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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :  
Review of the Application :  
of Ohio Edison Company, :  
The Cleveland Electric :  
Illuminating Company, The : Case No. 12-2190-EL-POR  
Toledo Edison Company for : Case No. 12-2191-EL-POR  
Approval of Their Energy : Case No. 12-2192-EL-POR  
Efficiency and Peak :  
Demand Reduction Program :  
Portfolio Plans for 2013 :  
through 2015. :

- - -

PROCEEDINGS

before Mr. Gregory Price and Ms. Mandy Willey Chiles,  
Attorney Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-A,  
Columbus, Ohio, called at 10:00 a.m. on Friday,  
October 26, 2012.

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VOLUME V

- - -

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1 Friday Morning Session,  
2 October 26, 2012.

3 - - -

4 EXAMINER PRICE: Let's go on the record.  
5 Good morning. The Public Utilities  
6 Commission has set for hearing at this time and  
7 place, Case Nos. 12-2190-EL-POR, et al., being  
8 In the Matter of the Application of Ohio Edison  
9 Company, The Cleveland Electric Illuminating Company,  
10 and The Toledo Edison Company for Approval of Their  
11 Energy Efficiency and Peak Demand Reduction Portfolio  
12 Plans for 2013 through 2015.

13 My name is Gregory Price. With me is  
14 Mandy Willey Chiles. We are the attorney examiners  
15 assigned to preside over today's hearing. We will  
16 dispense with appearances, as has been our practice  
17 since the first day.

18 Do we have any preliminary matters we  
19 wish to address before we take our first witness?

20 Mr. Allwein.

21 MR. ALLWEIN: Thank you, your Honors. We  
22 wanted to ask the Bench about any ruling on our  
23 motion for local public hearings in these cases.

24 EXAMINER PRICE: We are prepared to rule  
25 on that at this time. Your motion will be denied.

1 MR. ALLWEIN: Thank you, your Honor.

2 And I have another issue to bring up, and  
3 that is, I would like to move for judicial notice of  
4 the affidavit of John Dargie, a witness in this case,  
5 regarding Ohio Edison's meeting the cumulative  
6 benchmarks for 2011 but not meeting them in an  
7 incremental way.

8 I believe the issues of cumulative and  
9 incremental are going to be discussed at length  
10 today. We've discussed this affidavit earlier in the  
11 proceeding. I have copies for everybody, for those  
12 who would like to see a copy, and I request jud --  
13 that the Bench take judicial notice of this affidavit  
14 for those reasons.

15 EXAMINER PRICE: FirstEnergy.

16 MS. KOLICH: Thank you, your Honor. The  
17 company opposes such a request on several grounds.  
18 First of all, I do not expect to discuss cumulative  
19 versus incremental at length today.

20 Secondly, Mr. Dargie was on the stand on  
21 Monday. This is Friday. If there were concerns  
22 about the understanding -- or the companies'  
23 understanding or Mr. Dargie's understanding of those  
24 issues, they should have been brought up while he was  
25 on the stand. Moreover, what I believe -- I'm not

1 quite sure what point counsel wants to make, but in  
2 the daily transcripts for -- for Volume I, which was  
3 taken on Monday, the 22nd, on page 96 the issue of  
4 the companies' achieving their targets and which  
5 targets they achieved in each of the years and which  
6 ones they did not was specifically addressed in the  
7 redirect of Mr. Dargie where he clarified that which  
8 targets were, in fact, met and which ones weren't.

9 So there is no need to take judicial  
10 notice of the information requested because it's  
11 already in the record.

12 EXAMINER PRICE: Thank you.

13 Mr. Allwein, FirstEnergy brings up a good  
14 point. Mr. Dargie was on the stand. Why didn't you  
15 just introduce the affidavit at that time?

16 MR. ALLWEIN: I did not have a copy of it  
17 with me at that time, and I guess in the midst of the  
18 proceedings I simply didn't think to make the request  
19 at that time, but in preparation for today, I  
20 realized that, in my opinion, Ms. Kolich disagrees  
21 with me that this is going to be an issue today as  
22 well. And I just believe this affidavit does  
23 demonstrate that the company has an understanding of  
24 the benchmarks in both a cumulative measure and in an  
25 incremental measure, and I think it will be helpful

1 for today's discussion, as well as -- as it was for  
2 Mr. Dargie's discussion.

3 MS. KOLICH: May I respond?

4 EXAMINER PRICE: You may.

5 MS. KOLICH: I believe the clarity of the  
6 record when I bring up issues with regard to  
7 cumulative versus incremental is my responsibility,  
8 and while I appreciate counsel's concerns, I believe  
9 it's within the discretion of the company how they  
10 want to present their case and what information they  
11 believe is necessary to make their case.

12 EXAMINER PRICE: I understand.

13 We are going to go ahead -- we are going  
14 to go ahead and take administrative notice of this  
15 document. The companies will have an opportunity on  
16 Tuesday to explain, rebut any statements within the  
17 document, and if it's unnecessary because it's not an  
18 issue coming out of our cross-examination, it won't  
19 be necessary.

20 MS. KOLICH: Do we have a copy of that?

21 EXAMINER PRICE: Mr. Allwein is going to  
22 mark it now and we are going to --

23 MR. ALLWEIN: Would you like me to mark  
24 this as a Sierra Club exhibit?

25 EXAMINER PRICE: Yes.

1 MR. ALLWEIN: Okay.

2 EXAMINER PRICE: Or NRDC, I don't care.

3 MR. ALLWEIN: Well, it doesn't matter.  
4 I'll mark it as a Natural Resources Defense Council  
5 exhibit.

6 MS. KOLICH: Is it being admitted on  
7 behalf of Sierra Club or NRDC?

8 MR. ALLWEIN: Well, it's all about NRDC,  
9 so we'll submit it on behalf of the Natural Resources  
10 Defense Council.

11 EXAMINER PRICE: NRDC Exhibit number?

12 MR. ALLWEIN: 3.

13 EXAMINER PRICE: 3, thank you. It will  
14 be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 EXAMINER PRICE: The Bench would like a  
17 copy, but most importantly, the court reporter needs  
18 a copy.

19 MR. ALLWEIN: Indeed.

20 EXAMINER PRICE: There is only one key  
21 person in the room, and it's the court reporter.

22 Any other matters before we take our  
23 witness?

24 MS. KERN: I can raise it now.

25 EXAMINER PRICE: That's fine, Ms. Kern.

1 MS. KERN: OCC would like the opportunity  
2 to file surrebuttal to the companies' rebuttal  
3 testimony. We obviously don't know if it's necessary  
4 yet and won't know until we see the companies'  
5 rebuttal.

6 Understanding that it's within the  
7 discretion of the attorney examiners to allow such  
8 surrebuttal, and it has been allowed in the past, we  
9 would just request that we would have that  
10 opportunity if it's necessary. Thank you.

11 EXAMINER PRICE: Thank you. Your request  
12 is noted, but we will defer ruling on that until we  
13 have a more definitive request.

14 Anything else?

15 MS. KOLICH: Yes, your Honor. Companies  
16 recognize we have made several commitments to provide  
17 the Bench and the parties with certain information.  
18 The companies intend to do that on Tuesday during the  
19 presentation of witnesses in their rebuttal case.

20 EXAMINER PRICE: Thank you. That will be  
21 fine. Okay.

22 Yes, sir.

23 MR. KELTER: Just to make sure we've got  
24 this right, your Honor, I wanted to clarify when the  
25 rebuttal testimony is going to be filed.

1 MS. KOLICH: I believe we made a  
2 commitment to get it out by noon on Monday.

3 MR. KELTER: That's what I thought, too,  
4 but I just wanted to make sure.

5 MS. KOLICH: It's on the record.

6 EXAMINER PRICE: It's on the record now.  
7 We'll fix that on the next break.

8 Let's go off the record.

9 (Discussion off the record.)

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

12 At this time we will take our first  
13 witness.

14 Mr. Allwein.

15 MR. ALLWEIN: Your Honors, I call Dylan  
16 Sullivan, staff scientist for the Natural Resources  
17 Defense Council to the stand.

18 (Witness sworn.)

19 EXAMINER PRICE: Please state your name  
20 and business address for the record.

21 THE WITNESS: My name is Dylan Sullivan.  
22 My business address is 2 North Riverside Plaza, 2250,  
23 Chicago, Illinois 60606.

24 EXAMINER PRICE: Thank you.

25 Please proceed, Mr. Allwein.

1 MR. ALLWEIN: Your Honors, I request,  
2 please, that you mark the following exhibit entitled  
3 "Direct Testimony of Dylan Sullivan" as NRD --  
4 Natural Resources Defense Council Exhibit 4.

5 EXAMINER PRICE: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. ALLWEIN: And I ask that you please  
8 mark the exhibit entitled "Supplemental Testimony of  
9 Dylan Sullivan on behalf of the Natural Resources  
10 Defense Council" as Exhibit 5.

11 EXAMINER PRICE: So marked.

12 MR. ALLWEIN: NRDC Exhibit 5, sorry.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 - - -

15 DYLAN SULLIVAN

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

18 DIRECT EXAMINATION

19 By Mr. Allwein:

20 Q. Mr. Sullivan, good morning.

21 A. Good morning.

22 Q. Could you please state your name,  
23 occupation, and position for the record.

24 A. My name is Dylan Sullivan, and I'm a  
25 staff scientist.

1 Q. And can you also state your business  
2 address, please.

3 EXAMINER PRICE: He did that for me.

4 MR. ALLWEIN: Oh, he did already? I'm  
5 sorry.

6 Q. Can you please describe the exhibit  
7 that's just recently been marked as NRDC Exhibit No.  
8 4, please.

9 A. That's my direct testimony and  
10 attachments.

11 Q. And can you please identify the exhibit  
12 that's just been marked as NRDC Exhibit 5, please.

13 A. That's my supplemental testimony.

14 Q. All right. And in both cases, the  
15 testimony in both of these documents, was that  
16 prepared by you or under your direction?

17 A. Yes, it was.

18 Q. Do you have any corrections or updates  
19 that you would like to make to either of your  
20 testimonies this morning? And for the record, please  
21 let us know which document you are referring to  
22 specifically.

23 A. I have a few grammatical changes in my  
24 direct testimony, and one to reflect a discussion  
25 that we had in our deposition on the original direct

1 testimony.

2 Q. On the original direct testimony?

3 A. I'm sorry, the direct testimony, NRDC  
4 Exhibit 4.

5 Q. Okay. Can you walk us through those  
6 changes, please.

7 A. Sure. Page 1, line 23, after "American  
8 Electric Power-Ohio," I have parentheses and then  
9 "the Companies or." That should be deleted so that  
10 the parenthetical just reads "AEP-Ohio."

11 On page 17, line 22, in the middle of the  
12 line there, there's "Company's." That apostrophe  
13 should be removed.

14 And then the more substantive change is  
15 on page 18, line 10. That sentence says "shared  
16 savings mechanism." There should be a comma instead  
17 of a period, and then the new text says "unless such  
18 projects go beyond business' usual levels of  
19 efficiency."

20 MS. KOLICH: I'm sorry, I missed that  
21 reference.

22 THE WITNESS: Page 18, line 10.

23 MS. KOLICH: Got it.

24 Q. And then can you repeat the modification,  
25 please?

1           A.    Sure, "unless such projects go beyond  
2 business' usual levels of efficiency."

3                    And that is all.

4           Q.    That's all the changes to your direct  
5 testimony?

6           A.    Yes.

7           Q.    And do you have any changes in your  
8 supplemental testimony?

9           A.    No, I do not.

10          Q.    All right. Now, if I were to ask you the  
11 same questions that appear in your testimony today  
12 under oath, would your answers be the same, noting  
13 the corrections that you just described?

14          A.    Yes, they would be.

15          Q.    And that is for both the direct testimony  
16 and the supplemental testimony?

17          A.    Yes.

18                   MR. ALLWEIN: Thank you.

19                   Your Honor, I now present this witness  
20 for cross-examination.

21                   EXAMINER PRICE: Thank you.

22                   MR. OLIKER: Excuse me, your Honor, has  
23 the supplemental testimony been marked?

24                   EXAMINER PRICE: Yes.

25                   MR. OLIKER: Did I miss that?

1 EXAMINER PRICE: Yes. If I was not  
2 clear, it was NRDC 5.

3 OEC.

4 MS. LOUCAS: No questions, your Honor.

5 EXAMINER PRICE: Consumers' counsel.

6 MS. KERN: No questions, your Honor.

7 EXAMINER PRICE: OEG.

8 MS. KYLER: No questions, your Honor.

9 EXAMINER PRICE: ELPC.

10 MR. VICKERS: No questions, your Honor.

11 EXAMINER PRICE: IEU-Ohio.

12 MR. OLIKER: No questions, your Honor.

13 EnerNOC.

14 MR. POULOS: No questions, your Honor.

15 EXAMINER PRICE: OP&E.

16 MS. MOONEY: No questions, your Honor.

17 EXAMINER PRICE: Company.

18 MS. KOLICH: Yes, thank you, your Honor.

19 Before we start cross-examination, I  
20 would like to make two motions to strike, the first  
21 one regarding Attachment 2 to Mr. Sullivan's  
22 testimony. It is referenced on his testimony at page  
23 10, line 19, and the document marked as Attachment 2  
24 is Industrial Energy Improvement prepared for the  
25 Energy Trust of Oregon by Navigant Consulting.

1           Now, the reference on page 10, line 19, I  
2 am not moving to strike; however, I am moving to  
3 strike the supporting document. In the introduction  
4 which -- it's not numbered, but it's -- well, first  
5 page of text, apparently there is an Energy Trust of  
6 Oregon that is operating an Industrial Energy  
7 Improvement pilot program through Strategic Energy  
8 Group, which sounds like a program administrator.

9           This report apparently takes whatever  
10 Energy Trust of Oregon and/or Strategic Energy Group  
11 told Navigant, who prepared the report, provided the  
12 information to Navigant on which this report is  
13 based.

14           I believe this is -- well, it's being  
15 introduced for the truth of the matter asserted, and  
16 it's based on what the Trust said and/or the  
17 administrator said to Navigant, which is hearsay, and  
18 then Navigant is putting it into a document and  
19 telling people what they think they heard the parties  
20 said, which makes the report hearsay.

21           And NRDC is taking and now offering it  
22 for the truth of the matter asserted. There is no  
23 exception to the hearsay rules for this document, and  
24 for those reasons we move to dismiss -- or to strike.

25           EXAMINER PRICE: Mr. Allwein.

1 MR. ALLWEIN: Thank you, your Honors. I  
2 am not going to argue with the fact that this may be  
3 hearsay, but I would like to point out a few things.

4 First of all, the Ohio Supreme Court has  
5 said in Greater Cleveland Welfare Rights Org, Inc.,  
6 Incorporated, versus the Public Utilities Commission  
7 in 1982 that the Commission is not stringently  
8 confined to the Rules of Evidence and is granted  
9 broad discretion in conduct of the hearings.

10 That is reinforced by a Public Utilities  
11 Commission entry that cites that Ohio Supreme Court  
12 case, and that entry states that when it's deemed  
13 appropriate, it allows the Commission to allow for  
14 hearsay testimony, and that entry also notes that  
15 hearsay rules are designed, in part, to exclude  
16 evidence out of concern regarding the jurors' ability  
17 to assign appropriate weight to evidence.

18 And that entry goes on to say, "These  
19 concerns are inapplicable to Commission proceedings  
20 because the Commission has expertise and can assign  
21 appropriate weight," and that is Case No.  
22 07-1306-EL-CSS. That's on page 9, paragraph 20. And  
23 that is the complaint of Pro Se, Commercial  
24 Properties versus Cleveland Electric Illuminating.

25 And specifically regarding this

1 Attachment 2, it really isn't meant to speak to the  
2 companies' plans as proposed here, as much as it is  
3 to speak to Mr. Sullivan's recommended addition to  
4 the companies' plans. It shows a model that could be  
5 used by the companies or by the Commission in  
6 creating a continuous improvement program, and, in  
7 fact, we've been hearing over the last few days that  
8 the companies, themselves, have been asking deponents  
9 who have recommended additional plans, "Do you have  
10 any methodology or budget for these plans?" And this  
11 was Mr. Sullivan's way of presenting a possible  
12 solution for the addition of this program.

13 The companies have deposed Mr. Sullivan  
14 on his direct testimony for three hours. They had  
15 the document available then that they could have  
16 asked him about. And I would finally point out that  
17 this is a document produced by Navigant Consulting,  
18 and I believe that the FirstEnergy Corporation  
19 sometimes employs Navigant Consulting for various  
20 things so they are aware of this companies'  
21 reputation.

22 EXAMINER PRICE: Mr. Allwein, is this  
23 document offered for the truth of the matter  
24 asserted?

25 MR. ALLWEIN: This document is recom --

1 is --

2 EXAMINER PRICE: You got to answer yes or  
3 no, and then you can explain.

4 MR. ALLWEIN: What about "it depends"?  
5 Is that an option?

6 EXAMINER PRICE: Not going to work.

7 MR. ALLWEIN: Yes.

8 EXAMINER PRICE: Yes or no.

9 MR. ALLWEIN: This document is being  
10 offered for the truth of the matter asserted in terms  
11 of methodology of creating a continuous improvement  
12 program.

13 MS. KOLICH: May I respond?

14 EXAMINER PRICE: You may.

15 MS. KOLICH: Thank you. The reference is  
16 found on page 10, line 19, on Mr. Sullivan's  
17 testimony. And he indicates there nothing about this  
18 model that is included in the Attachment 2 being a  
19 recommendation being made by him, first of all.

20 Second of all, if we refer to page 94 of  
21 the companies' deposition of the original direct  
22 testimony of Mr. Sull -- Mr. Sullivan -- and I have  
23 copies for the Bench. I've already provided one to  
24 counsel.

25 MR. ALLWEIN: Thank you, Ms. Kolich.

1 MS. KOLICH: You're welcome.

2 I, in fact, did ask him about this in  
3 deposition, and it was on page 94, starting on line  
4 14, and there is no reference there to his  
5 recommendation as being set forth in this document.  
6 He makes a generic recommendation in his testimony,  
7 and then goes on to say it's merely being provided  
8 to -- so the purpose of Attachment 2 is "to provide  
9 the companies and other intervenors more context for  
10 my recommendation that the Commission direct the  
11 companies to develop a continuous improvement  
12 program."

13 There's nothing in there about this  
14 supporting his recommendation. Apparently, it's just  
15 to provide everybody with names and how to get ahold  
16 of other people if they want to talk about this topic  
17 in general.

18 MR. ALLWEIN: And I would agree with  
19 that, except that that is part of the answer to the  
20 question, "Are there program models that FirstEnergy  
21 could adopt to do this," speaking of a continuous  
22 improvement program, on page -- or on page 10, line  
23 16.

24 EXAMINER PRICE: Okay. Ms. Kolich, do  
25 you really believe this is offered for the truth?

1 You allege this is offered for the truth of the  
2 matter asserted. He doesn't care, for example -- I'm  
3 not even sure which page this is on because it's not  
4 page numbered, but under Findings, Overview, "What  
5 motivated the firms to participate?"

6 It says that "Five of the eight firms  
7 interviewed indicated prime motivation for  
8 participating in the IUI was reduced utility costs  
9 through energy savings."

10 He doesn't care about that statement. He  
11 doesn't care what their motivation was. He just  
12 offers this as continuous improvement program.

13 MS. KOLICH: If, in fact that is what it  
14 is offered for, the problem is with all of the  
15 attachments we have seen in this proceeding, when  
16 they are attached to testimony, they become part of  
17 the testimony, which becomes part of the record,  
18 which means anything in this document can be cited in  
19 a brief.

20 And without having any idea what they are  
21 going to cite, in an abundance of caution, they  
22 either have to tell us what it's used for and which  
23 portions they are relying on, or it's open season  
24 with no opportunity to refute it in brief because you  
25 didn't know what they were relying on.

1 EXAMINER PRICE: But you have counsel's  
2 representation -- this is different from some of the  
3 other ones that we were talking about. The other  
4 documents had situations where is it was installation  
5 rates found in other programs, and that was clearly  
6 offered for the truth of the matter asserted.

7 That's not counsel's representation as to  
8 what this is being offered for, and if he goes beyond  
9 that representation, then you will be able to point  
10 it out in your brief.

11 MS. KOLICH: Well, if in fact, this is  
12 his recommendation, what is it being offered for if  
13 not for the truth of the matter asserted?

14 EXAMINER PRICE: Again, it's not the  
15 information contained in the document is for the  
16 truth of the matter asserted. It's simply -- my  
17 understanding is he is simply offering this as there  
18 is such a thing as a continuous improvement project  
19 out there, and this is an example of one.

20 MS. KOLICH: If it's limited for that  
21 purpose only, I'll withdraw the motion to strike.

22 EXAMINER PRICE: Mr. Allwein.

23 MS. KOLICH: If it is limited solely as  
24 an example of one program that's out there from one  
25 entity that's offering it.

1 EXAMINER PRICE: Mr. Allwein.

2 MR. ALLWEIN: Your Honors, I would agree  
3 to that in so -- inasmuch as it just -- it answers  
4 this question, "Are there program models FirstEnergy  
5 could adopt?" Here is one. That's it.

6 MS. KOLICH: So is this the one he is  
7 recommending? Because I thought I heard you say  
8 earlier, and this was rather than putting it in  
9 testimony, the model he was recommending the  
10 companies adopt, or are you saying here is an example  
11 of a program somewhere in the country that's being --  
12 doing a continuous improvement project?

13 MR. ALLWEIN: That the companies would  
14 adopt, and we will spend time in our brief describing  
15 what's in that attachment. And the only reason I say  
16 that, and don't agree with you absolutely, is just  
17 because, you know, in the question it says, "Are  
18 there program models," meaning more than one, and in  
19 the answer he also mentions that AEP Ohio has a  
20 continuous improvement program.

21 MS. KOLICH: I'll deal with it on cross  
22 and withdraw the motion.

23 EXAMINER PRICE: Amicably resolved.  
24 Excellent. Next motion.

25 MS. KOLICH: Yes. The companies move to

1 strike Attachment 3 to Mr. Sullivan's testimony,  
2 which appears to be an article written by Richard  
3 Sedano as to "Who Should Deliver Ratepayer-Funded  
4 Energy Efficiency."

5 The company moves to strike this on two  
6 grounds, actually. I bet you all know what one of  
7 them is, but we will deal with the other one first,  
8 which is relevance. Who should deliver  
9 ratepayer-funded energy efficiency is not an issue in  
10 this case. It is not an issue in Ohio. The statute  
11 is clear the obligation lies with the utilities, so I  
12 don't see the relevance of this document as to  
13 addressing who should -- who should provide the  
14 energy efficiency.

15 And also the second reason is hearsay.  
16 Mr. Sedano simply writes an article talking about  
17 some work that was performed on behalf of the  
18 Colorado Public Utilities Commission, which is  
19 updating a report by RAP, and on page 3 in the  
20 purpose of this update, last paragraph, the author  
21 acknowledges the work of Brenda Hausauer, some woman  
22 in the original work done for the 2003 report by  
23 Cheryl Harrington and Cathie Murray.

24 We don't have the 2003 report, which this  
25 purportedly updates, and, therefore, we have no way

1 to put this document in context. Not only that, as I  
2 said, the author is simply taking materials and  
3 writing an article about them, and I'm -- I'm  
4 assuming this is being offered for the truth of the  
5 matter asserted.

6 Again, the reference on page 21, line 10  
7 through 17, quotes one paragraph out of the document,  
8 and that's what I was basing my assumption on.

9 EXAMINER PRICE: Mr. Allwein.

10 MR. ALLWEIN: Thank you, your Honors.  
11 Again, I am not going to dispute the issue that this  
12 may be hearsay. I would repeat briefly my citation  
13 to the Ohio Supreme Court case mentioned earlier and  
14 the Commission entry that I mentioned earlier and  
15 then I would say that --

16 EXAMINER PRICE: Certainly though,  
17 Mr. Allwein, you can distinguish between a pro se  
18 complainant coming in without an attorney trying to  
19 litigate his complaint case and the Natural Resources  
20 Defense Council, who has hired attorneys and expert  
21 witnesses. Surely you don't put yourself in the same  
22 position as a pro se complainant.

23 MR. ALLWEIN: I do not, your Honor, but  
24 the language in the entry is broad, in order to  
25 reiterate the -- the Ohio Supreme Court case, and it

1 doesn't limit it to a pro se complaint. It just  
2 discusses -- it goes beyond that to say, you know,  
3 the Commission is allowed to look at hearsay because  
4 they can assign the appropriate weight to any kind of  
5 document or statement like that.

6 And so we have included this because  
7 Dylan Sullivan is recommending third-party  
8 administration of some of the companies' -- or board  
9 to oversee the companies' administration of certain  
10 programs, and this -- so it is an issue as to who is  
11 going to deliver this in this case with his -- his  
12 recommendation here.

13 And I would note that, you know, going to  
14 the hearsay item, I mean, bringing in Rich Sedano  
15 would be expensive and time-consuming, and short of  
16 that --

17 EXAMINER PRICE: But not addressed in the  
18 Commission entry is the acknowledgment if you don't  
19 bring in Richard Sedano, they can't cross-examine  
20 him.

21 MR. ALLWEIN: Well, the idea here is this  
22 provided an introduction to Mr. Sullivan's  
23 recommendation for which he develops in subsequent  
24 pages. And by -- you know, short of bringing in Rich  
25 Sedano, the report as attached allows the Commission,

1 the companies, and other parties to put this "into  
2 context" in order, you know, for them to decide  
3 whether or not they should assign any/or appropriate  
4 weight to this document. And, again, it was  
5 available for the companies. They could have looked  
6 through this and asked Mr. Sullivan questions about  
7 it during his deposition.

8 EXAMINER PRICE: Questions he wouldn't be  
9 competent to answer because -- legally competent,  
10 Mr. Sullivan, questions he would not be competent to  
11 answer because he did not conduct the study.

12 MR. ALLWEIN: That's correct. But he is  
13 using this as a foundation for his recommendation,  
14 and I would also bring up that, you know, this is  
15 funded by the United States Government through the  
16 ARRA program. There isn't the disclaimer, and,  
17 actually, that money passed through NARUC, the  
18 National Association of Regulatory Utility  
19 Commissioners, of which this Commission is an active  
20 participant.

21 So I think that it should come in. It's  
22 a good foundation for his recommendation, and the  
23 Commission can assign appropriate weight to this  
24 document. The rest of the document is there for the  
25 companies and any of the other parties and the

1 Commission -- I said "the Commission" to put it into  
2 context -- and assign it the appropriate weight, if  
3 any weight is to be assigned at all.

4 EXAMINER PRICE: Thank you. The motion  
5 to strike is going to be granted, although certainly  
6 the Commission is not strictly bound by the  
7 evidentiary rules, and I am more than happy to  
8 construe hearsay exceptions broadly. I don't believe  
9 that we should just be accepting something that you  
10 acknowledge is hearsay and don't have an exception  
11 which, at least colorfully, fits into it.

12 Thank you. The motion to strike will be  
13 granted.

14 MS. KOLICH: Your Honor, given your  
15 ruling, I have a further motion to strike lines 10  
16 through 17 on page 21 of Mr. Sullivan's direct  
17 testimony, which basically quotes a provision out of  
18 the document you just struck.

19 EXAMINER PRICE: We'll go ahead and grant  
20 that motion to strike.

21 MR. OLIKER: Can you give me that page  
22 reference again? I'm sorry.

23 MS. KOLICH: Yes. Page 21, lines 10  
24 through 17, including the footnote, your Honor?

25 EXAMINER PRICE: That's part of line 17.

1 MS. KOLICH: Yep.

2 MR. OLIKER: Thank you.

3 EXAMINER PRICE: Thank you. Please  
4 proceed.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Kolich:

8 Q. Good morning, Mr. Sullivan.

9 A. Good morning.

10 Q. My name is Kathy Kolich, and I am counsel  
11 for the companies. I will be asking you some  
12 questions today. If at any time you don't understand  
13 any question, please feel free to tell me. I'll be  
14 happy to rephrase; otherwise, I am going to assume  
15 you understood the question.

16 Now, pulling up your -- your direct  
17 testimony which is NRDC 4, do you have that in front  
18 of you

19 A. I do.

20 Q. If you go to page 3, line 22 --

21 MR. ALLWEIN: I'm sorry, counsel, I was  
22 shuffling papers. Can you tell me which testimony  
23 you are in again? My apologies.

24 MS. KOLICH: No problem. His direct  
25 testimony.

1 MR. ALLWEIN: All right. Thank you.

2 Q. Page 3, line 22, you make the statement,  
3 "The pursuit of these primary goals is unlikely to  
4 generate a comprehensive energy efficiency and peak  
5 demand reduction program portfolio that will meet or  
6 exceed the energy efficiency benchmarks."

7 Do you see that?

8 A. I do.

9 Q. So at the time you filed your testimony,  
10 you had some concerns about whether the plans that  
11 the companies filed met or exceeded the energy  
12 efficiency benchmarks; is that right?

13 A. Yes. I noted early in my analysis that  
14 incremental savings year over year on an annualized  
15 or pro rata basis actually declined over the plan  
16 period, so I think that was the source of this  
17 concern, and unless the -- looking at the data at  
18 that time, I didn't see the company planning to  
19 exceed the benchmarks.

20 Q. Okay. Now, your direct testimony was  
21 filed on October 5; is that right?

22 A. I believe that's correct.

23 Q. Okay. And at the time of your filing you  
24 did not include any analysis similar to what is  
25 included in your supplemental testimony labeled

1 DSE-3, 4 and 5; is that right?

2 A. Let me check my testimony.

3 Q. Sure.

4 A. I didn't come to -- I think the  
5 conclusion that you are referencing, but if you look  
6 on page 19, line 17, I did note that FirstEnergy --  
7 and this was, I believe, on an annualized basis --  
8 proposing only getting 69 percent of this energy  
9 efficiency benchmark from nonself-direct, non-T&D  
10 programs.

11 Q. Right. But that wasn't my question. My  
12 question was at the time you filed your direct  
13 testimony on October 5, you did not perform an  
14 analysis similar to what's included in your  
15 testimony -- supplemental testimony as DES-3, 4, and  
16 5, did you?

17 A. No.

18 Q. Okay. But as I said, that analysis as to  
19 whether or not the companies would hit their  
20 cumulative or incremental benchmarks during the plan  
21 period was performed and included with your  
22 supplemental testimony; is that correct?

23 A. That's correct.

24 Q. Okay. Now, let's turn to those exhibits  
25 in your supplemental testimony.

1           A.    Okay.

2           Q.    Now, I believe -- do you have it?

3           A.    I do.

4           Q.    Okay.  Now, these analyses took you about  
5 five days, is that right, to perform and run the  
6 numbers down, check the numbers, discuss your results  
7 with various people?

8                   MR. ALLWEIN:  Your Honor, I am going to  
9 object at this time to the process by which he  
10 completed these in terms of the amount of time or  
11 what was going on because I believe they are not  
12 relevant, and they are basically being pulled out of  
13 the totality of the circumstances.  So I would like  
14 counsel to discuss the substance of his testimony and  
15 not items related to the circumstances surrounding  
16 the development of the testimony.

17                   EXAMINER PRICE:  Overruled.

18           A.    Can you repeat the question?

19           Q.    I'll just ask it a different way.  How  
20 long did it take you to prepare these exhibits,  
21 Exhibits DES-3, 4, and 5?

22           A.    So I think you mentioned five days as an  
23 estimate.  I think it was probably more like three  
24 days.

25           Q.    Oh, okay.

1           A.    And I think if you look at my deposition,  
2 I said the same thing a few days ago.

3           Q.    You're right.  And then I believe you  
4 went on to say that you then discussed it with some  
5 people before it was filed, but actual calculations  
6 took you approximately three days; is that right?

7           A.    I think you're right.

8           Q.    Okay.  Now, I believe in your  
9 supplemental testimony, page 4, line 8, you indicated  
10 that the analyses included in your supplemental  
11 testimony, DES-3, 4, and 5, could not have been filed  
12 with your direct testimony for several reasons, one  
13 of which was that you received information critical  
14 to your analysis 10 days before the direct testimony  
15 was due.  Do you see that?

16          A.    I do.

17          Q.    And another reason you indicated was your  
18 review of the plan was truncated.  Do you see that?

19          A.    I do.

20          Q.    And I believe you explained to me in  
21 deposition that reference meant the process -- or the  
22 period of time in which you could file objections to  
23 the plans was reduced from 45 -- from 60 days to 45  
24 days; is that correct?

25          A.    I believe I also mentioned testimony

1 deadlines as well at that time.

2 Q. Okay. And then the other reason you  
3 indicate, line 11, the plan failed to include a  
4 comparison between benchmarks and expected results;  
5 is that right?

6 A. That's right.

7 Q. Okay. Do you know if the Commission  
8 requires the companies in their portfolio plans to  
9 provide such comparison?

10 A. A comparison of what to what?

11 Q. The -- a comparison of the benchmarks and  
12 the expected results.

13 A. I'm not sure. I think it's reasonable,  
14 though.

15 Q. Okay. Do you know -- are you aware that  
16 the Commission issued an entry that set forth the  
17 requirements or a template on what should be included  
18 in the programs and the nature of the materials?

19 A. I recall that there is a template  
20 requiring certain information. It's been awhile  
21 since I have looked at that particular rule, though.

22 Q. Now, another reason you could not have  
23 filed on the 5th -- let me ask that a different way.  
24 Could another reason you could not have filed your  
25 exhibits on the 5th was because you didn't think

1 about performing the analysis until October 15?

2 MR. ALLWEIN: Your Honor, that is not the  
3 totality of Dylan's testimony with respect to this  
4 issue, and I'm going to object again on relevance  
5 regarding when the testimony ended up getting filed.  
6 I think that's already been decided by the Bench that  
7 this testimony is valid and is part of this case.

8 EXAMINER PRICE: Where are you going with  
9 this?

10 MS. KOLICH: I will show you that what  
11 was represented to the Bench at the time you made  
12 your ruling was not totally accurate. Moreover --

13 EXAMINER PRICE: Do you intend to raise  
14 this issue in your brief?

15 MS. KOLICH: I may.

16 EXAMINER PRICE: Okay. Proceed.

17 MR. ALLWEIN: Your Honor, may I ask one  
18 more thing? Isn't the proper process for this an  
19 interlocutory appeal if they disagree with the  
20 Bench's ruling?

21 EXAMINER PRICE: Actually, they can have  
22 their alternative ruling, interlocutory appeal or  
23 raising it before the Commission on brief.

24 MR. ALLWEIN: Thank you for the  
25 clarification, your Honor.

1           A.    Can you restate that last question?

2           Q.    Sure.  Could another reason you couldn't  
3 have filed your testimony on October -- or, I'm  
4 sorry, another reason that you could not have filed  
5 Exhibits DES-3, 4, and 5 on October 5 was because you  
6 had not thought about preparing those analyses until  
7 October 15?

8           A.    It's possible, but I do think that we --  
9 and this is me, I should say me.  I think we  
10 recognized this explanation wasn't part of the plan,  
11 but as you'll -- as I think you'll note from our  
12 objections and from my testimony, we -- we had a lot  
13 of analytical tasks to do between when the plan was  
14 filed and October 5.  And those -- those other tasks  
15 were the ones I was able to do in the time.

16          Q.    It was probably made a little difficult  
17 for you to get those tasks out because you were on  
18 vacation the week testimony was due.

19               MR. ALLWEIN:  Objection, harassment.

20               EXAMINER PRICE:  Sustained.

21               MR. ALLWEIN:  That's ridiculous.

22               EXAMINER PRICE:  I sustained your  
23 objection, Mr. Allwein.

24               MR. ALLWEIN:  I didn't hear you, sorry.

25               EXAMINER PRICE:  No further

1 cross-talking.

2 MS. KOLICH: I'm sorry.

3 EXAMINER PRICE: Counsel tables, please.

4 MS. KOLICH: I'm sorry?

5 EXAMINER PRICE: Nothing.

6 MS. KOLICH: So I'm not allowed to cross  
7 on the fact he was on vacation the week testimony was  
8 due?

9 EXAMINER PRICE: That's not relevant.

10 MS. KOLICH: Okay.

11 Q. (By Ms. Kolich) Did your counsel know you  
12 were on vacation the week testimony was due?

13 A. Yeah.

14 MR. ALLWEIN: Your Honor, I am going to  
15 ask for that last question and answer to be stricken.  
16 You said no more questions about vacation, and the  
17 question clearly included an item about Dylan's  
18 vacation and then an answer regarding Dylan's  
19 vacation.

20 EXAMINER PRICE: The question and the  
21 answer will both be stricken. Thank you.

22 Q. Okay. Let me see if I have got  
23 everything. Let me just make sure I understand this.  
24 Excluding discussions about vacation, your direct  
25 testimony was due the week you -- your direct

1 testimony was on October 5, right?

2 A. Yes.

3 Q. You filed your supplemental testimony the  
4 first day of hearings, which was the 22nd; is that  
5 right?

6 A. I believe we sent it to parties on  
7 Saturday, I believe.

8 Q. Right. But it was filed on the 22nd.

9 A. Okay.

10 Q. And the primary reason you listed in your  
11 testimony, the first reason on page 4, line 9, was  
12 you could not include your analyses in your  
13 supplemental testimony with your direct testimony  
14 because information you received 10 days before the  
15 filing deadline that was critical to your analysis --  
16 strike that.

17 So one of the reasons you stated -- the  
18 first reason you stated that you couldn't do this  
19 analysis in a timely manner was because the  
20 information you received 10 days before the filing  
21 deadline which was critical to your analysis that you  
22 hadn't thought about doing until 10 days after the  
23 deadline; is that right?

24 MR. ALLWEIN: Objection. I think that  
25 mischaracterizes the witness' testimony regarding the

1 time before the deadline.

2 EXAMINER PRICE: Overruled.

3 There's a pending question. You need to  
4 answer it.

5 THE WITNESS: I am going to ask her to  
6 clarify.

7 Kathy, I think your -- your question  
8 includes a timeframe and -- or sort of like a  
9 timeline, and I just got confused about the question.  
10 So can you -- can you state it again or --

11 MS. KOLICH: Let's have it reread.

12 THE WITNESS: Okay.

13 EXAMINER PRICE: Could you read the  
14 question, please.

15 (Record read.)

16 A. Kathy -- sorry, Ms. Kolich, I think your  
17 question mischaracterizes what I said about when it  
18 came in -- when we recognized this as a problem. So  
19 I stated that we recognized that this analysis wasn't  
20 part of the plan.

21 Q. Okay. All of these questions will  
22 pertain to your direct testimony unless otherwise  
23 stated at this point.

24 A. Okay. Thank you.

25 EXAMINER PRICE: Now, I have to ask, when

1 did you realize this was an issue? Give me a date  
2 because the 10 days before timelines are killing me.  
3 On or about what date did you realize this was an  
4 issue?

5 THE WITNESS: I said this in my  
6 deposition, and everything runs together, but I -- I  
7 commenced the analysis Monday or Wednesday of last  
8 week, and I can't recall which. And I think I  
9 realized it might be an issue perhaps the week before  
10 that.

11 EXAMINER PRICE: Okay. Thank you.

12 Q. (By Ms. Kolich) Okay. Now, you've got  
13 your direct testimony in front of you?

14 A. I do.

15 Q. Okay. When you prepared your testimony,  
16 you received various criteria; is that right?

17 A. I don't understand the question.

18 Q. The materials you reviewed to -- in order  
19 to prepare your testimony, you read the statutes in  
20 Ohio dealing with energy efficiency?

21 A. Yes.

22 Q. And Commission rules regarding plan  
23 filings and other requirements?

24 A. Yeah. I read Ohio Administrative Code  
25 4901, Chapter 39.

1 Q. Okay. Commission orders and entries?

2 A. Some.

3 Q. Obviously, you read the companies' plans.

4 A. I did.

5 Q. Okay. Companies' responses to NRDC --  
6 did you say discovery requests?

7 A. Yes.

8 Q. Companies' responses to other parties'  
9 discovery requests?

10 A. Generally, yes, but not with the same  
11 level of attention.

12 Q. How about materials in the Commission's  
13 docket involving the draft Technical Resource Manual,  
14 the TRM?

15 A. No.

16 Q. How about the docket involving the  
17 creation of a template for filing the EE/PDR plans?

18 A. No.

19 Q. Did you review any other utilities'  
20 energy efficiency peak/demands reduction plans?

21 A. I reviewed AEP's 2012 through 2014 plan.

22 Q. Okay. Now, in addition to reviewing  
23 materials, you also spoke to several people,  
24 including Dan Sawmiller?

25 A. Yes.

1 Q. And Joel Swisher?

2 A. Yes.

3 Q. Glenn Reed? And Wilson Gonzalez?

4 A. Yes.

5 Q. Okay page 4, line 3, of your testimony,  
6 you refer to "actions that would have happened  
7 without their involvement," their involvement being  
8 the companies'. Do you see that?

9 A. I do.

10 Q. Now, the actions you are referring to  
11 include the mercantile self-direct program; is that  
12 right?

13 A. Yes. That's mercantile self-direct  
14 customer actions. I think that also includes,  
15 perhaps, the results of the online audit program,  
16 which as I reference later on in the testimony is --  
17 is, I believe, evaluated using an invalid control  
18 group. So I think that's what I mean in terms of  
19 "happened without their involvement."

20 Q. How about the T&D projects?

21 A. The T&D projects I would lump, actually,  
22 more into the "don't actually generate any new  
23 savings."

24 Q. Okay. Page 4, line 7.

25 A. Yes.

1 Q. "The Companies' short-term focus fails to  
2 position them to meet statutory requirements in the  
3 years outside the Plan." Do you see that?

4 A. I do.

5 Q. Now, just to clarify the record, you are  
6 referring to the years 2016 and beyond?

7 A. Yes.

8 Q. Okay. Through what period?

9 A. I'm -- that period is 2016 through 2025.

10 Q. Okay. Did you perform any quantitative  
11 analysis that would indicate by how much the  
12 companies would fall short in those years?

13 A. So I -- as I noted earlier, when you look  
14 at pro rata or annualized savings, the expected  
15 savings of this plan actually decline in 2025  
16 compared to 2014, and so as I said in my deposition,  
17 I believe that puts the company in a bad position to  
18 meet the standard in 2016.

19 But in terms of, you know, what the  
20 cumulative shortfall is going to be over 2025, I  
21 didn't do that, and because I -- you know, I don't  
22 have confidence in the companies' plans 2016 out. I  
23 can't answer that.

24 Q. Plans being general plans, not written  
25 plans; is that right?

1           A.    I meant because there's no program  
2 portfolio plan through the years 2025.

3           Q.    Okay.

4           EXAMINER PRICE:   But you don't know what  
5 programs they'll offer commencing January 1, 2016, do  
6 you?

7           THE WITNESS:   So I don't know what they  
8 are going to offer, but it -- these programs,  
9 especially the programs that we're talking about,  
10 about the company adding data centers, continuous  
11 energy improvement, retro-commissioning, there might  
12 be one other, it's hard to start from zero and get  
13 savings.

14           In continuous energy improvement, the  
15 company is actually hiring a third party to help  
16 build long time -- long-term relationships with the  
17 companies' largest customers and implement energy  
18 management plans, which generate savings over time.

19           Similarly it's -- unless the market for  
20 retro-commissioning services is built and nurtured by  
21 the companies, those savings aren't just going to  
22 appear.   So the --

23           EXAMINER PRICE:   They are just not laying  
24 enough of a foundation for these programs to work  
25 successfully to commence in 2016 --

1 THE WITNESS: Exactly.

2 EXAMINER PRICE: -- is your testimony.

3 THE WITNESS: Yes.

4 Q. (By Ms. Kolich) Following up on that  
5 question, you're not exactly sure when the companies,  
6 in your opinion, won't be able to hit the targets,  
7 are you?

8 A. I believe for the reasons I was talking  
9 about with Attorney Examiner Price earlier, I think  
10 2016 is going to present difficulty.

11 Q. Okay. Do you have a copy of your  
12 deposition, the deposition taken for your direct  
13 testimony?

14 A. I do.

15 Q. Okay. Would you pull up page 25 of that  
16 deposition transcript.

17 A. Sure, sure.

18 MS. KOLICH: Does the Bench have a copy  
19 of that one?

20 EXAMINER CHILES: We do.

21 EXAMINER PRICE: We do? That wasn't a  
22 statement. That was a question. I'm trying to  
23 find -- what date was the one taken that you are  
24 talking about?

25 MR. LANG: October 21.

1 MS. KOLICH: October 12.

2 EXAMINER PRICE: We do have the October  
3 12.

4 MR. ALLWEIN: Ms. Kolich, could you  
5 repeat the page number again.

6 MS. KOLICH: Sure, page 25.

7 Q. (By Ms. Kolich) Are you there?

8 A. I am.

9 Q. Okay. Line 22, actually the question  
10 starts on line 19, "Back to falling short, do you  
11 know when the company, based on your statement here,  
12 won't be able to hit their targets?"

13 The answer, "No." Is that right??

14 A. That's what I said then.

15 Q. Page 5, line 16, of your testimony, you  
16 state that "The Commission should require the  
17 Companies to" --

18 A. Just a moment, Kathy.

19 EXAMINER PRICE: Ms. Kolich.

20 THE WITNESS: Sorry.

21 MS. KOLICH: We go back a long way.

22 A. I wish I had a Post-it note to write that  
23 down right here. Can you repeat the question,  
24 please, or the line reference?

25 Q. Sure. I am referring to page 5, line 16.

1           A.    Yes.

2           Q.    And you state that "The Commission should  
3 also require the Companies to expand their" goals --  
4 "goal of 'compliance with statutory targets' to  
5 include years outside the plan period."

6                    Do you see that?

7           A.    I do.

8           Q.    So you're not suggesting that the law  
9 requires the companies to exceed their statutory  
10 targets in any given year during the plan period, are  
11 you?

12          A.    No.

13          Q.    Now, page 4, line 18, of your testimony,  
14 you state that -- actually, on 17, the goal to  
15 maximize the ratio of kilowatt-hours spent harms  
16 customers in the long run, and is, in my opinion,  
17 contrary to Ohio law -- rules. Do you see that?

18          A.    Yes.

19          Q.    What is contrary to Ohio rules, the fact  
20 that they're maximizing the ratio of kilowatt-hours  
21 saved per dollars spent?

22          A.    The -- what I perceived to be the almost  
23 singular focus on that Element.

24                   MS. KOLICH:  , I'm sorry, could I have  
25 that answer reread?

1 EXAMINER PRICE: Please.

2 MS. KOLICH: My apologies.

3 (Record read.)

4 MS. KOLICH: Could I have the question  
5 reread. I apologize.

6 (Record read.)

7 MS. KOLICH: And the answer was?

8 (Record read.)

9 Q. Is that the only reason you believe  
10 the -- well, strike that.

11 Is it your testimony that the plans, as  
12 filed, are contrary to Ohio rules?

13 A. I think they are, yes.

14 Q. And would that be because the companies  
15 didn't, in your opinion, include -- consider all of  
16 the factors set forth in those rules when designing  
17 their plans?

18 A. I -- as I -- I believe I state in my  
19 testimony I believe the companies did not consider  
20 the full list of program planning criteria as it was  
21 developing the plans and certainly did not articulate  
22 those considerations in the program plans themselves.

23 Also, and I forget which section of the  
24 rules, the companies are required to explain how each  
25 program was selected according to those program

1 planning criteria, and the companies didn't do that.

2 Q. But you don't know for a fact whether the  
3 companies considered all members -- the benefits to  
4 all members of a customer class on the programs  
5 included in the plans, do you?

6 A. I know that that explanation isn't in the  
7 plan, the explanation of why a program was selected  
8 considering that factor wasn't in the plan.

9 Q. Were you present in any of the planning  
10 meetings with the companies when they were designing  
11 the plans?

12 A. No; but I did read the plan.

13 Q. So it's your testimony that if the  
14 information on -- that the companies considered when  
15 out picking the programs to be included in the plans,  
16 if that discussion is not in the plans, it was not  
17 considered?

18 A. It may have been, but there's no way for  
19 intervenors and the Commission to know that.

20 Q. Exactly. So you have no idea what the  
21 companies considered when deciding which programs to  
22 include in the plan, do you?

23 A. There are some parts of the program  
24 planning criteria that we know the company didn't  
25 consider because your own witnesses have said you

1 didn't consider.

2 Q. Such as?

3 A. Such as joint implementation with gas  
4 utilities of home performance programs. Mr. Dargie  
5 stated in his testimony that that was not considered.

6 Q. Any others?

7 A. I would have to look at the list of  
8 program planning criteria. If you had it, I could --  
9 I could take a look at that really quickly.

10 Q. I do.

11 A. Okay.

12 MS. KOLICH: May I approach?

13 EXAMINER PRICE: You may.

14 MS. KOLICH: For the record I just handed  
15 the witness a copy of Rule 4901:1-39-03, Program  
16 Planning Requirements.

17 A. So the planning criteria that I mentioned  
18 is the only one that I can recall definitively the  
19 company did not consider.

20 Q. Okay. And which one was that again?

21 A. That would be potential to integrate  
22 proposed programs with similar programs offered by  
23 other utilities if such integration produces the most  
24 cost effective result and is in the public interest.

25 Q. Thank you. Page 6, line 5 of your

1 testimony.

2 A. Yes.

3 Q. You refer to the term force majeure. Do  
4 you see that?

5 A. Yes.

6 Q. Now, you don't know about the  
7 Commission's rules governing force majeure, do you?

8 A. No. I recall the application of those  
9 rules in some earlier cases that I'm familiar with,  
10 but I don't know the exact rules.

11 Q. Page 6, line 9.

12 EXAMINER PRICE: Let's go off the record.

13 (Off the record.)

14 EXAMINER PRICE: Back on the record.

15 Q. I believe my reference was to page 6,  
16 line 9, of your testimony.

17 A. Okay.

18 Q. You state, "We have not been as  
19 consistently and productively engaged in the  
20 Collaborative Group." Do you see that?

21 A. Yes, I do.

22 Q. I want to clarify for the record, it is  
23 referring to NRDC?

24 A. Yes, it is. You can see the question in  
25 my references in line 8 to NRDC.

1 Q. Oh, I'm sorry. And just to clarify,  
2 again, the collaborative group you are referring to,  
3 that would be the group of interested stakeholders  
4 that meet with the companies to discuss energy  
5 efficiency issues, commonly referred to as the  
6 collaborative; is that right?

7 A. Yes.

8 Q. Now, on page 8, line 1.

9 A. Yes.

10 Q. You state, "FirstEnergy requested  
11 feedback on a list of programs and measures (on  
12 February 24, 2012)."

13 A. Yes.

14 Q. "And on a 42-slide presentation (on July  
15 10, 2012)." Do you see that?

16 A. Yes.

17 Q. Now, the list of programs in the 42-slide  
18 presentation wasn't the only materials that the  
19 collaborative received from the companies regarding  
20 these -- the plans that were filed, was it?

21 A. So what I'm referring to here is our need  
22 to comment on a draft plan. And so the companies did  
23 provide, I think you would call them, the modeling  
24 results of the portfolio and some -- one or two line  
25 program descriptions but so, yes, we received more

1 information than the two things I mentioned here.

2 Q. In fact, the companies provided you with  
3 a sector level kilowatt-hour savings by year  
4 analysis, didn't they?

5 A. I don't recall actually receiving -- I  
6 don't recall -- can you say that again? What was it  
7 called?

8 Q. Yes. It was called the sector level  
9 kilowatt-hour and megawatt savings by year analysis.

10 A. We could have received that, yeah.

11 Q. Okay. And the companies also provided  
12 sector level program budget by year analysis, didn't  
13 they?

14 A. Yes.

15 Q. And they also provided program level  
16 cumulative savings projections, didn't they?

17 A. Yes.

18 Q. And they also provided portfolio specific  
19 assignments of energy efficiency costs by program and  
20 sector, didn't they?

21 A. Can you repeat that one?

22 Q. Yeah. The portfolio of specific  
23 assignment of costs by program and sector.

24 A. Yes.

25 Q. And they also provided allocation of the

1 costs to customer sectors, didn't they?

2 A. Yes.

3 Q. And they also provided annual lifetime  
4 costs, lifetime benefits, TRC results, lifetime  
5 kilowatt-hour savings, megawatt savings by sector and  
6 program, didn't they?

7 A. I recall that there -- the TRC results  
8 were only for large programs, and you stated you  
9 weren't able to break out cost effectiveness at the  
10 subprogram level so, for example, I think we  
11 mentioned we weren't able to determine the cost  
12 effectiveness of the kits because you -- you weren't  
13 able to break out the cost effectiveness of the very  
14 large subprogram. So we got the cost effectiveness  
15 results for the larger home performance program but  
16 weren't able to understand the cost effectiveness of  
17 the major measures themselves and stated that.

18 Q. The companies also provided projected  
19 units by measure by year, didn't they?

20 A. They did.

21 Q. And they also provided program  
22 descriptions and incentive strategies, didn't they?

23 A. Can you say that again?

24 Q. Yeah. Program descriptions and incentive  
25 strategies.

1           A.    So the program descriptions were very  
2 short, one or two sentences. And incentive strategy  
3 was usually merely a range of incentives, not exactly  
4 what we would call a strategy or plan for action, so  
5 we did receive a document titled that.

6           Q.    Did you follow up with the companies and  
7 ask for any further details regarding or surrounding  
8 the program descriptions or the incentive strategies?

9           A.    I can't recall right now whether we did  
10 or didn't based on that information.

11          Q.    Okay. And then the companies also  
12 provided some measure-specific information to the  
13 collaborative, such as annual kilowatt-hour savings  
14 projections, didn't they?

15          A.    Yes, I believe they did.

16          Q.    On a measure-specific basis the  
17 kilowatt-hour savings.

18          A.    I thought that's what you just said.

19          Q.    That's savings projections versus --

20                MS. KOLICH: One moment, please.

21                Could I have that last question and  
22 response reread, please.

23                (Record read.)

24                MS. KOLICH: And then there was a --  
25 there was another question by me, but it seemed to be

1 duplicative, if I recall. Could I have that read.

2 (Record read.)

3 MS. KOLICH: Yes. Strike that.

4 Q. (By Ms. Kolich) They also provided on a  
5 measure-specific basis the kilowatt-hour -- the  
6 kilowatt savings projections, didn't they?

7 A. Can you -- can you tell me when they  
8 provided this? Do you recall, just so I can refresh  
9 my memory?

10 EXAMINER PRICE: I don't think you are  
11 supposed to be asking them questions, but perhaps --

12 THE WITNESS: But they appear to be  
13 answering them.

14 EXAMINER PRICE: That's a great answer in  
15 the form of a question.

16 Q. I don't know right offhand so I can't  
17 answer your question right now, but I'm asking, in  
18 general, did you receive information from the  
19 companies prior to the plan filing regarding measure  
20 lives on a measure-specific basis?

21 A. I believe we did, but I think this was  
22 distributed to you in mid July, which the companies  
23 filed a plan I think July 31, so I don't know what  
24 sort of feedback we were expected to be able to  
25 provide in that time.

1 Q. I understand. I am just asking which  
2 information you got.

3 A. Okay.

4 Q. And the companies also provided the basis  
5 on which they were making their savings assumptions  
6 on each measure, didn't they?

7 A. Yes.

8 Q. Okay. Are you sure that that date you  
9 provided in July was the date on which you received  
10 that information?

11 A. I think I said mid July.

12 Q. Okay. Are you sure you got it in July  
13 and not earlier?

14 A. I may have.

15 Q. Okay. And the companies also provided  
16 incremental cost measures, didn't they, on a  
17 measure-specific basis?

18 A. Yes; but some of those incremental costs  
19 were three years old.

20 Q. And the companies also provided model  
21 rebates on a measure-specific basis, didn't they?

22 A. Yes, they did.

23 Q. Page 8, line 13, you referred to the  
24 "Existing Plan, where most programs have been poorly  
25 implemented." Do you see that?

1           A.    I do.

2           Q.    And when you talk about "most programs,"  
3 you are referring to three programs, aren't you?

4           A.    You'll have to refresh me on my  
5 deposition answer.

6           Q.    Sure.  In your deposition you referred  
7 to -- it would be on page 46, line 23.

8           A.    Yes, so I'm mainly referring to the  
9 energy efficient products program, the  
10 commercial/industrial incentive program, small and  
11 large, so those could be considered two programs.  
12 And also I -- as I mention, I don't think that the  
13 legacy CFL program was poorly implemented, but it's  
14 problems were the result of the companies' -- the  
15 problems with the design of the original CFL program.

16          Q.    Now, on page 8, line 24, you also thought  
17 about several other recommendations, first of all  
18 which is, "The development of avoided costs using  
19 common analytic practices."  Do you see that?

20          A.    Yes.

21          Q.    That statement you are making there,  
22 you're simply relying on Mr. Swisher's testimony and  
23 his positions taken?

24          A.    So here I'm suggesting what the  
25 collaborative could do in order to learn to work

1 better together, and so I'm suggesting some tasks  
2 here based on, yes, in this case, Mr. Swisher's  
3 testimony.

4 Q. Okay. Now, on page 9, line 10, you make  
5 some suggested improvements to the collaborative  
6 process. Do you see that?

7 A. Yes.

8 Q. Now, one of them is that "the Companies  
9 should send out meeting materials one week in advance  
10 of meetings." Do you see that specific one?

11 A. I do, yes.

12 Q. Were you present when Mr. Dargie  
13 committed to the collaborative that the companies  
14 would use all reasonable efforts to accommodate that  
15 request?

16 A. So he did make a commitment, but I think  
17 it makes sense to formalize that.

18 Q. Okay. And then you go on, on line 11,  
19 that the process should "allow Collaborative members  
20 to add agenda items." Do you see that?

21 A. Yes.

22 Q. Now, there has never been a time you can  
23 recall the companies have refused to discuss an issue  
24 brought up by a collaborative member, is there, if  
25 the information was available?

1           A.    No, I can't. I think this is another  
2 thing that I just wanted to formalize.

3           Q.    Okay. And you also suggest that the  
4 collaborative or the companies send out meeting  
5 notes. I assume you mean minutes from the meetings?

6           A.    That's right.

7           Q.    And the companies do this already, don't  
8 they?

9           A.    They do, yes.

10          Q.    Okay. Page 9, line 19 -- I'm sorry, it's  
11 actually line 17. I can't read my own writing. You  
12 refer to reducing wait times. Do you see that?

13          A.    Yes.

14          Q.    Now, you don't know what the wait time is  
15 for application confirmation, do you?

16          A.    I know that it has been very problematic  
17 in the past, if you read the ADM Associates  
18 evaluation of the 2011 commercial and industrial  
19 incentive programs, but I don't know what the current  
20 average or maximum wait time is.

21          Q.    And -- oh, you did say current, okay.  
22 And you don't know the current rebate wait time, do  
23 you, rebate payment wait time?

24          A.    No.

25          Q.    Do you know what the terms and conditions

1 of the programs provide as a rebate payment period?

2 A. I believe it's 90 days after application  
3 approval. I think that's right.

4 Q. I am going to skip that section, CEIP,  
5 that Continuous Energy Improvement Period. We will  
6 come to that.

7 A. No objection.

8 Q. We may come back to that. Page 19, line  
9 7.

10 EXAMINER PRICE: Which page?

11 MS. KOLICH: We're zipping right along,  
12 page 19.

13 EXAMINER PRICE: Okay. Thank you.

14 A. Line 7, you said?

15 Q. Page 19, line 7, your table.

16 A. Yes.

17 Q. Now, in this table you -- you've adopted  
18 the percentages in line 7, the incentive percentages  
19 of OCC with one additional tier; is that right?

20 A. That's right.

21 Q. Now, do you have a ballpark estimate of  
22 what the companies could earn if they hit the  
23 130 percent, if you know.

24 A. So I know if you look on page 20, line 2  
25 that the companies suite of customer-directed

1 proactive energy efficiency programs, and what I am  
2 doing there is basically excluding mercantile T&D,  
3 will generate \$153 million of discounted net  
4 benefits. And assuming that that is at 130 percent  
5 of the adjusted benchmarks, which is a calculation I  
6 can't do right now --

7 Q. Right.

8 A. -- that would be around 15.3 million, 10  
9 percent of that, 10 percent of the 153 million.

10 Q. But you suggest a cap at 10 million;  
11 isn't that right?

12 A. 10 million per year.

13 Q. Well, the calculation you just made,  
14 was -- that was over three years?

15 A. That's over three years.

16 Q. Ah, okay. And I referred to a cap.  
17 Looking at page 19, line 11 of your testimony, you  
18 suggest a cap of \$10 million per year split among the  
19 three companies; is that right?

20 A. Yes.

21 Q. And you more or less correspond that to  
22 AEP's cap of \$20 million; is that right?

23 A. Yes, that's right.

24 Q. Now, the \$20 million cap of AEP is shared  
25 between Ohio Power and Columbus Southern; is that

1 right?

2 A. We talked about this in our deposition,  
3 but they might be operating as one company now for  
4 that purpose. I'm not sure if they are still  
5 splitting it between rate zones or operating  
6 companies.

7 Q. So --

8 A. So it's just better to look at that as  
9 just what the company gets.

10 Q. Got it, so one company. Let's assume  
11 you're right, and they are one company. They could  
12 cap out at 20, and let's assume that the companies  
13 split the 10 million equally. These companies  
14 individually split out at 3 million per year, 3.3  
15 million per year; is that right?

16 A. I suggest that it be split out based on  
17 nonmercantile software customer load shared  
18 between -- to do a proportional based on that.

19 Q. Okay. But if you just decided to split  
20 it, they would cap out at 3 million plus?

21 A. Uh-huh.

22 Q. Okay.

23 EXAMINER PRICE: What percentage of the  
24 companies' total operating revenues would \$3 million  
25 be?

1 THE WITNESS: I don't know.

2 EXAMINER PRICE: How can you evaluate  
3 whether this is an appropriate incentive level if you  
4 don't know what impact it's going to have on the  
5 company's financials? Could it be so small it's  
6 irrelevant? Could it be so large that it's, you  
7 know, far beyond what their authorized return would  
8 be?

9 THE WITNESS: So, of course, the company  
10 is going to be held, I assume, to the SEET threshold,  
11 right, at the end of the day, the distribution  
12 utility?

13 EXAMINER PRICE: Yeah.

14 THE WITNESS: And I -- you know, in  
15 California, for example, they -- they split a lot of  
16 hairs and really try to figure out what exactly, you  
17 know, what this is going to be as a percentage of  
18 earnings. It's -- it's a difficult effort.

19 I think what you're after in this is a  
20 number that gets the companies' interest, that gets  
21 management attention, that makes -- that allows the  
22 people who manage energy efficiency to come to the  
23 CEO and say, "Look what we got."

24 EXAMINER PRICE: That would something  
25 that would materially move the return on equity,

1 right?

2 THE WITNESS: I am not sure if it  
3 necessarily has to get to that level. I also note  
4 that this is a company that has unrestricted lost  
5 distribution revenues, which is, you know, more, I  
6 think -- it's a more lucrative way to deal with the  
7 problem of possible lost revenues than Duke or AEP  
8 have, for example.

9 So the companies already have good  
10 downside production and, you know, I don't -- I don't  
11 work at the companies so I don't know exactly what's  
12 going to, you know, help make Tony Alexander look at  
13 this, but part of the -- part of the reason I went  
14 for the 10 million also is just that the company is  
15 proposing a pretty small suite of programs relative  
16 to their benchmarks as compared to AEP so.

17 EXAMINER PRICE: Okay. Thank you.

18 THE WITNESS: Uh-huh.

19 Q. (By Ms. Kolich) Page 23, line 23 --  
20 actually, 22; page 23, line 22, you make a  
21 recommendation that the "Commission devolve the  
22 administration of the Companies' portfolio  
23 residential programs to an independent Board." Do  
24 you see that?

25 A. Yes.

1           Q.    Now, the board that you are recommending  
2 would only manage the residential programs, right?

3           A.    Yes.

4           Q.    And the companies would continue to  
5 manage the C&I programs?

6           A.    Yes.

7           Q.    Now, on page 24, line 16, you anticipate  
8 the hiring of a program im -- or an implementation  
9 contractor; is that right?

10          A.    That's correct.

11          Q.    That would be like a Honeywell or someone  
12 like that who -- who do you have? Can you give me an  
13 example of somebody who's an implementation  
14 contractor?

15          A.    Sure. So different -- different entities  
16 have -- you could do two things. You could hire an  
17 implementation vendor for maybe one program, or you  
18 could hire a prime vendor to manage all of the  
19 residential portfolio and presume that they would  
20 have subcontractors that would help them.

21                An example of a prime vendor would be the  
22 contract that DEIC received to implement, I guess,  
23 both AMP-Ohio programs here, but also the contract  
24 they recently got to manage the efficiency utility in  
25 Washington, D.C. Another example of prime vendor is

1 Ameren, Illinois' relationship with Conservation  
2 Services Group.

3 Q. And then on page 24, line 21, you would  
4 seek -- "The Board would seek public input as it  
5 developed the RFP."

6 A. Uh-huh.

7 Q. From residential customers, is that what  
8 you're thinking?

9 A. Yes.

10 Q. Okay. Now, on page 25, line 5, you  
11 recommend, "The Companies be relieved of their  
12 compliance obligation for the savings planned under  
13 the residential portfolio." Do you see that?

14 A. Yes.

15 Q. Do you know if your suggestion is lawful  
16 under the laws of Ohio? Have you talked to an  
17 attorney about this concept and whether or not it  
18 would be lawful in the state of Ohio?

19 MR. ALLWEIN: I just want to clarify,  
20 Mr. Sullivan is not an attorney, which I know he  
21 stated in his testimony.

22 MS. KOLICH: He is not.

23 A. No.

24 Q. Okay.

25 EXAMINER PRICE: Before you leave the

1 board, I have got many questions about the board, so  
2 this is a convenient time to ask them.

3 Why don't you give the staff a vote? You  
4 don't like Mr. Scheck?

5 MR. ALLWEIN: Your Honor, that's two  
6 questions. Which one do you want answered?

7 EXAMINER PRICE: My question was merely  
8 rhetorical.

9 First question, why do you exclude the  
10 staff from a vote? That's obviously a specific  
11 decision you made.

12 THE WITNESS: Because I feel like the  
13 Commission has to be able to judge the -- the success  
14 of the portfolio.

15 EXAMINER PRICE: Isn't the staff a party  
16 to -- or quasi-party, so to speak, to Commission  
17 proceedings all the time? Don't we judge the staff's  
18 reports, sub-staff reports, in rate cases, staff  
19 recommendations in cases like this all the time?

20 THE WITNESS: You do.

21 EXAMINER PRICE: This wouldn't be any  
22 different, would it?

23 THE WITNESS: But if the staff had a vote  
24 on program changes and if -- the people who are on  
25 the board are going to be making -- you know, of

1 course, the prime vendor is going to be the one out  
2 there implementing programs, but the staff is -- the  
3 voting members are going to have a lot of strategic  
4 direction in how -- in how energy efficiency programs  
5 for residential customers are implemented.

6 So I think it would be a different level  
7 of involvement than staff currently has, and I  
8 wouldn't want that to present conflict, you know, as  
9 the Commission judges the results of the programs  
10 that the board administers. This is also -- I think  
11 they also address this question in Indiana, as  
12 Indiana implemented it, a similar board, and for that  
13 reason staff was not included.

14 EXAMINER PRICE: Who would appoint -- who  
15 would appoint the representatives of the  
16 environmental advocates or who would select which  
17 environmental advocate gets a representative?

18 THE WITNESS: So I think the --

19 EXAMINER PRICE: It's going to come down  
20 to a person. Who would pick that person, as well as  
21 the low-income's advocate, and the HVAC  
22 representative, the municipal governments' advocate?  
23 Who would pick those people?

24 THE WITNESS: So in terms of the -- I  
25 imagine that it would be based -- I don't imagine I

1 am proposing something here. So in terms of the  
2 environmental advocates, it would be the  
3 environmental advocates from which someone would be  
4 chosen, would be the people who intervene in this  
5 case, and I think it's --

6 EXAMINER PRICE: Who would pick that  
7 person? Who would appoint that person?

8 THE WITNESS: I imagine -- my proposal is  
9 that the environmental advocates would pick one  
10 person.

11 EXAMINER PRICE: Okay. So OPAE would  
12 pick one person?

13 THE WITNESS: Yes.

14 EXAMINER PRICE: Okay. HVAC contractors  
15 who would pick that person?

16 THE WITNESS: I -- you would go to the  
17 Ohio Association of HVAC Contractors. I forgot what  
18 the association name is.

19 EXAMINER PRICE: Municipal governments?

20 THE WITNESS: Similarly, the -- I don't  
21 have an answer for that, for local governments.

22 EXAMINER PRICE: How much do you project  
23 the annual budget for this board would direct would  
24 be?

25 THE WITNESS: So I'm proposing that the

1 board direct programs under the same budget that the  
2 company is proposing.

3 EXAMINER PRICE: And for residential  
4 programs, how much is that?

5 THE WITNESS: 85 million.

6 EXAMINER PRICE: 85 million a year?

7 THE WITNESS: I forget.

8 EXAMINER PRICE: Okay. Would the members  
9 of this board be bound by Ohio Ethics Law?

10 THE WITNESS: I haven't thought about  
11 that.

12 EXAMINER PRICE: Would the members of  
13 this board be required to meet in public, according  
14 to the Ohio Sunshine Act?

15 THE WITNESS: Yes.

16 EXAMINER PRICE: How do you know if you  
17 are not an attorney? That's what you envisioned?

18 THE WITNESS: Yes.

19 EXAMINER PRICE: That's what you  
20 envisioned. Can anybody relieve the members of this  
21 board if they are doing a bad job of their duties?

22 THE WITNESS: The Commission could.

23 EXAMINER PRICE: Engaged in malfeasance,  
24 misfeasance.

25 THE WITNESS: The Commission.

1 EXAMINER PRICE: The Commission  
2 ultimately appoints the members of the board?

3 THE WITNESS: Yes.

4 EXAMINER PRICE: Would the funds that are  
5 expended be subject to audit by the auditor of state?

6 THE WITNESS: Yes.

7 EXAMINER PRICE: I think that covers my  
8 questions about the board. Thank you.

9 THE WITNESS: Thank you.

10 MS. KOLICH: Might strike a few questions  
11 here.

12 EXAMINER PRICE: I am sure you would have  
13 asked them better.

14 MS. KOLICH: I'm not sure.

15 Q. (By Ms. Kolich) Now, today the companies  
16 have three different class of customers from which to  
17 obtain the energy savings required by statute, is  
18 that right, the residential, commercial, and large  
19 industrial?

20 A. Yes.

21 Q. Okay. And if -- obviously, the plans are  
22 based on projected participation rates --

23 A. Sure.

24 Q. -- and results. So today if, say, the  
25 results that they projected for industrial are not

1 going to come about, the companies could petition the  
2 Commission and shift funds to a different class where  
3 maybe they are overperforming and there is more  
4 potential there, couldn't they?

5 A. Sure.

6 Q. Now, if you take this board and take the  
7 residential sector away and the results that are  
8 produced by that sector, don't I remove a lot of  
9 flexibility from the companies to hit their  
10 efficiency goals which I -- well, answer that first.  
11 I probably should have asked you a different question  
12 first.

13 A. Not necessarily.

14 Q. Okay. Why not?

15 A. So we talked about this in the  
16 deposition, if you recall, and I said that the -- in  
17 a situation like that it would -- it would make sense  
18 if there were programs that were not at full  
19 potential in the residential sector, but you were up  
20 against the wall in, say, the large industrial  
21 sector, to shift program budgets over to the -- the  
22 board-administered residential portfolio and credit  
23 the companies for the extra efficiency from that.

24 Q. So the companies would have to put a lot  
25 of faith in this board to generate they're -- at

1 least what they're on the hook for, if not extra?

2 A. Yes. But keep in mind, I believe I  
3 mentioned in my deposition and possible reply in the  
4 testimony that I imagine that the board, being  
5 prudent implementers, would seek performance  
6 contractors with implementation vendors, that would  
7 penalize those vendors for nonperformance and reward  
8 them for good performance. So I don't agree that the  
9 board would be less engaged in ensuring performance  
10 of the portfolio than the company is.

11 Q. Now, you indicated earlier on the  
12 companies would retain the responsibility to manage  
13 the programs for C&I customer segments, right?

14 A. Yes.

15 Q. So the companies would have a reduced  
16 target to hit through that class -- those classes?

17 A. Those classes, I'm sorry.

18 Q. The commercial and industrial classes  
19 through their programs -- strike that. Let me lay a  
20 better foundation.

21 The statute requires the utilities to hit  
22 a certain percentage target of energy savings each  
23 year; is that right?

24 A. Yes.

25 Q. Okay. And I believe you said -- let's

1 use 1 percent.

2 A. Okay.

3 Q. And let's say that the board -- well, let  
4 me ask this, how would the board decide which --  
5 which portion of that 1 percent they were responsible  
6 for?

7 A. So what I am proposing here, the board be  
8 responsible to get, over the length of this plan, the  
9 same energy savings that the companies propose to  
10 get.

11 Q. Okay. So you want to implement this  
12 board for management of the programs today, I mean in  
13 the plan period 2013 through '15.

14 A. Yes.

15 Q. That starts in eight weeks.

16 A. Uh-huh. Yes. And I acknowledge there is  
17 going to be a transition period in the testimony.

18 Q. Okay. So you are going to take the  
19 percentage in the plan that the companies estimate  
20 the residential customers can achieve and place that  
21 responsibility on the board; is that right?

22 A. Yes.

23 Q. Okay. And then the remainder, the  
24 companies are obligated to hit.

25 A. Yes.

1 Q. Now, if the board doesn't deliver  
2 theirs -- their portion of the savings that,  
3 apparently, the parties would agree to, your position  
4 is that the board should not be penalized; is that  
5 right?

6 A. No. Like I mentioned earlier, the board  
7 would probably have performance contracts with  
8 vendors, so vendors would have incentive to meet the  
9 targets. But I -- I don't suggest that, you know,  
10 for example, OCC or NRDC be assessed a compliance  
11 penalty if the board -- board-administered programs  
12 don't perform as projected.

13 Q. Now, you -- Examiner Price asked you why  
14 the staff didn't get a vote, but you also don't want  
15 the companies to have a vote; is that right?

16 A. That's right.

17 Q. But now you envision the companies being  
18 a part of the board, is that right, a member of the  
19 companies?

20 A. Yes. I -- if you look on page 24, line  
21 9, I said, "The Companies should participate in a  
22 non-voting role."

23 Q. Right. What would incent the companies  
24 coming to these meetings if they had no say?

25 A. Well, there are certain program areas,

1 for example, the same group of HVAC contractors that  
2 serve residential customers often serve small  
3 commercial customers. There are some buildings, like  
4 residential multi-family buildings, where individual  
5 apartments might be metered by the common areas, you  
6 know, might be on a commercial rate schedule of the  
7 companies. There are areas where they are going to  
8 overlap, both in space and in the people who are  
9 doing the efficiency work.

10 So it makes sense for the companies to be  
11 there, just so that that work and those relationships  
12 aren't uncoordinated, and this is -- this is an issue  
13 they are facing in Indiana right now. It's not  
14 something that hasn't been addressed before, but the  
15 implementation vendor and the board is going to have  
16 to stay in communication with the companies.

17 EXAMINER PRICE: Can I ask a question  
18 about load allocation?

19 THE WITNESS: Sure.

20 EXAMINER PRICE: If you are just going to  
21 take residential customers and pull them to the side,  
22 wouldn't it make more sense for residential customers  
23 to be simply responsible for their proportion of the  
24 share of the companies' total load rather than what  
25 the companies are proposing?

1           The companies proposed a certain  
2 percentage because they have the ability to shift the  
3 money back and forth. Wouldn't it make more sense  
4 just to say residential customers make up 40 percent  
5 of the load. They need to produce -- the board needs  
6 to produce 40 percent of the savings?

7           THE WITNESS: That would be simpler. My  
8 goal here was to not penalize the companies for this  
9 decision in this case, I guess, because they have  
10 developed a compliance strategy, and the goal of that  
11 proposal was to not upset that compliance.

12           EXAMINER PRICE: But you think it would  
13 be simpler just for the residential customers to take  
14 their share of the load and implement that energy  
15 savings?

16           THE WITNESS: Yeah. Right.

17           EXAMINER PRICE: And peak demand  
18 reduction?

19           THE WITNESS: I hadn't thought about  
20 that, but yes, I think that makes sense as well.

21           EXAMINER PRICE: And you are intending  
22 this to be peak demand reduction as well as energy  
23 efficiency, correct?

24           THE WITNESS: So I suggest that the  
25 companies' direct load control still exist under the

1 companies' direction, but it could be incremental to  
2 what would be under the jurisdiction of the board. I  
3 hadn't thought enough about peak demand reduction.

4 EXAMINER PRICE: What about savings  
5 coming out of a SmartGRID program? There are some  
6 incremental savings that come out of SmartGRID. Who  
7 gets that?

8 THE WITNESS: That's the companies'  
9 investment so it should probably be the companies'  
10 savings.

11 EXAMINER PRICE: Okay. Thank you.

12 Q. (By Ms. Kolich) How would you interface  
13 the tracking systems between what the board would be  
14 tracking for results and the companies tracking their  
15 results?

16 A. It's my understanding that the company  
17 has an online tracking system that it requires all of  
18 its vendors to use.

19 Q. Go ahead.

20 A. Do you want me to finish?

21 Q. Yes.

22 A. So the board could piggyback on the  
23 companies' existing investment there, or I do  
24 highlight, you know, IT and tracking as an area of  
25 incremental cost for this board. I think there would

1 need to be some reporting connection between the  
2 companies and the board, just so that everybody knows  
3 how much they're saving, and also so the companies  
4 can use that in their forecasting, so.

5 Q. Okay. Now, with your testimony you  
6 included the DES-1, which is different -- I'm sorry,  
7 DES-1. Do you have that with you?

8 THE WITNESS: Can I have a short break?

9 MS. KOLICH: Do you want a break?

10 THE WITNESS: Yes.

11 EXAMINER PRICE: You have to ask that man  
12 up there.

13 THE WITNESS: Could I get a short break?

14 EXAMINER PRICE: Let's go off the record.

15 (Discussion off the record.)

16 EXAMINER PRICE: Let's go back on the  
17 record.

18 Ms. Kolich.

19 MS. KOLICH: Thank you, your Honor.

20 Q. (By Ms. Kolich) Mr. Sullivan, would you  
21 turn -- and I'm going back in the testimony, but only  
22 for a specific issue and we'll move on, that I  
23 skipped. Page 10, line 16, of your testimony.

24 A. I'm sorry. Can you do the line reference  
25 again?

1 Q. Sure. It's page 10, line 16. It's  
2 regarding continuous improvement program.

3 A. Yes.

4 Q. Okay. Now, you -- you include two  
5 examples of potential programs, one being the Energy  
6 Trust of Oregon; is that right?

7 A. Yes.

8 Q. And the other being AEP Ohio?

9 A. Yes.

10 Q. Okay. Now, you've attached Attachment 2  
11 to your testimony. Do you have that handy that you  
12 could pull it up?

13 A. What's the name of it?

14 Q. It's your Attachment 2, Industrial Energy  
15 Improvement, the Energy Trust of Oregon.

16 A. Okay, yes. I thought we had that  
17 stricken.

18 Q. No.

19 A. No. It's still here. Okay. I got  
20 confused.

21 Q. If you would like to remove it, I'm not  
22 going to oppose it.

23 A. I am not proposing that.

24 Q. Then let's talk about it.

25 A. Okay.

1 Q. Now, is this document demonstrating a  
2 potential model the companies should follow if it  
3 developed a continuous improvement program?

4 A. Yes, it is. And I included this  
5 evaluation rather than just a simple program  
6 description because when you read this, you can  
7 understand, sort of, the benefits and drawbacks of  
8 the model that they used in the Energy Trust of  
9 Oregon. So this is an evaluation document so it's  
10 not just a description of the program. It's how it's  
11 worked.

12 Q. Okay. Now, where are the participation  
13 results found in this document, how it worked?

14 A. This is mostly a process evaluation, so  
15 it's not an impact evaluation.

16 Q. Okay. Does it lay out the structure of a  
17 program that FirstEnergy should follow?

18 A. Generally, yes.

19 Q. Where?

20 A. If you look on pages 12- and 13.

21 Q. Okay. Does yours have page numbers?

22 A. No, it doesn't.

23 EXAMINER PRICE: How did you know 12 and  
24 13?

25 THE WITNESS: I was looking at the table

1 of contents, which is on page 2, which is not labeled  
2 as page 2. Just a minute. Look for the section  
3 titled "What elements the firms found the most  
4 valuable."

5 MR. ALLWEIN: Just to be helpful, that  
6 clarification is in bold print on the top of a page,  
7 whichever page that happens to be, and the bottom of  
8 the page has two nonbolded quotes, if that's helpful  
9 at all.

10 A. And so also in addition to this report, I  
11 identify the elements that the companies should  
12 implement. In my testimony, if you look -- I forgot  
13 what the line is.

14 Q. Probably line --

15 A. Page 11, starting line 2.

16 Q. Okay. The reference you made to page 11,  
17 line 2 --

18 MS. KOLICH: Could I have my question  
19 read because I don't think that he answered my  
20 question.

21 EXAMINER PRICE: You may.

22 Let's have the question and the response.

23 (Record read.)

24 MS. KOLICH: Thank you. That was what I  
25 was looking for.

1           And his answer?

2           (Record read.)

3           MS. KOLICH: Okay. Thank you.

4           Q.    (By Ms. Kolich) That wasn't my question  
5    though, about what you're recommending the companies  
6    implement.

7           A.    Okay.

8           Q.    I am talking about the report which is  
9    Attachment 2 to your testimony. Where is the  
10   structure of this program described?

11          A.    Look at what I will call page 3. It has  
12   an introduction.

13          Q.    Where in the introduction are you  
14   referring, or the entire introduction?

15          A.    Yes, including the "Pilot Goals and  
16   Objectives."

17          Q.    Okay. What is the -- the second  
18   paragraph there, line 3 of the introduction, what is  
19   the "Plan, Do, Check, Act" cycle, as Energy Trust of  
20   Oregon or Strategic Energy Group defines it?

21          A.    So a "Plan, Do, Check, Act" cycle, as I  
22   understand it, is pretty well recognized in  
23   industrial businesses as part of, you know, various  
24   quality improvement processes, like ISO processes,  
25   not just that address energy use.

1           So you understand the quantity you are  
2 trying to improve. You make a plan for that. You do  
3 what's in the plan. You go back and check and make  
4 sure what you did, you know, moves you forward on  
5 that plan, and then you do further actions, I  
6 believe. But the "Plan, Do, Check, Act" cycle is a  
7 common feature of continuous energy improvement  
8 programs and also quality improvement initiatives.

9           Q. Okay. Now, do you know for a fact Energy  
10 Trust of Oregon or Strategic Energy Group used the  
11 definition you just described, or are you just  
12 assuming they are?

13          A. It's a general definition, so I'm not  
14 completely certain.

15          Q. Okay. And I don't know if you still have  
16 that page up that you referred to originally with  
17 what elements the firms found most valuable.

18          A. Uh-huh.

19          Q. And counsel for NRDC pointed out several  
20 quotes at the bottom of the page.

21          A. Uh-huh.

22          Q. Are you there?

23          A. Yes.

24          Q. And that quote says, "Coaxing from Steven  
25 Scott was good... Got more value out of hands-on

1 pushes from Steven than anything." Who is Steven  
2 Scott?

3 A. Steven Scott is one of the SEG employees,  
4 Strategic Energy Group. So one of the features of  
5 these programs is they provide technical assistance  
6 to help a customer, you know, set an energy use  
7 baseline and metrics and end goals to improve that,  
8 and then help implement those, you know, an energy  
9 management plan. And so Steven Scott is one of the  
10 people who helped implement that.

11 Q. Okay. And what are the "hands-on pushes"  
12 that they refer to there?

13 A. I don't know.

14 Q. Now, as a model for a program you are  
15 suggesting, where would I find the budget that this  
16 program uses?

17 A. It wouldn't be in this document. I'm not  
18 sure exactly where.

19 Q. Okay. Well, let's assume the companies  
20 adopt a continuous improvement-energy improvement  
21 program. What budget would you recommend the  
22 companies allocate to it?

23 A. So I don't have it right in front of me,  
24 but AEP Ohio proposes a continuous energy improvement  
25 program as part of their portfolio, and I think it's

1 initially targeting 30 of the company's largest  
2 customers in the first year, and they have a budget  
3 for that, so I would suggest the companies start with  
4 the AEP proposal, but I don't have that right in  
5 front of me so I can't quote a budget figure.

6 Q. Okay. Well, regardless of budget, which  
7 of NRDC's members would have to pay for this program?

8 A. Can you be more specific?

9 Q. Yeah. I know commercial customers have  
10 to pay, and I just don't know which customers you're  
11 representing. Which ones would have to pay?

12 EXAMINER PRICE: I'm not sure the NRDC  
13 represented they represent customers. I think they  
14 say they represent members who are interested in  
15 economic issues.

16 MS. KOLICH: Oh, okay. So the NRDC is  
17 not representing any customers in this case; is that  
18 right?

19 EXAMINER PRICE: That's not what you said  
20 in your motion to intervene, you are representing  
21 customers, did you?

22 MR. ALLWEIN: I had co-counsel at that  
23 time and -- but I believe it said something about  
24 NRDC members, many of which reside in the FirstEnergy  
25 service territory, but if there is a number in there,

1 I don't recall it.

2 EXAMINER PRICE: So to the extent your  
3 members are customers, they would be residential  
4 customers?

5 MR. ALLWEIN: I would say that's likely,  
6 but I couldn't say for sure.

7 THE WITNESS: We don't have any corporate  
8 members.

9 MS. KOLICH: Okay.

10 MR. ALLWEIN: That I would say so for  
11 sure.

12 Q. (By Ms. Kolich) Now, you have an exhibit  
13 attached to your direct testimony, DES-1.

14 A. Yes.

15 Q. Could you pull that up, please.

16 A. I'm there.

17 Q. Now, DES-1 was referenced in your  
18 testimony on page -- strike that.

19 Does DES-1 support the calculation  
20 referenced on page 5, line 3 of your testimony?

21 A. Yes.

22 Q. Okay. Now, just so I understand it, if  
23 you're looking at the column to the right of Column E  
24 where you have notes?

25 A. Yes.

1 Q. Now, you say that row 4, which is AEP,  
2 you excluded self-direct and demand response; is that  
3 right?

4 A. Yes.

5 Q. Did you exclude anything else?

6 A. Not that I recall.

7 Q. Okay. And down on row -- row 5,  
8 FirstEnergy -- which let's clarify, that would be the  
9 companies?

10 A. Yes.

11 Q. And that would be the companies in the  
12 aggregate?

13 A. Yes.

14 Q. Okay. Under your notes you say you  
15 excluded mercantile programs, direct load control  
16 program, and T&D program. I assume that means you  
17 excluded the results from those programs?

18 A. Yes; both the cost and the benefit of  
19 those programs and the savings from those programs.

20 Q. Okay. And what was your source for where  
21 you found those costs and benefits?

22 A. For both utilities or just FirstEnergy?

23 Q. Just FirstEnergy.

24 A. So if you look at the source column --

25 Q. Uh-huh.

1           A.    -- if you look down at B-5 and C-5 and  
2 E-5.

3           Q.    Okay.  Now, is that list included in your  
4 notes on row 5 for FE, that's all-inclusive?  You  
5 didn't exclude any other results?

6           A.    Sorry, could you repeat that question?

7           Q.    What you have listed there, those were  
8 the only results from only those programs that were  
9 excluded from your calculations; is that right?

10          A.    Yes.

11          Q.    Okay.  Now, I just want to confirm your  
12 number on row 9, line E, that 1995.1, et cetera.

13          A.    Uh-huh.

14          Q.    In order to get, that you multiplied the  
15 number in Column D, row 4, which is the net benefits  
16 per gigawatt hour for AEP, 162,409?

17          A.    No.

18          Q.    I'm sorry.

19          A.    Do you want me to explain?

20          Q.    No.  Hang on.  I apologize.  I had my  
21 arrow pointing at the wrong number.  So the 1995.1,  
22 that's multiplying Column C, No. 1591, times -- why  
23 don't you tell me how you got that number.

24          A.    Yes.  So the number in 9-E, the question  
25 I am trying to answer is if FirstEnergy got the same

1 percentage of its benchmarks from nonmercantile  
2 programs, non-T&D programs, how big would the  
3 portfolio be on a gigawatt-hour basis.

4 And so what I'm doing is just creating a  
5 ratio between C-4 for AEP and E-4 for AEP and  
6 multiplying that by -- just a minute. So, I'm sorry,  
7 I am making -- I am making a ratio and I -- I need a  
8 calculator to make sure I am doing this right but --  
9 I'm sorry.

10 Q. No. I'm just trying to figure out how  
11 you calculated the 1995.

12 A. Okay. So the 1995 is comparing that 1097  
13 number. You see that in C-5?

14 Q. Yes.

15 A. Which is the amount of savings that the  
16 company -- this is FirstEnergy -- plans to get from  
17 nonmercantile, non-T&D programs to the ratio of AEP's  
18 Plan Savings from Nonmercantile, non-T&D programs to  
19 AEP's target. So I'm just comparing that to -- I'm  
20 comparing that 1097 number to that 1591.1 divided by  
21 1270.

22 Q. Okay. Now, the number right below it on  
23 row 10, Column E, that 324,091, do you see that?

24 A. Yes.

25 Q. Now, that number you got by multiplying

1 the number in Column D, row 4, which is the 162,409  
2 times the 1995; is that right?

3 A. Yes.

4 Q. Okay. Now, you're recommending that the  
5 companies -- I'm sorry. Are you done with that  
6 answer?

7 A. Just a minute.

8 Q. Sure.

9 A. I should have included better notes with  
10 this exhibit. I apologize for that. Yes, so the  
11 number in 10 is that 1995 times -- which is  
12 gigawatt-hours -- times the net benefits per  
13 gigawatt-hour that AEP is yielding from its  
14 portfolio, so that D-4.

15 Q. Okay. So would I -- make sure I  
16 understand this. Is your point that you -- the  
17 companies -- if the companies -- this is  
18 demonstrating -- strike that. Forget that question.

19 Did you perform an analysis of how much  
20 the FE plan would cost during the plan period, the  
21 one that's before the Commission, if the companies  
22 would exclude the mercantile and non -- non --  
23 exclude the mercantile and T&D results and replace  
24 them with other programs?

25 A. So you're asking if I did an analysis

1 about what the budgetary costs of the programs would  
2 be if --

3 Q. Total.

4 A. Total, if FirstEnergy got the same  
5 proportion of its savings from nonmercantile, non-T&D  
6 programs as AEP?

7 Q. Yes.

8 A. No. I didn't look at the first cost of  
9 that or the budgetary impact.

10 Q. Okay. Now, if you will get your  
11 supplemental testimony out, and I assure you the  
12 questions -- my questioning is not nearly as long.  
13 And if you will turn to your calculations on DES-3.

14 A. Okay.

15 MS. KOLICH: Your Honors, at this time,  
16 if you recall, a day or so ago counsel for NRDC  
17 stipulated to the authenticity of a discovery  
18 response.

19 EXAMINER PRICE: Yes.

20 MS. KOLICH: SC Set 3, Interrogatory No.  
21 97.

22 EXAMINER PRICE: Yes.

23 MS. KOLICH: And it was marked as Company  
24 Exhibit 15.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MS. KOLICH: May I approach?

2 EXAMINER PRICE: You may.

3 MS. KOLICH: And at this time, your  
4 Honors, I have a document labeled "Portfolio Progress  
5 Estimate." On the bottom is "Ohio Energy Efficiency  
6 Collaborative, September 24, 2012, page 5."

7 What number are we up to? I would like  
8 this marked for identification as Company Exhibit 20.

9 EXAMINER PRICE: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MS. KOLICH: May I approach?

12 EXAMINER PRICE: You may.

13 MS. KOLICH: So I may not have enough  
14 copies.

15 MR. ALLWEIN: Ms. Kolich, I see there is  
16 a date on the Portfolio Progress Estimate page that  
17 you just handed us. I was wondering if you could --  
18 I guess I would like to know just to, for clarity  
19 here, when Sierra Club Set 3, Int 97 and the  
20 accompanying exhibits were distributed.

21 MS. KOLICH: I'll have to get back to you  
22 on that. I'll try to get it to you -- I'll have them  
23 look for it right now, so hopefully have it before we  
24 finish the cross-examination.

25 MR. ALLWEIN: Okay. Thank you.

1 Q. (By Ms. Kolich) Mr. Sullivan, do you have  
2 DES-3 through 5 with you?

3 A. I do.

4 Q. Let's look at DES-3, please.

5 A. Okay. I'm there.

6 Q. Okay. Now, this is a calculation of the  
7 cumulative benchmarks, cumulative savings; is that  
8 right?

9 A. Yes.

10 Q. Okay. And just for clarity and so  
11 everybody is on the same page as to what we are  
12 talking about, how do you define cumulative savings?

13 A. I define cumulative savings in a given  
14 year as the impact that the measures that the  
15 companies has installed through the end of the  
16 reporting period in that year.

17 Q. Okay. And on Column 3 you have a  
18 "cumulative benchmark" reference. For purposes of  
19 making sure the record is clear, how do you define  
20 "cumulative benchmark"?

21 A. So, Kathy, I think I just -- I didn't  
22 really understand what you were saying in the  
23 previous question. I thought you meant generally.  
24 You are talking about in the table, how do I define  
25 it?

1 Q. Yes, I'm sorry. Let's start over.

2 A. Okay.

3 Q. And we will start with Column 3. You  
4 have the cumulative benchmark listed there. How --  
5 what do you mean there? What are you referring to?

6 A. What I'm referring to there is the amount  
7 of energy savings that the company has to get on a --  
8 on a cumulative basis in that year, in that recording  
9 year, and "cumulative" just means the addition of  
10 each year's incremental energy savings goal.

11 Q. Could you give an example?

12 A. Sure. So the 2009 goal was .3 percent of  
13 load, the 2010 was .5 percent of load, so the  
14 cumulative goal for 2010 would be .8 percent of goal,  
15 adding that .3 and .5.

16 Q. Okay. Now, on column 5 you refer to  
17 "Cumulative Savings From Existing Plan." Do you see  
18 that?

19 A. Yes.

20 Q. Now, I'm not worried about what you mean  
21 by -- from the existing plan, but I want to know  
22 what -- how do you define "cumulative savings"?

23 A. In this column?

24 Q. Sure. Okay. In this column I define  
25 "Cumulative Saving From Existing Plan" as the

1 information that we had for what the companies -- the  
2 companies' assessment of cumulative savings were as  
3 of the collaborative meeting on September 24, which  
4 we just marked as Company Exhibit 20.

5 MS. KOLICH: To answer counsel's  
6 question, the Company Exhibit 15 was submitted or  
7 provided to the parties on September 25.

8 MR. ALLWEIN: Thank you. And was that at  
9 the end of the day?

10 MS. KOLICH: I have no idea.

11 MR. ALLWEIN: Subject to check, I think  
12 it was at 5:00 o'clock.

13 MS. KOLICH: Okay.

14 EXAMINER PRICE: Can I ask what  
15 difference it makes?

16 MR. ALLWEIN: Perhaps none --

17 EXAMINER PRICE: Okay. Great.

18 MR. ALLWEIN: -- at this point.

19 MS. KOLICH: We can discuss the discovery  
20 requests we got Friday at 5:30.

21 EXAMINER PRICE: No, sorry I asked. I  
22 withdraw my question.

23 Q. Okay. So let's look at Company Exhibit  
24 20.

25 A. Okay.

1 Q. So just so I'm clear you are going to  
2 have to compare it with DES-3 and the columns in  
3 column 5 for CEI, the 651,443, matches up with that  
4 total megawatt-hour savings as of 7-31-12 under the  
5 CEI column; is that right?

6 A. Yes.

7 Q. And that was the source of that number --

8 A. Yes.

9 Q. -- on column 5 DES-3.

10 A. Yes.

11 Q. Okay. And the same source was used to  
12 obtain the 597,160 for Ohio Edison?

13 A. Yes.

14 Q. And the same source, namely, Company  
15 Exhibit 20, was used to -- for purposes of the  
16 279,820 to Toledo Edison; is that right?

17 A. Yes.

18 Q. Okay. Now, if you look at Company  
19 Exhibit 20, the -- at the top it indicates that these  
20 -- no, strike that.

21 Let's look at line 3, "Mercantile  
22 Customer Sited Programs" on Company Exhibit 20. Now,  
23 you see that note at the bottom about mercantile  
24 customer sited results.

25 A. Yes.

1 Q. And those results represent the savings  
2 achieved on a pro rata basis as of September 18,  
3 2012; is that right?

4 A. So it is on a pro rata basis, but I know  
5 that on Mercantile Customer Sited Programs there's  
6 often a small difference between annualized and pro  
7 rata unlike other programs because they may have  
8 happened in the past, and so the full impact of that  
9 can be recognized in that, you know, in the year.

10 Q. Okay. Thank you for that clarification.  
11 But those results included on line 3 under Mercantile  
12 Customer Sited Programs are based -- are the results  
13 as of September 18, 2012; is that right?

14 A. Yes. And I do note that in my testimony.

15 Q. Yep. And up at the top left corner under  
16 "Portfolio Progress Estimate" the remainder of the  
17 results included on this document are results as of  
18 July 31, 2012; is that right?

19 A. Yes. So more measures could be  
20 implemented during the year.

21 Q. Okay. Now, you don't know what those  
22 numbers included in this chart if we were going to  
23 substitute these numbers for the results at the end  
24 of the year. You don't know what those numbers would  
25 be, do you?

1           A.    You're right, and I don't even know the  
2 assumptions that go into these numbers.

3           Q.    Okay.  Now, looking at line -- or, yeah,  
4 the line entitled "Total Megawatt-Hour Savings as of  
5 7-31-12," and the line right below it "2012 Benchmark  
6 estimate."  Do you see those two lines?

7           A.    Yes.

8           Q.    Now, if I subtracted the benchmark  
9 estimate, let's take Ohio Edison as an example, the  
10 548,952, and I subtracted that from the 597,160 right  
11 above it, wouldn't that generate excess savings that  
12 could be banked for future years' use?

13          A.    If all of these numbers in the table, you  
14 know, from residential programs to transmission and  
15 distribution programs are correct, then, yes, it  
16 would.

17          Q.    Okay.

18          A.    But the -- I'm unsure about, you know,  
19 what -- what is actually included in all these -- in  
20 all these numbers.  For example, residential programs  
21 might include the impact of previous years on my  
22 audit programs, and those savings don't accumulate so  
23 I can't be sure.

24          Q.    Okay.  But the assumption that you've  
25 made if -- if the numbers are correct, the difference

1 between the total megawatt-hour savings and the  
2 benchmark estimate would result in surplus that could  
3 be -- that is commonly referred to as being banked  
4 for future years' use?

5 A. Yes.

6 Q. Now, if you turn to DES-4, this analysis  
7 does not factor in any bank that the companies may  
8 have generated prior to 2012, does it?

9 A. No, it doesn't. This is based on the  
10 plan's programs.

11 Q. Okay. Do you know what the companies  
12 banked -- banked excess is as of the first of 2012?

13 A. I don't know with certainty. I know that  
14 the companies are claiming a large bank with respect  
15 to CEI but, you know, every other utility has been  
16 adding to that bank. I don't think anybody has ever  
17 used it, so I'm not sure how it would be used going  
18 forward.

19 Q. Okay.

20 A. And I don't want to -- I don't want to  
21 stipulate to the voracity of the savings in that  
22 bank --

23 Q. Understood.

24 A. -- so.

25 Q. Okay. But my question is do you know

1 what the companies' banked balance is as of the end  
2 of 2011?

3 A. Okay.

4 EXAMINER PRICE: Mr. Sullivan, I'm  
5 confused. You seem to be selectively saying you rely  
6 on this companies' number but not that companies'  
7 number. Can you explain? Are some taken from  
8 regulatory filings, therefore, you think they have  
9 more reliability, or is this you just have to look at  
10 what you have?

11 THE WITNESS: So I think what -- what I  
12 treat with most confidence is the companies'  
13 projected savings from the programs in this plan,  
14 and, you know, I am comfortable using those in DES-4  
15 and DES-5. And I have spent some time with the  
16 companies' portfolio status results that represent  
17 the impact in 2010 and 2011. Those are very  
18 difficult to understand and --

19 EXAMINER PRICE: I won't disagree.

20 THE WITNESS: And, you know, unwinding  
21 those and coming up with a credible assessment of  
22 what the companies' bank is is very, very difficult,  
23 but I'm most confident in what the companies are  
24 projecting from the programs in this plan.

25 EXAMINER PRICE: You are more comfortable

1 with a projection than a report of an actual number?

2 THE WITNESS: Well, I think for the point  
3 that I am trying to make about what the companies are  
4 planning to do in this case, I'm most comfortable  
5 with those projections, you know, because the point  
6 I'm trying to make here is that the companies didn't  
7 propose a plan that it thinks can meet the  
8 incremental benchmarks, if that makes sense.

9 EXAMINER PRICE: I understand what you're  
10 saying. Thank you.

11 Q. (By Ms. Kolich) Okay. Just a couple of  
12 cleanup questions which I found I forgot to ask.  
13 This document on DES-4 deals with the incremental  
14 benchmarks on a prorated basis; is that correct?

15 A. That's correct.

16 Q. All right. And on Company Exhibit 20  
17 have you seen this document before?

18 A. Yes.

19 Q. And where have you seen this document?

20 A. I saw it -- and this is the Portfolio  
21 Progress Estimate. Yes, I saw that at the  
22 collaborative meeting.

23 Q. Okay. Now, on DES-5.

24 A. Yes.

25 Q. This document is the "Incremental

1 Benchmarks" on an "Annualized Savings Basis"; is that  
2 right?

3 A. Yes.

4 Q. And this document doesn't factor in any  
5 surplus bank that the companies may have as of the  
6 end of 2011, does it?

7 A. No, it doesn't.

8 MS. KOLICH: If I could have just one  
9 minute, your Honor?

10 EXAMINER PRICE: You may.

11 MR. ALLWEIN: Your Honor, may I step out  
12 of the room while they have their moment, please?

13 EXAMINER PRICE: Sure. Off the record.

14 (Discussion off the record.)

15 EXAMINER PRICE: Ms. Kolich.

16 MS. KOLICH: Thank you, your Honor. No  
17 further questions.

18 EXAMINER PRICE: Mr. Parram.

19 MR. PARRAM: Just a couple.

20 EXAMINER PRICE: You can sit down now. I  
21 was trying to save you.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Parram:

25 Q. Good afternoon, Mr. Sullivan.

1 A. Good afternoon.

2 Q. If you could turn to page 19 of your  
3 direct testimony, not the supplemental. I can't  
4 recall, which exhibit is that?

5 EXAMINER PRICE: Direct is 4, NRDC 4.

6 Q. NRDC 4.

7 A. Yes. Page 19?

8 Q. Yes. And I'm looking specifically at the  
9 table in your testimony for the shared savings  
10 incentive mechanism that you recommend.

11 A. Yes.

12 Q. And for the shared savings incentive  
13 mechanism there you are recommending, if the  
14 companies reach the level of 100 percent of their  
15 statutory benchmark, is it your recommendation that  
16 they should receive an incentive?

17 A. Yes, it's my recommendation that that  
18 triggers an incentive.

19 Q. Okay. Are you aware if AEP Ohio has an  
20 incentive mechanism, a shared savings incentive  
21 mechanism?

22 A. Yes, they do.

23 Q. Are you aware if their shared savings  
24 incentive mechanism triggers actual incentives  
25 after -- once the companies reach 100 percent, or is

1 it when it's above 100 percent?

2 A. I think it might be when it's above  
3 100 percent, but I think that's sort of an angel's on  
4 the head of a pin kind of argument because I think  
5 the difference between 100 percent and 1  
6 megawatt-hour more than 100 percent, I don't really  
7 see that as a substantive difference but what I'm  
8 saying is I don't think there is like a dead band in  
9 AEP's incentive mechanism whereby, you know, they  
10 don't get an incentive if they reach -- until they  
11 reach 101 percent of the benchmarks, but I could be  
12 wrong.

13 Q. And the same question for Duke Energy  
14 Ohio, are you aware if they have a shared savings  
15 mechanism?

16 A. Yes, they do.

17 Q. And are you aware if their mechanism  
18 is -- shared savings mechanism is structured where  
19 they have to go above the statutory benchmark  
20 before --

21 A. So I think you are probably right. It  
22 says greater than 100 percent.

23 Q. Okay.

24 A. Not greater than or equal to 100 percent.

25 Q. And can you go to page 25 of your direct

1 testimony.

2 A. Yes.

3 EXAMINER PRICE: Mr. Sullivan, just to  
4 clarify, though, you think it is a really irrelevant  
5 question. Nobody lands exactly at 100 percent. You  
6 are either going to be above or below.

7 THE WITNESS: Yeah, yeah. Maybe this  
8 company, I don't know.

9 EXAMINER PRICE: You do recall  
10 Mr. Ouellette's testimony in the last portfolio.

11 MS. KOLICH: Let's not bring that up,  
12 please.

13 EXAMINER PRICE: Sorry, Mr. Parram.

14 MR. PARRAM: No, that's okay.

15 Q. (By Mr. Parram) On page 25, I'm at line 7  
16 where it says, "The Companies should not be liable  
17 for non-compliance penalties for the non-performance  
18 of its residential portfolio."

19 A. Yes.

20 Q. And I'm wondering when you say "not be  
21 liable," I think you discussed this a little bit  
22 earlier, but I want to expand on it, is it your  
23 position that the companies should not -- if they  
24 don't hit the statutory benchmark, that they would  
25 not be assessed any forfeiture by the Commission?

1           A.     What I'm proposing here is that the  
2 companies not be assessed a compliance penalty for  
3 the residential portion of whatever the goal is so  
4 that there -- so that, you know, for the programs  
5 that they run, that they be held to kind of a net of  
6 residential target so -- so what they -- what they  
7 would achieve net of residential, I either based on  
8 what -- you know, the share of load or what they  
9 planned to get from those programs in this plan.

10           Q.     Okay. So -- and I understand you're  
11 talking about specifically for the residential  
12 portion, but if it ultimately ends up being below the  
13 statutory benchmark, is it your testimony that  
14 although they fall below the statutory requirements,  
15 they still should not be held liable for that?

16           A.     So are you saying if the residential  
17 portfolio fails to deliver?

18           Q.     No, in total, the total statutory  
19 benchmark. I understand you're separating out the  
20 residential portion of it but in total. The  
21 residential portion is incorporated into the total  
22 statutory benchmark; am I correct?

23           A.     Yes.

24           Q.     So if ultimately the residential portion  
25 because they -- they were unable to reach that

1 benchmark leads to an overall noncompliance with the  
2 statutory benchmark, is it your testimony that the  
3 companies would not be liable for the total statutory  
4 benchmark?

5 A. So if -- if the -- so, say, for example,  
6 the companies plan to get a proportional share of  
7 their benchmarks from every sector, industrial,  
8 commercial, and residential, what I'm saying here is  
9 that if it's residential sector underperformance that  
10 causes -- that would cause them to be below the  
11 benchmark, the companies shouldn't be held liable for  
12 that.

13 Q. And are you envisioning the Commission --  
14 how do you envision the Commission structuring this?  
15 Through an order?

16 A. Yes, yes, through an order in this case  
17 setting up, you know, a planning process to get this  
18 done basically, but.

19 Q. And are you aware, I guess, the  
20 Commission has authority to say that although the  
21 companies fall short of the statutory benchmarks,  
22 they are not going to be held responsible for that?

23 A. I'm not aware if the Commission has that  
24 authority.

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

1 Honor.

2 EXAMINER PRICE: Thank you.

3 Redirect?

4 MR. ALLWEIN: May I have a few moments  
5 with the witness, your Honor?

6 EXAMINER PRICE: You may. Let's go off  
7 the record.

8 (Discussion off the record.)

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

11 Oh, wait. Let's go back off the record.

12 (Discussion off the record.)

13 EXAMINER PRICE: Let's go back on the  
14 record.

15 Mr. Allwein.

16 MR. ALLWEIN: Your Honors, we have no  
17 redirect for Natural Resources Defense Council Dylan  
18 Sullivan at this time.

19 EXAMINER PRICE: Ms. Willey Chiles, any  
20 questions?

21 EXAMINER CHILES: I do not have any  
22 questions.

23 EXAMINER PRICE: I don't have any  
24 questions.

25 Mr. Sullivan, you're excused.

1 Mr. Allwein.

2 MR. ALLWEIN: Let's finish this thing up  
3 here. Your Honors, I would move for the -- well,  
4 okay. At this time I would move for the admission of  
5 Natural Resources Defense Council Exhibits No. 4 and  
6 No. 5.

7 EXAMINER PRICE: Let's go off the record.

8 (Discussion off the record.)

9 EXAMINER PRICE: Back on the record.

10 Any objection to the admission of NRDC  
11 Exhibits 4 and 5?

12 MS. KOLICH: Yes, your Honor.

13 EXAMINER PRICE: Let's take them one at a  
14 time. Any objection to the admission of NRDC Exhibit  
15 4?

16 MS. KOLICH: No.

17 EXAMINER PRICE: That exhibit will be  
18 admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER PRICE: Any objection to NRDC  
21 Exhibit 5?

22 MS. KOLICH: Yes.

23 EXAMINER PRICE: Grounds?

24 MS. KOLICH: Your Honors, while I hate to  
25 ask the Bench to reconsider the prior ruling, given

1 the information that came to light during the  
2 deposition, I beg your indulgence. NRDC relied on  
3 4901:1-29(C) when seeking leave to file supplemental  
4 testimony out of time.

5 This request was premised on a  
6 representation made by NRDC that it could not with  
7 reasonable diligence file the information included in  
8 the supplemental testimony within the established  
9 filing deadlines.

10 I will concede that no amount of  
11 diligence would have allowed NRDC to file the  
12 information included in the supplemental testimony,  
13 only because it hadn't dawned on them to create the  
14 analyses and put the supporting testimony together  
15 until 10 days after the filing deadline.

16 Now, certainly OAC 4901:1-29(C) was not  
17 created to accommodate this situation and to allow  
18 this testimony to be admitted into the record under  
19 these circumstances would create a very dangerous  
20 precedent and make a mockery of the rule.

21 And, accordingly, the companies  
22 respectfully ask that NRDC 5 not be admitted into the  
23 evidence.

24 EXAMINER PRICE: We are going to go ahead  
25 and we will reconsider our ruling, but we will affirm

1 our prior ruling and NRDC Exhibit 5 will be admitted.  
2 I would just like to note for the record that because  
3 of the time constraints and the need to get this case  
4 up and down before the first of the year we did, in  
5 fact, shrink the procedural schedule, and I am  
6 satisfied with the companies were not prejudiced in  
7 the admission of NRDC 5 given they had an opportunity  
8 to depose Mr. Sullivan and fully litigate all of the  
9 issues raised in NR -- by Mr. Sullivan in his  
10 testimony. Therefore, NRDC Exhibit 5 will be  
11 admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER PRICE: Do you have any motions?

14 MS. KOLICH: I'm sorry?

15 EXAMINER PRICE: Admission?

16 MS. KOLICH: I would move for the  
17 admission of Exhibits 15 and 20.

18 EXAMINER PRICE: Any objection to the  
19 Company Exhibit 15 and Company Exhibit 20?

20 MR. ALLWEIN: No objection.

21 EXAMINER PRICE: They will be admitted.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 MS. KOLICH: Your Honors, can we go off  
24 the record?

25 EXAMINER PRICE: Let's go off the record.

1 (Discussion off the record.)

2 EXAMINER PRICE: Let's go back on the  
3 record.

4 Mr. Kelter or Mr. Vickers?

5 MR. KELTER: Mr. Kelter.

6 EXAMINER PRICE: Mr. Kelter, please call  
7 your next witness.

8 MR. KELTER: ELPC would like to call  
9 Jeffrey Crandall.

10 (Witness sworn.)

11 EXAMINER PRICE: Welcome to Columbus and  
12 please be seated and state your name and business  
13 address for the record.

14 Press the center button there.

15 THE WITNESS: My name is Geoffrey C.  
16 Crandall, address is 1800 Parmenter Street, Suite  
17 204, Middleton, Wisconsin.

18 EXAMINER PRICE: Please proceed.

19 - - -

20 GEOFFREY C. CRANDALL

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

23 DIRECT EXAMINATION

24 By Mr. Kelter:

25 Q. Mr. Crandall, do you have before you your

1 testimony, a document marked ELPC and OEC Exhibit 1  
2 and the attachments GCC-1 through 9?

3 A. Yes, I do.

4 Q. Was that exhibit prepared by you or under  
5 your supervision?

6 A. Yes, it was.

7 Q. Do you have any changes to that document?

8 A. I had one small change. Page 3, line 5,  
9 strike the word "non." That is the only change that  
10 I have.

11 Q. If I asked you the same questions today  
12 that are in your testimony, would your answers be the  
13 same?

14 A. Yes, they would.

15 MR. KELTER: Thank you. The witness is  
16 tendered for cross.

17 MS. LOUCAS: No questions.

18 EXAMINER PRICE: No, no. He is on behalf  
19 of OEC. You don't get to ask.

20 MS. LOUCAS: Yes, exactly. Thank you.

21 EXAMINER PRICE: I was just looking for  
22 Mr. Allwein.

23 Mr. Allwein.

24 MR. ALLWEIN: I have no questions, your  
25 Honor.

1 EXAMINER PRICE: Mr. Somoza.

2 MR. SOMOZA: No questions, your Honor.

3 EXAMINER PRICE: Ms. Kern.

4 MS. KERN: No questions, your Honor.

5 EXAMINER PRICE: Ms. Kyler.

6 MS. KYLER: No questions.

7 EXAMINER PRICE: Mr. Oliker.

8 MR. OLIKER: No questions, your Honor.

9 EXAMINER PRICE: Ms. Dunn.

10 MS. DUNN: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Dunn:

14 Q. Good afternoon, Mr. Crandall.

15 A. Good afternoon.

16 Q. Thanks for being here. I know you had  
17 quite a trip, so hopefully get you in and out quickly  
18 so you can relax.

19 My name is Carrie Dunn. I am one of the  
20 attorneys for the companies in this case.

21 If you could please turn to your  
22 testimony on page 4, line 14, and there you state "I  
23 believe the proposed programs have improved compared  
24 to the original proposed plans." Do you see that?

25 A. Yes.

1 Q. Now, the original proposed plans that you  
2 are referring to, are you referring to the current  
3 2009 to 2012 plans?

4 A. Yes, I am.

5 Q. Thank you. And then moving on down to  
6 page 4 down at the bottom, lines 21 to 22, you  
7 indicate "There is a need to embrace a continual,  
8 long-term effort to build customer awareness of  
9 energy efficiency." Do you see that?

10 A. Yes.

11 Q. Now, you are aware that the companies are  
12 proposing an energy efficiency kit for residential  
13 customers in this case?

14 A. Yes.

15 Q. And the kits are one approach in  
16 educating consumers, aren't they?

17 A. Yes, they are.

18 Q. As it relates to the marketing of energy  
19 efficiency measures, you did not review the  
20 companies' website with regard to their energy  
21 efficiency messages in preparation for your  
22 testimony, did you?

23 A. I did review the website one or two  
24 occasions during 2012.

25 Q. But that was not in preparation for your

1 testimony.

2 A. That's correct.

3 Q. Now, you have attended a few of the  
4 collaborative meetings for the companies' plans,  
5 haven't you?

6 A. Yes, I have.

7 Q. Now, although you attended a few of the  
8 collaborative meetings, you did not raise marketing  
9 materials as a concern, did you?

10 A. No, I did not.

11 Q. Now, I would like to turn to page 5  
12 relating to your data center recommendations. Now,  
13 the companies in their plans -- their proposed plans  
14 do make available funds for certain data measure --  
15 data center measures, don't they?

16 A. Yes, they do.

17 Q. And in your Exhibit GCC-4 relating to the  
18 program at XL Energy, you did not help design that  
19 program, did you?

20 A. No, I did not.

21 Q. And you do not know what the  
22 participation rates are under this program, do you?

23 A. That's correct.

24 Q. And you also do not know how much money  
25 XL budgeted for that program, do you?

1           A.    No, I do not.

2           Q.    Now, regarding your recommendations to  
3 LED street lighting, I know you cite to one of the  
4 companies' tariffs, the one of company-owned street  
5 lighting. Is your recommendation solely to  
6 company-owned street lighting?

7           A.    My recommendation is that the utility  
8 review both company-owned, company-operated, as well  
9 as customer-owned, and customer-operated street  
10 lighting options. The exhibit I referred to, the  
11 street lighting rate STL, is a company-owned option.  
12 That would be a natural first step to review the  
13 acquisition of additional street lighting under this  
14 tariff and it would be a natural place to start to  
15 look at the use of LED lighting by its customers.

16          Q.    Are you aware that the companies'  
17 proposed plan does have a program for LED street  
18 lighting for customer-owned facilities?

19          A.    Yes, I am.

20          Q.    And you do not know if AEP offers an LED  
21 street lighting program either for its customers or  
22 company owned, do you?

23          A.    That's correct.

24          Q.    And the same question for Duke?

25          A.    That's correct.

1 Q. And the same question for Dayton Power  
2 and Light?

3 A. That's correct.

4 Q. Now, turning to your recommendations  
5 regarding T12 to T8 lighting which is located on page  
6 11 of your testimony. You don't know that the  
7 companies offer lower rebates for T8 standard  
8 lighting than T8 high efficiency or T5 lighting, do  
9 you?

10 A. There is a rebate offer that was  
11 identified in the plan and it does apply to both  
12 standard and nonstandard linear fluorescents.

13 Q. Are you aware if the rebate is different  
14 for standard T8 lighting than either high efficiency  
15 T8 lighting or T5 lighting?

16 A. There would be a greater incentive for  
17 the higher performance, more expensive lighting, yes.

18 Q. Now, at the time of your testimony, were  
19 you aware of the rebate levels in the companies'  
20 plan?

21 A. I reviewed the rebate levels both at the  
22 technical meeting in September in Columbus as well as  
23 what was submitted in their -- in their plans.

24 Q. And in this case -- or in your testimony  
25 you're not prepared to propose specific rebate

1 levels, are you?

2 A. No, I'm not. I think it's important that  
3 the companies have flexibility with the rebate levels  
4 and to assess the customer uptake and the market  
5 conditions and to be able to react to that.

6 Q. Now, for -- I know you have been in Ohio  
7 before in one of our cases so you are familiar with  
8 the Ohio TRM, correct?

9 A. Yes, I am.

10 Q. And are you aware that the Commission  
11 does allow the companies to count measures for  
12 standard T8 lamps?

13 A. It's my understanding that is the case.

14 Q. Now, in your testimony you offer some  
15 recommendations regarding the administrative process  
16 regarding the implementation of commercial and  
17 industrial energy efficiency programs, correct?

18 A. Right.

19 Q. You don't know if there were reasons that  
20 applications were taking longer than people may have  
21 liked, do you?

22 A. Well, there were reasons. I don't know  
23 what those reasons were specifically. I know that  
24 the Hospital Association consulting engineers and the  
25 evaluation done by ADM there were some problems,

1 delayed processing time, delayed time to receive  
2 incentive payments after projects were completed.  
3 And those reasons were implementation oriented and  
4 management oriented, don't know precisely what the  
5 internal reasons were, but I know that the customers  
6 were not happy and trade allies were not happy with  
7 the long period of time required to process  
8 applications and then to have access to incentive  
9 payments.

10 MS. DUNN: Your Honor, I would move to  
11 strike everything after -- my question was asking if  
12 he knew what the reasons were and he said "no."

13 MR. KELTER: Can I respond to that?

14 EXAMINER PRICE: You may.

15 MR. KELTER: I think he was asked a  
16 question about whether he knew the reasons, and he  
17 gave the basis for his answer.

18 MS. DUNN: That was not my question.

19 EXAMINER PRICE: We're going to deny the  
20 motion to strike, but we will ask the witness to try  
21 to confine more carefully your answers to the  
22 questions that are being asked by counsel.

23 THE WITNESS: Yes, your Honor.

24 Q. (By Ms. Dunn) And for the  
25 administrator -- excuse me. For the rebates you

1 don't know the terms and conditions for payment of  
2 rebate checks, do you?

3 A. No, I do not.

4 Q. And in 2012, you don't know what the  
5 average processing time was for those applications,  
6 do you?

7 A. I do not.

8 Q. Now, on page -- on page 13 of your  
9 testimony, lines 14 to 16, you indicate the problem  
10 is that there are lingering questions regarding the  
11 installation rate for the measures included in the  
12 kits.

13 A. Yes.

14 Q. And FirstEnergy has not addressed these  
15 questions in this filing, correct?

16 A. Yes.

17 Q. You don't know what the installation  
18 rates are that the companies are using for its  
19 filing, do you?

20 A. The projected installation rates; is that  
21 what you are referring to?

22 Q. Yes.

23 A. I believe they projected installation  
24 rates for the CFLs on .88.

25 Q. If you could -- at the time of your

1 deposition though, you did not know what those rates  
2 were, did you?

3 A. I don't believe so.

4 Q. So you learned between your deposition  
5 and today what that rate is?

6 A. Yes.

7 Q. And you do not know what the installation  
8 rate for -- well, let me go back.

9 You are aware that the companies use  
10 similar energy efficiency kits in Pennsylvania,  
11 correct?

12 A. Yes.

13 Q. And do you know what those installation  
14 rates were?

15 A. Depending on the -- depending on the  
16 companies --

17 EXAMINER PRICE: They are a little fuzzy.

18 THE WITNESS: Weak battery or something.

19 A. Depending on the companies. On page 64  
20 of the statewide evaluator's report for Met-Ed, they  
21 were indicating a low installation rate of  
22 nightlights at 36 percent, faucet aerators  
23 38 percent, and furnace whistles at 0 percent and  
24 there were a number of companies included in this  
25 study by the statewide evaluator's but those were

1 three in particular.

2 There was concern by the statewide  
3 evaluators about the low installation rates, very low  
4 installation rates as they indicated here.

5 Q. At the time of your deposition you didn't  
6 have those figures with you, correct?

7 A. I believe in the deposition I referred to  
8 a 37 percent factor, and I think I indicated that I  
9 wasn't sure if that was on the kit in its totality or  
10 on particular measures, and since the deposition I  
11 reviewed the statewide evaluators' report that we  
12 provided to the companies and that's the reason I  
13 have these updated numbers, this information.

14 Q. And is that for low -- Med-Ed's low  
15 income program?

16 A. Yes.

17 Q. And that doesn't include what the  
18 installation rates for CFLs are, does it?

19 A. It may but I was referring to the note  
20 that the statewide evaluator made and concern about  
21 those low installation rates --

22 Q. I guess the question I have for you is  
23 what you're looking at does not have rates for CFLs  
24 on that page, does it?

25 A. I don't see it in here.

1 Q. Now, you have a recommendation in your  
2 testimony relating to prorated savings calculations,  
3 correct?

4 A. Yes.

5 Q. You are not aware of any other state that  
6 requires pro rata savings, are you?

7 A. Well, I haven't looked -- that's a  
8 difficult question because every state has a unique  
9 set of statutes or policies or Commission orders. So  
10 a pro rata savings estimate in Ohio may be different  
11 than a pro rata estimate methodology used in Michigan  
12 or Nevada or wherever. I don't think I can answer  
13 the question "yes" or "no" because I think it's  
14 unique to the circumstances within that state.

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

16 EXAMINER PRICE: You may.

17 Q. Now, Mr. Crandall, I would like to turn  
18 your attention to page 88 and 89 of your deposition,  
19 please.

20 Are you there?

21 A. Yes.

22 Q. Okay. And you'll see starting on line 25  
23 Ms. Kolich asked, "Are you aware of any state other  
24 than Ohio that requires pro rata savings calculations  
25 versus annualized?" Your answer, "Yeah, I don't

1 know. I don't have an answer for that." Do you see  
2 that?

3 A. No.

4 Q. Going from -- oh, yeah, lines 25 and then  
5 line 1 and 2 and 3 on page 89.

6 A. Okay. I'm following you.

7 Q. That's your deposition testimony,  
8 correct?

9 A. Yes, it is.

10 EXAMINER PRICE: Can you read the  
11 question and answer back again.

12 (Record read.)

13 EXAMINER PRICE: I was just in the wrong  
14 spot in the deposition.

15 Q. And during the collaborative you did not  
16 identify any concerns with the installation rate of  
17 the kits, did you?

18 A. We were introduced to the idea of energy  
19 kits, I believe, at the September collaborative  
20 meeting. And at that point in time we were trying to  
21 understand what the companies had in mind before it  
22 filed, or I guess this was shortly after they filed.  
23 So I don't -- I think that meeting I would  
24 characterize more as a meeting to understand the  
25 proposal and to be able to ask questions and

1 understand it as opposed to a forum to articulate our  
2 opposition to particular program approaches or ideas,  
3 so we were trying to understand what the companies  
4 were putting down in designing, which is the nature  
5 of a collaborative.

6 MS. DUNN: Your Honor, that response was  
7 unresponsive so I would like to strike the entire  
8 answer. I asked him "You did not identify any  
9 concerns with the installation kit, did you?"

10 EXAMINER PRICE: The motion to strike  
11 will be granted. The witness will be directed to  
12 respond directly to the question. In the event you  
13 have additional information that you believe the  
14 Commission should be aware of, I am certain your  
15 counsel will ask you that on redirect.

16 THE WITNESS: Yes, your Honor.

17 Q. Can you please answer my question?

18 A. Could you restate it, please?

19 Q. Sure. During the collaborative you did  
20 not have any concerns with the installation rates of  
21 the kits, did you?

22 A. I do not believe so.

23 Q. Now, you also make recommendations or  
24 criticisms relating to the companies' conservation  
25 voltage reduction study, correct, on pages 15 to 16?

1           A.    Yes, that's correct.

2           Q.    Now, as it relates to this study, if the  
3 companies do not implement any changes to their  
4 system, there will not be a request -- excuse me,  
5 there will not be a risk on damaging any sort of the  
6 companies' equipment, correct?

7           A.    Please reask your question. I'm not  
8 following it.

9           Q.    Sure. You are aware that the  
10 conservation reduction program is just a study and  
11 that the companies are not proposing changes,  
12 correct?

13          A.    No, I'm not. That's not my  
14 understanding. If -- if there are going to be actual  
15 operational adjustments in voltage fluctuations  
16 within a circuit, if that's part of the study, then,  
17 yes, I have a concern with that. If it's strictly a  
18 theoretical study in an analysis that does not  
19 include any mechanical or electrical adjustments,  
20 then I would refer to that as a study or understand  
21 that to be a study, but that was not my impression of  
22 what the companies had in mind here.

23          Q.    Now, you're not claiming that the plans  
24 that the companies are proposing here, that the plans  
25 do not meet the statutory targets for 2013 to 2015,

1 are you?

2 A. No, I am not.

3 Q. And you aren't claiming that the  
4 baselines were -- the baselines on which these  
5 savings are -- which the savings targets are based  
6 aren't calculated properly, are you?

7 A. No, I am not.

8 MS. DUNN: If you'll give me just one  
9 moment.

10 EXAMINER PRICE: Take your time.

11 MS. DUNN: I have no further questions,  
12 your Honor.

13 EXAMINER PRICE: Thank you.

14 Mr. Parram.

15 MR. PARRAM: No questions, your Honor.

16 EXAMINER PRICE: Redirect?

17 MR. KELTER: Can we have a few minutes,  
18 your Honor?

19 EXAMINER PRICE: You may. Let's go off  
20 the record.

21 (Discussion off the record.)

22 EXAMINER PRICE: Let's go back on the  
23 record.

24 Redirect.

25 MR. KELTER: Yes, your Honor.

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REDIRECT EXAMINATION

By Mr. Kelter:

Q. Mr. Crandall, I have a few questions for you. Do you recall Ms. Dunn asking you a question regarding the kits being an approach to educating consumers?

A. Yes, I do.

Q. And I believe you said your answer was that -- that is one approach or something along those lines. Do you have any further thoughts on the value of the kits in educating consumers?

A. Well, I believe the energy kits could contain information that would be useful for customers to go the next step to install lighting equipment or understand what the rebates are and to take action as a result of the audit and the kits. The proposal that I made was for a broader education customer awareness activity which would be trying to reach a high volume of people with general information, which is very common in the industry, and for that reason, it would be a general energy awareness campaign beyond what information a particular customer would have in a kit.

Q. And Ms. Dunn also asked you a question

1 regarding your knowledge of the processing time for  
2 rebates in 2012. Do you recall that question?

3 A. Yes, I do.

4 Q. Do you have an opinion on what the  
5 appropriate processing time for rebates is?

6 A. I think 30 days to 45 days would be  
7 acceptable and desirable.

8 MR. KELTER: That's all the questions I  
9 have.

10 EXAMINER PRICE: Thank you.

11 Mr. Somoza.

12 MR. SOMOZA: No questions, your Honor.

13 EXAMINER PRICE: Mr. Allwein.

14 MR. ALLWEIN: No questions, your Honor.

15 EXAMINER PRICE: Ms. Kern.

16 MS. KERN: No, thank you.

17 EXAMINER PRICE: Ms. Kyler.

18 MS. KYLER: No questions.

19 EXAMINER PRICE: Mr. Oliker.

20 MR. OLIKER: No questions, your Honor.

21 EXAMINER PRICE: EnerNOC.

22 MR. POULOS: No questions, your Honor.

23 EXAMINER PRICE: Ms. Dunn.

24 MS. DUNN: Thank you. I just have one  
25 clarification.

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RECROSS-EXAMINATION

By Ms. Dunn:

Q. Mr. Crandall, when you just discussed a marketing campaign proposal, you're talking about a broad umbrella marketing campaign, correct?

A. A broad energy awareness effort, yes.

MS. DUNN: That's all I have, your Honor.

EXAMINER PRICE: Thank you, Mr. Parram.

MR. PARRAM: None, your Honor.

EXAMINER PRICE: Any questions?

EXAMINER CHILES: I have no questions.

EXAMINER PRICE: I have no questions.

You're excused. Thank you.

MR. KELTER: Your Honor, I would like to move for the admission of Mr. Crandall's testimony and the accompanying exhibits.

EXAMINER PRICE: Okay. Any objections to the admission of ELPC Exhibit 1?

Seeing none, it will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

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

1                   We will adjourn the hearing until Tuesday  
2 at 10:00 o'clock, at which time we will take rebuttal  
3 testimony from the companies.

4                   Thank you. We are off the record.

5                   (The hearing was adjourned at 1:51 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Friday, October 26, 2012, and carefully compared with my original stenographic notes.

---

Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-5604)

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Summary: Transcript of Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company hearing held on 10/26/12 - Volume V electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.