

FILE

192

09-872/873-EL-FAC

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the Fuel :
Adjustment Clauses For :
Columbus Southern Power : Case No. 09-872-EL-FAC
Company and Ohio Power : Case No. 09-873-EL-FAC
Company. :

- - -

CONFIDENTIAL PROCEEDINGS

before Mr. Jeffrey Jones and Ms. Greta See, Attorney
Examiners, at the Public Utilities Commission of
Ohio, 180 East Broad Street, Room 11-A, Columbus,
Ohio, called at 10:00 a.m. on Monday, August 23,
2010.

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Utilities Commission.

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Monday Morning Session,

August 23, 2010.

- - -

EXAMINER JONES: The Public Utilities Commission of Ohio has called for hearing at this time and place case No. 09-872 and 09-873-EL-FAC, that being In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company.

My name is Jeffrey R. Jones. Also joining me on the Bench will be Greta See. We have been assigned by the Commission to hear these cases.

At this point in time I'll take appearances on behalf of the parties. On behalf of Columbus Southern Power and Ohio Power Company.

MR. NOURSE: Thank you, your Honor. On behalf of Columbus Southern Power Company and Ohio Power Company, Stephen T. Nourse, Matthew J. Satterwhite, Julie L. Atchison, 1 Riverside Plaza, Columbus, Ohio 43215. Thank you.

EXAMINER JONES: Thank you. On behalf of the staff of the Public Utilities Commission of Ohio.

MR. MARGARD: Thank you, your Honor. On behalf of the staff of the Public Utilities Commission, Richard Cordray, Attorney General,

1 William Wright, Section Chief, Public Utilities
2 Section, by Assistant Attorneys General Werner
3 Margard and Thomas McNamee, 180 East Broad Street,
4 6th floor, Columbus, Ohio.

5 EXAMINER JONES: Thank you.

6 On behalf of the office of the Ohio
7 Consumers' Counsel.

8 MR. IDZKOWSKI: Thank you, your Honor.
9 On behalf of the residential customers of Columbus
10 Southern Power and Ohio Power Company, the Ohio
11 Consumers' Counsel, Janine L. Migden-Ostrander, by
12 Assistant Consumers' Counsel Michael Idzkowski, 10
13 West Broad Street, Suite 1800, Columbus, Ohio, 43215.

14 EXAMINER JONES: On behalf of Industrial
15 Energy Users, Ohio.

16 MR. CLARK: Thank you. On behalf of the
17 Industrial Energy Users, Ohio, Joseph M. Clark,
18 Samuel C. Randazzo, Lisa McAlister, from the office
19 of McNees, Wallace & Nurick, 21 East State Street,
20 17th floor, Columbus, Ohio, 43215.

21 EXAMINER JONES: Thank you. Is counsel
22 present from Intervenor Ormet Primary Aluminum
23 Company?

24 (No response.)

25 EXAMINER JONES: There's no response.

1 At this time we will take up any
2 preliminary items that the parties have before we
3 begin the first witnesses.

4 Mr. Nourse, do you have anything?

5 MR. NOURSE: Yes. Thank you, your Honor.
6 A couple matters. First of all, with respect to
7 confidentiality, we had a discussion off the record.
8 There are several areas that have been redacted from
9 the audit report regarding several topics and
10 competitively sensitive matters relating to coal
11 contracts that we would like to ensure remain
12 confidential consistent with the June 29th protective
13 order in this case.

14 And I believe that the method that we've
15 arranged or agreed to proceed in order to best
16 protect that information would be to conduct
17 cross-examination under seal, and the companies will
18 work with the parties and the Commission to redact
19 the transcripts. We can produce a public version of
20 the transcript to be filed in the docket, and I
21 believe that's the best way to proceed in this case
22 given the prevalence of that confidential data
23 throughout the audit report and the parties'
24 testimony.

25 EXAMINER JONES: Any parties disagree

1 with Mr. Nourse's characterization?

2 MR. IDZKOWSKI: No, your Honor.

3 EXAMINER JONES: Thank you. Then that is
4 how we will proceed.

5 Mr. Nourse, your next issue.

6 MR. NOURSE: Yes, your Honor. The
7 companies indicated at the prehearing conference that
8 we'd likely want to file rebuttal testimony. We do
9 have some narrowly focused rebuttal testimony that's
10 been completed. It's being copied right now. It is
11 a few pages from each of the three witnesses that
12 deal with the accounting and the coal-related
13 matters.

14 We would propose to file and serve it on
15 the parties, hand-deliver it this morning, and have
16 those company witnesses adopt that rebuttal at the
17 conclusion of the other parties' and the auditor's
18 testimony in this case, at this point reserving the
19 possibility of doing some limited oral rebuttal in
20 addition to that written rebuttal.

21 We will have that momentarily this
22 morning and serve it on the Bench and the parties, if
23 that's acceptable.

24 EXAMINER JONES: Thank you.

25 Any comments or concerns with

1 Mr. Nourse's suggestion?

2 MR. CLARK: Your Honor, the only concern
3 I would have or question would be, I assume we'll
4 reserve all rights for motions to strike or other
5 matters that might be outside the scope of rebuttal
6 if that happens.

7 EXAMINER JONES: Thank you, Mr. Clark. I
8 was just going to say that of course you may file
9 information that will not be deemed admissible or
10 anything in this proceeding or otherwise accepted by
11 the Commission. It will be subject to the
12 appropriate motions to strike when it's presented.

13 But I would appreciate if you would get
14 that rebuttal testimony in the parties' hands as soon
15 as you can this morning.

16 MR. NOURSE: Thank you, your Honor.

17 EXAMINER JONES: Including the Bench.

18 MR. NOURSE: Yes. Thank you, your Honor.

19 EXAMINER JONES: Any other preliminary
20 items before we begin this morning?

21 MR. NOURSE: No, your Honor.

22 EXAMINER JONES: If not, Mr. Margard, you
23 may call your first witness.

24 MR. MARGARD: Thank you, your Honor. The
25 parties have requested an opportunity to

1 cross-examine the auditors and the auditors are being
2 made available for that purpose. Preliminary to
3 calling the first of the auditors, I would request
4 that the Report of the Management/Performance and
5 Financial Audits in this case be marked as
6 Commission-ordered Exhibit No. 1.

7 I have copies of both the redacted and
8 confidential versions. I would request that the
9 redacted version be marked as Commission-ordered
10 Exhibit 1A and that the confidential version be
11 marked as Commission-ordered Exhibit 1B. Since these
12 proceedings are closed for purposes of examination, I
13 would presume that most of the questions will be
14 asked with respect to the confidential version, and
15 for the sake of convenience of the parties I would
16 think either "audit report" or "Commission Exhibit 1"
17 would suffice to identify that document.

18 That being said, your Honor, I would call
19 Mr. Ralph C. Smith to the stand.

20 EXAMINER JONES: Thank you, Mr. Margard,
21 and those documents shall be so marked.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

23 EXAMINER JONES: I, too, would ask that
24 since we are under a closed record at this point in
25 time that we use the confidential version which has

1 been marked 1B for most references unless otherwise
2 stated.

3 Would you please raise your right hand?
4 (Witness sworn.)

5 EXAMINER JONES: Thank you. You may
6 proceed, Mr. Margard.

7 MR. MARGARD: Thank you.

8 - - -

9 RALPH C. SMITH

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

12 DIRECT EXAMINATION

13 By Mr. Margard:

14 Q. State your name and business address,
15 please.

16 A. My name is Ralph C. Smith. My business
17 address is Larkin & Associates, PLLC, 15728
18 Farmington Road, Livonia, Michigan, 48154.

19 Q. Thank you.

20 MR. MARGARD: Your Honor, may I approach?

21 EXAMINER JONES: Yes, you may.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Mr. Smith, I have handed you a multipage
24 document marked for purposes of identification as
25 Staff Exhibit 1. Do you recognize this document?

1 A. Yes.

2 Q. And is this the document that was
3 submitted as part of the proposal to perform the
4 audits in this case?

5 A. Yes, it is.

6 Q. And does this document set forth your
7 professional qualifications?

8 A. It does.

9 Q. Do you have any changes, additions to
10 this document?

11 A. No.

12 MR. MARGARD: Can all of the parties hear
13 Mr. Smith? Do we need to use the microphones?

14 (Off the record.)

15 EXAMINER JONES: Mr. Margard, you may
16 continue.

17 MR. MARGARD: Thank you, your Honor.

18 Q. Mr. Smith, do you have before you
19 Commission-ordered Exhibit No. 1, the
20 Management/Performance and Financial Audit performed
21 in these cases?

22 A. Yes, I do.

23 Q. And did you assist in the preparation of
24 these reports?

25 A. I did, yes.

1 Q. Are you able to identify which sections
2 you were responsible for assisting with?

3 A. Yes. Larkin & Associates was responsible
4 for Chapter 7, the financial audit of the Fuel
5 Adjustment Clause Rider.

6 Q. Have you reviewed that chapter prior to
7 your testimony today to determine whether there are
8 any changes, corrections, or modifications required?

9 A. Yes, I have. I notice there's a couple
10 of minor typos. Other than that, it appears to be
11 accurate.

12 Q. Do you want to make those corrections for
13 us?

14 A. Sure. At page 7-24 the sixth line up
15 from the bottom, it says, it starts with the word
16 "FAC"; it says the cumulative FAC. It should say
17 under, u-n-d-e-r, underrecovery. And then I noticed
18 one other typo and that one's on page 7-86, this is
19 the seventh line up from the bottom and it says
20 "Public Service PUCO of Indiana." Instead of saying
21 "PUCO," it should say "Commission."

22 Those are the only changes of which I'm
23 aware.

24 EXAMINER JONES: Very good.

25 MR. MARGARD: Your Honor, I would make

1 Mr. Smith available for cross-examination.

2 EXAMINER JONES: Thank you.

3 Mr. Idzkowski.

4 MR. IDZKOWSKI: Yes, thank you, your
5 Honor. As OCC raised off the record, we would wish
6 to now on the record, most of the questions we would
7 have had for our witness will be addressed in a
8 stipulation that the OCC is drafting and that all of
9 the parties in this case, except for Ormet, have thus
10 far seen and agreed to, so we just have a few
11 questions for this witness.

12 EXAMINER JONES: Thank you.

13 MR. IDZKOWSKI: That stipulation will be
14 prepared and submitted during the course of this
15 hearing.

16 EXAMINER JONES: Thank you,
17 Mr. Idzkowski.

18
19 CROSS-EXAMINATION

20 By Mr. Idzkowski:

21 Q. Can I refer you to your financial audit
22 recommendations on page 1-7, please.

23 A. Okay, I'm there.

24 Q. Thank you. Regarding the first financial
25 audit recommendation, there you're discussing FAC

1 workbooks explanations and identifications of the
2 differences between the includable FAC accounts or
3 amounts recorded in the general ledger versus
4 includable FAC amounts that were derived from other
5 sources. Do you see that?

6 A. Yes.

7 Q. What are the differences between
8 includable FAC amounts recorded in the general ledger
9 versus includable FAC and other sources?

10 A. In general, the general ledger contains
11 the amounts that pertain to Columbus Southern and
12 Ohio Power. They each have their separate general
13 ledger, and their general ledger contains amounts in
14 total, and in some instances, those amounts are
15 subject to various allocations for inclusion or
16 exclusion before they end up in the FAC.

17 Q. Do you know what the extent is -- can you
18 explain the extent of the differences besides --

19 A. I can give some illustrated examples.
20 For example, the purchased power costs are recorded
21 in the general ledger under a series of subaccounts.
22 Some of those subaccounts are includable in the FAC
23 and some of them, before being included in the FAC,
24 are subject to various allocations because the FAC
25 basically pertains to retail customers. So some of

1 the total amounts in the general ledger then do not
2 end up being fully included in the FAC.

3 Q. Is there a particular pattern, such as a
4 general ledger is always higher than other sources?

5 A. If amounts are allocated from the general
6 ledger, then only a portion of those would be
7 included in the FAC, so for the allocated amounts,
8 the general ledger would essentially include
9 100 percent and then the FAC would only include the
10 allocated portion of those.

11 Q. I'm sorry, are you done?

12 A. Yes.

13 Q. Thank you.

14 And what's your understanding of the
15 company's, AEP's, agreement on this particular issue?
16 Do they agree to include in the monthly work -- FAC
17 workbooks, do they agree to include the amounts for
18 the 2010 audit or how about for the 2009 audit?

19 A. It's my understanding that respectively
20 we are going to include additional documentation,
21 either monthly reconciliation packages, and I believe
22 they're going to do that prospectively, and they
23 provided an example in response to EVA 4-11.

24 Q. If you can look at your financial audit
25 recommendation No. 3, please, on that same page. Can

1 you explain why, if you know, why Larkin was unable
2 to trace most of the information provided to the FAC
3 workbooks?

4 A. Yes. We were able to trace the
5 information through the FAC workbooks, but when we
6 attempted to trace beyond the FAC workbooks to actual
7 invoices, we ran into some audit trail difficulties
8 there, and the company I believe has agreed to try to
9 create a better audit trail prospectively.

10 MR. IDZKOWSKI: Thank you. That's all
11 the questions I have at this time.

12 EXAMINER JONES: Thank you.

13 Mr. Clark.

14 MR. CLARK: No questions, your Honor.

15 EXAMINER JONES: Mr. Nourse or
16 Mr. Satterwhite?

17 MR. NOURSE: No questions, your Honor.

18 EXAMINER JONES: Staff have any redirect
19 for this witness?

20 MR. MARGARD: No questions on redirect.
21 Thank you, your Honor.

22 EXAMINER JONES: Thank you, Mr. Smith. I
23 believe you may step down at this time.

24 Mr. Margard, would you move for the
25 admission of Staff Exhibit No. 1?

1 MR. MARGARD: I would move admission of
2 that exhibit, your Honor.

3 EXAMINER JONES: Objections?

4 MR. NOURSE: No, your Honor.

5 MR. CLARK: No, your Honor.

6 EXAMINER JONES: If not, Staff Exhibit
7 No. 1 will be admitted.

8 MR. IDZKOWSKI: I'm sorry, was that
9 to --

10 MR. MARGARD: His CV, the qualifications.

11 MR. IDZKOWSKI: Yes, I'm sorry. Thank
12 you, your Honor. I'm sorry to interrupt you.

13 EXAMINER JONES: Thank you.

14 MR. IDZKOWSKI: No objection.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER JONES: Mr. Margard, you may
17 call your next witness.

18 MR. MARGARD: Thank you, your Honor.
19 Staff would call Mr. Mark Dady.

20 EXAMINER JONES: Would you raise your
21 right hand.

22 (Witness sworn.)

23 EXAMINER JONES: Thank you.

24 Mr. Margard, you may proceed.

25 MR. MARGARD: Thank you, your Honor.

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1 Q. You also were responsible for preparation
2 of a portion of the audit report in this case; is
3 that correct?

4 A. Yes.

5 Q. And you have Commission-ordered Exhibit
6 No. 1 in front of you.

7 A. That's the report?

8 Q. The audit report, yes, sir.

9 A. Yes.

10 Q. Are you able to identify which portions
11 of the audit report you were responsible for
12 assisting with?

13 A. I assisted on Chapter 7 as well, the
14 financial audit of the FAC.

15 Q. And have you had an opportunity to review
16 that chapter prior to your testimony today?

17 A. Yes.

18 Q. And other than the corrections already
19 noted by Mr. Smith, do you have any changes,
20 corrections, additions of any sort to that chapter?

21 A. No, I don't.

22 MR. MARGARD: Your Honor, I'd make
23 Mr. Dady available for cross-examination.

24 EXAMINER JONES: Thank you.

25 Mr. Idzkowski, questions?

1 MR. IDZKOWSKI: Thank you. No questions,
2 your Honor.

3 EXAMINER JONES: Mr. Clark?

4 MR. CLARK: No questions, your Honor.

5 EXAMINER JONES: Mr. Nourse?

6 MR. NOURSE: No questions.

7 MR. MARGARD: Well, that was easy.

8 EXAMINER JONES: Mr. Dady, I guess you
9 are excused at this time.

10 THE WITNESS: Okay.

11 MR. MARGARD: Your Honor, I would move
12 for admission of Staff Exhibit No. 2.

13 EXAMINER JONES: Any objections to the
14 admission of Staff Exhibit No. 2, the qualifications
15 of Mr. Dady?

16 If not, Staff Exhibit No. 2 shall be
17 admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 MR. MARGARD: Your Honor, I would like to
20 call Ms. Emily Medine to the stand, please.

21 EXAMINER JONES: Please raise your right
22 hand.

23 (Witness sworn.)

24 EXAMINER JONES: Thank you.

25 - - -

EMILY MEDINE

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

DIRECT EXAMINATION

By Mr. Margard:

Q. Would you please state your name and
business address for the record?

A. Emily Sue Medine, 1800 Beachwood,
Boulevard, Pittsburgh, Pennsylvania, 15217.

Q. Thank you.

MR. MARGARD: May I approach, your Honor?

EXAMINER JONES: Yes, you may.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Ms. Medine, I've handed you a single-page
document marked for purposes of identification as
Staff Exhibit No. 3. Can you identify that document
for us, please?

A. Yes. That is a copy of my résumé that
was included in the proposal.

Q. And is it true and accurate, or do you
have any changes, additions, or corrections to make
to it today?

A. It's true and accurate.

Q. Thank you.

You have before you what's been marked as

1 Commission-ordered Exhibit No. 1.

2 A. Yes.

3 Q. And were you responsible for preparation
4 of any portion of this document?

5 A. Yes. I was responsible for the
6 preparation of the overall audit and the
7 management/performance audit, which would be all
8 chapters except 7.

9 MR. MARGARD: Thank you.

10 Your Honor, I make Ms. Medine available
11 for cross-examination.

12 EXAMINER JONES: Thank you.

13 Mr. Idzkowski.

14 MR. IDZKOWSKI: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Idzkowski:

18 Q. Good morning, Ms. Medine.

19 A. Good morning.

20 THE WITNESS: Excuse me, I had a couple
21 corrections. Is that all right?

22 EXAMINER JONES: Yes. Do you want to go
23 through those now?

24 THE WITNESS: I would like to make a few
25 minor corrections to the report. The first one being

1 on page 2-20 where I would like to amend the
2 statement in the last full paragraph which starts
3 with "the market price for this coal was over \$100
4 per ton." I would like to amend that to "was
5 substantially greater than this at that time."

6 On page 2-21 on the large paragraph at
7 the middle I'd like to include a footnote after it
8 that states -- after the sentence, "AEPSC
9 commissioned [REDACTED] to perform a mine
10 study for the [REDACTED]" and the footnote would
11 state, "The second [REDACTED] report performed in
12 October 2007 was subsequently delivered to the
13 auditor."

14 EXAMINER JONES: I'm sorry, Ms. Medine,
15 could you just go over that second correction once
16 again?

17 THE WITNESS: Sure. Basically, I'll
18 describe it and then I can give you the exact
19 language. It was basically there were two [REDACTED]
20 reports and it was only last week we learned of the
21 second [REDACTED] report. So I just put a footnote saying,
22 "A second [REDACTED] report performed in October 2007 was
23 subsequently disclosed to the auditor."

24 EXAMINER JONES: Thank you.

25 MR. NOURSE: I thought you said

1 "delivered" the first time.

2 THE WITNESS: Okay, delivered to the
3 auditor.

4 And then on page 2-24 there are a number
5 of corrections to the second paragraph. Under
6 [REDACTED], the initial [REDACTED] should be changed to [REDACTED].
7 And the next sentence which states, "AEPSC also
8 agreed to increase the base price for all coal by
9 \$[REDACTED] per ton effective January 1st, 2009," should be
10 deleted and the statement then should be replaced by,
11 "AEP also agreed to increase the base price by
12 \$[REDACTED] per ton on the first [REDACTED] million tons
13 delivered effective January 1st, 2009."

14 Then I would like to --

15 MR. NOURSE: I'm sorry. Could you repeat
16 that one?

17 THE WITNESS: No. I'll be the court
18 reporter: AEP also agreed to increase the base price
19 by \$[REDACTED] per ton on the first [REDACTED] million tons
20 delivered," I think I said, "effective January 1st,
21 2009."

22 And I would like to add a footnote to
23 that sentence basically saying, "These terms differ
24 from the AEPSC December 29th, 2009, justification
25 memorandum, which is of the same date as the [REDACTED]"

1 agreement."

2 Thank you.

3 EXAMINER JONES: That concludes the
4 corrections?

5 THE WITNESS: Yes.

6 EXAMINER JONES: Thank you.

7 Mr. Idzkowski.

8 MR. IDZKOWSKI: Thank you, your Honor.

9 MR. CLARK: Sorry, your Honor. Before
10 Mr. Idzkowski, I could not catch that last footnote.

11 EXAMINER JONES: If the court reporter
12 could read it back, please.

13 (Record read.)

14 MR. CLARK: Thank you, your Honor.

15 EXAMINER JONES: Thank you.

16 Now Mr. Idzkowski.

17 MR. IDZKOWSKI: Thank you.

18 Q. (Mr. Idzkowski) Ms. Medine, I'd like to
19 ask you about the effects of the company, the AEP
20 company's, renegotiations in 2007 and 2008 that you
21 discuss in your audit report. Is it your
22 understanding that the renegotiations of contracts
23 between AEP in 2007 and 2008 and its coal supplier
24 that you discuss in your audit report, is it your
25 understanding that those negotiations caused the

1 price of coal passed through to customers to increase
2 dramatically for the period of 2009?

3 A. Yes.

4 Q. Do you have a copy of your audit report?

5 A. I do.

6 Q. Could you look at page -- at your Exhibit
7 2-15 on page 2-19, please.

8 A. Yes.

9 Q. Have you found that?

10 A. Uh-huh.

11 Q. Did you create this chart?

12 A. Yes.

13 Q. All right. And this is regarding spot
14 coal agreements; is that correct?

15 A. Correct.

16 Q. That the company entered into during the
17 audit period of 2009, correct?

18 A. Not necessarily. It would be coal that
19 was delivered in 2009, some of which would have been
20 entered into in earlier periods.

21 Q. Thank you for making that distinction.
22 Do we know when this chart, when the spot coal
23 agreements were made?

24 A. My guess is, though I can't say that I
25 checked each one, is that embedded in each of the

1 purchase order numbers is the purchase year.

2 Q. And where would that be embedded, to your
3 understanding?

4 A. That would be -- if you ignore the last
5 three numbers, it would be the next two.

6 Q. Prior to?

7 A. So 09, 08.

8 Q. So going by that standard, that's your
9 understanding, it looks as though almost all but
10 perhaps three of the purchases were made outside of
11 the audit period of 2009, correct?

12 A. Again, that's my speculation. I didn't
13 actually cross-check each purchase order, but that
14 would be my speculation.

15 Q. And then these were all for purchases --
16 for coal that was delivered in 2009 during the audit
17 period, correct?

18 A. That's my understanding. This is coal
19 that was actually purchased during the audit period.

20 Q. Thank you.

21 Would you look at page 2-21, please. In
22 the main paragraph, the paragraph about six lines
23 down you start a sentence, "In order to match
24 revenues and costs" -- do you see that? -- "EVA
25 believes that the PUCO should consider whether it

1 would be appropriate to credit the \$ [REDACTED] million cash
2 payment." Do you see that?

3 A. What page are you on?

4 Q. Page 2-21.

5 EXAMINER JONES: Mr. Idzkowski, are you
6 in the large paragraph in the middle of that page?

7 MR. IDZKOWSKI: Yes.

8 EXAMINER JONES: In about the middle of
9 the paragraph?

10 MR. IDZKOWSKI: Yes.

11 A. Thank you. I'm sorry. I see it.

12 Q. There you're discussing EVA believes PUCO
13 should consider it would be appropriate to credit a
14 \$ [REDACTED] million cash payment.

15 A. Yes.

16 Q. And also, I guess I'll break the ice, and
17 also the [REDACTED]. Do you see that?

18 A. Yes.

19 Q. Against OPCo's or OPCo's FAC
20 underrecovery.

21 A. Yes.

22 Q. Do you make that statement because the
23 renegotiations affected the cost of the tons that
24 were shipped during 2009?

25 A. 2009 and 2010 and 2011.

1 Q. And if you can, please look at page 2-22.
2 The second paragraph, last sentence starts with the
3 word "Equity."

4 A. Yes.

5 Q. You say, "Equity suggests that the PUCO
6 consider whether some of the realized value should be
7 credited against the under-recovery."

8 A. Yes.

9 Q. This realized value, does it include the
10 \$[REDACTED] million cash payment?

11 A. The \$[REDACTED] million cash payment and the
12 [REDACTED], value of the [REDACTED].

13 Q. Does it also include a \$[REDACTED] million note
14 from the coal supplier to AEP?

15 A. It did not.

16 Q. And on that page you state -- let me find
17 it. Sorry. If I may have a moment.

18 In that main paragraph, or the second
19 paragraph, you say "That being said, the contract was
20 an OPCo asset."

21 A. Yes.

22 Q. "And the value associated with it would
23 have flowed through to OPCo ratepayers through the
24 ESP period had there not been an early contract
25 termination." Is this an equity issue for you?

1 A. Yes.

2 Q. And you continue in your testimony, or in
3 your audit report rather, "Further, the difference
4 between the price of the replacement coal and the
5 contract price is one factor behind the large OPCo
6 FAC under-recovery." Again, this an equity issue for
7 you?

8 A. Yes.

9 Q. Is it your opinion that as a result of
10 the renegotiation of the coal contract between AEP
11 and its supplier, AEP's customers lost the benefit of
12 a low price and at the same time didn't receive an
13 equitable amount of the realized value of the new
14 contract?

15 MR. NOURSE: Objection.

16 EXAMINER JONES: Grounds?

17 MR. NOURSE: Your Honor, this is friendly
18 cross. OCC has their own witnesses.

19 EXAMINER JONES: I will allow her to
20 answer the question.

21 A. I certainly think it's a reason to look
22 at it in some detail.

23 Q. Did you read in preparation for this
24 hearing and your testimony today, did you read the
25 testimony of Mr. Hess?

1 A. I did.

2 Q. Mr. Hess testifies that the [REDACTED]
3 negotiation caused the FAC customers to bear the
4 total costs of the negotiation while AEPSC and OP are
5 allowed to retain the majority of the benefits. Do
6 you find that to be an accurate statement?

7 MR. NOURSE: Objection.

8 EXAMINER JONES: Grounds?

9 MR. NOURSE: Friendly cross, your Honor.
10 He's asking the witness to adopt the testimony of
11 Mr. Hess.

12 MR. IDZKOWSKI: If I may respond, your
13 Honor.

14 EXAMINER JONES: You may respond.

15 MR. IDZKOWSKI: I don't believe there's
16 going to be any friendly cross in this hearing. We
17 have an independent auditor and an independent
18 opinion witness from an independent party who's
19 testifying, and I'm asking them to comment on
20 testimony from another independent witness, and I'd
21 like to know if this witness thinks that their
22 statement is accurate.

23 MR. NOURSE: You're saying Mr. Hess is
24 independent now, too?

25 MR. IDZKOWSKI: They would be, I would

1 assume, from an auditor, yes.

2 EXAMINER JONES: I will allow the
3 question.

4 A. I'm wondering if you can provide me the
5 actual hard copy so I can just review it.

6 Q. Sure.

7 MR. IDZKOWSKI: If I may have a moment,
8 your Honor.

9 EXAMINER JONES: Yes, you may.

10 MR. IDZKOWSKI: May I approach, your
11 Honor?

12 EXAMINER JONES: Yes, you may.

13 MR. IDZKOWSKI: I'm going to provide, for
14 the record, a copy of Mr. Hess's confidential version
15 of his testimony to the witness. It begins at page 5
16 and goes to page 6.

17 Q. The part I read I believe starts with the
18 word "FAC customers."

19 A. I think my issue is I can't give you a
20 complete accounting of the settlement agreement, so
21 the statement of the total costs of the negotiation
22 is what I'm a little unwilling to necessarily agree
23 to. But clearly I think that the spirit is correct,
24 that most of the benefits did not flow through to the
25 FAC customers of the negotiation and certainly didn't

1 offset the fact that there would be additional fuel
2 purchase costs during the ESP period.

3 Q. In your audit did you find that [REDACTED]
4 would have ceased to supply coal to AEP at the
5 existing price if the contract had not been
6 renegotiated?

7 A. No. That being said, I didn't actually
8 look at that particular issue, but given my
9 understanding of the industry or [REDACTED]
10 circumstances at that time, I do not believe that
11 that would have occurred.

12 MR. NOURSE: Your Honor, could I have the
13 question reread?

14 EXAMINER JONES: Yes, you may.

15 (Record read.)

16 MR. IDZKOWSKI: May I proceed?

17 EXAMINER JONES: Yes, you may.

18 MR. IDZKOWSKI: Thank you.

19 Q. (Mr. Idzkowski) Ms. Medine, can you look
20 at your audit report at page 2-22, the last sentence
21 in the first paragraph, please.

22 A. Yes.

23 Q. Where it says, "AEPSC is planning to
24 start the permitting of the reserves which should
25 enhance the value of the reserve regardless of which

1 strategy is pursued."

2 A. Yes.

3 Q. Do you mean that the value of the reserve
4 would be enhanced upward from \$[REDACTED] million?

5 A. What I mean there is regardless of what
6 the value of the reserve is of the coal in the
7 ground, the permitted reserve would have more market
8 value than unpermitted reserves.

9 Q. Do you know by what amount it would be?

10 A. No. It would vary.

11 Q. How do you know that AEPSC is planning to
12 start the permitting of the reserves?

13 A. That was disclosed in the interviews with
14 Mr. Henry.

15 Q. Can you look at your footnote 8 on page
16 2-21, please. There you're discussing AEP's price
17 assumption.

18 A. Yes.

19 Q. Do you find that? And you say, "The
20 reserve has a negative \$[REDACTED] million value assuming an
21 [REDACTED] percent discount rate." What do you mean by that?

22 A. If you looked at the [REDACTED] report, and
23 they provided a table which showed the net present
24 value summaries under different cost and price
25 assumptions, and that was assuming AEP's price

1 forecast and an [REDACTED] percent discount rate.

2 Q. You continue in that footnote, "It is
3 EVA's opinion that AEPSC's price assumption is very
4 conservative." Why do you say that their price
5 assumption is very conservative?

6 A. Again, on page 2-8 of the April 2009 [REDACTED]
7 report, immediately above the summary of the net
8 present values they show -- [REDACTED] shows what AEP's
9 price assumption was versus what [REDACTED] price
10 assumptions were.

11 Q. What is the effect of a very conservative
12 price assumption?

13 A. It reduces the value of the reserve.

14 Q. Is that effect fair and equitable for
15 AEP's customers?

16 A. It depends on how you're valuing it. If
17 you're using the [REDACTED] report to value the reserve,
18 then I think you would probably want to use a more --
19 an accurate forecast of prices to determine the
20 value.

21 Q. In your discussion on page 2-21 above
22 that footnote, last sentence of the last main
23 paragraph where it says "Using [REDACTED] price
24 forecast," do you see that?

25 A. Yes.

1 Q. You say, "the value of the reserve on a
2 net present value basis using an [REDACTED] percent discount
3 rate would be \$ [REDACTED] million." Do you see that?

4 A. Yes.

5 Q. Is that \$ [REDACTED] value an accurate
6 valuation of the [REDACTED]?

7 A. Again, I didn't do an accurate
8 evaluation. I assumed that -- I didn't do an
9 evaluation. I was basically reporting on what
10 valuation that [REDACTED] did at AEP's directive, and it
11 provided -- obviously, [REDACTED] felt strongly enough
12 about the fact that its price forecast was more
13 reasonable than AEP's because it actually had a
14 separate line showing what the results are using
15 AEP's price forecast.

16 So [REDACTED] had its own forecast, and I
17 assume it felt strongly about that, so I simply was
18 reporting. I did not do my own analysis.

19 Q. Is it possible that the value is in
20 excess of [REDACTED] million?

21 A. According to the [REDACTED] report, it found a
22 range of [REDACTED] to [REDACTED] million dollars based upon
23 different discount rates using the [REDACTED] coal price
24 forecast.

25 Q. So a \$ [REDACTED] million value is conservative

1 within the range of the [REDACTED] report.

2 A. It was the lowest number that [REDACTED]
3 produced using its own price forecast.

4 Q. On that page, 2-21, your report found
5 that AEPSC had not yet decided what to do with the
6 [REDACTED]. In your opinion, is it fair and
7 equitable to AEP's customers for AEPSC to hold the
8 [REDACTED] indefinitely?

9 A. I think if AEP wanted to transfer the
10 value of the [REDACTED] to the customers, then it
11 certainly would have the right to do that. So I'm
12 not making a judgment as to what it does with the
13 reserve. I'm simply making a judgment that the value
14 associated with the reserve should be considered to
15 be applied to the underrecovery.

16 Q. If you can look at page 1-5 of your audit
17 report, please.

18 A. Yes.

19 Q. Okay. And in your footnote you discuss
20 the ESP limiting the annual FAC rate increases. Do
21 you see that?

22 A. Yes.

23 Q. And it limited it to fixed percentage
24 increases that are reasonable in the context of
25 the portfolio that AEPSC employs. You say,

1 "While it's hard to tie the under-recovery to
2 specific events, the extraordinary increases as a
3 result of the renegotiation with one supplier and a
4 contract buyout helped explain the large
5 under-recovery."

6 And then also in the top of paragraph 2,
7 you state that the two events alone helped to explain
8 more than half of OPCo's underrecovery.

9 Based on these facts would you consider
10 it fair the benefits of AEP's contract renegotiations
11 with [REDACTED] to flow through to customers in the form
12 of a credit to the FAC deferral?

13 A. I think what I said is that I think it's
14 something that the Commission should consider because
15 of the equity issue.

16 Q. Have you read Dr. Duann's testimony in
17 this case?

18 A. Yes, I have.

19 Q. Among other matters, Dr. Duann testifies
20 regarding this value of the [REDACTED] as
21 determined in the [REDACTED] report at \$ [REDACTED] million
22 conservatively and he advocates that the \$ [REDACTED] million
23 value should immediately flow through to customers as
24 a credit to the FAC deferral. Do you agree that this
25 would be a fair outcome for customers?

1 A. I think, again, I will defer that
2 decision-making to others. I think that's certainly
3 one option.

4 MR. IDZKOWSKI: Thank you, Ms. Medine.

5 I have no other questions at this time,
6 your Honor.

7 EXAMINER JONES: Thank you.

8 Mr. Clark?

9 MR. CLARK: Your Honor, may I have just a
10 couple minutes to kind of gather my notes before we
11 go on?

12 EXAMINER JONES: How long do you think
13 you need?

14 MR. CLARK: Literally probably two
15 minutes.

16 EXAMINER JONES: Okay. Go ahead and take
17 the two minutes.

18 (Off the record.)

19 MR. CLARK: Thank you, your Honor, I
20 appreciate it.

21 EXAMINER JONES: You may proceed,
22 Mr. Clark.

23 - - -

24 CROSS-EXAMINATION

25 By Mr. Clark:

1 Q. Good morning. Is it Medine?

2 A. Yes.

3 Q. Ms. Medine, my name is Joe Clark, I'm
4 counsel for Industrial Energy Users-Ohio, and I have
5 a few questions for you as well on cross.

6 I'd like to talk a little more about the
7 value of the [REDACTED] and I have some questions
8 for you. Earlier you had mentioned that you're now
9 aware that there are two [REDACTED] reports, and have you
10 reviewed both reports?

11 A. I reviewed the second report this
12 morning

13 Q. To clarify, when you say "the second
14 report," can you give me the date of the report
15 that -- was that the 2007 report that you actually
16 reviewed?

17 A. Yeah, it was October of 2007.

18 Q. There when you say "second report," it's
19 not necessarily chronologically as much as that's the
20 second report that you reviewed.

21 A. Correct.

22 Q. Okay. And is it your understanding that
23 AEPSC booked the value of the [REDACTED] at
24 [REDACTED] million?

25 A. That's my understanding.

1 Q. Did this valuation come from the
2 October 10, 2007, report?

3 A. Not exactly. I think that the -- the
4 October 2007 report was performed to assist AEP in
5 its negotiations with [REDACTED]. Basically it appears
6 that it was used so that AEP would be knowledgeable
7 in negotiations with [REDACTED] as they were figuring
8 out the value of the settlement agreement, how to
9 allocate dollars.

10 So the AEP report actually -- excuse me.
11 The [REDACTED] report in October 2007 does not
12 specifically. That -- is one of the numbers that's
13 in there, but there are a range of numbers. In fact,
14 on page 11 it states in [REDACTED] opinion the maximum
15 value AEP should place on the property is
16 \$[REDACTED] million. So it did not promote the [REDACTED] or any
17 specific number other than the \$[REDACTED] million.

18 Q. But that particular number is in this
19 report, correct?

20 A. It is one of, you know, a dozen and a
21 half numbers.

22 Q. I'm sorry. To make sure, did you say it
23 was one of how many numbers?

24 A. Let me count. Looks like [REDACTED]. Looks like
25 my eyeball was right.

1 Q. So there's a range of valuations in this
2 report, correct?

3 A. There are a range of NPV calculations,
4 but again, it was more of -- in my mind it was more
5 of a strategy document that was provided to AEP to
6 assist them in their negotiations with [REDACTED].

7 Q. And this October 2007 report, this report
8 was prepared on a desktop basis, correct?

9 A. Yes.

10 Q. Additionally, the report specifically
11 states that it was not intended to be presented or
12 prepared in accordance with the Uniform Standards of
13 Professional Appraisal Practice Standards, correct?

14 A. Correct.

15 Q. Now, this, I'll say the -- this
16 additional report, the April 30th, 2009, [REDACTED] report,
17 you reviewed that report too, correct?

18 A. Yes.

19 Q. And if I could direct your attention to
20 that report, page 2-8 of that report if I could.

21 A. Yes.

22 Q. In this report the lowest value from the
23 findings on this page is [REDACTED] million, correct?

24 A. The lowest value using [REDACTED] coal price
25 forecast.

1 Q. Yes. And they provide three other ranges
2 of values, correct, in this report, using their
3 forecasted coal price?

4 A. They provide a range of values using
5 AEP's price forecast. At least that's my
6 understanding.

7 Q. But depending upon the assumptions used,
8 there is a range in this report between [REDACTED] and
9 [REDACTED] million dollars, correct?

10 A. Again, using the [REDACTED] fuel price
11 forecast, coal price.

12 Q. I would like to now turn to your audit
13 report. Specifically, as Mr. Idzkowski referred you
14 to as well, Exhibit 2-15 on page 2-19 of the audit
15 report.

16 A. Yes.

17 Q. Looking at Exhibit 2-15, there's a
18 purchase order associated with each contract,
19 correct?

20 A. Yes.

21 Q. And is it your understanding that certain
22 digits in the purchase order are significant, they
23 identify the year the contract was entered into?

24 A. That's my presumption. As I said, that's
25 my general understanding of how they number purchase

1 orders, but I did not confirm each and every one to
2 confirm that assumption.

3 Q. But it's your general understanding it is
4 their practice to number in the year in which it was
5 entered into, correct?

6 A. Correct.

7 Q. And if you look at this particular
8 exhibit, isn't it true that all but three of these
9 contracts, using your presumption based upon AEP's
10 practices, were entered into before 2009?

11 A. Just checking.

12 It appears to be the case. [REDACTED],

13 [REDACTED], the last [REDACTED], and the

14 [REDACTED].
15 Q. So other than those three agreements, all
16 of the other ones were entered into before 2009,
17 correct?

18 A. It appears to be, yes.

19 Q. And these particular agreements, though,
20 appear in your audit report because the coal was
21 delivered during the 2009 audit period, correct?

22 A. Correct.

23 Q. In the scope of your review you look at
24 agreements that are outside of the audit period,
25 correct, that are entered into outside of the audit

1 period?

2 A. Typically you wouldn't do a prudency
3 evaluation of an agreement entered into outside the
4 audit period, but you would look at any agreement
5 that had deliveries during the audit period.

6 Q. Ms. Medine, are you aware that -- did you
7 review AEP Witness Rusk's testimony?

8 A. I did.

9 Q. In Mr. Rusk's testimony does he cite two
10 of your findings in your ESP testimony?

11 A. I believe he did.

12 Q. I'm sorry. To clarify, it's your
13 testimony in the ESP proceeding for AEP in docket
14 09-817, et al., correct?

15 A.. Yes. But if you're going to ask me
16 questions, I'd like to see a copy.

17 Q. Sure.

18 A. Sorry.

19 MR. CLARK: May I approach the witness?

20 EXAMINER JONES: You may approach, yes.

21 Q. Ms. Medine, do you have a copy of the
22 testimony from the ESP case with you now?

23 A. Yes.

24 Q. On page 37 of your testimony did you also
25 recommend that the Commission closely scrutinize any

1 additional costs paid by customers resulting from
2 AEP's actions from the price relief from coal
3 suppliers?

4 A. Yes.

5 Q. That's all I have for that document.

6 Ms. Medine, on page 2-20 of your audit
7 report, in the first contract under the supplier
8 contract buyout provision --

9 A. Yes.

10 Q. -- you talk about an affiliate coal
11 supply agreement in a particular coal mine sold to
12 this company, correct?

13 A. Yes.

14 Q. I'm trying to be sensitive to the
15 confidential nature of the record so I don't mean to
16 be vague but I'll try to reduce redactions.

17 I have some questions related to this
18 paragraph and the history of this particular mine, if
19 I could ask you.

20 A. Sure.

21 Q. Are you aware that at one time Ohio Power
22 owned additional affiliate mines?

23 A. Yes.

24 Q. And do you recall the names of those
25 mines or where the coal was utilized?

1 A. Yes.

2 Q. Would you tell for the record?

3 A. Martinka Mine provided the Mitchell
4 station; the Meigs Mine provided Gavin; Windsor, I
5 believe, went to Cardinal; Muskingum went to
6 Muskingum River.

7 Q. And does your familiarity arise from
8 doing audit reports on these particular mines while
9 employed by EVA?

10 A. Yes.

11 Q. And were you personally involved in any
12 of those audits?

13 A. Yes.

14 Q. And, in fact, you appeared before the
15 Commission as a witness in support of those audits,
16 correct?

17 A. When we went to hearing.

18 Q. And would you agree with me that the Ohio
19 Power Company affiliate mine issue has a broader
20 history than just the [REDACTED] contract?

21 A. Absolutely.

22 Q. Can you tell me, what is your
23 recollection of the fundamental dispute associated
24 with Ohio Power's affiliate -- ownership of affiliate
25 mines?

1 A. That the coal priced by the affiliate
2 mines was higher cost than market.

3 Q. And do you recall why that particular
4 coal was higher than market pricing?

5 A. There could be -- there were several
6 theories. One theory might have been that the mines
7 were not operated as efficiently as possible.

8 Q. And is it true that the coal that Ohio
9 Power Company received from affiliate mines was
10 priced at cost rather than market? It was provided
11 to customers at cost rather than market, correct?

12 A. As you described, it has a long history,
13 and there were a -- in theory it was price based on
14 costs, but there were a number of caps along the way
15 to try to minimize the cost. So there may have been
16 a short period of time where it was tied to a market
17 cap rather than costs, per se, but I think even in
18 that scenario there was some future recovery allowed
19 based upon underrecovery through that mechanism. But
20 again, there was multiple scenarios and multiple
21 pricing and it was a long process.

22 Q. And at the time that Ohio Power sold this
23 particular mine to this company, do you recall if
24 there was any dispute whether the prices under the
25 [REDACTED] contract were reasonable?

1 A Yes. There was a large dispute.

2 Q And was that dispute -- in that dispute
3 there were certain parties that believed that the
4 prices were not reasonable, correct?

5 MR. NOURSE: Your Honor, I object. This
6 line of questioning has gone pretty far into matters
7 that aren't pertinent or relevant to this case. He's
8 already explored the general parameters of what went
9 on in the early-'90s. I don't see how it bears on
10 the current case.

11 EXAMINER JONES: Response, Mr. Clark?

12 MR. CLARK: Your Honor, I think the
13 matters of this particular contract are highly
14 relevant to what's happening now in the findings of
15 the audit report, and there's a paragraph in here, a
16 short paragraph that has more of a cursory view of
17 that, and we believe that the information I'm
18 eliciting here is relevant and also provides context
19 in history to this particular contract and what
20 customers have paid.

21 Additionally, Ms. Medine has personal
22 knowledge of this and she had a little -- if you will
23 permit further questions -- was the auditor and can
24 testify firsthand knowledge to all of this.

25 MR. NOURSE: Your Honor, if I could

1 respond. Again, things were already stated in the
2 audit report. He's explored them. I think going
3 further with this is clearly an attempt to elicit
4 friendly cross-examination responses that IEU could
5 have presented through their own witness had they
6 wanted to do so.

7 MR. CLARK: Your Honor, may I respond?

8 EXAMINER JONES: Sure.

9 MR. CLARK: We do not believe it's
10 friendly cross because ultimately she is an
11 independent auditor and I'm just eliciting
12 information about the historical nature of the
13 contract that is relevant today.

14 Further, IEU is making a recommendation
15 for the Commission, whereas the auditor is leaving
16 the ultimate issue up to -- leaves the ultimate issue
17 up to the Commission's discretion. So ultimately it
18 is not friendly cross because we have a
19 recommendation we would like to support and the
20 auditor does not.

21 EXAMINER JONES: Mr. Clark, I am going to
22 allow you just a little bit of leeway here, but let's
23 try to wrap up this line of questioning as soon as
24 possible.

25 MR. CLARK: Thank you, your Honor.

1 Your Honor, I believe I might have a
2 question pending. Could I have the question read
3 back?

4 EXAMINER JONES: Yes, you may.

5 (Record read.)

6 A. So in that situation there were two
7 transactions. There was the sale of the mine and
8 there was the coal contract. And the concern was
9 that the coal price wasn't set to allow basically the
10 coal company to recover the cost of the coal mine in
11 the coal sales contract.

12 So the issue that arose was whether the
13 coal price under the Coal Sales Agreement was a
14 market price. And so we provided testimony that we
15 felt the market price under the coal contract was
16 within the range of market prices and that -- and
17 there was a following order from the Commission which
18 I believe continued for a number of years where each
19 year the coal price under the contract had to be
20 compared to market.

21 Q. In the Commission's review of that
22 review, is it true the Commission did actually
23 find -- strike that.

24 In the Commission's review, didn't the
25 Commission find via its own order that the market

1 price was lower than the contract price? Correct?

2 A. I'd have to actually see the order. My
3 recollection was that they accepted the contract
4 price was within the range but they were concerned
5 about how that would move forward, and that's why
6 they ordered an annual review of that relationship.

7 MR. CLARK: May I approach the witness?

8 EXAMINER JONES: Yes, you may.

9 MR. CLARK: Your Honor, no need to
10 approach. Thank you, though.

11 Q. Ms. Medine, were you personally involved
12 in the audits of the EFC mechanism for Ohio Power in
13 the early-'90s for EVA?

14 A. Yes.

15 Q. And do you recall, isn't it true that EVA
16 did find in the early-'90s, particularly case 93-101,
17 that the price of the coal under the contract was
18 priced higher than market?

19 A. Again, if you could provide that to me I
20 would appreciate it. Do you have that document?

21 MR. NOURSE: Your Honor, could I have the
22 question again?

23 EXAMINER JONES: Yes, you may.

24 (Record read.)

25 MR. NOURSE: Again, I object, your Honor.

1 Going pretty far down the road of exploring the
2 issues in that case 15 years ago.

3 MR. CLARK: Your Honor, I'll withdraw the
4 question.

5 EXAMINER JONES: He's withdrawing the
6 question. Thank you.

7 MR. NOURSE: Thank you.

8 MR. CLARK: Your Honor, I believe I'm
9 finished.

10 EXAMINER JONES: You're finished?

11 MR. CLARK: Yes, thank you.

12 EXAMINER JONES: Thank you.

13 Mr. Nourse, is it appropriate to take a
14 short break at this time?

15 MR. NOURSE: Probably so, your Honor.

16 EXAMINER JONES: I don't know what the
17 extent of your cross is, but I assume it's going to
18 be a half hour or more.

19 MR. NOURSE: Yes, for sure.

20 EXAMINER JONES: Okay. Then let's take a
21 15-minute break at this time.

22 (Recess taken.)

23 EXAMINER JONES: Let's go back on the
24 record.

25 Mr. Nourse, you may proceed with

1 cross-examination.

2 MR. NOURSE: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Nourse:

6 Q. Good morning, Ms. Medine.

7 A. Good morning.

8 Q. I'll ask you a couple of questions about
9 your background. Most of us are already familiar
10 with your background, your reputation precedes you.
11 But let me ask you, relative to accounting, that's
12 one thing you're not, correct? You're not an
13 accounting expert.

14 A. Correct.

15 Q. Okay. And you're not holding yourself
16 out as that or addressing accounting issues in this
17 case.

18 A. Larkin & Associates is providing the
19 financial audit.

20 Q. Now, let me just ask you about the basic
21 parameters of this audit that you performed and
22 oversaw in this case as reflected in Exhibit 1.
23 First of all, the FAC that the Commission approved
24 for AEP-Ohio, that was taken up in the ESP cases,
25 correct?

1 A. Yes.

2 Q. Okay. And that was the case where the
3 Commission authorized AEP to commence utilizing an
4 FAC as of January 1st, 2009.

5 A. That's my understanding.

6 Q. Okay. And prior to that period AEP, for
7 several years prior to that, had not had a fuel
8 clause as part of retail rates in Ohio, correct?

9 A. That's my understanding.

10 Q. So then the basic functions, let me start
11 there, the scope and the functions of this audit that
12 you performed, is it fair to say there are two
13 primary functions, one is the accounting verification
14 financial audit and two is the prudence review of
15 procurement decisions and FAC costs during the audit
16 period?

17 A. I think the prudence review is one
18 component. I would make it a little bit broader
19 saying it's generally a management/performance audit
20 which includes a prudence component.

21 Q. Okay. Is that the main component of the
22 M/P audit?

23 A. I guess I'd like to review the 4901, if
24 you have it with you.

25 Q. 4901, I'm sorry?

1 A. Appendix D and E to Chapter 4901-1-11 of
2 the Administrative Code, but basically it was
3 intended to be an EFC type audit, to my
4 understanding.

5 Q. Yeah. And I'm just asking your
6 understanding in your own words and your own mind.

7 A. I'd say prudence is one component. I
8 don't know that I'd say it was the major component.
9 I wouldn't divide it, but it's certainly one
10 component.

11 Q. What are the other components?

12 A. I think there's an intent to review the
13 overall procurement activities to determine whether
14 they're designed to produce reasonable costs over a
15 longer period of time, would be the sort of general
16 rubric of which prudence is one component.

17 Q. So the fuel procurement policies and
18 practices of the companies.

19 A. Correct.

20 Q. Okay.

21 A. And then there's some issues related to
22 benchmarking performance, environmental compliance.
23 Now the environmental -- the RECs as well. So it's
24 broader than simply just the prudence of fuel
25 procurement.

1 Q. Okay. Now, would you agree the initial
2 audit covers the January through December 2009
3 period?

4 A. That was -- yes.

5 Q. Relative to the prudence review that was
6 done as part of this audit report, did EVA reach any
7 findings of imprudence for AEP-Ohio?

8 A. Correct. No.

9 Q. Now, is an audit review relative to the
10 FAC or the fuel cost generally constrained to
11 reviewing costs that occurred during the audit
12 period?

13 A. I would say yes.

14 Q. And why is that? I mean, because you
15 have rolling periods as you go along with an FAC.

16 A. Well, historically, obviously as you well
17 know, prior to the suspension of the EFC you had
18 continuous annual evaluations, so there was an
19 attempt to have discrete reviews so that you didn't
20 two years out do a hindsight review of a prior
21 decision that had already been reviewed.

22 Q. Yeah, I'm -- go ahead.

23 A. So this review was slightly different in
24 that there hadn't been continuous reviews, but
25 nevertheless the focus was on costs incurred or not

1 incurred during the audit period which was 2009.

2 Q. Okay. But again, as a general matter
3 with FAC audits and audit periods, would you agree
4 that the reason that they're limited to the audit
5 period is because you've got, as you go along, the
6 next year is going to be the next audit and the prior
7 year was the prior audit?

8 A. Again, except in this case where there
9 wasn't continuous audits.

10 Q. I'm asking you in general. Let's --

11 A. In general, if they were continuous
12 audits, you would have clearly discrete periods.

13 Q. And that's normally how it works.

14 A. Correct.

15 Q. Okay. Now, have you been involved in
16 other cases, other jurisdictions where you got an FAC
17 that's either started up or stopped? Have you been
18 involved in that kind of situation before?

19 A. You mean a transition?

20 Q. Yeah.

21 A. Yes.

22 Q. Where?

23 A. In Nova Scotia.

24 Q. Okay. And what was the situation there,
25 that they started up an FAC?

1 A. Correct.

2 Q. And was there a decision by the regulator
3 to do that that authorized the FAC and set forth the
4 parameters?

5 A. It was a tortured decision, and I think
6 their understanding of the practice was limited and
7 so they -- it wasn't clear they understood the
8 hindsight rule philosophy.

9 Q. Okay. So with respect to a, let's say,
10 experienced regulator that had dealt with an FAC and
11 had some experience with that, have you been involved
12 in a case like that?

13 A. Well, I believe that West Virginia
14 restarted their fuel clause and so we were
15 involved -- worked with the consumer advocate in
16 three cases I believe related to the restart of their
17 ENEC.

18 Q. And that was done by statute?

19 A. I'm not sure.

20 Q. Let me ask you a couple questions. You
21 touched on this in your audit report, about the
22 extraordinary events in the coal industry in 2007 and
23 2008.

24 A. Yes.

25 Q. Would you agree for that time period the

1 changes in the coal industry in the United States
2 have been profound?

3 A. Yes.

4 Q. Would you understand that during that
5 period there were all-time high prices for coal in
6 the United States?

7 A. Yes.

8 Q. So you'd agree that it's accurate to
9 characterize that period as extraordinary or highly
10 unique?

11 A. I believe I did that.

12 Q. You believe you did that?

13 A. In the report, that's similar to how I
14 described it.

15 Q. Yeah, I'm just asking you in general your
16 opinion.

17 A. Yes.

18 Q. Now, I believe you mentioned, this has
19 already been mentioned on the record, but you were a
20 witness in the AEP-Ohio ESP cases.

21 A. Yes.

22 Q. That authorized the FAC mechanism be
23 started up again, correct?

24 A. Yes.

25 Q. Okay.

1 MR. NOURSE: May I approach, your Honor?

2 EXAMINER JONES: Yes, you may.

3 Q. Ms. Medine, I'm going to hand you a copy,
4 you can keep this during our discussion here, it's
5 the confidential version of your testimony in the ESP
6 cases.

7 A. Okay.

8 Q. And I've got the public version here with
9 me so I can ask you questions without getting into
10 confidential data.

11 Can you turn to page 24. First of all,
12 let me back up. This testimony was filed by you,
13 Emily S. Medine; is that correct?

14 A. Yes.

15 Q. It was not done on behalf of EVA.

16 A. No. It would have been through EVA.

17 Q. Okay. I'm just looking at the front page
18 here.

19 A. Typically, testimony is, you know,
20 personally filed, not filed on behalf of the company.

21 Q. So it was done on behalf of -- through
22 EVA.

23 A. Correct.

24 Q. Okay. That's the same firm that's doing
25 the audit here.

1 A. Correct.

2 Q. Let me ask you to turn to page 24. Do
3 you see question and answer 47?

4 A. Yes.

5 Q. You're stating, correct me if I'm
6 misstating it, that you don't think coal prices were
7 returned to presurge levels, meaning, I believe,
8 pre-2007 levels; is that accurate?

9 A. I think I meant pre -- first half of 2007
10 levels.

11 Q. Yes. Okay. So the good old days are
12 gone, those low prices; is that what you're saying?

13 A. I said that I didn't think we would
14 return to those low levels, yes.

15 Q. And do you believe it's reasonable to
16 expect suppliers would continue to sell at those
17 prices on a sustained basis, the pre-2007 prices?

18 A. Under a contract?

19 Q. Well, you can distinguish.

20 A. If the question was would I expect
21 somebody who had a contract for a low price to
22 perform, the answer is yes, I would expect them to.

23 Q. And if they didn't have a contract,
24 that's really what you're saying here, you don't --

25 A. If they don't have a contract, they would

1 sell the coal at the highest price they could get,
2 and that would be based upon what the market price
3 was.

4 Q. And it wouldn't be, in your opinion,
5 pre-2007 levels.

6 A. Pre-mid-2007 levels.

7 Q. Okay. Now, earlier I believe it was
8 Mr. Clark, he had a question about this testimony on
9 a statement you made on page 37. In answer 74 that
10 you --

11 A. Yes.

12 Q. In the first part of the answer you say
13 you support AEPSC's efforts in this area and concur
14 that had these suppliers not received some price
15 relief, filed for bankruptcy, the costs to CSP and OP
16 customers would have been much greater. Do you see
17 that?

18 A. Yes.

19 Q. And then you end the paragraph or the
20 answer by saying you recommend the Commission closely
21 scrutinize this issue in the context of the
22 companies' annual filings.

23 A. Yes.

24 Q. And that's referring to the FAC
25 proceedings.

1 A. Yes.

2 Q. Okay. Such as this.

3 A. Yes.

4 Q. But were you talking about future
5 contracts in that answer?

6 A. No.

7 Q. So you're recommending what ends up
8 being, to yourself, that you closely scrutinize
9 these --

10 A. How clever.

11 Q. -- contracts. Yeah, it's a good
12 business.

13 Is that accurate?

14 A. At the time I didn't know it was to
15 myself.

16 Q. Okay. And so you did scrutinize to your
17 own satisfaction the contracts you wanted to review,
18 correct?

19 A. My recollection is that this primarily
20 was focused on the [REDACTED] issue. I don't recall at
21 that time necessarily being aware of the settlement
22 agreement, and I was somewhat aware of what was going
23 on with [REDACTED] and, obviously, those costs were
24 fairly significant and that was the concern.

25 Q. But regardless, you didn't -- your

1 recommendation there wasn't specific to [REDACTED] or
2 limited to [REDACTED], was it?

3 A. No.

4 Q. Okay.

5 A. I would be more specific if I knew it was
6 to myself.

7 Q. Okay. Now, relative to the ESP cases, do
8 you recall your recommendations in your testimony in
9 that case?

10 A. If you can direct me to it.

11 Q. I'm just asking you a general question.

12 A. Not specifically.

13 Q. Okay. Did you propose to offset FAC
14 costs with off-system sales margins?

15 A. Could you direct me to where you're
16 focused?

17 Q. I'm just asking. You don't recall --

18 A. I would like to read through it. It's
19 been two years.

20 Q. Feel free to take your time.

21 A. I don't see anything, but...

22 Q. Do you recall that OCC's position --
23 whether OCC's position in the ESP cases advocated an
24 off-system sales offset?

25 A. I don't specifically recall.

1 Q. Do you recall whether OCC's position
2 regarding the FAC in the ESP cases opposed the
3 weighted average carrying costs for deferred fuel
4 costs?

5 A. I recall something more specifically
6 about that.

7 Q. Okay. What was your position on that
8 issue?

9 A. I was still optimistic that there
10 actually might not be an underrecovery so I was more
11 concerned that the company -- with the benefit of the
12 underrecovery or the overrecovery through the
13 interest calculated on that. That's the --

14 Q. Okay. Do you recall whether OCC's
15 position regarding the FAC in the ESP cases was to
16 use the 2008 baseline for fuel costs in implementing
17 the FAC going forward?

18 A. I believe there was some issue about what
19 the baseline was but I don't believe it was covered
20 in my testimony.

21 Q. Okay. You were OCC's FAC witness in the
22 ESP case, right?

23 A. I was not the only OCC witness. There
24 was another OCC witness that dealt more specifically
25 with the baseline issues.

1 Q. And did you confer? I mean, were you
2 involved with OCC's positions in the ESP case
3 regarding the FAC?

4 A. Baseline?

5 Q. Beyond your testimony at all.

6 A. There may have been some discussions, but
7 there was another witness, I think her name was Lee
8 Smith, who actually provided testimony on that. We
9 work for different companies, so we may have had some
10 discussions, but it wasn't the scope of my testimony.

11 Q. And that's not something you got involved
12 with any discussions with OCC about?

13 A. No. I was probably tangentially involved
14 in some discussions but it was not part of my scope.
15 And I think my testimony reflects what was in my
16 scope.

17 Q. Okay. But you were part of the -- you
18 were part of the FAC team for the cases, correct?

19 A. I was --

20 MR. IDZKOWSKI: I'm going to object. Can
21 counsel -- counsel's asking questions at length about
22 another case that's related to this case tangentially
23 but, you know, I don't know how we're going to go in
24 this direction and discuss this witness' discussions,
25 testimony for another -- in another case for another

1 party. She's here to be, I believe, questioned about
2 this audit report.

3 MR. NOURSE: Your Honor, this case is
4 closely related to the ESP cases, and Ms. Medine is
5 the auditor in this case, and I'm exploring how her
6 position in the ESP cases relates -- as a consumer
7 advocate relates to the position as the independent
8 auditor in this case.

9 MR. IDZKOWSKI: I'm going to object. She
10 was hired as, I believe -- I wasn't the one that
11 hired her, but I believe she testified in that case.
12 She's been characterized here as a consumer advocate.
13 She was hired as a consultant, I believe, and
14 testified in that ESP case as a consultant.

15 MR. NOURSE: Your Honor, I don't think
16 it's appropriate for Mr. Idzkowski to testify here.
17 He hasn't been sworn in, but that's the purpose of my
18 questions.

19 EXAMINER JONES: Mr. Nourse, I'm going to
20 give you just little more leeway, but please wrap
21 this up and let's move on, please.

22 Q. (By Mr. Nourse) Ms. Medine, we can try to
23 short-circuit this. Would you agree that the OCC's
24 positions in the ESP cases regarding the FAC which
25 was proposed, all three of those that I just

1 mentioned, would have the effect, if adopted, of
2 reducing the projected underrecovery at the end of
3 the ESP?

4 A. I'll perhaps answer it differently. I
5 did not -- all I did was provide my input to OCC. I
6 was not involved or responsible for their positions
7 on issues that were not part of my scope. So the
8 answer is I didn't evaluate that, and I'm not even
9 sure exactly what OCC's positions were on those
10 particular issues.

11 Q. Okay. Do you understand what the FAC
12 baseline was that was established in the ESP cases?

13 A. I did. I don't recall it specifically at
14 this point.

15 Q. You say you did understand it at the
16 time?

17 A. I believe there was a debate as to
18 whether -- how it was going to be set and I believe
19 there was an agreement reached as to how it would be
20 set, but if you asked me today on the stand exactly
21 what that agreement was, I could not answer it.

22 Q. Okay. And that was not an -- an
23 understanding of that was not necessary to do your
24 audit or raise the issues you raised?

25 A. I do not believe so.

1 Q. Okay. Let me ask you to turn to page
2 2-11 of the audit report. Item E there is what
3 you're recommending for the manual --

4 A. Yes.

5 Q. -- relating to physical and financial
6 hedges.

7 A. Correct.

8 Q. Are you asking AEP to propose a policy,
9 propose something that would be approved by the
10 Commission, or, to do something unilaterally
11 regarding physical and financial hedges?

12 A. Well, AEP, physical hedges are simply
13 coal contracts, so a financial hedge.

14 Q. Yeah.

15 A. I assume they have a policy already. A
16 financial hedge is an area that continues to be
17 somewhat uncertain as to what utilities should use,
18 and so I had discussions with Mr. Henry about that,
19 and I think everybody is concerned that if there is a
20 policy to use financial hedges, that it be a policy
21 that would allow cost recovery.

22 So I think that there's a little bit of
23 back and forth as to who goes first in terms of
24 proposing it or not proposing it, but I believe the
25 company would like regulatory approval of the costs

1 associated with financial hedges before using them in
2 any significant way.

3 Q. What's your understanding of the purpose
4 of financial hedges in this context? Is it to lower
5 prices or to simply stabilize them?

6 A. I think the primary purpose is to reduce
7 the volatility. There may be a secondary purpose
8 using them to minimize fuel costs by using what I
9 would call well-timed hedging. But again, there's
10 always risk.

11 Q. There's risk of a loss?

12 A. Yes.

13 Q. And that's part of the cost recovery that
14 you're talking about.

15 A. Yes.

16 Q. So if financial hedging were undertaken
17 in a prudent manner and a loss was incurred, those
18 losses or that loss would be passed through the FAC?

19 A. I think that is what the company would
20 like to do before it embarks upon using financial
21 hedges for coal procurement.

22 Q. We'd like to incur a loss?

23 A. No. You would like to be able to have a
24 policy that would allow cost recovery if, in fact,
25 you did incur a loss.

1 Q. And are you recommending that such a
2 policy be undertaken with the potential for losses to
3 be incurred without any guidance on that?

4 A. No. Could you rephrase your question?

5 Q. Yeah. I'm just asking you whether you
6 said the company would like to have guidance on that,
7 and the company's concerned about losses, and the
8 question is whether your recommendation is to proceed
9 doing financial hedges that could, even if
10 implemented in a prudent manner, result in losses.
11 Are you suggesting that be done without any
12 Commission guidance as to the cost recovery?

13 A. No. I'm recommending that the company
14 develop a policy that could be submitted for
15 approval.

16 Q. Okay. Turning to page 2-23 in the audit
17 report, you state after the bullet points in that
18 paragraph, that if the supplier were "forced into
19 bankruptcy, below market contracts would most surely
20 be rejected which would require AEP to pay a 'market
21 price' for the same coal."

22 A. Yes.

23 Q. So in your experience is that the outcome
24 of a -- when a supplier files bankruptcy, it has a
25 below-market contract, they would get out of that

1 contract?

2 A. Yes. That's my experience.

3 Q. And the fact is the coal contracts are
4 executory contracts; would you agree?

5 A. That's been my experience.

6 Q. And what does that mean, executory
7 contract? Can you explain?

8 A. From a practitioner's point of view as
9 opposed to a legal point of view?

10 Q. Yes.

11 A. That means if a company files for
12 bankruptcy, they have the right to reject the
13 contract and not perform.

14 Q. Okay. But in general the coal contracts
15 being executory in nature and when market prices
16 dramatically change relative to the cost of producing
17 coal, you would agree that becomes a challenge to
18 enforce contracts and get suppliers to actually
19 deliver coal?

20 A. I think it depends who your counterpart
21 is and what their portfolio of contracts are.

22 Q. Let me ask you to turn to page 34 of your
23 ESP testimony. Do you still have it up there?

24 A. I do. I already have it on that page.

25 Q. Good. I think that's where we left off.

1 And do you see the statement that says,
2 referring at that time to the prior year, being
3 '7 and '8, "pricing was extremely volatile making it
4 difficult to get coal producers to hold their price
5 even once it was offered. As difficult as buying
6 coal has been, what's been even more difficult is
7 contract performance" --

8 A. Yes.

9 Q. -- correct? Now, you didn't make that
10 statement relative to the counterparty risk or
11 portfolio; that was a general statement, correct?

12 A. Correct.

13 Q. Okay. And you still agree with that
14 statement?

15 A. Yes, as a general statement I agree.

16 Q. Okay. Now, we talked a couple times
17 today about doing a prudence review for coal supply
18 agreements. Can you describe what you mean when you
19 say "a prudence review"? What's involved, what steps
20 or what review, what issues are involved?

21 A. On a specific agreement what you would be
22 looking for is that the terms of the contract were
23 obtained through a competitive procurement, at some
24 level, an arm's length transaction. And that the
25 economics of the procurement were superior to your

1 alternatives and that the terms of the procurement
2 were consistent with your procurement strategy.

3 Q. What do you do to make those
4 determinations?

5 A. Well, with respect to whether the
6 procurement was through a competitive procurement,
7 you review the request for proposal. The results of
8 the analysis, the economic analysis, will generally
9 focus on the delivered -- on a cost analysis but it
10 would be adjusted for quality.

11 But you would also look to see how you
12 consider the noneconomic factors, such as
13 counterparty risks, coal quality, delivery issues,
14 whatever other issues that might be relevant in the
15 procurement, how it affects your overall portfolio
16 strategy.

17 The third part would deal with the fact
18 that you wouldn't want to buy more coal, for example,
19 than you actually need so that you've actually a
20 portfolio strategy that allows for, it minimizes
21 market exposure at any one time, provides some
22 certainty of supply and provides for coal quality
23 that meets your requirements.

24 Q. Does that cover the general process
25 that --

1 A. The process.

2 Q. Okay. Now, as I understand your
3 testimony -- let me first back up and try to ask you
4 a terminology question here so we can, again, try to
5 keep this record as public as possible. When I refer
6 to the January 2008 settlement agreement, do you know
7 what I'm referring to?

8 A. Yes, I do.

9 Q. And that could also be referred to as the
10 buyout agreement.

11 A. Yes.

12 Q. Okay. And when I refer to the
13 November 2008 settlement agreement, do you know what
14 I'm talking about there?

15 A. No.

16 Q. This is the agreement that at the end of
17 2008 the companies reached an agreement with the same
18 supplier that was involved in the January 2008
19 relative to shortfall and deliveries.

20 A. Yes. Now I know what you're talking
21 about.

22 Q. Damages for that breach.

23 A. Yes.

24 Q. Okay. That's the November 2008
25 settlement agreement.

1 If I refer to the 2008 production bonus
2 agreement, would that be the same agreement that was
3 mentioned at the bottom of page 2-22 and carrying
4 over to the top of page 2-24 --

5 A. That's --

6 Q. -- of the audit report? And the fourth
7 agreement is the 2008 production bonus -- I'm sorry,
8 that's the one I just mentioned.

9 The fourth is the 2008 contract support
10 agreement which is, I'm sorry, it's page 2-24.

11 A. Okay.

12 Q. Okay.

13 A. That's a challenge but we'll try.

14 Q. We'll try. It will just make it easier
15 later.

16 Now, back to the discussion we were just
17 having with the prudence review, it's my
18 understanding that you did not conduct a prudence
19 review of the January 2008 settlement agreement; is
20 that accurate?

21 A. Correct.

22 Q. And it's also my understanding that you
23 did not conduct a prudence review of the
24 November 2008 settlement agreement; is that correct?

25 A. Correct.

1 Q. And is it also correct you did not
2 conduct a prudence review of the 2008 production
3 bonus agreement?

4 A. Correct. Other than I would say that I
5 reviewed the companies' documents related to the
6 production -- the bonus payment, what did you call
7 it? -- production bonus agreement as well as the
8 fifth agreement, which you didn't reference in their
9 totality.

10 Q. What's the fifth agreement? General
11 terms?

12 A. Would be the per-ton increase in contract
13 prices for 2009.

14 Q. Okay. And that's part of the, what I
15 called the 2008 --

16 A. Production.

17 Q. -- production bonus.

18 A. Fair enough. So I would say that I
19 reviewed those documents and we conducted quite a bit
20 of discussion about that.

21 Q. Does that same statement apply to the
22 2008 contract support that's on 2-24 of the audit
23 report?

24 A. Yes. I reviewed all those documents and
25 had quite a bit of discussion about that.

1 Q. Yeah, okay. Thank you.

2 I want to --

3 A. I think just to make -- perhaps a
4 distinction is that with respect to the January 2008
5 agreement, I didn't go back and make any judgment as
6 to whether I thought it was a reasonable deal at the
7 time it was done in terms of the numbers or the
8 dollars, and that would be the difference.

9 Q. And that's a fair way to describe a
10 prudence review; is it not?

11 A. Correct.

12 Q. Okay. I want to have a general
13 discussion with you about coal contract buyouts.

14 A. Sure.

15 Q. Is it fair to say that a coal contract
16 buyout typically involves reducing the term of the
17 contract, early termination?

18 A. If it's a buyout as opposed to
19 renegotiation, yes.

20 Q. Yeah. Now, is it possible that a
21 contract -- that you could audit a contract and find
22 that the company was imprudent for not negotiating a
23 buyout of a contract? Have you ever done that?

24 A. Generally buyouts have to be consensual,
25 so I'm not sure I can find somebody imprudent for not

1 doing something that would require consent on the
2 other party's side. I don't recall that particular
3 scenario.

4 Q. But for not pursuing a buyout.

5 A. Again, I think it's very situational so I
6 can't say generally anything one way or the other.

7 Q. Okay. But let me just try to
8 distinguish. If there's a buyout that occurs and you
9 have an audit period that you review that you're
10 reviewing it to see if the buyout agreement that was
11 reached by both parties was prudent by the company,
12 by the utility, correct?

13 A. Correct.

14 Q. And what I'm asking is if it's possible
15 that you would look at a situation and conclude that
16 the company should have pursued a buyout of a
17 particular contract and it was imprudent to not
18 pursue that.

19 A. I understand what you're saying and I'm
20 just saying if you have a -- since a buyout is
21 consensual, you know, I think -- let me rephrase it.

22 I think utilities should always actively
23 manage their contract portfolio, so to the extent
24 that they fail to do that, I have issues. Whether it
25 rises to the level of prudence or imprudence, I can't

1 say I feel strongly, and I think it says in the
2 report that a responsible procurement department
3 actively manages its contracts. If there's benefits
4 from buying it out or renegotiating a contract, they
5 should pursue them.

6 Q. The party that pursues a contract would
7 typically be the party that ends up paying something
8 to get that; is that fair?

9 A. No, that's not -- no. For example, I
10 have clients that buy coal that I think has higher
11 value than where it's going, and so I say go to them
12 and see if they want to do a trade or they want to
13 buy the coal back from you. So I don't think it's
14 fair to say one way or the other.

15 Q. Well, that's a good clarification. When
16 I said the party would pay, I didn't necessarily mean
17 that they would have to be the only one to write a
18 check for the settlement, but they would give up
19 something in order to achieve a buyout.

20 A. Again, I would give you the example where
21 coal is being bought, let's say it's coal that could
22 be used in the metallurgical coal market and it's
23 going into the steam account, and coal prices rise.
24 I would say go to the company and see if they want to
25 buy back the tons because we can replace them

1 cheaper. I'm not sure what they're giving up.
2 They're giving up coal they can use and they're going
3 to get a check, so...

4 Q. So that may be a situation where it's
5 either mutually beneficial or mutually neutral for
6 the parties to negotiate a buyout.

7 A. My experience is that all buyouts are
8 commercially valuable to both sides or they wouldn't
9 do it.

10 Q. Yeah. Well, or at least neutral. I
11 mean, aren't you saying in that situation that the
12 supplier, that the customer doesn't have any problem
13 with switching out so it's no --

14 A. But I would, in that case I would expect
15 those additional dollars to flow through the fuel
16 account. It's better for -- their job is to minimize
17 fuel costs, and if there's a way to actively manage
18 their procurements so that it reduces their fuel
19 costs, they should try.

20 Q. And I understand that. I'm not dealing
21 with the FAC at all right now, I'm just asking you in
22 your experience in the coal industry in contracts,
23 negotiations, et cetera.

24 So typically, then, when there's a
25 buyout, though, that either changes the tons or

1 changes the terms, typically there would be a
2 shortfall created from that buyout; is that true?

3 A. If you needed the coal.

4 Q. Right. So it's a shortfall of what you
5 would have been delivered, some or all of which you
6 may not have needed.

7 A. Correct.

8 Q. Okay. Now, let me ask you to turn to
9 page 2-20 of the audit report. This is in connection
10 with the 2008 settlement, January 2008 settlement
11 agreement. You're reviewing some of the history with
12 this 20-year contract and you say there have been
13 this comparison during part of the period -- the
14 history of this contract, the contract price versus
15 market price, correct?

16 A. I said I believe that that continued,
17 yes.

18 Q. That was your understanding. Now, what
19 would have happened -- well, first of all, is it
20 typical for let's just say a long-term contract
21 regardless of whether it's 20 years, 10, 15, 5, is it
22 typical for -- in an FAC context for an auditor, for
23 a commission to review that contract when it's been
24 entered into during the audit period?

25 A. No.

1 Q. Is that typical?

2 A. No.

3 Q. Maybe I didn't state that correctly. Is
4 it --

5 A. Yes.

6 Q. Maybe this is the question -- let me try
7 again. This is the question you would say no to, not
8 that I'm leading you: If a long-term contract was
9 previously reviewed by an auditor and previously
10 entered into in years gone by, it would not be
11 typically revisited in a subsequent audit period
12 several years later, would it?

13 A. Yes.

14 Q. Right. I changed the question. Yes,
15 okay.

16 Now, what would have happened in this,
17 the one you're discussing here, the 20-year
18 agreement, in your opinion what would have happened
19 if the Commission had decided back in the '90s
20 sometime that, hey, this price is no longer
21 competitive; it's above market? What would be the
22 EFC at that time, the electric fuel clause case,
23 impact of that?

24 A. I would have to go back to the order and
25 see exactly how it was phrased.

1 Q. No. I'm not saying it actually happened.
2 I'm saying it was being reviewed as you've said here,
3 and I'm asking in your experience what happens if
4 during the term of the long-term contract subsequent
5 to initial review, sometime during the middle or the
6 end of the term, that there's a finding that, hey,
7 this is no longer a competitive contract; what would
8 you do about it as an auditor if you were in that
9 situation?

10 A. So not this specific contract.

11 Q. Well, yeah, let's just say in general.

12 A. Because I think this specific contract
13 might have had some additional language in the order
14 so that's why.

15 Q. Highly unique.

16 A. I think it was, as we just discussed, it
17 was not typical. You would have the annual review,
18 and I don't remember what the Commission provided for
19 as their rights.

20 So the answer is, in general, utilities
21 buy coal in a portfolio strategy in which some of the
22 contracts ended up being below market and some of the
23 contracts ended up being above market, and you
24 typically don't do your analysis based on a single
25 contract. You're looking at the strategy overall.

1 Similarly, coal producers sell coal in a
2 portfolio, and so they'll have very, very profitable
3 contracts and they'll have contracts that aren't
4 profitable. Clearly, overall, if they're making them
5 stay in business and if all of them end up being
6 unprofitable, they'll end up going bankrupt.

7 Q. And let's just leave aside affiliate
8 mining and all those issues for a moment here and say
9 if there was a long-term contract, it was procured by
10 competitive bidding and it was fully deemed to be a
11 market-competitive, prudent contract at the time it
12 was entered into, would it be fair five years later
13 or sometime during that term for a commission to come
14 back and say, you know what, market prices have taken
15 a dive, so this is just not competitive anymore and
16 we're going to disallow the portion that goes above
17 market. Would that be fair?

18 A. I've never seen that done in a regulatory
19 setting.

20 Q. Okay. Let me ask you to turn to page 1-5
21 of the audit report. In recommendation or major
22 finding No. 2, it starts off saying, "As predicted by
23 AEP, at the end of the first year of the FAC there is
24 a large under-recovery."

25 A. Yes.

1 Q. All right. Now, is it fair to say that
2 the underrecovery, regardless of whatever moving
3 parts in the FAC that you might try to line up with
4 the underrecovery, is the ultimate reason for the
5 underrecovery the fact that the Commission approved a
6 phase-in plan with deferrals of fuel cost for
7 AEP-Ohio?

8 A. Yes.

9 Q. Now, on the same page, let's see here,
10 you've got a statement in the fourth sentence, I
11 believe, "The decision to increase the contract
12 price" --

13 A. Yes.

14 Q. Okay. Then it goes on to say resulted in
15 an increase in the 2009 fuel expense over the
16 contracted prices.

17 A. Yes.

18 Q. Okay. Now, with this January 2008
19 settlement agreement, is it fair to say there were
20 two components to it? One would be what I call the
21 buyout and one would be the future purchase or
22 filling the open position created by the buyout.

23 A. There was replacement for a small portion
24 of the tons, yes.

25 Q. For a portion of the tons, okay. Now, I

1 guess when you say this was a result of an increase,
2 okay, that's what I want to talk about. The increase
3 you're referring to is comparing to the old price of
4 the old contract that was terminated, correct?

5 A. Yes.

6 Q. Okay. Now, was it your opinion, did you
7 review whether or not you thought, or viewed back at
8 that time in January 2008 whether that contract was
9 sustainable?

10 A. I'm not sure what you mean by
11 "sustainable."

12 Q. Well, I guess what I'm asking you is the
13 result -- when you say this negotiation resulted in
14 an increase, that assumes that the contract, the
15 prior contract with the lower, would have not only
16 been in effect throughout the ESP period, but also
17 the deliveries would have been made by the supplier;
18 is that correct?

19 A. Yes.

20 Q. Did you examine -- well, let me ask you
21 this: I think you recognized, correct me if I'm
22 wrong, but later in the audit report this particular
23 supplier we're talking about here had financial
24 difficulties at the time.

25 A. I don't believe so.

1 Q. Okay. I'm talking about the -- okay.
2 I'm sorry. That's a later question.

3 Was it your understanding that that
4 supplier had raised a legal claim as to the viability
5 of that contract?

6 A. Yes.

7 Q. And whether or not that claim could have
8 been pursued or litigated would have had a bearing on
9 whether the contract would continue to exist; is that
10 correct?

11 A. No. I think that the claim -- I
12 shouldn't say that. It's a legal discussion. My
13 personal opinion was it was a relatively weak claim,
14 but I didn't review it, and I think I saw it -- I
15 think, as always, litigation is always risky.

16 Q. And would you agree it's pretty difficult
17 to go back and try to assess that, sitting here
18 today, the viability of the legal claim?

19 A. I think that, again, I didn't conduct a
20 prudence review, so I would think that at some point
21 if one wanted to conduct a prudence review, it
22 could -- one could opine on the strength of the legal
23 point.

24 Q. Yeah. And you didn't evaluate the legal
25 point, nor are you holding yourself out as an legal

expert, correct?

MR. IDZKOWSKI: Objection.

A. I'm not holding myself out --

EXAMINER JONES: Overruled.

THE WITNESS: I'm sorry.

EXAMINER JONES: Go ahead. You may

answer.

THE WITNESS: I'm sorry. I am saying that I didn't do the prudence review. The counterparty was a [REDACTED] coal producer which sold, you know, upwards of certainly over [REDACTED] percent of his coal production and this was a relatively small part of their portfolio.

Q. Okay.

A. In addition, they had, you know, about that time they raised that issue, they had spun off the assets into another company yet retained some legal obligation, so they had additional incentive to try to just forge that obligation. So I think it's a little more complicated than -- complicated than simply opining about that legal strategy.

I think the point is that the counterparty with the obligation was a [REDACTED] company. This was a [REDACTED] of their portfolio, and it would be unlikely

1 they would have defaulted on performance.

2 Q. Well, again, I was mistaken in raising
3 financial difficulty on this particular agreement.
4 This was about their legal claim, not financial
5 difficulties, correct?

6 A. Correct. I just didn't want to leave the
7 impression that if there hadn't been relief, that
8 they would have stopped performing.

9 Q. Well, they wouldn't have stopped
10 performing for financial reasons.

11 A. Correct.

12 Q. And you didn't examine the legal claims.
13 Is that also true?

14 A. Correct.

15 Q. Okay.

16 A. I shouldn't say that. I read some
17 information about the legal claim. I didn't examine
18 it in detail.

19 Q. Now, at the top of page 1-5, I guess it's
20 carrying over from 1-4, you make a statement that
21 many of AEP's suppliers are willing to defer
22 shipments at no cost.

23 A. Yes.

24 Q. And that result would have saved FAC
25 ratepayers money in 2009; is that accurate?

1 A. I don't believe I said that part.

2 Q. I'm asking the question.

3 A. I guess my point is it's a give and take,
4 so there may be times where AEP is less than rigorous
5 about enforcement, and in exchange they are able to
6 do some these, you know, negotiations on deferrals.
7 I think it's -- I think the idea is it's generally
8 neutral. If you look through, for example, the
9 contract summaries, you can see many times that, you
10 know, people weren't in compliance with certain
11 contract terms, and I think it's part of give and
12 take.

13 Q. Well, was your statement at the bottom of
14 4 that AEP did an outstanding job managing its excess
15 volumes, was that a neutral statement?

16 A. No; I was positive.

17 Q. Okay. So you're not willing to agree
18 that the fact that we did defer shipments at no cost
19 would have saved any money looking at that issue
20 alone?

21 A. If you look at that issue alone, it would
22 potentially save money.

23 Q. Okay. Let me ask you a couple questions
24 about the November 2008 shortfall settlement.

25 A. Okay.

1 Q. This is dealt with in part on page 2-21
2 of the audit report.

3 A. Yes.

4 Q. Now, let me check my notes here. I
5 believe -- well, let me just ask you, and you may
6 have addressed this earlier. This was really a
7 separate agreement from the January 2008 settlement
8 agreement and related to a subsequently developed
9 issue of failure to deliver coal in 2008.

10 A. Correct.

11 Q. Is that correct?

12 A. That is my understanding.

13 Q. So, in other words, even though the
14 January 2008 settlement agreement terminated, that
15 contract, effective at the end of '08, as it turned
16 out, the supplier didn't deliver all the tons they
17 were obligated to do under the remainder of the
18 agreement.

19 A. Clearly they found a more valuable market
20 for that coal.

21 Q. Okay. And the settlement agreement
22 associated with that nonperformance by the supplier,
23 do you have an understanding of how the dollar amount
24 reached in that settlement was calculated?

25 A. I know the total dollars,, and I simply

1 divided tons into that to come up with a per ton for
2 the amount. I don't know how it was calculated other
3 than that, other than it was a settlement agreement.

4 Q. Well, in your opinion would the amount,
5 the settlement dollar amount, have covered or roughly
6 covered procurement of the shortfall and market
7 prices?

8 A. In November 2008? My guess is it would
9 have exceeded the cost of replacing that coal.

10 Q. Can you tell me how you're defining the
11 cost of replacing the coal in that context?

12 A. If they failed to deliver coal in the
13 fourth quarter, then you would buy coal -- if you
14 needed the coal, you would buy the coal and -- at
15 market prices, and the difference would be, I
16 presume -- again, I don't know. I did not look at
17 it, so I'm just opining how you would generally do
18 it. But if you're paying \$47, over \$47 a ton not to
19 deliver coal, either two things happen. One is the
20 cost of replacement was very expensive, or the second
21 is that the market value was very high and it was a
22 negotiated number.

23 Q. And this was in 2008, correct?

24 A. At the end of 2008 when the settlement
25 agreement was reached.

1 Q. Okay.

2 A. So it could have been either.

3 Q. Do you think, well, again, you're saying
4 you really don't know --

5 A. I don't know.

6 Q. -- what spot coal Ohio Power purchased in
7 '08 that might have covered that position?

8 A. Correct.

9 Q. Or the cost of that spot coal.

10 A. Correct.

11 Q. Okay. But it is fair to assume that the
12 dollars flowing from that settlement would generally
13 be offset by some cost of replacement coal?

14 A. Correct.

15 Q. And it would relate to 2008 purchases.

16 A. Again, the coal, you know, going -- I
17 don't recall the exact timing, but presumably it went
18 on the pile and flowed through in fuel costs.

19 Q. They would relate to the shortfall that
20 was supposed to be delivered in 2008, correct?

21 A. Correct. I just don't know when that
22 2008 coal would have been burned.

23 Q. You don't know, okay.

24 A. I don't know.

25 MR. NOURSE: Your Honor, I have some more

1 questions. This might be a good time to break. I'm
2 not going to be able to finish in ten minutes. You
3 said 1:00 o'clock I believe.

4 EXAMINER JONES: Yes, I did. Mr. Nourse,
5 do you have any estimation at this time of how much
6 more you will have?

7 MR. NOURSE: Probably another half hour.

8 EXAMINER JONES: Okay. My understanding,
9 based upon the prehearing conference, was that AEP
10 then was going to go next and present their
11 witnesses; is that correct?

12 MR. NOURSE: Yes.

13 EXAMINER JONES: And who will be your
14 first witness this afternoon?

15 MR. NOURSE: Mr. Dooley. We plan to
16 present Mr. Dooley, Mr. Rusk, Mr. Nelson,
17 Ms. Simmons.

18 EXAMINER JONES: In that order?

19 MR. NOURSE: In that order.

20 EXAMINER JONES: Thank you. With that we
21 will be adjourned for lunch until 2:00 p.m.

22 (At 12:50 p.m. a lunch recess was taken
23 until 2:00 p.m.)
24
25

Monday Afternoon Session

August 23, 2010.

-- -- --

EXAMINER JONES: Let's go back on the record.

Mr. Nourse, you may continue with your cross-examination.

MR. NOURSE: Thank you, your Honor.

-- -- --

CROSS-EXAMINATION (Continued)

By Mr. Nourse:

Q. Ms. Medine, can you turn to 2-24 of the audit report.

A. Yes.

Q. Now, here you're discussing this 2008 contract support item --

A. Yes.

Q. -- that we briefly touched on earlier. And I believe in your direct when you were adopting the audit report, you made corrections here, correct?

A. Yes.

Q. Now, in one of the -- have you reviewed the discovery in this case that's been exchanged among the parties?

A. Excuse me, are you referring to the IEU

1 additional discovery?

2 Q. In this case I'm referring to IEU. This
3 was interrogatory 13 that addresses this same
4 agreement and essentially corrects or clarifies some
5 of the statements in the audit report.

6 A. Yes, I have reviewed it. I just would
7 like --

8 Q. Do you have it? I'm sorry.

9 A. I would just like to say two things. One
10 is that the audit report was provided to the company
11 to give them an opportunity before we finalized it to
12 make any corrections, and that information was not
13 provided at that time.

14 Q. Yeah.

15 A. And the second thing is, as I noted
16 earlier, that the justification memorandum had
17 different numbers than now what is represented or
18 what is truly in the coal contract.

19 Q. That's fine. All I really wanted to ask
20 you about that is whether the interrogatory 13
21 response of the companies reflects your understanding
22 of that agreement accurately.

23 A. It reflects my current understanding of
24 the agreement, yes.

25 Q. Okay. Now, do you know, as part of this

1 agreement we were just speaking of there was an adder
2 or an escalated price for the first -- a certain
3 portion of tons delivered in 2009, correct?

4 A. Yes.

5 Q. Okay. With that additional adder, is it
6 your understanding that the price paid in 2009 to
7 this supplier for coal was a market competitive
8 price?

9 A. Yes, I believe it was.

10 Q. Now, part of the aspect of this agreement
11 includes an option for a discounted price starting in
12 2013; is that your understanding?

13 A. Yes.

14 Q. So for those tons at that price starting
15 in 2013, the company's not obligated as we sit here
16 today to buy those tons at that price.

17 A. No, it's an option price.

18 Q. Okay. I just wanted to clarify. Thank
19 you.

20 So it's possible that the discounted
21 price under that option might end up being above
22 market at that time, isn't it?

23 A. I would hope not. The price is intended
24 to be \$4.93 per ton below market.

25 Q. I understand. But I asked you if it was

1 possible.

2 A. I just wanted to check in the contract,
3 and maybe you can point me to the right place where
4 it talks about when the price is negotiated.

5 Q. I'm sorry, I didn't hear your answer.

6 A. I'm wondering when the price is
7 negotiated for the option period because the only way
8 the price would be below market or above market would
9 be that the price was negotiated at a period and the
10 market changed subsequent to the negotiation of the
11 price.

12 Q. I thought you testified it was your
13 understanding that the specified discount would
14 apply, the pricing in the contract was provided for
15 starting in 2013 but it was simply an option, AEP's
16 option.

17 A. In the contract itself on page 5, the way
18 I read it, it says that once the market price is
19 determined, then the contract price during this
20 applicable option period shall be the market price
21 less \$ [REDACTED] per ton, so my understanding is it would
22 be below market by about \$ [REDACTED] per ton.

23 Q. Okay. Thank you.

24 So let's turn to -- well, it's the same
25 page in the audit report. The 2008 contract support

1 I think is what we were referring to, this item
2 starting at the bottom half of the page. Do you see
3 that?

4 A Yes.

5 Q. Now, you say, actually this statement at
6 the bottom of 23 carrying over to 24, that this
7 renegotiation was in the best interest of AEP-Ohio
8 ratepayers and EVA commends AEPSC for its efforts.
9 Do you see that?

10 A Yes.

11 Q. Now, if this had occurred in 2009 during
12 the audit period, would the production bonus payment
13 have been appropriately flowed through the FAC?

14 A. One would hope it wouldn't have occurred
15 in 2009 because the market was entirely different.
16 So if you're assuming the same market conditions
17 existed --

18 Q. Yes.

19 A -- then I believe it would flow through
20 the FAC.

21 Q. Okay. Now, Ms. Medine, I believe you've
22 indicated you have with you a copy of the
23 confidential reports that were provided through the
24 audit through supplemental discovery relative to the
25 coal reserve.

1 A. Yes.

2 Q. And you have those with you still?

3 A. I have the complete [REDACTED] report from
4 April 2009 and then I have whatever excerpts you
5 provided me from the October 2007 report.

6 Q. In the notebook?

7 A. Yes.

8 Q. That is a complete copy, okay.

9 So with respect to the October 2007
10 report, what's the nature of that report?

11 A. The way I read the report, it was
12 intended to provide guidance to AEP for its
13 negotiations with the coal supplier regarding the
14 value of the coal reserve so that it could be used in
15 its negotiations.

16 Q. Right. So this was the report that AEP
17 had at the time they entered into the January 2008
18 settlement agreement?

19 A. That's --

20 Q. Is that correct?

21 A. That's my understanding. That is my
22 understanding. But again, as pointed out earlier,
23 it's not, you know -- it's a desktop analysis. So
24 it's not -- it doesn't have the same rigor that the
25 April 2009 report has.

1 Q. Whatever it is, that's the only report
2 AEP had at the time they entered into the agreement,
3 correct?

4 A. Not to be glib, but I didn't even know of
5 its existence until last week so I can't speak to
6 whatever else it had or didn't have.

7 Q. Okay. Well, when you say "last week" --

8 A. Two weeks ago.

9 Q. Are you referring to August 6th?

10 A. Yes.

11 Q. Okay.

12 A. Sorry, two weeks ago.

13 Q. You're referring to the communication
14 that said if you'd like to review the referenced
15 report, please contact my office?

16 A. Again, I don't have the complete e-mail,
17 but I believe it started with "we have a supplemental
18 production."

19 Q. Yeah, okay. And are you referring to the
20 audit request initially, EVA 4-14, that said "[REDACTED]
21 [REDACTED], most current
22 report"?

23 A. I don't recall saying "most current
24 report," and I -- I believe you, but I would caveat
25 it with saying I reviewed my notes subsequent to that

1 and found it didn't refer to multiple reports. It
2 simply referred --

3 MR. NOURSE: May I approach, your Honor?

4 EXAMINER JONES: You may.

5 A. I also note in our cover letters when we
6 do document requests, we say we may not be actually
7 asking for specifics, we don't know the names of each
8 document, and for you to interpret it as broadly as
9 possible with the intent.

10 Q. Yeah. There's lots of instructions with
11 discovery. Can you read the interrogatory EVA 4-14?

12 A. "[REDACTED]
13 [REDACTED], most current report."

14 Q. Most current report.

15 A. Correct.

16 Q. Okay. Thank you.

17 Ms. Medine, are you an expert on valuing
18 coal reserve properties?

19 A. I have been involved in coal valuations.
20 I would not put myself -- I'm not a mining engineer.

21 Q. Did you undertake a valuation study of
22 the coal reserves we're talking about in this case?

23 A. No.

24 Q. The extent of your opinion regarding the
25 value of that reserve is strictly limited to

1 repeating your understanding of the reports that have
2 been provided to you; is that accurate?

3 A. Yes.

4 Q. Now, with respect to the 2007 report
5 could you turn to page 11?

6 A. Yes.

7 Q. Would you agree that it states that in
8 [REDACTED] opinion the maximum valuation placed on the
9 property is [REDACTED] million?

10 A. Yes.

11 Q. Let's turn to the second report,
12 April 30th, 2009. Okay, this was the report you had
13 for several months and were able to fully analyze and
14 study to your heart's delight.

15 A. Yes.

16 Q. Okay. Now, do you recall the -- well,
17 first of all, this is referred to as a feasibility
18 study, correct?

19 A. Yes.

20 Q. And what does that mean to you?

21 A. I believe that [REDACTED] was engaged to
22 determine the feasibility of actually mining this
23 reserve.

24 Q. So the feasibility of actually mining the
25 reserve meaning develop the property.

1 A. Or selling it to a third party to develop
2 or leasing it or -- any of those.

3 Q. Do you recall the period of time that --
4 until initial operation was assumed in the report?

5 A. I don't recall, but I can look it up.

6 If you want to direct me, that would be
7 quicker, but I'd be happy to figure it out.

8 Q. Well, let me ask you this: Was it your
9 recollection it was [REDACTED] years -- it was in year [REDACTED]
10 of development that the mine production could
11 commence?

12 A. That's exactly what it looks like.

13 Q. Okay. With full operation at [REDACTED] years.

14 A. It looks, well, production started fairly
15 healthy at [REDACTED] million tons in year [REDACTED] and then
16 didn't go above [REDACTED], so I'm not sure I would --

17 Q. Let me direct you to page 2-7, the
18 statement about full production year [REDACTED]. Do you
19 see that?

20 A. I understand what they're saying. I'm
21 just saying the fact if you look at the production
22 numbers that they're putting in here, there's not a
23 huge difference between year [REDACTED] and year [REDACTED].

24 Q. But you agree with my statement that's
25 what was assumed in the report?

1 A. That's fine.

2 Q. Now, turning to 2-8, you made some
3 reference to this earlier, but the base case with the
4 more modest values, do you see that?

5 A. Yes.

6 Q. In the table 2-17. So that assumes a
7 market price, coal market price, for the
8 approximately [REDACTED] years of operation of the mine that
9 would be at or above \$[REDACTED]; is that correct?

10 A. Yeah. It's actually a calculated number,
11 so it's the number that would yield basically zero
12 NPV.

13 Q. Net present value, you mean?

14 A. Net present value using a [REDACTED] percent
15 discount factor.

16 Q. And, again, using that assumption
17 produces the more modest values, including a loss at
18 an [REDACTED] percent discount rate of [REDACTED] million.

19 A. I think that's a function of how the
20 number was derived.

21 Q. Okay. That's all I'm asking you.

22 So the more robust or the higher numbers
23 in the valuation table there, page 2-8, those are
24 based on the future price projections of the report's
25 author.

1 A. Correct.

2 Q. And is that reflected in the box that's
3 above -- in the middle of the page there on 2-8?

4 A. That's my understanding.

5 Q. That that price goes from the \$ [REDACTED] area
6 and fluctuates out to about [REDACTED], let's say, in
7 [REDACTED]; is that correct?

8 A. I'm sorry, where are you starting from?

9 [REDACTED]? Are you starting from a later year?

10 Q. Yeah. I'm really just asking that price
11 escalated over time and maxes out in [REDACTED] at
12 approximately [REDACTED].

13 A. It looks like that.

14 Q. So in order to rely on any of these
15 values, one key assumption there is that those market
16 prices are accurate, correct?

17 A. Certainly in any analysis prices are
18 variable.

19 Q. Is it also your understanding that the
20 total capital investment required to develop this
21 property would be -- would exceed a [REDACTED]
22 [REDACTED]?

23 A. Looks to me on page 2-7 that the initial
24 capital is [REDACTED] million. Is there another table
25 you're referring to?

1 Q. I've got 7-10 here, a note, yes, right
2 under the table on 7-10.

3 A. So that includes ongoing CAPEX?

4 Q. Yes.

5 A. The initial capital would be [REDACTED] million,
6 if your question was what was the capital.

7 Q. I wanted to know what kind of capital
8 requirements to develop and operate this mine.

9 A. Would be [REDACTED] million initially and then
10 there would be ongoing CAPEX.

11 Q. Totaling what?

12 A. According to this report, \$ [REDACTED] million.

13 Q. Now, are you aware of any permitting
14 activity that AEP's done relative to this property?

15 A. As I mentioned earlier, I was advised
16 that they had begun the permitting activity.

17 Q. I thought you said earlier that you were
18 advised that they were planning to permit it.

19 A. Fair enough. My understanding was they
20 were planning to permit it.

21 Q. And you're not aware of any actual
22 permitting activity on this property occurring.

23 A. Other than what I said earlier, that I
24 was told that they are planning to permit, which I
25 would assume that was underway, but it may not be.

1 Q. Well, planning and doing are two
2 different things, right?

3 A. Right. But when you do a mine permit,
4 you need quite a bit of baseline data, so I guess my
5 presumption was that some of that data collection was
6 underway.

7 Q. All right. That's just a presumption.

8 A. Correct.

9 Q. So if you look out at the next 30 years,
10 just like this report did, and opine on coal prices,
11 do you see a clear picture, or is there a lot of fog?

12 A. I see a clear picture.

13 Q. Do you have a crystal ball?

14 A. As we say in the business, people who use
15 crystal balls end up being crushed glass. But I
16 think there's some understanding as to what's going
17 to happen with coal mining costs and values, and
18 obviously we have forecasts, but . . .

19 Q. Is it possible that coal prices would be
20 below [REDACTED] by [REDACTED]?

21 A. Sure. And it's possible they'd be above
22 it. I mean, I think that -- again, I don't know
23 what's behind this forecast, but I think that
24 certainly, you know, we come up with an annual
25 forecast as well and it changes from year to year.

1 So obviously there's some sensitivity.

2 Q. It changes from year to year.

3 A. Correct.

4 Q. And is it also possible coal prices in
5 [REDACTED] would be below \$[REDACTED]?

6 A. I do not believe so.

7 Q. Is it your opinion that carbon regulation
8 could impact coal prices over the long term?

9 A. So the question is -- I think there's two
10 questions -- is what happens to production costs and
11 where do supply and demand cross. So clearly a
12 reduction in demand would change where the two cross,
13 but the reality is with respect to coal production
14 costs that there's not a lot of opportunity for
15 improvement in costs or productivity, and so the
16 mines that can't survive because they're too high
17 cost would shut down. But I don't believe it would
18 be below \$[REDACTED].

19 Q. Yeah. And I didn't ask you about
20 production costs. I'm talking strictly about market
21 prices and your projection, your understanding, your
22 expertise. So you're saying that carbon regulation
23 would not reduce the price of coal in the future, in
24 your opinion?

25 A. What I'm saying is that coal prices

1 ultimately are cost driven and where markets settle
2 depends on what overall demand is. So to the extent
3 that demand is reduced, you might have a different
4 settling point on market price, but ultimately you
5 will not sell coal for any continued period of time
6 at the price that's not only below cash cost but
7 below cash cost plus recovery of your capital.

8 Q. Did you predict the precipitous price
9 increases in '7 and '8 before they happened?

10 A. No. I'm not suggesting I did. But what
11 we did predict was the fact that when prices came
12 back down, they couldn't go down below a certain
13 level because you would obviously need to be able to
14 recover your costs.

15 Q. Would your answer -- I'm sorry. Go
16 ahead.

17 A. Just with a step increase in cost, you
18 would not expect prices to go back to the early-2007
19 levels.

20 Q. So you didn't see that abrupt price
21 change coming?

22 A. No.

23 Q. Okay. Now, would your answer be the same
24 as it was for carbon regulation if I asked you the
25 same series of questions about environmental

1 regulations?

2 A. I'm not sure what your question is.

3 Q. Environmental regulations beyond just
4 carbon.

5 A. Well, I think there's about ten different
6 regulations under development.

7 Q. Yeah. And there's, if we look out 30
8 years, there's probably another couple dozen, right?

9 A. Approximately.

10 Q. Does that prospect of environmental
11 regulation affect coal prices in the market?

12 A. Again, I think coal prices are ultimately
13 cost driven with a return on your investment. To the
14 extent that you can't produce -- you can't sell the
15 coal at a price greater than cost plus a return, the
16 coal mines ultimately shut down and go away.

17 So again, if you change your demand
18 profile, you'll change sort of where the market
19 settles, but that still doesn't eliminate the
20 possibility that you need to be able to recover your
21 cost.

22 Q. But where the market settles is a
23 different way of saying the market price?

24 A. Yes.

25 Q. Okay. Would your answers also be the

1 same relative to the prospect of renewable and
2 advanced energy, alternative energy portfolio
3 requirements that may be imposed in the next 30
4 years?

5 A. I certainly agree with you, the future is
6 uncertain.

7 Q. Okay.

8 MR. NOURSE: Your Honor, that's all I
9 have.

10 Thank you, Ms. Medine.

11 EXAMINER JONES: Thank you.

12 Staff, do you have any redirect for this
13 witness or do you want a few minutes?

14 MR. MARGARD: Let us have just a few
15 moments if we can, please, your Honor.

16 EXAMINER JONES: I'll give you five
17 minutes or so.

18 (Recess taken.)

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

21 Any redirect for this witness?

22 MR. MARGARD: Just a simple question, if
23 I may, your Honor.

24 EXAMINER JONES: You may proceed.
25 - - -

REDIRECT EXAMINATION

By Mr. Margard:

Q. Ms. Medine, you were asked a number of questions about risks associated with valuing the reserve here. Are there any ways to minimize the risks in valuating the reserve?

A. I think the best way to get a feel for how much the reserve is worth is actually to sell it because through, you know, an appropriate process where you get as much competition as possible, then you can actually get a full value of the reserve and eliminate the risks because a third party would be assuming the risks related to capital or the risks related to market.

MR. MARGARD: That's all I have, your Honor. Thank you.

EXAMINER JONES: Any further recross based on that very narrow redirect?

MR. IDZKOWSKI: No, your Honor.

EXAMINER JONES: Mr. Clark?

MR. CLARK: No questions. Thank you, your Honor.

EXAMINER JONES: Mr. Nourse.

MR. NOURSE: Yes, your Honor.

- - -

RECROSS-EXAMINATION

By Mr. Nourse:

Q. If the Commission were to order Ohio Power to sell the coal reserve, do you think that would positively or negatively affect the price that could be obtained in the market?

A. If the public knew that you had to sell the coal reserve, is that your question?

Q. Yeah.

A. Obviously, that shows that it's a true sale, so it might actually generate additional interest in the market because they know that, in fact, you're going to transact. You're not just doing it for paper purposes. But obviously there's the risk that people might think you could get it at a fire sale, but I think generally it would show that it was going to happen, it was a real sale, and it wasn't simply to put a value on it.

MR. NOURSE: Thank you. That's all I have.

EXAMINER JONES: Anything further?

Thank you. Ms. Medine. I believe that's all.

Mr. Margard, do you renew moving the admission of Staff Exhibit No. 3?

1 MR. MARGARD: Indeed I do, your Honor.

2 EXAMINER JONES: Any objection to the
3 admission of Staff Exhibit 3?

4 MR. NOURSE: No, your Honor.

5 EXAMINER JONES: It shall be so admitted.
6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER JONES: Do you have any further
8 witnesses to present at this time, Mr. Margard?

9 MR. MARGARD: I have no other witnesses.
10 Thank you, your Honor.

11 EXAMINER JONES: At this time would you
12 like to move the admission of Commission Exhibit 1
13 and Exhibits 1A and 1B (sic)?

14 MR. MARGARD: I would, your Honor.

15 EXAMINER JONES: Any objection to the
16 admission of Commission Exhibit 1 or Exhibits 1A or
17 1B?

18 Hearing none, those three documents shall
19 be admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER JONES: That does conclude your
22 witnesses at this time, Mr. Margard?

23 MR. MARGARD: It does, thank you, your
24 Honor.

25 EXAMINER JONES: Thank you.

1 Mr. Nourse, are you prepared to call your
2 first witness?

3 MR. NOURSE: Yes, your Honor.
4 Mr. Satterwhite's handling the witness.

5 MR. SATTERWHITE: Your Honor, the company
6 would like to call Timothy M. Dooley to the stand.

7 EXAMINER JONES: Would you please raise
8 your right hand.

9 (Witness sworn.)

10 EXAMINER JONES: Thank you.

11 Mr. Satterwhite, you may proceed.

12 MR. SATTERWHITE: Thank you, your Honor.

13 - - -

14 TIMOTHY M. DOOLEY

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

17 DIRECT EXAMINATION

18 By Mr. Satterwhite:

19 Q. Mr. Dooley, did you cause testimony to be
20 filed in this case on August 16th, 2010?

21 A. Yes, I did.

22 MR. SATTERWHITE: Your Honor, I'd like to
23 mark Company Exhibit 1 as the confidential copy of
24 that testimony that's in the docket.

25 EXAMINER JONES: It shall be so marked.

1 MR. SATTERWHITE: And Company Exhibit 1A
2 will be the redacted public version.

3 EXAMINER JONES: And it shall be so
4 marked.

5 (EXHIBITS MARKED FOR IDENTIFICATION.)

6 Q. Do you have a copy in front of you,
7 Mr. Dooley?

8 A. I do.

9 MR. SATTERWHITE: Does the Bench or the
10 reporter need a copy?

11 EXAMINER JONES: No, I'm all right.
12 Thank you.

13 Q. Do you have any corrections to this
14 testimony?

15 A. I do not.

16 Q. If I were to ask you all the same
17 questions today, would your answers be exactly the
18 same?

19 A. Yes, they would.

20 MR. SATTERWHITE: I would now tender the
21 witness for cross-examination.

22 EXAMINER JONES: Thank you.

23 Mr. Idzkowski, do you have any questions?

24 MR. IDZKOWSKI: Yes, I do, your Honor.
25 - - -

CROSS-EXAMINATION

By Mr. Idzkowski:

Q. Good afternoon, Mr. Dooley.

A. Good afternoon.

Q. We met at your deposition, correct?

A. We did.

Q. You state the purpose of your testimony is to address financial audit recommendations 1, 2, 3, 6c, 6d, 6h, and 6i.

A. That is correct. That is part of my -- the purpose of my testimony.

Q. Do you have your testimony in front of you?

A. I do.

Q. Can you look at page 3, please.

A. Yes.

Q. There you're discussing management audit finding 2.

A. That's correct.

Q. Regarding that finding, in that coal contract settlement with the coal supplier did OPCo receive \$ million in that contract buyout?

A. Yes, through a note receivable.

Q. And was that paid -- has that been paid?

A. Yes, it has.

1 Q. And of that \$[REDACTED] million, how much was
2 passed through to customers? How much effectively
3 did customers pay for the fuel ultimately?

4 A. Well, they didn't necessarily receive a
5 portion of any specific piece of the settlement
6 agreement. They received a portion of the total
7 value that was received. Some \$[REDACTED] million was
8 deferred as part of this settlement when we recorded
9 it, and in 2009 and 2010 portions of that were
10 amortized to fuel inventory. The Ohio retail FAC
11 portion would have gotten a portion of that.

12 Q. And that renegotiation was done in 2007
13 and signed in 2008, correct?

14 A. That's correct.

15 Q. January 2008 to be more exact.

16 A. Correct.

17 Q. And that was to terminate a 1992
18 contract, correct?

19 A. Yes. That's correct.

20 Q. And that extended, even though it
21 terminated in January of 2008, it extended the
22 original contract price of \$[REDACTED] a ton through the end
23 of 2008, correct?

24 A. Yes. I believe so.

25 Q. So that contract price extension through

1 the end of the 2008 period would have been one of the
2 benefits of agreeing to that buyout, correct, for
3 AEP?

4 A. I can't speak to the value that was
5 attributed to the contract going through 28 -- or,
6 2008.

7 Q. What happened to the rest of the
8 \$ million?

9 A. The rest? I don't think I understand the
10 question.

11 Q. Well, what happened -- you said of
12 the total value that was received was deferred for
13 future periods. What happened to the rest of it?

14 A. The residual amount was considered earned
15 and in income.

16 Q. And AEP also received around this time
17 period a \$ million note from in November of
18 2008, correct?

19 A. I wouldn't describe it as near. It was
20 in November '08. There was another separate
21 settlement for that amount that related to the
22 liquidation of some shortfall tons that were not
23 received in that year.

24 Q. When did that renegotiation, or that
25 negotiation, take place?

1 A. I do not know specifically the month or
2 days that that took place. It's my understanding it
3 was sometime in November.

4 Q. And how much of that -- that was a note
5 for [REDACTED] million?

6 A. Yes. That was how the settlement was
7 described

8 Q. And how much of that \$ [REDACTED] million note has
9 been paid?

10 A. I believe it's all been paid.

11 Q. And how much of that \$ [REDACTED] million passed
12 through to customers?

13 A. I believe that all of that was recorded
14 as a credit to fuel expense in 2008 Or a portion
15 thereof. It was all taken in income.

16 Q. In 2008?

17 A. In 2008, yes, that November 2008
18 settlement.

19 Q. So it had no effect after 2008.

20 A. That's correct.

21 Q. And you testified that the appraised
22 value of this coal reserve was [REDACTED] million.

23 A. Yes.

24 Q. And that was appraised by AEP's Fuel
25 Procurement Group, correct?

1 A. Yes.

2 Q. What independent appraiser was involved,
3 if any?

4 A. It was my understanding that the [REDACTED]
5 report that's been the subject of other testimony was
6 one of the basic supporting documents.

7 Q. Have you seen that appraisal?

8 A. No, I've never read it.

9 Q. Now, you can't testify as to whether
10 that's a reasonable value for that property, correct?

11 A. That's correct.

12 Q. Yet if you look at page 3 of your
13 testimony, you accept the valuation of [REDACTED] million
14 as the value of that property.

15 A. Yes, we did.

16 Q. And you recorded that as a -- that amount
17 as a debit to nonutility property account No. 121,
18 correct?

19 A. Yes.

20 Q. And you recorded offsetting credits as in
21 connection to that debit entry and other value, you
22 recorded a credit to fuel expense account No. 501 for
23 \$[REDACTED] million, correct?

24 A. We did.

25 Q. Did you prepare your testimony after the

1 audit report was filed?

2 A. Yes.

3 Q. And did you read the audit report before
4 you filed your testimony?

5 A. I'm sure I did.

6 Q. And according to the audit report, that
7 value of that coal reserve is unclear, correct?

8 A. Based upon the discussions I've heard, it
9 appears as if it's unclear.

10 Q. Do you recall in the audit report the
11 statement, "It is EVA's opinion that the AEPSC's
12 price assumption is very conservative"?

13 A. I'm sorry, I don't know where you're --
14 what you're talking about.

15 Q. So you don't recall that statement in the
16 audit report?

17 A. Is there a reference you want me to look
18 at?

19 Q. If you have the audit report, I don't
20 know if --

21 A. I do.

22 Q. Okay.

23 A. Is there a particular page?

24 Q. Yes. I think 2-21, in the footnote.

25 A. I cannot speak to how this information

1 was gathered. I'm not familiar with it.

2 Q. So is it still proper, then, under
3 accounting rules if the value is unclear, is it still
4 proper to record the value in the credit and debit
5 entries of the company at [REDACTED] million?

6 A. Right; at the time of the transaction
7 that was our fuel group's expert opinion as to what
8 the value of the property should be reflected at.

9 Q. And you don't know what, if any, plan AEP
10 has for this coal reserve, correct?

11 A. No, I do not.

12 Q. Now, on page 4 you testified about, down
13 at the bottom of the page, about a "\$[REDACTED] million
14 production bonus payment to a coal supplier in June
15 2008." Do you see that?

16 A. Yes.

17 Q. Has AEP ever paid such a bonus to this
18 company or any other coal producer before?

19 A. Of that nature? Not to my knowledge.

20 Q. And as a result of this renegotiation
21 with this coal producer, this production bonus
22 payment and other terms of this coal cost to AEP, how
23 did that affect the coal price from this coal
24 producer?

25 A. I'm sorry, I didn't completely understand

1 that question.

2 Q. Was AEP able to keep the -- by paying
3 this production bonus, did AEP, did the company
4 provide the same original contract price for coal per
5 ton through 2008?

6 A. I'm not aware of any other contract
7 amendments related to this particular contract or
8 vendor.

9 Q. So the price didn't change.

10 A. Not to the best of my knowledge. That
11 would probably be a better question for Witness Rusk.

12 MR. IDZKOWSKI: If I may have a moment,
13 your Honor.

14 EXAMINER JONES: Yes.

15 MR. IDZKOWSKI: That's all the questions
16 I have, your Honor.

17 EXAMINER JONES: Thank you.

18 Mr. Clark?

19 MR. CLARK: Yes, your Honor, thank you.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Clark:

23 Q. Mr. Dooley, my name is Joe Clark, counsel
24 for IEU. I believe we met at your deposition.

25 A. Yes.

1 Q. You're familiar with FASB 71, correct?

2 A. Yes, I am.

3 Q. And you're --

4 A. Go ahead.

5 Q. In your experience have you accounted for
6 deferred assets and deferred liabilities pursuant to
7 regulatory commission orders?

8 A. Yes.

9 Q. And do you agree that when a deferred
10 asset or deferred liability is created pursuant to a
11 commission order, that the recording of a deferred
12 asset or a deferred liability is appropriate in
13 accordance with GAAP?

14 A. Yes.

15 MR. CLARK: That's all I have, your
16 Honor.

17 EXAMINER JONES: Thank you.

18 Staff, any questions for this witness?

19 MR. MARGARD: No questions, thank you,
20 your Honor.

21 EXAMINER JONES: Mr. Satterwhite, any
22 redirect? Or do you need a minute?

23 MR. SATTERWHITE: Just one clarification,
24 your Honor, just real quick.

25

- - -

REDIRECT EXAMINATION

By Mr. Satterwhite:

Q. Mr. Dooley, do you remember when counsel for OCC was asking about the timing of the testimony in relation to the valuation for the reserve?

A. It was my understanding he was talking about my testimony in relation to when the audit report was being --

Q. Correct. You remember that line of questioning?

A. Yes.

Q. Was the accounting that was done after the audit report -- or when was the accounting done?

A. The accounting was done contemporaneously with the transaction back in January '08.

Q. So prior to the audit even taking place.

A. Yes.

MR. SATTERWHITE: That's all I have, your Honor.

EXAMINER JONES: Mr. Idzkowski, any further questioning base on that redirect?

MR. IDZKOWSKI: No, thank you, your Honor.

EXAMINER JONES: Thank you.

Anyone else? Mr. Clark? Staff?

1 Anything further for this witness?

2 MR. NOURSE: No thank you, your Honor.

3 EXAMINER JONES: Thank you, Mr. Dooley.

4 You may step down.

5 Mr. Satterwhite, do you move the
6 admission of your Exhibits 1 and 1A?

7 MR. SATTERWHITE: Yes, your Honor.

8 EXAMINER JONES: Any objection to the
9 admission of Company Exhibits 1 and 1A?

10 MR. IDZKOWSKI: No, your Honor.

11 EXAMINER JONES: Hearing none, those two
12 documents shall be admitted.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 MR. CLARK: Your Honor, to make sure I
15 have my record straight, is 1A the confidential?

16 EXAMINER JONES: 1A is the confidential,
17 according to my records. I'm sorry, 1A redacted.

18 MR. SATTERWHITE: We've used numbers for
19 all of our confidentials and then A for each of our
20 publics.

21 EXAMINER JONES: I'm sorry, Mr. Clark, I
22 had it backwards.

23 Is the company ready to call its next
24 witness?

25 MR. NOURSE: Yes, your Honor.

1 EXAMINER JONES: You may proceed.

2 MR. NOURSE: Call Jason T. Rusk to the
3 stand.

4 *Your Honor, I would like to mark --*

5 EXAMINER JONES: Let me swear him in
6 first.

7 MR. NOURSE: I'm sorry.

8 (Witness sworn.)

9 EXAMINER JONES: Thank you. Now you may
10 proceed, Mr. Nourse.

11 MR. NOURSE: Thank you. I'd like to mark
12 Mr. Rusk's confidential, filed-under-seal testimony
13 as Company Exhibit No. 2 and his public version of
14 his direct testimony as Exhibit No. 2A.

15 EXAMINER JONES: It shall be so marked.

16 (EXHIBITS MARKED FOR IDENTIFICATION.)

17 - - -

18 JASON T. RUSK

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

21 DIRECT EXAMINATION

22 By Mr. Nourse:

23 Q. Mr. Rusk, do you have the exhibits in
24 front of you we just marked?

25 A. My testimony?

1 Q. Your testimony.

2 A. Yes, I do.

3 Q. And did you cause this testimony to be
4 prepared?

5 A. Yes, I did.

6 Q. And do you have any corrections?

7 A. I do have one. I believe it is on page
8 9, third line down, it should say instead of "based
9 test," there should be inserted the word "on,"
10 "based on test sources."

11 Q. Any other corrections or updates?

12 A. None that I'm aware of.

13 Q. With that if you were asked all these
14 same questions today under oath, would your answers
15 be the same?

16 A. Yes, they would.

17 MR. NOURSE: Your Honor, I would tender
18 the witness for cross-examination.

19 EXAMINER JONES: Thank you.

20 Mr. Idzkowski?

21 MR. IDZKOWSKI: Thank you, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Idzkowski:

25 Q. Good afternoon, Mr. Rusk.

1 A. Good afternoon.

2 Q. Nice to see you again.

3 A. Nice to see you. Thank you for the
4 correction on the testimony because you actually
5 found it.

6 Q. You're welcome.

7 Mr. Rusk, are you a CPA?

8 A. No, I am not.

9 Q. And you're providing testimony regarding
10 management audit recommendations numbers 1, 2, 4, 5,
11 and part of No. 6, correct?

12 A. Correct.

13 Q. And you say AEP agrees with most of the
14 management audit recommendations in this audit
15 report, correct?

16 A. Yes.

17 Q. Regarding recommendation No. 2 -- is
18 there a copy of the audit report at the witness
19 stand?

20 A. I do have one, yes.

21 Q. Okay.

22 A. May not be updated with all of Witness
23 Medine's notes, by -- and corrections, but I've got
24 one.

25 Q. All right. Well, your cross-examination

1 will mainly follow your testimony, but I may ask
2 about that audit report.

3 At page 3 you start talking about
4 recommendation 2, and that is that AEP should
5 reconsider new coal procurement strategies to avoid
6 overcommitments in the future. To your knowledge, do
7 you know what was the basis for this recommendation?

8 A. I'm guessing from the recommendation, the
9 timing of the audit report, that it's referring to
10 the high inventories that we experienced in 2009 and
11 the fact that the auditor is speaking to the fact
12 that we should take measures into the future to
13 attempt to not have that situation occur again.

14 Q. And in your testimony, page 3, line 20,
15 you say, "In fact, such an approach is already part
16 of AEPSC's procurement strategy." Correct?

17 A. Correct.

18 Q. So is this in response to this
19 recommendation, or is it just a continuing program or
20 pursuit?

21 A. I would say it's probably a blend of
22 both. I think that the auditor has correctly
23 assessed the situation of our inventory situation and
24 we recognized it as well and took efforts and have
25 taken -- and have an ongoing policy to try to

1 minimize this situation from happening in the future.

2 Q. And on line 22 you refer to this
3 providing -- this strategy providing flexibility.
4 How does it do that?

5 A. One of the ways in which you can provide
6 this -- lessen this risk of overpurchasing would be
7 to not commit as many physical hedges as what we
8 may -- that we've had in the past, and that provides
9 more flexibility to respond to market and the
10 variability that comes as a result of low burns and
11 higher fluctuations in load.

12 Q. And on page 4, if you can look at that,
13 you are -- AEPSC is concerned about the Commission
14 setting overly prescriptive long-term and short-term
15 contract percentages. What do you mean by that?

16 A. The concern that we have is to have a
17 overly prescriptive procedure would require and
18 possibly cause more of a lackadaisical attitude in
19 those participating in this particular job function
20 and with not necessarily having latitude to be able
21 to fluctuate with and use business judgment in their
22 decisions to try to mitigate the volatility that
23 exists in the marketplace.

24 An example might be, if you would wish me
25 to explain it further, would be that if something

1 were to prescribe too many physical hedges, we could
2 be very much in the same situation that we are today.

3 Q. Can you look at recommendation No. 4,
4 please, on page 4, your testimony there?

5 A. Yes, sir.

6 Q. That is, that AEPSC should
7 currently undertake a study to determine whether
8 there is an economic justification for continuing to
9 operate the [REDACTED]. Does
10 AEP support this?

11 A. Yes. We are, in fact, in the process of
12 doing a study just for that very purpose.

13 Q. And has that started, that study?

14 A. That study is underway, although it is
15 not yet completed.

16 Q. Will it be done this year?

17 A. That is the anticipation. We do believe
18 we should have it done this year.

19 Q. Can you look at page 5, please. You
20 address recommendation No. 5.

21 A. Yes, sir.

22 Q. Now, here AEP doesn't agree that its
23 procedural schedule of its policies and procedures
24 manual should be updated, correct?

25 A. Well, we believe that the policies are

1 worthy of update. The part that we have difficulty
2 with is the word "procedure."

3 Q. What is your company's concern or problem
4 with that?

5 A. Just as stated previously, that a hard
6 line, hard-fast procedure may end up being too
7 prescriptive and consequently lead to poor business
8 decisions rather than better ones.

9 Q. Can you look at the bottom of page 5 to
10 page 6, you're discussing the recommendation No. 6,
11 please.

12 A. Yes, sir.

13 Q. And you're discussing biomass co-firing,
14 in particular.

15 A. Yes.

16 Q. Does biomass co-firing always involve
17 burning a biomass fuel with coal?

18 A. No, not exclusively coal.

19 Q. What other types of fuel?

20 A. Well, let me define this as saying
21 biomass in a general description, if you were to
22 include biodiesel into biomass, we are using and
23 currently attempting to use biodiesel in conjunction
24 with fuel oil in start-up and consumption at some of
25 our units. The one that we have done testing in is

1 at the Pickaway facility.

2 Q. So you're just in the testing stages at
3 the Pickaway facility?

4 A. We are just in the testing phases
5 anywhere with this stuff, yes.

6 Q. On page 8 you're discussing an Ohio EPA
7 permit approval letter. What does that Ohio EPA
8 permit pertain to?

9 A. I may have to defer that to someone else.
10 I am essentially responding in regard to the
11 procurement and the assessment of the procurement for
12 the particular materials and not necessarily the
13 permitting itself. That's another area of expertise.

14 Q. How does the cost of transportation of
15 biomass fuel compare to the cost of transportation of
16 coal?

17 A. Comparing -- so far, as far as a dry
18 biomass that we're talking about, we've only seen a
19 couple instances that we've actually seen quoted,
20 mostly it's truck, but we have seen it -- if it's
21 been offered in a preblended where it would already
22 be blended into a certain percentage with coal into a
23 rail car.

24 But with those concepts in the
25 transportation is something that's very difficult to

1 try to assess in and of itself, and so the best way
2 to evaluate these fuels would be on a delivered
3 basis, looking at it in terms of heat content on a
4 delivered basis.

5 Q. All right. Let's look at your response
6 to recommendation No. 1, which I believe starts on
7 page 11 of your testimony.

8 A. Okay.

9 Q. You say that AEP doesn't object to the
10 recommendation, if the Commission should review the
11 renegotiation of the coal contracts, correct?

12 A. Yes.

13 Q. It's just that the Commission shouldn't
14 tell the company to credit any of the proceeds of the
15 contract renegotiation to AEP's underrecovery of fuel
16 costs.

17 A. That's correct.

18 Q. Were you involved in this renegotiation
19 process?

20 A. I was not directly involved in the
21 renegotiation.

22 Q. Do you then lack an understanding of the
23 nature of the dispute between the producer and AEP?

24 A. I can speak in general to what was being
25 discussed in the department at the time. I was still

1 in the department then, but I was not in the, shall I
2 say, in the discussion, the settlement discussions
3 themselves.

4 Q. When exactly did this company raise the
5 matter of their contract with AEP?

6 A. It began in the mid part of 2007.

7 Q. To your knowledge, did they raise such
8 matters with any other coal customers?

9 A. I do not know if they did or not.

10 Q. Is it your testimony that they sought
11 renegotiation due to a change in laws claim?

12 A. That is correct. That is the main --
13 that's one of the main focuses of their increase in
14 costs which was their primary complaint.

15 Q. What's your understanding of that claim,
16 a change in law claim?

17 A. My understanding is that it was borne out
18 of the 2006 Miners Act legislation that came out of
19 the federal government that increased the safety
20 requirements for underground mines and the additional
21 costs that would have to be incurred by a mine to be
22 able to comply these particular requirements.

23 Q. Now, AEP's position in this dispute was
24 that they didn't necessarily believe the coal
25 supplier's position was legitimate, correct?

1 A. That is correct.

2 Q. And you don't know how much this matter
3 increased costs to the coal supplier, do you?

4 A. I do not know on a per-ton basis. I do
5 know that there were -- that [REDACTED] did make a
6 presentation to AEP and they had indicated that the
7 additional cost would be, from my recollection, which
8 may not be very sound, was in excess of [REDACTED]
9 [REDACTED] million dollars, and that they had had an
10 outside consulting company that verified the numbers
11 by doing another independent study and had verified
12 that that assessment was very near correct, at least
13 from that outside opinion.

14 Q. Now, you weren't, again, directly
15 involved in the negotiations, correct?

16 A. No, I was not.

17 Q. So as you said, your recollection of it
18 may not be very sound.

19 A. That's -- that's fair.

20 Q. And you're not aware of any of the costs
21 that this company claimed to be unanticipated or to
22 have risen, correct?

23 A. No other -- no other costs come to mind.
24 The other aspect that I was alluding to was the fact
25 that the other complaint that was raised by the

1 company had to do with the fact that they believed
2 that the contract itself was -- had some issues in
3 the language of the contract and they felt -- and the
4 phrase that was discussed in general around the
5 office was that they had quoted it as being
6 unconscionable.

7 Q. But AEP's position as to that claim was
8 as with the other claim, that it didn't necessarily
9 believe that to be a legitimate claim, correct?

10 A. What I sensed in my limited capacity
11 through this negotiation was that there was a certain
12 degree of uncertainty as to how this was going to be
13 received in the court of law and that [REDACTED] had --
14 excuse me, but the company had, in fact, stated that
15 they were, in fact, going to pursue legal remedy
16 under whatever provisions they could and that they
17 had believed that they had a very good case in trying
18 to accomplish that.

19 Q. To your knowledge, there was never a
20 claim actually filed against AEP.

21 A. You're speaking to a legal claim?

22 Q. Yes.

23 A. To my knowledge, no, there was not. But
24 I am not -- I don't know for sure.

25 Q. Was this company selling coal exclusively

1 to AEP at the time?

2 A. No, it was not.

3 Q. Was it selling coal on the spot market,
4 to your knowledge?

5 A. I would imagine it was.

6 Q. So some of its coal was selling, if it
7 was at the time on the spot market, around [REDACTED] to [REDACTED]
8 dollars a ton, correct?

9 A. I would expect that to be the case, yes.

10 If I might to add to that particular
11 point, I do not believe that the argument that the
12 counterparty made was that they had limited tons to
13 provide. I believe that their complaint was
14 exclusively with this particular coal supply
15 agreement.

16 Q. As a result of this renegotiation of this
17 coal supplier's contract, the price of coal that AEP
18 paid this supplier remained at the existing rate
19 through the end of 2008, correct?

20 A. Yes, that is correct.

21 Q. Did this contract just deal with one type
22 of coal AEP was buying?

23 A. Pardon?

24 Q. Did the contract just deal with one type
25 of coal, a particular type of coal?

1 A. There were two. Well, there were two
2 quality specifications within the contract that I'm
3 aware of, slightly different in the qualities, if you
4 will. But when you're talking about were they --
5 when you say "types," I'm not sure exactly what
6 you're speaking to. There's four different coal
7 basins and they sell coal out of the Powder River
8 Basin as well, so I'm assuming that you're not
9 talking about that.

10 Q. No.

11 A. Okay.

12 Q. The auditor says the settlement agreement
13 was signed December 2007, but did it in fact get
14 executed January 1, 2008?

15 A. I believe. And I found this out just
16 this morning, that I think that the actual signing of
17 the document was January the 2nd of 2008.

18 Q. That would be more convenient.

19 At some time in 2008 there was also with
20 this coal supplier a note payable that they gave to
21 AEP for \$ million, correct?

22 A. That is correct.

23 Q. What was that in connection with?

24 A. My understanding is that had to do with
25 shortfall deliveries that -- shortfalls in deliveries

1 throughout the year of 2008, and when we were in the
2 end of the year in 2008, it was recognized that they
3 were still going to continue to be short and,
4 therefore, the negotiation was to address the fact
5 they were -- they were essentially going to reduce
6 their quantity, the obligations for the year 2008, by
7 [REDACTED] tons.

8 Q. Is this supplier still a coal supplier to
9 AEP?

10 A. Yes.

11 Q. Do you know what percentage of the coal
12 AEP uses it gets from this supplier currently?

13 A. Well, let me address this in a different
14 way. Maybe that will change your question.

15 Q. Okay.

16 A. AEPSC still does business with this
17 counterparty. The amount of coal that we have coming
18 from that counterparty to both Columbus Southern and
19 Ohio Power is much reduced, and I can't remember the
20 exact percentage, but it does sell into some of the
21 other utilities that AEPSC is connected with.

22 So I don't know if that changes your
23 question at all or...

24 Q. Does that allow you -- well, I don't know
25 if --

1 A. If you're asking for a percentage, I
2 don't know. But I don't even know what framework you
3 want the percentage in, the companies', AEPSC.

4 Q. Let me ask you about this second matter
5 with the company in the audit report, it follows
6 immediately after the first we've been discussing,
7 regarding a contract support to a coal supplier.

8 A. Could you direct me to a page, please?

9 Q. Yes. In the audit report. It starts at
10 page 2-22.

11 A. Okay. Yes. I have the page.

12 Q. And you discuss that I think in your
13 testimony starting at page 16 but continuing to page
14 17.

15 A. Okay.

16 Q. And you discuss at line 7 on page 17 that
17 the company -- that the supplier was in jeopardy of
18 breaching its loan agreements.

19 A. That is correct.

20 Q. Do you know the nature of these loan.
21 agreements?

22 A. In regard to?

23 Q. In regard to why the company was in
24 danger of breaching them.

25 A. They did not have enough revenue to be

1 able to pay their debt, is my understanding.

2 Q. Was the lender requiring that the balance
3 be paid, or just the next payment?

4 A. The next payment, is my understanding.

5 Q. Was there a demand for renegotiation by
6 that lender?

7 A. Between the lender and the creditor?

8 Q. Yes.

9 A. Not that I'm aware of. I don't believe
10 that they wished to renegotiate; they wished to
11 terminate their arrangement.

12 Q. So the company wanted to call the loan
13 in.

14 A. I think that's --

15 Q. Or the investors.

16 A. The investors, I think that's a fair way
17 of putting it, yes.

18 Q. And you don't know whether this company,
19 the coal supplier, was insolvent at the time of this
20 matter, correct?

21 A. The coal company, I don't know its
22 definitive economic status, but it could not cover
23 the loans, is my understanding.

24 Q. Do you know if that lender had initiated
25 legal action against the coal company?

1 A. I do not know if it did that, no.

2 Q. Did you participate in an extensive
3 review of the coal supplier's books, records, lending
4 arrangements, et cetera?

5 A. AEPSC did. I did not, but we had our, I
6 believe, our Treasury Group did so, and the company
7 that we're talking about opened their books
8 completely to our review.

9 Q. Has AEP ever provided such a production
10 bonus payment to a coal supplier before?

11 A. I don't believe in this nature, but
12 again, I don't think that any counterparty has ever
13 been so forthcoming with all of their financials and
14 borne their soul, so to speak, like this one has.

15 Q. Now, this agreement and negotiation bonus
16 payment, et cetera, that we've been talking about,
17 this is in the audit report because it relates to
18 coal used during 2009, correct?

19 A. That is correct.

20 MR. IDZKOWSKI: If I may have just a
21 moment, your Honor.

22 EXAMINER JONES: You may.

23 Q. Keeping this contract with this -- by
24 making this production bonus payment and keeping this
25 contract in place with this coal supplier where the

1 coal supplier receives contract support, the one
2 we've just been discussing, in doing that the
3 company, AEP, was able to maintain its current or
4 existing price for coal through the end of 2008,
5 correct?

6 A. I think you may be switching back and
7 forth there on different companies. But what we did
8 is provided a bonus called a -- you know, of cash to
9 this particular company in 2008. We also increased
10 the per-ton amount of it, you know, on its receipts
11 in 2009.

12 But the benefit to that that I see going
13 forward is the fact that those prices under the
14 contract, the contract was preserved and retained in
15 this particular instance and the coal prices had
16 returned back to their original contract value for
17 the shipments beyond 2009.

18 I don't know -- I'm not sure where you
19 were with your question, but I hope that answer
20 covers it.

21 Q. Well, did the price change between the
22 payment in June of 2008 of this production bonus, did
23 the price change starting in 2009 until sometime
24 in --

25 A. That is correct. There was just a, let's

1 call it cash infusion in 2008 and then there was a
2 per-ton increase in 2009 for 2009 shipments, which
3 was then ceased at the end of 2009 shipments, and
4 then the contract price returned to its original
5 level.

6 Q. How much coal was AEP buying per year
7 from this supplier?

8 A. By "AEP" I'm assuming you're referring to
9 Columbus Southern and --

10 Q. Yes.

11 A. -- Ohio Power.

12 Q. Yes.

13 A. I believe from memory it would be about
14 [REDACTED] million, I think [REDACTED] million or [REDACTED]
15 million.

16 Q. [REDACTED] to [REDACTED] million tons per year.

17 A. Yes. That might be incorporating another
18 entity there, so . . .

19 MR. IDZKOWSKI: Thank you, your Honor.
20 Thank you, Mr. Rusk. No further
21 questions.

22 EXAMINER JONES: Thank you.

23 Mr. Clark?

24 MR. CLARK: IEU has no questions for this
25 witness, your Honor.

1 EXAMINER JONES: Staff have any
2 questions?

3 MR. MARGARD: No, your Honor.

4 EXAMINER JONES: Any redirect for this
5 witness?

6 MR. NOURSE: Briefly

7
8 REDIRECT EXAMINATION

9 By Mr. Nourse:

10 Q. Mr. Rusk, Mr Idzkowski asked you about
11 this contract support that you discussed. It's the
12 one you discuss beginning on the bottom of page 16
13 and following in your testimony and discussing the
14 financial difficulty associated with that and why you
15 agreed to the terms and what was reflected in the
16 FAC. Do you remember those questions?

17 A. Yes, I do.

18 Q. Okay. Is it your understanding that even
19 with the increased price in 2009, the all-in price
20 under the contract was still below market or was
21 competitively priced?

22 A. Well, if I may, it may have been in the
23 area of the market price I don't believe that it
24 was below, but it was probably near the market price.
25 But the real issue was if we would have had to have

1 gone out and replaced this coal and not been able to
2 obtain this particular coal during this time period,
3 we would have probably driven the price in the
4 marketplace up just by our own participation.

5 Q. And the other portion of this agreement
6 being referred to as the production bonus payment
7 that was discussed earlier, was that reflected in the
8 FAC, to your knowledge?

9 A. I'm not sure I remember what you're
10 talking about. I'm sorry.

11 Q. The production bonus payment in
12 June 2008.

13 A. Yes. It was that -- the question was
14 what?

15 Q. Was that reflected in the FAC for Ohio
16 Power?

17 A. No, I don't believe it was. Of course,
18 Witness Dooley would be able to answer that better,
19 but I don't think it was. I'm relatively certain
20 wasn't.

21 Q. Now, you indicated t earlier that this
22 particular form of contract support you didn't recall
23 any examples that were exactly the same, correct?

24 A. What was that again? Sorry.

25 Q. You didn't recall any other examples of

1 contract support that were structured exactly the
2 same as this one.

3 A. Not exactly the same, no.

4 Q. But you do, as the auditor notes, AEP
5 does support its suppliers when it's prudent to do so
6 and has done that on numerous occasions where
7 appropriate, correct?

8 A. When we have worked with counterparties
9 and they have been good suppliers and it is prudent
10 for us to, we believe, to keep them as a
11 counterparty, and if they are, for example,
12 struggling financially, it is, we believe, in the
13 best interest of all parties to keep them there, to
14 foster competition and to go ahead and provide that
15 kind of support to maintain that entity there.

16 MR. NOURSE: Thank you, Mr. Rusk.

17 That's all I have, your Honor.

18 EXAMINER JONES: Mr. Idzkowski, anything
19 further based on that redirect?

20 MR. IDZKOWSKI: No, thank you, your
21 Honor.

22 EXAMINER JONES: Thank you.

23 Anyone else? Mr. Clark?

24 MR. CLARK: No, your Honor.

25 EXAMINER JONES: Thank you, Mr. Rusk.

1 You may step down then.

2 MR. NOURSE: Your Honor, I move for the
3 admission of Company Exhibits 2 and 2A.

4 EXAMINER JONES: Any objection to the
5 admission of Company Exhibits 2 and 2A?

6 Hearing none, they shall be so admitted.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 EXAMINER JONES: At this time we will
9 allow you to, if you're prepared, to go ahead and
10 call your next witness, but we will probably break as
11 soon as we get ready for cross-examination after you
12 get them on the stand.

13 MR. NOURSE: Sure. Your Honor. We call
14 Philip J. Nelson to the stand.

15 (Witness sworn.)

16 EXAMINER JONES: Thank you, please be
17 seated.

18 You may proceed, Mr. Nourse.

19 MR. NOURSE: Thank you, your Honor.

20 I'd like to mark Mr. Nelson's prefiled
21 direct testimony, the confidential version, as
22 Companies' Exhibit No. 3, the public version as
23 Companies' Exhibit 3A.

24 EXAMINER JONES: They shall be so marked.

25 MR. NOURSE: Thank you.

(EXHIBITS MARKED FOR IDENTIFICATION.)

PHILIP J. NELSON

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

DIRECT EXAMINATION

By Mr. Nourse:

Q. Mr. Nelson, do you have the exhibits I
just marked for the record before you?

A. Yes.

Q. Is this your direct testimony prepared by
you or under your direction?

A. Yes.

Q. Do you have any changes, corrections, or
additions this afternoon?

A. Just one on page 1 of Exhibit 3. Up in
the header on the last line, the case number is
incorrect. The second case number should be 09-873.
And likewise on Exhibit 3A, the same correction.

Q. Thank you. Good catch.

All right. With that correction, if you
were asked these same questions under oath today
would your answers be the same?

A. They would.

MR. NOURSE: Your Honor, I'd tender the

witness for cross-examination.

EXAMINER JONES: Thank you, Mr. Nourse.

At this time we are going to take a 15-minute break. Hopefully that's all the longer it will be, and I will see the parties back here at approximately 3:45.

(Recess taken.)

EXAMINER JONES: Let's go back on the record.

Mr. Idzkowski, you may proceed with your cross-examination.

MR. IDZKOWSKI: Thank you, your Honor.

CROSS-EXAMINATION

By Mr. Idzkowski:

Q. Good afternoon, Mr. Nelson.

A. Good afternoon.

Q. Now, your position with AEP Service Company or AEPSC is director of strategy pricing and analysis?

A. Director of regulatory pricing and analysis.

Q. Director of regulatory pricing and analysis. Are you a CPA?

A. No, I'm not.

1 Q. And what are your areas of responsibility
2 with AEPSC?

3 A. My areas of responsibility are in the
4 pricing area, regulatory filings, maintenance of
5 tariffs. My department also does class cost of
6 service, jurisdictional cost of service, as well as
7 administer certain formula rate contracts and various
8 analysis around AEP generation, AEP pools.

9 Q. Your department doesn't do coal
10 procurement contracts and their related negotiations,
11 correct?

12 A. No, it does not.

13 Q. Now, the purpose of your testimony is to
14 address certain management financial audit
15 recommendations, specifically recommendation 1 as
16 well as 3, 6a, 6 b, 6e, 6f, and 6j, correct?

17 A. And I think 6g as well.

18 Q. 6g? All right.

19 If you could look at page 4 of your
20 testimony, please, regarding the first management
21 audit recommendation. Tell me when you're there.
22 And do you also have a copy of the audit report in
23 front of you?

24 A. Yes, I do.

25 Q. All right. Let me know when you're

1 ready, when you're at that point in your testimony.

2 A. Okay, I'm on page 4.

3 Q. All right. Here you're discussing a
4 recommendation No. 1 that deals with a renegotiated
5 contract involving the coal supplier and AEP,
6 correct?

7 A. Yes, what we refer to as 2008 settlement
8 agreement.

9 Q. In that settlement agreement AEP received
10 a \$ million note payable over a period of time,
11 correct?

12 A. Yes.

13 Q. And that note has been paid, correct?

14 A. Yes.

15 Q. And the audit recommendation states that
16 the Commission should review whether any of the
17 proceeds from the settlement agreement should be a
18 credit against OPCo's FAC underrecovery, correct?

19 A. Yes.

20 Q. Now, this buyout of a contract is
21 discussed at page 2-21 in the audit report, if you
22 want to refer to that, but it was negotiated in 2007
23 and booked prior to the ESP period, but it relates to
24 coal that was shipped during the ESP period, correct?

25 A. Well, there are several components to the

1 settlement. We've talked about it here. There isn't
2 only one component. There was the cash payment as
3 well as reserves received. There was the termination
4 of the existing contract as well as a new contract
5 beginning January 1st, 2009.

6 Q. Those reserves as received by AEP as part
7 of this settlement, they're in [REDACTED]?

8 A. That's my understanding, yes.

9 Q. So would they -- they wouldn't
10 necessarily be used by AEP, then, would they?
11 AEP-Ohio?

12 A. I don't think at this point it's known --

13 Q. They could be used --

14 A. -- how they would be used.

15 Q. They could be used by another utility
16 altogether, couldn't they?

17 A. They could.

18 Q. All right. Now, in 2008 AEP received a
19 \$[REDACTED] million cash payment or note from this coal
20 producer, correct?

21 A. Yes, at the end of the year, November.

22 Q. What was that in connection with?

23 A. That was in connection with a failure to
24 deliver a certain tonnage of coal in 2008.

25 Q. Was it in connection with a

1 nonperformance issue that the coal, you know,
2 nonperformance of the contract by the coal producer?

3 A. Yes.

4 Q. Was there litigation involved in that
5 matter?

6 A. I don't know.

7 Q. You weren't involved -- you weren't
8 directly involved in that negotiation, were you?

9 A. I was not.

10 Q. So you don't know if AEP received any
11 additional value as a result of that settlement,
12 correct?

13 A. As a result of the November 2008
14 settlement?

15 Q. Yes.

16 A. No, I'm not aware of any additional value
17 received.

18 Q. Do you know who was involved in that 2008
19 negotiation and settlement?

20 A. No, I do not, other than I would expect
21 it would be our Fuel Supply Group.

22 Q. You state on page 4 of your testimony
23 that the value of the property with coal reserves is
24 estimated at [REDACTED] million. Do you see that?

25 A. Yes.

1 Q. But you don't personally have any idea
2 what the value of that property with coal reserves
3 is, correct?

4 A. No, I do not.

5 Q. You don't know how the coal reserves were
6 valued at [REDACTED] million, correct?

7 A. My understanding is that, you know, a
8 valuation was done at the time the settlement was
9 entered into and that that was the amount that the
10 company recorded on its books as the value of those
11 reserves.

12 Q. But you don't know anything about how
13 that value was determined though, correct?

14 A. No.

15 Q. And while not being involved in the
16 contract negotiations we've been talking about, you
17 testify on page 5 that OPCo is fine with the
18 Commission reviewing these negotiations and
19 settlements but that the Commission should limit its
20 review to the audit period, correct?

21 A. That's correct.

22 Q. Well, let me ask this: How would the
23 Commission -- you testify it is fine the Commission
24 reviews the renegotiation but it should also limit
25 its review to the audit period. These negotiations

1 occurred outside of the audit period.

2 A. Yes. Well, in certain instances there
3 may be some carryover into an audit period and, you
4 know, for the auditor to actually look at these
5 contracts, we don't have an objection to that. She
6 has to determine whether in fact there was any impact
7 on the audit period. And I believe in this instance
8 there isn't any impact on the audit period.

9 Q. It's your position, in fact, on page 5
10 that the review by the Commission will confirm that
11 AEP made the proper entries in its books in
12 connection with the renegotiation of these coal
13 contracts, but you weren't involved in the contracts
14 and you're not a CPA, so how do you make -- how is
15 that your view?

16 A. Well, it's my view because I was very
17 much involved in the company's proceedings in the RSP
18 and ESP, and I know for a fact that we had no fuel
19 clause in 2008, we didn't have one during the RSP
20 period, in fact, we hadn't had a fuel clause since I
21 believe 2000.

22 I knew that we did propose a fuel clause
23 in the ESP and that fuel clause was well debated in
24 that case, and that fuel clause began January 1st,
25 2009.

1 I also know that Ohio Power's fuel costs
2 went up dramatically in 2008, substantial increases
3 that negatively impacted the company's earnings in
4 that year, and that in this proceeding what I think
5 some of the parties are attempting to do is just to
6 look at certain transactions, try to extract that
7 value and say if the company hypothetically did have
8 a fuel clause in 2008, then we want that particular
9 value.

10 But I think what the Commission has to do
11 is look at the whole situation. One, most
12 importantly, we didn't have a fuel clause in 2008.
13 Secondly, when you take all the transactions that
14 occurred on Ohio Power in total, you will see that
15 the company experienced a dramatic increase in fuel
16 and was harmed by not having a fuel clause in 2008.

17 Another point is that it was very well
18 recognized in the ESP proceeding that we would have a
19 significant underrecovery balance to be recovered
20 through the phase-in. And what's transpired is
21 exactly what we expected, and that's really a result
22 of the rate caps.

23 So I think that's why I'm offering my
24 opinion for those various reasons.

25 Q. But in connection as to specific entries,

1 as to specific entries on its books, placed on its
2 books in connection with these renegotiations, which
3 you didn't directly participate in, you're not
4 qualified to have a position on this, are you?

5 MR. NOURSE: Objection, your Honor.

6 EXAMINER JONES: Sustained.

7 Q. The audit report states that the value of
8 this coal reserve is unclear, correct?

9 A. I don't recall it specifically stating
10 that, but I would agree that it is fairly unclear.
11 There's been a lot of different numbers thrown
12 around.

13 Q. And you recall the audit report stating
14 that using [REDACTED] price forecast, the value of the
15 reserve on a net present value basis using an
16 [REDACTED] percent discount rate could be \$[REDACTED] million?

17 A. Yeah. There's a particular sentence in
18 the audit report on page 2-21 that I believe says
19 exactly that. It says, "Using [REDACTED] price forecast,
20 the value of the reserve on a net present value basis
21 using an [REDACTED] percent discount rate would be
22 \$[REDACTED] million."

23 Q. Then why do you maintain that the value
24 of that reserve is [REDACTED] million?

25 A. Alls I said is that's what we recorded on

1 the books, the \$ million. I don't know the value
2 today. Maybe someone else does.

3 Q. As to that renegotiated price in 2007 and
4 '8, that affected the price of coal to AEP in 2009,
5 correct?

6 A. Well, as part of the settlement
7 agreement, the 2008 settlement agreement, January 1,
8 there was a new contract taken with that same
9 supplier; however, the old contract was terminated at
10 the end of 2008.

11 Q. So the value of the coal price stayed
12 constant from the date it was signed. The
13 negotiation settlement was signed in January of '08.
14 It stayed constant until December 31st of '08. Then
15 it went up in 2009, correct?

16 A. Well, there were two separate contracts.
17 One was terminated, and I assume that contract price
18 went through 2008. I don't know if there's any
19 escalators in that particular contract. And then a
20 new contract was taken beginning January 1st, 2009.

21 Q. And that increased the price during 2009.

22 A. It was I think a market price in that
23 contract. The old one was well below market.

24 Q. You testify -- if you could look at page
25 6, please. You testify about Mr. Dooley's testimony,

1 and you say at lines 11 -- or, 10 to 12, "The proper
2 accounting also resulted in some of the 2008
3 Settlement Agreement payments received by OPCo being
4 flowed through the FAC, as Mr. Dooley explains." Is
5 that Mr. Dooley's opinion or your opinion?

6 A. It appears in Mr. Dooley's testimony, so
7 it's his opinion that I'm relying on.

8 Q. You're just relying on it, all right.
9 It's not your expert opinion.

10 A. I have no reason to doubt it.

11 Q. You're not a CPA, correct?

12 A. I'm not a CPA.

13 Q. You testify that, on page 6, proper
14 accounting also resulted in some of the 2008
15 settlement agreement payments received by OPCo being
16 flowed through the FAC, as Mr. Dooley -- I think we
17 just read that, sorry.

18 Is it -- strike that.

19 Is it a certainty that the coal contract
20 with this coal supplier existing in 2007, in 2008
21 could not have -- well, it terminated in January of
22 2008. But is it a certainty that that contract in
23 2007 couldn't have continued through 2009?

24 THE WITNESS: Could you read that
25 question back to me?

1 (Record read.)

2 A. I think you meant that it continued to
3 2008, the end of 2008, didn't terminate in January of
4 2008.

5 Q. I'll ask it again. The contract in
6 existence in 2007 with this coal supplier, regarding
7 that contract, is it a certainty that it could not
8 have continued through 2009?

9 A. No. It's just a high probability from
10 what I am told.

11 Q. On page 7 you testify regarding
12 Mr. Rusk's testimony. At lines 10 to 13 you say that
13 existing contracts would need to be renegotiated
14 because the contracts were unsustainable. Is your
15 opinion relying on Mr. Rusk's opinion?

16 A. Yes, I'm relying on Mr. Rusk's opinion,
17 as well as the auditor's opinion and the auditor's
18 testimony in the EFC -- or, I'm sorry, the ESP
19 proceedings.

20 Q. And these contracts you're referring to
21 are limited to two contracts, are they not, the coal
22 supplier which AEP received the coal reserves and
23 \$ [REDACTED] million, and also the [REDACTED] contract
24 support. Just those two contracts are what you're
25 referring to, correct?

1 A. In the sentence beginning on line 10,
2 that's a little broader because I say existing coal
3 contracts might have needed, so I'm not necessarily
4 limiting to those two in that statement; however,
5 with respect to this proceeding, we've been primarily
6 talking about those two.

7 MR. IDZKOWSKI: Thank you, Mr. Nelson.

8 Thank you, your Honor. I have no further
9 questions.

10 EXAMINER JONES: Thank you.

11 Mr. Clark?

12 MR. CLARK: Thank you, your Honor.

13 - - -
14 CROSS-EXAMINATION

15 By Mr. Clark:

16 Q. Mr. Nelson, my name is Joe Clark. I'm
17 counsel for IEU-Ohio, and I believe we met at your
18 deposition.

19 Mr. Nelson, you testified that you were
20 involved in the ESP proceedings for Ohio Power and
21 Columbus Southern Power, correct?

22 A. That's correct.

23 Q. And you testified in those ESP
24 proceedings, correct?

25 A. I did.

1 Q. And your ESP testimony addressed, in
2 part, the FAC proposal by Columbus Southern and Ohio
3 Power, correct?

4 A. Yes.

5 Q. And if you recall, did some parties in
6 the ESP proceedings recommend using actual 2008 fuel
7 costs to set the FAC baseline?

8 A. Yes. I believe several parties
9 recommended that.

10 Q. And in those ESP proceedings Ohio Power
11 and Columbus Southern opposed using the actual 2008
12 cost to set the baseline, correct?

13 A. Yes. We had a method that actually
14 unbundled the rates and determined the appropriate
15 FAC component of the rates. That was not accepted by
16 the Commission. They elected a third method.

17 Q. Correct. So based on CSPs and OP's
18 position in the ESP proceeding, CSP and OP had an
19 opportunity to build actual 2008 fuel costs into
20 their ESP rates and rejected the opportunity in the
21 ESP proceedings, correct?

22 A. We didn't reject it. The Commission was
23 the one that made the ruling on what the proper
24 baseline should be. And, in fact, I see this attempt
25 by some of the parties here as a thinly veiled

1 attempt to cull back on that decision as well. The
2 baseline was established in that proceeding and I
3 think we need to move on to the FAC in 2009.

4 Q. But you opposed setting the baseline --
5 pardon me, strike that.

6 But Ohio Power and Columbus Southern
7 Power opposed setting the baseline based on 2008
8 actual fuel cost, correct?

9 A. Correct. It was not an appropriate way
10 to establish a baseline for the FAC in 2009.

11 Q. Mr. Nelson, I wanted to also, in your
12 previous testimony you had discussed that you were
13 involved in the RSP case as well, correct?

14 A. I was.

15 Q. And you were involved in the formulation
16 of the RSP proposal, correct?

17 A. Yeah. I have had a role in it, yes.

18 Q. And the RSP was filed on February 9th,
19 2004, correct?

20 A. That sounds right.

21 Q. And the case number was 04-169, correct?

22 A. Sounds familiar.

23 Q. The RSP application by the companies
24 asked for automatic generation service rate
25 increases, correct?

1 A. It did.

2 Q. And it also, the RSP application, also
3 proposed the ability for the companies to ask for
4 discretionary generation increases, correct?

5 A. That's correct.

6 Q. The RSP application, though, did not ask
7 for any fuel clause or fuel recovery mechanism,
8 correct?

9 A. That's correct.

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

12 EXAMINER JONES: Staff have any questions
13 of this witness?

14 MR. MARGARD: No questions. Thank you,
15 your Honor.

16 EXAMINER JONES: Any redirect for this
17 witness?

18 MR. NOURSE: Just briefly, your Honor.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Nourse:

22 Q. Mr. Nelson, you were discussing with
23 Mr. Clark the AEP-Ohio Rate Stabilization Plan just a
24 moment ago; do you recall that?

25 A. Yes.

1 Q. Is AEP-Ohio in this proceeding in any way
2 complaining about its prior rate plans attempting to
3 retroactively modify those plans in any way?

4 A. No. In fact, because we didn't have a
5 FAC in 2008, we incurred all these additional costs,
6 but we're not the ones seeking to redefine this. We
7 made the deal. We probably made a mistake, perhaps,
8 at least in 2008 in not having a fuel clause and we
9 had to live with the consequences, and we're
10 preparing to go forward and forget 2008, the past is
11 past, and move on to 2009.

12 MR. NOURSE: Thank you, your Honor.
13 That's all the questions I have.

14 EXAMINER JONES: Any recross based on
15 that redirect?

16 MR. IDZKOWSKI: No, your Honor.

17 EXAMINER JONES: Mr. Clark?

18 MR. CLARK: No, thank you, your Honor.

19 EXAMINER JONES: Thank you, Mr. Nelson.
20 You may step down.

21 Moving the admission of Company Exhibits
22 3 and 3A, Mr. Nourse?

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

24 EXAMINER JONES: Any objection?

25 Hearing none, Company Exhibits 3 and 3A

1 will be admitted.

2 (EXHIBITS ADMITTED INTO EVIDENCE.)

3 EXAMINER JONES: Let's go off the record
4 a second.

5 (Discussion off the record.)

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

8 The company may call its next witness.

9 MR. SATTERWHITE: Thank you, your Honor,
10 the company calls Peggy Simmons to the stand.

11 (Witness sworn.)

12 EXAMINER JONES: Thank you.

13 Mr. Satterwhite, you may proceed.

14 MR. SATTERWHITE: Thank you, your Honor.

15 - - -

16 PEGGY I. SIMMONS

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

19 DIRECT EXAMINATION

20 By Mr. Satterwhite:

21 Q. Ms. Simmons, did you file testimony in
22 this docket on August 15th?

23 A. Yes.

24 MR. SATTERWHITE: At this time, your
25 Honor, I'd like to mark the Prefiled Direct Testimony

1 of Ms. Simmons in this docket as Company Exhibit No.
2 4.

3 EXAMINER JONES: It shall be so marked.
4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 EXAMINER JONES: And I believe at this
6 time, even though I think the door is still closed
7 and there's no one else here that would like to come
8 in, there's no reason to have a protected record for
9 this cross-examination. Correct?

10 MR. SATTERWHITE: Correct. If the
11 witness feels there's something that's going to be
12 confidential, just let us know.

13 EXAMINER JONES: Thank you.

14 Q. All right, Ms. Simmons, do you have in
15 front of you what's been marked as Company Exhibit 4,
16 which is your prefiled testimony?

17 A. Yes, I do.

18 Q. Do you have any corrections or changes to
19 this testimony?

20 A. No, I do not.

21 Q. Did you prepare this testimony or was it
22 prepared on your behalf?

23 A. That's correct.

24 Q. If I asked you all the same questions in
25 this testimony today, would your answers be the same?

1 A. Yes.

2 MR. SATTERWHITE: I have no further
3 questions. I tender the witness for
4 cross-examination.

5 EXAMINER JONES: Thank you.

6 Mr. Idzkowski.

7 MR. IDZKOWSKI: Thank you, your Honor.

8 - - -
9 CROSS-EXAMINATION

10 By Mr. Idzkowski:

11 Q. Good afternoon, Ms. Simmons.

12 A. Good afternoon.

13 Q. Your title is Manager-Renewable Energy?

14 A. That is correct.

15 Q. I'll try to speak up. If you can't hear
16 me, let me know.

17 A. Okay.

18 Q. I don't have a microphone.

19 You work for the service company?

20 A. That is correct.

21 Q. And you use -- your company uses
22 renewable energy purchase agreements to purchase
23 RECs?

24 A. The company uses them. We go through the
25 broker market as well as power purchase agreements to

1 acquire RECs, that is correct.

2 Q. What is an example of customer-sided
3 distributed generation?

4 A. An example of customer-sided distributed
5 generation would be if a company had -- if a customer
6 had solar panels put on their rooftop.

7 Q. And then those are able to supply energy
8 to the grid?

9 A. That would be my understanding, correct.

10 Q. How does the company evaluate ownership
11 of certain energy resource generation such as biomass
12 co-firing?

13 A. If you turn to page 4 of my testimony,
14 you will see that AEP's New Technology Group, they go
15 through a screening of various renewables and they go
16 through a cost evaluation, the viability of that
17 renewable, and come up with different determinations
18 of what's the most prudent -- what's the most prudent
19 option for the company.

20 Q. Is the company on course to meet the
21 renewable energy benchmark set forth in Senate Bill
22 221?

23 A. AEP-Ohio is currently on target to meet
24 those benchmarks; that is correct.

25 Q. Is that your job to oversee the progress

1 of the company toward those benchmarks?

2 A. My department specifically -- AEP goes
3 through a comprehensive planning process to find the
4 most reliable, prudent manner for acquiring, excuse
5 me, for meeting certain requirements in our various
6 jurisdictions, including Senate Bill 221. My
7 department's role specifically is, once there is a
8 strategy initiated and we share information back and
9 forth, is to execute on the commercial aspects of
10 that.

11 Q. You testify that in late-'09, 2009, AEP
12 began purchasing power generated from wind under two
13 50 megawatt Fowler II long term wind power purchase
14 agreements.

15 A. Yes. You're referring to page 3, line 22
16 and 23 of my testimony, that's correct.

17 Q. Thank you.

18 Will those wind power agreements remain
19 in place long enough to meet AEP's long-term
20 renewable energy benchmarks?

21 A. The contracts are for a 20-year term.
22 The output from those contracts will be used to meet
23 the requirements set forth in the bill.

24 Q. What generation facilities that are
25 renewable energy sources of generation does AEP own?

1 A. Sorry, could you repeat that?

2 Q. Sure.

3 MR. IDZKOWSKI: Could you read the
4 question back?

5 THE REPORTER: Probably not.

6 (Record read.)

7 MR. IDZKOWSKI: I'll restate it.

8 Q. In terms of AEP ownership, what renewable
9 energy generation facilities does AEP presently own?

10 A. Currently AEP Ohio owns the Newark and --
11 the solar facilities that are sited on our Newark and
12 Athens facilities as it relates to renewables.

13 Q. And are those solar wind and biomass
14 generation facilities?

15 A. The facilities located on the Athens and
16 Newark facility are solar facilities.

17 Q. Solar. And on page 4 you talk about a
18 list of criteria the company looks for when it
19 evaluates renewable energy options. You list cost,
20 location, feasibility, applicability to AEP's service
21 territory, and commercial availability.

22 A. That is correct.

23 Q. Are these criteria given equal weight or
24 are some given more weight?

25 A. Well, each of these in the new technology

1 group, whenever they look at each of these criteria,
2 they're looking for the least-cost prudent option for
3 the company; however, some -- however, the noncost
4 factors have to be taken in consideration for the
5 viability of the option.

6 Q. Well, let me ask you this: Is commercial
7 availability given the same weight as the other
8 criteria?

9 A. I'll restate my answer. We look for the
10 least-cost available option; however, nonprice
11 factors are taken into consideration, such as whether
12 there's an interconnection application that's in
13 place for it to come on line in the time in which we
14 need it to meet the needs, that would be one example;
15 whether there are facilities that are being developed
16 in the market that have been approved to meet such
17 requirements, that's another -- those are other
18 considerations that are taken.

19 Q. Does the company have any plans to
20 self-build wind turbine generation?

21 A. As it states here, we are continually
22 evaluating various options for -- to meet Senate Bill
23 221; however, currently the company would need a
24 clear path to cost recovery in order for a self-build
25 option.

1 Q. So is that a "no"?

2 A. I will say that the company continues to
3 evaluate all options to meet the requirements;
4 however, we would need a clear path to cost recovery
5 for self-build.

6 Q. And I have to look for it, but your
7 testimony refers to AEP using RFPs to secure
8 long-term power purchase agreements, and you say
9 these stipulate that all outputs of the bidder's
10 facilities include environmental attributes. What
11 are those environmental attributes?

12 A. That would be all of the -- any REC's or
13 any future attributes that may come up in future
14 legislation. Any environmental attribute that's
15 associated with any type of renewable facility in our
16 contract, we're saying it belongs to us.

17 Q. So it doesn't limit it to -- it would
18 include REC's and any renewable energy aspects of it?

19 A. Yes. Our contracts include energy
20 capacity REC's and any environmental attributes.

21 Q. All right. AEP disagrees with the
22 conclusion in the audit report on page 6-7 which
23 recommends greater emphasis be placed on the
24 self-build option for renewables, correct?

25 A. That is correct.

1 Q. Why is placing a greater emphasis on the
2 self-build option something the company is opposed
3 to?

4 A. Essentially, the way we look at meeting
5 the requirements is we evaluate all options that are
6 out there and which is the least-cost option and
7 which provides the most benefit to the customer, and
8 that's how we evaluate our options. Currently, as I
9 mentioned earlier, we don't see a clear path for cost
10 recovery for self-build options.

11 Q. Could that position change?

12 A. Could you repeat that? I'm sorry, I
13 couldn't hear you.

14 Q. Could that position by AEP change?

15 A. Yes. The company continues to evaluate
16 its options. If it is determined that we see a clear
17 path for cost recovery for a self-build option, that
18 would be taken into consideration in our evaluation
19 process.

20 Q. And what might cause that position to
21 change, in your view?

22 A. That is not in my scope of my testimony.

23 Q. Well, let me ask you this: You say that
24 wind power is more expensive than fossil, correct?

25 A. Currently than existing fossil, I do make

1 that statement.

2 Q. And does this comparison take into
3 consideration the cost of pollution-control equipment
4 for coal-fired generation plants?

5 A. Does that statement take into
6 consideration?

7 Q. Yes, your comparison of wind power to
8 fossil fuel generation.

9 A. No. In my testimony I state that it's to
10 existing fossil fuel generation.

11 Q. Yes.

12 A. So currently it's not taking into
13 consideration any potential environmental parameters
14 or upgrades that would have to go on for fossil
15 generation.

16 Q. Well, does it take into consideration
17 current pollution control costs?

18 A. No. Essentially what I was comparing
19 here in my testimony was when compared to the current
20 market and existing fossil that's currently in the
21 market today.

22 Q. Right, but --

23 A. The market price.

24 Q. I'm sorry, I don't want to cut you off.

25 A. I'm saying the current market price, and

1 we're comparing what the cost of installed wind is
2 and what the dollar per megawatt-hour is and we're
3 comparing the two, and wind there is a slight --
4 there is a premium to that.

5 Q. So should I assume or should I take it
6 that your comparison of wind power costs to fossil
7 fuel generation costs includes the current level of
8 pollution-control equipment necessary due to
9 regulations currently?

10 A. This is taking in consideration what's in
11 the market right now and what that marketplace -- not
12 necessarily what will be coming on once these
13 controls are added and what that cost will be -- what
14 that cost will have on the market price going
15 forward.

16 Essentially what it's saying is that
17 renewables, there is a slight premium for renewables,
18 and that's why you see in various RSPs either there
19 is a penalty, an ACP for noncompliance, or there's
20 some type of basis point or return for complying. So
21 it's essentially just saying that the renewables,
22 it's prevalent the renewables -- there is a slight
23 premium compared to existing market prices.

24 Q. What do you mean by a premium?

25 A. I'm just saying it costs more than

1 existing generation in the market currently.

2 Q. Can you look at your testimony at page 7
3 starting at line 19, please.

4 A. Yes, I have that.

5 Q. Okay. And there you're talking about the
6 cost of renewable energy versus fossil fuel and say,
7 cost of renewable energy versus fossil fuel generated
8 electricity "supports the rationale for renewable
9 standards to include either an incentive for
10 compliance or, in the case of Ohio, a non-recoverable
11 penalty for non-compliance."

12 I'd like you to explain that, but I'll
13 ask first, maybe -- and you can go from here. Are
14 you saying AEP would prefer to have regulations which
15 AEP would continue to generate electricity with
16 fossil fuel and pay a penalty for noncompliance if
17 that's more economically cost effective?

18 A. That's not what I'm saying here. What
19 I'm saying here is that renewables cost more than
20 what the existing market -- what the existing cost of
21 energy is in the market right now, and with that
22 being said, that's the rationale as to why there are
23 ACPs that are nonrecoverable for utilities to go out
24 and comply to bring more renewables on.

25 If it was the cheapest option compared to

1 market right now, there would not need to be an
2 incentive or penalty for compliance. You would
3 already be doing that.

4 MR. IDZKOWSKI: That's all the questions
5 I have.

6 EXAMINER JONES: Thank you.

7 Mr. Clark?

8 MR. CLARK: No questions, your Honor.

9 EXAMINER JONES: Staff?

10 MR. MARGARD: Actually, yes. Just a
11 couple, your Honor.

12 - - -
13 CROSS-EXAMINATION

14 By Mr. Margard:

15 Q. In response to the questions from OCC
16 about self-build, am I understanding your testimony
17 that the company's rationale for not placing more
18 emphasis on that is that it does not represent a
19 least-cost option?

20 A. Currently in our evaluations it's not one
21 of the least-cost options at the time.

22 Q. Does the company believe that there are
23 any advantages to self-build?

24 A. I believe that there are advantages to
25 self-build; however, that's not in the scope of my

1 testimony.

2 Q. The company has, though, in your opinion,
3 taken a look at these advantages and has considered
4 them; it's just because of the cost factor that
5 they're not pursuing the self-build option.

6 A. There is cost and there's also, my
7 understanding, there's not a clear path for cost
8 recover.

9 Q. Let me ask you about that clear path, and
10 if you can tell me what you think would represent the
11 clear path to cost recovery. What does that mean?

12 MR. SATTERWHITE: Objection, your Honor.

13 EXAMINER JONES: Basis?

14 MR. SATTERWHITE: Asking for a legal
15 conclusion to describe the statutory or some type of
16 process for recovery of the regulatory system.

17 EXAMINER JONES: I'm going to allow the
18 witness to answer it if she can.

19 A. What I can say about it is in my
20 understanding from Legal as to what has been laid out
21 in the statute, there was not a clear ability for us
22 to deploy capital and guarantee the cost for --
23 recovery of all those costs that were incurred during
24 that time.

25 Q. Do you know if the company could get

1 recovery of self-build investments through your IRP
2 process?

3 A. I am not -- I do not know.

4 Q. You don't know.

5 A. No.

6 MR. MARGARD: I think that's all I have.
7 Thank you, your Honor.

8 EXAMINER JONES: Mr. Satterwhite,
9 redirect?

10 MR. SATTERWHITE: No, your Honor.

11 EXAMINER JONES: Ms. Simmons, you may
12 step down.

13 Mr. Satterwhite, are you now moving the
14 admission of Company Exhibit No. 4?

15 MR. SATTERWHITE: Yes. Thank you.

16 EXAMINER JONES: Any objection to the
17 admission of Company Exhibit No. 4?

18 Hearing none, it shall be admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER JONES: At this time I believe
21 Mr. Idzkowski has a stipulation that was referenced
22 earlier this morning about some cross-examination
23 that all the parties have had an opportunity to look
24 at and sign.

25 Is that correct, Mr. Idzkowski?

1 MR. IDZKOWSKI: That is correct, your
2 Honor, and thank you for reminding me of that. We
3 have in this case, and this has been signed -- the
4 stipulation's been signed by all the parties in this
5 case, and we would be filing this today. It is
6 related to an area of questioning we thought -- OCC
7 thought would be prudent to get into with the
8 financial auditor because some of that information in
9 the financial part of the audit report dealt with
10 information regarding this other case, these other
11 two cases involving a company that's a party in this
12 case, Ormet, and those cases are case numbers
13 08-1338-EL-AAM and 08-1339-EL-UNC.

14 Without going into a great deal of
15 detail, there's a brief stipulation and
16 recommendation by the parties signed in this case
17 that we'll be filing at the end of the day.

18 EXAMINER JONES: Thank you. Is it the
19 parties' intention that this be made an exhibit in
20 the case?

21 MR. IDZKOWSKI: I think that would be our
22 intention, your Honor.

23 MR. NOURSE: Sure, Joint Exhibit 1.

24 EXAMINER JONES: Should we mark this as a
25 joint exhibit, then, No. 1?

1 MR. IDZKOWSKI: That would be good.

2 EXAMINER JONES: Let's mark it as such.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 EXAMINER JONES: You may file it.

5 There has been no objection. Do we know
6 whether or not Ormet has seen this document and
7 agreed to it?

8 MR. NOURSE: Yes, they agreed to it.

9 MR. IDZKOWSKI: They have signed it and
10 agreed to it.

11 EXAMINER JONES: Thank you. Without
12 objection we will admit Joint Exhibit No. 1.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 MR. IDZKOWSKI: Thank you your Honor.

15 EXAMINER JONES: Anything further for us
16 to do this afternoon? If not, let's just go off the
17 record for just a second.

18 (Recess taken.)

19 EXAMINER JONES: Let's go back on the
20 record just a second. We are going to adjourn until
21 10:00 a.m. tomorrow morning at which time we'll take
22 up the testimony of OCC Witness Dr. Duann.

23 With that we're adjourned until tomorrow
24 morning. Thank you.

25 (The hearing adjourned at 4:37 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, August 23, 2010, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2011.

(MDJ-3608)

- - -