

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
 Application of Columbus :
 Southern Power Company :
 and Ohio Power Company :
 for Authority to Establish:
 a Standard Service Offer : Case No. 11-346-EL-SSO
 Pursuant to §4928.143, : Case No. 11-348-EL-SSO
 Ohio Rev. Code, in the :
 Form of an Electric :
 Security Plan. :

In the Matter of the :
 Application of Columbus :
 Southern Power Company : Case No. 11-349-EL-AAM
 and Ohio Power Company : Case No. 11-350-EL-AAM
 for Approval of Certain :
 Accounting Authority. :

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PROCEEDINGS

before Ms. Greta See and Mr. Jonathan Tauber,
 Attorney Examiners, and Elizabeth Stevens, Legal
 Director, at the Public Utilities Commission of Ohio,
 180 East Broad Street, Room 11-B, Columbus, Ohio,
 called at 8:30 a.m. on Friday, July 13, 2012.

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ORAL ARGUMENTS

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1 Friday Morning Session,

2 July 13, 2012.

3 - - -

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

5 Scheduled for arguments today before the Chair and
6 Commissioners of the Public Utilities Commission of
7 Ohio is Case No. 11-346-EL-SSO, et al., being
8 entitled in the Matter of the Application of Columbus
9 Southern Power Company and Ohio Power Company for
10 Authority to Establish a Standard Service Offer
11 Pursuant to Section 4928.143, Revised Code, in the
12 Form of an Electric Security Plan and for Approval of
13 Certain Accounting Authority.

14 My name is Greta See. With me is Jon
15 Tauber. He and I are Attorney Examiners in the Legal
16 Department and have been assigned by the Commission
17 to the cases. Assisting with the oral arguments is
18 Elizabeth Stevens, Legal Director.

19 Pursuant to the entry issued June 22,
20 2012, for purposes of today's oral arguments the
21 following parties have designated counsel that will
22 answer the Commissioners' questions: AEP Ohio;
23 staff; IEU-Ohio; Duke Energy Retail and Duke Energy
24 Commercial Asset Management; Ohio Energy Group; Ohio
25 Hospital Association; the Office of Ohio's Consumers'

1 Counsel jointly with the Appalachian Peace and
2 Justice Network; Kroger; FirstEnergy Solutions; Ohio
3 Manufacturers Association Energy Group; Constellation
4 with Exelon; Natural Resources Defense Council with
5 the Ohio Environmental Council; Retail Energy Supply
6 Association with Direct Energy; AICUO with the City
7 of Grove City, Hillsboro, and Upper Arlington;
8 Wal-Mart with Sam's Club; Ormet; EnerNOC; the
9 University of Toledo Innovation Enterprise; Council
10 of small -- I'm sorry, Council of Smaller Enterprises
11 along with NFIB/Ohio; the Ohio Automobile Dealers
12 Association; the Ohio School Board's organizations;
13 and Interstate Gas Supply, Incorporated.

14 This morning's oral argument will be
15 conducted by topic in accordance with the Attorney
16 Examiner's entry of June 22, 2012. The order of the
17 topics this morning will be the retail stability
18 rider; pool termination, generation asset divestiture
19 and the effects of divestiture on the auction
20 process; the third topic the method to conduct the
21 statutory test also known as the ESP-MRO test. The
22 fourth issue is competitive supplier issues. Next is
23 the distribution investment rider. And the last
24 issue to be addressed this morning will be the
25 proposed base generation rate design.

1 At the discretion of the Commissioners we
2 may take a brief recess and reconvene.

3 EXAMINER TAUBER: For each specific topic
4 area, each Commissioner will call on parties in
5 attendance they have -- they have questions for.
6 Commissioners may reserve the right to pass on asking
7 any questions that may have already been answered or
8 were addressed in post-hearing briefs.

9 They also have the ability to recall
10 parties as necessary. Any party that is called on
11 this morning shall approach the podium to address the
12 Commission. Counsel should speak clearly into the
13 microphones so that his or her voice will be audible
14 as well as our court reporter and those watching on
15 the webcast online.

16 As was established in the June 22, 2012,
17 Attorney Examiner entry, while there's no guarantee
18 that all parties in attendance will be called upon to
19 present arguments, all post-hearing briefs are a part
20 of this record and will be considered by the
21 Commission.

22 As parties respond to Commissioner
23 questions, we ask that counsel be mindful of the
24 limited time constraints and answer the questions
25 directly with a yes or no, if appropriate, before

1 providing context to the answer. If counsel does not
2 know the answer or has not presented a position on
3 the issue, the Commission appreciates an honest
4 response. Counsel should avoid making assertions
5 that are not in the record and when possible shall
6 provide references in the record, if that's possible.

7 So the purpose of today's oral arguments
8 is not for parties to make speeches or to grandstand
9 but rather to provide well reasoned and logical
10 responses to questions posed by the Commissioners.
11 In presenting arguments counsel should assume that
12 all Commissioners have read the post-hearing briefs
13 and should avoid reciting facts or procedural
14 background of this proceeding.

15 Arguments presented by counsel must be
16 focused on the issue the Commission has agreed to
17 review, and parties will be precluded from deviating
18 beyond the scope of the issues this morning. Counsel
19 will receive a warning from the Legal Director or
20 Attorney Examiners if they proceed beyond the scope
21 of these oral arguments or if we end up running short
22 on time.

23 With that said we'll begin this morning's
24 oral arguments on the retail stability rider and
25 we'll start with Commissioner Porter who will begin

1 calling parties and we'll work our way down the row.

2 Commissioner Porter.

3 COMMISSIONER PORTER: Thank you. If we
4 could start with AEP Ohio on the retail stability
5 rider. Good morning, Mr. Nourse.

6 MR. NOURSE: Good morning.

7 COMMISSIONER PORTER: Good morning, sir.
8 What I would like to explore first is the legality of
9 the RSR rider, the challenges and assertions made
10 regarding its legality. In the briefs and in the --
11 in the testimony that's on the record the company
12 cited multiple reasons and rationale in support of
13 the RSR, one being the freeze of nonfuel generation
14 or temper-based rate increases. There's another
15 rationale supporting discounted capacity and then
16 finally certainty and stability.

17 The single rationale that I could find in
18 the statute that may support this would be associated
19 with stability. The question I have is are there
20 components of the RSR that are allocated to rationale
21 other than supporting this certainty and stability
22 rationale?

23 MR. NOURSE: Your Honor, I think the RSR
24 is a -- what I call it, it's the glue that holds the
25 plan together. The RSR is designed as a revenue

1 decoupling mechanism which is an established form of
2 alternative regulation. And it -- I believe it does
3 fall under multiple provisions in the -- in the ESP
4 statute -- laundry list of items in the ESP statute.

5 Certainly I think it's fairly
6 characterized as an automatic increase or decrease
7 which is explicitly covered in the statute by design.
8 The \$929 million annual revenue target on fuel
9 generation would be reconciled through the RSR,
10 either a positive or a negative adjustment after the
11 fact. And so I think -- I think it qualifies there.

12 I think as you mention under (B)(2)(d),
13 it does -- it does offer stability in multiple ways.
14 Again, it really is the glue that allows the company
15 to offer all the other parts of the plan.

16 COMMISSIONER PORTER: So let me ask you
17 this, so as long as there is a determination by the
18 Commission that the RSR supports certainty and
19 stability, it would be the company's position that
20 the RSR would be justified for only that reason, and
21 we not look to any of these other additional -- any
22 of the additional rationale that were cited.

23 MR. NOURSE: I think you only need one
24 reason, but it's always good to have belt and
25 suspenders. I would also add that the -- recently in

1 the Duke case the Commission approved a very similar
2 charge, the electric stability charge, I believe,
3 ESCC, I believe it's called, in that case. While
4 that was part of the settlement --

5 EXAMINER TAUBER: Mr. Nourse, let's try
6 to keep things on line with what Commissioner Porter
7 asked to the retail stability rider.

8 MR. NOURSE: Your Honor, the legal --
9 legality of the RSR based on the Commission's
10 precedent shows that it's not unlawful even if it was
11 adopted as part of the stipulation in the Duke case.

12 EXAMINER TAUBER: Please keep that
13 narrow, Mr. Nourse.

14 COMMISSIONER PORTER: Let's do this,
15 let's just address some of the other concerns --
16 concerns regarding RSR. Will the RSR be -- is it
17 proposed that the RSR be included as part of
18 transmission and/or distribution rates? It's one of
19 the concerns that -- in 4928 I think 02(H),
20 there's -- there's a prohibition for inclusion of
21 generation-related charges within transmission or
22 distribution rates.

23 MR. NOURSE: Yeah.

24 COMMISSIONER PORTER: And you
25 characterized it as a generation revenue decoupling

1 charge so this would be an additional generation
2 charge that shopping customers would also pay as a
3 part of the generation rate --

4 MR. NOURSE: Correct.

5 COMMISSIONER PORTER: -- or C and D?

6 MR. NOURSE: Yes. It's definitely a
7 generation rate and that's -- that's why I think some
8 of the arguments have been characterizing it as a
9 distribution, some people use the term wires charge,
10 but it's definitely a generation rate, and it's tied
11 explicitly to generation revenue, nonfuel generation
12 revenue.

13 COMMISSIONER PORTER: When it's charged,
14 where is the assessment for consumers? How is it
15 charged or how will it be assessed to shopping
16 consumers?

17 MR. NOURSE: Well, it was -- it was
18 allocated -- per Mr. Roush's testimony it was
19 allocated to the classes based on demand.

20 COMMISSIONER PORTER: Okay. Will it be a
21 D -- or distribution, transmission, or
22 distribution -- I'm sorry, distribution,
23 transmission, or generation?

24 MR. NOURSE: It should be a -- I'm sorry.
25 It should be a generation charge, your Honor.

1 COMMISSIONER PORTER: Okay.

2 MR. NOURSE: And I think that should be
3 clear. Frankly, some of the rate impact issues that
4 happened with the stipulation were part of that lack
5 of clarity but this is definitely a generation charge
6 and it should be clear on the bill that it's that.

7 COMMISSIONER PORTER: Okay. Is the RSR
8 also -- this is something that came up -- came --
9 that I first noticed in the reply briefs in the -- in
10 the post-hearing process, the RSR was characterized
11 in initial briefs as an unlawful POLR charge. In
12 your -- I believe the company responded that it was a
13 lawful POLR charge. Is that still what we should
14 understand, that this is a POLR charge?

15 MR. NOURSE: I think there is a component
16 of the POLR obligation in the RSR that's built in.
17 As I said, it's intended and proposed as enabling the
18 company to do all the things that we're doing in this
19 plan, we're proposing to do, and including, you know,
20 taking customers back if energy price goes up during
21 the plan and when we lose them. So there's a --
22 there's a stability there for customers and the
23 company.

24 COMMISSIONER PORTER: Would it be your --
25 the company's position that even if it is -- even

1 if -- even if there is a component of it that may be
2 related to POLR, I think one -- I think what -- what
3 I'm looking to get to is whether it would be an
4 unlawful POLR charge. The Supreme Court did not say
5 that POLR charges were unlawful, per se.

6 MR. NOURSE: Correct.

7 COMMISSIONER PORTER: Just that there
8 needed to be some support for -- there needs to be a
9 record of support for the cost basis --

10 MR. NOURSE: Correct.

11 COMMISSIONER PORTER: -- of POLR; is
12 that --

13 MR. NOURSE: That's -- that's my
14 understanding as well and that's what the Commission
15 found, I believe, in the remand order last fall.

16 COMMISSIONER PORTER: But then -- but
17 then the company has provided that cost basis here as
18 well?

19 MR. NOURSE: Well, again, these --
20 these -- this revenue decoupling mechanism is driven
21 by cost. They are -- basically the big driver
22 frankly is the capacity charge revenue from CRES --
23 from CRES providers, and certainly the -- as the
24 Commission recently found in the capacity order, the
25 company does incur costs in providing capacity and

1 actually that -- that deferral that was created in
2 the capacity charge order creates a wider berth, I
3 guess, for the RSR in terms of what the charge would
4 be, what the level of the charge should be.

5 COMMISSIONER PORTER: Okay. One of the
6 other things that is mentioned throughout the
7 proceeding is that there -- there is this potential
8 for an unlawful taking. There is -- if you'll give
9 me just -- give me your understanding of how there
10 will be an unlawful taking and whether that unlawful
11 taking will -- will persist in light of the recent
12 decision by the Commission in the 20 -- in the 2929
13 docket and with the potential of an RSR that was
14 described in that docket that would address the
15 deferral -- I'm sorry, the deferral and accounting
16 mechanisms for additional recovery for those
17 differences between the cost and the RPM rate. So,
18 there's still a taking in your eyes?

19 MR. NOURSE: Well, I think there's
20 multiple parts to the RSR. The RSR as designed, I
21 think, accommodates the capacity charge decision in
22 the way the Commission did that. What I mean by that
23 is that, again, it's taking the revenue including the
24 bucket of revenue from CRES providers that are
25 authorized for the charge that the Commission did

1 there.

2 Now, the Commission said they were going
3 to address the delta between the 189 and the RPM rate
4 as part of this case, and I believe there's two ways
5 to do that. One is through the RSR, and the RSR
6 mechanism already accommodates that because it does
7 credit as part -- against the revenue the CRES
8 revenues that are paid for the capacity. So that
9 getting us up to 189 is -- is -- is a key part of
10 that but it's --

11 COMMISSIONER PORTER: If you get to the
12 189, is there still a taking?

13 MR. NOURSE: I believe so, your Honor, as
14 we showed in our reply brief based on the record, the
15 getting us to 189 only yields a 5.9 percent ROE in
16 2013, and we do believe that's unreasonably low.

17 COMMISSIONER PORTER: Yeah. So in order
18 for there to be a taking, is it your -- would it be
19 the company's position that there would be a lack of
20 just compensation so there is a compensation issue
21 that's within the RSR.

22 MR. NOURSE: Taking property without
23 adequate compensation.

24 COMMISSIONER PORTER: And so there needs
25 to be a determination of what the true cost is. So

1 the debate would be -- the debate would not be
2 whether there was an attempt to compensate; it would
3 be the amount of the compensation.

4 MR. NOURSE: Whether it's accurate,
5 that's right; that's right. And just by the way when
6 I said 5.9 ROE, that's total company. On the
7 generation function itself it would be much lower
8 and, therefore, confiscatory in our opinion of
9 generation.

10 COMMISSIONER PORTER: One of the other
11 things the RSR -- I believe the RSR is not designed
12 or proposed by the company to guarantee a certain
13 ROE.

14 MR. NOURSE: Correct.

15 COMMISSIONER PORTER: No guaranteed ROE.

16 MR. NOURSE: Correct.

17 COMMISSIONER PORTER: O&M as a component
18 used to calculate an ROE so meaning if there were --
19 there are greater or less expenses that the company
20 has, dependent upon those expenses -- depending upon
21 the amount of those expenses, it would have an impact
22 on the ROE.

23 MR. NOURSE: Correct. Net income is what
24 drives return, and expenses are factored into that.

25 COMMISSIONER PORTER: The reason I ask

1 the question there is no guaranteed -- there is no
2 guaranteed ROE, but the company probably has a
3 targeted ROE it would like to see; is that correct?

4 MR. NOURSE: Well, Witness Sever
5 projected the ROE based on -- based on our proposed
6 RSR but, of course, keep in mind our RSR also was
7 packaged -- part of the package with the two-tiered
8 capacity discount. And while the capacity decision
9 is still subject to rehearing, that's -- that
10 doesn't -- currently as it stands it doesn't play
11 into the cards here.

12 COMMISSIONER PORTER: So to get to an
13 RO -- a particular ROE, there could be adjustments
14 made by the company in operations and maintenance
15 expenses so that would -- in the ROE -- in the eyes
16 of investors, if there is a need to enhance the ROE
17 through the RSR, there could be -- there would
18 need -- there would be a need by the company to
19 adjust -- address -- adjust the operations and
20 maintenance expenses.

21 MR. NOURSE: To some extent, your Honor,
22 the reality is we do have an obligation to serve, and
23 when things like the storm that hit a couple of weeks
24 ago pop up and we have to spend tens of millions of
25 dollars to respond to that and there's not always an

1 opportunity to reduce to that extent, so like I said,
2 with generation it would be a very low return. We
3 don't believe that's a wise move in moving into
4 competitive and corporate separation to have an
5 injured Genco that would need to be able to compete
6 as we spin off.

7 COMMISSIONER PORTER: The one I would
8 particularly like to explore today is the expense
9 related to jobs. So one of the concerns I think that
10 everyone has is the impact of this proceeding, you
11 know, on jobs going forward so we know there are
12 concerns about jobs so if there's a particular plan
13 that's approved, RSR -- if the RSR is not at a
14 certain level, will have that an impact on -- on
15 jobs?

16 MR. NOURSE: Well, it could. It
17 certainly could, your Honor. As Bob Powers testified
18 in this case, you know, our management is going to
19 have to look at we have part of the picture with the
20 capacity decision. I believe the ESP decision will
21 provide the rest of the picture. And our management
22 is going to have to look at the financial impact of
23 those decisions together and evaluate, you know, the
24 bottom line and certainly there could be significant
25 cuts if -- if they are needed.

1 COMMISSIONER PORTER: Okay. There is
2 within the RSR included a \$3 a megawatt-hour credit.

3 MR. NOURSE: Yes.

4 COMMISSIONER PORTER: Okay. In order to
5 get to this \$3 per megawatt-hour credit, there is
6 consideration given to the effect of modification or
7 termination of the pool. So let me see if I can make
8 this more clear. I believe -- I believe based upon
9 the record, and tell me if I have this wrong, that
10 there's a 60 percent downward adjustment made to get
11 to in the company's eyes from a -- from a per
12 megawatt -- per megawatt-hour number of \$11.73 down
13 to 4.69 and there is a 60 percent downward adjustment
14 made between those two numbers.

15 MR. NOURSE: Yes. That's intended to
16 reflect the reality that under the FERC-approved pool
17 agreement, AEP Ohio only keeps their MLR share,
18 member load ratio share, which is 40 percent of
19 off-system sales margins.

20 COMMISSIONER PORTER: Okay. So with
21 the -- when will the pool be terminated?

22 MR. NOURSE: Well, we don't know ,but we
23 plan on terminating it first of 2014.

24 COMMISSIONER PORTER: Okay. So within
25 that timeframe over the course of the three-year ESP

1 period, is there an adjustment made in that credit,
2 \$3 per megawatt-hour credit?

3 MR. NOURSE: No -- I'm sorry, your Honor.

4 COMMISSIONER PORTER: So what I'm looking
5 to find out is the \$3 per megawatt-hour credit the
6 effect of the across -- the whole term of the RSR.

7 MR. NOURSE: Yes.

8 COMMISSIONER PORTER: And the pool will
9 be modified -- I'm sorry, terminated prior to the end
10 of this three-year period, shouldn't there be an
11 adjustment?

12 MR. NOURSE: Well, to do that I think it
13 would be very complicated and there's nothing in the
14 record to support a number. I don't think -- you
15 certainly could not assume that the same level of
16 margins like a \$12 margin unadjusted for the pool and
17 unadjusted for the fact you can't sell all energy
18 that's freed up into the market; it's only about half
19 or up to 80 percent. That's how you get down from
20 the 12 down to the actually closer to \$2.

21 We did a \$3 credit as a conservative
22 measure but there's no reason to believe in general
23 or in the record that AEP Ohio's margin would be --
24 would be higher than that with no pool. Nobody has
25 assimilated that and nobody has put any evidence in

1 to suggest that that would be the case.

2 COMMISSIONER PORTER: Okay. Just a few
3 final topics to address, just want to talk about the
4 rate design for the RSR. The company proposes that
5 there be an over/under -- over/under accounting
6 maintenance used and so there is a component of the
7 RSR that would depend upon the level of shopping.

8 MR. NOURSE: Correct.

9 COMMISSIONER PORTER: What I'm looking to
10 figure out is what the company's request or
11 recommendation would be regarding how -- regarding
12 whether it should be estimates for the numbers -- for
13 the levels of shopping and recovery prior to the
14 actual -- the actual determination of the full level
15 of shopping and then sort of a true-up annually, or
16 will that be after the three-year period? In other
17 words, how do we account for the level of shopping
18 within the RSR?

19 MR. NOURSE: Okay. It would be an annual
20 reconciliation, and the shopping projections that
21 were made by Company Witness Allen were used in
22 designing the RSR, and then the result was levelized
23 over the period to get to the \$2 charge which, again,
24 just to be clear, Mr. Allen and Mr. Roush in their
25 testimony made clear, I think, that the \$2 was just

1 an example.

2 The actual RSR would depend on the CRES
3 revenues, the \$3 credit, and the nonshopping
4 generation revenues as a bucket, whether they fall
5 short or exceed the \$929 million. So we -- we
6 projected the RPM -- we projected the levels of
7 shopping that we believe will certainly hold true if
8 the capacity charge decision remains unchanged and
9 CRES providers are charged RPM.

10 COMMISSIONER PORTER: Let me just
11 quickly --

12 EXAMINER TAUBER: Mr. Porter, I'm going
13 to limit you to one or two more questions.

14 COMMISSIONER PORTER: I have exactly two
15 more questions for you, sir.

16 EXAMINER TAUBER: Thank you.

17 COMMISSIONER PORTER: There -- there were
18 requests made for the exceptions from the RSR. How
19 do you -- how do you address whether certain entities
20 benefit from the RSR? For example, a request for an
21 exception from the RSR. What benefits do all
22 customers receive from the RSR?

23 MR. NOURSE: Yeah. I think -- I think it
24 should definitely be a nonbypassable charge because
25 if you go -- if you go bypassable, then it becomes a

1 death spiral. And the last customer left gets to pay
2 the \$300 million which probably wouldn't work out to
3 well for us.

4 And then if you go -- if you go with the
5 suggestion that was made by I believe OCC that says
6 you should just only charge shopping customers, you
7 know, again, that really doesn't match the cost
8 causation principles and the reality that as the
9 Commission found in the capacity charge decision,
10 that stimulating competition, I believe this
11 Commission finds value for that for all customers,
12 all customers get -- get to choose to shop and can
13 benefit from that in the marketplace.

14 Now, with respect to format specifically,
15 you know, I think it's turnabout is fair play
16 relative to Ormet gets a most favored nation's status
17 with their hundreds of millions of dollars they are
18 getting under their contract. So they -- everybody
19 else pays for that and so I think this is just
20 another --

21 COMMISSIONER PORTER: That's sufficient
22 and let me just -- this will be the last question,
23 securitization, is the RSR the type of charge that
24 could eventually be securitized by a utility?

25 MR. NOURSE: Yes, I think so, your Honor,

1 especially with the capacity decision coming out the
2 way it did. If the RSR is -- raises above a level
3 that the Commission is comfortable with on rate
4 impacts, they could implement their 4928.144
5 authority and do a phase-in, and as part of that, the
6 carrying charge could be -- could be reduced to a
7 securitized carrying charge.

8 COMMISSIONER PORTER: Thank you.

9 EXAMINER TAUBER: Commissioner Lesser, do
10 you have any questions for Mr. Nourse?

11 COMMISSIONER LESSER: Yes, I do.

12 Mr. Nourse, I would like to ask you this
13 question. I would like Office of Consumers' Counsel
14 to follow you, and I would ask other parties to also
15 to the extent that they could supplement the answer.
16 In the RSR you discuss the idea of jobs and discuss
17 investment. Do you believe the Commission would have
18 jurisdiction and would be appropriate to link and
19 make the RSR contingent on actual investment and job
20 retention in the State of Ohio?

21 MR. NOURSE: You know, I hadn't thought
22 about the jurisdictional issue. I mean, I don't
23 think it's -- in general I don't think -- my reaction
24 is I don't think that would be necessary or
25 appropriate. You know, we haven't promised to

1 eliminate jobs, and I don't think we would have to
2 promise to keep jobs. There are a lot of other --
3 there are a lot of other factors that go into the
4 ultimate job count, especially with AEP being
5 headquartered in Ohio, even though we operate in 11
6 states so there are definitely other factors that
7 affect that.

8 Now, again, we could be headquartered
9 somewhere else in another state and then that would
10 reduce all the Ohio jobs associated with One
11 Riverside Plaza, but I think those are management
12 decisions and --

13 COMMISSIONER LESSER: Well, on the legal
14 side do you believe we have the jurisdiction, No. 1,
15 during the pendency of the ESP and, No. 2, do you
16 also link the RSR to the capacity deferral? Could
17 this contingency extend beyond the ESP?

18 MR. NOURSE: Well, the -- again, during
19 the ESP the -- I suppose the only way I could see is
20 if there is an indirect link to jobs by saying
21 your -- your labor expenses, we assume we are setting
22 this charge based on a particular labor expense
23 level, O&M level, and if that goes down below a
24 certain band of tolerance, then we have to come back
25 in and talk about it or show -- show why the RSR

1 shouldn't be reduced or something like that.

2 But we did not propose an earnings
3 based -- for a lot of reasons, but the big one is
4 that I think it would turn into a perpetual
5 litigation. It would be like the mother of all SEET
6 proceedings.

7 COMMISSIONER LESSER: But that's not
8 really my question but thank you, Mr. Nourse.
9 Ms. Grady.

10 MS. GRADY: Thank you. Commissioner
11 Lesser, with respect to your question on job
12 investment, whether it would be appropriate and the
13 Commission has jurisdiction to link the job
14 investment to the RSR, respectfully, your Honor, we
15 would submit the Commission does not. The RSR is a
16 revenue guarantee, and we do not believe that if
17 there is a legal basis for the RSR under
18 4928.143(B)(2)(d), which is what the company relies
19 upon, we do not believe that that provision is
20 sufficient. That provision provides for stability
21 and certainty for retail electric service. It does
22 not provide for stability and certainty with respect
23 to the company's earnings.

24 There is no provision in the statutes
25 that allow for financial stability or certainty to be

1 guaranteed for the company under an electric security
2 plan.

3 COMMISSIONER LESSER: So you're saying
4 because there's no basis for the RSR there's no basis
5 for a contingency.

6 MS. GRADY: That is correct.

7 COMMISSIONER LESSER: Okay. Well, I
8 appreciate -- I appreciate the argument. I would
9 also ask if there is other parties that would like to
10 address it.

11 MS. GRADY: Thank you.

12 COMMISSIONER LESSER: Thank you. I
13 hope -- I would like to apologize for my abruptness,
14 but the Examiners made it clear that we have to stay
15 in line too.

16 MR. RANDAZZO: My name is Sam Randazzo on
17 behalf of the Industrial Energy Users of Ohio and
18 thanks for the opportunity to respond to the question
19 in an argument context.

20 First of all, as I think you know, you
21 only have so much jurisdiction as AEP will give you
22 with regard to the ESP. AEP has the unilateral
23 right -- right to veto the ESP if it doesn't like the
24 ESP and there is no justification whatsoever. So
25 ultimately your linkage in an ESP context, whatever

1 it may be under the law, is a function of whatever
2 ESP will agree to. That is fundamentally the case.

3 With regard to the RSR, you may have some
4 linkage as long as I don't make it a nonbypassable
5 charge. When you make it a nonbypassable charge, I
6 think that's when you destroy your jurisdiction based
7 upon the provisions that are in the statute.

8 So to the extent that you were to say we
9 are willing to allow you to have this level of
10 generation-related revenue for standard service offer
11 and that is bypassable by customers who have access
12 to the marketplace and AEP accepts it, I believe that
13 could be an acceptable ESP if there were conditions
14 in it also that dealt with levels of employment and
15 job retention, job creation, and that sort of thing.
16 I think the problem is the bypassability.

17 COMMISSIONER LESSER: Thank you.

18 MR. YURICK: Good morning, Mark Yurick on
19 behalf of the Kroger Company. I think it's a great
20 question in terms of the MRO sort of ESP test,
21 whether it is more favorable in the aggregate than an
22 MRO, and I don't think that provision is necessarily
23 flushed out, but I do think that the company has made
24 time and time again the argument that without the
25 RSR, they are going to be subject to financial harm.

1 In fact, they say that without the RSR the Commission
2 would be acting in confiscatory way. I think if the
3 Commission is going to accept that argument on behalf
4 of AEP and determine that to be a legitimate
5 argument, that certainly the Commission would have
6 the jurisdiction.

7 And Mr. Randazzo makes a good point about
8 bypassability, but I think the Commission would have
9 jurisdiction to say that -- look at it and say, you
10 know, if the company is going to agree to create X,
11 Y, and Z jobs, that that can be taken into
12 consideration in the ESP/MRO context.

13 COMMISSIONER LESSER: Thank you.

14 MR. YURICK: Thank you very much.

15 COMMISSIONER LESSER: Mr. Petricoff.

16 MR. PETRICOFF: Thank you, your Honor.

17 On behalf of RESA we just want to add one point on
18 this. The counsel for OCC brought up the point that
19 you are limited in Section (B)(2)(d) to just retail
20 electric service and I would like to point out to the
21 Commission the definition of retail electric service
22 in 4928.01 and it is very broad. And I think that
23 probably when you look at that -- because it talks
24 about, you know, not only just the standard service
25 but also the CRES service. So -- and quite a bit is

1 taken under there.

2 So if the Commission was tying jobs to
3 the benefits under the MRO-ESP test and then looking
4 to that authority which allows it to defer charges
5 for stability, that could be part of the -- part of
6 the game given the large definition of retail
7 electric service.

8 COMMISSIONER LESSER: Thank you.

9 My next question, I believe counsel for
10 Ormet is here, Dan Barnowski.

11 MR. BARNOWSKI: Yes, your Honor.

12 COMMISSIONER LESSER: I'm asking you up
13 here mainly to help me and make sure I got your
14 position correct. In your testimony you describe an
15 interesting scenario that -- that I could not
16 necessarily find the answer. It described a scenario
17 unfortunately in which Ormet terminated business, and
18 the issue was that if the RSR was decoupled revenue,
19 AEP with Ormet out of business would continue to
20 collect the same amount of revenue and have that --
21 that energy available for off-system sales.

22 MR. BARNOWSKI: That's correct.

23 COMMISSIONER LESSER: Would you like to
24 either add to that or clarify that?

25 MR. BARNOWSKI: Sure.

1 COMMISSIONER LESSER: But did I describe
2 that correctly?

3 MR. BARNOWSKI: You did, your Honor, and
4 here's why, under the recommendation made by AEP,
5 they've set this RSR target, and if they don't get to
6 those revenues, I think the number is 929 million,
7 then they collect the rest of the RSR. Ormet is
8 right now contributing somewhere in the order of \$105
9 million, I believe, per year to that target. And if
10 Ormet goes out of business, that target will
11 obviously go down by 100 -- the target won't go down;
12 the ability to achieve it will go down \$105 million
13 and that will be collected by -- from the rest of the
14 ratepayers if Ormet goes away.

15 COMMISSIONER LESSER: And how much power
16 does Ormet actually use?

17 MR. BARNOWSKI: It's around 4.2 million
18 megawatt-hours per year. That -- all of that power
19 would then be freed up for off-system sales and/or as
20 it stands right now, AEP is not sharing the benefits
21 of those off-system sales with any of the customers
22 pursuant to this plan.

23 COMMISSIONER LESSER: Thank you.

24 MR. BARNOWSKI: Thank you, your Honor.

25 COMMISSIONER LESSER: Mr. Nourse.

1 MR. NOURSE: Thank you. Your Honor, with
2 respect to your scenario, I guess the -- there is
3 nothing today if Ormet had gone out of business today
4 that would require off-system sales to be shared, be
5 flowed back to SSO customers or retail customers of
6 AEP Ohio, so I think that scenario could happen
7 today, but I will note that the record also supports
8 the conclusion Mr. Allen, Company Witness Allen, made
9 it clear that just -- when energy is freed up from
10 competition or from lack of retail sales, there's
11 not -- there's not a one for one. Usually it's about
12 50 percent up to 80 percent that can even be sold in
13 general into the market. Now --

14 COMMISSIONER LESSER: What do you mean?
15 You mean there would be no -- there would be no
16 demand for the power?

17 MR. NOURSE: That -- it's all a matter of
18 the demand and the price point, but in general
19 historically, that's been the experience over -- over
20 a number of years. But, again, in Ohio based on the
21 SEET test, based on the SSO from the ESP I, there is
22 not any linkage between wholesale sales and
23 especially as they operate under the FERC-approved
24 pool and -- and retail rates but, you know, I think
25 the Ormet going-out-of-business scenario is extreme

1 and is not something that any of us wants to see.
 2 And so I don't know if that's some sort of
 3 contingency, or if that happens, maybe we should come
 4 back in and look at things. I think that's a better
 5 way of dealing with it than trying to, you know,
 6 design -- redesign the RSR based on, I think, a
 7 remote scenario.

8 COMMISSIONER LESSER: Any other party
 9 wish to add to that?

10 Thank you, Mr. Nourse.

11 Those were all my questions.

12 EXAMINER TAUBER: Chairman Snitchler.

13 CHAIRMAN SNITCHLER: Thank you. My
 14 question will start for Mr. Stahl with regard to some
 15 comments that were made or suggestions with regard to
 16 the auction and how soon AEP can get to a full
 17 auction which would impact the RSR. I believe as I
 18 read the brief, it indicated that your target for
 19 them would be June of 2014. It's my understanding
 20 that not everyone agrees that that's even achievable.
 21 I'm interested to get your thoughts on why you
 22 believe that's achievable and why you believe that
 23 would impact the RSR amount and to what extent.

24 MR. STAHL: Thank you, Mr. Chairman. I
 25 appreciate the opportunity to answer that question.

1 Yes, our proposal is to accelerate that
2 auction to June 1, 2014. We selected that date
3 because we are accepting at face value, unlike some
4 other parties, the AEP Ohio claim that they cannot go
5 to auction until two things happen, the termination
6 of the pool, the corporate separation which they
7 anticipate will be done by January 1, 2014.

8 There are other parties to this
9 proceeding who believe those contingencies do not
10 stand in the way of an auction. We have not gotten
11 involved in that debate. We think if that's their
12 position, we'll accept that. But June 1, 2014,
13 sounds realistic.

14 They are going to do it on June 1, 2015,
15 anyway. They are going to have an energy-only
16 auction by January 1, 2015, so we see no reason they
17 can't move this auction up by another six or seven
18 months.

19 AEP has said in its reply brief there are
20 really two reasons why the Exelon proposal is not a
21 sound one. The first one being that it's somehow
22 inconsistent with their FRR status. There is
23 absolutely no support for that in the record. In
24 fact, that claim is contradicted by the record, and I
25 can provide citations. Mr. Powers testified on

1 cross-examination that there was no impediment as far
2 as he was aware to holding that auction early. And
3 that citation appears at page 368 of the transcript.
4 And I know that FES's, FirstEnergy Solutions, reply
5 brief page 27, footnote 99, provides I believe three
6 other record citations that are inconsistent with the
7 idea that somehow FRR stands in the way.

8 Only one other point I would like to
9 make, AEP is also said in its reply brief the auction
10 should not be held on June 1, 2014, because even
11 though the record doesn't contain any evidence of
12 financial harm resulting to AEP Ohio from doing that,
13 that doesn't mean there won't be financial harm. I
14 think that's a very strange way to T up this issue
15 for the Commission.

16 We have had days and days of hearings and
17 plenty of opportunity, and AEP Ohio knew of that
18 proposal, didn't introduce any evidence. And, again,
19 in fact, the record is clear from the
20 cross-examination of Mr. Allen and Mr. Powers that
21 AEP Ohio hasn't done any analysis or study or
22 consideration of what kind of harm, if any, might
23 result from moving that auction up.

24 So the short answer is we think it's pro
25 competitive; we know it's pro competitive. And there

1 is no reason based on the record not to do it.

2 I think the Chairman also asked the
3 question about how this relates to the RSR charge.
4 And I think it does directly relate to the RSR
5 charge. Exelon's position on the RSR charge is that
6 it ought to be collected only from nonshopping
7 customers.

8 We believe there are a variety of reasons
9 for that. One of the reasons being that I think
10 Mr. Nourse said earlier that all customers are going
11 to benefit, he says, from the RSR. I would prefer to
12 say customers will benefit from RPM pricing that this
13 Commission has now made available. And the auction,
14 holding that auction earlier will be able to bring to
15 SSO customers not only the opportunity to take
16 advantage of RPM pricing through shopping but the
17 reality and the fact of RPM or competitive market
18 pricing through moving this auction up earlier.

19 And we believe that in the final analysis
20 the availability of competitive market pricing, the
21 availability of nonshopping customers to move to
22 shopping to take advantage of competitive pricing, is
23 a benefit to them which justifies imposing on
24 nonshopping customers the RSR charge.

25 I hope I've answered your question.

1 CHAIRMAN SNITCHLER: I think so.

2 Any other parties want to respond to
3 that?

4 Mr. Nourse, we'll start with you and work
5 down the aisle or do you want to go last?

6 MR. NOURSE: Do you want to have them to
7 speak first?

8 CHAIRMAN SNITCHLER: Have Mr. Randazzo
9 and work back this way. Go ahead.

10 MR. RANDAZZO: Just a couple of points
11 very quickly. There's been a lot of discussion about
12 the corporate separation-related aspects to this. I
13 will remind the Commission because it was here that
14 the original corporate separation plan approved for
15 AEP Ohio called for them to transfer their
16 distribution assets. They were to transfer their
17 distribution assets to a separate entity. That's
18 what was approved by the Commission.

19 Subsequent to that the Commission granted
20 delays and extensions in pulling the trigger on that.
21 But if you were to implement that originally approved
22 corporate separation strategy, there is absolutely no
23 implication to the pool and you can proceed with a
24 competitive bid with regard -- without regard to the
25 FRR election.

1 The second point as a matter of history
2 also AEP has actually used competitive bidding to set
3 the standard service offer prices. It used the
4 competitive bid when it acquired the Monongahela
5 Power customers to establish the market-based price
6 that would be paid for providing default generation
7 supplied to that population of customers.

8 It also used a competitive bid process to
9 establish the market-based price that was the
10 reference price for Ormet to determine -- determine
11 the delta revenue.

12 At that point in time oddly AEP said it
13 didn't have enough generation to serve Ormet, and so
14 it had to go to the market to procure the generation
15 supply that was made available to Ormet through the
16 reasonable arrangement. All of that stuff occurred
17 after the FRR election, I might add, as well.

18 So I agree with the objective of getting
19 to a competitive bid process fundamentally as a means
20 of not only helping the customers who do not shop but
21 the customers who cannot shop such as the universal
22 service fund customers. That is a way to bring down
23 the burden on them as well as other customers who pay
24 that.

25 I strongly suggest that you look at your

own determinations and the history here to test this claim that we can't do a competitive bid process sooner because AEP did, in fact, use competitive bidding in the two instances that I described and its original corporate separation plan approved by this Commission was to push the distribution assets, not the generation assets, into a separate entity.

And if you were to act on that already approved corporate separation plan, I believe that you could accelerate the introduction of competitive bid process and benefit the public interest as well.

Thank you very much.

MR. KURTZ: Mr. Chairman, thank you.

Mr. Chairman, the RSR is a formula rate. It is not a set number. It's a formula rate that will undue, make irrelevant, make moot everything you've done in the capacity case and here's why, it's a formula rate that looks at a target level of generation revenue, \$929 million. It's made up of four components, the base generation rate that nonshoppers pay, auction revenues once there is an auction, this \$3 per megawatt-hour credit for shopped load that is -- that is part of the formula, and the final piece of the formula is the CRES capacity revenue.

So if -- the \$189 per megawatt-day order

1 that came out, it wouldn't make any difference if it
2 was \$18 a megawatt-day or zero. The RSR will just go
3 up to make up the difference. It renders the
4 capacity case moot.

5 AEP's testimony, this is Allen Exhibit 6,
6 shows that -- an example under their two-tiered
7 capacity pricing of 146 and 255, they estimated that
8 the RSR would be \$2 a megawatt-hour on all of their
9 load, \$90 million a year on average.

10 Now, we have 188. That's -- that's the
11 law. The RSR will just go up to make up the
12 difference. It will go up to \$5 a megawatt-hour on
13 average to make up the difference. You charge zero,
14 RSR will go to \$20 a megawatt-hour to make up the
15 difference. It renders everything you've done in the
16 capacity case moot because you have given with one
17 hand and taking away with the other. That's the
18 insidious nature of this formula rate.

19 Now, the RSR is fundamentally
20 conceptually flawed. There have been two items that
21 brought up -- Commissioner Porter points out, once
22 the interconnection agreement is terminated this
23 member load ratio sharing ends the \$3 a megawatt-hour
24 fixed, that -- that number is fixed and that's wrong.
25 It's way too low, and it will be too low after pool

1 termination.

2 The Ormet example shows that it's a
3 flawed formula when you just look at a target level
4 of revenues instead of looking at earnings. The
5 other way the formula is flawed is that when -- when
6 AEP Ohio divests Amos and Mitchell as part of the
7 corporate separation, the new pool agreement, the
8 \$929 million of revenue that they are guaranteeing
9 stays, but the -- all the costs of those two power
10 plants are gone. So they get the revenue from Amos
11 and Mitchell, the expenses, the appreciation, the
12 fixed O&M. If I can draw you back to the first
13 question which is, I'm gathering based on your rather
14 extensive answer to the second half of the question,
15 that you think an auction could occur prior to June 1
16 of 2015, do you agree with the Exelon date of June 1
17 of 2014 or you have some other date that you think is
18 the date that an auction should occur?

19 MR. KURTZ: I was unclear of the
20 procedure, and I wanted to make sure that the
21 Commission understood my basic point that the RSR is
22 an absolutely flawed method that --

23 CHAIRMAN SNITCHLER: Message received --

24 MR. KURTZ: Okay.

25 CHAIRMAN SNITCHLER: -- on the first half

1 of the question.

2 MR. KURTZ: On -- on the auction an
3 auction could be good, could be bad, two years, three
4 years, we don't know what the auction price is going
5 to be.

6 CHAIRMAN SNITCHLER: So you don't have an
7 answer to my question.

8 MR. KURTZ: I don't have a legal answer.

9 CHAIRMAN SNITCHLER: Thank you.

10 MR. KURTZ: Now, on the Exelon point that
11 this RSR, this flawed charge which goes up the lower
12 the capacity piece is, the idea that that should be a
13 rate increase only on nonshoppers is preposterous.
14 The RSR is a capacity make-up formula that's tied to
15 the capacity pricing that CRES suppliers pay. The
16 lower they pay the higher the RSR goes up. The RSR
17 should be a charge only on shoppers to pay for the
18 capacity.

19 There is -- the RSR is flawed. You
20 shouldn't approve it, but if you do give AEP revenue
21 in addition to 188, if you do give them revenue in
22 addition to the 188, it ought to go -- the only valid
23 purpose for that is to go to pay down the deferral.
24 If you are going to give them extra cash flow, extra
25 money in addition to the just and reasonable

1 cost-based 188, if you are going to give them more
2 money, it should go to pay down the deferral. That's
3 the only valid purpose of an additional revenue
4 stream.

5 CHAIRMAN SNITCHLER: Thank you. Are
6 there others that want to comment as well?

7 MR. LANG: Yes, thank you, Mr. Chairman.
8 Jim Lang on behalf of FES. And as Mr. Stahl
9 commented, there are other parties that are arguing
10 for an earlier date. FES is one of them. FES is
11 recommending June 1, 2013. The -- this is something
12 we believe can be easily achieved. In their February
13 filing at FERC, AEP made a filing with regard to
14 corporate separate and pool termination, and their
15 dates that they were suggesting for both of those was
16 early 2013. That can still be done.

17 There are -- under the pool termination
18 there was a three-year notice provision given in late
19 2010 which is how they ended up with the 21 --
20 January 1, 2014, date. As evidenced in their FERC
21 filing in February, all of the parties, all of the
22 AEP East entities have agreed to waive that
23 three-year period and terminate the pool earlier if
24 it is coincident with corporate separation.

25 There is nothing in the pool agreement

1 that precludes a competitive bid process. Even if
2 the pool agreement is in place, still in place as of
3 January, 2013, there is nothing in that pool
4 agreement that precludes a CBP from going forward.

5 There is -- and FES Witness Rodney Frame
6 provided extensive testimony on the details of the
7 pool agreement, the interaction of the pool
8 agreement, how it would apply to a competitive bid
9 process, determined that not only was there nothing
10 precluding it from happening but essentially that
11 because of the way the -- the allocation happens
12 under the pool, because you are both buying and --
13 buying in and selling out, the impact of the pool is
14 essentially a wash on that transaction.

15 So AEP does say, well, there would be
16 financial harm, but AEP Ohio Witness Nelson was
17 unable in this case and in the stipulation ESP
18 hearing to quantify any of that financial harm. When
19 pressed, what he was talking about as financial harm
20 was simply the issue of if there is an auction, then
21 AEP bidding into that auction may receive lower
22 prices than what they are receiving now. And FES
23 certainly believes that the -- that the best thing
24 for the SSO design is to go to that CBP as of June,
25 2013. It is best for customers with regard to the

1 impact on the RSR. Share most of Mr. Kurtz's
2 comments that it's unworkable.

3 But I think the -- you know, the major
4 issue with the RSR and all the discussion we are
5 having this morning is the first point is under
6 the -- under the ESP versus MRO test, there is no way
7 you can get to a successful test with that M -- with
8 that RSR still in there, particularly with the one
9 that's proposed in the reply brief which is a -- a
10 continually increasing RSR. Thank you.

11 MR. YURICK: I'll be extremely brief. In
12 fact, I don't mean to get off topic but one thing --
13 one aspect of the RSR -- I concur with my colleagues,
14 but one aspect of the RSR that AEP didn't even
15 address, and I want to point it out while we are
16 talking about the RSR, is the rate design of it.
17 It's clearly a capacity charge. It's allocated on
18 the basis of demand. The rate design seeks to
19 collect RSR -- RSR through an energy charge.

20 They are mixing apples and oranges, and
21 it is going to create intraclass subsidies that will
22 discriminate against high load capacity users such as
23 my client.

24 I just wanted to point out, that and I
25 appreciate your patience. Thank you.

1 MR. BARNOWSKI: Your Honor, I will be
2 very brief, but in response to your second question
3 the comment was made that everyone on the system
4 benefits from the shopping the RSR seeks to recover
5 for. That is not true. There are three parties in
6 the system, just three, who absolutely cannot share
7 in those benefits at all. They are prohibited by
8 their contracts from shopping, from contributing to
9 the costs the RSR seeks to recover, and they are the
10 only three. It's Ormet, Eramet, and the third party,
11 I apologize, but the name escapes me.

12 And those parties -- it's one thing if a
13 party chooses not to avail itself of a benefit that's
14 available to itself. It's like the local library.
15 If you don't take a book out from the library, it's
16 still there for you. You can go out, you can avail
17 yourself of those benefits at some point. You don't
18 get to say my tax money shouldn't pay for that
19 library because I'm not using it.

20 That's everyone else in the system but
21 there are three parties here who have written
22 contracts that have the force of law that say you
23 cannot shop. At least our interpretation of those
24 contracts is the probable interpretation is you
25 cannot shop, and it is fundamentally unfair to

1 require Ormet to pay 8 to 9 percent of the RSR charge
2 which is what the recommendations would do when they
3 absolutely cannot share in those benefits.

4 Thank you.

5 MR. NOURSE: May I respond, your Honor?

6 Let me start at the end, Mr. Barnowski's
7 comments. I think Ormet and all the customers have
8 benefits from this ESP that exceed the shopping
9 stimulus plan that's sort of embedded in the capacity
10 charge docket and that flows over into this -- in
11 this docket. As I said earlier, the RSR is the
12 enabler for the entire plan, so I disagree that they
13 don't get other benefits. As I said earlier, Ormet
14 is getting benefits that are paid by all the other
15 customers as well.

16 I also want to correct Timken is able to
17 shop under their agreement so that's a false
18 statement. Let me go back to -- let me go back to
19 Mr. Lang and work backward briefly. Mr. Lang had
20 suggested that we start an auction and FirstEnergy is
21 suggesting we start an auction in 2013 and that there
22 would be no effect under the pool.

23 However, their witness, Mr. Frame, under
24 cross-examination did admit several things. He
25 admitted that one effect of his proposal was that

1 off-system sales would increase, that those sharing
2 under the pool would -- would go back to customers --
3 retail customers in other states. So that -- that
4 would be a certainty.

5 He agreed that he didn't know and didn't
6 do any evaluation on what the impact of primary
7 energy is under the pool when you do that kind of
8 auction. Primary energy is where the members share
9 on a cost basis energy and that would change under
10 this massive auction that was never contemplated in
11 the pool. Mr. Frame also admitted that AEP would
12 definitely take a hit under his proposal but in his
13 view is based on losing the SSO margin that we have
14 that's in his terms above market, and it all goes
15 back to RPM. So I think there are financial impacts
16 there.

17 So in getting back to Mr. -- Mr. Stahl's
18 and Exelon's proposal relative to doing it after the
19 pool terminates and after corporate sep -- separation
20 occurs, you know, AEP has never said that we couldn't
21 do that. What we have said -- in other words,
22 there's not a legal barrier at that point. We do
23 believe it's inconsistent with our FRR obligations in
24 the sense that we brought capacity for that whole
25 three-year period. And we believe that that would

1 potentially be displaced under an auction depending
2 on how it's done.

3 But -- but the fact is there is a
4 financial impact and it's rather obvious. Just like
5 the record shows in connection with the RSR that the
6 more shopping there is the less nonfuel generation
7 there is. Under an auction you are basically taking
8 all of the SSO margin away from AEP Ohio at once so
9 there's clearly indisputably an impact there.

10 What we've said is that our proposal is a
11 package and we believe it's a balanced package and so
12 as part of this transition, there is not a
13 requirement for auctions under the ESP statute, even
14 in the MRO statute takes you six years to get -- to
15 get to a fully competitive SSO.

16 We are proposing to do that in half the
17 time. We are proposing a rapid and major
18 transformation of the company through the change to
19 RPM. CRES providers have already gotten our election
20 to do RPM. They are getting RPM rates. What I mean
21 by that is in 2015 going forward an RPM entity. They
22 are getting RPM rates now through the capacity charge
23 decision. Now, that they have all those things, they
24 want to get the auction sooner than we proposed, but
25 we would submit that this plan is balanced.

1 There is a financial impact so doing it
2 sooner has a financial impact and you get back into
3 the net -- the net effect of whatever the modified
4 ESP that comes out of the order would be and that's
5 something that we'll have to evaluate.

6 I would just add a couple of things based
7 on Mr. Randazzo's, Mr. Kurtz's comments. You know,
8 the old corporate separation plan is not on the table
9 so I don't know why we should talk about going back
10 to that. That's not on the table. Frankly, we
11 didn't do it before for -- because things changed
12 after the approval occurred but that's still a
13 possibility here if we get -- even if we get approval
14 for corporate separation from this Commission, we
15 still have to go to FERC.

16 You know, if we have the financial
17 inability to spin off that company and to finance
18 those operations, that still may not occur which is
19 another reason I think the Commission, in trying to
20 foster competition, we want to make sure AEP would be
21 a large competitor, a healthy competitor going into
22 unbundling that we can -- we can finance that and
23 compete and benefit customers in Ohio.

24 With respect to Mr. Barnowski's other
25 comment --

1 EXAMINER TAUBER: Mr. Nourse, I'm going
2 to limit you a couple more minutes because we're
3 running really tight on time right now.

4 MR. NOURSE: Okay. The -- actually
5 Mr. Randazzo, I'm sorry, Mr. Randazzo talked about
6 the auctions done in the past. Those are very
7 limited. They were voluntary and so they certainly
8 weren't the scope and the impact of what -- what the
9 parties are proposing here, and they were under
10 different circumstances that were approved by the
11 Commission. Thank you.

12 MR. STAHL: Mr. Chairman, I don't want to
13 overstay my welcome here as a visitor, but I would
14 like to clarify --

15 EXAMINER SEE: Mr. Stahl, Mr. Stahl, the
16 Commissioners will indicate if they need a
17 clarification from you. Thank you.

18 MR. STAHL: All right.

19 CHAIRMAN SNITCHLER: Nothing further from
20 me. Thanks.

21 EXAMINER TAUBER: Commissioner Roberto.

22 COMMISSIONER ROBERTO: Thank you. My
23 question is directed to Mr. Nourse and anyone else
24 who wishes to respond. Fundamentally the genesis of
25 the RSR was a POLR obligation to help AEP recover its

1 cost for providing capacity for its entire footprint,
2 at least during the pendency of the FFR -- FRR term
3 that's currently in place. Assuming for purposes of
4 our discussion today that the Commission adopted a
5 cost-based capacity charge for CRES providers, why is
6 there a need for an RSR at all on top of that?

7 And my corollary question to that is if
8 we were to adopt any revenue requirement on top of
9 the cost-based charge that we've adopted in the
10 capacity case, why wouldn't that just be undoing the
11 188 and choosing a new dollar amount for the CRES
12 providers?

13 MR. NOURSE: Okay. Well, first of all,
14 there -- let's talk about the capacity charge case or
15 decision as it stands today. There may be changes to
16 rehearing and if that changes, then some of the
17 answers might change. But with regard to the 189,
18 folks have talked about we've already got 189; you
19 shouldn't go further. Well, we don't have the 189.
20 Right now, just looking at that order --

21 COMMISSIONER ROBERTO: Okay. Assuming
22 that the Commission adopted a cost-based -- our
23 judgment on what AEP's costs are, if AEP recovers its
24 costs, then why does it need an RSR?

25 MR. NOURSE: Okay. And I'll just caveat

1 that we don't agree with the Commission's finding but
 2 let's go forward from there. The RSR is more than
 3 just capacity charges. It's not just linked to that.
 4 We filed supplemental testimony, tried to make that
 5 even clearer than we did originally. It's about
 6 enabling the company to maintain financial stability,
 7 to provide all the things that are in the plan.

8 But with respect to staff's proposal that
 9 we limit the RSR to that delta, recovery of the
 10 delta, between 189 and RPM, that would not get us to
 11 the point we need to be financially. As we said in
 12 our reply brief, it would only get to us a 5.9 ROE in
 13 2013 and that's for total company. Generation would
 14 be lower and confiscatory.

15 And so the two -- there's still a \$2.75
 16 charge that's needed under the RSR just to get us
 17 back to 7-1/2 percent ROE in 2013 and assuming we get
 18 separate recovery of the difference between 189 and
 19 RPM and that 2.75, again, is based on not just
 20 capacity; it's based on the revenue target and trying
 21 to achieve financial stability which 5.9 percent ROE
 22 does not do, does not achieve. Does that answer?

23 COMMISSIONER ROBERTO: Yes, thank you.
 24 In whichever order.

25 MR. LANG: Thank you, Commissioner

1 Roberto.

2 The RSR as described by AEP Ohio has been
3 a moving target, particularly -- not so much during
4 the hearing but as the briefs have proceeded. During
5 the hearing if you review the testimony of AEP Ohio
6 Witness Powers, their most senior office that
7 testified, he was clear that the RSR had two
8 purposes. One was for the discounted capacity being
9 offered to CRES providers, and the other was for the
10 discounted capacity being offered as part of the
11 early energy-only auctions that would be their
12 capacity offered at \$255 per megawatt-day.

13 You know, AEP is, I think, concerned
14 about the impact of the 10-2929 order, is describing
15 in the RSR after the fact as being a potluck effort
16 for applying everything, but as it was designed and
17 as it was explained in the testimony of AEP
18 witnesses, in particular Mr. Powers, it's -- it was
19 directly tied to what they referred to as the
20 discounted capacity.

21 And to your question about the POLR, they
22 have -- AEP Ohio has now described it in their
23 briefing as essentially a backdoor attempt at another
24 POLR charge. It is not the -- you know, it has in
25 this case even less support than the POLR charge did

1 in their last ESP that was rejected. And to the
2 extent that that POLR issue was an issue, the
3 10-2929 -- the 10-2929 order dealing with the cost of
4 AEP Ohio's capacity deals with that POLR issue.

5 I probably agree with Mr. Nourse that FES
6 may not agree with all aspects of the 10-2929 order,
7 but since we're here in the modified ESP case, we're
8 going to accept that as a given for purposes of this
9 case. Since you have that there that's addressing
10 the POLR issue. Thank you.

11 MR. KURTZ: Commissioner Roberto, you are
12 exactly precisely correct. If the Commission gives
13 AEP Ohio something in addition to 188.88 which is the
14 fair, just, and reasonable cost-based capacity rate
15 that was charged to CRES suppliers, if you give them
16 anything above that, by definition it's above the
17 just and reasonable rate. So you are correct, there
18 shouldn't be anything extra. The RSR, again, is a
19 formula that undoes what you did in the capacity
20 rate. The lower the capacity rate the higher the
21 RSR. It makes no difference. It's a flawed formula.

22 In terms of this projected ROE in 2013,
23 that projection is like any projection, subject to
24 wide variation. In fact, once the AEP pool
25 terminates and there's no more member load ratio

1 sharing and the energy markets improve, once they
2 transfer these two power plants, Amos and Mitchell,
3 and they get the generation revenue and the RSR but
4 the costs are gone, their -- their revenues would
5 stay the same. Their expenses will go down. That
6 will be more earnings. And when you divest these
7 power plants, you shrink the company, you shrink the
8 equity base. Now, the ROE goes way up.

9 This is not -- this is not going to be
10 a -- the RSR is not going to -- as proposed, it will
11 probably, and this is a forecast, result in excessive
12 earnings and that's -- that's the problem with it.
13 Again, the only possible reason to give AEP Ohio more
14 than the fair, just, and reasonable cost-based
15 capacity rate of 188 is to -- is to put an extra
16 charge on shoppers, improve their cash flow, Wall
17 Street likes that, and use it to right down the
18 deferral. The deferral of 700 -- 730 million, when
19 that comes due, people are going to be paying above
20 market rates and so anything to do -- to keep that
21 lower would be -- would be beneficial.

22 And so if there is an extra charge, it
23 should only go on shoppers. It should go to right
24 down the deferral, but the RSR is a different
25 concept. It's absolutely -- it's a very, very

1 dangerous thing. I think the Commission would be
2 very sorry if they ever approved it.

3 MS. GRADY: OCC would echo the comments
4 made by FES and by OEG. If there is capacity-based
5 pricing as is the case under the 10-2929 case, there
6 is no need for the RSR. But we would object, your
7 Honors, to the fact that -- or we would ask your
8 Honors consider in the capacity charge case, your
9 Honors, split the baby between the CRES providers and
10 AEP, and the customers are the ones who are stuck in
11 the middle. The customers are the ones who will pay
12 the differential between RPM pricing and the 188 and
13 we believe that is not fair competition. And under
14 the policy of the State, we would like to promote
15 fair and reasonable competition to the benefit of
16 customers.

17 That also has to be considered a long
18 with the policy that reasonably priced electric
19 service shall be maintained and shall be available to
20 customers. And we think with all due respect that
21 the Commission got it wrong. If there is a
22 discounted capacity price, that discount should be
23 paid by the cost causers, the CRES providers, and it
24 should not be picked up by customers, especially
25 nonshopping customers who do not -- who do not cause

1 the cost. That is a cost subsidy. It is an unfair
2 subsidy and it is discriminatory pricing and it also
3 will result in double payments.

4 CRES -- or SSO customers right now pay
5 \$355 a megawatt-hour in the capacity rates that they
6 pay. CRES providers get RPM pricing. There is a
7 vast difference between the RPM pricing and the price
8 that SSO customers pay. A lot of attention in this
9 case has gone to the price for capacity paid by CRES
10 providers to AEP, but SSO customers, 85 percent of
11 them being residential, pay \$355 a megawatt-hour.
12 That is not fair and reasonable.

13 By the estimates of parties to this case,
14 the difference between the RPM price and the 188 will
15 cost millions, if not billions of dollars. IEU
16 estimates that that -- there will be approximately
17 \$834 million created by the deferrals from the
18 capacity charge case and that is without carrying
19 charges. Add that to the company's proposal to
20 increase the RSR as a result of the capacity case
21 from \$2 to \$2.75. That takes the RSR from a
22 284 million revenue guarantee up to \$390 million
23 revenue guarantee. And currently OCC's Witness
24 Wiggins testified that 15 percent of the customers of
25 AEP -- customers right now are struggling to pay

1 their bill. This will be unfair competition and will
2 not ensure reasonably priced service for residential
3 customers.

4 MR. RANDAZZO: Sam Randazzo again, a
5 couple of facts because I think they matter. If you
6 believe that the RSR had its genesis in the POLR, you
7 should also recall that the POLR was bypassable. If
8 you elected to come back to a market-based rate under
9 AEP's first ESP that contained the illegal POLR, it
10 was bypassable. And a lot of customers elected to
11 come back to a market-based rate to avoid paying the
12 POLR.

13 The RSR is not bypassable. There is no
14 opportunity as proposed for a customer to avoid the
15 volatile consequences. It's not sustainable. It is
16 not certain or stable. It's volatile because of the
17 nature of the mechanism as Mr. Kurtz and others have
18 described.

19 So if you believe there is an analogy
20 between an illegal POLR, if you think a -- legal
21 charges are an appropriate genesis for anything at
22 this point the POLR, I remind you, was bypassable for
23 those customers that agreed to come back at a
24 market-based price.

25 I want to say in commenting on the

1 implicit argument here, the problem that's been
2 created is that AEP is demanding to receive a revenue
3 stream that's in excess of the market based upon its
4 financial concerns, it's financial objectives.

5 This Commission has previously held that
6 consideration of earnings on the generation business
7 is irrelevant. It's irrelevant. To the extent that
8 the EDU -- and you held that in the first ESP case
9 and you held that in the rate stabilization plan case
10 before that. In response to AEP's arguments that
11 we're attempting to fend off the arguments from the
12 stakeholders suggesting that if you give them these
13 rates, they are going to earn too much money. They
14 are going to earn the 20 percent return on common
15 equity they did earn. You said that was irrelevant,
16 not you individually, the institution.

17 Now, all of a sudden we are all running
18 around trying to figure out a way to make AEP's
19 earnings numbers work. It's irrelevant. The
20 generation business is competitive. What AEP is
21 entitled to earn on that competitive segment is
22 determined by the market as guided by Ohio law. It's
23 entitled to no more or no less.

24 So when AEP keeps talking about
25 confiscation without actually advancing a

1 confiscation case, and I participated in one in this
2 Commission involving Monongahela Power, I know what
3 they look like, there has not been a confiscation
4 case made. If AEP's financial integrity --

5 EXAMINER TAUBER: Mr. Randazzo, I am
6 going give you one more minute.

7 MR. RANDAZZO: Fine, and that's fine. If
8 AEP's financial integrity is threatened by any of
9 this, it has the ability to come before this
10 Commission and request an emergency rate plan based
11 upon financial considerations, subject to
12 longstanding Commission precedent that guides not
13 only how much but the consequences of that relief.

14 And as Mr. Nourse said in response to
15 Ormet's counsel earlier, we ought not to be arguing
16 about dealing with extremes. If in reality AEP's
17 financial integrity is threatened, it should come to
18 this Commission and make a case based upon specific
19 facts as opposed to dragging us incessantly through
20 this speculative exercise which the Commission said
21 in any event is irrelevant. Thank you.

22 MR. BARNOWSKI: Your Honor, I promise I
23 will be very short, but AEP responded to your
24 question as to why it needed an RSR in addition to a
25 deferred amount by saying it needed financial

1 stability. The way you measure financial stability
2 is net income. It's not gross revenue, and it's
3 certainly not gross revenue in one revenue stream.
4 This company is a big, big company. It has a lot of
5 revenue streams. If one of them drops a little bit,
6 expenses can drop. Other revenue streams can go up.
7 AEP doesn't want to talk about that though. It's
8 fought like crazy against linking the RSR to its
9 actual financial performance. It wants to link it to
10 this one revenue stream.

11 I asked in cross-examination of Mr. Allen
12 what happens if your generation revenues go down by
13 \$100 million but your other five revenue streams go
14 up to \$100 million, you perform just as well, your
15 financial stability is just as strong, are you still
16 going to request an RSR of \$100 million? He said
17 yes.

18 I agree with what Mr. Randazzo just said.
19 If AEP suffers financial stability issues after this
20 order is put in place, it can always come back before
21 this Commission and say, look, our net income has
22 dropped dramatically. Our ROE has dropped
23 dramatically. Can you fix this? It's not what it's
24 interested in doing.

25 And in response to an earlier question

1 they would -- they would not agree to link their
2 employees -- level of employees to the RSR. That's
3 because they have a lot of different ways to make
4 sure that their net income stays high. One of them
5 is firing employees. You are going to see --

6 EXAMINER TAUBER: Mr. Barnowski, could
7 you please wrap up.

8 MR. BARNOWSKI: Okay. That's all I have,
9 your Honor. Thank you.

10 EXAMINER TAUBER: Thank you.

11 Ms. Roberto, do you have any other
12 parties you wish to hear from?

13 COMMISSIONER ROBERTO: I don't want to
14 unfairly cut off anybody who didn't get an
15 opportunity.

16 MR. YURICK: I will be less than a
17 minute.

18 EXAMINER TAUBER: Thank you.

19 MR. RANDAZZO: Same here.

20 MR. YURICK: Commissioner Roberto, you
21 can tell that this is a capacity charge by the way
22 it's calculated, okay? That's No. 1. So it is a
23 capacity charge. There is clearly an interplay
24 between the 2929 case and the RSR. If you look at
25 the way the costs are allocated, they are allocated

1 on the basis of demand. It's not magic.

2 No. 2, the point that I want to make here
3 this strange morphology into a POLR charge, the
4 Supreme Court didn't say that you couldn't charge a
5 POLR charge. It said you had to have a basis in the
6 record for charging a POLR charge and there is no
7 basis in the record for calling the RSR a POLR charge
8 in this record. It's clearly calculated, allocated,
9 and collected on the basis of capacity. Thank you.

10 MR. PETRICOFF: Thank you, Commissioners.
11 On behalf of RESA I will make this very quick. It's
12 important to know what we know and to know what we
13 don't know. In the 10-2929 case this Commission
14 established that looking at the 2010 FERC Form 1 the
15 projected capacity cost was \$188.88 per megawatt-day.

16 In terms of what the capacity cost is
17 that is in the standard service offer, we have no
18 idea. The standard service offer was based on the
19 original rate that came out of the 1994
20 cost-of-service study that went into the ETP case of
21 1999 and then we had rate stabilization increases and
22 then we had the ESP I increase.

23 As Mr. Allen's testimony --
24 cross-examination indicated, there was never a
25 cost-of-service study so we have no idea what the

1 capacity cost is for the standard service customer.
2 Therefore, we can't talk about what the differences
3 are, and we certainly can't say it's \$356 per
4 megawatt-day. Thank you.

5 MR. STAHL: May I just have a minute? I
6 just want to make clear that on behalf of Exelon we
7 have never advocated that an RSR be allowed. We have
8 not taken a position on that.

9 We do share the view that the charge
10 established by the 2929 order should be regarded as
11 superceding the RSR because as a matter of principle,
12 I think it's really the same thing, the difference
13 between the cost to the CRES providers and what the
14 cost-based rate for AEP is, so we think there ought
15 to be only one charge.

16 We also strongly believe as I explained
17 in my response to the Chairman's questions that these
18 deferred charges, however they are collected, ought
19 to be collected only from nonshopping customers.
20 We've addressed that in our brief. I think the cost
21 causation issue is a complete red herring for at
22 least three issues. It's in our brief. Take a look
23 at it. I won't say any more about that here,
24 however. Thank you.

25 MR. NOURSE: Can I respond? I answered a

1 narrow question, and they added a lot of other
2 things. I would like to briefly respond, if that's
3 okay.

4 COMMISSIONER ROBERTO: I will leave it to
5 you, Jon.

6 EXAMINER TAUBER: Very briefly,
7 Mr. Nourse.

8 MR. NOURSE: Okay. First of all, the RSR
9 as proposed all along, the \$2 was an example, it's a
10 formula rate, it does accommodate the capacity charge
11 decision as much as we disagree with it, but it's not
12 a change of the RSR at the end of the process.

13 I think the -- the approach advocated by
14 several parties of pushing AEP to the financial brink
15 and then come back in an emergency is a really bad
16 idea. I know the financial markets are watching for
17 this decision, very interested. They kind of were
18 treading water in the capacity case and looking to
19 this decision. You know, AEP Ohio is two clicks away
20 from junk bond status for a credit rating.

21 MR. RANDAZZO: I object. This is --

22 EXAMINER SEE: Mr. Randazzo, thank you.
23 Just a minute. Just a minute, Mr. Randazzo. Please
24 have a seat. Please have a seat.

25 MR. NOURSE: What I just said was backed

1 by Dr. Avera's testimony very clearly word for word
2 so you can look at that. But what I'm saying is that
3 approach is a terrible idea. You know, AEP Ohio is a
4 vertically integrated utility right now by the
5 Commission's approval. We do have generation so you
6 can say generation is competitive, I agree, but that
7 doesn't say, as the Commission decided last week,
8 that this whole argument of above market is misnomer.
9 They are saying we have a cost -- we have a
10 cost-based mechanism and as we -- as we indicated,
11 the 189 doesn't get us out of the woods.

12 So the RSR is needed for two reasons, to
13 get us back to 189, that can be done separately
14 through another bypassable -- nonbypassable charge,
15 but if it's under the RSR, it needs to be in addition
16 to the \$2.75 that gets us back from 189 to financial
17 stability of a mere 7-1/2 percent ROE.

18 One final point I would like to make
19 about Mr. Kurtz's testimony here, nobody in the
20 record did this study that he is advocating. He's
21 saying that we'll be just fine after the pool
22 termination. It shouldn't -- shouldn't worry about
23 it. We'll be -- we'll be in good shape. You know,
24 it is clear that we are going to lose -- nobody
25 knows, there's nothing in the record, what the

1 financial impact is going to be after the pool is
2 terminated.

3 AEP Ohio for certain lose \$400 million
4 annually that it's paid for capacity currently by
5 other members of the pool. That's going to be gone.
6 There are going to be other moving parts, but the
7 second step transfers after the initial divestiture.
8 And, again, no testimony from a sworn witness has
9 supported anything different in the record.

10 Thank you.

11 EXAMINER TAUBER: Commissioner Roberto.
12 Commissioner Slaby.

13 COMMISSIONER SLABY: In the interest of
14 time I think we've almost beat this to death. I'm
15 going to pass.

16 EXAMINER TAUBER: Thank you.

17 EXAMINER SEE: Then I'm going to remind
18 everyone participating that it's now 10:30. We've
19 spent the first hour -- better part of an hour and a
20 half on the first subject. Ask that you respond
21 directly to the questions posed in a concise manner.

22 The next topic to be addressed is pool
23 termination, generation asset divestiture, and the
24 effects of divestiture on the auction process. And
25 we're going to start with Commissioner Lesser.

1 COMMISSIONER LESSER: The bad news for me
2 is I thought the auction discussion was coming up in
3 here. The good news for everybody else is that has
4 dramatically narrowed my questions.

5 EXAMINER SEE: Thank you.

6 COMMISSIONER LESSER: Mr. Nourse, based
7 on -- based on I think it was Powers' testimony using
8 the -- the, I believe, 1-1-14 date as using that as
9 the assumption for divestment and pool termination,
10 the first period of time I'm looking at is January 1,
11 '13, to December 31, '13, if the Commission were to
12 order an energy-only auction for all or just a
13 portion of the SSO load, is there any legal
14 impediment to AEP Ohio participating in that auction?

15 MR. NOURSE: You're saying aside from the
16 ESP plan issues, if there is an auction, can AEP's
17 generation participate?

18 COMMISSIONER LESSER: I don't know -- I
19 don't know what you mean by the first part of that.

20 MR. NOURSE: Well, I don't know if you're
21 asking whether there's a legal impediment for the
22 Commission's ordering us to do an auction --

23 COMMISSIONER LESSER: No, no. Is there a
24 legal impediment to AEP Ohio participating in the
25 auction?

1 MR. NOURSE: Prior to corporate
2 separation.

3 COMMISSIONER LESSER: Yes.

4 MR. NOURSE: I think --

5 COMMISSIONER LESSER: FERC-approved
6 corporate separation, not PUCO-approved,
7 FERC-approved.

8 MR. NOURSE: Well, I guess when I say
9 corporate separation, I mean the actual closing after
10 it occurs which is after all the regulatory
11 approvals, okay?

12 COMMISSIONER LESSER: Okay. So based
13 on -- based on your testimony, the assumption we're
14 working under is 1-1-14. So in the period of time
15 before then, any legal impeded -- impediment to AEP
16 bidding in to that auction, energy only?

17 MR. NOURSE: You know, I -- I honestly
18 don't have an answer to that. I know there are
19 concerns and there are barriers to doing that but
20 that's not something I have a specific legal analysis
21 that's ready to, you know, share publicly. I think
22 there would definitely be barriers and concerns doing
23 that so you would probably have to assume that --
24 that they would not if you are going to order an
25 early auction.

1 COMMISSIONER LESSER: Any other party?

2 MR. LANG: Give it a shot. Thank you,
3 Commissioner Lesser. The -- FES believes that there
4 is not a legal impediment. There would certainly be
5 legal restrictions, particularly under 4928.17 with
6 regard to whether the wires company in that situation
7 is exercising market power, whether there is an issue
8 of cross-subsidies as there may be if, for example,
9 the RSR is approved as proposed by AEP Ohio in this
10 case. There is not a specific legal impediment.

11 And based on the testimony of AEP Ohio
12 Witness Powers, he described how the -- really the
13 AEP Service Company is the entity that participates
14 in wholesale auctions in Ohio. That's through their
15 commercial operations group of AEP Service Company.
16 It's that group that actually controls the generation
17 and bids that generation wholesale auctions.

18 So in that -- given his testimony I
19 believe the expectation would be if the wires company
20 is conducting that auction, then it would be the
21 commercial operations group of AEP Service Company
22 that would -- if it chose to do so, that would
23 participate in that auction.

24 COMMISSIONER LESSER: Thank you.

25 Mr. Randazzo.

1 MR. RANDAZZO: Yeah. Again, because I
2 think facts matter AEP is presently bidding all of
3 its generation into the PJM every day, has been for
4 years and so that's an energy auction. It's been
5 going on for quite some time.

6 The other part of it, and Mr. Lang
7 mentioned it, there -- we can have this conversation
8 about legal restrictions and people -- I encourage
9 the Commission to read the liability assurance
10 agreement and the parties that signed it. AEP Ohio
11 is not an FRR entity. The FRR entity under the
12 reliability assurance agreement is AEP East. There
13 has been no identification of the capacity resources
14 which under the RAA include generation, demand
15 response, and energy efficiency that are being
16 applied to satisfy the capacity obligation.

17 We don't even know if AEP Ohio's
18 generation in total is being used to satisfy that
19 capacity obligation because AEP never provided that
20 information in the record.

21 But relative to your question about
22 energy auctions happening presently AEP is bidding
23 its generation every day in -- in AEP Service
24 Corporation, Mr. Lang's point, is bidding that
25 generation supply into the PJM energy market every

1 day, and depending upon how that generation bids
2 prices into that market and PJM's need for energy,
3 PJM elects which generation resources are going to
4 get dispatched.

5 Thank you.

6 COMMISSIONER LESSER: Thank you.

7 MS. GRADY: Just a quick comment, your
8 Honor, to respond to the issue that Mr. Lang raised
9 on the RSR and the competitive auction. Under the
10 company's proposal for RSR the revenues go to AEP
11 Genco once corporate separation occurs. We think
12 that's a problem under 4928.17(H).

13 MR. NOURSE: Can I address that?

14 COMMISSIONER LESSER: Well, actually
15 that's -- I have a question as to -- well, come on
16 up.

17 MR. NOURSE: Can I just --

18 COMMISSIONER LESSER: Actually that was,
19 I believe, referring to the post divestment after
20 1-1-14, but my second question, you can answer that
21 part --

22 MR. NOURSE: Before you go on, could I
23 clarify a factual matter?

24 COMMISSIONER LESSER: Sure.

25 MR. NOURSE: When people talk about AEP

1 Service Corporation, those -- they are an agent for
2 the operating company so they act on behalf of so to
3 say that's a separate entity and they are not going
4 to be restricted or suggest they wouldn't be
5 restricted, they are representing AEP Ohio so the --
6 whatever the legal answer is to your question, it
7 applies regardless of AEP Service Corp. being the
8 agent.

9 COMMISSIONER LESSER: I don't -- stay up
10 there. I don't think there's any dispute over this
11 but just to make sure it's clear, after January 1,
12 '14, and this is working under my assumption that the
13 interconnection agreement is terminated and there's
14 been all regulatory approvals, there is no legal
15 impediment at that time to AEP Genco participating in
16 the auction short of any, you know, Edgar-affiliate
17 issues.

18 MR. NOURSE: Right. That's -- that's our
19 plan and it's our understanding that we want to get
20 the healthy Genco spun off to be able to fully
21 participate in the auctions affecting Ohio.

22 COMMISSIONER LESSER: I don't believe
23 there is any other disputes to that.

24 My last question is are there any
25 potential financial liabilities that could be

1 recovered from Ohio ratepayers that could result from
2 the termination of the interconnection agreement
3 including renewables?

4 MR. NOURSE: I'm not sure I follow your
5 question. There -- the -- when you mentioned the
6 pool meaning we do have the pool termination
7 provision, that's really just a reopener if there's a
8 threshold impact on AEP Ohio.

9 COMMISSIONER LESSER: And how -- how do
10 you view their reopener?

11 MR. NOURSE: I view it as if there's --
12 if there's a significant material financial impact of
13 the pool that company can simply come back and try to
14 address that and try to, you know, seek recovery if
15 there is an undue financial impact which, you know,
16 we don't plan on, we hope is not the case.

17 It's really designed as a contingency
18 simply to address to keep Ohio in the game when we --
19 when we go do the pool termination and end up with a
20 fair result like we plan on reaching.

21 COMMISSIONER LESSER: And AEP does not
22 believe that termination of the interconnection
23 agreement will have any impact on their cost for the
24 renewable portfolio?

25 MR. NOURSE: I mean, I think the

1 contractual -- to date we just have REPAs, renewable
2 energy purchase agreements, and, you know, purchased
3 renewable energy and purchased RECs that are -- that
4 are, you know, done by AEP Ohio to satisfy the
5 portfolio.

6 We -- you know, we don't -- we are
7 proposing the Turning Point facility and that will be
8 decided in another case presuming the GRR placeholder
9 is approved here but that would be through -- through
10 AEP Ohio so I don't think that's tied to the pool,
11 and I can't think of any example that would suggest
12 otherwise.

13 COMMISSIONER LESSER: Thank you.

14 MR. RANDAZZO: Commissioner Lesser, and I
15 know you know this, but I will make it explicit in
16 any event, if you go to FERC in a proceeding to
17 terminate the pool agreement and FERC decides that
18 Ohio should bear some portion of the costs associated
19 with generating facilities in West Virginia or, that
20 that agreement then preempts the ability of this
21 Commission to block recovery of what FERC has ruled
22 recoverable.

23 So the anxieties that we've had all along
24 with this sort of placeholder pool termination
25 agreement is that AEP is essentially setting you up

1 to pass through the costs that FERC approves, costs
2 that will be negotiated among all the other states
3 that are going to have different interests than Ohio.
4 And that, I think, is where you have the most risk
5 irrespective of what AEP tells you about their
6 belief. You cannot predict what is going to come out
7 of that FERC proceeding, and you are in my judgment
8 being set up for a preemption argument in the event
9 you adopt the pool termination agreement recommended.
10 Thank you.

11 MR. LANG: I think briefly the -- just
12 with regard to the pool modification provision versus
13 pool modification rider, as Mr. Nourse explained,
14 what is proposed in this modified ESP is a pool
15 modification provision which is a commitment not to
16 come back to the Commission at some future date if
17 the Commission approves the corporate separation plan
18 as proposed.

19 FES does support approval of the
20 corporate separation as quickly as possible. But
21 there is some uncertainty that was raised in AEP
22 Ohio's reply brief that actually refers to a pool
23 termination rider and seeks approval of the pool
24 termination rider that would be for recovering those
25 costs. And I would note that AEP Ohio Witness Roush

1 on cross-examination was asked about that, said there
2 is absolutely -- there is not a rider as part of this
3 case. It's not in anything that he provided.

4 So with regard to that provision and
5 whether it has any -- would have any impact on
6 renewables, I think I would agree with Mr. Nourse
7 there is certainly nothing in the record that would
8 show an impact to renewable costs. The pool
9 termination costs that they've talked about are costs
10 related to those intercompany transactions for energy
11 and capacity that are part of the pool today.

12 The strangeness of this whole concept is
13 it's AEP Ohio talking about coming back after
14 corporate separation and seeking recovery of costs
15 that are incurred by the Genco after corporate
16 separation. So it certainly makes sense as part of
17 the Commission's order to -- to both encourage the
18 corporate separation and note that that absurd
19 concept of AEP Ohio coming back to recover the
20 Genco's cost is something that the Commission would
21 not support.

22 Thank you.

23 MS. GRADY: Very quickly, your Honor, OCC
24 and APJN oppose the pool termination provision. We
25 don't believe there's a statutory basis for this as

1 OCC Witness Coppola testified.

2 Additionally, your Honor, it is somewhat
3 asymmetrical, we would submit, because there are
4 no -- none of the profits of the off-system sales are
5 used to offset the ESP rates, and the off-system
6 sales under the Commission's order are not included
7 in the SEET earnings. So we believe it is
8 asymmetrical to all of a sudden ask for us to pay for
9 costs of the pool when we are not currently
10 benefiting from the pool in our rates and in the
11 structure that is presently before the Commission.

12 We also believe that the payment of lost
13 revenues associated with the pool to the Genco
14 creates problems under the law under 4928.17 and
15 4928.02(H).

16 And, finally, we would note that the pool
17 termination provision that is proposed by the company
18 is quite open ended. There is no cap on that and
19 that is concerning to us as well.

20 COMMISSIONER LESSER: Ms. Grady, just to
21 clarify, you don't oppose termination of the pool
22 agreement; it's the cost.

23 MS. GRADY: That is correct, your Honor.

24 COMMISSIONER LESSER: Thank you.

25 Mr. Nourse.

1 MR. NOURSE: Can I just? Couple of
2 things. No. 1, the -- I appreciate Mr. Lang's
3 clarifications because I actually agree that the pool
4 termination is not a rider; it's a reopener. And we
5 did -- we did say that if our corporate separation
6 plan is approved as proposed, then it doesn't even
7 come into play so those are -- those are good
8 clarifications.

9 However, I will say that the -- I was
10 hoping we would agree on his entire answer and we
11 could mark our calendar and note the time, but he
12 went on to say it was an absurd proposal. And it's
13 actually the impact on AEP Ohio. I mean, the pool
14 has been around for 60 years. Ohio has benefited
15 from the pool. The time has come to terminate the
16 pool.

17 So we are looking at, again, in this
18 context just a reopener. We don't have to determine
19 all these issues now, although I would note that the
20 Commission did adopt it last -- a similar provision
21 last -- last December, and so I don't think it's
22 unlawful but -- but it is a contingency and hopefully
23 we've moved forward with corporate separation and
24 it's not an issue.

25 COMMISSIONER LESSER: Mr. Nourse, I -- in

1 light of the Examiners' statements, I don't want to
2 get into the issue. Can you just refer me to your
3 witness who outlined the actual financial benefits
4 Ohio received from the pool?

5 MR. NOURSE: Your Honor, I made that
6 statement from my own experience, 20 years dealing
7 with the pool, but that's not something that was
8 specifically addressed, so I apologize.

9 COMMISSIONER LESSER: Thank you.

10 MR. NOURSE: Yeah.

11 EXAMINER SEE: Chairman Snitchler, did
12 you have any questions?

13 CHAIRMAN SNITCHLER: I'll pass on this
14 one.

15 EXAMINER SEE: Commissioner Roberto.

16 COMMISSIONER ROBERTO: I pass as well.

17 EXAMINER SEE: Commissioner Slaby.

18 COMMISSIONER SLABY: I'll pass.

19 EXAMINER SEE: Commissioner Porter.

20 COMMISSIONER PORTER: No questions.

21 EXAMINER SEE: I'm sorry?

22 COMMISSIONER PORTER: No questions.

23 EXAMINER TAUBER: Okay. The next issue
24 is the methodology to conduct the statutory test.

25 We'll begin with Chairman Snitchler.

1 CHAIRMAN SNITCHLER: I would like to
2 request that, Attorney Examiners, given that we are
3 approaching 11 and we are starting a new topic, this
4 might be a prudent time for a brief 5-minute break so
5 that those who are uncomfortable could make
6 themselves comfortable.

7 EXAMINER TAUBER: We'll do that and
8 reconvene in 5 minutes.

9 (Recess taken.)

10 EXAMINER TAUBER: Let's go back on the
11 record.

12 We are going to move into the statutory
13 test.

14 Chairman Snitchler.

15 CHAIRMAN SNITCHLER: Thank you. I would
16 like to start with Mr. Petricoff, if I could. I
17 suspect my question will warrant input from others,
18 but I thought I would start with you, Howard, since
19 inevitably you are always last, it seems, whenever I
20 ask questions. I didn't want that to always be the
21 case.

22 In looking at the documents you filed and
23 the testimony that was provided, there seems to be a
24 wide disparity of the use among the parties about the
25 quantifiable portions and the nonquantifiable or the

1 aggregate test that's applied here. And I would like
2 some clarification.

3 I read it but I want to be sure I
4 understand what RESA's view is with regard to the
5 aggregate test when balancing the MRO versus the ESP
6 and how that would either assist the Commission or
7 would limit the Commission in our ability to use that
8 as we evaluate whether or not it's more beneficial as
9 we make a determination on what a final ESP outcome
10 should be in this case.

11 MR. PETRICOFF: Thank you, Commissioner,
12 I'll try my best here. I think it's structured to
13 start with the actual language that the General
14 Assembly gave us. The General Assembly said that we
15 were supposed to look in the aggregate. Well, first
16 of all, let's go back a step. First, the General
17 Assembly said we are going to have a specific test
18 for an electric security plan, and the Commission has
19 to make sure that we meet this test before you can
20 approve it. And the test was that in the aggregate
21 that the ESP is more beneficial.

22 That is a tremendous amount of discretion
23 that the General Assembly has given you because if
24 you just flip over a couple more pages in Chapter 49
25 and look to see how do you set a rate for the

1 monopoly wire service takeover. Well, here is the
2 algorithm. Plug in these numbers and give us the
3 answer.

4 The other thing that I think is
5 instructive about the statute is not only what it
6 says but what it doesn't say. It doesn't say make
7 sure that on a kilowatt-hour basis the standard
8 service offer is the same as market. It doesn't say
9 do it within the ESP period. It's really made it
10 broad and open.

11 And I think probably -- probably the
12 proper way to view the intent of the General Assembly
13 was that they were looking to assess the community as
14 a whole. You know, is the community better off or
15 not better off with this -- with this program? And I
16 think that's significant because it brings us down
17 now to how should we -- mechanically how should we as
18 the Commission apply the test.

19 Since we don't have to have a
20 mathematical formula and we don't have to come up to
21 make sure that the standard service offer is going to
22 equal what you could get in the market, I think you
23 can -- you don't have to apply the so-called
24 quantitative test which is good because in this case,
25 in this record every expert with the exception of

1 Ms. Thomas indicated that on a quantitative basis,
2 the SSO is going to be more expensive than the --
3 than the market rates. And probably now that the
4 Commission has established \$188.88 as the capacity
5 price, probably fails the test with -- as she -- her
6 testimony applied it.

7 So what we can -- what we can look at now
8 is, okay, what's the -- what's the best that we can
9 get for the community and that's where we get to the
10 qualitative. And from RESA's view basically we go
11 what -- what is the best for everybody. Well, if you
12 give everybody the right to go to market, then we
13 take care of that. If you give everybody the right
14 to negotiate their own terms, that's good, and if you
15 keep the SSO at a fairly reasonable amount even if
16 it's more than market, then I think you can say all
17 together in the aggregate it's more beneficial so
18 that's our view of the test.

19 CHAIRMAN SNITCHLER: Anyone care to
20 respond?

21 MR. RANDAZZO: Sam Randazzo again. To I
22 think highlight the issue here, I will disagree with
23 Mr. Petricoff's characterization that you've got
24 broad -- quite a broad view under the statute. In
25 fact, the court rejected that exact argument when it

1 found the POLR charge was illegal. The Commission
2 said that the list of things that the General
3 Assembly has given you to add discretionary
4 provisions on a discretionary basis, remember the ESP
5 you start with there is a generation price, and then
6 you have discretion to add other things to it. Well,
7 the court has told you you can't go outside the list.
8 It has to be on the list. So the notion that you've
9 got the ability to sort of qualitatively bypass the
10 list I think is a legal fiction.

11 I think qualitative considerations can
12 come into play if it's a close call. Of course, we
13 don't have a close call here. We have a proposed ESP
14 that is dramatically in excess of anything that would
15 be represented by an MRO whether you use capacity
16 price of 188, 255, 146, or RPM. So that's the way we
17 see the law.

18 CHAIRMAN SNITCHLER: Mr. Randazzo, can I
19 interrupt for just a second?

20 MR. RANDAZZO: Sure.

21 CHAIRMAN SNITCHLER: Do you view this as
22 limited by the circumstances upon which are the date
23 in which the application may be made given a time
24 specific circumstance? If an application were made
25 several years ago, energy prices are higher, the

1 outcome may be different because energy prices are
2 low now, do you view the Commission as having the
3 discretion to evaluate that on a longer-term basis,
4 not directly the way Mr. Petricoff described it, but
5 given the timing of when an application is made or is
6 that irrelevant? If you have poor timing, then you
7 absorb the cost; if you have better timing, you gain
8 the benefit?

9 MR. RANDAZZO: I think I would choose to
10 answer your question by restating it because I'm not
11 sure I quite understand it.

12 CHAIRMAN SNITCHLER: All right.

13 MR. RANDAZZO: The -- if the question is
14 does the Commission have the ability to take
15 contextual conditions in the mind for purposes of
16 developing the default service price under an ESP or
17 an MRO, I believe the answer is yes. On -- on the
18 other side of this agenda, however, are a number of
19 charges that are designed to constrain the ability of
20 customers to access the market and to benefit
21 therefrom.

22 So if you are qualitatively going to look
23 at context and circumstances and timing, you also
24 have to recognize that the effect of what is being
25 proposed here walls people off savings -- from

1 collecting savings during a period of three years to
2 set them up for paying more at a point in time when
3 prices are expected to go up.

4 Qualitatively I couldn't imagine a more
5 disastrous kind of structure from a qualitative
6 perspective, from a timing perspective. So, yeah, if
7 you are going to look at those sorts of things, I
8 think you then have to look at them symmetrically,
9 not just say, well, this gives us a better shot at
10 getting to competitive bidding sooner than we had the
11 MRO because that's really not relevant to the
12 shopping customers. The shopping customers, the
13 statutory focus is on the customer, not the default
14 service option. It is -- it is the customer that is
15 shopping that is exercising customer choice, either
16 directly or community aggregation. That's the
17 emphasis in the law.

18 And so we have this process to create
19 a -- a default price that may give you some latitude,
20 but you can't thereby constrain the ability of the
21 shopping customer to exercise its statutory right.
22 Qualitatively that has to be considered if you are
23 going to involve any leaves as a negative
24 consequence. So that's, I think, the broader spirit
25 of the law as well as the letter. The letter says

1 all terms and conditions you are constrained in the
2 list. The quantitative list shows that it fails by
3 large measure.

4 Thank you.

5 MS. GRADY: Chairman Snitchler, we would
6 disagree with the broad -- the statements of
7 Mr. Petricoff that it gives broad and open and
8 unlimited discretion to the Commission. This
9 court -- the court has held in the Elyria Foundry
10 case that the Commission must adhere to the policies
11 contained in 4928.02 including the policy to ensure
12 reasonably priced electric service and to ensure fair
13 competition to the benefit of customers.

14 Our quantitative analysis presented by
15 OCC Witness Hixon shows that the ESP fails the MRO
16 aggregate test miserably. Her calculation showed
17 that an ESP is \$690 million more than a market rate
18 offer and that does not even begin to consider the
19 capacity charge decision which will increase the
20 costs of the ESP and decrease the benefits of the
21 ESP. It is not a close call here.

22 With respect to the qualitative benefits
23 that Mr. -- that your question addressed, I think the
24 qualitative benefits are in the eyes of the beholder.
25 This plan has to ensure reasonably priced service for

1 shoppers and for nonshoppers, but it does not.

2 The -- in conjunction with the capacity
3 charge case and the increases included in the
4 unmodified ESP plan, customers will see much, much
5 more than the significant -- than the single digit
6 increases shown in the company's schedules. This was
7 a problem in the first stage of this proceeding where
8 this Commission heard from customers who received
9 bills of -- significantly increased bills, much more
10 than what the record would have shown.

11 I believe we are headed for that very
12 same direction if the ESP plan is not modified and
13 the capacity decision is made that the deferrals will
14 be collected from all customers including nonshopping
15 customers who do not cause this cost.

16 MR. KURTZ: Mr. Chairman, you've heard --
17 I'm going to respectfully disagree with Mr. Randazzo,
18 Ms. Grady, and come down where Mr. Petricoff is, and
19 it's really just reading the words in the statute,
20 more favorable in the aggregate, that is, the
21 Commission has been given a lot of discretion, not
22 unlimited but a subjective, qualitative-type test. I
23 think when you take a forecast of what an MRO rates
24 are projected to be in the future in the forecast of
25 what these ESP rates are projected to be in the

1 future and make a projection about energy pricing in
2 the future and fuel adjustment charge pricing in the
3 future, it's a false sense of security to try to
4 quantify that down to the dollar and say, well, this
5 is a dollar more than the other one over this
6 three-year period, and we're dealing with billions
7 and billions of dollars of forecast, therefore, it
8 fails or it passes. That's a false -- that's a false
9 use of math. This thing cannot be quantified to that
10 level.

11 So the words of the statute are --
12 inherently have a subjective aspect to it or a
13 qualitative aspect. I would say this, that
14 inherently an ESP is better than an MRO, all else
15 equal, because all else equal in an ESP gives the
16 Commission continuing jurisdiction over the utility
17 and over rate making and rate design in a way you
18 don't have in an MRO, and to me that's an inherent
19 benefit of an ESP.

20 I would also say this, if you determine
21 that the ESP is not more favorable and AEP rejects
22 it, how does the public benefit by having this
23 process start over? I mean, we've had enough turmoil
24 where it's time, I think, the public, the market, and
25 everybody else will benefit if we have a decision --

1 you have a decision and say that's it; we're moving
2 forward.

3 In order to do that, the capacity order
4 tied it to this ESP. Everyone knows the utility in
5 the ESP can say, well, you've changed a comma; we
6 reject it. You have all the dis -- a lot of
7 discretion in the capacity case. You referenced that
8 the two cases are tied. You can use the capacity
9 case to get the decision -- get the utility to accept
10 the ESP that you deem reasonable in this, not in a
11 corsive way like the Supreme Court but in a way that
12 is realistic because the two cases are so tied and
13 you do have so much dis -- so -- so much important
14 discretion in the 2929 case you should use that
15 authority to get a result here that everyone can say
16 that's it and just move forward and that's what would
17 be in the public interest.

18 MR. STINSON: Thank you. I'm Dane
19 Stinson. I represent the Ohio Schools in this
20 proceeding. Just briefly the Schools do share OCC's
21 concern that with approval of this ESP that we are
22 going to be headed back to the rate shock we saw
23 before with the December 14 order in this case.

24 We didn't submit a response or a witness
25 who took a quantitative analysis of the ESP versus

1 the MRO, but we do note most witnesses except AEP's
 2 found that there was a huge separation between the
 3 two. We think that the Commission is going to adopt
 4 the ESP. They have to do so by looking at the
 5 qualitative benefits, and our brief sets forth in
 6 great detail the significant benefit that rate relief
 7 is if given to the Ohio Schools. A special rate
 8 consideration for the Ohio Schools would be
 9 ubiquitous in nature, would benefit all tax payers
 10 that support schools and would benefit the media's
 11 peak consideration so thank you for that
 12 consideration.

13 MR. NOURSE: Mr. Chairman, if I might,
 14 first of all, Mr. Randazzo's pointing to the POLR
 15 decision is, I think, not applicable. The Supreme
 16 Court when they addressed that issue were addressing
 17 subsection (B) not subsection (C) for the MRO test.
 18 But you've heard from OCC and IEU as well that
 19 talking about a close call or beauty is in the eye of
 20 the beholder and so on. You know, I agree but it's
 21 not the parties' call; it's the Commission's call.

22 So I agree with the description of
 23 Mr. Petricoff and Mr. Kurtz gave that it's very clear
 24 under the statute these -- these steps that we talked
 25 about with the price test and the qualitative

1 evaluation and other quantitative evaluation are
2 things that we have created here at the Commission
3 through regulatory procedures. They are not in the
4 statute explicitly and so there's obviously
5 flexibility and discretion there.

6 And I think one point that bears
7 mentioning as well here is that many of the benefits
8 in this plan we would submit are long-term or
9 permanent benefits. So when we talk about
10 restructuring AEP Ohio, we talk about transitioning
11 to a fully competitive SSO, that's not something that
12 is limited to the term of the ESP. Those are
13 long-term and permanent benefits and so I think they
14 have even more value.

15 The Commission and the Commission's staff
16 agreed that the price test is not the end all be all.
17 You have to go on and look at -- look at qualitative
18 factors and the -- and Mr. Fortney mentioned several
19 of those in his testimony. And we've got lots of
20 briefing and testimony on the long list of benefits.
21 I won't go through them all today here but -- but I
22 do think it's worth mentioning that those permanent
23 benefits I think have a very high value, and I think
24 that's in part evidenced by what the Commission I
25 believe was trying to do in the capacity charge case

1 in page 23 of the order where there is a description
2 of the benefits and the reasons the Commission wants
3 to stimulate competition. I don't think the
4 Commission would have done that if they didn't think
5 there was -- it was worth the cost impact and there
6 is a cost impact. You still have to deal with that.

7 But I think that's an example of how the
8 Commission is clearly saying these are policies.
9 These are high value and when you're talking about
10 things like getting to an auction-based SSO,
11 that's -- again, it's not something that can be
12 required. It's not required in the statute. We are
13 proposing it. We are trying to be, you know,
14 cooperative and get to the Commission of the State of
15 Ohio's goals so that's really the only way that can
16 be achieve is through a cooperative effort and that's
17 what we are trying to do, but it has a very high
18 value that dwarfs any of the costs associated with
19 the -- with the ESP.

20 Now, we did demonstrate that the --
21 through an extrapolation from the record and we
22 attached to our reply brief in light of the
23 intervening capacity decision that the -- that the --
24 it was basically a wash on the price test if you look
25 at the 189 rate and include the early auction that we

1 proposed and then if you look at the additional RSR
2 piece and that's probably the biggest cost if you
3 look beyond the price test, the -- again, I think if
4 the cost, especially the large part of the RSR or a
5 separate nonbypassable charge, would be linked back
6 to this -- this 189 RPM differential recovery.

7 Again, I think the Commission said that
8 was highly valuable. It is something they understood
9 the cost difference, and they thought it was worth --
10 worth doing. So that inherently to me says in an ESP
11 context it's also more valuable than the cost impact.
12 And, again, these other -- these other factors like
13 doing early auctions and getting to the end game
14 through a cooperative plan I think are highly
15 valuable.

16 With respect to the -- with respect to
17 the rate impact issues, you know, I think we may be
18 talking about those separately in a few minutes but
19 the -- I would disagree that we're headed for the
20 situation that happened with the earlier stipulation.
21 The MTR and the load factor provision were -- and
22 there were a lot of moving parts there, this plan, we
23 stripped it down and it's very transparent. And I
24 don't think -- I don't think that will happen. I
25 think the Commission and the staff is very aware of

1 the rate impact issues.

2 EXAMINER TAUBER: Mr. Nourse, if you
3 could wrap up, please.

4 MR. NOURSE: I was, thank you.

5 EXAMINER TAUBER: Commissioner Roberto.

6 COMMISSIONER ROBERTO: Thank you.

7 Mr. Nourse, I have a fairly narrow question and this
8 goes to flowing through the decision in the capacity
9 case to the comparison. The embedded cost of
10 capacity for nonshoppers, AEP put on testimony to
11 some effect that it was somewhere in the ballpark of
12 \$355. I know many parties disagreed with that. And
13 I have a couple of questions that follow through on
14 that.

15 The first is whether or not you maintain
16 that is the embedded cost inside of the
17 nonshoppers -- I'll let you -- wait before you
18 answer; I'll ask the next two. The second question
19 is if it is, aren't we under an obligation to make
20 sure there's no -- no disparity between shoppers and
21 nonshoppers? So would AEP be under an obligation to
22 modify its application to back out the nonshoppers
23 capacity in the base generation?

24 And then the third question is there was
25 some discussion in the record and in the briefs that

1 the interruptible charge was based on the embedded
2 costs of capacity, and I believe it was set at \$8.21.
3 If it isn't -- if the embedded cost is no longer 355
4 but 188, 189, should that be also adjusted inside of
5 this plan?

6 MR. NOURSE: Okay. Well, I think what
7 our testimony showed -- and this was really more of
8 an issue frankly in the capacity case and the record
9 there. It's probably more clear and that was briefed
10 in that case. I think what we've said is that the
11 nonshopping, the SSO rate, do cover our costs, and
12 the base generation rate is largely a demand charge,
13 and so it does collect -- mathematically the rates
14 that are in effect do collect what's equivalent or
15 exceeding the \$355 per megawatt charge that we
16 proposed based on our costs in the capacity case.

17 So, you know, to a degree I agree with
18 what Mr. Petricoff said earlier, we don't know in the
19 sense that we haven't done a cost-of-service study
20 for -- for nonshopping customers in the context of an
21 SSO and done the same way we've done it in our
22 formula rate and in the capacity case we presented as
23 a true test period cost study view costs so we
24 haven't done that for nonshoppers.

25 But the -- as to whether there should be

1 an adjustment, you know, we were hoping it would go
 2 the other way and there would be more consideration
 3 of that in the capacity charge case rather than the
 4 other way around, but I don't think anybody's
 5 proposed that. I don't think that's something that's
 6 covered in the record. I can say that would be if --
 7 certainly if you took it down to the 189, again, you
 8 would have to conduct a whole new proceeding, I
 9 think, to get there, but I think that would be
 10 inappropriate, and I certainly can't say that we
 11 would support that -- that approach.

12 COMMISSIONER ROBERTO: And the
 13 interruptible.

14 MR. NOURSE: The interruptible, yeah, I
 15 think the only thing I would say there there is a
 16 logic to I think Staff Witness Scheck and Company
 17 Witness Roush had essentially agreed that the
 18 interruptible credit was tied to a capacity outcome.
 19 And so, you know, whether -- I think the cautionary
 20 right there is simply that the rate impact caution
 21 that we -- the rate impacts we presented were based
 22 on the interruptible credit that was in the plan.

23 So if that's going to be lowered, then I
 24 think you have to look closely at the GS-3 and 4 rate
 25 impacts if you are going to lower it to mirror or

1 reflect the same kind of 189 per megawatt-day cost
2 level. Okay?

3 MS. GRADY: Briefly, your Honor, I
4 believe, yes, you will have to back out that price.
5 You will have to bring down the standard service
6 offer price from the embedded 355 a megawatt-hour.
7 We made that proposal in our brief.

8 We extensively talked about the impact of
9 the capacity charge decision. Otherwise there is
10 discrimination. SSO customers are paying 355 a
11 megawatt-hour. That is in the record in both
12 proceedings. In fact, the Commission commented upon
13 that in the capacity case proceeding.

14 I don't believe there is a doubt and the
15 record will support that if customers -- SSO
16 customers are paying 355 a megawatt-hour and CRES
17 providers are receiving RPM price capacity for the
18 same or similar service and paying a vastly different
19 price, there's discrimination under the law, cannot
20 occur. It violates 4728.02(A) which requires
21 nondiscriminatory reasonably priced service be given
22 to the customers within the State of Ohio. And it
23 violates 4905.33 and 4905.35.

24 And it also causes a double payment
25 problem. There's a double payment because customers,

1 SSO, nonshopping customers will be paying a full
2 capacity price of 355. If the deferrals from the
3 capacity case are charged to nonshopping customers,
4 they will pay twice, once for the full 355 and the
5 second time for the deferred capacity costs. That is
6 unfair and it is unreasonable and it is not allowed
7 under the law.

8 MR. RANDAZZO: I want to emphasize the
9 point that Ms. Grady said from an accounting
10 standpoint. If you are going to create a deferral
11 which you've said in the capacity case, then you have
12 to figure out how much is being deferred. And to do
13 that you are going to have to identify the amount of
14 capacity revenue that is being collected from
15 nonshopping customers.

16 We argued and briefed, testified on this
17 point specifically. It is wrong to suggest that this
18 was not raised by any party. This is the concept of
19 comparability and nondiscrimination. Ms. Grady used
20 discrimination; the statute says comparable and
21 nondiscriminatory. For the rates to be comparable
22 and nondiscriminatory they have to be doing very
23 similar things.

24 I want -- this is a nuanced issue, but it
25 is critically important. It is a rate design issue.

1 The way capacity is charged to nonshopping customers
 2 is through what we've all come to learn to call the
 3 megawatt-day statistics. There is no corresponding
 4 statistics identified in the rate design for
 5 nonshopping customers. And what -- what we have here
 6 as shopping customers become shopping customers, they
 7 are told what their peak load contribution factor is,
 8 and this is in Mr. Murray's testimony, by AEP. There
 9 is tremendous opportunities for AEP to exercise
 10 discretion, I was going to use a harsher word,
 11 exercise discretion on the specification in the peak
 12 load contribution packet.

13 The reliability -- and that drives the
 14 billing determinant to which the capacity charge
 15 regardless of level, whether it's RPM, 188, 255,
 16 regardless of the level of the charge, that billing
 17 determinant is what tells the customer what the
 18 customers' bills are going to be for capacity.

19 There is no corresponding identification
 20 for the nonshopping customers. So even if you break
 21 out the portion of the revenue that's being collected
 22 for capacity from nonshopping customers, you still
 23 have a rate design noncomparability and an inability
 24 of a customer to do an apples-to-apples comparison
 25 between what happens when I shop, what happens when I

1 don't shop. And a lot of that is focused on the use
2 by AEP and the discretion as to use this peak load
3 contribution factor which sometimes is modeled,
4 sometimes it's based on interval metering, sometimes
5 you can't figure out what it is.

6 What we have recommended in the case, and
7 the reliability assurance agreement deals with this
8 subject and it puts you in the middle of it, it says
9 that the load-serving entity, in this case AEP Ohio,
10 and the state regulatory authority is supposed to
11 work out how that aggregate peak load contribution
12 factor for AEP is disaggregated back to the
13 individual customer, shopping and nonshopping. And
14 unless you make that transparent and explicit, the
15 conversation we're having now about comparability is
16 missing a fundamental ingredient.

17 And, again, we've maintained that we have
18 placed recommendations in our briefs, and we
19 discussed this extensively in Mr. Murray's testimony,
20 but it is a critically -- very geeky, very geeky but
21 it is a critical point. I can't tell what my
22 capacity bill is going to be at any price unless I
23 have the ability transparently to identify what my
24 peak load contribution factor is and, right now, that
25 is a black box subject to the control of AEP.

1 It's a big problem. Thank you.

2 MR. KURTZ: Commissioner Roberto, the
3 three questions, yes, the record indicates that the
4 capacity charge that nonshoppers pay varies by rate
5 schedule but is basically \$355 a megawatt-day.
6 That's -- the megawatt-day is a PJM metric. The
7 state metric is dollars per kW month. If you are a
8 demand-metered class, about \$10 on the AEP system.
9 If you are a residential customer, you just pay a
10 kilowatt-hour charge but that capacity is baked in
11 there and it's 355. That's what nonshoppers are
12 paying.

13 Now, the question is you just issued a
14 decision that says the cost-based capacity is 189.
15 Should you give all nonshoppers a huge rate reduction
16 essentially? That's what would happen. And while
17 that sounds attractive let me just have these
18 caveats. The 189 -- the biggest way you got from
19 about 355 in the capacity order down to 189 was the
20 energy credit. That was \$147 a megawatt-day energy
21 credit. That was the biggest reduction. The energy
22 credit represents the difference between the
23 cost-based energy that AEP produces and the market
24 price for energy, that margin.

25 The SSO customers don't pay market

1 energy. They pay the cost-based energy. They pay
2 fuel adjust -- they pay the average energy cost so
3 they pay under the logic of 2929 order a lower energy
4 rate. So you would have the disconnect between
5 charging SSO customers 189 as attractive as that
6 might be and as much turmoil it causes AEP by the
7 huge rate reduction, it is a mismatch because you get
8 the 189 because you're assuming the market price of
9 energy is higher than their cost of energy. And the
10 cost of energy is what the SSO customers pay. So
11 that's -- that's the disconnect, I believe, in the
12 math.

13 Also, the RSR -- again, as you adopted
14 the RSR, none of this would make any difference
15 because they would just pick up the 189 reducing 355
16 to 189 and you have the RSR because it's a formula
17 that trues everything up. Again, it wouldn't make
18 any difference but there is a disconnect.

19 The third -- third element is the
20 interruptible credit. Yes, if you do reduce the SSO
21 generation rate from 355 a megawatt-day to 189 which
22 would be cause -- which the turmoil that has been
23 caused would just be repeated and, again, there is
24 this energy -- average energy versus market energy
25 disconnect so it doesn't really work.

1 But if you were, then yes, you should
2 reduce the interruptible credit proportionally, but I
3 think when you go back and realize all the
4 ramifications and moving parts, the -- this SSO
5 customer is getting no rate increase, but that's
6 where you should be, not giving them a big rate
7 reduction but if you did by going from 355 to 189,
8 then yes, you should reduce the interruptible credit.
9 But if you keep the standard offer rates where they
10 are and the generation rates where they are at 3 --
11 essentially 355, then the interruptible credit of
12 8.21 is appropriate.

13 MR. LANG: Commissioner, just on the
14 second issue and there is, I think, some confusion
15 about the record on what capacity costs -- or what
16 costs is in the base generation rate that is in AEP's
17 Ohio rates. I specifically asked AEP Ohio Witness
18 Roush that question. He is their rate design person
19 actually going back to the 1990s case when they had
20 their last rate case. He said there is -- that base
21 generation rate is not cost based. It was back in
22 the 1990s, but it has been in trans -- modified over
23 the years and simply what the base rate is. There --
24 and he said there is no way of identifying any
25 particular portion of that base generation rate that

1 would relate to the capacity cost or to any other
2 cost that would be in that rate.

3 So on this record and based on
4 Mr. Roush's testimony, it would be quite difficult to
5 sit down and say, oh, we're just going to pull out
6 the difference between the 356 and 189 because that's
7 what -- what's in the base generation rate based on
8 AEP Ohio's witness testimony. They don't know what's
9 in there. And FES Witness Dr. Jonathan Lesser
10 addressed this issue in both his testimony and -- in
11 this case and in the capacity case simply to the
12 point of it's -- you can't see that \$356 per
13 megawatt-day charge in the existing base generation
14 rates.

15 There's not testimony on what is in there
16 but there is testimony that that -- that 356 is not
17 in those base generation rates. Thank you.

18 MR. NOURSE: I would like to respond
19 briefly. This discrimination claim that's been
20 raised, No. 1, I think, first of all, it's an apples
21 and oranges comparison. It's a wholesale charge
22 that's -- that's approved in the capacity charge
23 case. I think the Commission is clear about that.

24 So the CRES retail charge that they
25 choose to provide to customers, shopping customers,

1 are not regulated by this Commission, and we don't --
2 we don't know what they'll be. The wholesale charge
3 is -- has input into the retail charge and it's not
4 equivalent and so, of course, the CRES retail charge
5 is likely to be very similar to the SSO charge and
6 just under.

7 And, furthermore, the -- the demand
8 charge -- I think Mr. Kurtz may have mentioned this,
9 the demand charge under the capacity order is
10 something around \$342 per megawatt-day and that would
11 really be more of a comparison to the -- to the base
12 rate for the nonshopping customer and that's roughly
13 equivalent and certainly would not be discriminatory.

14 I also think it's important to understand
15 contrary to OCC's premise that, again, the Commission
16 in the 2929 decision is saying that RPM pricing and
17 giving a substantial discount to cost is an important
18 policy objective stimulating competition, and so
19 every customer benefits from that policy, I believe,
20 and every customer would have an opportunity to shop.
21 And so if you did do a reduction furthermore,
22 obviously we're very much against that goal of
23 stimulating shopping in AEP's territory. Thank you.

24 EXAMINER TAUBER: No further questions?

25 Commissioner Slaby.

1 COMMISSIONER SLABY: I'll pass.

2 EXAMINER TAUBER: Commissioner Porter.

3 COMMISSIONER PORTER: Yes. I would like
4 to follow up just on the original round of questions
5 with regard to the discretion.

6 Mr. Randazzo, if I could start with you
7 and then I think Mr. Kurtz, Ms. Grady, and then
8 Mr. Nourse, and Mr. Petricoff commented on this, if
9 I -- if we could go in that order, that would be
10 helpful.

11 Mr. Randazzo, I think that you, just
12 correct me if I'm wrong, you have mentioned the POLR
13 finding by the Supreme Court as limiting the actual
14 discretion of the -- of the Commission. So that POLR
15 finding was related to item (B) -- and let me -- let
16 me just finish and I want to get both these things
17 out. So 4928.143(B) relates to the list of items
18 that you were referring to, and then (C) says -- has
19 in the aggregate language so what I want to figure
20 out is if the discretion would then be in the
21 aggregate language or within (B). Which one?

22 MR. RANDAZZO: Well, what (C) says is
23 you've got to look at the ESP and all its terms and
24 conditions in the aggregate and compare it to the
25 MRO, all right? So the list in (B) controls what's

1 in the -- can be in the ESP. What the Commission
2 argued in the POLR case along with AEP is that the
3 Commission had a lot of discretion to modify that
4 list, and the court said, no, that's not correct.
5 It's either on the list or not on the list.

6 So the real problem that you have in the
7 kind of discretion that Mr. Petricoff suggests and
8 perhaps Mr. Kurtz supports is that it turns the
9 constraints imposed by the list if -- they are
10 reading of (C) turns the constraints imposed by the
11 list in (B) to a nonexisting constraint.

12 Theoretically, you can bypass what can be in an ESP
13 based on the MRO versus ESP comparison.

14 COMMISSIONER PORTER: Once it is
15 determined it is on the list in (B) there is
16 discretion in (C).

17 MR. RANDAZZO: There is discretion in (C)
18 to perform the test based upon the Commission's
19 evaluation of all the terms and conditions of the ESP
20 in the aggregate compared to the MRO.

21 COMMISSIONER PORTER: Okay. Thank you.
22 The others who commented about this as well.

23 Mr. Kurtz.

24 MR. KURTZ: Thank you, your Honor,
25 Commissioner Porter. The Supreme Court said

1 including but not limited to in (B). It means just
 2 the nine items in (B). (C), more favorable in the
 3 aggregate, those specific words, and that was the
 4 court's essential ruling was that the Commission's a
 5 creature of statute; it has to follow the statute.
 6 More favorable in the aggregate is a broad set of
 7 words giving -- where the Commission has been given
 8 discretion, a large degree of discretion.

9 COMMISSIONER PORTER: Okay.

10 MS. GRADY: We would agree with
 11 Mr. Randazzo's analysis, the 4928(B)(2) section
 12 prohibits anything in the plan that is not delineated
 13 specifically in that list. That's what the Supreme
 14 Court held. And the (C) section does give broader
 15 overall authority, but this Commission must keep in
 16 mind the Elyria Foundry decision which said that the
 17 policies of the State under 4928.02 must be carried
 18 out by the Commission when it is approving an ESP or
 19 an MRO.

20 MR. NOURSE: Was I next?

21 COMMISSIONER PORTER: Mr. Nourse and
 22 then -- fine.

23 MR. PETRICOFF: I'll just make it real
 24 quickly. I think we have now funneled down to where
 25 almost all the speakers at the moment are at the same

1 place. I agree with Mr. Randazzo that when you go
2 through subsection (B) and you're looking to do -- to
3 evaluate the ESP, it could only be increases that
4 match up to the itemized items in the subsection.

5 And the reason for this is important and
6 it certainly explains the earlier conversation. We
7 have left cost of service. We do not do cost of
8 service any more on the generation side. 4928.141
9 says that the utility as the provider of last result
10 has to come up with the competitive issues.

11 Generation is a competitive issue and here is how we
12 are going to price it and how we are going price is
13 we start with the historic rate and then you have
14 these items.

15 Now, it's no surprise to me that the
16 historic rate doesn't really add up to what the cost
17 of service was and particularly not with the
18 cost-of-service study that was done 20 years ago.
19 But I think now when you funnel it down, we have no
20 disagreement at all because now we go to measure, we
21 know what the ESP is, and we know what it can be in,
22 and the court has told us what we can measure. And
23 then we get to (C) and we go, okay, when you consider
24 all of that, if we are going to charge people that,
25 do we have -- have we gotten, you know, the greatest

1 good for the greatest number, the Commission has the
2 task.

3 COMMISSIONER PORTER: Mr. Nourse.

4 MR. NOURSE: And I won't extend that
5 conversation and agree with what Mr. Petricoff said,
6 but I would just like to briefly respond to
7 Ms. Grady's point about the policies, advancing state
8 policies. And we addressed this extensively in our
9 testimony with Witness Selwyn Dias and on brief, but
10 the Commission should not just look at one policy and
11 one interpretation of one policy. As you know, there
12 are more than a dozen policies in 4928.02 and we've
13 set forth in detail how our plan advances many of
14 them.

15 COMMISSIONER PORTER: Mr. Nourse, could I
16 just follow up --

17 MR. NOURSE: Yes.

18 COMMISSIONER PORTER: -- the second
19 question to this? You can go and others who want to
20 comment. So once we move from (B) to (C), there are
21 a number of factors mentioned, quantitative factors
22 and then qualitative factors, is there a need for a
23 weighting or greater level of importance to be placed
24 between either of those two, quantitative or
25 qualitative?

1 MR. NOURSE: I don't know that there's a
2 weighting. The Commission, I think, the ultimate
3 weighting is really on the step 3. And when I talk
4 about the three steps, it's the price test, step 1;
5 the quantitative benefits, step 2, the nonprice
6 quantitative benefits; and then step 3 is the
7 qualitative benefits, by definition can't be -- can't
8 be quantified.

9 So I think step 3 is where most of the
10 discretion comes in. Certainly in steps 1 and 2
11 there are -- as evidenced by the hundreds of pages of
12 briefing you got on this subject, there are varying
13 views of the record, but obviously the Commission
14 has -- certainly always has discretion in
15 interpreting the record, but I think, again, on step
16 3 that's really the key. When you talk about
17 these -- these, you know, to borrow from Mastercard's
18 commercial priceless benefits that I think are in
19 there, that's where the Commission has the most
20 discretion.

21 COMMISSIONER PORTER: Thank you.

22 Mr. Randazzo, could you follow up.

23 MR. RANDAZZO: Yes, thank you for the
24 opportunity to follow up. We've talked about the
25 discretion you have with regard to the ESP. You do

1 not have the discretion to invent -- invent an MRO.
 2 An MRO has no, for example, nonbypassable riders. So
 3 here we have an ESP and even if the nonbypassable
 4 rider is on the list in (B), you then have
 5 quantitatively the challenge of assigning some cost
 6 to it for purposes of comparing it to the alternative
 7 which is the MRO so you can't -- you cannot in my
 8 judgment avoid quantitative analysis.

9 Your qualitative analysis may inform you
 10 in terms of where you want -- where you think you
 11 might land within the range of numbers that have been
 12 presented to you through expert testimony.

13 COMMISSIONER PORTER: Okay.

14 MR. RANDAZZO: But real important here
 15 we've got nonbypassable charges that get in the way
 16 of shopping, that as I explained before have a
 17 qualitative problem when compared to the MRO auction
 18 so ESP lists benefit in the aggregate. The statute
 19 tells you what the MRO is.

20 COMMISSIONER PORTER: You suggest that
 21 the test fails for one versus the other, it fails for
 22 quantitative, you can't move to qualitative.

23 MR. RANDAZZO: That would -- that would
 24 be my view. I do not -- otherwise what happens is
 25 you end up having the qualitative discretion of the

1 Commission eating up the objective criteria in the
2 statute.

3 COMMISSIONER PORTER: Thank you. Anyone
4 else? Anyone else? I don't have a specific.

5 MR. LANG: If I could, sir, the -- just
6 following up on Mr. Randazzo's point and certainly
7 agree with the provisions he's discussed that the
8 statute itself is a -- is a comparison of the ESP to
9 the expected results of the MRO. When you are
10 comparing to the expected results of an MRO,
11 obviously you are looking at that market -- well, a
12 blended market price, and you're not looking as
13 Mr. Randazzo said at additional nonbypassable
14 surcharges.

15 In this case you have a -- you have an
16 ESP that's being compared to that blended MRO, that
17 blended MRO price, so it's actually a -- it's not
18 being compared to market price. It's a blended MRO
19 price, it's above market, so at that first starting
20 point you are comparing the ESP price to that blended
21 MRO price that is above market.

22 Obviously what AEP has proposed fails
23 that price comparison by hundreds of millions of
24 dollars, \$400 million at minimum. The -- I think
25 Mr. Nourse had referred to what they put in their

1 reply brief to say, well, if you use the 189 and it
2 passes it by approximately \$12 million is what they
3 have in their reply brief, but it only does that
4 because they ignore the RSR cost of, you know,
5 additional hundreds of millions.

6 But so there is that -- there is a way
7 to -- there is a way to get to that end result,
8 Commissioner, in comparing those, the ESP and the
9 MRO, if you do eliminate -- eliminate the RSR,
10 eliminate the GRR, and assume that you have that \$189
11 cost as the MRO -- as the CBP component of the MRO,
12 you can get down to that -- as Mr. Randazzo said
13 that, you know, close -- that close call and then
14 when you have that close call, you can decide, okay,
15 because it has these additional qualitative benefits,
16 we can approve this proposal. But FES suggests --
17 would strongly suggest that because the statutory
18 test is key to offer at that MRO price -- I'm sorry,
19 you have to look at that price and you have to make
20 that comparison, and then you can go from there on
21 the qualitative side.

22 COMMISSIONER PORTER: Thank you. That's
23 all I have.

24 EXAMINER TAUBER: Thank you,
25 Commissioner Porter.

1 Commissioner Lesser.

2 COMMISSIONER LESSER: Mr. Lang, why don't
3 you stay up there. Sorry. I'm sorry but I'm looking
4 back at the statute and where I'm confused is I don't
5 see a quantitative test and then a qualitative test,
6 and if one test is close, then you go to the other
7 test. And, again, let's assume the Commission
8 follows the law in approving the ESP, I like to
9 always assume that, and that we do realize what the
10 court said on its interpretation of including but not
11 limited to.

12 Now, I see a statute that says that if
13 you look at the ESP as approved including its pricing
14 and all other terms and conditions including
15 deferrals, future recovery of deferrals is more
16 favorable in the aggregate as compared to in the
17 blended MRO. I see one test. I do not see two
18 tests. I do not see a two-part test. I see one
19 test. What am I missing?

20 MR. LANG: Well, Commissioner, I -- you
21 are obviously reading the -- you are obviously
22 reading the statute. I don't think you are missing
23 it. I think what certainly has developed in these
24 cases is the process for the Commission to apply its
25 discretion in looking at that test.

1 And so what you see even with AEP Ohio's
2 filing is -- is that their approach -- their filing
3 as part of the stipulated ESP in that initial filing
4 had a price comparison and then qualitative benefits.
5 In this most recent filing they went three ways.
6 They have a price comparison and then some more
7 quantitative and then the qualitative. But for --
8 and all -- all of the parties have addressed it that
9 way both in this case and in the other electric
10 security plan proceedings.

11 And, again, Commissioner, we believe that
12 that's a very sensible way to go about this. You're
13 correct that the call at the end is the call. You
14 have to look at everything and make the call. But if
15 you have -- if you have an electric security plan
16 which will result in pricing for consumers that is
17 not only above market pricing but above the MRO
18 comparison, that blended price, which here I think
19 you're looking at --

20 COMMISSIONER LESSER: Mr. Lang, would you
21 be telling us to ignore in the aggregate language and
22 not approve the plan just on -- just on that basis?

23 MR. LANG: Not at all, Commissioner.
24 The -- what we're recommending that the Commission do
25 is make that comparison to the MRO, and when you are

1 making that comparison to the MRO because what the
2 MRO is is a price, you have to look at the price,
3 that's -- you know, that's simply as part of the
4 statute because you're comparing it to the expected
5 result of the MRO you can't do anything other when
6 you're looking at the MRO than look at price.

7 COMMISSIONER LESSER: But isn't that the
8 whole point of the statute, to look at the ESP in the
9 aggregate as opposed to an MRO which is just a price?

10 MR. LANG: Well, yes. I think the -- you
11 have to -- I think it has to be a process of your --
12 of the decision making that, again, the MRO price
13 is -- is the benchmark of if you are not going to
14 have that competitive bidding, if you are going to
15 have an ESP, there has to be a reason that that ESP
16 is better than those -- than the competitive pricing
17 that you get from the MRO.

18 And so, again, in making that decision
19 making process, all parties have started looking at
20 the price. If you have an ESP price that is
21 significantly above even that blended MRO price which
22 itself is above market, then that's a consideration
23 for the Commission, a very serious consideration for
24 the Commission of, you know, is this something we can
25 approve? Is this something we can impose on

1 customers as -- as compared to the MRO result? If
2 you have -- again, if you have that close call which
3 in this case you have got to do work to get to --

4 COMMISSIONER LESSER: Mr. Lang, I just
5 don't see that close call. I don't see that language
6 in the statute. I don't see a two-part test. I see
7 a single test, notwithstanding what the parties have
8 argued in the case. I'm just -- as we are often
9 reminded, go back to the statute and the statute has
10 a single test.

11 MR. LANG: And, Commissioner, the statute
12 has a single test which starts with looking at the
13 MRO price. And so, absolutely, as long as you start
14 there, you can then look at qualitative benefits,
15 would certainly favor Mr. Randazzo's position that
16 there is limits on that discretion. Again, if you
17 have, you know -- because you have the statutory test
18 set up, if that discretion is, you know, unlimited in
19 saying, you know --

20 COMMISSIONER LESSER: We're working under
21 a wild assumption that we will follow the law.

22 MR. LANG: I would hope so, but. Did I
23 answer your question?

24 COMMISSIONER LESSER: Yes, thank you.

25 MR. LANG: Thank you.

1 MS. GRADY: Commissioner Lesser, there is
 2 one test under the statute. However, what the
 3 Commission did in October of 2011 was do
 4 approximately the test that we are talking about.
 5 What they did was they looked at the price of the
 6 stipulated ESP and they determined that that price
 7 was approximately 325 million more than an MRO. And
 8 the Commission said that's too big of a gap. We need
 9 to make modifications.

10 And I think we are in the same boat today
 11 only it's a worse boat. It's a sinking boat. The
 12 gap between the MRO and the ESP pricing by accounts
 13 of OCC, by accounts of almost every party in this
 14 proceeding is not close. It is huge. And it will go
 15 up because of the capacity decision case.

16 So I think this Commission got it right
 17 in September of 2011 where it took -- looked at the
 18 price test, determined that that gap was too big, and
 19 then made adjustments.

20 And I would be -- I would want to also
 21 remind the Commission that in the ESP I order it
 22 determined that it could make adjustments to the
 23 modified ESP even if it did not find that the test
 24 was not met. Even if the test was met, this
 25 Commission determined that it had discretion to make

1 adjustments that were supported by the record.

2 COMMISSIONER LESSER: Thank you.

3 MR. RANDAZZO: Shall we refer to the law?
4 143, regardless of whatever discretion you have in
5 143, you can't permit the utility to recover
6 transition costs. 141 tells you that. And several
7 of these riders are clearly labeled as transition
8 cost recovery riders, the RSR --

9 COMMISSIONER LESSER: Mr. Randazzo, I'm
10 only talking about the test. I am not talking about
11 what the Commission could approve.

12 MR. RANDAZZO: And -- yeah. Under the
13 test if you cannot include an item in an ESP like
14 transition cost recovery, then it can't be included.

15 COMMISSIONER LESSER: Then that would
16 otherwise be unlawful. I'm assuming the Commission
17 is acting lawfully in approving the ESP, and, now, we
18 are just doing the test.

19 MR. RANDAZZO: And the test is one test
20 as you've correctly read the statute, but as
21 Ms. Grady has also said, if you get to the point
22 where there are other qualitative problems presented
23 by the ESP, even if it passes the test, you have the
24 discretion to modify it in view of the policy
25 objectives that are impeded in the law.

1 At that point the utility has the
2 discretion to determine whether or not they are
3 willing to accept it. And in the event that they
4 don't we are supposed to follow the law and go back
5 to the rate plan that was in effect prior to the ESP,
6 modified ESP. So that's pretty much it.

7 Thank you.

8 COMMISSIONER LESSER: Thank you.

9 MR. O'BRIEN: Tom O'Brien here for the
10 Hospital Association and I'm also filling in for Lisa
11 McAlister on behalf of the Manufacturers today.

12 Commissioner Lesser, because you did read
13 143(C)(1) and did mention the fact that the test --
14 the single test that it was called now must include
15 the deferrals and any future recovery of deferrals, I
16 think the Commission has done itself a great
17 disservice in attempting to apply this test by what
18 it did in the capacity charge case because we do now
19 have this deferral issue, but we don't have the
20 parameters of what those deferrals are going to look
21 like.

22 We don't know what the duration of their
23 collection is going to be. We don't know what the
24 amount is going to be. We don't know how they are
25 going to be collected when collection does begin. We

1 don't know what the market is going to look like at
2 the time the deferrals continue. For instance, right
3 now when capacity charges are low according to the
4 prevailing RPM rate, you know, there's maybe some
5 room to bump it and to collect those charges.

6 But the Commission may decide to impose
7 the collection of those deferrals at a time when the
8 market rates go high, and we are all in agreement we
9 can now go to the market. How do you incorporate
10 that into the application of the test is not clear to
11 me at all.

12 Furthermore, you don't have any of this
13 stuff in the record so how are you going to base your
14 decision in applying the test on what you have in
15 front of you?

16 Thanks.

17 MR. NOURSE: Can I answer that question,
18 your Honor, since Mr. O'Brien posed a question? I
19 think as I was trying to say earlier the RSR -- I
20 mean, what the Commission did in the capacity case
21 was said this discount from the determined cost, and
22 this is, again, we'll accept the decision for
23 purposes of this discussion even though we disagree
24 with it, but they determined there was a cost and
25 they determined for policy reasons to advance the

1 State of Ohio's policy to benefit all customers.
2 There's going to be this discount. There's going to
3 be this stimulus package which --

4 COMMISSIONER LESSER: Mr. Nourse, I'm
5 sorry. I interrupted other people so I might as well
6 be equitable about this and interrupt you too. Can
7 we just stay on the test?

8 MR. NOURSE: I'm sorry, I was
9 addressing --

10 COMMISSIONER LESSER: I know.

11 MR. NOURSE: -- Mr. O'Brien's point.

12 COMMISSIONER LESSER: But I would rather
13 just stay on the test.

14 MR. NOURSE: It was on the test, your
15 Honor, but he asked the question of how do you
16 measure this and he said it wasn't in the record.
17 Our RSR as proposed accommodates this situation, and
18 I think it's a neu -- it's neutral to the test in the
19 sense that the Commission made that finding, and I
20 believe the Commission found that it was more
21 beneficial than the cost of the test. The Commission
22 fully understood the cost. It's a mathematical
23 comparison between the rates. I don't think the
24 Commission itself would have done that if it didn't
25 think the benefits exceed the cost.

1 Therefore, it shouldn't be used against
2 us in this MRO test in this case.

3 Thank you.

4 EXAMINER SEE: The next topic to be
5 addressed is competitive supplier issues, and we are
6 going to start with Commissioner Roberto. I'm going
7 to ask the Commissioners to indicate exactly which
8 parties they wish to hear from so that we can get
9 those issues addressed by those parties in the
10 interest of time.

11 COMMISSIONER ROBERTO: I have no
12 questions on this topic.

13 EXAMINER SEE: Commissioner Slaby.

14 COMMISSIONER SLABY: No questions.

15 EXAMINER SEE: Commissioner Porter.

16 COMMISSIONER PORTER: Yes, just a few.

17 EXAMINER SEE: And whom would you like to
18 hear from?

19 COMMISSIONER PORTER: Let me start with
20 Mr. Petricoff and then I'll follow up with
21 Mr. Petricoff with counsel for IGS and FE and then
22 AEP.

23 EXAMINER SEE: Okay.

24 COMMISSIONER PORTER: Mr. Petricoff,
25 there is in the record a concern regarding the GRR

1 rider and it's inclusion of renewable projects and
 2 whether there would be a double counting issue
 3 applicable to competitive suppliers. And there's a
 4 solution in the record proposed by the company for
 5 allowing for RECs to be credited toward competitive
 6 suppliers. And it is -- I just want for the record
 7 for you to let us know if this is consistent with
 8 covering the total cost of that -- of that renewable
 9 energy compliance. If RECs are then credited to CRES
 10 suppliers or renewable RECs are included in the GRR,
 11 does that cover the total cost and avoid the double
 12 counting issue that's been highlighted?

13 MR. PETRICOFF: If, in fact, the RECs are
 14 credited back, I think we can -- we can eliminate
 15 that issue by quite frankly our general view is that
 16 the candle isn't worth the gain, that there's no
 17 reason to put this placeholder in until we know
 18 exactly what we are talking about, and then we can
 19 decide, you know, if the credit will work.

20 COMMISSIONER PORTER: Thank you.

21 MR. WHITT: Mr. Chairman, Commissioners,
 22 my name is Mark Whitt. Thank you for the opportunity
 23 to answer questions, and before I talk I will listen.

24 COMMISSIONER PORTER: There was a
 25 question about the double counting so that's just the

1 question that I have is whether the credits that are
2 proposed to be accounted and allocated to competitive
3 suppliers, if that covers the full cost and avoids
4 the double counting issue against competitive
5 suppliers.

6 MR. WHITT: Well, your Honor, I think I
7 would echo Mr. Petricoff's sentiment that it's really
8 something that we don't need to address in this
9 proceeding. It could recover the full costs. The
10 problem is that the tariff that is submitted doesn't
11 address the issue at all so it's somewhat of a black
12 box at this point.

13 COMMISSIONER PORTER: Thank you.

14 FirstEnergy Solutions.

15 MR. LANG: Thank you, Commissioner
16 Porter. And, yeah, on this issue I think I would
17 echo Mr. Whitt's comments that we don't know what
18 this is. To your point it's in the -- the suggestion
19 is in the record and from a statement by AEP Ohio
20 Witness Dias made in response I believe to a question
21 from staff. It was not actually part of AEP's Ohio
22 proposal, but it was a suggestion made by Mr. Dias.

23 There's no particulars around that.
24 There's no discussion of how the heck that would be
25 done. And there's no explanation of how it could be

1 done which would be one of our significant concerns.
 2 You know, putting aside as other parties have said
 3 that, you know, we are strongly opposed to the GRR,
 4 just the practical issues of reassigning those RECs
 5 is, you know, is something that, again, the
 6 suggestion was made on the record but how that would
 7 work is not in the record.

8 Thank you.

9 COMMISSIONER PORTER: Mr. Nourse.

10 MR. NOURSE: Thank you. I believe
 11 Mr. Nelson also addressed that issue too, but I will
 12 say that, you know, the details aside, the intention
 13 and the statement was that the RECs from this
 14 facility, Turning Point facility, would be -- would
 15 be applied to reduce the portfolio obligation for --
 16 for all, for CRES providers as well.

17 And I think just to tie back to the Nee
 18 case and I think the staff's position and the
 19 company's position, the separate Nee case related to
 20 Turning Point related to a great extent to the what
 21 I'll call the market failure for solar RECs in Ohio,
 22 there's a critical need, and that ties in with
 23 helping the entire --

24 EXAMINER TAUBER: Mr. Nourse, I'm going
 25 to ask you to please respond to Commissioner Porter's

1 question. We're getting off the scope of the
2 question.

3 MR. NOURSE: Okay. I was attempting to,
4 but I think all I'm saying is it would be applied to
5 all CRES providers, and I think there is a critical
6 need there for solar RECs in particular. As to
7 the --

8 COMMISSIONER PORTER: That's helpful.
9 Let me just finalize by asking so with regard to the
10 GRR that would be applicable to competitive
11 suppliers, would the GRR include an approval by this
12 Commission of the Turning Point project, or would it
13 be contingent?

14 MR. NOURSE: Not in this case, your
15 Honor. I do I think it's absolutely critical the
16 placeholder rider is part of the ESP statute in
17 (B) (2) (b) and (C) and that is something that needs to
18 be part of the ESP plan subject to the other case.

19 Thank you.

20 COMMISSIONER PORTER: All right. Just
21 one additional, not for you, Mr. Nourse. I'll call
22 you up.

23 MR. NOURSE: Okay.

24 COMMISSIONER PORTER: If I could start
25 with Mr. Petricoff again. Second question, in your

1 post-hearing brief and throughout the hearing you
2 have mentioned impediments to the competitive
3 marketplace that may prohibit -- that may limit your
4 clients' participation in the AEP service territory
5 for offering competitive offers.

6 You mentioned the lack of multiple items.
7 Is it still your -- your clients' position that they
8 will not participate in the AEP service territory if
9 certain impediments are not removed?

10 MR. PETRICOFF: I don't think we ever
11 said -- I don't think we said we would not
12 participate. What we're concerned these are barriers
13 that will limit the participation not only for my
14 clients, 35 members of RESA, but for all licensed
15 competitive retail electric suppliers and if I could
16 just take 20 or 30 seconds to describe why. If ,in
17 fact, we are going to reach the kind of shopping
18 numbers that Mr. Allen had in his projections,
19 65 percent residential, 80 percent commercial,
20 90 percent industrial, in -- in 2013, there's going
21 to have to be the kind of structure that's going to
22 permit this, and it's just -- it's real workaday-type
23 stuff.

24 If you go out to shop for -- for power
25 and you call three or four marketers, the first thing

1 they are going to ask you is, okay, what is your --
 2 what is your usage, not just how much kilowatt hours
 3 or the demand but when you used it. The customer
 4 doesn't know that. That data has got to come from
 5 the -- from the utility.

6 Likewise, if you -- once the CRES
 7 provider is in charge of providing that power, you
 8 have to account for deliveries every clock hour, and
 9 you have to phase the power in and out 10 minutes
 10 before the clock out and 10 minutes after so you have
 11 got to plan it. So that means you've got to know
 12 from the utility what the meter readings are, where
 13 we are, what the peaks are going to be.

14 Right now, that data is available for
 15 from AEP but some of it's in writing. Some of it's
 16 in one report. Some of it's no another report. You
 17 have to have a sum up.

18 COMMISSIONER PORTER: There are multiple
 19 impediments. Do you have a process for addressing
 20 the impediments?

21 MR. PETRICOFF: Yes. What we need is and
 22 what we suggested is that we have to get -- get a
 23 workshop together. We have to come down with -- with
 24 dates and times of what can be done to bring these
 25 systems to bear. And there's -- the thing about

1 these systems that there is nothing new and there is
2 nothing unique. Everybody uses EDI. Everybody wants
3 a web-based system.

4 The other thing is billing. If we are
5 going to have all the creative-type products that the
6 market can bear, there's got to be a way to bill them
7 and collect for them so we need, you know, to move to
8 the bill ready format, and maybe we need to
9 consider -- maybe we should consider supplier billing
10 as well.

11 COMMISSIONER PORTER: Okay. Thank you.
12 I wouldn't need to hear from anyone else except
13 Mr. Nourse if he wants to reply to that.

14 MR. NOURSE: Just briefly, your Honor. I
15 think, you know, it's -- as to some of the general
16 competitive wish list items, you know, I don't think
17 it's fair to subject AEP to requirements that are not
18 required generally of EDUs in Ohio so I don't think
19 this is the forum to raise all the issues that they
20 would like to see. If there is a forum, it should be
21 for all utilities.

22 Thank you.

23 COMMISSIONER PORTER: Thank you.

24 EXAMINER SEE: Commissioner Lesser.

25 COMMISSIONER LESSER: Thank you. Very

1 quick, Mr. Nourse, you stated that for the GRR rider
2 that this would be the set-up, zero base rider with
3 no approval, and you said there would be an
4 additional proceeding. Can you just tell me what the
5 nature of that proceeding would be?

6 MR. NOURSE: Certainly. There's actually
7 two companion proceedings. This case we just do a
8 zero rider. There's already a Nee case pending that
9 preceded this case and I believe is ripe for
10 decision. But this separate case I was referring to
11 is the rider case where we finalize the cost
12 estimates and really that's the case where the
13 Commission would decide whether the project should go
14 forward or whether the GRR remains zero for the
15 entire term.

16 EXAMINER SEE: I'm sorry, Chairman --
17 Chairman Snitchler.

18 CHAIRMAN SNITCHLER: I pass.

19 EXAMINER SEE: You pass? Okay.

20 EXAMINER TAUBER: The next topic here is
21 the distribution investment rider.

22 Commissioner Slaby.

23 COMMISSIONER SLABY: I don't think I have
24 a specific question regarding to this topic.

25 EXAMINER TAUBER: Commissioner Porter.

1 COMMISSIONER PORTER: No questions, sir.

2 EXAMINER TAUBER: Commissioner Lesser.

3 COMMISSIONER LESSER: No questions.

4 EXAMINER TAUBER: Chairman Snitchler.

5 CHAIRMAN SNITCHLER: Pass.

6 EXAMINER TAUBER: Commissioner Roberto.

7 COMMISSIONER ROBERTO: Pass.

8 EXAMINER SEE: That was very -- that was
9 very efficient. Next topic is the proposed base
10 generation rate design. And let's start with
11 Commissioner Porter.

12 COMMISSIONER PORTER: I'll also pass on
13 this one as well. Thank you.

14 EXAMINER SEE: Commissioner Lesser.

15 COMMISSIONER LESSER: Mr. Nourse.

16 MR. NOURSE: Yes.

17 COMMISSIONER LESSER: In the -- in the
18 Commission's entry in which it restarted this
19 proceeding there were rate design issues that the
20 Commission had raised as some of its concerns. Could
21 you just tell us very quickly how you address those
22 issues?

23 MR. NOURSE: Yes, sir. We -- we
24 certainly took -- undertook a diligent and we think
25 comprehensive effort to -- to scrub the rate impacts

1 in -- one in particular exhibit you could look at in
2 the record is AEP Exhibit 113 and what that
3 represents is a -- the results, the summation of a
4 study, a rate impact study, that was done literally
5 for all GS-2, 3, and 4 customers. And there is a
6 categorization for each year of the ESP of how many
7 customers fall into each percentile of rate impact
8 from 1 -- 1 through 10 and most of it's around the
9 middle of 4 to 5 percent but that's a very specific,
10 literally a, you know, comprehensive rate impact
11 study.

12 Relative to residential customers the --
13 the exhibits from Mr. Roush's testimony cover that
14 very thoroughly with the -- with the stated -- very
15 clearly stated parameters and the assumptions that
16 were used to develop those.

17 And so we believe the rate impacts are
18 clear. This is a much simpler, more transparent plan
19 than all the moving parts we had in the stipulation,
20 and so we don't think there are going to be surprises
21 with rate impacts.

22 COMMISSIONER LESSER: Well, speaking of
23 surprises I have a question.

24 MR. NOURSE: Okay.

25 COMMISSIONER LESSER: I'm not sure how to

1 describe those customers as, those customers who have
2 certain limitations on what they're billed based on
3 over, I think, 800, you know, kilowatts per month.
4 I'm not sure how we've referred to those customers in
5 this proceeding. I've seen the term all electric but
6 I think that's a misnomer.

7 But what I would like to do is take those
8 customers, if we have a common understanding, and now
9 we're out to a -- the SSO is based on a wholesale
10 auction. Do you have any kind of study what's the
11 rate impact on those customers if now they go on a
12 straight kilowatt basis?

13 MR. NOURSE: No. And I think as part of
14 the leading up to an auction, what we proposed is
15 within 90 days of the final order here and the
16 corporate separation, you know, whichever is later,
17 we would come in and do a full stakeholder process to
18 try to work through those. To me that's a question
19 of how you translate the wholesale auction result or
20 clearing price into a retail. That falls into the
21 category of an issue that would need to be closely
22 reviewed as part of that process.

23 COMMISSIONER LESSER: Okay. Thank you.

24 EXAMINER SEE: Chairman Snitchler.

25 COMMISSIONER LESSER: Oh, I don't know if

1 there were other parties that wanted to respond.

2 MR. KURTZ: Commissioner Lesser, could I
3 just make one very quick very important topic that
4 has not been addressed? And it is on the
5 generation -- base generation design, the deferrals.
6 The deferrals will be with interest in the
7 neighborhood of 7, 8 hundred million dollars. That
8 deferral is created by people who shop.

9 CHAIRMAN SNITCHLER: Mr. Kurtz, can you
10 point to me in the record where you find that number,
11 please?

12 MR. KURTZ: Well, it's a result of the
13 capacity order, and I'm just going by news reports
14 and analytical reports.

15 CHAIRMAN SNITCHLER: But those news
16 reports, I assume, are not a part of the record.

17 MR. KURTZ: Correct. Whatever the
18 deferral amount will be it will be significant. It
19 is created by people who shop and the CRES supplier
20 being charged RPM and deferring the 188. When it
21 comes time to repay that, I just want to make this
22 one very basic important point, the reasonable
23 arrangement customers, Ormet, Eramet, and Timken who
24 have not shopped during that period of time, if they
25 certify that to the Commission, they will not have

1 caused any of the deferred amount, whatever it would
 2 be, and I think it's important and consistent with
 3 the reasonable arrangements that were approved,
 4 consistent with economic development and other
 5 factors that they not be charged for any of the
 6 deferral when it comes time to repay it. If they can
 7 certify that they have not shopped, then they have
 8 not caused the cost to be incurred, they should not
 9 be forced to subsidize the shopping customers or the
 10 CRES suppliers.

11 MS. GRADY: Commissioner Lesser, you
 12 raise an important point about a particular segment
 13 of residential customers, and I think it's important
 14 for this Commission to not jump the gun and assume
 15 that rate design changes need to be made and need to
 16 be made now when there's no record for that kind of a
 17 change.

18 The company's proposal is and should --
 19 or what we would propose is that the rate design
 20 remain the same. Otherwise we would be going into a
 21 field where we are not basing any drastic -- where we
 22 are basing drastic rate design changes through an
 23 auction without the benefit of a record.

24 And very quickly to respond to Chairman
 25 Snitchler's prob -- or raising the fact that the

1 impact of the deferrals has not -- is not in the
2 record, that's a problem in this proceeding. I think
3 Mr. -- OMA --

4 CHAIRMAN SNITCHLER: Actually if I could
5 interrupt, I don't believe that it's not in the
6 record. I believe there is some evidence in the
7 record, but the numbers that were proposed by
8 Mr. Kurtz and have been as he indicated reported in
9 the paper are approximately double what's actually in
10 the record and that was evidenced by FES's
11 information which, again, is resulting from
12 speculative information where they calculated some
13 numbers to arrive at an estimate.

14 But I think the issue that you are
15 raising is a fair one that we don't know the hard
16 number, but I think it's imprudent for us to pick a
17 wildly significantly higher number than is even
18 demonstrated anywhere in the record and base our
19 comments or our evaluation as a Commission on that
20 number.

21 MS. GRADY: And I appreciate that and I
22 think that this points to the concern that we are
23 going to have to procedurally set some due process
24 here and have these claims looked at. We need to
25 know the bill impacts of pushing deferrals on to

1 customers. We need to know the impacts of the
2 increase in the RSR if the RSR increases are linked
3 as the company proposed. The company itself even
4 proposed numbers in its -- in its reply brief. A lot
5 of this information is coming through in people's
6 reply briefs. That is the reason why OCC filed a
7 motion to strike today with respect to all this
8 information coming in through reply briefs.

9 We need some process. We need some
10 order. It cannot come on the reply brief stage. We
11 need a procedural due process so customers can know
12 what the impact of changes to the plan are going to
13 be made and are based on the capacity decision case.

14 MR. NOURSE: Since Mr. Kurtz raised a new
15 issue and Ms. Grady also addressed it, may I respond
16 briefly? With respect to the cutover, the
17 relationship between the two cases, what I was trying
18 to say earlier is the RSR mechanism does accommodate
19 this scenario with the capacity charges. And I think
20 as we've done in our testimony, made clear, that
21 we've done examples, the \$2 charge was an example,
22 and Mr. Dias -- Mr. Roush made that clear. Mr. Allen
23 made that clear.

24 The Commission knows what it did in the
25 capacity charge decision. On the same page, page 23,

1 there are also citations to company evidence and
2 Mr. Allen's testimony about the rate impact of RPM
3 and the financial harm to the company. And that's
4 why the Commission said it would address those issues
5 in this case.

6 But, you know, we've litigated the
7 capacity case. We've litigated this ESP case. And
8 the capacity charges have been discussed throughout
9 the record, and all these scenarios have been
10 discussed throughout the record. I think the impact
11 of RPM pricing and the shopping level associated with
12 that has been addressed abundantly and, again, even
13 relied on in the finding on page 23 of the order from
14 the Commission.

15 So I think it is a function of the math
16 that falls out from that and -- and, again, we've
17 already put everybody on notice and litigated in both
18 cases the RSR proposal which deals with what happens
19 if the CRES revenue falls down below what we assumed
20 in designing the charge and that's why it was always
21 presented as an example.

22 Thank you.

23 EXAMINER SEE: Chairman Snitchler. Pass.
24 Commissioner Roberto.

25 COMMISSIONER ROBERTO: I have no

1 questions.

2 EXAMINER SEE: Commissioner Slaby.

3 COMMISSIONER SLABY: Pass.

4 EXAMINER SEE: Commissioner Porter.

5 COMMISSIONER PORTER: No.

6 EXAMINER SEE: Okay. If the
7 Commissioners have no other questions, then that
8 concludes the oral arguments today. We appreciate
9 you coming here and appreciate your participation.
10 Thank you.

11 (Thereupon, the hearing was concluded at
12 12:16 p.m.)

13 - - -

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Friday, July 13, 2012,
and carefully compared with my original stenographic
notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5555)

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Summary: Transcript of Oral Arguments of Columbus Southern Power Company and Ohio Power Company hearing held on 07/13/12 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.