

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Review of the Alternative :
Energy Rider Contained in :
the Tariffs of Ohio : Case No. 11-5201-EL-RDR
Edison Company, The :
Cleveland Electric :
Illuminating Company, :
and The Toledo Edison :
Company. :

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PROCEEDINGS

before Mr. Gregory Price, Hearing Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-C, Columbus, Ohio, called at 10:00
a.m. on Tuesday, November 20, 2012.

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APPEARANCES:

FirstEnergy
By Mr. James W. Burk
And Ms. Carrie M. Dunn
76 South Main Street
Akron, Ohio 44308

Jones Day
By Mr. David A. Kutik
901 Lakeside Avenue
Cleveland, Ohio 44114

On behalf of the Company.

Vorys, Sater, Seymour and Pease
By Mr. M. Howard Petricoff
And Mr. Stephen M. Howard
52 East Gay Street
Columbus, Ohio 43216

On behalf of the IGS Energy.

Bruce J. Weston, Ohio Consumers' Counsel
By Ms. Melissa R. Yost
Assistant Consumers' Counsel
10 West Broad Street, 18th Floor
Columbus, Ohio 43215

On behalf of OCC.

Williams, Allwein & Moser, LLC
By Mr. Christopher J. Allwein
1373 Grandview Avenue, Suite 212
Columbus, Ohio 43212

On behalf of the Sierra Club.

Ohio Environmental Council
By Mr. Trent A. Dougherty
and Ms. Catherine N. Lucas
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43215

On behalf of the OEC.

APPEARANCES (Continued):

Bricker & Eckler
By Mr. Matthew W. Warnock
100 South Third Street
Columbus, Ohio 43215

On behalf of OMA.

Bricker & Eckler
By Mr. J. Thomas Siwo
and Terrence O'Donnell
100 South Third Street
Columbus, Ohio 43215

On behalf of the Mid-Atlantic Renewable
Energy Coalition.

Mike DeWine, Ohio Attorney General
By Thomas G. Lindgren
Assistant Attorney General
180 East Broad Street, 6th Floor
Columbus, Ohio, 43215

On behalf of the Staff.

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1 Tuesday Morning Session,
2 November 20, 2012.

3 - - -

4 EXAMINER PRICE: Let's go on the record
5 please.

6 Good morning. The Public Utilities
7 Commission has set for this time and this place a
8 prehearing conference in Case No. 11-5201-EL-RDR,
9 being In the Matter of the Review of the Alternative
10 Energy Rider Contained in the Tariffs of Ohio Edison,
11 Company, The Cleveland Electric Illuminating Company,
12 and The Toledo Edison Company.

13 My name is Gregory Price, I'm the
14 Attorney Examiner assigned to preside over today's
15 prehearing conference.

16 Let's begin by taking appearances
17 starting with the company.

18 MR. BURK: On behalf of the companies,
19 James W. Burk and Carrie M. Dunn, 76 South Main
20 Street, Akron, Ohio, and also on behalf of the
21 companies David Kutik, the Jones-Day law firm, North
22 Point, 901 Lakeside Avenue, Cleveland, Ohio.

23 EXAMINER PRICE: Mr. Lindgren?

24 MR. LINDGREN: On behalf of the staff of
25 the Commission, Ohio Attorney General Mike DeWine, by

1 Thomas G. Lindgren, Assistant Attorney General, 180
2 East Broad Street, 6th Floor, Columbus, Ohio, 43215.

3 EXAMINER PRICE: Thank you.

4 MR. HOWARD: Your Honor, on behalf of the
5 Interstate Gas Supply, Inc., d/b/a IGS Energy, please
6 have the record reflect the appearance of the law
7 firm of Vorys Sater, Seymour and Pease, 52 East Gay
8 Street, Columbus, Ohio, 43216, by M. Howard Petricoff
9 and Stephen M. Howard. Thank you.

10 EXAMINER PRICE: Thank you.

11 MS. YOST: Good morning. On behalf of
12 the Ohio Consumers' Counsel, Bruce J. Weston,
13 Consumers' Counsel, Melissa Yost, 10 West Broad
14 Street, Suite 1800, Columbus, Ohio, 43215.

15 EXAMINER PRICE: Thank you.

16 MR. DOUGHERTY: Your Honor, on behalf of
17 the Ohio Environmental Council, Trent Dougherty and
18 Catherine N. Lucas, 1207 Grandview Avenue, Suite 201,
19 Columbus, Ohio, 43212.

20 EXAMINER PRICE: From the OMA?

21 MR. WARNOCK: On behalf of the OMA Energy
22 Group, Matt Warnock from the law firm of Bricker &
23 Eckler, 100 South Third Street, Columbus, Ohio.

24 MR. ALLWEIN: Good morning, your Honor.
25 On behalf of the Sierra Club, Christopher J. Allwein,

1 1373 Grandview Avenue, Suite 212, Columbus, Ohio,
2 43212.

3 EXAMINER PRICE: Thank you.

4 The purpose of today's prehearing
5 conference is to --

6 MR. SIWO: Your Honor, on behalf of the
7 Mid-Atlantic Renewable Energy Coalition, J. Thomas
8 Siwo, Terrence O'Donnell, Bricker & Eckler, 100 South
9 Third Street, Columbus, Ohio, 43215.

10 EXAMINER PRICE: Thank you.

11 Once again, the purpose of today's
12 prehearing conference is to take up the two motions
13 we have regarding discovery issues. We have pending
14 before us a motion for protective order filed by
15 FirstEnergy and a motion to dismiss filed by the
16 Consumers' Counsel.

17 We've reviewed the pleading -- motion for
18 protection and to compel discovery filed by
19 Consumers' Counsel. I've reviewed the pleadings
20 filed by the parties but I thought we'd start by
21 allowing the parties to briefly summarize and
22 supplement any arguments that they made in the
23 pleadings, and we'll start with the company.

24 MR. KUTIK: Thank you, your Honor. Good
25 morning.

1 Your Honor, the only thing that really is
2 at issue here is whether the parties and the Public
3 Utilities Commission get to see the names of the
4 suppliers that are in the Exeter Report. Although
5 the Exeter Report also contains and the public
6 version has redacted pricing information, we have
7 offered to the parties, particularly OCC, the
8 opportunity to see that information under a
9 protective agreement.

10 With respect to the identity of the
11 suppliers, your Honor, we believe that that is trade
12 secret, and in very similar circumstances this
13 Commission has determined and has held that type of
14 information to be protected from the public.

15 And in our briefs, as you know, your
16 Honor, we cited the competitive bidding process cases
17 in the companies' and other's ESPs where the
18 company -- where information as to specific bidders
19 being tied to specific bids was kept confidential and
20 remained from public view.

21 We believe that that information again is
22 information that the Commission in this instance
23 should keep from the public as well.

24 As indicated by Navigant which ran the
25 competitive processes here, that information would be

1 deleterious if it was disclosed to the future
2 viability of RFPs and competitive bidding processes.

3 Parties that have participated in the
4 process, parties that are anticipating participating
5 in the process need to understand the rules. The
6 rules were understood to be that information with
7 respect to their specific bids and their identities
8 with respect to specific bids would remain
9 confidential even if that information was given to
10 the Commission.

11 We were obligated under our contracts to,
12 if the information was provided to the Commission or
13 to their auditors, keep that information confidential
14 and take steps to do so.

15 We had agreements with the staff and with
16 the auditors that that information that they were
17 given that were in the published report would remain
18 confidential and that was the reason why the staff
19 did file the document under seal and file the
20 redacted document.

21 We believe that the process that was
22 filed by the staff was in large part appropriate and
23 we believe that the confidentiality of the
24 information should be maintained.

25 EXAMINER PRICE: Mr. Kutik, I have one

1 question for you. It's my understanding that the
2 companies object to releasing the identities of the
3 bidders to the other parties even under a protective
4 agreement.

5 MR. KUTIK: Correct.

6 EXAMINER PRICE: Can you explain why you
7 believe that that information should not be disclosed
8 to the parties under protective agreement which would
9 shield it from the public?

10 MR. KUTIK: Well, your Honor, again, that
11 information with respect to suppliers, one, we
12 believe that there hasn't been any demonstration of
13 relevance. The OCC, for example, has had four
14 occasions, four briefs to demonstrate relevance and
15 they haven't done so.

16 But with respect to the confidentiality,
17 your Honor, we believe that given that there is no
18 need for that information, given that the specifics
19 of the supplier information is one of the I think key
20 pieces of proprietary information, we believe that
21 there has to be an extra special showing for them to
22 see that information beyond what they would get with
23 redaction.

24 EXAMINER PRICE: But, Mr. Kutik, they
25 don't need to show relevance, they need to show that

1 this is something that's reasonably calculated to
2 lead to discoverable materials.

3 MR. KUTIK: That's true, your Honor, and
4 they haven't done that either.

5 EXAMINER PRICE: Thank you.

6 Consumers' Counsel?

7 MS. YOST: Thank you, your Honor.

8 First, I'd like to point to the
9 Commission's entry regarding this process here.
10 Specifically, the Commission has held in two separate
11 entries, the first being January 18, 2012, paragraph
12 7, the second being February 23, 2012, paragraph 9,
13 that any conclusions, results, or recommendations
14 formulated by the auditor may be examined by any
15 participant to this proceeding.

16 OCC is requesting the information that
17 the Commission mandated would be available to any
18 party in this proceeding for its review.

19 What I'd like to really focus on is the
20 fact of the matter is the arguments that FirstEnergy
21 raised are meritless. The information, the Exeter
22 audit report was filed on August 15, 2012. At that
23 time there was no motion for protection filed with
24 that report.

25 That's contrary to the Commission's

1 rules, specifically 4901-1-02(E), that holds that any
2 document will be treated as public unless a motion
3 for protection is filed at the same time.

4 Second, or the next issue is the
5 information that FirstEnergy seeks to protect is not
6 their information. In their initial motion for
7 protection they acknowledged that, that they say this
8 information is third-party information.

9 In regard to any alleged contracts all --
10 EXAMINER PRICE: But that's not
11 unprecedented, Ms. Yost. We have proceedings all the
12 time where utilities holding third party confidential
13 information will file for protective orders in order
14 to protect the information. That's not unprecedented
15 at all, is it?

16 MS. YOST: No, especially where there's a
17 duty to protect it, but here is where we lack the
18 duty.

19 With their motion for protection they
20 filed two exhibits, Exhibit 1, Exhibit 2. They cite
21 to three different articles of those exhibits to
22 bestow upon them this duty to protect the
23 information.

24 One of the articles they cite to in
25 regards to one of the articles clearly is

1 inapplicable. It's about the buyer's obligation --
2 excuse me, the seller's obligation.

3 In regards to Exhibit 2, that agreement
4 specifically puts upon -- the duty to protect the
5 information upon the suppliers. It speaks to audits
6 by the Commission and has language that imposes any
7 obligation to protect that information upon the
8 suppliers.

9 Here we are months into this proceeding
10 and no supplier has motioned the Commission to
11 protect their information.

12 In regards to the other exhibit, any duty
13 to protect that information expired one year after
14 the term of the contract. In regards to the vintages
15 of 2009-2010, that term of the contract has already
16 expired so any obligations that there was has
17 expired, and the third term of that contract expires
18 at the end of this year, December 31, 2012.

19 But that obligation to keep information
20 confidential was only imposed upon FirstEnergy if
21 there was an actual request. And there's been no
22 evidence that any of the suppliers requested that
23 information being protected.

24 EXAMINER PRICE: But a supplier under
25 your theory would have to disclose their identity

1 that they were a bidder in order to protect the
2 information, wouldn't they?

3 They're going to have to come before the
4 Commission and say I'm a supplier and I would like my
5 information to be protected.

6 MS. YOST: Sure. To the extent that they
7 were a winning bidder, and I believe everybody's a
8 winning bidder, yes. And I don't think that's
9 something that they would shy away from. I think
10 they want to be in the business of selling recs and
11 would want people out there to know that's what they
12 do. But that's a fair assessment.

13 That being said, even for the company to
14 put forth any statements of fact or affidavits that
15 XYZ bidder asked them to do that, and we've seen none
16 of that. The information that they're seeking to
17 protect beyond not being theirs is historical; most
18 of it is over three years old.

19 I look to the most recent Commission
20 precedent hot off the press November 16 regarding the
21 most recent auction in the Duke case, and I cite to
22 paragraph 10 of the November 16, 2012, Commission
23 entry which in essence after 21 days will be
24 releasing the names of the bidders who won tranches
25 in the competitive bid auction.

1 The number of tranches won by each
2 bidder, the first round of ratio tranche is supplied
3 compared to the tranches needed, and other
4 information.

5 So the names of the suppliers are
6 information that the Commission generally always
7 releases. The cases that they cite to they
8 misinterpret and do not support their position and in
9 fact, would support OCC.

10 So my final thoughts are the information,
11 if it were trade secret information, we do not
12 dispute trade secret information should be protected.
13 The problem with FirstEnergy's argument is it's not
14 trade secret information and therefore OCC would like
15 to see the entire report.

16 Why this identity of the suppliers is
17 relevant: The identity of the suppliers is relevant
18 because we need to know if it's affiliate
19 transactions or non-affiliate transactions.

20 EXAMINER PRICE: You know there's some
21 affiliate transactions.

22 MS. YOST: Yes, but I think it would help
23 a person in this position if -- I do know there's
24 some affiliate transactions which --

25 EXAMINER PRICE: So what more do you need

1 if you know some of the transactions are affiliate
2 transactions? That's public. What more do you need
3 to know to put on your case?

4 There's no evidence in the audit report
5 that there were improper controls on the affiliate
6 transactions.

7 MS. YOST: Well, they say it didn't
8 violate the statute, but the corporate separation law
9 always speaks to the Commission's obligation or
10 authority to amend corporate separation.

11 So to the extent that if there were other
12 transactions where such as the auditor found that
13 there were excessively high prices paid and it was a
14 non-affiliate, that would kind of mitigate our
15 concerns that it's just about corporate separation.

16 So to the extent that ABC Wind Farm
17 receives \$675 for recs, that would be helpful to us
18 to say hey, you know what, this may be an issue
19 that's just not about corporate separation and we
20 could rule that out, but if it's only the affiliate
21 companies, which it seems like all signs are showing
22 received what amounts that are over \$675 for recs
23 that were \$45 that the auditor found to be a
24 seriously flawed business decision, that's why it's
25 important.

1 So with that, thank you.

2 EXAMINER PRICE: Thank you.

3 Any other party care to speak to this?

4 Mr. Kutik, response?

5 MR. KUTIK: Yes, your Honor, briefly.

6 With respect to the relevance, I'm not
7 sure I understand what the relevance case is.
8 There's nothing that prevents them if they think that
9 the proper protections were not accorded here in
10 terms of keeping corporate separation. There's
11 nothing that can prevent them from doing whatever
12 discovery they want to do with respect to the
13 process.

14 There's nothing in the report that they
15 can talk about or cite to which helps them in terms
16 of their case on that particular issue.

17 So they haven't made their case for
18 relevance, as you pointed out, to show that this is
19 likely to lead to discovery of admissible evidence.

20 The bottom line here is that it is in all
21 parties' interests, particularly customers'
22 interests, for the process to be a competitive one,
23 that the process be one that suppliers want to
24 participate in, and to protect the process to get a
25 competitive process that will lead to the best prices

1 and hopefully the lowest price that can be obtained
2 in the market.

3 If we change rules that allow information
4 that suppliers reasonably believe would be protected
5 from public disclosure or disclosure at all to be
6 disclosed after the fact, there will be some concerns
7 that suppliers have and that will question -- pose
8 questions about the integrity of the process and will
9 retard the development of a rec market and
10 particularly the effectiveness of the RFP process by
11 the companies.

12 EXAMINER PRICE: Thank you.

13 At this time the motion for protective
14 order and the motion to dismiss will be granted in
15 part and denied in part. The Commission has
16 generally ruled that bidder-specific information
17 including prices, quantities, and the identity of
18 bidders to be trade secret information.

19 The Examiner finds that the redacted
20 portions of the auditor reports have independent
21 economic value and the information was subject to
22 reasonable efforts to maintain its secrecy.

23 Further, the Examiner finds the redacted
24 portions of the auditor's reports meet the six-factor
25 test specified by the Supreme Court.

1 Therefore, the Examiner finds that the
2 redacted portions of the auditor's reports are trade
3 secrets and a protective order should be granted
4 pursuant to Rule 4901-1-24 of the Ohio Administrative
5 Code.

6 However, FirstEnergy will disclose
7 unredacted copies of the auditor's reports to Ohio
8 Consumers' Counsel. No bid-specific information will
9 be withheld, no bidder identities will be withheld.

10 This disclosure will be contingent upon
11 the agreement of a mutual acceptable protective
12 agreement between FirstEnergy and Consumers' Counsel.

13 The Examiner expects the protective order
14 will be consistent with the agreements entered into
15 between the parties in prior Commission proceedings.
16 To the extent that no mutual acceptable protective
17 agreement can be reached, the parties should raise
18 this issue with the Examiners.

19 All parties -- I'd like to emphasize that
20 all parties will maintain the confidentiality of the
21 confidential information contained in the unredacted
22 audit reports.

23 No information may be -- none of that
24 information may be publicly disclosed, and any
25 information containing documents filed with this

1 Commission will be filed under seal, and at the
2 hearing we'll take appropriate measures to protect
3 the confidentiality of that information.

4 Further, the Examiner would like to
5 emphasize that no ruling has been made with respect
6 to any evidence contained in the auditor's reports at
7 this time.

8 MS. YOST: Your Honor, you said "motion
9 to dismiss."

10 EXAMINER PRICE: I said it again. You
11 know, I wrote it down that way wrong too.

12 The proper ruling is the motion for
13 protective order and the motion to compel will be
14 granted in part and denied in part.

15 Thank you, Ms. Yost.

16 MS. YOST: I have another separate matter
17 in regard to the report, if this is the time to bring
18 it up.

19 EXAMINER PRICE: Yes.

20 MS. YOST: Again, speaking to the
21 redacted report that was filed on August 15, your
22 Honor, do you have a copy of it in front of you?

23 EXAMINER PRICE: I do.

24 MS. YOST: I only have the redacted copy
25 but if I could point the Bench's attention to what is

1 page Roman Numeral iv, specifically the sentence that
2 is numbered 8 at the top that reads "The FirstEnergy
3 Ohio Utility should have been aware that the prices
4 bid by FirstEnergy Solutions reflected significant
5 economic grants and were excessive by any reasonable
6 measure."

7 If you could turn now to page 33 of the
8 same document, specifically paragraph 5.

9 EXAMINER PRICE: Yes.

10 MS. YOST: Again I have only the redacted
11 copy, that's all I've been provided, but to the
12 extent that the redacted portion of sentence 5 says
13 "FirstEnergy Solutions," which it appears to be the
14 identical sentence, OCC would move to have that
15 sentence 5 unredacted because it's already been
16 publicly released on page iv, paragraph 8. If it is
17 the identical sentence. I don't know, it appears to
18 be.

19 EXAMINER PRICE: I suspect it is but I
20 don't have the unredacted copy with me either.

21 Mr. Kutik?

22 MR. KUTIK: Well, your Honor, frankly,
23 the unredacted portion of No. 8 should have been
24 redacted. And without agreeing or admitting anything
25 with respect to No. 5 on page 33, even assuming that

1 it was the same, we would argue that since 8 was
2 improper, then 5 should remain redacted.

3 EXAMINER PRICE: We're going to deal with
4 it this way: You're going to give them at some point
5 in the near future the unredacted copy and they can
6 raise this issue on hearing to the extent they need
7 to.

8 If it's identical, I don't know what it
9 would add to the record, and if it's not identical,
10 then it will be a different issue that we'll have to
11 deal with at that time.

12 MS. YOST: Your Honor, I only raise that
13 to the extent we are able to negotiate a protective
14 agreement that is given to us and we don't want it to
15 be confusing whether we are releasing information
16 that is already publicly there.

17 EXAMINER PRICE: If you quote page I-4,
18 you will be just fine.

19 MS. YOST: Thank you, your Honor.

20 EXAMINER PRICE: Mr. Allwein.

21 MR. ALLWEIN: You mentioned this
22 unredacted report would be released to OCC upon the
23 execution of a protective agreement. Is that
24 available to all parties?

25 EXAMINER PRICE: Available to all parties

1 who are willing to sign a protective agreement that
2 is substantially consistent with protective
3 agreements filed in other Commission proceedings.

4 MR. ALLWEIN: Thank you, your Honor.

5 EXAMINER PRICE: Any other issues for the
6 Bench?

7 MR. KUTIK: Yes, your Honor.

8 EXAMINER PRICE: Yes, sir.

9 MR. KUTIK: We have two issues, both
10 relate to staff. The scheduling order, as far as I
11 understand it, your Honor, does not specify a date
12 for staff to file its testimony if any. And we would
13 ask that the Bench set such a date.

14 EXAMINER PRICE: Mr. Lindgren?

15 MR. LINDGREN: The Commission customarily
16 allows the staff until a day prior to the start of
17 the hearing to file its testimony.

18 EXAMINER PRICE: I don't know about the
19 Commission but that certainly is my custom, and I
20 expect the staff will be reasonable and will file it
21 not the day before the hearing date but at some point
22 prior to the hearing.

23 MR. LINDGREN: Yes, it will be filed
24 prior to the hearing.

25 MR. KUTIK: Well, your Honor, that raises

1 another point, and that relates to our ability to
2 adequately prepare our case. We expect that most of
3 the case will be a dialogue in essence between our
4 witness' position and the witnesses of the staff
5 consultants, technically the auditor.

6 We would like obviously an opportunity
7 before the hearing begins to be able to understand
8 what staff's consultant's testimony is. So we would
9 ask that we would be given at least a week before the
10 hearing to get their testimony.

11 EXAMINER PRICE: I don't know that
12 there's -- I guess let me step back.

13 I suspect that the auditor's testimony is
14 not going to be anything other than what's currently
15 in the audit reports. That the auditor's testimony
16 is simply going to be these are our reports and
17 everything in there is truthful and accurate.

18 Is there any reason to believe that's not
19 correct, Mr. Lindgren?

20 MR. LINDGREN: It's possible they would
21 have a correction to make, but otherwise their
22 testimony is --

23 EXAMINER PRICE: Not going to be any
24 supplemental or additional issues beyond what's in
25 the audit report.

1 MR. LINDGREN: That's my understanding.

2 MR. KUTIK: So, for example, your Honor,
3 if I could inquire, there wouldn't be any specific,
4 for lack of a better term, rebuttal or response to
5 things that are explained or pointed out by the
6 companies.

7 I would expect that the staff would want
8 that opportunity and would do so in terms of their
9 consultant.

10 EXAMINER PRICE: If the staff is going to
11 put on rebuttal evidence, they would have to ask for
12 permission to put on rebuttal evidence at the
13 conclusion of this case in chief.

14 MR. KUTIK: "Rebuttal" is probably the
15 wrong word. The better word is "response." Because,
16 frankly, I think it's the company that has probably
17 the opportunity for rebuttal since we file our
18 testimony first.

19 EXAMINER PRICE: I said "ask."

20 MR. KUTIK: Correct, I would have the
21 opportunity I think I said.

22 So that if they were going to put things
23 in their testimony as staff consultants that would be
24 responding to specific points that the company's
25 witnesses would make, points that would be beyond

1 things that were pointed out in the report, that's a
2 scenario where we would like to have more than a day
3 to respond before the hearing.

4 EXAMINER PRICE: And again, I guess what
5 I'm trying to say is to the extent that staff is
6 going to rebut or respond or address any issues in
7 testimony that your witnesses raise, I would expect
8 they'll do it in the rebuttal phase and will have to
9 ask the Bench's indulgence to file such testimony.
10 At that point we'll work out an appropriate schedule.

11 MR. KUTIK: May I have one minute, your
12 Honor?

13 EXAMINER PRICE: Yes.

14 MR. KUTIK: The other thing, your Honor,
15 is --

16 EXAMINER PRICE: Let me, before we move
17 off topic.

18 Mr. Lindgren, is the staff going to put
19 on anybody other than the auditors?

20 MR. LINDGREN: May I have a moment to
21 consult my clients?

22 EXAMINER PRICE: You may.

23 MR. LINDGREN: Your Honor, at this time
24 the staff does not plan to put on any additional
25 witnesses.

1 EXAMINER PRICE: Thank you.

2 Thank you, Mr. Kutik

3 MR. KUTIK: Your Honor, in regard to the
4 witnesses that are going to be the consultants, we
5 would like to have the opportunity to take the
6 depositions of those witnesses.

7 And the reason I bring it up now, not
8 having filed a motion, not having notice, I didn't
9 want to be down the line where we are at the eve of
10 hearing and leave this unresolved. That's why I'm
11 bringing it up now.

12 If it would be more appropriate to do it
13 later, I'm certainly glad to do that.

14 EXAMINER PRICE: Mr. Lindgren, do you
15 care to respond?

16 MR. LINDGREN: If he's suggesting that he
17 wants to take the deposition of the auditors, the
18 Commission has ruled in previous cases that the
19 auditors who were retained pursuant to the Commission
20 order are treated the same as the staff and
21 depositions are not permitted of them.

22 EXAMINER PRICE: Mr. Kutik?

23 MR. KUTIK: Your Honor, the rule that the
24 Commission has excepts out for discovery depositions
25 members of the staff. And it particularly uses the

1 word "members" of the staff. It does not use the
 2 word "consultant," it does not use the word
 3 "contractor," uses the word "member." So that under
 4 the language of the Rule, the clear language of the
 5 Rule, we believe we should have an opportunity to
 6 take a deposition of a witness even if they had a
 7 contract with the staff.

8 EXAMINER PRICE: Understood. Let's go
 9 off the record.

10 (Off the record.)

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

13 At this time the Bench will defer ruling
 14 on FirstEnergy's request for a deposition of the
 15 auditors. We do have usual practices and procedures
 16 around here and I would like the parties to see if
 17 they can informally resolve this without necessity of
 18 a ruling from the Bench.

19 Anything else?

20 Seeing none, we are adjourned for the
 21 day. Thank you, all.

22 (Hearing adjourned at 10:33 a.m.)

23 - - -

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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 Tuesday, November 20, 2012, and carefully compared with my original stenographic notes.

Julieanna Hennebert, Registered Professional Reporter and RMR and Notary Public in and for the State of Ohio.

My commission expires February 19, 2013.

(JUL-1928)

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in

Case No(s). 11-5201-EL-RDR

Summary: Transcript of Ohio Edison Company, Cleveland Electric Illuminating Company and Toledo Edison Company hearing held on 11/20/12 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Hennebert, Julieanna Mrs.