

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the Application:  
of Duke Energy Ohio, Inc., for :  
the Establishment of a Charge :Case No.  
Pursuant to Revised Code Section:12-2400-EL-UNC  
4909.18. :

In the Matter of the Application:  
of Duke Energy Ohio, Inc., for :Case No.  
Approval to Change Accounting :12-2401-EL-AAM  
Methods. :

In the Matter of the Application:  
of Duke Energy Ohio, Inc., for :Case No.  
the Approval of a Tariff for a :12-2402-EL-ATA  
New Service. :

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PROCEEDINGS

before Ms. Christine M. T. Pirik and Ms. Katie  
Stenman, Attorney Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-A,  
Columbus, Ohio, called at 8:00 a.m. on Tuesday, April  
16, 2013.

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VOLUME II

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ARMSTRONG & OKEY, INC.  
222 East Town Street, Second Floor  
Columbus, Ohio 43215-5201  
(614) 224-9481 - (800) 223-9481  
Fax - (614) 224-5724

- - -

## 1 APPEARANCES:

2 Duke Energy Business Services, LLC  
3 By Ms. Amy B. Spiller  
4 Ms. Jeanne W. Kingery  
5 Mr. Rocco O. D'Ascenzo  
6 Ms. Elizabeth H. Watts  
7 139 East Fourth Street  
8 Cincinnati, Ohio 45202

9 On behalf of Applicant Duke Energy  
10 Ohio, Inc.

11 Jones Day  
12 By Mr. David A. Kutik  
13 Ms. Lydia M. Floyd  
14 North Point  
15 901 Lakeside Avenue  
16 Cleveland, Ohio 44114

17 FirstEnergy Corp.  
18 By Mr. Mark A. Hayden  
19 Mr. Jacob McDermott  
20 76 South Main Street  
21 Akron, Ohio 44308

22 Calfee, Halter & Griswold, LLP  
23 By Mr. James F. Lang  
24 The Calfee Building  
25 1405 East Sixth Street  
Cleveland, Ohio 44114

Calfee, Halter & Griswold, LLP  
By Mr. N. Trevor Alexander  
1100 Fifth Third Center  
21 East State Street  
Columbus, Ohio 43215

On behalf of First Energy Solutions.

Ohio Partners for Affordable Energy  
By Ms. Colleen L. Mooney  
231 West Lima Street  
Findlay, Ohio 45840

On behalf of the Ohio Partners for  
Affordable Energy.

- - -

## 1 APPEARANCES: (Continued)

2 Carpenter Lipps & Leland LLP  
3 By Ms. Kimberly W. Bojko  
4 Ms. Mallory M. Mohler  
5 280 North High Street  
6 280 Plaza, Suite 1300  
7 Columbus, Ohio 43215

8 On behalf of the Kroger Company.

9 McNees, Wallace & Nurick, LLC  
10 By Mr. Joseph E. Oliker  
11 Mr. Frank P. Darr  
12 21 East State Street, 17th Floor  
13 Columbus, Ohio 43215

14 On behalf of Industrial Energy  
15 Users-Ohio.

16 Boehm, Kurtz & Lowry  
17 By Mr. Michael L. Kurtz  
18 Ms. Jody M. Kyler Cohn  
19 36 East Seventh Street, Suite 1510  
20 Cincinnati, Ohio 45202

21 On behalf of the Ohio Energy Group, Inc.

22 Bricker & Eckler, LLP  
23 By Mr. Thomas J. O'Brien  
24 100 South Third Street  
25 Columbus, Ohio 43215-4291

On behalf of the City of Cincinnati.

Bricker & Eckler, LLP  
By Mr. Matthew W. Warnock  
Mr. J. Thomas Siwo  
100 South Third Street  
Columbus, Ohio 43215-4291

On behalf of the Ohio Manufacturers  
Association.

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APPEARANCES: (Continued)

Kegler, Brown, Hill & Ritter  
By Mr. Andrew J. Sonderman  
Capitol Square, Suite 1800  
65 East State Street  
Columbus, Ohio 43215-4294

On behalf of DPL Energy Resources, Inc.

Mr. Douglas E. Hart  
441 Vine Street, Suite 4192  
Cincinnati, Ohio 45202

On behalf of Greater Cincinnati Health  
Council and Cincinnati Bell Telephone.

Dayton Power and Light Company  
By Ms. Judi Sobecki  
1065 Woodman Avenue  
Dayton, Ohio 45432

Faruki, Ireland & Cox, P.L.L.  
By Mr. James W. Pauley  
500 Courthouse Plaza, S.W.  
10 North Ludlow Street  
Dayton, Ohio 45402

On behalf of The Dayton Power and Light  
Company.

American Electric Power Service Corp.  
By Mr. Steven T. Nourse  
One Riverside Plaza, 29th Floor  
Columbus, Ohio 43215

On behalf of Ohio Power Company.

Vorys, Sater, Seymour and Pease, LLP  
By Mr. M. Howard Petricoff  
Ms. Gretchen L. Petrucci  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

On behalf of Constellation NewEnergy,  
Inc; Exelon Generation Company, LLC;  
RESA; and Interstate Gas Supply.

## 1 APPEARANCES: (Continued)

2 Mike DeWine, Ohio Attorney General  
3 By Mr. M. Howard Petricoff,  
4 Special Assistant Attorney General  
5 52 East Gay Street  
6 P.O. Box 1008  
7 Columbus, Ohio 43216-1008

8 On behalf of University of Cincinnati and  
9 University of Miami.

10 Bell & Royer Co., LPA  
11 By Mr. Barth E. Royer  
12 33 South Grant Avenue  
13 Columbus, Ohio 43215

14 On behalf of Dominion Retail.

15 Bruce E. Weston,  
16 Ohio Consumers' Counsel  
17 By Ms. Maureen R. Grady  
18 Ms. Kyle L. Kern,  
19 Assistant Consumers' Counsel  
20 10 West Broad Street, Suite 1800  
21 Columbus, Ohio 43215-3485

22 On behalf of the Residential Consumers of  
23 the Duke Energy Ohio, Inc.

24 Mike DeWine, Ohio Attorney General  
25 By Mr. William L. Wright  
Section Chief, Public Utilities Section  
Mr. Steven L. Beeler  
Mr. John H. Jones,  
Assistant Attorneys General  
180 East Broad Street, 6th Floor  
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

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1 Tuesday Morning Session,  
2 April 16, 2013.

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4 EXAMINER STENMAN: Let's go back on the  
5 record. We are here in the continuation of Case No.  
6 12-2400, et al. Let's start with appearances  
7 starting with the company.

8 MS. SPILLER: Good morning, your Honor,  
9 Amy Spiller, Rocco D'Ascenzo, Jeanne Kingery, and  
10 Elizabeth Watts on behalf of the applicant, Duke  
11 Energy Ohio, 139 East Fourth Street, Cincinnati, Ohio  
12 45202.

13 EXAMINER STENMAN: Thank you. If the  
14 intervenors want to go around the table.

15 MS. GRADY: Thank you, your Honor. On  
16 behalf of the Ohio Consumers' Counsel, Maureen R.  
17 Grady and Kyle L. Kern.

18 MS. KYLER: Michael L. Kurtz and Jody  
19 Kyler Cohn, 36 East Seventh Street, Cincinnati, Ohio.

20 MS. PETRUCCI: Good morning. On behalf  
21 of Constellation NewEnergy, Exelon, and RESA and IGS,  
22 the law firm of Vorys, Sater, Seymour and Pease,  
23 M. Howard Petricoff, Gretchen Petrucci, 52 East Gay  
24 Street, Columbus, Ohio.

25 MR. HAYDEN: Good morning, your Honors.

1 On behalf of the FirstEnergy Solutions, Mark Hayden  
2 David Kutik, Lydia Floyd, Jim Lang, and Trevor  
3 Alexander.

4 MR. NOURSE: Good morning, your Honor.  
5 On behalf of the Ohio Power Company, Steven T.  
6 Nourse.

7 MS. BOJKO: Good morning, your Honors.  
8 On behalf of the Kroger Company Kimberly Bojko,  
9 Mallory M. Mohler with the law firm Carpenter Lipps &  
10 Leland. Thank you.

11 MR. HART: On behalf the Greater  
12 Cincinnati Health Council and Cincinnati Bell  
13 Telephone, Doug Hart.

14 MR. DARR: On behalf the IEU-Ohio, Joe  
15 Olikier and Frank Darr.

16 MR. BEELER: On behalf of the staff,  
17 Steve Beeler, John Jones.

18 EXAMINER STENMAN: Thank you.

19 Mr. Darr, I believe you were in the  
20 middle of cross.

21 - - -

22 CROSS-EXAMINATION (Continued)

23 By Mr. Darr:

24 Q. Last night when we left off, we just had  
25 mentioned to you that we were going to move on to the

1 ESSC. Is it fair to say that the ESSC is -- is or  
2 relates to the supply and pricing of generation?

3 A. My understanding based on the  
4 Commission's orders is that it relates to provision  
5 of retail electric service specifically.

6 Q. Are you aware of the fact that the  
7 company in supporting its stipulation stated to the  
8 Commission "it's the" -- "that the rider ESSC is  
9 authorized as part of the ESP under Section 4928.143  
10 (B)(1) relating to the supply and pricing of  
11 generation"?

12 MS. SPILLER: I am going to the object to  
13 the extent Mr. Darr is clearly reading from a  
14 document that's not been provided to the witness.

15 EXAMINER STENMAN: Overruled.

16 A. You know, I can't specifically verbatim  
17 recall what the testimony was, but I would be happy  
18 to take a look at the testimony.

19 MR. DARR: I would like to have a  
20 document marked as IEU Exhibit 6, please.

21 EXAMINER STENMAN: It will be so marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. DARR: I will represent to the  
24 court -- to the Bench, excuse me, this is a certified  
25 copy of the supplemental testimony of Julia J. --

1 Julia S. Janson, filed on behalf of the Duke Energy  
2 Ohio, and it's dated October 28, 2011.

3 MS. SPILLER: Your Honor, if I may be  
4 heard on this particular document, this is clearly  
5 former testimony that was admitted into the record,  
6 and in order for Mr. Darr to utilize the former  
7 testimony of a party, the prerequisite showing is  
8 that the -- the individual rendering the testimony be  
9 unavailable, and there has been no showing of that in  
10 this case.

11 MR. DARR: Your Honor, I believe the  
12 situation here is that I was requested to provide the  
13 testimony to the witness, and I am now providing the  
14 testimony to the witness. I don't believe that there  
15 is any misstep here at all.

16 MS. SPILLER: Well, your Honor, I would  
17 again note to the extent Mr. Darr is attempting to  
18 utilize Ms. Janson's testimony as substantive  
19 evidence in this proceeding, attempting to ask  
20 Mr. Trent whether it was read correctly is an  
21 improper use of the former witness -- former  
22 witness's testimony under the evidence rules given  
23 that he's failed to demonstrate her unavailability.

24 EXAMINER STENMAN: The objection will be  
25 overruled.

1 MR. DARR: Thank you, your Honor.

2 Q. (By Mr. Darr) Turning your attention to  
3 page 14, line 16, am I correct that it was the  
4 company's position that rider ESSC is authorized as  
5 part of the ESP under Section 4928.143(B)(1) relating  
6 to the supply and pricing of generation?

7 A. It relates to supply and pricing of  
8 generation service. I think that's what it says.

9 Q. Very good. And was it also the position  
10 of the company that the ESSC is to protect financial  
11 integrity and ensure overall revenue under the ESP is  
12 adequate to DEO in its provision of the standard  
13 service offer?

14 A. Well, my understanding, again, is that  
15 the ESSC was relating directly to the provision of  
16 retail electric service. And it is my understanding  
17 that is also what the Commission found that the ESSC  
18 was designed to do.

19 Q. Am I not correct, sir, that you  
20 represented -- "you" being Duke Energy Ohio -- that  
21 the electric service stability rider, rider ESSC, is  
22 designed to ensure stability and certainty in respect  
23 to both pricing and supply under the ESP?

24 A. Well, again, I would stay with my  
25 testimony that it was in respect to provision of

1 retail electric service.

2 Q. Sir, didn't I just say that it was in  
3 pricing and supply of the ESP?

4 MS. SPILLER: Objection, asked and  
5 answered.

6 EXAMINER STENMAN: Overruled.

7 A. What I -- what I responded to is that it  
8 was related to the supply of retail electric service.

9 Q. And it was designed to ensure the  
10 stability and certainty with respect to that,  
11 correct?

12 MS. SPILLER: Objection, asked and  
13 answered.

14 A. It says "stability and certainty in  
15 respect of retail electric service." That's what it  
16 says.

17 Q. Now, as also -- a provision of the  
18 stipulation was that Duke Energy Ohio committed to  
19 divest itself of its legacy generation assets, among  
20 others, correct?

21 A. Yes. There was a stipulation that the  
22 assets would be transferred by the end of 2014, I  
23 believe.

24 Q. And, now, am I correct that the purpose  
25 of that separation was to bring the benefits of

1 competition in both wholesale and retail markets to  
2 customers of Duke Energy Ohio?

3 A. Well, I would tell you that the purpose  
4 of the stipulation as a whole was to support  
5 competition with respect to the energy market, which  
6 actually occurred prior to the transfer of the  
7 generation when we agreed to -- to auction all of the  
8 load.

9 Q. Is that something different than bringing  
10 the benefits of competition to both the wholesale and  
11 retail markets?

12 MS. SPILLER: Objection, asked and  
13 answered.

14 A. Again --

15 THE WITNESS: Well --

16 EXAMINER STENMAN: Overruled.

17 A. Again, my focus there was on the energy  
18 market.

19 Q. Is it fair to say that DEO represented to  
20 the Commission that it believed that the purpose of  
21 the separation of the generation assets was to bring  
22 the benefits of competition in both wholesale and  
23 retail markets to customers of Duke Energy Ohio?

24 A. I don't recall specifically that  
25 representation, but if there is specific testimony

1     you want to draw my attention to, I would be happy to  
2     take a look at it.

3             MR. DARR: Very good. I would like to  
4     have marked as IEU Exhibit No. 7 a document entitled  
5     "Supplemental Testimony of Charles R. Whitlock Filed  
6     on Behalf of Duke Energy Ohio, Inc.," dated 10/28 --  
7     excuse me, October 28, 2011. Again, I have certified  
8     copies for purposes of the record.

9             EXAMINER STENMAN: It will be so marked.

10            (EXHIBIT MARKED FOR IDENTIFICATION.)

11            Q. And drawing your attention to page 7,  
12     lines 1 and 2, am I correct then that it was Duke  
13     Energy Ohio's position that the generation separation  
14     was to "bring the benefits of competition to both  
15     wholesale and retail markets to customers of Duke  
16     Energy Ohio"?

17            MS. SPILLER: I am going to object again  
18     to the use of the former testimony of an individual  
19     who is -- I don't think the appropriate foundation  
20     under Evidence Rule 804 has been laid with respect to  
21     this testimony. I further believe that Mr. Darr's  
22     question takes the testimony out of context.

23            MR. DARR: The suggestion that this is  
24     hearsay testimony is not correct, your Honor. This  
25     is prefiled testimony adopted by the company,



1 submitted under oath. It is not hearsay.

2 MS. SPILLER: I am not suggesting that  
3 it's hearsay, but under Evidence Rule 804 there needs  
4 to be appropriate foundation laid for former  
5 testimony, and my point, Mr. Darr, that's lacking  
6 this morning.

7 EXAMINER STENMAN: The objection will be  
8 overruled.

9 Q. Can you answer my question, Mr. Trent?

10 A. So I think there are a couple of things  
11 here. First of all, the -- this refers to  
12 competitive auction pricing. There would be  
13 competitive auction pricing with respect to the  
14 energy component, as I stated before. Ultimately,  
15 under the stipulation there was agreement that Duke  
16 Energy Ohio would cease to be an FRR entity, and at  
17 that point the capacity mechanism would be limited to  
18 the PJM market pricing so I think both of those are  
19 contemplated in the -- I think, with Mr. Whitlock's  
20 testimony as well as by the stipulation of the  
21 Commission's order.

22 MR. DARR: Your Honor, I would request to  
23 have my substantive question before I asked him to  
24 answer my question, if that's -- I apologize for that  
25 not being terribly clear, but I believe it's two

1 questions ago. I would like to have that read back  
2 to the witness and see whether he can actually answer  
3 my question.

4 EXAMINER STENMAN: Can you read that  
5 back.

6 (Record read.)

7 Q. Again, my question, sir, can you answer  
8 that question, was that the position of the company?

9 A. And my answer would be exactly the same  
10 as it was before.

11 Q. So your answer is not "yes" or "no," it's  
12 an extended answer; is that correct?

13 A. I explained how I think competition was  
14 contemplated under -- under the stipulation and as I  
15 interpret Mr. Whitlock's testimony.

16 Q. So the answer to my question is, yes, it  
17 was the intention to bring benefits of competition to  
18 both wholesale and retail markets to customers of  
19 DEO?

20 MS. SPILLER: Objection, asked and  
21 answered.

22 EXAMINER STENMAN: Overruled.

23 A. I would say again to you that there was a  
24 contemplation of immediately going to auction with  
25 respect to the energy market, and then ultimately

1     when Duke Energy Ohio ceased to be an FRR entity,  
2     then there was a contemplation that the avenue then  
3     would be limited to the PJM market. That's how I  
4     interpret this.

5             Q.     Was it also the position of DEO that it  
6     was exiting the retail electric generating function  
7     and would rely upon market structures to provide  
8     customers with safe, reliable, and adequate  
9     generation services?

10            A.     With respect to retail electric service,  
11     yes.

12            Q.     As a result of the stipulation, the  
13     intention was to provide a competitive bidding  
14     process to support the SSO, correct?

15            A.     A competitive bidding process with  
16     respect to the energy component, yes.

17            Q.     And that process has taken place,  
18     correct?

19            A.     Yes, with respect to the energy  
20     component.

21            Q.     And by adopting this approach, this  
22     reflected "a complete severing of the nexus between  
23     Duke Energy Ohio generation and its load," correct?

24            A.     I don't interpret the testimony that way.

25            Q.     Would you turn to page 8, lines 3 through

1       7. Was it not the position of the company that the  
2       use of the CBP reflected "a complete severing of the  
3       nexus between DEO's generation and its load"?

4             A. I see that, and as I interpret that,  
5       that's referencing the connection between the energy  
6       component, the retail service, and the load.

7             Q. Was it not the intention of the company  
8       when it filed the stipulation that it was to provide  
9       customers clarity around how supply would be procured  
10      and priced in the future?

11            A. Well, I think it was to provide clarity  
12      with respect to the energy component.

13            Q. And was it not also the position of the  
14      company that the stipulation "protects DEO's  
15      financial stability by removing the uncertainty that  
16      comes with fulfilling the provider of last result  
17      obligation via owned generation?"

18            A. I don't recall -- well, let me see. I  
19      see that sentence.

20            Q. And that correctly reflected the position  
21      of the company, did it not?

22            A. But I'm not certain as to what that  
23      means. Mr. Whitlock would really be in a better  
24      position to interpret that part of the testimony.

25            Q. Now, as part of the generation

1 divestiture process, the company has also begun to  
2 look at potential buyers for those generation assets,  
3 correct?

4 MS. SPILLER: Objection, relevance, your  
5 Honor. I think it's also outside the scope of  
6 Mr. Trent's testimony in this proceeding.

7 EXAMINER STENMAN: Overruled.

8 A. At one point in time, we tested the  
9 market with respect to potential buyers. We're not  
10 actively doing so at this time.

11 Q. And when you tested the market, is it  
12 true that with the exception of one asset, one  
13 generation asset that may be retired, you were  
14 testing the market with regard to all of the legacy  
15 generation assets for which you are seeking a  
16 capacity charge here today?

17 A. We tested the market with respect to how  
18 I interpret the legacy assets as well as other  
19 assets, not just limited to those.

20 Q. I understand that. But with regard to  
21 the assets that were included, they included all  
22 except one of the legacy coal-fired assets, correct?

23 A. Yes. I think they included all of those  
24 assets as well as other assets.

25 Q. You included some of the oil- and

1 gas-fired assets as well, correct, as part of the  
2 assets that you were shopping?

3 A. Well, I consider the oil assets as part  
4 of the legacy assets, so I don't -- I don't know if  
5 you were not including those, but yes, it included  
6 oil-fired, the coal, as well as gas-fired assets.

7 Q. I would like to turn your attention just  
8 briefly to FirstEnergy Solutions Exhibit No. 8, which  
9 are the reply comments of DECAM and Duke Energy  
10 Retail Sales. Do you have that in front of you?

11 A. Yes.

12 Q. Fair to say that prior to the  
13 Commission's issuing the July 2 order in the AEP  
14 capacity case, that it was the position of the  
15 company, meaning DECAM and DERS, that "It is critical  
16 in this proceeding to recognize that pursuant to  
17 that, pursuant to Ohio's two regulation bills,  
18 generation services are not permitted to be priced on  
19 the basis of cost"? Turning your attention to page 8  
20 under subheading B.

21 MS. SPILLER: Your Honor, I would again  
22 object to the use of this document, DERS and DECAM  
23 are not parties to this proceeding, so to the extent  
24 those entities may have taken a certain legal  
25 position, it's irrelevant to Duke Energy Ohio and

1       their application.

2                   EXAMINER STENMAN:   Your objection will be  
3       noted for the record.

4           A.     So it is -- it is my understanding that  
5       DERS and DECAM made good-faith legal arguments that  
6       generation services are not permitted to be based on  
7       price on the basis of -- to be priced on the basis of  
8       cost.   That legal argument did not prevail.

9           Q.     And it would be fair to say, would it  
10      not, that Duke is taking care to make sure that  
11      whatever filings it makes are supported by a  
12      reasonable interpretation of the law, correct?

13          A.     Well, what I would say is that we try to  
14      base our legal arguments on a good-faith  
15      interpretation of the law, and sometimes we prevail  
16      on that and sometimes we don't.

17          Q.     But it's fair at the time you made this  
18      representation, that is what your belief was,  
19      correct?

20                  MS. SPILLER:   I am going to object --

21          A.     Yes.

22                  MS. SPILLER:   -- to the extent it's been  
23      asked and answered and I think the question is  
24      ambiguous.

25                  EXAMINER STENMAN:   Overruled.

1           A.    I would say that that was -- that at the  
2   time we felt that there was a good-faith basis for  
3   making that argument.

4           MR. DARR:  Thank you.  I have nothing  
5   further.

6           EXAMINER STENMAN:  Thank you.  With  
7   respect to the remaining intervenors, let's just go  
8   around the table.

9           Ms. Petrucci, any questions?

10          MS. PETRUCCI:  No questions.

11          EXAMINER STENMAN:  Mr. Nourse.

12          MR. NOURSE:  Yes, thank you.

13                               - - -

14                               CROSS-EXAMINATION

15   By Mr. Nourse:

16          Q.    Good morning, Mr. Trent.

17          A.    Good morning.

18          Q.    I represent Ohio Power Company, AEP Ohio.  
19   I just want to ask you about one area we talked about  
20   a week or so ago.

21          A.    Okay.

22          Q.    There has been a lot of discussion, of  
23   course, about the AEP decision, the 10-2929 decision,  
24   which I gather you're very familiar with?

25          A.    I am.



1           Q.    Okay.  And yesterday you had a discussion  
2 with Ms. Kern from OCC where I think you are  
3 characterizing the AEP decision as a precedent that  
4 Duke Energy Ohio believes should be followed in this  
5 case, correct?

6           A.    Yes.  I believe in that case the  
7 Commission established a state cost-based recovery  
8 mechanism and defined the parameters for where that  
9 would apply.

10          Q.    Okay.  We will get into that.  But in  
11 terms of the concept of a precedent, I want to  
12 clarify what you mean by that.  So your position, or  
13 Duke Energy Ohio's position, is that the decision in  
14 the AEP case, the 10-2929 case, is instructive on how  
15 the Commission should decide this case, correct?

16          A.    I think that's fair, yes.

17          Q.    And your position is that if -- if the  
18 Commission determines that Duke has similar  
19 circumstances and is in a -- in a comparable  
20 situation that AEP Ohio was, then you believe they  
21 should be granted similar relief; is that accurate?

22          A.    Yes.  I would elaborate just a bit that,  
23 in general, my view is that the parameters are if you  
24 are an FRR entity, then that means -- and you are  
25 providing a wholesale service, then you are entitled

1 to recover on a cost-based mechanism for -- for your  
2 provision of capacity and -- and the only other  
3 parameter that I saw was that if you are earning an  
4 unreasonably low ROE, which the Commission indicated  
5 was 7.6 percent, in that case, then that also would  
6 be instructive to the Commission in terms of whether  
7 to apply this cost-based mechanism.

8 Q. Okay. I understand those are the  
9 circumstances you believe are pertinent, but you  
10 agree that the Commission may determine that there --  
11 there -- Duke Energy Ohio is not similarly situated  
12 as AEP Ohio relative to this -- this issue.

13 A. Well, what I would say is two things.  
14 One, certainly the Commission is the ultimate decider  
15 of the issue. I do find it difficult to distinguish  
16 between the two situations.

17 Q. I understand. But it's not automatically  
18 applicable to Duke Energy Ohio, correct?

19 A. Well, I would think the precedent is  
20 applicable, and I should distinguish there that the  
21 precedent doesn't say we would get \$188 a  
22 megawatt-day, but as I interpret it, there is a  
23 cost-based mechanism they established, I feel, that's  
24 applicable. But to your point, the Commission is  
25 going to have to decide that.

1           Q.   And, in fact, the Commission when it  
2   decided the 10-2929 case specifically indicated that  
3   it was -- its intention was to limit the decision to  
4   AEP Ohio; is that your understanding?

5           A.   Well, I didn't interpret that it was  
6   expressly limiting it to the extent it was -- I  
7   interpreted it as, you know, every utility doesn't  
8   have an automatic right to a cost-based mechanism,  
9   and that you would -- but it does, I believe,  
10   establish a precedent in terms of the parameters  
11   under which a utility would be entitled to recover  
12   that.

13          Q.   So on that point are you saying that the  
14   parameters, as you call it, or the state compensation  
15   mechanism, as you've also referred to it, that's  
16   fixed and final as a result of the AEP Ohio decision  
17   and Duke is stuck with those parameters, for lack of  
18   a better term?

19          A.   Well, I think that Duke has -- Duke  
20   Energy Ohio has the right to go in and ask that it be  
21   allowed to recover under this mechanism that the  
22   Commission has created. I don't know that we would  
23   be mandated to come in and ask for that, but I think  
24   that we have a right to ask for that.

25          Q.   Okay. What I am trying to clarify is

1     when you talk about the mechanism that's been  
2     created, can Duke or the Commission change that  
3     mechanism in this case?

4             A.     Well, again, I mean, the Commission is  
5     the ultimate decider, and so I'm not going to step in  
6     their shoes, but I think there is law that would  
7     counsel the Commission to follow its precedent, as I  
8     appreciate it.

9             Q.     Now, I am just trying to get an  
10    understanding of your position on this point, though.  
11    Is there a formula that was established, for example,  
12    in the AEP Ohio case to determine the demand charge  
13    relative to the capacity charge?

14            A.     So a couple of things I would say there.  
15    First, the Commission did state that a utility that  
16    is providing its wholesale service, that they have an  
17    obligation to ensure that they are receiving just and  
18    reasonable compensation. They went on to say that in  
19    this type of situation to determine that  
20    compensation, they would apply traditional ratemaking  
21    principles, and then they ended up ruling on how  
22    those ratemaking principles would be applied. So, in  
23    my view, they did establish sort of a road map, if  
24    you will, on how you would do this.

25            Q.     Okay. Let me break it down a little bit

1 differently. Did Duke present its case here based on  
2 the same form -- ratemaking formula, to use that term  
3 loosely, in accounting -- the same accounting cost  
4 presentation as was involved in 10-2929?

5 A. My understanding is, in general, that  
6 that is how the calculation is made. Don Wathen  
7 would be the best person to talk about specifics in  
8 terms of how that calculation was made.

9 Q. Okay. And how about the energy credit,  
10 are you familiar with the energy credit that was  
11 adopted and used in the AEP Ohio case?

12 A. When you say "the energy credit," can you  
13 define that further for me?

14 Q. Yeah. The margins that are associated  
15 with energy sales that in the AEP Ohio case were used  
16 to effectively offset the demand charge to get the  
17 net capacity charge?

18 A. Yeah. And, again, Mr. Wathen would be  
19 the best person to ask on that, but certainly my  
20 understanding is that there is a credit included for  
21 the margin for energy sales in the calculation that  
22 was made in this case.

23 Q. And your understanding, expectation,  
24 would be that the Commission in entertaining Duke's  
25 proposal should use the same energy credit method and

1 to the same effect?

2 A. Well, I hesitate only because I'm not  
3 completely familiar with the energy credit method  
4 that was used in the AEP case, so, again, I think  
5 Mr. Wathen would be the best person to answer that  
6 question.

7 Q. Okay. But with respect to your general  
8 proposition that this is a state compensation  
9 mechanism adopted essentially for Ohio, I think is  
10 what you're really saying, in the AEP Ohio case,  
11 would it not follow that the Commission should use  
12 the same method and approach to the same effect in  
13 this case?

14 A. Well, I think, in general, that's  
15 correct. And, again, I would say that the  
16 overarching principle, though, is to use traditional  
17 ratemaking principles and to ensure that the utility  
18 is receiving just and reasonable compensation for the  
19 provision of LSE service.

20 MR. NOURSE: Thank you, Mr. Trent.  
21 That's all I have, your Honor.

22 EXAMINER STENMAN: Thank you.

23 Ms. Bojko.

24 - - -

25

## CROSS-EXAMINATION

By Ms. Bojko:

Q. Good morning, Mr. Trent.

A. Good morning.

Q. As we discussed yesterday, I -- my name is Kim Bojko, and I represent the Kroger Company.

Mr. Trent, you filed testimony -- there's been some discussion the last couple of days about the Duke ESP proceeding, and I'm going to try and lay a little foundation to refresh our memories here of what we discussed yesterday as well to help you out following these questions.

You filed testimony in the Duke ESP, the 2011 3549 proceeding; is that correct?

MS. SPILLER: Objection, asked and answered yesterday a few times.

MS. BOJKO: Again, I am just trying to help the witness and the record to establish foundation or I will get an objection of lack of foundation so.

EXAMINER STENMAN: Overruled.

Q. (By Ms. Bojko) I'm sorry.

A. Go ahead.

Q. Did you file testimony in that case, sir?

A. Yes.

1           Q.   And at that time you held the position of  
2 group executive and president of the commercial  
3 businesses organization for Duke Energy; is that  
4 correct?

5           A.   Yes.

6           Q.   And you were responsible for operation  
7 and management of Duke Energy's commercial  
8 businesses, specifically Duke Energy generation  
9 services; is that correct?

10          A.   I had oversight there. I was -- you  
11 know, I had people under me who were directly  
12 involved in that, but I had oversight there.

13          Q.   Right. You had management  
14 responsibilities for that company; is that correct?

15          A.   I think that's fair, yes.

16          Q.   And so as a manager with management  
17 responsibilities, you -- one purpose of your  
18 testimony in that proceeding was to provide an  
19 overview of Duke's application for the proposed ESP  
20 that was filed; is that accurate?

21          A.   I tried to do that.

22          Q.   Similarly, in this proceeding your  
23 testimony was to provide an overview of Duke's  
24 application in this case as well; is that correct?

25          A.   I think that's fair.



1           Q.   And as an overview witness, you were in  
2   your -- and you are generally familiar with other  
3   witness's testimonies filed in these cases; is that  
4   accurate?

5           A.   Generally familiar, but, you know, I was  
6   relying on those other folks with their testimony,  
7   but I was generally familiar, yes.

8           Q.   And since that time that you testified in  
9   the ESP case -- I think Mr. Kutik asked you this  
10   yesterday -- but you have actually had a title  
11   change; is that accurate?

12          A.   Yes.

13          Q.   And now in this proceeding you are  
14   executive VP of regulated utilities and not -- and  
15   you are responsible for the activities of regulated  
16   utility companies of Duke; is that correct?

17          A.   Well, my current title is not that. It's  
18   executive vice president and chief operating officer  
19   regulated utilities, and as I testified yesterday,  
20   the -- I'm involved in the management of the  
21   regulated utilities, but the management is really  
22   done through a committee called the Utility Executive  
23   Committee.

24          Q.   Okay. Thank you for that correction. I  
25   apologize. That's how it was written, your title, in

1 your testimony. And so one of those regulated  
2 utilities that you just stated you have the  
3 responsibility or a portion thereof includes Duke  
4 Energy Ohio; is that correct?

5 A. Well, again, I just want to be careful,  
6 the management is really through this Utility  
7 Executive Committee, and I am a member of that  
8 committee.

9 Q. And that committee has responsibility for  
10 Duke Energy Ohio?

11 A. Yes. The regulated utilities include  
12 Duke Energy Ohio.

13 Q. Thank you. And let's go back and talk a  
14 little bit about the ESP proceeding that you filed  
15 testimony in. Isn't it true in that application of  
16 the ESP proceeding, one of the primary issues of the  
17 case raised by Duke was the price of capacity  
18 furnished by Duke as an FRR entity?

19 MS. SPILLER: Objection. I think this  
20 was asked and answered yesterday, and it also  
21 mischaracterizes Mr. Trent's testimony from  
22 yesterday.

23 EXAMINER STENMAN: Overruled. He can  
24 correct his testimony.

25 A. Well, I wouldn't characterize it that

1 way, no.

2 Q. I'm not sure which testimony counsel  
3 thinks she's correcting, but could you answer my  
4 question and then maybe we can understand a little  
5 better of what you are talking about?

6 One of the primary issues -- I'm not  
7 asking about your testimony. I am asking you about  
8 the primary issues of the ESP Duke rate case in the  
9 application that you -- that Duke Energy Ohio filed  
10 was the price of capacity furnished by Duke as an FRR  
11 entity.

12 MS. SPILLER: Objection. Mr. Trent just  
13 answered the question.

14 EXAMINER STENMAN: Overruled.

15 A. So there were a lot of issues in the ESP  
16 case, the application that we filed. There was --  
17 part of the original application did include  
18 discussions about cost-based capacity so -- so  
19 capacity was part of what was in the application.

20 Q. Okay. Let's actually go to your  
21 testimony in that case, and maybe that will help a  
22 little bit.

23 MS. SPILLER: I am going to object to the  
24 commentary of Ms. Bojko whether this witness needs  
25 assistance this morning.

1 EXAMINER STENMAN: Ms. Bojko, if you  
2 could dial it back a little bit, that would be  
3 appreciated.

4 MS. BOJKO: Trying to be polite.

5 EXAMINER STENMAN: I understand.

6 MS. BOJKO: At this time, your Honor, I  
7 would like to mark for identification purposes as  
8 Kroger Exhibit 4 -- I am going to reserve the first  
9 three, please -- Kroger Exhibit 4. It's the direct  
10 testimony of B. Keith Trent on behalf of Duke Energy  
11 Ohio filed in Case No. 11-3549-EL-SSO filed on June  
12 20, 2011.

13 EXAMINER STENMAN: It will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

16 EXAMINER STENMAN: You may.

17 Q. (By Ms. Bojko) Mr. Trent, do you have  
18 before you what's been marked as Kroger Exhibit 4?

19 A. Yes.

20 Q. And is that an accurate copy of your  
21 direct testimony dated June 20, 2011, filed in Case  
22 No. 11-3549?

23 A. It appears to be.

24 Q. Which is Duke's ESP proceeding; is that  
25 correct?

1           A.    Yes.

2           Q.    And if you go to page 12 of that  
3    testimony, Mr. Trent, beginning on line 9, the  
4    proposal filed by the company was to charge a  
5    nonbypassable charge "for capacity based on the  
6    embedded cost of providing a reliable and adequate  
7    supply of capacity, including a rate of return." Do  
8    you see that sentence?

9           A.    Yeah. I mean, I think you paraphrased it  
10   but --

11          Q.    It says "unavoidable charges" instead of  
12   "bypassable charges"; is that correct?

13          A.    Yeah. It says, "The ESP will include an  
14   unavoidable charge for capacity based on the embedded  
15   cost providing reliable and adequate supply of  
16   capacity," and it goes on from there.

17          Q.    Thank you. I wasn't intending to read  
18   the whole paragraph into the record, but thank you.

19                And then on line 14, it goes on to state  
20   "In exchange" -- and this time I will read the  
21   sentence. "In exchange for recovering from"  
22   customers -- "from recovering from all customers the  
23   embedded cost of generation capacity, the Company is  
24   proposing to credit all retail customers (regardless  
25   of shopping status) with almost all of the net

1 profits derived from the ownership of such generating  
2 assets." Do you see that?

3 A. Yes. You read that correctly.

4 Q. And on page 16 of that same testimony,  
5 beginning on line 2 and going through the end of the  
6 page, you continue to explain in this -- on this page  
7 of your testimony that Duke's proposal to include a  
8 cost-based price of capacity in its ESP, and then on  
9 line 18, you go on to explain the benefits of such  
10 proposal. Do you see that? Is that accurate? I am  
11 not going to read it all in the record, but is that  
12 an accurate characterization of your testimony, sir?

13 A. I was reading as you were asking the  
14 question. I'm sorry, could you repeat?

15 Q. Is that an accurate reflection of your  
16 testimony?

17 A. I need how you characterized the  
18 testimony before I can answer. I'm sorry.

19 Q. I just merely stated in this piece of  
20 your testimony, you explained Duke's proposal to  
21 include a cost-based price of capacity in its ESP  
22 plan, and then you go on to explain the benefits of  
23 that proposal.

24 MS. SPILLER: And, your Honor, I would  
25 just ask the witness be given an opportunity to read

1 the testimony that Ms. Bojko is paraphrasing this  
2 morning.

3 EXAMINER STENMAN: Do you need a moment,  
4 Mr. Trent? Take the time you need.

5 THE WITNESS: Okay. Thank you.

6 A. Yes. So this does address the cost-based  
7 capacity that was being sought in connection with the  
8 original application and it talked about, I think,  
9 some benefits.

10 Q. And then beginning at the bottom of page  
11 17, line 22 of your testimony, you discuss that there  
12 are two alternatives, and I think you talked a little  
13 bit about this yesterday. Do you see the two  
14 alternatives discussions started on the bottom of  
15 page 17, sir?

16 A. Yes.

17 Q. And one of those alternatives is the FRR  
18 option; is that correct?

19 A. Yes.

20 Q. And on page 18, line 6, is the paragraph  
21 that you begin describing that second alternative of  
22 the FRR; is that right?

23 A. Yes.

24 Q. And line 8 states, and I'm quoting, "By  
25 electing the FRR option, the company is seeking a

1 capacity rate that is largely predicated upon its  
2 costs, thereby shielding retail customers from the"  
3 vol -- "volatile capacity market without adversely  
4 affecting competitive suppliers"; is that right?

5 A. Yes. That testimony is there. Just to  
6 be clear, this testimony was filed in connection with  
7 the ESP and not with respect to the stipulation.

8 Q. Absolutely. This was the company's  
9 original proposal; is that correct?

10 A. Yes. It was relating to the application.

11 Q. And are you familiar with that  
12 application, sir, that you sponsored in the ESP II  
13 proceeding through this testimony?

14 A. Yes, I'm familiar with it.

15 Q. Do you have a copy of that application  
16 before you, sir?

17 A. If it hasn't been marked, I don't have  
18 it.

19 MS. BOJKO: Your Honor, at this time may  
20 I have marked, please, for identification purposes  
21 Kroger Exhibit No. 5, and it is the application of  
22 Duke Energy Ohio filed in Case No. 11-3549-EL-SSO on  
23 June 20, 2011.

24 EXAMINER STENMAN: It will be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)



1 MS. BOJKO: May I approach, your Honor?

2 EXAMINER STENMAN: You may.

3 Q. (By Ms. Bojko) Sir, do you have in front  
4 of you what's been marked Kroger Exhibit 5?

5 A. Yes, I do.

6 Q. Is it the application that Duke Energy  
7 Ohio filed in the Duke ESP rate case 11-3549?

8 A. It appears to be so. It's -- the copy I  
9 have doesn't show a signature by counsel so I don't  
10 know, but it appears to be, and there is a stamp on  
11 the front.

12 Q. And the stamp you are talking about is  
13 the official Public Utilities Commission of Ohio date  
14 stamp of June 20 at 8:20 a.m.?

15 A. Yes.

16 Q. I ask you turn to page 10 of that  
17 application, please, sir.

18 MS. SPILLER: And, your Honor, if I just  
19 may, a point of procedure. I am not entirely sure of  
20 the source of the document. It appears to be  
21 double-sided, a blank signature page on the back.

22 MS. BOJKO: Your Honor, it was printed  
23 off of the Commission's official website, has the  
24 official date stamp on it. I guess I'm not sure  
25 either. Maybe the company electronically filed this.

1 I don't know. When we take a break, I can recheck  
2 the website and see if the company would like to  
3 confirm.

4 EXAMINER STENMAN: It would be best at a  
5 break if everyone would recheck what's filed on the  
6 website, and at this point if you see any inaccuracy  
7 in the application as it's been marked, please let  
8 the Bench know.

9 MS. SPILLER: Yes, your Honor.

10 Q. (By Ms. Bojko) Mr. Trent, are you at page  
11 10 of that application?

12 A. Yes, I am at page 10 of Exhibit 5.

13 Q. And the second paragraph of this  
14 application -- and it goes on to page 11. Do you see  
15 where it explains Duke's proposal would be to charge  
16 customers a nonbypassable charge for its embedded  
17 costs of supplying capacity?

18 MS. SPILLER: I am going to object to the  
19 extent Mr. Trent has already addressed this issue.

20 EXAMINER STENMAN: Overruled.

21 A. Yes. I see a sentence that says  
22 essentially "...generating assets to provide capacity  
23 for Ohio customers, Duke Energy Ohio proposes to  
24 recover its embedded cost of supply.

25 Q. And could you turn to page 25, please.

1 The last sentence of page 25, do you see where it  
2 states, "...under the FRR alternative, options exist  
3 for the supply and pricing of capacity.

4 Significantly, the FRR option, as elected by Duke  
5 Energy Ohio, enables a state-determined rate for  
6 capacity"? Do you see that?

7 A. I see the sentence on 26.

8 Q. 25 to 26.

9 A. Yes.

10 Q. And then it goes on to state a few lines  
11 down that "Decoupling capacity and energy, and  
12 charging customers a cost-based price for capacity,  
13 has successfully been done in the gas industry in  
14 Ohio, undeniably stabilizes prices, without even  
15 considering any other component of the Company's  
16 plan."

17 MS. SPILLER: Your Honor, if I may, I  
18 think this is an inappropriate use of documents with  
19 counsel simply reading documents into the record and  
20 asking the witness if portions thereof have been read  
21 correctly.

22 MS. BOJKO: Your Honors, counsel minutes  
23 ago objected because I was paraphrasing. Now, I am  
24 reading so that there is a clear indication of what I  
25 am reading and there is no paraphrasing. I guess I

1 can't win either way.

2 MS. SPILLER: No, Ms. Bojko. I simply  
3 ask that the witness be allowed time to read what you  
4 were paraphrasing, I think a significant difference.

5 EXAMINER STENMAN: The objection will be  
6 overruled.

7 Mr. Trent, please take all the time you  
8 need before you answer to read the documents.

9 Go ahead, Ms. Bojko.

10 MS. BOJKO: There is a question pending,  
11 your Honor.

12 A. Yeah. I think the question was did you  
13 read it correctly, and the answer would be yes, I  
14 think you read that sentence correctly.

15 Q. And with the testimony provisions that  
16 we've discussed, read, or paraphrased, explained, or  
17 otherwise, isn't it true -- and with this  
18 application, isn't it true that the application goes  
19 on to explain the cost-based capacity charge and that  
20 this is -- was a significant component of the  
21 application filed with the Commission in your ESP  
22 proceeding?

23 A. So what I would tell is, as I said  
24 before, this cost-based mechanism was something that  
25 was included. It was part of the application. There

1 were many other parts of the application that  
2 addressed different things. Ultimately neither my  
3 testimony nor this application was something that was  
4 ruled upon by the Commission, and that stipulation  
5 was very different from what was presented to the  
6 Commission, but cost-based capacity was something  
7 that was included in the original ESP.

8 Q. And, sir, specifically the capacity rider  
9 RC that begins on page 26, that was also a specific  
10 component of the ESP plan proposed by the company; is  
11 that correct?

12 A. The original ESP did include something  
13 called rider RC.

14 Q. And that was to provide capacity on a  
15 cost-based basis; is that correct?

16 A. Well, I think that was the rider through  
17 which that would be collected.

18 Q. And at this time of the application, the  
19 ESP was based on the premises, as we've discussed,  
20 that Duke was going to be or was an FRR entity; is  
21 that correct?

22 A. Yeah. At this time I think it was  
23 contemplated that Duke -- Duke Energy Ohio was going  
24 to be an FRR entity.

25 Q. And as you mentioned just a minute ago,

1 this application resulted in a stipulation that was  
2 filed on October 23, 2011; is that your recollection?

3 A. I wouldn't --

4 MR. KUTIK: May we go off the record,  
5 your Honor?

6 EXAMINER STENMAN: Let's go off the  
7 record.

8 (Discussion off the record.)

9 EXAMINER STENMAN: Let's go back on the  
10 record.

11 THE WITNESS: And given the time --

12 Q. I think there was a question pending, I'm  
13 sorry, Mr. Trent.

14 A. I do too. Given the time we had there, I  
15 can't remember the question exactly.

16 (Record read.)

17 A. So I would characterize it a little bit  
18 differently. Certainly we had this application.  
19 Subsequently there was a stipulation that really was  
20 nothing like the application, and there were separate  
21 testimony filed in support of that stipulation, and  
22 that stipulation was ultimately ruled on by the  
23 Commission.

24 Q. And this application wasn't ruled on by  
25 the Commission because you filed the settlement in

1 case 11-3549; is that correct?

2 A. Well, a stipulation was reached between  
3 the parties and that was -- that was submitted for  
4 consideration by the Commission.

5 Q. Sir, you are not sitting here today  
6 telling us that the settlement filed in the case did  
7 not resolve all issues in the application such that  
8 parties somehow waived their right to argue the  
9 application that was pending before the Commission,  
10 are you?

11 MS. SPILLER: I am going to object. I  
12 think this completely misstates Mr. Trent's testimony  
13 in this case, and I don't know that the argumentative  
14 tone is quite necessary this morning.

15 EXAMINER STENMAN: The objection will be  
16 overruled.

17 Again, you are free to clarify anything  
18 that she asks you.

19 THE WITNESS: Thank you.

20 MS. BOJKO: Your Honor, I said, "You're  
21 not saying." I'm asking for clarification.

22 EXAMINER STENMAN: Go ahead and answer.

23 THE WITNESS: Okay.

24 A. In my view, the application was not  
25 litigated. What was presented to the Commission was

1 the stipulation, and the terms of the stipulation are  
2 set forth, I think very specifically, in the  
3 Commission's order, is set forth very specifically,  
4 so that's how I would interpret this.

5 Q. Mr. Trent, I'm not being argumentative.  
6 I am trying to understand what you're saying to me  
7 because you're implying this application was not  
8 resolved by the settlement that was filed in the  
9 case. Is that what you are implying?

10 A. What I'm saying is that in my view it was  
11 the stipulation that was considered by the Commission  
12 and the stipulation contained very specific  
13 provisions, and that constituted what, in my view,  
14 was reviewed and determined by the Commission.

15 Q. Okay. Since you're -- obviously, you are  
16 familiar with the stipulation that you are  
17 referencing; is that correct?

18 A. Yes.

19 Q. I think we just need to go to the  
20 stipulation to try to ascertain the distinctions that  
21 you are making from what I'm asking you, Mr. Trent.  
22 This one has been previously marked as IEU Exhibit 5.  
23 Do you have that in front of you?

24 A. Let me -- let me look.

25 Q. Do you need an extra copy, sir?



1           A.    I'm looking.  I've got a large stack  
2   here, and I am trying to find it.  I've got it now.  
3   Okay.

4           Q.    Sir, could you turn to page 2 of that  
5   stipulation, please.

6           A.    Okay.

7           Q.    The last sentence of the first paragraph,  
8   that is, the first full paragraph on page 2, doesn't  
9   the stipulation say, "For purposes of resolving all  
10  issues raised by these proceedings, the Parties  
11  stipulate, agree, and recommend as set forth below"?

12          A.    You've read that sentence correctly.

13          Q.    And if you go to page 2, again, on the  
14  last sentence of the second paragraph on here, does  
15  it say, "The signatory Parties' agreement to this  
16  Stipulation, in its entirety, shall not be  
17  interpreted in a future proceeding before this  
18  Commission as their agreement to only an isolated  
19  provision of this Stipulation"?

20          A.    Yes, you've read that correctly as well.

21          Q.    So given that sentence, is it fair to say  
22  the stipulation was a package that resolved all  
23  issues in Case No. 11-3549?

24          A.    Well, as I stated before, in my view the  
25  Commission was presented with this stipulation, and

1 it entered an order based on the stipulation, so I  
2 would -- I would rely on the Commission's order with  
3 respect to the stipulation in terms of what was  
4 resolved and how it was resolved.

5 Q. I'm sorry. Did your company sign the  
6 stipulation?

7 A. I assume that counsel for Duke Energy  
8 Ohio signed.

9 Q. So I'm not talking about the Commission's  
10 order right now. I'm talking about this settlement.  
11 Are you telling me that your company, Duke Energy  
12 Ohio, did not agree to a term of this stipulation?

13 MS. SPILLER: I am going to object to the  
14 extent we've covered this issue a few times now, and  
15 I believe Ms. Bojko is taking Mr. Trent's testimony  
16 out of context.

17 EXAMINER STENMAN: The objection will be  
18 overruled.

19 THE WITNESS: And I'm sorry, what was the  
20 question?

21 (Record read.)

22 A. No, I am a not saying that.

23 Q. So the sentence says, and Duke agreed,  
24 that this stipulation was, first, to resolve all  
25 issues raised in these proceedings; and then,

1 secondly, that it was an agreement that was to be  
2 used as an entire agreement and there was not to be  
3 an isolated provision of the stipulation used or  
4 interpreted in a future proceeding before the  
5 Commission.

6 A. You read that correctly.

7 My struggle here is, as I review the  
8 stipulation, I don't see anywhere in the stipulation  
9 that it talks expressly about what Duke Energy Ohio  
10 would receive for the provision of capacity, and so  
11 that's a struggle that I have in terms of -- and why,  
12 you know, my statement was that the Commission ruled  
13 on the stipulation and that I'm relying on the  
14 Commission's order. But I'm not saying that the  
15 sentences as you read it in here are inaccurate.

16 MS. BOJKO: Your Honor, I move to strike  
17 everything after "I think that's what you read" or  
18 "you read that correctly" because I asked him nothing  
19 about capacity. Not a word in my question had to  
20 deal with a substantive issue regarding capacity.

21 EXAMINER STENMAN: Overruled.

22 Q. Again, Mr. Trent, I am just talking about  
23 the provisions of whether this agreement was agreed  
24 to by Duke in its entirety as a package.

25 MS. SPILLER: Objection, asked and

1 answered.

2 EXAMINER STENMAN: Overruled.

3 A. And I've stated before, that Duke Energy  
4 signed off on this agreement. Duke Energy Ohio  
5 signed off on this agreement.

6 Q. Thank you. Now, let's turn to the  
7 substance, and turn to page 6. If we go to -- this  
8 doesn't have line numbers, sir, so I am going to try  
9 to help you out with line information.

10 If you go the fifth line from the bottom,  
11 this is Section I.B, and the fifth line from the  
12 bottom, do you see where it states, "For purposes of  
13 this paragraph, the Parties also agree that, for so  
14 long as Duke Energy Ohio is a Fixed Resource  
15 Requirement entity under PJM Interconnection, LLC,  
16 (PJM), it will provide capacity of the Final Zonal  
17 Capacity Price (FZCP), in the unconstrained regional  
18 transmission (RTO) region"?

19 A. I see that.

20 Q. And then if we go to page 7, Section II.B  
21 of the stipulation, does it state, "Acknowledging  
22 Duke Energy Ohio's status as an FRR entity in PJM,  
23 the Parties agree that Duke Energy Ohio shall supply  
24 capacity to PJM, which, in turn, will charge for  
25 capacity to all wholesale supply auction winners for

1 the applicable time periods of Duke Energy Ohio's ESP  
2 with the charge for said capacity determined by the  
3 PJM RTO, which is the FZCP in the unconstrained RTO  
4 Region"? Does it state that, sir?

5 A. It does state that and that's -- we are  
6 not asking that that be changed in this case.

7 Q. And then if you go on to the next  
8 Section, II.C, in rider -- II.B it states, "Rider RC  
9 shall recover the cost of capacity consistent with"  
10 the Section II.B that we just read; is that correct?

11 A. I'm sorry, are you directing me to a  
12 different place?

13 Q. Just the subsequent paragraph II.C.

14 MS. SPILLER: And I'm sorry, can I have  
15 the question reread?

16 (Record read.)

17 A. As I understand rider RC, it is a  
18 mechanism by which -- and really a conduit by which  
19 the -- in this particular paragraph the wholesale CK  
20 suppliers are being charged by PJM, and the amount  
21 that they are being charged would be collected in  
22 this rider RC and paid over to them.

23 Q. I'm sorry. Did you disagree that the  
24 paragraph states "Rider RC shall recover the cost to  
25 capacity consistent with paragraph B above.

1 MS. SPILLER: Objection, your Honor. I  
2 think the witness is allowed to explain his testimony  
3 particularly given the propensity to read contents of  
4 the application and ask the witness whether or not  
5 they have been read correctly.

6 EXAMINER STENMAN: Overruled.

7 A. Well, again, I would say that rider RC  
8 was -- it says, "Rider RC shall recover the cost of  
9 capacity consistent with paragraph B," and then my  
10 prior testimony was explaining what I understood that  
11 to mean.

12 Q. If we turn to Section IV.A on page 12,  
13 doesn't this section specifically speak to capacity  
14 for shopping customers?

15 A. So this paragraph talks about capacity  
16 that Duke Energy Ohio will provide to PJM, and then  
17 it goes on further to talk about that it's relating  
18 to the CRES -- the CRES providers. As we talked  
19 about yesterday, there was a change, as I understood  
20 it, where this particular -- it says Duke Energy  
21 shall charge CRES providers for capacity." My  
22 understanding is that the stipulation and the order  
23 that ultimately was submitted said PJM will charge  
24 the CRES providers.

25 Q. Now, can you answer my question, please?

1 Does the section talk about capacity for shopping  
2 customers?

3 A. As I said before, this section talks  
4 about capacity for CRES providers.

5 Q. And so the section isn't titled "Capacity  
6 for Shopping Customers"?

7 A. The title says that, and the words under  
8 the title talk about capacity being provided to CRES  
9 providers.

10 Q. And shopping customers are served by CRES  
11 providers, sir; is that correct?

12 A. Yes. But, again, this talks about  
13 capacity being supplied directly to the CRES  
14 providers.

15 Q. So you're stating here today that the  
16 title of this stipulation is inaccurate or somehow  
17 doesn't reflect the paragraph below; is that what you  
18 are telling me?

19 A. Well, what I would tell you is the words  
20 to me are what we have to look at, and it says  
21 specifically capacity would be -- here is being  
22 provided to the CRES providers.

23 Q. And the title specifically says "Capacity  
24 for Shopping Customers"; is that correct?

25 A. You've read that correctly.

1           Q.    Thank you.  And since you've already gone  
2   into the body of the paragraph and read that, I won't  
3   redo that, but what you are -- your description of  
4   that paragraph is that it means that -- or the  
5   description that you just provided to us means that  
6   Duke through this stipulation as an FRR entity agreed  
7   that CRES providers would be charged market rates for  
8   capacity services; is that correct?

9           A.    They would be charged.  My understanding  
10   is that PJM would charge the CRES providers at market  
11   rates and, again, that is not something that would be  
12   impacted by the relief we are seeking in this case.

13           MS. BOJKO:  Your Honor, may I have that  
14   response read back, please.

15           EXAMINER STENMAN:  Yes.

16           (Record read.)

17           Q.    So isn't it your understanding that the  
18   stipulation adopted capacity priced at RPM prices?

19           A.    My understanding is that the stipulation  
20   dictated what would be charged to CRES providers by  
21   PJM.  It did not dictate what would be charged, in my  
22   view, by -- to retail customers for the provision of  
23   the wholesale service.

24           Q.    And you're making that distinction  
25   despite the title of the paragraph that's called



1 "Capacity for Shopping Customers"; is that correct?

2 A. Well, I'm making that distinction based  
3 on my interpretation of the Commission's order.

4 Q. I'm not asking about the order, sir. I  
5 am asking about what the stipulation says. We will  
6 get to the order in a minute.

7 MS. SPILLER: Your Honor, I think we've  
8 already established that the title says what it does.

9 MS. BOJKO: Your Honor, he is making a  
10 distinction, that clearly he changes every sentence I  
11 say to make a distinction, and I am trying to  
12 understand his distinction because I don't see it in  
13 the document.

14 EXAMINER STENMAN: I don't think we  
15 actually have an objection before us.

16 Mr. Trent, if you could attempt as best  
17 you can to actually answer the questions, that would  
18 be helpful.

19 THE WITNESS: I am doing the very best  
20 that I can.

21 EXAMINER STENMAN: Thank you.

22 A. So I'm looking at the words, with the one  
23 caveat that I think Duke Energy Ohio in the final  
24 stipulation that was filed, those words that were  
25 changed to "PJM," it says here specifically that PJM

1 shall charge CRES providers for capacity. The words  
2 in this paragraph do not specifically reference  
3 shopping customers. The title that you've referenced  
4 does say "Capacity for Shopping Customers," but that  
5 term does not appear in the words below.

6 Q. Let's -- let's get to the change that you  
7 just mentioned. The words in the stipulation --  
8 again, I am talking about the stipulation first. We  
9 will get to the change you just mentioned, okay? I  
10 just want to make sure the record is clear because I  
11 think that you just changed it when you were reading  
12 some of the language.

13 So just so we're clear, the language in  
14 the stipulation says, "The Parties agree that Duke  
15 Energy Ohio shall supply capacity resources to PJM,  
16 which, in turn, will charge for capacity resources to  
17 all CRES providers in its service territory for the  
18 term of the ESP, with the exception of those CRES  
19 providers that have opted out of Duke Energy  
20 Ohio's FRR plan." Is that correct?

21 A. You read that sentence correctly. I  
22 mean, you've left out a few words, but generally the  
23 gist of it is correct.

24 Q. And then the next sentence reads, "The  
25 Parties further agree that, during the term of the

1     ESP, Duke Energy Ohio shall charge CRES providers for  
2     capacity as determined by the PJM RTO which, is the  
3     FZCP in the unconstrained RTO region, for the  
4     applicable time periods of its ESP." Is that what  
5     the stipulation says, sir?

6             A.     That's what this document says. Now,  
7     there is an inherent conflict in the first sentence  
8     and the second sentence, which it says, "PJM, which,  
9     in turn, will charge for capacity."

10            MS. BOJKO: Your Honor, I move to strike  
11     everything after "my answer." I am trying to move  
12     through this quickly and do "yes" or "no" questions.

13            EXAMINER STENMAN: Overruled.

14            Q.     Did I accurately read the stipulation,  
15     sir?

16            A.     Well, again, you left out some words.

17            Q.     I left out words in "The Parties further  
18     agree that, during the term of the ESP, Duke Energy  
19     Ohio shall charge CRES providers for capacity as  
20     determined by the PJM RTO, which is the FZCP, and the  
21     uncontracted RTO region for the applicable time  
22     periods of its ESP?

23            A.     You read that correctly that time, yes.

24            Q.     Now, you referred to that as the  
25     stipulation, and from my standpoint the stipulation

1 is what ultimately went to the Commission for  
2 consideration. I just want to be clear about that.

3 MS. BOJKO: Your Honor, I object and move  
4 to strike. There was no question pending and now the  
5 witness is just testifying.

6 MS. SPILLER: Well, your Honor, I think  
7 he is here to testify, but I also think that we've  
8 covered this at length now with respect to what this  
9 particular provision says.

10 EXAMINER STENMAN: The motion to strike  
11 will be granted.

12 MS. BOJKO: Your Honor, at this time I  
13 would like to mark for identification purposes as  
14 Kroger Exhibit 6 a document entitled "Motion of Duke  
15 Energy Ohio, Inc., to Admit an Amendment to the  
16 Stipulation as Joint Exhibit 1.1 and Request for  
17 Expedited Treatment" filed in Case No.  
18 11-3549-EL-SSO.

19 EXAMINER STENMAN: It will be so marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MS. BOJKO: May I approach, your Honor?

22 EXAMINER STENMAN: You may.

23 Q. (By Ms. Bojko) Mr. Trent, do you have in  
24 front of you what's previously been marked as Kroger  
25 Exhibit 6, which is a motion filed by Duke Energy

1 Ohio in the ESP proceeding?

2 A. Yes.

3 MS. BOJKO: And for the record I don't  
4 believe I said it was dated -- well, it appears not  
5 to have a date on it. The time stamp attached to the  
6 back is November 16, 2011.

7 Q. Do you have that, sir?

8 A. Yes.

9 Q. Mr. Trent, isn't it true pages 1 and 4 of  
10 the motion to amend the stipulation state that the  
11 amendment is a typographical error?

12 A. I see the reference to a typographical  
13 error, yes.

14 Q. And is it your understanding, sir, if the  
15 typographical error is being corrected, the rest of  
16 the document remains unchanged?

17 A. I'm not exactly sure what you are asking  
18 me, but -- but my understanding is that the change  
19 that was being requested is substituting "PJM" For  
20 "Duke Energy Ohio." Is that what you are asking me?

21 Q. I wasn't, sir, but that's fine.

22 A. Okay.

23 Q. My question is if that change is made  
24 that you just stated, did the rest of the stipulation  
25 remain the same?

1           A.    Yeah.  I think that was the only change  
2   that was being referenced in this motion.

3           Q.    That one typographical error that you  
4   just stated was changing the words --

5           A.    "Duke Energy Ohio" to "PJM."  I'm sorry,  
6   I interrupted you.

7           Q.    That's okay.  Go ahead.  You can state  
8   the change, sir.

9           A.    I think it was, yeah, changing From "Duke  
10  Energy Ohio" to "PJM."

11          Q.    And it was just that one change that was  
12  made to the entire stipulation; is that accurate?

13          A.    That's my understanding.

14          Q.    And all testimony supporting the  
15  stipulation, it remained unchanged?

16          A.    I'm not aware of any changed testimony  
17  relating to this amendment.

18          Q.    And to your knowledge, sir, did it change  
19  specifically in Ms. Janson's testimony?

20          A.    I am not aware of any change.

21          Q.    We'll come back to this in one minute,  
22  sir.  Can we go to -- are you familiar with  
23  Ms. Janson's testimony that was filed in this  
24  proceeding?

25          A.    I've seen it in this proceeding.  In the

1 stipulation?

2 Q. Yes, sir.

3 A. I am familiar with the testimony supplied  
4 in reference to the stipulation.

5 Q. I'm sorry, I said "this proceeding." The  
6 stipulation that was filed in 11-3549; is that  
7 correct?

8 A. Yes.

9 Q. And are you familiar with -- I believe  
10 you had a discussion with Mr. Darr about the  
11 supplemental testimony that was filed of Ms. Janson?

12 A. There's so much -- so much paper, if you  
13 could direct me.

14 Q. Sure. IEU Exhibit 6.

15 A. Got it.

16 Q. If we turned to pages 4 and 5 of  
17 Ms. Janson's testimony -- and let's just back up a  
18 moment to lay some foundation here. What was  
19 Ms. Janson's title during the ESP proceeding?

20 A. I believe she was president of Duke  
21 Energy Ohio.

22 Q. And as president of Duke Energy Ohio, she  
23 would speak through -- for the company through her  
24 testimony; is that correct?

25 A. I believe so.

1           Q.    If we look at pages 4 and 5, beginning on  
2           line 20, the testimony states, "In the Stipulation  
3           and Recommendation, the parties recognize Duke Energy  
4           Ohio's obligations as an FRR entity and, for the term  
5           of the ESP, Duke Energy Ohio will supply capacity  
6           resources to PJM, which, in turn, will charge  
7           wholesale suppliers for capacity. But the charge  
8           applicable to these wholesale suppliers will not  
9           reflect Duke Energy Ohio's costs of service as  
10          defined above. Rather, the charge will be predicated  
11          upon PJM's capacity market pricing structure. To  
12          clarify, Duke Energy Ohio bears the obligation to  
13          provide the capacity resources necessary to serve all  
14          customers in our footprint for the term of the ESP  
15          and the Company will be compensated for capacity  
16          resources based upon competitive PJM prices."

17                   Did I read that correctly?

18           MS. SPILLER: Your Honor, again, I am  
19           going to object to the misuse of prior testimony.  
20           There has yet to be Evidence Rule 804, which is the  
21           applicable rule here.

22           EXAMINER STENMAN: Your objection will be  
23           note for the record.

24           A.    You read that correctly.

25           Q.    And isn't it true that Duke did, in fact,



1 recognize both the price and compensation in the ESP  
2 case?

3 A. I'm not sure what you just asked. The  
4 price of the compensation?

5 Q. Didn't -- didn't Ms. Janson's testimony  
6 here talk about both the price of the capacity being  
7 PJM prices, market-based prices, as well as the  
8 company being compensated for those capacity  
9 resources based upon the competitive prices?

10 A. That is in her testimony. As I stated  
11 earlier, I don't think it's in the stipulation or the  
12 order.

13 Q. And her testimony was filed in support of  
14 the stipulation. This piece of testimony was  
15 actually filed after the stipulation was filed; is  
16 that correct?

17 MS. SPILLER: Objection, asked and  
18 answered.

19 EXAMINER STENMAN: Overruled.

20 A. That's my understanding.

21 Q. Mr. Trent, let's go back to your  
22 testimony on page 5.

23 A. Okay.

24 Q. In your testimony --

25 A. Can you wait just a minute? I was trying

1 to grab it.

2 MS. SPILLER: Ms. Bojko, is that this  
3 case or a different case?

4 MS. BOJKO: I said the testimony in this  
5 case.

6 A. Okay.

7 Q. On page 5 of your testimony, you are  
8 making a distinction between noncompetitive wholesale  
9 capacity service and competitive retail services; is  
10 that correct?

11 A. Yes.

12 Q. And isn't it true that distinction does  
13 not exist in the ESP stipulation that we just  
14 discussed?

15 A. Well, in my view, the stipulation deals  
16 with the competitive retail service, and at this time  
17 we have the benefit of the Commission's subsequent  
18 ruling in the AEP Ohio case that says that provision  
19 of a wholesale service under an FRR is not a retail  
20 electric service.

21 MS. BOJKO: Your Honor, I move to strike  
22 the response as nonresponsive. I am asking him if  
23 the distinction exists in this stipulation. I didn't  
24 ask him anything about the order.

25 EXAMINER STENMAN: The motion is denied.

1           Q.    I'll ask it again, Mr. Trent.  Does it  
2 exist in the stipulation?

3           A.    My answer is exactly the same as before.  
4 I think that's the same question.

5           Q.    No, sir.  I would like to know if the  
6 distinction between noncompetitive wholesale capacity  
7 service and competitive retail services exists in the  
8 stipulation.

9           MS. SPILLER:  Objection, asked and  
10 answered.

11           EXAMINER STENMAN:  Overruled.

12           A.    As I said before, the stipulation, in my  
13 view, dealt with retail electric service, and, again,  
14 we now have a clarification from the Commission that  
15 the provision of capacity by an FRR entity is not a  
16 retail electric service.

17           Q.    So the answer to my question is "no"  
18 because the stipulation only dealt with a retail  
19 service in your mind; is that correct?

20           A.    In my view, the stipulation dealt with  
21 retail electric service.

22           Q.    And there was no distinction made in the  
23 stipulation but for -- before the order came out, did  
24 you recall there was a distinction in the ESP  
25 stipulation?

1           A.    You know, I don't specifically recall  
2           what was in my mind at the time.  But certainly we  
3           have the benefit of the Commission's interpretation  
4           at this point so -- but to answer your question, I  
5           don't believe specifically what was in my mind on  
6           that particular topic at the time.

7           Q.    Okay.  I'm asking what is in the  
8           stipulation, sir.  Is there a distinction in the  
9           stipulation?  Can you point me to a place in the  
10          stipulation that offers this distinction?

11          MS. SPILLER:  Objection, your Honor,  
12          again, asked and answered.

13          EXAMINER STENMAN:  Overruled.

14          A.    So as we sit here today, I can't go line  
15          by line in the stipulation.  I can only tell you what  
16          my interpretation of it is, and my view of the  
17          stipulation dealt with a retail electric service.

18          Q.    Okay.

19          A.    That's what it was dealing with, in my  
20          understanding.

21          Q.    Would you like to through the  
22          stipulation, sir, and look for the distinction?

23          A.    I'm comfortable with my interpretation.  
24          The one thing I would add is there was a discussion  
25          in the stipulation and the order in terms of

1 providing capacity to CRES providers and a recovery  
2 methodology for the CRES providers and the wholesale  
3 providers.

4 Q. And as you sit here today, we just read  
5 Ms. Janson's supplemental testimony which supported  
6 the settlement; is that correct?

7 A. You read some portions of it.

8 Q. In your understanding, she did reference  
9 both the compensation that the company will receive  
10 as well as the price that would be paid; is that  
11 correct?

12 A. I think the provision that you read  
13 earlier, and I confirmed you read it accurately, had  
14 those words in there.

15 Q. And that paragraph that I read  
16 accurately, there was no mention of noncompetitive  
17 capacity service in that paragraph, was there?

18 A. I don't recall those words being in that  
19 paragraph, no.

20 Q. And I think, as you stated and gotten us  
21 to this place many times this morning, it wasn't  
22 until the Commission came out with its order in this  
23 case 10-2929 that you then made your interpretations  
24 that you just stated for us; is that correct?

25 A. Well, I think the Commission's ruling

1 certainly was helpful in terms of clarifying that a  
2 wholesale service provided by an FRR entity was  
3 not -- was a wholesale service and not a retail  
4 electric service, so that clarified for us that.

5 Q. And it wasn't until that clarification in  
6 the AEP proceeding that now you are making the  
7 distinction with regard to the services provided  
8 under the stipulation; is that correct?

9 A. Well, until that -- that decision was  
10 made, there was not clarity on that issue and then  
11 there was not clarity that the Commission was  
12 establishing this state cost-based capacity  
13 mechanism.

14 Q. And the stipulation began -- or the ESP  
15 plan began when, sir?

16 A. This was January of '12, I believe.

17 Q. And the AEP Commission order was issued  
18 after the beginning of Duke's ESP plan; is that  
19 correct? I believe the first order was issued in  
20 July of '12, and so the ESP plan had moved forward  
21 under the terms of the ESP stipulation and the ESP  
22 order approving that stipulation as planned and per  
23 the stipulation; is that correct?

24 A. But the ESP went into effect January 1,  
25 '12. And as I said, the AEP order came out in July

1 of '12.

2 Q. So is that a yes, the ESP plan was  
3 effective for a period of six months before the  
4 Commission order was issued?

5 A. Yes.

6 Q. And -- and as you've discussed with  
7 Mr. Kutik, in the AEP proceeding when you managed  
8 DECAM, they argued in that proceeding -- in the AEP  
9 proceeding that as part of the generation service, it  
10 was competitive; is that correct?

11 MS. SPILLER: Objection, your Honor,  
12 asked and answered.

13 EXAMINER STENMAN: Overruled.

14 Q. That the capacity as part of the  
15 generation service was competitive. I apologize.

16 A. I think I previously testified that DECAM  
17 made good-faith legal arguments in that case. Those  
18 arguments did not prevail.

19 Q. And when you talk about Ohio law, I think  
20 you mentioned it both to Mr. Kutik and Ms. Kern, you  
21 keep referencing the Opinion and Order that was  
22 issued; is that correct? Is that what you believe to  
23 be the Ohio law that you keep stating through your  
24 testimony?

25 A. Well, the Opinion and Order of the

1 Commission in the AEP Ohio case I think does serve as  
2 precedent, and I think there are other opinions  
3 dealing with the precedential value of a Commission  
4 order. That's what I was referring to.

5 Q. And isn't it true, sir, there is no  
6 statutory provision that would allow a utility to  
7 recover its embedded capacity costs as part of  
8 generation service?

9 A. Well, my understanding is the Commission  
10 has authority under general statutes that it cited in  
11 its -- in its order in AEP Ohio to allow for  
12 cost-based recovery. I don't know and don't believe  
13 there is a specific statute that specifically and  
14 directly addresses that.

15 Q. And that's because the statute recognized  
16 generation services as a competitive service; is that  
17 correct?

18 MS. SPILLER: I am going to object to the  
19 extent this mischaracterizes Mr. Trent's testimony.

20 MS. BOJKO: I am asking him what the  
21 statute says, not his testimony, your Honor.

22 EXAMINER STENMAN: Overruled.

23 A. So my understanding is that the statutes  
24 that the Commission cited for its authority were not  
25 the statutes relating to the SSO. And so I think



1     what you are talking about in the SSO language is  
2     different from the statute I was referring to or  
3     statutes.

4             Q.     So, sir, you admit there is a statutory  
5     provision that specifically recognizes generation  
6     services as a competitive service.

7             A.     No, I didn't state that, without looking  
8     at the statutes.

9             Q.     Would you like to look at the statutes,  
10    sir?

11            A.     Well, you know, what I've told you is in  
12    my view the Commission has based -- on their order,  
13    they've determined they have authority to grant  
14    cost-based recovery for wholesale services, which  
15    they found is what an FRR entity is providing when it  
16    provides capacity, so that's my understanding, and  
17    it's based on what I have just said.

18            Q.     Sir, I am still talking about the  
19    statute, not the Commission order.

20            A.     And I'm not -- if you want to show me the  
21    specific statute, we can read it, but, you know, I'm  
22    giving you my understanding.

23            MS. BOJKO: Your Honor, at this time I  
24    would like to have marked for identification purposes  
25    as Kroger No. Exhibit No. 7 statutory provision

1 4928.03, "Identification of competitive services and  
2 noncompetitive services."

3 EXAMINER STENMAN: It will be so marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MS. BOJKO: May I approach, your Honor?

6 EXAMINER STENMAN: You may.

7 Q. Mr. Trent, do you have in front of you  
8 what's been previously marked as Kroger Exhibit No.  
9 7?

10 A. I do.

11 Q. And this provision, the statutory  
12 provision, is 4928.03; is that correct, sir?

13 A. That's what it says.

14 Q. So as not to read it into the record,  
15 would you like to read it, and I will ask you my  
16 question after you read it?

17 A. Okay. Okay.

18 Q. Sir, is this the statutory provision that  
19 you referenced as recognizing one that discusses  
20 generation service as being a competitive service?

21 A. I never referenced that. I think you  
22 did.

23 Q. I apologize. I don't mean to  
24 mischaracterize your testimony. I thought you said  
25 to me you believed there was a statutory provision

1 under the SSO section of the Commission that talked  
2 about generation service being competitive.

3 A. I don't recall specifically using those  
4 words. What I was talking about, I understood that  
5 there were provisions dealing with the SSO and this  
6 is part of those provisions.

7 Q. So this provision does specifically  
8 address generation service being a competitive  
9 service?

10 A. Well, the first sentence says, "Beginning  
11 on the starting date of competitive retail electric  
12 service, retail electric generation, aggregation,  
13 power marketing, and power brokerage services  
14 supplied to consumers within the certified territory  
15 of an electric utility are competitive retail  
16 electric services that the consumers may obtain  
17 subject to this chapter from any supplier or  
18 suppliers." So that's what it says.

19 Q. Okay. And then if you want to read a  
20 little further, sir, to go on since we are reading,  
21 it says, "Beginning on the starting date of  
22 competitive retail electric service and  
23 notwithstanding any other provision of law, each  
24 consumer in this state and the suppliers shall have a  
25 comparable and nondiscriminatory access to

1 noncompetitive retail electric services of an  
2 electric utility in this state."

3 Is that what it states?

4 A. It does.

5 Q. And this is your understanding that this  
6 is a generation service; is that correct?

7 MS. SPILLER: Objection, misstates  
8 Mr. Trent's testimony.

9 EXAMINER STENMAN: Overruled.

10 A. So my interpretation is that it says --  
11 it references retail electric generation in this  
12 list, but in terms of the interpretation of the  
13 statute, I would defer to the Commission, and as my  
14 understanding, they have interpreted under other  
15 statutes that the provision of capacity specifically  
16 delivered by an FRR entity is not a competitive  
17 retail electric service.

18 Q. Sir, I understand what you believe the  
19 Commission has stated, but I'm just talking about the  
20 statute. That is, the capacity discussion that you  
21 just mentioned is not in the statutory provision; is  
22 that correct?

23 MS. SPILLER: Your Honor, if I may, I  
24 think we are outside of Mr. Trent's testimony in that  
25 he has testified he has not relied upon this

1 particular provision, and to the extent Ms. Bojko is  
2 seeking to elicit a legal determination from this  
3 witness, he is not testifying in his capacity as a  
4 practicing attorney.

5 MS. BOJKO: Your Honor, he has mentioned  
6 Ohio law for the last two days, and I am trying to  
7 ascertain that his Ohio law is merely based on the  
8 Commission's one opinion and order and is not based  
9 on other Ohio law which is a statutory provision.

10 EXAMINER STENMAN: Overruled.

11 THE WITNESS: I've forgotten the question  
12 again. I'm sorry.

13 (Record read.)

14 A. So the word "capacity" is not  
15 specifically in this particular statute, which is  
16 4928.03.

17 Q. And capacity is not specifically excluded  
18 when it talks about generation service being a  
19 competitive service; is that correct?

20 A. Again, this paragraph does not include  
21 the word "capacity" at all, included or not.

22 Q. But it does talk about generation service  
23 being a competitive service; is that right?

24 A. It references retail electric generation  
25 are the words I see.

1           Q.    Thank you.  Now, let's go back to page 5  
2 of your testimony in this case.

3           MS. BOJKO:  Your Honor, may I have a few  
4 minutes?  May we go off the record for a second?

5           EXAMINER STENMAN:  Let's go off the  
6 record.

7           (Recess taken.)

8           EXAMINER STENMAN:  All right.  Let's go  
9 back on the record.

10          MS. BOJKO:  Thank you, your Honor.

11          Q.    (By Ms. Bojko) Mr. Trent, we were  
12 discussing the opinion and ordered issued by the  
13 Commission in the AEP capacity proceeding 10-2929.  
14 Do you recall that discussion, sir?

15          A.    Yes.

16          Q.    And you were explaining your  
17 interpretation of the Commission order.  I would like  
18 you to look at page 13 of the Opinion and Order.

19          A.    Is it an -- is there an exhibit number?

20          Q.    Oh, yes, it's been previously marked,  
21 sir.

22          MR. KUTIK:  OCC Exhibit 1.

23          THE WITNESS:  Thank you.

24          MS. BOJKO:  Thank you, Mr. Kutik.

25          A.    I've got that.  What page?

1 Q. 13, please.

2 A. Okay.

3 Q. Now, we were talking about competitive  
4 and noncompetitive services, and you explained that  
5 your reference to Ohio law was based on this Opinion  
6 and Order; is that correct?

7 A. In part we talked about that, yes.

8 Q. And on the last sentence of the first  
9 paragraph on page 13 of this Opinion and Order, isn't  
10 it true that the Commission made a finding that it  
11 was unnecessary to determine whether the capacity  
12 service is competitive or not competitive?

13 A. That sentence is correct. To be  
14 complete, we did talk yesterday about the motion to  
15 dismiss, and also I think in their subsequent order  
16 they issued they did specifically talk about the  
17 competitive and -- my memory is they found it was  
18 noncompetitive.

19 Q. Well, I move to strike everything after  
20 his response to my question, your Honor.

21 EXAMINER STENMAN: Motion denied.

22 MS. BOJKO: I'm sorry, your Honor, I want  
23 to make sure the record is clear, and I need to check  
24 an entry. One second, please.

25 EXAMINER STENMAN: Okay.

1 MS. BOJKO: Not to waste the court's  
2 time, your Honor.

3 Q. Mr. Trent, do you have that subsequent  
4 entry with you that you can point to a particular  
5 reference?

6 A. I was looking, and I can't remember if  
7 it's marked as an exhibit or not.

8 Q. So that's just from your recollection; is  
9 that right?

10 A. Yeah. I am pretty sure it's in there.

11 Q. Let's move on to the Opinion and Order  
12 before us and we will try to find that. On page 38  
13 of the Opinion and Order.

14 A. Okay. And I did find that other order if  
15 you want me to go back to that. You had asked --

16 Q. Could you provide the title of that?

17 A. I think it is -- well, I think it's OCC  
18 Exhibit 3, Entry on Rehearing.

19 Q. Let's move on, Mr. Trent. Can you go to  
20 the Opinion and Order?

21 MS. SPILLER: Your Honor, if I may, I  
22 think the question was posed to the witness as to  
23 whether he could identify in the Entry on Rehearing  
24 the Commission's determination. He is reviewing the  
25 document, and I would think he would be allowed to



1 review the document for purposes of answering the  
2 question.

3 MS. BOJKO: Then I withdraw my question,  
4 your Honor.

5 EXAMINER STENMAN: Okay.

6 Q. Are you at page 38 of the Opinion and  
7 Order, Mr. Trent?

8 A. Not yet, so. This is OCC 1; is that  
9 right?

10 Q. Yes.

11 A. Okay. I'm there.

12 Q. The last ordering paragraph on that page  
13 states that "Nothing in this Opinion and Order shall  
14 be binding upon this Commission in any future  
15 proceeding or investigation involving the justness  
16 and reasonableness of any rate, charge, rule, or  
17 regulation. It is further ..." Is that correct?

18 A. You've read that correctly.

19 Q. So by the Commission's own order the  
20 case -- the Opinion and Order is applicable to AEP in  
21 deciding Case 10-2929-EL-UNC; is that correct?

22 A. That's the language, but as I said  
23 before, I think there is law that counsels that the  
24 Commission should follow its precedent.

25 Q. Mr. Trent, is the Commission -- did it

1 specifically have an ordering paragraph in this order  
2 that stated it would not use it for precedent?

3 A. You've read that paragraph correctly, as  
4 I had said.

5 Q. And that was the Commission stating it in  
6 a finding and order; is that correct?

7 MS. SPILLER: Objection, asked and  
8 answered.

9 EXAMINER STENMAN: Overruled.

10 A. The words you read were accurate so it  
11 says, as you said, "Nothing in this Opinion and Order  
12 shall be binding upon the Commission in future  
13 proceedings."

14 Q. But that's not my question. My question  
15 was, was it a finding and order of the Public  
16 Utilities Commission?

17 A. Well, I'm not sure what you are saying.  
18 It is in the ordering language of the opinion issued  
19 by the Commission.

20 Q. Thank you. That's what I was asking.  
21 And, Mr. Trent, there has been a lot of discussion or  
22 in your testimony the last two days that have stated  
23 that the July 2, 2012, order was the -- was it your  
24 testimony -- I'll ask you so I'm not  
25 mischaracterizing it.

1           Was it your testimony that it was the  
2 first time the Commission had addressed or created a  
3 state-based mechanism?

4           A.   Well, my understanding is that was the  
5 first time the Commission established a cost-based  
6 mechanism relating to an FRR entity's provision of  
7 capacity service.

8           Q.   So you are aware of prior Commission  
9 entries that did address -- did address the state  
10 compensation mechanism of an FRR entity that were for  
11 not cost-based charges?

12          A.   I don't recall specifically one way or  
13 the other, so that would be my testimony.

14          Q.   It's not your testimony yesterday or  
15 today that the first time you were aware that the  
16 Commission created such a mechanism at all,  
17 regardless of what type, a state-based mechanism for  
18 capacity charges, that that was July 2, 2012?

19          A.   I don't recall that specifically. Again,  
20 what I recall is that the first time the Commission  
21 established this cost-based capacity mechanism for an  
22 FRR entity was in July of '12. That was my  
23 testimony, I believe.

24          Q.   Do you -- the case that you keep  
25 referencing, the AEP capacity case, the Opinion and

1 Order as a basis of your testimony here today; is;  
2 that right? It's a foundational piece of your  
3 testimony; is that right? A basis, a rationale for  
4 your testimony?

5 A. I said I reference that in the testimony.  
6 I'm not exactly sure what you mean by "foundational,"  
7 but it's certainly something that I'm talking about  
8 in the testimony and reference it.

9 Q. But not only in your testimony, sir, at a  
10 footnote in your testimony with some other language,  
11 which I guess is maybe later in your testimony, but  
12 the last two days every response in one of your  
13 answers has been, "but the Commission did in its  
14 Opinion and Order in the AEP capacity case." Isn't  
15 that accurate?

16 MS. SPILLER: Your Honor, I am going to  
17 object. That incredibly misstates the testimony from  
18 Mr. Trent over the last two days.

19 EXAMINER STENMAN: Overruled. He is free  
20 to clarify.

21 A. You're saying every response that I've  
22 given has those words? I disagree with that.

23 Q. Okay. But the majority of the responses  
24 that you've given over the last couple of days -- how  
25 about this sir -- strike that.

1           You've continued to mention the  
2 Commission's Opinion and Order in the AEP capacity  
3 case as a rationale for Duke's application in this  
4 case; is that accurate?

5           A.    Yes.

6           Q.    And are you aware that that case began in  
7 November of 2010?

8           A.    I can't give you the specific dates, but,  
9 you know, subject to review, I wouldn't quibble with  
10 you on the date.

11          Q.    I mean, it's fair if the case number is  
12 10-2929, that it likely began in 2010; is that fair?

13          A.    Yeah, I think so.

14          Q.    And are you aware that in December of  
15 2010, that the Commission did, in fact, establish an  
16 interim state-based mechanism for AEP as an FRR  
17 entity?

18               MS. SPILLER: Your Honor, I am going to  
19 object. The witness has already asked and answered  
20 this question as to his prior knowledge. I would  
21 also state that I think Ms. Bojko's question  
22 misstates what the Commission's entry was on  
23 December 8, 2010.

24               MS. BOJKO: It doesn't misstate. I asked  
25 if he was aware of the entry. This has not been

1 brought up the last two days because I had to pull it  
2 up on my computer right here. It hasn't been  
3 admitted as an exhibit or discussed.

4 EXAMINER STENMAN: Overruled.

5 A. I can't recall specifically what -- what  
6 order the Commission issued. I knew that there was  
7 a -- I know that there was an order that was issued  
8 that I believe was later withdrawn or changed, but I  
9 can't recall, specifically. And I didn't review that  
10 order in connection with this case.

11 Q. But is it fair to say that you were aware  
12 in 2010 that the issue of a state compensation  
13 mechanism for an FRR entity was being discussed in  
14 front of the Commission, there was a pending case.

15 A. You know, I just can't -- if you are  
16 referring to the AEP case, I can't recall  
17 specifically what was in their original filing. As I  
18 said, I focus more on the ultimate decisions by the  
19 Commission so I can't tell you exactly what was going  
20 on in the interim.

21 Q. But you were aware that AEP's capacity  
22 case had been going on for some time.

23 MS. SPILLER: Objection, asked and  
24 answered.

25 EXAMINER STENMAN: Overruled.

1           A.    I was generally aware that AEP had a  
2 capacity case going on.

3           Q.    And you -- we've already discussed that  
4 you were part of motions and comments on behalf of  
5 DECAM in that case; is that correct?

6           MS. SPILLER:  Objection, misstates  
7 Mr. Trent's prior testimony as to those documents.

8           EXAMINER STENMAN:  Overruled.

9           A.    We've talked about filings that DERS and  
10 DECAM made in the AEP case.  I didn't review those  
11 filings when they were made, but I've seen them.  
12 We've identified them.

13          Q.    So is it fair to say that you are aware  
14 that the AEP capacity case had been going on for a  
15 couple of years, either through your participation in  
16 DECAM or through testimony you had filed in the ESP  
17 case or the case number of the AEP docket?

18          A.    In terms of how long the capacity case  
19 was going on, I just can't tell you, but I'm sure the  
20 dockets would be available to show when that case was  
21 filed and how long it was going on.  I just don't --  
22 I don't know how long it's going on.

23          Q.    Well, AEP's capacity case was certainly  
24 pending when Duke filed its ESP proceeding in 2011;  
25 is that right?

1           A.    I think that's correct, yes.

2           Q.    And if we would go to your testimony on  
3 page 5 in this case, you are making a distinction  
4 between the price that PJM would charge for capacity  
5 and the compensation that Duke would receive for  
6 capacity, is that correct, on this page?

7           A.    Could you direct me to specific lines so  
8 I can tell you if it's on this page? Yeah, I see --

9           Q.    I was trying to ask you a question  
10 instead of reading into the record.

11          A.    No, no, I --

12          Q.    Is that your testimony?

13          A.    Yeah. You asked me if it's on this page,  
14 and I was trying to make sure it's on the page. But,  
15 yeah, the -- yes, the -- I do talk about the price  
16 PJM would charge for capacity, and I distinguish that  
17 from what Duke Energy Ohio would receive in the form  
18 of compensation.

19          Q.    And isn't it true that that distinction  
20 is not in the stipulation?

21                MS. SPILLER: Objection, asked and  
22 answered.

23                EXAMINER STENMAN: Overruled.

24          A.    Yeah. In my view the stipulation does  
25 not address the compensation that Duke would receive,



1 and so by the fact that it's not in the stipulation,  
2 I think that distinction is included by the  
3 exclusion, if you will.

4 Q. So Duke didn't make the explicit  
5 distinction then when it filed the ESP stipulation,  
6 but you're making it now through your testimony; is  
7 that right?

8 A. What I said was my review of the  
9 stipulation, it did not include a discussion  
10 regarding what Duke would recover as compensation.  
11 That's my testimony.

12 Q. So through your testimony in this case,  
13 you're trying to go back to one issue that you  
14 believe wasn't in the ESP stipulation and you would  
15 like to clarify it now in the pending case; is that  
16 correct?

17 MS. SPILLER: I'm sorry. Can I have the  
18 question read back. I'm not sure if I missed a word.

19 (Record read.)

20 MS. BOJKO: He said it was not in the  
21 stipulation.

22 MS. SPILLER: Okay. I don't know how you  
23 clarify something that's not in a document, so I  
24 would object to the form of the question.

25 EXAMINER STENMAN: Overruled.

1           A.    So in my view, as I said before, the  
2           stipulation was dealing with the provision of retail  
3           electric services. And what we're talking about here  
4           is a wholesale service, and so for me it was not --  
5           would not be logical for that particular stipulation  
6           to address the provision of the wholesale service  
7           by -- by Duke.

8           Q.    But we did already discuss that it was in  
9           testimony that supported the stipulation, that  
10          distinction is; is that right?

11          A.    You referenced testimony. We read it.  
12          But, again, as I stated, that was not in the  
13          stipulation. It was not in the Commission order.

14          Q.    It wasn't in the stipulation. It wasn't  
15          in the Commission order, but it was in Duke's  
16          supplemental testimony by the president of Duke  
17          Energy Ohio; is that correct?

18          A.    Well, the provisions that we read before  
19          in Julie Janson's testimony, I said you read it  
20          accurately and it did talk about compensation  
21          received by the Duke Energy Ohio.

22          Q.    And pricing. So the distinction was in  
23          her testimony; is that correct?

24          A.    Well, I would again say that the  
25          testimony was accurate and I think it talked about

1 pricing. It talked about compensation.

2 Q. And did the settlement -- I believe you  
3 mentioned this, again, for foundation. The  
4 settlement did call for the collection of the rider  
5 ESSC, which is the electric service stability charge;  
6 is that your recollection of the settlement?

7 A. The settlement did address the ESSC.

8 Q. And I think you mentioned that you don't  
9 believe that was in the original ESP application  
10 filed by Duke; is that correct?

11 A. I don't recall whether it was or wasn't,  
12 and I don't recall testifying about that, but, again,  
13 it's been a long couple of days.

14 Q. So that the rider ESSC was proposed in  
15 the original application?

16 A. I didn't say that. I just said I don't  
17 recall specifically. You know, it was in the  
18 stipulation. My memory is that it was in the  
19 stipulation but not in the original application, but  
20 I could be wrong there. I'm pretty sure that's  
21 right, though.

22 Q. I thought you said it was. I just didn't  
23 want to mischaracterize your testimony so I'm asking  
24 again. So is it fair that if it wasn't in the  
25 ESSC -- if the ESSC was not in the original

1 application but it did end up if the settlement, that  
2 that was a bargain or provision that resulted in the  
3 settlement; is that fair?

4 A. The ESSC was a part of the stipulation,  
5 yes, and it was related to the provision of retail  
6 electric service.

7 Q. So since the company is seeking to  
8 clarify the capacity versus compensation provision of  
9 the settlement in this case, is the company proposing  
10 to clarify or open up any other -- of the other  
11 issues in the settlement?

12 MS. SPILLER: Your Honor, I am going to  
13 object. I think that mischaracterizes the company's  
14 application in this proceeding. I think it also  
15 mischaracterizes Mr. Trent's testimony in this  
16 proceeding with the suggestion that we're trying to  
17 clarify something that Mr. Trent has said was not  
18 contained in the document.

19 MS. BOJKO: He said it was contained in  
20 supporting testimony. We are trying to figure out  
21 what was and what was not contained and where we go  
22 from here and what is and what is not contained in  
23 the current application.

24 EXAMINER STENMAN: The objection is  
25 overruled.

1           A.    So in my view we are not seeking to  
2   change what's in the stipulation and what's in the  
3   Commission prior order.  What we are seeking recovery  
4   for is a wholesale service, which is the capacity,  
5   and provided by the FRR entity.

6           Q.    And in that the capacity provision of the  
7   settlement -- there is a capacity provision of the  
8   settlement; is that correct?

9           A.    There is a provision that says that --  
10   that references the supply of capacity to the CRES  
11   providers and the wholesale auction winners, and it  
12   provides the PJM will charge for those services, so  
13   that is referenced.

14          Q.    And you're not suggesting or requesting  
15   to relook at any of the other issues in the  
16   settlement through this case; is that correct?

17          MS. SPILLER:  I am going to object to the  
18   form of the question and the suggestion that we are  
19   looking at issues in the ESP.

20          EXAMINER STENMAN:  Can you rephrase?

21          Q.    Are there any other issues that were  
22   raised, defined, settled in the ESP that you are  
23   asking to clarify or reconsider in the pending case?

24          A.    Well, your question includes the word  
25   "other," and what I have testified to is, in my view,

1 we are not seeking to change what was in the  
2 stipulation and the Commission's order.

3 MS. BOJKO: Well, I move to strike the  
4 response as nonresponsive, and I ask that you  
5 instruct counsel to stop coaching the witness so that  
6 his answers are then reflective of what the counsel  
7 would like him to say.

8 EXAMINER STENMAN: The motion to strike  
9 will be denied.

10 Mr. Trent, if you could just try to  
11 answer the questions, I know you are trying.

12 Q. Are there any issues in the ESP case that  
13 you are asking for the Commission to change, modify,  
14 revise, create in the current capacity case?

15 A. No. We are not trying to change the  
16 issues that were addressed in the stipulation or  
17 order relating to that.

18 Q. And to your knowledge, is Duke still an  
19 FRR entity?

20 A. Yes.

21 Q. And to your knowledge, are you still  
22 under the term of the ESP?

23 A. Yes.

24 MS. BOJKO: Your Honor, at this time in  
25 order to expedite my examination, I would ask that

1 the record from voir dire be treated as part of the  
2 record in this case so as I do not have to go through  
3 and repeat all of my questions that I asked Mr. Trent  
4 on voir dire yesterday.

5 EXAMINER STENMAN: That will be fine.

6 Q. Mr. Trent, do you recall a discussion  
7 that we had yesterday morning, I know it's been a  
8 long couple of days, but yesterday morning with  
9 regard to Duke's capacity service in connection with  
10 its obligations as the FRR entity and costs related  
11 to the economic development and charitable giving of  
12 Duke that is included in your testimony?

13 A. Yes.

14 Q. And in fear of mischaracterizing it  
15 was -- was it your testimony yesterday that the costs  
16 for those two items were not reflected in the case --  
17 in this case before us?

18 A. When you say "not reflected," are you  
19 meaning we didn't include those costs in the  
20 cost-based recovery calculation? If that's what you  
21 are asking me, the answer to that is yes.

22 Q. Yes. You didn't include costs associated  
23 with economic development activities or charitable  
24 giving in -- in the regulatory asset or in the -- the  
25 capacity service costs that you are seeking to

1 collect in this case; is that correct?

2 A. That is correct.

3 Q. And the reason that those costs -- strike  
4 that.

5 Those costs would normally be reflected  
6 in base rate cases; is that correct?

7 A. Actually, I think those costs are -- are  
8 often not included in rate cases. Sometimes they  
9 are. I mean, it depends. Some economic development  
10 costs are included in rate cases. Some are not. My  
11 experience is typically charitable contributions are  
12 not included in rate cases.

13 Q. But if such costs were to be included in  
14 rate cases, would it be the electric distribution  
15 company's base rate case those would be included?

16 A. Could be.

17 Q. Are you familiar with Duke's electric  
18 rate case, base rate case, that it filed in this --  
19 in this year?

20 A. Generally, yes.

21 Q. And is it your understanding that Duke  
22 requested recovery of economic development costs in  
23 that application?

24 MS. SPILLER: Objection, your Honor,  
25 relevance.



1 MS. BOJKO: Your Honor, he testifies in  
2 this case and brings in economic development. I  
3 offered and tried to strike it from the testimony,  
4 and my motion was denied. I'll renew my objection at  
5 this time to strike portions of testimony that deal  
6 with, I agree. Irrelevant, unrelated costs.

7 MS. SPILLER: Your Honor, my objection  
8 went to what may have been contained in Duke Energy  
9 Ohio's most recent electric distribution rate case,  
10 which is not a case currently before the -- before  
11 the Bench.

12 EXAMINER STENMAN: Your objection will be  
13 overruled.

14 Your motion to strike was denied  
15 yesterday, and your continuing motion will be noted  
16 for the record.

17 Q. Could you please answer the question,  
18 Mr. Trent?

19 A. Yeah. To be honest with you I don't  
20 specifically recall how economic development was  
21 handled in the electric distribution case. It may  
22 have been included. I just don't recall.

23 MS. BOJKO: Thank you, Mr. Trent. I may  
24 be finished if I may have one moment.

25 EXAMINER STENMAN: Take your time.

1 MS. BOJKO: That's all I have, your  
2 Honor. Thank you.

3 Thank you, Mr. Trent.

4 EXAMINER STENMAN: Thank you.

5 Mr. Hart.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Hart:

9 Q. Good morning, Mr. Trent. I am Doug Hart.  
10 I represent the hospital group and Cincinnati Bell.  
11 Let me try to plow some new ground here. I see in  
12 your background you started with Duke in 2002 as  
13 general counsel for litigation, correct?

14 A. That's correct.

15 Q. And I assume in that capacity you  
16 supervised litigation involving the company?

17 A. I did.

18 Q. And prior in private practice you had  
19 substantial experience with litigation?

20 A. Yes.

21 Q. Okay. You understand that litigation  
22 generally involves a party suing another one for some  
23 amount of money for some reason?

24 A. It can be money. It can be for  
25 injunctive relief.

1           Q.    But the plaintiff wants something and the  
2 defendant generally doesn't want to give it, correct?

3           A.    That's -- yeah, and typically in my  
4 cases, the defendant would ask for something also.

5           Q.    Okay.  Let's just talk about a simple  
6 case where one party is suing another for some money.  
7 Would you agree that the vast majority of cases  
8 resolve in a settlement?

9           MS. SPILLER:  Objection, your Honor, to  
10 the relevance of civil litigation.

11           EXAMINER STENMAN:  It will be overruled.

12           A.    You know, I haven't looked in a long time  
13 in terms of percentages, but certainly a majority of  
14 cases in my experience are settled.

15           Q.    And a settlement is a compromise where  
16 neither party generally gets what they asked for at  
17 the outset; is that correct?

18           A.    Sometimes they get what they asked for;  
19 sometimes they don't.

20           Q.    Okay.  And once the case settles, the  
21 settlement becomes the deal, so to speak, between  
22 those two parties, correct?

23           A.    Well, a settlement becomes an agreement  
24 in my view, yes.

25           Q.    And settlement agreements are

1 enforceable, correct?

2 A. My view, they are, yes.

3 Q. And when you settle a case, you generally  
4 don't entertain requests by the plaintiff to pay them  
5 more money, do you?

6 MS. SPILLER: Objection, your Honor. I  
7 think we are treading into what is legal opinion and  
8 I think a matter that is appropriate for briefs but  
9 not for this witness, who is not testifying in his  
10 capacity as a practicing attorney.

11 EXAMINER STENMAN: Mr. Hart.

12 MR. HART: It goes to background, your  
13 Honor, what was in his testimony.

14 EXAMINER STENMAN: Overruled.

15 A. Okay. I'm sorry, would you restate  
16 again, please, or read back, however you want to do  
17 it.

18 MR. HART: Read it back, please.

19 (Record read.)

20 A. Well, I mean, there certainly can be  
21 issues that -- there are new issues or different  
22 issues that the same plaintiff can come back and ask  
23 for different money or different relief. I've  
24 certainly seen that.

25 Q. But it requires some substantial change

1       that's recognized by the law, correct?

2               A.     I don't agree with that, no. In my view  
3       the issue on a settlement or an agreement always look  
4       at the four corners of the agreement, unless there is  
5       an ambiguity, and I construe that agreement based on  
6       what's included in the agreement.

7               Q.     That's fair. Oftentimes buyers have  
8       buyer's remorse after they settle a case, correct?

9               MS. SPILLER: Objection, your Honor. I  
10      think this is a theme for brief and not appropriate  
11      to this witness who is not testifying in his capacity  
12      as an attorney, and I think it goes well beyond his  
13      background in this case.

14              EXAMINER STENMAN: Overruled.

15              A.     I have no sort of statistical information  
16      that would indicate to me whether people often have  
17      buyer's remorse or not.

18              Q.     When you have buyer's remorse, you don't  
19      get to go back and retry the case, do you?

20              A.     I'm not sure what you're talking about  
21      specifically in terms of buyer's remorse. If you're  
22      talking about, you know, what's within a settlement  
23      agreement, again, if it's in the settlement  
24      agreement, that would be enforceable. If it's not in  
25      the settlement agreement, I think parties are free to

1 pursue other additional issues.

2 Q. Okay. Let's change topics. My  
3 understanding is that Duke is an FRR entity through  
4 May of 2015, correct?

5 A. That's correct.

6 Q. And starting in June of 2016, it will be  
7 subject to the market-based pricing under the PJM  
8 auction, correct?

9 A. That is correct.

10 Q. And Duke has accepted that market-based  
11 pricing starting in June '16, as fair and reasonable  
12 compensation for its capacity, correct?

13 A. Well, what I would say is that per the  
14 stipulation, Duke agreed that it would cease being an  
15 FRR entity at that point in time and at that point in  
16 time would be receiving the market-based rates. I  
17 don't recall anything specifically relating to that  
18 being determined as being fair and reasonable. It's  
19 certainly what we agreed to.

20 Q. You agreed to accept that, correct?

21 A. We did.

22 Q. And you voluntarily joined PJM knowing  
23 that's what the rules would be, correct?

24 A. Well, but for the stipulation --

25 Q. I am talking about the period after you

1 are an FRR entity, which is after the stipulation  
2 period ends.

3 A. But I think as I understood your  
4 question, you were saying when we joined PJM, that we  
5 understood that was going to happen and my -- my  
6 clarification there was when we joined PJM, I don't  
7 think there was limitation in terms of how long we  
8 would -- we would be an FRR entity, but because of  
9 the stipulation, we did limit how long we would be an  
10 FRR entity.

11 Q. Okay. And you understood when you ceased  
12 being an FRR entity, you would subject yourself to  
13 market pricing?

14 MS. SPILLER: Your Honor, I am going to  
15 object to the relevance. What happens after May 15,  
16 2015, is outside the scope of the application in this  
17 proceeding.

18 EXAMINER STENMAN: Overruled.

19 A. So my understanding, based on the RAA  
20 provisions, is that -- and as a result of the  
21 stipulation that we made, when we become -- or when  
22 we cease to be an FRR entity in 2015, at that point  
23 we will receive the market-based rates.

24 Q. My question to you was you understood  
25 joining PJM that when you became subject to

1 market-based rates, that would be the compensation  
2 you received?

3 A. At a particular point in time, but I  
4 don't think that I understood there would be a  
5 restriction at the time we joined PJM to at some  
6 point becoming an FRR entity. In fact, I think we  
7 would have had that option.

8 Q. But you didn't have the option to not be  
9 an FRR entity at the outset, correct?

10 A. Yeah. At the outset we had to become an  
11 FRR entity, and the question would be how long would  
12 you -- or the question I was trying to think through  
13 was how long would we or could we be an FRR entity.

14 Q. In fact, didn't you at one point sign up  
15 for a five-year period that would take you through  
16 the 2015-2016 plan year?

17 A. Yes. It's my understanding that the  
18 general sort of rules require -- required us to sign  
19 up for five years, but that that was subject to us  
20 going in and seeking a reduction.

21 Q. And you voluntarily went in and shortened  
22 that period by a year thereby subjecting Duke to  
23 market-based pricing a year earlier than it needed to  
24 be?

25 MS. SPILLER: I am going to object to the



1 form of the question. I think it misstates  
2 Mr. Trent's prior testimony.

3 EXAMINER STENMAN: Overruled.

4 A. So when you said "voluntarily," that was  
5 part of the agreement that we reached in the  
6 stipulation, and so as a result of that agreement, we  
7 then did go in and seek reduction by a year.

8 Q. Let's get one thing clear. You  
9 voluntarily signed the stipulation, didn't you?

10 A. Yes, yes. But I was -- wasn't clear if  
11 you were saying that -- that we volunteered to do  
12 that separate and apart from the stipulation. I just  
13 want to clarify it was part of the stipulation.  
14 That's all I was trying to do.

15 Q. All right. But the impact of that was to  
16 subject Duke to market-based pricing one year earlier  
17 than it otherwise would have been subject to?

18 A. That is correct. At that point we would  
19 not be able to use the state compensation mechanism.

20 Q. Okay. Now, when you started as an FRR  
21 entity, that was January 1, 2012; is that correct?

22 A. Yes.

23 Q. And you are still an FRR entity now,  
24 correct?

25 A. That's correct.

1           Q.    Has Duke been charging for capacity at  
2           the PJM market-based prices?

3           A.    My understanding is that PJM is the  
4           entity that's charging market-based capacity pricing,  
5           and that it's charging that to the suppliers.

6           Q.    And it's charging that on Duke's behalf,  
7           isn't it?

8           A.    Well, it's sort of -- well, on Duke's  
9           behalf, it's under its agreement it is doing that.

10          Q.    Remits to you what it charges, doesn't  
11          it?

12          A.    It -- it -- ultimately the PJM does pay  
13          amounts that are, as I understand it, delivered to  
14          generation supply and demand response that is  
15          supplying the capacity.

16          Q.    My question is how much does PJM pay to  
17          you?

18          A.    Well, the amount that currently is being  
19          paid by PJM is the market-based rates.

20          Q.    So PJM pays Duke the same price that it  
21          charges the load-serving entity.

22          A.    Well, PJM delivers, as I said, to  
23          generation supply. I think some of that is going to  
24          Duke Energy Ohio and some I believe is going to  
25          other -- other supply.

1           Q.   Well, let's back off a second then and  
2 talk about how PJM works. Let's forget about FRR  
3 entities for a minute and just talk about the  
4 entities that are subject to the auction. Am I  
5 correct that PJM holds a series of auctions to  
6 establish what the price for capacity will be for a  
7 year period?

8           A.   For -- for entities other than FRR, yes,  
9 that's my understanding.

10          Q.   Okay. And entities that own generation  
11 capacity that supply capacity to PJM are paid that  
12 price for the capacity that they provide?

13          A.   Yes. Those that are not FRR entities,  
14 yes.

15          Q.   And the load-serving entities that serve  
16 the retail customer and use that capacity pay into  
17 PJM that market price based on how much capacity they  
18 use?

19          A.   Yes. My understanding is that PJM  
20 charges the load-serving entities for supply.

21          Q.   So PJM is basically a clearing market  
22 where they collect from people who use it.

23          A.   Well, I think that is a function that  
24 they serve.

25          Q.   But in the capacity market, that's what

1 they do as far as money changing hands, correct?

2 A. Well, I mean, they run the auction.  
3 They, you know, determine how much capacity is needed  
4 to maintain reliability and that sort of thing. I  
5 think all of that is part of it, but in terms of the  
6 money flow, I think you've described it right.

7 Q. All right. Now, let's add in the  
8 component of FRR entities. Am I correct that an FRR  
9 entity would report to PJM how much capacity it had  
10 provided and what its authorized prices for that --  
11 whatever the source of that pricing might be?

12 A. Well, I know that the FRR entity files an  
13 FRR plan and submits that plan for approval by -- by  
14 the PJM.

15 Q. And when it comes to Duke as an FRR  
16 entity, PJM, under the terms of the stipulation, is  
17 billing out Duke's capacity at the market-based  
18 prices currently, correct?

19 A. As I previously testified, PJM is  
20 charging the CRES providers and the wholesale auction  
21 winners for capacity based on the market.

22 Q. I'm talking about Duke as an owner of  
23 capacity resources, is PJM paying you the market  
24 price?

25 MS. SPILLER: Objection, asked and

1 answered.

2 EXAMINER STENMAN: Overruled.

3 A. As I stated previously, currently Duke  
4 Energy Ohio as a provider is -- is receiving  
5 market-based payments from PJM.

6 Q. Now, the stipulation said PJM would  
7 charge both CRES providers and auction winners the  
8 PJM market price, correct?

9 A. That's correct.

10 Q. And that's the amount that PJM has been  
11 paying to Duke also, correct?

12 A. I think I just answered that that PJM  
13 currently is paying Duke Energy Ohio and I think  
14 other generators market price.

15 Q. Okay. Now, at the time the stipulation  
16 in case 11-3549 was entered into, which was October  
17 of 2012 -- 2011, I'm sorry, the auctions for PJM, the  
18 base-rate auction had occurred for the entire ESP  
19 period by that time, correct?

20 A. I believe that is correct, yes.

21 Q. And you knew the final price for the  
22 first energy year of your participation in PJM at  
23 that point, correct?

24 A. When you say "final," you are talking  
25 about the "final zonal"?

1 Q. Yes.

2 A. I believe that's right.

3 Q. So when Duke signed the stipulation, you  
4 understood that the market prices were what they  
5 were, and you knew what the duration of that period  
6 would be.

7 A. We understood what the base residual  
8 auction was for the time period through May of '15.

9 Q. Okay. You have characterized your  
10 capacity service as a wholesale service. When did  
11 Duke first provide capacity as a wholesale service?

12 A. You know, I would say under the  
13 interpretation of the -- of the Commission's order,  
14 the provision of capacity to the CRES providers and  
15 wholesale auction providers was a wholesale service.

16 Q. No. I said when did you start providing  
17 that wholesale service?

18 A. And I think it's when we -- well, I  
19 believe it would have been in January of '12. I'm  
20 not certain of the date but that would be my  
21 recollection.

22 Q. Okay.

23 A. I may be wrong there.

24 Q. Now, consumers of electricity, businesses  
25 and residences, are retail customers, correct?

1           A.    That's correct.

2           Q.    Now, when it comes to wholesale service,  
3 is it the load-serving entity or PJM that you  
4 consider to be the wholesale customer?

5           A.    I believe it would be -- in this  
6 instance, it would be the CRES provider and the  
7 auction winners, would be my belief.

8           Q.    Okay. So the stipulation provides that  
9 the auction winners and the CRES providers will pay  
10 PJM the market prices, correct?

11          A.    That's correct and it -- that is correct.

12          Q.    So that means that the stipulation  
13 established price wholesale customers would pay for  
14 your wholesale service.

15          A.    Well, I may have gotten that wrong  
16 because I think that the stipulation says that the --  
17 that the wholesale -- or the capacity is going to be  
18 provided to PJM, so I think that that's what the  
19 stipulation provides for.

20          Q.    So is PJM your wholesale customer?

21          A.    That's who we are providing capacity to,  
22 as I appreciate it.

23          Q.    PJM is not party to this case, are they?

24          A.    No.

25          Q.    And all the parties agreed that PJM would

1 charge the CRES provider and the auction provider the  
2 market price.

3 MS. SPILLER: Objection, asked and  
4 answered.

5 EXAMINER STENMAN: Overruled.

6 A. The -- I think the stipulation and the  
7 order does provide that PJM will charge the market  
8 price to the CRES providers in the wholesale auction.

9 Q. Okay. So in this case you're proposing a  
10 deferral of the difference between your legacy costs  
11 and these market prices. Is it the retail customer  
12 that would bear that charge ultimately?

13 A. Yes.

14 Q. So Duke's proposal here is to increase  
15 its wholesale price and collect the wholesale price  
16 from the retail customer?

17 MS. GRADY: I'm sorry, can I have the  
18 answer or the question -- a question ago reread  
19 before you quickly.

20 MR. HART: Sure.

21 MS. GRADY: I tried too quick.

22 (Record read.)

23 MR. HART: I don't recall if I got an  
24 answer to the second question, if we could read that  
25 back.



1 (Record read.)

2 A. Well, I guess I would distinguish between  
3 the service we are providing and the payment, the  
4 wholesale service is not being provided to the retail  
5 customer, but we are collecting for that in two  
6 forms. You know, one, we're collecting the market  
7 price ultimately, and that flows through the PJM; and  
8 then the second component is a retail payment, which  
9 is the deferral amount.

10 Q. Right. But you have testified that your  
11 wholesale customer is PJM, correct?

12 A. I think I've said I'm not real clear on  
13 that, it would be my answer.

14 Q. Well, wouldn't it be either PJM or the  
15 load-serving entity?

16 MS. SPILLER: Objection, your Honor,  
17 asked and answered.

18 EXAMINER STENMAN: Overruled.

19 A. I think that's accurate. What I am more  
20 clear on is that we are not providing the capacity  
21 directly to the retail customers.

22 Q. All right. And you've agreed, I think,  
23 under questioning of several people here that you are  
24 not proposing to change the amount that PJM charges  
25 the load-serving entity, correct?

1           A.    That's correct.

2           Q.    And I take it now you're also not  
3 proposing to change the amount that PJM pays to Duke.

4           A.    Well, the retail payment provision that  
5 we are talking about here, the retail payment  
6 mechanism is something that we would be recovering  
7 from retail customers.

8           Q.    But my question to you, though, is you  
9 are not proposing to change the amount that PJM  
10 remits to Duke, correct?

11          A.    I think that's correct.

12          Q.    Okay. So when the stipulation doesn't  
13 explicitly say how much Duke will charge PJM for  
14 capacity, you're agreeing with me, aren't you, that  
15 it will continue to be the market price?

16          A.    The amount that PJM -- that comes through  
17 PJM I believe would be the market price, and then  
18 this deferred amount would ultimately be paid by  
19 retail customers.

20          Q.    Okay. Now, you've accepted the market  
21 price for capacity through July of 2012 in this case,  
22 correct?

23          A.    I think that we've received it through  
24 that period, yes. We have accepted that amount so  
25 far.

1 Q. So you're proposing that the rates would  
2 change beginning August of 2012?

3 A. Well, we are proposing that as of August,  
4 2012, we would be entitled to start deferring this  
5 additional amount that we've talked about.

6 Q. All right. Is there anything different  
7 about the capacity service that Duke provided between  
8 January and July of 2012 from the capacity service  
9 that Duke is providing starting in August of 2012?

10 A. And I think this question came up  
11 yesterday. In general, I'm not aware of differences.  
12 There could be some differences in terms of load  
13 amounts and those sorts of things but in general,  
14 they -- it's the same.

15 Q. The nature of the service is exactly the  
16 same.

17 A. I think the nature of the service is the  
18 same, yes.

19 Q. And the facilities you are using to  
20 provide the service are exactly the same?

21 A. At this point, yes, I believe that's  
22 correct.

23 Q. So there's no new service, correct?

24 A. Again, subject to any changes in load,  
25 I'm not aware of new service.

1           Q.    Is it your testimony then that the  
2    deferral of legacy costs in excess of market costs is  
3    not a rate increase?

4           A.    Well, again, as I've said, my  
5    understanding is that the capacity service being  
6    provided by wholesale -- or by an FRR entity is a  
7    wholesale service and not -- not a retail electric  
8    service.  So to the extent that we're talking, so  
9    it's not a charge or rate increase for a retail  
10   service, but there would be a charge to retail  
11   customers that would include this deferred amount.

12          Q.    Well, whether at a wholesale or retail  
13   service, you would agree with me it is a rate  
14   increase?

15               MS. SPILLER:  Objection, your Honor.  
16   This case -- I think that misstates the application  
17   wherein we are not asking for a rate increase.

18               EXAMINER STENMAN:  Overruled.

19          A.    What I would say is we are asking for an  
20   additional payment from retail customers to collect  
21   this deferred amount.  That's how I would say it.

22          Q.    Well, is the deferred amount a rate  
23   increase for wholesale service?

24          A.    Well, again, I'm not sure what you mean  
25   in terms of "rate increase."  I don't think this is a

1 traditional rate case, as I've talked about before,  
2 but there would be an additional payment involved  
3 here.

4 Q. Okay. I would like to turn to the  
5 stipulation for a moment which, I guess, is OCC  
6 Exhibit 1.

7 A. Okay.

8 Q. And I want to turn you to page 7. I'm  
9 sorry, IEU 1?

10 A. IEU 1?

11 Q. I'm sorry. You've got the stipulation,  
12 correct?

13 A. Not yet.

14 Q. Whichever copy you have, we can look at  
15 that. I want to direct your attention to the bottom  
16 of page 7, paragraph No. II.C, which is discussing  
17 riders RC and RE. Do you see that?

18 A. Yes.

19 Q. Let's just talk generally about this.  
20 This section, as I understand it, describes how Duke  
21 will bill retail customers who are taking the  
22 standard service offer, correct?

23 A. I believe that's correct.

24 Q. And those charges were broken into two  
25 components. There's one dealing with capacity and

1 the other dealing with energy?

2 A. I see that.

3 Q. And if you go over to page 8, it  
4 discusses recovering the cost of capacity through  
5 rider RC, correct?

6 A. What --

7 EXAMINER STENMAN: Let's go off the  
8 record.

9 (Discussion off the record.)

10 EXAMINER STENMAN: Let's go back on.

11 MR. HART: I'm sorry, can you read back  
12 the last question.

13 (Record read.)

14 A. Yes. What it specifically says is,  
15 "Rider RC shall recover the cost of capacity  
16 consistent with paragraph B above."

17 Q. Okay. And paragraph B, it talks about  
18 the final zonal pricing, correct?

19 A. Yes.

20 Q. And let's turn to rider RE. It says that  
21 will "recover all remaining auction costs, including  
22 energy, market-based transmission service, and  
23 market-based transmission" auxiliary -- "ancillary  
24 services."

25 What I want to get your understanding is

1 in combination, do riders RC and rider RE cover all  
2 of the costs of providing retail electric service?

3 A. Well, as I said before, in my view, rider  
4 RC addresses the amount that would be -- would flow  
5 through to and be charged to the CRES providers and  
6 the wholesale auction winners. I don't -- I don't  
7 see anything in here that specifically prescribes  
8 what Duke Energy Ohio would be allowed to recover in  
9 the future on capacity costs.

10 Q. Well, I probably wasn't clear with my  
11 question. You understand in the broad vision of  
12 retail electric service, there are different aspects  
13 of that. There are the energy costs, transmission  
14 costs, capacity costs, correct?

15 A. Well, my understanding is that the  
16 provision of capacity by -- in an FRR entity is not  
17 considered to be a retail electric service.

18 Q. All right. Let's try it this way, rider  
19 RC recovers the market PJM price for capacity,  
20 correct?

21 A. Well, it says that "Rider RC shall  
22 recover the costs of capacity consistent with  
23 paragraph B."

24 Q. And that's the market price.

25 A. And, again, I talked about that's the

1 price that is being charged to the wholesale auction  
2 winners and the CRES providers. That's what it says.  
3 That's what B, I guess, refers to the wholesale  
4 auction winners.

5 Q. And there is a whole mechanism we haven't  
6 talked about where those auction price winners,  
7 prices are converted into retail rates, correct?

8 A. If you can point me to a specific place,  
9 I would be happy to --

10 Q. Well, I don't really want to get into it,  
11 but my point is rider RE is intended to cover the  
12 energy piece, correct?

13 A. That is my understanding.

14 Q. That -- when it says it includes all  
15 auction costs, that's everything that it costs Duke  
16 to procure the energy through the auction, right?

17 A. I believe that that is a correct -- I  
18 believe that that's right.

19 Q. And this case doesn't involve any attempt  
20 to increase rider RE, correct?

21 A. That's my -- yeah, that's my  
22 understanding.

23 Q. Okay. And there aren't any costs that  
24 are going unpaid with respect to those components  
25 that are covered in rider RE.



1           A.    I'm not aware of any, but I can't  
2           definitively say that as I sit here today. I haven't  
3           really focused on the energy side in connection with  
4           this particular case, but so -- but I'm not aware of  
5           any.

6           Q.    Okay. So Duke's content with its  
7           recoveries under rider RE right now.

8           A.    We're not seeking any relief with respect  
9           to rider RE right now.

10          Q.    So what this case is about is Duke's  
11          contention that rider RC doesn't recover its embedded  
12          costs of capacity, right?

13          MS. SPILLER: Your Honor, objection. I  
14          think we have talked CK ad nauseam about rider RC and  
15          what it does. I think this has been asked and  
16          answered several times.

17          EXAMINER STENMAN: Overruled.

18          A.    So, again, what this case is about is  
19          that we're seeking to collect fair and reasonable  
20          amounts for the provision of the wholesale service,  
21          which in this case is the capacity service being  
22          provided by FRR, as an FRR entity. That's what the  
23          case is about.

24          Q.    Let me ask you this. Your standard  
25          service offer is a retail service, isn't it?

1           A.    Well, the provision of retail electric  
2    service is included in the standard service offer.  I  
3    believe that's correct.

4           Q.    So only retail customers take the  
5    standard service offer.

6           A.    I think so, but, you know, when we start  
7    getting into real detail on that, I would probably be  
8    better to defer to other witnesses, but that's my  
9    understanding.

10          Q.    And the standard service offer comes with  
11   two components, capacity and energy.

12          A.    Well, again, my understanding is that the  
13   provision of wholesale service, in this case the  
14   capacity provided by an FRR entity, is not covered by  
15   the standard service offer.

16          Q.    All right.  Let's go to page 12 briefly  
17   here and Section IV.A that deals with capacity for  
18   shopping customers.  Now, there's been some  
19   discussion about the attempt to change that second  
20   sentence to say "PJM would charge CRES providers."  
21   Is it correct to say that was a mechanical change  
22   because PJM is actually the one who bills the CRES  
23   providers?

24          A.    I'm not sure what you mean by "mechanical  
25   change."  I think this change accurately reflects

1     what -- what was going to happen, and that is that  
2     PJM was going to charge the CRES providers.

3             Q.     And that's because Duke doesn't send the  
4     bill; PJM does?

5             A.     Well, it's because PJM is charging the  
6     CRES providers, my understanding.

7             Q.     And that's because Duke doesn't directly  
8     charge CRES providers; it goes through PJM.

9             MS. SPILLER:  Objection, asked and  
10     answered.

11             EXAMINER STENMAN:  Overruled.

12             A.     Again, what I would say is that this is  
13     how this works.  PJM charges the CRES providers for  
14     capacity.

15             Q.     Because Duke doesn't, correct?

16             A.     Well, it's just -- I don't know if it's  
17     because Duke doesn't or it's -- I wouldn't limit it  
18     to that.  It's because that's what the agreement  
19     provides for, that PJM will charge the CRES providers  
20     for capacity.

21             Q.     So this paragraph was revised to be  
22     consistent with PJM's mechanism for billing, correct?

23             A.     Well, I think this paragraph was revised  
24     to be consistent with what the understanding was  
25     between the parties.

1           Q.    Which was that Duke wouldn't be the one  
2    sending the bill, that PJM would?

3           A.    No; that PJM would be charging for this  
4    capacity.

5           Q.    Okay.  Now, I don't see anything in  
6    paragraph IV.A that discusses how the CRES provider  
7    would bill capacity to the retail customer.  Do you?

8           MS. SPILLER:  Your Honor, I am going to  
9    object to the relevance of the question insofar as  
10   this stipulation concerns Duke Energy Ohio's standard  
11   service offer.

12          EXAMINER STENMAN:  Overruled.

13          A.    Repeat the question.

14          Q.    Is there anything in the stipulation that  
15   dictates how CRES providers will bill their customers  
16   for the capacity costs they incur?

17          A.    I don't specifically -- it's not in this  
18   particular paragraph, as I read it, and I can't  
19   recall if it's addressed in any other paragraph of  
20   the stipulation.  I just can't recall right now.

21          Q.    Well, isn't it a fact that it's a matter  
22   between the CRES providers and their customers as to  
23   how they charge?

24          A.    I'm not certain of that in this case.  I  
25   know that -- that Duke Energy Ohio is -- is supplying

1 the capacity to PJM. I don't have perfect clarity in  
2 terms of how the CRES providers would be charging for  
3 capacity.

4 Q. You're familiar with DERS, aren't you?

5 A. Yes.

6 Q. And they are a CRES, correct?

7 A. They are.

8 Q. How does DERS bill capacity to its  
9 customers?

10 MS. SPILLER: Objection, your Honor. At  
11 this point we are now getting into competitively  
12 sensitive information of a nonparty, and I think  
13 issues, insofar as CRES providers are concerned, are  
14 nonjurisdictional, and in this stipulation, again,  
15 concerns Duke Energy Ohio's standard service offer.

16 EXAMINER STENMAN: Mr. Hart, do you have  
17 a response?

18 MR. HART: My response was he said he  
19 wasn't familiar with how CRES providers bill  
20 capacity, and then he admitted that he knows how DERS  
21 does it as a CRES. I want to know what he is  
22 familiar with about how they charge for capacity.

23 EXAMINER STENMAN: Overruled.

24 A. I never stated that I knew how DERS was  
25 charging for capacity. And I really don't have an

1 understanding. I know that -- well, I just don't  
2 have an understanding of that.

3 Q. Do you know of any constraints on how  
4 DERS can charge capacity to its retail customers?

5 A. I really have not looked into that.

6 Q. Can a CRES provider charge a flat rate  
7 that does not subdivide capacity and energy?

8 MS. SPILLER: Objection, your Honor,  
9 relevance.

10 EXAMINER STENMAN: Overruled.

11 A. You know, I would ask that -- I don't  
12 really know, and so I would defer to other -- other  
13 witnesses in this case that can address that.

14 Q. Okay. Let's change topics. If we could  
15 go to -- I want to talk about the concept of state  
16 compensation mechanism, and I believe the order from  
17 the AEP case quotes the language from the RAA on page  
18 7, if you could pull that up.

19 A. So if you could refer me to an exhibit  
20 number.

21 Q. I believe that is OCC exhibit --

22 EXAMINER STENMAN: No. 1.

23 A. OCC 1, okay, I have it.

24 Q. And on page 7 there's a quote from a  
25 section of the RRA -- RAA, I'm sorry. Do you see

1       that?

2               A.     Yes.

3               Q.     And I understand that's the basis upon  
4       which Duke is before the Commission and seeking a  
5       state compensation mechanism?

6               A.     Well, when you say "the basis," I  
7       struggle a little bit with that, but certainly  
8       this -- this provision of the RAA references the  
9       ability to collect under a state mechanism.

10              Q.     Okay. I want to focus on that sentence,  
11       which is the second sentence of the paragraph where  
12       it says, "In the case of load reflected in the FRR  
13       Capacity Plan that switches to an alternative retail  
14       LSE, where the state regulatory jurisdiction requires  
15       switching customers or the LSE to compensate the FRR  
16       Entity for its FRR capacity obligations, such state  
17       compensation mechanism will prevail."

18                     What I want to ask you is where or how  
19       has the Ohio Commission required switching customers  
20       or LSE -- LSEs to pay Duke for its capacity?

21              A.     I'm not sure that I can point to a  
22       specific provision so I would probably have to defer  
23       to someone on that.

24              Q.     Isn't that a fundamental prerequisite to  
25       coming here seeking application of the state

1 compensation mechanism?

2 MS. SPILLER: Again, your Honor, to the  
3 extent it is asking for a legal interpretation of the  
4 document, I think it goes beyond the capacity in  
5 which Mr. Trent is testifying today.

6 EXAMINER STENMAN: Overruled.

7 A. And, again, I would just tell you that I  
8 just don't have a specific understanding or knowledge  
9 regarding the particular question you've asked me. I  
10 just can't answer it.

11 Q. So you're saying you don't know the legal  
12 basis whereby CRES providers have to pay Duke for its  
13 capacity?

14 MS. SPILLER: Objection, asked and  
15 answered.

16 EXAMINER STENMAN: Overruled.

17 A. Yeah. And I would stick with what I've  
18 said. I don't have a specific understanding other  
19 than it's my understanding that we would be providing  
20 wholesale service to PJM, and ultimately PJM would be  
21 collecting and paying it at this time based on the  
22 mechanism that's in place now.

23 But in terms of your specific question, I  
24 can't answer it.

25 Q. Well, let me ask you this. Did the



1 Commission's order approving the stipulation in case  
2 11-3549 require load-serving entities to pay Duke for  
3 its capacity?

4 A. I don't recall specifically. I know it  
5 references what would -- that PJM would charge for  
6 the capacity that we've talked about, but I don't  
7 recall specifically the order addressing the issue  
8 you are talking about.

9 Q. Are CRES providers allowed to sell into  
10 Duke's distribution area without buying your  
11 capacity?

12 A. My understanding is that unless a CRES  
13 provider opted out from the FRR plan, they would be  
14 required to -- or that Duke would be providing for  
15 the capacity for the load.

16 Q. Okay. Doesn't the stipulation say that  
17 all CRES providers would buy capacity from Duke?

18 A. If you could refer me specifically, that  
19 would be helpful, to a particular part of the  
20 provision or the stipulation.

21 Q. Isn't that what paragraph IV.A says?

22 A. Paragraph IV.A, as we said before, says  
23 that Duke Energy Ohio shall supply capacity to PJM  
24 which, in turn, will charge for capacity resources to  
25 all CRES providers with the exception for those that

1 had opted out.

2 Q. Okay. And nobody has opted out; is that  
3 right?

4 A. That's my understanding.

5 Q. So this is saying all CRES providers will  
6 pay PJM for capacity at the rate of the PJM market  
7 price, correct?

8 A. That's my understanding.

9 Q. So if we go back to the -- the RAA that  
10 says, "Where the Commission requires the load-serving  
11 entity to compensate the FRR entity, such state  
12 compensation mechanism will prevail," isn't the  
13 stipulation the state compensation mechanism?

14 MS. SPILLER: Objection, your Honor. We  
15 are well into legal issues at this point and issues  
16 appropriately raised by counsel on brief, not  
17 appropriate for Mr. Trent to testify about.

18 EXAMINER STENMAN: Overruled.

19 A. Well, again, what I would tell you is  
20 it's my understanding that we were not precluded from  
21 collecting from retail customers in terms of  
22 provision of the wholesale service, and that's all I  
23 can really tell you on this.

24 Q. All right. Now, the -- I'm sorry, the  
25 RAA doesn't limit how a state compensation mechanism

1 can come into existence, does it?

2 A. I don't think it specifically deals with  
3 how a state mechanism can come into existence.

4 Q. Would you accept such a mechanism might  
5 be implemented by statute?

6 A. It may be.

7 Q. And it might in some state be implemented  
8 by Commission rule or regulation.

9 A. I would certainly think a Commission  
10 could establish a state mechanism.

11 Q. And it could come into play through the  
12 form of an order, as it did in the AEP case.

13 A. Well, that was what I was talking about,  
14 yeah, before, yes.

15 Q. Well, I am not talking about an order. I  
16 first asked about regulations or rules.

17 A. Oh, okay.

18 Q. Do you know of any regulation or rule in  
19 Ohio that establishes a state compensation mechanism?

20 A. Well, not specifically with respect to  
21 the provision of the wholesale service that we're  
22 talking about here.

23 Q. And, likewise, there's no statute that  
24 specifies the state compensation mechanism, is there?

25 A. I am not aware of a specific statute that

1 specifies it, although I do know that the Commission  
2 had indicated that it believed it had jurisdiction to  
3 do that under the general statutes that it cited.

4 Q. And it did that in the AEP case through  
5 an order, correct?

6 A. That's right.

7 Q. There is no statute that told the  
8 Commission to do that or how to do that.

9 A. Not that I recall.

10 Q. And in the AEP order the Commission  
11 stated it was establishing a state compensation  
12 mechanism for AEP, correct?

13 A. Well, as said before, my interpretation  
14 is that they established a framework where if I am an  
15 FRR entity and providing this, this capacity service,  
16 and earning an unreasonably low return, that this  
17 recovery would be appropriate. They also talked in  
18 terms of ensuring that utility receive just and  
19 reasonable compensation for that service.

20 Q. Well, I appreciate that's your  
21 interpretation, but I would like you to look at page  
22 38 of the AEP order.

23 A. Can you tell me --

24 Q. We just had that a minute ago, OCC 1.

25 A. Okay. All right. I've got it.

1           Q.    And I am looking at the ordering clause,  
2           and the third one says, "Ordered, that the state  
3           compensation mechanism for AEP-Ohio be adopted as set  
4           forth herein," correct?

5           A.    I do see that, yes.

6           Q.    Okay. It didn't say the general state  
7           compensation mechanism for everybody, did it?

8           A.    That particular language doesn't say  
9           that, but, again, I think it would be unfair to apply  
10          the principles differently to similarly situated  
11          utilities.

12          Q.    Let's talk about ratemaking generally.  
13          Duke's approach to this capacity case is the  
14          traditional rate of return sort of analysis, correct?

15          A.    Well, the formula that we have used  
16          involves the use of a rate of return.

17          Q.    So you have compiled the assets that are  
18          involved in the service, the O&M expense, that sort  
19          of thing, and followed the same approach you would do  
20          for a distribution case, say, correct?

21                MS. SPILLER: Objection, it misstates the  
22          testimony.

23                EXAMINER STENMAN: Overruled.

24          A.    Yeah. I don't think it's the same as in  
25          a rate case. I mean, in this instance we've got

1 different credits and things for, you know, margins  
2 associated where energy sales and ancillary services  
3 and that sort of thing. So it's using the ratemaking  
4 principles, but I would distinguish from a rate case.

5 Q. Well, let's focus on the embedded cost to  
6 capacity. That would be the same approach you  
7 would -- you would have used for capacity in the days  
8 when generation was regulated, isn't it?

9 A. For that specific component, the  
10 ratemaking principles that were involved throughout,  
11 you know, the past by the Commission would be similar  
12 to what we are doing here, yes.

13 Q. Okay. Now, in a traditional rate case,  
14 it can terminate either through a Commission order or  
15 through a stipulation of the parties, correct?

16 MS. SPILLER: I am going to object to the  
17 form of the question.

18 EXAMINER STENMAN: Overruled.

19 A. Certainly any case in front of a  
20 commission could be resolved by -- by an agreement,  
21 including a rate case.

22 Q. Okay. What about a case to establish a  
23 state compensation mechanism, can that be resolved  
24 through a stipulation?

25 A. I would assume so.

1           Q.    Okay.  So speaking very hypothetically,  
2    in this case, if this case were to resolve through a  
3    stipulation, would the outcome of the case be a state  
4    compensation mechanism?

5           MS. SPILLER:  I am going to object to the  
6    form of the hypothetical.  I think it assumes facts  
7    not in evidence.

8           EXAMINER STENMAN:  Overruled.

9           A.    Well, again, we are seeking to have a  
10   state based -- or cost -- a state cost-based  
11   mechanism apply here, and I suppose that could be  
12   established either through an order -- well, it would  
13   include an order in all respects, whether it was an  
14   order approving the stipulation or a ruling on the  
15   application.  I think this could go either way.

16          Q.    So going back to the general concept of a  
17   state compensation mechanism, would you agree with me  
18   that one could be established through a statute or  
19   regulation or rule, a commission order, or a  
20   stipulation approved by a commission?

21          MS. SPILLER:  Objection, asked and  
22   answered.

23          EXAMINER STENMAN:  Overruled.

24          A.    Well, I think that the stipulation itself  
25   wouldn't establish it, but I think you would need an

1 order from the Commission opining on the stipulation.

2 Q. I believe that was part of my question, a  
3 stipulation approved by an order.

4 A. Okay.

5 Q. So you would agree any of those  
6 mechanisms could be a state compensation mechanism  
7 within the meaning of the RAA?

8 A. Depending on what was being addressed in  
9 the stipulation, yeah. I would think that would be  
10 accurate.

11 Q. Well, I want to compare this case to the  
12 original application in 3549. In this case you're  
13 following an embedded cost approach for your  
14 capacity.

15 A. Well, we're seeking to recover for the  
16 wholesale service we're providing using a cost-based  
17 methodology, yes.

18 Q. Okay. And rate of return.

19 A. Well, the calculation involves a rate of  
20 return.

21 Q. Okay. And you're seeking to create a  
22 nonbypassable rider that would eventually collect the  
23 difference between those costs and your market-based  
24 recovery.

25 A. We are seeking to -- to recover through a



1 nonbypassable rider that would be deferred.

2 Q. Now, I want to go back to case 11-3549  
3 and talk about Duke's original application. The  
4 original proposal there was that all customers would  
5 be required to buy capacity from Duke directly,  
6 correct?

7 MS. SPILLER: Your Honor, if I may, I  
8 think we've covered this at length with Ms. Bojko,  
9 having her read a certain portion of Mr. Trent's  
10 testimony as well as the application into the record.  
11 This has been asked and answered.

12 EXAMINER STENMAN: Overruled.

13 A. So in the original application the  
14 provision -- there was a provision, a proposal that  
15 the provision or capacity would be made directly to  
16 retail customers and that that would be cost based.

17 Q. And that would be nonbypassable, correct?

18 A. I believe that's right, yes.

19 Q. So if a customer chose to have a CRES  
20 provider, they would only be buying energy from the  
21 CRES provider. They would still be buying capacity  
22 from Duke.

23 A. I believe that's correct.

24 Q. And the price of capacity that was being  
25 proposed in that case was also traditional rate of

1 return embedded costs.

2 A. I can't recall specifically how the  
3 calculation was made. I don't think it's exactly the  
4 same as how we're looking at it here, but it did  
5 involve traditional ratemaking principles and using a  
6 rate of return.

7 Q. All right. Well, that was Duke's ask.  
8 And do you recall that the customer intervenors  
9 essentially said no to that?

10 A. Well, I certainly recall that there were  
11 intervenors that filed and didn't agree with what we  
12 were seeking.

13 Q. And the position of at least most  
14 customers was that capacity had to be based on cost.

15 MS. SPILLER: I am going to object to the  
16 extent there is no foundation whatsoever for what  
17 intervenors may have said.

18 EXAMINER STENMAN: Overruled.

19 MR. DARR: May I have that question  
20 reread, please.

21 (Record read.)

22 MR. HART: Strike that question. I  
23 misspoke.

24 Q. The position of the customers generally  
25 was that capacity had to be charged at market price.

1 MS. SPILLER: Again, your Honor, object  
2 to the form. I think this is hearsay. Nothing in  
3 that record as to what intervenors may have asserted  
4 their position to be.

5 EXAMINER STENMAN: Overruled.

6 A. You know, I don't have a specific memory  
7 of what each of the intervenors were stating. I  
8 wouldn't be surprised there were objections to having  
9 capacity based on costs, but -- but I don't have a  
10 specific memory of each intervenor's position.

11 Q. Fair enough. The original proposal did  
12 not include the ESSC, correct?

13 A. I think we talked about that earlier. I  
14 don't think it included the ESSC. That's my memory.

15 Q. But the ESSC became a major topic of the  
16 settlement negotiations in that case, didn't it?

17 A. Well, you put the adjective "major"  
18 topic. It was certainly a topic that was discussed,  
19 as I appreciate. I was not involved directly in the  
20 discussions, but I understand that that was a topic  
21 that was discussed.

22 Q. Was someone reporting to you on what was  
23 going on?

24 MS. SPILLER: Objection, your Honor. If  
25 I may, I think conversations as to what may have

1 occurred in settlement negotiations that ultimately  
2 culminated in a stipulation are clearly outside of --  
3 of admissibility in this proceeding.

4 MR. HART: Your Honor, I only asked a  
5 foundation question of whether he knew what was  
6 happening. I didn't ask what was said or who said  
7 it. I just asked if he had been apprised of what was  
8 going on.

9 MS. SPILLER: And, your Honor, to the  
10 extent they are reaching now into attorney-client  
11 communications, I think this is impermissible  
12 questioning.

13 EXAMINER STENMAN: The objection will be  
14 overruled.

15 A. I was receiving some reports  
16 periodically.

17 Q. Were you involved in the decision-making  
18 process to settle that case?

19 A. Yeah. I think I previously testified I  
20 was involved in the approval.

21 Q. And who ultimately made the approval from  
22 Duke?

23 A. You know, I can't recall specifically if  
24 this was something that -- that would have -- well,  
25 whether it went through a TRC process and then was

1 approved by Mr. Rogers or whether it was approved by  
2 a subset of the TRC. I just cannot recall, but it  
3 would have been one of those two.

4 Q. And this is at a time when you were a  
5 member of the TRC?

6 A. Yes.

7 Q. So you were involved in those  
8 discussions?

9 A. Yes, I would have been.

10 Q. So you were aware of what was on the  
11 table?

12 A. Yeah, I was aware of generally what was  
13 on the table.

14 Q. And the TRC at the time knew what the  
15 three-year forward prices were for PJM, correct?

16 A. I don't know if every member of the TRC  
17 had that knowledge or not, but it was available, yes,  
18 as we've talked about before.

19 Q. That was available to you, and also  
20 available to you was the December, 2010, decision in  
21 the AEP case establishing market as a cost-based  
22 state mechanism, correct, or at a state compensation  
23 mechanism?

24 A. I'm not sure that there was any sort of  
25 discussion about AEP creating a -- or AEP case having

1 a state cost-based mechanism at that point in time.  
2 I don't remember that being discussed.

3 Q. But that decision was available to Duke  
4 as a resource, correct?

5 A. You know, we talked earlier about a  
6 decision. I'm not sure of the timing of the  
7 decision, but to the extent there was a decision in  
8 the AEP case or an interim decision, you know, it  
9 certainly would be public record.

10 Q. Okay. You were aware, were you not, that  
11 there were offers and counteroffers being made as to  
12 the amount of the ESSC charge?

13 MS. SPILLER: Your Honor, again, I think  
14 settlement negotiations and what may have occurred in  
15 that case are irrelevant for purposes of this  
16 proceeding, and Mr. Hart is, I think, dancing  
17 gingerly around attorney-client commun -- the  
18 attorney-client privilege here.

19 MR. HART: I have never been accused of  
20 dancing gingerly before.

21 EXAMINER STENMAN: Do you have a more  
22 substantive response?

23 MR. HART: I'm not asking anything about  
24 what was said. I am only asking whether he was aware  
25 of the different offers and counteroffers that had

1       been made.

2                   MS. SPILLER: And, your Honor, that  
3       knowledge would come from counsel.

4                   EXAMINER STENMAN: The objection will be  
5       overruled.

6                   A.    What I would say is I was receiving  
7       periodic reports, as I mentioned before, in terms of  
8       positions, you know, that were communications coming  
9       to me through counsel.

10                  Q.    I am not asking you what your counsel  
11       told you. But would it be fair to say that  
12       eventually it came before the TRC a proposal that was  
13       essentially the stipulation that was entered?

14                  A.    And as I have said before, I can't recall  
15       whether that came before the TRC or whether it was a  
16       subset. I just don't know. I don't recall, but it  
17       was approved.

18                  Q.    Okay. But you were a member of the  
19       subset that was looking at it, weren't you?

20                  A.    I would have been, yes.

21                  Q.    Okay. So it came before the TRC that  
22       there was a proposal that would include capacity at  
23       market price plus this ESSC charge of \$110 million a  
24       year for ten years, correct?

25                  MS. SPILLER: Objection, misstates

1 Mr. Trent's prior testimony as well as the  
2 stipulation.

3 EXAMINER STENMAN: Overruled.

4 A. So, again, I've stated that I don't  
5 recall whether it came to the TRC or a subset of the  
6 TRC, and --

7 Q. Well, let me amend my question. TRC or  
8 some subset thereof, and then if you can answer that  
9 question.

10 A. All right. And, again, you referenced  
11 capacity at market prices, and I would refer back to,  
12 you know, what was included in this stipulation, and  
13 we've kind of gone through that in terms of rider RC  
14 and what PJM would charge to the CRES providers and  
15 the wholesale auction winners.

16 Q. Let me ask you this, Duke had a choice to  
17 make, correct? It could either litigate the ESP case  
18 based on its application or sign the stipulation.

19 A. Well, those are two choices that were  
20 available to us. I would agree with that.

21 Q. And Duke chose the stipulation over the  
22 risks of litigation.

23 A. Well, Duke chose --

24 MS. SPILLER: Your Honor, I think again  
25 we're asking about legal strategies, legal opinions.



1 The fact of the matter is the case did result in a  
2 stipulation that was approved by this Commission and,  
3 again, Mr. Hart, I think at this point, is really  
4 asking Mr. Trent to reveal attorney-client  
5 communications and legal strategies.

6 EXAMINER STENMAN: Overruled.

7 A. So what I would say is that Duke chose to  
8 enter into the stipulation based on the terms that  
9 are in the stipulation.

10 Q. Okay. And Duke's -- there's nothing in  
11 the stipulation that says Duke will recover its  
12 embedded costs of the capacity, is there?

13 A. As I've said before, my review of the  
14 stipulation, it does not address what Duke Energy  
15 Ohio will or won't recover with respect to capacity.

16 Q. Would you turn to the stipulation briefly  
17 here. Do you have that in front of you?

18 A. Yes.

19 Q. Turn to page 4.

20 A. Okay.

21 Q. You see the "whereas" clause that says,  
22 "All of the related issues and concerns raised by the  
23 Parties have been addressed in the substantive  
24 provisions of this Stipulation and reflect, as a  
25 result of these discussions and compromises by the

1 Parties, an overall reasonable resolution of all such  
2 issues"?

3 A. You read that correctly.

4 Q. Okay. And there's nothing in the  
5 stipulation that says Duke will recover embedded  
6 costs of capacity, is there?

7 A. No. As I said before, there's nothing  
8 one way or the other.

9 Q. Now, I want to go back to the ESSC real  
10 quick. What service does Duke provide in exchange  
11 for payment of that ESSC?

12 A. Well, the Commission order specifically  
13 refers to that being a retail service that's in  
14 exchange for a retail service that's being provided.  
15 It's easier for me to say what's not in exchange then  
16 because the Commission has also said that wholesale  
17 capacity is not for -- is not a -- the capacity is  
18 not retail service.

19 But in terms of what it is, I mean, it's  
20 services that a -- that are provided by the company  
21 that are retail services, in general, is sort of how  
22 I view it. So --

23 Q. Well, let's break that down then. One of  
24 the retail services the company provides is  
25 distribution service, correct?

1           A.    Yes.

2           Q.    And the ESSC is not compensation for  
3 distribution, is it?

4           A.    I don't view it as compensation for  
5 distribution, no.

6           Q.    And the company provides transmission  
7 service, correct?

8           A.    That's correct.

9           Q.    Are any of the retail transmission  
10 services compensated by the ESSC?

11           MS. SPILLER: Your Honor, I am going to  
12 object to the extent this is misstating again the  
13 stipulation, Mr. Trent's testimony, and the fact that  
14 this ESP concerned an SSO of competitive retail  
15 electric service. I think the form of Mr. Hart's  
16 question is lacking and inappropriate.

17           EXAMINER STENMAN: Overruled.

18           Q.    Can you answer the question?

19           THE WITNESS: I need the question back,  
20 I'm sorry.

21           (Record read.)

22           A.    You know, I can't say for certain whether  
23 it is or it isn't, would be my answer.

24           Q.    Let me ask these questions a little  
25 different way. Are all the costs of Duke providing

1 retail transmission service covered by the retail  
2 transmission tariff?

3 A. Generally speaking, I think that would be  
4 the case.

5 Q. And the same is true of distribution?

6 A. Generally speaking, I think that would be  
7 the case.

8 Q. Okay. The only other things left besides  
9 distribution and transmission is generation, right?

10 A. Well, there is generation. I mean, they  
11 are sort of administrative services that are  
12 provided.

13 Q. Aren't those administrative services  
14 built into the rates?

15 A. You know, I'm not sure.

16 Q. Okay. Well, let's talk about the  
17 generation piece. You would agree with me that  
18 that's got two components, capacity and energy?

19 A. I agree with that.

20 Q. And we looked at the rider RC and rider  
21 RE, and you agree with me that rider RE covers all of  
22 Duke's auction costs to procure energy, correct?

23 A. Yeah, I believe that's correct. I'm not  
24 certain that we read that provision. I recall that.

25 Q. But Duke is not supplying any of its own

1 energy now. It's buying it all at auction through  
2 third parties, right?

3 A. That is my understanding today, yes.

4 Q. And so any Duke Energy costs are covered  
5 by the auction costs?

6 A. I'm sorry, you said --

7 Q. Any cost that Duke incurs to provide  
8 energy to its retail customers is included within the  
9 auction costs.

10 A. I'm not certain of that.

11 Q. Can you name one cost of energy  
12 procurement that's not?

13 A. As we sit here right now, no, I can't. I  
14 just don't know.

15 Q. Okay. So that leaves us with the  
16 capacity costs. Would you agree with me that the  
17 market prices that Duke is charging for capacity  
18 today does not cover its embedded generation costs --  
19 capacity costs, I should say?

20 A. Could you please state that one more  
21 time.

22 Q. That the amount Duke is recovering  
23 through rider RC for capacity at the market price is  
24 not covering Duke's embedded costs of providing  
25 capacity.

1           A.   Well, again, as I've testified before, I  
2   don't -- I don't view that the amounts collected  
3   through rider RC are being paid to do. We've kind of  
4   gone through that in terms of that mechanism so I  
5   guess I would disagree with that premise.

6           Q.   So, well, is there any source of capacity  
7   income to Duke other than rider RC with respect to  
8   SSO customers?

9           A.   Well, my understanding is that PJM is the  
10   entity that's currently paying.

11          Q.   Paying whom?

12          A.   Well, it's flowing through to the people  
13   who are providing generation for capacity, which  
14   includes Duke Energy Ohio as well as, I believe,  
15   demand response providers and other generation  
16   suppliers.

17          Q.   Well, in the SSO isn't Duke the one  
18   billing retail customers for capacity?

19          A.   The rider RC is the mechanism by which  
20   the retail customers are paying amounts into that  
21   rider, and then those amounts are being, as I  
22   appreciate it, paid over to the CRES providers in the  
23   wholesale auction winners.

24          Q.   They, in turn, pay PJM for the capacity?

25          A.   That is my understanding.

1           Q.    And, in turn, PJM pays Duke for that  
2 capacity.

3           A.    PJM does pay Duke for the capacity.

4           Q.    So through a chain of transactions, the  
5 revenue that's generated by rider RC ends up with  
6 Duke.

7           A.    Well, currently the amounts in rider RC  
8 equal the amounts that are being paid to Duke Energy  
9 Ohio.

10          Q.    And as things stand today, those -- that  
11 flow of funds is the only compensation Duke is  
12 receiving for capacity.

13               MS. SPILLER:  I am going to object to the  
14 characterization of the flow of funds, and I also  
15 think we have asked and answered this question  
16 several times now.

17               EXAMINER STENMAN:  Overruled.

18          A.    So my understanding is that currently the  
19 amounts being paid for capacity to the generators,  
20 including Duke Energy Ohio, are coming from PJM, and  
21 that's the market-based price right now.

22          Q.    All right.  And there's no other income  
23 or revenue service to Duke that's directed to  
24 covering its capacity costs other than that.

25          A.    Not that I am aware of.

1           Q.    And your contention in this case is that  
2   Duke's capacity costs are much greater than what it's  
3   recovering today.

4           A.    My -- our contention is that we're  
5   receiving an unreasonably low return on the costs; in  
6   fact, a negative return if you look at the  
7   generation, the legacy assets, and that we are  
8   entitled to recover a fair and reasonable  
9   compensation for the provision of capacity.

10          Q.    All right. So let me summarize here. If  
11   we look at all the components of providing retail  
12   electric service; generation, including capacity and  
13   energy; distribution and transmission, the only of  
14   those components in which Duke is not covering its  
15   costs today is capacity.

16          A.    As I said, I'm not certain of that, but I  
17   should add that as part of this stipulation, Duke did  
18   give up some revenue streams that it lost, and  
19   specifically it agreed that all of its auction -- all  
20   of its load would go to auction immediately and that  
21   it would not participate -- that Duke Energy Ohio  
22   would not participate in that auction, and it's my  
23   understanding that that was also part of the  
24   agreement.

25          Q.    All right. I'll wrap up here quickly.



1 You understand that when the stipulation was filed  
2 with the Commission that there was testimony filed by  
3 various parties in support of the stipulation?

4 A. Well, I am specifically -- we've talked  
5 specifically about the Julie Janson testimony, and I  
6 assume there was other testimony filed as well.

7 Q. Okay. Now, do you take any issue with  
8 anything that Ms. Janson said in her testimony? Do  
9 you want to change it or retract any of it?

10 A. Well, I'm not here to interpret or change  
11 Ms. Janson's testimony. What I would say is that at  
12 the time she filed that testimony, certainly the  
13 company did not have knowledge that the Commission  
14 was going to declare the provision of capacity by an  
15 FRR entity as being a wholesale service; nor did we  
16 have knowledge that the Commission was going to  
17 establish a state based -- or state cost-based  
18 capacity mechanism, so those things changed as well  
19 as the returns that we achieved, so there has been a  
20 change of circumstances and information. But I'm not  
21 here to try to correct Ms. Janson's testimony.

22 Q. Let me ask that a little more  
23 specifically. Going back to the time at which that  
24 testimony was filed, is there anything that you  
25 believe to be inaccurate or incorrect about it at

1       that time?

2                   MS. SPILLER:  Objection, asked and  
3       answered.

4                   EXAMINER STENMAN:  Overruled.

5           A.     As far as I know, it was accurate at the  
6       time based on the information that was available.

7           Q.     Okay.  You are aware that Mr. Wathen also  
8       filed testimony on behalf of the company?

9           A.     I believe he did.

10          Q.     Do you know if anything is incorrect,  
11       inaccurate, or that you want to change as of the time  
12       that testimony was filed?

13                  MS. SPILLER:  Objection, lack of  
14       foundation.

15          A.     You know, what I would say is I would  
16       defer to Mr. Wathen.  I know he is going to testify  
17       in this case, so I would probably defer to him in  
18       terms of his testimony.

19          Q.     Okay.  And just generally as to any other  
20       party that may have filed testimony in support of the  
21       stipulation, do you personally take issue with  
22       anything they said about the stipulation?

23                  MS. SPILLER:  Objection, lack of  
24       foundation.

25          A.     Yeah.  I haven't reviewed the other

1 testimony.

2 MR. HART: Thank you. That's all my  
3 questions.

4 EXAMINER STENMAN: Mr. Jones?

5 MR. JONES: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Jones:

9 Q. Mr. Trent, I'm John Jones. I represent  
10 the staff in this proceeding.

11 Mr. Trent, Duke's election to be an FRR  
12 entity started January 1, 2012, and that will  
13 continue through to May 31, 2015, correct?

14 A. That's correct.

15 Q. Okay. And also consistent with the  
16 stipulation that was filed in 11-3549, the electric  
17 security plan, the term of that plan is from January  
18 1, 2012, through May 31, 2015, correct?

19 A. The term of the ESP plan? I'm trying to  
20 remember if it's through -- through 2015 or whether  
21 it's through 2014. I just can't recall. I was  
22 thinking it was through '14, but I may be mistaken.

23 Q. Okay. If you would refer to the Exhibit  
24 IEU Exhibit 5, please.

25 A. Okay. I've got it.

1           Q.    And if you would turn to page 4 under  
2   Roman Numeral I, "Term," and read the first sentence,  
3   please.

4           A.    Yes.  Yes, it does refer ending May 31,  
5   2015, so I stand corrected.  Thank you.

6           Q.    Thank you.  And I also want to refer you  
7   to Ms. Janson's testimony, which is marked as IEU  
8   Exhibit 6, I believe.  Do you have that before you?

9           A.    It's here somewhere.  I do have it.

10          Q.    Okay.  Would you please turn to page 6,  
11   please.

12          A.    Yes.

13          Q.    And on the -- at the first paragraph  
14   that's not a complete paragraph but the top of the  
15   page, and if you look at the last sentence of that  
16   paragraph where it starts with "Significantly," there  
17   Duke had agreed that all suppliers, including --  
18   including CRES providers, will be charged the same  
19   rate for capacity during the term of this ESP, with  
20   the limited exception of those CRES providers that  
21   opted out of the company's FRR plan for the first  
22   five months of 2012.  Do you see that?

23          A.    Yes.  Yes, that's correct.

24          Q.    Okay.  So that's a term that Duke agreed  
25   to that would provide for market rates charged to

1 CRES providers for the term of the ESP; is that  
2 accurate?

3 MS. SPILLER: Objection, your Honor.

4 THE WITNESS: I think we've addressed the  
5 charges to the suppliers in this case.

6 EXAMINER STENMAN: Overruled.

7 A. Well, I think this references that --  
8 this specific sentence says that all suppliers will  
9 be charged the same rate which would include CRES  
10 providers that haven't opted out for the term of the  
11 ESP.

12 Q. That's right. So if you read that  
13 language in its proper context, that's saying that  
14 CRES providers will be charged for the term of the  
15 ESP market rates, correct?

16 A. I think that's accurate, and as we've  
17 talked about before -- I think that's accurate, yes.

18 Q. Okay. I want to -- I want to refer your  
19 attention now to your testimony on page 4.

20 A. Okay.

21 Q. And that at lines 6 and 7 you make the  
22 statement in your testimony that Duke Energy Ohio is  
23 not receiving just and reasonable compensation for  
24 the capacity services it must furnish as an FRR  
25 entity. Do you see that?

1           A.     I do.

2           Q.     And isn't it's true, Mr. Trent, that  
3     that's Duke's position after -- after the time that  
4     the AEP decision in 10-2929-EL-UNC became effective;  
5     isn't that correct?

6           A.     Well, it -- it certainly currently the  
7     position that we're taking based as I said before  
8     on -- on -- in part on the fact that our -- our ROEs  
9     have continued to spiral downward. It's also  
10    accurate we filed this -- this request subsequent to  
11    the Commission order in July in the AEP case.

12          Q.     And it's also true that this -- this  
13    position didn't come about until after that decision  
14    was made by the Commission; isn't that correct,  
15    Mr. Trent?

16                 MS. SPILLER:  Objection, asked and  
17    answered.

18                 EXAMINER STENMAN:  Overruled.

19          A.     You know, I don't -- I don't recall  
20    specifically when -- when we determined that we  
21    weren't receiving just and reasonable rates, but  
22    certainly what I would say is that the Commission's  
23    order focused us on this issue, and as I said  
24    earlier, the fact that our returns continued to  
25    spiral downward focuses on the issue.

1           Q.    Back at the time Duke entered into the  
2           Stipulation and Recommendation that was filed with  
3           the Commission, and I'm referring to IEU Exhibit 5  
4           that was filed on October 24, 2011, Duke then  
5           believed that it was receiving just and reasonable  
6           compensation for its capacity services, isn't that  
7           correct, Mr. Trent, pursuant to that agreement?

8           A.    Yeah. I don't -- I don't recall  
9           specifically if we made a determination that we were  
10          receiving just and reasonable compensation for the  
11          capacity services. I don't recall us specifically  
12          making that determination.

13          Q.    So you would have entered into that  
14          agreement not knowing what your position was as to  
15          whether or not you are receiving just and reasonable  
16          compensation for capacity -- for your capacity  
17          services?

18          A.    I wouldn't say -- I wouldn't say that. I  
19          would just say that I don't recall specifically us  
20          making that determination in connection with the  
21          stipulation.

22          Q.    Okay. I want to talk about rider ESSC.  
23          That is a nonbypassable -- nonbypassable generation  
24          charge; is that correct?

25          A.    It is a nonbypassable charge.

1 Q. Generation charge?

2 A. Well, and I can't recall whether it  
3 specifically talks about generation charge. It  
4 may -- it also is referred to as a retail -- charge  
5 for retail electric service.

6 Q. Okay. Mr. Trent, I want to refer your  
7 attention back to the Stipulation and Recommendation,  
8 IEU Exhibit 5, on page 15.

9 A. Okay.

10 Q. And would you read for me the first  
11 sentence there under Roman numeral VII, "Ohio  
12 Policy," A. Read that first sentence of that  
13 paragraph, please.

14 A. Yes. It says, "For the calendar years  
15 2012, 2013, and 2014 of the ESP Duke Energy Ohio  
16 shall recover, annually, the -- "via a nonbypassable  
17 generation charge called the Electric Service  
18 Stability Charge Rider, (Rider ESSC), an amount  
19 intended to provide stability and certainty regarding  
20 Duke Energy Ohio's provision of retail electric  
21 service as an FRR entity while continuing to operate  
22 under" the -- "under an ESP."

23 Q. So there, Mr. Trent, you would agree with  
24 me it's clearly expressed there in what you just read  
25 that that is a nonbypassable generation charge,



1 correct?

2 A. Yes. But as I said, it goes on to talk  
3 about in connection -- regarding the provision of  
4 retail electric service, so to make sure that was  
5 complete there.

6 Q. And that rider was intended to compensate  
7 Duke for its generation service -- generation assets,  
8 correct?

9 MS. SPILLER: Objection, I think this  
10 mischaracterizes the testimony that's already been  
11 asked and answered today.

12 EXAMINER STENMAN: Overruled.

13 A. So my -- my appreciation, understanding,  
14 was that this was primarily an exchange for us  
15 agreeing to go to market immediately, which at that  
16 time we had a significant amount of load that had not  
17 switched and we were earning significant margins, and  
18 so we effectively gave that up by going to market  
19 immediately. And then Duke Energy Ohio agreed not to  
20 participate in the auction. That's what I thought  
21 was being given up in exchange for this stability  
22 charge.

23 Q. So it's still related to your generation  
24 assets, correct, as to what you just described?

25 A. Well, I would say it's relating to the

1 margin that we were recovering from customers that  
2 had not switched, is how I would characterize that.

3 Q. Mr. Trent, I want to cover -- Mr. Hart  
4 covered with you about your wholesale rate, and I  
5 want to ask you as a follow-up to his questions.  
6 Now, there's part of your rate, your 224.15 a  
7 megawatt-day, that rate, there's a retail component  
8 to that rate, correct?

9 A. Well, and I wanted to distinguish between  
10 retail payment and a retail service. But -- but,  
11 yes, that -- there is what I would call a retail  
12 payment associated with that.

13 Q. And can you describe what part of that  
14 would be the retail payment?

15 A. Well, the currently receiving market and  
16 then the retail component -- retail payment would be  
17 the difference between what we're receiving from the  
18 market component and the cost-based formula that --  
19 and calculation that is being proposed here in this  
20 proceeding.

21 Q. And that's the balance of the deferral  
22 you are requesting in this application?

23 A. That's correct.

24 Q. And that's a rate that's being collected  
25 through a nonbypassable rider that all customers

1 would be paying?

2 A. That's correct.

3 Q. And that's also how the rider ESSC is  
4 structured, right, as a nonbypassable rider that's  
5 collected as a rate from all customers shopping and  
6 nonshopping, correct?

7 MS. SPILLER: Objection to the relevance.

8 EXAMINER STENMAN: Overruled.

9 A. So I just want to make sure I'm clear.  
10 You said I would agree with you that both the rider  
11 we're seeking here and the ESSC are nonbypassable.

12 Q. And they are both retail rates.

13 A. Well, they are both charged to retail  
14 customers, is what I would say.

15 Q. And they are retail rates?

16 MS. SPILLER: Objection, asked and  
17 answered.

18 EXAMINER STENMAN: Overruled.

19 MR. JONES: I don't believe he answered  
20 that part, your Honor.

21 A. And I am not sure I distinguish between a  
22 retail rate and an amount charged, but it's clearly  
23 charged to retail customers through this rider that  
24 we've described.

25 Q. So you're saying it's not distinguishable

1 between a rate and a charge and it's a rate, correct?

2 A. Well, I just don't -- I don't know if  
3 it's a rate, you know, as opposed to a charge. In my  
4 view I've always thought about it being a charge.

5 Q. And, Mr. Trent, you had testified that  
6 you had -- were a part of the review and approval  
7 process for the stipulation in 11-3549; is that  
8 correct?

9 A. Yes.

10 Q. And you're familiar with who were parties  
11 in that proceeding, correct?

12 A. Generally, yes. I think the parties were  
13 identified in the stipulation.

14 Q. P -- PJM was not a party in that  
15 proceeding, was it?

16 A. They were not.

17 Q. So when you -- when Duke promised RPM  
18 market prices in that stipulation, that was -- that  
19 was Duke, not PJM making that promise, correct?

20 MS. SPILLER: I am going to object to the  
21 extent this mischaracterizes the stipulation as well  
22 as Mr. Trent's testimony today.

23 EXAMINER STENMAN: Overruled.

24 A. So I'm not -- when you say "promise," I'm  
25 not sure exactly what you're talking about. I would

1 say, again, that the provisions dealing with how this  
2 would be charged, this was a specific stipulation  
3 that PJM would be the one charging the CRES providers  
4 and so that was part of the agreement. That's what  
5 was in the agreement. I also understand that PJM,  
6 while not being a party to the agreement, was aware  
7 that that provision was going to be in the agreement.

8 Q. Well, I am not going to go over this.  
9 It's been gone over many times, but I am referring  
10 you -- where I am referring to, I am referring to the  
11 stipulation on page 12 under Roman numeral IV.A.  
12 You've now read the provision several times here  
13 today and I think you're pretty familiar with that at  
14 this time, are you not?

15 A. I've read it several times today and  
16 yesterday, yes.

17 Q. Okay. And even with the change to that  
18 paragraph, as it was a typographical error, that --  
19 that change to "PJM shall charge CRES providers,"  
20 that paragraph and its context and referring back to  
21 Section II.B of that stipulation still refers to Duke  
22 agreeing that market prices would be charged to CRES  
23 providers, correct?

24 MS. SPILLER: Objection, your Honor. I  
25 think even counsel agrees that this question has been

1 asked and answered several times already.

2 EXAMINER STENMAN: Overruled.

3 A. So the stipulation does provide that --  
4 that PJM would charge CRES providers the market  
5 prices, as I appreciate it.

6 Q. Now, I want to refer back to the  
7 10-2929-EL-UNC proceeding, and in that proceeding the  
8 intervenors from Duke were Duke Energy Retail Sales  
9 and Duke Energy Commercial Asset Management, Inc.; is  
10 that correct?

11 A. That's my understanding, yes.

12 Q. And you refer to that proceeding as  
13 the -- or the decision from that proceeding as the  
14 precedent or the pathway for your current application  
15 that we're litigating here today, correct?

16 A. Yes. Generally speaking, yes.

17 Q. Okay. But Duke Energy Ohio never  
18 intervened in that proceeding, that 10-2929  
19 proceeding, did it?

20 MS. SPILLER: Objection, relevance.

21 EXAMINER STENMAN: Overruled.

22 A. I'm not aware of Duke Energy Ohio  
23 intervening in that particular case.

24 Q. Why not?

25 MS. SPILLER: Objection, your Honor.

1 Q. If you know.

2 MS. SPILLER: And to the extent he can  
3 answer without divulging attorney-client  
4 communications.

5 A. I don't have any specific recollection  
6 that would not involve conversations with counsel.

7 Q. So, Mr. Trent, it's accurate to say that  
8 Duke only became dissatisfied with its capacity  
9 compensation as an FRR entity only after the  
10 Commission decided the 10-2929 case; is that correct?

11 MS. SPILLER: Objection, asked and  
12 answered; misstates former testimony.

13 EXAMINER STENMAN: Overruled.

14 A. Yeah. What I said previously was I can't  
15 recall specifically, you know, a moment in time that  
16 we said that we're not happy with the amounts we're  
17 recovering. Certainly the returns that we've seen  
18 have been spiraling downward. And as I said before,  
19 when the Commission made its ruling regarding a state  
20 cost-based capacity mechanism, that certainly  
21 sharpened our focus.

22 Q. Mr. Trent, you would agree with me that  
23 pursuant to the RAA, there's three options for  
24 capacity pricing, correct?

25 A. Yes.

1           Q.    And one of those options is RPM pricing  
2           at the final zonal capacity pricing; is that correct?

3           A.    That's my understanding.

4           Q.    Okay.  And that's the option that Duke  
5           elected when it agreed to the provisions of Roman  
6           Numeral II.B, IV.A, correct?

7                   MS. SPILLER:  Objection, misstates the  
8           testimony as well as the stipulation.

9                   EXAMINER STENMAN:  Overruled.

10          A.    As I previously stated, in my review of  
11          the stipulation it does not specifically address what  
12          Duke would recover from the provision of this  
13          wholesale service.  As I read that provision, it  
14          talks about what PJM would charge CRES providers and  
15          wholesale auction winners, and it provides for a  
16          mechanism by which those entities would recover that  
17          amount.

18          Q.    Well, it's clear from the stipulation,  
19          Mr. Trent, the RPM pricing would be the one that  
20          would be applicable for purposes of the stipulation;  
21          isn't that correct?

22          A.    As I've stated, it is clear that that's  
23          the price that would be charged to the CRES providers  
24          and the wholesale auction winners.

25          Q.    Mr. Trent, are you aware of the recent



1 AEP Ohio filing before FERC as to their 205  
2 application asking FERC to ratify the wholesale price  
3 that the Commission established in the 10-2929-EL-UNC  
4 proceeding?

5 MS. SPILLER: Objection, relevance,  
6 outside the scope of Mr. Trent's testimony.

7 EXAMINER STENMAN: Overruled.

8 A. You know, I really have not tracked AEP's  
9 filing -- filings at FERC.

10 Q. So you have no knowledge of that filing?

11 A. You know, I was aware generally that AEP  
12 had some filings at FERC that addressed capacity, but  
13 in terms of the timing and what was included in  
14 there, I really could not testify about that.

15 Q. Mr. Trent, pursuant to the stipulation  
16 that Duke entered into in the transmission rider  
17 proceeding case, 11-2641-EL-RDR, et al., in that  
18 stipulation Duke agreed not to institute any filing  
19 at FERC under the RAA that would request approval of  
20 a wholesale capacity charge based on Duke's costs as  
21 an FRR entity in PJM; is that correct?

22 A. Generally, yes. We did agree that we  
23 would not pursue a cost-based recovery at FERC.

24 MR. JONES: Okay. Your Honors, if I  
25 could have just a minute, please.

1 EXAMINER STENMAN: Yes.

2 Q. Mr. Trent, I believe you previously  
3 testified to questions by Ms. Bojko that the  
4 stipulation in 11-3549 had addressed all retail  
5 issues related to your capacity costs, and now,  
6 you've agreed with me that there's a retail component  
7 to the charge you are currently seeking here at the  
8 Commission; isn't that correct?

9 A. No. I don't believe that was my  
10 testimony. What I had talked about, I believe, was  
11 that the -- the stipulation addressed retail electric  
12 service, and what we're talking about in this case is  
13 a wholesale service, and so that was my prior  
14 testimony.

15 And with respect to the payment, there is  
16 a retail payment component to pay for that wholesale  
17 service that we've talked about just recently, but  
18 that's how that I previously testified.

19 MR. JONES: I have no further questions.  
20 Thank you, Mr. Trent.

21 EXAMINER STENMAN: Thank you.

22 All right. At this time I think it would  
23 be appropriate to take a lunch break, and we'll take  
24 about an hour and 15 minutes so we will come back at  
25 1:30.

1           When we come back, we will come back with  
2     redirect, then recross, and then we'll deal with the  
3     confidential direct and move through that once we  
4     conclude.

5           MS. SPILLER: Your Honor, if I may just  
6     ask that the Bench's indulgence, as Mr. Trent  
7     explained yesterday, he does have other obligations  
8     to which he was committed today, and was hoping to at  
9     least fulfill some of those obligations this  
10    afternoon. I don't know the extent of Mr. Kurtz's  
11    cross on the confidential material. Just wondering  
12    if it would be, again, with your indulgence, possible  
13    just to continue on so that we can excuse Mr. Trent  
14    as a witness.

15           EXAMINER STENMAN: How much redirect do  
16    you think you have?

17           MS. SPILLER: No much, your Honor.

18           EXAMINER STENMAN: And Mr. Kurtz.

19           MR. KURTZ: 20 minutes, 25 minutes.

20           EXAMINER STENMAN: Did anyone else have  
21    any confidential questions?

22           Okay. Let's take a 10-minute break, and  
23    then we'll come back.

24           MS. SPILLER: Thank you, your Honor.

25           (Recess taken.)

1 EXAMINER STENMAN: Let's go back on the  
2 record.

3 Duke, redirect?

4 MS. SPILLER: Your Honor, Duke Energy has  
5 no redirect for Mr. Trent.

6 (Confidential Portion.)

7 EXAMINER STENMAN: Okay. At this time  
8 let's go into a confidential portion of the  
9 transcript. I believe that Duke represented to the  
10 Bench yesterday that there are parties that do not  
11 have signed confidentiality agreements. It's Duke's  
12 responsibility to make sure everyone in the room is a  
13 party to a confidentiality agreement.

14 MS. SPILLER: Yes, your Honor. It  
15 doesn't appear there aren't any representatives from  
16 Dayton Power & Light; the Dayton Power DPLER, the  
17 retail affiliate; University of Cincinnati;  
18 University of Miami; or the Ohio Manufacturers'  
19 Association. I don't believe that any of their  
20 counsel or representatives are here. The other  
21 counsel represented are all subject to  
22 confidentiality agreements.

23 EXAMINER STENMAN: All right. Then,  
24 Mr. Kurtz.

25 MR. KURTZ: Thank you, your Honor.



1       that sound about right?

2               A.     You know, I really have not reviewed the  
3       specific numbers on that. Not disputing what you  
4       said, I just don't have knowledge of it.

5               Q.     And also by way of background, the  
6       company DEO, Duke Energy Ohio, is buying  
7       approximately (REDACTED) megawatts of UCAP  
8       bilaterally to serve approximately (REDACTED)  
9       megawatts of load; does that sound about right?

10              A.     Again, I just haven't studied the numbers  
11       and didn't really review those so I don't know.

12              Q.     Okay. You do know, though, that all of  
13       the load, the (REDACTED), pays Duke Energy Ohio  
14       through PJM the final zonal capacity rate? That's  
15       the amount of money Duke Energy Ohio gets paid?

16              A.     When you say the load pays, my  
17       understanding is that PJM pays.

18              Q.     Okay.

19              A.     Okay.

20              Q.     PJM pays you for the (REDACTED) megawatts  
21       of load at the final zonal capacity rate.

22              A.     I believe -- well, I believe that's  
23       right. I'm just not certain.

24              Q.     And the final zonal capacity rate is the  
25       RPM price multiplied by a scaling factor. So it's a

1 little bit more than RPM; is that correct?

2 MS. SPILLER: I am going to object to the  
3 characterization of how the FZCP is calculated.

4 EXAMINER STENMAN: Overruled.

5 A. So there are other witnesses that can  
6 tell you a lot better than I can how it's calculated.  
7 My understanding was that the -- that it was made up  
8 of the base residual auction prices as well as  
9 incremental auction pricing, is sort of how I  
10 understood it.

11 Q. Okay. Let me ask you to assume that Duke  
12 Energy Ohio loses this case, and to the extent that  
13 you lose this case, wouldn't the earnings of Duke  
14 Energy Ohio be better the cheaper you can buy the  
15 bilateral contracts for? In other words, if you can  
16 buy them lower -- for less money than the FZCP that  
17 you are getting paid, you would be better off, all  
18 else equal?

19 A. To be honest with you, I'm not sure of  
20 the mechanics on that in terms of whether we would be  
21 better or not, but if the premise is that -- that  
22 what we would be paid would be higher than what we  
23 were being charged, then hypothetically I could see  
24 that being a situation where you would have  
25 additional earnings that you otherwise wouldn't have.

1           Q.    Extreme example, just to demonstrate, if  
2    you were buying the (REDACTED) approximately of  
3    bilateral contracts for zero and you were charging  
4    FZCP, obviously, you would make money on that.

5           A.    That sounds -- that sounds right to me.

6           Q.    Okay. Now, assuming you win this case,  
7    whatever your purchase power expense is, that is just  
8    a passthrough in the revenue requirements mechanism;  
9    is that correct?

10          A.    I'm sorry, could you restate that one  
11   more time?

12          Q.    You've got -- if you win this case where  
13   your purchased power costs for -- for bilateral  
14   contracts is just a passthrough, then whatever you  
15   pay, either really cheap or really high, would simply  
16   be a passthrough with no effect on earnings.

17          A.    And when you say "purchased power cost,"  
18   I assume you are talking about capacity.

19          Q.    Yes.

20          A.    Right?

21          Q.    Yes.

22          A.    I would think generally it should be a  
23   passthrough, yes.

24               MR. KURTZ: Okay. I would like to, your  
25   Honors, have these -- we have the redacted and



1       unredacted version of the -- of the bilateral  
2       contracts that the company has entered into.

3               EXAMINER STENMAN:   Are these the  
4       contracts that were marked yesterday as OEG 4 and 4A?

5               MR. KURTZ:   Yes.

6               (EXHIBIT MARKED FOR IDENTIFICATION.)

7               MR. KUTIK:   Your Honor, may we go off the  
8       record?

9               EXAMINER STENMAN:   The Bench still needs  
10       a copy.

11              MR. KUTIK:   Off the record.

12              (Discussion off the record.)

13              MR. KURTZ:   Your Honor, could we have  
14       marked for ease of reference this document as OEG 5.

15              EXAMINER STENMAN:   The will be so marked.

16              (EXHIBIT MARKED FOR IDENTIFICATION.)

17              MR. KURTZ:   No, it's not.   It's the PJM  
18       RPM pricing, just for ease of reference.

19              Q.    Okay.   Do you have the confidential  
20       version of the bilateral contracts as well as OEG 5  
21       in front of you, Mr. Trent?

22              A.    No, I don't.

23              MS. COHN:   I forgot to give one to him.

24              MS. SPILLER:   Jody, you have several  
25       here.

1 MS. KINGERY: Those are the redacted.

2 MS. SPILLER: I did not receive a  
3 confidential version from counsel.

4 MS. KYLER: Thank you.

5 A. The document says PJM, is that OEG 8?

6 Q. 5.

7 A. OEG 5.

8 Q. Turn to the second page of the  
9 confidential document. By the way you've had this  
10 since yesterday afternoon so I assume it's at least a  
11 little bit familiar.

12 MS. SPILLER: Objection.

13 A. I haven't reviewed this.

14 Q. You understand the first contract here to  
15 be between Duke Energy Ohio, buyer, and  
16 (REDACTED), seller?

17 A. That's what it says.

18 Q. Okay. This is for the -- this is for the  
19 2012-'13 PJM planning year?

20 A. Yes.

21 Q. Okay. (REDACTED) megawatts; is that  
22 correct?

23 A. That's correct.

24 Q. At \$(REDACTED) per megawatt-day?

25 A. Correct.

1 Q. Okay. That's why I gave you this PJM.  
2 The 2012-'13 PJM base residual RPM price was 16.46?

3 A. Yes, I see that.

4 Q. Okay. So Duke was able to buy slightly  
5 (REDACTED) than RPM for this particular purchase?

6 A. It appears to be the case. Now, I don't  
7 know if the numbers on the RPM -- or the PJM document  
8 are apples to apples in terms of if we are providing  
9 final zonal capacity prices or not, but those two  
10 numbers are different, yeah.

11 Q. Actually, these are not the final zonal  
12 capacity. This is just the RPM.

13 A. That's what I was thinking.

14 Q. Okay. And I guess if you turn it, this  
15 is signed by (REDACTED) and Duke Energy Ohio by  
16 a trader for doing this transaction?

17 A. Yes, I see that.

18 Q. Just turn the page again. Now we have  
19 a transaction dated December 7, 2011, between  
20 Duke Energy Ohio and (REDACTED) ;  
21 is that correct?

22 A. Yes, I see that.

23 Q. Okay. Here this is again for the  
24 2012-'13 PJM planning year?

25 A. Yes.

1           Q.    Okay.  (REDACTED) megawatts, same  
2           quantity as the (REDACTED) purchase?

3           A.    Yes.

4           Q.    And same price, \$(REDACTED) per  
5           megawatt-day?

6           A.    I see that.

7           Q.    Okay.  Again, slightly (REDACTED) -- I  
8           think that's (REDACTED) percent of RPM, but less than  
9           RPM.

10          A.    Yes.

11          Q.    Okay.  This -- if you turn the page  
12          again, I won't ask you to work through this  
13          transaction 1, transaction 2, and credit, but there  
14          is something complicated going on there in this one.  
15          I think the price may be \$(REDACTED) after you go  
16          through it, but I won't ask you to do it.  I  
17          struggled with it.

18                If you -- the signatures were -- for this  
19          one was                               (REDACTED)  
20          ,    president,       and       then    Bryan   Garrett,  
21          trader.

22          A.    I see that.

23          Q.    Okay.  And these were from Schedule 1.  
24          If you turn the page again, these are from the  
25          (REDACTED)   , I guess, specified capacity.

1 A. Yes.

2 Q. Okay. Turn the page again. We have a  
3 contract between Duke Energy Ohio and (REDACTED); is  
4 that correct?

5 A. I see that.

6 Q. Okay. Again, 2012-'13 is the planning  
7 year?

8 A. Yes.

9 Q. (REDACTED) megawatts?

10 A. Yes.

11 Q. \$(REDACTED) a megawatt-day?

12 A. Yes.

13 Q. Okay. Again, slightly (REDACTED) than RPM?

14 A. Yes.

15 Q. Okay. And, again, this is signed by  
16 (REDACTED) and then Duke Energy Ohio by  
17 the -- by the power trader?

18 A. Yes.

19 Q. Turn again, I guess, two pages. We've  
20 got another Duke Energy Ohio/(REDACTED) purchase  
21 agreement for the 2012-'13 planning year.

22 A. Yes.

23 Q. Okay. (REDACTED) megawatts?

24 A. Yes.

25 Q. \$(REDACTED) a megawatt-day?

1 A. Yes.

2 Q. Okay. Again, slightly (REDACTED) than RPM?

3 A. Correct.

4 Q. Okay. Again, signed by (REDACTED) and  
5 Duke Energy Ohio, correct?

6 A. Yes.

7 Q. Okay. Next contract is again between  
8 Duke Energy Ohio and (REDACTED)  
9 (REDACTED), correct?

10 A. Yes.

11 Q. This is again for the 2012-'13 planning  
12 year?

13 A. Yes.

14 Q. Pretty big purchase (REDACTED) megawatts?

15 A. Yes.

16 Q. At \$(REDACTED) per megawatt-day, correct?

17 A. Yes.

18 Q. And that is -- that is again (REDACTED)  
19 than the \$16.46 per the PJM RPM?

20 A. Yes.

21 Q. Okay. Again, we've got this transaction  
22 1, transaction 2 where (REDACTED) is  
23 selling and then buying. Do you understand what --  
24 how that works?

25 A. I know in terms of the (REDACTED) situation

1 and then contracts that are the same price as  
2 (REDACTED), for example, my understanding generally  
3 there was -- that Duke Energy Ohio was buying  
4 capacity from (REDACTED), but it was not  
5 unit-specific capacity and that capacity wouldn't  
6 qualify for FRR purposes, and so -- so there was, I  
7 think, a -- it was called a swap where (REDACTED),  
8 (REDACTED), was able to then do a swap so that Duke  
9 Energy Ohio could get capacity that was unit specific  
10 that would qualify for FRR purposes.

11 I think that was what was happening, but  
12 in terms of this specific agreement, the one you  
13 point to, the (REDACTED), I am not sure if that was  
14 one of the swapped ones or not.

15 Q. Okay. That's helpful. All right. The  
16 next agreement is December 7, 2011, between Duke  
17 Energy Ohio and (REDACTED); is  
18 that correct?

19 A. Yes.

20 Q. Okay. This is for the 2013-'14 planning  
21 year, correct?

22 A. Yes.

23 Q. Okay. And now the RPM number is \$27.73  
24 per megawatt-day?

25 A. Yes, I see that.

1           Q.    Okay.  And this is for (REDACTED)  
2 megawatts?

3           A.    Yes.

4           Q.    And Duke Energy Ohio was able to buy for  
5 \$(REDACTED) a megawatt-day?

6           A.    Yes.

7           Q.    Okay.  And, again, we have this  
8 transaction 1, transaction 2, but this is that swap  
9 situation you talked about?

10          A.    You know, it may be.  I'm not sure  
11 because there was also, as I appreciated, some  
12 capacity that -- that, you know, was being provided  
13 by           (REDACTED)           that was just a  
14 direct acquisition as opposed to being the  
15 swap.

16          Q.    Okay.  And for this (REDACTED) -megawatt  
17 transaction, Mr. Whitlock signed on behalf of  
18 (REDACTED) and then Duke Energy Ohio, Bryan Garnett,  
19 power trader?

20          A.    I see that.

21          Q.    You don't happen to know Bryan Garnett.

22          A.    I mean, I've met Bryan.

23          Q.    Okay.  And he is authorized to make  
24 transactions on behalf of the Duke Energy Ohio  
25 presumably?



1           A.    Presumably.

2           Q.    Okay.  The last contract, what I want to  
3 really ask you about, if you turn to page 23 between  
4 Duke Energy Ohio and Duke Energy Commercial Asset  
5 Management.  This is for the 2014-'15 PJM planning  
6 year, correct?

7           A.    Yes.

8           Q.    Okay.  And by the way, this was entered  
9 into on June 17, 2011, which is about a month after  
10 the base residual auction for the '14-'15 planning  
11 year?

12          A.    Okay.

13          Q.    Because they occur in May for three years  
14 forward.

15          A.    Right.

16          Q.    Okay.  So this is for (REDACTED)  
17 megawatts?

18          A.    Right.

19          Q.    Here the contract price is not below RPM.  
20 It's (REDACTED) at RPM, \$125.99, which is (REDACTED),  
21 correct?

22          A.    I see that.

23          Q.    Okay.  This is -- this is a big  
24 transaction.  This is (REDACTED) purchase, if you  
25 just do the math, (REDACTED) times (REDACTED), times

1 365. Do you accept that math, subject to check?

2 A. Yeah. I don't have a calculator up here.

3 Q. It's a \$(REDACTED) million purchase. On  
4 the -- will you turn to the signature lines. Do you  
5 see that the (REDACTED) signed on  
6 behalf of (REDACTED) Duke Energy Ohio,  
7 Mr. Whitlock?

8 A. I see that.

9 Q. Okay. Now, I mean that's -- I assume you  
10 have a -- how can the (REDACTED) of this  
11 \$(REDACTED) million purchase?

12 A. Well, from a technical standpoint, I  
13 think that Mr. Whitlock had authority to sign on  
14 behalf of (REDACTED), and my appreciation of what was  
15 going on here was that at the time this -- this  
16 agreement was entered into, the only market  
17 information that was available was the -- the auction  
18 price that had cleared just previously to that, as I  
19 appreciate it. I against prior -- the other  
20 transactions, I think you would have had more market  
21 information than just the RPM price, but this was  
22 done basically -- or it was done (REDACTED),  
23 so I think that probably added some comfort in terms  
24 of Mr. Whitlock signing.

25 Q. Is Mr. Whitlock an officer of the Duke

1 Energy Ohio?

2 A. I don't know whether he is or isn't at  
3 this point in time. I would assume that he -- that  
4 he is, but I'm not certain of that.

5 Q. Now, all the other purchases were  
6 (REDACTED) RPM and this one is (REDACTED) RPM. Do  
7 you know if there was any effort -- what type of  
8 effort did Duke Energy -- did Mr. Whitlock make to  
9 get a good deal from (REDACTED)? I mean, what did he  
10 do to make sure this was a prudent purchase, a  
11 reasonable price?

12 MS. SPILLER: I am going to object to the  
13 form of the question.

14 EXAMINER STENMAN: Overruled.

15 A. So as I stated before, this transaction  
16 was done (REDACTED) at the price that was -- that  
17 cleared in the RPM for that year. That was the  
18 only -- that was market information that was  
19 available at that time, and so that was the  
20 indication there was -- that was a reasonable number.  
21 And as I said before, the prior pricing that was  
22 (REDACTED) than what's in this RPM model, my  
23 understanding is that that pricing was based on  
24 (REDACTED). That was new market information that was  
25 available at that time, is my understanding, so the

1 deal was basically done (REDACTED) at market which  
2 had been established just prior to this transaction.

3 Q. Well, the base residual auction market  
4 had occurred a month before. You can't -- you can't  
5 get the auction price from PJM a month after the  
6 auction, can you?

7 A. I mean, I think it would be possible to,  
8 but I don't know for certain, but, again, that's --  
9 that was, as I appreciate it, the basis for this  
10 pricing.

11 Q. When an entity has capacity that is not  
12 bid into the market -- into the auction, it either  
13 has to sell bilaterally to a third party or  
14 participate in the incremental auctions, correct?

15 A. I think that's right.

16 Q. And Mr. Niemann, your expert, testifies  
17 that the incremental auctions have been significantly  
18 low priced. Do you recall that testimony from him?

19 A. I don't recall specifically. I've looked  
20 at a lot of things, but, you know, his testimony is  
21 what it is.

22 Q. Do the affiliate transaction rules of the  
23 FERC and of this Commission apply to this \$(REDACTED)  
24 million purchase?

25 MS. SPILLER: I am going to object to the

1 extent we are asking for a legal interpretation and  
2 legal conclusion. Again, outside the scope of  
3 Mr. Trent's testimony in his capacity here as chief  
4 operating officer.

5 EXAMINER STENMAN: Overruled.

6 A. So I'm not going to profess to be an  
7 expert on FERC's affiliates rules, but my  
8 understanding these transactions would comply with  
9 FERC -- FERC rules, which I think, in part, would be  
10 based on the fact there was approval to do  
11 market-based agreements. But in terms of getting any  
12 more specific than that, I really would not be able  
13 to do that.

14 Q. In fact, I think Duke Energy Ohio got a  
15 waiver from the FERC affiliate transaction rules  
16 because Ohio customers are not captive. Does that  
17 that sound accurate?

18 A. I just don't know.

19 Q. Now, if the Commission approved this  
20 cost-based proposal, they would be captive to paying  
21 the deferral, would they not?

22 MS. SPILLER: I am going to object to the  
23 extent that's an incorrect interpretation of the  
24 waiver and the rule.

25 EXAMINER STENMAN: Overruled.

1           A.    Yeah.  I just don't have an understanding  
2   of that.

3           Q.    Let's -- I mean, again, let me ask you to  
4   assume that Duke Energy Ohio loses -- loses this  
5   case.  The (REDACTED) million purchase from the  
6   utility is going to (REDACTED), which is a  
7   (REDACTED), so in that sense there is no effect  
8   on the earnings of the (REDACTED), whether  
9   it's (REDACTED) million or 5 million, whether  
10  (REDACTED) got a great deal or a bad deal, or the  
11  utility got a great deal or bad deal, it  
12  wouldn't have any effect on the (REDACTED)  
13  because this is all among (REDACTED), correct?

14          A.    Yeah.  In terms of the (REDACTED), I  
15  believe that is accurate.  We talked yesterday about  
16  the different financial segments for reporting, and  
17  there would be a change there.  And I think that  
18  would apply again as long as (REDACTED) remained a.

19                   (REDACTED) .

20          Q.    But from a (REDACTED) basis, it  
21  wouldn't make any difference, it would just be an.  
22                   (REDACTED) , no matter  
23  what the price was.

24          A.    And, again, from a (REDACTED)  
25  standpoint that's right.  From a (REDACTED) ,

1 it would change.

2 Q. If Duke Energy Ohio prevails in this  
3 case, then that \$(REDACTED) million transaction will  
4 be essentially paid for by consumers in Ohio, so it  
5 does make a difference whether the utility got a good  
6 deal or bad deal, doesn't it?

7 MS. SPILLER: I am going to object to the  
8 extent you are characterizing "a good deal" or "bad  
9 deal" here with respect to these contracts.

10 EXAMINER STENMAN: Overruled.

11 A. What I would say is that in the  
12 calculation, Mr. Wathen can talk more about this, but  
13 in the calculation that was used, the cost of  
14 capacity being acquired, as I appreciate it, would  
15 have been included in that calculation and so  
16 customers would be -- you know, if we are successful  
17 there, would be a component of this deferred amount  
18 that we're seeking that would include effectively the  
19 costs.

20 MR. KURTZ: Okay. One last document,  
21 your Honors, if we could. If we could have this  
22 marked as OEG 6.

23 EXAMINER STENMAN: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 EXAMINER STENMAN: Just to be clear, is

1       there anything confidential in this document?

2               MR. KURTZ: No, there is not. This  
3 purports to be the first incremental auction results  
4 for 2014-'15 PJM planning year. I have the entire  
5 document. This is just a summary page.

6               Q. But, Mr. Trent, do you see where the  
7 first incremental auction for the '14-'15 planning  
8 year cleared at \$5.54 per megawatt-day?

9               A. I see those, yeah, I see that word --  
10 those words on there.

11              Q. So had (REDACTED) not sold to Duke Energy  
12 Ohio a month after the base residual auction  
13 (REDACTED) the RPM price -- just hypothetically, had  
14 they participated in the first incremental auction,  
15 they would have gotten essentially  
16 \$(REDACTED) million (REDACTED) revenue.

17              A. That's -- that's not how I would  
18 interpret it, I mean, in a couple of ways. One, I  
19 think the incremental auction happened subsequent to  
20 the time the transaction was entered into. Secondly,  
21 if you included the capacity that was the subject of  
22 the bilateral agreement that we are talking about in  
23 the incremental auction, my expectation is that it  
24 would have impacted the price, but I am -- I'm not  
25 the expert on this, again, so I would defer to others



1 to talk about that.

2 Q. Well, that's a good point. As you put  
3 (REDACTED) megawatts of additional supply in, all  
4 else equal, you would expect the incremental auction  
5 to clear at a lower price than \$5.54.

6 A. Well, it would change the price  
7 potentially high, potentially low. But, again, this  
8 information was not available at the time that the  
9 deal was entered into.

10 Q. Right. Now, again, would you agree that  
11 under the traditional ratemaking cost-based paradigm  
12 that you're requesting, that only prudently incurred  
13 costs should be recovered from consumers?

14 MS. SPILLER: Objection, calls for a  
15 legal conclusion and interpretation.

16 EXAMINER STENMAN: Overruled.

17 A. I think generally when commissions are  
18 determining outcomes using traditional ratemaking  
19 principles, they apply a prudence test.

20 MR. KURTZ: Thank you, Mr. Trent.

21 No more questions, your Honors.

22 EXAMINER STENMAN: Any redirect?

23 MS. SPILLER: One moment, please, your  
24 Honor.

25 EXAMINER STENMAN: Yes.

1 MS. SPILLER: No redirect, your Honor.

2 EXAMINER STENMAN: Okay. Let's go back  
3 into the public version of the transcript.

4 (Public record.)

5 EXAMINER STENMAN: We did just exit the  
6 confidential transcript. It will be Duke's  
7 responsibility, once they receive the transcript, to  
8 appropriately redact the confidential transcript.  
9 It's my understanding, too, that only Duke will  
10 receive the confidential portion of the transcript  
11 and should be responsible for sharing that portion of  
12 the record with the parties that have signed a  
13 confidentiality agreement. That way the court  
14 reporter does not bear the burden of determining who  
15 does and does not receive the confidential  
16 transcript.

17 MS. BOJKO: I'm sorry, I can't hear a  
18 word you're saying.

19 EXAMINER STENMAN: I just went on the  
20 record and said Duke will bear the burden of  
21 redacting the confidential portions of the  
22 transcript. Also, they will be the only party  
23 receiving the confidential portion of the transcript,  
24 and it will be their responsibility to share the  
25 confidential portion of the transcript with the other

1 parties that have entered into confidentiality  
2 agreements with the company.

3 MR. KUTIK: Well, your Honor, we have a  
4 protective agreement with the company. We have also  
5 asked to have daily transcript so we would ask to be  
6 exempted from your ruling.

7 EXAMINER STENMAN: Is the company on  
8 board with that request?

9 MS. SPILLER: I have no problem with  
10 Mr. Kutik's request, your Honor.

11 EXAMINER STENMAN: Then he will be  
12 exempted from that, and he can receive the  
13 confidential portion of the transcript.

14 Mr. Trent, I think you are finally free  
15 to go.

16 THE WITNESS: Thank you very much.

17 EXAMINER STENMAN: Is there anything we  
18 need to discuss before we break for lunch?

19 MS. SPILLER: No, your Honor. We can  
20 take care of formal moving of exhibits after lunch.

21 MR. JONES: Your Honor, I would have one  
22 thing I would like to say off the record.

23 EXAMINER STENMAN: Let's break for lunch  
24 until 2:15.

25 (Discussion off the record.)

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(At 12:56 p.m., a lunch recess was taken  
until 2:15 p.m.)

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1 Tuesday Afternoon Session,  
2 April 16, 2013.

3 - - -

4 EXAMINER STENMAN: Let's go back on the  
5 record. I believe we have some exhibits to deal  
6 with.

7 MS. SPILLER: Yes, your Honor, thank you.  
8 On behalf of the company, Duke Energy Ohio would move  
9 for admission into evidence the Direct Testimony of  
10 B. Keith Trent marked as Duke Energy Ohio Exhibit 2,  
11 filed in this docket on March 1, 2013.

12 EXAMINER STENMAN: Any objections?

13 MR. DARR: We have objection to page 18,  
14 lines 6 through 14, same basis.

15 MS. BOJKO: Yes, your Honor, renew my  
16 objection stated in the motion to strike yesterday  
17 morning to pages 22, 23, and 24, I believe.

18 EXAMINER STENMAN: The objections will be  
19 noted for the record. Duke Exhibit 2 will be  
20 admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 MR. KUTIK: Your Honor, at this time FES  
23 moves for the admission of Exhibits 4 through 14.

24 EXAMINER STENMAN: Any objection to the  
25 admission of Exhibits 4 through 14?

1 MS. SPILLER: Yes, your Honor. One  
2 moment, please.

3 Your Honor, with respect to FES Exhibit  
4 4, again, this document is irrelevant. I would  
5 further note that Mr. Kutik certainly was deliberate  
6 in his reading into the record of certain contents --  
7 or certain portions of this document which are now  
8 part of the evidentiary record in this case. There  
9 was significant information contained within this  
10 document that was not used on cross-examination. I  
11 think it's admission, therefore, is prejudicial to  
12 the company.

13 If I -- do you want me to continue?

14 EXAMINER STENMAN: Yes.

15 MS. SPILLER: Okay, thank you, your  
16 Honor. The same would be said with respect to  
17 FirstEnergy Solutions Exhibit 5. Again, Mr. Kutik  
18 read certain portions of this document into the  
19 record. It also contains undeniable information  
20 related to Duke Energy -- Duke Energy Kentucky, which  
21 is not an entity within the jurisdiction of this  
22 Commission or an entity that in any way can be  
23 construed as the applicant in this case.

24 It also contains a matter clearly  
25 unrelated that would concern the company's plans, if

1 you will, with respect to a standard service offer  
2 that would replace the standard service offer  
3 approved under Case No. 08-920. Again, I think this  
4 document to be irrelevant and prejudicial.

5 I would also, if I may, your Honor, with  
6 respect to FirstEnergy Solutions Exhibit No. 6, I  
7 would state that this document is similarly  
8 irrelevant. The point of why and when first -- Duke  
9 Energy Ohio migrated to PJM is a moot point. The  
10 fact is they did, in fact, realize. No party has  
11 disputed that in this proceeding, so, again, I  
12 believe that this document is irrelevant.

13 The same would be said of FirstEnergy  
14 Solutions Exhibit No. 8. -- I'm sorry, FirstEnergy  
15 Solutions Exhibit No. 7. If I may address together  
16 FirstEnergy Solutions Exhibits 8 and 9, these were  
17 documents that were filed in Case No. 10-2929 by  
18 entities that are not before this Commission in this  
19 proceeding and, again, much of this was read into the  
20 record.

21 I think these arguments -- the content of  
22 these documents have been explained. These were not  
23 statements of a party in this proceeding. They  
24 certainly are not attributed to Duke Energy Ohio, and  
25 there was no solicitation of Mr. Trent as -- as to

1     that. I believe there was certainly a lack of  
2     foundation with respect to these exhibits having been  
3     laid when presented to Mr. Trent.

4             With respect to FirstEnergy Solutions  
5     Exhibit No. 10, again, I don't believe that there was  
6     any foundation laid as to the content of this  
7     document in its entirety. There was no attribution  
8     of any particular statements to Mr. Trent, the  
9     testifying witness to whom these were presented.

10            I also would state with FirstEnergy  
11     Solutions No. 11, there is a fair portion of this  
12     that is, in fact, hearsay, indeed statements that are  
13     not at all attributed to Duke Energy Ohio and cannot  
14     at all be interpreted as statements of a party. I  
15     also think the document largely irrelevant in that it  
16     discusses historic ROEs and not those that are  
17     relevant to the issues in this proceeding, and,  
18     namely, the negative ROEs that have been projected  
19     and demonstrated through the direct testimony of the  
20     company's witnesses.

21            With respect to FirstEnergy Solutions  
22     Exhibit No. 11, this document clearly is again a  
23     hearsay document. I think -- again, contains hearsay  
24     information in that these statements, many of them,  
25     are not attributed to Mr. Trent.



1 FirstEnergy Solutions Exhibit 12, I would  
2 say the bulk of this document is, in fact, irrelevant  
3 to the issues in this proceeding. Mr. Kutik, I  
4 believe, referenced only one page, page 10, of the  
5 document. All of the other pages in this document  
6 largely contain parties pertaining to other entities,  
7 those outside of the jurisdiction of this Commission  
8 and certainly issues that are not at all relevant to  
9 the issues in this proceeding. I think its  
10 introduction would be prejudicial and certainly serve  
11 to confuse the issues that are before the Commission  
12 today.

13 With respect to FirstEnergy Solutions  
14 Exhibit 13, when you look at the cover page, very  
15 clear that the witness to whom this document was  
16 presented was not even involved in the conversation.  
17 These were conversations that were had as between  
18 other individuals, no indication that these  
19 individuals necessarily -- and certainly all of them  
20 are not speaking on behalf of the Duke Energy Ohio,  
21 as Mr. Trent I believe acknowledged yesterday. He  
22 was not even a participant in the call, so, again,  
23 irrelevant, hearsay, and prejudicial.

24 FirstEnergy Solutions Exhibit 14, much of  
25 this document similarly is unrelated to Duke Energy

1 Ohio, the applicant in this proceeding. Most of this  
2 information, therefore, is largely irrelevant. It's  
3 admission would be certainly prejudicial to Duke  
4 Energy Ohio, the applicant in this proceeding.

5 EXAMINER STENMAN: Mr. Kutik.

6 MR. KUTIK: Thank you, your Honor. With  
7 respect to FirstEnergy Exhibits 4 and 5, I would note  
8 that both of these exhibits were admitted in Case No.  
9 10-2586, so the issue about it being prejudicial to  
10 Duke Energy obviously didn't carry the day before the  
11 Bench in that case and shouldn't carry the day here.

12 To the extent that Ms. Spiller believed  
13 that there were other parts of a document that needed  
14 to be explained or explained away, that was the  
15 purpose of redirect, and she decided not to go down  
16 that route, so her failure to explain the rest of the  
17 document doesn't bode well for their exclusion.

18 Ms. Spiller also indicated that she  
19 believed that the documents were prejudicial. That's  
20 all she said, that they are prejudicial. We don't --  
21 she hasn't given a basis of why they are prejudicial  
22 other than it shows that the company or Duke had  
23 planned to enter into PJM without having to be an FRR  
24 entity, so when witnesses make the statement in this  
25 case, as they have and as they will, that Duke was

1 required to be an FRR entity, that's false. They  
2 made that option. There were ways around it, and  
3 that's the purpose of the admission of these  
4 documents.

5 Similarly, your Honor, with respect to  
6 the purpose of Exhibits 6 and 7, it shows the  
7 planning for Duke and Duke Energy Ohio to come into  
8 PJM, how they could have avoided the situation that  
9 they are seeking relief for now, and they made  
10 conscious choices to become an FRR entity to use  
11 their own facilities, among other things, to fulfill  
12 their obligations, and, therefore, it is improper for  
13 them to say that they had no choice but to face the  
14 situation that they are in.

15 With respect to FES Exhibits 7 -- excuse  
16 me, 8 and 9, we went through this in the objections  
17 that Ms. Spiller made during the examination of  
18 Mr. Trent. Mr. Trent was the -- was one of the top  
19 managers responsible for Duke Energy Retail Sales and  
20 Duke Energy Commercial Asset Management. These two  
21 companies were making statements and taking positions  
22 which were directly -- which are directly contrary to  
23 the positions he now takes. They're certainly  
24 relevant to the credibility of the positions that the  
25 witness now takes.

1                   With respect to the Exhibit 10 and  
2     Exhibit 12, the PowerPoint exhibits, those were  
3     undeniably identified by Mr. Trent as what they are,  
4     which is PowerPoint presentations that were made by  
5     the company and statements that were made by Duke  
6     management about their ESP or about their ESP  
7     settlement. It goes to show that they had certain  
8     expectations. Those expectations centered around  
9     rates of return, which they said at the time they  
10    thought would be okay, that they thought would show  
11    that the returns would be -- or the assets would be  
12    financially viable, and now they are changing their  
13    tune.

14                  With respect to the transcripts, these  
15    also were identified by Mr. Trent and authenticated  
16    by Mr. Trent. Mr. Trent also indicated these were  
17    documents that are regularly done as far as  
18    presentations that are made to analysts, and so they  
19    qualify as a business record, therefore, are not  
20    hearsay. And to the extent the statements here are  
21    irrelevant, the relevant statements relate to  
22    statements that are made by company personnel.

23                  Ms. Spiller points to other parties'  
24    statements, but, again, those statements are included  
25    in the document which is a business record and,

1       therefore, not hearsay.

2               With respect to the relevance of these  
3 documents, your Honor, again, what they show is one  
4 of the company's expectations for their financial --  
5 financial implications of the ESP. That's with  
6 respect to the exhibits up through Exhibit 13, and  
7 Exhibit 14, your Honor, is relevant because what it  
8 shows is a detailed financial presentation of all of  
9 the Duke companies, and they neglected at any time to  
10 mention DEO was in any type of dire financial  
11 situation.

12              If DEO was, in fact, in dire financial  
13 condition, that certainly would have been a material  
14 fact that an investor would know, and they would be  
15 under a duty to disclose that. They did not. That's  
16 why it's relevant.

17              EXAMINER STENMAN: The objections will be  
18 overruled. FirstEnergy Exhibits 4 through 14 will be  
19 admitted.

20              (EXHIBITS ADMITTED INTO EVIDENCE.)

21              MR. DARR: I don't know what order you  
22 want to go in but I'll go next.

23              EXAMINER STENMAN: It doesn't matter.

24              MR. DARR: Move the admission of IEU  
25 Exhibits 4 through 7. I believe the Bench has

1 already granted administrative notice and admitted 1  
2 through 3.

3 EXAMINER STENMAN: That is correct. Are  
4 there any objections to the admission of IEU Exhibits  
5 4 through 7?

6 MS. SPILLER: I'm sorry, your Honor.

7 EXAMINER STENMAN: Any objections to IEU  
8 Exhibits 4 through 7?

9 MS. SPILLER: I do, your Honor, thank  
10 you. Your Honor, with respect to IEU Exhibit No. 4,  
11 again, I think this -- the document -- the witness  
12 testified that he did not read the document, did not  
13 prepare the document -- strike that, did not read the  
14 document prior to its submission, was not familiar  
15 with the document, and certainly was not the preparer  
16 of the document. Mr. Darr simply read one sentence  
17 from the document. I think to admit the entire -- I  
18 think there was a lack of foundation with respect to  
19 the witness at hand.

20 I would further note, and this is  
21 something that will be raised again with respect to  
22 OEG's exhibits, there is highlighting in the  
23 document, and I think that unnecessarily prejudices  
24 the record, prejudices the entire document by placing  
25 undue influence on particular portions of the record.

1 We have no idea as to who may have done those  
2 highlights, what their intended purpose was. To the  
3 extent the document is admitted, I think it should be  
4 admitted in clean form.

5 I would also, your Honor, with respect to  
6 IEU Exhibit No. 5 certainly appreciate that there may  
7 have been a desire to conserve the production of  
8 paper. This is not a complete copy of the  
9 stipulation that was submitted on October 24, 2011,  
10 clearly by the handwritten notation at the top. The  
11 entire document consists of 215 pages, 48 of which  
12 were submitted in connection with IEU Exhibit No. 5.

13 Your Honor, again, we would renew the  
14 exhibits -- I'm sorry, the objection to IEU Exhibit  
15 No. 6. There was no proper foundation as required  
16 under Evidence Rule 804 for the use of former  
17 testimony. This is not an out-of-court statement  
18 that is not subject to Evidence Rule 801, but clearly  
19 falls within 804.

20 The lack of foundation that exists is  
21 that Mr. Darr failed to demonstrate that the witness  
22 was unavailable. I think the same would be said of  
23 IEU Exhibit No. 7, again, lack of foundation with  
24 respect -- with respect to that document.

25 MR. DARR: Briefly, your Honor?

1 EXAMINER STENMAN: Yes.

2 MR. DARR: Starting with No. 4, I guess  
3 the complaint that if you use a highlighter, it's  
4 prejudicial, if there were any concerns about what I  
5 highlighted or didn't highlight or the structure of  
6 the document, that could have been addressed on  
7 redirect. Certainly we can substitute if that's  
8 necessary, but it seems to me this Bench is more than  
9 willing and able to read the document and put it in  
10 the proper context so I don't see that it's any way  
11 unduly prejudicial. That is the standard, not just  
12 prejudicial. There is somehow highlighting.

13 The fact that the witness had not read  
14 the document before again is irrelevant.

15 EXAMINER STENMAN: Could you use your  
16 microphone?

17 MR. DARR: The document was prepared by  
18 Duke, filed on behalf of Duke, and there's no  
19 indication that the document is anything other than  
20 what it was purported to be, nor did the witness  
21 suggest otherwise.

22 It is also relevant because it is the  
23 bridge between what the company did at the FERC and  
24 what it was proposing to do at the Ohio Commission.  
25 And, in fact, if you'll go back and look at the



1 transcript, that was the purpose of using the  
2 document in the first place, that the FERC had not  
3 decided any of the issues which Duke specifically  
4 said it was going to address with regard to capacity  
5 through the Ohio Commission decisions. This doesn't  
6 process.

7 With regard to the stipulation and  
8 recommendation this is the document that was filed  
9 with the Commission. There's no question as to its  
10 authenticity, as to completeness. If the company has  
11 a question about the completeness of the document, it  
12 can complete the document itself. There is no reason  
13 for me to do it. The operative provisions that are  
14 important to this case are now in the record and  
15 included in that document.

16 With regard to the last two items, the  
17 Janson and Whitlock testimony, IEU Exhibits 6 and 7,  
18 the complaint is that I failed to lay the proper  
19 foundation under Rule 804. That might be true if  
20 Rule 804 applied but it does not. This is a  
21 statement -- statements made by the company, made  
22 under oath. These are not hearsay, and 804 applies  
23 specifically to only hearsay, thus the objection is  
24 irrelevant to the question of the admissibility of  
25 this document.

1                   And certainly these documents are  
2                   authentic. They came with the certificate of the  
3                   Commission itself indicating the authenticity of  
4                   those documents.

5                   Thank you, your Honor.

6                   MS. BOJKO: Your Honor, may I be heard on  
7                   the testimony, of two pieces of testimony, one which  
8                   was used in my cross-examination as well?

9                   EXAMINER STENMAN: Briefly.

10                  MS. BOJKO: I just wanted to more clearly  
11                  define for the Bench that Rule 801(D)(2) is admission  
12                  by a party opponent, and that is where it  
13                  specifically says that it's not hearsay by  
14                  definition. I just wanted to have that rule citation  
15                  for you.

16                  MS. SPILLER: Your Honor, if I may very  
17                  briefly respond to Ms. Bojko, certainly all very  
18                  seasoned trial counsel in this case, 804 pertains to  
19                  out-of-court statements, and I can't believe that  
20                  there is any -- any confusion with respect to that  
21                  804 clearly speaks to former testimony.

22                  EXAMINER STENMAN: Okay. That's enough.  
23                  We are not going to debate the Rules of Evidence. We  
24                  do need to get clean copies of everything that you  
25                  are moving to admit.

1           IEU Exhibits 4 through 7 will be  
2 admitted, but I need clean copies supplied to the  
3 court reporters. That is going to be an ongoing  
4 ruling so know in advance any OEG exhibits that are  
5 going to be admitted, you are going to need clean  
6 copies for those also.

7           (EXHIBITS ADMITTED INTO EVIDENCE.)

8           EXAMINER STENMAN: Who would like to go  
9 next?

10          MR. KURTZ: Your Honors, I move the  
11 admission of OEG Exhibit 2, 3, 4, 4A, 5, and 6, and  
12 we will provide the court reporter copies without the  
13 yellow highlighting.

14          MS. SPILLER: Your Honor, if I may, OEG  
15 Exhibit 2 I would again note that, similar to other  
16 documents, that this document pertains to matters  
17 unrelated to Duke Energy Ohio, the applicant in this  
18 proceeding; and to the extent that it does, this  
19 information is irrelevant.

20          With respect to the Form 10-K reflected  
21 in OEG Exhibit 3, this is a total corporation 10-K,  
22 again, concerning matters related to entities other  
23 than the applicant in this proceeding, again,  
24 therefore containing information that is irrelevant,  
25 and I think that the irrelevance and confusion can be

1 eliminated by omitting this document from the record,  
2 given that Mr. Kurtz read into the record the  
3 relevant portions that he had highlighted within the  
4 document.

5 No objection, your Honor, to OEG Exhibit  
6 4 or 4A.

7 With respect to OEG Exhibit 5, I think  
8 the document is misleading insofar as it concerns  
9 just the base residual auction prices that may have  
10 cleared for particular planning years within PJM  
11 when, in fact, I think even as Mr. Kurtz had  
12 acknowledged, this is not the final zonal capacity  
13 price, given his cross-examination of Mr. Trent as to  
14 how the -- how the final zonal capacity price is  
15 calculated.

16 Also note that this document contains  
17 planning years that are well outside of those  
18 planning years at issue in this proceeding and,  
19 therefore, again, contains irrelevant information.

20 EXAMINER STENMAN: Mr. Kurtz.

21 MR. KURTZ: Thank you, your Honor. The  
22 Exhibit 2, the regulatory -- the investor  
23 presentation made in February of 2013, it's highly  
24 relevant to the question of Duke Energy Ohio's  
25 financial integrity. We learned from this document

1 that Duke Energy Ohio has Midwest -- Midwest coal  
2 assets which are known as the legacy coal assets that  
3 are submitted in the FRR plan. Those are the assets  
4 that have the negative return, according to Duke.

5 We also learned from that document that  
6 the Midwest gas assets are highly profitable, which  
7 leads Duke Commercial Power segment to earn  
8 \$47 million in 2012 and \$77 million in 2011. So  
9 those documents also tie the ESSC, the \$110 million  
10 charge to the Commercial Power segment, which means  
11 they go with the generation which, of course, is a  
12 highly contested issue in this case.

13 The 10-K also is a legally binding  
14 acknowledgment of Duke's numerous times that  
15 regulatory accounting does not apply to the  
16 unregulated assets of Duke Energy, unregulated  
17 generated assets in the Midwest coal and Midwest gas.  
18 So for the Commission to grant Duke's request,  
19 essentially the Commission would have to  
20 retroactively reregulate those units all the way back  
21 to August 1, 2012. So those documents go to the  
22 heart of this case, in many ways.

23 As to the PJM base residual auction  
24 results, that's -- that's throughout this entire  
25 case. That's central as to what the capacity price

1 is. And, by the way, it will be demonstrated later  
2 the company assumed for purposes of this capacity  
3 purchase expense in their case that they bought at  
4 the base residual auction amounts when, in fact, they  
5 bought at substantially less, so that number will be  
6 shown to be overstated.

7 So I think in terms of weighing the  
8 relevance of these documents, clearly the Commission  
9 should have access to that.

10 EXAMINER STENMAN: Thank you, Mr. Kurtz.  
11 OEG Exhibits 2 through 6, including both 4 and 4A  
12 will be admitted but, again, please provide clean  
13 copies to the court reporter.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 MS. GRADY: Thank you, your Honor. OCC  
16 would move for admission of Exhibits 1, 2, and 3, and  
17 would note that we did provide clean copies of our  
18 documents.

19 EXAMINER STENMAN: You're ahead of the  
20 game.

21 MS. GRADY: As my secretary insisted, we  
22 out all my notes.

23 MS. SPILLER: Well, I may have wanted  
24 those, Ms. Grady.

25 Your Honor, no objection to OCC 1, 2, or

1 3.

2 EXAMINER STENMAN: Anyone else objecting?

3 Hearing no objection, OCC 1, 2, and 3  
4 will be admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 Ms. Bojko.

7 MS. BOJKO: Thank you, your Honor. At  
8 this time, I would like to move the admission of  
9 Kroger 4, 5, 6. I don't believe we need to move the  
10 statutory provision.

11 EXAMINER STENMAN: We can take  
12 administrative notice of that.

13 Any objections to the admission of Kroger  
14 4, 5, and 6?

15 MS. SPILLER: Oh, no, your Honor.

16 EXAMINER STENMAN: Anyone else? Hearing  
17 no objections, Kroger 4, 5, and 6 will be admitted.

18 MS. BOJKO: Thank you, your Honor.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER STENMAN: Thank you. I believe  
21 we've addressed all of our pending exhibits.

22 Ms. Spiller.

23 MS. SPILLER: Thank you, your Honor. At  
24 this time Duke Energy Ohio would call Dr. Scott  
25 Niemann to the stand.

1 (Witness sworn.)

2 MS. SPILLER: And, your Honor, for  
3 purposes of the record, may we approach the Bench and  
4 have marked as Duke Energy Ohio Exhibit No. 3 the  
5 Direct Testimony of Scott Niemann, Ph.D., on behalf  
6 of Duke Energy Ohio filed on March 1, 2013.

7 EXAMINER STENMAN: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MS. SPILLER: Thank you.

10 - - -

11 SCOTT W. NIEMANN, PH.D.

12 being first duly sworn, as prescribed by law, was  
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 By Ms. Spiller:

16 Q. Dr. Niemann, can you please identify  
17 yourself for the record.

18 A. I'm Scott Niemann.

19 MR. KUTIK: Dr. Niemann, can you turn  
20 your microphone on.

21 Q. And, Dr. Niemann, do you have before you  
22 what has been marked as Duke Energy Ohio Exhibit No.  
23 3?

24 A. Yes, I do.

25 Q. Can you identify that document for the



1 record, please?

2 A. That is my direct testimony, prefiled  
3 testimony, in this case.

4 Q. And, sir, do you have any corrections or  
5 changes to your direct testimony identified as Duke  
6 Energy Ohio Exhibit 3?

7 A. Yes. I have a few corrections.

8 Q. And what are those, please?

9 A. The first is on page 12, line 9. The  
10 word "remain" should be replaced with "remaining."  
11 On page 16, line 16, the word "than" should be  
12 replaced with the word "that." On page 17, line 4,  
13 "January 1, 2011," should be corrected to "January 1,  
14 2012." And on page 20, line 22, the word "on" should  
15 be inserted between "based" and "information," and on  
16 line 23, the word "with" should be inserted after  
17 "that" so it reads that "I have confirmed that with  
18 the offer caps." And those are all the corrections.

19 Q. And, Dr. Niemann, incorporating the  
20 corrections that you have identified for us this  
21 afternoon, is your direct testimony marked as Duke  
22 Energy Ohio Exhibit 3 true and accurate?

23 A. Yes, it is.

24 Q. And with the corrections that you have  
25 identified this afternoon, would your answers to the

1 questions reflected in Duke Energy Ohio Exhibit 3 be  
2 the same today?

3 A. Yes, they would.

4 Q. And do you, Dr. Niemann, adopt as Duke  
5 Energy Ohio Exhibit No. 3 your direct testimony in  
6 these proceedings?

7 A. Yes, I do.

8 MS. SPILLER: Your Honor, the witness is  
9 available for cross-examination.

10 EXAMINER STENMAN: Mr. Kutik.

11 MR. KUTIK: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Kutik:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. You did not review at all any of the  
18 statutes which may apply to DEO for purposes of this  
19 procedure, correct?

20 A. I did not review any of the statutes in  
21 preparation of my testimony, that's correct.

22 Q. And you would not consider yourself an  
23 expert on the Ohio retail market.

24 A. I would not consider myself an expert on  
25 the legal aspect of the Ohio retail market.

1           Q.    Okay.  And you are not offering an  
2           opinion on whether recovery of the company's embedded  
3           costs with its FRR construct is consistent with Ohio  
4           ratemaking principles, correct?

5           A.    I'm not offering an opinion with regards  
6           to the legal aspects of Ohio ratemaking principles.

7           Q.    And you did not review the stipulation in  
8           the DEO electric security plan case, correct?

9           A.    That's correct, I did not.

10          Q.    And, in fact, Dr. Tabors' testimony is  
11          the most specific discussion of that stipulation that  
12          you had reviewed.

13          A.    I reviewed Dr. Tabors' testimony, and it  
14          certainly discusses that.  That may well be the most  
15          specific discussion I reviewed.  I don't recall.

16          Q.    And you didn't review any testimony that  
17          was filed in the DEO ESP case, correct?

18          A.    Not to my recollection, no.

19          Q.    And you didn't review any other  
20          stipulation or agreement that DEO might have entered  
21          into in the last several years, correct?

22          A.    That's correct.

23          Q.    And you haven't reviewed the ESSC,  
24          correct?

25          A.    That's correct.

1           Q.    And you don't know whether the ESSC  
2 revenues are associated with wholesale or retail  
3 service?

4           A.    As I said, I have not reviewed it, and I  
5 cannot form an opinion based on that.

6           Q.    So you don't know.

7           A.    I haven't reviewed it, and I haven't  
8 formed an opinion.

9           Q.    So you don't know.

10           MS. SPILLER:  Objection, asked and  
11 answered.

12           EXAMINER STENMAN:  Overruled.

13           A.    I haven't reviewed it and can't form an  
14 opinion.

15           Q.    So you don't know?

16           A.    Without reviewing it, no.

17           Q.    Okay.  And you don't know whether these  
18 revenues are considered generation revenues, correct?

19           A.    Again, I have not reviewed the document  
20 so I can't answer that question, no.

21           Q.    Although you are testifying about the  
22 FRR, you did not review DEO's FRR plan, correct?

23           A.    I don't believe that's correct.  I  
24 certainly reviewed part of the FRR plan.

25           Q.    All right.  You didn't review the plan

1       itself, correct?

2               A.    I didn't read the plan in its entirety,  
3       the plan that was filed.

4               Q.    Okay.  Now, you believe the plan was  
5       filed in 2011, correct?

6               A.    I don't know the specific date.  It was  
7       either 2010 or 2011.

8               Q.    All right.  And in your deposition you  
9       gave me the date 2010, did you not?

10              MS. SPILLER:  Objection, your Honor.  
11       That's an improper use of a deposition.

12              MR. KUTIK:  He can either say "yes" or  
13       "no."

14              EXAMINER STENMAN:  Overruled.

15              A.    I believe in my deposition I said I  
16       didn't recall the exact date, the 2011 sounded right.

17              Q.    Okay.  And it was filed in 2010, correct?

18              A.    I said I don't recall whether it was '10  
19       or '11.

20              Q.    Do you not know when it was filed?

21              A.    No.

22              Q.    Okay.

23              MR. KUTIK:  Your Honor, may I approach?

24              EXAMINER STENMAN:  You may.

25              Q.    Dr. Niemann, I want to show you what's

1       been previously marked and admitted into the record  
2       as FES Exhibit 7, which is an August 16, 2010, letter  
3       from an attorney by the name of Noel Symons to  
4       Kimberly D. Bose of the Federal Energy Regulatory  
5       Commission. Do you recognize that as a document that  
6       was filed on behalf of DEO and Duke Energy Kentucky,  
7       correct?

8             A.     Yes, that's correct.

9             Q.     And it's labeled or it's described in the  
10       first couple of sentences as the "FRR Plan filing,"  
11       correct? The fourth line?

12            A.     Yes, I see that.

13            Q.     Okay. And that bears a date of 2010,  
14       correct?

15            A.     That's correct.

16            Q.     Now, the PJM capacity market is something  
17       that you're here to testify about, correct?

18            A.     That's correct.

19            Q.     And you would agree with me that the PJM  
20       capacity market is a competitive market.

21            A.     There are many aspects to the PJM  
22       capacity market, one of which is auctions which I  
23       would generally consider to be competitive.

24            Q.     Well, would you generally consider  
25       capacity under the PJM market to be competitive? You

1 would consider it to be competitive, would you not?

2 MS. SPILLER: Objection, asked and  
3 answered.

4 EXAMINER STENMAN: Overruled.

5 A. I'm sorry, could you repeat that.

6 Q. Would you generally consider capacity  
7 under the PJM market to be a competitive service?

8 A. As I said before, there are different  
9 types of capacity under the PJM market, some of which  
10 are competitive, some of which are not.

11 Q. Would you generally consider the capacity  
12 market in PJM to be a competitive wholesale market?

13 MS. SPILLER: Asked and answered,  
14 objection.

15 EXAMINER STENMAN: Overruled.

16 A. I consider the competitive auctions  
17 conducted under the RPM construct to be competitive.

18 Q. Dr. Niemann, do you have your deposition  
19 transcript with you?

20 A. I don't have it in front of me.

21 MR. KUTIK: May I approach, your Honor?

22 EXAMINER STENMAN: You may.

23 MS. GRADY: Mr. Kutik, I have extra  
24 copies of Mr. Niemann's deposition if I could assist  
25 you.

1 MR. KUTIK: No, it's okay.

2 Q. Dr. Niemann, let me hand you a copy of  
3 your deposition transcript.

4 EXAMINER STENMAN: Thank you.

5 Q. Do you recognize that as a copy of your  
6 deposition transcript?

7 A. Yes, it appears to be.

8 Q. Let me refer you, sir, to page 48 of your  
9 transcript in condensed version, so I'm looking at  
10 the pages that are condensed. Are you there?

11 A. Page 48, yes.

12 Q. And let me direct you further to line 21  
13 of the deposition. Did you testify as follows:

14 "Question: Okay. And would you  
15 generally consider the capacity, the capacity under  
16 the PJM market, to be a competitive or noncompetitive  
17 service?

18 "Answer: A competitive or noncompetitive  
19 service?

20 "Question: Yes."

21 MS. SPILLER: Your Honor, I'm --

22 Q. "Answer: It's again -- there's -- there  
23 are dif -- there are different definitions for  
24 competitive, but it's generally considered to be a  
25 competitive wholesale market service."



1                   That's what you testified to, correct?

2                   MS. SPILLER: Your Honor, I am going to  
3 move to strike to the extent Mr. Kutik is referring  
4 to these questions on page 48, line 21, intending to  
5 impeach Dr. Niemann with respect to that. That was  
6 not the question that was posed to Dr. Niemann this  
7 afternoon.

8                   MR. KUTIK: I think the Bench can  
9 determine that, your Honor. It's exactly the  
10 question I asked.

11                   EXAMINER STENMAN: The objection will be  
12 overruled.

13                   Q. That's what you testified to, yes?

14                   A. Give me a second here to review, please.  
15 In this answer I am specifically referring to the  
16 market meaning the auctions. My answer says, "As a  
17 charge for capacity under the PJM capacity market  
18 construct," which is more narrow than PJM -- than the  
19 PJM.

20                   Q. Sir, I just asked you whether I read your  
21 deposition correctly. Did I?

22                   A. Yes, you read it correctly.

23                   Q. Thank you. Now, with its reliance on the  
24 liability pricing model, the PJM market has been a  
25 relatively well functioning market, correct?

1           A.     There are certain aspects of the market  
2     that have not functioned as intended, but generally  
3     as an overall construct, RPM, I would say, has been  
4     well functioning.

5           Q.     It attracts a substantial amount of new  
6     entry, correct?

7           A.     There's been a substantial amount of new  
8     entry through the RPM market, yes.

9           Q.     And FERC has determined that prices  
10    resulting from the RPM auction process will  
11    approximate those of a competitive market, correct?

12          A.     Generally, yes.

13          Q.     And FERC has determined that pricing from  
14    RPM auctions results in rates that are just and  
15    reasonable.

16          A.     Again, I don't recall specifically that  
17    FERC has made that statement, but I would say it's  
18    generally true.

19               MR. KUTIK:   May I approach, your Honor?

20               EXAMINER STENMAN:   You may.

21               MR. KUTIK:   Your Honor, at this time we  
22    would like to have marked as FES Exhibit 15 an order  
23    from the Federal Energy Regulatory Commission in  
24    Docket Nos. ER05-1410-005 and EL05-148-005, re PJM  
25    Interconnection, Order Denying Rehearing, issued

1 November 15, 2007.

2 EXAMINER STENMAN: It will be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Now, in your study of the PJM market,  
5 you've from time to time reviewed -- reviewed orders  
6 of the FERC, have you not?

7 A. Yes, I have.

8 Q. And particularly you were involved and I  
9 believe your testimony is in the case that resulted  
10 in the RAA, correct?

11 A. A portion of the RAA, the portion of the  
12 RAA pertaining to RPM.

13 Q. And the case that I've handed you, that  
14 was the case that helped develop the RPM, correct?

15 A. Yes, it is.

16 Q. And let me refer you to page 12. And  
17 paragraph No. 24, the opinion states, "We conclude  
18 that prices in RPM will be just and reasonable  
19 because mitigation measures will constrain sellers to  
20 submit bids that prevent the exercise of market  
21 power, with the result that prices will approximate  
22 those of a competitive market." Do you see that?

23 A. I do.

24 Q. Now, the FERC has also determined, has it  
25 not, that cost-based rates are not the only means by

1       which one can get just and reasonable pricing,  
2       correct?

3               A.     Again, off the top of my head, I can't  
4       think of a specific place where -- where that has  
5       been stated by the Commission.

6               Q.     Let me have you refer to page 128 of your  
7       deposition. Let me specifically refer you to line 14  
8       and did you testify as follows:

9                     "Question: Would it also be fair to say  
10      that FERC has expressed of you that determining  
11      what's just and reasonable doesn't compel cost-based  
12      rates?"

13                    And you say: "Answer: It would be  
14      accurate to say that cost-based rates are not the  
15      only means by which you can get just and reasonable  
16      pricing on recovery."

17                    That is what you testified to, correct?

18               A.     You've read that correctly, yes.

19               Q.     Thank you. Now, in a competitive  
20      capacity market for a given location, capacity prices  
21      do not differ on the basis of old plants or new  
22      plants, correct?

23               A.     I'm sorry, can you repeat that.

24               Q.     Sure. In a competitive market for a  
25      given location, capacity price does not differ for

1 old plants versus new plants?

2 A. For a given point in time and a given  
3 market outcome, yes.

4 Q. And the same could be true for  
5 inefficient versus efficient plants?

6 A. That's true, that within the RPM  
7 construct and the auctions conducted by PJM, all  
8 capacity in the same location providing the same  
9 product is paid the same price.

10 Q. Now, it would be correct to say that FERC  
11 has found that a competitive market can provide  
12 important advantages to electric -- electricity  
13 customers in comparison to cost-of-service  
14 regulation?

15 A. At a general level, I would agree with  
16 that, yes.

17 Q. A competitive market with a single  
18 clearing price creates incentives for sellers to  
19 minimize their costs because cost reductions can  
20 increase a seller's profit?

21 A. Again, in general, I would agree with  
22 that.

23 Q. When many sellers work to minimize their  
24 cost, competition among them helps keep prices as low  
25 as possible.

1           A.    Again, as a general matter, I would agree  
2           with that.

3           Q.    Generally if all suppliers are offering  
4           in at their lowest possible cost, it will result in  
5           lower costs for the system?

6           A.    Again, as a general matter, I would  
7           agree.

8           Q.    A competitive market can result in  
9           benefits to customers because over time the market  
10          results in more efficient sellers and lower prices,  
11          correct?

12          A.    I'm sorry, can you repeat that one?

13          MR. KUTIK:   Sure.

14          May I have that read, your Honor.

15          (Record read.)

16          A.    As a general matter, I would agree with  
17          that.

18          Q.    Now, switching subjects slightly, you  
19          were involved in a case at FERC which we mentioned  
20          just earlier that helped develop part of the RAA,  
21          correct?

22          A.    That's correct.

23          Q.    And there is something else called  
24          Attachment D, correct?

25          A.    To the PJM open access transmission

1       tariff?

2               Q.     Yes.

3               A.     Yes.

4               Q.     And that was involved in that case as  
5       well, correct?

6               A.     I believe it is Attachment DD.

7               Q.     Okay.  And would it be fair to say that  
8       the RAA and Attachment DD do not use the term  
9       "embedded costs"?

10              A.     I've not exhaustively searched either one  
11       of those documents for the word "embedded cost," but  
12       I don't believe it's in there.

13              Q.     In your testimony you say that the PJM  
14       rules do not and are not intended to address recovery  
15       of embedded costs, correct?

16              A.     Generally, yes, that's true.

17              Q.     And in the absence of market power in a  
18       competitive capacity market, individual suppliers  
19       would be expected to offer at least their avoided  
20       costs, correct?

21              A.     Generally speaking, yes.

22              Q.     Avoided costs would be those costs that  
23       would be avoided by either retiring or mothballing a  
24       unit.

25              A.     For the purposes of market monitoring in

1 the RPM base residual and incremental auctions,  
2 that's how they define what it will cost rate.

3 Q. Now, the RAA also talks about a state  
4 compensation mechanism, correct?

5 A. Yes.

6 Q. And a state compensation mechanism is one  
7 way in which a fixed resource requirement entity, an  
8 FRR entity, can be compensated -- or the compensation  
9 can be set.

10 A. That's correct.

11 Q. And there is nothing -- or where there is  
12 a state compensation mechanism in the state, there is  
13 nothing in the RAA that prevents having more than one  
14 state compensation mechanism in a particular state,  
15 correct?

16 A. There's nothing in the RAA that prevents  
17 that, that's correct.

18 Q. So there could be a situation where there  
19 are different FRR entities in the state and those --  
20 those FRR entities have different state compensation  
21 mechanisms, correct?

22 A. From a regulatory economics perspective,  
23 I would generally expect the compensation mechanisms  
24 to be consistent, but there's nothing in the RAA that  
25 says they have to be exactly the same.



1           Q.     So different FRRs in the state could have  
2 different state compensation mechanisms, correct?

3           MS. SPILLER:   Objection, asked and  
4 answered.

5           EXAMINER STENMAN:   Overruled.

6           A.     Yes.

7           Q.     Now, a state compensation mechanism could  
8 be set below embedded costs, correct?

9           A.     There's nothing in the RAA that dictates  
10 the level at which a state compensation mechanism  
11 needs to be set.

12          Q.     So it could be set below embedded costs,  
13 correct?

14          A.     That would be allowed under the RAA.

15          Q.     And a state compensation mechanism might  
16 make sense to establish a rate other than the RPM  
17 rate that is the RPM auction price when a supplier's  
18 avoided costs are greater than the RPM clearing  
19 price, correct?

20          A.     That could make sense. I would have to  
21 consider all the facts in any situation.

22          Q.     Now, nothing in the RAA guarantees a  
23 supplier the ability to recover its embedded costs,  
24 correct?

25          A.     That's correct, there is nothing in the

1 RAA that specifies guaranteed recovery of embedded  
2 costs.

3 Q. And I think, as you said earlier, there's  
4 nothing in the RAA that states rates couldn't be  
5 below full embedded costs, correct?

6 A. There is nothing -- the RAA is silent on  
7 embedded costs. Recovery could be higher or lower on  
8 in the RAA.

9 Q. However, under the RPM construct,  
10 suppliers have the opportunity to recover embedded  
11 costs through the market, correct?

12 A. Under the RPM construct, suppliers can  
13 sell capacity through the auctions conducted by PJM,  
14 and that may allow some recovery or all recovery or  
15 more than recovery of embedded costs.

16 Q. And some of the ways that might happen  
17 would be, for example, if there -- if the RPM auction  
18 cleared above the suppliers avoided costs, correct?

19 A. Well, are you talking about avoided costs  
20 versus embedded costs? Just because it clears above  
21 avoided costs doesn't mean it's above embedded costs.

22 Q. That's not my question. My question is  
23 if a seller has avoided costs that are below the  
24 clearing price, that margin on the capacity can be  
25 applied towards the embedded costs for recovery of

1 embedded costs, correct?

2 A. In that case for an entity to participate  
3 in the auction, yes.

4 Q. And similarly, a supplier that  
5 participates in the energy and ancillary services  
6 market to the extent that that seller earns margins  
7 on those services, those margins can also be applied  
8 towards the recovery of embedded costs, correct?

9 A. They could be, with no guarantee that  
10 it's going to be greater or less than embedded costs.

11 Q. Now, I noticed in your resume that you  
12 formerly worked for Charles River Associates,  
13 correct?

14 A. Yes, that's correct.

15 Q. And at Charles River Associates, you  
16 worked on some assignments for Duke, correct?

17 A. That's correct.

18 Q. And in some of those assignments you  
19 worked with a man named Robert Stoddard, correct?

20 A. Yes, that's correct.

21 Q. And he was one of the senior players on  
22 the CRA team that you worked with, correct?

23 MS. SPILLER: Your Honor, if I may, I  
24 think this line of questioning regarding Robert  
25 Stoddard is irrelevant and certainly beyond the scope

1 of Dr. Niemann's testimony in this proceeding.

2 EXAMINER STENMAN: Mr. Kutik?

3 MR. KUTIK: Your Honor, as we will  
4 establish, Mr. Stoddard has considerable expertise,  
5 worked with this witness. This witness relied upon  
6 Mr. Stoddard's information. I should be able to talk  
7 to him about Mr. Stoddard and Mr. Stoddard's views.

8 EXAMINER STENMAN: The objection will be  
9 overruled.

10 Q. Do you remember the question?

11 A. No. Can you repeat it?

12 MR. KUTIK: May I have it read, please?

13 EXAMINER STENMAN: Could you?

14 (Record read.)

15 A. Both Mr. Stoddard and I were officers in  
16 the CRA energy practice, that's correct.

17 Q. Well, you weren't always an officer, were  
18 you, sir?

19 A. No. I was there for a long time and was  
20 eventually promoted to officer.

21 Q. And, again, let's talk about  
22 Mr. Stoddard. Mr. Stoddard, he was one of the senior  
23 players on the CRA team, wasn't he?

24 A. Yes.

25 Q. And you worked with Mr. Stoddard on the

1 settlement that led up to the RAA modification that  
2 we just mentioned, correct?

3 A. Yes, that's correct.

4 Q. And he was one of the principal  
5 consultants for CRA's clients -- or client with  
6 regard to that settlement process, correct?

7 A. Yes, that's correct.

8 Q. And he was one of the drafters of the RAA  
9 that resulted from the settlement, correct?

10 MS. SPILLER: Your Honor, again, I think  
11 we are -- Mr. Kutik is attempting to, I believe,  
12 through this witness put in the opinions of Robert  
13 Stoddard on matters that are clearly outside of  
14 Dr. Niemann's testimony and I think it's improper use  
15 of Mr. Stoddard's former testimony, which I think is  
16 where we are headed.

17 MR. KUTIK: Your Honor, as I will  
18 establish, Mr. Stoddard was one of the drafters of  
19 the RAA that this witness relies upon to give  
20 testimony or to give opinions in his testimony.

21 Mr. Stoddard also provided testimony  
22 which this witness relied upon in his review and work  
23 in this case, and so I should be able to continue to  
24 talk -- be able to talk to Dr. Niemann about his  
25 views versus Mr. Stoddard's views.

1 EXAMINER STENMAN: The objection is  
2 overruled.

3 THE WITNESS: I'm sorry, could you read  
4 back the question.

5 Q. I think the question was, he was one of  
6 the drafters of the RAA.

7 A. Mr. Stoddard drafted, to my knowledge,  
8 parts of the settlement agreement and some of the  
9 tariff language. Whether it was specifically RAA or  
10 Attachment DD, I don't recall. You have to ask  
11 Mr. Stoddard that.

12 Q. Let's have you refer to your deposition,  
13 sir, page 97. Let me specifically refer you to line  
14 24. You testify as follows:

15 "Question: Okay. Now, Mr. Stoddard was  
16 part of the group that actually drafted the documents  
17 that resulted in the RAA, correct?"

18 Ms. Spiller objects.

19 And you say on line 5: "Answer: I  
20 believe that's correct."

21 That was your testimony, correct?

22 MS. SPILLER: Your Honor, I am going to  
23 move to strike. Dr. Niemann hasn't said anything  
24 inconsistent with that today so I think the attempted  
25 impeachment improper.

1 EXAMINER STENMAN: Overruled.

2 A. What you just read accurately reflects  
3 what's in the transcript.

4 Q. And on -- in his work in that case, that  
5 FERC case that we have been talking about, you  
6 supported his work, did you not?

7 A. Some aspects of his work, yes.

8 Q. Now, while both you and he were employed  
9 by Charles River Associates, Mr. Stoddard testified  
10 in the AEP capacity case on behalf of FirstEnergy  
11 Solutions, correct?

12 A. Yes, that's correct.

13 Q. And you were aware that Mr. Stoddard was  
14 testifying for FirstEnergy Solutions in that case  
15 while you worked at CRA, correct?

16 A. I was aware that he was a witness in that  
17 case, yes.

18 Q. And, in fact, one of the first things  
19 that you did in this case is that you went and looked  
20 at the AEP capacity case record and you reviewed his  
21 testimony, correct?

22 A. I don't recall if it was one of the first  
23 thing that I did in this case, but I did review his  
24 testimony as part of my preparation of my testimony.

25 Q. In fact, in the entire record of the AEP

1 capacity case, you only read two things, one, the  
2 opinion and order in that case; and, two,  
3 Mr. Stoddard's testimony, correct?

4 A. I believe that's correct.

5 Q. And Mr. Stoddard presented views that are  
6 different from your views; isn't that correct?

7 MS. SPILLER: Objection. This is  
8 improper use of the former testimony of Mr. Stoddard.  
9 Again, we are trying to backdoor into this case what  
10 a witness in another proceeding in which Duke Energy  
11 Ohio was not a party may have testified to.

12 MR. KUTIK: Your Honor, it's the same  
13 argument we've made before. This witness worked with  
14 Mr. Stoddard. Mr. Stoddard obviously has significant  
15 experience in this. This witness went to look for  
16 Mr. Stoddard when he was preparing his testimony, so  
17 I think I'm entitled to talk to the witness about  
18 Mr. Stoddard's testimony.

19 EXAMINER STENMAN: Overruled.

20 Q. By the way is -- well, I don't know if I  
21 have an answer to the question so, let's get that.

22 A. I'm sorry, I forgot the question.

23 MR. KUTIK: May I have it read, please,  
24 your Honor.

25 EXAMINER STENMAN: Yes.



1 (Record read.)

2 A. I don't agree with all the views  
3 presented by Mr. Stoddard in his testimony.

4 Q. Okay. By the way, Mr. Stoddard, his  
5 office is in Boston or Cambridge or similar,  
6 somewhere in that neighborhood, correct?

7 MS. SPILLER: Objection, relevance.

8 MR. KUTIK: I'll tie it up, your Honor.

9 EXAMINER STENMAN: Overruled.

10 A. Yes, his office is in Boston.

11 Q. Okay. And were you aware that  
12 Mr. Stoddard declined to testify in this case because  
13 he felt he had a conflict?

14 MS. SPILLER: Objection, your Honor,  
15 relevance.

16 MR. KUTIK: Your Honor, Ms. Spiller has  
17 specifically objected to references to testimony in  
18 the past because the witness was unavailable. I am  
19 now establishing that Mr. Stoddard is unavailable.

20 MS. SPILLER: This is not how you  
21 establish that, Mr. Kutik, and you know that.

22 MR. KUTIK: Oh, yes, it is.

23 EXAMINER STENMAN: All right. Overruled.

24 A. I haven't discussed this case with  
25 Mr. Stoddard.

1 Q. Haven't heard that?

2 A. I have not discussed it with  
3 Mr. Stoddard, no.

4 Q. Now, Mr. Stoddard took the opinion that  
5 the RPM auction price is the best price for capacity  
6 as it's best for markets in the short and long runs.  
7 You are aware of that, right?

8 MS. SPILLER: Objection, your Honor.  
9 Again, attempting to insert into this record former  
10 testimony of Robert Stoddard in another proceeding  
11 and clearly no indication as to his unavailability;  
12 lack of foundation, and I think this also highly  
13 prejudicial to Duke Energy Ohio, which was not a  
14 party to that proceeding.

15 EXAMINER STENMAN: Overruled.

16 A. I don't recall the specific language in  
17 his testimony. I don't have it in front of me.

18 MR. KUTIK: Your Honor, may I approach?

19 EXAMINER STENMAN: You may.

20 MR. KUTIK: Your Honor, at this time we  
21 would like to have marked as FES Exhibit 16 a  
22 document entitled the "Direct Testimony of Robert B.  
23 Stoddard on Behalf of" the FirstEnergy -- "on behalf  
24 of FirstEnergy Solutions Corp." in Case No.  
25 10-2929-EL-UNC.

1 EXAMINER STENMAN: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. (By Mr. Kutik) Dr. Niemann, I have handed  
4 you what the court reporter has marked as FES Exhibit  
5 16. Do you recognize that as Mr. Stoddard's  
6 testimony in the AEP capacity case, do you not?

7 A. Yes, I do.

8 Q. And let me have you turn to page 3 of his  
9 testimony. Mr. Stoddard says, starting at line 2,  
10 "The appropriate capacity price" in the RPM RTO  
11 auction -- "is the RPM RTO auction price. In the  
12 short run, the RPM auction price is the 'right price'  
13 in terms of economic efficiency, appropriately  
14 compensating AEP Ohio and is the closest  
15 approximation to the market value of the reliability  
16 value of the capacity. In the long run, RPM is  
17 designed to provide the appropriate incentives for  
18 the entry of new, cost-efficient resources and the  
19 exit of inefficient resources over a suitably long  
20 investment horizon. Because the RPM RTO auction  
21 price is efficient in both the long- and short-term,  
22 it follows that incorporating any capacity price in  
23 the state compensation mechanism other than the RPM  
24 RTO price leads to uneconomic impacts and distorts  
25 the competitive landscape."

1                   That's what Dr. -- or, excuse me,  
2                   Mr. Stoddard testified to, correct?

3                   A.     That's what the testimony says, yes.

4                   Q.     And Mr. Stoddard also testified that the  
5                   RPM price is designed to provide appropriate  
6                   incentives for the entry of new cost efficient  
7                   resources and the exit of inefficient resources over  
8                   a suitably long investment horizon, correct?

9                   MS. SPILLER:  Objection, relevance,  
10                  particularly given that the Commission was not  
11                  persuaded by Mr. Stoddard's testimony.

12                  EXAMINER STENMAN:  Mr. Kutik.

13                  MR. KUTIK:  Your Honor, again, this  
14                  witness reviewed Mr. Stoddard's testimony and worked  
15                  with Mr. Stoddard.  Mr. Stoddard took one view and  
16                  this witness, obviously, is taking a different view,  
17                  and we're entitled to show that this witness's views  
18                  are inconsistent with the views that were taken by  
19                  his senior on the very project that he touts his  
20                  experience for.

21                  EXAMINER STENMAN:  Objection overruled.

22                  MS. SPILLER:  Your Honor, understanding  
23                  that Mr. Kutik, if I may be heard, please, is going  
24                  to continue down this path, he is equating "review"  
25                  with "rely," suggesting that Dr. Niemann somehow

1       relied upon Mr. Stoddard's testimony, that somehow  
2       Dr. -- Dr. Niemann was influenced by Mr. Stoddard's  
3       role in the company, and I think that's incredibly  
4       unfair, mischaracterizes Dr. Niemann's testimony.

5               He said he reviewed it and disagreed with  
6       it, and now Mr. Kutik is attempting to prejudice this  
7       record by reading into it portions of Dr. Stoddard's  
8       testimony.

9               MR. KUTIK: Your Honor --

10              EXAMINER STENMAN: Your objection will be  
11       noted for the record. It's already been overruled.

12              Mr. Kutik.

13              MR. KUTIK: I believe there was a  
14       question pending, your Honor. May I have it read,  
15       please.

16              EXAMINER STENMAN: Yes, please.

17              (Record read.)

18              A. You would have to point me to the  
19       specific lines so I can verify that's what you are  
20       reading from his testimony.

21              Q. Certainly. Let me refer you to page 21.  
22       Are you there, sir?

23              A. I am.

24              Q. And on line 12, Mr. Stoddard says, "In  
25       the long run, the RPM is designed to provide the

1 appropriate incentives for the entry of new,  
2 cost-efficient resources and exit of inefficient  
3 resources over a suitably long investment horizon;  
4 the success of this market design has been well  
5 documented, particularly in two reports by  
6 Mr. Graves' consultancy, The Brattle Group."

7 Do you see that?

8 A. Yes, I see those words in his testimony.

9 Q. Okay. And let me also refer you now to  
10 page 28, starting at line 14. Mr. Stoddard says,  
11 does he not, "As an economist who had direct  
12 responsibility for negotiating the RPM design, it is  
13 my professional opinion that AEP should only be  
14 allowed to recover costs that are consistent with how  
15 that term is used elsewhere in Section 8 of the RAA,  
16 and as used in the parallel Attachment DD of the PJM  
17 Tariff: The ACR net of the E&AS offset. Any other  
18 definition of 'cost' would provide FRR Entities a  
19 (presumably higher) rate that cannot be earned by  
20 entities participating in the RPM; consequently, such  
21 treatment would encourage some entities to opt out of  
22 the RPM auction structure to seek higher capacity  
23 rates. But the design intent of the RPM was to  
24 provide a comprehensive framework for PJM. The FRR  
25 Alternative was always viewed as an exception, not

1 the rule, offered for the narrow purpose of helping  
2 FRR Entities manage their own portfolios. The FRR  
3 Alternative was not intended to create the  
4 opportunity for substantial unjust enrichment by  
5 opting out of the RPM Auctions."

6 That's what Mr. Stoddard said, correct?

7 A. You've read that correctly, yes.

8 Q. Now, while both you and he were working  
9 at CRA, CRA gave advice to Duke regarding the PJM  
10 market and regarding Duke's potential entry into PJM?

11 MS. SPILLER: Objection, your Honor.  
12 Your Honor, Mr. Kutik is now venturing into  
13 confidential information protected both, pursuant to  
14 CRA, between the client and the witness, as well as  
15 the witness and his former employer.

16 MR. KUTIK: I don't believe that's true,  
17 your Honor.

18 EXAMINER STENMAN: The objection will be  
19 overruled.

20 A. I have a confidentiality agreement in  
21 place with CRA under which I am obligated not to  
22 disclose confidential information about clients'  
23 work, including the nature of engagements.

24 Q. And you would venture that Mr. Stoddard  
25 was similarly subject to those confidentiality

1 agreements, correct?

2 A. Yes.

3 MR. KUTIK: May I approach, your Honor?

4 EXAMINER STENMAN: You may.

5 Q. Dr. Niemann, I want to hand you a  
6 deposition transcript of Robert Stoddard in Case No.  
7 10-2929.

8 MS. SPILLER: 17?

9 MR. KUTIK: I have not marked it, and I  
10 don't intend to mark it, your Honor.

11 Q. Mr. -- Dr. Niemann, I want to refer you  
12 to page 6 of this deposition where Mr. Stoddard is  
13 asked the question: "And can you describe to me what  
14 the nature of the assignment was for Duke Energy  
15 Ohio?"

16 And Mr. Stoddard, after an admonition  
17 from me not to disclose proprietary information,  
18 says, "I can describe it. I worked with Duke Energy  
19 Ohio since the inception of RPM on helping them  
20 assess capacity market issues, and that involvement  
21 continued as Duke Energy Ohio and its Kentucky  
22 affiliate shifted from the Midwest ISO to PJM,  
23 effective January 1 of this year, including helping  
24 Duke Energy Ohio assess options open to it with  
25 respect to capacity and capacity pricing."



1 MS. SPILLER: Your Honor --

2 Q. Did you work on that assignment?

3 MS. SPILLER: Mr. Kutik, this is  
4 important. The fact that Robert Stoddard neglected  
5 your advice and chose to disclose information which  
6 Dr. Niemann feels is confidential, I believe that's  
7 inappropriate to attempt to try to encourage  
8 Dr. Niemann to so agree and follow suit with  
9 Mr. Stoddard. Dr. Niemann has testified he has a  
10 confidentiality agreement with his employer. That  
11 your witness chose to waive that agreement is not  
12 Dr. Niemann's issue.

13 MR. KUTIK: No. What it shows is the  
14 lack of credibility of this witness.

15 MS. SPILLER: Your Honor, move to strike.

16 EXAMINER STENMAN: Okay, let's not speak  
17 over each other. Go ahead.

18 MR. KUTIK: May I continue?

19 EXAMINER STENMAN: You may.

20 MR. KUTIK: Thank you, your Honor. This  
21 witness has claimed a cover of a confidentiality  
22 order which he claims prohibits him from discussing  
23 that. Dr. -- or Mr. Stoddard, who this witness  
24 admits was subject to the same protective order, was  
25 able to give this description of what he worked on.

1 And my question to him is knowing that, knowing that  
2 this was Dr. -- Mr. Stoddard's description of what he  
3 did is, did he work on that project, too?

4 MS. SPILLER: Your Honor, if I may, I  
5 think it is insulting of this witness to challenge  
6 his credibility because of what another individual  
7 retained by FirstEnergy Solutions chose to do, so.  
8 Dr. Niemann is standing on two confidentiality  
9 agreements, neither of which have been waived.

10 EXAMINER STENMAN: The objection will be  
11 overruled.

12 However, Dr. Niemann, I would encourage  
13 you to testify as you see appropriate.

14 Q. Did you work on that, too?

15 A. This is a fairly broad description of a  
16 lot of work. I may have been involved in some of it,  
17 not necessarily all of it.

18 Q. Okay. Now, whatever part you worked on,  
19 it's fair to say that you claim not to know why DEO  
20 sought to migrate from MISO to PJM, correct?

21 A. I don't believe that was my testimony,  
22 no.

23 Q. That you do know then; is that your  
24 testimony?

25 A. My testimony was that I hadn't -- hadn't

1 specifically had discussions with the company or  
2 hadn't specifically had discussions with the company  
3 about the reasons for migrating to -- to PJM from  
4 MISO in preparing my testimony as I didn't see it as  
5 relevant.

6 Q. So that you cannot answer the question as  
7 to why the company migrated or sought to migrate to  
8 PJM; is that correct?

9 A. I was generally familiar with some of the  
10 reasons why companies were moving from MISO to PJM at  
11 the time that Duke Energy -- Duke Energy Ohio made  
12 the decision to migrate to PJM.

13 Q. With respect, Doctor, that really wasn't  
14 my question. My question is, it's true, is it not,  
15 that you cannot testify about -- or you cannot say  
16 what the company's reasons were for moving to PJM,  
17 correct?

18 A. I cannot testify about all of the reasons  
19 that the company was considering. I was not part of  
20 those discussions and was not part of that  
21 decision-making process.

22 Q. Well, let me refer you to your  
23 deposition, sir. Let me refer you to page 28 of your  
24 deposition, line 5.

25 A. You said that was page 28?

1           Q.    Yes, it is, line 5, sir. Now, you  
2 testified starting at line 5, "Question: Okay.  
3 Thank you. Now, do you understand why Duke Energy  
4 Ohio joined PJM on January 1, 2012?"

5           Ms. Spiller objected

6           And answer beginning on line 10: "So I  
7 have not had discussions with the company about  
8 exactly why they joined PJM; and, you know, I can't  
9 answer that question in terms of -- of -- in terms of  
10 the company's rationale for the transition."

11           That was your answer in deposition,  
12 correct?

13           MS. SPILLER: Again, move to strike.  
14 Doesn't impeach what Dr. Niemann has said this  
15 afternoon.

16           EXAMINER STENMAN: Overruled.

17           A.    Yes, you read that correctly.

18           Q.    And you can't -- you can't say or you  
19 don't know what scenarios the company considered,  
20 correct?

21           A.    That's correct.

22           Q.    Now, as a potential participant in the  
23 PJM market, the timing of when DEO would seek to  
24 enter the market was up to DEO, correct?

25           A.    I don't know all of the restrictions and

1 so forth that DEO would have been facing and what,  
2 for example, regulatory requirements may have  
3 dictated the timing.

4 Q. So is the answer to my question "yes" or  
5 "no"?

6 A. Could you repeat your question?

7 Q. Yes. As a potential participant in the  
8 PJM market, the timing of when DEO would seek to  
9 enter the market was up to DEO.

10 A. Subject to any restrictions in terms of  
11 gaining approval and so forth to make the move,  
12 ultimately the decision would have been the company.

13 Q. Thank you. Now, it was possible under  
14 the RAA for DEO to have migrated to PJM without being  
15 an FRR entity, correct?

16 A. I believe that technically under the RAA,  
17 they could have come in and participated in base  
18 residual auctions and joined at a later time if they  
19 were willing to take the risks that were associated  
20 with that.

21 Q. Okay. So just going to what they did  
22 first in terms of this alternative, they became, that  
23 is, DEO became an FRR entity because it sought to  
24 enter the market in January of 2012 and they had not  
25 participated in the base residual auction for that

1 year, correct?

2 A. That's correct.

3 Q. And so the first base residual auction  
4 that they could participate in would have been --  
5 let's say they decided they wanted to participate in  
6 the May 11, 2011, auction. The first delivery year  
7 that they could participate in would have been the  
8 year beginning June 1, 2014, correct?

9 A. At the time of their application to join  
10 PJM, that would have been the first auction -- that  
11 was the next auction that had not yet occurred, but  
12 that still would have occurred before they were  
13 officially in PJM.

14 Q. Right. So if they were first officially  
15 in PJM in January, is it your testimony then that  
16 their first auction they could have been participated  
17 in would be the May, 2012, auction for the delivery  
18 year beginning June 1, 2015?

19 A. At the time -- once they had joined, the  
20 next auction would have been in May, 2012, auction.

21 Q. So between whatever time they joined and  
22 whatever the first delivery year they could  
23 participate in for the BRA, they would have had to be  
24 an FRR entity for that period of time, correct?

25 MS. SPILLER: I'm sorry, could I have

1       that question read back.

2                       (Record read.)

3               A.     They would have to be an FRR entity for  
4     any auctions that had already been conducted.

5               Q.     Thank you.  Now, but assume for me that  
6     DEO, sitting in 2010, had said, We'll stay in MISO  
7     until June 1, 2014, but we'll start participating in  
8     the BRAs for the year in May of 2011.  Are you with  
9     me so far?

10              A.     Yes.

11              Q.     Under that scenario they could have  
12     migrated into PJM without being -- becoming an FRR  
13     entity, correct?

14              A.     If they had done so, they would have  
15     taken on additional residual --

16              Q.     That's not my question.  My question is  
17     they could have done so, correct, under the rules?

18                     MS. SPILLER:  Mr. Kutik, if the witness  
19     could be allowed to answer.

20                     MR. KUTIK:  He wasn't answering the  
21     question, your Honor.  That was the point of my  
22     redirecting the witness.

23              Q.     Under the rules they could have done  
24     that, correct?

25              A.     I am not aware of anything under the

1 rules that would prevent that.

2 Q. And during the time that they remained,  
3 that DEO would have remained in MISO, DEO would have  
4 received compensation for their capacity, correct?

5 A. That's correct.

6 Q. Now, FRR entities may exist in states  
7 with retail competition, correct?

8 A. FRR entities may exist in states of  
9 retail competition, yes, that's correct.

10 Q. FRR entities are not limited to solely  
11 existing in states with a traditional regulated  
12 environment, right?

13 A. There's nothing in the -- in the RAA or  
14 any other PJM rules that would prevent that.

15 Q. Now, an FRR entity that's seeking a state  
16 compensation mechanism would necessarily be operating  
17 in a state with retail competition; isn't that  
18 correct?

19 A. I'm sorry, could you repeat that?

20 MR. KUTIK: May I have it read, please.

21 (Record read.)

22 A. A state that's seeking -- I'm sorry, an  
23 entity that's seeking a state compensation mechanism  
24 under the inception of the RAA that addresses how --  
25 how the costs are passed on to the CRES entity, you



1 would have to have competitive retail. It doesn't  
2 mean there couldn't be a state mechanism in a  
3 different context.

4 Q. That's not my question. My question was  
5 that they would necessarily, that is, the FRR entity  
6 seeking a state compensation mechanism, would  
7 necessarily be in a state where there was retail  
8 competition, correct?

9 MS. SPILLER: Objection, asked and  
10 answered.

11 EXAMINER STENMAN: Overruled.

12 A. So you could have -- you could have a  
13 state compensation mechanism outside of -- outside of  
14 just passing things on to CRES entities.

15 Q. Okay. But the state compensation  
16 mechanism talks about the compensation that will be  
17 paid to capacities to FRR entities from alternative  
18 retail suppliers, correct?

19 A. That's what's addressed in the RAA.

20 Q. Right. In Ohio's lingo, that's a CRES  
21 provider, correct?

22 A. That's correct.

23 Q. All right. So in -- in that case, in a  
24 case where an FRR entity is seeking a state  
25 compensation mechanism, there would be entities like

1 CRES providers that would be providing alternate --  
2 alternative retail electric service, correct?

3 A. If -- if an entity is seeking or is to be  
4 compensated under a state compensation mechanism for  
5 charges to CRES entities or competitive retail  
6 entities more generally, yes, there would need to be  
7 competitive retail entities in that state.

8 Q. And that's something that traditional  
9 regulated utilities don't face, correct?

10 A. I can't say that comprehensively.

11 Q. Now, in -- in a state with retail  
12 competition, you would agree with me, that the state  
13 policy would likely be presumed to promote  
14 market-based as opposed to cost-based prices for  
15 competitive services?

16 A. Again, I can't speak to all states and  
17 all jurisdictions, but, generally, if you're talking  
18 about competitive services, yes, you'd looking to a  
19 competitive market for supply of those.

20 Q. And an FRR entity in a retail competition  
21 market would likely be getting market prices for  
22 noncompetitive generation services, correct?

23 A. I'm sorry, could you repeat or have that  
24 read back.

25 Q. Sure. Let me rephrase. I misspoke. An

1 FRR entity in a retail competition environment would  
2 likely be getting market prices for noncapacity  
3 generation services.

4 A. I'm sorry, that was noncapacity  
5 generation services?

6 Q. Yes.

7 A. I would need to know what the -- what  
8 those noncapacity generation services were.

9 Q. Well, energy and ancillary services. And  
10 we are talking again in the PJM market.

11 A. Typically energy would be -- would be at  
12 market prices. There are ancillary services that are  
13 at regulated rates.

14 Q. Right. At least for energy prices, those  
15 would be market prices, right?

16 A. Typically, yes.

17 Q. And, in fact, DEO is currently getting  
18 market prices for its energy and ancillary services,  
19 correct?

20 A. Again, I can't speak to all of the  
21 ancillary services. I haven't reviewed what's --  
22 what's being provided. It's my understanding that  
23 they are getting market-based rates for generation,  
24 by "generation," I mean energy.

25 Q. If DEO's proposal is accepted, DEO's

1 generation service revenues would not be  
2 predominantly cost based; isn't that true?

3 A. I'm sorry, could you repeat that?

4 Q. Sure. If DEO's proposal is accepted  
5 here, DEO's generation service revenues would not be  
6 predominantly cost based.

7 A. For competitive services, that they would  
8 be predominantly cost based for noncompetitive  
9 services where they were entitled to a -- a cost of  
10 service, cost-based return, it would not be. I can't  
11 speak to which would be predominant.

12 MR. KUTIK: I think one of us misspoke.  
13 Can I have the answer read, please.

14 (Record read.)

15 Q. Did you mean for competitive services  
16 they would not be cost based?

17 A. For competitive services they would not  
18 be cost based.

19 Q. Thank you.

20 A. If I said "cost based," I meant "market  
21 based."

22 Q. Thank you. Now, the RAA doesn't require  
23 an FRR entity to use solely its own resources to meet  
24 its FRR obligation, correct?

25 A. The RAA does -- the RAA is silent about

1        what resources can be used to meet the obligation.

2                Q.     So the obligation can be met through  
3        procurement of resources through bilateral contracts.

4                A.     Through unit-specific bilateral  
5        contracts, yes.

6                Q.     Or even through an auction.

7                A.     Through an auction that's secured  
8        unit-specific capacity.

9                Q.     Now, the obligation is to meet a load  
10       target plus a reserve margin, correct?

11              A.     That's correct.

12              Q.     And that -- that load target plus the  
13       reserve margin is set three years in advance,  
14       correct?

15              A.     Let me clarify. When you're talking  
16       about the objective being to meet that target, whose  
17       objective are you referring to?

18              Q.     The FRR entity.

19              A.     The FRR entity must meet its obligation,  
20       which is load plus reserve margin, and yes, that's  
21       set -- that's set in advance of the base residual  
22       auction, which is conducted three years in advance.  
23       For an FRR entity that's required to commit for five  
24       years, it would be longer.

25              Q.     Okay. And that for any particular

1 delivery year, once the target plus margin is set,  
2 that target -- that number may change as the planning  
3 process is implemented, correct?

4 A. I'm not sure what planning process you  
5 are referring to, but PJM does update the load  
6 forecast, which can change the obligation, yes.

7 Q. Right. And then if for some reason when  
8 we get to the delivery year the load that's actually  
9 needed for some reason is above the load target,  
10 above the margin, the reserve margin, that's PJM's  
11 responsibility to get those resources, correct?

12 A. An FRR's entity is obligated to meet the  
13 capacity requirements set three years in advance.

14 Q. That's not my question.

15 A. I'm not sure I understood your question.

16 Q. All right. My question is let's assume  
17 we are looking at the load within a particular FRR  
18 entity's service territory. Are you with me so far?

19 A. Yeah.

20 Q. And when we get to the delivery year, the  
21 actual load that's needed to serve customers' needs  
22 is beyond the load target plus the reserve margin.  
23 Are you with me so far?

24 A. Yes.

25 Q. The responsibility for getting those

1 additional resources is with PJM, correct?

2 A. Subject to check, I believe that's  
3 correct, that PJM would account for the load of both  
4 in the FRR service area, in their overall PJM  
5 requirement.

6 Q. Thank you. Now, as you know, DEO has  
7 been able to meet -- as far as you know, DEO has been  
8 able to meet its FRR obligations so far.

9 A. I'm not aware of a case where they  
10 haven't been.

11 Q. You are not aware they have been required  
12 to pay any penalties.

13 A. I haven't reviewed what penalties they  
14 have paid, but I am not aware of any.

15 Q. And you are not aware they haven't  
16 experienced any shortfall of capacity, correct?

17 A. Again, I have not reviewed that, but I'm  
18 not aware of anything.

19 Q. And as far as you know, there has been  
20 capacity that's cleared the base residual auctions  
21 for the delivery years 2012-'13, 2013-'14, and  
22 2014-'15, correct?

23 A. I missed the first part of that.

24 Q. Sure. As far as you know, there has been  
25 capacity, not necessarily from DEO, but there's been

1 capacity in the PJM market that did not clear the BRA  
2 for the delivery years 2012-2013, 2013-'14, and  
3 2014-'15.

4 A. Yes, I believe resources in all those  
5 auctions.

6 Q. And that uncleared capacity would be  
7 available for purchase through bilateral transactions  
8 or in subsequent incremental auctions, correct?

9 A. Immediately after the BRA it may have  
10 been available, yes.

11 Q. Now, to the extent that DEO has had a  
12 surplus of capacity, you're not aware of DEO being  
13 unable to sell that capacity into the PJM, into the  
14 market, correct, or sell it through bilateral  
15 contracts?

16 MS. SPILLER: Objection, assumes facts  
17 not in evidence.

18 EXAMINER STENMAN: Mr. Kutik.

19 MR. KUTIK: Your Honor, I believe this  
20 will be testified to by other witnesses.

21 EXAMINER STENMAN: Overruled.

22 THE WITNESS: All right. Can we have the  
23 question read back.

24 (Record read.)

25 A. I have not discussed with DEO whether



1 they have tried to sell back capacity.

2 Q. Okay. So you are not aware of any  
3 problems that they've had, correct?

4 A. I'm not -- like I say, I haven't  
5 discussed whether they have been able to sell back  
6 capacity or whether they have tried to sell back  
7 capacity. They would potentially be restricted from  
8 selling back capacity based on their FRR obligation  
9 in that you are required to maintain an additional  
10 you surplus to sell back capacity.

11 Q. You are not aware any of those  
12 restrictions having had to come into play, correct?

13 A. Not that I am aware.

14 Q. Now, as of August, 2010, upon DEO's  
15 filing of an FRR plan, any LSE -- LSE within DEO  
16 would have been ineligible to participate in the BRAs  
17 for -- for any delivery year before 2014-'15,  
18 correct?

19 A. That's correct.

20 Q. And an LSE wishing to opt out of DEO's  
21 plan would then have needed to procure capacity  
22 within PJM but outside of the RPM auctions, correct?

23 A. That's correct.

24 Q. As of October, 2011, DEO would have known  
25 the base residual auction prices for 2011/'12,

1 2012-'13, 2013-'14 and 2014-'15, correct?

2 MS. SPILLER: Objection to the extent  
3 Mr. Kutik is asking Dr. Niemann what Duke Energy Ohio  
4 may have known.

5 MR. KUTIK: Your Honor, these are  
6 publicly available pieces of information.

7 EXAMINER STENMAN: Overruled.

8 A. I'm sorry, you said that was as of  
9 October, 2011?

10 Q. Yes.

11 A. Yes, those base residual auctions would  
12 have been conducted and the prices that were posted  
13 by PJM.

14 Q. And you would expect DEO to have known  
15 what its embedded costs were for its units at that  
16 time.

17 MS. SPILLER: Objection, your Honor,  
18 seeking to elicit information from this witness as to  
19 what Duke Energy Ohio may have known. The question  
20 was better directed to Mr. Trent earlier in this  
21 process.

22 EXAMINER STENMAN: Overruled.

23 A. I'm not aware of Duke Energy Ohio's  
24 process for tracking embedded costs.

25 Q. Let me refer you to your deposition, sir.

1 Let me refer you to page 34, starting at line 11.

2 Did you testify as follows:

3 "Question: Would you assume from your  
4 knowledge of working with the utilities and your  
5 knowledge of the PJM market that a utility that is an  
6 FRR entity in the PJM market would be aware of its  
7 embedded costs of capacity?

8 "Answer: Generally, yes."

9 Is that what you testified to, sir?

10 MS. SPILLER: Objection, move to strike.

11 I don't think this at all mischaracterizes  
12 Dr. Niemann testimony today, improper use of  
13 deposition for purposes of attempting to impeach.

14 EXAMINER STENMAN: Overruled.

15 A. After clarifying that I hadn't reviewed  
16 Duke's embedded cost calculation and didn't know what  
17 they did or did not know as of that date, that is how  
18 I answered the question, yes.

19 Q. Okay. Now, you've previously testified  
20 in Ohio, correct?

21 A. Correct.

22 Q. Before this Commission.

23 A. Yes.

24 Q. And that was in a case involving Dayton  
25 Power & Light.

1 A. That's correct.

2 Q. That was their SSO proceeding, correct?

3 A. Their ESP proceeding, yes, in 2008 and  
4 2009.

5 Q. And you were presenting the results of  
6 modeling that CRA had done with respect to RPM  
7 auction prices.

8 A. That's correct.

9 Q. And, in fact, you've done a good deal of  
10 your work for -- you've done a good deal of your work  
11 at CRA relating to modeling of that type, correct?

12 A. Both at CRA and after, yes.

13 Q. And, in fact, you've also done modeling  
14 of other types as well, correct?

15 A. Yes, that's correct.

16 Q. But you were not asked in this case to do  
17 any modeling, correct?

18 A. No, I was not.

19 Q. And you haven't provided in any testimony  
20 or any workpapers any calculations that support any  
21 conclusions regarding the potential impact of DEO's  
22 proposal on any market?

23 A. My testimony addresses the impact of  
24 Duke's -- of DEO's capacity supply and an FRR option  
25 on market that, in part, is supported by analysis

1       that's in my workpapers.

2               Q.     All right.  That's not my question.  My  
3     question is, you have not provided in any testimony  
4     or any workpapers any calculations that support your  
5     conclusions regarding the potential impact of DEO's  
6     proposal on any market.

7               MS. SPILLER:  Objection, asked and  
8     answered.

9               EXAMINER STENMAN:  Overruled.

10              A.     No, I don't think what you just said  
11     correctly characterizes that.

12              Q.     Okay.

13              A.     As I said -- there --

14              Q.     There are no calculations in your  
15     testimony; isn't that true?

16              A.     There are calculations in my workpapers.

17              Q.     All right.  Well, there are no  
18     calculations you did in your workpapers; isn't that  
19     true?

20              A.     No, there are not calculations that I did  
21     in my workpapers.

22              Q.     Okay.  And isn't it true you did not  
23     provide cal -- the calculations you did was from  
24     offer caps, correct?

25              A.     That's correct.

1           Q.    And you didn't provide calculations for  
2           offer caps for each year that you looked at; isn't  
3           that true?

4           A.    That's true.

5           Q.    Now, if a suppliers' avoided costs of a  
6           unit were greater than the revenues it received for  
7           that unit, it -- the economically rational thing to  
8           do would be to retire that unit, correct?

9           A.    If -- if its avoided costs were greater  
10          than the market price, the rational thing to do would  
11          be to not supply that capacity. Typically, that's  
12          the way markets work. There are exceptions to that  
13          and it doesn't say anybody would retire the unit or  
14          that you would even be able to retire the units.

15          Q.    Isn't it true in the situation I just  
16          mentioned where the avoided costs are greater than  
17          the revenues that were received from that unit, the  
18          economically rational thing for the unit would be to  
19          retire it?

20          A.    Not necessarily. Just because you  
21          wouldn't put it in the auction doesn't mean you  
22          couldn't retire the capacity.

23          Q.    Let me refer you to your deposition, sir.  
24          Let me refer you to page 161, starting at line 8, did  
25          you testify as follows:

1                   "Question: If a -- if DEO could not  
2                   recover its avoidable costs for a unit, would the  
3                   economically correct decision be to close or retire  
4                   those units?

5                   "Answer: Economically correct decision  
6                   from whose perspective?

7                   "Question: From DEO's perspective.

8                   "Answer: If the compensation that DEO is  
9                   going to receive by keeping a unit open is below the  
10                  avoidable cost, the economically rational thing to do  
11                  is -- is not keep the unit open."

12                  And I added the word "avoidable" before  
13                  cost on page 15, as you added that in your  
14                  corrections.

15                  Have I read your testimony as corrected  
16                  correctly?

17                  A. Yes.

18                  Q. And if a participant in the market  
19                  doesn't do the economically rational thing, there is  
20                  the potential markets to become distorted, correct?

21                  A. There's potential, yes.

22                  Q. Now, if DEO decided prior to 2015-'16 to  
23                  retire certain generation; it could do so without  
24                  violating its obligation under the FRR, correct?

25                  A. I'm sorry, I didn't catch the first part

1 of that.

2 Q. Let me start again. If DEO decided prior  
3 to 2015-'16 to retire certain of its units, it could  
4 do so without violating its FRR obligations, correct?

5 A. If it could find replacement capacity.

6 Q. If Duke retired some of its units and  
7 went out to procure capacity in incremental auctions,  
8 that could affect the prices in those auctions,  
9 correct?

10 A. If Duke was procuring additional capacity  
11 in an auction, it could potentially affect those  
12 prices.

13 Q. And if Duke retires some units and went  
14 out to procure capacity through bilateral contracts,  
15 that could also affect the capacity prices in the  
16 incremental auction, correct?

17 A. To the extent that bilateral contract --  
18 bilateral contracts were entered into in advance of  
19 the auctions and would change the nexus supply in the  
20 auction, it could affect the price, yes.

21 Q. Now, I want to change topics slightly,  
22 and I'm almost done. The prices paid for different  
23 types of electricity service could be an important  
24 part of a customer's business economics, would you  
25 agree?



1           A.    I would agree that -- that energy costs,  
2           electricity costs specifically, can be a main  
3           component of some business cost structures and  
4           business decisions, yes.

5           Q.    And electricity price could be an  
6           important factor in a customer's competitiveness,  
7           correct?

8           A.    How are you defining "competitiveness"?

9           Q.    Let me refer you to your deposition, sir,  
10          page 165, line 5. "Question: Electricity prices  
11          would be important or could be an important factor in  
12          a customer's competitiveness, true?

13          "Answer: Potentially, yes."

14          That's what you testified to, correct?

15          A.    That's what the transcript says, yes.

16          Q.    Okay. And you are not offering an  
17          opinion on the effect of DEO's proposal on the  
18          competitiveness of any particular set of customers,  
19          correct?

20          A.    No. I have not done any analysis on  
21          impact of customers, no.

22          Q.    And you don't know DEO's proposal would  
23          affect the company in terms of a percent of increase  
24          of revenues, correct?

25          A.    I have not done those calculations.

1           Q.    You're aware that some of the revenues  
2 generated by DEO's proposal could make its way to a  
3 DEO affiliate on the transfers of generation assets  
4 to that affiliate, correct?

5           A.    That's my understanding, yes.

6           Q.    And you haven't looked at the effects on  
7 the finances of those affiliates if they receive such  
8 revenues, correct?

9           A.    No, I have not.

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

12           EXAMINER STENMAN: You may.

13           MR. KUTIK: I have no further questions.  
14 Thank you, Doctor.

15           EXAMINER STENMAN: Thank you.

16                I think that this would be a good time to  
17 take just probably about a seven-minute break until  
18 4:10.

19                Thank you.

20                (Recess taken.)

21           EXAMINER STENMAN: All right. Let's go  
22 back on the record.

23                I believe, OCC, it's your turn.

24           MS. GRADY: Thank you, your Honor.

25                       - - -

## CROSS-EXAMINATION

By Ms. Grady:

Q. Good afternoon, Mr. Niemann.

A. Good afternoon.

Q. On page 4 of your testimony the question posed on line 2 asked you, "What is the purpose of your testimony?" Do you see that?

A. Give me just a second to get my testimony in front of me.

I'm sorry, which page and line number?

Q. That would be page No. 4.

A. Okay, I think I'm there.

Q. And is it correct to state there are primarily three purposes of your testimony? The first purpose being to describe the PJM RPM capacity market for recovering capacity resources.

A. One of the purposes is to describe the PJM capacity market, yes.

Q. And another purpose would be to discuss the FRR mechanism within the RPM market?

A. Yes.

Q. And the third purpose would be to discuss why the proposed compensation mechanism should not be expected to adversely affect the outcomes in the PJM market or competition among suppliers either in the

1 RPM market or in the Ohio retail market, correct?

2 A. Yes, that's correct.

3 Q. Now, you do not offer an opinion,  
4 Mr. Niemann, that Duke's financial integrity will be  
5 impaired if it does not receive its fully embedded  
6 costs, do you?

7 A. I did not review that, no.

8 Q. And you do not offer an opinion on -- as  
9 to what the appropriate cost of embedded capacity is  
10 for Duke.

11 A. I did not do any calculations or any  
12 analysis related to Duke's embedded cost, no.

13 Q. And you do not offer an opinion on the  
14 company's financial integrity claims, do you?

15 A. No, I do not.

16 Q. And you do not offer an opinion on  
17 whether the Ohio regulations permit the company to  
18 collect its embedded cost, correct?

19 A. From a legal perspective, no.

20 Q. Okay. And you do not offer an opinion or  
21 make a recommendation as to how the ESSC revenues  
22 should be treated for purposes of this proceeding,  
23 correct?

24 A. That's correct.

25 Q. And you do not offer an opinion on

1       whether the stipulation the company may have entered  
2       into in other PUCO cases preclude the current  
3       application.

4               A.     That's correct, I did not review those  
5       stipulations.

6               Q.     And you do not offer an opinion from a  
7       legal perspective as to whether Duke is receiving  
8       just and reasonable compensation for its capacity  
9       that it furnishes as an FRR entity.

10              A.     From a legal perspective, no.

11              Q.     And do you not offer an opinion on the  
12       impact of corporate separation of the company's legal  
13       legacy assets on its ability to continue as an FRR  
14       entity, correct?

15              A.     That's correct.

16              Q.     And you do not offer an opinion on the  
17       impact of corporate separation of the company's  
18       legacy assets on its financial integrity.

19              A.     That's correct.

20              Q.     And you do not offer an opinion on  
21       whether the current revenues received by Duke are  
22       sufficient to recover its embedded costs, correct?

23                   MS. SPILLER:  Objection, asked and  
24       answered.

25                   EXAMINER STENMAN:  Overruled.

1           A.    As I said before, I have not calculated  
2           the embedded costs for Duke Energy Ohio.

3           Q.    And you are not offering an opinion on  
4           whether the deferral request that Duke has made  
5           complies with generally accepted accounting  
6           principles, correct?

7           A.    That's correct.

8           Q.    And you are not offering an opinion on  
9           whether it is appropriate to defer costs incurred for  
10          capacity, correct?

11          A.    I am -- my testimony addresses  
12          distortionary impacts on the market and how deferral  
13          of recovery can make that nondistortionary.

14          Q.    But you are not offering an opinion on  
15          whether it is appropriate to defer the costs incurred  
16          for a capacity?

17          A.    From a legal perspective, no.

18          Q.    Mr. Niemann, you do not offer an opinion  
19          on whether Duke Energy Ohio is receiving just and  
20          reasonable compensation for the costs of its  
21          capacity, do you?

22                MS. SPILLER:  Objection, asked and  
23          answered.

24                EXAMINER STENMAN:  Overruled.

25          A.    Again, from an Ohio -- from the

1 perspective of Ohio law, no.

2 Q. And you are not offering an opinion on  
3 whether the company's requested 11.15 rate of return  
4 on equity for its investment in its generation assets  
5 that is -- that it has committed to fulfill its FRR  
6 obligation is fair and reasonable?

7 A. I have not reviewed -- not reviewed that  
8 or offered any opinion, no.

9 Q. And you are not offering an opinion, are  
10 you, Mr. Niemann, as to whether the AEP compensation  
11 mechanism should be applied to Duke?

12 A. Again, from a legal perspective I have  
13 not offered an opinion.

14 Q. Now, Mr. Niemann, you do not offer an  
15 opinion on this case as to whether the company's  
16 application in this case seeks to collect transition  
17 costs, correct?

18 A. That's correct.

19 Q. And you have not rendered -- let me  
20 strike that.

21 You have not reviewed nor rendered an  
22 opinion of any of the conclusions of the company  
23 witnesses in this case; is that correct?

24 A. I -- I'm sorry, could you repeat the  
25 question?

1           Q.    Yes.  You have not reviewed or rendered  
2           an opinion on any of the conclusions of the company  
3           witnesses in this case.

4           A.    I have reviewed the testimony of some of  
5           the company witnesses in this case.

6           Q.    But you have not rendered an opinion on  
7           any of the conclusions of the company witnesses  
8           presented in this case; is that correct?

9           A.    That's correct, except to the extent that  
10          conclusions in my testimony are consistent with those  
11          of other witnesses.

12          Q.    For purposes of this proceeding, you  
13          reviewed, did you not, Duke's application that was  
14          filed?

15          A.    Yes, I did.  I did read the application.

16          Q.    And you are familiar with that  
17          application and the statements made by Duke in that  
18          application?

19          A.    Generally, yes.

20          Q.    And you also reviewed, for purposes of  
21          this case, the testimony of Mr. Wathen; is that  
22          correct?

23          A.    I very briefly reviewed that testimony.  
24          I did not read that closely.

25          Q.    And you would have reviewed the testimony



1 of Witnesses Tabors and Lesser?

2 A. I reviewed parts of that testimony. I  
3 believe I read the body of Dr. Tabors' testimony and  
4 some parts of Mr. Lesser's testimony.

5 Q. And that would be the extent of the  
6 testimony that you reviewed in preparation of your  
7 testimony in this case?

8 A. I believe with respect to the testimony  
9 filed in this case, that's -- that's correct.

10 Q. And you did not review any of the  
11 materials associated with Duke's electric security  
12 plan case, is that correct, 11-3549-EL-SSO?

13 MS. SPILLER: Objection, asked and  
14 answered.

15 MS. GRADY: Your Honor, the question was  
16 asked about whether he reviewed the stipulation. I  
17 am asking him more generally whether he reviewed any  
18 other materials.

19 EXAMINER STENMAN: Overruled.

20 A. I don't believe I've reviewed any of the  
21 materials from that case.

22 Q. And you have not, for purposes of  
23 presenting testimony in this proceeding, reviewed any  
24 opinion and orders of the PUCO issued in the last  
25 three years with the exception of the AEP

1 compensation order; is that correct?

2 A. Yes, I believe that's the only thing I  
3 recall reviewing in the last three years.

4 Q. Now, I want to direct your attention to  
5 your testimony on page 19, line 19. And there,  
6 Mr. Niemann, you state that the question of whether  
7 and how embedded costs were a service mandate should  
8 be recovered as a policy and regulatory question. Do  
9 you see that?

10 A. Yes. Those are the words in my prefiled  
11 testimony.

12 Q. And, Mr. Niemann, you are familiar, are  
13 you not, with Duke's proposal in this case to recover  
14 its embedded costs?

15 A. Yes, I am.

16 Q. And your understanding is that Duke  
17 proposes to recover its embedded costs of capacity  
18 through a nonbypassable charge to all distribution  
19 customers, whether supplied under SSO service or by a  
20 CRES provider, correct?

21 A. Yes, that's correct.

22 Q. And when I use the term "distribution  
23 customers," do you understand that to mean the retail  
24 customers taking distribution service under the  
25 company's tariffs?

1           A.    I understand that to mean the retail  
2           distribution customers in the Duke Energy Ohio's  
3           service area.

4           Q.    And you understand, Mr. Niemann, how the  
5           charge Duke proposes is calculated, correct?

6           A.    Yes.

7           Q.    And you understand what the charge is  
8           linked to in terms of compensation, correct?

9           A.    Generally, yes.

10          Q.    Now, Mr. Niemann, I want you to take the  
11          Duke's -- Duke's proposal in this case and change  
12          only one aspect of that proposal. And that change  
13          would be from whom the embedded cost of capacity is  
14          collected from. Instead of Duke collecting the  
15          charge from all distribution customers, it will  
16          collect its charge from CRES providers and the  
17          winners of the auction. Are you following me so far?

18          A.    Yes.

19          Q.    From an economic perspective, you would  
20          support a ratemaking approach where Duke would  
21          collect its nonbypassable capacity charge from all  
22          CRES providers and parties who won the auction  
23          instead of from all distribution customers, correct?

24          A.    It depends on the full details of the  
25          proposal, as well as -- as well as how it would be

1 implemented with the entities and potentially  
2 specific details of the competitive entities. So I  
3 would need more information than what you have given  
4 to me.

5 Q. Mr. Niemann, do you have in front of you  
6 your deposition?

7 A. Yes, I do.

8 Q. Could you turn to page 22 of your  
9 deposition?

10 A. Yes.

11 Q. I want to direct you to line 16, and I am  
12 going to read the questions and answers that follow,  
13 and I want to know if I'm reading it correctly.

14 "Let me try it this way, I want you to  
15 assume for purposes of my question that the  
16 nonbypassable charge that I am referring to has the  
17 exact properties that the Duke nonbypassable charge  
18 proposed in this proceeding has except for instead of  
19 being collected from all distribution customers, it  
20 is collected directly from CRES providers and the  
21 parties who win the auction."

22 And then there was an objection.

23 "Question: All the assumptions, the only  
24 change is who the nonbypassable charge is being  
25 collected from. And so my question is simply would

1     you support a ratemaking approach where Duke would  
2     collect its nonbypassable charge from all CRES  
3     providers and parties who won the auctions instead of  
4     from all distribution customers?"

5             There was another interjection imposed,  
6     and then going down to line 20:

7             "Answer: So I will answer this from an  
8     economic perspective and note that I am not a lawyer  
9     and I am not addressing this in terms of Ohio law.  
10    To the extent that such recovery would remain  
11    nondistortionary from the markets and compensate Duke  
12    for the -- for the service provided, as the proposed  
13    charge is currently structured, I would support it."

14            Did I read that correctly?

15            A. Yes, I believe there was a correction  
16    that was not reflected in your reading.

17            Q. And what would that correction be,  
18    Mr. Niemann?

19            A. So on page 23, line 21, the word  
20    "respective" should have read "perspective." I  
21    believe you may have read that one back when you just  
22    read the answer.

23            Q. Yes.

24            A. On line -- I'm sorry, page 23, line 24,  
25    it should read "nondistortionary to the markets"

1       rather than "from the markets." I'm not sure if you  
2       got that one or not.

3               Q.     Thank you.

4               A.     You may have. On page 24, line 1, after  
5       the word "provided," the correction has an insertion  
6       of "through payments from beneficiaries," so that it  
7       would read, "to the extent that such recovery would  
8       remain nondistortionary to the markets and compensate  
9       Duke for the service provider through payments from  
10      the beneficiaries, as the proposed charge is  
11      currently structured, I could support it."

12              On page 24, line 2 currently reads  
13      "would" was corrected to "could."

14              Q.     And what was the purpose of the change  
15      made on line 2, to that line?

16              MS. SPILLER: Line 2, Ms. Grady?

17              MS. GRADY: Yes, page 24 of the  
18      deposition, changing the "would" to a "could."

19              MS. SPILLER: Thank you.

20              A.     Your question during the deposition, as I  
21      understood it, was related to whether or not the  
22      charge would be distortionary. As I think I had made  
23      very clear in -- in prior discussion that's reflected  
24      in this transcript, there were a lot of other details  
25      that I would need to consider to really be able to

1 evaluate such a charge would -- would be something  
2 that I would support.

3 So my answer was really saying that from  
4 the perspective of whether or not the charge was  
5 distortionary, and if -- and under your hypothetical  
6 was exactly the same as the -- as the charge being  
7 proposed by Duke Energy Ohio in its application in  
8 this matter, then, yes, I could support it from that  
9 perspective.

10 Q. So -- so as long as the charge is not  
11 distortionary to the market and compensates Duke for  
12 its capacity, you would have no problem with that  
13 hypothetical.

14 MS. SPILLER: Objection, misstates  
15 Dr. Niemann's testimony.

16 EXAMINER STENMAN: Overruled.

17 A. Whether or not it's distortionary is one  
18 aspect. It's my opinion, and it's also important,  
19 that the charge is paid for by the beneficiaries, by  
20 the -- by the entities or individuals receiving the  
21 benefits of the service.

22 Q. Would it be your understanding that if  
23 the proposal -- if the nonbypassable charge was only  
24 changed with respect to who it was collected from,  
25 that there wouldn't be a nondistortionary impact on

1 the PJM market?

2 A. Again, if the charge was ultimately being  
3 borne by the beneficiaries and it was not distorting  
4 the markets, then -- then, yes. But, again, there's  
5 not enough information here for me to evaluate  
6 whether that would be the case in this hypothetical.

7 Q. Mr. Niemann, I want you to go to page 24,  
8 starting with line -- the question posed on line 22,  
9 and I am going to ask you if I am reading it  
10 correctly.

11 "And would it be your understanding that  
12 if the proposal was only -- if the nonbypassable  
13 charge was only changed with respect to who it was  
14 collected from, that there shouldn't be a  
15 nondistortionary impact on the PJM market?"

16 Again, your counsel objected.

17 Your answer was: "So to the extent that  
18 the way that the charge is determined is -- is  
19 unchanged and --

20 "Question: Yes.

21 "Answer: -- it's merely a difference of  
22 what -- how the funds flow when -- when the charge is  
23 paid?"

24 "Question: Yes.

25 "Answer: Then I would say, yes, it would



1 not change. To the extent to which it's  
2 distortionary or not would not be affected."

3 Did I read that correctly?

4 A. Yes. To the extent that --

5 Q. Thank you, Mr. Niemann. Now, on page 5  
6 of your testimony, you indicate on lines 8 through 11  
7 that the compensation mechanism proposed by DEO is  
8 compatible with the existing PJM market rules for the  
9 RPM market and the FRR mechanism. Do you see that?

10 A. I'm sorry, were you reading from the  
11 testimony, or were you paraphrasing it?

12 Q. Yes. I'm sorry. On lines 8 through 11,  
13 I'm paraphrasing. You indicate the compensation  
14 mechanism proposed by DEO is compatible with the  
15 existing PJM market rules. Do you see that? General  
16 discussion?

17 A. Yes. What my testimony says is, "The  
18 compensation mechanism proposed by Duke Energy Ohio  
19 in its application is compatible with the existing  
20 PJM market rules for the RPM market and the FRR  
21 mechanism."

22 Q. Now, there you are not opining on whether  
23 the state compensation mechanism for Duke was -- was  
24 approved in the 10-2929 case, correct?

25 A. I'm sorry, I'm not familiar with all the

1 docket numbers off the top of my head. Is that the  
2 AEP?

3 Q. Yes, I apologize, the AEP capacity case.

4 A. No, I don't believe what I've stated  
5 there has anything -- says anything about the AEP  
6 capacity case.

7 Q. Now, on page 4 of your testimony, lines 9  
8 through 10, you indicate that the RAA, "specifically  
9 discuss the FRR mechanism within RPM, which Duke  
10 Energy Ohio must utilize in meeting its capacity  
11 obligations in PJM through May 31, 2015," correct?

12 A. Yes, that's what it says.

13 Q. Now, January 1, 2012, is the date on  
14 which the Duke's membership into PJM was effective;  
15 is that correct?

16 A. That's correct.

17 Q. In fact, Duke applied to join PJM on June  
18 25, 2010, if you know?

19 A. I would have to verify the exact date  
20 but, yes, that sounds right.

21 Q. And you testified that you do not know  
22 why the company chose to join PJM and leave MISO?

23 MS. SPILLER: Objection, asked and  
24 answered.

25 EXAMINER STENMAN: Overruled.

1           A.    My testimony was that I had not spoken  
2   to -- with the company about all the reasons why they  
3   left PJM, but I was familiar -- familiar in general  
4   with some of the reasons why companies were leaving  
5   PJM and moving to MISO.

6           Q.    And what were those general reasons have  
7   been that companies were leaving PJM for -- or MISO  
8   for PJM?

9           MS. SPILLER: I am going to object to the  
10  relevance. There has been no association to those  
11  rationale as to Duke Energy Ohio. I think it's  
12  irrelevant.

13          EXAMINER STENMAN: Ms. Grady.

14          MS. GRADY: Your Honor, the testimony of  
15  Mr. Niemann focuses on the options that Duke had, and  
16  he purports to -- he purports to testify that Duke  
17  had no option, and this goes to what -- what options,  
18  in fact, Duke had and what the motivation behind  
19  those options would have been.

20          EXAMINER STENMAN: Overruled.

21          THE WITNESS: I'm sorry, may I have the  
22  question read back.

23                (Record read.)

24          A.    So companies were comparing MISO and PJM  
25  in terms of what costs they would be allocated for,

1 backbone transmission projects through the MTEP  
2 process in MISO and the RTEP process in PJM, and  
3 making an evaluation about which fit better with --  
4 within their objectives.

5 Also in the case of companies in Ohio to  
6 the extent that other companies in -- in the state  
7 were part of PJM, in some cases co-owners on  
8 generation assets, there may have been reasons why it  
9 made sense to move and be in the same -- the same RTO  
10 as your co-owners.

11 Q. Do you know at the time when Duke applied  
12 to join PJM whether or not there was a capacity  
13 market in MISO?

14 A. There is a resource adequacy construct in  
15 MISO, and I believe at that time there were voluntary  
16 capacity auctions that you could use to fulfill  
17 resource adequacy obligations, so in that sense there  
18 was a market.

19 Q. Do you have any familiarity with Duke's  
20 filing at FERC when it sought approval of its  
21 proposed move from MISO to PJM?

22 A. I've not reviewed it closely or relied  
23 upon that for this case. I may have looked at it in  
24 the past.

25 Q. And you testified you had not reviewed

1 Duke's proposed FRR plan -- integration plan?

2 A. I'm sorry, can you repeat that to make  
3 sure I had it right?

4 Q. With respect to Duke's application before  
5 FERC to join PJM, it would have filed an FRR  
6 integration plan, correct?

7 A. That's correct.

8 Q. And do you recall reviewing that proposed  
9 FRR integration plan?

10 MS. SPILLER: Objection, asked and  
11 answered.

12 EXAMINER STENMAN: Overruled.

13 A. I don't recall that I reviewed the  
14 specific document, but I certainly have reviewed  
15 information and discussed information that's  
16 contained in that document.

17 Q. And is it your understanding that the FRR  
18 integration plan would have contained detailed  
19 information on how Duke would meet its PJM resource  
20 adequacy requirements?

21 A. I mean, it would outline the methodology  
22 by which they were planning to meet their  
23 requirements.

24 Q. Did you review other comments that were  
25 filed in that case?

1           A.    Not to my recollection, no.

2           Q.    Would you agree with me at the time Duke  
3 applied to join PJM, that certain clearing price  
4 information would have been publicly known?

5           A.    What type of clearing price information?

6           Q.    Mr. Niemann, I am talking about the  
7 results of the residual auctions.  As of June,  
8 2010 -- let's go back a second.

9                    You -- you generally agree that you  
10 believed June, 2010, was the time period that Duke  
11 would have applied to join MISO, correct?

12          A.    That's correct.

13          Q.    And as of June, 2010, the base residual  
14 auction results for the 2011 and 2012 year would have  
15 been known -- or would have been publicly available  
16 information, correct?

17          A.    That auction had been conducted and the  
18 results were posted by PJM, yes.

19          Q.    And as of June, 2010, the base residual  
20 auction results for planning year 2012-2013 would  
21 have been publicly available information, correct?

22          A.    Yes.  Again, the results of those  
23 auctions would have been posted on the PJM website.

24          Q.    And, finally, the -- as of June, 2010,  
25 the base residual auction results for the planning

1 year 2013-2014 would have been publicly available  
2 information, correct?

3 A. The BRA results for that auction would  
4 have been known, yes.

5 Q. And for 2011 and '12, the BRA rates were  
6 \$116.15 a megawatt-day, correct?

7 A. I -- I would have to verify. I believe I  
8 have those numbers in my direct testimony. I'm  
9 sorry, your question was about the '11-'12 delivery  
10 year?

11 Q. Yes.

12 A. That is approximately \$116, yes.

13 Q. And for the 2012-'13 year, the BRA  
14 results were \$16.74 a megawatt-day?

15 A. Yes, that's correct.

16 Q. And for the 2013-'14 planning year, the  
17 BRA results were \$27.73 per megawatt-day, correct?

18 A. Yes. That was the BRA price for '13-'14.

19 Q. Now, Mr. Niemann, Duke had the option --  
20 is it your understanding that Duke had the option to  
21 join PJM prior to January 1, 2012?

22 A. I don't know if they would have been able  
23 to complete all of their applications and get  
24 approval prior to that date.

25 Q. Duke had the option to apply to join the

1 PJM prior to January -- or, I'm sorry, prior to June,  
2 2010, correct?

3 A. Yes, I believe they would have had the  
4 option to apply.

5 Q. And once they applied, then they had to  
6 go through the proper channels in terms of approval  
7 and coordination with the -- with the RTOs, correct?

8 A. Yes, that's correct.

9 Q. And as you sit here today, you cannot  
10 recall whether or not there was a minimum stay period  
11 for an entity for MISO; is that correct?

12 A. I'm not aware of one, but I haven't  
13 looked into that recently so I don't recollect.

14 Q. Is it your understanding that the Duke's  
15 FRR integration plan had to have been approved by  
16 FERC; is that correct?

17 A. I believe that's correct.

18 Q. And is it also your understanding that  
19 once FERC approved Duke as an FRR entity, that Duke  
20 could file with FERC under Section 205 of the Federal  
21 Power Act for a compensation methodology based on  
22 cost?

23 A. The RAA allows for a 205 to be filed  
24 allowing compensation based on cost, yes.

25 Q. And that's a 205 for an FRR entity,



1 correct?

2 A. Yes, correct.

3 Q. So it would be your understanding that  
4 once Duke was approved as a FRR entity, being  
5 January 1, 2012, it could have proposed compensation  
6 based on cost under a 205 application.

7 A. The RAA allows for that, yes.

8 Q. Would you agree with me, Mr. Niemann,  
9 that whatever ratemaking FERC approved for Duke, FERC  
10 would have no authority to set rates for Duke's  
11 retail customers in Ohio?

12 A. I'm sorry, I think I miss -- might have  
13 missed the first part of that. Could you read that  
14 again?

15 Q. Sure. Would you agree whatever  
16 ratemaking FERC approved for Duke would have no --  
17 let me strike that. Let me try to rephrase that.

18 Would you agree that whatever FERC  
19 approved for ratemaking at the federal level would  
20 have no -- let me strike that again. I'm just going  
21 to scratch that one.

22 Now, on page 17, I want you to take a  
23 look at lines 11 through 12.

24 A. This is page 17 of my direct testimony?

25 Q. Yes, it is, Mr. Niemann.

1 A. Okay. I'm sorry, which line numbers?

2 Q. 11 through 12. There you state that Duke  
3 satisfied its resource requirement for 2014/2015  
4 through the FRR plan. Do you see that?

5 A. I say additionally Duke Energy Ohio  
6 satisfied its resource requirement for the 2014-'15  
7 delivery year through its FRR plan.

8 Q. And it would be your understanding that  
9 Duke made that determination prior to the 2014-2015  
10 base residual auction, correct?

11 A. That's correct.

12 Q. And would it also be your understanding,  
13 Mr. Niemann, that Duke was not required to  
14 participate as an FRR entity for the 2014-2015  
15 delivery year?

16 A. To the extent that -- or, because the  
17 base residual auction for 2014-'15 hadn't occurred at  
18 the time that Duke applied, they could have  
19 participated in that -- in that BRA, though that  
20 would have been before they had joined PJM.

21 Q. Was it a requirement they -- that they  
22 participate as an FRR under the FRR construct as  
23 opposed to the RPM construct?

24 A. Again, given that the base residual  
25 auction had not been conducted, they could have

1 participated in that auction had they decided to  
2 prior to, I believe, it's April, may have been as  
3 early as March, some lead time in advance of the May  
4 auction. So as long as they made the decision that  
5 they were going to participate in the BRA by that  
6 date and were willing to accept the risks and  
7 responsibilities associated with a BRA obligation,  
8 yes, they could have participated in that auction.

9 Q. Now, Mr. Niemann, you are not rendering  
10 an opinion in this case as to whether Duke's plans to  
11 meet its FRR obligation are prudent, are you?

12 A. From the perspective of Ohio law and a  
13 determination of whether or not it was prudent under  
14 those standards, no.

15 Q. And you have not analyzed the mix of  
16 capacity that Duke is expected to utilize from its  
17 own fleet and the capacity obtained through engaging  
18 in bilateral transactions to meet its FRR obligation,  
19 correct?

20 A. I mean, I'm generally familiar with the  
21 assets that are in -- that have been designated for  
22 meeting the FRR plan, as well as we heard from  
23 Mr. Trent this morning about some of the bilateral  
24 contracts, so, you know, I haven't done an explicit  
25 calculation of the exact percentage coming from each

1 resource, but I'm generally familiar with the mix.

2 Q. But you haven't really analyzed that mix,  
3 correct, other than being generally familiar with it?

4 A. No, I mean that wasn't particularly  
5 relevant to my testimony. It isn't something I  
6 looked at in great detail.

7 Q. Now, is it your understanding,  
8 Mr. Niemann, the only other entity in PJM that is an  
9 FRR would be Ohio Power, correct?

10 A. I don't know comprehensively who all the  
11 entities that are FRR within PJM would be. I don't  
12 believe that information is made public. There may  
13 be other entities beyond AEP and Duke.

14 Q. But you're not aware of any as you sit  
15 here today?

16 A. Well, FirstEnergy or ATSI was -- was FRR  
17 during the transitional period, and I know, for  
18 example, PJM publishes information about the FRR load  
19 in each load season, and I believe there was some FRR  
20 load for the upcoming auction in the ComEd zone,  
21 which I don't know what entity that would belong to,  
22 but it would suggest something other than AEP or  
23 Duke.

24 Q. And do you know if that entity in the  
25 ComEd zone receives compensation for its capacity

1 based on cost?

2 A. I don't know what that entity is so I  
3 can't speak to that.

4 Q. Okay. Do you know, Mr. Niemann, whether  
5 or not Duke voluntarily gave up its right to seek a  
6 Section 205 filing with FERC?

7 A. I have not made an evaluation of that or  
8 not formed an opinion about that, no.

9 MS. GRADY: May I have a moment, your  
10 Honor?

11 EXAMINER STENMAN: You may.

12 Q. Mr. Niemann, let's talk for a moment  
13 about the ESSC revenues. Do you understand what that  
14 term is?

15 MS. SPILLER: I am going to object to the  
16 extent the witness has indicated he is not familiar  
17 with the rider.

18 EXAMINER STENMAN: Overruled.

19 A. I have not reviewed the rider.

20 Q. You do have familiarity with the ESSC  
21 revenues in the sense that you know there is a rider  
22 that allows the ESS revenues, correct?

23 A. I'm aware a rider exists, yes.

24 Q. But you haven't read the rider and you  
25 don't know specifically what those revenues are

1 associated with; is that correct?

2 A. That's correct.

3 Q. And you wouldn't know if the ESSC  
4 revenues are considered generation revenues?

5 A. I haven't reviewed the ESSC so I can't  
6 make that determination.

7 Q. Now, on page 18 of your testimony, I want  
8 you to look at lines 10 through 12, and there you  
9 indicate that Duke Energy Ohio sells required  
10 capacity to PJM, and then Duke receives from PJM the  
11 FZCP for each delivery year. Do you see that?

12 A. My testimony on those lines says, "Duke  
13 Energy Ohio sells the required capacity to PJM, under  
14 PJM's standard tariffs. Duke Energy Ohio.  
15 thereby receives from PJM the FZCP for each  
16 applicable Delivery Year."

17 Q. Yes. And is it your understanding that  
18 the FZCP stands for final zonal capacity price?

19 A. Yes, that's correct.

20 Q. And that the FZCP is the price for  
21 capacity that is charged to an entity with capacity  
22 obligations under the RPM construct for non-FRR  
23 entities who purchase capacity through the PJM base  
24 residual auction?

25 A. I'm not sure I got all that question, but

1 the -- under the RAA the default price for  
2 competitive retail LSEs is the FZCP.

3 Q. And is it your understanding that PJM  
4 procures capacity on their behalf and then allocates  
5 back the costs?

6 A. Yes. PJM acts as a central buyer in the  
7 PJM auctions, base residual auction and the  
8 incremental auctions, and then effectively allocates  
9 that through the FZCP.

10 Q. And is it your understanding PJM then  
11 charges the FZCP to the load-serving entities under  
12 the RPM construct?

13 A. Yes.

14 Q. And let me strike that.

15 Is it also your understanding that the  
16 FZCP is a charge for capacity under the PJM capacity  
17 market construct which is a wholesale market?

18 A. The FZCP, as applied to the entities that  
19 are meeting their obligations through the base  
20 residual auction, I believe is characterized as a --  
21 as a wholesale service, and PJM is a wholesale market  
22 from the purposes -- or, from the perspective of Ohio  
23 law, I am not aware if that's the distinction.

24 Q. Now, on page 5 of your testimony, I want  
25 to direct your attention to lines 19 through 21, and

1       there you refer to "other such service obligations."

2       Do you see that reference?

3             A.     Yes, I do.

4             Q.     And when you make that reference in your  
5       testimony, specifically at that page 5, lines 19  
6       through 21, you were referring to service obligations  
7       such as providing transmission and distribution  
8       services that vertically integrated utilities  
9       provide, correct?

10            A.     That would be one example.  There are  
11       other cases where entities have a service obligation  
12       as well.

13            Q.     Would you agree with me, Mr. Niemann,  
14       that under cost-based reg -- ratemaking that a  
15       utility is not automatically -- let me strike that.

16                    Would you agree with me, Mr. Niemann,  
17       that cost-based ratemaking does not automatically  
18       warrant regulatory approval of embedded cost?

19            A.     Cost-based ratemaking generally means  
20       recovery of all costs of providing the service, and  
21       that's typically measured or evaluated by embedded  
22       costs.

23            Q.     And would you also agree with me that --  
24       that the cost-based ratemaking requires that costs be  
25       prudently incurred?



1           A.    Again, I can't speak to the legal  
2           standard in all jurisdictions, but typically the fact  
3           that -- typically costs do need to be prudent costs  
4           to get regulatory approval.

5           Q.    Now, on page 13 of your testimony, at the  
6           very bottom you quote from the RAA. Do you see that  
7           reference from schedule -- or Section D(9)?

8           A.    Yes, I do.

9           Q.    Is it your understanding that FERC would  
10          have to approve Duke as an FRR entity before Duke  
11          could file with the Ohio Public Utilities Commission  
12          for a state compensation mechanism?

13          A.    For the specific state compensation  
14          mechanism that's pondered in this section of the RAA,  
15          which refers to cost recovery for an FRR entity, they  
16          would have to be an FRR entity -- FRR entity, yes.

17          Q.    Now, is it your understanding that this  
18          section of the RAA refers to the switching load or  
19          the LSE's obligation to compensate the FRR entity for  
20          its capacity?

21          A.    Yes. This section of the RAA addressed  
22          switching load.

23          Q.    And would you agree that this section  
24          does not reference nonswitching load obligation?

25          A.    I would agree that nonswitching load is

1 not mentioned here and is not -- is not relevant  
2 to -- to this particular clause.

3 Q. And by nonswitching load for Ohio, I  
4 mean, do you understand that I mean the Ohio standard  
5 service offer customers?

6 A. Yes.

7 Q. Now, on page 18 of your testimony, if you  
8 go to line 10, you indicate there that -- you pose  
9 yourself a question that says, "How will Duke Energy  
10 Ohio recover the embedded costs of capacity included  
11 in its FRR plan, covering its obligations through  
12 May 31, 2015?" Do you see that question?

13 A. Yes, I do.

14 Q. And your response, the very first  
15 sentence is, "The Company does not now have any  
16 mechanism to recover such costs." Do you see that?

17 A. Yes, I do.

18 Q. But, Mr. Niemann, you have not reviewed  
19 the ESSC, have you, and you are not aware if the ESSC  
20 is a method for recovering Duke's embedded costs?

21 A. I have not reviewed the ESSC.

22 Q. And you don't -- you are, therefore, not  
23 aware of whether or not the ESSC is a method for Duke  
24 to recover its embedded costs, correct?

25 A. It's my understanding that the ESSC is

1 not a mechanism that is tied to full recovery of the  
2 embedded costs associated with meeting its FRR  
3 capacity obligation and the wholesale capacity  
4 service that goes with that.

5 Q. Mr. Niemann, I want to direct you to your  
6 deposition, page 67, starting on line 24. Actually,  
7 let's start on line 18 to give this some context, and  
8 I am going to read the questions and answers posed  
9 and ask you if I read them correctly.

10 Question beginning on line 18: "Now, at  
11 page 18, you indicate that on line 10, the company  
12 does not have any mechanism to recover such embedded  
13 costs. Do you see that? The very first response to  
14 question -- the question posed on line 7.

15 "Answer: Yes.

16 "Question: Are you aware whether or not  
17 the ESSC that we talked about earlier is a method for  
18 the company to recover its embedded costs?"

19 There was an objection interposed by  
20 Ms. Spiller.

21 Answer on line 7: "No, I have not  
22 reviewed the ESSC."

23 Did I read that correctly?

24 A. I'm sorry, I actually didn't catch up to  
25 you before you started reading. I can't verify you

1 read everything correctly.

2 Q. We'll try it again.

3 A. Okay.

4 Q. Question on lines -- starting on page 67,  
5 question, line 18: "Now, at page 18, you indicate  
6 that on line 10, the company does got have any  
7 mechanism to recover such embedded costs. Do you see  
8 that? The very first response to question -- the  
9 question posed on line 7.

10 "Answer: Yes.

11 "Question: Are you aware whether or not  
12 the ESSC that we talked about earlier is a method for  
13 the company to recover its embedded costs?"

14 And then there was an objection  
15 interposed.

16 "Answer: No, I have not reviewed the  
17 ESSC."

18 Did I read that correctly?

19 A. Yes, you did.

20 Q. Thank you. Now, I would like to walk you  
21 through the steps in the timeline, Mr. Niemann, that  
22 led Duke to the situation where it does not have a  
23 mechanism in place to recover its costs, as you  
24 indicate on line 10 of page 18.

25 Let's talk about the first -- or, let's

1 talk about the date that Duke applied to join PJM.  
2 That was in June of 2010, correct?

3 A. Yes, I believe so.

4 Q. And then the effective date of June -- of  
5 Duke joining PJM was January 1, 2012.

6 A. Yes, that's correct.

7 Q. And the decision to apply to PJM was a  
8 management decision by Duke. It was not forced to  
9 apply, correct?

10 A. That's my understanding, yes.

11 Q. And Duke knew at the time that it would  
12 have to join -- let me strike that.

13 And Duke knew at the time it applied to  
14 join PJM that PJM had already conducted its base  
15 residual auction for the period of January 1, 2012,  
16 through May 31, 2014, correct?

17 MS. SPILLER: Objection, your Honor.

18 MS. GRADY: To the question that -- to  
19 the extent the question asks Dr. Niemann what he knew  
20 that Duke Energy knew, and I also think this has been  
21 addressed a few times now.

22 EXAMINER STENMAN: The objection will be  
23 overruled.

24 A. Again, I can't speak to what the company  
25 would or would not have known, but the clearing

1 prices for the base residual auctions for the  
2 delivery years through the period ending May 31,  
3 2014, would have been known as of June, 2010.

4 Q. And you also testified earlier that you  
5 were familiar with the FRR integration plan that Duke  
6 filed, correct?

7 A. I haven't reviewed the plan in detail or  
8 don't recall that I have, but I'm generally family  
9 with the plan, yes.

10 Q. Is it your understanding in that plan  
11 Duke proposed to provide capacity to the LSCs at the  
12 RPM price and -- let me stop there. In that filing  
13 Duke proposed to provide capacity to the LSEs at the  
14 RPM price, correct?

15 A. I'm sorry, I am not sure I caught the  
16 question.

17 Q. We were talking about the FRR integration  
18 plan. In that plan Duke proposed to provide capacity  
19 to the LSEs at the RPM price, correct?

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

21 Q. Is it also your understanding that at the  
22 time Duke reserved its rights under Section 205 to  
23 seek authorization to amend its proposed rates to  
24 seek cost-based rates?

25 A. Again, I don't remember all the details

1 of exactly what's in the plan, but I believe that's  
2 correct.

3 Q. And do you know under that FRR  
4 integration plan the first point in time that Duke  
5 could have filed a 205 request with FERC?

6 A. The answer to your question is the first  
7 point in time when they could have filed a 205  
8 request?

9 Q. Yes.

10 A. I don't know the requirement for when  
11 they would have been able to file that.

12 Q. Is it your understanding that Duke had  
13 hoped to bid into the base residual auction for 2014  
14 and 2015, which was held in May, 2011?

15 MS. SPILLER: Objection, lack of found --  
16 excuse me, lack of foundation, also asking this  
17 witness what he may know about Duke Energy Ohio's  
18 knowledge.

19 MS. GRADY: Your Honor, if I may, this  
20 witness testified that he's familiar with the  
21 application of the company in this case, and I  
22 believe in the application of the company that  
23 statement is made.

24 EXAMINER STENMAN: Overruled.

25 A. I would have to review the document to

1 know the specific language.

2 Q. Is it your understanding, Mr. Niemann,  
3 that Duke could have requested to join the PJM at a  
4 later date?

5 A. Yes, they were not required to join by  
6 January 1, 2012. I am not aware of anything that  
7 required that.

8 Q. Now, you would agree, Mr. Niemann, that  
9 there's nothing in the RAA that states that  
10 alternative rates could be rates that are based on  
11 something less than fully embedded costs, correct?

12 A. I'm sorry, the alternative rates?

13 Q. Yes.

14 A. Could you repeat or have the question  
15 read back?

16 Q. Yes. You would agree, Mr. Niemann, that  
17 there's nothing in the RAA that states that  
18 alternative rates could be based on less than fully  
19 embedded costs?

20 A. Again, the RAA is completely silent with  
21 regard to embedded costs.

22 Q. And it's silent as to any alternative  
23 rates, correct?

24 A. That's correct. It allows alternative  
25 rates through filing of a 205 or through a state



1 compensation mechanism, but it is not proscriptive  
2 about what forms those rates would have to take.

3 Q. So a non-BRA rate could be marginal  
4 costs, correct?

5 A. Under the BRA there is nothing that would  
6 prevent that or preclude that, I should say.

7 MR. DARR: Could I have that answer back.

8 MR. KUTIK: Do you mean RAA?

9 (Record read.)

10 Q. Did you mean to say under the RAA?

11 A. Yes, I'm sorry, under the RAA.

12 Q. Thank you. Now, on page 12 carrying over  
13 to page 13, you are discussing traditional  
14 pre-restructuring resource planning responsibility of  
15 vertically integrated utilities. Do you see that,  
16 Mr. Niemann?

17 A. I said in the direct testimony that  
18 "This responsibility makes the FRR responsibility  
19 very similar to the traditional, pre-restructuring  
20 resource planning responsibility of vertically  
21 integrated utilities."

22 Q. And is it your understanding that  
23 typically the rates for utilities in such an  
24 environment give the utilities the opportunity to  
25 recover their embedded costs and earn a reasonable

1 return on rate base?

2 A. Those -- the rates can take a variety of  
3 different structures, and have in different -- in  
4 different regulatory environments. Typically the  
5 principle of -- of regulatory economics is applied  
6 there in that entities that have a service obligation  
7 are entitled to cost recovery, and, again, that's  
8 typically measured by embedded costs, that the  
9 objective would be to allow such regulated entities  
10 providing noncompetitive service to recover their  
11 embedded costs.

12 Q. Is that an opportunity or a guarantee,  
13 under your understanding?

14 A. Again, that's going to vary by  
15 jurisdiction. I would say it's an objective.

16 Q. In Ohio is it an opportunity or  
17 guarantee?

18 A. It depends on the service. It depends on  
19 the context.

20 Q. Do you believe that -- you are not  
21 familiar with Ohio law, though, are you Mr. Niemann?

22 A. I am not a lawyer and I am not an expert  
23 in Ohio law, that's correct.

24 Q. So you wouldn't know whether or not under  
25 Ohio law utilities are entitled to recover their

1 embedded costs of service, correct?

2 A. That's correct. From --

3 Q. Thank you. Now, on line 3 you speak of a  
4 confiscatory rate. Do you see that reference, page  
5 13, line 3.

6 A. Yes, that term is used on that line.

7 Q. And when you use the term "confiscatory,"  
8 you are not speaking of the Constitutional standard  
9 as to what constitutes confiscation, correct?

10 A. I'm using the term from an economic  
11 perspective.

12 Q. Thank you. Now, you state on page 13  
13 lines 4 through 6, that you recommend that Duke  
14 Energy Ohio be allowed to recover its embedded cost  
15 of service. Do you see that?

16 A. Yes.

17 Q. But Mr. Niemann, that is not a  
18 recommendation that is premised upon Duke showing  
19 that its cost of service has been prudently incurred;  
20 is that correct?

21 MS. SPILLER: I am going to object to the  
22 extent it's asking for a legal conclusion.  
23 Dr. Niemann has testified that he is not an attorney.  
24 He is not here in the capacity to render conclusions  
25 that are really appropriate for the Ohio Commission.

1 EXAMINER STENMAN: Overruled.

2 A. So the statement -- the question, answer,  
3 and statement in my testimony to which you are  
4 referring is saying that in this instance for the  
5 noncompetitive wholesale capacity service that Duke  
6 Energy Ohio was providing as an FRR entity, or is  
7 currently providing as an FRR entity, that I would  
8 recommend recovery of embedded costs.

9 Q. But that recommendation is not premised  
10 upon Duke showing that its cost has been prudently  
11 incurred, Mr. Niemann; is that correct?

12 A. I've not reviewed -- I've not reviewed  
13 this from the perspective of Ohio law regarding  
14 whether or not it would be prudent.

15 Q. And as a matter of fact, you haven't made  
16 a determination that Duke's cost of service has  
17 been -- cost of capacity service has been prudently  
18 incurred.

19 A. I have not made a legal determination  
20 about that, no.

21 MS. GRADY: If I may have a moment, your  
22 Honor, I think I will be concluded, but I would like  
23 a moment to review my cross.

24 EXAMINER STENMAN: Absolutely.

25 MS. GRADY: Thank you.

1                   That's all the questions I have. Thank  
2                   you, Mr. Niemann.

3                   EXAMINER STENMAN: Thank you.

4                   I think we'll take this opportunity to  
5                   conclude for the evening. We will reconvene at 9:00  
6                   a.m. tomorrow morning. Is there anything else we  
7                   need to talk about before we adjourn for the day?

8                   All right, thank you.

9                   (The hearing adjourned at 5:16 p.m.)

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## 1 CERTIFICATE

2 I do hereby certify that the foregoing is a  
3 true and correct transcript of the proceedings taken  
4 by me in this matter on Tuesday, April 16, 2013, and  
5 carefully compared with my original stenographic  
6 notes.

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Karen Sue Gibson, Registered  
Merit Reporter.

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Summary: Transcript in the matter of Duke Energy Ohio hearing held on 04/16/13 - Volume II - Public Version electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.