

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 Company for : Case No. 10-388-EL-SSO
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 9:00 a.m. on Thursday,
April 22, 2010.

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VOLUME III

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1 Thursday Morning Session,

2 April 22, 2010.

3 - - -

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

5 Good morning. The Public Utilities Commission has
6 set for hearing at this time and this place Case No.
7 10-388-EL-SSO, being in the Matter of the Application
8 of Ohio Edison Company, The Cleveland Electric
9 Illuminating Company, and The Toledo Edison Company
10 for Authority to Establish a Standard Service Offer
11 Pursuant to Revised Code Section 4928.143 in the Form
12 of an Electric Security Plan.

13 My name is Gregory Price. With me is
14 Kimberly Bojko. We are the attorney examiners
15 assigned to preside over today's hearing. This is
16 our third day of hearing in this proceeding.

17 Do we have any preliminary matters we'd
18 like to address before we take our first witness?

19 MR. SMALL: Yes, your Honor.

20 EXAMINER PRICE: We'll take Mr. Randazzo
21 first.

22 MR. RANDAZZO: Thank you, your Honor.
23 Yesterday during my cross-examination of Mr. Schisler
24 we made reference and there have been other times
25 during the course of this case and the prior MRO case

1 where there's been reference made to the frequently
2 asked questions associated with the RPM FRR
3 integration auction associated with ATSI's migration
4 to PJM, and I indicated yesterday that I would be
5 asking the Bench to take administrative notice of
6 that which has a date of March 12th, 2010.

7 I have copies. What I'd like to do this
8 morning is to mark it as an IEU exhibit and
9 distribute copies to the parties that are here, of
10 course, and then if the Bench wishes to take
11 administrative notice of it as well, I think that
12 might help to make the record more easily applied to
13 the resolution of issues.

14 EXAMINER PRICE: Yes, it will. Thank
15 you. Which exhibit number would you like this
16 marked?

17 MR. RANDAZZO: IEU Exhibit 3.

18 EXAMINER PRICE: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 EXAMINER PRICE: Does anybody have
21 objection to us taking administrative notice of IEU
22 Exhibit 3?

23 Seeing none, we'll take administrative
24 notice of that exhibit.

25 MR. BURK: Just one other housekeeping

1 matter, your Honor, the companies have marked the
2 proof of publication of the legal notices as Company
3 Exhibit 7. Those are on the reporter's table and
4 available for review by the parties but I would move
5 admission of that.

6 EXAMINER PRICE: Does anyone need
7 additional time to review the proofs of publication
8 or can we take them now? So there are no objections
9 to the admission of Companies' Exhibit 7.

10 Seeing none, it will be admitted.

11 (EXHIBIT MARKED/ADMITTED INTO EVIDENCE.)

12 EXAMINER PRICE: Mr. Small.

13 MR. SMALL: Thank you, your Honor. It
14 has come to my attention that materials were passed
15 out before the public hearings at at least Garfield
16 Heights and the City of Cleveland that state, and I
17 will quote --

18 EXAMINER BOJKO: Hold up, could you
19 provide copies, please?

20 MR. SMALL: I don't have copies for
21 everybody. I'd be happy to show it to everybody.

22 EXAMINER PRICE: The Bench would like a
23 copy.

24 EXAMINER BOJKO: A copy for the Bench?

25 EXAMINER PRICE: Perhaps we'll take up

1 your motion when we have copies for everybody which
2 would pretty much be the form we've been proceeding
3 in this proceeding.

4 MR. SMALL: Could we take it up after the
5 lunch break?

6 EXAMINER PRICE: That would be fine. I'd
7 like to take it up before we take your witnesses,
8 though.

9 MR. SMALL: I know they're up third and
10 fourth today.

11 EXAMINER PRICE: That's what I said.
12 That would be -- well, we're always hopeful we'll get
13 through the first two witnesses before lunch.

14 MR. SMALL: I was just wondering whether
15 you thought we would get to our witnesses before
16 lunch.

17 EXAMINER PRICE: I'm always optimistic.

18 MR. SMALL: All right. We'll take this
19 up later. Thank you.

20 EXAMINER PRICE: Thank you.

21 Mr. McNamee, would you like to call your
22 next witness?

23 MR. McNAMEE: Staff would call Robert
24 Fortney.

25 (Witness sworn.)

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

3 THE WITNESS: My name is Robert B.
4 Fortney. My business address is 180 East Broad
5 Street, Columbus, Ohio 43215.

6 EXAMINER PRICE: Let's go off the record.
7 (Off the record.)

8 EXAMINER PRICE: Go back on the record.
9 Mr. McNamee, please proceed.

10 - - -

11 ROBERT B. FORTNEY
12 being first duly sworn, as prescribed by law, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 By Mr. McNamee:

16 Q. Mr. Fortney, by whom are you employed and
17 in what capacity?

18 A. Employed by the Public Utilities
19 Commission of Ohio as a public utilities
20 administrator 3.

21 MR. McNAMEE: Your Honors, I'd ask to
22 have marked for identification at this time as Staff
23 Exhibit 3 a multipage document filed in this case on
24 April 15 denominated Testimony of Robert B. Fortney.

25 EXAMINER PRICE: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Mr. Fortney, do you have before you
3 what's just been marked for identification as Staff
4 Exhibit 3?

5 A. Yes, I do.

6 Q. What is it?

7 A. It's my prefiled written testimony in
8 this proceeding.

9 Q. Okay. Do you have any corrections to
10 make to that document here this morning?

11 A. No, I do not.

12 Q. Are the contents of what's been marked
13 for identification as Staff Exhibit 3 true to the
14 best of your knowledge and belief?

15 A. Yes, they are.

16 Q. If I asked you the questions contained
17 within what's been marked for identification as Staff
18 Exhibit 3 again here this morning, would your answers
19 today be as represented therein?

20 A. Yes, they would.

21 Q. Do you adopt what's been marked for
22 identification as Staff Exhibit 3 as your direct
23 testimony in this case?

24 A. Yes, I do.

25 MR. McNAMEE: The witness is available

1 for cross.

2 EXAMINER PRICE: FirstEnergy?

3 MR. KORKOSZ: No questions, your Honor.

4 EXAMINER PRICE: Mr. Lavanga?

5 MR. LAVANGA: No questions, your Honor.

6 EXAMINER PRICE: Mr. White?

7 MR. WHITE: No questions, your Honor.

8 EXAMINER PRICE: Mr. Smith?

9 MR. SMITH: No questions.

10 EXAMINER PRICE: Mr. Porter?

11 MR. PORTER: No questions, your Honor.

12 EXAMINER PRICE: Mr. Randazzo?

13 MR. RANDAZZO: I have just one or two
14 questions.

15 EXAMINER PRICE: Can I ask if you're --

16 MR. RANDAZZO: On behalf of IEU. No
17 questions on behalf of the City of Akron.

18 EXAMINER PRICE: Thank you.

19 MR. RANDAZZO: But the City of Akron
20 concurs.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Randazzo:

24 Q. Mr. Fortney, I'd like you to turn to your
25 prepared testimony at the bottom of page 3. Are you

1 with me?

2 A. Yes.

3 Q. There you have some recommendations that
4 you suggest the Commission should adopt regarding
5 what I'll call the clinic-specific provision in the
6 ESP stipulation and recommendation, correct?

7 A. That's correct.

8 Q. At the time you filed this testimony you
9 did not have the -- Mr. D'Angelo had not testified,
10 correct?

11 A. That's correct.

12 Q. What I'd like to ask you is with regard
13 to item 1 on the list of things that start on the
14 bottom of page 3 and carry over to the top of page 4
15 of your prepared testimony, again, focusing on item
16 1, from your perspective does the testimony of
17 Mr. D'Angelo satisfy what you were trying to
18 accomplish with item 1?

19 A. In regards to item 1, the written
20 testimony of Mr. D'Angelo as supplemented by his oral
21 testimony more than accomplishes what I was
22 questioning. I guess I'm not sure what the proper
23 definition of an affidavit is, I guess if the
24 Commission wants more than that, they will say so,
25 but for my purposes it suffices.

1 MR. RANDAZZO: Thank you very much.

2 That's all I have.

3 EXAMINER PRICE: Constellation?

4 MR. SETTINERI: No questions, your Honor.

5 EXAMINER PRICE: Mr. Kurtz?

6 MR. KURTZ: No questions, your Honor.

7 EXAMINER PRICE: Ms. De Lisi?

8 MS. De LISI: No questions, your Honor.

9 EXAMINER PRICE: Mr. Warnock?

10 MR. WARNOCK: No, your Honor.

11 EXAMINER PRICE: Mr. Dyas?

12 MR. DYAS: No questions, your Honor.

13 EXAMINER PRICE: Mr. Gallon?

14 MR. GALLON: No questions, your Honor.

15 EXAMINER PRICE: Mr. O'Brien?

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

17 EXAMINER PRICE: OCC?

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

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Poulos:

22 Q. Good morning, Mr. Fortney.

23 A. Good morning, Mr. Poulos.

24 Q. Can you hear me?

25 A. I think you need to speak into the --

1 Q. How is that? Is this better?

2 A. Yes.

3 Q. I'd like to have you turn to page 5 of
4 your testimony to start. Looking at your answer at
5 the top of page 5, this answer relates to the
6 domestic automaker provision of the stipulation,
7 correct?

8 A. Yes.

9 Q. And if I refer to the domestic automaker
10 facilities or domestic automaker provision, do you
11 understand that to be the same provision?

12 A. I understand.

13 Q. Thank you.

14 And looking at your answer on the top of
15 page 5, you're stating that the economic incentive of
16 the domestic automaker facilities provision in the
17 stipulation is for a core industry. Do you see that?

18 A. Yes.

19 Q. And that core industry is the auto
20 industry?

21 A. Yes.

22 Q. And it's your testimony that this is a
23 reasonable provision, this economic incentive for the
24 domestic automaker facilities is a reasonable
25 provision to put in the stipulation because hopefully

1 it will result in increased business in the industry;
2 is that true?

3 A. That's true, and to my understanding the
4 provision will not kick in unless there is increased
5 business in the domestic auto industry.

6 Q. Increased electric use, correct?

7 A. That's correct.

8 Q. Not increased -- that doesn't directly --
9 that may not directly result in increased business;
10 is that true?

11 A. I can't imagine a scenario where there
12 would be increased electric use where there was not
13 increased business, but I guess there could be some
14 scenario.

15 EXAMINER PRICE: Well, the domestic
16 automakers could start making toasters, couldn't
17 they?

18 THE WITNESS: Yes.

19 EXAMINER BOJKO: That would be an
20 increase in business.

21 EXAMINER PRICE: Good point.

22 Q. Now this provision at the domestic
23 automakers facilities in the stipulation only applies
24 to facilities with more than 45 million
25 kilowatt-hours for the 12-month billing period ending

1 December 31st, 2009, at a single site, correct?

2 A. Correct.

3 Q. And do you know how many sites that would
4 be?

5 A. Do not know.

6 Q. Do you know why it has to be for domestic
7 automaker facilities?

8 A. I assume it was to promote buy American.

9 Q. Do you know if there are any foreign
10 automaker facilities that this is excluding that has
11 the same parameters other than they're foreign
12 automaker facilities?

13 A. I do not know in FirstEnergy's territory.

14 Q. And is it your opinion those foreign
15 domestic automakers [sic] would not be available for
16 this discount? Correct?

17 A. According to the --

18 MR. McNAMEE: Objection.

19 EXAMINER PRICE: Grounds?

20 MR. McNAMEE: Previous testimony has
21 indicated that there are some such entities in
22 FirstEnergy's territory. So it assumes a
23 contra-factual situation.

24 EXAMINER PRICE: Mr. Poulos.

25 MR. POULOS: Your Honor, the previous

1 testimony was that he was not aware of any.

2 EXAMINER PRICE: You're still assuming
3 facts not in evidence. Sustained.

4 Q. (By Mr. Poulos) Mr. Fortney, I want you
5 to assume a hypothetical, I have a hypothetical for
6 you, what if a new automaker facility wants to build
7 a facility in Ohio that would compete with the
8 facilities that meet the qualifications that are put
9 in this domestic automaker provision of the
10 stipulation? Isn't it true that any new facilities
11 coming into the area would not get a discount,
12 according to the terms of the stipulation?

13 A. Could you repeat or could I have the
14 question reread? I'm not sure of what the
15 circumstances of the hypothetical.

16 Q. Let me restate it. Assuming all the same
17 facts for the provisions in this domestic automaker
18 facilities provision in the stipulation except for
19 it's a new facility that comes into the service area
20 so that it does not meet the 2009 part of the
21 qualification. Is that hypothetical -- can you
22 understand that part?

23 A. And this new facility is a domestic
24 automaker?

25 Q. Yes, it is.

1 A. I believe it certainly could be argued
2 that it would be included and the 2009 baseline would
3 be zero and thus they would get the discount on all
4 kilowatt-hours.

5 Q. So any new companies that would -- I can
6 look to -- excuse me. Any new domestic automaker
7 facilities that come into the service territory are
8 eligible for this discount, in your opinion.

9 A. Yes, although they may believe they can
10 seek other alternatives to get a larger discount and
11 they may pursue those.

12 Q. And this provision only refers to
13 facilities with one site, at one site; is that
14 correct?

15 A. I need to -- I will need to reread that
16 provision in the stipulation to answer that question.

17 Q. Mr. Fortney, I don't know if it would
18 help but it's page 28. I'm sorry.

19 A. 28 of which document? I don't have the
20 stipulation in front of me, I have the application.

21 Q. It should be -- do you have the
22 stipulation as well as the application?

23 A. No, I do not.

24 EXAMINER PRICE: Robert.

25 THE WITNESS: I was looking for the

1 provision that's in the EDR rider, I was simply going
2 to read that provision.

3 Yes, the stipulation does say at a single
4 site. I apologize for the delay.

5 Q. So domestic automaker facilities with
6 more than a single site would not be eligible.

7 A. No; I think each -- it would apply to
8 each site individually.

9 Q. And they have to -- if they meet the
10 qualification of 45 million kilowatt-hours annually
11 at a single site.

12 A. At a single site. I think it was just
13 that they cannot consolidate various facilities to
14 meet the 45 million, it's that each site will be
15 judged on its own.

16 Q. Now, do you have the provision in front
17 of you?

18 A. I haven't got to it yet.

19 Q. I'm sorry, I thought it was handed to
20 you.

21 EXAMINER PRICE: Mr. Poulos, are you
22 talking about the stipulation in the provision or --
23 or provision in the stipulation or in the tariffs?

24 MR. POULOS: The provision in the
25 stipulation. I have a copy of it if you would like.

1 A. Okay. I am at Toledo Edison's EDR rider
2 provision (h) which is the same as the other two
3 operating companies.

4 Q. I was going to go back to this point but
5 if you have it in front of you, doesn't it say that
6 the domestic automaker facilities that are eligible
7 for this provision -- eligible for this incentive had
8 to use 45 million kilowatt-hours annually at a single
9 site in 2009? Do you see that?

10 A. In which document?

11 Q. In the stipulation.

12 A. Annually at a single site in 2009.

13 Q. So a new facility coming into the area
14 couldn't meet that qualification, correct?

15 A. That's probably correct.

16 Q. Mr. Fortney, how do you define -- do you
17 have an understanding of how the term "automaker
18 facilities," what type of facilities that would
19 incorporate as used in the stipulation?

20 A. Actually, on the day that this document
21 was signed by various parties I asked the same
22 question myself, how do you define "domestic
23 automakers"? I was kind of given a look as to how
24 stupid are you, that it applies to General Motors,
25 Ford, Chrysler automaking facilities. I also heard

1 Mr. Ridmann's definition of automakers headquartered
2 in the United States. I would have no objection to a
3 definition being put -- better definition being put
4 into the stipulation even if it was something that
5 simple.

6 Q. Do you consider auto parts manufacturers,
7 would that also be included in that definition?

8 A. I do not.

9 Q. You do not know or do not consider it?

10 A. I do not consider auto parts
11 manufacturers, but that's probably a valid reason to
12 put a better definition in the rider.

13 Q. So the only part, if I understand this
14 correctly, so the only part of the auto industry that
15 is eligible for this incentive is auto car makers.

16 A. That is my understanding.

17 Q. I want to have you look now at your
18 testimony again on the same page, lines 6 through 8.

19 A. Which page?

20 Q. Page 5. Sorry.

21 A. Of my testimony?

22 Q. Testimony. Are you there?

23 A. Yes.

24 Q. Thanks.

25 You start off on the first sentence

1 starting on line 6 where it starts "The theory is
2 that it seems contradictory to offer a discount." Do
3 you see that?

4 A. Yes, I do.

5 Q. Whose theory? Is it all the signatory
6 parties to the stipulation?

7 A. It's my theory.

8 Q. And going further with that statement,
9 the theory is that it seems contradictory to offer a
10 discount for economic development and then recover
11 that discount from the same customers. Are you
12 referring to the fact that GT class is exempted from
13 the recovery mechanism?

14 A. Yes, that's what I was referring to
15 specifically in this testimony.

16 Q. Well, the same customers you're referring
17 to on line 8, those same customers are domestic
18 automaker facilities; isn't that true?

19 A. That's true.

20 Q. So this statement basically is that you
21 think it's contradictory to offer a discount to
22 domestic automaker facilities and then recover that
23 discount from those same domestic automaker
24 facilities.

25 A. That is a theory that would support the

1 GT class being exempted from the recovery mechanism.

2 Q. Do you know how many companies are in the
3 GT class?

4 A. No, I don't.

5 Q. Do you know if it's more than just
6 domestic automaker facilities?

7 A. Yes, it is.

8 Q. Do you think it's -- and those are not
9 the customers, those are not -- it's not unfair for
10 those customers that are not domestic automaker
11 facilities that are in the GT class to pay part of
12 this discount; would you agree with that?

13 A. Yes, those customers would not be
14 receiving the discount, I guess the theory would not
15 apply to them.

16 Q. Looking at lines 8 through 10 starting
17 with "Also, if the GT class was included in the
18 recovery mechanism, the result could be direct
19 competitors subsidizing each other." Is the "direct
20 competitors" referring to competition between members
21 of the GT class or competition between members of the
22 domestic automaker facilities?

23 A. The intent was to refer to members in the
24 domestic auto making facilities. In other words, if
25 a Ford plant got a discount, then if a GT class were

1 not exempted, then there would be General Motors'
2 facilities that would be paying for the discount to
3 Ford.

4 Q. I want to turn to the Cleveland Clinic
5 provision. And I would like to look on page 2, start
6 on lines 12 to 13. Are you there, Mr. Fortney?

7 A. Yes.

8 Q. Thanks. "Per the terms of the
9 Stipulation, CEI will be responsible for those
10 costs." And those costs would be the \$70 million for
11 the electric upgrade of the infrastructure at the
12 Cleveland Clinic main campus, correct?

13 A. Yes, it refers to the \$70 million that is
14 talked about in the previous sentence.

15 Q. And those costs, where you state that CEI
16 will be responsible for those costs, what do you mean
17 by CEI will be responsible for those costs?

18 A. As costs are incurred, CEI will pay for
19 whatever facilities, whatever labor is included in
20 those costs.

21 Q. Do you understand that those costs will
22 be collected, the 70 million, approximately
23 70 million in costs will be collected from all
24 customers of FirstEnergy? Is that your
25 understanding?

1 A. That's in my next sentence.

2 Q. And isn't it true that part of that
3 70 million will be paid for by residential customers,
4 industrial customers, and commercial customers,
5 correct?

6 A. That's correct.

7 EXAMINER PRICE: Are there any customers
8 other than residential, commercial, and industrial?

9 THE WITNESS: It includes all classes
10 other than I believe the three lighting classes,
11 streetlighting, traffic lighting, and private outdoor
12 lighting.

13 EXAMINER PRICE: Thank you.

14 THE WITNESS: Residential GS, GP, G Sub,
15 and GT.

16 MR. RANDAZZO: For the record,
17 Mr. Fortney, those are references to rate schedules?

18 THE WITNESS: Those are rate schedules
19 within the FirstEnergy tariffs.

20 MR. RANDAZZO: Thank you.

21 Q. (By Mr. Poulos) As a member of the PUCO
22 staff, is it your position that this provision is
23 reasonable to include in a stipulation where
24 residential customers will have to fund a part of the
25 70 million for the clinic's electric infrastructure

1 improvements? Is that correct?

2 A. Absolutely.

3 Q. And the clinic is in CEI's territory,
4 service territory, correct?

5 A. It's in the City of Cleveland. I assume
6 that is within CEI's service territory, yes.

7 Q. What about the residential customers in
8 Toledo Edison, they will be also contributing towards
9 paying for the 70 million; is that true?

10 A. The recovery mechanism applies to all
11 three operating companies; yes.

12 Q. Do you believe that there's a value that
13 the residential customers of Toledo Edison will
14 receive from the electric infrastructure improvement
15 at the Cleveland Clinic main campus?

16 MR. RANDAZZO: I object.

17 EXAMINER PRICE: Grounds?

18 MR. RANDAZZO: The General Assembly's
19 already made that determination, the General Assembly
20 in the provision dealing with Section 4928.143 that
21 deals with economic development says that the costs
22 can be distributed over all the operating companies
23 within the same utility.

24 EXAMINER PRICE: I understand the point
25 you're making, but I think that Mr. Poulos is

1 probably arguing about whether that is an appropriate
2 policy choice, I don't think that he's arguing that
3 that's an illegal policy choice, so overruled.

4 Please answer the question, Mr. Fortney.

5 A. Since they are allowed to by law I assume
6 that the General Assembly believes that benefits in
7 one operating company probably must benefit the
8 ratepayers of the other two operating companies for
9 whichever company you're talking about.

10 Q. Just to clarify, what benefits do you see
11 in Toledo Edison residential customers paying for
12 this improvement at the Cleveland Clinic electric
13 infrastructure in the CEI service territory?

14 A. The benefits are hard to quantify. I
15 believe that anything that promotes the economic
16 development in northern Ohio probably would benefit
17 many of the other citizens of northern Ohio.

18 Q. What about the hospitals in the Toledo
19 Edison territory, what are the benefits that you see
20 for the hospitals in the Toledo Edison territory for
21 the economic -- the electrical infrastructure of the
22 Cleveland Clinic in the CEI territory?

23 A. Well, there again, any benefits that I
24 see are somewhat abstract. I could envision a
25 patient coming to the Cleveland Clinic and maybe the

1 Cleveland Clinic referencing them to another
2 hospital, but it's very fuzzy.

3 Q. Now --

4 EXAMINER PRICE: Mr. Fortney, this is a
5 situation whenever we do anything to promote economic
6 development, however; is that not the case? If an
7 automaker facility in Toledo gets the benefit of the
8 domestic automakers provision, that doesn't
9 necessarily create a new job in Springfield, does it?

10 THE WITNESS: No, it does not.

11 EXAMINER PRICE: Or if a aluminum
12 facility continues to be open in Meigs County, that
13 doesn't necessarily create a new job in Franklin
14 County, does it?

15 THE WITNESS: No, it does not.

16 EXAMINER PRICE: That's just simply the
17 characteristics of having economic development
18 provisions in Commission orders; is it not?

19 THE WITNESS: Well put.

20 EXAMINER PRICE: Thank you.

21 Thank you, Mr. Poulos.

22 MR. POULOS: Thank you, your Honor.

23 Q. (By Mr. Poulos) Referring to the
24 hospitals in the Toledo Edison service territory
25 again, would those, in your understanding, would

1 those be competitors of the Cleveland Clinic?

2 EXAMINER PRICE: Mr. Poulos, I think you
3 need to better define "competitors." Yesterday we
4 had testimony that Cleveland Clinic is a nonprofit
5 organization, so are you talking about competitors
6 for research dollars? Competitors for patients?
7 Competitors for better doctors? Competitors for
8 grants?

9 Q. Let's see if I can shortchange all of
10 those and ask is it your understanding, Mr. Fortney,
11 that almost all the hospitals in the state of Ohio
12 are nonprofit hospitals?

13 THE WITNESS: I'm sorry, could I have the
14 question reread?

15 EXAMINER PRICE: Please.

16 (Record read.)

17 MR. McNAMEE: Objection.

18 EXAMINER PRICE: Grounds?

19 MR. McNAMEE: This is really outside the
20 scope of this witness's testimony. How would he have
21 any idea? He's not testifying to the business
22 structure of hospitals in the state of Ohio generally
23 I don't believe. I don't see that in his testimony
24 anywhere.

25 EXAMINER PRICE: Mr. Poulos.

1 MR. POULOS: I'm just laying foundation
2 for asking about the competitors, and the point of
3 these questions are that domestic automaker
4 facilities, there's a statement that they should
5 be -- there should be discounts for the GT customers
6 because they're competitors and I was curious why or
7 if that would apply to the Cleveland Clinic provision
8 too.

9 EXAMINER PRICE: Objection sustained.

10 Q. (By Mr. Poulos) Mr. Fortney, do you see
11 Toledo Edison -- hospitals in Toledo Edison as
12 competitors for patients with the Cleveland Clinic?

13 A. I do not know.

14 Q. I want to have you turn to page 3 of your
15 testimony. I'm looking at lines 6 to 8. Now, it's
16 your opinion that the expansion plan cannot be
17 completed without the \$70 million and I'm referring
18 to the Cleveland Clinic expansion plan cannot be
19 completed without the \$70 million paid for from
20 CEI -- or from, excuse me, FirstEnergy customers,
21 correct?

22 A. That's my understanding from
23 Mr. D'Angelo's written and oral testimony, that if
24 the \$70 million is not funded as per the ESP, that
25 there would be less than the \$1.4 billion in

1 expansion and the 1,000 jobs.

2 Q. And is it your understanding or do you
3 have an understanding of how much less it would be,
4 that \$70 million?

5 A. I do not.

6 Q. Of the thousand jobs that were stated in
7 your testimony here, if the \$70 million is paid by
8 FirstEnergy customers, how many of those thousand
9 jobs are you aware of that are guaranteed to happen?

10 A. I believe that Mr. D'Angelo has testified
11 that there will be 1,000 jobs. I do have a question
12 and answer later on in my testimony that requests the
13 Cleveland Clinic to provide to FirstEnergy a progress
14 report, for lack of a better word.

15 Q. And what time frame does the Cleveland
16 Clinic have to complete or arrange for those thousand
17 jobs?

18 A. The recovery period is over five years.
19 I don't believe actual construction has been started.
20 I believe the five years starts with the first day of
21 the ESP period, so I don't know that there is a
22 specific time frame where Cleveland Clinic has to
23 reach 1,000 jobs to comply with the ESP.

24 Q. And as a PUCO staff member what would
25 happen if the, in your understanding what would

1 happen if the Cleveland Clinic was not able to meet
2 the thousand jobs?

3 A. I would assume that if sometime during
4 this reporting period that it was indicated that
5 there was something less than 1,000 jobs, that the
6 Commission would take appropriate action at that
7 time. I don't know how much less than 1,000 jobs
8 that would trigger action by the Commission, but
9 certainly the Commission would have the ability to
10 review the number of jobs created as well as the
11 number of dollars spent in the expansion project.

12 Q. And what the Commission would do if there
13 wasn't that number of jobs is undefined; is that
14 correct?

15 A. It's undefined by me.

16 Q. Undefined by the stipulation as well.

17 A. Undefined by the stipulation.

18 Q. And the \$1.4 billion investment, is it
19 your understanding that if the Cleveland Clinic gets
20 FirstEnergy customers to pay that \$70 million, that
21 the Cleveland Clinic is committed to spending
22 \$1.4 billion?

23 A. Yes, in that area. I'm not saying that
24 if it was 1.39 billion that the Commission should
25 take some type of action, but, yes, approximately

1 \$1.4 billion is the promise.

2 Q. Approximately. Understandable.

3 What happens if the company were not to
4 come close to that \$1.4 billion in expenditures?

5 A. Same answer as if they did not reach
6 1,000 jobs.

7 Q. Now, the \$70 million for the electric
8 infrastructure at the Cleveland Clinic is meant to be
9 an incentive for the hospital to spend money on
10 economic development; is that a fair statement?

11 EXAMINER PRICE: Could I have that
12 question back again, please?

13 (Record read.)

14 A. I believe that this was filed under the
15 economic development provision of 4928.143, whatever
16 the particular reference is, so yes, it is for
17 economic development purposes.

18 Q. Were you here yesterday for
19 Mr. D'Angelo's testimony?

20 A. Most of it.

21 Q. Do you recall him stating that the clinic
22 has already started spending the 1.4 billion?

23 A. My recollection is that they have started
24 the studies, the engineering studies and that. I
25 don't recall that he said that any physical

1 facilities have actually been installed or began. I
2 believe he was talking about the engineering studies
3 preliminary for expansion.

4 EXAMINER PRICE: You wouldn't expect him
5 to spend \$1.4 billion overnight, would you?

6 THE WITNESS: I could. But no.

7 Q. Is it your opinion that it is reasonable
8 to provide an economic incentive to a company that
9 has already started the work?

10 A. Sure.

11 Q. Is there a point where it's no longer
12 acceptable to provide an economic incentive to a
13 company that has already started the work?

14 A. Well, in order to even get some estimate
15 of what the project would and what the amount
16 required would be, they have to do engineering
17 studies, so I don't know how they could make any type
18 of application through an ESP or through a reasonable
19 arrangement without knowing the numbers that would
20 have to be part of that application.

21 Q. And is there a point, though, where
22 they've gone too far and it is not reasonable to
23 provide an economic incentive?

24 A. I think it would have to be on a
25 case-by-case basis.

1 Q. Mr. Fortney, are you aware of how many
2 hospitals there are in the FirstEnergy territory?

3 A. No, sir.

4 Q. Mr. Fortney, I'd like you to consider the
5 following hypothetical. University Hospital which is
6 in Cleveland as -- do you have an understanding of
7 that? Do you know where the -- the University
8 Hospital in Cleveland, are you familiar with that
9 hospital?

10 A. No, I am not familiar, but I will accept
11 there is a Cleveland University Hospital.

12 Q. As for -- and that they are at least --
13 you're not sure of this but for my hypothetical
14 purposes that they are a competitor of Cleveland
15 Clinic.

16 A. Again, I do not know how the term
17 "competitor" relates in the hospital business.

18 Q. Okay. So a nearby hospital to Cleveland
19 Clinic in Cleveland asks for \$1.4 billion to expand a
20 facility and wants FirstEnergy customers to pay,
21 again, \$70 million for electric infrastructure
22 expansion, do you believe it is reasonable to expect
23 the clinic to pay a share of that cost?

24 MR. McNAMEE: I'll object.

25 EXAMINER PRICE: Grounds?

1 MR. McNAMEE: I can't figure out how this
2 is related to any issue in the case. So I would
3 object on the basis of relevance.

4 EXAMINER PRICE: Mr. Poulos.

5 MR. POULOS: Again, he's asking customers
6 to pay, he said, Mr. Fortney's already said GT
7 class -- a competitor should not pay for the
8 benefits, so I would like to know if that's the same
9 for the hospital situation, if competitors should not
10 pay for the benefits.

11 EXAMINER PRICE: Mr. Randazzo.

12 MR. RANDAZZO: Your Honor, at some point
13 in time hypotheticals can become speculative and I
14 believe that unless there's some foundation or
15 commitment on the part of counsel, that he's going to
16 introduce evidence that these facts are real and have
17 relevance in the real world. The question is
18 objectionable based upon speculative Q and A, so in
19 addition to Mr. McNamee's objection I would object on
20 that grounds.

21 EXAMINER PRICE: Mr. McNamee.

22 MR. McNAMEE: And of course we still have
23 the embedded problem of we don't know what we're
24 talking about, we don't have any agreement here about
25 what "competitor" means, what "competitive" means.

1 MR. POULOS: Actually, I don't think I
2 said "competitor." I just said a nearby hospital.

3 EXAMINER PRICE: I'm going to sustain the
4 objection and I'm going to note for the record that
5 the Ohio Hospital Association which I assume is an
6 association of hospitals in Ohio is represented in
7 this proceeding and fully capable of representing the
8 interests of hospitals that may or may not be
9 competing or not competing with Cleveland Clinic.

10 Q. (By Mr. Poulos) Mr. Fortney, do you
11 recall the first time Cleveland Clinic approached
12 members of the PUCO staff regarding this Cleveland
13 Clinic reasonable arrangement -- or, excuse me, this
14 Cleveland Clinic provision in the stipulation?

15 EXAMINER PRICE: Mr. Poulos, can I ask
16 the relevance of this? I mean, you've asked these
17 questions of Mr. D'Angelo earlier and I'm just not
18 understanding how this advances the ball at all in
19 this proceeding.

20 MR. POULOS: I'm just curious when it was
21 started, that's just my only question on the area,
22 because I would like to just know the time limit of
23 when they started the discussions and when things
24 came to our attention.

25 EXAMINER PRICE: Wasn't Mr. D'Angelo's

1 testimony yesterday sufficient?

2 MR. POULOS: He didn't recall.

3 EXAMINER PRICE: He said -- he gave you a
4 ballpark, did he not?

5 MR. POULOS: He gave me a ballpark of
6 what he can recall and I'm just curious if
7 Mr. Fortney has an opinion on it.

8 EXAMINER PRICE: Okay. Mr. Fortney,
9 please answer the question.

10 A. I would not have been able to recall
11 either, but I did go back on my calendar of last year
12 and on October 29th I have a meeting with the
13 Cleveland Clinic and Mr. Randazzo and unless that
14 meeting got canceled and rescheduled for a later
15 date, I'm assuming that that October 29th was the
16 date that we first met. That's the first time I was
17 aware. I don't know what time -- someone obviously
18 scheduled the meeting so they were notified before
19 then, but I was aware on October 29th.

20 Q. Thank you.

21 Looking at your testimony, looking at
22 your testimony on page 3 at the bottom, there's --
23 Mr. Randazzo went over provision No. 1 on line 17 of
24 your testimony. Do you see that?

25 A. Start over.

1 Q. Looking on page 3 of your testimony.

2 A. Okay.

3 Q. Starting on line 17.

4 A. Yes.

5 Q. Mr. Randazzo asked you questions about
6 No. 1, do you see that, "The Cleveland Clinic should
7 submit to the Commission prior to its ruling in this
8 case an affidavit." Do you see that?

9 A. Yes.

10 Q. Okay. I wanted to go over the other two
11 with you. Part of your recommendation is that
12 "FirstEnergy should submit cost estimates which
13 justify the otherwise applicable \$70 million Clinic
14 share;" do you see that on page 4?

15 A. Yes, page 4 at the top of the page.

16 Q. Okay. What do you mean by "cost
17 estimates"? What are you looking for?

18 A. The whole point of the \$70 million was
19 that this was in the absence of some other agreement,
20 that the \$70 million would have been the Cleveland
21 Clinic's line extension share of this project, and
22 all I am suggesting is that the Commission should at
23 least be able to see the estimates to see if the
24 \$70 million share is a reasonable number for other
25 customers to be requested to pay for.

1 Q. And have you received that information
2 yet?

3 A. No. I have not.

4 Q. Earlier you made a reference to this --
5 you considering this to be a reasonable arrangement;
6 is that true?

7 A. I need --

8 MR. McNAMEE: Objection. Objection.

9 EXAMINER PRICE: Grounds?

10 MR. McNAMEE: That is not what the
11 witness said. The witness said it was an arrangement
12 under 143.

13 EXAMINER PRICE: Mr. Poulos.

14 MR. POULOS: If that's true, then if
15 that's what his answer is, then I understand. That's
16 fine. I was just asking if I'm correct that he said
17 that.

18 EXAMINER PRICE: Why don't you rephrase
19 your question so you're not assuming something that's
20 not been said.

21 Q. (By Mr. Poulos) Let me ask it this way,
22 Mr. Fortney, do you consider this provision to fall
23 under the requirements of 4905.31 for reasonable
24 arrangements, the requirements for reasonable
25 arrangements?

1 MR. McNAMEE: Objection.

2 EXAMINER PRICE: He can ask that
3 question. That's not assuming anything.

4 MR. McNAMEE: Except it's assuming the
5 opposite of what he said.

6 EXAMINER PRICE: Well, he's just
7 following up with what he said.

8 MR. McNAMEE: Okay.

9 EXAMINER PRICE: It's not an
10 objectionable question.

11 A. The answer is no, I don't consider it to
12 be a reasonable arrangement filed under that statute.
13 It could have been, but it was not.

14 Q. And why do you not consider it a
15 reasonable arrangement under that statute?

16 A. Because it was not filed under the
17 reasonable arrangement statute. It was filed under
18 the ESP statutes.

19 Q. When I refer to some of the rules for
20 reasonable arrangements, economic development
21 arrangements, are you familiar with those rules?

22 MR. RANDAZZO: And I will object to this
23 line of questioning for reasons previously stated. I
24 do not believe that the rules that attach to a
25 different statutory option are relevant for purposes

1 of evaluating an ESP.

2 MR. POULOS: I certainly understand that,
3 your Honor, I just want to understand one provision,
4 two provisions under there and one of them I want to
5 clarify where he got some of the language that he
6 used in his expectations. If I could have slight
7 latitude on this, I understand you can strike it.

8 EXAMINER PRICE: Why don't you ask your
9 question and we'll see how many objections we get to
10 that question.

11 Q. (By Mr. Poulos) Mr. Fortney, are you
12 familiar with the provisions under 4901:1-28-03
13 regarding the economic development arrangements?

14 A. Yes, I am familiar with those provisions.

15 Q. And this is linked back to your three
16 requirements that you asked for the Cleveland Clinic
17 provision which No. 3 is that "FirstEnergy should
18 provide annual information to the Commission which
19 verify the actual costs." Do you see that?

20 A. Yes.

21 Q. Is that the same requirement as required
22 under the economic development arrangements?

23 MR. RANDAZZO: Objection.

24 EXAMINER PRICE: Sustained. He's already
25 testified that he does not consider this under the

1 statute for reasonable arrangements. The rules you
2 are referencing were promulgated by the Commission to
3 implement that statute. He's already answered your
4 question.

5 MR. POULOS: I'm just curious --

6 EXAMINER PRICE: If you wanted to ask him
7 do you think this is a good policy and, therefore,
8 you also think that it's a good policy to ask for
9 this information, that's fine, but you're trying to
10 get in the back door somehow to get him to
11 acknowledge this is a reasonable arrangement and he's
12 already said that it's not.

13 MR. POULOS: Your Honor, I'm sorry. I'm
14 absolutely not trying to do that, I'm trying to find
15 how this mechanism works and if it's meant to work
16 the same way as an economic development arrangement
17 when you're filing this information and information
18 like that. So I was just trying to streamline and
19 figure out how this provision would work.

20 EXAMINER BOJKO: Well, ask him.

21 MR. POULOS: I will, I'll just go through
22 and ask him those questions.

23 EXAMINER PRICE: Mr. Randazzo.

24 MR. RANDAZZO: Your Honor, surely
25 Mr. Poulos gives us more credit intellectually than

1 that.

2 MR. POULOS: That's not even -- that is
3 not my point and I don't appreciate that kind of
4 comment. Let's just get on and take the extra time.

5 EXAMINER PRICE: Mr. Poulos, Mr. Randazzo
6 will each address the Bench.

7 MR. RANDAZZO: Your Honors, from the
8 advocacy that we can see in the testimony of OCC
9 predicate for this line of cross-examination is that
10 somehow the rules that apply to applications that are
11 submitted under 4905.31 should be used to establish a
12 normative standard to evaluate economic development
13 provisions that are in an ESP. I believe the theory,
14 the legal theory, is incorrect and questions that are
15 directed to that legal theory are a profound waste of
16 time in this proceeding and that is the basis for my
17 objection.

18 EXAMINER PRICE: We're going to give
19 Mr. Poulos one more opportunity to phrase this in an
20 unobjectionable manner. If he does not succeed, then
21 he will move on to a different topic.

22 Q. (By Mr. Poulos) Mr. Fortney, do you have,
23 for provision No. 3 on page 4 starting on line 2,
24 that "FirstEnergy should provide annual information
25 to the Commission which verify the actual costs," do

1 you have a date when that annual information would be
2 required?

3 A. There was not a date in here. I would
4 expect the information to be provided prior to the
5 onset of the recovery mechanism which is, what,
6 July 1st, 2011? Sometime prior to that.

7 EXAMINER PRICE: But you are expecting
8 the information to come in annually, that's why you
9 say "annual information," is that not correct?

10 THE WITNESS: Well, there's a second
11 purpose of the annual information as to how much
12 money was actually spent and that's that we do not
13 want ratepayers to pay more than the cost, more than
14 the 70 million or more than whatever the otherwise
15 applicable line extension cost of Cleveland Clinic
16 would have been. So if at some point during the
17 five-year period if it is shown that these costs are
18 only 60 million, then I would expect the recovery
19 mechanism to be adjusted to recover only 60 million.

20 EXAMINER PRICE: Thank you.

21 Q. And this information per your testimony
22 on line 3, this information goes to the Commission,
23 do you see that?

24 A. That's what it says.

25 Q. Would this information, in your

1 understanding, be provided to other parties to this
2 case as well?

3 A. Signatory parties to the stipulation.

4 Q. And that would not include -- so other
5 parties that are parties to this case but not
6 signatories to the stipulation would not receive this
7 stipulation?

8 A. Mr. Poulos, that would be a decision that
9 I let the Commission make. I don't understand all
10 the confidentiality rules and provisions. I believe
11 that to the degree that someone is paying money that
12 they should be provided with the verification that
13 that money was spent.

14 EXAMINER PRICE: Mr. Fortney, there will
15 be some sort of proceeding where FirstEnergy will
16 adjust the EDR; will there not? They're going to
17 make a filing to make adjustments to their EDR.

18 THE WITNESS: Yeah, I think most of the
19 provisions in the EDR will require periodic, whether
20 they're quarterly, semiannual, annual adjustments and
21 the Commission will have, and other parties will have
22 an opportunity to review those at that time and most
23 provisions of that sort have some sort of
24 reconciliation which all parties would be able to
25 participate in.

1 EXAMINER PRICE: And that's what you
2 envision in this case.

3 THE WITNESS: That's what I envision,
4 yeah.

5 MR. POULOS: Thank you, your Honor. If I
6 may have one minute, I may be done.

7 EXAMINER PRICE: You may.

8 MR. POULOS: Thank you.

9 EXAMINER PRICE: Let's go off the record.
10 (Discussion off the record.)

11 EXAMINER PRICE: Go back on the record.

12 MR. POULOS: Thank you, your Honor,
13 Mr. Fortney, I have no further questions at this
14 time.

15 EXAMINER PRICE: Thank you.

16 Mr. McNamee, redirect?

17 MR. McNAMEE: None.

18 EXAMINER BOJKO: Ms. Bojko.

19 - - -

20 EXAMINATION

21 By Examiner Bojko:

22 Q. Mr. Fortney, do you recall some
23 discussion with Mr. Poulos regarding the definition
24 of domestic automaker?

25 A. Yes.

1 Q. Would the applicability be somewhat
2 defined by the fact that the facility has to have
3 more than 45 million kilowatt-hours of consumption
4 for 12 monthly billing periods?

5 A. Yeah, that certainly would be part of the
6 definition, but I believe that that is already
7 included in the provision itself.

8 Q. Right.

9 A. So I'm not sure that there would be
10 any -- if that were the only provision that had to be
11 defined, it's already there.

12 Q. Right. My point being there were some
13 questions about would park facilities and the like be
14 considered falling under this provision, and wouldn't
15 some of that be defined by the magnitude of their
16 energy consumption?

17 A. Yes, it probably could be.

18 EXAMINER BOJKO: Thank you.

19 - - -

20 EXAMINATION

21 By Examiner Price:

22 Q. Mr. Fortney, just so the record is clear,
23 it is staff's position that the domestic automaker
24 provision and the Cleveland Clinic provision are
25 filed under the electric security plan provisions

1 related to economic development programs; is that
2 correct?

3 A. I believe that they are filed under
4 4928.143(2)(i).

5 Q. Thank you. Now, as part of your job
6 duties you work on other reasonable arrangement
7 cases -- or reasonable arrangement cases, not other
8 reasonable arrangement cases.

9 A. Yes.

10 Q. I'd like to -- I think maybe one of your
11 colleagues spoke the other day, are you familiar with
12 the Eramet reasonable arrangement?

13 A. Yes, I am. I testified in that case.

14 Q. And that was filed under the reasonable
15 arrangements chapter that Mr. Poulos was referencing
16 earlier, was it not?

17 A. That's correct.

18 Q. And all the information that was required
19 under that chapter was provided; is that correct?

20 A. Yes, I believe it was.

21 Q. And OCC's position on that case was?

22 A. They were not in favor of the application
23 as filed although I -- as much as I hate to, I will
24 give OCC some credit that they were not opposed to
25 the economic development provisions themselves. What

1 they are mainly opposed to is assuring some value for
2 the customers that they represent and they are also
3 opposed to the recovery mechanism that would give
4 100 percent of the recovery to the company.

5 So I believe that their opposition is
6 mainly on those areas rather than strictly on the
7 provisions of the application itself.

8 EXAMINER PRICE: Thank you very much.
9 Thank you for clarifying.

10 MR. McNAMEE: Staff would move for the
11 admission of Staff Exhibit 3.

12 EXAMINER PRICE: You're excused.

13 Any objections to the admission of Staff
14 Exhibit 3?

15 Seeing none, it will be admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER PRICE: At this time I believe
18 that another attorney would like to make an
19 appearance in this proceeding.

20 MR. WOLFE: Thank you, your Honor, Samuel
21 Wolfe with Viridity Energy, Inc., 100 West Elm
22 Street, Conshohocken, C-o-n-s-h-o-h-o-c-k-e-n,
23 Pennsylvania.

24 EXAMINER PRICE: Thank you very much.

25 MR. WOLFE: Representing the Demand

1 Response Coalition.

2 EXAMINER PRICE: Thank you very much.

3 Let's go off the record.

4 (Discussion off the record.)

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

7 Thank you, Mr. Wolfe. It's my
8 understanding now it is time for you to call your
9 witness.

10 MR. WOLFE: Thank you, your Honor. The
11 Demand Response Coalition would like to call Bruce
12 Campbell to the stand.

13 EXAMINER BOJKO: Mr. Campbell, please
14 raise your right hand.

15 (Witness sworn.)

16 EXAMINER BOJKO: Please be seated.
17 Please state your name and address for the record.

18 THE WITNESS: My name is Bruce Campbell.
19 My business address is 901 Campisi Way,
20 C-a-m-p-i-s-i, Campbell, California 95008.

21 - - -
22
23
24
25

1 BRUCE CAMPBELL

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

4 DIRECT EXAMINATION

5 By Mr. Wolfe:

6 Q. Mr. Campbell, did you cause prefiled
7 testimony to be filed in this matter?

8 A. Yes, I did.

9 Q. Is this the testimony that you're
10 referring to?

11 A. Yes, it is.

12 Q. Do you have a copy of your testimony with
13 you?

14 A. In my bag.

15 Q. (Handing document to witness.)

16 A. Okay, I have it here.

17 Q. All right. Was this testimony prepared
18 by you or under your direct supervision and control?

19 A. Yes, it was.

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

22 A. I have several corrections. On page 11
23 in lines 3 and 4 it speaks to the clearing price for
24 "PJM's FRR auction." The "FRR" should be RPM --
25 excuse me, it should be the BRA auction, not the "FRR

1 auction," and the quantity which says "\$3.31 per
2 kilowatt month" should be \$3.36 per kilowatt month.

3 EXAMINER BOJKO: Could you please pull
4 the microphone closer to you. I'm having difficulty
5 hearing you.

6 THE WITNESS: Okay. Is that better?

7 EXAMINER BOJKO: Yes, thank you.

8 A. Similarly -- I think that corrects the
9 reference. If I could get my notes from my bag, I
10 have some specific notes in my bag for one of the
11 other corrections.

12 EXAMINER BOJKO: Yes, please.

13 A. Okay. That concludes the changes for
14 corrections.

15 Q. Do you have any other corrections or
16 additions?

17 A. Not at this time.

18 Q. If asked these questions today under
19 oath, would your answers be the same as in your
20 prefiled testimony?

21 A. Excuse me, could you repeat.

22 Q. If you were asked the questions in your
23 prefiled testimony again here today under oath, would
24 your answers be the same?

25 A. Yes, they would.

1 MR. WOLFE: Your Honors, I ask that the
2 prefiled testimony of Bruce Campbell be marked DR
3 Coalition Exhibit 1.

4 EXAMINER BOJKO: I'm sorry, DR Coalition?

5 MR. WOLFE: DR Coalition.

6 EXAMINER BOJKO: It will be marked DR
7 Coalition Exhibit 1, will be the prefiled testimony
8 of Mr. Campbell.

9 MR. WOLFE: Thank you.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. WOLFE: The witness is available for
12 cross-examination.

13 MR. KUTIK: Your Honor, would it be
14 appropriate at this time to entertain motions to
15 strike?

16 EXAMINER BOJKO: It would be.

17 MR. KUTIK: A motion to strike.

18 EXAMINER BOJKO: It would be. Please
19 proceed.

20 MR. KUTIK: Thank you, your Honor.

21 Your Honor, the companies move to strike
22 a portion of Mr. Campbell's prefiled testimony
23 starting at page 8, line 23.

24 EXAMINER BOJKO: I'm sorry, Mr. Kutik,
25 you're going to have to speak up.

1 MR. KUTIK: Your Honor, we move to strike
2 Mr. Campbell's testimony starting at page 8, line 23
3 to page 9, line 10. Our objection is Mr. Campbell is
4 making a legal argument; it's inappropriate for
5 testimony.

6 MR. WOLFE: Your Honors, I'd suggest that
7 the witness is making a policy argument --

8 EXAMINER BOJKO: One moment, let us read
9 the provision.

10 Please proceed.

11 MR. WOLFE: Thank you, your Honor.

12 I would suggest that the witness is
13 simply making a policy argument describing what the
14 law provides and applying it to the facts in this
15 case and suggesting that the provisions in question
16 are inconsistent with the law he cites.

17 EXAMINER BOJKO: Are you finished?

18 MR. WOLFE: Yes, I am.

19 EXAMINER BOJKO: Mr. Kutik.

20 MR. KUTIK: Your Honor, Mr. Campbell
21 talks about certain things contradicting the statute,
22 that's in his first sentence. In the second sentence
23 he talks about what the rules specify. And then he
24 comments that something can't be found to comply with
25 the law and regulations. Those are legal

1 observations.

2 EXAMINER BOJKO: Mr. Kutik, we typically
3 allow parties to speak to regulatory matters and
4 issues. We will allow him to speak to regulatory
5 matters with the understanding that he --

6 I don't believe you're an attorney, are
7 you, Mr. Campbell?

8 THE WITNESS: No, I'm not.

9 EXAMINER BOJKO: That you are not
10 providing a legal opinion here, merely your lay
11 opinion on regulatory matters. So you will have an
12 opportunity for cross-examination under those
13 grounds. Thank you. So the motion to strike is
14 denied.

15 Other motions?

16 OCC? Do you have any questions?

17 MR. SMALL: No questions.

18 EXAMINER BOJKO: Mr. Heintz?

19 Ms. De Lisi?

20 MS. De LISI: No questions, your Honor.

21 EXAMINER BOJKO: Mr. Warnock?

22 MR. WARNOCK: No questions.

23 EXAMINER BOJKO: Mr. Dyas?

24 MR. DYAS: No questions, your Honor.

25 EXAMINER BOJKO: Mr. White?

1 MR. WHITE: No questions, your Honor.

2 EXAMINER BOJKO: City of Akron,

3 Mr. Randazzo?

4 MR. RANDAZZO: No questions for Akron.

5 EXAMINER BOJKO: Mr. Settineri?

6 MR. SETTINERI: No questions, your Honor.

7 EXAMINER BOJKO: Mr. Lavanga?

8 MR. LAVANGA: Your Honor, I might have
9 some questions, but we'd like to have the company go
10 first because we think some of our questions might be
11 covered by the company.

12 EXAMINER BOJKO: That's a good idea.
13 Does the company agree?

14 MR. KUTIK: Yes, I do. No problem.

15 EXAMINER BOJKO: Please proceed,
16 Mr. Kutik.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Kutik:

20 Q. Good morning.

21 A. Good morning.

22 Q. Mr. Campbell, you're not a degreed
23 economist, correct?

24 A. That's correct.

25 Q. And you've never testified before in a

1 proceeding like this where you're giving testimony
2 under oath, correct?

3 A. Correct.

4 Q. You need to speak into the microphone.

5 A. I'm sorry. That's correct.

6 Q. Thank you. Now, EnergyConnect is a
7 wholly-owned subsidiary of a company called
8 EnergyConnect Group, Inc., correct?

9 A. Yes.

10 Q. And EnergyConnect Group, Inc., doesn't
11 have any other business other than EnergyConnect.

12 A. That's right.

13 Q. And so that EnergyConnect Group derives
14 all of its revenue through the business of
15 EnergyConnect, Inc., correct?

16 A. Yes.

17 Q. Now, there have been no events that you
18 can at least tell us about that have seriously
19 affected the financial viability or status of
20 EnergyConnect since January 1st, 2010, correct?

21 A. That's correct.

22 Q. And EnergyConnect has historically relied
23 upon direct sales organizations and agents to sign up
24 commercial, industrial, and other customers, correct?

25 A. Yes.

1 Q. And they're signed up to receive revenues
2 for load curtailment in certain circumstances,
3 correct?

4 A. Yes, that's correct.

5 Q. And so these customers in effect receive
6 revenue from you.

7 A. Yes.

8 Q. And you, in turn, receive revenues from
9 grid operators that are then, these revenues, shared
10 with customers, correct?

11 A. That's correct.

12 Q. And the percentage that the customers may
13 get is negotiable on a customer-by-customer basis.

14 MR. WOLFE: Objection, your Honors. This
15 is soliciting proprietary information and we would
16 request an opportunity to seek a protective order if
17 he's directed to answer the question.

18 MR. KUTIK: Your Honor, he answered this
19 question in deposition without objection.

20 EXAMINER BOJKO: Well, I think he
21 answered it on the stand already.

22 MR. KUTIK: Frankly that's the only
23 question I have on this.

24 Q. That is the percentage is negotiable on a
25 customer-by-customer basis, isn't that true,

1 Mr. Campbell?

2 A. It can be, for most of my peer businesses
3 and my business, that is true.

4 Q. Now, I want to talk to you a little bit
5 about the status of EnergyConnect and EnergyConnect
6 Group. Isn't it true that the auditors of
7 EnergyConnect Group, the independent auditors have
8 expressed doubt about its ability to continue as a
9 going concern?

10 MR. WOLFE: Objection, your Honors. This
11 is outside the scope of the witness's prefiled
12 testimony. He's testified nothing about the
13 financial condition of his employer.

14 EXAMINER BOJKO: Overruled. Please
15 answer.

16 A. If I may say that I am prepared to offer
17 my expertise on behalf of the coalition rather than
18 my individual company, I mean, that's what I'm here
19 to do and my expertise is on the business and the
20 market impacts of what curtailment providers --

21 EXAMINER BOJKO: Could you pull the mic
22 closer to you, first of all, I'm sorry. We cannot
23 hear you. Secondly, are you answering the question
24 or are you making an objection? Because you have a
25 counsel that's here to represent you, you're the

1 witness. If your counsel has an objection, he needs
2 to make it, not you.

3 THE WITNESS: Okay. I did want to
4 clarify that.

5 A. So would you repeat the question?

6 MR. KUTIK: Sure. Would you read the
7 question, please.

8 (Record read.)

9 A. I have not read any audit report to that
10 effect.

11 MR. KUTIK: May I approach, your Honor?

12 EXAMINER BOJKO: You may.

13 Q. Mr. Campbell, I have handed you a
14 document entitled, "EnergyConnect Group, Inc., Form
15 10-K" from the U.S. Securities & Exchange
16 Commission -- or filed with the U.S. Securities &
17 Exchange Commission. You're aware that your company
18 does file these things, do they not?

19 A. Yes, I am.

20 Q. Could you please turn to page 9. And
21 under the section that talks about certain factors
22 that may affect future results, the third heading
23 down, it says "Our independent auditors have
24 expressed substantial doubt about our ability to
25 continue as a going concern which may hinder our

1 ability to obtain future funding." Do you see that?

2 MR. WOLFE: Your Honors, I have to object
3 to this line of questioning. The witness is,
4 although he has substantial expertise in energy
5 regulatory matters, he has -- I've not suggested he
6 has any expertise in the interpretation of SEC
7 filings and especially in the discussion of how risk
8 factors may be disclosed in a company's filing with
9 the SEC and what the implications of those
10 disclosures are.

11 EXAMINER BOJKO: Mr. Kutik.

12 MR. KUTIK: Well, your Honor, he said he
13 hadn't seen any filings. I'm showing him a filing.

14 EXAMINER BOJKO: We'll give counsel
15 leeway. I know you weren't present earlier this
16 week, but we did allow this line of questioning for
17 previous or similarly situated parties, so we'll
18 allow it at this time.

19 Please proceed. Please answer the
20 question.

21 Q. Did I read that correctly? Did I read
22 that correctly?

23 A. Did you read --

24 Q. The heading.

25 A. Yes.

1 Q. Isn't it true that as of January 2nd,
2 2010, EnergyConnect had an accumulated deficit of
3 \$158 million?

4 A. I would have to read the report to
5 confirm that.

6 Q. All right. Look at the next paragraph.
7 Second line up from the bottom it says "At
8 January 2nd, 2010, we had an accumulated deficit of
9 \$158 million"; isn't that correct?

10 A. Yes, that's what it says.

11 EXAMINER PRICE: You definitely have to
12 make an effort to speak up because I know everybody,
13 we have a large room with --

14 THE WITNESS: I'm sorry, yes.

15 EXAMINER PRICE: -- with multiple
16 parties.

17 Q. It may help if you put the microphone
18 between you and me.

19 And is it also true that EnergyConnect
20 has incurred losses since its inception and your
21 auditors said that EnergyConnect may continue to
22 incur net losses into the future and may never reach
23 profitability?

24 A. I'm sorry, is that in the auditor's
25 report, sir?

1 Q. Yes. That's the heading from the
2 paragraph we just read, is it not?

3 A. The heading is as you say.

4 Q. And the second paragraph, the second
5 sentence of that paragraph, excuse me, does it not
6 say that "We have yet to demonstrate that we can
7 generate sufficient sales of our products to become
8 profitable"?

9 A. It basically says that, yes.

10 Q. Isn't it true that one of the things that
11 EnergyConnect has disclosed to the marketplace and
12 the investor community is that there are limited
13 barriers to entry in the business EnergyConnect is
14 in?

15 A. I'm not familiar with what
16 representations we've made to the investment
17 community.

18 Q. Let me have you turn to page 11 of the
19 10-K. The second paragraph from the bottom says "We
20 are experiencing increased competition in capacity
21 programs as there are limited barriers to entry. We
22 have seen a number of small companies enter into
23 capacity programs. This in turn has led to an
24 increase in the share of our revenues that we share
25 with our customers in order to remain competitive in

1 capacity programs resulting in increased pressure on
2 our gross margins." That's what you told -- that's
3 what EnergyConnect told the investment community,
4 correct?

5 A. Yes, that's what the report says.

6 Q. Now, would it be fair to say that the
7 success of your business is dependent on the growth
8 in the energy market and curtailment programs and to
9 the extent that such growth slows and the need for
10 service is curtailed, your business may be harmed?

11 A. Yes.

12 Q. And the capacity markets made up nearly
13 all of your revenues in 2009, correct?

14 A. That's correct.

15 Q. Now, EnergyConnect has some customers in
16 Ohio, correct?

17 A. Yes.

18 Q. And you've had those customers for a few
19 years?

20 A. I'm not familiar with how long we've had
21 those customers.

22 Q. More than one year?

23 A. I believe so, yes.

24 Q. Now, EnergyConnect is not a CRES
25 provider, not now, not ever, correct?

1 A. CRES, I believe you mean --

2 MR. WOLFE: Object to the form of the
3 question, with the "not ever" asks whether this could
4 happen in the future.

5 MR. KUTIK: Well, I'll back up.

6 EXAMINER BOJKO: Could you rephrase this.

7 MR. KUTIK: Yes.

8 EXAMINER BOJKO: And please don't use the
9 acronym this time.

10 MR. KUTIK: Okay.

11 Q. Mr. Campbell, are you familiar with what
12 is known as a certified retail electric service, or
13 CRES provider?

14 MR. RANDAZZO: I believe it would be
15 competitive.

16 MR. KUTIK: Yes, thank you.

17 MR. RANDAZZO: Use the acronym.

18 MR. KUTIK: That's why I do it.

19 Q. Do you know what a competitive retail
20 electric service provider is?

21 A. I wanted to be sure. I mean, I'm not
22 familiar with the Ohio term, but I understand what
23 you're speaking about.

24 Q. Whatever it is.

25 A. It's different in every state.

1 Q. Right. I appreciate that.

2 And so are you one?

3 A. We are not.

4 Q. Okay. And have you ever been one?

5 A. Not in Ohio.

6 Q. Thank you.

7 Now, isn't it true that at one point in
8 time EnergyConnect had been registered in the state
9 of Ohio?

10 A. I'm not familiar with that.

11 Q. Okay.

12 A. I am not aware of that possibility.

13 Q. So you don't know at this point in time
14 whether you are or you're not registered in the state
15 of Ohio.

16 A. I do not know.

17 Q. Do you know, for example, whether
18 EnergyConnect was registered in the state of Ohio but
19 that registration was revoked for failure to file
20 appropriate tax forms or pay appropriate taxes?

21 A. I'm not aware of that.

22 MR. KUTIK: May I approach?

23 EXAMINER BOJKO: I'm sorry, are you
24 talking about CRES registration?

25 MR. KUTIK: I'm sorry. Let me back up.

1 Q. Mr. Campbell, is EnergyConnect, to the
2 best of your knowledge, registered to do business in
3 the state of Ohio with the Ohio Secretary of State?

4 A. Not to the best of my knowledge.

5 Q. Were they at one point in time?

6 MR. WOLFE: I object to these questions,
7 your Honor.

8 EXAMINER BOJKO: What are the grounds?

9 MR. WOLFE: The witness has no reason to
10 be familiar with the corporate filings that may have
11 been made with the Ohio Secretary of State and has
12 not testified to anything resembling this in his
13 direct testimony.

14 EXAMINER BOJKO: Well, if the witness
15 doesn't know, he can answer as such, but it is his
16 company and we have a right to know the information.

17 MR. WOLFE: Thank you.

18 MR. KUTIK: I'm sorry, was there a
19 question pending?

20 (Record read.)

21 A. I don't know.

22 Q. Do you know whether the registration for
23 EnergyConnect was revoked by the Secretary of State's
24 office because of a failure to file taxes or pay
25 taxes?

1 A. No, I don't know.

2 MR. KUTIK: May I approach the witness,
3 your Honor?

4 EXAMINER BOJKO: You may.

5 MR. KUTIK: Your Honor, we'd like to have
6 this exhibit marked as Companies' Exhibit 8.

7 EXAMINER BOJKO: It will be so marked.
8 For the record, what is being marked?

9 MR. KUTIK: Sure. Your Honor, I have
10 provided the witness, and I will share with the other
11 parties, a letter from the Secretary of State's
12 office dated May 8th, 2009, to Gene Ameduri,
13 A-m-e-d-u-r-i, Poland, Ohio, Re: EnergyConnect, Inc.

14 EXAMINER BOJKO: That letter will be so
15 marked as Company Exhibit 8.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. WOLFE: Your Honors, if I could
18 object to the admission of this document, there's
19 been no authentication of it. I think that is what
20 we will hear here in a moment, but there's been no
21 movement for it to be admitted at this point. We do
22 that at the end of the examination. You can take
23 that issue up at that time.

24 Q. (By Mr. Kutik) Mr. Campbell, have you had
25 an opportunity to review the document?

1 A. Yes, I did.

2 Q. Do you know who Gene Ameduri is?

3 A. Yes, I do.

4 Q. Is he an agent for EnergyConnect?

5 A. Not at this time.

6 Q. He was?

7 A. He was.

8 Q. Does this refresh your recollection as to
9 whether your, that is EnergyConnect's articles of
10 incorporation were revoked in the state of Ohio?

11 A. No, it does not. EnergyConnect is, the
12 best of my knowledge, incorporated in the state of
13 Oregon. I understand that Mr. Ameduri was a resident
14 of Ohio. Beyond that, I couldn't speculate or say
15 what the rationale for incorporation in Ohio might
16 have been.

17 EXAMINER BOJKO: Excuse me.
18 Mr. Campbell, you're going to have to speak up. I
19 can't hear you so I'm pretty sure that they're having
20 difficulty as well.

21 THE WITNESS: I will redouble my efforts.

22 EXAMINER BOJKO: There you go.

23 Q. Do you know what it means to be
24 registered to do business in the state, Mr. Campbell?

25 A. No, I do not.

1 Q. So whether someone is registered to do
2 business, that's somebody else's job, not your job as
3 head of regulatory affairs or whatever you are with
4 EnergyConnect.

5 A. That's correct.

6 Q. Is that correct?

7 A. That's correct.

8 Q. Now, you're testifying on behalf of a
9 number of other companies, correct?

10 A. Yes.

11 Q. And there's no formal relationship that
12 exists between or among those companies.

13 A. There is no formal relationship.

14 Q. It's sort of a loose coalition.

15 A. Yes.

16 Q. And you don't know whether any of those
17 customers or any of those companies has customers in
18 the state of Ohio.

19 A. I have no specific knowledge of what the
20 other coalition members do in Ohio.

21 Q. Or whether they've been certified as a
22 CRES provider.

23 A. That's correct.

24 Q. Or whether they're registered to do
25 business in the state of Ohio.

1 A. I have no specific knowledge.

2 Q. Let me ask you a general regulatory
3 question. With respect to the ATSI auctions at PJM,
4 is it your belief that there were more than two
5 auctions done for the ATSI integration purposes to
6 date, or for the PJM integration of ATSI -- for the
7 purposes of ATSI's integration to PJM?

8 A. What I am aware of is a single auction
9 for two years.

10 Q. Okay. And your understanding is that was
11 a BRA auction, not an FRR auction.

12 A. That's -- no. No, that's not my
13 understanding. The character, I would say that the
14 character -- it was certainly not a BRA auction. The
15 characterization of FRR I think is a matter of terms,
16 a business term for PJM. But it was no BRA auction.

17 Q. Was it an FRR auction?

18 A. It was what PJM and the ATSI companies
19 characterize as an FRR auction, yes.

20 Q. Now, if you participate in one of those
21 auctions and bid demand response into those auctions,
22 the customers associated with that DR do not have to
23 be located within the ATSI footprint, correct?

24 A. Correct.

25 Q. They simply have to be located within

1 PJM.

2 A. That's correct.

3 Q. Now, with respect to the recommendations
4 that you've made in this case, you haven't done any
5 consumer research, any market research regarding
6 customer attitudes about Riders ELR or OLR; fair to
7 say?

8 A. That's correct.

9 Q. And you haven't talked to any customers
10 in Ohio about those riders; is that correct?

11 A. That's correct.

12 Q. You don't know whether any customers take
13 service under those riders.

14 A. That's correct.

15 Q. Now, to criticize those riders it would
16 be helpful to understand them, correct?

17 A. Yes.

18 Q. And you believe that to receive a credit
19 under Rider OLR the customer would have to be signed
20 up and participating and in the program since 2008
21 and have a 1 megawatt participation size.

22 A. That is not correct. It would be -- if I
23 may check my notes, I do say that -- let me say that
24 I've been confusing OLR and ELR tariffs in my reviews
25 here. There are similarities, certainly, in the

1 acronyms.

2 Q. So my characterization of OLR was
3 correct. Or was it correct?

4 A. Rider ELR has provisions that require
5 customers to be signed to an interruptible tariff in
6 I think 2008.

7 Q. All right.

8 A. Rider OLR does not have that sort of
9 restriction.

10 Q. And it would be fair to say in your
11 deposition you testified just the opposite.

12 A. That's correct. I made a switch of
13 those.

14 Q. Now, would you agree with me that many,
15 in fact maybe most customers would want certainty
16 with respect to the amount of credit they would
17 receive for interruptions of their load?

18 A. Certainties, certainly. And the term of
19 certainty would be -- may differ with different
20 customers.

21 Q. And between what you recommend and the
22 stipulation, you believe that they have the same in
23 terms of the certainty or uncertainty in the amount
24 of the credit that a customer might, correct?

25 A. I'm not sure if I understood the

1 question. Would you repeat it, please?

2 MR. KUTIK: Sure. Could you read it.

3 (Record read.)

4 A. Can you restate the question, please?

5 I'm just not grasping the --

6 Q. Do you understand the comparison I'm
7 asking you to draw?

8 A. No, I don't.

9 Q. Okay. Well, you are asking to have one
10 set of circumstances involving what customers can do
11 with respect to interruptible load including the
12 limitations on the current -- or, the current Riders
13 ELR and OLR, correct?

14 A. Yes.

15 Q. And the stipulation talks about an
16 extension or renewal of those riders, correct?

17 A. That's correct.

18 Q. Now, those are the two circumstances I
19 want to compare. Are you with me so far?

20 A. I think so, yes.

21 Q. Now, between those two circumstances,
22 isn't it true that you believe that they are the same
23 in terms of the certainty or uncertainty that they
24 offer customers in the amount of the credit that
25 customers would receive for their interruptible load?

1 A. I believe they would be the same for any
2 customers that have agreed already to participate in
3 those tariffs.

4 Q. All right. Now, under your proposal --
5 with your proposal a customer would receive a credit
6 if they were not on the tariffs only if a CSP or the
7 customer otherwise was able to bid that customer's DR
8 into the PJM auctions, correct?

9 A. That's correct.

10 Q. And these auctions are held at PJM for
11 each planning year, correct?

12 A. That's correct.

13 Q. And then there are sometimes incremental
14 auctions, correct?

15 A. Yes, there are.

16 Q. And for some years there may not be
17 incremental auctions, correct?

18 A. There are incremental auctions for every
19 year.

20 Q. Okay. But sometimes there are not.

21 A. There are always incremental auctions for
22 every year.

23 Q. Well, isn't it true that with incremental
24 auctions they are not held if demand does not
25 increase?

1 A. There are nominally -- for each delivery
2 year there are three incremental auctions and PJM and
3 the community, the PJM community characterizes those
4 auctions as incremental auction 1, incremental
5 auction 2, and incremental auction 3.

6 Incremental auctions 1 and 3 are always
7 held for every year. Incremental auction 2 is
8 optional or -- is optional for the next two delivery
9 years, those begin in 2011 and '12. Excuse me, '11,
10 yeah, it would be optional for '11-'12. The timing
11 for the '10-'11 year has passed. In delivery year
12 '12 and '13 there would be a second incremental
13 auction as well as a first and third.

14 Q. You said that one of the years the
15 incremental auction would be optional, correct?

16 A. That's correct.

17 Q. So it may or may not happen, correct?

18 A. That's correct.

19 MR. WOLFE: That's not what the witness
20 had said.

21 MR. KUTIK: Well, he said "correct." And
22 I object to the lawyer coaching the witness.

23 EXAMINER BOJKO: Okay. Remember,
24 everybody focus their comments to the Bench.

25 Do we have an objection pending from you,

1 sir?

2 MR. WOLFE: Yes, your Honor. The
3 objection is that the question was already asked and
4 answered and the answer was not the way that counsel
5 characterized it.

6 MR. KUTIK: My question, your Honor, was
7 it's an option that may not happen. The witness I
8 believe answered yes.

9 EXAMINER BOJKO: Let's ask the witness
10 again.

11 Q. (By Mr. Kutik) If it's optional, it may
12 not happen, correct?

13 A. An optional auction may not occur.

14 Q. Thank you.

15 Now, in setting what price that you are
16 bidding, you take into account what your company
17 might get out of it, correct?

18 A. Yes.

19 Q. Now, if a customer's taking service
20 through the ELR or OLR tariffs, they could not
21 participate with the same load with the CSP in the
22 PJM auctions, correct?

23 A. That's correct. We could not sign a
24 customer who was taking service under the ELR or OLR.

25 Q. And similarly if you had signed up a

1 customer, that customer couldn't try to take service
2 under let's say Rider OLR if that rider --

3 A. That is correct -- well, I'm sorry, I
4 don't know that that's necessarily true.

5 Q. Okay. Do you know what the --

6 A. Let me think about that a second.

7 I would have to give that some thought,
8 but it does occur to me that there's no particular
9 reason why the company could not compensate such a
10 customer under the rider without actually registering
11 them with PJM.

12 Q. Do you know whether the companies'
13 proposed tariffs include any prohibition on them
14 signing up with someone else?

15 A. Customers that sign up on the customer's
16 tariff are prohibited from signing up in the PJM
17 program. I do not believe the converse is true.

18 Q. Now, under your proposal customers could
19 switch back and forth, correct, between tariff and
20 CSP from year to year?

21 A. What I would suggest is, and I was not
22 specific in my recommendation, but what I would
23 suggest is the recommendation to disallow any new
24 sign-ups after the first of May would include any
25 customers that -- would prohibit any customers that

1 were signed up and left from signing up again.

2 Q. Okay. So once they're --

3 A. They would be able switch out, but not
4 back in.

5 Q. Okay. Thank you.

6 And you would expect, if customers were
7 looking at which way to go, they would opt to go with
8 the option between working with the CSP and the
9 FirstEnergy operating companies' tariffs which would
10 give them the higher credit most of the time,
11 correct?

12 A. Would give them the higher credit in the
13 capacity market, yes.

14 Q. Yes. Now, you're aware that the
15 companies are obligated, that is I'm talking about
16 the FirstEnergy operating companies, are obligated to
17 meet certain peak demand reduction goals in the
18 state, correct?

19 A. I'm aware of that, yes.

20 Q. And you have recommended that any demand
21 response in FirstEnergy bid into the PJM auction
22 through CSPs be counted towards those demand
23 reduction goals.

24 A. Yes, I do.

25 Q. Now, if that part of your proposal is

1 rejected by the Commission, if the market price that
2 the customers thought they could get or they would
3 get through the capacity market auctions through CSPs
4 that was higher than the OLR credit -- with me so
5 far?

6 A. Well, you've got two questions in there
7 so far but let me see if I can keep track of them.

8 Q. First, that part of the proposal about
9 counting CSP, PDR we'll call it.

10 A. Okay.

11 Q. Having that count towards the goals, that
12 would be rejected. With me so far?

13 A. Okay.

14 Q. And that customers perceive that they can
15 get a better deal from the CSP rather than staying on
16 the tariffs. With me so far?

17 A. Yes.

18 Q. If that happened and the companies had to
19 go buy some kind of DR to meet their demand reduction
20 goals, they would be having to go out and buy those
21 at a market price that would be higher than under --
22 higher than the credits that were being offered under
23 the tariffs, correct?

24 A. I would assume so, yes.

25 Q. Now, your proposal would allow the

1 tariffs to permit a customer to terminate the
2 customer's participation in the tariffs given seven
3 months' notice, correct?

4 A. Yes, seven months prior to the delivery
5 year.

6 Q. Now, isn't it true that your company's
7 business model seeks to sign customers up to
8 multiyear contracts?

9 A. I believe that's proprietary, sir.

10 Q. Okay. Please refer to the 10-K.

11 EXAMINER BOJKO: Let's go off the record
12 for one second.

13 (Discussion off the record.)

14 EXAMINER BOJKO: Let's go back on the
15 record.

16 MR. KUTIK: Thank you, your Honor.

17 Q. Mr. Campbell, could you refer to page 12
18 of the 10-K? Are you there?

19 A. I'm there.

20 Q. The third paragraph up, the paragraph
21 that has the heading "The Failure to Renew or Sign
22 New Contracts," do you see that, that's the heading?

23 A. Yes.

24 Q. It says "The majority of our customers
25 are under annual contracts which means we have to

1 re-sign them each year for the capacity and economic
2 programs. Although we are moving to longer-term
3 contracts, there can be no assurance that we would be
4 successful in signing or re-signing customers to
5 longer-term contracts. The failure to sign customers
6 to longer-term contracts could have a significant
7 impact on our revenues." That's what the 10-K says,
8 correct?

9 A. Yes.

10 Q. And you would agree with that, correct?

11 A. Yes.

12 MR. KUTIK: No further questions.

13 EXAMINER BOJKO: Mr. Lavanga.

14 MR. LAVANGA: Yes, your Honor.

15 - - -

16 EXAMINATION

17 By Mr. Lavanga:

18 Q. Good morning, Mr. Campbell. My name is
19 Mike Lavanga, I'm an attorney for Nucor Steel Marion.

20 Mr. Campbell, you testified that you
21 don't know whether there are any customers on Rider
22 ELR or OLR currently?

23 A. Yes, that's what I said.

24 Q. And you've done no market research?

25 A. I have done no market research, no.

1 Q. And you've done -- you've had no contact
2 with any customers that are on Rider ELR or OLR.

3 A. No, I have not.

4 Q. Do you know what types of customers
5 typically are on those riders?

6 A. No, I do not.

7 Q. I just want to try to get an idea of if
8 an end-use customer were to sign up with the CSP,
9 what that would entail and what the requirements for
10 the customer would be. Now, if I'm a customer that
11 signs up with a CSP like EnergyConnect, is it correct
12 to say that there is essentially a one-year minimum
13 term?

14 A. Yes.

15 Q. The one year being --

16 A. Well, as has been referenced, there is in
17 PJM -- we normally -- for the ATSI programs, and in
18 PJM there are two programs, one which commonly are is
19 referred to as economic, one is capacity.

20 Capacity, the capacity program which has
21 a lot of similarities into which the Riders ELR and
22 OLR are aimed primarily at, in my opinion, are
23 primarily capacity programs. There does not seem to
24 be a very comparable opportunity for economic
25 participation.

1 The capacity program would require a
2 one-year commitment. The economic program, we would
3 ask for that and we would generally ask for a
4 one-year commitment, but there's no external delivery
5 year associated with that.

6 Q. Let's just talk about the capacity
7 program for now. So there is essentially a one-year
8 minimum but it could be longer than that if that's
9 what you negotiated with the particular customer,
10 right?

11 A. Yes. It would be a one-year commitment,
12 minimum commitment, and it could be a longer
13 commitment if the customer and we agree upon it.

14 Q. Okay. And participation, obviously, is
15 voluntary year to year if you're signed up for just
16 one year.

17 A. That's correct.

18 Q. And under Rider ELR do you understand
19 that there is an economic interruption component?

20 A. I under -- yes, I'm aware there is an
21 economic component.

22 Q. And there is no economic component in the
23 PJM RPM, correct?

24 A. That's not quite true. And it's an
25 important issue for my business but -- distinction,

1 but screening does allow for capacity participants to
2 sign up for what's called full emergency which allows
3 for compensation for energy reductions as well as
4 capacity during an event.

5 Q. Okay. So it's fair to say that there's
6 an option for you to do both capacity and energy in
7 PJM, but you could also go capacity only.

8 A. That's correct.

9 Q. Now, under the RPM they have annual
10 auctions for delivery years?

11 A. Yes.

12 Q. And the prices are going to vary from
13 year to year, correct?

14 A. That's right.

15 Q. Okay. And on page 11 you mention the
16 prices for the 2011-2012 and 2012-2013 delivery years
17 that just came out of the ATSI auction.

18 A. The prices that are in this -- in my
19 testimony actually refer to the BRA auction for
20 this -- for the region that ATSI is in. They happen
21 to be fairly close to the FRR auction results, but
22 these actual values are the BRA references.

23 The reason I used the BRA references is
24 because I am somewhat concerned that resources
25 that -- customers that are assigned by the companies

1 could then be offered into incremental auctions by
2 the companies subsidized by nonparticipating
3 customers and thereby imposing unfair competition for
4 companies like my own.

5 MR. LAVANGA: Can you read that answer
6 back, please?

7 (Record read.)

8 MR. LAVANGA: Your Honor, I move to
9 strike everything after when the witness says "The
10 reason I used the BRA auction prices."

11 EXAMINER BOJKO: After that sentence?

12 MR. LAVANGA: That sentence and to the
13 end.

14 EXAMINER BOJKO: Granted.

15 Q. Mr. Campbell, let's just go with the --
16 well, first of all, what does "BRA" stand for?

17 A. Balancing residual auction, or base
18 residual auction.

19 Q. And you said those prices are fairly
20 close to the ATSI prices.

21 A. That's correct.

22 Q. Now, would you agree with me that that's
23 a pretty big spread there between 3.31 and 50 cents?

24 A. Yes.

25 Q. And would you agree with me that the

1 prices in these auctions can be volatile?

2 A. Yes.

3 Q. Would you also agree with me that these
4 prices are short-term market prices?

5 A. They are annual prices. If you look at
6 it from, I mean, the phrase "short-term" could mean
7 many things in a marketplace so if you could be more
8 specific about what you mean by that.

9 Q. Well, as opposed to long-term. They are
10 one-year prices.

11 A. They are one-year prices.

12 Q. And the payments to the ultimate end-use
13 customer is going to come out of this price, correct?

14 A. That's correct.

15 Q. Okay. Do you think customers have an
16 interest in ensuring that -- strike that.

17 Would you agree with the proposition that
18 interruptible customers need reasonable rate
19 certainty to make prudent operating decisions?

20 A. I could not give an unqualified agreement
21 to that proposition.

22 Q. Why not?

23 A. Operating positions can mean many
24 different things, could mean what do I do tomorrow,
25 could mean what am I going to do two years, three

1 years, five years from now.

2 Q. So is it fair to say you don't know?

3 A. I would certainly agree that certainty of
4 information guides operating decisions no matter what
5 the term is.

6 Q. And I believe, Mr. Campbell, you
7 mentioned that the contracts would be negotiated
8 between the CSPs and customers on an individual
9 basis.

10 A. Yes.

11 Q. So the terms and conditions of those
12 contracts might vary from customer to customer.

13 A. They might vary.

14 Q. Do you know whether any of these
15 contracts fall under the regulation of the Public
16 Service Commission?

17 A. They do not.

18 Q. Now, Mr. Campbell, if I understand the
19 mechanism you proposed correctly, you're proposing a
20 mechanism whereby a customer that participates in the
21 CSP -- I'm sorry, with a CSP to participate in the
22 capacity markets could be counted by the utility in
23 meeting the peak demand reduction benchmarks in Ohio.

24 A. That's correct.

25 Q. Did EnergyConnect or any of the other

1 Demand Response Coalition members participate in
2 FirstEnergy's recent energy efficiency and peak
3 demand reduction portfolio proceeding?

4 A. I'm not aware of what the other companies
5 did.

6 Q. What's the answer for your company?

7 A. And for my company I would say it's
8 proprietary.

9 Q. Proprietary as to whether you
10 participated in the proceeding.

11 A. I'm sorry, in the proceeding?

12 Q. Yes.

13 A. Or in the auction itself?

14 Q. No, no. In the proceeding. Are you
15 familiar -- do you know that FirstEnergy recently
16 filed an energy efficiency and peak demand reduction
17 portfolio filing?

18 A. I'm sorry, I misunderstood the question.
19 I am aware that there is such a filing,
20 and I'm not familiar with it.

21 Q. So, again, did you intervene in this
22 proceeding?

23 A. We did not.

24 Q. Okay. Do you know whether your proposal,
25 whether you could have made that proposal in that

1 proceeding?

2 A. I could not say.

3 MR. LAVANGA: That's all the questions I
4 have, thank you, Mr. Campbell.

5 EXAMINER PRICE: Mr. Smith?

6 MR. SMITH: No questions.

7 EXAMINER BOJKO: Mr. Porter?

8 MR. PORTER: No questions.

9 EXAMINER BOJKO: Mr. Randazzo.

10 MR. RANDAZZO: Just a couple.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Randazzo:

14 Q. Sir, my name is Sam Randazzo, I
15 represent -- for purposes of my cross-examination I
16 represent the Industrial Energy Users of Ohio, a
17 curtailment service provider registered with PJM.

18 You were asked whether or not you
19 participated in FirstEnergy's recent portfolio
20 proceeding by prior counsel. Do you recall that
21 question?

22 A. I was asked that in deposition, yes.

23 Q. Well, you were just asked by the prior
24 questioner.

25 A. Okay.

1 Q. Right? Have you participated in the
2 rulemaking proceedings related to what counts under
3 Ohio law?

4 A. No. No. EnergyConnect has not
5 participated.

6 Q. Do you know if any other members of your
7 coalition have participated?

8 A. I'm not aware that any of the coalition
9 participated.

10 Q. Have you followed any of the cases in
11 which organizations like the Industrial Energy Users
12 of Ohio have been attempting to make it clear that
13 participation in RTO demand-response programs count
14 against the portfolio requirement?

15 A. I'm not specifically aware of that. I
16 can't say that I have reviewed -- that I would have
17 guessed that having reviewed some of the rules that
18 are currently in place.

19 Q. Might I suggest that we could use your
20 help in that venue.

21 I notice towards the end of your
22 testimony you invoke the name of one Ken Schisler,
23 and Mr. Schisler is the individual who testified
24 yesterday for EnerNOC, right? That's the same Ken
25 Schisler.

1 A. Yes.

2 Q. And when was your testimony -- are you
3 coordinating with Mr. Schisler for purposes of
4 preparing your testimony?

5 A. I think that would be reasonably
6 accurate. Mr. Schisler and I did have some
7 discussions as we prepared our respective
8 testimonies.

9 Q. But EnerNOC is not part of the coalition?

10 A. EnerNOC is not part of the coalition.

11 Q. You're not attempting to, through your
12 testimony, provide independent support for the
13 recommendations of Mr. Schisler or EnerNOC, are you?

14 A. I am not -- I would have to answer that
15 by saying I believe Mr. Schisler's recommendations
16 would also address some of the concerns that I have
17 with respect to competition and the ability to
18 continue to provide demand response services.

19 Q. But you would defer to him for purposes
20 of supporting his recommendations?

21 A. Yes.

22 Q. I was trying to shorten up the cross.

23 Under Rider ELR as it's proposed in this
24 proceeding is it your understanding that customers
25 that wish to continue on that rider must execute an

1 addendum?

2 A. I'd have to review the rider to confirm
3 that. I believe there's provisions that require
4 signing the contract.

5 Q. Okay. If you would assume for me, and --
6 would you accept subject to check --

7 A. Sure.

8 Q. -- under the as-proposed ELR rider
9 there's a requirement that customers execute an
10 addendum in order to remain on the schedule, would
11 you accept that with me, subject to check?

12 A. Yes.

13 Q. And it wasn't clear to me from your prior
14 testimony, but have you approached, has your company,
15 or any members of your coalition approached current
16 ELR customers to attempt to sign them up?

17 A. I don't know.

18 MR. RANDAZZO: That's all I have, thank
19 you.

20 EXAMINER BOJKO: Ms. Mooney?

21 MS. MOONEY: No questions, your Honor.

22 EXAMINER BOJKO: Mr. Kurtz?

23 MR. KURTZ: Yes, your Honor, thank you.

24 - - -
25

CROSS-EXAMINATION

By Mr. Kurtz:

Q. Good morning, Mr. Campbell. I'd like to ask you to turn to page 6 of your testimony. I want to read three separate sentences. Starting on page 6, line 10, you say "CSPs provide services substantially equivalent to those proposed in Riders OLR and ELR." Did I read that correctly?

A. Yes.

EXAMINER BOJKO: Mr. Kurtz, could you please get a microphone or speak louder.

Q. The next on page 9, line 12, you state "The difference in treatment of the two sets of customers is especially egregious when the requirements for demand response in the FE Companies' ELR and OLR programs are virtually identical to the requirements of PJM's Reliability Pricing Model." Did I read that correctly?

A. Yes.

Q. And finally on page 10, line 7, you state "The PJM programs and the OLR and ELR provisions are essentially the same." Did I read that correctly?

A. Yes.

Q. So I take it from these three quoted

1 sentences that your testimony, at least in part,
2 relies on the fact that the OLR and ELR are the same
3 as the PJM demand-response programs.

4 A. Yes, they essentially -- I believe the
5 riders essentially rely on the PJM program.

6 Q. Would you agree that under the PJM
7 program, as you've testified earlier, that the amount
8 of the capacity credit is for a one-year period?

9 A. Yes.

10 Q. And do you understand that the OLR and
11 ELR are fixed amounts over a three-year period?

12 A. I understand that the compensation
13 amounts are fixed for the entire three-year period,
14 for each of the three-year periods.

15 Q. That would be a difference, wouldn't it?

16 A. Well, it's not clear to me from the
17 tariffs whether customers are obligated to sign for
18 three years or one year.

19 Q. Well, do you know that there's a 36-month
20 notice provision to get out of the tariff once you
21 get on it?

22 A. Yes.

23 Q. Okay. That would be another difference
24 with PJM, wouldn't it?

25 A. That's correct.

1 Q. What is the notice period on PJM?

2 Essentially one year?

3 A. Yes, one year. Well, the notice, you
4 would sign up for one year and that would be the end
5 of the obligation. There's no prior notice required.
6 Customers do need to sign up in advance of the next
7 year if they want to participate, so that advancement
8 notice would be implicit.

9 Q. There would also be a difference between
10 the PJM programs and the OLR/ELR term?

11 A. That would be a difference.

12 Q. Do you understand that the ELR tariff
13 approved by the Commission currently in effect has an
14 economic development component in addition to a
15 reliability component?

16 A. I did not understand there was an
17 economic development component to the ELR.

18 Q. If you assume that that's true -- well,
19 let's just say the PJM demand response credit has no
20 economic development aspect to it, does it?

21 A. That's correct.

22 Q. Under the ELR customers are subject to
23 economic buy-through events for up to 876 hours per
24 year; is that correct?

25 A. I'm sorry, I didn't hear that, would you

1 repeat that?

2 Q. Under the ELR tariff customers are
3 subject to 876 hours of economic buy-through events,
4 in other words, to continue with electric service
5 they have to pay prevailing market prices not the
6 amount -- not the electric rate under the standard
7 generation tariff.

8 A. I'm aware of the buy-through provisions.
9 I can't confirm -- I will accept that your assessment
10 is correct, the details I'm not familiar with.

11 Q. Okay. Is there a similar requirement
12 under the PJM?

13 A. No.

14 Q. Now, to be eligible for OLR or ELR a
15 customer has to buy generation service from the
16 utilities as a result of these descending clock
17 auctions, do you understand that?

18 A. Yes.

19 Q. Now, to participate in PJM demand
20 response the customer can be shopping competitively
21 for its generation supply and do demand response,
22 isn't that right?

23 A. The company can take tariffs or shop
24 competitively.

25 Q. So that's a difference between the ELR,

1 OLR, and the PJM demand response, is it not?

2 A. The difference would be ELR and OLR under
3 the tariff require that they take -- that the
4 customer take generation service from the companies.

5 Q. And it may be the situation for a large
6 industrial customer that they could shop individually
7 on their own for less than what the auction price
8 might be because of the fact that a slice of the
9 system, it includes residential, commercial, and
10 industrial load and there's a risk premium built into
11 that price because of the fact that customers may
12 shop, it may be that a large industrial on their own
13 could shop and get a better price than the auction
14 clearing price, but if they were on ELR, they would
15 not have that opportunity.

16 A. I'm afraid that I'm not clear when you
17 say "shop." As I understand, a customer could shop
18 for energy and capacity. Could you clarify the
19 question?

20 Q. Yeah. If you're on ELR, you have to buy
21 standard offer generation service --

22 A. Right.

23 Q. -- from the utility.

24 A. That's correct.

25 Q. And there could be circumstances where

1 that standard offer price causes a blend of
2 commercial, industrial, residential load
3 characteristics, because of risk premiums that the
4 auction providers put in, could be that the standard
5 offer price is higher than the market price that the
6 large industrial customer might get if he shopped
7 individually.

8 A. That's right. That's correct, you're
9 speaking of, I mean, let me clarify. When you say
10 "shop," I mean for customers, for my customer
11 shopping for demand response, so I needed to clarify
12 that.

13 Q. I meant shop for generation.

14 So you could envision where the
15 generation price under the standard offer is higher
16 than the generation market prices a large industrial
17 customer could get on their own.

18 A. Yes.

19 Q. For example, if they had a very high load
20 factor, that customer on their own could probably get
21 a better price in the market than the standard offer
22 price which would be a system average load factor
23 type product.

24 A. Yes.

25 Q. So that would be another difference,

1 would it not, between the PJM program and the
2 companies' tariff programs?

3 A. The PJM program is open to customers
4 regardless of whether -- regardless of their tariff,
5 the source of -- their energy supplier.

6 Q. So there could be situations where the
7 PJM demand response providers have a competitive
8 advantage where they could win customer load versus
9 the utilities' tariffs because of this ability to
10 shop individually and participate in demand response.

11 A. An independent CSP can compete for
12 customers that can't participate under a tariff rate.

13 Q. Let me give you an example.

14 A. Please.

15 Q. Okay. Assume a customer has a hundred
16 megawatts of firm demand and 1 megawatt of
17 interruptible. If they were on the ELR program, they
18 would get an ELR credit on 1 megawatt and they'd pay
19 the standard offer auction price on 101 megawatts,
20 correct?

21 A. I'm not hearing that correctly because it
22 sounds like you're mixing and matching. Repeat the
23 question, please.

24 Q. Yeah, 101 megawatts total load but 100 is
25 firm and only 1 interruptible, you would buy

1 101 megawatts from the company under the ELR at the
2 auction price and you would get credit for your 1
3 megawatt of interruptible load; is that correct?

4 A. Implicit in your question I think is that
5 customer could mix and buy part of their energy from
6 the companies and part independently?

7 Q. No. No. In fact it's the opposite. If
8 you're on ELR you have to buy a hundred percent of
9 your generation from the utility.

10 A. Right.

11 Q. Did you not understand that?

12 A. Right. Correct.

13 Q. Now, let's take the same 101-megawatt
14 customer who is not ELR. They could shop all of --
15 they could shop competitively for 101 megawatts of
16 generation and do PJM demand response for that 1
17 megawatt that they wanted to deem to be
18 interruptible.

19 A. That's correct.

20 Q. So there are circumstances where an
21 industrial customer with nominal interruptible load
22 would actually prefer your coalition-type product
23 versus the ELR; isn't that true?

24 A. That's right.

25 Q. Now, let me ask you about your agreement

1 with Mr. Schisler at the end of your testimony. It
2 is your position that the Commission ought to throw
3 out the OLR/ELR program or allow its termination.

4 A. I believe that the Commission's goals
5 with respect to achieving peak demand reduction do
6 not require the ELR and OLR tariffs.

7 Q. But do you understand there are other
8 reasons for those tariffs including economic
9 development and rate stability?

10 A. Again, as I stated earlier, I was not
11 aware that they were explicitly tied to any economic
12 development goals.

13 Q. With that understanding would that modify
14 your conclusion?

15 A. I would think that those goals could be
16 met in other ways.

17 Q. Is part of the reason you would like the
18 Commission to terminate the ELR and OLR tariffs, is
19 part of the reason that would give you a larger
20 customer base to sell to?

21 A. That's part of the reason, yes.

22 Q. Do you know how many megawatts are on ELR
23 currently?

24 A. I do not.

25 Q. Do you know how many megawatts will have

1 signed up by today which is the addendum deadline
2 period -- I guess you couldn't know that because no
3 one knows that yet. Let me strike that question.

4 Do you know how many megawatts are
5 available of the utilities' commercial and industrial
6 load in total that might be customers of yours?

7 A. I have not done that research, no, I
8 don't.

9 MR. KURTZ: Thank you, your Honor, those
10 are all my questions.

11 EXAMINER BOJKO: Mr. Gallon?

12 MR. GALLON: No questions, your Honor.

13 EXAMINER BOJKO: Mr. Weldele?

14 MR. WELDELE: No questions, your Honor.

15 EXAMINER BOJKO: Mr. Warnock?

16 MR. WARNOCK: No questions.

17 EXAMINER BOJKO: Mr. McNamee?

18 MR. MCNAMEE: No, thank you, your Honor,
19 I only had a few and Mr. Kurtz asked the last.

20 EXAMINER BOJKO: Do you have any redirect
21 of this witness?

22 MR. WOLFE: I do, your Honor. Could I
23 have a minute with the witness?

24 EXAMINER BOJKO: You may. Let's take
25 five minutes.

1 (Recess taken.)

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

4 Mr. Wolfe, do you have redirect?

5 MR. WOLFE: Yes, please.

6 - - -

7 REDIRECT EXAMINATION

8 By Mr. Wolfe:

9 Q. Mr. Campbell, in your prefiled testimony
10 you described your responsibilities with
11 EnergyConnect. Do you have responsibilities in the
12 area of sales and marketing?

13 A. I support some sales and marketing
14 efforts, but I do not engage in direct sales myself.

15 Q. Do you have contact directly with
16 customers to solicit them for participating in demand
17 response programs?

18 A. Only in association with sales and
19 account managers.

20 Q. Do you still have the EnergyConnect's
21 10-K with you?

22 A. Yes, I do.

23 Q. If I could turn your attention to page
24 11. And do you see the segment that says "We Face
25 Pricing Pressure" in the heading?

1 A. Yes, I do.

2 Q. Okay. Could you read the text that's not
3 in boldface underneath that, please?

4 A. The text below it starting with "We are
5 experiencing"?

6 Q. Yes.

7 A. "We are experiencing increased" --

8 Q. I'm sorry, into the mic.

9 A. "We are experiencing increased
10 competition in capacity programs as there are limited
11 barriers to entry, we have seen a number of small
12 companies enter into capacity programs. This in turn
13 has led to an increase in the share of our revenues
14 that we share with our customers in order to maintain
15 competitive -- remain competitive in capacity
16 programs resulting in increased pressure on our gross
17 margins."

18 Q. So assuming that statement to be true,
19 how would you see the effective -- what would you see
20 the effect of the circumstances to be on customers
21 participating in PJM demand-response programs?

22 A. Customers would be getting a better deal
23 because there would be lesser fees charged by CSPs.

24 Q. How would you see the effect of those
25 circumstances on nonparticipating customers?

1 A. To the extent that a better deal for
2 participating customers encourages more customers,
3 nonparticipating customers would also benefit from
4 lower prices in the overall marketplace.

5 Q. You had been asked on cross-examination
6 whether the FirstEnergy companies, I'm sorry, if your
7 recommendation was accepted to allow demand response
8 procured through curtailment service providers, if
9 that could count toward the FirstEnergy companies'
10 obligations. You had been asked on cross-examination
11 whether those companies would -- if that suggestion
12 were rejected, could those companies be required to
13 purchase demand response on the open market. And you
14 were further asked whether those prices on the open
15 market could be higher than what would be paid on the
16 tariff.

17 Could the converse be true as well?

18 A. Yes. Prices could be lower or higher and
19 they wouldn't necessarily have to buy on the market,
20 it does offer some sort of incentive.

21 Q. Okay. It was also suggested to you on
22 cross-examination that generation prices could be
23 higher under a standard offer service than under a
24 service from a competitive retail supplier. Again,
25 could the converse be true?

1 A. Competitive prices could be higher or
2 lower than standard offer prices.

3 Q. Okay. And if the competitive prices were
4 higher than the standard offer prices, how would you
5 expect that to affect customer behavior?

6 A. I would think most customers would be
7 looking at the best deal and if that were standard
8 offer prices, that's where they might go. I would
9 presume that they would consider all the -- the
10 implications of such decision, I mean there it's a
11 multiproduct market, we have spoken to both energy
12 prices today and to capacity prices, so the whole
13 package has to be considered.

14 Q. Okay. Is it your belief that the
15 FirstEnergy companies, if the riders were extended,
16 could sell demand response into PJM markets?

17 MR. KUTIK: May I have the question read,
18 please?

19 EXAMINER BOJKO: Yes.

20 (Record read.)

21 A. Yes, it is.

22 Q. What would be the implications of the
23 utilities being able to make those sales?

24 A. Sales -- customers signed onto the Riders
25 ELR and OLR could be committed to the PJM auction and

1 presumably would be committed to the PJM auction and
2 in order to participate they -- or they could be sold
3 bilaterally but the normal process would be to
4 participate in an auction.

5 Because of the rider and fixed
6 compensation, that in any -- any costs needed to
7 support the fixed compensation that is also charged
8 to the DES rider would be, you know, that would
9 support that -- the ELR and OLR rider participants.
10 The implication is that any such offering into the
11 auction would result in lower prices where the
12 auction results. And while that's a good thing,
13 those lower prices benefit all customers in certainly
14 the western part of PJM, potentially PJM as a whole,
15 but those lower prices would be subsidized by
16 nonparticipating customers in the FirstEnergy
17 territories.

18 MR. WOLFE: Thank you. That's all I have
19 on redirect.

20 EXAMINER BOJKO: Ms. Roberts?

21 MS. ROBERTS: I have nothing, thank you.

22 EXAMINER BOJKO: Mr. Poulos or Small?

23 MR. POULOS: We have no further
24 questions.

25 EXAMINER BOJKO: Ms. De Lisi?

1 MS. De LISI: No questions, your Honor.

2 EXAMINER BOJKO: Mr. Heintz?

3 MR. HEINTZ: No questions, your Honor.

4 EXAMINER PRICE: Mr. Warnock, NOPEC?

5 MR. WARNOCK: No questions for either.

6 EXAMINER BOJKO: Mr. Dyas?

7 MR. DYAS: No questions, your Honor.

8 EXAMINER BOJKO: Company? Mr. Kutik?

9 Mr. Settineri?

10 MR. SETTINERI: No questions, your Honor.

11 EXAMINER BOJKO: Mr. Porter?

12 MR. PORTER: No questions.

13 EXAMINER BOJKO: Mr. Smith?

14 MR. SMITH: Just one.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Smith:

18 Q. In your redirect why did you feel it was
19 necessary to emphasize that you were not part of the
20 sales/marketing functions of your employer?

21 A. There had been a number of questions
22 asked of me about my direct knowledge with customers
23 and I felt it was appropriate to make it clear that I
24 don't generally deal directly with customers, it's
25 not a part of my job.

1 Q. But don't you feel it's important to have
2 knowledge about customers' behavior in order to
3 strike a deal?

4 A. Yes, I do. And my role is to interpret
5 PJM rules, which are very complex, for my salespeople
6 and so forth.

7 MR. SMITH: No further questions.

8 EXAMINER BOJKO: Mr. Gallon?

9 MR. GALLON: No questions, your Honor.

10 EXAMINER BOJKO: Mr. Weldele?

11 MR. WELDELE: No questions, your Honor.

12 EXAMINER BOJKO: Mr. O'Brien?

13 Mr. Kutik?

14 MR. KUTIK: Yes, your Honor.

15 - - -

16 RE CROSS-EXAMINATION

17 By Mr. Kutik:

18 Q. Mr. Campbell, yesterday during his
19 testimony at page 445 of the transcript Mr. Schisler
20 characterized the ELR tariff proposal as, quote, "an
21 incredibly better deal than the market would offer,"
22 end quote. Do you disagree with Mr. Schisler?

23 A. I would have to look more closely at the
24 ELR tariff. What I would say is that the capacity
25 component of it is an excellent deal compared to the

1 marketplace. There is an energy component that I
2 would need to do more analysis with. It did strike
3 me that was not a very good deal.

4 MR. KUTIK: Thank you. No further
5 questions.

6 EXAMINER BOJKO: Mr. Lavanga?

7 MR. LAVANGA: No questions, your Honor.

8 EXAMINER BOJKO: Mr. Randazzo?

9 MR. RANDAZZO: None.

10 EXAMINER BOJKO: Mr. Kurtz?

11 MR. KURTZ: No questions, your Honor.

12 EXAMINER BOJKO: Mr. McNamee?

13 MR. MCNAMEE: No, thank you.

14 EXAMINER BOJKO: Mr. White? I'm sorry, I
15 should have done you first.

16 MR. WHITE: No questions, your Honor.

17 EXAMINER BOJKO: You may be excused.
18 Thank you, Mr. Campbell.

19 THE WITNESS: Thank you.

20 MR. WOLFE: Your Honors, at this time I'd
21 like to move Exhibit DR Coalition 1 into evidence,
22 please.

23 EXAMINER BOJKO: Any objection to the
24 admission of Mr. Campbell's testimony, DR Coalition
25 Exhibit 1?

1 MR. KUTIK: None subject to our motion to
2 strike, your Honor.

3 EXAMINER BOJKO: The motion to strike was
4 denied, so the entirety of the testimony will be
5 admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 MR. KUTIK: Your Honor, at this time we
8 move for the admission of Companies' Exhibit 8.

9 EXAMINER BOJKO: Any objection to the
10 admission of Companies' Exhibit 8?

11 Hearing none, it will be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER BOJKO: Thank you. You may step
14 down.

15 Let's go off the record.

16 (Discussion off the record.)

17 EXAMINER BOJKO: We will come back at
18 1 o'clock.

19 (At 11:47 a.m., a lunch recess was taken
20 until 1:00 p.m.)

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1 Thursday Afternoon Session,
2 April 22, 2010.

3 - - -

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

6 MR. SMALL: Off the record there was some
7 discussion about how I had started the motion this
8 morning. The OCC will proceed with a motion in
9 writing and I won't make it at the hearing. Thank
10 you, your Honor.

11 EXAMINER BOJKO: Thank you.

12 Would you like to call your first
13 witness, Mr. Small? Or Mr. Poulos?

14 MR. POULOS: I will. Thank you, your
15 Honor. OCC calls Dr. Ibrahim.

16 Your Honor, I've put a copy of his
17 testimony on the Bench and provided one to the court
18 reporter.

19 EXAMINER BOJKO: Please raise your right
20 hand.

21 (Witness sworn.)

22 EXAMINER BOJKO: Please be seated.

23 THE WITNESS: Thank you.

24 EXAMINER BOJKO: Please state your name
25 and address for the record.

1 THE WITNESS: My name is Amr Ibrahim, my
2 address is 10 West Broad Street, Suite 1800,
3 Columbus, Ohio 43215.

4 EXAMINER BOJKO: Please proceed.

5 MR. POULOS: Thank you, your Honor.

6 - - -

7 AMR A. IBRAHIM, Ph.D.
8 being first duly sworn, as prescribed by law, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Poulos:

12 Q. Dr. Ibrahim, by whom are you regularly
13 employed?

14 A. I am employed by Ohio Consumers' Counsel,
15 sir.

16 Q. And are you the Dr. Ibrahim whose
17 prepared testimony was filed by the Office of
18 Consumers' Counsel on April 15th in this case?

19 A. Yes.

20 Q. And on whose behalf do you appear today?

21 A. On behalf of OCC, Ohio Consumers'
22 Counsel.

23 Q. Do you have your prepared testimony with
24 you on the stand?

25 A. Yes, I do.

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

3 A. This is correct.

4 Q. Do you have any changes or corrections to
5 your prepared testimony?

6 A. I do have minor typos that I would like
7 to highlight.

8 Q. Before you do that.

9 MR. POULOS: Your Honor, may I have the
10 prepared testimony marked as OCC Exhibit 1 for
11 identification purposes?

12 EXAMINER BOJKO: It will be so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MR. POULOS: Thank you, your Honor.

15 Q. Dr. Ibrahim, you said you had some
16 changes?

17 A. Some typos, yes.

18 Q. Can you identify those at this time?

19 A. Yes, I can. If you go to page 6, line
20 12, a sliding scale of charges rather than "changes."
21 It's a change of an N to R.

22 EXAMINER BOJKO: I'm sorry, where was
23 that?

24 THE WITNESS: Page 6, line 12, B, a
25 sliding scale of charges rather than "changes."

1 EXAMINER BOJKO: Thank you.

2 THE WITNESS: Page 10, line 17, section i
3 rather than "h."

4 Page 15, line 10, section i rather than
5 "h."

6 Page 17, line 21, the rest of the
7 sentence starts the next page so I would -- if you go
8 to page 17, line 21, "proposed" and then we continue
9 the rest of the sentence in the following page.

10 MR. RANDAZZO: No substantive change.

11 THE WITNESS: No.

12 Q. (By Mr. Poulos) So that last sentence
13 reads, "The impact of the proposed revenue recovery
14 that is consistent with OAC 4901:1-38-08(A)(4) on the
15 average residential customer monthly and annual bills
16 are demonstrated in Figure 1"; is that correct?

17 A. Yes.

18 Q. Are there any other changes?

19 A. No, sir.

20 Q. If I asked you today the same questions
21 found in your prepared testimony as modified with
22 your corrections, would your answers be the same?

23 A. Yes.

24 MR. POULOS: Your Honor, at this point
25 OCC tenders the witness for -- offers the exhibit for

1 admission and tenders the witness for
2 cross-examination.

3 EXAMINER BOJKO: We'll hold off on ruling
4 on the admission until after cross-examination.

5 Let's proceed with Mr. --

6 MR. RANDAZZO: Your Honors, I would like
7 for you to consider a motion to strike.

8 EXAMINER BOJKO: Yes. Please.

9 MR. RANDAZZO: And to facilitate this I
10 used my free time over the lunch hour to prepare a
11 description of what I'm going to be focusing on in
12 the motion to strike, hopefully that will make it
13 easier for folks to follow, it is somewhat tedious,
14 unlike my usual -- let the record reflect there was
15 laughter.

16 Your Honors, I have handed out a document
17 that I believe describes in written form the content
18 of my motion to strike. The grounds are the same in
19 each case. I can go through and refer to all of
20 these items or generally describe the basis and have
21 this document serve as the reference for the motion
22 to strike.

23 EXAMINER BOJKO: I'll choose the latter
24 approach.

25 MR. RANDAZZO: The basis is, your Honor,

1 this witness's testimony, first of all, indicates
2 that he has not reviewed the merits of the proposals
3 in the ESP settlement, he proceeds to address what
4 I'll call procedural issues that rely upon the legal
5 theory that the provisions in the ESP settlement that
6 deal with the automakers and the Cleveland Clinic are
7 bound by the requirements related to reasonable
8 arrangements and the Commission's rules and
9 regulations that apply to applications for reasonable
10 arrangements.

11 The motion to strike is designed to try
12 to preserve as much of the testimony as possible,
13 which is difficult given the predicate, but
14 nonetheless the motion would strike those portions of
15 the testimony that are most clearly standing for the
16 proposition that the rules and regulations that are
17 associated with reasonable arrangements and statutory
18 requirements related to such arrangements control the
19 disposition of issues in this proceeding.

20 EXAMINER BOJKO: Mr. Poulos.

21 MR. POULOS: Thank you, your Honor.
22 Dr. Ibrahim's testimony in large part addresses the
23 policy and procedures of how the Commission should be
24 looking at these different economic development
25 arrangements, and as such, it should be looked upon

1 as a policy statement.

2 He is not an attorney so he's not making
3 legal conclusions on these in asking simply that
4 those policies be applied in this circumstance.

5 EXAMINER PRICE: Mr. Poulos, are you
6 saying that he is arguing that the Commission should
7 look at a certain set of information as part of the
8 application requirements in an ESP?

9 MR. POULOS: He is saying that those have
10 been -- they should be taken under advisement, yes.

11 EXAMINER PRICE: Okay. So if that were
12 true, wasn't that issue addressed in the rulemaking
13 where we addressed what's in an application
14 requirement for an ESP? I mean he's certainly
15 entitled to say the Commission should require
16 whenever it considers an ESP any sort of information
17 it had, but the Commission's made that decision,
18 hasn't it?

19 MR. POULOS: What's to be considered?

20 EXAMINER PRICE: We promulgated rules for
21 applications for ESPs.

22 MR. POULOS: And in those rules there's
23 the opportunity for parties to put provisions and
24 recommendations, aren't there?

25 EXAMINER PRICE: No. He's saying that

1 those rules are insufficient. That we should have
2 promulgated the same rules for economic development
3 provisions in the ESP rules that we have in the
4 reasonable arrangement rules. Isn't that what he
5 he's saying?

6 MR. POULOS: He's suggesting information
7 would be helpful in this process and he doesn't have
8 enough information to address the merits more than
9 what's in the application.

10 MR. RANDAZZO: Your Honor, if I may, I
11 believe the scope of my motion to strike leaves that
12 text in. I am not quarreling with this witness's
13 ability to say that he didn't have enough information
14 in front of him to evaluate the proposals. I would
15 not seek to strike that portion of the testimony.

16 MR. POULOS: Your Honor --

17 EXAMINER BOJKO: One moment.

18 Mr. Poulos, did you have a response that
19 you wanted to make?

20 MR. SMALL: Your Honor, I'd also like to
21 add that part of Dr. Ibrahim's recommendation is that
22 these should be separated out and done under separate
23 procedure, they don't have to be, but that's the
24 recommendation he's making.

25 EXAMINER BOJKO: We're fully aware of his

1 recommendation to do that.

2 EXAMINER PRICE: But when you say it
3 should have been filed under 4905.31, is that a legal
4 conclusion you're going to allow Mr. Randazzo to
5 cross-examine him on?

6 MR. POULOS: What legal conclusion?

7 EXAMINER PRICE: He's saying it should be
8 filed under 4905.31 which is the statute. So if that
9 is his -- Mr. Small, I'm hearing you but not
10 Mr. Poulos. Mr. Poulos is arguing this.

11 If he's arguing that that's the legal --
12 that that's the conclusion, that it was filed under
13 the wrong statute, are you going to allow
14 Mr. Randazzo and FirstEnergy and staff and the
15 parties supporting the stipulation to cross-examine
16 him on that basis?

17 MR. POULOS: We're suggesting it's a
18 policy, but yes, that is his opinion that it should
19 be found as a reasonable arrangement.

20 EXAMINER PRICE: Under 4905.31.

21 MR. POULOS: Yes.

22 EXAMINER PRICE: Okay.

23 EXAMINER BOJKO: We're going to grant the
24 motion to strike in part and we're going to deny it
25 in part. We concur with the theory of Mr. Randazzo's

1 motion, however, I believe that more review is
2 necessary to go through and exactly determine what
3 needs to be stricken.

4 For example, we do not believe the first
5 sentence of the first motion to strike should be
6 stricken so we're going to need to take a few minutes
7 and go through and see. I appreciate your attempt,
8 but I think we need to go through and look at it.

9 MR. RANDAZZO: Understood.

10 EXAMINER BOJKO: I think that, as
11 Mr. Price just alluded to in his questioning, I think
12 the point of you think it should be filed under a
13 different provision can be allowed to be in here but
14 any provision that talks about the chapter and how it
15 wasn't compliant with it should not be in here.

16 So give us a few minutes to go through
17 this. Let's go off the record.

18 (Off the record.)

19 EXAMINER BOJKO: Let's go back on the
20 record. We are going to grant the motion to strike
21 with regard to the first line item on Mr. Randazzo's
22 list in part, and this one is on page 5. We are
23 going to leave in the first sentence on lines 3
24 through 6, the statement "My testimony requests
25 adherence not process established by the Commission

1 in OAC Chapter 4901:1-38 to provide for a review and
2 to provide transparency for all economic development
3 proposals in Ohio." The remainder portion of that
4 paragraph will be stricken.

5 We are going to deny the second request
6 to strike on page 5, and we are going to deny the
7 third request to strike on page 5.

8 Moving to page 6, we are going to deny
9 the request to strike on page 6.

10 Moving to page 7, we are going to deny
11 the request on page 7 except for the word
12 "reasonable" -- I'm sorry. No. We're going to deny
13 the page 7 request in its entirety.

14 Turning to page 8, we are going to grant
15 the motion to strike the text in lines 14 and 15,
16 full sentence.

17 And then on page 8 we are going to grant
18 the request to strike the words "reasonable" on lines
19 17 and 19.

20 Page 10, we are going to grant the motion
21 to strike the word "reasonable" on lines 2 and 5.

22 Page 11, we are going to consistently
23 keep striking the word "reasonable" as requested on
24 line 6 and as requested on page 12, line 2.

25 Also on page 12 we are going to grant the

1 motion to strike lines through 17, question and
2 answer 15.

3 On page 12 we are going to grant the
4 request to strike the word "reasonable" again on
5 lines 20 and 23.

6 Page 13, we are going to grant the
7 striking of the word "reasonable" on lines 2, 7, and
8 15.

9 Also on page 13 we're going to grant the
10 striking of the text beginning with the word "as" on
11 line 13 and ending on line 14 after the number "3."

12 Turning to page 14, we are going to grant
13 and strike the word "reasonable" on lines 13 and 16.

14 On page 15, line 8, strike the word
15 "reasonable."

16 On page 16, line 24, again, we're going
17 to grant the striking of the word "reasonable."

18 Page 17, line 9, we're going to strike
19 the text starting with the words "the strict" and
20 ending on line 10 with the word "of."

21 Page 18, strike the word "reasonable" on
22 line 15.

23 And also on page 18 we're going to grant
24 the request on line 17 to strike the text with the
25 word "the" striking the entire page 19, striking the

1 entire page 20, and striking the top of page 21, the
2 last two sentences on the top of 21. So after the
3 words "yes, there are" in the answer of 21, the
4 remaining answer of 21 will be stricken.

5 Moving to page 21, line 8, we are going
6 to grant the motion to strike the sentence that
7 starts with "The information" on line 8 and ends with
8 "state" on line 13.

9 We are also on that page going to grant
10 the striking of the word "reasonable" on lines 14 and
11 15.

12 Page 22 we're going to grant the striking
13 of lines 1 through 10 and footnote 39.

14 MR. POULOS: What was that, which one are
15 you on?

16 EXAMINER BOJKO: Page 22, the first
17 paragraph, lines 1 through 10 including footnote 39.
18 Oh, and 38. I guess the entire page 22 would be
19 stricken.

20 MR. RANDAZZO: Right, the motion that I
21 made, any footnote that appears in the text would be
22 included in the motion.

23 EXAMINER BOJKO: Where we have a sentence
24 that we've agreed should be stricken the footnote
25 attached to the sentence would come out as well.

1 Page 23, we're going to grant the
2 striking of the sentence that begins on line 1 with
3 the word "finally" and then ends on line 6 with the
4 footnote 40.

5 Page 23, we're also going to grant the
6 striking of starting with the words "the above" on
7 line 13 and going through "and" on line 16, and also
8 striking on line 16 the words "reasonable
9 arrangement."

10 Any questions? Are there any other
11 motions before we proceed with this witness?

12 MR. RANDAZZO: Thank you.

13 MR. KUTIK: Yes, your Honor, I have a
14 few.

15 MR. POULOS: Your Honor, before you
16 address Mr. Kutik's motions I'd like to offer to
17 proffer that information. I think it affects our
18 ability to demonstrate the settlement violates of the
19 policies, regulatory principles and practices, it
20 affects our ability to attack this settlement as
21 inappropriate, and his testimony, if it was
22 proffered, this information that you did strike was
23 proffered, it would go to support adherence to a
24 process that was established in Ohio Administrative
25 Code Chapter 4901:1-38 for economic development

1 provisions. So we ask that that information be
2 proffered into the record.

3 EXAMINER BOJKO: We'll accept that and
4 we'll move on to Mr. Kutik now.

5 MR. KUTIK: Thank you, your Honor. Just
6 following up on a couple of points from
7 Mr. Randazzo's motion, although not necessarily
8 included in Mr. Randazzo's motion, we would move to
9 strike on page 13 at line 10 the word "reasonable."

10 EXAMINER BOJKO: Consistent with our
11 prior ruling that will be granted.

12 MR. KUTIK: Your Honor, we also move to
13 strike question and answer No. 19 that begins on page
14 16.

15 EXAMINER PRICE: Mr. Kutik, where did you
16 end your -- did you say the entire question and the
17 entire answer?

18 MR. KUTIK: Yes.

19 MR. POULOS: Your Honor, this statement
20 is basically saying that -- this is Dr. Ibrahim's
21 policy foundation on this and again it goes to the
22 second prong of settlement provisions regarding
23 important regulatory principles and practices about
24 the percents residential customers should pay or
25 shouldn't pay.

1 EXAMINER PRICE: We were trying to
2 narrowly tailor our ruling to be consistent with our
3 previous ruling.

4 EXAMINER BOJKO: Okay. We're going to
5 grant in part and deny in part your motion to strike.
6 We're going to strike the word "reasonable" in
7 question -- line 3. We're going to strike the word
8 "reasonable" on line 6.

9 We're going to strike line 8 beginning
10 with "Ohio" and ending with the quote on line 14.

11 And then on line 24 I believe we already
12 struck the word "reasonable."

13 And then similarly on page 17, line 3, we
14 would strike the word "reasonable" and the rest would
15 remain in which I believe addresses your concern,
16 Mr. Poulos, about the percentages.

17 MR. POULOS: I submit the same proffer as
18 before.

19 EXAMINER BOJKO: Again, that will be
20 accepted -- before somebody runs up here to the
21 Bench. It's accepted.

22 MR. KUTIK: Your Honor, our next motion
23 to strike deals with the question and answer No. 8
24 that begins on page 6. The grounds on that is
25 similar to Mr. Randazzo's motion. We also move on

1 the grounds that it calls for legal opinion and
2 analysis on the part of the witness.

3 EXAMINER BOJKO: I'm sorry, are you
4 saying the entire question 11 and answer?

5 MR. KUTIK: I'm sorry, I think it's
6 question 8.

7 EXAMINER BOJKO: Oh, question 8.

8 MR. KUTIK: On page 6.

9 EXAMINER BOJKO: I apologize.

10 EXAMINER PRICE: Mr. Poulos has indicated
11 that he'll have no objection to you cross-examining
12 Dr. Ibrahim on his legal conclusion and so --

13 MR. KUTIK: Well, with due respect to
14 Mr. Poulos I don't think we should waste our time
15 debating legal issues when that's an issue for
16 lawyers on briefs, not witnesses in the hearing room.

17 MR. POULOS: Your Honor, again this goes
18 to the second prong of the settlement provisions
19 that -- well, this is the basis for what Dr. Ibrahim
20 is talking about when he's looking at important
21 regulatory principles and practices and this is what
22 he's basing it on and I think this is part of his
23 testimony in providing us an opportunity to confront
24 the issues in this settlement regarding economic
25 development.

1 EXAMINER BOJKO: Is this the witness
2 that's talking about the prong of the test? I
3 thought that was the second witness.

4 MR. POULOS: For reasonable arrangements
5 he's at least setting out his provisions. The
6 economic development, excuse me.

7 MR. KUTIK: I mean, we have a citation to
8 the statute and commentary on the statute. How much
9 more basic legal discussion can be?

10 EXAMINER BOJKO: We're going to deny the
11 motion to strike it with, again, I believe I already
12 asserted earlier that, or, no, that was a different
13 witness. We're going to deny but, again, this
14 witness is not an attorney to my knowledge -- are you
15 an attorney, sir?

16 THE WITNESS: No, ma'am, I'm not.

17 EXAMINER BOJKO: He's not an attorney and
18 thus we will be offering this as a lay opinion and
19 you may cross-examine him on this as you see fit.

20 MR. KUTIK: Thank you.

21 Our last motion, your Honor, is on page
22 8, and specifically the quote starting on line 6
23 going to line 12 on the grounds that although this is
24 a quotation from our beloved chairman it is still
25 nevertheless hearsay and I would also move to strike

1 the Attachment AAI-1 on the same grounds.

2 MR. POULOS: Your Honor, this is an
3 exceptions to hearsay, it's a public record that we
4 ask that in any event the hearing examiners take
5 administrative notice. This was a docket or
6 testimony that was provided before the Senate
7 committee.

8 MR. KUTIK: Unfortunately, your Honor,
9 first, it's not a public record; secondly, it was
10 statements given under oath that we had opportunity
11 to cross-examine.

12 EXAMINER BOJKO: Did you have something
13 to add, Mr. Randazzo?

14 MR. RANDAZZO: Your Honor, I would just
15 caution the Bench unless there's some indication that
16 this testimony was presented in the form that it's
17 attached, his testimony here, it's not always the
18 case the testimony that is handed out in a
19 legislative process is the testimony that is actually
20 given, and I think there's predicate here to dismiss
21 it relative to the testimony as well.

22 EXAMINER PRICE: I think there's also
23 authentication problems, Mr. Randazzo. There's no
24 legislative history here, not to accuse anybody of
25 putting words in our chairman's mouth, but we don't

1 have a congressional record in the state of Ohio, I'm
2 sure this was dutifully picked up at the hearing
3 but --

4 MR. POULOS: Your Honor, this is actually
5 from the PUCO website.

6 EXAMINER PRICE: Where's it say that?

7 MR. POULOS: We can certainly ask the
8 witness or is there another way --

9 EXAMINER BOJKO: Ask the witness about
10 the chairman's statement?

11 MR. POULOS: Where he got the statement
12 from.

13 EXAMINER BOJKO: Mr. Ibrahim, did you
14 personally pull this report off of the Commission's
15 website?

16 THE WITNESS: No, ma'am, I did not
17 personally do that.

18 EXAMINER BOJKO: Given that, we believe
19 that the attachment needs to be stricken from the
20 testimony and that that follows the question 11 and
21 answer 11 really cannot stand on its own so we will
22 strike question 1 -- or, I'm sorry, line 1 through
23 lines 12 and 14 and 15 were already stricken so the
24 whole entire question 11 will be and answer will be
25 stricken.

1 MR. POULOS: Your Honor, we also ask that
2 this motion be -- the information in this motion be
3 proffered.

4 EXAMINER BOJKO: I think you might need
5 new batteries, Mr. Poulos.

6 MR. POULOS: Your Honor, we ask that this
7 also be proffered as important to OCC's position
8 regarding the settlement package and the policies and
9 regulatory statements, in particular the fact that
10 Dr. Schreiber is the one making the statements. We
11 ask that this be proffered.

12 MR. McNAMEE: Excuse me. Did you strike
13 the attachment too?

14 MR. KUTIK: Yes.

15 MR. McNAMEE: Okay.

16 MR. SMALL: Your Honor, I assume he's
17 just not close enough to the microphone.

18 EXAMINER BOJKO: No; it keeps turning
19 itself off because the batteries are low. It's
20 flashing, I can see it.

21 MR. KUTIK: Your Honor, that concludes my
22 motions to strike.

23 EXAMINER BOJKO: Thank you.

24 MR. POULOS: Your Honor, did you catch my
25 motion too?

1 EXAMINER BOJKO: I did and I accept the
2 proffer.

3 MR. POULOS: Thank you.

4 EXAMINER BOJKO: Anything else?

5 MR. SMITH: Yes, your Honor, I request a
6 clarification on your granting of motions to proffer.
7 Proffer is appropriately used to preserve evidence
8 for appeal. Your ruling does not allow for briefing
9 of proffered evidence in this case, does it?

10 EXAMINER PRICE: Well, the predicate's
11 going to be they're going to have to demonstrate to
12 the Commission that our ruling was wrong, and if they
13 can persuade the Commission that our ruling was
14 wrong, then they're going to be able to rely upon
15 that evidence. If they can't persuade the Commission
16 our ruling was wrong, they're not going to be able to
17 rely upon that evidence.

18 MR. SMITH: And they raise that issue in
19 their appeal? Is that the mechanism you expect to be
20 used? Or will it be a separate application for
21 rehearing?

22 EXAMINER PRICE: It should be raised in
23 their brief to the Commission to address in their
24 opinion and order. I suppose they can take an
25 interlocutory appeal at this point, but...

1 MR. SMITH: Thank you.

2 EXAMINER BOJKO: Anything further?

3 Mr. Poulos, did you provide the
4 foundational questions and offer -- you did tender
5 the witness.

6 MR. POULOS: Yes.

7 EXAMINER BOJKO: I'm sorry. That was a
8 long time ago.

9 Okay. Ms. Roberts?

10 MS. ROBERTS: No questions, your Honor.

11 EXAMINER BOJKO: Ms. De Lisi?

12 MS. De LISI: No questions, your Honor.

13 EXAMINER BOJKO: Is Mr. Warnock back
14 there?

15 Oh, Mr. Heintz?

16 MR. HEINTZ: No questions, your Honor.

17 EXAMINER BOJKO: Mr. Dyas?

18 MR. DYAS: No questions, your Honor.

19 EXAMINER BOJKO: Mr. White?

20 MR. WHITE: No questions, your Honor.

21 EXAMINER BOJKO: City of Akron,
22 Mr. Randazzo?

23 MR. RANDAZZO: No questions for Akron.

24 EXAMINER BOJKO: Mr. Kutik?

25 MR. KUTIK: Yes, your Honor.

CROSS-EXAMINATION

By Mr. Kutik:

Q. Good afternoon.

A. Hi. Good afternoon, sir.

Q. As a regulatory -- a senior regulatory analyst for the OCC, one of your jobs is to provide studies and analyses on, among other areas, economic development, correct?

A. Whenever there is an economic development case, yes.

EXAMINER BOJKO: Mr. Ibrahim, you're going to have to talk into the mic.

THE WITNESS: With pleasure, I shall do that, of course.

EXAMINER BOJKO: Thank you.

A. Particularly yes, when there is an economic development or reasonable arrangement case.

Q. And you're part of the OCC in developing or formulating OCC's positions on economic development issues. Correct?

A. Correct.

Q. You've testified in only three cases before the Public Utilities Commission of Ohio.

A. This is correct.

Q. One of those cases was involving Dayton

1 Power & Light.

2 A. Correct.

3 Q. And that case involved Dayton Power &
4 Light's ESP which included an economic development
5 component.

6 A. Correct.

7 Q. Second case involved a company called
8 Ormet.

9 A. Correct.

10 Q. And that case was a reasonable
11 arrangement case.

12 A. Correct.

13 Q. And the third case you testified in was a
14 case involving a company called Eramet Marietta,
15 correct?

16 A. Correct.

17 Q. That was another reasonable arrangement
18 case.

19 A. Correct.

20 Q. And it is also the case, sir, that in the
21 cases where you've testified, you have not -- you
22 have recommended that the either reasonable
23 arrangements or economic development proposals not be
24 accepted by the Commission as filed, correct?

25 A. Correct.

1 Q. Now, it's also true to say that you can't
2 say that OCC as a general matter supports economic
3 development in the state of Ohio, correct?

4 A. No, I wouldn't agree with your question.
5 It is a case-by-case opinion and it would be
6 communicated to the relevant parties on a
7 case-by-case basis.

8 Q. Sure. So as a general proposition, you
9 can't agree that OCC supports economic development
10 because you view it as a case-by-case proposition;
11 fair to say?

12 A. Yes. And this is how I see support.
13 It's a case-by-case.

14 Q. Okay. Now, let me talk to you about your
15 recommendations here to the extent I understand your
16 testimony in light of the motions to strike. You are
17 not addressing the merits of the proposals, correct?

18 A. I didn't -- this is correct, because I
19 didn't find enough information to help me to come up
20 with a conclusion.

21 Q. Right, so you're not taking the position
22 that the proposals are unreasonable, you just want
23 more information and more time, correct?

24 A. More time for analysis and consideration,
25 correct.

1 Q. Now, as one of OCC's economic development
2 experts and the one involved in this case, you
3 participated in OCC's efforts to undertake discovery
4 in this case, correct?

5 A. Correct.

6 Q. And OCC propounded discovery to the
7 FirstEnergy operating companies, correct?

8 A. Yes.

9 Q. And some of that discovery involved the
10 economic development issues that you were responsible
11 for reviewing, correct?

12 A. This is correct.

13 Q. And you don't necessarily have any
14 problems with FirstEnergy's discovery in terms of
15 they did not refuse any information to you, if you
16 have a problem with FirstEnergy's discovery responses
17 it was that they either didn't have the information
18 or they didn't know, correct?

19 A. Basically, my issues are related to time
20 so that we can provide the analysis. I did send
21 discovery to questions -- I did formulate discovery
22 questions to FirstEnergy companies and they replied
23 and the amount of information included in the reply
24 in the time available did not allow me to complete an
25 analysis.

1 Q. I'm sorry, Doctor, I don't think that
2 really answers my question so let me try it a
3 different way.

4 A. Please do, sir.

5 Q. With respect to the economic development
6 discovery that you or OCC propounded on the
7 FirstEnergy operating companies, the FirstEnergy
8 operating companies answered to the best of their
9 ability as far as you know every single discovery
10 request, correct?

11 A. Correct.

12 Q. And your problem with the responses to
13 the extent you have a problem seems to be two-fold:
14 One, that either FirstEnergy didn't have the
15 information or didn't know the information; or two,
16 they gave you the information but you need more time
17 to review it.

18 A. Correct.

19 Q. No discovery was conducted by the OCC
20 against or propounded to the Cleveland Clinic,
21 correct?

22 A. To the best of my knowledge, this is
23 correct.

24 Q. And you sought no opportunity to get
25 information from the Cleveland Clinic informally;

1 isn't that also correct?

2 A. There was no venue in the time available
3 to seek that even if I wanted.

4 Q. Well, sir, isn't it true that you sought
5 no opportunity from the Cleveland Clinic to
6 informally exchange information? Isn't that true?

7 A. There was no contact, informal contact
8 between Cleveland Clinic and I.

9 Q. So the answer to my question is?

10 A. That's correct.

11 Q. Thank you.

12 Now, you did do some, what we'll call
13 independent investigation relating to the clinic,
14 correct?

15 A. To the best of my ability, yes, this is
16 correct.

17 Q. And that included internet research,
18 correct?

19 A. Correct.

20 Q. And one of the things you did during your
21 internet research was that you looked at the
22 Cleveland Clinic website, correct?

23 A. Correct.

24 Q. And one of the things that appears on the
25 Cleveland Clinic website is an economic impact

1 report, correct?

2 A. This is correct, however, I would like to
3 highlight that this particular report is three or
4 four levels down in the website, that was not
5 immediately apparent to me when I did the review.

6 Q. All right.

7 A. And -- please.

8 Q. Go ahead.

9 A. And the report itself is not there.
10 There is a summary of the report highlighting the
11 economic impact of Cleveland Clinic in Cleveland.
12 There is no study that I am aware of that speaks
13 about the economic impact of the \$1.4 billion
14 expansion project.

15 Q. Well, my question to you, sir, there was
16 and is reference on the Cleveland Clinic's website to
17 an economic impact report, correct?

18 A. I became aware of it after Mr. Randazzo
19 highlighted that to me in the deposition.

20 Q. So the answer to my question is yes.
21 There is such a report referenced on the website.

22 A. I can confirm that and there is a summary
23 of the report that I managed to confirm after I heard
24 that from Mr. Randazzo, yes.

25 Q. So we're, again, the report is referenced

1 on the site, correct?

2 A. Yes. I couldn't find the report itself.

3 Q. And you didn't look at that report before
4 you rendered your opinions and, in fact, still
5 haven't looked at the report, correct?

6 A. I would like to remind you, sir, that I
7 didn't pass an opinion on --

8 Q. Sir.

9 A. -- the reasonable arrangement.

10 Q. Can you answer my question?

11 A. Can I have the question again, please?

12 Q. Yes, please.

13 A. If I may.

14 MR. KUTIK: Sure. May I have the
15 questioned read, your Honor?

16 EXAMINER BOJKO: Please.

17 (Record read.)

18 A. I didn't read the report and I couldn't
19 find the report itself. I found reference to it.

20 Q. So the answer to my question is "yes."

21 A. I think that I have answered your
22 question very precisely. I couldn't find -- I didn't
23 read the report because I couldn't find it. I found
24 a reference.

25 Q. Now, it's also true, is it not, that you

1 didn't visit the Cleveland Clinic site for purposes
2 of this case until after you formulated your opinion
3 and you submitted your testimony? Correct?

4 A. This is correct, I did not visit the
5 Cleveland Clinic specifically.

6 Q. All right. And you did visit the clinic
7 last Saturday?

8 A. This is correct, sir.

9 Q. And that was a couple days before your
10 deposition and, of course, before this hearing.

11 A. Yes, sir.

12 Q. And you didn't on that visit try to reach
13 out to any clinic officials to talk with them about
14 their facilities or their plans, correct?

15 A. No, no, sir, I did not do that.

16 Q. And while you were visiting the clinic,
17 while you were walking around the site, you didn't
18 talk to anyone or try to reach out to anyone during
19 the time of your visit, correct?

20 A. No, sir, that was not possible.

21 Q. Okay. Now --

22 EXAMINER BOJKO: I'm sorry. Did you say
23 it wasn't possible?

24 THE WITNESS: That wasn't possible. It
25 was a Saturday -- the purpose of the visit was a

1 specific visit conducted on Saturday to understand
2 the size of the campus and see if I can depict parts
3 of the expansion plan. There was no one --

4 EXAMINER BOJKO: Was it a scheduled
5 visit?

6 THE WITNESS: No, ma'am. It was a
7 personal visit.

8 EXAMINER BOJKO: A personal visit?

9 THE WITNESS: Yes, I undertook that on a
10 Saturday myself to go and visit Cleveland Clinic.

11 EXAMINER BOJKO: And you didn't inform
12 anybody at the clinic that you were coming to visit
13 it?

14 THE WITNESS: No, ma'am. I did not
15 inform anybody. I just visited the facilities.

16 EXAMINER BOJKO: In your official
17 capacity as an employee of the Consumers' Counsel?

18 THE WITNESS: Ma'am, on a Saturday I
19 undertook on myself to go and visit the site myself
20 in order to know how big it is and what is impacted,
21 the area as far as I can tell.

22 EXAMINER BOJKO: On personal time or
23 state time?

24 THE WITNESS: On personal time.

25 EXAMINER BOJKO: Thank you.

1 Please proceed.

2 MR. KUTIK: Thank you, your Honor.

3 Q. (By Mr. Kutik) Now, OCC, it's true, has
4 not conducted any discovery in this case propounded
5 towards any automotive manufacturers, correct?

6 A. This is correct, and for part of the
7 reason is for a considerable period of time we didn't
8 know exactly what were they.

9 Q. You didn't visit any automotive
10 manufacturers' facilities, correct, for purposes of
11 this case?

12 A. No, sir, I did not.

13 Q. And you didn't seek discovery from any
14 party in this case that may represent automotive
15 manufacturers' interests, correct?

16 A. Correct.

17 Q. Were you here during Mr. Ridmann's
18 testimony?

19 A. Parts of it; not all.

20 Q. Are you aware of Mr. Ridmann's testimony
21 regarding domestic automotive manufacturers and
22 whether there are any so-called nondomestic
23 automotive manufacturers within the FirstEnergy
24 operating companies' service territory?

25 A. It is fair to say that I remember him

1 saying that he's not aware of any.

2 Q. And would it be fair to say that you have
3 no reason to dispute Mr. Ridmann's testimony?

4 A. I don't have any reason to dispute that.

5 Q. Now, you're skilled in performing
6 cost-benefit analysis from an economic perspective,
7 right?

8 A. This is correct.

9 Q. And you know how to gather information
10 and conduct such analysis, correct?

11 A. Correct.

12 Q. And you know what questions to ask to do
13 a sound, economically reasonable cost-benefit
14 analysis; fair to say?

15 A. Correct.

16 Q. And you're skilled at being able to
17 quantify benefits to programs or propositions when
18 they are quantifiable.

19 A. Correct.

20 Q. And you didn't, in this case, attempt to
21 do a cost-benefit analysis, correct?

22 A. In this particular --

23 Q. Yes.

24 A. Two cases for the Cleveland Clinic and
25 for --

1 Q. Yes.

2 A. -- domestic automaker.

3 EXAMINER BOJKO: I'm sorry, you're
4 trailing off, I just can't hear you. Can you speak
5 up?

6 THE WITNESS: Certainly. We are speaking
7 about two cases -- we are speaking. We are speaking
8 about two cases. Please forgive me, we are speaking
9 about two cases here, one related to Cleveland and
10 one related to the domestic automakers.

11 So you are referring to the two cases.

12 Q. Yes, I am.

13 A. I started the preliminary process of
14 gathering information on -- to come up with
15 information that would help me to come up with a
16 study.

17 Q. Well, sir, that's not my question. My
18 question is that you did not do a cost-benefit
19 analysis for purposes of this case.

20 A. No, sir, I did not.

21 Q. Okay. And you did not attempt to
22 quantify benefits for any party, any person, or any
23 segment of the economy or any segment of the
24 FirstEnergy operating companies' customers for
25 purposes of this case.

1 A. No, I did not, because there was no time.

2 Q. You didn't do any studies on consumer
3 attitudes about economic development in the
4 FirstEnergy operating companies' territory, correct?

5 A. For the purpose of this particular
6 reasonable arrangement or assumed reasonable
7 arrangement, you are right.

8 Q. Now, I want to talk with you briefly
9 about one of your views as to something other than
10 your problems or alleged problems in getting
11 information. You think that the Commission should
12 spread the delta revenue recovery across customer
13 classes in proportion to their contribution to
14 current revenues, correct?

15 A. Correct.

16 Q. And you understand that -- well, there
17 are discounts that customers currently get, that some
18 customers currently get, that aren't -- where the
19 delta revenue is not distributed across all customer
20 classes; you're aware of that, correct?

21 A. I am aware that some customers are
22 getting discounts. I am not aware of the mechanics
23 of how this is distributed.

24 Q. Okay. Are you aware, sir, of the fact
25 that certain customers who own all-electric homes

1 receive a discount?

2 A. I am aware of it.

3 Q. And is it your testimony that you're not
4 aware of how the delta revenue recovery is allocated
5 among customer classes?

6 A. This is correct.

7 Q. Okay. Now, to allocate in proportion to
8 customer classes' total revenue, that would include
9 generation revenue, correct?

10 A. In the context of reasonable arrangement,
11 correct.

12 Q. And the costs that we're talking about
13 here, particularly with respect to the Cleveland
14 Clinic, would be considered distribution costs,
15 correct?

16 A. You are asking this question and labeling
17 it as distribution cost because it is -- these are
18 investments in distribution level facilities? Yes.

19 Well, let me back up. You understand
20 that this is -- that the facilities here are
21 essentially distribution plant.

22 A. This is correct.

23 Q. All right. And so would the costs
24 associated with a distribution plant be properly
25 characterized as generally distribution costs or

1 distribution-related costs?

2 A. Distribution-related costs, correct.

3 Q. And so your proposal is to allocate
4 distribution-related costs based upon total revenues
5 including generation revenues, correct?

6 A. This is one way of looking at it. There
7 are other ways of looking at it as well.

8 Q. Isn't that your proposal, sir?

9 A. My proposal is that as a result of
10 granting reasonable arrangements or what I labeled as
11 reasonable arrangements for economic reasons, that
12 will create a cost that -- we generally label them as
13 delta revenue, and to recover the delta revenue I am
14 suggesting that it should be allocated to all
15 customer classes in proportion to their contribution
16 to the revenues of CEI.

17 Q. Okay.

18 A. Whether the moneys that went into
19 supporting the economic development of Cleveland went
20 to build distribution assets or to help them to
21 reduce their energy cost, that's beside the point.

22 MR. KUTIK: I move to strike the answer
23 as nonresponsive and the witness should be directed
24 to answer the question "yes" or "no" and give an
25 explanation.

1 (Record read.)

2 EXAMINER BOJKO: He's explaining his
3 proposal. You can ask a follow-up, Mr. Kutik.

4 Q. Is the answer to my question "yes"?

5 A. I find it difficult to follow your
6 question really. The context of the investment in
7 this particular case for Cleveland are in
8 distribution assets but in support for their economic
9 development. That will create an obligation of other
10 customer classes to pay for it in order to keep
11 FirstEnergy whole.

12 EXAMINER BOJKO: Mr. Ibrahim, okay, now
13 you've gone far enough.

14 THE WITNESS: Yes, ma'am.

15 EXAMINER BOJKO: Can you restate your
16 question one more time?

17 Q. Let me try it this way, Doctor, do you
18 have your deposition transcript with you?

19 A. Yes.

20 Q. Okay. Would you turn to your deposition
21 transcript.

22 A. I beg your pardon. I don't have it in
23 front of me.

24 MR. KUTIK: May I approach the witness,
25 your Honor?

1 EXAMINER BOJKO: You may.

2 Q. Doctor, please turn to page 73 of your
3 deposition.

4 A. Go ahead, sir.

5 Q. And was it your testimony starting at
6 line 1, "Question: So in effect what you're
7 suggesting is costs relating to distribution plant
8 should be allocated in part based upon
9 generation-related revenue?

10 "Answer: I think that's beside the
11 point.

12 "Question: Please answer the question,
13 then you can explain."

14 Mr. Poulos asked the question to be read
15 back and you said "Answer: To all revenues including
16 that of generation."

17 A. Correct.

18 Q. That was your testimony.

19 A. Correct.

20 Q. Thank you. I want to ask you some
21 questions.

22 A. That was in the deposition.

23 Q. Yes, and my question to you, sir, is
24 that's what you testified to in your deposition. You
25 were under oath in your deposition, correct?

1 A. Correct, sir. Correct.

2 Q. Now, let me turn to some questions about
3 Cleveland Clinic and what you know about the
4 Cleveland Clinic. You understand that the size of
5 the clinic, Cleveland Clinic campus that we're
6 talking about, is approximately 166 acres?

7 A. I can imagine that this is a reasonable
8 number.

9 Q. You've seen that number?

10 A. I have seen the number of acres.

11 Q. And you have no reason to dispute it?

12 A. I have no reason to dispute it.
13 Cleveland Clinic is known at the state level, it's
14 known at the national level, it's known at the
15 international level as well.

16 Q. And the campus that we're talking about
17 includes 50 buildings.

18 A. It included several buildings and I also
19 am aware of other Cleveland Clinic related buildings
20 outside the campus.

21 Q. You've seen the number 50 buildings on
22 the main campus, haven't you?

23 MR. POULOS: Objection, your Honor. Lack
24 of foundation. This witness can't answer his
25 questions. He clearly has shown he doesn't have

1 specific knowledge of this information.

2 EXAMINER BOJKO: Oh, Mr. Poulos, I don't
3 think that's clear. I think that's what we're trying
4 to all figure out here, what he knows.

5 MR. POULOS: The number of buildings.

6 MR. KUTIK: We're coaching now, your
7 Honor.

8 EXAMINER BOJKO: Yeah.

9 A. I have no reason to dispute your number,
10 so, I saw an impressive number of buildings in
11 Cleveland Clinic.

12 Q. So one of, in fact, you would believe
13 that these facilities that you visited last Saturday,
14 based upon that and whatever else you're familiar
15 with respect to the Cleveland Clinic, that the
16 Cleveland Clinic is probably one of the largest
17 medical facilities that you've ever visited.

18 A. Among the largest, certainly.

19 Q. And it employs over 40,000 people.

20 A. I saw that number.

21 Q. And you would agree with me that it is
22 one of the major employers in CEI's service
23 territory?

24 A. By the virtue of its size, yes.

25 Q. And you would also agree with me, sir,

1 that with respect to the CEI service territory, that
2 currently it has or the economic condition in that
3 service territory includes a high rate of
4 unemployment.

5 A. Yes.

6 Q. On the order of 11 percent.

7 A. Yes.

8 MR. KUTIK: I have no further questions.

9 EXAMINER BOJKO: Mr. Lavanga?

10 MR. LAVANGA: No questions, your Honor.

11 EXAMINER BOJKO: Mr. Smith?

12 MR. SMITH: No questions.

13 EXAMINER BOJKO: Mr. Porter?

14 MR. PORTER: No questions, your Honor.

15 EXAMINER BOJKO: Mr. Randazzo?

16 MR. RANDAZZO: Just a few.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Randazzo:

20 Q. Doctor, would you turn to page 18 of your
21 testimony.

22 A. Go ahead, sir.

23 Q. There you, in the boxed figure you
24 illustrate your alternative proposal for distributing
25 the costs associated with the economic development

1 provisions in the settlement; is that correct?

2 A. Correct.

3 Q. And you are proposing there in your
4 alternative methodology to recover the costs across
5 all three operating companies; is that correct?

6 A. Correct.

7 Q. And you're proposing that the total cost
8 be recovered by the FirstEnergy operating companies
9 there, correct?

10 A. Yes.

11 Q. Your only difference is on the allocation
12 methodology; is that correct?

13 A. Correct.

14 MR. RANDAZZO: And to provide the Bench
15 with some return on the investment in time we devoted
16 to the motion to strike, I will end my
17 cross-examination. Thank you very much.

18 EXAMINER BOJKO: Thank you.

19 Mr. Settineri?

20 MR. SETTINERI: No questions, your Honor.

21 EXAMINER BOJKO: Mr. Kurtz?

22 MR. KURTZ: Thank you, your Honor.

23 - - -
24
25

CROSS-EXAMINATION

By Mr. Kurtz:

Q. Good afternoon, Dr. Ibrahim.

A. Good afternoon, sir.

Q. You testified about the domestic auto manufacturers in --

A. Can you kindly repeat that again?

Q. You have testified about the domestic automakers' incentive rate.

A. I testified regarding the domestic automakers filed in the stipulation, yes.

Q. Can you generally describe your understanding of how the rate will work?

A. I understand basically as I have outlined it in my testimony, that there is going to be a base level of consumption that's related to the consumption level in 2009 and as they go above this particular consumption level, each additional consumption level above the 2009 level is going to receive a scaled reduction, 10 percent for the first -- 1 cent for the first 20 percent and then 1.2 cents for anything above that.

Q. And if the auto manufacturers do not increase production, there is no incentive rate paid to them, correct?

1 A. This is correct.

2 Q. And if they do not increase production,
3 then there will be no charge to consumers.

4 A. Correct.

5 Q. Now, in your testimony you use the dollar
6 figure of 2.7 million for illustrative purposes, that
7 is the amount of the auto incentive, the annual
8 amount.

9 A. Yes.

10 Q. Okay. And where did you get that number
11 from?

12 A. I got that from Schedule 1 from the
13 application and the stipulation.

14 Q. Do you understand the 2.7 million per
15 year incentive to be the amount of incentive if all
16 of the auto manufacturers increased their production
17 back to the 2008 level from the 2009 baseline?

18 A. I understand that this is going to be
19 paid if they increase their electricity consumption
20 above the baseline of 2009.

21 Q. But only paid if --

22 A. If.

23 Q. -- if they increase production.

24 A. Yes.

25 Q. Now, as an economist, all else equal,

1 with this type of incentive that should incentivize
2 additional production, should it not?

3 A. I don't have enough information to answer
4 this particular question. It depends upon the
5 percentage of energy, the total cost of
6 manufacturing, the final product of what they do.

7 Q. But all else equal, having an incentive
8 to produce more should help the manufacturers produce
9 more.

10 A. If you are giving discount when they
11 increase production, yes, it should.

12 Q. Would you turn to page 15 of your
13 testimony, please.

14 A. I assume that page 15 would remain 15
15 after the removal of --

16 Q. Okay. Page 15, line 13, where you give
17 the amount of the --

18 A. Yes.

19 Q. Okay. This is \$0.000071 per
20 kilowatt-hour.

21 A. Correct.

22 Q. That is the amount of charge that would
23 appear on the monthly bill for residential consumers
24 if the auto manufacturers increase production to the
25 2008 level and, therefore, receive this \$2.7 million;

1 is that correct?

2 A. Correct.

3 Q. Okay. Is it also correct that the
4 average monthly consumption of residential consumers
5 across all three operating companies as shown on the
6 schedule on page 18 as well as your -- as well as one
7 of your schedules, I'll refer to it, schedule -- or,
8 table 7, it's 675 kilowatt-hours per month?

9 A. I am looking into figure 1 on page 18
10 that gives the summary of the average monthly
11 consumption kilowatt-hours, and it is 675
12 kilowatt-hours.

13 Q. So if the automakers increase production
14 back to the 2008 level and receive this
15 \$2.7 million --

16 A. Yes.

17 Q. -- can you calculate what the impact on
18 the average residential monthly bill will be?

19 A. It's going to be, as you can look into
20 the same figure in page 18, it's going to be 22 cents
21 a month, of 200 -- I beg your pardon. It is going to
22 be, for the -- to the automaker facilities it's going
23 to be 4.4 or 52 cents a year, 53 cents a year.

24 Q. Well, if we multiply 0.000071 times 675,
25 I get 4.8 cents a month for the average.

1 A. This is as proposed.

2 Q. As proposed.

3 A. As proposed.

4 Q. So that would be 4.8 cents per month for
5 the average residential household.

6 A. Correct.

7 Q. If the automakers do, in fact, increase
8 production back to 2008.

9 A. Correct.

10 Q. And if they don't, if the production
11 stays flat, it's a zero charge.

12 A. Correct.

13 Q. Okay. Now, under your alternative
14 proposal, alternative allocation, as I understand it,
15 as shown on table 9, if we reallocate the
16 \$2.7 million in accordance with your alternative,
17 then the monthly charge would be .0000652.

18 A. Can you repeat because it took me some
19 time to go to the table, please, sir.

20 Q. Yeah, table 9. If you reallocate the
21 residential portion --

22 A. Yes.

23 Q. -- of the \$2.7 million, assuming
24 production in fact increases, the new residential
25 monthly charge would be .0000652.

1 A. Correct.

2 Q. And if we multiply that times 675 hours
3 per month, I get 4.4 cents --

4 A. Correct.

5 Q. -- a month. That would be the charge to
6 the average residential household.

7 A. Correct.

8 Q. So that would be four-tenths of a cent
9 different than the company's allocation proposal.

10 A. Correct.

11 Q. So that would mean that if the Commission
12 adopted your alternative, the average residential
13 household would save four-tenths of a cent per month
14 or less than a nickel per year.

15 A. Correct.

16 Q. Do you think that given that small amount
17 of change, a nickel a year for the average
18 residential household, assuming production does, in
19 fact, increase, do you think that's significant
20 enough to modify the stipulation?

21 A. Basically, I am trying to establish a
22 principle and that the principle is not only going to
23 be applied on the automaker facilities but it's also
24 going to be applied on all similar proposals, namely
25 for Cleveland -- namely that for Cleveland, and if I

1 want to be consistent across the board, I have to
2 treat both Cleveland Clinic and the automakers the
3 same. It is true that the difference for the
4 automakers is de minimis, but a principle is a
5 principle.

6 Q. Now, you realize that these arrangements
7 are filed pursuant to the ESP statute, correct?

8 A. Yes.

9 Q. So to the extent we have a principle
10 established here, that principle would only apply if
11 and when there are additional ESPs in the future.

12 A. My principle that I'm trying to put
13 forward in my testimony is the application of a
14 framework that I think would be applicable on
15 arrangements like that which I labeled them as
16 reasonable arrangement. And I am trying to be
17 consistent across the board whenever I deal with
18 reasonable arrangements in this case, as I was in the
19 previous two cases, particularly those that I have
20 worked on after the enactment of Ohio Administrative
21 Code 4901:1-38. And, therefore, I didn't come up
22 with these particular proposals because this is what
23 I like, but this is what Ohio administrative code
24 advised that it would be followed, yes, sir.

25 Q. And that is --

1 MR. RANDAZZO: Your Honors, I would move
2 to strike the last sentence from his answer.

3 EXAMINER BOJKO: Granted.

4 MR. POULOS: Your Honor, he's answering
5 the question.

6 EXAMINER BOJKO: No, he went beyond
7 answering the question about five minutes ago.
8 Granted.

9 Q. Doctor, just for the record --

10 A. Yes, sir.

11 Q. -- on page 15 --

12 EXAMINER BOJKO: Wait, Mr. Kurtz, are you
13 moving on to a different subject matter?

14 MR. KURTZ: I think -- yes.

15 EXAMINER BOJKO: We need to take a
16 five-minute break. I apologize for interrupting.

17 EXAMINER PRICE: Off the record.

18 (Recess taken.)

19 EXAMINER BOJKO: Let's go back on the
20 record. Please remember you're still under oath.

21 THE WITNESS: Yes, ma'am, thank you.

22 EXAMINER BOJKO: Mr. Kurtz, I apologize,
23 you were on page 15, I believe.

24 MR. KURTZ: Yes, thank you, your Honor.

25 Q. (By Mr. Kurtz) Doctor, just very quick,

1 for the record, the Cleveland Clinic amount for the
2 residential customers is on line 4 of page 15 at
3 .00052 cents per kilowatt-hour.

4 A. Correct.

5 Q. Times the same monthly kilowatt-hour
6 usage of 675, that would be approximately 35 cents a
7 month for the average residential household?

8 A. Correct.

9 Q. One last question. On page 23, line 13,
10 you make the --

11 A. Just a minute. 9?

12 Q. 13.

13 A. Go ahead, sir.

14 Q. You make the statement "As important as
15 the automakers are to the economy of Ohio," then you
16 go on. What is your understanding or basis for
17 making that statement?

18 A. The state of Ohio is the second largest
19 state in the union in the production of light motor
20 vehicles. In 2006 they produced 1.6 million
21 vehicles. It is also the largest state in the union
22 in manufacturing parts of motor vehicles. This
23 particular industry which is under International
24 Standard Classification 360 employs 160,000 employees
25 in the state of Ohio of which perhaps 130,000 are in

1 the motor vehicle industry and the rest in ancillary
2 services.

3 Q. That's very specific information. Is
4 there a source that you have used for that?

5 A. Yes, I do have a source.

6 Q. And it is?

7 A. I do have it in my papers and I can
8 provide you with this particular source.

9 Q. Can you just describe what it is?

10 A. It is a search I have done for the motor
11 vehicle industry in Ohio so that I can form an
12 opinion.

13 Q. Was that off of the Ohio Department of
14 Development website?

15 A. I do not think so; subject to check.

16 Q. Okay. Do you know whether or not the
17 auto manufacturing wage and benefit packages tend to
18 be high?

19 A. I can't answer this question I'm afraid.

20 Q. Do you know what the employment
21 multiplier effect is of jobs in the auto industry
22 versus, say, jobs in the service sector?

23 A. We, we I mean OCC, should have the
24 capability to have this specific level of information
25 perhaps within 8 weeks to 12 weeks. At the moment I

1 don't.

2 Q. Are you getting a new computer program of
3 some sort; is that what you're referring to?

4 A. Correct.

5 Q. Do you understand that the Ohio auto
6 manufacturers compete nationally with other locations
7 of General Motors and Ford in Kentucky and Indiana
8 and Michigan and so forth?

9 A. I am not aware of specific cases but it's
10 possible.

11 Q. Do you think it's a fair assumption that
12 the Ohio plants compete with the other plants owned
13 by the auto manufacturers nationwide?

14 MR. POULOS: Objection, your Honor,
15 speculation, asks for speculation.

16 THE WITNESS: I don't have --

17 MR. POULOS: Amr, wait.

18 THE WITNESS: I'm sorry.

19 MR. KURTZ: I'm just asking him if he
20 understands based on his expert status.

21 EXAMINER PRICE: Mr. Poulos, why is that
22 not a fair question for somebody who's a specialist
23 in economic development?

24 MR. POULOS: Because he wasn't sure about
25 that same type of information in the region.

1 EXAMINER BOJKO: Overruled. Please
2 answer.

3 THE WITNESS: Can I have the question
4 again, please?

5 Q. (By Mr. Kurtz) Is it fair to assume that
6 the Ohio auto manufacturers compete with other
7 manufacturers in the United States?

8 MR. POULOS: Objection, he asked him to
9 assume.

10 EXAMINER BOJKO: In his expert opinion,
11 and he's here to testify about economic development.

12 MR. POULOS: Do you know, is it fair to
13 assume.

14 EXAMINER BOJKO: He can answer if he
15 knows.

16 A. I imagine that this is the case. I don't
17 have specific information whether it is really the
18 case or not.

19 Q. Would your answer be the same with the
20 term "international competition" as well?

21 A. I.e., whether the facilities are going to
22 be located within the country or overseas?

23 Q. No, whether or not the General Motors
24 Lordstown plant, for example, competes with other
25 manufacturing facilities located in Japan and Korea,

1 et cetera.

2 A. I would like to have more specific
3 information. It depends upon the type of product
4 that we are talking about. It is possible that
5 facilities in the United States are producing a
6 product that it is not intended for international,
7 but possibly yes, possibly no. I don't have enough
8 information I'm afraid.

9 Q. I just want to go back to one thing you
10 said. Do you have that source document you were
11 referring to with you on the stand about the jobs and
12 so forth?

13 A. At the moment, no. But I can provide it
14 to you.

15 MR. KURTZ: Your Honor, if Dr. Ibrahim
16 does provide that, I guess as a post-hearing data
17 request or something, would that be part of the
18 record at that point?

19 EXAMINER BOJKO: It would have to be a
20 late-filed exhibit made by somebody.

21 MR. KUTIK: I just ask whether it's in
22 the room.

23 Q. Do you have it with you here today?

24 A. I wish if -- no. The answer is no.

25 EXAMINER BOJKO: If the document is

1 produced pursuant to a discovery request and then at
2 that time if you wish to admit it as a late-filed
3 exhibit, you would have to do it that way.

4 Q. Could I make the request of you,
5 Dr. Ibrahim, to provide the document to the parties?

6 A. Sure.

7 MR. KURTZ: Thank you. Your Honor, those
8 are all my questions.

9 EXAMINER BOJKO: Thank you.

10 Mr. Gallon?

11 MR. GALLON: No questions, your Honor.

12 EXAMINER BOJKO: Mr. Weldele?

13 MR. WELDELE: No questions, your Honor.

14 EXAMINER BOJKO: Mr. Warnock?

15 MR. WARNOCK: No questions, your Honor.

16 EXAMINER BOJKO: Mr. O'Brien?

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

18 EXAMINER BOJKO: Mr. McNamee?

19 MR. MCNAMEE: No, thank you.

20 EXAMINER BOJKO: Do you have any
21 redirect, Mr. Poulos?

22 MR. POULOS: Could we take a minute, your
23 Honor?

24 EXAMINER BOJKO: Yes. Let's go off the
25 record.

1 (Recess taken.)

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

4 Mr. Poulos.

5 MR. POULOS: Your Honor, we have no
6 redirect at this point.

7 - - -

8 EXAMINATION

9 By Examiner Bojko:

10 Q. Dr. Ibrahim, I think in response to one
11 of Mr. Kutik's questions you stated that you've
12 received I think you said a large amount of
13 information from FirstEnergy regarding -- or in
14 discovery, you just hadn't had time to review it.
15 Did I hear that correctly?

16 A. I didn't have time to analyze it and
17 consider it in the context. The time available was
18 very limited.

19 Q. Okay. But you received a large amount of
20 information about both arrangements, what you're
21 calling reasonable arrangements in your testimony?

22 A. I did receive information I've asked for,
23 particularly regarding the consumption level of those
24 who are going to benefit from the arrangements as
25 well as information regarding Cleveland Clinic

1 reports.

2 Q. Okay. And just so we're clear, there's
3 no outstanding discovery that you know of on behalf
4 of OCC to the companies or Cleveland Clinic or
5 automakers or anybody?

6 A. In the context of the time available --

7 Q. No. No.

8 A. You are right.

9 Q. Thank you. I just wanted to know if
10 there was outstanding discovery so thank you.

11 A. My pleasure, ma'am.

12 EXAMINER BOJKO: You may step down,
13 Dr. Ibrahim. Thank you.

14 THE WITNESS: Thank you.

15 MR. POULOS: Your Honor, at this time OCC
16 offers OCC Exhibit 1 subject to the proffer.

17 EXAMINER BOJKO: Is there any opposition
18 to the admission of OCC Exhibit 1 taking into
19 consideration the motion to strike -- motions to
20 strike that have been granted?

21 MR. KUTIK: Well, I would have no
22 objection subject to the motions to strike that have
23 not been granted. In other words --

24 EXAMINER BOJKO: Oh, yes.

25 MR. KUTIK: -- I'm preserving my motion.

1 EXAMINER BOJKO: Subject to the motions
2 to strike that have been granted, we will admit OCC
3 Exhibit 1.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER BOJKO: Mr. Small, I presume.

6 MR. SMALL: Yes.

7 EXAMINER BOJKO: Would you like to call
8 your next witness?

9 MR. SMALL: OCC calls Mr. Wilson Gonzalez
10 to the stand and I would like his prepared testimony
11 market as OCC Exhibit 2.

12 EXAMINER PRICE: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 (Witness sworn.)

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

17 THE WITNESS: My name is Wilson Gonzalez,
18 I'm at 10 West Broad Street, 18th Floor, Columbus,
19 Ohio.

20 EXAMINER PRICE: Please proceed,
21 Mr. Small.

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WILSON GONZALEZ

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

DIRECT EXAMINATION

By Mr. Small:

Q. Mr. Gonzalez, by whom are you regularly
employed?

A. The office of the Ohio Consumers'
Counsel.

Q. And are you the Wilson Gonzalez whose
prepared testimony was filed on April 15th, 2010, in
this case?

A. Yes.

Q. On whose behalf do you appear?

A. The Office of the Ohio Consumers'
Counsel.

Q. And do you have your prepared testimony
with you on the stand?

A. Yes, I do.

Q. Did you prepare the testimony or have it
prepared at your direction?

A. Yes. For the lost revenue calculations
regarding the ESP scenario I worked jointly with
Mr. Dylan Sullivan to arrive at my figures.

1 Q. Do you have any changes or corrections to
2 your prepared testimony?

3 A. Yes.

4 MR. SMALL: The OCC would like to mark
5 OCC Exhibit 2A.

6 EXAMINER PRICE: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Mr. Gonzalez, would you please describe
9 what's been marked OCC Exhibit 2A.

10 A. Yes. Exhibit 2A contains changes and
11 corrections to my testimony including corrected
12 versions of my WG-1 schedules and a workpaper for the
13 corrected version of Schedule WG-1.

14 Q. Could you please describe the changes
15 stated in OCC Exhibit 2A?

16 A. First change is a correction to my WG-1
17 schedule regarding the lost revenue figures for the
18 MRO scenario. The line on each of the WG
19 schedules -- WG-1 schedules for the estimated lost
20 revenues has been adjusted and those changes reflect
21 the present value summary located near the bottom of
22 each WG-1 schedule.

23 Corresponding changes from the summaries
24 are required to the text of my testimony on pages 23,
25 39, and 42.

1 Q. Okay. Are there any other changes that
2 are described on the front page of Exhibit 2A?

3 A. Yes. The second change is to correct a
4 typographical error. On page 39, line 13, and in
5 footnote 59 the figure "5" should instead be .5.

6 Q. And, Mr. Gonzalez, all those changes
7 are -- the changes on the front sheet of OCC Exhibit
8 2A are the changes to the text that are associated
9 with the changes that you've just described?

10 A. That's correct.

11 Q. And do any of these changes or
12 corrections alter the conclusions stated in your
13 testimony?

14 A. No. The changes have a minimal impact on
15 the overall analysis provided in my testimony.

16 Q. If I asked you today the same questions
17 found in your prepared testimony as modified by your
18 changes and corrections on the stand, would your
19 answers be the same?

20 A. Yes, they would.

21 MR. SMALL: Your Honors, the witness is
22 available for cross-examination.

23 EXAMINER PRICE: Thank you.

24 Mr. Lang?

25 MR. LANG: Thank you, your Honor. If I

1 could start with motions to strike, please.

2 EXAMINER PRICE: Yes indeed.

3 MR. LANG: Following up on the last
4 witness, page 21 of Mr. Gonzalez's testimony, this is
5 where he is summarizing Dr. Ibrahim's testimony, we
6 would move to strike on page 21 starting at line 10,
7 starting with the -- starting with "normally these"
8 through the end of that paragraph on line 17, and
9 also on the next page, page 22, line 1, starting with
10 "ignoring" through the end of that paragraph, and
11 further down on page 22 starting at line 11, "the
12 application and its" through the end of that
13 paragraph. I apologize, I did not have these written
14 out the way Mr. Randazzo did, but the motion to
15 strike is on the same basis as Mr. Randazzo and my
16 counsel Mr. Kutik moved to strike the same
17 substantive testimony in Dr. Ibrahim's testimony.

18 MR. SMALL: Your Honors.

19 EXAMINER PRICE: Mr. Small.

20 MR. SMALL: If I understood the ruling
21 from the Bench earlier, there was an effort to
22 maintain Dr. Ibrahim's testimony except that there
23 were striking of "reasonable" on reasonable
24 arrangement and also certain citations to the Ohio
25 Administrative Code. At least as I understand the

1 Bench's ruling, neither one of those circumstances
2 apply to the matters where there's been a motion to
3 strike in this instance, simply referring to places
4 where the Commission has made statements which are,
5 in his opinion, regulatory policies and practices
6 that should be applied for an ESP case.

7 EXAMINER PRICE: We're going to grant the
8 motion to strike in part. The first provision at
9 page 21 starting on line 10 with "normally" and
10 ending on line 17 with "case" will be denied.

11 The second part beginning on line 22 on
12 line 1 with "ignoring the" and ending on line 5 with
13 "fashion" will be granted.

14 The third on page 22 beginning with the
15 words "the application" on line 11 and ending with
16 "and practices" on line 16 will also be stricken
17 consistent with our prior rulings.

18 MR. SMALL: Your Honors, I make the same
19 proffer of evidence that had this been admitted into
20 the record, Mr. Gonzalez's testimony would have
21 offered and supported the origin of Commission
22 policies and practices which are found in its rules.

23 EXAMINER PRICE: Your proffer is noted,
24 thank you.

25 MR. LANG: Your Honors, my next motion is

1 page 18, at the bottom of that page, line 18 starting
2 with the sentence "Thus the Commission," going over
3 to page 19 to the end of that sentence so it ends at
4 the end of line 1, and then picks up again on line 5
5 with "the stipulation" through the end of that
6 paragraph. The grounds is that Mr. Gonzalez is
7 providing his legal interpretation and analysis of
8 the Commission's order in the 09-535 case. He's
9 certainly not a lawyer and this testimony is improper
10 and should be -- certainly to be made on brief but
11 it's not appropriate to be made by Mr. Gonzalez.

12 EXAMINER PRICE: Mr. Small.

13 MR. SMALL: Your Honors, I would ask the
14 Bench to make a ruling consistent with earlier Bench
15 rulings on these matters which is we don't offer
16 Mr. Gonzalez as a legal expert, nonetheless it would
17 be virtually impossible in a procedure like this
18 where witnesses are expected to review the criteria
19 for approval of stipulations if the witnesses did not
20 understand the cases and the rules that were
21 fundamental to the Commission's decision-making, and
22 Mr. Gonzalez offers it in that sense of policy rather
23 than a legal opinion, and I'll leave it at that.

24 EXAMINER PRICE: I concur with Mr. Small,
25 the motion to strike will be denied.

1 MR. LANG: Moving on to hearsay issues,
2 your Honor. Page 37 starting at line 10 of page 37,
3 "For example, a 2006 ACEEE study reveals that"
4 through the end of the block paragraph including the
5 footnote. That is hearsay. A paper available from
6 the American Council for an Energy Efficient Economy
7 which is a 501(c)(3) organization, that's an energy
8 efficiency advocacy organization. This article
9 interestingly is available on their website for \$30,
10 but it remains hearsay and I would move that it be
11 stricken.

12 EXAMINER PRICE: Mr. Small.

13 MR. SMALL: Yes, your Honor. I believe
14 the same document was -- the same motion was offered
15 with respect to Mr. Sullivan's testimony yesterday
16 and was denied from the Bench and under the learned
17 treatise doctrine.

18 EXAMINER PRICE: On the contrary, though,
19 Mr. Small. The Electricity Journal is a
20 peer-reviewed journal, this appears to be solely a
21 paper from an advocacy organization; it would not
22 qualify under the learned treatise exception. We're
23 going to grant the motion to strike.

24 MR. LANG: The same objection, your
25 Honor, on the next page, page 38, it's the same study

1 is referenced, lines 10 through 12 ending with
2 footnote 57, and again, picking up on line 12
3 starting with "the fact that" and ending with
4 footnote 58.

5 EXAMINER PRICE: Okay, again, just to
6 clarify, you're talking about the sentence that
7 begins on line 10 and ending with the footnote number
8 57 and then beginning again with the "and" and ending
9 with the footnote 58; is that correct?

10 MR. LANG: Correct, your Honor.

11 EXAMINER PRICE: Motion to strike will be
12 granted for the reasons we discussed earlier.

13 Actually, I want to step back on that.
14 The first part -- I was looking at the ID.'s
15 incorrectly. The first part, footnote 57 refers back
16 to the ACEEE study that we discussed earlier.

17 Mr. Lang has confused me here or I've
18 confused myself.

19 MR. LANG: I'm sorry, your Honor, I
20 believe you are correct that my second reference with
21 footnote 58 is a different document.

22 EXAMINER PRICE: Okay. The George
23 Fitzpatrick testimony, wasn't that testimony that was
24 offered by a FirstEnergy witness in the portfolio
25 proceeding?

1 MR. LANG: Your Honor, the second
2 document is footnote 58, the Val Jensen.

3 EXAMINER PRICE: No, let's separate the
4 two motions.

5 MR. LANG: Right. No, your Honors, I did
6 not have a motion pending for the reference to
7 footnote 56 which is the George Fitzpatrick
8 testimony.

9 EXAMINER PRICE: Well, but footnote 57
10 references an Id., references back to prior.

11 MR. LANG: Yes, I think that's an
12 incorrect cite by Mr. Gonzalez. He clearly does
13 intend this to be a quote from the ACEEE study.

14 EXAMINER PRICE: Well, let's ask
15 Mr. Gonzalez that question.

16 Mr. Gonzalez, the footnote 57, is that
17 citing back to the ACEEE study or is that citing back
18 to FirstEnergy Exhibit FE-GLF-3 in Case No.
19 09-1947-EL-POR?

20 THE WITNESS: It relates back to the
21 ACEEE study, your Honor.

22 EXAMINER PRICE: Thanks to Ms. Bojko we
23 have found the reality here. Okay, that motion to
24 strike will be granted.

25 Now let's take up Val Jensen, "Aligning

1 Utility Incentives." What type of document is that,
2 Mr. Lang?

3 MR. LANG: I move for it on the same
4 grounds. I have not -- I do not know the particulars
5 of the document, but certainly there's no foundation
6 laid for the document that it's anything other than
7 hearsay.

8 MR. SMALL: Well, your Honor, that would
9 be a problem for the motion, that he doesn't
10 understand the basis of his objection on what kind of
11 document it is.

12 EXAMINER BOJKO: Well, Mr. Small, maybe
13 because the footnote doesn't tell us. It's a title
14 with an author, it doesn't tell us which journal it
15 was published in or where it came from. The citation
16 is deficient. Can you add that for us?

17 MR. SMALL: I'm not sure he was saying he
18 couldn't find it, just that he didn't look at it.

19 EXAMINER BOJKO: Okay. Well I'm asking,
20 what kind of publication was this in?

21 MR. SMALL: You'll have to ask the
22 witness.

23 EXAMINER PRICE: Mr. Gonzalez.

24 THE WITNESS: Yes, this is a document --
25 this is one of many documents and manuals that has

1 been put together by DOE and EPA in their National
2 Action Plan for Energy Efficiency. Members that are
3 part of this initiative are utilities, consumer
4 advocates, it's a broad range of stakeholders in this
5 particular area.

6 EXAMINER BOJKO: Well, first of all, can
7 you tell me the title because the quotation, does it
8 go -- there's no end quotation. Does the title end
9 with "Efficiency"?

10 THE WITNESS: Yes, that's correct.

11 EXAMINER BOJKO: Okay. And then you're
12 saying it's a DOE document?

13 THE WITNESS: DOE/EPA, the ones that --
14 you would find this on a DOE/EPA website as their
15 document.

16 EXAMINER BOJKO: You mean either-or,
17 there's not a DOE/EPA website.

18 THE WITNESS: No, they're both funding --
19 cofunding this initiative.

20 EXAMINER PRICE: But you don't have a web
21 address. I suppose we could Google this but I don't
22 think that is really a proper citation for the
23 examiners. You seem to be saying this is a U.S.
24 government document but I'm not sure if that's true
25 or if that's simply -- this is a document referenced

1 in a U.S. government website.

2 THE WITNESS: No, I'm saying that this
3 document appears on the DOE/EPA auspices and it's a
4 study funded by the EPA and DOE initiative concerning
5 the National Action Plan for Energy Efficiency.

6 EXAMINER PRICE: Do you have a copy of
7 this document with you, Mr. Gonzalez?

8 THE WITNESS: No. I left it in the
9 office.

10 EXAMINER PRICE: I think the burden here
11 is upon OCC to demonstrate that this falls within a
12 hearsay exception. It's clearly hearsay. It's just
13 a question of whether it falls within the exception,
14 I don't think you've met that burden so we're going
15 to grant the motion to strike.

16 Mr. Lang.

17 MR. LANG: Your Honor, going to
18 Mr. Small's earlier comment to 34 as Sullivan's
19 testimony yesterday, on page 39, footnote 59, again,
20 a reference to this Pamela Lesh article. Again, we
21 believe it's hearsay and would move to strike.

22 EXAMINER PRICE: Denied.

23 MR. LANG: And we would have one more,
24 your Honor. Yes. On page 53, starting on line 15 --

25 MR. SMALL: If you could hold on for a

1 moment, I'm not there.

2 MR. LANG: Sure.

3 MR. SMALL: Okay. What line?

4 MR. LANG: It's page 53, line 15,
5 starting with "This will more closely mimic" through
6 to the end of that paragraph, it's a reference to a
7 press release by a Pennsylvania utility and we move
8 to strike on the basis of hearsay.

9 EXAMINER PRICE: Mr. Small.

10 MR. SMALL: Well, first of all -- I lost
11 my microphone.

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

13 (Off the record.)

14 MR. SMALL: First of all, the motion to
15 strike refers to the reference on footnote 84,
16 however, the motion to strike is more extensive than
17 that. There's two sentences there. The first one is
18 not dependent upon the footnote.

19 EXAMINER PRICE: Is there a second of
20 all, Mr. Small?

21 MR. SMALL: Yeah, second of all, this is
22 the type of information experts typically rely upon
23 to inform them of the activities elsewhere around the
24 country. And there's a very limited experience in
25 Ohio and this is the type of information that the

1 experts in the field typically rely upon and that an
2 expert witness, he's entitled to rely upon this type
3 of information.

4 EXAMINER PRICE: You think he's entitled
5 to rely upon press releases?

6 EXAMINER BOJKO: Mr. Gonzalez, do you
7 have independent knowledge of PICO's REC auction?

8 THE WITNESS: I've been on their website
9 and I've looked at the materials regarding the
10 auction.

11 EXAMINER PRICE: I think Mr. Small's
12 first point is well-taken, his second one not so
13 much. We'll grant the motion to strike beginning
14 with "As a result" on line 16 and ending with
15 footnote 84 on line 19, the first sentence however
16 will remain in.

17 MR. LANG: And, your Honor, would that
18 include the Attachment 6 itself?

19 EXAMINER PRICE: Yes, it will.

20 MR. LANG: That concludes my motions,
21 your Honor.

22 EXAMINER PRICE: Thank you.

23 Mr. Porter.

24 MR. PORTER: Yes, one motion to strike
25 from the AICUO.

1 EXAMINER PRICE: Yes, sir.

2 MR. PORTER: Page 16 of Mr. Gonzalez's
3 testimony on line 4 beginning with the word "this"
4 and continuing all the way through line 12 ending
5 with the word "customer," would move that this
6 testimony -- we would make a motion to strike based
7 upon this language drawing a legal conclusion and the
8 witness not being an attorney.

9 I understand that there have been several
10 motions made for striking similar language, but this
11 language is different because there would be no other
12 purpose for this language other than to make a legal
13 conclusion about how the Commission is required to
14 interpret and apply the stipulation, and
15 additionally, how the Commission is required to
16 interpret and apply Revised Code 4928.01(A)(19).

17 MR. SMALL: Your Honors.

18 EXAMINER PRICE: Mr. Small.

19 MR. SMALL: First of all, I do think it
20 falls under the same category as previous rulings
21 from the Bench concerning the knowledge of
22 individuals testifying on the three criteria for
23 approval of stipulations where they have to have a
24 reasonable understanding of the statutes, rules, and
25 Commission orders in order to even make a passible

1 attempt at testifying in this area.

2 Also, Mr. Porter's statements clearly
3 don't apply to the entirety of this statement. You
4 can see on page 16, line 6, with reference to my
5 previous remarks he's drawing -- or he's stating an
6 opinion that placing a statute into a stipulation and
7 providing a statutory interpretation within a
8 stipulation is an unprincipled manner for the
9 Commission to proceed or should it approve something
10 like that, that would be an unprincipled manner of
11 proceeding so this is an opinion on policies and
12 practices of the Commission and, of course, he has to
13 have some knowledge of the statute, but overall the
14 opinion expressed here is that you couldn't be
15 interpreting statutes at all in stipulations.

16 EXAMINER PRICE: Mr. Porter.

17 MR. PORTER: Your Honor, more than just a
18 policy and practice of the Commission, in order to
19 determine if the statute is going to be applied in an
20 unprincipled manner, there has to be some principle
21 against which that's going to be compared, that
22 principle's probably going to be the statute or would
23 have to be the statute. And so in order to make that
24 conclusion there would necessarily be a legal
25 argument made and a legal conclusion drawn. And

1 Mr. Gonzalez is not qualified to make such a
2 conclusion.

3 EXAMINER PRICE: And you can certainly
4 raise that on cross-examination. I think that to be
5 consistent with our previous rulings we're going to
6 deny your motion to strike.

7 MR. PORTER: Thank you, your Honor.

8 EXAMINER PRICE: Any other motions to
9 strike?

10 Seeing none, Ms. De Lisi?

11 MS. De LISI: No questions, your Honor.

12 EXAMINER PRICE: Mr. Heintz?

13 MR. HEINTZ: No questions, your Honor.

14 EXAMINER PRICE: Direct Energy?

15 MR. AUSTIN: No questions, your Honor.

16 EXAMINER PRICE: Mr. Warnock on behalf of
17 NOPEC?

18 MR. WARNOCK: No questions for either.

19 EXAMINER PRICE: Ms. Roberts, is she
20 still here?

21 MR. KUTIK: She walked out.

22 EXAMINER PRICE: Thank you.

23 Mr. White?

24 MR. WHITE: No questions, your Honor.

25 EXAMINER PRICE: Mr. Randazzo on behalf

1 of the City of Akron.

2 MR. RANDAZZO: None.

3 EXAMINER PRICE: Schools Council?

4 MR. WARNOCK: No questions.

5 EXAMINER PRICE: Mr. Lang?

6 MR. LANG: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Lang:

10 Q. Good afternoon, Mr. Gonzalez.

11 A. Good afternoon.

12 Q. Do you consider yourself to be an expert
13 regarding the federally regulated relationship
14 between PJM and load-serving entities and the tariffs
15 governing that relationship, correct?

16 A. Yes.

17 Q. And that expertise is based on their
18 following of PJM programs and discussing them with
19 representatives at PJM, correct?

20 A. I would say that's incorrect. It's not
21 limited to that.

22 EXAMINER PRICE: Mr. Gonzalez, as always,
23 I'm going to ask you to attempt to raise your voice
24 and I do notice you have the microphone between you
25 and Mr. Lang, so that is helpful.

1 THE WITNESS: Yes, your Honor.

2 Q. You would agree that you understand that
3 the relationship between RTOs and load-serving
4 entities is subject to exclusive federal
5 jurisdiction, correct?

6 A. That's correct.

7 Q. You also consider yourself to be an
8 expert regarding the PJM tariffs as they relate to
9 energy efficiency and demand response, Appendix 12 of
10 the Transmission Tariff and Reliability Pricing
11 Model, correct?

12 A. That's correct.

13 Q. And Appendix 12 is the provision dealing
14 with allocation of RTEP charges, correct?

15 A. That's correct.

16 Q. Now, your experience regarding RTEP dates
17 back to your experience at AEP when it was deciding
18 which RTO to join, correct?

19 A. I would answer that my experience
20 predates that particular experience to when I was
21 working with the Connecticut Energy Office. I was
22 involved with the NEPOOL, the NEPOOL rules committee
23 and I was part of the power planning committee of the
24 New England Governors Conference, so we used to meet
25 with the New England Power Pools and during those

1 periods there were transmission projects across the I
2 believe five-state footprint of New England Power.

3 Q. Your NEPOOL experience has nothing to do
4 with RTEP charges and Appendix 12 of PJM, correct?

5 A. It does not but it has experience with
6 allocation of costs across different states.

7 MR. LANG: Move to strike the response
8 after "it does not."

9 EXAMINER PRICE: Sustained -- granted,
10 sorry.

11 Q. With regard to your experience at AEP,
12 your understanding is that AEP's decision to join PJM
13 was similar to ATSI's decision to go from MISO to PJM
14 in that it involved looking at economics and
15 reliability, correct?

16 A. I would disagree with that particular
17 characterization because AEP was not -- my
18 understanding is AEP was not in an RTO at that
19 particular time, whereas the ATSI decision is it
20 moving from one existing RTO to another. So in that
21 sense it's different.

22 Q. Sir, we're going to have to go to your
23 deposition then.

24 MR. LANG: May I approach, your Honor?

25 EXAMINER PRICE: You may.

1 MR. LANG: Do you have a copy?

2 MR. SMALL: I have a copy. Just provide
3 the page number.

4 MR. LANG: Sure.

5 Q. (By Mr. Lang) Mr. Gonzalez, I took your
6 deposition on Monday, April 19th, correct?

7 A. That's correct.

8 Q. And there was a court reporter there
9 taking down questions and answers, correct?

10 A. That's correct.

11 Q. And if you could turn to page 24 of your
12 deposition transcript, please, starting at 5 --

13 MR. SMALL: If we could have a moment.
14 I'm there.

15 Q. Starting at line 5 --

16 A. I'm sorry, can you repeat the page
17 number?

18 Q. Page 24. Starting at line 5 and I asked
19 you a question "Do you know how AEP made its decision
20 to join PJM?"

21 And your answer was: "Yeah, that's a
22 vague question, but while at the company there was,
23 you know, there were presentations made on that
24 particular topic. I've talked to I believe Baker who
25 in my role as a profitability coordinator I had

1 discussions with him and we were looking at some of
2 the implications and I would assume decision to
3 switch RTOs are probably similar to your decision to
4 go from MISO to PJM, you look at economics, you look
5 at reliability, you look at where you think you
6 can -- the company's best position to operate."

7 Did I read my question and your answer
8 correctly?

9 A. You did. I would --

10 Q. Thank you.

11 A. Just the characterization of your question
12 is what I was objecting to originally.

13 EXAMINER PRICE: Mr. Gonzalez, there was
14 no question pending.

15 Q. Mr. Gonzalez, you also consider yourself
16 to be an expert regarding standard service offer
17 procurement through a descending clock auction
18 process, correct?

19 A. That's correct.

20 Q. And you also consider yourself to be an
21 expert regarding the design of an auction to procure
22 electric generation either through an SSO or
23 otherwise, correct?

24 A. That's correct.

25 Q. Now, you've never designed such an

1 auction, but you claim expertise based on reviewing
2 the designs of others, correct?

3 A. That's partly correct. I've been
4 involved in discussions dating prior to the
5 development of auctions in terms of discussions that
6 took place both in academia and in proceedings
7 dealing with restructuring and SSO procurement.

8 Q. So if I revised my question to say that
9 you claim expertise based on reviewing and commenting
10 on the designs of others, that would be correct?

11 THE WITNESS: Can you reread that
12 question?

13 EXAMINER PRICE: Please.

14 (Record read.)

15 A. I've always participated in a number of
16 proceedings dealing with SSO procurement, so it's not
17 limited to that. I was just trying to say in the
18 infancy of this particular -- the development of
19 bidding projects I was involved at that early stage
20 and continue to be involved.

21 Q. You would consider yourself to be an
22 expert regarding how auction design affects the
23 clearing price, correct?

24 A. Yes, and I think I would fall back on my
25 economics background and the principles, the economic

1 theory behind auctions and so on.

2 Q. So that would include how load size or
3 tranche size effects a clearing price in an auction,
4 correct?

5 A. That's one of many issues.

6 Q. And you agree that everything else being
7 equal, which economists have to say, the more load to
8 bid out, the more load that is bid out, the more
9 interest you potentially will receive from potential
10 bidders, correct?

11 A. With the caveat that everything else
12 remains equal, that's a fair characterization.

13 Q. And again, everything else being equal,
14 you would agree the more interest from bidders the
15 greater the likelihood of a lower clearing price,
16 correct?

17 A. I would qualify it by saying the more
18 participation of bidders would probably lead to lower
19 prices, yes.

20 Q. Fair enough.

21 You also consider yourself to be an
22 expert regarding the regulatory approvals needed in
23 order for an electric transmission company to build a
24 new interstate transmission line, correct?

25 A. Yes, generally.

1 Q. However, you don't recall ever having had
2 direct involvement in a proceeding involving the
3 regulatory review of an application for approval of
4 an interstate transmission project, correct?

5 A. Not that I recall.

6 Q. On direct examination you made a brief
7 reference to your Schedule WG-2, I believe you said
8 it was -- you had prepared it with Mr. Sullivan, I
9 wanted to get some clarification on that. Can you
10 tell me specifically, is this a schedule that you
11 prepared and provided to him or did he prepare it and
12 provide it to you?

13 A. I would say it was -- the final product
14 was a joint product. The fact that he prepared it,
15 somebody -- when you're working on a joint product,
16 somebody has to put it down on paper, but he prepared
17 a draft, I looked at it, made recommendations to
18 change it, we changed it, and I think we went through
19 about two or three iterations of that.

20 Q. I'll ask you a similar question to what I
21 asked him yesterday. If you could turn to that
22 schedule, please. In the footnote section of this
23 schedule there's no footnote numbers. Do you know
24 why there's no footnote numbers?

25 A. Let me get to the section, please.

1 Q. Okay.

2 MR. SMALL: Just to make sure we don't
3 have confusion, are we looking at something which was
4 in the corrections? No.

5 MR. LANG: I don't believe so.

6 A. Okay, I'm ready.

7 Q. Schedule WG-2, you have what look like
8 four lines of notes at the bottom of that schedule
9 but there's no footnote numbers. Do you know why
10 those numbers are missing?

11 A. They're missing but they correspond to
12 the four footnotes that are in the text above.

13 Q. So the third line would correspond to
14 footnote 3.

15 A. Correct.

16 Q. So for that third line it says it assumes
17 .032334 kilowatt-hour distribution rates, how is that
18 distribution rate derived?

19 A. That was derived from the company from an
20 interrogatory in the portfolio case.

21 Q. Is that document part of your materials
22 here or part of the record in this case?

23 A. In my haste to prepare it that cite was
24 left out.

25 Q. Is that -- what does that number

1 represent? Is that aggregate across all companies?

2 A. It's a blending of the distribution rate
3 for the three companies.

4 Q. Is it a straight average of the three
5 companies, or did you make adjustments for the fact,
6 for example --

7 A. I took the rate the company supplied in
8 discovery when we asked what is the rate for the
9 three companies.

10 MR. SMALL: Did we lose his microphone?

11 EXAMINER PRICE: Yes. Let's go off the
12 record.

13 (Off the record.)

14 Q. So, Mr. Gonzalez, by stating you took the
15 number provided by the company, can you tell me
16 sitting here today how it was derived by the company,
17 how that aggregate average was determined?

18 A. I don't believe that was part of the
19 explanation for my -- I think it's a weighted
20 average.

21 EXAMINER PRICE: Can you tell me what
22 question you asked the company? I understand you
23 might not be able to respond to what the company did.
24 Can you tell me what question you asked the company?

25 THE WITNESS: What is the loss, to the

1 best of my recollection is what is the distribution
2 charge for residential customers.

3 Q. Does it include Rider DSI?

4 A. No, it does not. Oh, it -- the original
5 contained Rider DSI and we substituted Rider DCR in
6 my exhibit.

7 EXAMINER PRICE: Excuse me, you say plus
8 Rider DCR, so is the number, the first number,
9 .032334, is that the number FirstEnergy gave you
10 minus Rider DCI or is Rider DCI still in there?

11 THE WITNESS: It's -- DCI is out of
12 there.

13 EXAMINER PRICE: So you took whatever
14 number FirstEnergy gave you, you subtracted Rider
15 DCI, and then you added the --

16 THE WITNESS: That's correct.

17 EXAMINER PRICE: -- the DCR rider back
18 in.

19 THE WITNESS: That's right.

20 EXAMINER PRICE: Thank you.

21 Thank you, Mr. Lang.

22 Q. (By Mr. Lang) Mr. Gonzalez, I want to ask
23 you a few questions about your knowledge of the ESP
24 stipulation proposed in this proceeding. You will
25 agree that with regard to the stipulation there were

1 several OCC staff members who worked closely relating
2 to the negotiation process concerning the ESP
3 stipulation, correct?

4 A. Yeah, generally speaking there were
5 several OCC staff.

6 Q. And at different times you were one of
7 those employees, correct?

8 A. Yes, I would say in around six of the
9 meetings.

10 Q. You did not have a particular role with
11 regard to your involvement in those negotiations,
12 correct?

13 A. My role was reviewing the elements of the
14 settlement as it evolved over time, so I looked at --
15 I looked at carefully each element.

16 Q. As the settlement evolved over time.

17 A. That's correct.

18 Q. Now, in your testimony you mention a
19 December 1, 2009, meeting. Did you attend that
20 meeting?

21 A. Yes, I did.

22 Q. And you also recall one or more meetings
23 taking place after that December 1st meeting in the
24 December time frame, correct?

25 A. Yes. I believe it's probably a

1 December 8th meeting if you look at the e-mail.

2 Q. Now, you did not attend all of the
3 meetings concerning the negotiations of the
4 stipulation, correct?

5 A. I did not attend all the meetings.

6 Q. And you remember attending I believe you
7 had said six, so that would be the
8 December 1st meeting plus five additional meetings
9 that you attended, correct?

10 A. Yes. But there was usually debriefing,
11 so even though I didn't attend, the OCC staffers who
12 attended would come back and debrief.

13 Q. Now, you do not know whether any of the
14 OCC's lawyers communicated with FirstEnergy regarding
15 the ESP negotiations, correct?

16 A. No, I don't, but during the absence we
17 were briefing -- we were working on the MROs, so we
18 were working on the MRO, so time was particularly
19 scarce at that particular point.

20 Q. You do recall that Janine
21 Migden-Ostrander on the day you were going on
22 vacation mentioned that she was communicating
23 directly with FirstEnergy, correct?

24 A. That's incorrect.

25 Q. That's incorrect.

1 A. Are you referring to my deposition
2 response?

3 Q. Yes.

4 A. Yes. You had asked me that question and
5 I said, I was saying it could have been -- there
6 could have been a communication as I was going to
7 vacation, she might have said something, but I
8 wouldn't -- I wouldn't tie any -- I just don't know.
9 I think a better response would be I don't know, I
10 just don't know if she's --

11 Q. That's something she may have or may not
12 have told you.

13 A. Yes.

14 Q. And you otherwise do not know the
15 circumstances under which she was communicating with
16 FirstEnergy concerning the ESP negotiations, correct?

17 A. I don't know whether any communications
18 took place. I'm just -- I have no idea whether they
19 did or didn't.

20 Q. You do recall attending a number of
21 one-on-one meetings, you had described them as
22 one-on-one meetings with FirstEnergy and this is
23 between February 25th and March 23rd, and you
24 remember that staff was at least, was in at least two
25 of those meetings.

1 A. That's correct.

2 Q. Although you sponsored testimony in the
3 MRO case -- let me ask you first to confirm, in the
4 MRO case you sponsored testimony arguing for
5 elimination of the inclining block rate for
6 residential customers, correct?

7 A. Yes, I did. They were the only customer
8 class that had mandatory provision like that
9 blocking.

10 Q. However, this was not an issue that you
11 discussed with anyone at FirstEnergy during the ESP
12 negotiations, correct?

13 MR. SMALL: Your Honor, objection. This
14 question is entering into the confidential settlement
15 discussions now that OCC has no objection to the, you
16 know, the where and whens of whether discussions took
17 place, however, by Commission rule the content of
18 those negotiations are confidential.

19 EXAMINER PRICE: Mr. Lang?

20 MR. LANG: Your Honor, Mr. Gonzalez's
21 testimony is replete with descriptions of
22 negotiations that did not take place and the rule
23 that Mr. Small is referring to says that issues
24 discussed or decided in settlements cannot be used
25 for the proof of those issues but can be used for any

1 other purpose in the same way that settlement
2 discussions under general civil rules can be used for
3 any other purpose.

4 My purpose here is to impeach
5 Mr. Gonzalez's testimony that it's leaving many
6 matters out of what actually occurred in this
7 process.

8 MR. SMALL: And, your Honor, his
9 testimony to that effect is to say that there's a gap
10 in the negotiations, which is to say time and place,
11 which, as I said previously, we have no objection to
12 those types of questions. However, the content is
13 another matter.

14 EXAMINER PRICE: Mr. Lang, if you could
15 rephrase. If you want to tie this to a specific
16 portion of the testimony where you care to impeach
17 him, then maybe that will be less objectionable. It
18 did seem like a very general question.

19 MR. LANG: I apologize, your Honor.

20 Q. (By Mr. Lang) Mr. Gonzalez, with regard
21 to the ESP negotiations you agree that you cannot
22 speak for what other OCC staff members stated or
23 received from the companies in those negotiations,
24 correct?

25 A. The only caveat would be that, like I

1 mentioned earlier, we were debriefed, and to the
2 extent materials were handed out, they were shared
3 with people working on that.

4 Q. But you certainly can't say for certain
5 and you're not going to sit here today and say that
6 you know that you had all the materials provided to
7 OCC and you're aware of all the discussions between
8 OCC and the companies, correct?

9 A. I don't have firsthand knowledge of all
10 the discussions that took place.

11 Q. During the negotiation process, this was
12 prior to the filing of the ESP stipulation with the
13 Commission, you would agree that FirstEnergy provided
14 you with RTEP cost estimates as provided by PJM and
15 also the impact of those costs or an estimate of the
16 impact of those costs by customer class, correct?

17 A. I believe so.

18 Q. They also provided you with information
19 of the impact of the ESP as a whole on RS class
20 customers but you don't recall the exact detail of
21 what was provided?

22 A. I believe we were given summary figures,
23 not how they were calculated or the detail, but we
24 were given some summary figures.

25 Q. It's also possible that FirstEnergy

1 provided information to other OCC staff members that
2 you don't know about, correct?

3 A. There could have been some instances
4 where that occurred, but I can -- like I said, we
5 were debriefed and the documents were shared amongst
6 the groups -- the group.

7 Q. As a result it's also possible that you
8 don't know the sum total of the information provided
9 to all of the signatory parties, correct?

10 THE WITNESS: Can you reread that,
11 please?

12 (Record read.)

13 A. I would say one of our complaints was
14 that we didn't receive all the information that the
15 other parties were privy to. We believe were privy
16 to.

17 Q. But you don't know for certain what the
18 other parties were privy to because you were only
19 involved in a part of this on behalf of OCC, correct?

20 A. When we see a negotiations that has a lot
21 of details of a proposal and we haven't been involved
22 in the development of that or seen it, then the
23 assumption is somebody else, some other party had
24 that information and we did not.

25 Q. FirstEnergy did provide you with

1 documentation of what riders -- what riders were
2 falling off, what riders were coming on, were new
3 riders, and what the impact was of those riders by
4 customer class, correct?

5 A. I believe, like I said, in a summary
6 form, yes.

7 Q. Do you agree that the Commission staff
8 looks at the impact of a stipulation on -- they look
9 at the impact of a stipulation on all customer
10 classes including the residential class?

11 MR. SMALL: Objection. Calls for
12 speculation.

13 EXAMINER PRICE: I think he can answer
14 that question.

15 A. I believe the staff would look at the
16 impacts on the different consumer classes, but they
17 would also look at the impact on the financial impact
18 on the companies to the extent they look at -- it's a
19 more, has more elements. It's not just customers.
20 They also look at the financial impact on the
21 company.

22 Q. In your testimony you state that
23 FirstEnergy's -- I'm sorry. You state that there was
24 not a signatory party that represents residential
25 customers, and by "signatory party" you mean a party

1 that signed the stipulation; is that correct?

2 A. Can you point me to that?

3 Q. Page 11, line 11 going onto line 12.

4 A. Yes, that's my testimony.

5 Q. By "signatory party" you mean a party
6 that signed the stip.

7 A. That's correct.

8 Q. As I understand it, then, your testimony
9 is that Ohio Partners for Affordable Energy does not
10 represent the interests of residential customers,
11 correct? That's your testimony?

12 A. OPAE represents weatherization providers
13 in their membership.

14 Q. Isn't OPAE also responsible for fuel fund
15 moneys?

16 A. I believe that's part of their -- that's
17 part of the services they provide.

18 Q. And those services are focused on
19 representing the interests of low and moderate income
20 residential customers, correct?

21 MR. SMALL: Objection. Asked and
22 answered. He's already answered.

23 EXAMINER PRICE: Overruled.

24 THE WITNESS: Can you reread that
25 question, please?

1 (Record read.)

2 A. I would say those services are provided
3 to moderate and low income customers. I would object
4 to the characterization of representing. I think
5 they're a nonprofit corporation but they provide
6 services and they get involved in fund-raising and so
7 on to be able to provide those services.

8 EXAMINER PRICE: Mr. Gonzalez, do you
9 believe they advocate on behalf of low income and
10 moderate income customers?

11 THE WITNESS: No. What I'm saying is --

12 EXAMINER PRICE: "No" is fine. "No" is
13 fine.

14 THE WITNESS: Okay.

15 EXAMINER PRICE: Let's go off the record
16 for one minute.

17 (Recess taken.)

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

20 Mr. Lang, please continue. I apologize
21 for the interruption.

22 MR. LANG: Thank you, your Honor.

23 Q. (By Mr. Lang) Mr. Gonzalez, back on page
24 11 of your testimony, in particular I'd like to refer
25 you to the -- starting on line 13, you say "The

1 Stipulation fails to represent the interests of most
2 of FirstEnergy's customers who will be largely
3 responsible for paying for the increased rates," and
4 there by the customers who you believe will be
5 largely responsible you're referring to the
6 residential customer class; is that correct?

7 A. That's correct.

8 Q. And when referring to the increased
9 rates, in your testimony you are comparing the 2012
10 rates under the proposed electric security plan to
11 what you believe the 2012 rates would be if the
12 Commission approved an MRO.

13 A. That's correct.

14 Q. And by "largely responsible," by
15 "largely" you mean that the residential rate class
16 will pay more than the other rate classes in the
17 aggregate, correct?

18 A. Basically saying that the residential
19 class is I would say one of the classes that is
20 paying, not just with respect to the MRO versus the
21 ESP comparison, but the DCR -- not just DCR, but when
22 you take into account the residential credits or the
23 residential payments into the delta revenue, for
24 example, in the economic development or in some of
25 the other provision of the, for example in ELR

1 provisions where we have to pay for this connection.

2 So you put all the different charges that
3 fall under residential class, that's where I'm
4 talking about there are a lot of places where
5 residential customers are being charged because of
6 the ESP where they wouldn't be charged had an MRO
7 been approved.

8 Q. By saying they're "largely responsible,"
9 my question again is your comparison is the
10 residential class to the other classes, correct?

11 A. Yes.

12 Q. Where would I find your analysis
13 comparing the residential rate increases as you
14 understand them to the other classes that would
15 support your use of the term "largely"?

16 A. Due to time constraints I didn't
17 undertake multiclass analysis. I concentrated on the
18 residential class.

19 Q. So you --

20 A. So it's not -- that analysis doesn't
21 appear -- a strict comparison of residential
22 increases vis-a -- as compared to nonresidential
23 increases are not contained in my testimony.
24 Although other charges to residential customers
25 besides DCR are.

1 Q. So you're making an assumption based on a
2 comparison between residential and nonresidential,
3 but you only looked at the residential, correct?

4 A. I believe, rereading my testimony, the
5 "largely," I probably could have used a different
6 adjective to describe it. Along with some major
7 parties were contributing a lot to the increase.

8 EXAMINER PRICE: So you're disavowing the
9 term "largely" in your testimony?

10 THE WITNESS: I think if I were to
11 restructure it, I would say will be responsible for
12 paying a large portion of.

13 EXAMINER BOJKO: And just so I'm clear,
14 your answer to Mr. Lang was that this analysis does
15 not exist, it's not attached to your testimony
16 anywhere comparing the classes of customers; is that
17 right?

18 THE WITNESS: That's correct.

19 EXAMINER BOJKO: Okay.

20 Q. Mr. Gonzalez, during the time period the
21 ESP was negotiated, the stipulation for this electric
22 security plan was negotiated, you do not recall any
23 parties who asked to be included in the negotiations
24 and were excluded from those negotiations, correct?

25 A. I believe, as I answered in my

1 deposition, that if a party is not aware that
2 negotiations are taking place, then the question
3 becomes nonsensical because they can't ask to be
4 participants in a process that they have no notice
5 of.

6 MR. LANG: Could I have my question read
7 back, please?

8 (Record read.)

9 Q. Mr. Gonzalez, can you answer that
10 question, please.

11 A. I could answer it but I just want to
12 listen to it one more time just to make sure I
13 answered in the right way.

14 (Record read.)

15 A. Yes, that's correct, subject to my
16 earlier caveat.

17 MR. LANG: Motion to strike the answer
18 after "Yes, that's correct."

19 EXAMINER PRICE: Sustained.

20 MR. LANG: Thank you.

21 EXAMINER PRICE: Granted, I'm sorry.

22 MR. LANG: Granted.

23 Q. Mr. Gonzalez, moving on to page 17 of
24 your testimony, you raise an issue with regard to
25 waivers, and in particular what you view as a broad

1 waiver request.

2 EXAMINER PRICE: I'm sorry, where are you
3 at in his testimony?

4 MR. LANG: This is page 17 of his
5 testimony.

6 EXAMINER PRICE: Thank you very much.

7 Q. Are you aware that the companies filed a
8 motion for waiver of rules on March 23rd,
9 specifically identifying each rule for which a waiver
10 was sought?

11 MR. SMALL: Object.

12 A. Yes.

13 MR. SMALL: Object, your Honor. My mic
14 went off again. I'm blinking. Does that mean I --

15 EXAMINER PRICE: One second. Mr. Small
16 has an objection.

17 MR. SMALL: I have an objection. My
18 objection is that mischaracterizes the companies'
19 filing on that date.

20 EXAMINER BOJKO: I just didn't hear you,
21 Jeff.

22 MR. SMALL: FirstEnergy has
23 mischaracterized the nature of that pleading seeking
24 waivers.

25 MR. LANG: He answered the question, your

1 Honor. He didn't seem to have a problem with it. He
2 said "yes."

3 THE WITNESS: I didn't hear my counsel
4 because of a technical failure.

5 MR. LANG: Nonetheless, he had no problem
6 answering the question.

7 EXAMINER PRICE: You can't take it back.

8 Sorry, Mr. Small, your objection is moot.

9 Q. (By Mr. Lang) Mr. Gonzalez, even though
10 you are aware of that motion, am I correct that you
11 are not familiar with the Commission's
12 April 6th entry granting in part and denying in part
13 that motion?

14 A. I believe I am.

15 Q. Is that familiarity that you've gained
16 since your deposition?

17 A. Yes.

18 Q. Mr. Gonzalez, do you agree that existing
19 Rider ELR is a demand-response program?

20 A. I believe it's a demand-response program,
21 but it has other nondemand response or it's tied to
22 another rate that does not have a demand-response
23 component.

24 Q. So you would say it is in part a
25 demand-response program.

1 A. That's correct.

2 Q. And that program was implemented
3 starting -- effective June 1, 2009, correct?

4 A. That's correct.

5 Q. You also agree that Rider OLR is a
6 demand-response program or an optional
7 demand-response program, correct?

8 A. Yes, but I also believe that it may be,
9 you know, partly a demand response program and I'm
10 not clear if there's credits also offered to OLR, I
11 don't recall if credits are also offered to OLR from
12 the economic EDR rate.

13 Q. And that Rider OLR was also implemented
14 effective June 1, 2009, correct?

15 A. That's correct.

16 Q. I want to refer you with regard to those,
17 let's see, I'll refer you to page 45 of your
18 testimony, line 6, skipping ahead a bit, where you
19 reference the ELR and OLR rates and you describe an
20 annual revenue shortfall from those rates of
21 \$31 million annually.

22 Mr. Gonzalez, am I correct that you do
23 not know whether this amount includes an offset for
24 capacity payments from PJM?

25 A. I don't recall, no.

1 Q. Your opinion stated here I believe
2 starting at line 7 on page 45 is that an
3 interruptible RFP would result in a lower overall
4 cost per megawatt than would Rider ELR and OLR; did I
5 describe that correctly?

6 A. That's correct.

7 Q. Now, you remember, do you not, that the
8 companies, the FirstEnergy companies in the MRO cases
9 estimated that the interruptible RFP would be revenue
10 neutral, correct?

11 A. Revenue neutral to the existing ELR and
12 OLR rates, is that your question?

13 Q. Correct.

14 A. I didn't recall that provision.

15 Q. Nonetheless, you would agree that
16 performing an analysis comparing the amount the
17 utilities might pay in an RFP to the amount the
18 utilities would pay through Rider ELR is a difficult
19 analysis.

20 A. There's some projections you might have
21 to make depending on -- given the term of the ELR and
22 the OLR, but I think I believe there's been some
23 testimony by providers of energy demand response
24 resources that have indicated that the prices
25 possibly would be lower.

1 Q. Just to ask you, Mr. Gonzalez, you're
2 testifying here today, with regard to that comparison
3 you would agree, it takes some time, takes some
4 effort, it's a difficult analysis, correct?

5 MR. SMALL: Objection; asked and
6 answered.

7 EXAMINER PRICE: I believe Mr. Lang
8 believes that it was not answered. Overruled.

9 MR. LANG: I'm waiting for the answer.

10 A. I believe my answer is that perhaps the
11 third year, since we don't have capacity prices for
12 the third year of the auction, you know, we know 2011
13 through 2012 and 2012 through 2013 but we don't
14 know -- we don't know the last year. There would be
15 some projections there.

16 Q. Well, with regard to any year of the
17 analysis, you did not perform that analysis, correct?

18 A. No, I did not. I was -- part of my
19 discussion is that as an economist, I would believe a
20 market-based solution would be more efficient than an
21 administrative-type price setting and so I would
22 believe that the rate set administratively would be
23 the second best type option.

24 MR. LANG: Motion to strike the response
25 after "No, I did not," your Honors.

1 EXAMINER PRICE: Motion is granted.

2 Mr. Gonzalez, we will all get out of here
3 much more quickly if you attempt to answer the
4 question and only the question, and I am sure
5 Mr. Small will be happy to elicit on redirect any
6 further explanation that you believe is warranted.

7 Please proceed, Mr. Lang.

8 THE WITNESS: I apologize, your Honor.

9 Q. Mr. Gonzalez, you briefly addressed in
10 your testimony the, what's referred to as the
11 domestic automaker provision. I just had one
12 question for you on that.

13 A. Will you direct me to the page, please?

14 Q. Page 22, the part that was not stricken.

15 EXAMINER PRICE: Let's wait.

16 Please proceed.

17 Q. Mr. Gonzalez, do you have that reference
18 on page 22?

19 A. Yes, I do.

20 Q. You do not know whether any automaker in
21 the utilities' service territories is excluded by use
22 of the term "domestic" in that provision, correct?

23 A. I don't know either way.

24 Q. Now, Mr. Gonzalez, when estimating the
25 cost of an ESP and comparing it to an MRO estimating

1 both the costs and the benefits of an ESP and MRO,
2 you would agree that you should use the best credible
3 estimate or the most reasonable estimate of what
4 those costs actually will be and what those benefits
5 will be, correct?

6 A. I would say yes, you would want to have
7 the best estimates and estimates that are somewhat
8 robust in that they are not surrounded by
9 uncertainty.

10 Q. That would include using the best
11 information available, correct?

12 A. Yes, I think you would use the best
13 information available, but you would also note
14 whether that information had uncertainty surrounding
15 it.

16 Q. And as an economist typically if there is
17 uncertainty, you would adjust for that uncertainty
18 using a risk factor, correct?

19 A. That's one way to handle that.

20 Q. Now, you assume that a distribution rate
21 case increase, in your alternative MRO world, would
22 be only 60 percent of that estimated by Mr. Ridmann
23 in his testimony; is that correct?

24 A. That's correct.

25 Q. And by engaging in that modeling exercise

1 you started with his estimate of what he believes
2 would result from a distribution case with a date
3 certain of March 2011, correct?

4 A. Yes. I believe that's the date certain.

5 Q. And you understand that his estimate
6 includes only an adjustment for plant in service
7 projected to be recovered through the Rider DCR
8 proposed in the electric security plan, correct?

9 A. Yes.

10 Q. You took that estimate and then used 60
11 percent of his number, correct? That's your modeling
12 exercise.

13 A. That's my modeling exercise, but if a
14 rate case were filed and it was more extensive, there
15 would be pluses and minuses for the Commission and
16 the staff to evaluate.

17 Q. Absolutely. Would be many elements that
18 came into play, correct?

19 A. That's correct.

20 Q. And a much more complex analysis could be
21 done if you were looking, you know, if what you
22 wanted to do was model that alternative rate case,
23 correct? You'd look at many more parameters.

24 A. Yes, I would look at many more parameters
25 and would be uncertain what the final amount would

1 be.

2 Q. If I can direct you to page 27 of your
3 testimony, in particular the sentence starting on
4 line 11, it starts with the clause "Upon close
5 study." "Upon close study, this arrangement is not
6 prohibited within the confines of an MRO." With
7 regard to your use of "this arrangement" in that
8 sentence, you mean the companies having two
9 competitive bids, one for PIPP customers and one for
10 all other customers, correct?

11 A. That's correct.

12 Q. And by "close study," you mean you made
13 the determination that two competitive bids are
14 permitted under the MRO statute, 4928.142, and that
15 all of the competitive bid process criteria in that
16 statute would be satisfied in that PIPP-only auction,
17 correct?

18 A. My testimony speaks to that. I believe
19 it was a prohibited.

20 Q. Well, if I could ask you, you reach a
21 conclusion here that that PIPP-only bid would most
22 likely come in with a higher than 6 percent discount,
23 so by reaching that conclusion you must have not only
24 determined that it was not prohibited but you must
25 have determined that it could be done, correct?

1 A. Yes, for modeling purposes, yes.

2 Q. And not only that it could be done, but
3 it would result in a greater than 6 percent discount
4 from the price to compare that would result from the
5 auction including all of the other customers,
6 correct?

7 A. Yes, that could be done. That was my
8 assumption, yes.

9 Q. And although you are not an attorney you
10 made that legal determination on your own that that
11 separate bidding process can be done, is possible
12 under Revised Code section 4928.142, correct?

13 A. Like I said, for modeling purposes I
14 think it -- it would be prohibited as long as they
15 met the requirements of an MRO.

16 Q. When you made that legal determination,
17 this close study that you refer to here, did you make
18 that on your own or was that done with legal counsel?

19 MR. SMALL: Objection to the extent that
20 it probes into privileged communications.

21 EXAMINER PRICE: Mr. Lang? Are you
22 probing into privileged communications?

23 MR. LANG: I'm not asking for the
24 communications. I want to know if he did it by
25 himself or with other folks.

1 EXAMINER PRICE: I'll allow it.

2 A. I believe there were discussions amongst
3 the team, but I wouldn't classify them as legal.

4 Q. Would you agree with me that, as with
5 some other legal determinations, this one could be
6 wrong?

7 A. It could be wrong, but it also could be
8 right.

9 Q. As an economist did you estimate the
10 possibility that you could be wrong and include that
11 factor in your analysis?

12 A. Are you asking me to put an expected
13 value on that?

14 Q. I'm asking if you did. Did you take that
15 into consideration?

16 A. Yes. When this issue first came up,
17 there was interest, I thought, from other parties to
18 the table in supplying that load, so I believe that
19 that would strengthen the interest a bit and so on
20 and so forth if they met their requirements, it could
21 be a way to structure an MRO.

22 Q. Let me ask you about those requirements.
23 Now, you think there is a possibility that a
24 PIPP-only auction would be oversubscribed, which is
25 one of those requirements, correct?

1 A. It could be, yes.

2 Q. And there's also a possibility that it
3 would satisfy the four-bidder criteria, which is
4 another one of those requirements, correct?

5 A. That's correct.

6 Q. And also a possibility that it would not
7 be oversubscribed and would not satisfy the
8 four-bidder criteria, correct?

9 A. You're asking me to speculate, and I said
10 earlier based on the interests that I perceive from
11 the supplier community I would think that there is a
12 higher probability that it would be supplied or not.

13 Q. If a PIPP-only auction were held, you
14 don't know what the size of the load would be, what
15 the size of a PIPP-only tranche would be in that
16 auction, correct?

17 A. I believe in deposition I didn't recall,
18 but it's clearly on Mr. Ridmann's table, it's about
19 2.3 percent.

20 Q. In determining that a PIPP-only auction
21 would result in a greater than 6 percent savings for
22 PIPP customers, you did not do any particular
23 analysis with regard to the tranche size or with
24 regard to the load profile of PIPP customers,
25 correct?

1 A. I would say I didn't do any detailed
2 analysis. I'm aware the company purchases
3 receivables so that would be one risk premium that
4 would be taken away from the analysis and put it on a
5 level playing field from that respect.

6 Q. Your conclusion here, putting aside all
7 the uncertainties that we've discussed, your
8 conclusion here is that a bid would most likely come
9 in with a higher than 6 percent discount. My
10 question is with regard to tranche size and load
11 profile, that conclusion, any analysis that you
12 prepared, any analysis that you underwent to reach
13 that conclusion did not include an analysis of the
14 tranche size, the size of the load, or the load
15 profile, correct?

16 A. It didn't consider those two elements,
17 but it considered capacity markets, the price of
18 natural gas being cheap, the economic recession and,
19 therefore, I think there's suppliers out there that
20 are hungry to serve load.

21 EXAMINER PRICE: So your testimony is
22 that considering all of those factors, remarkably
23 enough the estimate came in at .50 right on the dot.
24 Half a percent. .50. That's not an arbitrary
25 figure, that's a figure that stemmed from your

1 quantitative analysis.

2 THE WITNESS: No. No, I wouldn't --

3 EXAMINER PRICE: It is an arbitrary
4 figure.

5 THE WITNESS: I would say it is a very
6 conservative, I thought, figure off what the company
7 was willing to offer, FirstEnergy Solutions.

8 EXAMINER PRICE: But it's not
9 quantitatively derived at all.

10 THE WITNESS: It would be very difficult
11 to quantify that type of bid.

12 EXAMINER PRICE: It's your testimony.
13 It's your testimony that that's a conservative
14 estimate. Now you're telling me it's difficult to
15 quantify.

16 Okay, in your million dollars in
17 additional savings that you estimate, you did not
18 weight that by any of the risk factors that Mr. Lang
19 mentioned regarding the possibility that the
20 Commission or the court might determine that you
21 can't do a PIPP bid or it might not make the
22 statutory requirements for a bid.

23 THE WITNESS: No, I did not.

24 EXAMINER PRICE: Thank you.

25 Q. (By Mr. Lang) And, Mr. Gonzalez, you've

1 never worked for or assisted a supplier in developing
2 a bid price or responding to an auction, correct?

3 A. I have never worked for a CRES provider
4 or -- yeah, I have never worked for a CRES provider,
5 but I worked for American Electric Power during
6 restructuring. I was part of a team that responded
7 to RFPs from major -- from large industrial customers
8 and we tried to put together a product for those
9 customers, and part of the product would be a
10 supply-related product.

11 I've talked to different people in that
12 market, I'm not going to say I'm the one who made the
13 determination.

14 EXAMINER BOJKO: I'm sorry, Mr. Gonzalez.
15 I don't know if I heard you correctly. Did you poll
16 other suppliers to get -- did you poll a group of --
17 you said suppliers at the table so I'm not sure what
18 you were talking about. Did you actually poll the
19 suppliers and said you would put an RFP bid in for
20 5-1/2 cents, or a 5-1/2 percent discount?

21 THE WITNESS: I didn't --

22 EXAMINER BOJKO: I'm sorry. More of a
23 discount. 6-1/2 percent.

24 THE WITNESS: Yeah, yeah, specifically to
25 this proposal I didn't poll any supplier or any other

1 suppliers that were involved in this settlement, but
2 I recall that there was interest even knowing that
3 there was a 6 percent discount offered by FirstEnergy
4 Solutions, there was an interest in opening that up
5 to see if they could match the 6 percent. So to me
6 that reveals that, based on the suppliers in the
7 room, that they may have enough margin to
8 competitively bid that.

9 EXAMINER BOJKO: I'm sorry. Was the
10 interest on behalf of the suppliers to match the
11 6 percent or to give a better discount than the
12 6 percent?

13 THE WITNESS: I believe it would be to
14 give a better -- to beat what was being offered. It
15 was a chance to beat what was being offered.

16 EXAMINER BOJKO: Okay. But, and I don't
17 know, again, you said "at the table," so I don't know
18 what you -- and I don't want confidential settlement
19 discussions.

20 THE WITNESS: Yeah, I know. I was trying
21 to be careful.

22 EXAMINER BOJKO: But are you suggesting
23 that even suppliers that signed the stipulation
24 expressed an interest in giving a better discount or
25 serving this group of customers?

1 THE WITNESS: I believe before they
2 signed, and if I point -- I believe even in the
3 settlement document there's a footnote related to
4 that item where some suppliers are not taking a
5 position on that particular element of the settlement
6 which to me, again, is information that perhaps that
7 part of the settlement caused some heartburn.

8 EXAMINER BOJKO: I mean, you're not that
9 party. You don't know why they -- I mean, you don't
10 know that. I guess I'm asking you if you have any
11 basis or analysis or data, I mean, I hear you, I
12 don't want to put words in your mouth, but I hear you
13 speculating as to why people did or did not sign. I
14 mean, I guess I was asking if you had any evidence or
15 any analysis that you've actually conducted to get
16 this half a percent more of a discount figure.

17 THE WITNESS: There's no specific
18 analysis. It was just based on my observation that
19 there was interest in meeting that load even after
20 the 6 percent was being bandied around.

21 EXAMINER PRICE: So you assumed a half a
22 percent savings.

23 THE WITNESS: Yes.

24 EXAMINER PRICE: Did you look at the
25 experience of other states going down the path that

1 you're recommending this Commission go down?

2 THE WITNESS: I didn't look at other
3 states, but I --

4 EXAMINER PRICE: No, that's it. That's
5 my question.

6 THE WITNESS: I was going to say I looked
7 at Ohio on the gas side, but...

8 Q. (By Mr. Lang) Mr. Gonzalez, I'm
9 interested in moving on to your testimony about RTEP
10 charges, I'm going to work a little backwards here,
11 I'd like to take you to page 33 of your testimony
12 first. It's the question and answer 33 on page 33.

13 Starting at line 9 you say that "PJM's
14 cost allocation methodology annually re-allocates
15 RTEP obligations, system-wide, and is not provided on
16 a project-by-project basis by project approved date."
17 Can you explain for me why that's an issue in regards
18 to the company's commitment not to pass through RTEP
19 charges to retail customers that's in the
20 stipulation?

21 A. It's an issue when you compare it to the
22 MRO.

23 Q. Why would that be an issue when you
24 compare it to the MRO?

25 A. Because in the MRO the scenario presented

1 by Mr. Ridmann's testimony assumes that that full
2 cost will be borne if we -- if the Commission rules
3 on an MRO and approves the company's MRO application.

4 Q. Your testimony here on lines 9 through 11
5 appears to be there's uncertainty in determining the
6 amount of what could or could not be passed through
7 because there's not, you know, that data is not
8 provided on a project-by-project basis; am I reading
9 that incorrectly?

10 A. No; that's correct.

11 Q. So if PJM also provides a
12 project-by-project revenue requirement in its
13 derivation of Schedule 12 rates for each zone, that
14 would go a long way towards solving that problem,
15 correct?

16 A. To the extent that the calculations could
17 be verified.

18 MR. LANG: May I approach?

19 EXAMINER PRICE: You may.

20 Q. If you can review that document, please.

21 EXAMINER PRICE: Mr. Lang, could you have
22 made the font smaller?

23 MR. LANG: I don't think I could, your
24 Honor.

25 Q. I'm going to ask you, Mr. Gonzalez,

1 before I ask you specifically about this document
2 I've handed to you, are you aware of PJM's Market
3 Settlements Working Group?

4 A. Yes, I've heard about it. Yes.

5 Q. And you had testified earlier that you're
6 an expert on many of the PJM processes. Have you
7 also visited the PJM's Market Settlements Working
8 Group web page?

9 A. I think the preface to that question was
10 very broad. I don't think I said I know every
11 process that PJM is involved in.

12 Q. You're correct. Let me narrow the
13 question. With regard to that Market Settlements
14 Working Group, would you consider yourself to be
15 knowledgeable with regard to the workings of that
16 group?

17 A. I'm aware that that group exists, through
18 the different PJM trainings that OCC staff has
19 attended, you know, we're aware of what that group
20 is, but I don't follow it on a daily basis.

21 EXAMINER PRICE: Mr. Lang, one minute.

22 Mr. Randazzo.

23 MR. RANDAZZO: I'm going to ask the Bench
24 please instruct the witness again to answer the
25 questions more directly.

1 EXAMINER PRICE: Mr. Gonzalez, please
2 attempt to listen to the question and answer only the
3 question, particularly from the Bench.

4 THE WITNESS: Yes, your Honor.

5 Q. Now, Mr. Gonzalez, with respect to the
6 document that I've handed you, do you recognize this
7 as a document that is generated by that PJM Market
8 Settlements Working Group and is publicly available
9 on their website?

10 A. Subject to check, yes.

11 Q. Well, have you seen documents of this
12 type previously, in particular documents that are
13 updated every six months or so showing
14 project-by-project costs by load zone?

15 A. I believe I've had opportunities to see
16 these types of documents.

17 Q. And so you're familiar, for example, on
18 the first page there's the first section of this
19 chart, it says "Required Transmission Enhancements
20 Owned By Trans-Allegheny Interstate Line Company
21 TrAILCo." Are you familiar with TrAILCo and does
22 this representation of these costs, this looks
23 familiar to you, this is information that you're
24 aware that PJM generates, correct?

25 A. Yes.

1 MR. LANG: Your Honors, I would ask that
2 this be marked as Company Exhibit 9.

3 EXAMINER PRICE: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Mr. Gonzalez, you also state at page 33
6 of your testimony --

7 A. Excuse me, sir, am I through with this?

8 Q. We're through with that one.

9 A. Thank you.

10 Q. You state at page 33 of your testimony
11 about 2/3 of the way down, line 12, "There remains
12 the problem of verification of the calculations for
13 purposes of FirstEnergy's charges." Is that an
14 issue, are you concerned about -- well, let me just
15 ask you, what are you concerned about with regard to
16 that problem?

17 A. I state in lines 13 through 16 how these
18 charges will be verified in applications brought
19 before the Commission.

20 Q. These are charges verified by PJM; are
21 they not?

22 A. That's correct.

23 Q. And you are aware that Schedule 12
24 charges, also known as RTEP charges, are billed --
25 I'm sorry, are billed to the load-serving entity,

1 correct?

2 A. That's correct.

3 Q. Are you aware that these Schedule 12
4 charges in the bills to load-serving entities are a
5 separate itemized line so they can be easily
6 identified on those transmission bills?

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

8 Q. Now, you also reference in your testimony
9 on the preceding pages, I think starting
10 approximately on page 29 and continuing for a few
11 pages thereafter, the December 17th, 2009, FERC order
12 approving ATSI's realignment to PJM. Is your
13 testimony that there is a probability that FERC at
14 some time in the future will order that ATSI has to
15 pay some or all of the RTEP charges and can't pass
16 those charges through to load-serving entities?

17 THE WITNESS: Can you reread that
18 question?

19 EXAMINER PRICE: Please.

20 (Record read.)

21 A. Yes. As I stated in my page 30, the
22 order states that "Transmission owners that seek to
23 change RTOs should be prepared to assume the costs
24 attributable to their decisions." So I believe
25 there's some uncertainty around that and there's --

1 as I believe the staff witness when was queried
2 answered, that particular part of the order, he
3 believed, was asking the parties to negotiate the
4 RTEP costs given the value of or the perceived value
5 of PJM -- I'm sorry, ATSI coming into PJM, and I'm
6 talking about the production cost savings and the
7 estimated congestion costs.

8 Q. So your understanding is that in that
9 FERC order FERC determined that they would not modify
10 Schedule 12 regarding the allocation of RTEP costs
11 because, as stated here, ATSI was making a business
12 decision to join PJM, correct?

13 A. Could you rephrase the first part of that
14 question, please.

15 Q. Let me try again. Your testimony is that
16 FERC determined in this December 17th, 2009, order
17 that it would not modify the Schedule 12 charges as
18 requested by ATSI because ATSI is making a business
19 decision to join PJM; fair enough?

20 THE WITNESS: I'm sorry, can you please
21 read that back.

22 (Record read.)

23 A. No, I don't believe they said they
24 wouldn't modify the charges. They ruled on the
25 complaint I guess on -- on the tariff and, as I

1 stated earlier, said negotiate with other PJM RTO
2 members and come up -- before you file the actual
3 costs.

4 Q. So essentially the issue was left
5 undecided.

6 A. Yes. To be -- we've -- in comments to
7 FERC our office has asked for clarification.

8 Q. If I can direct you to page 30 of your
9 testimony, start at the end of line 18 with the word
10 "FERC." "FERC has assigned these costs to ATSI as
11 the decision-maker, not to ATSI's customers." That's
12 your testimony, I read that correctly, correct? I'm
13 just asking you if I read it properly. Is that your
14 testimony?

15 A. You read it properly.

16 Q. Thank you. So you just told me that the
17 FERC order left the issue undecided. This sentence
18 appears, it appears you're saying that FERC did
19 decide the issue, they assigned the costs to ATSI.
20 Are you making a legal determination based on your
21 reading of the ATSI order that even though the issue
22 was left undecided, that it was decided and the
23 charges were assigned to ATSI?

24 A. No. I'm using the quote from lines 8
25 through 14 to make my opinion that the FERC is

1 pointing out to ATSI that these costs were -- are
2 based on a business decision by ATSI and, therefore,
3 these costs will be assigned to ATSI and not ATSI
4 customers; but, instead of "undecided" I think the
5 word I want to use is more clarification, and that
6 follows from our separate filing at the FERC to make
7 sure that that's what they've -- that that's what
8 that order states.

9 Q. Did you work on the filing at FERC, this
10 request for clarification that you mentioned?

11 A. I believe there's a -- we have a federal
12 team and I'm --

13 Q. Just "yes" or "no." I just want to know
14 if you worked on it.

15 A. I would say peripherally.

16 Q. Were you involved in its drafting?

17 A. Probably not.

18 EXAMINER PRICE: Probably not?

19 THE WITNESS: Yeah, I don't believe I
20 was. Drafting means actual writing as opposed to --

21 EXAMINER PRICE: Did you write or edit or
22 otherwise review this document? Review and give
23 comments to a third person.

24 THE WITNESS: I don't believe so. I
25 don't believe so.

1 Q. Mr. Gonzalez, you're aware that AEP and
2 DP&L, they're utilities in Ohio, are currently
3 members of PJM?

4 A. Yes, I do.

5 Q. And at some point those companies, we
6 discussed AEP earlier, but at some point those
7 companies made the decision to become a member of
8 PJM, correct?

9 A. That's correct.

10 Q. And the RTEP charges that we're
11 discussing today and whether they will be passed
12 through to customers, those RTEP charges are
13 currently passed through to customers by AEP and
14 DP&L, right?

15 A. Yes, that's my understanding.

16 Q. Is it OCC's position that those charges
17 that pass through to AEP's and DP&L's customers, that
18 they're imprudent?

19 A. No, it's not.

20 Q. Now, one of the benefits of leaving MISO
21 is that future MTEP costs not be paid by
22 FirstEnergy's customers, correct?

23 MR. SMALL: Objection, your Honor. We're
24 getting into an area of questioning about whether it
25 was a good idea or a bad idea for FirstEnergy or ATSI

1 to request a move from MISO to PJM. As far as I can
2 tell, both the MRO and the ESP that are being
3 compared here and are being compared in
4 Mr. Gonzalez's testimony, this situation with respect
5 to their membership in PJM is exactly the same.

6 So I object as far as relevance to the
7 line of questioning having to do with asking this
8 witness whether it was a good idea for ATSI to
9 request to move to PJM.

10 EXAMINER PRICE: I think that you are
11 perhaps several steps ahead of Mr. Lang when you -- I
12 think this question is unobjectionable. If he gets
13 to that point and you find that it's objectionable,
14 perhaps you ought to raise it, but I think you may be
15 premature.

16 Mr. Lang -- actually, Mr. Gonzalez,
17 answer the question.

18 THE WITNESS: Can you please reread the
19 question?

20 (Record read.)

21 A. By "future" you mean once they leave
22 MISO.

23 Q. Correct.

24 A. Yes, that's correct. But --

25 Q. Thank you. There are -- you're aware

1 there are estimates of what those costs will be but
2 you can't say, you know, you can't say how high,
3 correct?

4 A. I believe I've seen estimates, but I
5 haven't -- I can't testify to the veracity of those
6 estimates.

7 Q. And the benefit that may be derived when
8 you're comparing ESP and MRO and you adjust the PJM
9 costs in your analysis, you're not including any
10 benefit with regard to MISO because that's not a
11 benefit that, you know, that you can calculate by any
12 reasonable means, correct?

13 A. No; I'm not including it because the same
14 reason Mr. Ridmann didn't include it in his analysis,
15 in his scenario. I'm just -- I took Mr. Ridmann's
16 Schedule 1 where that was absent and ran my analysis
17 off of that.

18 Q. Let's talk about what Mr. Ridmann used in
19 his -- with regard to these transmission projects.
20 Can you turn, please, to Attachment 4 of your
21 testimony. The first page of that attachment is a
22 response to OCC Discovery Set 2-26. The second page
23 is what I want to ask you about. This is an exhibit
24 entitled, "ATSI Share of Annual Revenue Requirements
25 for Major RTEP Approved Projects." Are you there,

1 Mr. Gonzalez?

2 A. Yes.

3 Q. On the left side of this exhibit there
4 are different transmission projects in the PJM
5 transmission projects, and in slightly smaller type
6 is the company sponsoring those projects. Can you
7 tell me of the projects listed here which ones you
8 believe will be completed?

9 A. I believe it would be the first two
10 listed. Carson-Suffolk and the TrAIL.

11 Q. Okay. With regard to the remaining
12 projects listed you are not certain whether or not
13 they will be completed, correct?

14 A. There's quite a bit of uncertainty
15 surrounding those projects, as I have an exhibit and
16 based on decisions in, for example, Virginia related
17 to the PATH project where the project has been
18 withdrawn.

19 Q. None of these projects have been canceled
20 by PJM or FERC, correct?

21 A. Again, these projects have not been
22 canceled by PJM or FERC, but they're undergoing
23 scrutiny given the uncertainty in the drivers that
24 led to these particular projects.

25 MR. LANG: Move to strike after "but,"

1 your Honor.

2 EXAMINER PRICE: After which word?

3 MR. LANG: "But." Starting with "but,"
4 actually.

5 EXAMINER PRICE: Your motion to strike
6 will be granted.

7 Q. On page 32 of your testimony you
8 referred -- you refer, and it somewhat starts at the
9 bottom of 31, moves to the top of page 32, you refer
10 to the Commonwealth of Virginia State Corporation
11 Commission referring to the legislation for
12 withdrawal of the approval of the PATH project and
13 your belief is that effectively canceled the PATH
14 project, correct?

15 A. It cancels the project in the sense that
16 if one of the major states that the project has to go
17 through withdraws the particular application it
18 becomes, again, uncertain whether that project can be
19 completed.

20 Q. Is there a difference between canceled
21 and uncertain? Is this project canceled or is this
22 project uncertain?

23 A. Well, from the order the project was
24 withdrawn. For all intents and purposes I would say
25 in the Virginia Commonwealth this is not a project

1 that's before the Commission.

2 MR. LANG: May I approach, your Honor?

3 EXAMINER PRICE: You may.

4 Let's go off the record.

5 (Discussion off the record.)

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

8 MR. LANG: Your Honor, I've handed
9 Mr. Gonzalez a document that shows it's from the
10 Virginia State Corporation Commission, I'd like to
11 have this document marked as Company Exhibit 10.

12 EXAMINER PRICE: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Gonzalez, do you recognize that this
15 is the document that would be the motion to withdraw
16 application that resulted in the order granting
17 withdrawal that you cite in your testimony?

18 A. Yes.

19 Q. And this was a document filed with the
20 Virginia State Corporation Commission on December 21,
21 2009?

22 A. Yes.

23 Q. By Mr. Gary from Hunton and Williams.
24 Are you familiar with Mr. Gary from Hunton and
25 Williams?

1 A. I've not had the pleasure of meeting him.

2 Q. I'd like to direct you to the, not the
3 cover page and the cover letter but the first page of
4 the motion to withdraw itself, five lines down on
5 that first page, it states that "PATH-Virginia's
6 current intention is to file a new application early
7 2010 based on the most current information then
8 available with regard to the PATH Project and to
9 propose a procedural schedule for the Commission's
10 consideration that will be coordinated with the
11 procedural schedules for the West Virginia and
12 Maryland Public Service Commission's consideration of
13 the portion of the PATH Project that will be
14 constructed in those states.

15 Is that your understanding of why this
16 application for withdrawal was filed?

17 A. This conflicts somewhat with the order.
18 I've read the order of the Commission and in that
19 order there's the statement that this project may
20 come up in the future or may not come up in the
21 future. I think there's language specific to that in
22 the order.

23 Q. Now, on the second page, four lines down,
24 there's a sentence that starts "In Maryland." Do you
25 see that sentence, second page?

1 A. Yes.

2 Q. Four lines down?

3 A. Yes, I do.

4 Q. "In Maryland, an application for approval
5 and certification of the PATH Project Is being filed
6 concurrently with the filing of this motion and
7 consideration of the Maryland portion of the PATH
8 Project is also expected to proceed to evidentiary
9 hearings in the second half of 2010." Now, are you
10 aware that the PATH Project is not withdrawn but it's
11 proceeding apace in other states?

12 A. Yes, but I don't -- yes.

13 Q. Another project you mention starting at
14 the bottom of page 32 -- just to be clear, the PATH
15 project is not canceled.

16 A. Yes; not yet.

17 EXAMINER PRICE: It's not effectively
18 canceled. Your testimony as filed was it's
19 effectively canceled. Are you now saying you agree
20 it's not effectively canceled?

21 THE WITNESS: I would say the Virginia
22 part is -- has been withdrawn.

23 EXAMINER PRICE: Withdrawn does not
24 equate to effectively canceled. So now you're back
25 to it's uncertain, but it may not be effectively

1 canceled.

2 THE WITNESS: That's correct. I think
3 that's the clarification.

4 Q. Let's talk about the Susquehanna-Roseland
5 project. You mention this at the bottom of page 32
6 in your testimony, in the text of page 32 going onto
7 to the top of page 33. You mention that "The New
8 Jersey Board of Public Utilities postponed a decision
9 regarding" that project, and you cite your basis for
10 that postponement is a news article that is
11 Attachment 5 to your testimony, so could you turn to
12 that Attachment 5, please.

13 A. Yes.

14 Q. Now, this is a news article from -- this
15 came from the internet? Is that true? It's from the
16 NJ.com?

17 A. Yes.

18 Q. And NJ.com includes articles from the New
19 Jersey Star-Ledger; is that correct?

20 A. Yes. That's one of the suppliers.

21 Q. And stories in the Star-Ledger, it's
22 reasonable to determine general public information
23 about whether a project is going forward or not based
24 on what's reported in the Star-Ledger; is that
25 correct?

1 A. Are you asking me is it for general
2 consumption?

3 Q. No, I'm asking you do you believe it's
4 reasonable to rely on these stories from the
5 Star-Ledger for facts regarding whether the
6 Susquehanna-Roseland project is going forward or not?
7 I would think that your answer is yes because you're
8 citing it for that fact, but I just want to confirm
9 that.

10 THE WITNESS: I thought he answered for
11 me. I'm sorry. No, no, I thought he was answering
12 for me.

13 EXAMINER PRICE: No, you have a question,
14 a pending question.

15 THE WITNESS: Yeah.

16 EXAMINER PRICE: What was your answer,
17 I'm sorry?

18 THE WITNESS: Can you just read that
19 question?

20 EXAMINER PRICE: Please reread the
21 question and then the witness will answer it.

22 (Record read.)

23 A. I would say barring the definitive
24 analysis that is going to come in June on the RTEP,
25 I'm looking for information that reports on these

1 particular projects. I would say it's not as
2 definitive as the RTEP analysis that is going to I
3 believe confirm some of my statements in my
4 testimony. But it's, you know, what we have.

5 EXAMINER PRICE: So was the answer to his
6 question "yes" or "no"? One or the other,
7 Mr. Gonzalez.

8 THE WITNESS: It was "yes" with the
9 caveat on the RTEP.

10 EXAMINER PRICE: Okay. On my own motion
11 I'm going to strike the phrase "with the caveat"
12 because I asked him for a "yes" or "no" answer.

13 If Mr. Small would desire to elicit
14 information from you regarding this topic, he will do
15 so on redirect.

16 Q. (By Mr. Lang) Now, Mr. Gonzalez, the
17 second paragraph of the story says "The BPU, however,
18 at a hearing this morning in New Jersey," and this
19 morning would be January 15th, 2010, which is the
20 date of the story, the BPU "said it would only be a
21 short delay and expects to rule on PSE&G's proposed
22 Susquehanna-Roseland high voltage line within 30
23 days." Do you see that statement?

24 A. Yes.

25 Q. Now, your testimony was filed on

1 April 15th, so I'm assuming you followed up to see
2 what the BPU did, so please tell us what happened.

3 A. I don't believe I have information on
4 that particular case.

5 Q. Let me see if I can help you out.

6 MR. LANG: May I approach, your Honor?

7 EXAMINER PRICE: Yes, you may.

8 MR. LANG: I think this would be Company
9 11.

10 EXAMINER BOJKO: That's correct.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Mr. Gonzalez, before we talk about this
13 document, the Attachment 5 to your testimony, this
14 January 15th news story, am I correct it has a
15 footnote on it that shows you printed it on
16 April 14th, 2010? Is that when you remember printing
17 this news story, on April 14th, 2010?

18 A. Yes.

19 Q. So would I be correct that you went onto
20 the internet and you looked for stories about the
21 status of the Susquehanna-Roseland power line project
22 and you found this story stating that it had been
23 delayed and you printed it on April 14th, correct?

24 A. That's correct.

25 Q. Now, I've handed you what's been marked

1 as --

2 MR. LANG: Your Honor, I formally ask to
3 have it marked as Company Exhibit 11.

4 EXAMINER PRICE: So marked, to the extent
5 we didn't.

6 Q. I've handed you a document also from
7 NJ.com, also from the Star-Ledger, remarkably has the
8 same transmission line photograph as what's in the
9 article that you're relying on, and it's -- and
10 what's the date of this document that I've handed
11 you?

12 A. March 28th, 2010.

13 EXAMINER PRICE: I'm sorry, Mr. Lang, I
14 believe you misrepresented. The pictures do not
15 appear to be the same to me.

16 MR. LANG: Oh, they're not?

17 EXAMINER BOJKO: Do we have the same
18 document because ours do not even resemble each
19 other. You're sitting there trying to closely
20 compare the two.

21 MR. LANG: Let me make sure I do have the
22 right document.

23 MR. RANDAZZO: You need the 3-D glasses.

24 MR. LANG: That's why these are the color
25 ones.

1 EXAMINER PRICE: Are you going to
2 introduce this later? Leave this marked as 11.

3 MR. LANG: Actually, I think the other --
4 yeah, they all have different ones.

5 EXAMINER PRICE: We'll hand you back
6 these.

7 MR. LANG: I would prefer to switch these
8 out. Thank you. Note for the record it's no longer
9 in color.

10 EXAMINER BOJKO: So this will be the one
11 marked as Company Exhibit 11.

12 MR. LANG: This will be Company Exhibit
13 11.

14 EXAMINER PRICE: Okay.

15 (EXHIBIT RE-MARKED FOR IDENTIFICATION.)

16 Q. (By Mr. Lang) Now, Mr. Gonzalez, again,
17 NJ.com, the Star-Ledger and the date of this story is
18 what at the top?

19 A. February 11th, 2010.

20 Q. All right. And can you read the first
21 sentence of the story, please?

22 A. "The State Board of Public Utilities has
23 unanimously approved the \$750 million
24 Susquehanna-Roseland power line project that will cut
25 through New Jersey with a goal of providing a

1 reliable power supply to the region."

2 Q. Goes on to say that the board voted
3 unanimously, correct?

4 A. That's correct.

5 Q. Now, you're aware that this power line in
6 addition to being in front of the New Jersey Board of
7 Public Utilities and having been approved by the New
8 Jersey Board of Public Utilities -- you can confirm
9 that now, correct?

10 A. That's correct.

11 Q. -- this line also runs through
12 Pennsylvania, correct? Are you aware of that, that
13 it runs through Pennsylvania?

14 A. Yes, I believe so.

15 Q. And the Pennsylvania Public Utilities
16 Commission, you are aware, are you not, also approved
17 this line on January 15th, 2010, correct?

18 A. I wasn't aware of that. My impression
19 was there was an order granting rehearing for further
20 consideration on the Branchburg line.

21 Q. So you're not aware that the Pennsylvania
22 Public Utility Commission approved, voted on
23 January 15th to approve the project. That's
24 something you're not aware of?

25 A. No, I'm not.

1 Q. Now, Mr. Gonzalez, in all of your
2 schedules comparing the ESP to an MRO you show the
3 benefit of FirstEnergy's agreement not to pass
4 through RTEP charges to customers as having a value
5 of zero, correct?

6 A. That's correct.

7 Q. Now, you agree that the Carson-Suffolk
8 and TrAIL projects will be completed. We
9 demonstrated here that the Susquehanna-Roseland
10 project has been approved and at least we know it's
11 been approved in New Jersey. Yet you determine that
12 there's a zero possibility of the costs of these
13 projects being passed through to customers. Why is
14 that?

15 A. I believe I had three reasons for that, I
16 think the first one the reasons we discussed earlier
17 in terms of the FERC order. Second reason is
18 Seventh Circuit Appeals remand of the PJM cost
19 allegation methodology to the extent that it moves to
20 a beneficiary pays I would expect that those dollars
21 would decrease significantly. I believe those are
22 the two reasons, the two main reasons.

23 Q. Okay. So we've determined that the FERC
24 order created uncertainty, you just stated that the
25 Seventh Circuit remand for reconsideration of the

1 allocation method could result in the numbers
2 being -- the cost of these projects allocated to the
3 load-serving entities in the ATSI load zone being
4 lower. How does that get to zero?

5 A. I would say I was leaning more in terms
6 of the first part of my discussion about it not being
7 passed on to ATSI's customers.

8 EXAMINER PRICE: What does that mean?
9 Does that mean that the Seventh Circuit's decision
10 had no bearing on your decision that the net benefit
11 is zero?

12 THE WITNESS: No. The Seventh Circuit,
13 if I were to go on the Seventh Circuit alone, I
14 would -- the number wouldn't be zero but it would be
15 highly discounted but taken into account even if --
16 for a hypothetical let's say these costs get passed
17 on, then I think the Seventh Circuit, whatever FERC
18 rules and PJM, whatever the allocation methodology
19 PJM adopts and is approved by FERC would decrease the
20 cost of the projects to the ATSI customers.

21 EXAMINER PRICE: Thank you.

22 Q. (By Mr. Lang) Now, Mr. Gonzalez, we
23 discussed earlier that the standard practice for an
24 economist is to assign a risk factor when they see
25 uncertainty and include a reduced benefit amount in

1 an analysis of the sort that you performed here. But
2 you didn't do that. Why not?

3 A. I did assign -- I basically assigned a
4 zero because of my first -- my reading of the
5 principle in the FERC order. So that was the biggest
6 weight. So if you're assigning that zero, then, you
7 know, zero times some value for the expectation of a
8 new cost allocation method is still zero.

9 EXAMINER PRICE: So you believe there's a
10 zero percent probability that FERC will allow ATSI to
11 pass the RTEP charges to its customers.

12 THE WITNESS: Yes. Based on that order,
13 yes.

14 EXAMINER BOJKO: And that's why your
15 office filed a motion for clarification?

16 THE WITNESS: Yes, our office filed a
17 motion for clarification because there were
18 representations made by ATSI that that would be, well
19 FirstEnergy that those costs would be recovered. So
20 we --

21 EXAMINER BOJKO: If you were so sure that
22 it would have a zero value assigned to it, why would
23 you need to file for clarification? If you were so
24 certain there was no risk, why would you file for
25 clarification?

1 THE WITNESS: Well, for confirmation, but
2 I see your point.

3 MR. LANG: Your Honors, I was going to
4 move on to MISO exit fees and then PJM integration
5 fees, somewhat a different topic if this is a place
6 you'd like to break.

7 EXAMINER PRICE: This is a fine place but
8 I guess I'm not done with this topic just yet. This
9 idea it's a zero percent probability that ATSI will
10 be allowed to pass these charges along to customers,
11 this would be a significant policy shift for FERC;
12 would it not?

13 THE WITNESS: It would be, your Honor,
14 but this is a -- FERC, the switching of RTOs doesn't
15 come before the FERC in --

16 EXAMINER PRICE: Well, I understand that,
17 but wholesale charges as a general rule, FERC allows
18 utilities to pass them on, recovery, to its
19 customers, correct?

20 THE WITNESS: That's correct, yes.

21 EXAMINER PRICE: And these RTO charges
22 are wholesale charges, they're transmission charges.

23 THE WITNESS: Correct.

24 EXAMINER PRICE: FERC approved tariffed
25 transmission charges. So you believe that this

1 language that doesn't reference any prior precedence
2 from FERC, any prior precedence in the federal
3 circuit courts, any prior precedence for the United
4 States Supreme Court is effectively reversing that
5 policy at least as to -- at least as to utilities
6 changing RTOs. And they felt no need to distinguish
7 those prior cases whatsoever. That's your testimony?

8 THE WITNESS: Not being an attorney, the
9 second part, but yes.

10 EXAMINER PRICE: You know, you can't bail
11 on being an attorney here because you have said that
12 the decision is clear. I'm not asking you for a
13 legal opinion. I'm asking you as an economist to
14 weight the probabilities here, and so you believe
15 this one line accords a probability of these charges
16 being passed along to customers is zero
17 notwithstanding 50 years of power law precedence; is
18 that what you're saying?

19 A. I'm saying that. Like I said before,
20 because this is an area that the FERC has not -- I
21 don't believe there's another company that has
22 switched RTOs fully so it's a new --

23 EXAMINER BOJKO: Okay, let's split it up
24 just slightly then, Mr. Gonzalez.

25 THE WITNESS: Okay.

1 EXAMINER BOJKO: I think when you're
2 talking about RTO realignment or switching you're
3 talking about MISO exit or PJM entrance fees, right?
4 I mean, you're not trying to suggest that actual
5 charges, the RTEP charges are not the types of costs
6 that FERC has historically, and this is I believe the
7 50-year precedent that Mr. Price was talking about.

8 THE WITNESS: Yes. No, no, no.

9 EXAMINER BOJKO: You're not suggesting
10 that those charges have not historically been passed
11 on to customers.

12 THE WITNESS: No, I'm not suggesting that
13 at all to you.

14 EXAMINER BOJKO: So what I hear, you may
15 think that there's uncertainty about or this is a new
16 world that we live in, it's only with regard to the
17 RTO realignment, I believe, is what it's been called.

18 THE WITNESS: Yes. And how that's
19 reflected in the order.

20 EXAMINER BOJKO: Okay.

21 EXAMINER PRICE: I think I'm done with
22 this topic. I believe that, as we discussed earlier
23 off the record, this is a good time for a break in
24 Mr. Lang's cross-examination of Mr. Gonzalez, and we
25 will recess until 8:30 tomorrow morning. Hopefully

1 at that point we'll finish with Mr. Gonzalez and wrap
2 up this case. Thank you all.

3 (Thereupon, the hearing was adjourned at
4 6:13 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 Thursday, April 22, 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-3551)

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Summary: Transcript Transcript of FirstEnergy hearing Volume III held on 04/22/10.
electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones,
Maria DiPaolo Mrs.