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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
 : Case No. 11-4393-EL-RDR
Application of Duke Energy:
Ohio, Inc., for an Energy :
Efficiency Cost Recovery :
Mechanism and for Approval:
of Additional Programs for:
Inclusion in its Existing :
Portfolio. :

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PROCEEDINGS

before Ms. Christine M. T. Pirik and Ms. Katie
Stenman, Attorneys Examiner, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-C,
Columbus, Ohio, called at 10:00 a.m. on Tuesday,
November 29, 2011.

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 8 On behalf of the Company.

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 17 By Ms. Cathryn N. Loucas
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 22 On behalf of the Ohio Environmental
 23 Council.

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 Mr. Jeffrey L. Small
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 On behalf of the Residential
 Consumers of Duke Energy Ohio.

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APPEARANCES (Continued):

Mike DeWine, Ohio Attorney General
William L. Wright, Section Chief
Public Utilities Section
By Mr. Devin D. Parram
180 East Broad Street, Sixth Floor
Columbus, Ohio 43215-3793

On behalf of the Staff of the Public
Utilities Commission.

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1 Tuesday Morning Session,
2 November 29, 2011.

3 - - -

4 EXAMINER STENMAN: The Public Utilities
5 Commission of Ohio has called for hearing at this
6 time and place Case No. 11-4393-EL-RDR being In the
7 Matter of the Application of Duke Energy Ohio, Inc.,
8 for an Energy Efficiency Cost Recovery Mechanism and
9 for Approval of Additional Programs for Inclusion in
10 its Existing Portfolio.

11 My name is Katie Stenman. With me is
12 Christine Pirik. We are the attorneys examiners
13 assigned by the Commission to hear this case.

14 Let's take appearances of the parties,
15 starting with the company.

16 MS. WATTS: Thank you, Your Honor. On
17 behalf of Duke Energy Ohio, Amy B. Spiller and
18 Elizabeth H. Watts, 139 East Fourth Street,
19 Cincinnati, Ohio.

20 EXAMINER STENMAN: Thank you.

21 Mr. Boehm.

22 MR. BOEHM: I'm David Boehm of the law
23 firm of Boehm, Kurtz & Lowry, 36 East Seventh Street,
24 Cincinnati, Ohio 45202, on behalf of the Ohio Energy
25 Group.

1 EXAMINER STENMAN: Thank you.

2 MR. PARRAM: Good morning, your Honors.
3 On behalf of the staff of the Public Utilities
4 Commission of Ohio, Attorney General, Mike DeWine,
5 Assistant Attorney General William Wright, section
6 chief, I am Assistant Attorney General Devin D.
7 Parram, 180 East Broad Street, Sixth Floor, Columbus,
8 Ohio 43214.

9 EXAMINER STENMAN: Thank you.

10 MR. SMALL: Your Honor, on behalf of the
11 residential customers of Duke Energy Ohio, Jeffrey L.
12 Small, counsel of record, Melissa Yost, assistant
13 consumers' counsel, Office of the Ohio Consumers'
14 Counsel, 10 West Broad Street, Suite 1800, Columbus,
15 Ohio 43215. Thank you.

16 EXAMINER STENMAN: Thank you.

17 Does anyone else need to make an
18 appearance?

19 MS. LOUCAS: I will for the record, your
20 Honor. Cathryn Loucas, on behalf of the Ohio
21 Environmental Council, 1207 Grandview Avenue,
22 Columbus, Ohio.

23 EXAMINER STENMAN: Thank you.

24 It looks like the parties have docketed a
25 Stipulation.

1 MS. WATTS: That's correct, your Honor,
2 we have. We would like to introduce the Stipulation,
3 along with the testimony of Timothy Duff, who will be
4 our fourth witness today.

5 EXAMINER STENMAN: The Stipulation will
6 be marked as?

7 MS. WATTS: Duke Energy Ohio Exhibit 6.

8 EXAMINER STENMAN: The Stipulation?

9 MR. SMALL: Why don't we make it a Joint
10 exhibit?

11 MS. WATTS: I'm sorry, Joint Exhibit 1.

12 EXAMINER STENMAN: It will be so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 EXAMINER STENMAN: You also have the
15 supplemental testimony of Mr. Duff?

16 MS. WATTS: Yes. Your Honor, my thought
17 was to introduce the witnesses, and to the extent
18 they have direct and supplemental, introduce both of
19 those exhibits with those witnesses.

20 EXAMINER STENMAN: Okay.

21 MS. WATTS: And Mr. Duff is the fourth
22 witness, so his direct and supplemental would be
23 5 and 8.

24 EXAMINER STENMAN: So his direct
25 testimony filed on July 20 will be Duke Exhibit 5?

1 MS. WATTS: Actually, make it 5 and 7.

2 EXAMINER STENMAN: And the supplemental
3 testimony filed on November 22 will be Duke Exhibit
4 7?

5 MS. WATTS: That's correct.

6 EXAMINER STENMAN: It will be so marked.

7 (EXHIBITS MARKED FOR IDENTIFICATION.)

8 MS. WATTS: And, your Honor, could we
9 have the Application marked as Duke Energy Ohio
10 Exhibit 1?

11 EXAMINER STENMAN: It will be so marked,
12 and that was filed on July 20, 2011.

13 MS. WATTS: And I have, your Honor, two
14 copies of that with me today.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MS. WATTS: We can call our first witness
17 if you're ready.

18 EXAMINER STENMAN: Okay.

19 MS. WATTS: Duke Energy calls Kevin
20 Bright. Take the stand, please.

21 (Witness sworn.)

22 MS. WATTS: Your Honor, may we have
23 Mr. Bright's testimony marked as Duke Energy Ohio
24 Exhibit 2.

25 EXAMINER STENMAN: It will be so marked.

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(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

KEVIN A. BRIGHT,

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

DIRECT EXAMINATION

By Ms. Watts:

Q. Mr. Bright, do you have before you what
has just been marked as Duke Energy Ohio Exhibit 2?

A. Yes.

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

A. I do not.

Q. Is this the testimony you prepared for
this proceeding?

A. Yes.

Q. If were to ask you the questions
contained in this testimony again today, would your
responses be the same?

A. Yes.

MS. WATTS: The witness is available for
cross-examination.

EXAMINER STENMAN: Before I ask for
cross, I believe Ms. Mooney has joined us.

MS. MOONEY: Yes. I was at the AEP

1 hearing. My name is Colleen Mooney, on behalf of the
2 Ohio Partners for Affordable Energy, 231 West Lima
3 Street, Findlay, Ohio.

4 EXAMINER STENMAN: Ms. Mooney, cross?

5 MS. MOONEY: No.

6 EXAMINER STENMAN: Mr. Small.

7 MR. SMALL: No questions, your Honor.

8 EXAMINER STENMAN: Mr. Boehm.

9 MR. BOEHM: Yes, your Honor. Thank you.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Boehm:

13 Q. Good morning, Mr. Bright.

14 A. Good morning.

15 Q. Mr. Bright, I'd like to refer you to your
16 testimony -- well, first, before I refer you to your
17 testimony, I'd like to ask you if you are familiar
18 with the existing DR-SAWR tariff that's on file.

19 A. Yes.

20 Q. Okay. And let's go through how that
21 works, if we can. The distribution revenue
22 allocation that's represented in SAWR, there is a
23 distribution revenue allocation to the residential
24 customers; isn't that right? Is it allocated on
25 distribution or not?

1 A. I would have to defer that question to
2 Mr. Ziolkowski.

3 Q. Okay. In any event, the rate for those
4 customers under the current SAWR is .000928 per
5 kilowatt-hour, right?

6 A. Without having that document in front of
7 me.

8 Q. Okay. Let's put the document in front of
9 you.

10 EXAMINER STENMAN: Mr. Boehm, are you
11 marking this?

12 MR. BOEHM: Your Honor, I'd like to run
13 through with the witness. I believe that this is
14 something that can be taken administrative notice of
15 because it's a tariff of the company on file with the
16 Commission, so it may not be necessary to file it, to
17 mark it as an exhibit.

18 But if you feel that would be more
19 convenient or clearer, we can do that as well.

20 EXAMINER STENMAN: I think it's easier
21 just for citation purposes if we can mark it as an
22 exhibit.

23 MR. BOEHM: Okay. Then I would like to
24 mark this for identification as OEG Exhibit 1.

25 EXAMINER STENMAN: It will be so marked.

1 Thank you.

2 MR. BOEHM: Thank you.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Mr. Bright, do you recognize this as the
5 current Duke tariff covering energy efficiency?

6 A. Yes, I do.

7 Q. Now, I want to refer you to
8 paragraph 3 of that, if I may. It says, "The DR-SAWR
9 is to be applied to nonresidential service customer
10 bills, including transmission service customers
11 participating in SAWR programs, beginning with the
12 August 2010 revenue month for distribution service
13 is" -- and then it has the number, right? And that
14 number is \$1.78 roughly, a megawatt-hour, right?

15 A. Yes.

16 Q. And that compares to the residential rate
17 which is roughly 9 cents a megawatt-hour, right?

18 A. Yes.

19 Q. Then it says the SAWR to be applied to
20 transmission service rates "not participating in SAW
21 programs, beginning with the January 2009 revenue
22 month is" -- and there's a bunch of zeros and it's 49
23 per megawatt-hour -- kilowatt-hour, rather, and when
24 we convert that to megawatt-hours, it comes to about
25 5 cents a megawatt-hour; isn't that true?

1 A. Doing the math in my head, that appears
2 to be true.

3 Q. So the way the program works right now,
4 isn't it true for a TS customer, a transmission
5 service customer, who is not participating in any of
6 the programs and, therefore, does not take any money
7 from the company for energy efficiency projects,
8 their rate is 5 cents a megawatt-hour. Am I
9 accurate?

10 A. It's .000049.

11 Q. Whatever. We'll round it off. We'll
12 call it a nickel, okay? But if that TS customer uses
13 any money that is a part of the SAWR program, then
14 immediately they begin to pay under the existing
15 tariff \$1.78 a megawatt-hour?

16 A. That's correct.

17 Q. And it doesn't matter how much money the
18 project requires or how much money the company gives
19 them; isn't that right?

20 A. That's correct.

21 Q. So if they took \$200, their rate would go
22 from 5 cents a megawatt-hour to \$1.78 a
23 megawatt-hour; is that right?

24 A. That's correct.

25 Q. Now, let's take a semi-hypothetical

1 customer that has a use of 1.3 million -- let's put
2 it at 1.3 million megawatt-hours. Okay?

3 A. Okay.

4 Q. All right. And the way we would
5 calculate the impact on that customer of moving from
6 5 cents a megawatt-hour, which is what he would pay
7 if he didn't participate in the program, and the rate
8 that it would pay if it did take some money from the
9 program, even \$100 from the program, we would take
10 the difference between 5 cents and \$1.78, right,
11 which is roughly \$1.73? And we would multiply it
12 times 1.3 megawatt-hours, 1.3 million megawatt-hours,
13 right?

14 A. That's correct.

15 Q. And we'd come out probably around
16 \$2.3 million, wouldn't we?

17 A. Without a calculator, I don't know.

18 Q. Do you know whether you have any
19 industrial customers that take about 1.3 million
20 megawatt-hours?

21 A. I don't.

22 Q. Okay. Is there somebody here who know
23 that, roughly?

24 A. I don't know that.

25 Q. Do you know whether AK Steel takes about

1 1.3 million megawatt hours?

2 A. I don't know what AK Steel's annual
3 consumption is.

4 Q. Okay. And the roughly 5 cents per
5 megawatt-hour that the industrial -- the TS customer
6 pays for not -- pays because it's not taking any
7 money from the program, okay, that roughly represents
8 what its rate will be if its rate were allocated --
9 if these costs were allocated to it on a distribution
10 basis?

11 A. I would have to defer that question to
12 Mr. Ziolkowski.

13 Q. Okay. Do you know how many in the three
14 years now that this tariff has been in effect,
15 roughly three years now, do you know how many TS
16 customers have become part of the SAWR program and
17 taken money?

18 A. I know of one for sure.

19 Q. Who would that be? Can you say?

20 MS. WATTS: Your Honor, I have to object
21 to this because we're getting into a line of
22 information that's confidential.

23 MR. BOEHM: Okay. I'll withdraw the
24 question. That's fair enough.

25 Q. We will do it this way. Do you know

1 whether it was AK Steel?

2 A. It was not.

3 Q. Do you know whether it was Ford?

4 A. It was not.

5 Q. Do you know whether it was GE Aviation?

6 MS. WATTS: Again, I have to object.

7 MR. BOEHM: I'm not trying to identify it
8 by, your Honor, subtraction. I'm trying to establish
9 it is none of my clients, no member of OEG.

10 EXAMINER STENMAN: The objection will be
11 overruled.

12 Q. So it's not GE Aviation, right?

13 A. No.

14 Q. And it's not Air Products?

15 A. No.

16 Q. And it's not Procter & Gamble?

17 A. Correct.

18 Q. Do you know whether it was any more than
19 one TS customer that availed itself of the SAWR
20 program?

21 A. I only know of one.

22 Q. Okay. Do you know how many TS customers
23 Duke Energy has?

24 A. I believe it's seven.

25 Q. Seven. Do you have any opinion as to why

1 the customers that I named, which I think were five
2 out of the seven, did not use the program?

3 A. No, I don't.

4 Q. All right.

5 MR. BOEHM: I'd like to introduce -- just
6 a minute, your Honor. I'd like to introduce an
7 entry, September 15, 2010, in Case No. 10-834-EL-EEC
8 before the PUCO.

9 EXAMINER STENMAN: Mr. Boehm, would you
10 like to mark this?

11 MR. BOEHM: No. 2, great.

12 EXAMINER STENMAN: Yes.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Bright, are you familiar with the
15 matter that is the topic of Case No. 10-834 entitled
16 In the Matter of a Mercantile Application Pilot
17 Program Regarding Special Arrangements with Electric
18 Utilities and Exemptions from Energy Efficiency and
19 Peak Demand Reduction Riders?

20 A. To some extent I am, yes.

21 Q. Okay. I'd like you to refer you to page
22 6 of that order, and, Mr. Bright, this is a sort of a
23 sheet summarizing the provisions of this pilot
24 program, which, by the way, is in effect right now,
25 is it not?

1 A. Yes, it is.

2 Q. And I think it went into effect maybe the
3 day of this order, September of 2010, and I think
4 it's 18 months; isn't that right?

5 A. That sounds right.

6 Q. Okay. If I get it wrong, tell me,
7 because there was an entry, and then there were five
8 entries on rehearing, so some of this stuff may have
9 changed. Let me see if I can summarize how this
10 program works, and you tell me whether I'm right,
11 okay, based on this?

12 If I understand the pilot program, among
13 other things, it says that if you are a customer and
14 you elect to become part of an energy efficiency
15 program and you use that -- but that you do not put
16 any actual cash into the program, you don't put in a
17 new motor, you don't put in new lightbulbs, you
18 merely engage in activity that saves energy, with
19 respect to that activity, the customer who engages in
20 that activity gets no rebate, nor are they able to
21 avoid the higher energy efficiency surcharge; is that
22 correct?

23 A. I'm not sure I completely followed the
24 question.

25 Q. Let me give an example. Let's say a

1 customer comes up to you and says, Look, I'm going to
2 help you with your energy efficiency program. I'm
3 going to shut this machine down for three days out of
4 a week. And I'm going to save by shutting this
5 machine down, I'm going to save a million kWh. Okay?
6 And because I'm saving a million kWh, I want either a
7 rebate, incentive rebate -- which is part of the
8 program, is it not?

9 A. It could be.

10 Q. Yes. Or I want to avoid the surcharge.
11 I'm a TS customer. I want a mercantile exemption.

12 Under this order, can I get either one of
13 those things?

14 A. In the example that you used, I do not
15 believe you can.

16 Q. And that's because the Commission in this
17 order regarded that activity as behavioral; am I
18 correct?

19 MS. WATTS: Objection as to what the
20 Commission regarded it. I don't think Mr. Bright
21 would know the answer to that.

22 MR. BOEHM: Let me try to work around it
23 then, your Honor.

24 EXAMINER STENMAN: Okay.

25 Q. Have you read this order, Mr. Bright?

1 A. I have.

2 Q. Okay. Do you know whether this order
3 talks about a distinction between behavioral energy
4 efficiency programs and energy efficiency programs
5 which require some sort of a cash investment?

6 A. It does.

7 Q. Okay. And in the example that I gave you
8 with respect to this hypothetical program, I'm going
9 to shut my machine down for three days, do you
10 believe that that would be regarded as behavioral
11 under this order?

12 A. In my opinion, it would not.

13 Q. It would be regarded as behavioral or it
14 would not?

15 A. In my opinion, I would not consider that
16 a behavioral change.

17 Q. And if it weren't a behavioral change,
18 then would that customer then be eligible for a
19 rebate or a waiver of the surcharge?

20 A. They would not.

21 Q. Now I'm confused, Mr. Bright. Would you
22 agree with me that what the order says is that
23 behavioral charges are not eligible -- are not
24 eligible -- for rebates or waivers but only
25 investments are eligible for rebates and waivers?

1 A. The question that you're posing is hard
2 to answer because I think you're into a semantic
3 issue of how this is written.

4 Q. Let me try another one. You agree with
5 me that in the example that I gave you, the customer
6 would not be eligible for a rebate or a waiver; am I
7 right?

8 A. That was my opinion.

9 Q. Okay. Now, let's assume that the
10 customer decided that it was going to install a
11 brand-new motor, and it installed a brand-new motor,
12 and the motor was more efficient than the motor it
13 took the place of. Would that customer be eligible
14 for incentive payments or a waiver of the rider?

15 A. I'm not following the question because
16 I'm not sure what you're referring to at this point.

17 Q. Well, I'm referring to a hypothetical,
18 which I hoped to use to demonstrate how this order
19 worked, Mr. Bright, and I thought I could do it a
20 little faster.

21 Let me refer you to some things here. I'm
22 going to refer you to page 4 -- no, let's start on 3.
23 See the second paragraph under paragraph 7?

24 A. Yes, I do.

25 Q. And please read along with me.

1 "Notwithstanding the statutory provisions regarding
2 what the electric utilities are permitted to count,
3 Section 4928.66 (A)(2)(c), Revised Code, also
4 provides the Commission with the direction to exempt
5 mercantile customers from paying any costs associated
6 with a electric utilities' compliance with the energy
7 efficiency and peak demand benchmarks as an incentive
8 for the mercantile customers to commit their
9 capabilities to the electric utilities' programs. A
10 clear distinction exists between what may be counted
11 versus what the Commission has discretion to
12 incentivize. For example, we find that no incentive
13 should be paid for behavioral changes by a customer
14 that did not include a monetary investment by the
15 customer; however, the electric utility is permitted
16 to count any measurable and verifiable energy savings
17 that result from such behavioral changes towards its
18 statutory benchmarks. Likewise, unless the
19 mercantile customer can demonstrate that it has
20 installed more efficient equipment than was otherwise
21 available, no incentive should be paid for the
22 replacement of failed equipment, but, for purposes of
23 the pilot program, the public utility is permitted to
24 count measurable and verifiable savings that result
25 from such equipment replacement."

1 This is what I was trying to get at
2 before, Mr. Bright. The Commission seems to be
3 saying there's a distinction between behavioral
4 activities and activities that involve the investment
5 of money to achieve energy efficiency, doesn't it?

6 A. It does.

7 Q. Okay. Now, in the same respect that a
8 customer who engages in what the Commission regards
9 as behavioral activity cannot get an incentive
10 rebate, is it also true that that customer may not
11 count those kilowatt-hours towards a waiver of its
12 obligations to pay a surcharge?

13 A. That is my understanding.

14 Q. Okay. So let's go back to page 6 then,
15 of this order, and see if we can go through it.

16 Before we get into that, would you also
17 agree, Mr. Bright, that based on what I just read to
18 you and your own knowledge of this document, that
19 although a customer may not be able to count its own
20 energy efficiency activity in order to get a rebate
21 or an incentive, under certain circumstances the
22 company, nevertheless, is able to count those energy
23 efficiency savings towards its goal, towards its
24 mandate?

25 A. That is correct.

1 Q. Okay. Let's go to page 6, Incentivizing
2 versus Counting. With respect to Equipment
3 Replacement, what this says, does it not, is if
4 equipment is retired early, right, then the customer
5 may count it and the company may count it? Right?

6 A. Correct.

7 Q. Now, let's talk about the parenthetical
8 that says "as found." What does "as found" mean?

9 A. It refers to the as-found piece of
10 equipment. So, in other words, it's not referring
11 back to a current standard. It's referring to the
12 equipment that was currently in place.

13 Q. But how does that term figure into the
14 calculation of energy efficiency, if any?

15 A. The distinction is more towards how the
16 programs are administered in that under the
17 save-a-watt programs, we measure from what is the
18 current efficiency standard to a higher efficiency
19 standard. What the Commission issued with this
20 directive is that for these types of replacements,
21 you actually go back to what is the as-found
22 efficiency for the equipment.

23 Q. So, in other words, if I have a piece of
24 equipment, I have a motor, and that motor has --
25 let's not get into how we will measure efficiency.

1 Let's say the motor has an 80 percent efficiency.
2 Okay? And the motor fails, and I replace it with --
3 or the motor is retired, rather, and I replace it
4 with a motor with a 90 percent efficiency. The
5 as-found standard means that I calculate the amount
6 of energy that qualifies for achieving the mandates
7 by subtracting the amount -- the efficiency of the
8 motor that exists and the efficiency of the new
9 motor, right?

10 A. That's roughly correct, yes.

11 Q. So if I replaced it with a motor that was
12 80 percent efficiency and it had an 80 percent
13 efficiency, I'd get nothing, right?

14 A. That is correct.

15 Q. Let's go past the Equipment Subject to
16 State or Federal Standards, and go back to the
17 Behavioral Modifications at the bottom of page 6.
18 Okay?

19 Now, if I engage in activity that
20 obviously saved kilowatt-hours, I did something like
21 we discussed before, I shut off my machine three days
22 a week, and I saved 10 million kWh, and the
23 Commission were able to measure that and verify that
24 really happened, okay, you, Duke, would be able to
25 count that towards your mandate, right?

1 A. Correct.

2 Q. But the customer wouldn't get anything
3 under the energy efficiency for that, right?

4 A. That's correct.

5 Q. Okay. Let me ask another question,
6 Mr. Bright, and maybe you can tell me how this works.
7 Let's assume that in any given year, Duke Energy has
8 a mandate for energy efficiency that requires it to
9 save 100 million kWh. Okay? And I'm a customer of
10 Duke, and I use 5 percent of the energy on average
11 that Duke generates. Okay?

12 A. Uh-huh.

13 Q. Do I have a goal? Do I have a mandate as
14 a customer of Duke, and if so, what is it?

15 MS. WATTS: Your Honor, I need to object
16 at this point because I think Mr. Boehm has spent the
17 last 20 minutes essentially just establishing what he
18 believes the Commission policy is and that can be
19 readily ascertained from what is in the Commission's
20 orders relative to the 10-834 docket.

21 And he has also gone extremely far afield
22 from what Mr. Bright's testimony contains. So I feel
23 like we have gone way outside the scope of where we
24 should be.

25 MR. PARRAM: Your, Honor, I also would

1 like to object because Mr. Boehm is testifying for
2 15 minutes as to what his position is, and I wonder
3 what the relevancy is?

4 MR. BOEHM: Your Honor, this witness
5 testifies that the energy efficiency program being
6 proposed by the company, that energy efficiency
7 program apparently is going to be, among other
8 things, covered by these rules.

9 The witness has shown on several
10 occasions that he's not sure what this order says.
11 I'm not sure what this order says. And I feel
12 certain that in the next few questions that I ask
13 him, he's not going to know what the order says
14 either.

15 I want to identify the fact that there
16 are huge gaps in what the order says and what the
17 tariff says as to how this program is going to work.
18 I would like to know how this program is going to
19 work if it going to cost my customers millions of
20 dollars.

21 MS. WATTS: All of which is not relevant
22 to the case at hand. And I would further like to
23 state that I disagree with Mr. Boehm's
24 characterization as to what the witness has testified
25 to thus far.

1 EXAMINER STENMAN: Okay. The objection
2 will be overruled.

3 But I need you to stay on topic,
4 Mr. Boehm.

5 MR. BOEHM: Yes, thank you. I think this
6 is on topic.

7 Q. (By Mr. Boehm) I'm AK Steel and I'm a
8 part of this program, okay? What sort -- and I want
9 to do a mercantile self-exemption. What sort of
10 numbers do I need to get to avoid paying the
11 surcharge?

12 A. I don't understand your question. I
13 apologize.

14 Q. All right. Let's do it this way. I'm AK
15 Steel, and I'm now paying -- let's assume that the
16 company prevails here. I am now paying the number
17 the company says. I think it's \$1.30 a
18 megawatt-hour, and I decide I want to go for an
19 exemption.

20 I come to you and I say, I've changed
21 five lightbulbs in the hot strip mill. I've saved
22 200 megawatts this year. Do I avoid paying the
23 surcharge?

24 A. You're throwing a lot of numbers at me
25 that I don't know what the numbers are. Where the

1 question becomes challenging is I need to know what
2 is the current year statutory benchmark requirement,
3 which I don't have committed to memory, and I need to
4 look at those percentages and compare that to what
5 you're talking about with AK, and I just don't have
6 all those numbers.

7 Q. Let me give them to you hypothetically so
8 we can understand this. All right? Let's assume
9 that AK Steel uses 1.3 million megawatt-hours a year.
10 Okay? Let's assume that the mandate in this
11 particular year for Duke Energy, that mandate
12 requires them to save 10 percent. 10 percent equals
13 5 million megawatt-hours. Okay?

14 So Duke's goal this year is 5 million
15 megawatt-hours. AK Steel use 1.4 megawatt-hours.
16 Okay? AK Steel applies for an exemption, and it says
17 the exemption says -- you are familiar with
18 mercantile exemptions, are you not?

19 A. I am.

20 Q. Okay. I've saved 200 megawatt-hours this
21 year because I changed a bunch of lightbulbs in the
22 hot strip mill. Now, my question to you is,
23 according to the program that Duke has introduced and
24 is proposing that the Commission accept here, can AK
25 get an exemption for that year, and if so, for how

1 much?

2 MS. WATTS: Honor, again, I object. I
3 think these are facts that Mr. Boehm has no intention
4 of proving in evidence later in the case and they're
5 entirely hypothetical.

6 MR. BOEHM: I'm sorry, I didn't catch
7 your part of that, Elizabeth.

8 MS. WATTS: These are facts not in
9 evidence, and I'm gathering that you don't intend on
10 proving these facts contained in your hypothetical.
11 It's convoluted, to say the least.

12 MR. BOEHM: Your Honor, I'm surprised to
13 see this late in my career that people aren't allowed
14 to ask hypothetical questions in hearings. This is a
15 hypothetical question. I've given all the numbers
16 that need to be. I think it is quite obvious the
17 point I'm going after, and it seems obvious to me the
18 company is trying to avoid answering how their
19 program works.

20 That's what I want to get. If they want
21 to give me real numbers, I'll take the real numbers.
22 But I think it's a realistic hypothetical, and I
23 think the witness should be able to answer.

24 EXAMINER STENMAN: The Bench recognizes
25 that it is just that, a hypothetical. The objection

1 will be overruled.

2 A. Obviously, I don't have a pen with me.
3 You threw a lot of numbers at me. So can I answer
4 it?

5 Q. Yes, please.

6 A. The way that the program would work is
7 that there are statutory benchmark requirements that
8 are laid out through Senate Bill 221 that progress up
9 as a percentage of total throughput on the system.
10 The customer can elect to opt out to the point they
11 can prove measurable and verifiable savings that are
12 either equal to or greater than the utility statutory
13 benchmark. If that is the case, they can opt out of
14 paying the rider.

15 To the point where they do not exceed
16 that statutory benchmark anymore, then they would
17 have to come back into the rider.

18 Q. Are you telling me, Mr. Bright, then,
19 that for AK Steel to get the exemption they would
20 have to come up with energy efficiency that would
21 meet the entire mandate that particular year of Duke,
22 they would have to do, in my hypothetical, 5 million
23 megawatt-hours?

24 A. Can I answer it differently again?

25 Q. Please.

1 A. If it's a million megawatt-hours that AK
2 has, and the mandate for Duke is that 3 percent of
3 the sales is what our statutory benchmark requirement
4 is under Senate Bill 221, then AK would have to show
5 that they have reduced their energy consumption over
6 the past three years by at least 3 percent.

7 Q. But AK Steel's mandate is your mandate.
8 The number percentage is the same as yours, right?

9 A. To be able to opt out, that is what the
10 Commission has laid out.

11 Q. Can you show me where it says that?

12 A. It's in the Ohio Green Rules.

13 Q. Okay. I'm going to give you a copy of
14 the Ohio Green Rules. Okay? By the way, by the Ohio
15 Green Rules, you mean Chapter 4901:1-1-39, AC, right?

16 A. I'm guessing.

17 Q. I don't think there is anything called
18 the Ohio Green Rules, at least officially. I think
19 it's this. Can you show me where it says that?

20 A. I would have to read through this entire
21 document to try and find it.

22 Q. Do you think it's in there somewhere?

23 A. I do.

24 Q. It says if yours is 3 percent then every
25 customer -- every customer -- theirs is 3 percent?

1 A. It doesn't say that every customer is
2 3 percent. It says in order to opt out, you have to
3 have met that same statutory requirement.

4 Q. Okay. Let me ask a question then. What
5 if AK Steel has a program that will save it one and a
6 half percent of its energy in a particular year.
7 What does that qualify for? Anything?

8 A. I need clarity on the question because I
9 don't understand the time frame that you're talking
10 about.

11 Q. Let's call it this year. All right?
12 Next year we apply. This year we say to Duke, We've
13 get a program that saves one and a half percent of
14 the energy that we have.

15 Assuming, that that's what the law says,
16 okay, and it is Duke's interpretation that the law
17 says you've got to save 3 percent, and we save one
18 and a half percent, right? Let's assume that it's
19 one and a half percent that we save through an
20 investment so it qualifies for the rebates and it
21 qualifies for the waiver. What does AK Steel get, if
22 anything, as far as a waiver or a rebate for it
23 saving one and a half percent of its energy in a
24 particular year?

25 A. It depends on the program. Okay? If

1 you're talking about them making an investment this
2 year, they would then opt into the program, assuming
3 they wanted to take an incentive, and without knowing
4 what the project is, there would be a value ascribed
5 to that project and an offer would be tendered to
6 them, and they would make an decision as to whether
7 or not they want to proceed.

8 Q. What if instead of an incentive, they
9 wanted the waiver. They didn't want to pay the
10 surcharge. What would their surcharge be after they
11 did one and a half percent of their energy?

12 A. The surcharge would be -- it's assigned
13 based on their kilowatt-hour usage.

14 Q. And so in the example that I gave you,
15 what would that be? They pay half the surcharge?

16 A. No. They would pay the entire amount of
17 the DR-SAWR rider, and then they would calculate --
18 they would get incentives that would offset some of
19 that cost.

20 Q. We are not talking about incentive; we're
21 talking about a waiver. Are you saying they can't
22 have a waiver; they can only have an incentive?

23 A. In the hypothetical example you used
24 where the current mandate requirement is 3 percent,
25 then no, they would not be eligible to opt out of the

1 rider.

2 Q. So the example we gave before that we
3 were using the current incentive, AK Steel would pay,
4 say, \$2.3 million as far as this surcharge is
5 concerned, right around there?

6 A. That sounds about right.

7 Q. And then they would get the cost of
8 whatever the company decided that they would get for
9 the incentive, right?

10 A. There's not a cost for the incentive.
11 They would receive an incentive.

12 Q. Can you tell me where that is set forth,
13 where it says that it works this way? Is it in your
14 tariff? Is it in the Green Rules? Where is it?

15 A. The place where it's most clearly laid
16 out on our website. If you looked at the Smart\$aver
17 custom web page, that would be where the -- for a
18 customer of that size it's typically going to be
19 under the custom program.

20 Q. So it isn't a document filed with the
21 Commission, and it isn't the Commission rules?

22 MS. WATTS: Your Honor, I object to this
23 line of questioning. Mr. Bright is not an attorney.
24 He testified as to what his understanding is of how
25 the program works and how it is accomplished, and

1 asking him to pinpoint a particular rule and just
2 throwing the entire set of 4901:1-1-39 is a little
3 unfair.

4 MR. BOEHM: Your Honor, if I may, I've
5 got a client who is going to pay \$2.3 million, and
6 the company won't tell me how this program works, or
7 if they do, they won't tell me where it says that.

8 I mean, if this isn't a law and this
9 isn't a tariff passed on by the Commission, I submit
10 it is insufficient that the company put it on its
11 website. That has no official status, and if that's
12 where this exists, I want to know about it, and I
13 want to talk about it in my brief. I think it's
14 relevant to the Commission's decision.

15 EXAMINER STENMAN: The objection will be
16 overruled.

17 A. Where this is laid out -- and I apologize
18 because I didn't understand that's what you were
19 looking for. Where that's laid out is in the
20 original filing. At least I believe the custom
21 program is laid out in the SAWR filing.

22 Q. You say the SAWR filing. There won't be
23 a SAWR. I was addressing how it would work under the
24 proposed Stipulation. My understanding of the
25 proposed Stipulation SAWR is gone. It's called the

1 EE-DPR or something. Which are we talking about?

2 A. And, Mr. Boehm, this is where it gets
3 confusing for me because you're jumping between the
4 Save-a-Watt Rider. You're jumping between the
5 mercantile program. You're jumping between a current
6 filed program, and it's hard for me to follow which
7 program you're referring to.

8 Q. I am trying not to jump anywhere,
9 Mr. Bright, and I thought we understood going in, I
10 have now moved to the point of how the company's
11 proposal will work. It is my understanding in the
12 company's proposal, first of all, the rider is not
13 called DR-SAWR. It's called something else. But, in
14 any event, I'm trying to understand how that program
15 works.

16 A. And, again, sir, the way you posed the
17 question, you said the customer wanted to apply for
18 an incentive today. We currently operate under
19 DR-SAWR, and you asked where was that program
20 recorded in the record, and it's recorded through the
21 Save-a-Watt filing. You've now moved to the new
22 program, and that's where I got lost in the
23 description.

24 Q. Okay. If I did that to you, I apologize.
25 Let's make sure that we understand now.

1 I'm referring to the company's proposal, which has
2 been part of this Stipulation, which I understand has
3 been filed in this case. And the questions that I
4 was asking you were, where is the authority that the
5 company is invoking when it says, for instance, that
6 the customers each have an energy efficiency mandate
7 equal to the company's energy efficiency mandate
8 times their energy? That's what I want to know, is
9 where that is so I can read it and understand.

10 A. And I don't know that off the top of my
11 head.

12 Q. When you talk about something being
13 posted on your website, that was a posting that
14 referred to the existing SAWR or to the proposed
15 SAWR?

16 A. It refers to the existing SmartSaver
17 custom program, which is part of the Save-a-Watt
18 program.

19 Q. Okay. Which of the witnesses in this
20 case can explain in detail how the company's proposed
21 program works?

22 A. I don't understand your question.

23 Q. I have the feeling, Mr. Bright, that you
24 weren't completely familiar with this and that you
25 wanted to refer me to some other Duke witness to

1 answer some of these questions. Am I wrong?

2 A. No, I don't understand your question.

3 Q. All right. Let's go to your testimony.
4 Let's start at page 3, Mr. Bright, under Smart\$aver
5 Prescriptive. Smart\$aver Prescriptive is a
6 nonresidential program, right?

7 A. Yes.

8 Q. So it would apply to TS customers?

9 A. Yes, it would.

10 Q. Okay. And you identify five categories,
11 right?

12 A. Five broad categories, yes.

13 Q. Lighting, HVAC, and then
14 pumps/motors/drives, Energy Star food service
15 equipment, and process equipment, right?

16 A. Correct.

17 Q. Okay. Now, would you expect that for a
18 large manufacturer, HVAC would be a program directed
19 toward them? Heating and air conditioning is what
20 you're talking about.

21 A. It would be applicable, but it would not
22 be what I would expect to be where they would see the
23 most opportunity.

24 Q. How about lighting?

25 A. It's actually been a very popular measure

1 with our manufacturing customers.

2 Q. TS customers?

3 A. Well, as we already established, the one
4 TS customer who has participated, they have taken
5 advantage of lighting incentives, but other non-TS
6 customers, lighting is the most popular measure.

7 Q. Non-TS. Energy Star food service
8 equipment?

9 A. I would not expect that to be.

10 Q. Motors, pumps, and drives?

11 A. I would expect that to be.

12 Q. Process equipment?

13 A. I would expect that to be.

14 Q. And what is process equipment?

15 A. It's industrial process-related measures.

16 Q. Okay. Let me go to page 4 of your
17 testimony, we are talking about SmartSaver Custom.
18 And you say this is projects that do not fit into the
19 prescriptive portfolio, and that's because they don't
20 fall into any of the five categories you were talking
21 about?

22 A. No, sir.

23 Q. Why are they different?

24 A. It's where a customer can quantify energy
25 savings, but it's not a direct replacement, which is

1 the prescriptive program. You are usually looking at
2 a one-for-one replacement.

3 Q. Replacement of what, Mr. Bright?

4 A. It can be anything. Custom can handle --
5 we can really model any type of energy savings
6 project for the customer.

7 Q. How about energy savings that doesn't
8 involve a financial investment?

9 A. That would not be available for
10 incentives.

11 Q. It has to involve an investment?

12 A. Yes, sir.

13 Q. You have one called Smart\$aver Energy
14 Assessments where you call people up on the telephone
15 and you offer a telephone assessment; is that right?

16 A. That is correct.

17 Q. You wouldn't see you're calling up AK
18 Steel and telling them how to save energy over the
19 telephone, would you?

20 A. I would not.

21 Q. Or any TS customer, for that matter?

22 A. Highly unlikely.

23 Q. Yeah. Let's go to power share. Let me
24 ask you something. Under that order that I
25 introduced before that's, the September 15 order, do

1 you remember that?

2 A. Yes.

3 Q. Where we agreed that behavioral changes
4 would not entitle a company to have a waiver or an
5 incentive payment; remember that?

6 A. Yes, sir.

7 Q. Does that apply to PowerShare?

8 A. No, it would not.

9 Q. So under PowerShare, demand response,
10 behavioral savings could be counted?

11 A. Could you restate that question?

12 Q. I'm sorry, I probably didn't say that
13 clearly as I intended to.

14 If I'm engaged in an activity which saves
15 demand, demand response, which is what PowerShare is,
16 right?

17 A. No.

18 Q. Oh, it isn't? Okay.

19 A. It's not the way you described it.

20 Q. I'm looking at the first sentence it
21 says, "PowerShare is Duke Energy Ohio's demand
22 response program offered to commercial and industrial
23 customers."

24 A. Correct. Your statement that you just
25 made was that I have a customer who has an

1 opportunity to save demand. That's different than a
2 demand response program.

3 Q. Okay. Tell me how it's different. What
4 is a demand response program?

5 A. A demand response program is intended to
6 respond to capacity constraints on a systemwide
7 basis, and they're typically, in our territory, an
8 emergency situation is typically declared by an
9 independent operator.

10 Q. And you call the manufacturer up and you
11 say, I want you to drop 10 megawatts, right?

12 A. We don't tell the customer what to drop.
13 The customer signs an agreement at the beginning of
14 the year where they specify how much load they'll
15 drop in response for capacity payment.

16 Q. Would you call that behavioral?

17 A. No, I wouldn't.

18 Q. Why not?

19 A. Because it's responding to a demand
20 response event with a preset plan. It's not a
21 behavioral change.

22 Q. It doesn't involve any cash investment,
23 does it?

24 A. It could.

25 Q. What if it doesn't, though?

1 A. Then it would be -- it doesn't have to
2 require a capital investment.

3 Q. So that's an exception to the behavioral
4 language that was in the September 15 order that we
5 talked about earlier?

6 A. Again, the September 15 order is talking
7 about something different than what you're talking
8 about now.

9 Q. I thought it was talking about energy
10 efficiency and demand response.

11 A. You're making reference to PowerShare,
12 which is a demand response program offered by Duke
13 Energy versus an exemption from a rider that is
14 issued by the Public Utilities Commission.

15 Q. Now, let's assume that we're dealing with
16 a program that doesn't offer -- let's call it an
17 energy efficiency program. It doesn't offer any
18 rebate opportunity, nor does it offer any opportunity
19 to avoid the surcharge because it's behavioral.
20 Okay?

21 A. Okay.

22 Q. All right. But I think we agreed that
23 under the order that we read before, the September 15
24 order, that the company can nevertheless count this,
25 right, toward it's yearly mandate?

1 A. That's is what the statute says.

2 Q. But the customer can demand a payment for
3 committing this energy efficiency to the utility,
4 right?

5 A. Yes.

6 Q. But by Commission rule that commitment is
7 limited 5 cents a megawatt-hour; isn't that true?

8 A. Yes. Now you're bringing in a new
9 variable into the equation on all the nuances of
10 these programs, but yes.

11 Q. I'm doing that intentionally. I'm trying
12 to get to the bottom of this. So if it saves, you
13 know, 1,000 megawatt-hours, 10,000 megawatt-hours,
14 but it doesn't involve any financial investment on
15 the part of the customer, the customer gets no
16 rebate. It gets no exemption, but it can get a
17 nickel a megawatt-hour for committing that to you and
18 you get to count it, right?

19 A. Correct. Could I back up? Did you say a
20 nickel per megawatt-hour? Because it's a nickel per
21 kilowatt-hour. I have to look at the numbers, but I
22 thought it was a nickel per kilowatt-hour.

23 Q. Oh, no. Think about it.

24 A. You're right.

25 Q. Here's something I don't understand. On

1 page 10 -- I'm sorry, page 11 of your testimony
2 beginning on line 4, the question is, "Would you
3 recommend that this rate for TS customers be
4 continued in the filing?" And that's the existing
5 rate, correct?

6 A. Correct.

7 Q. You say "no" and that they represent
8 9 percent, right? It says, "In order their Duke
9 Energy Ohio to meet the energy and demand reduction
10 requirements in Senate Bill 221, energy efficiency
11 improvements by these customers are needed. In
12 addition, with the adoption of Self-Direct, there is
13 now a vehicle in place for these customers to receive
14 incentives for energy efficiency improvement projects
15 that were previously completed. Lastly, for those
16 customers who can demonstrate that they have
17 implemented projects generating energy and demand
18 reductions in excess of Duke's mandated reduction
19 requirements under Senate Bill 221, they can apply to
20 avoid paying any energy efficiency rider costs, as
21 any other Mercantile customer can."

22 Does that mean that a mercantile customer
23 can only get a waiver of the surcharge costs if it
24 introduces energy efficiency reductions in excess of
25 Duke's mandated reduction requirements?

1 A. Yes.

2 Q. So if it gives a program equal to Duke's
3 demand energy reduction, it doesn't get an exemption?

4 A. No, sir. You've picked up on a nuance in
5 the verbiage, which you are correct, it could be
6 equal to or greater than.

7 Q. And if it introduces a program that saves
8 10 percent less, it falls short of Duke's mandate by
9 10 percent, it doesn't get any waiver, right?

10 A. That is my understanding.

11 Q. Okay. Now, on page 11 of your testimony,
12 line 6 to 8, you say that Duke needs to have the TS
13 customers participate in this program in order for it
14 to make its mandates, right?

15 A. Correct.

16 Q. Do you have an analysis that shows that?

17 A. I do not.

18 Q. Does anybody have an analysis that shows
19 that?

20 A. Not that I'm aware of.

21 Q. Do you know what the projected economic
22 efficiency and demand reduction achievement, the
23 projected achievements are without TS customer
24 participation?

25 A. I do not.

1 Q. And I take it then you can't quantify the
2 projected impact of rate TS customer participation?

3 A. No, I cannot.

4 Q. Isn't it true, Mr. Bright, that in the
5 first two years that Duke has had these programs it
6 has wildly overachieved their energy efficiency
7 savings without TS participation?

8 MS. WATTS: Objection as to the
9 characterization with respect to "wildly."

10 MR. BOEHM: He can say "no," your Honor.

11 EXAMINER STENMAN: It will be sustained.

12 MR. BOEHM: I'd like to introduce two
13 documents. One is in 10-317, and it is In the Matter
14 of the Annual Energy Efficiency Portfolio Status
15 Report of Duke Energy, Inc., and I would like to call
16 that OEG Exhibit 3.

17 EXAMINER STENMAN: It will be so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. BOEHM: Then I would like to at the
20 same time --

21 EXAMINER STENMAN: Let me do the first
22 one.

23 MR. BOEHM: I'm sorry?

24 EXAMINER STENMAN: Are these in the same
25 docket or is it a different one?

1 MR. BOEHM: It's a different one.

2 Then I would like to introduce the annual
3 Energy Efficiency Status Report, Duke Energy, in
4 11-1311, and I'd like that to be OEG 4.

5 EXAMINER STENMAN: It will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. I'd like to refer you first, Mr. Bright,
8 to OEG Exhibit No. 3, which is the energy efficiency
9 status report in Case No. 10-317. Do you see that?

10 A. Yes.

11 Q. First of all, are you familiar with this
12 document?

13 A. Not well-versed in this document.

14 Q. Did you participate in compiling this
15 document?

16 A. Members of my team provided some of the
17 data inputs, but we did not really actively
18 participate in the compilation of the document.

19 Q. Okay. Whom may I cross-examine on this
20 documents?

21 A. I'm assuming Mr. Duff would be the
22 appropriate person.

23 Q. Okay. Let me take that into account
24 here.

25 MR. BOEHM: If I can have a moment, your

1 Honor.

2 EXAMINER STENMAN: You may.

3 Q. So that I can be secure in the knowledge
4 before I let you off the stand, Mr. Bright, all
5 questions that I have, I have a number of them, about
6 what the achievement by Duke was and Duke customers
7 were for the year 2009 and 2010, as well as forecasts
8 about achievements for years going forward, are
9 questions better put to Mr. Duff than you?

10 A. Yes, sir.

11 Q. Just a few more then in light of that,
12 Mr. Bright. Have you ever worked with any industrial
13 customers or TS customers with respect to their
14 energy efficiency projects that might eventually be
15 eligible under this program or that they sought to be
16 eligible under this program or that you wanted to
17 submit under the program?

18 A. Can you clarify your questions just a
19 little bit? I want to make sure I understand and
20 answer correctly.

21 Q. Let me try it another way. I'm sorry, I
22 don't remember offhand your resume. Have you worked
23 with industrial customers, TS customers in the past,
24 any sort, so that you are familiar with some of their
25 manufacturing processes and how they use energy?

1 A. I am, or I have.

2 Q. A customer -- and I don't want to pick on
3 AK Steel, but they are the biggest user that we got.
4 AK Steel pays tens of millions of dollars for energy
5 a year, do they not?

6 A. Yes, sir.

7 Q. In your familiarity with them and their
8 use of energy, would you say that they're generally
9 inclined to take any cost-effective measures that
10 might save them energy?

11 A. No, I would not necessarily characterize
12 it that way.

13 Q. Ah. So you think that these customers
14 that are paying tens of millions of dollars for
15 energy might not take a project that is
16 cost-effective in saving them energy?

17 A. That's correct.

18 Q. Why wouldn't they do that?

19 A. That's a lot of competing interests for
20 capital dollars, number one. I've witnessed a
21 reticence on some customers to not necessarily
22 believe energy savings will be there; or sometimes
23 it's the decision-maker we are working with.
24 Sometimes it's at the higher management level. Those
25 are the biggest reasons why I see the customers tend

1 to shy away from it.

2 Q. And if you went to a company, like AK
3 Steel, and you said, for instance, I think you can
4 save energy by changing that motor, and they said
5 they didn't think they could, do you think that your
6 opinion would be superior in that subject over
7 theirs?

8 A. I wouldn't necessarily say it's superior.
9 I think it's a difference of opinion.

10 Q. So they might be right?

11 A. They may be; so may I.

12 Q. And if an industrial customer said to
13 you, Look, Kevin, I don't have anything like a
14 project that could save 3 percent or 7.5 percent, or
15 whatever my energy is this year. I did it in the
16 previous years, or, I did it ten years ago, or, It's
17 not there, and so I don't have a program to submit to
18 you for a mercantile exemption, would you know
19 whether he was right or not? Would you accept that?

20 A. You asked two questions. I'm not sure
21 which one you want me to answer.

22 Q. I'm sorry, I did. Let me break it down.
23 A TS customer comes to you and says, Mr. Bright, we
24 don't have anything. We certainly don't have
25 anything that would equal what the company's mandate

1 is that particular year. As I understand it, you're
2 saying if the company's mandate is 7-1/2 percent,
3 then this customer's mandate is 7-1/2 percent, and if
4 it doesn't hit that 7-1/2 percent, he doesn't get any
5 waiver at all. That's what you testified to, isn't
6 it?

7 A. Yes.

8 Q. He says to you, We don't have it. It's
9 not there. Is that believable?

10 A. It could be.

11 Q. Would he have a reason the lie about it?

12 A. I don't know.

13 Q. Have you ever been engaged in a process
14 of making steel?

15 A. I have not.

16 Q. How about air reduction?

17 A. No.

18 Q. Do you know what a air reduction company
19 is?

20 A. I do.

21 Q. How about automobiles?

22 A. I have been associated with automobile
23 manufacturing.

24 Q. Oh, really, okay. In what respect,
25 Mr. Bright?

1 A. I ran a start-up operation and the due
2 diligence and the construction projects for utility
3 infrastructure at two General Motors facilities, one
4 in Shreveport, Louisiana and one in Oklahoma City.

5 Q. Oh, good. Did you have anything to do
6 with energy down there?

7 A. We did. We assisted them with their
8 energy reduction plans.

9 Q. Okay. How about aircraft companies?

10 A. No. Well, other than I purchased
11 aircraft company equipment.

12 Q. Okay. And I won't go through this report
13 because I'm going to ask Mr. Duff about that, but
14 with respect to the programs that you're familiar
15 with now, mostly -- what would you say is your most
16 successful program, saves the most energy?

17 A. Again, can you clarify that question? I
18 want to make sure I answer it correctly because we're
19 jumping between a bunch of different programs.

20 Q. I've seen some studies, and maybe you
21 have also, that say most successful programs involve
22 changing lightbulbs and lighting. Is that your
23 experience?

24 A. No.

25 Q. Okay. What do you think they are?

1 A. It depends on the program. In the
2 SmartSaver prescriptive program, lighting has been by
3 far our most popular measure. The reality has been
4 that where we have seen the most uptake has been in
5 manufacturing customers where they're replacing high
6 intensity discharge lighting and replacing it with
7 fluorescent lighting with occupancy sensors. We are
8 see as big of impacts, sometimes greater impacts out
9 of our SmartSaver custom program, which is geared
10 towards all sectors of customers with all kinds of
11 projects.

12 Q. Would you expect a company like AK Steel,
13 for instance, would change its lights and achieve
14 what you maintain is their mandate each year, which
15 is the same percentage that Duke has? Do you think
16 they could save that much energy changing lighting?

17 A. I do not.

18 Q. How about GE Aircraft?

19 A. I would say highly unlikely.

20 Q. Probably highly unlikely for any heavy
21 manufacturing?

22 A. I would say that's probably a fair
23 statement.

24 MR. BOEHM: Your Honor, I have no further
25 questions at this time.

1 Thank you, Mr. Bright.

2 EXAMINER STENMAN: Thank you.

3 Mr. Parram.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Parram:

7 Q. I have one question.

8 A. Yes, sir.

9 Q. I have a question regarding rebate
 10 incentives. There's a little bit of discussion that
 11 you had about that and behavioral modification.
 12 Although it's true that a TS customer may not
 13 potentially receive a rebate incentive for a
 14 behavioral modification, isn't it true that the TS
 15 customer would directly benefit through a reduction
 16 of their rider by paying less per kWh?

17 MR. BOEHM: Your Honor, I'm going to
 18 object here. I think this is clearly a friendly
 19 cross. The party has signed on to the Stipulation,
 20 presumably supports the Stipulation, and this is a
 21 softball. If we're going to watch softballs all day
 22 long, it's going to be a very long day.

23 MR. PARRAM: Your Honor, I'm asking a
 24 specific question regarding OEG Exhibit 2, where
 25 Mr. Boehm asked questions about for quite a long

1 period of time. I think I would like to be able to
2 just clarify some of the questions or
3 mischaracterizations of Mr. Boehm by asking this
4 witness directly.

5 MR. BOEHM: I would object to counsel's
6 characterization of my mischaracterization and
7 suggest that the company can get through this thing
8 on redirect. But these are clearly softballs. I
9 mean, the fact that I'm being accused of
10 mischaracterization I think tips his hand.

11 EXAMINER STENMAN: This is your only
12 question, Mr. Parram?

13 MR. PARRAM: This is my only question.

14 EXAMINER STENMAN: It will be overruled.

15 MR. PARRAM: May I have the question read
16 back, please.

17 Q. (By Mr. Parram) Did you understand the
18 question?

19 A. I'm sorry. I got lost in all that.
20 Could you state that for me again.

21 Q. Yes. There was a discussion regarding
22 behavioral modification and a potential for incentive
23 for TS customers for behavioral modification. And
24 isn't it true that although the TS customer may not
25 receive a direct incentive for behavioral

1 modification, that a TS customer does receive an
2 indirect benefit through an overall reduction of the
3 rider?

4 A. You're exactly correct. They would
5 receive savings through the energy reduction. They
6 also would potentially receive savings from a peak
7 demand reduction. It's common questions that we get,
8 especially around our demand response programs where
9 customers inquire about things like a thermal energy
10 storage system and wanting to sign up for a demand
11 response program.

12 And the routine answer is, you're better
13 off to save on the demand all year long than you are
14 to take a lesser incentive for a demand response
15 program. So your example is correct.

16 MR. PARRAM: Thank you. That's all that
17 I have.

18 EXAMINER STENMAN: Any redirect?

19 MS. WATTS: Your Honor, could we take
20 five minutes?

21 EXAMINER STENMAN: Sure. Be back at
22 11:30.

23 (Recess taken.)

24 - - -

25 EXAMINER STENMAN: Back on the record.

1 Ms. Watts.

2 MS. WATTS: Your Honor, just a couple
3 redirect.

4 - - -

5 REDIRECT EXAMINATION

6 By Ms. Watts:

7 Q. Mr. Bright, you were asked a couple
8 questions with respect to TS customers taking
9 advantage of the company's incentive programs, and I
10 believe you indicated that the company had one.

11 A. That's correct.

12 Q. Do you have any personal knowledge as to
13 what decision those companies may have made with
14 regard to whether to take advantage or not take
15 advantage?

16 A. I don't. I mean, it's a decision that
17 every company makes and values on their own, so I
18 really don't have any firsthand knowledge of why they
19 did or didn't.

20 Q. Okay. And the exemption or the opt out
21 program that Duke Energy Ohio has in effect, which
22 the Commission has sort of devised, does that apply
23 to only TS customers or for all mercantile customers?

24 A. It applies to all mercantile customers.
25 And there were a lot of questions around that, and

1 that's not our program. You know, that was a
2 Commission-directed program, so what you were getting
3 was my interpretation of the program.

4 Q. Okay. So with respect to Duke Energy
5 rate classes, which rate classes are included in that
6 mercantile definition?

7 A. I know for a fact DS, DP, TS would all
8 fall into that. Based on the definition of a
9 mercantile customer, the one rate class that I'm not
10 sure of, Mr. Ziolkowski may be able to answer this,
11 is if there would be any rate DM customers that would
12 be considered national accounts.

13 Q. Thank you. I believe you were asked a
14 question with respect to the Commission's decision in
15 the case 11-834. Do you remember those questions?

16 A. Somewhat.

17 Q. I'm sorry. It's 10-834. And Mr. Boehm
18 asked you a series of questions with respect to your
19 understanding of how that order applies to the
20 exemption process.

21 Isn't it true that a mercantile customer
22 is able to file on its own behalf with the Commission
23 for exemption and the Commission makes a
24 determination whether they should be able to opt out
25 or not?

1 A. That's correct. They file either jointly
2 with the utility or individually on their own.

3 Q. So it's not Duke Energy's interpretation
4 of the Commission's order; it would be the
5 Commission's interpretation of its own order that
6 would be relevant there?

7 A. That's correct.

8 Q. I believe you were also asked with
9 respect to whether the company or whether you
10 personally had done an analysis regarding whether
11 there is a need for the attribution, if you will, of
12 the mercantile class customers toward our baseline in
13 order to meet the requirements of the Commission's
14 rules.

15 A. Correct.

16 Q. Has the company performed such as
17 analysis, so far as you know?

18 A. It is my understanding that the company
19 has done it, and it is part of its forecasting,
20 forecasting when we will no longer be in compliance
21 with the requirements under Senate Bill 221.

22 When the question was asked, it was
23 asked, at least as I recalled it, did I do any
24 analysis, and I have not done any of the analysis,
25 but I understand the company has.

1 Q. Where would that analysis be found?

2 A. I would refer you to Mr. Duff for that
3 answer.

4 MS. WATTS: Nothing further, your Honor.
5 Thank you.

6 EXAMINER STENMAN: Any recross?

7 MR. SMALL: Nothing, your Honor.

8 MR. BOEHM: Nothing, your Honor.

9 MR. PARRAM: No, your Honor.

10 EXAMINER STENMAN: Thank you.

11 Mr. Bright.

12 THE WITNESS: Thank you.

13 MS. WATTS: Duke Energy Ohio will call
14 Ashlie Ossege, please.

15 (Witness sworn.)

16 MS. WATTS: Could we please have
17 Ms. Ossege's testimony marked Duke Energy Exhibit 3.

18 EXAMINER STENMAN: It will be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 - - -

21 ASHLIE J. OSSEGE,
22 being first duly sworn, as prescribed by law, was
23 examined and testified as follows:

24 DIRECT EXAMINATION

25 By Ms. Watts:

1 Q. Ms. Ossege, do you have before you what
2 is marked Duke Energy Exhibit 3?

3 A. Yes, I do.

4 Q. Can you identify that document, please?

5 A. It's my testimony.

6 Q. Do you have any additions or corrections
7 to that testimony?

8 A. No, I do not.

9 Q. And if I were to ask you the questions
10 contained therein, would your responses be the same?

11 A. Yes, they would.

12 MS. WATTS: Ms. Ossege is available for
13 cross-examination.

14 EXAMINER STENMAN: Any cross?

15 MS. MOONEY: No questions, your Honor.

16 MR. SMALL: No questions, your Honor.

17 EXAMINER STENMAN: Mr. Boehm.

18 MR. BOEHM: Yes, thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Boehm:

22 Q. Good morning.

23 A. Good morning.

24 Q. Ms. Ossege, am I correct that you were
25 responsible for compiling and filing that has been

1 marked for identification as OEG Exhibits No. 3 and
2 4, which are respectively the First Annual Energy
3 Efficiency Status Report of Duke Energy Ohio and the
4 Annual Energy Status Report of Duke Energy Ohio?

5 A. I am responsible for pieces in that
6 filing, such as the Appendix C.

7 Q. I'm sorry, I didn't hear you.

8 A. The Appendix C of the latest annual
9 update filing.

10 Q. Okay. The latest would be OEG 4 in Case
11 No. 11-1311; is that right?

12 A. I believe that that's this year's filing.

13 Q. Okay. Let me ask you this. In OEG
14 No. 4 -- by the way, do you have a copy in front of
15 you?

16 A. I do not have a copy.

17 Q. Let me give you a copy. Let's start with
18 4. See page 3?

19 A. Yes.

20 Q. You see those figures in there?

21 A. Yes.

22 Q. Are you responsible for calculating or
23 accumulating those figures?

24 A. I would just like to read to confirm.

25 Q. Yes.

1 A. No, I'm not.

2 Q. Who did that?

3 A. I believe this comes from our -- a
4 combination of our forecasting group, as well as our
5 P&L planning group.

6 Q. How about the figures on page 7 of that
7 same Exhibit 4?

8 A. No, I'm not specifically responsible for
9 this table.

10 Q. Are you responsible for any of the
11 numbers that relate to achievement or overachievement
12 of energy efficiency goals?

13 A. I'm responsible for the evaluation
14 measurement and verification of impacts in order to
15 verify the impacts achieved by our customers.

16 Q. Okay. So, Ms. Ossege, then you would
17 know, for instance, in any particular year whether or
18 not Duke met the mandate for that year for energy
19 efficiency and demand reduction, right?

20 A. Only through the compilation of this
21 annual filing, but those questions would best be
22 directed to Mr. Duff.

23 Q. Mr. Duff, okay. Make sure I got the
24 right, Ms. Ossege. I'm asking you, because what
25 happens to lawyers sometimes, they let people off the

1 stand, and they find out later they shouldn't have.

2 Okay?

3 So you're saying that all of the
4 statistics about accomplishing EE goals or demand
5 reduction goals or overachieving those goals, et
6 cetera, those are questions that I should ask
7 Mr. Duff?

8 A. That's correct.

9 Q. Let me ask you this, Ms. Ossege. You
10 talk about avoided costs, right? You have gone
11 through avoided costs calculations as part of the
12 things you do?

13 A. Uh-huh.

14 Q. What does that mean? What is the company
15 avoiding?

16 A. The avoided costs refer to -- the reason
17 those are in my testimony, those are components of
18 cost-effectiveness test scores, of which I do
19 calculate, and the avoided costs refer to either the
20 avoided costs of production or the avoided costs of
21 capacity.

22 Q. With respect to incentive payments that
23 the company is asking for, what sort of avoided costs
24 are part of that incentive?

25 A. Those would be, again, the avoided costs

1 of production and capacity.

2 Q. When you say "production," do you mean
3 generation?

4 A. Energy consumption or energy generation,
5 yes.

6 Q. You're talking about generating costs,
7 right?

8 A. Uh-huh.

9 Q. So how, in your mind, in calculating
10 these costs, does one avoid generation costs? How
11 does a program avoid the cost of generation?

12 A. A program would avoid the cost of
13 generation through our energy efficiency programs.
14 A reduction in energy consumption essentially would
15 lead to an avoided cost to generate that particular
16 kWh that was saved.

17 Q. Ms. Ossege, are you familiar with the
18 term "demand side management"?

19 A. Yes.

20 Q. And that's been around a long time,
21 hasn't it?

22 A. Yes.

23 Q. Now, I'm going to give this to you. If
24 you disagree with any part of this, please tell me
25 the part you disagree with. Okay? But it's faster

1 sometimes if I just give this to you and ask for a
2 "yes" or "no." All right? If it's a "no" or you
3 have an explanation, I will invite you to correct me.
4 Okay?

5 A. Certainly.

6 Q. Isn't it true, Ms. Ossege, that the
7 principle of demand side management came from the
8 idea if you wanted to save ratepayers money, one of
9 the ways of saving ratepayers money would be to
10 undertake measures that would cause the company to
11 avoid constructing a power plant, because
12 constructing power plants is expensive and, at least
13 at one time, was a principal reason why companies
14 filed rate cases.

15 The idea was that if, in fact, people
16 used less energy or less capacity, the company
17 wouldn't have to build a power plant and, that power
18 plant wouldn't have to be in rates, and the
19 ratepayers wouldn't to pay those increased rates.

20 Is that generally the idea behind demand
21 side management?

22 A. I would not necessarily agree that's the
23 principal reason for energy efficiencies.

24 Q. Please give me what you think is the
25 principal reason.

1 A. Essentially, the -- well, yes, the
2 avoidance of building a power plant or deferring to
3 build a power plant is definitely a reason.

4 The benefit to both the customer and the
5 company is based on the system benefits as a whole
6 and not just the deferral of developing a plant or
7 building a plant; as well as energy efficiency takes
8 more of a long-term view, instead of a short-term
9 view.

10 Q. Okay. But with respect to avoided
11 generation costs, those are essentially demand costs,
12 aren't they?

13 A. Avoided generation? No, that's
14 avoided -- I'm assuming that the demand you are
15 referring to is peak.

16 Q. Yes.

17 A. So avoided energy and capacity.

18 Q. Going back to the rationale of demand
19 side management, using demand side management as a
20 way to avoid constructing new power plants -- and
21 I think you agree that that is part of it, an
22 important part of the goal of demand side management,
23 right?

24 A. It can be, yes.

25 Q. If the company would sell all their power

1 plants so that when they build a new power plant,
2 ratepayers aren't going to have pay for it anyway,
3 what are ratepayers avoiding?

4 A. I don't think that's an appropriate
5 question for me to answer. I'm not sure of the
6 answer.

7 Q. Who would you defer that to?

8 A. I would defer it to Mr. Duff, possibly
9 Mr. Ziolkowski.

10 MR. BOEHM: Your Honor, given the
11 witness's representation, my questions with respect
12 to the contents essentially of the annual filings are
13 better put to Mr. Duff.

14 I have no further questions.

15 Thank you.

16 EXAMINER STENMAN: Thank you.

17 Mr. Parram.

18 MR. PARRAM: No questions, your Honor.

19 EXAMINER STENMAN: Ms. Watts, any
20 redirect?

21 MS. WATTS: One moment, your Honor.

22 Nothing further your, Honor. Thank you.

23 EXAMINER STENMAN: Thank you.

24 THE WITNESS: Thank you.

25 MS. WATTS: Our next witness is

1 Mr. Ziolkowski.

2 MR. SMALL: Your Honor, I haven't heard
3 anything like a motion to have matters into the
4 record. I wondered if that matter has kind of gone
5 by the wayside, but we are having witnesses and
6 nothing is going into the record.

7 MS. WATTS: Thank you, Mr. Small, for the
8 reminder. I guess there's two ways to do it, after
9 each witness or at the end of the hearing. I was
10 just going to move everything in at the end of the
11 hearing, but we can do it now.

12 EXAMINER STENMAN: I had assumed you were
13 waiting until the end of the hearing. Whatever your
14 preference is, is fine with me.

15 MR. SMALL: Your Honor, there's more than
16 the matter of this direct testimony. There is also
17 Mr. Boehm's exhibits as well, and I'm having to
18 mentally keep the notes on what I consider to be
19 admissible and what I don't consider to be
20 admissible, and if you wait until the very end, it
21 might be a mess by that time.

22 MR. BOEHM: Your Honor, I would be happy
23 to accommodate Mr. Small's desire to file motions
24 here by moving thus far for the admission of OEG
25 Exhibits 1 through 4.

1 EXAMINER STENMAN: Okay. And I will
2 take objections. I am assuming that you have
3 some.

4 MR. SMALL: Yes, Your Honor. There
5 hasn't been a I single substantive question about
6 Exhibit 3 or 4, just witnesses that say they are
7 unfamiliar with the material presented.

8 I assume that Mr. Boehm will be using
9 them at future witnesses, but so far there has not
10 been a question concerning those reports.

11 MR. BOEHM: With respect to that, your
12 Honor, I think we just heard the witness, who was
13 nominally the sponsor of that, tell me that the
14 person that I should ask about with respect to
15 the matters contained in those exhibits is
16 Mr. Duff.

17 EXAMINER STENMAN: I think at this point
18 we should defer ruling on the motions for admission
19 until the end. I recognize that requires you to keep
20 mental notes on what your objections will be, but I
21 think that will make this a whole lot clearer.

22 MR. BOEHM: I think to the extent that
23 counsel fears they are laying there unused, that will
24 be taken care of when Mr. Duff comes up.

25 EXAMINER STENMAN: Okay.

1 (EXHIBITS MARKED FOR IDENTIFICATION.)

2 - - -

3 JAMES E. ZIOLKOWSKI,

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

6 DIRECT EXAMINATION

7 By Ms. Watts:

8 Q. Mr. Ziolkowski, could you
9 introduce yourself.

10 A. My name is James E. Ziolkowski.

11 Q. And by whom are you employed, sir?

12 A. I am employed by Duke Energy Business
13 Services.

14 Q. Do you have before what has just been
15 marked as Duke Energy Ohio Exhibits 4 and 8?

16 A. Yes, I do.

17 Q. Could you identify those please?

18 A. Duke Energy Ohio Exhibit 4 is my direct
19 testimony filed on July 20, 2011, and Exhibit 8
20 is my supplemental testimony filed on November 22,
21 2011.

22 Q. And do you have any changes or
23 corrections to either of those documents?

24 A. No.

25 Q. If I were to ask you the questions

1 contained therein, would your answers be the same
2 today?

3 A. Yes.

4 MS. WATTS: Mr. Ziolkowski is ready for
5 cross-examination.

6 EXAMINER STENMAN: Any cross?

7 MS. MOONEY: No, your Honor.

8 MR. SMALL: No questions, your Honor.

9 EXAMINER STENMAN: Mr. Boehm.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Boehm:

13 Q. Good morning, Mr. Ziolkowski.

14 A. Good morning.

15 Q. Mr. Ziolkowski, you have attached to your
16 direct testimony a JEZ Attachment No. 1; is that
17 correct?

18 A. Yes, I do.

19 Q. All right. And would you summarize what
20 that exhibit purports to show?

21 A. JEZ Attachment 1 is the calculation of
22 the proposed Rider EE-PDR recovery rates.

23 Q. Okay.

24 A. Excluding lost revenue recovery.

25 Q. Okay. And that's the calculation

1 pursuant to the company's original filing, or is it
2 pursuant to the Stipulation that has been filed in
3 this case?

4 A. Well, this is the calculation that was
5 done -- this was filed on July 20. The Stipulation
6 was done in this particular case recently, so this is
7 prior to the Stipulation.

8 Q. This is the original filing?

9 A. Yes.

10 Q. Okay. Now, in the original filing,
11 Mr. Ziolkowski, what was the top rate that this
12 company wanted for incentive payments? In other
13 words, the original filing upon which you did this
14 testimony called for incentive payments to the
15 company upon the achievement of certain levels of
16 overcompliance with the mandates of the law
17 concerning energy efficiency and demand reduction; is
18 that correct?

19 A. This calculation of the revenue
20 requirement did include incentive payments, yes.

21 Q. All right.

22 A. So is your question what were those
23 graduated payment levels?

24 Q. Right. Yes.

25 A. My testimony and my calculations did not

1 include that. I believe that -- I'm going to pass
2 that back to Mr. Duff. I believe it's included in
3 his testimony, speaking specifically of what the
4 graduated payment level factor is.

5 Q. Knowing that, isn't it true that Mr. Duff
6 has a table in his testimony, table No. 1, and,
7 again, this is the company's case as filed, that said
8 that if you were at 100 percent of the target in a
9 particular year, whatever the mandate was, that the
10 shared savings, you call them incentive payments to
11 the company, would be zero, and that if the company
12 achieved anywhere from 100 to 110 percent, it would
13 get 7.5 percent incentive payments, right?

14 A. I don't have it in front of me, but that
15 sounds correct.

16 Q. Okay.

17 MS. WATTS: Mr. Boehm, do you have a copy
18 of that to share with the witness?

19 MR. BOEHM: This is in Mr. Duff's
20 testimony.

21 MS. WATTS: I understand, but this is not
22 Mr. Duff.

23 MR. BOEHM: I'd be happy to.

24 Presumably you have Mr. Duff's testimony.

25 MS. WATTS: I do.

1 Q. Do you see that on page 5?

2 A. Yes, I do.

3 Q. And it goes up to 115. So if you exceed
4 a mandate by 115 percent, you get 15 percent, right?

5 A. Yes.

6 Q. Do you know whether or not in the
7 Stipulation that was filed with the company, those
8 incentive levels were retained?

9 A. I don't know.

10 Q. Okay. However, with respect to JEZ-1 --
11 hold that question for a minute. I apologize to you
12 if you already answered this, but I can't remember.
13 Okay?

14 Would you tell me again what JEZ
15 Attachment No. 1 shows?

16 A. Attachment JEZ-1 shows our proposed Rider
17 EE-PDRR cost recovery rate from our June 20th filing,
18 and it assumes that we achieve that 7.5 percent
19 incentive rate.

20 Q. Okay. And this is applying that to the
21 year 2012?

22 A. Correct.

23 Q. Which is obviously a forecast.

24 A. Correct.

25 Q. Okay. So, for instance, on JEZ

1 Attachment No. 1, you have -- the first group is
2 entitled Total Portfolio, right?

3 A. Yes.

4 Q. Okay. And you have Total Portfolio
5 Avoided Costs, Program Costs & Overhead, and you
6 subtract the program costs and overhead from total
7 avoided costs, right?

8 A. Yes.

9 Q. Okay. And then you get what is net,
10 supposedly net, avoided costs right?

11 A. Are you looking at the row that says
12 Shared Savings?

13 Q. Yes.

14 A. Yes.

15 Q. 59 million, et cetera.

16 A. Yes.

17 Q. Okay. And then you apply to the
18 59 million, 7.5 percent, which I take to be the
19 incentive amount, right?

20 A. Correct.

21 Q. Now, did you use 7.5 percent because the
22 overachievement in this case was between 100 and
23 110 percent of the annual target?

24 A. Yes.

25 Q. You did?

1 A. Yes. That's what the basis for this
2 calculation was, is the assumption that --

3 Q. That it was between 100 and 110?

4 A. Yes.

5 Q. Do you know for the years 2009 and 2010
6 what the actual accomplishment was of the company as
7 far as achieving of their energy efficiency goals?

8 A. No, I don't.

9 Q. Mr. Duff, right?

10 A. Yes.

11 Q. Looking down the sheet, I see M&V
12 recovery. What is M&V recovery?

13 A. Measurement and verification.

14 Q. And that number represents the cost of
15 measuring and verifying compliance?

16 A. That's my understanding, yes.

17 Q. Okay. Can you tell me why that wasn't
18 subtracted from the total avoided costs the same as
19 program costs and overhead were?

20 A. I don't have an answer for that. I don't
21 know. This particular schedule was prepared by a
22 number of people that work with the programs and do
23 the avoided costs calculations.

24 Q. Well, let me ask the question then,
25 Mr. Ziolkowski. Wouldn't you regard measurement and

1 verification costs to be program costs and overhead?

2 A. On the surface I would, but I don't know
3 what the different distinction is on this.

4 Q. Is there a witness here today that can
5 give us that distinction?

6 A. Mr. Duff might.

7 Q. Mr. Duff?

8 A. Mr. Duff.

9 Q. The all-knowing Mr. Duff, okay.

10 Let's go down below that. There's
11 residential EE and Nonresidential EE. I take it that
12 to be the residential energy efficiency program and
13 the other is the nonresidential energy efficiency
14 program, right?

15 A. Correct.

16 Q. I will run some calculations here and see
17 if you can agree with those. Do you have a
18 calculator with you? You engineers have always have
19 calculators with you, don't you?

20 A. I have a cell phone with me.

21 Q. Okay. If I were to try to understand
22 what the avoided costs per megawatt-hour was for
23 energy efficiency forecasted for 2012, what
24 calculation would I make?

25 A. The question is the energy -- the avoided

1 costs per megawatt-hour?

2 Q. Right.

3 A. Well, for example, for the nonresidential
4 EE, I would take the total avoided costs, the
5 46.8 million, and divide that by the kilowatt-hours
6 for a nonresidential.

7 Q. Of 99,964 megawatt-hours -- wait a
8 minute. That's not 99. It should be the number of
9 megawatt-hours saved, right?

10 A. Correct. Page 4 of 5 on Attachment
11 JEZ-1 shows the 2012 kilowatt-hours for residential
12 and nonresidential, so it would be 13.2 million
13 megawatt-hours.

14 Q. Can you make that calculation for me?

15 A. Yes.

16 Q. You're referring to page 4 of 5 of your
17 JEZ-1?

18 A. Yes.

19 Q. Okay. Now, the number we should be
20 dividing it by should be the number of megawatt-hours
21 saved, shouldn't it?

22 A. Yes.

23 Q. Is that what the number on page 4 of
24 5 shows for nonresidential rates? The 13 million
25 274, that's the number of hours saved or the number

1 of hours sold?

2 A. Those are the total distribution
3 throughput kilowatt-hours.

4 Q. Okay. But the correct number would be
5 the number of hours that are saved, right?

6 A. What are we trying to calculate, the
7 avoided costs?

8 Q. We are trying to calculate what the
9 avoided cost per megawatt-hour is for nonresidential
10 customers in 2012 according to this forecast.

11 A. That would be a different metric that we
12 could come up with. We could divide the avoided
13 costs in dollars by the avoided kilowatt-hours and we
14 could come up with the difference.

15 Q. And what is that number?

16 A. I don't think I have that avoided
17 kilowatt-hour number in my schedule.

18 Q. Okay. Can you go to OEG Exhibit No. 4,
19 the Annual Energy Efficiency Status Report? Doesn't
20 that document say what the forecasted number of
21 kilowatt-hours to be saved in 2012 are? Hold on. I
22 may have the wrong document here. Hold on.

23 I'm sorry, do you have the testimony of
24 Ms. Ossege there?

25 A. No, I don't.

1 MR. BOEHM: Can counsel give the witness
2 Ms. Ossege's testimony?

3 MS. WATTS: Yes.

4 Q. Would you please turn to OAG Attachment
5 5?

6 MS. WATTS: OAG Attachment 5?

7 MR. BOEHM: I'm sorry, AJO. AJO.

8 Q. Does that give you the number you need to
9 make the calculation for avoided costs in
10 megawatt-hours?

11 A. I haven't found that attachment yet.

12 Q. Okay. AJO Attachment 5.

13 EXAMINER STENMAN: Mr. Boehm, I'm not
14 seeing an attachment.

15 MR. BOEHM: Yes. Let me move on. Skip
16 that for now.

17 Q. Let me ask you some overall questions and
18 see if this is for you or Mr. Duff. Let's assume
19 that under the energy efficiency program someone,
20 let's make it a nonresidential customer, makes an
21 investment that qualifies for an exemption or rebate,
22 or whatever, and it's a more efficient motor. Okay?

23 And we know that, or it's verified that
24 the more efficient motor as compared to the less
25 efficient motor is going to save -- make up a

1 number -- is going to save 10 million kWh per year.
2 Okay?

3 Now, in the year that that's verified,
4 and the customer is going to take incentive payments
5 or a waiver from the company, okay, so it's
6 qualified, that 10 million megawatt-hours, the
7 company will claim that toward its goal in year '12
8 or something, okay? 2012. All right?

9 A. Okay.

10 Q. But the motor saves kilowatt-hours in
11 2013 and 2014 and 2015, right? It is still there.

12 A. Correct.

13 Q. How long does the company count that
14 energy efficiency saving?

15 A. My testimony focuses on the rate recovery
16 mechanism, counting the energy efficiency savings.
17 That piece is for Mr. Duff to refer to.

18 Q. Okay.

19 A. Any lost revenues that, if we were to
20 have lost revenue recovery, though, that would be for
21 three years.

22 Q. Three years for lost revenue from that
23 motor?

24 A. Yes.

25 Q. Okay.

1 A. To the extent we would include that in
2 the recovery mechanism.

3 Q. Again, I'm saving for Mr. Duff here, but
4 I'm like to go on, Mr. Ziolkowski, to your
5 supplemental testimony.

6 MR. BOEHM: Did we mark that?

7 MS. WATTS: We did. It's 8.

8 MR. BOEHM: 8. So this is Duke Exhibit
9 8?

10 MS. WATTS: Correct.

11 Q. You are familiar, Mr. Ziolkowski, about
12 how the current SAWR, the SAWR program, works as far
13 as the allocation of costs?

14 A. I'm generally familiar with that. I
15 didn't do those calculations a couple years ago, but
16 I have reviewed them.

17 Q. Okay. And you are generally familiar,
18 then, with the fact that under that current rider, TS
19 customers are assigned energy efficiency costs based
20 on distribution rates; is that correct?

21 A. Yes. Correct.

22 Q. And you are generally aware that it is
23 the testimony of OEG Witness Baron that that method
24 be retained, right?

25 A. Yes.

1 Q. And the company proposes, however, that
2 with respect to TS customers the costs should be
3 passed on on a kWh basis, right?

4 A. Yes.

5 Q. And a kWh basis, you will concede, puts a
6 lot more cost on the TS customers, right?

7 A. Yes.

8 Q. And isn't it generally true,
9 Mr. Ziolkowski, when you're assigning costs to rate
10 classes in rate cases -- and you have testified in a
11 number of -- I'm not sure there are any rate cases
12 anymore -- ESP cases, right? Is that right?

13 A. Yes.

14 Q. On allocation questions, right?

15 A. I've dealt with allocation questions,
16 yes.

17 Q. Okay. If you allocate costs to customers
18 based on kWh versus, say, kW, large industrial
19 customers will end up picking up a lot more of the
20 costs; isn't that true?

21 A. High load-type of customers would end up
22 picking up more of the costs.

23 Q. That's correct. And TS customers are
24 generally high load-type of customers, aren't they?

25 A. TS customers, as a class, have higher

1 load factors on average than any of the other rate
2 classes.

3 Q. And they have a lot higher load factors
4 on average than, say, residential customers, right?

5 A. That's correct.

6 Q. And a lot higher load factors on average
7 than commercial customers?

8 A. That's correct.

9 Q. So the assignment of energy efficiency
10 rates to or costs to TS customers on a kWh basis is
11 probably for the TS class the worst way they could be
12 assigned; isn't that right?

13 A. I think the term "worst" or "better" is
14 relative, depending upon your point of view.

15 Q. More expensive, how about that?

16 A. More expensive, yes.

17 Q. Now, you say on page 3 of your testimony
18 talking about line 8 -- let's start with line 5. The
19 question is, "Why is the OEG's proposed distribution
20 rate allocation methodology unfair to the rest of
21 Duke Energy Ohio's customers?"

22 "All of Duke Energy Ohio customers
23 contribute toward payment of the costs for energy
24 efficiency so that the Company can meet the mandates
25 set forth by the state of Ohio. If one class of

1 customers is allowed to avoid paying for these costs,
2 the overall costs are borne by the remaining rate
3 classes."

4 Is it your understanding that it's OEG's
5 position in this case that they totally avoid paying
6 energy efficiency costs?

7 A. My understanding of OEG's position is
8 that OEG feels that they are paying far in excess of
9 their appropriate share of their energy costs under
10 our proposed rate, and OEG would like to dramatically
11 reduce the portion of the company's energy efficiency
12 revenue requirement that has to be borne by OEG
13 members.

14 Q. Provided that they don't take any benefit
15 from the program; isn't that true?

16 A. My understanding is OEG's position is
17 that they don't intend to take -- participate in the
18 programs.

19 Q. Just as they don't participate now.

20 A. That's my understanding of OEG's --
21 Mr. Baron's testimony.

22 Q. And what proposal -- what would the OEG's
23 proposal, what rate impact would it have on
24 residential customers?

25 A. Is your question how much would the

1 calculated residential rate increase if we used the
2 allocation methodology as proposed by OEG?

3 Q. Right.

4 A. I don't know the answer. I haven't done
5 that calculation.

6 Q. The answer is it wouldn't have any impact
7 at all; isn't that true?

8 A. Oh, you're right. I agree with that
9 because we first allocate between residential and
10 nonresidential.

11 Q. It would have absolutely no impact on
12 residential customers.

13 A. I agree with that.

14 MR. BOEHM: I think that's all I have for
15 this witness, your Honor.

16 EXAMINER STENMAN: Mr. Parram, any
17 questions?

18 MR. PARRAM: No questions, your Honor.

19 EXAMINER STENMAN: Any redirect?

20 MS. WATTS: No redirect, Your Honor.

21 EXAMINER STENMAN: Okay. Thank you.

22 MR. BOEHM: Your Honor, may I ask a
23 question, please. I have quite a few, quite a bit of
24 cross for Mr. Duff, for obvious reasons.

25 EXAMINER STENMAN: Let's go off

1 the record.

2 (Discussion off record.)

3 (Recess taken.)

4 EXAMINER STENMAN: Back on the record.

5 MS. WATTS: Duke Energy Ohio will call
6 Timothy J. Duff.

7 (Witness sworn.)

8 MS. WATTS: Your Honor, these are Duke
9 Energy Ohio Exhibit 5, the direct testimony of
10 Mr. Duff, and 7, the supplemental testimony of
11 Mr. Duff.

12 EXAMINER STENMAN: They will be so
13 marked.

14 - - -

15 TIMOTHY J. DUFF,
16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Ms. Watts:

20 Q. Mr. Duff, could you introduce yourself
21 please?

22 A. My name is Timothy J. Duff. I work for
23 Duke Energy Services.

24 Q. Mr. Duff, I have just handed you Duke
25 Energy Ohio Exhibits 5 and 7.

1 A. Yes.

2 Q. Could you identify those, please?

3 A. My direct testimony filed on July 20,
4 2011, and my supplemental direct testimony filed on
5 November 22, 2011.

6 Q. And calling your attention, Mr. Duff, to
7 the case number on the cover of both of those
8 testimonies, do you see a discrepancy there?

9 A. Yes.

10 Q. And is there a correction needed to the
11 one for your direct testimony?

12 A. Yes. Instead of Case No. 11-4349-EL-RDR,
13 it should read Case No. 11-4393-EL-RDR.

14 Q. Thank you. And with that one correction,
15 do you have any other corrections or additions to
16 your testimony.

17 A. Not to my knowledge.

18 Q. If I were to ask you the questions
19 contained therein, would your responses be the same?

20 A. Yes.

21 MS. WATTS: Mr. Duff is available for
22 cross-examination.

23 EXAMINER STENMAN: Thank you.

24 Ms. Mooney

25 MS. MOONEY: No questions, your Honor.

1 MR. SMALL: No questions, your Honor.

2 EXAMINER STENMAN: Mr. Boehm.

3 MR. BOEHM: Yes. Thank you.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Boehm:

7 Q. Good afternoon, Mr. Duff.

8 A. Good afternoon.

9 Q. Mr. Duff, you testified, I think, in your
10 supplemental testimony about the reasonableness of
11 the Stipulation, did you not?

12 A. Yes.

13 Q. And you go through at one point
14 essentially the traditional standards of what is a
15 reasonable basis for a stipulation, right?

16 A. Yeah.

17 Q. And one is that it is the product of
18 serious bargaining among capable, knowledgeable
19 parties, right?

20 A. Yes.

21 Q. It does not violate any important
22 regulatory da, da, da, da, da, da, da. Okay?

23 One of them is, and I think you address,
24 the parties with whom this was negotiated, right?

25 A. That's correct.

1 Q. Can you tell me, do any of the parties --
2 or any of the parties who signed the Stipulation and
3 settlement, were any of those parties, did they
4 represent industrial customers?

5 A. Not to my knowledge. I can't speak
6 specifically about what the Natural Resources Defense
7 Council, Sierra Club, or the Ohio Environmental
8 Council, as well as Vectren Retail, on whose behalf
9 they were representing themselves, but to my
10 knowledge, no.

11 Q. I mean, generally those are environmental
12 groups, right?

13 A. Correct. But they could still be looking
14 out for industrial customer groups.

15 Q. Really? Okay. Then you had three
16 residential low-income groups, right? OCC, OP&E,
17 People Working Cooperatively, residential/low-income
18 groups.

19 A. Yes. I would agree with that.

20 Q. Then you had Vectren, which is a CRES
21 provider, right?

22 A. Correct.

23 Q. And OEG was then the only intervenor that
24 represented industrial customers, right?

25 A. Correct.

1 Q. And we were not signatories.

2 A. That's correct.

3 Q. Can you tell me, one of the other things
4 that you say on page 6, line 1 and 2, is that "the
5 Stipulation provides benefits for all customer groups
6 and interested stakeholders."

7 Can you identify the benefits that this
8 Stipulation provides to industrial customers?

9 A. Yes. It puts forth a portfolio of energy
10 efficiency programs that industrial customers can
11 reap the benefits of energy efficiency from.

12 Q. And what are those benefits of energy
13 efficiency?

14 A. They can come in the form of being able
15 to control your bill and lower your bill through
16 using less energy. They can come from the greater
17 system benefits of others participating in energy
18 efficiency.

19 Q. When you say "system," how big a system
20 are we talking about?

21 A. I would be talking about Duke Energy
22 Ohio.

23 Q. The Ohio system. Now, you're familiar
24 with how the program works right now, right?

25 A. When you say "the program works right

1 now" --

2 Q. The SAWR tariff.

3 A. Yes.

4 Q. And essentially the way that tariff works
5 is that TS customers pay a rate which is calculated
6 on distribution costs, unless they take some money
7 from the company, and then they pay a much higher
8 rate, right?

9 A. That is my understanding.

10 Q. Okay. And to your knowledge, has anybody
11 who is an OEG customer, have any of those people
12 applied for or obtained a program where energy
13 efficiency which would involve money from the
14 company?

15 A. I have to be honest, yes, I am aware of
16 that. While they're not TS accounts, which is what I
17 think you're getting at, a number of OEG member
18 accounts have participated in the company's energy
19 efficiency. I don't believe the TS customers have.

20 Q. I'm talking about TS.

21 A. Okay. Well, I just wanted to --

22 Q. And most of these industries have office
23 buildings and things like that, right?

24 A. I assume so, yes.

25 Q. That are on different metered accounts

1 than TS, right?

2 A. I can't tell you what those accounts are
3 for. But, yes, OEG customers have participated in
4 the company's programs.

5 Q. Is it true -- let me ask you Mr. Duff,
6 have you -- what experience do you have in the way
7 that large manufacturers use energy?

8 A. I have worked in what I would consider an
9 electric generating plant, a large industrial
10 facility, as well as worked in an automobile
11 manufacturing facility.

12 Q. Okay. Do you think that you, or anybody
13 in Duke, could go into, say, an air reduction company
14 and tell them how to engage in energy efficiency,
15 cost-effective energy efficiency measures they
16 haven't already taken?

17 A. That's not my role, but the company has a
18 program that has certified professionals that are
19 aware of how to go into specific facilities and
20 identify opportunities.

21 Q. Do you know, for instance, if any of them
22 have ever worked for an air reduction company?

23 A. No. But I believe the air reduction
24 company could select their own assessor, if they
25 would like, under the program, as long as they met

1 certain criteria.

2 Q. Are you familiar with how much of the
3 manufacturing costs of an air reduction company
4 energy is?

5 A. No, I'm not.

6 Q. Okay. Do you know what an air reduction
7 company does?

8 A. Vaguely.

9 Q. What they do, isn't it true, is they take
10 air, and they take great big compressors, and they
11 compress the air until various gases liquify and
12 separate from the air, and they sell the oxygen and
13 the argon and the hydrogen and the nitrogen, so that
14 their raw material is air, right?

15 A. Based on your description, yes.

16 Q. And manufacturing costs are costs running
17 those compressors?

18 A. Again, I'll take your word for it. I
19 have no reason to disagree or agree.

20 Q. Don't you think they have people in-house
21 that are looking for ways to save money on energy?

22 MS. WATTS: Your Honor, Mr. Boehm, after
23 just testifying for five minutes, continues to ask
24 Mr. Duff questions about an industry that he
25 indicated he is only vaguely aware of, so I think

1 we've --

2 EXAMINER STENMAN: He can answer the
3 question if he knows. Overruled.

4 A. Can you repeat the question, please.

5 MR. BOEHM: I don't remember what the
6 last question was. Can you help me?

7 (Record read.)

8 A. I really have no grounds upon which to
9 say "yes" or "no."

10 Q. If you ran a business where half of your
11 overhead costs were energy, would you have people
12 in-house trying to find ways to save energy?

13 A. Or I would look for outside professionals
14 that could help me assess that. That's part of a
15 manufacturer's role, is to try and drive down their
16 costs.

17 Q. Okay. With people who have never worked
18 in an air reduction company before?

19 A. I can't tell you that.

20 Q. Is it possible, Mr. Duff, is it
21 believable, if an air reduction -- if any large
22 manufacturer would come to you and say, I don't have
23 anything. I don't have a program that I could
24 initiate to get a mercantile exemption so that I
25 don't have to pay the surcharge, is that believable

1 in your mind?

2 A. You know, it would depend. I think the
3 customer -- the statute allows the customer to look
4 back to what they've done, and I think there's
5 grounds for them to try and get the exemption from
6 looking backwards, as well as looking at what they
7 did in the current year. So it's hard for me to
8 speculate, given a very limited knowledge of what
9 hypothetical situation you're spelling out.

10 Q. In order to have a project that would
11 exempt them from the surcharge, we know from the
12 testimony of Mr. Bright, for instance, that they
13 would have to have a program that would save enough
14 energy to equal whatever the percentage number is for
15 the company at the time. Say it's 7-1/2 percent.
16 They would have to hit 7-1/2 percent of their energy,
17 right?

18 A. Again, I believe that they could also
19 look back to things that they had done in the past.

20 Q. Okay. It would be 7-1/2 percent of those
21 years, too, wouldn't it?

22 A. No; it's a cumulative. You can look --
23 the Commission gave mercantile customers the ability
24 to look backwards, at one time, all the way back to
25 2006. Now that's increased. But they could go in

1 and identify things that they done, and basically
2 until the cumulative annual benchmarks were no longer
3 met but those reductions, my understanding is that
4 they would qualify for an exemption.

5 I'm not aware of any applications that
6 were made with regards to those exemptions, but my
7 understanding is they could qualify for the
8 exemption.

9 Q. Let me ask you something. If, in fact,
10 AK Steel now went back and looked in the past two or
11 three years and said, Okay, I did this and this and
12 this and I saved so many kilowatt-hours, and I want
13 money for it now. I want an incentive, or, I want a
14 waiver, right? Isn't it true that under the
15 Commission's rules whatever the, for instance,
16 incentive payment was, would be reduced by how much
17 they have avoided paying the higher incentive rate
18 over those three years?

19 A. Your question lost me. I'm sorry.

20 Q. I know. Let me make it simpler. Let's
21 assume that -- well, I don't have to assume. It's a
22 fact -- that AK Steel has been paying the lower
23 surcharge rate based upon distribution, lo, these
24 last three years, rather than the higher rate because
25 they haven't used any of the programs, right? Are

1 you with me?

2 A. Correct. I think I'm following you.

3 Q. And now that things have changed, if
4 you're saying AK could go back for three years and
5 come up with things they've done and haven't claimed
6 any money for -- right?

7 A. They could use those in their application
8 for an exemption, right.

9 Q. But isn't it true that under the
10 Commission rules, if they did that, then the company
11 could go back or would go back and recalculate how
12 much they paid those three years, increase the number
13 to what they would have been paying had they been
14 taking benefits and subtract from the benefits that
15 the company gets?

16 A. I believe that's correct, in order to
17 prevent gaming, so wouldn't wait until the last
18 second and then jump off and say, Oh, I did all this,
19 and I avoided paying the higher rate.

20 Q. I understand. I understand. But in any
21 event, going forward, if AK wanted to get an
22 exemption from that surcharge, they would have to
23 meet or exceed whatever Duke's goal was that year,
24 3 percent, 7-1/2 percent, 15 percent, whatever,
25 right?

1 A. They would have to make an application to
2 make that case, yes. That's my understanding.

3 Q. Or they wouldn't get it?

4 A. Again, that's not my decision. That's
5 the Public Utilities Commission of Ohio's decision.

6 Q. Just trying to understand how it works.

7 A. Again, it's their decision, not mine.

8 Q. Uh-huh. And I asked Mr. Bright this
9 earlier when he gave me the answer that -- I think I
10 asked him how you calculate what any particular
11 customer's mandate was for a year under the new
12 proposal for energy efficiency and demand reduction.

13 And Mr. Bright said he thought it was
14 whatever the percentage was that the company had to
15 meet, so that if the company had to come up with
16 7-1/2 percent or one percent savings over its kWh,
17 then each customer in order to get an exemption would
18 have to show one percent savings, right?

19 A. That's what Mr. Bright said, yes.

20 Q. But Mr. Bright couldn't identify where
21 that provision was.

22 A. I believe that's correct.

23 Q. And you?

24 A. No, I don't believe I sponsored that in
25 my testimony.

1 Q. You don't know where that requirement is?

2 A. No.

3 Q. But you did testify that there was no way
4 that the company could meet its goals, its mandates
5 unless industrials became involved, right?

6 A. Based off of our projections, we believe
7 that we need all customer classes to be
8 participating, yes.

9 Q. Wouldn't you have to know what those
10 customer classes' individual goals were in order to
11 make that claim?

12 A. No. Because if a customer's
13 participating in our programs, provided they're
14 participating in the programs, as long as they're
15 undertake paying the rider, it's assumed that they're
16 doing efficiency and at the level to get the
17 incentives that they're filing for.

18 Q. I'm sorry. I thought you said, you just
19 said, if they're paying the surcharge, it's assumed
20 that they're doing the energy efficiency.

21 A. There is no -- if a customer is
22 participating in the company's program, each
23 individual project that's undertaken under one of the
24 company's programs is done on a project-by-project
25 basis. There is no annual requirement for a customer

1 who is participating in the rider to hit a certain
2 reduction level.

3 Q. But we're talking about -- I'm sorry. I
4 was talking about the mercantile exemption, if
5 somebody doesn't want to participate in the rider.
6 Okay?

7 A. If somebody doesn't want to
8 participate --

9 Q. Right.

10 A. -- then my understanding, consistent with
11 Mr. Bright's, is they need to make an application to
12 the Commission showing what they have achieved and
13 how it stacks up versus the company's benchmark.

14 Q. What is your understanding about what
15 that company benchmark is? For an individual
16 applicant, what is your understanding about what they
17 have to achieve?

18 A. That it is consistent with what the
19 utility's percentage is.

20 Q. When you say "consistent," you mean the
21 same or greater, right?

22 A. It would be the same, yes.

23 Q. Okay. Now, I'm asking you where you got
24 that information?

25 A. It was how it's been explained to me. I

1 can't point you to a statute, and I haven't testified
2 to it.

3 Q. Who explained it to you like that?

4 A. Well, it was explained to me actually by
5 Dr. Richard Stevie, who works for the company.

6 Q. And is it your understanding that the
7 company can impose costs based upon what any of its
8 employees explain to you?

9 MS. WATTS: Objection, your Honor.

10 EXAMINER STENMAN: That will be
11 sustained.

12 A. Again --

13 EXAMINER STENMAN: There's no question.

14 Q. Let me summarize and move on. You're
15 telling me you cannot identify for me or for the
16 hearing examiner, a place in the statutes, the Green
17 Rules, the Ohio Administrative Code, a provision that
18 establishes what goals a customer must hit in order
19 to get a mercantile waiver.

20 A. Mr. Boehm, that's not the company's
21 responsibility. If Duke was responsible for that,
22 sir, I would feel like I should know that, but that
23 is on the individual customer to file an application
24 with the Commission.

25 So, no, I don't know what an individual

1 customer's mercantile exemptions requirement is on an
2 annual basis. That's what the customer can file an
3 application with the Commission for.

4 Q. And you haven't done any revenue
5 calculations making various assumptions about what
6 qualifies and what doesn't qualify?

7 A. With respect to? I'm struggling to,
8 again, understand your question.

9 Q. If, in fact, a customer gets a mercantile
10 exemption, it wouldn't be paying you the surcharge
11 will it? It won't be paying you the surcharge for
12 those years, and that would affect your revenue,
13 wouldn't it?

14 A. That's correct. And it would affect the
15 annual true-up process.

16 Q. Aren't you curious about what your
17 revenues are going to be?

18 A. That is not my job or position.

19 Q. But you're going to -- you're assuming in
20 your testimony then that the goal that an individual
21 customer has to hit in order to get a rebate or get
22 an exemption is exactly what the company has to
23 achieve in that year, right?

24 A. Again, that is my understanding.

25 Q. And this is what you got from Dr. Stevie?

1 A. When it was explained to me, yes.

2 Q. And Dr. Stevie didn't tell you where he
3 got it, right?

4 A. No; he didn't at the time.

5 Q. Let's go into banking. Okay?

6 A. Okay.

7 Q. Let's assume that a customer or the
8 company overachieves its energy efficiency goals for
9 a particular year. And, in fact, Duke has
10 overachieved its energy efficiency goals for '09 and
11 '10; is that correct?

12 A. That's correct.

13 Q. And they've overachieved by a lot.

14 A. It's a relative term.

15 Q. I'll give you some numbers. Bear with me
16 for a minute. I believe this is an attachment to the
17 Ms. Ossege's testimony.

18 A. I'm sorry, I don't have that in front of
19 me right now.

20 MR. BOEHM: Counsel, could you provide
21 this witness --

22 MS. WATTS: You know, may we go off the
23 record for a minute.

24 EXAMINER STENMAN: We may.

25 (Discussion off record.)

1 EXAMINER STENMAN: Back on the record.

2 MR. BOEHM: I'm going to avoid
3 Ms. Ossege's testimony here. I don't quite know what
4 all that means at this last moment?

5 MS. WATTS: What you have, David, is
6 correct.

7 Q. Let's instead go to OEG No. 4, page 8 of
8 OEG Exhibit No. 4.

9 A. 8, yes.

10 Q. You see a table 5, do you not?

11 A. Table 5, yes.

12 Q. And that's entitled Comparison of
13 Achieved Impacts to the 2010 Benchmark, right?

14 A. That's correct.

15 Q. All right. It's benchmarks for both
16 energy efficiency and demand reduction.

17 A. Correct.

18 Q. And the first is expressed in
19 megawatt-hours and the second in megawatts, right?

20 A. Yes.

21 Q. And also it says that the 2010
22 benchmark -- by the way, what was the incentive
23 benchmark in 2010?

24 A. I believe it was a .5 percent.

25 Q. .5, okay. What you needed to achieve was

1 109,536 megawatt-hours, right?

2 A. I believe that was the calculation, yes.

3 Q. And your achievement was 535,915; is that
4 right?

5 A. Not in 2010, no. This would be the
6 cumulative of both banked and annual achievements.

7 Q. Banked and annual achievements. Okay.
8 But using that banked and annual achievements, you
9 overcomplied by 489 percent, right.

10 A. I can't tell you if that's the percentage
11 of overachievement or not.

12 Q. Well, what we are doing is you subtract
13 109,536 from your achievement --

14 A. Right, I understand. I just can't tell
15 you if that percentage is correct or not.

16 Q. Would you take it from me, subject to
17 check, that's an overcompliance of 489 percent?

18 A. Certainly.

19 Q. Okay. And how much of that was achieved
20 through programs involving TS customers?

21 A. I can't tell you what the TS customer
22 participant achieved, whether it was 2011, 2010, or
23 2009.

24 Q. There was testimony, however, because of
25 only -- to Mr. Bright's knowledge, only one TS

1 customer participated in the energy efficiency
2 program in past years; isn't that right?

3 A. Mr. Bright said he had direct knowledge
4 of one but wasn't sure if there were more or not.

5 Q. He was sure that the five or six members
6 of our OEG group didn't participate, wasn't he?

7 A. That is correct.

8 Q. And those are the customers that you
9 testified need to participate in order for the
10 company to meet its goals, right?

11 A. Yes.

12 Q. Okay. But in 2010 it exceeded its goals
13 or achieved a compliance of 489 percent, right?

14 A. Yes, that's correct, based off of your
15 math.

16 Q. Now, that's energy efficiency. With
17 respect to the megawatt-hours, which is demand
18 reduction, it achieved 537 percent, right, again
19 subject to check?

20 A. Subject to your math.

21 Q. All right.

22 A. But, again, I'd like to remind you that
23 the 2010 number is an annual benchmark. The
24 achievement level is reflective of banked savings
25 that can go all the way back to 2006, per the

1 Commission's guidelines.

2 Q. Let me talk about that for a minute. Of
3 the 489 percent -- let's assume it wasn't 2010.
4 Let's assume it was 2012. We will get to 2012 in a
5 minute. Let's assume you overcomplied. You hit
6 489 percent in 2012, and now we are going to apply
7 the program that company filed as part of the
8 Stipulation. Okay? Not the old one, the new one.
9 Okay?

10 A. Okay.

11 Q. With respect to incentive payments to the
12 company for overcomplying, how much of that
13 489 percent do they get to count?

14 A. I would have to -- I can't tell you that
15 right now because what the company has said is that
16 it won't take credit for incentive, for any
17 achievements that were used to earn incentive under
18 the rider SAWR, which is currently in place. Meaning
19 that if the customer had to achieve certain levels
20 above the compliance target on an annual basis, if it
21 used those impacts to achieve a level of incentive,
22 that it would not count those again. And I don't
23 have that math in front of me, so I can't answer your
24 question.

25 Q. Do that one more time for me.

1 A. The company in it application clearly
2 said if any impacts were used for purposes of
3 calculating incentive under its rider SAWR that you
4 introduced earlier, that the company would not then
5 claim those same impacts towards an incentive in the
6 future because they would have already earned
7 incentive on them.

8 Under the company's SAWR mechanism, in
9 order to earn an incentive, they had to overachieve
10 by different thresholds, so I can't tell what amount
11 was used for incentive or what wasn't because that's
12 not in front of me, sir.

13 Q. Isn't it true that one of the things
14 you're telling me, Mr. Duff, is that if you carried
15 some amount over from last year, and this year that
16 kWh -- let's talk about energy efficiency -- will be
17 used first to meet the mandate for that year, and
18 only after that to calculate an incentive for
19 overachieving the mandate?

20 A. No, that's not what I said.

21 Q. Okay.

22 A. I said for purposes of determining our
23 incentive level, we will only use impacts that have
24 not been used for earning incentive under the
25 existing SAWR rider.

1 Q. You won't get incentives twice for it,
2 right?

3 A. Won't be able to count it twice, right.

4 Q. How about banking?

5 A. Banking with respect to?

6 Q. Let's assume you overachieved by
7 200 percent and you get an incentive on it, right?
8 Let's assume that number is, I don't know, 200,000
9 megawatt-hours, and you get an incentive on the
10 200,000 megawatt-hours because that was the amount by
11 which you overachieved the mandate, right?

12 A. You lost me. You had me going for a
13 while, and then you lost me.

14 Q. Okay. I'll try it again. In any
15 particular year let's assume that you have
16 overachieved your energy efficiency mandate by
17 200,000 megawatt-hours.

18 A. Okay.

19 Q. Okay. So you get to bank that, right?

20 A. It depends on what your definition of
21 banking is for. Are you talking about for the
22 purposes of determining an incentive, or are you
23 talking about for purposes of compliance with
24 Commission's mandates and benchmarks.

25 Q. Let's start with the second one. Do you

1 get to bank it to use for the next year?

2 A. You get to bank it to use in the future.

3 It doesn't have to be the next year.

4 Q. How many years in the future can you --

5 A. I believe the Commission's benchmarks go
6 out to year 2022.

7 Q. Okay.

8 A. 2025.

9 Q. I guess my question is this. If you bank
10 an amount and you use it the next year, and because
11 of the fact you used it the next year, you have
12 overachieved for that year, do you get incentives?

13 A. Not if that overachievement was ever
14 claimed for purposes of calculating an incentive in
15 the past.

16 Q. Let's try this. I don't want to get this
17 too complicated, but I think this is important.
18 Let's say you overachieved by 200,000.

19 A. Uh-huh.

20 Q. Let's assume your next year's goal is
21 200,000.

22 A. Uh-huh.

23 Q. Okay. So you overachieve by 200,000.
24 You carry it over and you bank it for the next year,
25 and in that particular year, you get another 200,000

1 of new projects, right? Okay? This is my
2 hypothetical.

3 A. You asked me if I knew.

4 Q. I'm not asking whether you know. I'm
5 asking you to accept that, and whether you understand
6 that that's a hypothetical.

7 A. Let me repeat this, since you've asked me
8 a number of different things.

9 Q. Okay.

10 A. In year, we will use 2011, to try to give
11 your hypothetical some definition, I overachieved by
12 200,000 megawatt-hours. In year 2012, the next year,
13 I achieved a total of 200,000 megawatt-hours of
14 incremental new projects.

15 Q. And in that year your mandate was
16 200,000. That's what you owed. Okay?

17 A. Okay.

18 Q. All right. How do you apply the 200,000
19 banked, can you apply it, and the 200,000 new as far
20 as meeting the goal that year and getting incentives?

21 A. Well, the 200,000 in terms of meeting the
22 compliance benchmark, it really doesn't matter what
23 year you're taking credit for from. It rolls
24 forward. It's a cumulative number, because the
25 Commission's benchmark is supposed to get -- I

1 believe it's a cumulative 22-1/2 percent by 2025, I
2 believe.

3 But essentially what your question, the
4 second part with regard to the incentive, you left
5 out a key variable in terms of me being able to
6 answer your question, so I can't answer your
7 question.

8 Q. What was that variable?

9 A. You didn't tell me what number or amount
10 of the 200,000 of overachievement was used for the
11 purposes of claiming incentive.

12 Q. That's what I'm going to ask you. Okay?

13 A. I can't answer that.

14 Q. Let me go back. Let's do this again.
15 You're carrying over 200,000 from last year. You're
16 banking it, right? First of all, let me ask you this
17 question. In your understanding, are you allowed to
18 bank it and get an incentive payment at the same
19 time?

20 A. No. If what we said -- you're talking --
21 there's two different things you're looking at.
22 One's compliance and one is incentive.

23 Q. Right. Now, in the hypothetical you've
24 overachieved by 200,000. You carry it over to the
25 next year. All right? Now, would you have gotten an

1 incentive payment on that 200,000?

2 A. If the company elected to recognize those
3 for the purposes of calculating an incentive, then
4 yes, they would have recovered an incentive on those.

5 Q. And if it got an incentive on it, would
6 it be allowed to bank it the next year?

7 A. For what purpose?

8 Q. For the purpose of complying with your
9 energy efficiency mandate.

10 A. Yes.

11 Q. So you get an incentive, and then you get
12 to count it toward your energy efficiency the next
13 year, right?

14 A. It counts towards the cumulative total,
15 correct. We are not counting it twice. It just
16 rolls forward.

17 Q. The goal in that particular year, you get
18 to count it, right?

19 A. Not necessarily, if you don't need to.
20 Under your example, you wouldn't need to count it.

21 Q. Let me go back again. You overachieve by
22 200,000 --

23 A. Correct.

24 Q. -- in year one. And according to you,
25 let's assume, you get an incentive payment on it

1 because you've overachieved, right? You're going to
2 carry that and bank it for the next year. You told
3 me you can do that. You can get an incentive payment
4 on it and bank it for next year, right?

5 A. We look at the level of achievement
6 versus the annual benchmark.

7 Q. All right.

8 A. To determine what level of incentive was
9 earned.

10 Q. Yes.

11 A. We will claim an incentive based upon a
12 recognition of a certain number of megawatt-hours.
13 That is independent of compliance with the
14 Commission's benchmarks. The only mechanism that
15 it's used for incentive is because the Commission's
16 rules strictly say that you only get an incentive for
17 exceeding the benchmarks.

18 Q. Right. I'm trying to very simply,
19 Mr. Duff, I'm trying to understand whether you can
20 get an incentive off of energy efficiency and then
21 bank it and use it to meet next year's energy
22 efficiency goal. Can you or can't you?

23 A. With respect to meeting the -- you can --
24 they're independent of each other, so I guess my
25 answer to you would be that you look at your annual

1 incentive achievement and you look at your cumulative
2 compliance with the benchmarks.

3 Q. There's a different benchmark every year,
4 isn't there?

5 A. Correct.

6 Q. Okay. Forget cumulative. All right, I'm
7 talking about what the benchmark is any particular
8 year. My question is, if you carry over stuff from
9 last year on which you got an incentive payment, are
10 you allowed to use that the following year for any
11 purpose at all?

12 A. For the purposes of determining your
13 compliance with the SB221 benchmarks, I believe the
14 answer to your question is "yes." However, I have
15 got to admit your question has really lost me.

16 Q. So now, in the next year, you use the
17 200,000 you got the incentive in to meet your
18 benchmark for that year, right?

19 A. Well, again, as I said earlier, the
20 200,000 you could say you achieved an annual basis,
21 in your example, and so you would just continue to
22 roll that bank forward because you didn't need to use
23 it.

24 Q. Would you get an incentive if you
25 overachieved the next year by virtue of counting the

1 200,000?

2 A. If you achieved -- if you earned
3 incentive on those 200,000 megawatt-hours, you would
4 not be able to earn an incentive on those 200,000
5 megawatt-hours again.

6 Q. But you can bank them to meet the
7 requirement next year, right?

8 A. For the purposes of compliance with
9 SB221, achievements are bankable, yes.

10 Q. Any new energy efficiency you got that
11 year would be an overachievement, right?

12 A. It depends on what portion of your bank
13 you wanted to use.

14 Q. Let's assume you use it all.

15 A. Mr. Boehm, you're missing the point that
16 every year those targets get more difficult to hit.
17 They ramp up, as well as --

18 Q. Oh, I'm not missing those at all?

19 A. Well, your example seems to be flawed in
20 my mind. You're trying to look at a static period,
21 and when I answer your question based off of the
22 numbers you give me, you disagree, so I'm answering
23 to the best of my ability, but your questions are
24 starting to lose me a little bit.

25 Q. Would you agree if you overachieve in any

1 particular year by 489 percent, that you're going to
2 meet the future requirements for a lot of years?

3 A. I would disagree. If you're basing your
4 statement off of the number you just quoted me, I
5 would say that your statement is false because we did
6 not overachieve in any individual year by
7 489 percent. That number includes a banked amount
8 that was carried over from the 2009 annual report,
9 which is OEG Exhibit 3.

10 Q. Right. And you can use that then to meet
11 your benchmark for that year, and any new stuff you
12 have, you can get an incentive payment on that,
13 right?

14 A. You can -- we recognize our impacts for
15 purposes -- again, I would need you to kind of
16 specify your question a little bit more, because I
17 think I've answered it a number of times. But,
18 again, we won't claim incentive on a kWh once it's
19 been used for the purposes of calculating incentive.

20 Q. But you will bank it.

21 MS. WATTS: I'm sorry, but we've been
22 back over this about 15 times.

23 MR. BOEHM: I think so, too. I agree.
24 I'll move on.

25 Q. As far as you know, is there any

1 provision in the law for a partial exemption from the
2 EE rider?

3 A. To my knowledge, no.

4 Q. With respect to the mechanisms that you
5 have been describing to me, how you use the hours and
6 things, where do I look to find those rules?

7 A. Again, I'm concerned with respect to what
8 exactly you're asking.

9 Q. Well, you've said you could bank -- you
10 could get an incentive and you could bank it, right?
11 You could bank kilowatt-hours?

12 A. We just said that we wouldn't take credit
13 for an incentive on a kWh that had already had
14 incentive earned upon it.

15 Q. Right. But you did say that if you get
16 an incentive on it, you can nevertheless bank it for
17 next year.

18 A. For purposes of compliance with
19 SB221 benchmarks, yes.

20 Q. Where does it say that?

21 A. I can't tell where it says that. That's
22 what I testified to, that we would --

23 Q. I know that. But is that in the tariff
24 someplace? Is that in the Green Rules? Where is
25 that?

1 A. Again, I can't cite a specific statute.
2 Do you have a cite that's contra to that?

3 Q. No. But I can tell you I don't think it
4 should mean that, and from what I can understand,
5 that's just as good as what you're telling me. I'm
6 trying to understand whether there's a law or rule
7 that says this or whether it's the company
8 pontificating.

9 Isn't it true, Mr. Duff, given the
10 overcompliance with the company thus far, in the
11 first year that they seek to obtain incentive
12 payments for overachieving, they will. It's
13 guaranteed they will overachieve?

14 A. We haven't factored any into our
15 projection that you see in I believe it was witness
16 Ziolkowski's testimony. I don't believe there's any
17 forecast of using any bank in that year. I believe
18 that's based off of a forecast of participation in
19 the programs.

20 Q. Do you have Mr. Ziolkowski's attachment?

21 A. No, I don't.

22 MR. BOEHM: Will counsel provide that to
23 him?

24 MS. WATTS: Yes.

25 MR. BOEHM: Thank you.

1 Q. Do you see that?

2 A. I see the numbers reflected in his
3 testimony.

4 Q. Do you see the line that says Total
5 Avoided Costs 2012?

6 A. Yes.

7 Q. And these are forecasts, by the way,
8 right?

9 A. These are based off of -- forecasted in
10 our actual portfolio of programs, as well as, I
11 believe, you will see a line called Self-Direct/Merc,
12 which would be the mercantile customers that file for
13 incentive.

14 Q. You have \$85,579,000 forecasted total
15 avoided costs, right?

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

17 Q. That would be residential and
18 nonresidential?

19 A. I believe that's correct.

20 Q. Program costs and overhead, you subtract
21 from that amount, right, 25,885,000?

22 A. Yes.

23 Q. And before we go any further, go down to
24 M&V Recovery.

25 A. Yes.

1 Q. Do you see that?

2 A. Uh-huh.

3 Q. What is M&V recovery?

4 A. I believe that's the cost of measurement
5 and verification associated with the product.

6 Q. Can you tell me why that wasn't
7 subtracted from the overhead cost?

8 A. Yes, I can. For purposes of calculating
9 shared savings, we looked at the cost-effectiveness
10 that's used to gauge the programs, and based off of
11 the Commission's definition of cost-effectiveness in
12 4901:1-1-39, the company defined cost-effectiveness
13 as including -- basically being based off the total
14 resource cost test, which excludes the M&V from the
15 calculation of costs associated with the program.

16 Q. It specifically excludes it?

17 A. The total resource cost test does, yes.

18 Q. Can you give me a reference?

19 A. I can't. I don't the total resource cost
20 test in front of me.

21 Q. Can you tell me generally why M&V,
22 measurement and verification, shouldn't be an
23 overhead cost of the program?

24 A. I can't tell why that was determined, but
25 those are the agreed-upon tests that the Commission

1 judges the cost-effectiveness of a program.

2 Q. You agree with me if we go through the
3 total resource test and we don't find any mention of
4 measure and verification costs being subtracted, they
5 oughtn't be subtracted?

6 A. They are not subtracted -- they are not
7 included in the calculation of program costs because
8 they are not part of the actual energy efficiency
9 programs costs.

10 Q. Whether or not they're included in the
11 definition of program costs and overhead, would you
12 agree that measurement and verification costs should
13 be excluded from the calculation of the avoided
14 costs?

15 A. Well, wait. You've kind of lost me,
16 because if you look at the exhibit, the total avoided
17 costs have nothing to do with M&V. That's why it's
18 calculated out as separate line item of costs.

19 Q. It's not subtracted from the total
20 avoided costs, is it?

21 A. No. It's not considered a program cost
22 in overhead.

23 Q. I guess my point is, why,
24 philosophically, shouldn't it be?

25 A. As I said, based off the definition of

1 cost-effectiveness for determining the avoided costs,
2 you exclude the M&V from that calculation.

3 EXAMINER STENMAN: Let's take our lunch
4 break now. The Commission meeting is starting. We
5 will come back at 2:30.

6 (At 1:29 p.m. a lunch recess was taken
7 until 2:30 p.m.)

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Tuesday Afternoon Session,
November 29, 2011.

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EXAMINER STENMAN: Back on the record.
CROSS-EXAMINATION (continued).

By Mr. Boehm:

Q. We're going to stay on this a little bit more, Mr. Duff. Please go to OEG Exhibit No. 4.

A. Certainly.

Q. Page 7.

A. Yes.

Q. You were talking before about this and about how much was banked of that overachievement that you had. First of all, take a look at table 5, and we talked about that.

A. Table 5, back on page 8, correct?

Q. Yes.

A. Okay.

Q. And it shows your overrecovery, and we talked about what the percentage of that overrecovery was, and you were mentioning what the bank -- how much the bank participated in that overachievement, right?

A. That's correct.

Q. Okay. Now go back to page 7.

1 A. I'm there.

2 Q. And you have Total EE Programs, right?

3 A. Yes.

4 Q. And you have the megawatt-hours, 310,755,
5 right?

6 A. Yes.

7 Q. You got that?

8 A. Yes.

9 Q. And you got the banked amount, which is
10 225?

11 A. 225,160, right.

12 Q. And you got the total impact.

13 A. Correct.

14 Q. So we can assume that anything that
15 wasn't banked was new EE achievements for that year,
16 right?

17 A. The 310,755, yes.

18 Q. And the 310,755, you would agree that
19 compared to the banked benchmark, that's an
20 overachievement of about 180 percent, right?

21 A. Correct.

22 Q. And isn't it true generally, as we go
23 through your annual energy efficiency status reports,
24 that in the forecasted years out, the company shows
25 an overachievement over their --

1 A. These are annual status reports that
2 don't show forecasts. They show annual and
3 historical results. I think you're misguided.

4 Q. Well, 2012 isn't historical.

5 A. I don't believe 2012 is in here.

6 Q. We just went through 2012 before, didn't
7 we?

8 A. No, we went through 2010.

9 Q. Let's go through Mr. Ziolkowski's Exhibit
10 JEZ-1. That shows 2012 doesn't it?

11 A. That's correct.

12 Q. And isn't it true that you forecasted
13 other years out?

14 A. Yes. We forecasted other years, but
15 they're not included in this annual report that you
16 referenced.

17 Q. Okay. Isn't it true that those other
18 forecasts also show overachievement?

19 A. They show overachievement in 2012.
20 Beyond 2012, we're actually under the annual
21 benchmark.

22 Q. 2012 you're under the annual benchmark?

23 A. No, Mr. Boehm. I said in year 2012 we
24 exceed the benchmark. In the years beyond 2012 we
25 are short of the benchmark based on current

1 projections.

2 Q. Can you show me with where that's
3 contained?

4 A. Well, I can tell you what you've got in
5 front of me, your question was 2012. In 2012 we will
6 exceed the benchmark. But based off what is in front
7 of me, I don't see the forecasts, but I'm familiar
8 with it so I can tell you in the out years, we're
9 short.

10 Q. Is that document anywhere in this case?

11 A. I'm not sure. I don't believe it is
12 because this document was simply showing the proposed
13 rider for 2012 calculation, which is why it only
14 shows 2012. You would file it the next year in
15 accordance with the true-up process.

16 Q. We already said for 2012, you've
17 overachieved by what, 486 percent?

18 A. No, Mr. Boehm. We said that through
19 2010, there was a cumulative overachievement. In
20 2012 we're forecasting a slight overachievement. I
21 believe approximately -- it's approximately
22 6 percent, I believe. It's less than -- I'm sorry.
23 It will be somewhere between, based off of this,
24 somewhere between 100 and 110 percent. It's in that
25 first bucket of achievements.

1 Q. I'm referring to Ossege Attachment
2 No. 5 of her testimony.

3 A. You have to give me a minute to get
4 there.

5 Q. Sure.

6 A. Okay.

7 Q. Doesn't Ossege Attachment No. 5 show the
8 forecasted achievements through years 2013 to 2016?

9 A. I believe it does, yes.

10 Q. All right. And with respect to, say,
11 year --

12 A. Let me caveat, though, this is only for
13 company programs. It doesn't have any reflection of
14 the potential mercantile impacts that could be
15 counted towards it, as well as any new programs that
16 could be developed along the way, just so we're all
17 on the same page.

18 Q. Right. So with respect to 2012 through
19 2016, are you telling me that the total residential
20 and nonresidential -- it's the total residential and
21 total nonresidential, isn't it? Isn't it true that
22 if we added up for 2013 on a projected basis, the
23 total residential and nonresidential projected energy
24 efficiency, that for every year you would be
25 overachieving?

1 A. No, that's not correct.

2 Q. Okay. Let's go with 2013.

3 A. I don't have -- I can tell you from
4 recollection that we are short in those years, but I
5 don't have the benchmarks in front of me and I don't
6 have a calculator to add all of these results
7 together to give you a number and compare the two.

8 Q. I do.

9 A. Okay.

10 Q. Take a look at 2013.

11 A. Yes.

12 Q. And I represent to you that if you add
13 2013 together, and I'm talking about -- I'm just
14 talking here about --

15 A. Are you talking about the column that
16 says 2013 Gross Cumulative kWh with Losses?

17 Q. Yes.

18 A. And what I'm representing to you, if you
19 add those numbers together and compare them to the
20 projected benchmark -- because I think you're not
21 factoring in the fact that the annual amount
22 increases -- you will find that it is short in 2013.

23 Q. In 2013 the mandate is .9 percent.

24 A. No, I believe it's .8 percent in 2013, if
25 I'm correct.

1 Q. I understand that's 2012.

2 A. 2012 is 8, isn't it? It goes 3, 5, 7, 8.

3 Q. 2012 is 8 and 2013 is 9.

4 A. Okay.

5 Q. And 9 is 197,165 megawatt-hours. That
6 would be the mandate, right?

7 A. I don't have the mandate to do that math.

8 Q. And I'm representing to you that if you
9 add up the columns under 2013, they come up to
10 315,506.

11 A. I can -- subject to check, I can take
12 your word for that.

13 Q. I'm representing to you that in every
14 year from 2012 to 2016 you overachieve.

15 A. Versus what benchmark?

16 Q. The mandate.

17 A. Have you calculated the annual mandate?

18 Q. Yes. The annual mandate in 2012 is
19 175,258. In 2013 it is 197,165. In 2014 it's
20 219,072, and in 2015 it's 219,072, and --

21 A. Mr. Boehm, you're calculating that --
22 it's a three-year rolling average. To do it in those
23 out years, you can't do it.

24 Q. It's a three-year rolling average of
25 what?

1 A. Is your baseline calculation. You're
2 performing a baseline calculation that can't be done,
3 so I will disagree with your numbers.

4 Q. Tell me why it can't be done.

5 A. Because it's a three-year rolling average
6 off of actual kWh sales. You might have done the
7 arithmetic correct, but the actual calculation can't
8 be done because we don't have a three-year rolling
9 average upon which to do the baseline.

10 Q. Well, let's do it this way. Let's assume
11 it's a three-year rolling average. That would make
12 these numbers lower rather than higher, wouldn't it?

13 A. Not necessarily.

14 Q. Well, if you're rolling in years that
15 lesser levels of achievement with years that have
16 higher levels of achievement, the one I gave you
17 would be based upon what the highest level of
18 achievement in the last year would be?

19 A. Mr. Boehm, you can't take those in
20 isolation.

21 Q. Why wouldn't what I just said be true?

22 A. Because you could have low growth. You
23 could have a number of different factors. You could
24 have abnormal weather. All that needs to be taken
25 into consideration. Your calculation can't be

1 performed as you talked about it in an accurate
2 manner.

3 Q. Let's put it this way. If you assume
4 that load remained the same, the same level it is
5 now, what I said would be true, wouldn't it?

6 A. I would have to check that. Based off of
7 our projections, and I vividly recall the discussions
8 with the other parties, they were very concerned that
9 after 2012 we were short. That's how I can represent
10 that to you, Mr. Boehm.

11 Q. Who were the other parties that were
12 worried about you being short?

13 A. The other signatory parties in the
14 Stipulation.

15 Q. In any event, we have this in the record,
16 and we can argue from it.

17 A. I guess I simply want to look at -- if
18 you look at 2010, we had a mandated target of
19 approximately 109,000 megawatt-hours, and that was at
20 a .5 level.

21 MS. WATTS: One second. Your Honor, I
22 would like to object to Mr. Boehm's comment that we
23 have this in the record. I don't think we have
24 anything in the record right now.

25 MR. BOEHM: I got this.

1 EXAMINER STENMAN: Nothing has been
2 admitted yet for the record. I need all the parties
3 to not talk over each other. It makes the court
4 reporter's life very difficult.

5 Q. Put that aside for a moment. We'll argue
6 that on brief.

7 Have you made any calculations to
8 determine that if the rate TS is allocated, the
9 EE-PDR rider cost, as you forecast this, will assure
10 that Duke will meet its benchmark?

11 A. I don't know how you do a calculation
12 regarding that.

13 Q. I don't know how you make the statement
14 that you can't make it without it. That's what you
15 said, isn't it?

16 A. That's why we've only forecasted out one
17 year based off of existing programs that we've asked
18 for approval. In out years we'll need to develop new
19 programs, and we said that clearly in our
20 application, Mr. Boehm; however, in 2012 we know what
21 programs will be in our portfolio, and based off of
22 our product manager's forecast, we have forecasted
23 what the participation associated impact will be
24 those programs.

25 Q. I thought you conceded that 2012, given

1 the forecast that Mr. Ziolkowski used, that you were
2 going to make that without TS?

3 A. No, I didn't concede that we will make it
4 without TS.

5 Q. So you didn't?

6 A. I didn't concede we would make it.

7 Q. So you disagree with Mr. Ziolkowski?

8 A. I don't recall Mr. Ziolkowski saying one
9 way or another we would hit our mandated benchmarks
10 with or without TS.

11 Q. JEZ Attachment No. 1, Mr. Ziolkowski, in
12 fact, calculated the overachievement, and the
13 incentive you will get in 2012 based on forecast?

14 A. Mr. Ziolkowski's calculation has no
15 specific reference to TS customers one way or
16 another. It's based on overall program
17 participation, which based off of the program
18 manager's direction, they were to factor in potential
19 participation from all customers.

20 Q. Okay. So how much does he forecast for
21 TS customers?

22 A. I can't tell you that, Mr. Boehm.

23 Q. Do you know whether any TS customers are
24 in it?

25 A. I can't tell you that.

1 Q. Do you know whether given the historic
2 participation of TS customers, it would be wise to
3 put any of them in there?

4 A. Mr. Boehm, I believe that the Commission
5 has given them an opt out policy, that if they want
6 to seek waiver and not be part of the program, then
7 they can. However, I believe if they are paying the
8 rider, as all other customers, they will be
9 incentivized to look for energy efficiency measures
10 upon which they can participate in the company's
11 programs.

12 Q. But they are incentivized to do that now
13 because energy is free for them, right?

14 A. That's not what I said.

15 Q. Why aren't they incentivized to do it now
16 when they're paying tens of millions of dollars for
17 electricity?

18 A. They are -- they are not incentivized
19 currently under the structure to take part in the
20 utilities' programs or file for the activities
21 they've actually undertaken to be counted towards the
22 state's mandate. That's the fundamental problem.

23 Q. How do you incentivize them, Mr. Duff?

24 A. We provide a cash incentive for the
25 investment in energy efficiency.

1 Q. No, you provide a cash penalty, don't
2 you?

3 A. No, sir.

4 Q. You are going to charge these guys, in
5 AK's case \$2.3 million a year to participate in the
6 program when they say they don't have anything,
7 right?

8 A. Energy efficiency programs are
9 administered on a project-by-project basis, and the
10 customer has the option of participating at their
11 choice. The incentive is tied to a particular
12 investment that the company will make. With regard
13 to their entire consumption and their bill, I can't
14 speak to that, Mr. Boehm.

15 Q. And now, Mr. Duff, let's take the example
16 that your program goes through. AK Steel's rates go
17 up about \$2.3 million, and they still don't have any
18 energy efficiency programs that qualify. What
19 happens to that \$2.3 million that they put in the
20 pot? Where does that money go?

21 A. Assuming your calculations are correct,
22 if the \$2.3 million that you're referencing would be
23 their amount of the rider, then that amount would go
24 to cover program costs and incentives that the
25 utility incurred through its energy efficiency

1 programs.

2 Q. In other words, it would go to pay other
3 people's projects, right?

4 A. Just as you could make the case that by
5 not filing for the waiver, the industrial TS
6 customers have forced other even OEG members to pay a
7 higher amount because you have had to achieve a
8 higher amount of energy efficiency because the TS
9 customers are in the baseline.

10 Q. Give that to me again? How is AK Steel
11 forced other customers to pay more money?

12 A. Because AK hasn't taken credit for the
13 energy efficiency that you've stated they've already
14 done, which I do disagree with, but what I'm going to
15 say is by essentially forcing the costs that are
16 associated with getting energy efficiency
17 achievements to other customers, they are forcing
18 those other customers to bear a higher burden of the
19 cost.

20 Q. First of all, I've never maintained that
21 AK has already done it. I said "what if." We are
22 all talking about --

23 A. I thought that was a hypothetical.

24 Q. I don't testify. And with respect to
25 residential customers, we've already established that

1 what AK does and doesn't do won't have a darn thing
2 to do with what their rates are, right?

3 A. I completely agree with you with respect
4 to the rate of the energy efficiency rider.

5 Q. So what we are talking about is
6 commercial and industrial customers.

7 A. Nonresidential customers, correct.

8 Q. And you're telling me if AK doesn't get
9 an exemption every year, that it's going to force
10 them to pay more for their --

11 A. No. What I'm telling you is that the
12 avoided cost system benefits are spread across all
13 customers. AK basically only paying based off their
14 distribution rather than the kilowatt-hours that
15 everybody else does, they're getting a
16 disproportionate amount of the benefit while not
17 paying the same proportionate amount of the cost.

18 Q. And what benefit are they getting?

19 A. What are they getting? They're getting
20 lower system costs.

21 Q. I'm sorry. Let's go through that. First
22 of all, you're going to accept my premise, aren't
23 you, that AK isn't going to take any money, right?
24 Just like they don't take any money right now. Okay?

25 A. I don't know whether I should accept that

1 or not because if, in fact --

2 Q. You think they have taken money?

3 A. I'm not saying they have taken money, but
4 I'm not going to accept your premise they won't take
5 money, because if, in fact, they are a participating
6 member of the rider and are paying the rider that
7 allocates based off the method that was proposed by
8 the company, I think they would have a financial
9 incentive to try and get as much out of the company's
10 programs and participate in the energy efficiency
11 measures discussed by Mr. Bright.

12 Q. Whether they have such measures or not?

13 A. We have a custom program, which as
14 Mr. Bright discussed, is extremely broad and pretty
15 much can cover any customer, provided it's got an
16 energy efficiency application.

17 Q. Isn't it true that Duke's entire case is
18 based on the inflexible assumption that every year AK
19 Steel has sufficient energy efficiency measures that
20 they can get an exemption?

21 A. No, that's not Duke's assumption; that
22 is, the benchmarks and the mandates were put forth by
23 the state of Ohio. It has nothing to do with the
24 company or its platform.

25 Q. So that's the State of Ohio's assumption,

1 you say.

2 A. The State of Ohio's assumption is that
3 they have put a required amount of energy efficiency
4 on the utility, and that in order for a customer to
5 not have to pay the rider and help achieve those
6 benchmark goals, the customer has the ability to file
7 an application with the Commission, and the
8 Commission can deem whether or not that customer
9 should participate in the rider or not.

10 Q. What if it doesn't have any energy
11 efficiency programs?

12 A. I think they would need to make that
13 stated in their application.

14 Q. And in your filing, would that get us off
15 the hook?

16 A. It's not my filing.

17 Q. I'm sorry, it is your filing. It is
18 Duke's filing?

19 A. But, Mr. Boehm, our filing doesn't say
20 whether a customer's exemption is granted or not.
21 Those rules were specified by the Commission, not the
22 company.

23 Q. According to your filing, if AK Steel
24 doesn't have any programs in which to claim an
25 exemption, they're going to pay anyway, right?

1 A. No, that's not what --

2 Q. They will pay that surcharge, right?

3 A. My claim is that AK should file an
4 application with the Commission to determine whether
5 they need to pay the surcharge.

6 Q. And you think they could file an
7 application and say, We don't have any. We want out?
8 Is that your reading of the law?

9 A. I think they need to -- if they show the
10 historic trends, I think that it is up to the
11 Commission to look at and determine. That's not the
12 company's determination. Again, those decisions are
13 outside of this company's application for the
14 portfolio programs.

15 Q. And AK Steel pays the money, doesn't have
16 any programs, pays the money. The money goes to pay
17 for other people's programs right? \$2.3 million a
18 year goes to other companies.

19 A. And those energy efficiency savings would
20 deliver system benefits that AK Steel would benefit
21 from.

22 Q. What benefits?

23 A. Avoided transmission, distribution, and
24 generation costs.

25 Q. Avoided in what regard?

1 A. Avoided because the system isn't having
2 to bear the costs associated with the additional
3 generation, transmission, and distribution associated
4 with the sales that don't happen because of energy
5 efficiency.

6 Q. So you think if there's energy
7 efficiency, your distribution rate is going to go
8 down?

9 A. It's included. There's a volumetric
10 component to distribution.

11 Q. Is that what you think, though?

12 A. It's not for me to specify or speculate
13 upon. That's not my expertise.

14 Q. That's the assumption, isn't it?

15 A. The assumption that is spelled out in the
16 Commission's guideline, in 4901:1-1-39 says that it
17 needs -- it's cost-effective for avoided supply
18 costs, which includes generation, transmission, and
19 distribution.

20 Q. Okay. Can you tell me after -- isn't it
21 true, Mr. Duff, under the current Stipulation filed
22 in the Duke ESP case, that Duke is going to divest
23 themselves of their generating assets in about three
24 years?

25 A. I believe that's correct.

1 Q. Can you tell me after Duke divests itself
2 of its generating assets, what possible generation
3 costs customers are avoiding?

4 A. Certainly I can.

5 Q. What?

6 A. Under the Commission statute 4928.143(B).
7 in a company's ESP application, it can ask for and
8 request a nonbypassable distribution charge to pay
9 for competitively bid generation facilities. That
10 request will then be judged by the Commission on the
11 grounds of how it fits into the company's long-term
12 resource plan. So, yes, there is the potential for
13 you to avoid future distribution/generation costs.

14 Q. You say --

15 A. Because it would be a nonbypassable
16 distribution charge, but it would cover generation
17 facility.

18 Q. Even if you don't have any generation,
19 you think your customers ought to pay avoided
20 generation costs?

21 A. Yes. I don't think the Commission has
22 ever said anything that would lead you to believe
23 that who or where the generation comes from
24 determines the savings associated with the avoided
25 costs. Currently generation costs are calculated in

1 the avoided costs associated with energy efficiency
2 that CRES customers enjoy and, therefore, they're not
3 buying -- it's not coming from Duke-owned generation.
4 Ownership of generation is independent from where the
5 benefit comes from.

6 Q. You have been quoting a lot of law to me,
7 and I've been asking questions about why
8 practically -- practically -- you ought to get
9 avoided generation costs when you don't have any
10 generation?

11 A. Because the company has --

12 MS. WATTS: Your Honor, I object. I
13 think the witness has answered the question. I think
14 we are going down the same path all over again.

15 MR. BOEHM: Your Honor, this witness a
16 little while ago couldn't tell me where he found the
17 rules that said what our proportional mandate was per
18 customer and couldn't find a whole bunch of stuff.
19 He's spouting law like crazy now, and I'm asking him
20 practical questions about why he should get an
21 avoided generation cost when he doesn't have
22 generation.

23 That's all I'm asking. I'm not asking
24 him what the rules say or the law says. I know that.
25 I want to know practically why we should pay for

1 generation instead of costs when he doesn't have any
2 generation.

3 EXAMINER STENMAN: The objection is
4 overruled.

5 But he may answer the question if he
6 knows. You can't badger him into answering questions
7 he doesn't know the answers to or answer them in the
8 way that you would like him to.

9 Q. Please don't give me citations Mr. Duff.
10 Just explain to me in English why it is that you
11 should get generation incentives based on generation
12 that you don't even own?

13 A. Certainly. Because while that might
14 pertain to generation that you're talking about being
15 divested over the next three years, the company in
16 its long-term forecast can propose and get approval
17 to build a new generation facility based off of its
18 long-term resource needs. Therefore, energy
19 efficiency is included in that long-term forecast.
20 So the amount of energy efficiency that is achieved
21 can avoid the need for the building of that new
22 generation plant.

23 Q. So you're saying the reason we got to pay
24 generation costs is even though you won't have any
25 generation, maybe sometime in the future, using Ohio

1 law, you'll build generating assets? Is that it?

2 A. I guess, I think I lost your question. I
3 told you that essentially energy efficiency will
4 hopefully allow for that generating plant not
5 necessarily to have to be built. But at the end of
6 day, the customers are paying generation-related
7 charges, and the Commission has clearly stated, as I
8 mentioned earlier, that who owns the generation is
9 not relevant to determining what the avoided cost
10 benefits associated with generation are. Otherwise,
11 CRES providers, you wouldn't factor in the avoided
12 generation costs to a CRES-provided customer in the
13 energy efficiency, which is currently done today.

14 Q. Where?

15 A. Across every utility in the state.

16 Q. CRES providers are getting avoided
17 generation costs?

18 A. No, CRES providers are not. When the
19 company calculates its cost-effectiveness with the
20 TRC tests, it looks at avoided costs. The avoided
21 costs, as defined by the TRC tests include energy
22 efficiency -- or include the generation,
23 transmission, and distribution benefits of energy
24 efficiency.

25 So regardless of if the customer is

1 served by a CRES provider, which would mean the
2 company doesn't own the generation, or if they are
3 served by Duke Energy Ohio, they're still getting
4 what are perceived as generation benefits or avoided
5 costs from the energy efficiency measure.

6 Q. Well, I think we've been through this
7 enough. Isn't it true that some of the incentives
8 that the company wants are for not building
9 distribution lines?

10 A. The company has asked for an incentive
11 that is based on the sharing of the total avoided
12 costs associated with the energy efficiency measures,
13 so yes, there is a distribution component.

14 Q. In your last rate case you got paid
15 because you built transmission lines, right?

16 A. I can't speak to that. I'm not familiar
17 with it.

18 Q. Well, isn't it true that now you're
19 getting -- you've gotten in the last distribution
20 rate case, or will get, the cost of building
21 distribution lines, and in this case you want the
22 cost of not building distribution lines, right?

23 A. Again, I can't speculate --

24 MS. WATTS: I object to that question.
25 I'm not sure I even understood that one.

1 MR. BOEHM: It's simple enough, your
2 Honor.

3 EXAMINER STENMAN: Could you rephrase
4 your question? I didn't follow it either.

5 MR. BOEHM: I'm questioning the witness
6 about the fact that in the last distribution rate
7 case, they're asking this Commission to give them a
8 rate of return on distribution assets that they had
9 constructed. That's how they get a return on their
10 distribution assets.

11 In this case, what the company is asking
12 for is the cost of avoiding building distribution
13 lines. So what they're getting here, or hope to get,
14 one at the same time, is the cost of building
15 distribution lines and the cost of not building
16 distribution lines.

17 Q. (By Mr. Boehm) That's my question.

18 A. I struggle with your question because,
19 really, it doesn't make sense. We're asking for --
20 as the Commission has determined, energy efficiency
21 measures are determined cost-effective. There is a
22 methodology to determine the avoided supply costs.
23 That includes transmission, generation, and, to your
24 point, distribution. We have asked --

25 Q. How does that --

1 EXAMINER STENMAN: We can't speak over
2 each other.

3 MR. BOEHM: I'm sorry. You're right.

4 Q. Go ahead.

5 A. We have asked as an incentive for
6 overcompliance with the benchmark to share a small
7 percentage of those avoided costs.

8 Q. What costs? What does "avoided" mean?
9 What are you avoiding?

10 A. You're avoiding O&M and capital
11 expenditures.

12 Q. You're avoiding building distribution
13 lines, aren't you? Isn't that the capital
14 expenditure you're talking about?

15 A. Potentially repairing them from excess
16 wear.

17 Q. And also building them, right?

18 A. Potentially.

19 Q. Okay. And in your last distribution
20 case, you got paid because you did build them, right?

21 A. You know, Mr. Boehm, I think you're
22 missing the concept of avoided costs.

23 Q. I don't think so.

24 A. You're essentially saying that you would
25 have an avoided cost of something that you're not

1 having to incur, not trying to look back at what
2 you've already incurred.

3 Q. You're going both ways. In the
4 distribution case, you are looking at what you
5 already incurred and you are getting a return on it.
6 In this case, you're saying because we won't have to
7 incur it, therefore, we want a return on that as
8 well.

9 A. No, that's not what -- your question is
10 that way, but my answer is simple. Avoided costs are
11 forward looking, not backward looking.

12 MR. BOEHM: I think that's all we have,
13 your Honor. Thank you.

14 Thank you, Mr. Duff.

15 EXAMINER STENMAN: Mr. Parram?

16 MR. PARRAM: No questions.

17 EXAMINER STENMAN: Redirect.

18 MS. SPILLER: No redirect.

19 MS. WATTS: Your Honor, would it now be
20 an appropriate time to move exhibits into evidence?

21 EXAMINER STENMAN: Do you have any more
22 witnesses?

23 MS. WATTS: We do not.

24 MR. SMALL: Just for clarification, we
25 have no Exhibit 6; is that right?

1 MS. SPILLER: It's coming, Jeff.

2 MS. WATTS: But thanks for keeping track.

3 MR. SMALL: I'm just hoping my notes are
4 up to snuff.

5 MS. WATTS: Before we move the balance of
6 them into evidence, I'd like to have marked as Duke
7 Energy Ohio No. 6, the direct testimony of Casey
8 Mather.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. BOEHM: We have no objection, your
11 Honor.

12 MS. WATTS: Your Honor, that was filed in
13 the docket. Would you like a copy of it?

14 EXAMINER STENMAN: No.

15 MS. WATTS: With the help of Mr. Small,
16 perhaps I'll be able to get this right.

17 We would move for the admission of Duke
18 Energy Ohio Exhibit 1, which should be the
19 application.

20 EXAMINER STENMAN: Any objection?

21 MR. BOEHM: No objection.

22 EXAMINER STENMAN: Exhibit 1 is admitted.

23 MS. WATTS: Duke Energy Ohio Exhibit 2,
24 the direct testimony of Mr. Bright.

25 EXAMINER STENMAN: Objections?

1 MR. BOEHM: No objection.

2 EXAMINER STENMAN: Exhibit 2 be admitted.

3 MS. WATTS: Duke Energy Ohio Exhibit 3,
4 the testimony of Ashlie Ossege.

5 EXAMINER STENMAN: Objections?

6 MR. BOEHM: No objection.

7 EXAMINER STENMAN: Exhibit 3 will be
8 admitted.

9 MS. WATTS: Duke Energy Ohio Exhibit 4,
10 the direct testimony of James E. Ziolkowski.

11 EXAMINER STENMAN: Objections?

12 MR. BOEHM: No objection.

13 EXAMINER STENMAN: It will admitted.

14 MS. WATTS: Duke Energy Exhibit 5, the
15 direct testimony of Timothy Duff.

16 EXAMINER STENMAN: Objections?

17 MR. BOEHM: No objection.

18 EXAMINER STENMAN: It will be admitted.

19 MS. WATTS: Duke Energy Ohio Exhibit 6,
20 the direct testimony of Casey Mather.

21 EXAMINER STENMAN: Objections?

22 MR. BOEHM: No objection.

23 EXAMINER STENMAN: It will be admitted.

24 MS. WATTS: Duke Energy Ohio Exhibit 7,
25 the supplemental testimony of Timothy J. Duff.

1 EXAMINER STENMAN: Objections?

2 MR. BOEHM: No objection.

3 EXAMINER STENMAN: It will be admitted.

4 MS. WATTS: And Duke Energy Ohio Exhibit
5 8, the supplemental testimony of James E. Ziolkowski.

6 MR. BOEHM: No objection.

7 EXAMINER STENMAN: It will be admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 EXAMINER STENMAN: I believe it is just
10 the reply comments you have as well.

11 MR. SMALL: If I may, there are a number
12 of pleadings by each party. I don't think they are
13 ordinarily the subject of a motion. If they would
14 be, it would be all the parties, not just Duke. I
15 guess I'm a little bit confused by your addressing
16 the reply comments of only Duke.

17 EXAMINER STENMAN: Only because it is the
18 Bench's preference to have all of the comments marked
19 and moved into evidence.

20 MR. SMALL: So all the pleadings of all
21 the parties should be marked?

22 EXAMINER PIRIK: All the comments and the
23 reply comments are marked as exhibits and moved into
24 evidence. That is our routine. And the only
25 pleadings that Duke has filed is reply comments.

1 They did not file initial comments, so that's why
2 Ms. Watts is the first approach.

3 MS. WATTS: All right. One moment, your
4 Honor.

5 EXAMINER PIRIK: It's not necessary you
6 have copies, just that you note the date. And to the
7 extent they expired because of the Stipulation or
8 whatnot, it's just a history of the case, as is the
9 Stipulation and the initial testimony.

10 MS. WATTS: Thank you, your Honor. We
11 move as Duke Energy Ohio Exhibit 9, the Reply
12 Comments of Duke Energy Ohio filed with the
13 Commission on October 5, 2011.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 EXAMINER STENMAN: Any objections?

16 MR. BOEHM: I'm sorry, what was the last
17 one again?

18 MS. WATTS: The Reply Comments of Duke
19 Energy Ohio.

20 MR. BOEHM: Oh, okay. No objection.

21 EXAMINER STENMAN: Exhibit 9 will be
22 admitted.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 MS. WATTS: Your Honor, I believe we have
25 marked as Joint Exhibit 1 the Stipulation and

1 Recommendation marked in the case.

2 MR. PARRAM: I just want to clarify that
3 was all the parties' comments, including staff's
4 comments?

5 EXAMINER STENMAN: You need to mark your
6 comments, yes.

7 MS. WATTS: I would move for the
8 admission of Joint Exhibit 1.

9 EXAMINER STENMAN: Any objection?

10 MR. BOEHM: No objection.

11 EXAMINER STENMAN: It will be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 MR. SMALL: Your Honors, if I understand
14 the Bench's desire in this area, OCC Comments, which
15 are referenced in the Stipulation, Joint Exhibit 1,
16 by background is information that the Commission
17 might find useful in making its final determination.
18 So I move -- I'll make it an OCEA exhibit because it
19 was jointly filed. The comments of the OCEA parties,
20 I move for its admission, and mark it, if you please,
21 as OCEA Exhibit 1.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 EXAMINER STENMAN: Those are the comments
24 filed on September 21?

25 MR. SMALL: Yes.

1 MR. BOEHM: Your Honor, may I ask a
2 question on this? As I contemplate this thing, I'm
3 concerned that comments filed by parties in this
4 case, which were not subject to cross-examination and
5 not put to any other degree of proof, may be used as
6 evidence in this case.

7 I have no objection if they are admitted
8 to the case to show the positions the parties have,
9 but I am concerned that the comments might be used in
10 some evidentiary way to support a particular
11 position. Again, I haven't been able to
12 cross-examine, for instance, the environmental
13 parties because they haven't put any witnesses on.

14 So if I could have an understanding that
15 they're going to be admitted merely to show what sort
16 of position somebody takes, rather than the
17 evidentiary basis for some outcome, I'm okay.

18 EXAMINER PIRIK: I do understand, and we
19 understand your point of view. It is, and always has
20 been, our process in these cases to take the comments
21 in as exhibits in whatever case we are dealing with.
22 So we will bring those comments in.

23 They are being brought in as a point of
24 history with the processing of this case and the
25 issues that were brought out prior to the Stipulation

1 and will be part of, at least part, of the order in
2 this case and an understanding of what the parties'
3 positions were.

4 MR. BOEHM: Okay.

5 EXAMINER PIRIK: Down the road if there's
6 an objection that you have, you can make an objection
7 at that time.

8 MR. BOEHM: I think you understand my
9 point.

10 EXAMINER PIRIK: Yes, and it's noted for
11 the record.

12 MR. BOEHM: Okay. Thank you.

13 EXAMINER PIRIK: But I think the easiest
14 way to go through this would be for me -- I think
15 OPAE is no longer in the room -- to go through the
16 comments and the dates of filing, and we will just
17 mark them as I go through, as opposed to have
18 everybody.

19 MR. PARRAM: I think that probably would
20 be best.

21 EXAMINER PIRIK: So we have marked as
22 OCC -- is that what you meant, Mr. Small?

23 MR. SMALL: OCEA, all in caps.

24 EXAMINER PIRIK: I just saw the court
25 reporter look at me and wonder what you were saying.

1 MR. BOEHM: What does that stand for?

2 EXAMINER PIRIK: Yes, could you state
3 what that stands for.

4 MR. SMALL: Ohio Consumer and
5 Environmental Advocates. It's just a name for a
6 jointly filed pleading.

7 MR. BOEHM: Might I ask, so this is the
8 OCC and what other organizations?

9 EXAMINER PIRIK: They were the comments
10 filed on September 21, 2011.

11 MR. BOEHM: I can go back and look at the
12 components.

13 EXAMINER PIRIK: Mr. Small, my other
14 question is that on October 5, 2011, there was a
15 filing made by Mr. Allwien of the Natural Resources
16 Defense Council. That is what it was dubbed. And
17 the title of it was "Attachments 1 and 2 that were
18 inadvertently omitted from comments filed on
19 September 21, 2011."

20 I'm thinking that those are attachments
21 attached to the document that we just marked as OCEA
22 Exhibit 1.

23 MR. SMALL: I can't say at this moment,
24 your Honor. Mr. Allwien, of course, was an attorney
25 for OCC at one time.

1 EXAMINER PIRIK: He was the gentleman who
2 filed the comments on behalf of OCEA on September 21,
3 which is why I'm assuming those are the attachments.

4 MR. SMALL: Yes. Yes, I believe that's
5 correct. You're refreshing my memory.

6 EXAMINER PIRIK: Okay. How about if we
7 mark those as OCEA Exhibit 2.

8 MR. SMALL: That's fine.

9 EXAMINER PIRIK: Those would be reply
10 comments or the Attachments 1 and 2 that were omitted
11 that were filed on October 5, 2011.

12 MR. SMALL: That would be fine. Thank
13 you, your Honor. It does refresh my memory.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 EXAMINER PIRIK: Thank you. I believe
16 there are reply comments that were filed on
17 October 5 also, and we will mark those OCEA
18 Exhibit 3.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 EXAMINER PIRIK: Then we have initial
21 comments filed on behalf of OP&E. Ms. Mooney is not
22 here to actually move those, but we will mark that as
23 OP&E Exhibit 1 because we need to have those in the
24 record along with the rest of them.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 EXAMINER PIRIK: Likewise we have
2 comments on behalf of People Working Cooperatively
3 that were filed on September 21. We will mark those
4 as People Working Cooperatively, PWC Exhibit 1.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 EXAMINER PIRIK: We have staff comments
7 that were filed on September 21.

8 MR. PARRAM: I believe the staff has
9 comments and the amended staff comments.

10 EXAMINER PIRIK: Right now we are dealing
11 with the staff comments filed on September 21. We
12 will mark those as Staff Exhibit 1.

13 Amended staff comments then that were
14 filed on September 21 will be Staff 2.

15 MR. PARRAM: That's fine.

16 (EXHIBITS MARKED FOR IDENTIFICATION.)

17 EXAMINER PIRIK: We already marked the
18 reply comments filed by Duke.

19 We have reply comments filed on behalf of
20 OEG, filed on October 5. We will mark those, I
21 believe, as OEG 5.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 EXAMINER PIRIK: We have the reply
24 comments filed on behalf of Ohio Partners for
25 Affordable Energy. We will mark that as OPAE

1 Exhibit 2.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 EXAMINER PIRIK: I believe that's all
4 that we have. For purposes of dealing with the
5 comments and the reply comments that we just marked
6 as exhibits, understanding Mr. Boehm has some -- the
7 comment that he made on the record as far as the
8 usage of those comments and reply comments, are there
9 any objections to the comments and reply comments
10 being entered into the record as those exhibit
11 numbers?

12 Hearing none, we shall admit them into
13 the record.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 MR. BOEHM: Your Honor, it may be
16 efficient if I would now move the admission of my
17 exhibits, and then Mr. Baron would be the next
18 witness up, and I can at the same time introduce his
19 testimony as an additional exhibit of OEG, if the
20 company is finished with its case.

21 MS. WATTS: Yes, the company is finished
22 with its case.

23 MR. BOEHM: Thank you, your Honor. I
24 would then like to introduce OEG Exhibit No. 1, which
25 is Rider DR-SAWR Energy Efficiency Recovery Rate, the

1 PUCO Electric No. 19, sheet No. 106.1 of the Duke
2 tariffs.

3 OEG No. 2 --

4 EXAMINER STENMAN: Let's go one at a
5 time.

6 Any objections?

7 MR. BOEHM: I move its admission.

8 MS. WATTS: Your Honor, I do have an
9 objection to this. I do recognize that the
10 Commission probably can take administrative notice of
11 this, but I don't think that Mr. Boehm provided any
12 foundation for this exhibit, and getting it in with
13 somebody else's witness just seems improper to me
14 when the witness doesn't have any understanding of
15 the document.

16 MR. BOEHM: Your Honor, am I to believe
17 that Duke is objecting to the admission of their own
18 tariff sheet? They're the ones that put this -- this
19 is part of your tariff.

20 MS. WATTS: The fact that it's our tariff
21 doesn't necessarily mean that it should be admitted
22 in this case.

23 MR. BOEHM: I'm sorry. I introduced it
24 to show what the current rates were of the company,
25 and I can't believe that the company is objecting to

1 its own tariff. That's what I used it for. I went
2 to the witness and said, How are things calculated
3 now? Isn't this your tariff sheet?

4 I don't even think I need it as an
5 exhibit. I think your Honor decided it would be more
6 convenient that way, but I think it is subject to
7 administrative notice. It's been approved by the
8 Commission and it's a Commission's document. Also,
9 Mr. Duff talks about it on page 3 of his testimony.

10 EXAMINER STENMAN: Anything else?

11 OEG Exhibit 1 will be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 MR. BOEHM: Thank you. I believe OEG
14 Exhibit 2 is the order of this Commission in Case No.
15 10-834-EL-EEC. It's the entry of September 15, 2010.
16 That would be, as I say, OEG Exhibit No. 2, and I
17 move for its admission.

18 EXAMINER STENMAN: Any objections?

19 MS. WATTS: No objection.

20 EXAMINER STENMAN: OEG Exhibit 2 will be
21 admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 MR. BOEHM: Thank you. OEG
24 Exhibit No. 3 is the First Annual Energy Efficiency
25 Status Report of Duke Energy Ohio, Inc. in Case

1 No. 10-317-EL-EEC. I would move for its admission.

2 EXAMINER STENMAN: Any objection?

3 MR. SMALL: Objections from the OCC, your
4 Honor.

5 EXAMINER STENMAN: They would be?

6 MR. SMALL: My notes are that OEG
7 Exhibit 3 was not the subject of any
8 cross-examination. It was simply marked, and at one
9 point there may have been a question of whether a
10 witness knew something about it. There was no
11 connection with a witness. No witness was
12 cross-examined or any substantive questions asked of
13 them concerning this exhibit.

14 EXAMINER STENMAN: Mr. Boehm.

15 MR. BOEHM: Yes. Your Honor, I think I
16 did ask some questions about this exhibit. It has
17 some data involved in it that constitute the first
18 year's estimation and calculation of what the energy
19 efficiency measures were that the company took and
20 whether they were achieved or not achieved.

21 I don't think that it necessarily
22 requires any witness to authenticate it. It's the
23 company's documents. They filed it in this case, and
24 I think I have every right to have it in evidence and
25 use it against them, if I can.

1 EXAMINER STENMAN: OEG Exhibit 3 will be
2 admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 MR. BOEHM: Thank you, your Honor.

5 In the same way, your Honor, I would like
6 to move for the admission of OEG Exhibit 4, which was
7 the Annual Energy Efficiency Status Report of Duke
8 Energy Ohio, Case No. 11-1311-EL-EEO. I move for its
9 admission.

10 EXAMINER STENMAN: I believe that case
11 number is actually "-EEC."

12 MR. BOEHM: I'm sorry.

13 EXAMINER STENMAN: Any objections to the
14 admission of OEG 4?

15 MS. WATTS: No objection.

16 MR. BOEHM: OEG Exhibit No. 5.

17 EXAMINER STENMAN: One moment, OEG
18 Exhibit 4 will be admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 MR. BOEHM: Thank you. OEG Exhibit 5 I
21 think the Bench already took that up as the comments
22 of OEG, and I think that's already been admitted.

23 EXAMINER STENMAN: Yes.

24 MR. BOEHM: And OEG No. 6 we would
25 propose to have as the prefiled testimony of

1 Mr. Steve Baron, who we call as a witness, and I
 2 think we will defer moving its admission until his
 3 cross-examination.

4 EXAMINER STENMAN: Okay.

5 Mr. Baron.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 - - -

8 STEPHEN J. BARON,
 9 being first duly sworn, as prescribed by law, was
 10 examined and testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Boehm:

13 Q. Mr. Baron, would you state your name and
 14 spell the last name for the court reporter, please?

15 A. Stephen J. Baron. The last name is
 16 B-A-R-O-N.

17 Q. And, Mr. Baron, by whom are you employed?

18 A. J. Kennedy and Associates, Incorporated.

19 Q. And I call your attention to what has
 20 been marked for identification as Ohio Energy Group
 21 No. 6. Is that your direct testimony filed in this
 22 case?

23 A. Yes.

24 Q. Was that prepared by you or under your
 25 supervision?

1 A. Yes.

2 Q. And do you have any changes to that
3 testimony?

4 A. No.

5 Q. Any corrections?

6 A. No.

7 Q. And are the statements made therein true
8 and correct to the best of your knowledge,
9 information and belief?

10 A. Yes.

11 Q. If I were to ask you these same questions
12 today, would your answers be the same?

13 A. Yes.

14 MR. BOEHM: I submit the witness for
15 cross-examination, your Honor.

16 EXAMINER STENMAN: Thank you.

17 Duke.

18 MS. SPILLER: Your Honor, if I may, to
19 follow on Mr. Boehm's statement that he was going to
20 move for the admission of Mr. Baron's testimony, at
21 this point in time, connected with cross-examination,
22 I do have a motion to strike portions of his
23 testimony.

24 EXAMINER STENMAN: Okay.

25 MS. SPILLER: If I may make that now,

1 specifically, your Honor, page 9, the question
2 beginning on line 4, carrying through the balance of
3 that page, all of page 10 and all of page 11.

4 On these pages Mr. Baron devotes his
5 testimony solely to the laws in other states, for
6 example, Virginia and Arkansas, and what those state
7 legislatures may have allowed in the form of opt out
8 from energy efficiency programs.

9 Those issues are completely irrelevant to
10 the issues before this Commission. In fact, I would
11 note that Mr. Baron's testimony on the identified
12 pages is really a policy argument, a policy that the
13 OEG appears to be making that industrial customers
14 should be granted rather wide latitude with respect
15 to opting out of the energy efficiency mechanisms.

16 The policy of this state should be
17 determined by our legislature and not a witness who
18 may be reciting the laws in other states wholly
19 inapplicable to Duke Energy Ohio and its mercantile
20 customers. So I would ask that the Bench strike
21 those portions of the testimony as irrelevant.

22 MR. BOEHM: May I address?

23 EXAMINER STENMAN: Yes.

24 MR. BOEHM: Make sure that I'm getting
25 the portions that are subject to this motion. This

1 is page 9, line 4, through page what?

2 MS. SPILLER: Through page 11.

3 MR. BOEHM: Through page 11 .

4 MS. SPILLER: Line 22 on page 11.

5 MR. BOEHM: Your Honor, Mr. Baron has
6 done in his testimony, as he said, here's what the
7 laws in other states are. They allow for an opt out
8 of TS customers from energy efficiency.

9 He brings them up not because he's urging
10 the legislature of the state of Ohio to do likewise,
11 not because he's urging the PUCO to do likewise, but
12 because he is pointing to these as evidence of the
13 fact that other states have recognized that TS
14 customers are not really suitable beneficiaries of
15 this sort of law.

16 If you give me a minute, I will give you
17 the part of his testimony where he says that. On
18 page 10 the question is asked, "Why are the practices
19 of other states relevant to your proposed allocation
20 methodology...?" Not to the exemption but, his
21 proposed allocation methodology, which as you know
22 from reading his testimony is to allocate on
23 distribution system, not to give an exemption like
24 other states do, but to allocate it on distribution.

25 He says, "Although, unlike the states I

1 have mentioned, Ohio law does not appear to provide
2 unconditional waivers," et cetera, "it is important
3 for this Commission to understand that other states
4 recognize the unique position of large industrial
5 customers in regard to EE PDR measures and costs."

6 Other states recognize, essentially, that
7 you can get to an exhaustion point about EE-PDR. I
8 think this is relevant. I don't think the witness is
9 arguing for a change of law. He's not arguing for an
10 exemption from law. He's saying that the logic
11 behind his recommendation of the distribution-only
12 allocation, that logic has been recognized in other
13 states.

14 MS. SPILLER: Your Honor, if I may
15 briefly, the testimony to which Mr. Boehm just cited
16 is not intended for that specific purpose.
17 Mr. Baron, in his testimony, focuses on exemptions,
18 an exemption specific to large industrial customers.

19 He does not detail in his testimony on
20 the identified pages how these other states may apply
21 rate allocation as to nonresidential customers. He
22 is simply talking about how other states treat the
23 opt out for industrial mercantile customers.

24 I would further add that this case is
25 not one in which OEG members, particularly AK Steel,

1 who has been identified throughout the proceeding
2 today, is seeking an opt out. So, again, I would
3 base the objection on relevance.

4 MR. BOEHM: Your Honor, admittedly we are
5 not asking for an opt out. We are asking for an
6 allocation based on distribution rates. But the
7 logic behind the laws of these other states is that
8 there's a point at which -- the exhaustion point that
9 Mr. Baron testifies that can be reached with TS
10 customers.

11 That's all we want it for. We are not
12 arguing that the law should be changed. We are not
13 arguing that the Commission should grant us an
14 exemption. We are arguing that we should get an
15 allocation based on a distribution rate which would
16 put a smaller amount of costs on us.

17 EXAMINER STENMAN: Thank you.

18 The motion to strike will be denied.

19 MS. SPILLER: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Spiller:

23 Q. Mr. Baron, in preparing your direct
24 testimony, sir, you did not rely upon any studies,
25 reports, or analyses that detail the self-funded

1 measures taken by Duke Energy Ohio's large industrial
2 customers to maximize their energy efficiency,
3 correct?

4 A. Yes, that's correct. I didn't prepare
5 any independent analyses, nor did I rely on any
6 specific study that might have been prepared by
7 somebody else.

8 Q. And, in fact, sir, you do not know
9 whether any of Duke Energy Ohio's large industrial
10 customers have undertaken self-funded measures to
11 maximize their energy efficiency, correct?

12 A. I'm not familiar one way or the other. I
13 haven't studied any filings, cases where a
14 self-directed program might have been presented to
15 the Commission, for example, so I haven't reviewed
16 any.

17 Q. And in preparing your direct testimony,
18 sir, you did not rely upon any studies, reports, or
19 analyses that detail the self-funded measures taken
20 by Duke Energy Ohio's large industrial customers to
21 minimize their energy costs, correct?

22 A. That's correct. I think that my answer
23 would be the same. And you're talking -- I assume,
24 to make sure, you're speaking of specific programs
25 that are part of Duke's overall energy efficiency

1 program wherein a customer would participate via a
2 self-directed program. That's what you're referring
3 to there?

4 Q. Well, sir, what does a self-funded
5 measure mean to you?

6 A. Well, a self-funded measure could be
7 basically any project that a customer would have
8 undertaken on its own, completely independent of Duke
9 Energy or any other party. I haven't reviewed
10 specific -- those types of specific projects.

11 I am aware that large industrial
12 customers are very sensitive to those types of
13 individual projects that they might undertake
14 regarding their particular production processes.
15 Obviously, those are the kinds of things they don't
16 want to become public to the extent their competitors
17 would obtain information about what that customer's
18 costs are.

19 I know in many industries, especially
20 very electric-intensive industries, customers are
21 extremely sensitive about their particular production
22 process, innovations that they might have undertaken,
23 which would include energy efficiency. But I haven't
24 investigated any of those as part of my testimony.

25 Q. And, so, sir, you don't know whether any

1 of Duke Energy Ohio's large industrial customers have
2 undertaken self-funded measures to minimize their
3 energy costs, correct?

4 A. I haven't done a survey of that, that's
5 correct.

6 Q. And you don't know whether any of OEG's
7 members have undertaken any self-funded measures to
8 maximize their energy efficiency or minimize their
9 energy costs, correct?

10 A. Again, I haven't surveyed. Based on my
11 experience representing large manufacturing customers
12 for the last 30 years, and particularly the last five
13 years, I am aware that customers undertake projects
14 such that would involve large improvements in energy
15 efficiency all the time. One of my clients currently
16 is a steel company in Colorado --

17 MS. SPILLER: Your Honor, if I may move
18 to strike the answer from "based upon my experience"
19 on. The question was simply a yes or no type
20 question as to whether Mr. Baron knew whether any OEG
21 member has undertaken specific measures.

22 A. I believe I answered that.

23 Q. Correct. Thank you.

24 EXAMINER STENMAN: The motion to strike
25 will be denied.

1 MR. BOEHM: Excuse me. Are we waiting on
2 a ruling?

3 EXAMINER STENMAN: The motion to strike
4 will be denied.

5 Q. Mr. Baron, do you know whether AK Steel
6 has any intention of duplicating in their other
7 facilities the energy savings work they have done at
8 the Coshocton facility?

9 A. I do not.

10 Q. You don't know, sir, whether any OEG
11 member has exhausted all possible cost-effective
12 energy efficiency projects, such that it would be
13 meaningless for them to participate in Duke Energy
14 Ohio's energy efficiency/peak demand reduction
15 programs, correct?

16 A. That's correct. I haven't done any
17 analysis of any individual OEG member's processes or
18 their planning relating to those processes with
19 respect to energy efficiency investments or any other
20 type of investments. That simply wasn't part of my
21 role in this case.

22 Q. And the same, sir, could be said with
23 respect to all of the nonresidential customers in
24 Duke Energy Ohio's territory, you do not know whether
25 such customers have exhausted all possible

1 cost-effective energy efficiency projects such that
2 it would be meaningless for them to participate in
3 Duke Energy Ohio's energy efficiency and peak demand
4 reduction programs, correct?

5 A. Your question was all nonresidential
6 customers?

7 Q. Correct.

8 A. Thousands of them?

9 Q. Right.

10 A. I don't know. I'd be guessing. It would
11 be impossible for anyone to know the answer to that
12 question. But I definitely haven't done that.

13 Q. So the opinions, sir, that are set forth
14 in your direct testimony are not based on any facts
15 specific to Duke Energy Ohio's nonresidential
16 customers, correct?

17 MR. BOEHM: Excuse me, your Honor. I
18 would object unless we have some reference point to a
19 particular opinion. Counsel mentions the opinions in
20 his testimony. He has a lot of opinions in his
21 testimony. I'd like a reference as to what opinion
22 you're talking about.

23 MS. SPILLER: I'm happy to rephrase.

24 Q. Your opinion, sir, regarding the rate
25 allocation that you propose on behalf of OEG is not

1 based upon any facts specific to Duke Energy Ohio's
2 nonresidential customers, correct?

3 A. I don't think I would agree with that.
4 It is based on my understanding of large
5 manufacturing customers of the type that are members
6 of OEG who take service on TS and the types of
7 investments that they would typically make.

8 And I haven't done it specifically for a
9 member of OEG on Duke Energy, but my knowledge of
10 industrial customers and the competitiveness that
11 those customers face with respect to energy costs, to
12 the extent that energy costs are a large cost of
13 production, those customers, it's self-evident that
14 large manufacturing customers that use -- that are
15 electric intensive would focus on cost savings
16 associated with their production inputs, electricity
17 being one of them. It's a self-evident question

18 Q. Mr. Baron, to the best of your knowledge,
19 sir, you have not offered any testimony in Ohio on
20 behalf of OEG related to the energy efficiency and
21 peak demand resource requirement as included in
22 Senate Bill 221, correct?

23 A. That's correct.

24 Q. But, sir, you have testified in Ohio on
25 behalf of OEG in several Standard Service Offer cases

1 over the last several years, correct?

2 A. Yes.

3 Q. And as a result of that, sir, you are
4 aware of the MRO provision codified in Revised Code
5 4928.142, correct?

6 A. Certainly at one time I was very aware of
7 it, less so now, but I've certainly read it many
8 times.

9 Q. And, Mr. Baron, the MRO provisions don't
10 allow an electric distribution utility to alter its
11 energy efficiency or peak demand resource requirement
12 simply because that EDU procures supply through a
13 competitive bidding process, correct?

14 A. I believe that's correct.

15 Q. And, Mr. Baron, through your testimony in
16 SSO cases, you are also aware of the ESP provisions
17 codified in Revised Code Section 4928.143, correct?

18 A. Yes. With the caveats that I gave you
19 with regard to the MRO provisions.

20 Q. And, sir, the ESP provisions do not allow
21 an electric distribution utility to alter its energy
22 efficiency or peak demand reduction requirements
23 because the EDU procures supply through a competitive
24 bidding process, correct?

25 A. Yes. I believe that's correct.

1 Q. Mr. Baron, would you agree with me that
2 Duke Energy Ohio's large commercial and industrial
3 customers are included in the company's baseline with
4 regard to energy efficiency and peak demand reduction
5 requirements, correct?

6 A. That's my understanding, yes, all
7 distribution sales.

8 Q. Distribution load, sir. So the
9 requirements are not a function of generation sales,
10 correct?

11 A. That's my understanding.

12 Q. And the baseline determines Duke Energy
13 Ohio's statutorily imposed compliance obligations
14 with regard to energy efficiency and peak demand
15 reduction, correct?

16 MR. BOEHM: Excuse me. May I have that
17 question reread?

18 (Record read.)

19 A. Yes.

20 Q. And, sir, would you agree with me that
21 the higher the baseline, the higher the compliance
22 requirements, correct?

23 A. I think that follows, yes.

24 Q. And the requirements for energy
25 efficiency and peak demand reduction as set forth in

1 law actually increase over time, correct?

2 A. Yes.

3 Q. I believe, Mr. Baron, for purposes of
4 preparing your direct testimony, you reviewed Ohio
5 law, Section 4928.66, correct?

6 A. Yes.

7 Q. And you've also reviewed, sir, Commission
8 rules adopted pursuant to that statutory provision,
9 correct?

10 A. Yes.

11 Q. And based upon that review, Mr. Baron, as
12 well as your familiarity with Senate Bill 221
13 generally, the energy efficiency and peak demand
14 reduction requirements are not dependent on whether
15 an electric distribution utility owns generation,
16 correct?

17 A. In terms of a requirement that the
18 distribution utility must meet the benchmarks
19 established in the rule, that's correct.

20 Q. And, sir there is no statutory provision
21 of which you are aware that relaxes the energy
22 efficiency or peak demand reduction requirements for
23 an electric distribution utility that does not own
24 generation, correct?

25 A. That's correct. I am certainly not

1 suggesting anything to the contrary in my testimony
2 or in any of my recommendations.

3 Q. And, Mr. Baron, your first recommendation
4 set forth in your direct testimony is one in which
5 OEG opposes the rate allocation methodology
6 incorporated into the Stipulation filed in this case,
7 correct?

8 A. Yes.

9 MR. BOEHM: Excuse me, counsel. Could we
10 have a page reference? Mr. Baron is doing a better
11 job of following this than I am.

12 Q. Mr. Baron, for the benefit of Mr. Boehm,
13 your recommendation concerning rate allocation begins
14 on page 3, line 17 of your direct testimony, correct?

15 A. Yes. I actually mention it on page 2 at
16 line -- well, the specific recommendation, you're
17 correct.

18 Q. All right. You had, I guess, a summary
19 that appears on page 2 beginning at line 16 of your
20 testimony.

21 A. Yes.

22 Q. And, Mr. Baron, it is your testimony on
23 behalf of OEG that Duke Energy Ohio allocate
24 nonresidential rates under its Rider EE-PDR based on
25 distribution revenues, correct?

1 A. Yes. Basically I'm recommending that the
2 distribution revenues be used to assign the costs. I
3 think from a practical standpoint, my recommendation
4 is essentially the same as the current method that's
5 being used for Duke, which is to assign TS the -- the
6 TS schedule on distribution, which means all of the
7 other nonresidential classes would also be on
8 distribution revenues in the aggregate.

9 Just from a practical standpoint, I think
10 that makes the most sense. But, essentially, I'm
11 recommending distribution revenue allocation.

12 Q. And in opposing the rate allocation to
13 which all other parties in this case agreed, you
14 opine that Duke Energy Ohio's rate allocation imposes
15 unreasonable costs on TS rate customers, correct?

16 A. Yes. Absolutely.

17 Q. And the basis for your opinion on page 5,
18 line 12 of your direct testimony is that TS customers
19 "are generally more sophisticated energy users who
20 have already taken self-funded measures to maximize
21 their energy efficiency and minimize their energy
22 costs." Correct?

23 A. Yes. And certainly, as I think I
24 answered in a prior response, that large
25 manufacturing customers that are electric intensive,

1 electricity is a large input cost of their production
2 process. It's self-evident that these customers, who
3 compete, that are not subject to tariff charges for
4 their products but must face the competitive market,
5 must engage in actions that minimize this cost of
6 production.

7 That's how they stay in business,
8 competing, and to the extent there are opportunities
9 to make investments to reduce energy costs, customers
10 engage in that, just like they would in trying to
11 obtain lower costs of raw materials for their
12 production process.

13 Q. But, Mr. Baron, I believe you've already
14 acknowledged that you have no facts specific to OEG
15 members to confirm that Duke Energy Ohio's rate TS
16 customers have, in fact, engaged in self-funded
17 measures to minimize -- maximize energy efficiency
18 and minimize their energy costs, correct?

19 A. I did agree, absolutely, that I have not
20 done a survey or study of OEG members. I'm basing
21 this on my experience and knowledge in working with
22 large industrial manufacturing customers for 30 years
23 and understanding why -- how those customers operate.

24 The more electric intensive the customer
25 is, the more there are opportunities that that

1 customer can evaluate for reducing their input costs,
2 and, again, electricity in many cases -- in most
3 cases, is an important input cost.

4 Q. Mr. Baron, many of OEG's members in Duke
5 Energy Ohio's service territory are on rate TS and
6 thus would benefit from the rate allocation that you
7 are proposing as compared to the rate allocation set
8 forth in the Stipulation, correct?

9 A. Yes. The Stipulation rate proposal
10 allocating nonresidential energy efficiency and PDR
11 costs on kilowatt-hours, in my view, is unreasonable
12 and does not in any manner reflect the benefits that
13 would inure to a specific class. The costs that are
14 incurred by the company to conduct energy efficiency,
15 there's simply no -- in my view, total kilowatt-hour
16 usage is an unreasonable allocation factor.

17 Q. And if the rates for Rider EE-PDR are
18 allocated among nonresidential customers in the
19 manner that you describe, lower load factor,
20 nonresidential customers will pay more of the rider
21 than they would otherwise pay under the rate
22 allocation set forth in this Stipulation, correct?

23 A. I would expect that would be the case,
24 yes, especially if the methodology that's currently
25 used, which I'm agreeing that really makes the most

1 sense to use, distribution revenues to assign costs
2 between TS, which are clearly seven customers.
3 They're very unique, and the other nonresidential
4 customers, clearly it follows that to the extent the
5 other group, the non-TS customers, would tend to
6 have, on average, lower load factors, I would agree
7 that would raise the otherwise applicable rate.

8 But there's reason -- for the reasons I
9 just talked about in my prior answer, the TS
10 customers likely have engaged in numerous projects,
11 simply to survive in the competitive environment,
12 that reduce energy usage, and so the benefits of the
13 company's EER programs would most likely flow to the
14 other-than TS customers, so it's not an unreasonable
15 allocation.

16 Q. Now, in preparing your direct testimony,
17 Mr. Baron, you did not prepare any rate impact
18 calculations to determine how much more the lower
19 load factor nonresidential customers would pay under
20 your proposed allocation versus the allocation set
21 forth in the Stipulation, correct?

22 A. That's correct, I did not prepare that
23 analysis.

24 Q. And in recommending a rate allocation
25 based on distribution revenues, on page 6 of your

1 testimony, sir, you also opine that Duke Energy
2 Ohio's allocation, as incorporated into the
3 Stipulation, could hinder economic development,
4 correct?

5 A. Yes. All else being equal, it's going to
6 impose significantly higher costs on the very largest
7 manufacturing customers of the company.

8 Q. But, to your knowledge, sir, no
9 industrial or commercial entity has refused to locate
10 in Duke Energy Ohio's service territory because of
11 the prospect of having to pay Duke Energy Ohio's
12 proposed Rider EE-PDR, correct?

13 A. Well, the answer is, I don't know one way
14 or the other. The proposed rate, the rate agreed to
15 in the Stipulation, is not in effect yet. I do know
16 that compared to states such as Kentucky, Virginia,
17 Arkansas that I cited in my testimony, even West
18 Virginia, that the proposal that Duke is making is
19 significantly more imposing of energy efficiency
20 costs on large manufacturing customers than these
21 other nearby states.

22 Q. But, sir, you have no knowledge
23 whatsoever that existing commercial or industrial
24 customers in Duke Energy Ohio's service territory
25 have refused to expand their business operations

1 because of Duke Energy Ohio's energy efficiency or
2 peak demand reduction rider correct?

3 MR. BOEHM: Objection, your Honor. He
4 just testified this law isn't even in effect yet.
5 Why would they do that if the law isn't even in
6 effect?

7 MS. SPILLER: What law?

8 MR. BOEHM: The proposal that you have
9 right now is a distribution allocation.

10 MS. SPILLER: No.

11 MR. BOEHM: The law right now is a
12 distribution allocation.

13 EXAMINER STENMAN: The objection will be
14 overruled. He can answer if he knows.

15 A. My answer was going to be similar to what
16 Mr. Boehm said. But basically the current rate
17 that's in effect under the SAWR tariff has a very low
18 charge for transmission service customers. I haven't
19 done any surveys one way or the other. I certainly
20 can't tell you who didn't show up in Ohio because of
21 a prospective rate that the company has filed with
22 the Commission. It has not yet been approved. The
23 current tariff is actually very favorable to large
24 manufacturing customers in the Duke Energy Ohio
25 system.

1 Q. But your testimony, sir is that the
2 proposed rate and the manner in which it is allocated
3 could hinder economic development in Ohio, correct?

4 A. Yes; and for the reasons I responded to
5 your question two or three questions ago, because all
6 else being equal, that is going to cause a very large
7 increase in the energy efficiency charge that TS
8 customers will pay, and when that's compared to
9 surrounding states that I just enumerated, it's a
10 very adverse type of proposal.

11 Q. So how does Virginia allocate rates for
12 energy efficiency between nonresidential customers?

13 A. Well, Virginia has the exemption for
14 10-megawatt and above customers.

15 Q. But that's not my question. How do they
16 allocate rates for nonresidential customers for
17 energy efficiency?

18 A. I don't recall how they do it.

19 Q. And how do they allocate rates for energy
20 efficiency for nonresidential customers in Arkansas?

21 A. In Arkansas?

22 Q. Yes, sir.

23 A. I don't recall that either. I can tell
24 you the answer to that in Kentucky and West
25 Virginia., if you care to know.

1 Q. But, sir, you're making an opinion with
2 respect to Duke Energy Ohio's proposed rate
3 allocation and you don't know whether it will have an
4 impact on economic development, correct?

5 A. I think my testimony, again, on that
6 issue is self-evident. When you allocate costs of a
7 particular component of electric utility service, in
8 this case, energy efficiency, on total
9 kilowatt-hours, including off-peak kilowatt-hours,
10 that a customer faces as to whether -- looks at in
11 making decisions about increasing production at
12 existing facilities, it's self-evident that raising
13 those costs, which this proposal would do compared to
14 the existing Duke allocation proposal, with all else
15 being equal, will have a detrimental effect.

16 I have not done a study. I can't tell
17 you whether any customer seeing the company's
18 proposal might not have expanded production, but it
19 absolutely, based on my experience working with the
20 manufacturing customers, is a consideration that
21 customers evaluate when they're looking at the
22 overall environment of a particular service area.

23 Q. You don't know, Mr. Baron, whether any
24 existing commercial or industrial customer of Duke
25 Energy Ohio's service territory has refused to hire

1 employees because of the prospect of having to pay
2 Duke Energy Ohio's proposed Rider EE-PDR?

3 A. That's correct.

4 Q. Mr. Baron, you also testify that your
5 rate allocation is consistent with existing
6 precedent, correct?

7 MR. BOEHM: Do you have a page reference,
8 counsel?

9 MS. SPILLER: Page 6, the question begins
10 on line 21.

11 A. Yes. Well, I don't think -- I don't
12 recall using the word "precedent." I gave two
13 examples of the AEP companies and Duke Energy Ohio
14 that use distribution revenues as an allocation
15 basis.

16 Q. Sir, if you would refer to page 2, the
17 question beginning on line 16 of your testimony, in
18 fact, sir, you base your recommendation on the rate
19 allocation, in part, on what you believe and what you
20 opine, is its consistency with PUCO precedent,
21 correct?

22 A. Could you give that reference again?

23 Q. Page 2, the question beginning on
24 line 16. The answer that I'm focusing on is the last
25 part of your paragraph there, the answer, line 20-21.

1 A. Yes, that's correct.

2 Q. And the precedent to which you are
3 referring to, sir, includes Duke Energy Ohio's
4 current ESP Stipulation approved by the Commission in
5 December 2008, correct?

6 A. Yes.

7 Q. And, sir, you would have reviewed that
8 document for purposes of preparing your testimony,
9 correct?

10 A. I believe I did, yes.

11 Q. And, sir, you would agree with me that
12 the Stipulation and Recommendation filed in Case
13 No. 08-920 provides that, except for dispute
14 resolution purposes, neither this Stipulation, nor
15 the information and data contained therein or
16 attached, shall be cited as precedent in any future
17 proceeding for or against any party or the Commission
18 itself?

19 A. Yes, I believe that's correct. It says
20 that.

21 Q. And, to your knowledge, sir, OEG was a
22 signatory party to the Stipulation in Duke Energy
23 Ohio's current ESP case, correct?

24 A. Yes.

25 Q. And the other precedent, sir, to which

1 you rely on making your recommendations --

2 A. I'm sorry to interrupt you, but your
3 question seems to be suggesting that that precedent
4 is the primary or sole basis for my recommendation,
5 and I was answering your questions, but I would not
6 want it to be construed that I was agreeing that's
7 the sole basis. That's an observation that I'm
8 making, and it's true.

9 Q. I understand.

10 A. But that is not the basis, the primary
11 basis, for my recommendation. I just wanted to
12 clarify that.

13 Q. It is a basis for your recommendations,
14 sir, correct?

15 A. It's an acknowledgment that the
16 Commission accepted that as a means of allocation,
17 yes.

18 Q. And the other precedent on which you
19 rely, sir, is the AEP Energy Efficiency Program,
20 Application for Approval of Portfolio Programs filed
21 under Case No. 09-1089, correct?

22 A. Yes.

23 Q. And that matter, sir, was also resolved
24 by way of a Stipulation and Recommendation, correct?

25 A. Yes.

1 Q. And, again, the Stipulation in that case
2 also indicated that the Stipulation was not to be
3 cited as precedent in any future proceeding for or
4 against any signatory party or the Commission itself,
5 correct?

6 A. I assume that's in there.

7 Q. I'm happy to share the documents.

8 A. No. I accept that. I said I assume
9 that's in there. That typically has that language.
10 From my perspective, the reason I cited those cases
11 is to show that this Commission has accepted this
12 method of allocation in prior cases.

13 Q. And the OEG was a signatory party in the
14 case filed under 09-1089, correct?

15 A. Yes. Or my understanding, again, that
16 the Commission, in approving the Stipulation,
17 essentially is approving that the provisions of that
18 Stipulation is in the public interest, and so I view,
19 not as a lawyer but as a nonlawyer, that that was
20 information to show that a distribution allocation
21 was a reasonable means of allocating costs. That's
22 how I used that.

23 Q. And, sir, I appreciate the statement to
24 which there was no question. But let me follow up on
25 your answer there, sir. These stipulations reflect a

1 compromise over a variety of issues, correct?

2 A. Yes.

3 Q. And in approving a Stipulation, the
4 Commission approves the totality of the Stipulation,
5 correct?

6 A. Yes; that's my understanding.

7 Q. And so is it your opinion, sir, in
8 approving the Stipulation in Case No. 08-920 and Case
9 09-1089 the Commission found all the elements in each
10 of the Stipulations to be reflective of the public
11 interest?

12 A. My understanding -- I don't know the
13 answer to that. I assume that if there was a
14 provision in a Stipulation that was not in the public
15 interest, the Commission would have some concerns
16 about that. But I don't know the answer to that.

17 Q. And, sir, to your knowledge, the
18 Commission had no concerns in Case No. 08-920
19 regarding the incentive mechanism incorporated into
20 and a part of the Stipulation that it approved,
21 correct?

22 A. Yes. I would -- for the same reasons I
23 just cited with respect to the allocation, I would
24 agree.

25 Q. And similarly, sir, the Commission in

1 Case No. 09-1089, to your knowledge, had no concerns
2 with the incentive mechanism for the electric
3 distribution utility when it approved that
4 Stipulation, correct?

5 MR. BOEHM: Your Honor, I can't sit here
6 much longer and listen to the witness divine what the
7 Commission did or did not have problems with.

8 MS. SPILLER: You allowed him to answer
9 the question when he so divined before.

10 MR. BOEHM: I thought it was going to
11 end. I didn't think it was going to go on forever.
12 Now, we have gone on to what was in the Commission's
13 mind? I've practiced here for 35 years and I don't
14 know what's in the Commission's mind at any given
15 moment. I think it's ridiculous for us to go through
16 this very much longer -- I don't mean ridiculous. I
17 apologize for that term.

18 I think it's pointless for us to go
19 through and have my witness tell us what the
20 Commission had in its mind.

21 MS. SPILLER: Your Honor, if I may
22 briefly, this witness is basing his testimony, in
23 part, on what he identifies as Commission precedent,
24 commission precedent filed in two cases, those cases
25 that have been cited in connection with his

1 cross-examination.

2 And certainly the Stipulations at issue
3 do not reflect the single issue on which Mr. Baron
4 wants to offer the precedent, and I certainly have
5 the right to cross-examine him on the other issues
6 incorporated into these Stipulations that he seems to
7 gloss over, almost ignore, in his direct testimony.

8 EXAMINER STENMAN: The objection will be
9 overruled.

10 A. I would need to read the Commission's
11 order, I guess, to fully answer that question. I
12 haven't really focused on the incentive portion of
13 the order. When I answer your questions, I'm really
14 just answering as a general matter. I don't know
15 whether there was any language in the order one way
16 or the other that discussed that.

17 Q. And, sir, would you agree with me if the
18 Commission issued an order modifying the Stipulation
19 in respect to incentives for exceeding energy
20 efficiency targets, we could simply defer to the
21 Commission's order for that purpose, correct?

22 A. I think the order can always speak for
23 itself. That much of law I know.

24 Q. Mr. Baron, on page 6, line 1 of your
25 direct testimony you state that nonresidential

1 customers with lower kilowatt-hour energy usage than
2 large industrial customers will likely derive greater
3 benefit from the utility's energy efficiency and peak
4 demand reduction programs than those large industrial
5 customers, correct?

6 A. Yes.

7 Q. But you have no study, analyses or
8 reports specific to Ohio and Duke Energy Ohio's
9 customers to support this statement, do you?

10 A. I haven't done any study of that. I have
11 based, on my experience in looking at utility energy
12 efficiency programs for nonresidential customers,
13 they tend to be focused on lighting and refrigeration
14 and building efficiency, like for office buildings.

15 That's not to say there aren't other
16 programs out there that are more specific, but the
17 vast majority of expenditures that I have seen tend
18 to be focused on the majority of customers, which are
19 the types of programs I just cited and that's the
20 basis for my testimony.

21 Q. And, sir, you have not done any analyses
22 of Duke Energy Ohio's proposed large industrial
23 programs that might be customized for an individual
24 large industrial user, correct?

25 A. I'm aware there was a program, a custom

1 program. That's typical, that utilities have such
2 programs. I'm aware that Duke has them. I read the
3 testimony in this case. I don't recall the company
4 citing each and every project that they had actually
5 undertaken for commercial customers or large
6 industrial customers by customer. I don't recall
7 seeing any evidence that this company presented on
8 that.

9 Q. But, sir, my question was, you have not
10 done any analyses that Duke Energy Ohio's proposed
11 large industrial programs that might be customized
12 for an individual large industrial user, correct?

13 A. Only to the extent that I'm aware there
14 are -- the company does offer custom programs.

15 Q. But, sir, you have not done an analysis
16 of those programs, correct?

17 A. Well, no. Custom programs, again, I'm
18 not sure what you mean by an analysis. I haven't
19 done a study of it. Custom programs, by definition,
20 tend to be oriented towards an individual customer's
21 specific situation. I don't know -- I haven't looked
22 historically at the custom programs that this company
23 actually undertook, say, in the last two years. I
24 haven't done anything like that.

25 Q. So, sir, you don't know whether lower

1 energy usage, nonresidential customers would derive
2 any greater benefit from the company's energy
3 efficiency and peak demand reduction programs as
4 compared to large industrial customers, correct?

5 A. Well, I do know that based on my
6 experience, that because there are vastly greater
7 number of customers, commercial customers -- I
8 haven't done a study of any Duke Energy Ohio
9 customers -- but as a general matter, I think I just
10 explained to you in a prior answer why I believe that
11 to be the case. I haven't done a study. It's my
12 opinion based on my experience.

13 Q. Mr. Baron, do you recall when I took your
14 deposition last week?

15 A. Yes.

16 Q. And you were placed under oath by a court
17 reporter?

18 A. Yes.

19 Q. And in taking that oath, you agreed to
20 tell the truth?

21 A. Correct.

22 Q. And on page 41, sir, of your deposition,
23 on line 12 the question I posed to you was as
24 follows: Now, with respect to Duke Energy Ohio's
25 lower energy usage, nonresidential customers, you

1 don't know whether they would derive any greater
2 benefit from the company's EE/PDRR programs as
3 compared to large industrial customers, correct?

4 A. That's what it says. And I'm just
5 reading the question and answer before that, and the
6 question and that answer seems similar to what I just
7 said.

8 Q. Sir, but your answer to my question that
9 I just reread that begins on page 41, line 18 of your
10 says, "I haven't done any analyses of Duke's proposed
11 large industrial programs that might be customized
12 for an individual large industrial customer of Duke,
13 and, therefore, I haven't made a calculation of the
14 relationship between the benefits that such a measure
15 might provide a customer and the level of that
16 customer's kilowatt-hour usage, correct?

17 A. Yes. And that's, I think, essentially
18 what I just told you a few minutes ago, that I'm
19 basing this testimony on my experience in looking at
20 programs. But I haven't done any specific analysis
21 of Duke's customers. I think if you look at the
22 transcript, that's what I said.

23 Q. And, sir, the large industrial customers
24 that you contend are not likely to benefit from
25 participation in Duke Energy Ohio's EE and PDR

1 programs have a statutory right to seek an opt out of
2 those utility's programs, correct?

3 A. As a mercantile customer, such customers
4 can work with the company or propose, as I understand
5 it, through filings, mercantile programs, if that's
6 what you're speaking of.

7 Q. And in opting out, the mercantile
8 customer, which would include large industrial
9 customers, would avoid having to pay Duke Energy Ohio
10 EE-PDR rider, correct?

11 A. If such a customer can come up with a
12 program meets, what I understand from Mr. Bright's
13 testimony, energy efficiency reductions commensurate
14 with the percentage reductions that Duke Energy in
15 total is required to meet, pursuant to the Commission
16 rules.

17 Q. So, again, sir, if the mercantile
18 customer opts out, they avoid the utility's company
19 energy efficiency rider, correct?

20 A. If the Commission approves the customer's
21 mercantile self-directed program and, apparently,
22 according to Mr. Bright, and maybe Mr. Duff as well,
23 that the savings from such a self-directed program
24 are equal to or exceed the savings that are required
25 of Duke Energy as a whole. Then that customer has an

1 opportunity to opt out of the surcharge or the rider.

2 Q. And if the mercantile customer opts out
3 of the surcharge or rider, their load is not included
4 in the utility's baseline for purposes of the
5 utility's compliance requirements, correct?

6 A. That's my understanding. I know there
7 are some provisions where the -- yes, that would be
8 my understanding.

9 Q. And, sir, when you prepared your direct
10 testimony, you were not aware of the Commission's
11 automatic approval process for mercantile customers,
12 correct?

13 A. No; not specifically.

14 Q. And, Mr. Baron, you are not aware of any
15 mercantile customer in Duke Energy Ohio's service
16 territory that has sought an opt out, are you?

17 A. That's correct.

18 Q. And you are also not aware, sir, of the
19 Commission rejecting the request of any mercantile
20 customer in Duke Energy Ohio's service territory to
21 opt out of its rider, are you?

22 A. I am not aware one way or the other.

23 Q. Mr. Baron, if a large industrial
24 customer, such as the customers served under rate TS,
25 performs energy efficiency measures but does not do

1 so through the utility's program or does not file for
2 a mercantile exemption, as permitted by Ohio law,
3 there is no way for the Commission to verify whether
4 those investments in energy efficiency have been
5 made, is there?

6 A. I'll accept that. I mean, as a practical
7 matter, I suppose there may be a way to know, but
8 with regard to the company meeting its benchmark
9 requirements, that would be my understanding.

10 Q. Mr. Baron, you are aware that the law
11 authorizes a utility to recover incentives to achieve
12 energy efficiency mandates, correct?

13 A. It is my understanding there is a
14 provision in the statute, yes.

15 Q. And that statutory provision is not at
16 all dependent on whether that electric distribution
17 utility owns generation, correct?

18 A. The statute is not dependent. It's my
19 understanding that the Commission would have
20 discretion as to whether to approve it or not. And
21 clearly, in the case of Duke Energy, that has plans
22 to shift all of its generation to the market and not
23 directly serve Duke Energy Ohio customers, it is my
24 recommendation that be considered and, therefore,
25 reject the incentive proposal.

1 Q. Mr. Baron, you have no reason to believe
2 that Duke Energy Ohio is seeking to recover lost
3 generation revenues in this filing, do you?

4 A. My understanding is that the company is
5 not. I think my testimony on that subject was simply
6 to ensure that -- seek a clarification and ensure
7 that such revenues were not being collected.

8 Q. And, Mr. Baron, you have been here for
9 the duration of the hearing today, correct?

10 A. Yes.

11 Q. And, sir, you heard the various
12 hypotheticals posed by Mr. Boehm, counsel for OEG,
13 correct?

14 A. The various hypotheticals?

15 Q. The various hypotheticals, yes.

16 A. Yes, I believe so. I may have been out
17 of the room for a few minutes here and there, but I
18 was here for most all of them.

19 Q. And, sir, you would agree with me that
20 many of the hypotheticals assumed that a
21 manufacturing company, an automotive company, an
22 airplane company did not have programs that would
23 enable energy efficiency results, correct? Or could
24 not avail themselves of programs to do that?

25 A. There may have been. I recall Mr. Boehm

1 discussing that, and it was probably in the course of
2 a hypothetical. I don't remember specifically how it
3 was constructed and what assumption to make, but I do
4 recall that, yes.

5 Q. But, sir, because you have done no
6 specific survey of OEG members' investment in energy
7 efficiency programs, you don't know whether or not AK
8 Steel, for example, has programs that it could
9 participate in to achieve energy efficiency, do you?

10 A. That's correct. I don't know one way or
11 the other because I have not conducted any survey or
12 analysis of that issue. I do know, though, AK Steel
13 will pay millions of dollars as a result of the
14 company's proposal in this case. That, I do know.

15 Q. I'm sorry, could you restate that?

16 A. I just said what I do know is that AK
17 Steel, as a result of the company's rider, EE-PDR
18 rider, will pay millions of dollars in energy
19 efficiency charges. That, I do know. That's a fact.

20 Q. As compared to what they're paying now?

21 A. As compared to what they're paying now,
22 that's correct.

23 Q. But, again, under your proposal, sir,
24 other nonresidential customers, non-TS customers,
25 would pay those charges if rate TS customers did not,

1 correct?

2 A. Well, assuming that the expenditures of
3 the company are the same, a change in allocation
4 would have an effect on rates. That's an arithmetic
5 certainty.

6 Q. Are any of OEG members on rates OS or DP?

7 A. I don't know. It wouldn't surprise me if
8 some smaller facilities, office buildings or other
9 facilities that might be separately metered, might be
10 on such rates. I don't know. It certainly wouldn't
11 surprise me.

12 MS. SPILLER: Your Honor, I have no
13 further questions. Thank you.

14 EXAMINER STENMAN: Thank you.

15 Cross.

16 MR. SMALL: No questions, your Honor.

17 EXAMINER STENMAN: Mr. Parram.

18 MR. PARRAM: May I have one second, your
19 Honor?

20 EXAMINER STENMAN: You may.

21 MR. PARRAM: No questions your Honor.

22 EXAMINER STENMAN: No questions,
23 redirect.

24 MR. BOEHM: May I consult the witness for
25 five minutes, please?

1 EXAMINER STENMAN: We will take a
2 five-minute break.

3 (Recess taken.)

4 MR. BOEHM: No redirect, your Honor.

5 EXAMINER STENMAN: Thank you.

6 THE WITNESS: Thank you.

7 EXAMINER STENMAN: Anything else?

8 MR. BOEHM: Oh, yes. I would like to
9 move for the admission of OEG Exhibit No. 6, which I
10 believe is the prepared direct testimony of Stephen
11 Baron.

12 EXAMINER STENMAN: Any objections?

13 MS. SPILLER: No, your Honor.

14 EXAMINER STENMAN: OEG Exhibit 6 will be
15 admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER STENMAN: Let's go back off the
18 record.

19 (Discussion off record.)

20 EXAMINER STENMAN: Back on the record.

21 We discussed transcripts and briefing.

22 Duke will be arranging for expedited transcripts.

23 The parties have agreed there will be no reply

24 briefs. Initial briefs will be due December 9.

25 Is there anything else to come before us

1 today?

2 MS. WATTS: Nothing further, your Honor.

3 EXAMINER STENMAN: Hearing nothing else,
4 we are adjourned. Thank you.

5 (The hearing adjourned at 4:40 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, November 29, 2011, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson,
Professional Reporter and
Notary Public in and for
the State of Ohio.

My commission expires April 5, 2014.

(RFA-8717)

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Case No(s). 11-4393-EL-RDR

Summary: Transcript Transcript of Duke Energy Ohio, Inc. hearing held on 11-29-11 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.