

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

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

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10 PROCEEDINGS

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

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17 VOLUME VII

18 - - -

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1 Thursday Morning Session,

2 October 13, 2011.

3 - - -

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

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

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

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

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

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

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

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

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

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

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

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

15 EXAMINER TAUBER: Are there other
16 parties?

17 (No response.)

18 EXAMINER TAUBER: Thank you.

19 At this point we'll have Mr. Banks.

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

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

1 Tony C. Banks on Behalf of FirstEnergy Solutions
2 Corp.

3 EXAMINER SEE: You did say "FES Exhibit
4 1"?

5 MR. KUTIK: Yes.

6 EXAMINER SEE: Okay.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 EXAMINER TAUBER: Please raise your right
9 hand.

10 (Witness sworn.)

11 EXAMINER TAUBER: Thank you. You may be
12 seated.

13 - - -

14 TONY C. BANKS

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

17 DIRECT EXAMINATION

18 By Mr. Kutik:

19 Q. Please introduce yourself.

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

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

25 A. Yes, I do.

1 Q. What is that?

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

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

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

8 Q. What is the first correction?

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

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

14 MR. KUTIK: Sure.

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

18 MR. KUTIK: That's on line 14.

19 MR. SATTERWHITE: Thank you.

20 Q. What's the second correction?

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

23 Q. Could you give that page and line again?

24 A. Page No. 32, line 14.

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

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

4 Q. What's the fourth correction?

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

9 Q. And that should happen on both lines.

10 A. On both lines 9 and line 20.

11 Q. What's the next correction?

12 A. The fifth correction is on page 42, line
13 21, the word "not," n-o-t, needs to be inserted after
14 the word "should." A period should be added after
15 the word "waiver," and the words "so that" should be
16 deleted.

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

23 Q. What's the sixth correction?

24 A. The sixth correction is on page 58, line
25 13, the date on line 13 should read "September 6th"

1 instead of "August 30th."

2 Q. And what's the seventh correction?

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

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

12 A. Yes, they would.

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

18 Specifically he talks about an afternoon
19 meeting where he said, quote, "We had a subsequent
20 meeting of all the parties that afternoon, I remember
21 that vividly, that Friday afternoon where we polled
22 the parties to see who was willing to continue
23 working within the framework that had been developed
24 at that point, and FirstEnergy Solutions specifically
25 walked out of that session and indicated they were no

1 longer interested in that framework," end quote.

2 Were you at that August 26th afternoon
3 meeting?

4 A. Yes I was.

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

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

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

15 A. No, we did not.

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

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

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

23 EXAMINER SEE: Is that agreeable with the
24 parties?

25 Okay. Who's going to be first?

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

3 MR. BEELER: No questions.

4 EXAMINER TAUBER: Ms. McAlister?

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

8 - - -

9 CROSS-EXAMINATION

10 By Ms. McAlister:

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

13 A. Yes, I can.

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

16 Mr. Banks, on page 1 of your testimony it
17 explains that you joined FirstEnergy Solutions in
18 2004 and you were with the FirstEnergy Corporation
19 for four years before returning back to FirstEnergy
20 Solutions in 2009; is that correct?

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

24 Q. And at page 3 of your testimony on line
25 12 you say that AEP Ohio should have transitioned to

1 the market years ago; is that correct?

2 A. I'm trying to read the whole sentence to
3 understand the context.

4 Q. Take your time.

5 A. Could you repeat the question?

6 Q. Sure. On page 3, line 12, you say that
7 AEP Ohio should have transitioned to market years
8 ago; is that correct, a correct paraphrasing of what
9 you say there?

10 A. That is correct.

11 Q. Are you familiar with Ohio's transition
12 to competitively priced standard service offer
13 generation service?

14 A. Generally, yes.

15 Q. Turning your attention to page 6 of your
16 testimony, there beginning on line 1 you state that
17 "...the truth is that AEP Ohio created its own path
18 and, thus, should bear the consequences of its
19 decisions."

20 And then you also state that "AEP Ohio
21 knew that its generation service was required to be
22 competitive (and separate) when it waived its right
23 to recover transition charges"; is that correct?

24 A. That is correct.

25 Q. Are you aware that in a 2002 case that

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

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

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

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

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

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

23 Q. On page 6 you say that "It is
24 unpersuasive and offensive for AEP Ohio to seek the
25 protections, additional revenue, and discriminatory

1 prices included in the Revised ESP to compensate for
2 its earlier decisions not to embrace Ohio's policy to
3 support competitive markets"; is that correct?

4 A. Yes, that's what it says.

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

9 A. I do not know that.

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

13 A. I do not know that.

14 Q. If you know, the FirstEnergy operating
15 companies did not complete the transfer of generating
16 assets to FirstEnergy Solutions until the end of
17 2005; is that correct?

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

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

23 A. Around that same time generally.

24 Q. When I say "completely financially" --
25 or "corporately separated," I mean financially and

1 unwinding the generating assets and functionally
2 separating as well. Does that change your answer at
3 all?

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

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

11 A. I don't know.

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

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

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

1 to a full competitive market at the end of the
2 current ESP.

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

5 A. Yes.

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

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

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

22 A. Could you restate the question?

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

25 A. If I accept the date is 2008, they all

1 transitioned at the same time to my knowledge.

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

5 A. I do not believe they have.

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

8 A. They have not.

9 Q. I'm going to turn your attention to page
10 11 of your testimony, there you outline some
11 recommendation if the PUCO doesn't reject outright
12 the revised ESP, and the first bullet, and that's on
13 page 11 there, says "The Revised ESP should
14 incorporate a competitive bid process for the full
15 standard service offer load for service beginning in
16 2012...." Is that correct?

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

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

21 A. Yes, I am.

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

1 A. Could you repeat the question?

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

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

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

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

17 Q. So the answer is Yes?

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

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

23 A. Then the current ESP is extended.

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

1 EXAMINER TAUBER: Mr. Kurtz?

2 MR. KURTZ: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Kurtz:

6 Q. Good morning, Mr. Banks.

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

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

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

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

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

18 A. Yes, I would.

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

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

24 Q. Okay.

25 A. Yes.

1 Q. You would have the Commission order the
2 AEP Ohio utilities to divest their generation to an
3 unregulated affiliate?

4 A. I would have them divest the generation
5 and an unaffiliated affiliate is possible.

6 Q. And that would correspondingly trigger a
7 case at FERC to dissolve the AEP six-state
8 five-utility power pool?

9 A. I'm not a lawyer, and I don't know
10 specifically if it would require that.

11 Q. Okay. You answered this with
12 Ms. McAlister. If the ESP is rejected, AEP will
13 continue with its existing ESP; is that right?

14 A. Yes.

15 Q. Okay. Or it has the option to go to an
16 MRO. So then it also would have the option to go to
17 an MRO, correct?

18 A. If approved by the Commission.

19 Q. And as Ms. McAlister pointed out, that
20 would have a 10 percent auction for the SSO load in
21 year 1 of an MRO.

22 A. Well, I don't think Ms. McAlister pointed
23 that out. I think that's what I said, that the first
24 year would be a 10 percent competitive process and
25 that would be blended with the ESP price.

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

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

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

15 A. Could you repeat that, please?

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

19 A. Fastest time I think is immediately.

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

22 A. Oh, I think the last MRO competitively
23 bid portion is five years. I also believe that the
24 Commission has wide authority to have that be
25 something different after the first year. So I would

1 think the fastest time could be two years, or the
2 second year.

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

5 A. I do not.

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

9 A. Is it my recommendation.

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

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

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

20 A. Yes.

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

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

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

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

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

9 A. I would assume it would stay open.

10 Q. Stay open.

11 A. Until resolved.

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

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

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

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

25 Q. If the stipulation is rejected, that FERC

1 litigation would be reopened as well.

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

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

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

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

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

22 Q. Let's assume the Commission accepts your
23 position that the interim state compensation
24 mechanism of RPM is maintained so that 100 percent of
25 the AEP load would have RPM access. Do you have an

1 opinion how quickly shopping would escalate in the
2 AEP Ohio service territory?

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

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

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

25 Q. So if there was a competitive bid for

1 100 percent of the SSO load at RPM capacity pricing,
2 assuming that like you just said, do you have any
3 idea how quickly customers would, or CRES providers
4 would serve the nonshopping load, what the migration
5 rates would be? Have you done any kind of thinking
6 about that, how fast load would leave the system?

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

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

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

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

25 It could participate in the bid for the

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

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

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

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

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

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

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

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

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

21 A. I do not.

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

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

1 recall the specifics.

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

6 A. I'm not aware.

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

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

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

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

25 Q. The public interest also is a standard

1 the Commission should consider?

2 A. The Commission can consider public
3 interest as well.

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

6 EXAMINER TAUBER: Thank you.

7 Ms. Kaleps-Clark?

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

10 EXAMINER TAUBER: Mr. Satterwhite?

11 MR. SATTERWHITE: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Satterwhite:

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

18 A. Yes, we did.

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

21 A. That's correct.

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

25 A. I am responsible for helping set policy

1 in those jurisdictions where FirstEnergy Solutions
2 does business, yes.

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

6 A. In some cases, yes.

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

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

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

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

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

23 A. That's fine with me.

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

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

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

6 A. Yes, I am.

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

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

15 Q. Does FES issue press releases?

16 A. Yes, they do.

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

20 A. They could, yes.

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

24 A. Again, it's a very general statement, but
25 I am responsible for the accuracy of policy related

1 statements, or information contained in press
2 releases. I do review those.

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

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

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

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

13 A. That's correct.

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

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

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

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

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

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

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

5 A. So would you repeat the question, please?

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

8 A. That is correct.

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

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

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

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

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

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

24 EXAMINER TAUBER: Mr. Satterwhite.

25 MR. SATTERWHITE: Your Honor, I think

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

8 EXAMINER TAUBER: Your objection is
9 overruled.

10 Please continue, Mr. Satterwhite.

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

13 A. Yes, please.

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

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

20 Q. Which includes --

21 A. Including FES.

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

24 A. You want every name?

25 Q. Every one you can think of.

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

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

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

12 A. A little more than that, but yes.

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

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

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

19 A. Yes, that's correct.

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

23 A. That's correct. But I would point out
24 that even though those years were in the natural gas
25 industry, a large part of that experience was in

1 competitive markets both wholesale and retail.

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

5 A. Yes, that is correct.

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

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

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

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

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

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

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

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

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

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

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

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

18 Q. Do you know if FES is offering -- has
19 signed up to switch customers past January 1st,
20 2012, already?

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

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

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

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

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

17 A. Yes, that's correct.

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

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

24 Q. I'm not asking you to give me information
25 on those individual customers. I'm just asking if

1 you have entered into contracts for that time period.

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

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

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

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

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

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

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

25 Q. But you agree that it's important, it's

1 an important price for FES to know to be able to
2 compete in Ohio.

3 A. Well, the important price --

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

6 EXAMINER SEE: Yes.

7 MR. SATTERWHITE: I can repeat it.

8 (Record read.)

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

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

15 A. Not all of them, that is correct.

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

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

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

24 A. No, I said the standard service offer,
25 it's important to understand how that feeds into the

1 price to compare, and the price to compare is the
2 actual price that FES uses to determine whether or
3 not it can provide CRES-related services.

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

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

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

11 MR. KUTIK: Objection. Asked and
12 answered.

13 MR. SATTERWHITE: Just trying to clarify.

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

16 EXAMINER TAUBER: Sustained.

17 MR. SATTERWHITE: Thank you.

18 Q. (By Mr. Satterwhite) Now, let's go to
19 your testimony, pages 3 to 4, you mention that only
20 1 percent of customers in Ohio that have switched are
21 in AEP's territory, correct?

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

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

1 A. Yes, I do.

2 Q. And there you mention only 1 percent of
3 the customers in Ohio that have switched are in AEP's
4 territory; is that correct?

5 A. The 1 percent is 1 percent of all
6 switched customers in Ohio. 1 percent of those are
7 located in AEP Ohio's service territory, yes.

8 Q. And that report does not include shopping
9 levels since June 30th, 2011, correct?

10 A. Yeah, the information we used to develop
11 that number does not include shopping levels as of
12 June 30 -- it includes shopping levels as of June 30,
13 2011, but the important fact about that is AEP Ohio
14 serves 30 percent of the load in Ohio, but only
15 1 percent of the customers who are shopping in Ohio
16 are located in AEP's service territory. That was the
17 point of that 1 percent number.

18 Q. I appreciate that. But the point of my
19 question was that that report only reflects as of
20 June 30th, 2011, correct?

21 A. That's correct.

22 Q. Are you aware of any increases in
23 shopping in AEP Ohio since June 30th, 2011?

24 A. Yes, I am.

25 Q. So is it your belief that that number is

1 still the same number, or has that changed?

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

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

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

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

16 A. No, that's not correct. I think the
17 10 percent and, again, the 10 percent is only the
18 first year. It's the blending idea in total that I
19 was referencing, but the 10 percent blending is one
20 of the differences between an MRO and an ESP.

21 Another difference is that on the
22 10 percent or 20, 30, or 40 or 50 percent, whatever
23 level that is, that amount has to be competitively
24 bid which is not absolutely required in an ESP, and
25 on the other side of the ledger an ESP has some

1 flexibility to have riders that you can't have on the
2 MRO side of the ledger. So those are other
3 differences other than just the blending percent.

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

6 A. Yes, I do.

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

9 A. Yes, I did.

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

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

14 Q. And you answered truthfully that day,
15 correct?

16 A. Yes, I did.

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

19 A. I do.

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

22 A. I'm there.

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

24 MR. SATTERWHITE: David, do you have it?

25 MR. KUTIK: I do, thank you.

1 Q. Read lines 18 to 24 for me out loud.

2 A. Okay. Question: "What's your
3 understanding of the differences between the two, an
4 ESP and an MRO?"

5 Answer: "An MRO uses 10 percent
6 competitive benchmark pricing and an ESP does not."

7 Question: "Is that the extent of your
8 understanding of the difference between the two?"

9 Answer: "Generally."

10 And I would, again, suggest --

11 Q. That's all, I don't -- thank you.

12 MR. KUTIK: Your Honor, I think he should
13 be able to explain his answers, other witnesses have
14 been able to explain their answers to deposition?

15 MR. SATTERWHITE: Your Honor I was using
16 his deposition to impeach him, not to allow him to
17 provide more testimony, so he wasn't really answering
18 a question. The question was "Could you read what's
19 in your deposition?" not read "What's in your
20 deposition and provide me context for it."

21 MR. KUTIK: There have been numerous AEP
22 witnesses who have been allowed to explain their
23 deposition answers because they claim it was taken
24 out of context. This witness should have the same
25 opportunity.

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

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

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

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

11 EXAMINER TAUBER: No. He provided his
12 answer.

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

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

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

21 A. I'm there.

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

1 please read that for the record.

2 A. I'm trying to --

3 Q. I wanted to make sure I was clear.

4 A. On page 78.

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

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

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

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

25 EXAMINER TAUBER: Doesn't make a

1 difference.

2 EXAMINER SEE: Large.

3 MR. SATTERWHITE: Here's both.

4 EXAMINER TAUBER: Perfect. Thank you.

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

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

12 EXAMINER SEE: Just a minute, Mr. Kutik.

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

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

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

21 A. Yes, would you repeat it, please?

22 Q. Sure. I'd asked you to pull out your
23 deposition transcript and read for the record the
24 question starting on line 22 that goes over to page
25 77 and ends on line 5, and then your answer that

1 appears on page 78 on line 8 that's in relation to
2 that question being reread to you.

3 A. Okay. And --

4 Q. Read that for the record.

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

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

15 Q. Thank you.

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

20 A. Yes, I do.

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

23 A. I have the stipulation, I have some
24 sections of the Ohio Code, as well as Senate Bill
25 221.

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

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

5 Q. Okay. Thank you.

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

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

10 MR. SATTERWHITE: Fifteen and 16.

11 MR. KUTIK: Thank you.

12 Q. Have you read that?

13 A. Yes, I have.

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

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

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

24 A. Yes, that is true.

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

1 the Commission's mission statement?

2 A. Yes, I believe it is.

3 Q. Is that the entire mission statement?

4 A. No, it isn't.

5 Q. Do you know the entire mission statement
6 for the Commission?

7 A. I do not.

8 Q. If there's more to the Commission's
9 statement, do you think it should be considered in
10 its entirety?

11 A. Relating to?

12 Q. This case. You chose to include part of
13 the mission statement. I'm asking if you think it's
14 important that the Commission consider the entire
15 mission statement in its analysis and not just the
16 portion you've cited.

17 A. Oh, I think it's important for the
18 Commission to consider all of state law and policy in
19 this case.

20 Q. But you're not asking the Commission --
21 I'm sorry, were you done?

22 But you're not asking the Commission to
23 only rely on the portions that you cited of its
24 mission statement in your testimony, are you?

25 A. I'm not asking that, but for emphasis

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

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

5 A. Yes, I do.

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

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

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

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

15 Q. From their website?

16 A. Yes.

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

20 A. How they -- yes, it does.

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

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

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

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

7 MR. SATTERWHITE: Thank you.

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

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

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

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

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

22 A. A definition of "effective competition"
23 to me is one that has no barriers to shopping, one
24 where the wholesale price of power is based on
25 competitive bid because that results in the lowest

1 price that's available to customers, and there are no
2 retail prohibitions on shopping or restrictions or
3 limitations.

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

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

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

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

19 Q. Thank you.

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

23 A. Yes, I do.

24 Q. And you had no involvement in PUCO cases
25 99-1730 and 99-1731, correct?

1 A. I did not.

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

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

9 EXAMINER TAUBER: Yes.

10 (Record read.)

11 A. I know that Senate Bill 221 is in the
12 2008 time frame and those cases were in 1999.

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

16 A. I did not know the exact dates of both,
17 that's correct. But I since looked it up and have
18 learned that Senate Bill 221 is after the cases in
19 1999.

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

23 MR. KUTIK: Objection.

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

25 Q. Okay. You also did not know when

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

4 A. Yes, I do.

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

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

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

14 A. I'm there.

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

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

20 Answer: "No."

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

24 Answer: "That's correct."

25 Q. Thank you.

1 Did you write your own testimony?

2 A. I did not write all of it. I reviewed
3 it, though.

4 Q. So it was prepared for you and you
5 reviewed it then?

6 A. I reviewed it and I was in agreement with
7 the contents of that testimony.

8 Q. Is it your opinion that it doesn't matter
9 what the costs of the utility are, that the
10 Commission should ensure competitive suppliers access
11 to RPM-based pricing for capacity?

12 A. I do believe that the Commission should
13 ensure access, unfettered access, to RPM-based
14 capacity.

15 Q. But it's your opinion that it doesn't
16 matter what the costs are to the utility, correct?

17 A. That's my opinion, yes.

18 Q. And I think you stated earlier in a
19 response to Mr. Kurtz that it's FES's position that
20 the current capacity RPM rate in effect is not an
21 interim rate, correct?

22 A. I do believe I responded in that way,
23 yes. I don't believe it's an interim rate because
24 right now the mechanism is for RPM-based capacity
25 and, like any other regulated rate, unless it's

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

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

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

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

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

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

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

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

23 Q. Let me fix that.

24 Mr. Banks, are you familiar with the
25 Commission's entry establishing the PJM capacity

1 rates in the 10-2929 case?

2 A. Generally, yes.

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

6 A. It wouldn't hurt.

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

8 MR. SATTERWHITE: What's that?

9 MR. KUTIK: May I have a copy?

10 MR. SATTERWHITE: Absolutely.

11 I don't think I need to mark it.

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

15 A. Okay, I've read paragraph 4.

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

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

22 Q. Thank you.

23 MR. SATTERWHITE: I don't know if we need
24 notice, it's already a case in this -- before the
25 Commission in this stipulation, so I don't think I

1 need to ask for administrative notice or anything.

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

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

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

14 Q. That's fine. Thank you.

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

17 EXAMINER TAUBER: We may.

18 (Discussion off the record.)

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

22 (Recess taken.)

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

25 Mr. Satterwhite.

1 MR. SATTERWHITE: Thank you, your Honor.

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

5 MR. KUTIK: Objection.

6 EXAMINER TAUBER: On what grounds,
7 Mr. Kutik?

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

11 EXAMINER TAUBER: Mr. Satterwhite.

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

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

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

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

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

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

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

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

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

18 A. Page 16 through 19?

19 Q. Correct.

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

23 Answer: "I don't know."

24 And again, because there was no
25 specific --

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

6 A. I did not understand that.

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

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

13 Q. And it's true, isn't it, that you do not
14 recognize the difference between a capacity charge of
15 \$255 and \$355 other than the dollar amount for
16 purposes of competition?

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

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

25 A. I do not see a difference because if I

1 think about the difference between those two, I think
2 about, for example, an appliance store putting out a
3 refrigerator and has a suggested retail price of
4 \$20,000, they have a list price of \$10,000, but then
5 they actually sell it at \$5,000.

6 So in this as it relates to the 355 and
7 255, the 355 would be the suggested retail price, the
8 255 would be a list price, but in either case that's
9 not the ultimate price that the customer should be
10 paying because they're both above market. That's my
11 view.

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

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

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

24 A. Yes, I do.

25 Q. And that answer is in reference to the

1 rate design proposed by the stipulation; is that
2 correct?

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

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

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

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

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

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

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

1 A. Yes, I do.

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

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

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

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

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

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

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

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

17 EXAMINER TAUBER: You may.

18 (Record read.)

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

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

1 EXAMINER TAUBER: Your motion to strike
2 shall be granted.

3 Please continue, Mr. Satterwhite.

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

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

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

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

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

25 Q. But you would -- the statutory test is

1 not a valid test?

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

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

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

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

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

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

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

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

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

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

4 MR. KUTIK: Objection. Asked and
5 answered.

6 EXAMINER TAUBER: Overruled.

7 THE WITNESS: Could you repeat the
8 question, please?

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

11 (Record read.)

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

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

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

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

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

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

8 MR. SATTERWHITE: Thank you.

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

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

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

24 MR. SATTERWHITE: Your Honor, I'd like to
25 mark AEP Exhibit No. 9, and it's the second opinion

1 and order in Commission Case 08-935-EL-SSO issued on
2 March 25th, 2009.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

7 A. Yes, I do.

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

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

12 MR. SATTERWHITE: Thank you.

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

15 A. I'm on page 12.

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

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

24 Q. Can I draw your attention to page 15,
25 paragraph 29. Is it your understanding that the

1 rider in this paragraph is unusually set at zero?

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

5 EXAMINER TAUBER: Mr. Satterwhite.

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

12 EXAMINER TAUBER: Objection's overruled.

13 A. Okay, could you tell me where --

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

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

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

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

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

6 MR. SATTERWHITE: Okay, thank you.

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

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

15 Q. Thank you.

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

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

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

24 A. We have customers served under
25 governmental aggregation contracts in AEP Ohio

1 service territory, yes.

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

4 A. Yes, it is.

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

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

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

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

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

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

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

25 A. This is that.

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

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

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

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

15 Q. Okay.

16 A. -- of the agreements.

17 Q. That's fine. I'd ask you to turn to page
18 19 which is the second-to-last page, and under
19 Pricing it lists Residential and Commercial. Do you
20 see that?

21 A. Yes, I do.

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

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

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

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

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

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

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

16 A. Yes, that's what it says.

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

20 A. Yes, I do.

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

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

1 of this master agreement.

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

5 A. That's correct.

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

9 A. Can you point me to the specific
10 reference?

11 Q. Yeah, back to H.

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

14 A. So we're not in Article 3.

15 EXAMINER TAUBER: One minute.

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

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

20 A. Yes, I see that.

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

25 A. That's what it says, yes.

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

4 MR. KUTIK: Objection. Relevance.

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

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

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

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

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

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

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

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

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

23 MR. SATTERWHITE: Thank you, your Honor.

24 EXAMINER TAUBER: -- in these questions.

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

1 question reread, sir?

2 A. Yes, please.

3 (Record read.)

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

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

11 A. That's my general understanding, yes.

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

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

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

19 A. I don't.

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

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

24 EXAMINER TAUBER: Your objection is
25 overruled.

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

5 A. That's correct.

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

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

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

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

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

1 Reynoldsburg government aggregation agreement if
2 that's the case.

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

5 MR. KUTIK: Again, objection.

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

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

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

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

1 nonsignatory, and the relevance of the stipulation
2 going forth and regulation in Ohio.

3 EXAMINER TAUBER: Objection is overruled.

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

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

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

14 A. Yes, I --

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

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

19 MR. ETTER: OCC joins as well.

20 EXAMINER TAUBER: Mr. Satterwhite.

21 MR. SATTERWHITE: Again, your Honor, I
22 think it's appropriate for the Commission to consider
23 the motivations of the arguments being made by
24 FirstEnergy Solutions and to the extent issues that
25 relate to Ohio also might be faced in other states or

1 his knowledge of what's going on in other states
2 could be important to see the motivation of why
3 FirstEnergy Solutions might be attacking the
4 stipulation, not with the words they're attacking
5 with, but just the fact that they're opposing
6 something.

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

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

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

23 EXAMINER TAUBER: Give the Bench a
24 minute, please.

25 Objection is overruled.

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

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

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

9 A. I'm there.

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

13 A. Yes, I do.

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

18 A. Yes, I do.

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

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

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

1 government aggregation, correct?

2 A. To our knowledge at that point in time
3 that's my understand, yes.

4 Q. And you relied on FirstEnergy, FES's,
5 research to determine that and believe that to be
6 true to the best of your knowledge still?

7 A. Yes. That is relying on internal
8 research.

9 Q. Let me ask you about the time line that
10 you lay out on page 33 of your testimony for entities
11 that become governmental aggregators.

12 A. Okay. I'm there.

13 Q. Lines 15 to 21 you discuss some different
14 timelines. Do you see that?

15 A. Yes, I do.

16 Q. Is it your understanding that those steps
17 run consecutively and cannot overlap?

18 A. My understanding is generally they do run
19 consecutively.

20 Q. But the question is are they required to
21 run consecutively or just it just happens to turn out
22 that they run consecutively?

23 A. I don't know that they're required to run
24 consecutively.

25 Q. So they could be compressed, correct?

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

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

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

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

24 Q. For instance -- one second.

25 The timelines within here, though, could

1 occur on a shorter time period, you're just giving
2 what you believe is the typical amount of time that
3 these things take to happen, correct?

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

7 Q. Okay. That's fine.

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

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

14 MR. KUTIK: Objection.

15 EXAMINER TAUBER: Overruled.

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

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

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

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

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

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

7 Q. And you're familiar with this case?

8 A. Yes, I am, generally.

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

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

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

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

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

24 MR. KUTIK: Well, with due respect, your
25 Honor, although we ruled on Pennsylvania as a general

1 matter, now we're talking about a specific matter.

2 EXAMINER TAUBER: That matter and your
3 objection is overruled.

4 Please continue, Mr. Satterwhite.

5 THE WITNESS: Could you repeat the
6 question, please?

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

9 (Record read.)

10 A. Yes, it is.

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

13 MR. KUTIK: Objection.

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

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

20 MR. SATTERWHITE: Sure.

21 EXAMINER TAUBER: Thank you.

22 Q. (By Mr. Satterwhite) Mr. Banks, is this a
23 communication from the Pennsylvania Commission
24 consolidating three cases before it considering the
25 lawfulness of opt-out of municipal aggregation

1 programs in the state of Pennsylvania?

2 MR. KUTIK: Objection.

3 MR. DARR: Objection, your Honor.

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

6 EXAMINER SEE: And there was another
7 objection?

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

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

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

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

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

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

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

1 EXAMINER SEE: Thank you, Mr. Darr.

2 MR. DARR: My apologies, your Honor.

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

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

7 EXAMINER SEE: Yes.

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

14 MR. KUTIK: Objection.

15 MR. DARR: Objection.

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

18 EXAMINER SEE: Your objections are noted.
19 Let me hear the answer to the question,
20 Mr. Banks.

21 THE WITNESS: This communication from the
22 Commission is relating to, as it reads, consolidating
23 three petitions, and it also instructs both utilities
24 and CRES providers that they call electric generation
25 suppliers to not pursue opt-out municipal aggregation

1 until they further resolve their position in general.

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

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

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

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

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

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

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

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

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

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

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

25 EXAMINER SEE: I mean on this particular

1 topic.

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

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

7 MR. SATTERWHITE: Thank you, your Honor.

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

12 MR. KUTIK: Objection.

13 MR. DARR: Objection to form.

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

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

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

1 arguments provided.

2 MR. KUTIK: In Pennsylvania.

3 MR. SATTERWHITE: For FES as a company.

4 EXAMINER SEE: Thank you, gentlemen.

5 That's enough.

6 I'll allow you to proceed,

7 Mr. Satterwhite.

8 MR. SATTERWHITE: Okay.

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

11 THE WITNESS: Could you repeat it,
12 please?

13 EXAMINER SEE: Yes.

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

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

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

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

10 Q. Thank you.

11 MR. SATTERWHITE: I'll move on.

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

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

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

18 MR. KUTIK: Thank you.

19 Q. Do you see that?

20 A. Yes, I do.

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

23 A. Well, the change was because we realized
24 that AEP Retail's an affiliate of AEP Ohio, so they
25 may have an interest in some of these proceedings

1 from a competitive supplier perspective, but to our
2 knowledge none of the other signatory parties met
3 those conditions.

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

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

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

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

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

19 A. Yes, I see that.

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

22 A. Yes, it is.

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

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

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

7 MR. KUTIK: Objection. Argumentative.

8 EXAMINER TAUBER: Sustained.

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

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

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

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

25 Q. Specifically on the AEP pool that's been

1 referenced throughout this proceeding, you do not
2 consider yourself an expert on the AEP pool, correct?

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

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

10 A. I'm there.

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

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

16 Line 5 the answer is: "No."

17 Q. Thank you.

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

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

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

1 A. Yes, I see that.

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

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

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

18 A. I was not.

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

21 EXAMINER SEE: Yes.

22 (Discussion off the record.)

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

25 MR. SATTERWHITE: Yes.

1 EXAMINER SEE: Okay.

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

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

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

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

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

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

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

25 A. If they become a policy issue, I would

1 have to deal with them, but to this date in this
2 position I have not yet had to really deal with them.

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

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

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

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

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

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

19 May I have a minute, your Honor?

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

22 MR. KUTIK: Thank you.

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

25 (Recess taken.)

1 EXAMINER SEE: Let's go back on.

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

4 A. Yes, I do.

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

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

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

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

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

19 A. Could you be more specific?

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

23 A. Yes, I do.

24 Q. And your additional testimony today --

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

1 date?

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

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

6 A. August 26th I do recall.

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

10 A. Yes.

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

13 A. I did not.

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

16 EXAMINER SEE: Yes.

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

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

22 (Discussion off the record.)

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

25 MR. SATTERWHITE: Thank you, your Honor.

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

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

10 MR. SATTERWHITE: Okay.

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

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

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

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

22 EXAMINER SEE: Okay.

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

1 MR. DARR: No objection, your Honor.

2 MR. ETTER: No objection.

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

5 A. I'm on page 13.

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

9 A. Yes, I do.

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

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

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

20 MR. DARR: Objection, your Honor.

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

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

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

4 EXAMINER SEE: Rephrase your question,
5 Mr. Satterwhite.

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

8 A. Yes.

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

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

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

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

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

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

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

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

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

8 EXAMINER SEE: Okay.

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

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

13 EXAMINER SEE: Mr. Kutik.

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

16 EXAMINER SEE: Yes.

17 MR. KUTIK: Can we go off the record?

18 EXAMINER SEE: Yes.

19 (Off the record.)

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

22 Mr. Kutik.

23 MR. KUTIK: Thank you, your Honor.

24 - - -

25

REDIRECT-EXAMINATION

1
2 By Mr. Kutik:

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

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

15 A. That's correct.

16 Q. What did you mean by that?

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

21 Q. You were also asked questions about what
22 an answer to a question that appeared on -- the
23 question appeared on 76, the answer appeared on page
24 78 of your deposition. I want to direct you to page
25 74 of your deposition starting at line 21.

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

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

9 Did you give that answer?

10 A. Yes, I did.

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

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

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

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

4 A. Yes, I do.

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

7 A. Yes.

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

11 MR. SATTERWHITE: Objection.

12 A. Yes.

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

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

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

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

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

25 EXAMINER SEE: Just a minute, gentlemen.

1 The objection is sustained.

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

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

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

11 A. Yes, it is.

12 Q. And what's "competitive intelligence"?

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

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

25 MR. SATTERWHITE: Objection, your Honor.

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

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

12 MR. SATTERWHITE: It's --

13 EXAMINER SEE: Wait just a minute.

14 MR. SATTERWHITE: Sorry.

15 MR. KUTIK: May I be heard?

16 EXAMINER SEE: The objection is
17 overruled.

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

20 THE WITNESS: No.

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

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

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

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

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

25 Q. You were also asked some questions about

1 "termination provision." What do you understand
2 "termination provisions" or those questions to be
3 directed towards?

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

11 MR. KUTIK: No further questions. Thank
12 you.

13 EXAMINER SEE: Recross, Ms. McAlister?

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

16 EXAMINER SEE: Mr. Kurtz?

17 MR. KURTZ: None, your Honor.

18 EXAMINER SEE: Ms. Kaleps-Clark?

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

20 EXAMINER SEE: Mr. Satterwhite?

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

23 EXAMINER SEE: Thank you, Mr. Banks.

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

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

3 MR. SATTERWHITE: None, your Honor.

4 EXAMINER SEE: Hearing none, FES Exhibit
5 1 is admitted into the record.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

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

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

13 EXAMINER SEE: Okay. With that, Exhibit
14 9 is admitted into the record.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

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

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

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

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

24 MR. KUTIK: Your Honor, it really is to
25 the authenticity of the document, particularly with

1 respect to some handwritten notations on the
2 document.

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

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

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

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

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

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

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

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

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

14 MR. SATTERWHITE: If I may, your Honor.

15 EXAMINER SEE: Mr. Satterwhite.

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

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

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

3 EXAMINER SEE: Say that again, Mr. Darr.

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

6 EXAMINER SEE: You may.

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

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

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

1 Thursday Afternoon Session,
2 October 13, 2011.

3 - - -

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

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

9 MR. SATTERWHITE: Thank you.

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

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

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

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 EXAMINER TAUBER: Please raise your right
20 hand.

21 (Witness sworn.)

22 EXAMINER TAUBER: Thank you.

23 - - -

24

25

1 JONATHAN A. LESSER

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

4 DIRECT EXAMINATION

5 By Mr. Lang:

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

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

10 Q. Could you identify FES Exhibit No. 2?

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

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

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

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

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

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

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

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

5 THE WITNESS: Yes, ma'am.

6 EXAMINER SEE: Okay.

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

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

11 MR. CONWAY: Thank you.

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

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

16 Q. And the next?

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

19 Q. And the next?

20 A. On page 52, line 21, consistent with the
21 changes in table 14 on the last page, what you should
22 change is the statement "1 billion to almost
23 2 billion" should now read: "1.2 billion to over
24 1.4 billion."

25 Q. And any more?

1 A. Yes. One more. On page 53, footnote 7,
2 delete the --

3 Q. That would be footnote "57"?

4 A. "57." You would delete "filed
5 September 27th, 2011."

6 Q. Do you have any more corrections?

7 A. No, I do not.

8 Q. With those corrections, if you were asked
9 the same questions in the testimony, would you
10 provide the same answers?

11 A. Yes, I would.

12 MR. LANG: Your Honors, the witness is
13 available.

14 EXAMINER TAUBER: Mr. Kurtz?

15 MR. KURTZ: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Kurtz:

19 Q. Good afternoon, Dr. Lesser.

20 A. Good afternoon.

21 Q. Could I ask you to turn to page 23 of
22 your testimony.

23 A. All right.

24 Q. Heading E, line 12, this is where you
25 discuss how AEP's formula rate overstated its

1 capacity costs; is that correct?

2 A. Yes, it is.

3 Q. AEP calculated their capacity costs at
4 \$355 a megawatt-day?

5 A. That's correct.

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

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

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

15 A. That's correct.

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

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

25 Q. And as you indicate later in your

1 testimony, is it Dr. Schnitzer?

2 A. Mr. Schnitzer.

3 Q. Mr. Schnitzer. He cites the same error
4 and comes at it slightly differently as well but he
5 makes the same adjustment in his maximum above-market
6 capacity number?

7 A. I don't have Mr. Schnitzer's testimony in
8 front of me and so I really don't want to comment on
9 what he's done. I think you would be better served
10 to ask him directly.

11 Q. Well on page 30 to 31 you refer to his
12 testimony and if you could just review that. I think
13 you indicate that he cites the same error.

14 A. He's actually doing something slightly
15 different. He's doing something that's more
16 consistent with how the net cost of new entry is
17 determined in PJM but he's subtracting out energy and
18 ancillary services revenues.

19 Q. Right. That's what he does. He also
20 says you need to count off-system sale energy
21 revenues in the -- margins the calculation; is that
22 right?

23 A. I believe that's correct.

24 Q. All right. the second error you cite on
25 page 23 is that, in your opinion, the Commission

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

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

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

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

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

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

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

20 A. Okay.

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

23 Page 24, let's see, on line 7 you say
24 "AEP Ohio ignores the fact that it also recovers a
25 portion of its fixed costs when it makes

1 energy-related sales for resale because revenues
2 received from those sales that exceed AEP Ohio's
3 variable O&M expenses -- O&M plus fuel cost recover a
4 portion of its embedded capacity costs."

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

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

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

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

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

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

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

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

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

25 A. Yes.

1 Q. And purchased power is 555, if you know?

2 A. I believe that's correct.

3 Q. Okay. All right. You've taken FERC Form
4 1 data for 2010, this is on page 28 of your
5 testimony, and you've taken their production costs,
6 you've taken their account 447 sales for resale
7 revenues, and you've calculated a margin or a profit
8 on line 18 of table 5, net contribution to embedded
9 cost; is that right?

10 A. That's correct.

11 Q. Okay. I don't want to switch back. On
12 page 27 you estimate that for 2010 the pre-2001
13 generating plants, now, you've excluded Darby and
14 Waterford.

15 A. That's correct. Because they were on
16 line after the transition date.

17 Q. We'll just -- that's fine, we'll just
18 ignore that for the time. But you've calculated that
19 there were, on page 27, line 17, 252 million of
20 margins, gross margins, from off-system sales that
21 AEP failed to account for?

22 A. That was my calculation, yes.

23 Q. Okay. That's pretax? If you look on
24 your exhibit, table 5, I don't think you have a tax.

25 A. That's true.

1 Q. So this is gross margins pretax.

2 A. That's right.

3 Q. Okay. And what you're essentially saying
4 is that that \$252 million gross pretax margins that
5 AEP made in -- that AEP Ohio made in 2010 should be
6 used to reduce the fixed costs when calculating the
7 number that AEP came up with of \$355 a megawatt-day.

8 A. That's one of the reasons for reducing
9 that value, yes.

10 Q. And you have your second reason is the
11 pre-2001 legal --

12 A. That's correct.

13 Q. -- legal question. Okay.

14 So it's your assumption in your
15 calculation that AEP Ohio would be able to retain all
16 the profits from off-system sales that it made in
17 2010.

18 A. I may not be understanding your question,
19 sir. If AEP is earning profits on off-system energy
20 sales, I'm not sure where else they're going to go.

21 Q. Well, I'll tell you. Are you familiar
22 with the AEP interconnection agreement?

23 A. No, I'm not.

24 Q. Mr. Schnitzer is, I know he attaches --
25 he refers to it and attaches a number of documents

1 from that.

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

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

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

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

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

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

21 Q. Well, if you take as a hypothetical,
22 assume for me that AEP Ohio's only entitled to keep
23 its member load ratio share of these profits, which
24 is approximately 41 percent, take that as a
25 hypothetical, then your number would be overstated

1 and your calculation on this issue would be
2 incorrect.

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

5 Q. Well, if you just take 41 percent of
6 252 million, you'll get a different conclusion than
7 if you take a hundred percent of 252 million. You
8 can agree to that, can't you?

9 A. I would agree that 41 percent of
10 252 million is a different number than 100 percent of
11 252 million.

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

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

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

23 A. Yes, it is.

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

1 Senate Bill 221?

2 A. I am familiar with that legislation, yes,
3 sir.

4 Q. Yet it's still your opinion that net
5 capital costs need to be excluded in the calculation
6 of --

7 A. Yes, it's still my opinion.

8 Q. Okay. And you base that upon -- your
9 nonexpert, nonlawyer, but based upon your reading of
10 Senate Bill 3.

11 A. And Senate Bill 221. As well as the
12 stipulation signed by AEP in the electric transition
13 case.

14 Q. Will you turn to, please, page 32 of your
15 testimony.

16 A. All right.

17 Q. Line 17 you start a new section that
18 "Based on AEP's claim embedded costs, the base
19 generation rate reflects an artificial subsidy for
20 SSO customers," and that goes on for several pages;
21 is that correct?

22 A. Yes, it is.

23 Q. Okay. So you're saying that based upon
24 your calculation of AEP's costs, that the embedded --
25 that the SSO generation rates don't provide enough

1 recovery to meet the generation revenue requirements
2 and, hence, they're subsidized.

3 A. No, that's not exactly what I say.

4 Q. Let's turn to page 36. As I understand
5 it, you calculate -- let's go to page 37. You
6 calculate as \$142 million the net recoverable nonfuel
7 energy-related costs which is referred to on line 7
8 of your testimony at page 37; is that correct?

9 A. I'm sorry, which number were you
10 referring?

11 Q. Well, let's read line 7. The remaining
12 142 million, which is line 9 of table 8; is that
13 correct?

14 A. Right. Correct.

15 Q. Okay. The remaining 142 million is the
16 net energy-related production costs that would need
17 to be recovered from AEP customers. Did I read that
18 correctly?

19 A. Yes, you did.

20 Q. Okay. And in making this determination
21 on line 8 of table 8 you also exclude 100 percent of
22 profits from off-system sales?

23 A. Line 8 of the, I'm sorry, line 8 of table
24 8?

25 Q. Yes.

1 A. Yes. Those numbers are from Mr. Pearce.
2 Yes.

3 Q. Now, if it's correct under the
4 interconnection agreement that AEP Ohio only keeps
5 41 percent and the other 59 percent go to Indiana,
6 Michigan, Appalachian Power which is in West Virginia
7 and Virginia, and Kentucky Power, then this table
8 would be wrong as well?

9 A. No, I don't -- I have to disagree with
10 you.

11 Q. Okay. On page 37, line 11, you say
12 "Thus, either AEP Ohio's remaining energy-related
13 production costs are either over \$50 million greater
14 than the amount it needs to recover in 2012, or --
15 2012 through the proposed base generation rates for
16 each customer class or AEP Ohio's capacity cost are
17 much less than claimed."

18 So you don't know, it's one way or the
19 other. So you calculated a \$90 million number and
20 you've come up with 142 million here and you're
21 saying it's either one of these two explanations but
22 you're not quite sure how to reconcile that?

23 A. No. If you look at starting on page 38,
24 line 7, I do reconcile it where I say "...as I've
25 previously demonstrated, AEP Ohio's embedded capacity

1 cost charge, as developed by AEP Ohio Witness Pearce,
2 double recovers stranded costs it previously had
3 agreed to forego recovering except in the market.
4 Moreover, Dr. Pearce's estimates wrongly exclude the
5 contribution to embedded costs to the profits
6 associated with off-system energy sales. Thus, in
7 reality, AEP Ohio is unlikely to be subsidizing SSO
8 customers."

9 Q. Now, I guess you're complaining that
10 Dr. Pearce excluded all of the profits from
11 off-system sales. You included 100 percent, correct?

12 A. My problems with Dr. Pearce's
13 calculations are not just on the off-system sales
14 calculations.

15 Q. But just --

16 A. They're also, in fact, much more of the
17 impact is associated with his inclusion of all
18 embedded capital costs post-January 2001.

19 Q. Okay. But your debate with him on the
20 off-system sales profits issues, he did not include
21 any, you included 100 percent.

22 A. That's correct.

23 Q. Let me ask you to turn to page 39. Were
24 you here in the room today when there was testimony
25 that somehow the residential customers were

1 subsidizing the industrial customers?

2 A. I recall something like that.

3 Q. How do you explain on your table 10
4 GS-4/IRP? That's the large transmission voltage
5 industrial customers for Columbus & Southern. How do
6 you explain 105.1 percent rate increase to the
7 Columbus & Southern industrials if the industrials
8 are somehow subsidizing -- being subsidized by the
9 residential?

10 A. Well, my testimony is that, if you'll
11 read down on page 39, that the increase in the
12 GS-4/IRP-D customer rate class for CSP, I state
13 that's incongruous. I really don't know why they are
14 more than doubling that rate.

15 But in general I say "...it appears to be
16 an attempt by AEP to foreclose market competition by
17 reducing costs allocated to the large commercial and
18 industrial customers who are most likely to switch to
19 competitive electric suppliers, while increasing
20 costs to residential customers who are least likely
21 to switch."

22 Q. Well, how would AEP be reducing costs to
23 the industrial customers if they're giving the CSP
24 transmission voltage large industrials 105 percent
25 rate increase?

1 A. Because you're looking at one small class
2 of interruptible customers, not all of the commercial
3 and industrial customers.

4 Q. That's not a -- GS-4 is not a small
5 class. It's \$34 million of revenue, generation
6 revenue in current rates and you've calculated it
7 goes up to 71 million. That's not a small class, is
8 it?

9 A. I didn't make that calculation. That's
10 Mr. Roush's calculation.

11 Q. How do you claim that AEP is artificially
12 keeping the -- reducing the rate increase on the
13 industrials if there's a 105 percent rate increase to
14 the major Columbus & Southern industrial customers?

15 MR. LANG: Objection, your Honors. It's
16 mischaracterizing the stipulation terms.

17 Q. Well, whatever the 105.1 percent number
18 in your table means, how do you square that with your
19 statement that the rate increase is being
20 artificially reduced for the industrial customers?

21 A. Well, my answer would be that it may --
22 and I don't know what AEP's -- since AEP has never
23 done a class cost-of-service study and Mr. Roush
24 testified that they hadn't done one in many, many
25 years, which is why they wanted to go to what they

1 call market rates, it may be that AEP believes the
2 costs of serving the interruptible customers is
3 higher than they've set it at. Or they believe that
4 those customers are sufficiently high-cost customers
5 to serve that they would prefer to have them switch.

6 And, in fact, that was one of my
7 discussions regarding the \$10 per megawatt-hour
8 subsidy for GS-1 and GS-2 schools.

9 Q. Let's turn to page 41 where you discuss
10 your recommendation that AEP Ohio should do a
11 cost-of-service study. You disagree with the
12 generation rate design that AEP has included in the
13 stipulation, correct?

14 A. That's correct. I don't see -- they
15 argue that it's a market-based design and as my
16 testimony shows, their market-based rates depend on
17 the assumed capacity charge.

18 Q. And your solution on page 41, line 22, is
19 "AEP Ohio should perform a new class cost-of-service
20 study to determine how its costs can properly be
21 allocated to each customer class." That's your
22 proposed solution?

23 A. My proposed solution, sir, is that it's
24 based on Mr. Roush's conclusion on the line above,
25 that he testifies, as it says in my testimony, that

1 AEP Ohio's cost allocations are based on "very old
2 cost relationships." Hence, his argument for going
3 to a market based, what they call market-based rates.

4 Therefore, what I said is well, then the
5 solution is obvious, do a class cost-of-service
6 study.

7 Q. Is that your recommendation?

8 A. That would be my recommendation.

9 Q. Okay. When should -- so at the end of
10 this proceeding the Commission should throw out the
11 proposed rate design that's been agreed to by the
12 stipulating parties and we should all get back
13 together here and do a class cost-of-service
14 litigation?

15 A. I'm not going to be presumptive enough to
16 instruct the Commission as to what they should do.

17 Q. Well, your recommendation is that the
18 Commission should do a class cost-of-service study.

19 A. If the issue is a question of we have
20 these very old cost relationships that shouldn't be
21 used to design rates, then, again, the solution is
22 quite obvious to me, is that do a study and
23 reestablish what those rates are.

24 Instead, what the stipulation is
25 proposing is to put forth these "market-based rates"

1 that have no bearing on the market. They're
2 completely arbitrary.

3 Q. Now, in all the jurisdictions I've ever
4 practiced in, embedded cost -- class cost-of-service
5 studies to allocate costs to customer classes and
6 design rates, that's an old-school traditional
7 cost-based ratemaking concept, isn't it?

8 A. It is cost-based ratemaking and AEP, in
9 fact, proposes to use it to allocate costs of some of
10 their other, for example, the distribution investment
11 rider costs.

12 Q. I thought FES's biggest concern here was
13 essentially we're not moving the full divestiture,
14 full deregulation fast enough, why in the world would
15 the Commission want to revert back to traditional
16 cost of service ratemaking?

17 A. Well, first off, sir, that's not my
18 testimony. My testimony is specifically addressing
19 how AEP is proposing to set class -- individual class
20 rates, and if you'll read my testimony, you'll see
21 that the allocation, the market allocations they've
22 used are completely arbitrary. So first -- let me
23 finish, sir.

24 In terms of distribution rates, no one is
25 arguing that the distribution system rates, for

1 example, should be market based. Those are going to
2 be -- AEP will continue to charge customers for
3 distribution services based on traditional old-school
4 cost of service ratemaking principles.

5 Q. I'm talking about generation rates here,
6 aren't we?

7 A. Well, AEP is proposing to avoid a
8 market-based rate structure through an ESP.

9 Q. They say it's marked based and you want
10 to set generation rates based upon traditional
11 embedded cost of service.

12 A. Traditional cost of service does not
13 result in artificial cross-subsidies which I contend
14 that AEP's proposed rate design would. And under
15 traditional regulation or under market-based rate
16 setting cross-subsidies are anticompetitive.

17 Q. Let's see. In every cost of service case
18 I've ever been in we have a whole wide variety of
19 opinions of what cost-of-service study should be
20 used. What would you propose in this case for the
21 Commission to use? Which type of cost-of-service
22 study? Average and excess? Peak and average?
23 12 CP, 5 CP? Base intermediate? Which one?

24 MR. LANG: Objection, your Honor,
25 Dr. Lesser's already testified several times he's not

1 proposing use of cost of service, that was only in
2 response to Mr. Roush's testimony.

3 What Dr. Lesser is proposing in his
4 testimony is using a competitive bidding process to
5 move to market, not the issues that Mr. Kurtz is
6 cross-examining on.

7 MR. KURTZ: I beg to differ, your Honor.
8 On page 41, line 23, the witness states "If that is
9 the case, then the solution is obvious: AEP Ohio
10 should perform a new class cost-of-service study to
11 determine how its costs can be properly allocated to
12 each customer class." That's what he's recommending.

13 EXAMINER TAUBER: Objection's overruled.

14 Q. (By Mr. Kurtz) Which type of cost of
15 service study do you recommend the Commission should
16 use in this generation cost-of-service study?

17 A. Well, because AEP itself uses a 5CP to
18 allocate its -- to determine the embedded capacity
19 cost number, one might start with that. But I have
20 not studied AEP's system sufficiently to be able to
21 recommend a specific type of cost-of-service study to
22 perform.

23 Q. Okay. And do you have an opinion of when
24 the timing of all this, what should happen and when
25 the Commission should start with that case?

1 A. Well, I would have, if I were AEP, I
2 would have already done the analysis.

3 Q. Okay. On page 42, line 3, next new
4 heading, "The proposed market transition rider is
5 unreasonable and unfairly subsidizes certain
6 customers." That's your basic conclusion on the MTR
7 rider?

8 A. Yes, it is.

9 Q. Okay. Do you know that the MTR rider is
10 a credit to the residential customers?

11 A. Yes, I understand that.

12 Q. So you want to take away the residential
13 credit on the MTR?

14 A. I believe the MTR, there should not be an
15 MTR and it should not be a nonbypassable MTR because
16 that's anticompetitive.

17 Q. Now, do you realize -- this was
18 interesting. Were you here when we got into this
19 aggregation agreement with the City of, wherever it
20 was, AEP Exhibit 10 where FES is providing power to
21 residential customers at a 5 percent discount from
22 the price to compare?

23 A. I was in and out of the room, sir, and I
24 don't know what that exhibit is, I've never seen it.

25 Q. Well, let's just do the math, though. If

1 the MTR rider gives the residential customers, let's
2 just use Columbus & Southern 2012, a \$2.94 per
3 megawatt-hour discount, that would reduce the profit
4 margin FES would make on its aggregation deal with
5 this city because the price to compare would go down
6 and, therefore, the 5 percent discount would be off
7 the lower price. Is that the way you understand that
8 would work?

9 A. Sir, I don't know -- I haven't seen the
10 document you're referring to. I just don't know.
11 I'm not familiar with FES's government aggregation
12 programs and that's not in my testimony.

13 Q. Just one last point. On the
14 distribution, the DIR rider, you -- page 51. You
15 calculate in your opinion what the difference between
16 the maximum DIR rate increase under the stipulation
17 versus what you think AEP Ohio would have gotten in
18 base distribution rate cases and that number is then
19 plugged into the MRO versus ESP comparison; is that
20 how that works?

21 A. That's correct.

22 Q. And your starting point with what
23 AEP Ohio would have gotten in distribution base rate
24 cases is the Staff Report that was issued about a
25 month ago?

1 A. It's an average of the staff high and low
2 estimates which I took to be a reasonable estimate of
3 what AEP might get.

4 Q. You understand the Commission's not bound
5 by the staff report.

6 A. I do understand that, sir.

7 Q. So you understand that the Staff Report
8 may or may not be adopted by the Commission on any
9 number of issues?

10 A. That's certainly possible. On the other
11 hand, it's possible that the Commission will adopt
12 the Staff Report.

13 Q. It's possible they could give AEP less
14 money than what staff recommends.

15 A. Absolutely.

16 Q. It's possible they could give AEP a lot
17 more money than what staff recommends.

18 A. Perhaps. Although I can't see giving
19 AEP -- allowing AEP to double recover ten years worth
20 of distribution investment, which is what I discuss
21 in here, because AEP is going back to the year 2000
22 to recover embedded distribution costs under the
23 stipulation proposal, and is recovering those costs
24 in its base distribution rate.

25 Q. I understand that point. I think you're

1 right on that. But this will have to be for another
2 day, I think.

3 MR. KURTZ: Thank you, Dr. Lesser.

4 THE WITNESS: Thank you.

5 EXAMINER TAUBER: Ms. Clark.

6 MS. KALEPS-CLARK: No questions, thank
7 you.

8 EXAMINER TAUBER: Mr. Conway?

9 MR. CONWAY: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Conway:

13 Q. Good afternoon, Dr. Lesser.

14 A. Good afternoon, Counselor.

15 Q. Would you let me know if you can't hear
16 me?

17 A. I will.

18 MR. CONWAY: And, Vern or Mike, if you
19 can let me know if you can't hear me also.

20 Q. Dr. Lesser, I have a few preliminary
21 questions with regard to your testimony. I didn't
22 make a motion to strike at the outset and I don't
23 think it's going to be necessary, but I did have some
24 questions about the nature of the opinions that you
25 provide in your testimony.

1 If you could turn to page 7 of your
2 testimony.

3 A. All right.

4 Q. Do you see the statement at lines 3 to 5
5 of your testimony on page 7 where you state that
6 "...under the terms of the Stipulation AEP signed --
7 AEP Ohio signed over ten years ago as part of its
8 Electric Transition Plan proceeding...." Do you see
9 that?

10 A. Yes, I do.

11 Q. And then you make the statement "it no
12 longer is allowed to recover," and I think you're
13 referring to embedded generation costs; is that
14 right?

15 A. Stranded generation costs and the GTRs
16 and the --

17 Q. RTCs.

18 A. Regulatory.

19 Q. Regulatory transition costs?

20 A. That's correct.

21 Q. Okay. And your statement there is not an
22 opinion that is a legal opinion, is it?

23 A. It's based on my reading of the
24 stipulation.

25 Q. You're not a lawyer, let alone licensed

1 in Ohio, correct?

2 A. I am not an attorney, sir. However, I am
3 quite familiar with economic regulatory concepts,
4 I've been doing this a long time, and restructuring
5 cases. And I do know how to read.

6 Q. You do a lot of reading.

7 A. Not the kind of reading I'd like to do.

8 Q. Both you and I are wearing glasses at
9 this point, right?

10 A. Yes.

11 Q. Okay. In any event, your opinions --
12 your opinion at that point is based on your nonexpert
13 nonlegal --

14 A. It's based on my nonlegal understanding.

15 Q. I meant that, and that's the vein I meant
16 it in. Your nonlegal expert capacity.

17 A. That's correct.

18 Q. Okay. Then at page 15 starting at lines,
19 I think it's 21 through the end of that page and then
20 going on for the entire page 16 and 17 and 18, and
21 then continuing on to the top of page 19, the first
22 nine lines on page 19, you have a fair amount of
23 discussion about the history of SB 3 and what
24 happened in the cases that were litigated under SB 3
25 and treatment of these generation transition costs

1 and regulatory transition costs for AEP Ohio and
2 things of that nature, correct?

3 A. That's correct.

4 Q. Okay. And, again, in this portion of
5 your testimony the conclusions and interpretations
6 and opinions that you offer regarding the meaning and
7 the application of SB 3 are not being offered as
8 legal opinions or legal interpretations or legal
9 conclusions, are they?

10 A. No. It's my -- my opinion, sir, as an
11 expert economist.

12 Q. Could you turn to page 10 of your
13 testimony. There's a statement on line 4, part of a
14 sentence that begins on line 4, the statement, a
15 premise to your point there is that "...AEP Ohio
16 cannot justify charging more than the RPM price for
17 capacity...." Do you see that?

18 A. That's correct.

19 Q. And the context in which you make the
20 statement, you're talking about charging CRES
21 providers more than the RPM price for capacity,
22 right?

23 A. That's correct.

24 Q. Okay. Would you agree that AEP Ohio
25 could justify charging CRES providers more than the

1 RPM price for capacity if the PUCO approved a higher
2 price?

3 A. That might get into a disagreement
4 between the state and FERC, I'm not sure.

5 Q. You're not sure whether the PUCO has the
6 flexibility, the authority at this point to establish
7 capacity prices for AEP Ohio to charge CRES
8 providers?

9 A. Well, my understanding is that the PUC
10 has established prices for AEP to charge CRES
11 providers and that price is currently the RPM market
12 price.

13 Q. And is the PUCO, in your opinion or your
14 view, is it able to change those prices from RPM to a
15 different basis?

16 A. I can't give you a legal, from a legal
17 standpoint I just don't know.

18 Q. Do you think it was illegal for the
19 Commission to establish prices for capacity at the
20 RPM levels?

21 A. That's the default price that would be
22 charged by FERC. In other words, under the
23 reliability assurance agreement the price under the
24 FRR would be the RPM price, is my understanding, in
25 the absence of some sort of state action, if you

1 will, setting the price.

2 Now, if the state sets a price that's, in
3 fact, higher than the RPM clearing price, I would
4 argue that that is anticompetitive.

5 Q. And you would say that's illegal for the
6 state to do that.

7 A. Well, I can't offer a legal opinion, but
8 in my view it would be, as an economist, it would be
9 anticompetitive.

10 Q. So you don't know whether it would be
11 lawful or not for the PUCO to do that.

12 A. I do not know.

13 Q. Okay. If the PUCO were to lawfully
14 approve a capacity price for CRES providers that is
15 higher than the RPM price, would it then be
16 justifiable for AEP Ohio to charge that higher price?

17 A. I believe I answered that, but I'll say
18 it again, that if the PUC set a higher-than-RPM
19 price, that might involve sort of a dispute between
20 the state and FERC as to whether the price set was
21 anticompetitive.

22 Q. So you're just not willing to address the
23 question as to whether or not the PUCO has authority
24 to set a capacity price that's higher than the RPM
25 price because of this potential conflict with the

1 FERC.

2 A. Again, I cannot give you a legal answer
3 whether they legally have the authority. As you
4 pointed out, I'm not an attorney.

5 Q. All right. Let's turn to the FERC, then.
6 Do you have an opinion as to whether or not the FERC
7 could establish a capacity price based on some other
8 rationale than RPM at a level that's higher than RPM?

9 A. It's conceivable. It's called the RMR
10 agreement, which means reliability must run.

11 Q. In your opinion, could the FERC establish
12 a capacity price for AEP Ohio to charge CRES
13 providers based on an embedded cost measure?

14 A. As a capacity price?

15 Q. Yes. What's your opinion about that,
16 whether FERC has the authority to do that?

17 A. I can't give you a legal opinion on
18 whether FERC has the authority. I would be very
19 surprised if FERC would ever do that, given FERC's
20 very strong support for market-based mechanisms.

21 Q. So the answer is you don't know whether
22 FERC could do that or that FERC could do that, but
23 you're not sure that they ever would do that?

24 A. From a legal standpoint I can't answer
25 your question because I'm not an attorney, however,

1 given my experience with FERC, with the FERC
2 proceedings that have, in fact, established these
3 sorts of capacity markets in ISO New England,
4 New York ISO, and in PJM, and given my layman's
5 reading of FERC orders in those -- in cases related
6 to those jurisdictions, and FERC's very clearly
7 stated desire to move to market-based capacity
8 pricing mechanisms, I would be very surprised if FERC
9 told AEP Ohio: Yes, AEP, you don't have to -- we
10 have this capacity market in PJM and it's a great
11 thing, but you don't have to do it, you get to charge
12 an embedded capacity cost for all your capacity.

13 Q. In your view would it be possible for the
14 PUCO to approve a capacity price that's lower than
15 the RPM price?

16 A. Are you asking if the PUC could force AEP
17 to sell capacity at a below-market price?

18 Q. I'm asking you whether the PUCO could
19 establish capacity pricing with whatever measure of
20 pricing that it determines is appropriate that the
21 result of which is capacity prices that are lower
22 than the RPM price. Is that possible in your view?

23 A. Well, I think -- the reason I asked my
24 previous question is because, I mean, let's suppose
25 hypothetically the PUCO establishes a capacity price

1 of zero, so it tells AEP you sell CRES providers
2 capacity or essentially give it away for free.

3 I would presume that AEP would -- might
4 not like that and would say, well, we get to collect
5 the market price, the RPM. So if you're asking me
6 whether the PUCO could force AEP to provide capacity,
7 sell it to CRES providers at below-market rates, I
8 would think that would be very unlikely.

9 Q. Well, let me give you another scenario.
10 The PUCO adopts a measure of pricing which is cost
11 based as a result of the litigation that's pending,
12 hypothetically assume we continue with that
13 litigation.

14 A. In this case, sir?

15 Q. In the capacity pricing proceeding. Are
16 you familiar with that?

17 A. Yes, I am.

18 Q. Okay. And we get to the conclusion of
19 that proceeding and the PUCO agrees that a cost-based
20 method of setting capacity pricing is appropriate, it
21 does so, and the price that it sets turns out to be,
22 for whatever period of time's applicable, lower than
23 the RPM price. Is that a possible outcome in your
24 opinion that the PUCO could adopt?

25 A. I suppose the PUCO could do that. Again,

1 I think AEP would probably object slightly.

2 Q. And if the RPM price that is higher than
3 the cost-based price is in excess of the embedded
4 capacity cost measure of pricing, do you think
5 AEP Ohio would object to that?

6 A. Well, since AEP is now trying to sell
7 capacity for roughly five times the average PJM
8 market price for capacity over the next four years, I
9 doubt AEP would object to being told you get to sell
10 it at a much-higher-than-market price.

11 Q. My scenario that I just described to you
12 is where RPM is less than -- excuse me, is greater
13 than the embedded cost rate. Would AEP Ohio in that
14 situation, in your view, object to being limited to
15 the embedded cost-based price?

16 MR. LANG: Sorry. Your Honor, if I could
17 just, is this a hypothetical or are you assuming
18 facts not in evidence? If I could just --

19 MR. CONWAY: It's certainly a
20 hypothetical.

21 MR. LANG: Okay.

22 MR. CONWAY: I'm testing the views of the
23 witness at what point do they change.

24 Q. So can you answer the question?

25 A. Could you ask the question again?

1 Q. Sure. If the Commission were to adopt an
2 embedded cost-based method of pricing capacity for
3 AEP Ohio and the RPM price was higher than the
4 embedded cost rate for the period in question, do you
5 think that AEP Ohio would object to being limited to
6 the embedded cost of capacity price?

7 A. If AEP had an alternative or essentially
8 a choice of selling capacity at the RPM price, which
9 is, under your hypothetical, higher than an embedded
10 capacity cost price, then I would assume AEP would
11 very much prefer to sell at the higher price because
12 any business is going to want to sell its product for
13 more money.

14 Q. Let me turn to page 17 of your testimony.
15 I think you mentioned previously when we were
16 discussing the nature of your opinions with regard to
17 this part of your testimony that you are discussing
18 the generation transition costs and regulatory
19 transition costs that were at issue during the SB 3
20 period; is that right?

21 A. That's correct.

22 Q. Okay. And you note that the generation
23 transition costs were recoverable through a
24 transition charge through a transition period at
25 lines 3 to 4, right?

1 A. Yes, which ended December 31st, 2005.

2 Q. You also mention at the top of the page
3 the regulatory transition costs, and what's your
4 understanding about how those were recoverable?

5 A. Well, as I explained below, actually in
6 footnote 14 of that same page, that CSP could recover
7 its regulatory transition costs through
8 December 31st, 2008, while OPC could recover its
9 regulatory transition costs through December 31st,
10 2007.

11 Q. And was that recovery, as you understand
12 it, through transition charges? Regulatory
13 transition charges?

14 A. That was my understanding, yes.

15 Q. And those transition charges, the
16 regulatory transition charges and the generation
17 transition charges that were collected during that
18 period, they were collected from all retail
19 customers?

20 MR. LANG: Objection. Again, I think
21 assuming facts not in evidence to the extent he's
22 referring to generation transition charges.

23 MR. CONWAY: The witness has testified
24 about his understanding, your Honor, of what took
25 place as a result of the electric transition plan

1 cases back in 2000, and I'm simply asking him about
2 the extent of his understanding and knowledge.

3 If there's something that's not factually
4 accurate that's embedded in my question and he
5 doesn't agree with it or doesn't understand it, I
6 would welcome the correction or the acknowledgment.

7 EXAMINER TAUBER: Mr. Conway, could you
8 please rephrase your question?

9 Q. (By Mr. Conway) The transition charges
10 that were established in the transition plan case,
11 Dr. Lesser, who paid those transition charges? Were
12 they retail customers of the companies?

13 A. That's my understanding.

14 Q. And do you know whether they were
15 bypassable or nonbypassable?

16 A. I don't know specifically. Typically
17 those costs are nonbypassable.

18 Q. In any event, they were retail charges,
19 right?

20 A. Charged to CSP and OPC ratepayers, so I
21 would consider that generally retail.

22 Q. Thank you.

23 EXAMINER SEE: Mr. Lesser, I'm going to
24 need you to use the mic, you trail off at times.

25 THE WITNESS: I'm sorry, your Honor.

1 MR. KUTIK: You might want to make sure
2 it's working.

3 Q. Now, the capacity prices that AEP Ohio
4 charges to CRES providers, those are wholesale
5 prices, right?

6 A. I would consider those wholesale prices,
7 yes.

8 Q. And regardless of what basis the capacity
9 prices are set, whether it's RPM, embedded costs, or
10 some other basis, they still remain wholesale price,
11 right?

12 A. I would characterize them as, right,
13 wholesale prices.

14 Q. And the ETP cases from 2000, they did not
15 establish capacity prices for the companies, did
16 they?

17 A. I'm not aware of those capacity prices
18 being set because there was no capacity market at the
19 time.

20 Q. Could you turn to pages 23 to 32 of your
21 testimony, and the reason I give you such a wide
22 swath there is I think that is the section where you
23 discuss your criticisms of AEP Ohio's formula rate
24 estimates of its capacity costs.

25 A. That's correct.

1 Q. Specifically, at this part of your
2 testimony you're commenting on and criticizing
3 Dr. Pearce's calculations of the embedded costs used
4 to develop his measures of capacity pricing, right?

5 A. That's correct.

6 Q. And I think you mentioned in your
7 conversation with Mr. Kurtz that there are two basic
8 reasons why you believe that Dr. Pearce's cost
9 estimates are overstated, the first being that he
10 doesn't exclude the post-2000 net generation
11 investments, and the second is that he doesn't
12 include as an offset to the costs the margins from
13 energy sales for resale; is that right?

14 A. That's correct.

15 Q. Now, there are two tables that you used
16 to display your calculations in this area, table 5
17 and table 6, right?

18 A. Yes. Table 5 estimates the contributions
19 to embedded capacity costs from energy sales for
20 resale to margins; table 6 provides the revised
21 embedded capacity cost estimates.

22 Q. Now, the information you have in table 5
23 and the calculations you provide based on the
24 information in table 5, and I believe table 6, those
25 rely upon data that's through the end of 2010, right?

1 A. That's correct, out of the FERC Form 1s
2 filed by the companies.

3 Q. The FERC Form 1s for 2010?

4 A. That's correct. Those are the -- that's
5 the data source that Mr. Pearce used.

6 Q. Going back to the second area of
7 adjustments that you think should be made to
8 Dr. Pearce's formula rate estimates, limiting
9 generating plant in service to the amount that was in
10 service, the net amount that was in service prior to
11 January 1, 2001, are you with me so far?

12 A. Yes, I am.

13 Q. And if you could now, unfortunately you
14 have to go back to table 3.

15 A. I was just turning there, Counselor.

16 Q. It's like we're on the same wavelength,
17 isn't it?

18 Can you tell me how much generation plant
19 in service investment on a net or a gross basis that
20 you excluded from the formula rate calculation when
21 you eliminated the post-2000 investments?

22 Let me back up.

23 Table 3 shows your calculation of what
24 the net investment is as of 12/31/2000, right?

25 A. That's correct.

1 Q. Okay. That's, on a total company basis
2 that's the 700 million-dollar figure down on --

3 A. That's right, that would be the net
4 remaining generation plant in service as of
5 December 31st, 2010, limited to plant that was in
6 service before the transition.

7 Q. So Darby and Waterford you --

8 A. Not in there.

9 Q. -- take them out of there.

10 A. Right.

11 Q. Okay. And so my question was, to restate
12 it, is how much did you exclude from the year-end
13 2010 net plant investment in generation by not
14 including anything that was invested after December
15 31st, 2000 [verbatim]?

16 A. I don't have that number. That would be,
17 I'd have to look at the FERC Form 1 values to tell
18 you that.

19 Q. Is it substantial?

20 A. Define "substantial."

21 Q. Well, in comparison to the
22 700 million-dollar figure that you've got left over
23 on table 3. Is it a multiple of that?

24 A. A multiple of 700 million?

25 Q. Yes. Like 1 or 2 or 3.

1 A. I honestly have to look at the FERC Form
2 1 data to answer.

3 Q. Sitting here today you have no idea how
4 much you excluded by this calculation you made.

5 A. I can take a guess, but that's all it is.

6 Q. Okay, give me a guess.

7 A. It's probably on the order of a billion
8 dollars or so.

9 Q. A billion?

10 A. That would be -- that's a guess and I
11 would have to check that.

12 Q. That would be ballpark, I wouldn't hold
13 you to it, but in order of magnitude -- not order of
14 magnitude but ballpark, a billion.

15 A. I just don't -- it's a guess.

16 Q. Okay. And then I believe you talked to
17 Mr. Kurtz for several moments about what the nature
18 of the investments are that have been excluded by
19 this adjustment that you made. Do you recall that?

20 A. I recall the conversation, yes.

21 Q. And Mr. Kurtz asked you whether or not
22 they were for environmental compliance purposes or
23 something like that, right?

24 A. He asked if they were only for
25 environmental compliance purposes. And you.

1 Q. Resisted saying yes to that, right?

2 A. That's correct.

3 Q. You pointed out that there could be other
4 things besides environmental compliance investments.

5 A. Typically for generators there's annual
6 capital investments for just normal maintenance of
7 facilities.

8 Q. Do you think most of it was for
9 environmental compliance purposes?

10 A. I really don't know what the number --
11 I'd have to look at the numbers to be able to give
12 you an answer.

13 Q. Let me back up a little bit.

14 You were very familiar, from your
15 testimony, with what went on in the electric
16 transition plan cases, there's like three, four, five
17 pages where you account in a pretty detailed fashion
18 your understanding of what happened during the
19 environmental transition plan cases back in 2000. Do
20 you recall that part of your testimony?

21 A. I recall my -- obviously, I wasn't in
22 those cases personally. I have read some of the
23 Commission orders and the stipulation with AEP, so
24 that's what I base my familiarity on.

25 Q. Did you, in the course of your review and

1 your investigation, did you continue forward into the
2 2006 through 2008 period and even the period of time
3 before then, say starting at 2004 when the question
4 in Ohio was what do we do at the end of the market
5 development period? Did you look at what happened
6 during that period, 2004 through 2008?

7 A. Are you talking about the rate
8 stabilization cases?

9 Q. Exactly. That's exactly what I'm
10 referring to. Did you look at the rate stabilization
11 plan materials?

12 MR. LANG: Your Honors, just for purposes
13 of the record and the court reporter, I think both
14 the witness and the questioner are stepping on each
15 other a little bit. Maybe for -- on both ends, if
16 each could wait until the other one is done talking,
17 I think everyone would benefit.

18 MR. CONWAY: Thank you, Mr. Lang. I'll
19 do my best.

20 THE WITNESS: So will I.

21 Q. Exactly. The rate stabilization plan
22 period. Did you look at the orders that were issued
23 for AEP Ohio in the rate stabilization planner era?

24 A. I have not reviewed those orders.

25 Q. How about the -- what happened after the

1 rate stabilization period, in your -- as far as you
2 understand it, as far as ratemaking for standard
3 service offer generation for AEP Ohio? What came
4 after rate stabilization?

5 A. The question is very general. Are you
6 referring to the first ESP?

7 Q. Let me give you -- yes. Let me give you
8 the answer. The answer is SB 221 and the electric
9 security plans. That's what I'm getting at. Did you
10 look at the order in the AEP Ohio companies' first
11 electric security plan case?

12 A. I may have reviewed it. I'm really not
13 familiar at this time whether I did or not.

14 Q. So you would not know, sitting here
15 today, and you didn't know while you were preparing
16 your testimony, the extent to which recovery of
17 investments in environmental compliance equipment was
18 in issue in the RSP case and then in the ESP case for
19 AEP Ohio.

20 A. As I did not participate in those cases,
21 I can't say how much of an issue it was.

22 Q. Did you have any understanding? Can you,
23 even though you would not agree with Mr. Kurtz that
24 it was -- or you would not say that it was all the
25 investment from 2000 forward was environmental

1 compliance related, would you agree with me that much
2 of it was?

3 A. No, I would not agree with that without
4 checking the numbers.

5 Q. Would you agree that any of it was?

6 A. Not without checking the numbers.

7 Q. Do you know whether the AEP Ohio
8 generating units would be in compliance with
9 applicable environmental laws today and over the last
10 ten years if the investments made during the last ten
11 years had not been made?

12 A. I can't answer that question.

13 Q. Would you agree with me that if
14 environmental investments were necessary in order to
15 maintain environmental compliance during that period
16 up through today that if they had not been made and
17 the units were out of compliance, it would have
18 affected adversely their ability to operate?

19 A. Unless the units were buying offsets for
20 SO₂ and NO_x, that would be an alternative to the
21 units being actual -- having actual environmental
22 controls on them. But presumably if they had not
23 done that and they're not in compliance, I would
24 assume that could create operational issues.

25 Q. And if there are operational issues, that

1 would then affect the output of the plants that's
2 available for either native load or for system sales,
3 right?

4 A. Well, if you're assuming that if they're
5 out of compliance and they have to be shut down
6 because of that, then presumably that would affect
7 AEP's ability to sell power in the market or serve
8 its customers' needs.

9 Q. And if it did affect AEP Ohio's ability
10 to sell power in the market, that would then affect
11 the amount of off-system sales margins that might be
12 available, say in 2010, right?

13 A. That's possible.

14 Q. But you didn't take that into account as
15 part of your analysis, did you?

16 A. The environmental compliance, the impacts
17 of environmental compliance?

18 Q. And the effects of those impacts on
19 off-system energy sales for resale.

20 A. I did not take into account that
21 hypothetically AEP, had it not been in environmental
22 compliance, that it might have had to shut down
23 plants, because that's completely hypothetical.

24 Q. Let me turn to table 5 for a minute.
25 Now, table 5, which is on page 28, is a contributor

1 to your revised embedded cost formula rate, correct?

2 A. That's correct.

3 Q. I think you mentioned to Mr. Kurtz, and I
4 apologize if I'm repeating what you've already been
5 through, you calculated an offset to the -- what you
6 ultimately offset against capacity costs in table 5,
7 right?

8 A. Yes. If you look at -- if you take line
9 20 in table 5, that appears in table 6 as line 2.

10 Q. And that's the \$248 million of margins
11 from off-system energy sales for resale, correct?

12 A. Correct.

13 Q. Then I think, as you just mentioned, you
14 used that \$248 million as one of the inputs to your
15 calculations that you display on table 6, correct?

16 A. Correct.

17 Q. In table 6 where you compile your other
18 analyses, for example, from table 3 and from table 5,
19 you come up with your final revised capacity cost
20 estimates on line 17 and then 19, correct?

21 A. That's correct.

22 Q. So the revised costs are, in aggregate
23 for 2010 are 100 -- roughly 190 million, 189,651,000,
24 right?

25 A. Correct.

1 Q. Let me back up a little bit. You start
2 with the annual capacity costs on table 6, that's the
3 figure in line 1 on a total company basis, that's
4 \$1,137,000,000 roughly?

5 A. Yes, that's Mr. Pearce's or Dr. Pearce's
6 number.

7 Q. And that's a 2010 figure, right?

8 A. Based on FERC Form 1's values, that's
9 correct.

10 Q. And I think as you just explained, your
11 first deduction on line 2 is you remove the
12 \$248 million of energy sales for resale margins that
13 you calculated in table 5, right?

14 A. Correct.

15 Q. And, again, those are the margins that,
16 as Mr. Kurtz pointed out, might have to be shared
17 with other companies or might not even have been
18 produced if the environmental investments had not
19 been made, right?

20 A. I don't recall exactly what Mr. Kurtz
21 said, but that was associated with off-system energy
22 sales.

23 Q. Okay. What he said is, what he pointed
24 out is that member load ratio feature of the
25 interconnection agreement might cause those margins

1 to be shared among more than just the AEP Ohio
2 companies.

3 MR. DARR: Objection, your Honor.

4 MR. LANG: Objection.

5 MR. DARR: I didn't know Mr. Kurtz was
6 testifying today. Certainly the form of that
7 question implies that.

8 MR. CONWAY: Your Honor, I'm just -- I'll
9 move on. Excuse me.

10 Q. So at any rate, the first step is to
11 deduct the \$248 million from the 1.137 billion figure
12 that you start with, right?

13 A. Correct.

14 Q. And then the next thing you do is you
15 deduct on line 5 an amount of depreciation from what
16 is reported on the FERC Form 1, right?

17 A. Correct.

18 Q. Okay. And the point of this is to get
19 you to the juncture where the amount of depreciation
20 that you include in this calculation is what you came
21 up with in table 3, which is the amount that you
22 think is appropriate based on the pre-2000 net plant
23 investment, right?

24 A. That's correct.

25 Q. So that's a deduction of 173 million,

1 roughly?

2 A. That's correct.

3 Q. Okay. And then the next significant or
4 the next deduction is the return on rate base
5 adjustment that you reach on line 9, right?

6 A. Correct.

7 Q. And that's about \$380 million that you
8 take off the starting capacity costs, right?

9 A. Correct.

10 Q. And I assume that the adjustment there,
11 that \$380 million is an adjustment that has a basis
12 in the exclusion of all those post-2000 investments
13 in the generating units; is that where it comes from?

14 A. That's correct.

15 Q. Okay. Does that give you any kind of
16 feel as to what the nature of the size of the
17 investments were post-2000?

18 A. I can't do the math in my head, but I
19 can, with a calculator and a blank piece of paper I
20 could probably calculate it.

21 Q. Well, what's remaining in the return
22 category is about \$60 million, right?

23 A. That's correct.

24 Q. So you take out 380 of the total of 440
25 that was reported on the FERC Form 1, right?

1 A. Correct.

2 Q. Okay. So it's roughly six times what's
3 left over, the amount of the exclusion, correct?

4 A. I'm sorry, say that again. Six times?

5 Q. What's left over, the 380 -- excuse me,
6 what's left over, the 60 million on line 8 is roughly
7 one/sixth of the amount that you deduct, the
8 380 million.

9 A. Approximately, yeah.

10 Q. And finally there's an income tax
11 adjustment of about 146 million on line 15. Right?

12 A. That's correct.

13 Q. And I assume that's just a consequence of
14 all the other adjustments and revisions?

15 A. That's primarily affected by the change
16 in the return.

17 Q. So as a result of making these
18 adjustments based on the inclusion of a hundred
19 percent of these off-system energy sales for resale
20 margins and the exclusion of the post-2000
21 investment, you end up reducing the beginning fixed
22 costs for capacity at 1.137 billion down to
23 189,651,000, right?

24 A. That's correct.

25 Q. And that 189,651,000, that converts or

1 translates into the \$57.35 per megawatt-day figure
2 that you see on line 19?

3 A. Yes, using the 5CP method.

4 Q. Now, for Columbus Southern alone that
5 figure is, that dollars-per-megawatt-day figure is
6 \$179.60 on line 19, right?

7 A. Correct.

8 Q. And for Ohio Power Company it's a minus
9 \$44.88, right?

10 A. Correct.

11 Q. And when you combine them together you
12 get that \$57.35, right?

13 A. Correct.

14 Q. And then I think at some point in your
15 testimony you make some adjust -- you make an
16 adjustment to reflect losses where you explained that
17 should be done, correct?

18 A. Yes. To have a consistent estimate you
19 want Mr. Pearce's -- Dr. Pearce's numbers, well, he
20 wasn't sure whether they included losses, the 35572
21 value he uses, I believe it includes losses of
22 3.4 percent so you want to include, you want to
23 multiply that number.

24 Q. The 355 includes 3.4 percent of losses?

25 A. I believe that's correct.

1 Q. Okay. So you would adjust these by a
2 multiplier of 1.034 or thereabouts on line 19 to come
3 up with the final megawatts --

4 A. If I were using an embedded cost rate
5 that incorporated losses, absolutely.

6 Q. Okay. Did you ever -- did you make that
7 final calculation?

8 A. I don't recall if I did or not.

9 Q. Assume for me for the moment that the two
10 companies, Columbus Southern on the one hand and Ohio
11 Power on the other hand, are not being merged.
12 Instead they remain separate. Okay?

13 A. Okay.

14 Q. Okay. And in that event your analysis
15 would be that a formula rate for capacity based on
16 embedded costs would result in Ohio Power paying CRES
17 providers approximately \$45 per megawatt-day to take
18 capacity for their shopping customers, right?

19 A. No, because what it would mean is that
20 Ohio Power would just clearly be asking for
21 market-based rates in that case.

22 Q. But if they were using the formula rate
23 approach, that's what it would imply, would it not?

24 A. It would imply that, yes, they've
25 essentially fully depreciated their generating

1 plants, but I don't believe you can -- the PUC could
2 force Ohio Power to pay CRES providers \$44 per
3 megawatt-day to use its capacity.

4 Q. Isn't that the effect of adopting your
5 adjusted embedded costs formula, that that would take
6 place, that there would be payments essentially to
7 CRES providers for taking capacity off Ohio Power's
8 hands?

9 A. That's simply the mathematics of
10 applying. What I've done is to take both the
11 companies, the values that Dr. Pearce estimated for
12 both companies and adjust them as appropriate to
13 remove the impacts of post-2001 investments.

14 So, in fact, what it would be showing is
15 that OPC is making, because its plants are heavily
16 depreciated it's making significant profits on that
17 depreciated investment and, hence, if you were truly
18 going to charge an embedded cost rate, its rate would
19 be negative.

20 This is why some of the environmentalists
21 get so upset at, you know, we passed all this
22 environmental legislation and companies keep
23 operating these old depreciated coal plants. The
24 reason they keep operating them is because they're
25 profitable.

1 Q. Are you familiar with the phrase "sanity
2 check"?

3 A. Yes, I'm --

4 MR. LANG: Objection, argumentative.

5 MR. CONWAY: It's not argumentative, your
6 Honor. I'm going to ask him about his experience as
7 an academic.

8 A. I'm not an academic.

9 EXAMINER SEE: Just a minute.

10 MR. CONWAY: I'll rephrase the question.

11 EXAMINER SEE: Okay.

12 Q. When you prepare studies or analyses and
13 you get done with it, do you step back and ask
14 yourself does the result make sense? Isn't that --
15 that's a sanity check. Don't you do that? Or not?

16 A. Yes, I do.

17 Q. Okay. And so when you saw that your
18 approach led to a result where Ohio Power's embedded
19 cost capacity rate was minus \$44 which you added to
20 the, or combined with the Columbus Southern price of
21 \$179 to develop a \$57 combined capacity price, did
22 you not look at that number and ask yourself: Why is
23 this turning out like this? This doesn't make sense
24 to me? Did that not cross your mind?

25 A. I asked why, I did look at it and

1 consider why is this number negative. But in terms
2 of, you know, your words are "this doesn't make
3 sense." Those aren't my words.

4 Q. Okay. Let me turn to the next section of
5 your testimony, Dr. Lesser, I believe Mr. Kurtz also
6 had a few questions for you in this section. It
7 starts on page 32.

8 A. Right.

9 Q. I think Roman Numeral III is the place
10 where the heading appears "AEP Ohio's rate design
11 under the proposed ESP is unreasonable and
12 anticompetitive." Do you see that?

13 A. Yes, I do.

14 Q. Okay. And I'm actually, I want to focus
15 on the portion of this section of your testimony that
16 starts on page 35 and continues on to 38, so I guess
17 it's the first section of that Roman Numeral
18 III starting on page 35, okay?

19 A. All right.

20 Q. Dr. Lesser, we may have plowed this
21 ground already, but bear with me. The current ESP
22 SSO generation service prices that AEP Ohio charges,
23 they're not based on a cost-of-service method of
24 ratemaking, are they? Or do you know?

25 A. My understanding is it's not based on

1 cost-of-service rates.

2 Q. And the generation SSO prices that were
3 in effect prior to the current electric security
4 plan, that's prior to 2009, they were not based on a
5 cost-of-service method of ratemaking either, were
6 they? I'm referring to that rate stabilization plan.

7 A. I have not evaluated the pre-current --
8 rates before the current ESP that expires on
9 December 31st of this year. I have not evaluated
10 how those rates were set.

11 Q. And let me go back before that. The
12 electric transition plan era, 2001 through 2005 for
13 AEP Ohio, were the generation standard service offer
14 rates during that period established based on cost of
15 service?

16 A. I have not evaluated those rates.

17 Q. And how about the generation service
18 rates that prevailed before the electric transition
19 plan period, so before 2001, do you know how they
20 were established? Whether they were established on a
21 cost-of-service basis?

22 A. I haven't evaluated those rates. I would
23 assume under a traditional utility they were
24 established under cost-of-service rates.

25 Q. At some point in the past your assumption

1 is that traditional ratemaking applied, "traditional"
2 meaning cost-of-service type ratemaking applied.

3 A. That would be correct.

4 Q. Okay. And do you know the extent to
5 which, when those rates were set -- maybe the answer
6 is already obvious, but you don't know whether when
7 those rates were set prior to the ETP era on a
8 cost-of-service basis, whether subsidies of one or
9 another class of customers, by one or another class
10 of customers, were embedded in these pre-ETP rates,
11 do you?

12 A. Well, if the rates were set based on a
13 class cost-of-service study which Mr. Roush referred
14 to.

15 Q. Mr. Roush?

16 A. Roush. I'm sorry. He referenced a
17 cost-of-service data that they had used many years
18 ago, in some cases you do get regulators will
19 essentially create subsidies between rate classes.

20 The key here and the key difference is
21 when you're subsidizing, say, one class of SSO
22 customers, nonshopping, to restrict their shopping,
23 you know, they're going to shop or you're going to
24 subsidize, say, GS-1 and GS-2 schools customers to
25 shop, and that will be paid by other customers who

1 are shopping or not, those are cross-subsidies, those
2 are very anticompetitive.

3 If you're talking about a sort of
4 precompetition era, well, you're not really talking
5 about -- they couldn't go out and buy retail
6 electricity, it wasn't possible.

7 Q. Let me see if I can cut through this line
8 of questioning. Do you know the extent to which, as
9 a result of subsidies that were established in the
10 pre-ETP era, if they were, the extent to which those
11 kinds of subsidies have been carried forward through
12 the RSP and ESP eras until today in the generation
13 standard service offer rates?

14 A. I'm not sure I understand your question.
15 Are you asking --

16 Q. Do you want me to repeat it or --

17 A. No. Let me ask you if -- so I believe
18 the question you're asking is that are the -- do the
19 current ESP rates in effect today reflect subsidies
20 and cross-subsidies? Or are you asking something --

21 Q. That's a good question. Why don't you
22 answer that one. Go ahead and answer that one.

23 A. I asked you first, Counselor.

24 Q. The answer is Yes. So what's your
25 answer?

1 A. The answer is I don't know.

2 Q. Okay. You didn't study that topic or
3 that issue, did you?

4 A. I have not performed a cost-of-service
5 study for AEP.

6 Q. You did look at the ETP filings or orders
7 or some documentation related to that process for
8 AEP Ohio, though, right?

9 A. Yes.

10 Q. That's reflected in your other testimony
11 that we talked about earlier about, you know, pages
12 15 through 19, right?

13 A. Correct.

14 Q. Okay. And in the ETP case for AEP Ohio,
15 or cases for AEP Ohio, is it your understanding that
16 the prior bundled rates were unbundled into their
17 functional piece-parts, distribution, transmission,
18 and generation?

19 A. You'll have to start that one over. I'm
20 sorry.

21 Q. Let's go back to 2000, okay.

22 A. So we're talking pretransition --

23 Q. No, we're actually talking about -- we're
24 talking about the transition plan case, okay, or
25 cases. And I'm asking you when the generation

1 service offer prices were established in that ETP --
2 in those ETP cases, were they established by
3 unbundling the prior bundled rates into the three
4 pieces including generation?

5 A. I guess I'm not sure which specific, A,
6 which specific cases you're referring to.

7 Q. The ETP case, the electric transition
8 plan cases.

9 A. My understanding is that the rates are --
10 that they are currently unbundled.

11 Q. When did that happen?

12 A. Well, the current ETP I believe
13 started --

14 Q. There are too many acronyms, "ESP."

15 A. "ESP," I'm sorry.

16 Q. The transition plan cases. I'm referring
17 back to 2000 now.

18 A. I don't know what date that started.

19 Q. I know you -- okay. Accept, subject to
20 check, that the cases took place in 1999 and 2000 and
21 the plans commenced for the AEP Ohio companies in
22 2001, okay?

23 A. Fine.

24 Q. Okay. My question is, when you were
25 looking at the materials that you reviewed in

1 connection with those transition plan cases that you
2 referred to at pages 15 through 19 of your testimony,
3 did you look to see the manner in which the prior
4 rates were unbundled or if they were unbundled?

5 A. I did not look at any of the specific
6 rate calculations.

7 MR. LANG: I think, your Honors, the
8 witness may need a break, he's been going for a while
9 and I think he might benefit from stretching the
10 legs.

11 MR. CONWAY: That's fine.

12 EXAMINER SEE: Okay. Let's take a
13 ten-minute recess.

14 (Recess taken.)

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

17 MR. CONWAY: Thank you, your Honor.

18 Q. (By Mr. Conway) Dr. Lesser, I believe
19 where we ended up before the break was, correct me if
20 I'm wrong, we were discussing the history of
21 generation standard service offer prices from 1999 to
22 the present, correct?

23 A. That's correct.

24 Q. Okay. I think we've exhausted that area,
25 thank you.

1 I do want to go back, though, for a
2 moment to your table 5. Tell me when you turn to
3 page 28.

4 A. I'm there.

5 Q. In line 1 the fuel cost line, do you see
6 that?

7 A. Yes, I do.

8 Q. And we talked about the total AEP Ohio
9 fuel costs of 1,359,649,000. Do you remember that?

10 A. I don't remember us actually discussing
11 that number, but I see the number.

12 Q. Okay. Maybe we just referred to the
13 number. I'd like to discuss the number for just a
14 moment.

15 MR. LANG: Your Honors, could Mr. Conway
16 pull the mic a little bit closer? There you go.

17 Q. I would like to discuss the number a
18 little bit. The 1,359,000,000-dollar value in table
19 5, line 1. Again, this calculation or this value is
20 based on 2010 FERC Form 1 data?

21 A. Yes, it is.

22 Q. And as I gather, the number you derived,
23 is it from account 501?

24 A. That's correct.

25 Q. What kind of costs does that account

1 include?

2 A. I'm not sure I understand your question.
3 It's fuel expenses.

4 Q. Fuel expense, okay. Is there anything
5 else besides fuel expenses in it? I'm not suggesting
6 that there are but I'm just asking.

7 A. I don't have access to AEP's private
8 accounts so I was under the -- worked under the
9 assumption that it's AEP's actual fuel expenses and
10 doesn't include anything else.

11 Q. Are you familiar with the fuel cost
12 deferral feature of the current electric security
13 plan?

14 A. Yes, I am.

15 Q. To the extent that there were fuel
16 expense deferrals in 2010, that wouldn't show up in
17 this account 501 figure.

18 A. It's my understanding that would be
19 treated separately. That's essentially a regulatory
20 asset.

21 Q. Okay. So if there were, whatever the
22 number is, whether it's \$1 or a hundred million
23 dollars of deferrals for 2010 for fuel expense, that
24 wouldn't show up in this number, would it?

25 A. My understanding is that it would be

1 separately accounted for.

2 Q. And is the separate accounting for
3 reflected in any of the other values in your table 5?

4 A. Let me see if I understand your question.
5 Are you asking whether the fuel deferral expenses or
6 the fuel deferral costs are included in any of the
7 other FERC accounts listed here?

8 Q. No. Is the deferral reversed in any of
9 the other accounts that you have there?

10 A. I don't believe so, no.

11 Q. So if, for example, if there were
12 \$130 million of net fuel expense deferrals in 2010,
13 that would not be reflected in any fashion on this
14 table 5, right?

15 A. It's my understanding, I'm not an
16 accountant, my understanding is that the fuel
17 deferral expenses would be treated separately, they
18 would not be reversed in any of these other FERC
19 accounts shown.

20 Q. And the fuel expense deferral, as you
21 understand it, is it -- the costs are actually
22 incurred, the company pays actual money for the fuel,
23 but it doesn't record the expenditure as an expense
24 on its accounts, right? For that year.

25 A. I believe it's treated as a regulatory

1 asset, so it's recorded, but it's not recorded as an
2 expense.

3 Q. So if it were recorded as an expense and
4 hypothetically suppose it's \$130 million that was
5 deferred during the year that's evaluated in your
6 table 5, if it had not been deferred and the number
7 was 130 million, then the number in line 1 would have
8 been greater by 130 million? In the total column.

9 A. If your -- given your hypothetical, if
10 there was no deferral and AEP's actual expenses were
11 130 million higher, then that's true.

12 Q. And if that were the case, if they
13 were -- if the fuel costs were \$130 million higher
14 than the value that's shown in column 1 under the
15 column -- excuse me, line 1 under the Total column,
16 then the impact on the bottom line for that table
17 would be that the \$248 million figure would be --
18 what would be the impact on that? Would it be lower
19 by 130 million?

20 A. I'd have to check the calculations
21 because -- to see how it flows through to the
22 variable production costs associated with sales for
23 resale in line 16.

24 Q. In any event, would it be -- if the
25 number on line 1 in the Total column were

1 \$130 million higher, would the value on line 20 in
2 the Total column be lower?

3 A. Yes, it would be lower.

4 Q. You just don't know exactly how much it
5 would be lower.

6 A. Correct.

7 Q. Is it possible that it could be lower by
8 130 million or not?

9 A. I'd have to do the calculation.

10 Q. Do you think it would be close to
11 130 million?

12 A. Same answer.

13 Q. Could you turn to the testimony on pages
14 35 and 38 that surround or was related to your table
15 7 and 8. The first question in this area relates to
16 the reference in line 8 on page 35 to the full
17 capacity cost charge shown in Exhibit LJT-1, and let
18 me know when you get there.

19 A. Line 8, page 35.

20 Q. And the reference is to "full capacity
21 cost charge."

22 A. Okay. I see that.

23 Q. And it's a reference to a value, I
24 believe, that shows up in some sort of presentation
25 by Ms. Thomas in her Exhibit LJT-1; is that right?

1 A. That's correct.

2 Q. And do you remember which -- there's
3 three pages to that exhibit, do you remember which
4 page it was?

5 A. Yes. It's noted on note 2 of table 7, it
6 says it's page 3 of Exhibit LJT-1.

7 Q. And the full capacity cost charge is the
8 \$355 per megawatt-day charge, right?

9 A. That number Dr. Pearce calculated.

10 Q. And the full capacity cost page of
11 Ms. Thomas's Exhibit LJT-1, that third page, it
12 provides capacity prices on a
13 dollars-per-megawatt-hour basis for each of the three
14 major customer classes, right, based on that \$355?

15 A. That's my understand, yes.

16 Q. Those are the values you have included on
17 line 2 of your table 7 under Residential, Commercial,
18 and Industrial?

19 A. That's correct.

20 Q. Okay. Now, the purpose for your table 7
21 on page 36 is to calculate what you call the, quote,
22 net base generation rate revenue -- excuse me, the
23 net remaining base generation rate revenue; is that
24 right? That's on line 7.

25 A. Line 7 of which page, Counselor? I'm

1 sorry.

2 Q. I'm sorry. I'm looking at table 7 and,
3 I'm sorry, it's line 8. I can't read my own writing.

4 A. Line 8 of table 7 or line 8 in the text?

5 Q. Line 8 in the table.

6 A. Okay.

7 Q. Line 8 in the table, that's where you
8 calculate the net remaining base generation rate
9 revenues, right?

10 A. Correct.

11 Q. Okay. And that's really the purpose of
12 this table is to make that calculation, isn't it?

13 A. That's correct. To show those values on
14 a per-kilowatt-hour basis in line 9.

15 Q. Well, that's correct. You show them on a
16 per-kilowatt-hour basis on line 9, on a total-dollars
17 basis on line 8, right?

18 A. Correct.

19 Q. And then in the Total column there's the
20 figure you mention in your testimony; is it not? The
21 90,623,993?

22 A. That's correct.

23 Q. And that's the Total AEP Ohio value for
24 the net remaining base generation rate revenues,
25 correct?

1 A. Correct.

2 Q. And then you take that \$90 million, that
3 roughly \$90 million of net remaining BGR revenues for
4 2012 and you compare to your estimate of another
5 value that you calculated in table 8, right? That
6 \$142,556,780 value in table 8, that's the comparison
7 you make, right?

8 A. That's correct.

9 Q. And to make the calculations in table 8
10 you rely on Dr. Pearce's work, correct?

11 A. I rely on Dr. Pearce's data he shows in
12 his exhibits as well as data taken from the 2010 FERC
13 Form 1s.

14 Q. And Dr. Pearce's data and calculations
15 are for a test year, so to speak, of 2010, correct?

16 A. He takes his data from the 2010 FERC Form
17 1s.

18 Q. So table 8 is 2010 data, correct?

19 A. That's correct.

20 Q. And table 7 is 2012 data and conclusions,
21 right?

22 A. Table 7, for example, nonshopping load, I
23 believe that's a forecast for 2012.

24 Q. I'm just -- I thought I was just
25 confirming it. I wasn't challenging you. I thought

1 I saw in your testimony the information that you had
2 included in table 7 was 2012 information and I'm, for
3 example, I'm reading your footnotes to your table
4 where it seems to refer to 2012 information at a
5 couple of different places.

6 A. That's correct.

7 Q. So my question is, the table 7
8 information is a 2012 view, correct?

9 A. Correct.

10 Q. Table 8 information is a 2010 view,
11 correct?

12 A. Correct. But you have to remember that
13 Roush, when he calculates the base generation
14 revenues and when AEP is using the capacity costs
15 that is projecting -- it's assigning to 2012, it's
16 using 2010 values.

17 Q. Well, in any event, on table 8 you end up
18 with the net recoverable nonfuel energy-related costs
19 in line 9 on a total company basis of 142 million
20 plus, right?

21 A. Correct.

22 Q. And the difference between that value,
23 142 million plus, and the 90 million plus is roughly
24 \$50 million, right? 52 million.

25 A. That's correct.

1 Q. And then you draw possible conclusions
2 from that comparison starting at the bottom of page
3 37 and continuing on the top half of page 38,
4 correct?

5 A. Correct.

6 Q. And what are the nonshopping embedded
7 capacity costs for AEP Ohio that you calculated in
8 table 7 based on that \$355 per megawatt-day? Is that
9 the value at line 3?

10 A. I'm sorry. Could repeat your question,
11 please?

12 Q. What is the nonshopping embedded capacity
13 costs for AEP Ohio that you calculated in table 7 on
14 a total company basis?

15 A. The 949 million in line 3 of table 7.

16 Q. Okay. So that's the -- and your
17 difference between that \$90 million figure and the
18 \$142 million figure, the roughly \$50 million figure,
19 if you'll allow me that latitude, that's what you're
20 comparing. That \$50 million, you're comparing that
21 figure to this \$949 million figure ultimately to
22 determine whether or not all these capacity costs are
23 being recovered, right?

24 A. What I'm doing, if I understand your
25 question -- what I'm saying is that either AEP is not

1 recovering all of its -- what it says are its true
2 energy ancillary service and capacity costs in its
3 proposed base generation rate, or -- in which case
4 it's an anticompetitive subsidy that would foreclose
5 shopping competition, or it's in fact overestimating
6 the embedded capacity costs. And I conclude that, in
7 fact, it's overestimated its embedded capacity costs
8 because we all know AEP would not want to
9 anticompetitively subsidize to prevent shopping.

10 Q. Maybe I should back up just a little bit.
11 Before we get to the conclusions, what I'm interested
12 in first of all is the comparison that you're making,
13 and when I read your testimony at the bottom of page
14 37 and continuing over to page 38, you note that the
15 AEP Ohio, under your estimate, AEP Ohio's remaining
16 energy-related production costs are over \$50 million
17 greater than the amount it intends to recover in 2012
18 through the proposed base generation rates for each
19 customer class. Do you see that?

20 A. Yes, I do.

21 Q. And so I asked myself, what is he
22 comparing that 50 million to, and I looked, and it
23 appears to me that what you're comparing it to,
24 saying in order to come to your conclusion at that
25 point that's a possible shortfall, is that you're

1 comparing it to the \$949 million figure on line 3 of
2 table 7.

3 So my question is, is that right? Is it
4 \$50 million of that \$949 million that, in the first
5 alternative you suggest there, is not being
6 recovered?

7 A. That's correct. That if you took AEP's
8 estimated embedded capacity costs, which I think are
9 fantasy, but if nevertheless you assumed that, that
10 taking that amount plus the ancillary services costs
11 estimate based on Ms. Thomas's 60-cent per
12 megawatt-hour value plus the variable energy-related
13 costs, nonfuel O&M, you'd come up with a number that
14 was 50 million too high.

15 So I concluded that there's a change in
16 that capacity cost -- AEP's capacity costs are
17 certainly less than what it's advertising.

18 Q. If AEP's capacity costs are \$355 per
19 megawatt-day, then your point is, is it not, that AEP
20 Ohio, in your view, is underrecovering its capacity
21 costs by \$50 million, roughly?

22 A. My point is that, as I state in my
23 testimony, that if AEP's costs are what it
24 represents, which I disagree with obviously, that AEP
25 is, in fact, setting its BGR values in a way that's

1 providing an anticompetitive subsidy.

2 Q. What I'm trying to get at is how much of
3 an underrecovery is occurring here. You say it's
4 \$50 million possibly, and the question that I have is
5 compared to what? And the answer to "compared to
6 what" is compared to 949 million, right?

7 A. That's correct.

8 Q. Okay. What percentage of 949 million is
9 50 million? Roughly.

10 A. 5-1/2 percent approximately.

11 Q. So the result of your comparison here is
12 to conclude that AEP Ohio might be recovering only
13 94-1/2 percent of its capacity costs, right?

14 A. If you believe AEP -- if you take AEP's
15 number of \$355 per megawatt-day as an accurate and
16 valid number, which I don't, then that's the
17 conclusion you would reach.

18 Q. And if I multiplied 94-1/2 percent times
19 355, what would be the result?

20 A. I don't know.

21 Q. On a dollars-per-megawatt-day basis how
22 much is a 94.5 percent realization of the 355? Do
23 you know?

24 A. I don't know the number.

25 Q. Would you accept, subject to check, that

1 it's about \$335?

2 A. No, I would not. I don't know the
3 number. And I would suggest that the number you're
4 coming up with, whether it's accurate or not, is not
5 what I would consider AEP's true capacity costs
6 because I simply believe that the 355 value, as I've
7 demonstrated in my testimony, is completely
8 erroneous.

9 Q. Well, would you accept, subject to check,
10 that 94-1/2 percent of 355 is approximately 335?

11 A. No. I don't know the answer.

12 Q. Okay. If you had run the calculations
13 that you have presented in table 7 and table 8 using
14 a \$255 per megawatt-day value as the capacity price,
15 what do you think the result would have been as far
16 as your comparison? Do you think that if you ran it
17 at a \$255 per megawatt-day level, that you would have
18 found that AEP Ohio is recovering more than its
19 capacity costs?

20 A. It's possible. I don't know what the
21 number is. I haven't done the calculation.

22 Q. Let me go to your table No. 9 on page 38.
23 I think you discussed this table as well as table 10
24 with Mr. Kurtz also. You indicate in your table 9
25 that AEP Ohio is proposing to increase base

1 generation rates by 30 percent for Columbus Southern
2 Power customers in 2012. Do you see that?

3 A. Base generation revenue.

4 Q. So you make a distinction between the
5 "rates" and the "revenues"?

6 A. Well, the rates --

7 Q. What's the rate increase that they're
8 proposing?

9 A. The rate increase depends on the customer
10 class as table 10 shows. Table 9 just shows the --
11 takes Mr. Roush's workpapers and simply calculated
12 the percent change in existing to proposed 2012 base
13 generation revenues.

14 Q. My question is did you make the
15 calculation based on rates as opposed to revenues
16 that you've shown in table 9? Do you know what the
17 rate increase is for CSP on the basis that you're
18 presenting in table 9?

19 A. Perhaps I'm being dense and not
20 understanding your question. If you'll look on table
21 10, you'll see that the change in revenues for
22 different rate classes, which given a fixed amount of
23 sales -- there are different percentage values, so
24 the change in rates is different.

25 Q. I understand that. I just -- my question

1 is simply did you calculate what the base generation
2 rate increase is on a total company basis for
3 Columbus Southern Power?

4 A. Well, in table 9, line 4, it says
5 30.07 percent is the change in base generation
6 revenues.

7 Q. Yes. My question is did you calculate
8 what the increase is as far as base generation rate
9 levels? The stipulation in the ESP compared to
10 current rates. Did you make that calculation?

11 A. Not for each customer class, no.

12 Q. How about on a total company basis?

13 A. On a total company basis it would be
14 30.07 percent holding sales fixed.

15 Q. Okay. Maybe I didn't understand that.
16 So if you hold sales constant, then the rate increase
17 equals the revenue increase; is that right?

18 A. That's correct.

19 Q. Okay. And I think you mentioned that you
20 relied on information that Mr. Roush prepared in
21 order to do your analysis?

22 A. Correct.

23 Q. Did you look at Mr. Roush's testimony?

24 A. I recall reading it, yes.

25 Q. Did you look at his Exhibit DMR-1?

1 A. I believe I did. I don't have that
2 exhibit with me.

3 Q. And did you compare the values -- are you
4 familiar with the total generation rate value that
5 Mr. Roush shows in his DMR-1?

6 A. I don't have his exhibit with me so I
7 can't tell you.

8 MR. CONWAY: May I approach, your Honor?

9 EXAMINER TAUBER: You may.

10 MR. CONWAY: This is part of one of the
11 company's exhibits, it's page one of Exhibit DMR-1 to
12 Mr. Roush's testimony.

13 Q. Do you see the columns marked Total Gen,
14 start with CSP, for the 2012 rates before the
15 proposed ESP as well as the 2012 rates with the
16 proposed ESP?

17 A. Yes, I do.

18 Q. In your analysis did you compare the
19 total generation rates for CSP for 2012 different
20 than the proposed ESP to the total generation rates
21 before the proposed ESP?

22 A. No. I was comparing the base generation
23 rates that were proposed.

24 Q. And would you accept, subject to check,
25 that the total generation rate under the proposed ESP

1 is only 3.8 percent higher than the total generation
2 rate before the proposed ESP for CSP?

3 A. No. I haven't done the calculation.

4 Q. And do you see where the last column
5 under both the 2012 rates before proposed ESP as well
6 as the 2012 rates with the proposed ESP, there's a
7 Total Rate column? Do you see those columns?

8 A. Yes, I do.

9 Q. And would you agree that, subject to
10 check, that Mr. Roush's Exhibit DMR-1 shows an all-in
11 total company rate for 2012 for CSP which includes
12 generation, transmission, and distribution, of 9.56
13 cents under the proposed ESP?

14 A. I see that number, yes.

15 Q. And that the all-in rate Mr. Roush shows
16 total company before the proposed ESP is 9.37 cents?

17 A. I see that number.

18 Q. And if you were to do the same comparison
19 for OPCo using the rates shown on page 1 of DMR-1,
20 would you agree that a comparison of the all-in total
21 company rate for OPCo under the proposed ESP is 8.43
22 cents?

23 A. I see that number.

24 Q. And that the same rate before the
25 proposed ESP is also 8.43 cents?

1 A. I see that number.

2 Q. With regard to table 10, just a few more
3 questions. Your comparisons in your table 10 in your
4 testimony are of base generation rates which are
5 before fuel, before environmental in the case of the
6 pre-proposed ESP rates, correct?

7 A. It's the change in base generation rate
8 revenues for the major rate classes.

9 Q. It doesn't include fuel, correct?

10 A. That's correct.

11 Q. And I think you mentioned, you said you
12 didn't compare the total generation rates pre- and
13 post-proposed ESP, correct?

14 A. That's correct.

15 Q. And you didn't incorporate into your
16 table 10 analyses the impacts in 2012 of the load
17 factor rider on the 2012 ESP proposed rates, did you?

18 A. No. Again, I wanted to focus on base
19 generation revenues to highlight the changes in how
20 AEP was allocating those base generation revenues to
21 different customer classes.

22 Q. And you didn't incorporate into your
23 table 10 analyses the impacts of the market
24 transition rider either, did you?

25 A. No, because as I testified, I think the

1 market transition rider is a clear cross-subsidy and
2 it's anticompetitive. And it's based on market rates
3 that simply make no sense.

4 Q. I'd like for you to look at the base
5 generation levels on DMR-1, page 1, and let's just
6 start with Columbus Southern again. That's the first
7 column on the left side that has values in it,
8 correct?

9 A. Correct.

10 Q. And the RS or residential base generation
11 rate pre-proposed ESP is 2.01 cents, correct?

12 A. Correct.

13 Q. And then GS-1 is 4.57 cents, right?

14 A. I guess it is.

15 Q. And that's, what, 125 percent higher than
16 the residential base generation rate?

17 A. I haven't -- I haven't done the
18 calculation. It's more than double the residential
19 rate.

20 Q. So more than 100 percent.

21 A. Correct.

22 Q. And then the GS-2 base generation rate
23 pre-proposed ESP is 4.4 cents?

24 A. Correct.

25 Q. And that's also more than a hundred

1 percent times the residential price?

2 A. That's correct.

3 Q. Okay. And then it looks like the GS-3
4 rate pre-proposed ESP is in the same ballpark as the
5 residential price per kilowatt-hour, right?

6 A. Yes, it shows 2 -- this is cents per
7 kilowatt-hour, 2.2 cents per kilowatt-hour.

8 Q. And the GS-4 rate is .94 cents?

9 A. Correct.

10 Q. Which is half the residential rate,
11 right?

12 A. Approximately.

13 Q. In a competitive environment would
14 generation rates that show these kind of
15 relationships be sustainable?

16 A. Define your term "sustainable."

17 Q. Well, would you have all these customer
18 classes ended up paying these amounts in a, or these
19 relative amounts in a competitive environment?

20 A. I don't know. I haven't done that study.

21 Q. Okay. Does it look to you like there may
22 be subsidy effects that are embedded in these rates?

23 A. I have not done the analysis. I can't
24 tell you what the basis for those rates are. I can
25 tell you that the basis for the new 2012 rates is --

1 whereas it's supposedly based on market
2 relationships, that those market relationships, as I
3 explain in my testimony, are simply arbitrary because
4 they change depending on what capacity cost
5 assumption's used. That makes no sense.

6 Q. And would you agree that the base
7 generation rates for the four customer classes that
8 are shown in the portion of DMR Exhibit 1, page 1
9 under 2012 rates post-proposed ESP are showing much
10 less variation than the pre-proposed ESP generation
11 rates?

12 A. Are you talking about relative to one
13 another?

14 Q. Yes.

15 A. I would agree with that.

16 Q. Okay.

17 MR. CONWAY: Your Honor, that's all I
18 have.

19 EXAMINER TAUBER: Thank you.

20 Mr. Margard, do you have any questions on
21 cross-exam?

22 MR. MARGARD: No, thank you, your Honor.

23 EXAMINER TAUBER: Mr. Lang, would you
24 like redirect?

25 MR. LANG: If we could have just a few

1 minutes.

2 EXAMINER TAUBER: Sure. Let's go off the
3 record.

4 (Recess taken.)

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

7 Mr. Lang, on redirect?

8 MR. LANG: Your Honors, FirstEnergy
9 Solutions has no redirect and we would move FES
10 Exhibit No. 2.

11 EXAMINER TAUBER: Are there any
12 objections to FES Exhibit No. 2 which is the direct
13 testimony of Dr. Lesser?

14 MR. CONWAY: No.

15 EXAMINER TAUBER: Hearing none, FES
16 Exhibit No. 2 shall be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 MR. LANG: Thank your Honors.

19 EXAMINER TAUBER: You may be excused.

20 Thank you.

21 Mr. Kutik.

22 MR. KUTIK: Your Honor, for FES's next
23 witness we call Michael Schnitzer.

24 EXAMINER TAUBER: Please raise your right
25 hand.

1 (Witness sworn.)

2 EXAMINER TAUBER: Thank you.

3 MR. KUTIK: Your Honor, at this time we'd
4 like to have marked as FES Exhibit 3 the testimony of
5 Michael M. Schnitzer on behalf of FirstEnergy
6 Solutions Corp. Revised Public. And we'd like to
7 have marked as FES Exhibit 4 the testimony of Michael
8 M. Schnitzer on behalf of FirstEnergy Solutions
9 Revised Confidential. They were filed today, your
10 Honor, in this matter.

11 The motion for protective order for
12 certain portions of Exhibit 4, what we identified as
13 Exhibit 4, and those portions have been highlighted
14 to indicate which are confidential, which portions
15 are confidential.

16 EXAMINER TAUBER: Mr. Conway.

17 MR. CONWAY: Your Honors, I'd just like
18 to on the record move on behalf of AEP Ohio
19 separately but in concert with FirstEnergy Solutions
20 for an order protecting from disclosure
21 Mr. Schnitzer's confidential version of the
22 testimony.

23 EXAMINER TAUBER: Thank you.

24 MR. KUTIK: May I have those documents so
25 marked, your Honor?

1 EXAMINER TAUBER: Yes, those shall be so
2 marked.

3 (EXHIBITS MARKED FOR IDENTIFICATION.)

4 MR. KUTIK: May I proceed?

5 EXAMINER TAUBER: You may.

6 - - -

7 MICHAEL M. SCHNITZER

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

10 DIRECT EXAMINATION

11 By Mr. Kutik:

12 Q. Could you introduce yourself, please?

13 A. Yes. My name is Michael Schnitzer.

14 Q. Mr. Schnitzer, where do you work? What
15 do you do?

16 A. I'm a Director of the NorthBridge Group,
17 a management consulting firm, headquartered in
18 Concord, Massachusetts.

19 Q. Are you familiar with exhibits for FES 3
20 and 4?

21 A. I am.

22 Q. What are they?

23 A. They are my revised prepared testimony in
24 this proceeding.

25 Q. Do you have any additions or corrections

1 to make to either of those exhibits today?

2 A. I do not.

3 Q. If I asked you the questions that appear
4 in those exhibits, would your answers be as appear in
5 those exhibits?

6 A. They would.

7 MR. KUTIK: No further questions.

8 EXAMINER TAUBER: Mr. Kurtz.

9 MR. KURTZ: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Kurtz:

13 Q. Good afternoon, Mr. Schnitzer.

14 A. Good afternoon.

15 Q. I'd like to ask you about the maximum
16 above-market rate that you've calculated, it starts
17 on page 30 through 33 of your testimony. Let me
18 just -- essentially your maximum above-market rate is
19 your calculation of a cost-based capacity rate for
20 AEP Ohio?

21 A. Well, it's derived from costs, but I
22 think the way I would characterize it would be if the
23 Commission were to determine both as a matter of law
24 and policy that an above-market capacity rate was
25 appropriate, that this would be the maximum

1 conceivable rate that I could see them a policy or
2 economic matter reaching.

3 Q. And so you criticize the \$347.97 per
4 megawatt-day cost-based capacity number that AEP has
5 calculated in the 2929 case?

6 A. I do.

7 Q. And you also say that the \$255 per
8 megawatt-day rate in the stipulation is above the
9 maximum above-market rate that you've calculated at
10 \$162 per megawatt-day.

11 A. That's correct.

12 Q. Okay. The reason you -- well, this is
13 not the only reason, it's certainly one of the main
14 reasons, let's go to page 32 for the difference
15 between what you calculate and what AEP calculates.

16 On line 5, I'll just read the sentence,
17 "The reason for this is that, if a customer shops
18 with a CRES supplier, AEP Ohio no longer has to
19 supply energy or ancillary services to that customer.
20 This would then allow AEP Ohio to sell the 'freed up'
21 energy and ancillary services' --

22 MR. KUTIK: What page are we on?

23 MR. KURTZ: I'm sorry. Page 32.

24 MR. KUTIK: Line?

25 MR. KURTZ: Thirty-two, line 5. I'll

1 start again.

2 A. I see the sentence. I'm in the
3 confidential version and I'm seeing that, a slightly
4 different sentence, but the same gist of it on the
5 top of page 32.

6 Q. Well, read the sentence that I'm -- I
7 guess I don't know what version I'm looking at.

8 A. I have the sentence, we'll see if this
9 gets to your question. "While I am not an attorney,
10 it is clear from an economic perspective that if a
11 customer shops with an alternative supplier, the
12 utility would be able to recover the market value of
13 the 'freed up' energy and ancillary services in the
14 competitive market."

15 Q. Read the "therefore" then as well.

16 A. "Therefore, if the Commission does allow
17 AEP Ohio to recover all or some portion of its
18 above-market capacity costs from customers, which
19 again, I do not recommend or endorse, these market
20 revenues along with other sources of revenue
21 available to the Company should be credited against
22 its total generation costs."

23 Q. Okay. So this is the off-system sales
24 that the AEP Ohio would make with the freed-up
25 energy?

1 A. It's the value of the freed-up energy
2 valued at market, yes.

3 Q. Valued at market. Valued at PJM LMP?

4 A. Correct.

5 Q. I hope I have the right exhibit. You've
6 quantified this on your Exhibit No. 5. Is that
7 correct?

8 A. Yes, Exhibit 5 goes through the
9 methodology and the numbers underlying the 162,
10 that's correct.

11 Q. I'd like to ask you some questions about
12 that, MMS Exhibit 5. I don't want to read it line
13 for line. You've assumed if all the customers
14 shopped with a CRES supplier in 2010, that all of the
15 energy from the AEP Ohio units would be freed up to
16 be sold at market?

17 A. Yes. That's the way this is drafted, but
18 just to be clear, that we talk about this number in
19 two different contexts, and just to make a clear
20 distinction, we talk about it as to the maximum rate
21 to be charged to a CRES supplier, we also talk about
22 it as the maximum rate in an MRO context, if you
23 will.

24 So if we're talking about an MRO context,
25 this would not be a CRES supplier-type thing, this

1 would be if all the SSO load was competitively
2 procured, then what would AEP have freed up at that
3 point under that world.

4 So I just want to be careful whether
5 we're talking about, you know, CRES supplied within
6 the ESP or whether we're talking about the MRO
7 alternative.

8 Q. Okay. I'm just talking, just the way
9 you've done this you've assumed that all the energy
10 would be sold at market price.

11 A. That's right.

12 Q. So you start with a fixed production
13 cost, number one, correct?

14 A. Yes. The pieces you're about to tick
15 through are depicted pictorially on page 2, if you
16 want to --

17 Q. Yeah. That was very nice.

18 Okay. What return on equity did you use
19 for the fixed production costs?

20 A. I don't recall offhand. We mirrored the
21 AEP calculation.

22 Q. Okay. And you used all of the net rate
23 base for generation as of 2010?

24 A. Yes, 2010 Form 1 data, that's right.

25 Q. So you did not do what Dr. Lesser did and

1 stopped at 2000?

2 A. This is as per books 2010.

3 Q. Okay. Point two, then the costs that you
4 have, the variable production costs, what are those?

5 A. Fuel, variable O&M, environmental, AEP
6 actually classifies certain capacity-related charges
7 as variable costs as well, but it's whatever they
8 classified as variable production costs.

9 Q. Now, for account 501 fuel, did you take
10 that off the FERC form 1?

11 A. Yes.

12 Q. Okay. Did you hear the discussion about
13 the deferral?

14 A. I overheard part of the discussion about
15 a deferral, that's right.

16 Q. Do you realize that AEP Ohio is not
17 recovering all of its fuel costs, about 130 million
18 in 2010 was deferred?

19 A. I don't know the precise number, but I
20 understand there is a deferral amount in that year,
21 yes.

22 Q. Would you understand that the 501 would
23 have a negative expense for the amount of the
24 deferral and there would be an offsetting accounting
25 entry in a regulatory asset account?

1 A. It may not. I'm not familiar with the
2 particular accounting.

3 Q. Well, would you agree that if
4 \$130 million of fuel costs were deferred and not
5 counted on the income statement, it were ignored
6 essentially, that the variable production costs in
7 reality would be \$130 million greater?

8 A. If there were \$130 million of actual fuel
9 expense not recorded in 501 in that year, I would
10 agree that these numbers would be understated.

11 Q. So if we turn the page, when you have
12 your pictorial description, your 1.721 billion of
13 variable production costs would be increased by
14 130 million?

15 A. Again, under this.

16 Q. Under this hypothetical that we're
17 talking about.

18 A. Yes.

19 Q. Okay. This is the big adjustment, No. 3,
20 I'll just read it, the "Non-AEP pool sales revenues:
21 The largest source of revenue available to AEP Ohio's
22 generating fleet when customers shop comes from
23 generating and ancillary services in the wholesale
24 market."

25 This is the freed up energy?

1 A. Yes, it is.

2 Q. Okay. So for your quantification of
3 No. 3, "Energy revenues are calculated by multiplying
4 each generating unit's hourly output by the
5 applicable Day-Ahead LMP in 2010."

6 That means you assume that the full
7 production from the plants against net of losses was
8 sold at LMP.

9 A. Yes. There was a slight adjustment here
10 to exclude the energy that was sold on an
11 intercompany basis at a different price which shows
12 up in the next bar, but for all the freed up energy
13 that would otherwise have gone to retail customers,
14 yes, your statement is correct.

15 Q. Tell me about the intercompany, how did
16 you deal with the intercompany energy?

17 A. Well, in 2010 actual there were
18 intercompany net sales of capacity and also net sales
19 of energy.

20 Q. Let's just stick with the energy, we'll
21 get to the capacity equalization. Just for the
22 intercompany energy transfers.

23 A. Yes. There was I think, if memory
24 serves, about, and I'm looking at the fourth bar over
25 on that figure.

1 Q. Okay.

2 A. The 570 which is labeled "AEP pool
3 revenues from net sales."

4 Q. Right.

5 A. That has both capacity and energy in it.
6 The energy component I think in 2010 was roughly
7 \$170 million.

8 Q. In your footnote 4 you say that AEP Ohio,
9 primarily Ohio Power, surplused at 398 million of
10 capacity payments from the affiliates.

11 A. Yes.

12 Q. And so if there was 570 of net capacity
13 and energy, the energy portion would be your
14 172 million.

15 A. Approximately, yes.

16 Q. So this is revenue -- when the affiliated
17 companies swap energy, it's at cost, correct?

18 A. It is.

19 Q. Okay. So that really wouldn't have any
20 affect on the margins.

21 A. That's what this calculation is designed
22 to ensure.

23 Q. Okay. But on your No. 3, the off-system
24 sales revenue, which is essentially what I understand
25 the total volume production from the power plants --

1 A. No, that's --

2 Q. -- less the amount sold to the affiliates
3 at cost, that's the volume of energy that you have
4 modeled in LMP?

5 A. Valued at market, that's correct.

6 Q. Okay. Now, you understand, or you do it,
7 you've addressed the pooling agreement concepts here,
8 the fact that Ohio Power gets capacity equalization
9 revenues from the deficit companies?

10 A. Yes.

11 Q. And that's included in your No. 4. And
12 you've accounted for the fact that the affiliated
13 companies, Ohio Power, Columbus Southern, Indiana and
14 Michigan, Kentucky Power, Appalachian, interchange
15 energy on a cost basis, you've accounted for that.

16 A. Yes.

17 Q. Now, for No. 3 did you account for the
18 fact that for off-system sales profits or margins,
19 that those are also shared among the affiliated
20 companies on a member load ratio basis?

21 A. No, I didn't. I didn't think it would be
22 appropriate to do so.

23 Q. Now, in the real world when energy is
24 freed up from shopping in Ohio and that power is sold
25 into the PJM market, the profits are shared among the

1 affiliates based upon member load ratio. Do you
2 understand that that's the way it works?

3 A. I understand that's the way it works. To
4 my knowledge in other circumstances where a portion
5 of a system is in a competitive jurisdiction and
6 other portions are not, there are modifications to
7 the agreement to prevent that kind of leakage of
8 benefits across jurisdictional lines.

9 What's happening here is that AEP Ohio's
10 customers, so long as they are customers of AEP Ohio,
11 have first call on this energy at cost and magically
12 when they shop, somebody else has first call on that
13 energy or first call on the profits from selling that
14 energy. That's not a symmetric situation. That's
15 not a situation that supports retail competition.

16 In most jurisdictions, other
17 jurisdictions that I'm aware of make modifications to
18 the agreements to prevent that from happening, and
19 that's what would -- should and would happen.

20 Q. Well, you know, you use the word
21 "magically," but that's exactly what does happen
22 under the FERC-approved AEP interconnection
23 agreement, those off-system sales profits do get
24 shared to Appalachian Power, Kentucky Power, and
25 Indiana and Michigan based upon member load ratio.

1 It's not magic, it's by operation of
2 federal law

3 A. Well, it's by operation of a current
4 tariff which is not a reasonable tariff in a retail
5 competition circumstance and which in other analogous
6 circumstances there have been applications to modify
7 that tariff.

8 Q. Well, but if we're looking in the real
9 world now, shouldn't we model the way the system is
10 required to work under the interconnection agreement?

11 A. From a policy perspective, I would
12 suggest to the Ohio Commission the answer to that is
13 no. When you're asking yourself how should retail
14 competition be implemented, is it reasonable to leave
15 in place an agreement which says if you don't shop,
16 you get the benefit of low-cost energy at cost, and
17 if you do shop, costs for Ohio collectively go up by
18 roughly \$500 million a year, that to me is not a
19 reasonable agreement to be operating under in this
20 kind of a world and it would be reasonable to modify
21 it.

22 Q. Well, do you think the Ohio Commission
23 has jurisdiction to modify the AEP interconnection
24 agreement, the six-state pooling agreement that's
25 been approved by FERC? Do you think any state

1 commission can unilaterally change that agreement?

2 A. I'm not suggesting that.

3 Q. Well, then how can you model something
4 that doesn't reflect reality? I mean, you may think
5 it's unreasonable, but the FERC and the other
6 affiliated companies live under that agreement every
7 day.

8 MR. KUTIK: I'm sorry, your Honor. I'm
9 not sure that's an objection so I'll object. That's
10 argument.

11 Q. Isn't that true?

12 MR. KUTIK: I still will object, that's
13 an argument.

14 EXAMINER SEE: Okay.

15 A. I think, as I've already stated, that I'm
16 not disputing that that is the nature of the
17 agreement today. What I'm saying is that agreement
18 is susceptible to change and that in other analogous
19 circumstances such changes have been made, and that
20 the Ohio Commission has whatever its jurisdiction is
21 to determine retail competition policies, and that's
22 what I'm testifying about.

23 Q. Okay. So you're testifying -- you're
24 quantifying the maximum above-market capacity rate
25 that AEP Ohio should be able to charge if the Ohio

1 Commission could change the FERC-approved
2 interconnection agreement the way you think is
3 reasonable.

4 A. No. I'm not premising it on the Ohio
5 Commission being able to change that agreement. I'm
6 saying that if the Ohio Commission, back to where we
7 started, found from both a legal and policy
8 perspective it was appropriate to set an above-market
9 capacity charge, that it should not, under those
10 circumstances it should not set it at a rate which is
11 proposed by AEP which would countenance a
12 \$500 million a year cost shift from Ohio customers to
13 other AEP stakeholders, and that if it's within its
14 prerogative to set the rate at a different level, the
15 162 would be the maximum that would be economically
16 reasonable under those circumstances.

17 Q. Now, you understand that part of the
18 stipulation deals with this very issue, that the pool
19 agreement is going to have to be modified to account
20 for the fact of Ohio retail competition and
21 divestiture of Ohio assets. That's contemplated to
22 change that very agreement.

23 A. It is contemplated and my understanding
24 is it's contemplated to be accomplished by
25 February 2013.

1 Q. Do you know what -- you do know what the
2 member load ratio of Ohio Power and CSP is? It's in
3 your exhibits.

4 A. I think they're roughly 20 percent
5 apiece, something like that.

6 Q. About 41 percent of the total system?

7 A. Yes, sir.

8 Q. So 59 percent of the off-system sales
9 margins that you modeled would, in fact, under the
10 federal law, be flowed to Virginia, West Virginia,
11 Indiana, Michigan, and Kentucky.

12 A. Under the current tariff, so long as that
13 tariff stayed in place, that would be correct.

14 Q. Do you know whether ratemaking treatment
15 of those off-system sales margins, do you know, for
16 example, whether in West Virginia those additional
17 off-system sales profits would be flowed through
18 automatically to West Virginia ratepayers under their
19 version of the FAC which is called the ENEC?

20 A. My broad understanding is that in the
21 other AEP jurisdictions the policies are mixed, some
22 have a sharing of off-system revenues, some flow them
23 through, but in any event the beneficiary is not Ohio
24 consumers.

25 Q. That's right. The beneficiary would be

1 the ratepayers in West Virginia where they have
2 sharing or the ratepayers in Kentucky or the
3 ratepayers in Indiana --

4 A. Or the corresponding shareholders.

5 Q. To the extent they're not flowed through
6 automatically to ratepayers.

7 A. Yes.

8 Q. But you and I both have agreed that part
9 of the additional off-system sales margins would flow
10 through automatically to those ratepayers.

11 A. Right, emphasis on the word "part."

12 Q. Yeah. It's a hundred percent in
13 West Virginia.

14 A. In that one jurisdiction, yes.

15 Q. Yeah. So under a scenario that we have
16 here where there's additional shopping, additional
17 off-system sales are made, those off-system sales
18 profits are shared with the various states, and the
19 ratepayers in some of those states, at least in part,
20 get the automatic benefit, do you think that should
21 be taken into account by the Commission when deciding
22 the issues in this case?

23 A. No. Whether the beneficiaries of the
24 cost transfer from Ohio to other jurisdictions, are
25 customers in other jurisdictions or shareholders of

1 AEP, seems to me from the Ohio perspective the
2 question is should transition, for instance, to an
3 MRO necessitate a transfer of up to \$500 million a
4 year, a net increase in cost for Ohio consumers of
5 \$500 million a year for the beneficiaries that you
6 mention, which would include other customers and
7 other shareholders, and I don't think that's a
8 reasonable policy for the Commission.

9 Q. You don't think the Ohio Commission would
10 want to know that decisions they may make in this
11 case would have the effect of providing, I'll call
12 them windfall, you can disagree with that, windfall
13 benefits to the ratepayers in West Virginia?

14 A. Well, they're windfall benefits to
15 whomever, be that the shareholders or other
16 customers. My point is the Ohio Commission ought to
17 be concerned that there is such a windfall, you know,
18 a cost transfer, and they obviously could choose to
19 be concerned about whatever they like, but it seems
20 to me the fact that there was such a transfer, its
21 magnitude would seem to me would be the first order
22 of concern.

23 And that's what would happen under a
24 \$347 a megawatt-day capacity price coupled with an
25 MRO type of a plan, would be that over time as the

1 competitive procurement was phased in, net costs in
2 Ohio would go up by \$500 million a year and the
3 beneficiaries would be customers in other states and
4 to some extent the shareholders.

5 Q. Doesn't that relationship, to you, argue
6 in favor of a transition mechanism that would try to
7 limit the windfall benefits to ratepayers in other
8 states at the expense of, well, just windfall
9 benefits to ratepayers in other states?

10 A. Well, you say "transition mechanism."
11 You know, the resolution of this issue in terms of
12 the interconnection agreement is most directly under
13 AEP's control rather than anybody else's.

14 So, you know, I can't speak to whether --
15 how long it would take to implement the change,
16 whether they should have already implemented the
17 change, but to testify to tell the Ohio Commission
18 that you need to pay us \$347 a megawatt-day because
19 that's what keeps us whole assuming a \$500 million
20 transfer to other jurisdictions I think is not a
21 reasonable position.

22 Q. Let's move to your Exhibit 3 if we could.

23 A. I'm sorry? Three?

24 Q. Yeah. Your Exhibit 3.

25 A. I have it.

1 Q. Okay. Really, this is your correction to
2 the competitive benchmark price, and really this is
3 the question of how you price capacity, this exhibit,
4 you've priced it at the PJM RPM whereas Ms. Thomas
5 has priced it at a blend of PJM RPM plus, did she use
6 255?

7 A. They used 255 for one run and RPM for
8 another and then she averaged the two.

9 Q. Okay. So in a sense this is one of the
10 crux issues of the case, don't you agree, as to what
11 you assume about how capacity should be priced?

12 A. It's one of a small number of crux issues
13 that determine whether you think the ESP pricing is
14 more favorable or not.

15 Q. That's fine. We have to make an
16 assumption about how the 2929 capacity pricing case
17 would turn out and how the section 205 FERC case may
18 turn out, how the section 206 FERC case may turn out
19 and --

20 A. I wouldn't agree with that.

21 Q. Well, let me -- if you assume that AEP
22 would win in any of those cases and get \$355 per
23 megawatt-day for capacity, then the ESP looks pretty
24 God darn good, doesn't it? No?

25 A. No, I wouldn't agree with that.

1 Q. You don't think so?

2 A. Those cases are all about the capacity
3 price that we charge to a CRES supplier. They don't
4 bear on the question of under the portion of the
5 statute that deals with an MRO whether the Commission
6 is authorized to approve an above-market price for
7 capacity in the context of an MRO.

8 And I'm advised by counsel that that's a
9 separate legal question and the resolution of these
10 cases about capacity price to CRES suppliers is
11 legally distinct from the resolution of the question
12 of in an MRO comparison, which is what we're doing,
13 what would be the price, the capacity price
14 applicable in the MRO.

15 Q. Let me see if I understand this. So you
16 think that if the Commission ruled tomorrow in the
17 2929 case that AEP was correct as to how they should
18 charge CRES suppliers for capacity, that in an MRO
19 comparison we would disregard the decision in 2929
20 and use RPM instead?

21 A. I'm advised by counsel, and I have a
22 footnote to that effect in my testimony, that in the
23 context of the MRO, that FE believes the statute does
24 not permit an above-market capacity price.

25 Q. Even if the Commission had determined

1 that that was the appropriate state compensation
2 mechanism in the 2929 case?

3 A. Which is a CRES context in a different
4 part of the statute, yes.

5 Q. And even if the FERC ruled in AEP's
6 favor.

7 A. That's my understanding, I've been so
8 advised.

9 Q. Is there some part of the statute --

10 A. Yes.

11 Q. Okay. Let's hear it.

12 A. The section that I've been advised is
13 relevant here is 4928.142(C). And there's a
14 paragraph in that section which begins "All costs
15 incurred." And that's the section of the statute
16 that I've been told by counsel provides for
17 market-based recovery of capacity only in the context
18 of an MRO.

19 Q. Despite -- even if the Ohio Commission
20 and FERC both said that that was not the lawful rate
21 in Ohio.

22 A. That's what I've been advised.

23 Q. Wow. Okay. Well, I guess everyone's
24 entitled to an opinion.

25 MR. KUTIK: Objection. Move to strike.

1 MR. KURTZ: I'll withdraw the comment.

2 EXAMINER TAUBER: Thank you.

3 Q. Let's look at line -- in your Exhibit 3
4 you've got a difference in capacity pricing versus
5 what Ms. Thomas used for capacity, \$7.79 per, is this
6 megawatt-day pricing?

7 A. Yes. You're comparing her blended, which
8 is the third column of numbers, with the fourth
9 column, which is mine, all at RPM.

10 Q. Right.

11 A. Yes.

12 Q. Are we talking, yeah, dollars per
13 megawatt-day here?

14 A. No, these would be --

15 Q. Dollars per megawatt-hour.

16 A. These are dollars per megawatt-hour in
17 Exhibit 3.

18 Q. So this \$7.79 per megawatt-hour
19 difference is probably the biggest difference between
20 you and AEP in terms of the MRO-ESP comparison, the
21 biggest dollar amount difference?

22 A. The pool modification rider is of a
23 similar magnitude. Those would be the top two. And
24 then going the other direction, the environmental
25 investment cost recovery rider which favors the ESP,

1 higher costs that would otherwise be required in my
2 high case, is of a similar magnitude going the other
3 direction.

4 Q. And then you've got three ripple effects
5 of changes in the capacity prices, you've got a
6 65-cent per megawatt-hour load following ripple
7 effect and a 7-cent per megawatt-hour losses and
8 42-cent per megawatt-hour transaction risk adder. It
9 looks like just over another dollar per megawatt-hour
10 in the ripple effects?

11 A. Yes. And just to clarify, we used
12 Ms. Thomas's model for these purposes so those were
13 the interrelationships she had built into her
14 calculation which when we put in a new capacity
15 price, if you will, rippled through.

16 Q. Okay. You understand that when AEP
17 calculates what they consider to be the net benefit
18 of the ESP settlement, they used something other than
19 RPM capacity pricing and they say it's an
20 800-something million dollar benefit to consumers,
21 and you and maybe others have said no, you should use
22 RPM and it's a \$2 billion loss.

23 A. Yeah, I don't recall the \$2 billion
24 number, but a substantial loss.

25 Q. A substantial loss. So how you -- the

1 perspective that one views on that particular issue,
2 which I think is the phrase that Dr. Shanker used, is
3 critical to at least to -- reviewing this case?

4 A. Sure. And as I tried to indicate in my
5 previous response, that, as it turns out, has both a
6 legal component and then a policy and economic
7 component.

8 Q. Okay. Let's talk about the pool
9 modification rider if we could, I think that's on
10 page 19 of your testimony in Exhibit 2 but it may be
11 page -- well, I'm sorry. Let's just turn one page
12 and go to your Exhibit 2. You've got it quantified
13 here nicely.

14 A. So we're on Exhibit 2 now?

15 Q. Yeah. You've got a high and low case for
16 the pool modification rider.

17 A. I do.

18 Q. Basically, the pool modification rider is
19 if as a result of going to FERC and redoing the AEP
20 interconnection agreement to divest Ohio generation
21 AEP Ohio has a loss of less than \$50 million, they
22 can't even ask the Commission for a recovery of that;
23 is that correct?

24 A. That's correct.

25 Q. If the loss is more than 50 million, they

1 could ask the Commission for recovery but there's no
2 guarantee the Commission would grant recovery; is
3 that right?

4 A. That's my understanding.

5 Q. Okay. You've calculated a high case/low
6 case as to how that proceeding may turn out by
7 assuming that generation would be transferred to the
8 affiliates at a market-based capacity, that would be
9 your high case scenario.

10 A. Well, whether they were transferred or
11 whether those relationships were terminated and
12 AEP Ohio then was able to sell it at the market
13 price, but both the capacity and the energy that we
14 were currently -- we were talking about a few moments
15 ago, that bar on Exhibit 5, the methodology was to
16 assume both of those went from their current cost
17 basis to the relevant market for capacity that would
18 have been the RPM capacity price, and for energy it
19 would have been the LMP price that we were talking
20 about, and the net of those two is what I'm measuring
21 as the effect of the pool termination, which is
22 precisely the same methodology that AEP itself used
23 in a filing in Indiana in 2009.

24 Q. Okay. Were you here yesterday when
25 Dr. Shanker testified that it's unlikely but he

1 agreed that the pool modification could be a benefit
2 to AEP?

3 A. Are you asking if it's mathematically --
4 I was not in the room yesterday so I don't know.

5 Q. He said it was unlikely but said
6 possible. You didn't model a benefit, you just
7 modeled a high case/low case cost?

8 A. Yeah, see, I guess -- I don't know what
9 question Dr. Shanker was asking, but if the specific
10 question is between now and May 2015 when RPM prices
11 are already known, is it possible that pool
12 termination could be a benefit, my answer would be
13 "extremely remote." There's no uncertainty about the
14 capacity prices that are out there in that time
15 period.

16 Q. Let's set the stage here. How many years
17 from now are we all going to be at FERC for the pool
18 modification case? Is it next year or a year and a
19 half? I forget the timing.

20 A. My understanding, if I'm remembering the
21 calendar, is the consultations start very early in
22 2012 and the FERC process goes forward, I think's
23 Appendix B to the stipulation lays out that time
24 frame, but I think it concludes by February 2012 --
25 '13, excuse me, to my recollection.

1 Q. So AEP Service Corp. will make a filing
2 on behalf of all the AEP-East affiliates at FERC
3 proposing a way to terminate the existing pool and
4 create a new pool with the three operating companies?

5 A. I don't know what the basis of the filing
6 would be that AEP would make.

7 Q. Well then how can you model a high
8 case/low case and quantify hundreds of millions of
9 dollars of cost?

10 A. As I said, my methodology, I mean, you
11 hypothesized not just a pool termination but the
12 reconstitution of a new pool and I have no idea what,
13 you know, what the residual system would decide to
14 do.

15 But if you're talking about the pool
16 termination part of it, the methodology that I used
17 is the same methodology that AEP itself used in a
18 collaborative study that was filed in Indiana in
19 2009.

20 Q. What if the result of the pool
21 termination is all the generation is transferred to
22 the unregulated affiliate at net book cost, would
23 there be any harm to the utilities at that point?
24 Would there be any loss?

25 A. My understanding is that AEP Ohio has

1 agreed that the measure of injury, if you will, is
2 the lost capacity revenues offset by any increase in
3 energy contribution. And by that measure I think
4 using AEP's own forecasts of what the pool transfer
5 price would be, if the arrangement was not terminated
6 through this time period, then the forward energy
7 prices and the RPM capacity prices for the market
8 prices and applying the same methodology that AEP has
9 used to estimate the impacts of pool termination on
10 AEP Ohio, that's my high case.

11 And my low case is basically saying
12 suppose there's some negotiated outcome which cuts
13 that number in half, and that's my low case.

14 Q. What if AEP -- AEP doesn't get to decide
15 this by itself, does it?

16 A. Well, AEP, the pool termination is
17 obviously subject to FERC jurisdiction. It's a FERC
18 tariff. But I don't understand, decide what? I mean
19 if the termination is such that AEP -- that the pool
20 arrangements are terminated and AEP can no longer
21 transfer capacity to its sister companies after
22 September 2013, that's the effect.

23 Q. Well, what if the result of the FERC
24 hearing is that FERC says that the transfer from the
25 Ohio utilities to the unregulated affiliate will be

1 at net book cost? Is there any -- is there any harm
2 to AEP Ohio? Is there any -- it's booked at zero
3 loss, zero gain.

4 A. I don't think -- I don't know that that's
5 necessarily relevant. The question is, as I
6 understand it, is what's the loss of, net loss of
7 capacity revenues that AEP Ohio will experience.

8 And if under your hypothetical which,
9 where a transfer is contemplated, you know, to a
10 separation, if you will, from the generation from AEP
11 Ohio, pool termination rider wouldn't be in the
12 stipulation, there would be no need for it under the
13 arithmetic that you were just describing.

14 But what we do know is that the pool
15 termination rider and six or seven other riders were
16 in the initial ESP, every rider except two was
17 eliminated during the negotiations and so the
18 stipulation doesn't have five or six other riders
19 which are detailed on page 6 of my testimony. And
20 what we're left with are two riders, the fuel
21 adjustment clause rider and the pool modification
22 rider.

23 And I think that the only conclusion, the
24 only reasonable conclusion one can draw from that is
25 that AEP thinks that that's important to preserve.

1 Not that it would have a zero value, otherwise it
2 would have been negotiated away like six other riders
3 in the process.

4 So I think to sit here and to suggest
5 that it could be something else and it could be zero,
6 maybe in some conceptual or theoretical sense may be
7 true, but the question is what's consistent with the
8 actual facts that have transpired here since the
9 initial ESP was filed. And I think a reasonable
10 reading of those facts is that AEP was unwilling to
11 give up the pool termination rider when they gave up
12 several other riders, and the only other rider that
13 they refused to give up was the fuel rider, and I
14 think it's very reasonable to conclude that they have
15 an expectation that there might be a claim for a
16 significant sum of money under that rider and hence
17 their reticence to negotiate it away.

18 Q. Well, there's a slightly different
19 interpretation of that rider, that is if the costs
20 are below 50 million, AEP cannot even ask the
21 Commission for permission to recover them and if --
22 so that by itself, if it's 49.9 million, AEP can't
23 even ask this Commission for recovery.

24 A. Well, that's --

25 Q. How does that hurt AEP? That helps

1 consumers, doesn't it?

2 A. No, but I think that proves too much and
3 in so doing it proves my point. If AEP thought the
4 actual injury was going to be \$50 million or less and
5 they were willing to agree to a \$50 million
6 threshold, they would have negotiated the thing right
7 out of the deal.

8 The only reason that they would keep a
9 rider in that had a \$50 million threshold is if they
10 thought there was a pretty good chance that the
11 number would be more than 50 million, which my
12 analysis suggests is absolutely right.

13 Q. Well, whether it's more than \$50 million,
14 the only right AEP has under the stipulation is to
15 ask the Commission please give us recovery.

16 A. Sure. And the point is they did not
17 negotiate that right away, they did negotiate away
18 several other proposed riders, and I don't see how
19 it's reasonable to suggest that notwithstanding that
20 they clung stubbornly to this particular rider that
21 really they don't expect to recover anything from it.
22 I don't think that that is a reasonable explanation
23 of what's happened here.

24 Q. Well, you weren't in the negotiations.

25 A. I was not, but I'm looking at the facts

1 that I've recited to you and I don't see another
2 reasonable way to interpret it.

3 Q. Let's go back to the FERC proceeding.
4 AEP will make an application to FERC or AEP Service
5 Corp. on behalf of all the affiliates will make an
6 application to FERC under section 201 I think of the
7 Federal Power Act to modify -- to terminate the pool
8 and maybe start a new pool. At least they'll file
9 something at FERC, right?

10 A. They'll file something at FERC and it
11 sounds like it ought to at least include termination
12 with respect to AEP Ohio's participation.

13 Q. So then we'll have the state commissions
14 from Indiana, Michigan, Ohio, Kentucky,
15 West Virginia, and Virginia intervening to protect
16 their interests, right?

17 A. I would suspect there will be a number of
18 intervenors, yes.

19 Q. All the consumer advocates from all the
20 different states.

21 A. Sure.

22 Q. Okay. All the industrial groups.

23 A. As I said, I think there will be a lot of
24 people intervening.

25 Q. FES will intervene, right, most likely?

1 A. I can't speak for FES.

2 Q. Municipal utilities, transmission users,
3 PJM, it will be a Cecil B. DeMille cast of thousands,
4 won't it?

5 A. It will be a well-attended event.

6 Q. But you're sitting here and predicting
7 the outcome of that well-attended event with a high
8 and a low case and putting those numbers into your
9 model.

10 A. Yes. I'm sitting here saying that my
11 estimate which uses AEP's forecasts and AEP's
12 methodology is much more reasonable than an
13 assumption of zero and it's a much more reasonable
14 given the negotiating facts that I recited to you
15 that the number will not be zero, or at least AEP
16 believes it will not be zero.

17 Q. And so you're making an assumption about
18 how this well-attended FERC case will come out and
19 then you're making an assumption about what the Ohio
20 Commission will do as a result of that FERC case. In
21 terms of cost recovery or not.

22 A. Yes. I'm suggesting that there will be a
23 substantial claim here under the pool modification
24 rider and I've represented that range.

25 Q. Despite the level of uncertainty you

1 think it's reasonable to include numbers, dollar
2 amounts, high and low case in the MRO-ESP comparison.

3 A. For the reasons I described I think
4 that's far more reasonable than assuming zero.

5 Q. Okay. Let me -- have you looked at the,
6 have you read the testimony of the other FES
7 witnesses?

8 A. Only small pieces that pertain to my
9 testimony, but not in the entirety.

10 Q. You know FES's position in this case, at
11 least as it relates to your issues?

12 A. Can you be more specific?

13 Q. Yeah. You understand that FirstEnergy is
14 encouraging the Commission to reject the stipulation.

15 A. Yes.

16 Q. Okay. And to order AEP to immediately
17 divest its generation.

18 A. I'll accept that, subject to check. I
19 don't know that, but --

20 Q. Okay. And to charge a hundred percent
21 RPM pricing immediately for all CRES suppliers.

22 Correct?

23 A. Yes.

24 Q. To immediately hold an auction for all
25 SSO load.

1 A. Yes.

2 Q. Okay. And that would then entail
3 AEP Ohio selling freed-up generation into the PJM
4 market?

5 A. To the extent that they were not the
6 winners of the SSO auction, I suppose that's correct.

7 Q. Okay. Well, to the extent they have any
8 freed-up generation from this matter, profits would
9 flow to the other states in proportion to their
10 member load ratio?

11 A. Yeah, assuming no modification to the
12 interconnection agreement in the interim, yes.

13 Q. How long do you think it will take for
14 this well-attended FERC case to resolve?

15 A. Well, I think the schedule that AEP has
16 got is laid out in Appendix B and I'd be happy to --
17 of the stipulation, I'd be happy to refresh my
18 recollection on that.

19 And, by the way, I see looking at
20 Appendix B that this will be a 205 filing, not a 201
21 filing.

22 Q. Okay.

23 A. And it looks like for that whole process
24 of the schedule in the stipulation concludes
25 February 1st, 2013.

1 Q. That's when they would hope to have a
2 FERC decision?

3 A. That's the FERC order, that's correct.

4 Q. Okay. And so at least until, well, of
5 course, whenever FERC would rule. Until then we
6 would have these off-system sales profits flowing to
7 the other jurisdictions according to the member load
8 ratio?

9 A. It's possible. It's possible that there
10 could be, under the scenario that you're outlining,
11 an interim kind of amendment to the interconnection
12 agreement that would basically change the definition
13 of surplus energy.

14 And to prevent that from happening
15 pending the fuller proceeding, so I wouldn't -- the
16 full termination looks like it would take a year, but
17 there may be an interim fix, if you will, to deal
18 with this issue that you were describing that could
19 be implemented more quickly.

20 Q. And then while all this action we're
21 going through, all this stuff is happening,
22 Dr. Lesser would have us back here arguing a
23 cost-of-service case for how the generation would be
24 prosed.

25 MR. KUTIK: Objection, mischaracterize

1 Dr. Lesser's testimony.

2 MR. KURTZ: I'll rephrase.

3 Q. Were you here when Dr. Lesser testified
4 that he thinks we ought to have a cost-of-service
5 case to straighten out the generation rates based
6 upon a traditional cost of service?

7 MR. KUTIK: Again, mischaracterizes
8 Dr. Lesser's testimony. He said AEP should have done
9 one already.

10 Q. Let me ask you -- we'll forget how
11 Dr. Lesser characterized it. If all that was going
12 on, do you think it would be a good idea to be in
13 this hearing room having a cost-of-service case
14 talking about how generation rates should be priced
15 on traditional cost of service?

16 A. That's not a subject about which I have
17 an opinion.

18 MR. KURTZ: Thank you, your Honors, those
19 are all my questions.

20 EXAMINER TAUBER: Ms. McAlister?

21 MS. McALISTER: No questions, your Honor,
22 thank you.

23 EXAMINER SEE: Mr. Yurick?

24 MR. YURICK: No questions, thank you,
25 your Honor.

1 EXAMINER TAUBER: Mr. Conway?

2 MR. CONWAY: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Conway:

6 Q. Good afternoon, Mr. Schnitzer.

7 A. Good afternoon, Mr. Conway.

8 Q. I'll try not to duplicate significantly
9 what Mr. Kurtz has already traversed with you.

10 Your testimony in its first substantive
11 part provides your support for the proposition that
12 the stipulation ESP price is understated, correct?

13 A. Yes, sir.

14 Q. And one of your criticisms is that
15 AEP Ohio's ESP-MRO comparison is flawed because the
16 stipulation ESP price that it uses is understated and
17 you provide corrections to the stipulation ESP price
18 in your Exhibit MMS-2 and one of those is fuel costs,
19 right?

20 A. Yes, sir.

21 Q. And your view is that the fuel costs are
22 understated for the January 2012 through May 2015
23 period, right?

24 A. Yes, sir.

25 Q. And so you increased them, right?

1 A. I did.

2 Q. And the increased fuel costs that you
3 included in your analysis, they are from a fuel
4 forecast that the companies had prepared; is that
5 right?

6 A. That is correct.

7 Q. And when was that fuel forecast prepared,
8 if you know?

9 A. I'm not sure if I recollect that. I do
10 know that it's confidential.

11 Q. Do you know whether it was prepared at
12 the -- coincidentally or about at the time that the
13 company's original ESP filing was made?

14 A. It may well have been. It was I believe
15 produced in response to discovery of the original
16 filing.

17 Q. And when was that, if you recall, the
18 filing of the ESP originally?

19 A. I think it was January, if memory serves.
20 This particular piece of discovery I think, as I
21 recollect, came pretty late in the game in terms of
22 our being able to incorporate it in response, so
23 these numbers were not provided contemporaneously
24 with the filing. They may have been prepared then,
25 but they were not provided to us until some months

1 later.

2 Q. Well, the filing was some months before
3 the stipulation that we're discussing here today was
4 entered into, right?

5 A. Yes, it was.

6 MR. CONWAY: Your Honor, may I approach
7 the witness?

8 EXAMINER TAUBER: You may.

9 Q. Mr. Schnitzer --

10 MR. KUTIK: May I see what you're going
11 to show the witness?

12 MR. CONWAY: Yes. Yes.

13 Q. Mr. Schnitzer, I'm handing you a copy of
14 FES Exhibit 10, which is I believe the fuel forecast
15 document that you had just mentioned is confidential.
16 And my question for you is, is this the fuel forecast
17 that you relied upon to prepare your adjusted fuel
18 cost numbers?

19 A. Yes. As I describe in my testimony, with
20 an estimation to deal with the first five months of
21 2015.

22 Q. And so you used the values that are in
23 the fuel forecast for 2012 and 2013 and 2014 which
24 were separately stated, converted them into
25 dollar-per-megawatt-hour values that you then

1 included in your estimate of the stipulation ESP
2 price?

3 A. There was no conversion required. This
4 exhibit does state the figures in dollars per
5 megawatt-hour.

6 Q. Okay. And then you mentioned that you
7 had to extrapolate or come up with some estimate of
8 what the fuel cost would be for the five months of
9 2015, January through May?

10 A. Correct.

11 Q. And did you do an extrapolation based on
12 the fuel forecast cost values that are in the
13 document?

14 A. That is correct.

15 Q. So there is not actually an AEP fuel
16 forecast value for that period that you used.

17 A. For the first five months of 2015 that
18 would be correct, for the other 36 months these are
19 the values that I used.

20 Q. And so you assumed that the trend in the
21 fuel cost prices that -- the 2012, 2013, and 2014
22 values from the fuel forecast FES Exhibit 10 would
23 continue for the first five months of 2015, right?

24 A. Yes. And I think that's stated in lines
25 7 through 9 of page 16 of my testimony.

1 Q. And if you had held the fuel cost value
2 constant for the January through May 2015 period at
3 the 2014 level, that would have had an effect on your
4 results, overall results, would it not?

5 A. Very modest, but yes.

6 Q. And what would have been the effect?

7 A. Well, you're going to have to --

8 Q. Qualitatively.

9 A. You're going to have to -- comparing what
10 to what are you asking me what would be the effect?

11 Q. Well, I'm just asking if you held
12 everything constant in your analysis other than kept
13 the value for January through May 2015 constant at
14 the 2014 level, what would have been the effect?

15 A. I still need a clarification from you,
16 Mr. Conway. As you know, the fuel assumption is also
17 part of the MRO part of the test and I used the same
18 fuel adjustment clause assumptions on the MRO side as
19 I did on the ESP side. So in your hypothetical am I
20 doing what you suggested on both sides of the ledger,
21 as it were?

22 Q. My question is what would be the impact,
23 at least in a qualitative sense, if you had flowed
24 through that adjustment through all of your analyses.

25 A. Through all of my analyses comparing the

1 ESP through to the MRO using otherwise the same
2 approach I have used.

3 Q. Yes.

4 A. It would be very minor, perhaps a penny
5 or two in favor of the ESP. A penny or two per
6 megawatt-hour, but very modest.

7 Q. And if you had used Ms. Thomas's fuel
8 cost values for the entire period January 2012
9 through May of 2015 instead of the values you did use
10 and you flowed through that change and its effects
11 through all your analyses, what would have been the
12 impact at least in a qualitative sense?

13 A. Very small improvement in the relative
14 position of the ESP.

15 Q. So is it your conclusion that the fuel
16 cost difference of opinion that you have with the
17 company does not lead to material results in the
18 calculation of the MRO-ESP comparison?

19 A. It depends on whose methodology we're
20 talking about. Under Miss Thomas's methodology it
21 makes an enormous difference. Under my approach it
22 makes a smaller difference.

23 Q. And I'm focusing on your approach right
24 now.

25 A. I would say --

1 MR. KUTIK: Your Honor, could he finish
2 his prior answer before he was interrupted.

3 MR. CONWAY: I'm sorry. I apologize.

4 A. So I was going to say, so it depends on,
5 you know, exactly what you're asking me. We have two
6 analyses here, Ms. Thomas and myself, that vary in a
7 number of factors, one of which is fuel, but they
8 vary also structurally.

9 And so other things being equal, just
10 changing fuel in her analysis makes a big difference
11 and other things being equal just changing fuel in my
12 analysis makes much less of a difference.

13 Q. Now, referring to your Exhibit MMS-2 as a
14 point of context, my understanding is that the way
15 that the exhibit is constructed you have the AEP Ohio
16 view of the stipulation ESP price at the top third of
17 the exhibit and then you have two other scenarios
18 that reflect the high and the low pool modification
19 costs in the second and third portions of the
20 exhibit; is that right?

21 A. Yes. As well as a change in the fuel in
22 the GRR relative to the top third.

23 Q. Okay. But the way you have it segregated
24 is the AEP approach in the top third, your approach
25 using high case for the pool modification rider as

1 the second approach, and then your view of the
2 stipulation ESP price using the low case pool
3 modification rider in the bottom third of the
4 exhibit; is that right?

5 A. Yes. Both of which latter cases also
6 reflect my view of fuel based on the company's
7 forecast and my view of the GRR rider based on the
8 company's forecast.

9 Q. Okay. And the high case pool
10 modification adjustment that appears in that second
11 tier of the three tiers of Exhibit MMS-2 assumes
12 impacts of \$2.92 per megawatt-hour in 2013, and then
13 \$8.75 per megawatt-hour for 2014 and the first five
14 months of 2015, right?

15 A. Yes. With one clarification, that the
16 2.92 in 2013 is actually because the recovery doesn't
17 start until the last, either September or October and
18 so it's actually \$8.75 per megawatt-hour once it
19 starts, but when you annualize that for the portion
20 of the year when it's not in effect, the 2.92 is the
21 average of -- prior to the starting of that recovery
22 and the then-recovery at the 8.75 rate.

23 Q. And that leads to the \$525 million, the
24 8.75 through that portion in 2013 and then on through
25 2014 and the first five months of 2015?

1 A. That allows for recovery of that amount,
2 that's right.

3 Q. And then your low case pool modification
4 rider scenario on the bottom third of Exhibit MMS-2,
5 you simply take one half of the high case scenario
6 costs; is that right?

7 A. That is correct.

8 Q. And so that's where you get the \$1.46 per
9 megawatt-hour for 2013 and the \$4.38 per
10 megawatt-hour for the remainder of the period for
11 2014 and the first five months of 2015?

12 A. Yes, with the same qualification about
13 the 1.46.

14 Q. And so the low case scenario costs
15 resulting from your estimate of the pool modification
16 termination rider is that it would produce costs of
17 262 million for the 2013 through May 2015 period?
18 Half of the 525?

19 A. Yes.

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

22 EXAMINER TAUBER: You may.

23 (Record read.)

24 A. Yes, it would be half of the 525.

25 Q. And in your conversation with Mr. Kurtz

1 you explained your view that you thought that the,
2 either the 525 or the \$262 million impacts of the
3 pool termination or modification would be flowed
4 through this rider; is that right?

5 A. Yes.

6 Q. And by reaching that conclusion is it
7 your view that FES would support AEP Ohio's recovery
8 of those costs in any future proceedings either -- at
9 the PUCO?

10 A. I have no basis to make a representation
11 one way or the other on that.

12 Q. Did they advise you in the course of
13 preparing your testimony that it was reasonable for
14 you to take this position because they would
15 acquiesce or support AEP Ohio's recovery of those
16 costs?

17 A. They did not.

18 Q. What do you think their position will be
19 in the -- if there is such a PUCO proceeding?

20 MR. KUTIK: Objection. Well beyond the
21 scope of his testimony, your Honor.

22 MR. CONWAY: It's actually within the
23 core of his testimony. What's the probability of
24 this happening, which is itself dependent upon what
25 the views of and what the activities are with

1 positions taken by all the interested parties is
2 going to be.

3 And if I might add, your Honor, I'm also,
4 I think, entitled to test the reasonableness of his
5 position here which has got to be in part premised on
6 whether or not his client, the person who's
7 presenting him, is going to take positions consistent
8 with his testimony in future proceedings.

9 MR. KUTIK: Well, he's already said, your
10 Honor, that he does not know, has not had a
11 discussion with FES about that issue, about what
12 position if any FES would take.

13 MR. CONWAY: My next question --

14 MR. KUTIK: So there's no foundation for
15 the question at all.

16 MR. CONWAY: The question is what does --
17 does he have a view, does he have an opinion about
18 what FES's position will be in the future, which is
19 independent of the answer to the prior question.

20 MR. KUTIK: That further establishes the
21 remoteness from any topic relevant to this case.

22 EXAMINER SEE: The objection is
23 sustained.

24 Q. (By Mr. Conway) Mr. Schnitzer, if you
25 look at the Load-Weighted Average column on Exhibit

1 MMS-2 --

2 A. Yes.

3 Q. -- and if you focus on the \$9.10, if
4 that's still the value, if it's not confidential, I
5 guess let me see.

6 A. I think that one's okay. Well, I'm not
7 sure.

8 MR. KUTIK: May we go off the record?

9 EXAMINER TAUBER: Gentleman, let's go off
10 the record.

11 (Discussion off the record.)

12 Q. With regard to the load-weighted average
13 components that correspond to the total adjustments
14 to the stipulation ESP price for both the high case
15 and the low case for pool modification, do you see
16 those two values?

17 A. I do.

18 Q. Can you tell me what the
19 dollar-per-megawatt-hour amount of that total value
20 is represented by in the high case and the low case
21 of the pool modification rider adjustment. Which I
22 don't think is confidential.

23 A. Yes. If you turn to Exhibit MMS-4,
24 Mr. Conway, and I'm looking at page 2 of 5. If
25 you'll look two-thirds of the way down, the block

1 labeled "Stipulation ESP Price" and you'll see a line
2 "High Pool Modification Rider," and then all the way
3 to the right-hand margin is the load-weighted
4 average, I think that's the figure you're asking
5 about.

6 And then the very next page of MMS-4,
7 page 3 of 5, will have the corresponding figure for
8 the low case RPM. Do you see that?

9 Q. Yes, I do. Thank you.

10 And another difference between your
11 approach to calculating the stipulation ESP price and
12 Ms. Thomas's approach is that you include amounts for
13 the generation resource rider related to the Turning
14 Point Solar Project; is that right?

15 A. Yes, it is.

16 Q. And those reflect cost recovery for the
17 Turning Point Solar Project's costs, correct?

18 A. Not exactly. Those reflect the net costs
19 of the Turning Point project, so net of their
20 capacity and energy values, if you will.

21 Q. And is it your understanding that before
22 any such costs could be recovered through the GRR
23 that, like the pool modification rider, there would
24 have to be a separate proceeding at the PUCO?

25 A. That is my understanding.

1 Q. And the recoverability of any such costs
2 would be at issue in such a proceeding.

3 A. It would.

4 Q. And by approving the stipulation the PUCO
5 is not approving at this time recovery of Turning
6 Point Solar net costs, right?

7 A. It is not, but nor has AEP given up the
8 right to pursue and request such approval.

9 Q. And do you know what FirstEnergy
10 Solutions' position is regarding the recovery of
11 those net Turning Point Solar Project costs through
12 the GRR?

13 A. I do not.

14 Q. With regard to the competitive benchmark
15 price, you also have several disagreements with how
16 the company has estimated that value, right? The
17 competitive benchmark price.

18 A. Really one difference that then has the
19 ripple effects using Ms. Thomas's model that ripple
20 through but one difference of opinion about inputs.

21 Q. And that's the capacity price to use?

22 A. Yes, sir.

23 Q. And you may have already gone over this
24 with Mr. Kurtz, but you believe it was improper to
25 use the stipulation capacity prices in order to

1 construct a competitive benchmark price, right?

2 A. Yes.

3 Q. And your view is that the correct
4 capacity prices to use are the RPM price, right?

5 A. Yes.

6 Q. And I'm not sure which page it is now in
7 your testimony, but in your prior version at page 20
8 you made a statement about this, and so could you
9 turn to page 20 of your testimony, whichever version
10 you have in front of you?

11 A. The discussion of this issue does begin
12 on page 20 of the version I have in front of me, it's
13 Exhibit 4, I think.

14 Q. In the title to the section of your
15 testimony that starts at page 20 you state that --
16 you say that "AEP Ohio overstates the competitive
17 benchmark price component of the MRO price by
18 assuming the Commission would resolve the capacity
19 pricing issue in the same manner as the stipulation."
20 Do you see that?

21 A. I do.

22 Q. Now, in your analysis you assume that the
23 Commission would resolve the capacity pricing issue
24 in the same manner as FES's litigation position in
25 the capacity pricing case, correct?

1 A. Yes, but for different reasons. But yes,
2 it's the same number.

3 Q. What is AEP Ohio's position, again, in
4 the capacity pricing case before the PUCO? Do you
5 recall?

6 A. Well, again, that's a case about capacity
7 price to be used for CRES suppliers and I believe
8 AEP Ohio's position in that case is, depending on
9 which side of losses you measure it, something like
10 \$347 a megawatt-day.

11 Q. And would you agree that AEP Ohio is not
12 assuming in this proceeding, that is the stipulation
13 review proceeding, and in connection with the
14 competitive benchmark price that it has proposed that
15 the PUCO would resolve the capacity pricing issue in
16 the same manner as AEP Ohio's position in that
17 capacity pricing case?

18 A. That's a true statement.

19 Q. And would you agree that the capacity
20 pricing to which AEP Ohio has agreed in the
21 stipulation is a reduction from the capacity pricing
22 it has advocated in the PUCO capacity pricing case?

23 A. It is. But again, in the stipulation the
24 effect of that agreement relates only to CRES pricing
25 of capacity, not to MRO. So that the reduction from

1 247 to -- 347, excuse me, to 255, has no practical
2 effect on switching as I outline later in my
3 testimony. That switching that would be uneconomic
4 at 347, is also uneconomic at 255, so it's a
5 concession, if you will, without a consequence.

6 Q. You haven't conducted a market study that
7 examines that question, have you?

8 A. Well, I've included in my testimony an
9 assessment of the average savings opportunity for the
10 percentage of load which is underneath the cap and,
11 thus, their suppliers are able to get capacity at RPM
12 and then what happens to that savings opportunity for
13 the segment of load that would be above the cap, and
14 those figures are in my testimony.

15 Q. So your position is, your view is that
16 offers could not be made by CRES providers in an
17 environment where \$255 per megawatt-day capacity from
18 AEP Ohio is available.

19 A. Well, offers could legally be made, but
20 economically attractive offers except in limited
21 subsegments owing to rate design I would expect there
22 wouldn't be an opportunity to make an economically
23 attractive offer.

24 Q. And have you ever worked for a marketer
25 of retail electric services?

1 A. We have consulted to some from time to
2 time. It's not a major part of our business.

3 Q. With regard to the RPM prices that you
4 quote at the bottom of page 20 and on the top of page
5 21 of your testimony, do you see those?

6 A. I do.

7 Q. These are the prices that you're assuming
8 AEP Ohio may charge CRES suppliers for its capacity
9 during the periods indicated at the price levels
10 indicated pursuant to the current pricing regime that
11 the Ohio Commission has adopted?

12 A. Well, those are the RPM prices for those
13 periods, but if I can perhaps cut to the chase on
14 this, if you could turn to Exhibit MMS-3 where we
15 were a moment ago, and if you look -- I'll give you a
16 minute to get there. Do you have it?

17 Q. I do.

18 A. Okay. If you look at the first column,
19 that's Ms. Thomas's run of her competitive benchmark
20 model using the RPM prices and you see she gets a
21 figure of 4.79 for capacity under RPM assumptions.
22 And if you go three columns over to my analysis of
23 what happens when I assume the RPM price, I get 4.76
24 for capacity, which is virtually identical. The only
25 difference being that I assume a slightly different

1 customer mix of switching load.

2 So there's no difference in what I've
3 assumed and what Ms. Thomas has assumed, and it's
4 pretty clear from Exhibit MMS-3 that's the case.

5 Q. Thank you.

6 At page 21 --

7 A. "21" you said?

8 Q. Yes. At lines 13 to 14 you state that
9 "Neither the \$255 figure nor the blended capacity
10 price in the Stipulation has been approved by the
11 Commission or FERC." Do you see that?

12 A. I do.

13 Q. Do you have an opinion about whether the
14 PUCO could approve a capacity price of \$255 or a
15 blended capacity price?

16 A. In the context of an MRO or for purposes
17 of capacity sales to a CRES provider?

18 Q. The latter.

19 A. The latter. That, I don't, because I
20 don't know whether as a matter of law the Commission
21 can do that. I don't have an opinion. I don't know
22 that I've been advised by counsel as to that point.

23 My testimony is just that if it is
24 permissible in that context, the maximum number
25 should be the number that I've computed for an

1 above-market capacity charge which is less than the
2 255 number.

3 Q. And the former context, the MRO context,
4 which you offered I supposed to provide an opinion
5 about, if we went down that track would it lead to
6 the discussion you had with Mr. Kurtz?

7 A. Yes. There I've been advised by counsel
8 that under the statute that that would not be
9 permissible.

10 Q. So you don't have an opinion as to
11 whether or not the PUCO could approve in the 10-2929
12 docket a cost-based rate for capacity pricing?

13 A. I don't. I have my policy recommendation
14 that if they can, and contemplate it, that it
15 shouldn't be higher than 162, but that's the only
16 opinion that I'm offering and I also offered the
17 policy reasons why I think RPM is the better choice.

18 Q. Could you turn to your Exhibit MMS-4?

19 A. Yes.

20 Q. Page 1 of this exhibit as revised is your
21 summary table; is that right?

22 A. That's correct.

23 Q. And then it's succeeded by four more
24 pages of several scenarios that you've evaluated that
25 are summarized on the summary table on page 1.

1 A. That's correct.

2 Q. First off, with regard to the variation,
3 and I'm looking at your page 1 of 5, the summary
4 table, with regard to the variation in the, start
5 with the second column that has values in it
6 depending on your high or low case pool modification
7 rider cost estimates. Do you see that column?

8 A. Yes, I do.

9 Q. What is the total dollar impact of the
10 high case estimate on either scenario 1 or scenario
11 2?

12 A. I believe that would be the 525 million
13 figure that we were talking about earlier.

14 Q. So that if -- so if we assume that there
15 were no dollars recovered through the pool
16 modification rider, would I be -- would it be
17 appropriate to reduce the \$804 million under scenario
18 1 by the \$525? I know you don't agree with that but
19 I'm just asking if --

20 A. The calculation that you describe would
21 be I think the proper calculation for that
22 hypothetical, yes.

23 Q. Okay. And then similarly for the second
24 scenario -- and just to be clear, the first scenario
25 is low environmental investment carrying cost

1 recovery, and the second scenario it is high
2 environmental investment carrying cost?

3 A. Yes, in the MRO side.

4 Q. Okay. In that second scenario, the high
5 environmental cost scenario, I would deduct
6 525 million from the \$580 million value?

7 A. I think that's correct, yes.

8 Q. And then would I just take half of that
9 number which is, I think we agreed, is about
10 262 million and deduct from the load case value to
11 get what that value would be if we assumed that there
12 was zero cost being recovered through that rider?

13 A. Yes. Again, without agreeing with that
14 assumption, but that's the math.

15 Q. Okay. In either of these two scenarios
16 did you include the Turning Point Solar cost recovery
17 estimate, or did you include it in both of them?

18 A. Well for that let's go to the backup, if
19 you will, and I think in 1A it's in there, in 1B it's
20 in there. Yes, it's in all of them.

21 Q. And I see that there's -- in the
22 load-weighted average column on those detailed
23 scenario pages, pages 1 through 5, I see that under
24 the load-weighted average column it includes a value
25 of 12 cents a megawatt-hour for GRR, which I assume

1 is the Turning Point Solar; is that right?

2 A. Yes. That's pages 2 through 5, but yes.

3 Q. And I didn't see anywhere any way I could
4 quantify the aggregate, like how many million of
5 dollars that would correspond to. Is that a value of
6 that type anywhere in here so if I were to adjust
7 that out, what would be the number I'd deduct from
8 what you have?

9 A. First let me see if we mention that in
10 the body of the testimony. I don't think that we do,
11 but let me just quickly check.

12 No, that number is not in the testimony.

13 Q. Okay.

14 A. So the answer to your question is, you
15 know, is a -- I can describe the math to do that
16 calculation, but we have just talked through how the
17 525 million relates to the number on the far
18 right-hand column and so the ratio of 525, and I
19 can't tell, is that redacted or not? I can't see
20 what's redacted.

21 Q. It's not redacted.

22 A. Either the pool modification rider or
23 the --

24 Q. Neither is redacted.

25 A. Okay, so the ratio of 525 to 4.03 would

1 be the same ratio of the number you're looking for,
2 the 12 cents.

3 Q. All right.

4 A. Does that makes sense?

5 Q. Yes, it does. It's just a straight
6 direct relationship, right?

7 A. Yes, it is.

8 Q. I think you've already answered the next
9 question I have -- but let me just make sure. If you
10 were to use Ms. Thomas's estimates of fuel costs in
11 your analysis that's presented in Exhibit MMS-4, the
12 cost-benefit analysis, if you were to use her fuel
13 costs instead of the fuel costs that you did use, you
14 don't think it would have a material impact on the
15 results; is that right?

16 A. It would not have a material impact on
17 the results.

18 Q. That's because of the way that you
19 include those impacts on both sides of the balance;
20 is that right? Both on the MRO side and on the ESP
21 side.

22 A. That's half the answer. But yes, that's
23 half the answer and there's another piece as well if
24 you want me to --

25 Q. I can't stop myself from asking: What is

1 the other piece?

2 A. The piece that you just described applies
3 equally to the retained load in both scenarios, but
4 in the MRO side it's only the portion of the retained
5 load that is served at the competitive -- at the
6 generation service price and not the part that's put
7 out to bid.

8 So that's not one for one, but then on
9 the switched load in either case, the load that's
10 assumed to be at a competitive price, the fuel has no
11 effect on that obviously on either case and there's
12 more of that in the ESP side than there is on the MRO
13 side and so the net is about 7 cents.

14 Q. So it's somewhat serendipity, but that's
15 the way it turns out.

16 A. Again, in my methodology. In
17 Ms. Thomas's methodology it's a big deal, but in this
18 methodology it's not.

19 MR. KURTZ: Your Honor, may we go off the
20 record for a minute?

21 EXAMINER SEE: Yes.

22 (Discussion off the record.)

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

25 Q. Let me turn to MMS-5 which you talked to

1 Mr. Kurtz about, but don't lose touch with MMS-4
2 while we're talking about this, okay?

3 A. Okay.

4 Q. In MMS-5 you develop the maximum
5 above-market capacity rate for capacity, right?
6 Excuse me, capacity rate, correct?

7 A. From an economic or a policy perspective,
8 putting aside legal constraints, yes.

9 Q. And if you had used the \$162 per
10 megawatt-day capacity figure that this calculation
11 produced in your two scenarios that you have in
12 MMS-4, what would be the impact -- what would have
13 been the impact or what would be the impact of that
14 variation?

15 A. Just so I have the question correct, for
16 each of the four scenarios that are summarized on
17 page 1 of MMS-4, if instead of RPM capacity if I had
18 assumed the 162 but otherwise each of those scenarios
19 being the same in all other respects.

20 Q. That's right.

21 A. Is that your question?

22 Q. Yes.

23 A. The answer is that the excess costs shown
24 in that right-hand column would decrease, I can't
25 tell you the magnitude sitting here, but in no case

1 would the sign change -- let me just stop for a
2 moment and make sure that I've got that right.

3 Yes, in each of those cases the ESP
4 pricing would still be less favorable than the MRO
5 pricing, although the magnitude of the excess costs
6 would be reduced in each of those four scenarios.

7 MR. KUTIK: Your Honor, may I ask the
8 court reporter whether she got the full answer?

9 THE REPORTER: Yes.

10 MR. KUTIK: Yes.

11 Q. And do you have a ball park estimate of
12 what the impact is?

13 A. I don't. All I know is that sign doesn't
14 change. So, I mean, the magnitude has to be less
15 than 357 million but I don't know by how much less.

16 EXAMINER SEE: Just a minute.

17 Q. So you know directionally what the impact
18 is but not the magnitude except that it's not more
19 than 357 million.

20 A. Indeed that it's less than 357 million,
21 so that in none of these cases would the sign in the
22 right-hand column or in either column the sign would
23 not change, the MRO pricing would still be preferred.

24 Q. On an order of magnitude basis can you
25 tell me it whether it's 1 million, 10 million, a

1 hundred million, or plus or minus either of those
2 order of magnitude?

3 A. It's hundreds of millions, I just can't
4 tell you how many. Other than less than 357 but it's
5 not 1 million or 10 million, it's over a hundred. It
6 may be over 200, I'm not certain.

7 Q. Did you model your scenarios that remain
8 in Exhibit MMS-4 using zero for the pool modification
9 rider cost and the \$162 per megawatt-day instead of
10 the RPM capacity pricing?

11 A. So as on MMS-4 with now two changes, RPM
12 to 162 and zero pool modification?

13 Q. Right.

14 A. Yes.

15 Q. And what was the result?

16 A. In that case where you assume 162, no
17 pool modification in the high EICCR case only, that
18 is sufficient to overcome the excess costs and that
19 does change the sign just in that instance.

20 Q. Can you tell me what happened to Sporn 5
21 in your analyses, that used to be in Exhibit MMS-4
22 and they're no longer in there?

23 A. Yes, I can tell you.

24 Q. Please do.

25 A. At the time I first started the analysis

1 of the stipulation I was under the mistaken
2 impression that the stipulation also resolved the
3 Sporn 5 recovery issue and that that was being given
4 up as part of the stipulation.

5 So under that assumption it was
6 appropriate to analyze it both ways on the MRO side
7 because it was a difference, a potential difference
8 between the MRO and the ESP. But I have since been
9 informed by counsel that the resolution of the Sporn
10 5 recovery is independent of whether we're in a
11 stipulation world or MRO world, hence, it doesn't
12 make a difference in comparing the two and so it was
13 removed from all of the scenarios.

14 Q. So let me back up to the prior Q and A
15 regarding the impacts of zero pool modification rider
16 costs and \$162 per megawatt-day capacity pricing.

17 Was your answer in that scenario to the
18 high environmental investment carrying cost rider
19 scenario resulted in a switchover from a cost of the
20 ESP to a benefit of the ESP?

21 A. Yes. Those three assumptions together,
22 high EICCR, zero pool modification, and 162, are
23 sufficient to change the sign. But it takes all
24 three.

25 Q. It takes all three. And then how close

1 to breakeven or crossover do you get with the low
2 environmental investment carrying cost scenario?

3 A. I'm sorry. I don't know. I don't have
4 that number.

5 Q. Back to Exhibit 5, MMS-5, at the top of
6 page 3 of Exhibit MMS-5 you indicate -- I don't think
7 this has changed, I got this from the prior version
8 of your testimony. But at the top of page 3, the
9 first sentence in that first paragraph you indicate
10 that your analysis in Exhibit MMS-5 is based on a
11 2010 test year, while AEP used the test year of 2009
12 to calculate its proposed capacity price. Do you see
13 that?

14 A. I do.

15 Q. And I assume that you are, correct me if
16 I'm wrong, you're referring to Dr. Pearce's use of
17 the 2009 test year?

18 A. I think that's correct, yes.

19 Q. And do you know whether Dr. Pearce used
20 the 2009 test year and 2009 data? Strike that
21 question.

22 What's the basis for your assumption that
23 he used 2009 test year and data?

24 A. Let me back up. I'm sorry. At the time
25 this was prepared I think we were looking at the

1 record in the 2929 docket, I think it's in that
2 docket that our understanding was that the 347 was
3 based on a 2009 test year.

4 I think Dr. Pearce has since filed
5 testimony in this docket that relies on the 2010 test
6 year.

7 Q. If you could go back to your chart on
8 page 2 of Exhibit MMS-5.

9 A. Yes.

10 Q. Entitled "Method Used to Calculate the
11 Maximum Above-Market Capacity Rate." Do you see
12 that?

13 A. I do.

14 Q. And I believe in conversation with
15 Mr. Kurtz, again, correct me if I'm wrong, but you
16 discussed with regard to the variable production
17 costs element of that calculation the 17 million --

18 A. .7 million.

19 Q. The 1.721 million, do you see that?

20 A. I do.

21 Q. And that information came from the FERC
22 Form 1; is that right?

23 A. It did.

24 Q. And I believe in conversation with
25 Mr. Kurtz you discussed what the impact might be on

1 that value if there were deserved expenses for 2010
2 of \$130 million that weren't reflected in the
3 \$1.721 billion. Do you recall that?

4 A. I do.

5 Q. And you agreed, I believe, that if you
6 were to include the actual fuel expenses represented
7 by the deferrals, it would increase that value by
8 whatever that number is, and in the example he was
9 using \$130 million.

10 A. Yes. Assuming that there were deferrals
11 not included in the 1.7 million, that would be the
12 effect.

13 Q. And that would have an impact on the
14 capacity revenue requirement, the fifth column, of
15 increasing it by \$130 million in that example, right?

16 A. Yes, with a little asterisk. I'd have to
17 think some more as to whether it -- assuming it
18 didn't affect any of the pool transaction pricing or
19 anything in that regard but under that assumption,
20 yes.

21 Q. And if it didn't have any impact, then
22 your maximum above-market rate would be increased by
23 whatever fraction 130 over 497 represents, right?

24 A. That's correct.

25 Q. Would you accept, subject to check, that

1 that would convert that value to \$204 from 162?

2 A. To something just over 200 seems right.

3 Q. Mr. Schnitzer, bear with me as I pose a
4 hypothetical to you and at the end of it ask you to
5 make an estimate for me, if you haven't already done
6 it.

7 A. Do I need to make notes?

8 Q. Probably not.

9 Assume for me that all of AEP Ohio's load
10 shopped during the January 2012 through May 2015
11 period and the pricing for capacity was as prescribed
12 in the stipulation, okay? RPM for the set-aside and
13 the 255 for the rest.

14 A. And notwithstanding that everybody
15 shopped or everybody switched?

16 Q. Yes, everybody shopped. Is there a
17 difference between shopping and switching?

18 A. Well, shopping doesn't mean you --

19 Q. Switching.

20 A. Actually switched.

21 Q. Okay, they switched.

22 A. Yes.

23 Q. What would the load-weighted average
24 capacity price be over that period for all of that
25 capacity that was sold?

1 A. I don't have that number offhand but in
2 the first year it would be 21 percent RPM, 79 percent
3 255. In the second year it would be 31 to whatever
4 based on the securitization, you know, threshold,
5 et cetera, et cetera.

6 So it would be those three weighted
7 averages averaged together but I don't know what that
8 number would be.

9 Q. I have a question for you.

10 EXAMINER TAUBER: Hold on.

11 (Discussion off the record.)

12 Q. Back to the, I guess forward to the past.
13 Could you go to page 7 of your testimony.

14 A. Yes.

15 Q. At lines 7 through 11 you identify some
16 positive aspects of the stipulation, at least that's
17 the way I interpreted it. You support the move to
18 competitive procurement of SSO supply and AEP Ohio's
19 participation in the RPM capacity market. You say
20 that on page 7, do you not?

21 A. I do.

22 Q. And then you also support the elimination
23 of nonbypassable generation charges funded by
24 ratepayers; you say that, right?

25 A. Yes.

1 Q. And then you also support the other
2 efforts to promote effective wholesale and retail
3 competition provided by the stipulation, right?

4 A. Yes.

5 Q. And those are all benefits of the
6 stipulation, right?

7 A. Compared to the initial ESP filing, yes.

8 Q. Mr. Schnitzer, could you turn back to
9 Exhibit MMS-4 and look at page 2 which has a
10 presentation of the low EICCR, environmental
11 investment carrying cost rider, impacts, and I'm
12 looking for the high EICCR as an example and I'm not
13 finding it.

14 A. That would be page 4 of 5 and page 5 of
15 5, either.

16 Q. So do you see the values for the low case
17 environmental in your version of the testimony
18 without reciting what they are?

19 A. Yes. And, again, we're looking at that
20 Load-Weighted Average column on the right-hand side.

21 Q. Actually I was looking at the annual
22 figures and load-weighted average so all five of
23 those values.

24 A. Yes, I see them.

25 Q. Now, my recollection is that your

1 original testimony had different values for both the
2 low and the high cost scenarios for the EICCR. Do
3 you recall that?

4 A. Not specifically. No. I mean, we used
5 the same AEP forecast low and high range of
6 environmental expenditures for AEP Ohio to derive
7 this.

8 MR. CONWAY: May I approach witness, your
9 Honor?

10 EXAMINER TAUBER: You may.

11 Q. I'd like to try to refresh your
12 recollection, Mr. Schnitzer.

13 Mr. Schnitzer, I'm going to represent to
14 you that this document I'm handing to you is a page
15 from your July 25th testimony that was prefiled but
16 has not been presented by you, and I believe it
17 indicates values for the low and the high
18 environmental investment cost scenario.

19 MR. KUTIK: What pages are you showing
20 him?

21 MR. CONWAY: Page 68.

22 MR. KUTIK: Does he also have 67 in front
23 of him?

24 THE WITNESS: I do.

25 MR. CONWAY: He does.

1 A. I see the figure.

2 Q. And if you could, in the first several
3 years of the chart that are indicated on the page 68
4 of your original testimony, compare them to the
5 values that you have in your testimony, your
6 stipulation testimony, and then tell me whether it
7 refreshes your recollection about why there is a
8 difference or, first, whether there is a difference,
9 and then if there is a difference, why there's a
10 difference between the two.

11 A. Well, the picture you've handed me is a
12 graph of the company's low and high cases, but those
13 were different than my low and high cases and so this
14 draft is not directly comparable to MMS-4.

15 Q. Okay.

16 MR. CONWAY: Just a moment, your Honor.

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

18 (Off the record.)

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

21 Mr. Conway.

22 MR. CONWAY: That's all I have, your
23 Honor.

24 Thank you, Mr. Schnitzer.

25 THE WITNESS: Thank you, Mr. Conway.

1 EXAMINER SEE: Redirect?

2 MR. KUTIK: May we have a moment, your
3 Honor?

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

6 (Recess taken.)

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

9 Mr. Kutik.

10 MR. KUTIK: Thank you, your Honor.

11 - - -

12 REDIRECT EXAMINATION

13 By Mr. Kutik:

14 Q. Mr. Schnitzer, Mr. Conway spoke with you
15 about one potential scenario to consider with respect
16 to the ESP versus MRO test and that's assuming there
17 would be zero in pool termination/modification
18 charges, high environmental cost, and a 162 capacity
19 price.

20 Do you view that as a reasonably likely
21 scenario or a reasonable scenario at all for the
22 Commission to consider in evaluating the ESP versus
23 the MRO?

24 A. No, I don't consider it to be a
25 reasonable scenario and that's why I didn't include

1 it in my testimony.

2 Q. Why not?

3 A. Well, let me take the two pieces really
4 for that, the first is, is a 162 capacity charge a
5 reasonable assumption, and for the reasons that I
6 discussed at length with at least two attorneys
7 today, the advice that I had from counsel is that the
8 relevant section of the statute that deals with the
9 MRO does not permit the Commission to put in place an
10 above-market charge for capacity and so a scenario
11 that assumes that would not be reasonable under that
12 instruction.

13 The second has to do with the pool
14 termination or pool modification required and, again,
15 for the reasons that I stated, that despite ample
16 opportunity to bargain that rider away as part of the
17 extensive conversation between the initial ESP and
18 the final stipulation where six or seven other riders
19 were negotiated away, this one survives.

20 AEP itself has put forward a methodology
21 for quantifying the proposed -- the potential impacts
22 from pool termination, I used that methodology, I
23 used their assumptions to implement that methodology,
24 and I came up with the numbers that I came up with in
25 my high case which are totally consistent with the

1 numbers that AEP themselves came up with when they
2 estimated this impact in 2009.

3 And so neither of those two assumptions
4 are reasonable, in my mind, let alone assuming them
5 both together, as Mr. Conway asked me to.

6 MR. KUTIK: Thank you. I have no further
7 questions.

8 EXAMINER SEE: Recross? Mr. Kurtz?

9 MR. KURTZ: No, your Honor.

10 EXAMINER SEE: Mr. Yurick?

11 MR. YURICK: No. No thank you, your
12 Honor.

13 EXAMINER SEE: Ms. Clark? Kaleps-Clark,
14 I'm sorry.

15 MS. KALEPS-CLARK: You can pick one or
16 the other, I'm okay with that.

17 EXAMINER SEE: Okay. Thank you. Any
18 recross?

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

20 MR. CONWAY: No, your Honor.

21 EXAMINER SEE: Mr. Margard?

22 MR. MARGARD: No thank you, your Honor.

23 EXAMINER SEE: Thank you, Mr. Schnitzer.

24 THE WITNESS: Thank you.

25 MR. KUTIK: Your Honor, at this time FES

1 moves for the admission of Exhibits 3 and 4 with 4
2 being under seal.

3 EXAMINER SEE: Are there any objections
4 to the admission of FES Exhibit 3, the public version
5 of Mr. Schnitzer's testimony?

6 MR. CONWAY: No, your Honor.

7 EXAMINER SEE: Hearing none, FES Exhibit
8 3 is admitted into the record.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 EXAMINER SEE: And my understanding,
11 Mr. Kutik, is that a motion for protective order was
12 filed today in regards to the confidential version?

13 MR. KUTIK: Yes, your Honor.

14 EXAMINER SEE: Which AEP Ohio endorsed?

15 MR. CONWAY: Well, yes, we support that
16 motion. We also would separately move for protective
17 order of the same document and the basis of it would
18 be the same as we provided in our earlier motion for
19 protective order with regard to the earlier version
20 of the stipulation testimony. So I was hoping you'd
21 grant the motions right now and not require us to
22 file, actually write up and file another motion.
23 Whatever your pleasure is.

24 EXAMINER SEE: And what was the basis for
25 your supporting the request for protective order,

1 Mr. Conway, in general?

2 MR. CONWAY: The information that we seek
3 to protect has value when kept in a confidential
4 state, it would lose its value or its value would be
5 diminished if it were made public. It is a trade
6 secret under Ohio law and it fits within the
7 parameters of the Commission's rules for granting
8 protective orders.

9 So that's the basis for it. And if you
10 would like us to prepare a written motion, we'd be
11 happy to do so.

12 EXAMINER SEE: On that basis and after
13 looking at the confidential version of
14 Mr. Schnitzer's confidential testimony, the motion
15 for protective order is granted and FES Exhibit 4
16 will be maintained under seal.

17 MR. KUTIK: And admitted into the record?

18 EXAMINER SEE: And admitted into the
19 record.

20 MR. KUTIK: Thank you.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER SEE: With that, we'll reconvene
23 tomorrow morning at 9:00 a.m. The hearing is
24 adjourned.

25 (The hearing adjourned at 5:57 p.m.)

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Summary: Transcript Transcript of Columbus Southern Power Company and Ohio Power Company hearing held on 10/13/11 - Vol VII electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.