

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

DEPOSITION

of Wilson Gonzalez, taken before me, Karen Sue
 Gibson, a Notary Public in and for the State of Ohio,
 at the offices of Bruce Weston, Ohio Consumers'
 Counsel, 10 West Broad Street, Suite 1800, Columbus,
 Ohio, on Friday, February 8, 2013, at 9 a.m.

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Friday Morning Session,
 February 8, 2013.

STIPULATIONS

It is stipulated by and among counsel for the
 respective parties that the deposition of Wilson
 Gonzalez, a witness, under the applicable Rules of
 Civil Procedure, may be reduced to writing in
 stenotypy by the Notary, whose notes thereafter may
 be transcribed out of the presence of the witness;
 and that proof of the official character and
 qualification of the Notary is waived.

1 APPEARANCES:
 2 FirstEnergy Corp.
 3 By Mr. James W. Burk
 4 and Ms. Carrie M. Dunn (via speakerphone)
 5 76 South Main Street
 6 Akron Ohio 44308
 7 Jones Day
 8 By Mr. David A. Kutik
 9 North Point
 10 901 Lakeside Avenue
 11 Cleveland, Ohio 44114
 12 On behalf of the Applicants.
 13 Bruce E. Weston,
 14 Ohio Consumers' Counsel
 15 By Ms. Melissa Yost,
 16 Assistant Consumers' Counsel
 17 10 West Broad Street, Suite 1800
 18 Columbus, Ohio 43215-3485
 19 On behalf of the Residential Consumers of
 20 the FirstEnergy Companies.
 21 Environmental Law & Policy Center
 22 By Mr. Nicholas McDaniel (via speakerphone)
 23 1207 Grandview Avenue, Suite 201
 24 Columbus, Ohio 43212
 On behalf of the Environmental Law &
 Policy Center.

ALSO PRESENT:

Mr. Edmond Berger, OCC.
 Mr. Michael Schuler, OCC.
 Ms. Eileen Mikkelsen, FirstEnergy Companies
 (via speakerphone).
 Mr. Stuart Siegfried, Staff (via speakerphone).

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 Gonzalez Exhibit Identified
 1 Responses to GS Set 2-INT-4 186
 2 Resource Planning Case Input Form 212

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| <p style="text-align: right;">Page 5</p> <p>1 WILSON GONZALEZ 2 being by me first duly sworn, as hereinafter 3 certified, deposes and says as follows: 4 EXAMINATION 5 By Mr. Kutik: 6 Q. What is your name? 7 A. My name is Wilson Gonzalez. 8 Q. Mr. Gonzalez, did you cause to be 9 prepared in this case a document entitled the "Direct 10 Testimony of Wilson Gonzalez"? 11 A. Yes. 12 Q. And did you bring that with you today? 13 A. Yes. 14 Q. I understand, Mr. Gonzalez, that your 15 counsel has sent to other parties yesterday evening 16 or yesterday afternoon some corrections. Do you have 17 those corrections with you? 18 A. Yes, I do. 19 Q. Okay. Other than those corrections do 20 you have any other corrections to make? 21 A. No. 22 Q. Okay. You have with you a notebook of 23 materials. What's in your notebook? 24 A. Just background materials to --</p> | <p style="text-align: right;">Page 7</p> <p>1 Q. And the Goldenberg, what do you 2 understand that to be? 3 A. That's the financial audit. 4 Q. Did you -- are you aware of a report that 5 was done by Exeter and others for NARUC of the Ohio 6 renewable market? 7 A. No. 8 Q. You never saw that before? 9 A. No. 10 Q. For purposes of your testimony, did you 11 review anything other than what's cited in your 12 testimony? 13 A. Cited in my testimony. 14 Q. In other words, if I go through your 15 testimony and I look at the materials that you've 16 cited or attached, would I have the full universe of 17 materials that you reviewed and relied upon for your 18 testimony? 19 A. I would say no. 20 Q. What else did you review or rely? 21 A. I would say I reviewed -- I have been 22 involved in a number of cases here in Ohio so there's 23 other testimonies that I have read for other cases. 24 I was involved in the Duke. I have been involved in</p> |
| <p style="text-align: right;">Page 6</p> <p>1 background material to this particular case so I have 2 the witnesses, the FirstEnergy witness testimony. I 3 have some of the background materials to the tables 4 that may have been part of either the Exeter report 5 or my report and I also have some cases, some ACP 6 cases, that I sent -- that we sent through discovery 7 to the company so, for example, the ACP cases from 8 FirstEnergy and some of the other companies, Ohio 9 Power, Duke, so. 10 Q. So you brought with you testimony of 11 other witnesses in this case and materials that you 12 relied upon for your testimony. 13 A. Correct. 14 Q. Would it be fair to say that you are the 15 lead investigator for OCC in this case? 16 A. I'm the lead analytical, yes, I am. 17 Q. And I assume as part of your work in this 18 case -- would it be correct to assume as part of your 19 work in this case you reviewed the Exeter and 20 Goldenberg reports? 21 A. Yes, I did. 22 Q. And when I say the Exeter report, do you 23 understand what I'm talking about? 24 A. The Exeter management audit.</p> | <p style="text-align: right;">Page 8</p> <p>1 Duke cases. I have been involved in AEP cases, their 2 original ESP that has a major portion dealing with 3 renewable energy so, for example, testimonies of Jay 4 Gottfried or -- and -- and I don't recall who the -- 5 who the person was for DP&L in their 10-90 -- 10-94 6 case. So I would say that information is something 7 that I -- that I also, you know, have in mind plus I 8 have information having worked with the company in 9 our renewable REC programs that we negotiated with 10 the company, FirstEnergy companies. 11 Prior to that there was green pricing 12 programs that -- you know, voluntary-type market 13 programs so I have that type of information. You 14 know, I've gone through AWEA conferences, annual 15 conferences so, you know, that's the -- AWEA is 16 American Wind Energy Association. I have been to 17 conferences dealing with RECs, RECs pricing so, you 18 know, the to -- when you say the totality, you know, 19 obviously I looked at the material in this particular 20 case, but I have a lot more information I bring to 21 the table. 22 Q. Okay. But the specific information that 23 you relied upon is the stuff that's cited or attached 24 to your testimony.</p> |

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| <p>1 A. I think when you -- when we talk about 2 specific in terms of a number, I would say that's 3 probably generally correct.</p> <p>4 Q. Okay. Would it be also fair to say the 5 only calculations you did for purposes of this case 6 are the calculations that appear in your testimony?</p> <p>7 A. I would say that the calculations in my 8 exhibits are the ones that appear in my testimony. I 9 would say I have looked at FirstEnergy's alternative 10 energy rider in the past in terms of it always seemed 11 to be such a big line item compared to the other 12 states so we kind of had our eye on it so I believe 13 sometime I believe in 2011 I -- I did look and 14 compared the FirstEnergy company's AER rider with the 15 other companies in the state for one quarter just to 16 take a good look at it but that's since the financial 17 audit, more thorough review. That was the 18 information I utilized.</p> <p>19 Q. Let me see if I can understand your 20 answer. Would it be fair to say since the financial 21 audit came out -- or the two audit reports came out, 22 that the only calculations that you've done are the 23 calculations that appear as tables in your testimony?</p> <p>24 A. Yes. I would say yes.</p> | <p>1 depositions that have been taken thus far?</p> <p>2 A. Yes. I have sat in on parts.</p> <p>3 Q. Okay. Which -- which depositions did you 4 sit in?</p> <p>5 A. I would say I spent time -- the most time 6 with the early deposition.</p> <p>7 Q. Okay. Did you sit in on parts of the 8 Brad -- the Bradley deposition?</p> <p>9 A. I want to say I probably did not.</p> <p>10 Q. Did not?</p> <p>11 A. Yeah. I don't think I sat in through 12 Bradley.</p> <p>13 Q. Did you sit in on Ms. Mikkelsen's 14 deposition?</p> <p>15 A. No. That was taken up in FirstEnergy, if 16 I recall.</p> <p>17 Q. Okay.</p> <p>18 A. I did not.</p> <p>19 Q. Have you had any contact with Exeter 20 other than sitting in on that interview --</p> <p>21 A. No.</p> <p>22 Q. -- with Mr. Estomin?</p> <p>23 A. No.</p> <p>24 Q. Are you aware of any contacts between OCC</p> |
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| <p>1 Q. Okay. And did you review the company's 2 discovery responses as part of your work in this 3 case?</p> <p>4 A. Yes. I tried to review and pay attention 5 to the -- what I thought were the relevant responses.</p> <p>6 Q. And that would include the company's 7 responses to the auditor's data requests; would that 8 be correct to say?</p> <p>9 A. Yes.</p> <p>10 Q. Did you sit in -- well, I'll back up. 11 Were you aware that there was an 12 interview of Steven Estomin, E-S-T-O-M-I-N, of Exeter 13 by the parties in this case?</p> <p>14 A. You're taking about the clarification 15 conference that the company and parties had with 16 Mr. Exeter?</p> <p>17 Q. Mr. Estomin?</p> <p>18 A. Mr. Estomin, I'm sorry. Yes, I was -- I 19 sat in through that and sounded very much like a 20 deposition to me.</p> <p>21 Q. Okay. So you -- you sat in on what I'll 22 call the interview of Mr. Estomin, correct?</p> <p>23 A. You call it an interview. Yes, I did.</p> <p>24 Q. Okay. Did you also sit in on any of the</p> | <p>1 and Exeter other than that?</p> <p>2 A. I can only speak for myself.</p> <p>3 Q. Okay. So you are not aware of any.</p> <p>4 A. I am not aware of any.</p> <p>5 Q. Are you aware -- have you had any 6 conferences with the staff or any other party about 7 this case?</p> <p>8 A. Define conference.</p> <p>9 Q. Meeting, discussions, telephone calls.</p> <p>10 A. I've had -- I've had, I believe, one or 11 two calls with -- with staff but very minor. I just 12 asked whether they were going to file testimony or 13 not.</p> <p>14 Q. So that was the nature of the calls?</p> <p>15 A. Yeah.</p> <p>16 Q. Whether they were going to file 17 testimony?</p> <p>18 A. And I would say we always talk to the 19 staff on any particular case.</p> <p>20 Q. And when you say you talked to the staff.</p> <p>21 A. Yeah.</p> <p>22 Q. You personally.</p> <p>23 A. If I'm the lead on a case and -- and I 24 usually -- you know, we usually will call the staff</p> |

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| <p style="text-align: right;">Page 13</p> <p>1 just to get our bearings, see what -- what the 2 case -- especially if there is something that might 3 be unusual with a case, you know, for clarification, 4 so. 5 Q. So you've had contact with the staff 6 about this case, correct? 7 A. I just said I had maybe two phone calls, 8 very limited. 9 Q. And when you say you had two phone calls, 10 who did you call? 11 A. I called -- I believe I called Stuart 12 Siegfried. 13 Q. Okay. 14 A. Yes. 15 Q. And when did you call Mr. Siegfried 16 first? 17 A. I would -- this case has a long history 18 so I would say maybe when it first -- it was filed in 19 2011, right? So I believe probably early on when I 20 might have called him when they had selected perhaps 21 an auditor for Exeter. It was a little while ago, 22 and then I might have called them maybe three weeks 23 to a month ago just to ask them whether they were 24 going to file testimony.</p> | <p style="text-align: right;">Page 15</p> <p>1 Q. And why did you call him? 2 A. I called him to -- I was curious about 3 the timing of the case, what was going to happen 4 after that, how fast it was going to move. We have 5 very few resources here so we need to keep a tight 6 schedule, you know, it's kind of just in time so I 7 wanted to see, you know, when was the procedural 8 schedule coming out, what was going to be the nature 9 of it, how much time we were going to have, those 10 kinds of questions. 11 Q. What did he tell you? 12 A. He didn't know. 13 Q. Okay. As part of your work for OCC, have 14 you had an opportunity to review the renewable energy 15 credit procurement of other companies in Ohio? 16 A. Do you mean like have I reviewed an RFP 17 that set out to procure? 18 Q. We'll start there. 19 A. Yes. 20 Q. Okay. Have you had any discussions with 21 members or employees of other utilities in Ohio about 22 how those companies plan to meet the renewable energy 23 benchmarks? 24 A. Yes. I believe I've had discussions with</p> |
| <p style="text-align: right;">Page 14</p> <p>1 Q. So the most recent call was to ask 2 whether they were going to file testimony. 3 A. Mostly, yes. 4 Q. Pardon? 5 A. Yes, that was exact -- that was the sole 6 purpose of my call to the staff. 7 Q. And what were you told? 8 A. I was told that -- I was told no. 9 Q. And what was the subject of the first 10 call you had with Mr. Siegfried? 11 A. It was probably the nature of the case. 12 You know, the audit had come in. A lot of the 13 information was protected, redacted. I had no -- I 14 had no -- no information, per se, you know, some of 15 the detailed relevant information. And if you know 16 Stuart, Stuart is very -- I know he is on the phone, 17 but he is very tight lipped and doesn't -- you know, 18 is very professional about his information as far as 19 his response and so on. 20 Q. So was this call you made to 21 Mr. Siegfried before or after the audit reports came 22 out? 23 A. I believe it was after the audit reports 24 came out, just after they came.</p> | <p style="text-align: right;">Page 16</p> <p>1 all the companies including your company -- 2 Q. Okay. 3 A. -- concerning that. And I would say 4 prior to the establishment of the renewable mandates, 5 there was an Ohio Wind Working Group that was 6 established. I would say I participated from perhaps 7 2005 to 2008 when the mandates were started, and we 8 have participants from all different facets of the 9 industry so we had industry people but that's where 10 we -- we -- the companies and your company would send 11 somebody. I don't recall the person's name but so, 12 you know, we have always had conversations. 13 Q. Okay. Are you sufficiently -- well, I'll 14 back up. 15 Has every electric utility in Ohio issued 16 RFPs for renewable energy credits? 17 A. I believe they have. And that's -- one 18 of your witnesses has a table that shows the dates 19 and the times of the RFPs. And you're distinguishing 20 between RFPs to meet these -- the renewable mandates? 21 Because there were RFPs sent out for the green 22 pricing program prior to 2008. 23 Q. I am just talking to meet the renewable 24 energy mandates.</p> |

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| <p>1 A. Okay.</p> <p>2 Q. And so would it be -- would it be fair to</p> <p>3 say that you're familiar with each of the companies'</p> <p>4 RFPs? By companies I am talking about all of the</p> <p>5 utility companies' RFPs in Ohio for RECs to meet the</p> <p>6 mandates.</p> <p>7 A. No. I am aware they submitted RFPs. I</p> <p>8 think I have reviewed -- I want to say I've</p> <p>9 reviewed -- the closest I've reviewed I think was</p> <p>10 AEP's. Most of the information on what the company's</p> <p>11 strategy -- any company's strategy for fulfilling the</p> <p>12 mandates was gathered from the compliance reports</p> <p>13 that have to be filed in April of every year.</p> <p>14 Q. Would it be fair to say you've reviewed</p> <p>15 each of the companies' reports?</p> <p>16 A. I would say I have, yes.</p> <p>17 (Discussion off the record.)</p> <p>18 Q. Back on the record. Have you reviewed</p> <p>19 any company's contingency plans regarding how they</p> <p>20 plan to meet the renewable energy benchmarks?</p> <p>21 A. Outside of the plans that they filed in</p> <p>22 the compliance and they talk about how they are going</p> <p>23 to meet it, I haven't -- like I answered in my -- in</p> <p>24 your discovery of us, I was -- I am not aware of any</p> | <p>1 Q. Is there anything that you needed to</p> <p>2 complete your testimony that you didn't get?</p> <p>3 A. Well, I would think if I asked the</p> <p>4 question, I probably wanted the answer to fulfill and</p> <p>5 to prove -- and prove the nature of my testimony.</p> <p>6 Q. When did you start writing your</p> <p>7 testimony?</p> <p>8 A. I started writing it in my head the day I</p> <p>9 read the Exeter report.</p> <p>10 Q. Okay. Well, I didn't ask you when you</p> <p>11 started writing it in your head. I asked you when</p> <p>12 you started writing your testimony.</p> <p>13 A. Formally writing it I would say -- we</p> <p>14 have been so busy, but I would say maybe three weeks</p> <p>15 before it was submitted, before it was submitted.</p> <p>16 Q. Now, I want to talk to you a little bit</p> <p>17 about your experience, okay? Have you had any</p> <p>18 experience in designing RFPs for the procurement of</p> <p>19 RECs?</p> <p>20 A. I have had experience writing RFPs but</p> <p>21 not for the procurement of RECs.</p> <p>22 Q. And would it be fair to say you have not</p> <p>23 had any experience designing RFPs for procurement of</p> <p>24 RECs to satisfy the renewable energy mandates in</p> |
| Page 18 | Page 20 |
| <p>1 document, per se, that says contingency plan on it.</p> <p>2 Q. Okay. Would it be fair to say that as</p> <p>3 the lead analyst, you have had input into the</p> <p>4 discovery that OCC has done in this case?</p> <p>5 A. Yes.</p> <p>6 Q. You've had the opportunity to submit</p> <p>7 written discovery to the company?</p> <p>8 A. Yes. I think we submitted four sets or.</p> <p>9 Q. You have had the opportunity to suggest</p> <p>10 questions or lines of questions for depositions to</p> <p>11 your counsel?</p> <p>12 A. If that's not attorney-client, then I</p> <p>13 would say, yes, I did submit questions.</p> <p>14 Q. I am not asking what you suggested. You</p> <p>15 just had the opportunity to do that.</p> <p>16 A. Yes, I have.</p> <p>17 Q. Okay. Was there anything that you</p> <p>18 requested in discovery that you didn't get from the</p> <p>19 company?</p> <p>20 A. Yes.</p> <p>21 Q. What?</p> <p>22 A. I would have to go over it but there was</p> <p>23 a lot of objections and questions were irrelevant for</p> <p>24 this case or whatever. I have the --</p> | <p>1 Ohio?</p> <p>2 A. I would say that's correct. That's not</p> <p>3 my -- I am not a utility. OCC is not mandated to</p> <p>4 meet the renewable energy standard.</p> <p>5 Q. Okay. And would it be fair to say you</p> <p>6 also have not had any responsibility for implementing</p> <p>7 such RFPs?</p> <p>8 A. Using the strict word "implementing."</p> <p>9 Q. Would -- it would be fair to say, though,</p> <p>10 you have not had that experience, correct?</p> <p>11 A. Not of implementing, no.</p> <p>12 Q. Now, you've -- would it be fair to say</p> <p>13 your experience has been limited to reviewing the</p> <p>14 RFPs in terms of their processes and their results?</p> <p>15 I am talking about RFPs for clearing RECs for the</p> <p>16 Ohio mandates.</p> <p>17 A. Yes. I would say for some companies. I</p> <p>18 would note that we opposed I think the last two</p> <p>19 FirstEnergy ESPs so I think from the language we were</p> <p>20 restricted from participating in one of the REC RFPs</p> <p>21 I think you guys were involved in.</p> <p>22 Q. But I want to go back to my question</p> <p>23 because I am not sure you answered it. Would it be</p> <p>24 fair to say whatever experience you have with respect</p> |

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| <p style="text-align: right;">Page 21</p> <p>1 to Ohio RFPs for RECs, your experience has been</p> <p>2 limited to reviewing the processes of the RFPs and</p> <p>3 the results of those?</p> <p>4 MS. YOST: Objection as to form. Go</p> <p>5 ahead and answer, if you can.</p> <p>6 THE WITNESS: What was your objection?</p> <p>7 I'm sorry.</p> <p>8 MS. YOST: Form of the question.</p> <p>9 A. I would say generally, yes.</p> <p>10 Q. Now, in one of your interrogatory answers</p> <p>11 you listed the -- a variety of cases OCC has</p> <p>12 participated in. Do you remember that discovery</p> <p>13 response?</p> <p>14 A. Yes, I do.</p> <p>15 Q. And would it be the case that you were</p> <p>16 someone who participated in each one of those?</p> <p>17 A. I would say that's correct.</p> <p>18 Q. Do you need to see the list?</p> <p>19 A. No.</p> <p>20 Q. You said, I believe, earlier that you've</p> <p>21 reviewed some of the AEP RFPs for the RECs -- for its</p> <p>22 RECs?</p> <p>23 A. Yes. I would say most notably the 2008</p> <p>24 RFP. And I would say that usually when an RFP went</p> | <p style="text-align: right;">Page 23</p> <p>1 standards in the states they operate with which are,</p> <p>2 I think, 11 states so southwest and different places</p> <p>3 so I believe they have also submitted RFPs not just</p> <p>4 for Ohio but for the rest of the service corp.</p> <p>5 MR. KUTIK: Let's go off the record.</p> <p>6 (Discussion off the record.)</p> <p>7 Q. My question, Mr. Gonzalez, was about</p> <p>8 whether you are aware of any AEP RFP for Ohio other</p> <p>9 than 2008 relating to RECs or renewable energy? Are</p> <p>10 you aware of any?</p> <p>11 A. I can't recall.</p> <p>12 Q. Okay. Let's turn to Duke. Are you aware</p> <p>13 of any RFPs for RECs or renewable energy to meet the</p> <p>14 Ohio renewable energy mandates?</p> <p>15 A. Yes. I believe Duke also filed an RFP in</p> <p>16 2008.</p> <p>17 Q. Any other time?</p> <p>18 A. I can't recall but I would say given</p> <p>19 their experience with the first RFP, i.e., the prices</p> <p>20 that were -- that came in the RFP were so much higher</p> <p>21 than what they can do at a broker, and given their</p> <p>22 strategy of looking to short-term purchases in the</p> <p>23 market, I would -- I would think that there's a</p> <p>24 chance they didn't go out again for an RFP.</p> |
| <p style="text-align: right;">Page 22</p> <p>1 out, it was noticed so it's not like we were in a</p> <p>2 case or, you know, at any one time, we could go on</p> <p>3 the internet and see -- or go on the company's</p> <p>4 website and see what the RFPs were so I would say,</p> <p>5 you know, that would be the nature.</p> <p>6 Q. What was your understanding of what the</p> <p>7 RFP in 2008 by AEP was seeking?</p> <p>8 A. It was seeking both solar and renewable</p> <p>9 RECs to meet the Ohio standard, and it was based on</p> <p>10 they were looking for what was called a REPA, an oil</p> <p>11 and price -- or renewable power purchase agreement.</p> <p>12 And it was on a 20-year term so it was a long-term</p> <p>13 process.</p> <p>14 Q. And was it also -- did it also seek both</p> <p>15 in-state and we'll call it all state products or</p> <p>16 REPAs?</p> <p>17 A. I would say I remember it -- I remember</p> <p>18 it seeking solar and nonsolar but in terms of</p> <p>19 in-state versus out of state I'm not.</p> <p>20 Q. What other AEP RFPs for RECs for</p> <p>21 renewable energy are you aware of?</p> <p>22 A. I believe they -- they submitted other --</p> <p>23 the 2008 was Ohio specific, I believe, but their</p> <p>24 service corp. has submitted RFPs to try to meet</p> | <p style="text-align: right;">Page 24</p> <p>1 Q. But you specifically don't recall that.</p> <p>2 A. I don't recall that, no.</p> <p>3 Q. So you can only recall sitting here today</p> <p>4 one Ohio REC or renewable energy RFP that Duke Ohio</p> <p>5 did and that was in 2008, fair to say?</p> <p>6 A. Yes. Again, we're talking about to meet</p> <p>7 the Ohio mandate because we weren't involved with</p> <p>8 them when they sent out -- when they were -- all the</p> <p>9 Ohio utilities had a green pricing program that</p> <p>10 predated this.</p> <p>11 Q. Right. And I am not talking about that.</p> <p>12 A. Okay.</p> <p>13 Q. You understand that, right?</p> <p>14 A. Okay. I am just clarifying.</p> <p>15 Q. So let's go back to my question. With</p> <p>16 respect to Duke Ohio you are only aware sitting here</p> <p>17 today of one RFP that they did for RECs or renewable</p> <p>18 energy to meet the Ohio mandates and that was in</p> <p>19 2008, correct?</p> <p>20 A. As far as I recall, yes.</p> <p>21 Q. All right. Let's turn to DPL. Are you</p> <p>22 aware of whether they have done any RFPs to meet the</p> <p>23 Ohio mandate?</p> <p>24 A. I believe they have also in 2008.</p> |

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| <p style="text-align: right;">Page 25</p> <p>1 Q. Any other time that you are aware of?</p> <p>2 A. I don't recall.</p> <p>3 Q. Would it be fair to say you're not aware</p> <p>4 of any companies other than the FirstEnergy companies</p> <p>5 that have done RFPs since -- for renewable energy or</p> <p>6 renewable energy RECs -- let me start over again.</p> <p>7 So it would be fair to say that you're</p> <p>8 not -- that other than the FirstEnergy utilities</p> <p>9 you're not aware of any other company that has done</p> <p>10 an RFP to meet the Ohio renewable energy mandates</p> <p>11 since the effective date of SB 221?</p> <p>12 MS. YOST: Karen, could you please read</p> <p>13 that question back for me.</p> <p>14 MR. KUTIK: Just the question part, not</p> <p>15 where I started over again.</p> <p>16 (Record read.)</p> <p>17 A. I would say no.</p> <p>18 Q. Okay. Were these RFPs that you are aware</p> <p>19 of for AEP and Duke and DPL in 2008 --</p> <p>20 A. Yes.</p> <p>21 Q. -- after the effective date of SB 221?</p> <p>22 A. They were very close and some may have</p> <p>23 predated it.</p> <p>24 Q. All right.</p> | <p style="text-align: right;">Page 27</p> <p>1 remember that?</p> <p>2 A. Yes, curriculum vitae.</p> <p>3 Q. And as I understand it, you worked four</p> <p>4 years for some part of what I would just call</p> <p>5 Columbia Gas; would that be correct to say?</p> <p>6 A. Yes, closer to five.</p> <p>7 Q. And you worked four or five years for</p> <p>8 some part of AEP?</p> <p>9 A. I would say closer to six.</p> <p>10 Q. Did your work for Columbia or AEP relate</p> <p>11 to any state other than Ohio?</p> <p>12 A. Yes. In both places I worked for the</p> <p>13 service -- for a service corp. type so I worked with</p> <p>14 all the service companies.</p> <p>15 Let me back up. For Columbia Gas I</p> <p>16 worked for the service corp. of the distribution</p> <p>17 company.</p> <p>18 Q. Okay. But you had responsibilities</p> <p>19 outside Ohio for both Columbia and AEP; is that</p> <p>20 correct?</p> <p>21 A. Correct, correct.</p> <p>22 Q. Now, I would like you to turn to page 13</p> <p>23 of your testimony, please.</p> <p>24 (Discussion off the record.)</p> |
| <p style="text-align: right;">Page 26</p> <p>1 A. Very shortly, I guess a better's hunch.</p> <p>2 Q. Were you aware of any utility other than</p> <p>3 the FirstEnergy utilities that have done an RFP to</p> <p>4 meet the renewable energy mandates for Ohio since</p> <p>5 January 1, 2009?</p> <p>6 A. I would say in terms of the RFP, I know</p> <p>7 there are a number of utilities in Ohio that have</p> <p>8 submitted RFPs for projects, so in a sense that RFP</p> <p>9 is to meet the renewable requirements so we know that</p> <p>10 there is Timber Ridge Solar Project. We know AEP,</p> <p>11 DPL also had -- also had some competitively bid</p> <p>12 projects for renewable, so in that sense other</p> <p>13 companies submitted RFPs to meet the renewable.</p> <p>14 Q. Right. Would it be fair to say that</p> <p>15 you're not aware of any utilities other than the</p> <p>16 FirstEnergy utilities that have issued RFPs for RECs</p> <p>17 to meet the Renewable Energy Standards since</p> <p>18 January 1, 2009?</p> <p>19 A. I would say I don't recall, no.</p> <p>20 Q. So what I said is correct.</p> <p>21 A. I said I don't recall any other. I paid</p> <p>22 most attention to the early period.</p> <p>23 Q. All right. Now, you submitted your</p> <p>24 resume as part of the discovery responses. Do you</p> | <p style="text-align: right;">Page 28</p> <p>1 Q. Are you at page 13 of your testimony,</p> <p>2 sir?</p> <p>3 A. Yes, I am.</p> <p>4 Q. And on page 13 of your testimony is a</p> <p>5 figure, correct?</p> <p>6 A. There's a graph.</p> <p>7 Q. Right.</p> <p>8 A. Yes.</p> <p>9 Q. And that graph you took from a report</p> <p>10 from the Department of Energy entitled "Annual Report</p> <p>11 on U.S. Wind Power Installation Costs and Performance</p> <p>12 Trends 2007," a report dated May, 2008, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Now, in your corrections you cite page 13</p> <p>15 of that report. Could you -- do you have that report</p> <p>16 with you?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Is that an error, sir? Should it be page</p> <p>19 18?</p> <p>20 A. Yes, it is page 18.</p> <p>21 MS. YOST: We'll correct it.</p> <p>22 MR. KUTIK: All right.</p> <p>23 Q. Now, you have page 18 of what I'll call</p> <p>24 the DOE wind report from 2007 in front of you now?</p> |

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| <p>1 A. Yes, I do.</p> <p>2 Q. And with respect to that page that we're</p> <p>3 looking at, there's a box on that page, correct, the</p> <p>4 lower part of the page?</p> <p>5 A. Yes.</p> <p>6 Q. And the box includes the graph that you</p> <p>7 have reprinted on page 13 of your testimony, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And that box is entitled "REC Markets</p> <p>10 Remain Fragmented and Prices Volatile." Do you see</p> <p>11 that?</p> <p>12 A. That's correct.</p> <p>13 Q. And when this report uses the phrase</p> <p>14 markets -- "REC Markets Remain Fragmented," would it</p> <p>15 be fair to say that what that means is that different</p> <p>16 states have different markets?</p> <p>17 A. I would say that's a fair statement.</p> <p>18 Q. All right. So that different things in</p> <p>19 each state affect the prices of RECs in each state;</p> <p>20 would that be correct to say?</p> <p>21 A. Yes.</p> <p>22 Q. It also says here that prices are</p> <p>23 volatile, correct?</p> <p>24 A. You can see that from the table.</p> | <p>1 Q. Sure. Are you finished?</p> <p>2 A. So I would say that there's volatility,</p> <p>3 especially in the early years which this is a table</p> <p>4 of the recent market but it's not like -- I wouldn't</p> <p>5 describe it as a crystal ball where you don't know or</p> <p>6 something that you just don't have an idea of</p> <p>7 anything that's coming.</p> <p>8 Q. Well, I was trying to understand how --</p> <p>9 what a fair reading of price volatility or prices</p> <p>10 volatile would mean. And would it be fair to say at</p> <p>11 least in the short-term prices would be uncertain?</p> <p>12 A. I would say with that qualification, yes.</p> <p>13 Q. Now, with respect to the graph that</p> <p>14 appears on page 13 of your testimony, this purports</p> <p>15 to list average monthly REC price, correct, for a</p> <p>16 number of states? That's the label on the Y axis, is</p> <p>17 it not?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Now, going back to page 18 of the</p> <p>20 wind report -- sorry -- there's some text that</p> <p>21 explains some of the information that appears in the</p> <p>22 graphs in that box that we were looking at, right?</p> <p>23 A. That's correct.</p> <p>24 Q. And in the third paragraph of the text it</p> |
| Page 30 | Page 32 |
| <p>1 Q. Right. And would it be fair to say what</p> <p>2 that means is that predicting where prices are going</p> <p>3 to go would be uncertain?</p> <p>4 A. I would say with the caveat that to the</p> <p>5 extent the state has an ACP, there's a very definite</p> <p>6 ceiling on the price.</p> <p>7 Q. All right. But other than that</p> <p>8 predicting where prices would go would be uncertain.</p> <p>9 A. Yes.</p> <p>10 Q. It would be uncertain whether prices are</p> <p>11 going to go up, prices are going to go down. That's</p> <p>12 what volatility means, right?</p> <p>13 A. Yeah. I wouldn't generalize for all the</p> <p>14 states because you'd have to look at what the</p> <p>15 planning horizon was of any particular state, you</p> <p>16 know, whether -- how many projects were in the queue</p> <p>17 of their respective RTOs, whether there was a</p> <p>18 production tax credit, are there state incentives to</p> <p>19 promote.</p> <p>20 Q. Sure.</p> <p>21 A. So I don't want to just say that it's --</p> <p>22 Q. I'm trying --</p> <p>23 MS. YOST: Can you let the witness</p> <p>24 finish?</p> | <p>1 starts "The figures to the right represent indicative</p> <p>2 monthly data on spot market REC prices in both</p> <p>3 competitive and voluntary markets" --</p> <p>4 A. Compliance.</p> <p>5 Q. Excuse me, "both compliance and voluntary</p> <p>6 markets. Data for compliance markets focus on the</p> <p>7 class 1 or main tier of the RPS policies." Now,</p> <p>8 where it says -- when it says "indicative monthly</p> <p>9 data," would it be fair to say that doesn't</p> <p>10 necessarily represent any actual price of an actual</p> <p>11 transaction?</p> <p>12 A. I think it doesn't necessarily mean so.</p> <p>13 Q. What I said was correct then?</p> <p>14 A. I say doesn't necessarily mean so. I</p> <p>15 think sometimes trades have happened but sometimes</p> <p>16 trades haven't happened.</p> <p>17 Q. Right. So "indicative" does not</p> <p>18 necessarily mean that it is an actual price of an</p> <p>19 actual transaction, correct?</p> <p>20 A. That's correct.</p> <p>21 Q. All right. Now, with respect to the</p> <p>22 states that are shown on the graph either on page 18</p> <p>23 of the report or page 13 of your testimony, can you</p> <p>24 tell me for each state shown when the -- well, I'll</p> |

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| <p>1 back up.</p> <p>2 Would it be fair to say each state shown</p> <p>3 has what we could call an alternate energy portfolio</p> <p>4 standard, AEPS?</p> <p>5 A. Yes, although I think most of them are</p> <p>6 called renewable portfolio standards. I think the</p> <p>7 alternative is when the cold states tried to, you</p> <p>8 know.</p> <p>9 Q. Let's call them RPS. When -- for each</p> <p>10 state can you tell me when the RPS statute was</p> <p>11 enacted? Can you start with Connecticut and tell me</p> <p>12 when that state's RPS statute was enacted?</p> <p>13 A. I've seen that information, and I may</p> <p>14 have it. I don't have it committed to memory, but I</p> <p>15 would say most of them were at the beginning of</p> <p>16 the -- of the -- I would say at the turn of the year</p> <p>17 so by 2000 or so. I think some of them may have been</p> <p>18 as early as 1999.</p> <p>19 Q. When you say you have that information</p> <p>20 before you, before you somewhere in that big</p> <p>21 notebook?</p> <p>22 A. I'm sure I've looked at --</p> <p>23 Q. Can you find it quickly?</p> <p>24 A. I think I have it in my desk.</p> | <p>1 Q. All right. Do you know when the RPS</p> <p>2 statute in the District of Columbia was enacted?</p> <p>3 A. No. In the short time I had I didn't</p> <p>4 find that one.</p> <p>5 Q. Okay. Did you know when the RPS statute</p> <p>6 in Massachusetts was enacted?</p> <p>7 A. Not the specific date, no.</p> <p>8 Q. Do you know when the RPS statute in</p> <p>9 Pennsylvania was enacted?</p> <p>10 A. I believe it was 2004 with 2007 being the</p> <p>11 first year of compliance.</p> <p>12 Q. So in Pennsylvania the date of the RPS</p> <p>13 enactment was 2004, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And the date the RPS was to be in effect</p> <p>16 was 2007, correct?</p> <p>17 A. Correct.</p> <p>18 Q. So there was about a two- or three-year</p> <p>19 lead time in Pennsylvania, correct?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Is that correct?</p> <p>22 A. Yes, it is. And that table does show</p> <p>23 when the different -- it seems to indicate when the</p> <p>24 different states had to complete compliance.</p> |
| Page 34 | Page 36 |
| <p>1 Q. All right. So you -- could you access</p> <p>2 that information quickly if we went off the record?</p> <p>3 A. I think I could.</p> <p>4 Q. Could you find that for us, please.</p> <p>5 MS. YOST: Let's take a 10-minute break.</p> <p>6 (Recess taken.)</p> <p>7 Q. Let's go back on the record.</p> <p>8 Mr. Gonzalez, can you tell me when the RPS statute in</p> <p>9 Connecticut was enacted?</p> <p>10 A. Yes. I believe it was 2003.</p> <p>11 Q. Okay. Well, would you believe it was</p> <p>12 1998?</p> <p>13 A. It could be it was 2003, the year that it</p> <p>14 actually took force, if it was passed in '98 and 2003</p> <p>15 was the year it took force.</p> <p>16 Q. Well, would you believe that the RPS for</p> <p>17 at least class 1 -- well, the RPS statute did not go</p> <p>18 into effect until 2006 in Connecticut?</p> <p>19 A. 2006.</p> <p>20 Q. Does that sound right?</p> <p>21 A. Well, my information said 2003.</p> <p>22 Q. That it was effective in 2003 or it was</p> <p>23 enacted in 2003?</p> <p>24 A. It wasn't clear.</p> | <p>1 Q. Well, let's finish with my questions, and</p> <p>2 then we will look at your chart.</p> <p>3 A. Okay.</p> <p>4 Q. Rhode Island, when was that enacted, the</p> <p>5 RPS statute?</p> <p>6 A. I didn't find that information.</p> <p>7 Q. When was the Texas RPS statute enacted?</p> <p>8 A. I didn't -- I didn't find that</p> <p>9 information.</p> <p>10 Q. Okay. And you said earlier -- I'll back</p> <p>11 up.</p> <p>12 Do you know other than for Pennsylvania</p> <p>13 what the effective date was for the RPS statute in</p> <p>14 any year of any state that's shown on your figure on</p> <p>15 page 13?</p> <p>16 A. Yes. I would say Maryland 2004 for 2006</p> <p>17 compliance.</p> <p>18 Q. Okay.</p> <p>19 A. New Jersey 2002 for 2004 compliance. And</p> <p>20 I think we've covered the other ones.</p> <p>21 Q. Okay. Now, you said earlier, I believe,</p> <p>22 that the graph shows when the --</p> <p>23 A. Which graph, I'm sorry?</p> <p>24 Q. Your graph, that's what we have been</p> |

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| <p style="text-align: right;">Page 37</p> <p>1 looking at, right, on page 13?</p> <p>2 A. Okay.</p> <p>3 Q. Or the graph that appears on page 18 of</p> <p>4 the wind report.</p> <p>5 A. Okay.</p> <p>6 Q. Same graph, right?</p> <p>7 A. It's a different graph because it's</p> <p>8 different time periods.</p> <p>9 Q. Okay. Does the graph on your -- in your</p> <p>10 testimony at page 13 show when the RPS date -- the</p> <p>11 RPS statute was effective for each state?</p> <p>12 A. No, it doesn't because it looks like some</p> <p>13 states started trading early just to catch up to the</p> <p>14 time when it was enacted so there was some early</p> <p>15 trades.</p> <p>16 Q. So we can't tell from this graph when the</p> <p>17 RPS statutes in the various states became effective,</p> <p>18 correct?</p> <p>19 A. Not fully but it gives you an idea of</p> <p>20 within a lag, a year or so lag, when they did become</p> <p>21 effective.</p> <p>22 Q. Is it your testimony that there is only</p> <p>23 about a year or two years of trades that would</p> <p>24 precede the effective dates in any of the states</p> | <p style="text-align: right;">Page 39</p> <p>1 Q. All right. Now, do all of the states</p> <p>2 that are shown on your graph on page 13 have an</p> <p>3 alternate compliance payment?</p> <p>4 A. I would say yes.</p> <p>5 Q. Do you know what the alternate compliance</p> <p>6 payment was for any state for any year shown?</p> <p>7 A. I would say the compliance payments for</p> <p>8 these -- for these states hovered probably in the \$55</p> <p>9 range so, for example, Massachusetts was in the 50s.</p> <p>10 I don't recall whether it was 55, 50 or.</p> <p>11 Q. So you've cited Massachusetts --</p> <p>12 A. Correct.</p> <p>13 Q. -- as having an ASP somewhere in the \$50</p> <p>14 plus range, correct?</p> <p>15 A. Correct, yes.</p> <p>16 Q. Can you give me an ACP level for any</p> <p>17 other state for any year?</p> <p>18 A. I would say I haven't committed all of</p> <p>19 them to memory, but I would say that given my</p> <p>20 understanding of the ACP in compliance markets and</p> <p>21 what they were based on, the difference between, you</p> <p>22 know, solar and nonsolar, I would say that most of</p> <p>23 the ACPs for these states was in, I would say, the 40</p> <p>24 to 55 range.</p> |
| <p style="text-align: right;">Page 38</p> <p>1 shown?</p> <p>2 A. Let me check that. I would say it</p> <p>3 varies. Not all but some are right on target of when</p> <p>4 the effective date was. Others preceded as many as</p> <p>5 two years but some only one year.</p> <p>6 Q. Okay. So it would be at most a two-year</p> <p>7 display before the effective date?</p> <p>8 A. At most, yes.</p> <p>9 Q. Okay. But this does show for some states</p> <p>10 prices when they would be in a voluntary market and</p> <p>11 prices when they would be in a compliance market,</p> <p>12 correct?</p> <p>13 A. My table just speaks to compliance</p> <p>14 markets.</p> <p>15 Q. All right. But it did show a period of</p> <p>16 time -- some of these show a period of time when the</p> <p>17 RPS was not in effect, correct?</p> <p>18 A. I think that's a technicality. I would</p> <p>19 interpret it once the mandate passed you're really</p> <p>20 trading in a compliance regime.</p> <p>21 Q. Okay. But it was -- but these trades</p> <p>22 were taking place for some of these years before the</p> <p>23 effective date of the RPS, correct?</p> <p>24 A. That is correct.</p> | <p style="text-align: right;">Page 40</p> <p>1 Q. Okay. So although you can't recall any</p> <p>2 specific prices, it's your belief that the prices for</p> <p>3 the ACP levels were in the 40 to 50 dollar range for</p> <p>4 each state?</p> <p>5 MS. YOST: Objection. Asked and</p> <p>6 answered.</p> <p>7 Q. Is that your testimony?</p> <p>8 A. That's what I answered before, yes.</p> <p>9 Q. Now, the 40 to 50 dollar ACP range that</p> <p>10 you're thinking of, was that for I will just call it</p> <p>11 RECs as opposed to SRECs?</p> <p>12 A. That's correct.</p> <p>13 Q. Is it your understanding that the lines</p> <p>14 that are shown in your graph are the indicative</p> <p>15 prices of only RECs and not RECs and SRECs?</p> <p>16 A. That's correct.</p> <p>17 Q. Do any of these states have a requirement</p> <p>18 that the renewable energy must be produced in the</p> <p>19 state or part of -- part of the RPS includes what we</p> <p>20 will call an in-state requirement?</p> <p>21 A. I have that information. I believe only</p> <p>22 Texas. I believe only Texas, and I think that's what</p> <p>23 your witness Earle testified to. And -- okay. So</p> <p>24 that's, you know, my first answer.</p> |

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| <p>1 Second answer which I also explain in -- 2 in my testimony is that I believe some of the smaller 3 New England states were afraid that, for example, 4 Maine who had a lot of hydro and existing renewable, 5 they were afraid that all the -- they wouldn't have 6 any renewable development in-state so they put 7 stricter delivery conditions on outside RECs. So in 8 a sense it created at least some barriers to protect 9 the internal market so I would say Texas and my 10 understanding of the way Massachusetts attempted 11 to -- delivery, in-state delivery, tried to limit the 12 amount of outside RECs. 13 Q. So as far as you're concerned, the two 14 states that have what we might call effective 15 in-state requirements that are shown on page 13 in 16 your graph would be Massachusetts and Texas, correct? 17 A. I would say generally, yes. 18 Q. All right. Now, it's your belief that 19 Massachusetts has a requirement that transmission 20 must be arranged hourly? 21 A. Yes. I think that was my understanding. 22 Q. Okay. And would it be your view that 23 such a requirement would result in less than half of 24 the renewable energy use for compliance by the</p> | <p>1 A. I would think that data is probably 2 available, yes. 3 Q. Okay. And would you believe that data 4 would be authoritative? 5 A. I would say that information, if it's 6 published -- you know, I would have to see the 7 information, what the -- how the data is -- where 8 they got the data and whether there is some 9 estimation going on or whatever but -- and the other 10 thing was -- okay. I think that's all. 11 Q. So it wouldn't surprise you if, for 12 example, in Massachusetts over half of the power 13 used -- renewable power, renewable energy credits, 14 came from outside the state? 15 Let me back up. It wouldn't surprise you 16 if more than half of the renewable energy used to 17 comply with the RPS in Massachusetts came from 18 outside the state? 19 A. It's a possibility. I still contend that 20 it's less than -- less than it would have been 21 without that restriction. 22 Q. And, again, you claim Massachusetts has 23 this hourly delivery requirement for transmission. 24 A. I believe especially during the early</p> |
| Page 42 | Page 44 |
| <p>1 Massachusetts utilities would be from outside the 2 state? 3 A. I would say that would present a barrier 4 between -- inhibit outside the state. 5 Q. I'm sorry. Go ahead. 6 A. I'm looking at the graph, and I see that 7 Massachusetts has some of the highest REC prices so I 8 would say they were very successful. They are very 9 close to Maine who had an abundance of renewable 10 power. 11 Q. So, again, you would expect there would 12 be a relatively small amount of renewable energy 13 coming from outside Massachusetts to satisfy the 14 Massachusetts RPS; would that be your expectation? 15 A. I would say they would be less than if 16 that restriction wasn't there. 17 Q. All right. Well, that wasn't my 18 question. Would you expect it to be less than 19 50 percent coming from out of state? 20 A. I don't -- I don't know. 21 Q. Okay. Do you know whether the 22 Massachusetts energy authority, whatever agency or 23 administration, commission, it publishes that data, 24 in other words, where the energy comes from?</p> | <p>1 period of their ESP -- of renewable, yes. So I would 2 say -- let me be specific. I would say I'm speaking 3 around the 2006, 2007 timeframe. 4 Q. All right. How about after that? 5 A. I haven't followed it after that so that 6 information -- that information or -- I became aware 7 of that in around 2006, I would say. 8 Q. All right. So you don't know whether 9 that information or that requirement still maintained 10 after 2007. 11 A. No, I don't. 12 Q. Correct? 13 A. I don't -- I don't know whether it was 14 maintained or not. 15 Q. All right. In your testimony you 16 reference certain of the findings of the Exeter 17 report, do you not? 18 A. That's correct. 19 Q. And would it be fair to say that you 20 agreed with the findings and conclusions of the 21 Exeter report? 22 A. The ones that I have cited, yes. 23 Q. All right. Are there other findings of 24 the Exeter report that you disagree with?</p> |

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| <p>1 A. I would say that there's a part of my 2 testimony that speaks to -- let me just go to that. 3 MS. YOST: Are we going into an area 4 that's confidential? 5 THE WITNESS: Yes. 6 Q. Just tell me the page number. 7 A. 19 to 20. 8 Q. Okay. And you believe what's on pages 19 9 and 20 of your deposition -- excuse me, of your 10 testimony is inconsistent with the Exeter report? 11 A. It's a critique of the Exeter report, I 12 would say. 13 Q. Okay. Other than that do you have any 14 disagreements with the findings of the Exeter report 15 or the conclusions of the Exeter report? 16 A. I would say I would generally agree with 17 the findings of the Exeter report, although I spent 18 more of my time studying the more egregious portion 19 of what I thought was the Exeter report's findings. 20 Q. All right. Let me talk to you a little 21 bit about some of the findings then that you didn't 22 talk about. Would it be fair to say that the Exeter 23 report found that the RFP process designed by 24 Navigant, used by Navigant was competitive?</p> | <p>1 A. The process set a competitive outcome. I 2 don't agree that it was a competitive outcome. 3 Q. All right. But the process was designed 4 to obtain a competitive outcome, fair to say? 5 A. I would say in a general sense, in a very 6 high level sense. I think given the nature of the 7 short-term purchase of RECs was really not inductive 8 to getting a lot of responses. 9 Q. Okay. Do you believe that the process -- 10 well, I'll back up. 11 Do you understand that Exeter believed 12 that the RFP process designed and used by Navigant 13 was transparent? 14 A. You're looking at the second part? 15 Q. Yes, on page Roman Numeral II. 16 A. Okay. So he basically in the second -- 17 he speaks to what I just answered prior, how there 18 were certain decisions made not to participate in the 19 bid from developers or. 20 Q. My question to you, sir, is did Exeter 21 find that the process used by R -- by Navigant was 22 transparent? 23 A. I don't see the word transparency in this 24 answer. It was generally acceptable. It was</p> |
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| <p>1 A. So are you looking at page Roman Numeral 2 II? 3 Q. Yes. 4 A. For even the wording "do not appear" it's 5 not really the strongest way you would phrase that 6 particular provision. 7 Q. Do you disagree with that statement? 8 A. I would say given the way I see it, "do 9 not appear," if he's kind of qualifying it and based 10 on my information earlier that we talked about in the 11 redacted portion of my testimony, I don't know 12 enough. I would say I haven't looked at that part 13 enough to determine whether they. 14 Q. Would it be fair to say you have no basis 15 to disagree? 16 A. The only question I have is I know, for 17 example, AEP had a -- an affiliate policy in their 18 RFP which forbid any affiliate of AEP from bidding on 19 the RFP, and your RFP didn't obviously have -- the 20 FirstEnergy company's RFP obviously did not have that 21 provision, so with that caveat. 22 Q. All right. Well, I am just trying to 23 understand. Do you believe that the RFP process used 24 by Navigant was competitive?</p> | <p>1 generally acceptable by industry standards. 2 Q. All right. Did you believe that -- and 3 do you agree with that? 4 A. I don't have no basis to. 5 Q. Let's be clear as to what we are looking 6 at. The Exeter report says on Roman Numeral II page 7 "Exeter examined the FirstEnergy utilities 8 procurement process for evaluation relative to the 9 following important characteristics." 10 A. Can you point me to the? 11 Q. Roman Numeral II. 12 A. Yes. 13 Q. First full paragraph. Let's start again, 14 sir. 15 A. Okay. 16 Q. It says, does it not, "Exeter examined 17 the FirstEnergy Ohio procurement process for 18 evaluation relative to the following important 19 characteristics: 1, competitiveness; 2, 20 transparency; 3, cost; and, 4, ability to obtain 21 adequate industry response. Each of these 22 considerations appears to have been satisfied by the 23 REC acquisition approach employed by the companies." 24 That's what Exeter said, right?</p> |

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| <p>1 A. That's what they said, correct.</p> <p>2 Q. Do you agree with that?</p> <p>3 MS. YOST: Objection.</p> <p>4 A. I would answer the same way, that they</p> <p>5 say "each of these considerations appears to have</p> <p>6 been satisfied." To me it's not a strong</p> <p>7 confirmation that information was --</p> <p>8 Q. My question to you, sir, do you agree</p> <p>9 with that statement?</p> <p>10 MS. YOST: Objection.</p> <p>11 A. I would say to the extent that the -- I</p> <p>12 would break this up. So, 2, transparency, the RFP</p> <p>13 went out, everybody could see it, so on and so forth.</p> <p>14 So I think, you know, if you look at transparency and</p> <p>15 if you look at the cost of the -- what it took to</p> <p>16 administer the RFP and so on, I would say on those</p> <p>17 two areas I would probably be more in agreement than</p> <p>18 perhaps -- in terms of competitiveness if it means</p> <p>19 that it, like I indicated earlier, sought to get a</p> <p>20 number of suppliers, that characteristic I would</p> <p>21 agree with. Did it actually happen? I would</p> <p>22 disagree with it.</p> <p>23 Q. Okay.</p> <p>24 A. And then, 4, ability to obtain adequate</p> | <p>1 Numeral II says "The basic terms and conditions</p> <p>2 contained in the RFPs were generally acceptable by</p> <p>3 the industry, and to the extent that individual</p> <p>4 bidders were unwilling to provide bids in response to</p> <p>5 the solicitations, those decisions were based on</p> <p>6 specific elements contained in the RFPs that were at</p> <p>7 odds with the business models with the individual</p> <p>8 potential bidders. Such conditions include a</p> <p>9 duration of the contract periods and the firmness of</p> <p>10 the supply requirements." Do you agree or disagree</p> <p>11 with that statement?</p> <p>12 MS. YOST: Objection.</p> <p>13 A. I would say as he says they were</p> <p>14 generally acceptable. You put out an RFP and with</p> <p>15 specifications. However, the RFP was not acceptable</p> <p>16 to a large part of the industry because they didn't</p> <p>17 show up.</p> <p>18 Q. Okay. Do you agree or disagree with this</p> <p>19 statement, sir?</p> <p>20 MS. YOST: Objection. Asked and</p> <p>21 answered.</p> <p>22 MR. KUTIK: He hasn't answered the</p> <p>23 question.</p> <p>24 A. I would say if you are forcing me into a</p> |
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| <p>1 industry response, I've already stated that given the</p> <p>2 nature and going back to his second point that there</p> <p>3 were certain things in the RFP that perhaps limited</p> <p>4 like he says specific elements contained in every RFP</p> <p>5 were at odds with certain business models.</p> <p>6 Q. So let me now ask you about some of the</p> <p>7 findings. Finding No. 1 on Roman Numeral II, that</p> <p>8 page, "The RFPs issued by the FirstEnergy Ohio</p> <p>9 utilities are reasonably developed and do not appear</p> <p>10 to incorporate any provisions or terms that could be</p> <p>11 assessed to be anti-competitive." Do you agree or</p> <p>12 disagree with that statement?</p> <p>13 MS. YOST: Objection.</p> <p>14 A. I thought I answered that question</p> <p>15 earlier on when you asked it.</p> <p>16 Q. I have not asked you that question, sir.</p> <p>17 Please answer it.</p> <p>18 A. I thought when I answered it, I would say</p> <p>19 they were -- I agree they were reasonably developed,</p> <p>20 but the issue of not having an anti-affiliate</p> <p>21 provision, I think, could generally be construed as</p> <p>22 perhaps not being as anti-competitive as it could</p> <p>23 have been.</p> <p>24 Q. Okay. Second finding on page Roman</p> | <p>1 yes or no, I would say no.</p> <p>2 Q. You disagree.</p> <p>3 A. I would disagree based on what I said.</p> <p>4 Q. I want agree or disagree --</p> <p>5 A. Okay. Fair.</p> <p>6 Q. -- all right? No. 3, "The security</p> <p>7 requirements contained in the RFPs are assessed to</p> <p>8 strike a reasonable balance between guard" --</p> <p>9 "safeguarding the FirstEnergy Ohio utilities and</p> <p>10 making the RFP attractive to potential bidders."</p> <p>11 That's what Exeter said. Do you agree or disagree?</p> <p>12 MS. YOST: Objection.</p> <p>13 A. I would say -- I would say that</p> <p>14 particular finding on the security requirements is --</p> <p>15 I agree with that.</p> <p>16 Q. Okay. Let's move to finding No. 4,</p> <p>17 Exeter says "The processes in place to disseminate</p> <p>18 information to potential bidders and to address</p> <p>19 issues and questions that arose during the time that</p> <p>20 potential bidders were deciding whether to proffer a</p> <p>21 bid and the offer due dates were adequate."</p> <p>22 MS. YOST: Objection.</p> <p>23 Q. Do you agree or disagree?</p> <p>24 A. I have no -- I have no agreement or</p> |

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| <p>1 disagreement with this particular.</p> <p>2 Q. Okay. You have no basis to agree or</p> <p>3 disagree?</p> <p>4 A. Correct.</p> <p>5 Q. All right. No. 5, Exeter says "The</p> <p>6 mechanisms in place to renew and evaluate the bids</p> <p>7 were adequate, although a shorter period of time</p> <p>8 between the bid due date and the award in the first</p> <p>9 RFP would have been an improvement. The</p> <p>10 approximately three-week review period established by</p> <p>11 the FirstEnergy Ohio utilities was generally deemed</p> <p>12 to be excessive by industry participants and this was</p> <p>13 rectified by the FirstEnergy utilities in subsequent</p> <p>14 RFPs." Do you agree or disagree with that statement,</p> <p>15 sir?</p> <p>16 MS. YOST: Objection.</p> <p>17 A. I would tend -- I would tend to generally</p> <p>18 agree with that one.</p> <p>19 Q. Okay. Number -- in finding No. 6 Exeter</p> <p>20 says "The mechanisms in place to solicit industry</p> <p>21 feedback through both the nature of the questions and</p> <p>22 comments raised by potential bidders and the conduct</p> <p>23 of a survey by NCI are seen as an acceptable approach</p> <p>24 to inform the FirstEnergy Ohio utilities about the</p> | <p>1 Q. Finding No. 2 at the bottom of page Roman</p> <p>2 Numeral III "While lower prices would have been</p> <p>3 available to the companies were fewer RECs purchased</p> <p>4 through RFP 1 and more RECs purchased under RFP 3,</p> <p>5 the company's decisions to purchase the bulk of 2009,</p> <p>6 2010, and 2011 requirements under RFP 1 were not</p> <p>7 unreasonable." Do you agree with that statement?</p> <p>8 MS. YOST: Objection.</p> <p>9 A. I think I addressed this in my testimony,</p> <p>10 and I would say I don't agree that -- I don't think</p> <p>11 this was reasonable once you saw the types of pricing</p> <p>12 that was being offered.</p> <p>13 Q. Okay. So you disagree.</p> <p>14 A. I disagree, yes.</p> <p>15 Q. Let me now have you turn to page 3 of the</p> <p>16 Exeter report. Let me direction you to the last</p> <p>17 page -- excuse me, the last sentence on that page</p> <p>18 which says "Because bidders recognize that there may</p> <p>19 be only one opportunity to secure a buyer bidders</p> <p>20 tend to provide competitive prices reflective of</p> <p>21 market conditions." Do you agree with that</p> <p>22 statement?</p> <p>23 MS. YOST: Objection.</p> <p>24 A. I would disagree with that statement,</p> |
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| <p>1 strengths and weaknesses of the issued RFPs.</p> <p>2 Further, the information obtained through the process</p> <p>3 was effectively used and served as a basis for</p> <p>4 modifications in RFPs subsequent to the conduct of</p> <p>5 the survey." Do you agree or disagree with that</p> <p>6 statement?</p> <p>7 MS. YOST: Objection.</p> <p>8 A. I don't agree or disagree. I don't have</p> <p>9 a basis to say.</p> <p>10 Q. All right. Finding No. 7 Exeter says</p> <p>11 "Information" -- excuse me, "Market information for</p> <p>12 in-state solar and all renewable RECs was limited</p> <p>13 prior to the first two RFPs."</p> <p>14 A. I would agree there was limited</p> <p>15 information.</p> <p>16 Q. All right. Now, let's move to the</p> <p>17 findings at the bottom of Roman Numeral III, page</p> <p>18 Roman Numeral III, it says, this report, "No. 1, the</p> <p>19 prices paid by the" -- "by the companies for all</p> <p>20 states all renewable RECs were reasonably consistent</p> <p>21 with other regional RECs prices." Do you agree or</p> <p>22 disagree with that?</p> <p>23 MS. YOST: Objection.</p> <p>24 A. I would agree with that.</p> | <p>1 especially given the types of prices that the</p> <p>2 FirstEnergy companies paid.</p> <p>3 Q. Let me refer you to page 5 of this Exeter</p> <p>4 report. On the second paragraph, the last sentence,</p> <p>5 it says "All RFPs were found to be adequate with</p> <p>6 respect to clarity." Do you agree or disagree with</p> <p>7 that statement?</p> <p>8 A. I have no agreement or disagreement.</p> <p>9 Q. Let me refer you to page 7 and the last</p> <p>10 paragraph that begins "Preparation Mechanics," first</p> <p>11 sentence reads "The FirstEnergy Ohio utilities appear</p> <p>12 to have exercised reasonable care in preparation of</p> <p>13 the documents for the solicitations and arranged</p> <p>14 appropriate mechanisms for the evaluation of the bids</p> <p>15 received to allow awards" -- "award to be made within</p> <p>16 timeframes specified in the specifications." Do you</p> <p>17 agree or disagree with that statement?</p> <p>18 MS. YOST: Objection.</p> <p>19 A. I would say -- I would say reading that</p> <p>20 sentence and reading the title, I think the order is</p> <p>21 just simply stating that mechanically -- that</p> <p>22 mechanically they were a process to business. I</p> <p>23 don't think, you know, when they say appropriate --</p> <p>24 so it's a mechanism. It's not that the outcome was</p> |

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| <p>1 appropriate.</p> <p>2 Q. No. But do you agree or disagree with</p> <p>3 this statement, sir? That's my question.</p> <p>4 A. I would say I have no -- if you read it</p> <p>5 just as mechanical, high level mechanical reading, it</p> <p>6 may have some basis, but generally I would -- I would</p> <p>7 disagree if it was interpreted as anything else.</p> <p>8 Q. Well, as you interpret this sentence,</p> <p>9 sir, do you agree or disagree with it?</p> <p>10 MS. YOST: Objection. Asked and</p> <p>11 answered.</p> <p>12 A. I thought I answered it.</p> <p>13 Q. No, you didn't. You said if people could</p> <p>14 read it one way, you disagree so I am asking you the</p> <p>15 way you read it, sir, do you agree or disagree?</p> <p>16 MS. YOST: Objection. Asked and</p> <p>17 answered.</p> <p>18 If you have something else to add, you</p> <p>19 can.</p> <p>20 MR. KUTIK: He didn't answer the</p> <p>21 question.</p> <p>22 MS. YOST: He answered the question.</p> <p>23 MR. KUTIK: I haven't posed it to him.</p> <p>24 Q. Can you answer my question, sir?</p> | <p>1 statement, sir? That was my question.</p> <p>2 MS. YOST: Objection. Asked and</p> <p>3 answered.</p> <p>4 A. I thought I generally -- I thought my</p> <p>5 statement generally would agree with this.</p> <p>6 Q. Okay. Down at the bottom of page 8, last</p> <p>7 paragraph, it says "While information on market</p> <p>8 prices that the FirstEnergy Ohio utilities could</p> <p>9 expect to pay for all states all renewables and all</p> <p>10 states solar RECs would be reasonably obtainable from</p> <p>11 these sources, the amount of available (or</p> <p>12 potentially available) RECs and SRECs meeting the</p> <p>13 Ohio in-state criterion would not be available in any</p> <p>14 meaningful way." Do you agree or disagree with that</p> <p>15 statement?</p> <p>16 MS. YOST: Objection.</p> <p>17 A. I would state that I would agree with the</p> <p>18 part that states SRECs -- because SRECs were very</p> <p>19 difficult to obtain and there were force majeure</p> <p>20 proceedings in Ohio so I agree with that part of the</p> <p>21 statement.</p> <p>22 Q. Do you believe that information available</p> <p>23 on the amount of available or potentially available</p> <p>24 RECs, meaning the in-state criterion, was available</p> |
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| <p>1 A. I would say I'm having trouble with the</p> <p>2 appropriate mechanisms for the evaluation of the bids</p> <p>3 because --</p> <p>4 Q. So you disagree with that.</p> <p>5 A. I would disagree with that section.</p> <p>6 Q. Okay. Let's move on. Page 8, first full</p> <p>7 paragraph, starting with the second sentence the</p> <p>8 report reads "The markets contain geographic and</p> <p>9 product definition dimensions which need to be</p> <p>10 recognized, and information available as to the</p> <p>11 quantity of applicable RECs generated or that will</p> <p>12 likely be generated during the contract performance</p> <p>13 period is difficult to assemble and verify. This is</p> <p>14 largely the result of the nascent nature of the</p> <p>15 markets, particularly in 2009 and 2010 and also,</p> <p>16 although to a lesser extent, in 2011." Do you agree</p> <p>17 or disagree with that statement?</p> <p>18 MS. YOST: Objection.</p> <p>19 A. I would agree that the REC markets during</p> <p>20 this nascent period were very complex. They weren't</p> <p>21 liquid or transparent so.</p> <p>22 Q. You agree with that statement.</p> <p>23 A. I agree with what I said which is --</p> <p>24 Q. Well, do you agree or disagree with this</p> | <p>1 in any meaningful way --</p> <p>2 MS. YOST: Objection.</p> <p>3 Q. -- during the time of RFPs 1, 2, and 3?</p> <p>4 A. Well, I would say later. I think you</p> <p>5 have to differentiate between the different RFPs, but</p> <p>6 I would say -- I would disagree with it if it was the</p> <p>7 latest RFP, your RFP 3.</p> <p>8 Q. All right. So during the time of RFP 1</p> <p>9 and 2, it would be a fair statement that information</p> <p>10 on market prices and the amount of available RECs</p> <p>11 meeting the in-state requirement would not be</p> <p>12 available in any meaningful way?</p> <p>13 MS. YOST: Objection. Answer if you can.</p> <p>14 Karen, could you read that question back.</p> <p>15 (Record read.)</p> <p>16 A. I will say again I would agree on the</p> <p>17 solar REC --</p> <p>18 Q. I didn't ask about solar, sir. I asked</p> <p>19 you about RECs.</p> <p>20 A. The other ones? No. I would tend to --</p> <p>21 I would state that there was information, although I</p> <p>22 agree the market was complex and the information in</p> <p>23 the market wasn't trading in a liquid and transparent</p> <p>24 way. I believe there was information. So I would</p> |

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| <p>1 quibble with -- with the language that -- with 2 respect to the in-state, right. 3 Q. What -- what sources of information were 4 available on in-state REC prices during the time of 5 RFPs 1 and 2? 6 A. I would say there was information 7 especially after RFP 1. I think for RFP 1 it was -- 8 there was less information. I think with respect to 9 every RFP, the first one would probably be the least 10 information and then more information and -- was 11 available after the first one. 12 Q. Now, let's try to answer my question. My 13 question was tell me what information, the source of 14 the information, with respect to prices or 15 availability for in-state RECs before or at the time 16 of RFP 1 and 2. 17 A. Oh, I think -- I think there was 18 information. You had information of how many 19 projects were certified in Ohio. 20 Q. Right. That's one. What else? 21 A. You had some information -- there's 22 information that brokers would -- could be 23 communicated through brokers -- 24 Q. All right.</p> | <p>1 trading. 2 Q. What was the location of his office? 3 A. I don't recall, but I do believe it was 4 in the east coast. 5 Q. All right. And what did -- what was his 6 name again, last name? 7 A. Kolchins, Mr. Kolchins. 8 Q. Kolchins? 9 A. Yeah. 10 Q. Okay. What did Mr. Kolchins tell you 11 about what RECs were trading at, in-state RECs were 12 trading at, at or around the time of RFPs 1 and 2? 13 MS. YOST: Objection. Go ahead and 14 answer. 15 A. I would say the REC pricing that he 16 divulged or we discussed was always definitely below 17 the \$45 RFP and probably at around 80 -- 75 percent 18 of ACP in the state. 19 Q. All right. And did he indicate to you 20 that in-state RECs were plentiful? 21 A. No, he did not. 22 Q. Did he indicate to you the market was 23 relatively thin? 24 A. Thin. I think he indicated that the</p> |
| Page 62 | Page 64 |
| <p>1 A. -- in the market. 2 Q. Were you in contact with any brokers 3 during that time, sir? 4 A. Yes. 5 Q. All right. And they were telling you 6 price information? 7 A. They were saying generally some. 8 Q. Tell me the name of the broker or brokers 9 that you were -- 10 A. I believe most of my contacts were 11 with -- I guess I would say probably in terms of a 12 broker exclusively it would be with Evolution 13 Markets. 14 Q. All right. Who are Evolution Markets? 15 A. And I believe it was Andrew Kolchins. 16 Q. Can you -- 17 A. Andrew Kolchins. 18 Q. Could you spell that for me, please. 19 A. I believe his last name is 20 K-O-L-C-H-I-N-S. 21 Q. And where does -- where did that 22 individual work? 23 A. He worked for Evolution Markets. I 24 believe he was the director of renewable energy</p> | <p>1 market wasn't developed. 2 Q. Okay. So would that mean the market was 3 thin in your view? 4 A. It would mean it wasn't developed. It 5 was mason and. 6 Q. Would the term -- infant market would be 7 a term you would have used for the market in 2009 or 8 2010? 9 MS. YOST: Objection. 10 A. I believe mason and infant are very 11 related so. 12 Q. So you would use the term infant, right, 13 that it was an infant market? 14 A. I'm having trouble answering that because 15 there is a very specific economic notion around 16 infant in history. 17 Q. Have you ever used the term infant market 18 to describe the REC in-state market for Ohio for 2009 19 or 2010? 20 A. I've never used that term. 21 Q. All right. Isn't it true, sir, that you 22 once estimated that the price of an in-state REC in 23 2009 could be as high as \$250 per REC? 24 A. Can you point me to where I've --</p> |

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| <p>1 Q. Do you recall ever doing that, sir?</p> <p>2 MS. YOST: Karen, could you read the</p> <p>3 question back, please, before the "do you recall."</p> <p>4 (Record read.)</p> <p>5 A. Was that for SREC?</p> <p>6 Q. No, sir.</p> <p>7 A. For a regular REC.</p> <p>8 Q. Correct.</p> <p>9 A. I'm not aware. I don't believe I've.</p> <p>10 Q. Okay. So you deny you've ever valued a</p> <p>11 REC, in-state REC, of market value in 2009 at \$250 --</p> <p>12 as high as \$250; is that your testimony?</p> <p>13 A. I would never have valued any REC above</p> <p>14 the ACP.</p> <p>15 Q. So your answer is you never did.</p> <p>16 MS. YOST: Objection. Asked and</p> <p>17 answered.</p> <p>18 Q. You never did; is that correct?</p> <p>19 A. I would say I don't recall it, and I</p> <p>20 don't recall if there's something available, what the</p> <p>21 context of that remark was, but I would say for the</p> <p>22 record I would --</p> <p>23 Q. And we are on the record, sir.</p> <p>24 A. Yes. I would never have quoted any price</p> | <p>1 ever valued at \$250 per REC in 2009 for an in-state</p> <p>2 Ohio REC and I believe your testimony is you don't</p> <p>3 recall it and if you did, you didn't do it, right?</p> <p>4 MS. YOST: Objection. Mischaracterizing</p> <p>5 the witness's testimony. He's asked -- he's answered</p> <p>6 your question.</p> <p>7 MR. KUTIK: Well, he asked me a question.</p> <p>8 Apparently the witness is confused.</p> <p>9 Q. Are you confused, Mr. Gonzalez?</p> <p>10 MS. YOST: Objection.</p> <p>11 Q. Are you confused?</p> <p>12 MS. YOST: Don't answer that.</p> <p>13 Q. Are you confused?</p> <p>14 MS. YOST: Do not answer that.</p> <p>15 A. No. I am very clear about this issue.</p> <p>16 Q. Okay. So your testimony is you don't</p> <p>17 recall ever saying that the value of an in-state Ohio</p> <p>18 REC in 2009 was 2000 -- was \$250, correct?</p> <p>19 MS. YOST: Objection. Asked and</p> <p>20 answered. We need to move on.</p> <p>21 Q. Is that your testimony, sir?</p> <p>22 MS. YOST: We need to move on.</p> <p>23 MR. KUTIK: I have gotten several answers</p> <p>24 so I am trying to find out what the real answer is.</p> |
| Page 66 | Page 68 |
| <p>1 above the ACP.</p> <p>2 Q. All right. So as far as you can tell,</p> <p>3 you've never said that the market value of an</p> <p>4 in-state Ohio REC could be as high as \$250 per REC,</p> <p>5 correct?</p> <p>6 MS. YOST: Objection.</p> <p>7 Q. Correct?</p> <p>8 MS. YOST: Asked and answered and you are</p> <p>9 misquoting the witness's testimony.</p> <p>10 A. I answered that.</p> <p>11 Q. No, you didn't. I never asked you that</p> <p>12 question before. I am trying to understand what your</p> <p>13 testimony is. Have I stated your testimony</p> <p>14 correctly? Let me say it again.</p> <p>15 A. Oh. Go ahead.</p> <p>16 Q. Is it the case that you do not recall</p> <p>17 ever evaluating an Ohio in-state REC in 2009 to be as</p> <p>18 high as \$250 per REC?</p> <p>19 MS. YOST: Objection.</p> <p>20 A. I don't recall, but I would believe not</p> <p>21 for a nonsolar REC.</p> <p>22 Q. Okay.</p> <p>23 A. And you're saying that's in my testimony?</p> <p>24 Q. I just asked you, sir, whether you've</p> | <p>1 MS. YOST: We are moving on.</p> <p>2 MR. KUTIK: Let's not move on. Let's get</p> <p>3 Greg on the phone.</p> <p>4 MS. YOST: You are asking the same</p> <p>5 question over.</p> <p>6 Q. Sir, can you answer my question and I can</p> <p>7 move on once you answer my question? I've gotten "I</p> <p>8 wouldn't have." I've gotten "I don't recall." So I</p> <p>9 want to know what the answer is. Is it you don't</p> <p>10 recall that you did that? Is that your answer?</p> <p>11 MS. YOST: Objection.</p> <p>12 A. The answer is I don't recall, but I would</p> <p>13 supplement that answer by saying that it's -- it</p> <p>14 would be highly unlikely that I would ever have said</p> <p>15 that, agreed to any price above the ACP.</p> <p>16 Q. All right. Now, let me refer you to page</p> <p>17 28 of the Exeter report.</p> <p>18 MS. YOST: Before we move on let's take a</p> <p>19 15-minute break.</p> <p>20 MR. KUTIK: Let's take a 10-minute break</p> <p>21 and I have a lot of questions, unless we want to go</p> <p>22 for two days, which is fine with me, I think we need</p> <p>23 to shorten the break.</p> <p>24 MS. YOST: Mr. Wilson, is 10 minutes okay</p> |

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| <p style="text-align: right;">Page 69</p> <p>1 for you?</p> <p>2 THE WITNESS: Yes.</p> <p>3 MS. YOST: 10 minutes.</p> <p>4 (Recess taken.)</p> <p>5 Q. Let's go back on the record.</p> <p>6 Mr. Gonzalez, let me refer you to page 28 of the</p> <p>7 Exeter report. Are you there?</p> <p>8 A. Yes.</p> <p>9 Q. The first paragraph begins as follows:</p> <p>10 "Based on our review of the legislation, the</p> <p>11 responses of the FirstEnergy Ohio utilities to our</p> <p>12 requests for information and various Commission</p> <p>13 filings and our interview with the FirstEnergy</p> <p>14 personnel and personnel from Navigant Consulting,</p> <p>15 there do not appear to be any technical violations of</p> <p>16 the Ohio's AEPS statute, and the FirstEnergy Ohio</p> <p>17 utilities appear not to have violated the letter of</p> <p>18 the legislation." Do you agree or disagree with that</p> <p>19 statement?</p> <p>20 MS. YOST: Objection.</p> <p>21 A. I disagree with that statement.</p> <p>22 Q. And why did you disagree with the</p> <p>23 statement?</p> <p>24 A. I disagree, especially the part that says</p> | <p style="text-align: right;">Page 71</p> <p>1 not -- or not making the compliance payment, by not</p> <p>2 doing those things, the FirstEnergy Ohio utilities</p> <p>3 violated Section 4928.64?</p> <p>4 A. I would -- they did but I would add based</p> <p>5 on the 15 -- of the 15 times the payment for a REC, I</p> <p>6 think that definitely violated the intent of that</p> <p>7 legislation.</p> <p>8 Q. Okay. Well, you just -- you realize you</p> <p>9 just mentioned something that was confidential,</p> <p>10 understand that?</p> <p>11 A. No. I think if you look at the --</p> <p>12 MS. YOST: He quoted the unredacted</p> <p>13 portion of the Exeter report.</p> <p>14 Q. Well --</p> <p>15 A. I will be very -- I know I have to be</p> <p>16 very careful.</p> <p>17 Q. All right. So, again, not making -- not</p> <p>18 making a compliance payment and not going for force</p> <p>19 majeure, those make the company in violation of the</p> <p>20 statute, correct?</p> <p>21 MS. YOST: Objection. Asked and</p> <p>22 answered.</p> <p>23 Q. Is that correct?</p> <p>24 A. I've said it violates the intent of the</p> |
| <p style="text-align: right;">Page 70</p> <p>1 "appear not to have violated the letter of the</p> <p>2 legislation."</p> <p>3 Q. Okay. And you believe the company has</p> <p>4 violated the letter --</p> <p>5 A. Yes, I do.</p> <p>6 Q. In what way?</p> <p>7 A. I believe that the consequence of the</p> <p>8 alternate compliance payment was altered. I believe</p> <p>9 the lack of asking for a confidential force majeure</p> <p>10 was -- was problematic.</p> <p>11 Q. So do you believe that the companies</p> <p>12 violated Section 4928.64 of the Ohio Revised Code</p> <p>13 because they didn't make a compliance payment or</p> <p>14 because they didn't go in for a force majeure</p> <p>15 application for in-state RECs?</p> <p>16 A. I would say they violated the letter --</p> <p>17 the intent of the legislation, yes.</p> <p>18 Q. So you believe they did violate in that</p> <p>19 way.</p> <p>20 A. The intent of the -- and even the</p> <p>21 statement talks about technical violations so it's</p> <p>22 a -- like a technicality-type argument.</p> <p>23 Q. Well, I am trying to understand. Do you</p> <p>24 believe that not going in for force majeure and</p> | <p style="text-align: right;">Page 72</p> <p>1 statute.</p> <p>2 Q. Okay. So it violates the statute.</p> <p>3 MS. YOST: Objection. Asked and anted.</p> <p>4 MR. KUTIK: No, it isn't.</p> <p>5 Q. I don't understand when you say "intent."</p> <p>6 Is that something different than violating the</p> <p>7 statute?</p> <p>8 A. Yeah. I would say it violated the</p> <p>9 statute as I understand it.</p> <p>10 Q. Okay. Thank you. Now, let me have you</p> <p>11 turn to page 29 of the Exeter report. Under the</p> <p>12 heading "Statutory Violations," it says "While this</p> <p>13 audit is not a legal review and the following opinion</p> <p>14 is not based on a legal review, we found no</p> <p>15 indication that the FirstEnergy Ohio utilities</p> <p>16 operated outside of the legal requirements</p> <p>17 established by the Ohio APS legislation." Do you see</p> <p>18 that?</p> <p>19 A. I'm reading the rest of that.</p> <p>20 Q. Now, my question, sir, it would be fair</p> <p>21 given your prior testimony in this deposition that</p> <p>22 you disagree with that statement, that is, that the</p> <p>23 FirstEnergy Ohio utilities -- they didn't find any</p> <p>24 indication that the FirstEnergy Ohio utilities</p> |

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| <p style="text-align: right;">Page 73</p> <p>1 operated outside of the legal requirements 2 established by the Ohio APS legislation. 3 A. I would generally disagree with that 4 nonlegal conclusion. 5 Q. All right. For the same reasons you 6 mentioned earlier, that because the companies didn't 7 go for force majeure or pay a compliance payment? 8 A. I would say generally, yes. 9 Q. All right. The report goes on to say 10 "There is nothing in the legislation that limits the 11 price that the companies could pay for RECs other 12 than the requirement on an expected looking forward 13 basis, the cost compliance should not exceed 14 3 percent of the company's charges of the provision 15 of power supply." Do you disagree with that 16 statement? 17 A. Yes, I would agree with that -- disagree 18 with that. 19 Q. You disagree with that. 20 A. Yes. 21 Q. And can you tell me what in the 22 legislation other than the 3 percent test limits the 23 price that the companies could pay for RECs? 24 A. I believe that the legislation and its</p> | <p style="text-align: right;">Page 75</p> <p>1 available, you're going to get a much higher price. 2 So it does -- is implied. 3 Q. It's implied. 4 A. Correct. 5 Q. All right. Let me -- is there anything 6 else in the force majeure statute that speaks to 7 price other than the phrase "reasonably available"? 8 MS. YOST: Wilson, do you have the 9 statute? 10 THE WITNESS: I'm reading. 11 MS. YOST: Is that the entire statute? 12 THE WITNESS: I don't know if this is the 13 complete force majeure. 14 Q. Okay. We'll come back to it. 15 MR. KUTIK: Sit down. 16 Q. We'll come back to the question. Let me 17 move on. 18 MS. YOST: Don't answer his question. He 19 is moving on. 20 Q. We'll move on. We'll get the statute. 21 A. I already answered it. 22 Q. Pardon? 23 A. I thought I answered the question about 24 the implied price.</p> |
| <p style="text-align: right;">Page 74</p> <p>1 intent was very carefully crafted to ensure that Ohio 2 utilities don't pay excessive amounts for the -- for 3 RECs so they had -- I see it as you had three 4 protections. You had the protection of force 5 majeure. You had the protection of the ACP. And you 6 had the protection of the 3 percent. So there were 7 three hurdles and three facets of that law that to me 8 signifies the intent that they were very concerned 9 about the cost of renewable, and they wanted to 10 protect Ohio consumers from overpriced RECs. 11 Q. Can you point me to anything in the force 12 majeure provisions of Section 4928.64 that mentions 13 price? 14 A. Let me get my testimony because I 15 think -- I think it speaks about reasonably -- let me 16 just look through the language. Getting close. 17 I think the language speaks -- I am 18 trying to recall. I know I quoted it in my 19 testimony. Oh, here it is. You know, it states 20 renewable resources are reasonably available. As an 21 economist, that speaks to price. You infer price 22 from that. If something -- if something is 23 reasonably available, you are going to tend to get a 24 competitive price. If something is not reasonably</p> | <p style="text-align: right;">Page 76</p> <p>1 Q. The question you couldn't answer 2 apparently without looking at the rest of the statute 3 at your counsel's suggestion -- 4 A. Okay. 5 Q. -- is whether there is anything else in 6 the force majeure statute that refers to price other 7 than the phrase reasonably available. Do you need 8 the rest the statute to look at that? 9 A. I would prefer to look at that. 10 Q. Very good. Then let me ask you another 11 question. Let me refer you to page 29 of the Exeter 12 report. Are you there, sir? 13 A. Yes. 14 Q. The second paragraph under the heading 15 "Statutory Violations" operates as follows -- or says 16 as follows: "The solicitations issued by the 17 companies as discussed earlier in this report were 18 competitive, and the rules for the determination of 19 winning bids appear to have been applied uniformly." 20 Do you agree or disagree with that statement? 21 A. I would say the solicitations issued, I 22 would say, were competitive. 23 Q. Okay. Would you also say that the rules 24 for determining or agreeing that the rules for</p> |

| Page 77 | Page 79 |
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| <p>1 terminating -- of termination of winning bidders 2 appear to have been applied uniformly? 3 A. Can you -- can you -- uniformly, is that 4 related to the next sentence? 5 Q. Sir, I just asked you whether you agree 6 or disagree with the statement that's written in this 7 document. 8 A. Again, I would say the winning bids 9 appeared to have been applied uniformly and -- let me 10 finish. And the second sentence that said you 11 submitted the lowest bids to satisfy the -- seek to 12 satisfy the requirements, the fact there was only one 13 bid is where the -- where the issue is. 14 Q. But you found -- let's read the 15 sentence -- the second sentence of that paragraph. 16 It says "We find nothing to suggest that the Ohio" -- 17 "the FirstEnergy Ohio utilities operated in a manner 18 other than to select the lowest cost bids received 19 from a competitive solicitation to satisfy the annual 20 in-state all renewables requirement established by 21 the legislation." Do you agree with that statement? 22 MS. YOST: Objection. 23 A. I would say I disagree because I know at 24 the meeting we had with the auditor he really -- he</p> | <p>1 Q. So you don't believe the process was 2 designed to select the lowest cost bid. 3 A. I would say in a very technical sense. 4 Q. In a very technical sense, yes? 5 A. A very technical sense -- 6 Q. Yes? 7 A. You got X amount of bids. You picked the 8 lowest bid. I think in that case, yes. 9 Q. That was what it was designed to do, 10 correct? 11 A. From a technical point of view if you 12 align your bids, it was -- and with the added they 13 had to be a qualified bid. 14 Q. Okay. 15 A. So I would qualify you have to be a 16 qualified bidder. So it would be select the 17 lowest -- I would -- I would have edited that to say 18 select the lowest qualified bids. 19 Q. All right. Let me direct you to the 20 paragraph that begins "Market Information" on page 29 21 of the Exeter report. And the last sentence says 22 "Consequently, we believe that there was significant 23 uncertainty associated with the assessing changes in 24 future RECs' prices and the potential availability of</p> |
| Page 78 | Page 80 |
| <p>1 didn't investigate whether improper communication had 2 taken place. So from that respect I would -- I 3 would -- I don't know. I'm having trouble with the 4 oxymoron in that sentence that the lowest bid can be 5 up to 15 times the ACP. 6 Q. Sir, do you agree or disagree? You have 7 been doing this for an hour and a half. You know 8 what I'm asking you. So let me ask the statement -- 9 let me ask the question to you again, it says "We 10 found nothing to suggest that the FirstEnergy Ohio 11 utilities operated in a manner other than to select 12 the lowest cost bids received from a competitive 13 solicitation to satisfy the annual in-state all 14 renewables requirement established by the 15 legislation." Do you agree with that statement? 16 MS. YOST: Objection. 17 A. Yeah. I would say I still disagree with 18 that. 19 Q. Okay. And you disagree because you don't 20 believe it was designed to select the lowest cost 21 bid, the process? 22 A. I would say that given the structure that 23 you would accept a single bid at such an excessive 24 price, that's very problematic.</p> | <p>1 future RECs." Do you agree with that as of RFPs 1 2 and 2? 3 MS. YOST: Objection. This line of 4 questioning you are asking him if he agrees these 5 people believe that. 6 MR. KUTIK: Don't make a speech. Don't 7 coach. If you have an objection, you've stated it. 8 Now, he can answer the question. 9 Q. Go ahead. 10 MS. YOST: You are talking about time. 11 You are wasting time with this line of questions. 12 MR. KUTIK: No, I'm not. 13 A. I would say -- you are asking me about 14 that last sentence "consequently"? 15 Q. Yes, I am. 16 A. I would say there was an uncertainty 17 associated with assessing a change. 18 Q. So you would agree with this statement. 19 A. No. I said I would -- I agree there was 20 uncertainty. I think when he says significant 21 uncertainty, I would quibble with the significant 22 part of that. 23 Q. All right. Now, would it be fair to say 24 that Exeter did not recommend a disallowance?</p> |

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| <p style="text-align: right;">Page 81</p> <p>1 A. I mean, the recommendation is pretty 2 clear. On 4 it says "Based on the findings we 3 recommend the Commission examine the disallowance of 4 excessive costs associated with purchasing RECs to 5 meet the FirstEnergy Ohio utilities in-state 6 renewable obligations." 7 Q. So they recommend to examine the 8 disallowance, not that there should be a 9 disallowance; is that correct? 10 A. That's correct. But there is -- there's 11 much in their report that talks about the flawed 12 decision making by the companies. 13 Q. Again, the recommendation is to examine a 14 disallowance, not that there should be a 15 disallowance, correct? 16 MS. YOST: Objection. Asked and 17 answered. 18 A. Yeah. I read the recommendation. 19 Q. So the answer to my question is yes. 20 A. The answer to your question is yes, based 21 on my reading of this and based on my prior answer. 22 Q. Thank you. Now, you recommended 23 disallowance, correct? 24 A. Yes.</p> | <p style="text-align: right;">Page 83</p> <p>1 A. Yes. 2 Q. What's the source? 3 A. It's the Spectrum Group. 4 Q. Okay. And did you do any independent 5 verification of any of this data to be able to vouch 6 for its accuracy? 7 A. I did look at some of the -- I did look 8 at some months that I had information from other 9 sources that I was able to confirm that it was -- the 10 data was in the ballpark. 11 Q. All right. But you couldn't confirm the 12 accuracy of all the data on here, could you? 13 A. Not every data point, no. 14 Q. Do you know whether these represent 15 prices of actual transactions? 16 A. No. It says right here it's just plotted 17 values of the last trade, if available, so there was 18 no trade it wasn't available so it's -- it's 19 information that bids and offers and some trades were 20 consummated somewhere. 21 Q. So this may as far as you know represent 22 data that doesn't reflect actual transactions, 23 correct? 24 A. Could, yes.</p> |
| <p style="text-align: right;">Page 82</p> <p>1 Q. And you provide several bases for this 2 disallowance, do you not? 3 A. That's correct. 4 Q. And would it be fair to say that one of 5 the bases for the disallowance appears on page 9 of 6 your testimony and that is a graph labeled figure 3? 7 A. Yes. That's one -- one of the reasons, 8 yes. 9 Q. Right. I understand there are others, 10 but I just wanted you to identify this figure on page 11 9 which is identified as figure 3, that's one of the 12 bases for your recommendation, correct? 13 A. Yes. 14 Q. And this figure is taken from the Exeter 15 report, is it not? 16 A. That's correct. 17 Q. Did you do any modifications to this 18 figure? 19 A. No. 20 MR. KUTIK: Let's go off the record. 21 (Discussion off the record.) 22 Q. Let's go back on the record. Do you know 23 the source of this information that's shown on this 24 figure?</p> | <p style="text-align: right;">Page 84</p> <p>1 Q. And would it be fair to say that we don't 2 know what the volume of any transactions behind any 3 of these prices might be? 4 A. The table doesn't speak to volumes. 5 Q. So the answer to my question is yes, we 6 don't know? 7 A. From this table we don't know, yes. 8 Q. Have you done any research to learn on 9 your own accord what volume of transactions, if any, 10 support these price numbers, the figures? 11 A. No. 12 Q. Do we know whether any of these prices 13 are in any way representative of actual prices paid? 14 A. I would say, as I stated earlier, if 15 there was a trade that was actually made and 16 available, it reflects that, if there were, if it 17 wasn't, so it's made up of both those types of data 18 points. 19 Q. But we don't know whether any of this 20 data represents any transaction, do we? 21 A. No. It says "if available" so. 22 Q. So we don't know whether anything was 23 available, correct? 24 A. I would say that my reading of that is</p> |

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| <p style="text-align: right;">Page 85</p> <p>1 that some were available and some weren't.</p> <p>2 Q. Okay. But, again, you don't know.</p> <p>3 A. For every data point on this table, no, I</p> <p>4 don't.</p> <p>5 Q. Right. And you don't know whether there</p> <p>6 were any trades that represent prices on this graph,</p> <p>7 do you? That's just an assumption you're making,</p> <p>8 isn't it?</p> <p>9 A. Yeah. My reading and talking with other</p> <p>10 brokers, you know, some of the -- there is some</p> <p>11 trades that are consummated and some are not.</p> <p>12 Q. That's not my question, sir. You haven't</p> <p>13 answered my question. My question is you don't know</p> <p>14 whether for any of these data points -- or any of</p> <p>15 these data points there was any transaction that</p> <p>16 supports that.</p> <p>17 A. I would say I don't know specifically,</p> <p>18 but it would be highly unlikely if there were no</p> <p>19 trades consummated during that period.</p> <p>20 Q. And that's an assumption you are making,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. Now, at least my figure 3 from your</p> <p>24 testimony is not in color. So it's difficult for me</p> | <p style="text-align: right;">Page 87</p> <p>1 it would be reasonable if one were representing</p> <p>2 consumers in Connecticut, the District of Columbia,</p> <p>3 or Delaware to argue that there should be a</p> <p>4 disallowance of prices or costs, the costs of the</p> <p>5 difference between what the utilities in those states</p> <p>6 paid as represented on this graph versus what</p> <p>7 utilities in Texas paid?</p> <p>8 A. I would say a disallowance is specific to</p> <p>9 every state, and I would think the consumer advocate</p> <p>10 would look to see whether any of these prices for</p> <p>11 each state exceeded an ACP, alternative compliance</p> <p>12 payment, if they have one, or if the states have</p> <p>13 force majeure or some other provisions.</p> <p>14 Q. All right. So we couldn't just look at</p> <p>15 relative prices in different states to make a case</p> <p>16 for a disallowance, right?</p> <p>17 A. That's not what I said. I would say that</p> <p>18 the purpose of showing this particular graph in my</p> <p>19 case, I would assume in the Exeter case, is that the</p> <p>20 prices paid by the company were so much higher</p> <p>21 than -- than these types of prices so they were in a</p> <p>22 sense aberrant. It was -- it was, you know -- it</p> <p>23 went up to a 15 times when the highest price here is</p> <p>24 50 so they went up. You know, the ACP in Ohio is 45.</p> |
| <p style="text-align: right;">Page 86</p> <p>1 to identify the states with the two lowest prices.</p> <p>2 Can you do that for me? Can you tell me which two</p> <p>3 states are the lowest states in price as shown here?</p> <p>4 MS. YOST: Go off the record for a</p> <p>5 second. Oh.</p> <p>6 A. I can see Texas, I can make out, is very</p> <p>7 low. And, yeah, it's very difficult to read if you</p> <p>8 don't have a color copy.</p> <p>9 Q. Okay. Can you tell me what the two</p> <p>10 highest states are?</p> <p>11 A. It looks like Connecticut, D.C. had some</p> <p>12 high RECs. That may be -- maybe D-E, Delaware.</p> <p>13 Q. Okay. Well, assuming that Connecticut,</p> <p>14 the District of Columbia, and Delaware are among the</p> <p>15 higher prices that are shown on this figure 3 --</p> <p>16 A. I would add it looks like for some period</p> <p>17 Massachusetts perhaps.</p> <p>18 Q. Let me ask my question, sir, please.</p> <p>19 A. Okay.</p> <p>20 Q. Assuming since we don't have color charts</p> <p>21 that Connecticut -- the District of Columbia and</p> <p>22 Delaware represent the higher priced states as</p> <p>23 graphed here and assume that Texas is one of the</p> <p>24 lower priced states that's graphed here, do you think</p> | <p style="text-align: right;">Page 88</p> <p>1 The auditor report says it went up to as high as 15</p> <p>2 times so I would say, you know, that's -- that's why</p> <p>3 this -- this particular graph is instructed.</p> <p>4 Q. Couldn't a consumer advocate in</p> <p>5 Connecticut, D.C., and Delaware argue that the prices</p> <p>6 paid were too high because of the relative prices</p> <p>7 that are shown here versus \$10 and less in states</p> <p>8 like Texas? Wouldn't that be a reasonable argument</p> <p>9 in your view?</p> <p>10 A. I think you have to be very specific</p> <p>11 to --</p> <p>12 Q. So that would not be a reasonable</p> <p>13 argument.</p> <p>14 A. Whatever -- whatever -- my answer is it's</p> <p>15 very case specific for each particular state.</p> <p>16 Q. Right. So what I suggested would not be</p> <p>17 a reasonable argument, correct?</p> <p>18 A. In and of itself would not -- would not</p> <p>19 suffice.</p> <p>20 Q. Okay. Now, it's the case that with</p> <p>21 respect to figure 3 all of the states have alternate</p> <p>22 compliance payment?</p> <p>23 A. I believe so. I believe so. Generally</p> <p>24 they --</p> |

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| <p style="text-align: right;">Page 89</p> <p>1 Q. Is there any state that you are aware of</p> <p>2 on this figure that does not have alternate</p> <p>3 compliance payment as part of its RPS statute?</p> <p>4 A. I would say generally they all have it</p> <p>5 but each one specifically --</p> <p>6 Q. I am not asking you specifically. I just</p> <p>7 want to know if you are aware of anyone that doesn't</p> <p>8 have one.</p> <p>9 A. I'm trying to get that information.</p> <p>10 Q. What are you looking at, sir?</p> <p>11 A. Information.</p> <p>12 Q. Sir, what are you looking at?</p> <p>13 A. I'm looking at information in my</p> <p>14 testimony of one of your witnesses.</p> <p>15 Q. Okay. Information that was relied upon</p> <p>16 by one of the FirstEnergy witnesses?</p> <p>17 A. One of the attachments.</p> <p>18 Q. Okay. Go ahead. Now, let me ask my</p> <p>19 question then.</p> <p>20 A. You still have -- you have a question</p> <p>21 pending.</p> <p>22 Q. Yeah. I want to restate it so the record</p> <p>23 is clear.</p> <p>24 A. I understand the first question.</p> | <p style="text-align: right;">Page 91</p> <p>1 Q. All right. So would it be fair to say</p> <p>2 you can't state that any of the states that have an</p> <p>3 ACP on this chart or graph do not allow recovery?</p> <p>4 A. I can't say that, no.</p> <p>5 Q. Okay. So as far as you know, they all</p> <p>6 do?</p> <p>7 A. I would say the majority of them do, yes.</p> <p>8 Q. Right. You can't point to any that vary</p> <p>9 from that rule, right?</p> <p>10 A. I cannot.</p> <p>11 Q. All right. Now, do any of these states</p> <p>12 have a specific requirement that the renewable energy</p> <p>13 must be -- must originate from the state? Again, we</p> <p>14 are talking about the states shown on figure 3.</p> <p>15 A. Uh-huh. I believe Texas is the only one.</p> <p>16 Q. Okay. Now, are you aware of whether any</p> <p>17 of these statements had an RPS statute that was</p> <p>18 enacted in 2009 -- 2008?</p> <p>19 A. Can I back up on my answer?</p> <p>20 Q. Sure.</p> <p>21 A. I would say I see that this one has</p> <p>22 Illinois Wind. I believe Illinois also has an</p> <p>23 in-state requirement.</p> <p>24 Q. Okay. Is that -- that for wind or for</p> |
| <p style="text-align: right;">Page 90</p> <p>1 Q. That's what I want to restate so the</p> <p>2 record is clear.</p> <p>3 A. But I understand it.</p> <p>4 Q. I don't care. I want to make my record,</p> <p>5 sir.</p> <p>6 MS. YOST: There is a question pending</p> <p>7 and if the answer is not the answer you want, you can</p> <p>8 follow up.</p> <p>9 MR. KUTIK: No. I am going to restate</p> <p>10 it.</p> <p>11 Q. And the question is can you point to any</p> <p>12 state that's shown on figure 3 that appears at page 9</p> <p>13 of your testimony that does not have alternate</p> <p>14 compliance payment?</p> <p>15 A. I would say I can't point to any one that</p> <p>16 doesn't. I would say the majority of them have.</p> <p>17 Q. Well, again, you can't point to any that</p> <p>18 don't have, correct?</p> <p>19 A. That's correct at this point.</p> <p>20 Q. Now, are you aware of whether any of</p> <p>21 these states having an ACP don't allow the ACP to be</p> <p>22 recovered from customers?</p> <p>23 A. I would say -- I would say most of these</p> <p>24 states would allow recovery from customers.</p> | <p style="text-align: right;">Page 92</p> <p>1 anything else?</p> <p>2 A. Think about that one. I believe it's a</p> <p>3 general.</p> <p>4 Q. Okay. So you would agree that -- well,</p> <p>5 you believe that all renewable -- all types of</p> <p>6 renewables are subject to an in-state requirement in</p> <p>7 Illinois?</p> <p>8 A. Yes.</p> <p>9 Q. And do you believe that that requirement</p> <p>10 was in place in Illinois for the period shown by</p> <p>11 figure 3?</p> <p>12 A. I believe it -- it's hard to see on here,</p> <p>13 but I would say I think in Illinois it -- it changed</p> <p>14 in 2011.</p> <p>15 Q. Okay. So the in-state requirement that</p> <p>16 you are aware of in Illinois came into effect in</p> <p>17 2011?</p> <p>18 A. No, no. It ended in 2011.</p> <p>19 Q. Okay. So it was in effect until 2011.</p> <p>20 A. Correct. That's my understanding.</p> <p>21 Q. I'm sorry?</p> <p>22 A. Yes, that's my understanding.</p> <p>23 Q. You need to speak up, sir. Were any of</p> <p>24 the states that are shown in figure 3, were there RPS</p> |

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| <p style="text-align: right;">Page 93</p> <p>1 statutes enacted in the year 2008?</p> <p>2 A. I would say it looks like all the states.</p> <p>3 I'm not sure about perhaps Illinois, but I believe</p> <p>4 all the other states were enacted prior to 2008 as we</p> <p>5 discussed earlier.</p> <p>6 Q. That was -- my question was was there any</p> <p>7 state that was enacted in the year 2008.</p> <p>8 A. Oh, no, I don't believe so.</p> <p>9 Q. All right. Was there any state where the</p> <p>10 RPS became effective in 2009?</p> <p>11 A. In 2000?</p> <p>12 Q. And '9.</p> <p>13 A. No.</p> <p>14 Q. Would you expect that where a state has</p> <p>15 an ACP that may be paid in lieu of compliance and</p> <p>16 where that ACP is recoverable from customers, that</p> <p>17 that ACP would act as an effective cap on market</p> <p>18 prices for RECs?</p> <p>19 THE WITNESS: Could you read that back,</p> <p>20 please.</p> <p>21 (Record read.)</p> <p>22 A. I'll say yes.</p> <p>23 Q. Now, this data that's shown here was from</p> <p>24 an organization called Spectrum, I think you said?</p> | <p style="text-align: right;">Page 95</p> <p>1 ballpark figure, I think you would consider it a</p> <p>2 nascent market.</p> <p>3 Q. Okay. So let's make sure we're clear</p> <p>4 what we mean by that. Would it be the first three</p> <p>5 years starting with the effective date of the RPS?</p> <p>6 That would be the period of the nascent market?</p> <p>7 A. I would say generally, yes, except I am</p> <p>8 trying to see how long in advance some of these may</p> <p>9 have traded before that so the markets would have had</p> <p>10 more time to develop.</p> <p>11 Q. All right. So would it be fair to say</p> <p>12 that as far as you would define it, the nascent</p> <p>13 market would be the period up through three years</p> <p>14 after the effective date of the RPS?</p> <p>15 A. He would say yes, if there was many years</p> <p>16 of trading before that effective date.</p> <p>17 Q. So let's go back to my question. Can you</p> <p>18 tell me for any state what the period of the nascent</p> <p>19 market was as shown on the figure on page 13?</p> <p>20 A. I would say in Pennsylvania all the --</p> <p>21 all the points. In Connecticut I would say the full</p> <p>22 period because they also -- I believe Connecticut had</p> <p>23 changes -- made some changes to their legislation,</p> <p>24 more qualifying during this period so.</p> |
| <p style="text-align: right;">Page 94</p> <p>1 A. That's correct.</p> <p>2 Q. All right. Did Spectrum publish similar</p> <p>3 data for Ohio for 2009?</p> <p>4 A. Not that I am aware of.</p> <p>5 Q. For 2010?</p> <p>6 A. Yes. I believe they provided information</p> <p>7 in 2010 for Ohio in-state RECs.</p> <p>8 Q. Okay. Do you know of any reason why that</p> <p>9 could not appear on figure 3, that data, if it was</p> <p>10 available?</p> <p>11 A. No, I don't.</p> <p>12 Q. Let me now refer you back to your graph</p> <p>13 on page 13. Would it be fair to say that one of the</p> <p>14 things you were trying to show is what prices were in</p> <p>15 other states when they had nascent markets?</p> <p>16 A. Yes.</p> <p>17 Q. Now, could you take me through each state</p> <p>18 and tell me the periods where you believe that market</p> <p>19 was nascent?</p> <p>20 A. So as we talked about earlier, I would</p> <p>21 say for Connecticut was enacted I thought 2003 to</p> <p>22 2000 -- so Connecticut I would think from the 2003</p> <p>23 to -- I would make a general statement that the first</p> <p>24 three years of -- of any of these compliances in that</p> | <p style="text-align: right;">Page 96</p> <p>1 Q. Can you tell me the nascent period for</p> <p>2 any other state?</p> <p>3 A. Okay. Let me see, again, these are</p> <p>4 subjective. I would say maybe through 2006.</p> <p>5 Q. For what state?</p> <p>6 A. Massachusetts. New Jersey probably '05,</p> <p>7 '06. Texas pretty steady. I would say same thing</p> <p>8 for Texas.</p> <p>9 Q. '05, '06?</p> <p>10 A. Yes. I would say the full period for</p> <p>11 Maryland.</p> <p>12 Q. What does that mean?</p> <p>13 A. That means through 2000 -- December, '04,</p> <p>14 to '06, December, '06.</p> <p>15 Q. Okay. Any other state?</p> <p>16 A. I would say Rhode Island.</p> <p>17 Q. And what's the period for Rhode Island?</p> <p>18 A. The only period is shown June, '7,</p> <p>19 through December, '7.</p> <p>20 Q. So 2007 was a period where that market</p> <p>21 was nascent?</p> <p>22 A. Yes, I would say.</p> <p>23 Q. Okay.</p> <p>24 A. I would say the period shown for the D.C.</p> |

| Page 97 | Page 99 |
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| <p>1 market and that's -- looks like it starts '6 and ends 2 December, '7, on the graph. 3 Q. June of '06 to December of '07? 4 A. That's what it shows. 5 Q. Okay. Have you completed your answer? 6 A. I think -- I think I've addressed all of 7 them. 8 Q. Okay. 9 A. We completed -- I believe I completed my 10 answer. I would just say that a nascent market is a 11 term -- is a subjective term and a term that is -- 12 I'll say it's a judgment. 13 Q. Okay. Now, these prices that are shown 14 on this figure on page 13, are these average prices? 15 A. Okay. I'm going to review the answer. 16 Q. You are looking at the wind report now? 17 A. Yeah, yeah. We talked about this. It 18 represents indicative monthly data on spot market 19 prices in both compliance and voluntary data. And 20 these are for class 1 or main tier of RPS policies. 21 Q. So they are average prices or can't you 22 say? 23 A. I would say -- I'm looking at the source. 24 It says Evolution Markets. My understanding of their</p> | <p>1 page 13 that prices were volatile? 2 A. You asked me that already. 3 Q. Do you agree that's what that shows? 4 A. I answered that already. 5 Q. And the answer is what, sir? 6 A. I answered yes for -- for Connecticut 7 it's volatile. For D.C. it looks like it's volatile, 8 and for Massachusetts is volatile. Some more 9 volatile than others because if you look at the 10 bottom, it looks like Texas, D.C., New Jersey class 11 1 -- New Jersey -- yeah. There's some volatility in 12 some of the states, yes. 13 Q. Now, is it your experience that SREC 14 prices are always higher than REC prices? 15 A. I would say SRECs -- my experience is 16 that SRECs are always higher than the non-SREC prices 17 except for the abnormal situation we have before us 18 here. 19 Q. Okay. So except for this case -- 20 A. That's correct. 21 Q. Every other case that you are aware of 22 RECs -- RECs have always been priced higher than 23 SRECs, correct? 24 A. In compliance markets, I believe so, yes.</p> |
| Page 98 | Page 100 |
| <p>1 index is -- hold on one second. 2 MS. YOST: I'm sorry. What's the pending 3 question? Could you read it back? 4 MR. KUTIK: Are they average prices or 5 can't you say. 6 A. I believe the midpoint of the daily bid 7 offer prices. I would say they are the midpoint of 8 the bid offer prices. 9 Q. So they are not necessarily average 10 prices of transactions. 11 A. Yeah. Midpoint is not an average. 12 Q. Okay. Now, some states have more than 13 one tier; is that your understanding? 14 A. Yes. 15 Q. All right. And it's your understanding 16 that these are all prices from the first or main 17 tier? 18 A. Correct. 19 Q. And you gather that by reading what the 20 wind report says, correct? 21 A. That and my understanding of some of 22 these states. 23 Q. Now, would you say that at least during 24 this period of time that's depicted on this figure on</p> | <p>1 Q. Okay. Now, is Pennsylvania a compliance 2 market? 3 A. Yes. 4 Q. Okay. 5 A. All of these states the title says 6 "Compliance Markets." 7 Q. Well, I just asked about Pennsylvania, 8 sir. 9 A. All right. 10 Q. Are you aware of whether there is any 11 not -- any public nonsubscriber posting of a range of 12 SREC and REC prices in the same market? 13 MS. YOST: Karen, could you read that 14 back. 15 Q. Let me try it again. Are you aware of 16 whether there is a public nonsubscriber-oriented post 17 being of a range of SREC and REC prices in the same 18 market? 19 MS. YOST: Objection. Answer if you can. 20 A. I believe I am probably more familiar 21 with New Jersey. 22 Q. New Jersey has one. 23 A. Correct. 24 Q. Are you aware of any other states?</p> |

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| <p style="text-align: right;">Page 101</p> <p>1 A. Publicly I can't recall but I would -- I</p> <p>2 would think the states that have the most -- where</p> <p>3 the mandate has been in effect the most years, those</p> <p>4 states would probably -- there's a chance they may</p> <p>5 have it, but I'm only familiar with New Jersey.</p> <p>6 Q. Okay. And it's your understanding that</p> <p>7 New Jersey there is a public nonsubscriber accessible</p> <p>8 posting for REC prices.</p> <p>9 A. I know there is a posting for SREC</p> <p>10 prices. I would have to review their website to see.</p> <p>11 Q. So sitting here today you can't say?</p> <p>12 A. I can't recall. I have been on their</p> <p>13 website but the -- at that time I was looking for --</p> <p>14 I was very interested in what the SREC prices were.</p> <p>15 Q. Right. Do you recall going on any other</p> <p>16 states' websites to look at prices, price</p> <p>17 information?</p> <p>18 A. I don't -- I don't believe. I don't</p> <p>19 believe I have seen other publicly traded alone. I</p> <p>20 know by law in Maryland they have to divulge the</p> <p>21 pricing so I would think that might be a place.</p> <p>22 Q. But you don't know.</p> <p>23 A. I'm not sure. I do know they have to</p> <p>24 publish. That one state has to be published.</p> | <p style="text-align: right;">Page 103</p> <p>1 provide information on -- on their particular</p> <p>2 projects, sometimes in more detail, especially if</p> <p>3 it's a major conversion like a biofuel or biomass.</p> <p>4 Q. Okay.</p> <p>5 A. So, you know, that type of information</p> <p>6 but you have to look for it.</p> <p>7 Q. You have to look for it. Is that</p> <p>8 information available in 2009 and 2010?</p> <p>9 A. I would say -- I would say the</p> <p>10 information -- I would say that was good information</p> <p>11 about the cost of projects, different types of</p> <p>12 projects, put out by the Department of Energy and --</p> <p>13 and -- and so -- so public documents that were put</p> <p>14 out by the Department of Energy.</p> <p>15 Q. Were those specific to Ohio?</p> <p>16 A. I would -- I think they had midwest</p> <p>17 projects. I don't know that they specified any of</p> <p>18 the Ohio projects. Granted there weren't very many</p> <p>19 projects in Ohio as has been testified to in this</p> <p>20 particular case. So but they're -- you know,</p> <p>21 generally, I think generally was understood what the</p> <p>22 costs of a renewable project in Ohio would be with --</p> <p>23 within a -- from a planning perspective. I think --</p> <p>24 I think it was sufficient data put out by the</p> |
| <p style="text-align: right;">Page 102</p> <p>1 Q. Any other states that has a public</p> <p>2 nonsubscriber accessible posting of both SREC prices</p> <p>3 and REC prices?</p> <p>4 A. Not that I can recall, not that I am</p> <p>5 aware of.</p> <p>6 Q. Not in Ohio.</p> <p>7 A. No.</p> <p>8 Q. Are you aware of any public nonsubscriber</p> <p>9 accessible posting of development costs for renewable</p> <p>10 energy projects in Ohio?</p> <p>11 THE WITNESS: Can you just read that</p> <p>12 question back, please.</p> <p>13 (Record read.)</p> <p>14 A. I know that there's information that is</p> <p>15 not -- you know, that there are studies or there is</p> <p>16 information about, you know, some development costs</p> <p>17 in Ohio at different times; for example, the Bowling</p> <p>18 Green project, you know, there is a lot of</p> <p>19 information. That was the first major utility scale</p> <p>20 wind project in the state and we know it cost -- 7.2</p> <p>21 megawatts and it cost about, I want to say, \$9.2</p> <p>22 million and so on so we have that type of anecdotal</p> <p>23 information about projects. I believe when some of</p> <p>24 the companies come in to certify, sometimes they</p> | <p style="text-align: right;">Page 104</p> <p>1 government.</p> <p>2 Q. What was that cost?</p> <p>3 A. What was that cost?</p> <p>4 Q. Yeah. That was generally available so</p> <p>5 what was the cost?</p> <p>6 A. In the midwest it was \$50.</p> <p>7 Q. \$50 per what?</p> <p>8 A. A megawatt-hour --</p> <p>9 Q. A megawatt-hour.</p> <p>10 A. -- in the midwest.</p> <p>11 Q. And that information was available to you</p> <p>12 as of when?</p> <p>13 A. As of 2008, 2007.</p> <p>14 Q. Okay. Can you get any updated</p> <p>15 information after 2008 as to development costs?</p> <p>16 A. Yes. There's information available from</p> <p>17 the Energy Information Association.</p> <p>18 Q. And that was information specific to</p> <p>19 Ohio?</p> <p>20 A. I believe it's more -- I believe that</p> <p>21 particular information wasn't specific to Ohio, but</p> <p>22 it would basically determine what the costs of a new</p> <p>23 project would be.</p> <p>24 Q. On a general basis but not specific to</p> |

| Page 105 | Page 107 |
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| <p>1 Ohio, correct?</p> <p>2 A. I would say -- I would say it was in</p> <p>3 generalities, but I would just say that Ohio when you</p> <p>4 compare it to other states, you know, is -- has a</p> <p>5 lower cost of doing business in certain areas.</p> <p>6 Q. Let's get back to my question.</p> <p>7 A. So I would think that if I took the</p> <p>8 national information and transposed it on Ohio, I</p> <p>9 would think Ohio would be very average or below</p> <p>10 average in terms of that cost data.</p> <p>11 Q. Right. But, again, my question to you</p> <p>12 isn't it true that as of 2009, there was little</p> <p>13 information on development costs for projects in</p> <p>14 Ohio?</p> <p>15 A. I say there was information of projects</p> <p>16 in Ohio. We only had, you know, the Bowling Green</p> <p>17 Wind Turbine so we had information of that.</p> <p>18 Q. Again, there was little information on</p> <p>19 projects in Ohio, correct?</p> <p>20 MS. YOST: Objection. Asked and</p> <p>21 answered.</p> <p>22 A. To the extent that there was a</p> <p>23 proliferation of projects like in some other states</p> <p>24 at that point but I think we had information from the</p> | <p>1 Project and residential projects, would it be fair to</p> <p>2 say you can't recall sitting here today seeing any</p> <p>3 project development costs data specific to Ohio as of</p> <p>4 2009?</p> <p>5 A. Yeah. I would say I can't recall any</p> <p>6 except for what I've said specific to Ohio.</p> <p>7 Q. Thank you.</p> <p>8 A. Beyond a planning, you know, I mean</p> <p>9 planning numbers.</p> <p>10 Q. All right. And what does that mean,</p> <p>11 "beyond planning"?</p> <p>12 A. Well, that means that we had an idea of</p> <p>13 what it would cost for a turbine and how much it</p> <p>14 would --</p> <p>15 Q. And you are extrapolating from general</p> <p>16 numbers, not specifically specific to Ohio?</p> <p>17 A. Specific numbers that the -- that the</p> <p>18 reports have for different regions.</p> <p>19 Q. For different regions?</p> <p>20 A. The federal reports do look at different</p> <p>21 regions, and when they look at the midwest, the</p> <p>22 midwest was in the middle of the costs so that type</p> <p>23 of information --</p> <p>24 Q. But you know what I am asking you, and</p> |
| Page 106 | Page 108 |
| <p>1 federal sources.</p> <p>2 Q. Okay. But those sources were not</p> <p>3 specific to Ohio, correct?</p> <p>4 A. I would say probably not for wind. There</p> <p>5 may be some information about biomass or methane</p> <p>6 because Ohio had a number of projects.</p> <p>7 Q. Do you specifically recall seeing cost</p> <p>8 information, development cost information, for</p> <p>9 methane or biomass projects in Ohio?</p> <p>10 A. I believe I -- I don't recall.</p> <p>11 Q. Okay. So would it be fair to say that</p> <p>12 sitting here today, you can't recall seeing any</p> <p>13 specific project information on development costs</p> <p>14 relating to Ohio renewable projects?</p> <p>15 A. No. I said I was aware of the Bowling</p> <p>16 Green costs.</p> <p>17 Q. Other than that one.</p> <p>18 A. I don't recall but I -- I would say --</p> <p>19 and, yeah, I would say I was very knowledgeable of</p> <p>20 the residential types of costs.</p> <p>21 Q. Other than that.</p> <p>22 A. In terms of what, you know -- what a PV</p> <p>23 or small type of wind turbine, you know.</p> <p>24 Q. So other than the Bowling Green Wind</p> | <p>1 you are deliberately not answering me.</p> <p>2 A. No.</p> <p>3 MS. YOST: Let him answer.</p> <p>4 Q. You are not answering. I am asking you,</p> <p>5 and you know what I am asking you, which is other</p> <p>6 than the residential projects and the Bowling Green</p> <p>7 projects, you can't recall specific data on</p> <p>8 development costs of projects for renewable projects</p> <p>9 in Ohio, specific to Ohio, as of 2009, correct?</p> <p>10 A. I would say with all those caveats, yes.</p> <p>11 Q. All right. Now, would it be fair to say</p> <p>12 that prices for RECs and SRECs can be driven by</p> <p>13 factors other than development costs?</p> <p>14 A. Yes.</p> <p>15 Q. Such as supply and demand.</p> <p>16 A. Yes.</p> <p>17 Q. And would it be fair to say that there</p> <p>18 may be some circumstances where a price for a REC or</p> <p>19 an SREC would be higher than necessary just to</p> <p>20 recover development costs, correct? And this may be</p> <p>21 certain situations where price would be below the</p> <p>22 level to recover development costs.</p> <p>23 A. There wouldn't be much development in</p> <p>24 that situation.</p> |

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| <p style="text-align: right;">Page 109</p> <p>1 Q. But there could be those situations.</p> <p>2 A. Short-term, not sustainable.</p> <p>3 Q. Okay. Now, on page 11 of your testimony,</p> <p>4 line 7, you refer to an Attachment WG-2 and there's</p> <p>5 price information that appears on that attachment,</p> <p>6 correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Now, may be just the copy I have but</p> <p>9 would it be fair to say there really isn't an</p> <p>10 Attachment WG-2 but what you are referring to is</p> <p>11 Attachment 2?</p> <p>12 A. Yes.</p> <p>13 Q. And if we look at Attachment 2 of your</p> <p>14 testimony, this is from -- this is data from</p> <p>15 something called SNL Financial LC, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And is this a subscriber accessible</p> <p>18 service?</p> <p>19 A. Yes.</p> <p>20 Q. And just so we can make clear on our</p> <p>21 terms, I have been talking about nonsubscriber</p> <p>22 accessible and subscriber accessible. Do you take</p> <p>23 that to mean either that you have to be a subscriber</p> <p>24 or for nonsubscriber anybody can get it; is that the</p> | <p style="text-align: right;">Page 111</p> <p>1 was the case because they are not necessarily</p> <p>2 representative.</p> <p>3 Q. Again, that's a representation on your</p> <p>4 part?</p> <p>5 A. Correct. No. I would say I talked to</p> <p>6 Evolution Markets and some of their -- some of</p> <p>7 their -- some of their numbers do include trades.</p> <p>8 Q. But you did not ask them, did you,</p> <p>9 whether every price represents an actual price or</p> <p>10 actual transaction, did you?</p> <p>11 A. Not for every price, no, I did not.</p> <p>12 Q. Did they confirm for you that any price</p> <p>13 shown here represents an actual price for an actual</p> <p>14 transaction?</p> <p>15 A. No. I believe these are all midpoints.</p> <p>16 Q. All right. So you did not confirm it,</p> <p>17 correct?</p> <p>18 A. No. It's -- these are the midpoints of</p> <p>19 either the bids and offers or trades that have taken</p> <p>20 place.</p> <p>21 Q. My question to you, sir, did you confirm</p> <p>22 with SNL that any price shown here represents an</p> <p>23 actual price for an actual transaction?</p> <p>24 A. I didn't confirm it from them.</p> |
| <p style="text-align: right;">Page 110</p> <p>1 way you understood those terms?</p> <p>2 A. Generally, yes.</p> <p>3 Q. Okay. Now, is this Attachment 2 a copy</p> <p>4 of something you received from SNL Financial, or did</p> <p>5 you or someone at OCC prepare this schedule?</p> <p>6 A. It was something received from -- from</p> <p>7 SNL.</p> <p>8 Q. All right. Now, this says on the second</p> <p>9 page "Data is compiled from a range of market</p> <p>10 indicatives and do not necessarily represent</p> <p>11 completed trades," correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And when it says "market indicatives,"</p> <p>14 would that be things like the midpoint between bids</p> <p>15 and asks?</p> <p>16 A. Yes, very well be.</p> <p>17 Q. So would it be fair to say that it may</p> <p>18 well be the case that none of these prices that are</p> <p>19 shown here represent actual prices for actual</p> <p>20 transactions?</p> <p>21 A. Some of them, yes, could be.</p> <p>22 Q. It may well be that all of them do not,</p> <p>23 correct?</p> <p>24 A. The way -- they would just say that if it</p> | <p style="text-align: right;">Page 112</p> <p>1 Q. Okay. Would it be correct to say as we</p> <p>2 look on this Attachment 2, that there is no data from</p> <p>3 2009 for our price?</p> <p>4 A. That's correct.</p> <p>5 Q. And would it be fair to say there is no</p> <p>6 price for our data for 2010?</p> <p>7 A. It looks like there was a 2010, the first</p> <p>8 number. There is a 2010 REC.</p> <p>9 Q. I'm sorry?</p> <p>10 A. There is a 2010 REC term. There's one</p> <p>11 later on. There's two -- it looks like there's</p> <p>12 two -- two RECs that were -- that the term was 2010.</p> <p>13 Q. Okay. That's the first one?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And then there is one on the</p> <p>16 second page?</p> <p>17 A. Yes.</p> <p>18 Q. It says NA?</p> <p>19 A. Yes.</p> <p>20 Q. So would it be fair to say we only have</p> <p>21 one price that might be denominated a 2010 REC price?</p> <p>22 A. I would disagree with that. I would say</p> <p>23 anything before 3-25-2011 could be termed a 2010 REC</p> <p>24 because you have to file compliance in April of the</p> |

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| <p style="text-align: right;">Page 113</p> <p>1 year after the compliance year so purchases can go on</p> <p>2 for earlier term RECs as -- as -- as early as -- oh,</p> <p>3 as late as your filing date.</p> <p>4 Q. Let's see if we can understand your</p> <p>5 answer.</p> <p>6 A. Uh-huh.</p> <p>7 Q. Would you not read on this table the term</p> <p>8 2000 -- the term "term" to refer to the specific year</p> <p>9 for compliance?</p> <p>10 A. Yes. That's true.</p> <p>11 Q. And isn't it true using that definition</p> <p>12 of the word "term," there is only one 2010 REC price</p> <p>13 shown here?</p> <p>14 A. Yes.</p> <p>15 Q. Now, for any of these prices do we know</p> <p>16 the volume that's represented by the price?</p> <p>17 A. No, we don't.</p> <p>18 Q. All right. And would you think that the</p> <p>19 price that might be offered for RECs might change</p> <p>20 with the volume that would be offered?</p> <p>21 A. That would be one of the variables to</p> <p>22 consider.</p> <p>23 Q. Would it be possible that -- or would it</p> <p>24 be a fair reading of your Attachment 2 and the prices</p> | <p style="text-align: right;">Page 115</p> <p>1 conference.</p> <p>2 Q. I'm sorry?</p> <p>3 A. At the OWEA conference, people from</p> <p>4 Gamesa.</p> <p>5 Q. Do you want to spell that for the court</p> <p>6 reporter?</p> <p>7 A. G-A-M-E-S-A.</p> <p>8 Q. Okay. Anything -- anybody else --</p> <p>9 A. I would think that --</p> <p>10 Q. -- told you that the compliance payment</p> <p>11 in Ohio acted as a cap on prices?</p> <p>12 A. I would say that nobody told me that it</p> <p>13 wasn't.</p> <p>14 Q. But nobody told you that it was.</p> <p>15 A. No. People -- people, I just mean --</p> <p>16 Q. You mentioned two names.</p> <p>17 A. I mentioned two names.</p> <p>18 Q. Anybody else?</p> <p>19 A. Other conferences that I have had with --</p> <p>20 I would say with conversations I've had with Duke,</p> <p>21 with AEP. I even thought the company when we were</p> <p>22 discussing the residential REC program we put an</p> <p>23 80 percent ACP cap so I thought that was the</p> <p>24 reigning.</p> |
| <p style="text-align: right;">Page 114</p> <p>1 that are in that that actual prices for actual trades</p> <p>2 could be a fraction of these prices that are shown?</p> <p>3 A. Actual trades could have been different</p> <p>4 than what's demonstrated here.</p> <p>5 Q. They could have been a fraction.</p> <p>6 A. They would have been a fraction. They</p> <p>7 could have been higher, yes.</p> <p>8 Q. They could have been multiple, correct?</p> <p>9 A. I would say limited by the \$45 price.</p> <p>10 Q. All right. That's because you believe</p> <p>11 the \$45 price would act as a cap on prices.</p> <p>12 A. Correct.</p> <p>13 Q. Do you know whether there were suppliers</p> <p>14 that were thinking or participating in the state of</p> <p>15 Ohio who believed the same as you believed, that is,</p> <p>16 the ACP or the compliance payment more accurately</p> <p>17 represented a cap on prices in Ohio?</p> <p>18 A. I would say during the rulemaking and</p> <p>19 based on the Ohio Wind Working Group, the developers</p> <p>20 there felt there was a cap.</p> <p>21 Q. Can you give me the name of any</p> <p>22 developers that you felt believed it was a cap?</p> <p>23 A. I would say Sun Edison. I believe I've</p> <p>24 talked to people in -- in the Gamesa at the OWEA</p> | <p style="text-align: right;">Page 116</p> <p>1 Q. Who at AEP told you that they believed</p> <p>2 that the compliance payment acted as a cap on REC</p> <p>3 prices in Ohio?</p> <p>4 A. I would say that most of my discussions</p> <p>5 with -- I would say whoever was the head --</p> <p>6 Q. Give me the name, sir.</p> <p>7 A. Okay. Wait.</p> <p>8 Q. Give me the name.</p> <p>9 A. Whoever -- because some of these -- some</p> <p>10 of these people have changed so.</p> <p>11 Q. I want to know the name.</p> <p>12 A. So I would say -- I would say when we've</p> <p>13 had discussions or presentations by these companies</p> <p>14 on that -- on renewable issues, I would say the</p> <p>15 people at AEP that I deal with would be somebody</p> <p>16 like -- well, we had a REC program with them. I</p> <p>17 would say perhaps like Mark Gundlefinger was there,</p> <p>18 residential REC programs.</p> <p>19 Q. Mark who?</p> <p>20 A. Gundlefinger or Gundlefeldt, something</p> <p>21 like that.</p> <p>22 Q. And he told you that he believed that --</p> <p>23 excuse me, compliance payment levels in Ohio acted as</p> <p>24 a market cap. He told you that.</p> |

| Page 117 | Page 119 |
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| <p>1 A. I believe that in discussions concerning 2 the program when we were developing it, the ACP was 3 a -- was a limiting -- was being -- 4 Q. Did he tell you it was a market cap? 5 A. It was a cap. 6 Q. He did tell you that. 7 A. I -- verbatim? 8 Q. Yes. 9 A. I don't remember. 10 Q. Who else told you at AEP? 11 MS. YOST: Let him finish his answers. 12 A. We discussed the AEP REC program came out 13 of their 2000 -- it was 2009 portfolio filings so I 14 don't remember verbatim. 15 Q. So who else told you at AEP? 16 A. I believe we've had -- at the wind 17 working group we've had discussions with Jay -- Jay 18 Gottfried, I believe, is their director of renewable. 19 I think at Duke -- 20 Q. I asked about AEP. 21 A. Okay. 22 MS. YOST: You keep changing up the 23 question. Please let him answer. 24 MR. KUTIK: Don't yell, No. 1. Keep your</p> | <p>1 Q. Andrew? 2 A. Ritch, R-I-T-C-H. And I would even say 3 that if you look at Duke's compliance report, they 4 used a term ACP and that prices were trading at 5 around below or around ACP so it was clear from that 6 document that they were referring to the ACP concept. 7 Q. Now, I want the people who told you that. 8 So far you've given me the name of two people at AEP, 9 two people at Duke. Anyone else at Duke who told you 10 that? 11 A. I believe those are the two individuals 12 that I've had most contact with concerning renewable 13 energy. 14 Q. Okay. Let me refer you to page 11 of 15 your testimony and the footnote that appears there, 16 footnote 11. And you make a comparison in that 17 footnote, do you not, between REC and SREC prices -- 18 A. Yes. 19 Q. -- for in-state? 20 A. Correct. 21 Q. All right. And you refer to Attachment 22 WG-1 and Attachment WG-2, right? 23 A. Yes. 24 Q. And by that do you actually mean</p> |
| Page 118 | Page 120 |
| <p>1 voice down. No. 2, I was always asking about AEP. 2 I've never moved to Duke so why don't you pay 3 attention to the questioning. 4 MS. YOST: You are changing up the 5 questions. 6 MR. KUTIK: No, I am not. 7 Q. Who at AEP told you that the compliance 8 payment market cap -- you gave me Mark Gundlefelt. 9 A. Gundlefinger or something like that. 10 Q. Who else at AEP? 11 A. I told you the other name. 12 Q. Well, you said Mr. Gottfried was at Duke. 13 Was he at both places? 14 A. No, no. He was at AEP. 15 Q. Anyone else at AEP? 16 A. I would say those are the two major 17 people I've. 18 Q. How about at Duke, who told you at Duke 19 that they believe that the compliance payment acted 20 as a cap on market prices? 21 A. I would say used to be -- I know the last 22 name is Laffeld. I don't know if it was Mike 23 Laffeld. Laffeld. And then most recently is Andrew 24 Ritch.</p> | <p>1 Attachment 1 and Attachment 2? 2 A. Yes. 3 Q. Now, we talked about Attachment 2 and 4 what that is and isn't. Let's talk about Attachment 5 1, what that is and isn't. This comes from PJM? 6 A. This comes from the PJM GATS System. 7 Q. Okay. And these are weighted average 8 prices for solar? 9 A. The final column is a weighted average. 10 Q. Okay, okay. So we see high prices, low 11 prices, and weighted prices. 12 A. Correct. 13 Q. Do you know whether all RECs that are 14 procured for Ohio compliance purposes need to be 15 reported? 16 A. Whether the price needs to be reported or 17 whether the number of RECs need to be reported? 18 Q. The price. 19 A. I'm not certain. 20 Q. So this may be a situation where the 21 prices shown here don't represent all transactions or 22 all prices of RECs that are actually purchased, 23 correct -- or SRECs that are actually purchased? 24 A. Yes, on this.</p> |

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| <p style="text-align: right;">Page 121</p> <p>1 Q. Now, you didn't attach a similar page 2 from PJM for REC prices, right? 3 A. That's correct. 4 Q. Because there isn't such a page, correct, 5 that's available to you? 6 A. That was my understanding. 7 Q. All right. And is it your understanding 8 that such a page would not be available to the 9 FirstEnergy operating companies or to Navigant? 10 A. I wouldn't know. 11 Q. You don't know one way or the other? 12 A. No. You have a higher level of 13 membership in PJM than we have. 14 Q. Well, the companies do, I don't, but go 15 ahead. I understand what you're saying. 16 Now, you say that the solar in-state 17 doesn't vary more by a factor of two. Is that 18 because you're comparing the prices that show up in 19 Attachment 1 with the prices that show up in 20 Attachment 2? 21 A. No, no. That's strictly an Attachment 1 22 observation. 23 Q. Okay. Well, where do you get the -- 24 where do you get the statement that the difference</p> | <p style="text-align: right;">Page 123</p> <p>1 A. Compared to the ACP? 2 Q. Compared to the ACP. 3 A. Yes. 4 Q. So it's not two times greater than the 5 ACP. 6 A. That's correct. 7 Q. All right. Now, let me refer you to page 8 14 of your testimony. And here is another price 9 comparison starting on line 7 and ending at line 10. 10 You refer to someone quoted in an article, correct? 11 A. Yes. 12 Q. Now, do you know Mr. Liggett? 13 A. No. 14 Q. Have you ever spoken to Mr. Liggett? 15 A. No, I have not. 16 Q. When he said supposedly that in-state 17 generated RECs are running near \$35 per 18 megawatt-hour, do you know what the basis of his 19 statement was? 20 A. He was commenting as a broker in the 21 field, and he was sharing information. 22 Q. All right. Do you know what the basis of 23 his statement was? You don't, do you? 24 A. The specific basis, I don't know the</p> |
| <p style="text-align: right;">Page 122</p> <p>1 between the two, and I assume the two is in-state -- 2 what are you comparing? 3 A. No. I think -- 4 Q. Are you comparing in-state solar and all 5 state solar? 6 A. No. If you look at low price and high 7 price, it's all solar comparison. 8 Q. Are you comparing in-state solar to all 9 state solar? 10 A. No. I'm comparing -- I'm comparing the 11 range, the low prices with the high prices in this 12 list. 13 Q. When you say on footnote 11 -- let's 14 refer to that. You say -- 15 A. Let me get there. 16 Q. You say "Also, while the in-state solar 17 requirement would yield higher prices than the 18 out-of-state solar RECs, their prices do not appear 19 to be a multiple of Ohio ACP and generally vary by a 20 factor of less than two." 21 A. That's correct, yes. 22 Q. So what you're saying is the variation of 23 in-state solar prices doesn't -- there isn't a 24 multiple gradient of two of the lowest price.</p> | <p style="text-align: right;">Page 124</p> <p>1 specific basis but I would -- he's a broker in the 2 state so a broker with information about Ohio RECs 3 so. 4 Q. And you don't know whether that \$35 5 represents an actual price for an actual transaction, 6 correct? 7 A. The only thing I would say about the 35 8 price it seems very consistent with all the tables 9 that -- the SNL table. It's consistent with the 10 Spectrum tables. 11 Q. Let's try answering my question. 12 MR. KUTIK: Could you read my question, 13 please. 14 (Record read.) 15 A. In the same vein we have been talking 16 about price, yes. 17 Q. Okay. Now, he also makes a statement 18 that this price is the highest in the country. Would 19 it be fair to say you don't know what states that he 20 looked at, right? 21 A. No, but I think it's consistent with 22 figure 3. If you look at figure 3, all those prices 23 are below the \$30 mark. 24 Q. My question is you don't know what other</p> |

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| <p style="text-align: right;">Page 125</p> <p>1 states he looked at, correct?</p> <p>2 A. I don't know what other states he looked</p> <p>3 at, but his information seemed consistent with figure</p> <p>4 3.</p> <p>5 Q. Thank you. I am just trying to</p> <p>6 understand what you know or more likely don't know</p> <p>7 about the basis of his statement. Do you understand</p> <p>8 that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. That's part of my question, right?</p> <p>11 A. No, I understand, yes.</p> <p>12 Q. Now, the -- you attach an article as</p> <p>13 Attachment 3, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And that is an article from something</p> <p>16 called SNL Financial LC, right?</p> <p>17 A. Yes.</p> <p>18 Q. Same source we looked at before --</p> <p>19 A. Yes.</p> <p>20 Q. -- right? And this -- would it be fair</p> <p>21 to say that one of the points of this article is that</p> <p>22 the market in Ohio for in-state RECs was so thin that</p> <p>23 the entry of the Berger Plant would have a</p> <p>24 significant effect on prices?</p> | <p style="text-align: right;">Page 127</p> <p>1 Friday Afternoon Session,</p> <p>2 February 8, 2013.</p> <p>3 - - -</p> <p>4 WILSON GONZALEZ</p> <p>5 being by me previously duly sworn, as hereinafter</p> <p>6 certified, deposes and says further as follows:</p> <p>7 EXAMINATION (Continued)</p> <p>8 By Mr. Kutik:</p> <p>9 Q. Let's go back on the record.</p> <p>10 Mr. Gonzalez, a little bit of unfinished business</p> <p>11 from our morning session. Your counsel has brought</p> <p>12 into the room a copy, I believe, of Title 49 of the</p> <p>13 Ohio Revised Code, and she is in the process of</p> <p>14 handing it to you.</p> <p>15 Mr. Gonzalez, the question I think we</p> <p>16 left off in that series of inquiry was whether you</p> <p>17 can show me anywhere in the force majeure provisions</p> <p>18 of 4928.64 where it refers to price in any way other</p> <p>19 than the phrase "reasonably available."</p> <p>20 A. We went through that line of questioning.</p> <p>21 The word "price" doesn't show up but it's implied.</p> <p>22 Q. And I want to know where it's implied</p> <p>23 other than the use of the phrase reasonably</p> <p>24 available. Is there any -- are there any other words</p> |
| <p style="text-align: right;">Page 126</p> <p>1 A. I would agree that the article does</p> <p>2 indicate that, yeah, the Berger Plant would have a</p> <p>3 major impact on its prices.</p> <p>4 Q. And this is an article that's dated</p> <p>5 September 30, 2010, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Let me refer you to page 17 of your</p> <p>8 testimony.</p> <p>9 MS. YOST: David, if you are going to a</p> <p>10 new topic, this might be a good time to take a lunch</p> <p>11 break. It's almost 1 o'clock.</p> <p>12 MR. KUTIK: Sure. Want to come back in a</p> <p>13 half hour?</p> <p>14 MS. YOST: That's fine.</p> <p>15 (Thereupon, at 12:40 p.m., a lunch recess</p> <p>16 was taken.)</p> <p>17 - - -</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> | <p style="text-align: right;">Page 128</p> <p>1 you can point me to?</p> <p>2 A. That's the only place that -- I would</p> <p>3 think it would -- the price location comes up.</p> <p>4 Q. All right. Now, can I understand your</p> <p>5 view of the statute to be if a company is faced with</p> <p>6 the choice of buying RECs that are priced "too high,"</p> <p>7 that they are required to decline those RECs and</p> <p>8 either file for force majeure or pay the compliance</p> <p>9 payment?</p> <p>10 THE WITNESS: Can you read that question</p> <p>11 back again, please.</p> <p>12 (Record read.)</p> <p>13 A. I would say if the prices were abnormally</p> <p>14 high as in this case and which to me speaks that they</p> <p>15 are not reasonably available because of the implied</p> <p>16 price condition, then the company could apply for</p> <p>17 force majeure. And then depending on whether the</p> <p>18 Commission for all the conditions for applying for</p> <p>19 force majeure grants force majeure, that's one -- one</p> <p>20 point. Or the Commission can say you didn't meet the</p> <p>21 requirements of force majeure, generally spoken as</p> <p>22 good faith effort, and then it could open a</p> <p>23 proceeding or have a proceeding where it discusses</p> <p>24 the compliance payments, whether it was -- whether</p> |

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| <p style="text-align: right;">Page 129</p> <p>1 the company's actions were avoidable or not.</p> <p>2 Q. All right. So is the answer to my</p> <p>3 question no?</p> <p>4 A. You would have to read the question again</p> <p>5 to see what -- I thought I tried to answer it the</p> <p>6 best I could.</p> <p>7 MR. KUTIK: Karen, could you read it,</p> <p>8 please.</p> <p>9 (Record read.)</p> <p>10 A. I would say the intent and the spirit of</p> <p>11 the law would be that they interpret as not</p> <p>12 reasonably available and -- and seek relief.</p> <p>13 Q. Okay. So they would be required to do</p> <p>14 that or make the compliance payment, correct?</p> <p>15 A. I would say, again, my professional view</p> <p>16 in terms of -- of the spirit of the law, the intent</p> <p>17 of the law, would be that they seek relief.</p> <p>18 Q. Okay. Again, they would be required to</p> <p>19 do that or make a compliance payment, right?</p> <p>20 A. They could enter into a compliance</p> <p>21 proceeding.</p> <p>22 Q. Okay. So the answer to my question is</p> <p>23 yes?</p> <p>24 A. The answer to your question is yes based</p> | <p style="text-align: right;">Page 131</p> <p>1 A. Yes.</p> <p>2 Q. And we agreed that some of that</p> <p>3 information may not reflect actual prices for actual</p> <p>4 transactions, correct?</p> <p>5 A. We had a long discussion, and we</p> <p>6 discussed aspects of that type of pricing.</p> <p>7 Q. So my question is you agree with me that</p> <p>8 some of those figures and some of that data may not</p> <p>9 reflect actual prices of actual transactions,</p> <p>10 correct?</p> <p>11 A. Some may not, yes.</p> <p>12 Q. And we also discussed some of the broker</p> <p>13 information, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Such as what's on Attachment 2.</p> <p>16 A. Yes.</p> <p>17 Q. And we discussed how that also might not</p> <p>18 be actual prices from actual information, correct?</p> <p>19 Actual transaction, correct?</p> <p>20 A. It's the same answer as before.</p> <p>21 Q. Right. So would it be fair to say that</p> <p>22 it's unclear as to based upon the information that</p> <p>23 you have whether you have available to you access to</p> <p>24 any information that represents the large bulk of</p> |
| <p style="text-align: right;">Page 130</p> <p>1 on my understanding of the intent of the law.</p> <p>2 Q. Sure. Thank you. Now, let me have you</p> <p>3 refer to page 14 in your testimony, please. And we</p> <p>4 are done with the statute. You can put this to the</p> <p>5 side. Now, I want to direct you specifically to the</p> <p>6 sentence that begins on line 5 and ends on line 7.</p> <p>7 Are you there, sir?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Now, without referring to the</p> <p>10 number that's designated as confidential on line 7,</p> <p>11 would it be fair to say that your knowledge of prices</p> <p>12 is based upon publicly available information?</p> <p>13 A. I would say it's based on publicly</p> <p>14 available information, information from brokers which</p> <p>15 may not be publicly available like the subscription</p> <p>16 information we got.</p> <p>17 Q. Right.</p> <p>18 A. And based on my discussions with people</p> <p>19 in the field.</p> <p>20 Q. Right. So would it be fair to say that</p> <p>21 you are only aware -- well, I'll back up.</p> <p>22 We talked earlier about some of the</p> <p>23 publicly available information that you use for your</p> <p>24 figures, correct?</p> | <p style="text-align: right;">Page 132</p> <p>1 actual prices for actual transactions?</p> <p>2 MS. YOST: Objection.</p> <p>3 Q. Would that be fair to say?</p> <p>4 A. I think -- I think based on the</p> <p>5 information that's available given its limitations,</p> <p>6 it's the best information available, I would not</p> <p>7 agree with the conclusion that you stated.</p> <p>8 Q. Well, my -- the question just is about</p> <p>9 the nature of the trans -- nature of the data you</p> <p>10 relied upon, okay? You said subject to its</p> <p>11 limitations and that's exactly the point of my</p> <p>12 question. And the point of my question, and I'll ask</p> <p>13 you again directly, isn't it true that the</p> <p>14 information that you've relied upon to make that</p> <p>15 statement may very well not represent the -- actual</p> <p>16 prices from actual transactions for the large bulk of</p> <p>17 REC transactions that have taken place in either Ohio</p> <p>18 or the country?</p> <p>19 MS. YOST: Objection.</p> <p>20 A. Yes, I wouldn't agree with that. I</p> <p>21 think -- I think it's -- it's -- like I said, it's</p> <p>22 the best information available from reputable</p> <p>23 brokerage firms, firms that have been awarded prizes</p> <p>24 for being the best in the field so it's being used by</p> |

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| <p style="text-align: right;">Page 133</p> <p>1 the U.S. government as a repository of information 2 and as disseminator of information so I would say it 3 probably captures a lot of the pricing. 4 Q. Okay. That wasn't my question. My 5 question is the large bulk of actual price 6 information about actual transactions. You believe 7 it does; is that your testimony? 8 A. I would say -- I would say it would be 9 representative, yes. 10 Q. That wasn't my question. My question, 11 does it represent the large bulk of actual prices for 12 actual transactions? 13 MS. YOST: Objection to the form of the 14 question. 15 A. Could you rephrase that last question? 16 Q. What about my question needs rephrasing, 17 sir? 18 A. It's just -- I'm having trouble 19 understanding what -- when you talk about the bulk. 20 Q. Over 50 percent. 21 A. I would say I'm not aware specifically of 22 that type. 23 Q. Okay. All right. Now, let me refer you 24 to the table that appears I believe on page 10 of</p> | <p style="text-align: right;">Page 135</p> <p>1 the source of these numbers in the Goldenberg report? 2 A. My understanding from reading the report 3 was that the data is from the tariff sheet, the AAR 4 tariffs, quarterly tariffs for the companies and for 5 those utilities that didn't have a distinct AER rider 6 that they looked at. The -- usually renewable 7 compliance was found in fuel adjustment type clauses, 8 and adjustments were made to extract that value from 9 the -- those fuel adjustment costs. 10 Q. My question is did you do any independent 11 investigation to verify these numbers? 12 A. As I mentioned earlier, I had looked at 13 one quarter and made my own comparison and had gone 14 into the fuel adjustment clauses of I believe it was 15 Duke and I believe it was AEP and I had done a 16 similar analysis that was very consistent with what 17 the financial auditor did. 18 Q. Was that before or after the report was 19 issued? 20 A. Before. 21 Q. All right. Once you saw this report did 22 you do anything to verify that the numbers that 23 appear in this table are accurate? 24 A. No. Like I said, I looked at a previous</p> |
| <p style="text-align: right;">Page 134</p> <p>1 your testimony. 2 MR. KUTIK: And before I do that, let's 3 go off the record. 4 (Discussion off the record.) 5 Q. Let's go back on the record. Are you 6 there, sir? 7 A. Yes. 8 Q. Now, would it be fair to say that the 9 table that you show here is based upon the data 10 displayed by the Goldenberg report and based upon the 11 PUCO published shopping statistics? 12 A. That's correct. 13 Q. Now, do you have the Goldenberg report 14 with you? Do you need a copy of it? 15 A. No. 16 Q. Now, there's a table or set of tables -- 17 there is a table on the Goldenberg report on page 9, 18 right? 19 A. That's correct. 20 Q. And that's one of the bases that you used 21 to calculate the numbers that appear in your table on 22 page 10 of your testimony, correct? 23 A. Yes. 24 Q. Now, did you do any investigation as to</p> | <p style="text-align: right;">Page 136</p> <p>1 analysis I had done for one quarter that looked 2 consistent so. 3 Q. So you haven't gone back -- 4 A. And traced. 5 Q. Well, you've anticipated my question. 6 You haven't gone back and verified for each number 7 from the tariff or made a calculation that you could 8 replicate these numbers, correct? 9 A. I have not done that, no. 10 Q. Now, is it your understanding with 11 respect to the Goldenberg table that these represent 12 the charges that are to recover the costs for all 13 products that are required under the statute, that 14 is, all four benchmarks? 15 A. That is my understanding. 16 Q. So it includes products -- the cost of 17 products other than in-state all renewables. 18 A. That's correct. 19 Q. Are you aware of the different -- the 20 different companies have purchased RECs for different 21 terms, different periods of time? 22 A. I would say AEP probably has purchased 23 RECs with perhaps longer periods of time. 24 Q. All right. So what I said was true,</p> |

| Page 137 | Page 139 |
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| <p>1 different companies have purchased different REC's for 2 different periods of time? 3 A. For AEP I would say perhaps yes and -- 4 Q. For the others? 5 A. I would say -- I am thinking of DP&L. To 6 the extent that they were involved with a project 7 that had a longer life, I would say yes also. 8 Q. All right. How about for Duke? 9 A. No. I think Duke buys short-term. 10 Q. All right. And short-term being a year 11 or less? 12 A. I would say within the ESP period. 13 Q. Okay. So it could be as long as three 14 years? 15 A. Could be. 16 Q. Okay. Would it be fair to say in looking 17 at the table that appears on the Goldenberg report, 18 we don't know the specific price that was paid for 19 any of the products they purchased? 20 A. We know it for sure could. 21 Q. I am just saying looking at this table. 22 A. Right. 23 Q. We don't know the price paid for any 24 specific product other than FirstEnergy, correct?</p> | <p>1 I just can't recall the exact name of the rider, but 2 it's in the class of fuel. 3 Q. All right. And would it be fair to say 4 that you don't know exactly where within that fuel 5 rider Goldenberg took a number that would appear for 6 the AEP companies in this table in the Goldenberg 7 report on page 9? 8 A. Well, I would say since I have done it 9 you have to go to the fuel adjustment when they file 10 their fuel adjustment tariffs and you have to break 11 it down and they have a specific amount that's for 12 renewal. 13 Q. All right. And that specific amount 14 that's for renewable, is that based upon estimated 15 costs or actual costs or both? 16 A. I am trying to recall because I haven't 17 read the AEP tariff recently. Usually fuel purchase 18 is an actual cost, predominantly actual cost. 19 Q. You believe this is actual? 20 A. Predominantly. 21 Q. Okay. 22 A. The fuel -- when they file a fuel -- 23 Q. I am talking about renewable cost, sir. 24 Renewable cost portion, whatever it is of the fuel</p> |
| Page 138 | Page 140 |
| <p>1 A. That's correct. 2 Q. Now, do you know whether AEP has an AER 3 rider? 4 A. I believe they have one now. 5 Q. All right. Did they have one during the 6 period covered by the table appearing on page 9 of 7 the Goldenberg report? 8 A. Well, that the AEP AER rider was 9 established in the last ESP so, no. 10 Q. So? 11 A. No. 12 Q. Okay. So during the period that's 13 covered by the Goldenberg table, we'll call it, AEP 14 did not have an AER rider. 15 A. That's right. 16 Q. What was the rider through which AEP 17 recovered its cost to comply with the renewable 18 mandates? 19 A. It was the fuel, fuel purchased power, I 20 believe. 21 Q. Do you know the name of that rider? 22 A. I know the rider has the word fuel in it. 23 Q. Other than that you don't know? 24 A. I have looked at it before in the past.</p> | <p>1 adjustment rider, you said, did you not, that there 2 is a part of the fuel clause -- 3 A. Correct. 4 Q. -- where the renewable costs are broken 5 out, right? 6 A. Yes. 7 Q. And my question to you is that breakout, 8 is that actual, estimated, or both? 9 A. I can say I don't recall. 10 Q. All right. So would it be fair to say 11 that you don't know whether the numbers that appear 12 for Columbus Southern and Ohio Power are actual, 13 estimated, or either or both? 14 A. I would say over the nine quarters they 15 reflect actual -- some actual costs. 16 Q. All right. My question to you, sir, is 17 let's take Q4, 2009, for Columbus & Southern, .0077, 18 is that based on actual costs or estimated costs or 19 both? 20 A. I don't recall. My anticipation was that 21 they were -- 22 Q. Were what, sir? 23 A. Just what I said before. 24 Q. Let me put the question to you again.</p> |

| Page 141 | Page 143 |
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| <p>1 Would it be fair to say that you don't know whether 2 the numbers that are displayed in the Goldenberg 3 table for Columbus & Southern and Ohio Edison are 4 based upon actual numbers, estimated numbers, or 5 both? I'm sorry, Ohio Power, Columbus & Southern and 6 Ohio Power.</p> <p>7 A. I would say they were mainly actual, but 8 they may have an estimation part.</p> <p>9 Q. But you don't know?</p> <p>10 A. I don't recall.</p> <p>11 Q. All right. Now, are you aware of whether 12 there is a reconciliation component of the fuel rider 13 for AEP -- through AEP companies?</p> <p>14 A. I believe there is.</p> <p>15 Q. And the purpose of that reconciliation 16 rider is to, as the name implies, reconcile the 17 charges with revenues actually received and costs 18 actually received, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Or incurred. Do you know whether the 21 figures that appear in the Goldenberg table for 22 Columbus & Southern and Ohio Power reflect those 23 reconciliation adjustments?</p> <p>24 A. For the period, for the quarters, I would</p> | <p>1 they incurred costs before the fourth quarter of 2 2009?</p> <p>3 A. I believe they did, yes.</p> <p>4 Q. Is it your understanding they -- those 5 AEP companies reflected those costs incurred prior to 6 the fourth quarter of 2009 somewhere in the fuel 7 rider before 2009? When I say those costs, the costs 8 to comply with the renewable benchmarks established 9 in 4928.64.</p> <p>10 MS. YOST: Karen, could you read that 11 back.</p> <p>12 (Record read.)</p> <p>13 MS. YOST: Object as to form.</p> <p>14 Q. Let me ask it again. Either I misstated 15 it or Karen didn't pick up part of my question. It's 16 probably the former.</p> <p>17 Is it your understanding that when AEP 18 incurred costs to comply with the 4928.64 renewable 19 benchmarks, prior to the fourth quarter of 2009, 20 those costs were reflected in the fuel rider prior to 21 the fourth quarter of 2009?</p> <p>22 MS. YOST: Object as to form.</p> <p>23 A. Can you ask that in a -- in a different 24 way?</p> |
| Page 142 | Page 144 |
| <p>1 say yes.</p> <p>2 Q. But you're guessing, correct?</p> <p>3 A. Usually when --</p> <p>4 Q. My question is do you know?</p> <p>5 A. Well, I would say that the quarterly 6 updates usually are reconciled.</p> <p>7 Q. My question is to you, sir, do you know 8 whether these numbers that appear on this table 9 include the reconciliation adjustment for Columbus & 10 Southern and Ohio Power? Do you know this for a 11 fact?</p> <p>12 A. I don't recall but I --</p> <p>13 Q. All right. Thank you.</p> <p>14 A. They do.</p> <p>15 Q. Let me ask you, sir, whether you know 16 when AEP -- the AEP companies first started incurring 17 costs to comply with the renewable mandates?</p> <p>18 A. I don't know the exact date, but my 19 understanding would be that when they started 20 activity towards complying and gearing up for the 21 mandate, probably sometime in 2008.</p> <p>22 Q. 2008.</p> <p>23 A. Yes.</p> <p>24 Q. So would it be your understanding that</p> | <p>1 Q. Well, you said, did you not, that you 2 believe that AEP incurred costs --</p> <p>3 A. Right.</p> <p>4 Q. -- prior to the fourth quarter of 2009? 5 And am I correct to understand that they incurred 6 costs to comply with the renewable energy benchmarks?</p> <p>7 A. Correct.</p> <p>8 Q. And were those costs reflected in the 9 fuel adjustment rider?</p> <p>10 A. I believe -- I believe they were.</p> <p>11 Q. Were they reflected in the fuel 12 adjustment rider prior to the fourth quarter of 2009?</p> <p>13 A. I don't know for sure.</p> <p>14 Q. Okay. Do you know whether the fuel rider 15 is a wholesale or retail charge?</p> <p>16 A. I believe it's -- it's -- it's a 17 wholesale charge, I believe.</p> <p>18 Q. Okay. And if it's a wholesale charge -- 19 I'll back up.</p> <p>20 The FirstEnergy AER, is that a wholesale 21 charge or retail charge?</p> <p>22 A. The FirstEnergy AER?</p> <p>23 Q. Yes.</p> <p>24 A. I don't understand the question.</p> |

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| <p style="text-align: right;">Page 145</p> <p>1 Q. Okay. Is it a charge that appears on a</p> <p>2 bill or as part of a bill?</p> <p>3 A. Yes.</p> <p>4 Q. All right. Does it have to be grossed up</p> <p>5 for distribution losses?</p> <p>6 A. Does it -- you are asking me whether the</p> <p>7 AER charge has to be grossed up for distribution</p> <p>8 losses?</p> <p>9 Q. Yes.</p> <p>10 A. My understanding is -- is it's the cost</p> <p>11 of FirstEnergy compliance divided by the economy</p> <p>12 kilowatt-hours.</p> <p>13 Q. So is the answer no?</p> <p>14 A. It's what I said.</p> <p>15 Q. I don't know if the answer is yes or no.</p> <p>16 So is it no?</p> <p>17 A. Can you ask your question again?</p> <p>18 Q. Yes. Does the AER charge have to be</p> <p>19 grossed up for the distribution losses?</p> <p>20 A. What do you mean grossed up?</p> <p>21 Q. You don't know what the term means?</p> <p>22 Never heard it before?</p> <p>23 A. No, I've heard it before.</p> <p>24 Q. What's it mean to you?</p> | <p style="text-align: right;">Page 147</p> <p>1 MR. KUTIK: You are coaching him.</p> <p>2 MS. YOST: I am not coaching him.</p> <p>3 MR. KUTIK: The record will reflect. Do</p> <p>4 it again and we'll get Greg on the phone.</p> <p>5 MS. YOST: Call him.</p> <p>6 Q. Do you know what distribution losses are,</p> <p>7 sir? Have you ever heard that term before?</p> <p>8 A. You're talking about distribution line</p> <p>9 loss; is that what you are talking about?</p> <p>10 Q. Is that how you understand it?</p> <p>11 A. I mean, that's one use of the</p> <p>12 distribution losses.</p> <p>13 Q. Did you ever hear distribution losses</p> <p>14 referred to in any other context?</p> <p>15 A. Losses due to energy efficiency.</p> <p>16 Q. Okay. Any other context?</p> <p>17 A. Losses due to distributed generation.</p> <p>18 Q. Let's take the first instance. Can you</p> <p>19 answer my question now?</p> <p>20 A. Oh, the one about the does it have to be</p> <p>21 by line losses?</p> <p>22 Q. Right. Would you gross up the AER charge</p> <p>23 for distribution losses?</p> <p>24 MS. YOST: Objection.</p> |
| <p style="text-align: right;">Page 146</p> <p>1 A. To take account for lost distribution.</p> <p>2 Q. Can you answer my question? Does the AER</p> <p>3 charge have to be grossed up for distribution losses?</p> <p>4 A. When you talk about distribution losses,</p> <p>5 you mean losses due to shopping?</p> <p>6 Q. No, sir.</p> <p>7 A. Oh, okay. Grossed up, no.</p> <p>8 Q. It does not have to be grossed up.</p> <p>9 A. Hold on. Let me just understand this</p> <p>10 here. What type -- I am still having trouble with</p> <p>11 what type of lost distribution are you referring to?</p> <p>12 Q. You have no idea what I'm referring to;</p> <p>13 you can't answer my question?</p> <p>14 A. I'm trying to understand what you --</p> <p>15 Q. Can you answer my question? That's all.</p> <p>16 A. I am trying to get some more</p> <p>17 clarification.</p> <p>18 Q. Can you answer my question?</p> <p>19 MS. YOST: Objection. He says he can't</p> <p>20 answer your question. He is seeking clarification.</p> <p>21 MR. KUTIK: Don't coach him. Don't coach</p> <p>22 him.</p> <p>23 MS. YOST: That is not coaching. He is</p> <p>24 asking you what do you mean.</p> | <p style="text-align: right;">Page 148</p> <p>1 A. I don't -- I don't know.</p> <p>2 Q. Okay. Would you gross up the AEP fuel</p> <p>3 charge for distribution losses?</p> <p>4 A. I don't know.</p> <p>5 Q. Okay. Let's talk about DPL. Does DPL</p> <p>6 have a rider AER?</p> <p>7 A. Yes, I believe they do. They have a</p> <p>8 rider specific to their alternative energy</p> <p>9 compliance.</p> <p>10 Q. When was that -- pardon me?</p> <p>11 A. Compliance.</p> <p>12 Q. When was that rider first established?</p> <p>13 And I'll ask you generally is it your understanding</p> <p>14 it was established before the fourth quarter of 2009?</p> <p>15 A. I would say yes. I think it was in the</p> <p>16 08-1094 case.</p> <p>17 Q. Okay. And do you have a general</p> <p>18 understanding when the rates in that case first came</p> <p>19 into effect?</p> <p>20 A. I would say probably the fourth quarter</p> <p>21 of 2009 because it was a late settlement.</p> <p>22 Q. But you don't know?</p> <p>23 A. I believe it was the fourth quarter.</p> <p>24 Q. Okay. So you would -- you would reject</p> |

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| <p style="text-align: right;">Page 149</p> <p>1 the idea that the rates actually came into effect in 2 June of 2009.</p> <p>3 A. I wouldn't reject that idea because, like 4 I said, the settlement in that case and after the 5 settlement, the order -- you know, the rehearings and 6 all that, then there is a filing --</p> <p>7 Q. Well, I asked you the question when did 8 the rates come into effect. Was it in June of 2009? 9 Was it in the third quarter of 2009? Was it in the 10 fourth quarter of 2009 or don't you know?</p> <p>11 A. I don't know specifically.</p> <p>12 Q. Okay. Would it be fair to say that 13 during the period reflected in the Goldenberg table 14 the DP&L rate did not change?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know the basis upon which the DP&L 17 rate was established in terms of whether it reflected 18 actual costs or estimated costs or both?</p> <p>19 A. I don't recall specifically, but it looks 20 like there is probably some estimated costs given 21 that it doesn't change over time.</p> <p>22 Q. Right. Would you -- would you hazard the 23 opinion that it's most likely that DP&L's costs to 24 comply with the renewable energy mandates varied from</p> | <p style="text-align: right;">Page 151</p> <p>1 recover the AER costs and adjust that rider, but I 2 don't know whether it was quarterly or.</p> <p>3 Q. Okay. Do you know whether there were any 4 adjustments made to the AER rider for DP&L during the 5 period of this table outside the context of a 6 distribution rate case?</p> <p>7 A. No. I don't believe so.</p> <p>8 Q. You don't believe so? All right. So I'm 9 trying to understand now the basis for your view that 10 there would have been "slight" variations in the 11 quarter costs if there were no adjustments to the 12 rider outside of a rate case? What filings are you 13 referring to?</p> <p>14 A. I recall there was -- when I talk about 15 filings, I'm talking about the filings specific to 16 the alternative energy rider.</p> <p>17 Q. Yes. And you believe there were filings 18 that showed the costs from quarter to quarter?</p> <p>19 A. I believe there was a filing to recover 20 costs.</p> <p>21 Q. Right.</p> <p>22 A. But I don't know whether it was from -- 23 whether -- as I mentioned earlier, whether it was a 24 quarterly -- I don't recall it was a quarterly</p> |
| <p style="text-align: right;">Page 150</p> <p>1 quarter to quarter during the period shown in the 2 Goldenberg table?</p> <p>3 THE WITNESS: Can you just please repeat 4 the question.</p> <p>5 (Record read.)</p> <p>6 A. I would answer by saying it was -- it 7 would have been a variation but most of the costs are 8 reflected so they had these purchases in hand, and 9 they can estimate going forward what the cost was.</p> <p>10 Q. But you would agree that you would expect 11 the cost to vary.</p> <p>12 A. There would be some slight variation.</p> <p>13 Q. Slight variation, that's based upon what, 14 sir?</p> <p>15 A. Based upon -- based on, for example, if 16 you have to file -- make a certain filing related 17 to -- to the AER rider or costs.</p> <p>18 Q. Are you aware of whether there were any 19 such filings, sir?</p> <p>20 A. I believe there was.</p> <p>21 Q. Okay. So you believe there were filings 22 for the AER rider which would show the costs they 23 incurred every quarter?</p> <p>24 A. I know there were filings for them to</p> | <p style="text-align: right;">Page 152</p> <p>1 filing.</p> <p>2 Q. All right. And would it be fair to say 3 you don't recollect whether it was outside of a 4 distribution rate case?</p> <p>5 A. Whether it was outside of the 6 distribution. It would have to be outside of a 7 distribution rate case because they haven't filed a 8 distribution rate case in this period.</p> <p>9 Q. Okay. So you believe there was a filing 10 during the period of this table which reflected an 11 attempt to adjust the rider, correct?</p> <p>12 A. Let me just check something. I couldn't 13 find it, at least in my records, so I was thinking of 14 an ACP filing that they made.</p> <p>15 Q. All right. So let me go back to my 16 question. Is it -- is it the case that you cannot 17 recall that there's any filing that DP&L made outside 18 of a rate case that reflected any variation in their 19 costs?</p> <p>20 A. Yes. I don't -- I don't recall any.</p> <p>21 Q. So would it be fair to say you have no 22 basis for the statement you made earlier that 23 there -- you would expect a slight variation 24 between -- of costs to comply with the renewable</p> |

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| <p>1 energy mandate for DP&L from quarter to quarter in 2 the period shown in the Goldenberg report? 3 MS. YOST: Objection. 4 A. I would say my earlier answer was just 5 more of a -- there's always variation in costs. For 6 whatever reasons it is more high level general. 7 Q. But you don't know the nature of the 8 variation, whether it was slight or more than slight? 9 A. No, I don't. 10 Q. All right. Now, do you know whether DP&L 11 during the period shown in the Goldenberg table 12 self-supplied to comply with the renewable energy 13 benchmarks? 14 A. Explain self-supplied. 15 Q. Does that term have a meaning to you? 16 A. I just want to understand what you mean. 17 Q. Does that term have a meaning to you? 18 A. I have an -- I have my understanding. I 19 just want to make sure we're on the same page. 20 Q. Well, I am about to ask you how you 21 understand that term. What's your definition of that 22 term? 23 A. My understanding would be that they have 24 facilities that produce renewable energy and RECs.</p> | <p>1 Q. Okay. So as far as you know, no other 2 had significant contributions; is that your 3 testimony? 4 A. Self-supply, what you term self-supply? 5 Q. Yes. 6 A. The only question I would have would be 7 who owns the Killian Plant which I think they used to 8 satisfy some of their compliance. 9 Q. So other than the Killian Plant and 10 whatever DP&L is doing, you are not aware of any 11 other utility self-supplying to meet the renewable 12 energy benchmarks, correct? 13 A. Yes. I mean, the other utility would be 14 the AEP companies, and I believe most of these have 15 been -- 16 Q. Purchased? 17 A. -- purchased, have been purchased. They 18 have some small forwardable takes on their property. 19 Q. But that's not significant. 20 A. No. 21 Q. Now, let's turn to Duke. What is the 22 name of the rider in which Duke's alternate energy 23 costs would be recovered under? Again, during the 24 period of time covered by the Goldenberg table.</p> |
| Page 154 | Page 156 |
| <p>1 Q. Okay. So it's your understanding that 2 during the period reflected in the Goldenberg table 3 that DP&L was self-supplying to meet the renewable 4 energy benchmarks? 5 A. I believe that's true. 6 Q. And do you know what -- well, for 7 example, DP&L owned and operated something called the 8 Yankee Solar Facility, correct? 9 A. Yes. 10 Q. And do you know whether -- or what cost 11 this was valued at, this self-supply from Yankee? 12 A. I believe during the forecast case they 13 did tell us that -- we did review the cost of that 14 particular facility. I believe it was -- I don't 15 know specifically, but we had an installed costs. 16 Q. Do you know what the cost to receive 17 supply from the Yankee Solar Facility was valued at 18 for purposes of the DP&L AER rider? Again, during 19 the period that's covered by the Goldenberg table. 20 A. No. 21 Q. Did any other utility self-supply to meet 22 the renewable energy mandates? 23 A. I don't believe it was significant 24 enough.</p> | <p>1 A. Again, it's in the nature of a fuel cost 2 so it's fuel and purchased power. It might have some 3 PTC, or it may have some acronym in front of it but. 4 Q. Okay. And do you know whether the 5 figures that appear for Duke Ohio in the Goldenberg 6 report, that represents some line item for renewable 7 energy costs recovery in the fuel rider; is that your 8 understanding? 9 A. There's a part of the fuel -- the fuel 10 and purchased power that is categorized as 11 alternative energy compliance. 12 Q. All right. And do you know whether this 13 number is taken from that part of the fuel rider? 14 A. I would say based on my understanding and 15 based on the footnote 4, several of the companies 16 include the alternative costs in their fuel 17 adjustment clause rider so, yes, this would be one of 18 the companies that -- where that applied. 19 Q. And do you know whether these numbers 20 reflect estimated costs, actual costs, or both? 21 A. I don't recall. 22 Q. All right. Do you know whether those 23 charges would need to be grossed up for distribution 24 losses?</p> |

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| <p>1 A. I don't recall.</p> <p>2 Q. Do these numbers reflect any</p> <p>3 reconciliation adjustment?</p> <p>4 A. As discussed earlier, I would believe</p> <p>5 there was some reconciliation.</p> <p>6 Q. But you don't know.</p> <p>7 A. I don't recall specifically, no.</p> <p>8 Q. It's not that you don't recall. You</p> <p>9 don't know.</p> <p>10 A. Like I said, I looked at these numbers</p> <p>11 one time.</p> <p>12 Q. You didn't look at all the numbers, did</p> <p>13 you?</p> <p>14 A. I looked at numbers for all the</p> <p>15 companies.</p> <p>16 Q. All right. So it's your understanding</p> <p>17 that these do or do not reflect reconciliation</p> <p>18 adjustment for the Duke numbers? You believe they</p> <p>19 do, or you believe they don't?</p> <p>20 A. I don't recall. I don't recall.</p> <p>21 Q. Okay. Now, do you recall whether there</p> <p>22 was any issue that was raised about how Duke was</p> <p>23 calculating its compliance obligations?</p> <p>24 A. I'm not aware.</p> | <p>1 A. They were proposing one way, and the</p> <p>2 Commission -- in the true settlement. We said no.</p> <p>3 Q. Pardon?</p> <p>4 A. In -- yes, the Commission staff report</p> <p>5 and the parties in that case -- parties in that case</p> <p>6 didn't feel it was appropriate for them to make the</p> <p>7 baseline calculation they were making.</p> <p>8 Q. And so as a result of the Commission</p> <p>9 order in that case, Duke's method or proposed method</p> <p>10 of calculating the baseline was rejected, correct?</p> <p>11 A. This was a settlement with a -- where</p> <p>12 they went back to the traditional baseline</p> <p>13 calculation.</p> <p>14 Q. Right. And would it be fair to say you</p> <p>15 don't know what cal -- what the baseline calculation</p> <p>16 was with respect to the numbers that are shown on the</p> <p>17 Goldenberg table regarding Duke?</p> <p>18 A. No. I would say that that issue with the</p> <p>19 baseline only came up because of the extreme shopping</p> <p>20 that came, that Duke experienced --</p> <p>21 Q. That's not my question.</p> <p>22 A. -- later on so.</p> <p>23 Q. My question simply is do you know whether</p> <p>24 these numbers reflect Duke's proposed way of</p> |
| Page 158 | Page 160 |
| <p>1 Q. Okay. So you are not aware that the</p> <p>2 Commission made Duke change the way it calculated its</p> <p>3 compliance obligations? You don't know whether that</p> <p>4 statement is true or not, correct?</p> <p>5 A. And you're talking about during the</p> <p>6 period of this -- represented in these quarters?</p> <p>7 Q. At any time, sir.</p> <p>8 A. Well, they -- when they filed their new</p> <p>9 ESP, they separated the costs of renewable.</p> <p>10 Q. Other than that.</p> <p>11 A. Other than that I am not aware.</p> <p>12 Q. Okay. So you are not aware of any issue</p> <p>13 that arose as part of the -- a compliance filing,</p> <p>14 fair to say?</p> <p>15 A. I believe in one of the compliance</p> <p>16 filings they wanted to redefine the baseline, and I</p> <p>17 think that was an issue, if that's what you are</p> <p>18 referring to.</p> <p>19 Q. Do you recall an issue for how to define</p> <p>20 baseline?</p> <p>21 A. Correct.</p> <p>22 Q. And Duke was doing it one way, and the</p> <p>23 Commission said, no, you need to do it another way,</p> <p>24 correct?</p> | <p>1 calculating the baseline or the way they were</p> <p>2 ultimately made to calculate the baseline?</p> <p>3 A. The latter.</p> <p>4 Q. You're sure it's the latter.</p> <p>5 A. The latter, yes, because they never got</p> <p>6 approval for it, and they never had significant</p> <p>7 shopping early on.</p> <p>8 Q. Let me make sure I understand because now</p> <p>9 you're talking over me.</p> <p>10 A. I'm trying to clarify.</p> <p>11 Q. Right. Well, is it -- so it's your</p> <p>12 belief that the numbers reflected for Duke Ohio</p> <p>13 reflect the base -- a baseline calculation that was</p> <p>14 not what Duke had proposed to use for its</p> <p>15 calculation.</p> <p>16 A. Correct.</p> <p>17 Q. Now, going back to your table on page 10</p> <p>18 of your testimony, there's a couple of lines over on</p> <p>19 page 11, you took the numbers in the Goldenberg</p> <p>20 report and then you reflected an adjustment for</p> <p>21 shopping, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And would it be correct to say that</p> <p>24 adjustment for shopping was essentially comparing the</p> |

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| <p style="text-align: right;">Page 161</p> <p>1 level of shopping in the last month of the quarter --</p> <p>2 A. Yes.</p> <p>3 Q. -- with the last month of the preceding</p> <p>4 quarter?</p> <p>5 A. Yes.</p> <p>6 Q. And taking that percentage difference and</p> <p>7 applying it to the number that appears in the</p> <p>8 Goldenberg table?</p> <p>9 A. That's correct.</p> <p>10 Q. Now, I think you said earlier when we</p> <p>11 were talking about Duke that Duke was ultimately</p> <p>12 required to calculate the baseline in what I think</p> <p>13 you said was the traditional way. Do you remember</p> <p>14 that?</p> <p>15 A. Correct.</p> <p>16 Q. And it would be fair to say that the --</p> <p>17 what you meant by that was to take the average load</p> <p>18 or cost for the three previous years.</p> <p>19 A. Load.</p> <p>20 Q. Load, okay.</p> <p>21 A. Yes.</p> <p>22 Q. Now, would it be fair to say that the</p> <p>23 load that is used for calculating the compliance</p> <p>24 obligation is not the load over which the costs are</p> | <p style="text-align: right;">Page 163</p> <p>1 what I will call the compliance obligation calculated</p> <p>2 load and the load over which recovery would take</p> <p>3 place?</p> <p>4 A. I took it over the recovery -- my</p> <p>5 adjustments was for the recovery for the load after.</p> <p>6 Q. That's not my question. My question is</p> <p>7 did you basically compare those two loads for any</p> <p>8 company?</p> <p>9 A. Again, I believe my adjustment starts</p> <p>10 with -- starts with the load, the three-year average</p> <p>11 load, and then adjusts for shopping so I think that</p> <p>12 I'm looking at both -- both loads. So, for example,</p> <p>13 the FirstEnergy load --</p> <p>14 Q. Go ahead. Finish your answer or finish</p> <p>15 your nonanswer. Go ahead.</p> <p>16 A. The FirstEnergy, you know, there was</p> <p>17 significant shopping so your actual load, SSO load,</p> <p>18 was much smaller yet your obligation load was much</p> <p>19 larger.</p> <p>20 Q. Okay. And I guess that's what I'm -- to</p> <p>21 use your phrase you believe that you compared the</p> <p>22 obligation load to the SSO load.</p> <p>23 A. I took a period in time, and I looked at</p> <p>24 the existing load --</p> |
| <p style="text-align: right;">Page 162</p> <p>1 to be recovered?</p> <p>2 A. That's correct.</p> <p>3 Q. There's a mismatch.</p> <p>4 A. And that's why I wanted to try to adjust</p> <p>5 that.</p> <p>6 Q. Okay. Now, did you do any analysis of</p> <p>7 the difference between the load used for calculating</p> <p>8 the compliance obligation and the load over which</p> <p>9 costs were to be recovered for any company?</p> <p>10 A. Can you rephrase that, please?</p> <p>11 Q. Sure. We know that there are two</p> <p>12 numbers, right? There is a load to calculate the</p> <p>13 compliance obligation which is the three-year average</p> <p>14 of the three prior years, right?</p> <p>15 A. Yes.</p> <p>16 Q. And the load over which costs are to be</p> <p>17 recovered in a particular year is that current year's</p> <p>18 load, correct?</p> <p>19 A. That current year's cost.</p> <p>20 Q. Current year's load. It's recovered over</p> <p>21 the load, right?</p> <p>22 A. Over the existing load, correct.</p> <p>23 Q. Right. So my question is did you</p> <p>24 calculate or look at the difference between the --</p> | <p style="text-align: right;">Page 164</p> <p>1 Q. That's not my question.</p> <p>2 A. -- and I adjusted it.</p> <p>3 Q. My question is did you compare the</p> <p>4 obligation load to what you would say would be the</p> <p>5 existing load, the loads for the current year? Did</p> <p>6 you compare those two numbers at all?</p> <p>7 A. No. I compared the changes in the</p> <p>8 numbers.</p> <p>9 Q. Now, would you agree with me that in --</p> <p>10 in a case where there is a greater increase in</p> <p>11 shopping the mismatch between the obligation</p> <p>12 calculated load and the existing load or the load</p> <p>13 over which the cost is to be recovered is greater?</p> <p>14 A. Yes. And that's -- that's why I tried to</p> <p>15 make that adjustment to acknowledge that.</p> <p>16 Q. Now, let me refer you to page 14 of your</p> <p>17 testimony. We talked about this a little bit before,</p> <p>18 starting on line 20 where you talked about New</p> <p>19 England states having the restriction. Do you see</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. And is it my understanding that the New</p> <p>23 England states that you are referring to are Maine</p> <p>24 and Massachusetts?</p> |

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| <p>1 A. I believe Massachusetts was the one that 2 I recall. 3 Q. And Maine you don't recall. 4 A. No, no. 5 Q. So what I said was correct, Maine you 6 don't recall. 7 A. Yes. Maine was the state that 8 Massachusetts was trying to avoid. 9 Q. All right. And when was this delivery 10 restriction in effect in Maine -- excuse me, 11 Massachusetts? 12 A. I know as of 2000 -- I would say 2000 -- 13 I became aware of it in 2006. 14 Q. Okay. And as far as you know, has that 15 requirement remained in effect? 16 A. I'm not aware because there's a new -- 17 ISO New England -- New England were in the NEPOOL 18 prior and then there's been development in the 19 Freedom of Transmission Organization so I don't know 20 what happened after that. 21 Q. Okay. Let me refer you to page 15 of 22 your testimony, lines 5 through 9. And you say that 23 you agree with the FirstEnergy witnesses that the 24 Ohio in-state all renewables REC market was</p> | <p>1 word search, but I don't believe they would have said 2 permanently short. 3 Q. Okay. So your best recollection is they 4 did not say that? 5 A. Not the part that says permanently. 6 Q. Okay. Now, we talked earlier about the 7 RFP process, and I think you said that you believe 8 that the design of the process was to achieve a 9 competitive result but that it did not receive a 10 competitive result in this case; would that be a fair 11 summary of your opinion? 12 A. I would say -- I would say generally, 13 yes. 14 Q. Okay. And normally if we have a 15 competitive procurement process, we would view the 16 result of that process, the prices that came as a 17 result of that process as a price that would reflect 18 a market price, correct? 19 A. No. 20 Q. Okay. Why not? 21 A. If you -- if the idea behind a 22 competitive price is that you have a number of 23 bidders. 24 Q. Right.</p> |
| Page 166 | Page 168 |
| <p>1 constrained and that the in-state all renewables RECs 2 were not reasonably available in the marketplace 3 during the market period, correct? 4 A. I say during the early part of the audit 5 period, yes. 6 Q. All right. Now, can you tell me which 7 FirstEnergy witnesses said that the Ohio in-state all 8 renewables marked was constrained and that in-state 9 all renewables RECs were not reasonably available? 10 A. I would say that just both their 11 testimonies, Earle with his demand and supply and how 12 there was a constrain and there was -- and because of 13 the in-state quota and also in Bradley's testimony 14 when he's discussing the Ohio market. 15 Q. Okay. Now, did Dr. Earle or Mr. Bradley 16 ever state that in-state all renewable RECs were not 17 reasonably available? 18 A. I don't recall but just my understanding 19 of their testimony was that the market was 20 constrained. 21 Q. All right. Did any FirstEnergy witnesses 22 ever say that the in-state all renewable RECs market 23 was permanently short and constrained? 24 A. I don't recall. I would have to do a</p> | <p>1 A. And if you only have one bidder -- 2 Q. Well, that was not my question. 3 A. Yeah, but that's -- 4 Q. My question to you is normally, that was 5 the word I used, normally where you have a 6 competitive process, you would expect at the end of 7 that process to have a price that you could view as a 8 market price, correct? 9 A. And I would say under a normal process 10 which is not the process that we're talking about 11 today I would agree with you. 12 Q. Okay. And the reason why you reject the 13 notion that this was a competitive process was that 14 there was only one qualified bidder, correct? 15 A. Yes. I've stated that the result was not 16 competitive. 17 Q. Again, because there was only, in your 18 view, one qualified bidder, correct? 19 A. Yes. 20 Q. Now, are you aware of any study which 21 showed that for part of the audit period Ohio 22 in-state market supply slightly exceeded demand? 23 A. I am not aware of any study. 24 Q. Okay. Would that be your -- your</p> |

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| <p style="text-align: right;">Page 169</p> <p>1 understanding of the state of the market at any 2 stage, say, from RFP 1 to RFP 2? 3 MS. YOST: Objection. 4 THE WITNESS: Can you repeat that last 5 question, please? 6 Q. Let me restate it for you. Are you aware 7 of any study that con -- that was concluded -- I'll 8 back up. 9 Are you of the view that the in-state 10 market's supply exceeded the demand for that product 11 in 2009? 12 A. I am -- 13 MS. YOST: Objection. 14 A. I am not aware of any study. 15 Q. I didn't ask about a study. Is it your 16 opinion that the supply for in-state all renewable 17 RECs exceeded demand? 18 A. I would say the supply at least equaled. 19 Q. In 2009. 20 A. That's correct. 21 Q. Let me ask you the same question for 22 2010, do you believe that the market for -- in the 23 market for Ohio in-state all renewable RECs in 2010 24 the supply exceeded demand?</p> | <p style="text-align: right;">Page 171</p> <p>1 August, 2010? 2 Q. Correct. Do you have my question in 3 mind, or do you want me to restate? 4 A. No. I have your question in mind. I am 5 just trying to review the ACP. 6 Q. And, sir, what are you referring? 7 A. This is just information on the case. 8 Q. What case? 9 A. The cases that we sent you in our -- in 10 our response to your discovery. 11 Q. Is that information you are relying on 12 for your testimony in this case? 13 A. No. My testimony -- if I actually had 14 the computer, I could go to the case. This is what I 15 am trying to read is a summary of looking at force 16 majeure. 8-16-12 ordered. So that case was after. 17 Q. Sir, you are looking at that material to 18 respond to my questions, are you not? 19 Mr. Gonzalez, you are looking at some 20 materials to respond to my questions? 21 A. Yes. 22 Q. Okay. 23 MR. BURK: Did his book maybe hit that? 24 MS. YOST: Are people still on the phone?</p> |
| <p style="text-align: right;">Page 170</p> <p>1 A. I would say -- I would give you the same 2 answer. 3 Q. You believe so or about the same. 4 A. Correct. 5 Q. All right. 6 A. We're talking about just in-state all 7 renewables, right? 8 Q. That was my question. 9 A. Yes. 10 Q. And for 2011, do you believe that the 11 market for all state -- excuse me, in-state all 12 renewable RECs supply exceeded demand? 13 A. Exceeded or was met. 14 Q. Okay. 15 A. Was available. 16 Q. Now, as of the time of RFPs 1, 2, and 3, 17 had any force majeure applications been granted under 18 4928.64? 19 A. And you're asking granted, not when it 20 was -- when the company applied? 21 Q. Granted was my question. 22 A. And the three periods of your first three 23 auctions were August, 2009 -- are you referring to 24 the August, 2009; October, 2009; and February, 20 --</p> | <p style="text-align: right;">Page 172</p> <p>1 MR. KUTIK: Let's go off the record. 2 (Discussion off the record.) 3 Q. Let's go back on the record. 4 THE WITNESS: Can you repeat his 5 question. I think I can answer it now. 6 Q. My question was were any force majeure 7 applications granted as of the time of RFP 1, 2, and 8 3? 9 A. Based on for the four companies -- the 10 four major -- for the four majors, I don't believe 11 so. 12 Q. Right. Now, you said you had to refer to 13 some materials to respond to my question. They were 14 some kind of summaries? 15 A. It was just the listing that we gave you 16 for -- 17 Q. Can you pull out of your notebook those 18 summaries that you referred to? 19 A. The -- 20 MS. YOST: I am going to object. What's 21 the purpose? 22 MR. KUTIK: I am going to mark it as an 23 exhibit, that's why. I am entitled to anything that 24 he refers to to respond to my questions.</p> |

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| <p style="text-align: right;">Page 173</p> <p>1 MS. YOST: Let me see. Can we go off the 2 forward for a second and pull these and let's go 3 outside and confer. 4 MR. KUTIK: Why don't we take a 5-minute 5 break. Let's go off the record. 6 (Recess taken.) 7 Q. Back on the record. Has the Commission 8 ever granted a force majeure application because the 9 price of a REC or an SREC was too high? 10 A. I would say my understanding of the 11 orders that have come out in the force majeure 12 case -- cases have been more because of 13 nonavailability of supply. 14 Q. So you're not aware of any case in which 15 the Commission has granted a force majeure 16 application because RECs were available but too high, 17 priced too high? 18 A. I would say that's correct. 19 Q. Okay. Now, would it be correct to say 20 that in your testimony you recognize that even if the 21 companies had agreed with your position and thought 22 that a force majeure application was appropriate, 23 that there was a possibility that the PUCO may not 24 have granted that application?</p> | <p style="text-align: right;">Page 175</p> <p>1 Q. All right. 2 A. Obligation subject to the 3 percent cost 3 cap and -- 4 Q. All right. 5 A. -- and the reason to be available. 6 Q. So are you aware of -- I'll back up. 7 You are aware that the Commission has 8 reviewed the company's compliance obligations, 9 correct? 10 A. There is a filing that takes place every 11 year in April. 12 Q. And that's been for 2009, 2010, 2011? 13 A. That's correct. 14 Q. Okay. Has -- has the Commission found 15 that the companies did not meet their compliance 16 obligation in 2009 for in-state all renewable RECs? 17 A. No. 18 Q. In fact, the Commission has found that 19 the companies were in compliance with those 20 obligations, correct? 21 A. Yes. 22 Q. The Commission also found that the 23 companies were in compliance with the in-state all 24 renewables obligations for 2010.</p> |
| <p style="text-align: right;">Page 174</p> <p>1 A. That's correct. That's a possibility. 2 Q. And so you talk about the alternative of 3 having to pay a compliance payment, right? 4 A. That's another option. 5 Q. Okay. Now, the compliance payment 6 process, you're aware how that works, right? 7 A. The company -- the Commission would have 8 to find that it was -- if it was avoidable, then you 9 would pay the compliance. If it was unavoidable, 10 then it was unavoidable. 11 Q. Right. Now, for a compliance payment to 12 be levied, the Commission would first have to find 13 that the companies had not met their compliance 14 obligations, correct? 15 A. Can you rephrase that? 16 Q. What in my question needs rephrasing? 17 A. Can you please restate it. 18 Q. I'll restate it for you. Isn't it true 19 that for a compliance payment to be levied the 20 Commission would first have to find that the 21 companies did not meet their compliance obligations? 22 A. I believe in the broad sense of the word 23 if it -- a compliance payment would be paid if they 24 had not met the full compliance.</p> | <p style="text-align: right;">Page 176</p> <p>1 A. Yes. 2 Q. And for 2011. 3 A. Yes. 4 Q. Now, you are aware, are you not, that 5 FirstEnergy operating companies have filed for force 6 majeure applications for the solar obligation, 7 correct? 8 A. Yes. 9 Q. And OCC was among the parties to oppose 10 the company's applications, correct? 11 A. That's correct. 12 Q. So -- 13 A. OCC I would say my recollection in those 14 cases is that was that we filed as OC. It would be 15 more appropriate we were part of a coalition that 16 opposed it. 17 Q. And the coalition, OCC supported the 18 coalition's views, right? 19 A. We signed onto the filing by the 20 coalition, yes. 21 Q. And the coalition objected and opposed 22 the force majeure application, right? 23 A. I would say generally speaking we did 24 oppose, and we said if it was granted, they should --</p> |

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| <p>1 the company should still have to meet that obligation</p> <p>2 in a later year.</p> <p>3 Q. Right. And so in the cases where</p> <p>4 FirstEnergy filed for force majeure applications, the</p> <p>5 Commission found that the RECs were not available,</p> <p>6 correct?</p> <p>7 A. They found that --</p> <p>8 Q. Solar RECs were not available.</p> <p>9 A. The solar REC market was not sufficiently</p> <p>10 supplying solar RECs.</p> <p>11 Q. There was an absence of solar RECs.</p> <p>12 A. There wasn't sufficient supply of solar</p> <p>13 RECs.</p> <p>14 Q. Okay. Nevertheless OCC opposed this</p> <p>15 application, correct?</p> <p>16 A. I believe, like I stated earlier, that</p> <p>17 the law asks for best effort and it asks -- and it</p> <p>18 has a number of conditions under which it can -- we</p> <p>19 wanted -- we didn't think the company's application</p> <p>20 at that particular time had addressed all the</p> <p>21 conditions.</p> <p>22 Q. Okay. Now -- well, the answer to my</p> <p>23 question is that OCC opposed those applications,</p> <p>24 correct?</p> | <p>1 Q. Well, you are aware that the company</p> <p>2 doesn't share your view that force majeure was</p> <p>3 appropriate here, correct, or available?</p> <p>4 A. I believe we have differing opinions on</p> <p>5 that.</p> <p>6 Q. So that's an issue -- let's say that's an</p> <p>7 issue for debate in this case, correct?</p> <p>8 A. It's one of the issues in the case.</p> <p>9 Q. Another issue is whether the compliance</p> <p>10 payment can be made in lieu of an obligation to</p> <p>11 purchase, right?</p> <p>12 A. Yes.</p> <p>13 Q. You understand the companies have a</p> <p>14 different view?</p> <p>15 A. Yes.</p> <p>16 Q. Now, is it your view that the companies</p> <p>17 have ever paid renewable compliance payments for</p> <p>18 in-state all renewable RECs?</p> <p>19 A. My understanding is that they have not.</p> <p>20 Q. So would it be fair to say that customers</p> <p>21 have never been burdened with having to pay for</p> <p>22 renewable compliance payments by the company?</p> <p>23 THE WITNESS: Oh, can you -- this one I</p> <p>24 want just restated -- I mean read back, please.</p> |
| Page 178 | Page 180 |
| <p>1 A. Yes.</p> <p>2 Q. Now, I want to talk to you about your</p> <p>3 comments about the sugar market in response to</p> <p>4 Dr. Earl's comments. And you say, do you not, that</p> <p>5 there is a distinction between the sugar market and</p> <p>6 the Ohio in-state all renewables market, and you</p> <p>7 point out two distinctions, correct? This is on page</p> <p>8 15, lines 13 to 20, of your testimony.</p> <p>9 A. Yes. I think those are two very</p> <p>10 important considerations.</p> <p>11 Q. Okay. And you took care in your</p> <p>12 testimony to point out the important distinctions,</p> <p>13 correct?</p> <p>14 A. I took -- I took effort to point out</p> <p>15 those two instances where -- I thought were</p> <p>16 significant.</p> <p>17 Q. Okay. These are two significant</p> <p>18 distinctions, correct?</p> <p>19 A. Correct.</p> <p>20 Q. All right. And you are aware, are you</p> <p>21 not, that the availability of force majeure is not an</p> <p>22 issue that everyone in this case agrees with your</p> <p>23 position on, correct?</p> <p>24 A. That's too general.</p> | <p>1 (Record read.)</p> <p>2 A. Well, my understanding is that the law</p> <p>3 prohibits customers from being charged the compliance</p> <p>4 payment.</p> <p>5 Q. Right. So, again, the customers have</p> <p>6 never been burdened with such payments, correct?</p> <p>7 A. No. They have been burdened with worse.</p> <p>8 Q. But they haven't been burdened with these</p> <p>9 payments, correct?</p> <p>10 A. With the compliance payments, that's</p> <p>11 correct.</p> <p>12 Q. And as you point out, under Ohio law they</p> <p>13 could never be so burdened?</p> <p>14 A. At least my professional understanding of</p> <p>15 the law.</p> <p>16 Q. Right. We mentioned before that you have</p> <p>17 the view that there was only one qualified supplier</p> <p>18 with respect to RFPs 1 and 2, correct?</p> <p>19 A. Yes, I believe.</p> <p>20 Q. That was based on the Exeter report?</p> <p>21 A. The Exeter report plus their</p> <p>22 correction -- your correction to their Exeter report</p> <p>23 in our discovery -- in your discovery response.</p> <p>24 Q. Okay. Now, with respect to the payment</p> |

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| <p style="text-align: right;">Page 181</p> <p>1 of compliance payments -- well, let me back up a bit.</p> <p>2 How many CRES providers are there in the state of</p> <p>3 Ohio?</p> <p>4 A. I believe there are many. I don't know</p> <p>5 the exact number.</p> <p>6 Q. Order of magnitude, 30? 50?</p> <p>7 A. At least.</p> <p>8 Q. At least 50?</p> <p>9 A. I would say. I would say perhaps 40.</p> <p>10 Q. Okay. And would it be fair to say that</p> <p>11 those -- that those CRES providers are subject to the</p> <p>12 renewable energy mandates in 4928.64?</p> <p>13 A. Yes.</p> <p>14 Q. And how many electric utilities are there</p> <p>15 in the state of Ohio that are subject to the</p> <p>16 renewable energy mandates?</p> <p>17 A. I believe just the four major industrial</p> <p>18 utilities.</p> <p>19 Q. Well, actually if we count up the number</p> <p>20 of companies, there would be 10, correct?</p> <p>21 A. Yeah, but I was talking about the parent.</p> <p>22 Q. All right. So we could say that there</p> <p>23 are at least 50 entities that are subject to the</p> <p>24 renewable energy compliance mandates in this state,</p> | <p style="text-align: right;">Page 183</p> <p>1 payment, correct?</p> <p>2 MS. YOST: Objection.</p> <p>3 A. I don't know. I know the cases that I</p> <p>4 cite and your response but I don't -- I haven't</p> <p>5 reviewed all the CRES filings.</p> <p>6 Q. That's my point. You only know of three,</p> <p>7 correct?</p> <p>8 A. I can't recall specific -- any other</p> <p>9 specific case so I would have to.</p> <p>10 Q. Sitting here today you only know of</p> <p>11 three, correct?</p> <p>12 A. The three that we're talking about but</p> <p>13 that doesn't mean there may not be others. I haven't</p> <p>14 reviewed all the CRES filings.</p> <p>15 Q. You haven't taken it upon yourself to</p> <p>16 review all of the ACP proceedings to determine</p> <p>17 whether there are more than three, correct? That is,</p> <p>18 more than three companies that have paid compliance</p> <p>19 payments?</p> <p>20 A. I haven't made a tally of all the -- of</p> <p>21 all the companies that paid compliance.</p> <p>22 Q. All right. Now, of the companies that</p> <p>23 you are aware of, do you know whether they have paid</p> <p>24 compliance payments more than once?</p> |
| <p style="text-align: right;">Page 182</p> <p>1 correct?</p> <p>2 A. I would say as a ballpark figure, yes.</p> <p>3 Obviously the 10 for the utility is correct.</p> <p>4 Q. Right. And we've had three compliance</p> <p>5 cycles, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And how many companies have had to make</p> <p>8 or been ordered to pay compliance payments?</p> <p>9 A. I don't know all the CRES providers, but</p> <p>10 I know there's been a number that have been -- and I</p> <p>11 cite that in my testimony.</p> <p>12 Q. Well, isn't it a fact only three have</p> <p>13 been required to make payments?</p> <p>14 A. I don't know. I think -- I pointed to</p> <p>15 two.</p> <p>16 Q. All right. And are you aware that</p> <p>17 FirstEnergy in its discovery responses identified a</p> <p>18 third?</p> <p>19 A. I don't recall but.</p> <p>20 Q. Okay. Well, assuming that's true then,</p> <p>21 so far as you know, there have only been three</p> <p>22 companies or three times when a company subject to</p> <p>23 the compliant -- the compliance obligations of the</p> <p>24 statute have been ordered to make a compliance</p> | <p style="text-align: right;">Page 184</p> <p>1 A. I would say, no, I don't know.</p> <p>2 Q. So we only know of three instances</p> <p>3 sitting here today where someone, an entity that is</p> <p>4 subject to the renewable energy mandates of the</p> <p>5 statute, has been required to make a compliance</p> <p>6 payment, fair to say?</p> <p>7 A. I already said I don't know.</p> <p>8 Q. Okay. Again, you only know of those</p> <p>9 three instances.</p> <p>10 A. Yes. But I am not going to agree those</p> <p>11 are the only three instances.</p> <p>12 Q. And sitting here today in terms of your</p> <p>13 knowledge, that's all I am asking, sir, you only know</p> <p>14 of those three instances, correct?</p> <p>15 A. I know of those three instances. I am</p> <p>16 not sure whether there were other instances.</p> <p>17 Q. Thank you. Now, you mentioned in your</p> <p>18 testimony something called the Advanced Energy Fund.</p> <p>19 Do you remember that?</p> <p>20 A. Yes.</p> <p>21 Q. And you are familiar with the Advanced</p> <p>22 Energy Fund? It's on page 31 of your testimony.</p> <p>23 A. Uh-huh, yes.</p> <p>24 Q. Now, is that a fund that has -- that we</p> |

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| <p style="text-align: right;">Page 185</p> <p>1 can go and see how much money is in that fund? Is 2 that a fact that's knowable?</p> <p>3 A. I don't think the every day amount of the 4 fund is published but it's a state -- you could ask 5 for it. I'm sure if you call ODOD, which I think 6 manages it, the old Office of Development, they could 7 probably give you an idea.</p> <p>8 Q. Do you know the size of the fund for any 9 period of time?</p> <p>10 A. I think originally the fund was -- I 11 think it was financed at a very small amount 12 originally, maybe 50 million a year. It may have 13 grown at one time --</p> <p>14 Q. You need to speak up. One time?</p> <p>15 A. It may have grown up to 100 million at 16 one time, but I'm not sure.</p> <p>17 Q. Okay. Do you know what -- whether that 18 fund has provided any grants or sent -- sent money 19 out to folks?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And you are aware of particular 22 projects that have -- that have used Advanced Energy 23 Fund moneys?</p> <p>24 A. I would say most of the projects I'm</p> | <p style="text-align: right;">Page 187</p> <p>1 Q. Okay. And do you recall reviewing this 2 response?</p> <p>3 A. Yes, I believe I did.</p> <p>4 Q. Okay. And this response includes some 5 attachments, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And attachments show calculations of the 8 3 percent test, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And would it be fair to say that what 11 these calculations show is that using a method of 12 calculation that sets the compliance obligation based 13 upon the three-year -- three prior years average 14 load, the companies were within the 3 percent for 15 2009, 2010, and 2011?</p> <p>16 A. I acknowledged that in my testimony.</p> <p>17 Q. This was my next question.</p> <p>18 A. That the companies felt they had not 19 exceeded the 3 percent threshold.</p> <p>20 Q. All right. And do you disagree with the 21 company's assessment that they were not in excess of 22 the 3 percent threshold?</p> <p>23 A. I don't have an opinion of that. I 24 didn't -- I didn't discuss that in my testimony.</p> |
| <p style="text-align: right;">Page 186</p> <p>1 aware of are customer projects, i.e., they had a -- 2 an incentive program for residential and commercial 3 renewable products so they would buy down the -- they 4 would give you an incentive for every watt.</p> <p>5 Q. Do you know how much money from the 6 Advanced Energy Fund was used for those type of 7 projects?</p> <p>8 A. I don't remember specifically.</p> <p>9 Q. Okay. Now, you said that you reviewed 10 all of the responses that FirstEnergy sent to the 11 auditors, correct?</p> <p>12 A. I tried to review -- yeah, I reviewed all 13 of them. I didn't commit them all to memory.</p> <p>14 Q. Sure. There were a lot of them, weren't 15 there?</p> <p>16 A. There were quite a bit.</p> <p>17 MR. KUTIK: Let's mark this as Gonzalez 18 Exhibit 1.</p> <p>19 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>20 Q. Mr. Gonzalez, the court reporter has 21 handed you what has been marked as Gonzalez Exhibit 22 1. Do you recognize this as the company's responses 23 to request GS-set 2-interrogatory 4?</p> <p>24 A. Yes, that's what it appears.</p> | <p style="text-align: right;">Page 188</p> <p>1 Q. My question to you, sir, do you have -- 2 do you believe that they were or were not in excess 3 of 3 percent?</p> <p>4 A. I haven't done an exhaustive study of 5 this particular request. My understanding is that 6 the company indicated it hadn't exceeded the 7 3 percent test, and I know that's an issue in this 8 case but that's not an issue I addressed in my 9 testimony.</p> <p>10 Q. Would it be fair to say you have no 11 reason to dispute the company's calculations?</p> <p>12 A. I have no reason to dispute or assent to 13 them.</p> <p>14 Q. Okay. So you're not taking the position 15 in this case that the companies exceeded the 16 3 percent test, correct?</p> <p>17 A. I'm not taking that position. I'm 18 neutral on that.</p> <p>19 MR. KUTIK: Let's go off the record for a 20 moment.</p> <p>21 (Discussion off the record.)</p> <p>22 Q. Let's go back on the record. I don't 23 believe this is a part of your confidential 24 testimony. If it is, please tell me. It is the case</p> |

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| <p style="text-align: right;">Page 189</p> <p>1 that -- is it not, that you had recommended that the</p> <p>2 companies pay a penalty; is that correct?</p> <p>3 A. I believe the gist of that is in my</p> <p>4 confidential section.</p> <p>5 Q. I'll ask you in the confidential then.</p> <p>6 Well, subject to our disagreement about the exhibit</p> <p>7 that you referred to --</p> <p>8 A. What exhibit? I'm sorry.</p> <p>9 Q. The one that your lawyer is looking at</p> <p>10 right now.</p> <p>11 A. Oh.</p> <p>12 (Confidential portion begins.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> | <p style="text-align: right;">Page 213</p> <p>1 they were granted?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And what are these documents?</p> <p>4 A. There is a database of cases related to</p> <p>5 resource planning as it states.</p> <p>6 Q. And who maintains this database?</p> <p>7 A. I maintain it.</p> <p>8 Q. And are you the one responsible for</p> <p>9 putting in the various pieces of data that are shown</p> <p>10 in this document?</p> <p>11 A. I would say predominantly, although an</p> <p>12 administrative assistant may help at times, and</p> <p>13 before our budget cuts I had another person who</p> <p>14 was -- who assisted me.</p> <p>15 Q. Is this administrative assistant someone</p> <p>16 who works under your direction to put this material</p> <p>17 in?</p> <p>18 A. Yes, yes.</p> <p>19 Q. Who has access to this database other</p> <p>20 than you and the administrative assistant?</p> <p>21 A. I believe members of the resource</p> <p>22 planning team that we used to have before the budget</p> <p>23 cuts.</p> <p>24 Q. Okay. So today who has access to this</p> |
| <p style="text-align: right;">Page 212</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 (Confidential portion ends.)</p> <p>15 MR. KUTIK: And we are now in the</p> <p>16 nonconfidential session, but we'll go off the record</p> <p>17 until counsel has produced a document.</p> <p>18 (Discussion off the record.)</p> <p>19 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>20 Q. Mr. Gonzalez, the court reporter has</p> <p>21 handed you what has been marked for identification as</p> <p>22 Gonzalez Exhibit 2. Are these the pages you were</p> <p>23 referring to when you were trying to answer my</p> <p>24 question as to force majeure applications and when</p> | <p style="text-align: right;">Page 214</p> <p>1 database?</p> <p>2 A. I think -- I believe it's myself, the</p> <p>3 administrative assistant, and --</p> <p>4 Q. And what's the name of the administrative</p> <p>5 assistant?</p> <p>6 A. Gina Bringa.</p> <p>7 Q. Pardon?</p> <p>8 A. Gina, G-I-N-A, Bringa, B-R --</p> <p>9 Q. Is this a woman?</p> <p>10 A. Correct, yes.</p> <p>11 Q. Is the general purpose of this for you to</p> <p>12 keep track of relevant events relating to matters?</p> <p>13 A. This is just a database to keep -- for me</p> <p>14 to know -- to monitor what activity has happened in</p> <p>15 any -- in a myriad of cases we get involved in.</p> <p>16 Q. Again, this is for you to keep track of</p> <p>17 what's going on.</p> <p>18 A. Yes.</p> <p>19 Q. Now, your -- your counsel has redacted</p> <p>20 certain information, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Did the redacted information reflect</p> <p>23 legal advice?</p> <p>24 MR. BERGER: Do you need the original?</p> |

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| <p style="text-align: right;">Page 215</p> <p>1 MS. YOST: I am going to object to this, 2 attorney-client privilege information. If you want 3 to pursue this, we can send it to Mr. Price. 4 MR. KUTIK: I asked him -- I said does it 5 reflect legal advice. 6 Q. You can answer that question yes or no. 7 MS. YOST: I have objected to him 8 answering that question. He doesn't know what the 9 legal advice standard is in Ohio. 10 Q. Sir, can you answer my question? 11 A. I don't know what the legal requirements 12 in Ohio are. 13 Q. I didn't ask you legal requirement. Do 14 you believe that what's been redacted reflects legal 15 advice or is legal advice as you understand what 16 those two words mean as a layman? 17 A. I said I don't understand. 18 Q. Well, you understand the concept of legal 19 advice, don't you? 20 MS. YOST: All right. At this point I am 21 going to instruct him not to answer. You have got a 22 call into the Hearing Examiner so I will turn over 23 the unredacted and we can have a determination. 24 MR. KUTIK: So you are instructing him</p> | <p style="text-align: right;">Page 217</p> <p>1 know, you have the right to review the transcript and 2 to make corrections to any stenography errors, and 3 you also have the ability to waive that right. And 4 you need to indicate on the record whether you wish 5 to read or waive. 6 THE WITNESS: I am going to read. 7 MR. KUTIK: Thank you very much and we 8 are concluded at this time. 9 (Thereupon, the deposition was adjourned 10 at 4:31 p.m.) 11 - - - 12 13 14 15 16 17 18 19 20 21 22 23 24</p> |
| <p style="text-align: right;">Page 216</p> <p>1 not to answer whether what's been redacted is legal 2 advice as he understands that term. 3 MS. YOST: That is correct. He stated he 4 didn't understand it. 5 MR. KUTIK: Okay. It's a good yes or no 6 answer. 7 MS. YOST: You've got your answer. 8 MR. KUTIK: Let's not make a speech. 9 Just answer my question. 10 MS. YOST: Any more questions, counsel? 11 MR. KUTIK: No. I am looking at the 12 document. This is the first time I have seen this 13 document so let me look through the document. Can 14 you do that for me, please? 15 MS. YOST: I think it's nice for me to 16 produce that document so take your time. 17 MR. KUTIK: You're a peach. Thank you 18 for doing that. 19 MS. YOST: We can give you guys some 20 time. We'll leave the room. 21 MR. KUTIK: That's okay. 22 All right. Mr. Gonzalez, subject to any 23 remaining discovery issue relating to this document, 24 that concludes my questions at this time. As you</p> | <p style="text-align: right;">Page 218</p> <p>1 State of Ohio : 2 : SS: 3 County of _____ : 4 I, Wilson Gonzalez, do hereby certify that I 5 have read the foregoing transcript of my deposition 6 given on Friday, February 8, 2013; that together with 7 the correction page attached hereto noting changes in 8 form or substance, if any, it is true and correct. 9 10 _____ 11 Wilson Gonzalez 12 13 I do hereby certify that the foregoing 14 transcript of the deposition of Wilson Gonzalez was 15 submitted to the witness for reading and signing; 16 that after he had stated to the undersigned Notary 17 Public that he had read and examined his deposition, 18 he signed the same in my presence on the _____ day 19 of _____, 2013. 20 21 _____ 22 Notary Public 23 24 My commission expires _____, _____. - - -</p> |

1 CERTIFICATE

2 State of Ohio :
3 : SS:

4 County of Franklin :

5 I, Karen Sue Gibson, Notary Public in and for
the State of Ohio, duly commissioned and qualified,
6 certify that the within named Wilson Gonzalez was by
me duly sworn to testify to the whole truth in the
cause aforesaid; that the testimony was taken down by
7 me in stenotypy in the presence of said witness,
afterwards transcribed upon a computer; that the
8 foregoing is a true and correct transcript of the
testimony given by said witness taken at the time and
place in the foregoing caption specified and
9 completed without adjournment.

10 I certify that I am not a relative, employee,
or attorney of any of the parties hereto, or of any
11 attorney or counsel employed by the parties, or
financially interested in the action.

12
13 IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office at Columbus, Ohio,
on this 9th day of February, 2013.

14
15 _____
16 Karen Sue Gibson, Registered
Merit Reporter and Notary Public
in and for the State of Ohio.

17 My commission expires August 14, 2015.

18 (KSG-5659)

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

Summary: Deposition Transcript of Wilson Gonzalez electronically filed by MR. DAVID A KUTIK on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company