

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :  
Application of Ohio Edison:  
Company, The Cleveland :  
Electric Illuminating :  
Company, and The Toledo : Case No. 10-176-EL-ATA  
Edison Company for :  
Approval of a New Rider :  
and Revision of an :  
Existing Rider. :

- - -

PROCEEDINGS

before Mr. Gregory Price and Ms. Mandy Willey,  
Attorney Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-A,  
Columbus, Ohio, called at 10 a.m. on Wednesday,  
February 23, 2011.

- - -

VOLUME IV

- - -

ARMSTRONG & OKEY, INC.  
222 East Town Street, Second Floor  
Columbus, Ohio 43215-5201  
(614) 224-9481 - (800) 223-9481  
Fax - (614) 224-5724

- - -

## 1 APPEARANCES:

2 FirstEnergy Service Company  
3 By Mr. James W. Burk  
4 and Ms. Carrie Dunn  
5 76 South Main Street  
6 Akron, Ohio 44308

7 and

8 Jones Day  
9 By Mr. David A. Kutik  
10 and Mr. Jeffrey W. Saks  
11 North Point  
12 901 Lakeside Avenue  
13 Cleveland, Ohio 44114

14 and

15 Jones Day  
16 By Mr. Grant Garber  
17 325 John H. McConnell  
18 Columbus, Ohio 43215

19 On behalf of the Applicants Ohio Edison  
20 Company, The Cleveland Electric  
21 Illuminating Company, and The Toledo  
22 Edison Company.

23 Janine L. Migden-Ostrander,  
24 Ohio Consumers' Counsel  
25 By Mr. Jeffrey L. Small,  
Ms. Maureen R. Grady,  
and Mr. Christopher Allwein  
Assistant Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485

On behalf of the Residential Ratepayers  
of Ohio Edison Company, The Cleveland  
Electric Illuminating Company, and The  
Toledo Edison Company.

Corcoran & Associates Co., LPA  
By Mr. Kevin Corcoran  
8501 Woodbridge Court  
North Ridgeville, Ohio 44039

On behalf of Bob Schmitt Homes, Inc.; Sue

## 1 APPEARANCES: (Continued)

2 Mike DeWine,  
3 Ohio Attorney General  
4 By Mr. John H. Jones,  
5 Mr. Thomas Lindgren,  
6 and Mr. Werner L. Margard, III,  
7 Assistant Attorneys General  
8 180 East Broad Street, 6th Floor  
9 Columbus, Ohio 43215

10 On behalf of the Staff of the PUCO.

11 McNeese, Wallace & Nurick, LLC  
12 By Mr. Samuel C. Randazzo,  
13 and Mr. Scott E. Elisar  
14 Fifth Third Center, Suite 1700  
15 21 East State Street  
16 Columbus, Ohio 43215-4228

17 On behalf of the Industrial Energy  
18 Users-Ohio.

19 Vorys, Sater, Seymour & Pease, LLP  
20 By Mr. M. Howard Petricoff  
21 and Ms. Lija Kaleps-Clark  
22 52 East Gay Street  
23 Columbus, Ohio 43216-1008

24 On behalf of the Constellation NewEnergy,  
25 Inc.

Ohio Partners for Affordable Energy  
By Mr. David C. Rinebolt  
and Ms. Colleen L. Mooney  
231 West Lima Street  
P.O. Box 1793  
Findlay, Ohio 45840-1793

On behalf of the Ohio Partners for  
Affordable Energy.

Bricker & Eckler, LLP  
By Mr. Thomas J. O'Brien  
100 South Third Street  
Columbus, Ohio 43215

On behalf of the Ohio Manufacturers  
Association.

## 1 APPEARANCES: (Continued)

2 Mr. Richard L. Sites  
3 150 East Broad Street  
4 Columbus, Ohio 43215

5 and

6 Bricker & Eckler, LLP  
7 By Mr. Thomas J. O'Brien  
8 100 South Third Street  
9 Columbus, Ohio 43215

10 On behalf of the Ohio Hospital  
11 Association.

12 - -

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## INDEX

- - -

| WITNESS                           | PAGE |
|-----------------------------------|------|
| Charles R. Ritley                 |      |
| Direct Examination by Mr. Kutik   | 729  |
| Cross-Examination by Mr. Small    | 735  |
| Cross-Examination by Mr. Corcoran | 781  |

- - -

| COMPANY EXHIBITS   | IDFD | ADMTD |
|--|------|-------|
| 3A - Revised - Susan Steigerwald<br>Excerpts, Deposition of 1/20/11            | 622  | 824   |
| 3B - Revised - Susan Steigerwald<br>Excerpts, Deposition of 2/3/11             | 622  | 824   |
| 3C - Revised - Additional Susan<br>Steigerwald Excerpts, Deposition<br>1/21/11 | 626  | 824   |
| 4 Political e-mails  | 188  | 824   |
| 5 3-7-10 document authored by<br>Ms. Steigerwald                               | 188  | 824   |
| 6 September, 2010, e-mails   | 188  | 824   |
| 7 June, 2010, e-mails  | 188  | 824   |
| 8 March, 2010, e-mails   | 188  | 824   |
| 9 Resume of Chester A.<br>Karchefsky, Jr.                                      | 188  | 824   |
| 10 August, 2010, e-mails   | 188  | 824   |
| 11 September, 2010, e-mails  | 188  | 824   |
| 12 E-mail from Mr. Funk  | 188  | --    |
| 13 Media e-mails   | 188  | 824   |
| 14 Letter from Mr. Charles   | 188  | --    |

## INDEX (Continued)

- - -

| 3  | COMPANY EXHIBITS                           | IDFD | ADMTD     |
|----|--|------|-----------|
| 4  | 15 Press Release                           | 188  | 824       |
| 5  | 16 11-20-10 e-mail from<br>Ms. Steigerwald | 188  | 824       |
| 6  | 17 Urgent Message from<br>Ms. Steigerwald  | 188  | 824       |
| 8  | 18 8-5-10 e-mail from<br>Ms. Steigerwald   | 188  | 824       |
| 9  | 19 Multiple e-mails                        | 188  | 824       |
| 10 | 20 July, 2010, e-mails                     | 188  | 824       |
| 11 | 21 7-16-10 e-mail from<br>Ms. Steigerwald  | 188  | 824       |
| 13 | 22 June, 2010, e-mails                     | 188  | 824       |
| 14 | 23 June, 2010, e-mails                     | 188  | 824       |
| 15 | 24 June, 2010, e-mails                     | 188  | Withdrawn |
| 16 | 25 January and February, 2010,<br>e-mails  | 188  | 825       |
| 17 | 26 2-24-10 e-mail from<br>Ms. Steigerwald  | 188  | --        |
| 19 | 27 3-3-10 e-mail from<br>Ms. Steigerwald   | 188  | 825       |
| 20 | 28 3-16-10 e-mail from<br>Ms. Steigerwald  | 188  | 825       |
| 22 | 29 2-26-10 e-mail from<br>Ms. Steigerwald  | 188  | 825       |
| 23 | 30 2-27-10 e-mail from<br>Ms. Steigerwald  | 188  | 825       |
| 25 | 31 3-9-10 e-mail from                      |      |           |

## INDEX (Continued)

- - -

|     | COMPANY EXHIBITS   | IDFD | ADMTD |
|-----|--|------|-------|
| 32  | 3-18-10 e-mail from<br>Ms. Steigerwald                       | 188  | 825   |
| 33  | 3-31-10 e-mail from<br>Ms. Steigerwald                       | 188  | 825   |
| 34  | 4-8-10 e-mail from<br>Ms. Steigerwald                        | 188  | 825   |
| 35  | 6-10-10 e-mail from<br>Ms. Steigerwald                       | 188  | 825   |
| 36  | 11-2-10 e-mail from<br>Ms. Steigerwald (admitted in part)    | 188  | 825   |
| 37  | 11-12-10 e-mail from<br>Ms. Steigerwald                      | 188  | 825   |
| 38  | 2-23-10 e-mail from<br>Ms. Steigerwald                       | 188  | 825   |
| 39  | E-mails to Docketing<br>regarding Case<br>No. 10-0176-EL-ATA | 188  | 825   |
| 40  | 3-5-10 e-mail from<br>Ms. Steigerwald                        | 188  | 825   |
| 41  | 3-22-10 e-mail from<br>Ms. Steigerwald                       | 188  | 825   |
| 42  | 12-12-10 e-mail from<br>Ms. Steigerwald                      | 188  | 825   |
| 43  | 3-24-10 e-mail from<br>Ms. Steigerwald (admitted in part)    | 188  | 825   |
| 44  | 4-16-10 e-mail from<br>Ms. Steigerwald                       | 188  | 825   |
| 64  | - Rebuttal Testimony of C. Ritley                            | 728  | 787   |
| 64A | - Attachment CRR-4 (Revised)                                 | 730  | 787   |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

| INDEX (Continued)                                   |      |       |
|---|------|-------|
| - - -   |      |       |
| COMPANY EXHIBITS                                    | IDFD | ADMTD |
| 64B - Defiance Data Analysis 2003-2010<br>(Revised) | 730  | 787   |
| 64C - Defiance Data Analysis 2007-2010<br>(Revised) | 730  | 787   |

- - -



1 Wednesday Morning Session,  
2 February 23, 2001.

3 - - -

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

5 The Public Utilities Commission of Ohio  
6 has called for hearing at this time and place Case  
7 No. 10-176-EL-ATA, being in the Matter of the  
8 Application of Ohio Edison Company, The Cleveland  
9 Electric Illuminating Companies, The Toledo Edison  
10 Company for Approval of a New Rider and Revision of  
11 an Existing Rider.

12 My name is Mandy Willey and with me is  
13 Gregory Price and we are the attorney examiners  
14 assigned by the Commission to hear this case.

15 Just to note for the record this is the  
16 fourth day of hearing.

17 EXAMINER PRICE: Our first --

18 MR. KUTIK: Your Honor.

19 EXAMINER PRICE: Mr. Kutik.

20 MR. KUTIK: If I could be so bold as to  
21 interject, over the weekend we provided the parties  
22 with a copy of Company 3A Revised and Company 3B  
23 Revised. There was some copying and other errors in  
24 our initial exhibits so we have done it and I have a  
25 copy of both for the court reporter.

1 I also provided the copies with a  
2 redlined version of the table of excerpts so they  
3 could determine what changes had been made, so we  
4 will seek to admit those at the end of our discussion  
5 today, and I'll provide a copy to the court reporter  
6 now.

7 EXAMINER PRICE: Okay. Thank you. The  
8 Bench needs a copy too.

9 MR. KUTIK: You need copies?

10 EXAMINER PRICE: Yes. I put the onus on  
11 you to make sure I had the right pages.

12 While Mr. Kutik passes that out, our  
13 first order of business today is to take up the  
14 matter of Ms. Steigerwald's deposition and exhibits.  
15 Specifically the specific objections that parties  
16 have to sections of the depositions and sections --  
17 and specific exhibits.

18 It's my understanding as a general  
19 matter, the parties are willing to stipulate the  
20 admission of the transcript and of the exhibits in  
21 lieu of calling Ms. Steigerwald as a witness; is that  
22 correct?

23 MR. SMALL: You mean subject to the  
24 objections.

25 EXAMINER PRICE: Subject to the

1 objections.

2 MR. SMALL: Yes.

3 EXAMINER PRICE: Mr. Kutik, how would you  
4 like to proceed?

5 MR. KUTIK: Your Honor, we --

6 EXAMINER PRICE: Do we have a motion  
7 pending on -- have we marked 3 and 3B?

8 MR. KUTIK: Yes, your Honor, we did.

9 EXAMINER PRICE: Have you moved admission  
10 yet?

11 MR. KUTIK: I am not sure we have so at  
12 this point we move for the admissions of Exhibits 3A,  
13 3B, and Exhibits 4 through 44.

14 EXAMINER PRICE: Thank you. At this time  
15 we will entertain objections to specific portions of  
16 3A, 3B, and specific documents of Company Exhibits 4  
17 through 44.

18 Whenever you're ready, Mr. Small.

19 MS. GRADY: Your Honor, I will be  
20 handling that.

21 EXAMINER PRICE: Whenever you are ready,  
22 OCC.

23 MS. GRADY: In terms of where you want to  
24 start, do you want to start with the exhibits or  
25 transcripts first?

1 EXAMINER PRICE: I think it would  
2 probably be easier for me if you started with the  
3 transcripts.

4 MS. GRADY: Okay, thank you. If we could  
5 begin on page 7 -- actually the first -- the first  
6 entry on Exhibit I guess this would be 3A with  
7 respect to page 6, line 1, we have no objection but  
8 we would request that you add into the transcript  
9 page 8, lines 1 through 23, which is part of the  
10 overall discussion against the excerpts, some context  
11 which we believe in all fairness should be considered  
12 at the same time.

13 EXAMINER PRICE: Do you have copies of  
14 those page for the reporter?

15 MS. GRADY: No, your Honor, I did not  
16 make copies of those.

17 EXAMINER PRICE: Let's go off the record.  
18 (Discussion off the record.)

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

21 MR. KUTIK: Your Honor.

22 EXAMINER PRICE: If OCC could read into  
23 the record the sections they are --

24 MR. KUTIK: Your Honor, perhaps I can  
25 shortcut this.

1 EXAMINER PRICE: I hope so.

2 MR. KUTIK: With respect to page 8, line  
3 1 through 25 --

4 MS. GRADY: 23.

5 MR. KUTIK: 23? We have no objection and  
6 what I propose is that we add -- we will add that if  
7 the parties don't object to our 3A Revised.

8 EXAMINER PRICE: If you are willing to  
9 take the responsibility, I think it probably would be  
10 best just so we keep our exhibits clean if we mark  
11 any additional sections that you are willing to agree  
12 to admit as Company 3C and then we'll have a separate  
13 exhibit and we'll -- the Bench and the Commission  
14 will just read all those together.

15 MR. KUTIK: Okay. Or, you know, I would  
16 be happy -- if OCC wanted to mark them as an exhibit  
17 and have an OCC exhibit of the additional excerpts to  
18 follow.

19 MS. GRADY: Whatever the Bench wants.

20 EXAMINER PRICE: We will mark it as  
21 Company Exhibit C; it will be easier for me to keep  
22 straight.

23 MR. KUTIK: We will do that.

24 EXAMINER PRICE: Perhaps you can bring  
25 that tomorrow.

1 MR. KUTIK: We will do that, your Honor.

2 EXAMINER PRICE: Perfect.

3 MR. SMALL: So it won't be necessary to  
4 read it then?

5 EXAMINER PRICE: It's not going to be  
6 necessary to read them. Well, to the sense they  
7 agree with them, it's not going to be necessary to  
8 read them. So let's go on to the company is willing  
9 to agree to the admission of your first section. Why  
10 don't we go on to your second section.

11 MS. GRADY: Thank you, your Honor. We  
12 have no objection to the second entry, but we would  
13 add in page 12, lines 12 through 25, and page 13,  
14 lines 1 to 14, which is additional background  
15 information regarding the witness which should in all  
16 fairness be considered along with the excerpts the  
17 company moved for admission on.

18 MR. KUTIK: Could you repeat those,  
19 please? Could you repeat those excerpts, please?

20 MS. GRADY: Page 12, lines 12 through 25,  
21 and page 13, lines 1 through 14.

22 MR. KUTIK: We have no objection, your  
23 Honor.

24 EXAMINER PRICE: Thank you.

25 MS. GRADY: With respect to the third

1 entry, we have no objection but would add in lines 14  
2 through 25 of page 14, which is additional background  
3 information on the witness which should in all  
4 fairness be considered along with the excerpts.

5 MR. KUTIK: That was 14 through?

6 MS. GRADY: 25 of page 14.

7 MR. KUTIK: Are you going to add the  
8 answer that goes over on page -- the answers that are  
9 on page 15?

10 MS. GRADY: That would be fine, yes.

11 MR. KUTIK: Could we make the excerpt  
12 from page 14, line 14, through to page 15, line 6?

13 MS. GRADY: And actually we would ask  
14 that all of the information on -- for the following  
15 on page -- well, that's fine, yes. We'll move --  
16 I'll keep it simple, yes, that would be fine.

17 Your Honor, with respect to the next  
18 entry which is page 15, line 7 through line 9, we  
19 have no objection but would add in all of page 15  
20 because it contains background information, again,  
21 which should, in all fairness, be considered along  
22 with the excerpt.

23 EXAMINER PRICE: Mr. Kutik?

24 MR. KUTIK: Your Honor, I'm -- we have no  
25 objection as long as we go, I think to the top of

1 page 16, line 2.

2 EXAMINER PRICE: Seems fair. Ms. Grady?

3 MS. GRADY: Yes, your Honor, that would  
4 work.

5 EXAMINER PRICE: Thank you.

6 MS. GRADY: With respect to the next  
7 entry we have no objection but would add in the  
8 remainder of pages 17 and 18 through line 7 on 18.  
9 Again --

10 EXAMINER PRICE: Could you give the  
11 specific line numbers rather than "the remainder of"?

12 MS. GRADY: Okay. With respect to page  
13 17, beginning on line 22, through 18, line 7.

14 EXAMINER PRICE: Mr. Kutik?

15 MR. KUTIK: Your Honor, the line 7 ends  
16 with a question.

17 MS. GRADY: I'm sorry, line 8 then.

18 MR. KUTIK: That's fine. No objection,  
19 your Honor.

20 EXAMINER PRICE: Thank you.

21 MS. GRADY: Your Honor, going to the next  
22 entry page beginning page 19, line 8, that entry, we  
23 would object to page 21 and move --

24 EXAMINER PRICE: Let -- let's back up,  
25 I'm sorry, are you done with the additional sections



1 you want to include?

2 MS. GRADY: Yes, your Honor. That is my  
3 recollection.

4 EXAMINER PRICE: Okay. Thank you. Okay.  
5 Now, let's move on to your specific objections.  
6 Page, please?

7 MS. GRADY: Page 19 -- it begins with the  
8 excerpt not -- listed as page 19, line 8, through  
9 page 22, line 6, we would object beginning with the  
10 information based upon page 21, line 4 through line  
11 7. And then beginning on line 10 and line 13 through  
12 line 18.

13 MR. KUTIK: I'm sorry, I'm lost.

14 EXAMINER PRICE: I am too.

15 MR. JONES: I am too.

16 EXAMINER PRICE: Let's begin your first  
17 objection.

18 MS. GRADY: Your Honor, my first  
19 objection is on page 21, the question beginning on --

20 EXAMINER PRICE: I thought we were on  
21 page 19.

22 MS. GRADY: That's -- the company grouped  
23 the excerpt and so this is within --

24 EXAMINER PRICE: All's you need to do is  
25 read what sections you specifically -- what questions

1 and answers you specifically object to.

2 MS. GRADY: Okay. Yes, that would be on  
3 page 21, beginning on line 4 continuing through line  
4 7, ending with the word "available." Do you want me  
5 to go through them one by one?

6 EXAMINER PRICE: Yes.

7 MS. GRADY: And then on --

8 EXAMINER PRICE: I mean, give the excerpt  
9 and give the grounds and we will do it that way.

10 MS. GRADY: The grounds there are that,  
11 your Honor, this is hearsay. We don't believe it is  
12 relevant as well. It pertains to a conversation with  
13 a customer service representative of CEI so on both  
14 of those bases. And then on line 10 --

15 MR. KUTIK: May I respond?

16 EXAMINER PRICE: You don't need to  
17 respond because there is a hearsay exception to  
18 statements by a party.

19 MS. GRADY: Your Honor, these were  
20 statements by the -- Ms. Steigerwald with respect to  
21 what the representatives of CEI told her, so it's not  
22 a statement by a party opponent.

23 EXAMINER PRICE: I'm sorry. Then I guess  
24 since I was wrong, I will let Mr. Kutik respond.

25 MR. KUTIK: Your Honor, the excerpt is

1 being offered for -- this question and answer is  
2 being offered to reflect Ms. Steigerwald's state of  
3 mind in terms of what she was aware of, not  
4 necessarily for the truth of the matter asserted.  
5 Therefore, it's not hearsay.

6 EXAMINER PRICE: I should have let you  
7 respond all along. Objection is overruled.

8 Next objection.

9 MS. GRADY: Your Honor, as well as  
10 relevance.

11 EXAMINER PRICE: Still overruled.

12 MS. GRADY: Line 10, motion to strike,  
13 same grounds, hearsay, relevance.

14 MR. KUTIK: I'm sorry, what page are we  
15 on?

16 MS. GRADY: Still on the same page, 21,  
17 line 10.

18 MR. KUTIK: Well, my remarks, your Honor,  
19 relate to the whole question and answer, my earlier  
20 remarks relate to all of this.

21 EXAMINER PRICE: Objection overruled.

22 MS. GRADY: Beginning on line 13,  
23 starting with the word "and" following through line  
24 16 -- actually line 18, I'm sorry, ending with "that  
25 particular call," same grounds, your Honor, hearsay

1 and relevance.

2 EXAMINER PRICE: Overruled.

3 MS. GRADY: Beginning on lines 20 through  
4 line 22, again, hearsay and relevance.

5 EXAMINER PRICE: I don't -- Mr. Kutik.

6 MR. KUTIK: This again, your Honor, deals  
7 with her perceptions of what she was being told. We  
8 have been told in this case that the companies have  
9 been acting -- misrepresentations. Here is something  
10 she was told and I asked her if she believed it was  
11 true and she said yes, contrary to the statements  
12 made by the parties -- her party in this case.

13 EXAMINER PRICE: Overruled.

14 MS. GRADY: Your Honor, next motion  
15 with -- would be with respect to starting on page 25,  
16 beginning on lines 20, beginning with the word "I,"  
17 carrying through line 25, this relates to Sue's  
18 conversation with a representative of OCC, again,  
19 hearsay and relevance.

20 EXAMINER PRICE: Mr. Kutik.

21 MR. KUTIK: Your Honor, as you indicated  
22 earlier, there is an exception to hearsay, the  
23 statements of a party opponent, and that's what  
24 happens here.

25 MS. GRADY: Your Honor, OCC --

1 EXAMINER PRICE: I knew I was going to be  
2 correct at one point.

3 MS. GRADY: Your Honor, OCC is not the  
4 party opponent being offered against. This is being  
5 offered against CKAP and it must be a statement by  
6 that party. OCC is not an authorized representative  
7 or agent of CKAP such that that exception would  
8 apply.

9 MR. KUTIK: Your Honor, this is being  
10 offered against OCC.

11 EXAMINER PRICE: I agree. Overruled.

12 MS. GRADY: Your Honor, again, with  
13 respect to the following page, I believe it is page  
14 26 beginning on line 4 going through line 5 with --  
15 ending with the word "laws," and going on to line 7,  
16 beginning with the word "and" and concluding with  
17 line 8, "answer," and then following as well.

18 EXAMINER PRICE: Could I have that again,  
19 please?

20 MS. GRADY: I'm sorry.

21 EXAMINER PRICE: No, that's okay. My  
22 mistake.

23 MS. GRADY: Beginning -- the motion to  
24 strike is based upon hearsay --

25 EXAMINER PRICE: Where are you beginning?

1 MS. GRADY: Beginning on line 4, the  
2 answer --

3 EXAMINER PRICE: The page.

4 MS. GRADY: Page 26. "I told him I  
5 didn't care that the state had changed its laws."  
6 That's a phrase we will move to strike on.

7 Then on line 7, "And I told him it was an  
8 unsatisfactory answer," which is going from line 7 to  
9 8 and then line 10, answer, "I don't believe he  
10 responded back at that time." Again, this relates to  
11 OCC's statements or response which is hearsay and not  
12 an exception to hearsay and relevance.

13 EXAMINER PRICE: She can testify what she  
14 said.

15 MS. GRADY: She's making an assertion  
16 that he responded or did not respond back. That is a  
17 hearsay statement.

18 EXAMINER PRICE: I am just talking about  
19 the first two sections of your objection. She can  
20 testify as to what she said, can't she?

21 MS. GRADY: Well, your Honor, she can  
22 but, however, because that is related to the prior --  
23 the prior conversation, I think it is -- it relates  
24 back to the hearsay from the prior statements on page  
25 25.

1 EXAMINER PRICE: Overruled.

2 MS. GRADY: Your Honor, your ruling is on  
3 all of those?

4 EXAMINER PRICE: Yes.

5 MS. GRADY: Okay. On page 32, beginning  
6 on line 9, carries over through page 33, line 19,  
7 your Honor, these are hearsay statements. They are  
8 related to Ms. Steigerwald putting pressure on the  
9 PUCO through the Grendell lawsuit. I think it's also  
10 relevance. There is a relevance issue.

11 It is not probative of anything that --  
12 any issues that are relevant in this case. Has to  
13 deal with other avenues or other ways to put pressure  
14 on the PUCO, not relevant, very little probative  
15 value in addition to hearsay, your Honor.

16 EXAMINER PRICE: Mr. Kutik.

17 MR. KUTIK: Your Honor, I guess I am not  
18 sure exactly what she is claiming hearsay -- hearsay  
19 objection is. If it's to Mr. Grendell, Mr. Grendell  
20 is acting or talking to her as her representative so  
21 it would be admission of a party opponent.

22 With respect to the relevance of the  
23 lawsuit, your Honor, I think that's actually a key  
24 issue with respect to motivations of CKAP here as  
25 with the earlier quote that we looked at that she

1 didn't care whether the law has changed.

2           What this deposition documents and what  
3 the Exhibits 4 through 44 document is a clear  
4 campaign to influence the PUCO regardless of the  
5 merits of the case, to use any tactics, fair or  
6 unfair, whether they had any legal basis whatsoever.

7           As Ms. Steigerwald admits, she admits,  
8 that the lawsuit had no basis to be in -- in court  
9 and that it really should have been in the PUCO all  
10 along and that the lawsuit was only used to drum up  
11 media pressure again to put pressure on the PUCO. It  
12 speaks to the credibility of the assertion being made  
13 by these parties.

14           EXAMINER PRICE: Ms. Grady, response?

15           MS. GRADY: If credibility is that -- if  
16 the credibility of Ms. Steigerwald is what is being  
17 disputed here, there are Rules of Evidence that --  
18 that allow -- allow it -- that kind of evidence to  
19 come in, but it has to show, your Honor, that there  
20 is a bias or prejudice or interest or motive to  
21 misrepresent, and none of that has been shown here.

22           The company can, by extrinsic evidence,  
23 show that but this information is not showing any  
24 bias, prejudice, or interest. It is merely -- I  
25 would think that it's truly just speculative and it



1 is not relevant and has very little probative value  
2 to the issues that are in front of the Commission in  
3 this case and for that reason should be struck.

4 In addition, your Honor, Mr. Grendell is  
5 not the representative or the party opponent here. I  
6 think that is a misreading the -- of the rule,  
7 misunderstanding of the rule.

8 EXAMINER PRICE: Would you like to  
9 clarify that, Mr. Kutik?

10 MR. KUTIK: Sure. Under I believe it's  
11 801 -- 801(2)(a) and (d), a party whose individual --  
12 who is a representative or an agent making statements  
13 in the course of their agency or within the scope of  
14 their agency is as -- is treated as if it is a  
15 statement of the party. Mr. Grendell --

16 MS. GRADY: Your Honor.

17 MR. KUTIK: Let me finish. Mr. Grendell  
18 was the attorney for Ms. Steigerwald and is,  
19 therefore, making statements to her on her behalf.

20 EXAMINER PRICE: We are going to overrule  
21 the objection. Thank you.

22 MS. GRADY: Your Honor, my next motion to  
23 strike begins on page 57 beginning on lines --  
24 beginning on line 15 with the -- with the sentence  
25 "And" and moving through page 58 in its entirety, 59

1 in its entirety, 60 in its entirety, 61 in its  
2 entirety, and ending on 62, page -- I'm sorry, line  
3 22. These -- this questioning, your Honor, relates  
4 to the Company Exhibit No. 4, relates to the letter  
5 of Thomas Logan to Senator Widener or Widener. It is  
6 hearsay.

7 It is clear from the excerpts that  
8 Ms. Steigerwald had no personal knowledge of the  
9 underlying claims of Mr. Logan and whether or not he  
10 had an alleged dispute with Ohio Edison, which is  
11 what these experts -- or what these excerpts are  
12 intending to show.

13 Additionally, Mr. Logan was a witness and  
14 the company had the opportunity to -- to  
15 cross-examine Mr. Logan at the -- at the public  
16 hearings. He was a witness, your Honors, at --

17 EXAMINER PRICE: Do they have any  
18 evidence -- did they have any notice at the  
19 Strongsville that he was going to testify so they  
20 could prepare for their cross-examination?

21 MS. GRADY: Your Honor, I am not -- I'm  
22 not sure of that.

23 EXAMINER PRICE: I am asking do you know.

24 MS. GRADY: I don't think the record  
25 reflects that.

1 EXAMINER PRICE: Okay. Can you tell me  
2 again where your objection ends?

3 MS. GRADY: Your Honor, the objection  
4 ends with the -- on page 62, line 22.

5 EXAMINER PRICE: 62, line 22. Thank you.

6 MS. GRADY: If I might add --

7 EXAMINER PRICE: I just have to get  
8 caught up with you. I haven't necessarily focused on  
9 the specific sections you are referring to so I just  
10 would like to refamiliarize myself with them, if you  
11 don't mind.

12 Okay. Now, finish your objection.

13 MS. GRADY: Yes, your Honor. Under Rule  
14 701, Ms. Steigerwald was a lay witness. A lay  
15 witness can only testify, your Honor, to information  
16 that she has personal knowledge of. Ms. Steigerwald  
17 very clearly in this excerpt shows that she does not  
18 have personal knowledge of what the alleged dispute  
19 that Mr. Logan has or the dispute that is alleged  
20 between Mr. Logan and Ohio Edison.

21 The only way that the company was able to  
22 get this in was to say "You read the e-mail, he sent  
23 you an e-mail are you now aware of it?" Under that  
24 standard I would be aware of it and they could  
25 examine me on Mr. Logan because I read the e-mail as

1 well.

2 This is what they call stealth hearsay;  
3 the company presents no foundation for showing  
4 Ms. Steigerwald had personal knowledge of any of the  
5 contents of Mr. Logan's letter. It is hearsay at its  
6 worst.

7 EXAMINER PRICE: Mr. Kutik.

8 MR. KUTIK: Your Honor, I think it would  
9 be helpful for you to look at Exhibit 4 as --

10 EXAMINER PRICE: Which one?

11 MR. KUTIK: Company Exhibit 4 at the top.  
12 Does the Bench have a copy?

13 EXAMINER PRICE: I have a copy. I just  
14 need to catch up to it. Okay.

15 MR. KUTIK: This is an e-mail that  
16 Ms. Steigerwald received from Mr. Logan. And then it  
17 is -- which is what she testified to. And then this  
18 is Mr. Logan's -- and attached to that is Mr. Logan's  
19 e-mail to Senator Widener where Mr. Logan sets forth  
20 his grievance against Ohio Edison relating to his  
21 business and his statement or allegation that with  
22 respect to his business Ohio Edison supposedly I  
23 think the word he used was "reneged," on yet another  
24 supposed oral promise.

25 As you know, your Honor, Mr. Logan was

1 the alleged recipient of the letter that was  
2 supposedly written by Mr. Andreatta. Mr. Logan is a  
3 member of CKAP. He was writing to Ms. Steigerwald or  
4 advising Ms. Steigerwald of this in her capacity as a  
5 member of CKAP. There would be no other basis for  
6 him to share this with her.

7 So with respect to the statements of  
8 Mr. Logan in his e-mail, those are not hearsay. And  
9 they are certainly probative. It is also probative  
10 that and goes to Ms. Steigerwald's state of mind with  
11 respect to the fact that she knew prior in question  
12 and answers starting on page 57, line 19, I asked her  
13 "Mr. Logan had an issue about his business, correct?"  
14 And she knew that.

15 MS. GRADY: Your Honor, what --

16 MR. KUTIK: If I may be permitted to  
17 finish.

18 MS. GRADY: I'm sorry.

19 MR. KUTIK: I'm sorry, your Honor, what  
20 the rest of this excerpt deals with is my attempt to  
21 get an admission from Ms. Steigerwald which was  
22 ultimately successful about her knowledge with  
23 respect to Mr. Logan's alleged issue with Ohio Edison  
24 and his office's animus towards Ohio Edison, which is  
25 certainly probative of the authenticity or weight

1     that the supposed Andreatta/Logan letter should have.

2                 She was clearly evasive in her answers  
3     and that speaks to the length of the excerpt. The  
4     fact that she is evasive doesn't mean it's not  
5     admissible.

6                 MS. GRADY: Your Honor, if I might  
7     quickly add.

8                 EXAMINER PRICE: You may.

9                 MS. GRADY: When we look at the  
10    transcript, what we see is Mr. Kutik repeatedly  
11    asking the -- Ms. Steigerwald she's -- if she's aware  
12    that -- aware of the letter and aware of this, aware  
13    of that. She says "No." And I am looking at page  
14    59, "No, I was not aware he had a bone to pick."  
15    That's on page 59, lines 21 through 23.

16                And then it continues. "Are you aware of  
17    the e-mail?

18                "Yes, I am aware of the words he wrote in  
19    the e-mail."

20                That's all -- that's what her knowledge  
21    consists. And she says that on lines 12 through 17.  
22    "I don't know what he had. I am aware of just the  
23    words he wrote in the e-mail." And she asked -- he  
24    asked her again, "So you are aware he had a dispute  
25    with Ohio Edison.

1 "I am aware of the words he wrote in the  
2 e-mail."

3 Clearly and then on page 61, lines 11  
4 through 12, "Are you aware?"

5 EXAMINER PRICE: Ms. Grady, in all  
6 fairness, that's a very hedged answer. "I am aware  
7 of the words he wrote in the e-mail" is a very hedged  
8 answer. He simply asked if she had knowledge of the  
9 dispute.

10 MS. GRADY: Your Honor, and that's the  
11 problem that she said "No" and that's the problem,  
12 she has to have personal knowledge. She doesn't have  
13 personal knowledge.

14 EXAMINER PRICE: She has personal  
15 knowledge of a dispute. He is not -- he's -- first  
16 of all, with respect to the dispute, he's not  
17 offering for the truth of the matter as said that  
18 Mr. Logan had a legitimate grievance against  
19 FirstEnergy. He is simply saying Mr. Logan has a  
20 dispute with FirstEnergy. We are going to overrule  
21 the objection.

22 MS. GRADY: Your Honor, the next motion  
23 would begin on lines -- or page 67, lines 16 through  
24 21, based upon relevance.

25 EXAMINER PRICE: One minute, please.

1 Page 67?

2 MS. GRADY: Yes. I'm sorry, lines --  
3 line -- actually line 16, because it begins with an  
4 answer with no question, unless this is one of the  
5 corrections the company made.

6 EXAMINER PRICE: No. My particular copy  
7 doesn't have a 67. Ms. Willey's does.

8 MR. KUTIK: It should, at least my  
9 version, your Honor, page 67, lines 16 starts with  
10 the --

11 EXAMINER PRICE: It's probably just a  
12 copying error.

13 MR. KUTIK: Actually, just so you know,  
14 15 it says "Question: Thank you," and then it then  
15 starts on 16 with the real question.

16 EXAMINER PRICE: Where does your  
17 objection end?

18 MR. SMALL: I think there is some  
19 confusion about pages.

20 EXAMINER PRICE: No, there is no  
21 confusion.

22 MR. SMALL: Your Honor, if we could have  
23 a moment? The problem is the staple is where the  
24 page number is and we are having a hard time  
25 identifying the right page.



1 MS. GRADY: I believe it's page 67, lines  
2 16 through 21. The excerpt says have you -- "Have  
3 those been produced to us?

4 "Answer: They were media ones, yes.

5 "So, frankly, ma'am, that's the only  
6 letter that we have that's on CKAP letterhead.

7 "Answer: There was some media e-mails."

8 MR. KUTIK: Your Honor.

9 MS. GRADY: I'm sorry, that's page 66.

10 EXAMINER PRICE: Your objection is once  
11 again page 66 --

12 MR. KUTIK: Your Honor.

13 EXAMINER PRICE: Let's get the objection  
14 on the record. Again, your objection is page 66,  
15 lines 16 through 21?

16 MS. GRADY: Yes, on the basis of  
17 relevance.

18 MR. KUTIK: Your Honor, that is not part  
19 of our revised 3A.

20 EXAMINER PRICE: Oh, that makes it much  
21 easier. Okay.

22 MS. GRADY: I guess I win on something  
23 this morning.

24 MR. KUTIK: Well, I wouldn't call it a  
25 win.

1 EXAMINER PRICE: Everybody is happy.

2 MR. KUTIK: That's true.

3 EXAMINER PRICE: It's a win for the  
4 Bench.

5 MS. GRADY: Next motion is beginning on  
6 page 72, line 8, through 73, line 1, object to the  
7 entire excerpt based on relevance and hearsay. Has  
8 to do with what Mr. Funk, who is -- works for The  
9 Plain Dealer provided to Sue and there is just no  
10 relevance.

11 MR. KUTIK: What is the end of the  
12 objection you are objecting to?

13 MS. GRADY: I think as you have stated,  
14 72, line 8, through 73, line 1, I believe.

15 MR. KUTIK: Okay. Thank you.

16 MS. GRADY: Very little relevance, very  
17 little probative value, and under Rule 403 if it has  
18 very little probative, it -- it should be struck.

19 MR. KUTIK: Your Honor, throughout  
20 Ms. Steigerwald's testimony we go through some detail  
21 with her near incestuous relationship with various  
22 members of the media including reporter John Funk  
23 from The Plain Dealer. She -- one of CKAP's  
24 principal objectives, your Honor, was to generate  
25 publicity, negative publicity, with respect to the

1 rate increases.

2 CKAP, those aligned with it then claim  
3 that because of the publicity, there has been some  
4 negative statements about their houses and, now, they  
5 can't sell their houses. We think that's relevant,  
6 your Honor, to show where the publicity came from and  
7 ultimately the fact that the publicity was about  
8 things that had no merit.

9 MS. GRADY: Your Honor, I don't think the  
10 publicity is in any way related to that, what happens  
11 with their houses. That is a fact of the housing  
12 market and I think to try to connect the need to seek  
13 publicity to that and make it an issue shows how  
14 pitiful the companies' argument is in terms of  
15 relevance.

16 MR. KUTIK: What's pitiful is that  
17 Mr. Frawley, CKAP's witness, admitted that with more  
18 publicity with respect to a negative aspect of the  
19 house it's more likely that individuals would hold  
20 negative perceptions about the house and stigmas will  
21 attach to those houses, so it is relevant.

22 EXAMINER PRICE: We are going to admit.  
23 We will consider the weight to be given this  
24 testimony. The Commission will consider the weight  
25 to be given this testimony.

1 MS. GRADY: Beginning on page 61, line 1,  
2 your Honor, this testimony is asking Ms. Steigerwald  
3 for her legal opinion. Legal opinion testimony from  
4 lay witnesses is not permitted under Rule 701. This  
5 discussion gets into subsidy, deregulation, and is  
6 speculative. It adds little relevance and very  
7 little probative value.

8 EXAMINER PRICE: Mr. Kutik.

9 MR. KUTIK: Your Honor, she is the leader  
10 of CKAP. CKAP is the party. We are allowed to ask  
11 her questions about issues in this case. She clearly  
12 had views. If they want to add that they are  
13 untutored, unlettered, and uninformed views, they can  
14 argue that.

15 EXAMINER PRICE: I agree. Overruled.

16 MS. GRADY: Your Honor, our next motion  
17 is with respect to page 82 --

18 EXAMINER PRICE: Just, Ms. Grady, if I  
19 might interrupt you, just so I can plan my day here  
20 as we approach the time of the Commission meeting,  
21 how many motions do you have, do you think?

22 MS. GRADY: Quite a few, your Honor.

23 EXAMINER PRICE: Okay. Great. Please  
24 proceed.

25 MS. GRADY: On page 82, beginning on

1 lines 19, carrying over to 83, line 23 -- actually  
2 25, again, your Honor, the questions relate to  
3 seeking a legal opinion from a lay witness. A lay  
4 witness may not testify as to expert matters. It is  
5 limited -- lay testimony is limited to opinions  
6 rationally based on personal knowledge and helpful to  
7 a clear understanding of the facts in issue.

8 In addition, your Honor, there is a  
9 question of relevance here. I think this has very  
10 little probative value.

11 EXAMINER PRICE: It's not -- he is not  
12 asking her legal questions. He might be asking  
13 her -- I mean, you said objecting in terms of legal  
14 questions. These aren't legal questions. These  
15 might be --

16 MS. GRADY: Expert questions, your Honor,  
17 how energy conservation relates to a declining block  
18 rate, how a certain rate structure applies, yes, your  
19 Honor, those would be expert opinions, not  
20 necessarily legal opinions but expert opinions of  
21 which a lay witness cannot testify to.

22 EXAMINER PRICE: Mr. Kutik.

23 MR. KUTIK: Your Honor, again, I am  
24 allowed to ask her questions about issues in this  
25 case as the leader of CKAP. Notice she never said "I

1 don't know" or "I don't have an opinion on that" or  
2 "I really have to guess." She certainly offered up  
3 her views as to what was happening in this case.

4 I would also note that some of the things  
5 I was asking her in this excerpt were factual  
6 matters, for example, that the number of rate  
7 schedules decrease and her knowledge of that. These  
8 are certainly admissions against CKAP.

9 EXAMINER PRICE: We are going to go ahead  
10 and allow this particular excerpt. Again, if OCC  
11 would like to argue on brief that Ms. Steigerwald has  
12 no basis for her opinions, the Commission should  
13 consider that as the weight of the evidence, you are  
14 free to do so. Overruled.

15 MS. GRADY: Your Honor, our next motion  
16 begins on line -- on page 89, running from lines 9  
17 through 25, along with page 90, lines 1 through 5,  
18 and also on page 90, lines 20 through 25, carrying  
19 over to --

20 EXAMINER PRICE: Let's go all the way  
21 back to the start here.

22 MS. GRADY: I'm sorry.

23 EXAMINER PRICE: Page 89.

24 MS. GRADY: 89, lines 9 through 25.

25 EXAMINER PRICE: 9 through 25. When you

1 give us more than one excerpt at a time, you make it  
2 more difficult.

3 MS. GRADY: I'm sorry, I don't mean to  
4 make it difficult. Those are being objected to on  
5 the basis of hearsay. They relate to statements from  
6 FirstEnergy's public relations directors -- director  
7 Ellen Raines in her e-mail and certainly, your Honor,  
8 that is clear hearsay and we would believe is not  
9 relevant as very little probative value to the issues  
10 that are under consideration in this case.

11 EXAMINER PRICE: Mr. Kutik.

12 MR. KUTIK: Your Honor, I was asking  
13 Ms. -- Ms. Steigerwald about a statement that  
14 Ms. Raines made in the context of another statement  
15 that Ms. Steigerwald made to others that discounts  
16 were taken away, removed, or needed to be reinstated.

17 As I read Ms. Raines statement which was  
18 "You never stopped providing a discount to customers  
19 who were on special electric heating rates," and I  
20 asked her whether that was -- Ms. Steigerwald whether  
21 that was true, and she admitted that which is  
22 contrary to the position taken by her and others in  
23 this case.

24 MS. GRADY: Your Honor, I am wondering  
25 what exception to hearsay counsel is citing here.

1 EXAMINER PRICE: Mr. Kutik.

2 MR. KUTIK: Your Honor, it isn't hearsay,  
3 it is basically asking her if she agrees with a  
4 statement, a statement that presents a fact. By her  
5 adoption of the statement, it does not become  
6 hearsay. It becomes her statement.

7 EXAMINER PRICE: Overruled.

8 MS. GRADY: The statement -- your Honor.

9 EXAMINER PRICE: I think we can move on  
10 to the next one. Overruled.

11 MS. GRADY: Your Honor, we are still on  
12 page 90, that would be the motion beginning on -- or  
13 the question beginning on line 3, "So when she says,"  
14 there is the statement, was that true and the answer,  
15 "Yes," we would move to strike that on the basis of  
16 hearsay.

17 MR. KUTIK: Same argument.

18 MS. GRADY: No exception to hearsay --

19 EXAMINER PRICE: He is asking her if she  
20 agrees with the statement. He is not offering the  
21 statement for the truth of the matter asserted. He  
22 is asking Ms. Steigerwald if she agrees with that  
23 statement, isn't he? He is asking her understanding  
24 whether that's true or not. Overruled.

25 MS. GRADY: Your Honor, to say what's



1 being sought here --

2 EXAMINER PRICE: That's my ruling,  
3 overruled.

4 MS. GRADY: Your Honor, then the next  
5 statement is with respect -- or strike -- motion to  
6 strike is starting on line 20 on page 90, with the  
7 sentence "Some," and ending with line 25, with the  
8 answer "Yes." Again, that is hearsay and what some  
9 people have reported and whether -- and who those  
10 people are, we don't know. It is hearsay and there's  
11 a question of relevance. I am not sure how it is  
12 relevant to anything being considered by the  
13 Commission in this proceeding.

14 EXAMINER PRICE: Mr. Kutik.

15 MR. KUTIK: Your Honor, well, let's start  
16 that with the issue do we know? Yes, we do. Because  
17 in the next page we talk about what was marked as  
18 Steigerwald Exhibit 8 which was an e-mail from a  
19 member of CKAP to Ms. Steigerwald talking about how  
20 his bills were at record lows.

21 So that shows that this is relevant  
22 because it shows that the adjustments that were made  
23 in the initiation of rider RGC have, in fact,  
24 benefited customers perhaps beyond what they should  
25 be getting and beyond what they had ever enjoyed and

1 that there is certainly a need to remedy that to make  
2 sure that other customers aren't -- other customers  
3 who have to pay for these credits aren't paying for  
4 record low bills that are being enjoyed by certain  
5 other customers.

6 EXAMINER PRICE: Ms. Grady?

7 MS. GRADY: Your Honors, it's hearsay.  
8 There is no exception to hearsay. Where is the  
9 exception?

10 MR. KUTIK: He is a member -- the  
11 individual who was being asked about -- the  
12 individual who is being discussed in the remainder of  
13 this excerpt, which Ms. Grady, I believe, is  
14 discussing, is an individual who I believe is  
15 Mr. Bruton. Mr. Bruton is a member of CKAP. I  
16 believe he is a leader of CKAP and so that's a  
17 representative admission.

18 EXAMINER PRICE: We are going to sustain  
19 the objection. You are correct on page 8 that they  
20 narrowed it down to the document in Mr. Bruton's  
21 statement but on page -- or on page 90, it's not  
22 clear that that is who she was talking about in that  
23 statement.

24 Ms. Grady.

25 MS. GRADY: Yes, your Honor, beginning on

1 page 91, question posed on line 21, carrying over to  
2 23, same basis, "Someone has been telling you the  
3 rates have never been lower.

4 "Correct, yes."

5 Again, hearsay, no exception to hearsay  
6 and relevance.

7 EXAMINER PRICE: Do you know that  
8 Mr. Bruton is not a member of CKAP?

9 MS. GRADY: Yes, your Honor, that's the  
10 testimony that later comes in says that Mr. Bruton  
11 was not -- well, not a leader of CKAP, I'm sorry.

12 EXAMINER PRICE: But he is a member.

13 MS. GRADY: It is not clear from the  
14 transcripts, your Honor.

15 MR. KUTIK: Your Honor, this witness  
16 testified that Mr. Bruton was a member of CKAP.

17 MS. GRADY: Do you have a reference to  
18 the transcript?

19 EXAMINER PRICE: Given the morphus nature  
20 of CKAP's membership and the extent to which we have  
21 more than bent over backwards to accommodate that, I  
22 think in this case we will go ahead and allow this  
23 piece of testimony.

24 MS. GRADY: Your Honor, the next motion  
25 would be with respect to -- may I have a moment, your

1 Honor?

2 EXAMINER PRICE: Uh-huh.

3 MS. GRADY: The next motion, your Honor,  
4 would be on -- beginning on page 97, lines 17,  
5 through 98, line 22. This, your Honor, this  
6 testimony is about the -- whether Ms. Steigerwald was  
7 encouraging individuals to file complaints with the  
8 PUCO and what other activities she was urging  
9 individuals to take, question of relevance.

10 I am not sure it's relevant at all to any  
11 of the issues in this proceeding. We're not here to  
12 opine on whether or not it is appropriate to go to  
13 other forums to try to achieve a result. We're here  
14 in the PUCO, and we should be concerned about the  
15 issues before the PUCO, not necessarily what's going  
16 on politically with the Governor and with others in  
17 the legislature.

18 EXAMINER PRICE: Mr. Kutik.

19 MR. KUTIK: Your Honor, again, this shows  
20 the orchestration of a publicity campaign and a  
21 pressure campaign regardless of the merits.

22 With respect to specifics with respect to  
23 the complaints that were made at the PUCO, if OCC and  
24 CKAP are not going to -- well, certainly in this case  
25 have made mention of the fact there have been

1 numerous complaints made in the docket, and they have  
2 referred to complaints made in the docket.

3 This puts those complaints, we believe,  
4 in the proper light that it was basically an  
5 orchestrated campaign headed by Ms. Steigerwald.

6 MS. GRADY: And, your Honor, that's quite  
7 a general statement to assume that every letter filed  
8 at the PUCO has been -- somehow gone through CKAP  
9 or --

10 EXAMINER PRICE: He didn't say that.

11 MS. GRADY: -- or at the urging of CKAP.

12 EXAMINER PRICE: He didn't say they have  
13 encouraged people to file letters and complaints at  
14 the PUCO. He certainly never said anyone was at the  
15 instigation of CKAP.

16 MS. GRADY: I think the record will show  
17 what he said, I'm sure.

18 MR. KUTIK: It will. We'll stipulate to  
19 that.

20 EXAMINER PRICE: Overruled.

21 MS. GRADY: Your Honor, our next motion  
22 to strike begins on page 105, beginning on line 4,  
23 carrying over to 106, line 14. Your Honor, this is  
24 hearsay, relates to statements by Mr. Bishop. There  
25 is no admission by a party opponent. Mr. Bishop is

1 not a CKAP leader. He is not authorized to make CKAP  
2 statements. It's not a statement against interest.  
3 It is strictly hearsay.

4 EXAMINER PRICE: Aren't all -- isn't  
5 Mr. Corcoran representing all members of CKAP, not  
6 all leaders of CKAP? I mean, you are trying to  
7 distinguish between leaders and members here and  
8 saying an admission of a party opponent doesn't  
9 count, but isn't he representing every member of  
10 CKAP?

11 Didn't -- hasn't he told us that he has  
12 sent an e-mail out to every member of CKAP saying  
13 "Would you like my representation in this case?" And  
14 this?

15 MS. GRADY: Well, your Honor, if I may  
16 address that.

17 EXAMINER PRICE: Please.

18 MS. GRADY: Admission by party opponents  
19 requires a showing that the statement being offered  
20 is the party's own statement in either an individual  
21 representative capacity or the statement of a party  
22 who has been authorized by the party to make a  
23 statement concerning this subject. I don't think the  
24 company has established --

25 EXAMINER PRICE: Mr. Bishop is a party,

1 is a party because he is a member of CKAP. All  
2 members of CKAP are parties to this proceeding,  
3 aren't they? I mean, let me rephrase that. I'll ask  
4 Mr. Corcoran the question.

5 Mr. Corcoran, what is the -- you moved to  
6 intervene on behalf of CKAP.

7 MR. CORCORAN: That's correct.

8 EXAMINER PRICE: Are all members of CKAP  
9 parties to this proceeding? Or is it only  
10 Ms. Steigerwald and Ms. Heginbotham?

11 MR. CORCORAN: Both of those parties are  
12 individually named. CKAP as a group is named.

13 MS. GRADY: But, your Honor, I guess the  
14 point is that under the rule is someone authorized to  
15 make statements on behalf of the party and I don't  
16 believe --

17 EXAMINER PRICE: Again, this gets back  
18 to -- let me finish, Ms. Grady. Again, I think this  
19 gets back to the morphus nature of CKAP. We have  
20 bent over backwards to allow CKAP, even though it's a  
21 fairly loose association, to testify and to  
22 participate in this proceeding and now I think you're  
23 kind of unfairly trying to use the fact that it's a  
24 morphus and loose association to exclude testimony  
25 that reasonably fits into a hearsay exception.

1 Overruled.

2 MS. GRADY: Your Honor, if I might add --

3 EXAMINER PRICE: No. You don't need to  
4 make any further statements. Time presses.

5 MR. KUTIK: Your Honor, do you need to  
6 take a break at this time?

7 EXAMINER PRICE: I was hoping to get one  
8 more objection in before the break.

9 MS. GRADY: Your Honor, our next motion  
10 begins on page 107, starting with line 17 through  
11 line 25, carrying over to page 108, line 4, again,  
12 this is hearsay. On page 108 it appears to be in any  
13 respect an incomplete question with no answer so it  
14 is incomplete.

15 Again, Mr. Bishop was a witness at the  
16 North Ridgeville hearing. The company had an  
17 opportunity to cross him as well as the company had  
18 the opportunity to bring this witness in and subpoena  
19 this witness as part of its case. It did not. It  
20 cannot try to do -- cannot try to present this  
21 information, which is clearly hearsay.

22 EXAMINER PRICE: I am going to reiterate  
23 that OCC is attempting to make too much of the  
24 companies' failure to cross-examine people at public  
25 hearings. At the public hearings the companies had



1 no notice who was going to show up, no opportunity to  
2 conduct discovery, and I really think that you're  
3 trying to give too much weight to that opportunity to  
4 cross-examine witnesses.

5 And I also point out that we were already  
6 there until 11:00 o'clock. If they had done 20  
7 minutes of cross-examination on all 400 witnesses, we  
8 still would be in North Ridgeville and Strongsville.

9 MR. KUTIK: One thing, your Honor, I  
10 would note on our 3A Revised we do not include line 4  
11 from page 108.

12 EXAMINER PRICE: Okay. Why don't you  
13 respond to her objection --

14 MR. KUTIK: Your Honor --

15 EXAMINER PRICE: -- as modified.

16 MR. KUTIK: Sure. What was happening  
17 here was that Ms. Steigerwald as a member and leader  
18 of CKAP was asking Mr. Bishop as a member of CKAP to  
19 go find other FirstEnergy employees, and he was  
20 unsuccessful in doing so. It talks about the  
21 activities of the CKAP members. It's not hearsay.

22 EXAMINER PRICE: Overruled.

23 At this time we are going to take a  
24 20-minute break. We will reconvene at 11:15 or such  
25 other time after the Commission meeting as I can get

1 back here. Let's go off the record.

2 (Recess taken.)

3 EXAMINER PRICE: Let's go back on the  
4 record. I apologize for the brief delay -- not as  
5 brief delay as I'd anticipated.

6 Please proceed with your next objection,  
7 Ms. Grady.

8 MS. GRADY: Yes, your Honor, with respect  
9 to line 109, lines 22 through 25, move to strike on  
10 the basis that it is hearsay.

11 EXAMINER PRICE: Mr. Kutik.

12 MR. KUTIK: Statement of another CKAP  
13 member.

14 EXAMINER PRICE: Ms. Grady, are you  
15 disputing that Mr. Karchefsky is member of CKAP or is  
16 this your continuing objection to hearsay by members  
17 of CKAP?

18 MS. GRADY: First of all, your Honor, I  
19 do not know that Mr. Karchefsky is a member of CKAP.  
20 I don't know that the record reflects that.

21 EXAMINER PRICE: Mr. Corcoran, is  
22 Mr. Karchefsky, to the best of your knowledge, a  
23 member of CKAP?

24 MR. CORCORAN: I don't remember, your  
25 Honor.

1 MR. KUTIK: Your Honor, on page 290 of  
2 the deposition, line 10, "Was Mr. Karchefsky a member  
3 of CKAP?

4 "Answer: Yes."

5 EXAMINER PRICE: Certainly looks like he  
6 is a member.

7 MS. GRADY: Your Honor, I would note  
8 that, again, under -- it is part of my continuing  
9 objection under 801(D)(2), in order to fall within --  
10 the definition of not being hearsay it -- the  
11 statement must be made by a person authorized by the  
12 party to make the statement concerning the subject,  
13 and we would -- we would contend that Mr. Karchefsky  
14 was noted by CKAP to make any statement and is not a  
15 party.

16 It is not a statement by a party and that  
17 the company has failed to set the foundation to show  
18 by preponderance of the evidence that it must under  
19 U.S. versus Lang 364 F3d 1210, 1222 -- 1220 -- 1222,  
20 10th Circuit, 2004, that the company has not met its  
21 burden of proof.

22 MR. KUTIK: Your Honor, Mr. Karchefsky is  
23 showing Ms. Steigerwald documents as part of their  
24 preparation for their work in CKAP.

25 EXAMINER PRICE: I understand. Again, we

1 are going -- generally at the Commission we attempt  
2 to construe hearsay exceptions broadly to admit as  
3 much evidence as possible. The evidentiary rules do  
4 not strictly apply to Commission proceedings, and in  
5 this case, we are going to be consistent with our  
6 previous rulings and admit hearsay statements that  
7 were made by members of CKAP to Ms. Steigerwald.  
8 Your objection is overruled.

9           However, I guess I would, again, coming  
10 back from the break, note for the record that OCC is  
11 certainly capable and has the opportunity on its  
12 brief to argue that the Commission, in considering  
13 the weight of any of these statements, should  
14 consider hearsay statements or relevance or -- what  
15 was your other objection, or any other objection that  
16 you have made that has been overruled.

17           MS. GRADY: Opinion -- yes, our 701.

18           EXAMINER PRICE: 701, thank you. Please  
19 proceed.

20           MS. GRADY: Yes, your Honor. On page  
21 10 -- 110, lines 16 through 20, motion to strike on  
22 the basis of hearsay.

23           EXAMINER PRICE: Overruled.

24           MS. GRADY: Your Honor, our next  
25 objection would be with respect to page 111, lines 2

1 through 8, and also lines 20 through 25 on page 111,  
2 again, hearsay. There is no foundation that  
3 Ms. Steigerwald had personal knowledge of the resume  
4 and the contents. She was just merely reading the  
5 resume.

6 Under Rule 701 a lay witness can only  
7 testify to those -- to that information which she has  
8 personal knowledge of. In addition we would argue  
9 relevance.

10 EXAMINER PRICE: Overruled.

11 MS. GRADY: Your Honor, beginning on page  
12 112, starting with the line 1, through page 113, line  
13 5, again, same basis, hearsay, no foundation to show  
14 that this witness has any personal knowledge of the  
15 resume and the contents. Under Rule 701 it is  
16 inappropriate lay witness testimony.

17 EXAMINER PRICE: Overruled.

18 MS. GRADY: Your Honor, the next motion  
19 to strike would be page 115, beginning on lines 24,  
20 carrying over to 116, line 9.

21 EXAMINER PRICE: Grounds?

22 MS. GRADY: The grounds are relevance,  
23 your Honor.

24 EXAMINER PRICE: Mr. Kutik.

25 MR. KUTIK: Your Honor, again, it goes to

1 the campaign here and the relevance of the campaign  
2 that she thought it was relevant to organize as many  
3 letters as possible regardless of their merits.

4 EXAMINER PRICE: Overruled.

5 MS. GRADY: Your Honor, again, on this  
6 issue of relevance I'm not certain how -- we are not  
7 understanding how this is any -- of any consequence  
8 to the determination of things in this proceeding  
9 that make it more or less probable and --

10 EXAMINER PRICE: And if and when  
11 FirstEnergy uses this information on their brief, you  
12 can make that argument to the Commission as to  
13 regarding the weight of the evidence and its  
14 relevance to the proceeding at that point.

15 Your continuing disagreement with the  
16 Bench is noted and overruled.

17 MS. GRADY: Your Honor, my next motion to  
18 strike would be with respect to page 126, lines 9  
19 through -- through -- all the way through page 129,  
20 line 2.

21 EXAMINER PRICE: Excuse me. Can you tell  
22 me where that begins again?

23 MS. GRADY: I'm sorry, that would begin  
24 on page 126, line 9, the answer.

25 EXAMINER PRICE: I know. Do you want to

1 object to -- do you want to strike the question? In  
2 other words we are just going to have the question  
3 hanging there.

4 MS. GRADY: We can move to strike the  
5 question as well.

6 EXAMINER PRICE: Okay.

7 MS. GRADY: Starting on line 6, so then  
8 it continues throughout -- through page 127, through  
9 the entirety of 128, ending on 129, line 2, again,  
10 this is hearsay. Ms. Steigerwald has no personal  
11 knowledge of Mr. Willits' information.

12 Under Rule 701 it is impermissible lay  
13 testimony, issue of relevance. You are asking a lay  
14 witness to interpret a letter. In addition, your  
15 Honor, Mr. Willits was a witness called and the  
16 company had the opportunity to cross Mr. Willits on  
17 the documents as well, so.

18 EXAMINER PRICE: Where does your  
19 objection end again, please?

20 MS. GRADY: 129, line 2.

21 EXAMINER PRICE: Okay. Thank you.

22 Mr. Kutik, response, please.

23 MR. KUTIK: Pardon?

24 EXAMINER PRICE: Response, please.

25 MR. KUTIK: Your Honor, with respect to

1 the statements by Mr. Willits, we are not offering  
2 those for the truth. We are offering those with  
3 respect to her knowledge and CKAP's knowledge with  
4 respect to the source of the document, where it came  
5 from.

6 With respect to the rest of the document  
7 and the rest of the excerpt, this is a document that  
8 certainly was introduced by CKAP through its own  
9 witness, Mr. Willits. We certainly were allowed to  
10 ask the founder and leader of CKAP what she believes  
11 the letter means. Mr. Willits was allowed to give  
12 his interpretation. Certainly Ms. Steigerwald should  
13 be allowed to give her opinion.

14 EXAMINER PRICE: Ms. Grady.

15 MS. GRADY: Your Honor, again, it is  
16 hearsay. She did not have personal knowledge of it.

17 EXAMINER PRICE: But, Ms. Grady, CKAP  
18 moved to introduce it.

19 MS. GRADY: Yes, your Honor. But  
20 Ms. Steigerwald did not have personal knowledge and  
21 her understanding or interpretation of it is not  
22 relevant. She didn't -- she lacked the personal  
23 knowledge. And the company had the opportunity to  
24 ask Mr. Willits about what he believed the  
25 information showed. Mr. Willits was a CKAP witness,



1 yes. He had the opportunity. It's merely cumulative  
2 evidence at this point.

3 MR. KUTIK: The fact that we may have had  
4 the opportunity to ask the same questions of  
5 Mr. Willits doesn't bear on the admissibility of this  
6 document.

7 EXAMINER PRICE: No, it does not.  
8 Overruled.

9 MS. GRADY: Your Honor, my next motion to  
10 strike begins on page 131, starting at line 20 with  
11 the question, and it carries over through page 133,  
12 line 2. Your Honor, these questions deal with the  
13 lawsuit that was filed by Mr. Grendell. There is --  
14 Ms. Steigerwald is a lay witness. She can only  
15 testify as to her -- what she has personal knowledge  
16 of.

17 Questions about venue and whether the  
18 PUCO versus the Cuyahoga County Court was the right  
19 venue is a legal opinion. She cannot testify as to  
20 legal opinion. Her opinion, therefore, is -- should  
21 be disallowed.

22 It's a question of relevance and there is  
23 also hearsay thrown in all of this with respect to  
24 all the Grendell statements, so I believe those are  
25 all adequate motions -- or adequate grounds to strike

1 this slightly -- slightly relevant information.

2 EXAMINER PRICE: So you are agreeing it's  
3 relevant.

4 MS. GRADY: I am agreeing probative --  
5 that your Honor has ruled in the past that it is  
6 relevant, but I would say the except -- if you were  
7 to accept that ruling, that probative value of this  
8 evidence is very low and should not be allowed.

9 EXAMINER PRICE: I guess where I'm  
10 puzzled by your objection is both CKAP and OCC asked  
11 the Commission to consider these issues. The only  
12 thing this testimony indicates is that, yes, they  
13 thought the Commission should address these issues.  
14 That's consistent with their course of conduct  
15 throughout this proceeding. It's frankly something  
16 OCC has supported.

17 I don't understand -- I guess I just  
18 don't understand your objection. It doesn't say  
19 anything here other than I felt the best way to  
20 resolve it was at the PUCO. I mean, that's -- if she  
21 didn't feel that way, she wouldn't have moved to  
22 intervene.

23 MS. GRADY: It's not relevant, your  
24 Honor. Who cares?

25 EXAMINER PRICE: You already agreed it

1 was at least slightly relevant.

2 MS. GRADY: I said based -- let me  
3 withdraw that.

4 EXAMINER PRICE: The weight -- the issues  
5 here but.

6 MS. GRADY: I will withdraw that. I  
7 don't believe it is relevant. I will maintain my  
8 objection that none of this is relevant in terms of,  
9 you know, the issues that are before the Commission,  
10 whether there is publicity, whether there is  
11 lawsuits. We're here before the Commission. We  
12 should be limiting our evidence to matters that are  
13 before the Commission.

14 EXAMINER PRICE: Overruled.

15 MS. GRADY: Your Honor, the next motion  
16 to strike is with respect to page 134, beginning on  
17 line 4, the question carrying over to line 7,  
18 actually the entire question, I would assume 4  
19 through 9.

20 EXAMINER PRICE: I'm sorry. 134, line 4.

21 MS. GRADY: Through 9.

22 EXAMINER PRICE: Through 9.

23 MS. GRADY: The first portion of that  
24 question is hearsay. And that I would move to strike  
25 the answer as well through line 11.

1 MR. KUTIK: Your Honor, I am quoting at  
2 that point from an e-mail that she wrote. These are  
3 her statements. It's not hearsay.

4 EXAMINER PRICE: Overruled.

5 MS. GRADY: Your Honor, my next motion to  
6 strike goes to line 12, the question beginning on  
7 line 12, carrying over all the way to the answer on  
8 the following page, line 3, the answer "Yes," that  
9 would be on page 135, line 3. This is all back to  
10 what Mr. Grendell was going to do to put -- put  
11 pressure on the Commission. It's hearsay. It's not  
12 relevant. We move to strike.

13 EXAMINER PRICE: Overruled.

14 MS. GRADY: On page 135, lines 15 through  
15 17 -- actually, I'm sorry, on page 135, line 7  
16 through line 19, your Honor, the question is seeking  
17 a legal opinion from a lay witness. A lay witness  
18 may not testify as to a legal opinion. And,  
19 therefore, we move to strike.

20 MR. KUTIK: Your Honor, the question and  
21 answer was whether I read her e-mail correctly.

22 EXAMINER PRICE: Yeah. Ms. Grady, can  
23 you respond to that?

24 MS. GRADY: Well, your Honor, the  
25 question is whether or not the lawsuit being denied

1 in the jurisdiction --

2 EXAMINER PRICE: No, his question is "Did  
3 I read that correctly?"

4 MS. GRADY: Yeah, but the intro to that  
5 question introduces -- introduces that concept in the  
6 question itself, your Honor.

7 EXAMINER PRICE: Well, I suspect that  
8 this is either an exhibit that FirstEnergy is moving  
9 to -- is going to move for admission, in which case  
10 you should make that argument at that point, or if  
11 they are not moving for admission, then whether it's  
12 prejudice, overruled.

13 MR. KUTIK: Your Honor, it will be  
14 Company Exhibit 11.

15 EXAMINER PRICE: Then you should make  
16 your objections at that point.

17 MS. GRADY: Oh, I certainly will, your  
18 Honor.

19 Moving along to page 145, objection  
20 beginning on line 20 through 25, carrying over to  
21 146, line 7. Our objection is based on relevance and  
22 hearsay.

23 EXAMINER PRICE: Mr. Kutik.

24 MR. KUTIK: Well, I guess I'm not sure  
25 exactly what the hearsay is, your Honor. It's

1 talking about talking points that came from OCC, and  
2 we are just talking about were you given talking  
3 points. Certainly that fact, the act of giving  
4 talking points, isn't hearsay.

5 Back to the relevance, your Honor, it  
6 relates to the coordination of this case by OCC and  
7 CKAP after they made representations to the  
8 Commission, CKAP, that OCC could not be an effective  
9 advocate for all-electric customers.

10 MS. GRADY: Your Honor, the hearsay rule  
11 not only applies to statements but also assertions  
12 and this is an assertion.

13 EXAMINER PRICE: Could you further  
14 explain that to me? I am not sure that you fairly  
15 met his response.

16 MS. GRADY: If your Honor will give me a  
17 moment. Your Honor, under the Rule 801 in terms of  
18 statement -- a statement is, No. 1, an oral or  
19 written assertion or nonverbal conduct of a person if  
20 it is intended by a person as an assertion. And I  
21 would submit, your Honor, that OCC providing advice  
22 or giving talking points is an assertion and falls  
23 within the statement definition of hearsay under Rule  
24 801.

25 MR. KUTIK: It's an assertion as to what?

1 It's an assertion that you have talking points? The  
2 objection makes no sense. The question simply says  
3 you are given talking points by OCC, and the answer  
4 is basically yes. That describes a course of conduct  
5 between two parties to this case. No statements are  
6 being made.

7 EXAMINER PRICE: I agree. Overruled.

8 MS. GRADY: Your Honor, the next motion  
9 to strike is page 154, lines 10 through 18, we would  
10 move to strike on the basis of relevance. Again,  
11 this has to do with what -- what she believes to be  
12 part of her work here is to create publicity and --  
13 and about the all-electric issue, again, not relevant  
14 to this proceeding and the issues that are before the  
15 Commission.

16 EXAMINER PRICE: And if -- if FirstEnergy  
17 uses this testimony in their brief, you can make that  
18 argument on your reply. Overruled.

19 MS. GRADY: Your Honor, my next motion to  
20 strike would be on page 155, lines 11 through 24,  
21 beginning, your Honor, in this -- I'm sorry, 1  
22 through 24 has to do with an e-mail to Mr. Funk of  
23 The Plain Dealer and whether or not publicity was  
24 being given. Again, your Honor, it's a question of  
25 relevance. It has no relevance to this proceeding.

1 EXAMINER PRICE: Overruled.

2 MS. GRADY: The next motion to strike  
3 would be with respect to page -- starting on 157 --  
4 I'm sorry, it starts on 156, the bottom line, line  
5 25, and carries over through 157, line 19. Motion to  
6 strike based upon relevance and hearsay. Has to do  
7 with an e-mail from John Funk and what John Funk was  
8 asking and what her response was and whether he was  
9 cooperative or not. Again, no relevance to this  
10 proceeding.

11 EXAMINER PRICE: Mr. Kutik.

12 MR. KUTIK: With respect to the  
13 statements of Mr. Funk, we are not offering them for  
14 the truth. We are offering them just to show the  
15 relationship between the company and that he was  
16 cooperative. With respect to relevance, we already  
17 addressed that issue.

18 EXAMINER PRICE: Overruled.

19 MS. GRADY: My next motion to strike is  
20 page 158, beginning on line 9, through 160, line 17.  
21 Again, this deals with what publicity Ms. Steigerwald  
22 was seeking in this case. Much of it is hearsay and  
23 the rest is a relevancy objection.

24 EXAMINER PRICE: Overruled.

25 MS. GRADY: The next motion to strike is



1 on page 162, beginning on line 11, and carrying over  
2 to the end of 165, line 25. Your Honor, these  
3 objections are made on the basis of relevance.

4 This particular portion of the transcript  
5 deals with a complaint that was filed with the Ohio  
6 Inspector General. That complaint is not an exhibit  
7 in this proceeding. It was not part of any testimony  
8 presented. It's just not relevant. It has nothing  
9 whatsoever to do with the issues before us in this  
10 proceeding.

11 EXAMINER PRICE: Mr. Kutik.

12 MR. KUTIK: In her complaint, which we  
13 will be offering as an exhibit in this proceeding,  
14 Ms. Steigerwald, as head of CKAP, contends that the  
15 Commission and the Commissioners and the staff  
16 engaged in criminal and civil wrongdoing that could  
17 be remedied by the Inspector General, and further  
18 that unless the Commission agrees with her views,  
19 that that wrongdoing has continued.

20 We think that reflects on CKAP's  
21 credibility and with respect to the other -- and also  
22 reflects on the weight that the Commission should  
23 give their other arguments.

24 MS. GRADY: Your Honor, in addition to  
25 the fact that this is hearsay with respect to this

1 document --

2 EXAMINER PRICE: You want to stop because  
3 you are going to win this objection so you probably  
4 want to stop making argument.

5 We are going to sustain this objection.  
6 I don't want to get into what people do and don't  
7 claim about the Commission in an outside forum.

8 MS. GRADY: Your Honor, my objection or  
9 my motion to strike would then go to page 166,  
10 beginning on line 1 -- actually because this all --  
11 all of this cross-examination refers to the Inspector  
12 General's report which you ruled -- you allow -- or  
13 sustained the objection on, I would make my motion to  
14 strike for the entirety of 166, 167, 168, through  
15 line 21, 169, because this line of questioning all  
16 relates to the complaint filed with the Ohio  
17 Inspector General.

18 EXAMINER PRICE: Sustained.

19 MS. GRADY: If I may have a moment, your  
20 Honor?

21 EXAMINER PRICE: You may.

22 MS. GRADY: Your Honor, my motion to  
23 strike begins on page 170, beginning on line 3,  
24 carrying over through 171, 172, 173, 174, 175, 176,  
25 177, through 178, line 22 and, your Honor, this is

1 the -- these were -- these are moved to strike on the  
2 basis of relevance. This entire portion talks about  
3 the Commission's decision to require testimony -- the  
4 form the testimony would be required in, whether  
5 nonexpert's testimony is to be prefiled or not.

6 It's not an issue that's related to --  
7 relevant to any issue in front of the Commission in  
8 this proceeding. It's merely an evidentiary ruling.  
9 Has nothing to do with the substance of this  
10 proceeding.

11 EXAMINER PRICE: We are going to overrule  
12 the objection with respect to the testimony on page  
13 170 because it relates to their efforts to obtain  
14 publicity that FirstEnergy believes to be relevant to  
15 the Commission's consideration.

16 The rest of the objection though will be  
17 sustained because, frankly, it simply deals with a  
18 ruling wrong since made, so we'll sustain the  
19 objection for the balance of the -- through 178 to  
20 line 22.

21 MR. KUTIK: So the ruling sustaining the  
22 objection starts at page 171?

23 EXAMINER PRICE: Yes, that's correct.

24 MS. GRADY: Your Honor, my next objection  
25 would be with respect to page 179, starting on line

1 4, carrying over to the end of page 181, line 5, on  
2 the basis of relevance. This relates to how Sue is  
3 conveying how --

4 EXAMINER PRICE: I'm sorry, could you  
5 tell me where this ends, please?

6 MS. GRADY: I'm sorry, 181, line 5.

7 EXAMINER PRICE: 181, line 5, okay.

8 MS. GRADY: E-mail talks about getting  
9 people prepared or to provide testimony at the public  
10 hearings. Again, question of relevance.

11 EXAMINER PRICE: Mr. Kutik.

12 MR. KUTIK: She's coaching public hearing  
13 witnesses.

14 EXAMINER PRICE: Ms. Grady, can you  
15 respond to that?

16 MS. GRADY: Getting the word out that  
17 evidentiary hearings are coming up and letting  
18 customers know what topics for presenting testimony  
19 are I don't believe is coaching.

20 EXAMINER PRICE: I suspect that Mr. Kutik  
21 believes that she is doing more than simply getting  
22 the word out.

23 MR. KUTIK: She says that she is going to  
24 be sending out talking points.

25 EXAMINER PRICE: Overruled.

1 MS. GRADY: Beginning on page 182 with  
2 line 2, through 183, line 20 -- I'm sorry, 182, line  
3 2, through 183, line 4, question of relevance.

4 MR. KUTIK: Here, your Honor, she is --  
5 we are talking about what she's specifically coaching  
6 them about and coaching them about an issue with  
7 respect to what they are going to testify regarding  
8 company marketing practices, an issue that they  
9 wanted to have discussed in this case.

10 EXAMINER PRICE: Is OCC representing that  
11 whether people did or didn't install equipment to get  
12 the first -- the all-electric discount is irrelevant  
13 to this proceeding? Is that your relevance  
14 objection, that that doesn't matter and the  
15 Commission shouldn't consider that question?

16 MS. GRADY: I think our relevance  
17 objection goes to the fact that what Ms. Steigerwald  
18 is conveying to -- to potential witnesses is --

19 EXAMINER PRICE: So you think whether  
20 people installed equipment in their house in order to  
21 qualify for the discount is relevant?

22 MS. GRADY: No, your Honor, I am not  
23 saying that. I don't understand your question.

24 EXAMINER PRICE: Well, my question -- you  
25 say this is not relevant. My question is, is it the

1 subject matter from your perspective that's not  
2 relevant? Because the Commission need not consider  
3 whether people did or didn't install equipment?

4 We heard lots of public testimony that  
5 people did install equipment to qualify for the  
6 all-electric discount. Are you saying that that  
7 question is not relevant to this proceeding?

8 MS. GRADY: No, your Honor. I'm  
9 saying --

10 EXAMINER PRICE: So what about this  
11 document then where she's giving people advice on  
12 what to say in their testimony, what is not relevant  
13 about that? It's an issue in the proceeding, and  
14 she's giving people advice as to how to word this; is  
15 that right?

16 MS. GRADY: One could characterize it as  
17 that. I think she is giving them -- telling them  
18 here is some issues and here is some issues that you  
19 might want to address in your public testimony. I  
20 don't think that that in any way is coaching or  
21 something that we should be -- you know, the  
22 testimony was what the testimony was.

23 The customers came up and swore -- and  
24 swore under oath to their testimony. Whether or not  
25 Ms. Steigerwald's e-mails prompted them to address

1 issues or change their testimony doesn't change the  
2 fact that testimony was submitted under oath by  
3 customers.

4 EXAMINER PRICE: Mr. Kutik.

5 MR. KUTIK: Your Honor, well, to begin,  
6 this is relating to Company Exhibit 16 which is an  
7 e-mail that Ms. Steigerwald sent out to CKAP members  
8 in November of 2010. And I'm reading to her in these  
9 excerpt portions of that exhibit and, for example,  
10 when Ms. Grady talks about, well, she is simply  
11 advising them of issues, that's not an accurate  
12 statement.

13 As we indicate -- or I ask her on page  
14 182, at line 10, I ask her, it says, "In place of the  
15 word written contract, you can simply use the term  
16 contract." That's coaching. That bears on the  
17 weight of the public hearing testimony that is given,  
18 that these people were influenced by Ms. Steigerwald  
19 in these particular words in this particular way.

20 In respect to the next question an answer  
21 regarding where she says "We either built our homes  
22 to a specific set of requirements and/or later  
23 installed all-electric equipment in our homes in  
24 exchange for a discounted electric rate," well, then  
25 I asked her, "Well, did you do that?"

1           Here she is telling what other people  
2       should say, like she's included in that group. And  
3       that's a false statement for her. So it's relevant  
4       in a number of ways, your Honor. It's relevant with  
5       respect to coaching on that issue of equipment  
6       installation, and it's also relevant with respect to  
7       Ms. Steigerwald's and CKAP's position in this case.

8           EXAMINER PRICE: Ms. Grady, why is this  
9       not coaching the witnesses?

10          MS. GRADY: Well, your Honor, because she  
11       is giving advice or she is giving tips --

12          EXAMINER PRICE: She is giving  
13       specific -- is she not at line 10 through 12 telling  
14       them specific language to use or specific language  
15       not to use? She is specifically saying "don't say  
16       written contract, simply say contract"?

17          MS. GRADY: "You may say," I think she  
18       says "you may say" and, again, we don't have -- we  
19       can get -- when we get to that document, it might  
20       make it a little clearer when we talk about that  
21       document for admission, we will have a look at the  
22       document and see what the document actually says and  
23       whether these quotes are in context or not.

24                It's difficult from this -- from reading  
25       this excerpt to know whether or not they have been --



1 they are accurate, whether they are in the context,  
2 what the other statements surrounding this are so --

3 EXAMINER PRICE: Actually that gets back  
4 to the other issue which is the actual question on  
5 line 14 through 18 is "is that what it says?" That's  
6 the only question he asks. He asked her whether he  
7 read that correctly.

8 MS. GRADY: Well, your Honor, it goes to  
9 the context. If that is pulled out of context, it  
10 isn't necessarily helpful and, your Honor --

11 EXAMINER PRICE: It's not helpful to your  
12 case, but the question is whether or not it has  
13 probative value.

14 MS. GRADY: As well did anyone even  
15 follow these tips? Do we know the public changed  
16 their testimony? No, we do not. What we know is  
17 that the public presented testimony under oath that  
18 they swore to.

19 EXAMINER PRICE: Well, I think that's a  
20 fair issue for FirstEnergy to question whether people  
21 were -- their recollections were influenced by  
22 Ms. Steigerwald's activities. I am not questioning  
23 that everybody at the hearing stood up and testified  
24 as to what they understood to be the truth.

25 The difficulty for the Commission is did

1 Ms. -- activities like this influence what people's  
2 recollections were and to the detriment of  
3 FirstEnergy's position in this case. Overruled.

4 MS. GRADY: Your Honor, along the same  
5 lines of objections on the bottom of page 148  
6 beginning on line 24, carrying over to 185, line 11,  
7 on the basis of relevance we would object and move to  
8 strike.

9 EXAMINER PRICE: Consistent -- since this  
10 is along those same lines consistent with our  
11 previous ruling, you're overruled.

12 MS. GRADY: Your Honor, my next motion to  
13 strike is contained on page 191, beginning on  
14 lines -- line 21, carrying over to 192, line 14, on  
15 the basis of relevance.

16 EXAMINER PRICE: We are talking about  
17 191, line 21, through 192, line 14?

18 MS. GRADY: Yes, your Honor.

19 EXAMINER PRICE: Mr. Kutik, response?

20 MR. KUTIK: Your Honor, as you may recall  
21 in our motions to strike on the first day of these  
22 proceedings, we pointed out the problem presented to  
23 FirstEnergy by the tactics of CKAP. And as your  
24 ruling as I recall was that you would admit those  
25 testimonies and allow us to argue these issues on

1 brief, this deals with that issue.

2 This deals with the fact that CKAP knew  
3 that they were parties and she is telling people go  
4 ahead and testify although we are parties. This is  
5 part of the evidence with respect to what we think is  
6 the game that they played.

7 EXAMINER PRICE: I think that's fair  
8 enough. Overruled.

9 MS. GRADY: Your Honor, my next motion to  
10 strike begins on page 193 -- actually -- actually it  
11 should, I'm sorry, on 192, line 20, and carrying over  
12 to 193, line 20, on the basis of relevance. The  
13 question that was specifically asked Ms. Steigerwald  
14 is if she saw -- it starts out did you see -- "Did  
15 you help any individuals write their testimony?"

16 And then her response is "Some people had  
17 shown me their testimony and asked for my opinion on  
18 it."

19 And then he goes forward and asks  
20 questions about the different -- whether she saw --  
21 whether she saw the testimony of Teryl -- Teryl  
22 Bishop or Brian Kurz, and it really is -- clearly  
23 from her answers it's not that she helped them write  
24 their testimony but that she saw the testimony.

25 And there's quite a bit of difference

1 between reviewing testimony and altering or modifying  
2 or making changes to the testimony, and I believe  
3 this transcript portion shows that her -- the fact  
4 that she saw their testimony before it was filed, not  
5 that she modified or gave input or changes to their  
6 testimony.

7 EXAMINER PRICE: Well, I understand that  
8 that's your opinion on what the testimony says. But  
9 I don't understand your evidentiary objection.

10 MS. GRADY: So it's relevant -- of what  
11 relevance is it that Ms. Steigerwald saw testimony  
12 before it was filed or submitted in public hearing?

13 EXAMINER PRICE: Overruled.

14 MS. GRADY: Your Honor, with respect to  
15 the next motions, and they pertain to starting with  
16 page 193, through -- actually through 208, I would --  
17 I had objections on the same basis that the fact that  
18 Ms. Steigerwald saw testimony ahead of time is not  
19 relevant.

20 What would be relevant is if she had some  
21 input or change or modification to the testimony, and  
22 clearly the question was not asked whether she  
23 changed the testimony or modified the testimony. It  
24 was did you see the testimony, and her responses  
25 throughout these pages was either I saw -- I don't

1 remember seeing the testimony or I saw the testimony,  
2 not that I changed the testimony or provided  
3 modifications.

4 So, your Honor, with respect to all the  
5 statements made where she conveyed whether she saw  
6 the testimony or not, I would move to strike.

7 EXAMINER PRICE: Overruled.

8 MS. GRADY: On page 211, beginning on  
9 line 13, and carrying over through line -- page 212,  
10 line 15, I would move to strike these questions on  
11 the basis of relevance, question -- questions were  
12 about with respect to a Mr. Oliveros and what  
13 Mr. Oliveros does for a living and whether Mr. --  
14 whether he's active in Frawley's political campaign.  
15 No relevance whatsoever.

16 EXAMINER PRICE: Mr. Corcoran --  
17 Mr. Corcoran. Mr. Kutik. We have been at this for a  
18 while.

19 MR. KUTIK: Your Honor, this particular  
20 excerpt is -- I am trying to make sure I have the  
21 right excerpt, is dealing with what various  
22 individuals who were identified as leaders or people  
23 who helped formulate strategy within CKAP did and the  
24 fact that there is a connection between CKAP and  
25 Mr. Frawley, your Honor, we believe reflects on

1 Mr. Frawley's commitment.

2 EXAMINER PRICE: I guess I am struggling,  
3 Ms. Grady, with your breadth of your motion to  
4 strike. Can you tell me when your motion to strike  
5 begins and ends again, please?

6 MS. GRADY: I'm sorry, it begins on line  
7 13, page 211, where you asked about Mr. Oliveros and  
8 what Mr. Oliveros is doing with respect to  
9 Mr. Frawley's campaign, and then goes forward on page  
10 212 to ask about whether Mr. Frawley's political  
11 campaign has ended and what Mr. Oliveros is doing  
12 with respect to the campaign.

13 EXAMINER PRICE: Is Mr. Oliveros a member  
14 of CKAP?

15 MS. GRADY: Your Honor, I do not believe,  
16 and I do not believe it's established in the record.

17 MR. KUTIK: It is and it also indicates  
18 that Mr. Oliveros, in the question and answer on page  
19 211, starting at line 4, was one of the individuals  
20 who helped formulate strategy within CKAP.

21 MS. GRADY: I think that was Mr. Carney.

22 MR. KUTIK: No, Mr. Oliveros.

23 EXAMINER PRICE: She acknowledges he is a  
24 leader of CKAP.

25 MS. GRADY: I'm sorry, I am not following

1 where that is. I see the question.

2 EXAMINER PRICE: Sure, if you look at  
3 page 211, question 7, "what did that person -- I'm  
4 sorry, I don't know if it's a he or she.

5 "Answer: It's a he.

6 "-- do as a leader?

7 "Answer: Formulate strategy on that one,  
8 too."

9 MS. GRADY: I do see that now, your  
10 Honor. Thank you.

11 EXAMINER PRICE: She has identified him  
12 as a leader of CKAP. I think given the importance  
13 OCC placed upon leaders of CKAP as members of their  
14 control group, FirstEnergy is entitled to raise  
15 questions regarding their background.

16 In addition you can -- people make their  
17 arguments however they want, but it's certainly  
18 relevant to the Commission's consideration,  
19 Mr. Frawley is an expert, that he has an outside  
20 interest along with Mr. Oliveros. Overruled.

21 MS. GRADY: Your Honor, page 213, lines  
22 15 through 18, again, similar objections as to  
23 Mr. Sweeney, what his background is. He is a CKAP  
24 member. I am not sure what the relevance is.  
25 Mr. Sweeney I am not certain provided testimony, so

1 I'm not certain how it has any connection whatsoever  
2 to the testimony in this proceeding.

3 EXAMINER PRICE: Mr. Kutik.

4 MR. KUTIK: Your Honor, at this point  
5 what we are trying to understand is what Mr. Sweeney  
6 did and what his background was to do what he did.

7 EXAMINER PRICE: Overruled.

8 MS. GRADY: Your Honor, my next motion to  
9 strike is on page 240, beginning on lines 13 through  
10 25, question is posed to Ms. Steigerwald whether she  
11 believes electric heating customers are being  
12 subsidized. Again, this was an expert -- this is an  
13 opinion that is -- that involves legal -- that  
14 involves expertise. She is a lay witness. Under  
15 Rule 701 she cannot testify as to matters that really  
16 are delegated to an expert witness, and she is not an  
17 expert witness.

18 EXAMINER PRICE: Overruled. You can  
19 raise with the Commission on your brief her lack of  
20 qualifications to make that statement.

21 MS. GRADY: On page 241, beginning on  
22 lines 19 through 23, question and answer asks if  
23 someone is paying a subsidy, would -- paying for the  
24 credits, would there be a subsidy, again, same  
25 objection, your Honor. She's a lay witness. She has



1 no -- no ability to testify as to a matter that  
2 requires expertise.

3 EXAMINER PRICE: Same ruling, overruled.

4 MS. GRADY: I believe that's the entirety  
5 of my objections to Volume I.

6 EXAMINER PRICE: Before we move on to  
7 Volume II, Mr. Corcoran, do you have any objections  
8 to Volume I?

9 MR. CORCORAN: I do not have any separate  
10 objection, your Honor.

11 EXAMINER PRICE: Thank you.  
12 Volume II.

13 MR. KUTIK: And for the record, your  
14 Honor, Volume II, the excerpts are in Exhibit 3A  
15 Revised -- 3B Revised. Thank you.

16 MS. GRADY: Your Honor, my objection  
17 begins on page 289 and goes all way through 301 on  
18 the basis that FirstEnergy has not moved Exhibit 28  
19 into evidence or is not -- that is not on the list to  
20 include as an exhibit. And, therefore, the  
21 transcript portions of the excerpt cannot stand on  
22 their own without admission of that exhibit.

23 EXAMINER PRICE: I'm sorry. I believe  
24 FirstEnergy is moving Exhibit 28, aren't you,  
25 Mr. Kutik? It's on the list.

1 MR. KUTIK: Your Honor, as far as the  
2 document that has been marked in Ms. Steigerwald's  
3 deposition as Exhibit 28, we are not moving that into  
4 evidence.

5 EXAMINER PRICE: Oh, I'm sorry. Okay.  
6 Sustained.

7 MS. GRADY: Thank you, your Honor.

8 MR. KUTIK: Your Honor, I want to make  
9 sure I am clear on this. Are we only -- if I can be  
10 heard on that objection as well. My understanding is  
11 that the objection goes from page 289, line 20, all  
12 the way to 301?

13 MS. GRADY: Yes. Your Honor, I'm sorry,  
14 line 9 on 301.

15 MR. KUTIK: All right. So, your Honor,  
16 with respect to Exhibit 28, the discussion on Exhibit  
17 28 only goes to page 293, line 4.

18 I would also indicate, your Honor, that  
19 there is nothing in the testimony from exhibit --  
20 excuse me, page 289, line 10 -- line 20, to 292, line  
21 4, that addresses the content of the exhibit other  
22 than to recognize it as -- as a -- as an e-mail.

23 And so what we are talking about, your  
24 Honor, is with respect to what Mr. Karchefsky told  
25 her about what happened with respect to how he

1 supposedly made his sales representations to  
2 individuals. That's beyond the words of the  
3 document. It's her testifying about her recollection  
4 with respect to those conversations. Therefore, your  
5 Honor, it is properly in the record. There is a  
6 proper evidentiary foundation for it and the absence  
7 of the exhibit does not detract from its  
8 admissibility.

9 MS. GRADY: Your Honor, he is correct  
10 that my motion really related --

11 EXAMINER PRICE: Overly broad.

12 MS. GRADY: Yeah, it does stop. I  
13 apologize, I have other grounds for the remainder.  
14 He is correct in saying it would stop at page 293,  
15 line 4, related to Exhibit 28, which is referred to.

16 MR. KUTIK: And, further, your Honor, if  
17 there is an issue of completeness, then certainly OCC  
18 is more than able to admit -- seek the admission of  
19 Exhibit 28 if they believe Exhibit 28 is necessary to  
20 make this part of the -- this part of the excerpt  
21 complete.

22 MS. GRADY: That would not be part of our  
23 motion, your Honor.

24 MR. KUTIK: It is the fact that you say  
25 it is incomplete doesn't necessarily mean that it

1 should be stricken. If it's incomplete and you can  
2 cure it and you want to cure it, you should be able  
3 to do that, and so the fact that they take the  
4 opportunity -- don't take that opportunity doesn't  
5 detract from the admissibility of this document, this  
6 excerpt.

7 EXAMINER PRICE: We're going to affirm  
8 our previous ruling that the objection will be  
9 sustained only through, however, page 293, line 4.

10 MS. GRADY: Thank you, your Honor.

11 EXAMINER PRICE: Uh-huh.

12 MS. GRADY: With respect to my next  
13 motion to strike begins on page 293, beginning on  
14 line 12, through 294, line 25. We move to strike on  
15 the basis of relevance here. This is again speaking  
16 to the elect -- this -- let me strike that.

17 This is speaking to an electronic  
18 petition, a petition which is not an exhibit and  
19 which has not been produced as part of the case and,  
20 therefore, we would submit it has no relevance in  
21 this proceeding.

22 EXAMINER PRICE: Mr. Kutik.

23 MS. GRADY: And never used.

24 MR. KUTIK: The reason why it hasn't been  
25 produced in this proceeding, is because it hasn't

1    been produced to us. As you may recall, your Honor,  
2    we have asked now several times for the names and  
3    addresses of members of CKAP. Here is a document  
4    that includes members' addresses and we were not  
5    provided it. So here is again CKAP making  
6    representations to FirstEnergy, representations to  
7    the Commission that are not true.

8                   EXAMINER PRICE: Overruled.

9                   MS. GRADY: Your Honor, my next motion to  
10   strike begins on page 295, beginning on line 6  
11   through line 18 -- actually line 23 -- let me strike  
12   that, let me begin again, I'm sorry.

13                   I would move to strike beginning on page  
14   295, line 6, through 297, line 9, all on the same  
15   basis of relevance. Again, referring to a petition  
16   which is not in evidence and not been used. In  
17   addition there is hearsay at the very top of 296 with  
18   respect to Mr. Brock Landers which would also be the  
19   basis for our objection.

20                   MR. KUTIK: Your Honor, Mr. Landers is a  
21   member of CKAP.

22                   EXAMINER PRICE: Overruled.

23                   MS. GRADY: Your Honor, my next motion to  
24   strike begins on page 297, starting with line 16, and  
25   carrying over to 298, line 2, on the basis of

1 hearsay. They are speaking about an e-mail from a  
2 Jim and Susan Borchert, hearsay and relevance.

3 EXAMINER PRICE: Mr. Kutik.

4 MR. KUTIK: Your Honor, we are not  
5 offering the idea of any statements in Ms. or Mr. --  
6 Mr. and Mrs. Borchert's e-mail. What we are offering  
7 or we are discussing is the response of  
8 Ms. Steigerwald to that e-mail where she talks about  
9 the necessity of making sure you put your address on  
10 the petition. And it's relevant for the reasons I  
11 indicated earlier, that we were told they didn't have  
12 addresses and, now, we know they do.

13 EXAMINER PRICE: Sustained -- back up. I  
14 said that erroneously. Overruled.

15 MS. GRADY: Your Honor, my next motion to  
16 strike begins on page 298, beginning on line 6,  
17 carrying over to 299, line 1, on the basis of  
18 relevance again. They are asking her about signing  
19 the petition. Again, the petition is not in  
20 evidence. It has not been used. It has not been  
21 referred to and not been relied upon.

22 EXAMINER PRICE: Overruled.

23 MS. GRADY: My next motion to strike  
24 begins on page 13 -- or 300, line 6, through 301,  
25 line 9. Again, this appears to be related to the

1 petition to make the all-electric rate permanent in  
2 Ohio, based on relevance.

3 EXAMINER PRICE: Overruled.

4 MS. GRADY: My next motion to strike  
5 begins on page 305, 1 through -- through 16, related  
6 to hearsay, hearsay upon hearsay. An e-mail from Sue  
7 Daugherty and Joyce Limbach and an e-mail from Sue,  
8 then an e-mail from Joyce to somebody called Harold  
9 Butcher. Again, doubly problematic from a hearsay  
10 perspective.

11 MR. KUTIK: Where does your motion to  
12 strike end?

13 MS. GRADY: Ends on line 16.

14 MR. KUTIK: Of 305?

15 MS. GRADY: Yes.

16 MR. KUTIK: Thank you.

17 EXAMINER PRICE: Ms. Daugherty has been  
18 identified by CKAP as a leader of CKAP. And then at  
19 page -- on this page, line 17 and 18, Ms. Limbach is  
20 identified as a member of CKAP. Overruled.

21 MS. GRADY: And Harold Butcher?

22 EXAMINER PRICE: What about Mr. Butcher?

23 MS. GRADY: With respect to the next  
24 motion to strike would be on page 306 --

25 EXAMINER PRICE: I wasn't sure. You said

1 "what about" --

2 MS. GRADY: I don't know that he is a  
3 CKAP member and this e-mail is from Joyce Limbach to  
4 Harold Butcher and, again, hearsay on hearsay. I  
5 don't know that Mr. Butcher has been identified.

6 EXAMINER PRICE: We have been  
7 consistently allowing e-mails and statements by CKAP  
8 members under the party opponent hearsay exception.  
9 The point that Mr. Butcher is a recipient of an  
10 e-mail, I don't understand how that makes the e-mail  
11 some -- somehow problematic beyond you don't agree  
12 with my ruling all along.

13 MS. GRADY: Your Honor, Mr. Butcher was  
14 responding back but that's -- that's inaccurate.

15 EXAMINER PRICE: That's not the way I  
16 read it.

17 MS. GRADY: And we may -- the issue may  
18 be resolved when that exhibit is moved in.

19 MR. KUTIK: Well, your Honor, it states  
20 at page 305, line 13, and then there's -- and then  
21 from that there's an e-mail from Joyce Limbach to  
22 somebody called Harold Butcher, correct?

23 EXAMINER PRICE: That's the way I read  
24 it, it's just to Mr. Butcher.

25 MS. GRADY: We will see that when we go



1 through that document so it will be very clear.

2 EXAMINER PRICE: Okay.

3 MS. GRADY: The next motion to strike  
4 begins on page 306, line 5 through line 12, counsel  
5 is referring her to a document. There is some  
6 handwriting. She says that's not my handwriting.  
7 She can't identify whose handwriting it is and,  
8 therefore, she lacks the personal knowledge, and  
9 under Rule 701 she cannot testify as to that.

10 EXAMINER PRICE: Well, I think it's  
11 certainly -- at least clarifies for the record it's  
12 not her handwriting. Overruled.

13 MS. GRADY: Your Honor, my next motion to  
14 strike is with respect to 306, lines 19 through 23.  
15 Counsel appears to be quoting from a document and  
16 refers to a FirstEnergy's spokesperson Ellen Raines  
17 who admitted some statement. We believe that to be  
18 hearsay and move to strike.

19 MR. KUTIK: This is a statement -- this  
20 is -- we are talking about a statement that's being  
21 made by Ms. Steigerwald. And then she's commenting  
22 on Ms. Raines' statement. So Ms. Raines -- so  
23 Ms. Steigerwald is paraphrasing what Ms. Raines says  
24 and then commenting on it.

25 MS. GRADY: And I guess I'm wondering how

1 Ms. Raines' statement is an exception to hearsay.

2 MR. KUTIK: Because she's not making it.

3 Ms. Steigerwald is making it.

4 EXAMINER PRICE: Yeah, Ms. Steigerwald --

5 MS. GRADY: She is conveying it which  
6 makes it hearsay by hearsay.

7 EXAMINER PRICE: Well, this certainly  
8 conveys Ms. Steigerwald's understanding of what the  
9 statement was, so we'll leave it at that. Overruled.

10 MS. GRADY: Your Honor, the next motion  
11 strike would begin on page -- actually on page 306,  
12 lines 24 and carries over to 308, line 15. Here we  
13 are talking about, again, it appears to be a  
14 statement perhaps by Ellen -- Eileen Raines, I don't  
15 know, a statement about whether or not customers were  
16 originally subsidized by industrial customers. I  
17 think that's a hearsay problem.

18 EXAMINER PRICE: Well, No. 1, again, the  
19 actual question posed is "Do you see that?"

20 MS. GRADY: Yes, your Honor, and to the  
21 extent that the cus -- to the extent that  
22 Ms. Steigerwald does not have personal knowledge of  
23 that, that she just sees it, is not enough to gain  
24 personal knowledge. I could see it and yet I do not  
25 have personal knowledge. The fact that she's aware

1 of a statement does not mean she has personal  
2 knowledge and can testify as a lay witness on that.

3 MR. KUTIK: I am reading Ms.  
4 Steigerwald's e-mail to her.

5 EXAMINER PRICE: That's what I thought.  
6 Overruled.

7 MS. GRADY: With respect to -- I'm sorry,  
8 your Honor. If I may on a different ground for --  
9 argue a different ground for page 307, line 16,  
10 through page 308, line 15, and that motion to strike  
11 refers to the fact that Ms. Steigerwald is getting  
12 information from Amy Gomberg which helps her  
13 understand something about the concepts or the ideas  
14 in this case I believe is hearsay. In addition, she  
15 lacks the personal knowledge and cannot testify as to  
16 those -- those statements.

17 EXAMINER PRICE: She can't testify as to  
18 whether Amy Gomberg helped her?

19 MS. GRADY: She can testify as to -- as  
20 to an opinion that was received based upon something  
21 she has no personal knowledge of. It's different  
22 than an expert. A lay witness's testimony is  
23 strictly limited --

24 EXAMINER PRICE: Again, I think you are  
25 premature. We can get back to that exhibit when we

1 get to it but the question posed is "Did I read that  
2 correctly?"

3 MS. GRADY: Again, your Honor, and this  
4 is a way to get hearsay in by merely quoting from a  
5 document that is a hearsay document and asking the --  
6 that person if they are aware of it. It's called  
7 stealth hearsay.

8 EXAMINER PRICE: Mr. Kutik would never  
9 engage in that tactic.

10 MR. KUTIK: And by the way, your Honor,  
11 it isn't hearsay because I am reading, again, Ms.  
12 Steigerwald's e-mail back to Ms. Steigerwald.

13 EXAMINER PRICE: I understand this is  
14 Ms. Steigerwald's e-mail.

15 Ms. Grady.

16 MS. GRADY: Your Honor, are you expecting  
17 a response or are you --

18 EXAMINER PRICE: Oh, no, I'm sorry, I  
19 thought I had overruled your objection.

20 MS. GRADY: Oh, okay.

21 EXAMINER PRICE: To the extent I didn't,  
22 you're overruled.

23 MS. GRADY: Okay. Your Honor, the next  
24 motion to strike begins on 312, starting with line  
25 13, carrying over to 313, line 14 with respect to an

1 e-mail that was received by Mr. Campbell of the  
2 Enforcement Department of the PUCO. It's hearsay,  
3 there is no exception to hearsay that I am aware of  
4 that would allow this to come in.

5 EXAMINER PRICE: Isn't staff -- isn't  
6 staff at least within the -- I understand staff's not  
7 technically a party but staff is participating in  
8 this proceeding, aren't they?

9 MS. GRADY: But they are not a party  
10 opponent, your Honor. If your Honor is thinking  
11 about 801(D)(2), it has to be made by a person  
12 authorized -- it has to be made by a person  
13 personally or in their individual or representative  
14 capacity or made by a person authorized by the party  
15 to make a statement.

16 EXAMINER PRICE: I suspect that  
17 Mr. Campbell was authorized to issue that letter.  
18 Otherwise he wouldn't have done so. We'll grant  
19 FirstEnergy leeway with respect to staff's  
20 out-of-court statements and extend the hearsay  
21 exception to include those. I understand staff is  
22 not technically a party but they're here. Overruled.

23 MS. GRADY: Your Honor, my next motion to  
24 strike would be with respect to page 313, line 25,  
25 carrying over to 314, line 14, on the same basis that

1 they are talking about the letter from Mr. Campbell  
2 and what they should do about the letter from  
3 Mr. Campbell. Relevance and hearsay.

4 MR. KUTIK: Your Honor, this again  
5 catches up to the issues that were addressed in our  
6 motion to strike with respect to CKAP leaders and  
7 CKAP members. This deals with the issue of they knew  
8 that they were to be treated or have special  
9 relationships not like the general public and they  
10 ignored that. That's unfair to FirstEnergy and we  
11 should be able to argue that this evidence supports  
12 it.

13 EXAMINER PRICE: I agree. Overruled.

14 MS. GRADY: Your Honor, my next motion to  
15 strike -- may have I have a moment, your Honor?

16 EXAMINER PRICE: You may.

17 MS. GRADY: Your Honor, my next motion to  
18 strike begins on page 323, line 25, through 324, line  
19 4 on the basis of hearsay. We were talking about  
20 responding to an e-mail from a Vince Astor. And I  
21 don't believe Mr. Astor has been identified as a CKAP  
22 member.

23 EXAMINER PRICE: She wrote the e-mail.

24 MS. GRADY: But the e-mail is coming from  
25 Vince Astor and that's the problem. That's the

1 hearsay.

2 MR. KUTIK: Your Honor, we are not  
3 offering Mr. Astor's e-mail for the truth. The  
4 relevant part of the document is Ms. Steigerwald's  
5 response to Mr. Astor.

6 EXAMINER PRICE: He actually directs her.  
7 "At the top this is an e-mail that you wrote to  
8 somebody named Vince, correct?

9 "Yes."

10 Overruled.

11 MS. GRADY: It says you are responding to  
12 an e-mail.

13 EXAMINER PRICE: Well, page 323, "The  
14 court reporter has handed you what's been marked as  
15 Exhibit 41. At the top this is an e-mail that you  
16 wrote to someone named Vince, correct?"

17 MS. GRADY: And then it's indicated later  
18 on, your Honor, on the top of 334 that she is  
19 responding to the e-mail from Vince Astor?

20 EXAMINER PRICE: Right.

21 MS. GRADY: And my position is the e-mail  
22 from Vince Astor is hearsay.

23 EXAMINER PRICE: But he is not asking her  
24 any questions about what Mr. Astor's e-mail says. He  
25 says at line 9, "Now, you are describing some certain

1 things to Mr. Astor, correct?"

2 MR. KUTIK: The only -- I'm sorry, your  
3 Honor.

4 EXAMINER PRICE: No. Go ahead,  
5 Mr. Kutik.

6 MR. KUTIK: The only relevance with  
7 respect to the rest of the document was to identify  
8 who was in her e-mail. We go down the document, and  
9 we see that she's responding to an e-mail from an  
10 individual named Vince, e-mail so it establishes for  
11 the record who Vince is, that's the relevance.

12 MS. GRADY: I guess if we are on  
13 relevance, what is the relevance of this? Not a  
14 member. CKAP --

15 EXAMINER PRICE: We will get to the  
16 relevance of Exhibit 41 when we take up 41.  
17 Overruled.

18 MS. GRADY: Now going to my next motion  
19 to strike goes to page 335, lines 14, through 326,  
20 line 2, motion to strike on relevance and hearsay as  
21 well.

22 EXAMINER PRICE: Mr. Kutik.

23 MR. KUTIK: Your Honor, again, this --  
24 this establishes interworkings of CKAP and where the  
25 issue of promises came from. We talked earlier,



1 Ms. Steigerwald admitted that no promises were made  
2 to her. It was only after Mr. Grendell suggested  
3 that prom -- we might want to talk about promises in  
4 this group that the issue of promises was raised.  
5 It's highly relevant.

6 EXAMINER PRICE: Overruled.

7 MS. GRADY: My next motion to strike is  
8 on page 328, lines 13 through 17. Hearsay and  
9 relevance.

10 EXAMINER PRICE: Overruled.

11 MS. GRADY: My next motion to strike is  
12 on page 333, beginning on line 7, all the way down to  
13 line 24 of page 333, on the basis of hearsay and  
14 relevance.

15 EXAMINER PRICE: Mr. Kutik.

16 MR. KUTIK: Your Honor, as we established  
17 in other parts of this deposition, Mr. Grendell was  
18 acting as her lawyer. This is discussions between  
19 her and her lawyer and her lawyer is making these  
20 comments in his representative capacity; therefore,  
21 it is the admission of a party opponent.

22 MS. GRADY: Your Honor, Mr. Grendell is  
23 not a representative in this case nor is he a member  
24 of CKAP.

25 MR. KUTIK: He is a lawyer for Ms.

1 Steigerwald.

2 MS. GRADY: Not in this proceeding he is  
3 not.

4 MR. KUTIK: It doesn't matter.

5 EXAMINER PRICE: I think he has  
6 established she's a member of the class. He's a  
7 lawyer for -- if you look at page 328, "He is the  
8 lawyer for a class action lawsuit.

9 "That includes you, correct?

10 "Yes.

11 "And other members of CKAP, correct?

12 "Yes.

13 "So he's your lawyer, correct?

14 "He is a lawyer for the lawsuit, yes.

15 Overruled.

16 MS. GRADY: Your Honor, my next motion to  
17 strike is on 333, lines 21 through 24. Hearsay and  
18 relevance.

19 EXAMINER PRICE: You are talking about  
20 333, 21 through 24?

21 MS. GRADY: Yes.

22 EXAMINER PRICE: Mr. Kutik.

23 MR. KUTIK: Your Honor, again, this shows  
24 that essentially Mr. Grendell was working with  
25 Ms. Steigerwald in the formation of CKAP and even

1 basically helped her suggest the name.

2 EXAMINER PRICE: Very limited probative  
3 value, sustained.

4 MS. GRADY: My next motion to strike is  
5 on page 334, line 7, through 13 -- 7 through 14,  
6 hearsay as well as relevance.

7 EXAMINER PRICE: Overruled.

8 MS. GRADY: Next motion to strike is  
9 on --

10 EXAMINER PRICE: You are making me --  
11 that one made me reconsider my previous motion -- or  
12 previous ruling but we'll just -- we'll overrule this  
13 one.

14 MS. GRADY: Page 334, lines 20 through  
15 24, relevance and hearsay.

16 EXAMINER PRICE: He was acting as their  
17 lawyer at the time, overruled.

18 MS. GRADY: Page 337, starting on line 8,  
19 carrying over to 338, line 14, based upon relevance.

20 EXAMINER PRICE: Overruled.

21 MS. GRADY: Page 344, beginning line 17,  
22 carrying over to page 346, line 11, based upon  
23 several grounds, your Honor, relevance, lack of --  
24 lack of -- I'm sorry, lack of -- lack of personal  
25 knowledge on areas that are subject to expert

1 opinion, and lack of familiarity, meaning that it  
2 should not be a basis for the admission of lay -- lay  
3 witness testimony.

4 EXAMINER PRICE: Mr. Kutik.

5 MR. KUTIK: This is what she is telling  
6 people to say in comments that appear in the docket  
7 in this case.

8 EXAMINER PRICE: Yeah. I'm not sure if I  
9 am understanding your objection, Ms. Grady.

10 MS. GRADY: Your Honor, if we take  
11 several sections, the first section of the excerpt  
12 really deals with what case did the residential  
13 distribution credit get taken away and --

14 EXAMINER PRICE: The fact that she may  
15 have misled people because she didn't understand  
16 doesn't change the fact that she certainly made the  
17 statements. FirstEnergy is not offering her  
18 statements as this is correct. FirstEnergy is  
19 offering the statement as this is what she was  
20 telling people.

21 MR. KUTIK: That's true, your Honor.

22 MS. GRADY: And I would submit that  
23 that's not relevant.

24 EXAMINER PRICE: Overruled.

25 MS. GRADY: Your Honor, my next motion to

1 strike is on page 361, beginning on line 19  
2 through -- through line -- page 362, line 15, she's  
3 advising people based upon advice she received from  
4 Amy Gomberg from the OCC, so it's hearsay and  
5 relevance as well.

6 EXAMINER PRICE: Can you give me the  
7 beginning and end of that again?

8 MS. GRADY: Beginning would be line 19,  
9 on 361, ending on page 362, line 15, having to do  
10 with settlement discussions as well.

11 EXAMINER PRICE: I understand.

12 Mr. Kutik.

13 MR. KUTIK: Your Honor, we are not  
14 offering this for the truth. There were settlement  
15 discussions but the fact that OCC had such a close  
16 connection with CKAP that they were advising CKAP of  
17 OCC's discussions or other discussions with respect  
18 to FirstEnergy regarding settlement. That is  
19 certainly contrary to the impression they tried to  
20 give the Commission initially that OCC couldn't  
21 represent their interests adequately and there was  
22 some type of independence or adversity between those  
23 two parties.

24 EXAMINER PRICE: Okay. Overruled.

25 MS. GRADY: I would object to that

1 characterization.

2 EXAMINER PRICE: Your objection is noted.

3 Thank you.

4 MS. GRADY: Your Honor, my next motion to  
5 strike comes at page 370, beginning on lines 3  
6 through line 10, on the basis of hearsay.

7 EXAMINER PRICE: FirstEnergy is not  
8 offering that for the truth of the matter asserted.  
9 They are simply saying what she was doing, passing on  
10 information that came from OCC or Senator Grendell's  
11 office. Overruled.

12 MS. GRADY: I believe that's the extent  
13 of Volume II.

14 EXAMINER PRICE: Mr. Corcoran, any  
15 exhibits -- any objections to any -- with respect to  
16 exhibit -- Volume II that OCC has not already made?

17 MR. CORCORAN: No, your Honor.

18 EXAMINER PRICE: Thank you.

19 Okay. Let's proceed with the exhibits.

20 MS. GRADY: Starting with Company Exhibit  
21 4.

22 EXAMINER PRICE: Okay. Let's go off the  
23 record.

24 (Discussion off the record.)

25 EXAMINER PRICE: Let's go back on the

1 record.

2 Start with Exhibit 4.

3 MS. GRADY: Yes, your Honor. We would  
4 move to strike, and it's going to be a little  
5 difficult. I will have to describe it because  
6 there's no lines.

7 On the first page -- Exhibit 4 is a  
8 two-page exhibit. We are objecting to the portion --  
9 the first entire three paragraphs above the subject  
10 line. Starting with "mention to them that it was"  
11 and then ending at "Cleveland, Ohio 44114."

12 The transcripts will show that  
13 Ms. Steigerwald could not identify what this -- what  
14 this excerpt came from. She could not and that's  
15 found at transcript 57. She had no knowledge,  
16 personal knowledge, of where it came from or what it  
17 meant, so that -- that would be the objection with  
18 respect to that portion.

19 EXAMINER PRICE: Mr. Kutik.

20 MR. KUTIK: Your Honor, I don't  
21 believe -- I'll take Ms. Grady's characterization,  
22 but I don't believe we really had any discussion  
23 about the top portion of this page of the exhibit.

24 That being said, the problem that we have  
25 is that when we ask for e-mails and newsletters and

1 that type of thing, we were given what's called a  
2 text file which basically had e-mails seriatim, so we  
3 have one e-mail or e-mail chain on top of another.

4 It is not our intent to make reference to  
5 anything with respect to the first two or three  
6 paragraphs. Essentially we believe the relevant  
7 portion of this document starts at the horizontal  
8 line that begins about two-thirds of the way down the  
9 page.

10 EXAMINER PRICE: Okay. So we can all  
11 agree that anything above the horizontal line will  
12 simply be ignored.

13 MR. KUTIK: That's right.

14 EXAMINER PRICE: Okay. Ms. Grady? Are  
15 you done with Exhibit 4?

16 MS. GRADY: No, that is not all. I  
17 would -- I would offer that we would -- should strike  
18 it rather than leave it in but that certainly is  
19 your -- your call. I would note that on transcript  
20 56 the question asked on line 19, "Ms. Steigerwald,  
21 the court reporter has handed you a document --"

22 EXAMINER PRICE: Ms. Grady, I already --  
23 you're right, it is my call, and I already made it,  
24 so we are just going to ignore everything above the  
25 horizontal line.



1                   Do you have any objections to the rest of  
2                   the exhibit?

3                   MS. GRADY: Yes, your Honor, I do. What  
4                   follows is a -- is a letter that Sue Steigerwald I  
5                   believe received from Jen Lynch which is then a  
6                   letter from Tom Logan which was sent to Senator  
7                   Widener. This is stealth hearsay. There is no  
8                   exception to the hearsay rule that this falls under.

9                   There is no foundation to show that Sue  
10                  had personal knowledge of the underlying claims of  
11                  Mr. Logan that are made in this e-mail. She had  
12                  never talked to Mr. Logan with regard to the dispute.  
13                  She read the e-mail and, therefore, she lacks the  
14                  personal knowledge required under Rule 701 of a lay  
15                  witness.

16                 EXAMINER PRICE: Mr. Kutik.

17                 MR. KUTIK: Your Honor, they are having  
18                 these conversations or this e-mail chain because they  
19                 are all members of CKAP. So they are statements of  
20                 CKAP. And, therefore, it's not hearsay.

21                 With respect to the relevance, we talked  
22                 about the relevance with respect to Mr. Logan's  
23                 potential animus towards Ohio Edison and the  
24                 authenticity of the letter he allegedly received.

25                 EXAMINER PRICE: Okay. Sustained -- not

1       sustained. Back up, strike that.

2               Your objection to -- I'm trying to think  
3       what the proper ruling is. Your objection to the  
4       admission -- let's go off the record.

5               (Discussion off the record.)

6               EXAMINER PRICE: Objection is overruled  
7       to Exhibit 4.

8               MS. GRADY: Moving on to Exhibit 5, your  
9       Honor, we object to portions of this -- object, move  
10      to strike portions of this exhibit starting with the  
11      fourth --

12              EXAMINER PRICE: Why don't you tell me  
13      what your objections are first.

14              MS. GRADY: Your Honor, my objections are  
15      that parts of this letter relate to legal  
16      conclusions. As a lay witness, her testimony should  
17      be limited to opinions which are rationally based on  
18      personal knowledge and helpful to clear understanding  
19      of the facts and issues.

20              Doing research as she has done does not  
21      qualify to make her -- does not qualify her to make  
22      legal conclusions, in addition, under Rule 3403 --

23              EXAMINER PRICE: I don't think  
24      FirstEnergy is moving this for her legal conclusions.  
25      I think they are moving this to show what she said to

1 people.

2 Am I incorrect about that?

3 MR. KUTIK: That's correct.

4 EXAMINER PRICE: You are not endorsing  
5 her conclusions.

6 MR. KUTIK: And the fact she was telling  
7 people stuff she knew wasn't true.

8 MS. GRADY: Your Honor, if the -- if  
9 counsel is trying to attack the truthfulness of this  
10 witness, it cannot do so by extrinsic evidence.  
11 Under 608(B) it cannot -- it cannot attack the  
12 truthfulness of a witness through extrinsic evidence.

13 EXAMINER PRICE: Mr. Kutik.

14 MR. KUTIK: Your Honor, this is a subject  
15 that CKAP has taken a position on in this case, that  
16 is, whether there is a subsidy or not. Here we have  
17 a statement of an individual who then by the way, the  
18 statement is then repeated in public testimony.

19 This is a statement she knew was untrue.  
20 And so on many levels -- and many levels it's not  
21 necessarily an extrinsic evidence to -- with respect  
22 to credibility and it relates to a specific issue  
23 that's been put at issue in this case.

24 EXAMINER PRICE: Yeah. Overruled.

25 Exhibit 6.

1 MS. GRADY: Your Honor, are we on  
2 number -- Exhibit No. 6? Your Honor, within this  
3 document is various hearsay statements. We would  
4 object to the hearsay statements coming in. Where we  
5 find hearsay statements are in the first paragraph  
6 starting with "And I'm sure Amy pointed out," I  
7 assume that's a reference to Amy Gomberg. It's an  
8 out-of-court statement and it falls -- it's not  
9 clear. I's not an exception to hearsay. Amy Gomberg  
10 is not part of CKAP and, therefore, there is no  
11 exception.

12 In terms of the e-mail that followed --  
13 EXAMINER PRICE: But you can present Amy  
14 Gomberg to say she didn't make that statement. I  
15 mean, that's the whole point of the hearsay exception  
16 party opponent. If Amy Gomberg doesn't agree with  
17 this statement, you could produce Amy Gomberg, and  
18 she could stand up and say I never said that; isn't  
19 that right?

20 MR. KUTIK: Plus it's not hearsay because  
21 it's OCC.

22 MS. GRADY: I would like to understand  
23 that if an OCC statement is not hearsay, that --

24 EXAMINER PRICE: You are a party opponent  
25 to FirstEnergy.

1 MR. KUTIK: Just as FirstEnergy is  
2 advertising their statements from FirstEnergy.

3 MS. GRADY: It's not an admission by a  
4 party opponent. It doesn't fall within this -- if  
5 you can cite a rule that you are responding to that  
6 makes it an exception to hearsay, that would be  
7 great. That would be helpful, so I can understand  
8 it.

9 MR. KUTIK: Well, I am not going to cite  
10 you the basic Rules of Evidence, counsel. The  
11 statement by a party opponent is not hearsay. Look  
12 it up.

13 I apologize, your Honor.

14 EXAMINER PRICE: Thank you, Mr. Kutik.

15 He's correct. Statements by OCC  
16 witnesses, you've got any opportunities you want to  
17 argue that these statements were not made. I mean,  
18 that's the whole point of the hearsay rule, so you  
19 can properly contest out-of-court statements.

20 If Amy Gomberg didn't make this  
21 statement, you should produce Amy Gomberg and deny  
22 making the statement. Overruled.

23 MS. GRADY: Your Honor, in the bottom  
24 portion of Exhibit 6 is an e-mail from Andy Ouriel to  
25 Sue Daugherty and that certainly is a hearsay. I am

1 not sure what exception to hearsay that falls under.  
2 I don't believe Mr. Ouriel -- or the company has laid  
3 a foundation to show that Mr. Ouriel, or however you  
4 pronounce that, is a CKAP member.

5 MR. KUTIK: Your Honor, we are not  
6 offering any document here from Mr. Ouriel who, by  
7 the way, is a media member, other than to show that  
8 this was -- that was transmitted.

9 EXAMINER PRICE: Yeah. I don't think  
10 they are offering that statement for the truth of the  
11 matter asserted, just to set this to provide context  
12 for these other statements by CKAP. Overruled.

13 MS. GRADY: And, your Honor, on the  
14 second page we've got a hearsay within hearsay, an  
15 e-mail from Andy Ouriel to -- forwarding an e-mail  
16 from Ellen -- Eileen Raines of FirstEnergy.

17 EXAMINER PRICE: Overruled.

18 MS. GRADY: So, again, that's hearsay  
19 within hearsay.

20 EXAMINER PRICE: It's overruled.

21 MS. GRADY: And finally, your Honor, this  
22 is -- this is an incomplete document. It appears to  
23 be that it is a three-page document and the company  
24 has produced only two of the three pages.

25 EXAMINER PRICE: Mr. Kutik.

1 MR. KUTIK: Your Honor, we would be glad  
2 to add the next page if there is a next page. The  
3 context is basically to talk about what Ms. Raines is  
4 saying in the first paragraph that Ms. Steigerwald  
5 then comments on in hers.

6 EXAMINER PRICE: I understand. If you  
7 could just add the third page to the record so that  
8 it's complete. Now, this is a document that was  
9 produced to you by CKAP; is it not?

10 MR. KUTIK: It was a document that was  
11 produced by I believe OCC.

12 EXAMINER PRICE: By OCC.

13 MR. KUTIK: And I would just note, your  
14 Honor, we will -- as you note, it says in the bottom  
15 right "2 of 3" on the last page, so I'm not sure  
16 there is a last --

17 MS. GRADY: There is a last page.

18 MR. KUTIK: Let me finish -- but if there  
19 is a last page, we will certainly produce it.

20 EXAMINER PRICE: If FirstEnergy is unable  
21 to produce it, then we will have OCC produce it.

22 MS. GRADY: It was contained in the  
23 discovery that was submitted to the company.

24 EXAMINER PRICE: Okay.

25 MR. KUTIK: We'll look at Bates number

1 5453 and produce that.

2 EXAMINER PRICE: Thank you.

3 Exhibit 7.

4 MS. GRADY: Exhibit 7, again, here we are  
5 talking about hearsay within hearsay. We've got a  
6 letter from Mr. Bruton to Sue Steigerwald and a  
7 number of others and within that letter he's attached  
8 documents from other residents that show other  
9 information, so it's hearsay within hearsay within  
10 hearsay. And this is -- there is no exception. It's  
11 not reliable evidence.

12 EXAMINER PRICE: But, Ms. Grady, I don't  
13 believe that FirstEnergy is offering Mr. Bruton's  
14 e-mail for the truth of the matter asserted. I  
15 suspect they don't agree with everything that he says  
16 in here. They are simply offering this as context  
17 for Sue Steigerwald's statements in her e-mail at the  
18 top of the e-mail chain.

19 MR. KUTIK: That's correct, your Honor.  
20 Specifically the statement that several people have  
21 mentioned seeing record-low bills in May and June.

22 MS. GRADY: I would also add relevance to  
23 my objection.

24 EXAMINER PRICE: Overruled.

25 MS. GRADY: Going on --



1           EXAMINER PRICE: I do want to point out  
2 for the record, because we are having a string here  
3 of objections by OCC that are being overruled, that  
4 FirstEnergy similarly had numerous objections to  
5 hearing exhibits at the public hearing and the vast  
6 majority of those objections were overruled and  
7 FirstEnergy has indicated that they should argue the  
8 relevance and hearsay issues on those objections on  
9 their brief as to the weight of the evidence.

10           I don't want the record to look like we  
11 are treating OCC any differently than we previously  
12 treated FirstEnergy. In both cases the vast majority  
13 of objections raised by the parties are being  
14 overruled. Thank you.

15           On to Exhibit 8.

16           MS. GRADY: On Exhibit 8, your Honor,  
17 your Honor, we object or move to strike the e-mail  
18 from -- that relates to Sue Steigerwald which is  
19 contained at the bottom of 1 of 2 carrying over to 2  
20 on the basis that it is hearsay. The transcript  
21 shows that under transcript 105, line 20, through  
22 107, shows that Mr. Steigerwald did not have personal  
23 knowledges -- personal knowledge of Mr. Bishop's  
24 circumstances or the positions he held and,  
25 furthermore, that under Rule 701 who his wife works

1 for -- let me strike that.

2 She did not have personal knowledge of  
3 Mr. Bishop's information and, therefore, as a lay  
4 witness cannot present testimony, and this is in  
5 furtherance of the testimony.

6 MR. KUTIK: This is an e-mail  
7 conversation between two members of CKAP specifically  
8 where she is trying to get him to say he told people  
9 while he worked for FirstEnergy or Ohio Edison that  
10 the discount went with the house and she said -- and  
11 he said, no, it didn't.

12 EXAMINER PRICE: Overruled. At this time  
13 I think we need to take a recess. Let's go off the  
14 record for a minute.

15 (Discussion off the record.)

16 EXAMINER PRICE: At this time we are  
17 going to take a lunch break until 2:15, at which  
18 point we will take our next witness and resume  
19 working on the exhibits after the witness.

20 Thank you. Off the record.

21 (Lunch recess taken at 1:10 p.m.)

22 - - -

23

24

25

1 Wednesday Afternoon Session,  
2 February 23, 2011.

3 - - -

4 EXAMINER PRICE: Let's go on the record.  
5 Just for purposes of the record I would like to state  
6 that Company Exhibit 3C has been marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. KUTIK: Your Honor, and also for the  
9 record Exhibit 3C contains the additional excerpts  
10 that were requested by OCC this morning, and we do  
11 not object to them, of Ms. Steigerwald's deposition.

12 EXAMINER WILLEY: Okay. Is FirstEnergy  
13 ready to proceed?

14 MR. KUTIK: Yes, your Honor, for our  
15 first rebuttal witness we call Charles R. Ritley.

16 (Witness sworn.)

17 MR. KUTIK: May I proceed, your Honor?

18 EXAMINER WILLEY: Yes, please.

19 MR. KUTIK: Your Honor, we have marked  
20 for identification and provided the court reporter  
21 four exhibits. We have marked as Company Exhibit 64,  
22 rebuttal testimony of Charles R. Ritley on behalf of  
23 Ohio Edison Company, The Cleveland Electric  
24 Illuminating Company, and The Toledo Edison Company.

25 We have also marked for identification as

1 Company Exhibit 64 a one-page document entitled at  
2 the top "Attachment CRR-4 (revised)." We have also  
3 marked as Company Exhibit 64B a document, with one  
4 page, that says at the top "Defiance Data Analysis  
5 2003-2010 (revised)." And then as Company Exhibit  
6 64C, we have marked for identification Company  
7 Exhibit -- excuse me, as Company Exhibit 64C a  
8 document entitled "Defiance Data Analysis 2007-2010  
9 (revised)," and we request that the documents be so  
10 marked.

11 EXAMINER WILLEY: They shall so marked.

12 (EXHIBITS MARKED FOR IDENTIFICATION.)

13 - - -

14 CHARLES R. RITLEY

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

17 DIRECT EXAMINATION

18 By Mr. Kutik:

19 Q. Could you introduce yourself, please,  
20 sir?

21 A. Yes, my name is Charles R. Ritley. I'm a  
22 real estate appraiser. My address is 6875 Commerce  
23 Park Road, Beachwood, Ohio 44122.

24 Q. Sir, do you have in front of you what's  
25 been marked for identification as Company Exhibit 64?

1           A.    Yes.

2           Q.    And do you also have in front of you what  
3 has been marked as Company Exhibit 64A, B, and C?

4           A.    Yes.

5           Q.    Tell us what is Exhibit 64.

6           A.    Are you referring to the change?

7           Q.    I am referring to your testimony.

8           A.    Oh, the testimony, I'm sorry. Exhibit 64  
9 is my testimony rebutting Mr. Frawley's earlier  
10 testimony.

11          Q.    Okay. And are 64A, B, and C additions or  
12 corrections that you wish to make to your testimony?

13          A.    Yes, they are.

14          Q.    With referencing these exhibits or  
15 otherwise could you -- do you have additional  
16 corrections that you would like to make?

17          A.    There are two minor typos. It's simply a  
18 word change. The word "of" should be crossed out and  
19 the "two" -- as we go through this, I can point them  
20 out and change them then.

21               MR. SMALL: Your Honor, could we have a  
22 location?

23          Q.    Let me direct your attention, sir, to  
24 page 8 of your testimony. Do you have a correction  
25 to make on that page?

1           A.    This chair is not high enough and I'm too  
2 close to the paper.

3           Q.    Do you need your glasses, sir?

4           A.    Yeah. I believe they are in my coat.

5           EXAMINER PRICE: Let's go off the record.

6           (Discussion off the record.)

7           EXAMINER PRICE: Now let's go back on the  
8 record.

9           MR. KUTIK: Thank you, your Honor.

10          Q.    Sir, while we were off the record we  
11 were -- before we were off the record we were  
12 discussing corrections or additions to your  
13 testimony. Let me direct you to page 8, line 20, and  
14 the second word. Do you wish to amend that word?

15          A.    The -- on line 20, page 8, the beginning  
16 with the word "advantage," the next word is "of,"  
17 should be changed to "or," O-R.

18          Q.    Let me refer you now to page 15, line 12.  
19 Do you have an additional correction to make on that  
20 line?

21          A.    On line 12, beginning "following table,  
22 the data on that the overall," it should be simply  
23 "the overall," crossing out the word "that."

24          Q.    Now, let me refer you to attachment  
25 CRR-1.

1 A. Yes.

2 Q. And specifically within CRR-1 the table  
3 that says "Defiance Submarket Electric Residence  
4 Sales."

5 A. Yes.

6 Q. Do you have any additions or corrections  
7 to make to that table?

8 A. I do. Looking on the left-hand side of  
9 the page about a little more than halfway down you'll  
10 see the address 1697 Crestwood listed twice. The  
11 change on that is that the second Crestwood was a  
12 2008 sale. And for some reason it was -- the same  
13 date was duplicated.

14 Q. Do you have the date?

15 A. I am looking for it. I don't have it on  
16 this page.

17 Q. Is it June 11?

18 A. That would be correct.

19 Q. Let me now refer you to --

20 MR. SMALL: Could I have a clarification  
21 on this correction? 16 --

22 THE WITNESS: I'm sorry, I couldn't hear  
23 you.

24 MR. SMALL: I am just not clear on the  
25 correction.

1 MR. KUTIK: The second listing for 1697  
2 the date should be June 11, 2008.

3 MR. SMALL: And that's the only change?

4 MR. KUTIK: That's the only change.

5 Q. (By Mr. Kutik) With respect to the table  
6 that's labeled "Defiance Submarket Gas Residences,"  
7 do you have any additions or corrections to make to  
8 that?

9 A. I do. A little more than halfway down  
10 the page you'll see two addresses, 1570 Evan Street,  
11 in fact, there is a space between the two because of  
12 space required further down. Both of those listings  
13 should be removed.

14 Q. Now, let me now refer you to Exhibit 64A.  
15 This is entitled C -- "Attachment CRR-4 (revised)."  
16 Does this replace the Attachment CRR-4 that was filed  
17 with your testimony?

18 A. Yes, it does.

19 Q. Now, let me refer you to Exhibit 64B.  
20 And also refer you to page 12 of your testimony.

21 A. Yes.

22 Q. Does 64B replace -- supercede the table  
23 that appears at line 5 on that page?

24 A. Yes, it does.

25 Q. Let me now refer you to page 15 and



1 Exhibit 64C.

2 A. Yes.

3 Q. Does 64C replace and supercede the table  
4 that initially appeared at line 9, page 15?

5 A. Yes, it does.

6 Q. Other than the additions and corrections  
7 that we have just discussed do you have any other  
8 additions or corrections to make?

9 A. No, I do not.

10 Q. If I asked you the questions that appear  
11 in Exhibit 64, would your answers be as appear in 64  
12 subject to the additions and corrections that we have  
13 discussed this morning -- this afternoon?

14 A. Yes, yes.

15 MR. KUTIK: No further questions.

16 EXAMINER WILLEY: All right, the witness  
17 is available for cross-examination. Let's begin with  
18 OCC.

19 MR. SMALL: Thank you, your Honor. As a  
20 preliminary matter the OCC may have motions to strike  
21 but they would be dependent upon some preliminary  
22 questions. So I would like to proceed with those  
23 questions and there may or may not be motions to  
24 strike following them.

25 - - -

## CROSS-EXAMINATION

By Mr. Small:

Q. Good afternoon, Mr. Ritley. I see from your background in question and answer 3 that your bachelor's degree is in economics; is that right?

A. Yes, yes, it is.

Q. And as part of your bachelor's degree how many classes in statistics did you take?

A. One -- one full year of statistics.

Q. Did that class address the subject of regression analysis?

A. Sir, that was approximately 50 years ago and regression analysis was not widely used. It was a general business -- business statistics course.

Q. So the answer to my question is it didn't involve regression analysis?

A. No.

Q. Do you have any formal training in statistics received outside your education at John Carroll?

A. No.

Q. Have you published any articles in journals based on statistical analysis of the data source?

A. We've done general studies and I've been

1 involved in studies regarding value differences for  
2 features in homes some years ago where a discernment  
3 was made as to the improvement or deletion of an item  
4 such as a finished recreation room or a finished  
5 second floor in a bungalow as to the change in value  
6 that one might achieve with that improvement or lack  
7 of.

8 Q. Do you hold yourself out as an expert in  
9 statistical analysis?

10 A. No, I do not. But, again, I'm familiar  
11 with statistical analysis to the point that it  
12 applies to real estate valuation.

13 Q. I would like to direct your attention to  
14 page 3 of your testimony. And on page 3 it's part of  
15 your question and answer to question 5. You state  
16 certain conclusions on page 3 and do you see on line  
17 7 you refer to "statistically significant"?

18 A. Yes.

19 Q. Do all three of these conclusions on this  
20 page, they are No. 1, 2, and 3 on this page, do all  
21 three of your conclusions stated on page 3 of your  
22 testimony depend on statistical analysis?

23 A. I'm sorry, if you could speak up just a  
24 little bit.

25 Q. I'm sorry.

1           A.    I've got a fan behind me.

2           MR. SMALL:  If the court reporter caught  
3   that would you please reread it.

4                   (Record read.)

5           A.    In general, yes.  We did a large study  
6   involving the values of homes given certain  
7   parameters so that the homes maintained a level of  
8   similarities so that they might be compared to one  
9   another with the difference primarily being how they  
10  were heated, whether it was gas or electric.

11          Q.    I direct your attention to page 4 of your  
12  testimony.  And you have comments there on  
13  Mr. Frawley's conclusions.  And then again on line 8  
14  you refer to "statistically significant."  Do all of  
15  your comments stated on page 4, and they are No. 1, 2  
16  and 3 again, do all of your comments stated on 4 --  
17  page 4 of your testimony depend on statistical  
18  analysis?

19          A.    That has a great deal to do with  
20  appraisal analysis.  You cannot compare a widely  
21  different type of home if there is -- if there is  
22  disparity between two residences, they cannot be used  
23  as a comparison one with the other.

24                   When you have a -- in this case a group  
25  of electrically-heated homes and a group of

1 gas-heated homes, there needs to be a degree of  
2 similarity to allow a comparison to boil down the  
3 issue as to whether there is a difference in value  
4 between the gas-heated similar home and an  
5 electrically-heated similar home.

6 When you take -- when you take the homes  
7 out of their neighborhoods, out of the context of a  
8 well-integrated neighborhood where you have both gas-  
9 and electrically-heated homes, you destroy the basis  
10 of comparison. It's meaningless.

11 MR. SMALL: Your Honor, motion to strike  
12 the entire response. There was nothing responsive in  
13 the entire answer to my question of whether the  
14 testimony depends on statistical analysis. No  
15 response to the term -- the question statistical  
16 analysis at all.

17 EXAMINER WILLEY: Okay. I am going to  
18 grant your motion. If you would like to ask the  
19 question again or ask a different question.

20 MR. SMALL: I will repeat it and I would  
21 ask the Bench to ask that the witness respond.

22 Q. (By Mr. Small) Do all three of your  
23 comments stated on page 4 of your testimony depend  
24 upon statistical analysis?

25 A. Yes.

1 MR. SMALL: Your Honor, at this time I  
2 have motions to strike.

3 EXAMINER WILLEY: Okay.

4 MR. SMALL: And for the convenience of  
5 the Bench the basis of all of my motions to strike is  
6 the same. So maybe I could just state them for the  
7 record.

8 The significance of the objection -- or  
9 the motions to strike is that the witness has just  
10 stated that he does not hold himself out as an expert  
11 in statistical analysis and the witness is not  
12 qualified as an expert in this area.

13 All of my motions to strike have to do  
14 with those portions of his testimony that are  
15 statistical in nature including his portions of his  
16 testimony that deal with regression analysis in which  
17 he stated he has no training. If I may cite the  
18 portions of the testimony.

19 EXAMINER WILLEY: Go ahead.

20 MR. SMALL: Page 2, line 19, through page  
21 3, line 18; page 4 --

22 EXAMINER PRICE: Slow down, Mr. Small.

23 MR. SMALL: I'm sorry.

24 EXAMINER WILLEY: I'm sorry, that's page  
25 2, line 19 through?

1 MR. SMALL: Page 2, line 19, through page  
2 3, line 18. This is the portion of the testimony  
3 which I asked the witness whether it depended on  
4 statistical analysis and he stated -- he affirmed  
5 that. But like I said, I'm not -- I think it might  
6 be best if I just cited them since the argument is  
7 going to be based on the same argument.

8 EXAMINER WILLEY: That's fine.

9 MR. SMALL: Second motion to strike is  
10 page 4, line 6, ending on page 4, line 22. The third  
11 motion to strike is page 5, line 16, through page 6,  
12 line 1, ending with the word "analyzed." The fourth  
13 motion to strike is page 6, line 18 --

14 MR. KUTIK: Did you say 18?

15 MR. SMALL: Line 18, yes. Starting with  
16 the word "To." The sentence beginning "To" through  
17 the end of the sentence on line 19 that ends with the  
18 word "data."

19 The fifth motion to strike is page 8,  
20 line 10, starting with the word "After" through the  
21 word "conducted," which appears on page 8, line 11.

22 The sixth motion to strike is page 8,  
23 line 21, starting with the word "We" and concluding  
24 on page 9 through the entire portion of the top  
25 through line 10. This is a testimony about

1 regression analysis.

2 Objection No. 7 is page 10, line 8,  
3 starting with the words "In addition" and ending at  
4 the end of the page, page 10, line 11.

5 The eighth motion to strike is page 14 --

6 EXAMINER PRICE: Mr. Small, how many  
7 motions to strike in total do you have?

8 MR. SMALL: 14. I believe I was on No.  
9 8. Page 14, line 7, beginning with the words "and  
10 there" and ending on page 14, line 9 at the end of  
11 that sentence.

12 Motion to strike No. 9 is page 14, line  
13 15 through line 16, the parenthetical phrase that  
14 appears on lines 15 and 16.

15 MR. KUTIK: So you're seeking to strike  
16 the parenthetical phrase?

17 MR. SMALL: Just the parenthetical, yes.

18 Motion to strike 10 is at page 16, line  
19 9, through page 17, line 2. That would be question  
20 and answer 13.

21 The 11th motion to strike is page 17,  
22 line 14, beginning with the words "In Table 2"  
23 through the end of line 15.

24 The 12th motion to strike is page 18,  
25 line 2, starting with the words "the change" through



1 line 4, and the end of the sentence which ends  
2 "statistically inconsequential."

3 Motion to strike 13 is on page 22, line  
4 14, starting with the words "and the" and proceeding  
5 through line 15, the end of the sentence -- through  
6 the end of the sentence where the last word is  
7 "insignificant."

8 And the last motion to strike is motion  
9 to strike 14 which is Attachment CRR-6 dealing with  
10 summary of a regression analysis. That concludes the  
11 OCC's motion to strike. And as I say, your Honor,  
12 they are all based on the same argument.

13 EXAMINER PRICE: And that argument again  
14 is?

15 MR. SMALL: The witness has acknowledged  
16 on the stand that he is not an expert in statistical  
17 analysis and he has had no training in regression  
18 analysis.

19 EXAMINER WILLEY: Does FirstEnergy have a  
20 response?

21 MR. KUTIK: Yes, your Honor, I do if I  
22 need to.

23 EXAMINER PRICE: It wouldn't hurt.

24 MR. KUTIK: Okay. Your Honor, as this  
25 witness's testimony both in his prefiled testimony

1 and on the stand indicate, he is a 47 perhaps plus  
2 year practitioner in real estate valuation and  
3 appraisal including practitioner of the art of  
4 statistical analysis relating to comparative  
5 evaluation of real estate.

6 He specifically said that he also is  
7 experienced in doing studies just like the study he  
8 did in this case to compare the particular value or  
9 added value or detrimental value of a particular  
10 feature of a home using statistical analysis again.

11 The only question he was asked with  
12 respect to regression analysis is whether he took a  
13 course of that at John Carroll, and as this witness  
14 indicated, that was not something that he learned in  
15 that course.

16 Certainly as a practitioner he is someone  
17 who uses standard statistical analysis which is  
18 something he -- and he's able to answer questions  
19 with respect to what he did with respect to  
20 regression analysis and what he did or what others  
21 did at his direction with respect to regression  
22 analysis, and there is no indication on the record or  
23 by Mr. Small's aborted examination of Mr. Ritley that  
24 he is unable or unqualified to discuss those subjects  
25 based upon the 47-year career that he's had.

1 EXAMINER WILLEY: Do you have a response,  
2 Mr. Small?

3 MR. SMALL: Yes, your Honor. The  
4 counter-argument seems to be that he -- that the  
5 witness has extensive experience as an appraiser.  
6 There is no indication from testimony or from the  
7 cross-examination conducted that he while -- and I  
8 did not move to strike his entire testimony which I  
9 would do if -- if there was no indication of his  
10 expertise, but the argument that he's been a  
11 practitioner and an appraiser for a long career does  
12 not speak to his ability in the --

13 EXAMINER PRICE: That's not the argument  
14 he made. The argument he made is he has used  
15 statistical analysis in his field as an appraiser for  
16 47 years.

17 MR. KUTIK: And that's what he so  
18 testified, your Honor.

19 EXAMINER PRICE: Do you have to be an  
20 expert in statistics to use statistical analysis?

21 MR. SMALL: I believe you have to have --  
22 I believe you have to have formalized training.

23 EXAMINER PRICE: He has formal training  
24 in statistics. He has a course in statistics. You  
25 asked that question. You said -- what you said is

1 "Have you ever had a course in regression analysis?"  
2 You didn't ask him -- you asked him do you have a  
3 course in statistical analysis. He said "Yes," and  
4 then you asked "Did that include regression  
5 analysis?" He said no, it wasn't very common  
6 practice in 1963 or.

7 THE WITNESS: That's correct.

8 MR. SMALL: Well, I asked him whether he  
9 had training in statistics and it's one class -- one  
10 course of study in -- as an undergraduate.

11 MR. KUTIK: Well, to be fair it was one  
12 year.

13 MR. SMALL: It may have been a year class  
14 but it was one class long ago in a bachelor's degree  
15 program, and I emphasized when asked if he holds  
16 himself out as an expert in this area, he answered  
17 no, and I also asked him whether he had any other  
18 training and said in this field and he also answered  
19 no to that question.

20 MR. KUTIK: The question was have you  
21 ever had any other formal training. Certainly he has  
22 been a practitioner of this art and using these  
23 analyses for 47 years. That's enough qualification.

24 MR. SMALL: Well, your Honor, the  
25 telling -- the telling response was I asked him

1       whether he holds himself out as an expert in  
2       statistical analysis and he said no.

3               EXAMINER PRICE:  No.  You don't -- only  
4       if people ask you questions.  Do you hold yourself  
5       out as an expert in appraisal?

6               THE WITNESS:  Yes, I do.

7               EXAMINER PRICE:  Do you hold yourself out  
8       as an expert in using statistical analysis for  
9       appraisals?

10              THE WITNESS:  Yes.

11              MR. SMALL:  Well, your Honor, he has just  
12       contradicted himself on the stand.  I'm sure that the  
13       witness understands his predicament having responded  
14       to do me initially, but he's just contradicted  
15       himself on the stand.

16              EXAMINER PRICE:  I don't need this  
17       predicament, Mr. Small, honestly.  You are saying no  
18       person can come and testify before a Commission  
19       proceeding and use statistics unless they claim to be  
20       an expert in statistical analysis.

21              MR. SMALL:  Yes, that's -- it seems like  
22       an admission that he does not have a command of this  
23       area.

24              EXAMINER PRICE:  I suspect that you are  
25       opening the door to a lot of expert testimony being

1 stricken before this Commission, Mr. Small.

2 EXAMINER WILLEY: Your objection will be  
3 denied -- I'm sorry, your motion will be denied, your  
4 motion to strike.

5 Are you ready to proceed with  
6 questioning?

7 MR. SMALL: Yes, I am.

8 EXAMINER WILLEY: Please proceed.

9 Q. (By Mr. Small) Mr. Ritley, would you  
10 please turn to page 7 of your testimony.

11 A. Yes.

12 Q. Now, I'm particularly interested in the  
13 portion of your testimony on lines 11 through 13.  
14 And you state that the goal -- I'm on line 11, "the  
15 goal was to determine whether the change in electric  
16 rates paid by owners of electric-heated residences  
17 was negatively impacting the value and marketability  
18 of their residences." Do you see that?

19 A. Yes.

20 Q. When you say "the goal," you mean the  
21 goal of your work and the purpose of your testimony;  
22 is that correct?

23 A. The purpose of my testimony and the goal  
24 of my work was to determine whether or not the value  
25 of electrically-heated homes as compared to similar

1 gas-heated homes suffered a price decline or not. We  
2 did not know, and that was the purpose of this study.  
3 There is a difference.

4 Q. For the four submarkets that you identify  
5 in your testimony, you compared home sales for years  
6 2003 through 2010, correct?

7 A. Yes, I did.

8 Q. And do you know the history of the change  
9 in electric rates over the years 2003 through 2010  
10 for customers in these submarkets?

11 A. I know there was a change in 2007  
12 impacting homebuyers of electric homes at that time.

13 Q. Okay. Are you aware of the electric  
14 rates that were in effect from -- during the period  
15 of -- the early years of your study period through  
16 December 31, 2005?

17 A. I can't cite them specifically but I'm  
18 aware that there may have been some changes during  
19 that period.

20 Q. You're not aware there was a rate freeze  
21 during that time period?

22 A. A rate increase on electrically-heated  
23 homes or for all homes?

24 Q. I said a "rate freeze."

25 A. "Freeze."

1 Q. "Freeze."

2 A. It's hard -- I have a fan behind me, sir.  
3 It's hard.

4 Q. You are not aware there was a rate freeze  
5 during that period ending December 31, 2005?

6 A. Yes, I am aware there was a rate freeze.

7 Q. Do you know the length of time covered by  
8 the -- the following rate plan for the FirstEnergy  
9 electric distribution utilities?

10 A. No.

11 Q. Now, you said that you were aware of some  
12 change in rates. Was it 2007 that you said?

13 A. Yes.

14 Q. And what was that change?

15 A. As I understand it, it was a -- the buyer  
16 of a home in 2007 would not continue to receive the  
17 discount that the prior owner had.

18 Q. Okay. Following -- following that change  
19 in rate tariff are you aware of any other changes  
20 that occurred in tariffs for residential customers?  
21 I'm specifically referring to this period of 2003  
22 through 2010.

23 A. As I recollect, there were some changes  
24 that occurred relative to the discounts. There was  
25 an additional discount given in 2000, I believe it



1 was 2009.

2 Q. What were the discounts that you are  
3 referring to?

4 A. I can't cite the names of the discounts.  
5 Those discounts were not, again, pertinent to my  
6 study. My study was to show the difference, if any,  
7 between gas- and electrically-heated homes over a  
8 period of time.

9 Q. So you're saying you're aware that there  
10 were some discounts for electrically-heated  
11 homeowners in the 2009 period, is that what you just  
12 said?

13 A. I believe there was a discount granted in  
14 2009.

15 Q. And anything after that?

16 A. I'm not aware of it.

17 Q. All right. Now, you've -- you've  
18 mentioned a few changes in residential tariffs over  
19 this period of 2003 through 2010. Which of the  
20 changes in electric rates do you believe is evaluated  
21 by your valuation of residences for the years 2003  
22 through 2010?

23 A. Which of the changes?

24 Q. Yes.

25 A. That would have been the 2007 change

1       wherein homebuyers of an electrically-heated home  
2       would not receive a discount going forward.

3               Q.     So that's the -- that's the purpose of  
4       your evaluation -- evaluation for the years 2003  
5       through 2010?

6               A.     2007 through 2010.

7               Q.     All of my questions have been about so  
8       far --

9               A.     2003 --

10              Q.     If you could let me finish my question,  
11       sir. All of my questions so far have been about your  
12       analysis of the years 2003 through 2010. So with  
13       that in mind, which -- I think we have to go back.  
14       Which of the changes in prices were you trying to  
15       evaluate in doing that work?

16              A.     Again, the determination of our study was  
17       to see if there were any value changes that occurred  
18       during these periods of times relative to gas-heated  
19       homes as to electric homes. It was a comparison  
20       between the two types of property, other things  
21       considered similar as to whether it was gas or  
22       electric heated, was there a change in value.

23              Q.     So you are not doing any evaluation of  
24       any particular change in -- in prices?

25              A.     If the -- if there was a price change

1 that occurred because of a discount lapse or put in  
2 place, it would have shown up in data. In other  
3 words, if the -- if there had been a discount put in  
4 place, one might have expected the values to rise.  
5 If there was a discount taken away, one might expect  
6 the value to decrease for electrically-heated homes.

7 Q. Do you agree if you include a period of  
8 time, you study a particular period of time in which  
9 there were changes that not all in the same  
10 direction, that that would tend to obscure any change  
11 connected with any particular price movement?

12 A. Our study showed that there is no  
13 significant change in value during that period of  
14 time as the two types of heating related to one  
15 another for similar homes.

16 MR. SMALL: Your Honor, motion to strike  
17 the entire answer as being unresponsive.

18 MR. KUTIK: Your Honor, basically he  
19 disagreed with the characterization of the question  
20 and was explaining his point of view on that subject.  
21 It was responsive.

22 EXAMINER WILLEY: I am going to deny your  
23 motion to strike.

24 Q. For this eight-year period that you  
25 studied, 2003 through 2009, were nominal values used

1 for the sale price of residences?

2 A. You said "nominal values"?

3 Q. Nominal values, yes.

4 A. We used the sale price of these  
5 residences on a per-square-foot basis.

6 Q. So there was no attempt to adjust for  
7 inflation over this eight-year period?

8 A. No, because we were comparing this entire  
9 period for -- and you can see by the charts that they  
10 relate to the time period. You can see change over  
11 time.

12 Q. Okay. If you could turn to page 6 of  
13 your testimony. And at the bottom of that portion of  
14 your testimony, lines 15 through 18, you refer to  
15 selecting residences built during a certain period of  
16 time to have, I am quoting here on page -- line 16,  
17 "features and styles that were" -- features and  
18 styles. Could another period of time for the  
19 construction of residences been -- have been picked  
20 in order to have features and styles that were in  
21 harmony with one another?

22 A. That could be if gas and electric homes  
23 continued to have been built during those other  
24 periods of time. It is clear that the subdivisions  
25 that were developed after 1985 were virtually all

1 gas-heated homes.

2 The period prior to 1965 virtually all  
3 the homes were gas heated so that you could not draw  
4 a proper basis of comparison using older or newer  
5 homes than that period of time.

6 Q. Okay. According to footnote 2 in your  
7 testimony, you deviated from your rule concerning  
8 construction in 1965 through 1985 in two instances,  
9 correct?

10 A. Yes. And that was because they were --  
11 first of all, it was very close in time. There was a  
12 more limited amount of data available in Avon Lake  
13 and these two homes that were included were a 1962  
14 and 1964 which was very close to the 1965 cutoff that  
15 we had otherwise established and, therefore, we  
16 included them to have enough data with which to work.

17 Furthermore, these homes still bore a  
18 good level of resemblance in similarities to the  
19 homes included. And were in the same neighborhood.

20 Q. According to page 7 of your testimony,  
21 I'm on lines 3 through 4, you also eliminated  
22 outliers. Do you see that in your testimony?

23 A. Page 7, lines?

24 Q. 3 through -- 3 and 4.

25 A. Yes.

1           Q.   Where in your testimony do you explain  
2 where the outliers were that you eliminated?

3           A.   An outlier would be a property that would  
4 be, for example, a very, very low sale price, a home  
5 that was in foreclosure, vacant, in poor condition.  
6 There might be an exceptional -- exceptionally high  
7 priced home that perhaps would be in the \$150 square  
8 foot range that would be eliminated.

9                       These were not -- these are properties  
10 that are not comparable or similar to the homes  
11 included in the study. Again, a major attempt was  
12 made on our part to keep the homes on a similar  
13 footing.

14                   MR. SMALL: Your Honor, move to strike  
15 the answer as nonresponsive, the question was where  
16 in your testimony. I didn't hear anything that  
17 responded to my question of where we find his  
18 analysis in his testimony.

19                   EXAMINER PRICE: Could I have the answer  
20 back, please.

21                               (Record read.)

22                   EXAMINER WILLEY: I am going to grant the  
23 motion to strike.

24                   MR. SMALL: If we could have my original  
25 question read to the witness, please.

1 EXAMINER WILLEY: Please read back the  
2 question.

3 (Record read.)

4 A. On page 6, line 9, through line 19. If I  
5 may read it. "The sales data was further refined to  
6 ensure that my analysis included comparable  
7 residences and that the observations drawn from each  
8 submarket was consistent to the greatest degree  
9 possible. Specifically, principal value shaping  
10 parameters were considered such as: Year built,  
11 house size, lot size, style, condition, and  
12 eliminated those residences with the anomalous  
13 features. For example, electric-heated residences  
14 began to be constructed in the early 1970s.  
15 Consequently, we only considered residences built  
16 between 1965 and 1985, because older and newer  
17 residences would be more likely to have features and  
18 style that were not harmonious with residences built  
19 during the selected time period. To go beyond the  
20 selected time period would create the inappropriate  
21 risk ever skewing the data. Location was also a  
22 major parameter."

23 Now, if it didn't fit within those  
24 parameters, it was an outlier. If a home contained  
25 4,000 square feet, and if you look at our studies the

1 homes were plus or minus a couple hundred square  
2 feet, 2000 square feet, that 4,000 square foot home  
3 would be an outlier and not appropriate to include in  
4 the study. It would skew the data one way or the  
5 other.

6 Q. The testimony that you have on the  
7 following then which was the -- began my questioning  
8 is merely redundant; is that correct? When you say  
9 "Our analysis eliminated outliers after determining  
10 their disqualification"? You are referring to the  
11 same elimination you had --

12 A. Yes, sir. That -- that -- the  
13 disqualification is what I just read for seeding  
14 that.

15 Q. Just thinking about the affect of  
16 changing rates on the value of homes, do you agree  
17 that the greatest effect of a change in electricity  
18 rates would be felt on a -- on an -- by homeowners  
19 where they had less -- comparatively less or fewer  
20 alternatives such as having -- would the impact on a  
21 home be greater of a change in rates if the customer  
22 didn't have access to an alternative fuel?

23 A. The data that we developed and, again, in  
24 appraisal work our job is to interpret market  
25 reaction. How does the market or a property react?



1           So in that sense in response to your  
2 question the idea that if there is no alternative  
3 available in terms of a heat source for a resident  
4 would a raise -- an increase in rates impact the  
5 value of their home?

6           It's hard to say. I can't answer that  
7 question because there has been changes in rates over  
8 time. There's been changes in gas costs over time.  
9 And there's no direct evidence that we have been able  
10 to discern in either case that that impacts value.

11           I happen to remember very well on a  
12 personal basis that gas spiked terribly about four  
13 years ago and it crushed a lot of people because of  
14 the cost of their gas bill. Well, did it impact  
15 values? No. Everybody got through it. And that was  
16 a spike that was way beyond any electric increase  
17 that's occurred.

18           Q.    Okay.

19           A.    Fortunately, it's over and there was not  
20 impact in value, the value of those properties at  
21 that time. So given that corollary, I would say, no,  
22 it possibly wouldn't impact it. It makes life a  
23 little more difficult, as does gasoline at the pump  
24 these days.

25           Q.    I would like to approach this from a

1       hypothetical standpoint.

2               A.     Okay.

3               Q.     Two situations identical in all respects  
4       except for one -- with a price change -- an increase  
5       in electricity price. Two homes, both experiencing  
6       the same change -- increase in electricity prices.  
7       One of them has an alternative fuel source of natural  
8       gas available to them. The other home has either --  
9       it's very difficult to extend a gas line to that  
10      house so, in all other respects they are identical to  
11      one another.

12                   Which home would suffer the greater  
13      impact on their value between those two situations?

14               MR. KUTIK: Objection. Asked and  
15      answered.

16               EXAMINER WILLEY: I am going to overrule  
17      your objection.

18               THE WITNESS: Sorry. I didn't hear.

19               EXAMINER WILLEY: You can go ahead and  
20      answer.

21               A.     It would depend on the dollar amount. If  
22      you are talking about a very large dollar amount, it  
23      could impact the value given your circumstances. If  
24      it's to use a number \$50 a month, would it impact the  
25      value? Probably not. It also depends on the price

1 class of the housing relative to the affordability of  
2 that home for the buyers.

3 People -- and this is even much more true  
4 today. People are not -- a number of years ago and  
5 part of the reason we are in the economic situation  
6 we are in is people were buying more home than they  
7 could possibly afford. They were cajoled into that  
8 kind of opportunistic buying type of environment,  
9 they thought only to find out differently a few years  
10 later and in those cases it might have more impact if  
11 they have been able to hang on to the house but they  
12 are hanging by a thread.

13 If -- under today's circumstances homes  
14 are being bought with much stricter underwriting  
15 standards, real down payments and the ability to pay  
16 for the house and is that dollar change going to be  
17 significant enough to change those people's  
18 lifestyle?

19 MR. SMALL: Your Honor, motion to strike  
20 the entire response as being nonresponsive. I asked  
21 a hypothetical question where I held two things  
22 constant and asked him which one would have a greater  
23 impact.

24 Not only did I not get a response to that  
25 hypothetical but I got a long response having to do

1 with his studies and variability in factors which I  
2 specifically took away from him when I posed the  
3 hypothetical.

4 MR. KUTIK: He was asking a hypothetical  
5 question and he provided the answer. An answer  
6 Mr. Small didn't like. He was providing an answer to  
7 the hypothetical based upon his experience and his  
8 judgment and reflecting the hypothetical in the  
9 context of specific experiences he had. It was  
10 certainly responsive.

11 EXAMINER WILLEY: Your motion will be  
12 denied.

13 Q. Would you please turn to Attachment  
14 CRR-2A, please. Now, I am looking at the  
15 Strongsville map that you have in two pages, one says  
16 electrically-heated residences the other one says  
17 gas-heated residences. Do you see that?

18 A. Bear with me just a second here. CRR-2?

19 MR. KUTIK: A.

20 Q. 2A.

21 A. 2A. Okay. I have it.

22 Q. And this map -- the electrically-heated  
23 residences map and gas-heated residences map, that --  
24 those two maps are the same subdivision; is that  
25 right?

1           A.    Yes, that's correct.

2           Q.    So for your Strongsville analysis you're  
3   comparing residences -- electrically-heated  
4   residences that are in close proximity to gas lines;  
5   is that correct?

6           A.    Yes.

7           Q.    And would you agree with me that your  
8   analysis does not pick up differences in the value of  
9   residences between your selected subdivision and  
10   the -- and a totally different location that has no  
11   access to natural gas lines?

12          A.    That is correct. It does not. In this  
13   case, and it is extremely important for comparable  
14   studies to have the properties located within close  
15   proximity and one given neighborhood.

16                Strongsville, like many cities, is a  
17   large community with different neighborhoods. If you  
18   move out of this neighborhood into an entirely  
19   different neighborhood, you change value concepts  
20   because it may or may not have similar locational  
21   characteristics, desirability, closeness to schools  
22   and shopping and freeway access and so forth.

23                These homes are all built around the same  
24   time in the same neighborhood and that is why we used  
25   them.

1           Q.    In other words, in order to control for  
2 other factors you feel like you have to have them all  
3 in similar neighborhoods.

4           A.    Yes, sir.

5           Q.    And back on Attachment CRR-2A, the two  
6 plots of single subdivisions, are you aware of the  
7 heating system that is in these homes?

8           A.    Yes. Our sales data which is included in  
9 the work copies that you have does say what type of  
10 heat is in which one.

11          Q.    And these are all in the same  
12 subdivision, these are all forced-air systems?

13          A.    There may be some baseboard in there.  
14 I'd have to go back through it. There is so much  
15 data here you have to look at each one.

16          Q.    Your analysis also doesn't pick up  
17 differences in the value of residences between your  
18 selected subdivision and a totally different  
19 location, a different subdivision, where the houses  
20 have very different features such as differences in  
21 the presence of duct work for the heating system; is  
22 that correct?

23               MR. KUTIK: Objection.

24          A.    Again --

25               MR. KUTIK: Objection.

1 EXAMINER WILLEY: Basis?

2 MR. KUTIK: Assumes facts not in  
3 evidence. We haven't talked about -- hasn't examined  
4 the witness, hasn't established that this particular  
5 residence or this particular subdivision has one type  
6 of system that isn't present at another system, so  
7 his question assumes that this area has unique  
8 heating systems that are not present in whatever  
9 comparison he is trying to make. That's the  
10 objection.

11 EXAMINER WILLEY: Mr. Small, could you  
12 lay more of a foundation for your question.

13 Q. In selecting your observations of homes,  
14 you strived to have similarities, strong  
15 similarities, in the features of those homes; is that  
16 correct?

17 A. Yes.

18 Q. And that's the reason why we are looking  
19 at the same subdivision for electrically-heated  
20 residences and gas-heated residences; is that  
21 correct?

22 A. Yes.

23 Q. And in such a subdivision, the  
24 construction features would be similar to one  
25 another; is that correct?

1           A.    Yes.

2           Q.    And among those features that would be  
3 similar to the type of heating system. I am  
4 referring now to forced air versus baseboard systems.

5           A.    Generally speaking, I would say that  
6 would be true but we -- without going through each of  
7 the comparables I can't tell you whether it's  
8 baseboard or not. Baseboard heating was installed in  
9 quite a few homes for a period of time because it was  
10 a far less expensive system to install in the initial  
11 construction of the home. You didn't have to put in  
12 duct work.

13                   The baseboards were very simple to  
14 install and much lower cost than a furnace whether  
15 it's a heat-pump-based forced air or a gas furnace.

16           Q.    Well, to the extent that -- let's use as  
17 an example your Strongsville submarket. To the  
18 extent that the systems are different from one  
19 another, say, that the gas furnaces are forced air  
20 and the electrically-heated homes are baseboard,  
21 these -- the presence of that difference would be --  
22 tend to make these not comparable; is that correct?

23           A.    The primary difference in the my view of  
24 the market's reaction to it lies in having ducts in  
25 your testimony whether it's electric or gas allows



1     you to put in air conditioning.

2                 With a ducted air conditioning -- I'm  
3     sorry, with a ducted heating -- electric-heating  
4     system you have a heat pump which provides air  
5     conditioning as well as heat. Resistance heat does  
6     come on below a certain temperature with that type of  
7     system regardless.

8                 With a gas forced-air system the -- you  
9     may or not have air conditioning. Most of the homes  
10    do in this subdivision.

11                Q.   Well, in this example that we have been  
12    going over, the Strongsville, do we have a  
13    comparability problem because they have very  
14    different heating systems?

15                A.   One of the issues is if you look at a --  
16    at a total electric subdivision in Strongsville, that  
17    would be Schmitt's development, Wedgewood, very  
18    attractive development, those are all-electric homes.  
19    And you can't compare them with a colonial built by  
20    Parkview. Pitatello Companies, south of 82. They  
21    are just not comparable homes.

22                The Schmitt homes are ranches. They are  
23    what I call a contemporary style, very attractive  
24    homes. And many of them don't have basements whereas  
25    the Parkview homes are all colonials, basements, and

1 a different type of home altogether so they are  
2 not -- they just don't compare.

3 MR. SMALL: Motion to strike. The answer  
4 is not responsive. I asked him about this  
5 specific -- not about subdivisions outside  
6 Strongsville. I asked him about this subdivision and  
7 whether we have a comparability problem because they  
8 have different heating systems. And the response  
9 was -- had to do with subdivisions outside of this  
10 study subdivision.

11 MR. KUTIK: And he contrasted the homes  
12 in this area versus the homes elsewhere to show  
13 about -- the comparable about the homes in this area.

14 EXAMINER WILLEY: Your motion will be  
15 denied.

16 Q. With respect to just the Strongsville  
17 submarket that you identified in your testimony, do  
18 we have a problem of comparability between the  
19 electric- and gas-heated homes here because they have  
20 different heating systems?

21 MR. KUTIK: Objection, asked and  
22 answered. He just answered that very question.

23 EXAMINER WILLEY: Can you rephrase your  
24 question?

25 MR. SMALL: I got an answer but I don't

1 think I got an answer to that question.

2 MR. KUTIK: He did get an answer, that's  
3 why your motion to strike was denied.

4 Q. Do you know the number or the percentage  
5 of the electrically-heated homes that are forced-air  
6 systems in the Strongsville subdivision that are part  
7 of your study?

8 A. Our study in Strongsville?

9 Q. Right.

10 A. Again, I would have to -- for purposes of  
11 your question I would have to go back to the data for  
12 Strongsville and go through them one by one to  
13 determine that.

14 EXAMINER PRICE: So the answer is no, you  
15 don't know.

16 THE WITNESS: No, I don't know.

17 EXAMINER PRICE: But the point, again, of  
18 your including all houses in a similar subdivision is  
19 to control for as many differences as you possibly  
20 can control for.

21 THE WITNESS: Correct. That is correct.

22 EXAMINER PRICE: So you can see whether  
23 there is a difference over time whether house values  
24 go up or down whether they are gas or electric.

25 THE WITNESS: And our study shows that

1 they do in concert.

2 Q. (By Mr. Small) Okay. Would you please  
3 turn to page 13 and question and answer 12. And here  
4 you state, line 7, that you studied data from January  
5 of 2007 through 2010, correct?

6 A. Yes.

7 Q. What does the -- what do the results from  
8 the 2007 through 2010 period show that your analysis  
9 of 2003 through 2010 didn't show? Or what is it that  
10 is added by the analysis of the 2007 through 2010?

11 A. What we were interested in being able to  
12 discern was whether or not there was a difference  
13 once the announcement was made that electric  
14 discounts would no longer be available to new home --  
15 to homebuyers acquiring a home as of beginning 2007.

16 Q. And that's the purpose for the selection  
17 of the 2007 date, correct?

18 A. Yes.

19 Q. Okay. Other than the time period for the  
20 sales that you selected, did you change any of your  
21 methods that you used for the full 2003-2010 period?

22 A. In terms of maintaining the  
23 comparability?

24 Q. I didn't limit it. Did you -- other than  
25 the time periods selected did you change any of your

1 methods?

2 A. No, we did not.

3 Q. And so the -- the observations that are  
4 in your work concerning 2007 through 2010 are a  
5 subset of the -- of the larger 2003 to 2010 period;  
6 is that correct?

7 A. Yes.

8 EXAMINER PRICE: Doesn't that create a  
9 sampling problem for you whether you have a large  
10 enough sample, since you are limiting now your study  
11 to only three years as opposed to seven years,  
12 haven't you effectively cut your sample by half?

13 THE WITNESS: You've cut it down  
14 substantially particularly -- particularly since  
15 2007, that's when the housing turnover rate dropped  
16 significantly due to the economy.

17 EXAMINER PRICE: So you have a much  
18 smaller sample for the 2007-2010 range than you did  
19 for the other one?

20 THE WITNESS: Yes, sir.

21 MR. SMALL: Your Honor, at this time I  
22 would like to present the witness with a portion of a  
23 transcript from a local public hearing. I won't mark  
24 it because it's already part of the -- already part  
25 of the record.

1 MR. KUTIK: Well, may I see it before the  
2 witness, please?

3 EXAMINER WILLEY: I'm sorry?

4 MR. KUTIK: May I see it before the  
5 witness sees it?

6 MR. SMALL: You may all have a copy as  
7 soon as I find them.

8 May I approach, your Honor?

9 EXAMINER WILLEY: You may.

10 MR. KUTIK: May we go off the record,  
11 your Honor?

12 EXAMINER WILLEY: Let's go off the  
13 record.

14 (Discussion off the record.)

15 EXAMINER WILLEY: Okay. Let's go back on  
16 record.

17 Q. (By Mr. Small) Okay. Mr. Ritley, what  
18 I've given you is a portion of a transcript and the  
19 entire testimony of Ms. Rita Lockhart at the North  
20 Ridgeville local public hearing. Would you please  
21 look on page 28 of that transcript. And I'm looking  
22 at lines 8 through 10.

23 A. I'm sorry, 8 through 10?

24 Q. Yes. And I'll read it. "My husband and  
25 I moved to our present home, our retirement home in

1 February of 2009 from out of state." Do you see  
2 that?

3 A. Yes.

4 Q. So this is during the time period which  
5 is part of your second study 2007 to 2010 period,  
6 correct?

7 A. Yes.

8 Q. Okay. Also look on page 28, lines 16  
9 through 22. And it states "Before making an offer on  
10 this home we did what most prudent and diligent  
11 buyers would do when they were investing in the most  
12 expensive investment of their lives. We requested a  
13 detailed accounting of electric costs of the  
14 utilities at this home." Do you see that?

15 A. Yes, sir.

16 Q. And then following that on page 29, lines  
17 1 through 7, Ms. Lockhart states she received an  
18 account, that's the last word on page 28, "prepared  
19 by Ohio Edison for the former owner of our home for  
20 the period 4-10-07 to 4-8-08."

21 And also she states that she, I am  
22 looking at this especially at line 7, that she got  
23 bills for the months of September, October, and  
24 November. Do you see that?

25 A. Yes, sir.

1           Q.    From Ms. Lockhart's description it  
2 appears as though her expectations regarding electric  
3 rates were determined based on past bills. Is that  
4 your understanding of that portion of the testimony?

5           MR. KUTIK:  Objection, it calls for  
6 speculation.  It's also an unfair, incomplete  
7 hypothetical with respect to this witness who has no  
8 personal knowledge of Ms. Lockhart's experience.  The  
9 fact Ms. Lockhart received incomplete information  
10 from her buyer or did not pursue information with  
11 Ohio Edison is irrelevant with respect to any  
12 examination of this witness.

13           EXAMINER WILLEY:  Do you have a response?

14           MR. SMALL:  I simply asked whether he  
15 agreed with my interpretation of that portion of her  
16 testimony.

17           MR. KUTIK:  Is he to opine with respect  
18 to whether she was reasonable, diligent, or being  
19 treated fairly with respect to her buyer?

20           MR. SMALL:  Well, I didn't ask that  
21 question.

22           MR. KUTIK:  Well that's implicit in the  
23 question.

24           EXAMINER WILLEY:  Could you read back the  
25 question, please.



1 (Record read.)

2 MR. KUTIK: So he is asking him to  
3 testify about his understanding of what Ms.  
4 Lockhart's expectations might be.

5 EXAMINER WILLEY: Mr. Small, can you  
6 rephrase your question in a less objectionable  
7 manner?

8 Q. (By Mr. Small) Mr. Ritley, as part of  
9 your preparation for your testimony, did you conduct  
10 any analysis of how customers of electric service  
11 form their expectations concerning future electricity  
12 rates?

13 A. Could I rephrase it? As to how people  
14 would perceive future increases in electric rates?

15 Q. I don't think you can perceive future  
16 events but you could form --

17 A. Or increases in electric rates.

18 Q. You can't form expectations concerning  
19 the future. I am asking you whether you've performed  
20 any study of that.

21 A. I suppose one of my issues with that is  
22 that pretty much everybody has got expectations of  
23 increases in virtually everything from taxes to --

24 EXAMINER PRICE: Mr. Lockhart, you --  
25 "Mr. Lockhart," I'm sorry. You need to answer his

1 question correctly. Mr. Ritley, you need to answer  
2 his question correctly. Either you performed a study  
3 or you didn't perform a study.

4 A. We did not include that in our study,  
5 that is correct.

6 Q. From your experience as an appraiser, do  
7 you agree that the affect of a change in electricity  
8 rates can have a delayed impact on home valuations  
9 until the information on the rates is fully  
10 disseminated to the population?

11 A. If the information wasn't available to  
12 the people, it would probably have an impact, yes.  
13 If the information is available and they understand  
14 going into a transaction that there is a change, I'm  
15 not sure it does impact it.

16 Q. So the determining factor in your answer  
17 and your analysis is whether the information is  
18 readily available?

19 A. I think that's part of it and the other  
20 part of it is if there were changes during the period  
21 of our study and we are not able to discern any value  
22 changes because of it. At least relative to the  
23 other type of heating, natural gas. There's always  
24 changes in --

25 EXAMINER PRICE: So you didn't find a

1 lag, a delayed change --

2 THE WITNESS: That is correct.

3 EXAMINER PRICE: -- is what you are  
4 saying.

5 Q. As a follow-up, you didn't -- you didn't  
6 look for a lag, did you?

7 A. The sale data would have indicated one if  
8 it were there.

9 Q. Would you please turn to page 25 of your  
10 testimony and the question and answer 20.

11 A. Yes, sir.

12 Q. Now, on lines 13 and 14, you referred to  
13 "negative publicity." And on 13 and 14 you referred  
14 to an "atypical market condition." Do you see that?

15 A. Yes.

16 Q. Are you referring to the present case and  
17 the associated publicity connected with it?

18 EXAMINER PRICE: Are you saying that the  
19 resolution of the case is irrelevant, the mere fact  
20 that the case is resolved would cause the stigma to  
21 go away?

22 MR. KUTIK: Did you say "relevant" or  
23 "irrelevant"?

24 EXAMINER PRICE: "Irrelevant."

25 THE WITNESS: The case is relevant to any

1 stigma that exists at this time. There has been a  
2 lot of publicity about it. I believe strongly that  
3 that would fade away over time once it is solved.

4 EXAMINER PRICE: The key point is the  
5 resolution of the case.

6 THE WITNESS: Yes.

7 EXAMINER PRICE: Not whether the  
8 Commission might choose on the -- whether the  
9 continued discount might be provided.

10 THE WITNESS: That's correct. Because  
11 there had been disparity between gas and electric  
12 costs in the past and there was no indication of a  
13 value change in homes during those periods.

14 Additionally, should electric rates rise  
15 in terms of the resolution of this case, I believe  
16 the current problem arising from the publicity  
17 surrounding this will fade away.

18 It may be one year but everything tends  
19 to revert to the norm over time and this is not a  
20 lasting stigma like a city dump being established in  
21 the middle of the neighborhood. It's a situation  
22 that the market accepts after time and typically one  
23 might expect this to disappear within a year.

24 There's other cases of so-called stigma  
25 that have risen over time that it's clearly proven

1       that that stigma attached to the item has gone away.

2               EXAMINER PRICE: Are you testifying that  
3       Mr. Frawley is correct, there is a stigma, or are you  
4       simply testifying that if there is a -- are you  
5       simply testifying if there is a stigma, it will go  
6       away but you are not necessarily saying there is a  
7       stigma?

8               THE WITNESS: That is correct.  
9       Mr. Frawley referred to a stigma and, you know, this  
10      has created a problem and I can't say that it hasn't  
11      because there is not enough evidence at this time to  
12      say that it's impacted values.

13              Given that evidence if it were available  
14      then I would have to agree that there is such a  
15      stigma at this time. If that is the case, it would  
16      fade away over a reasonable period of time.

17              Q.     (By Mr. Small) Part of your testimony you  
18      state the -- you use the word "significant" in the  
19      results of your statistical tests, correct?

20              A.     Yes, sir.

21              Q.     And those statistical tests assume that a  
22      random sample is used; is that correct?

23              A.     Yes.

24              Q.     And you selected homes from particular  
25      subdivisions, correct?

1           A.    Yes, sir.

2           Q.    And you selected homes from construction  
3 during -- homes that were constructed only during  
4 certain years, correct?

5           A.    Yes, sir.

6           Q.    But you made a couple of exceptions to  
7 that rule.

8           A.    Very slight exception. Which I explained  
9 earlier.

10          Q.    With all that selection what population  
11 are your observations a random sample from?

12          A.    The random sample occurs with the fact  
13 that we selected a subdivision containing -- in all  
14 the communities containing homes of both gas and  
15 electric heat. It was not a -- the selection if you  
16 were to say random covering an entire community you  
17 lost the basis of comparison. Our random selection  
18 eliminated certain homes that we regarded as  
19 outliers.

20          Q.    Okay -- on page 9 of your testimony --

21          A.    I'm sorry, page?

22          Q.    Page 9, line 1 of your testimony.

23          A.    Yes.

24          Q.    States that "Regression analysis is a  
25 method that examines the relationship between one or

1 more independent variables and dependent variable by  
2 plotting points on a graph." Do you see that?

3 A. What line are you on?

4 Q. I'm at the very top of the page.

5 A. I see.

6 Q. 1 through 3.

7 A. Yes.

8 Q. Where is the plot that you -- in your  
9 testimony where is the plot that you referred to on  
10 page 9 of your testimony?

11 A. That graph is of -- is not in the  
12 material you have. It is actually in the computer.  
13 We use a computer program called SSP. It's been  
14 around for about 20 plus years. It's a standard  
15 nationally accepted program and it takes the  
16 information and it internally plots and puts out the  
17 results.

18 Q. And the SSP program provides a  
19 mathematical relationship between one or more  
20 independent variables in the deep-ended variable; is  
21 that correct?

22 A. Yes.

23 Q. Would you turn to Attachment CRR-6, which  
24 at the top is titled "Regression Model Summary."

25 A. Yes.

1           Q.    That -- that relationship, that  
2    regression analysis with its parameters are not  
3    displayed on that page, are they?

4           A.    No.  It does state what the inputs were.

5                   MR. SMALL:  That concludes my  
6    examination, your Honor.

7                   EXAMINER WILLEY:  Thank you.

8                   Mr. Corcoran.

9                   MR. CORCORAN:  Yes, your Honor.

10                               - - -

11                               CROSS-EXAMINATION

12   By Mr. Corcoran:

13           Q.    Good afternoon, Mr. Ritley.  You have  
14    never spoken to any buyer or seller of an  
15    all-electric home, have you?

16           A.    Over my career, yes.

17           Q.    For the purposes of this study.

18           A.    No.

19           Q.    And you couldn't tell me what is going  
20    through any of their personal situations now  
21    currently; is that correct?

22           A.    As of this time, no.

23           Q.    Mr. Small was referencing the sample size  
24    that you looked at in Strongsville same subdivision  
25    being gas and electric homes in the same subdivision?



1           A.    Yes, sir.

2           Q.    Do you remember that?

3           A.    Yes.

4           Q.    And if those people wanted to, those  
5 people could have a choice between electric and gas;  
6 is that correct?

7           A.    Yes, because gas is available in the  
8 subdivision they would be able to switch from  
9 electric to gas with the expense of putting the line  
10 to their home in the home and converting from  
11 electric to gas heat.

12          Q.    And you did not choose to use an  
13 all-electric home for a comparison, correct?

14          A.    As I said earlier, sir, it wasn't -- it  
15 made no sense for terms of comparison.  Again, I  
16 described, for example, an all-electric subdivision  
17 being Wedgewood and Strongsville, Bob Schmitt's  
18 development with an all-gas subdivision, and the  
19 homes are simply not comparable in any way.

20          Q.    And the study doesn't look at what would  
21 happen in an all-electric subdivision or has happened  
22 or will happen in the future; is that correct?

23          A.    Well, certainly where you have -- and  
24 it's a pretty well-known fact that the heat-pump  
25 system in an electrically-heated home can be a very

1 efficient way to heat a home. I even looked at it  
2 for my own home recently because I'm not far from a  
3 furnace replacement and getting out of gas heat.

4 And part of the reason is that you lose a  
5 lot of energy with a gas furnace, it goes up the flue  
6 pipe. So, you know, the efficiency factors can be  
7 good with electric if you have a modern, good system.  
8 If you don't, like an old gas furnace, you are going  
9 to suffer inefficiencies.

10 Q. But the utility usage is going to depend  
11 on a lot more than just the equipment itself, isn't  
12 it?

13 A. The utility usage would depend on?

14 Q. A lot more than just the equipment  
15 itself.

16 A. Well, it depends on how the home is  
17 constructed with insulation, windows, doors, the way  
18 the home is utilized, young children, pets in and  
19 out, that all that affects all utilities in terms of  
20 heating for gas or electric.

21 Q. And you don't know if there were any  
22 differences in insulation values, for example,  
23 between the gas homes and all-electric homes that you  
24 used in part of your study; is that right?

25 A. In the subdivisions that we selected they

1     should be pretty similar because they were all built  
2     about the same time.

3             Q.     But you don't know that for sure.

4             A.     We don't know for a fact.  Generally my  
5     experience is electric homes have been better  
6     insulated than gas homes when they were constructed.  
7     In fact, I recall some advertising in the Cleveland  
8     area that I've seen with regard to that.

9             Q.     I think those advertisements were for  
10    this case.

11            You didn't use any homes built after 1985  
12    because you couldn't find any all-electric homes.

13            A.     Well, there are all-electric homes built  
14    after 1985 but not in the subdivisions, and further,  
15    the -- there's changes in types of electric heat.  
16    One of the -- the most efficient systems you can do  
17    today is geothermal and I am seeing -- I live in  
18    Geauga County and there is a fair amount of that  
19    being done in Geauga County.

20            It's an incredible efficient system for  
21    both heating and air conditioning.  I would have done  
22    it myself had I had the land to do it on.

23            Q.     Do you know if the people that have  
24    geothermal systems that were built prior to 2007, do  
25    you know if they are receiving all the discounts that

1 are the subject of this case?

2 A. That I don't know the answer to.

3 Q. Mr. Ritley, have you testified on behalf  
4 of FirstEnergy before?

5 A. No.

6 Q. Have you testified in matters that were  
7 handled by Jones Day before?

8 A. I'm sorry, by who?

9 Q. Jones Day.

10 A. No.

11 Q. Do you have any kind of a legal  
12 relationship with Jones Day or have you had a legal  
13 relationship with Jones Day?

14 A. No. Other members of my firm have done  
15 some work for Jones Day in the past.

16 Q. How much are you getting paid for your  
17 testimony?

18 A. Strictly hourly rate.

19 Q. And what is that hourly rate?

20 A. 225.

21 MR. CORCORAN: No questions.

22 EXAMINER WILLEY: Mr. Jones.

23 MR. JONES: No questions, your Honor.

24 EXAMINER WILLEY: Is there redirect?

25 MR. KUTIK: May I have a moment, your

1 Honor?

2 EXAMINER WILLEY: Yes, you may.

3 Let's take a 5-minute break. Let's go  
4 off the record.

5 (Recess taken.)

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

8 Mr. Kutik, are you ready to proceed?

9 MR. KUTIK: Your Honor, we have no  
10 questions.

11 EXAMINER WILLEY: No questions? All  
12 right. I have no questions so the witness may be  
13 excused.

14 You may be excused. We have no further  
15 questions.

16 THE WITNESS: Thank you.

17 MR. KUTIK: Your Honor, at this time the  
18 company moves for the admission of Company Exhibits  
19 64, 64A, 64B, and 64C.

20 EXAMINER WILLEY: Are there any  
21 objections?

22 MR. SMALL: Yes, your Honor, those stated  
23 previously in the motions to strike.

24 EXAMINER WILLEY: Okay. Your objections  
25 will be overruled and Exhibits 64, 64A, 64B, and 64C

1 will be admitted.

2 (EXHIBITS ADMITTED INTO EVIDENCE.)

3 EXAMINER PRICE: At this time we will  
4 take up where we left off with the exhibits.  
5 FirstEnergy has provided us Revised Exhibit 6.  
6 Mr. Kutik, would you care to move its admission at  
7 this point in time?

8 MR. KUTIK: Yes, your Honor. We move for  
9 the admission of Company Exhibit 6 Revised, which is  
10 the e-mail that we had previously discussed with the  
11 attached last page.

12 EXAMINER PRICE: We will take that up  
13 with the rest of them. So it's my understanding this  
14 is substituting the current Exhibit 6; is that  
15 correct?

16 MR. KUTIK: Yes, your Honor, it is.

17 EXAMINER PRICE: Okay. Ms. Grady, I  
18 believe we left off with Exhibit 9; is that correct?

19 MS. GRADY: That's correct.

20 EXAMINER PRICE: And please state your  
21 objections to the admission of Exhibit 9.

22 MS. GRADY: Yes, this is stealth hearsay,  
23 there is no foundation laid that Ms. Steigerwald had  
24 any personal knowledge of the resume and its  
25 contents. Under Rule 701 she cannot testify to

1 something she does not have personal knowledge on.

2 Transcript 111 through 113 shows that she  
3 was reading the resume, had no independent knowledge.  
4 Also a question of relevance. We would contend that  
5 your Honors should not allow collateral attachment on  
6 a third-party witness through hearsay by another  
7 witness.

8 MR. KUTIK: Your Honor, the testimony  
9 establishes that this is a document that  
10 Ms. Steigerwald received from Mr. Karchefsky, both  
11 CKAP members. Mr. Karchefsky supposedly testified or  
12 testified about his supposed experience at the  
13 company. This is his statement as to what his  
14 experience is.

15 As we noted in the testimony with  
16 Ms. Steigerwald, there is nothing here about any  
17 experience with residential customers so it is  
18 relevant. And it's certainly not hearsay.

19 EXAMINER PRICE: It is not hearsay and it  
20 does appear to be relevant. Objection overruled.

21 Exhibit 10.

22 MS. GRADY: Yes, your Honor. This is  
23 hearsay within hearsay. We have statements here  
24 by -- in particular Jesse Willits to Sue Steigerwald  
25 with Jesse Willits' e-mail being at the very bottom

1 of that page.

2 In addition, on page 3 and 4 of the  
3 document -- 3 and 4 appear to be illegible copies of  
4 documents and in addition I believe pages 3 and 4  
5 were already entered into evidence when Mr. Willits  
6 came on and presented testimony as a CKAP witness in  
7 this case.

8 MR. KUTIK: Your Honor, this is a  
9 document that was in the form produced to us,  
10 illegibly produced to us what -- we are really not  
11 offering the attachment other than just to note that  
12 it was attached, nor are we offering the e-mail from  
13 Mr. Willits to Ms. Steigerwald for its truth, just  
14 that she had the e-mail and was forwarding an e-mail.

15 What's relevant and important with  
16 respect to this document is Ms. Steigerwald's  
17 assessment of Mr. Willits's letter. That's  
18 relevance, leader of CKAP explaining a document that  
19 CKAP ultimately broached the document saying that  
20 it's potentially damaging.

21 EXAMINER PRICE: Do you want to respond  
22 to Mr. Kutik, Ms. Grady?

23 MS. GRADY: I'm not certain if -- is he  
24 saying pages 3 and 4 are not being moved? That's the  
25 first question I have.



1                   EXAMINER PRICE: No. I think he's saying  
2 pages 3 and 4 are in the condition they received them  
3 in. I think everybody agrees that there are better,  
4 more legible copies of 3 and 4 that are currently in  
5 the record.

6                   I guess I was asking him -- asking you to  
7 respond to his contention that they are not offering  
8 the Willits e-mail for the truth of the matter  
9 asserted. That the more relevant portions are  
10 Ms. Steigerwald's e-mail. I was asking if you have a  
11 response to that.

12                  MS. GRADY: I still believe it's not  
13 relevant, your Honor. Provides little probative  
14 value.

15                  EXAMINER PRICE: Overruled.

16                  MS. GRADY: The next exhibit is Exhibit  
17 11. Here we have statements from an Emily Barker,  
18 not sure who Emily Barker is, to Sue Steigerwald with  
19 respect to hearing dates and public hearings. Not  
20 sure -- that is not only hearsay, there is a question  
21 of relevance.

22                  I am not sure what it's related -- how  
23 it's relevant to the issues being decided by this  
24 Commission. Again, at the top we have a message from  
25 Amy Gomberg to Sue Steigerwald which is hearsay, and

1       also relevance issues.

2                   And then when we get to the second page  
3       of that document, we have it looks like a newsletter  
4       from Sue to CKAP friends. The first paragraph  
5       contains hearsay statements with respect to what  
6       Senator Grendell called to tell her and Senator  
7       Grendell is -- is -- his statements are certainly not  
8       exception to hearsay. His statements then conclude  
9       at the bottom of that paragraph back to Mr. Grendell  
10      what Mr. Grendell said, with what he agrees to, all  
11      hearsay.

12                   And then when we move to the third page  
13      of that document, we have an e-mail -- let me strike  
14      that. So I think what we have, the problems we have,  
15      your Honor, and we move to strike is on hearsay and  
16      relevance.

17                   EXAMINER PRICE: Mr. Kutik.

18                   MR. KUTIK: Your Honor, with respect to  
19      the first page and going over to the start of the  
20      second page, this is offered basically to show that  
21      CKAP was sending materials to OCC with respect to  
22      CKAP's communications to its members.

23                   Again, contrary to the idea that they are  
24      diverse with respect to the e-mail regarding  
25      Ms. Steigerwald to various individuals, including

1 members of the media, this is Ms. Steigerwald  
2 discussing comments between her and her lawyer about  
3 the value of the lawsuit and about what the -- what  
4 their view of the lawsuit was with respect to this  
5 case.

6 We've already talked about how the  
7 lawsuit was as this seems to indicate only a pressure  
8 tactic. It is not a valid or bona fide legal lawsuit  
9 and this was a part of their PR campaign to generate  
10 publicity, to generate complaints, and to -- and  
11 complaints at the Commission and complaints  
12 elsewhere.

13 EXAMINER PRICE: Thank you. Overruled.  
14 Next exhibit.

15 MS. GRADY: Your Honor, with respect to  
16 this exhibit there has been no identification, no  
17 foundation because there was no transcript associated  
18 with this particular document. It is an e-mail, in  
19 addition it is an e-mail that includes hearsay by  
20 Ms. Migden-Ostrander as well as Beth Trumbull and so  
21 there are hearsay problems and also relevance  
22 problems.

23 EXAMINER PRICE: Let's deal with the  
24 foundation issue first, Mr. Kutik.

25 MR. KUTIK: Your Honor, the foundation on

1 this document comes from page 43, line 16, to 145,  
2 line 17. That's where the foundation comes from.

3 MS. GRADY: If I may, those lines are not  
4 included in Exhibit 3A Revised that I have as being  
5 included as part of what's going to be admitted.

6 MR. KUTIK: Well, your Honor, if that's  
7 the basis for the objection then we will ask to  
8 supplement our -- our exhibits accordingly.

9 EXAMINER PRICE: Well, that's not very  
10 fair. They came -- they certainly are entitled to  
11 win this objection. Objection sustained.

12 MS. GRADY: Your Honor, we are now on  
13 Exhibit 13. This is -- appears to be an e-mail  
14 from -- well, let's deal with first that the e-mail  
15 in the second page comes from John Funk to Sue  
16 Steigerwald, and that's certainly hearsay because  
17 it's statements made by Mr. Funk to Ms. Steigerwald,  
18 and the question then is also relevance.

19 There is also a portion below the dotted  
20 line. I am not sure what that -- where that comes  
21 from or what that means. No idea what -- where that  
22 comes from.

23 EXAMINER PRICE: It looks to me to be the  
24 beginning of a story.

25 MS. GRADY: That very well may be, so

1     that's hearsay within hearsay. So that -- and  
2     there's no -- no exception to hearsay for that.  
3     Thank you.

4             And then the -- with respect to the first  
5     page there are -- it's filled with hearsay, various  
6     instances where Rick Jordan has attached a  
7     spreadsheet showing how difficult it is for consumers  
8     to deal with the electric company.

9             You know, the statements by the company  
10    it's 25 percent stated by The Illuminating Company is  
11    a huge understatement.

12            EXAMINER PRICE: Well, again, I'm quite  
13    certain with respect to this article that FirstEnergy  
14    is not offering it for the truth of the matter  
15    asserted, especially where they indicate that  
16    FirstEnergy lied, so I am certain FirstEnergy is not  
17    endorsing that.

18            I believe they are simply including this  
19    as part of their contention that this is an  
20    orchestrated campaign to pressure the Commission into  
21    ruling otherwise, not based upon the record presented  
22    at this hearing.

23            Would you care to address that?

24            MS. GRADY: I think that's irrelevant,  
25    your Honor. Not before the Commission, not related

1 to the issues of the Commission. Focus on --

2 EXAMINER PRICE: Mr. Kutik.

3 MR. KUTIK: Well, your Honor, I think you  
4 accurately stated our position on relevancy with  
5 respect to hearsay. With respect to the first page,  
6 it's her -- it's her, Ms. Steigerwald's, e-mail.

7 EXAMINER PRICE: Okay. I am going to  
8 overrule that.

9 MS. GRADY: Your Honor, next is Exhibit  
10 No. 14, consistent with the rulings that you reached  
11 earlier this morning, this is the Ohio Inspector  
12 General report that you -- one of the few rulings  
13 where something was struck was related to the  
14 transcripts that dealt with the Ohio Inspector  
15 General report, so we would move that -- we move to  
16 strike that on the basis of relevance and hearsay.

17 EXAMINER PRICE: We are going to strike  
18 that. We don't need to get into her interactions  
19 with agencies that have investigative authority over  
20 the Commission.

21 15.

22 MS. GRADY: Yes, your Honor. 15 is a  
23 press release put out by CKAP, discusses the fact  
24 that FirstEnergy requested that nonexpert testimony  
25 be submitted in writing, and on the same basis that

1 your Honor struck a portion of the transcript this  
2 morning related to that finding to be a procedural  
3 ruling was no longer an issue before the Commission  
4 in this case on the basis of relevance, this should  
5 also be struck.

6 EXAMINER PRICE: Mr. Kutik.

7 MR. KUTIK: Your Honor, again, this is  
8 part of their campaign. We also believe that the  
9 statements made here are in direct contrast to her  
10 deposition testimony where she indicated necessarily  
11 wouldn't be burdensome; it was merely inconvenient  
12 because she was working on other things.

13 EXAMINER PRICE: Haven't I already  
14 excluded that portion of the deposition transcript?  
15 I guess we will go ahead and overrule -- overrule  
16 your objection. We did exclude the portions of the  
17 deposition transcript you found to be offensive. But  
18 it certainly is another small -- very small part of  
19 their public relations campaign that FirstEnergy  
20 believes is something the Commission should be aware  
21 of.

22 16.

23 MS. GRADY: Yes, 16, your Honor, is a --

24 EXAMINER PRICE: Do you have anything  
25 new? I understand as a general matter that you don't

1     like these e-mails but I think we are repeating our  
2     arguments and repeating our rulings. Is there  
3     anything to distinguish this e-mail from our previous  
4     rulings that we've allowed Ms. Steigerwald's e-mails  
5     in?

6             MS. GRADY: This particular e-mail is  
7     just public testimony tips which -- which, again, we  
8     did cover this in general. And we would make the  
9     argument that it's not relevant to the issues in  
10    front of us.

11            EXAMINER PRICE: Overruled.

12            17, an urgent message from Sue  
13     Steigerwald. Again, is there anything that would  
14     distinguish this particular communication from our  
15     previous rulings?

16            MS. GRADY: Your Honor, there is hearsay  
17     contained -- with respect to Kasich's position on the  
18     all-electric issue found in the bottom paragraph and  
19     Ms. Steigerwald speaking to the Lake County  
20     Republican Party chair and the chair getting  
21     information back, and I believe that first, you know,  
22     starting with "regarding" through "itself" is  
23     certainly hearsay.

24            I don't believe Mr. Kasich is a member of  
25     CKAP, unfortunately, so I think there is no exception



1 to hearsay and that should be excluded from this  
2 document.

3 EXAMINER PRICE: Mr. Kutik.

4 MR. KUTIK: Well, first, I don't believe  
5 there are any statements from Kasich -- Governor  
6 Kasich or from --

7 EXAMINER PRICE: Thank you.

8 MR. KUTIK: -- anyone with the Republican  
9 Party in Geauga County or Cuyahoga County, and in  
10 addition even if there were, we are not offering it  
11 for the truth but we are offering it as part of  
12 Ms. Steigerwald's methodology of trying to bring  
13 political pressure on to the Commission.

14 EXAMINER PRICE: Yeah, I don't see, any  
15 actual statements from the people she contacted, only  
16 her summary what she said to them. Overruled -- said  
17 to those individuals. Overruled.

18 Exhibit 18.

19 MS. GRADY: Yes, your Honor. We just  
20 have an objection to relevance. This is, again,  
21 related to --

22 EXAMINER PRICE: We've been over this  
23 ground, Mrs. Grady. Consistent with our previous,  
24 overruled.

25 19.

1 MS. GRADY: 19, the very top of this page  
2 is all hearsay, it's from Kathy and Jim Gillette. I  
3 am not certain these are members of CKAP so it would  
4 not fit within 801(D)(2)(b), exception to hearsay, so  
5 that whole front e-mail and then we have an e-mail  
6 from Brock Landers to Sue Steigerwald and I do not  
7 know that we've established that Mr. Landers is a  
8 member of CKAP, and so his e-mail to Sue is hearsay  
9 as well. And I object to the issue of relevance.

10 EXAMINER PRICE: Mr. Kutik.

11 MR. KUTIK: Your Honor, we are not  
12 offering Exhibit 19 for anything above the horizontal  
13 line two-thirds of the way down on the third page.  
14 We are offering the rest of the exhibit, principally  
15 Ms. Steigerwald's discussions about -- or brief  
16 discussion about the petition.

17 And Mr. Landers is a member of CKAP. We  
18 are not offering Mr. Landers' statements for the  
19 truth but also just to indicate that this is what  
20 Ms. Steigerwald was responding to, and it generally  
21 dealt with the issue of the petition that we never  
22 received.

23 EXAMINER PRICE: Overruled.

24 20.

25 MS. GRADY: Yes, your Honor, 20, we

1 object on the basis of relevance and hearsay. This  
2 is from a Richard Barnes to Sue. And the question of  
3 relevance, it's hearsay and irrelevant.

4 EXAMINER PRICE: Actually doesn't he at  
5 that point ask to join CKAP? "We plan to be at the  
6 meeting Friday. Please enroll us in the group that  
7 is up for us" --

8 MS. GRADY: I guess at the time he sent  
9 his e-mail he obviously wasn't a member so that  
10 communication was not. Well, that was as an  
11 individual customer.

12 EXAMINER PRICE: Mr. Kutik.

13 MR. KUTIK: We are not offering Exhibit  
14 20 for the six or seven lines above the horizontal  
15 line. We are offering Exhibit 20 with respect to the  
16 e-mail Ms. Steigerwald sent to Jim and Susan and we  
17 are offering the exhibit below her e-mail to indicate  
18 what she is responding to and, again, to indicate  
19 that the topic that she is talking about or  
20 responding to is the petition we did not receive.

21 EXAMINER PRICE: Thank you. With those  
22 clarifications by FirstEnergy the objection will be  
23 overruled.

24 21.

25 MS. GRADY: Yes, with respect to 21, if

1 we go to the bottom of that page starting with "A few  
2 weeks ago I spoke to Jen Lynch," when it starts "She  
3 reported to me, she and I both felt, however, both of  
4 us felt," all that is hearsay. Jen Lynch as far as I  
5 know is not a CKAP member, and there is a question of  
6 relevance as well.

7 EXAMINER PRICE: Okay. Again, I don't  
8 think FirstEnergy is offering this for the truth of  
9 the matter asserted. I believe they are simply  
10 offering it as part of the course of conduct by  
11 Ms. Steigerwald, so your objection will be overruled  
12 consistent with our previous rulings.

13 22.

14 MS. GRADY: Yes, your Honor.

15 EXAMINER PRICE: Mr. Kutik, if at any  
16 point I indicate wrongly you are not offering this  
17 for the truth of the matter asserted but you are,  
18 please feel free to interrupt me and correct me for  
19 the record.

20 MR. KUTIK: No, your Honor. I believe  
21 you will understand.

22 MS. GRADY: Yes, your Honor, on the first  
23 page of that document, fourth paragraph down,  
24 statement by FirstEnergy spokesman Ellen Raines is  
25 hearsay. Ellen is not a member of CKAP as I know it.

1           Amy Gomberg's statements down below about  
2 her understanding of what she helped Sue to  
3 understand is hearsay as well.

4           Then on the second page we have an e-mail  
5 from Joyce Limbach to Sue Steigerwald and in the  
6 third page of the e-mail from Sue Daugherty to Joyce  
7 Limbach which I believe is hearsay as well.

8           And the final objection, your Honor, is  
9 this is page -- it's -- it appears that this is  
10 supposedly a four-page document. There are three  
11 pages of four attached so it is an incomplete  
12 document.

13           EXAMINER PRICE: Mr. Kutik.

14           MR. KUTIK: Your Honor, we are offering  
15 Exhibit 22 principally for the purpose of the e-mail  
16 that Ms. Steigerwald sends to Ms. Limbach. And this  
17 shows, again, her activities with respect to  
18 publicity and pressure and so forth. It also -- I  
19 believe counsel has misrepresented the paragraph on  
20 page 4.

21           These are not quote, statements, end  
22 quote, from Ms. Gomberg, but rather this is  
23 Ms. Steigerwald's take of the so-called subsidization  
24 issue and that's clearly something that's relevant.

25           With respect to the other e-mails that

1 continue on page 2 of the document, Ms. Limbach is a  
2 member of CKAP and we have Ms. Steigerwald's e-mail  
3 and then we have Ms. Limbach -- excuse me,  
4 Ms. Daugherty's e-mail, and Ms. Daugherty is a  
5 member.

6 Your Honor, we are not offering  
7 Ms. Limbach's e-mail subsequent. That is the one to  
8 Mr. Butcher.

9 EXAMINER PRICE: Okay. Thank you. With  
10 those clarifications the objection will be overruled.

11 23.

12 MS. GRADY: Yes, your Honor. This  
13 appears to be the John Campbell service monitoring  
14 letter to Ms. Steigerwald. It is not an exception to  
15 hearsay. It is an out-of-court statement made by  
16 some member, consumer service investigator of the  
17 service monitoring, an enforcement department of the  
18 PUCO, does not fall within a hearsay exception.

19 EXAMINER PRICE: Well, as I indicated  
20 earlier, although I would be the first to acknowledge  
21 staff is not strictly a party for purposes of the --  
22 many of the procedural rules, they are participating  
23 in this hearing and if staff did not believe that  
24 Mr. Campbell's statement was being accurately  
25 portrayed, I am sure they would produce Mr. Campbell

1 to testify otherwise. Overruled.

2 24.

3 MS. GRADY: Yes, your Honor. We object  
4 to this document coming in on the basis of relevance  
5 as well as hearsay. We've got statements by Amy  
6 Gomberg about an 11:00 o'clock meeting and letting  
7 Sue know what number to call. I am not sure how that  
8 is relevant to anything before the Commission.

9 And then on the bottom of that page we  
10 have another e-mail from Amy to Sue about what  
11 FirstEnergy has come back with respect to the  
12 electric security plan, again, which is not relevant  
13 to the proceedings before this Commission at this  
14 point.

15 MR. KUTIK: Your Honor, we will withdraw  
16 Exhibit 24.

17 EXAMINER PRICE: You are?

18 MR. KUTIK: Yes.

19 EXAMINER PRICE: Okay. Another amicable  
20 resolution.

21 25.

22 MS. GRADY: Yes, your Honor. On 25 we  
23 have the e-mail from Vince Astor to Sue Steigerwald,  
24 again.

25 EXAMINER PRICE: Let me seek

1 clarification. Mr. Kutik, are you offering the Astor  
2 e-mail too or just the Steigerwald response?

3 MR. KUTIK: We are offering the Astor  
4 e-mail just to indicate who she is responding to, not  
5 necessarily anything in terms of the substance of  
6 that document.

7 EXAMINER PRICE: That's problematic  
8 because it is incomplete.

9 MR. KUTIK: Well, in essence, your Honor,  
10 all we're doing is the most relevant thing is the  
11 name there, just to complete who Vince was in her  
12 e-mail, in her e-mail. At least in the format that  
13 we received it, it didn't indicate who the recipient  
14 was and so we included that portion of Mr. Astor's  
15 e-mail just to indicate that it was Mr. Astor.

16 EXAMINER PRICE: Okay. With that  
17 clarification we will overrule the objection.

18 MS. GRADY: Your Honor?

19 EXAMINER PRICE: Yes.

20 MS. GRADY: May I be heard on the  
21 relevance?

22 EXAMINER PRICE: No. Again, this --  
23 there is nothing different in this e-mail than dozens  
24 of rulings I've made -- the Bench has made in the  
25 last -- in the course of today that we're going to



1 allow FirstEnergy to prove up their allegations that  
2 Ms. Steigerwald has engaged in a campaign to  
3 influence the PUCO.

4 MS. GRADY: I guess, your Honor, this one  
5 was different in that their the inquiry as to whether  
6 or not if this customer is with an alternative  
7 supplier what happens to their credit if they are in  
8 an aggregation program, so I thought it was not  
9 really relevant to the issue.

10 MR. KUTIK: Well, what is relevant, your  
11 Honor, is the last paragraph.

12 EXAMINER PRICE: I understand, I  
13 understand and I'm -- in the course of admitting it I  
14 am not endorsing Ms. Steigerwald's interpretation of  
15 what happens if you switch to a marketer under the  
16 Commission rulings either. It will be admitted -- I  
17 am going to overrule the objection. We will admit it  
18 later.

19 26.

20 MS. GRADY: Yes, your Honor, this appears  
21 to be an incomplete document. I don't know what  
22 started -- it looks like it's not started correctly  
23 from -- starts mid-sentence, it would appear, in the  
24 question, the relevance of this document.

25 Also we are talking about the Ohio

1 Inspector General complaint. Your Honor ruled that  
2 that complaint is not relevant and ruled that the  
3 complaint --

4 EXAMINER PRICE: You are correct. You  
5 are correct, we've excluded all the evidence thus far  
6 of the alleged complaint by Ms. Steigerwald. We will  
7 exclude this too. Sustained.

8 MS. GRADY: Your Honor, 27 contains  
9 numerous hearsay -- hearsay statements by Amy  
10 Gomberg. Mr. --

11 EXAMINER PRICE: Which again, Ms. Grady,  
12 if we could just come up with new arguments here  
13 because we've allowed these in so far by Ms. Gomberg,  
14 plus Senator Grendell, Ms. Steigerwald. Is there  
15 anything different about this e-mail than from all  
16 the other e-mails we have admitted thus far?

17 MS. GRADY: That's a tough thing to say  
18 but I believe the arguments that were made earlier  
19 apply to this, if that's what your question is.

20 EXAMINER PRICE: Yes. Overruled.

21 MS. GRADY: 28, your Honor, we've got --  
22 we have on page 2 a bunch of hearsay by Mr. Grendell  
23 and Eileen Raines. I believe, again, in addition  
24 when we go to page 11, I guess it's numbered page 11  
25 and 12, we are talking here about House Bill 276 and

1     what -- what efforts we should -- they should make  
2     for House Bill 276. I don't believe House Bill 276  
3     is an issue that is relevant to this proceeding.

4             And it appears, as a matter of fact, that  
5     this is an incomplete document. When you go to page  
6     12, it looks like they cut off -- it cuts off  
7     mid-sentence.

8             MR. KUTIK: Well, your Honor, if I could  
9     just speak to this issue of incompleteness.

10            EXAMINER PRICE: Please.

11            MR. KUTIK: If we were to provide  
12     complete e-mails, we would have used all of the  
13     e-mails because they never stopped. What we are  
14     attempting to do, for example, to this document in  
15     particular is the e-mail -- relevant e-mail basically  
16     ends with the notation original message on the last  
17     page which is numbered 12.

18            So I just want to make a comment with  
19     respect to similar objections by counsel. We clearly  
20     don't -- where we have complete e-mails -- by the  
21     way, in the testimony of Ms. Steigerwald we do  
22     establish the specific exhibit -- part of the  
23     exhibits that we were talking about.

24            So at this point, your Honor, when you  
25     are dealing with these kinds of documents or these

1 types of documents, incompleteness objection is  
2 inappropriate.

3 EXAMINER PRICE: I understand. Just so  
4 that -- a clarification here, the discussion about  
5 telephone deregulation, that is Ms. Steigerwald's  
6 language?

7 MS. GRADY: Yes, I believe she is  
8 relaying what Amy Gomberg asked, help to fight  
9 telephone deregulation.

10 EXAMINER PRICE: From CKAP?

11 MS. GRADY: It's hard to tell, I don't  
12 know, your Honor. I don't know. No idea, but I know  
13 it's labeled "telephone deregulation" which I don't  
14 believe is an issue in this proceeding.

15 EXAMINER PRICE: Well, now, you start  
16 running into issues of quid pro quo, we'll support  
17 you on issue X if you support us on something  
18 totally -- totally not a part. I am going to allow  
19 this.

20 MS. GRADY: Your Honor, I think that's --  
21 you are jumping to many conclusions off of an e-mail,  
22 and I don't think that's fair, for the record. I  
23 would object to that.

24 EXAMINER PRICE: I am just responding to  
25 your argument that it's not relevant.

1 MR. CORCORAN: Your Honor?

2 EXAMINER PRICE: Mr. Corcoran.

3 MR. CORCORAN: There is no effort by CKAP  
4 on telephone deregulation.

5 EXAMINER PRICE: Then is this telephone  
6 deregulation, was that in a CKAP newsletter or an  
7 e-mail that was served as a CKAP newsletter?

8 MR. KUTIK: Your Honor, I believe her  
9 testimony is this is her e-mail.

10 MS. GRADY: I'm sorry?

11 MR. KUTIK: Her testimony is this is her  
12 e-mail. That's one of the things we did in her  
13 deposition, explain in the particular documents what  
14 was her e-mail and what wasn't her e-mail. This was  
15 part of her e-mail.

16 MS. GRADY: The relevance at this point  
17 it is not relevant and it's -- even if you consider  
18 it relevant its probative value is close to nil or  
19 zero.

20 EXAMINER PRICE: Which you can argue  
21 before the Commission. Overruled.

22 29.

23 MS. GRADY: Your Honor, on page 275 of  
24 that document we've got hearsay about ORC and  
25 Representative Lundy who stated that Mr. -- that

1 Strickland has ordered the all-electric rate to be  
2 instated tomorrow, it's hearsay, question the  
3 relevance.

4 We also have statements made by an Amy  
5 Winehart about a theatrical or comedy troupe that  
6 could video or provide a satire. I am not sure how  
7 that's relevant to anything that's going on here.  
8 It's hearsay. And then in addition on the bottom of  
9 page 276 it looks like it's an incomplete e-mail.

10 EXAMINER PRICE: Again, we have discussed  
11 the completeness issue already.

12 MR. KUTIK: Your Honor, all this shows  
13 is, again, is her plan, how she reached out to the  
14 media, various types of media to orchestrate this  
15 campaign.

16 EXAMINER PRICE: I understand it also  
17 shows how foresighted Mr. Corcoran was raising this  
18 issue before anybody else. Overruled.

19 MS. GRADY: Your Honor, on 30 we have  
20 hearsay statements by Amy Gomberg on page 277 at the  
21 very bottom of the first paragraph and then at the --  
22 in the next paragraph that follows we have on page  
23 279 information about the Inspector General's  
24 Office's investigation of the PUCO. That carries  
25 over onto page 280.

1 EXAMINER PRICE: Okay. We will strike  
2 that portion.

3 MR. KUTIK: Well, your Honor, if I may be  
4 heard on that.

5 EXAMINER PRICE: You may.

6 MR. KUTIK: Your Honor, I understand your  
7 rulings with respect to this but this goes beyond  
8 just the Inspector General complaint. This goes to  
9 the fact that she was using the Inspector General  
10 complaint as part of her publicity campaign so this  
11 is different than the fact that she had just filed a  
12 complaint.

13 EXAMINER PRICE: I understand it is  
14 different, but I don't believe it is different enough  
15 and we are going to strike the language related to  
16 the Inspector General's complaint beginning at the  
17 bottom of page 279 and concluding at the top of page  
18 280.

19 MR. KUTIK: Between the asterisks.

20 EXAMINER PRICE: Between the asterisks,  
21 yes.

22 MS. GRADY: Then, your Honor, at the  
23 bottom of 281 there are statements by Mr. Grendell  
24 that are hearsay.

25 EXAMINER PRICE: And we have already

1     dealt with similar objections and overruled those, so  
2     your objection will be sustained in part and  
3     overruled in part.

4             MS. GRADY: Your Honor, our objection to  
5     33 goes to relevance.

6             MR. KUTIK: Are we on 31 or 33?

7             MS. GRADY: 31 goes to relevance.

8             EXAMINER PRICE: I was hoping we were  
9     jumping ahead. Overruled.

10            MS. GRADY: On 32 there are hearsay  
11     statements throughout this document beginning with  
12     "FE claims it's not possible to restore the original  
13     way our bills were figured because they have  
14     abandoned that structure" and that's right in the  
15     very first paragraph.

16            There is hearsay statements by what John  
17     Funk on the second page told Sue. There's hearsay  
18     statements on page 3 at the very bottom about what  
19     Senator Grendell talked about and what he liked about  
20     the website and the group's name.

21            The -- there's hearsay on the next page,  
22     219, with respect to the calling the Governor's  
23     Office and what the Governor's Office communication  
24     department told Sue back.

25            And then finally there is -- on page 221



1     there's a mention of Connie Cline doing extensive  
2     research and what her findings were. I am not sure  
3     who Connie Cline is but I do believe that to be  
4     hearsay as well, so hearsay and relevance.

5             EXAMINER PRICE: Overruled.

6             MS. GRADY: 33, your Honor, primarily a  
7     relevance issue.

8             EXAMINER PRICE: Is there anything  
9     different about 33 than --

10            MS. GRADY: Well, your Honor, this does,  
11     on page 87, talk about the class action, Grendell  
12     class action suit, and talks about that which again  
13     we believe is irrelevant to the issues in this  
14     proceeding, and it is an incomplete document.

15            EXAMINER PRICE: Incompleteness issues  
16     we've already talked about extensively. Overruled.

17            MS. GRADY: Your Honor, the next  
18     document, 34, there is a hearsay statement -- hearsay  
19     statement contained on page 171 about an article in  
20     the -- in the newspaper and what that article -- that  
21     it is a favorable article, and I believe it's  
22     hearsay --

23            EXAMINER PRICE: Well, she is giving her  
24     opinion she thinks it's a fair article, isn't she?

25            MS. GRADY: I think it's irrelevant to

1 the issues in this proceeding. Whether publicity is  
2 favorable or unfavorable has nothing to do with this  
3 case.

4 EXAMINER PRICE: It all goes back to  
5 FirstEnergy's allegations of campaigning by CKAP to  
6 improperly influence this Commission. Overruled.

7 MS. GRADY: Which is irrelevant in OCC's  
8 opinion.

9 We are now on Exhibit 35.

10 EXAMINER PRICE: Ms. Grady, it's not  
11 going to help us get home at a reasonable hour if you  
12 make comments like that.

13 MS. GRADY: Your Honor, I am trying to  
14 move things along.

15 EXAMINER PRICE: I understand, but, you  
16 know, I understand you don't think it's relevant but  
17 I think the Bench made it clear that we are going to  
18 allow that evidence at this point, so if every time I  
19 overrule you raise that same issue, we are going to  
20 be here very late.

21 MS. GRADY: I will be mindful of that,  
22 your Honor.

23 EXAMINER PRICE: Thank you.

24 MS. GRADY: Exhibit 35 we have a  
25 statement on page 210 about the PUCO ruling or order

1     that something is out of their jurisdiction. That is  
2     hearsay, no exception to hearsay.

3             On page 211 there are statements by  
4     Chairman Schriber which again is hearsay. And  
5     there's no exception to hearsay that I am aware of  
6     that would allow that kind of information in.

7             EXAMINER PRICE: Well, and, again, I  
8     don't think that FirstEnergy is offering this for the  
9     truth of the matter asserted. They are simply  
10    offering this as part of the course of conduct  
11    regarding CKAP's efforts to obtain a political  
12    solution to this issue. Overruled.

13            MS. GRADY: On page -- Exhibit No. 36 we  
14    have then again statements by Chairman Schriber  
15    announcing what people should do at a public hearing.  
16    Again, question of relevance, out-of-court  
17    statements, we would move to strike.

18            EXAMINER PRICE: Yeah, I will -- we'll  
19    sustain your objection as to the paragraph beginning  
20    "Because it was so crowded," and ending "on the  
21    official record," as that relates to simply the  
22    procedure we were handling the public hearing in  
23    Sandusky as well as all the other public hearings and  
24    Chairman Schriber's exact words are a part of the  
25    transcript for that proceeding. Otherwise overruled.

1 MS. GRADY: Your Honor, with respect to  
2 37 --

3 EXAMINER PRICE: Hold on one second,  
4 please.

5 Okay. 37.

6 MS. GRADY: With respect to 37 the first  
7 full section before the e-mail to Sue Steigerwald I  
8 am not sure what that shows. It looks like it's  
9 incomplete. I don't -- I can't believe that's  
10 offered for anything.

11 EXAMINER PRICE: Why don't we ask  
12 Mr. Kutik.

13 Mr. Kutik, are you offering anything  
14 above the e-mail from Ms. Steigerwald?

15 MR. KUTIK: No.

16 EXAMINER PRICE: Objection.

17 MS. GRADY: The remainder of the e-mail  
18 we would object to on the basis of relevance. All it  
19 is is updating CKAP on the procedural rulings that  
20 have been made, when expert testimony is, when  
21 hearings are. I am not sure that it has any  
22 relevance. The last page entirely, 225, not sure  
23 that has any relevance whatsoever as well.

24 EXAMINER PRICE: Overruled.

25 MS. GRADY: With respect to 38, we have

1 hearsay statements by Mr. Grendell.

2 EXAMINER PRICE: Go ahead.

3 MS. GRADY: And that would be it as well  
4 as relevance.

5 EXAMINER PRICE: Overruled.

6 MS. GRADY: Exhibit 39, your Honor, is a  
7 compilation of letters from the public docket. I  
8 believe this is cumulative evidence, and it's already  
9 evidence that's part of the record as per Chairman  
10 Schriber's statements within the -- within the  
11 transcripts for the Sandusky and Strongsville  
12 hearing, I believe.

13 EXAMINER PRICE: Mr. Kutik.

14 MR. KUTIK: Your Honor, Exhibit 39 needs  
15 to be read in context with Exhibit 38. Exhibit 38 is  
16 Steigerwald helpfully suggests a text of an e-mail  
17 that should be sent to the Commission. And what  
18 Exhibit 39 is is a collection of various very  
19 similarly-worded e-mails.

20 We're certainly not seeking to introduce  
21 Exhibit 39 or a page of Exhibit 39 for the truth of  
22 the matter but for their relative similarity to  
23 Ms. -- Ms. Steigerwald's suggested e-mail.

24 EXAMINER PRICE: Do you mean the exact  
25 same typographical error throughout the documents?

1 MR. KUTIK: Yes, your Honor.

2 EXAMINER PRICE: Overruled.

3 MS. GRADY: Exhibit 40, your Honor,  
4 hearsay statements by Amy Gomberg on the first page  
5 as well as hearsay statements. I'm not sure who on  
6 page 65 she heard -- Sue heard from someone not even  
7 identifying who those -- who she heard from, so that  
8 I believe is hearsay as well, and I would throw in  
9 relevance, I am not sure how it's relevant.

10 EXAMINER PRICE: Consistent with our  
11 previous rulings, overruled.

12 On 41 where is the portion that you're  
13 introducing beginning?

14 MR. KUTIK: The last two lines of the  
15 first page.

16 MS. GRADY: I'm sorry?

17 MR. KUTIK: The last two lines of the  
18 first page.

19 MS. GRADY: On Exhibit 41?

20 EXAMINER PRICE: Yes.

21 MS. GRADY: Your Honor, this document  
22 contains hearsay. If we go to 213, "FirstEnergy  
23 officials have said," all that is hearsay, it's in  
24 quotation marks. It appears to be even an article  
25 from the Akron Beacon Journal which there is no

1 exception to hearsay.

2 EXAMINER PRICE: I don't believe they are  
3 offering this for the truth of the matter asserted.  
4 I think they are offering this as an example of the  
5 public relations campaign that CKAP was engaged in.

6 MS. GRADY: And then below that is a  
7 statement by Governor Strickland -- or Sue is saying  
8 that Governor Strickland is making statements that he  
9 wants the discount reinstated permanently, it's  
10 hearsay, no exception to hearsay.

11 EXAMINER PRICE: Again, I think that's  
12 part -- a significant event she believed and part of  
13 their efforts. Overruled.

14 MS. GRADY: And finally, hearsay  
15 statements on 214 about Amy Gomberg making statements  
16 about the residential -- or it looks like the ESP  
17 case. I don't know what case she is talking about so  
18 I don't think it's relevant and I think it's hearsay.

19 MR. KUTIK: Once and for all, a statement  
20 by Ms. Gomberg is not hearsay, that's No. 1. No. 2,  
21 with respect to what -- what Ms. Steigerwald is  
22 saying, she's talking about what she learned and  
23 stating facts that she learned, not necessarily  
24 statements of Ms. Gomberg.

25 EXAMINER PRICE: I can't disagree with

1 Mr. Kutik. Overruled.

2 MS. GRADY: Your Honor, on Exhibit 42,  
3 not sure, it looks like it's an incomplete e-mail at  
4 the top.

5 EXAMINER PRICE: Let's just seek  
6 clarification.

7 Mr. Kutik, where is the portion of 42  
8 that you intend to introduce?

9 MR. KUTIK: Starting with the last three  
10 lines of the first page.

11 EXAMINER PRICE: Thank you.

12 MS. GRADY: Well, your Honor, going to  
13 132 then of the document, we've got rumors about  
14 Schriber not wanting to be around for a decision on  
15 the all-electric case and clearly hearsay and not  
16 even attributable -- I am not sure who that's  
17 attributable to.

18 And then we also have an indication about  
19 a survey that the company is asking to conduct which  
20 I -- is hearsay and relevance, so both of those  
21 statements have -- are problematic in terms of  
22 relevancy and hearsay.

23 EXAMINER PRICE: Mr. Kutik.

24 MR. KUTIK: Your Honor, again, this is  
25 just part of their communication process establishing



1 their plans and opinions. They are certainly not  
2 offering any of this for the truth of the matter but  
3 to establish coordinated activities among CKAP and  
4 with OCC, particularly the statement OCC are our  
5 allies.

6 EXAMINER PRICE: Thank you. Overruled.

7 MS. GRADY: Your Honor, on Exhibit 43,  
8 starting on page 120, Senator Grendell's Office is  
9 forwarding something about rebates and buying Energy  
10 Star appliances, all hearsay and has no relevance to  
11 this proceeding.

12 EXAMINER PRICE: Well, I have to say I  
13 agree that the appliance rebate information is of no  
14 probative value in this proceeding and we will go  
15 ahead and strike beginning "Senator Grendell's  
16 office" and ending on 121, "because of this program."

17 MS. GRADY: Thank you, your Honor.

18 And the last exhibit as far as I have is  
19 Exhibit No. 44, we would object to this document on  
20 the basis of hearsay and also relevancy. On page 107  
21 she's discussing the PUCO's past procedural ruling  
22 about the 90-day timeframe not being enough time to  
23 look at this issue and that -- make statements about  
24 the PUCO, what they would be willing to investigate  
25 all related to procedural rulings that are no longer

1 at issue in this proceeding.

2 And then I would go to page 110 where we  
3 have just a listing of -- appears to be a listing of  
4 locations, I'm not sure whether they're locations for  
5 the public hearings or not and information about a  
6 bus trip or rally on page 12.

7 EXAMINER PRICE: I believe if you recall  
8 correctly they are public hearings in 10-388-EL-SSO,  
9 maybe not. Yeah.

10 MS. GRADY: The fact that the date in  
11 that sentence is of little relevance, very little  
12 probative value. We can find the dates from the  
13 public hearing from the Commission's entries.

14 EXAMINER PRICE: Well, again, it goes  
15 back to their efforts to coordinate the testimony of  
16 their members. We'll overrule it.

17 Mr. Corcoran, would you like to make any  
18 arguments to supplement the arguments that Ms. Grady  
19 has already made with respect to these exhibits?

20 MR. CORCORAN: No, your Honor. I think  
21 she did a fine job.

22 EXAMINER PRICE: As she did. Even when  
23 she did not win.

24 At this point then I guess we'll take up  
25 the admission of Company Exhibits 3A, 3B, and 3C.

1 Any objection to the admission of 3A, 3B, and 3C  
2 beyond subject to the previous objections that you  
3 made?

4 Hearing none, those will be admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER PRICE: With respect to Company  
7 Exhibits 4 through 44, I guess we will just have to  
8 do these one at a time.

9 Exhibit 4 will be admitted. Exhibit 5  
10 will be admitted. Revised Exhibit 6 will be  
11 admitted. 7 will be admitted. 8, 9, 10, and 11 will  
12 be admitted.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 EXAMINER PRICE: 12 will not be admitted.  
15 13 will be admitted. 14 and 15 will not be admitted.

16 (EXHIBITS ADMITTED INTO EVIDENCE.)

17 MR. KUTIK: Your Honor, your ruling on 15  
18 was that you were going to admit it. That was the  
19 press release.

20 EXAMINER PRICE: Oh, you're correct, I'm  
21 sorry. 15 will be admitted. Thank you.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 EXAMINER PRICE: 16 through 23 will be  
24 admitted. 24 has been withdrawn. 25 will be  
25 admitted. 26 will not be admitted. 27, 28, 29 will

1 be admitted. 30 will be admitted in part. 31  
2 through 35 will be admitted. 36 will be admitted in  
3 part. 37 through 42 will be admitted. 43 will be  
4 admitted in part. And 44 will be admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER PRICE: Let's go off the record.

7 (Discussion off the record.)

8 EXAMINER PRICE: Let's go back on the  
9 record.

10 Mr. Kutik.

11 MR. KUTIK: Your Honor, sometime between  
12 3:00 and 3:30 today I'm advised that we did provide  
13 the parties electronically copies of our final  
14 rebuttal witness that is Mr. Ridmann. I believe at  
15 this time that it is likely that we are not going to  
16 supplement Mr. Ridmann's rebuttal testimony in light  
17 of the Bench's rulings.

18 I would like to have some time to confer  
19 with my client on that. So what I offer is that  
20 if -- it is now by this clock 5:10, and we will  
21 advise the parties electronically by 6:00 o'clock if  
22 we intend to supplement. And if they do not hear  
23 from us by 6:00 o'clock, we will not be  
24 supplementing, and we will -- of course, if we do  
25 send a message out, we will send a message out to the

1 attorney examiners.

2 EXAMINER PRICE: Thank you. With that we  
3 will adjourn for the evening. We will reconvene at  
4 noon tomorrow. Thank you all. We are off the  
5 record.

6 (The hearing was adjourned at 5:10 p.m.)

7 - - -

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## 1 CERTIFICATE

2 I do hereby certify that the foregoing is  
3 a true and correct transcript of the proceedings  
4 taken by me in this matter on Wednesday, February 23,  
5 2011, and carefully compared with my original  
6 stenographic notes.

7  
8  
9 Karen Sue Gibson, Registered  
Merit Reporter.

10 (KSG-5324)

11 - - -  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**3/9/2011 9:57:12 AM**

**in**

**Case No(s). 10-0176-EL-ATA**

Summary: Transcript Transcript of Ohio Edison Company hearing held on 02/23/11. Vol IV electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.