

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
 Application of Ohio Power :
 Company and Columbus :
 Southern Power Company :
 for Authority to Merge and: Case No. 10-2376-EL-UNC
 Related Approvals. :

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

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

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

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

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

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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 8:45 a.m. on Tuesday,
15 October 18, 2011.

16 - - -

17 VOLUME X

18 - - -

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IEU-Ohio Exhibits	Identified	Admitted
12 Report of the Management/ Performance and Financial Audits of the FACs of the CSPC and the OPC	1744	--

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FES Exhibit	Identified	Admitted
15 (a) STIP-OCC-INT-361	IX-1662	1681
15 (b) INT-13-005	IX-1662	1681
15 (c) RFA-13-015	IX-1662	1681
15 (d) RFA-13-016	IX-1662	1681
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16 (a) STIP-FES-INT-029	IX-1662	1681
16 (b) STIP-FES-INT-17-17-046	IX-1662	1681

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16(c) STIP-FES-INT-17-17-047 IX-1662 1681

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16(e) STIP-FES-INT-19-037 IX-1662 1681

16(f) STIP-FES-INT-19-039 IX-1662 1681

16(g) STIP-FES-INT-19-041 IX-1662 1681

16(h) STIP-FES-RFA-21-005 IX-1662 1681

16(i) STIP-IEU-RFA-6.8 IX-1662 1681

17(a) STIP-FES-INT-17-17-043 IX-1662 1681

17(b) STIP-IEU-INT-3-008 IX-1662 1681

17(c) STIP-IEU-INT-6-001 IX-1662 1681

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Staff Exhibit Identified Admitted

3 Direct Testimony of Daniel R. Johnson 1682 1689

3A Errata to Direct Testimony of Daniel R. Johnson 1682 1689

4 Direct Testimony of Robert B. Fortney 1689 1769

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1 Tuesday Morning Session,
2 October 18, 2011.

3 - - -

4 EXAMINER SEE: Let's go on the record.
5 Just before we left there was an issue, well, there
6 was a request for admission of FES Exhibits 15
7 through 17 and subparts.

8 Mr. Nourse, you wanted some additional
9 time to review those exhibits.

10 MR. NOURSE: Yes, your Honor. And my
11 position is the same, that these are -- the ones that
12 we objected to that have the witnesses, responsible
13 witnesses that appeared at the hearing, were subject
14 to cross-examination. I think dumping this kind of
15 stuff in the record also, in addition to what I said
16 yesterday, discourages people to be open in discovery
17 because discovery's not supposed to be the same as
18 the standard for admission into evidence. And if
19 we're just going to dump stuff in without a nexus to
20 a witness or testimony, I think it discourages open
21 discovery, and so my objection remains the same for
22 those items.

23 EXAMINER SEE: The Bench recognizes, as
24 stated yesterday, that it is usually the Commission's
25 procedure to take interrogatories while the witness

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1 is on the stand, but notes that it is permissible to
2 put interrogatories into the record in this manner,
3 and for that reason FES Exhibits 15 through 17 are
4 admitted into the record.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER SEE: Mr. McNamee.

7 MR. McNAMEE: Yes, your Honor. At this
8 time staff would call Daniel R. Johnson.

9 EXAMINER SEE: Mr. Johnson.

10 Mr. Johnson, please raise your right
11 hand.

12 (Witness sworn.)

13 EXAMINER SEE: Have a seat.

14 Mr. McNamee.

15 MR. McNAMEE: Thank you, your Honor.

16 - - -

17 DANIEL R. JOHNSON

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

20 DIRECT EXAMINATION

21 By Mr. McNamee:

22 Q. Mr. Johnson, please state and spell your
23 name for the record.

24 A. Daniel R. Johnson, D-A-N-I-E-L R.
25 Johnson, J-O-H-N-S-O-N.

1 Q. Mr. Johnson, by whom are you employed and
2 in what capacity?

3 A. I'm employed by the Public Utilities
4 Commission of Ohio as a public utilities
5 administrator III.

6 Q. What is your business address?

7 A. 180 East Broad Street.

8 MR. McNAMEE: Your Honor, at this time I
9 would ask to have marked for identification two
10 documents, the first I would ask to have marked as
11 Staff Exhibit 3 was filed in this case on August 4, a
12 multipage document denominated Prefiled Testimony of
13 Daniel R. Johnson. I would also ask to have marked a
14 one-page document that I have distributed hopefully
15 to everyone who's here this morning, I believe,
16 including the Bench, a document entitled Errata to
17 Direct Testimony of Daniel R. Johnson, I would ask to
18 have that denominated Staff Exhibit 3A.

19 EXAMINER SEE: The exhibits are so
20 marked.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 Q. Mr. Johnson, do you have before you what
23 have been marked for identification as Staff Exhibits
24 3 and 3A?

25 A. Yes, I do.

1 Q. What is Staff Exhibit 3?

2 A. That is my direct testimony prefiled in
3 this case.

4 Q. Okay. What is Staff Exhibit 3A?

5 A. 3A is a sheet that spells out certain
6 errors, errata, that are in my prefiled testimony.

7 Q. Okay. Are there any changes or
8 corrections that you would need to make to either of
9 these?

10 A. Yes. On the errata sheet, 3A, I believe
11 there's a typo in No. 5 which should read "On
12 Attachment DRJ-1, the right hand set of columns: The
13 third square," as opposed to "the second square."

14 Q. Okay. Mr. Johnson, with the changes
15 noted on what's been marked for identification as
16 Staff Exhibit 3A and your correction to what's been
17 marked for identification as Staff Exhibit 3A that
18 you just made, having made those corrections to
19 what's been marked for identification as Staff
20 Exhibit 3, is Staff Exhibit 3 true to the best of
21 your knowledge and belief?

22 A. Yes, sir.

23 Q. Were both of these prepared by you or
24 under your direction?

25 A. Yes, sir.

1 Q. Do you adopt the contents of what's been
2 marked for identification as Staff Exhibit 3 with the
3 modifications indicated in what's been marked for
4 identification as Staff Exhibit 3A and your
5 correction on the stand this morning as your direct
6 testimony in this case?

7 A. Yes, I do.

8 MR. McNAMEE: With that, your Honor, the
9 witness is available for cross.

10 EXAMINER SEE: FES want to start for
11 Mr. Johnson?

12 MR. LANG: Yes, your Honor.

13 EXAMINER SEE: Mr. Lang.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Lang:

17 Q. Good morning, Mr. Johnson. I'm Jim Lang
18 representing FirstEnergy Solutions.

19 Just a few hopefully confirmations of
20 parts of your testimony. With regard to your
21 estimate of the MRO price, you provided an MRO price
22 for the first five months of 2015, correct?

23 A. I believe that is correct.

24 Q. And is that \$73.59?

25 A. Let me just refer to my sheet here.

1 Yes, sir, that is correct.

2 Q. That's \$73.59 per megawatt-hour?

3 A. That period is from June 1, 2014, through
4 May 1, 2015.

5 Q. Through --

6 A. Or May 31, I mean.

7 Q. May 31, yes.

8 A. Sorry.

9 Q. So for purposes of comparing an ESP to an
10 MRO and doing that analysis, that \$73.59 per
11 megawatt-hour is what we would use as the comparable
12 market rate for that time period from June 1, 2014,
13 through May 31, 2015; is that right?

14 A. Yes.

15 Q. Okay. And the comparable market rate, to
16 go back a year, so the comparable market rate for the
17 first five months of 2014 would be \$61.38 per
18 megawatt-hour; is that right?

19 A. No.

20 Q. No?

21 A. That would be a 17-month period
22 corresponding with Ms. Thomas's second period, from
23 January 2013 through May 2014.

24 Q. So --

25 A. January 1, 2013, through May 31, 2014, a

1 17-month period.

2 Q. Okay. And so when comparing an ESP to an
3 MRO, that MRO price for all of 2013 and the first
4 five months of 2014, then, would be the \$61.38 per
5 megawatt-hour.

6 A. Yes.

7 MR. LANG: That's all the questions I
8 have, your Honor.

9 EXAMINER SEE: Mr. Darr?

10 MR. DARR: Thank you, your Honor. If I
11 may approach.

12 EXAMINER SEE: Yes.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Darr:

16 Q. Mr. Johnson, I'm handing you what's been
17 previously admitted as OCC No. 5. Are you familiar
18 with that page?

19 A. No, sir.

20 Q. Could you take a moment to review it,
21 please.

22 A. Okay.

23 Q. Have you had a chance to review it?

24 A. Yes.

25 Q. As of September 7th were you or are you

1 aware of anyone else on staff that was aware that the
2 unallocated allotments associated with the commercial
3 class under the stipulation had been fully exhausted?

4 MR. NOURSE: Your Honor, I object. I
5 think it goes beyond the scope of his testimony.

6 MR. DARR: Rule 611(B), we've had this
7 argument before, your Honor. 611(B) allows me to ask
8 questions as to any competent matter.

9 EXAMINER SEE: Mr. Darr, you're going to
10 have to be sure to use the mic this morning.

11 MR. McNAMEE: I'd ask to have the
12 question read again, please.

13 (Record read.)

14 A. I'm not aware --

15 EXAMINER SEE: Just a minute,
16 Mr. Johnson.

17 THE WITNESS: Okay.

18 EXAMINER SEE: There's an objection
19 outstanding.

20 The objection is overruled. You can go
21 ahead and answer the question, Mr. Johnson

22 A. Could you read it again, please?

23 (Record read.)

24 A. No.

25 Q. And based on your calculations,

1 particularly on DRJ No. 4, is it fair to say that
2 you're anticipating an increase in the energy prices
3 that customers will be seeing through the competitive
4 bidding process over the life of the ESP, over the
5 life of the proposed ESP?

6 A. My direct testimony indicates that in
7 each of the successive periods I would expect prices
8 to increase.

9 Q. You do not provide a number for the
10 2015-2016 period. Is it your -- based on your
11 knowledge and experience of the markets do you
12 anticipate that those price increases will continue
13 during that period?

14 A. I have no conclusion about that.

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

16 EXAMINER SEE: Ms. Hand?

17 MS. HAND: No questions, your Honor.

18 EXAMINER SEE: Mr. Smalz?

19 MR. SMALZ: No questions, your Honor.

20 EXAMINER SEE: Okay. Mr. McNamee,
21 redirect for Mr. Johnson?

22 MR. McNAMEE: None, your Honor. Staff
23 would move for the admission of Staff Exhibits 3 and
24 3A.

25 EXAMINER SEE: Are there any objections

1 to the admission of Staff Exhibits 3 and 3A?

2 (No response.)

3 EXAMINER SEE: Hearing none, Staff
4 Exhibits 3 and 3A are admitted into the record.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER SEE: Thank you, Mr. Johnson.
7 Mr. Margard.

8 MR. MARGARD: Thank you, your Honor.
9 Staff would call Mr. Robert Fortney to the stand.

10 EXAMINER SEE: Mr. Fortney, if you'd
11 please raise your right hand.

12 (Witness sworn.)

13 EXAMINER SEE: Have a seat. And I'm
14 going to need you to speak into the mic, Mr. Fortney.

15 Mr. Margard.

16 MR. MARGARD: Thank you, your Honor.

17 Your Honor, I would respectfully request
18 that the prefiled testimony of Robert Fortney filed
19 in this docket on September 13th of 2011 be marked
20 for purposes of identification as Staff Exhibit
21 No. 4.

22 EXAMINER SEE: The exhibit is so marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 - - -
25

1 ROBERT B. FORTNEY

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

4 DIRECT EXAMINATION

5 By Mr. Margard:

6 Q. Please state your name, sir.

7 A. Robert B. Fortney.

8 Q. And by whom are you employed?

9 A. Public Utilities Commission of Ohio.

10 Q. Mr. Fortney, do you have before you what
11 has been marked as Staff Exhibit No. 4?

12 A. Yes, I do.

13 Q. Would you tell me what that exhibit is,
14 please?

15 A. It's my prefiled testimony in this
16 proceeding.

17 Q. Mr. Fortney, we are going to need you to
18 speak into the microphone, please. Even I'm having
19 trouble hearing you.

20 And was this exhibit prepared by you or
21 at your direction?

22 A. Yes, it was.

23 Q. And at the time that you prepared this
24 exhibit were the answers true to the best of your
25 knowledge?

1 A. Yes, they were.

2 MR. MARGARD: Your Honors, I would
3 respectfully move the admission of Staff Exhibit
4 No. 4 subject to cross-examination and would tender
5 this witness for that purpose.

6 EXAMINER SEE: FES want to start?

7 MR. KUTIK: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Kutik:

11 Q. Good morning.

12 A. Good morning.

13 Q. Mr. Fortney, would it be fair to say that
14 the staff supports upholding state policy?

15 A. Yes.

16 Q. And that would include the elimination of
17 anticompetitive practices.

18 A. Yes.

19 Q. And that would include the elimination of
20 discriminatory rates.

21 A. Yes.

22 Q. Now, would you agree with me that
23 generally the same service that is provided to
24 customers should not be differently priced for
25 similarly situated customers?

1 A. Same service for similarly situated
2 customers should be priced equally.

3 Q. Now, in preparation of your testimony
4 would it be correct to say that you reviewed the
5 entire stipulation?

6 A. Yes.

7 Q. Did that include Appendix C to the
8 stipulation?

9 A. I certainly read Appendix C and reviewed
10 it. That's not an area that I would classify myself
11 as an expert.

12 Q. Well, would it be fair to say that with
13 respect to how Appendix C works, it would be possible
14 for shopping customers to pay two different prices
15 for capacity, one at \$255 per megawatt-day and the
16 other at an RPM price?

17 A. I believe that's correct, yes.

18 Q. And as far as you know would it be fair
19 to say that the capacity that would be provided to
20 either of those two sets of customers would be the
21 same, there would be no difference?

22 A. That would be my understanding, yes.

23 Q. And with respect to the priorities or
24 groups that are set out in Appendix C, would it be
25 fair to say that the only distinction is the time

1 that the customer took service from a CRES provider
2 or provided notice that the customer was going to
3 take such service?

4 A. I believe that's a distinction, yes.

5 Q. Now, would it also be fair to say that
6 you have, in this case, have been previously critical
7 of certain proposals to the extent that they
8 discouraged or prohibited shopping?

9 A. Yes. In my initial testimony of
10 August 4th I believe I was critical of the rate
11 stability rider as being discriminatory and
12 anticompetitive.

13 Q. And that would be -- and you thought it
14 would have been anticompetitive because it would have
15 discouraged shopping, correct?

16 A. Yes. One of the provisions of that
17 proposed rider was that if a customer shopped, they
18 were -- the discount was taken away from them and
19 they had to repay the discount with a penalty.

20 Q. Would it be fair to say that you have not
21 analyzed the effect of Appendix C on potential
22 shopping in AEP Ohio?

23 A. I have not.

24 Q. Would you believe, though, even though
25 you have not analyzed it, that having to pay a

1 capacity price of 255 as opposed to an RPM price
2 would tend to discourage shopping?

3 A. I believe if the CRES provider had to pay
4 a higher capacity price, he would not be able to make
5 as good an offer to the ultimate customer and so it
6 would discourage shopping in that sense, yes.

7 Q. Now, you attempted to quantify the
8 proposed ESP price and compare that to a hypothetical
9 MRO price, correct?

10 A. That's correct.

11 Q. And in doing that you attempted to be
12 careful and reasonable in coming up with what you
13 thought those prices would look like, correct?

14 A. I think so, yes.

15 Q. Now, one of the things that you did is
16 you came up with a value for a charge under the
17 generation resources rider, correct?

18 A. That's correct.

19 Q. And because you thought that that would
20 be a fair and reasonable thing to do, correct?

21 A. That's correct.

22 Q. And by not including a charge for the GRR
23 rider you would have been concerned that you were
24 underestimating or understating the potential cost of
25 the ESP, correct?

1 A. Correct.

2 Q. And you thought it was reasonable to
3 include an estimated charge under the GRR especially
4 since AEP had produced a revenue requirement for the
5 Turning Point project, correct?

6 A. Yes, there was an estimate available.

7 Q. And you used that estimate, did you not?

8 A. Yes.

9 Q. Now, the calculation of your testimony --
10 the calculations that are done in your testimony were
11 done prior to the Commission's October 3rd order in
12 Case No. 08-917 on remand, correct?

13 A. Yes, that's correct. Testimony was filed
14 on September 13th, so it was prior to that date.

15 Q. Would it be fair to say that that
16 October 3rd order dealt with the proper level of the
17 POLR charge in the current ESP for AEP Ohio?

18 A. Yes.

19 Q. Would it also be fair to say that it's
20 staff's position that as a result of that order the
21 current ESP charges should not include any charges
22 for POLR?

23 A. I believe that the intent of the remand
24 order was that the POLR should be removed from the
25 current rates, the entire POLR.

1 Q. And would it be fair to say that your
2 calculations in your testimony as we sit here today
3 do not include a calculation that reflects the
4 elimination of POLR charges from the current ESP?

5 A. Nothing that I provided in my testimony
6 reflects that, no.

7 Q. And have you made such a calculation as
8 to what the effect of eliminating the POLR charge
9 would be?

10 A. Yes, I have.

11 Q. And would it be fair to say that if we
12 eliminated the POLR charge from the current ESP
13 charge, that would have the tendency to reduce the
14 MRO price?

15 A. Yes, because the MRO price is a blend
16 between the forecasted MRO price and the current
17 price, so if the current price were lowered, the
18 blended MRO price would also be lowered.

19 Q. And so that if we looked at the three
20 years that you made calculations for and we
21 eliminated the POLR charge from the current ESP
22 portion of the MRO price, the ultimate result of your
23 calculations would be that the ESP would cost more
24 than the MRO to the tune of 276 million or \$276.6
25 million, correct?

1 A. That's what my calculation shows also,
2 yes.

3 Q. So in terms of that portion of the MRO
4 versus ESP test, the ESP would fail, correct?

5 A. It would fail my quantitative analysis,
6 yes.

7 Q. And in terms of a dollar per
8 megawatt-hour difference, if we took out the POLR
9 charge just for the three years that we're talking
10 about, the ESP would cost \$2.12 per megawatt-hour
11 more than the MRO, correct?

12 A. Certainly something in that -- very close
13 to that, yes.

14 Q. Now, you only included calculations for
15 the calendar years 2012, 2013, and 2014, correct?

16 A. That is correct.

17 Q. And Mr. Johnson included calculations
18 that went through the first five months of 2015,
19 correct?

20 A. That is correct.

21 Q. Would it be also fair to say that if we
22 extended your calculations through the first five
23 months of 2015 using Mr. Johnson's data, the cost of
24 the ESP relative to the cost of the MRO would go up?
25 Correct?

1 A. I did not do that calculation.

2 Q. All right. So looking at Mr. Johnson's
3 data you can't sit here today and opine what
4 direction your ESP versus MRO test would go if you
5 included the first five months of 2015. Is that your
6 testimony?

7 A. I would not be able to opine, there would
8 be a blending factor. I used Mr. Johnson's three
9 numbers as a -- for the calendar years '12, '13, and
10 '14, I did not do the pro ratio calculation that
11 would show the additional five months so I do not
12 know the answer.

13 Q. And you don't know what direction it
14 would go.

15 A. I do not know.

16 Q. Would it be fair to say, then, that you
17 did not do a calculation eliminating the POLR charge
18 and taking your calculations out through the end of
19 May 2015?

20 A. I did not, no.

21 Q. You also did not include in your
22 calculations any analysis of the value of rider MTR,
23 correct?

24 A. No, I did not.

25 Q. Would it be fair to say that that rider

1 is not revenue neutral in at least 2012?

2 A. I believe in the first year it is not
3 revenue neutral by \$24 million if I recall.

4 Q. And rider MTR would be included in the
5 ESP part of your calculations, but not in the MRO
6 part, correct?

7 A. That would be correct, yes.

8 Q. So it would be fair to say that if we
9 included the \$24 million, the ESP benefit would go
10 down and the cost of the ESP relative to the MRO
11 would go up.

12 A. In that first year, yes.

13 Q. You also, did you not, included a value
14 for fuel costs?

15 A. Yes, I did include a value for fuel
16 costs.

17 Q. And it was the same value on both the MRO
18 side of the equation and the ESP side of the
19 equation, correct?

20 Well, let me back up. You included a
21 value for fuel in the ESP part, correct?

22 A. Correct.

23 Q. And there's also a value for fuel in
24 taking the current ESP price and blending that to a
25 competitive bid price to come up with your MRO price,

1 correct?

2 A. That is correct.

3 Q. And both the references to the fuel on
4 either the MRO side or the ESP side, they were the
5 same value, correct?

6 A. They were the same value and -- nor did I
7 increase that value for the subsequent years.

8 Q. Well, I'll ask that question in a minute.
9 But the values you used for fuel were the same values
10 that Ms. Thomas used in her calculation, correct?
11 Approximately \$33 per megawatt-hour.

12 A. Well, yes, the number that I used for the
13 current rate was adjusted taking out what the 8.4
14 schedules showed as the current fuel rate which was
15 3.033 and adding back in the current fuel rate of
16 3.31. But that's the only adjustment that I made to
17 fuel.

18 Q. So the number you used for fuel, again,
19 was somewhere in the neighborhood of \$33 per
20 megawatt-hour, correct?

21 A. Yes.

22 Q. And as you said earlier, you didn't
23 increase that 2012 over 2013, 2013 over 2014.

24 A. That is correct, yes.

25 Q. Would it be also fair to say that you

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1 would not expect over that three-year period that
2 AEP Ohio's fuel costs would be the same for every
3 year?

4 A. I would not expect the fuel cost to
5 remain constant for three years, no.

6 Q. Are you aware in this case that AEP Ohio
7 produced fuel cost charge estimates?

8 A. I have seen the response to one of FES's
9 interrogatories where they responded to the question:
10 Please provide a forecast of the fuel rate for the
11 next three years.

12 Q. And without identifying the specific
13 number would it be fair to say that those fuel cost
14 charges, those estimated fuel cost charges are
15 greater than \$33 per megawatt-hour?

16 A. The responses in that document were
17 higher than that number, yes.

18 Q. And if you use those numbers as opposed
19 to the \$33 that you used, would it be fair to say
20 that the ESP benefit would go down or the relative
21 cost of the ESP to the MRO would go up?

22 A. All other things being equal, if the fuel
23 cost goes up, the value of the ESP would go down.

24 Q. You also had a figure in your
25 calculations for transmission charges, correct?

1 A. Yes.

2 Q. And that's the same number that
3 Ms. Thomas used, correct?

4 A. I used the same number that Ms. Thomas
5 and Mr. Roush used in their calculations.

6 Q. Now, you're aware that there have been
7 fairly recent estimates of transmission cost charges,
8 correct, by AEP Ohio?

9 THE WITNESS: I'm sorry, could I have
10 that reread.

11 EXAMINER SEE: Yes.

12 (Record read.)

13 Q. Let me restate the question. You're
14 aware, are you not, that AEP provided transmission
15 cost charge figures in Case No. 11-2473-EL-RDR?

16 A. Yes.

17 Q. And the charges that would result from
18 those estimates would be somewhere in the
19 neighborhood of \$2.70 as opposed to the 2.14 figure
20 you used?

21 A. Yes, I believe that's -- to my memory
22 that's correct.

23 MR. KUTIK: Your Honor, may I --

24 A. And I would expect transmission rates to
25 fluctuate.

1 MR. KUTIK: Your Honor, may I approach?

2 EXAMINER SEE: Yes.

3 Q. Mr. Fortney, I've handed you a document,
4 do you recognize this?

5 A. Yes. I believe it's a document that
6 staff member Don Howard provided to me when we -- at
7 some early stage of our investigation when I was
8 trying to reconcile the numbers.

9 Q. And these are a part of your workpapers,
10 are they not?

11 A. They were probably in that stack, yes.

12 Q. And what is this -- this shows a
13 calculated rate based upon a June 9, 2011, update in
14 Case No. 11-2473-EL-RDR, correct?

15 A. Correct.

16 Q. And it shows a charge of \$2.73 or so per
17 megawatt-hour, correct?

18 A. Yes.

19 Q. And would it be fair to say that if we
20 used this figure as opposed to the \$2.14 figure you
21 used, the ESP benefit that you calculated would go
22 down and the relative cost of the ESP relative to the
23 MRO would go up?

24 MR. NOURSE: Your Honor, I object.
25 There's no foundation that suggests those two dollar

1 amounts are comparable to ask that question.

2 MR. KUTIK: The witness can answer, your
3 Honor. If that's an improper characterization or
4 comparison, he can say.

5 EXAMINER SEE: The objection is
6 overruled.

7 You can answer the question, Mr. Fortney.

8 A. Again, all other things being equal, if
9 the transmission component goes up, the ESP becomes
10 less favorable.

11 Q. Your job in this case was to attempt to
12 quantify the relative benefits of the ESP versus an
13 MRO, correct?

14 A. Correct.

15 Q. And one of the things you did as we've
16 just discussed for several minutes is quantify the
17 ESP price versus a hypothetical MRO price, correct?

18 A. Correct.

19 Q. You've also indicated on your Attachment
20 A something about grants that would potentially be
21 made to two organizations, the Partnership With Ohio
22 and the Ohio Growth Fund, right?

23 A. Correct.

24 Q. And would it be fair to say that you put
25 that figure or that little calculation on your

1 Attachment A to signify a potential benefit of the
2 ESP?

3 A. That's fair.

4 Q. You would agree with me, would you not,
5 that the grant that might be made to those two
6 organizations is conditional?

7 A. I believe it is tied to some rate of
8 return, but I would like to verify that in the
9 stipulation itself.

10 Q. Sure. If you need to take a minute,
11 please do that.

12 A. Well, apparently I did not bring my copy
13 of the stipulation with me, so I don't have a copy of
14 the stipulation.

15 Q. I can give you my copy if you'd like.

16 Thank you.

17 A. Perhaps if you would lead me to that
18 provision, it would save some time.

19 I'm sorry. I have it.

20 Q. Okay. Do you have the question still in
21 mind, sir?

22 A. Pardon?

23 Q. Do you have the question still in mind,
24 that is that the grants are potentially, or are
25 conditional?

1 A. Yeah, it looks like provisions u and v, u
2 deals with the Partnership With Ohio, 3 million for
3 low-income customers annually during the term of the
4 ESP provided AEP Ohio's return on equity exceeds
5 10 percent for the prior calendar year.

6 The Ohio Growth fund of 5 million
7 annually is, the same wording, provided AEP Ohio's
8 return on equity exceeds 10 percent for the prior
9 calendar year.

10 Q. So you would agree with me that the
11 grants are conditional.

12 A. Yes.

13 Q. Would it be fair to say also that your
14 Attachment A shows all of your calculations or the
15 results of all your calculations?

16 THE WITNESS: I'm sorry. I need that
17 reread, please.

18 (Record read.)

19 A. My Attachment A shows all the
20 calculations that I thought were quantifiable and --
21 it does not quantify the two funds, for instance,
22 that you just mentioned in the calculation. I just
23 mention those as potential benefits.

24 Q. Well, for example, we see nothing in your
25 Attachment A which tries to calculate or quantify the

1 likelihood that those gifts will ever be made,
2 correct?

3 A. No. That is correct.

4 Q. And you made no such calculation,
5 correct?

6 A. That's correct.

7 Q. You also didn't list on Attachment A any
8 alleged benefit as a result of customers not having
9 to pay a capacity price of \$355 per megawatt-hour,
10 correct -- megawatt-day, correct?

11 A. That is correct. I did not list that.

12 Q. Now, you're familiar with Mr. Choueiki's
13 testimony, correct?

14 A. I have read all the testimonies, yes.

15 Q. Would it be fair to say that
16 Mr. Choueiki's testimony supports capacity pricing at
17 RPM?

18 A. Yes.

19 Q. So would it be fair to say that -- would
20 it be fair to say that if one was going to have a
21 benefit calculated from not having to pay a capacity
22 price of \$355, one would have to assume that AEP was
23 entitled to charge that amount?

24 A. I play the lottery and occasionally when
25 one of the jackpots gets fairly high I take out my

1 pad of paper and I write down what I'm going to spend
2 the money on, who I might leave it to, and who I
3 might give it to, and I guess, for example, if I took
4 my pad of paper out and I put Ms. Grady's name down,
5 she's a nice person, it probably isn't much of a
6 benefit to her unless I actually win the lottery and
7 until I actually give her a million dollar check.

8 So I know you like yes or no answers, so
9 I think the answer to your question is yes, I think
10 when you are going to compare two things, one of the
11 things has to be a certain.

12 Q. And you didn't attempt to calculate that
13 benefit because you didn't think it was a benefit,
14 did you?

15 A. It may be a meaningful number for AEP. I
16 do not believe it's a meaningful number for the
17 comparison of the MRO to the ESP.

18 Q. Thank you.

19 MR. KUTIK: May I have a minute, your
20 Honor?

21 EXAMINER SEE: Yes.

22 Q. Going back to the methodology you used to
23 calculate the ESP price versus the MRO price, I think
24 you mentioned earlier that there is a blending that
25 needs to take place on the MRO side of the equation,

1 correct?

2 A. Correct.

3 Q. And you're blending the current ESP price
4 with a competitive benchmark or competitive bidding
5 process price, correct?

6 A. I blended the current price with the
7 market rate number that Mr. Johnson provided to me.

8 Q. And the blending that you used is set out
9 in Section 4928.142(D), correct?

10 A. It's set out in Senate Bill 221.

11 Q. In the MRO part of the statute.

12 A. Yes.

13 Q. Would it be correct to say that if one
14 has an MRO, the PUCO can change the blend in the
15 second year?

16 A. I'm not entirely familiar with that
17 statute, but yes, I believe that is correct.

18 Q. Going to Attachment A, do you have that
19 in front of you?

20 A. Yes.

21 Q. I want to direct your attention to the
22 columns dealing with the year 2014. When we're
23 talking about the year 2014, we're talking about the
24 calendar year 2014, correct?

25 A. That's correct.

1 Q. Particularly with respect to the column
2 that says "Staff Projected MRO," you have a figure
3 for the market comparable total generation of \$7.359,
4 correct?

5 A. 7.359 cents per kilowatt-hour.

6 Q. And that is the figure that you used for
7 all of the calendar year of 2014, correct?

8 A. Yes, that's what I used.

9 MR. KUTIK: I have no further questions.
10 Thank you, Mr. Fortney.

11 EXAMINER SEE: Ms. Grady?

12 MS. GRADY: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Grady:

16 Q. Good morning, Mr. Fortney.

17 A. Good morning.

18 Q. Now, you indicate on your testimony on
19 page 1 that you are testifying in support of the
20 stipulation and recommendation; is that correct?

21 A. That's correct.

22 Q. And that stipulation and recommendation
23 was filed on September 7th, 2011?

24 A. Yes.

25 Q. And, Mr. Fortney, you're presenting your

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1 testimony setting forth the official staff position
2 on the stipulation?

3 A. Regarding the quantitative analysis, yes.

4 Q. Are you the primary staff witness that
5 testifies as to whether the stipulation as a whole
6 should be adopted by the Commission?

7 A. Yes.

8 Q. Now, you base your recommendation, do you
9 not, Mr. Fortney, on your conclusions with regard to
10 the three-prong test criteria for adopting a
11 stipulation? Correct?

12 A. Yes.

13 Q. Now, on page 2 of your testimony,
14 specifically lines 10 through 16, you indicate that
15 in your opinion, taken as a package, the stipulation
16 benefits ratepayers and is in the public interest; is
17 that a fair characterization of your testimony?

18 A. Yes, it is.

19 Q. And would you agree that the proposal,
20 the proposed stipulation, is a package?

21 A. Yes.

22 Q. And would you agree that the whole of the
23 package is equal to the sum of all of its parts?

24 A. Yes.

25 Q. And would you agree that one way to judge

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1 the proposal would be to evaluate it by evaluating
2 each one of the component parts?

3 A. I believe that's what you have to do,
4 yes.

5 Q. And, in fact, as an ESP proposal the PUCO
6 must evaluate each component part; is that correct?

7 A. Yes.

8 Q. And it must determine if the entire
9 package is more favorable in the aggregate and that
10 each component part complies with the law; is that
11 correct?

12 A. I'm not a lawyer, but yes, that sounds
13 like a reasonable proposition, yes.

14 Q. And the Commission is required, is it
15 not, to determine whether each provision within the
16 ESP complies with the state policy provisions of
17 Senate Bill 221?

18 A. Yes.

19 Q. Now, on line 14, page 2, you state that
20 the focus of your testimony is on the quantitative
21 benefits of the stipulation, correct?

22 A. Yes.

23 Q. And you distinguish between the
24 quantitative benefits and the qualitative benefits of
25 the stipulation; do you not?

1 A. That's correct.

2 Q. And when you came to your conclusion in
3 your testimony that the stipulation benefits
4 ratepayers and is in the public interest, that is
5 based upon both the quantitative and the qualitative
6 benefits; is that correct?

7 A. While I focused on the numbers part, yes,
8 that was my conclusion, that the stipulation as a
9 whole was better in the aggregate.

10 Q. And you are not drawing that conclusion
11 solely on the basis of your quantitative analysis,
12 are you?

13 A. Not solely, but primarily.

14 Q. Now, in response to questions posed to
15 you by Mr. Kutik you indicated that if you completely
16 eliminated POLR from the ESP versus MRO price
17 comparison, the ESP would fail. Do you recall those
18 questions?

19 A. Yes.

20 Q. And specifically I would ask you whether
21 or not you are drawing that conclusion with respect
22 to each year of the ESP proposed in the stipulation.

23 A. No, I did not. It was over the
24 three-year period.

25 Q. And the three-year period being 2012,

1 2013, and 2014 that if POLR was eliminated for each
2 year under the stipulation, the comparison would fail
3 the aggregate test.

4 A. According to those calculations that I
5 made it fails for each year, yes.

6 Q. Now, you mentioned to Mr. Kutik that you
7 submitted testimony on August 4th, 2011. Do you
8 recall that?

9 A. Yes.

10 Q. Now, in that testimony you were
11 addressing the filed electric security plan of the
12 companies?

13 A. I was addressing the application, yes.

14 Q. And specifically you provided testimony
15 on the issues in the company's application that the
16 staff did not support or was proposing to be
17 modified; is that correct?

18 A. Staff's instructions on filing testimony
19 were to address issues with which we were not in
20 agreement, yes.

21 Q. Now, there are similarities, are there
22 not, Mr. Fortney, between the filed electric security
23 plan and the stipulation filed in this proceeding?
24 Is that correct?

25 A. Sure, there are similarities.

1 Q. Now, in the testimony you filed on the
2 company's application you objected to the company's
3 proposed rate structure that was based on
4 market-based pricing relationships; did you not?

5 A. Yes, I did in my initial testimony.

6 Q. And you objected to the substantial cost
7 shifts under the ESP proposed rate structure,
8 correct?

9 A. Yes, I did.

10 Q. Is that same proposed rate structure a
11 part of the stipulation?

12 A. Yes, the proposed rate structure is part
13 of the stipulation.

14 Q. And aren't there also substantial cost
15 shifts also proposed under the rate structure in the
16 stipulation?

17 A. Yes.

18 Q. Now, Mr. Fortney, did you also testify on
19 the application with respect to the ESP that until
20 such time as the costs to AEP are actual market
21 price, that the staff does not believe a complete
22 rate design overhaul is necessary? Do you recall
23 that testimony?

24 A. That was my initial testimony, yes.

25 Q. And under the stipulation are the costs

1 to AEP actual market prices during any period of the
2 proposed term?

3 A. Not until mid-2015.

4 Q. Now, in your testimony filed with respect
5 to the ESP proposed by the company you also disagreed
6 with the company's proposal to increase its
7 generation rates, correct?

8 A. Correct.

9 Q. And the premise of your disagreement was
10 that there was no cost-based rationale to the
11 company's proposal, correct?

12 A. That was my initial testimony, yes.

13 Q. And because there was no cost-based
14 rationale you testified that the staff had no reason
15 to believe that such an increase in revenue was
16 warranted at that time; is that correct?

17 A. I don't know. I assume you're reading
18 from my initial testimony so yes.

19 Q. That is a correct assumption.

20 Now, under the proposed stipulation there
21 are increases in generation rates for each of the
22 years 2012 through 2015; are there not?

23 MR. NOURSE: Could I have the question
24 reread?

25 EXAMINER SEE: Yes.

1 (Record read.)

2 A. There are proposed increases in the base
3 generation rates, but those base generation rates no
4 longer represent what they initially did in the
5 application.

6 Q. And these generation rate increases are
7 not based on costs, are they?

8 A. Not to my knowledge.

9 Q. Now, are you aware of Commission policies
10 or practices with respect to the approval of electric
11 security plans in general?

12 A. Only that they need to be better in the
13 aggregate than the MRO to be approved.

14 Q. Were you involved in any of the first
15 round of electric security plan filings that occurred
16 directly after the passage of Senate Bill 221?

17 A. Yes.

18 Q. And you would have been involved in the
19 FirstEnergy ESP filing Case No. 08-953-EL-SSO?

20 A. Yes.

21 Q. And in that case, in fact, you filed
22 testimony; did you not?

23 A. I don't recall, but it's likely I did.

24 Q. Mr. Fortney, are you aware of whether or
25 not -- let me strike that.

1 Mr. Fortney, is it the Commission's
2 policy or practice to allow noncost-based provisions
3 as part of the electric security plans of electric
4 distribution facilities? Let me strike that. It's a
5 little bit of a mouthful.

6 Mr. Fortney, is it your understanding
7 that it's the Commission's policy or practice to
8 allow noncost-based provisions as part of an electric
9 security plan of an electric distribution utility?

10 MR. CONWAY: Excuse me. Can I have the
11 question reread, your Honor?

12 EXAMINER SEE: Yes.

13 (Record read.)

14 A. I keep not hearing the "an" part. Did
15 you say distribution --

16 Q. Electric distribution utility.

17 A. I believe Senate Bill 221 allows for
18 single-issue rate-making on the distribution side but
19 it needs to be cost justified, yes.

20 Q. So you would -- it would be your
21 understanding that the Commission's policy is not to
22 allow noncost-based provisions as part of an electric
23 security plan.

24 MR. MARGARD: Your Honor, I object.

25 MR. NOURSE: Your Honor, I object.

1 MR. MARGARD: Mischaracterization.

2 Mr. Fortney clearly limited his response to
3 distribution.

4 EXAMINER SEE: I think there was another
5 objection coming from this side?

6 MR. NOURSE: Yeah. My further objection
7 is equating the word "policy" with the outcome of
8 prior Commission decisions regardless of whether
9 they've been presented with the same issues.

10 EXAMINER SEE: And the objection is
11 sustained.

12 Q. Can you identify, Mr. Fortney, any
13 specific examples of Commission practice with respect
14 to ESPs where the PUCO has allowed noncost-based
15 elements or provisions in an electric security plan?

16 A. And, again, are we talking about
17 distribution? Was that part of the question?

18 Q. Of an -- an electric security plan of an
19 electric distribution utility.

20 A. Not that I'm aware of. There have been
21 several approvals of riders, but all of them have
22 some cost-based mechanism for adjustment.

23 Q. Are you aware of any Commission practice
24 to disallow noncost-based elements as part of an
25 electric security plan for an electric distribution

1 utility?

2 A. Not that I remember.

3 Q. Are you aware of the Commission's
4 rejection of an automatic annual non-FAC generation
5 increase in the AEP ESP order 08-917-EL-SSO?

6 THE WITNESS: Could I have the question
7 reread, please?

8 EXAMINER SEE: Yes.

9 (Record read.)

10 A. I remember that that application was
11 modified by the Commission, but I don't remember that
12 particular provision of it.

13 Q. Are you familiar with the standby charges
14 that were requested in FirstEnergy's ESP case in
15 08-935-EL-SSO?

16 A. Yes.

17 Q. And is it your understanding that the
18 PUCO modified the rider's standby charges so that it
19 would be based on actual prudently incurred costs?

20 A. Yes.

21 Q. And are you familiar with the
22 distribution service improvement rider in the
23 FirstEnergy ESP case?

24 A. Somewhat, yes.

25 Q. And is it your understanding that the

1 PUCO determined that that distribution investment
2 rider should be based on costs?

3 A. I don't recall whether it was based upon
4 costs in the first ESP, but in the second ESP it was
5 determined that it should be based upon costs, yes.

6 Q. Now let's talk for a moment about the
7 distribution investment rider, Mr. Fortney. That
8 distribution investment rider is part of the
9 stipulation, is it not, a three-year rider with
10 expenditures in 2012, 2013, and 2014? Correct?

11 A. There again, let me find that provision
12 in the stipulation.

13 Q. If I can help, that would be page 8,
14 paragraph n.

15 A. Okay.

16 Q. And under the provisions in the
17 stipulation there are expenditures capped at
18 86 million in 2012, 104 million in 2013, and
19 124 million in 2014, correct?

20 A. Those are caps, and the 124 million is
21 for 2014 and the first five months of 2015, yes.

22 Q. Thank you for that clarification.

23 Now, that is, as far as you know, based
24 on post-2000 distribution plant investment?

25 A. The net capital additions included for

1 recognition under the DIR will reflect gross plant in
2 service incurred post-2000 adjusted for growth and
3 accumulated depreciation.

4 Q. The staff filed testimony, did it not, on
5 the company's proposed distribution investment rider
6 as it was proposed in the ESP? Correct?

7 A. I believe Ms. McCarter did, yes.

8 Q. And that testimony would have been filed
9 on August 4th, 2011?

10 A. Yes.

11 Q. And Ms. McCarter in her testimony -- let
12 me strike that.

13 And in that testimony which you referred
14 to Ms. McCarter, the staff recommended that the
15 Commission not adopt the company's proposed
16 distribution investment rider; is that correct?

17 MR. MARGARD: Your Honor, I'm going to
18 object. Ms. McCarter is not on the stand. If she
19 wants to ask Mr. Fortney about his testimony, that
20 would be fine, but to ask Mr. Fortney about testimony
21 filed by other staff witnesses not being offered in
22 this case is inappropriate.

23 MS. GRADY: Your Honor, if I may briefly
24 respond.

25 EXAMINER SEE: Yes.

1 MS. GRADY: Mr. Fortney is the witness
2 responsible for supporting the stipulation and
3 whether it passes a three-prong test. Earlier this
4 morning Mr. Fortney said that you had to examine each
5 component of the stipulation to determine whether or
6 not the ESP proposed under the stipulation could be
7 adopted by the Commission. This is one of those
8 provisions and, therefore, it should be subject to
9 cross-examination whether Ms. McCarter has been
10 identified as a staff witness or not.

11 MR. MARGARD: May I respond?

12 EXAMINER SEE: Yes.

13 MR. MARGARD: Your Honor, I don't
14 disagree, and certainly Ms. Grady can inquire
15 regarding the DIR, but using testimony that's not
16 being offered in the case to do so is inappropriate.
17 If she has questions about provisions, she's more
18 than free to ask Mr. Fortney, but to ask him about
19 her testimony is inappropriate.

20 MR. NOURSE: The companies join the
21 objection.

22 MR. DARR: Can I address the objection,
23 your Honor?

24 EXAMINER SEE: Yes, Mr. Darr.

25 MR. DARR: At issue here are two, I

1 think, related questions: One is the appropriateness
2 of the line of cross-examination, and I think
3 Mr. Margard has already indicated that the line of
4 cross-examination is appropriate; the second is
5 whether or not the staff's positions can be used with
6 regard to the examination.

7 These are statements that have been made
8 by the staff, they are clearly evidence and they do
9 not constitute hearsay in any sense of the term.
10 Thus it's appropriate, I believe, and I think that
11 you have already ruled, the Bench has already ruled
12 on this on a couple of occasions previously that
13 prior testimony not only of a person but of that
14 party is available for examination.

15 MR. NOURSE: Your Honor, it's not staff
16 testimony regarding the stipulation that was
17 submitted in this hearing, so I object to that
18 characterization.

19 MR. DARR: It's testimony that's been
20 filed. It has not been adopted yet. That is the
21 only distinction, your Honor.

22 EXAMINER SEE: The objection is
23 overruled. You can answer the question, Mr. Fortney.

24 A. I believe I can answer the question. I
25 believe that Ms. McCarter's initial testimony filed

1 on August 4th recommended that there not -- AEP not
2 be granted a DIR rider. I think she then went on to
3 say if they are, she put some flags to be attached if
4 the DIR rider were to be approved.

5 Q. Thank you, Mr. Fortney.

6 Is it also your understanding that her
7 testimony concluded that the companies had not
8 demonstrated a need for a distribution investment
9 rider?

10 A. I believe that was the gist of her
11 testimony, yes.

12 Q. Now, in the time period between
13 August 4th, 2011, and September 7th, 2011, what
14 information did the companies provide to the staff to
15 demonstrate a need for the DIR proposed in the
16 stipulation?

17 A. I don't know that there was any
18 additional information provided during that time
19 frame.

20 Q. Now, Staff Witness McCarter also
21 testified the company had not developed a specific
22 analysis of what assets they would replace under the
23 distribution investment rider; is that your
24 understanding?

25 A. That's my recall of Ms. McCarter's

1 testimony.

2 Q. Now, in the time period between
3 August 4th, 2011, and September 7th, 2011, what
4 information did the companies provide to the staff of
5 any specific analysis of what assets they would
6 replace under the DIR proposed in the stipulation?

7 A. I am not aware of any additional
8 information that was provided, although there was the
9 calculation of changing from an O&M adder to a
10 carrying charge adder. And so those calculations
11 would have been included.

12 Q. Now, the staff testimony of Ms. McCarter
13 also concluded that the testimony had not developed a
14 concrete methodology to target the asset
15 improvements. Do you recall that?

16 A. I recall the gist of that testimony, of
17 that being her testimony, yes.

18 Q. Now, in the time period between
19 August 4th, 2011, and September 7th, 2011, what
20 information did the companies provide to the staff of
21 any concrete methodology to target the asset
22 improvements?

23 MR. NOURSE: Your Honor, I just object to
24 this continuing line of questioning. We're going
25 down through each line of Ms. McCarter's testimony

1 even though she's never been presented and subject to
2 cross-examination or motion to strike or anything
3 else and trying to present her testimony as if she
4 was testifying regarding the stipulation when her
5 testimony was regarding the application and is not
6 being presented by staff in this case -- in this
7 hearing.

8 EXAMINER SEE: The objection is
9 overruled.

10 THE WITNESS: I will need that question
11 reread.

12 (Record read.)

13 A. I don't believe there was any additional
14 information other than what was in the initial
15 application, there may have been -- Ms. McCarter may
16 have asked some clarification questions which may
17 have been answered and, there again, the only
18 modification was going from the O&M adder to a
19 carrying charge adder.

20 Q. Now, the staff testimony -- are you aware
21 of whether the staff testimony -- let me strike that.

22 The staff testimony of Ms. McCarter
23 identified only two specific capital investments
24 identified by the companies, the gridSMART phase and
25 the replacement of current mobile communication

1 systems, and those two projects at that time were
2 distribution investments that were to be made under
3 the DIR proposed in the ESP; is that your
4 understanding?

5 A. To the best of my recollection, yes.

6 Q. Now, in the time period of August 4th,
7 2011, to September 7th, 2011, what information did
8 the companies provide to the staff of specific
9 investments to be made under the DIR proposed in the
10 stipulation?

11 A. There again, I'm not entirely familiar
12 with that but I believe that Ms. McCarter probably
13 had somebody clarify the exact amounts that were
14 going to be spent on the smart grid and any other
15 known thing.

16 Q. Now, the staff also testified -- let me
17 strike that.

18 You're aware, Mr. Fortney, that
19 Ms. McCarter also testified the companies had not
20 indicated any expected tangible improvements to
21 reliability performance associated with the
22 distribution investment rider; do you recall that
23 testimony?

24 MR. NOURSE: Your Honor, I object.
25 Ms. McCarter is not testifying in this proceeding.

1 EXAMINER SEE: Do you wish to respond,
2 Ms. Grady?

3 MS. GRADY: Your Honor, obviously there
4 was a change in staff position from the filing of
5 Ms. McCarter's testimony and the signing of the
6 stipulation on September 7th, 2011. We are exploring
7 the basis for that change in the staff's position and
8 whether or not that change is an appropriate change
9 and whether or not that provision in the stipulation
10 is a reasonable provision and is consistent with
11 Commission policy and practice under the three-prong
12 criteria.

13 MR. NOURSE: Your Honor, if you read back
14 the question, she stated Ms. McCarter testified as to
15 X, and I'm objecting to that characterization.

16 MS. GRADY: If I could modify that. I'm
17 sorry. I thought he was objecting to the whole
18 question. Rather --

19 MR. NOURSE: I am, but that's already
20 been overruled.

21 MS. GRADY: With the clarification that
22 Ms. McCarter stated in testimony that the companies
23 had not indicated any expected tangible improvements
24 to reliability performance under the DIR of the ESP.

25 EXAMINER SEE: And before you answer that

1 question, Mr. Fortney.

2 The objection that was made by the
3 company I think as to the form of the question and
4 continuing to place Ms. McCarter's position in the
5 record, if you want to proceed, then I think you can
6 get down the avenue of determining support of the
7 record on the distribution investment rider. You can
8 explore that, but be very careful about putting
9 Ms. McCarter's previously filed testimony in the
10 record.

11 You can answer the question, Mr. Fortney.
12 Reread it?

13 THE WITNESS: I would need it reread,
14 yes.

15 (Record read.)

16 A. There again, I don't recall
17 Ms. McCarter's testimony word for word, but I believe
18 that the lack of tying the DIR to reliability was an
19 issue that she raised.

20 Q. In the time period between August 4th,
21 2011, and September 7th, 2011, what information did
22 the companies provide to the staff of any expected
23 tangible improvement to reliability performance
24 associated with the DIR proposed in the stipulation?

25 A. None that I am aware of, and I guess I

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1 would be remiss if I didn't say that in rereading the
2 DIR provision that is something that staff would
3 certainly not object to the Commission modifying,
4 some type of reliability to the DIR expenditures. I
5 don't believe that provision is clear on that in the
6 stipulation.

7 Q. Now, you earlier indicated that you
8 believe Ms. McCarter's filed testimony took the
9 position that if there was to be a DIR, there should
10 be some modifications to the DIR. Do you recall
11 that?

12 A. Yes.

13 Q. Now, was it your understanding that one
14 of those recommendations that Ms. McCarter filed
15 testimony on was that the DIR baseline should be
16 plant in service as of the date certain in the
17 distribution rate case?

18 A. Again, I assume you are reading to me
19 from Ms. McCarter's testimony, I probably should have
20 had Ms. McCarter's testimony up here so I could
21 verify all this, but yes, I do remember that line of
22 recommendation.

23 Q. Now, do you know the value of the plant
24 in service that has been identified in the
25 distribution rate case as of the date certain?

1 A. No, I do not.

2 Q. Do you know how that compares with the
3 post-2000 plant in service consideration that is
4 proposed to be used in the stipulation as the
5 baseline for the DIR?

6 A. No, I do not.

7 Q. Is it your understanding that based on a
8 post-2000 distribution plant investment under the
9 stipulation, that in order for the company to collect
10 its first 86 million in carrying charges the company
11 would not have to even invest one additional dollar
12 in distribution plant?

13 A. That's my understanding, yes.

14 Q. That the carrying charges would simply
15 accrue on the post-2000 plant values without any
16 additional investment for 2012.

17 A. I believe that's true, yes.

18 Q. Is it your understanding that based on
19 the post-2000 distribution plant that, under the
20 stipulation, in order for the company to collect its
21 next \$104 million in carrying charges for 2013 the
22 companies would not have to invest another dollar in
23 distribution plant?

24 A. The stipulation talks about caps. I
25 don't see anywhere where it talks about it has to be

1 new expenditures.

2 Q. So your response to my question
3 essentially would be yes, that that could -- under
4 the stipulation, the company could collect
5 \$104 million in 2013 without investing any new
6 additional dollars in distribution plant for
7 reliability.

8 A. It's my understanding in the provision,
9 yes, that that could occur.

10 Q. And could that also occur for 2014 where
11 the cap is 124 million, that the companies would not
12 need to invest any additional dollars in distribution
13 plant related to reliability in order to collect
14 \$124 million in carrying costs?

15 A. I don't see any difference in 2013 or
16 2014.

17 Q. Now, are you aware, Mr. Fortney, that the
18 companies have requested a return on distribution
19 plant investment in the distribution rate cases, Case
20 Nos. 11-351 and 11-352-EL-AIR?

21 A. I'm aware that they have requested. I'm
22 not aware of what those numbers are.

23 Q. Is it your understanding that the
24 companies have included distribution plant in rate
25 base valued as of date certain August 31st, 2010?

1 A. That's a date certain that's what they
2 should have done, yes.

3 Q. And is it your understanding that the
4 Staff Report of Investigation was issued in those
5 cases on September 16th in both 11-351 and
6 11-352-EL-AIR?

7 A. I'm not sure of the exact date, but yes,
8 I'm aware that they were docketed.

9 Q. I'm sorry. I didn't mean to cut you off.

10 A. I'm aware the staff reports were
11 docketed.

12 Q. Okay. Is it your understanding,
13 Mr. Fortney, that the staff in its staff reports
14 recommended a rate based valuation of distribution
15 investment as of August 31st, 2010, for both
16 companies?

17 A. That's my understanding, yes.

18 Q. And is it also your understanding,
19 Mr. Fortney, that the staff in its staff report
20 recommended revenue requirements of the company to
21 include revenues associated with calculating a return
22 on the date certain rate base investment?

23 A. Yes.

24 Q. And are you aware, Mr. Fortney, that the
25 companies have also requested a return of the

1 distribution plant investment in their distribution
2 rate case, a return of?

3 A. Sure.

4 Q. And that would be through the
5 depreciation expense.

6 A. Uh-huh, yes.

7 Q. And is it your understanding that the
8 staff in its staff reports recommended revenue
9 requirements for the companies that would include a
10 return of the distribution plant investment as of
11 date certain August 31st, 2010?

12 A. That would be my understanding, yes.

13 Q. And are you aware that the companies have
14 also requested expenditures related to date certain
15 distribution investments including taxes such as
16 property taxes, commercial activity taxes, and income
17 taxes? In the distribution case.

18 A. Yes.

19 Q. And is it your understanding that the
20 staff in its staff report recommended revenue
21 requirements of the companies that would have
22 included expenditures related to date certain
23 distribution investment including property taxes,
24 commercial activity taxes, and income taxes?

25 A. That would be my understanding, yes.

1 Q. Now, Mr. Fortney, are you aware of
2 whether or not the staff made recommendations on the
3 company's filed ESP related to carrying charges
4 associated with the distribution investment rider
5 that was proposed?

6 A. I know that Mr. Retterer's testimony
7 discussed carrying charges for various things. I do
8 not recall whether Mr. Retterer's testimony addressed
9 the carrying charges for the DIR, no.

10 MS. GRADY: Mr. Fortney, that's all the
11 questions I have. Thank you very much.

12 Thank you, your Honors.

13 EXAMINER SEE: Mr. Smalz?

14 MR. SMALZ: Yes, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Smalz:

18 Q. Good morning, Mr. Fortney. On page 3,
19 lines 7 through 9 of your testimony, you refer to the
20 Partnership With Ohio initiative. Do you see that?

21 A. Yes, I do.

22 Q. Now, Mr. Fortney, I think earlier in
23 answer to questions from Attorney Kutik you
24 referenced the figures in Attachment A regarding
25 Partnership With Ohio. Do you recall that testimony?

1 A. Yes.

2 Q. And under the stipulation the proposed
3 contribution to Partnership With Ohio would be
4 \$3 million per year; is that your understanding?

5 A. That's my understanding, yes.

6 Q. Now, Mr. Fortney, are you familiar with
7 the current ESP of AEP Ohio, the one that is in
8 effect for the years 2009 through 2011?

9 A. Yes.

10 Q. And are you aware of the Partnership With
11 Ohio provisions in that -- that apply to the current
12 ESP?

13 A. I'm aware that there is some number in
14 there for the, both the Growth Fund and the
15 Partnership With Ohio. I do not remember what those
16 exact numbers were under the current ESP.

17 Q. Do you remember if the number in the
18 existing ESP, the number for annual contributions by
19 AEP Ohio to the Partnership With Ohio fund for
20 low-income programs, is that number greater or lesser
21 than what's proposed in the stipulation?

22 A. I really don't recall what the number was
23 under the current ESP. The numbers in the
24 stipulation are less than what was in the initial
25 application in this proceeding. I don't know if the

1 initial application in this proceeding reflected the
2 current ESP rates or not, or revenues or not.

3 Q. And is it your understanding that the
4 amount proposed in the current ESP for low-income
5 assistance -- strike that.

6 Is it your understanding that the amount
7 that AEP Ohio proposed to contribute to Partnership
8 With Ohio for low-income assistance is \$6 million per
9 year?

10 THE WITNESS: I'm sorry. I must have
11 missed something. Could I have the question reread,
12 please?

13 EXAMINER SEE: Yes.

14 (Record read.)

15 A. \$6 million in the initial application,
16 yes.

17 Q. As compared to \$3 million in the
18 stipulation.

19 A. That's correct.

20 Q. And that's about half of what was
21 originally proposed.

22 A. Yes.

23 MR. SMALZ: I have no further questions,
24 your Honor.

25 MR. MARGARD: Your Honor, could I suggest

1 this might be a good time for a break for
2 Mr. Fortney.

3 EXAMINER SEE: Okay. Let's go off the
4 record for ten minutes.

5 (Recess taken.)

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

8 Mr. Darr.

9 MR. DARR: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Darr:

13 Q. Mr. Fortney, in terms of assessing the
14 MRO versus ESP I note that you didn't include the
15 last 17 months that we talked about earlier. Would I
16 be correct that if you did make a calculation, you
17 would use the same kind of blending formula that you
18 started to use for the MRO calculation, that is
19 adjusting it each year by another 10 percent?

20 A. Yeah. If I went into 2015, then the
21 blend would be 60/40.

22 Q. And in 2016, 50/50?

23 A. Yes.

24 Q. And would that change at all given the
25 fact that in the June '15 to May 2016 delivery period

1 the stipulation proposes that the customers receive a
2 competitive bid generated -- generation price?

3 A. Well, I believe that from mid-2015
4 through 2016 that the ESP generation rate and the MRO
5 would be the same number since it's derived from my
6 competitive bid.

7 Q. Why would the 2015-2016 be the same
8 number? Why would you not -- let me rephrase.

9 Would the MRO comparison price be the
10 competitive bid price in that year?

11 A. The result of the competitive bid would
12 be a market rate offer. That's my understanding.

13 Q. For the ESP. For the proposed ESP,
14 correct?

15 A. If in mid-2015 AEP derives its generation
16 rate from a competitive bid, then that would be
17 equivalent to a market rate offer. That's the way I
18 view it.

19 Q. Would the market rate comparison be at
20 50/50, 50 percent on the old ESP and 50 percent off
21 the competitive rate?

22 A. Again, I think the Commission could
23 modify that, but yes, that would probably be the way
24 that I would look at it.

25 Q. At least on a going in basis it would be

1 50/50.

2 A. Yes. For the -- where are we at? In the
3 fifth year.

4 Q. In preparing your calculations I note
5 that you did it on an AEP Ohio basis. Did you
6 perform these calculations on a CSP only or an OP
7 only basis?

8 A. No, I did not.

9 Q. With regard to the pool termination rider
10 contained in Section IV.5 of the agreement, it's your
11 understanding that the rider would be initially zero.

12 A. I'm sorry. Which provision?

13 Q. The pool termination mechanism or rider.

14 A. Yes, that's my understanding.

15 Q. And is it also your understanding that
16 the staff had a concern as this was originally
17 proposed that the company's proposal, if acted upon
18 in this proceeding, could be misconstrued as
19 preapproval of any alleged revenue shortfalls?

20 A. Yes, I think that was one of staff's
21 concerns, that we did not want the stipulation
22 reflecting the fact that we preapproved any pool
23 termination charges, that there would be a separate
24 proceeding for that.

25 Q. Are you familiar with the audit report

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1 that's been done in the 10-268 cases? These are the
2 FACs for Ohio Power and AEP.

3 A. Somewhat, yes.

4 MR. DARR: And if I could, please, I'd
5 like to have the audit report marked as IEU
6 exhibit --

7 MR. CONWAY: 11.

8 MR. DARR: 12, I think.

9 EXAMINER SEE: IEU 10 is the last
10 Exhibit.

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

12 EXAMINER TAUBER: Yeah, we can.

13 (Discussion off the record.)

14 EXAMINER TAUBER: Let's go back on the
15 record. Exhibit 12?

16 MR. DARR: Yes. Your Honor, I'll
17 represent to the Bench that this is a certified copy
18 of the Report of the Management Performance and
19 Financial Audits of the FAC of the Columbus Southern
20 Power Company and the Ohio Power Company in Case Nos.
21 10-268, 10-269, 10-870, 10-871, 10-1286, and 10-1288.

22 MR. KUTIK: Off the record?

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

25 (Discussion off the record.)

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

3 MR. NOURSE: Your Honor, I would
4 initially object and note that this report that's
5 been marked, actually I received an excerpt of the
6 report, apparently not the version that's going to be
7 sought for admission, but the status of these cases
8 is such that this report has not been litigated and
9 the testimony relating to it hasn't been filed yet.
10 And furthermore -- well, I would object initially on
11 that basis, that it's not a final report, it's a
12 pending matter.

13 MR. DARR: May I respond?

14 EXAMINER TAUBER: You may.

15 MR. DARR: I don't know whether it's
16 final or not. It's been filed with the Commission.
17 It's a public document. But I will advise the Bench
18 at this point that my intention is not to use it for
19 any of the matters -- for the truth of any of the
20 matters contained in there, but rather to address the
21 issues that have been raised in the report as they
22 may relate to the proposed stipulation. So there's
23 no intent here on my part to suggest to either the
24 Bench or the Commission in its final decision that
25 the matters stated here are matters of fact. I'm

1 simply using it for purposes of notice.

2 EXAMINER TAUBER: Mr. Nourse.

3 MR. NOURSE: I stated my objection. I
4 wanted to initially state that and I guess we can see
5 what questions are asked.

6 EXAMINER TAUBER: Please proceed,
7 Mr. Darr.

8 MR. DARR: Thank you, your Honor.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. (By Mr. Darr) Have you had a chance to --
11 first of all, are you familiar with this report?

12 A. I'm familiar generally with the audit
13 reports, yes.

14 Q. And specifically with regard to IEU
15 Exhibit No. 12, had you previously reviewed this
16 report?

17 A. Certainly not in any detail, no.

18 Q. Are there individuals that either work
19 for you or, either directly or indirectly, that would
20 be responsible for reviewing this report?

21 A. I'm trying to think through whether it
22 was Ms. Turkenton or Mr. Gallina and I'm not, but
23 yes, someone who I work with or works for me is
24 responsible for reviewing the audit report.

25 Q. Turning your attention to page 5-12 of

1 the report.

2 A. Yes, I'm there.

3 Q. Is it correct that the auditor has
4 indicated some concern or concerns about the approval
5 process with regard to a 20-year contract with regard
6 to the Paulding Wind Energy facility for its
7 99-megawatt Timber Road Wind Farm?

8 MR. NOURSE: What page was that,
9 Mr. Darr?

10 MR. DARR: Page 5-12. 5-12.

11 A. Again, if you could direct me to a
12 specific paragraph.

13 Q. It would be the first and second full
14 paragraphs on the page.

15 MR. NOURSE: Your Honor, I'm going to
16 renew my objection that Mr. Fortney has only stated
17 he's generally familiar with M/P audit reports; he
18 didn't state that he had previously read this; he
19 only said that someone he works with may have
20 reviewed it, not someone who has reported to him or
21 that he's responsible for any portion of it let alone
22 this page that's being asked about currently. Given
23 that it's an actively litigated matter I don't think
24 there's any basis to proceed with questions about it.

25 MR. DARR: If I could be given a little

1 leeway, I'll tie this together for the Bench.

2 EXAMINER TAUBER: The objection is going
3 to be sustained. We're not sure where you're going
4 with that, Mr. Darr.

5 Q. (By Mr. Darr) Mr. Fortney, as part of
6 your review of the stipulation did you have an
7 opportunity to review the EVA report that was filed
8 on May 26th, 2011?

9 A. I may have had the opportunity, but I
10 didn't take that opportunity so, no, I have not
11 reviewed it.

12 Q. And would it be fair to say, based on
13 your response, that you did not consider the
14 auditor's recommendations in the May 26th, 2011,
15 report as part of your review of the stipulations
16 provisions with regard to the Paulding Wind Farm
17 REPAs? Renewable energy purchase agreement.

18 A. Yes. Yes, that would be fair to say.

19 Q. Are you aware that the auditor also has
20 raised questions with regard to the use of accrued
21 deferred income taxes in the deferral allowances in
22 the -- that are being collected or being accrued by
23 the company?

24 MR. NOURSE: Your Honor, I object. Same
25 objection.

1 EXAMINER TAUBER: Mr. Darr.

2 MR. DARR: Yes, again, your Honor, I
3 think it's pretty clear how I'm using this and why
4 it's appropriate.

5 EXAMINER TAUBER: The objection is
6 sustained. Please continue, Mr. Darr.

7 Q. Mr. Fortney, did you, as part of your
8 review of the provisions with regard to the phase-in
9 recovery rider, did you have an opportunity to review
10 the auditor's report that's been filed and which is
11 in front of you and marked as IEU Exhibit No. 20?

12 EXAMINER TAUBER: Excuse me. Do you mean
13 Exhibit 12?

14 MR. DARR: Excuse me. 12. My apologies.

15 EXAMINER TAUBER: Thank you.

16 A. It was my understanding in the
17 calculation of the phase-in recovery rider that it
18 was yet to be litigated and any issues involving that
19 number would still be part of some future hearing on
20 the amount of the PIRR.

21 Q. Was it your understanding that that
22 extended to the calculation of whether or not it
23 would be gross or net of tax?

24 A. No. I'm not familiar with that issue.

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

1 EXAMINER TAUBER: Thank you.

2 Ms. Hand, do you have any questions on
3 cross-examination?

4 MS. HAND: No cross, your Honor. Thank
5 you.

6 EXAMINER TAUBER: Are there any other
7 parties with questions on cross-examination that we
8 might have missed?

9 (No response.)

10 EXAMINER TAUBER: Mr. Margard, redirect?

11 MR. MARGARD: Can we have just a few
12 moments, your Honor?

13 EXAMINER TAUBER: Sure. Let's go off the
14 record.

15 (Off the record.)

16 EXAMINER TAUBER: Let's go back on the
17 record. Mr. Margard.

18 MR. MARGARD: Thank you, your Honor.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Margard:

22 Q. Mr. Fortney, throughout your
23 cross-examination you were asked a number of
24 questions about testimony filed by staff witnesses in
25 this or in other proceedings that reflected staff's

1 position at the time that that testimony was filed.

2 Is that your understanding?

3 A. Yes.

4 Q. Is it your understanding that staff's
5 position remains the same in each instance subsequent
6 to the filing of this stipulation?

7 A. No, not at all. There again, whenever
8 there are negotiations and whenever a stipulation is
9 signed, there's some compromise in your initial
10 litigation positions, maybe for a variety of reasons,
11 but the stipulation represents staff's compromised
12 position on each of those issues and we no longer
13 follow our litigation path because we have signed the
14 stipulation and we supported the stipulation.

15 Q. To the extent that you were asked
16 questions about cases at the Commission that may be
17 pending in which staff has, for example, not yet
18 taken a position of any sort, materials, documents,
19 audit reports that may have been filed in those
20 dockets likewise do not necessarily reflect a staff
21 position of any kind, do they?

22 MR. KUTIK: Objection. Leading.

23 MR. DARR: Join that one.

24 MR. NOURSE: It's redirect.

25 EXAMINER TAUBER: Mr. Margard, could you

1 rephrase your question?

2 MR. MARGARD: Absolutely.

3 Q. (By Mr. Margard) You were also asked a
4 number of questions, were you not, about some cases
5 currently pending before the Commission? Correct?

6 A. Correct.

7 Q. Are you aware of whether staff has taken
8 positions in each of those cases? For example, the
9 10-2929 case.

10 A. I do not believe that staff has taken a
11 position in that proceeding, no.

12 Q. Or how about the 2010 FAC cases?

13 A. They have not been litigated.

14 Q. Now, you were shown an exhibit that
15 contained an auditor's report from the 2010 FAC case.
16 Does that audit report reflect staff's position?

17 MR. DARR: Objection. Outside the scope
18 of the cross-examination.

19 EXAMINER TAUBER: The objection is
20 overruled.

21 Q. Do you have the question, Mr. Fortney?

22 A. No, I believe the audit report reflects
23 the views of the auditor.

24 Q. And staff, in developing its position in
25 this case and in those cases, considers a variety of

1 things, I presume? Is that correct?

2 A. Yes.

3 Q. That would include, for example,
4 auditor's recommendations?

5 A. Staff would certainly look at the
6 auditor's recommendations, but I do not always adopt
7 those recommendations in their entirety.

8 Q. You were asked a variety of questions
9 throughout your cross-examination about a variety of
10 features of the stipulation. Were there any matters
11 that were raised in your cross-examination that you
12 did not consider in your recommendation that the
13 stipulation be approved?

14 A. Well, as I believe I had indicated in my
15 testimony, and certainly there have been other people
16 that testified, that the stipulation is a combination
17 of a quantitative analysis, which I performed, there
18 are some issues which can be somewhat quantified
19 based upon estimates, and I believe the other parties
20 have testified that to those type of issues, the
21 schools, the hospital, the cities, other CRES
22 providers, and then I believe there are benefits that
23 the stipulation brings about that are just simply
24 impossible to quantify and the Commission will have
25 to look at the stipulation as a whole to decide

1 whether those qualitative, but not calculable, issues
2 are enough such that they can conclude that the ESP
3 is better in the aggregate than the stipulation.

4 Q. In your assessment and on behalf of staff
5 do you believe that the package as a whole in the
6 aggregate is more beneficial than an MRO and should
7 be approved?

8 A. I believe based upon two of those items
9 that I mentioned as benefits to the stipulation but
10 unquantifiable, one being AEP moving -- changing
11 their business structure and agreeing to go to a
12 competitive bid in 2015 is that they would -- at that
13 time would be at market, and also I believe that
14 probably the biggest unquantifiable thing is the MR6,
15 building a plant that uses natural gas, building a
16 plant that uses exclusively Ohio shale natural gas is
17 a benefit that is in line with what I understand to
18 be the state policy, but I do not believe that anyone
19 can possibly quantify the economic benefits of that
20 provision.

21 But certainly I would ask the examiners
22 and the Commission to look at those two issues as
23 important in being part of the comparison of the ESP
24 to the MRO.

25 Q. You were asked some questions about state

1 policy. Is it possible, in your opinion, for state
2 policies to compete at different times in the course
3 of a plan?

4 A. Sure. Yes.

5 Q. And is it your testimony, I do gather
6 from your previous answer, that you believe that the
7 support of these particular state policies in the
8 long range override any shortcomings in the short
9 term?

10 MS. GRADY: Objection.

11 MR. KUTIK: I join, to the form.

12 EXAMINER TAUBER: Mr. Margard, can you
13 please rephrase your question?

14 MR. MARGARD: Certainly.

15 Q. Is it possible, in your opinion, for a
16 plan to achieve a greater good in the long term at
17 the cost of some short-term goals and policies?

18 A. I believe so, yes.

19 Q. Do you believe that the stipulation as
20 proposed promotes state goals and objectives in the
21 long term that offset any shopping setbacks?

22 A. I believe that's the decision the
23 commissioners and the examiners will have to make,
24 and yes, I believe that it does.

25 Q. Let me ask you just a couple of questions

1 about the DIR just to be clear about that. You
2 indicated in a response to Ms. Grady, I believe, that
3 it was possible for the company to be able to recover
4 under the DIR as proposed without making any
5 incremental investment. Was that your response?

6 A. I believe it was, yes.

7 Q. And what would have to occur in order for
8 that to be true?

9 A. It's my understanding that if you add the
10 three annual caps together at 86, 104, 120, it comes
11 to \$310 million, I believe that for the scenario
12 Ms. Grady described they would have already had to
13 have spent \$310 million in order for them not to
14 spend any extra. And I don't believe that that's the
15 case.

16 MS. GRADY: May I have that answer
17 reread, please?

18 EXAMINER TAUBER: You may.

19 (Record read.)

20 Q. So do I understand you to say that it
21 would be possible but it would be based on
22 investments already made by the company?

23 A. Yes.

24 Q. And the level of recovery would be
25 dependent upon the level of investment previously

1 made.

2 A. Yes.

3 Q. And is the DIR subject to any kind of
4 review?

5 A. There is an annual prudence review I
6 believe by an auditor selected by the Commission.

7 Q. Is that prudence review of the
8 incremental investments?

9 A. I believe it's of any investment that
10 they are recovering -- applying to recover money for.
11 Doesn't matter whether it's already spent or
12 incremental.

13 MR. MARGARD: Thank you, your Honor. I
14 have no further questions.

15 EXAMINER TAUBER: Thank you. Mr. Kutik,
16 do you have questions on recross?

17 MR. KUTIK: I do.

18 - - -

19 RECROSS-EXAMINATION

20 By Mr. Kutik:

21 Q. Mr. Fortney, you mentioned in response to
22 your counsel's question that the staff took certain,
23 quote, litigation positions, unquote. Do you
24 remember that?

25 A. Yes.

1 Q. The fact that they took, quote,
2 litigation positions doesn't mean those positions
3 were wrong, does it?

4 A. No, sir.

5 Q. The staff took litigation positions that
6 it thought had merit, correct?

7 A. Yes.

8 Q. That it thought the Commission should
9 adopt, correct?

10 A. Based upon the application, yes.

11 Q. Okay. With respect to the staff's
12 position on the issues in Case 10-2929, it's true, is
13 it not, that Mr. Choueiki has pronounced the staff's
14 position on issues related to that case in this case?
15 Correct?

16 THE WITNESS: I need that reread, please.

17 EXAMINER TAUBER: Yes.

18 (Record read.)

19 Q. Let me break this down for you.
20 Mr. Choueiki has testified in this case, has he not?

21 A. Yes.

22 Q. And Mr. Choueiki testified about capacity
23 prices, correct?

24 A. Correct.

25 Q. And capacity prices are an issue in the

1 10-2929 case; are they not?

2 A. Correct.

3 Q. Now, your counsel asked you about whether
4 there were any matters not raised by the folks
5 questioning you this morning that were not considered
6 in your recommendation. Do you remember that
7 question?

8 A. Yes.

9 Q. And it's true, is it not, that before or
10 after you submitted your testimony and after you
11 completed your calculations there was a development
12 that you had not considered and that development is
13 the October 3rd order in the 08-917 case on remand?
14 Correct?

15 A. Correct.

16 Q. So that was a new development after your
17 testimony, correct?

18 A. Yes.

19 Q. And that development and that development
20 alone flips the result of your quantitative analysis
21 from the ESP being better to the MRO being better;
22 isn't that correct?

23 A. That's correct.

24 Q. And you said to Ms. Grady that in looking
25 at the benefits, that you look primarily at the

1 quantifiable benefits. Do you remember that?

2 A. My testimony is based primarily on the
3 quantifiable benefits, yes.

4 Q. And the reason why your testimony is
5 based primarily on the quantifiable benefits is that
6 the Commission needs to be careful in how it applies
7 qualitative benefits. Would you agree?

8 A. I think the Commission needs to be
9 careful in whatever benefits they apply, yes.

10 Q. Right. Because if the Commission could
11 deem anything a qualitative benefit, there would be
12 no limit to the Commission's discretion as to how
13 they would weight or could weight an MRO versus an
14 ESP, correct?

15 A. Well, I believe they still have to decide
16 based upon the record, but --

17 Q. Is the answer to my question Yes?

18 A. I guess I need your question reread.

19 (Record read.)

20 MR. NOURSE: Your Honor, I'd just object
21 to the question. I think it's argumentative and
22 ultimately the limits of the Commission's discretion
23 is a legal matter. Mr. Fortney's already stated it
24 would be subject to the record. I think he's already
25 answered the question.

1 MR. KUTIK: He hasn't answered the
2 question, your Honor, that's why I've asked it. It's
3 the first time I've asked him this question.

4 EXAMINER TAUBER: Mr. Fortney, do you
5 understand the question?

6 THE WITNESS: I can give him my answer.

7 EXAMINER TAUBER: Could you please answer
8 the question.

9 THE WITNESS: Pardon?

10 EXAMINER TAUBER: Could you please answer
11 the question or do you need it reread?

12 THE WITNESS: No, I don't believe that
13 the Commission has unlimited decision-making powers
14 without a record from the proceedings. So I think
15 the answer to your question -- my answer to your
16 question is no.

17 Q. (By Mr. Kutik) Okay. Well, if the
18 Commission would label something as a qualitative
19 benefit, there would be no way to measure that,
20 correct? By definition.

21 A. And, yes, I believe that the two things
22 that I mentioned are probably unmeasurable.

23 Q. And if something is unmeasurable, there's
24 no real way to determine whether the Commission is
25 right or wrong in terms of how much weight they give

1 it, correct?

2 MR. MARGARD: Your Honor, I'd object to
3 the extent that he's asking about a legal standard.

4 MR. KUTIK: He's testified about whether
5 the ESP is better than the MRO and whether they
6 recommend it. I'm allowed to ask him in terms of how
7 that -- how his mind works with respect to these
8 qualitative benefits.

9 MR. MARGARD: Your Honor, to the extent
10 he's asking about how his mind works, I agree. To
11 the extent he's asking about how the Commission might
12 decide, that's a legal question.

13 MR. NOURSE: And further, your Honor, I
14 think Mr. Kutik is asking really what the issue and
15 the standard of review on appeal or challenging a
16 Commission's decision, not what Mr. Fortney is doing
17 here today that is making a recommendation through
18 his testimony to the Commission to reach a decision.

19 MR. KUTIK: And I'm allowed to test the
20 soundness of the recommendation to the extent it's
21 based upon qualitative factors.

22 EXAMINER TAUBER: The objection is
23 sustained. Mr. Fortney speaks for the staff, not for
24 the Commission.

25 Please continue, Mr. Kutik.

1 Q. (By Mr. Kutik) You agree with me,
2 Mr. Fortney, do you not, that as far as the
3 quantitative test is concerned, the ESP, the proposed
4 ESP fails; is that correct?

5 A. Based upon my analysis once you remove
6 the POLR, yes.

7 Q. And you identified two qualitative
8 benefits, one was that the AEP would be moving to a
9 competitive market-based POLR service, correct?

10 A. I'm not -- competitive market-based POLR
11 service.

12 Q. Correct. In other words, it would be --
13 they would procure POLR service through a competitive
14 bidding process.

15 A. Yes.

16 Q. And that, you believe that's a benefit,
17 correct?

18 A. Yes.

19 Q. Now, as we talked earlier with the
20 grants, it is true, is it not, that the move to that
21 competitive bidding process is conditional? Correct?

22 A. It's not coming to my mind what the
23 condition is. I believe that the stipulation says
24 that beginning in June 2015 that AEP will go to a
25 competitive bid to procure their generation.

1 Q. All right. So it's your view that going
2 to the competitive bidding process in that year is
3 not dependent on AEP Ohio separating their generation
4 assets or achieving some modification or termination
5 of their pool.

6 A. You are correct, there are conditions,
7 those conditions are part of the stipulation.

8 Q. And isn't it true that there's nothing
9 specifically set forth in the stipulation that says
10 what the penalty is, if any, if AEP does not achieve
11 those conditions? Correct?

12 A. There's nothing that I'm aware of, no.

13 Q. Now, with respect to MR6 and the alleged
14 benefits from MR6, isn't it true that whether that
15 plant ever happens also is subject to a number of
16 conditions?

17 A. Yes.

18 Q. For example, that AEP Ohio is able to
19 show that there is a need for that facility, correct?

20 A. I believe that's correct, yes.

21 Q. And able to show that that process has
22 been or that project has been competitively bid.

23 MR. NOURSE: Objection, your Honor. I
24 think the statutory phrase is "competitively
25 sourced."

1 Q. With that correction, can you answer my
2 question, Mr. Fortney?

3 A. I believe that's correct.

4 Q. And as we sit here today we don't know
5 whether AEP Ohio will ever meet either of those
6 criteria with respect to the MR6 plant.

7 A. That's correct.

8 Q. So as we sit here today we don't know
9 whether any of the alleged benefits that you've
10 identified as the qualitative benefits, the large
11 qualitative benefits, will ever happen, do we?

12 A. No, I don't.

13 MR. KUTIK: May I have a minute, your
14 Honor?

15 EXAMINER TAUBER: You may.

16 Q. Mr. Fortney, wouldn't AEP Ohio be
17 required to separate out its generation assets even
18 if there wasn't a stipulation?

19 A. I don't know the answer.

20 MR. KUTIK: No further questions. Thank
21 you, Mr. Fortney.

22 EXAMINER TAUBER: Thank you.

23 Ms. Grady?

24 MS. GRADY: Thank you, your Honor.

25 - - -

RECROSS-EXAMINATION

By Ms. Grady:

Q. Mr. Fortney, do you recall the series of questions from your counsel about the staff taking various positions in different proceedings?

A. Yes.

Q. Would you consider the Staff Report of Investigation a staff position?

A. The Staff Report of Investigation is a staff position, yes.

MS. GRADY: Thank you. That's all the questions I have, your Honor.

EXAMINER TAUBER: Thank you.

Mr. Smalz?

MR. SMALZ: Yes, your Honor.

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RECROSS-EXAMINATION

By Mr. Smalz:

Q. Mr. Fortney, you mentioned as one of the two qualitative benefits the building of the MR6 plant. In your MRO-ESP price comparison did you include any value -- or, let me ask you did you assign any value to the generation resource rider for the cost of building the MR6 plant?

A. No.

1 Q. Okay. So on the one hand you're citing
2 this as a qualitative benefit but not taking into
3 account the cost.

4 A. I said it was an uncalculable
5 quantitative benefit, I don't know what the cost is
6 and I'm not sure that there will be any costs within
7 the term of this ESP. If there are, I cannot -- I do
8 not know what those costs would be.

9 MR. SMALZ: I see. That's all I have,
10 your Honor.

11 EXAMINER TAUBER: Thank you.

12 Mr. Darr?

13 MR. DARR: Thank you, your Honor.

14 - - -

15 RE CROSS-EXAMINATION

16 By Mr. Darr:

17 Q. Does this stipulation say anything about
18 what happens after 2016 with regard to the
19 competitive bidding process?

20 MR. NOURSE: Your Honor, I'd just object
21 that that's beyond the scope of redirect. I don't
22 see a connection there.

23 EXAMINER TAUBER: Mr. Darr?

24 MR. DARR: The witness testified that one
25 of the outstanding benefits that he has found here is

1 that the company will change its corporate structure
2 throughout the competitive bidding process and as a
3 result I'm asking whether or not this stipulation has
4 anything to do with continuation beyond 2016.

5 EXAMINER TAUBER: The objection is
6 overruled.

7 A. Not to my recollection.

8 Q. Do you have the stipulation in front of
9 you right now?

10 A. Yes.

11 Q. Would you turn to page 29. You
12 understand that the rejection of, or any part of,
13 this stipulation or recommendation of the Commission
14 shall be deemed to be a material modification for
15 purposes of this provision and "this provision" I
16 believe refers to section 6, the nonseverability.

17 A. Yes. Yes, I understand.

18 Q. And you further understand that if the
19 Commission's issuance of an entry on rehearing does
20 not adopt the stipulation in its entirety, without
21 material modification, or an alternative proposal, if
22 one is submitted, a signatory party may withdraw from
23 the joint stipulation and recommendation by filing a
24 notice with the Commission within 30 days.

25 A. There is a period of time where the

1 signatory parties agree to convene and work in good
2 faith to attempt to formulate an alternative proposal
3 that satisfies the intent of the stipulation and
4 recommendation, but ultimately, yes, the parties have
5 a right to withdraw from the stipulation.

6 Q. And you understand that AEP Ohio is
7 specifically exempted from that alternative process?

8 A. Which alternative process?

9 Q. The alternative process that's available
10 to the other signatory parties to come up with an
11 alternative proposal.

12 A. I guess I do not understand that. The
13 way I read it the rejection of all or any part of the
14 stipulation and recommendation by the Commission
15 shall be deemed to be a material modification for the
16 purposes of this provision, if the Commission
17 materially modifies all or any part of this
18 stipulation and such modifications are not acceptable
19 to all the signatory parties, the signatory parties
20 agree to convene immediately to work in good faith.

21 Q. Specifically pointing you --

22 A. I would consider that to include the
23 company.

24 Q. Specifically looking at the last
25 sentence, AEP may withdraw if the proposed

1 stipulation is modified pursuant to section -- excuse
2 me, RC 4928.143(C)(2)(a) and without regard to the
3 additional process set forth in this provision. Upon
4 such withdrawal the stipulation will become null and
5 void.

6 MR. NOURSE: Your Honor, I'd just object
7 because it refers to a statutory provision, very
8 specific, it's not being explained to the witness and
9 I think it's ultimately a legal issue.

10 EXAMINER TAUBER: The objection is
11 sustained. This does go to a legal issue, Mr. Darr.

12 Q. Is it fair to say that if the parties
13 don't agree with whatever -- with a decision of this
14 Commission rejecting any provision of this agreement,
15 that in effect its signatory party or the company may
16 walk away from this and the deal would be null and
17 void?

18 A. I don't know what 4928.143(C)(2)(a) says.

19 MR. DARR: Thank you.

20 EXAMINER TAUBER: Thank you.

21 MR. DARR: Nothing further. Thank you.

22 EXAMINER TAUBER: Ms. Hand?

23 MS. HAND: Nothing, your Honor. Thank
24 you.

25 EXAMINER TAUBER: Thank you, Mr. Fortney.

1 You may be excused.

2 MR. MARGARD: Your Honor, I respectfully
3 move the admission of Staff Exhibit No. 4.

4 EXAMINER TAUBER: Are there any
5 objections to Staff Exhibit No. 4 which is the
6 testimony of Mr. Fortney?

7 MR. KUTIK: No objection.

8 EXAMINER TAUBER: Hearing none, Staff
9 Exhibit No. 4 shall be admitted into the record.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 MR. DARR: Move IEU 12.

12 MR. NOURSE: Your Honor, I object. I
13 don't think the foundation was laid for this and the
14 questions about it were -- the objections were
15 sustained as I recall.

16 MR. DARR: In fact, several questions
17 were allowed, your Honor, with regard to whether
18 Mr. Fortney had reviewed the document and, again, as
19 I pointed out when I presented the document, it is a
20 certified public record of this Commission satisfying
21 any authentication process. And I'm not using it for
22 the truth of the matter asserted, I'm using it merely
23 for the purpose of demonstrating notice and with
24 regard to -- and as it relates to the testimony of
25 Mr. Fortney.

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1 EXAMINER TAUBER: The objection to IEU
2 Exhibit No. 12 shall be sustained and it shall not be
3 admitted into the record.

4 Are there any other matters this morning
5 before the Commission?

6 MR. NOURSE: Your Honor, I would just
7 like to note that the companies filed a memorandum in
8 response to the motions for protective orders that
9 have been filed the last couple days, I believe there
10 was an expedited request, so we filed a response and
11 we're serving the parties here today.

12 EXAMINER TAUBER: Thank you.

13 MR. NOURSE: Thank you.

14 EXAMINER TAUBER: At this time the Bench
15 understands we have one more witness, Mr. Murray, and
16 in regards to when he will be called, we will provide
17 electronic notice to the parties.

18 Are there any other matters at all this
19 morning?

20 (No response.)

21 EXAMINER TAUBER: Hearing none, this
22 session shall be adjourned until further notice.
23 Thank you.

24 (Thereupon, at 12:01 p.m., the hearing
25 was adjourned.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Tuesday, October 18, 2011,
5 and carefully compared with my original stenographic
6 notes.

7
8 Maria DiPaolo Jones, Registered
9 Diplomat Reporter and CRR and
Notary Public in and for the
State of Ohio.

10 My commission expires June 19, 2016.

11 (MDJ-3910)

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Summary: Transcript Transcript of Columbus Southern Power Company and Ohio Power Company hearing held on 10/18/11 - Vol X electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.