

1           BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

2                               - - -

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

8                               - - -

9                               PROCEEDINGS

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

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On behalf of the Company.

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On behalf of Ohio Energy Group.

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On behalf of the Staff of the Public  
 Utilities Commission.

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Tuesday Morning Session,  
November 29, 2011.

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EXAMINER STENMAN: The Public Utilities Commission of Ohio has called for hearing at this time and place Case No. 11-4393-EL-RDR being In the Matter of the 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.

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

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

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

EXAMINER STENMAN: Thank you.

Mr. Boehm.

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

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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 SmartSaver  
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

Honor.

EXAMINER STENMAN: You may.

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

A. Yes, sir.

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

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

Q. Let me try it another way. I'm sorry, I don't remember offhand your resume. Have you worked with industrial customers, TS customers in the past, any sort, so that you are familiar with some of their 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, OPAC,  
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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1 Tuesday Afternoon Session,  
2 November 29, 2011.

3 - - -

4 EXAMINER STENMAN: Back on the record.  
5 CROSS-EXAMINATION (continued).

6 By Mr. Boehm:

7 Q. We're going to stay on this a little bit  
8 more, Mr. Duff. Please go to OEG Exhibit No. 4.

9 A. Certainly.

10 Q. Page 7.

11 A. Yes.

12 Q. You were talking before about this and  
13 about how much was banked of that overachievement  
14 that you had. First of all, take a look at table 5,  
15 and we talked about that.

16 A. Table 5, back on page 8, correct?

17 Q. Yes.

18 A. Okay.

19 Q. And it shows your overrecovery, and we  
20 talked about what the percentage of that overrecovery  
21 was, and you were mentioning what the bank -- how  
22 much the bank participated in that overachievement,  
23 right?

24 A. That's correct.

25 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 OPAC 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 OP AE

Exhibit 2.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER PIRIK: I believe that's all that we have. For purposes of dealing with the comments and the reply comments that we just marked as exhibits, understanding Mr. Boehm has some -- the comment that he made on the record as far as the usage of those comments and reply comments, are there any objections to the comments and reply comments being entered into the record as those exhibit numbers?

Hearing none, we shall admit them into the record.

(EXHIBITS ADMITTED INTO EVIDENCE.)

MR. BOEHM: Your Honor, it may be efficient if I would now move the admission of my exhibits, and then Mr. Baron would be the next witness up, and I can at the same time introduce his testimony as an additional exhibit of OEG, if the company is finished with its case.

MS. WATTS: Yes, the company is finished with its case.

MR. BOEHM: Thank you, your Honor. I would then like to introduce OEG Exhibit No. 1, which 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,

specifically, your Honor, page 9, the question beginning on line 4, carrying through the balance of that page, all of page 10 and all of page 11.

On these pages Mr. Baron devotes his testimony solely to the laws in other states, for example, Virginia and Arkansas, and what those state legislatures may have allowed in the form of opt out from energy efficiency programs.

Those issues are completely irrelevant to the issues before this Commission. In fact, I would note that Mr. Baron's testimony on the identified pages is really a policy argument, a policy that the OEG appears to be making that industrial customers should be granted rather wide latitude with respect to opting out of the energy efficiency mechanisms.

The policy of this state should be determined by our legislature and not a witness who may be reciting the laws in other states wholly inapplicable to Duke Energy Ohio and its mercantile customers. So I would ask that the Bench strike those portions of the testimony as irrelevant.

MR. BOEHM: May I address?

EXAMINER STENMAN: Yes.

MR. BOEHM: Make sure that I'm getting 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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**in**

**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.