

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

- - -

PROCEEDINGS

before Ms. Greta See and Ms. Sarah Parrot, Attorney
Examiners, and Commissioner Andre Porter, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-A, Columbus, Ohio, called at 2:00
p.m. on Wednesday, April 25, 2012.

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VOLUME VII

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1 Wednesday Afternoon Session,
2 April 25, 2012.

3 - - -

4 EXAMINER SEE: Let's go on the record.

5 I would like to take brief appearances of
6 the parties present. Start with the company and go
7 around the room.

8 MS. MOORE: Thank you. On behalf of Ohio
9 Power Company, Steven T. Nourse, Matthew J.
10 Satterwhite, Daniel R. Conway, Yazen Alami, and
11 Christine M. Moore.

12 EXAMINER SEE: Thank you.

13 MR. PETRICOFF: On behalf of
14 Constellation NewEnergy, Direct Energy, Exelon
15 Generation, and Retail Energy Supply Association,
16 Howard Petricoff and Lija Kaleps-Clark.

17 MR. HAYDEN: Your Honor, on behalf of
18 FES, Mark Hayden, Jim Lang, and David Kutik.

19 MR. RANDAZZO: On behalf of the
20 Industrial Energy Users, Frank Darr, I would like to
21 enter a new appearance for Matthew Pritchard, and Sam
22 Randazzo.

23 MS. McALISTER: On behalf of the Ohio
24 Manufacturers Association, Lisa McAlister.

25 MR. SUGARMAN: Roger Sugarman on behalf

1 of NFIB/Ohio.

2 MS. KERN: On behalf of the Ohio
3 Consumers' Counsel, Kyle Kern and Melissa Yost.

4 MR. JONES: On behalf of the staff, Steve
5 Beeler and John Jones.

6 EXAMINER SEE: The rest of the counsel in
7 the room.

8 MR. HAQUE: On behalf of the City of
9 Grove City and the Association of Independent
10 Colleges, Asim Haque.

11 MR. ROYER: Thank you, your Honor, Barth
12 Royer for Dominion Retail.

13 MR. STINSON: On behalf of the Ohio
14 Schools, Dane Stinson, Bailey Cavalieri.

15 EXAMINER SEE: Okay. I think,
16 Mr. Sugarman, you have the first witness?

17 MR. SUGARMAN: Yeah, we are ready to
18 proceed with Mr. Geiger.

19 EXAMINER SEE: Okay. Mr. Sugarman, I
20 appreciate you contacting your witness and your
21 witness's flexibility to be rescheduled to this
22 afternoon.

23 MR. SUGARMAN: We appreciate the Bench's
24 accommodation as well.

25 EXAMINER SEE: As the witness is coming

1 forward, there are -- there was a motion to strike
2 and a reply to the motion to strike. After
3 considering the motions and the reply, we are going
4 to grant that motion and deny that motion in part
5 such that the motion to strike is granted for page 1
6 starting with the question "Why are you" -- "Why are
7 you doing so in this proceeding?"

8 On page 3 we're striking what is part of
9 sentence 12 -- line 12 through to the end of line 13.
10 We are keeping the question "What is the purpose of
11 your testimony," and striking the first full sentence
12 and "in addition," so that it reads "What is the
13 purpose of your testimony?"

14 "My testimony will explain," and proceed
15 through the end of the response to that question.
16 And we are striking the question that starts on
17 that -- the last question on that page through to the
18 following page where you start your third argument.

19 Yes, Mr. Sugarman.

20 MR. SUGARMAN: For record purposes would
21 you like a resubmitted direct testimony or simply the
22 ruling from the Bench is sufficient?

23 EXAMINER SEE: Ruling from the Bench is
24 going to be sufficient on this one. Okay?

25 With that.

1 (Witness sworn.)

2 EXAMINER SEE: Please proceed,

3 Mr. Sugarman.

4 MR. SUGARMAN: If I may approach, your
5 Honor?

6 EXAMINER SEE: Yes.

7 MR. SUGARMAN: I've handed the witness a
8 copy of his direct testimony as prefiled with the
9 Commission without obviously the ruling from the
10 Bench, but I would ask that it be marked NFIB/Ohio
11 Exhibit 1.

12 EXAMINER SEE: The exhibit is so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 EXAMINER SEE: Mr. Sugarman, that's
15 marked as Exhibit 101.

16 MR. SUGARMAN: 101, yes. I believe that
17 conforms with the convention.

18 EXAMINER SEE: Yes, it does.

19 - - -

20 ROGER R. GEIGER

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

23 DIRECT EXAMINATION

24 By Mr. Sugarman:

25 Q. Mr. Geiger, could you introduce yourself

1 to the Bench, please.

2 A. Yes. I am Roger Geiger, Vice President
3 and Executive Director of the Ohio Chapter of the
4 National Federation of Independent Businesses. We
5 represent about 24,000 small independently owned --

6 EXAMINER SEE: Mr. Geiger, is your
7 microphone on?

8 THE WITNESS: The light's on.

9 EXAMINER SEE: Let's go off the record
10 for a minute.

11 (Off the record.)

12 EXAMINER SEE: Let's go back on the
13 record.

14 Mr. Geiger, go ahead and finish
15 introducing yourself.

16 THE WITNESS: Your Honor, I am Roger
17 Geiger, Vice President and Executive Director of the
18 Ohio Chapter of the National Federation of
19 Independent Businesses, better known as NFIB/Ohio.
20 We represent about 24,000 small independently-owned
21 businesses across the state of Ohio.

22 Q. Mr. Geiger, do you have in front of you
23 what's been identified and marked as NFIB/Ohio
24 Exhibit 101?

25 A. I do not.

1 Q. Is that a copy of the direct testimony
2 which was prepared by you or under your direction on
3 behalf of NFIB/Ohio for purposes of these
4 proceedings?

5 A. It is.

6 Q. Sir, do you have any corrections or
7 changes to your prefiled testimony?

8 A. I do.

9 Q. And if I were to ask you the same
10 questions today that are asked in your prefiled
11 testimony and understanding that you are under oath
12 here today, would your answers be the same as they
13 appear in your prefiled testimony?

14 A. They would be.

15 MR. SUGARMAN: Thank you. Your Honor, I
16 would tender the witness for cross-examination.

17 EXAMINER SEE: Ms. Kern?

18 MS. KERN: No questions, your Honor,
19 thank you.

20 EXAMINER SEE: Ms. McAlister?

21 MS. McALISTER: No questions, your Honor.

22 EXAMINER SEE: Mr. Randazzo?

23 MR. RANDAZZO: No questions, your Honor.

24 EXAMINER SEE: Mr. Stinson?

25 MR. STINSON: No questions, your Honor.

1 EXAMINER SEE: Mr. Haque?

2 MR. HAQUE: No questions, your Honor.

3 EXAMINER SEE: Sorry about that.

4 Mr. Hayden?

5 MR. HAYDEN: No questions.

6 EXAMINER SEE: Mr. Petricoff?

7 MR. PETRICOFF: No questions, your Honor.

8 EXAMINER SEE: Mr. Jones?

9 MR. JONES: No questions, your Honor.

10 MR. ALAMI: Ms. Moore will be handling
11 the cross.

12 EXAMINER SEE: Ms. Moore?

13 MS. MOORE: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Moore:

17 Q. Hi, Mr. Geiger.

18 A. Hi.

19 Q. Your education is in political science,
20 history, and public administration; is that correct?

21 A. Correct.

22 Q. And not in economics?

23 A. Correct.

24 Q. And not in electric regulations?

25 A. Correct.

1 EXAMINER SEE: Ms. Moore, I am going to
2 need you to speak up.

3 MS. MOORE: Yes, your Honor, thank you.

4 Q. Do any members of NFIB/Ohio receive
5 electric service from CRES providers, Mr. Geiger?

6 A. I'm sure they do.

7 Q. Do you know approximately what percentage
8 of FNIB/Ohio members receive electric service from
9 CRES providers?

10 A. I do not.

11 Q. Do you know about how many as a number
12 instead of a percentage?

13 A. I do not.

14 Q. And I understand that since December,
15 2011, you have received contacts from some of your
16 members regarding their electric rates; is that
17 correct?

18 A. That's correct.

19 Q. And the amount that your members pay has
20 changed since December, 2011?

21 A. The ones that have inquired in our
22 offices, they have seen what they perceive to be
23 significant increases.

24 Q. And are all of the members who have
25 contacted you within AEP Ohio's service territory?

1 A. They are.

2 Q. But you don't know whether any of the
3 charges or increases to your members' bills are due
4 to capacity increases; is that correct?

5 A. The way I would answer that is I'm aware
6 of changes that were made by the PUCO, its rulings,
7 that led to those increases, so my assumption is that
8 that most certainly played a role.

9 Q. But you don't know sitting here today for
10 a fact whether or not the capacity prices that your
11 members pay has increased?

12 A. Their prices have increased.

13 Q. Do you know sitting here today whether
14 that increase is attributable to an increase in the
15 capacity charge portion of their bill?

16 A. Again, I believe from my own
17 understanding that, yes, there would be some
18 relationship. But am I an expert to say to what
19 degree or how much? No. But my assumption is based
20 on what has happened in the last several months, that
21 clearly would have played because some of our members
22 actually showed a decrease in usage of electricity
23 and an increase in price.

24 Q. Mr. Geiger, is it possible that the price
25 changes could be due to other components of your

1 members' rates such as the distribution charge?

2 A. I'm assuming so.

3 Q. So you can't say sitting here today
4 whether the capacity charge has increased, correct?

5 A. Have I done my own independent analysis?
6 No. But, again, as I said earlier, I do believe when
7 you look at the -- what has happened and what has
8 transpired, one has to make the assumptions that it
9 did play a role.

10 Q. If you could turn with me to page 5 of
11 your testimony, sir. On pages -- on page 5, lines 2
12 and 3, you state -- 2, 3, and 4 "The core philosophy
13 of NFIB/Ohio is rooted in the concept of free markets
14 limiting government intervention as necessary." Did
15 I read that correctly?

16 A. You did.

17 Q. You agree, though, Mr. Geiger, that the
18 market for electric service in Ohio is not and has
19 never been a purely free market, correct?

20 A. Over time that's correct, but I do
21 believe and as part of the -- part of the legislative
22 debates 10 years or so ago, I do believe the
23 direction is changing in this state to move us to a
24 market-based environment for electricity.

25 So while your statement, in my opinion,

1 is correct in a historical perspective, I don't
2 believe that's currently the track the state is on as
3 a fact of stated policy.

4 MR. SUGARMAN: Mr. Geiger, when you turn
5 your head that way, it's harder to hear on this side
6 of the room, so if you do that, just keep your voice
7 up.

8 THE WITNESS: Thank you.

9 Q. Is it your understanding that the market
10 for electric service in Ohio presently is a
11 competitive, open, free market?

12 A. I believe we are in that transition.

13 Q. But it's still a regulated market
14 presently; is that your understanding?

15 MR. RANDAZZO: I'll object. Can counsel
16 define what they mean by "regulated market"? At the
17 wholesale level? Retail level?

18 MS. MOORE: I can rephrase my question.

19 EXAMINER SEE: Say it again.

20 MS. MOORE: I am happy to rephrase my
21 question, your Honor.

22 EXAMINER SEE: Okay. Please do.

23 Q. (By Ms. Moore) Is it your understanding
24 that the retail market for electric service in Ohio
25 is a free market, Mr. Geiger?

1 A. I believe as a matter of stated public
2 policy established by the legislature and by what I
3 believe to be rulings of the Commission, we are on
4 that path to make us a deregulated marketplace.

5 Q. Have we gotten there yet?

6 A. I think the fact that I'm sitting here
7 today suggests no.

8 Q. Mr. Geiger, are you aware that AEP Ohio
9 has a legal obligation until June, 2015, to supply
10 CRES providers with as much capacity as the CRES
11 provider requires?

12 MR. SUGARMAN: Objection, your Honor.

13 EXAMINER SEE: On what basis,
14 Mr. Sugarman?

15 MR. SUGARMAN: On the basis she has asked
16 him for his understanding of the law and the legal
17 implications of the statement, which I don't believe
18 the witness is able or should be asked to be
19 testifying about. That's not why he is here.

20 MR. RANDAZZO: I will also object.
21 There's no basis for the assertion that there is a
22 legal obligation.

23 EXAMINER SEE: Response, Ms. Moore?

24 MS. MOORE: Your Honor, I am asking
25 Mr. Geiger's opinion as a lay witness. I am not

1 asking for a legal opinion. And I'm simply asking
2 for his understanding.

3 EXAMINER SEE: The objections are
4 overruled.

5 You can answer the question to the best
6 of your ability, Mr. Geiger.

7 THE WITNESS: Thank you, your Honor.

8 No, I do not know the answer to that.

9 Q. (By Ms. Moore) Mr. Geiger, on lines 5
10 through 7 of page 5 of your testimony you state that
11 "The reinstated capacity charge of \$255 per megawatt
12 day places the cost of shopping at a level that
13 essentially denies customers the ability to shop
14 elsewhere." Did I read that correctly?

15 A. Yes, you did.

16 Q. Have you done any calculations yourself
17 to determine whether there would be customer shopping
18 at a capacity charge of \$255 per megawatt day?

19 A. We have not.

20 Q. Are you aware of -- have you been
21 reviewing testimony of other witnesses taken
22 previously in this proceeding?

23 A. To a limited degree. Not every item.

24 Q. There's been a lot of testimony.

25 A. Yes, there has.

1 Q. Are you aware of testimony that has been
2 given thus far in this proceeding that there would,
3 in fact, be shopping at a capacity charge of \$255 per
4 megawatt day?

5 MR. SUGARMAN: I have to object, your
6 Honor.

7 EXAMINER SEE: On what basis,
8 Mr. Sugarman?

9 MR. SUGARMAN: Without a citation to the
10 witness of any proffer of the author of that
11 statement.

12 EXAMINER SEE: Ms. Moore?

13 MS. MOORE: Your Honor, I believe that
14 there has been testimony from AEP Ohio witnesses and
15 also possibly from RESA Witness Ringenbach to that
16 effect.

17 EXAMINER SEE: Okay. The objection is
18 overruled.

19 Mr. Geiger.

20 THE WITNESS: Your Honor. I have not --
21 I would like to see it in context because I can't
22 react to something I don't see in context. Do I know
23 that it has been -- that that has been proffered as
24 testimony? Yes, but I don't -- I don't have it in
25 context so I can't react to what I think about it.

1 Q. Okay. Assuming that you reviewed and
2 felt comfortable with the proposition that a capacity
3 charge of \$255 per megawatt day -- let me rephrase
4 that.

5 Assuming you reviewed the testimony thus
6 far and felt comfortable with the proposition there
7 would be customer shopping at a customer charge of
8 \$255 per megawatt day, do you still believe that that
9 charge would stifle competition?

10 A. Absolutely. It stands to reason. It
11 simply drives up the cost, in my opinion, that takes
12 us away from the market-based system and, therefore,
13 yes, it does add to the bottom line cost, so it
14 stands to reason that, yes, it would impact that cost
15 and it will certainly, in my opinion, distort a
16 market-based system which, therefore, means that
17 there would be less of a competitive advantage in a
18 true open marketplace.

19 Q. Have you yourself analyzed the effect of
20 a \$255 capacity charge on competition in AEP Ohio's
21 service territory?

22 A. I have not.

23 Q. At line 10 of your testimony on page 5,
24 you state that "The two-tiered capacity pricing
25 scheme," as you refer to it, "would have the effect

1 or has had the effect of locking small business
2 owners into rates." Do you see where I am reading?

3 A. Uh-huh.

4 Q. Can you explain what you mean by that
5 statement?

6 A. Again, as I said earlier, it makes sense
7 that when you have that capacity pricing, you are
8 clearly taking away the margin that would be used for
9 competition, and so it clearly does in our opinion
10 have a stifling effect on competition.

11 Every time you narrow what would be in
12 the marketplace based on the fact that we have this,
13 what I call a capacity scheme, you have other terms
14 for it, that clearly takes away from the margins that
15 allow you to have a truly competitive marketplace, so
16 it is a logical conclusion in my opinion.

17 Q. Are you aware of any specific example or
18 member who has been, quote, locked into their
19 electric rate as a result of the two-tiered capacity
20 pricing scheme?

21 A. The reality is many small businesses are
22 locked into their rates in the current environment as
23 it is today. So whether -- it's just the reality of
24 what happens in the small business marketplace and
25 unless there is a really -- a great opportunity for

1 true competitive market forces to work out, they
2 generally are locked into their incumbent carrier.

3 And I use the "locked in" in parentheses
4 because that's just reality what happens when you
5 don't have competitive market forces at will.

6 Q. Just so I understand, when you use the
7 term "locked in," do you mean that they are unable to
8 shop; they are unable to procure a competitive retail
9 electric service?

10 A. There isn't any competitive -- they
11 have -- they don't have choices because there isn't
12 really anything out there that's competitive for
13 them.

14 Q. Directing your attention to line 8 of
15 your testimony on page 5, you state -- you use the
16 phrase "open market pricing" in the context of the
17 sentence "at a time when open market" -- "open market
18 pricing is less than 10 percent." Do you see where
19 I'm referring to?

20 A. Unfortunately my lines are not numbered
21 so I have to count down. What's the start of the
22 sentence?

23 Q. The beginning of line 8 says "Time when
24 open market pricing."

25 A. Okay.

1 Q. When you use the term "open market
2 pricing," are you referring to RPM-based pricing?

3 A. Again, I'm -- my reference is to what can
4 be out in the open market.

5 EXAMINER SEE: What was the last part of
6 that?

7 THE WITNESS: What was in the open
8 marketplace that they can compete for.

9 EXAMINER SEE: And "they" would be small
10 business?

11 THE WITNESS: Small business customers.

12 Q. What is your -- and you may have just
13 answered this, but what is your understanding of open
14 market pricing? When you use that term, what do you
15 use it to mean?

16 A. From our perspective, as simplistic as it
17 can be, it means that they have a system out there
18 that allows for robust competitive pricing that is
19 not encumbered by lots of regulatory requirements
20 that allow for a number of different competitors to
21 compete for the customer that's G1 and G2 class
22 customers.

23 Q. I'll ask my question a little differently
24 because I think we may be crossing wires here.

25 You state beginning on line 7 of page 5

1 that "At a time when open market pricing is less than
2 10 percent of the AEP Ohio charge," and I assume when
3 you use the term "AEP Ohio charge," you are referring
4 to the capacity charge?

5 A. Correct.

6 Q. Okay. Now, you've said that open market
7 pricing for capacity is less than 10 percent of the
8 AEP Ohio charge?

9 A. That's our understanding.

10 Q. Okay. And where do you derive that open
11 market price from? Where do you derive that open
12 market price for capacity?

13 A. Simply our understanding of what our
14 members have submitted to us as information where
15 they have called and inquired and given us their
16 bills.

17 Q. Okay. Have they commented on from where
18 they derived that information, that open market price
19 information?

20 A. From what they get as their bill versus
21 what they have the ability to try to get in true open
22 market, so as those have tried to go out into the
23 open market, the understanding that that's where the
24 State's moving in many cases, unfortunately, in your
25 service area they feel like it's not open. It's not

1 competitive and there is a big differential and so
2 that's where we derive those comments from.

3 Q. Okay. When your customers go out into
4 the open market in an attempt to procure competitive
5 retail electric service, are they purchasing that
6 service as a bundled rate, or are they purchasing the
7 components of their service separately, if you know?

8 A. Again, I think it varies. I think part
9 of it varies on their size maybe. I don't know the
10 answer specifically what their -- what they're
11 bundling and what they're not. At the end of the day
12 what matters to them is what the bottom line is.

13 Q. Would you agree that the capacity charge
14 is included as part of the electric service charge
15 that a customer pays?

16 A. At the end of the day it's in the bottom
17 line, yes.

18 Q. Are you aware of any other market in Ohio
19 through which capacity would be priced other than the
20 RPM market?

21 A. I'm not aware of any. There might be, I
22 am just not thinking of anything.

23 EXAMINER SEE: What was the last part of
24 that response?

25 THE WITNESS: I'm not aware of any. I am

1 not thinking of anything.

2 EXAMINER SEE: Okay.

3 Q. Are you familiar with the RPM market?

4 A. I'm not a technical expert; no. Again,
5 my testimony is meant to be at a very high level. I
6 am not the experts that you will hear from ad nauseam
7 from others.

8 Q. Sure. So just to make sure I understand,
9 you are not familiar with that term?

10 A. Just in a very general way.

11 Q. Okay. Mr. Geiger, let's assume that two
12 parties dealing with each other in an arm's length
13 transaction enter into a contract for a good under
14 which one party agrees to purchase the goods from the
15 other party, okay?

16 Is it your understanding as a general
17 principle the price agreed to would be an indicator
18 of the market price for that good, assuming an arm's
19 length transaction?

20 A. A lot of it would depend on your business
21 practice, I suppose. I mean, the reality is what
22 you're getting at is absolutely what our members have
23 to do every day, and that is compete in the
24 marketplace where their prices are driven by what the
25 market will bear.

1 Whether they are in a contract or not,
2 oftentimes that may mean they have to go back and
3 renegotiate that contract because it simply isn't
4 what the customer is willing to pay.

5 And so every product that I know my
6 members sell, whether it's a product or a service, it
7 is most certainly driven by what the market will
8 bear, what the customers are able to pay for that,
9 and what their competitors are offering that same
10 product or service for.

11 So whether it's in a contract or not
12 often means that the contracts -- if it is in a
13 contract, most cases it's not but, if it is, it has
14 to be renegotiated.

15 Q. So is your answer to my last question
16 yes?

17 A. My answer is it depends, and it most
18 certainly might be the starting point, but it isn't
19 necessarily what happens in the general course of
20 commerce in this state.

21 Q. But you would agree, wouldn't you, at the
22 time the two parties enter into a contract, they
23 agree to a price that is reflective of the market
24 price for that good or service regardless of whether
25 it later has to be renegotiated because of changes in

1 the market?

2 A. You know, again, you are asking me to
3 make a really broad statement in lots of -- in lots
4 of different types of commerce. And so there is a
5 lot of variations.

6 I would tell you that it is not common
7 practice in the commerce of this state that you enter
8 into an agreement of price that is based on -- solely
9 on what it costs you to produce it. You enter most
10 of your agreements in price, whether it's a formal
11 contract or what you put on the sticker on the
12 product. Your cost may not reflect what's in that
13 price at all.

14 I mean, many of my members will tell you
15 that oftentimes there are products and services that
16 they sell at a disadvantage to them. They aren't
17 recovering their total cost of doing business on that
18 commodity or product. They may offer it as a bigger
19 portfolio of products but that individual product may
20 actually cost that company.

21 Q. Are there also times, sir, where your
22 members sell a product at above their cost?

23 A. Absolutely; "profit" is not a bad word.

24 Q. Thank you.

25 A. And everyone is entitled to make a profit

1 because if you don't make a profit, you are not going
2 to be in business. That's true with your business,
3 that's true with every single of my members'
4 business.

5 Q. And you touched on this a few moments ago
6 in response to another question, but on lines 15 and
7 16 of your testimony on page 5 you state "Our members
8 operate in that very environment day in and day out,"
9 and when you refer to "that very environment," I
10 believe you are referring to the free market "in
11 order to remain competitive in the global
12 marketplace." Do you see that statement?

13 A. Uh-huh, yes.

14 Q. Your members do not operate, though, in a
15 market where they are obligated to -- obligated to
16 provide their goods and services to their competitors
17 at a price that is below their cost, do they?

18 A. I'm not aware of any. I wouldn't say
19 there isn't any example out there, but I am not aware
20 of any, none come to mind.

21 Q. And if you were --

22 A. Let me rephrase that. You have different
23 forces -- you obviously are in a regulated
24 environment here. You most certainly have suppliers
25 to large corporations and small businesses so

1 oftentimes there is market forces in play that do
2 allow for the fact that you may not recover or you
3 have to provide a price if you want the entire
4 package.

5 If you want to do the entire amount of
6 work for that given company, there may very well be
7 examples of where you are providing a product or
8 service at an amount that is below what you would
9 recover from in an open marketplace.

10 So in that sense, yes, I think they have
11 many of the similar examples of where they are
12 providing a product or service and it may very well
13 be as part of a deal with a competitor where there
14 may be multiple suppliers to a single larger
15 corporation, and so they most certainly are in --
16 could be very much in that environment that, again,
17 not regulated by government but regulated by an open
18 competition process that they choose to participate
19 in.

20 Q. I believe you touched on a key point when
21 you said that those of your members that engage in
22 business in that type of circumstance want to. They
23 are not required to or obligated to; is that correct?

24 A. Obligated to if they want to stay in
25 business.

1 Q. But no one is telling them they have to.

2 A. Obligated to if they want to stay in
3 business.

4 Q. Is anyone telling them they have to, sir?

5 A. As in some government entity? No.

6 Q. Now, would you advocate to your members
7 that they should sell their goods or services at a
8 price below their cost?

9 A. That's not my role. As an organization I
10 don't get into how they set their prices and what
11 they do to price. That's an individual company's and
12 owner's decision.

13 Q. But you certainly advocate on behalf of
14 independent businesses, correct?

15 A. Yes.

16 Q. Would you advocate independent businesses
17 in Ohio sell their goods or services at a price below
18 their cost?

19 MR. RANDAZZO: I'll object. I don't see
20 the relevance of the line of questions to any issue
21 or position that's been advanced in this case.

22 EXAMINER SEE: Would you like to respond,
23 Ms. Moore?

24 MS. MOORE: Yes, please, your Honor.
25 Mr. Geiger's -- in his testimony Mr. Geiger is

1 advocating that AEP Ohio provide capacity at a
2 market-based price, and his testimony focuses on the
3 free market.

4 I'm simply asking whether he would
5 advocate that his members participate in such a
6 market if they were forced to at a price below their
7 cost.

8 EXAMINER SEE: The objection is
9 overruled.

10 A. Your Honor, again, I said earlier it's
11 not my role to tell them what kind of marketplace
12 they ought to be in. I don't know all of the
13 factors. And so that's an individual company
14 decision.

15 The reality is if they operated that way
16 consistently, they probably wouldn't be in business.
17 But the truth is, as I said earlier, there are many
18 circumstances in which an individual product or
19 service may very well be at -- at a marketplace.

20 But, again, you are losing sight of the
21 fact that my testimony and what I'm here today for is
22 that we need to be moving in a direction where my
23 members compete every day, and that is in a free,
24 open marketplace, that allows for healthy, robust
25 competition, and that should be whether you're buying

1 10 widgets or whether you're buying kilowatt hours.

2 If we want our system to provide for the
3 lowest price and best quality, we fundamentally
4 believe let the market dictate that.

5 MS. MOORE: I have no further questions,
6 your Honor. Thank you.

7 EXAMINER SEE: Redirect, Mr. Sugarman?

8 MR. SUGARMAN: No, thank you, your Honor.
9 I would move though at this time for the admission of
10 NFIB 101 consistent with the Bench's ruling on the
11 motion.

12 EXAMINER SEE: Are there any objections
13 to the admission of NFIB Exhibit 101?

14 Hearing none, NFIB Exhibit 101 is
15 admitted into the record.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER SEE: Thank you, Mr. Geiger.

18 THE WITNESS: Thank you, your Honor.

19 MR. SUGARMAN: Thank you, your Honor.

20 EXAMINER SEE: I think the next witness
21 is yours, Ms. McAlister?

22 MS. McALISTER: They are, your Honor, and
23 I have received word they are on their way and should
24 be here momentarily.

25 EXAMINER SEE: They were scheduled to

1 arrive at 3:00?

2 MS. McALISTER: Yes.

3 EXAMINER SEE: Let's take a 10-minute
4 recess. We are off the record.

5 (Discussion off the record.)

6 (Recess taken.)

7 EXAMINER PARROT: Let's go back on the
8 record. I believe OMA has our next witness.

9 MS. McALISTER: Thank you, your Honor.
10 OMA calls Ed Forshey to the stand.

11 (Witness sworn.)

12 EXAMINER PARROT: Please proceed.

13 MS. McALISTER: Thank you, your Honor.

14 - - -

15 ED FORSHEY

16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows.

18 DIRECT EXAMINATION

19 By Ms. McAlister:

20 Q. Mr. Forshey, could you please state your
21 name and business address for the record.

22 A. My name is Ed Forshey. Business address
23 is 60790 Southgate Road, Cambridge, Ohio.

24 Q. And by whom are you employed?

25 A. AMG Vanadium. I am the Director of

1 Energy and Asset Management.

2 Q. And on whose behalf are you providing
3 testimony today?

4 A. The Ohio Manufacturers Association.

5 Q. And was the testimony that was filed on
6 April 5, 2012, in this proceeding prepared by you or
7 at your direction?

8 A. Yes, it was.

9 MS. McALISTER: Your Honor, at this time
10 I would like to have marked as OMA Exhibit 101 the
11 confidential version of the prefiled direct testimony
12 of Mr. Forshey and I would also like to have marked
13 as OMA Exhibit 101-A the public version of the
14 testimony of Mr. Forshey.

15 EXAMINER PARROT: I believe in keeping
16 the convention with IEU Witness Murray's testimony,
17 let's go with A and B markings.

18 Yes, OMA Exhibit 101-A shall be the
19 public testimony and 101-B the confidential. And the
20 exhibits are so marked.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 Q. (By Ms. McAlister) Mr. Forshey, do you
23 have a copy of what has been marked as Exhibit 101-A
24 and 101-B with you here?

25 A. Yes, I do.

1 Q. Do you have any corrections or additions
2 to make to those exhibits at this time?

3 A. No, I don't.

4 Q. And if I were to ask you the same
5 questions today as those that are in OMA Exhibits
6 101-A and 101-B, would your answers be the same?

7 A. Yes, they would.

8 Q. And those answers are true and correct to
9 the best of your knowledge and belief?

10 A. That is correct.

11 MS. McALISTER: Thank you, your Honor.
12 At this time I would move for admission of OMA
13 Exhibits 101-A and 101-B into the record subject to
14 cross-examination, and Mr. Forshey's available for
15 cross-examination.

16 EXAMINER PARROT: Thank you.

17 Any cross, Ms. Kern?

18 MS. KERN: No questions, your Honor.

19 EXAMINER PARROT: Mr. Randazzo?

20 MR. RANDAZZO: No questions.

21 Thank you for coming, Mr. Forshey.

22 EXAMINER PARROT: Mr. Stinson?

23 MR. STINSON: No questions.

24 EXAMINER PARROT: Mr. Haque?

25 MR. HAQUE: No questions.

1 EXAMINER PARROT: Mr. Hayden?

2 MR. HAYDEN: No question.

3 EXAMINER PARROT: Ms. Kaleps-Clark?

4 MS. KALEPS-CLARK: No questions, your
5 Honor.

6 EXAMINER PARROT: Ms. Moore?

7 MS. MOORE: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Ms. Moore:

11 Q. Good after, Mr. Forshey. Thank you for
12 being with us today. I am Christen Moore, I
13 represent Ohio Power Company.

14 Turning to page 3 of your prefiled
15 testimony, and directing your attention to lines 7
16 and 8, it's under question 10. You state "...if we
17 shopped, our competitive supplier will be compelled
18 to pay a \$355 megawatt day capacity charge, which is
19 significantly above market rates." Do you see that
20 sentence?

21 A. Yes, I do.

22 Q. What do you mean when you use the term
23 "market rates"?

24 A. The market rates are the PJM rates that
25 have been decided.

1 Q. And those rates -- is it your
2 understanding those rates were set in an auction
3 process?

4 A. Three years in advance, yes.

5 Q. Great.

6 A. Correct.

7 Q. Yes. And are you familiar with the term
8 "RPM"?

9 A. Yes.

10 Q. What do you understand that to mean?

11 A. RPM as in the -- give me a moment here.

12 RPM is the capacity auction that is
13 conducted three years in advance of the actual
14 delivery.

15 Q. All right. And are you familiar with the
16 base residual auction that takes place each year as a
17 part of RPM?

18 A. No.

19 Q. But you are aware that there is an
20 auction that takes place every year?

21 A. Yes.

22 Q. As RPM?

23 A. That's correct.

24 Q. Mr. Forshey, do you know whether anyone
25 can participate in the yearly auction? Any capacity

1 supplier? Do you know if there are any requirements
2 that would -- that they would have to meet or
3 anything they would have to do to be able to
4 participate in the auction?

5 A. You have to be a part of the PJM to
6 participate.

7 Q. Do you know if there are any other limits
8 or constraints?

9 A. I'm not familiar with any other.

10 Q. Do you know whether there are any limits
11 on the amount of capacity that certain entities are
12 permitted to bid in the yearly auction through RPM?

13 A. I'm aware that AEP has limits currently
14 of what they allow capacity to go to market.

15 Q. What do you understand those limits to
16 be?

17 A. My understanding is 21 percent the first
18 year, 31 percent, 41, and then they will be going to
19 market.

20 Q. And I believe what you are referring to
21 is the capacity pricing scheme that was adopted and
22 then later rejected as part of the stipulation at the
23 end of last year; is that correct?

24 A. Yes, that is what I am referring to.

25 Q. What I am asking about is the actual

1 participation in the auction itself. Do you know
2 whether there is a limit on the amount that a -- an
3 entity with capacity is allowed to buy into the
4 market to set the market price?

5 A. No, I'm not aware.

6 Q. Are you aware that AEP Ohio did not
7 participate in the most recent auction which set the
8 RPM price for the 2014 and 2015 planning year?

9 A. Yes, I am aware of that.

10 Q. And at lines 8 and 9 of your testimony on
11 page 3, you state that the \$355 per megawatt day
12 rate, you refer to it as the above-market rate, you
13 state that it would likely be passed on to AMG
14 Vanadium. Do you see that?

15 A. Yes.

16 Q. What's the basis for your belief that an
17 increase in capacity price would be passed on to AMG
18 Vanadium?

19 A. Well, if I were shopping -- which I am
20 not currently, I did not make the deadline that was
21 established to meet in the 21 percent. If I were
22 shopping and this capacity rate approved, the
23 supplier would have to pay it and most likely that
24 rate would be passed back on to me as a customer.

25 Q. You don't know for sure though because

1 you are not shopping right now if that price would be
2 passed on to you, correct?

3 A. No, I don't know for sure. I'm assuming
4 it would be. I don't -- I don't know of a supplier
5 that would want to absorb that type of cost on their
6 own.

7 Q. Are you aware of the amount that AMG
8 Vanadium -- let me rephrase my question.

9 Out of the total amount that AMG Vanadium
10 pays for electric service, are you aware of what
11 portion of that is capacity charges? On a yearly
12 basis?

13 MR. RANDAZZO: I object to the question.
14 Is the witness to assume it's 355 which has been
15 AEP's position and what they are currently paying in
16 the rates or some other number?

17 MS. MOORE: May I respond, your Honor.

18 EXAMINER PARROT: You may.

19 MS. MOORE: I'm simply asking Mr. Forshey
20 whether he is aware of -- or what his understanding
21 of the capacity component of his electric rate is
22 right now.

23 EXAMINER PARROT: Mr. Forshey, you may
24 answer the question.

25 A. I know what my capacity load is.

1 Q. I believe that's information your counsel
2 and you have already provided in discovery.

3 A. Yes.

4 Q. Is that correct?

5 Do you know what -- are you able to put a
6 price on that as you sit here today?

7 A. That 355 capacity rate.

8 Q. I'm asking are you able to quantify the
9 amount that AMG Vanadium paid in, let's say over the
10 last year as a dollar figure for the capacity
11 component of their electric service rate?

12 MS. McALISTER: Your Honor.

13 Just a second, Mr. Forshey.

14 I believe we are starting to get into
15 confidential information that's proprietary and
16 sensitive.

17 MS. MOORE: I am happy to rephrase the
18 question.

19 EXAMINER PARROT: Please do so.

20 Q. On a percentage basis are you able to
21 quantify the percentage of your total electric
22 payment that went to capacity last year?

23 MS. McALISTER: Your Honor, same concern.

24 MS. MOORE: Your Honor, I don't -- I
25 think it's a stretch to say the percentage of the

1 total electric bill on a -- as a percentage number is
2 getting into proprietary information without -- we
3 are not asking for dollar figures. I am not asking
4 for a quantifiable number. I am simply asking for a
5 percentage if he knows.

6 A. Let me refer to my notes.

7 EXAMINER PARROT: The Bench agrees that
8 the percentage information would not be considered
9 confidential, but if we stray much further with this
10 line of questioning, I think we may need to push
11 those questions to the end of your cross-examination
12 and we'll have to close the proceedings at that
13 point. Do you have much more along this line or?

14 MS. MOORE: I don't, your Honor. Thank
15 you.

16 EXAMINER PARROT: Well, then let's
17 proceed.

18 Mr. Forshey, you may answer the question.

19 A. I would estimate 15 percent.

20 Q. (By Ms. Moore) Directing your attention
21 to line 10 of page 3 of your testimony, the figure
22 \$2,343,405, which you state is the difference between
23 market pricing for capacity and AEP Ohio's proposed
24 \$355 per megawatt day rate or price, did you
25 calculate that figure?

1 A. I provided the numbers, the base numbers
2 for the calculation.

3 Q. Do you know who did calculate that
4 number?

5 A. Yes.

6 Q. And who was that?

7 A. And that was our attorney at the OMA.

8 Q. Okay. Do you have any understanding of
9 the methodology that was used to calculate that
10 number?

11 A. Yes, I am familiar with the way it was
12 calculated.

13 Q. And if you could explain how it was
14 calculated.

15 A. Well, it begins with the -- the demand --
16 peak demand number which is calculated by AEP based
17 on some rates. That's the starting point. It's then
18 trued up for the RPM. It's trued up for zonal and
19 then that -- that rate is multiplied by the capacity.
20 And that's compared to the proposal of 355 for the
21 three years.

22 Q. And the capacity price that is being
23 multiplied and compared to the greater than 355, is
24 that the RPM price for the next three delivery years?

25 A. That is correct, yes.

1 Q. And did those calculations assume that
2 100 percent of an increase in the price of capacity
3 would be passed on to AMG?

4 A. Yes.

5 Q. Directing your attention to line -- lines
6 12 through 17 on page 3, specifically line 13 where
7 you state that the inability to proactively manage
8 AMG's electricity costs creates an operational
9 strain. Do you see that?

10 A. Yes.

11 Q. Other factors besides the price of
12 electricity could contribute to AMG's operational
13 strain; is that correct?

14 A. Sure. There could be many factors
15 contributing.

16 Q. What are some of those other factors?

17 A. Well, it could be pricing materials, it
18 could be labor costs, operating costs, other
19 operating costs.

20 Q. And is it your understanding that the
21 price of electricity is comprised of a number of
22 different parts or elements? Such as capacity and
23 distribution, other components?

24 A. Yes.

25 Q. Is it possible that other factors other

1 than the price of capacity within that rate could
2 contribute to any operational strain that AMG
3 experiences due to a change in its electric prices?
4 For instance -- I'm sorry, go ahead.

5 A. Well, from my standpoint the company
6 power costs make up over 20 percent of my operation
7 costs so it's a significant amount with all the items
8 that are in that power rate.

9 Q. On line 20 of page 3 of your testimony,
10 you state that "AMG has engaged in negotiations with
11 several competitive suppliers...." Do you see that?

12 A. Yes.

13 Q. How many competitive suppliers has AMG
14 engaged in negotiations with since December, 2010?

15 A. At least three.

16 Q. And when did those negotiations -- each
17 of those negotiations occur, if you recall?

18 A. Those negotiations are basically still
19 ongoing. I'm continuing to receive quotes from those
20 vendors.

21 Q. When did you begin negotiations with each
22 of those three suppliers?

23 A. I would say it was late in 2011,
24 November/December timeframe.

25 Q. For each of the three?

1 A. Sure.

2 Q. Now, at the very last line of line 3
3 going on to -- I'm sorry, on the very last line of
4 page 3 going on to the first two lines of page 4, you
5 state that the uncertainty created by the current
6 state of capacity charges in AEP Ohio service
7 territory has made it difficult if not impossible to
8 predict the rates for even a short-term period. Do
9 you see that?

10 A. Yes, I do.

11 Q. And on the next line you say the result
12 of the uncertainty is that AMG Vanadium hasn't been
13 able to enter into an agreement with the supplier?

14 A. Correct, yes.

15 Q. Can you explain how the uncertainty that
16 you have described has caused AMG to not be able to
17 enter into an agreement with the CRES supplier --
18 CRES provider?

19 A. As stated earlier, certainly this
20 capacity charge most likely will be passed back on to
21 the -- to me, the customer, from the third party.
22 If -- I'm not sure what that capacity charge is, how
23 can I enter into a contract with another supplier?

24 Q. And so the fact that you've not entered
25 into a retail agreement with the CRES provider is

1 that you are not comfortable doing so until the price
2 for capacity is set?

3 A. There's -- there's not enough certainty
4 to know whether I am going to have a low price or a
5 high price or whether the vendor can even be
6 competitive to supply.

7 Q. If the price for capacity was known as it
8 will be as a result of these proceedings, will AMG
9 Vanadium then be able to enter into an agreement with
10 a CRES provider?

11 MS. McALISTER: Objection, your Honor.

12 EXAMINER PARROT: Grounds?

13 MS. McALISTER: Assumes facts not in
14 evidence. She's assuming the price will be known as
15 a result of these proceedings.

16 MS. MOORE: I can rephrase my question.

17 Q. If the price for capacity were known,
18 would AMG Vanadium be able to enter into an agreement
19 with a CRES provider if there were certainty?

20 A. There would be other things that would
21 have to be met, certainly I would have to give notice
22 to AEP that I was going to negotiate or shop. And
23 under the scenario I would have to be able to shop.

24 Q. What do you mean --

25 A. Capacity release that I could shop.

1 Q. I don't think I understood the last part
2 of your answer.

3 A. Well, right now, I'm under contract
4 with -- with AEP. So I would have to give them
5 notification and the only way I would shop is if --
6 if I could lower my price or have savings for the
7 business. Right now, there is no guarantee of that.

8 Q. But if the capacity -- the price for
9 capacity was known and the price that you were able
10 to obtain from a CRES supplier was lower than that
11 which you are paying to AEP Ohio, you would probably
12 shop, correct?

13 A. Most likely, yes.

14 Q. Directing your attention to page 4, lines
15 7 through 11, actually lines 6 through 11, the
16 sentence at the end of line -- that begins on the end
17 of line 6, "In other words, there are no practical
18 ways to mitigate the increase as AEP Ohio's proposal
19 inhibits customers' ability to shop for alternative
20 suppliers and save money. It also holds customers
21 captive to higher rates and essentially serves as a
22 tax on shopping." Do you see that?

23 A. Yes.

24 Q. I have some questions for you about
25 that -- those statements. Again, you are presuming

1 in that statement that CRES providers pass on
2 100 percent of the prices they pay for capacity,
3 correct?

4 A. From -- in my mind that's the most
5 logical assumption, yes.

6 Q. Do those statements also presume that
7 there would be no other benefit or cost savings that
8 a CRES provider would possess in order to enable it
9 to compete?

10 MS. McALISTER: I'm sorry, could I have
11 the question reread? I couldn't hear the last part
12 of it.

13 (Record read.)

14 Q. And by compete I mean offer electric
15 service price at a lower than AEP Ohio standard
16 service offer rate?

17 A. Yes, I would say that's an assumption,
18 you know, it's pretty -- it would be difficult for
19 them to overcome a potential \$2.3 million amount.

20 Q. And when you say \$2.3 million, just for
21 the record you are referring to the difference
22 between market prices and the proposed --

23 A. And the 355.

24 Q. And that would be just for AMG Vanadium?

25 A. That's correct.

1 Q. Mr. Forshey, are you aware that energy
2 rates are presently low?

3 A. Yes.

4 Q. Directing your attention back to lines 10
5 and 11 of page 4 of your testimony, could you please
6 explain what you mean by the statement that "AEP
7 Ohio's proposal holds customers captive to higher
8 rates and serves as a tax on shopping"?

9 A. Well, basically a high capacity charge
10 limits my ability to -- to go out and solicit these
11 market rates that are available for generation and
12 transmission of power.

13 Q. And so I understand that that's how --
14 that's what you mean when you say that it "holds
15 customers captive." What do you mean when you say it
16 "serves as a tax on shopping"?

17 A. It's a charge that I will have to pay, I
18 am assuming would be passed through and most likely
19 would be passed through. It's the same as putting a
20 tax which prohibits me from participating in the
21 market. It's a fee that I should not have to pay.

22 Q. Mr. Forshey, you don't have any
23 background in economics; is that correct?

24 A. No, I do not.

25 Q. What about in electric regulation?

1 A. No; I'm not an expert. I'm a former
2 plant manager. I have been a manager in
3 manufacturing for over 40 years. That's my
4 background.

5 Q. And I understand, AMG Vanadium
6 manufacturers themselves products and services for
7 the metals manufacturing, refinery, and petro
8 industries; is that correct?

9 A. That's correct, yes.

10 Q. Would AMG Vanadium voluntarily sell its
11 products to competitors at a price less than cost?

12 MR. RANDAZZO: I object, relevance.

13 EXAMINER PARROT: Response.

14 MS. MOORE: I think the question is
15 relevant to the issue of AEP Ohio's position that the
16 RPM price for capacity is lower than its cost.

17 EXAMINER PARROT: The objection is
18 overruled. You may answer the question.

19 A. The question was would I as a company
20 sell product to a competitor at lower than what I
21 would sell it in the market? I don't think that
22 would make logical sense. I wouldn't stay in
23 business.

24 But I also know that if I was selling my
25 product, I wouldn't have it priced so high that I

1 couldn't sell it in the market. I would have to be
2 at the market rates or I wouldn't stay in business.

3 Q. Your statement there presumes that you
4 would be -- would have participated in setting the
5 market rates; is that correct?

6 A. My statement presumes that if I'm -- you
7 know, saying, you know, if my costs are such that I
8 can't compete in the marketplace, why am I in
9 business?

10 And I can't force my customers to pay a
11 higher price really than what's in the market and
12 should not be able to force a customer to do that.

13 Q. If AMG Vanadium were required to sell its
14 products to its competitors at less than its cost, do
15 you believe that would negatively affect its
16 long-term financial viability?

17 MR. RANDAZZO: I object.

18 EXAMINER PARROT: Overruled.

19 A. If AMG over a period of time continued to
20 do that, they would not survive. Now, certainly I
21 would think AMG is a smart enough company they would
22 figure out ways to mitigate other costs to be
23 competitive with the marketplace. We have been in
24 business for 60 years and that's what we have been
25 doing.

1 MS. MOORE: Thank you, Mr. Forshey.

2 I have no further questions, your Honor.

3 EXAMINER PARROT: Mr. Beeler?

4 MR. BEELER: No questions, your Honor.

5 EXAMINER PARROT: Any redirect?

6 MS. McALISTER: If I could have just a
7 minute.

8 EXAMINER PARROT: Yes.

9 MS. McALISTER: Your Honor, we have no
10 redirect. And is it your preference I move the
11 exhibits all together at the end or individually?

12 EXAMINER PARROT: Let's just do them
13 individually as we go.

14 MS. McALISTER: I would renew my motion
15 to admit into evidence OMA Exhibits 101-A and 101-B.

16 EXAMINER PARROT: Are there any
17 objections?

18 Hearing none, OMA Exhibits 101-A and
19 101-B are admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER PARROT: Thank you very much,
22 Mr. Forshey.

23 THE WITNESS: Thank you, your Honor.

24 EXAMINER SEE: Ms. McAlister, your next
25 witness?

1 MS. McALISTER: Thank you, your Honor.
2 OMA calls Lima Refinery witness Rick Walters to the
3 stand.

4 (Witness sworn.)

5 EXAMINER SEE: Ms. McAlister.

6 MS. McALISTER: Thank you, your Honor.

7 - - -

8 RICHARD J. WALTERS
9 being first duly sworn, as prescribed by law, was
10 examined and testified as follows.

11 DIRECT EXAMINATION

12 By Ms. McAlister:

13 Q. Mr. Walters, could you please state your
14 name and business address for the record?

15 A. My name is Richard Walters, Sr. I go by
16 Rick. Our address is 1150 South Metcalf Street,
17 Lima, Ohio.

18 Q. And by whom are you employed?

19 A. Lima Refining Company.

20 Q. And on whose behalf are you providing
21 testimony today?

22 A. The Ohio Manufacturers Association.

23 Q. And was the testimony that was filed on
24 April 5, 2012, in this proceeding prepared by you or
25 at your direction?

1 A. It was at my direction.

2 MS. McALISTER: Your Honor, at this time
3 I would like to have marked as OMA Exhibit 102-A the
4 public version of the prefiled testimony and OMA
5 Exhibit 102-B as the confidential version of
6 Mr. Walters' testimony.

7 EXAMINER SEE: The exhibits are so
8 marked.

9 (EXHIBITS MARKED FOR IDENTIFICATION.)

10 Q. Mr. Walters, do you have a copy of what's
11 just been marked as OMA Exhibits 102-A and 102-B with
12 you today?

13 A. I do.

14 Q. Do you have any corrections or additions
15 to make?

16 A. No.

17 Q. And if I were to ask you the same
18 questions today as what are in those exhibits, would
19 your answers be the same?

20 A. Yes, they would.

21 Q. And are those answers true to the best of
22 your knowledge and belief?

23 A. They are.

24 MS. McALISTER: Your Honor, at this time
25 I would move for the admission of OMA Exhibits 102-A

1 and 102-B into the record subject to
2 cross-examination, and Mr. Walters is available for
3 cross-examination.

4 EXAMINER SEE: Ms. Kern?

5 MS. KERN: No cross, thank you.

6 EXAMINER SEE: Mr. Stinson?

7 MR. STINSON: No questions, your Honor.

8 EXAMINER SEE: Mr. Haque?

9 MR. HAQUE: No question.

10 EXAMINER SEE: Mr. Randazzo?

11 MR. RANDAZZO: No questions. Thank you
12 for coming, Mr. Walters.

13 EXAMINER SEE: I'm sorry, Mr. Randazzo?

14 MR. RANDAZZO: I said no questions and
15 just thanked the witness for coming.

16 EXAMINER SEE: Mr. Hayden?

17 MR. HAYDEN: No questions.

18 EXAMINER SEE: Ms. Kaleps-Clark?

19 MS. KALEPS-CLARK: No questions.

20 EXAMINER SEE: Ms. Moore or Mr. Alami.

21 MR. ALAMI: Ms. Moore will also be
22 handling cross of this witness, thank you, your
23 Honor.

24 MS. MOORE: Thank you, your Honor.

25 - - -

CROSS-EXAMINATION

By Ms. Moore:

Q. Hi, Mr. Walters.

A. Hi.

Q. And I will just echo our thanks for being here today.

A. You are welcome.

Q. Turning to page 3 of your prefiled testimony, on lines 3 through 5 you state that "Under AEP Ohio's proposal, our competitive supplier will be compelled to pay a \$355 megawatt day capacity charge, which is significantly above market rates." Do you see that statement?

A. I do.

Q. When you use the term "market rates," are you referring to RPM rates?

A. I'm referring to this same rate. I can't -- if it's RPM versus -- I don't know. I'm not an expert and I get lost in the jargon, I will be the first to admit it. Which incidentally, I do have a consultant that Lima Refining Company uses, Susan Buckley who is back there, and we have done that just to mitigate through some of the jargon and help us as we went out to supply, so.

Sorry for the long-winded answer.

1 Q. That's okay. What is your understanding
2 of the term "market rates" then?

3 A. Okay. My understanding is based on this
4 capacity load that AEP has historically charged a
5 market rate and my understanding of the genesis of
6 the 355 is that that is AEP's claimed costs and that
7 is what they are wanting to charge now.

8 Q. Are you familiar with the term "RPM"?

9 A. I am only yesterday when I saw some
10 verbiage on it but I wouldn't be able to describe it.

11 Q. As you hear the term "market rates," is
12 it your understanding that those rates are the rates
13 set through an auction process?

14 A. I'm aware that there is an auction
15 process, and as Ed mentioned, I'm aware it's done
16 three years in advance.

17 Q. And you are aware it is administered
18 through RPM?

19 A. Yes.

20 Q. Do you know whether any entity that has
21 capacity can participate in the yearly auction?

22 A. I don't know that.

23 Q. Are you aware that AEP Ohio did not
24 participate in the most recent auction?

25 A. I don't know that either.

1 Q. Directing your attention to lines 5 and 6
2 of your testimony on page 3, you state that the \$355
3 per megawatt day capacity charge which you refer to
4 as the above-market rate will be passed on to Lima
5 Refining.

6 A. That's my understanding, yes.

7 Q. What's the basis for the understanding?

8 A. Lima elected -- we started the process of
9 investigating -- with the new ESP we started
10 investigating going out to the market and in doing so
11 was able to come in contact with Scioto Energy, start
12 working through that process, and as we did that, we,
13 you know, became aware of some of -- of some of these
14 things, so I'm not sure if that answers your
15 question.

16 Q. It does in part so I'll ask you another
17 one.

18 A. Okay.

19 Q. Has any CRES provider represented to Lima
20 Refining that the -- an increase in capacity pricing
21 would be passed on?

22 A. Yes. I'm sorry. I kind of lost track.
23 When the -- we did shop and we went into contract
24 with a CRES provider I think around September of last
25 year, and in so doing, I mean without going into

1 contract language which I don't have in front of me
2 but --

3 Q. And I don't want you to today anyway.

4 A. Good. But they have -- that language is
5 there, as I understand it.

6 Q. And so just to clarify, it's your
7 understanding Lima Refining -- that any increase in
8 the price your CRES provider pays for capacity would
9 be passed on to Lima Refinery?

10 A. At their option. It's not mandatory, as
11 I understand it, but to Ed's point earlier,
12 logically, especially as large as this is, I would be
13 stunned if they weren't wanting to pass it on.

14 Q. Is there a similar provision that would
15 provide for any decrease in the price your CRES
16 provider pays for capacity would be passed on?

17 MS. McALISTER: Your Honor, could I --
18 are you asking about the contract specifically or his
19 review in general of various CRES contracts?

20 MS. MOORE: Thank you.

21 MS. McALISTER: We are starting to cross
22 over that line again.

23 MS. MOORE: Thank you for the
24 clarification. I will rephrase the question.

25 EXAMINER SEE: Okay.

1 Q. Mr. Walters, are you aware of whether
2 generally CRES providers also pass through decreases
3 in capacity prices?

4 A. I'm not aware.

5 Q. Directing your attention to line 8 of
6 page 3 of your testimony where you state that the
7 difference between the market prices for capacity and
8 AEP Ohio's proposed \$355 per megawatt day rate is
9 approximately \$51,700,000 over the next three years?

10 A. Yes.

11 Q. Did you calculate that figure?

12 A. I reviewed the calculation and walked
13 through it with several.

14 Q. And was that figure prepared by counsel?

15 A. Yes.

16 Q. And to your knowledge did that figure
17 assume a -- that 100 percent of an increase in
18 capacity pricing would be passed on to Lima Refining?

19 A. Yes.

20 Q. Have you or has anyone from your company
21 calculated -- calculated the difference between the
22 amount that Lima Refining presently pays for electric
23 service and the amount it would pay if capacity is
24 priced at \$355 per megawatt day?

25 A. I guess I'm not sure that I'm following

1 the question. I'm sorry.

2 Q. As I understand it, the -- the
3 \$51,700,000 number that appears in your testimony is
4 based on the difference between AEP Ohio's proposal
5 of \$355 per megawatt day --

6 A. Okay.

7 Q. -- and the RPM rate that would be in
8 effect for the next three delivery years?

9 A. Okay.

10 Q. Is that your understanding as well?

11 A. Yes.

12 Q. What I'm asking is has anyone from Lima
13 Refinery calculated -- done a similar calculation
14 comparing the \$355 per megawatt day figure with the
15 amount that Lima Refining presently pays or is
16 charged for capacity right now?

17 A. We talked about that in the last couple
18 of days and I don't have a firm number, but I believe
19 we're roughly at \$140, give or take, versus the 355,
20 and so you could -- you could fairly easily do that
21 math and come up with a number, but that's as far as
22 I took that.

23 Q. Thank you. Directing your attention to
24 lines 9 through 13 of your testimony on page 3 where
25 you discuss the impact on Lima, are there factors

1 besides the price of capacity that could affect
2 Lima's capacities to make capital investment, conduct
3 worker training, hire new employees, and retention of
4 existing employees? Is that correct?

5 A. Absolutely.

6 Q. What are some of those other factors?

7 A. We're negotiating a wage contract right
8 now that's going to cost us more, new environmental
9 regulations, new OSHA regulations, you know, the list
10 goes on. If you have been in business in -- the
11 factors are pretty limitless.

12 Q. Sure. Now, you state at lines 16 and 17
13 on page 3 of your testimony that Lima has engaged in
14 negotiations with several competitive suppliers.

15 A. That's correct.

16 Q. How many competitive suppliers did Lima
17 negotiate with?

18 A. As I mentioned, when we decided to go
19 down this path and investigate shopping, we engaged
20 Scioto Energy. We went through this process and
21 looked at I believe about eight suppliers and then,
22 of course, narrowed that down through the process and
23 ultimately did select one, as I mentioned.

24 Q. And I believe you selected one in
25 approximately September, 2011?

1 A. Yes.

2 Q. When did you begin negotiations with CRES
3 suppliers?

4 A. When -- I want to say we started
5 negotiations, I'm going to say June, but that's a
6 guess, a rough guess.

7 Q. Around approximately June of 2011?

8 A. Yes.

9 Q. You state at lines 20 and 21 on page 3 of
10 your testimony that Lima Refining's competitive rate
11 will be impacted by the 355 per megawatt day price
12 adopted. That again assumes 100 percent of the
13 difference in price would be passed on to Lima,
14 correct?

15 A. That's correct.

16 Q. In the next line there you state that
17 there are no practical ways to mitigate the increase
18 as AEP Ohio's proposal inhibits customers' ability to
19 shop for alternative suppliers and save money. And
20 you go on on page 4 to state it holds customers
21 captive to higher rates and essentially serves as a
22 tax on shopping. Do you see that?

23 A. Uh-huh.

24 Q. Does -- do those statements assume that
25 CRES suppliers do not possess any other price or

1 other benefits which would make them able to supply
2 electricity at a rate below AEP Ohio standard service
3 offer even if the capacity rates were \$355 per
4 megawatt day?

5 A. Those statements are what I would call a
6 general business sense, having gone through this
7 process and to now, after we entered that contract be
8 faced with a \$52 million over three year additional
9 expense that I can't -- I can't in my pushing 30
10 years of manufacturing experience fathom how they
11 could figure out how to absorb that. Nor any
12 company, to be honest, ourselves included, how we
13 would be able to absorb a \$52 million kick.

14 So that's maybe a long answer but
15 that's -- no, I don't see how they could possibly
16 mitigate that.

17 Q. You would agree, would you not, that a
18 CRES provider like any other business has numerous
19 different cost components that go into its ultimate
20 price that it charges its customers?

21 A. I would agree.

22 Q. Are you aware that energy rates are
23 presently very low? Relative to recent historical
24 prices?

25 A. Are you meaning energy rates in general

1 or electricity capacity or --

2 Q. I'm talking about the energy component of
3 an electric rate.

4 A. I guess when you say that, because I've
5 seen our rates go up for the last five years every
6 year, no, I guess everything is relative, but to me
7 they are not low when they keep going up at 5 to 15
8 percent clips, so.

9 Q. And it's possible that component of
10 electric service could be low and others could have
11 increased, could they not, to leading to an increase
12 in the overall price?

13 A. That's what I was trying to get. Are you
14 referring to just the capacity piece? I think as Ed
15 stated, I'm more interested from the refinery
16 overall -- of the overall electricity costs to the
17 refinery because it's 15 percent of our cost to
18 manufacture.

19 So it's a huge expense, so the fact that
20 now capacity is -- is the latest where we are facing
21 potentially a huge additional expense, okay, it's
22 capacity but my -- my interest is in the overall rate
23 ultimately.

24 Q. And it is possible that other components
25 of the overall rate could decrease as capacity

1 increases?

2 A. I am sure that is possible, yes.

3 Q. And, Mr. Walters, you are not an
4 economist by background; is that correct?

5 A. No.

6 Q. And you are not an expert in electric
7 regulations.

8 A. I'm definitely not.

9 Q. My understanding is Lima Refining
10 processes crude oil and gasoline and diesel fuels; is
11 that correct?

12 A. That's correct.

13 Q. Lima Refining voluntarily sells its
14 products to competitors at less than its cost to
15 produce those products?

16 A. On -- we don't get to set our rates. The
17 market decides what we are going to get for gasoline,
18 diesel, jet on a daily basis and, quite frankly, on
19 an hourly basis. So ultimately, yes, unfortunately
20 we do sell it below cost sometimes, believe it or
21 not, those of you that are buying gasoline.

22 But so, no, not willingly, but it happens
23 because you have got to keep the refinery -- you want
24 to keep the refinery running to a certain level as
25 well because of the unbelievable cost to bring the

1 refinery down. So again, I apologize for the
2 long-winded answer.

3 Q. Now, I understand that -- that as a part
4 of your business you are sometimes -- it sometimes
5 become necessary to sell your products at lower than
6 your cost, but if you were required to undertake such
7 transactions on a long-term basis, would that
8 negatively affect your long-term viability?

9 A. Absolutely.

10 MS. MOORE: Thank you, Mr. Walters, I
11 have no further questions.

12 THE WITNESS: Thank you.

13 EXAMINER SEE: Redirect, Ms. McAlister?

14 MS. McALISTER: I suspect not but if I
15 could have just one moment.

16 EXAMINER SEE: You may.

17 I'm sorry, Mr. Beeler.

18 MR. BEELEER: No questions, thank you.

19 (Discussion off the record.)

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

22 Ms. McAlister?

23 MS. McALISTER: No redirect, your Honor.
24 And, your Honors, I would renew --

25 EXAMINER SEE: Thank you very much,

1 Mr. Walters.

2 MS. McALISTER: Excuse me. I would renew
3 my motion to admit into evidence OMA Exhibits 102-A
4 and 102-B.

5 EXAMINER SEE: Are there any objections
6 to the admission of OMA 102-A and 102-B?

7 Hearing none, they are admitted into the
8 record.

9 (EXHIBITS ADMITTED INTO EVIDENCE.)

10 EXAMINER PARROT: You may call your next
11 witness.

12 MS. McALISTER: Thank you, your Honor.
13 The OMA calls Whirlpool Corporation witness, Mr. John
14 Seifker.

15 (Witness sworn.)

16 - - -

17 JOHN P. SEIFKER

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

20 DIRECT EXAMINATION

21 By Ms. McAlister:

22 Q. Please state your name and business
23 address for the record.

24 A. My name is John P. Seifker.

25 Q. And by whom are you employed -- I'm

1 sorry, please state your business record -- your
2 business address?

3 A. My business address is 4901 North Main
4 Street, in Findlay, Ohio.

5 Q. Thank you. And by whom are you employed?

6 A. I am employed by Whirlpool Corporation.

7 Q. And was the testimony that was filed on
8 April 5, 2012, in this proceeding prepared by you or
9 at your direction?

10 A. It was at my direction.

11 MS. McALISTER: Your Honor, at this time
12 I would like to have marked as OMA Exhibits 103-A the
13 public version of Mr. Seifker's testimony and 103-B
14 the confidential version.

15 EXAMINER PARROT: So marked.

16 (EXHIBITS MARKED FOR IDENTIFICATION.)

17 Q. Mr. Seifker, do you have a copy of what
18 has been marked OMA Exhibits 103-A and 103-B with you
19 today?

20 A. Yes, I do.

21 Q. And do you have any corrections or
22 additions to make to those exhibits.

23 A. Yes, I do. I have several and I would
24 like to go through them now if I could, please. On
25 page 1, line 16, there's a change from "35" to "20."

1 On page 3, line 13, please strike out
2 "while" and "not" and put a period after "time."

3 Also on page 3, lines 14 and 15, strike
4 out "if we shop."

5 On page 4, line 5, after the word
6 "suppliers" insert "and has shopped" and strike out
7 "in an attempt to shop."

8 Also on page 4, lines 10 through 11,
9 strike out "The results of the uncertainty is that we
10 have not been able to enter into an agreement with
11 the competitive supplier. However."

12 And finally on that same page 4, line 12,
13 strike out "even if we were to competitively source
14 our generation."

15 That is my changes.

16 Q. Okay. Just so the record is clear, those
17 changes reflect the fact that Whirlpool is shopping;
18 is that correct?

19 A. That's correct.

20 Q. Thank you. Now, if I were to ask you the
21 same questions today as what are in those exhibits
22 with the changes that you just made, would your
23 answers be the same?

24 A. Yes, they would.

25 Q. And are those true and correct to the

1 best of your knowledge and belief?

2 A. Yes.

3 MS. McALISTER: Thank you, your Honor, at
4 this time I would move for admission of Exhibits OMA
5 103-A and 103-B into the record subject to
6 cross-examination, and Mr. Seifker is available for
7 cross.

8 EXAMINER PARROT: Ms. Kern?

9 MS. KERN: No cross, thank you, your
10 Honor.

11 EXAMINER PARROT: Mr. Randazzo?

12 MR. RANDAZZO: No questions.

13 Thank for coming.

14 EXAMINER PARROT: Mr. Hayden?

15 MR. HAYDEN: No questions.

16 EXAMINER PARROT: Ms. Kaleps-Clark?

17 MS. KALEPS-CLARK: No questions.

18 EXAMINER PARROT: Ms. Moore?

19 MS. MOORE: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Moore:

23 Q. Hello, Mr. Seifker, thank you for coming.

24 A. Thank you. I would ask you to speak up a
25 little bit. Plant noise has deteriorated my hearing

1 a little, so if you would, I would appreciate it.

2 Q. Sure, and if you can't hear any of my
3 questions, just ask me and I'll repeat them.

4 A. Okay.

5 Q. Thank you. If you'll turn with me to
6 page 3 of your direct testimony.

7 A. Yes.

8 Q. At lines 15 and 16 you state that
9 Whirlpool's competitive supplier will be compelled to
10 pay a \$355 per megawatt day capacity charge which is
11 significantly above market rates?

12 A. Yes.

13 Q. What do you mean by the term "market
14 rates"?

15 A. Market rates are the PJM market rates
16 that are done during the public auction. That's what
17 I refer to as market rates.

18 Q. And so throughout your testimony when you
19 use the term "market rates," you are referring to the
20 RPM-based rates that are set in auctions?

21 A. That's correct.

22 Q. Okay. Thank you. Do you know whether
23 anyone can participate in the yearly auction to set
24 the RPM-based rates?

25 A. I'm not -- I'm not sure.

1 Q. Okay. Do you know whether there are any
2 limits on the amount of capacity an entity who
3 participates in the auction is permitted to bid into
4 the auction each year?

5 A. I'm not aware. No, I do not know.

6 Q. Are you aware that AEP Ohio did not
7 participate in the most recent auction setting the
8 current RPM price?

9 A. No; I do not know that information.

10 Q. Directing your attention to lines 16 and
11 17 of your testimony on page 3, you state that the
12 355 megawatt day capacity charge which you
13 characterize as the above-market rate will be passed
14 on to Whirlpool.

15 A. Would you repeat that again? What line
16 are you on, please?

17 Q. Sure, I'm on lines 16 and 17.

18 A. Uh-huh.

19 Q. Where you state that "This above-market
20 rate," which I believe you are referring to as the
21 \$355 per megawatt day capacity charge, will be passed
22 on to Whirlpool. Do you see that sentence?

23 A. Yes, I see that. Yes, I believe that
24 will be passed on to us for any up charge to the
25 capacity rate whether it's the 355, 246, whatever

1 that rate will be will be passed on to us.

2 Q. What's the basis for that belief?

3 A. Being in business, any time there's an up
4 charge like that, you would think that that -- you
5 would have to send it on to your -- whoever is paying
6 the bill.

7 Q. Has any CRES provider informed Whirlpool
8 that, in fact, such an increase in capacity prices
9 would be passed on to Whirlpool?

10 A. No, not that I know.

11 Q. If you'll look at line 19 on page 3 of
12 your testimony, you state that the difference between
13 AEP Ohio's proposed \$355 per megawatt day charge and
14 the RPM-based market, what you are characterizing as
15 market prices for capacity, over the next three years
16 will be \$3.4 million.

17 A. That's an approximate estimation, yes, it
18 is.

19 Q. Did you calculate that \$3.4 million
20 figure?

21 A. No, I did not calculate that figure but I
22 put -- input into the numbers so that they were
23 calculated for us.

24 Q. And who did calculate the \$3.4 million
25 figure?

1 A. The OMA did that for us.

2 Q. And to your knowledge does that figure
3 assume that 100 percent of any increase in the price
4 of capacity would be passed on to Whirlpool?

5 A. Yes, I do believe that would be passed on
6 to us.

7 Q. You state, sir, on page 3 at lines 20
8 through 22 that the inability to proactively manage
9 Whirlpool's electricity costs creates an operational
10 strain on Whirlpool.

11 Other factors besides the price of
12 capacity that a CRES provider pays could contribute
13 to Whirlpool's operational strain, correct?

14 A. All costs could have an effect on our
15 business. I mean, you have to factor them all in,
16 you know, Whirlpool looks at we do projects around
17 the plant that take 4 or 5 cents out of our product.
18 We are adding significant dollars. How do I -- we
19 get that out of our product?

20 Q. So other factors besides the price of
21 capacity would or could contribute to Whirlpool's
22 operational strain, correct?

23 A. Yes, it would.

24 Q. And I understand from the changes to your
25 testimony today that Whirlpool is now shopping.

1 A. Yes.

2 Q. Correct?

3 With how many CRES providers did
4 Whirlpool negotiate?

5 A. Our standard for Whirlpool Corporation is
6 a minimum of three. And there's no limit on the top
7 end.

8 Q. Do you know how many?

9 A. No, I am not -- I am not privy to say how
10 many. I really don't know.

11 Q. You don't know or you don't feel that you
12 are able to say?

13 A. I really don't know.

14 Q. Okay.

15 A. That negotiation is done at another level
16 than me.

17 Q. Do you know when Whirlpool's negotiations
18 with CRES providers began?

19 A. It began in summer last year.

20 Q. Summer of?

21 A. 2011.

22 Q. Thank you. And do you know on what date
23 Whirlpool entered into its present agreement with a
24 CRES provider?

25 A. I do not have that date right in front of

1 me. I'm not sure.

2 Q. Okay. Directing your attention to lines
3 14 through 17 of your testimony on page 4. You state
4 that there are no practical ways to mitigate the
5 increase in capacity pricing as AEP Ohio's proposal
6 inhibits customers' ability to shop for alternative
7 suppliers and save money. It also holds customers
8 captive to higher rates and essentially serves as a
9 tax on shopping. Did I read that correctly?

10 A. Yes.

11 Q. These statements assume that CRES
12 providers will pass on 100 percent of the price they
13 pay for capacity, correct?

14 A. That is correct.

15 Q. These statements also presume that CRES
16 providers possess no other benefits or ability to
17 offer a price that is lower than AEP Ohio's standard
18 service offer rate?

19 A. I don't -- I do not know that. All I do
20 know is anything that they would come up with as far
21 as capacity would be passed on whether it's 355 like
22 I stated before, 255, whatever that rate is.

23 Q. Is it possible that a CRES provider that
24 is compelled to pay \$355 per megawatt day for
25 capacity could -- strike that.

1 Please explain, sir, what you mean by the
2 statement that "the \$355 per megawatt day price holds
3 customers captive to higher rates."

4 A. It's part of what the other generation
5 companies would have to acquire and would have to
6 pass on through to your customers.

7 Q. When you say "other generation
8 companies," do you mean CRES providers?

9 A. Yes.

10 Q. And can you explain your statement that
11 the proposed capacity charge is a tax on shopping?

12 A. It's up and beyond what the market rate
13 is out on the open market, so how would you consider
14 it any more than an up charge or a tax to do business
15 with somebody other than the power company?

16 Q. And when you use the term "market rate,"
17 are you again referring to the market-based rate?

18 A. Yes, I am.

19 Q. Is RPM an open market?

20 A. RPM is a bid market as I know it.

21 Q. Is it an open market?

22 A. I don't know.

23 Q. Mr. Seifker, your background is not in
24 economics; is that correct?

25 A. That is correct.

1 Q. And it's not in electric regulations?

2 A. No. I'm no expert. I run a plant.

3 Q. And Whirlpool Manufacturing sells a
4 number of products, including washers, dryers,
5 refrigerators, dishwashers, correct?

6 A. That's correct.

7 Q. Would Whirlpool voluntarily sell its
8 products to one of its competitors at less than
9 Whirlpool's cost to produce those products?

10 A. No, I don't think they would.

11 Q. Okay. Thank you. If Whirlpool were
12 required to undertake to sell its product to its
13 competitors at less than its costs, would you agree
14 that would negatively impact Whirlpool's long-term
15 financial viability?

16 A. Yes, it would, but you can sustain that
17 for a while to keep your market share so you keep
18 your factories running. You know, to hold off the
19 LGs and the Samsungs of the world that we are in the
20 world market with.

21 Q. And the amount of time that it would be
22 feasible to sell products at less than cost would
23 depend on the company, right, financially feasible?

24 A. It would depend on somebody higher than
25 me.

1 Q. And it would depend on each company is
2 unique, correct?

3 A. That is correct.

4 Q. Okay. I have no further questions.
5 Thank you.

6 MS. MOORE: Thank you, your Honor.

7 EXAMINER PARROT: Mr. Beeler?

8 MR. BEELEER: We have no questions, your
9 Honor.

10 EXAMINER SEE: Any redirect?

11 MS. McALISTER: I don't think so.

12 EXAMINER PARROT: Take a moment.

13 MS. McALISTER: Thank you, your Honor.

14 No redirect, your Honor.

15 EXAMINER PARROT: Thank you. All right.

16 I believe you already moved for the admission of your
17 exhibits. Are there any objections to the admission
18 of OMA Exhibits 103-A or 103-B?

19 Hearing none, Exhibits 103-A and 103-B
20 are admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 EXAMINER PARROT: Thank you. You are
23 excused.

24 THE WITNESS: Thank you.

25 EXAMINER SEE: Your next witness,

1 Ms. McAlister.

2 MS. McALISTER: Thank you, your Honor,
3 the OMA calls OSCO Industries witness Mr. John Burke.

4 (Witness sworn.)

5 EXAMINER SEE: Thank you. Have a seat.

6 Ms. McAlister?

7 MS. McALISTER: Thank you, your Honor.

8 - - -

9 JOHN BURKE

10 being first duly sworn, as prescribed by law, was
11 examined and testified as follows.

12 DIRECT EXAMINATION

13 By Ms. McAlister:

14 Q. Could you please state your name and
15 business for the record.

16 A. My name is John Burke, and the business
17 address is Chillicothe -- 11th and Chillicothe
18 Streets, Portsmouth, Ohio.

19 Q. And by whom are you employed?

20 A. OSCO Industries.

21 Q. And on whose behalf are you providing
22 testimony today?

23 A. The OMA.

24 Q. Was the testimony that was filed on
25 April 5, 2012, in this proceeding prepared by you or

1 at your direction?

2 A. At my direction.

3 MS. McALISTER: Your Honor, at this time
4 I would like to have marked as OMA Exhibit 104-A the
5 public testimony of OSCO Industries and OMA Exhibit
6 104-B the confidential version.

7 EXAMINER SEE: The exhibits are so
8 marked.

9 (EXHIBITS MARKED FOR IDENTIFICATION.)

10 Q. Mr. Burke, do you have a copy of what's
11 just been marked as OMA Exhibits 104-A and B today?

12 A. Let's see, I'm a little confused. Is B
13 the purchase agreement? I'm a little --

14 Q. No, B is the confidential version of your
15 testimony.

16 A. Okay.

17 Q. It should be marked at the top as
18 "Confidential Version."

19 A. Okay. It appears to be the same
20 document. Am I confused about that or?

21 MS. McALISTER: Your Honor, may I
22 approach the witness?

23 EXAMINER SEE: Yes, you may.

24 MS. McALISTER: And, your Honor, I am
25 providing the witness with OMA Exhibits 104-A and

1 104-B.

2 EXAMINER SEE: Okay.

3 THE WITNESS: Okay. Thank you.

4 Q. Now, Mr. Burke, do you have what's just
5 been marked as OMA Exhibits 104-A and B with you
6 today?

7 A. I do.

8 Q. Okay. Do you have any corrections or
9 additions to those exhibits?

10 A. I do not.

11 Q. And if I were to ask you the same
12 questions today as what are in those exhibits, would
13 your answers be the same?

14 A. Yes, they would.

15 Q. And are those answers true and correct to
16 the best of your understanding and belief?

17 A. They are.

18 MS. McALISTER: Your Honor, at this time
19 I would move for admission of OMA Exhibits 104-A and
20 B into the record, subject to cross-examination, and
21 Mr. Burke is available for cross.

22 EXAMINER SEE: Ms. Kern?

23 MS. KERN: No questions, your Honor.

24 EXAMINER SEE: Mr. Randazzo?

25 MR. RANDAZZO: No questions. Thanks for

1 coming, Mr. Burke.

2 EXAMINER SEE: Mr. Hayden?

3 MR. HAYDEN: No questions.

4 EXAMINER SEE: Ms. Kaleps-Clark?

5 MS. KALEPS-CLARK: No questions, your
6 Honor, thank you.

7 EXAMINER SEE: Mr. Beeler?

8 MR. BEELER: No questions, your Honor.

9 EXAMINER SEE: Ms. Moore?

10 MS. MOORE: Thank you, your Honor. Thank
11 you.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Moore:

15 Q. Mr. Burke, thank you for coming this
16 afternoon.

17 Directing your attention to lines 7 and 8
18 of your prefiled testimony on page 3, you state that
19 AEP Ohio's proposal would compel your competitive
20 supplier to pay \$355 per megawatt day capacity charge
21 which is significantly above market rates.

22 A. Yes.

23 Q. When you use the term "market rates,"
24 what do you mean?

25 A. Okay. I guess in repetition on the -- in

1 the queue here and, yes, I understand that there's an
2 auction conducted out there that determines these
3 capacity charges in what's called the larger market
4 out there. And that by comparison to that
5 marketplace, you know, the 355 stands pretty tall.

6 Q. And when you refer to that "marketplace,"
7 you are referring to the RPM reliability pricing
8 mechanism?

9 A. Yes, yes.

10 Q. And so throughout your testimony when you
11 use the term "market rates," are you referring to
12 RPM-based rates?

13 A. Yes, I am.

14 Q. Okay. Do you know whether anyone can
15 participate in the auction that is held as part of
16 RPM?

17 A. I did not know the details of that
18 auction and what -- you know, what's required for
19 eligibility.

20 Q. Okay. Do you know whether there are any
21 limits on the amount of capacity an entity
22 participating in that auction is permitted to bid in
23 the auction?

24 A. I don't know that either.

25 Q. Okay. Are you aware that AEP Ohio did

1 not participate in the most recent auction?

2 A. Not until yesterday.

3 Q. But you were aware prior to today.

4 A. Yes. I heard that yesterday. You are
5 supplying out of your own capacity and did not elect
6 to participate.

7 Q. Directing your attention to lines 8 and 9
8 of your testimony on page 3, you state that the \$355
9 per megawatt day capacity charge which you
10 characterize as the above-market rate will be passed
11 on to OSCO?

12 A. Yes.

13 Q. What's the basis for your belief that
14 that increase will be passed on to OSCO?

15 A. Yes. I have a -- or we buy marketed
16 electricity and there's a clause in there that it
17 indicates that my supplier certainly has the
18 capability of passing those charges through to our
19 company.

20 Q. So it's in your -- in your company's
21 contract with the CRES provider?

22 A. Yes.

23 Q. Directing your attention to line 11 on
24 page 3 of your testimony where you state that the
25 difference between the RPM-based price for capacity

1 which you call the market price "...and AEP Ohio's
2 proposed \$355 per megawatt day charge is
3 approximately \$2,572,000 over the next three years."

4 A. Correct.

5 Q. Did you calculate that figure?

6 A. I didn't do the direct calculation, but
7 as commented, we have an individual within our
8 company who is familiar with electricity and
9 electrical billing, and I sought out his expertise in
10 that area.

11 Q. Okay.

12 A. And learned what peak load capacity
13 means.

14 Q. Okay. And in calculating that figure was
15 it assumed that 100 percent of a capacity increase --
16 of an increase in the price of capacity would be
17 passed on to OSCO?

18 A. It was.

19 Q. Okay. Have you or has anyone from your
20 company calculated the difference between the amount
21 that OSCO presently pays for capacity and the amount
22 it would pay if capacity were priced at \$355 per
23 megawatt day?

24 A. No. I have not made that calculation.

25 Q. Okay. Directing your attention to lines

1 15 through 17 -- actually lines 13 through 17 on page
2 3 of your testimony, you state that the proposed \$355
3 per megawatt day capacity charge will have a
4 significant impact on OSCO. Do you see that
5 paragraph?

6 A. Yes, I do.

7 Q. There are other factors besides the price
8 of capacity that a CRES provider is required to pay
9 that could affect OSCO's ability to, for instance,
10 make capital investments, conduct worker training,
11 hire new employees, and retain new employees --
12 correct that, retaining of existing employees, I'm
13 sorry; is that correct?

14 A. I'm not sure you exactly said that
15 question right.

16 Q. Sure, I'll repeat my question.

17 A. In other words, beyond my contract I
18 don't really care what my CRES provider does.

19 Q. Sure.

20 A. I'm under contract and have a price
21 that's locked in.

22 Q. That's not what I'm asking. I'm asking
23 are there other factors in OSCO's business that
24 could -- that could impact its ability to make
25 capital investments, conduct worker training, hire

1 new employees, or retain existing employees?

2 A. Yes, you're correct. There are many.

3 Q. What are some of those factors?

4 A. Well, the price of energy is a key -- key
5 factor. The price of our labor, the price of metal
6 in our case is probably central to our cost
7 structure, and as others have pointed out,
8 regulation.

9 Q. And OSCO presently shops --

10 A. We do.

11 Q. -- for its generation portion of its
12 service, correct?

13 A. Yes.

14 Q. When did OSCO begin shopping?

15 A. In the summer of 2010 is when we
16 concluded the shopping and contracted.

17 Q. You entered into your contract in summer,
18 2010?

19 A. Let's see, I think the contract --
20 because I heard you ask that question previously.
21 Yeah, it's actually dated in August of 2010.

22 Q. Okay.

23 A. And then there is a 90-day waiting period
24 that AEP has, so we wouldn't have actually gone on
25 brokered power until December of 2010.

1 Q. Do you know with how many CRES providers
2 OSCO negotiated prior to entering into its present
3 agreement in August, 2010?

4 A. That's a good question. We had several
5 fliers, and, when I spoke with our electrical
6 engineer about this, he is -- we quickly narrowed it
7 down to one and actually moved pretty quickly on it,
8 so I think there were -- my answer would be three.

9 Q. And when you -- you just stated that you
10 had several fliers. Do you mean like pamphlets and
11 information about competitive retail electric --

12 A. Yes.

13 Q. -- supply? Okay.

14 When did all of the negotiations with
15 CRES providers occur?

16 A. In the summer of 2010.

17 Q. Do you know when they began?

18 A. I wouldn't know the exact date, no.

19 Q. Has OSCO's CRES provider informed OSCO
20 that it plans to increase the amount it charges OSCO
21 if the price of capacity increases?

22 A. We have had no communication with them in
23 that regard.

24 Q. So the answer is no?

25 A. The answer would be no.

1 Q. And has OSCO had the same CRES provider
2 since August, 2010?

3 A. Yes.

4 Q. On lines 2 through 5 of your testimony on
5 page 4, you state that OSCO's competitive rates will
6 be impacted even though OSCO is shopping before
7 September of 2011 and that there are no practical
8 ways to mitigate the increases as AEP Ohio's proposal
9 inhibits customers' ability to shop for alternative
10 suppliers and save money?

11 A. Yes, I see that language.

12 Q. Do those statements assume that OSCO's
13 CRES provider will pass on 100 percent of any
14 increase in the price of capacity?

15 A. Yes.

16 Q. Okay. Do these statements also assume
17 that OSCO's CRES provider possesses no other means by
18 which it could compete and offer a price lower than
19 AEP Ohio's standard service offer if capacity were
20 priced at \$355 per megawatt day?

21 A. That -- that's really beyond my
22 knowledge. I wouldn't know the circumstances of the
23 CRES provider.

24 Q. Well, you say there are -- you say that
25 your rates -- that OSCO's rates will be impacted,

1 correct? And you are assuming that 100 percent of
2 the capacity price will be passed on to OSCO,
3 correct?

4 A. Yes. The agreement allows them to pass
5 those costs on.

6 Q. Are you assuming that there would be no
7 other way for a CRES provider to prorate a lower
8 rate?

9 A. I'm not -- I'm not going to assume
10 anything.

11 Q. Are you aware that energy rates are
12 presently very low?

13 A. As another individual spoke, we have seen
14 no decrease even though we are buying brokered power.
15 The price of power has done nothing but go up, so if
16 the market is low, I don't know that. Not in my
17 bill.

18 Q. Mr. Burke, your background is not in
19 economics; is that correct?

20 A. It is not.

21 Q. And you are not an expert in electric
22 regulation?

23 A. I'm not.

24 Q. And OSCO is a gray iron foundry, correct?

25 A. Yes. We have three locations.

1 Q. And it produces and sells green sand and
2 shell molding among other processes?

3 A. We sell metal parts.

4 Q. Would OSCO voluntarily sell its products
5 to competitors at a price less than cost to sell its
6 products?

7 A. I was curious about your question. Do
8 you mean to put the word "competitor" in there?

9 Q. I do.

10 A. Because typically we would -- I can't
11 think of a situation unless it would be to help
12 somebody out where we would sell to a competitor.

13 Q. So OSCO would not sell to a competitor?

14 A. We would not unless they were in an
15 emergency, unless it was an emergency.

16 Q. And would OSCO voluntarily sell its
17 products to anyone at less than its cost to produce
18 its products?

19 A. At times that can happen, yes.

20 Q. And under what circumstance would that
21 happen?

22 A. Well, a mistake, for instance can cause
23 that to happen or a change in the, for instance, the
24 quality requirements might change the processing and
25 that would change, you know, the profitability of a

1 certain part. As another individual mentioned,
2 market share is sometimes a consideration or if with
3 that customer you have good things and bad things,
4 you might take it as a package and.

5 Q. Would that be a sustainable business
6 model for OSCO?

7 A. Not 100 percent.

8 Q. And would you agree that if OSCO were
9 required to undertake such transactions on a
10 long-term basis, it would affect OSCO's financial
11 viability as a company?

12 A. It certainly would.

13 MS. MOORE: Thank you, Mr. Burke.

14 I have no further questions, your Honor.

15 THE WITNESS: Thank you.

16 EXAMINER SEE: Wait just a minute. Just
17 a minute.

18 THE WITNESS: Thank you, your Honor.

19 EXAMINER SEE: Ms. McAlister, any
20 redirect?

21 MS. McALISTER: Unlikely, but may I have
22 a moment?

23 EXAMINER SEE: You may. Let's go off the
24 record for a couple of minutes.

25 (Discussion off the record.)

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

3 Ms. McAlister?

4 MS. McALISTER: No redirect, your Honor.

5 EXAMINER SEE: And I think you already
6 moved -- you did already move OMA Exhibits 104-A and
7 104-B into the record. Are there any objections to
8 the admission of 104-A and 104-B?

9 Hearing none, OMA Exhibits 104-A and
10 104-B are admitted into the record.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 EXAMINER SEE: And thank you very much,
13 Mr. Burke.

14 THE WITNESS: Thank you, your Honors.

15 EXAMINER PARROT: Ms. McAlister, you may
16 call your next witness.

17 MS. McALISTER: Thank you, your Honor.
18 The OMA calls Belden Brick witness Mr. Brad Belden.

19 (Witness sworn.)

20 EXAMINER PARROT: Please be seated.
21 Please proceed.

22 MS. McALISTER: Thank you, your Honor.

23 - - -

24

25

1 BRADLEY H. BELDEN

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

4 DIRECT EXAMINATION

5 By Ms. McAlister:

6 Q. Please state your name and business and
7 address for the record.

8 A. My name is Bradley Belden. The business
9 address is 700 West Tuscarawas Street, Canton, Ohio.

10 Q. And by whom are you employed?

11 A. The Belden Brick Company.

12 Q. And on whose behalf are you testifying
13 today?

14 A. The OMA.

15 Q. Was the testimony that was filed on
16 April 5, 2012, in this proceeding prepared by you or
17 at your direction?

18 A. At my direction.

19 MS. McALISTER: Your Honor, at this time
20 I would like to have marked as OMA Exhibit 105-A the
21 public version of Belden's testimony and 105-B the
22 confidential version.

23 EXAMINER PARROT: So marked.

24 (EXHIBITS MARKED FOR IDENTIFICATION.)

25 Q. Mr. Belden, do you have a copy of what

1 has been marked OMA Exhibits 105-A and B with you
2 today?

3 A. Yes.

4 Q. And do you have any corrections or
5 additions to make to those exhibits at this time?

6 A. No.

7 Q. And if I were to ask you the same
8 questions today as what's in those exhibits, would
9 your answers be the same?

10 A. They would be the same.

11 Q. And are those answers true and correct to
12 the best of your knowledge and belief?

13 A. Yes, they are.

14 MS. McALISTER: Thank you, your Honor.
15 At this time I would move for the admission of OMA
16 Exhibits 105-A and B into the record, subject to
17 cross-examination, and Mr. Belden is available for
18 cross.

19 EXAMINER PARROT: Ms. Kern?

20 MS. KERN: No questions, your Honor.

21 EXAMINER PARROT: Mr. Randazzo?

22 MR. RANDAZZO: No questions. Thank you
23 for coming, Mr. Belden.

24 EXAMINER PARROT: Mr. Hayden?

25 MR. HAYDEN: No questions.

1 EXAMINER PARROT: Ms. Kaleps-Clark?

2 MS. KALEPS-CLARK: No questions, your
3 Honor.

4 EXAMINER PARROT: Ms. Moore?

5 MS. MOORE: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Ms. Moore:

9 Q. And thank you for coming today,
10 Mr. Belden.

11 A. You're welcome.

12 Q. Directing your attention to your prefiled
13 testimony on lines 11 and 12 on page 3, you state
14 that under AEP Ohio's proposal Belden Brick's
15 competitive supplier will be compelled to pay a \$355
16 per megawatt day capacity charge which is
17 significantly above market rates. When you use the
18 term "market rates," to what are you referring?

19 A. I am -- I am referring to the PJM RPM
20 auction.

21 Q. Great. Do you know whether anyone can
22 participate in the yearly PJM RPM auction?

23 A. I do not know.

24 Q. Do you know whether there are any limits
25 on the amount of capacity an entity that is bidding

1 in the auction is permitted to bid?

2 A. I do not know that either.

3 Q. Are you aware that AEP Ohio did not
4 participate in the most recent auction?

5 A. I am aware of that, yes.

6 Q. Were you aware of that before today?

7 A. I was.

8 Q. Okay. Directing your attention to lines
9 12 and 13 on page 3 of your direct testimony, you
10 state that the \$355 per megawatt day capacity charge,
11 which you call the above-market rate, will be passed
12 on to Belden Brick. What is the basis for that
13 belief?

14 A. We do have a CRES provider, and in our
15 contract it does state that they have the ability to
16 change the rate that they charge us if capacity
17 charges would change.

18 Q. And has Belden Brick's CRES provider
19 informed Belden that it will, in fact, increase its,
20 Belden's, rates if capacity prices increase?

21 A. No. They have not indicated to us that
22 that would happen if this passed.

23 Q. Directing your attention to line 15 on
24 page 3 of your testimony, you state that the
25 difference between the RPM-based price for capacity,

1 which you called the "market price" for capacity, and
2 AEP Ohio's proposed 355 per megawatt day number is
3 approximately \$896,270 over the next three years; is
4 that correct?

5 A. That's correct.

6 Q. Did you calculate that figure?

7 A. No. It was calculated by the OMA but
8 with information provided by us.

9 Q. Okay. And do you know whether that
10 figure assumes that 100 percent of an increase in the
11 price of capacity would be passed on to Belden?

12 A. Yes, it assumes that 100 percent of that
13 change would be passed on.

14 Q. Have you or anyone from Belden Brick
15 calculated the difference between the amount that
16 Belden presently pays for electric service and the
17 amount it would pay if capacity was priced at \$355
18 per megawatt day?

19 A. The only calculation we have done is this
20 one so we pay a flat rate and which already has the
21 auction-based prices in that model so we're assuming
22 if they would -- if the capacity charges were raised,
23 that they would raise it by that amount.

24 Q. But you haven't performed the calculation
25 I just asked about; is that correct?

1 A. No. Just this calculation here.

2 Q. Okay. Directing your attention to line
3 17 through 23 of page 3 of your direct testimony
4 where you discuss the significant impact that Belden
5 Brick believes the \$355 per megawatt day proposal
6 made by AEP Ohio would have on it. It's true, is it
7 not, that other factors besides the price of capacity
8 that a CRES provider was required to pay to AEP Ohio
9 could affect Belden Brick's ability to make capital
10 investment, conduct worker training, hire new
11 employees, and retain existing employees, right?

12 A. That's true.

13 Q. What are some of those other factors?

14 A. The market for brick, for one, labor
15 costs, the price of natural gas is another for
16 instance.

17 Q. And Belden Brick is presently shopping
18 the generation portion of its electric service,
19 correct?

20 A. Correct.

21 Q. For how long has it been shopping?

22 A. We signed an agreement in December of
23 2010. So then there is a 90-day period after that.

24 Q. And before signing that agreement when
25 did Belden Brick begin negotiating with CRES

1 providers?

2 A. It was about September, 2010, give or
3 take a month or two.

4 Q. And with how many CRES providers did
5 Belden negotiate?

6 A. I know of two, but in the process we
7 hired a consultant so I don't know if there were any
8 that she saw during that time, but there were two
9 presented to me.

10 Q. And has Belden had the same CRES provider
11 since September -- I'm sorry, since December, 2010?

12 A. Yes.

13 Q. On lines 7 and 8 of page 4 of your direct
14 testimony you testified competitive rates will be
15 impacted as well even though Belden Brick was
16 shopping well before September, 2011, and in context
17 they will be impacted by the proposed \$355 per
18 megawatt day price.

19 Does that, again, assume that 100 percent
20 of any change in the price of capacity would be
21 passed on to Belden Brick?

22 A. Yes.

23 Q. Mr. Belden, Belden manufactures bricks,
24 pavers, and related products; is that correct?

25 A. Yes.

1 Q. Would Belden Brick voluntarily sell its
2 products to its competitor at less than Belden's cost
3 to produce those products?

4 A. We would not be voluntarily -- we would
5 not voluntarily sell those at below market costs. I
6 guess if we were forced to by law, we would probably
7 try to find ways to reduce the cost of our product,
8 as we always do anyway.

9 Q. But it would not do so voluntarily?

10 A. Not voluntarily.

11 Q. If Belden Brick were required to sell its
12 products to its competitors at less than Belden
13 Brick's cost to produce those products, would you
14 agree that the result to undertake such transactions
15 would negatively affect Belden Brick's long-term
16 viability as a company?

17 A. Yes, I agree.

18 MS. MOORE: Thank you. I have no further
19 questions, your Honor.

20 EXAMINER PARROT: Mr. Beeler?

21 MR. BEELER: No questions.

22 EXAMINER PARROT: Any redirect?

23 MS. McALISTER: Probably not.

24 EXAMINER PARROT: Take a moment.

25 MS. McALISTER: Thank you.

1 No redirect, your Honor.

2 EXAMINER PARROT: Thank you.

3 Thank you very much, Mr. Belden. You are
4 excused.

5 THE WITNESS: Thank you, your Honor.

6 EXAMINER PARROT: I believe you already
7 moved for the admission of Exhibits 105-A and 105-B.
8 Are there any objections?

9 Hearing none, OMA Exhibits 105-A and
10 105-B are admitted.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 EXAMINER PARROT: Is there anything else
13 to come before us today?

14 All right. Seeing nothing, we are
15 adjourned until tomorrow. We will reconvene at
16 8:30 a.m.

17 Let's go off the record.

18 (Thereupon, the hearing was adjourned at
19 4:42 p.m.)

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1502

1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on Wednesday, April 25,
5 2012, and carefully compared with my original
6 stenographic notes.

7
8

Karen Sue Gibson, Registered
9 Merit Reporter.

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11 (KSG-5516)

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Case No(s). 10-2929-EL-UNC

Summary: Transcript of Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company hearing held on 04/25/12 - Volume VII electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.