

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of: :
: Case No. 12-1230-EL-SSO
The Application of The :
Ohio Edison Company, :
The Cleveland Electric :
Illuminating Company, :
and The Toledo Edison :
Company for Authority to :
Provide for a Standard :
Service Offer Pursuant to :
R. C. Section 4928.143 in :
the Form of an Electric :
Security Plan. :

- - -

PROCEEDINGS

before Mr. Gregory Price and Ms. Mandy L. Willey,
Hearing Examiners, at the Public Utilities Commission
of Ohio, 180 East Broad Street, Room 11-C, Columbus,
Ohio, on June 5, 2012, called at 9:00 a.m.

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VOLUME II

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1 Tuesday Morning Session,
2 June 5, 2012.

3 - - -

4 EXAMINER PRICE: Let's go on the record.
5 Good morning. The Public Utilities
6 Commission has set for hearing at this time and this
7 place Case No. 12-1230-EL-SSO in the Matter of the
8 Application of the Ohio Edison Company, the Cleveland
9 Electric Illuminating Company, and the Toledo Edison
10 Company for Authority to Provide a Standard Service
11 Offer Pursuant to Section 4928.143, Revised Code, in
12 the Form of an Electric Security Plan.

13 My name is Gregory Price. With me is
14 Mandy Willey. We are the attorney examiners assigned
15 to preside over today's hearing. This is day 2 of
16 our hearing, although I could probably just call it
17 day 2.5.

18 Any preliminary matters before we
19 continue with Mr. Ridmann?

20 MR. KUTIK: Yes, your Honor. As I
21 indicated off the record, the companies now have in
22 their possession the proofs of notice of
23 publication -- proofs of publication of the notice of
24 this matter. We have given a copy to the court
25 reporter. We also have a copy available for the

1 parties to review and would ask that that document --
2 or that set of documents be marked as Company Exhibit
3 5.

4 EXAMINER PRICE: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. KUTIK: Your Honor, pursuant to your
7 admonition, we will make this available this morning
8 for the parties to review, and we intend to move for
9 its admission after the lunch break.

10 EXAMINER PRICE: Thank you.

11 Anything else before we --

12 MR. PETRICOFF: Yes, your Honor, I would
13 like to inquire if the Bench is ready to rule on the
14 pro hac vice for Mr. Stahl?

15 EXAMINER PRICE: Yes. Any objection to
16 the motion pro hac vice of Mr. Stahl?

17 Seeing none, it's granted.

18 MR. PETRICOFF: Thank you.

19 EXAMINER PRICE: Mr. Royer.

20 MR. ROYER: Your Honor, when I was
21 entering appearances, I neglected to enter the
22 appearance of Matthew White, Interstate Gas Supply,
23 Inc., 6100 Emerald Parkway, Dublin, Ohio, on behalf
24 of IGS.

25 Also, in that connection, I would like to

1 notify the Commission that Mr. Vince Parisi is
2 withdrawing as counsel for IGS in this matter.

3 EXAMINER PRICE: Thank you. So noted.
4 Anything else?

5 MR. BURK: Your Honor, did we want to put
6 on the record about rebuttal we discussed off the
7 record, or does that --

8 EXAMINER PRICE: Why don't we go ahead
9 and put it on the record, just to make it official.

10 MR. BURK: Okay. The company is planning
11 on offering three rebuttal witnesses. We expect to
12 file the testimony by close of business tomorrow,
13 June 6. The plan would be for the one company
14 witness to go on the stand Thursday at 1 p.m. and
15 then the two out-of-town witnesses would start Friday
16 morning at 9 a.m.

17 EXAMINER PRICE: Thank you very much.

18 MR. BURK: Thank you.

19 EXAMINER PRICE: That will be our plan
20 going forward. That being said, let's proceed with
21 Mr. Ridmann.

22 Mr. Ridmann, I remind you you are still
23 under oath.

24 Mr. Kutik, redirect.

25 MR. KUTIK: Thank you your Honor.

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WILLIAM R. RIDMANN,
being previously duly sworn, as prescribed by law,
was examined and testified further as follows:

REDIRECT EXAMINATION

By Mr. Kutik:

Q. Mr. Ridmann, do you remember some
questions from Mr. Dortch about ATSI prices, or
prices in ATSI, as a result of the May base residual
auction for planning year 2015-2016?

A. I do.

Q. And in your -- in preparation for your
testimony today, did you review various documents
published by PJM regarding that auction?

A. Yes, I did.

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

EXAMINER PRICE: You may.

MR. KUTIK: Your Honor, I would like to
have marked a single-page document as Company Exhibit
6.

EXAMINER PRICE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Ridmann, I have shown you what has
been marked for identification as Company Exhibit 6.

1 Do you recognize that?

2 A. Yes, I do.

3 Q. What is that?

4 A. It's basically a document -- an Excel
5 document that PJM filed on its website in conjunction
6 with what they put on their website showing the RPM
7 base residual auction results, which was marked as
8 AEPR Exhibit 1. So both AEPR Exhibit 1 and Company
9 Exhibit 6 were posted on the website at the same
10 time.

11 And this basically shows on the top chart
12 of Company Exhibit 6 the ATSI annual resource
13 clearing price of 357, and then there was much
14 discussion yesterday, I guess I'll say, regarding
15 whether that was the preliminary zonal net on that
16 load price, and the second chart on Company Exhibit 6
17 basically shows that for the ATSI zone the
18 preliminary zonal net load price is 294.03.

19 Q. Is this -- I'm sorry?

20 A. Which is what I referred to yesterday in
21 my testimony.

22 Q. You also had some questions from
23 Mr. Sauer about a survey of customers' expectations
24 regarding reliability, and you mentioned that survey
25 was done in and around 2008. Are you familiar with a

1 case with the Case No. 09-759?

2 A. Yes. That case is the company's
3 reliability performance standard case.

4 Q. Was that survey, that 2008 survey, used
5 or filed in that case?

6 A. Yes, it was.

7 Q. And could you be more specific in terms
8 of how it was used or filed?

9 A. Well, it was basically used in terms of
10 company -- or customers' expectations regarding
11 reliability issues, and it was basically the overall
12 survey taken by the company of its customers in 2008.

13 Q. Are you familiar with the testimony filed
14 by Staff Witness Baker in this case?

15 A. Yes, I am.

16 Q. And did Mr. Baker refer to any filings
17 that were made in Case No. 09-759?

18 A. Yes. He made reference to that, to that
19 survey filing.

20 Q. You were asked some questions about the
21 audit process for the DCR rider.

22 A. Yes. I remember that.

23 Q. Do you remember that? Did OCC
24 participate in the audit process in any way?

25 A. Yes. OCC reviewed the audit

1 recommendations and the audit report, and, as a
2 matter of fact, filed comments regarding that audit
3 report on Friday, June 1, 2012.

4 Q. You were asked some questions from
5 Mr. Petricoff about other states that had a purchase
6 of receivables program. Do those states' situations
7 apply here?

8 A. No, I don't believe so. Basically, you
9 know, as you know, in our service territories, in
10 FirstEnergy Ohio service territories, our shopping
11 rates are in the 75 percent or greater range.

12 The other states mentioned where there is
13 POR programs have shopping rates substantially lower
14 than that. For instance, Pennsylvania for MetEd and
15 Penelec and Penn Power, which is three of our
16 utilities in Pennsylvania, have shopping rates that
17 are in the 50 to 58 percent range, depending on the
18 company.

19 In Maryland, our subsidiary, Potomac
20 Edison, has a shopping rate of around 38 percent, and
21 it has a POR program I think mandated by the state.
22 And in New Jersey our subsidiary, Jersey Central
23 Power & Light, again, has a POR program, I think,
24 mandated by the state, and their shopping is around
25 38 percent.

1 So I think the correlation -- any
2 correlation between a purchase of receivables program
3 and the degree of shopping, I see very little, if
4 any, correlation because where we don't have a POR
5 program in our territories in Ohio, the shopping rate
6 is the highest.

7 Q. You were also asked some questions about
8 how -- whether you considered whether -- the rates
9 within ATSI, how they compared to the rates
10 elsewhere. Have you made such a comparison?

11 A. Yes, I have.

12 Q. And what is your -- does your analysis
13 show?

14 A. Making use of what has been marked as
15 AEPR Exhibit 2, which is the sheet that we spent a
16 fair amount of time on yesterday, which is the
17 response, the discovery response, essentially to AEPR
18 Set 1, Interrogatory 7.1 -- or 11.7, I should say, we
19 looked at the top chart that we had discussed
20 yesterday for the pricing in '14-'15 and '15-'16
21 delivery years, and we adjusted them for losses to
22 bring them to the retail level.

23 So, for instance, '14-'15 on this chart
24 is 55.81. We adjusted it for losses to bring it to a
25 retail level. We then compared it to the rates that

1 are pending before this Commission in two separate
2 cases, one being the AEP Ohio case and the other
3 being the Dayton Power & Light case.

4 And for the '14-'15 numbers, comparing
5 generation-type charges that are comparable,
6 including what I am going to call the rate to
7 stability riders associated with generation in both
8 of those cases, the AEP Ohio rate that is part of
9 their filing is approximately 10 percent above what
10 we have shown on this chart for the comparable rate
11 in terms of a generation rate.

12 And I will add that AEP Ohio in their
13 estimates of their rates in '14 and '15 made no
14 estimate of the escalation for their fuel from the
15 existing level, and I would think if you include the
16 fuel escalation, it would be even greater than 10
17 percent.

18 AEP Ohio did not make an estimate for the
19 '15-'16 delivery year, so I can't compare that to our
20 chart 1.

21 Doing the same thing for Dayton's MRO
22 case, and I use the '14-'15 data adjusted to the
23 retail level from the chart, the top part of our
24 chart from AEPR Exhibit 2, and compare that to Dayton
25 Power & Light's proposed charges, including their

1 ESSC charge, which is a rate stability charge for
2 generation, basically Dayton's proposed rate is
3 53 percent higher than the comparable rate for the
4 '14-'15 period shown on this schedule.

5 And they do make estimates for the
6 '15-'16 delivery year, and for that year the Dayton
7 Power & Light rate is 45 percent higher than the
8 comparable rates shown here.

9 MR. KUTIK: I have no further questions.

10 EXAMINER PRICE: Thank you.

11 Mr. Dortch.

12 MR. DORTCH: Thank you, your Honor.

13 - - -

14 RECROSS-EXAMINATION

15 By Mr. Dortch:

16 Q. Good morning, Mr. Ridmann.

17 A. Good morning.

18 Q. Mr. Ridmann, with reference to
19 FirstEnergy Exhibit No. 6 --

20 A. Yes.

21 Q. And I appreciate this exhibit, sir, and
22 the company providing it. The preliminary zonal net
23 load price of 294.03 that is found on this sheet,
24 does that include the scaling factors that will be
25 applicable to determine a price that will be imposed

1 to customers?

2 A. As we discussed yesterday, it does not.

3 Q. And, in fact, that price is, by the
4 company's ultimate estimate, it was contained in its
5 memo contra, the motion filed by my client to compel,
6 the company's estimate is approximately \$329 per
7 megawatt-day; is that correct?

8 A. And as I indicated yesterday, that is in
9 the range of reasonableness.

10 Q. And Mr. Kutik asked you some questions
11 about the POR program, and you made the statement
12 that shopping rates in FES I'm sorry -- in your
13 service territories are approximately 75 percent.

14 A. I testified that the shopping in the FE
15 Ohio utilities shopping was in the range of 75
16 percent.

17 Q. I'm sorry. When I said "yours," I meant
18 the company. Okay. FE Ohio's territories is
19 approximately 75 percent. Sir, what do you mean by
20 shopping?

21 A. The percent of the load that is shopping.

22 Q. Is that the percent of the load that is
23 no longer on the provider of last resort rates?

24 A. Yes. It's the percent that's not being
25 provided SSO service by the utilities.

1 Q. And so that would incorporate all load
2 that is also being served by FirstEnergy Solutions?

3 MR. KUTIK: Objection.

4 EXAMINER PRICE: Grounds?

5 MR. KUTIK: Again, your Honor, unless
6 this is a very generic question --

7 MR. DORTCH: Your Honor, it is a very
8 generic question.

9 MR. KUTIK: Again, talk about specific
10 CRES providers and what they are providing or not
11 providing, your Honor, is nonpublic information.

12 EXAMINER PRICE: Sustained. Mr. Dortch,
13 there are other witnesses you may be able to get this
14 information from, but getting it from the companies
15 is probably going to violate one of the rules we
16 discussed yesterday.

17 MR. DORTCH: Your Honor, with the Bench's
18 permission, I was permitted to review the rule that
19 was being used to preclude this line of questioning
20 yesterday. May I ask the witness a question
21 concerning the company's application or understanding
22 of the application of that rule?

23 EXAMINER PRICE: I don't think that's --
24 I think that is counsel's job to interpret the rules,
25 not the witness's job.

1 MR. DORTCH: Very well, your Honor. Your
2 Honor, I have no further questions.

3 EXAMINER PRICE: Thank you.

4 Mr. Warnock?

5 MR. WARNOCK: No questions.

6 EXAMINER PRICE: Mr. Hays?

7 MR. HAYS: Very brief, your Honor.

8 - - -

9 RECROSS-EXAMINATION

10 By Mr. Hays:

11 Q. First, just looking -- first, good
12 morning. It seems like we haven't seen each other
13 for half a day.

14 A. If that.

15 Q. I think I asked you yesterday if the PJM
16 auction price from the BRA from May was about twice
17 or more than twice the AEP number. Looking at your
18 exhibit you have produced today, can you answer that
19 question?

20 A. Looking at -- first of all, you asked me
21 a couple of questions. You asked me first is there
22 any zone that's next to the companies, being the ATSI
23 zone, if you will, and whether there was any rates
24 that were, how shall I say it, less than half of ATSI
25 is, I think the way you put it.

1 And I will add that Penelec is adjacent
2 to the ATSI zone, and on this sheet basically the
3 Penelec rate is 165.78 and that is -- if I doubled
4 that, the ATSI load is less than doubling the Penelec
5 rate.

6 And then on -- regarding AEP, the AEP
7 preliminary zonal net load price is 314.62 on this
8 sheet. And, again, I find it ironic that AEP Ohio's
9 proposed rate is at least 10 percent higher than the
10 rate that we compute under AEPR Exhibit 2.

11 Q. Having found that ironic -- and I don't
12 believe I asked any questions about that -- is the
13 PJM capacity price or the preliminary zonal capacity
14 price for AEP 134.62?

15 A. Yes. I think I just stated that.

16 Q. And for Dayton Power and Light, it's
17 314.62?

18 A. Dayton's is 134.62.

19 Q. Okay.

20 A. Which, again, I find very ironic their
21 retail rates are substantially less.

22 Q. I didn't ask that question, and if you
23 would stop answering on your own and answer the
24 question --

25 MR. KUTIK: Your Honor.

1 EXAMINER PRICE: Everybody. Mr. Hays, if
2 you want to move to strike, move to strike. Don't
3 argue with the witness.

4 MR. HAYS: I would move to strike that.
5 I would also move to strike the part he volunteered
6 to the question before.

7 EXAMINER PRICE: Let's have the
8 question -- what is in the past is in the past.
9 Let's go to the immediate question. What was -- can
10 I have the response back.

11 (Record read.)

12 EXAMINER PRICE: We will strike
13 everything beginning with "which I find."

14 Mr. Hays, please proceed.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. HAYS: Your Honor, I have an apology
17 to make. The Motel 6 makes duplicating very
18 difficult so I have only literally two copies of what
19 I have marked as NOAC Exhibit 1.

20 EXAMINER PRICE: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. HAYS: And I'm not quite sure how we
23 can do this.

24 EXAMINER PRICE: Show it to counsel, give
25 one to the reporter, and then we'll go from there.

1 MR. HAYS: Might I use this one before I
2 give it to the reporters?

3 EXAMINER PRICE: Yes.

4 MR. HAYS: Thank you.

5 MR. KUTIK: Your Honor, if you don't
6 mind, if there are questions going to be asked about
7 the document, I would just look over Mr. Ridmann's
8 shoulder.

9 EXAMINER PRICE: That would be fine.

10 Please proceed, Mr. Hays.

11 MR. HAYS: I just wanted to give him a
12 chance to take a quick look at it, your Honor.

13 EXAMINER PRICE: Okay.

14 Q. This exhibit is a printout of a newspaper
15 article from The Plain Dealer; would you agree it
16 appears to be?

17 A. That's what it appears to be.

18 Q. Have you read it before?

19 A. I may have scanned it before.

20 Q. I would like you to turn to the third
21 page near the bottom, the paragraph that begins
22 "After PJM objected, FirstEnergy said it would place
23 four 208 megawatt combustion turbines at its Eastlake
24 plant."

25 MR. KUTIK: Your Honor, I object, beyond

1 the scope of redirect.

2 EXAMINER PRICE: Sustained.

3 MR. HAYS: Your Honor, I would ask a
4 little indulgence. I believe yesterday you ruled
5 during a question, counsel had raised the objection
6 that it was confidential information, and at that
7 point I indicated I did not believe it was
8 confidential information. And as a result of that
9 ruling, I brought this in today because the --

10 EXAMINER PRICE: I understand, Mr. Hays,
11 but you should have had this -- if you intended to
12 use it in cross, you should have used it for cross.
13 I was very indulgent with everybody yesterday, but we
14 are going to stay within the scope of redirect.

15 The objection is sustained.

16 MR. HAYS: May I just, for the record,
17 state one other thing, sir?

18 EXAMINER PRICE: You may.

19 MR. HAYS: In this, for the record for
20 appeals purposes, it does say the company said the
21 turbines did not clear the auction price. The
22 representation by counsel yesterday was that this was
23 confidential information. It clearly was not
24 confidential information but widely disseminated.

25 Thank you.

1 EXAMINER PRICE: Thank you.

2 MR. KUTIK: Your Honor, the record will
3 be what the record will be. I object and I think
4 counsel mischaracterized the record.

5 EXAMINER PRICE: I understand, but we are
6 going to let him make his proffer, and we will go
7 from there.

8 MR. KUTIK: I understand.

9 EXAMINER PRICE: Any further questions,
10 Mr. Hays?

11 MR. HAYS: No, sir. Thank you.

12 EXAMINER PRICE: Mr. Sauer.

13 MR. SAUER: Thank you, your Honor.

14 - - -

15 RECROSS-EXAMINATION

16 By Mr. Sauer:

17 Q. Good morning, Mr. Ridmann.

18 A. Good morning.

19 Q. Do you recall Mr. Kutik asking you a
20 question regarding Case No. 09-759-EL-ESS?

21 A. Yes, I do.

22 MR. SAUER: May I approach, your Honor?

23 EXAMINER PRICE: You may.

24 MR. SAUER: I'm sorry, I only have one
25 copy. It's the company's application in 09-759, and

1 I wanted to show the witness.

2 EXAMINER PRICE: Mr. Kutik -- Mr. Sauer,
3 are you asking this to be marked or just showing
4 this?

5 MR. SAUER: I'm just showing it.

6 Q. (By Mr. Sauer) Mr. Ridmann, are you
7 familiar with that document?

8 A. I probably reviewed it at the time it was
9 filed. It's been a while.

10 Q. And on I believe it's page 11 of that
11 document there are some performance standards for the
12 three FirstEnergy companies; is that correct?

13 A. Yes. There is some minimum performance
14 standards, a chart.

15 Q. And did the 2008 customer survey that you
16 were alluding to in response to Mr. Kutik's question
17 allow the companies to conclude that the minimum
18 performance standards in there -- in the companies'
19 application complied with FirstEnergy customers'
20 expectations?

21 A. Do you have a reference in particular?

22 Q. No reference, I was just asking about the
23 customer survey you were talking about. Was it
24 intended to allow the company to confirm that their
25 minimum performance standards were in compliance with

1 your customers' expectations?

2 A. I think the customer surveys were -- show
3 that basically we're in -- I am not sure compliance,
4 but we're basically --

5 Q. In alignment?

6 A. In some degree, alignment with what our
7 expectations -- what their customer expectations were
8 versus what we proposed.

9 Q. Could you, for the record, read what the
10 minimum performance standards were for each of the
11 three companies for the CAIDI and SAIFI performance
12 standards that are shown there.

13 A. Looking at CEI, I am just reading off the
14 chart, minimum performance standard, average plus
15 three times standard deviation, SAIFI 1.72, CAIDI
16 1.44.

17 Ohio Edison minimum performance standard,
18 average plus three times the standard deviation, 1.31
19 for SAIFI and for CAIDI 1.21.

20 And for Toledo, minimum performance
21 standard, average plus three standard deviations for
22 SAIFI 1.28 and 1.34 for CAIDI.

23 MR. SAUER: Thank you. I have no further
24 questions, your Honor.

25 EXAMINER PRICE: Mr. Royer.

1 MR. ROYER: Just briefly. Thank you,
2 your Honor.

3 - - -

4 REXCROSS-EXAMINATION

5 By Mr. Royer:

6 Q. You referred to FirstEnergy's shopping
7 percentages being 75 percent; is that correct?

8 A. Yes.

9 Q. Is that in terms of -- is that in terms
10 of load? Sales?

11 A. Yes, in terms of sales, not --

12 Q. Do you know how much of that shopping
13 percentage is distributable to residential load?

14 A. I do not specifically, but I think all of
15 them are really -- all the classes are pretty high
16 shopping.

17 Q. You don't know specifically how
18 residential shopping compares to shopping in the
19 other classes?

20 A. Not specifically. I would say it's very
21 close probably to the 75 percent.

22 Q. And if -- and without running afoul of
23 the nondisclosure issue we were discussing, do you
24 know what percentage of the shopping is attributable
25 to aggregation loads?

1 A. I do not, nor do I think it matters since
2 it's still shopping.

3 MR. ROYER: That's all, your Honor.

4 EXAMINER PRICE: Mr. Allwein.

5 MR. ALLWEIN: No questions, your Honor.
6 Thank you.

7 EXAMINER PRICE: Mr. Lavanga.

8 MR. LAVANGA: No questions.

9 EXAMINER PRICE: Mr. Vickers.

10 MR. VICKERS: No questions

11 EXAMINER PRICE: Mr. Kurtz.

12 MR. KURTZ: No questions, your Honor.

13 EXAMINER PRICE: Mr. Petricoff.

14 MR. PETRICOFF: Just one question.

15 - - -

16 RECROSS-EXAMINATION

17 By Mr. Petricoff:

18 Q. Following up on the 75 that is shopping,
19 do you know offhand whether Pennsylvania permits
20 governmental aggregation?

21 A. They, I believe, may have opt-in
22 government aggregation.

23 Q. But not opt-out government aggregation?

24 A. They do not have opt out.

25 Q. And are there opt-out government

1 aggregation programs in the FirstEnergy affiliate in
2 Maryland or New Jersey?

3 A. There are not.

4 MR. PETRICOFF: No further questions.

5 Thank you, Mr. Ridmann.

6 EXAMINER PRICE: Thank you.

7 Mr. McNamee.

8 MR. McNAMEE: No questions. Thank you.

9 EXAMINER PRICE: Thank you.

10 Any questions for the witness?

11 EXAMINER WILLEY: No questions.

12 EXAMINER PRICE: I have a few.

13 - - -

14 EXAMINATION

15 By Examiner Price:

16 Q. I'm interested, Mr. Ridmann, in three
17 areas. One is mitigation efforts that the company
18 may or may not undertake with respect to the PJM
19 constraint in the ATSI zone, and mitigating that
20 constraint to our limits -- what appear to be limits
21 on Commission authority in the ESP III stip, and,
22 three, you said repeatedly the -- you believe this is
23 an extension of the ESP II stip, so I am going to ask
24 you questions regarding changes from the ESP II or
25 what I thought were changes from ESP II to ESP III.

1 So that's just a preview.

2 EXAMINER PRICE: Just so the record is
3 clear, we keep talking about the ESP II stip, and I
4 am referring to the combined stipulations, but I'm
5 going to go ahead on my own motion take
6 administrative notice of the stipulation filed in
7 10-388, the first supplemental stipulation filed in
8 10-388 and the second supplemental stipulation filed
9 in 10-388, so we will have that in the record.

10 Q. Can you explain what specific steps the
11 company intends to take during this ESP to relieve
12 the -- to mitigate the constraint as a distribution
13 company?

14 I'm not asking about ATSI, but the steps
15 the companies intend to take under this ESP that will
16 be authorized by the CSP to mitigate or relieve the
17 constraint in the ATSI zone?

18 A. I think those are identified in the
19 letter we submitted to Mr. Johnson that I believe is
20 a staff exhibit.

21 Q. Staff Exhibit 1.

22 A. We basically identified the things that
23 we are looking at, and, as I indicated yesterday, I
24 think the Volt-var situation coming out of the pilot
25 associated with AMI will help determine some issues

1 or some values associated with the Volt-var
2 situation. And that pilot continues through, I
3 think, this summer and next summer, okay?

4 And then we look at whether we should --
5 basically, broad base on what we see the next two
6 summers. I think the capacity situation, the
7 capacitors that I talked about, I think that's looked
8 at probably routinely in terms of what can be done to
9 relieve congestion. I think it primarily has an
10 impact on the distribution system, but to the extent
11 it may relieve -- may improve reliability on the
12 transmission system, I am sure they are looking at
13 that.

14 And then the second one I indicated,
15 which dealt with reconductoring and standardization
16 of wires, I'm not quite sure what -- what's being
17 done regarding that.

18 And then we had mentioned in the letter
19 many preapplication or things we are looking at.
20 There are some, I think, confidential aspects
21 associated with that so I believe we indicated we
22 would be happy to meet with the staff --

23 Q. I am not asking for anything
24 confidential.

25 A. -- to go over that stuff.

1 Q. The distribution improvements that you
2 discussed, will those be funded by the delivery
3 capital --

4 A. The DCR rider?

5 Q. The DCR rider.

6 A. I would expect so.

7 Q. As you are aware, there are -- we
8 discussed yesterday there are some interim --

9 A. I would say absent something that would
10 be funded under the AMI rider associated with that
11 pilot.

12 Q. Right. That makes sense. There are some
13 interim auctions coming up in PJM. Do you intend to
14 bid any additional energy efficiency into those
15 interim auctions as owners come in, or are you done
16 with that project?

17 A. I would think we would look -- we would
18 be looking at possibly bidding into the -- if there
19 are any additional incremental auctions, I would
20 think we would be looking at bidding in.

21 Q. And is the only issue holding you up the
22 ownership attributes; otherwise, the EMV report
23 from -- that you discussed earlier has been done for
24 these?

25 A. The only thing holding us up on the

1 energy efficiency, I think, as I stated, we filed an
2 EMV report, and I believe it's been accepted for the
3 lighting stuff, for the lighting projects, by PJM, so
4 I think we're past that.

5 So I think the only -- I'm not sure there
6 is -- to the extent we were able to gain more
7 ownership of the energy efficiency attributes above
8 that which we had bid in, that possibility exists for
9 bidding in.

10 Q. Is it possible you could bid any
11 additional energy efficiency that you gain ownership
12 attributes into the next base residual auction that,
13 I assume, will be in May, 2013?

14 A. Yes. If I -- if I remember the rules
15 correctly, so the next base residual auction would be
16 for the '16-'17 delivery year, so we would be bidding
17 in in May of '13, and I think you would be able to go
18 back to June 1 of 2012 and look at energy efficiency
19 attributes, energy demand reduction from June 1,
20 2012, bidden in.

21 And the reason you can't go earlier than
22 that is because it's -- the energy efficiency is
23 already assumed to be reflected in historical load
24 that PJM uses.

25 Q. Right. Okay. If the Commission approves

1 your application, will you bid the peak demand
2 reduction coming from ELR in any subsequent
3 increment -- incremental auctions?

4 A. To the extent we have ownership.

5 Q. Okay. Just as an aside, I think the
6 record on this is not clear. The base residual
7 auction has resulted in the capacity price for the
8 2015-2016 planning year. That capacity price
9 applies, whether this ESP is approved or whether the
10 company -- if the Commission were to reject the ESP,
11 you were to proceed under a market rate offer; is
12 that correct?

13 A. Yes. The outcome of the PJM base
14 residual auction is the result of the auction
15 regardless of whether you have an ESP or MRO.

16 Q. Absent the statutory test it's the same
17 on either side of the ledger.

18 A. That's correct.

19 Q. My next two questions will kind of roll
20 together. What I'm interested in in the stip are
21 areas where it appears that the stip might be
22 limiting the Commissioners' authority or where there
23 are changes from the previous stipulation.

24 So let's start with page 7 of the ESP III
25 stip. About halfway down, it indicates, "The bidding

1 process, including its associated contingency
2 process, shall be conducted by an independent auction
3 manager."

4 In the past you've had a specific auction
5 manager. Now, it just indicates it will be an
6 independent auction manager. Who is going to select
7 the independent auction manager?

8 A. I would think the company probably would.

9 Q. Would that be subject to Commission
10 approval?

11 A. I would think we would probably have a
12 discussion with the Commission staff.

13 Q. Okay. Thank you. On page 8, again about
14 halfway down, the sentence says, "The competitive bid
15 process shall be conducted consistent with the
16 process approved in Case Nos. 10-388-EL-SSO and
17 10-1284-EL-UNC, "including without limitation," then
18 three specific bullet points.

19 What do you mean by "including without
20 limitation"? That those three bullet points -- that
21 it could be more than those three bullet points?

22 A. Yes.

23 Q. So if the Commission were to accept the
24 stipulation, you believe it would limit the
25 Commission's discretion to anything in those two

1 cases, including those three bullet points and
2 everything else?

3 A. I think it's without limitation, so.

4 Q. Is that a change from the previous
5 stipulation?

6 A. If you could hold on a minute.

7 That's the same as the existing ESP.

8 Q. The next page, sentence at the top
9 "based" -- I think it's the first full sentence of
10 the page. "Based on the recommendations of the
11 auction manager and the Commission's consultant, the
12 Commission may modify certain aspects of the auction
13 process of future auctions contemplated by the ESP."
14 And then it indicates, "such modifications may not
15 alter" five specific bullet points.

16 That would apply even if the independent
17 auction manager recommended a change in one of those
18 five specific bullet points?

19 A. I think it -- when it says, "However,
20 such modifications may not alter the following," I
21 think it is excluding the following.

22 Q. So even if the independent auction
23 manager were to recommend a lower load cap, then the
24 Commission would be -- under your interpretation, the
25 Commission would not be able to adopt that

1 recommendation.

2 A. Yes, I think that's correct.

3 Q. Thank you.

4 A. And that is consistent with the language
5 that's in the ESP II.

6 Q. I understand. Just because it slipped
7 past me last time doesn't mean it will this time.

8 Page 10, subsection 4, the first
9 sentence, I think the language "where reasonable" is
10 actually new from ESP II. Why the change?

11 A. Where are you at, your Honor? Page 10?

12 Q. Page 10, subsection 4 or section 4, on
13 the second line "including, where reasonable."

14 A. I don't know offhand the genesis of the
15 change, but it is a change.

16 Q. Yes.

17 A. It may have been -- I don't know.
18 Obviously, someone requested a change and we made the
19 change.

20 Q. And then later on in that section it
21 says, "The RFP process may be conducted by an
22 independent bid manager." I believe in the ESP II
23 stip it says "will be conducted by an independent bid
24 manager." Why the change there?

25 And let me say, correct me if I'm wrong.

1 When I think there's a change, I could have missed
2 something.

3 A. No. There was a change. Again, I don't
4 remember the genesis of what party requested a change
5 that was agreed upon, but it is a change.

6 Q. Okay. Page 12, section 5 indicates, and
7 I understand this is a nonchange from the ESP II
8 stip, it says, "However, the Commission may, with the
9 Companies' concurrence, institute a changed revenue
10 neutral distribution rate design."

11 Why do you believe the companies'
12 concurrence is necessary if the rate design change is
13 revenue neutral?

14 A. Where are you at, exactly?

15 Q. Page 12, section 5.

16 A. Oh, I see, okay.

17 Q. The phrase "with the companies'
18 concurrence."

19 A. Because the companies feel very strongly
20 about the rate design that may occur and the
21 implications on the company, and, therefore, in a
22 package under the ESP, we are very concerned with
23 rates being modified, even if revenue neutral, and
24 the implications of the companies' financial
25 situation.

1 Q. If they are revenue neutral, why aren't
2 you indifferent?

3 A. Because of the implication going forward,
4 they may be revenue neutral at one point in time, but
5 not maybe revenue neutral going forward.

6 Q. Okay. I understand. So you're concerned
7 that it may not result in your revenue requirement
8 over time.

9 A. That's correct.

10 Q. Okay. Thank you. Page 14, section 7,
11 subsection a, I think there was a change, the phrase,
12 "the allowed balance," we added in two consecutive
13 quarters. 14, 7, a.

14 A. Uh-huh, yes.

15 Q. Why did we make that change?

16 A. I don't see a change there, your Honor.

17 Q. Oh, I may be mistaken. Okay. As I said,
18 I was comparing three sets of documents. I got a
19 little bleary there.

20 Page 17, bottom of the page, it
21 indicates, "If the Commission rejects the results of
22 the RFP within the three business day period, the
23 event shall be deemed a force majeure and the
24 Companies incur no penalty." Why do you need this
25 change?

1 MR. KUTIK: I'm sorry, your Honor. Where
2 are you?

3 EXAMINER PRICE: Page 17, section d, the
4 bottom of the page, I think it's the last full
5 sentence.

6 A. I'm sorry. I tried to compare the
7 documents. Could you give me the reference again? I
8 know it's page 17.

9 Q. Page 17, section d, "within the three
10 business day period, the event shall be deemed a
11 force majeure and the Companies shall incur no
12 penalty."

13 So I have two questions. I think that's
14 a change, and to whether it's a change or not, what
15 would be the justification for an automatic force
16 majeure?

17 EXAMINER PRICE: And, yes, Mr. Kutik,
18 that was a compound question.

19 A. I don't believe that sentence is a
20 change, so that answers the first part of the
21 compound sentence. And the second is, you know, I
22 think that the -- basically, if you are rejecting the
23 results of the RFP, and we relied on the RFP in order
24 to meet our statutory requirements, then it should be
25 deemed a force majeure. We've gone out. We've tried

1 to acquire them --

2 Q. It may be -- I'm sorry. Go ahead.

3 A. You have gone out, tried to acquire them,
4 and for whatever reason, the Commission rejected
5 them.

6 Q. And that might make it grounds for a
7 force majeure, and certainly the Commission has
8 granted force majeure in the past. I think what
9 concerns me is the automatic force majeure language
10 in the stip.

11 A. Again, that's not a change from what was
12 there previously, and I think it's part of the
13 overall bargain of what we see in terms of risks
14 associated with that provision.

15 Q. Thank you. Okay. Page 18 -- and, again,
16 maybe this is not a change -- section e, first
17 sentence, "The application to the Commission will
18 seek approval of recovery for all costs associated
19 with acquiring RECs." Didn't it say "reasonable
20 costs associated with acquiring the RECs"?

21 A. At the end of that sentence on the fourth
22 line of e where it ends, but "including the costs
23 associated with administering the RFP," there -- in
24 the ESP II there was additional language "in that
25 such contracts are reasonable." That's the change.

1 Q. But you've removed "reasonable."

2 A. That's correct. That's what I said.

3 Yes, in the prior ESP, "in that such contracts are
4 reasonable" was included, and now it's not in there,
5 and I presume some party asked for the change.

6 Q. To take out the word "reasonable"?

7 A. Actually, what was taken out -- unless it
8 was inserted somewhere else, okay?

9 Q. Uh-huh.

10 A. "In that such contracts are reasonable."

11 Q. And you don't know the genesis of that
12 change?

13 A. I don't. I know the whole area about
14 RECs, and that was primarily a discussion between
15 staff and the company, but I don't remember the
16 genesis of all the changes.

17 Q. Okay. Page 19, section --

18 A. Assuming that's not confidential
19 information. It's a little late now.

20 Q. And that's the thing, I am not trying to
21 ask -- I want to be clear, I am not asking which
22 party asked for a specific change. I'm asking you to
23 explain the rationale behind the changes.

24 A. Okay.

25 Q. I don't want to know about your

1 negotiations. Page 19, section 2, the delivery
2 capital recovery rider, is the company willing to
3 work with the staff as to which projects will be
4 funded by the delivery capital recovery rider,
5 specifically projects to mitigate the ATSI zone
6 constraint?

7 A. Willing to work with the staff on what
8 projects get funded through DCR, I guess the way I
9 read DCR is any projects that fit under this, under
10 the words of the DCR, basically flow through the DCR
11 rider.

12 As we indicated in our response to the
13 letter to Mr. Johnson, we would be happy to sit down
14 with the Commission staff any time and go over what
15 we are doing and have discussions with them about
16 that.

17 Q. Okay. Thank you. Page 21, first full
18 sentence, it says, "as long as no net job losses at
19 the Companies or with respect to FirstEnergy Service
20 Company employees who provide support for
21 distribution services."

22 There have been -- this is a carryover
23 provision from the second ESP, but there have been no
24 net job losses thus far, have there?

25 A. There have not been. In particular, what

1 language -- because to be clear, what language were
2 you referring to?

3 Q. The first sentence on page -- first full
4 sentence on page 21.

5 A. There was a language change.

6 Q. I'm not asking for language change.

7 A. But, no, there have been no job losses.

8 Q. Page 43, the language with respect to the
9 value of an expeditious ruling, we've done this case
10 on an accelerated time schedule, not as accelerated
11 as the companies initially proposed.

12 What would be an appropriate guideline
13 for the filing of the next SSO by the company in
14 order to give the Commission more of the 275 days
15 statutory maximum to deal with the ESP?

16 A. Up to this point, I really haven't given
17 it much thought about the next one after this one, to
18 be honest with you. I have been more concerned about
19 this one and other ESPs or MROs before the
20 Commission. And so I really haven't given it much
21 thought. I think we will look at, basically, you
22 know, what's happened in the marketplace in terms of
23 PJM's situation and that to see if the current
24 situation continues or not.

25 I mean, you have got to remember that,

1 you know, we had a federal order come out that
2 basically forced us, unless we wanted to spend an
3 inordinate amount of money to shut down a significant
4 amount of our coal plants, which really precipitated
5 this.

6 We tried to react as best that we could
7 in all fronts to deal with that order, the
8 environmental order, and so we'll monitor closely the
9 events that are happening in the future on those type
10 things.

11 Q. Okay. The June 20 date is because of the
12 October auctions. In the event the Commission does
13 not hit the June 20 date that you requested, is it
14 possible that the October auctions could be moved to
15 later in 2012, November or December? Are there any
16 downsides to going past November into December?

17 A. I really think there are downsides to
18 particularly going into, I would say, the last half
19 of November into the holidays. That's not a good
20 time, based on feedback we've heard from suppliers
21 and everything, so I would try very hard to stick to
22 the October timeframe. You know, right now, the
23 auction is scheduled for October 23. You can slip a
24 week maybe, but I really wouldn't let it slip a whole
25 lot --

1 Q. Okay.

2 A. -- for the benefit of our customers.

3 Q. I understand.

4 MR. DORTCH: Your Honor, may we have the
5 last answer read back? We are having -- you guys are
6 having a nice chat, but we are having trouble hearing
7 it.

8 MR. KUTIK: What's your problem?

9 EXAMINER PRICE: Let's have the last
10 answer back, please.

11 (Record read.)

12 EXAMINER PRICE: Mr. Allwein.

13 MR. ALLWEIN: May I have the answer
14 before that read back? I didn't hear the answer to
15 the question before that.

16 EXAMINER PRICE: Just this one.

17 MR. ALLWEIN: Thank you.

18 EXAMINER PRICE: Would you read the
19 answer back, please.

20 (Record read.)

21 EXAMINER PRICE: Thank you, Mr. Ridmann.
22 You are excused.

23 MR. KUTIK: Your Honor, at this time the
24 companies move for the admission of Companies
25 Exhibits 1, 2, 3, 4, and 6.

1 EXAMINER PRICE: Any objection to the
2 admission of Company Exhibits 1, 2, 3, 4, and 6?

3 Seeing none, they will be admitted.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 MR. McNAMEE: Your Honor, the staff would
6 move for the admission of Staff Exhibit 1.

7 MR. KUTIK: No objection, your Honor.

8 EXAMINER PRICE: Any objection to Staff
9 Exhibit 1?

10 MR. KUTIK: No objection, your Honor.

11 MR. DORTCH: Your Honor --

12 EXAMINER PRICE: Let's admit staff.
13 You're next. Staff Exhibit 1 will be admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER PRICE: Mr. Dortch.

16 MR. DORTCH: Thank you, your Honor. Move
17 for AEP Retail Exhibits 1 and 2.

18 EXAMINER PRICE: Any objection to the
19 introduction to the admission of AEP Retail Exhibits
20 1 and 2.

21 MR. KUTIK: No objection.

22 EXAMINER PRICE: They will be admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER PRICE: Mr. Sauer.

25 MR. SAUER: OCC would move for the

1 admission of OCC Exhibits 1 through 8.

2 MR. KUTIK: Your Honor, may I have a
3 moment, please?

4 EXAMINER PRICE: You may.

5 MR. KUTIK: Your Honor, we have no
6 objection to the admission of Exhibits 2, 3, 4, 5, 7,
7 and 8 from OCC.

8 EXAMINER PRICE: One second. Okay. Then
9 anybody else have an objection to 2, 3, 4, 5, 6, and
10 7?

11 MR. KUTIK: No, 6 I did have an
12 objection.

13 EXAMINER PRICE: I'm sorry, 2, 3, 4, 5,
14 and 7?

15 Seeing none those exhibits will be
16 admitted.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 MR. KUTIK: And 8.

19 EXAMINER PRICE: And 8.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 MR. KUTIK: Your Honor, perhaps we can
22 resolve this, but with respect to OCC Exhibit 1, the
23 last page of that exhibit appears to not be part of
24 the responses that precede the interrogatory,
25 responses that precede it.

1 If I'm wrong, with the representation of
2 counsel, I will withdraw my comment. If I'm right,
3 as long as we have the representation or the
4 agreement that the last page is not part of the
5 response, I'm fine with its admission. I just think
6 the exhibit, as it stands now, is potentially
7 misleading or confusing.

8 MR. SAUER: Mr. Kutik is correct. The
9 last page of OCC Exhibit No. 1 was not a response
10 from the company to an interrogatory that we had
11 asked.

12 MR. KUTIK: And I am not seeking to have
13 it excluded. I just think that there should be an
14 understanding on the record that was not part of the
15 response.

16 EXAMINER PRICE: The record is now clear.

17 MR. KUTIK: And with respect to --

18 EXAMINER PRICE: Let me go ahead and
19 admit OCC Exhibit 1, subject to that clarification.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 MR. KUTIK: And with respect to OCC
22 Exhibit 6, the exhibit begins with an attachment that
23 refers to a request for production. And, your Honor,
24 I think to be complete, the request for production
25 that is the response should be a part of this, so I

1 would ask that if OCC is willing to do that, then we
2 would resubmit this exhibit with that request.

3 MR. SAUER: We are willing to do that,
4 your Honor.

5 EXAMINER PRICE: Okay. We will defer
6 ruling on 6 then until we get the full discovery.

7 Mr. Allwein.

8 MR. ALLWEIN: Your Honor, I would move
9 for the admission of Sierra Club Exhibits 1 through
10 3. And I would ask the Court to take administrative
11 notice of the February 29, 2012, entry in the 12-814
12 case and take administrative notice of the companies'
13 subsequent report on March 29, 2012, in that case.

14 EXAMINER PRICE: Okay. Let's break these
15 up. It's unnecessary to take administrative notice
16 of the Commission's entry in 12-814. The
17 Commission's entry speaks for itself and may be cited
18 freely by all parties.

19 Any objection to the admission of Sierra
20 Club's 1, 2, and 3?

21 MR. KUTIK: No, your Honor.

22 EXAMINER PRICE: They will be admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER PRICE: Any objection to
25 administrative notice of the companies' response

1 filed in docket No. 12-814-EL-UNC?

2 MR. KUTIK: No, your Honor.

3 EXAMINER PRICE: We will take
4 administrative notice of that.

5 MR. ALLWEIN: Thank you, your Honor.

6 EXAMINER PRICE: Mr. Petricoff.

7 MR. PETRICOFF: Yes, your Honor. At this
8 time we would like to move for admission of RESA
9 Exhibit 1?

10 EXAMINER PRICE: Any objection to the
11 admission of RESA Exhibit 1.

12 MR. KUTIK: No, your Honor.

13 EXAMINER PRICE: Seeing none, it will be
14 admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER PRICE: Mr. Hays.

17 MR. HAYS: I move to admit NOAC 1.

18 MR. KUTIK: I do object, your Honor.

19 EXAMINER PRICE: I agree with the
20 objection. NOAC 1 will not be admitted.

21 MR. HAYS: Your Honor, I meant, I would
22 ask that it be appended to the record.

23 EXAMINER PRICE: You can proffer it.

24 MR. HAYS: Pardon?

25 EXAMINER PRICE: You can proffer it.

1 MR. HAYS: I would also ask, your Honor,
2 to consider admitting those parts of NOAC 1 which are
3 statements of the company which are admissible as
4 hearsay as coming from a party opponent.

5 EXAMINER PRICE: Well, actually it's the
6 company -- I suspect that those statements were FES,
7 not by Ohio Energy -- Ohio Edison, Toledo Edison, and
8 Cleveland Electric Illuminating Company. Are you
9 offering party opponent against FirstEnergy
10 Solutions?

11 MR. HAYS: I was offering them as against
12 the EDUs.

13 EXAMINER PRICE: The EDUs are not the
14 generation affiliate, so your motion is denied. But
15 if you care to bring it up on brief, you can.

16 MR. HAYS: Thank you.

17 EXAMINER PRICE: Is that everybody? Did
18 I miss anybody?

19 Nope, okay.

20 Mr. Petricoff.

21 MR. PETRICOFF: Yes, your Honor. At this
22 time we would like to call to the stand Stephen
23 Bennett.

24 (Witness sworn.)

25 EXAMINER WILLEY: Thank you.

1 - - -
2 - - -

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

6 DIRECT EXAMINATION

7 By Mr. Petricoff:

8 Q. Please state your name and business
9 address for the record.

10 A. My name is Stephen Bennett. My business
11 address is 300 Exelon Way, Kennett Square,
12 Pennsylvania 19348.

13 Q. Mr. Bennett, on whose behalf do you
14 appear today?

15 A. I'm appearing on behalf of the Retail
16 Energy Supply Association or RESA.

17 MR. PETRICOFF: Your Honor, at this time
18 I would like to have marked as RESA Exhibit 2 the
19 direct prepared testimony of Mr. Bennett.

20 EXAMINER WILLEY: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Mr. Bennett, do you have a copy with you
23 of what has just been marked as RESA Exhibit 2?

24 A. I do.

25 Q. And is that your direct prepared

1 testimony?

2 A. It is.

3 Q. Are there any changes or corrections to
4 that testimony that you would like to make at this
5 time?

6 A. Yes, there is. On page 5, answer 14,
7 line 21, it talks about "access to NSPLC." It should
8 read "access to future period NSPLC," period, as the
9 existing NSPLC already exists in the FirstEnergy web
10 file.

11 Q. Are there any other changes that you
12 would like to make to this testimony?

13 A. No, sir.

14 Q. If I would ask you the questions today,
15 would your answers be the same?

16 A. Yes.

17 MR. PETRICOFF: Your Honor, the witness
18 is available for cross-examination.

19 EXAMINER WILLEY: Thank you. Let's begin
20 with Mr. Kurtz. Do you have any cross-examination?

21 MR. KURTZ: Oh, I didn't hear you. No,
22 your Honor.

23 EXAMINER WILLEY: Mr. Vickers.

24 MR. VICKERS: No.

25 EXAMINER WILLEY: Mr. Allwein. I'm

1 sorry.

2 MR. KAPLA: No.

3 EXAMINER WILLEY: Mr. Dortch.

4 MR. DORTCH: No, your Honor.

5 EXAMINER WILLEY: Mr. Sauer.

6 MR. SAUER: No, your Honor.

7 EXAMINER WILLEY: Mr. Hays.

8 MR. HAYS: No.

9 EXAMINER WILLEY: Mr. Warnock.

10 MR. WARNOCK: No questions.

11 EXAMINER WILLEY: Ms. Dunn.

12 MS. DUNN: Yes, your Honor. Thank you.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Dunn:

16 Q. Good morning, Mr. Bennett.

17 A. Good morning.

18 Q. My name is Carrie Dunn. I am an attorney
19 for the companies, and we spoke on Friday during your
20 deposition. Do you have in front of you the
21 stipulation and/or attachment C to the stipulation
22 from 12-1230?

23 A. I have attachment C to the stipulation.

24 Q. Okay. And do you have in front of you
25 attachment C to the stipulation in 10-388?

1 A. No. Just attachment C from the 12-1230
2 case.

3 MS. DUNN: May I approach, your Honor?

4 EXAMINER WILLEY: You may.

5 Q. I'm going to go ahead and hand you a copy
6 of 10-388, and, for the record, that's the
7 application and stipulation that the court gave
8 administrative notice to earlier today.

9 EXAMINER PRICE: Ms. Dunn, let's be
10 clear, I only gave administrative notice to the
11 stipulation itself.

12 MS. DUNN: Okay.

13 EXAMINER PRICE: And the attachments, not
14 the application.

15 MS. DUNN: Attached to the application
16 was a stipulation that was given administrative
17 notice of today.

18 MS. DUNN: Does your Honor need a copy?

19 EXAMINER WILLEY: No.

20 MS. DUNN: I just want to make sure you
21 have those in front of you.

22 MR. DORTCH: Your Honor, I apologize, I
23 am not certain what was just submitted.

24 MS. DUNN: I'm sorry. I handed him the
25 stipulation and application for 10-388, which is ESP

1 II.

2 MR. DORTCH: Okay, I'm sorry.

3 MS. DUNN: That's okay.

4 Q. (By Ms. Dunn) And I am going ahead.

5 Mr. Bennett, you are an employee of Exelon, correct?

6 A. That's correct.

7 Q. And today you are here to sponsor
8 testimony regarding electronic data interchange,
9 correct?

10 A. Yeah; and web data interchange as well,
11 yes.

12 Q. And for purposes of your testimony today
13 we are going to refer to electronic data interchange
14 as EDI, okay?

15 A. Okay.

16 Q. All right. The extent of your experience
17 related to EDI enhancement and retail file data
18 access is based on a one-year experience with the
19 Pennsylvania working group, correct?

20 A. That's correct.

21 Q. And the main focus of the PA EDI working
22 group was development of standards for EDIs, correct?

23 A. That's correct.

24 Q. And, in general, were your duties with
25 the PA working group to attend meetings

1 telephonically?

2 A. That's correct.

3 Q. And to simply listen for changes or
4 modifications that would impact Exelon systems?

5 A. That's right.

6 Q. You were not part of the PA working group
7 as a member of RESA, correct?

8 A. I was not.

9 Q. And isn't it true you are not extensively
10 familiar with FirstEnergy's web-based customer data
11 system?

12 A. Not extensively, although I've reviewed
13 it recently.

14 Q. And did you review it this weekend?

15 A. Yes, I did.

16 Q. But when you drafted your testimony, you
17 had not reviewed it, correct?

18 A. That's correct.

19 Q. And when I took your deposition on
20 Friday, you had not reviewed it.

21 A. That's also correct.

22 Q. So at the time that you wrote your
23 testimony, the extent of your knowledge of
24 FirstEnergy's web-based data system was that it
25 exists, correct?

1 A. That's right.

2 Q. And that there is an eligibility --
3 excuse me -- eligibility list on it, correct?

4 A. Correct.

5 Q. And an interval file, correct?

6 A. Yes.

7 Q. Based on your review this weekend, did
8 you find that to be true?

9 A. Yes.

10 Q. And when you drafted your testimony, did
11 you not know what kind of information was contained
12 on the web-based data system, correct?

13 A. Not personally. We had discussions
14 within the RESA group to discuss what was available,
15 I had not reviewed the files myself at that time.

16 MS. DUNN: Your Honor, I would like to
17 move to strike the last sentence based on hearsay and
18 lack of personal knowledge.

19 EXAMINER WILLEY: Granted.

20 MR. PETRICOFF: I'm sorry.

21 EXAMINER WILLEY: I'm sorry, I didn't
22 give you an opportunity to respond.

23 MR. PETRICOFF: Chance to respond, yes,
24 your Honor. We would indicate it is not hearsay. He
25 is the witness for RESA. He has talked to the RESA

1 members. He is reporting what RESA has, and one of
2 the differences we have in this type of proceeding,
3 as opposed to a court proceeding, is that rather than
4 troop in everybody who's in the chain of command, we
5 allow people to talk for groups, and in this case he
6 is representing the RESA group.

7 EXAMINER WILLEY: Do you have another
8 response to that?

9 MS. DUNN: Your Honor, he's -- first of
10 all, he's already testified that prior to this
11 weekend he did not have personal knowledge of what
12 was on the system. So the personal knowledge
13 objection still stands.

14 And, secondly, as far as he's asserting,
15 he is making the statement for the truth of the
16 matter asserted, which is the definition of hearsay.
17 Whether or not he is a member of RESA, that's no
18 exception to the hearsay rule and makes the testimony
19 unreliable because the RESA members are not here to
20 be cross-examined and, therefore, it's still hearsay.

21 MR. PETRICOFF: Your Honor, I mean, if
22 that was strictly enforced, then basically everything
23 that was done -- for example, Mr. Ridmann, in terms
24 of making rates -- would have -- we would have to
25 parade everybody up here. That's the very reason we

1 have the relaxed rule here.

2 EXAMINER PRICE: Mr. Petricoff, I
3 understand what you're saying, but in Mr. Ridmann's
4 case, you know, people will general say, "Was this
5 prepared under your supervision or direction?" And
6 that's where -- where you're losing me is RESA is not
7 a hierarchy organization like the companies where
8 Mr. Ridmann is supervising a team of people. It's a
9 group of organizations that have banded together, but
10 he's not supervising or operating it under the
11 direction of other members.

12 MR. PETRICOFF: It is true he is not
13 supervising, but he is representing the views of the
14 group and, therefore, he is consulting with group
15 members in order to present the group to you.

16 MS. DUNN: And, your Honor, I would say
17 I'm not arguing that his testimony should be excluded
18 because it's representative of the group. I'm saying
19 that the facts upon which he is now testifying are
20 based on hearsay. The fact that there is information
21 and what information is on FirstEnergy, before this
22 weekend he had not reviewed it. He has no personal
23 knowledge. His sole knowledge comes from statements
24 of RESA members, and that's inherent to hearsay.

25 EXAMINER WILLEY: Your motion will be

1 denied. The Commission will afford that testimony
2 its appropriate weight.

3 MS. DUNN: Okay. Fair enough.

4 Q. (By Ms. Dunn) Okay. Mr. Bennett, you had
5 just said in your earlier statement that you had
6 received information from RESA members as to what is
7 contained on FirstEnergy's web-based data system,
8 correct?

9 A. Correct.

10 Q. Who told you that?

11 A. You want a specific name?

12 Q. Yes.

13 A. The -- it was primarily a gentleman named
14 David Papish, who works for MC Squared.

15 Q. And who is MC Squared?

16 A. MC Squared is a retail provider. It is
17 actually now an affiliate of AES and Dayton Power &
18 Light.

19 Q. When I say the term "CRES provider," you
20 know what I'm referring to, correct?

21 A. I do.

22 Q. Is MC Squared a certified CRES provider
23 in the state of Ohio?

24 A. Yes, I believe so.

25 Q. And what is the basis of your belief?

1 A. The fact that they actually are a member
2 of the RESA Ohio group would most likely indicate
3 they are a registered CRES provider.

4 Q. And do you recall approximately when
5 Mr. Papish made the statement regarding what
6 information is on FirstEnergy's web-based data
7 system?

8 A. I don't remember the actual dates. It
9 was over several conversations that the group had in
10 preparing the testimony.

11 Q. Would that have been in the year 2012?

12 A. Oh, yes.

13 Q. Do you remember what month?

14 A. It was over, I would say, probably be
15 March and April timeframes.

16 Q. And what specific information did
17 Mr. Papish give you as it relates to what is
18 available on FirstEnergy's web-based customer data
19 system?

20 A. The information I received was that the
21 web-based data system does not include future period
22 network service peak load contribution information,
23 does not include effective dates for either the
24 network system peak load capacity -- contribution or
25 peak load capacity contribution values, does not

1 include a PIPP indicator, and that the eligibility
2 list does not include a 20-digit unique customer
3 number.

4 Q. Do you have any idea as to why that
5 information is not included on the web-based data
6 system?

7 A. I don't know -- I don't know why that
8 information is not available, especially given that
9 the customer number is available on the interval file
10 but not on the eligible customer list, and that
11 customer number is available on the FirstEnergy PA
12 eligible customer list on the FirstEnergy supplier
13 sites.

14 Q. And prior to -- this weekend did you
15 review an eligibility list from FirstEnergy's
16 web-based data system?

17 A. I did.

18 Q. But in preparation for your testimony --
19 drafting of your testimony you had not, correct?

20 A. That's correct.

21 Q. And I have handed in front of you the
22 application for 10-388, which I'm going to refer to
23 as ESP II, correct?

24 A. Correct.

25 Q. And if you'll look at it, it's a front

1 and back copy, so I'm looking at the third page, the
2 third page of the Stipulation and Recommendation; is
3 that correct? I mean third actual page, sorry.

4 A. Yes.

5 Q. Okay. And if you'll also look at the
6 page that I marked with a Post-it note, that's
7 attachment C?

8 A. Yes.

9 Q. Okay. You were -- you personally were
10 not involved in the negotiations of this stipulation,
11 were you?

12 A. I was not.

13 Q. And you were not present at any
14 negotiations related to this stipulation, correct?

15 A. That's also correct.

16 Q. And as you sit here today, are you
17 familiar with the Ohio Administrative Code or
18 Commission rules regarding confidential --
19 confidentiality of customer information?

20 A. No, I'm not.

21 Q. Are you familiar with Ohio Administrative
22 Code or Commission rules regarding information that
23 must be given to suppliers relating to eligible
24 customers?

25 A. Not specifically, no.

1 Q. Okay.

2 MS. DUNN: One moment, your Honor.

3 May I approach, your Honor?

4 EXAMINER WILLEY: You may.

5 Q. I am going to hand you, Mr. Bennett, a
6 copy of NOAC Set 1, Interrogatory 1, which is the
7 response to discovery that we gave to NOAC in this
8 case.

9 MS. DUNN: And for purposes of the record
10 I would like to mark it as Exhibit 7.

11 EXAMINER WILLEY: It is so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Now, Mr. Bennett, I realize you have --
14 have you seen this, the first page of this document,
15 before?

16 A. No, I have not.

17 Q. Do you see the second, third, and fourth
18 page listed as NOAC Set 1, Interrogatory 1,
19 Supplemental Attachment 1?

20 A. Yes, I do.

21 Q. Are you familiar with that document?

22 A. Yes, I am.

23 Q. Okay. And this document represents an
24 agreement between the companies and Constellation
25 NewEnergy, Inc. and Exelon Generation Company,

1 correct?

2 A. Correct.

3 Q. And as you can see at the bottom, it's
4 signed by David Fein, correct?

5 A. It is.

6 Q. And who is Mr. Fein?

7 A. Mr. Fein is the vice president of states
8 government affairs for the east region, the -- for
9 Exelon Corporation.

10 Q. And do you report to him?

11 A. I do.

12 Q. And I am going to ask you to go ahead and
13 turn to your testimony. We are going to go ahead and
14 start on page 6, and what I would like to do, just to
15 kind of get in order, is I would like to just go
16 through some of the things FirstEnergy agreed to and
17 see if that's covered by your testimony. Okay?

18 A. Okay.

19 Q. Okay. If you'll turn to page 2 of
20 Attachment 1, Supplemental Attachment 1 to Exhibit 7.

21 MS. DUNN: And, your Honor, for ease of
22 the record, since there is a lot of acronyms, instead
23 of reading each single line, I am just going to refer
24 to the exhibit and the letter if that's okay.

25 EXAMINER WILLEY: That's fine.

1 Q. If you'll look at the middle of the page,
2 it says "Data and Information Enhancements for CRES
3 providers." Do you see that?

4 A. I'm sorry, which one am I looking at?

5 Q. Sorry, second page to the supplemental
6 attachment, the letter agreement.

7 A. Oh, yes.

8 Q. Okay. So letter A has a number of things
9 that FirstEnergy has agreed to add to the EDI,
10 correct?

11 A. Yes, it does.

12 Q. Okay. And if you'll look at your
13 testimony on page 6 at the bottom, question 17, and
14 on the answer 17, which is line 30 to 31, and then
15 turning to page 7, lines 1 to 2.

16 A. Yes.

17 Q. Would you agree that letter a, 3-a of the
18 letter agreement, reflects our recommendation that I
19 just referred to?

20 A. For -- for specifically for question and
21 answer 17, it addresses three of the items on 3-a in
22 the supplemental.

23 Q. And that would be the loss factor, the
24 service voltage, and the special meter configuration,
25 correct?

1 A. Correct.

2 Q. Okay. And then if you'll go to page 9 of
3 your testimony, question 21, line -- and your answer
4 which is lines 5 through 7, would you agree that
5 lines 5 through 7 in your testimony, those
6 recommendations are included in part 3-a of the
7 letter agreement?

8 A. Yes, I concur.

9 Q. And then would you agree that the
10 entirety of No. 3-a -- excuse me, that 3-a is
11 reflective of -- is all reflected in your testimony?

12 That was a bad question. Let me start
13 over. The recommendations that made -- having a hard
14 time wording that question.

15 I think I got what I need. Never mind.
16 I'm going to go ahead and turn to 3-b, and your
17 testimony, question 19, page 7, lines 23 to 24, and
18 moving to page 8, line 1, would you agree that the
19 recommendation in your testimony I just cited is
20 reflected in this letter agreement in 3-b?

21 A. I do.

22 Q. Okay. Now, moving on to 3-c,
23 questions -- and your testimony, question 17, page 7,
24 line 1 to 2, would you agree that the recommendation
25 that I just cited from your testimony is reflected in

1 3-c?

2 EXAMINER PRICE: I'm sorry, can I have
3 the reference from his testimony again?

4 MS. DUNN: Sure. Question 17, page 7,
5 lines 1 and 2.

6 A. So for 3-c, yes, if we are on page 7,
7 line 1 and 2, it includes REFKY, so yes.

8 Q. Okay. And moving on to 3-d, 3-d in the
9 letter agreement, what the company has agreed to,
10 that recommendation is not in your testimony,
11 correct?

12 A. That's correct.

13 Q. Okay. And then moving on to 3-e, and
14 then looking at your testimony, question 19, page 7,
15 lines 21 to 23 would you agree that 3-e deals with
16 your recommendation that I just cited?

17 A. Yes, I agree with that.

18 Q. Okay. And last one, 3-f in the letter
19 agreement, and I'm going to refer to question 19,
20 page 8, lines 1 through 3, would you agree that the
21 recommendation in your testimony I cited is dealt
22 with in 3-f of the letter agreement?

23 A. I'm sorry, would you repeat my testimony
24 reference?

25 Q. Sure. Your testimony reference is page

1 8, lines 1 to 3, with the sentence starting
2 "Finally."

3 A. Yes.

4 Q. So after going through that exercise,
5 there are two topics that I believe are not covered
6 by the letter agreement. The first one would be
7 web-based data enhancements, correct?

8 A. Correct.

9 Q. And the second is you made on page 9 one
10 brief recommendation regarding a stakeholder process
11 to discuss supplier consolidated billing. That's
12 lines 8 through 12, correct?

13 A. Yes, that's an accurate representation.

14 Q. If you could please turn to your
15 testimony question 10, lines 10 through 12, and you
16 state, "As the agreed upon implementation date is
17 still pending, FirstEnergy has yet to implement a web
18 based data system as stipulated in attachment C."
19 And the attachment C you are referring to is the one
20 from 10-388, correct?

21 A. That's correct.

22 Q. Is that sentence true? Well, let me
23 strike that. Let me rephrase that. That sentence is
24 not correct, is it?

25 A. There is a web-based system available to

1 CRES providers on the FirstEnergy supplier's support
2 web page.

3 Q. Okay. Thank you. And then --

4 MR. PETRICOFF: Have you finished?

5 A. No. What I was going to say, that is --
6 that while it has some of the data -- and I would
7 have to look again to double-check -- it has the data
8 associated with what was in attachment C of the
9 stipulation. My understanding is that it was not
10 implemented in a way that matches the understanding
11 of the settling parties in the 10-388 case.

12 MS. DUNN: I would like to move to strike
13 the last few sentences of his testimony past my
14 original question, whether that was correct on the
15 basis of personal knowledge, and also based on the
16 parol evidence rule because it is -- there is a
17 memorialized agreement between the parties, and he is
18 attempting to bring extrinsic evidence outside the
19 scope of the agreement between the parties.

20 EXAMINER WILLEY: Mr. Petricoff, I
21 haven't forgot you this time.

22 MR. PETRICOFF: Thank you, your Honor.
23 At this time we're not challenging -- he is not
24 challenging the wording, per se, just giving his view
25 as to what, you know, RESA's thoughts were on the --

1 on the stipulation and what was required. I think
2 that's valuable information and not blocked by the
3 parol evidence rule.

4 MS. DUNN: May I respond, your Honor?

5 EXAMINER WILLEY: Yes, you may.

6 MS. DUNN: Could you please read back the
7 response from the last question in its entirety.

8 (Record read.)

9 MS. DUNN: Your Honor, he is clearly
10 trying to testify what the extent of the parties in
11 the negotiations as to attachment C, 10-388, so the
12 agreement is what the agreement is, and he's trying
13 to testify to things outside the scope.

14 EXAMINER WILLEY: Thank you. Again, as
15 with before, I am going to deny your motion to
16 strike; however, the Commission will afford this
17 testimony the weight that it's entitled to.

18 Q. (By Ms. Dunn) As you just described in
19 your previous testimony, you stated that it was --
20 that attachment C of 10-388 was not implemented in a
21 way to reflect the intent of the settling parties in
22 that case, correct?

23 A. I did.

24 Q. Which settling parties?

25 A. The RESA members that were part of the

1 settlement.

2 Q. Which ones?

3 A. I would have to say, at least, MC
4 Squared.

5 Q. And you believe MC Squared was part of
6 the settling parties in 10-388?

7 A. I don't know who the settling parties
8 were in 10-388. I know the RESA members who had
9 knowledge of the settlement in 10-388 indicated in
10 our discussions in preparing for this testimony that
11 they don't feel that the supplier website is
12 implemented in a way that is workable or matches
13 their expectations from the settlement.

14 Q. And I'm asking you who those parties
15 were.

16 A. Direct Energy, Constellation Energy, and
17 MC Squared.

18 Q. If you'll look at the 10-388 application
19 and stipulation that I handed to you --

20 MS. DUNN: May I approach, your Honor?

21 EXAMINER WILLEY: You may.

22 Q. If you'll look at the entire application
23 I gave you, the signatories --

24 MS. DUNN: I am showing him the signature
25 page to the stipulation.

1 Q. Is MC Squared identified as a signatory
2 to the 10-388 stipulation?

3 A. Not that I see.

4 Q. Is Direct Energy?

5 A. Not that I see.

6 MS. DUNN: Okay. No further questions,
7 your Honor.

8 EXAMINER WILLEY: Thank you.

9 Mr. Lavanga, I believe I skipped over you
10 when I asked if there was cross. Do you have any
11 questions?

12 MR. LAVANGA: No questions, thank you.

13 EXAMINER WILLEY: Mr. McNamee.

14 MR. McNAMEE: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. McNamee:

18 Q. Mr. Bennett, I'm not clear on what you
19 mean by a web-based data enhancements. Is -- is
20 there some other model you would prefer to what's
21 being done by FirstEnergy?

22 A. Yes, absolutely.

23 Q. What would that be?

24 A. Well, a couple of things. One of the
25 first things would be to have the eligible customer

1 list include the 20-digit customer number for
2 individual customers. That's a very useful, unique
3 identifier that allows a CRES provider to actually
4 identify a customer and all of the accounts and
5 meters associated with that customer.

6 That number -- without that number, it's
7 almost impossible to use the eligible customers list
8 provided on the FE Ohio supplier site to find
9 prospective customers, to know that you have all of
10 their data associated with that customer.

11 Also, the interval data file that's
12 available on the FirstEnergy Ohio website, the
13 interval data, that's very important in pricing for
14 our CRES providers, and that includes the customer
15 number, but because the eligible customer list does
16 not, you can't tie the two together so you can't get
17 the basic company and customer information and then
18 tie that directly to the usage.

19 In addition, the files are exceedingly
20 large, so when you have a very large file with lots
21 of customers, that you can't easily find any one
22 particular customer, it's very difficult for a CRES
23 provider to identify customers or find the
24 information they need to create products or price
25 products for them.

1 In other jurisdictions, you have the
2 ability on a web-based system to enter a customer
3 number 1, or more customer numbers, and have only
4 that information provided to you that can then be
5 scraped or downloaded into your system.

6 So what we would prefer is actually that
7 second model that I indicated, where you enter one or
8 more customer numbers as a unique identifier and have
9 only that customer information presented back to you
10 and have it presented back in a comprehensive manner
11 so you have all the data you need in order to
12 identify the customer, structure a product, and price
13 a product for that customer.

14 At the very least, the eligible --
15 eligibility list currently available in the
16 FirstEnergy Ohio website would need that customer
17 number, similar to how FirstEnergy provides that
18 customer number in the eligible list in their
19 Pennsylvania EDUs.

20 Q. You mentioned other jurisdictions. Are
21 there other jurisdictions that use the sort of system
22 or require the sort of system that you described
23 here?

24 A. Yes. One specifically would be the
25 Commonwealth Edison utility in Illinois. It's

1 exactly the way I described. You can enter between 1
2 and 10 customer numbers, and you get a screen -- a
3 screen output of all of that customer information
4 that can then be scraped into your CRES provider
5 system.

6 Q. Are you familiar with Texas?

7 A. I am familiar with, yes, the fundamentals
8 and basic structures of the Texas market.

9 Q. Is this consistent with what they do, in
10 Texas?

11 A. I actually am not sure about the
12 customer data systems in Texas, other than I
13 know that customer data is available from the
14 TDU, the transmission distribution utilities in
15 Texas.

16 MR. McNAMEE: Thank you, Mr. Bennett.
17 Nothing further.

18 EXAMINER WILLEY: Thank you.

19 Mr. Petricoff, do you have any redirect?

20 MR. PETRICOFF: Your Honor, may I have a
21 moment?

22 EXAMINER WILLEY: Yes, you may.

23 MR. PETRICOFF: I have one question, your
24 Honor, for the witness.

25 EXAMINER WILLEY: Okay.

1 - - -

2 REDIRECT EXAMINATION

3 By Mr. Petricoff:

4 Q. Mr. Bennett, do you still have the
5 Exhibit C from the 10-388 stipulation with you?

6 A. I do.

7 Q. Just from your own reading as an expert
8 in this area, is there something that's written in
9 that second paragraph that you think hasn't been done
10 or hasn't been carried out yet?

11 A. Yes. And if you look at -- it's about
12 the middle, after the colon where it says, web-based
13 system that provides electronic access to key
14 customer usage and account data that can be accessed
15 via supplier website that is updated quarterly, and
16 that presents data information, including: Account
17 numbers."

18 So an account number would be the main
19 missing piece in the eligible customer list on the
20 FirstEnergy Ohio website. And, again, that is the
21 main component that makes that web file almost
22 unusable for CRES providers.

23 MR. PETRICOFF: No further questions.

24 Thank you.

25 EXAMINER WILLEY: Thank you.

1 MS. Dunn.

2 MS. DUNN: Your Honor, may I have a
3 moment?

4 EXAMINER WILLEY: Yes, you may.

5 MS. DUNN: Just a few questions.

6 - - -

7 RECROSS-EXAMINATION

8 BY Ms. Dunn:

9 Q. Mr. Bennett, you were referring to
10 attachment C to the 10-388 stip.

11 A. Yes, I was.

12 Q. You state account numbers are not present
13 on the web-based data system.

14 A. It's not present on the eligible customer
15 list, no.

16 Q. It is available on the interval list,
17 correct?

18 A. Yes.

19 Q. And by account number, you mean customer
20 number, correct?

21 A. That's right.

22 Q. Okay. And you just stated that the
23 web-based data system is virtually "unusable"
24 correct?

25 A. It's -- yes, it's virtually unusable,

1 almost impossible to be sure that you are getting the
2 proper customer information from the eligible
3 customer list.

4 Q. Is your employer, Exelon, a certified
5 CRES provider in Ohio?

6 A. They are.

7 Q. Do they have access to FirstEnergy's
8 web-based data system?

9 A. They do.

10 Q. Have they been using it to date?

11 A. They do use it. They actually rely on
12 the EDI standard more.

13 Q. Are they competing in the FirstEnergy
14 territories?

15 A. They are.

16 MS. DUNN: No further questions, your
17 Honor.

18 EXAMINER WILLEY: Thank you.

19 Mr. McNamee.

20 - - -

21 RECROSS-EXAMINATION

22 By Mr. McNamee:

23 Q. Define "interval list" for me.

24 A. On the FirstEnergy Ohio website there is
25 a file that includes interval usage data for a

1 customer, so it basically gives you hour by hour
2 usage data. It's actually very -- it's very helpful.
3 It's the best kind of data for a CRES provider to use
4 in order to price a customer, so it's -- having the
5 customer number on that file is proper and very
6 helpful.

7 The problem is, in and of itself, it
8 doesn't allow you to identify a customer or price a
9 product for a customer, so without being able to tie
10 it back to the information that you need, all of the
11 other information that you need for a customer, PLCs,
12 NSPLCs, you know, the customer name and address
13 things of that nature, you can't use the two files
14 together, so just having it on the interval file
15 really doesn't solve the issue or create a usable
16 system.

17 MR. McNAMEE: No further questions.

18 EXAMINER WILLEY: Thank you.

19 Examiner Price.

20 - - -

21 EXAMINATION

22 By Examiner Price:

23 Q. Has any FirstEnergy representative or
24 employee represented to you that this data is not
25 available because of restrictions imposed on the

1 companies due to Ohio Administrative Code provisions?

2 A. No.

3 EXAMINER PRICE: Thank you.

4 EXAMINER WILLEY: I have no questions, so
5 thank you, Mr. Bennett. You are excused.

6 I think at this point we are going to
7 take a 15-minute recess, so we will be back here at
8 11:05.

9 (Recess taken.)

10 EXAMINER WILLEY: Let's go ahead and go
11 back on the record. I believe RESA Exhibit 2 and the
12 Company's Exhibit 7 has been marked. Would you like
13 to make any motions at this time?

14 MS. DUNN: Yes, your Honor. I would like
15 to move in FirstEnergy Exhibit 7 or Company Exhibit
16 7.

17 EXAMINER WILLEY: Thank you. Are there
18 any objections to the admission of Company Exhibit 7.

19 Hearing none, Company Exhibit 7 will be
20 admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 MR. PETRICOFF: Your Honor, I would like
23 to move to admit RESA Exhibit 2.

24 EXAMINER WILLEY: Thank you. Is there
25 any objection to the admission of RESA Exhibit 2?

1 Hearing none, RESA Exhibit 2 will be
2 admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER PRICE: Mr. Stahler.

5 MR. STAHL: Yes, good morning, your
6 Honor. Let me introduce myself first. My name is
7 David Stahl, S-T-A-H-L. I'm with the firm --

8 EXAMINER PRICE: Sorry, I said Stahler.

9 MR. STAHL: That's okay. I'm
10 representing Exelon Constellation, and we are
11 prepared to call David Fein as our witness in this
12 proceeding.

13 EXAMINER PRICE: Mr. Fein.

14 MR. FEIN: Thank you.

15 (Witness sworn.)

16 EXAMINER PRICE: Please be seated.
17 Please state your name and business address for the
18 record.

19 THE WITNESS: My name is David I. Fein.
20 That's F-E-I-N. Business address is 550 West
21 Washington Boulevard, Suite 300, Chicago, Illinois,
22 60661.

23 EXAMINER PRICE: Please proceed, Mr.
24 Stahl.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 - - -

2 DAVID I. FEIN

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

5 DIRECT EXAMINATION

6 By Mr. Stahl:

7 Q. Good morning, Mr. Fein. We have placed
8 before you a document that has been marked as Exelon
9 Exhibit 101. Can you identify that as your direct
10 testimony in this proceeding?

11 A. Yes, it is.

12 Q. And was this testimony prepared by you or
13 under your supervision, Mr. Fein?

14 A. Yes, it was.

15 Q. Do you have any changes you would like to
16 make to this testimony at this time?

17 A. I do not.

18 Q. Is this testimony true and correct to the
19 best of your knowledge?

20 A. Yes, it is.

21 Q. If I were to ask you the questions set
22 forth in this testimony, would your answers be as set
23 forth in this document?

24 A. They would.

25 MR. STAHL: Thank you. I have no further

1 questions of Mr. Fein, and he is available for
2 cross-examination.

3 MR. KUTIK: Your Honor, I just have one
4 procedural question, just to make sure that we
5 understand what document has been marked as Exelon
6 101, that is the document that was attached to the
7 motion for leave to withdraw testimony and revise
8 testimony?

9 MR. STAHL: That should be the revised
10 testimony, yes.

11 MR. KUTIK: Thank you.

12 EXAMINER PRICE: How many pages is the
13 revised testimony?

14 THE WITNESS: The testimony itself has 11
15 numbered pages.

16 EXAMINER PRICE: Okay. Then I am on the
17 right document. I'm just checking. Make sure I have
18 the right document. Okay, since we are all on the
19 same page.

20 Mr. Warnock.

21 MR. WARNOCK: No questions, your Honor.

22 EXAMINER PRICE: Mr. Hays.

23 MR. HAYS: No, your Honor.

24 EXAMINER PRICE: Mr. Sauer.

25 MR. SAUER: No questions.

1 EXAMINER PRICE: Mr. Dortch.

2 MR. DORTCH: Just a couple of questions,
3 your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Dortch:

7 Q. Mr. Fein, good morning.

8 A. Good morning.

9 Q. Would you look at page 18 -- I'm sorry,
10 page 8, line 18 of your testimony, and at that
11 question beginning at line 18, you discuss risks that
12 are faced by CBP -- CBP bidders. Do you see that
13 testimony?

14 A. Yes.

15 Q. What sort of risks are faced by CBP --
16 sorry -- CBP bidders, generally?

17 A. Well, there's a variety of risks that
18 they are responsible for, risks of price volatility,
19 weather, unforeseen supply risks, changes in the
20 usage pattern, shopping are just a few.

21 Q. All right. Is migration risk a risk
22 faced by bidders as well?

23 A. Yes. I guess that's what I meant when I
24 said shopping risk.

25 Q. Shopping. And just for the record, could

1 you define migration risk.

2 A. Sure. Well, CBP bidders bid to supply a
3 certain slice-of-system at a certain price when they
4 participate in a load auction. They do so based upon
5 what they perceived to be, via model, load they will
6 be responsible for, and with the slice-of-system type
7 approach that is utilized here, they would be
8 responsible for guaranteeing that price, regardless
9 of how many -- how much load they would serve,
10 whether that amount goes up or down, and would be
11 responsible for the management of that risk, whether
12 it be that they need to go out and procure more power
13 or whether they need to sell off power into the
14 marketplace.

15 Q. You also mentioned price volatility. Can
16 auction prices be forecast?

17 A. Can auction prices be?

18 Q. Forecast.

19 A. I guess I'm not following what you mean
20 by "forecast."

21 Q. Do marketers face risks when they bid in
22 an auction, into a -- into the CBP auction
23 specifically?

24 A. Certainly.

25 Q. And do those risks include risks that

1 you'll not accurately meet the market price; is that
2 fair?

3 A. Bidders, where the risk that the price
4 might be something other than what the winning bid
5 might be over whatever length of the term of that
6 contract might be, yes.

7 Q. And does Exelon prepare forecasts of bids
8 in order to -- in preparation for bidding into a CBP
9 auction?

10 A. When you say "prepare forecasts" --

11 Q. I'm sorry. Do you rely upon the forward
12 curve at the point in time that you prepare bids for
13 the auction?

14 A. I believe that all market participants
15 and bidders are going to rely upon a variety of data
16 or reference points for what those prices might be.
17 Some of that, of course, would be what we see in the
18 forward markets that are -- you know, publicly
19 available companies, obviously, have their own
20 internal confidential models or assumptions on what
21 they believe that might be. So it's, obviously, you
22 know, a combination of those factors or sources, I
23 guess, of data and information.

24 Q. Now, do the CBP bids that Exelon submits
25 reflect capacity prices embedded within that bid?

1 A. Are you asking specifically to the FE
2 auctions?

3 Q. Let me try again. With respect to the FE
4 auctions, would Exelon bid into the auction? Does
5 its bid reflect what is known about the PJM BRA
6 auctions?

7 A. Yes, because the nature of the FE -- the
8 FE zone is that since they are a part of the RPM
9 construct, you know as a bidder what the applicable
10 capacity charge will be three years forward, so over
11 the term of the -- and every supplier is really in
12 the same predicament on that one. There's one
13 capacity price that applies to all loads, so it's a
14 factor in your bid, but it's a known factor over, you
15 know, that period of time, and generally it's known
16 at the time of bidding because these procurements are
17 not held more than three years out.

18 Q. Thank you. Now, when you evaluate risks,
19 typically is it more or less risky -- is there more
20 or less risk involved in events that are immediate or
21 in events that are years down the road, generally
22 speaking?

23 A. Yeah. I mean, all else being equal,
24 risks that are farther out are harder to quantify or
25 to hedge for just because of time.

1 Q. And are those risks generally deemed
2 higher the farther out?

3 A. Depending on the nature of the risk, yes,
4 I mean, that sort of simple example, yeah, the
5 longer -- the longer you have to manage your risk,
6 the greater risk you have of -- of it being larger
7 than something shorter in time, if that's what you're
8 asking.

9 Q. Yes. And do you have an opinion upon --
10 as to how those risks would have an effect on price,
11 all else being equal?

12 A. I'm pausing to answer because there's a
13 lot of risks out there so I'm trying to understand --

14 Q. "Those risks," that was inartful. Let me
15 restate it. Do you have any idea of how near-term
16 versus far-term risks -- what kind of effect would
17 those have on price, near-term risks?

18 A. I mean, it's hard to say. If we're
19 talking about forward price risk, you know, longer
20 term is going to have more potential risk because
21 it's a longer period of time you are going to have to
22 manage that risk. So, say, you're bidding to provide
23 a three-year product. That's going to have more risk
24 than a one-year product in that simple example.

25 Q. And if I understand your testimony, again

1 at page 8, you have to factor a premium in to your
2 bids for such potential risks?

3 A. That's correct.

4 Q. And so as the time period goes further
5 and further out, that premium would have to be higher
6 and higher?

7 A. Yes.

8 Q. Again, with respect to risks -- well,
9 strike that.

10 With respect to markets generally, are
11 you familiar with the concept of market to market
12 accounting?

13 A. Generally familiar with it, yes.

14 Q. And is market to market accounting used
15 to forecast pricing?

16 A. Is it used to what?

17 Q. Forecast. I'm sorry. Market-to-market
18 accounting used to forecast pricing?

19 A. Does market-to-market accounting utilize
20 forecasting?

21 Q. Utilize forecast pricing.

22 A. Yes.

23 Q. And do you utilize market-to-market
24 accounting to evaluate future earnings, for example?

25 A. Do I personally?

1 Q. You personally, no. Exelon, generally
2 would it use market-to-market accounting to report
3 future earnings?

4 A. To report future earnings?

5 Q. Yes, sir.

6 A. You're going way beyond my knowledge
7 base.

8 Q. Okay. I apologize.

9 A. Pretty far beyond the testimony.

10 Q. I apologize.

11 EXAMINER PRICE: Mr. Fein, counsel will
12 make objections.

13 MR. STAHL: If he knew, I had no
14 objection.

15 MR. DORTCH: Thank you. I have no
16 further questions. Thank you, Mr. Fein.

17 THE WITNESS: Thank you.

18 EXAMINER PRICE: Thank you.

19 Mr. Royer.

20 MR. ROYER: No questions.

21 EXAMINER PRICE: Mr. Kapla.

22 MR. KAPLA: No questions, your Honor.

23 EXAMINER PRICE: Mr. Lavanga.

24 MR. LAVANGA: No questions, your Honor.

25 EXAMINER PRICE: Mr. Kurtz.

1 Mr. KURTZ: No questions.

2 EXAMINER PRICE: Mr. Vickers.

3 MR. VICKERS: No questions

4 EXAMINER PRICE: Mr. Kutik.

5 MR. KUTIK: Yes, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Kutik:

9 Q. Mr. Fein, within the Exelon newly
10 reconstituted families of companies, are there
11 utility companies?

12 A. Yes.

13 Q. And do those utility companies have --
14 and those utility companies have or some of them, at
15 least, have an auction process to procure the
16 equivalent of SSO load?

17 A. Yes.

18 Q. Do those -- and is it -- would it be the
19 case that those utilities don't prepare any forecasts
20 of what bid prices might be?

21 A. That's correct.

22 Q. You had a conversation regarding risks
23 further out. Would it be the case that if you were
24 trying to predict what the forward prices were three
25 years from now, you could -- you could more easily

1 predict those forward prices tomorrow than you could
2 a year from now, correct?

3 A. Say that again.

4 Q. In other words, if you were trying to
5 predict what the forward prices would be for
6 2015-2016, you could more easily predict today what
7 those forwards prices would be tomorrow than you
8 would a year from now.

9 A. Oh, yes.

10 MR. KUTIK: No further questions.

11 EXAMINER PRICE: Thank you.

12 Mr. McNamee.

13 MR. McNAMEE: Because of the letter
14 agreement, I have no questions at all.

15 EXAMINER PRICE: Thank you.

16 Redirect?

17 MR. STAHL: We have no redirect.

18 EXAMINER PRICE: Any questions?

19 EXAMINER WILLEY: No questions.

20 EXAMINER PRICE: I have no questions.

21 You are excused. Thank you.

22 THE WITNESS: Thank you.

23 MR. STAHL: Your Honors, I guess this
24 would be an appropriate time to move into evidence
25 Exelon Exhibit 101.

1 EXAMINER PRICE: Any objection to the
2 admission of Exelon Exhibit 101?

3 Seeing none, it will be admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 MR. STAHL: Thank you, your Honor.

6 EXAMINER PRICE: Thank you.

7 Let's go off the record.

8 (Discussion off the record.)

9 EXAMINER PRICE: Let's go back on the
10 record.

11 Would Consumers' Counsel like to call its
12 next witness?

13 MS. YOST: Thank you, your Honor. OCC
14 would like to now call Mr. James Wilson as our next
15 witness.

16 (Witness sworn.)

17 EXAMINER PRICE: Please be seated and
18 state your name and business address for the record.

19 THE WITNESS: James F. Wilson, 400
20 Hampden, H-A-M-P-D-E-N, Lane, Suite 200, Bethesda,
21 Maryland 20814.

22 EXAMINER PRICE: Please proceed.

23 MS. YOST: Your Honor, at this time I
24 would like to have the Direct Testimony of James F.
25 Wilson identified as OCC Exhibit No. 9.

1 EXAMINER PRICE: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 EXAMINER PRICE: A copy for the reporter,
4 please.

5 MS. YOST: Okay. We'll get you a copy
6 shortly.

7 - - -

8 JAMES F. WILSON,
9 being first duly sworn, as prescribed by law, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 By Ms. Yost:

13 Q. Are you ready, Mr. Wilson?

14 A. Yes.

15 Q. Could you identify on whose behalf you
16 appear today.

17 A. The Office of the Ohio Consumers'
18 Counsel.

19 Q. And do you have in front of you your
20 prepared testimony that I have previously requested
21 to be marked as OCC Exhibit 9?

22 A. Yes.

23 Q. Did you prepare the testimony or have it
24 prepared at your direction?

25 A. Yes, I did.

1 Q. Do you have any changes or corrections to
2 make to your direct testimony?

3 A. No.

4 Q. If I asked you the same questions found
5 in your direct testimony in OCC Exhibit 9, would your
6 answers be the same?

7 A. Yes.

8 MS. YOST: The OCC moves for the
9 admission of OCC Exhibit 9 and tenders the witness
10 for cross-examination.

11 EXAMINER PRICE: Thank you. Any motions
12 to strike before we proceed with cross?

13 Mr. Warnock.

14 MR. WARNOCK: No questions, your Honor.

15 EXAMINER PRICE: Mr. Hays.

16 MR. HAYS: No questions, your Honor.

17 EXAMINER PRICE: Mr. Dortch.

18 MR. DORTCH: Yes, your Honor, I do have
19 some questions.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Dortch:

23 Q. Mr. Wilson, would you turn to page 16 of
24 your testimony.

25 A. Yes.

1 Q. And at that point you are discussing
2 upgrades and how they might be reflected in the
3 results of the RPM auction; is that correct?

4 A. Yes.

5 Q. What upgrades -- what upgrades were you
6 referring, sir?

7 MR. KUTIK: Objection.

8 EXAMINER PRICE: Grounds?

9 MR. KUTIK: Friendly cross. There is no
10 adversity between AEPR and OCC on this position.

11 EXAMINER PRICE: I understand your point,
12 but he is not doing this to rehabilitate the witness
13 after your cross because you have not done your cross
14 yet, so we will give him a little bit of leeway.

15 But not too far, Mr. Dortch.

16 MR. DORTCH: Thank you, your Honor.

17 A. At this point in my testimony, I'm
18 talking about transmission upgrades that PJM has
19 planned, mainly in response to the retirements
20 announced for the ATSI zone.

21 Q. And the response to retirements, of
22 course, are the announced closing of coal-fired power
23 plants by FirstEnergy Solutions in general?

24 A. Correct.

25 Q. And are you at all familiar with the PJM

1 planning process?

2 A. Yes.

3 Q. How long does it take typically to get a
4 project through the PJM planning process?

5 MR. KUTIK: Objection.

6 EXAMINER PRICE: Grounds?

7 MR. KUTIK: Friendly cross.

8 EXAMINER PRICE: Your continuing
9 objection is noted. Thank you.

10 A. Well, it's a rolling process. Large
11 transmission projects take several years. Smaller
12 reinforcements can probably go very quickly. It's
13 primarily an annual process, but then there are
14 retools each year where PJM revisits projects that
15 were approved in prior years.

16 So, I guess, the simple answer is that
17 large projects take several years. Smaller projects
18 can be much quicker than that.

19 Q. And are you generally familiar with the
20 constraints in the ATSI zone?

21 A. Yes, I'm familiar with PJM's work on the
22 ATSI zone.

23 Q. And are the constraints -- I'm sorry.
24 Are the transmission projects that will be necessary
25 to address the existing constraints large projects,

1 smaller projects, a combination of the above?

2 A. It's a combination of the above. Just
3 working with the price tags, there were dozens of
4 projects on PJM's list that I referred to, presented
5 at the April 27, TEAC, Transmission Expansion
6 Advisory Committee, meeting. A few of them were over
7 100 million. Many of them were under 10 million.

8 MR. DORTCH: Your Honor, may I approach?

9 EXAMINER PRICE: You may.

10 Mr. Dortch, are you bolstering this
11 witness, or are you impeaching this witness? I've
12 given you some leeway.

13 MR. DORTCH: Yes, you have, sir.

14 EXAMINER PRICE: I have yet to hear
15 anything that's not cumulative evidence of what's
16 already in his testimony, and now, you have got an
17 exhibit for me.

18 MR. DORTCH: Yes, your Honor. I have
19 questions of the witness related to the timing that
20 it will take, in his opinion, to relieve the
21 constraints in the ATSI zone.

22 MR. KUTIK: Your Honor, I'll object to
23 that line of questioning.

24 EXAMINER PRICE: And to what extent does
25 AEP Retail disagree with OCC on this issue?

1 MR. DORTCH: AEP Retail does not disagree
2 with OCC on this issue, your Honor. AEP Retail does
3 wish to expand the record of this expedited
4 proceeding in order to promote full information for
5 the benefit of the Commission.

6 EXAMINER PRICE: So you don't disagree
7 this is friendly cross, and you are simply bolstering
8 this witness.

9 MR. DORTCH: I am inquiring further into
10 the witness's knowledge, your Honor.

11 EXAMINER PRICE: You've got an exhibit.
12 This isn't inquiring further into his knowledge; it's
13 expanding on his knowledge. I am not going to allow
14 this.

15 MR. DORTCH: Very well, your Honor. He
16 did testify --

17 EXAMINER PRICE: I understand what he
18 testified before, but you're just making Mr. Kutik's
19 point about friendly cross. If you wanted to present
20 a witness on this issue, you had the opportunity to.
21 You can't use OCC's witness to expand and to bolster
22 his case. You are not adverse to him at all in this.
23 You just acknowledged that.

24 MR. DORTCH: Thank you, your Honor.

25 EXAMINER PRICE: Thank you.

1 MR. DORTCH: Your Honor, may I have a
2 moment?

3 EXAMINER PRICE: You may.

4 MR. DORTCH: I have no further questions.

5 EXAMINER PRICE: Thank you, Mr. Dortch.
6 Mr. Royer.

7 MR. ROYER: No questions, your Honor.

8 EXAMINER PRICE: Mr. Kapla.

9 MR. KAPLA: Yes, a couple of questions,
10 your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Kapla:

14 Q. When you discussed the potential
15 mitigating effect of bidding resources into the PJM
16 for ATSI on page 29, lines 4 through 22, were you
17 considering solely the companies' proposed
18 65-megawatt bid in the PJM market?

19 A. Yes.

20 Q. So you were not considering the impact of
21 FirstEnergy bidding more than 65 megawatts into the
22 market, correct?

23 A. Yes. I was discussing the potential
24 offering of -- I think the number was 65 megawatts in
25 this part of my testimony? Yes.

1 MR. KAPLA: I have no further questions.

2 EXAMINER PRICE: Thank you.

3 Mr. Lavanga.

4 MR. LAVANGA: No questions, your Honor.

5 EXAMINER PRICE: Thank you.

6 Mr. Vickers.

7 MR. VICKERS: No questions.

8 EXAMINER PRICE: Mr. Kurtz.

9 MR. KURTZ: No questions.

10 EXAMINER PRICE: Mr. Petricoff.

11 MR. PETRICOFF: No questions, your Honor.

12 EXAMINER PRICE: Mr. Kutik.

13 MR. KUTIK: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Kutik:

17 Q. Good morning.

18 A. Good morning.

19 Q. Mr. Wilson, OCC in this case retained the
20 firm of Wilson Economics, correct?

21 A. My firm is called Wilson Energy
22 Economics.

23 Q. And that firm consists of one person,
24 that's you.

25 A. Yes.

1 Q. With respect to your comments about
2 bidder behavior, would it be fair to say that you
3 have not participated in an SSO auction as a bidder?

4 A. That's correct.

5 Q. Nor have you participated in such an
6 auction as an auction manager?

7 A. Correct.

8 Q. Or on behalf of a utility?

9 A. Correct.

10 Q. Or, in fact, in any way?

11 A. Correct.

12 Q. With respect to designing auctions, your
13 experience is with a single auction for nonutility
14 generation several years ago, correct?

15 A. No. With respect to auctions for power,
16 I think that was the question, yes.

17 Q. With respect to managing an electric
18 portfolio, you've never had any responsibility for
19 doing that, correct?

20 A. That's correct. I've had many consulting
21 projects advising, but not responsibility managing.

22 Q. Your most recent work advising utilities
23 on portfolio selection was over 20 years ago,
24 correct?

25 A. Probably close to 20 years ago, yes.

1 Q. And your most recent work on advising
2 utilities on hedging strategies was about 10 years
3 ago.

4 A. Roughly 10 years ago, perhaps, yes.

5 Q. You've never advised any regulatory body
6 on hedging strategies?

7 A. Correct.

8 Q. Or about competitive bidding processes
9 for wholesale load?

10 A. Correct.

11 Q. Now, if you are going to provide an
12 opinion about the companies' competitive bidding
13 process, you would agree with me, would you not, that
14 it would be helpful to know what that -- what the
15 companies propose?

16 A. Yes.

17 Q. Your understanding about the companies'
18 proposal here is that the companies proposed to
19 auction a three-year product that will procure
20 one-third of the load for that period of time,
21 correct?

22 A. In October and January, the October,
23 2012, and January, 2013, correct.

24 Q. But you don't know the rest of the
25 schedule, correct?

1 A. I do.

2 Q. You didn't at the time you prepared your
3 testimony.

4 A. That's correct.

5 Q. All right. Now, regarding the companies'
6 past ESPs, you agree with me they have successfully
7 acquired supply for SSO load, correct?

8 A. I haven't evaluated that question, but I
9 recognize that the Commission has accepted the
10 results and the auction manager has accepted the
11 results.

12 Q. Right. In fact, the Commission, the
13 auction manager, have deemed it suc -- that the
14 auctions have been successful in procuring reliable
15 power at reasonable prices, correct?

16 A. That's my understanding, yes.

17 Q. And you have no reason to dispute that
18 evaluation.

19 A. Correct.

20 Q. Now, you believe that the companies'
21 first ESP was in 2010, correct?

22 A. I believe it began in 2010, yes.

23 Q. Okay. And you don't know what period of
24 time that was for.

25 A. I don't remember exactly the duration. I

1 think it was three years.

2 Q. All right. And you don't know we respect
3 to the second ESP what the term of that ESP was,
4 correct? You just know when it ends.

5 A. Yes.

6 Q. As part of current ESP, you understand
7 that there is an auction for a one-year product, a
8 two-year product, and a three-year product, correct?

9 A. The initial auctions in October of 2012
10 and January, 2013, are proposed to auction a
11 three-year product, and then their subsequent
12 auctions I believe it's for a two-year product.

13 Q. Well, let me ask you this, as part of the
14 current ESP -- that is the ESP we are in?

15 A. Currently speaking.

16 Q. There was an auction for a one-year
17 product, a two-year product, and a three-year product
18 at the same time, correct?

19 A. Yes.

20 Q. And then I believe that there was an
21 auction for a two-year product and a one-year product
22 at the same time, correct?

23 A. I believe there was one such auction,
24 yes.

25 Q. And the procurement strategy that has

1 been used in the current ESP, that is the one we are
2 in now, can be called a staggered procurement or a
3 laddered procurement, correct?

4 A. Yes.

5 Q. Now, you would agree with me, would you
6 not, that, perhaps we could, one thing that's certain
7 about the energy market is uncertainty.

8 A. That's correct.

9 Q. And it's hard to predict whether prices,
10 for example, for the 2015-2016, I am talking energy
11 prices, will be higher or lower than they are today.

12 A. Correct.

13 Q. For any auction, for any particular time,
14 we could probably come up with a pretty good list of
15 things that we would be uncertain about, correct?

16 A. That's correct.

17 Q. And bidders would be uncertain about?

18 A. Yes.

19 Q. And that list would include the price of
20 energy in the future.

21 A. Yes.

22 Q. And ancillary services and the price of
23 that.

24 A. Yes.

25 Q. Or the price of fuel.

1 A. Yes.

2 Q. The quantity of supply.

3 A. The quantity of the SSO supply, yes.

4 Q. The amount of shopping which is the other
5 side of that.

6 A. Yes.

7 Q. Potential regulatory changes.

8 A. Yes.

9 Q. Weather.

10 A. Yes.

11 Q. The nature of the overall economy.

12 A. Yes.

13 Q. Now, you say in your testimony, you use
14 the word that it may be advantageous to procure power
15 for 2015-2016 in the future, correct?

16 MS. YOST: Excuse me, can I get a cite to
17 the testimony, please?

18 Q. Do you remember using the word "may" in
19 your testimony?

20 A. I very well may have, yes.

21 Q. Okay. You didn't say that it will be
22 advantageous; you say it may be advantageous.

23 A. That's correct.

24 Q. Because we don't know, sitting here
25 today, what the prices will be, either prices if we

1 try to procure now or if we try to procure for that
2 period later, correct?

3 A. Correct.

4 Q. Now, in wholesale auctions bidders take
5 into account all of these uncertainties that we've
6 just talked about and, perhaps, more uncertainty that
7 we haven't talked about, correct?

8 A. That's correct.

9 Q. Now, you believe that the three-year
10 product proposed by the company will result in
11 greater risks and higher auction prices, correct?

12 A. I did not say that the auction will
13 result in risks. I would say that under the
14 circumstances, the current circumstance of
15 extraordinary risk, that could very well lead to
16 higher prices in the auction.

17 Q. Okay. And you didn't do any quantitative
18 analysis with respect to how this uncertainty may
19 affect energy prices, correct?

20 A. No.

21 Q. Nor did you do any analysis of the size
22 of the supply of premiums associated with the
23 marketing uncertainty that you are concerned about.

24 A. No.

25 Q. Nor did you do any qualitative analysis

1 on the size of supplier premiums associated with the
2 market uncertainties that might affect the three-year
3 product versus some other length of product.

4 A. No. Any such analysis would be highly
5 speculative.

6 Q. You didn't do it, correct?

7 A. Right.

8 Q. Nor did you do an analysis of whether a
9 one-year product versus a three-year product for
10 2015-2016 would lead to more variable prices,
11 correct?

12 A. Correct.

13 Q. I want to talk to you a little bit now
14 about the status of the ATSI zone. The announced
15 retirements of the plants within ATSI was part of an
16 unprecedented wave of announced retirements
17 throughout PJM.

18 MS. YOST: Objection, argumentative.

19 Q. Would you agree with that?

20 EXAMINER PRICE: Overruled.

21 A. That's correct.

22 Q. In fact, when I use the word
23 unprecedented, PJM used that had exact word, correct?

24 A. Yes. They've had 14,000 megawatts
25 announced since about November.

1 Q. And the announced retirements within the
2 ATSI zone were not just FES plants, correct?

3 A. That's correct.

4 Q. And the retirements within ATSI and the
5 configuration of the remaining units and the load and
6 the transmission grid caused PJM to determine that
7 ATSI was a constrained area, such that PJM would have
8 a separate BRA for 2015-2016 for the ATSI zone,
9 correct?

10 A. No. I wouldn't necessarily attribute
11 PJM's decision to the retirements. In fact, they had
12 identified they would define ATSI as an LDA before
13 the retirements were announced.

14 Q. Okay. Well, sir, you mentioned in
15 earlier testimony something called TEAC. Do you
16 remember that?

17 A. Yes.

18 Q. And TEAC stands for Transmission
19 Expansion Advisory Committee.

20 A. Correct.

21 Q. And they are an entity that exists within
22 the PJM structure.

23 A. It's a stakeholder group, yes.

24 Q. And as the name implies, it provides
25 advice to the PJM board about transmission issues.

1 A. No, it does not advise the PJM board.

2 Q. Okay.

3 MR. KUTIK: Your Honor, may I approach,
4 please?

5 EXAMINER PRICE: You may.

6 MR. KUTIK: Your Honor, at this time we
7 would ask to have marked a -- as Company Exhibit 8 a
8 document entitled Transmission Expansion Advisory
9 Committee Recommendations to the PJM Board, PJM Staff
10 Whitepaper, May 2012.

11 EXAMINER PRICE: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Now, Mr. Wilson, in your work you follow
14 the PJM process, do you not?

15 A. Yes.

16 Q. And, particularly, you follow the process
17 with respect to transmission issues, do you not?

18 A. Yes; especially recently.

19 Q. Okay. Do you recognize what's been
20 marked for identification as Company Exhibit 8?

21 A. I do.

22 Q. You've seen it before?

23 A. Yes, I have.

24 Q. Studied it?

25 A. I haven't studied it, but I'm familiar

1 with its contents.

2 Q. Now, let me have you turn to page 2 of
3 23.

4 MR. HAYS: Excuse me, you spoke too low.

5 MR. KUTIK: 2 of 23.

6 MR. HAYS: Thank you.

7 Q. Are you there, sir?

8 A. Yes.

9 Q. This sets out the process by which a -- I
10 am looking at the boxes at the top of the page. Do
11 you see that?

12 A. Yes.

13 Q. And this sets out the process for
14 deactivation or, what we might say, retirements of
15 plants, correct?

16 A. Yes.

17 Q. And that's an accurate statement as you
18 understand it of the process, correct?

19 A. I haven't read the whole thing, but I
20 think it probably is.

21 Q. And then what follows in this document is
22 a table that goes on for about a page and a half. Do
23 you see that?

24 A. Yes.

25 Q. And this table represents the units that

1 have been requested to be deactivated, correct?

2 A. Yes.

3 Q. And these units or this table indicates
4 the "Official Owner Request Date," correct?

5 A. Yes.

6 Q. And it shows, for example, the request
7 date for the owner, the units owned by FE Solutions,
8 correct?

9 A. Correct.

10 Q. And it marks an official request date of
11 January 26, 2012, correct?

12 A. Yes.

13 Q. And then there are also some units that
14 are owned by Genon that are indicated on this
15 deactivation list, correct?

16 A. Yes.

17 Q. And those units are indicated as being
18 requested for deactivation about a month later in
19 February, the end of February, correct?

20 A. Correct.

21 Q. Now, in terms of when an entity seeks to
22 retire or deactivate a plant within PJM, they need to
23 make that request to PJM and get PJM approval,
24 correct?

25 A. It's not exactly approval, but, yes,

1 they -- they announce to PJM, yes.

2 Q. And PJM reviews that request for
3 reliability purposes, correct?

4 A. PJM reviews the request for the
5 deactivation to see if it raises any reliability
6 issues, correct.

7 Q. And if there are reliability issues,
8 among the things that PJM can do, is to request that
9 the unit remain on and designate that -- that plant
10 as "reliability must run" or RMR, correct?

11 A. That's correct. It's a last resort, but
12 they can do that.

13 Q. And if the PJ -- if PJM designates a unit
14 RMR and the owner agrees to continue with -- the
15 plant continues to run, the plant continues to run,
16 correct?

17 A. That's correct.

18 Q. And some of the units within PJM that
19 were requested for deactivation have, in fact, been
20 designated as RMR facilities, correct?

21 A. I believe PJM has requested some
22 facilities to remain in service as RMR, yes.

23 Q. And the owners of those facilities have
24 agreed to some of those requests, if not all of those
25 requests, correct?

1 A. I'm not aware of whether they reached an
2 agreement or not.

3 Q. Okay. Now, the deactivation requests are
4 also reviewed by the market monitor within PJM,
5 correct?

6 A. I understand that's one of his
7 responsibilities, yes.

8 Q. And the market monitor reviews the
9 deactivation requests for market power issues,
10 correct?

11 A. I understand he's supposed to do that,
12 yes.

13 Q. And if the market monitor has concerns,
14 he can raise those concerns with PJM or ultimately
15 with FERC, correct?

16 A. Yes, he can.

17 Q. Now, you also mention in your testimony,
18 you mentioned here today, about the transmission
19 projects that are being discussed within ATSI,
20 correct?

21 A. Yes.

22 Q. And this report, which was marked as
23 Exhibit 8, this report also lists those projects. We
24 can see that list in -- starting on page 13 of 23,
25 correct?

1 A. Yes.

2 Q. It lists a project, transmission owner,
3 and the cost estimate, correct?

4 A. Correct.

5 Q. And if we look at the cost estimate, for
6 example, the third one on page 13 -- or fourth one on
7 page 13 with respect to AEP shows -- it says 65.00.
8 That's \$65 million. That's how we should read this,
9 correct?

10 A. Correct.

11 Q. Now, if we flip to page 17 of this
12 document, this shows more information about some
13 projects, correct?

14 A. Yes.

15 Q. And that's projects -- or this table that
16 begins on page 17 shows a required date, required --
17 what are those two initials?

18 A. In-service date.

19 Q. And those are listed there, correct?

20 A. Yes.

21 Q. And these projects that are listed have
22 all been approved by PJM, have they not?

23 A. I believe these have been approved by the
24 PJM board, yes.

25 Q. Now, in this case on pages 35 and 36 of

1 your testimony, you say that FES would be in a better
2 position to handle uncertainty within ATSI than
3 perhaps other wholesale suppliers, correct?

4 A. Correct.

5 Q. And so if that's the case, you would
6 expect, would you not, that in these companies'
7 auctions going forward, if the companies' proposal
8 was approved, that you would expect that FirstEnergy
9 Solutions would have a competitive advantage over
10 other potential participants in the competitive
11 bidding processes for the SSO auctions, correct?

12 A. It's a complicated situation, but, yes,
13 with respect to that particular aspect that I address
14 in my testimony that they own a large quantity of
15 resources that are in the zone, yes.

16 Q. And so you would expect that there would
17 be a large potential for FES to obtain more tranches
18 for longer periods -- period products, correct?

19 A. There would be an opportunity, yes.

20 Q. Now, about three years ago you testified
21 before the Commission. Do you remember that?

22 A. I think it was closer to two, yes, two
23 and a half.

24 Q. And I had the pleasure of talking to you
25 in that case. Do you remember that?

1 A. Not specifically, no.

2 Q. I'm glad I made that impression on you.
3 But three years ago you testified in a case, and it's
4 Case No. 09-906, and you testified, did you not, that
5 you thought that there were uncertainties within
6 ATSI, and that FirstEnergy Solutions would be
7 better -- would be better able to handle the
8 uncertainties within ATSI then. Do you remember
9 that?

10 A. That's true. There were different
11 uncertainties but there was a similar situation, yes.

12 Q. And if that's true, then you would expect
13 that FES, if we look at the auction results since
14 then, would have won more tranches than its
15 competitors or more tranches for longer periods --
16 let me strike that and start again.

17 You would expect that for auctions
18 relating to longer periods of products, that FES
19 would win more of those than with respect to other
20 products. You would expect that, would you not?

21 A. Not necessarily, no.

22 Q. But that would be a logical conclusion
23 from your earlier analysis.

24 A. No, not necessarily.

25 Q. Okay. But it could be, sir.

1 MS. YOST: Objection. Asked and
2 answered.

3 A. I mean, FirstEnergy Solutions has a very
4 large portfolio in the zone; therefore, they have to
5 recognize how they bid into any auction is going to
6 influence the price. And they bid less or higher
7 prices, then they are going to clear a higher price
8 that's earned by their very large sales.

9 And when you're talking about an SSO
10 auction, they are also a competitive supplier so they
11 might prefer to serve the load through the
12 competitive supply rather than SSO. So there are a
13 lot of reasons why they might not clear a large
14 number of tranches.

15 EXAMINER PRICE: Mr. Wilson, your counsel
16 had objected. You probably want to let me rule on
17 the objection before you answer.

18 MS. YOST: I'll withdraw the objection.

19 MR. KUTIK: He said "not necessarily."

20 Q. But it could be, right?

21 MS. YOST: Objection. Asked and
22 answered.

23 A. Could you repeat that?

24 Q. My question was, you would expect from
25 the fact that you believe that FirstEnergy Solutions

1 had an advantage in dealing with uncertainties, that
2 if we look back at the SSO auctions for longer
3 products, that FES could obtain more of those
4 products than they would of lesser products because
5 of the alleged competitive advantage that they had?

6 MS. YOST: Objection. Asked and
7 answered.

8 EXAMINER PRICE: I don't think he's
9 answered the question yet, overruled.

10 A. It's unclear what you mean by "lesser" in
11 your question. You said lesser products.

12 Q. Lesser length products.

13 A. It's possible, yes.

14 Q. Okay. Now, I want to talk to you about
15 the recent base residual auction for 2015 and 2016.
16 It would be correct to say, at least at this time, we
17 don't know the shape of the supply curve that
18 resulted from that auction.

19 A. That's correct. It's no longer made
20 public.

21 Q. And we don't know whether the supply and
22 demand curves for that auction intersects at a point
23 on the supply -- well, on the demand -- strike that.

24 We don't know whether the point at which
25 the demand supply curves for the auctions

1 intersects -- they intersected the supply curve was
2 flat or steep?

3 A. Could you clarify what you mean by
4 "demand curves"?

5 Q. Demand curve.

6 A. Okay. I had heard you say in the plural.

7 Q. Okay. What I said, if we're looking at
8 the point where the demand curve and the supply curve
9 intersect, we don't know whether the supply curve at
10 that point was steep or flat.

11 MS. YOST: Objection, your Honor. He
12 just indicated that was not publicly available, so
13 there's a lot we don't know about it because it's not
14 public, so.

15 MR. KUTIK: Then this witness should
16 answer he doesn't know.

17 MS. YOST: You can ask a lot of questions
18 about what he doesn't know.

19 MR. KUTIK: Then I will.

20 EXAMINER PRICE: Your objection is
21 overruled. He is an expert on this. He can answer
22 if he knows.

23 A. It's ambiguous what you mean by demand
24 curve because there are, in effect, three demand
25 curves. There's the sloped variable resource

1 requirement curve. There's the minimum annual
2 resource requirement, which is, in effect, a vertical
3 curve; and there's the minimum extended summer
4 resource requirement, a third demand curve, in
5 effect, which is also vertical, but in each case we
6 don't know the shape of the supply curve.

7 Q. Thank you. And we don't know the point
8 where those curves intersect the supply curve whether
9 the supply curve was flat or steep.

10 A. That's correct.

11 Q. We don't know what resource or whether a
12 resource set the clearing price.

13 MS. YOST: Objection, your Honor. I am
14 going to renew my objection.

15 EXAMINER PRICE: Continuing objection is
16 noted. Thank you.

17 A. Yes. In the case of the vertical demand
18 curves, the minimum annual resource minimum and
19 minimum extended summer resource requirement, I think
20 we can expect that there was a resource that
21 intersected because it's a vertical curve. But for
22 the variable resource requirement, we do not know.

23 Q. And for the curve that we know that it
24 was a resource curve, we don't know what resource was
25 the price setter, correct?

1 A. That's correct.

2 Q. Now, with respect to the existing coal
3 units, would it be fair to say you don't know if the
4 ones that were offered into the BRA had already been
5 subject to heavy capital expenditures to comply with
6 environmental regulations.

7 A. I believe some had, and others probably
8 were still looking forward to other capital
9 investments that have to be made in the future.

10 Q. But you don't know which ones were which?

11 A. My understanding, it was a mix, and, yes,
12 I don't know.

13 Q. Would you agree with me that coal plants
14 have relatively low avoidable costs?

15 A. I think -- do you want to ask net
16 avoidable costs or avoidable costs?

17 Q. Avoidable costs.

18 A. Avoidable costs are not -- are low
19 compared to what?

20 Q. Other types of units.

21 A. Lower than some, higher than others.

22 Q. Okay. So you wouldn't agree they are
23 relatively low.

24 A. I mean, they are -- it's a relative term.

25 Q. Can you answer my question "yes" or "no,"

1 sir?

2 A. I mean, it is just a vague question, low,
3 relatively low.

4 EXAMINER PRICE: You can't answer the
5 question "yes" or "no" because it's vague?

6 THE WITNESS: I mean, I think I said
7 "yes" on my deposition.

8 Q. So you said "yes" in your deposition?

9 A. I think so.

10 EXAMINER PRICE: Mr. Kutik, please let
11 the witness finish his statement.

12 A. We may have clarified we were talking
13 about net avoidable costs in the deposition, and,
14 yes, coal plants have very low net avoidable costs.

15 Q. Thank you. And these are usually or
16 generally not price setters, the coal plants,
17 correct?

18 A. Generally.

19 Q. Okay. Now, you believe that all existing
20 units cleared in the BRA for 2015-2016.

21 A. No.

22 Q. Okay.

23 A. I believe all the missing generation in
24 the ATSI zone not announced for retirement, that all,
25 or very nearly all, of it cleared.

1 Q. Okay. Well, did all of it clear or
2 nearly all of it clear?

3 A. All or nearly all of it cleared. The
4 accounting that I can perform is probably plus or
5 minus 50 megawatts.

6 Q. So you don't know whether all of the
7 units cleared, correct?

8 A. I expect that probably all of them did,
9 but the information that you're -- as provided by PJM
10 indicates that all or nearly all of them cleared.

11 Q. All right. So you can't say that all of
12 it cleared?

13 MS. YOST: Objection. Asked and
14 answered.

15 EXAMINER PRICE: Sustained.

16 Q. Now, not all demand resources that bid in
17 cleared.

18 A. That's correct.

19 Q. And a record number of demand resource
20 was offered and cleared, correct?

21 A. That's correct.

22 Q. For the companies' bid demand resources,
23 the companies would have to either own the rights to
24 that or to have a marketing plan, correct?

25 A. That's correct.

1 Q. The companies' rights to demand resources
2 currently arise from their rider ELR, correct?

3 A. That's correct.

4 Q. The companies currently do not have the
5 right to demand resources through that rider for
6 2015-2016, correct?

7 A. That's correct.

8 Q. Because -- and you don't know if a
9 marketing plan has been approved.

10 A. I don't know.

11 Q. Now, you're not suggesting, is that
12 correct, that the companies should bid DR into the
13 BRA in terms of the DR they didn't control because
14 the companies could buy DR in incremental auctions
15 subsequently.

16 MS. YOST: Objection. Compound question.

17 A. Can you point to my testimony what you're
18 asking about?

19 MS. YOST: There is an objection.

20 EXAMINER PRICE: Mr. Wilson, your counsel
21 has made an objection. You probably want to wait
22 until you start answering.

23 Can you rephrase your question,
24 Mr. Kutik?

25 MR. KUTIK: Sure.

1 Q. Now, you're not suggesting that if the
2 companies don't own demand resources, they should --
3 they should have bid that amount or more demand
4 resources in because they could buy demand resources
5 in subsequent -- demand responses in subsequent BR --
6 incremental auctions.

7 MS. YOST: Objection. Compound again.

8 EXAMINER PRICE: Overruled.

9 A. No.

10 Q. You're not suggesting that.

11 A. I didn't suggest that, no.

12 Q. All right. And it is not necessarily the
13 case that clearing prices in the incremental auction
14 would be less than the clearing price in the prior
15 BRA, correct?

16 A. I think you mean in the BRA for the same
17 delivery year?

18 Q. Yes.

19 A. It's not necessarily the case, but it's
20 nearly always the case.

21 Q. It's not necessarily the case?

22 A. Not necessarily, no.

23 Q. And there haven't been any incremental
24 auctions in the ATSI zone, correct?

25 A. That's correct.

1 Q. Okay. As we mentioned, there was a
2 record of demand resources offered and bid into the
3 2,015,2016 BRA, right?

4 A. That's correct.

5 Q. And the same would be --

6 A. Correct.

7 Q. And the same would be true for new
8 generation, correct?

9 A. That's correct.

10 Q. Now, with respect to the environmental
11 plant -- excuse me -- the plants that were not
12 retired and that were offered in, they will have to
13 meet environmental regulations that would be put into
14 effect over the next couple of years, correct?

15 A. That's correct.

16 Q. And to install the equipment, if
17 necessary, these plants will have to be out of
18 service.

19 A. That's correct.

20 Q. Now, let me ask you a little bit about
21 those environmental regulations. You're aware of
22 something called the Mercury and Air Toxic Standard,
23 MATS, or referred to as MATS, correct?

24 A. Yes.

25 Q. And that final rule was published in

1 December of 2011, correct?

2 A. That's my understanding, yes.

3 Q. You would agree with me that that final
4 rule contained material changes from the prior
5 version?

6 A. I'm not aware of the details of that,
7 but, no, I'm not aware of the details of the extent
8 of the changes.

9 Q. So you don't know whether they were
10 extensive or not.

11 A. No.

12 Q. You're not aware; is that correct?

13 A. That's correct, that's correct, I'm not
14 aware.

15 Q. Now, FirstEnergy announced its
16 retirements in ATSI within about a month of the
17 publication of the final MATS rule, correct?

18 A. I understand that's correct, yes.

19 Q. All right. And Genon took another month
20 to announce its retirements, correct?

21 A. Correct.

22 Q. Let me switch gears a little bit. You're
23 not opposed to a three-year product in an SSO auction
24 generally, correct?

25 A. That's correct.

1 Q. And three-year auctions have been used to
2 procure one-third of what we will call the POLR load
3 every year or in recent years in other jurisdictions,
4 like the state of New Jersey.

5 A. That's correct.

6 Q. And New Jersey is an area that has had
7 volatile prices for energy and capacity, correct?

8 A. Yes.

9 Q. It has historically been a constrained
10 area for both energy and capacity.

11 A. In some years, yes.

12 Q. Okay. And there's no liquid market for
13 New Jersey that we could trade in -- on an exchange,
14 correct?

15 A. Well, there are -- there are forward
16 prices for New Jersey.

17 Q. But not specifically for New Jersey.

18 A. Not for the state of New Jersey, no.
19 It's not an electrically significant entity in
20 itself. There's forward prices for the public
21 service zone, JTL zone, and for, you know, PJM.

22 Q. You wouldn't say, would you, sir, that
23 the New Jersey procurement model is imprudent?

24 A. I haven't evaluated, but, no, I wouldn't.

25 Q. In fact, the laddering that that process

1 used is an acceptable method to manage risks, is it
2 not?

3 A. Yes.

4 Q. And it provides stable prices.

5 A. I haven't evaluated that.

6 Q. Well, isn't it true that laddering is a
7 method of providing stable prices?

8 A. It will provide more stable prices than
9 buying on a year-by-year basis, yes, because of the
10 averaging.

11 Q. Now, in general, you would agree with me
12 that the further you go out in time in the future,
13 the harder it is to predict what market pricing will
14 be.

15 A. That's generally correct, yes.

16 Q. But if we're looking at, let's say, the
17 forward prices for 2015-2016, it's easier to predict
18 what those forward prices will be as we're sitting
19 here today, tomorrow, what those prices will be
20 versus a year from now.

21 A. It will be easier to predict the prices
22 for 2015 to 2016 a year from now than it is today.

23 Q. That's not my question. My question is
24 if we're trying to predict what the 2015-2016 forward
25 prices will be, will -- it's easier to predict what

1 those forward prices will be sitting here today what
2 those forward prices will be tomorrow than what those
3 forward prices will be a year from now.

4 A. Okay. So we're predicting the forward
5 price for 2515-2016 and what that forward price will
6 be at different points in time.

7 Q. Correct.

8 A. Okay. Yes.

9 Q. You would agree with me, would you not,
10 locking in supply today provides greater certainty
11 about costs for future delivery than locking in
12 supply two years from now.

13 A. Locking in a price today provides
14 certainty about that price from now into the future,
15 and if you instead don't lock it in today and lock it
16 in two years from now, then, meanwhile, it will be
17 uncertain, correct.

18 Q. The uncertainty that exists today or in
19 October of this year or January of next year for a
20 three-year product would be assumed by a winning
21 bidder in an auction, assuming that the companies'
22 proposal is accepted, correct?

23 A. A winning bidder would be committed to
24 provide service at a price that is determined through
25 the auction and will have to manage all the risks

1 that he faces in fulfilling the obligation, yes.

2 Q. If we were not to have a three-year
3 product auctioned in October of this year and January
4 of next year but instead waited to procure SSO supply
5 for 2015-2016 to some other time, that would have its
6 own risk as well, correct?

7 A. Instead of locking in the price in
8 October and January, then it would be locked in at a
9 later time, and that price could end up being lower
10 or higher, yes.

11 Q. Okay. So it's possible that if we waited
12 to lock in supply for 2015-2016 that new
13 uncertainties might arise in the interim,
14 uncertainties that we don't know about, correct?

15 A. That's always possible, yes.

16 Q. It's possible, I think as you said, that
17 prices could rise substantially.

18 A. It could rise substantially. They could
19 fall, correct.

20 Q. Okay. We could be talking about 20, 30,
21 40 percent, correct?

22 A. I haven't evaluated that but, yes.

23 Q. And you've done no quantitative analysis
24 of how much prices could rise if we waited one or two
25 years to buy power for 2015-2061.

1 A. No, it would be highly speculative.

2 Q. So if the supplier -- if we don't have
3 the supplier committing for or providing power
4 2015-2016 now, and the supplier is not going to
5 assume those risks and we wait, the potential is that
6 those risks would be borne by customers, correct, the
7 risks of waiting?

8 A. I'm not sure what you're referring to
9 when you say "those risks."

10 Q. Well, so if we don't have a supplier
11 assume the risks of supplying power in 2015-2016
12 through an auction, the risk could be potentially
13 borne by customers, correct?

14 A. I think you're asking again, but if we
15 don't lock in the price in October and January and
16 wait another year, that price could go up and could
17 go down, so there's some risk associated with that,
18 yes.

19 Q. Okay. And there could be more risks in
20 that time that we're waiting, correct?

21 A. I think you're saying that additional
22 uncertainties could arise.

23 Q. Yes.

24 A. It could move prices higher or lower than
25 we expected, yes.

1 Q. Now, you believe that it's important to
2 minimize supplier risk, correct?

3 A. That's a vague question.

4 Q. Do you remember your deposition, sir?

5 A. Yes. I thought it was a vague question
6 at that time, too.

7 Q. But you answered that question in that
8 deposition yes, did you not?

9 A. I think what you mean is in designing an
10 auction in order to get the best result, you want to
11 minimize the risks that suppliers are going to have
12 to manage. That's how I probably interpreted it, in
13 which case the answer is yes.

14 Q. Okay. Thank you. Now, I think, as you
15 mentioned, one way that you could minimize supplier
16 risk would be to have a series of one-year auctions,
17 correct?

18 A. Yes.

19 Q. And, as you know, ATSI prices for
20 capacity have -- or are scheduled to increase
21 substantially, correct?

22 A. Capacity prices.

23 Q. Yes.

24 A. Yes.

25 Q. And so if we had a series of one-year

1 auctions, customers might see a substantial increase
2 from year to year, correct?

3 A. I think you're meaning if customers were
4 paying for the actual capacity price that has already
5 been established for the next three years on a
6 year-by-year basis as opposed to a three-year
7 average.

8 Q. No. I think my question was, knowing we
9 have those prices out there for capacity, if we had a
10 series of one-year auctions, it's possible the
11 customers could see a substantial increase in their
12 rates for generation year to year, correct?

13 A. Yes. In you auction year by year, each
14 year will reflect the capacity price for that year,
15 but if you had a three-year auction, customers will
16 start paying that average price on a much higher
17 price right away, but it won't rise over time, yes.

18 Q. So the question about increases was that
19 they could see substantial increases from year to
20 year, correct?

21 A. Correct, starting from a very low level.

22 Q. Thank you. Now, portfolio managers want
23 to balance a portfolio, correct?

24 A. Typically that's one of the objectives.

25 Q. And with respect to this type of product

1 that we have been talking about here, that would
2 include longer products, would it not?

3 A. It could potentially, yes.

4 Q. Now, the companies' plan, as you
5 understand it, is to buy power for 2015-2016,
6 correct, ultimately?

7 A. Correct.

8 Q. All right. And that 2015-2016
9 procurement would include a procurement from a mix of
10 one-, two-, and three-year products, correct?

11 A. Correct.

12 Q. And one-third of the supply would be from
13 a three-year product, one-third of the supply would
14 be from a two-year product, one-third would be from a
15 one-year product.

16 A. Correct.

17 Q. And procurements would take place at
18 about six different times over two and a half years.

19 A. Correct.

20 Q. And the results from those auctions would
21 be blended to come up with the generation rates,
22 correct?

23 A. That's correct.

24 Q. Now, you note in your testimony that
25 there is less volume for trading for products further

1 out in the future, correct?

2 A. You're talking about forward markets?

3 Q. Yes.

4 A. Yes.

5 Q. And that doesn't automatically translate
6 to higher prices, does it?

7 A. It means -- it means a higher chance
8 you're going to have to pay more to get a hedge.

9 Q. It doesn't --

10 A. Not automatic, no.

11 Q. Now, you believe that the risk facing
12 bidders now would be characterized as extraordinary
13 uncertainty, correct?

14 A. Yes.

15 Q. That's the phrase you use. And we talked
16 earlier about that this -- this may not be an
17 advantageous time, correct, to buy power on a
18 three-year product for 2015-2016, correct?

19 A. That's correct.

20 Q. So that implies, does it not, that later
21 on may be an advantageous time to buy power for
22 2015-2016, correct?

23 A. That's correct.

24 Q. So what you're saying is that we should
25 find -- try to find the right time to procure power

1 for 2015-2016, correct?

2 A. No.

3 Q. All right. Well, certainly you don't
4 believe today is necessarily or in October or January
5 is necessarily the right time, correct?

6 A. Yes. I question whether it was
7 advantageous to extend the bid term to three years
8 under the extraordinary uncertainty that we're facing
9 presently.

10 Q. Okay. Now, with respect to this
11 "extraordinary certainty," we don't know when these
12 risks will be unresolved, do we?

13 A. We will know more about transmission
14 upgrades. Over time we will start to see the
15 interconnection queue, hopefully, reflect some
16 proposals for new generation for the ATSI zone. I
17 think we'll learn a lot over the next year.

18 Q. That isn't my question. My question is
19 we don't know when those risks will be resolved,
20 correct?

21 A. We can estimate how much -- we'll know
22 better in a year. We don't know when each and every
23 risk will resolve.

24 Q. Thank you. And we don't know a date when
25 they would be resolved, correct?

1 MS. YOST: Objection. Asked and
2 answered.

3 EXAMINER PRICE: That's not what he
4 asked. Overruled.

5 A. As you get closer to the delivery date,
6 the various uncertainties with respect to that
7 delivery date are becoming less uncertain as you get
8 a better idea of where the transition system will be
9 on that delivery, so uncertainty resolved right up to
10 the point of delivery.

11 Q. Mr. Wilson, I asked you, you don't know a
12 date when the uncertainties that you are concerned
13 about will be resolved; isn't that true?

14 A. That's correct.

15 Q. All right. Now, uncertainty is never
16 resolved, correct?

17 A. Correct. I mean, until the actual time
18 of whatever it is you are trying to predict resolves.

19 Q. And there is always new uncertainties,
20 correct?

21 A. Yes.

22 Q. And perhaps we could say that a certainty
23 about uncertainty is uncertainty, correct?

24 A. I think that's nonsense, actually.
25 That's probably correct nonsense.

1 Q. Just to make sure, you said it's probably
2 correct nonsense.

3 A. Yes.

4 Q. Okay. Now, I think you just said that
5 you believe that things will be -- in ATSI will be
6 clearer in one or two years, correct?

7 A. That's correct.

8 Q. And is that an insight that you believe
9 is unique to you?

10 A. No.

11 Q. I mean, so if you know it, others know
12 it, right?

13 A. I expect potential bidders, for instance,
14 would imagine that things are going to be a lot
15 clearer in a year or two, yes.

16 Q. And that they can take that issue or that
17 likelihood, if that is a likelihood, into account as
18 they're coming up, their bidding strategies for a
19 three-year product, correct?

20 A. It's unclear how an expectation that
21 uncertainty will resolve after the auction really
22 helps you in forming your bid. I don't -- I don't
23 see that.

24 Q. So you couldn't think of a way that a
25 bidder could take advantage of that piece of

1 information; is that what you're saying?

2 A. We're talking about the possibility that
3 uncertainty will resolve after the auction?

4 Q. No; that things will be clearer, to use
5 your phrase.

6 A. After the auction?

7 Q. No.

8 A. Oh.

9 Q. Well, yes, after the auction, that things
10 will be clearer in -- if we have the auction now,
11 that things will be clearer with respect to these
12 uncertainties later.

13 A. I don't think that's very helpful for an
14 auction that has to happen under circumstances that
15 are uncertain.

16 Q. So going back to my question, you can't
17 think of a way that that information that things will
18 be better or clearer could be useful in a bidding
19 strategy, fair to say?

20 A. Yes.

21 Q. Okay. Now, going back to your testimony
22 in the 09-906 case, you testified in that case, did
23 you not, that the circumstances within the ATSI zone
24 also faced extraordinary uncertainty, that exact
25 phrase, did you not?

1 A. I don't recall if I used that phrase or
2 not.

3 MR. KUTIK: May I approach the witness?

4 EXAMINER PRICE: You may.

5 MR. KUTIK: Your Honor, we would like to
6 have marked as Company Exhibit 9 the Direct Testimony
7 of James F. Wilson in Case No. 09-906.

8 EXAMINER PRICE: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. Mr. Wilson, I've shown you what's been
11 marked as Company Exhibit 9. Do you recognize that?

12 A. Yes, I do.

13 Q. That was your testimony?

14 A. Yes.

15 Q. Do you know whether looking at this
16 testimony you can find the phrase "extraordinary
17 uncertainties" or "extraordinary uncertainty"?

18 A. You want me to find it?

19 Q. I'm just asking you as you are looking at
20 it, can you find it?

21 A. I will take a look.

22 MS. YOST: I object, your Honor. If he
23 knows where it is, I would request he point it out to
24 the witness to save time in this hunt.

25 EXAMINER PRICE: Overruled.

1 MR. KUTIK: Your Honor, let me see if I
2 can cut through this.

3 Q. Mr. Wilson, let me refer you to page 26
4 of your testimony.

5 A. 26.

6 Q. I am going to refer you to a different
7 page. Let me refer you to page 4.

8 MS. YOST: What's the page number now?

9 MR. KUTIK: 4.

10 Q. You used the phrase "substantial
11 uncertainty" on page 4, line 10.

12 MS. YOST: Your Honor, I am going to
13 object. He mischaracterized. This was a hunt for
14 the word "extraordinary uncertainty." I ask that we
15 strike this line of questioning.

16 EXAMINER PRICE: What's your basis for
17 striking the line of questioning?

18 MS. YOST: Counselor needs to get his
19 facts straight before he sends the witness on a hunt
20 for a word that does not exist in a document.

21 EXAMINER PRICE: Number one, it hasn't
22 been demonstrated it doesn't exist. Number two, the
23 Bench is aware of what's going on.

24 Q. (By Mr. Kutik) You used the phrase
25 "substantial uncertainty."

1 A. On page 4, line 10, I said, "Potential
2 bidders face substantial uncertainty regarding both
3 the quantities they will be required to supply and
4 the market costs and value of the supply, especially
5 in the latter years of the commitment."

6 Q. And you comment in this document, do you
7 not, on the conditions within ATSI, correct?

8 A. Correct.

9 Q. The fact that ATSI was migrating into
10 PJM, correct?

11 A. That's correct.

12 Q. And today we're facing extraordinary
13 uncertainty, correct, in ATSI?

14 A. Yes.

15 Q. So we just never know, correct?

16 A. No.

17 MR. KUTIK: No further questions.

18 EXAMINER PRICE: Thank you.

19 Mr. McNamee.

20 MR. McNAMEE: Thank you.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. McNamee:

24 Q. Mr. Wilson, you discussed the laddering
25 that the company proposes in its -- in its auction.

1 You discussed that with Mr. Kutik, yes?

2 A. Yes.

3 Q. Okay. One of the effects of that
4 laddering is to present customers with essentially
5 blended rates, blending of the different packages in
6 the auction, correct?

7 A. Blend of supply procured at different
8 times, yes.

9 Q. Okay. Excuse me. A necessary effect of
10 that blending is that the prices that customers will
11 see will be less volatile than they would be in the
12 absence of that blending; isn't that correct?

13 A. That's correct.

14 MR. McNAMEE: Thank you. That's all I
15 need.

16 EXAMINER PRICE: Thank you.

17 Redirect?

18 MS. YOST: Your Honor, this would be a
19 good time to take a lunch break so I can get the
20 redirect and make sure Mr. Wilson is on his way in a
21 timely manner.

22 EXAMINER PRICE: Let's go off the record.

23 (Discussion off the record.)

24 EXAMINER PRICE: Let's go back on the
25 record.

1 Redirect.

2 MS. YOST: Thank you, your Honor. Very
3 limited redirect.

4 - - -

5 REDIRECT EXAMINATION

6 By Ms. Yost:

7 Q. Mr. Wilson, could you please locate what
8 has been marked as FE Exhibit 8 in front of you.

9 A. Yes, thank you.

10 Q. The title of this, it says Transmission
11 Expansion Advisory Committee, and then at the bottom
12 of the title it says Recommendations to the PJM
13 Board. Whose recommendations are these?

14 A. Yes. My understanding these are PJM's
15 recommendations to the PJM Board. The Transmission
16 Expansion Advisory Committee is where they were being
17 reviewed, so the title is a little confusing because
18 it's basically PJM's recommendations and a review to
19 the TEAC group.

20 Q. The TEAC, when the TEAC finish their
21 review, do they vote or approve the recommendations?

22 A. No. PJM reviews the recommendations with
23 the TEAC. They have opportunity to comment on it,
24 but they are not -- I don't recall any vote.

25 Q. Thank you. Counsel for the companies was

1 asking you about full prices. If you could turn your
2 attention to your exhibit, which is your prefiled
3 testimony, OCC Exhibit 9, one of the attachments,
4 specifically JFW-1.

5 A. Yes.

6 Q. This exhibit shows forward prices; is
7 that correct?

8 A. That's correct.

9 Q. And what does this say about forward
10 prices from -- going forward to, it looks like, as of
11 May 1, 2012?

12 A. Yes. Well, unfortunately the exhibit is
13 not in color so it's little difficult to interpret,
14 but it contains four lines. Each line is the forward
15 curve as of May 1 on one of the last four years,
16 2009, '10, '11, '12.

17 And I think what's notable about these
18 curves is that in each case, the curve rises over
19 time, meaning that at all four of those points in
20 time, there were expectations that prices would rise.
21 They are up and down because there is seasonality,
22 but all four of the curves generally rise over time
23 from the present to the future.

24 So that's one thing I think is very
25 noticeable about this, that generally the forward

1 curve rises reflecting either expectation that prices
2 will rise, or the fact that to transact further into
3 the future, you have to pay higher prices because of
4 risks and some combination of that.

5 And the other notable thing about the
6 exhibit is, as you look from the curve for 2009,
7 which is the one that begins on the furthest left to
8 the one for 2010, which is the curve that begins May
9 of 2010, to 2011, to 2012, you see that with only one
10 exception the forward curves have dropped from May,
11 2009, to May, 2010. The 2010 curve sits below the
12 2009 curve. If you look vertically at any point in
13 time from 2010 to 2011, the forward curve hardly
14 moved. And then from 2011 to 2012, again, the
15 forward curve lies below the prior forward curve.

16 So, whereas, at each point in time there
17 have been over this period expectations that prices
18 would rise, in fact, over this period of time prices
19 have, in fact, fallen. Again, what will happen from
20 here, no one knows. A lot of this development
21 obviously reflects the shale gas coming out and
22 pushing down gas prices and pulling coal prices, but
23 I wanted to point out this is what this exhibit
24 shows.

25 Q. Thank you, Mr. Wilson. During your cross

1 with FE counsel, he presented you with your testimony
2 from a previous case, Case No. 09-906. They marked
3 it as FE Exhibit 9.

4 A. Yes.

5 Q. In that case counsel was asking you about
6 uncertainties. What were -- can you recall what the
7 uncertainties were that you identified in that case
8 in regards to the ATSI zone?

9 A. Yes. As I recall, I was referring to
10 uncertainties about fuel prices, and, indeed, since
11 then, we've seen fuel prices come down a lot. I
12 believe I referred to uncertainties about the economy
13 at that time. We were in the midst of the largest
14 recession since the '30s.

15 I also referred to the uncertainties
16 about how and whether ATSI will integrate into PJM.
17 At that time I considered there to be some
18 uncertainty about whether ATSI would go forward with
19 it. Other transmission owners have announced that
20 and have ultimately decided not to do -- to make a
21 change of RTO membership.

22 So that was a time of extraordinary
23 uncertainty. And, in fact, since that testimony what
24 has happened with the recession and prices has -- has
25 indicated that it very much was a time of

1 extraordinary uncertainty.

2 Oh, I forgot to mention environmental
3 regulations is another one, and, of course, we have
4 seen that move forward.

5 MS. YOST: No further questions. Thank
6 you, Mr. Wilson.

7 MR. KUTIK: Your Honor, may I have that
8 last answer read, please.

9 EXAMINER PRICE: You may.

10 MR. KUTIK: Just the last sentence.

11 EXAMINER PRICE: Last sentence of the
12 last answer, please.

13 (Record read.)

14 EXAMINER PRICE: Okay. Mr. Warnock.

15 MR. WARNOCK: No questions.

16 EXAMINER PRICE: Mr. Hays.

17 MR. HAYS: No questions, your Honor.

18 EXAMINER PRICE: Mr. Dortch.

19 MR. DORTCH: No questions, your Honor.

20 EXAMINER PRICE: Mr. Kapla.

21 MR. KAPLA: No questions.

22 EXAMINER PRICE: Mr. Lavanga.

23 MR. LAVANGA: No questions.

24 EXAMINER PRICE: Mr. Vickers.

25 MR. VICKERS; No questions

1 EXAMINER PRICE: Mr. Kutik.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Kutik:

5 Q. Mr. Wilson, directing your attention to
6 Company Exhibit 8, the TEAC information, let me refer
7 you to page 12 of 23. It says there in the last
8 sentence, does it not, "The PJM Board met on May 17
9 and approved the elements of the 2012 RTEP documented
10 herein." Correct?

11 A. Yes.

12 Q. With respect to forward prices for 2015
13 to 2016, would you agree with me that in about
14 February they were at a nine-year low?

15 A. I haven't reviewed that, but I don't
16 know.

17 Q. Okay. And would you -- then you don't
18 know whether -- whether those forward prices have
19 increased since February.

20 A. No.

21 Q. You don't know.

22 A. I don't.

23 Q. With respect to the time period that you
24 were referring to in Case 09-906, did I hear you say
25 that it was a time of extraordinary uncertainty?

1 A. It was. There were a number of other
2 uncertainties at that time, such as the recession.

3 Q. And we are at another period of
4 extraordinary uncertainty?

5 A. I believe we are, yes.

6 Q. All right. And since that time of
7 extraordinary uncertainty and this time of
8 extraordinary uncertainty, the companies have used a
9 laddering strategy that has produced successful
10 auctions, correct?

11 A. I haven't compared those outcomes to a
12 different strategy with respect to the durations of
13 the purchases.

14 Q. But as -- I think as -- I'm sorry. Were
15 you finished with your answer?

16 A. And that's the issue here, is the
17 duration of the procurement, and I have not evaluated
18 whether a different term in the purchases would have
19 had a better outcome. I haven't evaluated that.

20 Q. But you aren't revising your earlier
21 testimony you take the Commission and the auction
22 manager at their evaluation of the success of the
23 laddering strategies that have been in effect since
24 that time of extraordinary uncertainty in the 09-906
25 case and today's time of extraordinary uncertainty?

1 MS. YOST: Objection. He is
2 mischaracterizing the previous testimony. There was
3 no question or responsive question to an answer like
4 that.

5 EXAMINER PRICE: Could I have the
6 question back, again.

7 (Record read.)

8 EXAMINER PRICE: Why don't you rephrase
9 your question, Mr. Kutik.

10 Q. You are not revising your earlier
11 testimony that you are taking the Commission and the
12 auction manager at their evaluation that the auctions
13 that have been taking place in the current ESP have
14 been successful? You are not revising those remarks,
15 are you?

16 A. Okay. The auction manager and the
17 Commission approved the auction results given the
18 structure of the auction. But under circumstances
19 where the forward curve is always rising, as I just
20 explained, the shape of the forward curve says higher
21 prices in the future, but then if the forward curve
22 actually falls, you would actually have achieved
23 lower costs for consumers had you procured on a
24 year-by-year basis during that period.

25 MR. KUTIK: Move to strike, your Honor.

1 MS. YOST: Objection. Your Honor, he
2 answered the question.

3 EXAMINER PRICE: I will overrule -- you
4 didn't make an objection. You are just responding to
5 his.

6 MS. YOST: Yes. I'm sorry.

7 EXAMINER PRICE: Your motion to strike is
8 denied.

9 Q. Mr. Wilson, you understand that the
10 Commission and the auction manager felt that the SSO
11 auctions were successful in obtaining reliable power
12 at reasonable prices, correct?

13 A. I believe they were, but I do not
14 think -- I do not believe they did an ex-post
15 evaluation of the laddering strategy.

16 Q. Okay. But they made this evaluation that
17 it was successful, correct?

18 A. Correct.

19 Q. And those auctions took place between the
20 time of extraordinary uncertainty that you were
21 talking about in 09-906 and today's time of
22 extraordinary uncertainty, fair to say?

23 A. Correct.

24 MR. KUTIK: No further questions.

25 EXAMINER PRICE: Thank you.

1 Questions?

2 EXAMINER WILLEY: No questions.

3 EXAMINER PRICE: Mr. McNamee.

4 MR. McNAMEE: No questions.

5 - - -

6 EXAMINATION

7 By Mr. Price:

8 Q. Mr. Wilson, would you say it's generally
9 the case a laddering strategy is appropriate?

10 A. Yes. In general, laddering strategy is a
11 good approach and will smooth out prices over time.

12 Q. And in the event that the Commission does
13 not adopt this ESP, then all the previous product
14 auctions will be -- the period when they have
15 obtained products will come to an end on May 31,
16 2014.

17 A. That's correct.

18 Q. And so then we would have to have a new
19 set of auctions and have a totally different price on
20 June 1, 2014.

21 A. Yes.

22 Q. So you're testifying on behalf of
23 residential customers that that's an appropriate
24 response in these circumstances, it is generally
25 prudent to take your chances on an auction where you

1 will have a potentially steep increase in prices, or
2 potentially have a steep decrease in prices because
3 you will be starting over?

4 A. My testimony focused on the third year of
5 procurement from this autumn.

6 Q. That's the alternative. The
7 alternative -- the plan right now is a one-year
8 program. They've moved to change to a three-year
9 plan, but the alternative is all prices come to an
10 end on May 31, 2014, and we start over on June 1,
11 2014, and on behalf of residential consumers you are
12 saying that that's a prudent strategy?

13 A. At this time, given the uncertainties
14 that have all hit in the last few months, I think
15 it's a very unfortunate time. I mean, that the RPM
16 auction had extremely unfortunate timing with the
17 retirements coming in right before it, PJM not really
18 able to do the transmission upgrades, and I think,
19 similarly, holding auctions in October and January in
20 the midst of this uncertainty and looking out three
21 years, I think that's not a good idea, yes.

22 Q. Do you -- yesterday Mr. Ridmann testified
23 that the capacity prices for delivery year '14-'15
24 have been -- have been set by the PJM auction.

25 A. That's correct.

1 Q. And so nothing the Commission does here,
2 rejects the ESP, proceeds with an MRO, is going to
3 change that; is that correct?

4 A. That's correct.

5 Q. And that's true about delivery year
6 '15-'16 also. Those prices are set whether we adopt
7 an ESP or whether we go with an MRO or some other
8 alternative, those prices are set.

9 A. That's correct.

10 EXAMINER PRICE: Okay. Thank you. You
11 are excused.

12 Ms. Yost?

13 MS. YOST: Oh, at this time OCC would
14 like to move Exhibit 9 into evidence. That is the
15 direct testimony of Mr. James Wilson.

16 EXAMINER PRICE: Any objection to the
17 admission of OCC Exhibit 9?

18 MR. KUTIK: No objection, your Honor.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 MR. KUTIK: Your Honor, at this time we
21 move for the admission of Company Exhibits 8 and 9.

22 EXAMINER PRICE: Any objection to the
23 admission of Company Exhibits 8 and 9?

24 I guess a technical point, we are going
25 to admit 8 and take administrative notice of 9.

1 MR. KUTIK: Fair enough, your Honor.

2 Thank you.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER PRICE: Okay. Let's adjourn
5 until 2:00 o'clock, at which point we'll take either
6 Mr. Parisi, or in the event he is not available,
7 Mr. Baker.

8 Thank you, all.

9 (Therefore, at 1:01 p.m., a lunch recess
10 was taken until 2 p.m.)

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Monday Afternoon Session,
June 5, 2012.

- - -

EXAMINER WILLEY: Mr. Royer.

MR. ROYER: I am, your Honor. IGS calls
Mr. Vince Parisi.

EXAMINER WILLEY: Thank you.

MR. ROYER: While Mr. Parisi is going up,
I previously asked the court reporter to mark
Mr. Parisi's direct testimony that was filed in this
matter on May 21 as IGS Exhibit 1, and the
corrections to that testimony that were filed
yesterday as IGS Exhibit 1A, if that's acceptable to
the Bench.

EXAMINER WILLEY: So marked.

(EXHIBITS MARKED FOR IDENTIFICATION.)

EXAMINER WILLEY: Thank you.

- - -

VINCENT PARISI

called as a witness on behalf of, being first duly
sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Royer:

Q. Would you state your name and address for
the record, please.

1 A. Vincent A. Parisi, 6100 Emerald Parkway.

2 Q. And by whom are you employed and in what
3 capacity?

4 A. Interstate Gas Supply, Inc. I'm general
5 counsel and regulatory affairs officer.

6 Q. And do you have before you a document
7 that's been marked as IGS Exhibit 1A -- I'm sorry,
8 Exhibit I. Exhibit 1 the Direct Testimony of Vincent
9 Parisi.

10 A. I do.

11 Q. And can you identify that for me, please.

12 A. It's the direct testimony that I prefiled
13 in case 12-1230.

14 Q. And do you have any corrections or
15 additions to that testimony?

16 A. I do. We made some corrections with
17 respect to line 15 on page 19 and filed that
18 yesterday.

19 Q. And that would be the corrections that
20 are reflected in the document we've asked to be
21 marked as Exhibit IGS Exhibit 1A?

22 A. That's correct.

23 Q. And what was the reason for those
24 corrections?

25 A. After doing a bit more research, I

1 realized there wasn't a collectible expense rider for
2 generation charges, and I wanted to make that
3 correction to my testimony.

4 Q. And does that discovery change your
5 recommendation in any way?

6 A. It does not.

7 Q. Earlier today, in hearing yesterday, the
8 questions were asked of Mr. Ridmann regarding the
9 number of CRES suppliers that were serving customers
10 in FirstEnergy's territory. Did you have an
11 opportunity to review the Commission's Apples to
12 Apples website, and can you tell us -- and if so, can
13 you tell us how many offers are out there right now?

14 MR. BURK: I'll object. I'm sorry. Go
15 ahead and finish.

16 I object, your Honor, this is prefiled
17 direct testimony. It was due on May 21.

18 EXAMINER WILLEY: Your response?

19 MR. BURK: There has been no basis laid
20 to have direct testimony at this time.

21 MR. ROYER: First, I was just trying to
22 clarify the record because there was some question to
23 the reference to 35 registered suppliers in
24 FirstEnergy's territory. Secondly, if you don't want
25 me to do it through the witness, then I would ask

1 that the Commission take administrative notice of the
2 Apples to Apples comparison on its website.

3 EXAMINER WILLEY: We'll take notice of
4 the Apples to Apples chart.

5 MR. ROYER: I withdraw the question.

6 EXAMINER WILLEY: Okay. Thank you.

7 MR. BURK: Before you go on, I would just
8 add I'm not sure that the Apples to Apples website
9 reflects how many registered suppliers there are in
10 FirstEnergy's territory. I would just note that for
11 the record.

12 EXAMINER PRICE: It reflects what it
13 reflects. It reflects the numbers of offers that are
14 on the apples chart.

15 MR. BURK: Correct.

16 Q. (By Mr. Royer) Subject to those
17 corrections, if I were to ask you the questions
18 contained in IGS Exhibit 1 on the stand here today,
19 would your answers be the same as set forth herein?

20 A. They would.

21 MR. ROYER: Offer the witness for
22 cross-examination.

23 EXAMINER WILLEY: Thank you.

24 Let begin with Mr. Clark.

25 MR. CLARK: Nothing, your Honor.

1 EXAMINER WILLEY: Mr. Kurtz.

2 MR. KURTZ: Nothing, your Honor

3 EXAMINER WILLEY: Mr. Vickers.

4 MR. VICKERS: Nothing.

5 EXAMINER WILLEY: Mr. Lavanga.

6 MR. LAVANGA: No questions, your Honor.

7 EXAMINER WILLEY: Mr. Kapla.

8 MR. KAPLA: No questions, your Honor.

9 EXAMINER WILLEY: Mr. Dortch.

10 MR. DORTCH: Nothing, your Honor.

11 EXAMINER WILLEY: On behalf of OCC,

12 Mr.Sauer.

13 MR. SAUER: No questions, your Honor.

14 EXAMINER WILLEY: Mr. Hays.

15 MR. HAYS: No questions.

16 EXAMINER WILLEY: Mr. Warnock.

17 MR. WARNOCK: I just have one question.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Warnock:

21 Q. Good morning, Mr. Parisi.

22 A. Good morning.

23 Q. On page 15 of your testimony you
24 reference the government aggregation generation
25 supplier, the GAGS provision. Are you familiar with

1 that?

2 A. Yes, I am.

3 Q. Is your testimony seeking to remove the
4 GAGS language from the proposed stipulation?

5 A. No, it's not.

6 MR. WARNOCK: Thank you.

7 EXAMINER WILLEY: Mr. Burke.

8 MR. BURK: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Burk:

12 Q. Good afternoon, Mr. Parisi.

13 A. Good afternoon.

14 Q. You remember that I took your deposition
15 last week.

16 A. I do.

17 Q. Okay. Now, in your work with IGS Energy,
18 it's correct to say that you have only been involved
19 with the electric industry since the end of 2010,
20 correct?

21 A. That's correct.

22 Q. And IGS Energy itself only started to
23 enter the electric markets in 2011, correct?

24 A. That's correct.

25 Q. And IGS Energy at this time, would you

1 say it's fair to characterize it primarily as a
2 competitive natural gas supplier? Would that be
3 correct?

4 A. Primarily in terms of customers served?

5 Q. Yes.

6 A. We've been in the natural gas business
7 for about 22 years and just about a year and a half
8 or so with respect to electricity, so predominantly
9 we have gas customers.

10 Q. Okay. So it's about 80 percent gas, 20
11 percent electric, roughly?

12 A. Roughly.

13 Q. It's correct to say that IGS is not
14 currently providing retail generation service in the
15 FirstEnergy electric utilities service territories,
16 right?

17 A. That's correct.

18 Q. And, in fact, IGS is not currently
19 registered to switch customers in the FirstEnergy
20 electric utilities service territories, correct?

21 A. We are not registered with the utility,
22 that's correct. We are registered as a CRES
23 supplier.

24 Q. Yeah, as a CRES supplier. But IGS does
25 provide retail generation service to customers in the

1 AEP utility service territories, correct?

2 A. That's correct.

3 Q. And in the AEP service territories, IGS
4 has a system for tracking receivables and trying to
5 collect receivables and uncollectible amounts, right?

6 A. That's correct.

7 Q. Now, at page 3, line 7, of your
8 testimony -- and I will say I think my references to
9 your testimony are to Exhibit 1, but I don't think
10 they are impacted by 1a. So on page 3 if you would
11 look at line 7, you make a reference to accounting
12 rules.

13 A. Correct.

14 Q. And you state that "Accounting rules
15 generally do not allow an enterprise to record
16 revenue until money is actually received." Do you
17 recall that testimony?

18 A. I do.

19 Q. And while that may be a general rule,
20 it's correct that you also believe that companies can
21 take different approaches with respect to recording
22 revenue, correct?

23 A. That's correct.

24 Q. They can record it either upon receipt,
25 or they can record it when it's booked; is that

1 right?

2 A. That's correct. That's my understanding.

3 Q. And, excuse me, at page 3, line 21 of
4 your testimony --

5 A. Yes.

6 Q. -- there you make a reference to a CRES
7 provider having to pay an electric utility for
8 utility consolidated billing. Do you see that?

9 A. I do.

10 Q. But it's correct that this is a general
11 statement, it's not necessarily directed at the
12 FirstEnergy electric utilities; that would be
13 correct, right?

14 A. That's correct. This was made as a
15 general statement.

16 Q. And you're not aware what the FirstEnergy
17 utilities charge CRES providers for providing utility
18 consolidated billing, correct?

19 A. At the time of my deposition, I wasn't.
20 Subsequent to my deposition, I did go back and take a
21 look, and it's my understanding that there is not a
22 direct charge for billing. There is a provision, I
23 believe, that allows the utilities to retain late
24 charges and that may have been sort of a quid pro quo
25 essentially for offering the consolidated billing.

1 MR. BURK: I guess I'll move to strike
2 the last sentence as nonresponsive.

3 EXAMINER WILLEY: Do you have a response
4 to that?

5 MR. ROYER: He is just describing what
6 the provisions are regarding -- he makes a general
7 statement in his testimony, as he indicated in
8 response to Mr. Burk, that utility tariffs provide
9 various -- provide for paying, in some fashion
10 paying, the utility for the service provided.

11 He is just elaborating on that by saying
12 that there is no specific charge in FirstEnergy's
13 tariffs, but there is a provision in the tariff that
14 allows as compensation for billing and collection if
15 the utility keeps the late payment charges. I don't
16 know why that's objectionable.

17 MR. BURK: Beyond the scope of my
18 question.

19 EXAMINER WILLEY: I'm going to deny your
20 motion to strike. I am going to give a little bit of
21 leeway. The Commission is capable of giving the
22 testimony the weight that it deserves.

23 MR. BURK: Thank you, your Honor.

24 Q. (By Mr. Burk) I think in your previous
25 answer, you said there is no direct charge for

1 utility consolidated billing from the FirstEnergy
2 utilities based on your recent investigation.

3 A. That's my understanding, with the
4 provision --

5 Q. And so, as you've confirmed, since the
6 FirstEnergy electric utilities did not charge for
7 utility consolidated billing, then the general
8 statement in your testimony would be inapplicable to
9 those utilities, correct?

10 A. To the FirstEnergy utilities?

11 Q. Yes.

12 A. As a direct charge, I believe that would
13 be correct.

14 Q. Now, would you agree that there's a
15 prohibition in Ohio law that prevents CRES providers
16 from disconnecting a customer's electric service for
17 nonpayment for their charges?

18 A. I would agree.

19 Q. And you would also agree that there's a
20 similar prohibition that prevents electric utilities
21 from disconnecting a customer's electric service for
22 the nonpayment of CRES provider charges?

23 A. The nonpayment of CRES provider charges,
24 I would agree.

25 Q. Would you also agree that an element of

1 your recommendation for a purchase of receivables
2 program in Ohio, or at least the FirstEnergy
3 utilities territory, is that the electric utility, in
4 fact, be authorized to disconnect a customer's
5 electric service for nonpayment of amounts associated
6 with service provided by the CRES provider.

7 A. My recommendation with respect to
8 purchase of receivable would be that the utility
9 actually purchase the receivable and all the rights
10 and interest with respect to the receivable. Thus,
11 it would be the utilities' receivable, and,
12 ultimately, any disconnection would follow the same
13 protocols that would be appropriate for a utility
14 customer.

15 Q. Okay. So the answer to my question would
16 be yes, with your explanation?

17 A. With my explanation.

18 EXAMINER PRICE: Mr. Parisi, I'm sorry,
19 go ahead, and I'll follow-up and then I will ask my
20 question.

21 Q. Just to follow-up a little bit, so that
22 it's your view that the ability of an electric
23 utility to disconnect for CRES provider charges arise
24 by virtue of the electric utility purchasing the
25 receivables of a CRES provider?

1 A. Once -- once the title and interest to
2 the receivable transfers to the utility through the
3 purchase of receivables program, then it's the
4 utilities's receivable, ultimately similarly the way
5 it works on a natural gas, in the natural gas markets
6 in Ohio and, ultimately, then the utility could
7 disconnect for nonpayment.

8 Q. Okay.

9 EXAMINER PRICE: Mr. Parisi.

10 MR. BURK: Again, please go ahead, your
11 Honor.

12 EXAMINER PRICE: You're saying that a
13 bill or an unregulated service becomes a bill for a
14 regulated service if the utility purchases it?

15 THE WITNESS: Yes, your Honor. My
16 understanding with respect to the purchase of
17 receivables programs that I'm familiar with is
18 ultimately the utility purchases all rights, title,
19 interest to the receivable itself. It's an asset
20 essentially of the CRES provider and ultimately would
21 become an asset of the utility.

22 And once the right, title, and interest
23 to that asset is transferred to the utility, it is
24 functionally the utility's asset. They could
25 prosecute that asset under their -- under their

1 existing rules, ultimately would have all rights to
2 that asset. They could do, you know, effectively
3 whatever the Commission would permit them to do with
4 it, as if it was theirs.

5 MR. KUTIK: So if the utility had an
6 affiliate that was offering furnace filters and they
7 bought the receivable from the affiliate and you
8 didn't pay your furnace filter bill, the utility
9 would be able to disconnect you from electric
10 service?

11 THE WITNESS: Your Honor, typically the
12 programs I'm familiar with, the purchase of
13 receivables really stops with the generation, or on
14 the natural gas side, the commodity portion of the
15 receivables, so I'm not familiar with any programs
16 where the purchase extends beyond those core -- those
17 core assets, either generation or commodity.

18 EXAMINER PRICE: Okay. Thank you.

19 Q. (By Mr. Burk) To follow-up a little bit
20 with what the judge was saying, in other words, the
21 receivable would no longer be a CRES charge, but it
22 would be converted into a utility charge, and then
23 the utility can disconnect for that charge, correct?

24 A. That's correct, my understanding.

25 Q. Even though the underlying service was

1 not provided by the utility.

2 A. That's correct.

3 Q. Now, you would agree that a CRES provider
4 may, what I'll say, quote-unquote, drop a customer.
5 You understand what I mean by that phrase?

6 A. Do you mean that a CRES provider can
7 ultimately return that customer to the utility
8 generation service?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. So you would agree that a CRES
12 provider may drop a customer back to electric utility
13 service if the customer does not pay the CRES
14 charges, correct?

15 A. Under the -- under the rules of the
16 utility, typically the CRES provider could return,
17 under those tariff provisions, the customer back to
18 the utility service.

19 Q. And dropping a customer would be one way
20 that would help limit a CRES provider's uncollectible
21 expense on a going-forward basis, correct?

22 A. It would really depend on the provisions
23 of the program, so ultimately you could do a purchase
24 of receivable program with the discounts, for
25 example, in which case there would be a component of

1 the uncollectible -- potentially all the
2 uncollectible expense that is ultimately borne by the
3 supplier, but ultimately it would certainly put
4 parameters around the exposure with respect to that
5 receivable.

6 Q. So the answer to my question would be
7 yes, with your explanation?

8 A. Correct.

9 Q. Would you generally agree that collection
10 risk is a legitimate and normal business risk for a
11 competitive business?

12 A. I would.

13 Q. And wouldn't you agree that uncollectible
14 expense is a legitimate normal business expense for a
15 competitive business?

16 A. Generally I would agree with that.

17 Q. Now, several places in your testimony,
18 you talk about competition or enhancing competition;
19 is that correct?

20 A. Correct.

21 Q. And you are aware that competitive retail
22 electric service came into being in Ohio as a result
23 of Senate Bill 3 that was passed in 1999?

24 A. Generally I'm aware of that, yes.

25 Q. And that under that bill, competition

1 went into effect in 2001?

2 A. Generally I'm familiar with that, yes.

3 Q. And competition for retail generation
4 services has been going on since 2001 in Ohio?

5 A. Generally in Ohio I'm familiar with, yes,
6 electric competition in Ohio.

7 Q. And that competition for retail
8 generation service continues today?

9 A. That's my understanding.

10 Q. And you believe that the number of
11 customers that have switched to competitive suppliers
12 can be an indicator of competition or a competitive
13 market, correct?

14 A. I believe that the number of active
15 suppliers in a service territory that are making
16 offers to customer and the number of offers in the
17 territory can be an indication. Certainly I don't
18 think it's the only indication of what a competitive
19 market is or isn't.

20 Q. Okay. I appreciate that. But what I was
21 asking about, do you believe the number of customers
22 that have switched to competitive suppliers can be an
23 indicator of competition or a competitive market?

24 A. I think by itself, no. I don't think
25 that could really indicate something one way or the

1 other as to whether or not a market is competitive.

2 Q. Do you recall me taking your deposition
3 on Thursday of last week?

4 A. I do.

5 MR. BURK: May I approach the witness?

6 EXAMINER WILLEY: You may.

7 Q. Mr. Parisi, I am going to hand you a copy
8 of your deposition that was taken I believe last
9 Thursday in this proceeding. Do you recall that
10 deposition?

11 A. I do.

12 Q. Could you turn to page 67, specifically
13 line 19?

14 A. Yes, I'm there.

15 Q. And do you agree with me that the
16 question at line 19 says, "Do you think the number of
17 customers that have switched to competitive suppliers
18 is an indicator of competition or a competitive
19 market?"

20 And do you agree with me that your answer
21 is at line 22, "I mean, it can be. Generally the
22 litmus test is what are the barriers. If you have
23 high barriers to entry, you are not going to have a
24 competitive market. If you have low barriers or no
25 barriers, you are going to have a more competitive

1 market."

2 Did I read that correctly?

3 A. Generally, yes, I think you did.

4 Q. And you believe that the number of CRES
5 providers registered in a particular electric utility
6 service territory can give some information as an
7 indicator of competition, correct?

8 A. It can be some indication, but, again, by
9 itself it isn't meaningful.

10 Q. And you believe that the number of CRES
11 providers actually providing service to customers is
12 a better indicator of whether competition exists than
13 just the number of CRES providers registered,
14 correct?

15 A. I'm sorry, could you repeat the question?

16 Q. Sure. You believe that the number of
17 CRES providers actually providing service to
18 customers is a better indicator of competition than
19 just the number of CRES providers registered.

20 A. I do.

21 Q. Okay. Switching topics a little bit, are
22 you generally familiar with the term "subsidy" in an
23 electric utility context?

24 A. Generally, yes.

25 Q. And you would agree that a subsidy could

1 be defined as when a business expense of company A,
2 is paid for by others, rather than company A
3 including that expense in its pricing?

4 A. I believe that can be a definition, yes,
5 not the only definition.

6 Q. And it's correct that you do not consider
7 subsidies to be pro competitive; is that right?

8 A. That's correct.

9 Q. Now, with regard -- specifically with
10 regard to your purchase of receivables program, you
11 would agree in your testimony that while you talk
12 about a couple of different approaches, your
13 preferred approach would be to have the electric
14 utility purchase CRES provider receivables at a zero
15 discount; is that correct?

16 A. I would say generally, yes, that's
17 correct.

18 Q. And under your proposal, any
19 uncollectible expense that a CRES provider had would
20 be shifted to the electric utility through that
21 purchase of receivables, and then the electric
22 utility would recover that amount from all customers;
23 is that correct?

24 A. My recommendation would be that if we had
25 a zero discount for uncollectible expenses, that we

1 would have a rider where ultimately all uncollectible
2 expenses for the customers ultimately to benefit from
3 that program would pay those expenses.

4 Q. And would that be all customers?

5 A. It doesn't necessarily need to be all
6 customers. Typically it would be residential
7 customers and maybe small commercial customers that
8 would be in that program.

9 Q. So -- so the uncollectible expense that
10 the CRES provider had at that time was either
11 being -- or prior to a purchase of receivables
12 program was either being absorbed by the CRES
13 provider or was being passed on to the CRES
14 provider's customers in the form of higher prices,
15 correct?

16 A. Generally, I think that's correct, yes.

17 Q. But with your preferred approach, that
18 will no longer be the case.

19 A. With my preferred approach, the
20 uncollectible expense rider would ultimately track
21 and recover the uncollectible expenses from all
22 customers as opposed to having essentially two
23 separate systems, which is what I think we have
24 today.

25 Q. Right. What today is being included in

1 the CRES provider pricing or absorbed by the CRES
2 provider will now be collected through the
3 uncollectible rider.

4 A. That's correct. To the extent that
5 ultimately the dollars are the same, I think with the
6 provision that -- that the utility could ultimately
7 disconnect for nonpayment, there would be more
8 incentive with respect to the customers to ultimately
9 pay the bill timely, and ultimately what we
10 experience from a competitive supplier's standpoint
11 could be significantly less than we would through a
12 purchase of receivables program.

13 Q. But regardless of the balance, all of the
14 CRES supplier's accounts, uncollectible expense,
15 would be collected through the nonbypassable rider.

16 A. That's correct.

17 Q. Paid for by all customers, as you
18 described?

19 A. Yes; assuming a zero percent discount,
20 that's correct.

21 Q. Yes. And currently your sense of the
22 level of the uncollectible expense for CRES providers
23 in states without a purchase of receivable program is
24 in the 3 to 5 percent range?

25 A. I believe I said you could see it in that

1 range. You could see it higher, 5 to 8 percent, and
2 then it really depends on the activity level of the
3 individual CRES providers to how actively, one, they
4 are engaged in the market; and, two, they are
5 ultimately managing those receivables.

6 Q. You would agree that the current -- and I
7 believe you were referencing this earlier -- that the
8 uncollectible expense for an EDU would be -- you
9 would expect to be less than the uncollectible
10 expense for a CRES provider; is that correct?

11 A. I think, all things being equal, that's
12 correct.

13 Q. And we referenced a little bit, but as
14 part of your proposal, once we've established there
15 would be a zero discount for the purchase, then there
16 would be set up a nonbypassable generation
17 uncollectible rider that all customers would pay,
18 correct?

19 A. Well, yes. I think an uncollectible
20 expense rider for the purpose of collecting the
21 uncollectible expenses would be a reasonable way to
22 proceed. I think that the existence of an
23 uncollectible expense rider that is bypassable
24 currently is something that's in place and could be
25 utilized if it was made nonbypassable, ultimately to

1 recover those expenses.

2 Q. In FirstEnergy utility's situation, their
3 current bypassable generation uncollectible rider
4 would become nonbypassable.

5 A. With the purchase of receivable program,
6 correct.

7 Q. And you believe using a non -- converting
8 a bypassable uncollectible generation rider to a
9 nonbypassable uncollectible generation rider is
10 appropriate because all customers benefit from having
11 a nonbypassable generation uncollectible rider?

12 A. I think that with the way the existing
13 system is set up with respect to the utility having
14 already created a system and having a system
15 ultimately to manage the receivable so the entire
16 receivable -- we don't have a purchase of receivable
17 program. The CRES providers that do ultimately
18 engage in the market have to create those systems,
19 and ultimately what you have is both the subsidy and
20 redundancy, I think.

21 You create two systems, ultimately, that
22 do the same thing, effectively, and those customers
23 that have switched to a CRES provider who have
24 already paid for a utility system no longer get the
25 benefit of that. So I think by having a purchase of

1 receivable program with an uncollectible expense
2 rider, it will ultimately track and consolidate those
3 efforts.

4 Q. It would be your expectation now that the
5 suppliers providing service in FirstEnergy utilities'
6 territory have made that investment in that type of a
7 system that you just referenced?

8 A. If they don't have some means of managing
9 those receivables through the utility, I would think
10 they would have to. I know that we would have to do
11 that.

12 Q. And this nonbypassable generation
13 collectible, that would be the mechanism that keeps
14 the utility whole in this process?

15 A. That's my understanding, yes.

16 Q. But you would agree that the terms and
17 conditions of such a rider would be subject to
18 approval by the Commission and then subject to change
19 by the Commission at any time, correct?

20 A. I think, subject to approval by the
21 Commission, yes, and a change to a Commission process
22 could occur.

23 Q. And under your approach, there would be a
24 zero discount, and the flip side of that effectively
25 means that the CRES provider would be paid

1 100 percent of their billings, correct?

2 A. That's correct.

3 Q. And they would be paid that amount no
4 matter how much their customers ultimately paid for
5 the service provided by the CRES provider.

6 A. That's correct. It's been our experience
7 on the capacity side that ultimately the addition of
8 the ability to ultimately disconnect customers for
9 nonpayment is a significant motivating factor.
10 Ultimately people will pay their bills more timely.

11 Q. But you would agree that there was
12 still -- still going to be some uncollectible expense
13 associated with that CRES provider's service, right?

14 A. Generally I would believe that at some
15 point some customers won't pay their bills, that's
16 correct.

17 Q. And the amount that the CRES provider's
18 customers didn't pay would be recovered through the
19 rider.

20 A. The amount the CRES supplier's customers
21 don't pay would be collected through rider, that's
22 correct.

23 Q. And then that amount would be recovered
24 from both shopping and nonshopping customers.

25 A. As would the nonshopping customers

1 uncollectible expenses, yes.

2 Q. So one effect of that is you would have
3 nonshopping customers paying part of the
4 uncollectible expense associated with the CRES
5 provider's service?

6 A. With a nonbypassable uncollectible
7 expense rider, all customers that ultimately benefit
8 from that would pay for it, so shopping and
9 nonshopping customers alike.

10 Q. And the CRES provider itself would be
11 relieved of any risk of collection or noncollection
12 because there would be -- they are being paid
13 100 percent for their billings.

14 A. That's correct.

15 Q. And so if your approach is adopted with a
16 zero discount and nonbypassable generation
17 uncollectible rider, that really puts the CRES
18 provider in the position of being indifferent whether
19 the customer pays it all or not, correct?

20 A. It would allow CRES providers to solicit
21 customers without concern with respect to the -- with
22 respect to the payment, that's correct.

23 Q. Okay. And IGS, shifting gears a little
24 bit, has IGS done any studies or analyses of the
25 impact on lower income customers, other than PIPP

1 customers of making them subject to disconnection due
2 to the failure to pay CRES charges, as you propose?

3 A. We have done no study.

4 Q. Are you aware of any studies having -- or
5 analyses having been done by anyone else?

6 A. I'm not aware of any study.

7 Q. Okay. But, in fact, you believe the
8 impact on low income customers is not relevant with
9 respect to your suggestion for a purchase of
10 receivable program; is that correct?

11 A. I don't see the relevance with respect to
12 the low income portion given, at best, under a CRES
13 provider, the customer could avoid, for a short term,
14 nonpayment of generation. In the long term, it
15 doesn't really have a bearing on any customer group,
16 low income or otherwise.

17 Q. But, again, you have done no studies or
18 analyses to support that.

19 A. That's correct.

20 Q. And in your testimony you state that --
21 and this may have been addressed in your corrected
22 testimony, but I believe you state in your original
23 testimony, you state that a purchase of receivables
24 program was imposed on Duke Energy. Now, is that one
25 of the things you correct in your corrected testimony

1 to say that it was part of a settlement?

2 A. I think it was ultimately ordered by the
3 Commission through that -- the case we were
4 discussing that Duke created a purchase of receivable
5 program, so it was ultimately part of the Commission
6 entry and order.

7 Q. Right. But it was a Commission order
8 adopting a stipulation that Duke Energy voluntarily
9 agreed to, correct?

10 MR. ROYER: Your Honor, if your Honor
11 please, can we get a clarification which order we're
12 talking about? Are we talking about the order in the
13 ETP case that created --

14 MR. BURK: I'm sorry, the most recent ESP
15 case.

16 MR. ROYER: Could I have the original
17 question? I may have an objection. I misunderstood.

18 MR. BURK: I'll withdraw the question.

19 EXAMINER WILLEY: Thank you.

20 Q. In -- in Interstate Gas Supply Exhibit
21 1A, on the first page, lines 20 and 21, you say,
22 "However, the Commission approved the stipulation
23 that resolved that case." That's all I was asking,
24 was that the Duke purchase of receivable program
25 that's in effect today was the result of a

1 Commission-approved stipulation, correct?

2 A. My understanding is in the most recent
3 Duke ESP, that was a modification or maybe two -- a
4 couple of modifications to the existing purchase of
5 receivable program, and that case was resolved
6 through a stipulation.

7 Q. Okay. Now, in your testimony you make --
8 we have some discussion about attachment D to the
9 stipulation. Mr. Warnock may have asked you a
10 question about that.

11 A. Yes, I do.

12 Q. Have you read attachment D?

13 A. Yes, I have.

14 Q. Have you studied it further since the
15 time of your deposition?

16 A. Yes, I have.

17 Q. And that attachment D is a provision
18 relating to governmental aggregation, correct?

19 A. That's my understanding.

20 Q. And do you believe it currently applies
21 to all CRES providers' receivables generated from the
22 governmental aggregation programs?

23 A. That's my understanding in the
24 FirstEnergy service territories.

25 Q. Do you have attachment D with you?

1 A. Yes, I do.

2 Q. Okay. So would you agree with me --
3 well, let me back up. Are you generally familiar
4 with Revised Code 4928.144 regarding the Commission's
5 ability to phase-in increases in rates arising from
6 an ESP?

7 A. Generally, yes.

8 Q. Are you aware, has the Commission ever
9 ordered such a phase-in for the FirstEnergy
10 utilities?

11 A. Not to my knowledge.

12 Q. Do you have any belief or expectation
13 that they will do so in this case?

14 A. I don't have any expectation that they
15 will in this case, no.

16 Q. Is that something the companies have
17 requested as part of their filing?

18 A. Not to my knowledge.

19 Q. And you would agree with me that the --
20 other than the introductory paragraph, that the first
21 line of attachment D specifically says that it
22 applies only in the situation "where the Commission
23 has ordered a phase-in, pursuant to the authority in
24 RC 4928.144 of the generation prices arising out of
25 the auction for" -- that's set forth earlier in the

1 stipulation?

2 A. After studying it further, it seems to me
3 that there are a number of provisions that follow the
4 initial paragraph under Governmental aggregation on
5 attachment D. I think there are some of the
6 provisions that are enumerated paragraphs that
7 ultimately would only apply with respect to a
8 phase-in.

9 There are others that seem inconsistent
10 with the concept that it would only be in a phase-in
11 situation where they would apply. For example,
12 paragraph 6, it says, "The Company(ies) must use
13 commercially reasonable efforts to promptly enter
14 into an agreement with the GAGS which will provide
15 the GAGS with assurance of full recovery of all costs
16 related to the GAGS' recovery of its GAGS'
17 Receivables."

18 I'm not sure I understand what the
19 purpose of entering into an agreement for a
20 receivable purchase promptly would be, if it was only
21 applicable in the instance of a phase-in.

22 Q. Isn't GAGS receivables a defined term in
23 this document that relates specifically to a phase-in
24 generation credit?

25 A. Certainly see some of the provisions,

1 yes. But the GAGS definition ultimately precedes the
2 provision that says elects to phase-in such can
3 generation costs. So I think until we ultimately saw
4 how this attachment was implemented in practice, I'm
5 not sure how it would work.

6 Q. So your view is that this attachment D is
7 a purchase of receivable program, much like you're
8 seeking, generally is already in place for suppliers
9 to governmental aggregation programs?

10 A. It seems that's a possibility. I don't
11 know whether an agreement has been entered, but it
12 certainly seems that paragraph 6 there was a
13 directive to at least probably enter into an
14 agreement.

15 Q. So if the companies agreed to do
16 attachment D for all suppliers and not just suppliers
17 to governmental aggregation, that would satisfy your
18 concerns for a purchase of receivables program?

19 A. I think we would rally have to see the
20 purchase of receivables, the agreement, or ultimately
21 to see if they are comparable to what we were
22 suggesting with respect to purchasing of receivables.

23 Q. If the agreement reflected the provisions
24 of attachment D, wouldn't that satisfy your concerns?

25 A. Again, I think without seeing what the

1 ultimate agreement looks like, I don't know.

2 Q. But your view is this attachment D
3 applies to all receivables of a supplier serving a
4 governmental aggregation?

5 A. It seems to, yes.

6 MR. BURK: I think that's all the
7 questions I have.

8 Thank you, Mr. Parisi.

9 EXAMINER WILLEY: Thank you.

10 Mr. McNamee.

11 MR. McNAMEE: No, thank you.

12 EXAMINER WILLEY: Mr. Royer.

13 MR. ROYER: Thank you, your Honor.

14 - - -

15 REDIRECT EXAMINATION

16 By Mr. Royer:

17 Q. Hypothetically, Mr. Parisi, if there was
18 a market, particular EDU market, where there was
19 100 percent switching but all the switching was to
20 one CRES supplier, would that be a competitive
21 market?

22 A. Hypothetically, I don't think so. I
23 think we see competitive markets in multiple
24 different jurisdictions, and typically you see a
25 number of suppliers with multiple offers in the

1 market on a fairly regular basis chasing customers
2 and ultimately trying to capture those customers.

3 Q. So the degree of switching is not
4 necessarily an indicator whether a market is
5 competitive or not, correct?

6 A. That's correct.

7 Q. Now, if your proposal to expand the SSO
8 uncollectible expense riders to cover shopping on an
9 uncollectible expense as well, does that necessarily
10 mean that shopping customers -- or that nonshopping
11 customers would pay more than they currently do under
12 the -- under the rider?

13 A. I don't believe that necessarily to be
14 the case. There would be a larger potential pool of
15 customers ultimately responsible for that. Also with
16 respect to the ability to disconnect, customers may
17 pay more timely and currently. What we see in other
18 markets is the CRES provider rates are lower than
19 some of the incumbent utility rates, and ultimately
20 that would mean potentially lower costs.

21 Q. Would the -- would the incentive that
22 would be available under your proposal for CRES
23 suppliers -- or CRES customers to pay -- to pay their
24 bills also impact on that?

25 A. I believe that's correct.

1 Q. Now, Mr. Burk asked you a question as to
2 whether the CRES provider was -- under your proposal
3 whether the CRES provider was indifferent as to
4 whether the customer pays. Is the CRES provider
5 indifferent as to whether it loses a customer that
6 it has previously been able to attract?

7 A. No. Actually, getting and retaining
8 customers is one of the significant efforts
9 ultimately that CRES providers ultimately engage in.
10 A customer paying their bill is important in the
11 sense that ultimately if they don't have a
12 disconnect, we lose that customer. Indifferent
13 probably isn't the best word to use there.

14 Q. And he also asked you a question about
15 whether it was correct that -- this is why I asked to
16 have it read -- about whether it was correct the
17 current arrangement in Duke Energy Ohio was part of
18 the stipulation. Do you recall that question?

19 A. I do.

20 Q. And you agreed that it was part of the
21 stipulation in the last ESP case.

22 A. Yes. It was my understanding it was
23 modified, the existing purchase of receivables was
24 modified in the most recent Duke ESP, but the
25 original 2000 timeframe when the original purchase of

1 receivable was put in place, that was the result of a
2 Commission order.

3 Q. Okay. Can a utility disconnect a CRES
4 customer for failure to pay the utility's
5 distribution charges?

6 A. A utility can currently disconnect a CRES
7 provider for failure to pay the distribution charges,
8 I believe that's correct.

9 Q. Okay. So is the issue you have -- is the
10 issue you're talking about -- strike that.

11 Mr. Burk asked you if the -- if the
12 ability to return the customer for failure to pay his
13 CRES charge, return that customer to the utility,
14 that was of assistance in terms of managing your
15 uncollectible expense, and I believe you agreed it
16 was?

17 A. There is some benefit there. I think I
18 did agree there was some benefit there, but
19 ultimately because of -- generally, I'm not as
20 familiar -- I'm not familiar with FirstEnergy rules,
21 but there are rules with respect to how long it takes
22 to get a customer enrolled as a CRES provider, and
23 there are rules with respect to how long it is before
24 you can return that customer to utility service. So
25 it really doesn't do anything with respect to

1 limiting your exposure for that period of time.

2 Q. So, in other words, the CRES provider can
3 terminate a customer for nonpayment before -- in a
4 shorter timeframe than you can arrange to turn that
5 customer back to the utility for failing to pay the
6 CRES charges; is that -- is that your testimony?

7 A. Typically there is a relatively
8 significant amount of time that will go by from when
9 you provided that generation to the utilities and
10 ultimately are able to return that customer, that's
11 correct.

12 Q. Now, with respect to these questions
13 regarding exhibit -- or attachment D to the
14 stipulation, that appears as a part -- now appears as
15 part of IGS 1A.

16 A. Yes.

17 Q. If you were incorrect in your assumption
18 that paragraph 6 requires the companies to use
19 commercially reasonable efforts to promptly enter
20 into a purchase of receivables agreement, are there
21 other features of that -- of that program that result
22 in other customers -- in all customers paying for the
23 carrying charges associated with the -- the deferral
24 deferrals associated with the phase-in program?

25 A. Yes, there are. The deferral with

1 respect to it becomes a non -- nonbypassable, I
2 believe, and ultimately it becomes a regulatory
3 asset. I think that's in paragraph 4, so ultimately
4 all customers would be responsible for the
5 uncollectible in and out of the government
6 aggregation service territory.

7 Q. And Mr. Burk also asked you a series of
8 questions regarding subsidies, pulling one way or the
9 other. What you're proposing in this case is exactly
10 how purchase of receivable has been handled on the
11 gas side for years in this state?

12 A. It is.

13 Q. And Mr. Burk also asked you about CRES
14 providers that are currently rendering service
15 already have in place mechanisms in order to pursue
16 collections and so on. Do you recall that line of
17 questioning?

18 A. I do.

19 Q. Does the -- does FirstEnergy have those
20 systems in place as well?

21 A. FirstEnergy Solutions?

22 Q. I'm sorry. Does FirstEnergy have its own
23 set systems for handling its collections, its
24 collection activity?

25 A. I think, as I testified, the utilities

1 have developed account receivables management systems
2 typically paid for through base rates and base rates
3 paid for by all customers.

4 MR. ROYER: Nothing further. Thank you.

5 EXAMINER WILLEY: Thank you, Mr. Royer.

6 Mr. Warnock, do you have any recross?

7 MR. WARNOCK: No questions, your Honor.

8 EXAMINER WILLEY: Mr. Burk?

9 MR. BURK: Just a few, your Honor.

10 - - -

11 RECROSS-EXAMINATION

12 By Mr. Burk:

13 Q. Mr. Parisi, would it be your preference
14 if we removed the GAGS provision from the
15 stipulation?

16 A. I haven't studied it or the stipulation
17 itself related to the GAGS provision to say whether I
18 think we should remove it or not remove it. I think
19 Mr. Warnock asked if I thought it should come out,
20 and I said no.

21 Q. Do you think its unfair to suppliers that
22 don't provide service to government aggregation
23 programs?

24 A. I think in any utility service
25 distribution territories, the purchase of receivable

1 for all CRES providers is -- is a way to create
2 parity in the service territory.

3 Q. All right. Given the status quo, do you
4 think it's unfair?

5 A. For the government aggrega for the
6 suppliers of the government aggregation ultimately to
7 have a receivables purchase and not for other
8 competitors?

9 Q. For governmental aggregation suppliers to
10 avail themselves of attachment D with suppliers who
11 don't provide service to government aggregation
12 programs. Is that unfair for those who can't take
13 advantage of it?

14 A. I think all CRES providers ultimately
15 should have the ability to take advantage of all the
16 systems ultimately the customers pay for, which would
17 include the accounts receivable management systems
18 and costs of purchase of receivables. It creates
19 parity and, again, I think if it's in the market, I
20 think all suppliers ultimately should have the
21 ability to have that purchase -- purchase of
22 receivables done.

23 Q. Okay.

24 MR. BURK: I am going to move to strike,
25 your Honor, because my question was specific to

1 what's provided in attachment D, not generally a
2 purchase of receivables program.

3 EXAMINER WILLEY: Mr. Royer, do you have
4 a response?

5 MR. ROYER: He was explaining his answer.

6 MR. BURK: I don't believe the question
7 has yet been answered.

8 EXAMINER WILLEY: I am going to grant
9 your motion to strike. I feel the answer at this
10 point has gone beyond the bounds.

11 MR. BURK: Thank you, your Honor.

12 Q. Would you like the question reread?

13 A. Please.

14 MR. BURK: Could you please reread the
15 question.

16 (Record read.)

17 A. I don't think that's a question of
18 fairness. I think it's a question of parity. I
19 think in a competitive market -- ultimately what we
20 are trying to do is create a competitive market.
21 Purchase of receivables is an element of a
22 competitive market that helps expand the ability of
23 multiple suppliers ultimately to offer their
24 services, so I don't think it's a question of pari --
25 of fairness. I think it's a question of parity.

1 Q. Do you think IGS is at a competitive
2 disadvantage relative to other CRES providers because
3 there is no POR programs in the FirstEnergy service
4 territories?

5 A. Are we excluding the governmental
6 aggregation providers?

7 Q. For purposes of right now, yes.

8 A. I would say we're on equal footing with
9 respect to other CRES providers, with or without.

10 Q. What about the same -- the same question
11 with regard to suppliers that provide governmental --
12 service to governmental aggregation programs?

13 A. I certainly think it provides an
14 advantage.

15 Q. Okay. Are you familiar with the
16 disconnection rules that apply to electric utilities
17 in Ohio?

18 A. Not in detail, no.

19 Q. Okay. So you really can't testify as to
20 the timing of how long it takes to disconnect a
21 customer within those rules?

22 A. No, I can't.

23 Q. So you really can't testify whether
24 that's longer or shorter than how quickly a CRES
25 provider can drop a customer back to utility

1 generation service, correct?

2 A. What I'm familiar with on the gas side,
3 and just becoming more familiar with the electric
4 side, I can't tell you in the FirstEnergy service
5 territory what the provisions are, no.

6 Q. And you would agree if your approach is
7 adopted and a purchase of receivable program is put
8 into place, that customers -- amounts that customers
9 could be subject to disconnects for would increase,
10 correct?

11 MR. ROYER: Can I hear that again?

12 (Record read.)

13 A. If I understand the question, I think
14 ultimately with a purchase of receivables, with the
15 ability for the utility ultimately to disconnect for
16 generation service, customers would have a much
17 stronger incentive ultimately to pay their generation
18 service, so because that would be a component of what
19 could be disconnected, then, yes, under the
20 current -- under the current paragraph compared with
21 purchase of receivables, it would be -- the full bill
22 would ultimately be part of what the utility could
23 ultimately use to disconnect the customer.

24 Q. Because today shopping customers can only
25 be disconnected for utility charges, but under your

1 proposal, they could be disconnected for both utility
2 charges and CRES charges.

3 A. They could be disconnected for that
4 purchased receivable, that's correct.

5 Q. So as part of your preferred approach, a
6 key component to that is for the ability of the
7 electric utility to disconnect for previously -- or
8 for amounts owed based upon service supplied by the
9 CRES provider.

10 A. I'm not sure I understand the question.
11 Could you restate it?

12 Q. Yeah. A key component of your approach
13 is to give the utility the ability to disconnect for
14 CRES charges.

15 A. That's correct, ultimately for the
16 receivable purchase. It's a technicality but
17 ultimately once that purchased receivable -- once
18 that receivable is purchased by the utility, it's the
19 utility's receivable, so it wouldn't be disconnecting
20 for CRES charges. They would be disconnecting for
21 that purchased receivable.

22 Q. But the disconnects would be based upon
23 amounts not paid for service provided by the CRES
24 provider.

25 A. For generation service provided, that's

1 correct.

2 MR. BURK: I think that's all I have.

3 Thank you, Mr. Parisi.

4 EXAMINER WILLEY: Examiner Price.

5 - - -

6 EXAMINATION

7 By Examiner Price:

8 Q. Do you know whether this is the first
9 time this issue whether FirstEnergy should offer a
10 receivables programs has been presented to this
11 Commission?

12 A. Your Honor, I don't believe it is. I
13 believe back in 2000 there was a series of cases,
14 first set of cases, and ultimately I think an entry
15 by the Commission ordering FirstEnergy to have a
16 purchased receivable program, and then subsequently a
17 complaint case, I think in 2003, that I believe was
18 WPS and Green Mountain ultimately -- initially trying
19 to compel a purchase of receivables that was
20 ultimately settled with different provisions.

21 Q. Okay. What has changed since the
22 Commission's adoption of the stipulation in the WPS
23 case?

24 A. I think one of the things that's occurred
25 since then is more providers in the markets in Ohio

1 and I think, you know, IGS being one of those.

2 Q. More providers in which market?

3 A. Generally in the other markets in Ohio,
4 not necessarily in the FirstEnergy service territory.

5 Q. What's changed in the FirstEnergy service
6 territory?

7 A. From a competitive standpoint? Other
8 than government aggregation, I don't think a lot,
9 your Honor.

10 Q. Nothing has changed?

11 A. I don't think so.

12 EXAMINER PRICE: Thank you.

13 EXAMINER WILLEY: I have no questions, so
14 thank you.

15 MR. ROYER: May I have a follow-up on
16 that, please?

17 EXAMINER PRICE: On my question?

18 MR. ROYER: Yes. I wonder if I might
19 have a follow-up to Mr. Burk on one question. I
20 don't know if you set any rules at the outset. If
21 you did, I missed it.

22 EXAMINER PRICE: We had not in this
23 hearing thus far allowed re-redirect. We have done
24 two rounds: Direct, cross, redirect, recross. We
25 have not allowed any additional questions beyond

1 that.

2 MR. ROYER: Can I have one in response to
3 your question, which is neither cross nor --

4 EXAMINER PRICE: It's my colleague's
5 decision.

6 EXAMINER WILLEY: We haven't been
7 allowing that.

8 MR. ROYER: You were telling me what you
9 said before. I apologize, your Honor.

10 EXAMINER WILLEY: I think to be fair and
11 consistent, we will not allow follow-up. I
12 apologize.

13 MR. ROYER: Okay. Thank you.

14 I offer IGS Exhibit 1 and IGS Exhibit 1A.

15 EXAMINER WILLEY: Are there any
16 objections to IGS Exhibit 1 and IGS Exhibit 1A?

17 MR. BURK: No objections.

18 EXAMINER WILLEY: Hearing none, 1 and 1A
19 will be admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 EXAMINER WILLEY: I think at this time we
22 will go off the record. We will take a brief
23 10-minute recess and come back around 3:15.

24 (Recess taken.)

25 EXAMINER WILLEY: Let's go on the record

1 please.

2 MR. McNAMEE: At this time staff would
3 call Peter K. Baker to the stand.

4 (Witness sworn.)

5 EXAMINER WILLEY: Thank you.

6 - - -

7 PETER K. BAKER

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

10 DIRECT EXAMINATION

11 By Mr. McNamee:

12 Q. Please state and spell your name for the
13 record, please.

14 A. My name is Peter K. Baker P-E-T-E-R, K as
15 in Kent, B-A-K-E-R.

16 Q. By whom are you employed and in what
17 capacity?

18 A. I'm employed by the Public Utilities
19 Commission of Ohio. I'm a Section Chief in the
20 Reliability and Service Analysis Division of the
21 Service Monitoring and Enforcement Department.

22 Q. What is your business address?

23 A. My business address is 180 East Broad
24 Street, Columbus, Ohio 4215.

25 MR. McNAMEE: Your Honor, at this time I

1 would ask to have marked as Staff Exhibit 2 a
2 multi-page document filed in this case on May 7
3 denominated Prefiled Testimony of Peter K. Baker.

4 EXAMINER WILLEY: It is so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. (By Mr. McNamee) Mr. Baker, do you have
7 what's just been marked for identification as Staff
8 Exhibit 2 before you?

9 A. Yes, I do.

10 Q. What is it?

11 A. It is my testimony in this case.

12 Q. Do you have any additions or corrections
13 to make to that document as you sit here today?

14 A. No, I do not.

15 Q. Was it prepared by you or under your
16 direction?

17 A. Yes, it was.

18 Q. Are the contents of that document true to
19 the best of your knowledge and belief?

20 A. Yes, they are.

21 Q. If I were to ask you the questions
22 contained within what's been marked for
23 identification as Staff Exhibit 2 again here this
24 afternoon, would your answers be as represented
25 therein?

1 A. Yes, they would.

2 MR. McNAMEE: With that, your Honor, the
3 witness is available for cross-examination.

4 EXAMINER WILLEY: Thank you.

5 Begin with Mr. Lavanga.

6 MR. LAVANGA: No questions, your Honor.

7 EXAMINER WILLEY: Mr. Kapla.

8 MR. KAPLA: I would like to defer to the
9 end of the other nonsigning parties.

10 EXAMINER WILLEY: Okay. Mr. Dortch.

11 MR. DORTCH: A couple, yes, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Dortch:

15 Q. Good afternoon, Mr. Baker.

16 A. Good afternoon.

17 Q. Mr. Baker, at page 5 of your prefiled
18 testimony is your chart and the answer to question 11
19 in which you state the companies have met their
20 reliability standards. Do the reliability standards
21 that you are referring to in any way reflect
22 interruptions for transmission constraints?

23 A. No, they do not.

24 MR. DORTCH: No further questions, your
25 Honor.

1 EXAMINER WILLEY: Thank you.

2 Mr. Sauer.

3 MR. SAUER: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Sauer:

7 Q. Good afternoon, Mr. Baker.

8 A. Good afternoon.

9 Q. If you look at page 2 of your testimony I
10 see the question and answer 5. You state, "The
11 purpose of the testimony is to address whether the
12 FirstEnergy Companies have met the requirements of
13 Revised Code Section 4928.143(B)(2)(h)." Is that
14 correct?

15 A. Yes.

16 Q. And I believe that page 3 of your
17 testimony, lines 15 to 21, you discuss a two-step
18 analysis that you conducted. Do you see that?

19 A. Yes.

20 Q. And step 1 was to establish
21 Commission-approved reliability standards; is that
22 correct?

23 A. That's correct.

24 Q. And when was step 1 performed?

25 A. I believe it was in 2009, but I'm not

1 positive. I'll correct that. It may have been 2010.

2 Q. There was a case associated with
3 establishing the performance standards --

4 A. Yes.

5 Q. -- that you note in step 1. What was the
6 case number, sir?

7 A. I'll search for that.

8 EXAMINER PRICE: Footnote 4 of your
9 testimony.

10 THE WITNESS: Excuse me?

11 EXAMINER PRICE: Look at footnote 4 of
12 your testimony.

13 A. Anyway, the Case No. 09-759-EL-ESS.

14 Q. And for what historical time period did
15 you utilize to establish the reliability standards?

16 A. I believe it was a five-year period
17 ending either in 2008 or 2009.

18 Q. When you say 2008 or -- are those full
19 years, or could there be some partial years in the
20 analysis?

21 A. Full calendar years.

22 Q. Full calendar years? And then in your
23 testimony at page 4, line 8, you discuss a 10 percent
24 allowance for variable. Do you see that?

25 A. Yes.

1 Q. And is that 10 percent variability an
2 increase to the standard?

3 MR. KUTIK: Objection. Increase from
4 what?

5 MR. SAUER: From the five-year average.

6 A. The standard reflects a five-year average
7 with the addition of a 10 percent variability factor.

8 Q. So you looked at a -- the 10 percent
9 variability, was that -- did that serve to make the
10 liability standards more strict or less strict for
11 the companies?

12 A. That would allow a safety band around the
13 five-year average.

14 Q. And then you describe step 2 is to
15 monitor the utilities' performance against the
16 established reliability standards; is that correct?

17 A. Yes.

18 Q. And what was the time period that you
19 used to monitor the utilities' performance against
20 these reliability standards?

21 A. Each year all utilities are required to
22 file a report of the reliability performance. In
23 each year we compare the performance against the
24 standards to see if they met the standard.

25 Q. In your chart on page 5, where you do a

1 comparison of the performance standards to, is it,
2 2011?

3 A. Yes.

4 Q. Is that 2011 calendar year?

5 A. Yes.

6 Q. And, Mr. Baker, were you involved in
7 FirstEnergy's most recent distribution rate case,
8 07-551-EL-AIR, et al.?

9 A. Yes, I was.

10 Q. And was the Commission's decision in the
11 FirstEnergy company's most recent rate case, did that
12 decision occur before or after the reliability
13 standards were established in 09-759-EL-ESS?

14 A. I don't have a clear recollection which
15 came first.

16 Q. Do you know, coming out of FirstEnergy's
17 most recent rate case, what the authorized revenue
18 increase was for the companies?

19 A. No, I do not.

20 Q. But there was an authorized increase for
21 the companies?

22 A. I assume there was.

23 Q. And were you involved in the FirstEnergy
24 ESP I case? I believe it was 08-936-EL-SSO.

25 A. I believe so.

1 Q. And did you or someone else on the staff
2 perform a similar analysis that you performed in this
3 case to address whether the FE companies have met the
4 requirements of RC 4928.143(B)(2)(h).

5 A. I don't believe so.

6 Q. Were there distribution investment
7 dollars authorized in the ESP I case?

8 A. Yes.

9 Q. Do you know what level of increase in
10 distribution investment spending the companies were
11 granted?

12 A. I do not recall.

13 Q. Were you involved in the FirstEnergy ESP
14 II case?

15 A. I don't believe so.

16 Q. Do you know if someone else on the staff
17 conducted an analysis to determine whether the
18 FirstEnergy companies met the requirements of RC
19 4928.143(B)(2)(h)?

20 A. I don't believe so.

21 Q. And do you know what distribution caps
22 were established in the ESP II case?

23 A. No, I do not recall.

24 Q. Do you know what time periods the
25 additional distribution investment spending was

1 approved for in the ESP II case?

2 A. No, I do not recall.

3 Q. In preparing for your testimony in this
4 case, sir, did you -- did you serve any data requests
5 on the companies?

6 A. No, I do not believe so.

7 Q. Did the companies prepare any report or
8 document for you to assist you with your review with
9 regard to whether the FirstEnergy companies had met
10 the requirements of RC 4928.143(B)(2)(h)?

11 A. No, they did not, other than their
12 required reporting of reliability for year 2011.

13 Q. And that reporting is done annually, you
14 said?

15 A. Yes.

16 Q. That's a routine filing that they do?

17 A. Yes, that's required by rule.

18 Q. On page 6 of your testimony, sir, you
19 state that -- question and answer 12, "Based on the
20 Companies' successful performance against the
21 reliability standards, Staff believes the Companies'
22 and their customers' reliability expectations are in
23 alignment and the Companies are dedicating sufficient
24 resources to the reliability of their distribution
25 systems." Do you see that?

1 A. Yes.

2 Q. Is it possible that the DCR spending that
3 would be authorized in the ESP III case -- strike
4 that, please.

5 MR. SAUER: May I approach the witness?

6 EXAMINER WILLEY: You may.

7 MR. SAUER: This was a document that was
8 already admitted into evidence. It's OCC Exhibit 4.

9 MR. McNAMEE: Oh, okay.

10 MR. SAUER: If you don't have it and want
11 another.

12 Q. (By Mr. Sauer) Mr. Baker, this was a
13 document that was entered into evidence yesterday,
14 OCC Exhibit 4, and I would ask you to turn to the
15 second page where it sets out the spending levels
16 that were authorized under Case No. 10-388-EL-SSO.
17 Do you understand that to be the FirstEnergy ESP II
18 case?

19 A. Based on what you just told me, yes.

20 Q. And that the spending caps for
21 distribution investments are set out in the various
22 time periods on that schedule. Do you see that?

23 MR. KUTIK: Objection.

24 EXAMINER WILLEY: Grounds?

25 MR. KUTIK: This witness has previously

1 testified that he has no recollection with respect to
2 spending levels, no knowledge with respect to that.
3 This witness has not seen this document before, or
4 there's certainly no testimony that he has.
5 Therefore, a proper foundation has not been laid to
6 have any testimony with respect to this document or
7 its contents.

8 MR. SAUER: I'm not asking him for
9 foundation. I'm just giving him this information to
10 refresh his recollection as to what spending caps
11 have been authorized in these various cases.

12 MR. KUTIK: Well, the proper way to
13 refresh his recollection would be to show him the
14 document and ask him if it refreshes his recollection
15 rather than to read him the document and have all
16 that information in the record, which he has no
17 recollection or information about.

18 EXAMINER WILLEY: I'm going to sustain
19 the objection. I would like you to please try and
20 lay a foundation by asking -- showing the document to
21 the witness and asking if it refreshes his memory.

22 MR. SAUER: All right.

23 Q. (By Mr. Sauer) Mr. Baker, are you -- have
24 you been apprised of what the spending caps
25 authorized in the various ESP cases have been?

1 A. No, I haven't. I really have no
2 knowledge of those spending caps related to these
3 riders.

4 Q. So the fact that under the ESP II case
5 for January, 2012, to December, 2012, a \$150 million
6 cap was established would be a surprise to you?

7 A. It would just be information I've just
8 now become aware of.

9 Q. And the same for 2013 and 2014?

10 A. Yes.

11 Q. You testified in this case, the 12-1230
12 case. Were you aware of what the distribution caps
13 authorized by the stipulation were in this case?

14 A. No, I am not.

15 Q. You've indicated that your chart compares
16 the 2011 actual performance standards to the
17 performance standards that were established in the
18 09-759 case, the 09-759-EL-ESS case; is that correct?

19 A. Yes. This table analyzes performance
20 against the standards in that case.

21 Q. And do you have any reason to believe
22 that the spending caps that were established in the
23 ESP II case that are shown on OCC Exhibit 4 that I
24 was just talking about are incorrect as they are
25 shown in this chart?

1 MR. McNAMEE: Objection. He knows
2 nothing about those caps.

3 EXAMINER WILLEY: I think the witness has
4 testified he has no knowledge of the caps, so I'm
5 going to sustain the objection.

6 MR. SAUER: I was just asking if he has
7 any reason to believe those numbers are incorrect.

8 MR. McNAMEE: Object.

9 EXAMINER WILLEY: Sustained.

10 MR. McNAMEE: Relevance.

11 Q. All right. Mr. Baker, assume that under
12 the ESP II case that for the year following your
13 analysis in this -- that appears on the chart, the
14 companies will be spending \$150 million on
15 distribution investment. Is it your expectation that
16 the companies' performance standards would increase?

17 MR. KUTIK: May I have the question read,
18 please.

19 (Record read.)

20 MR. McNAMEE: Objection.

21 EXAMINER WILLEY: Grounds?

22 MR. McNAMEE: I think it's contrafactual.
23 The objection, the performance standards were set in
24 a different case. They don't have anything to do --

25 EXAMINER WILLEY: Do you have a response,

1 Mr. Sauer?

2 MR. SAUER: The performance standards are
3 set in a different case, but they measure them every
4 year against actual performance. My question is
5 whether the spending in these subsequent years will
6 increase or decrease the expectation of the -- on
7 reliability.

8 EXAMINER PRICE: I think the problem is
9 you used the word "standards." You said will the
10 performance standards increase. The standards aren't
11 changing. How it performs depends on the standards.

12 MR. SAUER: I'm sorry, let me rephrase.

13 EXAMINER WILLEY: Thank you.

14 Q. (By Mr. Sauer) Mr. Baker, would it be
15 your expectation, understanding that -- if assuming
16 that the caps that appear under the ESP II case are
17 actually invested by the FirstEnergy companies on
18 their distribution system to enhance reliability,
19 that their actual reliability performance would
20 improve?

21 A. I would like that to be the case, but it
22 would depend on the kind -- the type of spending that
23 was -- the type of capital projects that the money
24 was spent on. And I don't know particulars of the --
25 of what was -- what was spent.

1 EXAMINER PRICE: Mr. Baker, the
2 companies' performance against the performance
3 standards is a result of numerous factors, isn't it?
4 It's not a dollar per dollar, spend a dollar, reduce
5 your SAIFI by .1; isn't that correct? It depends on
6 weather, random chance, other factors?

7 THE WITNESS: That is correct.

8 EXAMINER PRICE: That's why there is a
9 10 percent variability in the standards.

10 THE WITNESS: That's correct.

11 Q. (By Mr. Sauer) Is it your understanding,
12 Mr. Baker, as part of an ESP, companies can ask for
13 distribution spending as part of their ESP case?

14 A. Yes, that's my understanding.

15 Q. And is that distribution spending
16 intended to enhance system reliability?

17 A. I'm not sure what you're asking. I
18 didn't understand the question.

19 Q. Is that additional distribution
20 investment spending intended to enhance distribution
21 reliability?

22 A. It's my understanding that the company
23 says that it intends to spend those -- those dollars
24 on projects that will enhance service reliability.

25 Q. And look again at your question and

1 answer 12, and where you state that "Staff believes
2 that the Companies' and their customers' reliability
3 expectations are in alignment and the Companies are
4 dedicating sufficient resources to the reliability of
5 their distribution systems," is it possible that they
6 are dedicating excessive resources to their
7 reliability?

8 A. I don't know.

9 Q. And your testimony today is essentially
10 agreeing that for the ESP II period, which is
11 2014-2015, the additional spending is \$405 million;
12 would that be correct?

13 A. I really didn't do any analysis of the
14 company's proposals on that rider, so I'm unable to
15 answer that question.

16 Q. Is there any mechanism under the ESP
17 cases that would allow parties to go back and revisit
18 whether the spending levels turn out to be excessive,
19 if the reliability performance is far exceeding the
20 performance standards?

21 A. Not that I'm aware of.

22 THE WITNESS: Can you read the question?

23 (Record read.)

24 A. Is the question trying to get at whether
25 there is a mechanism in place to determine whether

1 the company's providing gold-plated reliability
2 service due to excessive expenditures in this rider?

3 Q. You state that the companies' and the
4 customers' expectations are in alignment, correct?

5 A. Yes.

6 Q. And you are relying on a customer survey
7 from what period of time?

8 A. It was actually a series of customer
9 surveys that were conducted during the same time
10 period that was -- that matched reliability
11 performance over, I believe, a nine-year period that
12 was covered in the company's application in that
13 reliability case to establish the standards.

14 Q. And, again, those customer surveys, I
15 believe you said, were in 2008 or 2000 --

16 A. I don't recall the exact time span, but
17 it was a nine-year period ending, I believe, in 2008.

18 Q. And, again, we are looking at
19 distribution investment spending for 2014 through
20 2016, correct?

21 A. I'm not aware of what proposed spending
22 levels are for the DIR.

23 Q. Okay. I'm not asking the spending
24 levels, but the ESP III case covers the June, 2014
25 through May, 2016, time period, does it not?

1 A. I believe so.

2 Q. Okay. I guess my question is, is it
3 possible that alignment that you are reviewing from
4 2008 or 2009, or whatever it would have been, may not
5 be in alignment any more in 2014 through 2016,
6 warranting this additional spending, correct?

7 A. I don't understand the question. I'm
8 sorry.

9 Q. The --

10 EXAMINER PRICE: Mr. Sauer, are you
11 asking him to predict what the customers' interest
12 will be in 2014 through 2016? I think that might be
13 beyond the scope of his ability to testify to.

14 MR. SAUER: No. I'm not trying to get
15 that from the witness, your Honor. Maybe my question
16 is not clear. I'll try again.

17 Q. (By Mr. Sauer) Your chart on page 5
18 established some standards that came out of the
19 09-759 case, correct?

20 A. It contains those standards. The
21 standards were established in that prior case.

22 Q. Okay. And the company filed an
23 application in that case?

24 A. Yes, they did.

25 Q. And that application included a customer

1 survey?

2 A. It included an average of customer survey
3 results collected over a nine-year period.

4 Q. And the companies proposed standards were
5 even higher than -- were less onerous than the
6 standards that were ultimately decided upon?

7 A. That is correct.

8 Q. Okay. And those customers' surveys that
9 the company relied on supported even the higher
10 reliability standards, correct?

11 A. The --

12 MR. KUTIK: Objection. Objection.

13 EXAMINER WILLEY: Grounds?

14 MR. KUTIK: What the survey shows with
15 respect to support of higher standards is irrelevant.
16 What the survey shows with respect to what the
17 standards are and the performance is a relevant test
18 under the statute.

19 EXAMINER WILLEY: Mr. Sauer, do you have
20 a response?

21 MR. SAUER: I believe it was
22 Mr. Ridmann's testimony today that supported the fact
23 that the customer surveys were in alignment with the
24 companies' proposed reliability standards that were
25 higher than what was ultimately decided.

1 MR. KUTIK: I don't believe --

2 EXAMINER PRICE: Mr. Ridmann isn't on the
3 stand.

4 MR. KUTIK: Plus, I don't believe that
5 was Mr. Ridmann's testimony.

6 MR. SAUER: I'll rephrase.

7 EXAMINER WILLEY: Thank you.

8 Q. The standards that are established in --
9 on your chart 5 compared to 2011, the company has --
10 the companies have met the standards in each of the
11 reliability measures, have they not?

12 A. Yes, they have.

13 Q. And is it possible with the spending
14 levels that are currently proposed under the ESP II
15 case, that the actual performance could be even lower
16 than the performance in 2011?

17 MR. KUTIK: I guess clarification, if
18 we're talking about lower, is that better relative to
19 the reliability standards?

20 EXAMINER WILLEY: Can you please clarify.

21 MR. SAUER: Yeah.

22 Q. That would be better than the reliability
23 standards, even better than the 2011 performance?

24 A. It could be, but not knowing what the
25 expenditures entailed, I really have no way to judge

1 the likelihood of that occurrence.

2 Q. And I believe it's not "it shall"; I
3 believe it's just say "it could be."

4 A. It could be.

5 Q. Could be higher, could be lower? And
6 then there is additional spending for 2013.

7 MR. KUTIK: Excuse me, your Honor. I am
8 not sure the witness was allowed to finish. Could it
9 be higher, could it be lower, I believe is the last
10 question.

11 A. It could be either.

12 Q. And, again, there are spending caps
13 authorized for 2013, correct?

14 A. That's what you're telling me. I haven't
15 done an independent --

16 Q. Assuming the company spends in 2013
17 through December 31 165 million, that could lead to
18 performance -- actual performance even better than
19 the 2011 performance that's shown on your chart,
20 correct?

21 A. It could.

22 EXAMINER PRICE: Mr. Sauer, is OCC
23 opposed to better performance?

24 MR. SAUER: We're opposed -- well, I'm
25 not on the stand, I guess.

1 EXAMINER PRICE: Well, I think it gets to
2 the relevance of your question. I mean, how is your
3 question relevant to the decision the Commission has
4 to make?

5 MR. SAUER: Ultimately there's no check
6 on whether the performance standards are sufficient
7 to warrant stop spending under these ESP cases.
8 Mr. Baker's testified in this case based on 2011
9 actual performance. There's --

10 EXAMINER PRICE: Don't we have an audit
11 proceeding?

12 MR. SAUER: But I don't think the audit
13 proceeding is put in place to stop the DCR mechanism.
14 It just makes sure that the spending is --

15 EXAMINER PRICE: Isn't that an issue for
16 the audit proceeding?

17 MR. SAUER: I think it should be.

18 MR. KUTIK: Mr. Ridmann characterized it
19 as what they look at is the reasonableness of the
20 expenditures, so counsel is suggesting contrary to
21 the evidence at this point.

22 MR. SAUER: But there's no customer
23 alignment of this spending. That's the disconnect.

24 MR. McNAMEE: The upshot of all this,
25 this is a matter for brief, not a matter for

1 cross-examining Mr. Baker about.

2 MR. SAUER: I think I'm just about
3 finished, so can I have a minute, your Honor?

4 EXAMINER WILLEY: You may.

5 MR. SAUER: I have no further questions.

6 EXAMINER WILLEY: Thank you.

7 Mr. Hays.

8 MR. HAYS: No questions, your Honor.

9 EXAMINER WILLEY: Mr. Royer.

10 MR. ROYER: No questions.

11 EXAMINER WILLEY: Mr. Kutik.

12 MR. KUTIK: Your Honor, I would like --
13 since we are supporting, I would like to follow
14 Sierra Club.

15 EXAMINER WILLEY: Mr. Kapla.

16 MR. KAPLA: We have no questions, your
17 Honor.

18 EXAMINER WILLEY: You have no questions?

19 Okay. Mr. Kutik.

20 CROSS-EXAMINATION

21 By Mr. Kutik:

22 Q. Good afternoon, Mr. Baker.

23 A. Good afternoon.

24 Q. Did you read the Commission's order in
25 the 10-388 case?

1 A. No, I did not.

2 Q. Are you familiar with the fact there
3 is -- with the fact there is an audit process as far
4 as the current ESP is concerned with respect to rider
5 DCR?

6 A. That is my understanding.

7 Q. Okay. And I assume from your answer that
8 you have not participated in that audit process.

9 A. That's correct.

10 Q. Are you aware that there is a similar
11 audit that's being proposed in this case?

12 A. I don't know one way or another.

13 Q. Okay. Is it fair to say then that what
14 you did for purposes of this case was to review the
15 survey information you have with respect to customer
16 expectations regarding reliability and compare that
17 to the companies' performance regarding reliability
18 versus standards and historical averages?

19 A. The surveys you are talking about, these
20 are -- these are the surveys -- the survey results
21 that were provided with the companies' application on
22 the reliability case?

23 Q. Whatever surveys you looked at, sir, yes.

24 A. So could you repeat the question?

25 Q. Sure. Basically, what you did is you

1 looked at survey information about customer
2 expectations and the companies' performance and the
3 companies' standards, and you compared all those,
4 correct?

5 A. The survey results were used as an input
6 to establish the standards, and once the standards
7 were established, we compared the actual performance
8 against the standards, and if the company meets the
9 standards, then we consider the reliability
10 expectations to be in alignment.

11 MR. KUTIK: Thank you. I have no further
12 questions.

13 EXAMINER WILLEY: Thank you.

14 Mr. McNamee.

15 MR. McNAMEE: I seriously doubt it. If I
16 might confer with the witness for just a moment.

17 EXAMINER WILLEY: Of course.

18 MR. McNAMEE: No redirect.

19 EXAMINER WILLEY: Thank you.

20 Examiner Price?

21 EXAMINATION

22 By Examiner Price:

23 Q. Mr. Baker, are you aware, as we have
24 heard extensively over the last two days, that there
25 is a constraint in the ATSI zone of the PJM system?

1 A. I'm aware of that, yes.

2 Q. Are you aware of whether there are any
3 projects that can be done to mitigate that constraint
4 on the distribution level?

5 A. Yes. I'm aware of a number of project --
6 distribution project types that would tend to ease
7 congestion either by improving the flow of
8 electricity or by reducing line losses.

9 Q. Can you explain what those project types
10 would be, briefly?

11 A. Yes, I have -- I've identified nine
12 categories. They include adding new substations,
13 adding new circuits, connecting existing circuits,
14 adding more transformers, replacing electric lines
15 with larger electric lines, increasing the voltage on
16 circuits, addressing capacity for banks, increasing
17 the size of volt regulators, or merely replacing
18 aging distribution facilities that carry current with
19 new facilities.

20 Q. And do you think it would be in the
21 interest of both the EDUs and their customers to
22 relieve the constraint to the extent possible?

23 A. Could you repeat the question?

24 Q. Do you believe it would be in the
25 interests of both the EDUs and their customers to

1 mitigate the constraint to the extent possible?

2 A. Yes, I do.

3 EXAMINER PRICE: Thank you. That's all I
4 have.

5 EXAMINER WILLEY: I have no questions.
6 So thank you, Mr. Baker. You may step down.

7 MR. McNAMEE: Staff would move for the
8 admission of Staff Exhibit 2.

9 EXAMINER WILLEY: Are there any
10 objections to the admission of Staff Exhibit 2?

11 Hearing none, Staff Exhibit 2 will be
12 admitted.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 MR. McNAMEE: At this time staff would
15 call Robert B. Fortney to the stand.

16 EXAMINER WILLEY: Thank you.

17 - - -

18 ROBERT B. FORTNEY,
19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. McNamee:

23 Q. Please state and spell your name for the
24 record, please.

25 A. Robert B. Fortney, F-O-R-T-N-E-Y.

1 Q. By whom are you employed and in what
2 capacity?

3 A. Public Utilities Commission of Ohio, as a
4 Public Utilities Administrator 3 in the Rates and
5 Tariffs Division of the Utilities Department.

6 Q. What is your business address?

7 A. 180 East Broad, Columbus, Ohio 43215.

8 MR. McNAMEE: Your Honor, at this time, I
9 would ask to have marked for identification as staff
10 Exhibit 3 a multi-page document filed in this case on
11 May 7, denominated Prefiled Testimony of Robert B.
12 Fortney.

13 EXAMINER WILLEY: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. Mr. Fortney, do you have before you
16 what's just been marked for identification as Staff
17 Exhibit 3?

18 A. Yes, I do.

19 Q. What is it?

20 A. My prefiled testimony in this proceeding.

21 Q. Is it prepared by you or under your
22 direction?

23 A. It was prepared by me.

24 Q. Do you have any corrections that need to
25 be made to that document?

1 A. No, sir.

2 Q. If I were to ask you the -- if I were to
3 ask you this afternoon the questions that are
4 contained within that document, would your answers
5 here be the same as represented in -- therein?

6 A. Yes, they would.

7 Q. Are the contents of what's been marked
8 for identification as Staff Exhibit 3 true to the
9 best of your knowledge and belief?

10 A. To the best of my knowledge and belief,
11 yes.

12 MR. McNAMEE: With that, the witness is
13 available for cross.

14 EXAMINER WILLEY: Thank you.

15 Again, Mr. Kapla.

16 MR. KAPLA: No questions.

17 EXAMINER WILLEY: Mr. Lavanga.

18 MR. LAVANGA: No questions, your Honor.

19 EXAMINER WILLEY: Mr. Vickers.

20 MR. VICKERS: No questions, your Honor

21 EXAMINER WILLEY: Mr. Kurtz.

22 MR. KURTZ: No questions, your Honor.

23 EXAMINER WILLEY: Mr. Kutik.

24 MR. KUTIK: Your Honor, we would prefer
25 to go last.

1 EXAMINER PRICE: It would mitigate
2 concerns about friendly cross if you proceed before
3 the parties who are in opposition to the stip.

4 MR. KUTIK: I still would prefer to go
5 last, your Honor.

6 EXAMINER PRICE: We would prefer you go
7 next.

8 MR. KUTIK: I have no questions.

9 EXAMINER WILLEY: Thank you. All right.
10 Mr. Hays.

11 MR. HAYS: I have no questions, your
12 Honor.

13 EXAMINER WILLEY: Mr. Sauer.

14 MS. YOST: I have some questions.

15 EXAMINER WILLEY: Sorry, Ms. Yost.

16 MS. YOST: That's okay.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Yost:

20 Q. Good afternoon, Mr. Fortney.

21 A. Good afternoon.

22 Q. I don't believe we have met. I am
23 Melissa Yost from the Ohio Consumers' Counsel.

24 A. Nice to meet you.

25 Q. I want to talk a little bit about your

1 testimony in this case, but I also want to talk about
2 the ESP II case, which is the current ESP that
3 FirstEnergy is operating under. In that case you
4 also testified, correct? I have your testimony if
5 that would help you.

6 A. I don't -- do not believe that I
7 testified as to the three-prong test in that
8 proceeding, but I believe that there were issues that
9 I testified to in that proceeding.

10 Q. Yes, very fair. And I have your
11 testimony here if you want to refresh your
12 recollection. I didn't want to enter it into the
13 record or anything, but let me know if this -- I
14 wasn't going to try to read directly from your
15 testimony in that proceeding, the ESP II case.

16 You testified to the reasonableness of
17 certain provisions within the Stipulation and
18 Recommendation filed March 23, 2010, by FirstEnergy
19 and, again, that was in the ESP II case.
20 Specifically in that case you addressed provision F,
21 which was economic development and job retention,
22 which you referred to as the Cleveland Clinic
23 provision and a provision which you called the
24 domestic auto maker provision. Does that sound
25 accurate to the provisions of your testimony?

1 A. Yes.

2 Q. And you have not testified in this
3 proceeding in regards to either of those provisions
4 directly; is that correct?

5 A. That's correct.

6 Q. If I could have you take a look at your
7 staff -- your testimony, which is Staff Exhibit 3,
8 page 4, if you could turn to page 4, and if I could
9 refer you to line 8. Let me know when you're there,
10 sir.

11 A. Yes.

12 Q. The first sentence starting on line 8 it
13 says, "Staff, therefore, recommends that the
14 Commission conclude that in light of the
15 'qualitative' benefits provided by ESP 3, the
16 application in the instant proceeding should be
17 approved, and the Stipulation should be adopted."

18 In regards to your testimony, which I
19 just read into the record, what are the qualitative
20 benefits provided by the ESP III that you are
21 referring to?

22 A. Well, I believe that those are contained
23 in the answer to question 8 on page -- beginning on
24 page 3, included in those benefits are "modifying the
25 bid schedule previously approved in Case No.

1 10-388-EL-SSO so that the bids to occur in October,
2 2012, and January, 2013, will be for a three-year
3 product rather than a one-year product. Thus, the
4 current lower market-based generation prices will be
5 captured for a longer period of time that would be
6 blended with potentially higher market-based
7 generation prices, thus providing rate stability.
8 The additional two-year distribution rate increase
9 'stay out' will provide additional rate certainty,
10 predictability and stability for customers. ESP 3
11 continues a number of rate options and programs which
12 preserve and enhance the rate options for various
13 customers provided in ESP 2. Finally, staff has
14 indicated in previous proceedings (the most recent
15 being its comments in Dayton Power & Light Case, No.
16 12-0426 EL-SSO) that 'although either an electric
17 security plan or a market rate option would fulfill
18 the obligation under R C 4928.141, the electric
19 security plan can offer significant advantages for
20 the Applicant, the ratepayers of the Applicant and
21 the public at large.'"

22 Q. So you specifically mentioned the -- the
23 modification of the bid process, the "stay out"
24 provision. Is there anything else that you can list
25 in terms of those qualitative benefits?

1 A. Not off the top of my head.

2 Q. If I -- do you have a copy of the
3 stipulation in front of you, sir? I think it was FE
4 Exhibit 1.

5 A. Yes, I do.

6 Q. The application itself, the stipulation,
7 if you could turn to that. Is it --

8 A. I have the stipulation.

9 Q. Okay. If I could -- what I want to kind
10 of do is address provisions of the stipulation, and
11 if I could have you turn to -- if we could actually
12 start with the economic development and job retention
13 provisions in the stipulation starting on page 34.
14 Are you there, sir?

15 A. Yes.

16 Q. In the economic development and job
17 retention, specifically there were two provisions
18 that we previously discussed which were the subject
19 in your testimony in the last ESP II case, correct?

20 A. I believe -- I'm not sure -- I probably
21 have printed my copy off the internet. I'm not sure
22 that I'm on the same page as you are. My page 4 has
23 a table at the top.

24 MS. YOST: Is there a copy of the
25 stipulation up there?

1 MR. BURK: I don't know.

2 Q. I'm sorry, sir.

3 MS. YOST: If we could go off the record
4 for just a second.

5 (Discussion off the record.)

6 EXAMINER WILLEY: Go back on the record,
7 please.

8 Q. (By Ms. Yost) Here you go, Mr. Fortney.
9 This is a double-sided document but I have you here
10 on page 34 of the stipulation. I want to talk a
11 little bit about on page 34, paragraph 2 under
12 Section F, Economic Development and Job Retention.
13 This is what is referred to as the Cleveland Clinic
14 Foundation provision. Do you see that, sir?

15 A. Yes.

16 Q. And do you recall in the ESP II case
17 submitting testimony on this provision?

18 A. Yes.

19 Q. Would you agree with me that paragraph
20 F-2, that in regards to this paragraph, any benefit
21 from this provision was a result of the Commission's
22 decision in the ESP II case and is not a direct
23 benefit of the ESP III case and stipulation and,
24 therefore, should not be reflected in any ESP III
25 versus the MRO analysis? Do you agree with that

1 statement?

2 A. Yes. I would consider that similar to
3 our problem that we had with the RTO costs being
4 included. The Cleveland Clinic provision was as a
5 result of ESP II, and I don't see anywhere
6 Mr. Ridmann has included it in his analysis.

7 Q. Okay. So you're saying that you agree
8 that, like -- strike that.

9 So is it your opinion this provision to
10 the Cleveland Clinic should not be included in the
11 analysis for this case, the ESP III; is that correct?

12 A. It was continued from ESP II, and,
13 actually, that was one of the questions I had of the
14 stipulation, and I think Examiner Price might have
15 asked Ridmann -- Mr. Ridmann that when he was on the
16 stand.

17 I did make sure that the 70 million cap
18 was not being increased, and Mr. Ridmann indicated
19 that the 70 million cap was not being increased, so I
20 guess to answer your question, yes, it's a provision
21 from ESP II and should not be included in the
22 analysis for ESP III.

23 Q. Is that a reason why you didn't include
24 that in your testimony in this case?

25 A. Yes.

1 Q. Thank you. In regard to provision 3 on
2 page 37, this was the provision that you testified,
3 or a similar provision in the ESP II case, what is
4 known as the automaker -- domestic automaker
5 provision. In your testimony in the last case you
6 provided to the Commission some suggestions about the
7 information you felt the Commission should be
8 provided. Do you recall that in the last case in
9 general? And I could bring this up to you and let --

10 A. No, I do not recall that.

11 Q. Okay. Would you --

12 MS. YOST: I am going to provide this to
13 refresh his recollection. I only have one copy.

14 MR. McNAMEE: What is it?

15 MS. YOST: It's his testimony from the
16 10-388 case.

17 Would you like to see it? I am just
18 using it for refreshing his recollection.

19 EXAMINER WILLEY: Thank you.

20 Q. Mr. Fortney, what I'm presenting to you
21 is what was your testimony in Case No. 10-388. If
22 you could just -- or you can read whatever relevant
23 parts, but I would direct you to question 7 and
24 answer 7.

25 A. Well, the answer to question 7 pertains

1 specifically to the Cleveland Clinic provision. It
2 doesn't have anything to do with the automaker
3 provision.

4 Q. I'm sorry. I have you on the wrong page.
5 Actually, I am incorrect in that. I did mean to
6 state the Cleveland Clinic. In your testimony you
7 had made some suggestions what information the
8 Commission should be provided in regards to the
9 Cleveland Clinic provision. So if you could
10 familiarize yourself with that and just summarize
11 those or read it into the record, whatever you are
12 more comfortable.

13 A. Well, No. 1 involved an affidavit from a
14 company official to verify the veracity of the
15 information provided in the stipulation. And I
16 believe that there was a Cleveland Clinic witness
17 that testified in this proceeding who verified that
18 accuracy.

19 Q. In the ESP II?

20 A. So that has been --

21 Q. Okay, thank you. In regards to the
22 domestic automaker provision, do you know how many
23 companies are providing service -- or receiving
24 service in accordance with that provision?

25 A. That's a good question, and, no, I do not

1 know. I do not know that. There is a recovery
2 mechanism this has an amount in it, so I assume that
3 there are customers who are receiving those
4 incentives but, I do not know how many, nor who they
5 are.

6 Q. Do you know approximately how much is the
7 amount you are referencing?

8 A. I do not know that.

9 Q. Is it more than \$100,000, in the
10 ballpark?

11 A. I don't know.

12 Q. Mr. Fortney, did you have the
13 opportunity -- I don't recall if you were in the room
14 during his direct and cross-examination, but did you
15 have the opportunity to read the testimony of
16 Mr. James Wilson?

17 A. No, I did not.

18 Q. Are you aware of any of his concerns that
19 were presented in this case regarding the use of a
20 three-year product in regards to the bid?

21 A. I was in the courtroom this morning
22 when -- when he was cross-examined by Mr. Kutik, so,
23 yes, I'm aware of the issues that he brought up.

24 Q. And are you aware of the constraints in
25 the ATSI zone?

1 A. Only because of what I've heard in this
2 proceeding in the last two days.

3 Q. In regards to page 3 of your testimony,
4 if I could have you take a look at starting at line
5 18. Yes, page 3, starting at line 18. Let me know
6 when you are there, Mr. Fortney.

7 A. The sentence beginning with "thus"?

8 Q. Yes.

9 A. I'm there.

10 Q. The sentence reads, "Thus, the current
11 lower market-based generation prices will be captured
12 for a longer period of time that would be blended
13 with potentially higher market based generation
14 prices, thus providing rate stability."

15 Regarding line 18, you say, "thus, the
16 current lower market based generation prices." In
17 terms of lower market based generation prices, lower
18 than what? In terms of the pricing? What are you
19 referring to?

20 A. I'm referring to the rest of the
21 sentence, "with potentially higher market based
22 generation rates" in the future.

23 Q. So it's your testimony that the prices
24 now are -- strike that.

25 But isn't it fair to say that the future

1 market prices could be lower than the current prices?

2 A. Well, it was an interesting conversation
3 that Mr. Kutik -- or Mr. Burk and Mr. Turner had this
4 morning, and while it certainly appears that
5 capacity -- the capacity component of a market rate
6 is going up, if the energy component and all of the
7 other risks associated are unknown, so it is possible
8 that market rate in the future could be lower than
9 they currently are.

10 Q. Do you agree with Mr. -- Mr. Wilson's
11 concerns that a three-year product may not be
12 favorable for customers at this time?

13 A. Well, believe it or not, as staff was
14 analyzing the stip -- in terms of the stipulation,
15 there was significant discussion on that topic, and
16 there was some discussion on would it be better to do
17 the three-year up front; would it be better to have
18 three one-year products; would it be better to have
19 some -- what do you call it -- ladderization and
20 blending over the three years.

21 And I believe in the end that staff
22 concluded that the revenue stability and certainty
23 that would come from the three-year product overrode
24 the possibility that different types of auctions at
25 different times might produce slightly lower prices.

1 From my personal point of view, and I
2 have done a lot of discussions with Mr. Kurtz,
3 Mr. Randazzo, Ms. McAlister, Nucor, and while they
4 are certainly concerned about the level of what their
5 prices will be, they are also very concerned, their
6 customers are also, and clients are also very much
7 concerned about rate certainty and rate
8 stabilization, and I believe that staff believes that
9 the three-year bid was a reasonable approach in order
10 to produce the revenue certainty and revenue
11 stability that are needed by customers.

12 Q. When you reference counsel for different
13 clients, those counsels generally represent
14 industrial or commercial or manufacturing clients,
15 correct?

16 A. That's correct.

17 Q. And none of the counsel that you just
18 mentioned represent residential customers; is that
19 correct?

20 A. That's correct.

21 Q. Would you agree that residential
22 customers may have a different interest and their
23 interest may be in lower prices rather than stable
24 prices?

25 A. That's certainly a possibility. Or they

1 may agree that stability and certainty are important.

2 Q. Mr. Fortney, if I could have you turn to
3 page 2 of your testimony, specifically question and
4 answer No. 5. In your testimony you're saying that
5 Mr. Ridmann's analysis included a credit to the cost
6 of the ESP III to reflect the estimated RTEP costs
7 that will not be recovered from customers.

8 And it's staff's belief that the benefit
9 of this credit, as we previously discussed, was a
10 result of the ESP II case and should not be reflected
11 in any analysis in the ESP III versus MRO analysis
12 for this case; is that correct?

13 A. Yes.

14 Q. And at what point did you become
15 knowledgeable that the testimony or the reliance of
16 FirstEnergy on the RTEP costs for their analysis
17 regarding the ESP III versus MRO? In essence, when
18 did you become aware that they were going to use the
19 RTEP costs to support the analysis in this case?

20 A. Well, I believe that Mr. Ridmann's
21 testimony was provided at the same time as the
22 application and the stipulation were coming out, if
23 not very shortly after. Shortly after Mr. Ridmann --
24 Mr. Ridmann's testimony was filed.

25 Q. So you did not have any advanced notice

1 they were going to include this in their testimony to
2 support the stipulation?

3 A. We did not see Mr. Ridmann's testimony
4 prior to his filing it, at least I did not.

5 Q. Fair enough.

6 A. I don't know if there were any other
7 staff members that did.

8 Q. I appreciate that. You can only testify
9 to what you know.

10 You said you didn't see the testimony.
11 Were you told they were going to include that --

12 MR. McNAMEE: Objection.

13 Q. -- the RTEP costs in the analysis before
14 the filing?

15 MR. KUTIK: Objection.

16 MR. McNAMEE: Okay.

17 EXAMINER WILLEY: Grounds?

18 MR. McNAMEE: What possible difference
19 does it make?

20 MR. KUTIK: Plus, it's hearsay.

21 EXAMINER WILLEY: Sustained.

22 Q. And, Mr. Fortney, when you did your
23 analysis and you removed the costs that were
24 included, the RTEP costs, your analysis showed that
25 the ESP III exceeds the costs of an MRO by \$7.6

1 million; is that correct?

2 A. If you take the RTEP credits out and look
3 at only the two years of the ESP III and leave both
4 the DCR -- and under the ESP provisions and the
5 distribution rate case scenario, under the MRO
6 provisions, and Mr. Ridmann's analysis, it comes out
7 to be 7.7, or whatever the number is, the ESP would
8 exceed the MRO.

9 Q. And my point is, you did not run your own
10 analysis. You simply subtracted the costs that were
11 included by Mr. Ridmann, being the RTEP costs, and
12 used the numbers he had provided. You didn't do your
13 own analysis; is that correct?

14 A. Well, the DCR numbers come right from the
15 stipulation, the 195 million, the 210 million. I did
16 not do another -- my own analysis of what the
17 distribution rate case numbers would be, no.

18 Q. Or the MRO.

19 A. Well, that was one of the costs of an
20 MRO, yes.

21 Q. Starting on page 3 of your testimony --
22 I'm sorry, it is on page 4. You're talking about
23 another perspective you would like to submit. It
24 goes on to page 5 where you cite the case, the
25 Commission Case No. 11-346 and 11-348, the

1 Commission's Opinion and Order of December 14, 2011,
2 in the AEP -- AEP ESP cases. Do you see that on the
3 top of page 5?

4 A. Yes.

5 Q. All right. Do you recall, is that the
6 case that approved AEP's ESP stip -- the stipulation
7 resolving that case that was later rejected by the
8 Commission? Is that the same order you're
9 referencing there?

10 A. That would be the same case, yes. But I
11 have also submitted testimony in the case that is
12 currently going on, whatever you call it, 346 B, and
13 I have done an MRO versus ESP comparison, and I did
14 not include the -- theirs is not the DCR but the DIR,
15 or a distribution rate case in that analysis.

16 MS. YOST: Just a minute, your Honor. I
17 may be done.

18 I have no further questions. Thank you
19 Mr. Fortney.

20 THE WITNESS: Thank you.

21 EXAMINER WILLEY: Thank you, Ms. Yost.

22 Mr. Dortch.

23 MR. DORTCH: Thank you, your Honor.

24 - - -

25 CROSS-EXAMINATION

1 By Mr. Dortch:

2 Q. Good afternoon, Mr. Fortney.

3 A. Good afternoon.

4 Q. Mr. Fortney, you testified a few moments
5 ago that commercial and industrial customers have, at
6 least in some circumstances, indicated a desire for
7 stability, and conceded that residential customers
8 may not -- may value lower rates more than stable
9 rates. Is that an accurate summary of your
10 testimony?

11 A. Yes.

12 Q. Are more stable, predictable rates worth
13 it if they cost 5 percent more relative to the rates
14 that would otherwise be paid?

15 A. I don't know the answer, and I don't know
16 how you could conclude that rates would be lower or
17 higher by 5 percent because we don't know what the
18 bid will be; nor do we know what the bid would be if
19 there were different scenarios, if there were three
20 separate one-year bids or if there was some blended.

21 Q. Is it fair to say that at some point in
22 time there is a premium that would be paid that you
23 would find simply too expensive for the benefit of
24 stability?

25 A. Sure. As a residential customer myself,

1 not of FirstEnergy of but AEP, I would say that there
2 is some limit to stability, the benefits of
3 stability, if it comes in a much higher cost.

4 Q. And you have no opinion, sitting here
5 today, whether that benefit or that cost becomes
6 excessive at 5 percent, 10 percent, 15 or 20 percent?

7 A. I think it would probably differ for
8 every single customer.

9 Q. You testified, as I understand it, that
10 there are three qualitative benefits to the
11 stipulation. One is the capture of current low
12 prices to be blended with anticipated higher prices;
13 is that fair?

14 A. Yes.

15 Q. Could you achieve some of the purposes of
16 rate stability and capturing current low prices if we
17 bid a two-year product rather than a three-year
18 product in this ESP?

19 A. I imagine you could, yes.

20 Q. And with the concerns that exist
21 regarding the ATSI zone and the constraints that are
22 predicted for the '15-16 planning year, is it
23 possible that it would be better to wait another year
24 to see what sorts of responses are being developed to
25 that constraint?

1 A. Well, I was also present during your
2 cross of Mr. Fein, and he listed several risk factors
3 that come into play in the bid. You understand that
4 the capacity charge is only one component of a
5 competitive bid price. I believe that staff signed
6 the stipulation because they believed that the
7 three-year option was the best option available.

8 Q. And I understand your position, sir, and
9 I understand that staff has signed the stipulation,
10 but that wasn't my question. My question is, is it
11 possible?

12 A. It is possible. It's always easy to be a
13 Monday morning quarterback, and in three years I
14 might be saying -- well, I won't be saying it in
15 three years. Somebody might be saying it, "We
16 screwed up." I won't be saying it in three months.

17 Q. A second qualitative benefit, as I
18 understand your testimony, is the distribution stay
19 out provision and, again, as I understand it, you
20 believe that provides predictability rate certainty.

21 A. Well, that's an interesting question to
22 ask me about, and, yes, I believe that the DCR
23 mechanism does provide additional rate certainty,
24 predictability, and stability because it is a known
25 number.

1 I -- this is not a staff recommendation.
2 This is my personal opinion. I like rate cases. I
3 believe that that's what the Commission staff,
4 especially the utility department of the Commission
5 staff, does best.

6 But as an overall recommendation, staff
7 believes that a DCR is the better approach than
8 separate distribution rate cases every year, and I
9 can see their point.

10 Q. I understand. What part -- is there a
11 particular part of the DCR? I'm not certain. Isn't
12 the DCR -- isn't the company permitted to recover its
13 investment in any event through rider DCR, correct?

14 A. Distribution facilities will be recovered
15 through rider DCR.

16 Q. Rider DCR, and there's -- in the meantime
17 its distribution rate base is held frozen, correct?

18 A. Part of the ESP II and ESP III is that
19 there will not be distribution rate cases during that
20 time, yes.

21 Q. Theoretically, isn't it just a wash then?
22 Holding the distribution rate base constant,
23 permitting recovery through DCR, shouldn't it be a
24 wash?

25 MR. KUTIK: Objection.

1 A. Then, I believe, you are agreeing with my
2 testimony now.

3 Q. I think --

4 MR. KUTIK: Withdraw my objection.

5 A. I say it's a wash. When I first started,
6 I worked for a gentleman named Doug Magg, who was a
7 very respected, very knowledgeable person, and we
8 talked a great deal about what he termed artificial
9 provision. Do I believe that the DCR and the
10 distribution rate case will be an exact match dollar
11 for dollar, no. But I believe that in general they
12 would be a wash over time.

13 EXAMINER PRICE: Mr. Fortney, can I ask
14 you a question? Do you think the longer the time,
15 the more likely it is a wash?

16 THE WITNESS: Well, it depends for one
17 thing. If you do a distribution rate case, those
18 rates are in rates forever. Theoretically, the DCR
19 has an end date. But the probability is that unless
20 the DCR -- if the DCR is not extended some X period
21 of time, the company will do a distribution rate
22 case. So, yes, I believe that a longer period of
23 time that it's probably closer to a wash.

24 MR. DORTCH: Mr. Fortney, thank you for
25 your testimony. I appreciate it, sir.

1 THE WITNESS: Thank you.

2 MR. MARGARD: Thank you, Mr. Dortch.

3 Mr. McNamee?

4 MR. McNAMEE: If I might have a moment
5 with the witness.

6 EXAMINER WILLEY: You may.

7 MR. McNAMEE: No questions.

8 EXAMINER WILLEY: Thank you.

9 Examiner Price.

10 EXAMINER PRICE: Just a couple.

11 - - -

12 EXAMINATION

13 By Examiner Price:

14 Q. Mr. Fortney, just to clarify your
15 testimony line 18, page 3, you indicate "current
16 lower market based generation rates." Are you just
17 referring to the fact that market based generation
18 rates are now more or less historic loads?

19 A. Yes. I guess I'm referring to the fact
20 that most things that I have read, Staff Witness
21 Johnson, other people, have indicated that they
22 believe that market rates are pretty close to the
23 bottom, and that in the future, that they are
24 probably going to be going up, so that's the
25 assumption that I used.

1 Q. Okay. Turning to the stipulation, I just
2 want to make sure we're not contemplating two things.
3 With respect to the Cleveland Clinic and the domestic
4 automakers exception in your prior testimony in
5 10-388, you indicated that the Cleveland Clinic is
6 not -- the Cleveland Clinic provision is not a new
7 provision and is a benefit of 10-388 and should not
8 be included; is that correct?

9 A. Should not be considered in the analysis,
10 that comparison.

11 Q. Right.

12 A. Yes.

13 Q. But the domestic automakers provision, is
14 that incremental to what was in the 10-388?

15 A. Its' a --

16 Q. They are --

17 A. -- continuation, but there is not -- it's
18 not like the Cleveland Clinic where there was a
19 \$70 million cap.

20 Q. They are extending the term of the
21 discount?

22 A. They are extending the term of the
23 discount.

24 Q. So would you consider that to be of a
25 benefit to the stipulation?

1 A. Well, it's an economic benefit to the
2 automakers who take advantage of it, but other
3 customers pay, so I would say it's kind of a wash.

4 Q. To the extent you thought it was a
5 benefit in 2010, was it a benefit in 2012?

6 A. It was an economic development benefit.

7 Q. Thank you. The \$2 million of economic
8 development funds, that's incremental to -- on page
9 34 of the stip.

10 A. What are we talking about here?

11 Q. Page 34 of the stip.

12 A. Okay.

13 Q. \$2 million in economic development funds.

14 A. I think that that is --

15 Q. Is that incremental to ESP II?

16 A. This is a shareholder funded, and I
17 believe that it is not -- I believe this is a new
18 provision.

19 Q. Okay. So it's in addition to what's in
20 the ESP II?

21 A. Yes. But that's probably included in
22 Mr. Ridmann's analysis.

23 Q. Okay. And then one last question, or
24 maybe a series of questions, that we've had some
25 discussion now and you had some cross-examination

1 about, consider whether residential customers would
2 prefer to give up stability in return for lower
3 prices.

4 If it turns out in 2014 that the costs
5 were lower than we expect, a marketer would be able
6 to offer a one-year product at that point to a
7 consumer who's willing to exchange stability for
8 lower prices in the short-term, wouldn't they?

9 A. Customers always have the option of
10 shopping, yes.

11 Q. And marketers have the option of pricing
12 underneath the SSO?

13 A. If the market prices at that time were
14 lower, you would tend to believe that a CRES provider
15 could offer a lower price to not only residential
16 customers, but any customers.

17 Q. A CRES provider like AEP Retail.

18 A. They are a fine CRES providers.

19 EXAMINER PRICE: That's all I have.

20 MR. DORTCH: Thank you, Mr. Fortney.

21 EXAMINER WILLEY: No questions.

22 Thank you very much, Mr. Fortney. You
23 may step down.

24 MR. McNAMEE: Staff would move for the
25 admission of Staff Exhibit 3.

1 EXAMINER WILLEY: Are there any
2 objections to the admission of Staff Exhibit 3?

3 Hearing none, Staff Exhibit 3 will be
4 admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 MR. KUTIK: Your Honor, at this time the
7 company moves for the admission of Company Exhibit 5,
8 the notice of publications.

9 EXAMINER WILLEY: Is there any objection
10 to the admission of Company Exhibit 5?

11 MR. DORTCH: I'm sorry, your Honor.

12 Mr. Kutik, I did not hear.

13 MR. KUTIK: The notices.

14 MR. DORTCH: Oh, the notices, thank you.

15 EXAMINER WILLEY: Is there any objection
16 to the admission of Exhibit 5?

17 Hearing none, Company Exhibit 5 will be
18 admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 MR. SAUER: Could we go off the record
21 just a moment?

22 EXAMINER WILLEY: Let's go off the
23 record.

24 (Discussion off the record.)

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 EXAMINER WILLEY: Let go back on the
2 record.

3 MR. SAUER: Thank you. Off the record we
4 had a brief discussion about a pending OCC exhibit
5 that had not been moved into the record yet, that's
6 OCC Exhibit 6. I have OCC Exhibit 6A, which is the
7 actual request to produce the document that is a part
8 of OCC Exhibit 6, and I ask that the OCC Exhibit 6A
9 and 6 be moved into the record.

10 EXAMINER WILLEY: Is there any objection
11 to the admission of OCC Exhibit 6 and OCC Exhibit 6A?

12 MR. KUTIK: No, your Honor.

13 EXAMINER WILLEY: Hearing none, OCC
14 Exhibit 6 and OCC Exhibit 6A will be admitted.

15 MR. SAUER: Thank you, your Honor.

16 (EXHIBITS ADMITTED INTO EVIDENCE.)

17 EXAMINER WILLEY: Is there anything else
18 to come before us today?

19 Hearing none, we are adjourned until
20 tomorrow at 10 o'clock. Thank you.

21 (Thereupon, the hearing was adjourned at
22 4:49 p.m.)

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1 CERTIFICATE

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

7
8

Karen Sue Gibson,
Registered Merit Reporter.

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10 (KSG-5539)

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Case No(s). 12-1230-EL-SSO

Summary: Transcript of the Application of The Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company hearing held on 06/05/12 - Volume II electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.