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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

- - -

PROCEEDINGS

before Christine M.T. Pirik and Katie L. Stenman,  
Attorneys Examiner, at the Public Utilities Commission  
of Ohio, 180 East Broad Street, Room 11-D, Columbus,  
Ohio, called at 10:00 a.m. on Thursday, June 7, 2012.

- - -

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APPEARANCES:

Duke Energy Ohio, Inc.  
By Amy B. Spiller, Esq.  
Deputy General Counsel  
and Elizabeth H. Watts, Esq.  
Associate General Counsel  
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Cincinnati, Ohio 45201-0960

On behalf of the Company.

Boehm, Kurtz & Lowry  
By David F. Boehm, Esq.  
36 East Seventh Street, Suite 1510  
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On behalf of Ohio Energy Group.

Ohio Environmental Law & Policy Center  
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On behalf of the Ohio Environmental  
Council.

Ohio Partners for Affordable Energy  
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On behalf of Ohio Partners for Affordable  
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On behalf of the Residential Consumers of  
Duke Energy Ohio.

1 APPEARANCES (Continued):

2 Williams, Allwein & Moser, LLC  
3 By Christopher J. Allwein, Esq.  
4 1373 Grandview Avenue, Suite 212  
5 Columbus, Ohio 43212

6 On behalf of Natural Resources Defense  
7 Council.

8 Mike DeWine, Ohio Attorney General  
9 William L. Wright, Section Chief  
10 Public Utilities Section  
11 By Devin D. Parram, Esq.  
12 Assistant Attorney General  
13 180 East Broad Street, Sixth Floor  
14 Columbus, Ohio 43215-3793

15 On behalf of the Staff of the Public  
16 Utilities Commission of Ohio.

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1 Thursday Morning Session,  
2 June 7, 2012.

3 - - -

4 ATTORNEY EXAMINER PIRIK: We'll go on the  
5 record. This is the reopening of the case of  
6 11-4393-EL-RDR in the Matter of the Application of Duke  
7 Energy, Ohio, Inc. for an Energy Efficiency Cost  
8 Recovery Mechanism and for Approval of Additional  
9 Programs for Inclusion in its Existing Portfolio.

10 Since we've been in recess for a period of  
11 time, we're going to go through and call for  
12 appearances on behalf of the parties that are present  
13 today, starting with the Company.

14 MS. WATTS: Thank you, your Honor. Good  
15 morning. On behalf of Duke Energy Ohio, Amy B. Spiller  
16 and Elizabeth Watts, 139 East Fourth Street,  
17 Cincinnati, Ohio. I'm sorry, I don't have the ZIP for  
18 that -- 45202.

19 ATTORNEY EXAMINER PIRIK: Then we'll just go  
20 around the table, starting with Miss Mooney.

21 MS. MOONEY: On behalf of Ohio Partners for  
22 Affordable Energy, Colleen Mooney, 231 West Lima  
23 Street, Findlay, Ohio.

24 MS. LOUCAS: Cathryn Loucas, C-a-t-h-r-y-n  
25 L-o-u-c-a-s, with the Ohio Environmental Council, 1207

1 Grandview Avenue, Columbus 43212.

2 MR. ALLWEIN: Good morning, your Honors. On  
3 behalf of the Natural Resources Defense Council,  
4 Christopher J. Allwein of Williams, Allwein & Moser,  
5 1373 Grandview Avenue, Suite 212, Columbus, Ohio  
6 43212.

7 MR. PARRAM: Good morning, your Honors. On  
8 behalf of the Staff of the Public Utilities Commission  
9 of Ohio, Ohio Attorney General, Mike DeWine, Section  
10 Chief William Wright, by Assistant Attorney General  
11 Devin D. Parram, 180 East Broad Street, Sixth Floor,  
12 Columbus, Ohio 43215.

13 MS. YOST: Good morning, your Honors. On  
14 behalf of the Office of the Ohio Consumers' Counsel,  
15 Bruce J. Weston, Consumers' Counsel, Melissa Yost and  
16 Kyle Kern, 10 West Broad Street, Suite 1800, Columbus,  
17 Ohio 43215.

18 MR. BOEHM: Good morning, your Honor. My  
19 name is David Boehm. I'm with the law firm of Boehm,  
20 Kurtz & Lowry, appearing on behalf of the Ohio Energy  
21 Group. Our address is 36 East Seventh Street,  
22 Cincinnati, Ohio 45202.

23 ATTORNEY EXAMINER PIRIK: That's everyone who  
24 is here. We'll return to the Company now. I believe  
25 you have a witness.

1 MS. WATTS: Yes, your Honor, we do. We call  
2 Timothy J. Duff.

3 May I approach?

4 ATTORNEY EXAMINER PIRIK: Yes. Let me swear  
5 him in first. Even though I know you've been here  
6 before, please raise your right hand.

7 TIMOTHY J. DUFF,  
8 being first duly sworn, as prescribed by law, was  
9 examined and testified as follows:

10 ATTORNEY EXAMINER PIRIK: Please be seated.

11 MS. WATTS: Your Honor, I have flavors.  
12 Would you like double-sided or single-sided?

13 ATTORNEY EXAMINER PIRIK: It doesn't matter.  
14 Single-sided would be fine.

15 MS. WATTS: It might be easier to read. Your  
16 Honor, may we have that marked as Duke Energy Ohio  
17 Exhibit 10?

18 ATTORNEY EXAMINER PIRIK: The document is so  
19 marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 DIRECT EXAMINATION

22 By Ms. Watts:

23 Q. Mr. Duff, do you have before you what has  
24 just been marked as Duke Energy Ohio Exhibit 10?

25 A. I do.



1 Q. Could you identify that, please?

2 A. It is the Second Supplemental Direct  
3 Testimony of Timothy J. Duff, myself.

4 Q. And would you -- you just did identify  
5 yourself. Was this prepared under your direction or by  
6 you?

7 A. Yes, it was.

8 Q. Do you have any additions or changes to that?

9 A. Yes. The date on the cover should be May  
10 30th, 2012, not 2011.

11 Q. Thank you. Any other additions or  
12 corrections?

13 A. Not to my knowledge.

14 Q. If I were to ask you the questions contained  
15 therein again today, would your answers be the same?

16 A. Yes.

17 MS. WATTS: Mr. Duff is available for  
18 cross-examination.

19 ATTORNEY EXAMINER PIRIK: Thank you. We will  
20 proceed around the table, unless there is some other  
21 preference.

22 MR. BOEHM: Your Honor, I have a motion to  
23 strike. Would it be appropriate to take that up now?

24 ATTORNEY EXAMINER PIRIK: Yes.

25 MR. BOEHM: Your Honor, on behalf of the Ohio

1 Energy Group, we move to strike the testimony of Mr.  
2 Duff. The copy I have doesn't have lines on it, so  
3 mine is Page 11, with the question, "Please describe  
4 the incentive mechanism that the Commission has  
5 approved previously." This refers to the incentive  
6 mechanism in the AEP case and in particular 11-50 -- I  
7 guess it's 11-5568 and 11-5569, and the testimony goes  
8 on to Page 12, and my motion is to strike the testimony  
9 beginning with the question, Please describe the  
10 incentive mechanism . . .," and it goes to strike all of  
11 the material on Page 12 and the remaining material on  
12 Page 13, the rest of that answer, the first two lines,  
13 and the reason I move to strike it is in the dockets  
14 referred to in that case there was a Stipulation which  
15 was approved by the Commission, and that Stipulation is  
16 similar to ones that I'm sure you're very aware of in  
17 these cases, says nothing, and that Stipulation can be  
18 used and cited as a precedent in any other case, and  
19 the Commission Staff was a party to this. We were a  
20 party to it. I don't know if the Company was a party  
21 to this, but even if they weren't a party, the  
22 Stipulation says, in part, More specifically, no  
23 specific element or item contained in or supporting  
24 this stipulation can be construed or applied to  
25 attribute the results set forth in this Stipulation as

1 the results that any signatory party might seek or  
2 support for this stipulation in these proceedings or  
3 any other proceedings, et cetera. It goes on to say  
4 that -- essentially that's a black box settlement, and  
5 there's different parts. The Commission cannot  
6 consider this. No party can cite it, and so for that  
7 reason, we ask to strike the testimony of Mr. Duff  
8 because he cites it as a precedent.

9 ATTORNEY EXAMINER PIRIK: Response?

10 MS. WATTS: Your Honor, the information  
11 contained here is in direct response to a question  
12 posed by the Commission, and, in fact, it is not cited  
13 as precedent in any respect, but is really merely  
14 descriptive of the information contained in the earlier  
15 case and how that matches up to this case, and there  
16 isn't any really -- there's no issue in contention  
17 here. All of the parties to this proceeding, so far as  
18 I know, agree that the energy efficiency earnings are  
19 contained within the SEET test for purposes of Duke  
20 Energy Ohio, and no one is contesting that; so I think  
21 it's merely descriptive. It's not offered for a  
22 precedent, and I think it's reasonable to leave it in.

23 ATTORNEY EXAMINER PIRIK: Was Duke a party in  
24 the AEP case cited?

25 MS. WATTS: Yes.

1 MS. YOST: Your Honor, if I may, I believe  
2 OCC was also a signatory party to that Stipulation. We  
3 were unaware of OEG's motion, and we would like some  
4 time to take a look at it before we comment on the  
5 motion.

6 ATTORNEY EXAMINER PIRIK: That will be fine.  
7 Five minutes or --

8 MS. YOST: That would be great.

9 ATTORNEY EXAMINER PIRIK: We'll take a  
10 five-minute break. We're not taking a break-break, but  
11 we'll go off the record for five minutes.

12 MR. BOEHM: I'd like an opportunity to speak  
13 again.

14 ATTORNEY EXAMINER PIRIK: No, we're not done  
15 yet, Mr. Boehm. We'll go off the record for five  
16 minutes, and any other party can comment.

17 (Discussion off the record.)

18 ATTORNEY EXAMINER PIRIK: We'll go back on  
19 the record. I think you had a clarification.

20 MS. WATTS: Yes, your Honor. Thank you. I  
21 misspoke earlier. This case that's referred to in Mr.  
22 Duff's testimony with respect to AEP in its energy  
23 efficiency docket, Duke Energy Ohio is not a party in  
24 that case.

25 ATTORNEY EXAMINER PIRIK: Would any other

1 party like to make a statement?

2 MS. YOST: Yes, your Honor. I appreciate the  
3 time for OCC to review the Stipulation and  
4 Recommendation, the basis of OEG's motion to strike,  
5 which was signed in Case No. 11-5568. OCC was a  
6 signatory party to the Stipulation. It's my  
7 understanding that the Commission adopted that  
8 Stipulation in its entirety, and, therefore, OCC has a  
9 duty to comply with the terms that we agreed with in  
10 that case, and I will also add that under Section XI,  
11 Procedural Matters, Paragraph 1, which OEG cites for a  
12 portion of -- cites for support of their motion, I will  
13 also add that that sentence reads, "Except for  
14 enforcement purposes, neither this Stipulation nor the  
15 information and data contained herein or attached  
16 hereto shall be cited as a precedent in any future  
17 proceeding for or against any Signatory Party, or the  
18 Commission itself, if the Commission approves the  
19 Stipulation."

20 Again, OCC was a signatory party. Our  
21 understanding is the Commission approved the  
22 Stipulation in its entirety, and we feel like we have a  
23 duty to comply with the terms that we agreed to in that  
24 case, and, therefore, we join OEG's motion to strike.  
25 Thank you.

1           ATTORNEY EXAMINER PIRIK: Mr. Allwein.

2           MR. ALLWEIN: Your Honor, if I may, I believe  
3 Natural Resources -- no, I don't believe. Natural  
4 Resources Defense Council was a signatory party, and  
5 while we agree on the interpretation of the precedent,  
6 we feel that this is just an illustration of an  
7 industry standard and what is going on elsewhere and to  
8 just provide an example of how mechanisms like this are  
9 constructed, and so we don't think that it should be  
10 struck in terms of providing just an illustration of  
11 how shared-savings mechanisms work in general in the  
12 industry.

13           MR. BOEHM: Your Honor, if I may address it  
14 one more time, please.

15           ATTORNEY EXAMINER PIRIK: Mr. Boehm.

16           MR. BOEHM: I think your Honor knows how  
17 often this sort of language is invoked in settlements  
18 and how important it is that parties enter into these  
19 settlements, and I think how potentially devastating an  
20 interpretation such as that urged by Duke today would  
21 have on those settlements. One would have no assurance  
22 that some other party who wasn't present in the  
23 courtroom would throw this up to one in another  
24 proceeding. It would have an extremely adverse,  
25 chilling effect on settlements in the future. This is

1 the very reason why that language is there, and just  
2 because somebody didn't happen to be a party in that  
3 case, I think it guts the intention and purpose of the  
4 language to allow this in.

5 ATTORNEY EXAMINER PIRIK: Any response, Miss  
6 Watts?

7 MS. WATTS: Yes. Thank you, your Honor.  
8 With due respect to Mr. Boehm, since Duke Energy Ohio  
9 was not a party to this case, to the AEP energy  
10 efficiency docket, Duke Energy Ohio is not bound by any  
11 agreement between the parties to that Stipulation, so I  
12 think our use of this as precedent or otherwise is  
13 perfectly fair.

14 ATTORNEY EXAMINER PIRIK: Any other  
15 responses?

16 The Bench finds that without ruling on the  
17 actual interpretation of the language that is the AEP  
18 case cited in Mr. Duff's testimony, in light of the  
19 fact that Duke was not a party to that Stipulation and  
20 cannot be bound by what those parties agreed to, we  
21 find that the motion to strike should be denied.  
22 However, I would also note that the information cited  
23 to is a public document filed here at the Commission;  
24 so, again, we are not ruling on or interpreting the  
25 language that is within the context of that Stipulation

1 in making this ruling, but we are denying the motion to  
2 strike.

3 Are there any other motions?

4 Okay. Ms. Watts.

5 MS. WATTS: Your Honor, I believe Mr. Boehm  
6 was questioning Mr. Duff.

7 ATTORNEY EXAMINER PIRIK: That's correct.

8 MR. BOEHM: I'm up first?

9 ATTORNEY EXAMINER PIRIK: Well, no. We were  
10 starting over here with Miss Mooney, and then we were  
11 going to go around the table in this direction.

12 MS. MOONEY: I have no questions, your  
13 Honor.

14 ATTORNEY EXAMINER PIRIK: Thank you.

15 Are there any questions, Miss Loucas?

16 MS. LOUCAS: No, not for Mr. Duff, your  
17 Honor. Thank you.

18 ATTORNEY EXAMINER PIRIK: Mr. Allwein.

19 MR. ALLWEIN: I have no questions for Mr.  
20 Duff. Thank you, your Honor.

21 MR. PARRAM: No questions, your Honor.

22 MS. YOST: No questions, your Honor.

23 MR. BOEHM: I have some questions.  
24  
25



## CROSS-EXAMINATION

1  
2 By Mr. Boehm:

3 Q. Good morning, Mr. Duff.

4 A. Good morning, Mr. Boehm.

5 Q. Welcome back to Columbus.

6 A. Thank you.

7 Q. I have in front of me the Second Supplemental  
8 Direct Testimony of Timothy Duff filed in this case,  
9 and I have a few questions for you, Mr. Duff. Is it  
10 your proposal in this case, Mr. Duff, that the  
11 incentive that is the subject of this mini hearing, if  
12 you will, it is Duke's position that that incentive  
13 should apply to all energy efficiency once the company  
14 exceeds a hundred percent?

15 A. You'll have to kind of get a little bit more  
16 definitive with your question, because I think there's  
17 multiple ways that the impacts associated with the  
18 company's approved programs, as well as those that are  
19 done through the Self Directed Mercantile Program will  
20 be factored in, and those were spelled out in my  
21 initial direct testimony.

22 Q. Let's go to your Page 8, then, if you will,  
23 please. The question is, "Should Duke Energy ...  
24 incentive be limited to performance that exceeds the  
25 annual statutory benchmarks?" Answer: "The Company

1 does not believe that its incentive should be limited  
2 to performance that exceeds the annual statutory  
3 benchmark." Then, on the next page, you talk about  
4 how -- if, in fact, the incentive only applied to --  
5 you call it "over-achievement" of the statutory  
6 benchmarks, that in the scenario that you set forth,  
7 the Company would only have an incentive of \$352,520 on  
8 a -- I think you called it the "spend" of, what,  
9 \$4,477,041? Is that not the spend?

10 A. No. The spend would be -- is over \$25  
11 million, and that's consistent with Attachment 1 in  
12 witness Jim Ziolkowski's testimony and the direct  
13 testimony filed in this case.

14 Q. Then isn't it true that you go on and  
15 propose -- like on page -- you go on to propose that  
16 once the hundred percent benchmark is reached, that the  
17 incentive applies to everything before and after that  
18 hundred percent?

19 A. What I -- what the incentive structure that  
20 was proposed by the Company was -- is proposing to do  
21 is that once the Company exceeds its annual mandated  
22 targets, then the total amount of avoided costs  
23 associated with the entire portfolio would be eligible  
24 for the shared-savings calculation.

25 Q. So let's assume, then, in a particular year

1 that you achieve 99 percent of the --

2 A. Uh-huh.

3 Q. So at 99 percent, you don't get any  
4 incentives; right?

5 A. Unless the Company has banked achievement  
6 that it had never used for purposes of earning  
7 incentive, that is correct, or --

8 Q. Well, you --

9 A. Can I finish my answer, sir? Or the Company  
10 makes a filing consistent with the Commission's  
11 guidelines on why the benchmark target for that  
12 particular year was not able to be met. It's one of  
13 the conditions in 4901:1-39.

14 Q. Okay. Now let's assume, then, that now,  
15 instead of 99 in a particular year, you're 101  
16 percent. What do you get?

17 A. You would earn -- you would have the ability  
18 to earn the shared-savings incentive on the avoided  
19 costs associated with the energy impacts used to hit  
20 the 101 of the mandated benchmark target.

21 Q. All the way from zero up to a hundred; right?

22 A. The avoided costs, correct.

23 Q. And so that one percent or that two percent  
24 is a very important number, isn't it?

25 A. With respect to overcomplying with the

1 mandate and having the ability to earn incentive, yes.

2 Q. Now let's talk about the \$25 million spend  
3 you're talking about. Whose spend is that?

4 A. That's the Company's spend on energy  
5 efficiency programs approved by the Commission.

6 Q. Okay.

7 A. And that's a projection.

8 Q. All right. Does the Company recover this  
9 spend from anybody?

10 A. It is proposing to recover those costs from  
11 shareholders.

12 Q. From shareholders?

13 A. Or, I'm sorry, from -- from different  
14 customer classes.

15 Q. Ratepayers?

16 A. Yes, correct.

17 Q. So it's the ratepayers' spend? It's not the  
18 Company's spend?

19 A. Correct. I believe I didn't say it was the  
20 Company's spend. I said on a spend of.

21 Q. So can you tell me why the Company's  
22 incentives should be measured as a portion of the  
23 ratepayers' spend?

24 A. Why the Company -- just as -- just as when  
25 you make an investment on behalf of the utility and

1 collect those charges from customers, you're allowed to  
2 earn a return. The goal of an energy efficiency  
3 incentive is to put the demand-side resources on a  
4 level playing field with supply-side resources, so  
5 that's exactly why.

6 Q. Now, Mr. Duff, you talk about an investment  
7 in infrastructure. Let's go back to Utility 101, okay,  
8 and explore this. Now let's say the Company builds a  
9 power plant; all right? And they spend \$2 billion on  
10 the power plant. Do they get all of that money  
11 immediately from the ratepayer?

12 A. It would depend on the regulatory situation  
13 in the state with respect to how it was approved and  
14 how it works. I mean, I don't think --

15 Q. Let's say it's AFUDC, an AFUDC to a --

16 A. Mr. Boehm, you're asking me to testify to  
17 something beyond anything I know in particular  
18 regarding to what the situation or what the rules are.  
19 I'm sorry, I've not taken your course Utility 101 to  
20 know what you're referencing, but I would be very  
21 cautious in answering any question based off of a  
22 statement of let's just assume you build a plant and  
23 how is it going to get treated. I think that varies  
24 across the country, and even within states for  
25 particular projects it can vary.

1 Q. Are you finished with your answer?

2 A. Yes, I am.

3 (Discussion off the record.)

4 Q. It was you, Mr. Duff, that used the analogy,  
5 if I recall, about an infrastructure investment and how  
6 this is going to be similar to making an investment in  
7 infrastructure, didn't you?

8 A. You asked me why, and I said similar to  
9 investments on infrastructure.

10 Q. Okay. So now I'm talking about investments  
11 in infrastructure. You raised the topic.

12 A. But, Mr. Boehm, I could have been referring  
13 to distribution investment, which is actually what  
14 would be most -- most pragmatic in the State of Ohio.

15 Q. Let me ask the question like this, Mr. Duff,  
16 isn't it true that in traditional utility ratemaking  
17 there's at least two ways to finance things. One is  
18 that the company makes an investment, usually in  
19 infrastructure, and it's an investment that's amortized  
20 over 20 or 30 years, and so the company earns a rate of  
21 return on the money that they have in that investment.  
22 They earn, you know, a rate of return on equity, on  
23 that money, because they're out that money over a  
24 series of years, and that's -- that's what a rate of  
25 return is typically applied to, isn't it?

1           A.    I believe in some jurisdictions, that is  
2 correct.

3           Q.    Another way to finance things, for instance,  
4 like fuel, is to expense it, and so you spend money on  
5 fuel, but you get that money back in a very short  
6 period of time, don't you?

7           A.    Again, I think that varies by jurisdiction,  
8 so I can't really answer your question.

9           Q.    Can you name a jurisdiction that allows a  
10 rate of return on expenses?

11          A.    Yes.

12          Q.    What jurisdiction?

13          A.    Ohio, in energy efficiency.

14          Q.    You're trying to urge that; right?

15          A.    No.  It's been done -- it's been done in the  
16 past for the Company as well as for other utilities,  
17 Mr. Boehm.

18          Q.    Other utilities?

19          A.    Yes.

20          Q.    We're back to AEP?

21          A.    That is the one that I cited because that's  
22 the one I'm familiar with, correct.

23          Q.    Can you tell me why it is that a company  
24 that's going to get their money almost  
25 contemporaneously with the spend should get a rate of

1 return on that money?

2 A. Mr. Boehm, the Commission has deemed that  
3 fair in the past for Duke Energy Ohio as well as its  
4 predecessor company and has deemed it appropriate for  
5 AEP, as I stated is my general awareness.

6 Q. And that's your position, and it's my  
7 position that it's not appropriate; so let's talk about  
8 reasons why that should be so. Let's talk about good  
9 economic reasons why that makes sense.

10 A. Mr. Boehm, you asked me a question. It was  
11 are you aware of any costs that the Company is allowed  
12 to earn return on, and I cited examples both from the  
13 Company as well as from another utility. You haven't  
14 asked me any further questions.

15 Q. Okay. Let me ask you a further question,  
16 then. Can you give me --

17 MS. WATTS: Your Honor --

18 ATTORNEY EXAMINER PIRIK: Miss Watts.

19 MS. WATTS: Pardon me, if I can interrupt.

20 It appears that we've gone into a phase of argument  
21 here as opposed to question and answer, and I'd like to  
22 ask Mr. Boehm, would you please, rather than argue with  
23 the witness, frame a question and allow the witness to  
24 answer that question; so I have an objection.

25 ATTORNEY EXAMINER PIRIK: Thank you. We



1 would agree, so go ahead and pose your question.

2 MR. BOEHM: I will attempt to do that.

3 Q. For instance, Mr. Duff, can you tell me why a  
4 company should receive a rate of return on fuel?

5 A. That's not what I testified to here today.

6 Q. I understand --

7 Your Honor, one of our problems is that the  
8 witness -- I'm trying to form some analogies and  
9 metaphors to what the Company wants to propose here,  
10 and I am being told in each case that that's not what  
11 he's testifying to today. I think I should be accorded  
12 a little latitude in my cross-examination.

13 ATTORNEY EXAMINER PIRIK: I think, Mr. Boehm,  
14 if you pose the question, and, Mr. Duff, if you can  
15 answer the question. If for some reason it's not  
16 clear, then you can ask for clarification.

17 THE WITNESS: Your Honor, I guess I --

18 ATTORNEY EXAMINER PIRIK: Can you just please  
19 try to answer his question?

20 THE WITNESS: Okay. Yes.

21 ATTORNEY EXAMINER PIRIK: Thank you.

22 A. Mr. Boehm, I am not an expert on fuel  
23 recovery.

24 MS. WATTS: There's no question pending.

25 MR. BOEHM: There's no question pending, Mr.

1 Duff.

2 ATTORNEY EXAMINER PIRIK: Can you reread the  
3 question, the last one?

4 MR. BOEHM: Your Honor, let me try and  
5 rephrase it.

6 ATTORNEY EXAMINER PIRIK: Okay. Thank you.  
7 By Mr. Boehm:

8 Q. Let me go back. I'd like you to give me an  
9 economic or financial reason why the Company should  
10 earn a rate of return on an expense, don't cite a  
11 statute, give me an economic reason why that should be  
12 so.

13 A. I'm not testifying on economic justification,  
14 and so I don't know how I can testify to that. I know  
15 what the statute permits and that's -- and what the  
16 Company has been permitted by the Commission in the  
17 State of Ohio, and that's what I'm testifying to. I  
18 guess that's why I'm struggling to answer your  
19 question. I'm not trying to be difficult, but you're  
20 asking me to testify about things that are outside of  
21 energy efficiency, which is what I believe the limited  
22 purpose of this hearing was for.

23 Q. Is it your interpretation, Mr. Duff, that the  
24 statute requires you to get a rate of return on your  
25 incentive -- or in your energy efficiency? Is that

1 your testimony?

2 A. That is not my understanding, no.

3 Q. Okay. So the Commission has discretion?

4 A. That's correct.

5 Q. And so what we're talking about today is  
6 whether and to what extent the Commission should  
7 exercise that discretion; right?

8 A. And I answered you that they have in the past  
9 and that's why we think it is appropriate going  
10 forward.

11 Q. But that's your only reason today as to why  
12 you think the Company ought to get a rate of return on  
13 its expenses; right?

14 A. No. Energy efficiency delivers a long-term  
15 system benefit, and the Company is asking to share in a  
16 portion of that long-term benefit that all customers  
17 will benefit from.

18 Q. And, in fact, that all customers are paying  
19 for on a current basis; isn't that true?

20 A. Not necessarily. If a customer has opted  
21 out, they potentially would not have to pay those  
22 costs, sir.

23 Q. Everybody who hasn't opted out pays; right?

24 A. That is correct.

25 Q. On a current basis?

1 A. No. On a projected basis.

2 Q. But say on a lag basis, on a six-month lag or  
3 so; right?

4 A. I believe that's correct, yes.

5 Q. And when you get your money for, say, fuel,  
6 that's on a lag basis, also, isn't it?

7 A. Again, I don't know. I'm not an expert on  
8 how we recover fuel, and I don't even believe that the  
9 Company recovers fuel charges in -- under its current  
10 rate structures.

11 Q. Would you agree with me, Mr. Duff, that the  
12 spend, if you will, on energy efficiency is not an  
13 investment --

14 A. I disagree with --

15 Q. -- in traditional utility terms?

16 A. In the definition that you're putting  
17 forward, yes, but I don't agree with that definition.

18 Q. Isn't it true, Mr. Duff, that in the year  
19 2010, that the Company overachieved its energy  
20 efficiency goals by 487 percent?

21 A. I would have to have the numbers in front of  
22 me. I don't -- that could be approximately correct. I  
23 don't know if you're taking into account the banked  
24 achievements from prior to '08 that the Commission's  
25 guidelines allowed for purposes of meeting a compliance

1 target; so I'd have to see the numbers, but --

2 Q. In any event, it's your testimony that you  
3 should be allowed to apply them; right?

4 A. With respect to meeting our S.B. 221  
5 mandates, we believe, and we filed such in our Status  
6 Reports, that those -- that those mandates are -- meet  
7 the requirements to be included in the Status Reports.

8 Q. Can you give me an estimate about what your  
9 incentive payments would be if the rule that you now  
10 hope to --

11 A. No.

12 Q. -- that you now are urging on this Commission  
13 were applied, can you tell me what your incentive  
14 payments would be?

15 A. No, I cannot. I've not done that analysis.

16 Q. Okay. I'd like to refer you to Page 13 of  
17 your testimony where you were asked to explain why  
18 there shouldn't be a cap on the incentive structure  
19 here. Do you see that?

20 A. Yes.

21 Q. You say placing a cap is counterintuitive  
22 because it sends the message to a company to stop  
23 delivering energy efficiency --

24 A. Correct.

25 Q. -- is that right?

1           Is there a statute in the State of Ohio that  
2 says you must deliver energy efficiency?

3           A.    Yes.

4           Q.    Does it say you only have to deliver energy  
5 efficiency if you get an incentive?

6           A.    Not to my knowledge.

7           Q.    So what sort of signal do you think that  
8 statute sends to the Company?

9           A.    The statute lays out the rules that the  
10 electric distribution utilities in the State of Ohio  
11 are required to -- with a few exceptions, based off  
12 what I said earlier about that you can file a report  
13 saying you didn't -- hitting a certain annual level of  
14 energy efficiency, and for that, if the Commission  
15 deems it appropriate, as they have in the past, the  
16 Company can get cost recovery, shared savings, and the  
17 recovery of lost revenues.

18          Q.    Let's assume that the Commission doesn't deem  
19 it appropriate. Is the Company relieved of its  
20 obligation to provide energy efficiency?

21          A.    I don't believe so.

22          Q.    So what the Company is asking for is the  
23 ratepayers to pay for the Company doing something it's  
24 already obliged to do by law; isn't that true?

25          A.    No. It's incenting it to overachieve, past

1 the annual benchmarks. The Company -- if the Company  
2 has not exceeded the mandates set forth, then it would  
3 not be entitled to a percentage and sharing of the  
4 avoided cost savings.

5 Q. Don't you think that if the legislature  
6 thought that the Company ought to achieve more than the  
7 numbers they have down in the mandate that that would  
8 have been reflected in the level of the mandates?

9 A. I believe that's why it says if you exceed  
10 the mandates, you're eligible for incentive.

11 Q. Don't you think that the legislature, if they  
12 thought that that was a good thing, would have raised  
13 the mandates?

14 MS. WATTS: Objection, your Honor. I don't  
15 think Mr. Duff is here to speak on behalf of the Ohio  
16 General Assembly.

17 ATTORNEY EXAMINER PIRIK: Mr. Boehm.

18 MR. BOEHM: I'll withdraw the question.

19 ATTORNEY EXAMINER PIRIK: Thank you.

20 Q. What you propose, Mr. Duff, is that once the  
21 Company achieves a hundred percent of its mandates,  
22 that it gets an incentive on everything, even the part  
23 that it is required by law to provide; right?

24 A. The net benefit, yes.

25 Q. Okay. So once you hit that, and the Company,

1 I guess, would be foolish not to try to get that, you  
2 get incentives on everything that the law says you have  
3 to provide; right?

4 A. Well, it depends. I guess -- we get an  
5 incentive based off of the system savings associated  
6 with those impacts used to hit compliance, that's  
7 correct.

8 Q. You're required by law to provide those up to  
9 the number set forth in the mandates; right?

10 A. The mandates require, yes.

11 Q. And what the Company wants to do today is  
12 they want to get an incentive for doing what the law  
13 tells them they have to do; right?

14 A. That's not true, Mr. Boehm. What I've said  
15 is we're trying to seek an incentive that promotes us  
16 to deliver as much energy efficiency as possible in the  
17 most cost-effective manner possible.

18 Q. And to make money on it?

19 A. We have asked for an incentive to do so,  
20 that's correct.

21 Q. One moment.

22 (Discussion off the record.)

23 Q. Just a couple of questions, Mr. Duff. I know  
24 we've known each other for a long time, but I don't  
25 remember what you used to testify about before you got



1 to incentive ratemaking. What was your prior position  
2 before you were put in charge of the incentive  
3 ratemaking, Mr. Duff?

4 A. Well, I'll caveat that and say I'm not in  
5 charge of incentive ratemaking.

6 Q. I just gave you a promotion. Enjoy.

7 A. My role is the General Manager of Retail  
8 Customer and Regulatory Strategy, and I do have  
9 responsibility associated with the different incentive  
10 structures that we have in our five jurisdictions  
11 associated with energy efficiency as well as getting  
12 regulatory approvals associated with other retail  
13 products and services. Prior to that role, I was  
14 working in our Federal Regulatory Policy Group.

15 Q. And I don't remember, did you ever testify in  
16 any rate cases?

17 A. I have not.

18 MR. BOEHM: Your Honor, that's all the  
19 questions I have. Thank you.

20 Thank you, Mr. Duff.

21 ATTORNEY EXAMINER PIRIK: Miss Watts.

22 MS. WATTS: May we have a moment, your  
23 Honor?

24 ATTORNEY EXAMINER PIRIK: Yes.

25 (Discussion off the record.)

1 MS. WATTS: We have no redirect, your Honor.  
2 Thank you.

3 EXAMINATION

4 By Attorney Examiner Stenman:

5 Q. Mr. Duff, I have just a couple of questions  
6 for you. Can you turn to Page 9 of your testimony?

7 A. Certainly.

8 Q. This is just a clarification. At one point  
9 you reference the 7.5 percent incentive, and then four  
10 lines below that you reference a 7.9 percent. Is that  
11 a typo or --

12 A. No. Let me explain. What I was trying to do  
13 was say that if you were just allowing the Company to  
14 recognize the avoided costs above the mandated amount,  
15 which is -- it's actually -- the 7.5 percent is the  
16 incentive level under the tiered savings that was  
17 proposed, and what I was doing was saying that under  
18 that 7.5 percent, and it was in Jim Ziolkowski's  
19 Attachment 1, the projected incentive amount would be  
20 \$4,477,041, and the 7.9 is -- equates to the 352. The  
21 352,520 is 7.9 percent of the 4.5 million. So what  
22 it's saying is that if you only allow the Company to  
23 get a shared savings on the net benefits above the  
24 mandated targets, then it would be 7.9 percent of the  
25 incentive that it would have been able to earn had it

1 been able to earn the entire amount. I apologize for  
2 the confusion.

3 Q. Mr. Boehm asked you about Duke's compliance  
4 in 2010 and just approximating or assuming that the  
5 Company did achieve 487 percent of its benchmarks in  
6 2010. If you assume 487 percent of the benchmarks,  
7 using the numbers referenced in Ziolkowski Attachment  
8 1, what kind of incentive would the Company earn under  
9 that scenario?

10 A. Well, I guess I would want to kind of clarify  
11 the answer. I believe in 2010 we achieved  
12 approximately 310 million kWh of energy efficiency  
13 savings, and in -- but those mandates ramp up, so I  
14 believe the target in 2012 is approximately 171 million  
15 kWh. Again, it's a three-year average, so it's a  
16 little bit difficult to projected a number, but I would  
17 also caveat that if you note in our 2012 compliance  
18 filing, the number actually went down from that over  
19 300 million number to just over 200 million kWh; so  
20 given penetration in market and market conditions, the  
21 amount of annual energy efficiency you can get will  
22 vary drastically, especially when you look at things  
23 that have dominated the market, such as lighting  
24 measures, and lighting standards are changing, the  
25 opportunity for cost-effective energy efficiency goes

1 down; so, as I mentioned earlier, getting those savings  
2 earlier towards the mandated targets actually behooves  
3 customers, because it's more cost effective than what  
4 would have to be done in the future.

5 Q. Which I completely understand, but even  
6 assuming all of that, if they had -- if you had  
7 achieved the 487-percent compliance with the  
8 benchmarks, based on these 2012 numbers, what kind of  
9 incentive would you be looking at?

10 A. Without knowing -- again, it's difficult,  
11 because I don't know what the -- in order to calculate  
12 the incentive, you have to know what the avoided costs  
13 and the program spend was, and that --

14 Q. Assuming the Attachment 1's numbers --

15 A. Well, again, can I -- and I can't tell you  
16 exactly what that is, because I'd have to do the math,  
17 but if you look at the calculations I did for -- in  
18 Page 8, on the range of revenues, what I did was -- and  
19 if you'll note the Company's current projected spend  
20 and avoided costs, we would only be at -- not even at  
21 the highest level of incentive. We're only projecting  
22 to overachieve by 8.5 percent. Again, obviously, those  
23 mandated numbers have gone up considerably, but  
24 following a linear assumption that the net benefit  
25 stays constant for all those impacts above compliance,

1 the target would be -- if we achieved 115 percent, it  
2 would be the \$8.2 million. I would have to know what  
3 the avoided cost savings were from the entire portfolio  
4 as well as the spend to get there in order to calculate  
5 that number. I'm not trying to be evasive. I just  
6 need more than just a number of kWh. I would need to  
7 know what costs were spent and what avoided cost were  
8 there.

9 Q. Okay. And so you're saying that based on  
10 these numbers in Ziolkowski Attachment 1, that the  
11 maximum incentive would be \$8.2 million?

12 A. If -- if we could even get there. Based off  
13 of projected impacts, yes, that's correct. Right now  
14 we're projecting, based off of impacts, and  
15 unfortunately we feel like we're a little bit behind  
16 because of -- because of some of the procedural delays,  
17 we're behind in trying to hit those numbers; so, you  
18 know, we're working to try and get just to earning the  
19 7 1/2 percent, which would equate to the \$4.5 million  
20 that we originally projected in the rider.

21 Q. This is a purely speculative question. What  
22 do you believe the maximum incentive that you could  
23 earn to be? And that doesn't have to be constrained to  
24 the Attachment 1 numbers.

25 A. I -- I would -- in terms of what we think we

1 can do? I will tell you that based off of what we have  
2 experienced in the market, I would think that our  
3 incentive range will likely be between four and five  
4 million and would likely go down over time, because,  
5 again, to Mr. Boehm's point, yes, we overachieved  
6 early, but that's -- the targets get more and more  
7 aggressive, so we've tried to take the approach, and  
8 we've been incentivized by previous Commission-approved  
9 mechanisms, to go out and get it early, so that when it  
10 gets more challenging and difficult and expensive, that  
11 we've already accomplished our ability to hit the  
12 annual compliance target; so we're projecting -- and  
13 the parties will agree to this, they were disappointed  
14 in our filing because we explained that right now,  
15 given our current portfolio and where the market is at,  
16 we're worried about hitting those future benchmarks,  
17 and so based off of the projections that we put in,  
18 into these attachments, since we kind of got some  
19 clarity on what was -- what was required, you'll see  
20 that we're short of the benchmarks in the future, so we  
21 need new product development, and we would very much  
22 like to get -- to kind of have the ability to tap into  
23 some of the Self Direct and mercantile customers that  
24 previously had been disincented to participate in our  
25 rates and programs.

1 Q. So you're projecting about a 4 to \$7 million  
2 incentive at least in the next coming years?

3 A. Yes.

4 Q. And yet you're opposed to a cap. Is there a  
5 level where we could set a cap, where you'd be  
6 comfortable with a cap on the incentive earnings?

7 A. And I didn't put that in the testimony, but  
8 if we were asked to have the same \$20 million cap that  
9 AEP would have -- I don't think that there's any way we  
10 could get to that cap level, in all honesty, because  
11 of -- just because of the increasing mandates and where  
12 the market is at. It was more of a theoretical problem  
13 we had with the cap, because when you get to a cap, in  
14 terms of what your incentive is, then it gets to Mr.  
15 Boehm's point of you don't care about cost  
16 effectiveness because you know what you're going to  
17 get, so you know if you can spend more money, where  
18 that's the beauty of a shared-savings incentive, is the  
19 more cost effectively and less you have to spend to get  
20 it, the more customers benefit and the more Company  
21 benefits -- the Company benefits; so to say it would be  
22 in the customers' best interest to cap the incentive is  
23 hard for me to do, because really they're getting 87  
24 percent of the benefit, and so if a cap goes up,  
25 they're -- if it was beyond what a capped amount would

1 be, the customers would be realizing more benefit; so  
2 that's why it's more of a theoretical issue. Like I  
3 said, from a practical standpoint, if the Commission  
4 said that a \$20 million cap, similar to what was in the  
5 AEP case, was imposed on us, we could live with that  
6 and think it would be fine, but we wanted to make --  
7 differentiate why, and that's why we, in our  
8 Stipulation, we did not include a cap, because,  
9 theoretically, it just didn't make sense from what we  
10 believe and what we think is in the best interest of  
11 customers.

12 Q. Okay.

13 MR. BOEHM: Your Honor, if I may, can I ask a  
14 few follow-up questions?

15 ATTORNEY EXAMINER PIRIK: Thank you. I have  
16 a question. No, no more questions.

17 EXAMINATION

18 By Attorney Examiner Pirik:

19 Q. I do have a question. Realizing -- I mean,  
20 if there was a cap, I know you said \$20 million with  
21 AEP is okay, but recognizing that AEP does have a  
22 larger customer base than Duke does, I would think that  
23 would need to be taken into consideration.

24 A. Right. And, again, I don't know what was the  
25 methodology for coming up with the \$20 million cap.



1 Again, though, as the mandates increase, you're going  
2 to be getting more, so the overall magnitude could go  
3 up, and so that's why they found and the parties to our  
4 case found a rationale to it. I'm just saying it's  
5 something that if -- that's the number I'm aware of  
6 that's out there as a cap. You know, I am aware of  
7 what was testified to by other parties, and I think  
8 that those fundamentally would stifle the drive to  
9 deliver additional energy efficiency in the most  
10 cost-effective manner, but in terms of the magnitude of  
11 the cap, I can't tell you \$20 million is right or  
12 wrong. I do believe that theoretically, in theory and  
13 philosophically with what it incents, the concept of  
14 the cap doesn't align with -- with what the goals of  
15 the mandates are.

16 Q. And recognizing that, and I recognize that's  
17 your argument, I'm saying that if there was going to be  
18 a cap put on it, and you mentioned \$20 million, I would  
19 think that it would be reasonable to at least  
20 acknowledge the fact or recognize the fact that the AEP  
21 customer base is larger than the Duke customer base for  
22 purposes of determining what that cap would be?

23 A. And I do acknowledge that that's --

24 Q. So would you agree that it would be  
25 reasonable at least to recognize the difference in the

1 customer base numbers?

2 A. I think recognizing a difference in the  
3 companies is appropriate, but it really ties to how  
4 much energy efficiency you're going to go out there and  
5 get. If you put a -- if you put a cap that's based --  
6 I don't know what their projections are in terms of  
7 rates, cost effectiveness, so I just -- I don't want to  
8 say yes, it makes sense to do it on a per-customer  
9 basis, because I don't really think that there's  
10 justification for that, but I understand what you're  
11 saying. A scaled cap makes -- could make some sense,  
12 yes.

13 Q. What other -- specifically, other than the  
14 level of customer base, what other factors, I guess,  
15 parameters would you look at in determining what --

16 A. The total number of impacts. I think you  
17 could look at it on an impact basis.

18 Q. Anything else? Total number of impacts?

19 A. That's what -- that's what comes up to my  
20 mind. Again, now, you've got to -- you've got to --  
21 because the programs include both DR and EE, it could  
22 get a little complicated in looking at it that way  
23 because now you're looking at both a kW and kWh  
24 factor. I really haven't given it a whole lot of  
25 thought, but I understand what your question is, and I

1 think you're making a valid point. I just don't know  
2 that AEP calculated \$20 million based off of customers  
3 as the justification for their cap. That's all I'm  
4 saying.

5 (Discussion off the record.)

6 Q. If we were to look -- I'm trying to find out  
7 in the record where we would look to actually find what  
8 those impacts would be if there was a need to determine  
9 what an appropriate cap was, and I'm not saying there  
10 is. Those are the questions we're asking, so -- but  
11 based upon your answer that it would be appropriate to  
12 look at the impacts, where would we look -- is there a  
13 place in this record we would find that information?

14 A. I think you could look out at the  
15 Company's -- in their compliance filing, you would look  
16 at where your projected mandate numbers are, so I think  
17 you could look at it on a projected mandate basis.

18 Q. And that would be in the recent portfolio  
19 report filing?

20 A. Yeah, I believe it's in the -- I can't speak  
21 to AEP's, because I haven't looked at --

22 Q. No. I'm just asking about Duke.

23 A. Yeah, Duke's, we have our -- we have our  
24 impacts in there, and I believe it looks out into the  
25 future in terms of what the mandates are, because I

1 think that would take -- that would take into account  
2 that -- a per customer's fix. It doesn't take into  
3 account that the mandates ramp up, but if you look at  
4 the three-year period, the kWh requirements and kW  
5 requirements ramp up, and so I think that that would be  
6 a more accurate way to gauge what the cap should be.

7           ATTORNEY EXAMINER PIRIK: Actually, that  
8 brings up a good point. I think we're done with our  
9 questions, but I did notice in your testimony on Page 5  
10 that there could be a request for administrative notice  
11 of the Portfolio Status Report, and I think that that  
12 appropriately would need to be a motion on behalf of  
13 counsel, if, in fact, that's a request, so that we can  
14 actually get feedback from the other parties; so I  
15 would ask, now that we're done with testimony, and  
16 thank you very much for testifying, and we're into the  
17 exhibit portion of it, if that was your intent, and it  
18 sounds like since that was a response to one of my  
19 questions, that we will need to have that referenced in  
20 the record.

21           MS. WATTS: Yes. Thank you, your Honor. We  
22 would ask that the Commission take into -- take  
23 administrative notice of Duke Energy Ohio's most recent  
24 Status Report, and I apologize because I don't have  
25 that case number reference.

1 ATTORNEY EXAMINER PIRIK: Is it 09-1999?

2 MS. WATTS: No. It would be --

3 ATTORNEY EXAMINER PIRIK: It's the new one.

4 MS. WATTS: Yes. It would be 12-1211 or --

5 MS. LOUCAS: No. That's Alternative Energy.

6 MS. WATTS: Your Honor, it's 12-1477-EL-EEC.

7 ATTORNEY EXAMINER PIRIK: Thank you. Is  
8 there any objection to administrative notice of the  
9 Status Report?

10 Hearing none, we will take administrative  
11 notice.

12 MS. WATTS: Your Honor, I would move into  
13 evidence Duke Energy Ohio Exhibit 10, please.

14 MR. BOEHM: Your Honor, we would renew our  
15 objection, our motion to strike.

16 ATTORNEY EXAMINER PIRIK: Any other  
17 objections?

18 Hearing none, and having ruled on the motion  
19 to strike, we will admit Duke Exhibit 10 into the  
20 record.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 (Witness excused.)

23 ATTORNEY EXAMINER PIRIK: Go off the record  
24 for a minute.

25 (Discussion off the record.)

1           ATTORNEY EXAMINER PIRIK: We'll go back on  
2 the record.

3           Mr. Kollen.

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

7           ATTORNEY EXAMINER PIRIK: Thank you.

8                           DIRECT EXAMINATION

9 By Mr. Boehm:

10           Q. Mr. Kollen, would you state your name and  
11 spell it for the court reporter.

12           A. Yes. My name is Lane Kollen, K-o-l-l-e-n.

13           Q. Mr. Kollen, I hand you -- or do you have in  
14 front of you a document that is titled Direct Testimony  
15 and Exhibits of Lane Kollen?

16           A. I do.

17           MR. BOEHM: And, your Honor, I'd ask that  
18 that be marked for identification as OEG Exhibit  
19 No. 7. Is that right?

20           ATTORNEY EXAMINER PIRIK: Yes. The document  
21 is so marked.

22                           (EXHIBIT MARKED FOR IDENTIFICATION.)

23           Q. Mr. Kollen, was that prepared by you or under  
24 your supervision?

25           A. Yes.

1 Q. And if I were to ask you the questions  
 2 contained therein, would your answers today be the  
 3 same?

4 A. Yes.

5 Q. And is the content of that testimony true and  
 6 correct, to your knowledge, information, and belief?

7 A. Yes.

8 Q. Do you have any corrections?

9 A. No.

10 MR. BOEHM: Your Honor, I'd submit the  
 11 witness for cross-examination.

12 ATTORNEY EXAMINER PIRIK: Thank you.

13 Ms. Watts.

14 MS. WATTS: Thank you, your Honor.

15 CROSS-EXAMINATION

16 By Ms. Watts:

17 Q. Good morning, Mr. Kollen.

18 A. Good morning.

19 Q. Mr. Kollen, is it fair to say that you're  
 20 pinch-hitting for Mr. Baron today?

21 A. I think that Mr. Baron has been a witness in  
 22 this proceeding, in a prior round of testimony, and I'm  
 23 here to represent the OEG in this round.

24 Q. Would you agree with me that you've not  
 25 testified on energy efficiency and peak demand

1 reduction matters before the Ohio Commission  
2 previously?

3 A. Yes, that's correct.

4 Q. In turning your attention, Mr. Kollen, to  
5 what has just been marked as OEG Exhibit --

6 I'm sorry, what did you say it was?

7 ATTORNEY EXAMINER PIRIK: Seven.

8 Q. Seven. You have attached to your testimony a  
9 listing of proceedings in which you've testified  
10 previously; correct?

11 A. Yes.

12 Q. And is it correct to say that with regard to  
13 those pages of previous testimonies, not any one of  
14 them deals with energy efficiency or peak demand  
15 reduction?

16 A. I thought that was true at my deposition, but  
17 I did find one. It was a case that we did discuss in  
18 my deposition. I didn't recall that I had put it in  
19 testimony. It was around the 1994 time period. On  
20 Page 9 of my Exhibit LK-1, in May of 1994, before the  
21 Louisiana Commission, Docket U-20178, "Planning and  
22 quantification issues of least cost integrated resource  
23 plan."

24 Q. I'm sorry, can you give me that reference  
25 again? I'm not finding it.



1           A.     It's on Page 9 of Exhibit LK-1, a little past  
2     halfway down the page, May of 1994, Docket U-20178.

3           Q.     Okay. And so with the exception of that one  
4     item, none of the other testimonies on the remaining  
5     pages deal with energy efficiency and peak demand  
6     reduction; correct?

7           A.     Not specifically, that's correct. They deal  
8     with in many instances incentive ratemaking, which is  
9     the subject of my testimony here.

10          Q.     Mr. Kollen, are you familiar with legislation  
11     that was enacted in Ohio in 2008 that's referred to as  
12     S.B. 221?

13          A.     Yes.

14          Q.     In particular, do you have knowledge of the  
15     provisions in that law that relate to Market-Rate  
16     Offers and Electric Security Plans?

17          A.     Yes, I do.

18          Q.     With the testimony you filed in this case you  
19     are only addressing the issues raised by the Commission  
20     in its May 9 Order, Paragraph 9, Items B, C, D, and E;  
21     correct?

22          A.     Yes, that's correct.

23          Q.     And you are not testifying today with respect  
24     to rate allocation issues; correct?

25          A.     That's correct.

1 Q. And your testimony with regard to energy  
2 efficiency incentives is directed specifically toward  
3 the cost to customers and not to the substance of the  
4 performance of the benchmark; correct?

5 A. Yes, that's correct.

6 Q. And would you agree with me that your  
7 testimony relies solely on Ohio Administrative Code  
8 Section 4901:1-39-07 and that the other energy  
9 efficiency rules are not relevant?

10 A. I'm not sure I follow that question. My  
11 testimony addresses the Commission's May 9th Entry and  
12 the four questions that are contained in it, and my  
13 understanding is that the recovery mechanism is  
14 governed by the Administrative Rule 4901:1-39-07. I'm  
15 having difficulty responding to the question is it  
16 limited to that rule, and I don't think the testimony  
17 is limited to that rule.

18 MS. WATTS: May I approach, your Honor?

19 ATTORNEY EXAMINER PIRIK: Yes.

20 Q. Mr. Kollen, would you look at the document  
21 that was just put before you?

22 And, Your Honor, may I have this marked as  
23 Duke Energy Ohio Exhibit 11?

24 ATTORNEY EXAMINER PIRIK: The document is so  
25 marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Mr. Kollen, would you refer, please, to Page  
3 16 of that exhibit? Would you kindly read Lines 19  
4 through 24?

5 A. Out loud or silently?

6 Q. Aloud.

7 A. "Actually, as you asked me that, I may have  
8 reviewed a couple of other rules. I just have a vague  
9 recollection that I did, but then I think I put them  
10 aside because I didn't think" -- "I didn't think they  
11 were relevant to my testimony. I certainly did not  
12 rely upon them for my testimony."

13 Q. Is that an accurate recording of your words  
14 from this deposition?

15 A. I think it is, on that answer.

16 Q. Thank you.

17 A. I haven't seen the deposition transcript  
18 previously, but I think that that is an accurate  
19 transcription.

20 Q. Thank you. You are not aware of any of the  
21 energy efficiency programs or peak demand reduction  
22 efforts undertaken by other Ohio Energy Group clients;  
23 correct?

24 A. Only generally in reading through some of the  
25 orders in the other proceedings, but I did not do an

1 investigation of those programs for purposes of this  
2 testimony.

3 Q. Are you testifying that you are now aware of  
4 some of the energy efficiency programs undertaken by  
5 OEG's clients?

6 A. Oh, no, I'm not.

7 Q. Thank you for that clarification.

8 A. I thought your question dealt with  
9 implemented by other utilities. I didn't hear the OEG  
10 qualification. If it was there, I'm sorry.

11 Q. Do you recall sharing with me when we were  
12 taking your deposition on Tuesday that you had -- in  
13 preparing your testimony, you reviewed a Commission  
14 Order in Case No. 09-1947, which is a FirstEnergy case?

15 A. Yes. I remember that I told you that I had  
16 brought an excerpt of that Commission Order with me,  
17 and you asked me some questions about it.

18 Q. And is it fair to say that you're not aware  
19 of FirstEnergy Company's cost recovery mechanisms for  
20 energy efficiency other than what might have been in  
21 that docket?

22 A. Yes, that's correct.

23 Q. And which Entry was it that you referred to?

24 A. I am looking at the Entry that was cited in  
25 Mr. Duff's Second Supplemental Direct Testimony.

1 Q. Would you agree with me that the Commission  
2 has not yet reached a decision with respect to an  
3 incentive for the FirstEnergy Company in that docket?

4 A. I don't know, but I do know that with respect  
5 to this Entry that was cited by Mr. Duff, that it had  
6 not at that time.

7 (Discussion off the record.)

8 Q. And, Mr. Kollen, do you know that the  
9 Commission approved the Stipulation in a case related  
10 to the American Electric Power Company, wherein AEP was  
11 permitted to recover program dollars as well as an  
12 incentive for achieving performance in excess of the  
13 benchmarks submitted?

14 MR. BOEHM: Your Honor, I would renew the  
15 same objection that we made in regard to the motion to  
16 strike. I think it's in violation of the agreement in  
17 that case. It essentially allows any utility company  
18 to use the result of the Stipulation involving any  
19 other utility company.

20 ATTORNEY EXAMINER PIRIK: Miss Watts, may I  
21 have your question --

22 MS. WATTS: Again, your Honor, Duke Energy  
23 Ohio is not a party to that Stipulation, and I would  
24 contend that we are not, therefore, bound by it.

25 ATTORNEY EXAMINER PIRIK: I think that's

1 reasonable.

2           Could you reread the question?

3           (Question read back.)

4           MS. YOST: Respecting the Bench's ruling on  
5 that, I would also like to join OEG's motion. Thank  
6 you.

7           ATTORNEY EXAMINER PIRIK: Overruled.

8           A. Yes, I'm aware of it. It's part of a  
9 comprehensive Stipulation in those two proceedings, not  
10 something that was entered into as a separate  
11 determination or something that was separately  
12 supported by any of the parties, to my knowledge.

13           MS. WATTS: Could I have that read back,  
14 please?

15           (Answer read back.)

16           Q. Mr. Kollen, you're not aware of any  
17 compensation mechanism for how Dayton Power & Light is  
18 compensated for energy efficiency; correct?

19           A. That is true. I did not do an investigation  
20 of that.

21           Q. And you don't know whether any Competitive  
22 Retail Electric Supplier has a responsibility for  
23 energy efficiency compliance in the State of Ohio?

24           (Discussion off the record.)

25           A. I do not believe that CRESs have

1 responsibility in Ohio.

2 Q. And you're unaware of what a mercantile  
3 customer is in Ohio; correct?

4 A. I was unaware of the precise definition. I  
5 have a general understanding that it's a commercial or  
6 industrial customer, larger sized. That's from the  
7 context of the use of the term, but I have not seen a  
8 definition of the term.

9 Q. And so you don't know what the regulatory  
10 definition is in Ohio?

11 A. I don't know what the legal definition of it  
12 is, other than the general sense that it's a large  
13 commercial or industrial customer.

14 Q. Would you agree with me that there are no --  
15 that there is no mention in either the ESP or the MRO  
16 statutes, and if you need me to further define ESP or  
17 MRO, I'm happy to do that, but would you agree with me  
18 that neither of those statutes allow an electric  
19 distribution utility to alter or change its energy  
20 efficiency requirements after divesting generation  
21 assets?

22 MR. BOEHM: I object, your Honor. The  
23 witness is not an attorney. She's asking a legal  
24 interpretation.

25 ATTORNEY EXAMINER PIRIK: Response?

1 MS. WATTS: Your Honor, the witness has made  
2 explicit statements in his testimony that Duke Energy  
3 Ohio should not be entitled to incentive for energy  
4 efficiency programs because it's divesting itself of  
5 generation, so I'm trying to explore his understanding  
6 of how that works.

7 ATTORNEY EXAMINER PIRIK: Overruled.

8 THE WITNESS: Maybe we could have the  
9 question repeated.

10 (Question read back.)

11 A. My understanding of those provisions of  
12 Senate Bill 221 is that the energy efficiency  
13 requirements are set forth in another part of the  
14 statute aside from the ESP and the MRO, and that's  
15 independent of whether or not the utility has divested  
16 its generation or not.

17 ATTORNEY EXAMINER PIRIK: Just to be clear  
18 for the record, could you specifically cite for the  
19 record, when you're saying ESP or MRO, what specific  
20 statute you're referring to?

21 MS. WATTS: Yes, I would be happy to do  
22 that.

23 Q. I am referring, Mr. Kollen, to Revised Code  
24 Section 4928.142 and 143.

25 A. Yeah. My recollection is that those



1 provisions of the statute do not address energy  
2 efficiency.

3 Q. And are you aware of any statute within Title  
4 49 of the Revised Code that would allow an electric  
5 distribution utility to change its energy efficiency  
6 requirements based upon divestiture of assets, of  
7 generation assets?

8 A. I have looked for that, but I'm not aware of  
9 it, and that isn't really the subject of my testimony.  
10 I'm not quarreling with the law. I'm addressing only  
11 whether or not there should be an incentive to comply  
12 with the law or overcomply with it.

13 MS. WATTS: Just a moment, please, your  
14 Honor.

15 Q. Mr. Kollen, would you turn to Page 3 of your  
16 testimony, please?

17 A. I'm there.

18 Q. Beginning on Line 3 and continuing through  
19 Line 10, is that not the point you're making in that  
20 paragraph, that once the utility divests its assets, it  
21 should no longer be compensated for energy efficiency  
22 compliance?

23 A. No. The point there is that it makes no  
24 sense for the utility to be compensated for energy  
25 efficiency efforts, not that it should not be pursuant

1 to the law, and then I'm using that as the predicate  
2 then to argue against an incentive in the situation  
3 where there is a divestiture of generation assets.  
4 Again, I'm not quarreling with the law and whether or  
5 not the utility has to comply with the law. The issue  
6 is whether or not there should be an incentive for  
7 overcomplying with the law, in other words, going  
8 beyond the law itself.

9 Q. Okay. So just to be clear again, with  
10 respect to a utility divesting its assets, once it does  
11 that, that doesn't change its requirement to comply  
12 with energy efficiency mandates; correct?

13 A. That's my understanding, and, again, that  
14 wasn't the point of my testimony. The reason for  
15 reciting this foundational observation is that if it  
16 doesn't make sense, despite what the law says, to  
17 compensate for the costs to avoid generation, when the  
18 utility itself no longer owns generation, it certainly  
19 doesn't makes sense to pay an incentive. It isn't  
20 something then that I would argue or would suggest that  
21 the Commission impose upon customers as something that  
22 goes beyond the law itself, and that was the point of  
23 having it in the testimony.

24 Q. Would you also agree with me, Mr. Kollen,  
25 that nothing in the statutes we've been discussing,

1 Revised Code Section 4928.142 and 143, nothing in those  
2 statutes and, for that matter, nothing in any statute  
3 allows an electric distribution utility to change its  
4 energy efficiency mandate as a result of taking its  
5 load to auction?

6 A. I haven't done a legal analysis of that. I  
7 mean, the question is very broad, does any statute  
8 address that, but I'm not aware of that there is a  
9 provision where the utility is relieved of its  
10 obligation that the mandatory requirement for energy  
11 efficiency as a result of taking its load to auction,  
12 and, again, that's not the subject of my testimony.  
13 I'm addressing the incentive issue.

14 Q. And you recognize that the Commission's rules  
15 presently permit an incentive to be provided to an  
16 electric distribution company for energy efficiency and  
17 peak demand reduction; correct?

18 A. Yes. And I think that the operative word  
19 there is permitted, and my testimony addresses why I  
20 don't believe the Commission should permit it in this  
21 case.

22 Q. And it's your understanding that Duke Energy  
23 Ohio has received cost recovery for its energy  
24 efficiency and peak demand reduction in Rider DR-SAW?

25 A. Yes, that's correct.

1 Q. And is it fair to say that you didn't focus  
2 on any of Duke Energy Ohio's Energy Efficiency Status  
3 Reports, as that was not of particular interest to you  
4 and was not the subject of your testimony; correct?

5 A. Yes, that's correct. I did review, as I told  
6 you in the deposition, I did review at least one of the  
7 Status Reports, but, again, I did not focus on it,  
8 other than just generally familiarizing myself with the  
9 Status Reports. Again, my testimony was not addressing  
10 whether or not the Company complied or did not comply.  
11 It was addressing the issue of the incentive.

12 Q. So you are not offering an opinion about any  
13 of the Duke Energy Ohio programs that have been  
14 proposed to be included in our portfolio in this case;  
15 correct?

16 A. Right. That's correct. My understanding is  
17 that this proceeding was limited to the four or five  
18 questions that the Commission had in its May 9th Entry,  
19 so I didn't go beyond that.

20 Q. Would you turn to Page 5 of your testimony,  
21 Line 11, please?

22 A. I'm there.

23 Q. Is it fair to say that, beginning on Line 11,  
24 you're discussing your recommendation that the  
25 Commission adopt the lesser of a three percent of total

1 annual energy efficiency expenditures or one million  
2 annually as an incentive?

3 A. Yes, but conditionally. Only if the  
4 Commission adopts an incentive, then I recommend that a  
5 cap be applied of this magnitude.

6 Q. Is it fair to say that your main objective in  
7 arriving at those numbers was to minimize costs to your  
8 clients or to customers generally?

9 A. Both, because the context is that we don't  
10 believe an incentive is appropriate, and consequently,  
11 if there is one, then it should be minimized. One  
12 follows the other.

13 Q. And is it correct, Mr. Kollen, that you've  
14 not done any rate studies or analyses with regard to  
15 potential impacts of that proposed incentive on  
16 customers?

17 A. It's true that I haven't performed any  
18 computations with respect to what impact application of  
19 the cap would have on either broad rate classes or  
20 individual customers.

21 Q. And you did not review any incentive  
22 mechanisms for energy efficiency in other jurisdictions  
23 other than Ohio or any with respect to other Ohio  
24 utilities in order to reach that determination;  
25 correct?

1           A.    I did not perform an independent evaluation  
2 of other incentive programs, to the extent that they  
3 exist, I did not.

4           Q.    Mr. Kollen, you've never reviewed a Duke  
5 Energy Ohio load forecast; correct?

6           A.    That's true.

7           Q.    Likewise, you've not reviewed Duke Energy  
8 Ohio's Market Assessment, Market Potential Assessment  
9 Report; correct?

10          A.    That's true.

11          Q.    And do you understand that Duke Energy Ohio  
12 is not asking for compensation for lost generation  
13 revenue in this proceeding?

14          A.    I do understand that.

15                MS. WATTS:  If we may have a minute, your  
16 Honor.

17                ATTORNEY EXAMINER PIRIK:  Yes.

18                (Discussion off the record.)

19          Q.    Mr. Kollen, if you would turn to Page 4 of  
20 your testimony, please.

21          A.    I'm there.

22          Q.    On line 12 you state that, "As a practical  
23 matter, without any incentives, Duke substantially  
24 overachieved its benchmark requirements in 2009 and  
25 2010."  Do you see that?

1 A. I do.

2 Q. Can you tell me what you based that upon?

3 A. Well, first of all, I did, as I told you,  
4 review the Status Reports, and I also relied upon Mr.  
5 Baron's testimony in the earlier portion of this  
6 proceeding with respect to that.

7 MS. WATTS: We have nothing further, your  
8 Honor.

9 ATTORNEY EXAMINER PIRIK: Miss Mooney.

10 MS. MOONEY: No questions.

11 ATTORNEY EXAMINER PIRIK: Miss Loucas.

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

13 CROSS-EXAMINATION

14 By Ms. Loucas:

15 Q. Good morning, Mr. Kollen.

16 A. Good morning.

17 Q. Would you agree with me that the Ohio Revised  
18 Code, specifically those sections which provide for  
19 energy efficiency benchmarks, are floors and not  
20 ceilings?

21 A. That's my understanding, in other words, that  
22 it's a mandate, and if the utility overcomplies,  
23 there's no requirement for it to do so, but it may do  
24 so.

25 Q. Are you aware that PJM's Base Residual

1 Auction -- you're aware of PJM's Base Residual Auction  
2 for Energy Efficiency, are you not?

3 A. I'm aware of the Base Residual Auction, and  
4 there are certain -- you can bid in, for example, peak  
5 demand response to that Base Residual Auction.

6 Q. And can you also bid in energy efficiency  
7 resources?

8 A. I believe so.

9 Q. And given your years of experience in the  
10 industry -- I mean, energy regulatory in the utility  
11 industry and your knowledge of the regulatory system in  
12 regard to utilities, do you have an opinion as to why  
13 PJM would create a market for energy efficiency?

14 A. I haven't investigated that, but PJM is  
15 charged with balancing the load and capacity within the  
16 PJM footprint, and to the extent that there is less  
17 load, there is a less requirement for capacity.

18 Q. And are you aware that some Ohio utilities  
19 are selling energy efficiency into the PJM auction?

20 A. I haven't investigated that, but it would not  
21 surprise me.

22 Q. Are you aware that FirstEnergy has submitted  
23 testimony in its recent ESP 3 case currently before the  
24 Commission asserting that energy efficiency bid into  
25 the Base Residual Auction can lower market prices and



1 provide benefits to consumers?

2 A. I'm not aware of that.

3 Q. Assuming that that is true, that bidding  
4 energy efficiency into the Base Residual Auction does,  
5 in fact, lower market prices, would you consider that a  
6 benefit to consumers or customers?

7 A. No, because the purpose of the question says  
8 assume it and then if you assume it, would you agree  
9 that it's right, and I think the answer would be yes,  
10 under that condition, but I'm not willing to accept  
11 that as a premise. I don't know what the logic was  
12 behind whoever wrote that because I haven't seen it and  
13 I haven't reviewed it.

14 Q. Would you agree that lower prices for  
15 consumers are, in fact, a benefit to consumers?

16 A. Yes, I would, if, in fact, that is the case.

17 Q. Thank you.

18 A. Somebody simply alleging that some action  
19 would result in lower prices doesn't necessarily  
20 translate into a real-world benefit. That's why I  
21 can't really make that leap.

22 Q. But I presented it to you in the form of a  
23 hypothetical; correct?

24 A. Right, but you asked me if I accepted the  
25 hypothetical, would the hypothetical be correct, and I

1 simply said if I accepted the hypothetical, the  
2 hypothetical would be correct.

3 Q. I'm not going to argue with you, but for the  
4 record, I did not ask you to accept the hypothetical.  
5 I think in most matters it's assumed that you should  
6 accept the bases of the hypothetical.

7 MR. BOEHM: Your Honor, I would object at  
8 this time. If counsel wants to show that somebody from  
9 FirstEnergy believes that bidding in energy efficiency  
10 to PJM saves customers money, I'd like to have them on  
11 the stand and I want to cross-examine them, but to  
12 assert that its so and not even have a transcript and  
13 not allow me to cross-examine that individual, I think  
14 is objectionable.

15 ATTORNEY EXAMINER PIRIK: I agree with that.  
16 You can proceed with asking your questions and the  
17 witness can answer them to the best of his ability, but  
18 I think his response was appropriate, so you can  
19 continue.

20 MS. LOUCAS: Thank you, your Honor.

21 Q. Mr. Kollen, would you agree that investments  
22 and upgrades into the transmission and distribution  
23 resources should be paid for by Duke transmission and  
24 distribution customers?

25 A. In general I do, if the investment is

1 prudent, if it's used and useful and if it's reasonable  
2 and cost effective.

3 Q. Do you believe that when Duke transmission  
4 and distribution customers receive benefits from those  
5 investments that they should pay Duke Energy for those  
6 benefits?

7 A. Yes, and that's the way the ratemaking  
8 process is structured, so that the utility makes an  
9 investment in transmission and distribution and then  
10 the customers essentially pay for that investment over  
11 the useful life of those assets.

12 Q. And you agree, do you not, that Duke Energy  
13 should earn the rate of return on transmission and  
14 distribution investments; correct?

15 A. Yes, to the extent that they're prudent and  
16 they're used and useful and that they're reasonable and  
17 cost effective. Those are the traditional utility  
18 standards for cost recovery.

19 Q. And are you aware that energy efficiency can  
20 provide transmission and distribution benefits at a  
21 lower, comparable cost to transmission and distribution  
22 asset development?

23 A. I've seen that argument made, but I have not  
24 investigated it and I do not accept it.

25 Q. You do not accept that energy efficiency can

1 provide benefits to transmission and distribution asset  
2 development?

3 MR. BOEHM: Excuse me, your Honor. I  
4 object. That was not counsel's question. The question  
5 was --

6 ATTORNEY EXAMINER PIRIK: Well, why don't we  
7 let her phrase her question, and then we'll see if the  
8 witness can answer it.

9 Q. I'll try to rephrase it for you so I  
10 understand what your answer is. My question to you,  
11 and I'll repeat it, is are you aware that energy  
12 efficiency -- maybe I should put it this way, do you  
13 agree that energy efficiency can provide transmission  
14 and distribution benefits at a comparable cost to  
15 transmission and distribution asset development or, in  
16 other words, investments in transmission and  
17 distribution assets?

18 A. About the best that I could say in response  
19 to that question is that I would say that it's a  
20 rebuttable proposition, in other words, that it would  
21 depend upon the facts and circumstances and it is a  
22 possibility, but I don't think you can just accept in  
23 the abstract that it's always the case or that it's  
24 ever the case.

25 Q. That's fair, but you agree that it is a

1 possibility; correct?

2 A. It's a possibility, sure.

3 Q. And are you familiar with a -- are you  
4 familiar with the nonprofit organization called the  
5 Regulatory Assistance Project?

6 A. No. Never heard of it.

7 Q. This is another hypothetical. I'm expecting  
8 an objection from Mr. Boehm, but I'll try.

9 MR. BOEHM: I'm ready.

10 THE WITNESS: Are you listening, Mr. Boehm?

11 Q. I would like for you to assume that based on  
12 a -- that based on a current report authored by the  
13 Regulatory Assistance Project and issued in February of  
14 2012, that the findings of that report indicated that  
15 energy efficiency investments can provide energy  
16 savings, peak capacity savings, reserve margin savings,  
17 and overall transmission and distribution reliability  
18 improvements. Assuming --

19 MR. BOEHM: Your Honor -- excuse me. Go  
20 ahead.

21 Q. assuming those findings are valid, would you  
22 agree that those are benefits to the customer?

23 MR. BOEHM: If it's appropriate now, your  
24 Honor, I would object. She's reading hearsay into the  
25 record. Counsel is reading hearsay into the record in

1 lieu of putting on witnesses. You know, we can do the  
2 same sort of thing.

3 MS. LOUCAS: I can rephrase, your Honor.

4 MR. BOEHM: Will you accept what somebody  
5 says that, you know, it's all a bunch of baloney.  
6 Okay, yeah. So on that basis, we object.

7 ATTORNEY EXAMINER PIRIK: Let's see what the  
8 rephrase is.

9 MS. LOUCAS: I will rephrase.

10 Q. If energy efficiency investments provided  
11 energy savings, peak capacity savings, reserve margin  
12 savings, and overall transmission and distribution  
13 reliability improvements, would those be benefits to a  
14 customer?

15 MR. BOEHM: Your Honor, again I object. If  
16 counsel wants to ask the witness whether all of those  
17 things are good things for the customer, I think that's  
18 a proper question.

19 ATTORNEY EXAMINER PIRIK: I think that's what  
20 she just asked.

21 MS. LOUCAS: That's what I'm asking.

22 MR. BOEHM: Oh, she did? Okay. Great.

23 A. So I think what you asked me is if this list  
24 provides savings to customers, is that beneficial to  
25 customers. I think it's one of these -- the premise

1 answers itself, if we accept the premise, and in that  
2 case, you know, the answer would be yes.

3 Q. Okay.

4 A. If you assume that there are benefits and  
5 that are savings to customers, would that provide  
6 benefits to customers and savings to customers, and so  
7 the answer would be yes.

8 Q. Thank you. That's what I was looking for.  
9 Thank you.

10 A. Okay.

11 Q. Should Duke Energy receive incentives for  
12 programs that provide benefits to customers that exceed  
13 costs to customers?

14 A. No, I don't think so, and there's several  
15 reasons for that. The first one is that the ratemaking  
16 process is a cost-basis process; so, in other words, a  
17 cost is incurred. If it's reasonable and prudent and  
18 for an asset that's used and useful, then it may be  
19 recoverable through the ratemaking process, but if the  
20 utility were to be rewarded every time that there was,  
21 for example, a replacement of one fuel contract with  
22 another lower-cost fuel contract, that would be  
23 inappropriate, and the reason for that is is that if  
24 the company or if the utility continued with the  
25 excessive costs under the first of the two fuel

1 contracts, that would not be prudent; so there are  
2 standards in place to ensure that the utility acts  
3 appropriately, and in some cases there are mandates, as  
4 there are with the energy efficiency requirements, but  
5 to incentivize the utility to comply, to incentivize  
6 the utility to act prudently I think is inappropriate  
7 and unnecessary.

8 Q. Do you believe that energy efficiency  
9 programs reduce demand for generation resources?

10 A. To the extent -- they may. They may.

11 Q. And, I'm sorry, I should have followed up my  
12 previous question to you. Are you aware that the  
13 Commission requires that all programs produce customer  
14 benefits that are greater than customer costs? Do you  
15 understand that to be the burden on the utility?

16 A. Yes, I do.

17 Q. And then, I'm sorry, I apologize, I did not  
18 hear your answer to my next question, whether or not  
19 energy efficiency programs reduced demand for  
20 generation resources?

21 A. I said that they can. It depends on how you  
22 define that and how you define the reduction in the  
23 capacity requirements.

24 MS. LOUCAS: I have no further questions,  
25 your Honor.





1 Q. I'm wondering exactly what was your thought  
2 process on that statement?

3 A. Sure. I testified in a number of the SEET  
4 proceedings involving many of the utilities in the  
5 state and am very familiar with the statute and what  
6 the Commission has done with respect to the SEET tests  
7 and applying that test individually to utilities, and  
8 essentially I view that as being three levels of rates  
9 of return. There's a reasonable rate of return, which  
10 is what you would consider to be the traditional  
11 utility return requirement, and, arguably, anything in  
12 excess of that would be excessive, but then the SEET  
13 statute defines a new term called significantly  
14 excessive, and that term then would be applicable to a  
15 rate of return that exceeds its significantly excessive  
16 threshold; so that I view this as three tiers, a  
17 reasonable rate of return, an excessive rate of return,  
18 and then a significantly excessive rate of return. So  
19 if the utility is allowed to earn between the  
20 reasonable rate of return and a significantly excessive  
21 rate of return, it already is effectively earning an  
22 excessive return.

23 MR. PARRAM: That's all I have, your Honor.

24 ATTORNEY EXAMINER PIRIK: Thank you.

25 Mr. Boehm.

1 MR. BOEHM: We have no redirect, your Honor.

2 EXAMINATION

3 By Attorney Examiner Stenman:

4 Q. Mr. Kollen, just a couple of questions, and  
5 these are going to sound awfully familiar. Have you  
6 done any calculations of what you believe the maximum  
7 incentive would be that Duke could earn?

8 A. Under its proposal, no, I haven't. I  
9 understand that there are some quantifications included  
10 I believe in Mr. Baron's direct testimony on this issue  
11 in the earlier portion of the proceeding as well as in  
12 the OEG brief.

13 Q. And you made a cap recommendation in your  
14 testimony. Do you still hold firm to that?

15 A. Yes, for the reason that it should simply be  
16 minimized, and so that's why I selected the three  
17 percent of total program costs or the \$1 million limit.

18 Q. Attached to Mr. Duff's testimony there was an  
19 additional analysis of the three new proposed  
20 programs. Have you reviewed that?

21 A. I actually have not.

22 Q. Okay.

23 ATTORNEY EXAMINER PIRIK: Thank you.

24 (Witness excused.)

25 MR. BOEHM: Your Honor, at this time we would

1 move for the admission of OEG Exhibit No. 7.

2 ATTORNEY EXAMINER PIRIK: Are there any  
3 objections?

4 MS. WATTS: No objection.

5 MR. PARRAM: No objection.

6 ATTORNEY EXAMINER PIRIK: Hearing none, OEG  
7 Exhibit No. 7 shall be admitted.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 ATTORNEY EXAMINER PIRIK: Whoever would like  
10 to go next.

11 MR. PARRAM: Could we have five minutes  
12 before putting Mr. Scheck on?

13 ATTORNEY EXAMINER PIRIK: That would be  
14 fine.

15 (Recess taken.)

16 ATTORNEY EXAMINER PIRIK: Mr. Scheck, would  
17 you like to come up to the stand.

18 GREGORY C. SCHECK,  
19 being first duly sworn, as prescribed by law, was  
20 examined and testified as follows:

21 ATTORNEY EXAMINER PIRIK: Thank you.

22 Mr. Parram.

23 MR. PARRAM: Thank you.

24

25

## DIRECT EXAMINATION

1  
2 By Mr. Parram:

3 Q. Good afternoon, I believe, Mr. Scheck, if  
4 we're there yet.

5 A. Yes, it is.

6 Q. Do you have a copy of your prefiled testimony  
7 in front of you, Mr. Scheck, that's been marked Staff  
8 Exhibit 3? Do you have a copy of your testimony in  
9 front of you?

10 A. Yes, I do.

11 Q. And, I'm sorry, before we begin, would you  
12 please state your name and business address for the  
13 record.

14 A. Yes. My name is Gregory C. Scheck, and my  
15 business address is 180 East Broad Street, Columbus,  
16 Ohio, ZIP code 43215.

17 MR. PARRAM: Do you have copies of the  
18 testimony?

19 ATTORNEY EXAMINER PIRIK: I think we're  
20 okay. The court reporter will need a copy.

21 Q. By whom are you employed and in what  
22 capacity?

23 A. I am employed by the Public Utilities  
24 Commission of Ohio in the capacity as Utility  
25 Specialist.

1 MR. PARRAM: Your Honor, I'd like to have  
2 marked for purposes of identification the prefiled  
3 testimony of Gregory Scheck that has filed on May 30th,  
4 2012, as Staff Exhibit 3.

5 ATTORNEY EXAMINER PIRIK: The document will  
6 be so marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Was Staff Exhibit 3 prepared by you, Mr.  
9 Scheck?

10 A. Yes, it is.

11 Q. Did you cause this document to be filed in  
12 this case on May 30, 2012?

13 A. Yes, I did.

14 Q. Do you have any changes to Staff Exhibit 3?

15 A. Yes, I do.

16 Q. And what are those changes?

17 A. Yes. I have two changes to be made. The  
18 first one is on Page 6. At the very bottom of the page  
19 I've added a sentence. The sentence prior to this  
20 sentence is -- it is in answer to Question 10, which  
21 says, "Do you have any opinion about any of the three  
22 new energy efficiency programs?" Towards the bottom of  
23 the page there's a sentence that says, "In the future,  
24 the Staff recommends that the Company, as well as all  
25 of the Ohio electric distribution utilities leverage

1 similar programs when they are able to do so." The  
2 addition of the sentence should read, "In order to  
3 facilitate this leveraging, the Staff is recommending  
4 that Ohio's EDUs meet every six months to exchange  
5 information on leveraging programs and sharing  
6 resources where appropriate."

7 Q. Do you have any other changes to your  
8 testimony?

9 ATTORNEY EXAMINER PIRIK: Wait a minute. Can  
10 I have that reread again? I can't write that fast.

11 Q. Mr. Scheck --

12 A. I'll reread it again. "In order" --

13 Q. And we have the air going on back here, so  
14 speak a little bit louder.

15 A. I'll repeat the sentence. "In order to  
16 facilitate this leveraging, the Staff is recommending  
17 that Ohio's EDUs meet every six to exchange information  
18 on leveraging programs and sharing resources when  
19 appropriate."

20 My next changes are --

21 Q. Wait a second.

22 A. Sure. Do it shorthand.

23 ATTORNEY EXAMINER PIRIK: Okay.

24 Q. Do you have any other changes, Mr. Scheck?

25 A. Yes, I do, and they're on Page 8, in the

1 answer to Question 13, in the second paragraph. This  
2 is to clarify what I mean by a cap, so I will read in  
3 where the changes are and I'll tell you where they  
4 are. In the first sentence it says, "If this question  
5 was intended to address whether or not there should be  
6 a cap on energy efficiency earnings, the Staff would be  
7 in favor of a cap." The addition states, "That would  
8 be in relationship to the threshold of the Company's  
9 excessive earnings test," period -- "significant  
10 excessive earnings test." I'll reread that again. The  
11 additional clause would be, "That would be" -- after  
12 the word "cap" on Line 16, "That would be in  
13 relationship to the threshold of the Company's  
14 significant excessive earnings test."

15           And then the next sentence is left as is.  
16 The last sentence of that paragraph should read as  
17 follows: "Therefore, the Staff recommends that a cap  
18 on energy efficiency earnings would be reasonable," and  
19 this is the added part, "in the context of the  
20 significant excessive earnings test; otherwise, there  
21 should be no cap on energy efficiency." I'll reread  
22 that again, "... in the context of the significant  
23 excessive earnings test; otherwise, there should be no  
24 cap on energy efficiency," period.

25           Q. Do you have any other changes, Mr. Scheck?



1           A.    No, I do not.

2           Q.    And excluding those changes today, if I were  
3 to ask you the same questions that are contained in  
4 Staff Exhibit 3, would your answers be the same?

5           A.    Yes, they would.

6           MR. PARRAM: Your Honor, I tender Mr. Scheck  
7 for cross-examination.

8           ATTORNEY EXAMINER PIRIK: Thank you.

9           MR. BOEHM: Your Honor, excuse me, if it  
10 would be appropriate, I have a motion to strike at this  
11 time.

12           ATTORNEY EXAMINER PIRIK: It would be  
13 appropriate.

14           MR. BOEHM: Thank you. Your Honor, the OEG  
15 moves to strike the answer beginning on Page 9, Line 23  
16 and continuing to Page 10, Lines 1 and 2. Your Honor,  
17 I think it's been made very clear by the Commission  
18 that the intention of this subset or this continuation  
19 of the hearing was to address only those questions that  
20 were asked by the Commission, Paragraph 9 and all the  
21 subparagraphs, and parties have all, with this  
22 exception, followed that scrupulously, but his question  
23 on that page takes up on an entirely different subject  
24 and certainly one not set forth in Paragraph 9, it is  
25 rate allocation, and, in fact, Mr. Scheck admits that

1 on Page 2 in his answer -- the question is put down in  
2 No. 4, "What is the purpose of your testimony in this  
3 proceeding?" And he says, "The purpose of my testimony  
4 will be to address questions the Commission has put  
5 forward in its Entry in this case on May 9, 2012. In  
6 addition, I will provide testimony on the topic of  
7 energy efficiency cost allocation." So it's clear by  
8 the witness' own admission he's gone beyond the scope  
9 that was set forth by the Commission for this case, and  
10 on that basis, we move to strike.

11 ATTORNEY EXAMINER PIRIK: Mr. Parram.

12 MR. PARRAM: Yes, your Honor. Mr. Scheck's  
13 testimony was directly in response to the Commission's  
14 Entry on the matter. The prior record that was created  
15 in the prior proceeding was considered lacking. There  
16 was some issues as it relates to kilowatt hours versus  
17 distribution charges, which also relates specifically  
18 to the effectiveness of the energy efficiency  
19 programs. Although there were specific delineated  
20 questions that the Commission wanted answered, the  
21 Staff's position is that this specific issue as it  
22 relates to the kilowatt-hour basis for rate allocation  
23 is directly tied to whether or not energy efficiency  
24 programs will be effective or not, and I believe it is  
25 appropriate and responsive to the Entry and for the

1 Commission's consideration in this matter.

2 MR. BOEHM: Your Honor, if everybody is going  
3 to get a redo on Round 1, then people should have been  
4 told that, but that's not what the Commission said in  
5 their Order, and I think everybody has specifically  
6 been very scrupulous in this matter. As a matter of  
7 fact, at one point counsel, Miss Watts, asked Mr.  
8 Kollen now you're not dealing with any rate allocation  
9 issues, are you, and he said no, and I'm sure the  
10 question was to make sure that Mr. Kollen was staying  
11 strictly within the mandate set forth by the  
12 Commission.

13 ATTORNEY EXAMINER PIRIK: Mr. Parram, can  
14 you, specifically looking at Finding 9 in the Attorney  
15 Examiner's May 9th, 2012, Commission Entry, can you  
16 point me to the Finding 9 letter that this is actually  
17 responsive to?

18 MR. PARRAM: Your Honor, I will submit that  
19 this is not directly responsive to Finding 9, yet we  
20 did think that it was important for the Commission's  
21 consideration as it relates to making a determination  
22 on the appropriateness of the incentive mechanism in  
23 this matter, considering the overall, I guess, lack of  
24 information in the prior proceeding. Although we did  
25 want to address the specific questions that were raised

1 in Finding 9, the Staff just felt that it wasn't  
2 limited to that if it was information that would help  
3 further the Commission's understanding as to what an  
4 appropriate incentive mechanism would be.

5 ATTORNEY EXAMINER PIRIK: Miss Watts.

6 MS. WATTS: Your Honor, thank you. Certainly  
7 with respect to the Commissions's Entry it's our  
8 understanding that the Commission was not -- did, as  
9 Mr. Parram has stated, deem the prior record to be  
10 insufficient, so it's our view that the additional  
11 testimony that Staff has provided may well help the  
12 Commission in reaching a decision as it takes up this  
13 case, when it does so, and, likewise, although Mr.  
14 Boehm is correct that we have restricted much of our  
15 presentation to the questions in the Commission's  
16 Order, we have indeed filed some additional information  
17 in the record attached to Mr. Duff's testimony likewise  
18 to aid the Commission in reaching a decision this time  
19 with more information to support its decision, and so I  
20 think, to Mr. Parram's point, that whatever helps the  
21 Commission get to where it needs to get to at this  
22 point, we're all in favor of that.

23 ATTORNEY EXAMINER PIRIK: But wasn't the  
24 information attached to Mr. Duff's testimony  
25 specifically in response to 9A in the May Entry?

1 MS. WATTS: It was, your Honor, but like --  
2 but there are parts in the -- at least the Company  
3 deemed that there were directives in the Order in other  
4 places that seemed to indicate that the Company had not  
5 provided sufficient information for the Commission to  
6 reach a decision, and so, therefore, we provided as  
7 much additional information as we thought the  
8 Commission would require, and I think that's what Mr.  
9 Parram is trying to do as well.

10 MR. BOEHM: If I may, your Honor, there is no  
11 issue in this case that is more important to OEG than  
12 rate allocation. Does anybody believe that Mr. Kollen  
13 had gotten on the stand and started talking about rate  
14 allocation again that he would have been subject to a  
15 motion to strike. As a matter of fact, counsel asked a  
16 question, now, Mr. Kollen, you're not testifying about  
17 rate allocation; no, I'm not testifying about that. We  
18 know darn well there would have been a motion to  
19 strike, and I think it would have been proper. Now  
20 we're saying well, don't pay any attention to what the  
21 Commission said because the Company and the Staff think  
22 that, well, you really ought to hear more on this  
23 topic. I think it's a total ambush, and it really  
24 brings into question about what the Commission means in  
25 their Order and whether it really means that.

1           ATTORNEY EXAMINER PIRIK: The Commission is  
2 going to grant the motion to strike. If the witness  
3 wanted to put that information on the stand, then it  
4 should have been done in the initial hearing with the  
5 initial testimony, but this case and this reopening of  
6 the case is focused on Paragraph 9, A through E of the  
7 Commission's May 2012 Entry; so the motion to strike is  
8 granted.

9           MR. BOEHM: Thank you, your Honor.

10          ATTORNEY EXAMINER PIRIK: Miss Watts.

11          MS. WATTS: Thank you, your Honor.

12                           CROSS-EXAMINATION

13 By Ms. Watts:

14           Q. Mr. Scheck, turning to Page 8 of your  
15 testimony, in looking specifically at Lines 13 through  
16 17 and including the clarification you just added to  
17 that, do I correctly understand that you're saying that  
18 the Company SEET itself act as a cap in terms of the  
19 level of incentive that the Company might earn?

20           A. Yes. That is my -- the SEET is there in  
21 place already; so, therefore, it functions as the cap.

22           Q. So you're not recommending a separate cap?  
23 You're recommending that the SEET itself be used as the  
24 cap?

25           A. Correct. Energy efficiency earnings would be

1 a subset of the total earnings of the Company;  
2 therefore, those earnings would be added in and  
3 sufficient if the earnings were -- sufficiently high  
4 enough such that the earnings impact of the energy  
5 efficiency on the SEET would impact that number;  
6 therefore, it limits the total amount of the earnings  
7 that the Company could achieve with energy efficiency.

8 Q. And, Mr. Scheck, you were in the room, were  
9 you not, when Mr. Kollen was testifying earlier?

10 A. Yes, in part. I don't know if he had  
11 testified prior to me coming in or not.

12 Q. Do you recall his testimony with respect to  
13 his understanding of excessive earnings wherein he  
14 indicated that in his view there were three levels,  
15 there were earnings, excessive earnings, and  
16 significantly excessive earnings?

17 A. Yes, I heard him discuss that.

18 Q. Are you aware of anywhere in Ohio law or  
19 within the Commission's rules wherein there's a  
20 three-part level of analysis with respect to a  
21 Company's earnings such as he described?

22 A. I have not heard that. I've only heard  
23 either you have significantly excessive earnings or you  
24 do not.

25 Q. Thank you. I have no further questions.

1 ATTORNEY EXAMINER PIRIK: Miss Mooney.

2 MS. MOONEY: Yes, I do have a question.

3 CROSS-EXAMINATION

4 By Ms. Mooney:

5 Q. Mr. Scheck, what you added on Page 6 of your  
6 testimony about the Ohio EDUs meeting every six months,  
7 is that something that you've recommended before in  
8 another proceeding?

9 A. No, I have not.

10 Q. Do you have a recommendation how that would  
11 work? You would just have the other Ohio EDUs meet  
12 every six months to discuss leveraging of the programs?

13 A. In general, yes, even though I could probably  
14 elaborate that it might be good idea to meet at the  
15 Commission and have it as an open meeting. I'm not  
16 sure if that helps facilitate it or not. I mean, some  
17 thought would have to be given in regard to how that  
18 process would work, because there may be more willing  
19 to share with each other if others are not present or  
20 available, but I'm not certain.

21 Q. That goes to my question, too, if someone  
22 else, some other interested party might also be invited  
23 to the meeting?

24 A. If it adds to the meeting to collaborate  
25 versus hindering efforts, then it would be okay;



1 otherwise, it may end up hindering efforts.

2 Q. Is there any plan at the present for this to  
3 go forward, the meeting of the Ohio EDUs?

4 A. No, other than just the recommendation to  
5 meet. No prescribed dates or anything. That's just a  
6 recommendation. If the Commission accepts it, that's  
7 fine; if not, they don't.

8 Q. But then they would have to invite all the  
9 other EDUs, and so you would -- you would ask the  
10 Commission to make that kind of recommendation in this  
11 Duke proceeding?

12 A. Yes.

13 Q. That's all I have. Thank you.

14 MS. LOUCAS: I have no questions.

15 ATTORNEY EXAMINER PIRIK: Mr. Allwein.

16 MR. ALLWEIN: Thank you, your Honor. I have  
17 no questions.

18 MS. YOST: No questions, your Honor. Thank  
19 you.

20 ATTORNEY EXAMINER PIRIK: Mr. Boehm.

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

22 CROSS-EXAMINATION

23 By Mr. Boehm:

24 Q. Good afternoon, Mr. Scheck. Mr. Scheck, you  
25 have been working at this Commission a long time,

1 haven't you?

2 A. A while.

3 Q. You've been in a lot of rate cases?

4 A. A few.

5 Q. You've testified a lot on rate cases?

6 A. A lot of various different cases.

7 Q. And you are familiar with the traditional  
8 ratemaking paradigm in Ohio, are you not?

9 A. Pretty much, yes.

10 Q. And you are familiar, Mr. Scheck, with the  
11 fact that in a rate case a utility only earns a rate of  
12 return on investments; isn't that true?

13 A. Correct. In the traditional sense, that's  
14 right.

15 Q. And there are other ways for a utility to  
16 recover money that is used, and that is to expense  
17 them; right?

18 A. Yes.

19 Q. Okay. And when a utility has an investment  
20 and gets a rate of return on that investment, it's  
21 because generally that they put some money into some  
22 sort of infrastructure and they don't get their money  
23 right away, they only get it over a series of years,  
24 and, therefore, the Commission allows them to earn a  
25 rate of return on that investment; isn't that true?

1           A.    Yes.  It's dependent on the -- the life of  
2 the investment, the length of that.

3           Q.    Some of them can be up to 15, 30 years; is  
4 that right?

5           A.    Oh, yes.

6           Q.    But with respect to an item that's expensed,  
7 the utility gets their money almost contemporaneously  
8 with the expense; isn't that true?

9           A.    Pretty close.

10          Q.    Therefore, there's not a rate of return on  
11 that expense?

12          A.    Typically not.

13          Q.    For instance -- and isn't it true that most  
14 of the items that are recovered for -- through riders,  
15 are, in fact, expensed, but they're -- they're  
16 recovered on an ongoing basis?

17          A.    Yes.

18          Q.    For instance, fuel would be one of those;  
19 isn't that right?

20          A.    Yes.

21          Q.    And with respect to the money that's used by  
22 the Company with respect to energy efficiency, that  
23 money is recovered by the Company through a rider, is  
24 it not?

25          A.    Yes.  It's delayed a little bit, but yes.

1           Q.    Say six months or -- on a more or less  
2 contemporaneous basis; right?

3           A.    Yes.

4           Q.    And yet, Mr. Scheck, you seem to recommend  
5 that there be a rate of return on this expense. Can  
6 you tell me why that is?

7           A.    Because primarily the investment in energy  
8 efficiency is done to avoid an asset which the utility  
9 may or may not own, which is generation. The bulk of  
10 it would be in that category. It could avoid some  
11 transmission and distribution, which are fixed assets,  
12 as well, and in this case the State would grant or the  
13 Commission would grant the return on T&D investments,  
14 transmission and distribution investments. Generation  
15 is basically put into the marketplace over time, but  
16 still there's value there in terms of avoiding what is  
17 called a virtual power plant, which is the effect of  
18 energy efficiency, is to avoid purchasing that, so  
19 there is value in delaying that. Therefore, there is  
20 some equivalence in terms of energy efficiency  
21 investments as it relates to building a power plant or  
22 investing in additional transmission or distribution;  
23 therefore, the purpose of it is to incentivize a  
24 distribution company to do energy efficiency programs  
25 or promulgate them. That will avoid generation,

1 transmission and distribution, that are more costly  
2 than doing the energy efficiency.

3 Q. So essentially, if I understand your  
4 explanation, Mr. Scheck, is that since -- in fact, at  
5 least in some cases, energy efficiency can take the  
6 place of infrastructure?

7 A. It can delay it in most cases.

8 Q. That the Company ought to get a rate of  
9 return on it just as it would infrastructure?

10 A. Correct.

11 Q. But it doesn't disturb you that, in fact, in  
12 the first instance where the Company is making an  
13 investment in infrastructure it's using its own money,  
14 whereas in the instance here it's using ratepayer money  
15 on a current basis and still getting a rate of return?

16 A. Well, I don't know if they're getting  
17 ratepayer money right up front. The Company actually  
18 expends program administrative costs and rebates out of  
19 their own pocket to begin with, and then they're  
20 granted or may not be granted a recovery of those costs  
21 after the fact.

22 Q. There's a true-up?

23 A. Well, they still would have to get their  
24 monies after they spend them. They don't get them  
25 right away.

1           Q.    The point is merely that if they're spent  
2 properly, they get the money?

3           A.    Yes, subject to an EM&D evaluation.  So they  
4 still are evaluated by an independent auditor, the one  
5 which the Commission hired as well as their own  
6 independent auditor to make sure that the savings that  
7 they inured from the programs actually do exist.

8           Q.    But the delay is typically a matter of, say,  
9 six months?

10          A.    Typically, yes.

11          Q.    And, in fact, the Company can over-recover in  
12 some instances, can't it?

13          A.    It's possible, and this Company has actually  
14 over-recovered in the past, several years ago, and then  
15 actually rebated those funds back to customers.

16          Q.    So essentially what's happened with respect  
17 to giving this Company a rate of return on the money  
18 spent in the rider is they will earn a rate of return  
19 not on their money but on ratepayer money; right?

20          A.    I don't look at it that way.  They still  
21 spend their money first.

22          Q.    But they get it back in six months?

23          A.    Roughly, but it's still their money.

24          Q.    So are you recommending that they get a rate  
25 of return on the six months?

1           A.    A rate of return -- the rate of return would  
2   be determined on the amount that they exceed the annual  
3   benchmark.

4           Q.    Would you recommend on the same theory, for  
5   instance, that the Company get a rate of return on  
6   their fuel?

7           A.    No.

8           Q.    Why?

9           A.    Because fuel itself doesn't do anything to  
10   avoid any other asset.  It's consumed almost  
11   immediately.  Once it's -- once it's used, it's  
12   expended.  It's done.  It's gone.  You can't do  
13   anything more than that.  The energy efficiency  
14   investment is actually an investment in infrastructure  
15   typically owned by customers, even though the Company  
16   invests money in achieving that investment.

17          Q.    For instance, when you purchase power, that  
18   goes through the fuel adjustment cost?

19          A.    Correct.

20          Q.    Doesn't purchasing power avoid that  
21   infrastructure investment?

22          A.    Not necessarily.

23          Q.    Not necessarily.  Well, you would agree, of  
24   course, that energy efficiency doesn't necessarily  
25   avoid it either, wouldn't you, not in all cases?

1           A.    I'm not following the logic of that.  
2 Purchasing power is to provide power needs for  
3 customers immediately.  Again, it's like fuel.  Economy  
4 transactions that companies have done for years and  
5 years and years is burning energy from one facility  
6 versus another facility.  Those funds are expended to  
7 essentially recover fuel costs in a short-term economy  
8 transaction or if they're going through -- a PJM  
9 mechanism essentially does the same thing.  They do  
10 merit order of dispatch.  In a sense they might reorder  
11 the dispatch in order to get the savings.  Those are  
12 very short term, whereas energy efficiency achieves  
13 long-term savings over hard assets, not on a fuel  
14 basis.

15           Q.    And you don't -- you can't conceive of a  
16 situation where someone would buy power rather than  
17 build a new power plant or building a new distribution  
18 or transmission line?

19           A.    Could you repeat the question again?

20           MS. WATTS:  Your Honor, may I interpose an  
21 objection, please?

22           ATTORNEY EXAMINER PIRIK:  Yes.

23           MS. WATTS:  I'm using the aphorism "what's  
24 good for the goose is good for the gander" here.  Mr.  
25 Boehm's questions are going greatly far afield of the



1 four points that were raised by the Commission in its  
2 Entry, and since he seems to think that we are strictly  
3 limited to those questions, I object to these, as they  
4 go way outside the scope of those.

5 MR. BOEHM: Your Honor, we're talking about  
6 incentives, and my questions go to why, in fact, does  
7 the Staff think that the Company ought to get an  
8 incentive on ratepayer's money, and we're looking --  
9 we're examining now, as I understand it, analogous  
10 expenditures that have been traditionally regarded in  
11 certain ways in rate cases, and I'm trying to  
12 understand why this is different, why this is an  
13 expense that gets a rate of return, and that's where  
14 I'm going on this, your Honor.

15 ATTORNEY EXAMINER PIRIK: Objection  
16 overruled.

17 Q. Let me move on. Is it the position of the  
18 Staff that the Company ought to receive an incentive on  
19 all of the energy efficiency it undertakes, including  
20 that energy efficiency that is necessary to meet the  
21 mandates?

22 A. Well, let me clarify my answer. If a Company  
23 only met the mandate, the answer would be no. However,  
24 if they go above the mandate, the answer is yes. So if  
25 they only did a sufficient amount to meet the mandate,

1 the answer would be no return whatsoever. However, in  
2 order to get the Company to do more than just the  
3 mandate, there would need to be a mechanism in place  
4 that would make it attractive for the Company to invest  
5 more dollars into cost-effective energy efficiency  
6 rather than just meeting the mandate.

7 Q. When you say the Company invests more  
8 dollars, you mean ratepayer money; right?

9 A. I'm talking about Company dollars yet to be  
10 recovered from ratepayers.

11 Q. To be recovered within six months of --

12 A. Just like any other traditional asset. Its  
13 delayed and recovered over a long period of time.  
14 There's still -- the dollars that are being invested  
15 are company dollars and then recovered from  
16 ratepayers. It's the same thing for energy efficiency  
17 as it is for any other fixed asset.

18 Q. Then why is it delayed over time? I thought  
19 we agreed that they recovered it in six months.

20 A. It's still a delay. They still are subject  
21 to the measurement and evaluation from the auditors, so  
22 they may not get their money. If it's deemed that they  
23 did something imprudent or the programs weren't cost  
24 effective, they wouldn't receive recovery of those  
25 funds.

1 Q. Mr. Scheck, there's a delay between the time  
2 that you put in labor for this PUC and the time you get  
3 your paycheck, isn't there?

4 A. Yes.

5 Q. Do you think you ought to get a rate of  
6 return on that?

7 MR. PARRAM: Objection. I'm not  
8 understanding the question or what relevancy it has to  
9 the Commission's prior Entry.

10 MR. BOEHM: I'm trying to understand why six  
11 months is a delay for a public utility company, your  
12 Honor.

13 ATTORNEY EXAMINER PIRIK: Why don't we go  
14 down that road.

15 Q. I'm trying to --

16 Can I have the witness' last answer read  
17 back, please, your Honor?

18 ATTORNEY EXAMINER PIRIK: Yes.

19 (Answer read back.)

20 Q. So I thought we had an understanding, an  
21 agreement in the beginning, Mr. Scheck, that those  
22 matters that for the most part are recovered through  
23 the rider are expensed items. Do you want to change  
24 that now? Do you want to change that answer?

25 A. They're still expensed items and they're not

1 treated like a fixed capital asset, but as I explained  
2 to you, it's like a virtual power plant in the sense  
3 that delayed financing for fixed assets is the savings,  
4 so that's the reason why there's a return attributed to  
5 that; otherwise, why would the Company be incentivized  
6 to do anything if they couldn't earn a return on  
7 avoiding investment in the plant.

8 Q. Well, I think they might -- isn't it true  
9 that they might do it because the law tells them they  
10 have to?

11 A. Yes. I answered to you that they -- if they  
12 only did the minimum, they'd get nothing.

13 Q. If they do one percent over the minimum, they  
14 get that one percent and everything they did before;  
15 right?

16 A. So long as everything was deemed to be  
17 prudent.

18 Q. So why do they get everything they're  
19 required by law to get, why do they get all of that  
20 money back because they went one percent over?

21 A. They would get all of their money back if  
22 they met the benchmark. If they go one percent over,  
23 I'm not certain they even trigger the return yet, so if  
24 they did 101 percent of the benchmark, they'd get 101  
25 percent of the monies expended so long as they were

1 cost effective in meeting the benchmark.

2 Q. But we're not talking about -- I'm sorry if I  
3 misled you. I'm not talking about the cost of money  
4 expended. I'm talking about the incentive. As I  
5 understand it, the position of the Staff is that if the  
6 Company expends this ratepayer money and gets a hundred  
7 percent of what the benchmarks are, they get no  
8 incentive, but if they do 101, they get 101 percent of  
9 the incentive; is that right?

10 A. I don't believe so.

11 MR. PARRAM: Objection. Would you refer me  
12 to Mr. Scheck's testimony where he says 101 percent?

13 Q. Mr. Scheck, did you just say that if the  
14 Company achieved a hundred percent of their benchmark,  
15 they get no incentive money?

16 A. Correct.

17 Q. And if they achieve 101 percent of their  
18 benchmark, they get 101 percent; right? They get an  
19 incentive on the entire amount, not just the one  
20 percent, not just the overage, but everything they did  
21 before?

22 A. I'm not certain that's where it's actually --  
23 the trigger actually starts at one percent.

24 Q. Let's say 110 percent. They get not just the  
25 10 percent over? They get everything before that?

1           A.     They would get whatever is expended to meet  
2     the 110 percent plus return of the full amount -- they  
3     would get whatever funds were expended to reach 110  
4     percent of the annual goal, whatever that pot of money  
5     is, and then they would get return on the same amount  
6     on that pot of money, much like any other fixed asset  
7     the Company would invest in.

8           Q.     But it isn't a fixed asset, is it?  It's an  
9     expense?

10          A.     In a sense it is because you're avoiding  
11     fixed asset expenses on the other side of the ledger,  
12     which is when you look at the avoided cost calculation,  
13     you're talking about avoided generation, avoided  
14     transmission, and avoided distribution; so they're  
15     comparable in that sense.

16          Q.     But because of this analogy, now the Company  
17     gets a windfall; right?  They get paid an incentive for  
18     doing that which they are required by law to do?

19          A.     No.

20          Q.     They don't?

21          A.     I don't think so, because if they only did up  
22     to what the law required them to do, they get nothing.

23          Q.     If they do 10 percent more than that, they  
24     get everything?

25          A.     Correct.

1 Q. Even the part that the law says they're  
2 required to do; right?

3 A. Well, in order to incentivize the Company to  
4 do something beyond the minimum, then that's what you  
5 need to do. You have to have some sort of financial  
6 reward for doing so. I mean, what, you only get zero  
7 if you just build a power plant and you built it at  
8 cost?

9 Q. Can you tell me why it is the Staff feels the  
10 need to be so extravagantly generous with ratepayers'  
11 money that you're going to give them money to do what  
12 they're required by law?

13 MR. PARRAM: Objection. Mischaracterizing --

14 ATTORNEY EXAMINER PIRIK: Sustained.

15 Q. Why would the Commission pay the Company an  
16 incentive to do what they're required to do by law?

17 A. Again, my answer is if they only do the  
18 minimum, they get nothing.

19 Q. When you say they get nothing, you mean they  
20 get no incentive?

21 A. Correct.

22 Q. You don't mean that they don't get their  
23 money back? They get it from ratepayers?

24 A. Not necessary. Let's say they underperformed  
25 by one-tenth of one percent and didn't meet their

1 benchmark. They are subject to a penalty under the  
2 law.

3 Q. Do they get their costs of performance?

4 A. Minus whatever the penalty would be if you  
5 did not perform.

6 Q. Okay. So what you're saying is there's a  
7 penalty against the Company for not performing?

8 A. Correct.

9 Q. Then why isn't that enough incentive?

10 A. Because there's no additional reason to do  
11 above what the minimum is.

12 Q. Do you know how much the Company overachieved  
13 in 2010?

14 A. It was fairly significant. I don't remember  
15 the exact amount, but it was --

16 Q. Would you accept that it was 487 percent?

17 A. That's credible. But, again, the number in  
18 2010 is lower than it is in '11 or '12, and the number,  
19 in order to achieve each and every year, increases over  
20 time; so that's a much lower amount than it would be  
21 for 2012 or 2013 or 2014 and -- all the way up to 2025.

22 Q. Isn't it true that the Company overachieved  
23 all those years?

24 A. I don't know -- I haven't looked to see what  
25 their overachievement was for 2011. They did file it



1 recently, but I don't recall what their overachievement  
2 level was.

3 Q. Isn't it you true that the Company can bank  
4 its overachievement and use it in successive years to  
5 meet their goals?

6 A. Yes, but they can't use it towards future  
7 incentive plans and subtract it out, so if they use it  
8 to bank, they can't count towards their annual goal --  
9 if they use this year's -- let's say they overachieved  
10 in 2011 and they wanted to bank it. They can't count  
11 the banking in the current year for its overachievement  
12 or towards meeting the goal.

13 Q. Well, let's go with that.

14 A. You can count it towards meeting the goal,  
15 but you can't count it towards -- can count it towards  
16 the goal, the minium, the annual goal for banking, but  
17 you can't count it towards the incentive for that  
18 current year.

19 Q. But under the Staff's way of handling this,  
20 isn't it true, then, that they could use the bank to  
21 get them up to a hundred percent?

22 A. Possibly.

23 Q. Okay. And all they'd have to do, then, is  
24 come up with enough to get 10 percent more over?

25 A. If that's the threshold.

1 Q. And then they'd get everything, including  
2 return on the bank, an incentive on the bank?

3 A. I'm not sure of that.

4 Q. Would it bother you if that were the result?

5 A. It would.

6 Q. You would be against that?

7 A. It depends on the level, the amount that's  
8 banked.

9 Q. Let's go to, Mr. Scheck, your testimony with  
10 respect to the SEET being the cap. Okay. I think  
11 that's on Page 8 of your testimony.

12 A. Yes.

13 Q. I'm including here what I took down as your  
14 addition to that. All right. Now, apparently you  
15 weren't here, unfortunately, when Mr. Kollen was on the  
16 stand, when he was going over what he interpreted SEET  
17 to mean. First of all, SEET means Significantly  
18 Excessive Earnings Test, doesn't it?

19 A. Yes.

20 Q. Would you agree that a component of  
21 significantly excessive earnings would be that amount  
22 of earnings that essentially is equivalent to what the  
23 utility company, under traditional regulations, would  
24 get?

25 A. That's part of it.

1 Q. That would be the base. Okay. Would you  
2 agree that the rule implies that there's some amount  
3 above that that's excessive?

4 A. I think there's either reasonable or  
5 significantly excessive. I don't think there's a  
6 definition for excessive.

7 Q. Let's just -- let's not go into significantly  
8 excessive. Let's just talk about excessive. Let's  
9 assume for purposes of this discussion, then, that the  
10 rate of return of 11 percent on equity is a traditional  
11 rate of return, maybe even a little bit generous, that  
12 the Commission has allowed over time; right? So let's  
13 assume, then, that the Commission finds that a rate of  
14 return of 13 percent is excessive. Are you with me?

15 A. If it doesn't trigger a significant excessive  
16 earnings threshold, I don't think they would define it  
17 that way.

18 Q. Stay with me for a minute, will you, just on  
19 the questions I'm asking.

20 A. I'm trying.

21 Q. Okay. Let's say the Commission says okay, 13  
22 percent is excessive because it's more than you would  
23 have gotten in a traditional rate case, and that's why  
24 it's excessive; right?

25 A. There --

1 Q. Just address that's part of it now; okay?

2 MR. PARRAM: Objection, your Honor. If you  
3 don't -- the witness appeared as if he did not  
4 understand the question. I see that Mr. Boehm is  
5 jumping in when he's about to say something. I just  
6 want to make sure that he has time to answer.

7 ATTORNEY EXAMINER PIRIK: You need to slow  
8 down --

9 MR. BOEHM: I apologize if I --

10 ATTORNEY EXAMINER PIRIK: You need to slow  
11 down for a couple of reasons. The court reporter is  
12 trying to follow, and we need to be sure the witness  
13 understands.

14 MR. BOEHM: Okay.

15 Q. What I'm proposing, Mr. Scheck, is that  
16 you've got an amount that under traditional ratemaking  
17 would be a reasonable rate of return. Let's just call  
18 it 11 percent.

19 A. Uh-huh.

20 Q. And let's assume that 13 percent, since it's  
21 more than 11 percent, is excessive.

22 A. I don't see it that way.

23 Q. Let me finish my hypothetical. Thirteen  
24 percent is excessive. That 13 percent is not  
25 necessarily significantly excessive, is it? It's

1 merely excessive?

2 A. I don't accept the premise.

3 Q. What don't you accept?

4 A. Because the term excessive implies that  
5 something is out of -- out of the norm, so if a company  
6 would earn 13 percent instead of 11, I don't think  
7 that's abnormal.

8 Q. Let's make up a different number. I'll go  
9 anywhere you want. Let's go with 15; okay? Fifteen,  
10 let's say that the company is earning 15. Would you  
11 say that's excessive?

12 A. I don't know what the threshold is for the  
13 SEET.

14 Q. Will you accept for -- with me that -- for  
15 the purpose of my question, 11 percent is what the  
16 company would ordinarily get as a rate of return;  
17 right? Let's assume that they're going to get 15  
18 percent. So that's more than they would ordinarily  
19 get; right?

20 A. Yes, but the thing is that you're labeling  
21 something as excessive, meaning that they did something  
22 in terms of their behavior that was egregious, and I'm  
23 saying let's say the company did something to save  
24 costs on their end that was above average. So I don't  
25 see that as excessive. If it didn't trigger

1 significant excessive earnings, I don't necessarily see  
2 that 15 percent earnings relative to an 11 percent  
3 granted is necessarily excessive.

4 Q. First of all, Mr. Scheck, I'm not at all  
5 implying that they did something egregious. I'm all in  
6 favor of a company making profits. My clients all make  
7 profits, and I find that a good thing; okay? So  
8 there's no implication of nefarious conduct. You give  
9 me a number that you think is excessive, and we'll go  
10 with that; okay? What percentage?

11 A. I don't have a definition for that. I either  
12 have reasonable rate of return or you trigger a  
13 significant excessive return, but there's no such thing  
14 in the middle, in my eyes.

15 Q. So the word significantly to you is  
16 surplusage? It doesn't mean anything?

17 A. No. There is a defined -- there is a formula  
18 that defines what that number is.

19 Q. I understand the formula, but in the  
20 description, significantly doesn't mean anything to  
21 you? There's a reasonable rate of return and an  
22 excessive rate of return, and you don't recognize  
23 significantly excessive rate of return being anything  
24 different than an excessive rate of return; right?

25 A. No, I don't -- I don't agree with that

1 statement. I think there is either a reasonable rate  
2 of return or a significantly excessive rate of return,  
3 but there is no such thing as an excessive rate of  
4 return. It's not defined in the statute nor is it  
5 defined by the Commission.

6 Q. Therefore, it doesn't exist?

7 A. Correct.

8 Q. Can you tell me why you think significantly  
9 excessive rate of return is the cap?

10 A. That's the determination by the formula,  
11 whoever determines that.

12 Q. You're recommending it, aren't you?

13 A. Yes. If you hit the threshold, whatever that  
14 number may be. It may be 15 percent, but I --

15 Q. You're recommending it. I'm trying to  
16 understand your reasons for recommending it.

17 A. My reasons for recommending the cap is  
18 because energy efficiency earnings are a subset of the  
19 company's total earnings; therefore, they would factor  
20 in or be added to that total amount, and so you look at  
21 the total earnings of the Company inclusive of energy  
22 efficiency, not exclusive, in order to determine what  
23 the SEET would be, and if the energy efficiency  
24 earnings triggered that cap, then you would stop those  
25 earnings from going forward and be increased.

1           Q.    Let me see if I can summarize your testimony,  
2   and you disagree with me where you think it's -- but  
3   let me finish, please.  The testimony is that even  
4   though these investments that we're talking about for  
5   energy efficiency are not really investments, they are  
6   expenditures, they are expensed and recovered on  
7   virtually a contemporaneous basis, and notwithstanding  
8   that, the Commission Staff believes that the Company  
9   ought to get a rate of return on those -- or incentive  
10  on those in the form of a rate of return, and the only  
11  limit on the rate of return should be Significantly  
12  Excessive Earnings Test; is that right?

13           MR. PARRAM:  Your Honor, I object to the  
14  question.  Mr. Boehm is just testifying and asking the  
15  witness to agree with his testimony.  What Mr. Scheck  
16  has already testified to is his testimony.  If there's  
17  a specific question that he has for Mr. Scheck, I would  
18  like for him to pose it, but I object to the form of  
19  the question.

20           ATTORNEY EXAMINER PIRIK:  Sustained.

21           MR. BOEHM:  I'm sorry.  I don't understand.

22           ATTORNEY EXAMINER PIRIK:  If you have a  
23  question, you can ask Mr. Scheck his testimony.

24           MR. BOEHM:  My question was does he agree  
25  with my summary of his testimony.



1           ATTORNEY EXAMINER PIRIK: I'm not asking  
2 you -- it's not appropriate for you to try to summarize  
3 his testimony. His testimony is what it is. If you  
4 have clarification questions, you can ask those.

5           MR. BOEHM: Yes, your Honor.

6           Q. The energy efficiency, Mr. Scheck, we're  
7 talking about, what does that avoid? Energy efficiency  
8 for the most part, what sort of infrastructure costs  
9 does it avoid?

10          A. Primarily generation and then a second -- and  
11 a small secondarily amount would be distribution and  
12 transmission.

13          Q. Primarily generation?

14          A. Yes.

15          Q. And are you familiar with what happens to the  
16 Company's generation here in three years, the ownership  
17 of that generation?

18          A. Well, Duke Corporation still would own the  
19 generation. It just wouldn't be held by the utility.

20          Q. I'm sorry. Mr. Scheck, are you saying --  
21 what Duke Corporation will own the --

22          A. Duke Corporate in total still would own the  
23 generation. It's just not held by the utility.

24          Q. Are they subject to the jurisdiction of this  
25 Commission?

1 A. Which -- I didn't follow you.

2 Q. This Duke Corporation that would own the  
3 generation, are they subject -- or will they be subject  
4 to the jurisdiction of the Commission?

5 A. No.

6 Q. And isn't it true that as far as the law is  
7 concerned, they could sell it to Duke Generation  
8 Corporation or they could sell it to some Singapore  
9 outfit and it's all the same in the eyes of the law?

10 A. Sure. That would be a separate entity, but  
11 that's not what has occurred.

12 Q. So you distinguish -- you think there's a  
13 difference in the eyes of the law as to whether Duke  
14 sells its generation to an affiliate or whether it Duke  
15 sells its generation to some unrelated third party?  
16 There's a difference in your mind?

17 A. Oh, clearly --

18 MR. PARRAM: Objection. The witness is not  
19 an attorney. It's a legal interpretation. It should  
20 be -- it should be noted that he's making a legal  
21 determination based upon the question Mr. Boehm asked.

22 MR. BOEHM: Your Honor, it doesn't seem to  
23 bother the witness that he's willing to say generation  
24 corporation law in rendering his opinion, and it seems  
25 to me astounding that the Commission has got it in mind

1 that there's a difference between generation owned by  
2 an affiliate, so long as the corporate veil is  
3 recognized, and generation owned by a totally  
4 independent company. I'm just astounded by that. I'm  
5 trying to see how far this misconception on the part of  
6 the witness has to do with what his answers are.

7 ATTORNEY EXAMINER PIRIK: I'll overrule the  
8 objection and allow you to continue, and then I'll see  
9 how far you go.

10 MR. BOEHM: Okay.

11 Q. Would it make a difference to you, Mr.  
12 Scheck, if -- then if the Company divested its  
13 jurisdiction to Hong Kong Power and Light?

14 A. Absolutely.

15 Q. It would?

16 A. Yes.

17 Q. What would your recommendation be in that  
18 event?

19 A. Well, in that case there would be no  
20 behavioral reason for the company to favor its -- if it  
21 still owned the generation but it's held by some other  
22 party that actually sold it off, then they'd have no  
23 connected interest in trying to make sure that they can  
24 sell all that generation, especially if they have  
25 distribution customers under monopoly control, to try

1 to make sure that they can sell the generation or  
2 whatever generation they have so that there is some  
3 relationship between -- if you have a distribution  
4 company and you have a Genco under the same corporate  
5 umbrella, they will behave in a fashion to maximize  
6 their returns, whereas if they're separate, meaning  
7 fully divested, they don't own it at all, separate  
8 shareholders, then that relationship no longer exists.

9 Q. Mr. Scheck, let me ask you this, isn't it  
10 true that a part of this energy efficiency essentially  
11 devolved, if you will, from what we used to call  
12 demand-side management? And you and I have been here  
13 long enough to remember what that is. Isn't that true?

14 A. I'm sorry. What is the question again?

15 Q. Let me try it another way. Under the old  
16 demand-side management, the purpose of energy savings  
17 was to prevent the need of the company to build a new  
18 power plant, and the idea was that if the company  
19 didn't build a new power plant, then ratepayers rates  
20 wouldn't go up; isn't that right?

21 A. Correct.

22 Q. Okay. And so isn't it true that in the  
23 ordinary case that is put forward as one of the reasons  
24 that energy efficiency benefits ratepayers is because  
25 if there's energy efficiency, that the company doesn't

1 have to build a new power plant and ratepayers don't  
2 have to pay for the new power plant; isn't that  
3 correct?

4 A. Under the old paradigm. It still holds,  
5 though, that all else being equal, meaning the  
6 customers demand about the same amount as they did  
7 previously, that all those customers have to purchase  
8 that generation from somewhere. Whether the Duke  
9 utility held that generation or if it was Duke  
10 Corporate or it was some other third party, the purpose  
11 of energy efficiency is to avoid the costs of that  
12 generation from being built, whether it's owned by Duke  
13 or somebody else.

14 Q. But if it's not owned by Duke, then what you  
15 have is the ratepayers of Duke paying for the energy  
16 savings of people all over the PJM region; isn't that  
17 true?

18 A. Can you repeat the question again?

19 Q. If, in fact, the energy -- the generation is  
20 owned by Duke and you prevent Duke from building more  
21 generation, then the ratepayers of Duke see an  
22 immediate benefit; isn't that true?

23 A. Under the old paradigm, that is correct, but  
24 that doesn't mean some other entity may want to build  
25 generation.

1           Q.    But if Duke doesn't own generation anymore,  
2 if they don't own generation anymore, then they  
3 wouldn't have to pay for new generation, and the fact  
4 that Duke has saved buying or somebody has saved the  
5 cost of building new generation doesn't immediately  
6 benefit the ratepayers of Duke, does it?

7           A.    I think that's an incorrect premise, because,  
8 as I explained before, the demand of the consumers from  
9 the distribution company have to purchase their power  
10 from somewhere. They're not going to buy it from  
11 Hawaii. They're going to buy it within generally the  
12 PJM footprint, so there's going to be a responsibility  
13 by all the load-serving entities within PJM to meet  
14 their demand, plus a reliability number, typically  
15 around 15 to 18 percent, above that; so that -- those  
16 power plants would have to be supplied from somewhere,  
17 so whether it's built by Duke or it's built by someone  
18 else, the obligation to pay for that still exists, so  
19 you still have contracts that are paid by -- customers  
20 are shopping to third parties that are existing inside  
21 the PJM context, so those requirements are still there  
22 to meet the capacity obligations for those customers.  
23 They don't go away. Just because Duke is not building  
24 it doesn't mean somebody else has to build it, because  
25 if Duke is the load-serving entity for those customers,

1 then they would have to provide that capacity from  
2 somewhere, and those capacity payments would have to be  
3 paid by those retail customers.

4 Q. Maybe they're in Ohio and maybe they're in  
5 New Jersey and maybe they're in Maryland; right?

6 A. That could very well be, but the value of  
7 avoiding by performing energy efficiency, whether you  
8 are a shopper or a nonshopper, still has added value of  
9 avoiding that capacity.

10 Q. So in some instances, then, Ohio ratepayers  
11 are paying for the energy efficiency benefits that  
12 evolve to Maryland or Pennsylvania; isn't that true?

13 A. Repeat the question again.

14 Q. Isn't Maryland and Pennsylvania part of PJM?

15 A. Correct.

16 Q. And what you're telling me, as I understand  
17 it, is that even though Duke may not have to build a  
18 new power plant and the benefits, therefore, don't --  
19 what you're telling me is that the savings from not  
20 having to build power plants could be all over the  
21 region, all over the PJM; right?

22 A. Well, the value could spread throughout the  
23 entire PJM footprint, but -- if that value -- if  
24 they're doing energy efficiency in New Jersey as well  
25 as in Maryland and these other jurisdictions, then that

1 value is spreading throughout the whole footprint.

2 Q. Right. And AK Steel should feel good about  
3 the fact they're going to pay \$2 million more this year  
4 for energy efficiency costs because the people in  
5 Maryland are going to benefit; right?

6 MR. PARRAM: Objection. What fact in  
7 evidence does AK Steel bearing any type of cost --  
8 relevancy of the question.

9 MR. BOEHM: It was in the prior part of the  
10 hearing, your Honor.

11 ATTORNEY EXAMINER PIRIK: I'm going to  
12 sustain the objection with regard to that question. If  
13 you have another question, that would be fine.

14 Q. Would you call this energy efficiency  
15 proposal that you support on behalf of the Staff an  
16 economic development move on the part of Staff? Do you  
17 think this is going to aid economic development in  
18 Ohio?

19 A. Energy efficiency?

20 Q. Yes.

21 A. If it's cost effective by the Total Resource  
22 Cost Test which applies to the whole universe of  
23 customers, then yes. If there's value that -- let's  
24 say residential customers did something to reduce  
25 demand for everybody. Then AK Steel would benefit as



1 well, because total demand is reduced for all customers  
2 in the region, not just for AK Steel, so AK Steel would  
3 benefit from other customers reducing their demand  
4 because total demand in the PJM footprint is reduced.

5 Q. But you're talking about the PJM footprint  
6 now?

7 A. Yes.

8 Q. You recognize --

9 A. Well, in this case probably the zone, which  
10 I'm not sure if Cincinnati is in the AD zone or it has  
11 a separate zone, but the prior zone that existed was  
12 for AP Dayton, and Cincinnati may have a separate zone  
13 within the PJM footprint, but whatever zone they're in,  
14 definitely they would benefit.

15 Q. And assuming for the sake of a hypothetical  
16 that the difference between the rider as proposed by  
17 the Company here and the prior rider for one client, AK  
18 Steel, was \$2 million a year, your testimony is that  
19 that would be made up by the reduction in the -- in  
20 demand; is that right?

21 A. Based on Brattle studies and the prior PJM  
22 footprint, yes. The savings for doing energy  
23 efficiency globally, throughout the PJM, actually saved  
24 customers a lot more money, in the millions of dollars,  
25 than the amount of money that was spent on energy

1 efficiency.

2 Q. And so the Company, Duke Energy, should get  
3 an incentive to do more of this; right?

4 A. If it's cost effective, sure.

5 Q. Now, if they do more of it, will that cost AK  
6 Steel more in its rider?

7 A. That depends. I mean, if AK Steel does not  
8 nothing, yes, they'll have a rider payment to make, but  
9 to say that AK Steel has nothing to do I think is a  
10 premise that's probably not true. I think AK Steel  
11 could do a lot of energy efficiency. They could  
12 file -- certainly file for an exemption if they wanted  
13 to. If they've done a lot of energy efficiency, they  
14 could certainly file for that or they could request  
15 rebates.

16 Q. Can I ask you a question, Mr. Scheck, what do  
17 you know about running an integrated steel mill?

18 MR. PARRAM: Objection, your Honor. This is  
19 exactly what we litigated in the last hearing as it  
20 relates to what AK Steel has done, if the witnesses  
21 have run any type of steel mill. If Staff is going to  
22 be limited to the specific findings or questions that  
23 were put out in 9A, B, C, D, and E, I think OEG should  
24 be limited to that, also.

25 ATTORNEY EXAMINER PIRIK: Would you --

1 MR. BOEHM: I'll move on.

2 ATTORNEY EXAMINER PIRIK: Thank you, Mr.  
3 Boehm.

4 MR. BOEHM: I will conclude my testimony --  
5 or my cross-examination -- Freudian slip -- my  
6 cross-examination.

7 ATTORNEY EXAMINER PIRIK: Mr. Parram.

8 MR. PARRAM: Just a couple -- actually, your  
9 Honor, would it be okay if we take a brief five-minute  
10 recess?

11 ATTORNEY EXAMINER PIRIK: Why don't we do  
12 that. Let's go off the record.

13 (Discussion off the record.)

14 ATTORNEY EXAMINER PIRIK: Back on the  
15 record.

16 Mr. Parram.

17 REDIRECT EXAMINATION

18 By Mr. Parram:

19 Q. Mr. Scheck, I have a couple of redirect  
20 questions for you.

21 A. Okay.

22 Q. Mr. Boehm had a couple of questions about  
23 whether or not the incentive mechanism should, I guess,  
24 be allowed in this case.

25 MR. BOEHM: I'm sorry, you're trailing off.

1 MR. PARRAM: I'm sorry.

2 Q. Mr. Boehm had a couple of questions about  
3 whether or not the incentive mechanism should be  
4 allowed in this particular case. The question I have  
5 for you is does Ohio law currently allow utilities to  
6 get an incentive for going beyond their energy  
7 efficiency mandates?

8 A. Yes.

9 Q. And what is your understanding of the purpose  
10 of allowing for incentives as it relates to energy  
11 efficiency mandates?

12 A. Well, in general it's to get the company to  
13 perform as best as it can in terms of the cost  
14 expended. So, for example, it's not equivalent to a  
15 rate of return on a fixed asset, as described by Mr.  
16 Boehm in his questioning. It's a little different in  
17 the sense that if a company exceeds the benchmark but  
18 it doesn't -- it does no more than just meet the  
19 threshold, it doesn't go above cost effectiveness or  
20 it's not cost effective, it doesn't matter, because the  
21 incentive is driven to make the company perform as best  
22 as possible for cost effectiveness, not to just do  
23 meeting a threshold and then, therefore, getting a  
24 return. It's not guaranteed in that sense.

25 Q. And so you sort of touched on another

1 question I wanted to ask. You had a conversation with  
2 Mr. Boehm about what exactly is it that Duke or the  
3 utilities will get in this particular case for the  
4 incentive mechanism that it proposed in this case.  
5 What would Duke receive once it passes the --

6 A. Threshold.

7 Q. -- threshold?

8 A. Yeah. Basically, you would look at the  
9 avoided costs, and you subtract out the program costs,  
10 and you have some net benefits that are left over, and  
11 what the Company is proposing is to share in those net  
12 benefits, so the only way they're going to get -- or  
13 earn more money is by increasing the differential  
14 between what the avoided costs are and the program  
15 costs are; so the program costs would have to be  
16 greater than the program costs in order for them to get  
17 any shared savings at all. So they would only get a  
18 portion of those net benefits, not the full amount.

19 ATTORNEY EXAMINER PIRIK: Could you reread  
20 that answer, please?

21 (Answer read back.)

22 ATTORNEY EXAMINER PIRIK: Mr. Scheck, was  
23 that --

24 A. The second time around, the program costs  
25 minus program costs isn't correct. It should be

1 avoided cost minus program costs, and that differential  
2 that's left over, they share in that amount so long as  
3 they exceed the benchmark.

4 ATTORNEY EXAMINER PIRIK: Okay. Thank you.

5 Mr. Parram.

6 Q. Mr. Boehm also asked you a couple of  
7 questions about the amount that Duke is allowed to bank  
8 and using that in relation to meeting its threshold one  
9 year as opposed to actually getting an incentive  
10 mechanism off of bank amounts. Could you explain  
11 your -- what is your understanding of what can Duke do  
12 to meet the threshold and then what exactly -- what  
13 incentives will Duke get off of that banked portion  
14 from year to year?

15 A. Well, if they bank something and they move to  
16 the future year, subsequent year, then if they already  
17 used it in the prior year towards reaching their  
18 benchmark and going above that amount, then they  
19 wouldn't get to earn twice on that. They only get to  
20 earn once. So essentially they can count it towards  
21 meeting their benchmark in the subsequent year, but it  
22 wouldn't be used for the incentive payment.

23 Q. And after Duke divests its generation, does  
24 it still have the obligation to meet the statutory  
25 energy efficiency obligations?

1           A.     Could you repeat the question again?

2           Q.     Sure.  After Duke divests itself of its  
3 generation, Duke Ohio, Duke Energy Ohio, would it still  
4 have the obligation to meet the statutory obligations  
5 of the energy efficiency mandates?

6           A.     I take issue with the word divest.  I still  
7 believe that if it's held by Duke Corporation --

8                     (Discussion off the record.)

9           A.     I still believe that Duke has not fully  
10 divested of its generation assets.  It's still held by  
11 the Duke Corporation, so until it's either spun off and  
12 held by separate stockholders, separate group, or it's  
13 bought out by a different entity, it's still part of  
14 Duke Corporation.  And yes to the second part of your  
15 question in the sense that, yes, Duke Energy Ohio, as a  
16 distribution company, is still obligated to meet its  
17 statutory requirements as a distribution utility  
18 regardless or not if it owns generation.

19          Q.     So a preferable a term for divest would be  
20 transfer?

21          A.     Transfer, it may be a better word to use, but  
22 the stock ownership still reflects those generating  
23 assets regardless if they transferred to some other  
24 entity.  If it's still held by Duke Corporation -- I  
25 forget what the Duke symbol is on the Stock Exchange --

1 it still reflects all those generating assets.

2 Q. So I can clarify that, because I sort of  
3 butchered it, after Duke transferred its generation  
4 assets, they would still be obligated to meet the  
5 statutory energy efficiency mandates; is that correct?

6 A. Yes.

7 MR. PARRAM: That's all I have, your Honor.

8 ATTORNEY EXAMINER PIRIK: Thank you.

9 MR. BOEHM: Just a short redirect, your  
10 Honor.

11 ATTORNEY EXAMINER PIRIK: Okay.

12 MR. BOEHM: Or recross.

13 ATTORNEY EXAMINER PIRIK: Does anyone else  
14 have any recross?

15 MS. WATTS: No recross, your Honor.

16 ATTORNEY EXAMINER PIRIK: Mr. Boehm.

17 RE-CROSS-EXAMINATION

18 By Mr. Boehm:

19 Q. Mr. Scheck, have you ever asked Duke its  
20 opinion about your opinion of the difference between  
21 transferring their assets to a wholly owned subsidiary  
22 or affiliate and some third party? Have you ever --  
23 have you ever asked them whether they thought it made a  
24 difference?

25 MR. PARRAM: Objection, your Honor. I don't



1 see how that is relevant to the issues in this  
2 particular hearing as it relates to the Commission's  
3 prior Entry in this case.

4 ATTORNEY EXAMINER PIRIK: Does it relate to  
5 your redirect?

6 MR. BOEHM: I think it does, your Honor.

7 MR. PARRAM: Duke's understanding as it  
8 relates to --

9 ATTORNEY EXAMINER PIRIK: My question is does  
10 it relate to your redirect?

11 Mr. Boehm, does it relate to the redirect?

12 MR. PARRAM: I'll withdraw my objection, your  
13 Honor.

14 A. Could you repeat the question again?

15 Q. Whether you have ever tried out your opinion  
16 on Duke, the one you've proffered here today that it  
17 makes a difference in their regulatory status and  
18 obligations with respect to the generating assets if  
19 they transferred the generating assets to a wholly  
20 owned subsidiary of Duke or to some unrelated third  
21 party. Have you ever tried that opinion on them to see  
22 what their -- what they thought of it?

23 A. I have not tried that opinion on them, but in  
24 response to your question, I maintain consistency with  
25 the Staff White Paper regarding incentive mechanisms

1 and ownership and generation. I'm not differing from  
2 that. I don't believe corporate behavior really  
3 changes a lot. If you transferred it to some other  
4 entity, it's not under the distribution utility, and  
5 it's still under the ownership of Duke, and Duke seeks  
6 to maximize its returns regardless of the assets; so,  
7 in my view, until it is actually totally divested, its  
8 behavior toward generation will be similar then it was  
9 in the past.

10 ATTORNEY EXAMINER PIRIK: What White Paper  
11 are you referring to?

12 THE WITNESS: The Staff White Paper that  
13 was -- I don't know the date, but it was requested in  
14 the entry on the hearing in FirstEnergy's energy  
15 efficiency portfolio case. I think it's on 09-1947,  
16 09-1948, and 09-1949. I don't know the order. I think  
17 it's Ohio Edison, Cleveland Electric Illuminating, and  
18 Toledo Edison, those cases combined, and the Commission  
19 asked for a Staff White Paper regarding incentive  
20 mechanisms. That's what I'm referring to. So I'm  
21 consistent with the White Paper that was put out.

22 ATTORNEY EXAMINER PIRIK: Okay. Was it  
23 docketed?

24 THE WITNESS: Yes, it was docketed.

25 MS. WATTS: We have it, your Honor.

1 THE WITNESS: You have it right there  
2 (indicating).

3 MR. ALLWEIN: It was docketed October 24th,  
4 2011, in the cases that Mr. Scheck indicated.

5 ATTORNEY EXAMINER PIRIK: We'll take  
6 administrative notice of the White Paper, just to be  
7 sure that the record is clear as to what he's referring  
8 to in his testimony. Otherwise, it won't be clear.

9 Q. Just quickly Mr. Scheck, we may have gone  
10 over this before, but your counsel had ask you wasn't  
11 it true that the law allowed the Commission to grant  
12 the utility company an incentive mechanism, and you  
13 said yes; right?

14 A. Yes.

15 Q. Does the law, in your estimation, require  
16 them to do that?

17 A. No.

18 Q. It's up to the Commission to decide whether  
19 or not an incentive is called for; right?

20 A. Correct.

21 Q. I have no further questions.

22 ATTORNEY EXAMINER PIRIK: Thank you.

23 EXAMINATION

24 By Attorney Examiner Stenman:

25 Q. Mr. Scheck, did you review the information

1 attached to Mr. Duff's Supplemental Testimony, his  
2 Second Supplemental Testimony regarding the three  
3 proposed programs?

4 A. I read the -- about the three proposed  
5 programs, yes.

6 Q. Does Staff still support approving those  
7 three proposed programs based on that information?

8 A. Yes, and importantly, the Home Energy Manager  
9 also enables their smart grid project, which is quite  
10 significant in the number of dollars, so the benefits  
11 inured from the Home Energy Manager count towards the  
12 benefits of the smart grid as well; so it's important,  
13 I think, that the Commission move forward as quickly as  
14 possible to approve certainly the Home Energy Manager  
15 Program, because the summer is already upon us and a  
16 lot of those benefits are inured via through the  
17 program on thermostats and things, that type of  
18 technology.

19 Q. Going back to the incentive mechanism, do you  
20 have an estimate of what the maximum incentive would be  
21 that Duke could earn? And I recognize that requires  
22 you to sort of guesstimate numbers, but --

23 A. Yeah. I think that it -- you know, it would  
24 vary depending on how well they perform with their  
25 programs in terms of what they expend in their costs

1 relative to the avoided costs, but maybe 13 million,  
2 something in that range, 13 to 15 million probably,  
3 upward end. That's not likely to happen, but that  
4 would be a phenomenal performance.

5 Q. And I think you referenced an 8.5 million  
6 number?

7 A. That would be like the average.

8 Q. That would be the average of what you expect?

9 A. (Witness nods head.)

10 Q. And you stated that you don't support a cap  
11 other than the SEET?

12 A. The SEET, and being consistent with the  
13 Stipulation. In order to maximize cost-effective  
14 investment into energy efficiency, by putting on a cap  
15 will tend to cause the Company to only reach the cap  
16 and do nothing more.

17 Q. So there's no cap that you would support  
18 if --

19 A. Not until you reach the threshold, so the  
20 return on earnings or the incentives that are inured by  
21 the Company from doing energy efficiency are a subset  
22 of the total earnings that you would use to calculate  
23 the SEET.

24 Q. But you would expect the Company would earn  
25 about an average of \$8.5 million, but approximately --

1 A. Yes.

2 Q. -- a maximum of about 13 million?

3 A. Yes.

4 (Discussion off the record.)

5 EXAMINATION

6 By Attorney Examiner Pirik:

7 Q. Mr. Scheck, I know you were in another  
8 hearing and so you didn't have the opportunity to hear  
9 previous testimony that was given, but I think when  
10 posed with the question of -- and I understand that  
11 Staff's position is the SEET should be the -- the cap,  
12 if there is a cap, that you recommend no cap, but if  
13 there is one.

14 A. Yes.

15 Q. You did kind of go down a road I believe with  
16 Mr. Duff about the fact that AEP, in fact, has a cap of  
17 20 million, and you were just talking about -- and I'm  
18 again not saying that this is where the Commission is  
19 headed with this. They're obviously going to look at  
20 the record and make a decision based upon what's  
21 submitted on the record, but if the Commission needed  
22 to or was going to consider a cap other than the SEET  
23 and it was somehow going to be based on something, and  
24 we're looking at AEP's 20 million -- we were discussing  
25 previously that there is a difference between the

1 customer base of both AEP and Duke, but then there are  
2 also different characteristics that would need to be  
3 taken into account. If you were somehow to try to  
4 create some type of a comparison between -- and I  
5 understand it was a stipulated case and I don't want to  
6 go down that road, but if you're trying to create some  
7 type of a comparison between, you know, 20 million for  
8 a company like AEP and what potentially comparatively  
9 that could be for a Duke cap, what are the  
10 characteristics that you would look at in trying to  
11 determine, other than the SEET, what potentially would  
12 create that cap? I mean, would it be the customer  
13 base? Are there other like --

14 A. That would be part of it. The first thing I  
15 would look at is total sales. So I'm sort of -- I have  
16 knowledge of the total number of customers. I believe  
17 AEP has about 1.45 million customers, with Ohio Power  
18 and Columbus Southern combined. My last recollection,  
19 Duke had around 725,000 customers.

20 Q. Six hundred and ninety.

21 A. Am I high?

22 Q. Six hundred and ninety.

23 A. Six ninety? Okay. So it's a little less  
24 than 700,000. So on a percentage basis, then 8 1/2  
25 million to 20 million on sales, and assuming the sales

1 ratio is similar to the number of customers, it's  
2 probably in the right range. It's close. It should be  
3 maybe a little higher than 8 1/2, but if they were to  
4 use the barometer of 20 million for AEP, look at their  
5 sales for the last three years, use a benchmark  
6 comparison, and then you look at sales for the  
7 customers for Duke, and then you average those and take  
8 the ratio, just take the ratio of whatever Duke's  
9 amount is in terms of AEP sales and you apply that to  
10 the 20 million, then that's the number I would probably  
11 recommend. And you'd have to take into account, I  
12 mean, you have a lot more industrial base at Ohio Power  
13 than you probably do at Duke, so it's a little bit  
14 different makeup in terms of customer base. You  
15 certainly would get more cost-effective energy  
16 efficiency out of your commercial/industrial sector on  
17 a per kWh basis than you would probably get out of  
18 residential class. Duke probably has a higher  
19 percentage of their sales -- of their total sales in  
20 residential class than probably AEP Ohio does, but I  
21 would take that into account.

22 Q. Are there any other factors you would take  
23 into account?

24 A. I don't know if weather is a factor or not in  
25 terms of that. It might be slightly, higher air



1 conditioning load sales that are correlated to air  
2 conditioning in Cincinnati because it's a little bit  
3 warmer than the AEP Ohio climate, so that might be  
4 another factor, some weather adjustment.

5 (Discussion off the record.)

6 ATTORNEY EXAMINER PIRIK: Thank you, Mr.  
7 Scheck.

8 (Witness excused.)

9 ATTORNEY EXAMINER PIRIK: We have Mr.  
10 Scheck's testimony --

11 MR. PARRAM: Yes. Staff would move for the  
12 admission of Staff Exhibit 3.

13 ATTORNEY EXAMINER PIRIK: Are there any  
14 objections?

15 MR. BOEHM: No objections, your Honor.

16 ATTORNEY EXAMINER PIRIK: Staff Exhibit 3  
17 will be admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 ATTORNEY EXAMINER PIRIK: I think we have  
20 another exhibit also that we forgot to do for Mr.  
21 Kollen, Duke Exhibit 11, which was the deposition.

22 MS. WATTS: Yes. We would move that into  
23 evidence, your Honor.

24 ATTORNEY EXAMINER PIRIK: Are there  
25 objections?

1           Hearing none, it will be admitted into the  
2 record.

3           (EXHIBIT ADMITTED INTO EVIDENCE.)

4           (Discussion off the record.)

5           ATTORNEY EXAMINER PIRIK: Back on the  
6 record. I think we need another witness.

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

10           ATTORNEY EXAMINER PIRIK: You may be seated.

11                                 DIRECT EXAMINATION

12 By Mr. Allwein:

13           Q. Can you state your name, occupation, and  
14 position for the record.

15           A. Sure. My name is Dylan Sullivan, and I'm a  
16 Staff Scientist at the Natural Resources Defense  
17 Council.

18           Q. And do you have a document in front of you?

19           A. I do.

20           Q. Can you describe that document?

21           A. Sure. This is my Direct Testimony filed in  
22 this docket.

23           Q. On what date?

24           A. May 30, 2012.

25           MR. ALLWEIN: Your Honors, can I request,

1 please, that this document be marked as Natural  
2 Resources Defense Council Exhibit 1?

3 ATTORNEY EXAMINER PIRIK: The document is so  
4 marked.

5 MR. ALLWEIN: Thank you.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. Mr. Sullivan, was this testimony prepared by  
8 you or under your direction?

9 A. Yes, it was.

10 Q. And this afternoon do you have any  
11 corrections or updates that you would like to make to  
12 your testimony?

13 A. I have three updates I'd like to make. On  
14 Page 2, Line 14, insert an "and" after the comma, and  
15 then in Line 15 insert a period after the word  
16 "infrastructure," and then delete the rest of the  
17 content in that paragraph; so the sentence now reads:  
18 "Specifically, I'll address whether Duke Energy Ohio's  
19 incentive should be limited to performance that exceeds  
20 statutory benchmarks and if an incentive should be  
21 equal or greater to the return on investment that could  
22 earn by investing the same sums in utility  
23 infrastructure." It looks like I left out a word in  
24 that sentence somewhere.

25 Q. You may add one now if you'd like.

1 MR. BOEHM: And, I'm sorry, your Honor, do I  
2 understand that the rest of that sentence then is  
3 deleted?

4 THE WITNESS: Yes.

5 MR. BOEHM: Thank you.

6 A. I just discovered that I should have inserted  
7 the words "the company" after "that" on Line 14.

8 There's a second group of changes that is  
9 later on in the testimony on Page 7, and that change is  
10 to delete Lines 9 through 19.

11 Q. Do you have any other changes or corrections  
12 that you'd like to make to your testimony?

13 A. No, I don't.

14 Q. And acknowledging those changes, if I were to  
15 ask you the same questions that appear in your  
16 testimony today, would your answers be the same, again  
17 acknowledging the changes you just made?

18 A. Yes, they would.

19 MR. ALLWEIN: Your Honor, at this time I  
20 would move for the admission of Natural Resources  
21 Defense Council Exhibit No. 1, subject to  
22 cross-examination.

23 ATTORNEY EXAMINER PIRIK: Thank you.

24 Cross?

25 MS. WATTS: No objection.

1 ATTORNEY EXAMINER PIRIK: No questions?

2 MS. WATTS: I'm sorry. Yes, I do have just a  
3 couple, your Honor.

4 ATTORNEY EXAMINER PIRIK: Thank you.

5 CROSS-EXAMINATION

6 By Ms. Watts:

7 Q. Good afternoon, Mr. Sullivan.

8 A. Good afternoon.

9 Q. Mr. Sullivan, did you review Timothy J.  
10 Duff's Second Supplemental Direct Testimony in this  
11 case?

12 A. I did.

13 Q. And did you, in fact, review the attachment  
14 to that testimony?

15 A. I -- so I didn't review the entire  
16 attachment. I went over it a little bit, but I did  
17 review most of that material when it was presented  
18 before the Collaborative.

19 Q. Well, thank you. I think you anticipated my  
20 question.

21 A. Okay.

22 Q. You are a participant in the Duke Energy  
23 Community Partnership Collaborative; correct?

24 A. Yes, I am.

25 Q. And you did, then, at some point in the

1 recent Collaborative, review most of the material that  
2 was included in Mr. Duff's attachments?

3 A. Yes, that's true, specifically the three  
4 programs. Me and my consultant spent a lot of time  
5 reviewing those programs, and we support them.

6 Q. Just to be clear, those three programs are  
7 the programs that are new programs proposed to be  
8 included in the Company's portfolio?

9 A. Yes, that's right.

10 Q. Thank you. Mr. Sullivan, are you aware of  
11 any negative impacts that could arise as a result of  
12 the imposition of a cap on the Company's incentive  
13 structure for energy efficiency?

14 A. I think the one negative impact that would  
15 come from that or maybe it's not just one would be that  
16 the way the incentive is structured, the utility, Duke,  
17 only makes money when it does a good job of saving  
18 money for customers, because it's based on -- the  
19 incentive is based on the net benefits of the program,  
20 which are the avoided costs, avoided cost benefits  
21 minus the program costs; so if you are assessing a cap  
22 on that incentive, at some point you're making a  
23 decision about how much efficiency you want the utility  
24 to go after, and at NRDC, we want the utility to go  
25 after all of the efficiency that is basically cost

1 effective. That is cheaper than -- than what's  
2 avoided, so the negative of putting a cap on it would  
3 be you're -- you're essentially limiting how much  
4 efficiency the Company has incentives to go after.

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

6 ATTORNEY EXAMINER PIRIK: Okay.

7 MS. LOUCAS: I have no questions, your  
8 Honor.

9 MS. KERN: No questions, your Honor.

10 MR. PARRAM: No questions.

11 MR. BOEHM: I have some questions, your  
12 Honor.

13 CROSS-EXAMINATION

14 By Mr. Boehm:

15 Q. Good afternoon, Mr. Sullivan.

16 A. Good afternoon.

17 Q. Let's start with the statement, then, Mr.  
18 Sullivan, that you make on Page 2 of your testimony,  
19 starting on Line 22 and going over to the next page to  
20 Line 1. It says, "All regulation creates financial  
21 incentives for IOUs, so the question for regulators is  
22 not whether to adopt incentives but how to align them  
23 with the public interest." Okay. My first question  
24 for you, Mr. Sullivan, has anyone told you that the law  
25 in Ohio requires the Commission to order incentives in

1 the case of energy efficiency?

2 A. No. I think the Commission certainly has  
3 that option.

4 Q. You say, "All regulation creates financial  
5 incentives for IOUs"; right? If the Commission had  
6 issued or if the legislature had issued a law that says  
7 all utilities will achieve X level of energy efficiency  
8 by such and such a date and if they don't, they'll be  
9 penalized, and didn't make any provisions for  
10 incentives, would that be a financial incentive for an  
11 IOU?

12 A. Yes, it would. It would be a negative  
13 incentive.

14 Q. Okay. It would be a negative incentive;  
15 right?

16 A. Yes.

17 Q. And is it your testimony today that there  
18 shouldn't be any negative incentives?

19 A. No, that is, in fact, not my testimony. I  
20 mention that on Page 3, Line 12, that an incentive  
21 should "provide a balance of potential risks and  
22 rewards," and by "risk," I mean that negative  
23 incentive.

24 Q. Mr. Sullivan, I don't know your background.  
25 Have you been involved in other states in, say,



1 traditional utility rate cases?

2 A. So I have been involved in Ohio in  
3 distribution rate cases, and I have been involved in  
4 incentive regulation in Illinois and energy efficiency  
5 elsewhere throughout the Midwest, but I don't say --  
6 other than Ohio, I haven't been involved in, I think  
7 what you're referring to, as traditional rate cases.

8 Q. So my question to you, I guess, Mr. Sullivan,  
9 is are you familiar with how Commissions traditionally  
10 handle the compensation of utilities for various types  
11 of assets in a traditional rate case?

12 A. I have a general awareness.

13 Q. Okay. Would you agree with me, Mr. Sullivan,  
14 that the sorts of costs that are sought to be collected  
15 through the riders in this case are not -- regardless  
16 of metaphors or analogies, they are not infrastructure  
17 investments, they are expenses.

18 A. Can you repeat the question?

19 (Question read back.)

20 A. I think that depends on what perspective  
21 you're looking at. So certainly a customer is using  
22 utility incentives to help make an investment in  
23 infrastructure, and in some states in the past actually  
24 energy efficiency has been considered similar to other  
25 utility investments and the costs have been capitalized

1 and the costs have been handled in the rate case; so if  
2 you're talking about directly in this case, are they  
3 treated as so-called, I guess, traditional costs and  
4 handled in a rate case manner, I think, no, they're  
5 not.

6 Q. In fact, you say on Page 6 of your testimony,  
7 "Duke does not face the same regulatory lag for energy  
8 efficiency investments" -- you call them investments --  
9 "that it does for distribution investments included in  
10 rate base: It expenses the cost of energy efficiency  
11 programs, so costs are collected roughly concurrently  
12 with spending"; isn't that right?

13 A. I do say that, and I note earlier in that  
14 paragraph that energy efficiency is just different from  
15 other utility investments.

16 Q. You're not familiar with anything other than  
17 energy efficiency, any other costs that the utility  
18 company expenses that it gets a rate of return on, are  
19 you?

20 A. I don't know enough about the whole universe  
21 of utility regulation to be able to answer that with  
22 full confidence.

23 Q. I'm only asking about what you know, Mr.  
24 Sullivan. Do you know of any?

25 A. No, but I do note in my testimony that energy

1 efficiency is different than other utility investments.

2 Q. And how long -- I'm sorry. You look very  
3 young to me, but everybody looks very young to me. How  
4 long have you been involved in this business that  
5 you're in?

6 A. Okay. I have been at NRDC for four years,  
7 and in that time I have spent most of my time working  
8 on utility investments and energy efficiency and how  
9 they are treated for like this one.

10 Q. And would you agree with me, Mr. Sullivan,  
11 that the sorts of things that energy efficiency of the  
12 nature we're talking about here, the sort of costs that  
13 they avoid are primarily generation costs and not  
14 distribution and transmission costs?

15 A. No, I don't agree with that.

16 Q. You don't?

17 A. No.

18 Q. Okay. Let's go through an example. Now  
19 let's assume that somebody cuts down on the amount of  
20 energy they use -- let's go back to one of my clients  
21 again -- in a 10,000 horsepower roller in a cold roll  
22 mill; okay?

23 A. Okay.

24 Q. They get a more efficient -- a more efficient  
25 motor, okay, that doesn't have a nameplate capacity --

1 has a lower nameplate capacity and it's more efficient,  
2 and they do that. Can you tell me what, in regards to  
3 the traditional division of utility functions between  
4 transmission, distribution, and generation, what you  
5 think the primary savings to the company would be?

6 A. Are you asking from a --

7 Q. If any.

8 A. -- from a distribution and transmission  
9 perspective?

10 Q. No. I'm asking from the company's  
11 perspective. I'm the power company and the company  
12 just got a more efficient motor and it's got lower  
13 capacity and it uses less energy. Am I expecting to  
14 save on distribution costs, transmission costs, or  
15 generation costs?

16 A. So you're expecting to save actually on all  
17 three.

18 Q. Okay. Can you tell me why that's so?

19 A. Yeah, because it's -- there's now going to be  
20 less load on your distribution system, so things are  
21 going to fail later on in their useful life. You're  
22 going to be effectively extending the useful life of  
23 your -- of your equipment. The same thing is going to  
24 happen on -- on the transmission system. In other  
25 ISOs, and I'm not completely sure that this is what

1 happens in PJM, but the transmission costs are assigned  
2 by the Independent System Operator to utilities based  
3 on load, and so if load goes down, fewer costs are  
4 assigned, fewer transmission costs are assigned to Duke  
5 Energy customers, and then, of course, there are -- so  
6 you might get a longer lived transmission and  
7 distribution system. In fact, you will.

8           The utility can also avoid specific  
9 transmission or distribution investments. If -- if,  
10 say, for example, there were specific substations that  
11 needed an upgrade near that customer, those could be  
12 avoided, and that customer would have less transmission  
13 or distribution costs to pay, and then, of course,  
14 there are all the generation-related benefits that we  
15 talked about; so we're avoiding power plants. We're  
16 lowering peak, which lowers market prices for  
17 everybody. Duke can -- can bid the coincident peak  
18 demand reduction impact of -- of that motor change out  
19 into the PJM capacity auction and reduce prices for  
20 everybody there; so there are a lot of benefits, but I  
21 think it's a -- it's about a 60/40 relationship between  
22 generation benefits and transmission or distribution.

23           Q.    Would you accept my representation, Mr.  
24 Sullivan, that there's virtually no distribution  
25 benefit?

1           A.    Well, if they're transmission-level  
2 customers, then --

3           Q.    Right.

4           A.    If that's what your assumption is based on.

5           Q.    The sort of customer I'm talking about takes  
6 69 and 138 kV, and these are transmission customers;  
7 all right?

8           A.    Sure.

9           Q.    And most of these customers would own their  
10 own substation; isn't that true?

11          A.    You're asking me about specific customers  
12 and --

13          Q.    Okay.  But with respect to costs between  
14 transmission and generation, the costs are  
15 overwhelmingly generation costs, aren't they?

16          A.    I would need to see the individual customer  
17 bills.

18          Q.    You don't know whether or not, as between  
19 transmission and generation, the generation costs would  
20 be multiples of what the transmission costs would be  
21 for such a customer?

22          A.    I imagine they would be a lot higher, but  
23 I -- I don't have experience reading industrial  
24 customer bills.

25          Q.    And with respect to your recommendation

1 concerning the payment of incentives, do you recommend  
2 that the Company receive incentives on that portion of  
3 the energy efficiency savings, if you will, that are  
4 part of the mandate or only to the degree that they  
5 exceed the mandate?

6 A. So as I described in my testimony, I think  
7 the appropriate trigger for an incentive, the point at  
8 which an incentive starts is when they exceed the law's  
9 energy savings requirements, but I -- basically, they  
10 shouldn't get a -- it's not a rate of return, but --  
11 but they should get an incentive on the whole portfolio  
12 of energy efficiency programs that allowed them to meet  
13 and exceed that target.

14 Q. Doesn't it count for anything, in your  
15 estimation, that the law requires them to meet that  
16 mandate? Isn't that enough of an incentive?

17 A. I think what we're trying to do is trying to  
18 get a utility, and I talk about this in my testimony,  
19 to devote management resources attention, their best  
20 thinking to how to do energy efficiency and do it in a  
21 cost-effective manner that creates the most benefits  
22 for customers, to actually, you know, put some  
23 ingenuity into -- into how they're doing it and improve  
24 it over time, and I think with only negative incentives  
25 you're not going to get that kind of, you know,

1 continuous improvement in -- in the way the utility is  
2 operating.

3 Q. Aren't most of these energy incentive  
4 measures coming from the customers?

5 A. Can you explain what you mean by that?

6 Q. Well, for instance, the law says that Duke  
7 must meet a certain mandate, so they go to their  
8 customers and say you must meet a certain mandate -- we  
9 must meet a certain mandate from you, we're going to  
10 change out your light bulbs, we're going to do all  
11 sorts of things that will create energy savings; right?

12 A. That's not generally how the conversation  
13 goes.

14 Q. Okay. Tell me how you think it goes.

15 A. Well, the -- when a utility is planning an  
16 energy efficiency effort, what they do is they look at  
17 the opportunities to cost effectively reduce energy use  
18 in their service territory, and then they, you know,  
19 look at what the barriers are that keep customers from  
20 making those investments that are going to pay for  
21 themselves over time, and so it's not really a utility  
22 is going and tapping on a customer's shoulder and  
23 saying hey, why aren't you doing this. You know, they  
24 actually look at the market for all of these efficiency  
25 opportunities and say how can we -- you know, how can



1 we help make this market work better and remove some of  
2 the barriers that keep customers from investing in  
3 energy efficiency; so a utility is going to run  
4 programs that, you know, provide information to  
5 customers about what efficiency opportunities are.  
6 They're going to provide incentives to lower the first  
7 cost of that, of that efficiency measure, and, you  
8 know, they might work with distributors of motors, for  
9 example, to ensure that efficient motors are available  
10 when one goes out, because if one is not available, you  
11 know, and an industrial business needs to get up on  
12 line again, they need a motor, so availability is  
13 something a utility could help get around; so it's  
14 really -- it's really not -- it's really not that  
15 simple.

16 Q. Isn't it true that all of the customers of  
17 Duke will pay a surcharge whether or not they benefit  
18 from energy efficiency, whether they benefit from any  
19 of those programs, they'll pay a surcharge for Duke's  
20 energy efficiency measures?

21 A. Everybody will benefit, so I disagree with  
22 the premise.

23 Q. The question was will everybody pay a  
24 surcharge.

25 A. I don't think that was the question. I think

1 there was --

2 Q. Well, let me make it the question.

3 A. Okay.

4 Q. Will everybody pay a surcharge?

5 A. Unless they've opted out.

6 Q. When they -- when you talk about "opted out,"  
7 we're talking about mercantile customers only; right?

8 A. Yes.

9 Q. Okay. But the residential customer, he's  
10 going to pay for it whether he -- whether any of this  
11 benefits him or not?

12 A. Again, there's that "whether any of this  
13 benefits him or not." We just talked about a lot of  
14 the benefits of -- of the energy efficiency programs  
15 that -- that basically benefits the entire service  
16 territory, not just -- not just that single customer.

17 Q. You can say sitting here today on the stand  
18 without any equivocation that every customer will  
19 benefit?

20 A. Yes.

21 Q. But we know whether or not everybody -- every  
22 customer would benefit, we know everybody will pay?

23 A. Except those customers that opted out.

24 Q. Everybody except the customers that opted out  
25 will pay this incentive on top of the actual cost?

1           A.    They will -- they will only pay this  
2   incentive if the company does a good job of running  
3   energy efficiency programs, if it exceeds the benchmark  
4   and if it does so cost effectively, and they only --  
5   they only pay that incentive if -- if the programs are  
6   cost effective.

7           Q.    According to TRC Test?

8           A.    Actually, according to the Utility Cost Test  
9   in this, in this case.

10          Q.    According to both of them; right?

11          A.    The incentive is actually based on the  
12   Utility Cost Test, but they can't run -- the entire  
13   portfolio has to pass the Total Resource Cost Test.

14          Q.    So it's to the financial benefit of the  
15   utility company to make sure that there's as much of  
16   this as possible; right?

17          A.    Not exactly.

18          Q.    Why? Why not exactly?

19          A.    Because if the utility employs an energy  
20   efficiency program that has a Utility Cost Test ratio  
21   of one, if the utility basically spends a lot of money  
22   on things that are marginally cost effective, customers  
23   don't pay any more money for the incentive.

24          Q.    They "don't pay any more money." Why don't  
25   they pay any more money?

1           A.     Because there's no net benefit.

2           Q.     So you think the test is somebody is going to  
3 catch them; is that right?

4           A.     I'm sorry?

5           Q.     Because there's no net benefit, that's a  
6 test; right?  Somebody is going to have to apply this  
7 test to make that judgment that there's no net  
8 benefit?

9           A.     It's specified in the Stipulation agreement  
10 how that -- how net benefits are going to be  
11 calculated.  You're going to take the avoided costs  
12 savings of the programs.  You're going to -- and  
13 subtract the utility's program costs, including the  
14 incentives.

15          Q.     And all of that is formulaic; right?

16          A.     No.  You're going to be looking at actual  
17 costs that the utility incurs.

18          Q.     You're saying that's somebody's judgment  
19 call?

20          A.     For what the utility's costs are?  I don't  
21 think that's a judgment call.

22          Q.     How about the benefits?

23          A.     The benefits are based on what the avoided  
24 costs are.

25          Q.     And nobody would try to fudge those numbers

1 to make more money; right?

2 MS. WATTS: Objection, your Honor.

3 ATTORNEY EXAMINER PIRIK: Sustained.

4 Q. Has it ever occurred to you that somebody  
5 might fudge those numbers to try to make more money?  
6 Isn't there an incentive on the utility company to do  
7 that?

8 MS. WATTS: Objection.

9 Q. I'm pointing out there's a flaw. I mean,  
10 we're all human beings here, so the question is is it  
11 possible --

12 ATTORNEY EXAMINER PIRIK: Mr. Boehm, I think  
13 you're pointing out more than just a possible flaw.  
14 I'm going to sustain the objection.

15 MR. BOEHM: I think that's all I have. Thank  
16 you, your Honor.

17 Thank you, Mr. Sullivan.

18 ATTORNEY EXAMINER PIRIK: Mr. Allwein.

19 MR. ALLWEIN: Can I just briefly confer with  
20 my witness?

21 ATTORNEY EXAMINER PIRIK: Yes.

22 (Discussion off the record.)

23 ATTORNEY EXAMINER PIRIK: Mr. Allwein.

24

25

## REDIRECT EXAMINATION

1  
2 By Mr. Allwein:

3 Q. Mr. Sullivan, Mr. Boehm asked you about the  
4 net of benefits and that included a discussion about  
5 avoided costs. Are you familiar with the avoided costs  
6 as they apply in these circumstances?

7 A. Yes. So before agreeing to the Stipulation,  
8 we -- we looked at, you know, that avoided costs part  
9 of the calculation for how you determine net benefits,  
10 because it is actually a really important input into  
11 the process, how do you determine avoided costs, and,  
12 you know, we spent a full day with Duke, with our  
13 consultant, looking over the methodology that they were  
14 using and -- and decided that -- that it was a  
15 well-supported methodology, and that's part of the  
16 reason why we signed on to the Stipulation, and what  
17 they basically do is do a -- the avoided costs aren't  
18 based on the Company avoiding, you know, a specific  
19 peaker plant. They're avoided -- the avoided costs are  
20 based on a forecast of market prices, and, you know,  
21 we -- we spent a lot of time reviewing it, and we  
22 decided that it passed muster.

23 MR. ALLWEIN: I have no further questions,  
24 your Honor.

25 ATTORNEY EXAMINER PIRIK: Any recross?

1 Thank you, Mr. Sullivan.

2 ATTORNEY EXAMINER STENMAN: Oh, no. I want  
3 to ask him all about caps.

4 EXAMINATION

5 By Attorney Examiner Stenman:

6 Q. You've been with us all morning, so you know  
7 where I'm headed with this.

8 A. Yes.

9 Q. Do you support a cap mechanism?

10 A. I'm a party to the Stipulation, and, you  
11 know, for the reasons I specified earlier in my  
12 testimony, I think, from a policy perspective, I think  
13 there are some drawbacks to doing a cap, but, you know,  
14 if -- if the Commission decides that one is appropriate  
15 in this case, then, you know, I can provide an opinion  
16 about one -- about what one might be.

17 Q. And that's my next question. You listened to  
18 Mr. Duff talk about what an appropriate cap mechanism  
19 might look like and also Mr. Scheck. What's your  
20 opinion on that?

21 A. So there's nothing magic about the 20 million  
22 that was achieved, that was the result of the AEP  
23 Stipulation. You know, I was involved in the  
24 negotiation of that, and it's not -- you know, there  
25 wasn't a lot of analysis about that number, but if we

1 were to use that cap as a guide to this case, I think  
2 it makes sense to take into account the different load  
3 of the two companies, because, you know, the -- I guess  
4 the load of the two companies and then, as Mr. Scheck  
5 was talking about, the relative makeup of residential  
6 versus other customers between the two, for the reason  
7 that there's just more and cheaper energy efficiency in  
8 the commercial and industrial sector than there is in  
9 the residential sector, but scaling it down based on  
10 the number of customers, you know, could be one way to  
11 scale a cap.

12 Q. And I think Mr. Duff and Mr. Scheck also both  
13 opined as to what they expect Duke to earn in terms of  
14 an incentive and also what they believed could  
15 potentially be a maximum incentive earned under the  
16 current incentive mechanism that's proposed. Do you  
17 have an opinion as to an average and potential maximum?

18 A. So I think I reviewed this when we were, way  
19 back, signing on to this agreement; so it has been a  
20 while, but I think around -- I think when we ran the  
21 numbers, we were thinking about 12.5 million a year was  
22 going to be the maximum, and I can't give you an  
23 average.

24 Q. Okay. Thank you.

25 A. You're welcome.



1           ATTORNEY EXAMINER PIRIK: Now you are done,  
2 Mr. Sullivan. Thank you.

3           (Witness excused.)

4           MR. ALLWEIN: With that, your Honor, there is  
5 a pending motion for Natural Resources Defense Council  
6 Exhibit 1 to be admitted into the record.

7           ATTORNEY EXAMINER PIRIK: Are there any  
8 objections?

9           MS. WATTS: No objection.

10          ATTORNEY EXAMINER PIRIK: Hearing none, NRDC  
11 Exhibit 1 shall be admitted into the record.

12          (EXHIBIT ADMITTED INTO EVIDENCE.)

13          ATTORNEY EXAMINER PIRIK: We'll go off the  
14 record for just a moment before we conclude.

15          (Discussion off the record.)

16          ATTORNEY EXAMINER PIRIK: We'll go back on  
17 the record. We had a discussion off the record  
18 regarding the timing of the briefing schedule in this  
19 case. Duke has agreed to pay for expedited transcript  
20 that will be filed hopefully on Monday, June 11th. We  
21 are going to call for briefs to be due Friday, June  
22 22nd. We are not accepting reply briefs. We would ask  
23 the briefs themselves, that they be brief and that  
24 there is no need to put any history or any issues  
25 regarding the previous set of hearings, only to brief

1 what we have on the record here today.

2 We would also -- it was also mentioned or  
3 asked whether or not they could be electronically  
4 filed. Yes, the briefs can be electronically filed.  
5 We would ask that you do an electronic e-mail to the  
6 Examiner so that we would have a copy of it that same  
7 day, also. You could e-mail us, and if you do service  
8 by e-mail, then you're e-mailing everyone else anyway,  
9 so include us on there.

10 Are there any other questions on the record  
11 that we need before we recess for the day?

12 MS. WATTS: Nothing further. Thank you, your  
13 Honor.

14 ATTORNEY EXAMINER PIRIK: At this time the  
15 Bench is not going to say the record is closed. The  
16 Commission is going to consider -- and I obviously had  
17 some very pertinent questions that they were interested  
18 in, and we are going to leave the record open until it  
19 is actually closed by the Commission in their final  
20 determination in this case, so we will recess for the  
21 day.

22 (Thereupon, the hearing was adjourned at 2:13  
23 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, June 7, 2012, and carefully compared with my original stenographic notes.

---

Valerie J. Sloas, Registered  
Professional Reporter and Notary  
Public in and for the State of  
Ohio.

My commission expires June 8, 2016.  
(VJS-1145)

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Summary: Transcript Transcript from 6/7/12 hearing electronically filed by Mrs. Jennifer Duffer on behalf of Sloas, Valerie J. Mrs. and Armstrong & Okey, Inc.