

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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3 In the Matter of the :
4 Application of Ohio Power :
5 Company and Columbus :
6 Southern Power :
7 Company for Authority to : Case No. 10-2376-EL-UNC
8 Merge and Related :
9 Approvals. :

10 In the Matter of the :
11 Application of Columbus :
12 Southern Power Company :
13 and Ohio Power Company :
14 for Authority to Establish :
15 a Standard Service Offer : Case No. 11-346-EL-SSO
16 Pursuant to §4928.143, : Case No. 11-348-EL-SSO
17 Ohio Rev. Code, in the :
18 Form of an Electric :
19 Security Plan. :

20 In the Matter of the :
21 Application of Columbus :
22 Southern Power Company : Case No. 11-349-EL-AAM
23 and Ohio Power Company : Case No. 11-350-EL-AAM
24 for Approval of Certain :
25 Accounting Authority. :

26 In the Matter of the :
27 Application of Columbus :
28 Southern Power Company to : Case No. 10-343-EL-ATA
29 Amend its Emergency :
30 Curtailment Service :
31 Riders. :

32 In the Matter of the :
33 Application of Ohio Power :
34 Company to Amend its : Case No. 10-344-EL-ATA
35 Emergency Curtailment :
36 Service Riders. :

37 In the Matter of the :
38 Commission Review of the :
39 Capacity Charges of Ohio : Case No. 10-2929-EL-UNC
40 Power Company and Columbus :
41 Southern Power Company. :

42

1 In the Matter of the :
 Application of Columbus :
 2 Southern Power Company for:
 Approval of a Mechanism to: Case No. 11-4920-EL-RDR
 3 Recover Deferred Fuel :
 Costs Ordered Under Ohio :
 4 Revised Code 4928.144. :

5 In the Matter of the :
 Application of Ohio Power :
 6 Company for Approval of a :
 Mechanism to Recover : Case No. 11-4921-EL-RDR
 7 Deferred Fuel Costs :
 Ordered Under Ohio Revised:
 8 Code 4928.144. :

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10 PROCEEDINGS

11 before Ms. Greta See and Mr. Jonathan Tauber,
 12 Attorney Examiners, at the Public Utilities
 13 Commission of Ohio, 180 East Broad Street, Room 11-A,
 14 Columbus, Ohio, called at 9:30 a.m. on Wednesday,
 15 October 12, 2011.

16 - - -

17 VOLUME VI

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1 Wednesday Morning Session,
2 October 12, 2011.

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4 EXAMINER SEE: Let's go on the record.
5 Mr. Hamrock, I'll remind you that you
6 continue to be under oath.

7 And Mr. Conway.

8 MR. CONWAY: Thank you, your Honor.

9 I did want to take the opportunity, if
10 it's permitted, to explain our position with regard
11 to the document that Mr. Lang was, I think,
12 attempting to introduce into the record yesterday at
13 the end of the day, at which point we adjourned for
14 the day. So may I make just a few summary comments
15 about our position?

16 EXAMINER SEE: You can, but I need you to
17 speak up, Mr. Conway.

18 MR. CONWAY: Okay. Kurt, if you would
19 let me know if you can't hear me.

20 MR. K. BOEHM: I can hear you fine, thank
21 you.

22 MR. CONWAY: Your Honors, the document
23 that Mr. Lang is using in his cross-examination at
24 this point is a confidential settlement offer
25 document that was circulated at the end of the day on

1 September 6th, it's a near-final offer but yet it
2 is still an offer of compromise for the proceedings.

3 The Commission has traditionally regarded
4 offers of settlement, communications related to
5 settlement discussions, as privileged communications
6 and has not permitted their admission into the record
7 in proceedings to which the settlement discussions
8 relate. I believe that is the purpose to which
9 Mr. Lang is advancing here.

10 As I said, the September 6th offer that
11 was circulated, it's legended as and was intended to
12 be kept confidential and it was circulated on that
13 basis to all the parties in the case. We expected
14 that they would keep it confidential.

15 Mr. Lang's argument that because the
16 documents do not, or he's not seeking to use the
17 document to establish a liability and, therefore, the
18 Rules of Evidence don't apply and there's no
19 privilege that attaches to the document I think is
20 misguided.

21 We're not dealing with a personal injury
22 or property damage matter here, we're dealing with a
23 pretty significant rate matter and corporate
24 structuring matter here, and I think that the purpose
25 of his introduction of the document is to advance his

1 client's position, which is in opposition to the
2 signatory parties, including AEP Ohio's, position and
3 so I think that it is very similar to trying to
4 establish a liability, that is to advance his cause
5 and to defeat our cause.

6 So I don't think that the rule prevents
7 the Commission from maintaining its historical
8 practice of keeping confidential and treating as
9 privilege communications that are made during
10 settlement.

11 Having said all that, if there is some
12 specific purpose which Mr. Lang wants to achieve, it
13 seems to me there ought to be some way to do it
14 without divulging settlement offers that were made
15 during settlement discussions.

16 So I would hope that we could proceed in
17 that manner and not have a ruling that settlement
18 offers in settlement negotiations at the Commission
19 are now fair game to be admitted into the record of
20 contested proceedings that relate to the settlement
21 discussions.

22 Thank you.

23 EXAMINER SEE: Mr. Lang. Did you want to
24 respond?

25 MR. LANG: Thank you, your Honor.

1 I think to the extent that there is a
2 confidentiality issue, and I was thinking about this
3 last night after we adjourned and I think we were
4 talking past each other a little bit, on the issue of
5 confidentiality we have no problem with having the
6 attachment to the e-mails filed under seal. I
7 believe they said that the e-mails themselves they do
8 not consider to be confidential.

9 With regard to the exchange of these
10 documents, going back to the Commission rules, the
11 Commission rules is that the evidence of compromise
12 negotiations is not admissible but there's ample
13 exceptions under Rule, I think it's 26(E) that, among
14 other things, the admission of confidential
15 discussions is not excludable from the record
16 provided it's used for some other purpose.

17 And we started this many hours ago before
18 we even got to the point of trying to ask the witness
19 what the document was and asking the witness about
20 the contents of the document, so we've never gotten
21 to the point where I've been able to try to use the
22 document for a purpose, but my purpose is not to use
23 it to show what the ebb and flow of settlement
24 discussions was, it's simply to show that, again, as
25 Mr. Hamrock has in his testimony, he testifies that

1 AEP sent the stipulation to all parties.

2 My understanding is that his reference in
3 the testimony, that's at page 10, line 4, to AEP Ohio
4 sending the stipulation to all parties, that that is
5 to this communication that I'd like to have marked.

6 I'd like to have him explain both what he
7 meant by sending the stipulation and, most
8 importantly, explain what was not part of the
9 communication that was sent to the parties late on
10 the evening of September 6th.

11 So to the extent that he's saying the
12 stipulation was sent, the parties had an opportunity
13 to respond and then that stipulation was signed the
14 next day, that is -- that's not accurate, in fact,
15 which I would like to explore with the witness and
16 develop through this document that his testimony is
17 not accurate and for that purpose use the document to
18 impeach his testimony.

19 And I believe that under the Commission
20 rules for that purpose use of that document is
21 permitted and, again, if they want to maintain that
22 document under seal, we certainly have no problem
23 with that.

24 MR. CONWAY: Your Honor, if I may make
25 one or two short comments.

1 EXAMINER SEE: Briefly, Mr. Conway.

2 MR. CONWAY: He indicated in the midst of
3 his argument that what he wanted to show is what
4 wasn't included with the attachment to the e-mail,
5 and you don't need the document that he has been
6 referring to in order to make those points.

7 If what he is trying to show is that
8 attachments to the stipulation, for example, were not
9 included in the e-mail that was circulated, he
10 certainly doesn't need the e-mail -- the document
11 itself to be included in the record to do that. So I
12 think he can avoid the issue pretty easily.

13 And I think that the remainder of his
14 comments, which attempts to side step the core
15 problem here, don't do it which is that what he wants
16 to do is introduce into the record in this case a
17 settlement record that was made to the parties in a
18 confidential manner. And so we go down that track,
19 where it leads is that settlement offers going back
20 and forth are admissible in litigated proceedings at
21 the Commission.

22 So I don't think it's necessary to do
23 this and I don't think the rationale he's provided is
24 sufficient to upset the practice of the Commission on
25 this matter. And putting it under seal doesn't solve

1 the core problem which is divulging these settlement
2 offers in the litigation record.

3 Thank you.

4 EXAMINER SEE: At this point given that
5 there is a pending -- that is a motion -- I'm sorry,
6 let me go back.

7 Given that there is an entry in these
8 proceedings dated October 7th by Attorney Examiner
9 Jones addressing a public records request that
10 includes term sheets, settlement offers that were
11 exchanged by the parties in an attempt to negotiate a
12 settlement of these cases, I am going to rule at this
13 time that the attachment to the e-mail dated Tuesday,
14 September 6th, is not a part of the record.

15 We can mark the e-mail itself and FES can
16 cross-examine Mr. Hamrock on that without divulging
17 the content of the draft stipulation that was
18 attached to it.

19 If you wish to mark the e-mail, let's
20 proceed.

21 MR. LANG: And, your Honor, I think I
22 would like to mark the first page of what I handed
23 out which would be FES I think, again, FES Exhibit
24 No. 13. I think we can tear that off the top of the
25 copies.

1 EXAMINER SEE: As we left yesterday the
2 e-mail attachment had not been circulated to the
3 other parties.

4 MR. LANG: Correct. And we can do that
5 now.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. CONWAY: Mr. Lang, could I just have
8 your, I think you may have already done this, but can
9 I have your assurance that no one that you circulated
10 the e-mail and attachment to is a person who hadn't
11 already received the e-mail and attachment through
12 the September 6th communication?

13 MR. LANG: It was just AEP and the Bench.

14 MR. CONWAY: Okay. Thank you.

15 MR. LANG: And my understanding is that
16 everyone else in this room was a party and received
17 it on September 6th. Is there anyone in this room
18 who you believe should not receive a, you know,
19 should not have a copy already?

20 MR. NOURSE: I thought we were only
21 handing out the e-mail.

22 MR. LANG: I want to make sure that, you
23 know, to the extent that we did pass these documents
24 around, is there anyone in this room that would be
25 prohibited from seeing that document?

1 MR. CONWAY: I don't know, but I think
2 it's moot because of your reassurance to me that the
3 only people who got your previously marked version of
4 Exhibit 13 were the company and the Bench. So I
5 think it's a moot point.

6 MR. LANG: Sorry, your Honor. Is the
7 ruling that any testimony with regard to settlement
8 communications is inadmissible at this time?
9 Because, I mean, there's a, you know, pages 9 and 10
10 of Mr. Hamrock's testimony deal with those, with
11 settlement discussions, which is part, I believe, of
12 trying to meet one of the stipulation standards in
13 this case.

14 So if I can't -- if we're unable to use
15 the document that he's referencing in his testimony,
16 FES would move to strike the portion of this
17 testimony that refers to that document.

18 EXAMINER SEE: You can certainly pose
19 questions to the witness in general as you have, as
20 you did yesterday, inquiring when information was
21 sent. And that it's the content, the terms, the
22 specifics of the stipulation or term sheets or offers
23 during settlement negotiations that are the scope of
24 my ruling at this point.

25 MR. LANG: Thank you.

1 - - -

2 JOSEPH HAMROCK

3 being previously duly sworn, as prescribed by law,
4 was examined and testified as follows:

5 CROSS-EXAMINATION (Continued)

6 By Mr. Lang:

7 Q. Mr. Hamrock.

8 A. Good morning.

9 Q. Good morning. Back to your testimony,
10 page 10, line 4, and where you state AEP Ohio sent
11 the stipulation to all the parties. The
12 communication that sent the stipulation to all
13 parties, were you able to review that communication
14 before it was sent out?

15 MR. CONWAY: Just another interjection,
16 if you'll forgive me. By "the stipulation" you're
17 referring to the near-final stipulation that was
18 circulated by the September 6th e-mail; is that
19 right?

20 MR. LANG: I asked him a question about
21 his testimony. I was hoping to get an answer.

22 MR. CONWAY: Then I object to the form
23 because it's vague.

24 MR. LANG: Quoting his testimony is
25 vague. Can I get an answer to the question?

1 EXAMINER SEE: Mr. Hamrock, answer the
2 question please.

3 THE WITNESS: Can you repeat the
4 question, please?

5 (Record read.)

6 A. I don't recall reviewing the
7 communication before it was sent out. I certainly
8 was aware of the communication but I don't recall
9 that I reviewed it in advance of sending the e-mail.

10 Q. Did you review that communication after
11 it was sent out?

12 A. I'm sure I did at some point. I don't
13 recall when that might have happened.

14 Q. Do you have the e-mail that I handed to
15 you yesterday?

16 A. Yes, I do.

17 Q. And if you could actually just take the
18 first page of that document that I sent to you
19 yesterday that we'll be asking you about, this is an
20 e-mail from your counsel, Mr. Nourse, it has a date
21 on it, Tuesday, September 6th, 2011, 10:11 p.m. Is
22 this the e-mail communication that is the
23 communication you reference here in your testimony on
24 page 10, line 4?

25 A. Yes.

1 Q. And in your testimony where you say
2 AEP Ohio requested a final counteroffer, according to
3 this e-mail that final counteroffer was requested by
4 8:00 a.m. the next morning; is that correct?

5 A. Yes. Along with a request to indicate
6 whether there was any interest in additional
7 settlement discussions with AEP Ohio.

8 Q. Now, is it your understanding that this
9 e-mail sent, as you say in your testimony, the
10 stipulation to all parties?

11 A. Yes. The near-final stipulation, to the
12 best of my recollection, was included with this
13 e-mail.

14 Q. So when you say "near final," what was
15 missing?

16 A. As I recall, there were a number of
17 clean-up items that were discussed with parties the
18 following morning. Early the following morning. But
19 I don't recall the specifics of those.

20 MR. LANG: Do we need to go off the
21 record? His mic's not on.

22 EXAMINER SEE: Okay.

23 (Off the record.)

24 Q. Now, the stipulation that was sent after
25 10:00 p.m. on September 6th did not include the

1 Appendix A listing the MTR credits and charges,
2 correct?

3 A. I don't recall if it included Appendix A.

4 Q. Have you ever had an opportunity to
5 review the attachment that was the attachment to this
6 e-mail?

7 A. I'm sure that I have, yes. I don't
8 recall what all was included, though.

9 Q. So as we sit here today do you know
10 whether any of the appendices were attached to the
11 stipulation?

12 A. I don't recall.

13 Q. Do you know whether they may have been
14 attached as separate files?

15 A. I don't recall. As I recall the
16 stipulation, the main document, that was included, I
17 don't recall what, if any, of the appendices were
18 included.

19 Q. Does that also include Appendix C with
20 the RPM set-aside rules?

21 A. The same answer. I don't recall beyond
22 the original document what else might have been
23 included.

24 Q. Now, the stipulation, the final
25 stipulation says that the 21 percent set-aside of RPM

1 for 2012 will be based on AEP Ohio's total retail
2 load in 2012; is that correct?

3 A. That sounds correct, yes.

4 Q. So if Appendix C was not included with
5 what was sent to the parties on the evening of
6 September 6th, then the parties, none of the
7 parties would know that Appendix C calculates the
8 set-aside amount differently; isn't that true?

9 A. Differently than?

10 Q. It does not use AEP Ohio's total retail
11 load in 2012, which is what the stipulation says.

12 A. I don't know that that distinction
13 between Appendix C and the stipulation is correct.

14 Q. Have you --

15 A. The distinction you're making in the
16 question, I'm not sure that that's correct.

17 Q. Have you ever reviewed Appendix C?

18 A. I have.

19 Q. Do you know whether Appendix C was ever
20 provided to FirstEnergy Solutions or any of the other
21 non-stipulating parties until after the final
22 stipulation was signed later on the morning of
23 September 7th?

24 A. To the best of my recollection, Appendix
25 C, though it may not have been called Appendix C, the

1 substantial form that it took had been shared with
2 all the parties prior to FirstEnergy Solutions and
3 other parties moving away from the table, moving out
4 of the negotiations.

5 So the concept had been referred to in
6 the earlier versions of the term sheet and early
7 versions of what was ultimately to become Appendix C,
8 to the best of my recollection, had been shared prior
9 with FirstEnergy Solutions.

10 Q. What is the basis for that recollection?

11 A. My participation in settlement
12 discussions and all the discussions that included all
13 of the parties.

14 Q. So you provided a copy of Appendix C to
15 FirstEnergy Solutions.

16 A. I didn't say that I personally had
17 provided it, but I recall an early version of that
18 document being circulated to all the parties in
19 earlier settlement discussions.

20 Q. Do you know when the final version of
21 Appendix C was provided to FirstEnergy Solutions?

22 A. I believe after the stipulation was filed
23 there was a working session that we hosted to
24 finalize Appendix C. FirstEnergy Solutions was
25 certainly invited to that and participated in that

1 session, so FirstEnergy Solutions has been aware of
2 and engaged in that discussion, even though they're
3 not a signatory party.

4 MR. LANG: I have no further questions,
5 your Honor.

6 EXAMINER TAUBER: Ms. Grady.

7 MS. GRADY: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Ms. Grady:

11 Q. Good morning, Mr. Hamrock.

12 A. Good morning, Ms. Grady.

13 Q. Now, your testimony, Mr. Hamrock, gives
14 an overview of the stipulation; is that a fair
15 characterization?

16 A. Yes, I believe it is.

17 Q. Now, on page 6 of your testimony you
18 refer to the base generation rate under the
19 stipulation for 2012 through 2014. Do you see that
20 reference?

21 A. Which line are you referring to?

22 Q. If you could hold on a second, I'll get
23 that for you. I'm looking down at actually lines 20
24 through 22 where you say "The generation prices for
25 SSO customers," and you talk about a pricing

1 structure that essentially fixes the base generation
2 rate.

3 A. Yes, I'm with you now. Thank you.

4 Q. Now, the generation rate proposed under
5 the stipulation, would you agree that it is intended
6 to recover 100 percent of the company's generation
7 costs?

8 A. Not necessarily.

9 Q. So the generation rate for 2012 does not
10 cover -- is not intended to cover the generation
11 costs of the company?

12 A. Well, this is the generation rate for SSO
13 customers, so as customers shop, there would
14 certainly be other mechanisms designed to recover
15 costs of the AEP Ohio generation fleet.

16 Q. Now, currently in the ESP rates AEP is
17 recovering a portion of its generation costs, is it
18 not, through off-system sales?

19 A. I think that's a fair statement, yes.

20 Q. Do you know how much AEP's recovering of
21 its generation costs through its off-system sales?

22 A. I do not, no.

23 Q. Is that information publicly available,
24 if you know?

25 A. How much in terms of a percentage of the

1 total cost? Could you be a little more specific with
2 what you mean by "how much"?

3 Q. Yes. As a percentage of the total cost,
4 yes.

5 A. I don't know that public information
6 would provide that level of precision --

7 Q. But --

8 A. -- relative to off-system sales margins.

9 Q. There is off-system sales margins that
10 are publicly available showing the AEP Ohio
11 off-system sales, are there not?

12 A. Yeah, that's fair.

13 Q. Is there an expectation that under the
14 stipulation AEP will continue to recover a portion of
15 its generation costs through its off-system sales?

16 A. While the stipulation does not
17 specifically address that, I would certainly hope
18 that would be the case.

19 Q. Is there anything in the stipulation that
20 will have changed that expectation or would affect
21 that expectation?

22 A. Not to my knowledge, no.

23 Q. Now, would you agree with me,
24 Mr. Hamrock, that the greater the shopping that
25 occurs, the more energy that's freed up for

1 off-system sales?

2 A. Not necessarily. All other things held
3 constant, that might be the case, but it's a dynamic
4 business with a lot of different changing parameters,
5 so with those conditions, yes, I would agree with
6 that.

7 Q. And would you also agree with me that the
8 greater the shopping that occurs, the more capacity
9 that's freed up for off-system sales?

10 A. No.

11 Q. Would you agree that the more shopping,
12 the greater portion of generation costs that will be
13 recovered through off-system sales? All other things
14 equal?

15 A. Not necessarily.

16 Q. And why not?

17 A. It depends on the markets. It depends on
18 unit availability. It depends on what happens with
19 U.S. EPA rulemaking relative to our ability to
20 dispatch the fleet. So there are a lot of different
21 factors that influence that part of the business.

22 Q. Now, on page 15 of your testimony, lines
23 11 through 20, you testify that -- I'm sorry, I think
24 the reference I have is page 15, lines 11 through 20.
25 I believe that you indicate that shopping customers

1 who previously waived the POLR charge would now under
2 the stipulation not have to be penalized when they
3 come back to the SSO. Is that a fair
4 characterization?

5 A. No. I don't believe it's fair to
6 characterize it as a penalty. The approach had been
7 to come back to a market-based rate, I don't know
8 that that's necessarily a penalty, but what this does
9 is provides for those customers to return to the SSO
10 price.

11 Q. So they do not have to pay market rate
12 now under the stipulation, correct?

13 A. That's correct.

14 Q. Would you agree with me that the number
15 of customers that this effects up through August 2011
16 would be 427 customers out of the approximately
17 1.4 million AEP Ohio customers?

18 A. I don't know how many customers that
19 avoided POLR although I do recall it's a low
20 percentage of the customers who had shopped.

21 MS. GRADY: May I approach the witness,
22 your Honor?

23 EXAMINER TAUBER: You may.

24 Q. Mr. Hamrock, I'm going to hand you a
25 document that appears to be a discovery response to

1 OCC interrogatory 427 and ask you to quickly review
2 that if you could.

3 A. I have reviewed it.

4 Q. Now, is it your understanding that the
5 number of customers who have selected service from a
6 CRES provider and received distribution service from
7 the company that have waived the 2009 through 2011
8 POLR charge rider as of August 2011 is 427 customers?

9 A. Yes.

10 Q. Thank you.

11 Now, let's move along to your testimony
12 on the distribution investment rider. That begins on
13 page 20. Do you have that reference?

14 A. I do.

15 Q. Okay. Now, you testify, Mr. Hamrock,
16 that the distribution investment rider will allow
17 recovery of carrying charges on incremental
18 distribution plant. Do you see that reference?

19 A. Yes, I see that on line 15 and 16, page
20 20.

21 Q. Thank you. And is that investment
22 post-2000 investment?

23 A. That's my recollection of how that's
24 designed, yes. Witness Allen provided testimony to
25 that effect.

1 Q. And are you familiar with the testimony
2 of Mr. Allen that the carrying charges on that
3 post-2000 investment would be approximately
4 20 percent?

5 A. That sounds correct, yes.

6 Q. Now, Mr. Hamrock, are you not aware of
7 the distribution case filing where the company has
8 requested a return on and of post-2000 investment?

9 A. I am aware of that.

10 Q. And those would be case numbers
11 11-351-EL-AIR and 11-352-EL-AIR?

12 A. I'll take your word.

13 Q. Thank you.

14 Now, the distribution investment rider
15 will permit increases for continued distribution and
16 maintenance; is that correct?

17 A. The distribution investment rider?

18 Q. Yes.

19 A. Yes, that's correct.

20 Q. And the distribution investment rider
21 will also allow for the collection of funds for the
22 company without any additional distribution
23 expenditures; is that not correct?

24 A. I don't believe that's correct. I'm not
25 sure. "Without any" relative to what baseline?

1 Q. If we made an assumption that the -- as
2 of today that there were no longer plant investments,
3 there were no new plant investments made as of today,
4 that the distribution investment rider would
5 nonetheless permit you to collect carrying charges on
6 post-2000 investment.

7 A. Up through today. Under that
8 hypothetical scenario, if we cease to make additional
9 investments from today going forward, this rider is
10 designed to collect post-2000 up through a date
11 certain, so -- but I don't believe there would be
12 incremental recovery if we ceased to make additional
13 investment, if that's the premise of the question.

14 Q. Were you here when Mr. Allen testified to
15 that or answered questions with respect to that
16 particular issue?

17 A. I was here for part of his
18 cross-examination, not all of it, to my recollection.

19 Q. And are you aware that Mr. Allen
20 testified that no additional distribution investment
21 would necessarily have to be made in order for the
22 company to collect dollars under the DIR?

23 A. Well, again, the DIR is based on
24 post-2000. So there certainly has been investment
25 made since 2000. And I believe Witness Allen was

1 referring to the incremental investment from 2000
2 through a date certain. Looking forward, future
3 increases in that rider would depend on future
4 investments.

5 Q. Let's say for the increases for 2012,
6 those wouldn't depend on future investments now,
7 would they?

8 A. Those are based on investments that have
9 already been made.

10 Q. Now, on page 12 of your testimony you
11 testify that AEP Ohio will provide discounted
12 capacity prices to CRES providers for portions of AEP
13 capacity resources. Do you see that reference?

14 A. What line are you referring to?

15 Q. I'm sorry. That would be page 12 of your
16 testimony, I believe it's at the bottom, lines 22
17 through 23 and carrying over to page 13.

18 A. Yes. I'm with you now.

19 Q. Are you referring there to the RPM price
20 capacity set-aside? Is that what your reference is
21 to?

22 A. Yes, because that reference is to
23 substantial and increasing portions of AEP Ohio's
24 capacity resources. That is a direct reference to
25 the RPM set-aside.

1 Q. And under the stipulation is it your
2 understanding that the set-aside of RPM capacity is
3 initially allocated on a pro rata basis among
4 different customer classes including residential,
5 commercial, and industrial?

6 A. Yes.

7 Q. And that set-aside or pro rata allocation
8 applies to 2012 only, correct?

9 A. That applies to the shopping that occurs
10 during the remainder of 2011 for the customers that
11 actually switch between now and then, and it's a
12 one-time partitioning of the RPM set-aside for the
13 initial set-aside, yes.

14 Q. And that RPM partitioning would just be
15 for the 2012, the year 2012, correct?

16 A. Well, it would carry through the entire
17 transmission plan, so it doesn't only allow for 2012
18 shopping. Those deals that occur under that
19 framework could certainly carry through 2013 and
20 2014.

21 Q. Now, for 2012 the company identified a
22 pro rata allocation of RPM set-aside, did it not, by
23 customer class?

24 A. Yes.

25 Q. And the commercial customers as of

1 September 7th, 2011, that class in particular had
2 exceeded its 21 percent allotment. Is that your
3 understanding?

4 A. That's my understanding, yes.

5 Q. Then the allocation to both the
6 industrial and residential was reduced as a result of
7 that fact?

8 A. That's my understanding, yes.

9 Q. Is it your understanding that the
10 residential RPM set-aside was reduced by about half a
11 million megawatt-hours?

12 A. I don't recall the specific number.

13 Q. Would you accept, subject to check, that
14 it was reduced by half a million megawatt-hours?

15 A. Sure.

16 Q. And that half a million megawatt-hours
17 went to the commercial customers; isn't that your
18 understanding? That set-aside?

19 A. It's a result of the oversubscription of
20 the commercial customers relative to the initial
21 allotment.

22 Q. And as a result of the oversubscription
23 of the commercial customers, half a million
24 megawatt-hours for residential set-aside was then
25 allocated to those customers?

1 A. That was -- yes, it was subscribed to by
2 those customers.

3 Q. Is it your understanding that there's
4 also an issue of unallocated allotments as of
5 September 7th, 2011?

6 A. When you say "an issue of unallocated
7 allotments," what do you mean?

8 Q. Let me rephrase that.

9 Is it your understanding that there are
10 also unallocated allotments as of September 7th,
11 2011?

12 A. That is my understand, yes.

13 Q. And under the stipulation the unallocated
14 allotments are up for grabs; is that correct?

15 A. At what point in time are you referring
16 to?

17 Q. January 1st, 2012.

18 A. Those allotments are set aside for each
19 customer class through the end of the year and after
20 that, that is correct, they would be reallocated
21 without any partition, to use that word again.

22 Q. And the only class that has unallocated
23 allotments as you know today would be the residential
24 customer class?

25 A. I believe that's correct.

1 Q. And is it your understanding the
2 industrials capacity allotments are all awarded of as
3 of this date?

4 A. That's my recollection, yes.

5 Q. Are you aware of the level of unallocated
6 allotments to the residential customers?

7 A. As of this point in time?

8 Q. Yes.

9 A. I am not.

10 Q. Are you aware of any commercial and
11 industrial customers queuing up to get that
12 unallocated residential allotment?

13 A. I'm not aware of specific individual
14 customers, although it's a very dynamic process so
15 I'm sure there's a continuing growth in the queue and
16 I don't know where that stands at this point in time.

17 Q. Do you know generally where the queue
18 stands with respect to commercial and industrial
19 customers who --

20 A. I do not. I know that's publicly
21 available information, we've been posting that on the
22 AEP Ohio website, and whatever's posted there would
23 be the best of my knowledge.

24 Q. Is it your understanding, Mr. Hamrock,
25 that under the residential class allotment that would

1 be the category which government aggregation would
2 also be classified as?

3 A. For the residential load behind a
4 governmental aggregation contract, yes, that would be
5 correct.

6 Q. Now, would you agree with me,
7 Mr. Hamrock, that there are a number of communities
8 in the AEP Ohio service territory that have passed
9 ordinances to authorize the government to act as
10 their opt-out aggregation?

11 A. Yes, there are a number who have
12 previously passed ordinances to support governmental
13 aggregation, that's correct.

14 MS. GRADY: May I approach the witness,
15 your Honor?

16 EXAMINER TAUBER: You may.

17 MS. GRADY: At this time I would like to
18 mark for identification purposes as OCC Exhibit 7 a
19 single page, it's actually two-sided, copy of the
20 Ohio Power Company, Columbus Southern Power Company's
21 response to IEU-Ohio's supplemental discovery
22 request, third set, STIP-IEU-interrogatory 3-019.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Can you take a moment, Mr. Hamrock, to
25 look that over?

1 A. Sure.

2 Q. Now, are you familiar with that document,
3 Mr. Hamrock?

4 A. Yes, I am.

5 Q. And can you identify that document,
6 please?

7 A. The document is the company's response to
8 IEU-Ohio's supplemental discovery request,
9 STIP-IEU-INT-3-019.

10 Q. And is that a true and accurate copy of
11 the company's response to that interrogatory, if you
12 know?

13 A. It appears to be.

14 Q. Was that response true when it was made?

15 A. Yes.

16 Q. And does it still hold true today?

17 A. Yes.

18 Q. Now, these are the communities that -- is
19 it your understanding that these are the communities
20 that would not necessarily have aggregated yet but
21 had passed ordinances in order to facilitate
22 aggregation?

23 A. This is certainly a list of the
24 communities that have authorized aggregation. I
25 don't know which, if any of these, may have already

1 initiated aggregation from looking at the list.

2 Reynoldsburg is on the list, so
3 Reynoldsburg certainly has implemented aggregation,
4 so I believe your question was they authorized but
5 not yet initiated, and I don't think that's what this
6 list is.

7 Q. Can you tell me, then, what this list
8 represents, if you know?

9 A. It's a list of the communities that have
10 authorized and may or may not have initiated
11 aggregation contracts.

12 Q. Now, the load associated with these
13 particular communities, would these be considered --
14 these would not be considered part of the allotments
15 that had been awarded for the residential class; is
16 that correct?

17 A. That have already been awarded?

18 Q. Yes.

19 A. If they have indeed initiated aggregation
20 contracts and customers have switched as a result,
21 then they would be a part of the current allotment or
22 the current awards of the allotment under
23 residential.

24 Q. And the only community that you're aware
25 of from this list which shows ordinances passed that

1 actually has aggregation in place would be the City
2 of Reynoldsburg?

3 A. From my knowledge that's correct.
4 Although I don't have extensive knowledge of which
5 communities may have already initiated contracts. I
6 believe there are more than just Reynoldsburg that
7 have customer switching under aggregation, I just
8 don't know which one.

9 Q. Do you know what steps the communities
10 have to take once they pass an ordinance before they
11 can actively engage in aggregation?

12 A. I don't know the specific steps that a
13 community might take.

14 Q. Do you have an understanding that a
15 community would necessarily have to put the ordinance
16 or the issue on an electoral ballot?

17 A. Yes. And this list reflects communities
18 that have previously done that and have certainly had
19 time to implement aggregation based on the date of
20 when it was approved.

21 MS. GRADY: May I approach the witness,
22 your Honor?

23 EXAMINER TAUBER: Yes.

24 MS. GRADY: At this time I would like to
25 have marked as OCC Exhibit No. 8 the Ohio Power

1 Company's and Columbus Southern Power Company's
2 response to IEU Ohio's supplemental discovery
3 request, third set, STIP-IEU-interrogatory-3-021.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. And I'm going to hand that to you,
6 Mr. Hamrock, and ask you to take a look at that,
7 please.

8 A. Thank you.

9 Q. It is a two-sided document.

10 Did you have a moment to look at that?

11 A. Yes.

12 Q. And does that appear -- can you tell me
13 what that document is, if you know?

14 A. This is the company's response to
15 IEU-Ohio's supplemental discovery request, and it's
16 labeled STIP-IEU-INT-3-021.

17 Q. And is that -- you are familiar with that
18 document, are you not?

19 A. Yes.

20 Q. Does that appear to be a true and
21 accurate copy of your response to interrogatory
22 3-021?

23 A. It does.

24 Q. And is that response true, was it true
25 when it was made?

1 A. It was true and I want to emphasize that
2 it's based on research that, to the best of our
3 ability, to determine which communities have ballot
4 initiatives. I don't know of a single authoritative
5 source of that information so it may or may not be
6 completely accurate.

7 Q. Would you expect, given that
8 characterization, that it would be true today, the
9 information contained on this document would be true
10 to the best of your knowledge today?

11 A. Yes, I would.

12 Q. Now, this document shows the communities
13 that you understand that have government aggregation
14 or will have government aggregation on the ballot; is
15 that correct?

16 A. On the ballot this November. November of
17 2011, yes.

18 Q. And would you assume that on this list of
19 communities that the load associated with these
20 particular communities would not be considered part
21 of the allotments for the residential class that have
22 been awarded as of September 7th, 2011?

23 A. That have been awarded as of
24 September 7th?

25 Q. Yes.

1 A. Yeah, I believe that's correct. Unless
2 individual customers in these communities have
3 already shopped, that would be the only offset to
4 that.

5 Q. And, Mr. Hamrock, we earlier established
6 that you are not aware of what steps need to be taken
7 after these issues go on the ballot in order to
8 initiate an aggregation or initiate aggregation for
9 residential customers?

10 A. That's correct, I don't have detailed
11 familiarity with the steps that need to be taken.

12 MS. GRADY: Thank you, Mr. Hamrock.
13 That's all the questions I have.

14 Thank you, your Honor.

15 THE WITNESS: Thank you.

16 EXAMINER TAUBER: Thank you.

17 Mr. Smalz?

18 MR. SMALZ: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Smalz:

22 Q. Good morning, Mr. Hamrock.

23 A. Good morning, Mr. Smalz.

24 Q. Mr. Hamrock, do you have a copy of the
25 stipulation?

1 A. I do.

2 Q. I'd like to call your attention to
3 section 1.u. on page 17 of the stipulation. This is
4 the section dealing with the Partnership With Ohio or
5 PWO initiative.

6 A. I see it.

7 Q. It says here that "The Companies shall
8 provide funding for the Partnership With Ohio (PWO)
9 initiative...." Is that funding going to come from
10 shareholders?

11 A. Yes. This is intended to be a
12 shareholder-funded mechanism.

13 Q. Okay. Even though it's not explicitly
14 stated in the stipulation.

15 A. While it may not use those words, it
16 doesn't provide for any sort of rate mechanism to
17 recover that, it's certainly a shareholder-funded
18 mechanism.

19 Q. I see.

20 Turning to your prefiled testimony on
21 page 7, line 15, where you state the stipulation
22 provides continued support for low-income customer
23 programs, I assume here you're referring to the PWO;
24 is that correct?

25 A. Page 15, I'm sorry, I didn't follow the

1 reference.

2 Q. I'm sorry, did I say -- it's actually
3 page 7.

4 A. Of my testimony?

5 Q. Of your testimony.

6 A. Okay.

7 Q. Line 15.

8 A. Page 7. Yes. Okay. I see the
9 reference.

10 Q. Now, again, does this refer to the clause
11 in the stipulation at 1.u. page 17 --

12 A. Yes.

13 Q. -- that we just referenced?

14 A. Provide for continued support for
15 low-income customer programs in the form of the PWO.

16 Q. Okay. By "continued support" do you mean
17 continuing from what AEP is currently doing under the
18 existing ESP?

19 A. Yes. AEP currently has -- AEP Ohio
20 currently has a Partnership With Ohio fund and this
21 stipulation provides for a continuation of that set
22 of programs.

23 Q. And under the current ESP, which I
24 understand covers 2009 through 2011, is it your
25 understanding that AEP Ohio is providing \$5 million a

1 year for low-income programs?

2 A. That's correct. Under the current ESP
3 the funding is set at \$5 million per year.

4 Q. And under the stipulation in this case
5 the amount would be \$3 million; is that correct?

6 A. As a result of the settlement and
7 negotiations the amount would be 3 million per year,
8 provided that the earnings threshold in the prior
9 year was met to allow for funding of that mechanism.

10 Q. So compared to the current ESP, the
11 company is proposing to spend \$2 million less per
12 year; is that correct?

13 A. That's a fair way to characterize it.

14 Q. Also under the current ESP for the 2009
15 to 2011 period, the \$5 million per year is not
16 contingent on the company reaching a certain rate of
17 return on equity.

18 A. That's correct. That particular
19 provision in the stipulation is unique to the
20 settlement and did not appear in the previous plan
21 relative to the Partnership With Ohio funding.

22 Q. That trigger is unique to the settlement
23 in this case.

24 A. Yes. That's correct.

25 Q. Now, skipping ahead all the way to page

1 27 in your testimony, line 16, and specifically the
2 phrase "present value benefits of \$10 million," are
3 you referring there to the present value benefits of
4 the Partnership With Ohio proposal?

5 A. Yes. That's a reference to Witness
6 Allen's exhibit that calculates the net present value
7 of the Partnership With Ohio plan over the term of
8 the settlement agreement of the ESP and that is the
9 net present value that he calculates.

10 Q. And that calculation, in your
11 understanding, assumes that the company will reach
12 the 10 percent rate of return on equity for each of
13 the years of the upcoming ESP.

14 A. Yes, it does. That's our expectation.

15 Q. Okay. And so if that doesn't happen,
16 let's say, for one of the years of the upcoming ESP
17 then the actual value of this term of the ESP would
18 be less than \$10 million; is that correct?

19 A. If, indeed, we had a year that we didn't
20 hit that threshold and chose not to fund the PWO,
21 then that's a fair statement, that if we chose not to
22 fund the PWO in the subsequent year on that basis,
23 then that's a fair statement, the net present value
24 looking forward from today would have been different.

25 Q. And if per chance the company did not

1 attain that rate of return during any of the years of
2 the upcoming stipulation, 2012, 2013, or 2014, then
3 there would, in fact, be no funding for the
4 Partnership With Ohio program, would there?

5 A. There would be no obligation on the
6 company's part to fund the Partnership With Ohio per
7 the terms of the settlement agreement.

8 Q. I see.

9 You also discuss the PWO initiative on
10 page 19 of your prefiled testimony beginning -- page
11 19 beginning on line 15. Do you see that?

12 A. I do.

13 Q. Now, again, AEP Ohio has agreed to
14 provide funding for the PWO initiative of \$3 million
15 annually. In AEP Ohio's original application in this
16 case did AEP Ohio propose to spend \$6 million per
17 year for PWO?

18 A. Yes. In the ESP filing the proposal was
19 to fund PWO at the equivalent of \$6 million per year
20 over a 29-month plan term. So this was one of the
21 compromises in the overall settlement agreement, a
22 longer-term plan and \$3 million per year over the
23 term of that plan.

24 Q. But the actual amount that would be spent
25 annually is cut in half; is that correct?

1 A. That's correct. Like many things in the
2 settlement, a matter of negotiations and compromise.

3 Q. Do you happen to know where that
4 \$3 million per year went? Did it go to other
5 stakeholders?

6 A. I don't even understand the nature of the
7 question. Where it went?

8 Q. Well, you stated in general terms that as
9 a result of compromises in the case the amount that
10 was originally proposed as \$6 million per year was
11 cut in half to \$3 million. When you referred to
12 other "compromises" in the case that triggered that
13 reduction, could you give any examples?

14 A. Well, there are many compromises
15 reflected in the settlement, including the rates, the
16 rate mechanisms, the capacity compensation
17 mechanisms. I didn't mean to imply that the
18 difference in the original filing and the ultimate
19 settlement relative to PWO was somehow redirected to
20 another stakeholder; that's not the case at all.
21 It's just one more example of the overall compromise
22 in the settlement.

23 Q. Okay. Now, Mr. Hamrock, there's nothing
24 in either section 1.u. of the stipulation or
25 elsewhere in the stipulation that would reduce or

1 otherwise change the rates charged to PIPP customers,
2 is there?

3 A. No, there's no specific provision for
4 PIPP customers that's unique to PIPP customers.

5 Q. Do you know if any other EDUs in Ohio are
6 offering discounted rates to PIPP customers?

7 A. I don't know the specifics, but I do
8 understand that there have been, as a matter of
9 settlement agreements in at least the FirstEnergy
10 territory, a discount provided to PIPP customers.

11 Q. And there's no such discount in this
12 stipulation.

13 A. I believe I answered that there's no
14 specific provision for PIPP customers in this
15 settlement.

16 Q. Turn to page 23 of your prefiled
17 testimony, line 17, and specifically the reference to
18 "targeted assistance to low-income households in
19 AEP Ohio's service territory." Does that refer to
20 the PWO fund?

21 A. That is one example of how the PWO fund
22 has been designed currently. That specific reference
23 is to some of the United Way programs that we've
24 funded across the service territory that are designed
25 to target eligible customers in our service

1 territory.

2 Q. Has AEP determined -- has AEP developed a
3 definition of low-income households that would
4 benefit from the PWO funding?

5 A. The current working definition is at or
6 below 200 percent of the federal poverty guidelines.
7 I would expect something like that to continue under
8 the proposal, although we have identified that we'll
9 work with the PUCO staff to be sure to direct those
10 funds to their highest and best use during the plan
11 term.

12 Q. So that would be determined based on your
13 consultation with the PUCO staff.

14 A. That's correct.

15 Q. And as far as you know, no low-income
16 advocates or representatives will participate in that
17 process.

18 A. This is an element of the settlement and
19 the signatory parties are participating in that. I
20 would not rule out the opportunity for low-income
21 advocates to provide input into that process; we
22 certainly want to hear their perspectives.

23 Q. By the way, is there any portion of this
24 \$3 million annual fund under the PWO proposal that is
25 committed to bill payment assistance for low-income

1 customers?

2 A. There is currently Neighbor to Neighbor
3 program, bill payment assistance under the plan. We
4 would expect that kind of a mechanism to continue
5 under the plan. But, again, that's subject to
6 working with the PUCO staff to design the use of
7 those funds going forward.

8 Q. So as far as the parameters of the
9 stipulation itself are concerned, the amount -- the
10 portion of the \$3 million annual fund that would be
11 devoted to bill payment assistance could be anywhere
12 from zero to \$3 million.

13 A. That's a fair statement, yes.

14 Q. On page 10 of your testimony beginning on
15 line 20 you reference state policies, certain state
16 policies that are embodied in Ohio Revised Code
17 4928.02. Do you see that?

18 A. I do.

19 Q. Okay. And you refer, among other things,
20 to nondiscriminatory and reasonably priced retail
21 electric service. Is it also your understanding,
22 Mr. Hamrock, that one of the state policies that's
23 embodied in this same statute is the protection of
24 at-risk populations?

25 A. I don't recall that specific provision,

1 but I'll accept that that's one of the state
2 policies.

3 Q. Okay. And given that, would low-income
4 customers fall within the definition of at-risk
5 populations?

6 A. I don't know the statutory definition of
7 at-risk population, but I would expect that to be the
8 case.

9 Q. Okay.

10 MR. SMALZ: I have no further questions.

11 EXAMINER TAUBER: Thank you.

12 Mr. Conway, redirect?

13 MR. CONWAY: Your Honor, may we take a
14 short break?

15 EXAMINER TAUBER: Yeah, we'll take a --
16 would Ormet like an opportunity to cross first?

17 MS. HAND: No, thank you.

18 EXAMINER TAUBER: Thanks.

19 We'll take a quick five-minute recess.

20 (Recess taken.)

21 EXAMINER TAUBER: Let's go back on the
22 record.

23 Mr. Conway.

24 MR. CONWAY: Thank you, your Honor. Just
25 a few questions.

1 - - -

2 REDIRECT EXAMINATION

3 By Mr. Conway:

4 Q. Mr. Hamrock, do you recall a line of
5 questions that Ms. Grady pursued regarding post-2000
6 investments in the distribution infrastructure that
7 are recovered through the DIR? Do you recall that?

8 A. I do.

9 Q. And I believe there was also some
10 discussion of incremental investments past the date
11 certain that you had referred to that might be also,
12 then, incorporated into the DIR for recovery
13 incrementally in the future. Do you recall that?

14 A. I do.

15 Q. What is the basis for both the post-2000
16 to date and then future investments in the
17 distribution infrastructure?

18 A. The DIR is designed to provide for
19 recovery on and of investments in distribution that
20 both maintain and improve reliability of service, and
21 that demonstrated how those programs such as breaker
22 replacements, Witness Kirkpatrick's testimony in the
23 original ESP filing certainly dealt with this, we've
24 demonstrated how they improve reliability for
25 customers and how we gather input from customers

1 through the form of customer surveys, monitoring
2 customer inquiries, and even monitoring PUCO
3 complaints from customers relative to their
4 expectations of reliability.

5 And these programs are all designed to
6 meet customers' expectations, both the investments
7 that have been made and the investments we would
8 anticipate making under the DIR as set forth in the
9 settlement.

10 Q. Thank you. And do you recall a line of
11 questions from Mr. Lang on behalf of FirstEnergy
12 Solutions yesterday I believe that addressed
13 FirstEnergy Solutions' participating in the
14 negotiations that led up to the stipulation that
15 we're discussing here?

16 A. I do.

17 Q. And do you recall questions that Mr. Lang
18 posed in which he challenged the proposition that
19 FirstEnergy Solutions had, I forget the phrase he
20 used, either opted out or closed the door on further
21 negotiations by FES? Do you recall that?

22 A. I do.

23 Q. And have you had an opportunity to
24 reflect on, refresh your recollection of the nature
25 of FirstEnergy Solutions' position with regard to the

1 vitality or the promise of additional negotiations
2 and its participation in further negotiations?

3 A. I do. I had a chance after that line of
4 questioning to look back at my calendar and reflect
5 on all of the different interactions with all the
6 parties and with FirstEnergy Solutions. In
7 particular I recall a meeting on August 26th that
8 preceded the motion that I referred to yesterday.

9 We had an individual AEP Ohio-FirstEnergy
10 Solutions meeting that morning where it was clear
11 that the terms that were emerging with the parties in
12 the settlement talks were not acceptable to
13 FirstEnergy, they had very different terms, and it
14 was clear that we were parting ways in that
15 discussion.

16 We had a subsequent meeting of all the
17 parties that afternoon, I remember that vividly, that
18 Friday afternoon where we polled the parties to see
19 who was willing to continue working within the
20 framework that had been developed at that point, and
21 FirstEnergy Solutions specifically walked out of that
22 session and indicated they were no longer interested
23 in that framework.

24 Even after the stipulation was filed we
25 continued to try to work with FirstEnergy Solutions

1 and other parties to find common ground within the
2 framework and the overall envelope of the settlement
3 agreement and have failed to find such common ground.

4 Q. Thank you, Mr. Hamrock.

5 MR. CONWAY: Your Honor, that's all I
6 have.

7 EXAMINER TAUBER: Thank you.

8 Mr. Randazzo?

9 MR. RANDAZZO: Just a couple questions.

10 - - -

11 RE-CROSS-EXAMINATION

12 By Mr. Randazzo:

13 Q. Mr. Hamrock, your counsel asked you on
14 redirect a question regarding DIR and the purpose of
15 the distribution investment rider. Do you recall
16 that question?

17 A. I do.

18 Q. And you referred to testimony from a
19 Witness Kirkpatrick?

20 A. Yes, Tom Kirkpatrick, witness in the
21 original ESP filing.

22 Q. Yes. And Mr. Kirkpatrick has not
23 testified in this proceeding, correct?

24 A. That's correct.

25 Q. And so you were relying on information

1 that's not part of the evidence in this case, right?

2 A. I was referring to his testimony.

3 Q. Right. Now, during my cross of you
4 yesterday I asked you about whether or not you had
5 gone back and refreshed your recollection regarding
6 the things that had occurred during the transition
7 period associated with Senate Bill 3. Do you recall
8 those questions?

9 A. Somewhat, yes.

10 Q. Now, since you left the stand yesterday
11 after my cross did you go back and refresh your
12 recollection with regard to what occurred during that
13 Senate Bill 3 transition hearing?

14 MR. CONWAY: Objection. It's outside the
15 scope of my redirect, your Honor.

16 EXAMINER TAUBER: Objection sustained.

17 Q. Mr. Hamrock, do you know whether or not
18 during the course of the transition period associated
19 with Senate Bill 3 Columbus Southern and Ohio Power
20 agreed to freeze distribution rates over the
21 objections of other parties?

22 MR. CONWAY: Objection. Same basis, your
23 Honor.

24 EXAMINER TAUBER: Mr. Randazzo.

25 MR. RANDAZZO: Your Honor, Mr. Hamrock

1 has testified that the purpose of the DIR is to
2 recover investments since 2000. The record in this
3 case and other places I think reflects that the
4 post-2000 investment is what AEP is seeking.

5 The fact of the matter is that the
6 companies both, Ohio Power and Columbus & Southern,
7 agreed to freeze distribution rates as part of that
8 transition period, either he knows that or does
9 not -- either he knows that or he doesn't know that
10 and that's what I'm going after.

11 MR. CONWAY: This is not a retroactive
12 proposal we're making in this case.

13 MR. RANDAZZO: I don't want an argument
14 from counsel, your Honor, or testimony.

15 MR. CONWAY: My objection stands.

16 EXAMINER TAUBER: Mr. Randazzo, that's
17 outside of scope of redirect examination. Please
18 continue.

19 Q. (By Mr. Randazzo) Mr. Hamrock, are you
20 aware of whether or not Columbus & Southern or Ohio
21 Power previously agreed to freeze distribution rates?

22 MR. CONWAY: Same objection, your Honor.

23 EXAMINER TAUBER: Objection sustained.

24 Q. With regard to the DIR, have you
25 estimated how much of the amount that is slated for

1 2012 you would expect to increase rates through the
2 DIR component in the settlement if the settlement is
3 approved?

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

5 Q. Is it correct, sir, that the DIR
6 specifies, that's in the stipulation specifies a
7 maximum amount that is eligible for collection
8 through the DIR in 2012 and other years during the
9 term of the stipulation?

10 A. If you mean by that a cap on the revenue.

11 Q. Right.

12 A. Yes.

13 Q. And how much of that cap for 2012 do you
14 estimate AEP Ohio will collect in 2012?

15 A. I don't know the specific number, but I
16 believe we'd be at or near that cap based on previous
17 investment.

18 Q. Okay. And with regard to 2013, can you
19 answer a similar question, how much of the cap amount
20 do you estimate would be collected, incremental
21 revenue would be collected in 2013?

22 A. I don't have a final estimate for that
23 number because it depends on future capital
24 investment that's still being developed, plans for
25 which are still being developed.

1 Q. So you know the amount of investment
2 that's made since 2000, correct?

3 A. Through a certain date, that's correct.

4 Q. And you would know the amount of capital
5 investment that's budgeted for 2012 at this point,
6 correct?

7 A. No. That was the basis for my answer.
8 That's still being formulated.

9 Q. Well, based upon the budgeting process
10 that's completed thus far, how much of the 2013 DIR
11 cap do you estimate would be collected by AEP Ohio?

12 A. I don't have a point estimate for that at
13 this point.

14 Q. Would it be something greater than zero?

15 A. It would likely be greater than zero. In
16 terms of the incremental amount?

17 Q. Yes, sir.

18 A. Yes.

19 Q. And the same would be true for 2014, it
20 would be greater than zero?

21 A. I would expect that to be the case.
22 Again, given the fact that we have not completed the
23 capital planning for 2012, '13, or '14.

24 MR. RANDAZZO: That's all I have. Thank
25 you.

1 EXAMINER TAUBER: Mr. Lang?

2 - - -

3 RE-CROSS-EXAMINATION

4 By Mr. Lang:

5 Q. Mr. Hamrock, do you have a copy of your
6 deposition in front of you?

7 A. I do not.

8 Q. I'll see if I can help you out.

9 MR. NOURSE: Was that September 21st?

10 MR. LANG: I'm trying to find the right
11 one, if I could have one minute, please.

12 Yes, September 21.

13 Q. Could you turn to page 26 of this
14 deposition transcript, please. Mr. Hamrock, this was
15 the deposition from September 21, I just want to make
16 clear, because we had two depositions, this is the
17 more recent one.

18 A. The second one, yes.

19 Q. And, again, at that deposition there was
20 a court reporter there. Do you remember a court
21 reporter --

22 A. Yes.

23 Q. -- being there?

24 A. Yes, I do.

25 Q. And you remember your legal counsel being

1 there.

2 A. I do.

3 Q. If I could ask you, at page 26, line 19,
4 I asked the question: "Did you see any
5 communications from FirstEnergy Solutions that said
6 we're electing to stop participating in the
7 settlement negotiations?" and your answer was: "My
8 understanding is the motion to oppose, or the
9 opposition to the motion to continue, was such a
10 message."

11 A. Yes, I see that.

12 Q. Did I read that correctly?

13 A. Yes.

14 Q. And the next question was: "So your
15 understanding, now there was a motion filed, there
16 was a motion to continue the hearing that was filed
17 on or around that August 30th date, correct? Is
18 that what you are discussing" and your answer then
19 was: "Yes."

20 Was that your answer?

21 A. That's correct, and that was in the
22 context of an overall line of questioning and answers
23 relative to August 30th, the August 30th motion.

24 Q. Yes. And that was your answer.

25 A. That's correct.

1 Q. All right.

2 MR. LANG: I have no further questions.

3 EXAMINER TAUBER: Ms. Grady?

4 MS. GRADY: Thank you, your Honor.

5 - - -

6 RE-CROSS-EXAMINATION

7 By Ms. Grady:

8 Q. Mr. Hamrock, the stipulation does not
9 identify specific distribution investments that the
10 company has committed to making, does it?

11 A. When you say "specific investments,"
12 meaning types of programs or --

13 Q. Specific projects or expenditures that
14 are going to be made or that the company has
15 committed to making as part of the stipulation.

16 A. No, the stipulation itself does not --
17 except for the case of the provision for working with
18 the Ohio Hospital Association on circuits that serve
19 hospitals throughout our service territory.

20 Q. And the company has not committed under
21 the stipulation to make specific distribution
22 investments, has it?

23 A. That's correct.

24 MS. GRADY: That's all the questions I
25 have. Thank you, Mr. Hamrock.

1 EXAMINER TAUBER: Mr. Smalz.

2 MR. SMALZ: No questions, your Honor.

3 EXAMINER TAUBER: Ms. Hand, do you have
4 any questions?

5 MS. HAND: No, your Honor.

6 EXAMINER TAUBER: Thank you.

7 Mr. Hamrock, you may be excused, thank
8 you.

9 THE WITNESS: Thank you.

10 MS. GRADY: Your Honor, at this time I
11 would move for the admission of OCC Exhibit No. 7 and
12 8.

13 EXAMINER TAUBER: Are there any
14 objections to OCC Exhibits 7 and 8?

15 (No response.)

16 EXAMINER TAUBER: Hearing none, OCC
17 Exhibits 7 and 8 shall be admitted into the record.

18 MS. GRADY: Thank you.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 MR. LANG: And, your Honor, FES moves FES
21 Exhibit 13.

22 EXAMINER TAUBER: Are there any
23 objections to FES Exhibit No. 13?

24 (No response.)

25 EXAMINER TAUBER: Hearing none, FES

1 Exhibit No. 13 shall be admitted into the record.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 MR. CONWAY: Just for clarification, your
4 Honor, the FES 13 is the one page?

5 EXAMINER TAUBER: Correct, it is the
6 one-page document that is the e-mail from Thursday,
7 September 26th.

8 Mr. Randazzo.

9 MR. RANDAZZO: Your Honors, in view of
10 the fact that the Bench took administrative notice of
11 what was marked as IEU 7A and 7B, we're not moving to
12 admit those, with that understanding.

13 EXAMINER TAUBER: Thank you. That is
14 correct, the Bench took administrative notice of
15 those two exhibits.

16 MR. RANDAZZO: Thank you.

17 EXAMINER TAUBER: Mr. Conway.

18 MR. CONWAY: Thank you, your Honor.
19 AEP Ohio would move for the admission of
20 Mr. Hamrock's testimony which has been marked as
21 AEP Ohio Exhibit No. 8.

22 EXAMINER TAUBER: Are there any
23 objections to Mr. Hamrock's direct testimony,
24 AEP Ohio Exhibit 8?

25 (No response.)

1 EXAMINER TAUBER: Hearing none, that
2 shall be admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 MR. CONWAY: And then, your Honor, before
5 we go off the record may I make another comment or
6 suggestion?

7 EXAMINER TAUBER: You may.

8 MR. CONWAY: Before we started the
9 hearing today while we were off the record I
10 suggested that we might mark as Signatories Joint
11 Exhibit No. 1 a stipulation and recommendation that
12 was filed September 7th and as Signatories Exhibit
13 No. 2 the detailed implementation plan contemplated
14 by the stipulation which was prepared and then filed
15 in the docket on October 5th.

16 EXAMINER TAUBER: I'm sorry. You said
17 that's Signatory Parties Exhibit No. 2 --

18 MR. CONWAY: Yes.

19 EXAMINER TAUBER: -- is what you'd like
20 to mark it as?

21 MR. CONWAY: The detailed implementation
22 plan, yes, which was filed on October 5th in the
23 docket. Or the dockets, excuse me. And so I would
24 mark those exhibits as I indicated and offer them
25 into the record.

1 EXAMINER TAUBER: It shall be so noted,
2 thank you.

3 MR. RANDAZZO: Your Honor, may we be
4 heard with regard to the admission of those exhibits?

5 EXAMINER TAUBER: Yes, you may.

6 MR. RANDAZZO: No witness has sponsored
7 those exhibits, your Honor, it would be improper to
8 admit them. No witness was cross-examined on those
9 exhibits.

10 EXAMINER SEE: Are there any other
11 objections to the admission of Signatory Exhibit 1
12 and Signatory Exhibit 2?

13 MR. HAYDEN: Your Honor, FES would concur
14 with that objection on the same grounds.

15 MS. GRADY: OCC joins.

16 EXAMINER TAUBER: We'll note the
17 objections, we'll mark the exhibits as such and we'll
18 leave it at that for the time being.

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 EXAMINER SEE: There are a couple of
21 items we need to address before we move on to the
22 next witness.

23 Mr. Petricoff.

24 MR. PETRICOFF: Thank you, your Honor.
25 At this time I would like to enter the appearance of

1 the Hess Corporation in docket 10-343-EL-ATA and
2 10-344-EL-ATA, these are the emergency curtailment
3 proceedings that have been consolidated with this
4 proceeding.

5 I'd also like to note for the record that
6 the Hess Corporation's sole interest and focus
7 remains with the curtailment proceedings and they
8 take no position on any of the other rate matters or
9 other issues in 11-346 or the other consolidated
10 cases. Thank you.

11 EXAMINER SEE: Also note that Ms. Grady
12 has requested that Mr. Duann be cross-examined on
13 Friday.

14 MS. GRADY: Yes, your Honor.

15 EXAMINER SEE: October 14th.

16 MS. GRADY: Yes.

17 EXAMINER SEE: Okay. So at this point
18 Mr. Duann is the only witness for that day.

19 EXAMINER TAUBER: At this time we'd like
20 to call Mr. Fein as the next witness.

21 MR. PETRICOFF: Thank you, your Honor.

22 MR. RANDAZZO: Your Honor, may I inquire,
23 has the company rested their direct case?

24 EXAMINER SEE: You said did the company?

25 MR. RANDAZZO: Did the companies rest

1 their direct case?

2 EXAMINER TAUBER: Mr. Conway?

3 MR. CONWAY: Your Honor, two points, one,
4 the joint stipulation and recommendation is being
5 offered by all of the signatory parties, not just
6 AEP Ohio. That's one point.

7 And secondly, we haven't addressed
8 rebuttal testimony yet, so as far as resting our
9 case, we haven't gotten to the point of knowing
10 whether or not, from our standpoint at least, let
11 alone from the other signatory parties' standpoints,
12 whether they might choose to offer rebuttal
13 testimony.

14 And if there's any notion that the
15 stipulation, the joint stipulation and the
16 implementation plan require any kind of additional
17 support beyond what the witnesses that are supporting
18 the stipulation have or will provide, and I would
19 just note as an aside that Mr. Hamrock's testimony
20 shows a comprehensive detailed list of witnesses
21 supporting various aspects of the stipulation, but if
22 there is anything else that needs to be done to
23 support admission of the stipulation, then we would
24 reserve the right to do that also.

25 EXAMINER TAUBER: Thank you.

1 MR. CONWAY: I would just note that I
2 don't even know that it's necessary to have the joint
3 stipulation admitted into the record, or the
4 implementation plan, we did it as a matter of
5 convenience and to make sure that we had dotted all
6 the Is and crossed all the Ts that the examiners
7 thought necessary.

8 EXAMINER TAUBER: Thank you. We'll note
9 that.

10 MR. RANDAZZO: We have a motion that we
11 would like to make at this time orally to preserve
12 our rights, if I may.

13 EXAMINER TAUBER: Go ahead.

14 MR. RANDAZZO: Section 4928.143 provides
15 the opportunity for an electric distribution utility
16 to file an application for approval of an electric
17 security plan that conforms to said section.

18 Section 4928.143(C) states that the
19 burden of proof in an ESP proceeding shall be on the
20 electric distribution utility.

21 Neither the application filed in these
22 proceedings in January 2011 nor the stipulation,
23 regardless of whether it has a status as an exhibit,
24 proposed to establish an ESP for an electric
25 distribution utility. They proposed to establish, if

1 anything, an electric security plan for a fictional
2 entity known as AEP Ohio.

3 Therefore, there is no legal basis for
4 the application or the stipulation to be considered
5 by the Commission. The Commission lacks subject
6 matter jurisdiction.

7 Beyond the subject matter jurisdiction
8 issue and defect that I've just described and as
9 Mr. Hamrock testified, the September 7th, 2011,
10 stipulation uses the ESP application from January as
11 a foundation and then proposes to modify that ESP
12 application through the stipulation.

13 No party has sponsored the ESP
14 application or offered any testimony in support of
15 the ESP application, thus, the foundation for the
16 stipulation is not in evidence, and even if the
17 foundation was in evidence, neither Columbus Southern
18 nor Ohio Power has offered any testimony to
19 demonstrate that the ESP contained in the January
20 application is lawful and reasonable.

21 More specifically, and as a matter of
22 evidence, and the burden of proof that is
23 specifically set out in section 4928.143(C), the
24 Commission may not consider stipulations/proposed
25 modifications of an ESP application that has not

1 itself been sponsored and supported through an
2 affirmative direct case.

3 Indeed, the only testimony regarding the
4 January ESP application that has been discussed or
5 introduced in these proceedings is testimony
6 demonstrating that the original ESP application is
7 unreasonable and unlawful.

8 Therefore, your Honor, we would move to
9 dismiss based upon a failure to meet the burden of
10 proof and also for the subject matter jurisdiction
11 grounds that I identified previously. Thank you.

12 MR. HAYDEN: Your Honor, FES would join
13 in IEU's motion.

14 MR. ETTER: Your Honor, so will OCC.

15 MR. SMALZ: Your Honor, so does the
16 Appalachian Peace and Justice Network.

17 MR. NOURSE: Your Honor, may I respond?

18 EXAMINER TAUBER: You may.

19 MR. NOURSE: As to the AEP Ohio versus
20 Columbus Southern Power and Ohio Power individually,
21 the application as well as the stipulation clearly
22 identifies that Columbus Southern Power and Ohio
23 Power Company are the parties -- are the applicants
24 and are the parties to the stipulation.

25 The evidence has been presented as to the

1 standard of review for both companies individually
2 and collectively as AEP Ohio. It is anticipated, of
3 course, as a fundamental premise of the stipulation
4 that a merger will occur between the two companies
5 and during the ESP term that's proposed, which is the
6 primary case being addressed here, there will be a
7 single surviving company: Ohio Power Company.

8 I certainly would submit that the burden
9 of proof judgment is a matter for the merit decision
10 in this case and obviously can be part of the --
11 should be part of the Commission's judgment and
12 decision in deciding the case.

13 We, of course, maintain that we have and
14 are meeting that standard. The hearing's not done to
15 this point, and the evidence has not closed. You
16 know, in terms of sponsoring the stipulation, again,
17 all parties have had open opportunities to ask any
18 question of any witness about the terms of the
19 stipulation. It's a matter of record in the case
20 that's been filed.

21 I don't think it's any kind of a
22 traditional practice or requirement before the PUCO
23 to specifically have a witness sponsor that kind of
24 agreement or filing. It's not really evidence, it's
25 an agreement. And the evidence is the testimony

1 explaining and the cross-examination answers that
2 further explain issues raised. So the evidence does
3 support the stipulation.

4 In terms of, I'm not sure I understand
5 this distinction about a modification to the
6 application. I think all Mr. Hamrock said and all
7 the stipulation does in that regard, it's a
8 convenient, easy way to reference matters that are in
9 the record as to the application proposal being
10 modified by X, Y, and Z, and it's not an amendment to
11 the application or a formal modification of the
12 application.

13 Obviously, the stipulation does things
14 differently than the application and resolves the
15 issues proposed in the application in a different
16 way, and that's what the three-part test about this
17 hearing is all about. So I would submit that the
18 motion to dismiss should be denied. Thank you.

19 EXAMINER TAUBER: At this time --

20 Mr. Margard, did you have something you
21 wanted to add? You were standing earlier.

22 MR. MARGARD: Your Honor, I wanted to
23 note that the staff has also offered testimony in
24 support of the joint stipulation and that those
25 witnesses have not yet had an opportunity to testify,

1 I merely wanted to offer that in response to
2 Mr. Randazzo's request about the signatory parties
3 presenting their case.

4 MR. PETRICOFF: In that regard, your
5 Honor, the RESA witness, Teresa Ringenbach, presented
6 testimony in this case that was styled "Direct
7 Testimony in Support of the September 7th
8 Stipulation." The same heading that Mr. Fein will be
9 on the stand on cross today. And followed by
10 Mr. Dominguez for Exelon.

11 EXAMINER SEE: The Bench will take IEU's
12 motion to dismiss under advisement and rule on that
13 matter later.

14 With that, if there's nothing else, let's
15 move to the next witness. Mr. Petricoff.

16 MR. PETRICOFF: Yes, thank you, your
17 Honor. At this time we would like to call David I.
18 Fein to the stand.

19 (Witness sworn.)

20 EXAMINER TAUBER: Thank you.

21 MR. PETRICOFF: Your Honor, at this time
22 I would like to have marked as Constellation Exhibit
23 No. 1 the direct prepared testimony in support of the
24 September 7th stipulation of David I. Fein.

25 EXAMINER TAUBER: The exhibit is so

1 marked.

2 Mr. Petricoff.

3 MR. PETRICOFF: Thank you.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 - - -

6 DAVID I. FEIN

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

9 DIRECT EXAMINATION

10 By Mr. Petricoff:

11 Q. Good morning, Mr. Fein.

12 A. Good morning.

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

15 A. Yes. David I. Fein, that's F-e-i-n,
16 Constellation Energy Group, 550 West Washington
17 Boulevard, Suite 300, Chicago, Illinois, 60661.

18 Q. Mr. Fein, on whose behalf do you appear
19 today?

20 A. Constellation NewEnergy and Constellation
21 Energy Commodities Group.

22 Q. Do you have with you a copy of what has
23 just been marked as Constellation Exhibit No. 1?

24 A. Yes, I do.

25 Q. Is that your direct prepared testimony?

1 A. Yes, in support of the September 7th,
2 2011, stipulation.

3 Q. Do you have any amendments or changes you
4 would like to make to that testimony?

5 A. I do not.

6 Q. If I were to ask you today the questions
7 that are contained in that testimony, would your
8 answers be the same?

9 A. Yes, they would.

10 MR. PETRICOFF: Your Honor, the witness
11 is available for cross-examination.

12 EXAMINER TAUBER: Thank you.

13 Mr. Smalz?

14 MR. SMALZ: No questions, your Honor.

15 EXAMINER TAUBER: Mr. Etter?

16 MR. ETTER: A few questions, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Etter:

20 Q. Good morning.

21 A. Good morning.

22 Q. Mr. Fein, on page 1 and 2 of your
23 testimony you describe your position with
24 Constellation, and that is as Vice President of
25 Energy Policy in the Midwest and Pennsylvania,

1 correct?

2 A. That's correct.

3 Q. And what are your duties in that
4 position?

5 A. My duties in that position are
6 representing the company's interests before state
7 regulatory and legislative bodies and with other
8 stakeholders involved in the development of energy
9 policies, rules, practices, procedures.

10 Q. And could that be termed as being a
11 lobbyist?

12 A. Part of that job does entail lobbying,
13 yes.

14 Q. Thank you.

15 Now, on page 8 of your testimony, lines
16 11 through 22, you discuss the RPM price capacity
17 shopping caps, correct?

18 A. Yes. The RPM price capacity set-aside,
19 yes.

20 Q. Set-asides. And in 2012 the set-aside is
21 set at 21 percent, correct?

22 A. That's correct.

23 Q. Do you know the percentage of shopping
24 currently in the AEP Ohio service territories?

25 A. I don't have the specific figures in

1 front of me on an overall basis. I am aware that the
2 levels for the commercial class have hit or exceeded
3 that number and I believe the numbers for the
4 industrial class, if they have not been hit, are soon
5 to be or have been hit.

6 Q. By "that number" you mean 21 percent?

7 A. That's correct.

8 MR. ETTER: That's all the questions I
9 have, your Honor.

10 EXAMINER SEE: Thank you.

11 Mr. Kutik?

12 MR. KUTIK: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Kutik:

16 Q. Good morning.

17 A. Good morning.

18 Q. You believe there are benefits to
19 customers of competition, correct?

20 A. I do.

21 Q. And under a competitive bidding process
22 for POLR load procurement all the risks are borne by
23 a competitive wholesale supplier rather than
24 customers.

25 A. Correct.

1 Q. And a competitive bidding process for
2 POLR load procurement provides a proper balance
3 between getting the most competitive prices and
4 maintaining a reasonable level of price stability for
5 customers.

6 A. I agree with that.

7 Q. Now, the stipulation does not require
8 AEP Ohio to engage in a competitive bidding process
9 for POLR load for any load delivered prior to June of
10 2015, correct?

11 A. Correct.

12 Q. So you would agree with me that any
13 benefits of a competitive bidding process for POLR
14 load in AEP Ohio will not be felt by nonshopping
15 customers until June of 2015.

16 A. That's correct.

17 Q. Now, another policy that promotes
18 competition is the avoidance of nonbypassable
19 generation-related riders, correct?

20 A. Correct.

21 Q. And costs associated with service that
22 shopping customers would receive from a CRES provider
23 should be bypassable for those customers, correct?

24 A. That's correct.

25 Q. Otherwise shopping customers will end up

1 paying for the same service or the same costs twice.

2 A. That's the reason why, yes.

3 Q. And if customers had to pay for the same
4 service twice, that would be anticompetitive.

5 A. I don't know necessarily it would be
6 anticompetitive, but it certainly would subject
7 customers to kind of an anticompetitive subsidy, if
8 you will, or paying more than they need to for
9 generation service, yes.

10 Q. And perhaps less likely to shop.

11 A. Correct.

12 Q. The stipulation authorizes the
13 establishment of two riders, among others, GRR and
14 MTR, correct?

15 A. Correct.

16 Q. And you believe that MTR is generation
17 related, correct?

18 A. Correct.

19 Q. And shopping customers shouldn't have to
20 pay for that rider, correct?

21 A. We support the stipulation that was filed
22 in this case whereas that rider is being implemented
23 underneath the stipulation on a nonbypassable basis.

24 Q. Okay. Well, it's a generation-related
25 nonbypassable rider, correct?

1 A. It's a generation rate design mechanism
2 that is being implemented in such a fashion.

3 Q. All right. Let's turn to the rider GRR.
4 That's generation related.

5 A. Yes, it is.

6 Q. That's nonbypassable.

7 A. The rider that's proposed in this case,
8 the placeholder rider, yes, as proposed that would be
9 nonbypassable.

10 Q. You believe that currently there is an
11 oversupply of generation in Ohio, do you not?

12 A. Yes. Based upon the information that the
13 AEP utilities have provided to the Commission in
14 their most recent integrated resource plans. I'm not
15 as familiar with the plans or the information that's
16 been provided by the other utilities in Ohio, but I
17 believe, generally speaking, Ohio is in an oversupply
18 situation today.

19 Q. And specifically with respect to AEP you
20 believe there's an oversupply within AEP Ohio,
21 correct?

22 A. Correct.

23 Q. Of generation.

24 A. That's correct.

25 Q. Now, the stipulation currently

1 contemplates that required GRR would be the vehicle
2 for the potential recovery of costs associated with
3 the Turning Point project and a unit called MR6,
4 correct?

5 A. Correct.

6 Q. With respect to the Turning Point
7 project, would it be fair to say that you don't know
8 whether that project has been competitively bid?

9 A. That's correct.

10 Q. You're not aware of anything in the
11 record that would support including any costs in that
12 type of nonbypassable rider.

13 A. Not in this record today, no.

14 Q. With respect to the MR6 unit, it would be
15 fair to say that you don't know if that unit or the
16 construction of that unit is going to be
17 competitively bid.

18 A. At this time I do not know that, no.

19 Q. And you're not aware of any need for that
20 facility from a resource planning perspective.

21 A. That's correct.

22 Q. You're not aware of anything that would
23 support including any costs from that unit in a
24 nonbypassable rider.

25 A. Not based on this record, no.

1 Q. You're aware that there is also a unit by
2 the name of MR5, correct?

3 A. Correct.

4 Q. And there's been some discussion about
5 closing that unit, correct?

6 A. Correct.

7 Q. And it would be -- it would not be
8 appropriate to include the costs associated with the
9 closure of that unit for recovery through rider GRR,
10 correct?

11 A. That's correct.

12 Q. Now, another possible policy, another
13 policy that would be anticompetitive would be to
14 allow AEP Ohio to charge CRES providers at an
15 excessively high rate for capacity, correct?

16 A. Yes.

17 Q. And you believe that dramatic increases
18 in capacity prices over the RPM price will have an
19 adverse effect on shopping.

20 A. That's correct.

21 Q. And you felt that a dramatic increase,
22 such as AEP had initially proposed of about
23 400 percent, would harm retail customers and
24 eliminate competition, correct?

25 A. That's correct.

1 Q. You would also agree that an increase of
2 200 percent in capacity prices over RPM prices would
3 adversely affect shopping.

4 A. All else being equal, it would adversely
5 affect shopping, yes.

6 Q. And that it may limit shopping.

7 A. It may limit it, yes.

8 Q. You do not believe -- and you do not
9 believe that AEP Ohio was or is entitled to recover a
10 capacity charge of \$355 per megawatt day.

11 A. That's correct.

12 Q. You would not view that as a proper
13 charge for capacity, correct?

14 A. Correct.

15 Q. You also believe that the Commission
16 should avoid discriminatory pricing policies; do you
17 not?

18 A. I do.

19 Q. So similarly situated customers receiving
20 the same service shouldn't be required to pay
21 different prices for that service, correct?

22 A. That's correct.

23 Q. With respect to the capacity prices that
24 will be paid by shopping customers under the stip
25 prior to June 2015, there's a possibility that

1 shopping customers may pay two prices; some will pay
2 a price of the RPM price and some would pay a price
3 of 255 per megawatt-day, correct?

4 A. That's correct.

5 Q. And there's no difference in the capacity
6 that will be priced at the RPM or at the cap they'll
7 be priced at the 255, correct?

8 A. That's correct.

9 Q. Now, under the stipulation who gets the
10 price, the RPM price for capacity depends on the
11 priority the customer has as set forth in Appendix C
12 of the stip, correct?

13 A. That's correct.

14 Q. And the detailed implementation plan
15 that's been filed.

16 A. That's correct.

17 Q. And Group 1 customers are customers that
18 took service from a CRES provider as of July 1st of
19 this year, correct?

20 A. That's correct.

21 Q. And Group 2 customers are customers that
22 took CRES service first between July 1 and on or
23 before September 7th, correct?

24 A. They either took service or provided --
25 provided notice to the company that they intended to,

1 yes.

2 Q. So other than the date that they either
3 took service or indicated they were going to take
4 service by providing some type of notice, there are
5 no other cases to distinguish those customers in
6 those two groups that are set out in Appendix C,
7 correct?

8 A. That's right. The two dates that define
9 what group they were placed in for purposes of the
10 capacity set-aside.

11 Q. Now, with respect to the set-aside rules,
12 those rules are based on rules in the state of
13 Michigan to manage a queue with regard to a cap on
14 competition in that state, correct?

15 A. Yeah, I would say they formed the basis
16 for what ultimately ended up being Appendix C.

17 Q. And with respect to the rules that were
18 the basis of Appendix C, you're familiar with those
19 rules.

20 A. I am.

21 Q. And you're familiar with the statute upon
22 which those rules in Michigan are based, correct?

23 A. All too familiar.

24 Q. And it would be fair to say that those --
25 that statute calls for a hard cap on shopping; does

1 it not?

2 A. Sure does.

3 Q. And there's not a similar statute in
4 Ohio.

5 A. There is not.

6 Q. Now, compared to a capacity price set at
7 the RPM price, would you agree with me that it is
8 less likely that a customer will shop at a capacity
9 price of \$255 per megawatt-day?

10 A. Are you talking currently? In the
11 future?

12 Q. In the future, between January 1st,
13 2012, and June 2015.

14 A. It potentially makes it less likely or it
15 changes the economics for a customer considering
16 shopping on the issue of price. There are other
17 considerations that customers take into account when
18 making a decision to shop, but on the question of the
19 price for which they will pay for capacity, it's
20 obviously something that they may consider as part of
21 their decision.

22 Q. Let me move to another subject. Talk to
23 you a little bit about governmental aggregation.
24 You're aware that state policy in Ohio is to promote
25 governmental aggregation; are you not?

1 A. Yes, I am.

2 Q. And you're not aware of any contract that
3 Constellation or the other company or companies that
4 you represent has with any municipal aggregator
5 within AEP Ohio, correct?

6 A. That's correct.

7 Q. Now, to the extent that a municipal
8 aggregator, excuse me, that a municipality has a
9 governmental aggregation ordinance on the ballot this
10 November, if such ordinance were to pass, would you
11 agree with me that it would be likely that the first
12 time that those customers could receive service under
13 a governmental aggregation contract would be after
14 January 1st, 2012?

15 A. I'm counting in my head the time and the
16 steps as I understand them that that municipality
17 would have to go through before they could begin to
18 implement such a program with an election in
19 November, and with the various steps that would need
20 to be done it is likely they would not be able to
21 take service until after January 1st.

22 Q. So that would put them at best in Group 5
23 under Appendix C or the detailed implementation plan.

24 A. I believe so, that's correct.

25 Q. And that would be the lowest priority,

1 correct?

2 A. Yes.

3 Q. Now, with respect to the detailed
4 implementation plan and the stipulation, the
5 stipulation does not require the detailed
6 implementation plan to be reviewed or approved by the
7 Commission, correct?

8 A. I believe it is silent on that issue,
9 yes.

10 Q. And with respect to the detailed
11 implementation plan, would it be fair to say that you
12 don't know when the cap tracker mechanism will be
13 available and open for CRES providers to see?

14 A. I don't know. I know that they do have
15 information currently posted on their website, and
16 whether that will be enhanced in the time frame for
17 that, I don't know when that will occur.

18 Q. And you don't know what information
19 AEP Ohio will require of a customer about expanded
20 load to make that customer eligible for Group 3
21 status, correct?

22 A. I do not.

23 Q. And with regard to whether the queue
24 under the detailed implementation plan has begun, you
25 believe it already has begun, correct?

1 A. When you say "the queue has begun," you
2 mean customers or CRES providers have taken their
3 place in the queue?

4 Q. Well, I just mean the establishment of a
5 queue that's set forth in Appendix C. That's already
6 begun, correct?

7 A. I believe so, yes.

8 Q. You also believe that corporate
9 separation is something that benefits competition; do
10 you not?

11 A. I do.

12 Q. And the company that will own AEP Ohio's
13 generation resources, in your view, will be required
14 to bid all the generation it owns into the RPM
15 auction, correct?

16 A. Correct.

17 Q. Would it be fair to say that as the
18 stipulation now reads if the corporate separation
19 milestones are not met based upon actions of AEP Ohio
20 that has the effect of undue delay, there is no
21 specific remedy set forth in the stipulation as to
22 what the Commission could or should do?

23 A. It is not specified in the stipulation.

24 Q. In fact, you would agree with me, would
25 you not, that there's nothing in the stipulation with

1 respect to corporate separation that provides any
2 additional requirement for AEP in terms of, again,
3 corporate separation other than what AEP is already
4 required to do under Ohio law as you understand it?

5 A. I don't believe there's anything specific
6 in the stipulation on that, correct.

7 Q. Okay. Now, you believe, do you not, that
8 AEP has certain practices and certain things that
9 they don't do that are barriers to shopping, correct?

10 A. There are a number of items that have
11 been on the books in their tariffs since the opening
12 on the marketplace.

13 Q. Some of those barriers include not having
14 a rate ready billing.

15 A. That could be one, yes.

16 Q. And not having a purchase and receivables
17 program, correct?

18 A. Correct.

19 Q. And the stipulation doesn't require rate
20 ready billing for purchase and receivables program,
21 correct?

22 A. It does not.

23 Q. You also believe that there's certain
24 information that a pro-competitive policy would
25 foster that AEP does not provide, correct?

1 A. That's correct.

2 Q. And that would include, among other
3 things, web-based electronic access to key customer
4 usage and account data?

5 A. Correct.

6 Q. Access to data for validation, error
7 detection, and edit, data hosted via electronic data
8 interchange post.

9 A. Correct.

10 Q. Access to 867 historical usage and
11 historical integral usage data.

12 A. Correct.

13 Q. Access to data regarding meter read cycle
14 information.

15 A. Correct.

16 Q. Quarterly updated sync showing accounts
17 enrolled with a CRES provider.

18 A. Correct.

19 Q. Meeter master customer list.

20 A. The master customer list is something
21 that's provided to CRES providers.

22 Q. Currently.

23 A. Currently.

24 Q. Meter types and interval meter.

25 A. Correct.

1 Q. Rate code indications?

2 A. Correct.

3 Q. Load profile group indicator?

4 A. Correct.

5 Q. Minimum stay dates.

6 A. If any, correct. Yes.

7 Q. Whether a customer participates in a
8 budget plan.

9 A. Correct.

10 Q. And would it be fair to say that with the
11 exception of the meter master customer list, none of
12 those things are required by the stipulation for AEP
13 to provide?

14 A. None of those items are required to be
15 specifically provided under the stipulation, but some
16 of those items do appear on the master customer list
17 that's provided that isn't affected by the
18 stipulation, if you will. Some of the data and
19 information is provided via the master customer list
20 that you receive as a CRES provider.

21 Q. For some it's not.

22 A. That's correct.

23 Q. Now, you also believe that among the
24 business practices that would be pro competitive and
25 pro shopping would be to require AEP to notify a CRES

1 provider before a drop occurs.

2 A. That's correct.

3 Q. And the stipulation does not require AEP
4 to do that, right?

5 A. It does not.

6 Q. And you participated in the negotiations
7 in this case, did you not?

8 A. I did.

9 Q. And it would be fair to say that you did
10 not do any quantitative analysis comparing the MRO or
11 the ESP.

12 A. I did not.

13 Q. Now, you had previously reviewed the
14 testimony of, the initial filed testimony of FES
15 witness Mr. Schnitzer.

16 A. That's correct.

17 Q. And you supported that testimony with
18 respect to the initial application in this case,
19 correct?

20 A. That's correct.

21 Q. You supported how he valued the ESP.

22 A. That's correct.

23 Q. And how he valued the MRO.

24 A. I did.

25 Q. And how within the ESP calculation he

1 valued the rider GRR.

2 A. That's correct, I supported the testimony
3 submitted as it related to the so-called ESP versus
4 MRO test.

5 Q. And that would include how he valued the
6 pool modification and termination rider.

7 A. Correct.

8 Q. And within the MRO price how he developed
9 the competitive benchmark price.

10 A. Correct.

11 Q. You also supported his testimony
12 regarding the errors that he said that AEP Witness
13 Thomas had made in her initial calculations.

14 A. That's correct.

15 Q. Now, you also are familiar with the
16 testimony of AEP witness Mr. Allen in this case,
17 correct?

18 A. That's correct, generally.

19 Q. And you're aware that he quantifies a
20 "benefit" based upon a "discount" of capacity prices
21 from \$355 per megawatt-day, correct?

22 A. That's correct.

23 Q. You would agree with me, would you not,
24 that to calculate a "discount" from a 355 price and
25 quantify that as a "benefit" one would have to assume

1 that the 355 price was a proper price in the first
2 place?

3 A. Yes.

4 Q. And you do not believe that the 355 price
5 is proper, correct?

6 A. We did not.

7 Q. And so you would agree with me that
8 that's not a proper way to quantify a benefit of the
9 ESP, correct?

10 A. We obviously took issue with the original
11 filing that included that number and, you know, we're
12 not supportive of that.

13 Q. Thank you.

14 MR. KUTIK: May I have one minute, your
15 Honor?

16 No further questions, thank you.

17 EXAMINER TAUBER: Thank you.

18 Mr. Darr.

19 MR. DARR: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Darr:

23 Q. With regard to Constellation's
24 involvement in the cases that are part of the
25 stipulation, is it correct that you, meaning

1 Constellation, has not intervened in the deferred
2 fuel cases?

3 A. You said the deferral fuel cases?

4 Q. Yes, sir.

5 A. That's correct.

6 Q. Is it also true that you have not at this
7 point intervened in the corporate separation case,
8 11-5333?

9 A. I do not believe we have.

10 Q. With regard to the Turning Point project,
11 is it your belief that this is a renewable project?

12 A. As I understand the project, it is a
13 solar facility so, yes, it's a renewable energy
14 facility.

15 Q. Is it also your view that any renewable
16 energy mandates should be captured through a
17 bypassable as opposed to a nonbypassable charge?

18 A. I believe the statute addresses the issue
19 of bypassability as it relates to compliance costs
20 with the renewable standards, so to the extent that
21 costs are included to address the company's
22 compliance with that standard, as I understand the
23 statute they should be bypassable for a customer
24 taking service from a CRES provider.

25 Q. Are you personally familiar with the

1 transition schedule that was provided by Senate Bill
2 3?

3 A. Generally, yes.

4 Q. And would you agree with me that the
5 transition schedule provided by Senate Bill 3 would
6 have required the completion of that transition
7 period prior to the filing of this stipulation?

8 A. Yes.

9 Q. And do you know the specific date that
10 that would have been required?

11 A. I don't recall right now.

12 Q. I want to go back to something that came
13 up during your discussion with Mr. Kutik. You were
14 somewhat forceful about your opinion of the situation
15 in Michigan right now. Is it correct that
16 Constellation has taken a position with regard to the
17 caps that those are inappropriate?

18 A. Yes, we have.

19 Q. And is it also true that Constellation
20 opposed the passage of the legislation to produce the
21 system in Michigan?

22 A. Yes, we did.

23 Q. Is it also true that Constellation is
24 participating in a shareholder group -- stakeholder
25 group, excuse me, in Michigan that is working to

1 change Michigan's restrictions on that shopping?

2 A. Yes, we are.

3 Q. And can you state for us why
4 Constellation has taken that position?

5 A. Sure. And we'd welcome the participation
6 of any IEU members in that stakeholder process as
7 well.

8 The legislation in Michigan that you
9 referred to is an absolute cap on shopping and is
10 something that's been harming customers with
11 three-plus rate increases put in place by each of the
12 utilities there, we think it's been a bad policy and
13 it's been a real negative for consumers. Consumers
14 of all sizes.

15 So we're part of a group that's trying to
16 work with policymakers to either eliminate or
17 significantly raise that cap so that customers can
18 have an opportunity to enjoy the benefits of
19 competitively priced power which for 90 percent of
20 Michigan residents and businesses is not possible
21 right now.

22 Q. In fact, there are a number of commercial
23 and industrial customers who are seeking or would
24 like to seek a shopping opportunity and they are
25 being precluded by the cap, correct?

1 A. Yes. As of I think the last time I
2 looked, which was earlier this week, there's
3 something like 5,370-plus customers standing in line
4 in their queue hoping for an opportunity to take
5 advantage of a competitive Electric Choice.

6 Q. And am I correct also in stating that
7 Constellation has been encouraging electric customers
8 in Michigan to join electric competition for Michigan
9 now, I guess that should be in quotations --

10 MR. NOURSE: Your Honor.

11 Q. -- and help change the law in Michigan
12 that limits shopping to 10 percent?

13 MR. NOURSE: Your Honor, I object.
14 Relevancy. We've got enough problems in Ohio, I
15 don't think we need to solve Michigan's problems.

16 MR. DARR: It goes to the question of how
17 the Michigan system relates that was used as a basis
18 for this and it also goes to Constellation's support
19 or lack of support for shopping limits.

20 EXAMINER TAUBER: Your objection is
21 overruled. Please continue.

22 A. I believe the answer to your question
23 would be yes, we've encouraged customers to join that
24 group.

25 MR. DARR: Thank you. That's all I have.

1 Thank you.

2 EXAMINER TAUBER: Ms. Hand?

3 MS. HAND: No questions, your Honor,
4 thank you.

5 EXAMINER TAUBER: Are there any other
6 parties we're missing?

7 Mr. Petricoff, redirect?

8 MR. PETRICOFF: I have a couple of
9 redirect questions, thank you, your Honor.

10 - - -

11 REDIRECT EXAMINATION

12 By Mr. Petricoff:

13 Q. Mr. Fein, Mr. Kutik took you through a
14 list of items that had been in your original
15 testimony in terms of barriers that Constellation
16 would like to see lifted that were not. Are there
17 barriers that were on that list that were lifted as
18 part of the stipulation?

19 A. Yes, there were.

20 Q. Could you tell us about a few of those?

21 A. Sure. With respect to some of the retail
22 market enhancements that are a part of the
23 stipulation, the stipulation addresses, it's
24 paragraph s of the stipulation does address a number
25 of those concerns and now a CRES provider, as part of

1 the so-called master customer list, will receive
2 capacity PLC and transmission NSPL information, it
3 will be able to obtain historical usage via the EDI
4 867 transaction.

5 The company has agreed as part of the
6 stipulation to eliminate the 90-day notice that
7 certain customers have to provide before they can
8 shop with a CRES provider, and also will address
9 minimum stay requirements that have required larger
10 customers who return to the company to stay with the
11 company for a 12-month period.

12 Q. Mr. Kutik also asked you about rider GRR.

13 A. Yes.

14 Q. What is the dollar amount that customers
15 would pay under the stipulation when it's first
16 approved for GRR?

17 A. The rider currently is set at zero.

18 Q. Will the Turning Point project
19 automatically be included in the GRR?

20 A. No. As I understand it, that in the
21 event the company seeks to collect any costs from
22 customers pursuant to rider GRR, they will have to
23 make a separate filing with the Commission and
24 address the other statutory requirements in order to
25 impose such costs on a nonbypassable basis.

1 Q. Would Constellation as a signatory party
2 to the stipulation be barred from opposing Turning
3 Point being added to the GRR cost?

4 A. No. The stipulation expressly reserves
5 the right to all signatory parties to take whatever
6 positions they wish to take regarding those potential
7 future filings that could come before the Commission.

8 Q. Let's talk about MR6. Are you familiar
9 with the MR6 project as it's covered by the
10 stipulation?

11 A. Yes.

12 Q. Would Constellation be permitted to
13 oppose inclusion of MR6 as part of the GRR fee?

14 A. Similar to the Turning Point project the
15 stipulation reserves for Constellation and all the
16 signatory parties the right to oppose or take any
17 position regarding that potential future filing.

18 Q. Finally, does the stipulation call for
19 hard caps on shopping in Ohio or in, I'm sorry, in
20 the AEP Ohio service territory?

21 A. No. The stipulation has RPM price
22 capacity set-asides, not hard caps, that govern the
23 amount of RPM priced capacity that the company is
24 making available.

25 Q. And does that increase over time?

1 A. It does increase from the level in 2012
2 to a higher level in 2013 and a higher level in 2014,
3 and maybe even a higher level in 2013 [verbatim] if
4 the company is able to implement securitization.

5 Q. And what will the limit be after June of
6 2015?

7 A. There will be no limits.

8 Q. So everyone will get RPM pricing at that
9 time.

10 A. That's correct.

11 MR. PETRICOFF: No further questions,
12 your Honor.

13 EXAMINER TAUBER: Thank you.

14 Mr. Smalz, do you have any questions on
15 recross?

16 MR. SMALZ: No, your Honor.

17 EXAMINER TAUBER: Mr. Etter?

18 MR. ETTER: No, your Honor.

19 EXAMINER TAUBER: Mr. Kutik?

20 MR. KUTIK: No, your Honor.

21 EXAMINER TAUBER: Mr. Darr?

22 MR. DARR: Briefly, your Honor.

23 - - -

1 RE-CROSS-EXAMINATION

2 By Mr. Darr:

3 Q. With regard to rider GRR, you're aware
4 that there have been estimates made with regard to
5 the revenue requirement for 2013; is that correct?6 A. I recall that they might have been
7 proposed in this case but I'm not familiar with the
8 specific amounts.9 Q. And are you aware of whether or not
10 there's been any attempt by the company in its filing
11 so far to provide a cost or an estimate during the
12 ESP period of what GRR would cost customers?13 A. I don't recall whether a detailed one has
14 been provided in the record or not.15 Q. Okay. Have you reviewed Mr. Allen's
16 testimony?

17 A. In support of the stipulation, yes.

18 Q. And are you aware of anything in
19 Mr. Allen's testimony that would score or cost the
20 effect of including Turning Point in the GRR?21 A. I don't recall offhand sitting here right
22 now.23 Q. And with regard to the MR6, are you aware
24 of any estimates as to what that might mean in terms
25 of revenue to the companies or costs to the

1 customers?

2 A. I don't believe anything regarding that
3 was submitted into the record.

4 Q. And by the same -- following up on the
5 same question I had with regard to Turning Point, is
6 there anything in Mr. Allen's testimony that would
7 score or indicate to us the effect of the benefits or
8 costs of the MR6 proposal?

9 A. I don't believe it's in this record.

10 MR. DARR: Nothing further. Thank you.

11 MR. LANG: Ms. Hand.

12 MS. HAND: Nothing, your Honor. Thank
13 you.

14 EXAMINER TAUBER: The Bench has a
15 question for you.

16 THE WITNESS: Sure.

17 - - -

18 EXAMINATION

19 By Examiner See:

20 Q. Mr. Fein, in response to questions posed
21 by Mr. Kutik, you answered that the time line for --
22 first let me go back.

23 You answered some questions by Mr. Kutik
24 about governmental aggregation and he asked you about
25 the time line necessary once governmental aggregation

1 was approved. You said that it would take more than
2 a couple months from November -- from the time that
3 it could be placed on a municipality's ballot to the
4 time that they could receive an allocated allotment
5 would be more than November to let's say January 1,
6 2012, correct?

7 A. Correct. I said I thought it might be
8 tough for them to meet that deadline with the
9 requirements for the opt-out notices and some of the
10 other steps that any municipality has to go through
11 to comply with those provisions of the statute.

12 Q. Okay. So you appear to have some idea of
13 the steps that are usually taken by a municipality.
14 Tell me what those steps are, just in general.

15 A. Yeah. I know that there are some
16 requirements for public hearings, and I can't recall
17 if that's prior or after a referendum is placed on
18 the ballot and addressed. I think there's something
19 like there has to be two public meetings noticed up
20 by a municipality, and again, I can't recall if
21 that's prior or after a referendum is adopted.

22 Q. Okay.

23 A. There is a governance plan or
24 implementation plan that I believe the municipality
25 has to develop, and there is the required customer

1 opt-out notice that must be sent that provides a
2 customer with the opportunity to opt out of being
3 part of the aggregation program.

4 There's probably another step or two I'm
5 forgetting, but those are some of them that come to
6 mind.

7 Q. Okay. And based on your knowledge of
8 that process you believe it would take how long, from
9 the time that it's approved on the ballot, for the
10 governmental aggregation program to be effectuated?

11 A. Your Honor, I'm struggling a little bit
12 because I don't profess to be an expert on all the
13 steps in the process. I'm generally aware of the
14 requirements in the statute. But with an election,
15 what, second week in November it is this year if I'm
16 not mistaken, you know, that's with the holidays and
17 everything it's giving you only about six, seven
18 weeks maybe to get something like that done.

19 So, you know, my guess would be it's a
20 two- to four-month process but, again, that's not one
21 of the areas that I'm uniquely familiar with all the
22 steps and the timelines.

23 Q. And that's fine if you're not familiar
24 with it. Thank you very much, Mr. Fein.

25 THE WITNESS: You're welcome.

1 EXAMINER TAUBER: You may be excused.

2 THE WITNESS: Thank you.

3 MR. PETRICOFF: Your Honor, at this point
4 we would like to move for admission into the record
5 of Constellation Exhibit No. 1.

6 EXAMINER TAUBER: Are there any
7 objections to Constellation Exhibit No. 1, which is
8 the direct testimony of Mr. Fein?

9 (No response.)

10 EXAMINER TAUBER: Hearing none,
11 Constellation Exhibit No. 1 shall be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 MR. PETRICOFF: And at this time, your
14 Honor, I think the next witness on the list is
15 Exelon's and my co-counsel will present the Exelon
16 witness. Mr. Dominguez.

17 MR. STAHL: Good afternoon, your Honors,
18 this is the first opportunity I've had to address the
19 panel. My name is David Stahl, it's S-t-a-h-l. I'm
20 with the law firm of Eimer, Stahl, Klevorn and
21 Solberg in Chicago, Illinois, and we are among the
22 attorneys representing Exelon Generation and this is
23 Mr. Joseph Dominguez who will be our witness who is
24 prepared to testify.

25 EXAMINER TAUBER: Thank you.

1 Please raise your right hand.

2 (Witness sworn.)

3 EXAMINER TAUBER: Thank you.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 - - -

6 JOSEPH DOMINGUEZ

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

9 DIRECT EXAMINATION

10 By Mr. Stahl:

11 Q. Good afternoon, Mr. Dominguez. We have
12 already asked the reporter to mark and I believe she
13 has marked as Exelon Generation Exhibit No. 1 the
14 supplemental testimony of Joseph Dominguez. Can you
15 please state your name and business address for the
16 record?

17 A. Sure. My name is Joseph Dominguez, my
18 last name is spelled D-o-m-i-n-g-u-e-z. I work for
19 Exelon Corporation. My principal office is at 300
20 Exelon Way in Kennett Square, Pennsylvania.

21 Q. And is it correct that you are testifying
22 on behalf of Exelon Generation this afternoon?

23 A. I am. Exelon Generation and subsidiary
24 Exelon Energy, which is a retail electric supplier.

25 Q. And what is Exelon Generation Exhibit 1?

1 A. It's my testimony in support of the
2 stipulation.

3 Q. Do you have any changes that you would
4 like to make to that testimony this afternoon?

5 A. No, sir.

6 Q. If I were to ask you the questions set
7 forth in Exhibit 1, would your answers be the same as
8 reflected in that exhibit?

9 A. Yes.

10 MR. STAHL: Thank you, your Honors. I
11 have no further questions for Mr. Dominguez at this
12 time and he is now available for cross-examination.

13 EXAMINER TAUBER: Thank you.

14 MR. KUTIK: Your Honor, at this time will
15 the Bench entertain motions to strike?

16 MR. DARR: Same request, your Honor.

17 EXAMINER TAUBER: Yes.

18 MR. ETTER: The same request, your Honor.

19 EXAMINER SEE: I'm sorry, what was that,
20 Mr. Etter?

21 MR. ETTER: We also have a request, your
22 Honor.

23 MR. KUTIK: Your Honor, we have three
24 areas of the testimony that we would move to strike
25 all on the same basis.

1 First, starting on page 8, line 7,
2 beginning with the sentence "In the case of AEP," and
3 continuing through the rest of the page, that is
4 through line 14; second, we would move to strike the
5 table that appears at the top of page 9; and then we
6 would also move to strike attachments A through E,
7 and the ground, your Honor, for all is that the
8 witness here is -- testimony is hearsay.

9 It is obviously documents that are not
10 Exelon documents, they're not this witness's
11 documents, they're documents from a third party,
12 documents we have no ability to cross-examine the
13 authors of the documents, and it meets the classic
14 definition of hearsay, and they're all offered for
15 the truth of the matter which is the observations
16 supposedly made within these reports regarding the
17 stipulation and its merits or lack thereof.

18 MR. STAHL: Your Honors, I'm prepared to
19 respond, but may I approach Mr. Dominguez and hand
20 him a copy of his testimony so he can follow along?

21 EXAMINER TAUBER: Yes.

22 MR. ETTER: Your Honor, if I may, that
23 was exactly the motion we were planning to make, move
24 to strike the exact same portions Mr. Kutik had
25 mentioned, because of hearsay.

1 EXAMINER TAUBER: Thank you.

2 Mr. Darr.

3 MR. DARR: Same areas, same grounds,
4 although I would have gone back to page 7 starting at
5 line 21, since it basically incorporates the same
6 information.

7 I would add an additional basis for the
8 objection. If the testimony is being offered as
9 expert testimony with regard to the affects of this
10 particular stipulation, I would point out that the
11 testimony or evidence that the witness is relying on
12 is not proper evidence on which to base an expert
13 opinion, particularly under the Ohio rules, and that
14 it should be excluded on that basis as well.

15 EXAMINER SEE: Mr. Darr, you indicated in
16 the beginning that you would have also included --

17 MR. DARR: I would have gone back to page
18 7, line 21, taken the whole question and answer out.
19 Through the table and the attachments as well.

20 EXAMINER TAUBER: Mr. Stahl.

21 MR. STAHL: Yes. Thank you, your Honors.
22 First of all, with respect to the additional request
23 that the motion go back to page 7, line 21, through
24 page 8, line 7, nothing in any of that testimony is
25 anything other than Mr. Dominguez's direct

1 affirmative statements. They do not rely on any
2 third-party documents or statements at all, so
3 there's absolutely no basis for the additional motion
4 covering that piece of the testimony.

5 With respect to the grounds stated by
6 Mr. Kutik, I guess I would have three responses to
7 that, all of which support the admissibility of the
8 testimony, the table, and the attachments.

9 First of all, this is not, contrary to
10 Mr. Kutik's statement, classic hearsay by any stretch
11 of the imagination. These are not statements of fact
12 that have been introduced to establish the truth of
13 any ultimate fact that is in issue in this case.

14 These are not statements that a witness
15 to a traffic accident might make to the effect that
16 when the traffic light was red, I saw the car in the
17 intersection. That is a classic statement of fact
18 that might be considered hearsay and inadmissible
19 unless it falls within one of the recognized hearsay
20 exceptions.

21 We are not dealing with a statement of
22 fact here. These statements that Mr. Dominguez
23 references in his testimony to the effect that the
24 settlement is constructive, it is reasonable, it is
25 balanced, those statements are judgments or opinions,

1 and these are expressions of judgments and opinion
2 made by knowledgeable and independent third parties.
3 They don't purport to be statements of any ultimate
4 fact.

5 And I think as statements of judgment or
6 opinion made by these independent and knowledgeable
7 third parties, these are something that the
8 Commission ought to be made aware of and allowed to
9 consider in connection with its response to any
10 claims or opinions in this case that the settlement
11 is somehow unduly generous to AEP or is somehow a
12 windfall to AEP because I think these statements
13 succinctly summarized in the table on page 8 show
14 exactly what these knowledgeable and independent
15 observers say.

16 For example, Mr. Chin: We believe the
17 settlement -- we believe the settlement is something
18 of a mixed bag for AEP. Like all settlements,
19 there's some good, there's some bad.

20 So that's the first ground that I think
21 that this is admissible, it is simply not hearsay.

22 Secondly, even if these statements were
23 to be considered hearsay, I think they would fall
24 within the business records exception to the hearsay
25 rule as these documents show clearly on their face.

1 And they're all attached, they're Attachments A
2 through E and the motion to strike covers those as
3 well.

4 And I think, for example, if you were to
5 look at Attachment B to this testimony, this is the
6 report by BMO Capital Markets, it's the full report,
7 and you will see on page 7 of this the statement made
8 at the very end of the report "To U.S. Residents:
9 BMO Capital Markets Corp. and" -- I'm reading under
10 "Additional Matters" on page 7, it's about at the
11 middle of the page.

12 "BMO Capital Markets Corp. and/or BMO
13 Nesbitt Burns Securities Ltd., affiliates of BMO NB,
14 furnish this report to U.S. residents and accept
15 responsibility for the contents herein, except to the
16 extent that it refers to securities and the Bank of
17 Montreal."

18 Similar statements can be found in
19 Exhibits C and -- I'm sorry, Attachment C at page 8,
20 again, toward the middle of the page under Other
21 Important Disclosures. This is the Bank of America
22 Merrill Lynch report.

23 The words appear there "This research
24 report has been prepared and issued by MLPF&S and/or
25 one or more of its non-U.S. affiliates. MLPF&S is

1 the distributor of this research report in the U.S.
2 and accepts full responsibility for research reports
3 of its non-U.S. affiliates," et cetera.

4 There are similar statements in each of
5 those others which I don't need to belabor the record
6 with, but I think what these statements show is, is
7 that these are clearly -- first of all, there can be
8 no question about the authenticity of these
9 documents, but they are reports that are issued in
10 the normal course of the business of these investment
11 analysts. This is what analysts do.

12 And I think it's clear from the face of
13 all of these reports that these analysts are taking
14 and accepting full responsibility for the contents
15 and statements set forth in these reports. So I
16 think these are business records.

17 And, finally, Mr. Dominguez is not
18 testifying as an expert witness. He is testifying as
19 to his opinion, however, as a knowledgeable lay
20 witness that the three criteria that the Commission
21 ordinarily uses to judge settlements are satisfied in
22 this case, one of those being that the settlement is
23 in the public interest and provides benefits to
24 customers. And that, again, would be directly
25 contrary to the notion that this is somehow a

1 windfall or confers undue benefits on AEP.

2 And as part of his judgment that this
3 settlement meets the three criteria that the
4 Commission uses, he is relying on these admittedly
5 expert reports, I don't know if they're admittedly
6 expert reports but I think clearly it can't be
7 contested that these investment analysts are experts
8 in this field, he is relying on those and that's what
9 a witness expressing an opinion in Ohio and other
10 jurisdictions is allowed to rely on and in the
11 process of relying on that third-party information
12 bring it to the attention of the finder of fact.

13 That's what Mr. Dominguez is doing here,
14 and in short, for all three of those reasons we
15 believe this is information that should fairly be
16 made available to the Commission for its
17 consideration.

18 MR. NOURSE: Your Honor, the companies
19 would note that they oppose the motions to strike for
20 all the reasons eloquently stated by Mr. Stahl.

21 MR. KUTIK: May I respond, your Honor?

22 EXAMINER TAUBER: You may.

23 MR. KUTIK: Your Honor, the fact that
24 statements are opinion doesn't make them any less
25 hearsay. If we were here on a traffic accident and

1 someone wanted to testify about what they heard about
2 how fast a car was going, that's opinion testimony
3 and it's still hearsay.

4 Hearsay is an out-of-court -- a statement
5 by an out-of-court declarant. These reports, these
6 authors of these reports are not in this hearing room
7 today and they are statements being offered for the
8 truth and, therefore, that's the classic definition
9 of hearsay. There's no opinion exception to the
10 hearsay rule. That's number one.

11 Number two, Mr. Stahl said well, this is
12 important information that the Commission should
13 consider. Well, if it's such important information,
14 then let Exelon bring in the authors of these reports
15 and let us cross-examine them on their opinions. We
16 have no basis to do that. This witness doesn't know
17 the basis of their opinions.

18 So if this was so important that it
19 should be brought in front of the Commission properly
20 and fairly, then the authors of these reports should
21 be brought in.

22 With respect to whether it's a business
23 record or not, there needs to be evidence with
24 respect to someone who is familiar with the
25 recordkeeping of the institution for which the

1 business record would apply. This witness is not
2 that witness.

3 Mr. Stahl's statements reading certain
4 remarks in the reports doesn't make them
5 independently -- doesn't independently support the
6 foundation for a business record requirement.

7 In fact, what we don't know is are these
8 regular reports? Were these reports specially done?
9 Did Exelon ask for these reports? And all of these
10 things would be fair game if we had the witnesses
11 before us in terms of the authors of these reports.

12 And lastly, Mr. Stahl says, well, these
13 are the type of things that are regularly relied upon
14 to reach opinions. Of course, in the same breath he
15 says that Mr. Dominguez is not an expert.

16 Well, first, only an expert can rely on
17 things to form opinions, that's number one.

18 Number two, there is a special
19 requirement under Ohio, unlike the federal rules,
20 unlike rules elsewhere, with respect to what a
21 witness may rely upon, and that requirement is that
22 the materials that are being relied upon are
23 independently admissible and admitted, and certainly
24 this doesn't apply or that test is not met by trying
25 to get these in since they are not admissible in any

1 other way.

2 So none of the bases that Mr. Stahl has
3 set forth fly. We have an opinion, but it's still
4 hearsay. We haven't made a foundation that these are
5 business records. And he hasn't shown that it's
6 independently admissible which is required for an
7 expert to rely on it to provide the opinion testimony
8 in Ohio.

9 MR. DARR: May I, your Honor?

10 EXAMINER TAUBER: Briefly, yeah.

11 MR. DARR: One last point, your Honor.
12 By the argument that I just heard, if he's not
13 operating or if he's not testifying as an expert,
14 then he can only testify as to the things which he
15 knows, and by the very testimony itself demonstrates
16 that he's relying on the opinions of these other
17 parties.

18 So no matter which way you cut this, you
19 end up with the same result and that is that this is
20 improper testimony.

21 EXAMINER TAUBER: Mr. Stahl, do you have
22 a brief response?

23 MR. STAHL: Yes, just very briefly. A
24 point Mr. Kutik made. These are not hearsay because
25 they are simply not being admitted or asked to be

1 admitted to support the truth of any matter asserted.
2 They're simply statements of opinion, beliefs,
3 judgments by people, as I say, who are knowledgeable
4 and informed. So the principle basis for the hearsay
5 objection does not exist here.

6 And although Mr. Dominguez is not being
7 offered as an expert, he is entitled to provide a lay
8 opinion, and that is what he is doing in part relying
9 on these reports.

10 EXAMINER TAUBER: Thank you.

11 Given that we're at the point of the day
12 where we're getting near lunch and we're going to
13 need additional time to review this, we will take the
14 motion under advisement at this point in time and
15 take a lunch recess until 1:45 and we'll go off the
16 record. Thank you.

17 (Thereupon, at 12:34 a.m., a lunch recess
18 was taken.)

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1 Wednesday Afternoon Session,
2 October 12, 2011.

3 - - -

4 EXAMINER TAUBER: Let's go back on the
5 record.

6 Mr. Stahl.

7 MR. STAHL: Yes, your Honors, this is not
8 in any way intended to influence the ruling on the
9 motion to strike, so I can either say it now or I can
10 say it after you deliver your ruling, but it does
11 relate to something I said during the argument on the
12 motion to strike.

13 Mr. Petricoff suggested that I ought to
14 clarify this, I thought I was clear when I said it,
15 but maybe I wasn't clear when I said it, and I want
16 to make it abundantly clear to everybody in the room
17 here.

18 The statement I made to the effect that
19 Mr. Dominguez was testifying as a lay opinion witness
20 was directed only to the specific context of the
21 motions to strike and that was specifically the
22 financial impact of the settlement and, even more
23 specifically than that, whether the settlement
24 somehow resulted or was likely to result in a
25 windfall to AEP.

1 And I thought I made that clear and I
2 thought it was also clear from the context of the
3 question to which the answer and the evidence of the
4 subject of the motion to strike was responsive. So I
5 wanted to say that at the outset.

6 I also want to say that with respect to
7 all other matters or at least the matters covered by
8 Mr. Dominguez's testimony, and by that I mean to
9 include questions of regulatory policy, questions of
10 competitive policy, competitive procurement, and the
11 development and importance of competitive markets,
12 Mr. Dominguez is an expert witness and is and has
13 been qualified as such.

14 As I say, that's not intended to
15 influence the ruling on the motion to strike, but it
16 does relate to something I said in connection with
17 that argument.

18 EXAMINER TAUBER: Thank you.

19 MR. STAHL: Thank you.

20 EXAMINER TAUBER: At this point in time
21 we are going to deny the motion to strike.
22 Mr. Dominguez reviewed the public market reports and
23 utilized them -- scratch that.

24 EXAMINER SEE: Mr. Dominguez used public
25 published financial market reports to reach his

1 decision on evaluating the stipulation and as such we
2 will not grant the motions to strike those portions
3 of his testimony or the attachments with the
4 understanding that we are not accepting the
5 attachments -- we are not taking Attachments A
6 through E or the table into the record in support of
7 the truth of the matter asserted within those
8 reports.

9 Now, with that, Exelon Exhibit 1 has been
10 marked and moved into the record and I think we're
11 ready for cross of Mr. Dominguez.

12 Mr. Etter.

13 MR. ETTER: Yes, thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Etter:

17 Q. Good afternoon, Mr. Dominguez.

18 A. Good afternoon.

19 Q. On page 7 of your testimony, line 17, you
20 state that "...we did not independently analyze the
21 base generation rate." Who is the "we" in that
22 sentence?

23 A. I was speaking on behalf of Exelon and
24 the Exelon family of companies.

25 Q. And does Exelon have an employee who is

1 capable of analyzing the base generation rate
2 proposed in the stipulation?

3 A. You know, we employ 19,000 people. We
4 file our own rate cases, I'm sure there's probably
5 somebody in the company that has that expertise, but
6 I have not used them in this case.

7 Q. And why not?

8 A. Well, because we saw our role in this
9 case as trying to open up the competitive market in
10 Ohio and presently that market, from a CRES supplier
11 standpoint, has a cloud hanging over it.

12 We wanted to do business in Ohio. We
13 want to be a retail electric supplier here as we are
14 in many states, and so the focus for us was trying to
15 get to some regulatory certainty that would allow us
16 to begin and expand our business in Ohio, and the
17 ultimate goal there was to clear up what I think is a
18 dispute that lies at the heart of the case.

19 If you're a retail electric supplier in
20 Ohio and you're sitting across the table from a
21 prospective customer and that customer says "What are
22 you going to charge me?" the problem we had walking
23 into this case was that we couldn't answer that
24 question because there was a dispute that existed in
25 three different proceedings regarding the capacity

1 charge that would be assessed to those customers.

2 So my focus was ultimately in getting to
3 a competitive market resolution that provided clarity
4 on what the capacity component was going to be. And
5 that was important for Exelon Energy.

6 For Exelon Generation what was important
7 was for us to be able to compete on a best-price
8 basis as soon as practicable, in our view, for
9 default or POLR load.

10 The interim position on the generation
11 rate, there were others in the room who were far more
12 expert than I was, including the Commission staff and
13 representatives of industrial customers that signed
14 on. So it wasn't a function that we weren't
15 interested in it. I understood it to be a component
16 of the overall settlement that would have to be
17 reached, but I also understood our role in the case;
18 what we wanted to achieve through the settlement.

19 And the fact that despite the fact that
20 I'm sure we do have some company experts who could
21 opine on these matters, these matters were already
22 well represented in terms of a variety of experts in
23 the negotiating room and, frankly, in this case that
24 would understand the generation rate issues and be
25 able to opine to the hearing examiners on that.

1 Q. So the base generation rate to you, or to
2 Exelon, was a secondary matter in this case, it
3 wasn't of great importance?

4 A. I wouldn't describe it that way. I mean,
5 obviously we wanted to get to a resolution to achieve
6 the two objectives that I described earlier, and I
7 understood that in the context of getting to a
8 resolution, a generation rate issue was going to be
9 very important.

10 But what I am saying to you is that I
11 relied on the expertise of others, and there are a
12 great many parties that signed on to the stipulation
13 to address the generation rate and I didn't deploy
14 specific resources from Exelon to analyze the
15 generation rate or the DIR for that matter.

16 Q. So you have no opinion as to the
17 reasonableness of the base generation rate.

18 A. I didn't analyze the generation rate,
19 sir, no.

20 Q. Now, on pages 8 and 9 of your testimony
21 you discuss the opinions of various investment
22 analysts regarding the stipulation, and those
23 opinions are in the attachments to your testimony; is
24 that right?

25 A. Yes, sir.

1 Q. And have you read the attachments?

2 A. I have.

3 Q. And each of the attachments has a series
4 of disclosures or disclaimers that go along with
5 those opinions; is that right?

6 A. Yes.

7 Q. Have you read those disclosures and
8 disclaimers?

9 A. You know, when I read these reports, I
10 probably didn't reread those disclosures or
11 disclaimers, but I read so many of these that I'm
12 sure at some point in time I did read the words in
13 them. But I probably skipped over that when I read
14 these ones in particular.

15 Q. Well, let's go through some of those
16 disclosures and disclaimers because they appear to
17 limit the nature of the opinions, don't they?

18 First of all, let's start with Appendix
19 A -- or, Attachment A.

20 A. Okay.

21 Q. And on page 3 there's a disclaimer there
22 that's marked "Disclaimer," it's the third paragraph
23 down under "ISI Disclaimer," and would you read --
24 well, let me read it.

25 The disclaimer says "This material is

1 based upon information that we consider to be
2 reliable, but neither ISI nor its affiliates
3 guarantee its completeness or accuracy. Assumptions,
4 opinions, and recommendations contained herein are
5 subject to change without notice, and ISI is not
6 obligated to update the information contained
7 herein." Is that right?

8 A. Yes.

9 Q. So this opinion which is now about six
10 weeks old might have changed over the past six weeks;
11 is that right?

12 A. I'm not aware that it has, but it might
13 have, sure.

14 Q. Well, because it's subject to change
15 without notice, right?

16 A. It is, but you got to keep in mind I do
17 follow this issue. And I am not aware of an update.
18 If you are, I'd like to see it.

19 Q. But it's the fact that it's subject to
20 change without notice so they could have changed
21 their opinion and not notified anybody; is that
22 right?

23 A. I suppose so, yes.

24 Q. Okay. Now, on page 9 of your testimony
25 under the second, in the second heading or second

1 category I guess of Table 1, you have some statements
2 there made by Michael S. Worms, and the first
3 statement that you have there is that "The settlement
4 stipulation on the ESP appears to be balanced and
5 constructive, in our view." And that's in Attachment
6 B; is that correct?

7 A. Yes.

8 Q. And whereabouts in Attachment B is that
9 located?

10 A. I'd have to reread.

11 Q. Because there are no citations to the
12 actual statements in your testimony, we need to find
13 out where you are referring there.

14 MR. STAHL: Your Honors, if it will help,
15 this one appears to be at the very top of page 2.
16 I'm willing to have Mr. Dominguez sort through all of
17 this and find them, but if we want to expedite it, I
18 would direct the parties' attention to the very first
19 sentence on page 2.

20 Q. Is that the statement, Mr. Dominguez?

21 A. Yes.

22 Q. But on page 1 of the attachment under the
23 heading "Impact," the first sentence there says "We
24 view the settlement agreement as balanced and
25 constructive for AEP." Does it not?

1 A. Yes.

2 Q. So apparently they are qualifying that
3 statement as being balanced and constructive just for
4 AEP; is that right?

5 A. I don't think that's a fair
6 characterization of what they're saying here. I
7 think what all of these analysts do when they review
8 our settlements are trying to understand whether the
9 settlement is going to stick or not, whether it's a
10 deal that the Commission is going to approve
11 ultimately.

12 So I do agree with you that the words
13 here are "balanced and constructive for AEP," but I
14 believe and my understanding of the document is what
15 they're saying is that it's a fair, balanced deal and
16 a fair resolution of the rate case.

17 Q. But you don't know what all they took
18 into consideration. For example, did they take into
19 consideration the base generation rate that was
20 approved in the -- or, that's contained in the
21 stipulation?

22 A. I think so, because they looked -- they
23 analyzed the earnings per share impact of the
24 settlement which would, of course, have to consider
25 the base generation.

1 Q. But not necessarily its affect on
2 ratepayers; is that right?

3 A. Well, I think that's right. I think
4 you're right in saying that these aren't consumer
5 advocates we're talking about, we're talking about
6 whether or not the analysts believe that the company
7 got a fair deal and that ultimately whether it's
8 going to be approved or not. I think that's the
9 general theme here.

10 Q. Now, on page 7 of Attachment B they also
11 have a general disclaimer there as well. And there's
12 a sentence that begins on line 4 of the very first
13 paragraph of the General Disclaimer, and it states
14 that -- it's similar to the one before, it states
15 that "The opinions, estimates and projections
16 contained in this report are those of BMO Capital
17 Markets as of the date of the report and are subject
18 to change without notice." Is that right?

19 A. Yes.

20 Q. And at the bottom of that disclaimer, the
21 very last sentence states that "The reader should
22 assume that BMO Capital Markets or its affiliates may
23 have a conflict of interest and should not rely
24 solely on this report in evaluating whether or not to
25 buy or sell securities of issuers discussed herein."

1 So do you know whether BMO Capital
2 Markets has a conflict of interest in this regard?

3 A. I don't. What I would say, generally
4 speaking, is some of these analysts are completely
5 independent, they own no shares of the company that
6 they're reporting on; others have affiliated trading
7 organizations and Bank of America may in fact be one
8 of those, and some of the other analysts that are
9 cited here might in fact be some of those that have
10 an affiliate that trades and, therefore, they hold
11 positions on utility players.

12 So the language that you're seeing here
13 and the language you've read to me is an indicator
14 that some affiliate of this analyst group may hold a
15 position on AEP, they may or may not. I don't know
16 what their present stockholders are in AEP.

17 Q. So you don't know, for example, whether
18 Mr. Worms has stock holdings in AEP.

19 A. I don't.

20 Q. And if he did, he may have a conflict of
21 interest, as they state here; is that right?

22 A. May have criminal problems too if he was
23 manipulating the market for that purpose, but yes, of
24 course.

25 Q. Now let's move on to Attachment C, and I

1 believe this is Mr. Fleishman, yes, Steve Fleishman
2 who is the person you cite here.

3 And if you go to page 7 here, at the
4 bottom of page 7, well, the entire page has the
5 heading "Important Disclosures," does it not?

6 A. Yes, it does.

7 Q. Okay. And at the bottom of page 7 there
8 are a series of disclosures that seem to be specific
9 to American Electric Power, they mention American
10 Electric Power by name, do they not?

11 A. You're going to have to direct me to
12 that.

13 Q. Under the line, well, it's the very
14 bottom of the page, the first one that says MLPF&S,
15 which I presume means Merrill Lynch, Pierce, Fenner &
16 Smith.

17 A. Yes. Yep. And I think I referenced this
18 in my earlier response, that Bank of America, for
19 example, has affiliates that trade in the utility
20 sector and here I think what they're saying, advising
21 the reader that one of the companies that they may
22 trade in is American Electric Power.

23 Q. And the first or the second disclosure
24 under the one under price charts, the first one
25 that's labeled MLPF&S states that "Merrill Lynch or

1 one of its affiliates acts as a market maker for the
2 equity securities recommended in the report." AEP,
3 correct?

4 A. Yes.

5 Q. And the second one says that the, the one
6 below that says that "Merrill Lynch or an affiliate
7 has received compensation from the company for
8 noninvestment banking services or products within the
9 past 12 months," correct?

10 A. Right.

11 Q. And the next one says "The company is or
12 was, within the last 12 months, a nonsecurities
13 business client of Merrill Lynch and/or one or more
14 of its affiliates," correct?

15 A. Yes.

16 Q. And the next one says that "Marilyn Lynch
17 together with its affiliates beneficially owns
18 1 percent or more of the common stock of the
19 company."

20 A. Yes.

21 Q. And the next one says "Merrill Lynch or
22 one of its affiliates is willing to sell to, or buy
23 from, clients the common equity of the company on a
24 principal basis," correct?

25 A. Right.

1 Q. Do you know whether they have done so
2 recently?

3 A. I don't know. I know that these
4 companies move in and out of stock positions. I
5 mean, these are major banks and so they're talking
6 about their affiliates with major banks, and I think
7 what they're saying is that the value of the stock is
8 less because of the settlement. So they're actually
9 downgrading AEP because of what's occurred here and
10 because of additional risk to the company as it
11 transitions into the competitive market.

12 Q. And the last one says "Bank of America
13 and Merrill Lynch Research personnel (including the
14 analyst[s] responsible for this report) receive
15 compensation based upon, among other factors, the
16 overall profitability of Bank of America Corporation,
17 including profits derived from investment banking
18 revenues," correct?

19 A. That's right.

20 Q. So Mr. Fleishman might have a reason to
21 slant his view on AEP's stipulation.

22 A. I don't think so. I think Mr. Fleishman
23 is disclosing potential conflicts of interest. I
24 think he's trying to do the best he can in terms
25 evaluating this settlement.

1 And I would point out, again, that he
2 isn't looking at the settlement through rose-colored
3 glasses here. He's very specifically saying that
4 this settlement may not be a good deal for AEP and
5 he's very specifically saying he's downgrading the
6 shares of AEP as a consequence of the settlement.

7 So your implication that somehow he's
8 trying to sell AEP's shares here just doesn't wash,
9 sir.

10 Q. But you don't know that for a fact, do
11 you?

12 A. Sir, I'm not going to opine here that
13 Mr. Fleishman is slanting the report one way or the
14 other. I think he is trying to do the best he can in
15 evaluating the settlement.

16 Q. And on page 9 of the attachment under the
17 heading "Copyright and General Information regarding
18 Research Reports," the second paragraph begins
19 "Materials prepared by Bank of America and Merrill
20 Lynch Global Research personnel are based on public
21 information. Facts and views presented in this
22 material have not been reviewed by, and may not
23 reflect information known to, professionals in other
24 business areas of B of A Merrill Lynch, including
25 investment banking personnel." Correct?

1 A. That's what it says.

2 Q. And it goes on to state that "B of A
3 Merrill Lynch has established information barriers
4 between B of A Merrill Lynch Global Research and
5 certain business groups. As a result, B of A Merrill
6 Lynch does not disclose certain client relationships
7 with, or compensation received from, such companies
8 in research reports. To the extent this report
9 discusses any legal proceeding or issues, it has not
10 been prepared as nor is it intended to express any
11 legal conclusion, opinion, or advice." Is that
12 right?

13 A. Yes, that's what it reads.

14 Q. Now, moving on to Attachment D, and this
15 is the Wells Fargo Securities report, on page 5 at
16 the bottom of that page there are several disclosures
17 there.

18 A. I see that.

19 Q. And there are bullet points there. The
20 first one says "Wells Fargo Securities maintains a
21 market in the common stock of AEP"; is that right?
22 America Electric Power Company, Inc.

23 A. That's what it says, yes.

24 Q. And "Wells Fargo Securities or its
25 affiliates intends to seek or expects to receive

1 compensation for investment banking services in the
2 next three months from American Electric Power
3 Company, Inc.," correct?

4 A. That's what it says, yes, sir.

5 Q. And the third bullet says "Wells Fargo
6 Securities or its affiliates received compensation
7 for investment banking services from American
8 Electric Power Company in the past 12 months." Do
9 you know what those might be?

10 A. No, I don't.

11 Q. And the fourth bullet says that "American
12 Electric Power Company currently is, or during the
13 12-month period preceding the date of distribution of
14 the research report was, a client of Wells Fargo
15 Securities, Incorporated -- or, LLC. Wells Fargo
16 Securities provided investment banking services to
17 American Electric Power," correct?

18 A. Yes, sir, you read that correctly.

19 Q. And the last bullet on that page says
20 that "American Electric Power currently is, or during
21 the 12-month period preceding the date of
22 distribution of the research report was, a client of
23 Wells Fargo Securities." And that "Wells Fargo
24 Securities provided nonsecurities services to
25 American Electric Power." Is that right?

1 A. That's what it says.

2 Q. And at the top of page 6, the first
3 bullet there states that "Wells Fargo received
4 compensation for products or services other than
5 investment banking services from American Electric
6 Power in the past 12 months"; is that correct?

7 A. Yes, sir, that's correct.

8 Q. And the last bullet there states that
9 "Wells Fargo Securities or its affiliates may have a
10 significant financial interest in American Electric
11 Power Company"; is that right?

12 A. Yes, sir, that's correct.

13 Q. And finally let's move on to attachment
14 E, and this is Citigroup Global Markets. And on page
15 3 here they note at the bottom of page there, there
16 are several disclaimers there.

17 A. I see those, yes, sir.

18 Q. The first is that "Citigroup Global
19 Markets or its affiliates beneficially owns 1 percent
20 or more of any class of common equity securities of
21 American Electric Power"; is that right?

22 A. Counsel, you're just reading to me what's
23 on this form. That's already in my testimony.

24 Q. Yes, but --

25 A. I could continue to verify for you that

1 you're reading it accurately. If what you're trying
2 to get at is a question based on this reading, I'll
3 answer it, but you can go ahead and read all of it
4 and I'll just answer "yes" or "no" if you read it
5 accurately at the end. I don't want to use up your
6 time, but that's all you're doing here.

7 Q. I have all day, sir.

8 A. So do I, I'm just trying to make it more
9 expedient.

10 Q. That's correct on that first bullet, that
11 they own more than 1 percent -- owns 1 percent or
12 more of any class of equity?

13 A. I don't have an independent knowledge of
14 that, I'm just telling you you've read the sentences
15 correctly.

16 Q. Well, you didn't read this, apparently,
17 before you put this in your testimony, though, did
18 you?

19 A. Sir, this is so common. These are major
20 banks. I don't know how to explain it to you
21 otherwise. All of the banks transact in a variety of
22 spaces. They have analysts that work for the company
23 that evaluate for investors financial impacts on the
24 company. And they talk about whether the company is
25 a company that you should buy, you should hold, you

1 should sell and material events such as this
2 settlement influence their recommendations.

3 They have other parts of the bank that
4 loan money to companies like AEP, companies like
5 Exelon, and every other electric utility in the
6 business. Most of them have investment banking
7 services that they offer. And all of us partake in
8 those investment banking services.

9 I think you'll find very few analysts
10 that are completely unaffiliated with either
11 investment bankers, brokerage houses, or banks that
12 loan us money. It's just not that big a universe of
13 folks here.

14 And so what I tried to tell you at the
15 outset is I've read these disclosures, I understand
16 them. They don't want to be sued, so they are
17 telling everybody who reads their reports here are
18 all the other things that affiliates of this analyst
19 group do.

20 Many of them have erected conflict of
21 interest roles within the banks so they try not to be
22 influenced or use information gleaned from one source
23 of the business to influence analysts' reports and
24 all of that.

25 I don't even have to go back and read

1 them. The very first time I got in this business and
2 I started reading these reports I read the language
3 that you're talking about written with a variety of
4 different words but saying essentially the same
5 thing.

6 If you were an investor and you're
7 reading this report, understand my opinion might
8 change, understand that my bank has relationships
9 with this entity that, you know, that go beyond us
10 just analyzing. That's what these disclosures cover.

11 So no, sir, I didn't go back and reread
12 every one of these disclosure statements, and it
13 would not change for a second my inclusion of them in
14 the testimony because fundamentally I believe this,
15 that if this were a windfall for AEP, these people
16 would be among the very first to report it, and they
17 haven't.

18 What they've said is it's a balanced
19 deal. They don't see any economic windfall for AEP
20 in this, and as I've pointed out both with respect to
21 Mr. Fleishman's report and Mr. Chin's report, they go
22 even further and they say this is a bad deal for AEP
23 in certain circumstances, it adds risk to their
24 portfolio, and we are telling the investment
25 community not to buy AEP because of that.

1 That's what I'm saying here.

2 MR. ETTER: I would move to strike
3 everything past his affirmative response or his
4 negative response, whichever it was.

5 EXAMINER TAUBER: Go ahead.

6 MR. STAHL: We oppose and I think it's a
7 fair explanation of what the witness's answer was.

8 EXAMINER TAUBER: The motion to strike
9 should be granted.

10 Mr. Dominguez, please answer Mr. Etter's
11 questions.

12 THE WITNESS: Yes, sir.

13 Q. (By Mr. Etter) Now, on the next
14 disclosure or disclaimer it states that "Citigroup
15 Global Markets or its affiliates have received
16 compensation for investment banking services provided
17 within the past 12 months from American Electric
18 Power," correct?

19 A. Yes, that's what it reads.

20 Q. And the next one states that "Citigroup
21 Global Markets or its affiliates expects to receive
22 or intends to seek, within the next 3 months,
23 compensation for investment banking services with
24 American Electric Power"; is that right?

25 A. Yes, that's what it reads.

1 Q. And the next one states that "Citigroup
2 Global Markets, Inc. or an affiliate received
3 compensation from products and services other than
4 investment banking services from AEP in the last 12
5 months," correct?

6 A. You read that correctly.

7 Q. Would you happen to know what those might
8 be?

9 A. I don't.

10 Q. And the next one states that "Citigroup
11 Global Markets currently has, or had within the past
12 12 months, AEP as an investment banking client,"
13 correct?

14 A. That's what it reads, yes.

15 Q. And the next one states that -- well,
16 first of all, would you know what that concerned?

17 A. I don't.

18 Q. And the next one is that "Citigroup
19 Global Markets currently has, or had within the past
20 12 months, the following as clients, and the services
21 provided were noninvestment-banking
22 securities-related," and that refers to American
23 Electric Power Company, Inc.; is that correct?

24 A. That's right.

25 Q. Do you happen to know what that might be

1 about?

2 A. I don't.

3 Q. And the last or the next one there states
4 that "Citigroup Global Markets currently has, or had
5 within the past 12 months, the following clients, and
6 the services provided were noninvestment-banking
7 nonsecurities-related" and they refer to American
8 Electric Power, do they not?

9 A. Could you -- where are you there?

10 Q. It would be the third disclosure from the
11 bottom, the last one that starts "Citigroup Global
12 Markets, Inc."

13 A. Yes, I see that.

14 Q. And would you know what that was about as
15 well?

16 A. I don't.

17 Q. And on page 4 under "Other Disclosures"
18 the second disclosure there states that "Citigroup
19 Global Markets and/or its affiliates has a
20 significant financial interest in relation to
21 American Electric Power." Correct?

22 A. Yes, you read that correctly.

23 Q. You put great stock in these investment
24 analysts you've included in these attachments or
25 these reports you've included in these attachments,

1 correct?

2 A. Define "great stock." I think they're
3 qualified experts to evaluate the financial impact of
4 the settlement on AEP.

5 Q. Have investment analysts ever been known
6 to put anything misleading or untruthful or
7 inaccurate in a report such as this?

8 A. I don't know how to answer that. I'm
9 sure there has been inaccuracies in reports, but I
10 don't know any as I sit here today and I don't know
11 any relating to the subject matter of this
12 settlement.

13 MR. ETTER: Thank you, Mr. Dominguez.
14 No further questions, your Honor.

15 THE WITNESS: Thank you.

16 EXAMINER TAUBER: Mr. Kutik.

17 MR. KUTIK: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Kutik:

21 Q. Good afternoon.

22 A. Good afternoon to you, sir.

23 Q. Taking up from where Mr. Etter left off
24 with respect to those analysts' reports, it's true,
25 is it not, that you can't offer any bases for these

1 analysts' conclusions other than the statements that
2 appear in those documents, correct?

3 A. I haven't separately analyzed the
4 financial impacts of the settlement to AEP and the
5 ESP impacts and multipliers that are reflected in the
6 reports, no.

7 Q. You believe that AEP had a corporate
8 policy to discourage shopping, do you not?

9 A. I think AEP had a problem with shopping
10 and where that shopping was based on the RPM capacity
11 price, I believe they were losing money, and as a
12 consequence they undertook efforts to curtail that
13 shopping or change the capacity price that was being
14 recovered from CRES suppliers for those customers.

15 Q. So the answer to my question is Yes.

16 A. Yes.

17 Q. And in terms of that policy, you believed
18 that it formed the basis of the initially proposed
19 ESP in this case, correct?

20 A. I do.

21 Q. And you also believe that the
22 justifications that AEP gave for the various features
23 of the initial proposal were false.

24 A. I believe that's true, yeah.

25 Q. For example, you believe that Ohio is a

1 net exporter of power, correct?

2 A. That's correct.

3 Q. You also believe that Ohio generation
4 will do well in a competitive environment, correct?

5 A. I do.

6 Q. And based upon what you know of the
7 structure and responsibility for reliability in Ohio
8 and PJM, again, based upon what you know now, you
9 don't have any concerns about the future reliability
10 of power in Ohio, correct?

11 A. That's right. I think the entire market
12 is long on capacity right now, so from a gross
13 capacity standpoint I think there's a surplus. There
14 may be some specific reliability issues that occur
15 as, you know, a power plant in a particular location
16 retires and transmission work needs to be done, but
17 in terms of the amount of generation we have, we've
18 got more than enough generation to satisfy the
19 reliability criteria currently.

20 Q. You also believe that retail competition
21 and customer choice benefits Ohio customers and Ohio
22 generally.

23 A. Yes.

24 Q. And you recommended that the Commission
25 adopt a competitive bid process to procure the

1 default or POLR load within AEP Ohio, correct?

2 A. Yes, sir.

3 Q. And would it be fair to say that that
4 type of process will not produce power until June of
5 2015? That is, a competitive bidding process within
6 AEP will not deliver power into AEP until June of
7 2015.

8 A. Yes, that's correct, sir.

9 Q. Now, you also have criticized AEP's
10 initial proposal because it contained a number of
11 generation-related nonbypassable riders, correct?

12 A. I did.

13 Q. And it's also fair to say that there are
14 nonbypassable generation-related riders that are
15 present in the stip, correct?

16 A. Yes.

17 Q. One of those is rider GRR.

18 A. Yes.

19 Q. Another is the pool
20 termination/modification rider.

21 A. Yes.

22 Q. And you also believe, do you not, that
23 with respect to the market transition rider, that the
24 costs that are involved in there are generation
25 related, correct?

1 A. Yeah. That's a little bit of a harder
2 one, but I do think it's generation-related costs
3 handled through a, essentially a rate design
4 mechanism that's in the MTR.

5 Q. With respect to rider GRR, would it be
6 fair to say that, again, based upon what you know
7 now, you can't see a need for shopping customers to
8 pay for new generation within AEP?

9 A. Well, I'm aware that statute allows
10 nonbypassable surcharges for new generation of some
11 type. Presently I don't believe there is a need for
12 new generation and I believe what the stipulation
13 does is says, look, these guys may pursue, "these
14 guys" meaning AEP, may pursue building new
15 generation, we're going to defer that to another
16 proceeding to make that decision.

17 Based on everything we know right now
18 Exelon will be in that other proceeding and we would
19 oppose the construction of any additional power
20 plants as unnecessary and not being able to satisfy
21 the statutory criteria.

22 We'll see the ESP goes on for a number of
23 years. If the facts on the ground change in terms of
24 reliability impacts or other things that we can't
25 foresee right now, then that GRR will be there and it

1 will be evaluated by the Commission if and when AEP
2 makes the filing.

3 Q. With due respect, sir, I didn't ask you
4 about a future proceeding. I just asked you based
5 upon what you know now you can't see the need for
6 shopping customers paying for generation within
7 AEP Ohio owned by AEP Ohio, correct?

8 A. Based on everything that I know now about
9 the circumstances that are going to exist over the
10 next four years which is what, you know, the CSP
11 covers kind of till the middle part of '16, I don't
12 think there's going to be a need for new generation.

13 Q. Now, Appendix C that is in the
14 stipulation was not a primary focus of your efforts
15 in representing Exelon in the negotiation, correct?

16 A. I'm not sure I would say it wasn't a
17 personal focus of mine. In other words, I wasn't
18 involved in the personal negotiation of it, but
19 Mr. Petricoff, our attorney, and Stephen Bennett, one
20 of our employees, were more involved in those issues
21 working with the RESA president, David Fein. So I
22 don't have a lot of personal knowledge about what's
23 in Exhibit C. I didn't track that issue
24 particularly.

25 Q. My question simply was it wasn't a

1 primary focus of yours, correct?

2 A. You said "of yours on behalf of Exelon"
3 and what I'm saying is I delegated it to other people
4 to resolve on behalf of Exelon.

5 Q. So in terms of you personally, that
6 wasn't a primary focus, correct?

7 A. Yes.

8 Q. Would it also be fair to say that the
9 first time that you saw a draft of Appendix C was
10 after Labor Day?

11 A. That's right.

12 Q. It's also true to say, is it not, that as
13 far as you know Exelon or the Exelon -- one of the
14 Exelon companies that you represent does not have any
15 contracts with municipal aggregators in Ohio?

16 A. We don't have contracts in Ohio AEP zone
17 period, of any kind.

18 Q. But my question wasn't limited to AEP,
19 it's Ohio generally.

20 A. Right. Yes. That's right.

21 Q. So the answer is Yes.

22 A. Yes.

23 Q. And that has not been a focus of your
24 business, that's government aggregation.

25 A. So far it hasn't been.

1 Q. Now I want to ask you some questions
2 about Appendix C.

3 A. I'll do my best.

4 Q. Thank you. Would it be fair to say that
5 you don't know whether, if we have a Group 1 customer
6 that moves on January 2nd of 2012, whether that
7 customer will be able to retain that customer's Group
8 1 status?

9 A. I don't know. I'd have to go back and
10 really study to see, but I'm afraid I can't answer
11 your question one way or the other.

12 Q. Would it be also fair to say that you
13 don't know whether, if we had a Group 2 customer that
14 expanded its load by greater than 10 percent, whether
15 that Group 2 customer would have to pay a capacity
16 price of \$255 per megawatt-day?

17 A. Again, I am just not an expert on -- what
18 you said may or may not be true, I just don't know as
19 I sit here today.

20 Q. Now, would it also be fair to say that
21 Group 1 customers have different rights under
22 Appendix C than Group 2?

23 A. As I recall, they do, that's correct.

24 Q. And would it be fair to say that the only
25 distinction that you're aware of with respect to

1 Group 1 versus Group 2 is the date that the customer
2 takes service from the CRES provider or the date that
3 the customer provides notice that they are going to
4 take service from the CRES provider?

5 A. That's what I understand.

6 Q. You have not done any studies on the
7 effect of capacity rates on retail shopping, correct?

8 A. That's right.

9 Q. And you're not aware of any analysis of
10 the effect of the proposed charges for capacity set
11 forth in the stipulation on shopping, are you?

12 A. No, I'm not. I haven't done that
13 analysis.

14 Q. It would also be fair to say that Exelon
15 took a position in this case that AEP Ohio was not
16 entitled to charge for capacity 347 to 355 dollars
17 per megawatt-day to CRES providers, correct?

18 A. That's our litigation position both here
19 with regard to the originally filed ESP and it's our
20 litigation position at FERC.

21 Q. And would it be fair to say that you
22 wouldn't take a litigation position that you thought
23 did not have merit?

24 A. I think our litigation positions have
25 complete merit, but whether they'll win or not was

1 the question we settle here, right?

2 Q. My question to you is you believe as a
3 matter of merit that AEP would not be entitled to
4 charge a capacity price of \$355 to CRES providers.
5 Correct?

6 A. Yeah, we certainly didn't take a
7 frivolous position. We believe in our legal position
8 both here and at FERC that AEP should not be entitled
9 to charge that. We're aware certainly of arguments
10 both factual and legal on the other side of that
11 issue, and those aren't fruitless arguments either.
12 We believe we have the better of the argument both
13 here and at FERC but at the end of the day we didn't
14 know and, you know, we certainly advanced the best
15 argument we could and I believe it to be the right
16 argument.

17 Q. It's also true, is it not, that as far as
18 you know wholesale suppliers who might bid into a
19 competitive bidding process in AEP Ohio for
20 AEP Ohio's POLR load are not required to buy capacity
21 from AEP?

22 A. I believe that capacity, as long as it
23 could get into the AEP zone from a transmission
24 perspective, should qualify and should be able to
25 satisfy, in fact, the reliability requirements

1 underlying the capacity requirement in PJM.

2 Q. So the answer to my question is Yes.

3 A. Yes.

4 Q. You made no study to quantitatively
5 compare the MRO -- an MRO to the proposed ESP,
6 correct?

7 A. No, I did not.

8 Q. In fact, as far as you know no one at
9 Exelon did that.

10 A. I did not ask anyone at Exelon to do that
11 and no one, to my knowledge, did that.

12 Q. Previously in this case you had cited
13 Mr. Schnitzer's testimony with approval. Correct?

14 A. I cited aspects of Mr. Schnitzer's
15 testimony with approval, certainly.

16 Q. Would it be fair to say that, at least
17 with respect to his analysis of the initial proposal,
18 in comparing the ESP and the MRO, or an MRO, you
19 agreed with his conclusion that the initially
20 proposed ESP would cost between 700 million and
21 1 billion dollars more than an MRO?

22 A. Yes.

23 MR. KUTIK: Could I have one moment, your
24 Honor?

25 EXAMINER TAUBER: You may.

1 MR. KUTIK: No further questions, thank
2 you.

3 THE WITNESS: Thank you.

4 EXAMINER TAUBER: Mr. Darr?

5 MR. DARR: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Darr:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Is Exelon Generation Company currently
12 authorized to do business in Ohio?

13 A. Yes.

14 Q. When did that take place?

15 A. Well, we've been doing business in Ohio
16 as a gas supplier for many, many years, I don't know.
17 And I think as a competitive retail electric supplier
18 we have or, if we haven't, we're about ready to file
19 applications to be able to do work as a CRES supplier
20 here.

21 Q. And is that Exelon Generation Company?

22 A. Well, that's Exelon Energy which is a
23 part of Exelon Generation. In terms of Exelon
24 Generation, remember we're selling in a wholesale
25 market that we don't have to have specific permission

1 by a state to sell energy from Illinois, where we
2 have 11 nuclear plants, into Ohio through the
3 interstate transmission system.

4 We have the necessary approvals through
5 what's called the market-based rates filing at FERC
6 to sell energy at market rates in the wholesale
7 electricity business, that's the business of Exelon
8 Generation.

9 So when you ask me do we have specific
10 Ohio approval, I'm not aware and perhaps you could
11 share with me where that approval would be required
12 to make wholesale sales of electricity.

13 Q. So specifically what you're referring to
14 is a wholesale transaction, not a retail transaction.

15 A. That's the business of Exelon Generation.
16 On the retail side of it, Exelon Energy is selling
17 gas and, as I said, I don't remember if we've
18 actually filed the application to do business as a
19 CRES or will do so shortly.

20 Q. Do you know which entity signed the
21 settlement?

22 A. I believe I signed for Exelon Generation.

23 Q. In terms of the number of proceedings
24 that are involved in this stipulation, is it correct
25 that you're not currently involved in the merger

1 proceeding?

2 A. That's right.

3 Q. Is it also true that you're not currently
4 involved in the curtailment rider cases?

5 A. That's right.

6 Q. And is it also true that you're not
7 currently involved in the deferred fuel cases?

8 A. True.

9 Q. And is it also true that you're not
10 currently involved in the corporate separation case?

11 A. That one I'm not sure about. I know
12 we've made a decision to get involved in it, but
13 there was a question at least last time I visited as
14 to whether it was going to be consolidated with this
15 case, and if I understand it correctly, we now
16 learned just recently it hasn't been consolidated so
17 we'll get involved, but right now we're not actually
18 an intervenor in it.

19 Q. Now, with regard to the original
20 application in this matter, is it correct that your
21 view was that the competition not only can beat the
22 ESP rate now, but also can beat it through at least
23 May 31st, 2016, notwithstanding the fact that the
24 energy prices in the underlying market are projected
25 to rise over that period?

1 A. That's absolutely true.

2 Q. And is it also correct that based on your
3 initial estimation, competitive rates were something
4 like \$19 below AEP's proposed ESP rate?

5 A. That you'd have to direct me to where in
6 my testimony that is so I'll take a look at it.

7 Q. Subject to check I think it's page 24,
8 lines 6 through 11.

9 A. I just don't have my original testimony.
10 If you give me a copy, I'll follow up with you.

11 I'm looking. I have a copy of my
12 redacted testimony here.

13 Q. Page 24, lines 6 through 11.

14 A. Okay.

15 Q. I'm working off the redacted as well.

16 A. Yeah, this, I think what I'm referring to
17 here is really my adoption of Mr. Schnitzer's
18 conclusions that if you took the originally filed ESP
19 and you tried to calculate the value of the
20 nonbypassable riders and you pulled that all
21 together, you would generate a price that is
22 somewhere around \$73 at its edges as compared to the
23 FE price as produced by the competitive auction which
24 was more like 54, to my recollection that's what I'm
25 referring to here.

1 That, of course, assumes we win the
2 capacity argument. That, of course, assumes the
3 resolution in our favor of the legal issue of what
4 the appropriate capacity charge is.

5 Q. With that understanding you were still
6 estimating that you were \$19 under, correct?

7 A. Yeah. That's right.

8 Q. And as you indicated previously, this is
9 not a frivolous position that you were taking at the
10 time.

11 A. Not at all.

12 Q. And have you made a similar comparison to
13 the proposed ESP price in the stipulation versus the
14 competitive price?

15 A. Yeah. Just to be clear, I didn't make
16 this comparison. I'm referring back to
17 Mr. Schnitzer's testimony which I adopted. I haven't
18 looked at Mr. Schnitzer's revised testimony nor, you
19 know, taken any part of that into my testimony.

20 I never did this initial analysis and I
21 never did a subsequent one.

22 Q. At least at the time you were relying for
23 your litigation position on Mr. Schnitzer's expertise
24 and skills in terms of making those calculations,
25 correct?

1 A. Yes.

2 (Discussion off the record.)

3 Q. And I believe it is your understanding
4 that the next ESP, that is the one post-2016, at
5 least per the terms of the stipulation, does not
6 require a competitive bidding process at this point;
7 is that correct?

8 A. I think what the ESP does is set in play
9 a series of events, so they're going to come into
10 RPM, right, as part of the stipulation. If corporate
11 separation occurs, they'll be in RPM. Once you're in
12 RPM you have to stay for five consecutive auctions.

13 So definitionally once they're in RPM
14 they're going to be in a competitive capacity
15 environment through planning year, if my math is
16 correct, either '19-'20 or '20-'21.

17 In terms of the energy side of it,
18 whether or not there's going to be descending clock
19 auctions or energy procurements for tranches, that's
20 not addressed here in this stipulation and it's
21 deferred to a second ESP that would be filed that
22 would cover the energy side procurements for the
23 period that begins June 1st, 2016.

24 Q. So the answer to my question is that they
25 are not required to do that per the current terms.

1 A. I don't remember what your question was.
2 I think, if I understand correctly, I'm just trying
3 to address -- you asked if there's going to be
4 competition for --

5 Q. No, sir.

6 A. -- energy, and I was simply
7 distinguishing between energy and capacity.

8 Q. I believe my question was the following:
9 Isn't it true that the next ESP does not require a
10 competitive bidding process per the stipulation?
11 There's nothing in the stipulation as to that,
12 correct?

13 A. And I'm saying no, that's not true. The
14 competitive bidding process for capacity will
15 continue and it will cover planning years all the way
16 through '20. The competitive bidding process for
17 energy as opposed to capacity you're exactly right
18 about.

19 Q. And the competitive bidding process that
20 you're talking about, that would be all the same
21 process?

22 A. No. RPM is the competitive bidding
23 process.

24 Q. So you're talking about the wholesale
25 capacity business.

1 A. Yes, sir.

2 Q. Now, there are a number of riders that
3 you've identified in your discussions I believe with
4 Mr. Kutik, GRR, the MTR, pool termination. Does this
5 stipulation, as you understand it, do anything with
6 regard to any other possible nonbypassable riders as,
7 for example, the application to have a nonbypassable
8 rider for the Sporn 5 closure?

9 A. I remember, and I'd have to go back to
10 it, but there were a number of environmental riders
11 that were nonbypassable in the originally filed case.
12 I think there's either one or two of those.

13 There was a facilities closure rider,
14 there was a carbon sequestration rider, there was a
15 POLR rider, and as part of the settlement the
16 nonbypassable charges associated with the
17 environmental rider, for example, and the others that
18 I described, AEP was forced to give up at the
19 negotiating table.

20 Q. Are you aware that there's another
21 pending proceeding for nonbypassable rider with
22 regard to the closure of Sporn 5?

23 A. I'm aware that it exists. I don't know
24 anything about it and we're not in the case.

25 Q. Are you aware of anything in the

1 stipulation that effects that particular case?

2 A. Not at the moment.

3 Q. Now, the original ESP offered no means of
4 seeing if there were better offers, better
5 competitive offers to provide SSO service; is that
6 correct?

7 A. That's right.

8 Q. And is there anything in this particular
9 proposal that would address those issues during the
10 period 2012 through June of 2015?

11 A. For the default service?

12 Q. Yes.

13 A. No.

14 Q. And I believe your company in particular
15 has been interested in being involved in that
16 particular kind of activity; is that not correct?

17 A. We would love to be able to make energy
18 sales in Ohio. We think that would benefit
19 customers. We think it would benefit us. We have 11
20 nuclear plants not too far away and we'd love to sell
21 energy here.

22 Q. And this would be a wholesale
23 transaction?

24 A. Yes. And retail transactions, assuming
25 the elimination of the clouds as I described earlier

1 currently exist in the market.

2 Q. And in fact, and I want to do this
3 without getting into the portions of this which I
4 know that both you and the company believe are
5 sensitive, you have made those kinds of offers to
6 AEP, correct?

7 A. I want to be careful here as well.

8 Q. I understand that.

9 A. But we did --

10 Q. My understanding, if I may, your Honor,
11 my understanding is that the concern is not that
12 offers were made but rather the amounts. Am I
13 correct in that?

14 MR. NOURSE: The content of the documents
15 exchanged in discovery was designated as
16 competitively sensitive.

17 MR. DARR: As to what?

18 MR. NOURSE: The content of the documents
19 that related to what you're referring to were
20 designated competitively sensitive. If you want to
21 get into the contents, I think we need to be in a
22 sealed record.

23 MR. DARR: All I'm asking for is whether
24 or not such an event took place. And I'll wait to
25 see how each of you reacts to that.

1 A. Let me try to answer in a way that avoids
2 the problem here. AEP is one of our biggest
3 wholesale trading partners, so we routinely trade
4 energy, transmission, other things with AEP.

5 We have made offers to them, substantial
6 offers, for capacity that weren't within the
7 originally filed ESP period but would be within the
8 extended ESP period that is reflected in the
9 stipulation.

10 Q. And I believe it's your view that, at
11 least in the current environment, that AEP Ohio's
12 effectively increased its costs by ignoring cheaper
13 capacity resources it did not own; is that correct?

14 A. I think there has been an effort by the
15 company to use its own resources to supply capacity
16 in the zone and that the company might have looked at
17 cheaper alternatives to do that and has failed to do
18 so. This stipulation will require them to do so.

19 Q. And during at least the period 2015 and
20 2016 it's your expectation that the price of both
21 capacity and energy is expected to increase, correct?

22 A. Definitely on the energy side based on
23 the forward gas curves I think that you'll, you know,
24 we're seeing a liquid market out there so I can
25 pretty clearly say the prices are higher than the

1 spot prices we're seeing in the market today.

2 On the capacity side, that's going to be
3 settled by auction; hard to know what the results
4 will be. We do expect and we've stated publicly that
5 as retirements of generation occurs as a result of
6 Clean Air Act regulations in particular, that the
7 market will tighten. There still will continue to be
8 a surplus of generation but the market will get
9 tighter and that tightening will be reflected in
10 higher capacity prices over time.

11 Q. And do you have an estimate as to when
12 that's going to start to realize itself in the
13 marketplace?

14 A. I think it already has. I think PJM has
15 pretty clearly stated in the results from the last
16 auction that the market has begun to tighten. And
17 you saw that, right, in the actual prices that the
18 capacity auction produced.

19 We saw two auctions, one that produced
20 \$16, one that produced \$27, last auction was up to
21 \$125. That means supply and demand is coming closer
22 to equilibrium, and the surplus, the length that we
23 saw in the market is starting to tighten up.

24 It is still not tightening up anywhere
25 near to the point where supply-demand economics would

1 indicate that new generation is required, which is
2 what I responded to when Mr. Kutik asked me those
3 questions.

4 Q. Now, turning to your Attachment B, excuse
5 me, Attachment C, page 9.

6 A. Is that the Bank of America?

7 Q. Bank of America, page 9.

8 A. Yes, I have it.

9 Q. And I'm looking at the "Copyright and
10 General Information regarding Research Reports." And
11 there was a suggestion earlier in your description of
12 this that these are somehow part of the public
13 domain. Do you recall that?

14 A. I don't remember using the words "public
15 domain."

16 Q. My term, but these were publicly
17 available.

18 A. These are available to people who
19 subscribe to the services. I don't think you could
20 Google this and this will come up freely.

21 Q. I guess that's my point. Isn't it true
22 that each one of these documents is copyrighted and
23 with that copyright notice in particular with regard
24 to Bank of America's document it states as follows:
25 That "This research report is prepared for the use of

1 BOA Merrill Lynch clients and may not be distributed,
2 retransmitted or disclosed, in whole or in part, or
3 in any form or manner, without the express written
4 consent of B of A Merrill Lynch."

5 A. Yes, that's true, and that's why with
6 the -- for each of the five I made sure to contact
7 these analysts and to ensure that they allowed the
8 use of the documents in the testimony that I rendered
9 in this case. So you're right, I couldn't have done
10 that without their permission, but I did receive it.

11 Q. And so you secured written consent from
12 each of these?

13 A. I didn't -- no, not written consent.

14 Q. And if you turn to the Citigroup Global
15 Markets, page 7, you'll find a similar limitation on
16 the distribution of that as well, correct?

17 A. That's right.

18 Q. Finally, if we look at Attachment B, page
19 7, we will similarly find a copyright notice on that
20 as well, correct?

21 A. Yeah. I thought it existed on all of
22 them, which is the reason we contacted all of them,
23 but yeah, I see it here.

24 Q. And did you do this personally or did you
25 have someone do it on your behalf?

1 A. I had our investor relations group do it.

2 MR. DARR: Thank you very much.

3 THE WITNESS: Thank you.

4 EXAMINER TAUBER: Ms. Hand?

5 MS. HAND: No questions, your Honor.

6 EXAMINER TAUBER: Mr. Stahl, do you have
7 redirect?

8 MR. STAHL: Yes. Could we take about
9 five minutes? There's one other thing I'd like to
10 add to Mr. Dominguez's testimony on this copyright
11 point. My recollection is we did get the express
12 written consent of each of these five firms.

13 There are other firms that we were going
14 to quote but we couldn't get the consent from and
15 we're trying to track down and verify that this
16 consent, if it becomes an issue we can provide it,
17 but I know that the company made substantial efforts
18 to comply with these.

19 MR. KUTIK: Well, I object to that
20 statement. Is counsel testifying? I mean, so that
21 statement deserves no weight.

22 MR. STAHL: Fine, I'll withdraw it. I'm
23 just trying to provide some information to the
24 hearing examiners.

25 MR. KUTIK: Well, we're on the record.

1 EXAMINER SEE: Just a minute, gentlemen.

2 EXAMINER TAUBER: We're just going to
3 strike the record of that and we'll go into redirect.

4 EXAMINER SEE: Mr. Stahl's comments.

5 EXAMINER TAUBER: Of Mr. Stahl's
6 comments, yes, just to clarify that.

7 MR. KUTIK: So are we taking a break?

8 EXAMINER TAUBER: Do you need time?

9 MR. STAHL: Just five minutes.

10 EXAMINER TAUBER: Okay, we'll take five
11 minutes then. Let's go off the record.

12 MR. STAHL: Thank you.

13 (Recess taken.)

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

16 Mr. Stahl, redirect?

17 MR. STAHL: Yes, thank you, your Honor.
18 And I believe we will be brief here.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Stahl:

22 Q. Mr. Dominguez, going back to the
23 cross-examination that Mr. Etter was conducting, he
24 was referring to the disclosures that were set forth
25 in the various investment analysts' reports. In your

1 view, Mr. Dominguez, do any of those disclosures or
2 disclaimers affect your reliance on those investment
3 analysts' reports?

4 A. No.

5 Q. Can you please explain why not?

6 A. Well, I think I said some of this before,
7 I don't know what was stricken and whatnot and I
8 won't repeat it all, but these analysts are
9 associated with very large banks that have a variety
10 of commercial interactions with all of us in the
11 utility and, frankly, all companies or most companies
12 in the United States in one way or the other in terms
13 of loaning money, assisting in transactions, so on
14 and so forth.

15 They're obviously putting their name next
16 to some view of the market value of the company and
17 they're going to be very careful to disclose all
18 conflicts of interest associated with that. But the
19 concern that they are manipulating or falsely
20 representing their view regarding a particular
21 company in order to advance some transaction within
22 the company, to me, doesn't hold water.

23 These are many multibillion-dollar
24 companies that are bigger in many respects than
25 Exelon or AEP or the sum total of us. And in my view

1 while there may have been errors in analysts' reports
2 historically, I generally think they call it as they
3 see it, and in the ten years that I've been in the
4 business, whether they're reporting on us or one of
5 our competitors, that's what I've generally seen.

6 Q. Turning to a different subject. Some of
7 the points made during the cross-examination by
8 Mr. Kutik I'd like to just go back and talk about
9 those.

10 First of all, I think you agreed that
11 your -- Exelon's interest in this proceeding was to
12 open up the Ohio market to competition; is that
13 correct?

14 A. We want to open up this market for
15 wholesale and retail competition, absolutely.

16 Q. And also in response to several of
17 Mr. Kutik's questions you have agreed that the
18 stipulation to which Exelon is a signatory will not
19 realize the best of competition until June 2015, that
20 there are some nonbypassable riders provided for in
21 the stipulation, and that Exelon believed its
22 litigating position on the initially proposed by AEP
23 capacity rate had merit; is that all correct?

24 A. That's correct.

25 Q. In view of all of those factors,

1 Mr. Dominguez, how is it that you and Exelon are able
2 to support the stipulation?

3 A. Well, we never viewed this statically.
4 We understood the situation when we walked into Ohio,
5 and there's a history here.

6 There were some filings that were brought
7 out yesterday in Mr. Hamrock's cross-examination
8 regarding the willingness of parties to be involved
9 in competitive procurements and historically as I've
10 followed Ohio from afar admittedly, it seems like the
11 appetite for competition has had an ebb and flow to
12 it.

13 There have been moments where people
14 talked about things like reregulation and all of
15 that, and quite frankly when AEP first joined PJM, we
16 used to talk about the FRR rule as being "the AEP
17 rule" but we understood from other stakeholders that
18 that wasn't just the company, that other people
19 wanted to have the FRR option as an alternative to
20 the reliability pricing model RPM.

21 And so when AEP made these commitments,
22 it made commitments that stakeholders wanted it to
23 make to cover the capacity through this FRR channel,
24 and AEP is in this situation that I really described
25 in my early testimony where at one point their rates

1 were favorable to market, and that's evidenced by the
2 fact that nobody was shopping.

3 Then the market changed, it changed
4 because we had some fundamental drivers in the energy
5 market, the discovery of shale gas that changed the
6 world for all of us competing in this space.

7 And so all of a sudden AEP finds itself
8 in a position where the regulated rate is higher to
9 competition and if we could snap our fingers and go
10 to a competitive model, then we'd see a benefit
11 tomorrow for customers. But that would ignore the
12 history I just described that customers at times
13 wanted the security of that regulation blanket.

14 And so what we thought about in this
15 settlement is, look, we're going to take a look at
16 the litigated positions that they had in the case,
17 the capacity positions that they've taken both in the
18 ESP and at FERC, and while we thought we had the
19 better of the argument, I had to handicap that, I had
20 to talk to my boss about handicapping whether we were
21 going to win at the end of the day.

22 And then the other dimension of it was
23 time. Even if we were going to win, if we're going
24 to be wrapped up in FERC litigation and appeals for
25 years before we had this settled, then it just seemed

1 to us that making some compromises around the
2 stipulation was appropriate.

3 And a couple of those compromises were
4 that we couldn't get to a competitive state
5 immediately, not with the company being part of that
6 agreement, and that meant more litigation. And part
7 of that meant that some of the nonbypassable riders
8 that, frankly, I would like to not see, if Joe
9 Dominguez and Joe Dominguez alone drafted this
10 stipulation, they made it in.

11 But we made a lot of headway the other
12 way. We eliminated a cloud of uncertainty for
13 21 percent of the retail market next year,
14 31 percent, 41 percent, and then the entire market.
15 We got to a competitive solution faster than we think
16 we could get to it in an MRO.

17 And we think in the long term that's
18 going to provide enormous value to Ohio consumers,
19 more value than can be quantified in any specific
20 year of this ESP. And so we thought it was a win for
21 consumers.

22 While it didn't happen immediately, and
23 I, you know, I said earlier we'd love to make sales
24 here and, frankly, do cartwheels if we could
25 immediately, the fact of the matter is we had to get

1 real about a settlement that got us to competition.

2 We fully expect the company to comply
3 with the provisions that it signed up for, and as a
4 result by 2015 this market is going to be completely
5 open in a way that we didn't think could be achieved
6 through litigation.

7 MR. STAHL: Thank you, Mr. Dominguez, I
8 have no further questions.

9 EXAMINER TAUBER: Thank you.

10 Mr. Maskovyak, do you have any questions
11 on recross?

12 MR. MASKOVYAK: No questions, your Honor.

13 EXAMINER TAUBER: Mr. Etter?

14 MR. ETTER: Thank you, your Honors, just
15 a few.

16 - - -

17 RECROSS-EXAMINATION

18 By Mr. Etter:

19 Q. Mr. Dominguez, although you stated that
20 you felt that the disclosures were, or that the
21 analysts were providing statements that were not
22 meant to mislead anybody -- is that the way you
23 expressed it as a rule?

24 A. Yeah, I think so. I think what I was
25 trying to get at was I thought the implication of

1 your cross-examination was that they're biased and I
2 should be afraid that they're misleading. I don't
3 think they are.

4 Q. Okay. As part of putting together their
5 views, do you know who they might have spoken with
6 who had biases?

7 A. Oh. I'm sure they spoke to the company
8 and they heard what was reported in SEC filings and
9 on investment conference calls. Certainly the
10 company would be biased. But they spoke to other,
11 you know, parties as well and they have people on the
12 ground in all these states these days.

13 Q. But you don't know for certain --

14 A. I don't know.

15 Q. -- whether they spoke to anybody other
16 than the company?

17 A. I don't know.

18 Q. Or that they looked at any other
19 documents, any documents other than the stipulation
20 itself, correct?

21 A. I know they have been following this case
22 for many years before the stipulation even existed
23 and I know from prior reports from I think every one
24 of these analysts that they thoroughly studied and
25 investigated the originally filed ESP. As to whether

1 or not they got documents changed in litigation, I
2 don't know.

3 Q. Do you know if any of them did a
4 comparison between an MRO and the ESP proposed in the
5 stipulation?

6 A. I do not.

7 Q. And are any of them providing a legal
8 opinion as to whether the stipulation meets the legal
9 requirements for stipulations in Ohio?

10 A. A legal opinion?

11 Q. A legal opinion, yes.

12 A. I don't think their opinions are legal
13 opinions.

14 Q. And just to be clear, you don't know the
15 extent of any holdings that any of the authors of the
16 reports, any of the analysts who submitted these
17 reports or wrote these reports --

18 A. I sure don't.

19 Q. -- you don't know how much of a personal
20 interest if any they have in AEP stock, correct?

21 A. No, I don't.

22 MR. ETTER: Thank you. That's all I
23 have.

24 EXAMINER TAUBER: Thank you.

25 Mr. Kutik.

1 MR. KUTIK: Yes, your Honor.

2 - - -

3 RE-CROSS-EXAMINATION

4 By Mr. Kutik:

5 Q. Mr. Dominguez, you are aware, are you
6 not, that there was a conference call with investor
7 analysts about the stipulation that AEP put on?
8 Correct?

9 A. I'm aware that there was a call. I
10 didn't get the transcript and I wasn't on the call.

11 Q. But you were aware there was a call.

12 A. Yeah.

13 Q. Would it be fair to assume, and do you
14 assume, that these reports were written after the
15 conference call?

16 A. I don't know that.

17 Q. Well, I didn't ask you whether you knew
18 it, I asked you if it would be fair to assume.

19 A. They had been literally reporting
20 amazingly what was happening in the settlement room
21 at different times, so there were reports that were
22 written before these reports, predecessor reports,
23 that had things like "the parties met," "they failed
24 to reach a settlement," "they're going to meet
25 again," that sort of thing.

1 So component parts of what's in the
2 report may have been reflected in those prior reports
3 as they were studying it. I honestly don't know when
4 they wrote the report.

5 Q. So you wouldn't assume that --

6 A. I wouldn't assume anything --

7 Q. Let me finish.

8 A. Sorry.

9 Q. You wouldn't assume that these reports
10 were written about full evaluation of the settlement
11 until after the analysts heard what the company had
12 to say in the investor call?

13 A. I would assume they weren't completed
14 until after that investor call and the materials
15 became public.

16 Q. So it would be fair to say that this
17 report would, in part, or these reports would, in
18 part, rely upon statements that were made by the
19 officials from AEP during the conference call.

20 A. Yes.

21 MR. KUTIK: No further questions.

22 EXAMINER TAUBER: Mr. Darr?

23 MR. DARR: Thank you, your Honor.

24 - - -

1 agree that there would be such a transition period.

2 A. Right. There was no way to get into RPM
3 for the auctions that had already been concluded, and
4 by the time we got to this, we even began talking
5 about settlements. The RPM auctions all the way out
6 through '14 and '15 had been completed so there's no
7 way to go backwards in time and get into those
8 auctions.

9 Q. And you're aware, are you not, that
10 Senate Bill 3 provided an opportunity for a
11 transition to a competitive market beginning in 2001,
12 correct?

13 A. I am generally, but not much more than
14 that.

15 Q. Did you review the history of this
16 company to reach your concern or your decision that
17 there needed to be a transition period?

18 MR. STAHL: Object. He did not testify
19 that there needed to be a transition.

20 Q. Let me correct that, then. That it was
21 necessary for the purpose of reaching a settlement in
22 this case.

23 A. Did I review the history of the company?

24 Q. The history of the transition process.

25 A. You know, what I really reviewed and

1 focused on were the materials that were filed at FERC
2 and the materials supporting this ESP.

3 Historically working with Mr. Petricoff I
4 came to understand some of the regulatory landscape
5 from a legal perspective in his discussions with me
6 and I certainly understood what I had been reading
7 for many years about where the state of competition
8 kind of lies in Ohio and this ebb and flow I
9 described earlier in terms of the appetite to go to a
10 competitive market.

11 Q. So is the answer to my question no, that
12 you did not review that?

13 A. I told you what I reviewed.

14 Q. Did you review the transition plan that
15 was applicable to these two companies which resulted
16 from the adoption of Senate Bill 3?

17 A. I didn't.

18 Q. Did you review the filings that the
19 companies made I believe in 2007 indicating that they
20 were prepared to go to a statewide auction?

21 MR. STAHL: Excuse me, can I just have a
22 clarification? Are those the filings that were
23 reflected in IEU cross Exhibit 7A and 7B from
24 yesterday?

25 MR. DARR: Yes.

1 MR. NOURSE: And I object to the
2 characterization Mr. Darr stated.

3 A. What I reviewed in connection with that
4 was I reviewed what Mr. Randazzo had as
5 cross-examination exhibits because I was in the
6 audience and so I read them when it was handed out
7 yesterday.

8 Q. Was that the first time that you observed
9 those?

10 A. I'm not concluded in telling you what I
11 reviewed in connection with that.

12 That was the first time, to answer your
13 question, that was the first time. I also went back
14 and asked to review your filings in that same 2007
15 period to see if the IEU had, in fact, embraced
16 competition in '07, and what I found was that the IEU
17 wasn't so embracing of competition in '07 as it is
18 today, and that was in your pleadings in the same
19 docket, that's what I've reviewed. I haven't
20 reviewed anybody else's pleadings.

21 Q. Do you know whether or not AEP described
22 IEU's position in what's been described as the
23 Exhibit 7B documents?

24 A. I read a filing signed by Mr. Randazzo
25 that was filed in that docket, two of them, in fact.

1 Q. Have you reviewed AEP's characterization
2 of IEU's position in 7B?

3 A. No.

4 Q. And to put the cap on all of this, it's
5 fair to say that coming into this case it was your
6 view that basically AEP was positioning itself so
7 that it did not have to face a significant shopping
8 threat to itself; is that correct?

9 A. I would agree. I think they were
10 completely opposed to wholesale competition and were
11 trying to curb retail competition, the effect of the
12 settlement is to completely open up those markets.

13 Q. So the answer to my question is Yes.

14 A. I gave you the answer to your question.

15 Q. The answer to my question was Yes,
16 correct?

17 MR. STAHL: Object. The witness has --

18 EXAMINER TAUBER: Mr. Dominguez.

19 THE WITNESS: Yes.

20 MR. DARR: Thank you. I have nothing
21 further.

22 EXAMINER TAUBER: Ms. Hand?

23 MS. HAND: No questions, your Honor.

24 EXAMINER TAUBER: Mr. Dominguez, you may
25 be excused.

1 THE WITNESS: Thank you.

2 MR. STAHL: And I'm not sure if we have
3 formally moved the admission of Exelon Exhibit 1 into
4 evidence, but to make sure, I will so move.

5 EXAMINER TAUBER: Are there any
6 objections to Exelon Exhibit 1?

7 MR. KUTIK: Your Honor, we renew our
8 motion to strike, particularly in light of this
9 witness's testimony, about the fact that we can't
10 determine anything about what the reports or the
11 authors of the reports relied on other than what's in
12 the report. So, again, it's hearsay, it's improper
13 to be admitted.

14 MR. DARR: Again, we join in the motion
15 to strike based on what we heard today. Obviously an
16 extended discussion of what we can draw from these
17 documents, I think it demonstrates that the original
18 objections were warranted and the items should be
19 stricken.

20 MR. ETTER: OCC joins as well.

21 MR. STAHL: I think the matter has been
22 fully argued and I don't think that anything that
23 Mr. Dominguez testified to on cross-examination
24 affects that basic question. We never purported to
25 go behind these reports and support the reports based

1 on our own independent analysis of the reports or on
2 what the analysts relied on. We simply took the
3 reports at their face value and I think the examiners
4 have correctly ruled that they may be considered for
5 whatever they may be worth.

6 MR. KUTIK: Your Honor, and that's the
7 essential unfairness and impropriety, that we can't
8 go behind the reports because we don't have these
9 people here to testify.

10 MR. NOURSE: Your Honor, could I just add
11 in that the companies believe it would be
12 inappropriate at this point to strike those exhibits,
13 especially given the extensive testimony and
14 cross-examination that's already occurred on the
15 record about them. And there's already been a
16 ruling.

17 EXAMINER TAUBER: The Commission will
18 reaffirm that it denied the motion to strike,
19 however, we will, the Commission will determine the
20 appropriateness of the testimony of Mr. Dominguez
21 that's in the record. Therefore, Exelon Exhibit 1
22 shall be admitted into the record.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 MR. STAHL: And the clarification is with
25 respect to the weight to be given to Mr. Dominguez's

1 testimony in connection with those analysts' reports,
2 correct?

3 EXAMINER SEE: Yes.

4 EXAMINER TAUBER: That's correct.

5 MR. STAHL: Thank you.

6 EXAMINER TAUBER: Mr. Hayden.

7 MR. HAYDEN: Mr. Alexander's going to be
8 conducting this.

9 MR. ALEXANDER: Good afternoon. My name
10 is Trevor Alexander, I have appeared but I haven't
11 had the opportunity to address the panel yet, so I
12 wanted an opportunity to introduce myself.

13 At this point FES would call Dr. Roy
14 Shanker to the stand.

15 EXAMINER TAUBER: Please raise your right
16 hand.

17 (Witness sworn.)

18 EXAMINER TAUBER: Thank you.

19 MR. ALEXANDER: Your Honor, I previously
20 asked the reporter to mark Dr. Shanker's prefiled
21 testimony as FES Exhibit No. 14, I've also provided
22 copies for the Bench.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

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ROY J. SHANKER

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

DIRECT EXAMINATION

By Mr. Alexander:

Q. Dr. Shanker, could you please state your
name and business address for the record?

A. Roy J. Shanker, Post Office Box 60450,
Bethesda, Maryland.

Q. Dr. Shanker, this is a hearing regarding
the proposed stipulation signed by AEP Ohio and the
other signatory parties. Did you submit direct
testimony regarding that stipulation?

A. Yes, I did.

Q. Do you have that direct testimony with
you today?

A. Yes, I do.

Q. And, Dr. Shanker, did you prepare the
testimony we have just marked as FES Exhibit No. 14?

A. Yes.

Q. Have you already filed any modifications
to this testimony?

A. Yes, there is an errata page, two pages
of errata, or one page of errata that address two
pages of the testimony that was filed.

1 Q. And did you identify page 26, line 11,
2 changing the words "AEP Ohio" to "AEP"?

3 A. Yes.

4 Q. And page 27, lines 1, 2, 7, 9, 13, 15,
5 16, and footnote 27, once again changing the words
6 "AEP Ohio" to the word "AEP"?

7 A. Yes.

8 MR. CONWAY: Excuse me, can you give me
9 that reference again?

10 Q. Dr. Shanker, other than the corrections
11 we just discussed, do you have any other
12 modifications or corrections to your testimony?

13 A. No, I don't.

14 Q. And with those corrections if you were
15 asked the same questions today as you were asked in
16 FES Exhibit No. 14 which now includes the update that
17 you just made, would your answers today be the same
18 as they appear in that document?

19 A. Yes, they would.

20 MR. ALEXANDER: Your Honor, the witness
21 is available for cross-examination.

22 EXAMINER TAUBER: Mr. Maskovyak.

23 MR. MASKOVYAK: No questions, your Honor.

24 EXAMINER TAUBER: Mr. Etter.

25 MR. ETTER: No questions.

1 EXAMINER TAUBER: Sorry, excuse me.
2 We'll start that over. The companies, I guess we
3 switched things up a little bit there, I got in the
4 habit of going around.

5 Go ahead, please, Mr. Nourse.

6 MR. NOURSE: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Nourse:

10 Q. I'm sorry, is it Dr. Shanker or
11 Mr. Shanker?

12 A. I'm comfortable with either, but the
13 title formally is "doctor."

14 Q. I couldn't tell from your testimony.
15 Okay.

16 So let me ask you, first of all, let's
17 spell out a couple acronyms we may be talking about
18 here this afternoon. And by the way, I'm Steve
19 Nourse representing AEP Ohio, we met on the telephone
20 at your deposition I think on August 10th.

21 So when I use "reliability pricing model"
22 shorthand as "RPM," you'll know what I mean, correct?

23 A. Yes, I will.

24 Q. And "FRR" means "fixed resource
25 requirement."

1 A. Yes.

2 Q. Correct? And in Ohio we refer to
3 "competitive retail suppliers" as "CRES suppliers,"
4 "CRES," "CRESs."

5 A. Yes.

6 Q. Okay. And I may refer to an "EDU" or
7 "electric distribution utility," meaning in this case
8 AEP Ohio.

9 Okay, are we clear on those acronyms?

10 A. Yes.

11 Q. Thank you.

12 So let me first discuss with you the
13 meaning of the FRR and what it means to be an FRR
14 entity.

15 First of all, it is your understanding
16 that the AEP Ohio companies, Columbus Southern Power
17 and Ohio Power Company, participate in the PJM market
18 as FRR entities, correct?

19 A. Actually, I think they are -- AEP I think
20 is the FRR entity.

21 Q. AEP East operating companies?

22 A. Yes.

23 Q. Jointly?

24 A. Yes. And they are a part of it, yes.

25 Q. All right. So is it fair to say that the

1 FRR option is really an alternative to RPM pricing?

2 A. It is another option by which the FRR
3 entity can select to demonstrate it meets the
4 reliability requirements within PJM.

5 Q. And as part of that an FRR entity
6 relative to the generation resources that it's using
7 in support of its plan avoids RPM pricing; is that
8 correct?

9 A. Yes. I think we've had this exchange.
10 I'm uncomfortable with the word "avoids." They meet
11 their requirements essentially through their own
12 resources and they are not part of the RPM auction
13 clearing process. So they are not -- they don't pay
14 though price, but they do meet their requirements
15 through their own resources or purchased resources.

16 Q. So they avoid paying the RPM prices for
17 capacity. Is that correct?

18 A. They do not transact the RPM prices.
19 They may be paying other prices or they may be
20 transferring assets or value within the pool.

21 Q. And the generation resources that are
22 part of the FRR plan don't affect RPM auction
23 clearing prices either; is that correct?

24 A. Again, they are not within the auction
25 clearing process, so to that extent they are -- they

1 don't participate in the price-setting mechanism.
2 Their inclusion or not inclusion could impact the
3 result of the auction, but that's a separate issue.
4 In terms of the actual conduct of the auction that
5 has occurred, they were not part of the auction.

6 Q. Is it accurate to say FRR entities have
7 opted out of the RPM?

8 A. The entities, one of the expressions is
9 to opt out of participating in RPM, that's correct.

10 Q. And are there limitations, well, let me
11 back up. Is the basic idea with the FRR program or
12 option to match the load-serving entity or LSE's
13 load, excuse me, match their generation resources
14 with their retail load?

15 A. To be precise, PJM will establish a
16 resource requirement for them and they have to
17 demonstrate control either through ownership or
18 contractual ownership of sufficient capacity in the
19 right locations to meet that requirement.

20 Q. Okay. Now, what happens if the FRR
21 entity has additional generation resources that end
22 up being above and beyond their retail load?

23 A. They basically can dispose of them as
24 they wish. With respect to RPM participation,
25 though, there are certain limits.

1 Q. Okay. And what are those limits?

2 A. There's a minimum, and I believe it's
3 2 percent. No, that may be the maximum. I'm sorry.

4 There's a threshold, a dead band
5 threshold amount for which they cannot transact and
6 then above that and then below a cap which for AEP as
7 a whole is 1,300 megawatts, they can -- they also
8 cannot transact. So there are limited sales from the
9 bottom is the dead band and the top is 1,300
10 megawatts and if they chose, they could sell those
11 into RPM. They have no obligation to do so.

12 Q. Okay. So above the load you have a --
13 forgetting the term. There's too many terms in this
14 PJM stuff.

15 A. Yes.

16 Q. The reserve margin requirement and then
17 if you had generation above your reserve margin, then
18 you could, you as an FRR entity, could sell, and AEP
19 in particular could sell up to 1,300 megawatts into
20 the RPM market; is that accurate?

21 A. It's capped at 13 and there is a minimum
22 threshold above the reserve requirement and I'm
23 blanking at the amount right now, but yes.

24 Q. Now, can other -- this FRR plan is not
25 exclusive to AEP, correct? Other PJM members could

1 participate in the FRR option.

2 A. Can we take a step back? Generically do
3 they have access to the FRR option or when you say
4 "this plan," are you referring to AEP's plan?

5 Q. Well, I'm asking if other non-AEP PJM
6 members can participate as FRR entities.

7 A. A certified yes. The FRR option is open
8 to other LSEs within PJM based on defined criteria
9 under their -- we define reliability assurance
10 agreement the RAA, has specific requirements that
11 state eligibility. So the answer is yes.

12 Q. Subject to the qualifications set forth
13 in the RAA.

14 A. Right. And they define, there's state
15 savings provision, there are munies and co-ops in
16 general, and then there's certain metering and
17 measuring requirements.

18 Q. Within AEP's footprint in Ohio, let's
19 limit our discussion to that, are CRES entities
20 capable or permitted to participate in a self-supply
21 option in the FRR?

22 A. Can you give me the time frame?

23 Q. Well, I'm asking as a general matter, and
24 we can get into the timing issue.

25 A. Well, in the abstract there are

1 circumstances under which they could submit an FRR
2 plan as an LSE within the service territory of an FRR
3 entity, but it would be subject to certain
4 restrictions in terms of timing, and potentially
5 other elements.

6 Q. And when you talk about "timing," are you
7 talking about the fact that the BRA, or the base
8 residual auction, is conducted for three years in
9 advance for the planning years?

10 A. That's certainly one element. That is
11 that -- it may help to have a step back.

12 PJM will establish the reserve
13 requirements, the reliability requirements for the
14 FRR entity and then the FRR entity has to submit a
15 plan. The plan is subject to review by PJM for its
16 adequacy in meeting appropriate requirements. It is
17 unit-specific, so it's not just megawatts, it's
18 megawatts and specified generating resources.

19 That's what constitutes the plan and what
20 is approved.

21 It is approved, effectively, with the BRA
22 in the same time window which is for operating year
23 or planning year three years hence. So at that point
24 the plan is established and thereafter an LSE,
25 another LSE other than the FRR entity, would not have

1 the ability on its own to modify the plan.

2 Q. So subject to those qualifications it's
3 not just an abstract possibility. That is an option
4 for CRES providers in Ohio, correct?

5 A. After the termination or beyond the
6 horizon with proper notice, yes, but I think there
7 would be other considerations that would go into it
8 as well. Not just the timing.

9 Q. So while we're on the subject of timing,
10 you would agree or understand that AEP as we
11 discussed earlier is an FRR entity currently; is that
12 correct?

13 A. Yes.

14 Q. And when would be the soonest that AEP
15 could become an RPM entity and reverse its opt-out of
16 RPM?

17 A. Well, let me answer your question in
18 timing. It's '15-'16, June 15th, but actually I
19 think mechanically the process would be that the
20 planning -- the planning parameters from PJM would
21 come out in February of next year and they actually
22 assume that they would be within RPM and then it
23 would be up to AEP to designate, I believe, that they
24 intend to continue with the FRR option.

25 So they have to make a declaration.

1 Q. That they would continue or not.

2 A. Yes.

3 Q. And then when would that be effective?

4 A. If you give me a month or two leeway, I
5 think it would be April of 2012 for the May auction.

6 Q. And that would cover what period?

7 A. It may be -- might be March.

8 Q. And that would cover what delivery
9 period?

10 A. That would be the '15-'16 delivery year.

11 Q. Starting in mid-2015?

12 A. Yeah. June 1st. I'm sorry. The PJM
13 year runs from June 1st to May 31st.

14 Q. Okay. Now, just so the record's clear,
15 Dr. Shanker, did you agree with the FRR option when
16 it was created?

17 A. When it was initially proposed and
18 created, my personal opinion was that it should not
19 have been allowed. No, I did not agree with it.

20 Q. And do you still hold that belief today?

21 A. Yes. In general I believe the market
22 system would work better in the absence of the FRR
23 option.

24 Q. Do you recall whether the Public
25 Utilities Commission of Ohio agreed with the FRR,

1 endorsed it at the time it was established?

2 A. I've seen excerpts, but I don't -- that
3 indicate their general agreement with that option
4 being made available. I have to say I did not go
5 back and read the entire filing.

6 Q. Okay. Now, as long as RPM pricing is
7 maintained for CRES suppliers in Ohio, would you
8 agree it's fair to say that CRES suppliers don't have
9 any need or motivation to self-supply?

10 A. They should be indifferent between
11 self-supply, at least in price. Actually, in
12 thinking about it, a choice to self-supply in the
13 presence of that pricing may actually raise market
14 power concerns if they did choose to self-supply.

15 Q. And I asked you whether CRES suppliers in
16 that context would have any motivation or need to
17 self-supply, is your answer no?

18 A. I think I said they should be indifferent
19 and subsequent to that I thought about it some more,
20 to my deposition, I think there actually is a market
21 power element that I hadn't considered at that time.

22 Q. But that element that you're adding now
23 would actually suggest that they wouldn't, they would
24 have additional reasons not to do it, correct?

25 A. They would have, that's correct. Is that

1 one of the benefits of getting the transfer price
2 correct is they should be indifferent and enacting.

3 Other than in that indifference it would
4 raise an issue in my mind as to the appropriateness
5 of the supplies that were being diverted. It's a
6 variant of the same issue that I think I testified in
7 the previous testimony I submitted about potential
8 perverse incentives associated with transfer prices
9 other than at RPM. I think the same issue comes up
10 when you start to substitute resources unnecessarily.

11 Q. Okay. And in your current testimony on
12 page 7 you make a statement on line 14, do you not,
13 that the electing to self-supply would not be -- will
14 not be necessary in mid-2015 because AEP Ohio will be
15 an RPM entity at that time? Is that a fair
16 characterization?

17 A. Yes. That's what the statement is, it's
18 in the context of, my understanding, the stipulation
19 mechanics.

20 Q. So can you explain what you mean by
21 "necessary" at line 14?

22 A. If AEP Ohio participates in the RPM
23 process, then effectively the -- one way of looking
24 at the RPM process is PJM is procuring supply on
25 behalf of all load and so those resources would be

1 acquired and, therefore, self-supply in that context
2 as a designation under FRR would no longer be a
3 meaningful concept.

4 Q. And is it your understanding in mid-2015
5 there will be a delivery period for an SSO auction
6 under the stipulation, commencement of a delivery
7 period?

8 A. As well as the RPM switch. My
9 understanding is that is to be the commencement of an
10 auction-based SSO process, yes.

11 Q. So does that auction become an energy
12 auction?

13 A. Effectively, it would be, because the
14 capacity resources are -- well, let me take that
15 back.

16 It could be energy only. It could be
17 designed in that fashion. Would it be possible for
18 there to be supply that would be the equivalent of
19 contracts for differences based on a consideration of
20 displacement capacity prices? I suppose so, but
21 fundamentally the capacity supply would be taken care
22 of at that point in time.

23 Q. Now, you said a few moments ago that that
24 CRES supplier would be indifferent in the context of
25 RPM price capacity to doing self-supply, with your

1 additional comments, right?

2 A. We're now back under the FRR world. Yes.

3 Q. Okay. Well, what I want to get to next
4 is that would you agree that being an FRR entity
5 carries with it additional risks and additional
6 responsibilities that could result in financial
7 penalties?

8 A. There are obligations as the FRR entity
9 that are such that if you don't meet the obligations,
10 you would be subject to certain penalties, yes.

11 Q. So would that be a nonneutral
12 consideration even assuming the price, there was an
13 indifference to the price: These additional
14 responsibilities and potential penalties that apply,
15 wouldn't that be an additional consideration of a
16 reason not to do self-supply?

17 A. It would be a consideration. It would be
18 a potential cost of someone doing self-supply, yes.

19 Q. Okay. Now I want to ask you about a few
20 of those specific potential capacity penalties that
21 apply under an FRR plan, if you're familiar with
22 them.

23 The first one is capacity resource
24 deficiency charge. Are you familiar with that?

25 A. Yes.

1 Q. And the next one here is the generation
2 resource rating test failure.

3 A. Yes.

4 Q. And qualifying transmission upgrade
5 compliance penalty. Are you familiar with that one?

6 A. Yeah. That would be only for someone
7 that offered a QTU as part of an FRR plan and you
8 were talking about generation. I'm not sure if,
9 actually I don't know the issue's ever come up, if an
10 LSE electing to self-supply within a forward-going,
11 remember we're talking about this in the future now
12 for a new plan, would -- I guess they would be able
13 to offer a QTU, so I guess would, it could
14 potentially apply, it's not generic to generation.
15 It's only in the presence of offering a QTU.

16 Q. Okay. And what about the peak season
17 maintenance compliance penalty?

18 A. The same. All of the obligations to
19 generation apply to a FRR entity supply.

20 Q. And that one's specific to generation
21 capacity.

22 A. Yes.

23 Q. Unforced capacity availability, right?

24 A. Yes.

25 Q. Okay. And how about the peak hour period

1 availability?

2 A. The same, it would apply.

3 Q. And load management test failure?

4 A. To the extent that DR resources, I
5 believe that's a DR resource designation. To the
6 extent that the self-supply identified demand
7 response, it would also apply.

8 Q. And how about the demand resource and ILR
9 compliance penalty?

10 A. The same.

11 Q. Okay. So each of those seven charges or
12 penalties we just discussed apply to FRR entities and
13 they do not apply if you're not in a self-supply
14 role, PJM; is that correct?

15 MR. ALEXANDER: Could I have that
16 question reread, please?

17 EXAMINER SEE: Yes.

18 (Record read.)

19 A. The way you asked it, they would apply if
20 you were in self-supply roles.

21 Q. Yes, and they would only apply if you're
22 in a self-supply/FRR plan, correct?

23 A. We need to clear up the time frame.
24 Going forward if you self-supplied as an LSE, the
25 resources that you would put into an FRR plan would

1 be subject to those -- to compliance against those
2 performance standards and associated costs.

3 Q. Okay. And otherwise a CRES supplier in
4 Ohio just purchasing or relying on capacity of
5 AEP Ohio would not be subject to those charges or
6 penalties, correct?

7 A. Directly in terms of any charges that
8 come out to -- they would come to AEP Ohio. How they
9 get allocated, I don't know.

10 Q. Okay. Now, would you agree under the FRR
11 option that there are, when you're in an FRR plan,
12 rather, there are three options for charging for
13 capacity?

14 A. I'm sorry. I think something's missing
15 from the question or I didn't hear.

16 Q. Under the RAA if one is an FRR entity,
17 would you agree there are three different options
18 that could apply to determine the price for capacity?

19 A. I think you're still -- the price of
20 capacity to whom?

21 Q. To CRES suppliers relying on AEP Ohio's
22 capacity in this example under schedule 8.1, section
23 D.

24 A. There would be -- there is a default
25 option which is the RPM RTO price. There is -- that

1 would apply in the absence of a state designated
2 compensation.

3 And there is -- and this is an area I
4 understand of dispute, in the absence of a state
5 designated compensation program the ability for the
6 FRR entity to file for section 205 rate to be deemed
7 just and reasonable by the FERC.

8 Q. Okay. So the three options are RPM
9 price, number one; state compensation mechanism,
10 number two; and a cost-based rate resulting from a
11 section 205 filing, number three.

12 A. Well, I think I put in the qualifier that
13 the 205 would be, is a subject of dispute and may be
14 subject to the absence of -- only being available in
15 the absence of a state directed or state approved
16 compensation mechanism.

17 Q. You're saying you're not sure that that
18 option's available even though it's listed in the
19 RAA?

20 A. I'm saying that I believe the
21 availability is conditioned and then my understanding
22 that's an area of dispute between the company and
23 FERC.

24 Q. Do you agree that the RAA provides for
25 that FRR entity "May at any time make a filing with

1 FERC under section 205 of the Federal Power Act
2 proposing to change the basis for compensation to a
3 method based on the FRR entity's costs or such other
4 base as shown to be just and reasonable."

5 A. Are you representing that's the full
6 sentence?

7 Q. No. I'm taking a quote in the RAA. Do
8 you have the RAA with you?

9 A. I have the full quote with me.

10 Q. Can you read the full quote?

11 A. You left off the first part of it.

12 Q. Read the first sentence.

13 A. I have the first part of that sentence.

14 Q. Please read the whole sentence then.

15 A. In the absence of a state compensation
16 mechanism, the applicable alternative retail LSE
17 shall compensate the FRR entity at RTO or RPM
18 clearing prices, in brackets, provided that the FRR
19 entity may at any time make a filing with FERC under
20 section 205 of the Federal Power Act proposing to
21 change the basis for compensation to a method based
22 on the FRR entities' costs or such other basis as
23 shown to be just and reasonable."

24 Q. So your position is the, provided that
25 the FRR entity may at any time make a 205 filing is

1 limited to the context of the absence of a state
2 compensation mechanism?

3 A. I don't know that I've drawn a legal
4 conclusion there. I think this is an area of dispute
5 and my understanding is what the FERC has determined
6 as of this point in time is that under the tariff
7 language that you've seen, that in the presence of a
8 state compensation mechanism the company, AEP, or the
9 FRR entity would not be able to make a 205 filing
10 having voluntarily acquiesced to the condition in a
11 FERC tariff that states that the compensation would
12 be first set under a state program.

13 Q. Is it your understanding that the meaning
14 and intent of that provision within the RAA is the
15 subject of a section 206 proceeding before the FERC
16 that's currently pending?

17 A. Yes.

18 Q. So is it your understanding that that
19 FERC proceeding could be, if it's decided by the
20 FERC, they may disagree with the reading you're
21 suggesting of this tariff and/or provide clarifying
22 language that would allow for the same remedy of a
23 205 filing?

24 A. I don't know that I can predict what FERC
25 can do, will do. The range of a decision that they

1 could make probably encompasses what you said and
2 more, but, you know, I'm trying to differentiate
3 between do I have any insight into what the
4 Commission might do versus could the Commission do
5 something like that. I suppose they could.

6 Q. And those are the issues presented in the
7 complaint and the request that was made by AEP; is
8 that your understanding?

9 A. That AEP -- let me try and state my
10 understanding and see if it matches what you said
11 because I think the antecedents got messed up there.

12 Is that AEP is seeking clarification or a
13 determination that it has the 205 rights, independent
14 of anything that sentence may state or that that
15 sentence should be interpreted to be that they have a
16 205 right here.

17 Q. Okay. Let me go back to the self-supply
18 option we discussed available to CRES providers under
19 the RAA. Just ask you a couple of factual questions.

20 What was the most recent PJM planning
21 year for which CRES provider could supply their own
22 capacity rather than relying on AEP's?

23 A. '14-'15.

24 Q. And when would this election have been
25 made?

1 A. We'll say the window between February and
2 April of 2011. I'm not sure of the specific cutoff
3 date.

4 Q. The spring of 2011.

5 A. Yes.

6 Q. Okay. Do you know if FirstEnergy
7 Solutions or any other Ohio CRES provider elected to
8 bring their own capacity or enter a self-supply plan?

9 A. I'm not aware of anyone that did do that.

10 Q. Do you know why FirstEnergy Solutions,
11 your client, did not elect to use a self-supply
12 option?

13 A. I have no knowledge of their business
14 decision.

15 Q. So you didn't discuss that with them at
16 all in the context of preparing any of your
17 testimony?

18 A. No.

19 Q. Is it your understanding that the
20 capacity price is the only or the primary factor
21 driving a CRES provider's decision to enter a retail
22 market?

23 MR. ALEXANDER: Objection as to form.
24 "Only or primary" mean two different things. Can you
25 just clarify that?

1 MR. NOURSE: I'm asking either, only or
2 primary.

3 Q. Let me just restate it again. Is
4 capacity price the only factor or the primary factor
5 driving CRES providers' decision to enter a retail
6 market?

7 A. I think it would be a very material
8 factor in their decision.

9 Q. What other factors would be involved?

10 A. The access they would have to energy as
11 well. Probably, there would probably be a number of
12 other business issues simply from marketing to
13 administrative billing, you know, critical mass in
14 service area, things like that all of which would be
15 important.

16 Q. Now, you're familiar with the PUCO's
17 December 8th entry in docket 10-2929 here in Ohio?

18 A. The 2010, December 8th, 2010, yes.

19 Q. Correct. You agree that the stated basis
20 for adopting the RPM-based state mechanism was that
21 the 2009 through 2011 electric security plan was
22 based on RPM.

23 A. I have to say I don't remember reading
24 that. I'd have to look at the order with respect to
25 that specific language.

1 Q. Is it your understanding that that entry
2 established an interim rate or a permanent rate?

3 A. My understanding is that it established
4 the rate that would persist until changed and so I
5 guess there was no deadline, but now we're getting
6 into semantics, does that mean interim? I suppose
7 that could mean interim. But it had no sunset or
8 anything like that that I was aware of.

9 Q. Do you know if it was termed an "interim
10 rate" in the entry?

11 A. I believe the word "interim" was used but
12 I also, as I said, don't believe that it was given a
13 sunset. It was the rate that was established.

14 Q. Was there any indication in the decision
15 that the interim rate would continue into 2012 and
16 beyond?

17 A. Without reviewing the order, I don't
18 know. My recollection is that it was the rate that
19 was established and it would persist until changed by
20 the Commission.

21 Q. Is it your understanding that prior to
22 December 8th, 2010, the state compensation
23 mechanism provision in the RAA had not been invoked
24 or utilized?

25 A. I'm not sure mechanically whether -- I

1 don't know if -- I think the state itself did not
2 declare so that would suggest it would have been
3 under the fall process, but I think the language was
4 put forward to remove an ambiguity about it, it would
5 therefore adopt the RPM RTO -- the PJM three-year
6 forward rate I think is actually the language that
7 was used.

8 Q. Well, has any other state commission
9 established a state compensation mechanism under the
10 RAA?

11 A. I don't know.

12 Q. Is it your understanding that the PUCO
13 can change the interim rate to be a cost-based rate
14 or some other nonRPM-based rate?

15 A. I think the answer is that in general it
16 could, but I don't know that that's a totally
17 unfettered determination.

18 Q. Are you aware of any restrictions in the
19 RAA concerning the method for establishing a state
20 compensation mechanism?

21 A. In the RAA itself, no, but I think there
22 might be broader considerations that might apply.

23 Q. Such as what?

24 A. This is a FERC jurisdictional rate. The
25 provision does, it does allow for the state to put in

1 a compensation mechanism, but I think the general
2 proviso would be that with respect to capacity, I
3 should be careful about the term "commission," the
4 FERC has established its jurisdiction in a fashion,
5 this would be my understand, it's not a legal
6 opinion, that it would be concerned over actions that
7 would tend to distort or potentially work at odds to
8 the purposes of the basic FERC jurisdictional rate,
9 and so in the absence of any interference with the
10 working of the pricing and the FERC jurisdictional
11 markets, the state of Ohio in setting that rate
12 probably has leeway.

13 Q. Okay.

14 A. But the converse would also be true in
15 there, the presence of a determination that it might
16 interfere with the FERC jurisdictional pricing, then
17 there would be a problem.

18 Q. Okay. And, by the way, the capacity
19 charge we're talking about, you would agree that's a
20 wholesale charge.

21 A. I think we went through this discussion,
22 that the capacity charge to the CRES provider, and
23 I've looked at this further since my deposition, our
24 discussion, one I think is a FERC jurisdictional
25 rate, I think we discussed that, and actually I think

1 it's mechanically implemented in a fashion that is
2 consistent with that.

3 Q. Consistent with being a wholesale charge?

4 A. Yes.

5 Q. And, in fact, the CRES provider's
6 purchasing capacity that's resold to retail
7 customers, isn't that what's going on?

8 A. They are actually billed for the capacity
9 by PJM.

10 Q. And that capacity is used as a service
11 input into providing retail electric service; is that
12 correct?

13 A. I'm not sure what you mean by the term
14 "service input."

15 Q. Could they provide retail service without
16 capacity?

17 A. Well, the capacity is there, I mean, it
18 doesn't migrate. So what we're talking about is the
19 compensation structure in the sale, and I'm agreeing
20 with you that it's a FERC jurisdictional transaction.
21 The notion of decomposing, you're assuming away the
22 underlying capacity is a little troubling to me.

23 Q. I'm not assuming it away. I'm asking you
24 to agree that it's a necessary component of providing
25 retail electric service.

1 A. They have to purchase that capacity as a
2 function of providing the service.

3 Q. Thank you.

4 And so back to the December 8th, 2010,
5 entry, a couple additional questions about that. Are
6 you aware of a procedural schedule in that docket
7 that was established for testimony and briefing and
8 hearing this fall?

9 A. I think my only recollection is my
10 understanding that things were suspended based on
11 what's going on here but I don't have any particular
12 understanding of that, no.

13 Q. Well, but prior to suspending the
14 schedule based on the stipulation there was a
15 procedural schedule; is that your understanding?

16 A. I'm just assuming so. I don't have a
17 direct recollection of the schedule, but presumably
18 there was.

19 Q. Were you planning to file testimony on
20 behalf of FirstEnergy Solutions prior to the schedule
21 being suspended?

22 MR. ALEXANDER: I'm going to object. I'm
23 going to object at this point to the extent it calls
24 for FirstEnergy Solutions to disclose whether it will
25 or won't have any specific witness file testimony in

1 a case prior to the date that witness has actually
2 filed testimony. I think it calls for the
3 impressions of counsel and so I'm going to object.

4 MR. NOURSE: I'll withdraw it, that's
5 fine.

6 EXAMINER TAUBER: Thank you.

7 THE WITNESS: That's what I was
8 struggling with.

9 Q. Okay. Dr. Shanker, are you aware, do you
10 know what the applicable RPM price was as of
11 December 8th, 2010?

12 A. The resource price I think was \$110 a
13 megawatt-day.

14 Q. Would it refresh -- I'm asking of
15 December 8th, 2010. Would \$174.29 a megawatt-day
16 refresh your recollection?

17 A. Yeah. We're talking two different
18 metrics. I think the 174 reflects, I said the
19 resource price, and what you're talking about is the
20 zonal price, and I think --

21 Q. Auction clearing price. That's the same
22 as the BRA, auction clearing price?

23 A. Maybe I -- no. There is -- you're
24 talking about the charge to the CRES supplier? Maybe
25 I have the numbers wrong.

1 Q. Well, I'm talking about the auction
2 clearing price. I think we'll get into the actual
3 charge after scalers and et cetera a little bit
4 later. You don't --

5 A. I thought it was 110 for the resource
6 clearing price but I may be wrong. I have it in my
7 testimony, so we can find that.

8 Q. Can you take a moment to find that?

9 A. I think I do.

10 I'm sorry, I'm getting '11 and '12 rates,
11 I don't think I remember the '10-'11 rates. You're
12 saying it's 174, I just don't know.

13 Q. And it's not in your testimony?

14 A. No. What I quoted was the '11-'12,
15 '12-'13, '13-'14, and '14-'15 prices on page 12.

16 Q. So subject to check, would you agree that
17 the RPM base residual auction clearing price for 2010
18 and 2011 planning year was \$174.29 per megawatt-day?

19 A. When you say "clearing price," you mean
20 resource price. Resource clearing price as opposed
21 to the zonal price.

22 Q. Yes.

23 A. Subject to check, I'll accept that.

24 Q. Okay. And it's, the 110 you mentioned is
25 the current price.

1 A. Yeah. And I apologize, I'm thinking
2 you're asking current, you kept saying '10.

3 Q. As of December 8th, '10.

4 A. Yeah.

5 Q. Now, what will that same rate be the next
6 time it changes in June of 2012?

7 A. And, again, resource price I believe I
8 have \$16.46 a megawatt-day.

9 Q. Okay. Let's discuss the RPM market now a
10 bit for the moment, move away from FRR.

11 Now, do you think the RPM market is
12 effective and functions well?

13 A. I'd partition my answer into two pieces.
14 One is with respect to reliability, and I think the
15 market functions very well. With respect to pricing,
16 I've had issues with the mechanics of some of the
17 pricing mechanisms.

18 Q. Okay. And I think during your deposition
19 we discussed what I'll call your top three
20 criticisms. Do you recall that?

21 A. I mentioned three, yes.

22 Q. Well, I believe you mentioned more than
23 three, but the first three we discussed I'd like to
24 discuss again. And the first among those was the
25 demand curve holdback of 2.5 percent reduction.

1 Could you first explain how that works?

2 A. Yeah. I'm still thinking back to the
3 more than three. I mentioned things I think that
4 went in both directions in terms of the pricing
5 accuracy, but the 2.5 percent holdback, PJM -- the
6 auction structure is a base residual auction and
7 three incremental auctions.

8 If we assume that there were a hundred
9 megawatts of forecast demand for all of PJM, to make
10 it simple, in the base residual auction they would
11 procure only 97-1/2 percent, 97-1/2 megawatts, and
12 with the remainder procured through the incremental
13 auctions, and that tends to understate demand in the
14 BRA.

15 Q. So that reduces the RPM price that clears
16 the auction?

17 A. The resource clearing price in the BRA is
18 reduced by the 2-1/2 percent reduction, yes.

19 Q. Okay. I believe another criticism or
20 flaw that you mentioned was a number of backstops
21 that interfere with market pricing mechanisms of the
22 RPM. Do you recall that?

23 A. Yes.

24 Q. Can you explain that?

25 A. Yeah. The underlying mechanism of the

1 RPM is supposed to work sort of like a control or
2 damping mechanism with the amount of capacity being
3 greater than or less than the market requirements,
4 and it has a downward sloping demand curve.

5 So when the supply is less than the
6 targeted supply, prices are higher, and when the
7 supply is greater, it's lower. And the notion is
8 that over time the oscillation in pricing or quantity
9 will result in pricing that approximates the net cost
10 of new entry for, in this case a reference unit, a
11 peaking unit.

12 There are provisions within RPM that
13 essentially limit the probability of the excursions
14 into the short side due to reliability concerns,
15 which means that the pricing is skewed to the down
16 side.

17 Q. Okay. Now, is it also true in this
18 regard that if there's an anticipated shortfall for a
19 period of time, that PJM can sort of step in and take
20 action?

21 A. Yeah. I think if it's three or four
22 years in a row, there is a shortfall below a
23 threshold amount, and I'm not sure if I remember the
24 amount, PJM will then make a backstop procurement.

25 Q. And how does the backstop procurement

1 work relative to pricing?

2 A. I think the way the tariff reads is they
3 will make the procurement and -- I don't know if I
4 checked but I believe it has to be through an auction
5 process, but they will essentially make a
6 procurement. And it will be out of market,
7 obviously, it's not within the BRA process.

8 Q. Okay. And another major flaw I believe
9 that you characterize in your deposition was that
10 buyers can potentially exercise market power in the
11 structural RPM.

12 MR. ALEXANDER: Objection, major flaw
13 from the deposition. This isn't appropriate
14 impeachment. There's been no attempt to impeach or
15 get the witness to say something to classify this as
16 a major flaw. If he'd like to ask about this
17 specific topic, that's fine, but I object to the term
18 "major flaw."

19 EXAMINER TAUBER: Mr. Nourse.

20 MR. NOURSE: I'm just using the same term
21 we used in the deposition, but let me rephrase.

22 EXAMINER TAUBER: Thank you.

23 MR. NOURSE: Be happy to.

24 Q. (By Mr. Nourse) Dr. Shanker, your third
25 criticism of the RPM that we discussed earlier was

1 the potential for exercising market power under
2 structure of the RPM. Do you recall that?

3 A. I think I mentioned both buyers and
4 sellers and the specific concern we discussed was
5 with respect to buyers.

6 Q. Well, first of all, since we're not
7 putting your deposition transcript into the record
8 here, can you explain what that third criticism is
9 first?

10 A. The notion is that because there is a
11 steep downward sloping demand curve, there is an
12 incentive for both buyers and sellers to exercise
13 market power. Buyers can do so by withholding, a
14 small decrease in supply would increase price and
15 sellers -- I said it backwards.

16 Sellers can do so by withholding and a
17 small decrease in supply would increase price, and
18 buyers can artificially increase supply in an
19 uneconomic manner and a relatively small increase in
20 supply can depress prices. The latter is what we
21 were discussing.

22 If someone working as a load or on behalf
23 of load or as a representative of load, or an agent
24 of the load interest, uneconomically procured
25 unnecessary capacity, they would have the ability to

1 depress prices.

2 Q. Does that third concern we just discussed
3 apply to a cost-based capacity charge set by a
4 regulator?

5 A. I don't think I can answer the question
6 as posed. I'm not -- you have a couple of
7 antecedents. By the "concern" you mean depressing
8 market prices?

9 Q. Well, let me ask you, to try to save
10 time, for all three of these items we've discussed,
11 the three criticisms of the RPM, do any of them
12 apply -- would the same concerns apply in the context
13 of a cost-based rate established by a regulator for
14 capacity?

15 A. You're talking about a regime that's
16 solely cost based. That's what I think the confusion
17 here is.

18 If the compensation were solely cost
19 based and we assumed some sort of prudence in the
20 quantity, then you would have a normal revenue
21 requirement type of profile and rates would be
22 whatever they would and then I think the concerns
23 more typically would be on the other side which would
24 be whether rates were being artificially inflated by
25 the uneconomic procurement of capacity as opposed to

1 deflated in a market context.

2 Q. Okay. Well, I didn't ask you what your
3 concerns were with the cost-based rate or a regulated
4 rate. What I was asking you is whether any of the
5 three concerns that you've articulated about the RPM
6 pricing structure would apply to a cost-based rate
7 established by a regulator.

8 A. It's something of a non sequitur. If you
9 have a cost-based rate and those types of behaviors
10 occurred, the first one is I wouldn't -- I don't know
11 how to express in terms of a cost-based rate the
12 2-1/2 percent. I'm not sure why that would be an
13 issue.

14 Q. It would be not applicable, correct?

15 A. It wouldn't be applicable. That's -- and
16 so the second probably wouldn't, and the third would
17 probably be manifested as excessive rates rather than
18 a decrease in rates.

19 Q. Thank you.

20 Now, is it accurate in your opinion to
21 refer to the RPM pricing structure as a hybrid
22 structure that contains components of both market and
23 regulation?

24 A. There are elements of both, but I think
25 it is a market-like mechanism that is subject to

1 regulation and there are regulatory provisions or
2 rules that apply to its function. I think that's a
3 good description.

4 Q. My question or your answer?

5 A. My answer. The notion of hybrid in terms
6 of are there regulatory elements, this is a highly
7 regulated market, as I mentioned, there's a
8 determination of a highly concentrated market so
9 there are a lot of rules, but the intent of the rules
10 is to attempt to make it work as a market mechanism.

11 So if you consider the presence of those
12 rules a hybrid, I guess it's a hybrid. I would just
13 say the rules that go along with the market
14 mechanism.

15 Q. And is the RPM market and the PJM market,
16 are they really competitive markets?

17 A. You said "and the PJM," you're just
18 talking about RPM now? I'm sorry. You said "the RPM
19 market and the PJM market," which are we -- I don't
20 know what you mean by the second.

21 Q. Let's go with the RPM market. Is the RPM
22 market really a competitive market?

23 A. I believe so. I think that it is a
24 concentrated market using a market mechanism for
25 clearing and the mitigation procedures are such that

1 I believe you have a competitive result.

2 Q. Okay. It's not a purely market-based
3 mechanism, would you agree with that?

4 A. Well, it's subject to the type of rules
5 that we just talked about and potential mitigation.
6 And as I said, it's a market-like mechanism subject
7 to those rules, so I'm

8 Q. Would you agree it's a regulated market?

9 A. Oh, of course. Yes.

10 Q. Okay. So the regulator can step in and
11 modify or change the rules or change the results; is
12 that correct?

13 A. That's, they can certainly change the
14 rules. The auction needs to be certified, so
15 presumably once certified, I don't know that the
16 rates could be changed. I think part of the
17 determination is there was no manipulation, it was
18 done in accordance with the rules. But they
19 certainly can process and the rules be changed, yes.

20 Q. And they can step in under the backstops
21 we talked about earlier and change the results,
22 correct?

23 A. Going forward one of the implications of
24 those types of actions would be to influence price,
25 that's correct. They wouldn't change the existing

1 results.

2 Q. Okay. Would you agree that the base
3 residual auction clearing prices in the RPM have been
4 volatile since their inception in 2007?

5 A. There's two types of volatility, I think,
6 this was also something that we discussed, and the
7 distinction I would make is some of it is inherent in
8 the design, which is the change of price that I would
9 expect as a nature of the design and wouldn't
10 consider volatility in the same way that most people
11 would consider volatility, that has to do with things
12 like changes in the transmission system and the
13 resulting transfer capability.

14 Those are known and planned for and it's
15 intended that that would impact prices. There's
16 things like the general economy. Certainly the
17 recession, a change in demand has impacted prices
18 materially and I think that falls under the category
19 of which most people would consider volatile.

20 Q. Including yourself?

21 A. Yes.

22 Q. Would you agree that a cost-based price
23 would be more stable and less volatile than an
24 RPM-based price?

25 A. Under typical netted cost type revenue

1 requirement ratemaking I would expect that there
2 would be less volatility of probably both types.

3 Q. By the way, you mentioned earlier the
4 reference unit being a peaking unit for the RPM
5 structure. Is that --

6 A. Yes.

7 Q. -- correct?

8 Okay. And what did you mean by that?

9 A. There is a demand curve that is anchored,
10 if you will, one point is established at the cost of
11 the -- the net cost of a new peaking unit, it's
12 adjusted by location and zone, and so that means it's
13 the -- right now it is the nominal levelized cost to
14 construct a peaking unit net of the EE margins that
15 are referred to in the energy and ancillary services
16 market.

17 Q. Well, is it accurate to say the RPM is
18 designed to attract baseload generation capacity or
19 peaking capacity only?

20 A. If implemented properly, the incentives
21 would be neutral between peaking and cycling. The
22 amount of the, what I refer to as missing money in an
23 equilibrium structure for a capacity market is
24 identical for all three. So the structural bias
25 within the design shouldn't be there, it should be

1 neutral.

2 Q. But as it is implemented and has been
3 implemented, would you agree that the bias is to a
4 less capital intensive alternative like peaking
5 units?

6 A. Yes.

7 Q. Can a firm collecting only marginal costs
8 over the life of the investment yield a sufficient
9 return to induce a large capital investment that may
10 involve billions of dollars?

11 A. If the market's designed properly, yes.

12 Q. But as it's been designed and implemented
13 to date in that context, what's --

14 A. In this context, the current
15 implementation, I would expect that there would be a
16 bias, as I said, toward less capital intensive units.
17 I think that's the complement of the first statement
18 that you asked me.

19 Q. Would a cost-based capacity charge always
20 be higher than the RPM auction clearing price?

21 A. For which type of unit?

22 Q. For the base residual auction clearing
23 price and in general. If you can't say in general,
24 then you can specify.

25 A. Well, if we looked at the -- let's keep

1 it to the reference unit because I think that's
2 notionally separate because we have to get into
3 energy credits for other units which are important
4 elements that seems to have been missed a lot in this
5 debate, but just for the reference unit I would
6 expect that the clearing price would at times exceed
7 the cost-based rate and at times be below.

8 Q. And with respect to AEP Ohio's proposed
9 capacity, cost-based capacity charge, setting the
10 stipulation aside for a moment, would that proposed
11 charge always be higher than the RPM auction clearing
12 price?

13 A. We're now talking about the \$355.

14 Q. Correct.

15 A. Not necessarily.

16 Q. Okay. Now I'm going to move into your
17 testimony. Do you need a break, sir?

18 A. No, but I do probably at about 20 after 5
19 simply to make a phone call.

20 Q. Okay.

21 A. But I'm happy to proceed.

22 Q. Okay. We'll keep going.

23 In your testimony on page 8, excuse me,
24 7, and I'm looking at footnote 4, and you might also
25 reference footnote 7 on page 11 where I think you

1 make a similar comment. My question is, would you
2 agree that the actual dollar per megawatt-day charge
3 that CRES providers see on their bills includes
4 additional components above and beyond the auction
5 clearing price such as the scalers?

6 A. I think it would help if you said the
7 resource clearing price, and the answer is yes. I'm
8 answering it as if you asked the resource clearing
9 price, I think that's what you clarified before.

10 Q. Okay.

11 A. Yes.

12 Q. The scaling factor you referred to in
13 footnote 7.

14 A. Right.

15 Q. Okay. Have you reviewed those -- that
16 aspect of AEP witness Kelly Pearce and his Exhibit
17 KDP-5?

18 A. Yes.

19 Q. Okay. So those scaling factors he
20 mentions there, you don't disagree with those factors
21 that are listed for the years, planning years
22 referenced?

23 A. The adjustments to establish the final
24 zonal price, no, I agree.

25 Q. Okay. Would you agree that in the

1 context of a regulatory tariff that the phrase "cost
2 based" would normally refer to embedded costs?

3 A. No. Not necessarily.

4 Q. What kind of costs do you believe would
5 apply in the context of a regulatory tariff?

6 A. I think it's situational on the tariff.
7 For example, ISO New England has cost-based
8 reimbursement for units that are required for
9 reliability, and there's extensive regulatory
10 proceedings about that as to whether or not those
11 should be embedded costs based on the sort of logic
12 you're representing or whether they should be
13 associated with the bids that were offered for units
14 that were rejected for reliability, and the FERC
15 determined that the appropriate interpretation of
16 costs for that was the to-go costs. Something
17 similar to the avoided cost rates that we see in PJM.
18 So I think it's situational.

19 Q. And what was the exact language that you
20 used in that tariff?

21 A. I think those were -- well, the dispute,
22 if I understand, if I remember, I haven't thought
23 about it in a while, was whether or not a unit that
24 was delisted, whose delist bid was rejected and was
25 required to offer capacity would be compensated at

1 its costs. And then if so, what those costs were.
2 And I believe the Commission determination was to
3 interpret the costs appropriate in that situation as
4 the to-go costs.

5 I think there's a similar kind of
6 interpretation issue that's come up with respect to
7 the capacity in California as well.

8 Q. But do you recall the exact tariff
9 language or the pertinent phrase in the tariff?

10 A. In the ISO New England tariff?

11 Q. Yeah.

12 A. No.

13 Q. Okay. Turn to page 15 in your testimony.
14 In line 16, 15 to 16. You're making a statement
15 here --

16 A. I'm sorry. Page 15?

17 Q. Page 15, lines 15 and 16, are you there?

18 A. Yes.

19 Q. You say "Such market-based pricing would
20 also apply universally after June, 2015." Do you see
21 that?

22 A. Yes.

23 Q. And "such market-based pricing" is a
24 shorthand or longhand maybe for RPM pricing, correct?
25 In that context.

1 A. I'm just reading the whole sentence, but
2 I believe that's correct. The whole paragraph.

3 Yes.

4 Q. Okay. Now I want to clarify what you
5 mean by the term "universally." Can you first
6 take --

7 A. Yeah, and that's, I think there's an
8 editing issue here but the intent here is that
9 starting June '15 -- June 2015, the market rates for
10 capacity would be established through RPM.

11 Q. For AEP Ohio?

12 A. For AEP Ohio and for the CRES.

13 Q. Relative to the units that would at that
14 time presumably be formerly owned by AEP Ohio?

15 A. Well, remember PJM is procuring
16 essentially capacity from everybody including AEP
17 Ohio on behalf of the load, and so there would be a
18 capacity price established that would be the RPM
19 price that would be paid by --

20 Q. Right.

21 A. -- all those in the AEP Ohio distribution
22 function.

23 Q. Okay. But I'm trying to clarify your
24 statement. For example, are you saying that in
25 mid-2015 RPM pricing will apply to all generation

1 resources in RPM, excuse me, in PJM?

2 A. To AEP Ohio resources and the rest of
3 PJM, the remainder of the AEP entity that is the FRR
4 entity presumably would not be under RPM pricing.

5 Q. And you're not speaking to other PJM
6 market participants that may elect, for example, next
7 spring to opt into FRR status either, correct?

8 A. No. Presumably, if -- anybody who isn't
9 in our FRR would be under that pricing, that's
10 correct.

11 Q. Okay. That whole answer is really in the
12 context of if the stipulation is adopted, correct?

13 A. I believe so, yes.

14 Q. Okay. On page 16 you make a statement in
15 lines 8 and 9 that the FERC and PUCO already
16 determined appropriate capacity charges are the RPM.
17 Do you see that?

18 A. Yes.

19 Q. And I believe we already discussed the
20 December 8th, 2010, entry earlier, but let me focus
21 on the FERC part of this statement here now. Is it
22 your understanding that the FERC has, to this point
23 in time, in setting aside the pending rehearing in
24 the 205 case and the pending decision in the 206
25 case, that the FERC has merely determined that a

1 state compensation mechanism has been purported to
2 exist?

3 A. If I can restate it, I think I agree with
4 you, which is the FERC determination was that it
5 didn't need to make a finding with respect to a
6 cost-based rate because there was a state-determined
7 compensation mechanism, and I think that's -- if
8 that's what you're saying, I'm agreeing with you.
9 You phrased it in a way that seemed a little awkward
10 to me.

11 Q. Okay. Well, did the FERC really
12 determine that RPM is appropriate or did they
13 acknowledge that there's a purported state
14 compensation mechanism that exists?

15 EXAMINER SEE: Mr. Nourse, the Bench is
16 going to need you to speak up or use a mic.

17 MR. NOURSE: Okay.

18 A. I think they did both in acknowledging
19 the state determined -- that there was a
20 state-determined compensation mechanism that was
21 based on RPM.

22 Q. But the FERC, you're not suggesting, are
23 you, that the FERC has constrained the PUCO in
24 establishing their purported state compensation
25 mechanism to RPM price, are you?

1 A. No. I think we discussed that before.
2 That is some -- and I also mentioned other
3 alternatives I think that would approximate an
4 efficient transfer of price all of which would be
5 appropriate. I tried to explain earlier a range of
6 decisions that probably would fall within things that
7 FERC would deem acceptable and a range that would
8 not.

9 Q. Well, I know what you said earlier and
10 I'm asking about this sentence. So what you said
11 earlier applies to this sentence and we shouldn't
12 interpret otherwise; is that true?

13 A. Yes.

14 Q. Okay. Let me ask you to turn to page 17,
15 and in the bottom half of the page you're talking
16 about behavior by AEP Ohio that you're considering
17 anticompetitive in the question and answer. Do you
18 see that?

19 A. Yes.

20 Q. And what is it exactly that you're
21 referring to, as far as the behavior, proposing a
22 cost-based rate?

23 A. I think the time -- if you go through the
24 entire answer, I think it's really the series of
25 conduct and the sequence of conduct. If there was a

1 cost-based rate proposed to begin in '15-'16, I think
2 that would be appropriate. I might not like it per
3 se but I don't see any problem with it.

4 I think the first part of this discussion
5 defines what is generally construed as market power
6 and it's the ability to sort of move prices and that
7 when you create a situation where other suppliers,
8 where the CRES suppliers, are effectively locked in
9 to only having access to capacity from AEP and then
10 subsequent to that lock-in unilaterally attempt to
11 change the prices, that, to me, smacks of
12 anticompetitive behavior.

13 Q. Under any of the three options we
14 discussed earlier under the RAA is AEP permitted to
15 unilaterally change the cost, or excuse me, the
16 charge that applies to capacity?

17 A. I think we said that the third was in
18 dispute.

19 Q. The third option being the 205 action?

20 A. Yes.

21 Q. And by filing a 205 action is that
22 unilaterally changing the price or does FERC have to
23 approve the proposed charge in that context?

24 A. Well, FERC would have to approve the
25 proposed charge.

1 Q. So what example are you talking about
2 that AEP Ohio would unilaterally change the capacity
3 charge?

4 A. I think in the context you're asking is
5 it's the effort to interpret the tariff in a fashion
6 that that right existed in the presence of a state
7 compensation mechanism, but I think I agree that
8 ultimately FERC would have to agree with the
9 position.

10 Q. But are you suggesting that a filing of a
11 205 action before the FERC is anticompetitive
12 behavior by AEP Ohio?

13 A. In and of itself, no. I think that's a
14 fair distinction is that ultimately the behavior
15 would have to be sanctioned by FERC as just and
16 reasonable.

17 Q. And if it was accepted by the FERC, as it
18 still may be, would you consider that anticompetitive
19 behavior by FERC?

20 A. I would consider the result to be
21 anticompetitive in terms of what I think the
22 objective is with respect to fostering retail
23 competition in Ohio. I don't think that anybody
24 would challenge the right of FERC to establish that
25 kind of rate.

1 Q. And are you challenging AEP Ohio's
2 ability to file a request for approval of a
3 cost-based charge either at the FERC or PUCO?

4 A. The ability to file under this tariff in
5 the presence of a state compensation mechanism may be
6 limited, yes.

7 Q. Was the state compensation mechanism
8 that's purported to exist in Ohio in effect at the
9 time AEP Ohio made its section 205 filing at the
10 FERC?

11 A. At the time of the -- prior -- the entry
12 came after the filing. So I agree, yes. It was not
13 in effect.

14 Q. So your statements about in the presence
15 of a state compensation mechanism have no application
16 in the current facts, do they?

17 A. With respect to the formal compensation
18 mechanism approved by the state of Ohio, I think I
19 would agree with that, yes.

20 Q. Okay. Now, I'd like you to look at pages
21 19 and 20 of your testimony next. Let me try to
22 accelerate this question here, but is it fair to
23 summarize this section of your testimony as saying
24 that you believe the stipulation solves long-run
25 issues in a satisfactory manner but does not

1 satisfactorily resolve short-term issues?

2 A. With respect to the capacity transfer
3 price, yes. Yes.

4 Q. Do you have any view of whether the
5 resolution of the long-term issues is more important
6 or less important than resolving the short-term
7 issues?

8 A. I don't know quite how to answer that. I
9 sort of see this as right and wrong and so to the
10 extent part of it is wrong, it's wrong, and to the
11 extent part of it is right, it's right, and I'm not
12 sure about relative importance. I'd like to see both
13 things right.

14 Q. And if the FERC and/or the PUCO disagree
15 with your position, does that make it wrong or right?

16 A. Not to be flippant, it's not going to
17 change my opinion, but it obviously will govern what
18 takes place.

19 Q. Would you acknowledge that there's
20 uncertainty about the outcome in either forum of
21 those issues?

22 A. Yeah, I --

23 MR. ALEXANDER: Objection. The outcome
24 of what?

25 MR. NOURSE: I think he understood the

1 question, he was answering it.

2 EXAMINER TAUBER: Please answer.

3 A. That if you're talking about the
4 resolution of the FERC case or the FERC cases and --
5 the one that's unclear to me is when you say the Ohio
6 Commission, there's multiple dockets, but if you're
7 talking specifically the stipulation is the outcome
8 uncertain, I would say yes.

9 Q. Okay. On page 20 of your testimony in
10 lines 10 through 12 you make a statement, I'll
11 paraphrase, that the stipulation's two-tiered
12 capacity discount proposal results in any shopping
13 customer above the "caps" paying more than they
14 should for capacity. Do you see that?

15 A. Yes.

16 Q. First of all, are you suggesting that
17 CRES suppliers would pass along a hundred percent of
18 any reduction in the capacity charge -- the proposed
19 capacity charge versus your proposal? And by "pass
20 along" I mean to retail customers.

21 A. Which price are we talking about now?
22 You said --

23 Q. Let me rephrase.

24 If the stipulation's capacity charge,
25 let's take the \$255 per megawatt-day charge, and if

1 that is reduced to \$225 for CRES providers, are you
2 saying that CRES providers would pass along the
3 additional \$25 in savings 100 percent to retail
4 rates?

5 A. If we assume that somebody would take the
6 offer at 225 and that it wasn't better than the ESP
7 price, I think Mr. Schnitzer talks about that
8 comparison. But if that were the case, then my
9 expectation would be in a reasonable competitive
10 environment that it would be passed through, yes.

11 Q. That a hundred percent would be passed
12 through?

13 A. Yes. Or close to a hundred percent.

14 Q. Is it your belief that retail competitive
15 offers would or would not be made at the \$255 per
16 megawatt-day level?

17 A. I don't think I know empirically. The
18 only analysis I've seen suggests that that price with
19 that cost in it would exceed the ESP price.

20 Q. So you have no opinion on whether the
21 \$255 charge would cap retail competition?

22 A. Well, it certainly would reduce it and
23 have undesirable effects, that's what I'm talking
24 about here.

25 Q. All else --

1 A. Eliminated entirely, no.

2 Q. All else being equal, it would reduce it,
3 is that your testimony?

4 A. Oh, absolutely, yes.

5 Q. Okay. I think I'm going to finish by 20
6 after.

7 A. That's fine.

8 Q. I'll try to keep an eye on the clock.

9 A. I appreciate that.

10 Q. Okay.

11 A. And I can stay longer, I just simply need
12 that break.

13 Q. That's fine.

14 Okay. Page 27, so you have a number on
15 line 17 of 19 billion. Do you see that?

16 A. Right.

17 Q. And that relates to a calculation you
18 made for eight years?

19 A. Yes.

20 Q. And that's applicable to the first eight
21 years of the RPM auctions that have been in
22 existence?

23 A. Yes.

24 Q. Is that correct?

25 A. Yes. And for AEP as a whole using

1 Mr. Horton's data.

2 Q. So what was the first year of that, would
3 have been of that calculation?

4 A. '7-'8.

5 Q. 2007?

6 A. Yes.

7 Q. So do you agree that the stipulation's
8 proposal to get to RPM, full RPM pricing by the
9 middle of 2015 is achieving that result faster than a
10 market rate offer?

11 A. Are you referring to the mechanical
12 phase-in of the market rate offer?

13 Q. If you're familiar with that, yes.

14 A. In general I am but I don't think -- I
15 have not done that analysis.

16 Q. Do you know under the market rate offer
17 option the minimum period for the price blending that
18 you referred to?

19 A. I thought it was four or five years but I
20 do not remember. That was not part of the analysis I
21 conducted for this.

22 Q. Subject to check would you agree that
23 it's six years?

24 A. Subject to check. I do not know, that
25 was not part of the analysis I did.

1 MR. NOURSE: All right. Thank you, your
2 Honor. That's all I have.

3 EXAMINER TAUBER: Thank you.
4 Mr. Alexander.

5 MR. ALEXANDER: I'm sorry, I didn't
6 realize if anybody else had any questions.

7 MR. KURTZ: I have some brief cross, your
8 Honor.

9 MR. ALEXANDER: Your Honor, can we take a
10 ten-minute break so the witness can discuss travel
11 arrangements?

12 EXAMINER TAUBER: Yes. The witness
13 indicated that so we'll take a recess and reconvene
14 at 5:30.

15 (Recess taken.)

16 EXAMINER TAUBER: Let's go back on the
17 record.

18 Mr. Kurtz, you indicated you had
19 cross-examination?

20 MR. KURTZ: Very brief, I think, thank
21 you, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Kurtz:

25 Q. Good evening, Dr. Shanker. I don't want

1 to belabor the history, but right on the capacity
2 pricing issue we've got the AEP FERC section 205
3 complaint on rehearing; is that correct?

4 A. Correct.

5 Q. And we've got the AEP FERC section 206
6 complaint case pending.

7 A. Pending, correct.

8 Q. And we have the interim state
9 compensation mechanism, the 2929 case, incorporated
10 in this case; is that correct?

11 A. Whatever the latter incorporation is, but
12 you probably understand that better than I do.

13 Q. I think it's fair to say that you cannot
14 predict the outcome of any of those proceedings.

15 A. No, I can't.

16 Q. And it's probably fair to say that this
17 Commission cannot predict the outcome of the FERC
18 actions; is that correct?

19 A. Yes, I agree.

20 Q. And the FERC cannot predict the outcome
21 of the state compensation mechanism case here at this
22 Commission.

23 A. Correct.

24 Q. Okay. I ask you that because on page 24
25 of your testimony I think you kind of get to the

1 heart of what's going on here when you talk about the
2 perspective that you view the stipulation under. Let
3 me just paraphrase.

4 You say that AEP witness Mr. Allen says
5 that since we were entitled to \$355 a megawatt-day,
6 the stipulation is worth -- and we agreed to an RPM
7 set-aside and we agreed to 255 for the second tier,
8 the value is 856 million to consumers. That's his
9 perspective; is that correct?

10 A. Actually, I don't think that calculation
11 incorporates the 255. I think that's only the
12 set-asides at the RPM rate. But yes, I agree in
13 general with what you said.

14 Q. His perspective is they're entitled to
15 \$355 a megawatt-day, they settled for less and
16 therefore consumers got a benefit of 856 million,
17 that's his perspective.

18 A. Yes. And that's what I'm disagreeing
19 with, correct.

20 Q. Okay. Your perspective is consumers
21 should have got 100 percent RPM and, therefore, the
22 stipulation is a \$2.2 billion harm to consumers.

23 A. Right. That's what consumers have and
24 had. And moving up from that is, it's the
25 glass-half-full or half-empty kind of phenomenon, but

1 yes.

2 Q. And none of us can predict the outcome of
3 the two FERC litigations or the state litigation that
4 will ultimately decide the capacity compensation
5 price, correct?

6 A. Well, prospectively, yes. But we do know
7 where we are now and where we have been. I think
8 that's probably part of what paints my perspective of
9 this, plus understanding what I believe to be the
10 right rate is.

11 Q. You believe RPM is correct.

12 A. Yes.

13 Q. And you don't dispute that AEP thinks
14 cost-based compensation is correct. You don't
15 dispute their sincerity in that belief.

16 A. Well, certainly I believe they asked for
17 it and I also understand that they've agreed long
18 term to move to what I think is the right pricing.
19 So, you know, I guess the question is really for them
20 to say did they do something wrong in agreeing to the
21 stipulation. I think they got to the right price.

22 Q. Well, isn't it also a way to look at
23 this, as with any complex litigation, I think you
24 mentioned this very early in your testimony, page 4,
25 that settlements are a compromise process?

1 Isn't this essentially just a settlement
2 that people, reasonable people can disagree about but
3 they're looking at the various litigation outcomes
4 and agreeing to a compromise that they think is a
5 reasonable compromise for their interests on this
6 particular issue of capacity pricing?

7 A. I think I -- the answer is yes, it is a
8 compromise, and what I tried to make clear is now
9 we're talking about over 30 years of experience.

10 If there's just a pile of money sitting
11 around and there is a settlement and we argue about
12 who gets it, and the money is there and it's sitting
13 on the table and we just push it around, there may be
14 equities involved but there's seldom right and wrong
15 involved.

16 Here, when we're dealing with market
17 design principles that, and market advantages that
18 persist through the transition out into the
19 competitive range in the long run, I think there's a
20 right and wrong and my experience tells me that one
21 should be very cautious and avoid those, and those
22 kind of compromises almost always lead to a mess in
23 the end.

24 Q. Well, you went through with Mr. Nourse
25 that under the PJM tariff you could have three

1 different outcomes, a state compensation mechanism,
2 an RPM default, or a FERC-determined rate that is
3 cost based or just and reasonable in the absence of a
4 state compensation mechanism. Did I understand that
5 right?

6 A. The tariff provided for those things.

7 Q. So the tariff provides for something
8 other than what you believe, firmly believe is the
9 right answer, the black and white, the RPM. The
10 tariff allows for something different.

11 A. Well, the tariff language says that those
12 are the options. I'm not sure when they actually
13 would be implemented. If you really worked it
14 through and if something came up that was
15 significantly at odds with the RPM pricing, and I
16 acknowledge other types of marginal or market-based
17 pricing would be appropriate, I think you might
18 indeed find that all three of those trails would lead
19 back to a determination by FERC that it ought to look
20 similar to the RPM.

21 Q. Now, if the Ohio Commission views this
22 issue as right or wrong, RPM or nothing, they will
23 then presumably turn down the stipulation; don't you
24 think?

25 A. I'm not sure. You know, I don't think

1 it's appropriate for me to get into the shoes of the
2 Ohio Commission.

3 Q. Well, what should the Commission consider
4 here in determining whether this compromised
5 stipulation, given all the litigation risk, is
6 reasonable? What should they consider?

7 A. Well, my understanding of the statutory
8 guidance is to foster a competitive environment. And
9 I think the long-range -- long-run solution here does
10 that. I think the short-run solution yields a
11 material advantage in terms of the way the pricing is
12 against market to AEP, and so I think it's
13 inappropriate.

14 And so if the issue is to create a level
15 playing field, I think this is a lot of what
16 Mr. Lesser and Mr. Schnitzer talk about, if it's to
17 create a level playing field, then what I'd like to
18 see the solution be, simply that you put in place the
19 long-term solution and that you go to the RPM-type
20 pricing for capacity transfer immediately, or
21 actually not go to, you maintain the status quo
22 because that is the status quo.

23 Q. Do you think the Commission should
24 consider certainty and stability when deciding this
25 stipulation?

1 A. With respect to what? I'm sorry.

2 Q. With respect to settling contentious --
3 having a plan, having a set plan like Mr. Dominguez
4 said where you have a set plan where there is an end
5 game, full deregulation, full divestiture,
6 100 percent RPM pricing under a pathway versus the
7 uncertainty of turning it down and the existing ESP
8 is maintained.

9 MR. ALEXANDER: I'm sorry. Could you
10 read that back, please?

11 EXAMINER TAUBER: Yes.

12 (Record read.)

13 MR. ALEXANDER: I want to object to the
14 form. I didn't hear a question there.

15 EXAMINER SEE: She read the question
16 back. She didn't read the previous question.

17 (Record read.)

18 EXAMINER SEE: With that the witness can
19 respond to the question.

20 A. Again, not to put myself in the shoes of
21 the Commission, but -- because I don't know the
22 extent of their authority, but I think the right
23 solution is what I've recommended which is that
24 you've got the right end point identified and there
25 is an issue over the transition as to what the

1 appropriate pricing is and I'd like to see it at the
2 status quo.

3 If that's infeasible, then maybe there's
4 a problem, but as far as I know that's a potential
5 outcome and that's what I would recommend to the
6 Commission.

7 Q. (By Mr. Kurtz) Let me change topics just
8 briefly. You indicated that the FRR entity here is
9 AEP East, not simply AEP Ohio. Is that correct?

10 A. Yeah. With respect to PJM, my
11 understanding is the FRR entity is AEP East, what is
12 called AEP East. It's the five companies.

13 Q. Do you know the operating companies that
14 comprise AEP East?

15 A. Michigan and Indiana, Columbus Southern,
16 Ohio, Appalachian. And what am I missing? Kentucky.

17 Q. Kentucky Power.

18 A. Kentucky, whatever, yes.

19 Q. So those five operating companies
20 operating in seven states, Indiana, and Michigan,
21 Ohio, Virginia, and West Virginia.

22 A. West Virginia, right.

23 Q. Kentucky. That's it.

24 A. I think that's it.

25 Q. Okay.

1 A. If you got Indiana and Michigan, you're
2 fine.

3 Q. So six states, five operating companies.

4 A. Yes.

5 Q. Do you think the Commission -- let me --
6 do you understand that those five operating companies
7 operate under a FERC-approved interconnection
8 agreement or pooling agreement?

9 A. Yes.

10 Q. Let me just ask you very briefly, on page
11 29 of your testimony, beginning on line 13 you talk
12 about "AEP Ohio is net long against its own capacity
13 requirements, the remainder of AEP is short." Are
14 you talking about the other AEP operating companies?

15 A. Yeah, collectively. The other three
16 companies collectively.

17 Q. Well, then you go on to say, you're
18 talking about the pool dissolution provision here.

19 A. Right.

20 Q. Okay. Just to summarize, that's a
21 provision in the stipulation where if -- when
22 AEP Ohio divests and moves the generation out of the
23 utilities to an unregulated affiliate presumably,
24 they have to go to FERC and seek permission to change
25 their five-company, six-state pooling agreement. Is

1 that what we're talking about here?

2 A. Well, the costs associated with that,
3 yes.

4 Q. And under the stipulation if the costs
5 are less than 50 million, AEP Ohio is not even
6 allowed to ask the Commission for approval. Is that
7 your understanding?

8 A. Yes.

9 Q. And if the costs are more than
10 50 million, AEP Ohio is allowed to ask this
11 Commission for recovery but there's no requirement
12 the Commission grant approval. Is that your
13 understanding?

14 A. Yes.

15 Q. Okay. Now, on line 20 you say "Depending
16 on how these and other terms are settled, there may
17 be either a positive or adverse impact on AEP Ohio,
18 the new nonregulated generation entity, AEP Ohio's
19 distribution customers, other AEP FRR entities, and
20 other PJM members as a whole."

21 You're referring to depending on how the
22 pool dissolution case turns out at FERC?

23 A. Well, the dissolution and to the extent
24 there is a termination or modification charge that
25 would be approved.

1 Q. Okay. Let me ask you, you say depending
2 on how that comes out, and none of us knows how that
3 will come out, do we?

4 A. We can talk about alternatives as to how
5 it would come out, and I think actually in
6 Mr. Schnitzer's testimony he puts a metric on it.
7 There's a very large amount of money that's being
8 transferred into AEP Ohio, on the order of 4 or 5
9 hundred million dollars under the pool agreement in
10 terms of credits for capacity sales, and the issue of
11 how that gets handled when we have an AEP Ohio Genco
12 and we have FRR requirements for the remainder of
13 AEP, it can result in a significant reshuffling of
14 those moneys.

15 Q. Let's be careful. Are you familiar with
16 the AEP interconnection agreement?

17 A. Generally, yes.

18 Q. Okay. Well, let me ask you this: You
19 say there might either be a positive or adverse
20 impact. How could there be a positive impact on
21 AEP Ohio?

22 A. It depends on the circumstances. Well,
23 the agreement goes away. So under the, what is it,
24 MLR shares the --

25 Q. The member load ratio shares, right.

1 A. -- payments are made at, this is
2 approximating Mr. Schnitzer's workpapers, but
3 basically, you know, I think it was 460 or something
4 dollars a megawatt-day from those that are short to
5 those that are long.

6 Q. There's two surplus --

7 A. Right.

8 Q. There's two surplus companies that wanted
9 to get capacity equalization payments from the
10 capacity deficit companies at the surplus company's
11 average embedded cost of generation, right?

12 A. Right.

13 Q. Okay.

14 A. And those would presumably be replaced
15 with bilateral agreements.

16 Q. Presumably.

17 A. Well, they don't have to be. And
18 that's -- that's -- the point is, that's what I'm
19 trying to get to is if you don't know that, you don't
20 know what the final transfers are, and we're talking
21 about hundreds of millions of dollars a year that
22 swing under that, and depending on how you
23 restructure those transfers, you could see somebody
24 coming up and asking for reimbursement for that
25 amount here at the Commission.

1 Q. Oh, it could be -- it will be a real
2 Donnybrook at FERC when all the states and all the
3 state submissions and all the state consumer
4 advocates and all the industrial groups and all the
5 environmental groups all converging on FERC seeking
6 their issues on that pool termination, that's the way
7 that will work. They had this case in 2001 that got
8 withdrawn. Were you aware of that?

9 A. Yeah. But you left out they'll all be
10 here too, depending on how those contracts are set
11 up.

12 Q. Let me go back to my question.
13 Mr. Schnitzer, he quantified a \$525 million harm to
14 AEP Ohio based on his assumption of how this
15 multistate case that hasn't even been filed will turn
16 out. That's what he quantified, right? You referred
17 to that.

18 A. That's the ballpark of the difference
19 between the embedded cost payments and the market
20 payments, and I think the perspective that generated
21 that was if people in Ohio are paying, let's say a
22 hundred dollars a megawatt-day or 90 or so, which was
23 the average, and people in Kentucky are paying 460,
24 there is very likely to be some discontent.

25 Q. We understand you get something for your

1 capacity equalization payments. You get something
2 to -- you understand that, right?

3 A. You get access to the capacity and a
4 portion of the energy share, but when you dissolve
5 the pool it's not clear that you'll continue to get
6 that, and if you do continue to get it, it's not
7 clear at what price.

8 And if that price is different than the
9 current price, there's going to be a pot of money for
10 AEP Ohio that is not going to be recovered in the way
11 that it's being recovered now.

12 And you don't know and I don't know what
13 those arrangements are, and I think what
14 Mr. Schnitzer is saying is that the amount of money
15 being left on the table to be determined as to how it
16 is going to be transferred from the way it is
17 currently is approximately 500 and some million
18 dollars, and in my mind I refer to this as the pig in
19 the poke.

20 You don't understand right now, and the
21 company, in its answers to interrogatories, has made
22 it clear that they have no contemplation about how
23 they're going to resolve that.

24 Q. That's my point. Since no one knows how
25 this -- that this future case will be resolved, how

1 in the world could anybody quantify what it will
2 cost?

3 A. Well, if there is \$500 million of
4 transfers going and AEP doesn't know what's going to
5 happen to them and you don't know what's going to
6 happen to them and the Commission doesn't know what's
7 going to happen to them, I'm suggesting in this part
8 of my testimony that somebody ought to be concerned
9 about that.

10 Q. Yeah. I want to go back to my original
11 question. You said positive or adverse impact. So
12 do I take that to mean that the pool dissolution
13 could be positive to AEP Ohio? Does that mean they
14 get money?

15 A. It's possible. I see that as an unlikely
16 resolution of the transfers, but I have to say
17 intellectually could you write a contract that it
18 could turn out better for them? Yes.

19 Q. Sure.

20 A. Is it likely to happen? Not very likely.

21 Q. And it could have a positive impact on
22 AEP Ohio's distribution customers too. That's your
23 testimony, right?

24 A. That it's feasibility for that to happen,
25 yes.

1 Q. All right.

2 A. That it's likely to happen, no. That's
3 what that \$500 million is we're talking about.

4 Q. Okay. How could it be feasibly that
5 AEP Ohio or AEP Ohio ratepayers would be better off
6 by the pool dissolution?

7 A. If there was some fashion in which the
8 rest of the pool compensated them greater than they
9 do now, they would be better off. I think we both
10 understand that's very unlikely.

11 Q. You know, I enjoyed this conversation, I
12 think none of us know how that case is going to come
13 out and so we'll leave that there.

14 MR. KURTZ: Your Honors, those are all my
15 questions, thank you.

16 EXAMINER TAUBER: Thank you.

17 Other parties that wish to cross-examine?

18 (No response.)

19 EXAMINER TAUBER: Mr. Alexander, would
20 you like to redirect?

21 MR. ALEXANDER: I just have a couple
22 follow-up questions.

23 - - -

24

25

1 REDIRECT EXAMINATION

2 By Mr. Alexander:

3 Q. First of all, Dr. Shanker, you doing
4 okay, do you need a break?5 A. No, other than a sore throat, which I
6 apologize for, no.

7 Q. I'll try to be brief.

8 You've had quite a few questions today
9 regarding whether a state compensation mechanism can
10 or should be a cost-based mechanism, and you've
11 talked about that in some detail.12 What are the potential problems with
13 setting a state compensation mechanism as a
14 cost-based system?15 A. I think both I and Dr. Lesser describe
16 what's the right way to transfer assets and resources
17 among entities, and that's to have reference to the
18 market or the marginal cost or the market price, and
19 it's to create the right incentives. It's the
20 traditional make or buy type of incentive.21 And when you price something at the
22 marginal cost or the market price, regardless of how
23 the market's determined, an internal consumer faces
24 the right prices in terms of making a decision as to
25 how to deploy its assets. And if you have a

1 cost-based rate that is significantly higher than
2 market, you create an incentive for people to divert
3 resources from other reasonable applications into
4 that high cost application to displace cost rates --
5 cost-based assets and you use them inefficiently.

6 You're taking them away from an
7 application where they are useful at say \$150 in
8 order to displace something at \$350, and in doing so
9 you're disturbing the market where the 150 asset
10 was -- resided.

11 In the original testimony that I provided
12 I discussed how a likely result would be if prices
13 were very high and AEP on retail, let's say the 350
14 level, there would be an incentive for people to
15 withdraw assets from the rest of PJM where they're
16 properly -- not properly, where they are valued at,
17 say, 150 in the hypothetical, and to direct them into
18 AEP, and with the result being the prices would
19 actually rise in the rest of PJM from the distortion
20 of the resources.

21 That's what you're trying to avoid.
22 Whenever you go to a cost-based resource as opposed
23 to market, you're telling people the wrong signal in
24 terms of what to use among the alternatives they have
25 in front of them.

1 Q. You also received some questions from
2 Mr. Nourse regarding volatility, specifically the
3 volatility of RPM pricing. And you referenced two
4 types of volatility. Can you explain that in a
5 little more detail?

6 A. Sure. By intent RPM is supposed to be --
7 have variances in a sense we're calling it
8 volatility, between locational areas. As
9 transmission constraints come into existence, it was
10 designed that prices would increase in the
11 constrained area. And de facto prices would stay the
12 same or decrease in the unconstrained area.

13 And that was to send a price signal, not
14 so much to build as to retain existing generation or
15 to encourage new transmission, and I would expect
16 over time for one of those prices to rise and, two,
17 as new transmission is built and it has to be built,
18 these are mandatory build-outs for these types of
19 constraints, for the prices to then drop, and that's
20 exactly what we saw happen.

21 Part of the equalization in pricing
22 across PJM in this last auction was a decline in
23 prices in the east as new transmission came in and an
24 increase in prices in the west as the ability of
25 generation to move to the east was increased.

1 Now, part of it was other effects and
2 that's the second source of volatility, and that's
3 basic economics. We have an offset for energy and
4 ancillary services and it's based on historic price,
5 so as gas prices move, RPM prices would move in the
6 opposite direction.

7 Similarly as the general economy, we slow
8 down and the growth rate is less, the demand for
9 capacity will be lower and the prices will drop.
10 That kind of volatility is inherent, is real, it is
11 volatility in the sense that I think most people talk
12 about volatility.

13 The first one is structural in that we've
14 designed things to actually send price signals in and
15 relative scarcity with respect to locational supply
16 of capacity, and those are the two I was trying to
17 distinguish between.

18 Q. And even with that volatility have RPM
19 prices ever been as high as the \$355 a megawatt-day
20 suggested by AEP Ohio in this case?

21 A. No. No, they haven't. No, the RTO
22 prices have never come close to that.

23 Q. Mr. Nourse also had a pretty lengthy
24 discussion with you regarding three criticisms you
25 had of the RPM pricing model. Can you talk about

1 some of the positive things you think about the RPM
2 pricing model?

3 A. Well, there's two elements: First
4 there's offsetting price movements of things that are
5 wrong and then there's things that are right in
6 general.

7 The positive elements is that we're
8 getting a rational or intended-to-be rational pricing
9 of capacity based on the marginal cost of the
10 resource to go forward in the market. We define the
11 avoided cost rate which is the to-go cost, that's
12 what does a rational person need to spend to keep the
13 generation in the market and then what is their
14 anticipated earnings out of the energy market.

15 And anything they get above that
16 difference, so if it cost me a hundred dollars to
17 keep this unit functioning, it doesn't matter if it
18 costs 350 for embedded costs, but for a hundred
19 dollars I can keep it out there and I expect to earn
20 \$90 in energy revenues, then I'm irrational if I ask
21 for anything more than \$10 to keep it in the market
22 because everything above 10 bucks is profit. It's
23 offset to me. I'm better off than I would be.

24 That decision process is the fundamental
25 driver of pricing in RPM, is that you look at the

1 marginal to-go costs of a facility net of income and
2 if it makes sense in terms of the overall
3 requirements of the market, you offer it in at that
4 price, and if the market needs it then you get paid
5 for it and you're happy with that decision.

6 It's inherently the right decision
7 process that all of us do in almost everything else
8 in our lives except embedded cost-based
9 decision-making for utilities, and it's just what we
10 want to have. And that's just what RPM is about.

11 So everything, all the bells and whistles
12 and the complexity of the model, I propose the
13 structure that looked very much like RPM at around
14 2000, a little different in terms of how the
15 locational constraints worked.

16 The reason it was proposed is because
17 it's the right way to think about it. It's the same
18 as our locational pricing. You want people to offer
19 resources out into the market at their marginal cost
20 and you want them to clear only when they're at or
21 above the marginal cost.

22 Q. Next, there were several questions
23 regarding the exercise of market power. Are there
24 rules in place limiting the exercise of market power
25 in RPM auctions?

1 A. Yes. The supplier rules are pretty
2 stringent. There's a multiple-step process. The
3 first is a determination of concentration in the
4 markets by the market monitor. If they are
5 concentrated, all of the offers are subject to
6 avoided cost caps, avoided cost minus operating
7 margins, and the market monitor has to make a
8 determination that the entire process was competitive
9 in order to certify that the auction could go
10 forward.

11 On the buyer's side there are stronger
12 rules than there were. Would I like to see them
13 stronger? That answer is yes. But we do have
14 directed mitigation for new entrants in combined
15 cycle and combustion turbines related to their cost
16 of entry of a reference unit.

17 Now, I think over time we'll probably see
18 even some of the strength in them, hoping at least,
19 on the buyer's side.

20 MR. ALEXANDER: Could I just have one
21 second?

22 EXAMINER TAUBER: You may.

23 MR. ALEXANDER: No further questions at
24 this time.

25 EXAMINER TAUBER: Thank you.

1 THE WITNESS: Thank you.

2 EXAMINER TAUBER: Mr. Nurse, recross?

3 MR. NOURSE: Just a couple questions,
4 your Honor.

5 - - -

6 RECROSS-EXAMINATION

7 By Mr. Nourse:

8 Q. Dr. Shanker, the to-go cost principle
9 that you just discussed with your counsel, as I
10 understand the basic proposition there is that it's
11 irrational to do anything other than offer an
12 existing unit into the market at or above those
13 prices if you can harvest those prices; is that
14 correct?

15 A. Your net to-go costs, and that would be,
16 you know, anticipated expenses too, yes. But yes.

17 Q. And does that principal apply or
18 incentivize new capacity?

19 A. Yes, it should be totally consistent with
20 new capacity.

21 Q. So your proposition is that collecting
22 marginal cost over the life of a unit would
23 incentivize the building of capacity?

24 A. In the RPM design, yes, because we, in
25 short, we would clear against the curve if everything

1 worked right. And you would collect scarcity
2 payments in excess of your marginal costs.

3 And if you work through it,
4 the equilibrium, if you don't operate at all in
5 equilibrium, you would recover under RPM the net cost
6 of a peaker.

7 Q. Of a peaker.

8 A. Yes.

9 Q. All right.

10 A. And if you think about it, let's assume
11 it cost \$50 for a peaker to convert to a combined
12 cycle a megawatt-day, a rational owner will look at
13 that peaker and look at the rents in the energy
14 market and when they see sufficient rents in the
15 energy market, say \$51 a megawatt-day, they'll
16 convert it to a combined cycle plant. And then
17 they'll still be short the cost of the peaker.

18 And so if you pay them the cost of the
19 peaker, the energy conversion margins take care of
20 the incentives to move from a peaker to a combined
21 cycle to a baseload unit. And that's exactly the
22 basis upon which the model is built.

23 Q. But, again, my question wasn't directed
24 at an existing unit whether it should run or not, my
25 question was directed at the incentive for building

1 new capacity other than a peaker.

2 A. What I described is applicable to both
3 and it's the underlying theory as to -- it's the
4 underlying theory as to why we price the reference
5 unit at the net cost of a peaking unit. It's sort of
6 the purest -- it's, we talk about it as the cost of
7 pure capacity and all the inframarginal energy events
8 of any sort of conversion over time will pay for the
9 conversion of that peaker into the more capital
10 intensive form you need.

11 Now, if you anticipate those rents in
12 advance, you build the other type of unit.

13 Q. And so your theory is that one would
14 build a peaker converted into a combined cycle and
15 then convert it into a baseload, is that what you
16 said?

17 A. No. That's how you conclude that the
18 incentives over time are right so that if you
19 anticipate those kinds of rents in the market, you'll
20 make the investment in advance --

21 Q. Isn't that --

22 A. -- with the conversion.

23 And actually with a peaker and a combined
24 cycle you could actually do it, but obviously you
25 wouldn't do it for an IGCC or something like that.

1 Q. And that would be based one a three-year
2 decision investment -- investment decision time
3 frame?

4 A. It would be based on a long-term decision
5 time frame with a market mechanism that worked on the
6 three-year advance.

7 Q. Okay. And with regard to the market
8 power question your counsel asked you, and you
9 mentioned some rules that are in place and the market
10 monitor unit function as it relates to those rules,
11 correct?

12 A. Yes.

13 Q. Has the market monitor alleged that AEP
14 has violated any market power rules?

15 A. Not that I'm aware of.

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

18 EXAMINER TAUBER: Thank you.

19 Mr. Kurtz?

20 MR. KURTZ: No questions, your Honor.

21 EXAMINER TAUBER: Any other parties with
22 recross questions at this time?

23 (No response.)

24 EXAMINER TAUBER: Thank you, Mr. Shanker,
25 you may be excused.

1 THE WITNESS: Thank you.

2 EXAMINER TAUBER: Mr. Alexander.

3 MR. ALEXANDER: Your Honor, at this time
4 we would move to have FES Exhibit No. 14 admitted
5 into the record.

6 EXAMINER TAUBER: Are there any
7 objections to FES Exhibit No. 14, which was the
8 direct testimony of Mr. Shanker?

9 (No response.)

10 EXAMINER TAUBER: Hearing none, FES
11 Exhibit 14 shall be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER TAUBER: Let's go off the
14 record.

15 (Discussion off the record.)

16 EXAMINER SEE: Let's go back on the
17 record. We'll reconvene tomorrow at 9.

18 (Thereupon, the hearing was adjourned at
19 6:15 p.m.)

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Summary: Transcript Transcript of Columbus Southern Power Company and Ohio Power Company hearing held on 10/12/11 - Vol VI electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.