

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO  
2 - - -

3 In the Matter of the :  
4 Application of Columbus :  
5 Southern Power Company and:  
6 Ohio Power Company for :  
7 Administration of the :  
8 Significantly Excessive : Case No. 10-1261-EL-UNC  
9 Earnings Test Under :  
10 Section 4928.143(F), :  
11 Revised Code, and Rule :  
12 4901:1-35-10, Ohio :  
13 Administrative Code. :  
14 - - -  
15

16 PROCEEDINGS  
17 before Ms. Greta See and Jeffrey Jones, Attorney  
18 Examiners, at the Public Utilities Commission of  
19 Ohio, commencing at 9 a.m., on Wednesday, October 27,  
20 2010, in Hearing Room 11-A, 180 East Broad Street,  
21 Columbus, Ohio.  
22 - - -  
23

24 VOLUME III  
25 - - -

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EXAMINER SEE: Let's go on the record.

5 We'll take up the matter of rebuttal testimony after  
6 we finish with Mr. Cahaan.

7 Mr. McNamee.

8 MR. MCNAMEE: Thank you, your Honor. At  
9 this time the staff would call Richard Cahaan.

10 EXAMINER SEE: Mr. Cahaan, please raise  
11 your right hand.

12 (Witness sworn.)

13 EXAMINER SEE: Thank you.

14 Mr. McNamee.

— — —

16 RICHARD CAHAAN

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

## DIRECT EXAMINATION

20 By Mr. McNamee:

21 Q. Mr. Cahaan, can you state and spell your  
22 name for the record, please?

23 A. Richard Cahaan, C-A-H-A-A-N.

24 Q. By whom are you employed and in what  
25 capacity?

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1           A. I am employed by the Public Utilities  
2 Commission of Ohio, I am serving under contract with  
3 the utilities department.

4 Q. What is your business address, sir?

5           A.     Physically I'm working here at the  
6 Commission.

7 Q. Okay.

13 EXAMINER SEE: The exhibit is so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. Mr. Cahaan, do you have before you what's  
16 just been marked for identification as Staff Exhibit  
17 1?

18 A. I do.

19 Q. What is it?

20 A. It is the prepared prefiled testimony  
21 that I wrote for this proceeding.

22 Q. Was it prepared by you or under your  
23 direction?

24 A. Yes.

O. Are the contents of what's been marked

1 for identification as Staff Exhibit 1 true to the  
2 best of your knowledge and belief?

3 A. Yes.

4 Q. If I were to ask you the questions that  
5 are contained within what's been marked for  
6 identification as Staff Exhibit 1 again here this  
7 morning, would your answers be as represented  
8 therein?

9 A. Yes.

10 Q. Do you have any corrections to make to  
11 what's been marked for identification as Staff  
12 Exhibit 1?

13 A. No, I do not.

14 Q. Okay. Do you adopt what's been marked  
15 for identification as Staff Exhibit 1 as your direct  
16 testimony in this case?

17 A. Yes, I do.

18 MR. McNAMEE: Your Honor, with that the  
19 witness is available for cross-examination.

20 EXAMINER SEE: Mr. Randazzo.

21 MR. RANDAZZO: Sure.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Randazzo:

25 Q. Mr. Cahaan, welcome back.

1           A. Thank you. It's a pleasure.

2           Q. Good to see you again. Your testimony is  
3 always a good read, some fiction, some nonfiction,  
4 something for everybody.

5           A. I try.

6           Q. Now, I just want to see if you're up to  
7 speed on some current events. You are aware, are you  
8 not, that AEP has increased its dividend?

9           A. Yes, I believe there was a news release  
10 of that perhaps just yesterday or in the very recent  
11 past.

12          Q. And would you accept, subject to check,  
13 that that increase was 4 cents a share?

14          A. I'll accept that subject to check.

15          Q. And would you accept, subject to check,  
16 that AEP has approximately 479,440 outstanding  
17 shares? Excuse me. 479,440,000 outstanding shares.

18          A. It's a matter of public record, I  
19 certainly can accept it subject to check.

20          Q. Right. And if we were to multiply the 4  
21 cents a share increase in the dividend by the  
22 outstanding shares, we would have some appreciation  
23 for the annual cash flow that's associated with the  
24 increase in dividend, right?

25           MR. CONWAY: Objection.

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1           A. You've got me confused.

2           MR. CONWAY: Objection.

3           EXAMINER SEE: What basis, Mr. Conway?

4           MR. CONWAY: Relevance, your Honor.

5       We've been hearing continuously throughout this  
6       proceeding that the earnings and the cash flows and  
7       the various indicators of the parent are not relevant  
8       to consideration of the performance of the --

9           MR. RANDAZZO: I'll withdraw the  
10      question.

11           MR. CONWAY: -- the EDU.

12           MR. RANDAZZO: I'll withdraw the  
13      question.

14           Q. (By Mr. Randazzo) Mr. Cahaan, I'd like to  
15       talk to you a little bit about the structure of AEP.  
16       Now, the operating companies are, such as Columbus &  
17       Southern and Ohio Power, are wholly owned by the  
18       parent, AEP corporate, correct?

19           A. That is correct.

20           Q. And that means that AEP corporate owns  
21       100 percent of the common equity of Columbus &  
22       Southern and Ohio Power, right?

23           A. Yes, my understanding.

24           Q. All right. And when Columbus & Southern  
25       and Ohio Power pay dividends, they're actually paying

1 dividends to the parent organization, correct?

2 A. Yes.

3 Q. And it's the dividends paid by Columbus &  
4 Southern and Ohio Power that provide AEP corporate,  
5 at least in part, with the wherewithal to pay  
6 dividends to its shareholders, correct?

7 A. Yes.

8 Q. Now, if Columbus & Southern has  
9 significantly excessive earnings, does it have a  
10 greater facility to pay dividends to the parent  
11 corporation?

12 A. That's true almost by definition.

13 Q. Okay. Now, let's return to our  
14 discussion about the quantification of the impact of  
15 the increased dividend declared by AEP corporate. I  
16 think we got to the point where it was 4 cents a  
17 share.

18 MR. CONWAY: Objection. Your Honor, that  
19 dividend increase is not even applicable until the  
20 future, it has nothing to do with 2009, let alone the  
21 earnings of Columbus Southern Power in 2009.

22 EXAMINER SEE: The objection is  
23 sustained.

24 Q. Okay. Mr. Cahaan, to the extent AEP is  
25 increasing its dividend, would you take that as a

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1 sign of any indication that there were financial  
2 difficulties at the operating company level?

3 MR. CONWAY: Your Honor, I'll continue  
4 the objection on the grounds of relevance. This is  
5 all clearly --

6 MR. RANDAZZO: I'll withdraw the  
7 question.

8 MR. CONWAY: -- related to  
9 Mr. Randazzo's --

10 MR. RANDAZZO: I withdrew the question,  
11 you won.

12 Q. Is there a difference between the equity  
13 ratios of Ohio Power and Columbus Southern?

14 MR. CONWAY: Excuse me. Can I have the  
15 question reread, please?

16 EXAMINER SEE: Yes.

17 (Record read.)

18 A. I believe there is. I meant to bring up  
19 a piece of paper that showed this, and I forgot to do  
20 so. I believe there's a difference, but I don't have  
21 the number.

22 Q. Is it handy?

23 A. No.

24 Q. No?

25 A. I'd have to go down and get it.

1           Q. Perhaps if we take a break, you might be  
2 able to do that.

3                 You say at page 3 of your testimony that  
4 reasonableness becomes the criterion of judgment.  
5 And you say, I think, something similar, if I  
6 understand your testimony, at page 16; the idea of  
7 significantly excessive earnings is a concept of  
8 fairness. Have I got the thrust of your testimony  
9 correct?

10          A. Definitely.

11          Q. Now, are you familiar with the state  
12 policy that applies to electric utilities in Chapter  
13 4928?

14          A. I was familiar with that two years ago,  
15 but I haven't even looked at it or thought of it  
16 since.

17          Q. Okay. So for purposes of preparing your  
18 testimony you did not give that policy any explicit  
19 consideration.

20          A. Correct.

21          Q. On page 1, unnumbered 1, of your  
22 testimony at line 19 --

23          A. I see it.

24          Q. -- you have the words "electric  
25 utility's" apostrophe S; do you see that?

1           A. Yes.

2           Q. When you prepared your testimony, did you  
3 understand that there is a specific statutory  
4 definition associated with "electric utility" in the  
5 state of Ohio?

6           A. At the time of the preparation of my  
7 testimony I was not thinking of "electric utility" as  
8 a statutory term.

9           Q. Okay. And with regard to your  
10 descriptions of the SEET test that appear on  
11 unnumbered page 1, you were not attempting there to  
12 offer a legal opinion, were you?

13          A. Certainly not.

14          Q. You're more there describing conceptually  
15 how you approached preparing the testimony you  
16 provided here today, correct?

17          A. Yes.

18          Q. And on page 2, line 4, you use the word  
19 "Company."

20          A. I see it.

21          Q. Which company are you speaking of there?

22          A. I was referring to CSP, Columbus Southern  
23 Power, when I used the word "Company" in this  
24 testimony.

25          Q. Okay. Thank you. That's helpful.

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1                   So your testimony, you really didn't  
2 focus on Ohio Power.

3                   A. No.

4                   Q. Okay.

5                   A. It was focused on this case, on Columbus  
6 Southern Power.

7                   Q. You say at line 9 "that the proposed  
8 quantification by the Company is incomplete." Do you  
9 really mean there that it is both incomplete and not  
10 symmetrical?

11                  A. Incomplete's a shorthand for a number of  
12 errors contained in the company's quantification. It  
13 didn't go far enough in terms of what it addressed.  
14 I'm not sure whether symmetry is a specific problem  
15 with the calculations I was dealing with, but there  
16 are some major symmetry issues involved in the issues  
17 that are relevant to the calculation of the company's  
18 ROE. So symmetry is a major concern.

19                  MS. GRADY: Your Honor, may I have that  
20 question and answer reread, please?

21                  EXAMINER SEE: Sure.

22                  MS. GRADY: Thank you.

23                  (Record read.)

24                  MS. GRADY: Thank you.

25                  Q. Page 10 of your testimony, line 4, you

1 use the word "utility." Are you using that word  
2 there merely without regard to any specific utility?

3           A. Yes. The methodology that was being  
4 looked at at that point was applicable to a broad  
5 range of utilities, maybe not the total universe of  
6 utilities, but certainly a broad range, and so this  
7 does not apply to any specific utility.

8           Q. Okay. Now, if we could on that same page  
9 go to the end of the answer there, and I guess I was  
10 not sure what you were attempting to communicate to  
11 us, I'm sure it's brilliant, I'm just not sure what  
12 it is, the portion of your sentence that begins at  
13 page 12 --

14           A. Page --

15           Q. Or line 12, excuse me, line 12 that says  
16 "Especially when capital structure of a subsidiary is  
17 so obviously at the discretion of the parent  
18 company." What are you saying there and how does it  
19 apply in this specific case?

20           A. I'm expressing a concern about simply  
21 mechanically looking at leverage and the capital  
22 structure of a subsidiary without further  
23 examination. It is a more complicated thing than  
24 saying here is the number and that's all. Because if  
25 you have a stand-alone company with a stand-alone

1 capital structure, shareholders, and all the rest,  
2 the capital structure that it has is logically  
3 dictated by the company's own needs that it has -- if  
4 a stand-alone utility will have a capital structure  
5 at least theoretically that will be appropriate for a  
6 lowest cost total capital -- cost of capital.

7 It will be directly influenced by the  
8 cost of equity and the cost of borrowing in the bond  
9 market.

10 If you have a holding company situation  
11 where the subsidiary has a capital structure of  
12 something, its capital structure isn't necessarily  
13 dictated by the lowest cost capitalization of the  
14 subsidiary, but basically it's how that subsidiary  
15 fits into the entire capital structure of the entire  
16 corporation. And I'm not pointing fingers at any  
17 particular holding company, I'm saying logically  
18 that's how it would work.

19 Q. All right.

20 A. The bond market takes this into account  
21 when it looks beyond the single subsidiary and talks  
22 in terms of the entire corporation. Equity owners of  
23 the subsidiary don't exist, that is the holding  
24 company, so it's not a question of simply saying here  
25 is the leverage and here is the number, we'll plug

1       this into our calculations without thinking further,  
2       and that's the misgiving that I'm expressing in this  
3       paragraph.

4           Q.     Okay. And, for the record, the leverage  
5       that you're talking about basically is the ratio in  
6       the capital structure between common equity and  
7       debt --

8           A.     Yes.

9           Q.     -- correct?

10              And the idea there is that a company can  
11       borrow money perhaps more cheaply and then get -- and  
12       finance investments and obtain earnings on those  
13       investments and make a margin out of the proceeds  
14       from the debt capital, correct?

15              MR. CONWAY: Objection. Your Honor, this  
16       has been going on really from the outset now. It's  
17       friendly cross, he's using leading questions on top  
18       of it being friendly, and it's objectionable on both  
19       bases. It ought to be precluded because it's  
20       friendly, and in any event he should be limited, if  
21       he's going to be doing another direct exam of this  
22       witness for his own purposes, he should be limited to  
23       use nonleading questions, but he really ought to be  
24       precluded from the cross-examination in its entirety.

25              EXAMINER SEE: Do you want to respond,

1 Mr. Randazzo?

2 MR. RANDAZZO: Pardon?

3 EXAMINER SEE: Were you standing to  
4 respond?

5 MR. RANDAZZO: I was, your Honor, but --  
6 if necessary, I'd be happy to.

7 EXAMINER SEE: Go ahead.

8 MR. RANDAZZO: Your Honor, I believe that  
9 Mr. Cahaan's analysis is incomplete and in order to  
10 demonstrate that, I've got to ask him what he means  
11 by his testimony. It may be that I'm wrong, it's  
12 happened, but I've got to be able to ask him what he  
13 means by these words.

14 MR. CONWAY: Well, it may be incomplete,  
15 but Mr. Randazzo has the same opportunity that  
16 everyone else had to put his own witness on to  
17 provide his perspective and the questions, and the  
18 manner of the examination is clearly friendly. He's  
19 trying to enlist Mr. Cahaan to help make the --  
20 provide the testimony that he could have prefiled and  
21 we could have reviewed and cross-examined based on  
22 the review.

23 EXAMINER SEE: The objection is  
24 overruled. As a party to this proceeding  
25 Mr. Randazzo is entitled to cross-examine the

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1 witness.

2 MR. RANDAZZO: Thank you, your Honor. I  
3 believe there may have been a question pending.

4 (Record read.)

5 A. I'm not sure I understand the question.

6 Q. All right. Did you look at the, I asked  
7 you this question previously based upon this  
8 statement, did you look at the capital structures of  
9 Ohio Power and Columbus & Southern as they might  
10 compare to the other operating companies and the  
11 parent organization of AEP?

12 A. I looked at the capital structures of  
13 Ohio Power and Columbus & Southern, and I looked at  
14 that specifically in detail and also over time. I'm  
15 aware of the capital structure, roughly aware of the  
16 capital structure of the parent although I just sort  
17 of glanced at that, and as far as the other  
18 subsidiaries, I did not look at their capital  
19 structures.

20 Q. Well, did you look at the dividend  
21 payment practices of Columbus & Southern and Ohio  
22 Power?

23 A. Yes, I did.

24 Q. Did those dividend payment practices  
25 indicate to you that Ohio Power and Columbus &

1 Southern are being operated as independent companies?

2           A. Ohio Power stopped paying a dividend at  
3 all, I can't remember, three years ago or four years  
4 ago, somewhere around there. Columbus Southern has  
5 continued to pay dividends. Columbus & Southern's  
6 dividend amounts bounce around which is something, I  
7 mean most -- let me start again.

8           Most stand-alone companies would have a  
9 policy of a stable dividend or stable but moderately  
10 increasing dividend over time. They please their  
11 stockholders by such patterns. And you do not find  
12 most companies, of any size anyway, whose dividends  
13 are erratic unless there's painful reasons for that  
14 or one-time reasons in the sense of paying out a cash  
15 dividend because they just happened to have a lot  
16 more money than they could possibly use and they  
17 return it to the shareholders.

18           So the pattern of dividend payments by  
19 both Ohio Power and Columbus & Southern are not  
20 indicative of what the stand-alone company would be  
21 doing.

22           Q. Well, let me ask you mathematically,  
23 Mr. Cahaan, if Ohio Power is not paying a dividend,  
24 that would tend to maintain its common equity ratio  
25 at a higher level, all other things being equal,

1 would it not?

2           A. All other things being equal, in the  
3 sense of if it were paying a dividend or paying a  
4 proportion of a dividend, absolutely, yes.

5           Q. And to the extent that Columbus &  
6 Southern is paying dividends to the parent  
7 organization, that would tend to reduce the common  
8 equity ratio of Columbus & Southern, all things being  
9 equal.

10          A. Yes.

11          Q. And, of course, the SEET calculation as  
12 you have performed it is a calculation that compares  
13 the earned return to the common equity balance,  
14 correct?

15          A. Yes.

16          Q. And so in the parent company construct  
17 that you've identified here there are opportunities  
18 to affect the SEET calculation through dividend  
19 payment policies, correct?

20          A. Yes, and that was one of the aspects of  
21 the -- let me just simply agree with you and say  
22 yes --

23          Q. Okay.

24          A. -- and not go on further.

25          Q. And again, you haven't looked at Ohio

1 Power for purposes of conducting a SEET analysis,  
2 correct?

3 A. I mean, I looked at what their earned  
4 return was over time, but I have not looked at this  
5 in terms of a SEET analysis, no.

6 Q. All right. On page 12 you characterize  
7 the current process as, your opinion of course, as  
8 being one of reinventing the wheel. And I'd like to  
9 talk to you about that because of the facts in this  
10 case. You were involved in the ESP proceeding  
11 associated with Columbus & Southern and Ohio Power,  
12 correct?

13 A. I believe my testimony has an attachment  
14 that is the testimony I provided in that case at  
15 08-917.

16 Q. You were involved in more capacities than  
17 just providing testimony in that, correct? You  
18 evaluated the positions of other witnesses, you  
19 assisted your counsel, you were actively involved in  
20 that case?

21 A. I've been emersed in this process ever  
22 since it was dumped on us.

23 Q. Fair description.

24 Now, the process that we're currently  
25 engaged in ultimately, in the ESP context, is one

1 that benchmarks the ESP against the market, right?  
2 Against what the alternative would be in the  
3 marketplace, right?

4 A. I don't know if I could characterize it  
5 like that. I'm not sure I understand what you mean  
6 by that.

7 Q. Okay. Well, do you recall what the staff  
8 used as the market price for purposes of benchmarking  
9 the ESP that was proposed by Columbus & Southern?

10 MR. CONWAY: Objection. Relevance.

11 EXAMINER SEE: Objection is sustained.

12 Q. Mr. Cahaan, how long has Columbus &  
13 Southern been earning a return on equity in excess of  
14 15 percent?

15 A. Over the past ten years Columbus &  
16 Southern has earned returns on equity that have been  
17 above 15 percent a number of years. There have been  
18 some when it has been below 15 percent. That piece  
19 of paper downstairs that I don't have with me would  
20 show me that, but there have -- definitely a number  
21 of years that it's been above 15 percent.

22 Q. All right. And 15 percent is higher than  
23 the 10.7 percent you used for purposes of  
24 benchmarking, right?

25 MR. CONWAY: Objection.

1                   MR. RANDAZZO: I'll withdraw the  
2 question. I think everybody can do that math.

3                   Q. Mr. Cahaan, do you think it's fair to say  
4 that at the time that the ESP for Columbus & Southern  
5 was approved, that it was obvious that Columbus &  
6 Southern was going to produce significantly excessive  
7 earnings?

8                   MR. CONWAY: Objection.

9                   EXAMINER SEE: Mr. Conway, did --

10                  MR. CONWAY: He's asking the witness to  
11 reach a legal -- offer his opinion about a legal  
12 conclusion. Whether a company has significantly  
13 excessive earnings in the end is a decision the  
14 Commission makes based on the record and the  
15 arguments.

16                  MR. RANDAZZO: Okay, fair statement.  
17 I'll withdraw the question.

18                  Q. Mr. Cahaan, I'll rephrase the question.  
19 Do you think it was obvious at the time that the ESP  
20 was approved that the ESP for Columbus & Southern  
21 would produce excessive earnings?

22                  A. To be quite frank about the matter, in  
23 addition to the normal uncertainties regarding  
24 predicting the future and whether profitability will  
25 be maintained or diminished, given the parent and

1 holding company relationships and the nature of  
2 organizations, and a certain degree of skepticism,  
3 there was some expectation that the issue of  
4 significantly excessive earnings might be avoided by  
5 taking actions, for instance, to reduce -- excuse me,  
6 to increase the equity or other methods that could be  
7 done.

8 I'm not saying I had any knowledge, I'm  
9 simply saying that an expectation that earnings would  
10 be excessive in some way could not be necessarily  
11 made at that time. There are too many normal and  
12 other normal, supernormal variables here.

13 Q. Well, how much -- how much did your piece  
14 of paper indicate that Columbus & Southern was  
15 earning in 2008 before rates were increased as a  
16 result of the ESP?

17 A. Roughly, I believe it was around  
18 percent.

19 Q. All right. And do you recall Mr. Kollen  
20 was on the stand yesterday?

21 A. Yes.

22 Q. Did you review his testimony in the ESP  
23 proceeding for Columbus & Southern; do you recall?

24 A. Two years ago?

25 Q. Yes, sir.

1           A. I did.

2           Q. Yeah.

3           A. But I don't recall what I reviewed,  
4 actually.

5           Q. Well, if we really wanted to stop  
6 reinventing the wheel, one way to do that would be to  
7 avoid giving utilities too much money the first  
8 instance, right?

9           MR. CONWAY: Objection. It  
10 mischaracterizes the witness's testimony. The  
11 witness never said anything close to the position  
12 that Mr. Randazzo just asked him, basically whether  
13 he was saying in his testimony --

14           MR. McNAMEE: I object as well.

15           EXAMINER SEE: The objection is  
16 sustained.

17           Q. Well, Mr. Cahaan, do you think it would  
18 be good regulatory practice, as somebody that's  
19 worked for the Commission for 20 years, to authorize  
20 rate increases that you knew were going to put you in  
21 the position of having to worry about the  
22 significantly excessive earnings test?

23           MR. McNAMEE: Objection.

24           MR. CONWAY: Objection.

25           EXAMINER SEE: Sustained.

1           Q.     Mr. Cahaan, did parties to the Columbus &  
2 Southern ESP proceeding attempt to alert the  
3 Commission that the order approved by the Commission  
4 was going to produce excess earnings for Columbus &  
5 Southern?

6           MR. McNAMEE: Objection.

7           MR. CONWAY: Objection. Relevance. The  
8 fact that Mr. Randazzo's had a belief, well based or  
9 not, two years ago that there would be excessive  
10 earnings or significantly excessive earnings in the  
11 future is not relevant to this proceeding and  
12 Mr. Cahaan's awareness of whether or not he had that  
13 view two years ago is not relevant to this  
14 proceeding.

15           MR. RANDAZZO: Your Honor, if I may be  
16 heard on this.

17           EXAMINER SEE: Go ahead.

18           MR. RANDAZZO: Mr. Cahaan is saying in  
19 his testimony that we're talking by each other. My  
20 point -- my point is that if people would have  
21 listened to the people that were talking when the ESP  
22 plan was approved, we wouldn't be in this situation.

23           MR. CONWAY: And that's an argument he  
24 can make in his brief, he doesn't need to go through  
25 it with Mr. Cahaan here.

1                   EXAMINER SEE: And I agree, the objection  
2 is sustained.

3                   A. And if I may be permitted some more  
4 latitude, I'm talking about reinventing the wheel,  
5 not eliminating the road.

6                   Q. So you think the road should be open to  
7 giving utilities excessive earnings?

8                   A. I am not discussing that in my testimony,  
9 I'm just pointing out the fact that almost everyone  
10 in this room was here two years ago and almost all  
11 the testimony provided in this case was, with small  
12 modification, provided two years ago, and that's the  
13 reinvention of the wheel that I'm referring to.

14                  Q. Well, let's talk about the staff position  
15 two years ago. As part of the Columbus & Southern  
16 ESP proposal, Columbus & Southern proposed to adjust  
17 distribution rates and the staff took the position  
18 that the distribution rates shouldn't be adjusted  
19 upwards without there being a full-blown rate case,  
20 right?

21                  MR. McNAMEE: Objection.

22                  EXAMINER SEE: On what grounds,  
23 Mr. McNamee?

24                  MR. McNAMEE: Your Honor, we are not here  
25 to re-litigate the SSO case. We are here to

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1 determine whether these companies have significantly  
2 excessive earnings or not and not to re-litigate that  
3 case, that case is currently pending at the Ohio  
4 Supreme Court.

5 EXAMINER SEE: Correct. The objection is  
6 sustained.

7 MR. RANDAZZO: Okay.

8 Q. (By Mr. Randazzo) Mr. Cahaan, if you  
9 would turn to page 13, there you say your  
10 recommendation is to use 10.7 percent of the  
11 benchmark ROE for purposes of this proceeding and  
12 prior to that you say "with a bit more evidence  
13 arguing for a higher side of this range." Do you see  
14 that?

15 A. Yes.

16 Q. Okay. But 10.7 is the number that you're  
17 recommending based upon you arguing for the high side  
18 of the range, right?

19 A. Yes. I am putting forward my thought  
20 process as best I can and I am saying that I  
21 definitely think that 10 to 11 is clearly indicated  
22 given the evidence that has been presented and that  
23 looking at this I personally feel that something  
24 slightly higher than the average would be warranted,  
25 but that is just basically my take on this evidence

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1 and I'm trying to present the evidence in such a way  
2 as anybody else can reach their own conclusion.

3           But I would feel that given the numbers  
4 that I'm looking at, that 10.7 is a reasonable  
5 interpretation of what the evidence is.

6       Q.    Okay. And you are at the same time  
7 critical of Dr. Makjija for using what you describe  
8 as a black box, right?

9       A.    Yes.

10      Q.    And here the only thing we know is you  
11 think it's 10.7, because the range is 10 to 11, and  
12 you have not identified one factor, one objective  
13 factor, to inform us as to why customers should be --  
14 the interests of customers are any better protected  
15 by a 10.7 percent versus a 10 percent number, right?

16      A.    Dr. Makjija's black box bothers me mainly  
17 with respect to its standard deviation. He produces  
18 a sample which generates a mean of 11.4 -- 11.04. I  
19 think that should be taken into consideration. But  
20 if you're asking have I produced specific reasoning  
21 besides the fact that I don't dismiss Dr. Makjija's  
22 mean for saying that it shouldn't be the bottom, no,  
23 I have not.

24           But I think that there's not specific  
25 reasoning to say it shouldn't be the top of that

1 range, either.

2 Q. Well, what you're saying is you haven't  
3 offered us any objective criteria by which anybody  
4 can make a judgment or understand how you landed on  
5 10.7 versus 10 or 11 or 11.4 or anything else, right?

6 A. I've explained the reasoning and the  
7 limits of it, which is what you're addressing, in my  
8 testimony. So yes is my answer, I agree with you  
9 that I have not made any specific objective criteria  
10 for saying one point in the range is better than  
11 another point in the range except that I think the  
12 various evidence that comes out from the various  
13 means of the sample groups would argue for something  
14 slightly higher than the midpoint.

15 Q. Okay. Now, page 18, top of the page, you  
16 say that "I think that a higher threshold is  
17 warranted to take account of the asymmetrical risk  
18 problem." What is the "asymmetrical risk problem"?

19 A. The asymmetrical risk problem is caused  
20 by the fact that the significantly excessive earnings  
21 test is totally one sided in its application; that if  
22 a firm company is found to have significantly  
23 excessive earnings, then action can be taken to cause  
24 a refund or some other action to reduce, in effect,  
25 these earnings to compensate for these earnings. I'm

1 not getting into the mechanism here.

2 Q. Good.

3 A. But the test operates in one direction if  
4 you're found to have significantly excessive  
5 earnings. If you're found not to have -- well, a  
6 question was asked yesterday regarding significantly  
7 deficient earnings, would that be actionable, and of  
8 course the answer is no, so that's one aspect of  
9 asymmetry, but that's not the only thing I was  
10 thinking of.

11 If a company has significant excessive  
12 earnings one year and then not anywhere near the  
13 threshold the next year, they can't average the two.  
14 Or, alternatively in this case, because of the  
15 relationship between Ohio Power and Columbus &  
16 Southern as legally two separate companies, if  
17 they're combined, they may not have a significant  
18 excessive earnings, if we were allowed to combine  
19 them for the purpose of the test, but since they are  
20 treated separately the mathematical probabilities are  
21 greater that one of them might have the -- not pass  
22 the test while the other one the test is not a -- is  
23 not in a sense relevant because they're underneath  
24 that safe harbor clause.

25 All of these basically are forms of

1 asymmetric risk in the operation of the SEET.

2 Q. Okay. Now let's talk a little bit  
3 about -- by the way, is that answer based upon advice  
4 of counsel?

5 A. No. I don't take my counsel's advice,  
6 usually.

7 MR. McNAMEE: It's so true.

8 Q. I have many clients like you, Mr. Cahaan.  
9 And they are wiser, I'm sure.

10 Let me ask you about this asymmetrical  
11 risk theory. You remember the proceedings involving  
12 Monongahela Power when Monongahela Power wanted to go  
13 to market pricing towards the end of its market  
14 development period?

15 A. Yes.

16 Q. So do I. I think Mr. McNamee may as  
17 well.

18 Do you understand that utilities have a  
19 constitutional right to receive fair compensation  
20 regardless of what state law says? You've testified  
21 on this subject numerous times in rate cases talking  
22 about open blue field.

23 A. Yeah, I'm trying to avoid objections of  
24 legal opinions here.

25 MR. McNAMEE: Yeah, I think I will object

1 on two bases, I don't think he ever has testified  
2 about open blue field.

3 THE WITNESS: Well, it's in the staff  
4 report every time we put out a staff report --

5 MR. RANDAZZO: It's worth reading.

6 THE WITNESS: -- as justification for the  
7 rate of return.

8 MR. McNAMEE: Then I'm wrong. I'm sorry.

9 THE WITNESS: See, that's why I don't  
10 take advice of counsel.

11 Q. (By Mr. Randazzo) You've given rate of  
12 return testimony numerous times in the ratemaking  
13 context, have you not?

14 A. Yes.

15 Q. And there are two principal Supreme Court  
16 cases, United States Supreme Court cases, that are  
17 instructive relative to what you must do for purposes  
18 of recognizing your obligation to provide just and  
19 reasonable compensation to utilities.

20 A. Yes.

21 Q. Right?

22 A. Both in Blue Field, 1923 I believe is  
23 one --

24 Q. Right.

25 A. -- and I can't remember the other.

1           Q. Right. Do you recall the federal court's  
2 decision in Monongahela Power?

3           MR. McNAMEE: Let me object.

4           EXAMINER SEE: What basis, Mr. McNamee?

5           MR. McNAMEE: Shall I speak to my  
6 objection?

7           EXAMINER SEE: Yes, please.

8           MR. McNAMEE: The Monongahela case was an  
9 interesting one and I was indeed involved. I don't  
10 see how it's relevant to the determination of SEET in  
11 this case at all.

12          MR. CONWAY: Your Honor, I join the  
13 objection. I was also involved in the Monongahela  
14 Power case and it dealt with the constitutional test  
15 applied in a forward-looking manner, it had nothing  
16 to do with the retrospective character that we're  
17 involved in in this case.

18          MR. RANDAZZO: Absolutely false.

19          MR. CONWAY: And it's irrelevant.

20          MR. RANDAZZO: Absolutely false.

21          EXAMINER SEE: You wanted to respond,  
22 Mr. Randazzo?

23          MR. RANDAZZO: Your Honor, the  
24 Monongahela Power case, and Mr. Conway's law firm --  
25 I was surprised about his questions on asymmetrical

1 risk yesterday, his law firm was involved in that  
2 case, I was involved in that case, Mr. McNamee was  
3 involved in that case. Monongahela Power, as the  
4 case decision will show, challenged Senate Bill 3,  
5 the restructuring legislation adopted by this state  
6 because Monongahela Power took the position it denied  
7 it an opportunity under the Constitution to have just  
8 and reasonable compensation. And in that federal  
9 court action it sought, it sought to be made whole  
10 retroactively.

11                   Am I correct, Mr. McNamee?

12                   MR. MCNAMEE: I don't believe that I'm  
13 here to be cross-examined, Mr. Randazzo.

14                   MR. RANDAZZO: The facts will speak for  
15 themselves. You can cite the case.

16                   Q. Do you recall Monongahela --

17                   EXAMINER SEE: The objection was based on  
18 relevance to this proceeding.

19                   MR. RANDAZZO: Yes. This witness has  
20 talked about asymmetrical risk and said that the SEET  
21 is one sided. I'm suggesting to you, your Honor,  
22 that there is a body of law well known, existing for  
23 more than a century that requires, regardless of the  
24 ratemaking methodology adopted by this state,  
25 utilities be compensated based upon fair, just, and

1 reasonable standards articulated by the U.S. Supreme  
2 Court.

3 MR. CONWAY: Your Honor, we're  
4 degenerating into a legal argument here.

5 EXAMINER SEE: Thank you, Mr. Conway.

6 That's your position, you can take it up  
7 on brief. The objection is sustained.

8 Q. (By Mr. Randazzo) Mr. Cahaan, in making  
9 this observation about asymmetrical risk you did not  
10 consider any Supreme Court decisions for reaching  
11 your conclusion; is that correct? U.S. Supreme  
12 Court.

13 A. That is correct. My considerations of  
14 asymmetrical risk are closed set confined to this  
15 case and to the SEET test. I'm not putting it inside  
16 of any broader context.

17 Q. Well, but your observations regarding the  
18 return on equity are not confined to this context,  
19 are they?

20 A. I'm not sure I understand.

21 Q. Well, let's back up. Let's talk about  
22 the SEET test. Who gets to choose whether or not  
23 there is a SEET test at all? Let me strike the  
24 question.

25 Mr. Cahaan, is it your understanding that

1       an electric distribution utility must accept an  
2       electric security plan?

3           A.     No. An electric distribution utility  
4       need not accept a security plan, no.

5           Q.     Would it be fair to say that it's your  
6       understanding that an electric utility has the  
7       absolute right to veto an electric security plan  
8       approved by this Commission if that plan is modified  
9       based upon what the utility proposed?

10          A.     I think that is the case, yes.

11          Q.     Okay. And if the utility, the electric  
12       utility, proposes an electric security plan that is  
13       longer than three years, there is no SEET test at all  
14       in the first three years, right?

15           MR. CONWAY: Objection.

16          Q.     If you know.

17          A.     Well, there's two --

18           EXAMINER SEE: Hold on, Mr. Cahaan.

19           MR. CONWAY: It calls for a legal  
20       conclusion, first of all, and secondly, it's  
21       inapplicable. It's irrelevant.

22           MR. RANDAZZO: Strike the question.

23          Q.     Mr. Cahaan, I'd like you to assume the  
24       following: I'd like you to assume Section 4928.143,  
25       the electric security plan section --

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1                   MR. CONWAY: Which division?

2                   EXAMINER SEE: I'm sorry?

3                   A. (E).

4                   Q. (E), thank you, Mr. Cahaan. You're  
5 obviously familiar with it.

6                   A. I'm familiar with (E).

7                   Q. Well there's two sections, (E) and (F),  
8 right?

9                   A. And one applies to security plans  
10 under -- three years or under, or under three years,  
11 and the other is if it's not.

12                  Q. Right. And if the utility -- in terms of  
13 your discussion about asymmetrical risk and the SEET  
14 test, if the utility elects, we've already  
15 established that it has the veto right for electric  
16 security plans, if the utility elects to file an  
17 electric security plan that is longer than three  
18 years, is it your understanding that the SEET test  
19 does not apply in the first three years?

20                  A. I think so but I can't say that with  
21 absolute confidence. Two years ago I was familiar  
22 with both sections, and I'm not familiar with the  
23 other section anymore.

24                  Q. But you are absolutely certain that it's  
25 the utility that gets to choose.

1           A. They submit the plan and they determine  
2 the length of the plan that they submit. In that  
3 sense they choose which section of the legislation  
4 they would fall under assuming the Commission  
5 approves the plan.

6           Q. And they also get to reject a decision by  
7 the Commission on the electric security plan to the  
8 extent that the Commission modifies that plan, right?

9           A. I believe so.

10          Q. And customers have absolutely nothing to  
11 say about, nor the Commission, about those choices  
12 that are made by the utility, right?

13          A. I mean, I really --

14          Q. Excuse me. The Commission cannot  
15 interfere with the utility's choice, nor customers,  
16 by operation of law, correct?

17           MR. CONWAY: Objection.

18           MR. McNAMEE: Objection.

19           EXAMINER SEE: On what grounds? Start  
20 with you, Mr. McNamee.

21           MR. McNAMEE: We're asking for Mr. Cahaan  
22 to interpret the legal structure that we're operating  
23 here, we're asking for a legal conclusion and  
24 arguably an irrelevant legal conclusion as well.

25           EXAMINER SEE: Did you have anything to

1 add to that, Mr. Conway?

2 MR. CONWAY: I believe that this line of  
3 questioning is focused on division (E) and plans of  
4 longer than three years so I think it's irrelevant.  
5 On top of that I think he keeps interrupting the  
6 witness and cutting him off and it's more like a  
7 testifying experience for Mr. Randazzo than it is for  
8 Mr. Cahaan at this point. It's not just pure  
9 argument.

10 MR. RANDAZZO: I think Mr. Cahaan can  
11 handle himself.

12 EXAMINER SEE: I'm going to sustain the  
13 objection.

14 MR. RANDAZZO: Okay.

15 EXAMINER SEE: And I would ask that you  
16 allow the witness to finish his response.

17 MR. RANDAZZO: Okay. Absolutely, I  
18 apologize, your Honor, and to the extent you see me  
19 drifting out of the zone of reasonableness, please --

20 EXAMINER SEE: I'll let you know.

21 MR. RANDAZZO: Please.

22 Q. (By Mr. Randazzo) Now let's, with regard  
23 to your asymmetrical risk observation, Mr. Cahaan, do  
24 electric utilities have an opportunity to seek  
25 emergency rate relief?

1                   MR. CONWAY: Objection.

2                   Q. If you know.

3                   MR. CONWAY: It's irrelevant. Emergency  
4 rate relief is a forward-looking measure, it's not a  
5 retrospective measure. It has nothing to do with  
6 what we're involved with here.

7                   MS. GRADY: Your Honor.

8                   EXAMINER SEE: Ms. Grady.

9                   MS. GRADY: Mr. Cahaan testifies about  
10 asymmetry associated with the SEET test. We have  
11 much more than the SEET test here, we have a law, an  
12 entire law, and I believe that questions on whether  
13 the law as a whole is symmetric is very valid and  
14 relevant to this proceeding and that's what these  
15 questions are going to, and I plan on asking  
16 questions similarly along those lines because I think  
17 it is important that if we're going to call something  
18 asymmetric, that we take a large look at the law.

19                   MR. McNAMEE: Your Honor, maybe I can  
20 have a word here too.

21                   EXAMINER SEE: Go ahead, Mr. McNamee.

22                   MR. McNAMEE: We can argue about brief --  
23 on brief about the law all we want to. The witness  
24 has already indicated that his comment here is meant  
25 to be encapsulated or constrained within the

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1 structure of the SEET test as it exists, and he does  
2 not mean to speak to any other aspects of the law  
3 outside of the SEET test as it is on the books.

4 So I would suggest we are wasting a great  
5 deal of time rehashing arguments that will simply  
6 appear on brief no matter what Mr. Cahaan says one  
7 way or the other.

8 EXAMINER SEE: The objection is  
9 sustained.

10 Q. (By Mr. Randazzo) Okay, Mr. Cahaan, in  
11 forming your opinion regarding asymmetrical risk  
12 would it be fair to say that you have not considered  
13 any requirements of the United States Constitution,  
14 you've not considered any provisions dealing with  
15 emergency rate relief, you've not considered any  
16 provisions in the ESP that give the utility the  
17 opportunity to come in and seek additional moneys as  
18 a result of unanticipated closures of generating  
19 plants, you've not considered any of those things,  
20 correct?

21 A. Correct.

22 Q. Now, the numbers that appear at line 11,  
23 the net income number --

24 A. Which page are we on?

25 Q. Page 19. I'm sorry.

1           A. Yes, I see it.

2           Q. The 271.5 million, that would be a total  
3 Columbus & Southern Company number?

4           A. Yes, it would.

5           Q. Yeah. And when I say "total," as you  
6 understand it it's referring to all the various lines  
7 of business that Columbus & Southern is in? That  
8 would include wholesale, retail, and other.

9           A. Oh, definitely.

10          Q. All right. Now, I'd like to talk to you  
11 a little bit about your testimony that begins at page  
12 18, but more specifically your effort to reflect the  
13 exclusion of off-system sales as it effects the  
14 common equity ratio.

15          A. Okay.

16          Q. Are you with me?

17          A. Yes.

18          Q. And there the adjustment that you  
19 proposed is based on the view that a only-generation  
20 plant is involved in off-system sales, correct?

21          A. The method I used worked only with  
22 generation as an adjustment factor. I could not  
23 figure out a way of cleanly encapsulating -- rather,  
24 utilizing other aspects of the company's assets. It  
25 seemed to be a simpler and cleaner way to utilize,

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1 that is simpler to simply say that we're going to use  
2 this as the way in which we adjust the equity.

3           I'll give you an example. There was a  
4 question of transmission, transmission does -- sales  
5 of any kind go across the wires, wheeling goes across  
6 the wires, everything goes across wires, and there's  
7 no way I could even begin to imagine how I would say  
8 that is a component of off-system sales that I should  
9 be able to address by using transmission especially  
10 because I suspect, although I don't know for sure,  
11 that transmission costs are a part of the net that  
12 are netted out of the profits from off-system sales.

13           Now, that's how my logic worked in this  
14 case; is that responsive to your question?

15       Q. Well, I guess. And I'm not sure I call  
16 it logic.

17           You were here when Mr. Hamrock testified,  
18 right?

19       A. Yes.

20       Q. Do you disagree with him that for every  
21 wholesale transaction there is a transmission  
22 transaction?

23       A. Do I disagree with him?

24       Q. Yeah.

25       A. No.

1           Q. Well, let me just ask you -- strike the  
2 question.

3                         Is it your understanding that for every  
4 wholesale transaction there is a corresponding --  
5 wholesale generation transaction there is a  
6 corresponding wholesale transmission or transmission  
7 for resale transaction?

8           A. I cannot speak to, you know, the facts of  
9 that. The answer is no, I do not understand that to  
10 be the case one way or the other. I will say that  
11 implicit in the idea that I'm taking generation as my  
12 method of allocation is that the wholesale -- the  
13 transmission aspects of a wholesale transaction are  
14 netted out of the gain from the -- the net gain.

15           Q. Well, did you do anything to verify that  
16 fact?

17           A. No.

18           Q. So you just made a black box assumption,  
19 right?

20           A. Yes.

21           Q. Now, if you included -- well, strike  
22 that.

23                         You proceed, after making the assumption  
24 that only generation plant is involved in off-system  
25 sales, you proceed then to use another allocator for

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1 purposes of making or illustrating the adjustment to  
2 common equity that you describe in your testimony,  
3 right?

4 A. Yes.

5 Q. And the allocator that you use in that  
6 next step is revenue, right?

7 A. Actually, it's -- actually I better --  
8 one second.

9 Q. Well, at page 20, line 13, you say you  
10 used the ratio of sales for resale revenues to total  
11 sales revenues, which was 13.9 percent.

12 A. Yes, that's what I used.

13 Q. Okay.

14 A. There's some discussion I had with  
15 someone that made me want to double-check that.

16 Q. Okay.

17 A. Yes.

18 Q. All right. Now, revenues are a function  
19 of prices, right?

20 A. Yes.

21 Q. And is it your understanding that the  
22 wholesale market is a competitive market?

23 A. Yes. Somewhat competitive.

24 Q. Okay. So are you aware of any  
25 information that's in the record that AEP is making

1 less money on off-system sales than it's making on  
2 the sales to Columbus & Southern customers, retail  
3 customers?

4 A. When I looked at the sales revenues from  
5 Columbus & Southern, it was clear that the revenues  
6 per kilowatt-hour from certain -- for the residential  
7 sector, for instance, were higher than the revenues  
8 per kilowatt-hour from the commercial, which were  
9 higher than the industrial, and that the sales to  
10 ultimate consumer revenues were higher on the average  
11 than the wholesale sales numbers.

12 Q. Okay. So -- and what you're saying there  
13 is that if you compared the average price per  
14 kilowatt-hour for retail activity to the average  
15 price per kilowatt-hour during 2009 for wholesale  
16 activity, the average price for wholesale would be  
17 less than the average price for retail, right?

18 A. Yes. The price per kilowatt-hour average  
19 for retail transactions was higher than the price per  
20 kilowatt-hour for wholesale transactions --

21 Q. Now --

22 A. -- as FERC Form 1, I believe it's page  
23 219 or something, shows.

24 Q. All right. And, hypothetically speaking,  
25 if the retail side of the business was subsidizing

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1 the wholesale side of the business, the revenue  
2 allocation factor that you've used in your testimony  
3 would embed the subsidy in the allocation, correct?

4 MR. McNAMEE: Objection.

5 EXAMINER SEE: On what basis,  
6 Mr. McNamee?

7 MR. McNAMEE: It assumes a subsidy. That  
8 is a fact not in evidence.

9 MR. RANDAZZO: I'll withdraw the  
10 question.

11 Q. Mr. Cahaan, do you believe that the  
12 retail side of the business is subsidizing the  
13 wholesale side of the -- in the case of Columbus &  
14 Southern?

15 A. I can't answer that question. The fact  
16 that the prices are higher on the retail side than  
17 the wholesale side does not necessarily indicate some  
18 concept of subsidy because the, what I'll call the  
19 quality of the kilowatt may be different.

20 I don't know, for instance, if the  
21 wholesale side transactions are as firm as the retail  
22 side transactions. I would rather expect they are  
23 not nearly as firm and, therefore, the quality --  
24 even though the kilowatt may be the same in physical  
25 energy terms, the quality of the economic service may

1 be different and I would expect that it is different.

2 Q. Mr. Cahaan, I didn't ask you about  
3 whether retail was subsidizing off-system sales. I  
4 asked you if retail was subsidizing wholesale. So is  
5 it your understanding that the only wholesale  
6 transaction that Columbus & Southern engages in is  
7 off-system sales?

8 A. I think they have a contract with perhaps  
9 Westerville, which would not be off-system, and that  
10 would be a wholesale transaction. I don't know --

11 Q. How about the pool? The AEP pool  
12 transaction.

13 A. I'm not considering these as separate  
14 from off-system sales. I have not made a specific  
15 distinction there.

16 Q. So you would treat -- for purposes of  
17 your testimony we should understand that when you use  
18 off-system sales, you really mean all wholesale  
19 transactions? And that's a question.

20 A. I am trying to make an adjustment to the  
21 capital structure based upon what the company wishes  
22 to exclude from the numerator of earnings. I am  
23 assuming that the off-system sales that they are  
24 talking about as excluding from earnings, the net  
25 margins, have a correspondence in generation.

1           The issue of the pool arrangements is not  
2 entering into that analysis, and I am not making that  
3 distinction. I'm not -- I may, therefore, be  
4 implicitly assuming that system sales counts pool or  
5 not, I am not sure of that.

6           Q. So you really don't know what is in  
7 off-system sales, right?

8           A. Other than that it's 30 -- it is a  
9 certain amount of sales dollars and a certain amount  
10 of net margins that they wish to exclude, you're  
11 right.

12           Q. And you're relying on AEP's  
13 representation with regard to those values?

14           A. Yes.

15           Q. And to the extent that those values are  
16 inappropriate, then your adjustment would be  
17 incorrect as well, right?

18           A. I am correcting in my analysis what they  
19 claim to be the adjustment that they want to make.  
20 If the adjustment that they want to make is in dollar  
21 terms itself wrong, then of course my correction  
22 would be wrong as relative to the revised numbers.

23           Q. Are you finished?

24           A. I'm working with their numbers, period.

25           Q. Well, it's more than that, Mr. Cahaan,

1 isn't it? I mean, the adjustment that you describe  
2 in your testimony is an adjustment at least  
3 directionally that is required if the company's  
4 position on off-system sales is accepted in order to  
5 have a symmetrical operation of that adjustment,  
6 correct?

7 A. I use the word "symmetrical" there but an  
8 appropriate adjustment. They're missing something.  
9 If you want to characterize that as symmetry, that's  
10 okay, but they are adjusting the numerator of a ratio  
11 and I am saying if you are going to adjust that  
12 numerator, there is a corresponding adjustment that  
13 you are missing to the denominator that is  
14 corresponding to the adjustment to the numerator.  
15 That's what I'm doing there.

16 Q. Well, you're doing more than that,  
17 Mr. Cahaan. You are actually attempting to quantify  
18 what the adjustment looks like, right?

19 A. Corresponding to their adjustment to the  
20 numerator, yes.

21 Q. Right. And in your attempt to quantify  
22 the corresponding adjustment to the numerator that  
23 Columbus & Southern has made, you have assumed that  
24 there's no transmission associated with off-system  
25 sales, right?

1           A. I'm assuming -- implicitly assuming that  
2 there's no transmission associated with off-system  
3 sales margins, that the transmission costs are  
4 already accounted for in creating the margins from  
5 the revenues.

6           Q. Did you look at what your adjustment to  
7 the -- adjustment that you had described at the  
8 portion of your testimony that we've been talking  
9 about would be if you were to use megawatt-hours as  
10 an allocator?

11          A. Yes. I don't have the numbers with me,  
12 but it would be significantly different.

13          Q. And why, if you looked at it, why didn't  
14 you put that information in your testimony?

15          A. I put it in in the following sense: I  
16 decided the appropriate method of looking at this  
17 problem was to look at it as a financial problem, and  
18 as a financial problem I'm tracking dollars and I'm  
19 saying the dollars that are generated by the assets,  
20 if you're going to take away the dollars, you got to  
21 take away the proportion of the dollars that are  
22 generated -- the proportion of the assets that  
23 generate those dollars, not a physical relationship  
24 with kilowatts.

25           And the reason -- two reasons there, one

1 reason is that it's a financial issue to me, not a  
2 physical issue. And the second is that kilowatts are  
3 of a different quality so the economic value of them  
4 is different.

5 From a financial perspective, which is  
6 where I'm going with this, to the balance sheet, from  
7 a financial perspective I'm just tracking dollars.  
8 This means that a dollar of off-system sales is  
9 associated with the same dollars of plant -- excuse  
10 me, same dollar of equity through the plant  
11 calculation as a dollar of on-system sales.

12 I had -- that was the reasoning that I  
13 chose to use dollars rather than kilowatt-hours as  
14 the allocator.

15 Q. Mr. Cahaan, but you know that's not true,  
16 don't you?

17 A. I'm sorry, I think it is true.

18 Q. Well, you've seen in the record the  
19 earned returns from the other AEP operating  
20 companies, have you not, for 2009?

21 A. Yes, I have seen it in the record.

22 Q. All right. And for the other operating  
23 companies that are served out of the AEP pool are  
24 there any of them excluding I&M that are even in  
25 double digits on the return on equity?

1                   MR. CONWAY: Objection, relevance your  
2 Honor, for the same reasons that Mr. Nourse  
3 articulated yesterday. These comparisons are  
4 irrelevant.

5                   EXAMINER SEE: The objection is  
6 sustained.

7                   Q. Mr. Cahaan, if two utilities -- well,  
8 strike that.

9                   If you lower the return on common equity,  
10 is the revenue requirement in traditional ratemaking  
11 one that would also be lower?

12                  A. In traditional ratemaking if I lowered  
13 the authorized return on common in a rate case, would  
14 the rates that would be subsequently set be lower, is  
15 that the question?

16                  Q. Yes.

17                  A. Yes.

18                  Q. And would the average price per  
19 kilowatt-hour also be lower as a result of the  
20 reduction in the return on equity in that context?

21                  A. Working through the reduction in the  
22 rates, then the -- what am I looking for at the end,  
23 the average?

24                  Q. The average price per kilowatt-hour.

25                  A. Yes, it would be lower.

1           Q. Okay. And if we had two firms, two  
2 utilities, that were otherwise identical in all ways,  
3 same type of generation, same cost of providing  
4 service, same type of customer, in fact make it  
5 easier, each of them only have one customer.

6           A. My kind of hypothetical.

7           Q. The only thing that was different was  
8 that. And they were owned in common, okay?

9           A. Okay.

10          Q. Operated as a pool. Are you with me?

11          A. I am definitely with you.

12          Q. And the only thing that was different  
13 between the two firms was that one had a 7 percent  
14 return on common equity and the other one had a  
15 10 percent return on common equity. That's the only  
16 thing that was different. Are you with me?

17          A. I am with you. These are ex post earned  
18 returns, right?

19          Q. That's right.

20           Now, the customer of each of these  
21 utilities is also identical.

22          A. Okay.

23          Q. Now, if we allocate responsibility for  
24 revenue between the two utilities and we use your  
25 revenue-based allocator, which of the two utilities

1 gets the greater responsibility for revenue?

2 A. What is a "responsibility for revenue" in  
3 this case? That's what I don't understand.

4 Q. It doesn't matter, does it?

5 A. No, I don't understand what it is, not  
6 the value, but I'm not sure what is meant by the  
7 responsibility.

8 Q. Let's say it's a million dollars. The  
9 pool responsibility for revenue for both utilities is  
10 a million dollars, all right? Both utilities are the  
11 same. Both of the utilities' customers are the same.  
12 The only thing that's different is one of them has a  
13 7 percent return on equity and one of them has --

14 A. And they have the same amounts of equity.

15 Q. Everything's identical.

16 A. Everything's identical except one is  
17 actually making more revenues -- higher profits than  
18 the other --

19 Q. Right.

20 A. -- which I could assume is only, given  
21 the identical nature of the two, is because one has  
22 higher prices than the other.

23 Q. You're with me.

24 A. Okay.

25 Q. Yes.

1           A. So one has higher prices than the other,  
2 and it's the next step that I'm not sure I  
3 understand.

4           Q. Using your revenue-based allocation  
5 methodology that we've been talking about in your  
6 testimony.

7           A. So there's some common stuff coming back  
8 that has to be allocated.

9           Q. Yes.

10          A. Okay.

11          Q. Let's review the bidding again. The  
12 utilities are identical. The customers are  
13 identical. The two operating companies in this  
14 hypothetical are operated in a pool structure.

15          A. Okay.

16          Q. Common costs throughout.

17          A. And we're equal costs or are we going to  
18 allocate those costs somehow?

19          Q. Everything is identical, the only thing  
20 that is different between the two enterprises is the  
21 return on equity.

22          A. And the prices they charge to their one  
23 customer each.

24          Q. That's correct, necessarily.

25          A. Yes.

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1 Q. Are you with me now?

2 A. This step I'm good for.

3 Q. Okay. If we use your method allocating  
4 responsibility in your testimony, which is revenue  
5 based --

6 A. So something has to be allocated.

7 There's, for instance, a gizmo that has to be  
8 purchased jointly.

9 Q. Right.

10 A. Okay.

11 Q. If we use your revenue-based allocation  
12 factor in your testimony, which of the utilities gets  
13 the greater responsibility for the item that is being  
14 allocated?

15 A. If this is a cost item, then the utility  
16 which has the higher prices and therefore the higher  
17 revenues will have the higher responsibility even  
18 though they are identical in all physical respects.

19 Q. Okay. And isn't it that by using your  
20 revenue allocator here you are, in effect,  
21 attributing -- strike that.

22 Now, page 22, last line of your  
23 testimony, almost the last line, last substantive  
24 line before the general usual closing, you say you  
25 want to keep the arithmetic straight.

1           A. Yes.

2           Q. Why is that important?

3           A. Because the -- I viewed that the  
4 company's calculations were incomplete and needed to  
5 be corrected to allow for appropriate -- excuse me,  
6 scratch the word "appropriate." To allow for an  
7 adjustment to the denominator that I thought should  
8 accompany the adjustment they were seeking to the  
9 numerator.

10          Q. Is that principle of keeping the  
11 arithmetic straight important more generally?

12          A. I think it would be very useful to keep  
13 the arithmetic straight on all of the things that  
14 we're considering.

15          Q. Okay. And is it possible to keep the  
16 arithmetic straight if somebody is using a black box  
17 for purposes of providing recommendations to the  
18 Commission?

19          A. If we're talking about accounting  
20 changes, recommendations that are essentially  
21 accounting in nature, the arithmetic should be kept  
22 straight and can be kept straight if we look at the  
23 various magnitudes carefully.

24           If we're talking about economic  
25 estimates, the concept of arithmetic doesn't apply

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1 and being able to look at specific data that is of  
2 the quality of accounting data is nonexistent. We  
3 leave the world of the particular and enter another  
4 world that, frankly, I agree with a lot of people, is  
5 more the world of the twilight zone.

6           So I would not adopt the idea of keeping  
7 the arithmetic straight for issues that are involved  
8 in things like Black-Scholes or things like rate of  
9 return analysis or even the question of the  
10 appropriate benchmark, unless there's actual errors  
11 in the presented arithmetic, of course.

12           Q. Okay. You indicated that you took a look  
13 at allocating common equity to off-system sales using  
14 a megawatt-hour statistic, and I believe you  
15 indicated that the results would have been  
16 significantly different than those that you show in  
17 your testimony.

18           A. Yes.

19           Q. Directionally, or if you have more  
20 specifics, directionally can you tell me what happens  
21 if you were to perform the same allocation and  
22 include transmission as well as generating plant, but  
23 to use megawatt-hours as an allocator.

24           A. I can tell you that if I used  
25 megawatt-hours rather than revenues -- sales as the

1 allocator, that the result would be that the  
2 20.84 percent return that the company is claiming is  
3 the calculation of the rate of earned return, without  
4 any adjustments, would go down only a few basis  
5 points, something on the order of 20.7 or something  
6 like that, as compared to the amount it goes down if  
7 you use the, either the company's approach or my  
8 adjustment to the company's approach based upon sales  
9 revenues.

10 So I can tell you that the result would  
11 be a minuscule reduction in the earned return  
12 calculation if megawatt-hours were used with  
13 generation. I have not at all looked at it with  
14 respect to transmission, and I don't know how I would  
15 even do that.

16 Q. Well, again, for purposes of your  
17 observation there what megawatt-hours were you using?  
18 Were you using megawatt-hours only associated with  
19 the pool? Were you using megawatt-hours associated  
20 with off-system sales?

21 A. It's that piece of paper that's  
22 downstairs. I was using megawatt-hours as reported  
23 on FERC 1 as sales for resale.

24 Q. Okay. But for reasons -- never mind.

25 A. I mean, for clarity you have sales for

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1 resale and sales to ultimate consumers in FERC 1, and  
2 you have that expressed in terms of dollars and you  
3 have that expressed in terms of megawatts.

4 Q. Megawatt-hours.

5 A. Megawatt-hours. That's the basis of the  
6 calculations I'm talking about.

7 Q. Okay. And if one were to do the  
8 allocation based on megawatt-hours, the statistics  
9 that one would use to do that allocation are in the  
10 FERC Form 1 for Columbus & Southern?

11 A. Yes. As a matter of fact, it's on page  
12 300 of FERC Form 1, specifically.

13 Q. By the way, Mr. Cahaan, you've got  
14 another, what I'll call inspirational phrase in your  
15 testimony, and this is my last subject area, maybe my  
16 last question. At page 22, lines 3 through 5, you  
17 say there that "there is a need to be aware of  
18 arguments that effectively are attempting to get the  
19 better of cost (regulation) or market at all times."  
20 Can you help me to understand more specifically what  
21 it is that you're talking about?

22 A. Well, first I want to point out that I  
23 have experienced many times this same kind of  
24 argumentation from consumer groups so this is not a  
25 one-sided perspective. In terms of the current

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1 situation, the idea of excluding off-system sales,  
2 because these are really market transactions and have  
3 nothing to do with what is a regulated activity or  
4 semi-regulated activity in terms of the SEET test, is  
5 a perspective that says use market as a criteria.

6 At the same time, I'm aware that we have  
7 just received -- the Commission has just received an  
8 application for cost recovery of an AEP power plant,  
9 the Sporn plant. Now, without commenting on the  
10 validity of that application, I would point out  
11 simply that this is a perspective that says cost  
12 recovery under regulation is the way things should be  
13 viewed.

14 So in many cases there's lots of claims  
15 made from the perspective of there is a market out  
16 there and these things should be considered in terms  
17 of being nonregulated and when regulation benefits,  
18 well, it's a regulated entity. Pick and choose. And  
19 that's all I'm pointing out, that should be avoided.

20 Q. Okay. And if one were to be inspired and  
21 follow through with your observation there, it would  
22 require us to take a broader look at everything that  
23 is going on, wouldn't it?

24 A. I think that one of the problems involved  
25 in analyzing this business of significantly excessive

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1       earnings is a fundamental problem of understanding  
2       where the earnings are coming from and what they  
3       mean. There is not a clear knowledge on this --  
4       these facts or lack of facts, so we have numbers that  
5       are presented in total without an understanding of  
6       causation and yet the nature of the test somehow, and  
7       I mean very loosely because I do not understand it,  
8       seeks to deal with causation.

9                   So, yes, it would be better to have a  
10      more clear understanding of the particulars and how  
11      things are created in terms of all of these numbers.

12                  Q. And that observation would also extend to  
13      taking into account all the individual silos of  
14      applications that are proceeding at the Commission  
15      and bringing more of a holistic view to the  
16      resolution of this case in harmony with others,  
17      correct?

18                  A. Well, I was speaking from the perspective  
19      of just doing an analysis in this case of where in  
20      2009 did the earnings come from. Now, I think you're  
21      talking somewhat broader than in 2010 what is going  
22      on with the company as far as its total business plan  
23      vis-a-vis the state of Ohio, and that's beyond my  
24      focus.

25                  Q. Okay.

1                   MR. RANDAZZO: That's all I have,  
2 Mr. Cahaan, pleasure as always.

3                   THE WITNESS: Same here.

4                   MR. McNAMEE: Your Honor, if I might ask,  
5 this might be a good time to take a break.

6                   EXAMINER SEE: Well, we're going to need  
7 to take a break at 11 for the Commission meeting, so  
8 I think Mr. Maskovyak indicated that he thought his  
9 questions would last approximately ten minutes.

10                  MR. MASKOVYAK: And maybe not at all if I  
11 follow OCC.

12                  EXAMINER SEE: Well, I have the time for  
13 you between now and the Commission meeting, I do not  
14 have time --

15                  MR. MASKOVYAK: Could I confer with  
16 co-counsel for a moment?

17                  EXAMINER SEE: Go ahead.

18                  (Discussion off the record.)

19                  EXAMINER SEE: Let's go back on the  
20 record. Mr. Maskovyak.

21                  MR. MASKOVYAK: Your Honor, Mr. Smalz is  
22 going to do limited cross.

23                  MR. SMALZ: Yes, I'm confident we'll  
24 finish before 11.

25                  EXAMINER SEE: Okay.

## 1                   CROSS-EXAMINATION

2         By Mr. Smalz:

3             Q.    Good morning, Mr. Cahaan.

4             A.    Good morning.

5             Q.    I have just a few questions. First, on  
6 page 12 of your testimony, line 8, you state that in  
7 the future, the staff may want to put forward a  
8 benchmark ROE based upon an index or combination of  
9 indices announced well in advance so that the parties  
10 could get a good idea of the resulting benchmark of  
11 ROE well in advance. That's not what you've done in  
12 this case, though, is it?

13            A.    No.

14            Q.    In this case your recommendations as to  
15 SEET are focused just on the year 2009; is that  
16 correct?

17            A.    Yes.

18            Q.    And that would be true of your benchmark  
19 ROE and your range and your threshold, your SEET  
20 threshold ROE, they're focused on the year 2009,  
21 right?

22            A.    Yes.

23            Q.    Okay. Now, turning your attention to  
24 your testimony on page 16, line 20, where you say  
25 "Frankly, I am concerned about what might happen over

1 time in the economy, if the present deflationary  
2 tendencies are replaced by highly inflationary ones."

3 Now, given that we're focused on the year  
4 2009 and we were slipping into the most severe  
5 economic downturn we've had since the Great  
6 Depression, was there any reason in 2009 to suspect  
7 inflationary tendencies?

8 A. Well, 2009 tendencies were a matter of  
9 the past. The numbers -- the change in prices,  
10 whether it's positive or negative, I believe it may  
11 even have been a slight negative, they are what they  
12 are. So that's not what is being addressed here at  
13 all.

14 The only purpose of this is to set up a  
15 system that would not be bizarre if inflation were to  
16 kick in in the future. If you have an absolute  
17 number of basis points, then if there was a  
18 significant -- oops, I don't really want to use that  
19 word; it has no meaning.

20 If there was a lot of inflation, then the  
21 interest rates would be much, much higher, let's just  
22 say 30 percent as a rhetorical device, and if  
23 interest rates were 30 percent and you still had a  
24 hundred basis point criteria, it becomes negligible.  
25 It has no meaning at all -- or no impact at all.

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1                   Putting it in percent terms is just a  
2 convenient way of setting up a system that would be  
3 independent of the nature of inflation.

4                   Q.    Okay. Well, I think I understand that,  
5 Mr. Cahaan, but again, going back to 2009 and even  
6 before 2009, at the time of the ESP proceeding,  
7 wasn't it clear that 2009 was not going to be an  
8 inflationary year, that there was not going to be  
9 significant inflationary risk in 2009?

10                  A.    I have never addressed inflationary risk  
11 here and never incorporated anything like that in  
12 this analysis.

13                  Q.    So it has no relevance to your analysis.

14                  A.    It has relevance only in the sense that I  
15 am suggesting that instead of using a number of basis  
16 points as a criteria for defining "significantly" in  
17 the significantly excessive earnings test, instead of  
18 using an absolute number of basis points, I am  
19 proposing a percentage number, in effect.

20                  You can go -- given the benchmark ROE,  
21 there's a clear correspondence between the absolute  
22 number and a percentage number. You compute the  
23 absolute number directly from the percentage number.  
24 I am suggesting those, in effect. But I'm suggesting  
25 that going forward the formulation should be in

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1 percentage terms, not in absolute terms. It's  
2 cleaner, in my opinion.

3 Q. Well, you criticize Dr. Makjija's SEET  
4 methodology I think quite accurately as running  
5 counter to common sense. Couldn't the same criticism  
6 be made premising your SEET approach on possible  
7 inflationary tendencies?

8 A. I am not premising my SEET approach on  
9 possible inflationary tendencies. You have to  
10 explain why you say that.

11 Q. Well, again, looking at reality as  
12 opposed to abstraction. We not only are looking at  
13 the past, but we knew at the time, before 2009, that  
14 we were more likely to have deflationary than  
15 inflationary tendencies and so in developing a SEET  
16 test for 2009 specifically, I don't understand why  
17 that would be a factor. And I realize you've  
18 explained your answer and I'll take it for what it's  
19 worth but, frankly, it still doesn't make any sense.

20 A. I think you'd need to explain to me how  
21 you see that I have utilized any consideration of  
22 inflation in developing my approach to the SEET test  
23 with the exception of at the end, the definition of a  
24 "significant" being formulated in a percentage term  
25 rather than its equivalent basis point term.

1           Q.     Thank you, Dr. Cahaan, I won't belabor  
2 the point.

3                 Now, there was considerable discussion  
4 during Mr. Randazzo's cross-examination about the  
5 notion of asymmetric risk. And I'll try not to  
6 retread that same ground, I just have a couple of  
7 questions.

8                 Again, focusing on the year 2009 and the  
9 period preceding -- immediately preceding 2009, was  
10 there any reason, based on CSP's past earnings  
11 history, let's say its earnings history over the  
12 previous ten years, to think that CSP would  
13 experience deficient earnings in 2009?

14           A.     No.

15           Q.     Given the fact that the company, CSP,  
16 shows its ESP -- presented its ESP plan and had the  
17 right to drop it entirely and switch to an MRO if it  
18 didn't like the outcome, if it was modified in any  
19 respect, wouldn't that suggest to you that CSP  
20 thought they were going to earn at least adequate  
21 earnings, if not more, based on that ESP?

22           A.     The fact that CSP chose an ESP instead of  
23 an MRO indicates to me that they thought they would  
24 earn more under an ESP than an MRO. That's all it  
25 can tell me.

1           Q. Now, I believe during the prior  
2 cross-examination there was some reference to the  
3 ability of CSP to seek additional moneys in the event  
4 of plant closures. Do you recall that testimony or  
5 discussion?

6           A. The issue of seeking money in terms of  
7 plant closures has been mentioned in this proceeding,  
8 I will certainly agree with that.

9           Q. And would you say that the ability of CSP  
10 to seek those additional moneys in the event of a  
11 plant closure mitigated its asymmetric risk to some  
12 degree?

13          A. Personally, I view the issue of  
14 asymmetric risk as a narrow technical thing within  
15 the SEET process. The ability of the company to have  
16 heads I win, tails I break even in terms of its files  
17 is a different thing entirely. So these -- the  
18 ability to have in other areas what could be  
19 considered asymmetrical policies is a separate  
20 question.

21           I'm focusing on the application of the  
22 significantly excessive earnings test itself in terms  
23 of whether a company would, for instance, be able to  
24 balance off one year's excess versus another year's  
25 nonexcess over time or whether it would be able to

1 balance off things with respect to affiliates. All  
2 these things accentuate the problem if they're not,  
3 if they're not there, they accentuate the problem  
4 that the company if it has high earnings can be, to  
5 use the technical term, dinged, and if it doesn't  
6 have high earnings, it's not able to do anything.

7           I would also point out that the  
8 recommendations that I made in the previous case two  
9 years ago were based upon a different perspective as  
10 to what the nature and the magnitude of the  
11 asymmetrical risk was and that's the reason I'm  
12 particularly -- I'm mentioning the topic so much in  
13 this case, because the things that I discussed two  
14 years ago, some of those considerations which would  
15 have mitigated and reduced asymmetrical risk did not  
16 come about. So that's the rationale for the focus on  
17 it in my testimony.

18           Q.     I see.

19           What I don't understand, Mr. Cahaan, is  
20 you have been so eloquent and cogent in criticizing  
21 the theoretical methodology, this abstract twilight  
22 zone methodology of Dr. Makjija --

23           MR. CONWAY: Objection.

24           Q.     -- and yet -- and yet --

25           EXAMINER SEE: Based on the

1 characterization of the question, Mr. Conway?

2 MR. CONWAY: It's a cheap shot. It's a  
3 rhetorical, it's beyond being a rhetorical device.  
4 It's completely argumentative and it's not based in  
5 any evidence that's in the record.

6 EXAMINER SEE: Mr. Conway, I --

7 MR. CONWAY: It's objectionable.

8 EXAMINER SEE: And I need you to speak up  
9 so that myself and the court reporter can hear you.

10 Mr. Smalz, if you could rephrase the  
11 question, please.

12 Q. (By Mr. Smalz) Mr. Cahaan, as I say,  
13 you've been quite eloquent in criticizing the theory  
14 propounded, theoretical methodology of Dr. Makjija,  
15 and yet here you seem more willing to ignore concrete  
16 reality and focus on this theoretical asymmetrical  
17 risk when there's nothing -- there are no objective  
18 factors that suggest there is such a risk.

19 MR. CONWAY: Objection. It assumes so  
20 much in that question that is not in the record, in  
21 fact is rebutted by what this witness has already  
22 said, that it's objectionable. It's misleading.

23 EXAMINER SEE: I'm going to allow  
24 Mr. Cahaan to answer the question, I think he can  
25 address it.

1           A. First of all, in all fairness I need to  
2 make sure that you understand that my reference to  
3 twilight zone was not limited to Dr. Makjija but was  
4 focused on myself as well and to an extent maybe the  
5 whole economics profession these days.

6           Moving beyond that, however, the issue of  
7 asymmetrical risk is not the kind of issue of  
8 specific costs and cost recovery. The issue of  
9 asymmetrical risk is a logical problem of the  
10 construction of the test itself. There is no doubt  
11 that the logical structure of the test creates a  
12 situation where there is a symmetrical risk. All of  
13 the witnesses in this case have agreed with that  
14 concept.

15           Now, the magnitude of this asymmetrical  
16 risk in terms of being expressed as any given amount  
17 of adder or premium is, frankly, a judgment call that  
18 is based upon what you think ought to be taken  
19 account of in this asymmetrical risk issue.

20           You can say that, well, there's no risk  
21 at all. There is risk, but it's minuscule, and if  
22 you can find reasons to argue that, fine. But what  
23 I'm saying is that the level of asymmetrical risk  
24 that I assumed in my previous testimony, whether  
25 that -- excuse me, that level of asymmetrical risk

1 corresponded to a recommendation that had as its top  
2 end of the range 400 basis points. Perhaps that view  
3 was wrong, that that correspondence was wrong, but  
4 that's what I said two years ago.

5               Given that fact, that was the  
6 recommendation two years ago, if you look at the  
7 amount and degree of asymmetrical risk that the  
8 company faces in terms of the structure of this test,  
9 now that certain rules have been made regarding what  
10 is to be considered, and compare that to the  
11 discussion of the same stuff in my previous  
12 testimony, the nature of the situation is such that  
13 the level of asymmetrical risk is higher now than it  
14 was thought to be when I made the recommendations for  
15 that 400 basis points.

16           Q. Could you --

17           A. So you've got two places to argue that I  
18 was wrong with 400 two years ago and that going from  
19 400 to what amounts to be 525, that additional 125 is  
20 wrong because of what, I don't know, you can make  
21 that argument. But that's the logic of what's going  
22 on here, the company faces, in the logical structure  
23 of this test, a level of asymmetrical risk that was  
24 greater than it was, from my perspective, two years  
25 ago.

1           Q. Thank you, Dr. Cahaan. You do not have  
2 an opinion, then, as to whether that risk now, or for  
3 that matter in 2009, was minuscule or not. You  
4 couldn't characterize it one way or the other.

5           A. I'm not going to characterize it one way  
6 or the other, but if you and I could play a game in  
7 which the rules were heads I win, tails I break even,  
8 I would love to do that. That's the nature of the  
9 asymmetrical risk here.

10           MR. SMALZ: One moment, your Honor.

11           EXAMINER SEE: Sure.

12           MR. SMALZ: That's all for my questions,  
13 your Honor.

14           EXAMINER SEE: Okay. Thank you. We have  
15 a couple minutes before 11 o'clock. Let's just take  
16 a break until 11:15 and we'll reconvene.

17           (Recess taken.)

18           EXAMINER SEE: Let's go back on the  
19 record.

20           Mr. McNamee.

21           MR. MCNAMEE: Yes, your Honor. During  
22 the break Mr. Cahaan has obtained and we have  
23 distributed a document that includes the information  
24 that, it is the sheets I guess that Mr. Cahaan  
25 referred to several times, three times I believe

1 during Mr. Randazzo's cross-examination, of  
2 information that he meant to have with him but had  
3 left in his office, return on common equity over the  
4 years for Columbus Southern and several other topics.

5 For the sake of clarity I might suggest  
6 that, or completeness, I might suggest that we could  
7 mark these three sheets as a staff exhibit and put  
8 that information in the record in that way.

9 EXAMINER SEE: Mr. Conway, you have some  
10 objections?

11 MR. CONWAY: Yes, your Honor. The  
12 companies would object to the introduction of the  
13 three-page document into the record. I believe that  
14 Mr. Cahaan's testimony indicated that they were not  
15 papers that he relied upon in preparing the testimony  
16 that he presented, and I do believe that he was --  
17 Mr. Randazzo, for example, was able to inquire about  
18 the subject matters that he was interested in and  
19 Mr. Cahaan I think answered them -- answered his  
20 questions, and I think that it's just not appropriate  
21 to be bringing in documents from Mr. Cahaan's office  
22 into the record at this point after cross-examination  
23 by Mr. Randazzo is done. They're not work that  
24 support his testimony or his position, it's just like  
25 additional discovery is being conducted.

1                   MR. McNAMEE: If I might be heard.

2                   EXAMINER SEE: Go ahead, Mr. McNamee.

3                   MR. McNAMEE: The only thing I can  
4 suggest, your Honor, is the witness indicated that  
5 this was information that he did prepare for the  
6 hearing, he intended to have it with him here this  
7 morning, and, you know, I simply don't want to -- I'm  
8 concerned that we're leaving ambiguity in the record  
9 or lack of completeness in the record and we don't  
10 intend to do that. You know, this was stuff he meant  
11 to have with him. I put it out there for what it's  
12 worth.

13                  MR. CONWAY: And then the second level of  
14 the objection is I think it would be inappropriate  
15 also to just allow another round of cross-examination  
16 because this document is being brought in after half  
17 the cross has been completed. That's also not  
18 appropriate and it's unfair, we don't need to drag  
19 things out in that fashion.

20                  EXAMINER SEE: Mr. Conway, I'm going to  
21 need you to speak up. You trail off at the end. I  
22 caught it this time.

23                  MR. CONWAY: All right.

24                  EXAMINER SEE: Thank you.

25                  I believe that after considering the

1 admission, bringing in the document that Mr. Cahaan  
2 now has with him and considering the questions that  
3 were asked later, I think that the record is  
4 sufficient and complete. He did answer the questions  
5 and there's no need to bring in something that was  
6 not a workpaper used by him to prepare his testimony.

7 MR. McNAMEE: Okay. Thank you, your  
8 Honor.

9 EXAMINER SEE: Now let's continue with  
10 cross-examination. Let's go to Ms. Grady.

11 MS. GRADY: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Grady:

15 Q. Good morning, Mr. Cahaan.

16 A. Good morning.

17 Q. Let's go to page 2 of your testimony. If  
18 you would, specifically at page 2 on lines 1 and 2  
19 you explain that, you say you will explain in your  
20 testimony why a 50 percent adder to the comparable  
21 ROE is a reasonable interpretation of the concept  
22 significantly in excess. Do you see that reference?

23 A. Yes, I do.

24 Q. Do you believe that there are other  
25 reasonable interpretations of the concept

1 "significantly in excess"?

2           A. Numerical? I guess what I'm asking, do I  
3 believe that other numbers besides 50 percent are  
4 reasonable, or do I believe some other method than  
5 using a percentage adder are reasonable?

6           Q. Let's start with do you believe that  
7 there are other numerical interpretations of the  
8 concept of "significantly in excess" that are  
9 reasonable?

10          A. Definitely. It's a judgment call, and I  
11 have suggested that one way of looking at this  
12 situation is to look, as I put it, in both  
13 directions. I have suggested that you should pay  
14 attention roughly to the bond ratings as a method on  
15 the down side to get a sense of what you can call  
16 sufficiently deficient so you can know where to go on  
17 the up side. There may be lots of other reasonable  
18 ways of approaching this. This is really a question  
19 of how much is too much, which is a judgment call in  
20 and of itself.

21          Q. Thank you.

22          Now, let's go the other way and let's  
23 pose the question do you believe that there are other  
24 reasonable methods of determining what is  
25 "significantly in excess" other than the method that

1 you propose?

2           A. I believe that it would be possible for  
3 somebody to propose another reasonable method if  
4 after hearing it I felt it was reasonable. So I  
5 can't answer the question in the abstract, I can say  
6 that I'm open to hearing, personally open to hearing  
7 other reasonable methods.

8           I have a very strong opinion as to the  
9 unreasonableness of using what I call a statistical  
10 definition, a standard deviation definition, to  
11 determine what "significantly" means, I've got a very  
12 strong opinion about that one and I've expressed it  
13 at length.

14           Q. I've seen that.

15           A. I'll be happy to express it at length  
16 again, but if somebody were to come up with another  
17 method of determining "significantly" that made  
18 sense, I'd be happy to hear it and so I'm not  
19 precluding other ideas as being unreasonable at all.

20           Q. And when you say you're not precluding  
21 other ideas as being unreasonable at all, you're not  
22 precluding the analysis done by Dr. Woolridge as  
23 being unreasonable, are you?

24           A. Well, if you're talking about the word  
25 "significantly" and "significantly excessive" the

1 adder part --

2 Q. Yes.

3 A. -- Dr. Woolridge adopted the  
4 recommendation I made two years ago. At that time  
5 that was a good recommendation. I am raising that  
6 recommendation, I'm coming from that recommendation  
7 and raising it for reasons that I've put in this  
8 testimony. I think that's reasonable. That's, if  
9 Dr. Woolridge is going to use my basis, then he's  
10 going to have to say -- reason from that, I should  
11 say. Is that clear? I'm not sure it's clear to me.  
12 But is that clear to you?

13 Q. I think it's as good as I'm going to get.  
14 Thank you. I do appreciate it. I caught some of it.  
15 I don't know that I caught all of it, but I caught  
16 some of it.

17 A. If he wants to make an argument, I'd be  
18 happy to listen to it, but the argument he's making  
19 is the one I used to make and I've changed it for  
20 reasons I've given.

21 Q. And at that time it was a reasonable  
22 argument, would you agree, that you made in 08-917?

23 A. I made it, didn't I? Of course it was  
24 reasonable.

25 Q. Now, let's talk about part 1 of your

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1 analysis where you say, and it begins on page 2, it  
2 is about determining a comparable return on equity.  
3 Do you see that?

4 A. Yes.

5 Q. And on lines 14 and 15 you discuss that  
6 you reviewed not only Dr. Makjija's analysis, but you  
7 also reviewed Dr. Woolridge's analysis and later on  
8 then you say you also reviewed Dr. Vilbert's  
9 analysis. Do you see that?

10 A. Yes, I do.

11 Q. And also indicated that in addition to  
12 looking at these analyses that you looked at the  
13 return on equity of two published and market trade  
14 indices in your analysis?

15 A. Yes, I did. I see that.

16 Q. Now, on page 3 of your testimony you  
17 discuss the different models that were used to  
18 determine the comparable return on equities, and you  
19 indicate, again on lines 4 and 5 of page 3, that  
20 essentially that there's -- everyone went about it a  
21 different way, but the results are really not too far  
22 apart. Do you see that?

23 A. Yes, I do.

24 Q. And in fact, you state in your testimony  
25 that "taken together," and I'm assuming you're

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1 talking about all the results there, "they tend to  
2 define a zone of reasonable consideration." Do you  
3 see that reference?

4 A. Yes, I do.

5 Q. Focusing on the fact that you are  
6 defining a zone of reasonable consideration, you  
7 would then consider that a comparable ROE for CSP to  
8 be 9.58 percent as well as a 9.45 percent?

9 A. I am saying that looking at the evidence  
10 of the different approaches I'm -- I'm saying that a  
11 zone of 10 to 11 is the zone of reasonable  
12 consideration. I understand that Dr. Woolridge is  
13 putting forward a number of either 9.58 or 9.55, but  
14 I think that there are elements in the analysis that  
15 would argue that that's a bit low because of mainly  
16 the inclusion of a company that is kind of bizarre to  
17 be in there, I'm not saying it didn't pass the  
18 screening, but it's strange to be where it is for  
19 very unusual reasons, and, therefore, I think that a  
20 range of 10 to 11 is a zone of reasonable  
21 consideration.

22 Q. And going on, you're traveling along the  
23 road nicely because that's where my next set of  
24 questions come from, you talk about Dr. Woolridge's  
25 approach beginning on page 3 on 12, and then you go

1 on to page 4 where you indicate that you examined  
2 Dr. Woolridge's output and you found that one member  
3 of the group is an anomaly or could be considered an  
4 anomaly, correct?

5 A. Absolutely. Definitely.

6 Q. And that would be the Servidyne, Inc.?

7 A. Yes.

8 Q. And you characterize it as an outlier  
9 because it has a 12.41 percent loss as its return on  
10 equity?

11 A. I characterize it as an outlier because  
12 it is an outlier in terms of the number compared to  
13 the rest of the companies.

14 Q. And then is it fair to say that you also  
15 characterized an outlier on the other end, that being  
16 DP&L, with the highest return?

17 A. In his approach I looked at that one too,  
18 yes.

19 Q. And you indicate on page 5, lines 3  
20 through 7, that it's your experience that it's not  
21 unusual to eliminate both the highest and the lowest  
22 observations in a sample that calculates the mean.

23 A. Yes.

24 Q. And then your testimony goes on to state  
25 that if you eliminate both these outliers, the mean

1 would increase from 9.56 percent to 9.75 percent --

2 A. Yes.

3 Q. -- do you see that? And then you further  
4 go on to say that if only Servidyne was eliminated,  
5 the resulting mean would be 10.06 percent.

6 A. Yes.

7 Q. Is it your understanding that  
8 Dr. Woolridge's recommended return on equity  
9 threshold utilized the median and not the mean?

10 A. I'm not sure. In his recommendation  
11 initially the two were like one basis point apart.  
12 I'm not sure which he did.

13 Q. Would you accept, subject to check, that  
14 Dr. Woolridge's recommended ROE threshold utilized a  
15 median?

16 A. I'll accept it subject to check.

17 Q. And would you agree, then, if the median  
18 return on equity was calculated by Dr. Woolridge, it  
19 would be unaffected by the adjustments that you  
20 propose?

21 A. Yes.

22 Q. Now, on page 6 of your testimony, lines  
23 10 through 12, you indicate that "there is nothing  
24 more frustrating than setting up a carefully  
25 specified set of screening criteria and finding a

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1 sample so small as to be meaningless or unusable"; do  
2 you see that?

3 A. Yes.

4 Q. Do you consider Dr. Woolridge's sample to  
5 be so small as to be meaningless or unusable?

6 A. No.

7 Q. Now, Dr. Cahaan, you looked at two  
8 exchange-traded funds that are related to utilities  
9 and those would be the iShares, Dow Jones, and the  
10 Utilities Select Sector SPDR Fund; is that correct?

11 A. Yes.

12 Q. And on page 11 of your testimony on lines  
13 10 and 11 you indicate that they are conceptually  
14 close to the criteria used by Dr. Woolridge?

15 A. I'm sorry, what's the referencing page?

16 Q. That would page 11, lines 10 and 11.

17 A. I see the reference. Yes.

18 Q. Do you believe the criteria used by  
19 Dr. Woolridge were appropriate?

20 A. I believe Dr. Woolridge's approach is an  
21 appropriate approach and I believe that his criteria  
22 are reasonable criteria. I have no problem with what  
23 he's done except for the way certain things, certain  
24 companies have, what I'll call snuck through.

25 Q. I'm sorry?

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1           A. Well, strike that. With the way certain  
2 companies -- Servidyne, basically. But I'm not  
3 criticizing Dr. Woolridge's approach saying this is  
4 unreasonable or wrong in any way.

5           Q. Thank you.

6           Now, on page 11 on line 11 you indicate  
7 that the groupings that you have come up with through  
8 the two indices are likely to be very stable and  
9 individually understandable. Do you see that?

10          A. Yes.

11          Q. Would you also believe that  
12 Dr. Woolridge's groupings were likely to be very  
13 stable and understandable?

14          A. The basic method that he is using is one  
15 that I would think would be stable and definitely --  
16 and this I want to make a definite point of  
17 agreement, that the kind of approach Dr. Woolridge  
18 used is indeed exactly the kind of approach that is  
19 understandable, otherwise you wouldn't be -- one  
20 wouldn't be able to go inside of it and say what if  
21 there was a company that didn't belong or not. It is  
22 to be commended, in my opinion, as a useable  
23 technique because people can sit around and discuss  
24 it on a technical basis. So yes, it is  
25 understandable and it probably is going to be pretty

1 stable although I can't say for sure.

2 Q. Now, when you looked at your two indices,  
3 you found 11.39 percent earned return on equity and  
4 11.15 percent earned return?

5 A. Yes.

6 Q. And you indicate these are average  
7 returns; is that right?

8 A. Yeah. Weighted average returns.

9 Q. So they essentially represent a mean?

10 A. Yes.

11 Q. Now, on page 12, lines 1 and 2 of your  
12 testimony you say that as far as you're concerned,  
13 the 11.39 percent and the 11.15 percent tend to  
14 confirm the reasonableness of the other estimates.  
15 Do you see that reference?

16 A. Yes.

17 Q. And by that are you including the  
18 estimated return on equity calculated by  
19 Dr. Woolridge?

20 A. I'm referring more to the -- first place,  
21 yes, in the sense that as far as I'm concerned  
22 everybody's estimate, although this means a lot of  
23 money in between, but if you consider a sense the  
24 range of all possible numbers and look at the ranges  
25 of all these firms, you have two percentage points

1 difference between the lowest estimate that's being  
2 put out, the one from Woolridge --

3 Q. Yes.

4 A. -- and the highest one, that is the one  
5 that I computed by sticking Columbus & Southern's  
6 specific data into Dr. Vilbert's formula; there's a 2  
7 percentage point difference.

8 Now, I'm not saying this is unimportant,  
9 but if you step back a second and look at the ability  
10 to tell things like even forecasting inflation or  
11 anything, 2 percentage points is not huge in terms of  
12 the errors that exist in this world. And that's what  
13 I'm saying is that here's a 10-1/2 and that's, you  
14 know, it's in the same ballpark.

15 Now, we can't live with a ballpark of 2  
16 whole percentage points. We have to get a little bit  
17 better than that. But I think that you have to  
18 recognize the degree of precision that is  
19 conceptually possible in this endeavor \*\*\*is not as  
20 nice as accountants, I don't want to put down  
21 accountants, but not as nice as people who deal with  
22 precise numbers would prefer to have come at them.

23 Q. Understood.

24 A. And I only have to point you to the  
25 experience of the last few years to show the

1 imprecision of the whole process in terms of  
2 specifying numbers that you can rely on as being  
3 actually true ex post.

4 Q. Are you referring to the earned returns  
5 on ROE?

6 A. No, I'm referring to our economic  
7 situation that's pretty bad.

8 Q. I'm sorry.

9 A. That's pretty bad, and let's not get  
10 started on that, I suppose.

11 Q. Now, on page 12, line 18, you present  
12 your recommendation of a 10.7 percent benchmark ROE;  
13 do you see that?

14 A. Yes.

15 Q. And on that same page on lines 19 and 20  
16 you indicate that you had reason to believe that the  
17 9.58 might be low for the reasons explained above.  
18 Do you see that reference?

19 A. Yes.

20 Q. And we're talking about the 9.58 percent  
21 coming from Dr. Woolridge?

22 A. Yes.

23 Q. And are -- when you say "for the reasons  
24 explained above," are you specifically referring to  
25 the presence of outliers -- of the outliers Servidyne

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1 and DP&L that you took out of the mean calculation of  
2 Dr. Woolridge?

3           A. I'm specifically referring to the outlier  
4 Servidyne which I took out because it just, when we  
5 look at the specifics of the case, it felt -- it  
6 seemed to me that it really did not belong in that  
7 comparable group. I certainly could not make a case  
8 that DP&L should not be on the basis of this business  
9 activity and the basis of what it's doing in a  
10 comparable group. It was an outlier, but whether it  
11 should be in a comparable group of electric  
12 utilities, after all it's CSP's neighbor and I think  
13 that there's no conceptual basis for excluding it.

14           So it's more on the -- it's basically on  
15 the elimination of the Servidyne.

16           Q. Do you know if DP&L was in the comparable  
17 group used by Dr. Makjija in his analysis?

18           A. No, I don't know that specifically.

19           Q. Now on page 13, on lines 2 through 4, you  
20 indicate that considering the totality of the  
21 information developed, that you think a range of 10  
22 to 11 percent is reasonable with a bit more evidence  
23 arguing for the higher side of the range. Do you see  
24 that?

25           A. Yes, I do.

1           Q. And you had some questions this morning  
2 from Mr. Randazzo with respect to that so I'm going  
3 to try not to be repetitive, but can you tell me what  
4 evidence you have that argues for the higher side of  
5 the range there?

6           A. I'm basically saying that although I  
7 don't want to do any kind of averaging of the  
8 numbers, the evidence of the indices argues for the  
9 higher side and the evidence from plugging in CSP's  
10 data into Vilbert's method argues for the higher  
11 side.

12           If I were to do an average by plugging  
13 these numbers in and doing an average calculation of  
14 the various methods, I would get a number that's  
15 higher than 10.7. I'm not doing an average, I'm not  
16 treating them equally, I'm simply saying that the  
17 three other pieces of information that I looked at,  
18 the two indices and the adaptation of the Vilbert  
19 method, are all on the higher side of the middle of  
20 my 10 to 11 and so I'm leaning a little bit north of  
21 the 10-1/2 which would be the absolute middle.

22           Q. Would you agree with me that there may be  
23 evidence that argues for the lower side of that  
24 range?

25           A. I would agree that there's always the

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1 possibility of evidence not considered in my analysis  
2 that would argue for lower or higher, and I would  
3 appreciate reading the arguments from, which I'm sure  
4 will appear on brief regarding that.

5 Q. Now, Dr. Cahaan, would any point in that  
6 range, from that 10 to 11 percent range, be a  
7 reasonable point to say that it is a comparable ROE  
8 to utilize in the SEET test?

9 A. I believe so.

10 Q. So, for instance, 10 percent would be a  
11 reasonable point to say that it is a comparable ROE  
12 to utilize in the SEET test, according to your  
13 testimony.

14 A. What I am doing is defining a range and  
15 within that range it is my opinion, seems to me that  
16 the midpoint is a valid starting point of looking at  
17 this and that, looking at the other numbers in this  
18 evidence, leaning slightly above the midpoint is  
19 reasonable. All of these are reasonable points so I  
20 am defining 10 to 11 as a reasonable range.

21 Q. Now, you indicate on page 13, lines 13  
22 and 14, that the level of statistical significance  
23 proposed by the company in the ESP proceeding was  
24 egregiously excessive. Do you see that?

25 A. Yes.

1           Q.    Is the level of statistical significance  
2 proposed by the company in this case egregiously  
3 excessive?

4                 THE WITNESS: Could I have the question  
5 read?

6                     (Record read.)

7           Q.    Let me --

8           A.    I can answer it very simply. It's the  
9 same level as before.

10          Q.    So it would be egregiously excessive.

11          A.    I think it's similarly egregiously  
12 excessive as before.

13          Q.    Thank you.

14          A.    I have a long discussion of the use of a  
15 2-1/2 percent tail on a probability distribution as a  
16 standard of definition of significance equivalent to  
17 beyond a reasonable doubt in a legal proceeding; I  
18 made that argument in my previous testimony which is  
19 an attachment to this one. I think that the level of  
20 statistical significance proposed by the company is  
21 equivalent to putting the entire burden of showing  
22 excessive earnings on the part of the other parties  
23 and then setting up a system such that it's extremely  
24 unlikely that that would be ever able to be done. So  
25 "egregiously excessive" is a moderate term.

1           Q. Is it your understanding that the law  
2 provides that the burden of proof shall be on the  
3 utility to show that it is not earning significantly  
4 excessive earnings?

5           A. Yes.

6           Q. Now, on page 13 at the bottom you are  
7 discussing reasons in your mind to reject the use of  
8 the statistical definition of SEET. Do you see that?  
9 And the discussion then carries over to page 14.

10          A. Yes.

11          Q. And you present an example in your  
12 opinion that shows that reliance on the statistical  
13 approach to define "significantly excessive" can  
14 produce results that are counter to common sense and  
15 the ordinary use of English language?

16          A. Yes.

17           MR. CONWAY: Your Honor, at this point  
18 I'll make the same objection I made earlier when  
19 Mr. Randazzo was at the outset of his  
20 cross-examination. This is friendly cross. She's  
21 using, which is objectionable by itself, and on top  
22 of it she's using leading questions. If it's going  
23 to be done, it should be done without the use of  
24 leading questions, but in any event it's simply  
25 enlisting the witness in a friendly manner to advance

1 her own cause and that's objectionable.

2 EXAMINER SEE: Ms. Grady.

3 MS. GRADY: Your Honor, in response, as  
4 your Honor knows, the staff witnesses are not subject  
5 to the normal rules of discovery in these  
6 proceedings. In fact, under 4901-1-21 there's no  
7 deposition allowed of the staff witnesses. And  
8 there's no discovery attributable to the staff in  
9 this case.

10 I would argue, your Honor, that there  
11 should be greater leeway in the cross vis-a-vis  
12 alleged friendly cross given the role of the staff in  
13 this proceeding as well as others.

14 MR. CONWAY: Your Honor, if I could just  
15 speak to that. This is not -- we're not talking  
16 about doing discovery here. This is  
17 cross-examination and what is the proper scope of  
18 cross and what's the proper conduct of  
19 cross-examination. And I will leave it to your  
20 Honors to recall what you've just heard over the last  
21 five to ten minutes and make your own judgment as to  
22 whether or not that's friendly cross-examination. If  
23 it isn't, then there is none at this Commission would  
24 be my position.

25 EXAMINER SEE: The objection is

530

1 overruled.

2 MS. GRADY: I'm not sure, is there a  
3 question pending?

4 EXAMINER SEE: Go back and let's see if  
5 there's a question.

6 No, there isn't.

7 Q. Now, your testimony on page 14 where you  
8 are talking about -- let me strike that.

9 In your testimony filed 08-917-EL-AIR,  
10 did you have what you called a sanity check, what you  
11 characterize as a sanity check on the test?

12 A. I believe so.

13 EXAMINER SEE: I'm sorry, what case was  
14 that, Ms. Grady?

15 MS. GRADY: 08-917-EL-AIR attached to  
16 your Staff Exhibit 1.

17 EXAMINER SEE: 08-917?

18 MS. GRADY: I believe so.

19 THE WITNESS: Yes. EL-SSO.

20 EXAMINER SEE: Yes.

21 MS. GRADY: Yes.

22 Q. Now, under your sanity test you basically  
23 say that if we define profits as significantly  
24 excessive, that we need to accept that same term or  
25 that same logic with respect to profits being

1 significantly deficient; is that right?

2 A. Yes, that's the sanity check I'm  
3 proposing.

4 Q. And then in your example in your  
5 testimony here, and I'm looking at page 14, lines 10  
6 through 12, you take Dr. Makjija's comparable return  
7 on equity and you apply his adder of 11.47 to get it  
8 to the threshold return on equity of 22.51 percent,  
9 correct?

10 A. Yes.

11 Q. And then you did the reverse, taking the  
12 11.04 comparable mean return on equity and subtract  
13 the adder of 11.47 and come up with a negative  
14 .43 percent?

15 A. Yes. The statistical test assumes a  
16 normal distribution which is symmetrical and I'm just  
17 saying if you're looking in one direction, you need  
18 to look in the other direction to establish meaning  
19 here.

20 Q. And you conclude on lines 18 and 19 that  
21 under this kind of a sanity check that it  
22 demonstrates that it does not make sense and a  
23 statistical definition is not useful here.

24 MR. CONWAY: Objection. Same objection,  
25 your Honor. This line of questioning will continue

1       on --

2                   MS. GRADY: I can withdraw my question.

3                   MR. CONWAY: -- for a couple more pages  
4 where Mr. Cahaan indicates his disagreements with  
5 Dr. Makhija's approach as does her witness  
6 Dr. Woolridge, and we'll continue to have cumulative,  
7 repetitive piling on by this lawyer with this witness  
8 who are perfectly aligned on this point.

9                   EXAMINER SEE: Ms. Grady, did I hear you  
10 say you will withdraw your question?

11                  MS. GRADY: Yes.

12                  EXAMINER SEE: Thank you.

13                  Q. (By Ms. Grady) Now, Dr. Cahaan, if you  
14 take Dr. Woolridge's 9.58 percent and you add his 200  
15 to 400 basis point recommendation, you would get to a  
16 return on equity threshold of between 11.58 to 13.59?

17                  A. I wasn't hearing that, but it sounds like  
18 the arithmetic's right and we'll assume that.

19                  Q. And then let's do the reverse of your  
20 test, the other part of your sanity check. You take  
21 the 9.58 percent and subtract the adder of 200 to 400  
22 basis points and you come up with a 5.58 to  
23 7.58 percent as representing a threshold for  
24 significantly deficient under your sanity check?

25                  A. That's --

1                   MR. CONWAY: And once again, I object,  
2 your Honor. This is just the converse of what we  
3 just heard which is instead of using Mr. Cahaan to  
4 support her position, it's in opposition to  
5 Dr. Makjija, she's now pursuing a line which attempts  
6 to use Mr. Cahaan, enlist him in support of her own  
7 witness's approach which is in alignment in this  
8 respect, I'm sure, with Mr. Cahaan.

9                   MS. GRADY: To the extent that you would  
10 like a response, I believe Mr. Cahaan went through  
11 this same exercise with another witness, what happens  
12 when you take this out, and I'm just pursuing what  
13 happens when you take it out with Dr. Woolridge's  
14 numbers. He's presenting them what happens when you  
15 take this out with respect to Dr. Makjija's numbers.  
16 I think it's helpful to the record. It's relevant.

17                   MR. CONWAY: The difference depends on  
18 which side of the issue your witness happens to be  
19 aligned for purposes of the examination.

20                   MS. GRADY: If Dr. Woolridge is proposing  
21 a 200 to 400 basis points adder, which Dr. Cahaan has  
22 testified he is not supporting.

23                   EXAMINER SEE: Okay. And again, the  
24 objection is overruled.

25                   MS. GRADY: Thank you, your Honor.

1           A. Let me pick the first, the higher number  
2 first, the use of a 200, that would give you, as you  
3 have done, a 7.58 threshold of significantly  
4 deficient. Now, all of this is a judgment call as to  
5 what does this mean. Given the fact that there's a  
6 number of companies, some of which are AEP companies,  
7 that are already earning less than 7.58, given that  
8 the bond rate -- the embedded cost of debt for CSP is  
9 6-something, I don't think I personally would  
10 characterize 7.58 to be significantly deficient,  
11 period.

12           Regarding 5.58, now you're in an area  
13 that may, with judgment, roll off the ear as, yeah,  
14 that's significantly deficient. It may. I mean,  
15 that's the 400 basis point difference as opposed to  
16 what amounts to my 525 basis point difference. So  
17 5.58 doesn't hit my ear as being a definite no, but  
18 on the other hand it's -- so that I would say that  
19 applying this test with Dr. Woolridge's, 5.58 may be  
20 a significantly deficient number. That's with  
21 Dr. Woolridge's mean or, rather, recommendation,  
22 though.

23           That 5.58, if it were coming off of the  
24 10.7, would be approximately exactly what I'm  
25 recommending.

1           Q. Now, on page 16, lines 9 and 10, you  
2 refer to a system which is designed to avoid false  
3 positives at almost any cost, which is what is being  
4 proposed. Are you saying that that system is being  
5 proposed by a party in this proceeding?

6           A. I am saying -- the answer, the simple  
7 answer is yes. And I am saying that all of this  
8 emphasis in the entire discussion regarding  
9 significantly excessive, whenever the statistical  
10 test has been put forward, has stressed the  
11 importance of not having -- rather, reducing false  
12 positives to a very low level. Nowhere is it ever  
13 discussed the implication of reducing false  
14 negatives.

15           So this concept of false positive is  
16 meaningful only, by the way, using a statistical  
17 test. If you're using a different basis of judgment,  
18 the words "false positive," "false negative" have no  
19 meaning, they're not there.

20           But yes, this is -- I think in this case  
21 proposals to use statistical definitions of the word  
22 "significance" combined certainly with large standard  
23 deviations is really strongly creating a situation  
24 where false positives are reduced and avoided at  
25 almost any cost.

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1           Q. Now, on page 16, on lines 18 through 19,  
2 you indicate there that you're not continuing your  
3 recommendation of a 200 to 400 basis point adder as  
4 threshold in this case, correct?

5           A. Yes, as we've discussed before.

6           Q. And, rather, in this case you've proposed  
7 to define the threshold, or the threshold ROE as a  
8 percentage of the benchmark ROE?

9           A. Yes.

10          Q. And you indicated that one of the bases  
11 for changing your mind is your concern that you list  
12 on line 20 over what might happen in the economy if  
13 the present deflationary tendencies are replaced by  
14 the higher inflationary ones.

15          A. That is a reason why I'm switching from a  
16 basis point to a percentage, not for the level of the  
17 recommendation.

18          Q. Understood.

19          A. Okay.

20          Q. And I think you in response to questions  
21 by APJN, you said that 2009 was not a -- there were  
22 deflationary tendencies in 2009 rather than higher  
23 inflationary tendencies in 2009.

24          A. I think in -- I'm not sure whether the  
25 CPI or any other measure of inflation went down

1 slightly or was up slightly. Basically, there was no  
2 inflationary tendencies certainly in 2009, and so  
3 the -- I could leave this in a basis point type of  
4 approach for this year because we're not having  
5 inflation this year and right now I know that, as you  
6 can see right at the top of page 17, 50 percent  
7 standard is 535 basis points, we all know the numbers  
8 today. I'm setting it up in my recommendation as a  
9 percentage so that in the future it's more applicable  
10 because as a basis point recommendation in the future  
11 it might get ridiculous.

12 Q. Did you understand Dr. Woolridge's  
13 proposal to be limited to this proceeding only?

14 A. His proposal of what?

15 Q. Of using the 200 to 400 basis points  
16 adder.

17 A. Yes.

18 Q. Now, on page 17 on lines 9 through 10 you  
19 indicate that the 200 basis points from the return on  
20 equity is so low as -- might be so low as to  
21 discourage efficiency improvements that might benefit  
22 everyone in the long run. Do you see that?

23 A. Yes.

24 Q. Dr. Cahaan, would you agree that  
25 consumers are likely to be ambivalent about the

1 efficiency of CSP under Senate Bill 221?

2 A. I think -- strike that.

3 There's too many assumptions that would  
4 have to be made for me to respond to that question.

5 Q. And can you clue me in on what those  
6 assumptions would be?

7 A. Well, are we talking about the  
8 perspective of consumers vis-a-vis feeling of the  
9 inflationary economy and productivity in general, do  
10 they want things to become more efficient which in  
11 the long run would lower prices assuming we get some  
12 competition in the production side of the industry,  
13 which seems to be happening. Are we talking about  
14 what's going to be their pocketbook in a one-year  
15 time regarding electric rates. There's a lot of  
16 assumptions there.

17 Q. In general would you agree with me that  
18 under Senate Bill 221 that the value of efficiency is  
19 not necessarily passed back to customers as opposed  
20 to a traditional cost based rate approach?

21 A. Your question is right -- is a perfect  
22 illustration of the problem we have in this  
23 giraffapotomus of a regulated free market entity that  
24 is providing service under something akin to  
25 regulation called a standard service offer which is

1       in competition with the market and in a sense with  
2       itself, with the company itself that can have a  
3       nonregulated offer as well.

4                 Now, if there were some productivity  
5       improvement such that all of the promises that I grew  
6       up with in terms of Reddy Kilowatt being too cheap to  
7       meter would actually come halfway true so that the  
8       American Electric Power Company, the nonregulated  
9       parts of it would be producing electricity at 2 mils  
10      a kilowatt-hour without any pollution, et cetera,  
11      et cetera, et cetera, I think this would benefit  
12      everybody and they would -- and the consumer would  
13      benefit too.

14                 There is a market out there, so looking  
15      at it from the market perspective, productivity  
16      improvements are a wonderful thing to happen.  
17      Looking at it from a regulatory perspective, we are  
18      not in Senate Bill 221, the Commission is not passing  
19      through productivity improvements on the nonregulated  
20      side back into the regulated side.

21                 So which perspective, the giraffe  
22      perspective or the hippopotamus perspective, which  
23      part of the animal are we looking at when we make  
24      these comments regarding productivity improvements  
25      and how their effect will be.

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1           Q.    But everybody likes to go to the zoo to  
2 see different animals, don't they?

3           A.    Yes.

4           Q.    Let me withdraw that. I'm sorry.

5           A.    And I haven't even begun to discuss what  
6 part of the anatomy we're looking at.

7           Q.    Now, in that same paragraph, and we're  
8 talking about 17, page 17, lines 12 and 13, you're  
9 talking about an asymmetrical risk there and I know  
10 there was a bit of cross this morning on that and so  
11 I will try to be -- not try to replicate that cross.

12                 You characterize the SEET test as  
13 creating an asymmetrical risk; is that right?

14           A.    That is right.

15           Q.    Are you essentially saying that since  
16 SEET contains an asymmetric risk, that a higher  
17 threshold return on equity should be used in the SEET  
18 calculation?

19           A.    I am saying that because -- strike that.

20                 The existence of a symmetrical risk  
21 argues for a greater leeway in terms of the  
22 threshold; point number one. The amount of  
23 asymmetrical risk that I identified two years ago was  
24 a certain amount based upon the possibility of being  
25 able to treat the companies together, about

1 averaging, all these various things that could reduce  
2 the asymmetrical risk from where it has turned out to  
3 be because these things have not come about. So in  
4 that context I think my answer's yes.

5 Q. Now, this follows up on what you were  
6 saying, you said that -- or you tie your  
7 recommendation in the last case, the 200 to 400 basis  
8 point adder, to the fact that you considered factors  
9 with that and the two factors that you mention in  
10 your testimony are that you were looking at applying  
11 the test on a multiyear basis and you were  
12 considering the earnings of the operating utilities  
13 jointly; is that right?

14 A. Yeah. There may have been another or a  
15 couple others in my previous analysis, I'm not sure.

16 Q. Can you check that? Would you check that  
17 for me, please? Don't want to mischaracterize your  
18 former testimony.

19 A. No. I guess I was thinking with all the  
20 words that I used there must have been more reasons.  
21 There are just those two.

22 Q. Thanks.

23 And when you were talking in your  
24 testimony in 08-917 about averaging -- or applying  
25 the test on a multiyear basis, what number of years

1       were you considering when you were -- when that  
2       testimony was drafted?

3           A.     No specific number.

4           Q.     Do you recall if you did any analysis at  
5       that point to look at what would happen if you  
6       applied the test on a multiyear basis instead of a  
7       yearly basis?

8           A.     No.

9           Q.     Do you understand that Dr. Makjija in  
10      that proceeding was suggesting a multiyear basis for  
11      his test?

12          A.     I don't remember.

13          Q.     For purposes of this proceeding did you  
14      look at the average common equity return on equity  
15      earned by CSP over a period of time?

16          A.     I am aware of it, yes. I did look at the  
17      historical earnings.

18          Q.     And did you look at a -- over what period  
19      would you have looked at the historical earnings of  
20      CSP?

21          A.     Well, what I did was to look at the  
22      earnings of CSP for the whole period from 2000 to  
23      2009.

24          Q.     And in your analysis did you make any  
25      conclusions about how many years the return on equity

1 calculated was above 20 percent during the past ten  
2 years?

3 A. It's not a question of conclusions, it's  
4 a matter of fact in terms of the reported earnings of  
5 the company at least as to the FERC 1, so there  
6 was -- I don't want to characterize this as analysis  
7 is what I'm saying.

8 Q. Understood. And as a matter of fact, did  
9 you find that the return, the average common equity  
10 return on equity earned by CSP over the last ten  
11 years to be above 20 percent?

12 A. The average over the last ten years?

13 Q. Yes.

14 A. I didn't do a -- conduct an average but  
15 looking at the numbers I --

16 Q. Let me --

17 A. I'm not sure what the average would be.  
18 It would be around 20 but whether it would be above  
19 20 or not, I don't know. I did not do an average of  
20 these things.

21 Q. Over the past five years would you agree  
22 that the return on equity earned by CSP was above  
23 20 percent?

24 MR. CONWAY: Objection.

25 EXAMINER SEE: Basis?

1                   MR. CONWAY: Relevance. There's a  
2 specific formula that the Commission promulgated in  
3 its June 30th order about how you go about  
4 calculating a return on equity for purposes of SEET.  
5 There's been no foundation laid that the values he's  
6 being asked to average are calculated in accordance  
7 with the formula that the Commission requires for  
8 purposes of the SEET calculation.

9                   MS. GRADY: For clarification I'm not  
10 asking him to average, I'm asking him what the  
11 average common equity return on equity that was  
12 earned during the last ten years.

13                  MR. CONWAY: I don't quite understand how  
14 that's responsive but it sounds like she is asking  
15 for an average over the last ten years and my  
16 relevance objection stands.

17                  EXAMINER SEE: I'm going to sustain the  
18 objection.

19                  Q. (By Ms. Grady) Dr. Cahaan, would you  
20 agree with me that when the ESP plan was adopted in  
21 08-917, that the asymmetric SEET test was mitigated  
22 by factors or measures that were features of the ESP  
23 plan?

24                  A. Without clearer specification of what  
25 you're referring to I don't think I can answer.

1           Q. Let's turn to your testimony submitted in  
2 08-917 beginning on page 24, and I believe there  
3 you're testifying as to specific consideration that  
4 should guide the Commission. Do you see that  
5 reference?

6           A. Yes.

7           Q. And there you say -- you speak to, for  
8 instance, riders, deferrals, unavoidable charges.  
9 Those were all features of the ESP that were  
10 approved; is that right?

11          A. I believe so.

12          Q. And the riders, is it your understanding  
13 that there's an economic development rider in place  
14 currently?

15          A. Since I haven't been at the Commission  
16 for a while, I cannot speak from that perspective,  
17 but I have seen documents at this hearing that have  
18 talked about an economic development rider.

19          Q. And you would assume that there's other  
20 riders just from being at the hearing and hearing the  
21 testimony of the witnesses, the various witnesses; is  
22 that right?

23          A. Yes. I assume there's a number of riders  
24 that exist.

25          Q. Is it your understanding also that the

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1       ESP would have included a fuel adjustment clause?

2           A. Well, I understand that there's deferrals  
3 regarding the fuel being composed, so I would expect  
4 there's a fuel adjustment clause lurking in the  
5 background there.

6           Q. Fair enough.

7           If you know, are there deferrals that  
8 have been approved in the ESP plan that would  
9 stabilize the earnings of CSP?

10          A. Once again, since we are discussing  
11 deferrals today with respect to what goes in and out  
12 of the calculations for SEET purposes, I assume that  
13 deferrals exist and they would -- well, they would  
14 tend to augment, I don't know whether they would tend  
15 to stabilize, the earnings of CSP.

16          Q. And there's also unavoidable charges such  
17 as POLR charges under the ESP plan --

18          A. Yes.

19          Q. -- if you know?

20           Now, Dr. Cahaan, you testified in  
21 response to questions by I believe Mr. Randazzo that  
22 you had familiarity with 4928.142 and 4928.143, the  
23 SEET provisions of 221, essentially.

24          A. Well --

25           MR. CONWAY: I'm sorry, could I have that

1 question reread.

2 (Record read.)

3 MS. GRADY: Let me take out -- 142 was  
4 not one of them.

5 Q. Let me rephrase.

6 A. Let me point out I don't know the numbers  
7 very well on these things.

8 Q. You essentially are familiar with the,  
9 for instance, you're familiar with the annual SEET  
10 review process that we're in right now.

11 A. Yes.

12 Q. Is that safe?

13 A. I have a piece of paper with a section of  
14 SB 221 that doesn't have what number part of the law  
15 it came from that has the words that sat in front of  
16 me for a while and I became very familiar with it.

17 Q. Okay. That's fair enough. Now,  
18 Dr. Cahaan, do you understand that associated with  
19 the annual review process that we're involved in,  
20 that the companies have a -- they have the ability to  
21 terminate the plan if the Commission finds that there  
22 are significantly excessive earnings and orders a  
23 refund?

24 A. Yes. I was a little confused as to how  
25 the sequence of things occurs, but yes, if the

1 Commission orders a refund, the company can terminate  
2 the plan.

3 Q. And is it your understanding that in that  
4 event they could immediately file an application to  
5 implement an alternative plan?

6 A. An MR --

7 MR. CONWAY: O.

8 A. -- O I think is what it says.

9 Q. Is it even beyond an MRO, if you know?

10 A. Not sure.

11 Q. Okay. Would you agree with me that to  
12 the extent that the companies have the ability to  
13 terminate the plan if there's a SEET finding, that  
14 that is a mitigating factor that mitigates the  
15 asymmetric risk of SEET to a certain extent?

16 A. Let me see if I understand this right.  
17 The company would have to refund money but then could  
18 terminate the plan. In my way of looking at it the  
19 asymmetric risk still exists. The question is  
20 whether they would have to continue under the  
21 conditions separate from the existence of it.

22 Certainly, if we were setting up a  
23 question of how much is too much and the company was  
24 bound by this no matter what, which would be sort of,  
25 once again as I have indicated, the regulatory

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1 perspective, the company is regulated and stays  
2 regulated, that would argue that we should have a  
3 very high threshold compared to a situation where  
4 they can say "No, enough's enough. I'm out of here."

5 So making that comparison would argue for  
6 a lower threshold, but I think that the level of  
7 asymmetric risk that exists is consistent with what I  
8 feel a 50 percent adder would cover.

9 Q. When you developed your 50 percent adder,  
10 did you consider the fact that the company had this  
11 ability to terminate upon a finding of significantly  
12 excessive earnings?

13 A. I did not explicitly make that a  
14 consideration in either direction. I was aware that  
15 they could terminate.

16 Q. Now, when you speak on lines 13 of page  
17 of your testimony of the fair implementation of  
18 SEET and the asymmetric risk, do you mean to say --

19 A. Could I get the reference again?

20 Q. I'm sorry, I tend to speak too quickly.  
21 When you speak on lines 13 of page 17 --

22 A. Page 17, line 13. Okay, I'm finally  
23 there with you.

24 Q. And there your sentence is "Asymmetrical  
25 risk is a real problem in a fair implementation of

1 SEET." Do you see that?

2 A. I see that.

3 Q. Do you mean to say that the Commission  
4 should act to counterbalance the asymmetry of the  
5 annual SEET?

6 A. I'm not sure what "counterbalance" means  
7 in this situation. I am suggesting that the nature  
8 of asymmetrical risk argues for more room of earnings  
9 above some benchmark because of its existence. Now,  
10 if that's counterbalancing, perhaps -- I'm not sure  
11 what you mean by that word.

12 Q. That the Commission should take a  
13 conservative approach to defining the threshold  
14 because of the asymmetric nature of the test.

15 A. Conservative from whose perspective?

16 Q. From the customer's perspective.

17 A. Because of asymmetrical risk? I'm  
18 arguing the opposite.

19 Q. Now, in the company's last case, and I'm  
20 referencing you to page 20 of your testimony  
21 submitted in 08-917, you argue that there are major  
22 problems with using the peer group analysis in a  
23 statistical analysis when you deviate from  
24 mechanically taking the EDU's return on equity from  
25 its reported earnings. And I'm specifically

1 directing your attention to page 20, the question and  
2 answer on line 30.

3 A. Let me take a look at this a second.

4 MR. CONWAY: On line 7?

5 MS. GRADY: Thank you, Mr. Conway, it  
6 begins on line 7 through lines 15 on page 20.

7 A. I've read this now. I was referring to  
8 items such as extraordinary gains and losses that  
9 appear and how you would, if you were downloading  
10 from a data source, might not take these into account  
11 but they should balance out as a matter of a mean,  
12 but on the other hand would it tend to increase  
13 variance? So I would have some degree of discomfort  
14 in terms of the statistical approach to the word  
15 "significantly."

16 Does that clarify?

17 Q. I guess my question is when you're  
18 talking about mechanically taking the -- when you  
19 deviate from -- let me strike that.

20 Is it your understanding in this case  
21 that the companies have taken the EDU's ROE and  
22 deviated from that by recommending adjustments to  
23 that for deferrals and off-system sales?

24 A. First of all, the adjustments that the  
25 company is proposing for SEET purposes have

1       absolutely nothing to do with the question and answer  
2       on line 30 on this --

3           Q.     And that's where I was trying to go to.  
4       If that's your explanation, I certainly can accept  
5       that.

6           A.     This is a different topic.

7           Q.     Thank you.

8               Now, one last area, Dr. Cahaan, on the  
9       very end of your testimony, and I think that's page  
10      22, and this sentence has been pointed out by  
11      Mr. Randazzo, you say "It is indeed confusing and  
12      there is a need to be aware of arguments that  
13      effectively are attempting to get the better of cost  
14      (regulation) or market at all times." Do you see  
15      that reference?

16           A.     I do.

17           Q.     And you indicated in response to  
18      Mr. Randazzo's questions that you had seen consumers  
19      groups making such arguments in the past; is that  
20      right?

21           A.     Yeah, I don't remember the specific  
22      arguments, I just remember being in rooms when I've  
23      heard this sort of thing.

24           Q.     Now, is it your understanding that the  
25      consumer groups in this case are making those kind of

1 arguments where they're arguing for the best of both  
2 worlds?

3           A. I haven't been able to nail any  
4 particular argument that fits that category. I'm not  
5 surprised that people tend to argue for their  
6 interests and I certainly can accept that, but there  
7 is this continual confusion between looking at things  
8 from a cost and regulation basis versus looking at  
9 things from a market basis, and there is a tendency  
10 to choose the perspective based upon the outcome  
11 desired.

12 Q. Let's talk about off-system sales for a  
13 moment.

14 A. Sure.

15 Q. Is it your understanding that in the ESP  
16 case, that CSP argued that off-system sales not be  
17 used as a -- to bring down the cost of fuel,  
18 essentially, in the ESP case? That we should not use  
19 the profits from off-system sales to reduce the fuel  
20 costs being charged to customers; would that be your  
21 understanding?

22 THE WITNESS: I'm sorry, could I have  
23 that read.

24 | (Record read.)

25 A. You mean in the case two years ago?

1 Q. Yeah.

2 A. I don't remember.

3 Q. Okay. Would you accept, subject to  
4 check, that CSP made those arguments in the ESP case?

5 MR. McNAMEE: Objection.

6 EXAMINER SEE: On what basis,  
7 Mr. McNamee?

8 MR. McNAMEE: Your Honor, the arguments  
9 were whatever they were. They are reflected in the  
10 record of that case. Mr. Cahaan's recollection or  
11 failure to recollect whatever those arguments were in  
12 that other case have no consequence here.

13 EXAMINER SEE: Objection is sustained.

14 Q. Dr. Cahaan, can you assume -- let me  
15 strike that.

16 MS. GRADY: That's all the questions I  
17 have this morning -- this afternoon. Thank you,  
18 Dr. Cahaan.

19 THE WITNESS: Thank you.

20 EXAMINER SEE: Thank you. Ms. Mooney, do  
21 you have --

22 MS. MOONEY: No, I don't have any  
23 questions.

24 EXAMINER SEE: Thank you. Mr. Kurtz.

25 MR. KURTZ: Is it possible to take a

1 lunch break now, because I assume Mr. Conway's going  
2 to have a fair amount?

3 EXAMINER SEE: Let's go off the record.

4 (Discussion off the record.)

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

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Kurtz:

10 Q. Good afternoon, Mr. Cahaan.

11 A. Good afternoon.

12 Q. I'd like to ask you about your  
13 worksheets. Can you go to Exhibit 2, please?

14 A. Bear with me. Yes.

15 Q. This is the first of your worksheets  
16 where you are adjusting the denominator for the  
17 off-system sales adjustment?

18 A. Yes.

19 Q. Okay. As I understand it, what you did  
20 is you looked at, in the FERC Form 1, the intangible  
21 plant, production plant, transmission plant,  
22 distribution, general plant, got a total beginning  
23 year/end of year, and then did a calculation as to  
24 what the average production plant to total production  
25 plant was for 2009; is that correct?

1           A. Yes. It's the average -- it's the  
2 averages of the -- it's the average production plant  
3 compared to the average total plant for that year.

4           Q. Why did you only use production plant?

5           A. What I'm trying to do is to take out --  
6 the equity on the right-hand side of the balance  
7 sheet is associated with the income that is being  
8 taken out in the company's proposal. So there is  
9 implicit assumptions here that it is basically caused  
10 by generation, that off-system sales are a function  
11 of generation. I am assuming implicitly that  
12 transmission is costed out in the sales; that sales  
13 are made, the transmission charges of them are not in  
14 the net margins, they're taken out before you get to  
15 net margins.

16           And I am implicitly assuming that the  
17 intangibles and the distribution and the general  
18 plant, which are kind of minuscule, that these have  
19 nothing to do with off-system sales.

20           Q. I understand that. And with respect to  
21 intangible distribution and general.

22           Now, if your assumption about  
23 transmission plant was wrong and that should be  
24 included in the calculation, that would have the  
25 effect of changing your number in a sense that it

1 would help the consumers and hurt the company if  
2 you're looking at the pure dollar effect of it.

3           A. If my assumption about transmission is  
4 wrong and if a way of plugging in a value for the  
5 transmission that should be associated with the  
6 off-system sales were found, then it could be  
7 recalculated and the recalculation would result in a  
8 higher percentage allocator of plant which would  
9 result in a greater amount of common equity being  
10 taken out and associated with the off-system sales  
11 which would result in, everything else being equal, a  
12 greater calculated number for the ROE for the SEET  
13 test.

14           Q. Therefore, helping consumers all else  
15 equal as we work through the process.

16           A. Right. Well, I'm just telling you the  
17 arithmetic and you can draw the conclusion.

18           Q. Okay. That's fine.

19           Now, and you used production plant  
20 because, in your mind, off-system sales is related  
21 only to generation.

22           A. Right.

23           Q. Okay. Let's turn to --

24           A. In terms of the causation regarding the  
25 dollars.

1           Q.    Okay.  Exhibit 3, then, please.  At the  
2 top where you do the adjustment, as I understand you  
3 took the average equity, average common equity for  
4 the year of 1.302 billion --

5           A.    Yes.

6           Q.    -- correct?  Okay, for 2009.  Here's  
7 where you used your 51.5 percent generation  
8 allocator.  You said how much of this equity is  
9 related to production plant or generation, so you  
10 multiplied the total by 51.5 percent --

11          A.    Yes.

12          Q.    -- to get 671 million?

13          A.    Yes.

14          Q.    Okay.  Then you said well, how much of  
15 that equity related to generation should be assigned  
16 to off-system sales, right?

17          A.    Yes.

18          Q.    And you multiplied the 671, 671 million,  
19 times 13.9 percent.

20          A.    Yes.

21          Q.    Okay.  And then you went through your  
22 math.

23                 Now, the 13.9 percent is a number you've  
24 calculated?

25          A.    Yes.

1           Q. And that's back on Exhibit 2; is that  
2 correct?

3           A. Yes. It's the ratio of sales for resale  
4 to total sales.

5           Q. Now, you got both of these numbers from  
6 the FERC Form 1.

7           A. Yes.

8           Q. And I verified them, but let me just ask  
9 you if this is true, the total sales to ultimate  
10 customers are sales to CSP's jurisdictional  
11 ratepayers, correct?

12          A. Yes.

13          Q. In Ohio. And that number, that  
14 1.739 billion number total sales to CSP ratepayers  
15 includes generation, transmission, and distribution  
16 revenue from those customers; doesn't it?

17          A. Yes, it does.

18          Q. Okay. Now, if you were to make your  
19 calculation just on the generation component of the  
20 CSP retail rates, you would get a much bigger number  
21 than 13.9 percent, wouldn't you?

22          A. Mathematically, yeah. Yes.

23          Q. So if we were trying to match generation,  
24 you took out generation because off-system sales are  
25 only related to generation, if we compared the

560

1 off-system sales generation revenue to retail  
2 generation revenue, we would get a different result  
3 than what you have here.

4 MR. CONWAY: Could I have the question.

5 A. The earnings on --

6 EXAMINER SEE: I'm sorry. Wait just a  
7 second.

8 MR. CONWAY: Could you please read the  
9 question back.

10 Q. I'll restate it. You see where I'm going  
11 with this.

12 A. Well, I thought --

13 EXAMINER SEE: I thought you were going  
14 to restate the question.

15 Q. If you were to look at Columbus &  
16 Southern's unbundled generation revenue, all the  
17 components are unbundled here, and compare that to  
18 the off-system sales generation revenue, we would get  
19 a much different number than 13.9 percent changing  
20 the calculation and you understand which way it would  
21 go.

22 A. But the problem here is that I'm trying  
23 to balance out off-system sales out of \$271  
24 million of total earnings, that they're taking out.  
25 So I'm working with \$271 million of total earnings

1 which includes earnings from distribution, from  
2 generation to jurisdictional customers, it includes  
3 all these things as well as forfeited fees and all  
4 the various stuff that's on that income statement.

5 So yes, I'd get a bigger allocator, but  
6 the question then is what am I allocating in the  
7 first place? Because I'm not going after the equity  
8 associated with the off-system sales to offset, to  
9 pull it out of the total 271 income, it would have to  
10 be pulled out of something else, something that is  
11 the generation-only income, and I don't have that.

12 Q. Had you considered this before today,  
13 this process that we're talking about?

14 A. No, but my first reaction is I bet  
15 mathematically it makes no change. If I took out the  
16 things that don't belong out of the 271, and then  
17 allocated only on a generation basis for generation  
18 revenues, because I've already got a percentage of  
19 the total revenues, I'm not sure it would change --  
20 I've got a sneaking suspicion that you would be back  
21 to where you started from in the first place.

22 Q. It would depend on the relative  
23 profitability of the various aspects of CSP's  
24 business, distribution, transmission, generation,  
25 wouldn't it?

1           A. Well, let me just simply say that I'm  
2 saying it's a hunch we would end up where we were.  
3 Right now there's nothing productive I can say about  
4 how that would work. But I do -- can say that it  
5 would not be applied to the 271 of total revenue.

6           Q. Of total margins.

7           A. No; total revenue.

8           Q. You said 271 of net income.

9           A. Total earnings, I should say, not  
10 revenue.

11          Q. Right. Right.

12          A. So it's a different mathematical problem  
13 entirely. So if you're doing what you suggest --  
14 well, I'll leave it there, it's different.

15          Q. Okay. All right. Let me ask you a  
16 couple more questions. You have determined that the  
17 comparable earnings should be 9.7 percent, correct?  
18 Excuse me, 10.7 percent.

19          A. Oh, thank you.

20          Q. Right?

21           MR. CONWAY: Objection.

22          A. That's more in line with my recollection.

23           MR. CONWAY: I object to the  
24 characterization that the comparable earnings are  
25 10.7 percent. I don't think that's --

1                   THE WITNESS: I understand that as the  
2 benchmark.

3                   MR. CONWAY: Okay. I'll withdraw the  
4 objection.

5                   Q. Okay, the 10.7 percent throughout your  
6 testimony is --

7                   A. Is the benchmark ROE for purposes of the  
8 SEET test in my recommendation.

9                   Q. That's the first starting point. That's  
10 the earnings of the comparable companies? ROE of the  
11 comparable companies.

12                  A. It's the -- we're in fuzzyland in terms  
13 of characterizing it.

14                  Q. I didn't think this one was very fuzzy.

15                  A. Why don't we just call it the benchmark  
16 ROE that's based upon analysis of the ROEs of various  
17 companies that are considered to be comparable in  
18 different ways.

19                  Q. Okay. So your benchmark ROE is  
20 10.7 percent?

21                  A. Yes.

22                  Q. Now, if the Commission adopted that, then  
23 the safe harbor would be 200 basis points above that  
24 or 12.7 percent?

25                  A. As I understand, the safe harbor is a

1       200 percent difference and it would be, yes, 12.7.

2           Q.    Okay. And then applying -- what you did  
3       is you said the upper end is too much, would be 1.5  
4       times 10.7 or 16.05 percent.

5           A.    Yes.

6           Q.    Okay. If Ohio did not have the Senate  
7       Bill 221 giraffapotomus shopping option that you  
8       talked about, then under the Hope and the Bluefield  
9       and the comparable earnings, the way we would have  
10      set traditional returns on equity for fully regulated  
11      utilities, then they would only be entitled to,  
12      roughly speaking, the 10.7 percent comparable  
13      earnings approach.

14           MR. CONWAY: Objection. First of all, it  
15      calls for a legal conclusion. Secondly, it's --  
16      actually it calls for a legal conclusion which is  
17      incorrect. The legal test is what earnings  
18      opportunity is a utility entitled to have.

19           MR. KURTZ: Your Honor, can he quit  
20      interrupting my questions? I think this witness has  
21      testified all over the board on all of these type of  
22      topics. This is the heart of the case.

23           MR. CONWAY: Well, excuse me, your Honor,  
24      but my objection stands. He's calling for a legal  
25      conclusion from the witness.

1                   MR. KURTZ: I do not want a legal  
2 conclusion from Mr. Cahaan.

3                   MR. CONWAY: Then I would request you  
4 instruct the witness not to answer the question.  
5 Strike it.

6                   EXAMINER SEE: Just a minute, gentlemen.

7                   MR. KURTZ: Your Honor, I could rephrase  
8 the question if that would help.

9                   EXAMINER SEE: The objection is  
10 sustained.

11                  MR. KURTZ: Okay.

12                 Q. (By Mr. Kurtz) Let me ask you, did you  
13 look at Mr. Kollen's testimony?

14                 A. I've read it.

15                 Q. Did you see the portion where he  
16 testified as to what the 39 state public utility  
17 commission decisions in 2009 were in terms of  
18 authorized return on equity for those 39 utilities in  
19 2009?

20                 A. I read that section, I don't remember  
21 what he said specifically.

22                 Q. Okay. Let me refresh your memory.  
23 10.48 percent. So if we assume that 10 --

24                 A. Let me make sure I understand. The  
25 10.48 percent is the authorized return of regulatory

1 commissions with respect to regulated utility  
2 companies, is that --

3 Q. In 2009.

4 A. In 2009.

5 Q. Across the United States --

6 A. Okay.

7 Q. -- including, as we heard yesterday, Ohio  
8 Edison, Toledo Edison, it included all the rate case  
9 decisions.

10 A. Yeah, these are rate case decisions.

11 Q. Right.

12 A. Right.

13 Q. My point only is that 10.48, 10.7, if  
14 Ohio didn't have full shopping rights, if we were  
15 back to pre-Senate Bill 3, if we were fully  
16 regulated, the returns would be in that range; would  
17 you agree?

18 A. If we could put the toothpaste back in  
19 the tube and not only repeal Senate Bill 3 but get  
20 the assets and say that they are now fully regulated  
21 and give them the traditional regulatory treatment of  
22 full cost recovery for everything guaranteed so that  
23 their entire status was different and their entire  
24 economic and risk profile were different, and if I  
25 were in a rate case that had to recommend a rate of

1 return for the new old Columbus Southern Power, yes,  
2 I would probably be in the area of 10 or something  
3 like that for a cost-based fully regulated utility.

4 Q. Now, the 50 percent adder for the how  
5 much is too much under the significantly excessive  
6 earnings test is, in part, in large part, to  
7 compensate the utility for the added risk that  
8 it's -- that customers in Ohio can shop; is that  
9 true?

10 A. Well, once again we're at a place which  
11 has cost-based mentality and market mentality coming  
12 into conflict. From a regulatory perspective where  
13 every revenue is justified by some cost, the  
14 50 percent adder is to compensate them for risk, to  
15 have them justified in terms of -- well, just leave  
16 it there are risks of millions of kinds from a  
17 regulatory perspective.

18 From a market perspective, well, they can  
19 pretty much charge and keep the money and all the  
20 rest of that and so why would they give, you know, be  
21 required to take anything back at all from a pure  
22 market perspective, it is what it is. If we had a  
23 perfect market, then why would you go after any  
24 excess earnings in the first place.

25 Of course, if we had a perfect market, we

1 wouldn't have standard service offers in the first  
2 place. So from a market perspective the adder should  
3 be infinite. Keep it. From a regulatory perspective  
4 justify it in terms of every little risk element and  
5 cost it out how much an insurance policy would be to  
6 protect against it.

7 Well, which perspective do you have? I  
8 believe that you have to end up saying the company  
9 has a valid case because it's a nonregulated company  
10 in many of its respects, it has the right -- excuse  
11 me, strike "right."

12 There's something -- I don't want to get  
13 into legal questions but there's something going on  
14 where the company ought to be able to keep money that  
15 it works hard to get. On the other hand, too much is  
16 too much and they shouldn't be able to keep so much  
17 that it's ripping off the customer. It's a judgment  
18 call of fairness. I can't get more than that as far  
19 as any objectivity because all the so-called  
20 objectivity things would have to send me back to a  
21 purely regulatory perspective and this is the  
22 giraffapotomus again.

23 Q. I don't want to belabor the point. Let  
24 me just ask you a couple of just fact questions. You  
25 have come up with I guess at the very end of your

1 testimony, page 21, line 3, the calculated return on  
2 equity for CSP adjusting out off-system sales,  
3 numerator and denominator the way you've done it; is  
4 that correct?

5 A. Yes.

6 Q. Okay. And if we subtract your how much  
7 is too much threshold of 16.05 percent, we get  
8 3.68 percent of excess earnings?

9 A. I'll assume that your calculation is  
10 correct. I'm not able to -- do you want me to do it  
11 right now?

12 Q. No. 19.73 minus 16.05 equals  
13 3.68 percent.

14 A. Okay.

15 Q. Okay. No one's disputed this number.  
16 Have you looked at Mr. Kollen's where he's calculated  
17 1 percent return on equity equals how much of a  
18 refund?

19 A. I believe it's 20.39 or 039.

20 Q. 20.039 million.

21 A. Right.

22 Q. So if under your calculated 19.73 percent  
23 minus 16.05 equals 3.68 percent excess --

24 MR. CONWAY: Objection. He has not  
25 testified to any amount of excess earnings either as

1       a percentage -- on a percentage basis or on an  
2       earnings basis. To throw that into the question like  
3       that and try to get an answer from this witness that  
4       he'll then say represents this witness's opinion that  
5       there were excess earnings of 3.6 percent is  
6       misleading.

7                    MR. KURTZ: 3.68 percent.

8                    MR. CONWAY: 3.68 percent is misleading.

9                    MR. KURTZ: I don't know whose testimony  
10          Mr. Conway read, I read Mr. Cahaan's testimony,  
11          19.73 percent, page 21, line 3, the 16.05 percent  
12          threshold equals 3.68 percent differential. That's  
13          the math.

14                   MR. CONWAY: And where is the deferrals?  
15          Where is the deferrals piece of this?

16                   MR. KURTZ: You can ask this question --  
17          your Honor.

18                   EXAMINER SEE: Okay. Hold on a minute.  
19          Maybe we all need a five-minute break. Recess, five  
20          minutes.

21                   (Recess taken.)

22                   EXAMINER SEE: Back on the record. Prior  
23          to taking a brief break there was an objection to the  
24          question posed by Mr. Kurtz. The objection is  
25          sustained. If the parties want to address the math

1 that would be the result of the question posed, you  
2 can make that leap or put that example in your brief.

3                   Go on to your next question, Mr. Kurtz.

4                 Q. (By Mr. Kurtz) I'd like to ask you a  
5 hypothetical question, Mr. Cahaan.

6                 A. Yes.

7                 Q. Hypothetically assume the Commission  
8 accepted the 19.73 percent adjusted actual return on  
9 equity as stated on page 21, line 3 of your  
10 testimony, for just off-system sales.

11                A. Off-system sales only.

12                Q. Off-system sales only. And assume  
13 hypothetically the Commission adopted the, quote,  
14 threshold ROE of 16.05 percent as stated on page 17,  
15 line 3 of your testimony, would you agree  
16 hypothetically we would get 3.68 percent  
17 differential?

18                A. I would agree, not hypothetically, I  
19 would agree that 3.68 is the difference between 16.05  
20 and 19.73.

21                Q. Would you agree with this math, either  
22 hypothetically or actually, that 3.68 percent times  
23 20 million 039 -- 20,039,000 is \$73,740,000?

24                   EXAMINER SEE: Do not answer that  
25 question. I just indicated that if you wanted to go

1 down that path, you could put the math in your brief.  
2 Move on, Mr. Kurtz.

3 Q. Let me ask about, you made a second  
4 adjustment to the company's actual return with  
5 respect to deferrals?

6 A. Yes.

7 Q. Okay. What you did is you took your  
8 starting point, well, you took your starting point of  
9 what the return on equity would be if you did the  
10 off-system sales adjustment correctly, in your mind,  
11 and you get 19.73 percent?

12 A. What I did was to recalculate the two  
13 adjustments that the company had proposed. I  
14 recalculated them independently and then I put them  
15 together. So you'll have to tell me which one you're  
16 referring to; the calculation that's independent of  
17 the off-system sales or the one that's done with them  
18 together.

19 Q. Thank you. The one that's done together.

20 A. Okay.

21 Q. The 17.44 percent on line 17, page 21 of  
22 your testimony.

23 A. That's the one that is the adjustment for  
24 both off-system sales and deferral exclusions  
25 together, yes.

1           Q. Yes. And would you agree mathematically  
2 that 17.44 percent minus your recommended threshold  
3 ROE of 16.05 percent equals 1.39 percent?

4           A. 1.39 percent, yes.

5           Q. Okay.

6           MR. KURTZ: Thank you, your Honor. Those  
7 are all my questions.

8           EXAMINER SEE: Okay. Let's go off the  
9 record.

10           (Discussion off the record.)

11           EXAMINER SEE: Let's go back on the  
12 record. As I had just informed the parties, the plan  
13 is to finish with Mr. Cahaan's cross-examination  
14 today and that rebuttal will begin tomorrow morning.  
15 At that point, Mr. Randazzo indicated that he had an  
16 objection to that schedule. Go ahead.

17           MR. RANDAZZO: Yes, your Honor. I think  
18 that that schedule is unreasonable. We got the  
19 testimony late yesterday, we've been preparing for  
20 hearing ever since. I'm still trying to read the  
21 testimony let alone participate in this hearing.  
22 It's unfair, it's prejudicial and I object.

23           EXAMINER SEE: Noted.

24           Ms. Grady.

25           MS. GRADY: Yes, your Honor, I would join

1       in that objection. Additionally, your Honor, I would  
2       note that we have a notice of deposition out that  
3       would cover the presentation of this company or  
4       presentation of the rebuttal testimony that was filed  
5       in the docket at the Commission on September 29th,  
6       2010, category 4 where we indicated we were going to  
7       take deposition upon all persons called by CSP to  
8       present testimony including direct, rebuttal, and  
9       surrebuttal, and any other form of testimony filed in  
10      this proceeding, and that the depositions would take  
11      place on the relevant topics within their testimony.

12                  EXAMINER SEE: And you said that was  
13      September 29th?

14                  MS. GRADY: That's correct, your Honor.

15                  And in addition, your Honor, we conducted  
16      the deposition, for instance, of Dr. Makjija on  
17      October 21st, at that deposition we asked repeated  
18      questions of Dr. Makjija, what his analysis and  
19      his -- what his analysis of Dr. Woolridge showed and  
20      Dr. Makjija could not respond. He had the testimony  
21      12 days, couldn't respond to our questions. So we  
22      tried to do the deposition all at once, couldn't be  
23      done because the witness, for whatever reason, didn't  
24      read Mr. Woolridge's testimony and so now we're  
25      forced into at the last minute responding.

1                   And we believe that that was an  
2 unfortunate series of events, perhaps orchestrated,  
3 but for whatever reason it was we did not get our  
4 opportunity to depose Dr. Makjija as well as  
5 Mr. Hamrock on the testimony -- on the rebuttal  
6 testimony. We believe we have that right, it is one  
7 of the rights protected under 4903.082 of the Revised  
8 Code which provides parties shall be granted ample  
9 discovery rights in the proceeding. Additionally,  
10 your Honor, there was no motion to quash made of that  
11 notice to take deposition.

12                   MR. KURTZ: Just for the record, OEG  
13 supports IEU and OCC.

14                   MR. NOURSE: Your Honor, may I respond?

15                   EXAMINER SEE: Just a minute.

16                   Ms. Yost.

17                   MS. YOST: Yes.

18                   EXAMINER SEE: Are you not with OCC?

19                   MS. YOST: Well, it was specific to the  
20 deposition transcript that I took of Mr. Hamrock  
21 where I specifically asked him whether he began  
22 drafting any supplemental rebuttal testimony. He  
23 indicated no, and that date was October 21st.  
24 Thereafter I asked him if he knew if he would be  
25 filing any additional testimony. At that time he did

1 indicate initially "I don't know," then there was an  
2 objection by counsel and then counsel ultimately  
3 instructed him not to respond to my question. So,  
4 your Honor, there was an attempt to find out if there  
5 was any rebuttal and what that would be.

6 MR. NOURSE: May I respond now, your  
7 Honor?

8 EXAMINER SEE: Mr. Nourse.

9 MR. NOURSE: Yeah, first of all, when we  
10 got into the trial strategy during the deposition, I  
11 did instruct the witness not to answer, but the fact  
12 is we drafted our rebuttal testimony over the weekend  
13 after the depositions were completed.

14 But in any event, that's neither here nor  
15 there. Dr. Makjija did make extensive comments on  
16 Dr. Woolridge's approach during deposition, there's  
17 no question about that, and I don't see what that has  
18 to do with our rebuttal.

19 You know, it's highly unusual, I'll say,  
20 and perhaps unprecedented to even talk about  
21 depositions for rebuttal testimony during a hearing.  
22 It certainly doesn't typically occur. The discovery  
23 in this case was over, you know, our rebuttal is  
24 pretty straightforward. I haven't heard anything  
25 stated about exactly why discovery or additional

1 depositions need to be conducted regarding our  
2 rebuttal. So the company's certainly supportive of  
3 keeping the case moving and will be available  
4 tomorrow morning without objection.

5 EXAMINER SEE: I'll take all that under  
6 consideration and the Bench will give you a decision  
7 after lunch.

8 Let's reconvene at a quarter to 3.

9 (At 1:28 p.m., a lunch recess was taken  
10 until 2:45 p.m.)

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Wednesday Afternoon Session,  
October 27, 2010.

- - -

EXAMINER SEE: Let's go back on the record. After some discussion with counsel for the various parties, we'll resume for rebuttal on Monday, November 1st, at 9:30. There's also been some proposals about the briefing schedule. Assuming that we conclude things on Monday, November 1st, briefing schedule, initial briefs will be due Friday, November 19th, reply briefs November 30th.

12 MR. McNAMEE: Shall we serve these  
13 electronically?

14 EXAMINER SEE: Electronically on  
15 everyone.

16 Let's resume cross-examination of  
17 Mr. Cahaan.

18 MR. RANDAZZO: Your Honors.

EXAMINER SEE: Yes.

20 MR. RANDAZZO: I'm very reluctant to do  
21 this but I think I'm ethically obligated to do it.

EXAMINER SEE: Really?

23 MR. RANDAZZO: During the off-the-record  
24 discussion there was a discussion about the briefing  
25 schedule and I asked the question about the timing of

1 the briefing schedule because it appeared to me that  
2 we were moving along very aggressively on the  
3 briefing schedule, and in response to my question,  
4 the response came from the Bench, there was an  
5 indication that we needed to move along based upon a  
6 view regarding how the merits in this case would be  
7 resolved.

8 I believe that's improper, and to the  
9 extent, even if I would favor the result that was  
10 suggested in the description of how -- where we  
11 needed to move this along, I think it is improper for  
12 who is to judge the issues in this case to have a  
13 preconception about how the issue should be resolved.

14 EXAMINER SEE: You're finished,  
15 Mr. Randazzo?

16 MR. RANDAZZO: Yes, I am, thank you.

17 EXAMINER SEE: Mr. McNamee.

18 MR. MCNAMEE: I was here for that  
19 discussion as well, and I do not recall any  
20 indication of any prejudgment on the part of the  
21 Bench.

22 MR. RANDAZZO: Well, I was reluctant to  
23 say this, but the statement that was made was that we  
24 needed to move the briefing schedule along because  
25 there is a view that we're holding up a refund for

1 customers.

2 EXAMINER SEE: No.

3 EXAMINER JONES: Mr. Randazzo, are you  
4 telling us that 18 days to file your initial brief is  
5 not sufficient?

6 MR. RANDAZZO: No, your Honor, I'm  
7 telling you that it's improper for anybody that's  
8 judging this case to have a predisposition of how the  
9 merits should be resolved.

10 EXAMINER JONES: And so you are accusing  
11 the Bench of predisposing this case?

12 MR. RANDAZZO: I didn't accuse the Bench  
13 of that, I took the Bench's comments as communicating  
14 information that the Bench received.

15 EXAMINER JONES: Well, unless my  
16 co-Attorney Examiner here disagrees with me, I  
17 believe the briefing schedule has been set  
18 November 19th and November 30th and that is what the  
19 briefing schedule will be. Thank you.

20 EXAMINER SEE: Let's continue with  
21 Mr. Cahaan's cross-examination.

22 Mr. Conway.

23 MR. CONWAY: Thank you, your Honor.

24 - - -  
25

## 1                   CROSS-EXAMINATION

2         By Mr. Conway:

3                 Q.     Mr. Cahaan, I have a few questions,  
4 hopefully not more than a few, regarding your  
5 testimony in this case and your views of the various  
6 methodologies that you propose for establishing the  
7 benchmark and the threshold.

8                 First point is in reference to your  
9 testimony on page 3, it's a small point, I think,  
10 but -- or at least a short point. You mention at  
11 lines 21 and 22 that the second step in the method  
12 that Dr. Woolridge has proposed yields an additional  
13 30 nonutility companies to the 15 companies that are  
14 presented in the proxy group in the first step to  
15 provide a combined set of 45 companies. Do you see  
16 that?

17               A.     I do.

18               Q.     And my point is, my question is after I  
19 looked at Dr. Woolridge's group of 45 companies on  
20 his Exhibit JRW-4, it didn't appear to me that all 30  
21 of the additional firms were nonutility firms. In  
22 fact, it looked to me like there were only a few that  
23 were nonutility, but the question I have for you is  
24 are you sure that all 30 of them are nonutility  
25 firms?

1           A. No, I'm not. I'd be -- if you want me to  
2 correct it by showing me the page you're referring to  
3 in Dr. Woolridge's, could do it, but it's very  
4 possible I just looked at it and said, oh, there's 30  
5 there and 15 there and made an assumption as I was  
6 banging this out on the keyboard.

7           Q. So sitting here today you're not sure how  
8 many of the additional 30 firms in Dr. Woolridge's  
9 comparable public companies group are nonutility  
10 firms.

11          A. Well, you've raised doubt in my mind that  
12 they're all nonutility firms, certainly.

13          Q. Okay. Turning to page 4 of your  
14 testimony, at lines 5 through 8, you indicate that --  
15 or you ask the question "Are there different  
16 selection criteria that should be used and even if  
17 the selection criteria are appropriate, are there  
18 firms in the sample which should be excluded for  
19 other reasons?" Do you see that? Lines 5 -- the  
20 sentence that starts on line 5 and continues on to  
21 line 8.

22          A. Yes, I see it.

23          Q. And I took it when I read that that you  
24 have some acquiescence in or you have some affinity  
25 for the manner in which Dr. Woolridge selected the

1 companies that ultimately ended up in his comparable  
2 group of public companies?

3           A. I'm not sure I understand what the  
4 question is asking me. At this point in the  
5 testimony I'm discussing properties of a methodology  
6 and I have not discussed the particular results of  
7 Dr. Woolridge utilizing his methodology.

8           Q. In Dr. Woolridge's approach, would you  
9 agree that his method of selecting the comparable  
10 risk firms allows the analyst to get to the result  
11 that he thinks he should get to from the outset?

12           MS. GRADY: Can I have that question  
13 reread, please?

14           EXAMINER SEE: Sure.

15           (Record read.)

16           A. I think I made it clear in discussing the  
17 various approaches that Dr. Makjija claims that his  
18 approach is objective and by that I would assume he  
19 means this is something that could not be manipulated  
20 in order to reach some prejudged conclusion. And I  
21 believe I indicated that that property was a good  
22 property.

23           Conversely, this property of having to  
24 make discrete decisions as to specific criteria can  
25 be misused to allow a prejudged outcome to be

1 achieved. On the other hand, the transparency of the  
2 process allows such finagling to be detected and  
3 argued about. I think that is an advantage of the  
4 methodology.

5 So there's pros and cons in allowing the  
6 analyst to have discretion and use judgment in  
7 deciding what is relevant for the consideration. But  
8 by the same token there is the issue that other  
9 analysts can look at these decisions to see if they  
10 seem to be biased in any particular direction.

11 Q. And so in that manner if there is some  
12 bias that's inappropriate, using the approach that,  
13 say, Dr. Woolridge has advocated, someone like  
14 yourself would be able to detect the bias and  
15 eliminate it from the methodology's results.

16 A. If we're doing this kind of a system  
17 whereby everybody comes in with their own preferred  
18 model, then actually it would be a lot of work but it  
19 certainly could be done that other analysts could  
20 look at somebody's method, make what they believe to  
21 be the appropriate tweaks, show that with the  
22 appropriate tweaks you get very different answers,  
23 show also that the sensitivity and the range of this  
24 indicates that the robustness of the tweaks is really  
25 what's indicated, and so yes, you could look at

1 someone else's results and show why they are skewed.

2 I'm also, frankly, pushing a system that  
3 maybe enables some more efficiency where everybody  
4 starts at the same place so that everybody isn't  
5 looking at everybody else's work but actually has a  
6 basis for comparison.

7 But the -- let me stop there, I think I  
8 answered the question. If not, you'll --

9 Q. I think what I got from your answer, at  
10 least in part, was that you would agree that  
11 Dr. Makjija's approach does not try to prejudge which  
12 firms ought to make it into the comparable risk  
13 collection of firms.

14 A. Yes. I do agree that Dr. Makjija's  
15 approach, if you say in advance you're going to  
16 divide stuff up into quintiles and do the little  
17 boxes and then specify the database so that, you  
18 know, take out the database discretion, take out the  
19 slice-and-dice method discretion, then you end up  
20 with two criteria that you've announced in advance.  
21 You've announced the leverage and you've announced  
22 the unlevered beta. And unless something is strange  
23 about that, I mean, these are standard terms so  
24 there's no discretion in the system.

25 Q. And that's in the selection of the

1 comparable risk firms, there's not much discretion in  
2 that approach if you were to follow the methodology  
3 of the type that Dr. Makjija recommends.

4           A. Yes. My disagreement is with the  
5 methodology in terms of what it does, but in terms of  
6 how it operates, it operates very mechanically.

7           Q. My understanding, my understanding is  
8 that as far as the result of the collection of  
9 comparable risk firms and the mean ROE that that  
10 generates, that that's not really your -- that's not  
11 where your concern originates or is focused.

12          A. My concern is, first of all, what the --  
13 the words "comparable risk" here, the comparable risk  
14 firms in Dr. Makjija's method are comparable in risk  
15 to the investor, not comparable in risk to the firm  
16 CSP, and as such the focus of this comparable risk is  
17 not what the legislation says should be the  
18 comparison.

19           Dr. Makjija very clearly states that he  
20 is looking for firms which are of comparable risk,  
21 and let me say what he's really talking about is the  
22 stock of the firm of comparable risk to the investor.  
23 This is not the same as the firm itself faces  
24 comparable risk as the utility.

25           Now, there can be a transpondence of

1       this, but at the immediate stage it is not the risk  
2       to -- it is not risks that are comparable to the  
3       utility, but risks that are comparable to the  
4       investor who owns stock in that utility.

5           Q.     You used the word "transpondence."

6           A.     Maybe I better think it through.

7           Q.     No; that's okay. The point of it,  
8       though, just the meaning as you were using it is that  
9       you might end up at the same place?

10          A.     One can look at Dr. Makjija's method as  
11       saying, in effect, that he is using a screening -- a  
12       screening criteria that is a two-variable screening  
13       criteria as opposed to a screening criteria that  
14       contains seven or six or eight or other numbers of  
15       different screens. So you could use this as a  
16       screening criteria without saying -- that's on the  
17       same conceptual level as the screening criteria as  
18       used in other models. There's a catch though, that  
19       you have to drop the assumption that you're employing  
20       the CAPM model.

21           And so the various statements that have  
22       been made, for instance, by Mr. Hamrock that  
23       Dr. Makjija's method captures all of the  
24       considerations, what's the word here, the business  
25       and financial risk that Mr. Hamrock listed in his --

1 Q. JH-1, right?

2 A. JH-1. A large number of times in his  
3 testimony and deposition he said that Dr. Makjija's  
4 analysis captures them. Well, Dr. Makjija's analysis  
5 captures them only to the extent that it takes them  
6 and throws them under the rug because he makes the  
7 assumption that all companies' specific business  
8 risks that are not diversifiable -- excuse me, that  
9 are diversifiable are diversified out in a portfolio.  
10 So all those various companies' specific risks are  
11 captured in the sense that they're bundled up with  
12 all sorts of other companies and gone away at the  
13 investor level.

14 But at the company level for CSP, they're  
15 not captured at all, therefore, the analysis  
16 Dr. Makjija does does not specifically utilize  
17 these -- any of these as screening factors, but it's  
18 conceptually at the same level, same kind of  
19 analysis. You can call it the same kind of analysis  
20 as done by Dr. Vilbert and Dr. Woolridge.

21 Q. Just let me interject just for a moment  
22 here, Mr. Cahaan. Are you aware of whether  
23 Dr. Makjija also uses asset turnover as a business  
24 risk measure and bond ratings as a financial risk --

25 A. I'm --

1           Q. -- excuse me, indicator in his selection  
2 process also in a confirmatory way?

3           A. In a confirmatory way, but his basic  
4 model is one which utilizes only the two factors, and  
5 what I want to particularly point out is that it is  
6 claiming to capture all of the company-specific risks  
7 that are identified in other testimony.

8                 The key thing is that there is a  
9 difference between the risks to the investor and the  
10 risks to the company.

11          Q. In any event would you agree that --  
12 well, is it your position that the approach that  
13 Dr. Makjija has developed can produce or may produce  
14 an unbiased mean ROE?

15          A. Yes. It can produce an unbiased  
16 estimate, I think, of the ROE.

17          Q. And that's, I think, at page 7, lines 5  
18 through 7, when you say that.

19                 EXAMINER JONES: Mr. Conway, you'll have  
20 to start speaking louder. You're starting to trail  
21 off again. My hearing's not as good as it used to  
22 be.

23          A. Yes.

24          Q. And, Mr. Cahaan, my understanding of your  
25 primary concern with Dr. Makjija's methodology is

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1 that -- is your concern that it will result in a  
2 variance that's too large.

3           A. His selection criteria, which contains --  
4 it contains only two factors. Now, what this would  
5 mean to me is that there's a high probability that  
6 the resulting group may have the same -- let me back  
7 up a second.

8           I don't have a problem with the measure  
9 of financial risk, that's fine. So we're talking  
10 only about business risk. And there are many, many  
11 types of business risk, so I'm perfectly willing to  
12 assume, I don't have a firm basis for this, but it's  
13 not too unreasonable that between the unlevered beta  
14 and other things he has the same level of business  
15 risk possible in his approach in the comparable  
16 group.

17           If you could somehow get an index of  
18 business risk that if CSP is 17.6, then the firms in  
19 the comparable group you could have a single measure  
20 of business risk --

21           Q. So something other than beta?

22           A. No. I'm saying if you took -- oh, gosh,  
23 yes, something other than beta.

24           Q. Okay.

25           A. Because beta captures only the

1 nondiversifiable business risk.

2           But if you somehow could get the whole  
3       thing looked at, then the other companies may be  
4       fairly close, but it's very likely it's a very  
5       heterogeneous group, so the fact of the matter is if  
6       you have a group of companies that have the expected  
7       value of their earnings, in some percentage term, of  
8       course, and the same expected variation around that  
9       expected value, so they really do belong together a  
10      priori, looking forward, ex-post whatever happens  
11      happens, and if they're a very heterogeneous group of  
12      companies, then you would expect that what happens is  
13      going to put them individually all over the place and  
14      you would have a large variance.

15           Q.    Thank you. So the problem with the  
16       Makjija approach is that it leads to variances that  
17       are too big, right?

18           A.    That's a problem, in addition to the  
19       issue of you cannot see what's going on in terms of  
20       what the logic is there. Because it still has that,  
21       it still has that all the business risks are swept  
22       under the rug aspect to it by the assumption that  
23       these are combined by the investor.

24           Q.    Well, how he uses the beta measure is not  
25       a mystery. I mean, he explains how he does it,

1 correct?

2 A. How he does it, yes.

3 Q. Yes. And you don't have any issues with  
4 the arithmetic of what he did, do you?

5 A. No.

6 Q. And you don't have any issue with the  
7 equity ratios that he used, arithmetically or  
8 accurately.

9 A. No.

10 Q. And what I'm getting to is it seemed to  
11 me that your primary concern comes down to the size  
12 of the adder, and what I wanted to do is ask you,  
13 based on this various approach that Dr. Makjija  
14 recommends, and I just wanted to ask you kind of to  
15 tie this up that, as I understand it, your concern is  
16 how large the standard deviation statistic, how large  
17 of a value it produces from his methodology; isn't  
18 that accurate?

19 A. How his methodology will tend to produce  
20 a large standard deviation because the firms are  
21 really quite heterogeneous.

22 Q. As opposed to homogeneous which is closer  
23 to a description of, say, Woolridge's approach,  
24 right?

25 A. Well, it did surprise me that Woolridge's

1 standard deviation was as high as it was.

2 Q. You've just gotten to my next question.

3 A. I thought you'd get there.

4 Q. Okay. Thank you very much.

5 A. Trying to save you time.

6 Q. Thank you. We have other commitments we  
7 all need to make.

8 But the standard deviation statistic that  
9 Dr. Makjija's approach produces in this case is  
10 5.85 percent, right? Would you accept that, subject  
11 to check?

12 A. I'll accept it, yes.

13 Q. Were you here yesterday when I was  
14 cross-examining Dr. Woolridge and he indicated that,  
15 he stated that the standard deviation statistic for  
16 his group was somewhere in the range of 5.6 to 5.7?

17 A. Yes, I was.

18 Q. And that's pretty close to the  
19 5.85 percent that Dr. Makjija's group produced,  
20 right?

21 A. That's right.

22 Q. And you would agree that those are  
23 similar in magnitude, if not the same in magnitude.

24 A. They're disturbingly similar, yes.

25 Q. And the recommendation that you've

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1 sponsored in this case ultimately is 10.7 percent ROE  
2 baseline and a 50 percent adder which ends up being  
3 5.35 percent, right?

4 A. Yes.

5 Q. And the total threshold ROE, then, is  
6 16.05 percent, right?

7 A. Yes.

8 Q. Would you agree with me that the adder  
9 that your approach produces in this case, the  
10 5.35 percent, is the same magnitude, it's very  
11 similar to the one standard deviation that each of  
12 the other two methods produces, Woolridge and  
13 Makjija?

14 A. Well, if it is similar -- I know the  
15 numbers that we've just talked about, and the  
16 conclusion that the 5.35 is close to the other two  
17 numbers is what it is. They have a certain  
18 relationship. Since I didn't get to the 50 percent  
19 or the 5.35 by any method of standard deviations, I  
20 don't want to characterize this as a standard  
21 deviation of .96 or 1.02, or anything else like that.

22 Q. I understand that. I really am not  
23 trying to characterize your adder as a multiple of  
24 some standard deviation statistic, but I was just  
25 confirming with you that as it turns out, the

1 magnitude of the adder that you would recommend in  
2 this case is the same as the magnitude of the  
3 adder -- one standard deviation that each of the  
4 other two methodologies produces.

5 A. It turns out that way, yes.

6 Q. And so would it be fair to say that your  
7 reservations about Dr. Makjija's proposal are not so  
8 much about his mean ROE or the use of a  
9 variance-based adder like the standard deviation, but  
10 is, rather, primarily an objection to the number of  
11 standard deviations that he's recommending?

12 A. Absolutely not. That does not at all  
13 represent what I think. Quite the contrary. I don't  
14 think that I want to tie a definition of fairness and  
15 of what is a meaningful allowance for an earned  
16 return above the mean to a dispersion, a dispersion  
17 that is based, so-called, on a company not being  
18 where it is by random fluctuations, by chance.

19 I'm not so sure that it matters whether a  
20 company is there by random fluctuations or by chance,  
21 and I don't think the approach of defining whether a  
22 company is there, or whatever it earns, is by random  
23 fluctuations or by chance is an appropriate way of  
24 making a determination as to whether a company is  
25 earning what it is because of random fluctuations or

1 chance.

2                 If, for instance, Columbus & Southern  
3 were to have a wonderful year of sales off system and  
4 earn huge revenues and profits from off-system sales  
5 that drove the earnings to a level that is extremely  
6 high by the SEET test, and then the question is are  
7 they within the fluctuations, no, they're way out of  
8 it. But why use statistical inference when you can  
9 just look at what's going on and use direct  
10 observation and see, well, what drove that. Is it  
11 normal variation and chance or is it not. Is it  
12 something that's endemic that's tied to the  
13 non-chance part of it.

14                 Why use statistical methods to -- use  
15 statistical inference to infer something that can be  
16 observed or investigated. That's why just because it  
17 happens to be one standard deviation is not a concern  
18 or a reason why I think a statistical approach should  
19 be used.

20                 Q. So to sum it up, I didn't mean to  
21 mischaracterize what your position was, I thought  
22 that your primary concern was ultimately how many --  
23 what the multiple is that was being used with regard  
24 to these variance-based approaches that was causing  
25 you the most concern. You've explained yourself.

1 And so would it be accurate to say that you would not  
2 support, then, a one standard deviation approach to  
3 the statistical methodology, that is baseline ROE,  
4 mean ROE plus one standard deviation?

5 A. Correct.

6 Q. Okay. A few questions about your  
7 baseline mean -- actually it's not a mean ROE, I  
8 guess. It's your baseline ROE. You had mentioned I  
9 think in conversation with several of the other  
10 lawyers that you had looked at the mean ROEs that  
11 each of the Woolridge and Makjija methods had  
12 produced along with a mean ROE that you had developed  
13 using the Vilbert approach. Do you recall those  
14 conversations that you had with the other lawyers  
15 about that?

16 A. I think that was in my testimony. I'm  
17 not sure if --

18 Q. Yes.

19 A. -- conversations.

20 Q. Right. It's also in your testimony,  
21 that's right.

22 A. I'd rather refer to my testimony than  
23 conversations.

24 Q. Okay. Well, the questions that I had in  
25 mind to ask you simply were also, like some of the

1 other questions, about the manner in which the  
2 10.7 percent value that you recommend developed. And  
3 that was the subject of a discussion with the other  
4 lawyers, I believe.

5 A. I don't think I can add more than I've  
6 said at length or under lengthy questioning already.

7 Q. I'll take that as a suggestion that I  
8 move on. You don't have anything more to say.

9 A. It would be more efficient for you to  
10 move on, yes.

11 Q. Okay. Mr. Cahaan, are you familiar with  
12 the aspect of the SEET provision which indicates that  
13 only the adjustments that are included in the ESP  
14 that result in excessive earnings are subject to  
15 potentially being returned to customers?

16 A. I am aware of the language, although I  
17 don't have specific recall in detail of the language,  
18 of the legislation. I'm also aware that there seems  
19 to be a really big controversy as to how to interpret  
20 that language. I myself have neither certainly a  
21 legal opinion or even an economic opinion as to how  
22 that language should be interpreted.

23 There have been many statements that I  
24 have heard that people have made and, frankly, I'm  
25 totally confused about the matter.

1           Q.   Would you agree that -- or is it your  
2 understanding that Columbus Southern Power's  
3 off-system sales margins aren't the result of some  
4 adjustment that was included in the ESP?

5           A.   Well, I cannot state as a matter of fact  
6 that that is the case. Offhand I would expect that  
7 to be the case from the nature of off-system sales,  
8 but I can't attest that, indeed, is true.

9           Q.   Okay. Thank you.

10           Are you familiar with the gridSMART rider  
11 and the enhanced vegetation management rider?

12           A.   Actually, no.

13           Q.   Do you even recognize the reference?

14           A.   I've seen pages which -- of exhibits  
15 which have at the top of them gridSMART rider and  
16 vegetation rider, and they have, you know, been  
17 introduced in this case. The whole gridSMART thing  
18 and the vegetation rider either came about after I  
19 left here or else when it was happening, I wasn't  
20 aware -- paying attention to it. So I really don't  
21 know about the gridSMART and enhanced vegetation  
22 riders.

23           Q.   Is it your understanding, Mr. Cahaan,  
24 that the Commission, when it approves an ESP for an  
25 electric distribution utility, does so after

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1 concluding that the ESP is more beneficial in the  
2 aggregate than an MRO would be for the customers?

3 MR. McNAMEE: Objection.

4 EXAMINER SEE: What grounds, Mr. McNamee?

5 MR. McNAMEE: Relevance. I don't know  
6 how this relates at all to the question of whether  
7 Columbus Southern Power has significantly excessive  
8 earnings within the meaning of the statute.

9 MS. GRADY: Your Honor, I also enter an  
10 objection because I believe that during the  
11 cross-examination Witness Cahaan indicated that he  
12 had no knowledge of the SB 221 and the symmetry and  
13 asymmetry of that and that would actually be a  
14 provision outside SEET. So I don't think he has the  
15 knowledge and expertise. It's a legal question.

16 MR. CONWAY: Your Honors, if I might, if  
17 he doesn't know, that's fine. I certainly don't want  
18 him to give a legal conclusion as part of his  
19 testimony. I would point out that there was earlier  
20 cross-examination over the same point that another  
21 lawyer or other lawyers inquired of this witness as  
22 to whether or not an MRO might be more beneficial to  
23 customers than the ESP.

24 EXAMINER SEE: The objection is  
25 sustained.

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1           Q.     (By Mr. Conway) Just a couple more  
2 questions, Mr. Cahaan. In your testimony you perform  
3 a thought experiment, a sanity check on Dr. Makjija's  
4 proposed adder and you do that by, instead of looking  
5 at what the adder produces on the high side when  
6 actually added to the mean ROE, look at it from the  
7 low side to see what kind of a significantly  
8 deficient earnings threshold it would provide when  
9 subtracted from the mean ROE?

10           A.     That's correct.

11           Q.     Do you recall that part of your  
12 testimony?

13           A.     Yes.

14           Q.     And if you subtract the adder that, in  
15 this case that you're proposing, which is  
16 5.35 percent, from the ROE that you propose as a  
17 baseline of 10.7, of course, the result is also  
18 5.35 percent, correct?

19           A.     Yes.

20           Q.     And are you aware of whether -- well,  
21 strike that.

22                   So if you applied the thought experiment,  
23 the sanity check to your own proposal, as I  
24 understand it ROEs below 5.35 percent would be  
25 significantly deficient in your thought experiment.

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1 Is that right?

2 A. By the criteria of my thought experiment,  
3 yes, they would be reasonably characterized as  
4 significantly deficient. The -- let me stop there.  
5 Certainly the answer is yes.

6 Q. And do you know whether there are any  
7 examples that are in front of us today in Ohio of  
8 utilities whose ROEs for 2009 would have been less  
9 than the significantly deficient earnings threshold  
10 that the thought experiments -- a thought experiment  
11 produces?

12 MS. GRADY: Objection.

13 EXAMINER SEE: I thought that what his --  
14 Ms. Grady, did you --

15 MS. GRADY: I don't think we have a  
16 proposed. I think it's a mischaracterization of his  
17 testimony. We don't have a significantly deficient  
18 threshold being proposed. It is, pursuant to  
19 Mr. Cahaan's testimony, this is an asymmetric test  
20 that is not part of the SEET in Ohio.

21 MR. CONWAY: Your Honor, if you'd like me  
22 to rephrase the question, I would be happy to do that  
23 and try again.

24 EXAMINER SEE: Go ahead.

25 Q. (By Mr. Conway) Mr. Cahaan, are you aware

1 of any EDU ROEs that have been reported in Ohio for  
2 2009 which would have fallen below the significantly  
3 deficient earnings threshold that your thought  
4 experiment would have produced for your  
5 recommendation?

6 MS. GRADY: Objection.

7 Q. Based on your recommendation.

8 MS. GRADY: Sorry. Relevance.

9 EXAMINER SEE: The objection is  
10 sustained.

11 Q. (By Mr. Conway) Mr. Cahaan, are you aware  
12 of -- have you read Mr. Kollen's testimony in this  
13 proceeding?

14 A. Yes, I have.

15 Q. And in Mr. Kollen's testimony he reported  
16 that and relied upon ROEs reported by the FirstEnergy  
17 utilities two out of three of which were below  
18 5.35 percent. Do you recall that, or did you read  
19 that?

20 A. Yes, I do.

21 Q. Okay.

22 MR. CONWAY: No further questions, your  
23 Honor.

24 EXAMINER SEE: Redirect, Mr. McNamee? Do  
25 you want a few minutes?

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1                   MR. McNAMEE: Yeah, if I could have a few  
2 minutes to chat.

3                   EXAMINER SEE: Yes. 4 o'clock.

4                   (Recess taken.)

5                   EXAMINER SEE: Mr. McNamee.

6                   MR. McNAMEE: Thank you, your Honor. We  
7 have no redirect for Mr. Cahaan. I would at this  
8 time ask to move the admission of Staff Exhibit 1.

9                   EXAMINER SEE: Are there any objections  
10 to the admission of Staff Exhibit 1?

11                  MR. RANDAZZO: My usual objections, your  
12 Honor.

13                  EXAMINER SEE: Of definition, okay.

14                  Mr. McNamee, Mr. Randazzo's standing  
15 objection.

16                  MR. McNAMEE: Standing response.

17                  MR. RANDAZZO: And now we're all sitting.

18                  EXAMINER SEE: If there are no other  
19 objections to the admission of Staff Exhibit 1, it's  
20 admitted into the record.

21                  (EXHIBIT ADMITTED INTO EVIDENCE.)

22                  EXAMINER SEE: We'll reconvene Monday,  
23 November 1st, at 9:30. We're adjourned.

24                  (The hearing was adjourned at 3:56 p.m.)

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## CERTIFICATE

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I do hereby certify that the foregoing is a  
true and correct transcript of the proceedings taken  
by me in this matter on Wednesday, October 27, 2010,  
and carefully compared with my original stenographic  
notes.

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Maria DiPaolo Jones, Registered  
Diplomate Reporter and CRR and  
Notary Public in and for the  
State of Ohio.

10

My commission expires June 19, 2011.

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(MDJ-3638)

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