BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals.	Case No. 10-2376-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan.	Case No. 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM
In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders.	Case No. 10-343-EL-ATA
In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders.	Case No. 10-344-EL-ATA
In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	Case No. 10-2929-EL-UNC

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

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

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PROCEEDINGS

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

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VOLUME VII

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On behalf of EnerNOC.

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On behalf of the Cable Telecommunications Association.

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Thursday Morning Session,
October 13, 2011.

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EXAMINER TAUBER: Let's go on the record. We'll just start with brief appearances again this morning starting with the company.

MR. SATTERWHITE: Thank you, your Honor. On behalf of Columbus Southern Power and Ohio Power Company, Matthew Satterwhite, Steve Nourse, Dan Conway.

MR. SMALZ: On behalf of the Appalachian Peace and Justice Network, your Honor, Michael R. Smalz and Joseph E. Muskovyak, Ohio Poverty Law Center.

MR. ETTER: Good morning. On behalf of the Office of the Ohio Consumers' Counsel, on behalf of Ohio's residential customers, Terry L. Etter and Maureen R. Grady.

MR. HAYDEN: Good morning, your Honors. On behalf of FES Mark Hayden, Jim Lang, Trevor Alexander, Laura McBride, David Kutik, and Allison Haedt.

MS. KALEPS-CLARK: Good morning. On behalf of RESA, Constellation, Exelon, P3 and Compete, M. Howard Petricoff and Lija Kaleps-Clark.

On behalf of CTA, Benita Kahn and Lija Kaleps-Clark.

MR. DARR: On behalf of IEU-Ohio, Sam Randazzo, Frank Darr, and Joe Oliker.

MS. HAND: On behalf of Ormet Primary Aluminum Corporation, Emma Hand and Doug Bonner.

MR. KURTZ: Good morning, your Honor. On behalf of the Ohio Energy Group, Mike Kurtz and Kurt Boehm.

MS. McALISTER: On behalf of the OMA Energy Group, Lisa McAlister and Matt Warnock.

MR. BEELER: On behalf of the staff of the Public Utilities Commission of Ohio, Ohio Attorney General Mike DeWine, Assistant Attorneys General Werner Margard, John Jones, and Steve Beeler.

EXAMINER TAUBER: Are there other parties?

(No response.)

EXAMINER TAUBER: Thank you.

At this point we'll have Mr. Banks.

MR. KUTIK: Yes, your Honor. For FirstEnergy Solutions' second witness we call Tony Banks.

Your Honor, at this time we ask to have marked as FES Exhibit 1 the document entitled Testimony in Opposition to the Partial Stipulation of

Tony C. Banks on Behalf of FirstEnergy Solutions Corp.

EXAMINER SEE: You did say "FES Exhibit 1"?

MR. KUTIK: Yes.

EXAMINER SEE: Okay.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER TAUBER: Please raise your right hand.

(Witness sworn.)

EXAMINER TAUBER: Thank you. You may be seated.

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TONY C. BANKS

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

DIRECT EXAMINATION

By Mr. Kutik:

Q. Please introduce yourself.

A. My name is Tony Banks. I'm Vice President of Competitive Market Policies for FirstEnergy Solutions.

Q. Mr. Banks, do you have before you what has been previously marked as FES Exhibit 1?

A. Yes, I do.

Q. What is that?

A. That's my testimony in opposition to the partial stipulation.

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

A. Yes, I do. I have seven corrections to make.

Q. What is the first correction?

A. The first correction is on page 25, line 14. The first word in the sentence should be "most" followed by the rest of the sentence as stated.

MR. SATTERWHITE: I'm sorry. Can you state that again? I just got the page.

MR. KUTIK: Sure.

A. The first word in the sentence should be "most," m-o-s-t, followed by the rest of the sentence as stated.

MR. KUTIK: That's on line 14.

MR. SATTERWHITE: Thank you.

Q. What's the second correction?

A. On page 32, line 14, the value indicated as "650" now should read "65,000".

Q. Could you give that page and line again?

A. Page No. 32, line 14.

Q. Thank you. What's the third correction?

A. The third correction is on page 37, line 2, there should be a closed quote at the end of the sentence.

Q. What's the fourth correction?

A. The fourth correction is on page 42, lines 9 and 20, the references to AEP Ohio Witness Munczinski should be changed to reference AEP Ohio Witness Nelson.

Q. And that should happen on both lines.

A. On both lines 9 and line 20.

Q. What's the next correction?

A. The fifth correction is on page 42, line 21, the word "not," n-o-t, needs to be inserted after the word "should." A period should be added after the word "waiver," and the words "so that" should be deleted.

As a result of those changes the two sentences would read "The Commission should not grant the waiver. AEP Ohio can notify PJM of its entrance into the Base Residual Auction process as of the delivery year 2015-2016, pursuant to Section IV.1(q) of the partial stipulation."

Q. What's the sixth correction?

A. The sixth correction is on page 58, line 13, the date on line 13 should read "September 6th" instead of "August 30th."

Q. And what's the seventh correction?

A. The seventh and last correction is on page 59, line 5, the word "unaffiliated" should be inserted before the word "signatory." So the sentence should read "However, none of the unaffiliated Signatory Party CRES providers are based in Ohio," continuation.

Q. With those corrections would the answers that appear in Exhibit 1 to the questions that appear in Exhibit 1 be true and correct?

A. Yes, they would.

Q. I want to direct your attention to a comment that was made during the redirect testimony of Mr. Hamrock and specifically on page 941 of the transcript where he is discussing some meetings that occurred on August 26th.

Specifically he talks about an afternoon meeting where he said, quote, "We had a subsequent meeting of all the parties that afternoon, I remember that vividly, that Friday afternoon where we polled the parties to see who was willing to continue working within the framework that had been developed at that point, and FirstEnergy Solutions specifically walked out of that session and indicated they were no longer interested in that framework," end quote.

Were you at that August 26th afternoon meeting?

A. Yes I was.

Q. Is Mr. Hamrock's recitation of what occurred at that meeting true?

A. It is not true. FirstEnergy Solutions left the meeting with all the other parties when it was over, so unless the meeting was re-called to order without notifying FirstEnergy Solutions, we were at the complete meeting.

Q. And did FirstEnergy Solutions at that meeting indicate that they were no longer interested in talking about settlement?

A. No, we did not.

MR. KUTIK: That's all the questions I have, your Honor.

EXAMINER TAUBER: Mr. Satterwhite, do you have questions on cross-examination?

MR. SATTERWHITE: I believe we're going to start and go the other way, if that's all right with the Bench.

EXAMINER SEE: Is that agreeable with the parties?

Okay. Who's going to be first?

EXAMINER TAUBER: Mr. Beeler? Do you have any questions on cross-examination?

MR. BEELER: No questions.

EXAMINER TAUBER: Ms. McAlister?

MS. McALISTER: I do have questions and it's likely that I'll need a microphone, I'm a soft talker.

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CROSS-EXAMINATION

By Ms. McAlister:

Q. Good morning, Mr. Banks. Can you hear me all right?

A. Yes, I can.

Q. My name is Lisa McAlister, and I'm here on behalf of OMA Energy Group.

Mr. Banks, on page 1 of your testimony it explains that you joined FirstEnergy Solutions in 2004 and you were with the FirstEnergy Corporation for four years before returning back to FirstEnergy Solutions in 2009; is that correct?

A. It does say that. The actual employer for FirstEnergy Corporation was FirstEnergy Service Corporation.

Q. And at page 3 of your testimony on line 12 you say that AEP Ohio should have transitioned to

the market years ago; is that correct?
A. I'm trying to read the whole sentence to understand the context.
Q. Take your time.
A. Could you repeat the question?
Q. Sure. On page 3, line 12, you say that AEP Ohio should have transitioned to market years ago; is that correct, a correct paraphrasing of what you say there?
A. That is correct.
Q. Are you familiar with Ohio's transition to competitively priced standard service offer generation service?
A. Generally, yes.
Q. Turning your attention to page 6 of your testimony, there beginning on line 1 you state that "...the truth is that AEP Ohio created its own path and, thus, should bear the consequences of its decisions."
And then you also state that "AEP Ohio knew that its generation service was required to be competitive (and separate) when it waived its right to recover transition charges"; is that correct?
A. That is correct.
Q. Are you aware that in a 2002 case that

was approving the first of what's come to be known as the rate stabilization plans of the Dayton Power & Light Company, the PUCO encouraged all electric distribution utilities to consider filing plans to extend the market development period and file rate stabilization plans to allow additional time for the competitive market to develop?

A. Although I'm not familiar with that specific case reference, I am generally familiar with the idea of development of rate stabilization plans in Ohio, yes.

Q. So then you're aware that as a result of the PUCO's encouragement, both AEP Ohio and FirstEnergy filed rate stabilization plans that extended their market development periods?

A. I do know that FirstEnergy Ohio utilities filed to extend their rate stabilization -- their market development period on the rate stabilization plan.

Q. Are you aware that AEP Ohio also had a rate stabilization plan?

A. I am aware that they had one, yes.

Q. On page 6 you say that "It is unpersuasive and offensive for AEP Ohio to seek the protections, additional revenue, and discriminatory prices included in the Revised ESP to compensate for its earlier decisions not to embrace Ohio's policy to support competitive markets"; is that correct?

A. Yes, that's what it says.

Q. If you know, did FirstEnergy Solutions intervene in AEP Ohio's rate stabilization plan case and oppose the extension of the market development period for AEP Ohio?

A. I do not know that.

Q. Do you know whether FirstEnergy Solutions ever filed a complaint at the PUCO for AEP Ohio not going to market?

A. I do not know that.

Q. If you know, the FirstEnergy operating companies did not complete the transfer of generating assets to FirstEnergy Solutions until the end of 2005; is that correct?

A. I'm not sure of the exact date, but that is the time frame that that happened, yes.

Q. Do you know when FirstEnergy Solutions and the FirstEnergy operating companies completely corporately separated?

A. Around that same time generally.

Q. When I stay "completely financially" -- or "corporately separated," I mean financially and unwinding the generating assets and functionally separating as well. Does that change your answer at all?

A. I don't know the exact dates, but my understanding is that FirstEnergy functionally separated before that and legally separated by moving the assets to the generating affiliates somewhere in the time frame around 2005. That's my understanding.

Q. Would you accept, subject to check, that it wasn't until 2008?

A. I don't know.

Q. Can you tell me specifically when you believe AEP Ohio should have transitioned to market?

A. Well, I think that the Senate Bill 3, which established the idea of competitive markets and then suggested that utilities transition to the competitive marketplace, I think that the fact that it's been 11 years since that time, it should have been sometime before now.

And when you think about the proposal that's on the table today, they're asking for an additional three years or so before they have to transfer to a competitive market, and there is no real commitment in that transition. In there are a lot of ways that AEP would not end up transitioning to a full competitive market at the end of the current ESP.

Q. Okay. So your answer is sometime between the time SB 3 was passed and now?

A. Yes.

Q. Can you narrow it down at all? Should it have been before 2008?

A. I just think that it should be before now, especially considering the fact that the Senate Bill 3 was over 11 years ago and AEP's business plan as they describe, or business strategy was to stay regulated as it relates to comments provided by many of their senior executives, and the fact that they had no plan to transition to market, to my knowledge, until this revised ESP, because the first ESP was not proposing to transition to market at all, is an indication that they should have done it sometime before that.

Q. Do you know whether any other Ohio electric distribution utilities fully transitioned to market prior to 2008?

A. Could you restate the question?

Q. Sure. Did any of the FirstEnergy operating companies transition before 2008?

A. If I accept the date is 2008, they all transitioned at the same time to my knowledge.

Q. Okay. Do you know whether the Dayton Power & Light Company has transitioned to full market?

A. I do not believe they have.

Q. Do you know whether the Duke Energy Ohio transitioned to full market?

A. They have not.

Q. I'm going to turn your attention to page 11 of your testimony, there you outline some recommendation if the PUCO doesn't reject outright the revised ESP, and the first bullet, and that's on page 11 there, says "The Revised ESP should incorporate a competitive bid process for the full standard service offer load for service beginning in 2012...." Is that correct?

A. Yes, that's the first part of that sentence. Yes.

Q. And you're aware that AEP Ohio currently owns generating assets, right?

A. Yes, I am.

Q. In your view, could AEP Ohio implement a competitive bid process for the full standard service offer load beginning in 2012 under a market rate offer?

A. Could you repeat the question?

Q. Sure. If AEP elected a market rate offer, could they take their full standard service offer load to competitive bid in 2012?

A. It's my understanding under market rate or they could not take their full load to competitive bid, it would be limited to 10 percent the first year.

Q. And if you know, if the PUCO takes your recommendation and modifies the ESP to include a competitive bid process for the full standard service offer load in 2012, does AEP Ohio have the ability to withdraw and terminate the entire ESP?

A. Well, it's my understanding that AEP does not have to accept an ESP as proposed by the Commission.

Q. So the answer is Yes?

A. Again, the way I described is the way I understand it and that is that AEP does not have to accept a proposal for its ESP if it does not agree with it.

Q. What happens if they don't accept it?

A. Then the current ESP is extended.

MS. McALISTER: I have no further questions. Thank you, Mr. Banks.

EXAMINER TAUBER: Mr. Kurtz?

MR. KURTZ: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Kurtz:

Q. Good morning, Mr. Banks.

Are you the chief policy witness for FES in this case?

A. I'm not sure what you mean by "chief policy witness."

Q. Okay. Are you a policy witness for FES?

A. I'm a witness for FES to present its overall position in the AEP stipulation.

Q. Okay. What I want to do is just discuss with you your recommendations in this case to the Commission. You would have the Commission reject the ESP stipulation?

A. Yes, I would.

Q. You would have the Commission order that the state compensation mechanism for capacity pricing be 100 percent RPM?

A. I would have the Commission order the state mechanism to continue to be RPM-based capacity.

Q. Okay.

A. Yes.

Q. You would have the Commission order the AEP Ohio utilities to divest their generation to an unregulated affiliate?
A. I would have them divest the generation and an unaffiliated affiliate is possible.
Q. And that would correspondingly trigger a case at FERC to dissolve the AEP six-state five-utility power pool?
A. I'm not a lawyer, and I don't know specifically if it would require that.
Q. Okay. You answered this with Ms. McAlister. If the ESP is rejected, AEP will continue with its existing ESP; is that right?
A. Yes.
Q. Okay. Or it has the option to go to an MRO. So then it also would have the option to go to an MRO, correct?
A. If approved by the Commission.
Q. And as Ms. McAlister pointed out, that would have a 10 percent auction for the SSO load in year 1 of an MRO.
A. Well, I don't think Ms. McAlister pointed that out. I think that's what I said, that the first year would be a 10 percent competitive process and that would be blended with the ESP price.

Q. Okay. Does this ESP stipulation get to a full auction for all the SSO load faster than an MRO would?

A. I don't know that I can say that because of the conditions that are placed on the ESP, there's really no commitment to a full hundred percent auction even after the end of this ESP because there's conditions relating to pool termination, relating to corporate separation, and with those conditions I can't affirmatively say that this will happen at all.

Q. Do you know what the fastest a full transition to 100 percent competitive bid pricing for nonshopping load would be under an MRO?

A. Could you repeat that, please?

Q. What's the fastest time under an MRO you could get to a hundred percent auction for the people who don't shop?

A. Fastest time I think is immediately.

Q. In an MRO with this 10 percent/20 percent transitioning, do you know the answer?

A. Oh, I think the last MRO competitively bid portion is five years. I also believe that the Commission has wide authority to have that be something different after the first year. So I would think the fastest time could be two years, or the second year.

Q. Do you know if that issue's been recently litigated?

A. I do not.

Q. Under your recommendation the 2929 state compensation mechanism case would essentially get reopened, if the Commission rejects this stipulation.

A. Is it my recommendation.

Q. No. Yeah, under your recommendation that the Commission reject this stipulation, then the 2929 state compensation case would be reopened because it would not be settled.

A. I don't know that I would describe it as "reopened." I didn't know it was closed. But my understanding is that case is out there and it needs to be settled.

Q. So that case would -- the companies filed testimony in that case, correct?

A. Yes.

Q. But there would be a procedural schedule, the Commission would have to issue an order in that litigation.

A. I'm not a lawyer, again, but that's what I believe would happen, yes.

Q. If the Commission rejects this stipulation, the AEP FERC section 205 case for the cost-based capacity pricing under the FRR, that would be -- that case is on rehearing now, right?

A. I'm not a lawyer, but that case in my understanding is still open.

Q. Okay. And if the Commission rejects the stipulation, that case would be reactivated?

A. I would assume it would stay open.

Q. Stay open.

A. Until resolved.

Q. And then the AEP FERC section 206 complaint case would be reactivated or reopened or reinstituted if this stipulation is rejected?

A. Can you tell me specifically what the FERC 206 complaint case is, please?

Q. Yeah. When AEP filed that November 2009 section 205 case under section 8.1 of the PJM RRA rules to get cost based capacity, they essentially lost the first round, that's on rehearing, then they filed a complaint case to kind of do the same thing. Do you know the case I'm referring to?

A. I do, but what are you asking me about the case, please?

Q. If the stipulation is rejected, that FERC litigation would be reopened as well.

A. Again, as it relates to the stipulation, the stipulation is not accepted, so any cases that are still open, in my view as a nonlawyer, would still be open.

Q. Okay. Do you know, do you have an opinion whether the State Commission can order a utility to divest its generation?

A. I don't know that the Commission can order the utility to divest its generation because the utility has the opportunity to file for an ESP and the utility does not have to accept the Commission ruling as to how the ESP works, is my understanding.

Q. Would you agree there would be a fair amount of uncertainty with respect to all these issues if the ESP is rejected?

A. I think there's uncertainty whether the ESP is rejected or not, until there is a ruling that determines how the -- how AEP service territory would work in all respects going forward.

Q. Let's assume the Commission accepts your position that the interim state compensation mechanism of RPM is maintained so that 100 percent of the AEP load would have RPM access. Do you have an opinion how quickly shopping would escalate in the AEP Ohio service territory?

A. First of all, I wouldn't characterize the state mechanism as interim because it's in place today and until it changes, in my view, it's permanent.

But if you set that aside, I think that if you have a competitive bid process for a hundred percent of the load and first of all establish an SSO service that is a lower price than what is proposed in the AEP stipulation, and then beyond that I think suppliers would have to become even more competitive, more efficient, so that they can then earn the customer as -- earn the customer to get it to shop away from the SSO service because, again, the SSO service is going to be a lower price because it's competitively bid.

And then once you establish that lower price then suppliers will have to do even better than that in order to get the customers to move away from that SSO service, so I think that would end up being the result of the competitive bid process that would go into place immediately. Customers would save on the wholesale side as well as the retail side.

Q. So if there was a competitive bid for

100 percent of the SSO load at RPM capacity pricing, assuming that like you just said, do you have any idea how quickly customers would, or CRES providers would serve the nonshopping load, what the migration rates would be? Have you done any kind of thinking about that, how fast load would leave the system?

A. I've done thinking about it; I haven't done any analysis. And my thinking about that would be that it wouldn't be any faster than customers can migrate today under the current ESP.

So today a hundred percent of the customers have access to RPM-based capacity and to the extent you don't put any limits on that I think the migration rates later would be probably similar to what they are today.

Q. What happens to the energy owned by the utility that's freed up by shopping? In other words, AEP Ohio loses load to shopping and that energy is freed up; what happens to it?

A. I don't know what AEP would do with that energy, but it does have the option of serving the market in general. It can commit that capacity to PJM. It can sell on the spot market. It could enter into bilateral contracts.

It could participate in the bid for the

wholesale side of the SSO service. It could participate on the retail side. So I would assume that AEP has every opportunity to sell all of its load whether they go to a hundred percent competitive bid or not.

Q. Do you know if the Commission accepts your recommendation, that the stipulation be rejected, that RPM 100 percent pricing be maintained, that divestiture be ordered, that the pool be dissolved, essentially, if the financial integrity of the utility was in jeopardy under your recommendation, would the Commission have the ability to step in and provide financial support to AEP Ohio?

A. I'm not sure what you mean by "financial support." I don't know the utility has a fund that they can give to AEP Ohio, but --

Q. Rate increases if the financial integrity of the utility was in jeopardy. Would the Commission have authority to do that?

A. I think the Commission has authority to ensure the financial integrity of a utility in the state of Ohio. I don't know what form that needs to take, and I don't know that financial integrity means absolute certainty around the numbers that a company may want to achieve in its forward years.

Q. Have you given any thought to whether a possible outcome of your recommendation is bankruptcy for AEP Ohio?

A. I have given it a little bit of thought only because I just read something in the last day or so about bankruptcy and I think that in general the whole bankruptcy is overblown because it's not absolute.

AEP Ohio can participate in the markets just like everyone else, and to the extent that AEP Ohio claims that it will file bankruptcy by having to participate in the competitive marketplace, then in my view that means there's something fundamentally wrong with how AEP operates because there's so many other suppliers who can provide RPM-based capacity and still function without filing bankruptcy. So I think that AEP Ohio in some way should be held to that same standard.

Q. Do you know of the most recent utility to file bankruptcy in the United States?

A. I do not.

Q. Do you remember when Pacific Gas & Electric filed bankruptcy during the California crisis?

A. I vaguely remember that, but I don't

recall the specifics.

Q. Do you understand the jurisdictional tug-of-war that occurs in such a case between the state regulator and the Bankruptcy Court over who sets rates in that type of situation?

A. I'm not aware.

Q. Do you think that under your recommendation there's a possibility that the distribution reliability of the system could be jeopardized?

A. Because I don't know how AEP operates, I have no idea whether AEP Ohio's distribution reliability would be affected by rejection of the stipulation.

Q. Do you have an opinion what standards the Commission should use when deciding whether to accept the stipulation or reject it as you propose?

A. Well, generally I think that state policy would suggest that the utility provide nondiscriminatory services to customers and give them the opportunity to competitive markets and the ability to choose both supply and suppliers. I think those standards are standards that should be retained in evaluating the stipulation.

Q. The public interest also is a standard the Commission should consider?

A. The Commission can consider public interest as well.

MR. KURTZ: Thank you, Mr. Banks. No further questions.

EXAMINER TAUBER: Thank you.

Ms. Kaleps-Clark?

MS. KALEPS-CLARK: No questions, your Honor.

EXAMINER TAUBER: Mr. Satterwhite?

MR. SATTERWHITE: Thank you, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Satterwhite:

Q. Good morning, Mr. Banks. I'm Matthew Satterwhite. I believe we spoke once before when I took your deposition this week, correct?

A. Yes, we did.

Q. And your title is Vice President of Competitive Market Policies; is that correct?

A. That's correct.

Q. And you are responsible for the policy in jurisdictions where FirstEnergy Solutions does business, correct?

A. I am responsible for helping set policy in those jurisdictions where FirstEnergy Solutions does business, yes.

Q. And is part of your responsibility understanding the policies and past decisions of commissions in those jurisdictions?

A. In some cases, yes.

Q. When would it not be your responsibility to understand the policies of a commission you might operate in front of as the vice president of policies?

A. Perhaps when we're not active in those jurisdictions at any point in time, I would not have to be concerned at that point in time with the policies.

Q. And you represented to Mr. Kurtz that in this case you're testifying to the overall policy position of FirstEnergy Solutions, correct?

A. I am testifying to the overall position of FirstEnergy Solutions as it relates to the stipulation as filed, yes.

Q. Are other FirstEnergy Solutions -- and if I say "FES," is that all right?

A. That's fine with me.

Q. Are other FES direct employees testifying in this case?

A. No, there aren't any other FES direct employees.

Q. So you're the sole representative as an employee of FES testifying for the Commission in this case, correct?

A. Yes, I am.

Q. And you're also responsible for the accuracy of the information related to policies of FES before the PUCO in press releases; is that correct?

A. I'm not sure I know what you mean, being "responsible for the accuracy." I'm not responsible for the accuracy of all information in FES press releases.

Q. Does FES issue press releases?

A. Yes, they do.

Q. Does the information in some of those press releases reflect facts related to policies and issues before the PUCO?

A. They could, yes.

Q. And are you responsible for the accuracy of the information that's included in those press releases?

A. Again, it's a very general statement, but I am responsible for the accuracy of policy related statements, or information contained in press releases. I do review those.

Q. And you answer in the organizational structure of FES to a Mr. Daniel Schneider who's the President of FES, correct?

A. No, that's not his name. It's actually Donald Schneider.

Q. Donald Schneider. He'll be happy to know you corrected me on that.

And Mr. Schneider reports to Mark Clark, the executive vice president of FirstEnergy Corporation and CFO, correct?

A. That's correct.

Q. And the last chain there is Mr. Clark reports to Mr. Tony Alexander, the CEO of FirstEnergy Corporation?

A. Yes, Mr. Clark reports to Tony Alexander.

Q. And FirstEnergy Corp. is the parent company of FES, correct?

A. Not being a lawyer and knowing that our legal structure changes, FirstEnergy Solutions is an affiliate of FirstEnergy Corp. How deep that goes I can't honestly say.

Q. But FirstEnergy Services doesn't have control over FirstEnergy Corporation, correct?

A. I'm not sure if you meant FirstEnergy Services.

Q. Sorry. I'll say "FES" again in case I keep messing that up.

A. So would you repeat the question, please?

Q. Sure. First, FES does not have control over the actions of FE Corp., correct?

A. That is correct.

Q. And FES is a subsidiary to FE Corp. who sits above them in an organizational structure, correct?

A. FE Corp. sits above FES in an organizational structure.

Q. And FE Corp. has an executive council that provides leadership direction to the FE group of companies including FES and the other FE Corp. subsidiaries, correct?

MR. KUTIK: Your Honor, I object at this point on the ground of relevance.

EXAMINER TAUBER: I'm sorry, Mr. Kutik, I can't hear you.

MR. KUTIK: I object on the ground of relevance.

EXAMINER TAUBER: Mr. Satterwhite.

MR. SATTERWHITE: Your Honor, I think

it's prudent to understand the relationship of FES in the structure in Ohio, and there's been some assertions made in the testimony of Mr. Banks on statements of AEP Corp. executives that deal with the relationship of subsidiaries of AEP Corp. and I'm trying to establish the structure of FirstEnergy Corp. in relation to that.

EXAMINER TAUBER: Your objection is overruled.

Please continue, Mr. Satterwhite.

Q. (By Mr. Satterwhite) Would you like me to repeat the question?

A. Yes, please.

Q. FE Corp. has an executive council that provides leadership direction to the FE group of companies, including FES and the FE Corp. subsidiaries, correct?

A. Yes, they do have an executive council that oversees activities of FirstEnergy affiliates.

Q. Which includes --

A. Including FES.

Q. Okay. And what are the other companies that you know of? What are those affiliates?

A. You want every name?

Q. Every one you can think of.

A. That would be Toledo Edison, CEI, Ohio Edison, Penn Power, West Penn Power, Penelec, Metropolitan Edison, Jersey Central Power and Light, and there's an affiliate in West Virginia that the actual name escapes me. It's a regulated utility there. FirstEnergy Solutions.

Q. It's always the West Virginia one forgotten, isn't it? I'm just kidding.

All right. You testify that you have 35 years of energy industry experience, in your testimony, correct?

A. A little more than that, but yes.

Q. Twenty-seven years of that experience was with natural gas companies, correct?

A. Yes. And there's a few years in technology, but generally, yes.

Q. And you had 21 years with Consolidated Natural Gas; is that correct?

A. Yes, that's correct.

Q. And about five years with a company called Atlas America which was oil and gas; is that correct?

A. That's correct. But I would point out that even though those years were in the natural gas industry, a large part of that experience was in competitive markets both wholesale and retail.

Q. To prepare your testimony you reviewed FES analysis of shopping that would occur under the stipulation, correct?

A. Yes, that is correct.

Q. Did that analysis tell you that there would be no shopping under the stipulation?

A. No, it did not tell me that. It told me that shopping would be limited to those caps proposed by AEP for RPM-based pricing generally.

Q. And when you refer to "shopping cap" today in your testimony, you're referring to that RPM set-aside, not a cap on the ability to shop, correct?

A. I am referring to the RPM set-aside, but I think even in AEP's Appendix C they talk about a cap tracking system, so I assume that it is a cap.

Q. So, again, when you referring to shopping -- I'm just trying to get your understanding. When you refer to a "shopping cap," you're referring to the RPM set-aside amount, not an ability of customers to shop.

A. I am referring to the RPM set-aside but by virtue of the fact that there is a limit, RPM set-aside customers' ability to shop is hindered at any level above the RPM set-aside.

Q. Right. I'm just trying to establish that you're not saying customers aren't allowed to shop above the RPM set-aside.

A. To my knowledge, there is no limitation on customers being allowed to shop, but as I stated before, the likelihood that they can or will shop is probably as close to zero as you can get.

Q. Do you know if FES is currently offering contracts under the terms of the 255 RPM -- 255 capacity price?

A. I know that FES is not offering contracts to customers based on $255 megawatt-day capacity price for all their load.

Q. Well, at the end there you said "for all of their load." Is it for any other element of their load? A partial part of their load?

A. I don't know if they are or not.

Q. Do you know if FES is offering -- has signed up to switch customers past January 1st, 2012, already?

A. I know that FES has filed affidavits to switch customers, and to date we have got no feedback as to whether they're in the queue or out of the queue, and if they are in the queue, where they stand.

So I don't know exactly how that's going to work, but we have submitted affidavits and attempted to make enrollments into the AEP Retail load.

Q. So the involvement of new customers switching past January 1st, 2012, is solely limited to affidavits for the possibility to switch; is that correct?

A. That's not my understanding. I believe that Appendix C says you'll accept affidavits, of course, you'll accept contracts, you'll accept 90-day notices as well as actual enrollments.

Q. Right. I understand Appendix C. I'm just trying to understand what FES is doing. You mentioned in your answer before when I asked you that you've submitted affidavits.

A. Yes, that's correct.

Q. But in your list you also mentioned you could have contracts and other items. Has FES contracted with any customers to switch past January 1st, 2012?

A. I wouldn't answer that based on it being confidential information if we did or not.

Q. I'm not asking you to give me information on those individual customers. I'm just asking if you have entered into contracts for that time period.

A. I can't honestly say I know. I do not know specifically.

Q. So your knowledge of what FES's offers are in the market to provide service to customers past January 1st, 2012, is limited to your knowledge of some affidavits that have been submitted to AEP under the terms of the stipulation, correct?

A. I wouldn't say that. My knowledge is that FES enters into contracts with customers and the start date of those contracts may be before January '12 or after January '12. What I'm saying is I don't know specifically what those contracts are.

Q. So you don't know if there are any contracts that incorporate the $255 capacity charge within the contract.

A. I know based on what our folks tell me and that is that there are no offers based on 255 capacity.

Q. It's correct, isn't it, that you are not aware of the price of the different standard service offers in each of the Ohio certified territories?

A. I am not aware of all the prices in the standard service offers of all the utilities in Ohio.

Q. But you agree that it's important, it's an important price for FES to know to be able to compete in Ohio.

A. Well, the important price --

MR. KUTIK: May we have the question read, your Honor?

EXAMINER SEE: Yes.

MR. SATTERWHITE: I can repeat it.

(Record read.)

A. And is that price -- could you repeat what the price is you're referring to?

Q. Well, you said earlier you weren't sure of the standard service offer prices of the different -- in the different certified territories in Ohio, correct?

A. Not all of them, that is correct.

Q. But you agree that it is an important price for FES to know to be able to compete in Ohio, correct?

A. The standard service offer price leads into what we call the price to compare and that price to compare is important to FES, yes.

Q. So knowing the standard service offer price is not important, then?

A. No, I said the standard service offer, it's important to understand how that feeds into the price to compare, and the price to compare is the actual price that FES uses to determine whether or not it can provide CRES-related services.

Q. So then yes, it's important to understand that price, is your testimony?

A. I don't think you absolutely have to understand that price. You have to understand the resulting price to compare that comes from that price.

Q. So it's not important to know it, then.

MR. KUTIK: Objection. Asked and answered.

MR. SATTERWHITE: Just trying to clarify.

MR. KUTIK: He's asked the question three times. He's given an answer.

EXAMINER TAUBER: Sustained.

MR. SATTERWHITE: Thank you.

Q. (By Mr. Satterwhite) Now, let's go to your testimony, pages 3 to 4, you mention that only 1 percent of customers in Ohio that have switched are in AEP's territory, correct?

A. Could you direct me to the line you're referring to, please?

Q. Sure. Go to the end of 3, line 23, over to the top of page 4. Do you see that?

A. Yes, I do.
Q. And there you mention only 1 percent of the customers in Ohio that have switched are in AEP's territory; is that correct?
A. The 1 percent is 1 percent of all switched customers in Ohio. 1 percent of those are located in AEP Ohio's service territory, yes.
Q. And that report does not include shopping levels since June 30th, 2011, correct?
A. Yeah, the information we used to develop that number does not include shopping levels as of June 30 -- it includes shopping levels as of June 30, 2011, but the important fact about that is AEP Ohio serves 30 percent of the load in Ohio, but only 1 percent of the customers who are shopping in Ohio are located in AEP's service territory. That was the point of that 1 percent number.
Q. I appreciate that. But the point of my question was that that report only reflects as of June 30th, 2011, correct?
A. That's correct.
Q. Are you aware of any increases in shopping in AEP Ohio since June 30th, 2011?
A. Yes, I am.
Q. So is it your belief that that number is

still the same number, or has that changed?

A. I don't know if that's changed. To the extent that the increase in AEP Ohio is relatively the same as the increase in the other utilities, it could be the same, but I don't know that.

Q. So it's your assumption that any increase in AEP Ohio's territory is the same as an increase in any other territory since June?

A. That is not my assumption. I don't know.

Q. Okay. And it's true that your understanding of the difference between an electric security plan and a market rate offer is generally limited to the fact that an MRO uses a 10 percent competitive benchmark pricing and an ESP does not, correct?

A. No, that's not correct. I think the 10 percent and, again, the 10 percent is only the first year. It's the blending idea in total that I was referencing, but the 10 percent blending is one of the differences between an MRO and an ESP.

Another difference is that on the 10 percent or 20, 30, or 40 or 50 percent, whatever level that is, that amount has to be competitively bid which is not absolutely required in an ESP, and on the other side of the ledger an ESP has some flexibility to have riders that you can't have on the MRO side of the ledger. So those are other differences other than just the blending percent.

Q. You remember a deposition that we took on the 10th, earlier this week, correct?

A. Yes, I do.

Q. And you had counsel with you on that day; is that correct?

A. Yes, I did.

Q. And you were sworn in by a court reporter who took notes on that, took a transcript of that; is that correct?

A. There was a -- I was sworn in, yes.

Q. And you answered truthfully that day, correct?

A. Yes, I did.

Q. Do you have a copy of that deposition in front of you?

A. I do.

Q. Can you go ahead and open that to page 73 for me.

A. I'm there.

Q. I'd ask you to read starting on line 18.

MR. SATTERWHITE: David, do you have it?

MR. KUTIK: I do, thank you.

Q. Read lines 18 to 24 for me out loud.
A. Okay. Question: "What's your understanding of the differences between the two, an ESP and an MRO?"
Answer: "An MRO uses 10 percent competitive benchmark pricing and an ESP does not."
Question: "Is that the extent of your understanding of the difference between the two?"
Answer: "Generally."
And I would, again, suggest --
Q. That's all, I don't -- thank you.
MR. KUTIK: Your Honor, I think he should be able to explain his answers, other witnesses have been able to explain their answers to deposition?
MR. SATTERWHITE: Your Honor I was using his deposition to impeach him, not to allow him to provide more testimony, so he wasn't really answering a question. The question was "Could you read what's in your deposition?" not read "What's in your deposition and provide me context for it."
MR. KUTIK: There have been numerous AEP witnesses who have been allowed to explain their deposition answers because they claim it was taken out of context. This witness should have the same opportunity.

MR. SATTERWHITE: And that's what we can do on redirect, your Honor.

MR. KUTIK: Well, that was the argument we made.

EXAMINER TAUBER: Mr. Banks, please answer the questions that Mr. Satterwhite has and anything that needs to be addressed on redirect will be addressed on redirect.

MR. KUTIK: So can he explain his answer, your Honor?

EXAMINER TAUBER: No. He provided his answer.

Q. (By Mr. Satterwhite) Now it's correct, isn't it, that your view is that a Commission order that restricts competition is automatically anticompetitive and against state policy, correct?

A. I would not say that it's "automatically" anything.

Q. Can you open your deposition to page 76 for me, please?

A. I'm there.

Q. I'd like you to read the question I asked you that starts on line 22 of that, and then there was some attorney wrangling, but your answer I believe is on line 8, finally, of page 78, would you please read that for the record.

A. I'm trying to --

Q. I wanted to make sure I was clear.

A. On page 78.

MR. KUTIK: Well, your Honor, I object to the form of this impeachment. If he wants to read specific questions, we're talking about three pages of testimony here with colloquy between counsel, with rephrases of the questions, so if this counsel has a specific question he wants to refer the witness to, he should do so as opposed to trying to have the witness pull together a question here and an answer there.

MR. SATTERWHITE: If I may, your Honor, and I can show you a copy of the deposition, the question is on page 76 and then there's a number of objections asked and answered from Mr. Kutik in between and that's where we actually get to the answer after it's been reread a couple times, and I can provide a copy of the deposition, if that helps.

EXAMINER TAUBER: Could we please have a copy, Mr. Satterwhite?

MR. SATTERWHITE: Sure. Do you prefer Min-U-Script or large?

EXAMINER TAUBER: Doesn't make a

difference.

EXAMINER SEE: Large.

MR. SATTERWHITE: Here's both.

EXAMINER TAUBER: Perfect. Thank you.

MR. SATTERWHITE: Again, my reference starts on page 76, the question is on line 22. And I believe we finally get to an answer on 78, line 8.

MR. KUTIK: Well, I object to that characterization as well. It's indicated in the transcript, the witness had answered the question previously.

EXAMINER SEE: Just a minute, Mr. Kutik.

EXAMINER TAUBER: Mr. Satterwhite, you said this begins on page 76 is what you're referring to?

MR. SATTERWHITE: Correct, it says "Q" on line 22.

EXAMINER TAUBER: Mr. Banks, if you could just answer Mr. Satterwhite's question. If you need it repeated, we can repeat it.

A. Yes, would you repeat it, please?

Q. Sure. I'd asked you to pull out your deposition transcript and read for the record the question starting on line 22 that goes over to page 77 and ends on line 5, and then your answer that appears on page 78 on line 8 that's in relation to that question being reread to you.

A. Okay. And --

Q. Read that for the record.

A. Okay. Question: "I'm just trying to get a sense of your overall testimony. We've established already that what you think in relation to the revised ESP, and I'm trying to see how the Commission should apply that going forward overall, and I'm asking if you feel that a Commission order that restricts competition, is that automatically anticompetitive and against state policy?"

And you want me to go to page 78, line 8? My answer was "Yes."

Q. Thank you.

Now, on page 5 of your testimony -- I guess before we get to that, you mentioned you have your deposition up there with you. What else do you have up there?

A. Yes, I do.

Q. What else do you have up there with you today on the stand?

A. I have the stipulation, I have some sections of the Ohio Code, as well as Senate Bill 221.

Q. And are those clean copies of those or do you have notes to yourself on any of those documents?

A. I don't have notes, but I have certain parts of it marked so I can get there quickly.

Q. Okay. Thank you.

Could you go to page 5 of your testimony, lines 15 and 16 for me.

MR. KUTIK: I'm sorry. What were the lines?

MR. SATTERWHITE: Fifteen and 16.

MR. KUTIK: Thank you.

Q. Have you read that?

A. Yes, I have.

Q. And you cite a part of the Commission's mission statement in that testimony, correct?

A. I don't recall if I cite it word for word. If there's a place in my testimony that I do that, could you direct me to it, please?

Q. Well, let's look at it. On 15 it says "Such a decision flies in the face of state law and policy and the Commission's stated mission to, 'facilitate an environment that provides competitive choices,'" right?

A. Yes, that is true.

Q. Is it your testimony that that's part of

the Commission's mission statement?
A. Yes, I believe it is.
Q. Is that the entire mission statement?
A. No, it isn't.
Q. Do you know the entire mission statement for the Commission?
A. I do not.
Q. If there's more to the Commission's statement, do you think it should be considered in its entirety?
A. Relating to?
Q. This case. You chose to include part of the mission statement. I'm asking if you think it's important that the Commission consider the entire mission statement in its analysis and not just the portion you've cited.
A. Oh, I think it's important for the Commission to consider all of state law and policy in this case.
Q. But you're not asking the Commission -- I'm sorry, were you done?
But you're not asking the Commission to only rely on the portions that you cited of its mission statement in your testimony, are you?
A. I'm not asking that, but for emphasis

that was one that I thought it was important to point out.

Q. So do you support the PUCO's complete mission statement?

A. Yes, I do.

Q. And the indicators of accomplishment it has with that mission statement?

A. When you say "indicators of accomplishment," I'm not sure what you mean exactly.

Q. Well, when you included this in your testimony, what did you look at to review the Commission's mission statement?

A. I actually read the Commission's mission statement.

Q. From their website?

A. Yes.

Q. And on that it has the mission statement and indicators of accomplishment for that mission, correct?

A. How they -- yes, it does.

Q. Okay. And all of those are important in consideration of the Commission's mission statement. You would agree with that, correct?

A. I think they're all important in the Commission's mission statement, yes.

MR. SATTERWHITE: Your Honor, at this point I'd ask that the record take administrative notice of the Commission's mission statement in its entirety and the indicators of accomplishment.

EXAMINER TAUBER: We'll take administrative notice of that.

MR. SATTERWHITE: Thank you.

Q. Now, Mr. Banks, you would define effective competition as a market with no barriers to customers being able to shop in a market with multiple suppliers willing to offer a product and services at a competitive price, correct?

A. Yes, those are elements of a competitive marketplace.

Q. But that's how you would define "effective competition," correct?

A. Yes, that does, to me, result in effective competition.

Q. I'm just trying to get a definition of "effective competition." I want to make sure we're on the same page.

A. A definition of "effective competition" to me is one that has no barriers to shopping, one where the wholesale price of power is based on competitive bid because that results in the lowest price that's available to customers, and there are no retail prohibitions on shopping or restrictions or limitations.

And, again, I think that competitive market is created when you have competition and when you have competition it results in lower prices to customers and, yes, I believe that to be true.

Q. Could you open your deposition to page 83 for me. And could you read for the record the question I ask you on page 4 and the entirety of your answer down to page, line 9 -- I'm sorry. Page 83, line 4 to line 9.

A. Question: "How would you define 'effective competition'?"

Answer: "A market with no barriers to customers being able to shop and a market with multiple suppliers willing to offer product and services at a competitive price."

Q. Thank you.

Now, on footnote 5 on page 6 of your testimony, if I could ask you to turn to that page, you mention a couple of PUCO cases. Do you see that?

A. Yes, I do.

Q. And you had no involvement in PUCO cases 99-1730 and 99-1731, correct?

A. I did not.

Q. And you did not know if the changes from Senate Bill 221 were in effect at the time of 99-1730 and 99-1731 mentioned in footnote 5 on page 6 of your testimony at the time you wrote your testimony, correct?

MR. KUTIK: May I have the question read, please?

EXAMINER TAUBER: Yes.

(Record read.)

A. I know that Senate Bill 221 is in the 2008 time frame and those cases were in 1999.

Q. But at the time you wrote your testimony, you did not know if the changes from Senate Bill 221 were in effect at the time of these cases, correct?

A. I did not know the exact dates of both, that's correct. But I since looked it up and have learned that Senate Bill 221 is after the cases in 1999.

Q. That's fine. But my question was at the time you wrote your testimony you didn't know that, correct?

MR. KUTIK: Objection.

A. And I said I didn't know that.

Q. Okay. You also did not know when

AEP Ohio -- when I say "AEP Ohio," do you understand I'm referring to Columbus Southern Power and Ohio Power?

A. Yes, I do.

Q. You also did not know when AEP Ohio elected to supply under the fixed resource requirement when you wrote your testimony, correct?

A. While I didn't know the exact date that AEP Ohio elected fixed resource requirement, I did know that it was prior to 2009 during its current ESP and after Senate Bill 3 in 1999.

Q. Can I have you go back to page 89 again of your testimony.

A. I'm there.

Q. Could you read for the record the question I ask you starting on line 19 and the answer you gave on line 22?

A. Question: "Do you know when AEP elected to supply under FRR, the fixed resource requirement?"

Answer: "No."

Question: "So when you wrote this testimony, you weren't aware of when AEP made the election to supply under FRR."

Answer: "That's correct."

Q. Thank you.

Did you write your own testimony?
A. I did not write all of it. I reviewed it, though.
Q. So it was prepared for you and you reviewed it then?
A. I reviewed it and I was in agreement with the contents of that testimony.
Q. Is it your opinion that it doesn't matter what the costs of the utility are, that the Commission should ensure competitive suppliers access to RPM-based pricing for capacity?
A. I do believe that the Commission should ensure access, unfettered access, to RPM-based capacity.
Q. But it's your opinion that it doesn't matter what the costs are to the utility, correct?
A. That's my opinion, yes.
Q. And I think you stated earlier in a response to Mr. Kurtz that it's FES's position that the current capacity RPM rate in effect is not an interim rate, correct?
A. I do believe I responded in that way, yes. I don't believe it's an interim rate because right now the mechanism is for RPM-based capacity and, like any other regulated rate, unless it's

changed, it's permanent until it's changed.

Q. You're not arguing with any Commission entries or orders that might indicate otherwise, correct?

A. I'm not arguing with any order because they haven't been made yet.

Q. So if a Commission order or entry came out expressing the limitation of that rate, you wouldn't argue with the words from the Commission entry or order, correct?

A. I wouldn't necessarily agree with it, and if it was ordered I guess we'd have to comply with the order.

Q. I mean one that's already in existence. You're giving your opinion, but you're not -- if a Commission entry or ALJ entry establishing the case said differently, you wouldn't argue with that, correct?

MR. KUTIK: Objection. It assumes it does say differently.

EXAMINER TAUBER: Mr. Satterwhite, your question wasn't clear.

Q. Let me fix that.

Mr. Banks, are you familiar with the Commission's entry establishing the PJM capacity rates in the 10-2929 case?

A. Generally, yes.

Q. Would it help if I provided you a copy of that entry to refresh your recollection of what the Commission said in that entry?

A. It wouldn't hurt.

MR. KUTIK: Counsel, do you have a copy?

MR. SATTERWHITE: What's that?

MR. KUTIK: May I have a copy?

MR. SATTERWHITE: Absolutely.

I don't think I need to mark it.

Q. And if it helps, I think paragraph 4 might help show the establishment of the mechanism during the case.

A. Okay, I've read paragraph 4.

Q. And is it your understanding that the Commission entry establishing the 10-2929 case established the PJM capacity price during the pendency of the review of the case?

A. Yes, that's what it says, that it's PJM during the pendency of this review.

Q. Thank you.

MR. SATTERWHITE: I don't know if we need notice, it's already a case in this -- before the Commission in this stipulation, so I don't think I need to ask for administrative notice or anything.

MR. KUTIK: Well, you've read the sentence into the record and he's agreed with it so I'm not sure what you need notice of.

MR. SATTERWHITE: Didn't know if you wanted the entire thing in or not, but just to be sure with the Bench, the entire thing's in there as an entry in the case. Just trying to keep things -- okay.

A. I guess not being a lawyer I don't know if I'm allowed to do this, but again, I didn't see anything in there that said it was an interim rate and that explains my answer earlier.

Q. That's fine. Thank you.

MR. KUTIK: Your Honor, may we go off the record?

EXAMINER TAUBER: We may.

(Discussion off the record.)

EXAMINER TAUBER: Let's go back on the record. We'll take a five-minute recess and reconvene at 10:30. Let's go off the record.

(Recess taken.)

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

Mr. Satterwhite.

MR. SATTERWHITE: Thank you, your Honor.

Q. (By Mr. Satterwhite) Mr. Banks, it's true that you do not know if the capacity rate is a term of the electric security plan, correct?

MR. KUTIK: Objection.

EXAMINER TAUBER: On what grounds, Mr. Kutik?

MR. KUTIK: Capacity rate for what? When? It's a vague and undefined question on the record.

EXAMINER TAUBER: Mr. Satterwhite.

MR. SATTERWHITE: Your Honor, I think I'm asking a very general question, if the capacity rate, the type of which we're discussing today of setting, is an element of the electric security plan or not. I think it's a proper question.

EXAMINER TAUBER: Mr. Banks, do you understand the question?

THE WITNESS: I'm not sure if he's asking about the stip or the current electric security plan.

EXAMINER TAUBER: Mr. Satterwhite, could you clarify it?

Q. (By Mr. Satterwhite) Let's start with the current electric security plan. Is the capacity rate a term of that?

A. As I understand the current electric security plan, there is no specific allocation of costs to capacity except for when AEP provides capacity to CRES providers.

Q. And under the electric security plan that's represented by the stipulation, is it your understanding that as part of the electric security plan portion of that stipulation the capacity rate is a part of that stipulation? Or a part of that ESP, excuse me.

A. That is my understanding. The capacity rate is part of the ESP.

Q. Let me ask you to turn to your deposition, and I'm going to ask for some context after my question to make sure we're talking about the same thing on this one, to page 95. Could you read for the record lines 16 through 19.

A. Page 16 through 19?

Q. Correct.

A. Question: "Is it your understanding that the current capacity rate is a term of the electric security plan?"

Answer: "I don't know."

And again, because there was no specific --

Q. That's the next question. I'm sorry. My question, then to allow the explanation for you, when you answered that question, did you understand my question to be discussing the ESP that's in existence now or the ESP that's part of the stipulation?

A. I did not understand that.

Q. I'm asking which one. You answered the question so I'm asking which one you understood when you were answering the question.

A. Well, the answer was "I don't know" because I didn't understand which ESP you were talking about.

Q. And it's true, isn't it, that you do not recognize the difference between a capacity charge of $255 and $355 other than the dollar amount for purposes of competition?

A. I do not perceive there to be, relative to competition and customer access to competitive priced generation service through a CRES provider, I do not see much difference between 255 and 355 capacity rate.

Q. Right. So other than the dollars being different, you see no difference between the two prices, correct?

A. I do not see a difference because if I think about the difference between those two, I think about, for example, an appliance store putting out a refrigerator and has a suggested retail price of $20,000, they have a list price of $10,000, but then they actually sell it at $5,000.

So in this as it relates to the 355 and 255, the 355 would be the suggested retail price, the 255 would be a list price, but in either case that's not the ultimate price that the customer should be paying because they're both above market. That's my view.

Q. Right. But in relation to how it affects competition, you see no difference. They're essentially the same number because of how high they are, in your opinion?

A. I think that because of how high they are they will have the same negative effect on customers' ability to shop, yes.

Q. Okay. Then page 18 of your testimony, if I could get you to turn there, specifically lines 20 to 21, you reference a viewpoint that residential customers are subsidizing another customer class. Do you see that?

A. Yes, I do.

Q. And that answer is in reference to the rate design proposed by the stipulation; is that correct?

A. Okay. Could you repeat the question again? I'm sorry.

Q. Sure. That reference deals with the rate design that underlies the stipulation, correct?

A. That answer deals with the fact that residential customer rates during the term of the ESP will increase about 11 percent and large industrial rates will increase, I think the number was about 4 percent in some cases and in other cases there will actually be a rate decrease for large industrial customers. So based on that information it seems to me that residential customers are subsidizing industrial customers.

Q. Right. And that's based on the rate design. That's all I'm trying to establish.

A. If you call it "rate design," yes, that's fine. But it's based on what I just said.

Q. I want to make sure we agree and we're clear on what we're talking about.

Let's turn to page 13 of your testimony. Around line 21 you state that the GRR should be bypassable so customers do not pay twice. Do you see that?

A. Yes, I do.

Q. And that statement is based on your understanding that the customers would be paying for generation in the GRR but would not have any benefit from the generation; is that correct?

A. Well, it's based on my understanding that to the extent that customers shop with CRES providers, they will be getting their capacity and energy from the CRES providers; however, AEP Ohio in its stip proposes to charge this additional charge that those customers have to pay even though they're not getting any benefit from that service, yes.

Q. And it's your view that the Commission must know all the costs at the time of applying the MRO-ESP test and not have any placeholders in order to properly apply the test; is that correct?

A. It is my view that a placeholder with zero dollars in it should have to have a dollar amount for the facilities that are planned under the GRR rider and that dollar amount should be included in the MRO versus ESP test on the ESP side, yes.

Q. From a policy point of view you don't think the Commission should apply the test with something like a GRR or some kind of mechanism that has a zero dollar basis; is that correct?

A. From a policy perspective I think that the GRR has to have a dollar basis in addition to having been able to meet the policy of need; secondly, that it is competitively bid; and thirdly, that the facilities will be dedicated to Ohio. That's what I believe from a policy perspective.

MR. SATTERWHITE: Your Honor, I'll move to strike that. My question was not dealing with specifics of things that might fall under a GRR, it was dealing with in applying the MRO test, whether something should have a zero dollar basis or not as an overall policy. It seems like we kind of jumped to another topic of attacking things that might be within the GRR some day.

MR. KUTIK: May I have the question read, your Honor?

EXAMINER TAUBER: You may.

(Record read.)

MR. KUTIK: Your Honor, he asked from -- about a policy standpoint and he gave his answer with respect to a policy and the appropriate policy that should apply.

MR. SATTERWHITE: If I may, again, your Honor, it was the zero dollar amount basis in any type of mechanism was the scope.

EXAMINER TAUBER: Your motion to strike shall be granted.

Please continue, Mr. Satterwhite.

Q. (By Mr. Satterwhite) So back to the -- can I get -- let me ask the question again so it's clean.

So from a policy point of view is it your testimony that to apply the MRO test for an ESP, that the Commission should have dollar amounts in every mechanism and not have a zero dollar placeholder?

A. From a policy perspective I think zero amount placeholders are inappropriate for comparison of the MRO versus the ESP test. If you're going to have the rider and conduct the test, I believe from a policy perspective there should be dollar amounts in the riders.

Q. And it's your testimony today that the Commission cannot apply the MRO test properly unless it has dollar amounts for those, what you call placeholder riders, correct?

A. No. My testimony is without the dollar amounts in the riders, and I'll even refer to our Witness Schnitzer, he gets into that subject as well, the MRO versus ESP test is not a valid test.

Q. But you would -- the statutory test is not a valid test?

A. The value when you compare the MRO versus the ERP in the aggregate without including costs for all of the riders in the ESP, I believe that that test is not valid.

Q. And you said "ERP," you meant "ESP."

A. Yes, if I said "ERP," I meant "ESP."

Q. No problem. I just wanted to make sure it's clear.

So would you be surprised if the Commission in the past has applied the test and allowed for zero dollar mechanisms to be included?

A. I can't say I'd be surprised. The Commission has latitude to allow different things that I may or may not believe is in accord with state policy. It doesn't mean I'd be surprised, no.

Q. So the Commission does have the ability to apply the test with zero dollar placeholders; is that your testimony?

A. No, that's not. I said I wouldn't necessarily be surprised if they did, and "I don't know" is the answer to the last question you just asked.

Q. But I thought there were two different answers so let me start over and try again.

Do you think it would be improper for the Commission to apply the test in its decision and allow a zero dollar placeholder as a mechanism?

MR. KUTIK: Objection. Asked and answered.

EXAMINER TAUBER: Overruled.

THE WITNESS: Could you repeat the question, please?

MR. SATTERWHITE: Sure. Could you reread it for me, please?

(Record read.)

A. I believe that there should not be allowed a zero dollar rider in calculating the comparison of the MRO versus ESP.

Q. And just so we can build up to where we were when you didn't understand what I was saying, so you think it would be -- make sure I'm clear before I ask you to make sure you know I'm clear.

So if the Commission in the past has applied the MRO test and included what you term as a zero dollar placeholder, is it your testimony that the Commission was wrong in doing that?

MR. KUTIK: Objection. Assumes facts. Assumes that there was such an opinion by the Commission. Not in this record.

MR. SATTERWHITE: Your Honor, we'll get there, I'm just trying to find from a policy point of view right now what he believes the Commission's scope is because he's testified that it's improper to have a zero dollar placeholder.

EXAMINER TAUBER: I'll allow it at this time.

MR. SATTERWHITE: Thank you.

A. And I believe I said the Commission has wide latitude in the things that it would rule, but it doesn't necessarily change what I believe, and I believe that including a zero dollar rider is not appropriate if you're going to have an MRO versus ESP test.

Q. But it wouldn't necessarily violate any policy or practice of the Commission because of the Commission's wide latitude to have a zero dollar placeholder when it applies the test, correct?

A. I'm assuming that if the Commission has a ruling, it's in compliance with state policy. If I make that assumption, then the Commission has the right to do that. It doesn't mean I agree with it, though.

MR. SATTERWHITE: Your Honor, I'd like to mark AEP Exhibit No. 9, and it's the second opinion and order in Commission Case 08-935-EL-SSO issued on March 25th, 2009.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Banks, do you see the document I've just placed in front of you that's been marked AEP Exhibit No. 9?

A. Yes, I do.

Q. And do you recognize this to be a Commission second opinion and order in Case 08-935?

MR. KUTIK: We will stipulate to that fact, your Honor.

MR. SATTERWHITE: Thank you.

Q. Can I draw your attention to page 12 of that document.

A. I'm on page 12.

Q. Thank you. Particularly paragraph 21, is it your understanding that that paragraph includes a rider set at zero for the period?

A. It is my understanding that transmission rider will be set at zero, but, however, I think that the riders that are problematic for me as it relates to the GRR generation based riders, not transmission or distribution riders.

Q. Can I draw your attention to page 15, paragraph 29. Is it your understanding that the rider in this paragraph is unusually set at zero?

MR. KUTIK: Your Honor, I object. No foundation has been laid with respect to this witness's familiarity with this case.

EXAMINER TAUBER: Mr. Satterwhite.

MR. SATTERWHITE: Your Honor, earlier this witness testified that he is responsible for understanding the policies and prior decisions of the Commissions in the jurisdictions that he acts. This establishes the SSO in the FirstEnergy territory where he is -- his company operates on a wide basis.

EXAMINER TAUBER: Objection's overruled.

A. Okay, could you tell me where --

Q. My question is simple, on paragraph 29 is it your understanding that that also includes a rider to be initially set at zero?

A. Okay. This talks about a delta revenue rider and I'm not sure exactly what that is, but it doesn't change my answer about whether or not generation-based riders in an ESP comparison should be permitted to be set at zero.

MR. SATTERWHITE: Your Honor, I'll move to strike that, it was a simple question on what the paragraph has. How this is applied obviously is going to be argued out I'm sure later on brief.

MR. KUTIK: Your Honor, again, as AEP witnesses have been allowed to do, he's allowed to explain his answer.

EXAMINER TAUBER: Mr. Satterwhite, he was explaining his answer in that question.

MR. SATTERWHITE: Okay, thank you.

Q. (By Mr. Satterwhite) Let me draw your attention to paragraph 34 on that same page. Does that also have a rider set at zero?

A. It does, and I still have the same explanation that my issue with the GRR rider in this case is that it's being used in an MRO versus ESP test and it's a generation-based rider that's not being considered in that test.

Q. Thank you.

Now, FES is actively seeking to act as a supplier for governmental aggregators in AEP Ohio's territory, correct?

A. Yeah, we seek to supply government aggregation services in AEP Ohio service territory.

Q. And, in fact, you currently have customers in AEP Ohio's territory, correct? Governmental aggregators, to clarify.

A. We have customers served under governmental aggregation contracts in AEP Ohio service territory, yes.

Q. And Reynoldsburg is one such governmental aggregator that you serve, correct?

A. Yes, it is.

Q. Are you familiar with the relationship with Reynoldsburg of FES?

A. I'm familiar that FES is a supplier to Reynoldsburg as a government aggregation community, yes.

MR. SATTERWHITE: I'd like to mark AEP Exhibit No. 10 which is the ordinance No. 108-10 passed December 13th, 2010, from the City of Reynoldsburg.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Go ahead and take a second to review that document for me, if you don't mind.

Have you had a chance to review it? I just want to make sure.

A. I haven't read every word in it, but yes, I've had a chance to review it.

Q. Is this the ordinance passed by the City of Reynoldsburg with the attached master agreement to provide service to an aggregated group between the City of Reynoldsburg and FirstEnergy Solutions?

A. This is that.

Q. And is this a representative agreement of the type of governmental aggregation agreements that FirstEnergy Solutions would enter into with a governmental aggregator?

A. If you're asking that all agreements are like this, the answer is no, but there are several agreements that are similar to this one.

Q. Understanding there might be nuances for each entity, generally this is the type of agreement that's entered into; is that correct?

A. I'm not sure I know how to answer that because I'm not sure what you're asking me in terms of the specific terms and conditions, but generally this is a structure --

Q. Okay.

A. -- of the agreements.

Q. That's fine. I'd ask you to turn to page 19 which is the second-to-last page, and under Pricing it lists Residential and Commercial. Do you see that?

A. Yes, I do.

Q. So does this contract treat residential and commercial customers the same in relation to their rate design?

A. I'm not sure what you mean by "rate

design." We don't think in terms of our pricing being rate design.

Q. Fair enough. Let me ask it again, then.

Does this contract treat residential and commercial customers the same as far as what they're charged, the pricing?

A. If you're asking if residential and commercial customers pay the exact same rate, the answer to that question would be right, however, the process for determining the rate is based on all of the same characteristics in general.

Q. So residential customers here it looks like get a 5 percent discount off the price to compare, and commercial customers get a 15 percent discount; is that correct?

A. Yes, that's what it says.

Q. I'll ask you to look at page 2 of the document as well, the first page numbered 2, the Recitals. Do you see that?

A. Yes, I do.

Q. And in paragraph numbered H does that include an incentive for the City to agree to a term with FirstEnergy Solutions?

A. Yes. It says that there will be a one-time grant for the City's agreement to the term of this master agreement.

Q. And it shows, it references that again back on 19 and it says that that grant will be no less than $103,000, correct?

A. That's correct.

Q. And this grant is provided for in consideration of the term of the master agreement as provided in Article 3, correct?

A. Can you point me to the specific reference?

Q. Yeah, back to H.

MR. KUTIK: May I have the question read now.

A. So we're not in Article 3.

EXAMINER TAUBER: One minute.

MR. SATTERWHITE: I can clarify it. I can reask it.

Q. Can you go to page 2 again, we were talking about paragraph H.

A. Yes, I see that.

Q. And that references some language in there that the grant is being provided for the City's agreement to the term of the master agreement as provided in Article 3, correct?

A. That's what it says, yes.

Q. So does switching to a new supplier by Reynoldsburg away from FirstEnergy Solutions void the community grant provided for in this contract?

MR. KUTIK: Objection. Relevance.

MR. SATTERWHITE: Well, your Honor, I think as part of this case there are a number of CRES providers included that have signed the stipulation. FirstEnergy Solutions has not signed the stipulation.

I think the company and the signatory parties have a right to develop the record that might indicate why FirstEnergy Solutions, one of the CRES providers, would sign -- didn't sign, in order to test some of the arguments that they've made of state and Commission policies and practices dealing with competition. I think we have the right to look into their actions in the market and governmental aggregation right now and basically see if their words match their actions because that might be important for the Commission to consider when it's deciding and judging the arguments made in this case.

So I think it's important to develop that in the record to see if the testimony talks the talk, but do they walk the walk.

MR. KUTIK: Your Honor, there's nothing about how or whether or in what conditions

FirstEnergy has agreements with governmental aggregators that relates to the subject of how the stipulation affects governmental aggregation. There's nothing. And that's what this question goes to.

MR. SATTERWHITE: If I may, your Honor, this question goes directly to how FirstEnergy Solutions, or FES, impacts competition in the state of Ohio, a principle that they have throughout all of their testimony, and I'm trying to establish how their own actions impact competition in Ohio.

They've made a number of accusations that the stipulation and the signatory parties are hurting competition and I think it's appropriate for the Commission to consider the actions of FirstEnergy, FES, in this state to be able to judge the arguments that they make and the validity and authenticity of their challenge to the stipulation.

EXAMINER TAUBER: Thank you. Please give the Bench a minute.

Objection is overruled. Mr. Satterwhite, keep the scope limited, though --

MR. SATTERWHITE: Thank you, your Honor.

EXAMINER TAUBER: -- in these questions.

Q. (By Mr. Satterwhite) Do you need the

question reread, sir?

A. Yes, please.

(Record read.)

A. I actually haven't read all of the terms of this agreement, but I can't find anywhere in here where a switching away from FES would result in the grant being voided.

Q. Okay. So it's your understanding that the grant is provided for up front and that's not at risk if Reynoldsburg would choose another supplier.

A. That's my general understanding, yes.

Q. And do the contracts like Reynoldsburg that FirstEnergy Solutions enters into with customers include termination charges?

A. Do you want to point me to this contract or we talking about --

Q. I'm asking in general. If you know where it is in this contract, that's fine.

A. I don't.

MR. KUTIK: Again, your Honor, I'll object on the grounds of relevance.

MR. SATTERWHITE: It's the same argument, your Honor.

EXAMINER TAUBER: Your objection is overruled.

Q. (By Mr. Satterwhite) And if it helps, I think this might be the master agreement between the City and FirstEnergy Solutions, so that might not be included in a contract like this, correct?

A. That's correct.

Q. But contracts that are after this that you would make with the customer could include some type of termination charge, correct, if they were to leave?

A. The individual contract with the customer could. I don't know if in the Reynoldsburg case it is, but because you're trying to understand our position on government aggregation, I'll try to help you out, and the grant.

MR. SATTERWHITE: Well, your Honor, so we don't have to move to strike something, I think my question's pretty narrow right now on whether there's charges when customers leave.

EXAMINER TAUBER: Mr. Banks, if you could just answer Mr. Satterwhite's question and then you'll be provided an opportunity to provide context if it's related to the question.

A. And, again, it is possible that the individual contracts with the customer can include an exit fee. I don't know specifically in the

Reynoldsburg government aggregation agreement if that's the case.

Q. And do you know the range of what those fees might be?

MR. KUTIK: Again, objection.

MR. DARR: Join the objection, your Honor. I thought the point of this exercise was to determine the relevant -- determine this company's ESP, and we seem to be wandering a very strange jungle at this point.

MR. SATTERWHITE: Your Honor, do you want me to respond?

EXAMINER TAUBER: Yes, please respond, Mr. Satterwhite.

MR. SATTERWHITE: I don't think it should be strange that the company and the signatory parties have the right to explore or, certainly specifically in relationship to FES, why they did not want to sign under the stipulation, why this is not acceptable in developing a record of their practices and their placement currently as a CRES provider in Ohio maybe compared to other CRES providers, and the actions they take are very relevant to the Commission on how they understand the market and the impact this might have on all parties to the case, signatory and nonsignatory, and the relevance of the stipulation going forth and regulation in Ohio.

EXAMINER TAUBER: Objection is overruled.

Q. (By Mr. Satterwhite) So I can restate it. My question was do you know the range of charges that might be charged to customers for leaving under governmental aggregation?

A. To the best of my recollection, the charge could be zero. And it could be, if I remember correctly, as much as $150 for commercial accounts.

Q. Mr. Banks, you also have responsibilities concerning FES policy in the state of Pennsylvania, correct?

A. Yes, I --

MR. KUTIK: Objection. What does Pennsylvania have to do with this case?

MR. DARR: Join in the objection, your Honor.

MR. ETTER: OCC joins as well.

EXAMINER TAUBER: Mr. Satterwhite.

MR. SATTERWHITE: Again, your Honor, I think it's appropriate for the Commission to consider the motivations of the arguments being made by FirstEnergy Solutions and to the extent issues that relate to Ohio also might be faced in other states or his knowledge of what's going on in other states could be important to see the motivation of why FirstEnergy Solutions might be attacking the stipulation, not with the words they're attacking with, but just the fact that they're opposing something.

MR. KUTIK: Your Honor, we should not be getting into a discussion of FirstEnergy's positions in other states or anybody's positions in other states, as was indicated in other examinations. Other states have other rules and if we're going to get into a mini trial about what was going on in Pennsylvania on a particular issue and all that kind of stuff, we're going to burden the record unnecessarily.

MR. SATTERWHITE: If I may, your Honor, this will be really short, just to show the Bench a record of the proceedings going on in a state to give it reference to why FirstEnergy Solutions is raising questions in its --

MR. KUTIK: Whether something's short doesn't establish its relevance.

EXAMINER TAUBER: Give the Bench a minute, please.

Objection is overruled.

Mr. Satterwhite, please limit your question and keep it very tight.

MR. SATTERWHITE: Okay. And I'll come back to it in a second because I only had four copies, so I'll wait till I get copies of what I needed. So I don't have a copy.

Q. Let's turn to page 31 of your testimony, if you will. Let me know when you get there.

A. I'm there.

Q. Starting on line 16 you start the answer -- the question deals with 4928.20(K). Do you see that?

A. Yes, I do.

Q. And the question cites a portion of the statute that the Commission is charged to "adopt rules to encourage and promote large-scale aggregation in this state." Do you see that?

A. Yes, I do.

Q. So you used this portion of the statute as the source for your response to say that the RPM set-aside violates the statute, correct?

A. Yes, I do. I used that portion of the code.

Q. And on page 32 you state that only two communities in AEP Ohio's footprint have completed

government aggregation, correct?
A. To our knowledge at that point in time that's my understand, yes.
Q. And you relied on FirstEnergy, FES's, research to determine that and believe that to be true to the best of your knowledge still?
A. Yes. That is relying on internal research.
Q. Let me ask you about the time line that you lay out on page 33 of your testimony for entities that become governmental aggregators.
A. Okay. I'm there.
Q. Lines 15 to 21 you discuss some different timelines. Do you see that?
A. Yes, I do.
Q. Is it your understanding that those steps run consecutively and cannot overlap?
A. My understanding is generally they do run consecutively.
Q. But the question is are they required to run consecutively or just it just happens to turn out that they run consecutively?
A. I don't know that they're required to run consecutively.
Q. So they could be compressed, correct?

A. Well, my opinion would be they could be compressed by maybe one or two days, perhaps as long as a week, but it doesn't change the point of that statement which is it takes three to four months to get a customer enrolled under a governmental aggregation program.

Q. But each of these steps is not a condition precedent to the next step having to start, correct?

A. Well, to some degree yes, it is. In other words, you can't start your certification process necessarily until you've had your public hearings approving the fact that there is going to be a government aggregation program. You also can't have your mandatory opt-out before you've run the certification process with the Commission. So to a large degree the more significant steps have to happen in sequence.

Now, the days assigned to mailing and those kind of things, perhaps there's some leeway there, but at the end of the day it takes three to four months to properly enroll customers under a governmental aggregation program in Ohio.

Q. For instance -- one second.

The timelines within here, though, could occur on a shorter time period, you're just giving what you believe is the typical amount of time that these things take to happen, correct?

A. I'm giving the typical and probably very close to the shortest amount of time that they can happen, that's my opinion.

Q. Okay. That's fine.

MR. SATTERWHITE: If I could have one second, your Honor.

Q. Mr. Banks, you're familiar with a Pennsylvania proceeding dealing with the approval to offer opt-out governmental aggregation services in Pennsylvania, correct?

MR. KUTIK: Objection.

EXAMINER TAUBER: Overruled.

A. Not sure specifically what proceeding you're referring to.

Q. If I gave you the case number P-2010-2209253, would you know what I was talking about?

A. It would be better if you gave me the title of the case.

Q. If I gave you the case title Petition of FirstEnergy Solutions Corp. for Approval to Participate in an Opt-Out Municipal Energy

Aggregation Program of the Optional Third Class Charter City of Meadville, the Home Rule Borough of Edinboro, and the Home Rule City of Warren, and the Home Rule City of Farrell, would that be better?

A. I understand what case you're talking about, yes.

Q. And you're familiar with this case?

A. Yes, I am, generally.

MR. SATTERWHITE: Your Honor, I'd like to mark as AEP Exhibit 11, I believe, a November 10th, 2010, letter from the Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Banks, is this a communication from the Pennsylvania Commission concerning the case that we just discussed?

MR. KUTIK: Note my objection, your Honor. Same objection, relevance.

MR. SATTERWHITE: Your Honor, you already ruled upon this, I'm just trying to be able to discuss it now.

EXAMINER TAUBER: We have ruled on it, Mr. Kutik.

MR. KUTIK: Well, with due respect, your Honor, although we ruled on Pennsylvania as a general matter, now we're talking about a specific matter.

EXAMINER TAUBER: That matter and your objection is overruled.

Please continue, Mr. Satterwhite.

THE WITNESS: Could you repeat the question, please?

MR. SATTERWHITE: Could you reread the question for him, please?

(Record read.)

A. Yes, it is.

Q. And what is this communication from the Commission concerning?

MR. KUTIK: Objection.

MR. SATTERWHITE: I could ask it more directly if you want, I was just trying to give him a chance to say it generally if he wanted to.

EXAMINER TAUBER: Would you provide a little more direction with your question. I'm not sure where you're going with it.

MR. SATTERWHITE: Sure.

EXAMINER TAUBER: Thank you.

Q. (By Mr. Satterwhite) Mr. Banks, is this a communication from the Pennsylvania Commission consolidating three cases before it considering the lawfulness of opt-out of municipal aggregation programs in the state of Pennsylvania?

MR. KUTIK: Objection.

MR. DARR: Objection, your Honor.

MR. KUTIK: Not only is it irrelevant, but it also mischaracterizes the document.

EXAMINER SEE: And there was another objection?

MR. DARR: Yes, your Honor. It's a further extension of the relevance argument and that is, quite simply, we're talking about a state that doesn't have a statutory provision that deals with opt-in or opt-out aggregation, so this is just a losing argument any way we go in terms of it being relevant.

MR. SATTERWHITE: Your Honor, I appreciate their assessment of AEP's case whether it's losing or not, and I'm sure they'll provide that on brief if they want but, again, what AEP and the signatory parties have the right to establish are the business motivations of the parties attacking the stipulation in this case, and I believe if the Bench will allow it, the record will be benefited by seeing the treatment of government aggregation in another of FES's territories which might explain its attempt to act as it's acting.

I don't want to make any accusations in the record, but I think we can prove how it's acting in relation to aggregation here in Ohio.

MR. KUTIK: Your Honor, this is presented without any context. As Mr. Darr just mentioned, we're under a different statutory regime in Pennsylvania. And so without knowing and without discussing that statutory regime, the regulatory regime, the statements in here are totally out of context and are unfair to the company, FES, and are irrelevant to the issues in this case even as counsel would explain with respect to FES's, quote, motivations in Ohio.

If he wants to talk about FES's motivations in Ohio, then talk about Ohio.

MR. SATTERWHITE: And if I may, your Honor, FES and this witness has stated they are represented in many states and what's in the body of this document that's provided by the Commission of Pennsylvania, it establishes certain facts that this Commission might find interesting which could help explain the efforts of FirstEnergy, FES, in this case and its reaction to government aggregation.

MR. DARR: Again, your Honor, what the Pennsylvania --

EXAMINER SEE: Thank you, Mr. Darr.

MR. DARR: My apologies, your Honor.

EXAMINER SEE: Let me hear -- go directly to your question, Mr. Satterwhite.

MR. SATTERWHITE: Okay. I can restate it to make it easier.

EXAMINER SEE: Yes.

Q. (By Mr. Satterwhite) Mr. Banks, is it your understanding that this communication from the Commission in Pennsylvania resulted in a moratorium -- I'll get the exact language here -- on switching of customers in governmental aggregation programs in Ohio during the pendency of this review?

MR. KUTIK: Objection.

MR. DARR: Objection.

MR. SATTERWHITE: In Pennsylvania. I'm sorry.

EXAMINER SEE: Your objections are noted.

Let me hear the answer to the question, Mr. Banks.

THE WITNESS: This communication from the Commission is relating to, as it reads, consolidating three petitions, and it also instructs both utilities and CRES providers that they call electric generation suppliers to not pursue opt-out municipal aggregation until they further resolve their position in general.

MR. KUTIK: Objection. Move to strike the question and the answer.

MR. SATTERWHITE: It's already been ruled on, your Honor, I think you overruled his objection and allowed the answer.

MR. KUTIK: No, she said the objection was noted.

EXAMINER SEE: That is correct, I did say it was noted.

That was your only question for this -- on this issue, Mr. Satterwhite?

MR. SATTERWHITE: Yes, your Honor, I'm done.

EXAMINER SEE: You said that was your last question on this issue, Mr. Satterwhite?

MR. SATTERWHITE: Yes, your Honor, if that's overruled, that's all I have with it.

EXAMINER SEE: Motion to strike the question as well as the answer is granted.

That was your last question, Mr. Satterwhite, for this witness?

MR. SATTERWHITE: For this witness? No. I'm sorry. I thought you were asking if --

EXAMINER SEE: I mean on this particular

topic.

MR. SATTERWHITE: Because that was stricken, if I'm permitted to ask more questions, I will.

EXAMINER SEE: Continue with your cross-examination, Mr. Satterwhite.

MR. SATTERWHITE: Thank you, your Honor.

Q. (By Mr. Satterwhite) Mr. Banks, I'll get back to where I was on my page, maybe to provide context for the record, Mr. Banks, could you let me know what your understanding of this case involves?

MR. KUTIK: Objection.

MR. DARR: Objection to form.

MR. SATTERWHITE: Your Honor, I'm just trying to provide the Commission some perspective from Mr. Banks' point of view of what this docket involves.

MR. KUTIK: Your Honor, we're going down a road now where if he pursues this line further, we'll have to do redirect and provide additional context and he'll do recross on an issue that really has no merit with respect to whether this stipulation is appropriate or not under Ohio law.

MR. SATTERWHITE: Again, your Honor, this goes to the business practices and motivations of the arguments provided.

MR. KUTIK: In Pennsylvania.

MR. SATTERWHITE: For FES as a company.

EXAMINER SEE: Thank you, gentlemen. That's enough.

I'll allow you to proceed, Mr. Satterwhite.

MR. SATTERWHITE: Okay.

EXAMINER SEE: Do you recall the question, Mr. Banks?

THE WITNESS: Could you repeat it, please?

EXAMINER SEE: Yes.

MR. SATTERWHITE: I can restate it, if it's easier.

Q. (By Mr. Satterwhite) What is your understanding of what this case involves?

A. My general understanding of the case is that it involves opt-out municipal aggregation in Pennsylvania for Home Rule communities and our view is and was that Home Rule communities have certain rights that aren't afforded other communities, one of which we believe to be opt-out municipal aggregation, and as a result of that we pursued opt-out municipal aggregation with those communities.

We had several petitioners object to our activity in pursuing opt-out municipal aggregation and the Commission considered those petitions and decided that at that point in time we should not further pursue opt-out municipal aggregation until such time as the Commission would complete its investigation into competitive markets in Pennsylvania, the structure of which is very different from the competitive markets here in Ohio.

Q. Thank you.

MR. SATTERWHITE: I'll move on.

Q. Now, in some of the changes you noted at the beginning of your direct, I believe on page 59, line 5, you added the word "unaffiliated."

MR. KUTIK: I'm sorry. Where you are?

MR. SATTERWHITE: Page 59, line 5, one of the corrections.

MR. KUTIK: Thank you.

Q. Do you see that?

A. Yes, I do.

Q. What was the basis for that change? What was that correcting?

A. Well, the change was because we realized that AEP Retail's an affiliate of AEP Ohio, so they may have an interest in some of these proceedings from a competitive supplier perspective, but to our knowledge none of the other signatory parties met those conditions.

Q. Okay. And it's also your understanding that AEP Retail is a subsidiary of AEP Corporation which is why you mentioned "unaffiliated"; is that correct?

A. It's affiliated with AEP Corporation and that's why we added the term "unaffiliated."

Q. I just wanted to clear that up. Thank you.

MR. SATTERWHITE: Just crossing off questions that were asked by others here real quick, your Honor.

Q. Now, on page 41 of your testimony, if I could have you turn there, line 18, you include the phrase "simply by the Commission's decision to enforce the law...." Do you see that?

A. Yes, I see that.

Q. And that's in reference to the corporate separation or the structure of AEP Ohio, correct?

A. Yes, it is.

Q. Is it your assertion by making this statement that the PUCO has failed to enforce the law thus far?

A. That's not what it says, and I don't think that that's what I was trying to say.

Q. You say "simply by the Commission's decision to enforce the law." So that's not a connotation that the Commission has not enforced the law thus far.

MR. KUTIK: Objection. Argumentative.

EXAMINER TAUBER: Sustained.

Q. Mr. Banks, what did you mean by the statement that the Commission -- "simply by the Commission's decision to enforce the law"?

A. What I meant is that, as indicated on line 15 of that same page, corporate separation is required by law as a result of Senate Bill 3 and the Commission has provided several waivers, as I understand it, to AEP not to have to comply with that law.

Q. Then, therefore, it's your understanding that the waivers are proper, you're not arguing with the waivers.

A. I'm not -- I don't have an opinion on whether waivers are proper or not. I don't know all the context by which the Commission came to that conclusion to allow the waivers.

Q. Specifically on the AEP pool that's been referenced throughout this proceeding, you do not consider yourself an expert on the AEP pool, correct?

A. Although I'm not an expert on the AEP pool, I have quite a bit of experience with pools in the natural gas industry and in my read of the AEP pool it has some similarities to those. So I do understand what the AEP pool is.

Q. Can I have you turn back to your deposition on page 158 for me.

A. I'm there.

Q. Could I ask you to read lines, the question that starts on line 3 and the answer on line 5. That's right.

A. Okay. "Do you consider yourself an expert in the AEP pool?"

Line 5 the answer is: "No."

Q. Thank you.

Now, on page 48 of your testimony, if I could get you to turn there for me, you discuss FES's investments in renewables and its efforts in the renewable market. Do you see that?

A. Can you point me to the lines, please?

Q. I think it's starting around line 16 you start talking about the renewable energy resource benchmarks in Senate Bill 221.

A. Yes, I see that.

Q. What is the extent of FES's activities with renewables in Ohio?

A. Well, some of the specific involvement in Ohio are listed here. We purchased solar RECs to support the development of new solar generating facilities at the Cincinnati Zoo and Botanical Gardens in Southern Ohio, at a Campbell's Soup Company manufacturing facility in Northwest Ohio, and at a First Solar manufacturing facility in Northwest Ohio, and we've also entered into purchase agreements to support the development of a hundred megawatts of output from the Blue Creek Wind Farm in Western Ohio.

Q. And when Senate Bill 221 and the energy resource benchmarks were being considered by the legislature, were you involved from a policy point of view on the viewpoints of FES?

A. I was not.

MR. KUTIK: May I go off the record for a minute, your Honor?

EXAMINER SEE: Yes.

(Discussion off the record.)

EXAMINER SEE: We're back on the record. That was in reference to Senate Bill 221?

MR. SATTERWHITE: Yes.

EXAMINER SEE: Okay.

Q. (By Mr. Satterwhite) Who was involved from FirstEnergy Solutions on the policy positions of FES in relation to the renewable energy resource benchmarks?

A. I don't know. The policy group was just established in the early part of 2011.

Q. And in your ongoing role as vice president of policies for FES do you deal with the renewable benchmarks, or the energy resource benchmarks? I apologize.

A. I'm not sure what you mean by "deal with" them.

Q. Do considerations and questions come up every so often that come across your desk that might deal with the energy resource benchmarks in Senate Bill 221?

A. I imagine that they could, but to my recollection I don't recall those specific topics coming up in the last six months or so since I've been vice president of competitive market policies.

Q. Okay. So you don't deal much with the renewable market, the energy benchmarks is what you're saying?

A. If they become a policy issue, I would have to deal with them, but to this date in this position I have not yet had to really deal with them.

Q. Are you familiar with FES's efforts to sell renewable credits that it secures as part of the items that you listed on page 48?

A. I don't know that FES is trying to sell credits in relation to these items. FES is active in the market for renewables and they could be buying and selling and do a lot of things with the credits that I wouldn't necessarily know.

Q. Would it be helpful if I showed you an FES document to see if that refreshed your recollection of the efforts of FES in this market?

A. I don't know if it will or not.

MR. SATTERWHITE: To the extent this could contain confidential information, I'm only going to provide a copy to FES and the witness.

MR. KUTIK: May I see it first, please?

May I have a minute, your Honor?

EXAMINER SEE: Why don't we take a brief recess while counsel looks over the document.

MR. KUTIK: Thank you.

EXAMINER SEE: Let's take five minutes, we'll reconvene at 11:45.

(Recess taken.)

EXAMINER SEE: Let's go back on.

Q. (By Mr. Satterwhite) Mr. Banks, do you have the document I placed in front of you?

A. Yes, I do.

Q. Looking through that does that help refresh your recollection on whether FES participates in the REC market, the selling of RECs?

A. This document doesn't help because I've never seen this document before.

Q. Does this help refresh your memory at all that FES does participate in the selling of RECs?

A. It does not refresh anything because I've never seen the document. And I believe that FES may be involved in buying and selling RECs, but I'm not sure that this document does anything for me.

Q. Okay. Mr. Banks, you had some additional direct this morning with your counsel related to negotiations in this case. Do you remember that?

A. Could you be more specific?

Q. Yeah. After your testimony was presented Mr. Kutik asked you about an October 26th afternoon meeting. Do you remember that?

A. Yes, I do.

Q. And your additional testimony today --

MR. KUTIK: I'm sorry. What was the

date?

EXAMINER SEE: The date in the record is October 26th.

MR. SATTERWHITE: Sorry. August 26th, thank you.

A. August 26th I do recall.

Q. You testified to an August 26th afternoon meeting that you attended; is that correct?

A. Yes.

Q. Did you also attend a meeting in the morning of August 26th?

A. I did not.

MR. SATTERWHITE: Go off the record for one second so I can ask Mr. Kutik a question?

EXAMINER SEE: Yes.

MR. SATTERWHITE: I'm going to go over and ask him, it might cut down on a bunch of questions.

EXAMINER SEE: Okay, we'll go off the record for a moment.

(Discussion off the record.)

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

MR. SATTERWHITE: Thank you, your Honor.

To make sure I represent this correct I just had a conversation with Mr. Kutik and to avoid a line of questioning I believe the parties will stipulate that there is a joint defense agreement that was entered into between FES, IEU, OCC, and OPAE that started on September 1st, 2011.

MR. KUTIK: Well, your Honor, to be more accurate, FES is willing to enter into that stipulation.

MR. SATTERWHITE: Okay.

MR. KUTIK: With the addition of Appalachian Peace and Justice Network.

I'm sorry, do you need me to repeat myself?

EXAMINER SEE: I didn't hear that last part you just said.

MR. KUTIK: To be clear, FES, as opposed to the parties, is willing to enter into that stipulation, with the addition that the Appalachian Peace and Justice Network was also part of that agreement.

EXAMINER SEE: Okay.

MR. SATTERWHITE: All right? Should we check to see if there's any objection from the other parties?

MR. DARR: No objection, your Honor.

MR. ETTER: No objection.

Q. (By Mr. Satterwhite) Mr. Banks, back on page 13 of your testimony --

A. I'm on page 13.

Q. -- near the bottom starting on line 22 there's a bullet that begins to talk about the PIPP program. Do you see that? Over to the top of 14.

A. Yes, I do.

Q. And you're familiar with the PIPP or PIPP Plus program with the recent changes in that, correct?

A. I'm familiar with PIPP programs in general, but not necessarily with the PIPP Plus program.

Q. Would you accept, subject to check, that PIPP Plus is just the new name that got added to it when the Department of Development established some rules --

MR. DARR: Objection, your Honor.

EXAMINER SEE: There was an objection, Mr. Darr?

MR. DARR: Yes, ma'am. As to the form of the question and also some assumptions that are implied by the question.

MR. SATTERWHITE: All I asked is will you accept, subject to check, that that's the new name for the program.

EXAMINER SEE: Rephrase your question, Mr. Satterwhite.

Q. Sure. Mr. Banks, on page 13 to 14 you talk about the PIPP program, correct?

A. Yes.

Q. And to the best of your knowledge whether that's called "PIPP Plus" or "PIPP," it's the program in Ohio dealing with the percentage of income of customers and their payments for their electric bills, correct?

A. As I understand it, PIPP is percentage of income program for customer payment, yes.

Q. And isn't it true that a PIPP customer, their monthly PIPP installment payment is based on their percentage of income and not based upon tariffs?

A. I know that percentage of income is considered in their monthly payment, yes.

Q. But there's not a tariff charge for a PIPP customer, correct?

A. I can't say that I know that specifically.

Q. But it's your understanding that what they pay is related, as indicated in the name, by their percentage of income, correct?

A. I do understand that their payment is based on percentage of income.

MR. SATTERWHITE: One second. I think I might be done.

EXAMINER SEE: Okay.

MR. SATTERWHITE: Thank you, your Honor, that's all I have at this time for this witness.

At this point I would move for the admission of AEP Exhibits 9, 10, and 11.

EXAMINER SEE: Mr. Kutik.

MR. KUTIK: May I have a moment, your Honor?

EXAMINER SEE: Yes.

MR. KUTIK: Can we go off the record?

EXAMINER SEE: Yes.

(Off the record.)

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

Mr. Kutik.

MR. KUTIK: Thank you, your Honor.

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REDIRECT-EXAMINATION

By Mr. Kutik:

Q. Mr. Banks, you were asked several times about things you said in your deposition and you were not given the opportunity to explain your answers, so let me discuss a couple of those questions and answers with you.

You were directed to page 73 of your deposition where you were asked about the understanding of an ESP and an MRO and you gave one feature that you understood was different, then you were asked is that the extent of your understanding of the difference between the two, and your answer was: "Generally," correct?

A. That's correct.

Q. What did you mean by that?

A. Well, generally means that, in my view, was the big issue in the comparison, but generally means there are others that can be considered as well.

Q. You were also asked questions about what an answer to a question that appeared on -- the question appeared on 76, the answer appeared on page 78 of your deposition. I want to direct you to page 74 of your deposition starting at line 21.

Were you asked this question and did you give this answer: "So, I'm asking you if you believe that any action taken by the PUCO that places any type of restriction on competitive shopping, do you consider that anticompetitive and a violation of state policy?"

I objected and the answer you then gave: "I think 'any action' is too broad."

Did you give that answer?

A. Yes, I did.

Q. And when you were answering the question about whether it was "automatically anticompetitive and against state policy," would you like to explain your answer?

A. Well, again, it's obvious that the Commission has some authority to consider things like limitations on shopping if in their view it will negatively impact stability and certainty in the retail generation service, and that would be an example of a situation where the Commission could do something.

So the "automatically" is referring to the fact that there is a violation, but the Commission could determine well that violation is substantiated by considering those facts.

Q. You were also asked some questions about the contract between FES and the City of Reynoldsburg. Do you remember that?

A. Yes, I do.

Q. And you were also asked some questions about the grant that's in that contract, correct?

A. Yes.

Q. Do other companies that offer CRES service through governmental aggregation provide similar grants to other communities?

MR. SATTERWHITE: Objection.

A. Yes.

MR. SATTERWHITE: I don't think there's any foundation for that. He doesn't work for other companies. He works for FES.

MR. KUTIK: Your Honor, in competition you learn from customers.

MR. SATTERWHITE: Then it's hearsay then, your Honor.

MR. KUTIK: I didn't ask him what other people said. I asked him about practices. That's not hearsay.

MR. SATTERWHITE: If you need me to respond, let me know.

EXAMINER SEE: Just a minute, gentlemen.

The objection is sustained.

Q. (By Mr. Kutik) Prior to your current job and in another job that you had at FES were you responsible for developing products? That FES would offer?

A. Yes, I was, including products for governmental communities.

Q. And in that job and in your current job did you -- is it common for FES to gather what's called "competitive intelligence"?

A. Yes, it is.

Q. And what's "competitive intelligence"?

A. "Competitive intelligence" in that context is understanding what your peers are doing in the marketplace. Evaluating the effectiveness of those products that your peers might be developing in initiating a response through your own product development that might put you in a better competitive position.

Q. And through your understanding and development and gathering of competitive intelligence do you have an understanding of whether other CRES providers that deal with governmental aggregation provide grants similar to FES?

MR. SATTERWHITE: Objection, your Honor.

He's trying to circumvent your sustaining the earlier objection by relying on what he described himself as you learn things. We don't have in front of us any of these documents. Maybe if he provided the intelligence, we can get into the basis of where that intelligence came from, we can get into whether that understanding -- it could just be a guess from somebody in the field or what somebody heard at Burger King when they were ordering fries.

MR. KUTIK: That sounds like recross to me, your Honor.

MR. SATTERWHITE: It's --

EXAMINER SEE: Wait just a minute.

MR. SATTERWHITE: Sorry.

MR. KUTIK: May I be heard?

EXAMINER SEE: The objection is overruled.

You may answer the question, Mr. Banks. Do you need it reread?

THE WITNESS: No.

A. Generally, most of our competitors that have been in competitive situations with us for governmental aggregation have also offered grants.

Q. And why does FES put grant provisions or offer grants in these type of contracts?

A. Well, and I'm not sure exactly, but we may have been one of the first, in our product development efforts we took a look at the marketplace and in mid- to late-2008 when the economic downturn started to come into play, we were trying to figure out a good way to expand our programs and one of the things we thought about is that from a grant perspective it would be good to help communities, because a lot of communities were struggling with their budgetary concerns.

We also thought that if we could give customers a good discount off of their SSO or PTC price they're paying, that would be good and we thought it would be nice to get more customers.

So the way we viewed that is a win-win-win: A win for the community because they were being helped in their budgetary concerns; a win for the customer because they were starting to save money that they otherwise would not have, and it would be more customers because it could take years to accumulate that many customers and offer those services; and then finally we were getting more customers which is part of the reason we're in business.

Q. You were also asked some questions about "termination provision." What do you understand "termination provisions" or those questions to be directed towards?

A. Well, termination provisions are pretty common in most retail or competitive contracts and most of those termination provisions relate to early termination, it's not a termination under any circumstance. So if a customer were to leave a contract prior to its expiration, it's intended to recover at least some costs.

MR. KUTIK: No further questions. Thank you.

EXAMINER SEE: Recross, Ms. McAlister?

MS. McALISTER: No, thank you, your Honor.

EXAMINER SEE: Mr. Kurtz?

MR. KURTZ: None, your Honor.

EXAMINER SEE: Ms. Kaleps-Clark?

MS. KALEPS-CLARK: No recross, thank you.

EXAMINER SEE: Mr. Satterwhite?

MR. SATTERWHITE: Nothing further, your Honor, thank you.

EXAMINER SEE: Thank you, Mr. Banks.

MR. KUTIK: Your Honor, at this time FES moves for the admission of FES Exhibit 1.

EXAMINER SEE: Are there any objections to the admission of FES Exhibit 1?

MR. SATTERWHITE: None, your Honor.

EXAMINER SEE: Hearing none, FES Exhibit 1 is admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER SEE: And AEP has also moved for the admission of AEP Exhibits 9, 10, and 11. Are there any objections?

MR. KUTIK: Your Honor, we have no objection to Exhibit 9, but we do have objections to Exhibits 10 and 11.

EXAMINER SEE: Okay. With that, Exhibit 9 is admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. DARR: Join? The objection to Exhibit 11, your Honor.

MR. KUTIK: Would you entertain argument on the exhibits at this time, your Honor?

EXAMINER SEE: Just a second here. Just a minute, please.

Yes, let me hear the arguments on AEP Exhibits 10 and 11.

MR. KUTIK: Your Honor, it really is to the authenticity of the document, particularly with respect to some handwritten notations on the document.

For example, there's a notation on the very first page in the upper left-hand margin, on the second page there is a notation at the top of the right-hand corner, there are underlinings that are handwritten throughout the document, for example on page 7, paragraph 3.4(i), paragraph on page 6, 333. So to the extent that those obviously are not part of any type of official document, that would be the nature of our objection.

MR. SATTERWHITE: If it helps, your Honor, it's my understanding this is how we received it from the City. We can go get a clean copy from the office rather than have it faxed to us, we can substitute that in the record, if that's preferred by the Bench.

EXAMINER SEE: That's acceptable. You'll provide the Bench a copy, a clean copy.

MR. SATTERWHITE: Correct. What I'll do is we'll send the clean copy we have to Mr. Kutik first to make sure he's seen it and then provide it to the Bench.

MR. KUTIK: That would be acceptable to us, your Honor.

EXAMINER SEE: Okay. With those steps in place AEP Exhibit 10 should be admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER SEE: And now to your arguments on AEP Exhibit 11.

MR. KUTIK: Right, your Honor. This document, your Honor, was never properly authenticated, number one. The only document that specifically referred to what it is you struck the question and answer. And, further, no relevance has been established to this, no context was provided for this, no foundation was provided for this.

MR. SATTERWHITE: If I may, your Honor.

EXAMINER SEE: Mr. Satterwhite.

MR. SATTERWHITE: When he was presented with the document I believe I said is this the document from the Pennsylvania Utility Commission, he responded that it was. He also did answer questions on this, his understanding of the case. So I believe it's proper to admit it.

And it's an official document of the Pennsylvania Public Utility Commission, there can't be any doubt to that, and admissible on that basis as well.

MR. DARR: If I may address the last point, your Honor.

EXAMINER SEE: Say that again, Mr. Darr.

MR. DARR: If I may address that last point that Mr. Satterwhite made.

EXAMINER SEE: You may.

MR. DARR: There are procedures under the Civil Rules for authenticating foreign decisions and laws. Those are clearly not established here. So in addition to the arguments that Mr. Kutik made, I believe that there's no demonstration here on the authenticity of this document.

MR. SATTERWHITE: If I may, your Honor, I believe he's referring to 901(b)(7), I think, and if there's any evidence that it's a document from the agency, it's admissible. The reference that he understood what the case was, what it was about, and his answer when I asked him to broadly just let us know what the case is about matches the language within the letter from the Public Utilities Commission of Pennsylvania. So I think on that basis it's admissible.

MR. KUTIK: That's not how you establish foundation, your Honor. You have to establish what the document is and he did not do that.

EXAMINER SEE: I'm going to reserve judgment on AEP Exhibit 11 until after lunch. Let's go off the record.

(Discussion off the record.)

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

Mr. Banks, thank you.

We'll take a lunch break until 1:00 o'clock, reconvene at that point. Thank you.

(Thereupon, at 12:29 p.m. a lunch recess was taken.)

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Thursday Afternoon Session,
October 13, 2011.

- - -

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

After consideration of AEP Ohio's motion to admit AEP Ohio Exhibit 11 and the objections made, AEP Ohio's motion to admit Exhibit 11 is denied.

MR. SATTERWHITE: Thank you.

EXAMINER SEE: FES's next witness, please. Mr. Lang.

MR. LANG: Your Honors, FirstEnergy Solutions calls Dr. Jonathan Lesser.

Your Honors, I have two copies of Dr. Lesser's testimony on the corner of the Bench. The court reporter has also been provided a premarked copy. This will be FES Exhibit No. 2.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER TAUBER: Please raise your right hand.

(Witness sworn.)

EXAMINER TAUBER: Thank you.

- - -

JONATHAN A. LESSER

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

DIRECT EXAMINATION

By Mr. Lang:

Q. Give your full name for the record, please?

A. My name is Jonathan A. Lesser, L-e-s-s-e-r.

Q. Could you identify FES Exhibit No. 2?

A. Yes. That is a copy of my testimony I filed regarding the stipulation.

Q. And could you also identify the last page of the exhibit?

A. Yes. The last page of the exhibit contains revisions of my tables 2 and 14 that reflect adjusted values that were prepared by AEP Witness Allen and included as his Exhibit WAA-6 on October 5th of this month.

MR. LANG: Your Honors, these tables were provided to AEP and the other parties yesterday. Yes, your Honor.

Q. Dr. Lesser, do you have any corrections to your testimony?

A. Yes, I do. On page 22, line 23, the

words "CRES customers" should be CRES providers." On page 40 --

EXAMINER SEE: Just a minute, Mr. Lesser. Page 22, line 23?

THE WITNESS: Yes, ma'am.

EXAMINER SEE: Okay.

MR. CONWAY: Could I have the correction again, your Honor? Dr. Lesser.

THE WITNESS: "CRES customers" should be "CRES providers."

MR. CONWAY: Thank you.

Q. (By Mr. Lang) And then the next correction.

A. Page 44, line 5, the word "than," t-h-a-n, should be "then," t-h-e-n.

Q. And the next?

A. On page 50, line 1, the word "twice" should be deleted.

Q. And the next?

A. On page 52, line 21, consistent with the changes in table 14 on the last page, what you should change is the statement "1 billion to almost 2 billion" should now read: "1.2 billion to over 1.4 billion."

Q. And any more?

A. Yes. One more. On page 53, footnote 7, delete the --
Q. That would be footnote "57"?
A. "57." You would delete "filed September 27th, 2011."
Q. Do you have any more corrections?
A. No, I do not.
Q. With those corrections, if you were asked the same questions in the testimony, would you provide the same answers?
A. Yes, I would.
MR. LANG: Your Honors, the witness is available.
EXAMINER TAUBER: Mr. Kurtz?
MR. KURTZ: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Kurtz:
Q. Good afternoon, Dr. Lesser.
A. Good afternoon.
Q. Could I ask you to turn to page 23 of your testimony.
A. All right.
Q. Heading E, line 12, this is where you discuss how AEP's formula rate overstated its

capacity costs; is that correct?

A. Yes, it is.

Q. AEP calculated their capacity costs at $355 a megawatt-day?

A. That's correct.

Q. Okay. You cite two reasons why AEP is incorrect, on line 20, starting on line 20. Essentially, you're saying that they did not include profits from off-system sales as an offset to the capacity costs?

A. No. They included only profits from off-system capacity sales.

Q. Okay. They failed to include any profits from off-system energy sales.

A. That's correct.

Q. And as you state on line 22, "In other words, in setting the formula rate capacity costs, AEP Ohio keeps all of the profits from its energy-related sales." So, therefore, they should be counted in the capacity costs.

A. That's correct. And that leads to them earning an above-market return on equity higher than the 11.15 percent that they've asked for in that formula rate.

Q. And as you indicate later in your

testimony, is it Dr. Schnitzer?
A. Mr. Schnitzer.
Q. Mr. Schnitzer. He cites the same error and comes at it slightly differently as well but he makes the same adjustment in his maximum above-market capacity number?
A. I don't have Mr. Schnitzer's testimony in front of me and so I really don't want to comment on what he's done. I think you would be better served to ask him directly.
Q. Well on page 30 to 31 you refer to his testimony and if you could just review that. I think you indicate that he cites the same error.
A. He's actually doing something slightly different. He's doing something that's more consistent with how the net cost of new entry is determined in PJM but he's subtracting out energy and ancillary services revenues.
Q. Right. That's what he does. He also says you need to count off-system sale energy revenues in the -- margins the calculation; is that right?
A. I believe that's correct.
Q. All right. the second error you cite on page 23 is that, in your opinion, the Commission

should not include or consider any capacity cost additions since January 1, 2001?

A. Yes, because that was the first -- the day of the transition to competition began, and under SB 3 in the legislation all subsequent investments were to be made and recovered in the market.

Q. Okay. That's your opinion on that issue?

A. Based on my reading of that legislation and stipulations.

Q. So, basically, what we're really talking about are environmental investments primarily made since 2001 that you --

A. No, that's not correct. There's all sorts of capital additions that have been made since January 1st, 2001. Any generating facility, every year you're making new capital additions just to replace plant and equipment for maintenance purposes.

Q. Yeah, I understand that. We'll get to that.

A. Okay.

Q. That's fine. Let's just talk about the off-system energy sales for the time being, okay?

Page 24, let's see, on line 7 you say "AEP Ohio ignores the fact that it also recovers a portion of its fixed costs when it makes energy-related sales for resale because revenues received from those sales that exceed AEP Ohio's variable O&M expenses -- O&M plus fuel cost recover a portion of its embedded capacity costs."

That's profits from off-system sales they failed to include? Is that what that means?

A. Yeah, that the profits, they have not counted profits that they obtained from energy-related off-system sales.

Q. Okay. And by "off-system" you mean what, as you use the word on line 14?

A. "Off-system sales" refer to sales made into the market or they can be bilateral transactions, they can be sales into the PJM market.

Q. Do you know what account those are booked to? What FERC account?

A. Excuse me, sir, I'm having trouble, because of the fan --

Q. I'm sorry. Do you know what FERC account those sales are booked to?

A. I'd have to look that up. Off the top of my head I do not know that.

Q. On page 27, line 8 you indicate that they're recorded in account 447; is that right?

A. Yes.

Q. And purchased power is 555, if you know?
A. I believe that's correct.
Q. Okay. All right. You've taken FERC Form 1 data for 2010, this is on page 28 of your testimony, and you've taken their production costs, you've taken their account 447 sales for resale revenues, and you've calculated a margin or a profit on line 18 of table 5, net contribution to embedded cost; is that right?
A. That's correct.
Q. Okay. I don't want to switch back. On page 27 you estimate that for 2010 the pre-2001 generating plants, now, you've excluded Darby and Waterford.
A. That's correct. Because they were on line after the transition date.
Q. We'll just -- that's fine, we'll just ignore that for the time. But you've calculated that there were, on page 27, line 17, 252 million of margins, gross margins, from off-system sales that AEP failed to account for?
A. That was my calculation, yes.
Q. Okay. That's pretax? If you look on your exhibit, table 5, I don't think you have a tax.
A. That's true.

Q. So this is gross margins pretax.
A. That's right.
Q. Okay. And what you're essentially saying is that that $252 million gross pretax margins that AEP made in -- that AEP Ohio made in 2010 should be used to reduce the fixed costs when calculating the number that AEP came up with of $355 a megawatt-day.
A. That's one of the reasons for reducing that value, yes.
Q. And you have your second reason is the pre-2001 legal --
A. That's correct.
Q. -- legal question. Okay.
So it's your assumption in your calculation that AEP Ohio would be able to retain all the profits from off-system sales that it made in 2010.
A. I may not be understanding your question, sir. If AEP is earning profits on off-system energy sales, I'm not sure where else they're going to go.
Q. Well, I'll tell you. Are you familiar with the AEP interconnection agreement?
A. No, I'm not.
Q. Mr. Schnitzer is, I know he attaches -- he refers to it and attaches a number of documents

from that.

So you don't know, for example, that under the AEP interconnection agreement -- do you know that that's a FERC-filed rate schedule?

A. I'm not familiar with the interconnection agreement.

Q. So you don't know that -- you wouldn't know that profits from off-system sales are not maintained by the individual companies but they're shared among all the affiliates on a member load ratio basis?

A. As I've said, I'm not familiar with the agreement.

Q. If that were true, and AEP Ohio was only entitled under this federal interconnection agreement to keep 41 percent of its off-system sales profits, then your calculation would be incorrect mathematically; would it not?

A. Without reviewing the interconnection agreement I just can't say.

Q. Well, if you take as a hypothetical, assume for me that AEP Ohio's only entitled to keep its member load ratio share of these profits, which is approximately 41 percent, take that as a hypothetical, then your number would be overstated and your calculation on this issue would be incorrect.

A. I'd have to do the analysis assumed under your hypothetical.

Q. Well, if you just take 41 percent of 252 million, you'll get a different conclusion than if you take a hundred percent of 252 million. You can agree to that, can't you?

A. I would agree that 41 percent of 252 million is a different number than 100 percent of 252 million.

Q. Did you think to check how costs -- how revenues flow under the interconnection agreement before filing this testimony?

A. As I testified already, I'm not familiar with the interconnection agreement.

Q. Let's talk about the second reason you feel that the capacity cost calculation of AEP is overstated, the fact that you need to exclude capital addition, I guess net of depreciation but net capital additions to the power plants after January 1, 2001. That's essentially your reading of the law?

A. Yes, it is.

Q. Okay. Are you aware that since Senate Bill 3 was enacted there was a new electricity law, Senate Bill 221?

A. I am familiar with that legislation, yes, sir.

Q. Yet it's still your opinion that net capital costs need to be excluded in the calculation of --

A. Yes, it's still my opinion.

Q. Okay. And you base that upon -- your nonexpert, nonlawyer, but based upon your reading of Senate Bill 3.

A. And Senate Bill 221. As well as the stipulation signed by AEP in the electric transition case.

Q. Will you turn to, please, page 32 of your testimony.

A. All right.

Q. Line 17 you start a new section that "Based on AEP's claim embedded costs, the base generation rate reflects an artificial subsidy for SSO customers," and that goes on for several pages; is that correct?

A. Yes, it is.

Q. Okay. So you're saying that based upon your calculation of AEP's costs, that the embedded -- that the SSO generation rates don't provide enough recovery to meet the generation revenue requirements and, hence, they're subsidized.

A. No, that's not exactly what I say.

Q. Let's turn to page 36. As I understand it, you calculate -- let's go to page 37. You calculate as $142 million the net recoverable nonfuel energy-related costs which is referred to on line 7 of your testimony at page 37; is that correct?

A. I'm sorry, which number were you referring?

Q. Well, let's read line 7. The remaining 142 million, which is line 9 of table 8; is that correct?

A. Right. Correct.

Q. Okay. The remaining 142 million is the net energy-related production costs that would need to be recovered from AEP customers. Did I read that correctly?

A. Yes, you did.

Q. Okay. And in making this determination on line 8 of table 8 you also exclude 100 percent of profits from off-system sales?

A. Line 8 of the, I'm sorry, line 8 of table 8?

Q. Yes.

A. Yes. Those numbers are from Mr. Pearce. Yes.

Q. Now, if it's correct under the interconnection agreement that AEP Ohio only keeps 41 percent and the other 59 percent go to Indiana, Michigan, Appalachian Power which is in West Virginia and Virginia, and Kentucky Power, then this table would be wrong as well?

A. No, I don't -- I have to disagree with you.

Q. Okay. On page 37, line 11, you say "Thus, either AEP Ohio's remaining energy-related production costs are either over $50 million greater than the amount it needs to recover in 2012, or -- 2012 through the proposed base generation rates for each customer class or AEP Ohio's capacity cost are much less than claimed."

So you don't know, it's one way or the other. So you calculated a $90 million number and you've come up with 142 million here and you're saying it's either one of these two explanations but you're not quite sure how to reconcile that?

A. No. If you look at starting on page 38, line 7, I do reconcile it where I say "...as I've previously demonstrated, AEP Ohio's embedded capacity cost charge, as developed by AEP Ohio Witness Pearce, double recovers stranded costs it previously had agreed to forego recovering except in the market. Moreover, Dr. Pearce's estimates wrongly exclude the contribution to embedded costs to the profits associated with off-system energy sales. Thus, in reality, AEP Ohio is unlikely to be subsidizing SSO customers."

Q. Now, I guess you're complaining that Dr. Pearce excluded all of the profits from off-system sales. You included 100 percent, correct?

A. My problems with Dr. Pearce's calculations are not just on the off-system sales calculations.

Q. But just --

A. They're also, in fact, much more of the impact is associated with his inclusion of all embedded capital costs post-January 2001.

Q. Okay. But your debate with him on the off-system sales profits issues, he did not include any, you included 100 percent.

A. That's correct.

Q. Let me ask you to turn to page 39. Were you here in the room today when there was testimony that somehow the residential customers were subsidizing the industrial customers?

A. I recall something like that.

Q. How do you explain on your table 10 GS-4/IRP? That's the large transmission voltage industrial customers for Columbus & Southern. How do you explain 105.1 percent rate increase to the Columbus & Southern industrials if the industrials are somehow subsidizing -- being subsidized by the residentials?

A. Well, my testimony is that, if you'll read down on page 39, that the increase in the GS-4/IRP-D customer rate class for CSP, I state that's incongruous. I really don't know why they are more than doubling that rate.

But in general I say "...it appears to be an attempt by AEP to foreclose market competition by reducing costs allocated to the large commercial and industrial customers who are most likely to switch to competitive electric suppliers, while increasing costs to residential customers who are least likely to switch."

Q. Well, how would AEP be reducing costs to the industrial customers if they're giving the CSP transmission voltage large industrials 105 percent rate increase?

A. Because you're looking at one small class of interruptible customers, not all of the commercial and industrial customers.

Q. That's not a -- GS-4 is not a small class. It's $34 million of revenue, generation revenue in current rates and you've calculated it goes up to 71 million. That's not a small class, is it?

A. I didn't make that calculation. That's Mr. Roush's calculation.

Q. How do you claim that AEP is artificially keeping the -- reducing the rate increase on the industrials if there's a 105 percent rate increase to the major Columbus & Southern industrial customers?

MR. LANG: Objection, your Honors. It's mischaracterizing the stipulation terms.

Q. Well, whatever the 105.1 percent number in your table means, how do you square that with your statement that the rate increase is being artificially reduced for the industrial customers?

A. Well, my answer would be that it may -- and I don't know what AEP's -- since AEP has never done a class cost-of-service study and Mr. Roush testified that they hadn't done one in many, many years, which is why they wanted to go to what they call market rates, it may be that AEP believes the costs of serving the interruptible customers is higher than they've set it at. Or they believe that those customers are sufficiently high-cost customers to serve that they would prefer to have them switch.

And, in fact, that was one of my discussions regarding the $10 per megawatt-hour subsidy for GS-1 and GS-2 schools.

Q. Let's turn to page 41 where you discuss your recommendation that AEP Ohio should do a cost-of-service study. You disagree with the generation rate design that AEP has included in the stipulation, correct?

A. That's correct. I don't see -- they argue that it's a market-based design and as my testimony shows, their market-based rates depend on the assumed capacity charge.

Q. And your solution on page 41, line 22, is "AEP Ohio should perform a new class cost-of-service study to determine how its costs can properly be allocated to each customer class." That's your proposed solution?

A. My proposed solution, sir, is that it's based on Mr. Roush's conclusion on the line above, that he testifies, as it says in my testimony, that

AEP Ohio's cost allocations are based on "very old cost relationships." Hence, his argument for going to a market based, what they call market-based rates.

Therefore, what I said is well, then the solution is obvious, do a class cost-of-service study.

Q. Is that your recommendation?

A. That would be my recommendation.

Q. Okay. When should -- so at the end of this proceeding the Commission should throw out the proposed rate design that's been agreed to by the stipulating parties and we should all get back together here and do a class cost-of-service litigation?

A. I'm not going to be presumptive enough to instruct the Commission as to what they should do.

Q. Well, your recommendation is that the Commission should do a class cost-of-service study.

A. If the issue is a question of we have these very old cost relationships that shouldn't be used to design rates, then, again, the solution is quite obvious to me, is that do a study and reestablish what those rates are.

Instead, what the stipulation is proposing is to put forth these "market-based rates" that have no bearing on the market. They're completely arbitrary.

Q. Now, in all the jurisdictions I've ever practiced in, embedded cost -- class cost-of-service studies to allocate costs to customer classes and design rates, that's an old-school traditional cost-based ratemaking concept, isn't it?

A. It is cost-based ratemaking and AEP, in fact, proposes to use it to allocate costs of some of their other, for example, the distribution investment rider costs.

Q. I thought FES's biggest concern here was essentially we're not moving the full divestiture, full deregulation fast enough, why in the world would the Commission want to revert back to traditional cost of service ratemaking?

A. Well, first off, sir, that's not my testimony. My testimony is specifically addressing how AEP is proposing to set class -- individual class rates, and if you'll read my testimony, you'll see that the allocation, the market allocations they've used are completely arbitrary. So first -- let me finish, sir.

In terms of distribution rates, no one is arguing that the distribution system rates, for example, should be market based. Those are going to be -- AEP will continue to charge customers for distribution services based on traditional old-school cost of service ratemaking principles.

Q. I'm talking about generation rates here, aren't we?

A. Well, AEP is proposing to avoid a market-based rate structure through an ESP.

Q. They say it's marked based and you want to set generation rates based upon traditional embedded cost of service.

A. Traditional cost of service does not result in artificial cross-subsidies which I contend that AEP's proposed rate design would. And under traditional regulation or under market-based rate setting cross-subsidies are anticompetitive.

Q. Let's see. In every cost of service case I've ever been in we have a whole wide variety of opinions of what cost-of-service study should be used. What would you propose in this case for the Commission to use? Which type of cost-of-service study? Average and excess? Peak and average? 12 CP, 5 CP? Base intermediate? Which one?

MR. LANG: Objection, your Honor, Dr. Lesser's already testified several times he's not proposing use of cost of service, that was only in response to Mr. Roush's testimony.

What Dr. Lesser is proposing in his testimony is using a competitive bidding process to move to market, not the issues that Mr. Kurtz is cross-examining on.

MR. KURTZ: I beg to differ, your Honor. On page 41, line 23, the witness states "If that is the case, then the solution is obvious: AEP Ohio should perform a new class cost-of-service study to determine how its costs can be properly allocated to each customer class." That's what he's recommending.

EXAMINER TAUBER: Objection's overruled.

Q. (By Mr. Kurtz) Which type of cost of service study do you recommend the Commission should use in this generation cost-of-service study?

A. Well, because AEP itself uses a 5CP to allocate its -- to determine the embedded capacity cost number, one might start with that. But I have not studied AEP's system sufficiently to be able to recommend a specific type of cost-of-service study to perform.

Q. Okay. And do you have an opinion of when the timing of all this, what should happen and when the Commission should start with that case?

A. Well, I would have, if I were AEP, I would have already done the analysis.

Q. Okay. On page 42, line 3, next new heading, "The proposed market transition rider is unreasonable and unfairly subsidizes certain customers." That's your basic conclusion on the MTR rider?

A. Yes, it is.

Q. Okay. Do you know that the MTR rider is a credit to the residential customers?

A. Yes, I understand that.

Q. So you want to take away the residential credit on the MTR?

A. I believe the MTR, there should not be an MTR and it should not be a nonbypassable MTR because that's anticompetitive.

Q. Now, do you realize -- this was interesting. Were you here when we got into this aggregation agreement with the City of, wherever it was, AEP Exhibit 10 where FES is providing power to residential customers at a 5 percent discount from the price to compare?

A. I was in and out of the room, sir, and I don't know what that exhibit is, I've never seen it.

Q. Well, let's just do the math, though. If the MTR rider gives the residential customers, let's just use Columbus & Southern 2012, a $2.94 per megawatt-hour discount, that would reduce the profit margin FES would make on its aggregation deal with this city because the price to compare would go down and, therefore, the 5 percent discount would be off the lower price. Is that the way you understand that would work?

A. Sir, I don't know -- I haven't seen the document you're referring to. I just don't know. I'm not familiar with FES's government aggregation programs and that's not in my testimony.

Q. Just one last point. On the distribution, the DIR rider, you -- page 51. You calculate in your opinion what the difference between the maximum DIR rate increase under the stipulation versus what you think AEP Ohio would have gotten in base distribution rate cases and that number is then plugged into the MRO versus ESP comparison; is that how that works?

A. That's correct.

Q. And your starting point with what AEP Ohio would have gotten in distribution base rate cases is the Staff Report that was issued about a month ago?

A. It's an average of the staff high and low estimates which I took to be a reasonable estimate of what AEP might get.

Q. You understand the Commission's not bound by the staff report.

A. I do understand that, sir.

Q. So you understand that the Staff Report may or may not be adopted by the Commission on any number of issues?

A. That's certainly possible. On the other hand, it's possible that the Commission will adopt the Staff Report.

Q. It's possible they could give AEP less money than what staff recommends.

A. Absolutely.

Q. It's possible they could give AEP a lot more money than what staff recommends.

A. Perhaps. Although I can't see giving AEP -- allowing AEP to double recover ten years worth of distribution investment, which is what I discuss in here, because AEP is going back to the year 2000 to recover embedded distribution costs under the stipulation proposal, and is recovering those costs in its base distribution rate.

Q. I understand that point. I think you're right on that. But this will have to be for another day, I think.

MR. KURTZ: Thank you, Dr. Lesser.

THE WITNESS: Thank you.

EXAMINER TAUBER: Ms. Clark.

MS. KALEPS-CLARK: No questions, thank you.

EXAMINER TAUBER: Mr. Conway?

MR. CONWAY: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Conway:

Q. Good afternoon, Dr. Lesser.

A. Good afternoon, Counselor.

Q. Would you let me know if you can't hear me?

A. I will.

MR. CONWAY: And, Vern or Mike, if you can let me know if you can't hear me also.

Q. Dr. Lesser, I have a few preliminary questions with regard to your testimony. I didn't make a motion to strike at the outset and I don't think it's going to be necessary, but I did have some questions about the nature of the opinions that you provide in your testimony.

If you could turn to page 7 of your testimony.

A. All right.

Q. Do you see the statement at lines 3 to 5 of your testimony on page 7 where you state that "...under the terms of the Stipulation AEP signed -- AEP Ohio signed over ten years ago as part of its Electric Transition Plan proceeding...." Do you see that?

A. Yes, I do.

Q. And then you make the statement "it no longer is allowed to recover," and I think you're referring to embedded generation costs; is that right?

A. Stranded generation costs and the GTRs and the --

Q. RTCs.

A. Regulatory.

Q. Regulatory transition costs?

A. That's correct.

Q. Okay. And your statement there is not an opinion that is a legal opinion, is it?

A. It's based on my reading of the stipulation.

Q. You're not a lawyer, let alone licensed in Ohio, correct?

A. I am not an attorney, sir. However, I am quite familiar with economic regulatory concepts, I've been doing this a long time, and restructuring cases. And I do know how to read.

Q. You do a lot of reading.

A. Not the kind of reading I'd like to do.

Q. Both you and I are wearing glasses at this point, right?

A. Yes.

Q. Okay. In any event, your opinions -- your opinion at that point is based on your nonexpert nonlegal --

A. It's based on my nonlegal understanding.

Q. I meant that, and that's the vein I meant it in. Your nonlegal expert capacity.

A. That's correct.

Q. Okay. Then at page 15 starting at lines, I think it's 21 through the end of that page and then going on for the entire page 16 and 17 and 18, and then continuing on to the top of page 19, the first nine lines on page 19, you have a fair amount of discussion about the history of SB 3 and what happened in the cases that were litigated under SB 3 and treatment of these generation transition costs and regulatory transition costs for AEP Ohio and things of that nature, correct?

A. That's correct.

Q. Okay. And, again, in this portion of your testimony the conclusions and interpretations and opinions that you offer regarding the meaning and the application of SB 3 are not being offered as legal opinions or legal interpretations or legal conclusions, are they?

A. No. It's my -- my opinion, sir, as an expert economist.

Q. Could you turn to page 10 of your testimony. There's a statement on line 4, part of a sentence that begins on line 4, the statement, a premise to your point there is that "...AEP Ohio cannot justify charging more than the RPM price for capacity...." Do you see that?

A. That's correct.

Q. And the context in which you make the statement, you're talking about charging CRES providers more than the RPM price for capacity, right?

A. That's correct.

Q. Okay. Would you agree that AEP Ohio could justify charging CRES providers more than the

RPM price for capacity if the PUCO approved a higher price?

A. That might get into a disagreement between the state and FERC, I'm not sure.

Q. You're not sure whether the PUCO has the flexibility, the authority at this point to establish capacity prices for AEP Ohio to charge CRES providers?

A. Well, my understanding is that the PUC has established prices for AEP to charge CRES providers and that price is currently the RPM market price.

Q. And is the PUCO, in your opinion or your view, is it able to change those prices from RPM to a different basis?

A. I can't give you a legal, from a legal standpoint I just don't know.

Q. Do you think it was illegal for the Commission to establish prices for capacity at the RPM levels?

A. That's the default price that would be charged by FERC. In other words, under the reliability assurance agreement the price under the FRR would be the RPM price, is my understanding, in the absence of some sort of state action, if you will, setting the price.

Now, if the state sets a price that's, in fact, higher than the RPM clearing price, I would argue that that is anticompetitive.

Q. And you would say that's illegal for the state to do that.

A. Well, I can't offer a legal opinion, but in my view it would be, as an economist, it would be anticompetitive.

Q. So you don't know whether it would be lawful or not for the PUCO to do that.

A. I do not know.

Q. Okay. If the PUCO were to lawfully approve a capacity price for CRES providers that is higher than the RPM price, would it then be justifiable for AEP Ohio to charge that higher price?

A. I believe I answered that, but I'll say it again, that if the PUC set a higher-than-RPM price, that might involve sort of a dispute between the state and FERC as to whether the price set was anticompetitive.

Q. So you're just not willing to address the question as to whether or not the PUCO has authority to set a capacity price that's higher than the RPM price because of this potential conflict with the

FERC.

A. Again, I cannot give you a legal answer whether they legally have the authority. As you pointed out, I'm not an attorney.

Q. All right. Let's turn to the FERC, then. Do you have an opinion as to whether or not the FERC could establish a capacity price based on some other rationale than RPM at a level that's higher than RPM?

A. It's conceivable. It's called the RMR agreement, which means reliability must run.

Q. In your opinion, could the FERC establish a capacity price for AEP Ohio to charge CRES providers based on an embedded cost measure?

A. As a capacity price?

Q. Yes. What's your opinion about that, whether FERC has the authority to do that?

A. I can't give you a legal opinion on whether FERC has the authority. I would be very surprised if FERC would ever do that, given FERC's very strong support for market-based mechanisms.

Q. So the answer is you don't know whether FERC could do that or that FERC could do that, but you're not sure that they ever would do that?

A. From a legal standpoint I can't answer your question because I'm not an attorney, however, given my experience with FERC, with the FERC proceedings that have, in fact, established these sorts of capacity markets in ISO New England, New York ISO, and in PJM, and given my layman's reading of FERC orders in those -- in cases related to those jurisdictions, and FERC's very clearly stated desire to move to market-based capacity pricing mechanisms, I would be very surprised if FERC told AEP Ohio: Yes, AEP, you don't have to -- we have this capacity market in PJM and it's a great thing, but you don't have to do it, you get to charge an embedded capacity cost for all your capacity.

Q. In your view would it be possible for the PUCO to approve a capacity price that's lower than the RPM price?

A. Are you asking if the PUC could force AEP to sell capacity at a below-market price?

Q. I'm asking you whether the PUCO could establish capacity pricing with whatever measure of pricing that it determines is appropriate that the result of which is capacity prices that are lower than the RPM price. Is that possible in your view?

A. Well, I think -- the reason I asked my previous question is because, I mean, let's suppose hypothetically the PUCO establishes a capacity price of zero, so it tells AEP you sell CRES providers capacity or essentially give it away for free.

I would presume that AEP would -- might not like that and would say, well, we get to collect the market price, the RPM. So if you're asking me whether the PUCO could force AEP to provide capacity, sell it to CRES providers at below-market rates, I would think that would be very unlikely.

Q. Well, let me give you another scenario. The PUCO adopts a measure of pricing which is cost based as a result of the litigation that's pending, hypothetically assume we continue with that litigation.

A. In this case, sir?

Q. In the capacity pricing proceeding. Are you familiar with that?

A. Yes, I am.

Q. Okay. And we get to the conclusion of that proceeding and the PUCO agrees that a cost-based method of setting capacity pricing is appropriate, it does so, and the price that it sets turns out to be, for whatever period of time's applicable, lower than the RPM price. Is that a possible outcome in your opinion that the PUCO could adopt?

A. I suppose the PUCO could do that. Again, I think AEP would probably object slightly.

Q. And if the RPM price that is higher than the cost-based price is in excess of the embedded capacity cost measure of pricing, do you think AEP Ohio would object to that?

A. Well, since AEP is now trying to sell capacity for roughly five times the average PJM market price for capacity over the next four years, I doubt AEP would object to being told you get to sell it at a much-higher-than-market price.

Q. My scenario that I just described to you is where RPM is less than -- excuse me, is greater than the embedded cost rate. Would AEP Ohio in that situation, in your view, object to being limited to the embedded cost-based price?

MR. LANG: Sorry. Your Honor, if I could just, is this a hypothetical or are you assuming facts not in evidence? If I could just --

MR. CONWAY: It's certainly a hypothetical.

MR. LANG: Okay.

MR. CONWAY: I'm testing the views of the witness at what point do they change.

Q. So can you answer the question?

A. Could you ask the question again?

Q. Sure. If the Commission were to adopt an embedded cost-based method of pricing capacity for AEP Ohio and the RPM price was higher than the embedded cost rate for the period in question, do you think that AEP Ohio would object to being limited to the embedded cost of capacity price?

A. If AEP had an alternative or essentially a choice of selling capacity at the RPM price, which is, under your hypothetical, higher than an embedded capacity cost price, then I would assume AEP would very much prefer to sell at the higher price because any business is going to want to sell its product for more money.

Q. Let me turn to page 17 of your testimony. I think you mentioned previously when we were discussing the nature of your opinions with regard to this part of your testimony that you are discussing the generation transition costs and regulatory transition costs that were at issue during the SB 3 period; is that right?

A. That's correct.

Q. Okay. And you note that the generation transition costs were recoverable through a transition charge through a transition period at lines 3 to 4, right?

A. Yes, which ended December 31st, 2005.
Q. You also mention at the top of the page the regulatory transition costs, and what's your understanding about how those were recoverable?
A. Well, as I explained below, actually in footnote 14 of that same page, that CSP could recover its regulatory transition costs through December 31st, 2008, while OPC could recover its regulatory transition costs through December 31st, 2007.
Q. And was that recovery, as you understand it, through transition charges? Regulatory transition charges?
A. That was my understanding, yes.
Q. And those transition charges, the regulatory transition charges and the generation transition charges that were collected during that period, they were collected from all retail customers?
MR. LANG: Objection. Again, I think assuming facts not in evidence to the extent he's referring to generation transition charges.
MR. CONWAY: The witness has testified about his understanding, your Honor, of what took place as a result of the electric transition plan

cases back in 2000, and I'm simply asking him about the extent of his understanding and knowledge.

If there's something that's not factually accurate that's embedded in my question and he doesn't agree with it or doesn't understand it, I would welcome the correction or the acknowledgment.

EXAMINER TAUBER: Mr. Conway, could you please rephrase your question?

Q. (By Mr. Conway) The transition charges that were established in the transition plan case, Dr. Lesser, who paid those transition charges? Were they retail customers of the companies?

A. That's my understanding.

Q. And do you know whether they were bypassable or nonbypassable?

A. I don't know specifically. Typically those costs are nonbypassable.

Q. In any event, they were retail charges, right?

A. Charged to CSP and OPC ratepayers, so I would consider that generally retail.

Q. Thank you.

EXAMINER SEE: Mr. Lesser, I'm going to need you to use the mic, you trail off at times.

THE WITNESS: I'm sorry, your Honor.

MR. KUTIK: You might want to make sure it's working.

Q. Now, the capacity prices that AEP Ohio charges to CRES providers, those are wholesale prices, right?

A. I would consider those wholesale prices, yes.

Q. And regardless of what basis the capacity prices are set, whether it's RPM, embedded costs, or some other basis, they still remain wholesale price, right?

A. I would characterize them as, right, wholesale prices.

Q. And the ETP cases from 2000, they did not establish capacity prices for the companies, did they?

A. I'm not aware of those capacity prices being set because there was no capacity market at the time.

Q. Could you turn to pages 23 to 32 of your testimony, and the reason I give you such a wide swath there is I think that is the section where you discuss your criticisms of AEP Ohio's formula rate estimates of its capacity costs.

A. That's correct.

Q. Specifically, at this part of your testimony you're commenting on and criticizing Dr. Pearce's calculations of the embedded costs used to develop his measures of capacity pricing, right?
A. That's correct.
Q. And I think you mentioned in your conversation with Mr. Kurtz that there are two basic reasons why you believe that Dr. Pearce's cost estimates are overstated, the first being that he doesn't exclude the post-2000 net generation investments, and the second is that he doesn't include as an offset to the costs the margins from energy sales for resale; is that right?
A. That's correct.
Q. Now, there are two tables that you used to display your calculations in this area, table 5 and table 6, right?
A. Yes. Table 5 estimates the contributions to embedded capacity costs from energy sales for resale to margins; table 6 provides the revised embedded capacity cost estimates.
Q. Now, the information you have in table 5 and the calculations you provide based on the information in table 5, and I believe table 6, those rely upon data that's through the end of 2010, right?

A. That's correct, out of the FERC Form 1s filed by the companies.

Q. The FERC Form 1s for 2010?

A. That's correct. Those are the -- that's the data source that Mr. Pearce used.

Q. Going back to the second area of adjustments that you think should be made to Dr. Pearce's formula rate estimates, limiting generating plant in service to the amount that was in service, the net amount that was in service prior to January 1, 2001, are you with me so far?

A. Yes, I am.

Q. And if you could now, unfortunately you have to go back to table 3.

A. I was just turning there, Counselor.

Q. It's like we're on the same wavelength, isn't it?

Can you tell me how much generation plant in service investment on a net or a gross basis that you excluded from the formula rate calculation when you eliminated the post-2000 investments?

Let me back up.

Table 3 shows your calculation of what the net investment is as of 12/31/2000, right?

A. That's correct.

Q. Okay. That's, on a total company basis that's the 700 million-dollar figure down on --

A. That's right, that would be the net remaining generation plant in service as of December 31st, 2010, limited to plant that was in service before the transition.

Q. So Darby and Waterford you --

A. Not in there.

Q. -- take them out of there.

A. Right.

Q. Okay. And so my question was, to restate it, is how much did you exclude from the year-end 2010 net plant investment in generation by not including anything that was invested after December 31st, 2000 [verbatim]?

A. I don't have that number. That would be, I'd have to look at the FERC Form 1 values to tell you that.

Q. Is it substantial?

A. Define "substantial."

Q. Well, in comparison to the 700 million-dollar figure that you've got left over on table 3. Is it a multiple of that?

A. A multiple of 700 million?

Q. Yes. Like 1 or 2 or 3.

A. I honestly have to look at the FERC Form 1 data to answer.

Q. Sitting here today you have no idea how much you excluded by this calculation you made.

A. I can take a guess, but that's all it is.

Q. Okay, give me a guess.

A. It's probably on the order of a billion dollars or so.

Q. A billion?

A. That would be -- that's a guess and I would have to check that.

Q. That would be ballpark, I wouldn't hold you to it, but in order of magnitude -- not order of magnitude but ballpark, a billion.

A. I just don't -- it's a guess.

Q. Okay. And then I believe you talked to Mr. Kurtz for several moments about what the nature of the investments are that have been excluded by this adjustment that you made. Do you recall that?

A. I recall the conversation, yes.

Q. And Mr. Kurtz asked you whether or not they were for environmental compliance purposes or something like that, right?

A. He asked if they were only for environmental compliance purposes. And you.

Q. Resisted saying yes to that, right?
A. That's correct.
Q. You pointed out that there could be other things besides environmental compliance investments.
A. Typically for generators there's annual capital investments for just normal maintenance of facilities.
Q. Do you think most of it was for environmental compliance purposes?
A. I really don't know what the number -- I'd have to look at the numbers to be able to give you an answer.
Q. Let me back up a little bit.
You were very familiar, from your testimony, with what went on in the electric transition plan cases, there's like three, four, five pages where you account in a pretty detailed fashion your understanding of what happened during the environmental transition plan cases back in 2000. Do you recall that part of your testimony?
A. I recall my -- obviously, I wasn't in those cases personally. I have read some of the Commission orders and the stipulation with AEP, so that's what I base my familiarity on.
Q. Did you, in the course of your review and

your investigation, did you continue forward into the 2006 through 2008 period and even the period of time before then, say starting at 2004 when the question in Ohio was what do we do at the end of the market development period? Did you look at what happened during that period, 2004 through 2008?

A. Are you talking about the rate stabilization cases?

Q. Exactly. That's exactly what I'm referring to. Did you look at the rate stabilization plan materials?

MR. LANG: Your Honors, just for purposes of the record and the court reporter, I think both the witness and the questioner are stepping on each other a little bit. Maybe for -- on both ends, if each could wait until the other one is done talking, I think everyone would benefit.

MR. CONWAY: Thank you, Mr. Lang. I'll do my best.

THE WITNESS: So will I.

Q. Exactly. The rate stabilization plan period. Did you look at the orders that were issued for AEP Ohio in the rate stabilization planner era?

A. I have not reviewed those orders.

Q. How about the -- what happened after the rate stabilization period, in your -- as far as you understand it, as far as ratemaking for standard service offer generation for AEP Ohio? What came after rate stabilization?

A. The question is very general. Are you referring to the first ESP?

Q. Let me give you -- yes. Let me give you the answer. The answer is SB 221 and the electric security plans. That's what I'm getting at. Did you look at the order in the AEP Ohio companies' first electric security plan case?

A. I may have reviewed it. I'm really not familiar at this time whether I did or not.

Q. So you would not know, sitting here today, and you didn't know while you were preparing your testimony, the extent to which recovery of investments in environmental compliance equipment was in issue in the RSP case and then in the ESP case for AEP Ohio.

A. As I did not participate in those cases, I can't say how much of an issue it was.

Q. Did you have any understanding? Can you, even though you would not agree with Mr. Kurtz that it was -- or you would not say that it was all the investment from 2000 forward was environmental compliance related, would you agree with me that much of it was?

A. No, I would not agree with that without checking the numbers.

Q. Would you agree that any of it was?

A. Not without checking the numbers.

Q. Do you know whether the AEP Ohio generating units would be in compliance with applicable environmental laws today and over the last ten years if the investments made during the last ten years had not been made?

A. I can't answer that question.

Q. Would you agree with me that if environmental investments were necessary in order to maintain environmental compliance during that period up through today that if they had not been made and the units were out of compliance, it would have affected adversely their ability to operate?

A. Unless the units were buying offsets for SO2 and NOx, that would be an alternative to the units being actual -- having actual environmental controls on them. But presumably if they had not done that and they're not in compliance, I would assume that could create operational issues.

Q. And if there are operational issues, that would then affect the output of the plants that's available for either native load or for system sales, right?

A. Well, if you're assuming that if they're out of compliance and they have to be shut down because of that, then presumably that would affect AEP's ability to sell power in the market or serve its customers' needs.

Q. And if it did affect AEP Ohio's ability to sell power in the market, that would then affect the amount of off-system sales margins that might be available, say in 2010, right?

A. That's possible.

Q. But you didn't take that into account as part of your analysis, did you?

A. The environmental compliance, the impacts of environmental compliance?

Q. And the effects of those impacts on off-system energy sales for resale.

A. I did not take into account that hypothetically AEP, had it not been in environmental compliance, that it might have had to shut down plants, because that's completely hypothetical.

Q. Let me turn to table 5 for a minute. Now, table 5, which is on page 28, is a contributor to your revised embedded cost formula rate, correct?

A. That's correct.

Q. I think you mentioned to Mr. Kurtz, and I apologize if I'm repeating what you've already been through, you calculated an offset to the -- what you ultimately offset against capacity costs in table 5, right?

A. Yes. If you look at -- if you take line 20 in table 5, that appears in table 6 as line 2.

Q. And that's the $248 million of margins from off-system energy sales for resale, correct?

A. Correct.

Q. Then I think, as you just mentioned, you used that $248 million as one of the inputs to your calculations that you display on table 6, correct?

A. Correct.

Q. In table 6 where you compile your other analyses, for example, from table 3 and from table 5, you come up with your final revised capacity cost estimates on line 17 and then 19, correct?

A. That's correct.

Q. So the revised costs are, in aggregate for 2010 are 100 -- roughly 190 million, 189,651,000, right?

A. Correct.

Q. Let me back up a little bit. You start with the annual capacity costs on table 6, that's the figure in line 1 on a total company basis, that's $1,137,000,000 roughly?

A. Yes, that's Mr. Pearce's or Dr. Pearce's number.

Q. And that's a 2010 figure, right?

A. Based on FERC Form 1's values, that's correct.

Q. And I think as you just explained, your first deduction on line 2 is you remove the $248 million of energy sales for resale margins that you calculated in table 5, right?

A. Correct.

Q. And, again, those are the margins that, as Mr. Kurtz pointed out, might have to be shared with other companies or might not even have been produced if the environmental investments had not been made, right?

A. I don't recall exactly what Mr. Kurtz said, but that was associated with off-system energy sales.

Q. Okay. What he said is, what he pointed out is that member load ratio feature of the interconnection agreement might cause those margins to be shared among more than just the AEP Ohio companies.

MR. DARR: Objection, your Honor.

MR. LANG: Objection.

MR. DARR: I didn't know Mr. Kurtz was testifying today. Certainly the form of that question implies that.

MR. CONWAY: Your Honor, I'm just -- I'll move on. Excuse me.

Q. So at any rate, the first step is to deduct the $248 million from the 1.137 billion figure that you start with, right?

A. Correct.

Q. And then the next thing you do is you deduct on line 5 an amount of depreciation from what is reported on the FERC Form 1, right?

A. Correct.

Q. Okay. And the point of this is to get you to the juncture where the amount of depreciation that you include in this calculation is what you came up with in table 3, which is the amount that you think is appropriate based on the pre-2000 net plant investment, right?

A. That's correct.

Q. So that's a deduction of 173 million,

roughly?
A. That's correct.
Q. Okay. And then the next significant or the next deduction is the return on rate base adjustment that you reach on line 9, right?
A. Correct.
Q. And that's about $380 million that you take off the starting capacity costs, right?
A. Correct.
Q. And I assume that the adjustment there, that $380 million is an adjustment that has a basis in the exclusion of all those post-2000 investments in the generating units; is that where it comes from?
A. That's correct.
Q. Okay. Does that give you any kind of feel as to what the nature of the size of the investments were post-2000?
A. I can't do the math in my head, but I can, with a calculator and a blank piece of paper I could probably calculate it.
Q. Well, what's remaining in the return category is about $60 million, right?
A. That's correct.
Q. So you take out 380 of the total of 440 that was reported on the FERC Form 1, right?

A. Correct.

Q. Okay. So it's roughly six times what's left over, the amount of the exclusion, correct?

A. I'm sorry, say that again. Six times?

Q. What's left over, the 380 -- excuse me, what's left over, the 60 million on line 8 is roughly one/sixth of the amount that you deduct, the 380 million.

A. Approximately, yeah.

Q. And finally there's an income tax adjustment of about 146 million on line 15. Right?

A. That's correct.

Q. And I assume that's just a consequence of all the other adjustments and revisions?

A. That's primarily affected by the change in the return.

Q. So as a result of making these adjustments based on the inclusion of a hundred percent of these off-system energy sales for resale margins and the exclusion of the post-2000 investment, you end up reducing the beginning fixed costs for capacity at 1.137 billion down to 189,651,000, right?

A. That's correct.

Q. And that 189,651,000, that converts or translates into the $57.35 per megawatt-day figure that you see on line 19?

A. Yes, using the 5CP method.

Q. Now, for Columbus Southern alone that figure is, that dollars-per-megawatt-day figure is $179.60 on line 19, right?

A. Correct.

Q. And for Ohio Power Company it's a minus $44.88, right?

A. Correct.

Q. And when you combine them together you get that $57.35, right?

A. Correct.

Q. And then I think at some point in your testimony you make some adjust -- you make an adjustment to reflect losses where you explained that should be done, correct?

A. Yes. To have a consistent estimate you want Mr. Pearce's -- Dr. Pearce's numbers, well, he wasn't sure whether they included losses, the 35572 value he uses, I believe it includes losses of 3.4 percent so you want to include, you want to multiply that number.

Q. The 355 includes 3.4 percent of losses?

A. I believe that's correct.

Q. Okay. So you would adjust these by a multiplier of 1.034 or thereabouts on line 19 to come up with the final megawatts --

A. If I were using an embedded cost rate that incorporated losses, absolutely.

Q. Okay. Did you ever -- did you make that final calculation?

A. I don't recall if I did or not.

Q. Assume for me for the moment that the two companies, Columbus Southern on the one hand and Ohio Power on the other hand, are not being merged. Instead they remain separate. Okay?

A. Okay.

Q. Okay. And in that event your analysis would be that a formula rate for capacity based on embedded costs would result in Ohio Power paying CRES providers approximately $45 per megawatt-day to take capacity for their shopping customers, right?

A. No, because what it would mean is that Ohio Power would just clearly be asking for market-based rates in that case.

Q. But if they were using the formula rate approach, that's what it would imply, would it not?

A. It would imply that, yes, they've essentially fully depreciated their generating plants, but I don't believe you can -- the PUC could force Ohio Power to pay CRES providers $44 per megawatt-day to use its capacity.

Q. Isn't that the effect of adopting your adjusted embedded costs formula, that that would take place, that there would be payments essentially to CRES providers for taking capacity off Ohio Power's hands?

A. That's simply the mathematics of applying. What I've done is to take both the companies, the values that Dr. Pearce estimated for both companies and adjust them as appropriate to remove the impacts of post-2001 investments.

So, in fact, what it would be showing is that OPC is making, because its plants are heavily depreciated it's making significant profits on that depreciated investment and, hence, if you were truly going to charge an embedded cost rate, its rate would be negative.

This is why some of the environmentalists get so upset at, you know, we passed all this environmental legislation and companies keep operating these old depreciated coal plants. The reason they keep operating them is because they're profitable.

Q. Are you familiar with the phrase "sanity check"?
A. Yes, I'm --
MR. LANG: Objection, argumentative.
MR. CONWAY: It's not argumentative, your Honor. I'm going to ask him about his experience as an academic.
A. I'm not an academic.
EXAMINER SEE: Just a minute.
MR. CONWAY: I'll rephrase the question.
EXAMINER SEE: Okay.
Q. When you prepare studies or analyses and you get done with it, do you step back and ask yourself does the result make sense? Isn't that -- that's a sanity check. Don't you do that? Or not?
A. Yes, I do.
Q. Okay. And so when you saw that your approach led to a result where Ohio Power's embedded cost capacity rate was minus $44 which you added to the, or combined with the Columbus Southern price of $179 to develop a $57 combined capacity price, did you not look at that number and ask yourself: Why is this turning out like this? This doesn't make sense to me? Did that not cross your mind?
A. I asked why, I did look at it and

consider why is this number negative. But in terms of, you know, your words are "this doesn't make sense." Those aren't my words.

Q. Okay. Let me turn to the next section of your testimony, Dr. Lesser, I believe Mr. Kurtz also had a few questions for you in this section. It starts on page 32.

A. Right.

Q. I think Roman Numeral III is the place where the heading appears "AEP Ohio's rate design under the proposed ESP is unreasonable and anticompetitive." Do you see that?

A. Yes, I do.

Q. Okay. And I'm actually, I want to focus on the portion of this section of your testimony that starts on page 35 and continues on to 38, so I guess it's the first section of that Roman Numeral III starting on page 35, okay?

A. All right.

Q. Dr. Lesser, we may have plowed this ground already, but bear with me. The current ESP SSO generation service prices that AEP Ohio charges, they're not based on a cost-of-service method of ratemaking, are they? Or do you know?

A. My understanding is it's not based on cost-of-service rates.

Q. And the generation SSO prices that were in effect prior to the current electric security plan, that's prior to 2009, they were not based on a cost-of-service method of ratemaking either, were they? I'm referring to that rate stabilization plan.

A. I have not evaluated the pre-current -- rates before the current ESP that expires on December 31st of this year. I have not evaluated how those rates were set.

Q. And let me go back before that. The electric transition plan era, 2001 through 2005 for AEP Ohio, were the generation standard service offer rates during that period established based on cost of service?

A. I have not evaluated those rates.

Q. And how about the generation service rates that prevailed before the electric transition plan period, so before 2001, do you know how they were established? Whether they were established on a cost-of-service basis?

A. I haven't evaluated those rates. I would assume under a traditional utility they were established under cost-of-service rates.

Q. At some point in the past your assumption is that traditional ratemaking applied, "traditional" meaning cost-of-service type ratemaking applied.

A. That would be correct.

Q. Okay. And do you know the extent to which, when those rates were set -- maybe the answer is already obvious, but you don't know whether when those rates were set prior to the ETP era on a cost-of-service basis, whether subsidies of one or another class of customers, by one or another class of customers, were embedded in these pre-ETP rates, do you?

A. Well, if the rates were set based on a class cost-of-service study which Mr. Roush referred to.

Q. Mr. Roush?

A. Roush. I'm sorry. He referenced a cost-of-service data that they had used many years ago, in some cases you do get regulators will essentially create subsidies between rate classes.

The key here and the key difference is when you're subsidizing, say, one class of SSO customers, nonshopping, to restrict their shopping, you know, they're going to shop or you're going to subsidize, say, GS-1 and GS-2 schools customers to shop, and that will be paid by other customers who are shopping or not, those are cross-subsidies, those are very anticompetitive.

If you're talking about a sort of precompetition era, well, you're not really talking about -- they couldn't go out and buy retail electricity, it wasn't possible.

Q. Let me see if I can cut through this line of questioning. Do you know the extent to which, as a result of subsidies that were established in the pre-ETP era, if they were, the extent to which those kinds of subsidies have been carried forward through the RSP and ESP eras until today in the generation standard service offer rates?

A. I'm not sure I understand your question. Are you asking --

Q. Do you want me to repeat it or --

A. No. Let me ask you if -- so I believe the question you're asking is that are the -- do the current ESP rates in effect today reflect subsidies and cross-subsidies? Or are you asking something --

Q. That's a good question. Why don't you answer that one. Go ahead and answer that one.

A. I asked you first, Counselor.

Q. The answer is Yes. So what's your answer?

A. The answer is I don't know.

Q. Okay. You didn't study that topic or that issue, did you?

A. I have not performed a cost-of-service study for AEP.

Q. You did look at the ETP filings or orders or some documentation related to that process for AEP Ohio, though, right?

A. Yes.

Q. That's reflected in your other testimony that we talked about earlier about, you know, pages 15 through 19, right?

A. Correct.

Q. Okay. And in the ETP case for AEP Ohio, or cases for AEP Ohio, is it your understanding that the prior bundled rates were unbundled into their functional piece-parts, distribution, transmission, and generation?

A. You'll have to start that one over. I'm sorry.

Q. Let's go back to 2000, okay.

A. So we're talking pretransition --

Q. No, we're actually talking about -- we're talking about the transition plan case, okay, or cases. And I'm asking you when the generation service offer prices were established in that ETP -- in those ETP cases, were they established by unbundling the prior bundled rates into the three pieces including generation?

A. I guess I'm not sure which specific, A, which specific cases you're referring to.

Q. The ETP case, the electric transition plan cases.

A. My understanding is that the rates are -- that they are currently unbundled.

Q. When did that happen?

A. Well, the current ETP I believe started --

Q. There are too many acronyms, "ESP."

A. "ESP," I'm sorry.

Q. The transition plan cases. I'm referring back to 2000 now.

A. I don't know what date that started.

Q. I know you -- okay. Accept, subject to check, that the cases took place in 1999 and 2000 and the plans commenced for the AEP Ohio companies in 2001, okay?

A. Fine.

Q. Okay. My question is, when you were looking at the materials that you reviewed in connection with those transition plan cases that you referred to at pages 15 through 19 of your testimony, did you look to see the manner in which the prior rates were unbundled or if they were unbundled?

A. I did not look at any of the specific rate calculations.

MR. LANG: I think, your Honors, the witness may need a break, he's been going for a while and I think he might benefit from stretching the legs.

MR. CONWAY: That's fine.

EXAMINER SEE: Okay. Let's take a ten-minute recess.

(Recess taken.)

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

MR. CONWAY: Thank you, your Honor.

Q. (By Mr. Conway) Dr. Lesser, I believe where we ended up before the break was, correct me if I'm wrong, we were discussing the history of generation standard service offer prices from 1999 to the present, correct?

A. That's correct.

Q. Okay. I think we've exhausted that area, thank you.

I do want to go back, though, for a moment to your table 5. Tell me when you turn to page 28.

A. I'm there.

Q. In line 1 the fuel cost line, do you see that?

A. Yes, I do.

Q. And we talked about the total AEP Ohio fuel costs of 1,359,649,000. Do you remember that?

A. I don't remember us actually discussing that number, but I see the number.

Q. Okay. Maybe we just referred to the number. I'd like to discuss the number for just a moment.

MR. LANG: Your Honors, could Mr. Conway pull the mic a little bit closer? There you go.

Q. I would like to discuss the number a little bit. The 1,359,000,000-dollar value in table 5, line 1. Again, this calculation or this value is based on 2010 FERC Form 1 data?

A. Yes, it is.

Q. And as I gather, the number you derived, is it from account 501?

A. That's correct.

Q. What kind of costs does that account

include?

A. I'm not sure I understand your question. It's fuel expenses.

Q. Fuel expense, okay. Is there anything else besides fuel expenses in it? I'm not suggesting that there are but I'm just asking.

A. I don't have access to AEP's private accounts so I was under the -- worked under the assumption that it's AEP's actual fuel expenses and doesn't include anything else.

Q. Are you familiar with the fuel cost deferral feature of the current electric security plan?

A. Yes, I am.

Q. To the extent that there were fuel expense deferrals in 2010, that wouldn't show up in this account 501 figure.

A. It's my understanding that would be treated separately. That's essentially a regulatory asset.

Q. Okay. So if there were, whatever the number is, whether it's $1 or a hundred million dollars of deferrals for 2010 for fuel expense, that wouldn't show up in this number, would it?

A. My understanding is that it would be

separately accounted for.

Q. And is the separate accounting for reflected in any of the other values in your table 5?

A. Let me see if I understand your question. Are you asking whether the fuel deferral expenses or the fuel deferral costs are included in any of the other FERC accounts listed here?

Q. No. Is the deferral reversed in any of the other accounts that you have there?

A. I don't believe so, no.

Q. So if, for example, if there were $130 million of net fuel expense deferrals in 2010, that would not be reflected in any fashion on this table 5, right?

A. It's my understanding, I'm not an accountant, my understanding is that the fuel deferral expenses would be treated separately, they would not be reversed in any of these other FERC accounts shown.

Q. And the fuel expense deferral, as you understand it, is it -- the costs are actually incurred, the company pays actual money for the fuel, but it doesn't record the expenditure as an expense on its accounts, right? For that year.

A. I believe it's treated as a regulatory asset, so it's recorded, but it's not recorded as an expense.

Q. So if it were recorded as an expense and hypothetically suppose it's $130 million that was deferred during the year that's evaluated in your table 5, if it had not been deferred and the number was 130 million, then the number in line 1 would have been greater by 130 million? In the total column.

A. If your -- given your hypothetical, if there was no deferral and AEP's actual expenses were 130 million higher, then that's true.

Q. And if that were the case, if they were -- if the fuel costs were $130 million higher than the value that's shown in column 1 under the column -- excuse me, line 1 under the Total column, then the impact on the bottom line for that table would be that the $248 million figure would be -- what would be the impact on that? Would it be lower by 130 million?

A. I'd have to check the calculations because -- to see how it flows through to the variable production costs associated with sales for resale in line 16.

Q. In any event, would it be -- if the number on line 1 in the Total column were

$130 million higher, would the value on line 20 in the Total column be lower?

A. Yes, it would be lower.

Q. You just don't know exactly how much it would be lower.

A. Correct.

Q. Is it possible that it could be lower by 130 million or not?

A. I'd have to do the calculation.

Q. Do you think it would be close to 130 million?

A. Same answer.

Q. Could you turn to the testimony on pages 35 and 38 that surround or was related to your table 7 and 8. The first question in this area relates to the reference in line 8 on page 35 to the full capacity cost charge shown in Exhibit LJT-1, and let me know when you get there.

A. Line 8, page 35.

Q. And the reference is to "full capacity cost charge."

A. Okay. I see that.

Q. And it's a reference to a value, I believe, that shows up in some sort of presentation by Ms. Thomas in her Exhibit LJT-1; is that right?

A. That's correct.
Q. And do you remember which -- there's three pages to that exhibit, do you remember which page it was?
A. Yes. It's noted on note 2 of table 7, it says it's page 3 of Exhibit LJT-1.
Q. And the full capacity cost charge is the $355 per megawatt-day charge, right?
A. That number Dr. Pearce calculated.
Q. And the full capacity cost page of Ms. Thomas's Exhibit LJT-1, that third page, it provides capacity prices on a dollars-per-megawatt-hour basis for each of the three major customer classes, right, based on that $355?
A. That's my understand, yes.
Q. Those are the values you have included on line 2 of your table 7 under Residential, Commercial, and Industrial?
A. That's correct.
Q. Okay. Now, the purpose for your table 7 on page 36 is to calculate what you call the, quote, net base generation rate revenue -- excuse me, the net remaining base generation rate revenue; is that right? That's on line 7.
A. Line 7 of which page, Counselor? I'm

sorry.

Q. I'm sorry. I'm looking at table 7 and, I'm sorry, it's line 8. I can't read my own writing.

A. Line 8 of table 7 or line 8 in the text?

Q. Line 8 in the table.

A. Okay.

Q. Line 8 in the table, that's where you calculate the net remaining base generation rate revenues, right?

A. Correct.

Q. Okay. And that's really the purpose of this table is to make that calculation, isn't it?

A. That's correct. To show those values on a per-kilowatt-hour basis in line 9.

Q. Well, that's correct. You show them on a per-kilowatt-hour basis on line 9, on a total-dollars basis on line 8, right?

A. Correct.

Q. And then in the Total column there's the figure you mention in your testimony; is it not? The 90,623,993?

A. That's correct.

Q. And that's the Total AEP Ohio value for the net remaining base generation rate revenues, correct?

A. Correct.

Q. And then you take that $90 million, that roughly $90 million of net remaining BGR revenues for 2012 and you compare to your estimate of another value that you calculated in table 8, right? That $142,556,780 value in table 8, that's the comparison you make, right?

A. That's correct.

Q. And to make the calculations in table 8 you rely on Dr. Pearce's work, correct?

A. I rely on Dr. Pearce's data he shows in his exhibits as well as data taken from the 2010 FERC Form 1s.

Q. And Dr. Pearce's data and calculations are for a test year, so to speak, of 2010, correct?

A. He takes his data from the 2010 FERC Form 1s.

Q. So table 8 is 2010 data, correct?

A. That's correct.

Q. And table 7 is 2012 data and conclusions, right?

A. Table 7, for example, nonshopping load, I believe that's a forecast for 2012.

Q. I'm just -- I thought I was just confirming it. I wasn't challenging you. I thought

I saw in your testimony the information that you had included in table 7 was 2012 information and I'm, for example, I'm reading your footnotes to your table where it seems to refer to 2012 information at a couple of different places.

A. That's correct.

Q. So my question is, the table 7 information is a 2012 view, correct?

A. Correct.

Q. Table 8 information is a 2010 view, correct?

A. Correct. But you have to remember that Roush, when he calculates the base generation revenues and when AEP is using the capacity costs that is projecting -- it's assigning to 2012, it's using 2010 values.

Q. Well, in any event, on table 8 you end up with the net recoverable nonfuel energy-related costs in line 9 on a total company basis of 142 million plus, right?

A. Correct.

Q. And the difference between that value, 142 million plus, and the 90 million plus is roughly $50 million, right? 52 million.

A. That's correct.

Q. And then you draw possible conclusions from that comparison starting at the bottom of page 37 and continuing on the top half of page 38, correct?

A. Correct.

Q. And what are the nonshopping embedded capacity costs for AEP Ohio that you calculated in table 7 based on that $355 per megawatt-day? Is that the value at line 3?

A. I'm sorry. Could repeat your question, please?

Q. What is the nonshopping embedded capacity costs for AEP Ohio that you calculated in table 7 on a total company basis?

A. The 949 million in line 3 of table 7.

Q. Okay. So that's the -- and your difference between that $90 million figure and the $142 million figure, the roughly $50 million figure, if you'll allow me that latitude, that's what you're comparing. That $50 million, you're comparing that figure to this $949 million figure ultimately to determine whether or not all these capacity costs are being recovered, right?

A. What I'm doing, if I understand your question -- what I'm saying is that either AEP is not recovering all of its -- what it says are its true energy ancillary service and capacity costs in its proposed base generation rate, or -- in which case it's an anticompetitive subsidy that would foreclose shopping competition, or it's in fact overestimating the embedded capacity costs. And I conclude that, in fact, it's overestimated its embedded capacity costs because we all know AEP would not want to anticompetitively subsidize to prevent shopping.

Q. Maybe I should back up just a little bit. Before we get to the conclusions, what I'm interested in first of all is the comparison that you're making, and when I read your testimony at the bottom of page 37 and continuing over to page 38, you note that the AEP Ohio, under your estimate, AEP Ohio's remaining energy-related production costs are over $50 million greater than the amount it intends to recover in 2012 through the proposed base generation rates for each customer class. Do you see that?

A. Yes, I do.

Q. And so I asked myself, what is he comparing that 50 million to, and I looked, and it appears to me that what you're comparing it to, saying in order to come to your conclusion at that point that's a possible shortfall, is that you're comparing it to the $949 million figure on line 3 of table 7.

So my question is, is that right? Is it $50 million of that $949 million that, in the first alternative you suggest there, is not being recovered?

A. That's correct. That if you took AEP's estimated embedded capacity costs, which I think are fantasy, but if nevertheless you assumed that, that taking that amount plus the ancillary services costs estimate based on Ms. Thomas's 60-cent per megawatt-hour value plus the variable energy-related costs, nonfuel O&M, you'd come up with a number that was 50 million too high.

So I concluded that there's a change in that capacity cost -- AEP's capacity costs are certainly less than what it's advertising.

Q. If AEP's capacity costs are $355 per megawatt-day, then your point is, is it not, that AEP Ohio, in your view, is underrecovering its capacity costs by $50 million, roughly?

A. My point is that, as I state in my testimony, that if AEP's costs are what it represents, which I disagree with obviously, that AEP is, in fact, setting its BGR values in a way that's providing an anticompetitive subsidy.

Q. What I'm trying to get at is how much of an underrecovery is occurring here. You say it's $50 million possibly, and the question that I have is compared to what? And the answer to "compared to what" is compared to 949 million, right?

A. That's correct.

Q. Okay. What percentage of 949 million is 50 million? Roughly.

A. 5-1/2 percent approximately.

Q. So the result of your comparison here is to conclude that AEP Ohio might be recovering only 94-1/2 percent of its capacity costs, right?

A. If you believe AEP -- if you take AEP's number of $355 per megawatt-day as an accurate and valid number, which I don't, then that's the conclusion you would reach.

Q. And if I multiplied 94-1/2 percent times 355, what would be the result?

A. I don't know.

Q. On a dollars-per-megawatt-day basis how much is a 94.5 percent realization of the 355? Do you know?

A. I don't know the number.

Q. Would you accept, subject to check, that it's about $335?

A. No, I would not. I don't know the number. And I would suggest that the number you're coming up with, whether it's accurate or not, is not what I would consider AEP's true capacity costs because I simply believe that the 355 value, as I've demonstrated in my testimony, is completely erroneous.

Q. Well, would you accept, subject to check, that 94-1/2 percent of 355 is approximately 335?

A. No. I don't know the answer.

Q. Okay. If you had run the calculations that you have presented in table 7 and table 8 using a $255 per megawatt-day value as the capacity price, what do you think the result would have been as far as your comparison? Do you think that if you ran it at a $255 per megawatt-day level, that you would have found that AEP Ohio is recovering more than its capacity costs?

A. It's possible. I don't know what the number is. I haven't done the calculation.

Q. Let me go to your table No. 9 on page 38. I think you discussed this table as well as table 10 with Mr. Kurtz also. You indicate in your table 9 that AEP Ohio is proposing to increase base generation rates by 30 percent for Columbus Southern Power customers in 2012. Do you see that?

A. Base generation revenue.

Q. So you make a distinction between the "rates" and the "revenues"?

A. Well, the rates --

Q. What's the rate increase that they're proposing?

A. The rate increase depends on the customer class as table 10 shows. Table 9 just shows the -- takes Mr. Roush's workpapers and simply calculated the percent change in existing to proposed 2012 base generation revenues.

Q. My question is did you make the calculation based on rates as opposed to revenues that you've shown in table 9? Do you know what the rate increase is for CSP on the basis that you're presenting in table 9?

A. Perhaps I'm being dense and not understanding your question. If you'll look on table 10, you'll see that the change in revenues for different rate classes, which given a fixed amount of sales -- there are different percentage values, so the change in rates is different.

Q. I understand that. I just -- my question is simply did you calculate what the base generation rate increase is on a total company basis for Columbus Southern Power?

A. Well, in table 9, line 4, it says 30.07 percent is the change in base generation revenues.

Q. Yes. My question is did you calculate what the increase is as far as base generation rate levels? The stipulation in the ESP compared to current rates. Did you make that calculation?

A. Not for each customer class, no.

Q. How about on a total company basis?

A. On a total company basis it would be 30.07 percent holding sales fixed.

Q. Okay. Maybe I didn't understand that. So if you hold sales constant, then the rate increase equals the revenue increase; is that right?

A. That's correct.

Q. Okay. And I think you mentioned that you relied on information that Mr. Roush prepared in order to do your analysis?

A. Correct.

Q. Did you look at Mr. Roush's testimony?

A. I recall reading it, yes.

Q. Did you look at his Exhibit DMR-1?

A. I believe I did. I don't have that exhibit with me.

Q. And did you compare the values -- are you familiar with the total generation rate value that Mr. Roush shows in his DMR-1?

A. I don't have his exhibit with me so I can't tell you.

MR. CONWAY: May I approach, your Honor?

EXAMINER TAUBER: You may.

MR. CONWAY: This is part of one of the company's exhibits, it's page one of Exhibit DMR-1 to Mr. Roush's testimony.

Q. Do you see the columns marked Total Gen, start with CSP, for the 2012 rates before the proposed ESP as well as the 2012 rates with the proposed ESP?

A. Yes, I do.

Q. In your analysis did you compare the total generation rates for CSP for 2012 different than the proposed ESP to the total generation rates before the proposed ESP?

A. No. I was comparing the base generation rates that were proposed.

Q. And would you accept, subject to check, that the total generation rate under the proposed ESP is only 3.8 percent higher than the total generation rate before the proposed ESP for CSP?

A. No. I haven't done the calculation.

Q. And do you see where the last column under both the 2012 rates before proposed ESP as well as the 2012 rates with the proposed ESP, there's a Total Rate column? Do you see those columns?

A. Yes, I do.

Q. And would you agree that, subject to check, that Mr. Roush's Exhibit DMR-1 shows an all-in total company rate for 2012 for CSP which includes generation, transmission, and distribution, of 9.56 cents under the proposed ESP?

A. I see that number, yes.

Q. And that the all-in rate Mr. Roush shows total company before the proposed ESP is 9.37 cents?

A. I see that number.

Q. And if you were to do the same comparison for OPCo using the rates shown on page 1 of DMR-1, would you agree that a comparison of the all-in total company rate for OPCo under the proposed ESP is 8.43 cents?

A. I see that number.

Q. And that the same rate before the proposed ESP is also 8.43 cents?

A. I see that number.

Q. With regard to table 10, just a few more questions. Your comparisons in your table 10 in your testimony are of base generation rates which are before fuel, before environmental in the case of the pre-proposed ESP rates, correct?

A. It's the change in base generation rate revenues for the major rate classes.

Q. It doesn't include fuel, correct?

A. That's correct.

Q. And I think you mentioned, you said you didn't compare the total generation rates pre- and post-proposed ESP, correct?

A. That's correct.

Q. And you didn't incorporate into your table 10 analyses the impacts in 2012 of the load factor rider on the 2012 ESP proposed rates, did you?

A. No. Again, I wanted to focus on base generation revenues to highlight the changes in how AEP was allocating those base generation revenues to different customer classes.

Q. And you didn't incorporate into your table 10 analyses the impacts of the market transition rider either, did you?

A. No, because as I testified, I think the market transition rider is a clear cross-subsidy and it's anticompetitive. And it's based on market rates that simply make no sense.

Q. I'd like for you to look at the base generation levels on DMR-1, page 1, and let's just start with Columbus Southern again. That's the first column on the left side that has values in it, correct?

A. Correct.

Q. And the RS or residential base generation rate pre-proposed ESP is 2.01 cents, correct?

A. Correct.

Q. And then GS-1 is 4.57 cents, right?

A. I guess it is.

Q. And that's, what, 125 percent higher than the residential base generation rate?

A. I haven't -- I haven't done the calculation. It's more than double the residential rate.

Q. So more than 100 percent.

A. Correct.

Q. And then the GS-2 base generation rate pre-proposed ESP is 4.4 cents?

A. Correct.

Q. And that's also more than a hundred

percent times the residential price?
A. That's correct.
Q. Okay. And then it looks like the GS-3 rate pre-proposed ESP is in the same ballpark as the residential price per kilowatt-hour, right?
A. Yes, it shows 2 -- this is cents per kilowatt-hour, 2.2 cents per kilowatt-hour.
Q. And the GS-4 rate is .94 cents?
A. Correct.
Q. Which is half the residential rate, right?
A. Approximately.
Q. In a competitive environment would generation rates that show these kind of relationships be sustainable?
A. Define your term "sustainable."
Q. Well, would you have all these customer classes ended up paying these amounts in a, or these relative amounts in a competitive environment?
A. I don't know. I haven't done that study.
Q. Okay. Does it look to you like there may be subsidy effects that are embedded in these rates?
A. I have not done the analysis. I can't tell you what the basis for those rates are. I can tell you that the basis for the new 2012 rates is --

whereas it's supposedly based on market relationships, that those market relationships, as I explain in my testimony, are simply arbitrary because they change depending on what capacity cost assumption's used. That makes no sense.

Q. And would you agree that the base generation rates for the four customer classes that are shown in the portion of DMR Exhibit 1, page 1 under 2012 rates post-proposed ESP are showing much less variation than the pre-proposed ESP generation rates?

A. Are you talking about relative to one another?

Q. Yes.

A. I would agree with that.

Q. Okay.

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

EXAMINER TAUBER: Thank you.

Mr. Margard, do you have any questions on cross-exam?

MR. MARGARD: No, thank you, your Honor.

EXAMINER TAUBER: Mr. Lang, would you like redirect?

MR. LANG: If we could have just a few

minutes.

EXAMINER TAUBER: Sure. Let's go off the record.

(Recess taken.)

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

Mr. Lang, on redirect?

MR. LANG: Your Honors, FirstEnergy Solutions has no redirect and we would move FES Exhibit No. 2.

EXAMINER TAUBER: Are there any objections to FES Exhibit No. 2 which is the direct testimony of Dr. Lesser?

MR. CONWAY: No.

EXAMINER TAUBER: Hearing none, FES Exhibit No. 2 shall be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. LANG: Thank your Honors.

EXAMINER TAUBER: You may be excused. Thank you.

Mr. Kutik.

MR. KUTIK: Your Honor, for FES's next witness we call Michael Schnitzer.

EXAMINER TAUBER: Please raise your right hand.

(Witness sworn.)

EXAMINER TAUBER: Thank you.

MR. KUTIK: Your Honor, at this time we'd like to have marked as FES Exhibit 3 the testimony of Michael M. Schnitzer on behalf of FirstEnergy Solutions Corp. Revised Public. And we'd like to have marked as FES Exhibit 4 the testimony of Michael M. Schnitzer on behalf of FirstEnergy Solutions Revised Confidential. They were filed today, your Honor, in this matter.

The motion for protective order for certain portions of Exhibit 4, what we identified as Exhibit 4, and those portions have been highlighted to indicate which are confidential, which portions are confidential.

EXAMINER TAUBER: Mr. Conway.

MR. CONWAY: Your Honors, I'd just like to on the record move on behalf of AEP Ohio separately but in concert with FirstEnergy Solutions for an order protecting from disclosure Mr. Schnitzer's confidential version of the testimony.

EXAMINER TAUBER: Thank you.

MR. KUTIK: May I have those documents so marked, your Honor?

EXAMINER TAUBER: Yes, those shall be so marked.

(EXHIBITS MARKED FOR IDENTIFICATION.)

MR. KUTIK: May I proceed?

EXAMINER TAUBER: You may.

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MICHAEL M. SCHNITZER

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

DIRECT EXAMINATION

By Mr. Kutik:

Q. Could you introduce yourself, please?

A. Yes. My name is Michael Schnitzer.

Q. Mr. Schnitzer, where do you work? What do you do?

A. I'm a Director of the NorthBridge Group, a management consulting firm, headquartered in Concord, Massachusetts.

Q. Are you familiar with exhibits for FES 3 and 4?

A. I am.

Q. What are they?

A. They are my revised prepared testimony in this proceeding.

Q. Do you have any additions or corrections

to make to either of those exhibits today?
A. I do not.
Q. If I asked you the questions that appear in those exhibits, would your answers be as appear in those exhibits?
A. They would.
MR. KUTIK: No further questions.
EXAMINER TAUBER: Mr. Kurtz.
MR. KURTZ: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Kurtz:
Q. Good afternoon, Mr. Schnitzer.
A. Good afternoon.
Q. I'd like to ask you about the maximum above-market rate that you've calculated, it starts on page 30 through 33 of your testimony. Let me just -- essentially your maximum above-market rate is your calculation of a cost-based capacity rate for AEP Ohio?
A. Well, it's derived from costs, but I think the way I would characterize it would be if the Commission were to determine both as a matter of law and policy that an above-market capacity rate was appropriate, that this would be the maximum

conceivable rate that I could see them a policy or economic matter reaching.

Q. And so you criticize the $347.97 per megawatt-day cost-based capacity number that AEP has calculated in the 2929 case?

A. I do.

Q. And you also say that the $255 per megawatt-day rate in the stipulation is above the maximum above-market rate that you've calculated at $162 per megawatt-day.

A. That's correct.

Q. Okay. The reason you -- well, this is not the only reason, it's certainly one of the main reasons, let's go to page 32 for the difference between what you calculate and what AEP calculates.

On line 5, I'll just read the sentence, "The reason for this is that, if a customer shops with a CRES supplier, AEP Ohio no longer has to supply energy or ancillary services to that customer. This would then allow AEP Ohio to sell the 'freed up' energy and ancillary services' --

MR. KUTIK: What page are we on?

MR. KURTZ: I'm sorry. Page 32.

MR. KUTIK: Line?

MR. KURTZ: Thirty-two, line 5. I'll

start again.

A. I see the sentence. I'm in the confidential version and I'm seeing that, a slightly different sentence, but the same gist of it on the top of page 32.

Q. Well, read the sentence that I'm -- I guess I don't know what version I'm looking at.

A. I have the sentence, we'll see if this gets to your question. "While I am not an attorney, it is clear from an economic perspective that if a customer shops with an alternative supplier, the utility would be able to recover the market value of the 'freed up' energy and ancillary services in the competitive market."

Q. Read the "therefore" then as well.

A. "Therefore, if the Commission does allow AEP Ohio to recover all or some portion of its above-market capacity costs from customers, which again, I do not recommend or endorse, these market revenues along with other sources of revenue available to the Company should be credited against its total generation costs."

Q. Okay. So this is the off-system sales that the AEP Ohio would make with the freed-up energy?

A. It's the value of the freed-up energy valued at market, yes.

Q. Valued at market. Valued at PJM LMP?

A. Correct.

Q. I hope I have the right exhibit. You've quantified this on your Exhibit No. 5. Is that correct?

A. Yes, Exhibit 5 goes through the methodology and the numbers underlying the 162, that's correct.

Q. I'd like to ask you some questions about that, MMS Exhibit 5. I don't want to read it line for line. You've assumed if all the customers shopped with a CRES supplier in 2010, that all of the energy from the AEP Ohio units would be freed up to be sold at market?

A. Yes. That's the way this is drafted, but just to be clear, that we talk about this number in two different contexts, and just to make a clear distinction, we talk about it as to the maximum rate to be charged to a CRES supplier, we also talk about it as the maximum rate in an MRO context, if you will.

So if we're talking about an MRO context, this would not be a CRES supplier-type thing, this would be if all the SSO load was competitively procured, then what would AEP have freed up at that point under that world.

So I just want to be careful whether we're talking about, you know, CRES supplied within the ESP or whether we're talking about the MRO alternative.

Q. Okay. I'm just talking, just the way you've done this you've assumed that all the energy would be sold at market price.

A. That's right.

Q. So you start with a fixed production cost, number one, correct?

A. Yes. The pieces you're about to tick through are depicted pictorially on page 2, if you want to --

Q. Yeah. That was very nice.

Okay. What return on equity did you use for the fixed production costs?

A. I don't recall offhand. We mirrored the AEP calculation.

Q. Okay. And you used all of the net rate base for generation as of 2010?

A. Yes, 2010 Form 1 data, that's right.

Q. So you did not do what Dr. Lesser did and stopped at 2000?

A. This is as per books 2010.

Q. Okay. Point two, then the costs that you have, the variable production costs, what are those?

A. Fuel, variable O&M, environmental, AEP actually classifies certain capacity-related charges as variable costs as well, but it's whatever they classified as variable production costs.

Q. Now, for account 501 fuel, did you take that off the FERC form 1?

A. Yes.

Q. Okay. Did you hear the discussion about the deferral?

A. I overheard part of the discussion about a deferral, that's right.

Q. Do you realize that AEP Ohio is not recovering all of its fuel costs, about 130 million in 2010 was deferred?

A. I don't know the precise number, but I understand there is a deferral amount in that year, yes.

Q. Would you understand that the 501 would have a negative expense for the amount of the deferral and there would be an offsetting accounting entry in a regulatory asset account?

A. It may not. I'm not familiar with the particular accounting.

Q. Well, would you agree that if $130 million of fuel costs were deferred and not counted on the income statement, it were ignored essentially, that the variable production costs in reality would be $130 million greater?

A. If there were $130 million of actual fuel expense not recorded in 501 in that year, I would agree that these numbers would be understated.

Q. So if we turn the page, when you have your pictorial description, your 1.721 billion of variable production costs would be increased by 130 million?

A. Again, under this.

Q. Under this hypothetical that we're talking about.

A. Yes.

Q. Okay. This is the big adjustment, No. 3, I'll just read it, the "Non-AEP pool sales revenues: The largest source of revenue available to AEP Ohio's generating fleet when customers shop comes from generating and ancillary services in the wholesale market."

This is the freed up energy?

A. Yes, it is.

Q. Okay. So for your quantification of No. 3, "Energy revenues are calculated by multiplying each generating unit's hourly output by the applicable Day-Ahead LMP in 2010."

That means you assume that the full production from the plants against net of losses was sold at LMP.

A. Yes. There was a slight adjustment here to exclude the energy that was sold on an intercompany basis at a different price which shows up in the next bar, but for all the freed up energy that would otherwise have gone to retail customers, yes, your statement is correct.

Q. Tell me about the intercompany, how did you deal with the intercompany energy?

A. Well, in 2010 actual there were intercompany net sales of capacity and also net sales of energy.

Q. Let's just stick with the energy, we'll get to the capacity equalization. Just for the intercompany energy transfers.

A. Yes. There was I think, if memory serves, about, and I'm looking at the fourth bar over on that figure.

Q. Okay.

A. The 570 which is labeled "AEP pool revenues from net sales."

Q. Right.

A. That has both capacity and energy in it. The energy component I think in 2010 was roughly $170 million.

Q. In your footnote 4 you say that AEP Ohio, primarily Ohio Power, surplused at 398 million of capacity payments from the affiliates.

A. Yes.

Q. And so if there was 570 of net capacity and energy, the energy portion would be your 172 million.

A. Approximately, yes.

Q. So this is revenue -- when the affiliated companies swap energy, it's at cost, correct?

A. It is.

Q. Okay. So that really wouldn't have any affect on the margins.

A. That's what this calculation is designed to ensure.

Q. Okay. But on your No. 3, the off-system sales revenue, which is essentially what I understand the total volume production from the power plants --

A. No, that's --

Q. -- less the amount sold to the affiliates at cost, that's the volume of energy that you have modeled in LMP?

A. Valued at market, that's correct.

Q. Okay. Now, you understand, or you do it, you've addressed the pooling agreement concepts here, the fact that Ohio Power gets capacity equalization revenues from the deficit companies?

A. Yes.

Q. And that's included in your No. 4. And you've accounted for the fact that the affiliated companies, Ohio Power, Columbus Southern, Indiana and Michigan, Kentucky Power, Appalachian, interchange energy on a cost basis, you've accounted for that.

A. Yes.

Q. Now, for No. 3 did you account for the fact that for off-system sales profits or margins, that those are also shared among the affiliated companies on a member load ratio basis?

A. No, I didn't. I didn't think it would be appropriate to do so.

Q. Now, in the real world when energy is freed up from shopping in Ohio and that power is sold into the PJM market, the profits are shared among the affiliates based upon member load ratio. Do you understand that that's the way it works?

A. I understand that's the way it works. To my knowledge in other circumstances where a portion of a system is in a competitive jurisdiction and other portions are not, there are modifications to the agreement to prevent that kind of leakage of benefits across jurisdictional lines.

What's happening here is that AEP Ohio's customers, so long as they are customers of AEP Ohio, have first call on this energy at cost and magically when they shop, somebody else has first call on that energy or first call on the profits from selling that energy. That's not a symmetric situation. That's not a situation that supports retail competition.

In most jurisdictions, other jurisdictions that I'm aware of make modifications to the agreements to prevent that from happening, and that's what would -- should and would happen.

Q. Well, you know, you use the word "magically," but that's exactly what does happen under the FERC-approved AEP interconnection agreement, those off-system sales profits do get shared to Appalachian Power, Kentucky Power, and Indiana and Michigan based upon member load ratio.

It's not magic, it's by operation of federal law

A. Well, it's by operation of a current tariff which is not a reasonable tariff in a retail competition circumstance and which in other analogous circumstances there have been applications to modify that tariff.

Q. Well, but if we're looking in the real world now, shouldn't we model the way the system is required to work under the interconnection agreement?

A. From a policy perspective, I would suggest to the Ohio Commission the answer to that is no. When you're asking yourself how should retail competition be implemented, is it reasonable to leave in place an agreement which says if you don't shop, you get the benefit of low-cost energy at cost, and if you do shop, costs for Ohio collectively go up by roughly $500 million a year, that to me is not a reasonable agreement to be operating under in this kind of a world and it would be reasonable to modify it.

Q. Well, do you think the Ohio Commission has jurisdiction to modify the AEP interconnection agreement, the six-state pooling agreement that's been approved by FERC? Do you think any state commission can unilaterally change that agreement?

A. I'm not suggesting that.

Q. Well, then how can you model something that doesn't reflect reality? I mean, you may think it's unreasonable, but the FERC and the other affiliated companies live under that agreement every day.

MR. KUTIK: I'm sorry, your Honor. I'm not sure that's an objection so I'll object. That's argument.

Q. Isn't that true?

MR. KUTIK: I still will object, that's an argument.

EXAMINER SEE: Okay.

A. I think, as I've already stated, that I'm not disputing that that is the nature of the agreement today. What I'm saying is that agreement is susceptible to change and that in other analogous circumstances such changes have been made, and that the Ohio Commission has whatever its jurisdiction is to determine retail competition policies, and that's what I'm testifying about.

Q. Okay. So you're testifying -- you're quantifying the maximum above-market capacity rate that AEP Ohio should be able to charge if the Ohio

Commission could change the FERC-approved interconnection agreement the way you think is reasonable.

A. No. I'm not premising it on the Ohio Commission being able to change that agreement. I'm saying that if the Ohio Commission, back to where we started, found from both a legal and policy perspective it was appropriate to set an above-market capacity charge, that it should not, under those circumstances it should not set it at a rate which is proposed by AEP which would countenance a $500 million a year cost shift from Ohio customers to other AEP stakeholders, and that if it's within its prerogative to set the rate at a different level, the 162 would be the maximum that would be economically reasonable under those circumstances.

Q. Now, you understand that part of the stipulation deals with this very issue, that the pool agreement is going to have to be modified to account for the fact of Ohio retail competition and divestiture of Ohio assets. That's contemplated to change that very agreement.

A. It is contemplated and my understanding is it's contemplated to be accomplished by February 2013.

Q. Do you know what -- you do know what the member load ratio of Ohio Power and CSP is? It's in your exhibits.

A. I think they're roughly 20 percent apiece, something like that.

Q. About 41 percent of the total system?

A. Yes, sir.

Q. So 59 percent of the off-system sales margins that you modeled would, in fact, under the federal law, be flowed to Virginia, West Virginia, Indiana, Michigan, and Kentucky.

A. Under the current tariff, so long as that tariff stayed in place, that would be correct.

Q. Do you know whether ratemaking treatment of those off-system sales margins, do you know, for example, whether in West Virginia those additional off-system sales profits would be flowed through automatically to West Virginia ratepayers under their version of the FAC which is called the ENEC?

A. My broad understanding is that in the other AEP jurisdictions the policies are mixed, some have a sharing of off-system revenues, some flow them through, but in any event the beneficiary is not Ohio consumers.

Q. That's right. The beneficiary would be the ratepayers in West Virginia where they have sharing or the ratepayers in Kentucky or the ratepayers in Indiana --

A. Or the corresponding shareholders.

Q. To the extent they're not flowed through automatically to ratepayers.

A. Yes.

Q. But you and I both have agreed that part of the additional off-system sales margins would flow through automatically to those ratepayers.

A. Right, emphasis on the word "part."

Q. Yeah. It's a hundred percent in West Virginia.

A. In that one jurisdiction, yes.

Q. Yeah. So under a scenario that we have here where there's additional shopping, additional off-system sales are made, those off-system sales profits are shared with the various states, and the ratepayers in some of those states, at least in part, get the automatic benefit, do you think that should be taken into account by the Commission when deciding the issues in this case?

A. No. Whether the beneficiaries of the cost transfer from Ohio to other jurisdictions, are customers in other jurisdictions or shareholders of

AEP, seems to me from the Ohio perspective the question is should transition, for instance, to an MRO necessitate a transfer of up to $500 million a year, a net increase in cost for Ohio consumers of $500 million a year for the beneficiaries that you mention, which would include other customers and other shareholders, and I don't think that's a reasonable policy for the Commission.

Q. You don't think the Ohio Commission would want to know that decisions they may make in this case would have the effect of providing, I'll call them windfall, you can disagree with that, windfall benefits to the ratepayers in West Virginia?

A. Well, they're windfall benefits to whomever, be that the shareholders or other customers. My point is the Ohio Commission ought to be concerned that there is such a windfall, you know, a cost transfer, and they obviously could choose to be concerned about whatever they like, but it seems to me the fact that there was such a transfer, its magnitude would seem to me would be the first order of concern.

And that's what would happen under a $347 a megawatt-day capacity price coupled with an MRO type of a plan, would be that over time as the competitive procurement was phased in, net costs in Ohio would go up by $500 million a year and the beneficiaries would be customers in other states and to some extent the shareholders.

Q. Doesn't that relationship, to you, argue in favor of a transition mechanism that would try to limit the windfall benefits to ratepayers in other states at the expense of, well, just windfall benefits to ratepayers in other states?

A. Well, you say "transition mechanism." You know, the resolution of this issue in terms of the interconnection agreement is most directly under AEP's control rather than anybody else's.

So, you know, I can't speak to whether -- how long it would take to implement the change, whether they should have already implemented the change, but to testify to tell the Ohio Commission that you need to pay us $347 a megawatt-day because that's what keeps us whole assuming a $500 million transfer to other jurisdictions I think is not a reasonable position.

Q. Let's move to your Exhibit 3 if we could.

A. I'm sorry? Three?

Q. Yeah. Your Exhibit 3.

A. I have it.

Q. Okay. Really, this is your correction to the competitive benchmark price, and really this is the question of how you price capacity, this exhibit, you've priced it at the PJM RPM whereas Ms. Thomas has priced it at a blend of PJM RPM plus, did she use 255?

A. They used 255 for one run and RPM for another and then she averaged the two.

Q. Okay. So in a sense this is one of the crux issues of the case, don't you agree, as to what you assume about how capacity should be priced?

A. It's one of a small number of crux issues that determine whether you think the ESP pricing is more favorable or not.

Q. That's fine. We have to make an assumption about how the 2929 capacity pricing case would turn out and how the section 205 FERC case may turn out, how the section 206 FERC case may turn out and --

A. I wouldn't agree with that.

Q. Well, let me -- if you assume that AEP would win in any of those cases and get $355 per megawatt-day for capacity, then the ESP looks pretty God darn good, doesn't it? No?

A. No, I wouldn't agree with that.

Q. You don't think so?

A. Those cases are all about the capacity price that we charge to a CRES supplier. They don't bear on the question of under the portion of the statute that deals with an MRO whether the Commission is authorized to approve an above-market price for capacity in the context of an MRO.

And I'm advised by counsel that that's a separate legal question and the resolution of these cases about capacity price to CRES suppliers is legally distinct from the resolution of the question of in an MRO comparison, which is what we're doing, what would be the price, the capacity price applicable in the MRO.

Q. Let me see if I understand this. So you think that if the Commission ruled tomorrow in the 2929 case that AEP was correct as to how they should charge CRES suppliers for capacity, that in an MRO comparison we would disregard the decision in 2929 and use RPM instead?

A. I'm advised by counsel, and I have a footnote to that effect in my testimony, that in the context of the MRO, that FE believes the statute does not permit an above-market capacity price.

Q. Even if the Commission had determined that that was the appropriate state compensation mechanism in the 2929 case?

A. Which is a CRES context in a different part of the statute, yes.

Q. And even if the FERC ruled in AEP's favor.

A. That's my understanding, I've been so advised.

Q. Is there some part of the statute --

A. Yes.

Q. Okay. Let's hear it.

A. The section that I've been advised is relevant here is 4928.142(C). And there's a paragraph in that section which begins "All costs incurred." And that's the section of the statute that I've been told by counsel provides for market-based recovery of capacity only in the context of an MRO.

Q. Despite -- even if the Ohio Commission and FERC both said that that was not the lawful rate in Ohio.

A. That's what I've been advised.

Q. Wow. Okay. Well, I guess everyone's entitled to an opinion.

MR. KUTIK: Objection. Move to strike.

MR. KURTZ: I'll withdraw the comment.
EXAMINER TAUBER: Thank you.
Q. Let's look at line -- in your Exhibit 3 you've got a difference in capacity pricing versus what Ms. Thomas used for capacity, $7.79 per, is this megawatt-day pricing?
A. Yes. You're comparing her blended, which is the third column of numbers, with the fourth column, which is mine, all at RPM.
Q. Right.
A. Yes.
Q. Are we talking, yeah, dollars per megawatt-day here?
A. No, these would be --
Q. Dollars per megawatt-hour.
A. These are dollars per megawatt-hour in Exhibit 3.
Q. So this $7.79 per megawatt-hour difference is probably the biggest difference between you and AEP in terms of the MRO-ESP comparison, the biggest dollar amount difference?
A. The pool modification rider is of a similar magnitude. Those would be the top two. And then going the other direction, the environmental investment cost recovery rider which favors the ESP,

higher costs that would otherwise be required in my high case, is of a similar magnitude going the other direction.

Q. And then you've got three ripple effects of changes in the capacity prices, you've got a 65-cent per megawatt-hour load following ripple effect and a 7-cent per megawatt-hour losses and 42-cent per megawatt-hour transaction risk adder. It looks like just over another dollar per megawatt-hour in the ripple effects?

A. Yes. And just to clarify, we used Ms. Thomas's model for these purposes so those were the interrelationships she had built into her calculation which when we put in a new capacity price, if you will, rippled through.

Q. Okay. You understand that when AEP calculates what they consider to be the net benefit of the ESP settlement, they used something other than RPM capacity pricing and they say it's an 800-something million dollar benefit to consumers, and you and maybe others have said no, you should use RPM and it's a $2 billion loss.

A. Yeah, I don't recall the $2 billion number, but a substantial loss.

Q. A substantial loss. So how you -- the perspective that one views on that particular issue, which I think is the phrase that Dr. Shanker used, is critical to at least to -- reviewing this case?

A. Sure. And as I tried to indicate in my previous response, that, as it turns out, has both a legal component and then a policy and economic component.

Q. Okay. Let's talk about the pool modification rider if we could, I think that's on page 19 of your testimony in Exhibit 2 but it may be page -- well, I'm sorry. Let's just turn one page and go to your Exhibit 2. You've got it quantified here nicely.

A. So we're on Exhibit 2 now?

Q. Yeah. You've got a high and low case for the pool modification rider.

A. I do.

Q. Basically, the pool modification rider is if as a result of going to FERC and redoing the AEP interconnection agreement to divest Ohio generation AEP Ohio has a loss of less than $50 million, they can't even ask the Commission for a recovery of that; is that correct?

A. That's correct.

Q. If the loss is more than 50 million, they could ask the Commission for recovery but there's no guarantee the Commission would grant recovery; is that right?

A. That's my understanding.

Q. Okay. You've calculated a high case/low case as to how that proceeding may turn out by assuming that generation would be transferred to the affiliates at a market-based capacity, that would be your high case scenario.

A. Well, whether they were transferred or whether those relationships were terminated and AEP Ohio then was able to sell it at the market price, but both the capacity and the energy that we were currently -- we were talking about a few moments ago, that bar on Exhibit 5, the methodology was to assume both of those went from their current cost basis to the relevant market for capacity that would have been the RPM capacity price, and for energy it would have been the LMP price that we were talking about, and the net of those two is what I'm measuring as the effect of the pool termination, which is precisely the same methodology that AEP itself used in a filing in Indiana in 2009.

Q. Okay. Were you here yesterday when Dr. Shanker testified that it's unlikely but he agreed that the pool modification could be a benefit to AEP?

A. Are you asking if it's mathematically -- I was not in the room yesterday so I don't know.

Q. He said it was unlikely but said possible. You didn't model a benefit, you just modeled a high case/low case cost?

A. Yeah, see, I guess -- I don't know what question Dr. Shanker was asking, but if the specific question is between now and May 2015 when RPM prices are already known, is it possible that pool termination could be a benefit, my answer would be "extremely remote." There's no uncertainty about the capacity prices that are out there in that time period.

Q. Let's set the stage here. How many years from now are we all going to be at FERC for the pool modification case? Is it next year or a year and a half? I forget the timing.

A. My understanding, if I'm remembering the calendar, is the consultations start very early in 2012 and the FERC process goes forward, I think's Appendix B to the stipulation lays out that time frame, but I think it concludes by February 2012 -- '13, excuse me, to my recollection.

Q. So AEP Service Corp. will make a filing on behalf of all the AEP-East affiliates at FERC proposing a way to terminate the existing pool and create a new pool with the three operating companies?

A. I don't know what the basis of the filing would be that AEP would make.

Q. Well then how can you model a high case/low case and quantify hundreds of millions of dollars of cost?

A. As I said, my methodology, I mean, you hypothesized not just a pool termination but the reconstitution of a new pool and I have no idea what, you know, what the residual system would decide to do.

But if you're talking about the pool termination part of it, the methodology that I used is the same methodology that AEP itself used in a collaborative study that was filed in Indiana in 2009.

Q. What if the result of the pool termination is all the generation is transferred to the unregulated affiliate at net book cost, would there be any harm to the utilities at that point? Would there be any loss?

A. My understanding is that AEP Ohio has agreed that the measure of injury, if you will, is the lost capacity revenues offset by any increase in energy contribution. And by that measure I think using AEP's own forecasts of what the pool transfer price would be, if the arrangement was not terminated through this time period, then the forward energy prices and the RPM capacity prices for the market prices and applying the same methodology that AEP has used to estimate the impacts of pool termination on AEP Ohio, that's my high case.

And my low case is basically saying suppose there's some negotiated outcome which cuts that number in half, and that's my low case.

Q. What if AEP -- AEP doesn't get to decide this by itself, does it?

A. Well, AEP, the pool termination is obviously subject to FERC jurisdiction. It's a FERC tariff. But I don't understand, decide what? I mean if the termination is such that AEP -- that the pool arrangements are terminated and AEP can no longer transfer capacity to its sister companies after September 2013, that's the effect.

Q. Well, what if the result of the FERC hearing is that FERC says that the transfer from the Ohio utilities to the unregulated affiliate will be at net book cost? Is there any -- is there any harm to AEP Ohio? Is there any -- it's booked at zero loss, zero gain.

A. I don't think -- I don't know that that's necessarily relevant. The question is, as I understand it, is what's the loss of, net loss of capacity revenues that AEP Ohio will experience.

And if under your hypothetical which, where a transfer is contemplated, you know, to a separation, if you will, from the generation from AEP Ohio, pool termination rider wouldn't be in the stipulation, there would be no need for it under the arithmetic that you were just describing.

But what we do know is that the pool termination rider and six or seven other riders were in the initial ESP, every rider except two was eliminated during the negotiations and so the stipulation doesn't have five or six other riders which are detailed on page 6 of my testimony. And what we're left with are two riders, the fuel adjustment clause rider and the pool modification rider.

And I think that the only conclusion, the only reasonable conclusion one can draw from that is that AEP thinks that that's important to preserve.

Not that it would have a zero value, otherwise it would have been negotiated away like six other riders in the process.

So I think to sit here and to suggest that it could be something else and it could be zero, maybe in some conceptual or theoretical sense may be true, but the question is what's consistent with the actual facts that have transpired here since the initial ESP was filed. And I think a reasonable reading of those facts is that AEP was unwilling to give up the pool termination rider when they gave up several other riders, and the only other rider that they refused to give up was the fuel rider, and I think it's very reasonable to conclude that they have an expectation that there might be a claim for a significant sum of money under that rider and hence their reticence to negotiate it away.

Q. Well, there's a slightly different interpretation of that rider, that is if the costs are below 50 million, AEP cannot even ask the Commission for permission to recover them and if -- so that by itself, if it's 49.9 million, AEP can't even ask this Commission for recovery.

A. Well, that's --

Q. How does that hurt AEP? That helps

consumers, doesn't it?

A. No, but I think that proves too much and in so doing it proves my point. If AEP thought the actual injury was going to be $50 million or less and they were willing to agree to a $50 million threshold, they would have negotiated the thing right out of the deal.

The only reason that they would keep a rider in that had a $50 million threshold is if they thought there was a pretty good chance that the number would be more than 50 million, which my analysis suggests is absolutely right.

Q. Well, whether it's more than $50 million, the only right AEP has under the stipulation is to ask the Commission please give us recovery.

A. Sure. And the point is they did not negotiate that right away, they did negotiate away several other proposed riders, and I don't see how it's reasonable to suggest that notwithstanding that they clung stubbornly to this particular rider that really they don't expect to recover anything from it. I don't think that that is a reasonable explanation of what's happened here.

Q. Well, you weren't in the negotiations.

A. I was not, but I'm looking at the facts that I've recited to you and I don't see another reasonable way to interpret it.

Q. Let's go back to the FERC proceeding. AEP will make an application to FERC or AEP Service Corp. on behalf of all the affiliates will make an application to FERC under section 201 I think of the Federal Power Act to modify -- to terminate the pool and maybe start a new pool. At least they'll file something at FERC, right?

A. They'll file something at FERC and it sounds like it ought to at least include termination with respect to AEP Ohio's participation.

Q. So then we'll have the state commissions from Indiana, Michigan, Ohio, Kentucky, West Virginia, and Virginia intervening to protect their interests, right?

A. I would suspect there will be a number of intervenors, yes.

Q. All the consumer advocates from all the different states.

A. Sure.

Q. Okay. All the industrial groups.

A. As I said, I think there will be a lot of people intervening.

Q. FES will intervene, right, most likely?

A. I can't speak for FES.

Q. Municipal utilities, transmission users, PJM, it will be a Cecil B. DeMille cast of thousands, won't it?

A. It will be a well-attended event.

Q. But you're sitting here and predicting the outcome of that well-attended event with a high and a low case and putting those numbers into your model.

A. Yes. I'm sitting here saying that my estimate which uses AEP's forecasts and AEP's methodology is much more reasonable than an assumption of zero and it's a much more reasonable given the negotiating facts that I recited to you that the number will not be zero, or at least AEP believes it will not be zero.

Q. And so you're making an assumption about how this well-attended FERC case will come out and then you're making an assumption about what the Ohio Commission will do as a result of that FERC case. In terms of cost recovery or not.

A. Yes. I'm suggesting that there will be a substantial claim here under the pool modification rider and I've represented that range.

Q. Despite the level of uncertainty you

think it's reasonable to include numbers, dollar amounts, high and low case in the MRO-ESP comparison.

A. For the reasons I described I think that's far more reasonable than assuming zero.

Q. Okay. Let me -- have you looked at the, have you read the testimony of the other FES witnesses?

A. Only small pieces that pertain to my testimony, but not in the entirety.

Q. You know FES's position in this case, at least as it relates to your issues?

A. Can you be more specific?

Q. Yeah. You understand that FirstEnergy is encouraging the Commission to reject the stipulation.

A. Yes.

Q. Okay. And to order AEP to immediately divest its generation.

A. I'll accept that, subject to check. I don't know that, but --

Q. Okay. And to charge a hundred percent RPM pricing immediately for all CRES suppliers. Correct?

A. Yes.

Q. To immediately hold an auction for all SSO load.

A. Yes.
Q. Okay. And that would then entail AEP Ohio selling freed-up generation into the PJM market?
A. To the extent that they were not the winners of the SSO auction, I suppose that's correct.
Q. Okay. Well, to the extent they have any freed-up generation from this matter, profits would flow to the other states in proportion to their member load ratio?
A. Yeah, assuming no modification to the interconnection agreement in the interim, yes.
Q. How long do you think it will take for this well-attended FERC case to resolve?
A. Well, I think the schedule that AEP has got is laid out in Appendix B and I'd be happy to -- of the stipulation, I'd be happy to refresh my recollection on that.
And, by the way, I see looking at Appendix B that this will be a 205 filing, not a 201 filing.
Q. Okay.
A. And it looks like for that whole process of the schedule in the stipulation concludes February 1st, 2013.

Q. That's when they would hope to have a FERC decision?

A. That's the FERC order, that's correct.

Q. Okay. And so at least until, well, of course, whenever FERC would rule. Until then we would have these off-system sales profits flowing to the other jurisdictions according to the member load ratio?

A. It's possible. It's possible that there could be, under the scenario that you're outlining, an interim kind of amendment to the interconnection agreement that would basically change the definition of surplus energy.

And to prevent that from happening pending the fuller proceeding, so I wouldn't -- the full termination looks like it would take a year, but there may be an interim fix, if you will, to deal with this issue that you were describing that could be implemented more quickly.

Q. And then while all this action we're going through, all this stuff is happening, Dr. Lesser would have us back here arguing a cost-of-service case for how the generation would be prosed.

MR. KUTIK: Objection, mischaracterize

Dr. Lesser's testimony.

MR. KURTZ: I'll rephrase.

Q. Were you here when Dr. Lesser testified that he thinks we ought to have a cost-of-service case to straighten out the generation rates based upon a traditional cost of service?

MR. KUTIK: Again, mischaracterizes Dr. Lesser's testimony. He said AEP should have done one already.

Q. Let me ask you -- we'll forget how Dr. Lesser characterized it. If all that was going on, do you think it would be a good idea to be in this hearing room having a cost-of-service case talking about how generation rates should be priced on traditional cost of service?

A. That's not a subject about which I have an opinion.

MR. KURTZ: Thank you, your Honors, those are all my questions.

EXAMINER TAUBER: Ms. McAlister?

MS. McALISTER: No questions, your Honor, thank you.

EXAMINER SEE: Mr. Yurick?

MR. YURICK: No questions, thank you, your Honor.

EXAMINER TAUBER: Mr. Conway?

MR. CONWAY: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Conway:

Q. Good afternoon, Mr. Schnitzer.

A. Good afternoon, Mr. Conway.

Q. I'll try not to duplicate significantly what Mr. Kurtz has already traversed with you.

Your testimony in its first substantive part provides your support for the proposition that the stipulation ESP price is understated, correct?

A. Yes, sir.

Q. And one of your criticisms is that AEP Ohio's ESP-MRO comparison is flawed because the stipulation ESP price that it uses is understated and you provide corrections to the stipulation ESP price in your Exhibit MMS-2 and one of those is fuel costs, right?

A. Yes, sir.

Q. And your view is that the fuel costs are understated for the January 2012 through May 2015 period, right?

A. Yes, sir.

Q. And so you increased them, right?

A. I did.
Q. And the increased fuel costs that you included in your analysis, they are from a fuel forecast that the companies had prepared; is that right?
A. That is correct.
Q. And when was that fuel forecast prepared, if you know?
A. I'm not sure if I recollect that. I do know that it's confidential.
Q. Do you know whether it was prepared at the -- coincidentally or about at the time that the company's original ESP filing was made?
A. It may well have been. It was I believe produced in response to discovery of the original filing.
Q. And when was that, if you recall, the filing of the ESP originally?
A. I think it was January, if memory serves. This particular piece of discovery I think, as I recollect, came pretty late in the game in terms of our being able to incorporate it in response, so these numbers were not provided contemporaneously with the filing. They may have been prepared then, but they were not provided to us until some months

later.

Q. Well, the filing was some months before the stipulation that we're discussing here today was entered into, right?

A. Yes, it was.

MR. CONWAY: Your Honor, may I approach the witness?

EXAMINER TAUBER: You may.

Q. Mr. Schnitzer --

MR. KUTIK: May I see what you're going to show the witness?

MR. CONWAY: Yes. Yes.

Q. Mr. Schnitzer, I'm handing you a copy of FES Exhibit 10, which is I believe the fuel forecast document that you had just mentioned is confidential. And my question for you is, is this the fuel forecast that you relied upon to prepare your adjusted fuel cost numbers?

A. Yes. As I describe in my testimony, with an estimation to deal with the first five months of 2015.

Q. And so you used the values that are in the fuel forecast for 2012 and 2013 and 2014 which were separately stated, converted them into dollar-per-megawatt-hour values that you then included in your estimate of the stipulation ESP price?

A. There was no conversion required. This exhibit does state the figures in dollars per megawatt-hour.

Q. Okay. And then you mentioned that you had to extrapolate or come up with some estimate of what the fuel cost would be for the five months of 2015, January through May?

A. Correct.

Q. And did you do an extrapolation based on the fuel forecast cost values that are in the document?

A. That is correct.

Q. So there is not actually an AEP fuel forecast value for that period that you used.

A. For the first five months of 2015 that would be correct, for the other 36 months these are the values that I used.

Q. And so you assumed that the trend in the fuel cost prices that -- the 2012, 2013, and 2014 values from the fuel forecast FES Exhibit 10 would continue for the first five months of 2015, right?

A. Yes. And I think that's stated in lines 7 through 9 of page 16 of my testimony.

Q. And if you had held the fuel cost value constant for the January through May 2015 period at the 2014 level, that would have had an effect on your results, overall results, would it not?
A. Very modest, but yes.
Q. And what would have been the effect?
A. Well, you're going to have to --
Q. Qualitatively.
A. You're going to have to -- comparing what to what are you asking me what would be the effect?
Q. Well, I'm just asking if you held everything constant in your analysis other than kept the value for January through May 2015 constant at the 2014 level, what would have been the effect?
A. I still need a clarification from you, Mr. Conway. As you know, the fuel assumption is also part of the MRO part of the test and I used the same fuel adjustment clause assumptions on the MRO side as I did on the ESP side. So in your hypothetical am I doing what you suggested on both sides of the ledger, as it were?
Q. My question is what would be the impact, at least in a qualitative sense, if you had flowed through that adjustment through all of your analyses.
A. Through all of my analyses comparing the

ESP through to the MRO using otherwise the same approach I have used.

Q. Yes.

A. It would be very minor, perhaps a penny or two in favor of the ESP. A penny or two per megawatt-hour, but very modest.

Q. And if you had used Ms. Thomas's fuel cost values for the entire period January 2012 through May of 2015 instead of the values you did use and you flowed through that change and its effects through all your analyses, what would have been the impact at least in a qualitative sense?

A. Very small improvement in the relative position of the ESP.

Q. So is it your conclusion that the fuel cost difference of opinion that you have with the company does not lead to material results in the calculation of the MRO-ESP comparison?

A. It depends on whose methodology we're talking about. Under Miss Thomas's methodology it makes an enormous difference. Under my approach it makes a smaller difference.

Q. And I'm focusing on your approach right now.

A. I would say --

MR. KUTIK: Your Honor, could he finish his prior answer before he was interrupted.

MR. CONWAY: I'm sorry. I apologize.

A. So I was going to say, so it depends on, you know, exactly what you're asking me. We have two analyses here, Ms. Thomas and myself, that vary in a number of factors, one of which is fuel, but they vary also structurally.

And so other things being equal, just changing fuel in her analysis makes a big difference and other things being equal just changing fuel in my analysis makes much less of a difference.

Q. Now, referring to your Exhibit MMS-2 as a point of context, my understanding is that the way that the exhibit is constructed you have the AEP Ohio view of the stipulation ESP price at the top third of the exhibit and then you have two other scenarios that reflect the high and the low pool modification costs in the second and third portions of the exhibit; is that right?

A. Yes. As well as a change in the fuel in the GRR relative to the top third.

Q. Okay. But the way you have it segregated is the AEP approach in the top third, your approach using high case for the pool modification rider as the second approach, and then your view of the stipulation ESP price using the low case pool modification rider in the bottom third of the exhibit; is that right?

A. Yes. Both of which latter cases also reflect my view of fuel based on the company's forecast and my view of the GRR rider based on the company's forecast.

Q. Okay. And the high case pool modification adjustment that appears in that second tier of the three tiers of Exhibit MMS-2 assumes impacts of $2.92 per megawatt-hour in 2013, and then $8.75 per megawatt-hour for 2014 and the first five months of 2015, right?

A. Yes. With one clarification, that the 2.92 in 2013 is actually because the recovery doesn't start until the last, either September or October and so it's actually $8.75 per megawatt-hour once it starts, but when you annualize that for the portion of the year when it's not in effect, the 2.92 is the average of -- prior to the starting of that recovery and the then-recovery at the 8.75 rate.

Q. And that leads to the $525 million, the 8.75 through that portion in 2013 and then on through 2014 and the first five months of 2015?

A. That allows for recovery of that amount, that's right.

Q. And then your low case pool modification rider scenario on the bottom third of Exhibit MMS-2, you simply take one half of the high case scenario costs; is that right?

A. That is correct.

Q. And so that's where you get the $1.46 per megawatt-hour for 2013 and the $4.38 per megawatt-hour for the remainder of the period for 2014 and the first five months of 2015?

A. Yes, with the same qualification about the 1.46.

Q. And so the low case scenario costs resulting from your estimate of the pool modification termination rider is that it would produce costs of 262 million for the 2013 through May 2015 period? Half of the 525?

A. Yes.

MR. KUTIK: May I have the question read, please?

EXAMINER TAUBER: You may.

(Record read.)

A. Yes, it would be half of the 525.

Q. And in your conversation with Mr. Kurtz you explained your view that you thought that the, either the 525 or the $262 million impacts of the pool termination or modification would be flowed through this rider; is that right?

A. Yes.

Q. And by reaching that conclusion is it your view that FES would support AEP Ohio's recovery of those costs in any future proceedings either -- at the PUCO?

A. I have no basis to make a representation one way or the other on that.

Q. Did they advise you in the course of preparing your testimony that it was reasonable for you to take this position because they would acquiesce or support AEP Ohio's recovery of those costs?

A. They did not.

Q. What do you think their position will be in the -- if there is such a PUCO proceeding?

MR. KUTIK: Objection. Well beyond the scope of his testimony, your Honor.

MR. CONWAY: It's actually within the core of his testimony. What's the probability of this happening, which is itself dependent upon what the views of and what the activities are with positions taken by all the interested parties is going to be.

And if I might add, your Honor, I'm also, I think, entitled to test the reasonableness of his position here which has got to be in part premised on whether or not his client, the person who's presenting him, is going to take positions consistent with his testimony in future proceedings.

MR. KUTIK: Well, he's already said, your Honor, that he does not know, has not had a discussion with FES about that issue, about what position if any FES would take.

MR. CONWAY: My next question --

MR. KUTIK: So there's no foundation for the question at all.

MR. CONWAY: The question is what does -- does he have a view, does he have an opinion about what FES's position will be in the future, which is independent of the answer to the prior question.

MR. KUTIK: That further establishes the remoteness from any topic relevant to this case.

EXAMINER SEE: The objection is sustained.

Q. (By Mr. Conway) Mr. Schnitzer, if you look at the Load-Weighted Average column on Exhibit

MMS-2 --
A. Yes.
Q. -- and if you focus on the $9.10, if that's still the value, if it's not confidential, I guess let me see.
A. I think that one's okay. Well, I'm not sure.
MR. KUTIK: May we go off the record?
EXAMINER TAUBER: Gentleman, let's go off the record.
(Discussion off the record.)
Q. With regard to the load-weighted average components that correspond to the total adjustments to the stipulation ESP price for both the high case and the low case for pool modification, do you see those two values?
A. I do.
Q. Can you tell me what the dollar-per-megawatt-hour amount of that total value is represented by in the high case and the low case of the pool modification rider adjustment. Which I don't think is confidential.
A. Yes. If you turn to Exhibit MMS-4, Mr. Conway, and I'm looking at page 2 of 5. If you'll look two/thirds of the way down, the block

labeled "Stipulation ESP Price" and you'll see a line "High Pool Modification Rider," and then all the way to the right-hand margin is the load-weighted average, I think that's the figure you're asking about.

And then the very next page of MMS-4, page 3 of 5, will have the corresponding figure for the low case RPM. Do you see that?

Q. Yes, I do. Thank you.

And another difference between your approach to calculating the stipulation ESP price and Ms. Thomas's approach is that you include amounts for the generation resource rider related to the Turning Point Solar Project; is that right?

A. Yes, it is.

Q. And those reflect cost recovery for the Turning Point Solar Project's costs, correct?

A. Not exactly. Those reflect the net costs of the Turning Point project, so net of their capacity and energy values, if you will.

Q. And is it your understanding that before any such costs could be recovered through the GRR that, like the pool modification rider, there would have to be a separate proceeding at the PUCO?

A. That is my understanding.

Q. And the recoverability of any such costs would be at issue in such a proceeding.

A. It would.

Q. And by approving the stipulation the PUCO is not approving at this time recovery of Turning Point Solar net costs, right?

A. It is not, but nor has AEP given up the right to pursue and request such approval.

Q. And do you know what FirstEnergy Solutions' position is regarding the recovery of those net Turning Point Solar Project costs through the GRR?

A. I do not.

Q. With regard to the competitive benchmark price, you also have several disagreements with how the company has estimated that value, right? The competitive benchmark price.

A. Really one difference that then has the ripple effects using Ms. Thomas's model that ripple through but one difference of opinion about inputs.

Q. And that's the capacity price to use?

A. Yes, sir.

Q. And you may have already gone over this with Mr. Kurtz, but you believe it was improper to use the stipulation capacity prices in order to construct a competitive benchmark price, right?

A. Yes.

Q. And your view is that the correct capacity prices to use are the RPM price, right?

A. Yes.

Q. And I'm not sure which page it is now in your testimony, but in your prior version at page 20 you made a statement about this, and so could you turn to page 20 of your testimony, whichever version you have in front of you?

A. The discussion of this issue does begin on page 20 of the version I have in front of me, it's Exhibit 4, I think.

Q. In the title to the section of your testimony that starts at page 20 you state that -- you say that "AEP Ohio overstates the competitive benchmark price component of the MRO price by assuming the Commission would resolve the capacity pricing issue in the same manner as the stipulation." Do you see that?

A. I do.

Q. Now, in your analysis you assume that the Commission would resolve the capacity pricing issue in the same manner as FES's litigation position in the capacity pricing case, correct?

A. Yes, but for different reasons. But yes, it's the same number.

Q. What is AEP Ohio's position, again, in the capacity pricing case before the PUCO? Do you recall?

A. Well, again, that's a case about capacity price to be used for CRES suppliers and I believe AEP Ohio's position in that case is, depending on which side of losses you measure it, something like $347 a megawatt-day.

Q. And would you agree that AEP Ohio is not assuming in this proceeding, that is the stipulation review proceeding, and in connection with the competitive benchmark price that it has proposed that the PUCO would resolve the capacity pricing issue in the same manner as AEP Ohio's position in that capacity pricing case?

A. That's a true statement.

Q. And would you agree that the capacity pricing to which AEP Ohio has agreed in the stipulation is a reduction from the capacity pricing it has advocated in the PUCO capacity pricing case?

A. It is. But again, in the stipulation the effect of that agreement relates only to CRES pricing of capacity, not to MRO. So that the reduction from

247 to -- 347, excuse me, to 255, has no practical effect on switching as I outline later in my testimony. That switching that would be uneconomic at 347, is also uneconomic at 255, so it's a concession, if you will, without a consequence.

Q. You haven't conducted a market study that examines that question, have you?

A. Well, I've included in my testimony an assessment of the average savings opportunity for the percentage of load which is underneath the cap and, thus, their suppliers are able to get capacity at RPM and then what happens to that savings opportunity for the segment of load that would be above the cap, and those figures are in my testimony.

Q. So your position is, your view is that offers could not be made by CRES providers in an environment where $255 per megawatt-day capacity from AEP Ohio is available.

A. Well, offers could legally be made, but economically attractive offers except in limited subsegments owing to rate design I would expect there wouldn't be an opportunity to make an economically attractive offer.

Q. And have you ever worked for a marketer of retail electric services?

A. We have consulted to some from time to time. It's not a major part of our business.

Q. With regard to the RPM prices that you quote at the bottom of page 20 and on the top of page 21 of your testimony, do you see those?

A. I do.

Q. These are the prices that you're assuming AEP Ohio may charge CRES suppliers for its capacity during the periods indicated at the price levels indicated pursuant to the current pricing regime that the Ohio Commission has adopted?

A. Well, those are the RPM prices for those periods, but if I can perhaps cut to the chase on this, if you could turn to Exhibit MMS-3 where we were a moment ago, and if you look -- I'll give you a minute to get there. Do you have it?

Q. I do.

A. Okay. If you look at the first column, that's Ms. Thomas's run of her competitive benchmark model using the RPM prices and you see she gets a figure of 4.79 for capacity under RPM assumptions. And if you go three columns over to my analysis of what happens when I assume the RPM price, I get 4.76 for capacity, which is virtually identical. The only difference being that I assume a slightly different customer mix of switching load.

So there's no difference in what I've assumed and what Ms. Thomas has assumed, and it's pretty clear from Exhibit MMS-3 that's the case.

Q. Thank you.

At page 21 --

A. "21" you said?

Q. Yes. At lines 13 to 14 you state that "Neither the $255 figure nor the blended capacity price in the Stipulation has been approved by the Commission or FERC." Do you see that?

A. I do.

Q. Do you have an opinion about whether the PUCO could approve a capacity price of $255 or a blended capacity price?

A. In the context of an MRO or for purposes of capacity sales to a CRES provider?

Q. The latter.

A. The latter. That, I don't, because I don't know whether as a matter of law the Commission can do that. I don't have an opinion. I don't know that I've been advised by counsel as to that point.

My testimony is just that if it is permissible in that context, the maximum number should be the number that I've computed for an above-market capacity charge which is less than the 255 number.

Q. And the former context, the MRO context, which you offered I supposed to provide an opinion about, if we went down that track would it lead to the discussion you had with Mr. Kurtz?

A. Yes. There I've been advised by counsel that under the statute that that would not be permissible.

Q. So you don't have an opinion as to whether or not the PUCO could approve in the 10-2929 docket a cost-based rate for capacity pricing?

A. I don't. I have my policy recommendation that if they can, and contemplate it, that it shouldn't be higher than 162, but that's the only opinion that I'm offering and I also offered the policy reasons why I think RPM is the better choice.

Q. Could you turn to your Exhibit MMS-4?

A. Yes.

Q. Page 1 of this exhibit as revised is your summary table; is that right?

A. That's correct.

Q. And then it's succeeded by four more pages of several scenarios that you've evaluated that are summarized on the summary table on page 1.

A. That's correct.

Q. First off, with regard to the variation, and I'm looking at your page 1 of 5, the summary table, with regard to the variation in the, start with the second column that has values in it depending on your high or low case pool modification rider cost estimates. Do you see that column?

A. Yes, I do.

Q. What is the total dollar impact of the high case estimate on either scenario 1 or scenario 2?

A. I believe that would be the 525 million figure that we were talking about earlier.

Q. So that if -- so if we assume that there were no dollars recovered through the pool modification rider, would I be -- would it be appropriate to reduce the $804 million under scenario 1 by the $525? I know you don't agree with that but I'm just asking if --

A. The calculation that you describe would be I think the proper calculation for that hypothetical, yes.

Q. Okay. And then similarly for the second scenario -- and just to be clear, the first scenario is low environmental investment carrying cost recovery, and the second scenario it is high environmental investment carrying cost?

A. Yes, in the MRO side.

Q. Okay. In that second scenario, the high environmental cost scenario, I would deduct 525 million from the $580 million value?

A. I think that's correct, yes.

Q. And then would I just take half of that number which is, I think we agreed, is about 262 million and deduct from the load case value to get what that value would be if we assumed that there was zero cost being recovered through that rider?

A. Yes. Again, without agreeing with that assumption, but that's the math.

Q. Okay. In either of these two scenarios did you include the Turning Point Solar cost recovery estimate, or did you include it in both of them?

A. Well for that let's go to the backup, if you will, and I think in 1A it's in there, in 1B it's in there. Yes, it's in all of them.

Q. And I see that there's -- in the load-weighted average column on those detailed scenario pages, pages 1 through 5, I see that under the load-weighted average column it includes a value of 12 cents a megawatt-hour for GRR, which I assume is the Turning Point Solar; is that right?

A. Yes. That's pages 2 through 5, but yes.

Q. And I didn't see anywhere any way I could quantify the aggregate, like how many million of dollars that would correspond to. Is that a value of that type anywhere in here so if I were to adjust that out, what would be the number I'd deduct from what you have?

A. First let me see if we mention that in the body of the testimony. I don't think that we do, but let me just quickly check.

No, that number is not in the testimony.

Q. Okay.

A. So the answer to your question is, you know, is a -- I can describe the math to do that calculation, but we have just talked through how the 525 million relates to the number on the far right-hand column and so the ratio of 525, and I can't tell, is that redacted or not? I can't see what's redacted.

Q. It's not redacted.

A. Either the pool modification rider or the --

Q. Neither is redacted.

A. Okay, so the ratio of 525 to 4.03 would be the same ratio of the number you're looking for, the 12 cents.

Q. All right.

A. Does that makes sense?

Q. Yes, it does. It's just a straight direct relationship, right?

A. Yes, it is.

Q. I think you've already answered the next question I have -- but let me just make sure. If you were to use Ms. Thomas's estimates of fuel costs in your analysis that's presented in Exhibit MMS-4, the cost-benefit analysis, if you were to use her fuel costs instead of the fuel costs that you did use, you don't think it would have a material impact on the results; is that right?

A. It would not have a material impact on the results.

Q. That's because of the way that you include those impacts on both sides of the balance; is that right? Both on the MRO side and on the ESP side.

A. That's half the answer. But yes, that's half the answer and there's another piece as well if you want me to --

Q. I can't stop myself from asking: What is the other piece?

A. The piece that you just described applies equally to the retained load in both scenarios, but in the MRO side it's only the portion of the retained load that is served at the competitive -- at the generation service price and not the part that's put out to bid.

So that's not one for one, but then on the switched load in either case, the load that's assumed to be at a competitive price, the fuel has no effect on that obviously on either case and there's more of that in the ESP side than there is on the MRO side and so the net is about 7 cents.

Q. So it's somewhat serendipity, but that's the way it turns out.

A. Again, in my methodology. In Ms. Thomas's methodology it's a big deal, but in this methodology it's not.

MR. KURTZ: Your Honor, may we go off the record for a minute?

EXAMINER SEE: Yes.

(Discussion off the record.)

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

Q. Let me turn to MMS-5 which you talked to

Mr. Kurtz about, but don't lose touch with MMS-4 while we're talking about this, okay?

A. Okay.

Q. In MMS-5 you develop the maximum above-market capacity rate for capacity, right? Excuse me, capacity rate, correct?

A. From an economic or a policy perspective, putting aside legal constraints, yes.

Q. And if you had used the $162 per megawatt-day capacity figure that this calculation produced in your two scenarios that you have in MMS-4, what would be the impact -- what would have been the impact or what would be the impact of that variation?

A. Just so I have the question correct, for each of the four scenarios that are summarized on page 1 of MMS-4, if instead of RPM capacity if I had assumed the 162 but otherwise each of those scenarios being the same in all other respects.

Q. That's right.

A. Is that your question?

Q. Yes.

A. The answer is that the excess costs shown in that right-hand column would decrease, I can't tell you the magnitude sitting here, but in no case would the sign change -- let me just stop for a moment and make sure that I've got that right.

Yes, in each of those cases the ESP pricing would still be less favorable than the MRO pricing, although the magnitude of the excess costs would be reduced in each of those four scenarios.

MR. KUTIK: Your Honor, may I ask the court reporter whether she got the full answer?

THE REPORTER: Yes.

MR. KUTIK: Yes.

Q. And do you have a ball park estimate of what the impact is?

A. I don't. All I know is that sign doesn't change. So, I mean, the magnitude has to be less than 357 million but I don't know by how much less.

EXAMINER SEE: Just a minute.

Q. So you know directionally what the impact is but not the magnitude except that it's not more than 357 million.

A. Indeed that it's less than 357 million, so that in none of these cases would the sign in the right-hand column or in either column the sign would not change, the MRO pricing would still be preferred.

Q. On an order of magnitude basis can you tell me it whether it's 1 million, 10 million, a hundred million, or plus or minus either of those order of magnitude?

A. It's hundreds of millions, I just can't tell you how many. Other than less than 357 but it's not 1 million or 10 million, it's over a hundred. It may be over 200, I'm not certain.

Q. Did you model your scenarios that remain in Exhibit MMS-4 using zero for the pool modification rider cost and the $162 per megawatt-day instead of the RPM capacity pricing?

A. So as on MMS-4 with now two changes, RPM to 162 and zero pool modification?

Q. Right.

A. Yes.

Q. And what was the result?

A. In that case where you assume 162, no pool modification in the high EICCR case only, that is sufficient to overcome the excess costs and that does change the sign just in that instance.

Q. Can you tell me what happened to Sporn 5 in your analyses, that used to be in Exhibit MMS-4 and they're no longer in there?

A. Yes, I can tell you.

Q. Please do.

A. At the time I first started the analysis of the stipulation I was under the mistaken impression that the stipulation also resolved the Sporn 5 recovery issue and that that was being given up as part of the stipulation.

So under that assumption it was appropriate to analyze it both ways on the MRO side because it was a difference, a potential difference between the MRO and the ESP. But I have since been informed by counsel that the resolution of the Sporn 5 recovery is independent of whether we're in a stipulation world or MRO world, hence, it doesn't make a difference in comparing the two and so it was removed from all of the scenarios.

Q. So let me back up to the prior Q and A regarding the impacts of zero pool modification rider costs and $162 per megawatt-day capacity pricing.

Was your answer in that scenario to the high environmental investment carrying cost rider scenario resulted in a switchover from a cost of the ESP to a benefit of the ESP?

A. Yes. Those three assumptions together, high EICCR, zero pool modification, and 162, are sufficient to change the sign. But it takes all three.

Q. It takes all three. And then how close to breakeven or crossover do you get with the low environmental investment carrying cost scenario?

A. I'm sorry. I don't know. I don't have that number.

Q. Back to Exhibit 5, MMS-5, at the top of page 3 of Exhibit MMS-5 you indicate -- I don't think this has changed, I got this from the prior version of your testimony. But at the top of page 3, the first sentence in that first paragraph you indicate that your analysis in Exhibit MMS-5 is based on a 2010 test year, while AEP used the test year of 2009 to calculate its proposed capacity price. Do you see that?

A. I do.

Q. And I assume that you are, correct me if I'm wrong, you're referring to Dr. Pearce's use of the 2009 test year?

A. I think that's correct, yes.

Q. And do you know whether Dr. Pearce used the 2009 test year and 2009 data? Strike that question.

What's the basis for your assumption that he used 2009 test year and data?

A. Let me back up. I'm sorry. At the time this was prepared I think we were looking at the record in the 2929 docket, I think it's in that docket that our understanding was that the 347 was based on a 2009 test year.

I think Dr. Pearce has since filed testimony in this docket that relies on the 2010 test year.

Q. If you could go back to your chart on page 2 of Exhibit MMS-5.

A. Yes.

Q. Entitled "Method Used to Calculate the Maximum Above-Market Capacity Rate." Do you see that?

A. I do.

Q. And I believe in conversation with Mr. Kurtz, again, correct me if I'm wrong, but you discussed with regard to the variable production costs element of that calculation the 17 million --

A. .7 million.

Q. The 1.721 million, do you see that?

A. I do.

Q. And that information came from the FERC Form 1; is that right?

A. It did.

Q. And I believe in conversation with Mr. Kurtz you discussed what the impact might be on that value if there were deserved expenses for 2010 of $130 million that weren't reflected in the $1.721 billion. Do you recall that?

A. I do.

Q. And you agreed, I believe, that if you were to include the actual fuel expenses represented by the deferrals, it would increase that value by whatever that number is, and in the example he was using $130 million.

A. Yes. Assuming that there were deferrals not included in the 1.7 million, that would be the effect.

Q. And that would have an impact on the capacity revenue requirement, the fifth column, of increasing it by $130 million in that example, right?

A. Yes, with a little asterisk. I'd have to think some more as to whether it -- assuming it didn't affect any of the pool transaction pricing or anything in that regard but under that assumption, yes.

Q. And if it didn't have any impact, then your maximum above-market rate would be increased by whatever fraction 130 over 497 represents, right?

A. That's correct.

Q. Would you accept, subject to check, that

that would convert that value to $204 from 162?
A. To something just over 200 seems right.
Q. Mr. Schnitzer, bear with me as I pose a hypothetical to you and at the end of it ask you to make an estimate for me, if you haven't already done it.
A. Do I need to make notes?
Q. Probably not.
Assume for me that all of AEP Ohio's load shopped during the January 2012 through May 2015 period and the pricing for capacity was as prescribed in the stipulation, okay? RPM for the set-aside and the 255 for the rest.
A. And notwithstanding that everybody shopped or everybody switched?
Q. Yes, everybody shopped. Is there a difference between shopping and switching?
A. Well, shopping doesn't mean you --
Q. Switching.
A. Actually switched.
Q. Okay, they switched.
A. Yes.
Q. What would the load-weighted average capacity price be over that period for all of that capacity that was sold?

A. I don't have that number offhand but in the first year it would be 21 percent RPM, 79 percent 255. In the second year it would be 31 to whatever based on the securitization, you know, threshold, et cetera, et cetera.

So it would be those three weighted averages averaged together but I don't know what that number would be.

Q. I have a question for you.

EXAMINER TAUBER: Hold on.

(Discussion off the record.)

Q. Back to the, I guess forward to the past. Could you go to page 7 of your testimony.

A. Yes.

Q. At lines 7 through 11 you identify some positive aspects of the stipulation, at least that's the way I interpreted it. You support the move to competitive procurement of SSO supply and AEP Ohio's participation in the RPM capacity market. You say that on page 7, do you not?

A. I do.

Q. And then you also support the elimination of nonbypassable generation charges funded by ratepayers; you say that, right?

A. Yes.

Q. And then you also support the other efforts to promote effective wholesale and retail competition provided by the stipulation, right?

A. Yes.

Q. And those are all benefits of the stipulation, right?

A. Compared to the initial ESP filing, yes.

Q. Mr. Schnitzer, could you turn back to Exhibit MMS-4 and look at page 2 which has a presentation of the low EICCR, environmental investment carrying cost rider, impacts, and I'm looking for the high EICCR as an example and I'm not finding it.

A. That would be page 4 of 5 and page 5 of 5, either.

Q. So do you see the values for the low case environmental in your version of the testimony without reciting what they are?

A. Yes. And, again, we're looking at that Load-Weighted Average column on the right-hand side.

Q. Actually I was looking at the annual figures and load-weighted average so all five of those values.

A. Yes, I see them.

Q. Now, my recollection is that your

original testimony had different values for both the low and the high cost scenarios for the EICCR. Do you recall that?

A. Not specifically. No. I mean, we used the same AEP forecast low and high range of environmental expenditures for AEP Ohio to derive this.

MR. CONWAY: May I approach witness, your Honor?

EXAMINER TAUBER: You may.

Q. I'd like to try to refresh your recollection, Mr. Schnitzer.

Mr. Schnitzer, I'm going to represent to you that this document I'm handing to you is a page from your July 25th testimony that was prefiled but has not been presented by you, and I believe it indicates values for the low and the high environmental investment cost scenario.

MR. KUTIK: What pages are you showing him?

MR. CONWAY: Page 68.

MR. KUTIK: Does he also have 67 in front of him?

THE WITNESS: I do.

MR. CONWAY: He does.

A. I see the figure.

Q. And if you could, in the first several years of the chart that are indicated on the page 68 of your original testimony, compare them to the values that you have in your testimony, your stipulation testimony, and then tell me whether it refreshes your recollection about why there is a difference or, first, whether there is a difference, and then if there is a difference, why there's a difference between the two.

A. Well, the picture you've handed me is a graph of the company's low and high cases, but those were different than my low and high cases and so this draft is not directly comparable to MMS-4.

Q. Okay.

MR. CONWAY: Just a moment, your Honor.

EXAMINER SEE: Let's go off the record.

(Off the record.)

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

Mr. Conway.

MR. CONWAY: That's all I have, your Honor.

Thank you, Mr. Schnitzer.

THE WITNESS: Thank you, Mr. Conway.

EXAMINER SEE: Redirect?

MR. KUTIK: May we have a moment, your Honor?

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

(Recess taken.)

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

Mr. Kutik.

MR. KUTIK: Thank you, your Honor.

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REDIRECT EXAMINATION

By Mr. Kutik:

Q. Mr. Schnitzer, Mr. Conway spoke with you about one potential scenario to consider with respect to the ESP versus MRO test and that's assuming there would be zero in pool termination/modification charges, high environmental cost, and a 162 capacity price.

Do you view that as a reasonably likely scenario or a reasonable scenario at all for the Commission to consider in evaluating the ESP versus the MRO?

A. No, I don't consider it to be a reasonable scenario and that's why I didn't include it in my testimony.

Q. Why not?

A. Well, let me take the two pieces really for that, the first is, is a 162 capacity charge a reasonable assumption, and for the reasons that I discussed at length with at least two attorneys today, the advice that I had from counsel is that the relevant section of the statute that deals with the MRO does not permit the Commission to put in place an above-market charge for capacity and so a scenario that assumes that would not be reasonable under that instruction.

The second has to do with the pool termination or pool modification required and, again, for the reasons that I stated, that despite ample opportunity to bargain that rider away as part of the extensive conversation between the initial ESP and the final stipulation where six or seven other riders were negotiated away, this one survives.

AEP itself has put forward a methodology for quantifying the proposed -- the potential impacts from pool termination, I used that methodology, I used their assumptions to implement that methodology, and I came up with the numbers that I came up with in my high case which are totally consistent with the numbers that AEP themselves came up with when they estimated this impact in 2009.

And so neither of those two assumptions are reasonable, in my mind, let alone assuming them both together, as Mr. Conway asked me to.

MR. KUTIK: Thank you. I have no further questions.

EXAMINER SEE: Recross? Mr. Kurtz?

MR. KURTZ: No, your Honor.

EXAMINER SEE: Mr. Yurick?

MR. YURICK: No. No thank you, your Honor.

EXAMINER SEE: Ms. Clark? Kaleps-Clark, I'm sorry.

MS. KALEPS-CLARK: You can pick one or the other, I'm okay with that.

EXAMINER SEE: Okay. Thank you. Any recross?

MS. KALEPS-CLARK: No, thank you.

MR. CONWAY: No, your Honor.

EXAMINER SEE: Mr. Margard?

MR. MARGARD: No thank you, your Honor.

EXAMINER SEE: Thank you, Mr. Schnitzer.

THE WITNESS: Thank you.

MR. KUTIK: Your Honor, at this time FES

moves for the admission of Exhibits 3 and 4 with 4 being under seal.

EXAMINER SEE: Are there any objections to the admission of FES Exhibit 3, the public version of Mr. Schnitzer's testimony?

MR. CONWAY: No, your Honor.

EXAMINER SEE: Hearing none, FES Exhibit 3 is admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER SEE: And my understanding, Mr. Kutik, is that a motion for protective order was filed today in regards to the confidential version?

MR. KUTIK: Yes, your Honor.

EXAMINER SEE: Which AEP Ohio endorsed?

MR. CONWAY: Well, yes, we support that motion. We also would separately move for protective order of the same document and the basis of it would be the same as we provided in our earlier motion for protective order with regard to the earlier version of the stipulation testimony. So I was hoping you'd grant the motions right now and not require us to file, actually write up and file another motion. Whatever your pleasure is.

EXAMINER SEE: And what was the basis for your supporting the request for protective order, Mr. Conway, in general?

MR. CONWAY: The information that we seek to protect has value when kept in a confidential state, it would lose its value or its value would be diminished if it were made public. It is a trade secret under Ohio law and it fits within the parameters of the Commission's rules for granting protective orders.

So that's the basis for it. And if you would like us to prepare a written motion, we'd be happy to do so.

EXAMINER SEE: On that basis and after looking at the confidential version of Mr. Schnitzer's confidential testimony, the motion for protective order is granted and FES Exhibit 4 will be maintained under seal.

MR. KUTIK: And admitted into the record?

EXAMINER SEE: And admitted into the record.

MR. KUTIK: Thank you.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER SEE: With that, we'll reconvene tomorrow morning at 9:00 a.m. The hearing is adjourned.

(The hearing adjourned at 5:57 p.m.)

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, October 13, 2011, and carefully compared with my original stenographic notes.

____
Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2011.

(MDJ-3907)

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