

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :  
 Application of Duke :  
 Energy Ohio for Authority :  
 to Establish a Standard :  
 Service Offer Pursuant to : Case No. 11-3549-EL-SSO  
 \$4928.143, Revised Code, :  
 in the Form of an Electric :  
 Security Plan, Accounting :  
 Modifications and Tariffs :  
 for Generation Service. :

In the Matter of the :  
 Application of Duke :  
 Energy Ohio for Authority : Case No. 11-3550-EL-ATA  
 to Amend its Certified :  
 Supplier Tariff, PUCO :  
 No. 20. :

In the Matter of the :  
 Application of Duke :  
 Energy Ohio for Authority : Case No. 11-3551-EL-UNC  
 to Amend its Corporate :  
 Separation Plan. :

- - -

PROCEEDINGS

before Ms. Christine Pirik and Ms. Katie Stenman,  
 Attorney Examiners, at the Public Utilities  
 Commission of Ohio, 180 East Broad Street, Room 11-A,  
 Columbus, Ohio, called at 10:00 a.m. on Thursday,  
 November 3, 2011.

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VOLUME I

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13 Cincinnati, and Miami University.

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9 Bell & Royer Co., LPA  
10 By Mr. Barth E. Royer  
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12 Columbus, Ohio 43215

13 On behalf of Dominion Retail, Inc.

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21 Williams, Allwein and Moser, LLC  
22 By Mr. Christopher Allwein  
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25 On behalf of the Natural Resources  
Defense Council.

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		David C. Rinebolt		

1 Thursday Morning Session,  
2 November 3, 2011.

3 - - -

4 EXAMINER PIRIK: We'll go on the record.

5 The Public Utilities Commission of Ohio  
6 has set for hearing at this time and place Case  
7 Numbers 11-3549-EL-SSO, 11-3550-EL-ATA,  
8 11-3551-EL-UNC, in the Matter of the Application of  
9 Duke Energy-Ohio for authority to establish a  
10 standard service offer pursuant to Section 4928.143,  
11 Revised Code, in the form of an electric security  
12 plan, accounting modification and tariffs for  
13 generation service, and amend its certified supplier  
14 tariff PUCO No. 20, and amend its corporate  
15 separation plan.

16 My name is Christine Pirik, with me is  
17 Katie Stenman. We are the attorney examiners with  
18 the Commission and we are assigned to hear this case.

19 At this time we'll take the appearances  
20 of the parties, starting with the company.

21 MS. SPILLER: Good morning, thank you,  
22 your Honor. On behalf of the applicant, Duke  
23 Energy-Ohio, Amy Spiller and my colleagues, Elizabeth  
24 Watts, Rocco D'Ascenzo, and Jeanne Kingery, 139 East  
25 Fourth Street, Cincinnati, Ohio 43202.

1 MR. PETRICOFF: May it please the  
2 Commission, Howard Petricoff and Lija Kaleps-Clark  
3 from the law firm of Vorys, Sater, Seymour & Pease,  
4 on behalf of Constellation NewEnergy, Constellation  
5 Energy Commodities Group, Exelon Generation Company,  
6 the Retail Electric Suppliers Association, the  
7 University of Cincinnati, and Miami University.

8 EXAMINER PIRIK: Thank you.

9 Mr. Royer.

10 MR. ROYER: Thank you, your Honor. Barth  
11 Royer, Bell & Royer Co., LPA, 33 South Grant Avenue,  
12 Columbus, Ohio, on behalf of Dominion Retail, Inc.

13 EXAMINER PIRIK: Thank you.

14 MS. MOONEY: On behalf of Ohio Partners  
15 for Affordable Energy, Colleen Mooney, 231 West Lima  
16 Street, Findlay, Ohio 45839.

17 MR. HAYDEN: Good morning, your Honors.  
18 On behalf of FirstEnergy Solutions, Mark Hayden.

19 MR. BOEHM: Good morning, your Honor.  
20 I'm David Boehm and entering an appearance also for  
21 Mike Kurtz on behalf of the Ohio Energy Group through  
22 the law firm of Boehm, Kurtz & Lowry, 36 East  
23 Seventh Street, Cincinnati, Ohio 45208.

24 MR. O'BRIEN: Good morning, Madam  
25 Examiners. On behalf of the City of Cincinnati,

1 Bricker & Eckler, LLP, by Thomas J. O'Brien, 100  
2 South Third Street, Columbus, Ohio 43215. Thank you.

3 EXAMINER PIRIK: Thank you.

4 MR. POULOS: Good morning, your Honors.  
5 Gregory J. Poulos on behalf of EnerNOC, Inc.

6 MR. YURICK: Good morning, your Honors.  
7 On behalf of the Kroger Company, Mark Yurick, John  
8 Bentine, Zach Kravitz, the law firm is Chester,  
9 Willcox & Saxbe, 65 East State Street, Columbus,  
10 Ohio, 43215.

11 EXAMINER PIRIK: Thank you.

12 MR. JONES: Good morning, your Honors.  
13 On behalf of the staff of the Public Utilities  
14 Commission of Ohio, Assistant Attorneys General Steve  
15 Beeler, John Jones, 180 East Broad Street, Columbus,  
16 Ohio.

17 MR. ALLWEIN: Good morning, your Honors.  
18 On behalf of the Natural Resources Defense Council,  
19 Christopher Allwein of Williams, Allwein & Moser,  
20 1373 Grandview Avenue, Columbus, Ohio 43212.

21 MR. DOUGHERTY: Good morning, your  
22 Honors. On behalf of the Ohio Environmental Council,  
23 Trent Dougherty and Cathryn N. Loucas, 1207 Grandview  
24 Avenue, Suite 201, Columbus, Ohio 43212.

25 EXAMINER PIRIK: Thank you.

1 MR. OLIKER: Good morning, your Honors.  
2 On behalf of Industrial Energy Users-Ohio, Joseph  
3 Oliker, Sam Randazzo, and Frank Darr of the law firm  
4 of McNees, Wallace & Nurick, 21 East State Street,  
5 Columbus, Ohio 43215. Thank you.

6 MS. YOST: Good morning, your Honors. On  
7 behalf of the Office of the Ohio Consumers' Counsel,  
8 Bruce J. Weston, Interim Consumers' Counsel, Melissa  
9 Yost, Jeff Small, Joe Serio, 10 West Broad Street,  
10 Suite 1800, Columbus, Ohio 43215. Thank you.

11 EXAMINER PIRIK: Thank you.

12 Ms. Christensen.

13 MS. CHRISTENSEN: Good morning, your  
14 Honors. On behalf of People Working Cooperatively,  
15 Mary W. Christensen of the lawyer firm of Christensen  
16 and Christensen, LLP, 8760 Orion Place, Suite 300,  
17 Columbus, Ohio. Thank you.

18 EXAMINER PIRIK: Mr. Stinson.

19 MR. STINSON: On behalf of Direct Energy,  
20 LLC and Direct Energy Business, LLC, Dane Stinson,  
21 Bailey Cavalieri, 10 West Broad Street, Suite 2100,  
22 Columbus, Ohio 43215.

23 EXAMINER PIRIK: Thank you.

24 Are there other appearances?

25 MR. S. MILLER: Good morning, your

1 Honors. Erin Miller on behalf of Ohio Power Company  
2 and Columbus Southern Power Company. I'd also like  
3 to enter an appearance on behalf of Matthew  
4 Satterwhite at this time. One Riverside Plaza,  
5 Columbus, Ohio 43215.

6 EXAMINER PIRIK: Is there anyone else?

7 I know that we have limited seating at  
8 the table.

9 MS. KIMBROUGH: Margeaux Kimbrough from  
10 the law firm of Kegler, Brown, Hill & Ritter, 65 East  
11 State Street, Suite 1800, Columbus, Ohio, on behalf  
12 of Duke Energy Retail Sales.

13 EXAMINER PIRIK: Thank you.

14 Does that cover everybody?

15 All right. We had discussion off the  
16 record with regard to marking of exhibits and I  
17 believe everyone has a sheet whereby the company's  
18 exhibits are set forth. We will be getting an  
19 expedited transcript in this case, and we appreciate  
20 that from the company.

21 We have a couple motions, one of which  
22 we'll deal with as we work through the exhibits and  
23 the other one has to do with a motion for protective  
24 orders with regard to some of the exhibits, and we  
25 will deal with that at the conclusion of the

1 witnesses at today's hearing.

2 I also want to note that for those of you  
3 who do leave once we start the motion for protective  
4 order review, that we will be leaving the record open  
5 today, we will not be closing the record at the end  
6 of today's hearing, and that will be up to the  
7 Commission to do so at the conclusion of their  
8 consideration of this case. So I just wanted to note  
9 that early on for anyone who leaves the room.

10 So we will turn to the company now.

11 MS. SPILLER: Thank you, your Honor. If  
12 I may, with respect to the -- I would first like to  
13 start with the procedural aspect to formally and for  
14 the record identifying some of the exhibits that Duke  
15 Energy-Ohio will be offering into evidence this  
16 morning.

17 I will start with Exhibit No. 1, the  
18 company's application, along with Application  
19 Attachments A through I asking that that application  
20 with attachments filed on June 20, 2011, be marked as  
21 Duke Energy-Ohio Exhibit No. 1.

22 EXAMINER PIRIK: The document is so  
23 marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MS. SPILLER: I would ask that

1 Application Attachment J, the public version of  
2 workpapers filed on June 20, 2011, be marked as Duke  
3 Energy-Ohio Exhibit 2.

4 EXAMINER PIRIK: Why don't you go ahead  
5 and go through all of them and then I'll acknowledge  
6 them.

7 MS. SPILLER: Thank you, your Honor.

8 Duke Energy-Ohio would offer as Duke  
9 Energy-Ohio Exhibit 2A Application Attachment J the  
10 confidential version of workpapers filed of record on  
11 June 20, 2011.

12 Duke Energy-Ohio Exhibit 3, proof of  
13 publication filed in the Commission docket on  
14 June 26, 2011.

15 Duke Energy-Ohio Exhibit 4, the direct  
16 testimony of B. Keith Trent filed on June 20, 2011.

17 Duke Energy-Ohio Exhibit 5, direct  
18 testimony of Julia S. Janson filed on June 20, 2011.

19 Duke Energy-Ohio Exhibit 6, the public  
20 version of the direct testimony of Judah L. Rose  
21 filed on June 20, 2011.

22 Duke Energy-Ohio Exhibit 6A, the  
23 confidential version of the direct testimony of Judah  
24 L. Rose filed on June 20, 2011.

25 Duke Energy-Ohio Exhibit 7, direct

1 testimony of Stephen G. DeMay filed on June 20, 2011.

2 Duke Energy-Ohio Exhibit 8, direct  
3 testimony of James S. Northrop filed on June 20,  
4 2011.

5 Duke Energy-Ohio Exhibit 9, direct  
6 testimony of Robert J. Lee, filed on June 20, 2011.

7 Duke Energy-Ohio Exhibit 10, public  
8 version of the direct testimony of William Don  
9 Wathen, Jr. filed on June 20, 2011.

10 Duke Energy-Ohio Exhibit 10A,  
11 confidential version of the direct testimony of  
12 William Don Wathen, Jr. filed on June 20, 2011.

13 Duke Energy-Ohio Exhibit 11, direct  
14 testimony of Andrew S. Ritch filed June 20, 2011.

15 Duke Energy-Ohio Exhibit 12, direct  
16 testimony of Roger A. Morin, PhD, filed June 20,  
17 2011.

18 Duke Energy-Ohio Exhibit 13, direct  
19 testimony of Kenneth J. Jennings filed June 20, 2011.

20 Duke Energy-Ohio Exhibit 14, direct  
21 testimony of Salil Pradhan filed June 20, 2011.

22 Duke Energy-Ohio Exhibit 15, direct  
23 testimony of Jeffrey R. Bailey filed June 20, 2011.

24 Duke Energy-Ohio Exhibit 16, direct  
25 testimony of James E. Zoilkowski filed June 20, 2011.

1 Duke Energy-Ohio Exhibit 17, direct  
2 testimony of Mark D. Wyatt filed June 20, 2011.

3 Duke Energy-Ohio Exhibit 18, public  
4 version of the direct testimony of Brian D. Savoy  
5 filed June 20, 2011.

6 Duke Energy-Ohio Exhibit 18A,  
7 confidential version of the direct testimony of Brian  
8 D. Savoy filed June 20, 2011.

9 Duke Energy-Ohio Exhibit 19, direct  
10 testimony of Christian E. Whicker filed June 20,  
11 2011.

12 Duke Energy-Ohio Exhibit 20, direct  
13 testimony of Daniel L. Jones filed June 20, 2011.

14 And, your Honor, the balance of the  
15 exhibits we will mark as witnesses take the stand  
16 this morning.

17 EXAMINER PIRIK: I do have two questions.  
18 On September 28th there were documents filed, one  
19 were replacement to Mr. Zoilkowski's 1 and 2  
20 attachments, on I mean June 28th. I don't know if  
21 I said June 28th, but I meant June 28th. We need  
22 to somehow, since you marked his exhibit as 16, that  
23 was filed on 6/20, we need to do something with the  
24 revised attachments that were on the 28th.

25 MS. SPILLER: They are not confidential.

1 EXAMINER PIRIK: They weren't marked  
2 confidential, they're in the open.

3 MS. SPILLER: Correct, but the  
4 designation of 16A, I don't want to confuse the A as  
5 we've denoted that as confidential.

6 EXAMINER PIRIK: Why don't we do 16.1.

7 MS. SPILLER: Okay.

8 EXAMINER PIRIK: And then also, with  
9 regard to Mr. Wathen's, there was also attachments  
10 filed with regard to his testimony on 6/28/11. We  
11 can -- there were two pages, we can mark those, they  
12 were both filed under confidential and we need to  
13 have a discussion about those in the confidential,  
14 once we talk about those later on.

15 MS. SPILLER: Right, your Honor. Exhibit  
16 10A.1?

17 EXAMINER PIRIK: That would be fine.

18 MS. SPILLER: Okay.

19 EXAMINER PIRIK: I believe everything's  
20 marked.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 MS. SPILLER: Thank you. Your Honor, if  
23 I may, we would also propose, Duke Energy-Ohio would  
24 propose that the stipulation and recommendation with  
25 Attachments A through I docketed with the Commission

1 on October 24, 2011, be marked as Joint Exhibit 1.

2 EXAMINER PIRIK: The document is so  
3 marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MS. SPILLER: And with that, your Honor,  
6 we will call our first witness this morning, Julia S.  
7 Janson, to the stand, please.

8 EXAMINER PIRIK: Please raise your right  
9 hand.

10 (Witness sworn.)

11 EXAMINER PIRIK: Thank you.

12 MS. SPILLER: May I approach, your Honor?

13 EXAMINER PIRIK: Yes.

14 MS. SPILLER: Thank you. Your Honor, I  
15 would ask that the supplemental testimony of Julia S.  
16 Janson filed on October 28, 2011, be marked as Duke  
17 Energy-Ohio Exhibit 21 in this proceeding.

18 EXAMINER PIRIK: The document is so  
19 marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MS. SPILLER: Thank you.

22 - - -  
23  
24  
25

1 JULIA S. JANSON

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

4 DIRECT EXAMINATION

5 By Ms. Spiller:

6 Q. Ms. Janson, can you identify yourself for  
7 the record, please?

8 A. Yes. I'm Julie Janson, President of Duke  
9 Energy-Ohio and Duke Energy-Kentucky.

10 Q. And do you have before you, ma'am, a copy  
11 of a document Duke Energy-Ohio Exhibit 21?

12 A. I do.

13 Q. And can you identify that document for  
14 the record, please?

15 A. Well, I have -- I presume that that would  
16 be my supplemental testimony filed on behalf of Duke  
17 Energy-Ohio on October 28th.

18 Q. Do you have any changes, corrections, or  
19 amendments to your supplemental direct testimony?

20 A. I do not.

21 Q. And if I were to ask you, ma'am, the  
22 questions set forth in your supplemental direct  
23 testimony today, would your answers be the same as  
24 those reflected in Duke Energy-Ohio Exhibit 21?

25 A. They would.

1 MS. SPILLER: Thank you, your Honor. The  
2 witness is available for cross-examination.

3 EXAMINER PIRIK: Thank you.

4 I won't specifically go around the table,  
5 I will in general ask if there are any questions for  
6 cross-examination of Ms. Janson.

7 (No response.)

8 EXAMINER PIRIK: Hearing none, I believe  
9 the Bench does have some questions.

10 - - -

11 EXAMINATION

12 By Examiner Stenman:

13 Q. Ms. Janson, are there any provisions for  
14 fallback arrangements in the event that a competitive  
15 auction cannot proceed in the timeline specified in  
16 the stipulation?

17 A. You know, I would ask that you also pose  
18 this question of Company Witness Lee who will be  
19 taking the stand following, but yes, we have made  
20 provisions within the stipulation, although it's  
21 certainly the company's intention that the auction be  
22 carried forth within the balance of the year.

23 Q. Can you go into a little bit more detail  
24 about what those fallback provisions would include?

25 A. I think I probably need to correct my

1 testimony. I don't think we made provisions -- we  
2 made provisions in the event that through the next  
3 ESP process, I don't believe we made provisions in  
4 the stipulation in the event that the auction doesn't  
5 take place in 2011.

6 Q. So just on the off chance that there is  
7 no auction, the company has no plan?

8 A. I don't think that is the case. I think  
9 the case is that we would fully plan to either  
10 continue within the current ESP from a pricing  
11 perspective into -- I think we would have to make an  
12 application or some provision before the Commission  
13 to allow us to continue that ESP pricing.

14 Certainly, we wouldn't fail to provide  
15 adequate, reliable, and reasonably priced generation  
16 service to our customers, but we have made every  
17 provision and, in fact, have already begun that  
18 process and put some of the website information  
19 together, and we believe there is adequate time and  
20 certainly, certainly we've made all provisions for  
21 that auction to take place yet this year.

22 Q. Do you know the number of Duke customers  
23 that have advanced meters?

24 A. I know where we are in the advanced meter  
25 deployment. Certainly we have before the Commission

1 a mid-year -- a mid-term review filing which puts us  
2 about halfway through the deployment.

3 I guess updates on a monthly basis, a  
4 very detailed -- obviously we have both gas and  
5 electric customers to whom we're deploying advanced  
6 meters, and we're also at the same time deploying  
7 digital communications equipment. I would say  
8 roughly a third to a half of the Duke Energy-Ohio  
9 electric customers have received advanced meters.

10 Q. Is that with respect to residential  
11 customers or large industrial customers?

12 A. That's just an aggregate number.

13 Q. Okay.

14 A. Many of our residential customers and, in  
15 fact, we actually thought about our deployment in a  
16 thoughtful way to be sure that we were deploying in  
17 some of our more urban regions first so that we could  
18 deal with -- we have an inside meter, a number of our  
19 customers have meters inside their homes through  
20 which we have to gain access to read meters, so we  
21 were thoughtful about that meter deployment to get  
22 some of those more urban areas in our service  
23 territory.

24 Q. In the stipulation the interval meter  
25 threshold size requirement is increased from

1 100 kilowatts to 200 kilowatts. Do you know the  
2 rationale behind that?

3 A. Not specifically.

4 Q. Is there another witness that would be  
5 better able to answer that?

6 A. Mr. Wathen.

7 Q. Do you know the amount of commercial and  
8 industrial load served under existing realtime  
9 pricing tariffs for a comparable arrangement with  
10 time-differentiated pricing?

11 A. I do not.

12 Q. Is there a better witness? Mr. Wathen?

13 A. I presume Mr. Wathen can answer that and  
14 would be available today. Generally that would not  
15 be a large percentage.

16 Q. Assuming Commission approval of the  
17 stipulation, what elements of the company's transfer  
18 of generation assets would remain subject to  
19 Commission approval?

20 A. Can you -- can I hear the question again?

21 Q. Sure. Would the Commission have any  
22 continuing jurisdiction over the transfer of  
23 generation assets if the stipulation was approved, or  
24 would the stipulation sort of be the final say with  
25 respect to the transfer of the generation assets?

1           A.    Mr. Whitlock is the company witness that  
2   we have proffered to discuss the transfer of  
3   generation, but it's not my understanding the  
4   Commission would have continuing authority over that  
5   should this stipulation be approved.

6           Q.    Okay.  And could you please walk us  
7   through how -- the capacity purchases and the  
8   flow-through of the costs under the stipulation?

9           A.    The capacity --

10          Q.    How the capacity is purchased and then  
11   how those costs are flowed through to customers.

12          A.    I think I can be responsive.  Just the  
13   way you formulated your question.  So during the term  
14   of the company's ESP -- let me back up.

15                So Duke Energy-Ohio has made provision to  
16   move from MISO to PJM effective January 1st of  
17   2012, and for the term of the ESP and a bit beyond  
18   for the '15-'16 planning period the company has made  
19   an election to be a fixed resource requirements  
20   participant within PJM, which means that the company  
21   would supply the capacity for its retail load.

22                So pursuant to the stipulation the way  
23   that would work is the company would supply the  
24   capacity to PJM and in turn PJM would then bill the  
25   wholesale customers for the capacity at PJM's

1 capacity market pricing mechanism.

2 The CRES suppliers would also pay that  
3 same price, otherwise known as the final zonal  
4 clearing price or the FZCP.

5 Q. With respect to the stabilization charge  
6 for high-load factor customers, is this based on a  
7 customer's peak demand or does it have a relationship  
8 to the coincidence between the customer's demand and  
9 the applicable circuit utilities or the area's  
10 coincident peak load?

11 A. Can you ask me the question again?

12 EXAMINER STENMAN: Can you read it back?

13 (Record read.)

14 A. I would have you ask Mr. Wathen that  
15 question.

16 Q. Okay. And then one last question. I  
17 know that Duke is able to do consolidated billing for  
18 CRES providers and has entered into a purchase of  
19 accounts receivable --

20 A. Yes.

21 Q. -- agreement.

22 Will Duke be able to accommodate  
23 consolidated billing where a CRES provider provides  
24 services that are not currently offered in terms of  
25 Duke's rates and services? And if so, will there be

1 an additional cost to the CRES provider for that  
2 consolidated billing?

3 A. You know, I know we've made a lot of  
4 provision -- a number of provisions to ensure that  
5 not only is there a robust competitive market but the  
6 ability for CRES suppliers to compete within the  
7 service territory including doing away with some  
8 limitations on their ability to enter into the  
9 purchase of accounts receivable, agreeing to some  
10 lower bill switching charge costs, and others. But  
11 specifically to your question, I don't -- I don't  
12 know specifically.

13 Q. Is there anyone else who would be able to  
14 answer that?

15 A. Mr. Wathen.

16 Q. Okay.

17 EXAMINER STENMAN: That's all I have.

18 EXAMINER PIRIK: Thank you, Ms. Janson.

19 THE WITNESS: Thank you.

20 MS. SPILLER: Your Honor, if I may, just  
21 a couple of clarifying questions to Ms. Janson.

22 EXAMINER PIRIK: We don't typically do  
23 that but I have no problem with clarification.

24 MS. SPILLER: Thank you, your Honor.

25 - - -

1                   FURTHER DIRECT EXAMINATION

2       By Ms. Spiller:

3               Q.    I just wanted to be clear, Ms. Janson,  
4       you were asked about capacity charges or purchases  
5       and you said that PJM would bill the wholesale  
6       customer? Is it the customer or the supplier who  
7       will be billed by PJM, if you recall?

8               A.    The supplier.

9               Q.    Thank you.

10              MS. SPILLER: Thank you, your Honor.

11              THE WITNESS: I apologize if I misspoke.

12              EXAMINER PIRIK: That's fine. Thank you  
13       for the clarification.

14              Thank you, Ms. Janson.

15              MR. D'ASCENZO: Your Honor, for its next  
16       witness, Duke Energy-Ohio would call William Don  
17       Wathen.

18              Your Honor, for purposes of  
19       identification, if I could, we'd like to mark the  
20       supplemental testimony of William Don Wathen, Jr. as  
21       Duke Energy-Ohio Exhibit 22.

22              EXAMINER PIRIK: The document is so  
23       marked.

24              (EXHIBIT MARKED FOR IDENTIFICATION.)

25              MR. D'ASCENZO: And with respect to the

1 outstanding motion for WDW Supplemental Attachment 4,  
2 how would you prefer that we do that; as a separate  
3 attachment or if we were to mark that under the same  
4 format that we've discussed previously with  
5 supplements and do a ".1"?

6 EXAMINER PIRIK: The document that was  
7 filed on 11/1 is what you're referring to?

8 MR. D'ASCENZO: Yes.

9 EXAMINER PIRIK: I think the .1 would be  
10 appropriate.

11 MR. D'ASCENZO: Thank you.

12 EXAMINER PIRIK: And now would probably  
13 be a good time just to clear up that motion with  
14 regard to the timeliness of the filing of that.

15 The company had filed the attachment  
16 along with a motion asking that it be accepted as  
17 timely filed. Is there anyone who would like to  
18 respond to the motion that we accept it as timely  
19 filed before we rule on it?

20 (No response.)

21 EXAMINER PIRIK: Hearing none, the Bench  
22 finds the motion that it be accepted as timely filed  
23 be granted.

24 MR. D'ASCENZO: Thank you, your Honor.

25 May I approach?

1 EXAMINER PIRIK: Yes.

2 Mr. Wathen, will you please raise your  
3 right hand.

4 (Witness sworn.)

5 EXAMINER PIRIK: Thank you.

6 - - -

7 WILLIAM DON WATHEN, JR.

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

10 DIRECT EXAMINATION

11 By Mr. D'Ascenzo:

12 Q. Mr. Wathen, would you please identify  
13 yourself for the record?

14 A. My name is William Don Wathen, Jr.

15 Q. What is your business address and  
16 position with the company?

17 A. It's 221 East Fourth Street, Cincinnati,  
18 Ohio, and my title is Vice President and General  
19 Manager of Rates for Ohio and Kentucky.

20 Q. Mr. Wathen, do you have in front of you  
21 what has been marked as Duke Energy-Ohio Exhibit 22  
22 and 22.1?

23 A. If that's my testimony, yes.

24 Q. Would you please identify what Attachment  
25 22.1 is?

1 A. These aren't marked so is that the --

2 Q. That would be the filing that was made  
3 on --

4 A. The supplemental filing?

5 Q. Yes.

6 A. Those were rates schedules, bill  
7 comparison schedules for our major classes of  
8 customers that were intended to be filed along with  
9 supplemental testimony and it was just an oversight  
10 that they were left out.

11 Q. And was that document that has been  
12 marked as Exhibit 22.1 intended to be attachment WDW  
13 Supplemental 4 to your testimony?

14 A. That's correct.

15 Q. And was that document prepared by you or  
16 under your direction and control?

17 A. It was.

18 Q. And do you have any changes or  
19 corrections to that document?

20 A. No. Nothing to that document, no.

21 Q. Thank you.

22 Going back to your supplemental  
23 testimony, Duke Energy-Ohio Exhibit No. 22, do you  
24 have any changes or corrections to your testimony?

25 A. I have a few changes to that testimony.

1 Beginning on page 5, lines 1 through 5, I'll just  
2 read the sentence and correct it altogether but right  
3 now it reads "The total cost of capacity is the  
4 applicable Final Zonal Capacity Price (FZCP) for the  
5 Duke Energy-Ohio and Duke Energy Kentucky load zone  
6 region for the applicable delivery period," and it  
7 continues.

8 It should read: "During the ESP period  
9 the total cost of capacity is the applicable Final  
10 Zonal Capacity Price (FZCP) for the unconstrained  
11 regional transmission organization region for the  
12 applicable delivery period."

13 And on page 10, line 8, there's a typo,  
14 it should be -- there's a number date of "2001," it  
15 should be "2011."

16 On page 11, line 18, change the  
17 "2016/2017" to "2015/2016."

18 On page 25, line 1, the word  
19 "stipulation" is misspelled, just correct that.

20 And on page 33, line 11, strike the first  
21 occurrence of the word "the" from the sentence and  
22 change the word "creating" to "creates."

23 And I do have a correction to two  
24 attachments as well.

25 EXAMINER PIRIK: Hold on just a minute.

1                   Okay. Go ahead.

2                   A. I don't have copies for all this but I'll  
3 file a supplemental. There was a tariff that's Sheet  
4 No. 94 and 94.1, it's in Exhibits WDW Supplemental 2  
5 and Supplemental 3, and I inadvertently did not make  
6 a correction to those two tariffs, and we have those,  
7 I won't go through them, but we'll give you corrected  
8 copies. It's the backup delivery power rider.

9                   EXAMINER PIRIK: In order to get -- we're  
10 going to have to mark those as exhibits. Do you  
11 physically have them here now?

12                  THE WITNESS: I've got one copy.

13                  EXAMINER PIRIK: One copy. We could mark  
14 this as an exhibit and then you can provide the court  
15 reporter and the Bench and parties, to the extent  
16 they need them, copies of them.

17                  MR. D'ASCENZO: That would be fine, your  
18 Honor. For consistency purposes we would propose  
19 marking those as WDW 22.2.

20                  EXAMINER PIRIK: Yes, that would be  
21 appropriate.

22                  (EXHIBIT MARKED FOR IDENTIFICATION.)

23                  EXAMINER PIRIK: And then if you could  
24 just get the Bench copies of those because this copy  
25 will go with the court reporter, if you could get the

1 Bench copies of those by the end of the day, that  
2 would be appreciated.

3 MR. D'ASCENZO: Certainly, your Honor.  
4 Thank you.

5 EXAMINER PIRIK: Go ahead.

6 Q. (By Mr. D'Ascenzo) Mr. Wathen, do you  
7 have any additional corrections or changes?

8 A. Not at this time.

9 Q. With those corrections and changes do you  
10 hereby adopt your supplemental testimony, your  
11 Supplemental WDW Attachment 4 as your testimony for  
12 purposes of this proceeding?

13 A. I do.

14 Q. Mr. Wathen, if I could ask you just one  
15 more question. With respect to the auction that is  
16 anticipated to occur this year as part of the  
17 settlement of this case, if for some reason Duke  
18 Energy-Ohio does not have an auction this year, is  
19 there a contingency plan?

20 A. We had a contingency plan provided for in  
21 our original testimony that would be applicable today  
22 if needed, and that was, I mean, capacity price is  
23 going to be the same price regardless of when the  
24 auction happens. We can convert the one rider we  
25 need, the rider RC, without an auction, and then to

1 the extent necessary we can buy power from the PJM  
2 day-ahead realtime markets as necessary. It's not  
3 the optimal solution but I think that's doable.

4 Q. Mr. Wathen, that would go into effect  
5 should the Commission approve this stipulation but  
6 for whatever reason the auction itself is not able to  
7 happen.

8 A. That's correct. We have the tools  
9 provided for in the stipulation to handle any  
10 reconciliations that would be necessary.

11 MR. D'ASCENZO: Thank you, your Honor.  
12 The witness is available for cross-examination.

13 EXAMINER PIRIK: Thank you.

14 Does anyone wish to cross-examine the  
15 witness?

16 MR. PETRICOFF: Your Honor, I don't, but  
17 we have an agreement between RESA and Constellation  
18 and the company concerning testimony of Mr. Fein and  
19 to a degree I guess this witness as well, I think it  
20 probably makes more sense to introduce it with  
21 Mr. Fein, but it does border on some of the testimony  
22 for Mr. Watson [verbatim].

23 EXAMINER PIRIK: So do you want to ask  
24 him questions or do you just --

25 MR. PETRICOFF: No, well, maybe now is

1 the time to put this on the record, your Honor, or if  
2 you decide it's better for Mr. Fein, that's well and  
3 good as well.

4 As with the case of most of the  
5 out-of-town witnesses who are just filing support  
6 testimony for the stipulation, all of the parties  
7 today sort of round-robin e-mailed to see if there  
8 was any cross-examination for, for example, in this  
9 case Mr. Fein who's in Chicago, and none of the  
10 intervenors had any questions for Mr. Fein.

11 But there was a clarification that was  
12 requested by the company on Mr. Fein's testimony and  
13 that had to do with his testimony on page 14, line 18  
14 through page 15, line 2, this will be on his  
15 Constellation testimony when they're talking about  
16 what are the -- these are data and website updates  
17 that are part of the stipulation and Mr. Fein says  
18 that the company should -- or, rather, the Commission  
19 should approve those.

20 And the reason for that statement is  
21 because those are improvements that are going to come  
22 later in time and, therefore, they're not in the  
23 compliance tariffs. And so the company had asked for  
24 a clarification because we just say "information"  
25 there and we don't specify.

1           So we have agreed that we would specify  
2           that had Mr. Fein been called to the stand today, he  
3           would say that the reference there was to just the  
4           website improvements and the information that you  
5           will find in the stipulation in the section Roman IX.

6           Similarly, the company has agreed that  
7           when the day comes, the appointed day that we have,  
8           and there are different dates in there because, you  
9           know, there are like goals that have to be met for  
10          these upgrades, that the appropriate tariffs will be  
11          filed and that's where Mr. Watson comes in because he  
12          is the witness who is sponsoring the tariffs and that  
13          was the understanding on which we have no  
14          cross-examination for Mr. Watson and the company has  
15          no cross-examination for Mr. Fein.

16                 EXAMINER PIRIK: Just as a reminder, you  
17                 might next time want to also poll the examiners as to  
18                 whether we have questions. I mean, Mr. Fein was on  
19                 our list but I think the questions have been answered  
20                 at this point in time. But next time I would just  
21                 advise the parties if you have a witness that's going  
22                 to go on the stand, sometimes the Bench does have  
23                 questions.

24                 MR. PETRICOFF: Thank you, your Honor. I  
25                 apologize for that, especially if it's an

1 inconvenience for the Bench.

2 With that in mind, we would certainly be  
3 open to answering in interrogatory style in writing  
4 any question that the Bench would have which, of  
5 course, would be circulated to all parties.

6 EXAMINER PIRIK: And I think we're okay  
7 because I believe the witness has -- Mr. Wathen  
8 hopefully is available to answer some of our  
9 questions with regard to some of the kilowatt  
10 questions we have from Ms. Janson, and even though I  
11 don't think even if Mr. Fein touches on that in his  
12 testimony, I don't think it's necessary that he  
13 answer that, I think the company will be able to  
14 answer the questions, but thank you.

15 Ms. Watts?

16 MS. WATTS: Yes, thank you, your Honor.  
17 If I may, I'd just like to confirm that  
18 Mr. Petricoff's representation of the company's  
19 position is accurate from our view and we will file  
20 the necessary tariffs per our understanding with  
21 Constellation.

22 EXAMINER PIRIK: Okay. It may be good  
23 also, since we're at this point in time and you are  
24 referencing Mr. Fein's testimony, so we don't get too  
25 far in the transcript without having those documents,

1     why don't we mark the documents so that, and then you  
2     can reiterate what the lines -- where the questions  
3     were in that specific exhibit.

4             MR. PETRICOFF: Okay. Thank you, your  
5     Honor. At this time we would like to have marked as  
6     Constellation Exhibit No. 1 the direct prepared  
7     testimony in support of the stipulation of David I.  
8     Fein.

9             EXAMINER PIRIK: The document is so  
10    marked.

11            (EXHIBIT MARKED FOR IDENTIFICATION.)

12            MR. PETRICOFF: And the reference that  
13    was made earlier in the factual stipulation can be  
14    found on page 14, line 18, running through page 15,  
15    line 2.

16            And if your Honor will indulge me, in  
17    addition, as long as we're marking testimony, I would  
18    like to mark the direct prepared testimony in support  
19    of the stipulation of David I. Fein on behalf of the  
20    Retail Energy Supply Association as RESA, R-E-S-A,  
21    Exhibit No. 1.

22            EXAMINER PIRIK: The documents are so  
23    marked. Thank you. I think that clarifies the  
24    record.

25            (EXHIBIT MARKED FOR IDENTIFICATION.)

1 EXAMINER PIRIK: Is there any other  
2 cross-examination for this witness?

3 (No response.)

4 EXAMINER PIRIK: Hearing none.

5 - - -

6 EXAMINATION

7 By Examiner Stenman:

8 Q. Do you know the rationale for increasing  
9 the interval meter threshold size from 100 to  
10 200 kilowatts?

11 MR. HAYDEN: I'm sorry, your Honor.  
12 Could you speak up a little bit?

13 EXAMINER STENMAN: Sure. I asked if he  
14 knew the rationale for increasing the interval meter  
15 threshold size from 100 to 200 kilowatts.

16 A. I don't know all the details of it. I  
17 can tell you the limit of my knowledge on it and that  
18 was intended to expand the switching opportunities  
19 and eliminate another barrier to switching.

20 Q. Does it have any impact on current  
21 customers?

22 A. No.

23 Q. Okay. Do you know the amount of Duke  
24 commercial and industrial loads served under existing  
25 realtime pricing tariffs or comparable arrangements

1 with differentiated pricing?

2 A. Current commercial and industrial load,  
3 let me make sure I get the question right, served  
4 under RTP? I don't -- I can tell you a few customers  
5 but I don't know their load offhand, but it's -- it  
6 can't be much more than 500,000 megawatt-hours I  
7 wouldn't think.

8 Q. Okay. And will Duke continue to provide  
9 new time differentiated and dynamic pricing options  
10 to customers under the stipulation?

11 A. We have -- realtime pricing will continue  
12 for certain customers that are commercial and  
13 industrial customers. I think you're alluding to the  
14 dynamic pricing options we have pilots for today, TD  
15 rates, a few others, and we will absolutely continue  
16 offering those, and as I provide in my testimony they  
17 should become more, some of the barriers to people  
18 enrolling in those should be eroding with this new  
19 plan.

20 Q. And do you know with respect to the  
21 stabilization charge for high-load factor customers,  
22 is that based on a customer's peak demand or does it  
23 have a relationship to the coincident between  
24 customer demand and the applicable circuit utility or  
25 the area's coincident peak load?

1           A.    Make sure I understand the charge you're  
2 asking about.  The ESSC rider or the load factor  
3 adjustment?

4           Q.    The load factor adjustment.

5           A.    The load factor adjustment will be the --  
6 the billing determinant will be a customer's billing  
7 demand which is the highest monthly peak independent  
8 of when they peak with the company or with an RTO,  
9 and it's a ratchet, so whatever their highest peak  
10 for the year is in a given month, that will be their  
11 bill for the next 12 months.

12          Q.    Okay.  And last one, will Duke be able to  
13 accommodate consolidated billing of CRES services  
14 where the pricing for the services to be billed are  
15 not currently offered under Duke's current rates and  
16 services?

17          A.    Let me make sure I understand your  
18 question.  We offer consolidated billing for flat  
19 rates, we offer consolidated billing for discounts,  
20 so just a percent off the bill, and I think -- I  
21 believe that we offer at least the opportunity to  
22 work with the CRES providers to integrate new designs  
23 but we do charge them for IT services that are being  
24 done.

25          Q.    Do you know what the IT charges are?

1           A.    I believe it was in our tariff. Right  
2 now it's \$75 an hour.

3           Q.    Okay. Thank you.

4           EXAMINER PIRIK: Thank you, Mr. Wathen.

5           MR. PETRICOFF: Your Honor, since I do  
6 not have Mr. Fein here today, although Mr. Fein  
7 certainly thanks the Bench for keeping him from  
8 Southwest Airlines for a trip back and forth, I do  
9 want to note for the record two items: One, in his  
10 direct prepared testimony for the Retail Electric  
11 Supply Association on page 5, line 4, he does refer  
12 to the movement from a 100-kW load to a 200-kW load  
13 for having a meter as removing a barrier for  
14 shopping.

15           And I ask that the Bench take judicial  
16 notice of the current tariff which indicates that at  
17 the moment its only shopping customers who have to  
18 provide this meter from 100 kW to 200 kW at the  
19 moment and that's done at the expense of the  
20 customer.

21           EXAMINER PIRIK: Thank you.

22           Ms. Watts?

23           MS. WATTS: Thank you, your Honor. For  
24 its next witness Duke Energy-Ohio would call Robert  
25 J. Lee.

1 May I approach, your Honor?

2 EXAMINER PIRIK: Yes.

3 Mr. Lee, please raise your right hand.

4 (Witness sworn.)

5 EXAMINER PIRIK: Thank you.

6 - - -

7 ROBERT J. LEE

8 being first duly sworn, as prescribed by law, was

9 examined and testified as follows:

10 DIRECT EXAMINATION

11 By Ms. Watts:

12 Q. Sir, would you introduce yourself and  
13 give us your title, please?

14 A. Sure. My name is Robert J. Lee. I'm a  
15 principal with Charles River Associates in Boston.

16 Q. And, Mr. Lee, what is the business  
17 address of Charles River?

18 A. 200 Clarendon Street, Boston, Mass.,  
19 02116.

20 MS. WATTS: Your Honor, if I may, I'd  
21 like to have Mr. Lee's supplemental direct testimony  
22 marked as Duke Energy Exhibit 23.

23 EXAMINER PIRIK: The document will be so  
24 marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1           Q.    Mr. Lee, do you have that document before  
2   you?

3           A.    I do.

4           Q.    Can you tell me what that is, please?

5           A.    This is my supplemental testimony filed  
6   as part of this proceeding.

7           Q.    And if I were to ask you the questions  
8   contained in that testimony, would your answers today  
9   be the same?

10          A.    They would, yes.

11          Q.    Do you have any additions or corrections  
12   to that testimony?

13          A.    I have no corrections.

14          Q.    Mr. Lee, turning your attention to page  
15   5 --

16          A.    Yeah.

17          Q.    -- beginning at line 11 --

18          A.    Yes.

19          Q.    -- is there an update to that  
20   information?

21          A.    Yes, there is. On November 1st, so  
22   that was Tuesday, we went live with the information  
23   website as part of going forward with the auction for  
24   this year, and in the first couple hours or so we had  
25   about 25 registered parties. A lot of the major

1 parties who participated in other Ohio auctions that  
2 we've conducted have registered as interested in this  
3 proceeding and we expect to continue to have their  
4 participation going forward.

5 Q. Do you have anything else you'd like to  
6 offer with respect to that?

7 A. You know, I think that under the current  
8 schedule we can conduct an auction this year. We've  
9 started down that path. We're confident that we have  
10 enough time to conduct each of the steps in the  
11 process. And I think the experience that we had with  
12 prior auctions and the experience bidders had with  
13 prior auctions make the timeline more and more  
14 reasonable.

15 Q. And could you advise the Bench with  
16 respect to an event that's to occur on  
17 November 8th, please.

18 A. On November 8th, that's our first  
19 information session, that will be conducted via  
20 WebEx. Information session is designed to allow  
21 bidders and interested parties to ask questions about  
22 the process and for the company and for CRA to inform  
23 all interested parties about the process, the  
24 products, and the timeline.

25 MS. WATTS: I have no further questions.

1 Mr. Lee is available for cross-examination.

2 EXAMINER PIRIK: Thank you. Is there any  
3 cross-examination for this witness?

4 (No response.)

5 EXAMINER STENMAN: You said you have 25  
6 interested parties. When you typically preregister  
7 people for the information session, about what  
8 percentage of the interested parties actually  
9 participate in the auction, if you know?

10 THE WITNESS: Well, it's going to vary  
11 from auction to auction and industry to industry.  
12 You know, for Ohio auctions in the past we've had  
13 between 10 and 20 actual bidders. I expect we will  
14 continue to receive registrations through the  
15 process. The information site has very recently gone  
16 live.

17 But I offer the number out there, you  
18 know, just to note that there is a lot of interest,  
19 there's a lot of knowledge in the Duke-Ohio auction,  
20 and in particular the large active participants from  
21 prior auctions we've done are aware of the process  
22 and have registered.

23 EXAMINER STENMAN: Thank you.

24 EXAMINER PIRIK: Thank you very much,  
25 Mr. Lee.

1 MS. KINGERY: Your Honors, Duke  
2 Energy-Ohio will call for its next witness Charles  
3 Whitlock.

4 May I approach?

5 EXAMINER PIRIK: Yes.

6 MS. KINGERY: We would ask that the  
7 direct testimony of Charles Whitlock filed on  
8 October 28th be marked as Duke Energy-Ohio  
9 Exhibit 24.

10 EXAMINER PIRIK: The document will be so  
11 marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MS. KINGERY: Thank you, your Honors.

14 EXAMINER PIRIK: Mr. Whitlock, please  
15 raise your right hand.

16 (Witness sworn.)

17 EXAMINER PIRIK: Thank you.

18 Ms. Kingery.

19 - - -

20 CHARLES R. WHITLOCK

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

23 DIRECT EXAMINATION

24 By Ms. Kingery:

25 Q. Mr. Whitlock, would you please state your

1 name and business address for the record?

2 A. Yeah, Charles R. Whitlock, 139 East  
3 Fourth Street, Cincinnati, Ohio.

4 Q. Thank you. And by whom and in what  
5 capacity are you employed?

6 A. I'm employed by Duke Energy Business  
7 Services and I'm the President of Midwest Commercial  
8 Generation.

9 Q. Thank you very much.

10 And do you have in front of you what has  
11 been marked as Duke Energy-Ohio Exhibit 24?

12 A. I do.

13 Q. And would you identify that, please?

14 A. It's my supplement -- it's my direct  
15 testimony filed on behalf of Duke Energy-Ohio in the,  
16 a long-numbered case.

17 Q. Thank you very much.

18 And was that prepared and filed under  
19 your direction and supervision?

20 A. It was.

21 Q. And do you have any revisions to make to  
22 that testimony today?

23 A. I do not.

24 Q. If I were to ask you all those same  
25 questions today, would your answers be the same?

1           A.    They would.

2           Q.    Thank you very much.

3           MS. KINGERY:  The witness is available  
4   for cross-examination.

5           EXAMINER PIRIK:  Thank you.

6           Is there any cross-examination for this  
7   witness?

8           (No response.)

9           EXAMINER STENMAN:  Assuming that the  
10   stipulation is approved and not modified, are there  
11   any elements of Duke's transfer of its legacy  
12   generation assets or its corporate separation that  
13   would be subject to any further Commission review?

14          THE WITNESS:  I think the stipulation  
15   serves as final approval for the transfer of the  
16   assets.  There is provision in the stipulation for an  
17   audit to make sure that we basically transferred the  
18   assets in a manner that's consistent with the  
19   stipulation, and then there is some provisions on --  
20   let me just look at the word real quick -- there are  
21   three other items I believe that are listed that Duke  
22   Energy-Ohio cannot do to the affiliate or the  
23   subsidiary without Commission approval but those are  
24   not the transfer of the assets.

25          EXAMINER STENMAN:  Thank you.

1 EXAMINER PIRIK: Thank you, Mr. Whitlock.

2 THE WITNESS: That was easy.

3 EXAMINER PIRIK: I think I would prefer,  
4 until we actually conclude the confidential piece of  
5 it, to wait and just move all of the company's  
6 exhibits at the same time. So I think if we go  
7 forward with the other witnesses and remember to  
8 actually move and do what we're going to do with  
9 those exhibits at that time, I think that would be  
10 appropriate.

11 MS. SPILLER: That's fine, your Honor.  
12 That said, the company rests, the caveat being the  
13 final admission or introduction or proposed  
14 introduction into evidence of our exhibits.

15 EXAMINER PIRIK: Mr. Petricoff, with  
16 regard to your -- I assume you're willing to go next  
17 since you've already marked your exhibits.

18 MR. PETRICOFF: Yes, your Honor. That,  
19 we are.

20 May I approach the court reporter? I do  
21 have copies for her.

22 At this time we would like to move to  
23 introduce RESA Exhibit No. 1 and Constellation  
24 Exhibit No. 1.

25 EXAMINER PIRIK: Are there any objections

1 to the admission of RESA Exhibit 1 and Constellation  
2 Exhibit 1 into the record?

3 (No response.)

4 EXAMINER PIRIK: Hearing none --

5 MS. SPILLER: No, your Honor.

6 EXAMINER PIRIK: -- those exhibits shall  
7 be admitted into the record.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 EXAMINER PIRIK: I'm not aware of the  
10 witness order so I assume staff will go last?

11 MR. JONES: That's fine, your Honor.

12 MR. YURICK: Your Honors, at this time if  
13 I could have the testimony of Kevin Higgins marked as  
14 Kroger Exhibit 1.

15 EXAMINER PIRIK: The document will be so  
16 marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. YURICK: I also, along with  
19 Mr. Petricoff, failed to advise the Bench. I did  
20 check with the other parties and they had no  
21 questions. Certainly the offer that Mr. Petricoff  
22 made to answer any questions in an interrogative  
23 fashion, or if you would like Mr. Higgins to fly in  
24 from Salt Lake City, we'll make him available, but I  
25 did not do that, so my apologies to the Bench.

1 EXAMINER PIRIK: No, that's fine. I  
2 believe the company witnesses answered all of our  
3 questions and anything that's left over we'll be sure  
4 to give to Ms. Turkenton.

5 MR. YURICK: At this point, then, your  
6 Honors, I appreciate that and I would move the  
7 admission of Kroger's Exhibit 1, the direct testimony  
8 of Mr. Kevin Higgins in support of the stipulation.

9 EXAMINER PIRIK: Are there any  
10 objections?

11 MS. SPILLER: No, your Honor.

12 MS. MOONEY: No.

13 EXAMINER PIRIK: Hearing none, Kroger  
14 Exhibit 1 will be admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER PIRIK: Ms. Mooney?

17 MS. MOONEY: Yes, your Honor, I'd like to  
18 also mark as OPAE Exhibit 1 the direct testimony of  
19 David C. Rinebolt in support of the stipulation, and  
20 I have copies to give to the reporters.

21 There was a typo on the very first page  
22 with the date incorrect, but other than that there's  
23 no changes. And since I did correct that I'll go  
24 ahead and give a copy to the court reporter and the  
25 Bench.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 EXAMINER PIRIK: Well, and since I don't  
3 see Mr. Rinebolt here, I'm assuming he didn't fly in  
4 from northern Ohio.

5 MS. MOONEY: I was getting ready to do my  
6 apologies about, and he could walk from Findlay. No,  
7 he couldn't. He'd drive.

8 EXAMINER PIRIK: I was looking forward to  
9 having him on the stand.

10 MS. WATTS: So were we all, your Honor.

11 EXAMINER PIRIK: Are there any objections  
12 to OP&E Exhibit 1?

13 MS. WATTS: No.

14 EXAMINER PIRIK: Hearing none, it will be  
15 admitted into the record.

16 MS. MOONEY: Thank you.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER PIRIK: Now, Mr. Jones.

19 MR. JONES: Thank you, your Honor. At  
20 this time the staff would like to call Tami Turkenton  
21 to the stand, please. And also, your Honor, at this  
22 time I'd like to mark the testimony in support of the  
23 stipulation and recommendation of Tamara S. Turkenton  
24 that was filed October 28th, 2011, as Staff Exhibit  
25 No. 1.

1 EXAMINER PIRIK: The document will be so  
2 marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 EXAMINER PIRIK: Ms. Turkenton, please  
5 raise your right hand.

6 (Witness sworn.)

7 EXAMINER PIRIK: Thank you.

8 MR. JONES: I'm sorry, may I approach the  
9 Bench? I don't know if you have a copy or not.

10 EXAMINER PIRIK: Yes.

11 - - -

12 TAMARA S. TURKENTON

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

15 DIRECT EXAMINATION

16 By Mr. Jones:

17 Q. Ms. Turkenton, I have before you what's  
18 marked as Staff Exhibit 1. Was this exhibit either  
19 prepared by you or at your direction?

20 A. It was.

21 Q. Okay. And do you have any changes or  
22 additions to make to this exhibit?

23 A. I do not.

24 Q. And if I were to ask you the same  
25 questions in this exhibit, your answers would be the

1 same?

2 A. They would.

3 Q. And do you adopt the testimony in Staff  
4 Exhibit 1 as your testimony for this proceeding  
5 today?

6 A. I do.

7 MR. JONES: No further questions, your  
8 Honor. I offer the witness for cross-examination.

9 EXAMINER PIRIK: Thank you.

10 Are there any questions?

11 MS. SPILLER: No, your Honor.

12 EXAMINER PIRIK: No?

13 THE WITNESS: Oh, you're going to be easy  
14 on me.

15 EXAMINER PIRIK: Yeah, we don't have any  
16 questions for Ms. Turkenton.

17 THE WITNESS: I brought the whole thing  
18 up. Come on, just one question. I'm kidding.

19 EXAMINER PIRIK: Thank you.

20 MR. JONES: At this time, your Honor, I'd  
21 like to move for the admission of Staff Exhibit 1  
22 into evidence.

23 EXAMINER PIRIK: Are there any  
24 objections?

25 MS. SPILLER: No, your Honor.

1 EXAMINER PIRIK: Hearing none, Staff  
2 Exhibit 1 will be admitted into the record.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER PIRIK: I believe that concludes  
5 the witnesses that had prefiled testimony and I  
6 believe the only matter that we have to discuss at  
7 this point in time is the confidential information  
8 and the motion for protective order that's been filed  
9 by the company.

10 MS. SPILLER: Your Honor, I believe that  
11 is correct. In respect of the exhibits, we did also  
12 have the Joint Exhibit No. 1, the stipulation and  
13 recommendation, and understanding that we may lose  
14 some counsel when we move into the topic of  
15 confidential material, and perhaps as an  
16 off-the-record discussion for a moment, but I did  
17 want to just broach the subject of briefing with you.

18 EXAMINER PIRIK: I think it would be  
19 appropriate to move forward and see if there are any  
20 objections to the joint exhibit and I assume there  
21 are none.

22 (No response.)

23 EXAMINER PIRIK: Joint Exhibit 1 shall be  
24 admitted into the record.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 MS. SPILLER: Thank you, your Honor.

2 EXAMINER PIRIK: Okay. We'll go off the  
3 record for just a minute.

4 (Discussion off the record.)

5 EXAMINER PIRIK: We'll go back on the  
6 record.

7 In light of the fact that we are not  
8 closing the record today and the Commission will take  
9 everything under consideration, we're not requesting  
10 briefs at this time, but the record will remain open  
11 in the event additional process is needed.

12 I think with that, I think that's the  
13 only other thing other than the confidential  
14 information that we need to move into.

15 MS. MOONEY: Your Honor, if an attorney  
16 doesn't stay for the whole discussion on what's  
17 confidential or not, we would still say we don't  
18 object to the admission of the company's exhibits  
19 which I think is still going to be an issue, so I --

20 EXAMINER PIRIK: That's fine.

21 MS. MOONEY: Thank you.

22 EXAMINER PIRIK: If you're not here,  
23 since I'm not going specifically around the table for  
24 objections, that will be fine. We purposely left  
25 this to the end with the thought that, you know,

1 hopefully everything will be resolved very quickly  
2 and we'll move on, but if not, we just need to be  
3 sure the record's appropriate. So we didn't want to  
4 keep anybody if they had other matters.

5 MR. BOEHM: We are grateful.

6 MR. O'BRIEN: Deeply.

7 EXAMINER PIRIK: Okay. I think perhaps  
8 before we go into the confidential information that  
9 was filed in relation to the initial testimony, I  
10 think the easiest one to deal with, at least perhaps  
11 that we can resolve, is Mr. Wathen's testimony, the  
12 two pages that were filed on 6/28/11. And I would  
13 ask that you look at Mr. Wathen's Attachment WDW 2,  
14 page 4 of 9, which was filed in the open record and  
15 compare that to the document that was filed under  
16 seal.

17 MS. SPILLER: Your Honor, I would concur  
18 that the document filed on June 28, 2011, WDW 2, page  
19 4 of 9, is not a confidential document. That  
20 document was filed to correct a title. There was a  
21 mistake, the second line of the title, upper left  
22 corner, originally filed as "Projected Other Taxes,"  
23 when in fact the correct title for that document as  
24 reflected in the June 28 filing is "Projected  
25 Depreciation Expense."

1 EXAMINER PIRIK: Okay. So I guess my  
2 request would be that once we determine, because we  
3 have the other page that we need to address and we  
4 can address this within the context of Mr. Wathen's  
5 testimony, but once we're concluded with this,  
6 assuming that some of the information that has been  
7 provided where confidentiality's been requested and  
8 the Bench rules that it's not going to be protected,  
9 that we will come up with an attachment or an exhibit  
10 designation that you will file as a late-filed  
11 exhibit opening those items up to the public record.

12 MS. SPILLER: Okay.

13 EXAMINER PIRIK: And so that would be  
14 just one of -- that obviously will be a page in the  
15 exhibit for Mr. Wathen.

16 MS. SPILLER: Okay.

17 EXAMINER PIRIK: So we just need to  
18 remember to add that to that exhibit number.

19 Why don't we go ahead and talk about  
20 Mr. Wathen's testimony then. We'll just resolve the  
21 whole issue with Mr. Wathen's testimony.

22 MS. SPILLER: Okay.

23 EXAMINER PIRIK: I believe the first  
24 request is on Wathen Exhibit 10, or Company Exhibit  
25 10, and again, we are in the open record so I'm just

1 going to talk line numbers and whatnot.

2 Hopefully there's not a need to do  
3 anything other than that, but because the motion for  
4 protective order was kind of brief in the explanation  
5 as to why things were needed to be confidential, I'm  
6 going to have to ask for an explanation and I'm  
7 hoping we'll be able to have that explanation without  
8 going into proprietary information.

9 MS. SPILLER: Understood, your Honor.

10 EXAMINER PIRIK: So the first request is  
11 on page 8, beginning at line 1 through 8, and we'll  
12 just, I mean perhaps we could go through all of his,  
13 but --

14 MS. SPILLER: I believe save for the  
15 attachments this is the only partial portion of  
16 Mr. Wathen's testimony that was redacted, your Honor.

17 EXAMINER PIRIK: Yes. So why don't we  
18 deal with this and then we can deal with the  
19 attachments.

20 MS. SPILLER: Sure. We had redacted this  
21 portion of Mr. Wathen's testimony. If you will  
22 recall, your Honor, Ms. Janson's testimony this  
23 morning identified Duke Energy-Ohio's status as a  
24 fixed resource requirement entity in PJM. Consistent  
25 with that status, Duke Energy-Ohio has an obligation

1 to supply capacity. This portion of the testimony  
2 concerns Duke Energy-Ohio's satisfaction, if you  
3 will, with that requirement.

4 Under an FRR entity designation a company  
5 can self-supply their own capacity or engage in other  
6 methods of procurement. To the extent that other  
7 methods of procurement would entail interaction with  
8 counterparties in the marketplace, public disclosure  
9 of a company's intent to so do, that could work an  
10 unfair advantage to that company.

11 That was the basis or rationale behind  
12 redacting this part of his testimony, so as to not  
13 unduly prejudice Duke Energy-Ohio should it find  
14 itself out in the market interacting for a commodity  
15 specific to its FRR obligations.

16 EXAMINER PIRIK: So the stipulation  
17 itself and everything that's in the stipulation that  
18 includes capacity is -- this language is in no way  
19 changed by.

20 MS. SPILLER: That is correct. Under the  
21 stipulation it is identified with respect to the SSO  
22 supply that Duke Energy-Ohio will remain as an FRR  
23 entity for the term of this ESP and supply capacity.  
24 It doesn't go beyond that in the stipulation detail,  
25 if you will, the sources of that supply.

1           And I will also add there is provision  
2 within the stipulation for whether Duke Energy -- I'm  
3 sorry, not "whether," but Duke Energy-Ohio's efforts  
4 to exit the FRR plan early, but I don't believe that  
5 that would change at all this portion of Mr. Wathen's  
6 testimony.

7           EXAMINER PIRIK: Are there any objections  
8 to this motion?

9           (No response.)

10          EXAMINER PIRIK: Hearing none, the motion  
11 will be granted.

12          MS. SPILLER: Thank you, your Honor.

13          EXAMINER PIRIK: Moving to the  
14 attachments. I believe the first one is WDW 1, page  
15 10 of 17.

16          MS. SPILLER: That is what I have as  
17 well, your Honor.

18          EXAMINER PIRIK: Perhaps it would be best  
19 if, I mean, you're aware of what the attachments are,  
20 if you can group them, if there is a way to group  
21 them, or if we should do them individually, if you  
22 have the same arguments for certain attachments, then  
23 that might be easier. I do. I also will say, your  
24 Honor, we have revision in that information contained  
25 on these various pages we will withdraw the request

1 for confidential information for certain of the  
2 columns of information. I could probably do that  
3 globally if that would be helpful with respect to the  
4 attachments in Mr. Wathen's testimony.

5 To the extent these tables and the left  
6 portions of the tables contain a line number column  
7 as well as designated line numbers, the numeric  
8 information for line number, and then a description  
9 so that the word "description," whether that includes  
10 the identification of a generating station or a  
11 particular FERC account, Duke Energy-Ohio will  
12 withdraw its request for confidential treatment in  
13 respect of that information.

14 The concern in that which is the focus of  
15 our motion would be the actual detail, the numeric  
16 information, the dollar amounts, the company-specific  
17 information that would pertain to each line number  
18 and or description.

19 EXAMINER PIRIK: And that would go for  
20 all of the attachments both in the -- there's no  
21 exception as far as the left-hand column description  
22 through the description?

23 MS. SPILLER: The only caveat that I  
24 would have, your Honor, is with respect to page 1017,  
25 WDW 1, there is a line, line No. 25, we would ask

1     that that detail remain redacted all the way through  
2     actually the number. So we would ask that -- I  
3     withdraw that. We are fine in releasing the line  
4     number, the FERC account number as well as the  
5     description for No. 25.

6             EXAMINER PIRIK: Okay. So then for all  
7     of the attachments the line number and description  
8     and the FERC account numbers will be open. Is this  
9     correct?

10            MS. SPILLER: That's correct, your Honor.

11            EXAMINER PIRIK: I just want to be sure  
12     on WDW 2, page 1 of 1, which has been corrected I  
13     understand, but there were a couple lines after line  
14     15 that have been asked, are those okay to be open?

15            MS. SPILLER: Yes, your Honor, the  
16     version of WDW 2, page 1 of 1, filed on June 28,  
17     2011, consistent with my prior representations the  
18     leftmost column line number in its entirety as well  
19     as the second leftmost column description in its  
20     entirety we would withdraw the request for  
21     confidential treatment.

22            EXAMINER PIRIK: Okay.

23            MS. SPILLER: Again, reserving the  
24     request to the actual detailed numeric information  
25     within the table.

1                   EXAMINER PIRIK: And, again, we're just  
2 talking about the description piece but I just want  
3 to be sure. WDW 2, page 2 of 9, that farthest  
4 left-hand corner or left-hand column, it's not  
5 titled, well, at least on this copy it's not titled;  
6 it could be on an original.

7                   MS. SPILLER: Yes, your Honor, the  
8 leftmost column.

9                   EXAMINER PIRIK: Okay. Is that true for  
10 page 3 of 9 of that same --

11                  MS. SPILLER: Yes, your Honor.

12                  EXAMINER PIRIK: Page 5 of 9?

13                  MS. SPILLER: Yes, your Honor.

14                  EXAMINER PIRIK: Page 6 of 9?

15                  MS. SPILLER: Yes, your Honor.

16                  EXAMINER PIRIK: And then page 8 of 9.

17                  MS. SPILLER: Yes, your Honor.

18                  EXAMINER PIRIK: Well, and 9 of 9 I guess  
19 also.

20                  MS. SPILLER: Yes. And if I may, just to  
21 address page 7 of 9, as well the designations on the  
22 left we would remove the request for confidential  
23 treatment.

24                  EXAMINER PIRIK: They would be open.

25                  MS. SPILLER: Yes.

1 EXAMINER PIRIK: Okay. Now, with regard  
2 to the specifics of the argument.

3 MS. SPILLER: Your Honor, if I may,  
4 before I go to that, on page 6 of 9 contained within  
5 this table is information that is public. The public  
6 information would be the PJM capacity prices that are  
7 known through the 2014-2015 delivery year.

8 So when looking in the middle of the  
9 column, you will see dollar amounts 110, \$16.50,  
10 23 -- I'm sorry, \$27.73, \$125, that information is  
11 known, they are published PJM prices for capacity  
12 resulting from their base residual auction. So we  
13 will remove the request for confidential treatment  
14 with respect to the public published capacity prices.

15 EXAMINER PIRIK: Okay. Thank you.

16 Is there anything else?

17 MS. SPILLER: There is nothing -- oh, if  
18 I may, your Honor, going back, to be clear, if we  
19 went back to WDW 1, page 10 of 17, Schedule C-2,  
20 consistent with my prior representation, again, the  
21 line number, FERC account number, account  
22 descriptions on page 10 of 17 as well as 11 of 17 we  
23 are withdrawing the request for confidential  
24 treatment.

25 The fourth column from the left is

1 identified as "Total Per Books," that is the same  
2 column that carries over from page 10 into page 11,  
3 that information, that numeric information, is public  
4 pursuant to Duke Energy-Ohio's FERC Form 1, so we  
5 will be removing the request for confidential  
6 treatment with respect to the detail in that column.

7 The balance of the table, and again the  
8 numeric information, we would reserve or renew the  
9 request for confidential treatment.

10 Then with regard to the Notes section we  
11 would remove the request for confidential treatment,  
12 as I believe the removal would be consistent with  
13 Mr. Wathen's testimony save the note that pertains to  
14 line No. 25. And, again, carrying over into page 11  
15 removing the request for confidential treatment with  
16 respect to the Notes column, the right most column on  
17 that page.

18 EXAMINER PIRIK: You say, is there a note  
19 on page 11 that you do not -- that you still want a  
20 motion for protective order on?

21 MS. SPILLER: No, not on page 11, your  
22 Honor.

23 EXAMINER PIRIK: Not on page 11, okay.  
24 Okay, is there anything else?

25 MS. SPILLER: No, your Honor, with the

1 exception of the basis for the company's request with  
2 respect to Mr. Wathen's attachments and workpapers.

3 EXAMINER PIRIK: Okay.

4 MS. SPILLER: And I will attempt to  
5 summarize as best I can all of these attachments and  
6 the reason for the request.

7 As the Bench is aware, when Duke  
8 Energy-Ohio made its initial filing on June 20th of  
9 this year, what it proposed was a long-term electric  
10 security plan, a plan having a term of nine years and  
11 five months.

12 In respect of that, and as Ms. Kingery  
13 will detail further with respect to Judah Rose's  
14 testimony, in order to project out financial  
15 information consistent with filing requirements there  
16 was reliance on confidential proprietary modeling.  
17 Modeling and the mechanics of that modeling, the  
18 results of that modeling if revealed, we believe,  
19 would work an unfair competitive advantage to Duke  
20 Energy-Ohio.

21 The documents contained within  
22 Mr. Wathen's testimony include, for example, detail  
23 with respect to operating and maintenance, operating  
24 and maintenance costs that the company forecasts it  
25 may incur or would likely incur with respect to its

1 proposed ESP.

2 In that regard I believe that it is  
3 important to maintain the confidential nature of  
4 these financial projections in that Duke Energy-Ohio  
5 engages in the market with respect to commodities,  
6 commodities that are part and parcel to its operation  
7 and maintenance of its generating fleet.

8 To the extent Duke Energy-Ohio's forecast  
9 with respect to what it projects to incur with  
10 respect to operating its fleet would work a  
11 disadvantage to Duke Energy-Ohio vis-a-vis its  
12 interaction with its counterparties, vis-a-vis its  
13 interaction with competitors.

14 I would also offer, your Honor, that  
15 consideration of this material in the context of this  
16 case, and more specifically the stipulation that has  
17 been presented to the Bench, certainly underscores  
18 the need to maintain the confidential nature of this  
19 material.

20 As provided for in the stipulation, these  
21 generating assets, as detailed in Mr. Wathen's  
22 testimony and attachments, will move to a merchant  
23 status, will be separated from the distribution  
24 utility, and at that point in time they would be  
25 severely compromised and Duke Energy-Ohio's affiliate

1 would be severely compromised in its participation in  
2 wholly competitive markets if its projected operating  
3 and maintenance and capital investments were to be  
4 disclosed in the public domain.

5 And, again, part of Mr. Wathen's  
6 testimony and the attachments in support thereof, as  
7 I have previously testified, concerns Duke  
8 Energy-Ohio's obligation as an FRR, or fixed resource  
9 requirements entity, and addressing its capacity  
10 obligations in respect of that entity's status.

11 So to the extent there is some suggestion  
12 within these documents, and in fact there is specific  
13 suggestion, as to Duke Energy-Ohio's position and its  
14 level of supply, to the extent it would need to  
15 engage in procurement strategies with counterparties  
16 in the marketplace we believe it important to  
17 maintain the confidential and proprietary nature of  
18 its position.

19 EXAMINER STENMAN: Are there any  
20 objections? Any response?

21 (No response.)

22 EXAMINER STENMAN: With the exception of  
23 the information that we have already talked about  
24 releasing into the open record, Duke's motion for  
25 protective order will be granted with respect to the

1 remainder of the attachments.

2 MS. SPILLER: Thank you, your Honor.

3 EXAMINER STENMAN: Turning to Mr. Rose's  
4 testimony, let's start with the information that's  
5 actually contained in the testimony itself starting  
6 on I believe page 8.

7 MS. KINGERY: Yes. I would note for the  
8 record that the same arguments that Ms. Spiller just  
9 talked about with regard to Mr. Wathen's testimony  
10 also hold here. This information has been held  
11 confidentially and is not released except to parties  
12 who have a need for that information, and we believe  
13 the disclosure of this information would work a  
14 competitive disadvantage to Duke Energy-Ohio.

15 This information, and throughout  
16 Mr. Rose's testimony and workpapers is based on  
17 projections that were developed by Mr. Rose through  
18 proprietary modeling, particularly with the years  
19 2016 and beyond, and so we've been very careful  
20 throughout the testimony to attempt to allow into the  
21 public record information that's based on historical  
22 figures and information that's based on projections  
23 for the years 2015 and before except in some limited  
24 circumstances.

25 So our goal has been to try and

1 differentiate those two time periods in order to keep  
2 their proprietary -- the results of their proprietary  
3 modeling confidential.

4 So if we look at this page, for example,  
5 the first item that is redacted on line 14 is talking  
6 about a percent increase that goes out through 2021  
7 and, therefore, of necessity includes that time  
8 period from 2016 forward that is proprietary, and the  
9 same thing would apply to the item redacted from line  
10 23.

11 EXAMINER PIRIK: Ms. Kingery, does  
12 this -- with respect to just the testimony piece of  
13 it --

14 MS. KINGERY: Yes.

15 EXAMINER PIRIK: -- do your arguments  
16 apply to everything that's within the testimony, or  
17 is there anything in the testimony that can be put in  
18 the open record I guess is the question?

19 MS. KINGERY: Not that I have been able  
20 to locate. Now, there may be, as we go through each  
21 individual item, if you wish to do that, there may be  
22 some places where we find that we've made an error  
23 and allowed something to be redacted, attempted to  
24 redact it and it wasn't meant to be, but I have not  
25 located that.

1           In the workpapers I have found some  
2 things that were redacted fully that correspond to  
3 exhibits that are included within the testimony where  
4 pieces of it should have been in the public record.

5           EXAMINER PIRIK: Okay. Well then why  
6 don't we, since we're here, we'll just go through --  
7 while we're sitting here if you could just go through  
8 the pages of his testimony and be sure that you're  
9 confident and then as we go through the attachments  
10 and the workpapers, then, you know, if you see  
11 something else, we can come back. But go ahead and  
12 take a moment to go through it just to see if you see  
13 anything.

14           MS. KINGERY: That's fine.

15           Page 10, those two redactions both  
16 include the out years.

17           Page 11, same thing.

18           The next redaction is on page 13 and  
19 those also include time periods out through 2021.

20           Page 14 has a number of redactions and,  
21 again, they're talking about averages that include  
22 the late years.

23           15, same thing, it goes out through 2021.

24           I believe the next redaction is on page  
25 26 and that also is talking about the entire term of

1 the proposed ESP.

2 Page 31, again, is talking about 2021.

3 EXAMINER PIRIK: Now here I just want to  
4 be -- what was a little bit confusing about this is  
5 that when you compared the open to the closed, they  
6 have different page numbers.

7 MS. KINGERY: Yes, there was a pagination  
8 problem. Let's talk about it by section number from  
9 here forward. I'm looking right now at page 31 of  
10 the confidential version and it's Roman IV.2 that  
11 we're up to.

12 EXAMINER PIRIK: Okay.

13 MS. KINGERY: Then the next page is  
14 Exhibit F-1 and there you can see what we've redacted  
15 is 2016 and beyond, and any averages that include  
16 those time periods.

17 Under the question that follows F-1, this  
18 includes up through 2021.

19 The next question, which is on page 33 of  
20 the confidential version, there's a percentage that's  
21 talking about the entire term.

22 Then the question right above Exhibit F-2  
23 is referring to F-1 that we just talked about and F-2  
24 that's right below this which, again, has averages  
25 out through 2021.

1 I believe the next redaction is on  
2 confidential page 48 which is in section Roman  
3 Numeral V.4, a second question, and this is again  
4 talking about the late years out through 2021.

5 Exhibit P we have redacted, proposed  
6 redaction from 2016 on and the averages that include  
7 those time periods.

8 And there's a question following  
9 Exhibit Q that's talking about 2021.

10 EXAMINER PIRIK: On page -- and you're  
11 talking about Exhibit Q. Here's part of my question  
12 on this one at least, and I don't expect you to have  
13 this with you, but my dilemma is, and this was  
14 probably from just my memory of what we did in the  
15 MRO, but in the MRO a similar chart as depicted in  
16 Exhibit Q is in the open record. So I'm trying to  
17 figure out why it's now in the closed record.

18 And I would be, you know, I realize that  
19 Exhibit Q goes out even further than the exhibit that  
20 was in Mr. Rose's testimony, but -- and here, I'll  
21 show it to you.

22 MS. KINGERY: This is wholesale all hours  
23 energy prices out through '14.

24 EXAMINER PIRIK: It may not be exactly,  
25 but --

1 MS. KINGERY: And I'm looking at the  
2 confidential, I didn't bring with me the actual  
3 public version of Exhibit Q.

4 Did we redact that, the chart?

5 MS. SPILLER: The whole chart came out  
6 and I think that's a clarification that we need to  
7 make.

8 MS. KINGERY: Yes.

9 MS. SPILLER: So the point of demarcation  
10 was really 2015.

11 MS. KINGERY: Right. If the whole chart  
12 came out, I would propose that Duke Energy-Ohio could  
13 redact only the ICF forecast time period, which is  
14 2015 and beyond.

15 May I approach?

16 EXAMINER PIRIK: Yes.

17 MS. KINGERY: I'll bring this back.

18 So if we redacted only the ICF  
19 proprietary projection time period, then it would  
20 correspond more to what appears to have been done in  
21 the MRO proceeding.

22 EXAMINER PIRIK: Hold on just one second.

23 I mean, there's no way you can do this at  
24 this point in time, but the MRO testimony, I mean  
25 there is quite a bit of information in the MRO

1 testimony that I have not done a comparison other  
2 than this chart came to mind, but it appears as if  
3 even some of the projections in some of the other  
4 charts may be in the open record in the testimony  
5 that was in the MRO, and I'm not saying the case  
6 number and that would be inappropriate, but it's Case  
7 No. 10-2586-EL-SSO.

8 At this time we're not going to be able  
9 to sit here and go through them, but what I will ask  
10 is we will make the ruling today but we'll make it  
11 contingent upon a good-faith effort by the company to  
12 go back and look at the charts that were provided in  
13 the MRO and a reliance that if it was in the open  
14 record in the MRO testimony, in Mr. Rose's testimony  
15 in the MRO, that you would, when you file your  
16 unredacted version, that you would file it at that  
17 time with that.

18 I mean, I think that would be appropriate  
19 because there's no way we can -- and it will take you  
20 all time to do that.

21 MS. KINGERY: Yes.

22 EXAMINER PIRIK: I know with at least  
23 some of the charts, you know, Exhibit J which follows  
24 looks a lot -- like some of the charts where the  
25 whole thing has been redacted, pieces of certain

1 things, and if you could just do that, then our  
2 ruling will be contingent upon that.

3 MS. KINGERY: Yes, your Honor, we would  
4 be most happy to do that.

5 EXAMINER PIRIK: Okay. I'm sorry, you  
6 can continue now.

7 MS. KINGERY: Thank you, your Honor.

8 The next redaction is in Exhibit R where,  
9 again, we redacted 2016 and forward.

10 And then in the question following there  
11 is one redaction that appears and is related to the  
12 time in 2018, according to his testimony.

13 Then page 52 in the confidential, two  
14 questions down from where we just were, again, this  
15 is a projection of 2018 figures.

16 And that follows throughout that entire  
17 question and answer.

18 Then Exhibit S, we have redacted the  
19 forecasts from 2016 and on and the averages that  
20 include those time periods.

21 Exhibit T, same thing, we have redacted  
22 only where the numbers were based on ICF forecasts.

23 Then confidential page 58, which is a  
24 question asking about key input parameters and  
25 there's a series of bullet points, and this is

1 talking about projections for the 2015 to 2021 time  
2 period.

3 And Exhibit U that follows, we have  
4 redacted the information that includes ICF forecast  
5 figures.

6 Confidential page 61 there's a bullet  
7 point talking about capital costs for new builds and  
8 this is talking about 2015 expectations, this is  
9 their projection.

10 And delivered coal prices, they have a  
11 projection that goes out through 2017.

12 Confidential page 62, again, this is an  
13 average that includes the late years in the ESP  
14 period out through '21.

15 Then Exhibit V we have redacted  
16 information for 2016 and beyond.

17 The question that follows is referring  
18 back to Exhibit V, I'm sorry, it's looking forward to  
19 V-1 on the next page summarizing that and, again,  
20 there we have redacted the late years.

21 Exhibit W we've redacted the retail  
22 market price projections for years 2016 and on.

23 Then I think we jump ahead a few pages to  
24 Exhibit, looks like a question following Exhibit Z.  
25 Just a moment.

1           Okay, it looks like we redacted Exhibit Z  
2           itself -- no, we didn't. Z is open. Okay, so the  
3           next redaction is below Exhibit Z and this is talking  
4           about the -- out to 2021.

5           Exhibit AA we've redacted the information  
6           for 2016 and forward, and the question following that  
7           exhibit is talking about projected changes by 2021.

8           Exhibit BB, again, we've redacted the  
9           retail price component projections for 2016 and  
10          forward. And there's then a question following that  
11          that comes up with a summary of the premium that's  
12          calculated by -- I'm sorry, this one is referring to  
13          CC that we're about to come to where, again, we've  
14          redacted the late years as well as the average.

15          The next redactions that I have are on  
16          confidential page 80 where this is talking about 2016  
17          through '21 and Exhibit FF, again, we redacted only  
18          the late years and averages.

19          Exhibit GG-1, the same is the case. And  
20          then in the question that follows there are  
21          references to late years where the data is redacted.  
22          And in the next question, same thing, we're redacting  
23          only the data that includes the late years.

24                 And in Exhibit GG-2, same thing.

25                 And in the Conclusions section, this is

1 confidential page 85, Mr. Rose discusses his  
2 expectations for the entire ESP period, those actual  
3 numbers are redacted. And that includes the second  
4 paragraph under that question as well as the third  
5 paragraph under that question.

6 That's the end of his testimony. But we  
7 will absolutely go back through and compare the  
8 specific information that's in here against what was  
9 released in the MRO and ensure that there's nothing  
10 that was released in the MRO that we are attempting  
11 to redact.

12 EXAMINER PIRIK: Okay. So with regard to  
13 Mr. Rose's Exhibit 6A, Company Exhibit 6A, I think  
14 you noted one item that you would be filing in the  
15 open record.

16 MS. KINGERY: Yes, that's correct. I  
17 believe that was Exhibit Q of his testimony, or a  
18 piece of it would be still redacted and the rest  
19 would be open.

20 EXAMINER PIRIK: We will deal with how  
21 we're going to mark the new open documents in the  
22 open record once we're through everybody's testimony,  
23 we'll figure out what that is, but with regard to the  
24 motion for protective order with regard to  
25 Exhibit 6A, the motion will be granted with the

1 exception of the one item, and you will -- you've  
2 promised to go through in a good-faith effort to see  
3 if there's anything else like the testimony in the  
4 MRO filing and then you will file that as a  
5 late-filed exhibit.

6 MS. KINGERY: Yes, thank you very much.

7 EXAMINER PIRIK: We'll designate what  
8 that number will be once we're done with the  
9 workpapers of Mr. Savoy.

10 Okay. Let's move on to the workpapers of  
11 Mr. Rose.

12 MS. KINGERY: Here, your Honors, I would  
13 note that there are a number of examples where an  
14 exhibit was included in the testimony and then it is  
15 reproduced again in the workpaper and is not  
16 necessarily redacted in the same selective way, and  
17 we would also endeavor to go through those and make  
18 sure that the same redactions apply in the workpapers  
19 that we've just talked about in the testimony.

20 So, for example, if I can point you to  
21 Exhibit R, this is tab 3 in Mr. Rose's work papers --

22 EXAMINER PIRIK: And I know I didn't say  
23 this, but we're talking about Company Exhibit 2A.

24 MS. KINGERY: Yes. Thank you very much.  
25 Yes.

1           This is several pages into tab 3, you'll  
2   find Exhibit R which is real electrical energy prices  
3   in 2010 dollars per megawatt-hour, and that's  
4   comparable to Exhibit R in Mr. Rose's testimony which  
5   is on confidential page 51, and in the testimony that  
6   we just went through, Exhibit R was selectively  
7   redacted so that only the forecasted figures would be  
8   redacted. And we would attempt to carry that same  
9   selective redaction into the workpaper version of the  
10  same -- of the corresponding exhibit.

11           EXAMINER PIRIK: And is that true with  
12  the document, that's also true with Exhibit H which  
13  is the first document in tab 3, right? That's found  
14  on page 37 of the confidential?

15           MS. KINGERY: Yes. Exhibit H in his  
16  testimony was not redacted at all, at least according  
17  to my notes, it appears not to have been redacted.  
18  So if it wasn't redacted in his testimony, we would  
19  not redact it in the workpapers.

20           EXAMINER PIRIK: Okay.

21           MS. KINGERY: Let me just confirm that it  
22  wasn't.

23           Correct, it appears that all of Exhibit H  
24  appeared in the testimony and so it would all be  
25  public in the workpaper.

1 EXAMINER PIRIK: Okay. With the  
2 exception of that I'm trying to determine, do you  
3 want to go tab by tab, because I'm not sure, I mean,  
4 some of the information just doesn't appear to be  
5 confidential information even though it's not in his  
6 testimony. So I'm not -- is the concept that  
7 everything in the workpapers --

8 MS. KINGERY: Can you give me an example?

9 EXAMINER PIRIK: Well, again, it's  
10 more -- I understand some of the calculations and the  
11 projections, the argument that you all have been  
12 making, projections, but some of the calculations,  
13 and it's hard because there's no page numbers, but  
14 the second page in tab 3, I'm just not even --

15 MS. KINGERY: Can you give me a moment?

16 EXAMINER PIRIK: Yes.

17 MS. KINGERY: Your Honors, it appears to  
18 us as we look at this that the figure on the third  
19 and fourth lines, the titles are certainly public,  
20 2009 to 2015 in nominal dollars. The figure that's  
21 next to that on those third and fourth lines would be  
22 confidential because that goes into the planning year  
23 2015-'16, but nothing else would be. Everything else  
24 is historical.

25 EXAMINER PIRIK: Well, I think if we can

1     come to a resolution that the projections, the 2015  
2     and beyond, we will keep those confidential, but  
3     anything that's historical we will not, anything  
4     that's within Mr. Rose's testimony we will not. And  
5     then there is also certain items that, I mean, you  
6     can find on the internet; they're just open  
7     documents.

8                 MS. KINGERY: Yes, if information is  
9     available on the internet, clearly it won't be  
10    included in our redactions.

11                EXAMINER PIRIK: Okay.

12                MS. KINGERY: Right. If it was  
13    previously made public in the MRO or is not a  
14    projection, if it's historical.

15                EXAMINER PIRIK: Okay. Again, I think  
16    it -- also I think the column headings that we had  
17    agreed to on some of the previous documents, to the  
18    extent that those can be open so that it gives some  
19    flavor of exactly what the item is --

20                MS. KINGERY: Yes.

21                EXAMINER PIRIK: -- I think those need to  
22    be put in the open record. I think it's going to be  
23    difficult for us to go through the workpapers page by  
24    page so I am, again, going to rely on the company in  
25    good faith to go through them and follow what we have

1 decided here today, but I would turn to tab 26.

2 EXAMINER STENMAN: With respect to tab 26  
3 and the, I believe it's the daily historical gas  
4 prices, a lot of that is available on the internet.  
5 I found at least five years of daily Henry Hub data  
6 just through a Google search, and I know some of it  
7 is not and it probably is proprietary data, but at  
8 least five years of the Henry Hub nominal is public.

9 MS. KINGERY: We will pay particular  
10 attention to that, thank you.

11 Mr. Whitlock indicates that the Henry Hub  
12 prices are available through '19 publicly.

13 EXAMINER PIRIK: Okay.

14 MS. KINGERY: Thank you.

15 EXAMINER PIRIK: Is there any other  
16 argument you'd like to make with regard to the  
17 workpapers?

18 MS. KINGERY: Not at this time, thank  
19 you.

20 EXAMINER PIRIK: Then I think we are  
21 comfortable granting the motion, given the parameters  
22 we mentioned with regard to the topic headings with  
23 regard to anything that's already in Mr. Rose's  
24 testimony, again, anything that was in Mr. Rose's MRO  
25 testimony in that case, as well as anything that's

1 readily available on the internet, and we will rely  
2 on the company in good faith to go back and provide a  
3 public document within those parameters. And we will  
4 decide what that document will be marked as soon as  
5 we finish with Mr. Savoy's testimony.

6 MS. KINGERY: Thank you, your Honors.

7 EXAMINER PIRIK: Thank you.

8 Who is doing Mr. Savoy?

9 MS. SPILLER: Your Honor, I am happy to  
10 do that and I am hoping that we will be brief with  
11 this.

12 Mr. Savoy's testimony, the public version  
13 of Duke Energy-Ohio Exhibit 18, page 6 of his  
14 testimony, lines 18 through 21 was redacted from the  
15 public filing.

16 Duke Energy-Ohio is removing the request  
17 for redaction of lines 20 through 21. I think that  
18 statement taken in and of itself is not at all  
19 threatening to the company in respect of its  
20 competitive position; however, lines 18 through 19 we  
21 think are indicative of the company's intent with  
22 respect to meeting its FRR obligations and would  
23 renew the request for -- continue the request for  
24 confidential treatment based on the same arguments  
25 raised with respect to Mr. Wathen's testimony.

1                   EXAMINER PIRIK: I think there's only one  
2 item in the attachment.

3                   MS. SPILLER: That is correct, and it was  
4 the first page of Mr. Savoy's exhibits, Exhibit  
5 MDS-1, page 1 of 1. In the public version the table  
6 was redacted and save the line number and correlating  
7 line -- corresponding line numbers, consistent with  
8 the attachments to Mr. Wathen's direct testimony, we  
9 are removing the request for confidential treatment  
10 with respect to the description.

11                   So in particular, the second left column  
12 we will remove the redactions. The balance of the  
13 table, the numeric information we would continue to  
14 request confidential treatment.

15                   Again, this is forward-looking  
16 information with respect to the company's operation  
17 and maintenance of its generating fleet. Consistent  
18 with the arguments made earlier with regard to  
19 Mr. Wathen's testimony, we would ask that that be  
20 kept confidential.

21                   EXAMINER PIRIK: With regard to those two  
22 areas of Mr. Savoy's testimony, the Bench finds --  
23 and those clarifications, the Bench finds that with  
24 those corrections the motion for protective order  
25 should be granted.

1 I would note, however, that the  
2 protective order will be for a period of 18 months.

3 MS. SPILLER: Yes, your Honor.

4 EXAMINER PIRIK: And so specifically with  
5 regard to some of the projections that are in the  
6 attachment, you know, as those years become current  
7 or no longer confidential per se because they're not  
8 projected, then I would assume if, in fact, there is  
9 a request to renew the motion for protective order,  
10 that those items would then become public. So I'm  
11 asking the company to consider that if you decide to  
12 file for renewal of the protective order at the end  
13 of the 18 months.

14 MS. SPILLER: Certainly, your Honor.  
15 Thank you.

16 EXAMINER PIRIK: I think that concludes  
17 all the confidential items that we had to go through.  
18 With regard to I think all three, well, for everyone,  
19 everything we went through, there will be items that  
20 will be refiled in the open record so we will need to  
21 mark late-filed exhibit numbers for those items and  
22 we'll need to designate them.

23 With regard to Exhibit 6A for Mr. Rose,  
24 the document that would be in the open record, I  
25 think it should be marked as 6.1.

1                   So that will be 6.1, late-filed Company  
2                   Exhibit 6.1.

3                   And then with regard to Mr. Wathen's, I  
4                   would say with regard to his 6/20/2011 revisions to  
5                   that testimony, the document shall be marked Company  
6                   Exhibit 10.1.

7                   And just so that we're clear on which is  
8                   which, I think you also need to then file the one  
9                   page that's open that was filed on 6/28/11  
10                  separately, and I would say that would be late-filed  
11                  Company Exhibit 10.2.

12                  (EXHIBITS MARKED FOR IDENTIFICATION.)

13                  MS. SPILLER: Thank you.

14                  EXAMINER PIRIK: That way it will just be  
15                  clearer that way.

16                  With regard to Mr. Savoy's, I would say  
17                  that the portion you file in the open record would be  
18                  late-filed Company Exhibit 18.1, and with regard to  
19                  the workpapers that will be in the open record, that  
20                  would be Company Exhibit 2.1, late-filed exhibit.

21                  I think that resolves all of those  
22                  issues. I really appreciate the company working with  
23                  us on this. I know it's kind of a tedious process,  
24                  but it is important and, you know, we like to put as  
25                  much on the public record as we can, so we do

1 appreciate your help with that.

2 MS. SPILLER: Thank you, your Honor.

3 And if I may to conclude the record, Duke  
4 Energy-Ohio would move for the admission into  
5 evidence of its exhibits. For purposes of the record  
6 shall I delineate all of them?

7 EXAMINER PIRIK: Yes, I think that would  
8 probably be a good idea, just so we're sure what  
9 we're doing.

10 MS. SPILLER: Sure. Exhibit No. 1, the  
11 application and Attachments A through I.

12 Exhibit 2. Exhibit 2.1 late-filed  
13 exhibits to the workpapers. Exhibit 2A.

14 Exhibits 3 through 6. Exhibit 6.1  
15 late-filed testimony from Mr. Rose, Exhibit 6A.  
16 Exhibits 7 through 10. Exhibit 10.1, late-filed  
17 exhibit concerning Mr. Wathen's workpaper filed on  
18 6/28/2011. Exhibit 10.2, again, an open nonredacted  
19 version of a document filed on June 28, 2011.

20 Exhibit 10A. Exhibit 10A.1 which were the  
21 confidential -- the documents filed under  
22 confidential designation on June 28, 2011.

23 Exhibits 11 through 16. Exhibit 16.1,  
24 amendments to Mr. Ziolkowski's testimony and  
25 attachments, tariff revisions filed of record on

1 June 28, 2011.

2 Exhibit 17. Exhibit 18. Exhibit 18.1, a  
3 late-filed exhibit pertaining to Mr. Savoy's  
4 testimony. Exhibit 18A. Exhibit 19. Exhibit 20.  
5 Exhibit 21.

6 Exhibit 22. Exhibit 22.1, the William  
7 Don Wathen Supplemental Attachment 4 filed of record  
8 on November 1, 2011. Exhibit 22.2, the revisions to  
9 the backup delivery tariff revisions that Mr. Wathen  
10 identified from the stand today.

11 Exhibit 23 and Exhibit 24.

12 EXAMINER PIRIK: I believe that covers  
13 everything.

14 MS. SPILLER: Yes, your Honor.

15 EXAMINER PIRIK: Are there any objections  
16 to these exhibits?

17 (No response.)

18 EXAMINER PIRIK: Hearing none, the  
19 exhibits will be admitted into the record.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER PIRIK: Is there anything  
22 further that any of the parties have for the record?

23 (No response.)

24 MS. SPILLER: Your Honor, we certainly  
25 appreciate your time and patience, particularly going

1 through the confidential material.

2 EXAMINER PIRIK: There being nothing  
3 further, the Examiners will recess the hearing for  
4 today, however, the record will remain open until the  
5 Commission determines otherwise. Thank you all.

6 MS. SPILLER: Thank you, your Honor.

7 (Thereupon, the hearing adjourned at 12:17  
8 p.m.)

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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 Thursday, November 3, 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 (MDJ-3921)

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Summary: Transcript Transcript of Duke Energy Ohio hearing held on 11/03/11 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.