

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Duke Energy:
Ohio, Inc., for Approval :
of the Establishment of : Case No. 11-2641-EL-RDR
Rider BTR and Associated :
Tariff Approval :

and :

In the Matter of the :
Application of Duke Energy:
Ohio, Inc., for Approval :
of the Establishment of : Case No. 11-2642-EL-RDR
Rider RTO and Associated :
Tariff Approval. :

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PROCEEDINGS

before Ms. Christine Pirik and Ms. Katie Stenman,
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,
May 11, 2011.

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On behalf of the City of Cincinnati.

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On behalf of the Industrial Energy Users
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On behalf of the Ohio Manufacturers
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Mike DeWine, Ohio Attorney General
By Mr. William L. Wright,
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On behalf of the Staff of the PUCO.

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Wednesday Morning Session,
May 11, 2011.

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EXAMINER STENMAN: Let's go on the record. The Public Utilities Commission of Ohio has called for hearing at this time and place Case Nos. 11-2641-EL-RDR and 11-2642-EL-RDR being in the Matter of the Application of Duke Energy Ohio for Approval of the Establishment of Rider BTR and Associated Tariff Approval and In the Matter of the Application of Duke Energy Ohio for Approval of the Establishment of Rider RTO and Associated Tariff Approval.

My name is Katie Stenman and with me is Christine Pirik. We are the Attorney Examiners that have been assigned by the Commission to hear this case.

At this time I would like to start by taking the appearances of the parties starting with the company, and we'll just go around the table.

MS. SPILLER: Good morning. Thank you, your Honor. Amy Spiller along with my colleague Elizabeth Watts representing Duke Energy Ohio, 139 East Fourth Street, Cincinnati, Ohio 45201.

MR. WARNOCK: Matt Warnock of Bricker & Eckler, LLP, 100 South Third Street, Columbus, Ohio

1 43215, on behalf of the Ohio Manufacturers
2 Association.

3 MR. O'BRIEN: Thomas J. O'Brien with the
4 law firm of Bricker & Eckler, LLP, 100 South Third
5 Street, Columbus, Ohio 43215, here on behalf of the
6 City of Cincinnati.

7 MR. KURTZ: Good morning. For the Ohio
8 Energy Group, Mike Kurtz, Boehm, Kurtz & Lowry, 1510
9 URS Center, Cincinnati, Ohio.

10 MR. PETRICOFF: On behalf of the Epsilon
11 Generation and Constellation NewEnergy Corp., Howard
12 Petricoff from the Law Firm of Vorys, Sater, Seymour
13 and Pease.

14 MS. KYLER: Good morning. On behalf of
15 the residential customers of Duke Energy Ohio, Janine
16 Migden-Ostrander, Consumers' Counsel, by Jody Kyler
17 and Jeff Small, 10 West Broad Street, Suite 1800,
18 Columbus, Ohio 43215.

19 MS. MOONEY: On behalf of the Ohio
20 Partners for Affordable Energy, Colleen L. Mooney,
21 231 West Lima Street, Findlay, Ohio.

22 MR. GARBER: On behalf of the FirstEnergy
23 Solutions Corp., Grant Garber from the Law Firm of
24 Jones Day, 321 John H. McConnell Boulevard, Columbus,
25 Ohio 43215.

1 MR. OLIKER: On behalf of Industrial
2 Energy Users of Ohio, Joseph Olikier of the Law Firm
3 of McNees, Wallace & Nurick, 21 East State Street,
4 Columbus, Ohio 43215.

5 MR. JONES: On behalf of the staff of the
6 Public Utilities Commission of Ohio, Ohio Attorney
7 General Mike DeWine, Assistant Attorneys General
8 Steve Beeler and John Jones, 180 East Broad Street,
9 Columbus, Ohio 43215.

10 EXAMINER STENMAN: Thank you. Is Duke
11 ready to go forward with the stipulation that was
12 filed?

13 MS. SPILLER: We are, your Honor, and we
14 would call William Don Wathen to the stand, please.

15 (Witness sworn.)

16 MS. SPILLER: And, your Honor, may I
17 approach, please?

18 EXAMINER STENMAN: You may.

19 MS. SPILLER: Some housekeeping detail
20 and I would like to identify for the record, if I
21 may, three exhibits. The first has been identified
22 as Duke Energy Ohio Exhibit No. 1 docketed with the
23 Commission on April 26, 2011.

24 EXAMINER STENMAN: It will be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

MS. SPILLER: The next exhibit we would ask to be marked, your Honor, Duke Energy Ohio Exhibit 2, and the witness will identify these for counsel, another docketed -- document docketed on April 26, 2011, with the Commission.

Finally, we have marked as Joint Exhibit No. 1 again docketed with the Commission on April 26, 2011.

EXAMINER STENMAN: They will be so marked.

(EXHIBITS MARKED FOR IDENTIFICATION.)

MS. SPILLER: Thank you, your Honor.

--

WILLIAM DON WATHEN, JR.
being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

By Ms. Spiller:

Q. Mr. Wathen, can you state your full name for the record, please.

A. It's William Don Wathen, W-A-T-H-E-N.

Q. And by whom are you employed and in what capacity, sir?

A. I am employed by Duke Energy Business Services as the General Manager and Vice President of

1 Rates for Ohio and Kentucky.

2 Q. And, sir, you have before you what has
3 been marked for purposes of this proceeding as Duke
4 Energy Ohio Exhibit 1.

5 A. I do.

6 Q. Can you identify that for the record,
7 please.

8 A. This is the application filed in the --
9 this case.

10 Q. And, sir, could you please identify for
11 purposes of the record what has been marked as Duke
12 Energy Ohio Exhibit 2.

13 A. That's the -- my direct testimony as part
14 of the stipulation filed in this case.

15 Q. And finally, sir, the third exhibit that
16 I handed to you this morning was a Joint Exhibit 1.
17 Could you identify that for purposes of the record,
18 please.

19 A. It's the stipulation in this case that we
20 reached.

21 Q. Mr. Wathen, if we could please refer to
22 your testimony which has been marked as Duke Energy
23 Ohio Exhibit 2, is that direct testimony, sir, that
24 you caused to be filed in this proceeding?

25 A. It is.

1 Q. Do you have any revisions or changes to
2 that testimony since its filing on April 26, 2011?

3 A. I do not.

4 Q. Sir, if I were to ask you the questions
5 that are set forth in your direct testimony which is
6 Duke Energy Ohio Exhibit 2, would your answers today
7 be the same as they were at that time?

8 A. Yes.

9 MS. SPILLER: Thank you. Your Honor, the
10 witness is available for cross-examination.

11 EXAMINER STENMAN: Thank you.

12 We'll just go around the table.

13 Mr. Warnock.

14 MR. WARNOCK: No questions, your Honor.

15 EXAMINER PIRIK: Mr. O'Brien.

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

17 EXAMINER STENMAN: Mr. Kurtz.

18 MR. KURTZ: No questions.

19 EXAMINER STENMAN: Mr. Petricoff.

20 MR. PETRICOFF: Yes, your Honor, I have a
21 couple. Thank you.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Petricoff:

25 Q. Good morning, Mr. Wathen. I have a

1 couple of questions for you concerning the riders,
2 the proposed riders, rider BTR and rider RTO. It's
3 my understanding, and correct me if I'm wrong, that
4 under these riders Duke Energy Ohio would pay
5 directly the network integrated transmission charges
6 for all retail customers?

7 A. That's correct.

8 Q. And that includes customers who are
9 shopping as well as customers who are taking standard
10 service?

11 A. That's correct.

12 Q. Duke Energy Ohio is going to be paying
13 the network integrated transmission charges; would
14 the competitive retail electric supplier or I guess
15 in the parlance of the RTO the load-serving entity be
16 relieved of paying the network integrated
17 transmission charges?

18 A. Yeah. One way or another we'll ensure
19 that the CRES providers are not paying for network
20 service.

21 Q. Okay. And has such an arrangement been
22 made with PJM as of this time?

23 A. Not as of this time.

24 MR. PETRICOFF: Your Honor, may I
25 approach the witness?

1 EXAMINER STENMAN: You may.

2 Q. Now, Mr. Wathen, are you familiar with
3 the electric security plan in the case filed by the
4 FirstEnergy companies -- the FirstEnergy companies in
5 Case No. 10-388-EL-SSO?

6 A. I'm somewhat familiar with that case.

7 Q. And would you agree with me that in that
8 case there is a similar arrangement for the electric
9 distribution utility to pay the network integrated
10 charges and then relieve the competitive retail
11 electric service provider from making those payments
12 to the RTO?

13 A. This is a similar arrangement, yes.

14 MR. PETRICOFF: Your Honor, at this time
15 I would like the Court to take administrative notice
16 of the stipulation that was filed in the FirstEnergy
17 Case No. 10-388-EL-SSO, the stipulation filed on
18 March 23, 2010, and the opinion and order of the
19 Commission accepting that stipulation on August 25,
20 2010.

21 EXAMINER STENMAN: Administrative notice
22 will be taken of those, the stip and the order.

23 MR. PETRICOFF: Thank you.

24 Q. (By Mr. Petricoff) Mr. Wathen, what I
25 handed you is page 40 from the stipulation. And if

1 you would, I would like you to focus on the first --
 2 the first paragraph which states that "PJM on a
 3 billing line item basis, allows for market
 4 participants to select an alternate market
 5 participant for billing purposes so long as there is
 6 agreement between the two market participants for
 7 such an arrangement to take place." To the best of
 8 your knowledge, is that an accurate statement?

9 A. To the best of my knowledge, it's an
 10 accurate statement.

11 Q. And that is the kind of arrangement that
 12 Duke anticipates making with PJM in order to arrange
 13 for the direct payment of the network integrated
 14 charges?

15 A. That first paragraph I would -- seems
 16 like it would be an option, I mean, among others so,
 17 to ensure that CRES providers aren't billed for
 18 network service.

19 Q. Has Duke at this time made a decision as
 20 to how they are going to arrange to make the payments
 21 directly and relieve the competitive retail electric
 22 supplier from paying the network integrated charges?

23 A. I can't say we've decided definitively.
 24 We would like to work with the CRES providers and get
 25 their input. I believe the FirstEnergy model is a

1 workable model and seems like a good starting point.

2 Q. Okay. Thus far, I've talked to you about
3 the network integrated transmission service charges.
4 Is Duke under this application that's been filed
5 going to make payments for the, just use the acronym,
6 RTEPs, R-T-E-P-S, as well?

7 A. All the costs that we would include in
8 the BTR rider would be similarly treated as the NITS
9 including the RTEP and MTEP, those kinds of costs,
10 right.

11 Q. And, once again, you are anticipating
12 there will be an agreement between Duke and the --
13 and the PJM interconnect for the -- for the RTEPs and
14 the other charges covered by the riders?

15 A. I anticipate an agreement will be
16 reached, yes.

17 MR. PETRICOFF: Okay. Your Honor, I have
18 no further questions at this time.

19 Thank you very much, Mr. Wathen.

20 EXAMINER STENMAN: Thank you.

21 Ms. Kyler.

22 MS. KYLER: No questions, your Honor.

23 EXAMINER PIRIK: Ms. Mooney.

24 MS. MOONEY: Yes, thank you.

25 - - -

CROSS-EXAMINATION

By Ms. Mooney:

Q. Mr. Wathen, can you tell me when Duke determined to file the applications that are pending in these cases?

A. Well, we knew -- we've known for quite a while we have needed to file an application for transmission, so in some respect I would say ever since the MRO order was issued in what, February, that we would have to file something along these lines. I can't tell you a specific date when this filing was established but.

Q. So it was after the opinion and order came out in the MRO which was February 23 that you -- that Duke determined that it would be filing these two rider cases?

A. Not necessarily. I mean, we are scheduled to file a transmission cost recovery, our current rider, would be July 15, and I believe knowing what we have in mind for our timeline for the RTO realignment, somewhere between that February 23 date that denied our application to approve these riders and that July date, we would have to file something.

Q. And the riders BTR and RTO were issues in

1 the MRO Case 10-2586-EL-SSO; is that correct?

2 A. Those riders were two riders we proposed
3 in that case, yes.

4 Q. Those are the same two riders that are
5 the subject of this application that we're talking
6 about this morning, right?

7 A. The objective of those two riders is the
8 same as what we had in mind today.

9 Q. And what was the outcome of the SSO case
10 with regard to the riders BTR and RTO?

11 A. Well, I think the Commission didn't
12 really address those riders individually as to
13 approval or denial. They categorically dismissed all
14 the riders proposed in that case so -- or they denied
15 that the MRO was even filed for that matter so it's
16 hard to say they addressed it so.

17 Q. And did the Commission state in its
18 February 23, 2011, opinion and order that
19 applications for riders RTO and BTR needed to be
20 filed separately from the SSO filing?

21 A. I can't recall the specific language of
22 the order, but I'll take your word for it.

23 Q. Well, are you aware that the Commission
24 issued its opinion and -- no, entry on rehearing on
25 May 4 in the SSO case?

1 A. I am aware of that.

2 Q. And on page 15 of the entry on rehearing
3 the Commission referred to Duke filing separate
4 applications for the riders BTR and RTO; is that
5 correct?

6 A. If you could show me the document, I
7 could verify it, but I can't remember those words
8 specifically.

9 MS. MOONEY: Well, what I was going to
10 ask is for the Bench to take administrative notice of
11 the opinion and order issued February 23, 2011, in
12 the SSO Case 10-2586-EL-SSO and then the application
13 for -- no, the entry on rehearing of May 4, 2011, in
14 the SSO case.

15 EXAMINER STENMAN: We'll take
16 administrative notice of the opinion and order issued
17 February 23 and the entry on rehearing issued May 4,
18 both of 2011.

19 Q. When did the parties to the stipulation
20 that was filed in this case on April 26 begin
21 discussions about the stipulation?

22 A. It seems to me we had a global discussion
23 shortly after the MRO was done with all the parties
24 in the MRO case, and then sometime after that order
25 came out, within a few weeks we met with a couple of

1 parties, and then we brought the group. I can't
2 remember the exact date.

3 Q. When you refer on the global discussion
4 on the riders, that was, I believe, the Friday -- the
5 Friday before the opinion and order came out?

6 A. I don't have my calendar with me, but it
7 was before the order came out, and the timeframe is
8 pretty compressed, so it would be in there somewhere,
9 yeah.

10 Q. And were all the parties to the SSO case
11 invited to that settlement discussion, what we'll
12 call the global discussion?

13 A. At the -- because the MRO case was
14 pending and this was an opinion of the MRO case, all
15 the parties of that case were invited.

16 Q. And then you said you began discussions
17 on the stipulation that got filed in these
18 applications after the MR -- the SSO opinion and
19 order came out which was whenever in February, 23rd;
20 is that correct?

21 A. It was after the order came out, that's
22 true.

23 Q. Why were all -- why were -- the parties
24 to the MRO case or the SSO case, why were not all the
25 parties invited to continue the settlement

1 negotiations on the riders BTR and RTO?

2 A. Well, it didn't seem like every party had
3 an interest in the RTO issue. There was several
4 parties that expressed no interest whatsoever in that
5 particular aspect of the filing and it seemed
6 irrelevant and unnecessary to invite them to a
7 settlement negotiation on the topic they had no
8 interest in.

9 Q. But those same parties attended the
10 settlement negotiation before the opinion and order
11 came out.

12 A. As part of the MRO case, that's true.

13 Q. But the discussion that took place was
14 the riders BTR and RTO at that meeting.

15 A. Well, as we have been advised by the
16 Commission, we have been advised by the staff that
17 the RTO issue is -- should be taken out of the ESP
18 SSO filing, so in our view it was essentially
19 bifurcated at that point anyway so the nexus between
20 the MRO and those riders was kind of separate at that
21 point so we thought it was -- it was a separate case.

22 Q. So you began settlement negotiations for
23 this stipulation and were the -- there's four parties
24 to the stipulation as I remember, the staff, Duke,
25 OCC, and Ohio Energy Group. Were those the only

1 parties that participated in the settlement
2 negotiations for this stipulation?

3 A. No. There were more parties that
4 participated that didn't sign the stipulation.

5 Q. There were? Who are those other parties
6 that were invited to the settlement negotiations for
7 this stipulation?

8 MS. SPILLER: Your Honor, I would just
9 like to object to the relevance in that the issue
10 here concerns settlement discussions in respect to a
11 new filing. The issue before the Bench this morning
12 is whether or not the stipulation meets the test as
13 required under the Commission orders and decisions
14 regarding its reasonableness, the appropriate
15 inclusion of parties, to the bargaining of those
16 parties, et cetera, so I think we are getting a bit
17 far off of the purpose of the hearing this morning.

18 EXAMINER STENMAN: It will be overruled.

19 MS. SPILLER: Thank you, your Honor.

20 A. The only one I can think of right off the
21 top of my head is Industrial Energy Users were part
22 of the settlement negotiations. They did not sign
23 the stipulation, but they were part of the
24 negotiations, and right off the top of my head, I
25 can't remember anybody else that was either invited

1 or participated so. There might have been someone
2 else. I just can't remember.

3 Q. And do you know -- could you tell me like
4 specifically why OPAE, Ohio Partners for Affordable
5 Energy, was never invited to the settlement
6 negotiation?

7 A. Well, I think broadly we sought to have
8 representatives from various customers groups, and in
9 our view the OCC represented that group, the
10 residential group, and we didn't think it was
11 necessary to invite the OPAE.

12 Q. Because you thought that OPAE was a
13 residential customer group and -- is that?

14 A. I believe OPAE is inclusively a
15 residential group, yes.

16 Q. But did it -- did you -- did Duke
17 consider giving OPAE a call and letting them know
18 these settlement negotiations were taking place?

19 A. I can only speak for myself. It didn't
20 cross my mind but there's other parties that were
21 involved that would have made the call so.

22 Q. And OPAE had taken a position on riders
23 BTR and RTO in the SSO case; is that -- isn't that
24 correct?

25 A. I -- I believe they did. It seems to me

1 like it was -- it should be dealt with in another
2 case which was what we did.

3 Q. Well, OPAE also supported the position of
4 the staff, Staff Witness Turkenton, who testified in
5 the case, and she said that you need a separate
6 application, but she also said it was premature to
7 have these riders approved at this time. Do you
8 recall that?

9 A. I recall -- I recall her testimony, yes.

10 Q. And in OPAE's brief and reply brief that
11 was filed in both cases, we supported the position of
12 the staff at that point that it should be separate
13 applications, and it was premature at this point.
14 Are you aware of that?

15 A. Vaguely I knew that. I will take your
16 word for what the brief said but.

17 MS. MOONEY: Well, your Honors, I don't
18 know if I need -- if I would for purposes of what we
19 are trying to do in this case, our brief and reply
20 brief in the -- in the MRO case, could we have
21 administrative notice of that?

22 MS. SPILLER: Your Honor, if we are going
23 down that course, we are effectively asking the
24 Commission to take administrative notice of all the
25 filings in that case. Otherwise we have a piecemeal

1 process in which there are one-sided arguments
2 referenced here by counsel. So I think we're headed
3 down that path.

4 EXAMINER STENMAN: Do you have a
5 response?

6 MS. MOONEY: Oh, we are not going any
7 further down the path at all, and the only point of
8 our brief and reply brief that we would like to cite
9 in this case is that we did in the MRO brief the
10 rider issues and that we were definitely interested
11 in the rider issues and that just goes to the first
12 prong of admission of the three-prong test and we had
13 shown an interest in the issue and it's our position
14 obviously that if there were settlement negotiations
15 continued, we should have been invited and that's as
16 far as it's going to go.

17 EXAMINER STENMAN: Just for clarity and
18 given that there probably will be briefing in this
19 case let's just take administrative notice of the
20 entire docket in 10-2586-EL-SSO.

21 MS. MOONEY: Much more than I asked for.
22 Thank you.

23 Q. (By Ms. Mooney) Okay. So you're
24 negotiating with four or possibly five parties for
25 this stipulation that was filed on April 26. Who was

1 it that determined that the stipulation would be
2 filed at the same time or simultaneously with the two
3 applications that were also filed?

4 A. Well, at a minimum our legal staff would
5 have made that determination.

6 Q. Do you know why the stipulation was filed
7 the same day as the applications?

8 MS. SPILLER: Your Honor, I am going to
9 object. Mr. Wathen has just indicated that counsel
10 was involved in that decision, and this question
11 seeks to elicit attorney-client information and/or
12 work product.

13 EXAMINER STENMAN: Overruled. You can
14 answer if you know.

15 A. Would you repeat the question, please.

16 Q. I was asking why, if you know, the
17 stipulation and the applications were filed
18 simultaneously, same day, same time.

19 A. There had to be some legal reason I'm not
20 sure of.

21 Q. Would it have had anything to do with the
22 making a point that the applications when they were
23 filed had already been the subject of a settlement
24 with four parties?

25 MS. SPILLER: I'm sorry. Can I have the

1 question read back.

2 (Question read.)

3 A. I don't know. I assume the timing,
4 something to do with when the settlement was reached
5 and the applications were filed.

6 Q. Well, they were filed on the same day.

7 A. Yes.

8 Q. Was there an intent to block off any
9 further settlement negotiations at that point when
10 you filed the applications and the settlement?

11 A. I guess I don't really understand that
12 question because we reached a settlement so there was
13 no need to do further settlement negotiations.

14 Q. Did it ever occur to you to call other
15 parties from the SSO case, especially those that had
16 expressed an interest in the rider issue, to discuss
17 settlement negotiations?

18 A. I answered that question earlier, and to
19 my -- and personally it didn't occur to me, no.

20 Q. Well, I'm -- yes, that was asked earlier
21 but, now, I am asking like after the applications and
22 stipulation were filed in this docket on April 26,
23 was there any further attempt to broaden the range of
24 people that were negotiating with you at that point
25 after the applications were filed?

1 A. Did we reach out to anyone?

2 Q. Yes. That's another way of putting it.

3 A. We did not, no.

4 Q. And in the case of OPAE, not reaching out
5 to OPAE wasn't related so much to my understanding
6 our not being interested in it but that you felt if
7 you had OCC, then you did -- then you had enough of a
8 customer group and you didn't need OPAE in on the --
9 on any further negotiations; is that correct?

10 A. In my view that's true. I have been
11 involved in rate cases for seven or eight years that
12 involved both OPAE and OCC, and my impression is
13 their interests are very similarly aligned.

14 Q. Okay. I want to ask you now about the
15 more substance of the stipulation. Can you tell me
16 if Duke has determined as of now whether it will be
17 exiting MISO and joining PJM?

18 A. I believe the stipulation in so many
19 words suggests that we must do that or the
20 stipulation will be void so. In my mind we have
21 committed -- there is another witness here if you
22 would like to ask that specific question that can
23 answer it. To my knowledge we are committed to going
24 to PJM.

25 Q. Well, several -- several times in the

1 testimony you say if Duke does go forward with this
2 and exits MISO and joins PJM, this or that will
3 happen. So it's like the decision isn't definitive
4 at this point; is that true?

5 A. If the Commission doesn't approve the
6 stipulation, then we may not go to PJM.

7 Q. If this Commission does not approve this
8 stipulation?

9 A. Yes.

10 Q. But if -- are you saying that if this
11 Commission does approve this stipulation, then you
12 will exit MISO and go to PJM?

13 A. I believe the stip -- I believe the
14 stipulation in so many words says that's the case,
15 commits us to do that.

16 Q. In the SSO hearing there was testimony
17 about Duke -- Duke's decision or the basis of Duke's
18 decision to exit MISO and join PJM. Do you recall
19 some of that testimony?

20 A. I do.

21 Q. Can you tell me -- even though we did
22 have administrative notice of the record, could you
23 tell me the basis or why Duke made the decision to
24 exit MISO and go into PJM?

25 MS. SPILLER: Your Honor, if I may, I

1 think this is way off the mark of the stipulation. I
 2 would further voice concern in that as you will
 3 recall, much of the testimony around this issue was
 4 confidential, and we do not have confidentiality
 5 agreements with all of the parties in this case. So
 6 from a procedural aspect as counsel is asking --
 7 asking Mr. Wathen to divulge confidential
 8 information, I just would -- we are going to have to
 9 probably clear the room to a large extent to the
 10 extent the questioning is permitted.

11 MS. MOONEY: Frankly I can't recall, I
 12 know what I -- if all of that was -- ended up being
 13 confidential. I know a lot -- some of it was, but I
 14 want him to answer it in a totally nonconfidential
 15 way, if he could tell me, without giving any
 16 confidential information at all basically what is the
 17 basis of Duke's decision to exit MISO and join PJM.

18 EXAMINER STENMAN: At this time the
 19 objection will be overruled. You can answer if you
 20 can, but I think we need to be careful that we are
 21 confining our questions to the consideration of the
 22 stipulation and we are not litigating things that
 23 happened in the MRO which is long since we have moved
 24 on from that.

25 MS. MOONEY: Well, that -- none of this

1 has been determined in any litigation at all.

2 A. There is a pending question for me? Yes?

3 EXAMINER STENMAN: Is there a question to
4 be read back?

5 (Question read.)

6 A. I could repeat what I've heard, but it
7 would probably miss something, and since you have
8 taken administrative notice of the 10-2586 case, I
9 mean, that discussion was lengthy in that case and
10 all the material is there.

11 Q. If the Commission approves this
12 stipulation -- because you testified earlier that
13 that would be a commitment for Duke to go to PJM is
14 there any possibility if the Commission approves this
15 stipulation that Duke will not go to PJM?

16 A. I couldn't tell you that there is not a
17 snowball's chance or anything but there's a --
18 there's no inclination on our part whatsoever not to
19 pursue the realignment assuming the Commission
20 approves the stipulation. So to my knowledge, we are
21 100 percent committed to go to PJM if the Commission
22 approves the stipulation, no exceptions.

23 Q. Now, of course, if Duke exits MISO, it
24 will be liable for certain transmission projects that
25 MISO had approved before Duke's exit from MISO; is

1 that correct?

2 A. That's my understanding.

3 Q. Do you know what the acronym MTEP stands
4 for?

5 A. I do.

6 Q. Could you tell us what MTEP stands for.

7 A. Midwest Transmission Extension Planning.

8 Q. And when will Duke's MTEP obligations end
9 if Duke exits MISO?

10 A. It depends really. My understanding is
11 we would negotiate -- we could negotiate with MISO to
12 get a flat number, a period of payments for some time
13 to end our obligation. Most likely it will -- our
14 MTEP will last as long as the life of the longest
15 lived asset being charged in that project, in that
16 group.

17 Q. And about how long is the life of the --
18 of a transmission project?

19 A. I don't have an in depth knowledge of a
20 transmission project, but I would guess 25 to 40
21 years depending on the asset.

22 Q. And as -- I think we've already discussed
23 the MTEP obligations will be recovered through the
24 rider BTR; is that the idea?

25 A. That's correct.

1 Q. Now, does Duke know today what would be
2 the total cumulative costs, MTEP costs, that Duke
3 might be responsible for?

4 A. I think we have an estimate of the
5 dollars, the capital dollars, that would be
6 associated with our obligation. That would have to
7 be translated into a revenue requirement and then we
8 would pay our load ratio share of that revenue
9 requirement for as long as the asset lives so.

10 Q. Is your total cumulative figure
11 considered confidential, or could you tell us what
12 that is?

13 MS. SPILLER: Your Honor, it is
14 considered confidential as we shared with OPAE in
15 their discovery responses.

16 Q. Has -- let me ask you, the exit from MISO
17 will be December 31, 2011; is that correct?

18 A. That's -- that's the anticipated exit
19 date.

20 Q. And so are the 2011 MTEP costs approved
21 right now today?

22 A. I honestly don't know if you -- we have a
23 witness here that can answer that question
24 specifically if you would like to call him. I don't
25 know. I don't believe so, but I don't know.

1 Mr. Barrett so.

2 MS. MOONEY: Can we go off the record for
3 a second?

4 EXAMINER STENMAN: Yes. Let's go off the
5 record.

6 (Discussion off the record.)

7 EXAMINER STENMAN: Let's go back on the
8 record.

9 Q. (By Ms. Mooney) Do you know the value --
10 total value of the projects in the 2011 MTEP report?

11 A. I --

12 MS. SPILLER: Colleen, is this a public
13 report to which you are referring?

14 MS. MOONEY: I think that if it -- when
15 it's released, it is public. The 2010 is public.

16 MS. SPILLER: Okay. Do you have either
17 of those to share with the witness?

18 MS. MOONEY: Well, at this point I am
19 just asking him if he knows about the 2011 report
20 because your liabilities will continue through the
21 end of 2011. And the answer -- I mean, the answer is
22 that --

23 EXAMINER STENMAN: Let's not answer your
24 own questions.

25 Q. Has the 2011 MTEP report been released?

1 A. I think I just answered I don't know
2 anything about the '11 project.

3 Q. And do you know when the 2011 report will
4 be available?

5 A. Same answer, I don't know so.

6 Q. So at this point is Duke basing its
7 estimate on just the 2010 MTEP report?

8 A. I believe we have the 2010 -- we have the
9 approved projects at that point, and I think we have
10 an idea what might happen in '11, but as far as
11 what's approved or reported, I am not aware of it.

12 Q. Would you agree with me depending on what
13 the 2011 MTEP report says that there could be an
14 increase in costs from -- that Duke would be liable
15 for from 2010 to 2011?

16 A. There -- yeah, there's two groups I would
17 characterize that could increase our obligation. One
18 is the estimated '11 projects, and the other one is
19 the multi-value project issue so. But that
20 obligation will exist -- whatever is approved through
21 the end of '11 will be an obligation whether we are
22 in MISO or PJM.

23 Q. Okay. Now, do you also have estimates of
24 what would be the Ohio share of the Duke MTEP
25 liability?

1 A. We do.

2 Q. And what is the basis for determining the
3 Ohio share of the Duke MTEP liabilities? How do you
4 determine -- how do you estimate what will be the
5 Ohio share?

6 A. I believe they -- the factor is
7 calculated a little differently, but it's essentially
8 the load ratio share of Duke Energy Ohio to the total
9 PJM or total MISO.

10 Q. Now, the load ratio share is what you
11 have used to estimate the MTEP liabilities?

12 A. Our estimate of the load ratio share,
13 yes, is what we've used to estimate liability.

14 Q. Load ratio shares is a methodology for
15 determining the -- what would be the Ohio liability?

16 A. Load ratio share is an allocation method.
17 It can be derived in a couple of ways, probably more
18 than a few ways. And that is the method we -- that
19 we would use because it's the way they are billed out
20 in those two RTOs. So we've used an estimate of
21 our -- of our load ratio share in PJM and
22 approximately what our load ratio share is in MISO to
23 calculate the obligations in both.

24 Q. And is that basically allocating between
25 Ohio, Indiana, Kentucky?

1 A. Well, maybe a better example is for the
2 sake -- assume -- take MISO. It's an allocation
3 among the legal companies so of all -- overall
4 Midwest ISO that are applicable on load ratio share,
5 it would be our share of the total load relative to
6 the total MISO footprint load would be allocated to
7 us. Duke Energy Indiana's share would be allocated
8 to them. Duke Energy Kentucky's share would be
9 allocated to them. Ameren's share would be allocated
10 to them and so on.

11 Q. Now, you mentioned MVP previously. Do
12 you know what the acronym MVP stands for?

13 A. I think I said multi-value project. You
14 used the acronym.

15 Q. I think you're right. How does the MVP
16 differ from the current cost allocation methods?

17 A. I don't know that it does. It may; I
18 don't think it does. The assignment of the costs
19 allocation would be on the same basis.

20 Q. And that's the load ratio?

21 A. I believe that's correct.

22 Q. Are you aware of the MVP socialized
23 methodology?

24 A. All the costs are socialized in MISO so.
25 All the network, all the MTEP costs are socialized.

1 They -- that's why the load ratio share is for to
2 allocate the costs that are being socialized.

3 Q. So are you saying then the load ratio
4 methodology is the same -- is the same as the
5 socialized methodology of Duke's share of the MVP
6 project?

7 A. First of all, I qualified by saying I
8 wasn't certain, but I believe that the load ratio
9 share method of allocation is essentially socializing
10 costs, so in my mind they are synonymous so.

11 Q. Is there an issue currently at FERC on
12 these issues of the cost allocation methodologies?

13 A. I'm -- my guess there is probably a dozen
14 or so cases involving this stuff.

15 Q. Could you tell me if you exit MISO as of
16 the end of 2011, what would be the projected date
17 that Duke's -- Duke Ohio's financial responsibility
18 for MISO projects would end?

19 MS. SPILLER: Objection. Asked and
20 answered.

21 EXAMINER STENMAN: Overruled.

22 A. Well, I did answer that before. It would
23 be the earlier of whatever we agree to with MISO or
24 the life of the project that's -- the life of the
25 longest project that's included in that plan.

1 MS. MOONEY: That's all I have. Thank
2 you.

3 EXAMINER STENMAN: Thank you.
4 Mr. Garber.

5 MR. GARBER: Yes, thank you. May I
6 approach?

7 EXAMINER STENMAN: You may.

8 MR. GARBER: Your Honor, permission to
9 mark this document as FES Exhibit 1.

10 EXAMINER STENMAN: It will be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Garber:

15 Q. Mr. Wathen, you are aware that
16 FirstEnergy Solutions served interrogatories on Duke
17 in this proceeding?

18 A. I am.

19 Q. And the document that I just handed you,
20 FES Exhibit 1, is a true, completed, accurate copy of
21 those responses?

22 A. You are going to make me go through all
23 of these?

24 Q. Well, I am just asking you -- take your
25 time in flipping through that but I just wanted -- I

1 am just asking if that's a complete copy of Duke's
2 responses.

3 A. My copy seems to be complete.

4 Q. And those responses were generated in the
5 regular course of Duke's business, correct?

6 A. I'm not sure I would characterize
7 discovery as normal course of business, but it was
8 generated in our business, yes.

9 Q. Well, it was generated according to a --
10 according to a routine -- routine process that Duke
11 follows in receiving, generating responses to, and
12 then responding to discovery, correct?

13 A. That's correct.

14 Q. And you were involved in that process; is
15 that correct?

16 A. I was.

17 Q. And those responses are true and accurate
18 to the best of your knowledge?

19 A. They are.

20 MR. GARBER: I have nothing further.

21 EXAMINER STENMAN: You're finished?

22 MR. GARBER: Yes.

23 EXAMINER STENMAN: Mr. Oliker.

24 MR. OLICKER: No questions, your Honor.

25 EXAMINER STENMAN: Mr. Jones.

1 MR. JONES: No questions, your Honor.

2 EXAMINER STENMAN: Redirect?

3 MS. SPILLER: Yes, your Honor, but may we
4 take a brief recess, please?

5 EXAMINER STENMAN: 5 minutes?

6 MS. SPILLER: That would be fine.

7 EXAMINER STENMAN: Okay.

8 (Recess taken.)

9 EXAMINER STENMAN: Let's go back on the
10 record.

11 MS. SPILLER: Thank you, your Honor.

12 - - -

13 REDIRECT EXAMINATION

14 By Ms. Spiller:

15 Q. Mr. Wathen, I would like to draw your
16 attention, please, or focus to the questions that
17 were posed to you by counsel for OP&AE. With regard
18 to the MRO proceedings filed under Case No. 10-2586,
19 was the request in that proceeding to deny the cost
20 that would or would not be recovered through either
21 rider BTR or rider RTO?

22 A. No. And my testimony in that case we
23 explicitly said they -- we were only establishing the
24 riders. The issue of cost recovery was not -- was
25 not being requested at the time. That's a point that

1 it was acknowledged by the staff in their testimony.

2 Q. And, sir, were you present for all of the
3 hearing related to the MRO proceeding?

4 A. Every minute.

5 Q. And you, in fact, heard that testimony
6 from staff regarding establishing a cost recovery
7 issue related to riders BTR and RTO being conducted
8 at that separate proceeding?

9 A. That was their testimony.

10 Q. And, sir, to your recollection is that
11 consistent with the Commission's ruling, their
12 original order on the MRO application in February of
13 2011?

14 A. That's correct, yeah.

15 Q. Mr. Wathen, with regard to the settlement
16 discussions that occurred relative to this separate
17 subsequent proceeding concerning riders BTR and RTO,
18 was it your opinion based upon your experience that
19 those discussions included representation from all of
20 Duke Energy Ohio's customer classes or groups?

21 A. Yeah, that was the general intent was to
22 have some -- somebody from all stakeholders, customer
23 classes, if you will, obviously the staff, and as I
24 earlier, I couldn't remember all the parties involved
25 in that proceeding, and I was reminded that the Ohio

1 Manufacturing Association was part of that proceeding
2 as well so which is more of a commercial group.

3 Q. You were asked, Mr. Wathen, about the
4 MTEP projects for 2011. To be clear, sir, would Duke
5 Energy Ohio's customers be responsible for MTEP costs
6 in 2011 regardless of whether the company should
7 realign with PJM?

8 A. My understanding is everything that's
9 been approved prior to the time that we leave would
10 be an obligation of Duke Energy Ohio and its
11 customers regardless of which RTO we are in.

12 MS. SPILLER: Nothing further, your
13 Honor. Thank you.

14 EXAMINER STENMAN: Thank you.

15 Mr. Warnock.

16 MR. WARNOCK: No questions, your Honor.

17 EXAMINER STENMAN: Mr. O'Brien.

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

19 EXAMINER STENMAN: Mr. Petricoff.

20 MR. PETRICOFF: No questions.

21 EXAMINER STENMAN: Ms. Kyler.

22 MS. KYLER: No questions, your Honor.

23 EXAMINER STENMAN: Ms. Mooney.

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RECROSS-EXAMINATION

By Ms. Mooney:

Q. Let me ask one more time, so these are separate proceedings that the Commission was referring to in the MRO case?

A. I would say that's true.

MS. MOONEY: Thank you.

EXAMINER STENMAN: Mr. Garber.

MR. GARBER: No questions.

EXAMINER STENMAN: Mr. Olikar.

MR. OLIKER: No questions, your Honor.

EXAMINER STENMAN: Mr. Jones.

MR. JONES: No questions, your Honor.

EXAMINER STENMAN: All right. Thank you, Mr. Wathen.

MS. SPILLER: Your Honor, the final order of business from the company's perspective would simply be to move for admission of the documents that were identified at the beginning of -- or prior to Mr. Wathen's examination this morning, Duke Energy Ohio Exhibit 1, the application filed on April 26, 2011, as well as Duke Energy Ohio Exhibit 2 which is Mr. Wathen's direct testimony in support of that application as well as Joint Exhibit 1, the stipulation and recommendation, again, those three

1 documents all filed on April 26, 2011.

2 EXAMINER STENMAN: Any objections? Duke
3 Energy Ohio Exhibits 1 and 2 and Joint Exhibit 1 will
4 be admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER STENMAN: Mr. Garber.

7 MR. GARBER: And FirstEnergy Solutions
8 would also move the admission of FES Exhibit 1.

9 EXAMINER STENMAN: Any objections?

10 MS. SPILLER: No, your Honor.

11 EXAMINER STENMAN: FirstEnergy Solutions
12 Exhibit 1 will be admitted onto the record.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 EXAMINER STENMAN: Let's go off the
15 record for a moment.

16 (Discussion off the record.)

17 EXAMINER STENMAN: We will be taking
18 briefs in this matter. Briefs will be due Monday,
19 May 16. They will have a 10-page page limit, and if
20 possible, the earlier you can file those on Monday
21 the better. Electronic service on all of the parties
22 and also the Attorney Examiners would be appreciated.

23 EXAMINER PIRIK: I think I would just
24 mention in the briefs there is no need to do any of
25 the procedural history so you do not need to do any

1 of that. The 10 pages can be left with substance
2 alone.

3 MS. MOONEY: Can you electronically file
4 in this docket too?

5 EXAMINER STENMAN: No.

6 MS. MOONEY: Could we get electronic
7 filing in the docket?

8 EXAMINER PIRIK: Electronic filing is
9 handled in a separate docket unfortunately so we
10 can't just open this docket to electronic filing.
11 You can fax; that is still available. That's still
12 part of the rules.

13 EXAMINER STENMAN: And as long as
14 everyone is getting e-mail service.

15 Is there anything else that needs to come
16 before us today?

17 All right. Hearing nothing else we will
18 be adjourned.

19 (Thereupon, the hearing was concluded at
20 11:16 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Wednesday, May 11,
2011, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5353)

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in

Case No(s). 11-2641-EL-RDR, 11-2642-EL-RDR

Summary: Transcript Transcript of the Application of Duke Energy Ohio, Inc. of Rider BTR and Assoc. Tariff Approval hearing held on 05/11/11. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.