

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. :

- - -

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 9:00 a.m. on Friday, April
19, 2013.

- - -

VOLUME V

- - -

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.

23 - - -

1 APPEARANCES: (Continued)

2 Kegler, Brown, Hill & Ritter
3 By Mr. Andrew J. Sonderman
4 Capitol Square, Suite 1800
5 65 East State Street
6 Columbus, Ohio 43215-4294

7 On behalf of DPL Energy Resources, Inc.

8 Mr. Douglas E. Hart
9 441 Vine Street, Suite 4192
10 Cincinnati, Ohio 45202

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

13 Dayton Power and Light Company
14 By Ms. Judi Sobeki
15 1065 Woodman Avenue
16 Dayton, Ohio 45432

17 Faruki, Ireland & Cox, P.L.L.
18 By Mr. James W. Pauley
19 500 Courthouse Plaza, S.W.
20 10 North Ludlow Street
21 Dayton, Ohio 45402

22 On behalf of The Dayton Power and Light
23 Company.

24 American Electric Power Service Corp.
25 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.

- - -

1072

1	INDEX		
2	- - -		
3	WITNESS		PAGE
4	Ben Zhang, Ph.D.		
	Direct Examination by Ms. Spiller		1075
5	Cross-Examination by Mr. Kurtz		1076
	Cross-Examination by Mr. Alexander		1079
6	Cross-Examination by Ms. Bojko		1088
	Cross-Examination by Ms. Grady		1101
7	Cross-Examination (Cont.) by Mr. Alexander		1141
8	Will A. Garrett		
	Direct Examination by Mr. D'Ascenzo		1172
9	Cross-Examination by Mr. Kurtz		1174
	Cross-Examination by Ms. Petrucci		1189
10	Cross-Examination by Ms. Bojko		1190
	Cross-Examination by Mr. Hart		1192
11	Cross-Examination by Mr. Darr		1199
	Redirect Examination by Mr. D'Ascenzo		1207
12	Recross-Examination by Mr. Kurtz		1219
	Recross-Examination by Ms. Grady		1222
13	Recross-Examination by Ms. Bojko		1226
14	- - -		
15	COMPANY EXHIBITS	IDFD	ADMTD
16	8 - Prefiled Direct Testimony of Ben Zhang, Ph.D.	1074	1144
17			
18	9 - Prefiled Direct Testimony of Will A. Garrett	1172	1231
19	10 - Excerpt of Ohio Power 2008 FERC Form 1	1210	1231
20			
21	11 - Excerpt of AEP FERC 10-K	1211	1231
22	- - -		
23	OCC EXHIBITS	IDFD	ADMTD
24	14 - OCC-POD-19-124 (Public)	1093	1145
25	14A- OCC-POD-19-124 (Confidential)	1093	1145

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

- - -

OCC EXHIBITS	IDFD	ADMTD
14A- Attachment 1	1094	1145
14A- Attachment 2	1125	1145
14A- Attachment 3	1125	1145
15 - Response to OCC-POD-05-031(4) (Public)	1094	1145
15A- Response to OCC-POD-05-031(4) (Confidential)	1094	1145

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Friday Morning Session,
April 19, 2013.

- - -

EXAMINER PIRIK: We'll go on the record.
Duke, would you like to call your next
witness.

MS. SPILLER: Yes, your Honor. Thank
you. At this time Duke Energy Ohio would call
Dr. Ben Zhang to the stand, please.

Your Honor, may I approach?

EXAMINER PIRIK: Yes.

MS. SPILLER: At this time we would ask
that Duke Energy Ohio Exhibit 8 be marked for
identification. It is the Direct Testimony of
Dr. Ben Zhang filed in this proceeding on March 1,
2013.

EXAMINER PIRIK: The document will be so
marked.

MS. SPILLER: Thank you.

(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEN ZHANG, Ph.D.

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

DIRECT EXAMINATION

By Ms. Spiller:

Q. Good morning, Dr. Zhang.

A. Good morning.

Q. Would you identify yourself for the
record, please.

A. My name is Ben Zhang. I'm employed by
Duke Energy.

Q. And do you, sir, have before you what has
been marked as Duke Energy Ohio Exhibit 8A?

A. Yes, I do.

Q. And what is that, please?

A. That is my direct testimony.

Q. And, sir, do you have any corrections or
changes to your direct testimony?

A. No.

Q. So if I were to ask you today the
questions that are set forth in Duke Energy Ohio
Exhibit 8, would your answers be the same?

A. Yes.

Q. And do you hereby adopt the direct
testimony filed on March 1, 2013, as your testimony

1 in these proceedings?

2 A. Yes, I do.

3 MS. SPILLER: Your Honor, the witness is
4 available for cross.

5 EXAMINER PIRIK: OEG.

6 MR. KURTZ: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Kurtz:

10 Q. Good morning, Dr. Zhang.

11 A. Good morning.

12 Q. Would you turn to page 5 of your
13 testimony, please.

14 A. Okay.

15 Q. Line 17, you say, "We multiplied the
16 Company's load obligations as an FRR entity by the
17 PJM market prices for capacity." That's the --
18 that's the starting dollar figure in the revenue
19 requirement calculation in this case, is it not?

20 A. No. I don't think so. That's the
21 offset.

22 Q. Okay. That's -- is that number
23 confidential what the offset is?

24 MS. SPILLER: I think the load
25 obligations are confidential. Market prices are not.

1 MR. KURTZ: Is the dollar amount of the
2 offset confidential?

3 MS. SPILLER: I have to go to the
4 application.

5 Q. In any event, that's the offset. You
6 multiplied the load times PJM price to get the offset
7 to the revenue requirement, correct?

8 A. That is correct.

9 Q. And you did it for the three PJM planning
10 years, correct?

11 A. That is correct.

12 Q. And for the first PJM planning year, you
13 used the final zonal capacity rate times the load to
14 get the dollar amount, correct?

15 A. I think that's correct.

16 Q. And the second two planning years you did
17 not use FZCP, correct?

18 A. I believe that's correct.

19 Q. Okay. Now, since you filed your
20 testimony -- an FZCP is the correct number to use,
21 correct? That's what Duke Energy Ohio would
22 ultimately get paid by PJM, correct?

23 A. With the scaling factors adjustment, I
24 believe so, yeah.

25 Q. And since your testimony was filed, the

1 2013-'14 FZCP did become final, did it not?

2 A. Actually, I am not an expert on the
3 capacity structure, and also not managing the
4 capacity positions, so I am given the information --

5 Q. Okay.

6 A. -- for my purpose.

7 Q. Well, would it be correct to use the FZCP
8 or an estimate of it for purposes of the '13-'14 and
9 the '14-'15 planning year rather than just the pure
10 RPM number?

11 A. On this I believe you have to ask the
12 other witnesses because, once again, I am given the
13 numbers. I'm only testifying about the process,
14 extenders, multiplication. The information is given
15 to me just like any other marketing information.

16 Q. Okay. But you do understand that FZCP is
17 the correct number to use?

18 MS. SPILLER: Objection, misstates
19 Dr. Zhang's testimony.

20 Q. I'm asking a question isn't it correct
21 FZCP is the correct number to use?

22 A. I just told you that I am not an expert
23 on that. I use a number that's given to me.

24 Q. Okay. Thank you, your Honor.

25 EXAMINER PIRIK: Thank you.

1 Ms. Petrucci.

2 MS. PETRUCCI: No questions.

3 EXAMINER PIRIK: FES.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Alexander:

7 Q. Good morning, Dr. Zhang.

8 A. Good morning.

9 Q. My name is Trevor Alexander. We spoke at
10 your deposition.

11 A. Yes.

12 Q. It's good to finally meet you in person.

13 A. Yes.

14 Q. The CBM, what do those initials stand
15 for?

16 A. Commercial business model.

17 Q. And can we refer to that as the CBM for
18 today?

19 A. Sure, we can.

20 Q. The CBM is the Monte Carlo analysis; is
21 that correct?

22 A. That is correct.

23 Q. And when Duke Energy Ohio runs the CBM,
24 it provides various inputs for consideration by the
25 model.

1 A. We do the CBM run every day. The inputs,
2 once again, were not just for one particular purpose.
3 We conduct multiple runs every day based on standard
4 validated inputs, both for operation parameters, fuel
5 specs, EA, and all the other commodity prices. They
6 were production inputs. Of course, we do -- we need
7 inputs.

8 Q. And the CBM results used by Duke Energy
9 Ohio in this case resulted from the June 28, 2012,
10 CBM run.

11 A. I believe so.

12 Q. And Duke Energy Ohio makes CBM runs every
13 day.

14 A. That is correct.

15 Q. And your trading group will compile --
16 strike that.

17 Duke Energy Ohio's trading group will
18 compile market information for all inputs and then
19 provide that market information to your group for
20 inclusion into the CBM?

21 A. It's an automatic process. The process
22 of making curves is done by our trading. We call
23 that basically commodity risk management group. What
24 it is, they work with various marketing sources, such
25 as ICE and other brokers to look at what's going on

1 in the market. They basically mark all the curves,
2 and then the curves are validated by our global risk
3 management group. That goes into production, that
4 automatically being fetched by CBM, which produces
5 daily production runs.

6 Q. Did you say it was automatically fetched
7 by CBM?

8 A. That is correct.

9 Q. And the CBM incorporates unit retirement
10 by assuming that the unit will not be used after the
11 anticipated retirement date?

12 MS. SPILLER: Objection, your Honor. Can
13 we go off the record for a moment?

14 EXAMINER PIRIK: Yes.

15 (Discussion off the record.)

16 (Record read.)

17 EXAMINER PIRIK: You may proceed.

18 MR. ALEXANDER: Could I have the question
19 reread, please.

20 (Record read.)

21 A. That would be an input to CBM. Once
22 again, the status of any units, which timeframe they
23 will be available, retired, or on maintenance is
24 treated the same. Simply saying, CBM will not be
25 optimizing those units during this timeframe. It

1 will not differentiate between it's because of
2 retirement, because of maintaining outages or because
3 it's mothballed. There is no differentiation. It's
4 simply saying it's not available for optimize.

5 Q. And fuel curves are also an input into
6 the CBM.

7 A. That is correct.

8 Q. And the fuel curves used in the CBM are
9 based on market costs rather than existing fuel
10 contracts.

11 A. That is correct. I want to clarify since
12 we use coal mixing, so although we have extenders
13 marking curves, the process of determining the dollar
14 per MMBTU costs for a particular unit is very
15 complex, confidential process because we have coal
16 mixing. There is adjustments of SO2. There's
17 moisture. There's all kinds of other adjustments to
18 get to the right number for the dollar per MMBTU cost
19 for a particular unit.

20 Q. And to obtain forward curves for coal,
21 the CBM relies on market information from brokers
22 such as NYMEX?

23 A. CBM relies on our commodity risk
24 management team who interacts daily, hourly, and
25 minute with the markets, yes.

1 Q. And the market that global risk
2 management team interacts with is brokers such as
3 NYMEX.

4 A. It is commodity risk management. That's
5 the group that actually does the transaction. Global
6 risk management is a group that actually monitors any
7 activities that we do.

8 Q. And the commodity risk management group
9 interacts with brokers such as NYMEX to obtain
10 forward curves for coal.

11 A. Yes.

12 Q. And future energy prices are also an
13 input into the CBM?

14 A. That is correct.

15 Q. And the market data which is used for
16 future energy prices is based on the AD Hub?

17 A. Once again, I want to -- I don't know if
18 this is confidential or not, but we do have
19 information.

20 MS. SPILLER: Dr. Zhang, if you believe
21 it's confidential, the Bench has indicated you can
22 defer the answer.

23 THE WITNESS: I'll answer in the
24 confidential session, okay?

25 EXAMINER PIRIK: Thank you. Feel free to

1 just say it's confidential, and Mr. Alexander will
2 ask it later.

3 THE WITNESS: Thank you.

4 Q. And under the CBM the projected energy
5 price is relevant to whether or not a particular unit
6 is expected to dispatch.

7 A. Once again that's an input, yes.

8 Q. And so as the forward curve for energy
9 changes, it could adjust the CBM results, not just
10 with regard to the dollars associated with any
11 particular unit, but also whether particular units
12 are expected to dispatch.

13 A. That is correct.

14 Q. And the CBM inputs are updated daily?

15 A. That is correct.

16 Q. And --

17 A. I'm sorry, that's the minimum frequency.
18 Sometimes if there is a particular transaction that
19 we think we can potentially go through and we see
20 some marketing movements, we may make the CBM run
21 during the day.

22 Q. And Duke Energy Ohio runs the CBM daily
23 or even more often than daily because more recent
24 data is more likely to be accurate than older data.

25 A. What do you mean by "accurate"?

1 Q. Why does Duke Energy Ohio run the CBM on
2 a daily basis?

3 A. Because we transact on a daily basis, the
4 only information then you can transact on is today.
5 That's why we are very careful to use the
6 information, the very marketing information that we
7 will be transacting on, and that's so that we don't
8 fool ourselves. So, once again, we're not just using
9 CBM runs for this particular case. We use CBM for
10 the budgeting, for planning, for a lot of
11 transactions, actually determination of our bottom
12 line so we are very careful about that, yeah.

13 Q. And the reason Duke Energy Ohio is very
14 careful to use the most recent data is the most
15 recent data is the best indication of where the
16 market is at any given point.

17 A. It's a snapshot. Once again, it's the
18 snapshot at which you can transact, not necessary
19 by -- once again, it's not necessary, the lay
20 person's definition of accurate.

21 Q. And what is your definition of accurate?

22 A. Can I give you an example of what might
23 be a good example? If you are trying to forecast the
24 Citibank stock prices, do you think the January
25 information, 2007, is a better indicator, or do you

1 think the generating information of 2009 is a better
2 indicator for stock prices today? If you were a
3 forecaster, if you were sitting January 10, 2007, we
4 are trying to see what would happen for the Citibank
5 stock prices today, which is April 19, 2013. You had
6 another opportunity which is same day, maybe, a
7 little bit back and forth, of 2009, you were trying
8 to do the same thing. I wouldn't consider the 2009
9 forecast more accurate. You will be missing by a
10 very big margin, I guess. That's my point.

11 Q. You would agree with me that a forecast
12 for -- strike that.

13 The CBM incorporates unit operating
14 characteristics, correct?

15 A. That's correct.

16 Q. The CBM I have incorporates changes to
17 unit operating characteristics when the units are
18 mothballed.

19 A. That's correct. Once again, it's an
20 input, status input.

21 Q. And are you aware of whether or not any
22 of the Beckjord units have been mothballed?

23 A. Yes, I am.

24 Q. And which units have been mothballed?

25 A. I believe initially 1, 2, 3, and now,

1 it's 1, 2, 3 on a seasonal basis.

2 Q. And the CBM only takes into account
3 market-based revenue streams?

4 A. CBM optimizes based on market, which
5 means we look at everything in the market, which is
6 an opportunity cost concept, yes.

7 Q. And you have not reviewed Mr. Wathen's
8 testimony and exhibits, correct?

9 A. I might have seen some tables in my
10 deposition. I don't remember. They showed me a lot
11 of tables. I don't know which is from Mr. Wathen and
12 someone else. I have no idea.

13 Q. But you did not review Mr. Wathen's
14 calculations. You are not providing an opinion on
15 those calculations here today, correct?

16 A. There is no reason for me to do that.

17 Q. And you have not reviewed Mr. Savoy's
18 testimony and calculations either, correct?

19 A. I provided him with all of the
20 information that he needed from CBM from my team, and
21 I believe all the other calculations happened
22 afterwards. But I stand behind all the information
23 that I provided. I believe they are good, high
24 quality information.

25 Q. Dr. Zhang, have you reviewed witness

1 Savoy's testimony in this case?

2 A. I -- what do you mean "reviewed"? You
3 mean read? I was here when he was testifying so I
4 heard what he was saying but I did not read his
5 testimony.

6 MR. ALEXANDER: Nothing further,
7 reserving the right to continue in the confidential
8 section, your Honor.

9 EXAMINER PIRIK: Thank you.

10 Ms. Bojko.

11 MS. BOJKO: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Bojko:

15 Q. Good morning, Mr. Zhang.

16 A. Good morning.

17 Q. My name is Kim Bojko, and I represent the
18 Kroger Company. Here today in the discussion you
19 just had with Mr. Alexander, you were talking about
20 the CBM runs and the frequency of those runs. Do you
21 recall that discussion?

22 A. Yes.

23 Q. You stated that the CBM can change daily
24 or even more frequently during the day if you find
25 that necessary; is that correct?

1 A. The market changes, so sometimes we make
2 model runs based on the inputs that we have.

3 Q. And that's what I want to ask you about.
4 It's the inputs to that model either on a daily basis
5 or more frequently that would cause the necessity to
6 rerun the model; is that right?

7 A. I wouldn't say caused the necessity.
8 It's whenever we need information to transact on,
9 whenever we need to do analysis more frequently than
10 daily, we would do it during the day; otherwise,
11 there is a daily run every day.

12 Q. But the need to do that would be because
13 an input would have changed or been updated or been
14 more timely; is that right?

15 A. I will put it in a different way. Once
16 again, it's because we need to use the same
17 information that we will be transacting on. If I see
18 the market is \$30 now, next three hours it becomes
19 40, and I know I will be transacting at a 40 so,
20 therefore, I need to use 40 to run the model, not
21 because of any other reasons.

22 Q. And that 40 in your example is an input
23 to the model so you have to change that input in the
24 model in order to rerun it.

25 A. That is correct. I don't have to change

1 the input but people change it in the system.

2 Q. In the system and then the model is rerun
3 to update the new information that is inputs, as you
4 call it.

5 A. That's correct.

6 Q. Okay. Mr. Zhang, on page 5 of your
7 testimony.

8 A. Yes.

9 Q. Line 8, you say, "As I have been
10 informed. "and then you go on to talk about the -- a
11 similar production cost model used in a different
12 proceeding. That proceeding that you're referencing
13 is -- is 10-2929, which is the AEP capacity
14 proceeding; is that accurate?

15 A. Yes, it is.

16 Q. And when you say "as I have been
17 informed," you have no personal knowledge of the
18 model that was used in that proceeding; is that
19 right?

20 A. That is incorrect.

21 Q. You did -- did you review the model used?

22 A. Let me put it this way, I am a model
23 expert. I work with a lot of models. This
24 particular model I don't have personal working
25 knowledge, but I examined all kinds of models. I

1 said this in my deposition. I am aware of the firm
2 because, once again, this is confidential. We have a
3 working relationship with them, and I am generally
4 aware of the model structure, methodology, how it
5 works. In terms of how this model was used and the
6 data or any working knowledge, no.

7 Q. No, you don't know -- you don't have any
8 knowledge of the use of the model; you have some
9 familiarity with the model itself; is that what you
10 are telling me?

11 A. I do not have knowledge about the
12 particular analysis that's done by this model, which
13 is what you are referring to here, but, once again, I
14 am aware of the model structure and the methodology.

15 MS. BOJKO: Can I have that answer
16 reread, please.

17 EXAMINER PIRIK: Yes.

18 (Record read.)

19 Q. And the particular analysis that you are
20 talking about was in the AEP capacity case and how it
21 resulted in the Commission's outcome; is that
22 correct?

23 A. I believe so, yeah.

24 Q. I'm sorry, I just didn't hear you.

25 A. I said I believe so.

1 MS. BOJKO: Your Honor, I have no further
2 questions on the public version of the transcript.
3 Thank you.

4 EXAMINER PIRIK: Thank you.
5 Mr. Hart.

6 MR. HART: No questions.

7 EXAMINER PIRIK: Mr. Darr.

8 MR. DARR: No questions, your Honor.

9 EXAMINER PIRIK: Staff.

10 MR. BEELER: No questions, your Honor.

11 EXAMINER PIRIK: Do you have your
12 exhibits?

13 MS. GRADY: Your Honor, I have a portion
14 of the exhibits. They are -- the rest of them are
15 quite lengthy and are on their way, I've been told.
16 If you want, we can go forward and mark at least what
17 we have right now, and then when we receive the --
18 there are two sections that I am waiting, on a B and
19 a C section, but we can go forward and mark
20 everything.

21 EXAMINER PIRIK: Is there a number of
22 them? Should we go off the record and have you
23 distribute them and then give the company time to
24 review them, and then we can mark them on the record
25 once we go back on?

1 MS. GRADY: That might be the best
2 course.

3 EXAMINER PIRIK: Okay. Let's go off the
4 record.

5 (Discussion off the record.)

6 EXAMINER PIRIK: We'll go back on the
7 record. Ms. Grady.

8 MS. GRADY: Yes, thank you, your Honor.
9 At this time I would like to mark for identification
10 a couple of exhibits starting with OCC 14A. It is a
11 single-page document entitled OCC-POD-19-124.

12 EXAMINER PIRIK: The document is so
13 marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MS. GRADY: And I would also like to mark
16 at this time Attachment 1 to OCC Exhibit 14A, being a
17 10-page document with -- in the upper right-hand
18 corner, "Power \$ Per Megawatt-Hour" with numerous
19 columns on -- on the pages.

20 EXAMINER PIRIK: You mean the upper
21 left-hand corner?

22 MS. GRADY: Yes, I'm sorry. I don't know
23 my right from my left.

24 EXAMINER PIRIK: I think we can say 14A
25 has three attachments.

1 MS. GRADY: Yes. 14A has three
2 attachments. Two others will be coming shortly. And
3 then I have -- would like marked for identification
4 purposes as OCC Exhibit No. 15A, I believe, it is the
5 response to OCC-POD-5-31 (4) attachment, a four-page
6 document.

7 EXAMINER PIRIK: The document is so
8 marked.

9 (EXHIBITS MARKED FOR IDENTIFICATION.)

10 MS. SPILLER: Your Honor, if I may, with
11 regard to turning first to OCC Exhibit 14 with
12 respect to the cover page, which is simply the
13 discovery response, no confidential treatment of that
14 requested. However, with respect to the attachment
15 that we have today at this time to discuss. That
16 would be Attachment 1 to 14A, probably the easiest
17 way to discuss that which we would like reacted is to
18 talk about that which we don't want redacted because
19 I think it is the lesser of the two within the
20 document.

21 So on this first page where you see
22 "Power" and then "\$ Per Megawatt-Hour," there are two
23 headings directly below that AD Hub DA, both Onpeak
24 and Offpeak hub, that information in that upper left
25 quadrant, fine to remain confidential -- I'm sorry,

1 public. Public, sorry, your Honor.

2 Along the side July, '12 through
3 September, '14, fine to remain in the public domain.
4 The balance of the document, both the numeric
5 information as well as all of the headings that are
6 reflected in what I'm assuming the Bench has as the
7 shaded text in the document, we are asking that all
8 of that be given confidential treatment.

9 And then turning to page 2 of the
10 document, similarly, that which we would not seek
11 confidential treatment for are the headings, "AD Hub
12 DA, Onpeak AD, Must Be offpeak," and then the dates
13 October '14 -- excuse me, October '14 through May '15.

14 Turning to page 3 of Attachment 1, that
15 which we are not seeking confidential treatment of is
16 the heading that says "Coal \$ per ton," so those two
17 lines only, reading in terms of the heading, and then
18 the dates along the side, July, '12 through
19 September, '14, the balance of the document including
20 the subheadings below "Coal \$ per ton" as well as all
21 of the numeric information we are seeking
22 confidential treatment of.

23 With respect to page 14 following the
24 shaded text, we are asking for confidential treatment
25 of all of the shaded text including the headings the

1 dates long the side, October 14 through May, '15, we
2 are not seeking confidential treatment of.

3 Page 5 of the document the only
4 information that we are not seeking confidential
5 treatment of would be the dates along the left column
6 July, '12 through September, '14.

7 Page 6, similarly the only information
8 for which we are not seeking confidential treatment
9 are the dates along the left side October, '14,
10 through May, '15.

11 With respect to page 7, again,
12 information for which we are not seeking confidential
13 information are the dates along the left side July,
14 '12 through September, '14. Additionally, the
15 heading "Gas \$ per MMBTU" and "Oil \$ per MMBTU," we
16 are not seeking confidential treatment of. However,
17 all of the headings below that, in addition to the
18 numeric information contained on this page we, would
19 request confidential treatment.

20 Page 8 of Attachment 1, the only
21 information for which we are not seeking confidential
22 treatment are the dates along the side, October, '14
23 through May, '14. The balance of the page we are
24 asking be given confidential treatment.

25 Turning to page 9 of the document,

1 starting first with the dates along the side, not
2 seeking confidential information of that column,
3 which ranges from July, '12 through September, '14.
4 With respect to the top of the document, there are
5 five lines starting with the "Emissions \$ per ton,
6 Reagents \$ per ton" and below that three lines ending
7 with the parenthetical information, that information
8 is fine to be placed in the public record.
9 Consequently, that for which we are seeking
10 confidential treatment on page 9 would be the numeric
11 pricing information.

12 And the same would be said, your Honor,
13 with respect to page 10 of the document. We are
14 seeking confidential treatment of the numeric pricing
15 information, so the date columns along the left side
16 as well as the three rows along the top of the
17 document we are not seeking confidential treatment of
18 that information.

19 And the basis, your Honor, if I may
20 briefly, these are -- this is information, as we've
21 indicated earlier, that is utilized within the
22 commercial business model that is a proprietary
23 modeling that Duke Energy Ohio uses in respect of its
24 competitive operations, its transactions in the
25 marketplace. This information is not publicly known.

1 This is information that would be marked, if you
2 will, within the modeling process within Duke Energy,
3 and, consequently, the pricing information is not in
4 the public record, and to allow this to be produced
5 in the public record would prejudice Duke Energy Ohio
6 vis-a-vis the counterparties with whom it interacts,
7 so it includes sensitive information with respect to
8 how the company engages in the marketplace,
9 indicating the information is shielded from those who
10 are in the company who do not otherwise have a need
11 to know of it. So care is taken within the company.
12 This information is not disclosed, rather it would be
13 disseminated only to those who have a business need.
14 It is our position, therefore, this is trade secret
15 information as defined under Ohio law.

16 EXAMINER PIRIK: Thank you. Are there
17 any objections to right now we are just dealing with
18 14A, Attachment 1?

19 Motion for protective order -- hearing
20 none, those items requested protection of in
21 Attachment 1 shall be granted, and we'll deal with
22 Attachments 2 and 3 when they arrive.

23 MS. SPILLER: Your Honor, turning to OCC
24 Exhibit 15 and what would be the confidential
25 treatment for which we are seeking, on this

1 particular document turning first to page 1 of 4,
2 that for which we are not seeking confidential
3 treatment is probably the easiest way to address
4 this.

5 The heading at the top, "Power \$ per
6 megawatt-hour," as well as on the right side, "Coal \$
7 per ton" is not information for which we are seeking
8 confidential treatment. The two headings "AD Hub
9 Onpeak" and "Offpeak," not seeking confidential
10 treatment of those. The date information along the
11 left column July, 12 through May, '15, is free to be
12 released into the public domain.

13 The balance of the information on this
14 page we are requesting confidential treatment. Page
15 2 of 4 requesting confidential treatment of the
16 entire document, both the numeric pricing information
17 as well as the headings. With respect to page 3 of
18 4, we are not seeking confidential treatment of the
19 heading "Gas \$ per MMBTU, Oil \$ per MMBTU, Emissions
20 \$ Per Ton, Reagent \$ Per Ton."

21 However, below the columns for gas and
22 oil we are seeking confidential information as to
23 both the descriptive words as well as the numeric
24 pricing information. Under the columns that would
25 fall under the main heading of "Emissions \$ Per Ton,"

1 "SO2 Curve" through NOx Curve," as well as the two
2 rows below that, "Market" and the parenthetical
3 information we are not seeking confidential treatment
4 of. However, the pricing information below the main
5 heading "Emissions \$ Per Ton" we are seeking
6 confidential treatment

7 And, finally, it would be within the
8 shaded box the two columns to the right the two
9 subheadings below "Reagent \$ Per Ton," not seeking
10 confidential treatment of the three rows immediately
11 below that main heading. However, all of the numeric
12 pricing information that would be contained in those
13 two final columns appearing in the shaded portion of
14 the page we are seeking confidential treatment.

15 Page 14 appears to be a carry-over of --
16 I'm sorry, page 4 appears to be a carry-over of page
17 3. On this one we are seeking confidential treatment
18 of all of the numeric pricing information.

19 Similarly, with -- OCC Exhibit 15, your Honor,
20 similar to OCC Exhibit 14 and 14A that we have just
21 discussed, again, this is confidential information,
22 numeric information, pricing information as well as
23 sourcing information that is utilized by Duke Energy
24 with respect to its interactions with third parties
25 in the marketplace and would again, for the reasons

1 just disclosed, request confidential information of
2 that discussed with respect to Exhibit 15A.

3 EXAMINER PIRIK: Are there any
4 objections?

5 Hearing none, the request for protective
6 treatment of the items within OCC Exhibit 15A shall
7 be granted, and as we have with the other exhibits,
8 if Duke can provide redacted and unredacted versions
9 to the court reporter, that would be appropriate.

10 MS. SPILLER: Thank you, your Honor.

11 EXAMINER PIRIK: Ms. Grady.

12 MS. GRADY: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Grady:

16 Q. Good morning, Mr. Zhang.

17 A. Good morning.

18 Q. Mr. Zhang, you are employed by Duke
19 Energy Commercial Enterprises; is that correct?

20 A. That is correct.

21 Q. And that entity is the entity that
22 optimizes the commercial assets for the nonregulated
23 assets of Duke Energy Corporation, correct?

24 A. That is the entity that cuts me a
25 paycheck. I actually functionally work for Midwest

1 generation. That's the organization that I'm
2 actually in, and that's the organization that
3 actually optimizes our assets.

4 Q. Thank you. And when we speak of the
5 nonregulated assets of the Duke Energy Corporation,
6 do you understand that to be those assets included in
7 the Midwest commercial generation division of Duke
8 Energy Corporation?

9 A. That's correct.

10 Q. And, Mr. Zhang, the direct parent to the
11 Midwest commercial generation division as a legal
12 entity would be Duke Energy Ohio and DECAM; is that
13 correct?

14 A. That's correct.

15 Q. And you provide services, Mr. Zhang, for
16 the two Duke Energy Ohio and the other affiliated
17 companies of Duke Energy Corporation, correct?

18 A. Mainly Duke Energy Ohio but occasionally
19 maybe some other.

20 Q. Now, you indicate in your testimony that
21 you've built the model, the CBM model, which is being
22 used throughout Duke Energy Corporation, correct?

23 A. That is correct.

24 Q. And am I correct in understanding that
25 you don't do any data analysis for the regulated side

1 of the Duke Energy Corporation?

2 A. That is correct.

3 Q. And you indicate in your testimony that
4 the -- or let me strike that.

5 The CBM model is a model that optimizes,
6 correct?

7 A. That is correct.

8 Q. And when you say "optimization," you mean
9 by that term that it will -- that the CBM will
10 determine how you dispatch the cus -- the units to
11 give the customers the best rates that they can get,
12 correct?

13 A. I would say as many objective functions;
14 in this particular case, the CBM maximizes the
15 margins and minimizes the cost.

16 Q. Now, you indicate, Mr. Zhang, that you
17 have a Ph.D. in econometric and financial economics,
18 correct?

19 A. That is correct.

20 Q. And would you agree with me that
21 econometrics in a sense is an application of
22 mathematics or statistical methods to economic data?

23 A. It's generally correct, but not just the
24 economics has been applied to other areas. Sometimes
25 people also call that econometrics.

1 Q. Okay. Thank you. Now, on lines 14 and
2 15 of your testimony on page 1, you indicate that you
3 were a -- that you were a senior researcher/senior
4 financial economist in Cinergy Energy merchant
5 business. Do you see that?

6 A. Yes. I remember, yeah.

7 Q. And as a merchant business, it was not a
8 regulated business, correct?

9 A. Correct.

10 Q. And you also indicate in your testimony
11 that you were promoted to the director of risk
12 analytics. Do you see that reference?

13 A. Yes, I do.

14 Q. And as the director of risk analytics,
15 you would have performed various services to help the
16 company understand the trading and marketing side and
17 how much risk they were taking, correct?

18 A. That is correct.

19 Q. And you would also in that position
20 evaluate certain deals from a value and risk tradeoff
21 perspective, correct?

22 A. That is correct.

23 Q. Now, when you became the managing
24 director of pricing and quantitative analysis, you
25 were taking on more responsibility in the pricing and

1 structuring area, correct?

2 A. That is correct.

3 Q. And you were also doing modeling and
4 other quantity analysis type work, correct?

5 A. Correct.

6 Q. And those activities again would have
7 been done for purposes of an unregulated entity,
8 correct?

9 A. That's correct.

10 Q. Now, you indicate on page 1, line 19,
11 that you are the architect of the commercial business
12 model, correct?

13 A. That is correct.

14 MS. SPILLER: Objection, asked and
15 answered.

16 EXAMINER PIRIK: Overruled.

17 Q. Can you tell me -- let me strike that.

18 The commercial business model, it was a
19 long process to develop that model, was it not?

20 A. Yes, it was.

21 Q. And the process started in 1999; is that
22 correct?

23 A. Yes.

24 Q. And it went through the year 2000 and
25 2001, correct?

1 A. Yes.

2 Q. And then the process -- the CBM process,
3 went through an internal approval and validation
4 process, did it not?

5 A. Yes.

6 Q. And that occurred in early, 2002?

7 A. 2001 and 2002, yeah.

8 Q. And that associated with the CBM there
9 were further validation and testing by external
10 parties that happened along the way, correct?

11 A. Correct.

12 Q. And the CBM model started to be used in
13 2002, correct?

14 A. That's correct.

15 Q. And even when the CBM was used in 2002,
16 there were further validations that happened in the
17 second half of 2002, correct?

18 A. Correct.

19 Q. And also validations in 2003.

20 A. Correct.

21 Q. So would you agree with me that the
22 completion -- the completed CBM after it had gone
23 through testing and validation would have been
24 probably in 2003.

25 A. There is a continuation of improvement

1 every day along the lines as things move, as we see
2 new technology, as we see different types of
3 regulations, so there's a further improvement along
4 the way. But the external/internal complete
5 validation was done in 2003; and afterwards, we kind
6 of continue the process of our internal validation
7 and syndication. We call it syndication, working
8 with different parties, administrator of the model,
9 how it was used and continue.

10 Q. Now, the CBM model is used for DECAM and
11 DEO in the Duke corporate structure, is it not, along
12 with other entities?

13 A. Yes.

14 Q. And the company uses the CBM to optimize
15 your nonregulated assets to produce the position of
16 all the commodities including power, gas, emission
17 allowances, correct?

18 MS. SPILLER: Could I have the question
19 read back.

20 (Record read.)

21 A. When you say "company," you mean DE-Ohio
22 and DECAM, right?

23 Q. Yes.

24 A. Yes.

25 Q. And I might have left out coal. That

1 would be another element that is -- that you're
2 looking at the position of the commodity with the
3 CBM.

4 A. Yes.

5 Q. And with respect to DECAM, the model is
6 used to produce positions and to price and evaluate
7 deals for DECAM, correct?

8 MS. SPILLER: Your Honor, I am going to
9 object to the relevance. DECAM is not an applicant
10 in this proceeding. It's competitive interactions in
11 the marketplace are well beyond the scope of this
12 application.

13 EXAMINER PIRIK: Overruled.

14 A. Yes.

15 Q. And when we talk about pricing and
16 evaluating deals for DECAM, that would be for
17 wholesale and retail, correct?

18 A. Yes.

19 MS. SPILLER: Again, your Honor, I am
20 going to object. I think we are well beyond the
21 scope of Dr. Zhang's testimony with respect to Duke
22 Energy Ohio and the work in this case.

23 EXAMINER PIRIK: Thank you. Your
24 objection is noted for the record.

25 MS. SPILLER: Thank you, your Honor.

1 A. Yes.

2 Q. Thank you. Now, Mr. Zhang, forward
3 prices are -- or future prices are collected by your
4 risk managers, are they not, who then -- who take
5 information from brokers and various commodity
6 sources, correct?

7 A. That is correct.

8 Q. And then they take that information and
9 they mark the curve, in other words.

10 A. That is correct.

11 Q. And then CBM simply uses those inputs in
12 the daily runs.

13 A. Once again, as I said before, after they
14 mark a curve, there is an independent process where
15 global risk management, they validate the curve.
16 When everything is checked, they mark into the
17 system, that's the curve CBM uses.

18 Q. So the -- would you agree with me the
19 forward market prices would be an input to the CBM?

20 A. Yes.

21 Q. And is it your understanding you can use
22 the CBM for as many -- let me strike that.

23 Is it your understanding and your
24 testimony that CBM has no limitations as to how many
25 years you can run it?

1 A. Physically with the technology we have,
2 no. But typically people don't run for more than 20
3 years.

4 Q. Now, for purposes of Duke Energy
5 Corporation, it runs the CBM daily you testified and
6 the period that it focuses on is a five-year period;
7 is that correct?

8 A. That is correct.

9 Q. Now, let's go to page 1 of your testimony
10 and go to lines 19 through 22 where you are speaking
11 about your accomplishments, and I just wanted to ask
12 you a couple of questions about that. You indicate
13 that one of the accomplishments that you have
14 succeeded in assisting in the buildout of Duke's
15 retail business in 2009 and 2010. Do you see that?

16 A. Yes.

17 Q. And by "retail business," are you
18 referring to Duke Energy Retail?

19 A. Yes.

20 Q. And by buildout you mean that through
21 your efforts, you assisted Duke Energy in building up
22 its retail business at that point in time; is that
23 correct?

24 A. I was referring to building the relevant
25 systems, front office capabilities, data processes,

1 that's what I was referring to. I was not a
2 strategist. I was not a managing person. I was just
3 talking about the process, the models, and how the
4 data and the data flows that were required to help
5 with the business, yes, front office capabilities.

6 Q. Okay. I apologize. I don't want you to
7 be too humble here, but you are listing that as your
8 accomplishments, and I just want to understand what
9 you are talking about.

10 So you are saying as part of your role
11 within the -- within the company that you worked with
12 a model and you work -- you were able to translate
13 that modeling into a way to assist Duke Energy into
14 building out its business; is that fair?

15 A. That's fair, and also a lot of the
16 processes because retail is a very data oriented, we
17 have to build the data processes so that's what --
18 the main part of the work.

19 Q. Now, you also indicate as part of your
20 accomplishments that you developed the market
21 fundamental functions. Do you see that?

22 A. I led the effort of rebuilding the
23 fundamental function, yes.

24 Q. And in doing that, that would enable you
25 to look at from a fundamental perspective gas supply

1 and coal supply both regionally and nationally?

2 A. That's correct.

3 Q. And you would be looking at the supply
4 and demand perspective instead of just looking at the
5 market; is that right?

6 A. Yeah, among other things, yes.

7 Q. And that would enable you to have a
8 long-term view of -- of various scenarios?

9 A. That would allow us either to validate
10 certain views that other people feel, whether we
11 disagree with them, and have a general sense of what
12 my view would be, yes.

13 Q. Now, you also indicate on lines 20 --
14 actually 22 that another accomplishment that you had
15 was integrating the DENA assets into the CBM. Do you
16 see that?

17 A. Yes, I do.

18 Q. And is it your testimony that after the
19 Duke merger you collected all the inputs on the
20 operations side and the inputs from the market side,
21 and you added those units into the CBM so that you
22 could optimize those assets.

23 A. Generally speaking, yes.

24 Q. Now, you indicate on line 22 that another
25 one of your accomplishments was assisting the global

1 risk management to establish risk management metrics.

2 Do you see that?

3 A. Yes, I do.

4 Q. And can you tell me exactly what that is?

5 A. At the time we had the modeling group
6 that actually works in the global risk management
7 function before the merger, and that function has a
8 lot of QEDs in mathematics and physics and global
9 risk management, although they define the projects,
10 but they had no technical expertise to supervise them
11 so they made all those people reporting to me so, I
12 led the effort of establishing the risk metrics
13 validations in terms of our credit. That's what I'm
14 talking about.

15 Q. And when you spoke of the global risk
16 management group, that's the group that manages all
17 the risks of Duke Energy Corporation, correct?

18 A. That is correct.

19 Q. And so that would include the risks
20 associated with Duke Energy Ohio, correct?

21 A. That is correct.

22 Q. Now, you indicate on page 2 under your
23 current position as vice president commercial
24 analysis that you are responsible for leading the
25 functional areas of providing or structuring; do you

1 see that?

2 A. Yes, I do.

3 Q. And can you tell me what you mean there
4 by leading those areas?

5 A. I'm the person who determines the
6 direction and activities of all those functions.
7 Actually they are groups. When I say "function,"
8 both function as a group. Each one of the functions
9 we have, we have either a director, manager. I
10 basically supervise and also set the goals and
11 monitoring the daily activities and, of course, keep
12 track of their performances and make sure we have the
13 best business practice.

14 Q. And when you say making sure you have
15 best business practice, can you tell me what you mean
16 by best business practice?

17 A. We use the standards, the processes that
18 are commonly accepted by other companies, and we make
19 sure we follow all the rules and the manuals that we
20 use in terms of running the model, performing
21 analysis.

22 Q. Now, when you recovery -- let me strike
23 that.

24 When you refer in your testimony to the
25 term "market fundamentals," are you -- can you tell

1 me what you are referring to there? And I'm looking
2 at specific line. I think it's line 5 of page 2.

3 A. Three years ago there was a group. We
4 had four people, five people and now because of many
5 activities that we are having. We have moved all
6 those talents into other functions. Right now,
7 that's just a function. There is one person in that
8 function, but we have a lot of collaboration from the
9 people who were in that group but now are no longer
10 working in that group still contract on a daily
11 basis, so that's why I refer to that as a function,
12 merely a function.

13 Q. And part of that function would be to
14 provide information on the supply and demand of gas,
15 coal, and other information about the buildout of
16 transmission and other things?

17 A. That is correct.

18 Q. Now, you indicate on the -- on lines 3 is
19 through 17 of page 2 that the purpose of your
20 testimony is to support the projected margins from
21 the sales of energy and ancillary services. Do you
22 see that?

23 A. Yes, I do.

24 Q. Would you agree with me that these
25 margins are included as an offset to the overall

1 energy requirements set forth in the application?

2 MS. SPILLER: Object to the form of the
3 question. Go ahead.

4 A. Yes.

5 Q. Is it your understanding -- let me strike
6 that.

7 MS. SPILLER: And, your Honor, I need to
8 apologize. Basically overruled myself thinking I was
9 in a deposition this morning so.

10 EXAMINER PIRIK: That was fine. I didn't
11 have to say anything.

12 MS. SPILLER: All right.

13 Q. Now, you indicated earlier in response to
14 questions from I believe counsel for FES that you
15 recall looking at Mr. -- or that you recall looking
16 at other witnesses' testimony during the course of
17 the deposition, that many documents were shown to
18 you; is that correct?

19 A. I remember I was presented with many
20 tables, appendixes. The one testimony, I think it
21 was Mr. Savoy's, but I had looked at only one page,
22 one of the pages.

23 Q. Now, I am going to ask you about
24 Mr. Savoy's testimony, of course, because that's what
25 we talked about at the deposition. Can you turn --

1 do you have a copy of Mr. Savoy's testimony with you?

2 A. No, I do not.

3 MS. GRADY: Can counsel provide a copy of
4 Mr. Savoy's testimony to Mr. Zhang?

5 Q. And, Mr. Zhang, I want you to go to
6 schedule -- Mr. Savoy's Schedule BDS-1.

7 MS. SPILLER: Your Honor, if I may,
8 precautionary to Mr. Zhang, he has been given both
9 the confidential and public versions of the document
10 so to the extent you are asked about confidential
11 treatment, just keep that in mind, Dr. Zhang.

12 EXAMINER PIRIK: Thank you.

13 Q. Have you had a chance to look at that?

14 A. Yes; now, I have.

15 Q. And do you recall reviewing that document
16 for purposes of the -- during the deposition, during
17 your deposition?

18 A. I think I remember, yes.

19 Q. Okay. Now, do you have an understanding,
20 Mr. Savoy, of whether or not the results of the CBM
21 runs that you did on July 28, 2012, would have been
22 incorporated into this schedule?

23 MS. SPILLER: Ms. Grady, I assume you
24 mean Dr. Zhang, not Mr. Savoy.

25 Q. I apologize, Mr. Zhang.

1 A. I believe so.

2 Q. And just to be clear, the CBM runs that
3 the CBM, that I am speaking of is your July 20 -- I'm
4 sorry, June 28, 2012, CBM run that you believe is
5 incorporated into Mr. Savoy's schedule BDS-1.

6 A. Yes, I believe so.

7 Q. And the run that you were responsible for
8 producing would have produced the line 2 capacity
9 revenue for the time period that's shown on BDS-1,
10 correct?

11 A. The CBM run produces the energy revenue
12 cost margins. The capacity revenue calculation is a
13 very simple calculation. We do not use the CBM for
14 that.

15 Q. I apologize.

16 A. That's fine.

17 Q. But with respect to Mr. Savoy's schedule
18 line 3, "Energy Sales," and line 7, "Fuel Costs," and
19 line 8, "Emission Costs," that information would have
20 come from the CBM run that you were responsible for
21 producing; is that correct?

22 A. I said this before. I think I'm pretty
23 sure each one of this information -- piece of
24 information, at least part of it should be from CBM.
25 I'm pretty sure there are three. It is the company

1 information, but for the cost part -- I stated this
2 in my deposition before. We might have -- once
3 again, I did not see the number, but we might have
4 factored in the few hedges for the 13 and 14.

5 Q. And your testimony at the deposition was
6 that, if I recall correctly, that that information
7 that is produced from the CBM with respect to fuel
8 costs would be market information.

9 A. That is correct.

10 Q. And that if there were hedges -- hedging
11 adjustments made, then they would be then
12 incorporated and included in Mr. Savoy's testimony as
13 part of BDS-1.

14 A. I believe so.

15 Q. But you are not aware as you sit here
16 today of whether or not Mr. Savoy may -- whether or
17 not there were hedging adjustments made to the
18 information that you provided; is that correct?

19 A. After hearing him yesterday when he was
20 testifying, I think he might have factored in the
21 fuel hedges.

22 Q. Now, we've been speaking of the June 28,
23 2012, CBM run. Mr. Zhang, that run would -- would
24 have been one of -- just one of the daily runs that
25 you regularly run as part of the business, correct?

1 A. That is correct.

2 Q. And, in fact, it was not produced
3 specifically for -- for use in budget, but it was
4 used for the budgeting purposes; is that correct?

5 A. That is correct.

6 Q. And as far as you know, the June 28,
7 2012, run that was used for budgeting purposes would
8 have related to the 6 & 6 budget of the company; is
9 that correct?

10 A. That is my understanding.

11 Q. Now, if we go to Mr. Savoy's Schedule
12 BDS-3, am I correct that your projections are used in
13 part as a basis for Mr. Savoy's schedule for this
14 schedule of Mr. Savoy?

15 A. Actually, you cannot tell because this
16 is -- this says the return on equity. I'm not sure
17 this is the required return on equity, or this is the
18 after factoring in the offset, or just talking about,
19 for example, the status quo. I cannot tell. I can
20 hardly read it.

21 Q. Is it your understanding because line 1
22 adjusted earnings would reflect projections -- let me
23 strike that.

24 Is it your understanding that adjusted
25 earnings, line 1, would reflect the -- would reflect

1 the projections that you've produced for revenues
2 from energy sales and the costs from fuel and
3 emissions?

4 A. It might have.

5 Q. And do you recall responding to questions
6 at the deposition with respect to this issue?

7 MS. SPILLER: Your Honor, if I may, I
8 think that's an improper use of Dr. Zhang's former
9 deposition testimony.

10 EXAMINER PIRIK: The witness may clarify.

11 A. As I said, I cannot tell actually what
12 the contents without appropriate background. I don't
13 even know what this line simply means. Just by
14 reading the title "Adjusted Earnings," I don't know
15 what that means, actually. Sorry about that. Can
16 you provide me with a little bit of background?

17 Q. If you could go to your deposition, if
18 you have a copy of the deposition transcript of
19 Mr. Savoy -- or Mr. Zhang.

20 A. Mine or his?

21 Q. Your deposition transcript.

22 A. Yes. Deposition, I don't have it.

23 Q. If you hang on, I can get that for you.

24 A. Sure.

25 EXAMINER PIRIK: Could the Bench have a

1 copy also?

2 MS. GRADY: Yes.

3 Q. Mr. Zhang, do you recall being deposed on
4 March 25, 2013?

5 A. Yes.

6 Q. And could you turn to page 45 of that
7 deposition.

8 A. Yes, I'm there.

9 Q. And I am going to start reading from
10 line -- line 3, and if you could just follow along
11 and ask me if I am reading it correctly.

12 "Thank you. It is also your understanding
13 that the -- your projections are a component of the
14 projected income statement of the company that Mr.
15 Savoy offers in BDS-1?

16 Answer: That would be my understanding.

17 "Question: And is it also your
18 understanding that your projections are used in part
19 as a basis for Mr. Savoy's Schedule BDS-3?

20 "Answer: Let me check."

21 And then there was an objection
22 interposed.

23 And your answer was: "That would be my
24 understanding, first time seeing it.

25 "Question: Thank you. And is it your

1 understanding because your projections would -- would
2 be indirectly affected -- or would be indirectly --
3 let me strike that. Is it your understanding because
4 Line 1, Adjusted Earnings, would reflect the
5 projections that you produced for" energy "from
6 energy sales and costs from fuel and emissions?

7 "Answer: That is correct."

8 Did I read that correctly?

9 A. Yes, you did.

10 Q. Thank you.

11 EXAMINER PIRIK: We are pretty sure that
12 there was one word, "produced for revenues from
13 energy sales and costs." I just want to be sure
14 that's the correct reading.

15 MS. GRADY: Thank you.

16 Q. Now, would you agree with me, Mr. Zhang,
17 that what is produced by the model is only as good as
18 what is input into the model?

19 A. You have to have very high quality
20 inputs, yes.

21 Q. So if the inputs are not accurate, then
22 model results would not be accurate. You would agree
23 with that, correct?

24 A. That's the minimum requirement you have,
25 yes.

1 Q. Now, we talked about the fact that the --
2 it's your understanding that the CBM production run
3 that was done on June 28, 2012, underlies Mr. Savoy's
4 BDS-1 schedule. Do you recall that?

5 A. Yes, I do.

6 Q. And the inputs that the CBM would have
7 been the best available information at that date; is
8 that correct?

9 A. That is correct.

10 Q. And do you have an understanding,
11 Mr. Zhang, that the 6 & 6 forecasts of the company
12 has been updated?

13 A. I wouldn't call update for 6 & 6. I
14 think we update our budget each time. As you pointed
15 out yesterday, there's one more month with realized
16 number and one less number of projected numbers.

17 Q. Plans I -- and I appreciate that
18 fine-tuning there. Do you understand that there has
19 been a 12 & 0 version 3 forecast produced by the
20 company and approved by its board of directors?

21 A. That's my understanding, yes.

22 Q. And is it also true, Mr. Zhang, that
23 there would have been a CBM production run that was
24 used for purposes of that 12 & 0 version 3 budget?

25 A. That is correct.

1 MS. GRADY: If we could go off the
2 record.

3 EXAMINER PIRIK: Yes.

4 (Recess taken.)

5 EXAMINER PIRIK: We will go back on the
6 record.

7 MS. GRADY: Your Honor, at this time I
8 would like to mark for identification purposes as OCC
9 Exhibit 14 Attachment 2, a 108-page document entitled
10 "Generating Units Input Detail, Response to
11 OCC-POD-19-124(b).

12 EXAMINER PIRIK: The document is so
13 marked, but it's an attachment to 14A.

14 MS. GRADY: Yes.

15 EXAMINER PIRIK: Yes.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MS. GRADY: And, additionally, I would
18 like to have marked for identification purposes as
19 Exhibit 14 attachment 3, a 63-page document entitled
20 "OCC-POD-19-124(c) Generating Units Input Summary."

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 EXAMINER PIRIK: Thank you. I just want
23 to be -- be sure the record is clear that these
24 aren't separate exhibits. They are Attachment 2,
25 Attachment 3 to Exhibit 14. So that's how they will

1 be designated for reference on the record.

2 Okay. Now, with regard to the
3 confidentiality of the documents.

4 MS. KINGERY: Yes, thank you, your Honor.
5 Duke Energy Ohio would move for confidential
6 treatment of both Attachment 2 and Attachment 3 to
7 OCC Exhibit 14. With regard to Attachment 2, I think
8 it's easiest if we think about this in two segments.
9 The first 10 pages of the document are a little bit
10 different than the remaining pages so I'll first talk
11 about the first 10 pages.

12 On the first page we are not seeking a
13 protective order with regard to any of the line names
14 on the left-hand column, nor are we seeking any
15 protective order with regard to the column headers
16 along the top. In addition, the first eight lines
17 can remain in the public, and that would be through
18 the line that has the name "Dispatch Merit." From
19 there down on that page, all of the data in the table
20 should be confidential, whether those are numbers or
21 words.

22 EXAMINER PIRIK: And that's true for
23 pages 1 through 10.

24 MS. KINGERY: Well, the pages sort of
25 alternate. Page 2 looks like it's a continuation of

1 that same listing so there is not a repeat of the
2 first eight lines, so in this case we would have the
3 column headings and the row labels public but all the
4 data in the table confidential.

5 EXAMINER PIRIK: I see. Okay.

6 MS. KINGERY: Then pages 3 and 4 repeat
7 that model, so the first eight lines on page 3 could
8 be public and everything else confidential. And 4 is
9 a continuation so all of the data would be
10 confidential. 5 to 6 is again a repeat of that
11 approach and 7 to 8 and then the last one like that
12 is 9 to 10.

13 EXAMINER PIRIK: Okay, starting -- now,
14 wait a second.

15 MS. KINGERY: Okay.

16 EXAMINER PIRIK: 9, oh, I see. It's just
17 one column. I'm sorry. Go ahead.

18 MS. KINGERY: Yes. Okay. So starting
19 with page 11 through the remainder of the document,
20 all of the column headings and all of the row labels
21 can be public, but all of the data in the tables
22 should be confidential, whether words or numbers.

23 And I think it might be most efficient if
24 we look at Attachment 3 at the same time. The first
25 page can be in the public record. Then in all of the

1 remaining pages, the column headings and the line
2 labels can be public but all of the data should be
3 redacted, whether numbers or words. These may all be
4 numbers.

5 And with regard to all of this
6 information, this is input data, either in summary
7 form or detail form, to the proprietary CBM model.
8 In all cases Duke Energy Ohio seeks to ensure that as
9 few people within the company as possible know about
10 it. They only get the information if they have a
11 need to know and certainly protect it from public
12 distribution, and we do believe that it is
13 proprietary information under Ohio law.

14 EXAMINER PIRIK: Are there any
15 objections?

16 Hearing none, the items that Duke has
17 identified as confidential will be treated as such
18 and motion for protective order granted, and Duke
19 will provide the court reporters with the appropriate
20 redacted and unredacted copies.

21 MS. KINGERY: We will.

22 MS. SPILLER: Yes, your Honor.

23 EXAMINER PIRIK: Thank you.

24 Ms. Grady

25 MS. GRADY: Thank you.

1 Q. (By Ms. Grady) Mr. Zhang, do you
2 recall -- before the break do you recall we were
3 talking of the company's 2012 12 & 0 budget?

4 A. Yes, I remember.

5 Q. And you indicated that in conjunction
6 with the preparation of the company's 2012 12 & 0
7 version 3 budget, there would have been a CBM run.

8 A. There was, yes.

9 Q. Do you have in front of you what has been
10 marked for identification purposes as OCC Exhibit
11 14A?

12 A. No. I believe I have 14 Attachment 2,
13 yes.

14 Q. Mr. Zhang, there were actually four
15 documents that I'm speaking of when I refer to 14A.
16 I have a single-page discovery request that was
17 marked as 14A saying OCC-POD-19-124. Do you have
18 that in front of you?

19 A. No, I do not.

20 MS. GRADY: Can counsel provide him a
21 copy of that, please?

22 MS. SPILLER: Was there one originally
23 given to Mr. Zhang?

24 MS. GRADY: I believe there was.

25 Thank you.

1 Q. And, Mr. Zhang, do you have -- you also
2 have a copy of what was marked as OCC -- for -- as
3 OCC Exhibit 14A Attachment 1, 2, and 3?

4 A. I have only 2 and 3.

5 Q. You do have that; is that what you said?

6 A. I have 2 and 3, yes.

7 Q. Do you have OCC Attachment 1?

8 A. No, I do not.

9 MS. SPILLER: I have one, Ms. Grady.

10 MS. GRADY: If you could provide that.

11 MS. SPILLER: The copy you gave me?

12 MS. GRADY: I passed out 25 copies. It's
13 got to be around here somewhere.

14 MS. SPILLER: I only took one.

15 MS. GRADY: Is there counsel who would
16 lend their copy of 14A to the witness, Attachment 1?

17 MS. KINGERY: Hold on.

18 EXAMINER PIRIK: We'll go off the record.

19 (Discussion off the record.)

20 EXAMINER PIRIK: We'll go back on the
21 record.

22 Q. (By Ms. Grady) Mr. Zhang, do you have in
23 front of you now four documents, OCC Exhibit 14A, 14A
24 attachment 1, 14A attachment 2, and 14A attachment 3?

25 A. Yes, I do.

1 Q. Now, are you familiar -- let me ask you
2 this, are you familiar with these documents?

3 A. Yes, I am.

4 Q. And can -- let's start with Exhibit 14A,
5 Attachment 1. Can you tell me what this document is?

6 A. This is the inputs, market inputs for
7 CBM.

8 Q. And can you tell me what date these
9 market inputs were -- the market inputs associated
10 with the CBM run were done?

11 A. Once again, this is for the 12 & 0 for
12 the planning year of '13 and beyond, right?

13 Q. Yes.

14 A. Okay. This is from CBM December 27.

15 Q. December 27.

16 A. Yes.

17 Q. Thank you. And that would be
18 December 27, 2012, correct?

19 A. That is correct.

20 Q. And so your testimony is that with
21 respect to Attachment 1, that would be the CBM run
22 showing the market input summary that was used in the
23 CBM run of December 27, 2012.

24 A. That is correct.

25 Q. And is it your understanding that these

1 are -- this is a -- these are the forward market
2 prices that were used in conjunction with that run?

3 A. That is correct.

4 Q. And if I look at the column entitled "AD
5 Hub DA Onpeak," can you tell me what that means?

6 A. That's the on-peak prices for AD trading
7 hub day ahead.

8 Q. And the AD trading hub would be the --

9 A. AEP Dayton.

10 Q. AEP Dayton, is that what you said?

11 A. That's correct.

12 Q. And DA meaning day ahead?

13 A. That is correct.

14 Q. And the -- similarly the column that
15 shows "AD Hub DA, Offpeak" would be just the off-peak
16 of the AEP Dayton day-ahead hub.

17 A. Day-ahead price, yes.

18 Q. And was this the information that we
19 discussed earlier, I think you discussed it a little
20 bit with Mr. Alexander, that is automatically picked
21 up by the CBM model.

22 A. That is correct.

23 Q. Now, let's go on to the OCC Exhibit 14A
24 attachment 2. Can you tell me what this information
25 is?

1 A. These are the operational inputs for all
2 of our nonregulated generating assets CBM uses.

3 Q. Okay. And these were the operating
4 inputs -- this is the generating units input detail
5 that would have been associated with the December 27,
6 2012, CBM run, correct?

7 A. That is correct.

8 Q. And if we go to OCC Exhibit 14A
9 Attachment 3, can you tell me what this document is?

10 A. This is the -- also the input but at a
11 slightly higher level, not details but rather relates
12 to capacity E4 and some other costs so slightly
13 higher, more aggregated, yeah.

14 Q. And is that because it is a summary?

15 A. That is correct.

16 Q. And, again, just to make clear for the
17 record, this generating units input summary was
18 associated with the December 27, 2012, CBM run?

19 A. That is correct.

20 Q. Mr. Zhang, are there any other inputs to
21 the CBM runs than what are contained in OCC
22 Exhibits 14A -- A Attachment 1 through 3 for the
23 December 27, 2012, CBM run?

24 MS. SPILLER: I'm sorry, can I have that
25 reread.

1 (Record read.)

2 MS. SPILLER: Thank you.

3 A. I believe these are the fundamental
4 components of all the inputs for both market and
5 operational parameters.

6 Q. Thank you. Now, Mr. Zhang, you have not
7 been asked to compare the CBM run that was used for
8 budgeting purposes for the 6 & 6 forecast of the
9 company -- let me strike that.

10 Mr. Zhang, you have not compared the CBM
11 run that was used for the 6 & 6 forecasts with the
12 CBM run that was used for the 12 & 0 version 3
13 forecast, have you?

14 A. I have not been asked by a particular
15 person to do the comparison, but as someone who works
16 at the front office, I do look at the reports every
17 day. I have a general awareness.

18 Q. And to understand how the CBM is used in
19 the budgeting process, can you tell me am I correct
20 that the CBM provides for purposes of budgeting the
21 projected revenues and costs associated with the --
22 let me strike that.

23 Can you -- would you agree with me that
24 for purposes of budgeting that the CBM would provide
25 the company information which would have revenues

1 from energy sales and the costs from fuel and
2 emissions?

3 MS. SPILLER: Object to the relevance.

4 EXAMINER PIRIK: Overruled.

5 A. It would have the projected -- I'm sorry,
6 projected revenue based on market-projected
7 market-based costs and also the projected megawatt
8 hours among others.

9 Q. And when you say "projected revenues and
10 costs," you're limiting that to the variable,
11 variable cost? It would not provide a summary of the
12 fixed costs, the O&M, or the capital, correct?

13 A. That is correct.

14 Q. And you would consider the freshest
15 projections of gross margins that you are aware of to
16 be affiliated with the CBM daily production run that
17 occurred yesterday; is that right?

18 A. Actually, I'm here so I did not actually
19 have access, so.

20 Q. So it doesn't -- it doesn't get run
21 without you.

22 A. It's a very standard process. It's a
23 team effort. It's very controlled, and it's also
24 semiautomatically so if I get hit by a bus, nothing
25 would happen.

1 Q. Let's not think like that, Mr. Zhang.
2 You might say if counsel gets hit by a bus but
3 yourself --

4 MS. SPILLER: Objection, your Honor.

5 EXAMINER PIRIK: Sustained.

6 (Laughter.)

7 Q. I apologize, Mr. Zhang. The freshest
8 projections of gross margins that you are aware of
9 would have been, in your opinion, the most recent
10 legal -- the most recent daily CBM run, correct?

11 A. That is correct.

12 Q. Now, am I correct that you manage your
13 portfolio on a five-year window, and that's the
14 reason why you have a CBM run which has a five-year
15 window?

16 A. That is correct. Also a lot of times
17 that's where the market really permits. Beyond that
18 is very little liquidity.

19 Q. Now, I want you to take a look,
20 Mr. Zhang, at what has been marked for identification
21 purposes as OCC Exhibit No. 15. Do you have that in
22 front of you?

23 A. 15A.

24 Q. 15A, yes, thank you.

25 A. Yes.

1 Q. And can you identify this document for
2 me.

3 A. This is the OCC-POD-05-031, Case No.
4 12-2400-EL-UNC.

5 Q. And is it your understanding that this
6 document represents the forward price inputs for the
7 June 28, 2012, CBM run?

8 A. If this were from the e-mail I sent to
9 you -- to our counsel, because I was looking at the
10 time, title all matches, but in terms of numbers, too
11 many numbers. I can't really -- but I believe so.

12 Q. Would you accept, subject to check, that
13 it is the June 28, 2012, CBM run market -- or I'm
14 sorry.

15 A. June 28.

16 Q. June 28, 2012, run, these are the inputs
17 to the forward market prices.

18 A. Yes, I would.

19 Q. And just for purposes of comparison, we
20 could compare OCC Exhibit 15A to OCC 14A Attachment 1
21 and see that there were different day ahead -- there
22 were different forward prices used for -- for those
23 different runs, correct?

24 A. The forward prices were different, yes.

25 Q. But that -- 15A is just comparable to the

1 information shown on Attachment 1 14A of OCC exhibit,
2 correct?

3 A. Yeah.

4 Q. Just a different day.

5 A. Yes, different day, has a few more months
6 on it.

7 Q. But they're both the forward market
8 inputs used in the CBM model runs.

9 A. That's correct.

10 Q. Now, you indicated -- and, again, we're
11 going to talk about the forward market price inputs
12 that the CBM run -- model run takes the information
13 on the market automatically; is that right?

14 A. Once again, after all the curves have
15 been marked and validated, CBM would receive in an
16 e-mail, an official e-mail from each one of the
17 commodity managers, saying this set of curves have
18 been marked -- have been marked. After that, CBM
19 takes over, yes.

20 Q. So the CBM automatically loads the curves
21 and does the production costing, correct?

22 A. That is correct.

23 Q. And the CBM model would use that day's
24 market curve. For instance, for the June 28, 2012,
25 run, we would have -- the CBM would have used that

1 day -- that June 28, 2012, market curve, correct?

2 A. If that is officially marked and
3 validated, yes.

4 Q. Now, let's go back to your testimony at
5 page 5, lines 12 through 19. Actually, Mr. Zhang, we
6 can skip that reference.

7 Now, do you know, Mr. Zhang, whether the
8 revenue outputs related to the DENA assets were
9 included in the generating margins that are shown in
10 Mr. Savoy's BDS-1 as an offset?

11 A. I don't believe so. I was here when he
12 testified.

13 Q. Now, on page 4, lines 17 through 21, you
14 indicate that the margins on the sale of energy or
15 ancillary services are not shared. Do you see that
16 reference?

17 A. On my testimony?

18 Q. Yes.

19 A. Yes. I see that.

20 Q. You also indicate all of the margins on
21 energy and ancillary services derived from legacy
22 generation are contributed to DE-Ohio, do you not?

23 A. Yes.

24 MS. GRADY: If may have a moment, your
25 Honor, I think I'm finished.

1 EXAMINER PIRIK: Yes.

2 MS. GRADY: Thank you, Mr. Zhang. That's
3 all the questions I have.

4 Thank you, your Honor.

5 EXAMINER PIRIK: Thank you.

6 Redirect?

7 MS. SPILLER: Your Honor, may we have
8 just a moment?

9 EXAMINER PIRIK: Yes.

10 MS. SPILLER: Just a couple of minutes,
11 thank you.

12 (Discussion off the record.)

13 EXAMINER PIRIK: Back on the record.

14 MS. SPILLER: Yes, your Honor. Thank
15 you. Your Honor, at this time Duke Energy Ohio does
16 not have any redirect for Dr. Zhang.

17 EXAMINER PIRIK: Okay. Now, we have a
18 confidential portion of the record I believe we'll
19 begin.

20 (Confidential portion)

21 EXAMINER PIRIK: We had started cross
22 with OEG, however.

23 MR. KURTZ: I have no further cross for
24 the witness.

25 EXAMINER PIRIK: Okay. Ms. Petrucci.

1 MR. PETRUCCI: No.

2 EXAMINER PIRIK: Mr. Alexander.

3 MR. ALEXANDER: Briefly, your Honor.

4 - - -

5 CROSS-EXAMINATION (Continued)

6 By Mr. Alexander:

7 Q. Dr. Zhang, the market data that's used
8 for future energy prices is based on the AD Hub?

9 A. That is correct.

10 Q. And the CBM uses AD Hub pricing because
11 you believe that market forwards are the best
12 indication of what future energy prices will be.

13 A. On a future market, forward market,
14 that's the only information available. However, the
15 model does not literally use the AD Hub prices for
16 our generators because we know there's (REDACTED
17 (REDACTED). So we have (REDACTED) who participate in
18 auctions who collect information from other parties
19 that he (REDACTED) for each one of the
20 generators. So, once again, the reason that this
21 called a market curve is because it's a little public
22 place, but the model does use (REDACTED) for each one
23 of the generators.

24 Q. And it uses the (REDACTED) as (REDACTED)
25 as the (REDACTED) for each of the generators?

1 A. That is correct, for the forward market.

2 Q. And I think you and I both used the
3 phrase "(REDACTED)." Is that (REDACTED --
4 (REDACTED) ?

5 A. Yes.

6 Q. And the CBM takes inputs from the curve
7 at the AD Hub and also takes the (REDACTED) as
8 validated by the risk management group and that is an
9 input in the CBM?

10 A. That is correct.

11 MR. ALEXANDER: Thank you, Dr. Zhang.

12 THE WITNESS: Thank you.

13 EXAMINER PIRIK: Thank you.

14 Mr. Hart.

15 MR. HART: No questions.

16 EXAMINER PIRIK: Mr. Darr.

17 MR. DARR: No, ma'am.

18 MS. GRADY: No questions, your Honor.

19 EXAMINER PIRIK: No questions?

20 Staff.

21 MR. BEELER: No questions, your Honor.

22 EXAMINER PIRIK: Any redirect?

23 MS. SPILLER: No, your Honor, no
24 redirect.

25 EXAMINER PIRIK: That concludes the

1 confidential portion.

2 (Public record.)

3 EXAMINER PIRIK: Thank you, Dr. Zhang.

4 THE WITNESS: Thank you.

5 EXAMINER PIRIK: And this transcript, as
6 well as the one from yesterday, we would hope we
7 would have redacted versions by Monday.

8 MS. SPILLER: You will, your Honor.

9 EXAMINER PIRIK: We will go off the
10 record.

11 (Discussion off the record.)

12 EXAMINER PIRIK: Go back on the record.

13 And I think the first thing we have are
14 the exhibits for Dr. Zhang.

15 Duke.

16 MS. SPILLER: Yes, your Honor, thank you.
17 At this time Duke Energy Ohio would move for the
18 admission into the record of the Direct Testimony of
19 Dr. Ben Zhang identified as Duke Energy Ohio Exhibit
20 8 to these proceedings.

21 EXAMINER PIRIK: Are there any
22 objections?

23 Hearing none, it shall be admitted into
24 the record.

25 MS. SPILLER: Thank you, your Honor.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 EXAMINER PIRIK: OCC.

3 MS. GRADY: Thank you, your Honor. At
4 this time OCC would move for the admission of 14A --
5 14A and 14A Attachment 1, 2, and 3, and OCC Exhibit
6 15.

7 EXAMINER PIRIK: So that would be both
8 redacted and unredacted, OCC 14A, OCC 14, OCC 15 and
9 15A, correct? Those are redacted and unredacted
10 versions.

11 MS. GRADY: Yeah, if that's what you want
12 to call them.

13 EXAMINER PIRIK: That's all --

14 MS. GRADY: I thought you wanted them to
15 be Attachment 1, 2, and 3.

16 EXAMINER PIRIK: Okay. It's one exhibit.
17 It's 14A, and 14A has three exhibits, just like
18 when --

19 MS. GRADY: We will just call it one,
20 whatever you prefer in terms of labeling, I'm fine.

21 EXAMINER PIRIK: Okay. So we have OCC
22 Exhibits 14, 14A, 15, and 15A. Are there any
23 objections?

24 MS. SPILLER: No, your Honor.

25 EXAMINER PIRIK: Hearing none, those

1 exhibits shall be admitted into the record.

2 (EXHIBITS ADMITTED INTO EVIDENCE.)

3 EXAMINER PIRIK: And the company, as I
4 previously stated, will give the court reporters the
5 appropriate documents.

6 MS. SPILLER: Certainly.

7 EXAMINER PIRIK: Before we move on to our
8 next witness -- okay, we are still in the open
9 record. At this time we would like to address the
10 proposed redactions from Volume II Confidential, and
11 Volume III Confidential.

12 The company has put together proposed
13 redactions, and the Bench and I believe the parties
14 have had copies and an opportunity to look at them.
15 The first one we would like to talk about is the
16 Volume II. The Bench would like to talk about page
17 430, lines 55 -- line 25 over to page 431, lines 1
18 through 5, those redactions.

19 MR. D'ASCENZO: I'm sorry, what was the
20 first set?

21 EXAMINER PIRIK: The first one on Volume
22 II is page 430.

23 MR. D'ASCENZO: Okay.

24 EXAMINER PIRIK: Line 25 through line 5
25 on page 431. The Bench is questioning the

1 confidentiality of this information that has been
2 proposed redacted.

3 MR. D'ASCENZO: Just a moment, your
4 Honor.

5 Okay. So the question is about line 25
6 and the reference there is simply to the discussion
7 that's been going on about a particular transaction,
8 your Honor, and it's commentary on -- on that
9 transaction, whether or not, you know, it's -- what
10 that transaction is in terms of its impact.

11 EXAMINER PIRIK: I think the objection
12 was overruled, however, and the witness answered
13 according to -- I think they appropriately answered
14 in the fashion that they thought was appropriate so I
15 don't see any problem with that language in the
16 question itself, especially since the examiner
17 overruled the objection.

18 MR. D'ASCENZO: Okay.

19 EXAMINER PIRIK: So that should not be
20 redacted.

21 MR. D'ASCENZO: Okay. So after the word
22 "utility"?

23 EXAMINER PIRIK: Correct.

24 MR. D'ASCENZO: Okay.

25 EXAMINER PIRIK: And through line 4 on

1 431, that should all be open.

2 MR. D'ASCENZO: Okay.

3 EXAMINER PIRIK: Are there any other --
4 anyone else who has looked at the transcript?

5 Mr. Darr.

6 MR. DARR: Your Honor, I realize that we
7 took all of these contracts -- these all relate to
8 various contracts. I realize we took these in
9 confidential session, but we need to back up a second
10 on this. These are related to the FRR obligation.
11 It's very clear in the record of this case that, at
12 least as we stand here right now, for the delivery
13 years that we're talking about on these agreements,
14 they are fully locked in at this point. There is no
15 competitive issue that I can see and certainly none
16 that's been discussed or demonstrated at this point
17 with regard to any of these agreements at this point.
18 It's not like they are going to go out and substitute
19 additional contracts, or there's no indication of
20 that, for what's already been purchased.

21 So I'm -- I'm struggling with the notion
22 this has any competitive significance whatsoever at
23 this point in the satisfaction of the obligations or
24 the contracting concerns that may exist at DEO at
25 this point, so I'm finding it difficult to find a

1 justification based on what we know for holding any
2 of this confidential.

3 EXAMINER PIRIK: And you're talking both
4 the name and the prices?

5 MR. DARR: Yes, ma'am. It's -- the deals
6 are done. The need has been satisfied. Let's move
7 on.

8 EXAMINER PIRIK: We just need to be
9 sure -- Ms. Grady, I just want to be sure, it's
10 really hard for the court reporter and the Bench to
11 like follow when there's a lot of noise in the
12 background, so just at this point so we can make sure
13 we hear everything.

14 Is there anyone else -- any other parties
15 that would like to comment?

16 MR. DARR: May I add one more thing, your
17 Honor?

18 EXAMINER PIRIK: Mr. Darr.

19 MR. DARR: I went back and looked at the
20 company's 10-K, and in the 10-K it states that DEO, I
21 believe, is fully hedged through 2016. If that's the
22 case, then I would add that to my original concern as
23 to why this is necessary, why holding these -- this
24 information confidential is necessary.

25 MR. KURTZ: I would simply add that those

1 purchase contracts are wholesale sales and interstate
2 commerce. They are governed by the Federal Power
3 Act. There is a Mobile-Sierra provision at the end
4 of each of them indicating that FERC can't change
5 them unless certain things happen, so those are
6 regulated pricing. Now, they are entered into
7 pursuant to the market-based pricing authority but
8 those are -- those are FERC rates.

9 MS. BOJKO: Your Honor, first just
10 clarification, since this was taken as Mr. Darr
11 pointed out in the confidential session, it's my
12 understanding that despite that everything will be
13 released except what has been marked as -- in black
14 on the version that we are looking at; is that
15 correct?

16 EXAMINER PIRIK: Absolutely.

17 MS. BOJKO: Also so I don't say anything
18 inappropriate, we are on the public record right now?

19 EXAMINER PIRIK: Yes.

20 MS. BOJKO: Generically speaking, I would
21 draw your attention -- while I agree with both
22 Mr. Darr and Mr. Kurtz, I also have an additional --

23 EXAMINER PIRIK: Are you just looking at
24 Volume II because that's all we are dealing with
25 right now?

1 MS. BOJKO: Yes, ma'am.

2 EXAMINER PIRIK: I want to be sure.

3 MS. BOJKO: Volume II, page 426, and I am
4 highlighting this more illustratively. As an
5 example, I think the way the redactions will now
6 appear is very misleading to the record, particularly
7 with regard to 426. On line 1, eliminating those two
8 words appears that it is a third -- a third party --
9 I am trying to be sensitive. I'm sorry. It gives
10 the illusion of something different than what
11 occurred because of redactions in other sessions
12 based on these contracts that occurred.

13 And I think that's inappropriate and
14 misleading to the Commission record and, frankly, the
15 decision makers that may choose to review
16 confidential information or may not and that is an
17 additional concern with regard to what also has
18 already been represented here today.

19 EXAMINER PIRIK: First of all, let me
20 make sure that everyone understands that it's --
21 whether it's redacted or not, it's part of the total
22 record.

23 Second of all, I want to be sure when we
24 are going through confidential documents and we are
25 ruling on whether or not something is or isn't

1 protected, I really need the parties if you object,
2 you need to speak up at that time because that is
3 what we are basing going into the confidential record
4 on, and if, you know, now you are questioning, you
5 know, acquiescence to that in allowing us to move
6 forward in this fashion, and thus that's why we have
7 the record the way it is because we are making
8 rulings, there are no objections, and we're hearing
9 what Duke has to say, no one else is speaking up at
10 the appropriate time. So now we are into this trying
11 to decide whether or not pieces of contracts that
12 we've already granted protective orders for are now,
13 you know, going to be in the open record or not so
14 kind of in a difficult situation here.

15 MR. D'ASCENZO: Your Honor --

16 EXAMINER PIRIK: Well, no, just a minute.

17 MR. D'ASCENZO: Okay.

18 EXAMINER PIRIK: You will get a chance to
19 respond. I am not going to cut you off there.

20 MR. D'ASCENZO: Thank you.

21 EXAMINER PIRIK: Okay. I will call on
22 Duke now. You can make your arguments, and we'll
23 consider everything before we comment.

24 MR. D'ASCENZO: Thank you, your Honor.

25 What -- what Duke has requested redaction for here is

1 consistent, as you had mentioned earlier, with what
2 had already been ruled confidential. It's also
3 consistent with what the Commission has determined to
4 be confidential in other contracts in other
5 proceedings, including fuel proceedings, with respect
6 to counterparties, price, and quantity. That's the
7 nature of the redactions that -- that we have made
8 here to the record.

9 It's important and significant with
10 respect to both price and quantity as well as
11 counterparties to keep that information confidential
12 for a number of reasons. While Mr. Darr is correct
13 in that the company has entered into these agreements
14 and is locked in, it's also true that something could
15 go wrong. Units could go out of service, and if
16 that's the case, parties would know what -- if Duke
17 were to have to go into the market to try to procure
18 replacement unit-specific capacity, what the price
19 paid was, what the quantity was, and that would put
20 Duke at a competitive disadvantage for bargaining
21 purposes in the future.

22 Releasing this information also gives
23 party -- gives counterparties for Duke and in the
24 future an idea of what the load position is, what its
25 needs may be, and that puts the company in a

1 competitive disadvantage going into the future. The
2 contracts that we are dealing with are for future
3 periods. So it's showing what our need will be in
4 the future and from releasing that information
5 parties could -- potential counterparties could see
6 what the company's requirements may be even beyond
7 that, so the company feels that this is highly
8 confidential information. And specifically with
9 respect to page 26, the redactions that were made
10 there are consistent with other redactions that have
11 been made with respect to the counterparty. That's
12 all that was intended there, nothing nefarious as
13 Ms. Bojko intimated.

14 MS. BOJKO: Well, may I respond? That's
15 not what I was intimating.

16 EXAMINER PIRIK: No. Actually, I guess
17 my question is, I want to be sure -- I understand
18 what you're saying as far as the price goes. The
19 name of the entities that they are actually
20 contracting with, how -- how is that confidential?
21 How does that affect future purchases?

22 MR. D'ASCENZO: Your Honor, it's -- it's
23 simply a matter of, you know, information on who Duke
24 may deal with is just not public record with respect
25 to these types of agreements. It's been that way for

1 fuel purchases and going forward. You know,
2 there's -- if -- if something like that is released,
3 it may -- you know, parties may -- potential
4 counterparties may not be willing to enter into
5 certain agreements knowing that their information may
6 be released to the public.

7 EXAMINER PIRIK: Well, I'm not talking
8 about the information. I'm talking about the name.
9 That's my question.

10 MR. D'ASCENZO: And, again, it's --

11 EXAMINER PIRIK: Because I think to an
12 extent some of the information or some of the
13 confusion that Ms. Bojko points out could -- could,
14 in fact, be resolved if there were certain names and
15 certain items in the transcript that were not kept
16 confidential. It doesn't address -- it does not
17 address, you know, the issue of the prices and
18 whatnot and, you know, we still have to deal with
19 those issues but so now I'm specifically talking
20 about the names.

21 MR. D'ASCENZO: And, again, the
22 redactions that were made here were consistent with
23 redactions that were previously granted.

24 EXAMINER PIRIK: I understand that, and
25 you are throwing that back at me and I understand

1 that.

2 MR. D'ASCENZO: Yeah.

3 EXAMINER PIRIK: But, you know, I am
4 perfectly aware of what the ruling was for in the
5 situation we are in. I am just trying to see whether
6 or not there is some way we can resolve this short of
7 an interlocutory appeal is what essentially I am
8 trying because I don't see any other option for that.

9 Ms. Bojko, did you have something else
10 you would like to say?

11 MS. BOJKO: Well, I wanted to move to
12 strike the commentary because that wasn't my intent,
13 and I think it was inappropriate. That wasn't what I
14 was trying to do, but if Duke believes that that's
15 the case, then maybe we should talk about that.

16 But what I wanted to say was the fact --
17 the word on 20, just another -- I was trying to be --
18 show you examples but page 426, line 20, that word in
19 and of itself should in no way be confidential. And
20 I understand the Bench's concern that we all went
21 into confidential session, and I understand that.
22 But the problem that we have is when we go into
23 confidential session, we don't know what's going to
24 be said. We don't know what the questions are, and
25 we don't know what the responses are. So until we

1 see it in the context of this and go back and do
2 redactions, you know, that's maybe why we didn't
3 raise, and it's hard to go in and out, which I think
4 the Bench has recognized and that's why you put the
5 confidential treatment at the end.

6 But, you know, I think from now if you
7 would like us to object to every question that's
8 asked, we can -- we can try to do that but I'm just
9 saying --

10 EXAMINER PIRIK: You obviously don't
11 understand. What I'm saying when we enter exhibits
12 into the record and we're ruling on whether or not
13 items in those exhibits are confidential or not,
14 that's when I need parties to stand up and say, "Wait
15 a minute, we think this should be in the open
16 record." This -- this is always going -- the
17 confidential portion of the record is always going to
18 be ones that we are going to have.

19 And I think your points about the
20 different items on page 426 are very well taken as
21 far as what should and what shouldn't. I'm trying to
22 address, not like what Mr. Darr is saying, because I
23 think Mr. Darr is addressing the names and the prices
24 and whatnot he's concerned really shouldn't be kept
25 confidential because they are in place and they are

1 hard numbers and they are hard names.

2 On that I'm not sure how to address it,
3 although the issues that you bring up on page 426 are
4 well taken, and I think we need to consider whether
5 or not some of those items should be redacted or not
6 redacting in the transcript. The issue of the names
7 and the numbers, you know, we had already ruled on
8 that, and we're kind of in the position of we're kind
9 of stuck in a position of I'm thinking we're at the
10 point if a party feels strongly that it needs to be
11 in the open record, obviously, the Bench is
12 supportive of that because we want everything we can
13 possibly put in the open record there, but we're kind
14 of in a interlocutory appeal point at this point.

15 And I don't have the rule in front of me
16 so I'm not sure what direction that goes but it
17 would -- you know, whether it's an automatic or, you
18 know, something that has to be certified to the
19 Commission. I'm not sure, but, you know, certainly
20 if we need to clean up the record and put more
21 information in the public record, we are -- we are
22 supportive of that, but I think at this point that's
23 what we would need to do is have parties go down that
24 avenue, and then we are going to proceed in this
25 proceeding in the fashion that we are.

1 That being said, though, I think -- I
2 don't know. Do you have specific -- I know you
3 mentioned a couple on page 426 that you would like to
4 see in the open record.

5 MS. GRADY: OCC also has concern on that
6 page as well.

7 EXAMINER PIRIK: Okay.

8 MS. GRADY: You know --

9 EXAMINER PIRIK: How about if we have
10 Ms. Bojko first tell us what her proposal is for page
11 426, and then you can add anything that you think
12 needs to be added.

13 MS. GRADY: That would be great.

14 MS. BOJKO: Thank you. I would assert
15 that the first two words marked on line 1 would be
16 released. I would assert that the lines 6 and 7
17 first word be released. I think the last word on
18 line 7 needs to be released. I think the two words
19 on line 10 should be released. I think the two words
20 on line 13 can be released.

21 And just to clarify because that's not a
22 specific thing, I mean give us generally speaking.
23 And then I think -- I think 18, those three, four
24 words can be released and 20, that word can be
25 released. Did I miss one? Oh, yeah, that's true.

1 Even though that's a specific item on line 17, that's
2 a publicly available item so that could be released
3 as well. That's determined by the thing I didn't
4 want to mention up on line 13.

5 MR. D'ASCENZO: Your Honor, may I be
6 heard on those specific issues Ms. Bojko has
7 mentioned?

8 EXAMINER PIRIK: In just a minute. Thank
9 you.

10 MR. D'ASCENZO: Thank you.

11 EXAMINER PIRIK: I think we need to do
12 for today -- and I understand you want to have
13 further opportunity to respond, and I think we are
14 going to have to leave that until next week. I just
15 don't -- I think Examiner Stenman and myself need to
16 have more time to go through it.

17 I would like to hear from the other
18 parties as to if there are other things that, you
19 know, you think should be redacted or not redacted.
20 We're obviously talking about the contracts that are
21 present in OEG Exhibit 4.

22 MR. KURTZ: 4A.

23 EXAMINER PIRIK: 4A, so, you know,
24 understanding that at this point in time with a
25 motion that's already been ruled on, interlocutory

1 appeal is typically the route you have to go. We
2 really don't want to do that. We really want this
3 record to be complete when we're done and not have
4 motions that we have to work through.

5 So, you know, I think what the Bench
6 needs to do and what the parties need to do is take a
7 really good hard look at OEG Exhibit 4A and look at
8 those documents and then we will consider among
9 ourselves what we think should and shouldn't be on
10 the record. I mean, I want to point out that I do
11 understand that, you know, there are questions but I
12 would also direct the parties to look at the
13 condensed transcript from yesterday's transcript,
14 Volume IV, lines -- page 991, lines 9 through 13; and
15 as much as there were concerns about certain
16 information being on the record yesterday, this
17 sentence remains in the record.

18 So I, you know, understand that people
19 are going back and forth, but we have to consider
20 that when looking at all of this and the Bench wants
21 as much in the public record as we possibly can. So
22 that being said, we'll take -- you know, briefly take
23 further argument, further ideas that you can help us
24 so that as we consider this over the weekend, we'll
25 be able to come in on Monday and have some idea of

1 what we're doing, but, you know, we are not going to
2 make our ruling today. We are going to continue to
3 proceed as we have been proceeding, and we'll deal
4 with it in that fashion.

5 But before we get to Duke, I don't know
6 if Ms. Grady had an opportunity to make her comments.

7 MS. GRADY: Thank you, your Honor. And I
8 would note that we didn't have much time to look at
9 this, so that, I think, is part of the issue here.
10 We are not -- OCC is not receiving these transcripts
11 so this is the first -- this morning is the first we
12 have had to look at it, I would indicate, and I've
13 got changes all the way through this that it's my --
14 it is OCC's position and belief that the name of an
15 entity that is contract being Duke Energy Ohio
16 especially when Duke is asking for Ohio ratepayers to
17 pay for the cost associated with that contract,
18 should certainly be public information that the
19 public has a right to know.

20 I understand that terms and conditions as
21 the price or the megawatt-hour may be publicly
22 sensitive, but I don't -- I don't quite understand
23 why the names of entities that Duke is dealing with,
24 especially since ratepayers are paying the costs of
25 that, are confidential, so to the extent that we have

1 names sprinkled throughout this, like starting on 419
2 the name on line 15 or the names on 20 and 21, I
3 don't believe that that -- those would be -- should
4 be subject to confidentiality.

5 Likewise, on 420 where we have the name
6 and the name of an individual who works for that --
7 for that entity, I don't think that that is public
8 and that would be -- or that should be confidential.
9 That's 16 to 19. Then when we go to the discussion
10 on 422, specifically lines 19 through 22, I don't
11 understand how the words that are proposing to be
12 redacted are confidential whatsoever. You're talking
13 about a transaction and what happens in a
14 transaction, and I don't understand how that is
15 divulging confidential information.

16 Similarly, you have got more names on
17 423. On 424 you've got a word -- two words on line
18 5, don't understand how that is confidential. Again,
19 when we go through 425, we have got another name of
20 an entity. I don't see that that is confidential.

21 I concur with Ms. Bojko's -- or
22 suggestions for redaction on 426. On 427, line 5,
23 I'm not sure how an individual's name with -- with
24 respect to Duke Energy is confidential. He's an
25 officer of the company. I can't imagine that's

1 confidential information.

2 When we get down to the bottom of 427,
3 line 25, carrying over to 26, the fact that it's
4 referred to there is public knowledge. I don't
5 believe that that is private or confidential
6 knowledge that is subject specifically to Duke.
7 That's well known in the industry. We respect to
8 page 430, the -- talking about -- generally about
9 what occurs between a subsidiary and the corporation
10 and -- what the dealing means, I don't understand how
11 that is confidential. He's talking about whether or
12 not what is the effect of a transaction. I can't
13 understand how that or any of the discussion really
14 that occurs on that following page is anything that
15 should be confidential.

16 And then, finally, with respect to 431,
17 the characterization of a deal, can't understand how
18 that is confidential either. What I would -- when I
19 look at these redactions, I think it's information
20 that is not confidential but just information Duke
21 just doesn't want to make public for whatever reason.

22 MR. D'ASCENZO: Your Honor, if I may, I
23 believe when --

24 EXAMINER PIRIK: Hold on just a second.
25 Are there any other parties that would like to make a

1 comment before I turn to Duke?

2 MS. BOJKO: Your Honor, just for
3 illustrative purposes I went through one page. I
4 mean, I don't know how you would like to handle this,
5 but I have similar -- I went through and yellow
6 highlighted all that I think needs to be unredacted.

7 EXAMINER PIRIK: I think what would be
8 helpful is if you have something specific, if you
9 could just share that with the company and with
10 ourselves for over the weekend, and we will consider
11 that and we will make a decision next week.

12 MR. D'ASCENZO: Your Honor, I'm very
13 sorry. I don't want to interrupt, but I believe when
14 Ms. Grady was talking about page 430, she had said
15 something that was redacted that potentially
16 identifies the counterparty.

17 EXAMINER PIRIK: I did not recall any
18 names being said.

19 MR. D'ASCENZO: She didn't say a name but
20 discussed what the potential structure is.

21 EXAMINER PIRIK: We are going to keep
22 this in the open record. You know, I understand, but
23 you also, you know, have to understand, as I pointed
24 out in the condensed version page 991 of transcript
25 IV, lines 9 through 13, so I just want to point that

1 out again.

2 MS. GRADY: Your Honor, will we be given
3 copies of the transcript?

4 EXAMINER PIRIK: What transcript?

5 MS. GRADY: Are transcripts with proposed
6 redactions going to be something that's given to OCC
7 as well as others? Because I got this -- we got this
8 this morning.

9 EXAMINER PIRIK: We asked to have this
10 this morning. As we've said over several days, that
11 we needed to have it Friday morning in the hopes that
12 we were going to be able to go through it and the
13 document was to be consistent with what our previous
14 rulings have been, and now what we are hearing from
15 the parties is that they had concerns about the
16 previous rulings, and so we're trying to decide
17 whether or not exactly where to go from here.

18 So when the Bench gets copies of the
19 proposed redactions, then the other parties will, and
20 that was what the company did this morning.

21 Mr. D'Ascenzo, do you have a response you
22 would like to do brief before -- and, again, you
23 know, I expect that when we actually look at what
24 other -- other parties' proposals are, I think the
25 most efficient way is if other parties can give us

1 their proposals, give the company their proposals,
2 then we will be more prepared to come in next week
3 and actually go through them, so then Monday when you
4 bring in your redactions for today's copy and
5 yesterday's copy, then we will do likewise.

6 How about if we disperse those proposed
7 redactions to the other parties, we will take the
8 time to let them review them and the Bench to review
9 them, and then we will have similar discussion about
10 what's to be done with that.

11 But before we go through those subsequent
12 ones, the Bench is going to make a decision on these
13 two volumes so that everyone can appropriately move
14 forward, but I mean, I think you just go forward with
15 your redactions in Volumes IV and V, as you have with
16 this one, and then once we make our ruling, then we
17 can go forward from there.

18 But why don't you go ahead and make a
19 response so we have your thoughts to think about over
20 the weekend as well.

21 MR. D'ASCENZO: Thank you, your Honor. I
22 appreciate that. In particular, I want to do two
23 things, if I could, just to articulate what is of
24 concern to us and then to address Ms. Bojko's
25 specific items on page 426.

1 And, you know, we will reserve the right
2 to discuss specific other re -- issues that parties
3 may bring up next week be at that time. In going
4 through the redactions, you know, what -- what is of
5 particular concern to us with respect to contracts
6 and -- are the price, the counterparty, and the terms
7 including quantity. And so that was the nature of
8 the -- the redactions that were made consistent with
9 the redactions that were done with the exhibit in OEG
10 4A. With respect to page 426, the information that
11 Ms. Bojko had suggested be made public, if made
12 public, would allow one to glean who the counterparty
13 is. It talks about who the specific individual, who
14 may have been on one side of a transaction or
15 another.

16 And, you know, in particular, the company
17 was very careful that for -- for information dealing
18 directly with Duke Energy Ohio and its individuals
19 that it did keep that information in the public
20 domain, but with respect to that information that
21 belonged to a counterparty, that's where -- you know,
22 in terms of identification and individuals, that's
23 where we were trying to be selective in keeping that
24 information confidential, consistent with how things
25 have been treated in the past.

1 I would also just like to note for the
2 record that the Commission in the past has ruled that
3 counterparties to contracts are confidential. And
4 that -- and consistent with prior Commission rulings
5 that's what we have done here, so thank you.

6 EXAMINER PIRIK: Thank you.

7 I understand that there is a conference
8 call this afternoon at 3:00 p.m. What I would ask is
9 if the parties could give us their proposed
10 unredacted highlighted version as well as the company
11 by the end of the day today so that we can -- at
12 least on these two volumes, we can look at those and
13 you can just -- as far as we're concerned, if you
14 could just put our copies in an envelope and drop
15 them off at the reception desk on 12 and we can pick
16 them up from there, and then we will go from there.

17 MR. D'ASCENZO: Thank you.

18 EXAMINER PIRIK: And, again, I would just
19 say to parties from now on when -- if you need more
20 time to look at a proposed protected document before
21 a ruling is made, we would appreciate it if you would
22 ask us that ahead of time because, otherwise, we are
23 going to do what is consistent with where the record
24 is right now.

25 And we would prefer to have as much open

1 as we possibly can, but we also prefer in making
2 those rulings right up front. So, that being said
3 are there any questions about how we are proceeding
4 today and on these transcripts and in the future on
5 proprietary information?

6 Ms. Bojko.

7 MS. BOJKO: Your Honor, I've highlighted.
8 I'm not sure this will appear on copying. That's my
9 issue, but I can try -- I'll highlight multiple
10 copies, but does the Bench only -- since I have to do
11 that by hand, does the Bench need one?

12 EXAMINER PIRIK: You can give us one
13 copy, that's fine.

14 MS. BOJKO: One to the company, I am
15 assuming?

16 EXAMINER PIRIK: Yes.

17 MS. BOJKO: Thank you.

18 EXAMINER PIRIK: Any other questions?
19 Anything else before we move on with the next
20 witness?

21 MS. BOJKO: Your Honor, just since we are
22 going to go through this process, I think it might be
23 easier if there was a general understanding of
24 numbers can be redacted and names even -- I mean,
25 assuming that everything stands with regard to the

1 confidential treatment, but words like "the, was,
2 general purchase," I mean general words, I mean those
3 are all redacted in these documents as well, so maybe
4 if there was a general instruction that those general
5 type of words would not be redacted to do a complete
6 sentence or something of that nature.

7 EXAMINER PIRIK: In general, yes, that's
8 true. That's what we -- we prefer every word, every
9 parenthetical that can possibly be in the open record
10 to be in the open record, so it is -- as far as OEG
11 4A goes, it was the names, the numbers, the terms.

12 MR. KURTZ: Your Honor, one statement.

13 EXAMINER PIRIK: Yes.

14 MR. KURTZ: A number that is the quantity
15 of two separate numbers should be okay because
16 unless -- if you don't disclose the two things being
17 multiplied, the final number is important for the
18 public but it discloses nothing trade secret, and
19 we'll be taking that position in our redactions.

20 EXAMINER PIRIK: Okay.

21 MS. SPILLER: I have no idea what you
22 just said.

23 MR. KURTZ: X times Y equals Z should be
24 public because you can't know it as long as X and Y
25 are confidential.

1 EXAMINER PIRIK: Okay.

2 MR. DARR: And, again, your Honor --

3 EXAMINER PIRIK: Yes.

4 MR. DARR: I am not going to spend a
5 whole lot of time marking my copy up. The position I
6 took, that based on the record as it's developed to
7 this point, there is no demonstration that either the
8 counterparty or the amounts deserve confidential
9 treatment at this juncture.

10 EXAMINER PIRIK: Mr. Darr, I did hear
11 what your argument was, and again, I understand where
12 you are coming from. Right now, we are going to get
13 what we get from the other parties and if you choose
14 to make that argument, then -- then that's fine.

15 MR. DARR: Thank you, your Honor.

16 EXAMINER PIRIK: Again, that should have
17 been made at the time the document was brought into
18 the record as proprietary and ruled on.

19 Let's move on with the next witness.

20 Duke.

21 MR. D'ASCENZO: Thank you, your Honor.

22 For its next witness Duke Energy Ohio calls Will A.
23 Garrett.

24 Your Honor, may we approach, please?

25 EXAMINER PIRIK: After I swear him in,

1 that would be fine.

2 MR. D'ASCENZO: Thank you.

3 (Witness sworn.)

4 MR. D'ASCENZO: Your Honor, for purposes
5 of identification, we would like to mark Duke Energy
6 Ohio Exhibit 9, the Direct Testimony of Will A.
7 Garrett.

8 EXAMINER PIRIK: The document will be so
9 marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. D'ASCENZO: Thank you.

12 - - -

13 WILL A. GARRETT

14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. D'Ascenzo:

18 Q. Mr. Garrett, would you please state your
19 name, business address, and position with the company
20 for the record, please.

21 A. Yes. My name is Will Garrett. I work at
22 Duke Energy, at 550 South Tyron Street in Charlotte,
23 North Carolina.

24 Q. And your position with the company?

25 A. I'm director of accounting research.

1 Q. Thank you. Mr. Garrett, do you have in
2 front of you what has been marked as Duke Energy Ohio
3 Exhibit 9?

4 A. Yes, I do.

5 Q. And could you please identify that
6 document.

7 A. This is my direct testimony that I filed
8 on behalf of Duke Energy Ohio.

9 Q. And was that document prepared by you and
10 under your direction and control?

11 A. Yes, it was.

12 Q. Do you have any changes or corrections to
13 that testimony?

14 A. No, I do not.

15 Q. And if you were asked those same
16 questions here today, would your responses be the
17 same?

18 A. Yes, they would.

19 Q. And do you hereby adopt that testimony
20 for purposes of these proceedings?

21 A. Yes, I do.

22 MR. D'ASCENZO: Your Honor, the witness
23 is available for cross-examination.

24 EXAMINER PIRIK: Thank you.

25 OEG.

1 MR. KURTZ: Thank you, your Honor.

2 CROSS-EXAMINATION

3 By Mr. Kurtz:

4 Q. Good afternoon, Mr. Garrett.

5 A. Good afternoon.

6 Q. You are the company's regulatory
7 accounting witness, so to speak?

8 A. I am in the sense that I've provided
9 support around some of the accounting that's being
10 considered here.

11 Q. Okay. It's correct, isn't it, that Duke
12 Energy Ohio seeks to reapply regulatory accounting to
13 the Duke Energy Ohio Midwest coal assets?

14 A. I think where we're seeking reapplication
15 of FAS 71 to a service, that being, the FRR service
16 that we're providing.

17 Q. Just to be clear, you're seeking a
18 change -- you're seeking permission to defer as a
19 regulatory asset.

20 MR. KURTZ: Is the total dollar amount
21 public?

22 MS. SPILLER: Uh-huh.

23 Q. \$729 million for recovery at a later
24 date, plus interest, through nonbypassable charge; is
25 that correct?

1 A. That's correct.

2 Q. Okay. And right now -- and that's the
3 regular -- the 729 is the difference -- as quantified
4 by Mr. Wathen, it's the difference between the costs
5 of the Midwest coal assets versus the market-based
6 revenue that you receive for those assets, correct?

7 A. No. That's a component of the deferral,
8 but that's not the entire deferral.

9 Q. Okay. What is the entire deferral?

10 A. Again, the entire deferral is the -- our
11 cost to provide this FRR service.

12 Q. Based upon the costs of the Midwest coal
13 assets versus the market revenue received by those
14 assets.

15 A. Again, in part that's part of the
16 deferral, but it also includes purchase power costs
17 that we incur as well to supply that service.

18 Q. Okay. Now, right now, the Midwest coal
19 assets are currently deregulated for SEC and FERC
20 purposes, correct?

21 A. Yes. As of our most current reports for
22 the SEC, they were considered unregulated in the
23 sense that we did not apply FAS 71, F-A-S 71, to
24 those assets.

25 Q. Okay. Let me read from page 74 of IEU

1 Exhibit 11 and see if you agree. This is the SEC
2 10-K. "Duke Energy Ohio is subject to wholesale
3 commodity price risks for its nonregulated generation
4 portfolio. The nonregulated generation portfolio
5 dispatches all of their electricity into unregulated
6 markets and receives wholesale energy margins and
7 capacity revenues from PJM."

8 MR. D'ASCENZO: Your Honor, I would
9 object. The witness doesn't have a copy of that
10 document.

11 EXAMINER PIRIK: Can we provide him a
12 copy?

13 MR. KURTZ: If I can approach, I'll just
14 ask him if I read that correctly.

15 EXAMINER PIRIK: What page are you on
16 again?

17 MR. KURTZ: 74.

18 THE WITNESS: Have we sorted out the
19 pagination of our 10-K because I thought we had
20 some --

21 EXAMINER PIRIK: There is. You have to
22 kind of look in the middle of pages for the
23 appropriate page number on the copy we're using.

24 A. And the page number again?

25 Q. 74. It's in the paragraph entitled

1 "Generation Portfolio Risks" about midway.

2 A. I'm there. Yeah, I would agree with that
3 statement that that is one of the risks that Duke
4 Energy Ohio is -- is subject to.

5 Q. Okay. And the nonregulated generation
6 portfolio being referred to there is the Midwest coal
7 assets as well as the Midwest gas assets which are
8 part of the Commercial Power business segment of Duke
9 Energy Ohio, correct?

10 A. Yes.

11 Q. Now, because the Midwest coal and the
12 Midwest gas assets are currently unregulated, that is
13 why regulatory accounting, by definition, doesn't --
14 does not apply to them, correct?

15 A. Yes, that's -- in part that's true.

16 Q. What's the other part?

17 A. Well, the -- you know, the purpose of
18 making that determination is really to give the
19 reader of the financial statements the context of how
20 to read or understand the financial results, and so
21 in this particular 10-K we are looking at financial
22 results for 2012 so the company would go through an
23 assessment of determining whether or not it
24 considered operations within DEO, in this particular
25 case, Commercial Power, whether it had any reason for

1 applying FAS 71. There certainly -- there were
2 events during the year that could have resulted in
3 the application of FAS 71. We ultimately determined
4 that we would not apply that.

5 Q. And the reason that you stopped applying
6 regulatory accounting to Duke Energy Ohio's Midwest
7 coal and Midwest gas assets was the Public Utilities
8 Commission of Ohio's November, 2011, ruling approving
9 the ESP, Duke -- Duke Energy Ohio last ESP?

10 A. Yes. We discontinued the application of
11 FAS 71 in November of 2011, upon that order.

12 Q. Okay. Will you turn to page 18 of the
13 Form 10-K. And I think this is really sort of
14 confirmation of what we're talking about. Under the
15 Commercial Power segment, the bold paragraph that
16 begins "Other Matters," just when you're there, let
17 me know.

18 A. Page 17? 18; oh, 18, excuse me. Yes,
19 I'm there.

20 Q. Okay. And under "Other Matters" it says,
21 "As discussed in the U.S. Franchised Electric & Gas
22 section above, the PUCO approved Duke Energy Ohio's
23 new ESP in November 2011. In November 2011" as a
24 result of changes resulting" -- whoever wrote that
25 used "result" too many times. "In November of 2011,

1 as a result of changes resulting from the PUCO's
2 approval of the new ESP, Commercial Power ceased
3 applying regulatory accounting treatment to its Ohio
4 operations. Currently, no portion of commercial
5 power applies regulatory accounting."

6 Is that sort of confirmation of what we
7 said, the reason why regulatory accounting was
8 stopped?

9 A. Yes, that is the case. And it's being
10 disclosed because prior to that order, Commercial
11 Power did have certain costs that were subject to the
12 application of FAS 71.

13 Q. Do you know what portion of the
14 Commission's November, 2011, order triggered the
15 unregulation of those power plants and the ending of
16 regulatory accounting?

17 A. Yes. I think, generally, most of the
18 service prices were going to be based on something
19 other than Commercial Power's incurred costs.

20 Q. Okay. If you are on that same page under
21 the heading "Commercial Power" there's a little bit
22 of a more detailed explanation. Under the
23 "Commercial Power" midway down, three sentences, that
24 begins, "As discussed in the USFE&G section above."
25 Let me know if you see that.

1 I would have put that in yellow to make
2 it easier but -- and I did on the OEG exhibit.

3 A. I'm sorry I'm not there.

4 Q. Under "Commercial Power" it says, "As
5 discussed" -- "As discussed in the USFE&G section
6 above," it's midway down, the sentence starts on the
7 right-hand side of the page.

8 A. We're still on that page --

9 Q. Yes.

10 A. At the section that has the bold heading
11 Commercial Power?

12 Q. Yes. Five lines down on the right, "As
13 discussed in USFE&G session ..."

14 A. Yes, I think's there.

15 Q. "... the new ESP effectively separates
16 the generation electricity industries from Duke
17 Energy Ohio's retail load obligation as of January 1,
18 2012. As a result, As a result, the energy from Duke
19 Energy Ohio's coal-fired generation assets no longer
20 serve retail load customers or receive negotiated
21 pricing under the ESP. Effective January 1, 2012,
22 Duke Energy Ohio completed its Regional Transmission
23 Organization realignment to PJM and operates as a
24 Fixed Resource Requirement entity through May 31,
25 2015. As an FRR entity, Duke Energy Ohio is

1 obligated to self supply capacity for the Duke Energy
2 Ohio load zone. The generation assets began selling
3 all their electricity into wholesale markets in
4 January 2012, and currently receive wholesale energy
5 margins and capacity revenues from PJM at market
6 rates."

7 MR. D'ASCENZO: Objection, your Honor.
8 Counsel just read that whole section into the record.

9 EXAMINER PIRIK: Objection overruled.

10 Q. My question is, are those the aspects of
11 the PUCO's November, 2011, ESP decision which
12 triggered the deregulation of the power plants and
13 the end of regulatory accounting?

14 A. It was one aspect.

15 Q. Okay. Will you turn to page 6 of your
16 testimony, please.

17 A. Yes.

18 Q. Line 11, let me just read this and ask
19 you a question about it. "Therefore, if a
20 deregulated enterprise experiences 're-regulation'
21 such that it again meets the three criteria for
22 'initial and continuing application' of ASC 980-10,
23 regulatory accounting should be 'reapplied to all or
24 a separable portion of Operations.'" Did I read that
25 correctly?

1 A. Yes, you did.

2 Q. Okay. Now, do you understand -- or has
3 anyone told you that it's the policy of this
4 Commission to move towards deregulation, not
5 "re-regulation"?

6 A. Yes, I'm aware that in the state of Ohio,
7 there has been a movement since 2000 to deregulation.
8 I would add, though, that doesn't preclude the
9 application of FAS 71 to either components of that
10 business or specific costs.

11 Q. It seems that in November of 2011, the
12 auditors and accountants, lawyers for Duke Energy
13 Ohio felt that as a result of the ESP, the power
14 plants of Midwest coal, Midwest gas were deregulated,
15 and now you're asking to have them reregulated so you
16 can build up a regulatory asset and recover it in the
17 future; is that correct?

18 A. No, I wouldn't agree with that.

19 Q. What do you mean when you say
20 "re-regulation"? You're talking about the Midwest
21 coal assets, are you not?

22 A. No, I'm not. What I'm referring to there
23 is that the Commission could take action to allow for
24 costs to be recovered as they did in August, 2012,
25 with the AEP -- AEP order whereby the service, that

1 is, the FRR service, was recovered based on the AEP's
2 costs. If that -- if we apply that as we've asked
3 here, the regulator, the Public Utilities Commission,
4 could very well re-regulate, if you want to call it
5 that, but certainly allow those costs to be
6 recovered.

7 Q. Well, I didn't use the word
8 "re-regulation." You did in your testimony, and
9 that's what you're asking to have occur, is it not?

10 A. No. But you said all of the assets.

11 Q. I meant the Midwest coal assets. I think
12 that's what I said.

13 A. No, again, I would -- I wouldn't agree
14 with that. We're not asking for the Commission to
15 re-regulate all of those assets. We're asking them
16 to determine a cost-based rate associated with the
17 service, that being the FRR service.

18 Q. You've read the testimony of other
19 witnesses that say you want traditional ratemaking
20 applied to the assets listed on Appendix 1 or
21 Attachment 1 of the application, which was all of the
22 Midwest coal assets, isn't that correct?

23 A. That's part of the request, yes.

24 Q. Now, do you think it's a fairly -- if the
25 Commission here felt that if they had a policy of

1 moving towards deregulation and they felt that Duke
2 had already crossed at that threshold and was
3 essentially deregulated, isn't it a pretty big step
4 to go back and re-regulate?

5 A. No. I think we have -- we have
6 historical precedent where that's occurred. In 2008
7 the company made a determination as a result of
8 actions by the Utility Commission coming out of
9 Senate Bill 221 to apply FAS 71, so we had an entity
10 that was off of FAS 71. Effective December of 2008
11 we made a determination to put certain costs back on
12 FAS 71 and we began to apply regulatory accounting to
13 it.

14 Q. Is there any reason for you or anyone to
15 believe that this Commission has made the
16 determination to change course and to move back
17 towards reregulation and away from deregulation?

18 A. I wouldn't have an opinion as to what the
19 intent of the Public Utilities Commission is in that
20 regard.

21 Q. That change in 2008 you refer to was a
22 results of the passage of Senate Bill 221, correct?

23 A. That's what I said, yes.

24 Q. Okay. Now, let me -- let me give you an
25 example, hypothetical. Assume that the Public

1 Utilities Commission of Ohio today, April 19, 2013,
2 issued an order that said, okay, Duke we agree
3 effective -- with the effective date of this order,
4 you can apply regulatory accounting to -- to the
5 assets attached to Appendix A on your application.
6 If they said -- if they issued that order today, you
7 wouldn't be able to go back to August 1, 2012, would
8 you, and get your deferral? If they said effective
9 today those assets are re-regulated, could you go
10 back?

11 A. If they approved our petition as we've
12 requested, absolutely we could go back.

13 Q. No. I said they issue an order that says
14 effective with the date of this order, those assets
15 are re-regulated, not your -- not your application.

16 A. Uh-huh.

17 Q. Could you go back to August 1, 2012?

18 A. If they said to adopt it prospectively,
19 no.

20 Q. So really what you're asking the
21 Commission to do is to re-regulate retroactively.
22 You want them to re-regulate those assets
23 retroactively back to August 1, 2012.

24 A. No, I wouldn't agree with that. We're
25 asking them to apply the same standard they applied

1 to another utility in the application of recovering
2 the costs to provide this service.

3 Q. Now, I know you want to be treated
4 similarly to AEP, but if your application is granted,
5 the Commission will have re-regulated those -- those
6 assets and giving you authority to defer the costs
7 and build regulatory assets retroactive to August 1,
8 2012, isn't that true?

9 A. No, I wouldn't characterize it as
10 retroactive. I think they are relying or they are,
11 you know, exercising their authority to apply the
12 same cost-based recovery mechanism they did for a
13 similar utility, and so from my perspective, the
14 application of FAS 71 actually commenced in August of
15 2012 when they made that order, when they made that
16 determination.

17 Q. You think that order had sort of the same
18 weight as the passage of Senate Bill 221 creating
19 a -- a new statewide re-regulation paradigm for FRR
20 entities?

21 A. I think it had the weight of the
22 Commission actions that were equivalent coming out of
23 Senate Bill 221. Some of the actions that they took
24 in response to that I think it had very -- very
25 similar weight.

1 Q. So when we read your 2012 quarterly SEC
2 reports or the final one, you would -- you will have
3 applied regulatory accounting back to August, back to
4 the date of the AEP order?

5 A. No. I did not say that. We -- we
6 considered the application of FAS 71 when we filed
7 our August petition, our August, 2012, petition. We
8 considered the application of it, and because it
9 didn't meet all of the criteria of FAS 71, we did not
10 apply it, but from my perspective, it commenced at
11 that point.

12 Q. Do you know if this Commission has the
13 authority to order retroactive reregulation?

14 A. I don't have an opinion as to what
15 authority the Commission has.

16 Q. Now, do you know if AEP Ohio has and
17 continues to have regulatory accounting treatment for
18 its power plants?

19 A. Yes, I do. They continue to apply FAS 71
20 to portions of their plants and they -- they were off
21 of FAS 71 prior to 2009 and then reapplied it.

22 Q. So as of the date of the Commission's
23 capacity order in that case, they were already
24 applying regulatory accounting, correct?

25 A. To specific costs they were, yes.

1 Q. And the AEP deferral order was
2 prospective only, wasn't it? It didn't have a
3 retroactive component?

4 A. I believe it was effective on the
5 Commission's order -- of the date of the Commission's
6 order, yes.

7 Q. So there was no retroactive component
8 there, correct?

9 A. But I would add that there was precedent,
10 but I believe they were under interim provisions to
11 recover those costs. I don't know all of the details
12 around that, but I understood that there was some
13 interim provisions provided to them --

14 Q. Well, that's interesting. As of
15 December, 10 2012, the interim state compensation
16 mechanism was RPM plus the POLR, POLR, provider of
17 last resort, charge for AEP. Why didn't Duke come in
18 and ask for that when the interim state compensation
19 mechanism was effective?

20 A. I have no opinion on that.

21 Q. That wasn't -- well.

22 MR. KURTZ: Thank you, your Honors. No
23 more questions.

24 EXAMINER PIRIK: Thank you. Is there a
25 further order of cross, or should we just start with

1 OCC?

2 Ms. Grady.

3 MS. GRADY: We can start with OCC. No
4 questions.

5 EXAMINER PIRIK: Okay.

6 Ms. Petrucci?

7 - - -

8 CROSS-EXAMINATION

9 By Ms. Petrucci:

10 Q. I just want to go back to something you
11 said in the beginning of Mr. Kurtz's questions. Did
12 you indicate that the deferral that's being requested
13 is the total cost to provide the FRR service?

14 A. Well, it's the total costs less the
15 revenues that we have offset those costs based on
16 what we are recovering through the PJM markets.

17 Q. And then in addition there will be
18 carrying costs on top of that dollar amount.

19 A. I believe that's true.

20 Q. And so the carrying costs would be on top
21 of the \$729 million figure; is that right?

22 A. Well, the \$729 figure doesn't occur on
23 day one. It occurs over the entire period, so the
24 carrying costs would be whatever the regulatory asset
25 deferral is at the time.

1 Q. But the carrying costs will be on top of,
2 it will be -- the total costs will be in addition the
3 \$729?

4 A. Yes. Based on whatever the outstanding
5 regulatory asset was at the time the carrying costs
6 was calculated.

7 MS. PETRUCCI: I have no further
8 questions. Thank you.

9 EXAMINER PIRIK: Ms. Floyd.

10 MS. FLOYD: No questions, your Honor.

11 EXAMINER PIRIK: Ms. Bojko.

12 MS. BOJKO: Yes, your Honor thank you.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Bojko:

16 Q. You just stated in your conversation with
17 Mr. Kurtz that you believe that effective July, 2012,
18 the Commission order that you were given this
19 authority. Do you recall that?

20 MR. D'ASCENZO: Objection,
21 mischaracterizes what the witness said.

22 EXAMINER PIRIK: Objection overruled.

23 A. I remember that conversation. I'm not
24 sure that -- if you would like, I could go back on
25 what I actually said, but I don't think it was

1 just -- I didn't say we were given any authority.
2 I'm not sure. Maybe I should ask for some clarity in
3 the case. What do you mean by "Authority"?

4 Q. I thought you said -- and I didn't intend
5 to mischaracterize. I thought you said in response
6 to Mr. Kurtz that you believed when the Commission
7 issued its order in the AEP capacity case, that you
8 had authority to re-regulate per FAS 71.

9 A. No. I said we considered whether we
10 would reapply 71 as a result of the AEP action plus
11 our petition, so we considered that, and the
12 conclusions are in our 10-K. At that time we decided
13 we had not met the requirements of FAS 71 so we did
14 not apply regulatory accounting.

15 Q. But you believe that -- that particular
16 order gave you the authority to relook at it?

17 A. Well, I have the ability to revisit
18 whether FAS 71 applies to our operations at any time.

19 Q. Okay. So you -- you do not believe that
20 the Commission order alone gave Duke authority to do
21 the accounting mechanism that you are speaking of?

22 A. That's correct. I -- I believe that what
23 I said was that we evaluated that and in part, not
24 only because of that order, but also our application
25 to request a cost-based deferral.

1 Q. Right. Okay. There's the missing piece.
2 So you know -- or in your opinion, you had to go to
3 the Commission to seek your own authority for this
4 accounting proposal; is that correct?

5 A. Well, we had to go to the Commission to
6 seek approval of that, that is, the ability to defer
7 these costs but then also the mechanism by which we
8 would recover those.

9 Q. Because the July order that the
10 Commission issued was specific to AEP so Duke would,
11 in turn, need their own authority by the Commission
12 to do this kind of accounting authority; is that
13 correct?

14 A. Yes, we would file our own petition to
15 seek that treatment.

16 MS. BOJKO: Thank you. Nothing further.

17 EXAMINER PIRIK: Mr. Hart.

18 MR. HART: Yes, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Hart:

22 Q. When you considered the reapplication of
23 FAS 71, you said not all the criteria were met. Am I
24 correct that the criteria that was not met was that
25 Duke's rates weren't designed to recover its costs?

1 A. No. That was not one of them. What was
2 very specific to the petition that we filed, and
3 often when you're considering whether to set up
4 regulatory assets, you look to other entities and
5 whether or not there was a precedent that was
6 established to provide similar treatment. In this
7 particular case, we made a filing that we saw as
8 consistent with AEP's cost-based rate that was
9 requested. But we ultimately concluded that, of
10 course, we would need Commission action, and it was
11 very important for us to understand how those costs
12 would be recovered before we would defer them.

13 Q. In terms of your testimony on page 4,
14 where you have paragraphs A, B, and C, which I
15 believe you've described on the previous page as
16 criteria that needs to be met before FAS 71 applies,
17 correct?

18 A. Yes.

19 Q. And criteria B was that your regulated
20 rates are designed to recover the specific entity's
21 costs. And I will ask you, in July of 2012 or in
22 August when the petition was filed or even though are
23 Duke's regulated capacity rates designed to recover
24 its specific costs?

25 MR. D'ASCENZO: Objection, your Honor.

1 EXAMINER PIRIK: Objection overruled.

2 A. I'm not sure what you mean by "its
3 regulated capacity rates."

4 Q. Well, that's the service we're talking
5 about, correct?

6 A. Yes. But I'm not sure I understand what
7 you mean by "Duke's regulated capacity rates." Are
8 you suggesting that those capacity rates are
9 currently regulated; is that what you are asking? I
10 am not sure I follow your question.

11 Q. Well, let's back up and start at a more
12 basic level. You understand that Mr. Trent testified
13 in this case that the service that's at issue is
14 wholesale capacity service.

15 A. That's correct. It's -- it's, as I
16 understand it, a fixed resource requirement service.

17 Q. And aren't we here about capacity rates?

18 A. Yes. We're here to seek approval of our
19 petition to recover costs of capacity.

20 Q. Okay. And we're not talking about any
21 other service that Duke provides. We are only
22 talking about capacity service.

23 A. As an FRR entity, I would agree, yes.

24 Q. Let me ask you then, do you consider
25 Duke's rates for capacity service right now to be

1 regulated or unregulated?

2 A. Currently what they are recovering is a
3 market-based rate so I would say they are
4 unregulated. However, the Commission has taken
5 action in the AEP case to provide a cost-based rate
6 and recovery of that.

7 Q. Provided that to AEP, but at this point
8 Duke does not have that relief, correct?

9 A. But that's why we are here seeking that
10 relief.

11 Q. Okay. So before you can apply FAS 71
12 under criteria B, your capacity would have to be a
13 regulated rate, correct?

14 A. Yes. We would need approval of our
15 petition that we filed, yes.

16 Q. Now, as I understand your petition,
17 you're not asking that the rates that Duke charges to
18 PJM be changed; is that correct?

19 A. That's correct. As I understand it, yes.

20 Q. What you're asking to do is to defer a
21 cost that Duke incurs to provide capacity service
22 over and above what it recovers through that
23 wholesale rate; is that correct?

24 A. Yes. We're asking to defer the costs of
25 providing that FRR service.

1 Q. And you're asking that that deferral be
2 placed into a deferral account and that a rider be
3 established for potential future recovery, correct?

4 A. Yes. But I would add that we've also
5 requested that recovery be based on a nonbypassable
6 rider to fully recover those costs.

7 Q. And the request in this case is that
8 nonbypassable rider be initially set at zero,
9 correct?

10 A. That's correct, as I understand it.

11 Q. So if Duke were to get the relief that's
12 requested in the petition, you would continue to have
13 an unregulated wholesale capacity rate, and you would
14 have a retail capacity rate of zero; is that right?

15 A. Initially.

16 Q. And so at that point in time won't --
17 wouldn't it certainly still be true that Duke's
18 regulated rates would not be designed to recover its
19 specific costs of capacity?

20 A. Well, initially on that day when it's
21 zero, but my understanding is we would then file for
22 how that rate would change over time to recover those
23 costs.

24 Q. At some future time.

25 A. Yes, but -- as I understand it, I assume

1 we would want to do that rather quickly right after
2 having that ability to defer those costs.

3 Q. Okay. But until Duke applied and
4 actually got approval to populate that rider with a
5 number, wouldn't it still be true that Duke would not
6 have a regulated rate designed to recover its costs?

7 A. Initially that would be true.

8 Q. And so FAS 71 wouldn't apply until the
9 rider was actually populated with a price, correct?

10 A. No, I don't agree with that. If the
11 Commission approved the creation of the nonbypassable
12 rider and then determined the levels that it would
13 be, I would take that to mean that they supported
14 future recovery of those costs.

15 Q. Well, if the rider was initially set to
16 zero, how does that recover any costs?

17 A. Well, again, my -- at that date when it's
18 at zero, it doesn't. But I would assume that we
19 would want to ultimately adjust that to again recover
20 those costs.

21 Q. I'll ask you again. Until that ultimate
22 date when that cost-based rate is established, isn't
23 it true the FAS 71 could not apply?

24 A. No, it's not true.

25 Q. How can FAS 71 apply until there is a

1 rate designed to recover costs?

2 A. There are a number of costs where costs
3 could be deferred based on an expectation that the
4 Commission will take future action to provide
5 recovery of that. So it -- it's an assessment of
6 your likelihoods of being able to recover those
7 costs.

8 Certainly, if the Commission took action
9 on what we put before them here, and let's assume for
10 a moment they approved all of it, my assumption is if
11 they are approving then a nonbypassable rider, that
12 ultimately they intend to allow the recovery of these
13 costs.

14 Q. Can you create a regulatory asset before
15 FAS 71 applies?

16 A. That's an interesting sort of a chicken
17 and the egg question.

18 Q. Exactly.

19 A. I think you have to meet the criteria
20 here before you can apply FAS 71 and create a
21 regulatory asset.

22 Q. So until FAS 71 applies, the regulatory
23 asset cannot be created.

24 A. That's correct.

25 MR. HART: Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXAMINER PIRIK: Mr. Darr.

CROSS-EXAMINATION

By Mr. Darr:

Q. First, of all a couple of background questions. We've described or it's been described in this hearing that the company reports for accounting purposes and SEC purposes on a segment basis, correct? I'm speaking now specifically of DEO.

A. Yeah. It reports its operating results on a segment basis, as well as a legal entity basis.

Q. And with regard to the segments is the Franchised Electric & Gas operations, correct?

A. That's correct.

Q. And the other is the Commercial Power, correct?

A. That's one of them. And then there is a small -- there's actually three segments, but there's an "Other" that's a segment as well.

Q. And for purposes of FASB accounting standards, code 980, which is the update of -- updated reference to FAS 71, segment is a defined term, correct?

A. Well, it's not a defined term in this particular FAS 71.

Q. For purposes of applying either FAS 71 or

1 Code Section 980, you use the term consistently with
2 other provisions as it's defined in the accounting
3 standards, correct?

4 A. No, it doesn't have to apply to a
5 segment. It can apply to services. It can apply to
6 costs. It doesn't have to apply to an entire
7 enterprise or a segment of that enterprise, if that
8 makes sense. It can apply to just products,
9 services, or costs.

10 Q. When you say "it," let's make sure the
11 record is clear.

12 A. Yeah; FAS 71.

13 Q. Would you agree that the Franchised
14 Electric & Gas has historically been considered the
15 regulated segment, at least for the last four years,
16 now five years?

17 A. No, I wouldn't, because up until November
18 of 2011, portions of Commercial Power were considered
19 to be rate regulated and they had regulatory assets
20 associated with those, so within Commercial Power
21 there were regulatory assets.

22 Q. That wasn't my question, sir. My
23 question was would you agree that Franchised Electric
24 & Gas has historically be considered a regulated
25 segment?

1 A. Yes, I would say -- I thought you meant
2 it was the only one.

3 Q. And I understand you may have
4 misunderstood my question, and that's why I wanted to
5 clear it up. And you already discussed with
6 Mr. Kurtz that a portion of Commercial Power came off
7 of regulated accounting as of November, 2011. As I
8 understand your testimony today, it is Duke's
9 position that it is necessary for the Commission to
10 issue an order approving the creation of the
11 deferred -- deferral accounting before the company
12 can be placed and seek to internally change its
13 treatment of these assets; is that correct?

14 A. Yes. That's one thing we were required.

15 Q. Now, it's fair to say we are -- let me
16 rephrase that. Duke is not seeking this change as a
17 part of an ESP; is that correct?

18 A. Yes, I think that's fair.

19 Q. And it's fair to say that retail
20 generation, and I'm specifically using the term
21 "retail" here -- is deemed to be a competitive
22 service in Ohio. Do you understand that as well?

23 A. I'm not sure I have an opinion about --
24 about that.

25 Q. As you discussed with Mr. Hart, you are

1 currently recovering compensation for capacity
2 service at market rates for that capacity provided to
3 SSO bidders who are successful and capacity that is
4 provided to or used by CRES providers under your FRR
5 plan, correct?

6 A. I'm not sure I followed that question
7 completely. There was a lot of acronyms in there.

8 Q. Sure. You are currently receiving
9 compensation for capacity service for capacity
10 provided to the successful bidders in the ESP
11 auctions, correct?

12 A. I believe that's correct, that we -- we
13 receive compensation from PJM through those -- that
14 auction process.

15 Q. And that compensation is based on the RPM
16 price, correct?

17 A. As I understand it, I believe that's
18 true.

19 Q. And similarly you are receiving
20 compensation for capacity provided to CRES providers
21 also through the settlements process at PJM, correct?

22 A. I believe that's true.

23 Q. And which a capacity is priced at the RPM
24 rate as well, correct?

25 A. Yes, I believe that's true.

1 Q. Now, the premise for your application in
2 this case is that the Commission must have the
3 authority to establish a rate for a regulated
4 service, correct?

5 A. That the -- yeah. Yes, I think the
6 Commission would have to have the authority to be
7 able to enforce the rate that they established.

8 Q. In fact, that's the first of the three
9 requirements that you list on page 4 of your
10 testimony, correct?

11 A. That rates are approved by -- by a
12 regulatory authority, yes. That is one of the
13 requirements.

14 Q. And as reported by your company through
15 its 10-K, whatever margins Duke Energy Ohio is
16 receiving for its generation services at this time
17 are as a result of wholesale transactions; is that
18 also correct?

19 A. I think that's part of the margins that
20 we report if you're referring to how -- I guess what
21 I am thinking is how we report our Commercial Power
22 segment. That's part of the margins that we receive,
23 yes.

24 Q. With regard to generation, are you
25 suggesting that there are other margins that you're

1 receiving other than through the wholesale
2 transactions?

3 A. As we report Commercial Power financial
4 operations, there are other margins, yes.

5 Q. With regard to the legacy assets that are
6 at issue in this case, are you reporting any
7 wholesale -- anything other than wholesale margins in
8 terms of your 10-K?

9 A. Not that I am aware of, no.

10 Q. Now, at line 20 on page 6, you state that
11 the company is only requesting to defer the
12 difference between actual costs and the revenue
13 received from PJM, and that's what we were just
14 talking about, correct?

15 A. Yes.

16 Q. And you're aware, are you not, that the
17 company is using FERC Form 1 data from 2011 to
18 calculate the charge in this case?

19 A. Yes, I am.

20 Q. And you are aware there have been various
21 management decisions that have resulted in budget
22 changes that are reflected in the pro forma
23 calculations presented by the company?

24 A. I'm not fully aware how management
25 decisions have impacted pro formas of costs that

1 we've incurred.

2 Q. Were you here for Mr. Savoy's testimony
3 yesterday?

4 A. I was here for parts of it, yes.

5 Q. Were you here for the portions where we
6 discussed the changes that had occurred between the
7 6 & 6 budgets and the 12 & 0 budgets?

8 A. Yes, I was, but I'm not sure I completely
9 followed because I didn't have the benefit of the
10 documents that were being reviewed with him.

11 Q. Is it fair to say that your testimony
12 does not address the changes that may have occurred
13 in actual costs incurred by Duke Energy Ohio that
14 have occurred over the last year?

15 A. No. My testimony doesn't address that.

16 Q. Is it fair to say also you have not
17 identified the accounts for which regulatory
18 accounting is being sought?

19 A. No; other than I thought I looked at what
20 witness Wathen, Mr. Wathen, prepared and understand
21 it sufficiently enough to know note to arrive at the
22 conclusions I did, which is, you know, I really
23 don't -- I think it's common to use in many
24 jurisdictions historical cost data for purposes of
25 establishing cost-based rate.

1 Q. That wasn't my question, sir. My
2 question was whether or not you had identified any
3 accounts for which regulatory accounting is being
4 sought in this case.

5 A. Have I reviewed any accounts?

6 Q. No, have you identified.

7 A. Again, other than understanding the
8 source of the information that was the basis for our
9 costs and the request, no.

10 MR. DARR: Thank you. I have nothing
11 further.

12 EXAMINER PIRIK: Mr. Jones.

13 MR. JONES: No questions, your Honor.

14 EXAMINER PIRIK: Redirect?

15 MR. D'ASCENZO: If I could have just a
16 few minutes, please.

17 EXAMINER PIRIK: Yes.

18 MR. D'ASCENZO: Thank you.

19 (Discussion off the record.)

20 EXAMINER PIRIK: Does Duke have redirect?

21 MR. D'ASCENZO: Yes, just a few
22 questions, your Honor.

23 EXAMINER PIRIK: Okay.

24 - - -

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDIRECT EXAMINATION

By Mr. D'Ascenzo:

Q. Hello Mr. Garrett.

A. Hello.

Q. Do you recall a conversation with Mr. Kurtz about Duke Energy Ohio replying FAS 71 accounting?

A. Yes.

Q. And do you recall when that was?

A. Yes. We started to reapply FAS 71 in 2008, in December of 2008, so for the period 2009 through 2011 we were applying FAS 71 in regulatory accounting.

Q. And when did Duke Energy Ohio stop applying FAS 71 accounting?

A. In November of 2011.

Q. Prior to its reapplying, when did we stop applying it prior to that?

A. Would have been in 2000 as a result of the -- the, I guess if you will, commencing deregulation in the state of Ohio.

Q. And do you know if other utilities also similarly stopped applying FAS 71 accounting at that time, utilities in Ohio, that is.

A. Yes, I am aware of utilities. One that I

1 worked for, Dayton Power & Light, removed their
2 generation assets off of 71. And I think many of the
3 other utilities in the state did as well.

4 Q. And I believe when you were talking with
5 Mr. Kurtz, you had mentioned the AEP utilities.

6 A. That's correct. They went off FAS 71 as
7 well.

8 Q. And Mr. Kurtz, he walked through what was
9 IEU Exhibit 11, which was Duke Energy's Form 10-K.
10 Do you recall that?

11 A. Yes.

12 Q. And changes in accounting methods for
13 utilities, would you say they are regularly reported
14 in filings like the 10-K or FERC Form 1, for example?

15 A. Yes, they are.

16 Q. And do you review those as part of your
17 job as director of accounting research?

18 A. Yes, I do; in areas of interest, yes, I
19 do.

20 MR. D'ASCENZO: Your Honor, may I please
21 approach the witness?

22 EXAMINER PIRIK: Okay.

23 MR. D'ASCENZO: Your Honor, for purposes
24 of identification I would like to mark Duke Energy
25 Ohio Exhibit No. 10, which is a portion of the 2008

1 FERC Form 1 for the Ohio Power Company. I would
2 request that the Commission would take administrative
3 notice of the FERC Form 1 for the Ohio Power Company.
4 It's a document that is filed with the Commission,
5 and I pulled this from the Commission's website.
6 It's a publicly available document. And in the
7 interest of saving paper and trees, I only printed
8 out excerpts of it, similar to how other documents of
9 this size has been treated this far in this
10 proceeding.

11 EXAMINER PIRIK: When you say it was
12 filed with the Commission, are you talking about this
13 Commission?

14 MR. D'ASCENZO: Yes, your Honor, the
15 financial FERC Form 1 -- 10-K -- is filed with the
16 Ohio Public Utilities Commission.

17 EXAMINER PIRIK: Is it filed or
18 submitted.

19 MR. D'ASCENZO: It's submitted, your
20 Honor.

21 EXAMINER PIRIK: So it's not in a formal
22 docket?

23 MR. D'ASCENZO: It's not in formal
24 docket, no.

25 MR. DARR: You've used term FERC Form 1

1 and 10-K I think in the same sentence. Is this the
2 FERC Form 1?

3 MR. D'ASCENZO: I have both. I have the
4 FERC Form 1 here as the first document.

5 MR. DARR: I see.

6 MR. D'ASCENZO: And then I have the 10-K
7 as the next document.

8 MS. GRADY: Your Honor, may I seek
9 clarification?

10 EXAMINER PIRIK: Yes.

11 MS. GRADY: Counsel has asked for
12 administrative notice of the excerpts --

13 EXAMINER PIRIK: Why don't we hand it out
14 first and then.

15 MR. D'ASCENZO: That's fair. I have a
16 copy. I can submit a complete copy if it pleases the
17 Commission and the parties. I just have an excerpt
18 here. I am just going to refer to one small excerpt,
19 your Honor.

20 EXAMINER PIRIK: Let's pass it out and
21 we'll see where parties are.

22 MS. BOJKO: What number is this again,
23 please?

24 THE COURT REPORTER: 10.

25 EXAMINER PIRIK: And just so the record

1 is clear, we would not be talking administrative
2 notice of it, even though it's on the Commission's
3 website. It's not an officially filed document
4 that's been received by our docketing division or
5 statute or rule, so as parties look at this and
6 determine whether or not they want the entire
7 document, this will be marked as an exhibit.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. D'ASCENZO: Thank you for that
10 clarification, your Honor. And if parties would
11 prefer the entire document be filed, we can certainly
12 do that, but really, for purposes of my redirect,
13 it's just -- it's very limited so if it's just simply
14 filing this one portion as an exhibit, that would be
15 fine as well.

16 MS. GRADY: Your Honor, just for
17 clarification purposes, this is the Ohio Power
18 Company's FERC Form 1?

19 MR. D'ASCENZO: Yes.

20 EXAMINER PIRIK: I believe that's what he
21 said.

22 Q. (By Mr. D'Ascenzo) Mr. Garrett, do you
23 have in front of you what has just been marked as
24 Duke Energy Ohio Exhibit No. 10?

25 A. Yes, I do.

1 Q. And do you recognize that document?

2 A. Yes, I do.

3 Q. And have you reviewed that document
4 before?

5 A. I've scanned through it, yes. You know,
6 as a reader of financial information, I've read it
7 before.

8 Q. And as we had just discussed, the --
9 utilities typically report changing in accounting
10 methods in their -- in their various filings such as
11 the FERC Form 1 and the 10-K, right?

12 A. That's correct.

13 Q. If I could please direct you to page
14 123.7, which is the last page of the document. I
15 know it's two-sided, but it would be the last -- not
16 the second side but the first sides of the last page
17 of the printing.

18 A. I'm there.

19 Q. And is this the typical type of
20 description that you would expect to find in a FERC
21 Form 1 where there is a change of accounting methods?

22 MR. DARR: Objection, your Honor.

23 MS. BOJKO: Objection.

24 EXAMINER PIRIK: Mr. Darr.

25 MR. DARR: Thank you, your Honor. What

1 we have here is a reference to a change in accounting
2 undertaken by Ohio Power with regard to the creation
3 of deferred asset under the ESP I case. A deferred
4 asset created under the ESP I case, as I recall,
5 since our office is filing a brief in that in the
6 Supreme Court case today, I am recalling it very
7 clearly, was a result of an order in which the
8 Commission placed a price cap on the company and then
9 required the company to create a deferral account as
10 a result of that, and that was what was, as I
11 understand it, triggered this deferral accounting
12 change. It's completely irrelevant to the request
13 that's being made in this case, your Honor.

14 EXAMINER PIRIK: Go ahead.

15 MS. BOJKO: I would object on that
16 grounds, as well as it was beyond the scope of
17 cross-examination. Nobody referred to AEP Ohio, an
18 entity that -- I guess I can't say that yet. Nobody
19 referenced AEP's FERC Form 1 or the accounting
20 procedures that are being discussed. We referenced
21 AEP, his reliance on a Commission order, but we did
22 not discuss AEP's accounting mechanisms or their
23 procedures or anything with regard to AEP's
24 accounting.

25 And I would also add that there's been no

1 foundation laid that he has any responsibilities for
2 AEP Ohio's accounting, that he is aware of it. He
3 just stated that he is not familiar with the
4 document. He's generally familiar with these types
5 of documents, and he might have skimmed it, but he
6 does not seem to have specific personal knowledge, so
7 I would also object on those grounds.

8 MS. GRADY: OCC would support; the
9 objection, that is.

10 EXAMINER PIRIK: Yes. Response?

11 MR. D'ASCENZO: Yes, your Honor.

12 Mr. Garrett did mention during cross-examination by
13 Mr. Kurtz that other utilities have gone and off of
14 FAS 71 accounting. I had just asked Mr. Garrett if
15 this was a typical accounting type disclosure that
16 one would find in a utility's FERC Form 1. I had not
17 gotten into specifics with respect to anything that
18 Mr. Darr had mentioned.

19 I was -- as I said before, my purpose was
20 merely to speak in general terms with respect to
21 utilities going on and off of FAS 71, as I was
22 attempting to do. I was -- I had not gone into
23 anything specific, as what Mr. Darr has suggested.
24 Mr. Garrett did, in fact, bring this up. He did say
25 that he had reviewed it in the past.

1 EXAMINER PIRIK: I'll overrule the
2 objection. You may proceed.

3 MR. D'ASCENZO: Thank you.

4 Q. (By Mr. D'Ascenzo) Mr. Garrett, if I
5 could direct you simply to the last sentence on page
6 123.7.

7 A. I'm there.

8 Q. And I -- would you -- would you just read
9 that last sentence, please.

10 MS. GRADY: Objection.

11 EXAMINER PIRIK: Objection overruled.

12 A. "Due to the commencement of legislatively
13 required restructuring and a transition to customer
14 choice and market-based rates, OPco discontinued the
15 application of SFAS 71 regulatory accounting for the
16 generation portion of its business in Ohio in
17 September of 2000."

18 Q. And, Mr. Garrett, do you recognize what
19 OPco stands for?

20 A. Yes. I believe that's a subsidiary of
21 AEP.

22 Q. And do you know what that specifically
23 means, OPco?

24 A. I think it's the Ohio Power Company.

25 Q. Thank you.

1 MS. BOJKO: Your Honor, at this time I
2 move to -- I object and move to strike the witness's
3 response.

4 EXAMINER PIRIK: Motion denied.

5 MR. D'ASCENZO: Thank you, your Honor.
6 Your Honor, may I please approach the
7 witness?

8 EXAMINER PIRIK: Yes.

9 MR. D'ASCENZO: For purposes of
10 identification, I would also like to Duke Energy Ohio
11 Exhibit No. 11, which is a copy -- an excerpt from
12 the Form 10-K for the American Electric Power
13 Company.

14 EXAMINER PIRIK: The document is so
15 marked.

16 MR. D'ASCENZO: Thank you.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. (By Mr. D'Ascenzo) Mr. Garrett, do you
19 have what has been marked as Duke Energy Ohio Exhibit
20 No. 11?

21 A. Yes.

22 Q. Do you recognize that document?

23 A. Yes, I do.

24 Q. And could you please describe what that
25 document is.

1 A. It looks like it's pages or excerpts from
2 the AEP 10-K that was filed for the fiscal year ended
3 December 31, 2012.

4 Q. And do you have -- are you familiar with
5 this document?

6 A. Yes, I am.

7 Q. Have you reviewed this document in the
8 past?

9 A. Yes, I have -- I have read it.

10 Q. If I could please direct your attention
11 to the last page of the document, page number -- it
12 should say 56.

13 A. Yes, I'm there.

14 Q. Could I just please direct your attention
15 to the center section, "Accounting for the Effects of
16 Cost-Based Regulation," and specifically just the
17 last sentence there.

18 A. Yes, I'm there.

19 Q. Actually, if we could go back to the last
20 two sentences. I'm sorry, I take that back, just the
21 last sentence. I misread.

22 A. Yes, I'm there.

23 Q. Could you please just read that.

24 MS. BOJKO: Objection, your Honor.

25 MS. GRADY: Objection.

1 MR. DARR: Objection, your Honor.

2 EXAMINER PIRIK: Objection overruled.

3 A. "OPCo applies 'Regulated Operations'
4 accounting treatment only to specifically approved
5 portions of its generation business consisting of
6 fuel and capacity costs."

7 Q. Thank you, Mr. Garrett. And is this
8 information that you just read upon which you based
9 your opinion that other utilities have -- in Ohio
10 have gone off and on and off and on FAS 71
11 accounting?

12 MS. BOJKO: Objection, your Honor.

13 EXAMINER PIRIK: Objection overruled.

14 A. Yes, in part it is. It was a basis for
15 that opinion, yes.

16 Q. And what was the other part?

17 A. My own personal experience.

18 Q. And what was that experience?

19 A. Well, one, being at Dayton Power & Light
20 when we went off FAS 71, the reapplication of FAS 71,
21 as I understand it, as it was applied by Duke Energy,
22 and the determination of reviewing of this particular
23 request and whether we could reply FAS 71 to the
24 costs we were asking for recovery of.

25 MS. BOJKO: Your Honor, objection, move

1 to strike. It's beyond the scope of
2 cross-examination. We are way far afield.

3 EXAMINER PIRIK: Your objection is noted
4 on the record, and as I said before, it's overruled.

5 Q. Just for clarification, Mr. Garrett, you
6 said it was based upon your experience. With what
7 company, again?

8 A. I was at Dayton Power & Light.

9 MR. D'ASCENZO: Okay. Thank you. No
10 further questions.

11 EXAMINER PIRIK: Thank you.

12 Recross, Mr. Kurtz?

13 MR. KURTZ: Thank you, your Honor.

14 - - -

15 RE-CROSS-EXAMINATION

16 By Mr. Kurtz:

17 Q. Mr. Garrett, just so I understand the
18 sequence here, in the year 2000, because of the
19 passage of Senate Bill 3 --

20 MS. BOJKO: Excuse me. I'm sorry. We
21 can't hear you.

22 MR. KURTZ: Start over. Start again.

23 Q. In the year 2000 with the passage of
24 Senate Bill 3 starting deregulation in Ohio, both AEP
25 and Duke stopped CK FASB 71 regulatory accounting,

1 correct?

2 A. Yes, in that the predecessor company to
3 Duke, Cinergy would have.

4 Q. Okay. So 2000 when we go to
5 deregulation, FASB accounting, regulatory accounting
6 stops for AEP and Cinergy/Duke, correct?

7 A. That's right, they discontinued applying
8 FAS 71 in 2000.

9 Q. Okay. Then in 2008 with the passage of
10 Senate Bill 221, both AEP and Cinergy/Duke reapplied
11 regulatory accounting, correct?

12 A. I think, in part. It was the
13 Commission's action taken in response to the Senate
14 Bill 221. There was specific actions taken by the
15 Commission that allowed those entities to reapply FAS
16 71.

17 Q. Okay. So in 2008 because of the ESPs
18 approved under Senate Bill 221, both Duke and AEP
19 reapplied regulatory accounting.

20 A. Yes, the ESPs approved by the Commission,
21 yes.

22 Q. Okay. Then in November, 2011 -- and for
23 AEP that's continued. They've continued to use
24 regulatory accounting since that 2008.

25 A. To portions of their costs, yes, not to

1 the entire generation assets, yes.

2 Q. And then in November of 2011 for Duke, as
3 a result of the Commission's order in the last ESP
4 giving market pricing and resulting in deregulation
5 or unregulation of the power plants, Duke stopped
6 regulatory accounting, correct?

7 A. Yes, we discontinued it.

8 Q. And you, to this day, have continued to
9 discontinue it.

10 A. To this day, we have not reapplied, but
11 as I mentioned in my testimony or in the cross, that
12 we had considered the reapplication of it.

13 Q. Okay. So in the sense of whether
14 regulatory accounting applies or doesn't apply today
15 as we speak, Duke and AEP are different.

16 A. We are different in that we have not
17 concluded that we will reapply 71 yet. We're not
18 different in the sense that what we're requesting is
19 different.

20 MR. KURTZ: Thank you, your Honor.

21 EXAMINER PIRIK: OCC.

22 MS. GRADY: Thank you, your Honor.

23 - - -

24

25

1 portion of their generation business or to all of
2 their generation business?

3 A. I think it only applies to portions, as
4 it states there.

5 Q. And do you have any knowledge as to what
6 portions it applies to?

7 A. As it's disclosed here, fuel and capacity
8 costs.

9 Q. And when the term "OPCo" is used there,
10 what do you understand that entity to be?

11 A. I understand it to be a utility that
12 functions in the state of Ohio.

13 Q. And do you understand it is the same OPCo
14 that is referenced in DEO Exhibit No. 10?

15 A. Yes.

16 Q. Now, if we look at DEO Exhibit No. 10,
17 the statement, looks like it changed -- changed
18 somewhat because it refers to discontinuing the
19 application of SFAS for the generation portion of its
20 business. Do you see that?

21 A. Yes. Are you on page 123.7?

22 Q. Yes.

23 A. Yes, I see that.

24 Q. Do you know why the language changed
25 between the documents from DEO 10 to 11?

1 A. Yes. They changed because of the
2 application of FAS 71 starting in 2009 by OPCo to
3 specific costs, that is, they applied -- they applied
4 the ability to record regulatory assets to their fuel
5 and capacity costs. Prior to that date, they were
6 not applying regulatory accounting to those assets.
7 So that, to me, is the difference. So if I went to
8 their financial statements, I would see starting in
9 2009 specific fuel deferrals, regulatory assets being
10 created for an enterprise that prior to that was
11 deemed to be not applying regulatory accounting, and
12 then, in addition, they applied it to capacity costs
13 starting in August of 2012.

14 Q. So when you were -- they refer in it --
15 in DEO 10 to the generation portion of its business
16 and yet refer to specifically approved portions of
17 its generation's business in DEO 11, your
18 understanding is that there's a difference there?

19 A. Yes, it is my understanding there is a
20 difference.

21 Q. And what is the difference between the
22 specifically approved portions of its generation
23 business referred to in the DEO 11 and the generation
24 portion of its business referred to in DEO 10, if you
25 know?

1 A. Well, again, I believe what's being
2 disclosed here is that -- that regulatory accounting
3 prior to September of 2000 was applied to all of the
4 generation assets. In this particular case it would
5 have been a vertically integrated utility, would have
6 had distribution, transmission, generation functions,
7 and as a result of legislation starting in 2000 and
8 Commission action, that generation business, the
9 entirety, if you will, all the generation assets were
10 removed from 71. They were no longer applying
11 regulatory accounting commencing in 2009 because of
12 Commission action. The OPCo began to apply FAS 71 to
13 very specific costs that were being recovered and no
14 different than what we're requesting here, which is
15 the ability to defer costs and recover those and
16 apply FAS 71 to regulatory accounting or treatment of
17 those costs.

18 MS. GRADY: Thank you. That's all the
19 questions I have.

20 EXAMINER PIRIK: Thank you.

21 Ms. Petrucci.

22 MS. PETRUCCI: No further questions.

23 EXAMINER PIRIK: Ms. Floyd.

24 MS. FLOYD: No further questions.

25 EXAMINER PIRIK: Ms. Bojko.

1 MS. BOJKO: Yes. Thank you, your Honor.

2 - - -

3 RECROSS-EXAMINATION

4 By Ms. Bojko:

5 Q. You stated that you've worked for DP&L.
6 Have you also worked for AEP Ohio?

7 A. No, I have not worked for AEP Ohio.

8 Q. And thus is it fair to say that you
9 weren't at the company when these documents were
10 created and drafted?

11 A. No, I was not at the company.

12 Q. And so you had no part in the creation or
13 drafting or the intent behind the sentences that
14 you've read into the record today.

15 A. No. I didn't have --

16 Q. Thank you, sir.

17 A. -- personal involvement in that.

18 Q. And you also just stated to Ms. Grady
19 that the two sentences that you've read were results
20 of legislative activity and results of PUCO action;
21 is that what you stated?

22 A. Yes, that is.

23 Q. So you understand the sentences that you
24 read in to be summarizing or statements that have
25 resulted in Commission-approved cases for AEP or Ohio

1 Power Company specifically; is that correct?

2 A. That's correct.

3 Q. And were you involved in AEP's electric
4 transition plan proceeding that happened, the first
5 one?

6 A. No, I was not.

7 Q. And have you been involved in AEP's RSP,
8 rate stabilization plan, proceeding --

9 A. No, I have not.

10 Q. -- before the Commission?

11 A. Nope.

12 Q. And have you been involved in AEP's
13 electric security plan first, second, maybe third
14 iteration now?

15 A. I wasn't directly involved. I took,
16 certainly because of our application here, interest
17 in it.

18 Q. I'm sorry, sir. Does that mean you were
19 not involved?

20 A. I was not directly involved.

21 Q. And were you involved in the AEP capacity
22 case?

23 A. Not directly involved but, again, I took
24 great interest in it because of our application that
25 we filed here.

1 Q. I appreciate that, sir, but I am asking
2 if you were actually involved in the case that was
3 presented before the Commission in any capacity.

4 A. No, I was not directly involved.

5 Q. And you were not involved with AEP's
6 account -- accountants during that proceeding
7 either/or as the results of that proceeding; is that
8 accurate?

9 A. Well, I would say no, I was not directly
10 involved in their accounts.

11 MS. BOJKO: Thank you, sir. That's all.
12 I have no further questions.

13 EXAMINER PIRIK: Mr. Hart.

14 MR. HART: No questions.

15 EXAMINER PIRIK: Mr. Darr.

16 MR. DARR: No, thank you.

17 EXAMINER PIRIK: Staff.

18 MR. JONES: No questions, your Honor.

19 EXAMINER PIRIK: Thank you, Mr. Garrett.
20 With regard to the exhibits.

21 MR. D'ASCENZO: Thank you, your Honor.

22 At this time Duke Energy Ohio would move Exhibit No.
23 9, 10, and 11 into the record, please.

24 EXAMINER PIRIK: Objections?

25 Ms. Bojko, you have your microphone on.

1 MS. BOJKO: Yes, your Honor. I think
2 that Duke's 10 and 11 are inappropriate documents.
3 They lack foundation. They were brought in on
4 recross, and further lack foundation because they
5 could have been presented in the case in chief and
6 they have not. They also -- the witness could not
7 authenticate them. He was not at AEP when they were
8 drafted. He stated he had no involvement, and thus
9 he has no ability to give any kind of knowledge of
10 the intent of AEP or the power company. So he has
11 not been able to authenticate these documents and he
12 has not been able to say that he has personal
13 knowledge with regard to these documents and thus
14 they should not -- they are improper. They are
15 hearsay and they are improper. They have not been
16 filed at the Commission so they are improper.

17 EXAMINER PIRIK: Anything else?

18 Mr. Darr.

19 MR. DARR: Yeah, I join in the objection
20 and also raise, once again, the question with regard
21 to the relevance of either of those documents. Thank
22 you, your Honor.

23 EXAMINER PIRIK: Mr. Hart.

24 MR. HART: Your Honor, I would like to
25 join in the relevance argument that neither of these

1 has any bearing on whether Duke should or shouldn't
2 be allowed to engage in regulatory accounting.

3 MS. GRADY: I would concur in all of the
4 objections. I think there is a lack of
5 authentication. I think it's hearsay, and I think
6 it's irrelevant.

7 EXAMINER PIRIK: Anything else?

8 MS. GRADY: That's it.

9 MR. D'ASCENZO: Thank you, your Honor.
10 With respect to the relevance, one of the issues that
11 many of the parties have raised in common has to do
12 with whether or not the company can reply FAS 71
13 accounting. The purpose of these documents in
14 Mr. Garrett's direct testimony is to -- is to show
15 that, yes, it can happen, and it has happened and
16 it's happened here in Ohio, most recently with the
17 Ohio Power Company through orders approved by the
18 Commission. It also shows that FAS 71 accounting can
19 be applied to discrete portions of the generation
20 business of a utility. It can happen, and it has
21 happened in Ohio.

22 These issues were brought up during
23 cross-examination. Mr. Garrett did lay foundation.
24 He did say that he had reviewed these. He did
25 explain that it was based upon -- that his knowledge

1 was also based upon his experience both with Duke
2 Energy Ohio in his capacity as the director of
3 accounting research, as well as his experience in
4 Ohio working for another utility at the time of the
5 electric transition cases that were going on in the
6 early 2000s.

7 Mr. Garrett did explain that he had
8 reviewed the documents, that he was aware of them,
9 and quite simply we -- we were only referring to a
10 single portion that dealt with these -- the specific
11 application of FAS 71 which is, in fact, an issue in
12 this case. These documents are publicly available
13 documents filed regularly by utilities with the FERC,
14 also with the Securities and Exchange committee --
15 Commission, excuse me, and are no different than the
16 documents that were brought in by other parties, such
17 as analysts reports, the company's own Form 10-Ks,
18 and other documents. These are -- these are public
19 records and reports, your Honor, which I would remind
20 folks that that is also one of the exceptions to the
21 hearsay Rule 803.

22 EXAMINER PIRIK: The objections will be
23 noted for the record. However, Exhibits 10 and 11 as
24 well as 9 will be admitted into the record.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXAMINER PIRIK: Is there anything else procedurally we need to do on the record before we adjourn for the day?

Hearing none, we will reconvene at 9:00 o'clock on Monday morning, although let's go off the record for a minute.

(Discussion off the record.)

EXAMINER PIRIK: We'll start the hearing at 9:00 a.m. on Monday.

MS. SPILLER: Thank you, your Honor.

EXAMINER PIRIK: Thank you.

(The hearing adjourned at 1:59 p.m.)

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Friday, April 19, 2013, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-72096)

- - -

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/3/2013 3:37:45 PM

in

Case No(s). 12-2400-EL-UNC, 12-2401-EL-AAM, 12-2402-EL-ATA

Summary: Transcript in the matter of Duke Energy Ohio hearing held on 04/19/13 - Volume V - Public Version electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.