

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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

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PROCEEDINGS

before Ms. Christine M. T. Pirik and Ms. Katie
Stenman, Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:00 a.m. on Monday, April
22, 2013.

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VOLUME VI

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Monday Morning Session,
April 22, 2013.

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EXAMINER STENMAN: Duke, you may call
your next witness.

MS. SPILLER: Thank you, your Honor. At
this time Duke Energy Ohio would call William Don
Wathen.

EXAMINER STENMAN: Please raise your
right hand.

(Witness sworn.)

EXAMINER STENMAN: Thank you.

MS. SPILLER: And, your Honor, may we
approach, please?

EXAMINER STENMAN: You may.

MS. SPILLER: We would ask that the
following two exhibits be marked for purposes of
identification: Duke Energy Ohio Exhibit 12, the
public version of the direct testimony of Mr. Wathen
filed on March 1, 2013, in these proceedings, and
Duke Energy Ohio Exhibit 12A, the confidential
version of Mr. Wathen's direct testimony filed on the
same date.

EXAMINER STENMAN: They'll be so marked.

(EXHIBITS MARKED FOR IDENTIFICATION.)

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1 MS. SPILLER: And, your Honor, would you
2 like to -- I believe this conversation as to
3 confidential, maybe rather expedited given the
4 rulings from a week ago in connection with
5 attachments to the application, would you like to
6 address those now or wait?

7 EXAMINER STENMAN: Let's address them
8 now, it appears that the two attachments to
9 Mr. Wathen's direct testimony are confidential.

10 MS. SPILLER: That is correct, your
11 Honor.

12 EXAMINER STENMAN: Contain confidential
13 information. And those are the same attachments that
14 are mirrored in the application?

15 MS. SPILLER: That is correct, your
16 Honor, and so while what has been presented as 12A
17 was the originally filed public version of Mr.
18 Wathen's direct testimony, we will make the revisions
19 to, I'm going to start with his attachment WDW-1,
20 page 3 of 24 consistent with the Bench's ruling from
21 last week with regard to Attachment B, page 3 of 24
22 of the application.

23 EXAMINER STENMAN: Confidential treatment
24 will be granted.

25 MS. SPILLER: Thank you, your Honor.

1 And then the second attachment of
2 Mr. Wathen, Attachment WDW-2, page 1 of 1, is a
3 mirror image of Attachment C to the application. We
4 will make the redactions to WDW-2, page 1 of 1,
5 consistent with the Bench's ruling from a week ago.

6 EXAMINER STENMAN: Protective agreement
7 will be granted. Will you provided copies for the
8 court reporter?

9 MS. SPILLER: Yes, your Honor.

10 MR. LANG: Excuse me, Ms. Spiller, can
11 you just remind me, on those two pages were the
12 descriptions redacted or not?

13 MS. SPILLER: Mr. Lang, with respect to
14 Attachment -- and I'm looking at the application,
15 would you rather I refer to Mr. Wathen's testimony?

16 MR. LANG: Either one works for me.

17 MS. SPILLER: Okay. If you have WDW-1,
18 page 3 of 24, what will be unredacted are the
19 descriptions in lines 10 and 11 as well as the
20 reference in lines 10 and 11. And then for purposes
21 of clarification, turning to Attachment WDW-2, what
22 will be unredacted from what was previously filed is
23 the description of line 4 as well as the total for
24 line -- I'm sorry, it would be the description for
25 line 4.

1 MR. LANG: Okay. Thank you.

2 MS. SPILLER: And then moving down,
3 Mr. Lang, to line 14, there is a part of the
4 description that will be unredacted. The
5 parenthetical will remain redacted.

6 And, your Honor, briefly with respect to
7 the substance of Mr. Wathen's testimony on page 13,
8 line 14, there was originally a redaction in the
9 public version of his testimony. We are not seeking
10 confidential information of that number. It will be
11 unredacted.

12 EXAMINER STENMAN: Okay.

13 MS. SPILLER: And then turning to page
14 14, line 7, that is a numeric -- that is a number
15 that we are seeking confidential treatment of
16 consistent with the rulings from last week in respect
17 to the commercial business model and information
18 about which Dr. Zhang testified.

19 MS. BOJKO: I'm sorry, which number?

20 MS. SPILLER: Kim, it is page 14, line 7.

21 EXAMINER STENMAN: Confidential treatment
22 will be granted.

23 MS. SPILLER: Thank you, your Honor.

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WILLIAM DON WATHEN, JR.

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

DIRECT EXAMINATION

By Ms. Spiller:

Q. Good morning, Mr. Wathen.

A. Hello.

Q. Can you state your name for the record,
please.

A. It's William Don Wathen, Jr.

Q. And do you have before you, sir, what has
been marked as Duke Energy Ohio Exhibit 12 and Duke
Energy Ohio Exhibit 12A?

A. I do.

Q. And what are those documents, please?

A. It's the direct testimony I filed in this
case.

Q. And, Mr. Wathen, do you have any changes
or additions to your direct testimony filed in this
proceeding on March 1, 2013?

A. I have two corrections. Mr. Lang was
kind enough to point out one mistake I made on page
14 of my deposition, in line 7 there's an extra 3 in
the number. This is I think, as I said, redacted,
but there's an extra 3 in that number so if you

1 eliminate the first 3, you'll have the right number.

2 And then on the next page on line 1, the
3 number that says "16.74," it should be "16.73."

4 Q. Do you have any other additions to your
5 testimony, sir?

6 A. I'd say less an addition than an update
7 but we did file a SEET application on our filing,
8 whatever you want to call it, on Monday last week and
9 I had identified a preliminary number in my testimony
10 of 3.4 percent negative and the ultimate number was
11 2.76 negative for DE-Ohio's electric operations for
12 2012.

13 Q. Sir, are those all of the changes or
14 additions that you have to your direct testimony?

15 A. It is.

16 Q. And, sir, with those changes having been
17 identified and considering those changes would the
18 questions that were asked of you in your direct
19 testimony, would the answers to those questions be
20 the same today as reflected in your testimony?

21 A. Yes.

22 Q. And do you hereby adopt the direct
23 testimony marked as Duke Energy Ohio Exhibit 12 and
24 12A as your direct testimony in these proceedings?

25 A. I do.

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1 MS. SPILLER: Your Honor, the witness is
2 available for cross.

3 EXAMINER STENMAN: Thank you.

4 MS. BOJKO: Your Honor, for clarification
5 purposes, I don't think there was a page cite or
6 reference for the change in the number that
7 Mr. Wathen just provided on the record. I believe he
8 was referencing on page 19, line 5 at the end of the
9 sentence, it says "negative 3.4" and it should read
10 "2.76" there? Is that the correct spot of the
11 change?

12 THE WITNESS: Well, it's difficult to
13 correct it because it was identified as a preliminary
14 number in the testimony, so I don't know how to
15 change all the language but it is a final number now
16 which is 2.76 negative.

17 EXAMINER STENMAN: Thank you, Mr. Wathen.
18 I don't think we need to have a page cite. I think
19 we consider it an update.

20 Did the parties have a desired order of
21 cross?

22 MS. GRADY: Your Honor, yes.

23 EXAMINER STENMAN: Hold on.

24 Ms. Bojko.

25 MS. BOJKO: I'm sorry, the reason for my

1 clarification on the record, I apologize if there
2 wasn't a page reference, but I have a motion to
3 strike and that's why I was trying to get
4 clarification of the number.

5 EXAMINER STENMAN: Okay.

6 MS. BOJKO: Would you like me to proceed
7 with that at this time?

8 EXAMINER STENMAN: Yes. Let's take any
9 motions to strike first.

10 MS. BOJKO: Your Honor, at this time I
11 move to strike portions of Mr. Wathen's testimony,
12 page 2, lines 21 and 23 beginning with the last
13 sentence on that page, "finally," and ending with the
14 word "SEET."

15 Also in -- and the rationale is all the
16 same so I'll list the page citations for you.

17 EXAMINER STENMAN: That sounds good.

18 MS. BOJKO: Page 18, the heading, there
19 isn't a line number, but the heading of Section XII,
20 the latter part of the heading "and Preview of SEET
21 Filing," I move to strike that portion as well as
22 page 19, lines 1 through 7, ending the sentence on 7
23 with the word "above."

24 Your Honors, Duke's application for
25 approval of a cost-based charge to compensate Duke

1 for providing capacity service in conjunction with
2 their -- connection with their obligations as an FRR
3 entity in PJM and to create a regulatory asset and
4 defer the difference between the cost-based charge
5 and the market-based rates they currently receive
6 from PJM does not include a SEET test, a
7 significantly excessive earnings test. And the
8 company's brief preview of the future filing per the
9 statutorily mandated annual test is irrelevant to
10 this case.

11 As you've just heard subsequent to the
12 testimony, Duke filed an application in that separate
13 filing that Mr. Wathen just referred to and that SEET
14 proceeding will be litigated in the case that is now
15 pending before the Commission. And a determination
16 will not be made in this proceeding regarding
17 anything with regard to the SEET test. So, thus,
18 under -- or, per Rule 402 the testimony is not of
19 consequence to the determination of the application
20 of this case and it is irrelevant and not admissible.

21 Additionally, per Rule 403(B) the
22 testimony should be excluded because any probative
23 value that it may have is substantially outweighed by
24 the danger of unfair prejudice, confusion of the
25 issues, and it is misleading, therefore, we move to

1 strike. Thank you, your Honor.

2 EXAMINER STENMAN: Thank you. Does Duke
3 have a response?

4 MS. SPILLER: I do briefly, your Honor.
5 First, I would note that this same reference to Duke
6 Energy Ohio's 2012 SEET filing was included in
7 Mr. Trent's testimony discussed with him last week on
8 the stand, no objections to that having been raised
9 at that time.

10 With respect to Mr. Wathen's testimony, I
11 do believe that the information concerning the SEET
12 with respect to earnings for 2012 is indeed relevant
13 for the purpose that this Commission has found that
14 returns on equity of 7.6 percent are not sufficient
15 and compensatory with respect to the obligations of
16 an FRR entity and, more specifically, their provision
17 of noncompetitive wholesale capacity.

18 The information that is included in
19 Mr. Wathen's testimony with respect to 2012 earnings
20 is relevant to the establishment of Duke
21 Energy Ohio's returns on equity which I believe were
22 a critical consideration of the Ohio Commission. The
23 time period is indeed relevant, 2012, because Duke
24 Energy Ohio is seeking recovery for their costs for
25 the provision of capacity service from August 1,

1 2012, through May 31, 2015. So certainly 2012
2 earnings are relevant.

3 I would also note that very many of the
4 intervenors last week questioned repeatedly Duke
5 Energy Ohio witnesses with respect to 2012, with
6 respect to actual results for 2012, with respect to
7 results that included more than just the legacy
8 generation business of Duke Energy Ohio.

9 So to put in perspective their
10 questioning, I do believe that this information and
11 this testimony from Mr. Wathen is relevant and
12 probative to the Commission's decisions. Thank you.

13 MS. BOJKO: May I respond, your Honor?

14 EXAMINER STENMAN: Briefly.

15 MS. BOJKO: Two points. Counsel is, I
16 appreciate her testimony here this morning, but she
17 is confusing issues. I did not seek to strike the
18 table that talked about return on equities. I did
19 not seek to strike anything with regard to Duke's
20 revenue or request. I merely sought to strike the
21 testimony about the SEET test.

22 The SEET calculation is a statutorily
23 mandated test that has a different test than any kind
24 of revenue calculation. So it has nothing to do with
25 the 2012 revenue that we're talking about in this

1 case. It's a different test and, thus, it has
2 different parameters and the calculation and
3 methodology is different, and that is completely
4 separate.

5 Mr. Trent's testimony referred to
6 Mr. Wathen's testimony and that's why I didn't move
7 to strike, because it was for Mr. Wathen -- the
8 appropriate place to strike was the details of it in
9 Mr. Wathen's testimony. So it's completely separate
10 issues. I'm not moving to strike the revenue
11 calculation or any discussion on page 18 that talks
12 about 2012 earnings, it's separate and distinct

13 EXAMINER STENMAN: Thank you, Ms. Bojko.
14 The motion to strike will be denied. You can cross
15 on this.

16 Do we have any other motions to strike
17 before we move forward with cross?

18 All right. Who wanted to go first?

19 MR. LANG: That would be me, your Honor.

20 EXAMINER STENMAN: Thank you, go ahead.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Lang:

24 Q. Good morning, how are you?

25 A. Good morning.

1 Q. We'll start with your testimony is
2 calculating a revenue requirement for capacity
3 service that Duke Energy Ohio provides to PJM; is
4 that fair?

5 A. It's right. It's a calculation revenue
6 requirement from what we consider noncompetitive
7 wholesale service.

8 Q. And you believe that the Public Utilities
9 Commission of Ohio has authority not just to set a
10 rate for that service, but also to ensure that Duke
11 Energy Ohio provides that service consistent with
12 Ohio law and policy; is that correct?

13 A. Can you repeat that?

14 MR. LANG: May I have it read back,
15 please?

16 (Record read.)

17 A. I think that's fair.

18 Q. And so if Duke Energy Ohio incurs costs
19 to provide that service that are imprudent, the
20 Public Utilities Commission of Ohio can disallow
21 those costs; is that also fair?

22 A. Would you define "imprudent"?

23 Q. Well, as the -- you're the director of
24 rates?

25 A. I am.

1 Q. And so you would understand what a
2 prudency test is for purposes of rate regulation?

3 A. I have a view of prudency, yes, but I
4 don't think you're using it that way, so.

5 Q. Well, what's your view?

6 A. Well, if we have an expense, a power
7 plant for example, and the Commission decides that we
8 spent too much money on a contractor or the market
9 rate would have been 90,000, we spent a hundred, they
10 might rule a prudency review on the \$10,000
11 difference. That's my view.

12 Q. So using your understanding, again, if
13 Duke Energy Ohio incurs costs that the Commission
14 believes are imprudent, then the Commission can
15 disallow those costs, correct?

16 A. If they deem a cost imprudent, I mean,
17 obviously it's their prerogative to deem something
18 imprudent so I can't speak for the Commission, but if
19 they deem something imprudent, it's their prerogative
20 to disallow a cost.

21 Q. And, in fact, you would agree that it's a
22 universal theme in a regulatory environment of having
23 a prudency review, correct?

24 A. In my experience every regulator that
25 I've been involved with will -- would be unlikely to

1 allow a cost that they specifically deem imprudent.

2 Q. And, as an example, if Duke Energy Ohio
3 purchases capacity for its FRR obligation at an
4 above-market price, you would agree that the Public
5 Utilities Commission of Ohio can disallow the cost
6 recovery above market as imprudent.

7 A. We had a system reliability tracker for
8 several years and that tracker underwent periodic
9 audits, annual audits. If they deemed that we had
10 purchased something above market or at an imprudent
11 cost, they may disallow a portion of that cost.

12 Q. So would the answer to my question be
13 yes, they could disallow those above-market purchase
14 costs as imprudent?

15 A. As I said earlier, the Commission, if
16 they deem something imprudent for whatever reason,
17 it's their prerogative to disallow the cost.

18 Q. Now, with regard to Duke Energy Ohio's
19 realignment to PJM, it's fair to say that you had no
20 direct role in that realignment process, correct?

21 A. That's correct.

22 Q. And your understanding as to the reasons
23 why Duke Energy Ohio chose to realign to PJM from
24 MISO to PJM would be expressed in the testimony of
25 Duke witnesses that were submitted around the time of

1 that realignment, correct?

2 A. I'm certain that we provided a case for
3 moving, I don't know all the details of the case.

4 MR. LANG: Your Honors, Mr. Wathen
5 submitted testimony in the ESP case, supplemental
6 testimony in support of the stipulation on
7 October 28th, 2011, and I would like the Bench to
8 take administrative notice of Mr. Wathen's testimony,
9 and I would note that he had prefiled testimony, he
10 made several corrections to that at the hearing on
11 November 3rd of 2011. So what I would ask is that
12 the Bench take administrative notice of the testimony
13 as corrected by him at the November 3rd hearing.

14 I'm not intending to ask specific
15 questions of Mr. Wathen this morning of that
16 testimony. I have brought copies of his testimony
17 with the corrections marked on them if your Honors
18 would like to mark that as an exhibit, but -- because
19 I'm not going to ask him questions about it I don't
20 know whether it's necessary to do that, but I brought
21 it in case that would be your preference.

22 EXAMINER STENMAN: I think for clarity of
23 the record, since we have marked a number of other
24 things we've taken administrative notice of as
25 exhibits, those should be marked as an exhibit as

1 well.

2 MR. LANG: In that case, your Honor,
3 let's mark as FES Exhibit No. 22, and there's nothing
4 confidential in here so we'll mark it as 22, the
5 Supplemental Testimony of William Don Wathen, Jr. on
6 behalf of Duke Energy Ohio, Inc., that was filed on
7 October 28th and then submitted with corrections on
8 November 3rd, 2011.

9 EXAMINER STENMAN: It will be so marked
10 and administrative notice will be taken.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. LANG: And, your Honors, I'd also
13 like to ask the Bench to take administrative notice
14 of also Tamara S. Turkenton's testimony filed the
15 same date and time and also in support of the
16 stipulation and recommendation in the ESP case, it
17 was marked as Staff Exhibit No. 1 also filed
18 October 28th, 2011. It was not -- there were no
19 corrections made to that testimony.

20 EXAMINER STENMAN: That also needs to be
21 marked as an exhibit.

22 MR. LANG: And, your Honor, in that case
23 we would ask to have marked as Exhibit FES No. 23
24 that testimony of Ms. Tami Turkenton.

25 EXAMINER STENMAN: And it will be so

1 marked and administrative notice will be taken.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. LANG: May I approach?

4 EXAMINER STENMAN: You may.

5 THE WITNESS: Mr. Lang, what was the
6 number for these two exhibits?

7 Q. (By Mr. Lang) Mr. Wathen, your
8 supplemental testimony was marked as FES Exhibit No.
9 22 and then Ms. Turkenton's was marked as FES Exhibit
10 No. 23.

11 MR. LANG: I would note for the other
12 parties in the room I did not make additional copies
13 of Ms. Turkenton's testimony but it is as filed on
14 October 28th in that -- in the ESP docket.

15 Q. Now, Mr. Wathen, if we could move on from
16 this point I wanted to ask you about --

17 A. Can I just point out, say this is not a
18 complete copy of my testimony because there was three
19 more volumes.

20 Q. It's missing the rate schedules.

21 A. Right.

22 Q. Right.

23 A. I wanted to make sure we're clear.

24 Q. Absolutely. Yes, I decided not to kill a
25 few trees for the schedules.

1 A. It's Earth Day today.

2 Q. On your Exhibit WDW-1 filed in this
3 proceeding, page 13, for clarity of the record
4 actually if you can explain so that people can
5 follow, there's -- under the Attachment WDW-1 there
6 is page 13 of 24 and then a reference to a rate
7 schedule and then an additional page number on this
8 particular page would be page 6. If you would just
9 explain what those different page numbers are.

10 A. Rather than explain it can I just ask you
11 to ignore the second number. Let's just start with
12 that one on the top right.

13 Q. All right. So we'll just use the page
14 something of 24.

15 A. Right.

16 Q. Great. Now, on this page, 13 of 24, that
17 shows the production-related general plant allocation
18 for gross plant; is that right?

19 A. Well, it starts with total general plant
20 and intangible plant and then it uses some allocators
21 to allocate those costs to production. And then to
22 demand energy, the components of production.

23 Q. And the allocation to production that is
24 used are what are shown on lines 13 and 15 which is
25 the 51.417 percent?

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1 A. The allocation to production total, yes,
2 is 51.417.

3 Q. And then the, and then after that total
4 allocation, as you mentioned, it then takes that
5 production-related general plant and then does
6 another allocation to demand and energy; is that
7 right?

8 A. That's correct.

9 Q. And as part of Duke Energy Ohio's most
10 recent distribution case filing, that case also
11 included a general plant allocation, correct?

12 A. Our distribution case does, and our
13 transmission filing does as well, so.

14 MR. LANG: Your Honors, I'd like to have
15 marked as FES Exhibit No. 24 a Schedule B-2.1, a
16 particular page 3 of 5 from the distribution case,
17 Case No. 12-1682.

18 EXAMINER STENMAN: It will be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. LANG: May I approach?

21 EXAMINER STENMAN: You may.

22 Q. Now, Mr. Wathen, can you look at FES No.,
23 what's been marked as FES No. 24, and you would agree
24 this is a schedule, page 3 of 5 from Schedule B-2.1
25 of Duke's recent distribution case filing.

1 MS. SPILLER: We object to the relevance
2 to the distribution case filing.

3 EXAMINER STENMAN: Overruled.

4 A. This schedule comes -- does come from our
5 filing in the 1682, yes.

6 Q. And what's shown on this schedule with
7 regard to general plant category is generally the
8 same plant as what's shown on page 13 of 24 of your
9 Attachment WDW-1 except for a timing difference; is
10 that correct?

11 A. I'm not sure. I have a Form 1 with me if
12 I can look at that, if it's all right.

13 Q. Sure.

14 A. I'm not sure whether total company on
15 this page means total company, it may just be
16 T and D, so if it's okay.

17 Q. Okay.

18 A. Actually, here it is right here.

19 I believe the Schedule B-2.1 from the
20 rate case is -- what shows up as total company in
21 that example is just what's T and D and what shows up
22 in WDW-1, page 13 of 24, is total company.

23 Q. So your understanding of what is on WDW-1
24 where it says "Total System," that would be
25 transmission, distribution, and generation?

1 A. Yes. This comes from, the document you
2 just referenced, the data comes from the Form 1, the
3 data on Schedule B-2.1 comes from the internal
4 accounting records that are T and D only.

5 Q. Okay. So if we can look at line 8, "Lab
6 Equipment" as an example, on Schedule B-2.1 where it
7 says line 8 -- I'm sorry, line 10, line "Equipment"
8 and that's the total company number there of 125,110
9 today, that would be T and D only?

10 A. The way it's allocated internally is
11 T and D only, right.

12 Q. And then the same for, the same for
13 "Tools, Shop & Garage Equipment" on the line above,
14 the 14.8 million, that would be T and D only?

15 A. I couldn't tell you for sure on that.
16 The numbers don't tie on the schedules, so I can't
17 explain that difference without knowing the total
18 company number in the Column B-2.1 schedule. So what
19 you see in the schedule here is T and D only on the
20 B-2.1.

21 Q. Now, looking again at the "Laboratory
22 Equipment" of 125,110, if we compare that to
23 laboratory equipment on your Attachment WDW-1, it
24 has, on line 8, it also has \$125,110, so that would
25 be different laboratory equipment with remarkably the

1 same value or is that the same lab equipment?

2 A. It must be the same equipment.

3 Q. And on the other categories, "Tools, Shop
4 & Garage Equipment" where on the distribution
5 schedule it's 14.8 million, on your WDW-1 it's just a
6 little under 14 million, is that the same tools,
7 shop, and garage equipment or different equipment?

8 A. Well, as I explained, I can't tell you --
9 I can't reconcile completely because I don't know
10 that there isn't more in the 33.112 balance than is
11 here. But the 13.977 million you see on WDW-1 is the
12 totality of our gross value anyway for that line
13 item. So without, again, without the details, I
14 couldn't tell you what's allocable.

15 Q. All right. With regard to the
16 14.8 million that's shown on the schedule, the
17 distribution schedule, you're unsure as to whether
18 that's just T and D?

19 A. Well, I know this is T and D, the B-2.1
20 is T and D. Everything on B-2.1 is T and D, no
21 question about that.

22 Q. Right. And the allocation to, the
23 allocation that's performed that's shown on this
24 schedule, the distribution schedule, Schedule B-2.1,
25 is 92.57 percent, correct?

1 A. After adjustments it's 92.57. That's the
2 split between transmission and distribution based on
3 plant.

4 Q. Now, the WDW-1 is as of the -- as of
5 December 31, 2011; is that right?

6 A. That's correct.

7 Q. And the Schedule B-2.1 is a few months
8 later, that's as of March 31, 2012; is that right?

9 A. That was the date certain on our test
10 year, yes.

11 Q. So the total company values shown on
12 Schedule B-2.1 would be values as of March 31, 2012?

13 MS. SPILLER: I would object to the
14 reference to total company. Beyond what's stated in
15 Mr. Wathen's testimony.

16 EXAMINER STENMAN: Overruled. You may
17 clarify.

18 A. Just to clarify, you asked about B-2.1,
19 the value that shows up in total company again is
20 just the T and D portion, so.

21 Q. Yes. And that's the, I was simply
22 referring to the header is the, for that column, is
23 "Total Company," correct?

24 A. It is. But the -- we filed the case with
25 T and D only to start with so, you know, from a

1 convenience point of view it was just T and D.

2 Q. So with the -- with the allocation
3 percentage in the distribution case and the
4 allocation percentage that's used in this capacity
5 case, if you were to take the lab equipment as an
6 example, if both allocations were approved by the
7 Commission, then Duke Energy Ohio would be
8 overrecovering on that asset; isn't that fair?

9 A. Line by line there are definitely
10 examples where the allocations would have added up to
11 more than one. There's other examples where they add
12 up to less than one.

13 Q. Well, asking about the "Laboratory
14 Equipment" lines, that would be one example where
15 they were to add up to more than one and, therefore,
16 the company would be overrecovering, correct?

17 A. We would be recovering more for that
18 particular line item. If you add up the allocation
19 for the transmission that shows up in our H22 filing
20 at PJM, the allocation here if approved by the
21 Commission and the allocation in the distribution
22 case, again if approved, the settlement, could result
23 in an overcollection for that particular line item.
24 It may result in an undercollection on different line
25 items.

1 MR. LANG: Your Honor, I would move to
2 strike his response after his statement that they
3 would add up to more than one for that particular
4 line item. He then went off to talk about something
5 completely different from what I asked him about.

6 EXAMINER STENMAN: It will be denied.

7 Q. (By Mr. Lang) Mr. Wathen, you believe
8 that all of the capacity associated with the legacy
9 generation assets is committed to satisfying Duke
10 Energy Ohio's FRR obligation; is that correct?

11 A. Well, I've learned that some of our
12 Beckjord units have retired or will be retired but
13 all of the capacity that is considered, in our
14 vernacular, "legacy generation" is committed to the
15 FRR, yeah.

16 Q. It's also fair to say that you do not
17 have managerial oversight of the legacy generation
18 assets.

19 A. I do not.

20 Q. And your revenue calculation includes
21 plant in service and O&M expense as of December 31,
22 2011?

23 A. Well, it includes plant in service at
24 '11. It includes O&M for the year 2011, right.

25 Q. So for O&M expense that reflects the

1 total O&M expense for the calendar year 2011?

2 A. That was the basis for our calculation,
3 yes. With the exception of the purchased power in
4 there, so.

5 Q. And you do not have an intention to
6 update the revenue calculation with 2012 FERC Form 1
7 or 2013 FERC Form 1 data, correct?

8 A. That was our proposal. The Commission,
9 if they choose, they can recommend or suggest that we
10 do that, but that wasn't our proposal.

11 Q. Now, your revenue calculation includes
12 O&M expense for each of the legacy generation assets
13 that are identified on Attachment A to the
14 application; is that correct? And if you need to see
15 Attachment A, I can show it to you.

16 A. I have it somewhere, but it's -- I
17 believe that's correct, yeah. I don't think, the
18 schedules we gave in discovery regarding O&M by plant
19 I don't think were as broken out as it's supposed --
20 identified on Attachment A of the application but all
21 the O&M is in there.

22 Q. And your revenue calculation did not
23 include or account for any projected plant
24 retirements, correct?

25 A. It did not.

1 MR. LANG: Your Honors, I'd like to mark
2 an exhibit as FES No. 25, and this will be a
3 discovery response which is a breakdown of O&M
4 expenses by plant.

5 EXAMINER STENMAN: It will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. LANG: May I approach?

8 EXAMINER STENMAN: You may.

9 Before we go any further I do notice this
10 document is marked as confidential. Is that the
11 case?

12 MR. LANG: As discussed, the second page.

13 MS. SPILLER: Yeah, having discussions
14 internally, your Honor, no, the information is not
15 confidential.

16 EXAMINER STENMAN: Thank you.

17 Q. (By Mr. Lang) Mr. Wathen, do you have in
18 front of you what's been previously marked, marked by
19 the court reporter, as FES Exhibit No. 25?

20 A. I do.

21 Q. And can you identify this as a discovery
22 response that shows you as the responsible person?

23 A. That's correct.

24 Q. And it's the response to FES
25 Interrogatory 04-004.

1 A. I believe this is the original response.
2 We updated it since, but yes.

3 Q. And this provides a breakdown by legacy
4 generation station of production O&M expenses that's
5 shown on page 19 of 24 of your WDW-1.

6 A. That was a mouthful, but yes.

7 Q. But yes.

8 A. I believe we had a \$5,000 variance we
9 could explain at the bottom but that's essentially
10 correct.

11 Q. So, looking at page 19 of 24 of your
12 WDW-1, on line 9 where it shows total company
13 production expense of 892 million and change, that
14 would correlate to the 892 million and change shown
15 on this Exhibit FES No. 25; is that right?

16 A. That's correct. That, again, the \$5,000
17 variance, but yes, that's correct.

18 MR. LANG: And you had mentioned that it
19 was supplemented, so I'd like to have marked as FES
20 Exhibit No. 26 that supplement.

21 EXAMINER STENMAN: It will be so marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MS. SPILLER: And, your Honor, if I may
24 interject, similar to FES Exhibit 25 this discovery
25 response is not confidential.

1 EXAMINER STENMAN: Thank you.

2 Q. (By Mr. Lang) Mr. Wathen, do you have
3 what's been marked as I guess No. 26?

4 A. I do.

5 Q. And is this the supplement to FES
6 Interrogatory 04-004 that you had mentioned?

7 A. That's correct.

8 Q. And you were also responsible for
9 providing this discovery response, correct?

10 A. That's correct.

11 Q. And this is the, this is the same
12 interrogatory request that we looked at that was
13 marked in FES Exhibit No. 25; is that right?

14 A. Except for the update, yes. Same
15 information, different year.

16 Q. So just so it's clear, the request is for
17 a breakdown by individual legacy generating resource
18 of the production O&M expenses that's shown on page
19 11 of Exhibit WDW-1, and that's somewhat confusing,
20 that gets back to these different page numbers in
21 these exhibits again, but this is for the production
22 O&M expenses shown on page 19 of 24 of your WDW-1,
23 correct?

24 A. That's correct.

25 Q. Now, the data that is on the second page

1 of this exhibit, FES No. 26, this is actual 2012 data
2 as compared to the prior exhibit which was actual
3 2011 data; is that right?

4 A. That's correct.

5 Q. And the, what is shown on page 19 of 24
6 of your WDW-1, that is the 2011 data, correct?

7 A. That's correct.

8 Q. And the total shown of \$618,972,584, that
9 is the total O&M expense in 2012 for the legacy
10 generation assets; is that right?

11 A. That's correct. Both totals include all
12 fixed and variable costs, yes.

13 Q. Now, your understanding is that Duke
14 Energy Ohio has committed to transferring its legacy
15 generation assets to an affiliate or a subsidiary by
16 December 31, 2014; is that right?

17 A. That's correct.

18 Q. And that's, your understanding is that's
19 the latest it could happen. It could happen before
20 that date?

21 A. That's my understanding.

22 Q. And after that transfer Duke Energy Ohio
23 will continue to receive capacity charge revenues
24 under the proposal that we're addressing in this
25 case, correct?

1 A. That's correct.

2 Q. Now, is it fair to say that you do not
3 know whether Duke Energy Ohio will retain those
4 revenues or transfer them to the generation affiliate
5 that will hold these legacy generation assets after
6 separation?

7 A. I'm not sure we've worked out the details
8 on the transfer yet. That really kind of remains to
9 be seen, as far as I know, so.

10 Q. So you don't know yet how the -- how
11 those revenues will flow between Duke Energy Ohio and
12 the generation company.

13 A. I don't know exactly, but I would expect
14 that since those assets are the ones providing the
15 service, they would get the revenue, so.

16 Q. Is it also true that after those assets
17 are separated you do not know whether Duke
18 Energy Ohio will retain the FRR obligation?

19 A. It's my understanding, and again I'm not
20 the FRR expert, but I believe Duke Energy Ohio will
21 retain the FRR obligation. I believe that issue came
22 up in AEP's case as well and AEP would retain the
23 obligation.

24 Q. Now, do you know whether Duke
25 Energy Ohio, after those assets are separated, will

1 continue to purchase capacity to satisfy its FRR
2 obligation?

3 A. After May 31, 2015, or through -- after
4 the transfer?

5 Q. After the transfer.

6 A. I believe we've already procured all the
7 capacity we need so I don't know that we'd be making
8 any additional purchases.

9 Q. And by purchasing all the capacity that
10 we need, would that be a, would that be a reference
11 to one of the purchase agreements that OEG marked
12 earlier in this case for different planning periods?

13 A. I, without the benefit of having that FRR
14 plan in front of me, I can't remember exactly what
15 all the timing of the purchases were but I believe
16 that document's been introduced at some point
17 already.

18 Q. Now, in your testimony and in your
19 Exhibit WDW-1 you use a five CP demand calculation to
20 develop a rate, correct?

21 A. It's a rate for comparison. It really
22 isn't meaningful, but it's only for comparison.

23 Q. And I did mean to ask you about that.
24 The rate on a per megawatt-day basis, your opinion is
25 that that's not relevant to this case because what is

1 relevant to this case is the revenue requirement; is
2 that fair?

3 A. Can I explain on that? The proposal is
4 we want to calculate our cost, which is the revenue
5 requirement, we want to compare that to what we
6 collect in the revenue, the difference would be what
7 we would defer. So characterizing that revenue
8 requirement in a unitized basis, whether it's
9 megawatt-hour, megawatt-day, megawatt month, is
10 really only for comparison.

11 Q. And with regard to that comparison
12 calculation that you compared, when you use the five
13 CP demand, that was the five highest peaks from when
14 Duke Energy Ohio was in MISO in 2011; is that right?

15 A. Yes. The five CP that we used in the
16 case was the five monthly -- five peak monthly CPs
17 for 2011. We hadn't had the experience of being in
18 PJM for a full year at that point.

19 Q. And you would agree that that calculation
20 does not affect the revenue requirement.

21 A. Not in my view.

22 Q. Now, your proposal starts with a revenue
23 requirement before any credits are applied of
24 \$1.35 billion; is that right?

25 A. That's the revenue requirement for the

1 period August 1, 2012, through May 31, 2015, yes,
2 before credits.

3 Q. And we can see that on line, let's see,
4 page 3 of 24 of your Attachment WDW-1, line 6,
5 correct?

6 A. That's correct.

7 Q. And that revenue requirement less the
8 credits is what Duke Energy Ohio is asking the
9 Commission to approve in this proceeding; is that
10 right?

11 A. I would say that's the cost that we
12 believe, cost of service we believe for the
13 obligation we have for that period of time and that's
14 what we're asking the Commission to approve, yes.

15 Q. Now, every year Duke Energy Ohio will
16 receive revenue for its capacity at the PJM FZCP
17 price; is that right?

18 A. The legacy generation will be, it will be
19 given a revenue at the FZCP price, right.

20 Q. And what is included in your calculation
21 is the capacity pricing that you had available to you
22 at the time you made the filing; is that correct?

23 A. Essentially, yes, so.

24 Q. And for purposes of the net revenue
25 calculation that you're asking the Commission approve

1 in this case, the capacity revenue on an annual basis
2 will be updated to use that final zonal capacity
3 price; is that right?

4 A. I think I would characterize it a little
5 bit differently. I mean, again, what we're measuring
6 is the revenues, not necessarily a price. I mean,
7 we'll get an amount of revenues that we'll compare to
8 our revenue requirement and that will be what we
9 collect.

10 Q. But with regard to the capacity revenues,
11 for example, that are received in 2014, those
12 capacity revenues will be based on the actual
13 revenues from the actual FZCP; is that right?

14 A. Yeah. I assume they will be the FZCP
15 price times whatever the basis for the calculation is
16 and it will be ultimately a dollar amount that's
17 provided to DE-Ohio, right.

18 Q. Now, you are not proposing to update any
19 of the margins on the energy or the ancillary
20 services, correct?

21 A. That's not part of our proposal. It's,
22 again, it's up to the Commission if they want to try
23 to do something like that.

24 Q. Now, the credit for margin on sales of
25 energy was calculated by Dr. Zhang?

1 A. It was based on the model he ran, yes.

2 Q. The margins on sales of energy that are
3 reflected in your exhibit, is that -- did that dollar
4 amount come from the model that Dr. Zhang ran?

5 A. It's based on that model result, yes.

6 Q. Did you make any adjustments to the data
7 that was provided by Dr. Zhang?

8 A. I made no adjustments.

9 Q. And is it fair to say that you did not
10 review any of the assumptions in Dr. Zhang's model?

11 A. I did not review the assumptions in
12 Dr. Lang's model -- Dr. Zhang's model, sorry.

13 Q. And it's also fair to say that you do not
14 know the details of any of the assumptions that go
15 into the model.

16 A. I'm very familiar with the parameters,
17 having run production cost models myself, but I do
18 not know the price curves they used, the, you know,
19 the call specs., that kind of thing. I understand
20 production cost modeling pretty well.

21 Q. But in terms of the details, the actual
22 inputs that went into the model that generated the
23 energy margins that are used in your testimony, you
24 don't know the details of those, correct?

25 MS. SPILLER: Objection. Asked and

1 answered.

2 EXAMINER STENMAN: Overruled.

3 A. Again, I didn't review those -- I didn't
4 review any of the input data, so.

5 Q. Now, with regard to the capacity
6 reflected in your testimony, is it fair to say that
7 the legacy generation assets are insufficient to
8 satisfy in total the FRR obligation?

9 A. Yeah, Duke Energy Ohio's been short for
10 quite a while relative to its native load.

11 Q. So as a result Duke Energy Ohio purchases
12 capacity to satisfy, in part, its FRR obligation,
13 correct?

14 A. Well, again, we purchased capacity for a
15 number of years to meet our native load obligation,
16 it just happens to be an FRR in the time -- for the
17 time being.

18 Q. And your understanding is that that
19 capacity is purchased from PJM; is that correct?

20 A. My understanding based on what I've heard
21 is we have direct -- we have contracts for capacity,
22 bilateral contracts for the capacity.

23 Q. Now, with regard to the bilateral
24 contracts -- let me go back to that last question.
25 Your understanding is that there's bilateral

1 contracts, but is your belief that the capacity is
2 purchased from PJM or not?

3 A. There's probably a nuance in those
4 contracts that I'm not familiar with, but my
5 understanding is we buy the capacity -- because of
6 the unit specificity requirement of those contracts,
7 we buy them directly from and through the bilateral
8 market. But I'm not the expert in FRR, so.

9 Q. With regard to the bilateral contracts,
10 is it fair to say, at least at the time you filed
11 your testimony in this case, that you were unaware of
12 the details of those contracts or who the
13 counterparties were?

14 A. That's fair to say.

15 Q. Now, your understanding is that Duke
16 Energy Ohio uses some amount of demand response to
17 satisfy its FRR obligations; is that right?

18 A. That's correct. We have a number of
19 programs that give us some demand response resources,
20 yeah.

21 MR. LANG: Your Honors, I'd like to mark
22 another exhibit, it would be FES No. 27. This is
23 another interrogatory response, it's the response to
24 OCC Interrogatory 12-092.

25 EXAMINER STENMAN: That will be so

1 marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. LANG: And this one is confidential
4 in part.

5 THE WITNESS: Did you say "27"?

6 MR. LANG: 27.

7 THE NOTARY: So it will be 27A.

8 MR. LANG: 27A, correct, good point.
9 Your Honor, with that qualification if I can have
10 this marked as FES Exhibit 27A because it does
11 include some confidential information.

12 EXAMINER STENMAN: Thank you.

13 Does the company have copies?

14 MS. SPILLER: We do, your Honor, thank
15 you.

16 EXAMINER STENMAN: Are you prepared to
17 discuss the confidentiality of this exhibit?

18 MS. SPILLER: We are, your Honor, and on
19 this particular page, FES 27A, Duke Energy Ohio is
20 seeking confidential treatment of the numeric
21 information that would contain across the rows and
22 down the columns. The basis of that is similar to
23 the arguments that the Bench entertained last week.

24 This particular document identifies
25 discretely Duke Energy Ohio's capacity obligations as

1 well as the sources of those obligations, the
2 particular megawatts that would be coming from
3 various sources. If this information were put into
4 the public record, those individuals or those
5 entities with whom Duke Energy Ohio may interact in
6 the PJM markets would allow those individuals to
7 obtain competitive advantages and that would -- it
8 would indicate the particular amounts that Duke
9 Energy Ohio may need to procure from sources other
10 than its own.

11 This information, it's similar to that
12 which we discussed last week, identifies terms and
13 conditions, if you will, of existing transactions,
14 bilateral contracts. For the reasons expressed last
15 week we would similarly seek confidential treatment
16 of the numeric information contained within FES 27A.

17 MS. BOJKO: Your Honor.

18 EXAMINER STENMAN: Yes.

19 MS. BOJKO: I don't, I guess I don't
20 understand counsel's argument of bilateral contracts
21 with regard to this document. I guess I'm seeking
22 clarification. Your Honors instructed that we have
23 to object now so I just want to make sure that we're
24 all clear on what information should or shouldn't be
25 redacted.

1 Some of this information I believe is
2 publicly available.

3 EXAMINER STENMAN: If you can inform us
4 without giving away the actual information what is
5 public, what you believe to be publicly available.

6 MS. BOJKO: Well, I don't see any
7 reference to bilateral contracts so I'm confused of
8 that reference.

9 EXAMINER STENMAN: Right.

10 MS. BOJKO: I believe that the planning
11 year information should be filed in, my understanding
12 is that some of the load information should already
13 be filed somewhere in FERC Form 1.

14 EXAMINER STENMAN: Ms. Spiller, do you
15 have a response?

16 MS. SPILLER: I do, your Honor.

17 MS. BOJKO: Oh, PJM planning, sorry.

18 MS. SPILLER: What I would say, and I
19 think there were some documents identified, there is
20 publicly available on PJM load requirements but for a
21 zone that is more inclusive than just Duke
22 Energy Ohio.

23 And what this particular document
24 identifies are the load obligations specific to Duke
25 Energy Ohio as well as the sources pursuant to which

1 the company will utilize for purposes of meeting that
2 obligation.

3 A. And so while the terminology "bilateral
4 transaction" is not detailed on a particular row, the
5 information, if you look at it in totality, would
6 allow you to identify that which would be relevant to
7 those sorts of transactions.

8 So it shows you the sources and how much
9 is coming from each particular source, so I think
10 this document in its totality would, in fact, the
11 numeric information is confidential and it has not
12 been put forth in the public domain.

13 MR. OLIKER: Can I have a clarification.
14 Is this ICAP or UCAP, Amy?

15 MS. SPILLER: For the load obligation?

16 MR. OLIKER: For the generation resources
17 available to meet that obligation. ESP generation.

18 MS. SPILLER: That I believe would be
19 UCAP, Joe.

20 MR. OLIKER: Okay.

21 MS. BOJKO: And when you say "sources,"
22 are you referencing the column, the bottom column
23 information, so this whole side would be confidential
24 as well?

25 MS. SPILLER: No. We're asking for the

1 numeric information.

2 MS. BOJKO: Just the numeric.

3 MS. GRADY: And if I could have
4 clarification, the "Load (Estimate)" line, is that
5 the information that was provided for purposes of the
6 stipulation in 11-3549 in an attachment?

7 MS. SPILLER: That information which is
8 also confidential reflects generating unit
9 commitments that would have been made -- that would
10 have been filed with PJM through a confidential data
11 source on PJM after November, 2011.

12 MS. GRADY: So it was not, you're saying
13 it is not the load requirement threshold that's in
14 the stipulation 11-3549.

15 MS. SPILLER: There wasn't a load
16 requirement threshold shown in the stipulation. What
17 was asked for in the ESP stipulation was the
18 disclosure of the unit specific -- the generating
19 unit commitment information.

20 MS. GRADY: Not in the appendix. We had
21 some discussion in the deposition about this.

22 MS. SPILLER: The appendix?

23 MS. GRADY: To the stipulation.

24 MS. SPILLER: I don't know which
25 deposition you're talking about.

1 MS. GRADY: I believe it would have been
2 either Mr. Niemann's or Mr. Wathen's.

3 MS. SPILLER: Mr. Wathen would not have
4 been, I don't recall any questions of great detail to
5 Mr. Wathen with regard to the workpapers. And if
6 you're referring to those PJM workpapers, those were
7 addressed with, I believe with Dr. Niemann during his
8 examination as well as a different iteration of the
9 unit, generating unit commitment information. But
10 the company certainly has maintained the confidential
11 nature of that information.

12 MS. GRADY: If you recall, there were
13 questions with respect to whether the load estimate
14 threshold was based on MISO or PJM, and the response
15 was it was based on MISO and that those numbers came
16 from the 11-3549 appendix. That was my recollection.

17 MS. SPILLER: I don't recall any of that
18 that would have been asked of Mr. Wathen in his
19 deposition, and I don't know that there was an
20 appendix to the ESP stipulation inasmuch as there
21 were attachments.

22 MS. GRADY: Attachments, yes, that's what
23 I'm referring to.

24 MS. SPILLER: The reference to MISO, as
25 Mr. Wathen has already explained, was the five

1 highest peaks, so the coincident peaks that were
2 utilized for transforming the revenue requirement
3 into a per megawatt-day number. But we would not
4 have predicated our fixed resource requirement
5 obligations on information from MISO.

6 MS. GRADY: I can try to find the
7 transcript cite.

8 MS. SPILLER: Thank you.

9 EXAMINER STENMAN: I appreciate the
10 parties' arguments but at this point we'll treat the
11 numerics as confidential.

12 MS. SPILLER: Thank you, your Honor.

13 MR. LANG: May I proceed?

14 EXAMINER STENMAN: Yes.

15 MR. LANG: Great.

16 Q. (By Mr. Lang) Mr. Wathen, on FES No. 27A
17 this is, can you confirm this is a response to a
18 discovery request, OCC Interrogatory 12-092?

19 A. That's correct.

20 Q. And you were I guess co-responsible for
21 this request with Ken Jennings; is that right?

22 A. That's correct.

23 Q. Now, the interrogatory asks Duke
24 Energy Ohio to identify its load obligations as an
25 FRR entity, and that's for the period of this

1 application, August 1, 2012, through May 31, 2015; is
2 that correct?

3 A. That's correct.

4 Q. And that's the load obligations that were
5 used to determine the capacity revenues that are
6 included in your Attachment WDW-1; is that right?

7 A. It's used for another line as well, but
8 at least we'll use that.

9 Q. Now, on page 2 of this document that has
10 the data on it, the numbers, is it fair to say that
11 you do not know what the Beckjord references are
12 across the top?

13 A. I believe I do now.

14 Q. So at the time you filed your testimony
15 and also at the time of your deposition you did not
16 know what the Beckjord references are across the top;
17 is that true?

18 A. That's my memory, yes.

19 Q. And the load estimate that's shown here
20 was provided by Mr. Jennings; is that right?

21 A. I believe most of the numerical data on
22 here is from Mr. Jennings, right.

23 Q. And is it fair to say that you do not
24 know how Mr. Jennings or his team that he had
25 provided this, how the load estimate was developed?

1 A. I'm not familiar with the exchanges
2 between us and PJM on how the load was developed. I
3 mean, I have an understanding of how load is forecast
4 but I don't know how it's translated to PJM, so.

5 Q. The reference in the left column to
6 threshold, is it also fair to say you don't know what
7 that means?

8 A. I do know what it means. I've had an
9 opportunity to learn things since my deposition.

10 Q. Okay. What does "threshold" mean?

11 A. Threshold is essentially a holdback that
12 relates to how much capacity can be sold under the
13 FRR, it's 3 percent of the load. It's just a math --
14 just information over on this page, so.

15 Q. So that's, so that would be a reference
16 to the PJM restrictions on an FRR entity selling
17 capacity into the base residual auction?

18 A. That's my understanding.

19 Q. With regard to the reference in the left
20 column to "Locational Capacity Purchases," do you
21 know what that means?

22 A. Well, I do know that this is an internal
23 document and it's just a term that was used when this
24 was created, and I believe it relates to some of the
25 bilateral contracts we had with [REDACTED], so.

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1 MS. SPILLER: Your Honor, I believe we
2 still have the confidentiality related issues on
3 that.

4 THE WITNESS: Strike that last word.

5 MR. LANG: Yes.

6 EXAMINER STENMAN: If you could move that
7 to the confidential portion of the transcript.

8 MR. LANG: I'd actually be fine just
9 striking that last word but we can do that too.

10 Q. (By Mr. Lang) The line that shows
11 expected DE-Ohio DR, would that be the line that
12 shows the demand response that is included in the
13 company's total position with regard to capacity?

14 A. That's my understanding, yes.

15 Q. I tried to ask that in a nonconfidential
16 way, I mean in a -- yes, in a public way.

17 A. I tried to answer it in a nonconfidential
18 way.

19 Q. Okay. And then the lines that are "Total
20 Position" and the line that is "Load Requirement
21 Actual" are what carry over to the worksheet that you
22 used to calculate capacity costs; is that right?

23 A. I believe that's correct, and revenue.

24 MR. LANG: Your Honors, if I could have
25 marked as FES Exhibit No. 28, this is capacity cost

1 and revenue calculation worksheet, this page was
2 actually previously marked as one page of Mr. Savoy's
3 workpapers, but for -- since that was a very long set
4 of workpapers I'd like to mark it as a single page.

5 EXAMINER STENMAN: That will be so
6 marked.

7 MR. LANG: And, actually, your Honors, if
8 I could have it marked as FES Exhibit No. 28A.

9 EXAMINER STENMAN: It will be marked as
10 such.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. LANG: Your Honors, I believe that
13 previously when we referenced the data on this, it
14 was -- the numbers were deemed confidential except
15 for the lines in the bottom two boxes of "Price,"
16 "\$/MW-Day" and "Days."

17 MS. SPILLER: And, your Honors, that is
18 consistent with my recollection, that information is
19 public or certainly one can readily calculate the
20 number of days.

21 EXAMINER STENMAN: Consistent with our
22 prior discussions confidential treatment will be
23 granted.

24 MR. LANG: And, your Honors, I have just
25 a few questions on this exhibit, but they would

1 require using the confidential information, I'll hold
2 them for the end.

3 EXAMINER STENMAN: Thank you. Are you
4 finished?

5 MR. LANG: I have I guess one more
6 subject area.

7 Q. (By Mr. Lang) Mr. Wathen, if I can ask
8 you about page 18 of your testimony. The calculation
9 that's shown in the table, that would be for the
10 total electric business of Duke Energy Ohio; is that
11 right?

12 A. It's the total electric business of Duke
13 Energy Ohio that it directly owns, yes.

14 Q. And that it directly owns meaning it does
15 not include the DEO or the Midwest gas assets that
16 are held by DECAM.

17 A. Or Kentucky.

18 Q. Or Kentucky. So it does not include, for
19 that matter it does not include any Duke Energy Ohio
20 subsidiary revenue or cost; is that right?

21 A. That's correct. That's consistent with
22 the SEET rules.

23 Q. This would include the electric
24 distribution revenues for 2012?

25 A. It does.

1 Q. And is it fair to say that based on what
2 Duke Energy Ohio filed in its distribution case, in
3 Case No. 12-1682, that Duke Energy Ohio is currently
4 underearning on its distribution business?

5 A. Thus the need for a rate increase on
6 distribution, yes.

7 Q. And so the SEET calculation on page 12
8 would reflect, in part, that Duke Energy Ohio is
9 underearning on its distribution business.

10 A. That's correct.

11 Q. Now, the final SEET filing for 2012, you
12 said that was filed on, last Monday, April 15th?

13 A. That's correct.

14 Q. And would that have been prepared under
15 your direction or control? That was prepared by your
16 Rates Department?

17 A. That's correct.

18 Q. The witness supporting the SEET filing
19 was Peggy Laub, is that someone who works for you?

20 A. Peggy Laub, yes, she works for me.

21 MR. LANG: Your Honor, if I could have
22 one more exhibit marked, and it is an attachment from
23 Ms. Laub's SEET testimony, Attachment PAL-2.

24 EXAMINER STENMAN: That will be marked as
25 FES Exhibit --

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1 MR. LANG: No. 28 -- I'm sorry, No. 29.

2 EXAMINER STENMAN: -- 29.

3 MR. LANG: FES No. 29.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. (By Mr. Lang) Mr. Wathen, you had
6 identified at the beginning of your testimony that
7 the final ROE under the SEET calculation for 2012 was
8 a negative 2.7 percent; is that right?

9 A. It was adjusted, but, yeah, that's the
10 final ROE for the SEET calculation, yeah.

11 Q. And what I've had marked as FES Exhibit
12 No. 29, this would be the spreadsheet that shows the
13 calculation of adjusted net income for SEET purposes
14 for that 2012 filing, and that net income is what was
15 used to calculate the ROE that you referenced in your
16 testimony; is that fair?

17 A. That's correct.

18 Q. Now, the total net income on a
19 companywide basis is what would be shown in the
20 second column under the total heading at the bottom
21 of \$174.7 million; is that right?

22 A. That is the total company -- that is the
23 total DE-Ohio net income as reported on page 17 of
24 the Form 1 for 2012.

25 Q. Does that include both electric and gas?

1 A. The total income does include both
2 electric and gas, that's correct. It includes equity
3 and earnings and subsidiaries, it includes
4 everything.

5 Q. And then the next column over to the
6 right under the electric heading shows net income of
7 226 million. Is that the total with the gas removed?

8 A. The natural gas? You said "gas," not the
9 gas to -- gas generating assets, natural gas
10 business, right?

11 Q. A very fair clarification, yes, that
12 would be the natural gas business removed.

13 A. That's right.

14 Q. Now, does that mean that the natural gas
15 business lost \$51 million in 2012?

16 A. Bear with me for a moment, please.

17 Per our Form 1 the natural gas business
18 is -- our income anyway was \$61 million, so it did
19 not lose money in 2012.

20 Q. Okay. But in this -- in the SEET
21 calculation when the gas business is backed out of
22 the total net income, it increases the net income by
23 approximately \$51 million; is that fair?

24 A. I don't know what all is backed out of
25 here. Could be Kentucky as well, because I'm looking

1 at the equity and earnings of subsidiaries for
2 example, there's more, excuse me, there's more
3 deducted from the electric column than there is from
4 the total column. So I really can't explain without
5 some detailed analysis of what all's being deducted.

6 Q. Okay.

7 A. But I'm pretty sure that the gas business
8 did not lose money in 2012.

9 Q. That would be unusual.

10 A. We are here because we're losing money on
11 electric, yes.

12 Q. Now, the line for "Equity and Earnings of
13 Subsidiary Companies," what does that represent?

14 A. Duke Energy Ohio wholly owns a number of
15 subsidiaries including Duke Energy Kentucky and Duke
16 Energy Commercial Asset Management, Duke Energy
17 Commercial Asset Management in turn owns several
18 LLCs. Because of accounting rules the earnings in
19 those subsidiaries are reported below the line in
20 Form 1 as essentially a contribution to equity. So
21 that's how they're reported in here.

22 Q. Okay. And the total equity and earnings
23 of subsidiary companies would be approximately
24 188 million and then the electric-only would be
25 approximately 285 million; is that right?

1 A. That's what's reported on the schedule.

2 Q. And then the 285 million in earnings for
3 electric is what is subtracted from the net income,
4 the electric net income, to calculate the SEET; is
5 that fair?

6 A. That's correct. Affiliate earnings are
7 disallowed in the SEET test.

8 MR. LANG: And, your Honor, except for I
9 think I have probably three confidential questions,
10 I'm done for now.

11 EXAMINER STENMAN: Thank you.

12 Let's take a ten-minute break.

13 (Recess taken.)

14 EXAMINER STENMAN: Let's go back on the
15 record. Ms. Grady.

16 MS. GRADY: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Grady:

20 Q. Good morning, Mr. Wathen.

21 A. Good morning.

22 Q. I want to refer you to your testimony at
23 page 6, toward the bottom of the page you begin
24 testifying on how you determine rate base. Do you
25 see that?

1 A. I do.

2 Q. And on lines 21 through 22 you testify
3 that rate base includes balances of accumulated
4 deferred income taxes, correct?

5 A. That's correct.

6 MS. GRADY: Your Honor, at this time I'd
7 like to mark as OCC -- for identification purposes as
8 OCC Exhibit No. 16 the company's response to OCC
9 Interrogatory 4-48.

10 EXAMINER STENMAN: It will be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Mr. Wathen, can you identify that
13 document for me, please?

14 A. It's a discovery request and response
15 to -- related to an item that, the particular item in
16 our EDIT schedule in my WDW-1.

17 Q. And are you -- you're familiar with this
18 response?

19 A. I am.

20 Q. In fact, you're listed as one of the
21 persons that are responsible for this response; is
22 that correct?

23 A. That's correct.

24 Q. According to the response an error was
25 found in Attachment B; is that a fair

1 characterization?

2 A. That's fair. I believe we've
3 acknowledged that and Mr. Luciani for the staff made
4 a proposal that we would accept.

5 Q. And when I mentioned Attachment B, do you
6 know what I'm referring to?

7 A. Not really. Would you --

8 Q. Attachment B referred to the -- your
9 workpapers; is that correct? Isn't that what you
10 label your schedules, Mr. Wathen? Attachment B?

11 A. In my testimony?

12 Q. Yes.

13 A. I labeled it Attachment WDW-1.

14 Q. Is there also a characterization of that
15 as Attachment B above the -- right underneath the
16 12-2400-EL-UNC description. Attachment B, page 1 of
17 24.

18 A. Hang on a second. I'm not sure why it
19 was, why the questioner asked about Attachment B or
20 not. I know they were asking about the EDITs and
21 it's on page 8 of my WDW-1, so.

22 Q. Now, can you tell me when the error was
23 discovered that you referred to in OCC Exhibit
24 No. 16?

25 A. When we were researching the question.

1 Q. And when would that have been?

2 A. Looks like the date received was 3/21 and
3 we had a two-week turnaround so sometime in that
4 two-week timeframe.

5 Q. So the error was discovered by you prior
6 to you filing your testimony on March 1st, 2013; is
7 that correct?

8 A. That's correct.

9 Q. And the correction that is mentioned here
10 would have the effect of reducing the company's rate
11 base by 5.4 million; is that correct?

12 A. That's correct. Again, all these
13 calculations were provided in Luciani's testimony.

14 Q. But you did not make that correction in
15 your determined rate base which you filed on
16 March 1st, 2013; is that correct?

17 A. That's correct.

18 Q. Now I want you to refer to WDW-1 page 14.
19 Do you have that?

20 A. I do, let me get to it, please.

21 Okay.

22 Q. Now, this page shows the allocation -- I
23 think this was the page that Mr. Lang directed you
24 to, correct?

25 A. That's not correct. He did not direct me

1 to this page.

2 Q. Well, let's just say it's page WDW-1,
3 page 14, can you agree to that?

4 A. I can agree to that.

5 Q. And this page shows the allocation of
6 common plant to the production function, correct?

7 A. That's correct. Common plant and
8 accumulated depreciation.

9 Q. Now, if we refer to line 12 on this page,
10 account -- let me strike that.

11 If we refer to line 12, account 1970, do
12 you see that reference?

13 A. I do.

14 Q. And that account is labeled
15 "Communication Equipment - NonSmartGrid"; is that
16 correct?

17 A. That's correct.

18 Q. And if we also refer to line 5, account
19 1911, we see an account labeled "Electronic Data
20 Processing - Non-SmartGrid," do you see that?

21 A. I do.

22 MS. GRADY: Your Honor, at this time I
23 would like marked for identification purposes as OCC
24 Exhibit No. 17 a single-page document that is the
25 response to OCC 13-106.

1302

1 EXAMINER STENMAN: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MS. GRADY: If I may have a moment, your
4 Honor.

5 EXAMINER STENMAN: Yes.

6 Q. Can you identify that document,
7 Mr. Wathen, that's been marked as OCC Exhibit No. 17.

8 A. It's a response to a discovery request by
9 the OCC.

10 Q. And are you familiar with that document?

11 A. I need to refresh my memory, it will take
12 me a minute to look to review it.

13 I am familiar with it, yes.

14 Q. And you are, in fact, responsible for
15 responding to this data request, correct?

16 A. As it says here, I'm responsible for part
17 of it, yeah.

18 Q. Now, would you agree with me that the
19 balance in account 1970 after looking at -- let me
20 strike that.

21 After looking at this response would you
22 agree with me that the balance in the account 1970
23 shown on WDW-1, page 14, includes communication
24 equipment related to SmartGrid even though it's
25 labeled "Non-SmartGrid"?

1 A. That appears to be the case.

2 Q. And would you agree with me that the
3 balance in account 1911 shown on WDW-1, page 14,
4 includes electronic data processing equipment related
5 to SmartGrid even though it's labeled
6 "Non-SmartGrid"?

7 A. Again, that appears to be the case.

8 Q. Is it your understanding, Mr. Wathen,
9 that the company recovers SmartGrid costs through a
10 separate rider?

11 A. For electric we are recovering SmartGrid
12 costs through rider DRIM.

13 Q. And DRIM stands for distribution
14 reliability infrastructure modernization, correct?

15 A. That's correct.

16 Q. And that rider would have been approved
17 by the Commission in Case No. 12-1811-GE-RDR,
18 correct?

19 A. That was the last approval of that rider.
20 It's been approved on numerous occasions.

21 Q. And what is the justification for
22 including the SmartGrid assets in rate base used to
23 determine the company's proposed cost-based capacity
24 rate in this proceeding?

25 A. This, I believe this conversation was in

1 my deposition. We followed a model that the
2 Commission approved which is a simplified revenue
3 requirement calculation. In order to make --
4 continue to be simplified we do not go line by line
5 and exclude or include items that are not on the
6 books of FERC Form 1, the purpose of a simplified
7 model is to eliminate those extreme time-consuming
8 adjustments. So it was just an effort to limit the
9 issues in this case by following the formula the
10 Commission had already approved.

11 Q. Now, when you say the Commission already
12 approved, you're referring to the AEP order, correct?

13 A. I'm referring to the Commission's
14 decision in case 10-2929.

15 Q. And is it your understanding that AEP is
16 not a combination electric and gas utility?

17 A. AEP, well, what would represent AEP Ohio
18 now which is the merger of Ohio Power and Columbus
19 Southern Power to my knowledge is not a combination
20 utility.

21 Q. And, therefore, would you expect that it
22 has no common plant that is to be allocated between
23 gas and electric operations?

24 A. Knowing the Form 1 as I do, I would be
25 surprised to see common plant on their balance sheet.

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1 MS. GRADY: May I have that answer
2 reread, please?

3 Q. So you are agreeing with me that AEP
4 would not have common plant to be allocated between
5 gas and electric operations as opposed to Duke which
6 has common plant that it allocates between gas and
7 electric?

8 A. Well, again, as CSP and Ohio Power do not
9 have gas operations, I would be surprised to see
10 that, yes.

11 Q. Now, let's talk, Mr. Wathen, about your
12 general plant and the -- you have on WDW page 13 your
13 allocation of general plant to the production
14 function, correct?

15 MS. SPILLER: Ms. Grady, is that WDW-1?

16 MS. GRADY: Yes, I'm sorry.

17 MS. SPILLER: Thank you.

18 Q. WDW-1, page 13.

19 A. Yes, this is the document that we
20 discussed with Mr. Lang earlier. Yes.

21 Q. Yes. Thank you.

22 MS. GRADY: Now, at this time, your
23 Honor, I would like marked for identification
24 purposes as OCC Exhibit No. 18 the company's response
25 to OCC Interrogatory 13-105.

1306

1 EXAMINER STENMAN: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Can you identify this document,
4 Mr. Wathen?

5 A. It's another discovery request that
6 the -- that was submitted upon the company by the OCC
7 related to our general plant, so.

8 Q. And you are familiar with this document?

9 A. I am.

10 Q. In fact, you are the witness listed as
11 being responsible for this document; is that correct?

12 A. To the nonlegal portion of it, yes.

13 Q. Now, let's look at that response to
14 13-105, this response quantifies the SmartGrid assets
15 that are included in general plant, correct?

16 A. That was the question that we answered,
17 yes.

18 Q. Am I correct that these SmartGrid assets
19 shown in this discovery response were not removed
20 from the general plant dollars shown on WDW-1 page
21 13?

22 A. You are correct.

23 Q. And these are the same SmartGrid assets
24 that are being recovered through the rider DRIM which
25 we referred to earlier.

1 A. That's correct.

2 Q. Mr. Wathen, do you recall any discussion
3 in the AEP 10-2929 order with respect to the
4 treatment of SmartGrid assets in determining AEP's
5 production rate base?

6 A. That doesn't ring a bell.

7 Q. And am I correct in concluding that we
8 can't tell from looking at the 10-2929 order whether
9 AEP removed any SmartGrid assets before allocating
10 the general plant to the production facilities?

11 A. You can tell from the testimony of
12 Mr. Pierce in that case on AEP's behalf and Mr. Smith
13 on behalf of the staff and what was ultimately
14 approved what they did, but it doesn't necessarily
15 address it directly in the order.

16 Q. Now, remaining on this Attachment WDW-1,
17 page 13, you show an allocation of intangible plant
18 to production rate base, and that's shown on lines 14
19 and 15. Do you see that?

20 A. I do.

21 Q. Now I want to refer you back to WDW-1,
22 page 5. Do you have that?

23 A. I do. I do.

24 Q. Now, on line 8 you deducted the balance
25 of accumulated depreciation on general plant from the

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1 total balance of plant in service; is that correct?

2 A. That's correct.

3 Q. And if we look at the column labeled
4 "Reference," we see that the accumulated depreciation
5 on general plant comes from FERC Form 1, page 219,
6 correct?

7 A. That's correct.

8 Q. And would you agree with me that that
9 account includes the balance of accumulated
10 depreciation in account 108?

11 A. Would you ask that again, please? I'm
12 sorry.

13 MS. GRADY: Can the court reporter read
14 that question, please?

15 (Record read.)

16 A. So you're asking me if the \$21 million
17 shown on that --

18 Q. I said that account includes the balance
19 of accumulated depreciation in account 108.

20 A. Well, account 108 includes more than just
21 this account -- this item. I'm not sure if that's
22 what you're asking.

23 Q. But it would include the balance of
24 accumulated depreciation, correct?

25 A. Account 108 is accumulated depreciation,

1 so, yeah.

2 Q. And would you agree with me that account
3 108 does not include accumulated amortization of
4 intangible plant?

5 A. Yes. As I understood from Mr. Effron's
6 testimony, he pointed out an error that we made on
7 that, however, he also neglected to point out that we
8 forgot to include the depreciation expense on that as
9 well also, in the calculation.

10 Q. Have you reflected the accumulated
11 amortization of intangible plant in your
12 determination of rate base anywhere else?

13 A. I have not included the amortization
14 balance and I have not included the amortization
15 expense of intangible plant.

16 Q. Is it your -- is it your testimony that
17 it would be appropriate to reflect the accumulated
18 amortization of intangible plant in your
19 determination of rate base?

20 A. It would be appropriate to include the
21 accumulated amortization and the amortization
22 expense.

23 Q. Now let's go to WDW, page 22, WDW-1, page
24 22.

25 A. I'm there.

1310

1 Q. Okay. Now, on line 22 we see that you
2 have allocated approximately \$56 million of property
3 tax expenses to production demand.

4 A. Line 22?

5 Q. Yes, line 22.

6 MS. SPILLER: On page 22.

7 THE WITNESS: There is no line 22 on page
8 22.

9 Q. I'm sorry. Let me find the reference.

10 I'm sorry. That would be line 2.

11 A. That sounds better for line 2.

12 Q. Okay. Now, just to make sure the record
13 is clear, we are on page 22 of 24 in WDW-1, going to
14 line 2 we can see that you have allocated
15 approximately \$56 million of property tax expenses to
16 production demand, correct?

17 A. That's correct.

18 Q. And you are aware that Mr. Savoy
19 sponsored exhibits showing income statements for the
20 company's legacy generation assets, correct?

21 A. He filed projected income statements for
22 the company, yes.

23 Q. In fact, would you have had -- did you --
24 let me ask you this: Did you review Mr. Savoy's
25 testimony and exhibits as part of your role as

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1 director of rates and regulatory strategy?

2 A. I may have reviewed them. I didn't -- I
3 have no oversight on that schedule.

4 Q. Is it -- isn't it true that the property
5 tax expense allocated to production on your
6 Attachment WDW-1, page 22, is significantly greater
7 than the property tax expense in the income
8 statements sponsored by Mr. Savoy?

9 A. It's obvious when you compare the two
10 they're different, yes.

11 MS. GRADY: Your Honor, at this time I
12 would like to mark for identification purposes as OCC
13 Exhibit No. 19 the response to OCC interrogatory
14 11-83.

15 EXAMINER STENMAN: It will be so marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. Are you familiar with this data response,
18 Mr. Wathen?

19 A. I am.

20 Q. Do you understand from reviewing this
21 data response that Mr. Savoy's schedules reflect the
22 sum of property taxes for the generating units while
23 Attachment WDW-1, page 22, relies on an allocation of
24 property tax based on gross plant?

25 A. I think that's a good synopsis of the

1 answer.

2 Q. And would you agree that, as a general
3 principle, when attributing costs to a particular
4 function, direct assignments of costs where feasible
5 is better than using a general allocation factor?

6 A. Not necessarily.

7 Q. Would you agree that your method of
8 allocation does not recognize that the ratio of
9 taxable value to book cost for production plant may
10 be different from what the ratio is for production
11 plant?

12 A. As I indicated earlier, it's a formula
13 rate using simplified allocation factors. So it will
14 not necessarily reflect what you would get with
15 direct allocation, direct assignment. It mirrors not
16 only AEP's formula rate but it's virtually identical
17 to our transmission rate filing as well as approved
18 by the FERC.

19 Q. And can you point me to a provision in
20 the Commission's order in 10-2929-EL-UNC where the
21 Commission approved this specific method of
22 allocation that you are proposing in your testimony?

23 A. As I said earlier, the Commission, if you
24 start with Mr. Pierce's testimony, Mr. Pierce's
25 testimony in that case, and then Mr. Smith who

1 reviewed the testimony and advocated for the staff
2 and what the Commission adjusted, it's pretty clear
3 that the Commission did approve, even if it's not
4 explicitly said so in the Commission's order, they
5 approved that methodology and the result, so.

6 Q. But you can't point me to a specific page
7 reference that would show -- indicate that the
8 Commission approved that specific allocation for that
9 specific --

10 A. Again, you can't get to the 189
11 megawatt-day without having that number in there.

12 Q. Now, let's refer to WDW page 1, WDW-1,
13 page 1. Do you have that in front of you?

14 A. I do.

15 Q. Now, in calculating the net revenue
16 requirement related to the annual production fixed
17 cost you recognized certain offsets, did you not?

18 A. That's correct.

19 Q. And the offsets, some of the offsets that
20 you recognized were the credits for margins from the
21 sale of energy and ancillary services and existing
22 sales at the FZCP, correct?

23 A. I'll try to put it in my words and see if
24 that works. We recognized the margins on the sales
25 from generation, the ancillary service revenue from

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1 that generation that have any costs, and the sales of
2 capacity, so.

3 Q. But you have not recognized any credit
4 for the revenues earned from the rider ESSC in your
5 calculation of net revenue requirements, correct?

6 A. That's correct.

7 MS. GRADY: Your Honor, at this time I
8 would like marked for identification purposes as OCC
9 Exhibit No. 20 the company's response to OCC
10 Interrogatory 04-043.

11 EXAMINER STENMAN: It will be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Can you identify this data response,
14 Mr. Wathen?

15 A. It's a response to the request from the
16 OCC regarding our, well, it doesn't say, the ESSC in
17 our 11-3549 case.

18 Q. And would you agree with me that this is
19 basically the company's explanation of why it does
20 not offset its annual production fixed costs for the
21 EFC reviews?

22 A. That is correct, and I should point out
23 another typo there, should be another 1 on the very
24 last number, should be 11-346.

25 Q. Thank you.

1 So is it your understanding that the
2 company is making a distinction between what it calls
3 competitive retail electric service and what it calls
4 noncompetitive capacity service that it provides as
5 an FRR entity?

6 A. I would say that we're recognizing a
7 distinction the Commission made between those two
8 services.

9 Q. And the company's also making a
10 distinction between the revenues it receives from
11 such services, correct?

12 A. Again, we're relying on the Commission
13 distinction in the prior case.

14 Q. And when you say you are -- let me strike
15 that.

16 So is it your testimony, Mr. Wathen, that
17 the Commission determined that capacity services are
18 noncompetitive in its 10-2929 order?

19 A. I think the Commission made that
20 abundantly clear in that order.

21 Q. And if I were to ask you, if I showed you
22 that order, could you show me a finding where the
23 Commission specifically said that the capacity
24 services are noncompetitive services?

25 A. Yes.

1 MS. GRADY: Could counsel please provide
2 the witness with a copy of 10-2929, please.

3 MS. SPILLER: We're assuming that's your
4 OCC 1?

5 MS. GRADY: Yes.

6 THE WITNESS: I have a copy.

7 Q. And just so that you know that the
8 question I asked you, Mr. Wathen, I want to be very
9 specific, can you point to a page in this opinion and
10 order where the Commission determined that the
11 capacity services are noncompetitive services.

12 A. You'll have to give me some time. I know
13 there's about three or four occurrences in the orders
14 in the entry on rehearing, it doesn't use the word
15 "noncompetitive." It says not a competitive service.

16 Q. Mr. Wathen, I'm asking you --

17 MS. SPILLER: Excuse me.

18 Q. -- to go to, I've directed you to the
19 opinion and order which you testified contains a
20 finding that the Commission determined it was a
21 noncompetitive capacity service, that's a
22 noncompetitive service. My question is limited to
23 that order. Can you find in that order where the
24 Commission determined it was a noncompetitive
25 service?

1 A. Well, it says, I'm looking at page 13,
2 for example, on the order, it says we agree with the
3 provision of capacity for CRES providers pursuant to
4 the company's FRR capacity application is not a
5 retail electric service.

6 A retail electric service is competitive
7 in this context.

8 Q. Mr. Wathen, go to the next sentence,
9 please.

10 MS. SPILLER: Excuse me, Ms. Grady, if
11 Mr. Wathen could be allowed to finish his answers, I
12 would appreciate it.

13 Q. What's the next sentence say, Mr. Wathen?
14 Does it not say: "Accordingly, we find it
15 unnecessary to determine whether capacity service is
16 a competitive or noncompetitive service under Chapter
17 4928 Revised Code"?

18 A. They say that, but then following in the
19 rest of the document they do point out that it's not
20 a competitive service.

21 Q. And show me in that document where they
22 do point that out, Mr. Wathen.

23 A. And if you would give me some time to
24 review it, I would like to do that.

25 Q. Absolutely. Take all the time you want.

1 A. Okay.

2 Well, one example is on page 22, they say
3 "Although, Chapter 4928 Revised Code provides for
4 market-based pricing for retail generation services,
5 those provisions did not apply because as we noted
6 earlier, capacity is a wholesale rather than a retail
7 service." Therefore, it can't be competitive.

8 Q. Mr. Wathen, did the Commission say there
9 at that point that they found that capacity service
10 is a noncompetitive service?

11 A. Because they've defined wholesale as a
12 noncompetitive service I think it follows that it's
13 not competitive.

14 Q. Where did they define wholesale as a
15 noncompetitive service?

16 A. We wouldn't be doing this if wholesale
17 wasn't a noncompetitive service.

18 Q. Mr. Wathen, I'm asking you specifically
19 where did the Commission find that capacity service
20 is a noncompetitive service in order -- in the order
21 in 10-2929.

22 A. I'll go back to, again, you'll have to
23 draw conclusions out of this, but the fact that they
24 say right after that statement I just read that the
25 Commission's obligation under traditional rate

1 regulation is to ensure that jurisdictional utilities
2 receive reasonable compensation for the services they
3 render, the fact that they're asserting jurisdiction
4 makes it a noncompetitive service.

5 Q. Is there any other provision that you
6 interpret in the Commission's -- let me strike that.

7 Can you show me any other place in the
8 Commission's opinion and order where they found that
9 capacity services are a noncompetitive service?

10 A. Without spending a little more time
11 looking at it right now I can't in this order, but I
12 know for a fact in the entry on rehearing it's very
13 clear.

14 Q. Let's go to the entry on rehearing,
15 Mr. Wathen. Can you show me where in the entry on
16 rehearing the Commission determined that the capacity
17 service is a noncompetitive service?

18 And just so that we are, so we're
19 talking, what entry on rehearing are you referring
20 to, Mr. Wathen?

21 A. This is the entry on rehearing issued on
22 October 17th, 2012, in the case 10-2929.

23 Q. Great. We are on the same document.
24 Thank you.

25 MS. GRADY: That would be OCC, for the

1 record, OCC No. 3.

2 A. Well, on page 29 of the rehearing order
3 at the very top.

4 Q. If you could give me a moment to get
5 there, please.

6 A. Sure.

7 Q. 29, yes.

8 A. I'll start with the second line, it
9 starts "We affirm our findings in the Capacity Order
10 that capacity service is a wholesale generation
11 service between AEP-Ohio and CRES providers and that
12 the provisions of Chapter 4928, Revised Code, that
13 restrict the Commission's regulation of competitive
14 retail services are inapplicable."

15 Q. Is there any other point within the entry
16 on rehearing that you believe or that the Commission
17 determines that the provision of capacity service is
18 a noncompetitive service?

19 A. There are. I could spend a half an hour
20 reading this or you guys can do it on brief if you
21 want but there are statements to that effect in here.

22 Q. No, I just want you to spend the time
23 right now and tell me where those statements are
24 found.

25 A. Okay.

1 How about on page 39, the first full
2 paragraph on page 39, I don't think it could be more
3 clear than this, it says: "Having found that the
4 capacity service at issue is not a retail service and
5 thus not a competitive retail service" -- "electric
6 service," and then it goes on to respond to IEU
7 argument.

8 Q. Is there any other point in this entry on
9 rehearing where the Commission indicates that the
10 provision of capacity service is a noncompetitive
11 service?

12 A. I think there's a lot of interpretation
13 in here that you can deduce it's not competitive.
14 But that can't be more clear that it's not
15 competitive.

16 MS. GRADY: Your Honor, at this time I
17 would like to mark for identification purposes as OCC
18 Exhibit No. 21 the company's response to
19 Interrogatory 7-61.

20 EXAMINER STENMAN: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Are you familiar with that response,
23 Mr. Wathen?

24 A. I am.

25 Q. And you are the person, in fact,

1 responsible for that response.

2 A. I am.

3 Q. Now, in this response you say that the
4 company does not allocate or assign its legacy
5 generation costs between competitive retail electric
6 service and noncompetitive capacity service. Do you
7 see that?

8 A. I don't see that response. I mean,
9 that's the question you're asking, so.

10 Q. Yes, is that a fair characterization,
11 that the company does not allocate or assign its
12 legacy generation costs between competitive retail
13 electric service and noncompetitive capacity service?

14 A. That's fair.

15 Q. So is it your testimony that the company
16 earns a margin on the energy sales from the legacy
17 generation assets and it earns capacity revenues from
18 sales at the FZCP?

19 A. I think both of those statements are
20 correct and represented in my calculation on WDW-1.

21 Q. And then, Mr. Wathen, what are the ESSC
22 revenues compensation for?

23 A. The ESSC revenues were compensation for
24 stability and -- financial stability. It was a
25 provision of a stipulation that had multiple

1 components and one of them was the ESSC.

2 Q. And what service are the certainty and
3 stability related to? What service that the company
4 provides are the certainty and stability related to?

5 A. Well, insofar as that rider was approved
6 under 4928.143, specifically (B)(2)(d), it provides
7 the competitive retail service that we, it supports
8 the competitive retail service that we provide to the
9 customers.

10 Q. So it's related to generation service?

11 A. It's related to competitive retail
12 services.

13 EXAMINER STENMAN: Mr. Wathen, if you
14 back away from the microphone a little bit, it will
15 stop cutting out on you.

16 Q. Which would include generation service;
17 is that right?

18 A. We are not compensated directly for
19 generation services as part of the ESP.

20 Q. Now, Mr. Wathen, when I say "12 & 0," you
21 know what the 12 & 0 means, correct?

22 A. I do.

23 Q. Now, at the time you filed your testimony
24 on March 1st, 2013, you were aware that there was an
25 approved five-year operating budget for the company

1 based on the 12 & 0, correct?

2 A. I would assume by March we would have an
3 official budget for '13, yes.

4 Q. And that budget would have been based on
5 the 12 months actual data for 2012, if you know?

6 A. I don't know how they developed the
7 budget, no.

8 Q. Now, at the time I took your deposition
9 you said you had not seen the 12 & 0 budget.

10 A. That's correct.

11 Q. And have you seen the 12 & 0 budget since
12 then?

13 A. I have not.

14 Q. Now, am I correct that Duke has not
15 proposed in its application to apply any of the
16 revenues being collected from its stability charge to
17 the capacity deferrals that would be created in this
18 case? Correct?

19 MS. SPILLER: Objection. Asked and
20 answered.

21 EXAMINER STENMAN: Overruled.

22 A. We did cover this ground before but
23 that's true, yes.

24 Q. And is it your understanding that Duke
25 has a SEET threshold of 15 percent and that that

1 threshold was the result of your last ESP proceeding?

2 A. That's correct.

3 Q. Now, on page 17 of your testimony you
4 refer to an evidentiary hearing that is to occur
5 subsequent to the filing to implement the rider
6 DR-CO, correct?

7 A. That's correct.

8 Q. And there you are not recommending a
9 hearing but you are merely stating your expectation
10 that a hearing will occur; is that correct?

11 A. That's correct.

12 MS. GRADY: That's all the questions I
13 have. Thank you, Mr. Wathen.

14 EXAMINER STENMAN: Thank you.

15 Mr. Kurtz?

16 MR. KURTZ: Thank you, your Honor. Your
17 Honor, the bulk of my questions would be in the
18 confidential portion of the hearing.

19 EXAMINER STENMAN: Okay.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Kurtz:

23 Q. Mr. Wathen, do you have FES 29, the
24 one-page SEET summary document?

25 A. What Mr. Lang provided today?

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1 Q. Yes.

2 A. I do.

3 Q. Okay. I'd like just to understand this.

4 On the total basis, the 174.7, that includes
5 franchise Ohio transmission and distribution; is that
6 correct?

7 A. 174?

8 Q. Yeah.

9 A. It includes everything.

10 Q. So that would be Kentucky, Ohio Gas, Ohio
11 T and D, and then the Commercial Power business
12 segment of Duke Energy Ohio which is the Midwest coal
13 and the Midwest gas, correct?

14 A. I wouldn't characterize it that way. It
15 includes DECAM which is, you know, essentially the
16 Commercial Power segment, but it also includes OVEC,
17 so.

18 Q. Okay. Were you here when -- you've been
19 here the whole hearing, correct?

20 A. Happily.

21 Q. Yeah. And you understand that the
22 Commercial Power business segment of Duke Energy Ohio
23 includes Midwest coal and Midwest gas?

24 A. Among other things, yes.

25 Q. Okay. Would you agree that the

1 Commercial Power business segment earned \$50 million,
2 five-zero, in 2012? And if you want to see the
3 10-K --

4 A. I believe that's what we reported in '12,
5 yeah.

6 Q. Now, I don't understand, like Mr. Lang,
7 how when you go to -- what happened when you go to
8 electric and the number increases by \$51 million?
9 What happened there?

10 A. Well, without having time to review this
11 and get back behind the details I really can't tell
12 you. I need to spend some time looking at it and
13 understanding.

14 Q. Because you look at the FERC Form 2 and
15 saw that gas actually made a profit of 60 million
16 last year?

17 A. It made an operating income profit of
18 \$60 million, I don't know what the net income was,
19 so.

20 Q. Now, in the first dollar amount, 174.7
21 total company net income, that includes the ESSC,
22 \$110 million, correct?

23 A. That's correct. Actually it's about 108
24 for '11 -- or '12, rather.

25 Q. Does the -- tell me where else the ESSC

1 amount 108 or 110 million dollars is in. Is it in
2 the electric \$226 million?

3 A. Yeah, right. Correct, the ESSC revenues
4 show up on the revenue line under the electric
5 column, would be incorporated into what you see there
6 as \$1.689 billion.

7 Q. Okay. So the ESSC is in there. Then the
8 only other number that's bottom line there, is it
9 included in the equity and earnings of subsidiary,
10 the 285 million?

11 A. Is what included in the 285?

12 Q. Is the ESSC 108 million or 110 million
13 included in the equity and earnings of subsidiary
14 285 million?

15 A. No, I thought it was clear. The ESSC
16 revenue is an above the line item, it's shown in the
17 top number in the electric column as 1.689 billion.
18 The 108 and change we collected during 2012 would be
19 included in that line. The equity and earnings and
20 subsidiaries would be earnings from our wholly-owned
21 investments such as DECAM, DEK, transmission and
22 others.

23 Q. Okay. So for reporting purposes we know
24 the ESSC revenue gets reported up through the
25 commercial business segment, but you're saying that

1 the 285 does not include the ESSC?

2 A. Well, as I think we, I mean we're getting
3 back into corporate structure again but the
4 commercial segment includes directly-owned assets by
5 DE-Ohio and indirectly-owned assets by DE-Ohio, so
6 the indirectly-owned assets, the DECAM, Midwest
7 assets, would be flowing through the earnings of
8 subsidiaries, the directly-owned assets and all the
9 directly-owned stuff would be showing up in above the
10 line numbers.

11 Q. So your testimony is that in the
12 \$285 million equity and earnings of subsidiaries,
13 that does not include any of the ESSC revenue.

14 MS. SPILLER: Objection. Asked and
15 answered.

16 EXAMINER STENMAN: Overruled.

17 A. I believe the Form 1 includes a breakdown
18 of the 285 if you are, or at least the 187 in the
19 total column, but it is --

20 Q. We know --

21 A. -- the ESSC.

22 Q. We know the ESSC is in the total because
23 it's the total but is it the \$285 million?

24 A. Again, the only place in the electric
25 column that the ESSC is reflected is in the revenue

1 line in the column for electric. Since the ESSC is
2 not collected by any of the wholly-owned
3 subsidiaries, it would not be reflected in the equity
4 and earnings of subsidiaries.

5 Q. Okay. Now, the \$285 million you back out
6 is essentially the earnings that DECAM made in 2012;
7 is that correct?

8 A. That's not correct.

9 Q. Well, is DECAM the vast majority of the
10 \$285 million?

11 A. I don't know that. I don't have a
12 breakdown of the details. I can probably do some
13 quick review and tell you what the components are,
14 but --

15 Q. That would be great.

16 A. Bear with me. It's in the form but I
17 don't know what page. A lot easier to search it on
18 the computer than it is the document. I can't find
19 it right now but it's in here, if you want to ask me
20 after lunch, I'll give you the data.

21 Q. Okay. But just to sum up, the reason
22 that the total company earnings went from
23 \$174.7 million profit to a \$60.7 million loss for
24 SEET purposes is because you took away \$285 million
25 of earnings from the subsidiaries.

1 A. That's part of it, obviously.

2 Q. That's the vast majority of what's going
3 on in this sheet, isn't it?

4 A. If you look at the line that says "Net
5 Utility Operating Income," it says \$8.3 million,
6 that's before any DENA or anything else, that's just
7 electric, T, D, and G essentially and G being the
8 legacy generation. Our net utility operating income
9 is \$8 million, that excludes any interest, and
10 interest is about \$90 million, so our income is minus
11 70.

12 Q. Well, and the vast majority of that is
13 because of the Midwest coal assets. We're losing
14 money in this year.

15 A. No. Again, the line I just discussed
16 does not include any of the, I mean the coal, yeah,
17 the coal is losing money, that's right.

18 Q. The coal.

19 A. Yeah.

20 Q. And then you're making \$285 million in
21 the subsidiaries that you took away in order to get
22 to a \$60 million net loss for SEET purposes.

23 A. The 200 -- well, actually that includes
24 DEK and the gas assets, OVEC, KO transmission and
25 various other wholly-owned subsidiaries.

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1 Q. Well, KO transmission is nothing.

2 A. It has revenue and income.

3 Q. The vast majority of this is the DECAM
4 earnings, correct?

5 MS. SPILLER: Objection.

6 A. I did not have --

7 EXAMINER STENMAN: Overruled.

8 Q. Let's just sum up, DECAM is a
9 wholly-owned subsidiary of Duke-Ohio, correct?

10 A. That's correct.

11 Q. Okay. Duke Energy Ohio is buying
12 capacity to meet its FRR obligations from DECAM.

13 MS. SPILLER: Objection, your Honor.

14 Q. Correct?

15 MS. SPILLER: I think we're getting into
16 the matters concerning confidential information that
17 we discussed on Friday.

18 Mr. Kurtz, I believe it was unresolved so
19 I wanted to raise it for the Bench.

20 EXAMINER STENMAN: This information is
21 certainly within the public record at this point.

22 Q. (By Mr. Kurtz) Can you answer the
23 question?

24 A. I've got scolded for saying DECAM.

25 Q. What?

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1 A. I got scolded for saying we buy directly
2 from DECAM a while ago but, yes, part of it includes
3 that.

4 Q. Okay. And the cost of purchasing from
5 DECAM to meet the FRR is included in the revenue
6 requirements calculation that you performed, correct?

7 A. The -- well, I assumed the market price
8 but, yeah, it's essentially in there, so.

9 Q. But the profit from DECAM is not included
10 in your revenue requirement calculation for purposes
11 of this FRR case, correct?

12 A. If we included the cost of service from
13 DECAM, our price would go up, not down, so.

14 Q. Well, somebody's making \$285 million.

15 A. And as I indicated earlier, I couldn't
16 tell you who that is. We talked about \$50 million a
17 while ago from the DE-Ohio commercial fleet.

18 Q. That's Commercial Power. That's DECAM
19 less the money that you're losing on the Midwest
20 coal. That's what that is. That's what the
21 50 million is, isn't it?

22 A. It's part of it, yes.

23 Q. Well, that's the whole Commercial Power
24 business segment of DEO Ohio is the Midwest coal and
25 Midwest gas.

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1 A. I believe there's more. I know OVEC is
2 part of the commercial.

3 THE REPORTER: I'm sorry, commercial and?

4 A. I do know that OVEC is part of the group
5 as well.

6 Q. Okay. But Commercial Power reported
7 \$50 million of earnings in 2012, correct?

8 A. I believe the Commercial Power in the
9 10-K represented that we have earned \$50 million for
10 2012 for Ohio.

11 Q. And somebody's making \$285 million that
12 you're taking away for SEET purposes and that same
13 \$285 million of profit is not reflected in your FRR
14 requirements calculation either, is it?

15 A. The SEET test is very specific, we're not
16 allowed to include any affiliate earnings.

17 Q. But that's not true in the FRR
18 calculation, is it?

19 A. Knowing what I know about the DENA assets
20 or the DECAM assets we are absolutely not earning a
21 reasonable rate of return on those assets either, so.

22 Q. Well, somebody's making \$285 million and
23 we know that's not included in your FRR revenue
24 requirement calculation, is it?

25 MS. SPILLER: I'm going to object to the

1 form of the question that somebody's earning this
2 particular sum.

3 EXAMINER STENMAN: Overruled.

4 A. I'm not entirely sure I understand your
5 question. Could you just rephrase it, please.

6 Q. Duke Energy Ohio has earnings in its
7 subsidiaries to \$285 million that is removed from the
8 SEET and is not included in your FRR revenue
9 requirement calculation either; isn't that true?

10 A. Well, I mean, again, our net earnings are
11 \$187 million from all the wholly-owned subsidiaries
12 and, you're right, we do not include those in the
13 SEET test and we have not included those in the
14 revenue requirement calculation.

15 MR. KURTZ: Okay. Thank you, Mr. Wathen.

16 EXAMINER STENMAN: Ms. Petrucci.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Petrucci:

20 Q. Going back to some of the questions that
21 were asked earlier, is it incorrect that you were
22 aware of the error in the allocation of retirement
23 plan that's noted by the staff's witness at the time
24 you prepared your calculations?

25 A. I was not aware of that error at the time

1 I prepared my calculations.

2 Q. But you were aware before the testimony
3 was -- your testimony was filed in this case?

4 A. I was.

5 Q. And you did not include any recalculation
6 for that error in your testimony.

7 A. As we talked about with Ms. Grady
8 earlier, there was a couple of other errors that were
9 missed as well and some went up and some went down,
10 so it seemed like the more prudent thing to do is
11 just to leave it alone, so. Because it was, it would
12 have increased the overall rate, I believe, if we
13 included them all.

14 Q. So do I understand, then, that your
15 calculation contains errors?

16 A. There are a -- well, Mr. Effron pointed
17 out one, he left out one related to intangible plant.
18 He identified --

19 Q. I'm not asking you about Mr. Effron.

20 A. You asked me if I had errors and I'm
21 telling you how I found out about them.

22 Q. But I'm just asking based on what you
23 just told me you're acknowledging that your
24 calculations contain errors.

25 A. There were some very minor errors in the

1 calculations.

2 Q. And at the time that you prepared your
3 testimony, were you also aware that there were
4 certain data that was updated upon, well, let me
5 start again.

6 At the time you prepared your testimony
7 you were aware, isn't it correct, that some of the
8 data that you relied upon had been updated by the
9 company for other purposes?

10 A. The data that I used was 12/31/11, nobody
11 updated that data. That's per books. The only other
12 data that was not per books is the projected sales of
13 energy and ancillary services and the transactions
14 related to capacity.

15 Q. Weren't the O&M expenses updated?

16 A. The O&M expenses, again, were per books
17 actual for 2011. They are not updated in the
18 calculation. We don't get to go back and restate
19 2011.

20 Q. But the company had prepared updated 2012
21 O&M expenses for other purposes.

22 A. We record our actual expenses and we
23 record them in a Form 1 so 2012 is actual, we do have
24 a 2012 full set of financials now for actual data.
25 Unless I missed your point.

1338

1 Q. The calculation that you've provided in
2 your testimony does not include 2012 data; isn't that
3 correct?

4 A. It does not include any 2012 actual data,
5 that's true.

6 MS. PETRUCCI: I don't have any further
7 questions.

8 EXAMINER STENMAN: Thank you.

9 Ms. Bojko.

10 MS. BOJKO: Your Honor, may we go off the
11 record for a minute.

12 EXAMINER STENMAN: We can.

13 (Discussion off the record.)

14 EXAMINER STENMAN: Let's go back on the
15 record. Mr. Hart.

16 MR. HART: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Hart:

20 Q. Mr. Wathen, you attended the hearing to
21 approve the stipulation in case 11-3549; is that
22 correct?

23 A. I was a witness, so, yes, I did.

24 Q. And you sat through the entire hearing.

25 A. I can't recall, but I assume I did.

1339

1 MR. HART: Your Honor, I'd like to take
2 administrative notice of a portion of the transcript
3 of that hearing, pages 55 through 58, and I have
4 copies.

5 EXAMINER STENMAN: This needs to be
6 marked as an exhibit just for clarity of the record.

7 MR. HART: We can mark this GCHC 1.

8 EXAMINER STENMAN: Okay. It will be so
9 marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 EXAMINER STENMAN: We will take
12 administrative notice of this document.

13 MR. HART: Thank you.

14 Q. (By Mr. Hart) Mr. Wathen, I don't have
15 any questions for you about that now that it's in the
16 record.

17 I do want to ask you about some other
18 results of that case. Am I correct that for purposes
19 of charging retail customers Duke-Ohio developed two
20 riders called rider RC and rider RE?

21 A. We have two riders that are identified as
22 rider RC and RE to flow through the cost of purchases
23 we make from auction winners to SSO customers.

24 Q. And combined those two riders represent
25 the capacity and the energy portions of that retail

1 service, correct?

2 A. Mostly. There are some transmission fees
3 that were included in the auction price as well.

4 Q. Am I correct, then, you have tariffs on
5 file with the Commission reflecting those riders
6 currently?

7 A. That's correct.

8 Q. And the tariff explains the basis for
9 calculating the riders as well, correct?

10 A. I think the stipulation does a better job
11 of explaining how the riders are calculated, but
12 there's a process that was stipulated to in that
13 case, so.

14 Q. But as far as the mechanics of the
15 calculation, that's explained better in the
16 stipulation; is that what you're saying?

17 A. I would say that the entirety of that
18 calculation is explained better in the stipulation.

19 Q. Okay. And for rider RC am I correct that
20 that is a translation of the PJM market pricing into
21 a retail price?

22 A. The process we agreed to in that
23 stipulation was shown in I think Attachment B, and it
24 does trans -- it takes the auction price, which is a
25 fixed price, energy, capacity and whatever

1 transmission's in there, and it essentially decouples
2 between the retail capacity price that the auction
3 winners will charge and transforms that price into a
4 different rate for each customer class, so.

5 Q. And there was an agreement on how to
6 allocate that cost among the different rate groups,
7 correct?

8 A. That's correct.

9 Q. And within the rate groups it was spread
10 out into an actual price for that group.

11 A. That's right. There are energy, demand
12 and other characteristics in those prices.

13 Q. Am I also correct you have a required
14 SCR?

15 A. That's correct.

16 Q. And that's a supplier reconciliation
17 rider?

18 A. It's a supplier cost reconciliation
19 rider.

20 Q. And one of the purposes of that rider is
21 to capture any differences, plus or minus, between
22 what you collect under rider RC and the actual cost
23 of capacity in the PJM price; is that correct?

24 A. That's correct. That's driven by the
25 nature of the billing determinants.

1 Q. Because different customer classes could
2 each switch at different rates or could grow or
3 decline at different rates.

4 A. That's correct.

5 Q. And so that you make sure you capture
6 exactly the PJM capacity rates you use SCR as an
7 adjustment tool.

8 A. That's correct. It's a reconciliation.

9 Q. Thank you.

10 I think you testified in response to
11 questions from OCC, you gave a reference to Statute
12 4928.43(B)(2)(d) which I think you said was the basis
13 under which ESSC was approved?

14 A. That's my understanding.

15 Q. And where do you gain that understanding?

16 A. Well, I was involved in the stipulation,
17 the settlement talks leading up to the stipulation,
18 Ms. Janson refers to it in her testimony supporting
19 the stipulation, so I believe that's the basis for my
20 understanding.

21 Q. Is that the only place it appears in her
22 testimony?

23 A. I think that's the only place -- I don't
24 believe it appears in the order necessarily but it
25 does appear in the testimony.

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1 Q. Does it appear in the stipulation itself?

2 A. I do not believe that particular
3 provision, 4928.143(B)(2)(d) I do not believe shows
4 up in the stipulation.

5 Q. So it's neither in the stipulation or in
6 the order but it's in Ms. Janson's testimony.

7 A. It's in testimony and, again, it was a
8 much discussed provision in the settlement talks.

9 Q. Was the fact that it was discussed in the
10 settlement talks relevant here today?

11 A. I'm not a lawyer, I don't know what the
12 relevance is, so.

13 Q. Wouldn't everything that was discussed in
14 the settlement talks, then, be relevant?

15 MS. SPILLER: Objection, your Honor.
16 This witness has indicated he's not an attorney
17 capable of passing decision on what's relevant.

18 EXAMINER STENMAN: Overruled.

19 A. I'll leave that to you guys to figure out
20 what's relevant and what's not.

21 Q. Well, I take it that you personally found
22 it relevant because you volunteered that information
23 today, correct?

24 A. I believe -- I found that particularly
25 relevant. I mean, if 4928.143(B)(2)(d) has been

1 referred to not only in our case through Janson's
2 testimony, it was the basis for the similar charge
3 for AEP, and the staff in the DP&L case relied on
4 that statute as well to support the Dayton Power &
5 Light stability charge.

6 Q. Was it also discussed in the settlement
7 talks with respect to ESSC that it would be a charge
8 to compensate Duke for its capacity?

9 MS. SPILLER: Your Honor, I'm going to
10 object to the extent we are now reaching into
11 settlement discussions that culminated in a document
12 that the Commission modified and then approved. I
13 think what went behind that document is irrelevant
14 and outside of the scope of these proceedings.

15 I also think it's barred under evidence
16 Rule I think it's 408.

17 MR. HART: Your Honors, I believe
18 Mr. Wathen opened the door on that by himself
19 volunteering what was discussed in settlement
20 apparently in an effort to bolster their claim that
21 the statutory provision was used to approve that. So
22 I think if that's fair game to be considered in this
23 proceeding, everything else that was discussed in the
24 settlement discussions about ESSC is also fair game.

25 EXAMINER STENMAN: The objection will be

1 overruled.

2 A. I have no idea what the question is, so
3 can somebody repeat it for me?

4 MR. HART: If you can find it again.

5 (Record read.)

6 A. I do not recall that quid pro quo at all.

7 Q. Well, I didn't say "quid pro quo." I
8 asked you was it discussed as a mechanism to
9 compensate Duke for its capacity costs?

10 A. I don't recall that at all.

11 Q. Okay. Are you saying it didn't happen or
12 you just don't remember whether it happened?

13 A. I do not -- I have a pretty strong memory
14 of that settlement discussion. I do not remember
15 saying that we'd get this money because we're FRR.

16 Q. Let's talk about FRR for a minute and I
17 will attempt to dance gingerly around the
18 confidential piece.

19 A. You're dancing again?

20 Q. Yes, I am. I'm going to try to keep this
21 at a general level and not use numbers, so am I
22 correct that currently Duke's FRR plan includes
23 capacity that debones the legacy coal plus capacity
24 that Duke purchases through bilateral contracts?

25 A. That's correct, I believe that we

1 purchased unit-specific capacity through some
2 bilateral contracts.

3 Q. And am I also correct that under the
4 stipulation in the ESP case Duke agreed as soon as
5 commercially practicable to transfer those legacy
6 assets out of Duke Energy Ohio?

7 A. I remember words to that effect. I'm not
8 sure if that's exactly the words but it was something
9 to that effect in the stipulation.

10 Q. Okay. What is the status of that
11 transfer of the legacy assets?

12 MS. SPILLER: Object to the relevance.

13 EXAMINER STENMAN: Overruled.

14 A. I know we filed an application with the
15 FERC but I do not know the status off the top of my
16 head.

17 Q. So it's pending at FERC?

18 A. I do not know the status of the
19 application so I couldn't tell you whether it's
20 pending or approved or not right now.

21 Q. Fair enough. And you also understand
22 that under the terms of the stipulation Duke was to
23 accomplish that no later than December 31st, 2014.

24 A. That's my understanding.

25 Q. And am I also correct that the ESP period

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1 extends five months beyond that date to May 31st,
2 2015?

3 A. At least through that period, yeah.

4 Q. Does that mean that for that five-month
5 period of 2015 Duke will have no internally owned
6 generation assets? Duke Energy Ohio I should say.

7 A. At that point in time I do not believe
8 Duke Energy Ohio will have any direct ownership in
9 generation.

10 Q. Does Duke Energy Ohio have any agreements
11 in place today in order to procure capacity for its
12 FRR plan to replace the legacy assets that are to be
13 transferred away?

14 MS. SPILLER: I'm going to object to the
15 extent this is beyond the scope of Mr. Wathen's
16 direct testimony in this case.

17 EXAMINER STENMAN: Overruled.

18 A. I don't know the details of the FRR plan.
19 I know that we procured all our capacity.

20 Q. Through 2015.

21 A. We have to, yeah.

22 Q. What assumption have you made in your
23 revenue requirement calculation for the cost of
24 capacity for the five months of 2015?

25 A. I've assumed that the revenue requirement

1 is the same as it would have been as if they were
2 still being owned directly by the company. There's
3 no assumption other than that the revenue requirement
4 would persist for that period.

5 Q. So you're continuing to use Duke legacy
6 costs for the period of time that Duke Energy Ohio no
7 longer owns those assets?

8 A. Those assets, my understanding is we'll
9 still be providing that service so that was why to
10 keep the revenue requirement in the model for that
11 period.

12 MR. HART: Could you reread my question
13 again?

14 (Record read.)

15 Q. Could you answer that question, please?

16 MS. SPILLER: I'm going to object. I
17 think the witness did.

18 EXAMINER STENMAN: Overruled.

19 THE WITNESS: I think I answered the
20 question again but would you please read it one more
21 time because I --

22 (Record read.)

23 A. I think that was the content of my
24 answer, that it is -- that's the case.

25 Q. Okay. This is where I'm going to try to

1 not disclose confidential information, but currently
2 the portion of the capacity that Duke acquires
3 through bilateral contracts, how are you accounting
4 for the cost of that capacity in your revenue
5 requirement calculation?

6 A. All of the capacity, all of the net
7 capacity that we have to buy is assumed to be
8 purchased at the market. That's how it's accounted
9 for.

10 Q. Why do you not make that same assumption
11 for 100 percent of the capacity in year 2015?

12 A. Because the assets that are providing
13 that service are still the legacy generating assets
14 and they are still providing a noncompetitive
15 wholesale service that deserves a reasonable rate of
16 return.

17 Q. But at that point in time Duke
18 Energy Ohio won't own those assets, correct?

19 A. Duke Energy Ohio will own them
20 indirectly. And they are still entitled to that
21 recovery, again. This was addressed in the AEP case
22 as well and the Commission saw fit to make sure that
23 those assets got recovery even beyond the date of the
24 transfer.

25 Q. That's not how you treat other

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1 indirectly-owned assets that are currently used in
2 the FRR plan, correct?

3 A. We are -- obviously, the market prices
4 that we are providing to the counterparties in our
5 bilateral contract has that, they are credited to
6 those companies so I guess I'm not sure I follow your
7 question.

8 Q. Well, Duke Energy Ohio is only including
9 the contract prices in its capacity, not what the
10 underlying cost of those assets is, correct?

11 A. I think that would be more fair because
12 the embedded costs would be much more expensive.

13 MR. HART: Thank you.

14 EXAMINER STENMAN: Okay. I think this
15 would be a good time to take a lunch break. We will
16 come back at 1:35. Thank you.

17 (Thereupon, at 12:21 p.m., a lunch recess
18 was taken until 1:35 p.m.)

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1 Monday Afternoon Session,
2 April 22, 2013.

3 - - -

4 EXAMINER STENMAN: Back on the record.
5 With the ruling with respect to the confidential
6 portions of the transcript with respect to Volumes II
7 and III, there should be one copy per party, we'll
8 have some more copies available after the break. Our
9 copier was a little slow. We expect the parties to
10 review these and consider the rulings the Bench has
11 made and entering the confidential portion of the
12 transcript and asking questions and make sure that
13 anything you are asking on the confidential portion
14 of the transcript is something the Bench has actually
15 deemed confidential.

16 (Discussion off the record.)

17 EXAMINER STENMAN: Let's go back on the
18 record and Duke should provide an appropriately
19 redacted copy of the confidential versions of the
20 transcripts to the court reporter consistent with the
21 Bench's ruling.

22 MS. KINGERY: We will, thank you.

23 EXAMINER STENMAN: Is there anything else
24 we need to talk about before we turn to Ms. Bojko?

25 All right. Go ahead.

1 MS. BOJKO: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Bojko:

5 Q. Good afternoon, Mr. Wathen. The
6 foundation of your testimony in -- and Duke's
7 application is the Commission's decision in the AEP
8 capacity case 10-2929; is that accurate?

9 A. That's essentially correct.

10 Q. And but for that AEP capacity order that
11 was issued in July of 2012, Duke would have had to go
12 to the FERC to seek a cost-based capacity charge; is
13 that correct?

14 A. I would say at any time, what we know
15 now, based on the Commission's decision that the
16 wholesale capacity was a noncompetitive service, we
17 could have apparently come to the PUCO at any time
18 and asked for compensation at that rate.

19 Q. But before the order was issued that you
20 now said apparently you could have, before that order
21 was issued it was Duke's position that you would have
22 had to have gone to FERC in order to make that
23 determination; is that right?

24 A. That's not --

25 Q. For the RAA.

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1 A. I don't agree with that.

2 Q. So you disagree with Mr. Trent's
3 testimony that states that?

4 A. My position is that if we had given it
5 some thought and decided to pursue a cost-based
6 filing at the Commission even before the Commission
7 issued an order in that case, we may have gotten that
8 cost-based rate at that time from the state not the
9 FERC.

10 Q. But isn't it Duke's position, and if you
11 look at Mr. Trent's testimony on page 13, Mr. Trent
12 specifically stated that under the RAA Duke would
13 have had to have gone to FERC to seek the cost-based
14 authority that you're speaking of?

15 MS. SPILLER: I'm going to object only in
16 that the witness doesn't have the document to which
17 Ms. Bojko is referring.

18 EXAMINER STENMAN: Overruled.

19 MS. BOJKO: Could your counsel please
20 provide you a copy of Mr. Trent's testimony.

21 Thank you.

22 A. What page again?

23 Q. Page 13, please. If you look at line 10,
24 the question, are you there, sir?

25 A. I am.

1 Q. If you look at line 10 on page 13, the
2 question is: "You indicated previously that under
3 the RAA an FRR entity can seek a cost-based capacity
4 charge from FERC." Did I read that correctly?

5 A. I think so.

6 Q. And then it goes on to say: However,
7 after the Commission, I'm paraphrasing as well, so
8 tell me if it's a fair representation that after the
9 Commission's ruling in the AEP case, that now you
10 believe that the law has changed in the state and
11 that you could come before the Commission instead of
12 FERC.

13 A. Yeah, first of all, I think the question
14 that was asked is that we could seek a cost-based
15 rate at the FERC, and I don't think it means that we
16 had only that option, which is what I took from your
17 question. But, yeah, in our view the landscape
18 changed in Ohio when the Commission declared on
19 July 2nd, 2012, that capacity was a noncompetitive
20 wholesale rate.

21 Q. And isn't it true that you could not go
22 to FERC prior to the Commission's order being issued
23 in the AEP capacity case because in Case No.
24 11-2641-EL-RDR Duke committed to not make such a FERC
25 filing? Is that correct?

1 A. We made that commitment and I would
2 suggest also that in light of AEP's case it's moot
3 because FERC objected to that filing.

4 MS. BOJKO: Your Honor, I move to strike
5 anything after "We made that commitment."

6 EXAMINER STENMAN: Motion denied.

7 Q. Mr. Wathen, it's the company -- you're
8 not going back on that commitment now, are you, that
9 you made in 11-2641? You agreed in 11-2641 in the
10 stipulation filed in that case to not seek cost-based
11 capacity charge from FERC; is that correct?

12 MS. SPILLER: I'm going to object to
13 the -- excuse me, if I could object to the
14 characterization of reference of Duke Energy Ohio
15 going back on its commitments.

16 EXAMINER STENMAN: You can answer the
17 question.

18 A. I'm unaware of any filing at the moment,
19 any plan to file any filing at the FERC under a 205
20 filing for capacity service.

21 Q. And that's because, as your counsel just
22 pointed out, Duke made the commitment in the
23 stipulation filed in 11-2641; is that correct?

24 A. We made that commitment. However --

25 Q. Thank you.

1 A. Again, it's moot because the file was
2 rejected anyway.

3 Q. Thank you. That's all I asked,
4 Mr. Wathen, is whether that commitment was made in
5 that stipulation.

6 And on page 17 of your testimony, if you
7 could turn there, please, on page 17 you describe the
8 deferral request that you are seeking in this
9 application; is that correct?

10 A. It describes why. There's a question and
11 answer about why. Is that, I don't know if that's a
12 what, but...

13 Q. Well, sir, don't you state on page 17
14 that you're requesting to defer costs incurred
15 beginning August 1st, 2012?

16 A. Yes, but you asked me, you asked me what
17 are we deferring, and I'm telling you the questions
18 and answers were why we deferred, so.

19 Q. I just asked you if you were describing
20 the deferral request on that page.

21 A. And, again, I'm saying we described the
22 why part of it.

23 Q. Okay. Thank you.

24 And so just so we're clear you are
25 requesting deferral of costs incurred beginning

1 August 1st, 2012; is that correct?

2 A. That's correct.

3 Q. Okay. And that would include costs
4 incurred prior to the filing of the application in
5 this case which was done on August 29th, 2012; is
6 that correct?

7 A. By four weeks, yes.

8 Q. So Duke is asking for the recovery of
9 costs incurred prior to the date of its application
10 in this case; is that right?

11 A. That's right.

12 MS. SPILLER: Objection. Asked and
13 answered.

14 EXAMINER STENMAN: Overruled.

15 Q. And Duke is asking for the recovery of
16 costs incurred prior to the date of any order issued
17 in this case; is that right?

18 A. Generally the orders come out after the
19 application, if the application wasn't filed, then
20 yes, that's true.

21 Q. Thank you. And Duke is seeking to
22 collect those costs incurred beginning August 1st,
23 2012, through a rider mechanism; is that correct?

24 A. We are proposing a rider mechanism to be
25 recovered in a future, in another filing, yeah.

1 Q. Okay. Speaking of that subsequent
2 filing, it's your position that Duke will file the
3 amount to be collected in what I think you're
4 referring to as initial rider rates and that would be
5 done within 60 days after the Commission's order
6 approving the deferral request in this proceeding; is
7 that accurate?

8 A. That's our proposal.

9 Q. And when would the rider then begin
10 collecting for those deferred costs?

11 A. Shortly after the Commission approves the
12 rider rates.

13 Q. And when you say "shortly after," would
14 it be like the first billing cycle after the
15 Commission's approval?

16 A. It could be the first billing cycle, the
17 first billing cycle of the month, it could be
18 whenever the Commission says so.

19 Q. So assuming the Commission issues an
20 order and approves the rider in this case, let's say
21 they do it at their July 3rd Wednesday Commission
22 meeting, you would then file the initial rider rate
23 filing by September 1st, which would be within 60
24 days; is that right?

25 A. Assuming that's how the Commission

1 orders. I mean, they will probably have some say
2 about when we make that filing.

3 Q. Okay. But your proposal in your
4 application is to do it in that fashion. Once the
5 order is issued, then within 60 days you're going to
6 file the initial rider rate filing.

7 A. Again, assuming the Commission approves
8 our proposal, yes.

9 Q. And then after that 60-day filing is,
10 assuming that, and that filing, just to be clear, is
11 that it will be a request with regard to the
12 allocation of the costs and the proposed rate design;
13 is that accurate?

14 MS. SPILLER: I'm going to object to the
15 relevance of a subsequent proceeding regarding the
16 establishment of rider rates, it's irrelevant to the
17 scope of this proceeding.

18 EXAMINER STENMAN: Overruled.

19 A. I would expect those two items to be at
20 least included. We really haven't settled the
21 duration of recovery either so that would be another
22 element of the discussion, so.

23 Q. I'm sorry, Mr. Wathen, do you not testify
24 in your testimony here today that the purpose of the
25 application would be within 60 days of an order in

1 this case, that you would file a subsequent order
2 within 60 days in that subsequent -- or, subsequent
3 filing in 60 days, I apologize, and that subsequent
4 filing would include the allocation of costs in
5 proposed rate design?

6 A. Well, I'm not sure you missed my meaning.
7 One of the elements would have to be are we spreading
8 out the costs over three years, five years, seven
9 years, however long, so that's a relatively important
10 issue as well, so.

11 Q. So the answer is yes, in this application
12 you are setting forth that subsequent 60-day filing
13 at least in part of what you believe the subject of
14 that filing will be; is that correct?

15 A. I believe that what we're setting forth
16 to defer, essentially, to that second filing would be
17 the amount of recovery. The details of allocating it
18 to classes, the rate design, annualized amount would
19 be left to that case.

20 Q. You're not disagreeing with me that in
21 that subsequent filing you would have to demonstrate
22 the allocation of cost and the proposed rate design,
23 right?

24 A. Absolutely, that's part of the process.
25 One of the two things that I mentioned, yeah.

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1 Q. Okay. You mention it in this case, in
2 this application; is that right?

3 A. Yes.

4 Q. Okay. So let's go back to my
5 hypothetical. Say that the Commission approves --
6 issues an order in this case on July 3rd approving a
7 deferral rider mechanism for the deferral of costs
8 and parties intervene to object to the way that you
9 proposed your rate design or your allocation of
10 costs, and then that proceeding would take a couple
11 months to resolve those issues; is that how you
12 envision it?

13 A. I expect it will take more than a day,
14 yes.

15 Q. And then so then if the Commission
16 approves the rider rates, say it takes a couple
17 months and they approve in the November 6th meeting
18 the rider would begin to be collected from customers
19 either within a couple weeks or the next billing
20 cycle as you stated earlier; is that a fair
21 characterization?

22 A. We can't begin recovery until the order,
23 right.

24 Q. So the costs that this rider that is
25 eventually going to be approved by the Commission,

1 the costs that would be collected from customers
2 would include costs that have been incurred from
3 August 1, 2012, until the date that the issue -- that
4 an order is issued approving the actual allocation of
5 the cost and the amount of rider -- of the rider
6 mechanism that you just referenced, and that could
7 potentially be December, 2013, which would be a year
8 and a half worth of costs before the rider actually
9 goes into effect, is that fair?

10 A. That's true and it's not uncommon.

11 Q. And, sir, the company in this proceeding
12 is not proposing that a SEET calculation be
13 conducted; is that accurate?

14 A. That a SEET calculation be conducted as
15 part of this proceeding?

16 Q. Yes.

17 A. We filed a SEET application already and
18 separately for 2012.

19 Q. So the answer is no.

20 A. We didn't file a SEET application with
21 our August 29th application.

22 Q. So the answer is no, you're not asking
23 the Commission to perform a SEET calculation in this
24 proceeding.

25 A. We didn't file a SEET application in this

1 proceeding.

2 Q. And you're not asking the Commission to
3 do so, are you?

4 A. There's nothing to rule on. How can they
5 rule on something that doesn't exist?

6 Q. Right, so your answer to my question is
7 no, sir, right?

8 A. I'm telling you that we don't have a SEET
9 application in front of the Commission in this
10 docket --

11 Q. Thank you.

12 A. -- for them to rule on.

13 Q. And that proceeding that you're
14 referencing is Case No. 13-804-EL-UNC where that SEET
15 application was filed?

16 A. I'll take your word on the docket number.

17 Q. And you stated earlier today that you're
18 familiar with that application, I think it was done
19 under your group's control or purview; is that
20 correct?

21 A. That's correct.

22 Q. And Duke's application was submitted
23 pursuant to 4928.143(F) and Rule 4901:1-35-10, is
24 that accurate?

25 A. The 4928.143(F) I do know, the other one

1 I don't know, so.

2 Q. And Duke is seeking that the SEET be
3 applied in a manner consistent with the ESP
4 stipulation and recommendation that was applied by
5 the Commission in Duke's ESP proceeding which was
6 case 11-3549; is that accurate?

7 A. I'd probably characterize it differently.
8 We applied the agreement that we reached in that
9 stipulation to the results of the SEET and that's --
10 incorporated those.

11 Q. So you're disagreeing with the words I
12 said, that it would be applied in a consistent manner
13 with the ESP stipulation?

14 A. No, I just -- you said that the SEET
15 would be applied to the stipulation, and I'm saying
16 the stipulation agreements were applied to come up
17 with the SEET.

18 Q. And you're referencing that in the filing
19 Duke specifically set forth a SEET threshold of
20 15 percent; I believe you had a discussion with
21 Ms. Grady about that this morning.

22 A. The 15 percent threshold was an agreement
23 in the stipulation in 3549.

24 Q. Okay. And also in that ESP stipulation
25 there was a provision that states how the SEET would

1 be administered, is that accurate?

2 A. That's correct, Attachment H.

3 Q. And that was a bargained-for provision of
4 the ESP; is that correct?

5 A. It was one of the provisions of the ESP,
6 yes, as I said.

7 Q. It was an agreement that all parties
8 reached; is that correct?

9 A. Most of the parties signed the
10 stipulation, so I don't know if I'd say all, but most
11 of the parties signed the stipulation.

12 Q. And the stipulation contained a SEET
13 provision that set forth the threshold that you just
14 discussed as well as the methodology of that, how the
15 SEET is administered?

16 A. Well, I think we established that, yes.

17 MS. BOJKO: Your Honor, at this time I
18 would like to have marked Kroger Exhibit 8.

19 EXAMINER STENMAN: 8.

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

21 EXAMINER STENMAN: You may.

22 MS. BOJKO: I would like to have marked
23 as Kroger Exhibit 8 which would be an application of
24 Duke Energy Ohio -- oh, I'm sorry. Strike that.

25 I apologize. Kroger 8 will be the

1 opinion and order issued in Case No. 11-3549-EL-SSO.

2 May I approach again?

3 EXAMINER STENMAN: Yes.

4 It will be so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. (By Ms. Bojko) Mr. Wathen, do you have in
7 front of you what's previously been marked as Kroger
8 Exhibit 8?

9 A. I do.

10 Q. Do you recognize that document?

11 A. From the front page it looks like the
12 order in the ESP case, 3549.

13 Q. And if you could turn to, well, first of
14 all, let's put it in context, starting on page 9 of
15 the opinion and order, the Commission is -- begins
16 summarizing the stipulation. Do you see that on page
17 9?

18 A. I do.

19 Q. And then if you turn, if you go through
20 to page 35, the Commission is still summarizing the
21 stipulation, quite lengthy stipulation, and if you
22 look at section K --

23 A. Yes.

24 Q. -- do you see here a summary of the
25 stipulation, the provision that was specific to the

1 SEET that we just discussed?

2 A. I do.

3 Q. So this was a provision that the
4 Commission highlighted as part of the ESP settlement;
5 is that correct?

6 A. Apparently.

7 Q. And, sir, but for the stipulation that
8 was entered into that case Duke would not have had
9 this specific methodology or the specific threshold
10 that was established; is that correct?

11 A. It's hard to say. The SEET -- the SEET
12 rules don't really specify a single ROE but they do
13 lay out a number of parameters that are included in
14 that Attachment H.

15 Q. Right. See but for the stipulation where
16 all parties agreed to a specific threshold and to a
17 specific way to administer the SEET test for Duke,
18 this would not have been available to Duke; is that
19 correct?

20 MS. SPILLER: I'm going to object to the
21 form of the question. I think it assumes facts not
22 in evidence.

23 EXAMINER STENMAN: Overruled.

24 A. Again, the Commission held a separate
25 proceeding for administering the SEET and they laid

1 out several guidelines as to how that would be
2 administered. Attachment H mirrors many of those
3 guidelines to some extent. Whether or not the
4 Commission in an independent case would levy
5 15 percent is difficult to say.

6 Q. Great. When the stipulation went a step
7 further than that separate proceeding you just
8 discussed and set a threshold for Duke specifically
9 at 15 percent; is that correct?

10 A. The way I would characterize it is the
11 stipulation gave specificity where there was none
12 before, so, on certain things.

13 Q. Right, the stipulation, but for the
14 stipulation being entered into you would not have had
15 that specificity anywhere else at this time that the
16 stipulation was entered into; is that correct?

17 A. That's true, but we were still subject to
18 the SEET.

19 Q. Okay. I guess are you questioning the
20 administration of the SEET, sir, through the
21 stipulation?

22 A. I'm not sure I follow your question.

23 Q. Are you saying that the SEET was not set
24 forth in specific detail in the stipulation?

25 A. The Commission never defined what

1 significantly excessive was in a round number.

2 Q. Okay. Maybe it will be easier if we do
3 go to the application, and this is --

4 MS. BOJKO: If I could have this marked
5 as Kroger Exhibit 9, please.

6 EXAMINER STENMAN: It will be so marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

9 EXAMINER STENMAN: Yes.

10 MS. BOJKO: Kroger Exhibit 9 will be
11 marked for identification purposes as being the
12 application of Duke Energy Ohio in the administration
13 of the significantly excess earnings test.

14 EXAMINER STENMAN: It will be so marked.

15 MS. BOJKO: And for the record, your
16 Honors, this application was filed on April 15th and
17 has been referenced throughout Mr. Wathen's testimony
18 today.

19 Q. (By Ms. Bojko) Mr. Wathen, do you have
20 before you what's been identified as Kroger Exhibit
21 No. 8 -- 9. Sorry.

22 A. I do.

23 Q. And could you turn to page 2 of that
24 application the company filed. Mr. Wathen, doesn't
25 it specifically quote from the stipulation starting

1 on page 2 and going on to page 3 with regard to how
2 the SEET would be administered?

3 A. I don't have actually Attachment H in
4 front of me so I can't compare but I would assume
5 that's the case.

6 Q. Sir, isn't it in block quote format with
7 the citation back to Attachment H, page 2 of 2, for
8 the ESP opinion and order and stipulation and
9 recommendation?

10 A. That's the reference, but I can't
11 validate it without looking at the other document,
12 so.

13 Q. Are you not taking that your counsel
14 appropriately cut and pasted the SEET from the
15 application or the application -- I'm sorry, strike
16 that.

17 You're not trying to object or say that
18 this isn't a cut and paste from the stipulation that
19 was filed in the ESP proceeding that your counsel put
20 in their own application that they filed on Monday,
21 are you?

22 A. I have extreme trust in my counsel to cut
23 and paste.

24 Q. Thank you.

25 MS. SPILLER: I'm not going to object to

1 that.

2 Q. So, again, sir, Mr. Wathen, it's fair to
3 assume the cut and paste is from the ESP application
4 so your, from the ESP stipulation -- strike that.
5 We'll start over.

6 Is it fair to assume that the ESP
7 stipulation is quoted here and that the Duke's
8 application relies on the ESP stipulation language
9 for both the threshold and the administration of
10 Duke's SEET test?

11 A. It's fair to assume that because I sure
12 hope it does, so.

13 Q. Mr. Wathen, your group was responsible
14 for this application; isn't that right?

15 A. The Legal Department filed this. We did
16 the testimony and the exhibits.

17 Q. You're not trying to state here today
18 that the ESP stipulation wasn't the basis of this
19 filing as it says in Duke's application, are you?

20 MS. SPILLER: I'm going to object. I
21 think this misstates Mr. Wathen's testimony. He
22 doesn't have --

23 EXAMINER STENMAN: Overruled.

24 MS. SPILLER: -- a comparison document.

25 A. I said nothing of the sort. Didn't

1 intend to.

2 Q. So the application that was filed on
3 April 15th in the SEET case, let's go back, No.
4 13-804-EL-UNC, is based upon the ESP stipulation that
5 Duke and the parties filed in the ESP Case No.
6 11-3549-EL-SSO; is that accurate?

7 A. There was every attempt to follow the
8 guidelines in Attachment H when we filed.

9 Q. Mr. Wathen, let's turn to page 17 of
10 Kroger Exhibit 8 that you have in front of you. Are
11 you there?

12 A. I am.

13 Q. And, again, we're in -- we're still in
14 the summary of the stipulation in the Commission
15 order because that started on page 9, if you recall,
16 and the paragraph, the first full paragraph at the
17 top states: "With respect to Rider ESSC, Duke
18 witness Wathen avers that Rider ESSC is necessary
19 because Duke is required to supply capacity for
20 Duke's entire footprint until at least the 2015-2016
21 PJM planning year."

22 Did I read that correctly?

23 A. You read that part correctly.

24 Q. And then it states, the last sentence of
25 the same paragraph: "According to Mr. Wathen, Rider

1 ESSC is a means of providing economic stability and
2 certainty during the term of the ESP, while
3 recognizing the value of Duke's commitment of its
4 capacity and the separation of the generating
5 assets" -- "generation assets." Did I read that
6 correctly?

7 A. Yes, you did.

8 Q. Now, if we could turn to page 21 of the
9 opinion and order, again, we're still in the summary
10 section of the Commission's order, summary of the ESP
11 stipulation to be exact, and paragraph 7a on that
12 page states: "For calendar years 2012, 2013, 2014,
13 of the ESP, Duke shall recover annually, via an
14 unavoidable generation charge, Rider ESSC, an amount
15 intended to provide stability and certainty regarding
16 Duke's provision of retail electric service as an FRR
17 entity while continuing to operate under an ESP."
18 Did I read that correctly?

19 A. You did.

20 Q. Okay. Now if we could go to page 41, if
21 you will go to page 41 of the opinion and order,
22 Mr. Wathen. Here you will see Section III is
23 entitled "Consideration of the Stipulation." So it's
24 fair to assume that the order is done summarizing the
25 settlement and now they're going to move on to

1 considering the settlement; is that a fair
2 characterization? Is that your understanding?

3 MS. SPILLER: I'm going to --

4 Q. Is that your understanding?

5 MS. SPILLER: I'm sorry. I just wanted
6 to note an objection that I don't think the first 41
7 pages are just a summary of the stipulation in that
8 they include discussion from the Commission. So it's
9 not a fair characterization.

10 EXAMINER STENMAN: Well, the order speaks
11 for itself. You can ask your question.

12 MS. BOJKO: I think there's a question
13 pending.

14 (Record read.)

15 A. I could, I mean, without reading the
16 entire order again I can't tell you if they summarize
17 it further but they're done at that point.

18 Q. Okay. Section II was called summary of
19 the stipulation, Section III is now called
20 consideration of the stipulation; is that right?

21 A. Yeah.

22 Q. All right.

23 A. Speaks for itself as you said.

24 Q. It took just a little bit, sir.

25 If you turn then to page 42, the

1 Commission specifically states, the second sentence
2 of the first paragraph in section A: "Moreover,
3 Ms. Janson opines that all of the issues raised by
4 the signatory parties in negotiations were thoroughly
5 reviewed and addressed and all parties had an
6 opportunity to express their opinions on each issue
7 during negotiations that occurred over a period of
8 three months and involved almost daily meetings in
9 the weeks leading up to the filing of the
10 stipulation." Do you see that?

11 A. I do.

12 Q. And if you go down further in the next
13 paragraph, the Commission goes on to explain that the
14 stipulation addressed and resolved a wide range of
15 issues and that the parties expended a great deal of
16 time and effort to resolve those issues. Is that a
17 fair characterization of the next couple paragraphs,
18 sir?

19 MS. SPILLER: And, your Honor, I'm going
20 to object. I think the stipulation, as the Bench
21 just noted, speaks for itself and so simply reading
22 portions of it into the record, I don't think that is
23 a relevant exercise.

24 EXAMINER STENMAN: Well, I think we've
25 all been reading a lot into the record so there seems

1 to be no point in stopping now. The objection's
2 overruled.

3 Q. Mr. Wathen, I actually didn't read that,
4 I asked if that was a fair characterization of the
5 next few paragraphs.

6 A. Well, you'll have to repeat it again
7 because I was looking for what you were reading, so
8 what was your --

9 Q. I wasn't reading.

10 A. I know you weren't reading.

11 Q. In the second paragraph and in the third
12 paragraph the Commission goes on to explain that the
13 stipulation addressed and resolved a wide range of
14 issues and that the parties expended a great deal of
15 time and effort to resolve those issues. Is that
16 your understanding of those paragraphs?

17 A. I understood that the Commission resolved
18 all issues at issue in that case, but competitive
19 retail service was the only issue in that case.

20 Q. Sir, I asked you nothing about a
21 substantive piece.

22 MS. BOJKO: I move to strike the last
23 portion of his answer.

24 EXAMINER STENMAN: Overruled. Denied.

25 Q. I guess since I can't ask you a fair

1 characterization we'll have to read it into the
2 record. So does it state, "Upon review of the
3 stipulation, the Commission observes that, based upon
4 the wide-range of issues addressed and resolved in
5 the stipulation, which affect a very diverse and
6 experienced group of parties that signed the
7 stipulation, it is evident that the parties expended
8 a great deal of time and effort to resolve the issues
9 in these proceedings." Did I read that correctly?

10 A. You read that correctly.

11 Q. And now if you turn to page 43, the
12 Commission goes on to state that the stipulation as a
13 whole benefits all stakeholders and that the
14 stipulation as a package benefits ratepayers and
15 promotes the public interest. Do you see those
16 statements?

17 A. I think so. Was it your second
18 paragraph, is that what you're referring to?

19 Q. Again, I wasn't trying to read it. It's
20 the general sense of those. But the specific words I
21 guess could be found in the second full paragraph,
22 first sentence, and then in the last full paragraph
23 on that page, if you need to see --

24 A. I'm reluctant to paraphrase so, if you
25 don't mind, let's continue to read if you don't mind.

1 The stipulation speaks for itself, so.

2 Q. This isn't the stipulation, first of all,
3 this is the --

4 A. The order.

5 Q. -- the opinion and order; is that right?
6 Well, the first -- second paragraph says "As noted by
7 the witnesses supporting the stipulation," you
8 actually were a witness in that case, weren't you?

9 A. I was.

10 Q. And you filed supporting testimony, I
11 think we talked about that earlier today; is that
12 right?

13 A. I filed supporting testimony in the case
14 that was before the Commission, the 4928, yes.

15 Q. Right. So let's go back. This sentence
16 says "As noted by the witnesses supporting the
17 stipulation, it appears that, as a whole, the
18 provisions of the stipulation provide benefits to all
19 stakeholders." Did I read that correctly?

20 A. You've read it twice correctly, yeah.

21 Q. Okay. And now if we go down to the last
22 paragraph, "Accordingly, based upon the evidence on
23 the record in these proceedings, the Commission finds
24 that the stipulation, as a package, benefits
25 ratepayers and promotes the public interest." Did I

1 read that correctly?

2 A. You read that correctly too.

3 MS. BOJKO: Could I have one moment.

4 I have no further questions, your Honor,
5 thank you.

6 EXAMINER STENMAN: Thank you.

7 IEU.

8 THE WITNESS: Should I clear a space?

9 MR. OLIKER: Not just yet, Mr. Wathen.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Oliker:

13 Q. Good afternoon, Mr. Wathen.

14 A. Good afternoon.

15 Q. My name is Joel Oliker, I think we've met
16 before a few times.

17 A. Yes.

18 Q. I hope that my questions will be pared
19 down a little bit but I'd like to start with your
20 background. Your testimony indicates that you joined
21 Cincinnati Gas & Electric in 1998; is that true?

22 A. No, that's not correct. I joined Cinergy
23 Services in 1998.

24 Q. And would you agree Cinergy Services is
25 now part of Duke Energy Ohio?

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1 A. No. Cinergy Services was essentially,
2 I'm not sure what you'd characterize it but it no
3 longer exists. I work for Duke Energy Business
4 Services now.

5 Q. Okay. What did you do when you worked
6 for Cinergy Services?

7 A. When I first started with the company?

8 Q. Yes.

9 A. I was in the forecasting group, financial
10 forecasting, I did something not unlike what Brian
11 Savoy does now.

12 Q. And what was Cinergy?

13 A. What was Cinergy?

14 Q. Yes.

15 A. Cinergy was the result of a merger
16 between Cincinnati Gas & Electric and PSI Energy
17 circa 1994.

18 Q. Okay. And eventually Cinergy was
19 purchased by, I'm sorry, did you say again the
20 evolution between Cinergy, CG&E, and Duke -- could
21 you talk about that?

22 A. Some of it was before my time but I'll go
23 back to the history I know. Cincinnati Gas &
24 Electric and PSI merged in 1994, thereabouts, to
25 become Cinergy. I joined Cinergy in 1998. In May of

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1 2005 they announced a merger with Duke Energy Ohio --
2 Duke Energy, rather, that consummated in April of
3 2006 to the company that existed. Last year, on
4 July 2, 2012, we merged with Progress Energy to
5 become the company we are now.

6 Q. Okay. So I think we've established
7 Cinergy, Cincinnati Gas & Electric, and Duke
8 Energy Ohio are all related entities involving the
9 same assets for the most part.

10 MS. SPILLER: Could I have that question
11 read back.

12 (Record read.)

13 MS. SPILLER: I'm going to object to the
14 form of the question.

15 A. I'm not entirely sure what you mean by
16 that so can you explain or narrow down your question
17 a bit? Sorry.

18 Q. Okay. Let's come at that from a
19 different angle. Around the time you were at Cinergy
20 Services would you agree that Cincinnati Gas &
21 Electric Company filed an electric transition plan?

22 A. In 1999 we filed a transition plan,
23 that's true.

24 MR. OLIKER: Okay. Maybe I can short
25 circuit this, your Honor. I'd like to take

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1 administrative notice of two documents from CG&E's
2 electric transition plan.

3 EXAMINER STENMAN: Let's have those
4 marked as exhibits.

5 MR. OLIKER: Sure. I will try to shorten
6 my trips. First I'd like to mark as IEU-Ohio Exhibit
7 12 the direct testimony of Howard Pifer.

8 EXAMINER STENMAN: It will be so marked.

9 MR. OLIKER: Mr. Wathen, this is a
10 certified copy from the Commission.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. OLIKER: And can I also have marked
13 the other document, your Honor, to save some trips?

14 EXAMINER STENMAN: Yes.

15 MR. OLIKER: As IEU-Ohio Exhibit No. 13
16 I'd like to mark the stipulation and recommendation
17 in Cincinnati Gas & Electric's electric transition
18 plan case.

19 EXAMINER STENMAN: It will be so marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 EXAMINER STENMAN: We'll also take
22 administrative notice of these exhibits.

23 MR. OLIKER: Thank you.

24 MS. SPILLER: Your Honor, I guess, and
25 Mr. Oliker, I'm assuming this was just pulled from

1 the Commission's docket.

2 MR. OLIKER: I've given Don a certified
3 copy of Howard Pifer's testimony and -- Mr. Wathen,
4 sorry, and --

5 EXAMINER STENMAN: Can you use your
6 microphone.

7 MR. OLIKER: Mr. Wathen has a certified
8 copy of Howard Pifer's testimony and I just pulled
9 the stipulation and recommendation from the
10 Commission's website.

11 MS. SPILLER: I guess I'm just asking
12 because it shows that it was confidential, filed
13 under seal, I don't know if the --

14 MR. OLIKER: It's on the website. There
15 may have been an entry taking confidential portions
16 out but I don't believe that one contains
17 confidential information.

18 MS. SPILLER: Okay. Thank you.

19 Q. (By Mr. Oliker) Mr. Wathen, you've had an
20 opportunity to look at the two documents that I've
21 put before you. Would you agree that the first
22 document marked as IEU-Ohio Exhibit No. 12 contains
23 the direct testimony of Howard Pifer?

24 A. That's what it -- excuse me, that's what
25 it says on the front, Howard Pifer.

1 Q. And you would agree that in that case
2 Duke Energy Ohio requested recovery of generation
3 transition costs.

4 MS. SPILLER: Object to the relevance.

5 EXAMINER STENMAN: Overruled.

6 A. I have a very faint memory of that case
7 and I wasn't involved in the Rate Department at that
8 time. I do know that we requested recovery of some
9 stranded costs associated with two plants I believe.

10 Q. You do remember the two plants, okay,
11 thank you.

12 And Duke Energy Ohio also requested
13 recovery of regulatory transition charges in that
14 case, correct?

15 MS. SPILLER: Objection to the relevance.

16 MR. OLIKER: Would you like me to
17 respond, your Honor?

18 EXAMINER STENMAN: Yes.

19 A. Yeah, there were some I think we had, I
20 can go through it all if you want. I mean we had
21 some deferred regulatory assets that were unrecovered
22 and needed to be recovered that were essentially
23 going to be stranded as a result of the competitive
24 move. We asked for about \$115 million in various
25 transition costs for customer billing, setting up

1 shop and so on, and at the initial application we had
2 some stranded costs associated with two plants.

3 Q. Okay. And would you agree that Witness
4 Pifer provided an analysis of the stranded cost
5 recovery in the testimony that's been presented
6 before you?

7 A. My memory of this, and it's been a long
8 time since I've read this testimony, was that he did
9 a study, a unit-by-unit study of our generating
10 assets and that much -- much more than that, I don't
11 know, without reviewing the testimony again.

12 Q. Okay. Well, let's just take a quick
13 look. Maybe before that, sorry, I'm trying to find
14 my page number, would you agree that the term
15 "transition cost" refers to the difference between
16 the revenue requirement the utility would have under
17 regulation and the revenues it is likely it will
18 receive in a competitive market?

19 MS. SPILLER: I'll again object to the
20 relevance.

21 EXAMINER STENMAN: Do you have a
22 response?

23 A. I have --

24 EXAMINER STENMAN: Mr. Wathen, the
25 question is to Mr. Oliker.

1 MR. OLIKER: Your Honor, I think there's
2 a legitimate question whether this proceeding
3 involves an untimely request for transition costs and
4 I'm trying to explore what the company requested,
5 what they received, and any rights they may have
6 given up in this proceeding.

7 EXAMINER STENMAN: Objection overruled.

8 MS. SPILLER: Thank you, your Honor.

9 A. I do not agree with that. That
10 characterization of transition cost is exclusively
11 related to what's identified.

12 Q. Could you turn to page 10 of IEU-Ohio
13 Exhibit 12.

14 A. I didn't mark them so is that Pifer's
15 testimony again?

16 Q. That's correct, Mr. Wathen.

17 A. And page what?

18 Q. Page No. 10. Tell me when you're there.

19 A. Okay.

20 Q. And tell me if I read this correctly
21 starting on line 1: "The term transition costs
22 refers to the difference between the revenue
23 requirements a utility would have under regulation
24 and the revenues it likely will receive in a
25 competitive market."

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1 A. I see that Mr. Pifer said that, yes.

2 Q. Okay. And do you agree that Mr. Pifer
3 considered capacity costs as a potential component of
4 stranded cost recovery?

5 MS. SPILLER: Objection.

6 EXAMINER STENMAN: Overruled.

7 A. Again, I haven't looked at his testimony
8 in years. I don't remember what all he talked about,
9 so.

10 Q. Could you take a look at page 25, please.

11 A. And I am reluctant to answer questions
12 about his testimony without reading it in its
13 entirety, so. I'm on 25.

14 Q. And tell me if I read this correctly, on
15 line 7: It says, "Please summarize the modeling
16 methodology used" and then, going down to line 11,
17 "Market structure. Will the competitive market have
18 separate payments to generators for energy and
19 capacity or will it have only energy and payments,
20 (i.e., energy-only market), but the value of capacity
21 implicitly included within the energy payment?" Did
22 I read that correctly?

23 MS. SPILLER: Your Honor, at this point
24 as this witness has indicated he has not read this
25 testimony. I think it unfair just to ask if parts of

1 it are being read correctly.

2 MR. OLIKER: Your Honors, the witness
3 said he has read this testimony, it's just been a
4 while.

5 EXAMINER STENMAN: The objection's
6 overruled.

7 A. What lines were you reading again, Joe,
8 sorry.

9 Q. I was asking whether I read correctly
10 line 7 and then line 11 to 15. Would you like me to
11 read it again, Mr. Wathen?

12 A. No, that's all right. I've had enough
13 reading today. The "Market structure" section?

14 Q. Yes, did I read that section correctly?

15 A. I suppose you did, yeah.

16 Q. Okay. Now, Mr. Wathen, you would agree
17 that in the stipulation that was filed in that case
18 Duke Energy Ohio withdrew its request to recover
19 generation transition charges.

20 A. Inasmuch as I know we didn't ask for any,
21 I assume we withdrew it, yeah. It didn't come in the
22 stipulation so I assume we withdrew it before it got
23 to the stipulation.

24 Q. Just so the record is clear, Mr. Wathen,
25 Duke Energy Ohio did initially ask for generation

1 transition charges, correct?

2 A. That's correct.

3 Q. Yeah. And the stipulation and
4 recommendation that was filed in that proceeding,
5 Duke agreed that it would not recover generation
6 transition charges, correct?

7 A. Can I read the stipulation too? How much
8 time should I take?

9 Q. I can maybe refresh your recollection if
10 that will make this easier. Please turn to IEU-Ohio
11 Exhibit No. 13.

12 MS. SPILLER: Your Honor, I would ask
13 that the witness be given time to read as much of the
14 document as he feels appropriate to answer questions.

15 MR. OLIKER: No objection, your Honor.

16 EXAMINER STENMAN: Mr. Wathen, please do
17 take all the time you need to answer questions.

18 A. You said you could narrow this down for
19 me.

20 Q. Yeah. I'm just trying to help move it
21 along. If you go to page 6 of the stipulation,
22 Mr. Wathen.

23 A. I'm there.

24 Q. Would you agree that Duke agreed, have
25 you had an opportunity to look at page 6, Mr. Wathen?

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1 A. Briefly.

2 Q. Would you agree that Duke forego the
3 right to recover generation transition charges on
4 that page?

5 A. I really don't see the words that we
6 forewent that recovery but it's not included in the
7 charge.

8 Q. Do you see No. 1, CG&E will not propose
9 the GTC rate as filed?

10 A. I do see that, yes.

11 Q. Do you remember what the GTC is,
12 Mr. Wathen?

13 A. Generation transition charge I think.

14 Q. Thank you. And would you agree that the
15 parties agreed Duke Energy Ohio would recover the
16 regulatory transition charges on page 6 of the
17 stipulation? If you'll look at No. 2.

18 A. We were allowed to recover regulatory
19 transition charges, again, you know, the
20 characterization of "regulatory" encompassed several
21 different kinds of cost, right.

22 Q. Yes. And would you agree that the
23 Commission issued an opinion and order approving this
24 stipulation?

25 A. I would agree since we have rates from

1 that.

2 Q. Would you agree that Duke received
3 additional generation increases after its electric
4 transition plan? Particular -- I'm sorry, I didn't
5 mean to interrupt you.

6 A. Can you repeat it, please?

7 Q. Would you agree that Duke Energy Ohio
8 received additional generation rate increases in its
9 rate stabilization plan?

10 MS. SPILLER: I'm going to object to the
11 relevance to the RSP.

12 EXAMINER STENMAN: Overruled.

13 A. I'm trying to remember the RSP. We had a
14 few new riders that were implemented, I do not
15 believe in the RSP that filing that base generation
16 rate was increased at all, so.

17 Q. Are you familiar with the POLR charge
18 that was authorized in this case, Mr. Wathen, and the
19 system reliability tracker?

20 A. That was authorized?

21 Q. Well, the right to file I suppose was
22 authorized in that case.

23 A. We, to my knowledge, never got a POLR
24 charge in that case. We got a system reliability
25 tracker that recovered our purchased power, our

1392

1 purchased capacity. But there was no POLR charge
2 that I'm aware of.

3 MR. OLIKER: Your Honor, I'd like to take
4 administrative notice of two documents from the RSP
5 case.

6 May I approach, please?

7 EXAMINER STENMAN: You may.

8 MR. OLIKER: I'd like to mark as IEU-Ohio
9 Exhibit No. 14 a stipulation and recommendation
10 involving Case No. 03-93-EL-ATA.

11 EXAMINER STENMAN: It will be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MS. SPILLER: And, your Honors, as
14 Mr. Oliker is distributing documents I would renew my
15 objection to the questions about the RSP, please.

16 EXAMINER STENMAN: Duly noted for the
17 record, and administrative notice will be taken of
18 IEU 14.

19 THE WITNESS: 14?

20 MR. OLIKER: Yes, 14.

21 I'd like to mark for identification as
22 IEU-Ohio Exhibit No. 15 the opinion and order
23 approving case -- the stipulation in Case No. 03-93.

24 EXAMINER STENMAN: It will be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

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1 EXAMINER STENMAN: And administrative
2 notice will be taken of IEU Exhibit 15.

3 Q. (By Mr. Oliker) First, Mr. Wathen, would
4 you agree that the -- let me strike that.

5 Do you see the documents that I placed
6 before you as IEU-Ohio Exhibit No. 14?

7 A. I do. I do.

8 Q. Does that appear to be the stipulation
9 and recommendation in Case No. 03-93?

10 A. It's the May 19th, 2004, stipulation
11 and -- that's right.

12 Q. You have no reason to believe it's an
13 inaccurate copy, do you, Mr. Wathen?

14 A. I trust you, Joe.

15 Q. Thank you, Don.

16 (Discussion off the record.)

17 Q. Would you agree that the stipulation
18 states that it did not amend the electric transition
19 plan stipulation unless specifically noted?

20 A. You're asking me if the stipulation made
21 that statement? Is that what you're asking me?

22 Q. Yes, I am.

23 A. Without looking through it, again, the 40
24 pages, I couldn't tell you off the top of my head.

25 Q. You can take as much time as you want, I

1 don't want to rush you, but I might be able to help
2 you if I direct you to page 20.

3 A. Okay.

4 Q. Looking at paragraph 21 would you agree
5 that this stipulation did not amend the electric
6 transition plan stipulation?

7 A. That's what it says.

8 Q. Okay. And would you agree that the
9 stipulation -- strike that.

10 Earlier you said that this stipulation
11 did not provide that Duke would collect a POLR
12 charge; is that correct?

13 A. I did not say that. You asked me if the
14 order did and the order did not.

15 Q. Thank you for that correction.

16 A. Yeah.

17 Q. But would you agree that the stipulation
18 provided that Duke would collect a POLR charge made
19 of two components?

20 A. I believe there was something we crafted
21 that would be a POLR charge in the stipulation, but
22 the stipulation was modified by the Commission in
23 September and further modified in November on entry
24 on rehearing that year.

25 Q. Okay. And one of the charges that the

1 stipulation contemplated was the systemwide
2 reliability tracker, correct?

3 A. The way it was originally proposed or the
4 way it was ultimately approved?

5 Q. The way it was approved and implemented.

6 A. No, the approved system reliability
7 tracker was exclusively for purchasing power above
8 our -- at our needs above our generation, so.

9 Q. Okay.

10 A. We're long -- I mean, we're short so we
11 had to buy power.

12 Q. Would you agree that the stipulation
13 provided that Duke would end the market development
14 period -- strike that.

15 Under the stipulation Duke agreed to end
16 the market development period for nonresidential
17 customers on December 31st, 2004?

18 A. That was what was proposed, yes. And for
19 residential on 12/31/05.

20 Q. Good memory.

21 A. Yeah.

22 Q. And the Commission did approve this
23 stipulation, correct?

24 A. No.

25 Q. With modifications?

1 A. They modified it substantially and it was
2 unacceptable to the company so we reached another
3 deal that was ultimately approved in November of
4 2004.

5 Q. And one of the items that resulted from
6 that I believe you said was the system reliability
7 tracker.

8 A. I think the system reliability tracker
9 term persisted throughout. I mean, the way it ended
10 up was that it was purchasing capacity.

11 Q. And Duke was able to true up that charge,
12 correct, on an annual basis?

13 A. That's correct. It was, at least during
14 the RSP period it was a nonbypassable charge for
15 customers to provide us with recovery of ensuring
16 that we had enough capacity for our entire footprint.

17 Q. Okay. Now, turning to the application in
18 this proceeding, are you familiar with the standard
19 filing requirements, Mr. Wathen?

20 A. Yes, I am.

21 Q. And Duke has not included in the
22 application that it filed a complete operating
23 statement of its last fiscal year showing in detail
24 all receipts, revenues and income from all sources,
25 all of its operating costs and other expenditures,

1 and any analysis that the public utility deems
2 applicable to the matter referred to in said
3 application.

4 A. I believe we filed everything the
5 Commission needs for its determination in this
6 proceeding.

7 Q. Mr. Wathen, that was not my question.
8 Could you please answer the question I just asked
9 you.

10 A. We have filed financial statements, for
11 instance. Provided full-blown -- I mean, cash flow
12 statement, income statement, balance sheet for the
13 services being provided in this case.

14 Q. Have you included all receipts, revenues
15 and incomes from all sources?

16 A. The revenue line would include all those
17 revenues, yes.

18 Q. Revenues for what, Mr. Wathen?

19 A. For the, revenues being recovered by the
20 legacy generation assets.

21 Q. And did Duke include an income state --
22 strike that.

23 Did Duke include a statement of the
24 income and expense included under the application
25 filed?

1 A. No. My testimony includes the expenses
2 that were being relied upon to calculate the costs.
3 Mr. Savoy included expenses used in his forecast.

4 Q. Mr. Wathen, you would agree that Duke did
5 not make any attempt to comply with the standard
6 filing requirements, correct?

7 A. The, insofar as we are not asking for a
8 rate increase in this proceeding the standard filing
9 requirements don't apply so there was no need to
10 create a set of standard filing requirements under
11 49 -- under the Ohio Revised Code 4901-7 --
12 Administrative Code, sorry.

13 Q. Mr. Wathen, just so we're clear, Duke has
14 not attempted to comply with the standard filing
15 requirements, correct?

16 MS. SPILLER: Objection. Asked and
17 answered.

18 EXAMINER STENMAN: Overruled.

19 A. Again, the standard filing requirements
20 don't apply because we're not asking for a rate
21 increase in this proceeding, so there is no attempt
22 to file the standard filing requirements.

23 Q. Thank you.

24 And your application relies on FERC Form
25 1 data, correct?

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1 A. It does.

2 Q. Is the FERC Form 1 data subjected to a
3 review or audit process by the Commission staff?

4 A. I've been involved in Ohio for several
5 years and never known the staff to do a secondary
6 audit of what's already been audited by outside
7 auditors for each company, so.

8 Q. The answer --

9 A. No, they have not.

10 Q. Thank you.

11 Duke has not published the application
12 once a week for two consecutive weeks in a newspaper
13 published in general circulation in Duke's territory,
14 correct?

15 MS. SPILLER: Objection to the relevance.

16 EXAMINER STENMAN: Overruled.

17 A. You're, again, referring to requirements
18 for a rate increase and this is not a rate increase
19 so that wouldn't apply.

20 Q. I understand that you believe it does not
21 apply, but has Duke tried to comply with this
22 requirement?

23 A. It wouldn't be necessary, so we have not
24 complied with that requirement because there is no
25 requirement for this case.

1400

1 Q. Would you agree that the Commission staff
2 has not issued a Staff Report?

3 A. No report. There's testimony from a
4 staff witness, but no report.

5 Q. So as a result of there not being a Staff
6 Report Duke has not served a Staff Report on
7 municipalities in its service territory affected by
8 the application.

9 A. Well, again, you're speaking about
10 requirements that apply to a rate increase. This is
11 not a rate increase so we have not done that.

12 Q. And no opportunity to file objections to
13 a Staff Report was conducted, correct?

14 A. I'm not sure how you object to something
15 that wasn't filed, but no, so.

16 Q. Thank you.

17 And no property report as required by
18 Section 4905 Revised Code has been compiled by Duke
19 Energy Ohio, correct?

20 A. I think you're answering my question for
21 me now. 4905 is a ratemaking statute, we're not
22 asking for an increase in rates that that would apply
23 so we did not do that.

24 Q. The Commission has not established a date
25 certain test here, correct?

1 A. Same answer. We have not -- the
2 Commission has not established a test year. That
3 would be a ratemaking -- an increase in rates.

4 Q. And would you agree that the allocation
5 process used from the application has not been in
6 accordance with the cost allocation manual?

7 A. Our cost allocation manual?

8 Q. Yes.

9 A. It's consistent in some parts, not in
10 others.

11 Q. And the depreciation rates used in the
12 application were not the rates that were approved by
13 the Commission in your last base rate case, correct?

14 A. The last time generation depreciation
15 rates were set by this Commission was probably 1992,
16 and I know we've updated our rates since then under
17 deregulation so to my knowledge the Commission has
18 not addressed our depreciation rates in 23 years, 21
19 years.

20 Q. So the answer to my question is no.

21 A. I don't know how they would have, but
22 yeah. So no.

23 Q. And you're not providing any testimony
24 that when added to the current ESP the nonbypassable
25 charge you've requested in this proceeding would

1 allow the ESP to be more favorable than an MRO,
2 correct?

3 A. The ESP versus MRO test is a test of
4 competitive retail rates that would be achieved under
5 one statute under the SSO, 143 versus the other form
6 of the statute, 142. Neither one applies in this
7 case. We're not asking for a case under 4928 so the
8 requirement to do an MRO versus ESP test does not
9 apply in this case.

10 Q. So the answer to my question is you're
11 not offering such testimony.

12 A. There's no reason to, so no.

13 Q. You're familiar with Duke's original ESP
14 plan that was filed in 2011, correct?

15 A. Are you referring to the June filing?
16 June, '11, filing.

17 Q. Yes. Prior to the stipulation.

18 A. Yes, I am familiar.

19 Q. You submitted testimony in that
20 proceeding, correct?

21 A. I did.

22 MR. OLIKER: Your Honor, at this time I'd
23 like to mark an exhibit. I'd like to mark as
24 IEU-Ohio Exhibit 16 the redacted version of the
25 direct testimony of William Don Wathen in Case No.

1 11-3549.

2 EXAMINER STENMAN: It will be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 EXAMINER STENMAN: The Bench will also
5 take administrative notice of this exhibit.

6 MS. GRADY: Mr. Olikier, this is the
7 testimony in 11-3549?

8 MR. OLIKER: In support of the original
9 application.

10 MS. GRADY: Oh, okay, I'm sorry. Because
11 I noted that Mr. Lang had introduced another portion
12 of testimony. Thank you.

13 Q. (By Mr. Olikier) Mr. Wathen, do you see
14 the document that's been marked as IEU-Ohio No. 16?

15 A. I do.

16 Q. Is that your prefiled testimony in
17 support of Duke Energy Ohio's original ESP
18 application?

19 A. I believe so.

20 Q. Does it appear to be a true and accurate
21 copy?

22 A. It appears to be, yeah.

23 Q. Mr. Wathen, in that case Duke Energy
24 Ohio, there's been some discussion about this,
25 requested a nonbypassable capacity charge based on

1 Duke Energy Ohio's costs; is that correct?

2 A. We, again, we filed the application under
3 4928.143 which is competitive retail service, that
4 application included a proposal to implement a rider,
5 a retail capacity rider, which is pretty much as you
6 described, yeah.

7 Q. And your testimony described the manner
8 in which those capacity costs would be calculated,
9 correct?

10 A. It did.

11 Q. Would you agree that Duke proposed to
12 commit its generating assets to provide capacity for
13 service for Duke's shopping and nonshopping load?

14 A. Our proposal as part of the, you know,
15 competitive retail application was to do that, yes.

16 Q. Would you agree that Duke proposed to
17 calculate rider retail capacity based upon a formula
18 rate to recover the cost of Duke Energy Ohio's legacy
19 generation assets?

20 A. Again, the application we filed was a
21 direct transaction between us and customers, which
22 would be nonbypassable, and it would be as you
23 described, so.

24 Q. Would you agree that the form of the rate
25 used to develop rider RC had its roots in traditional

1 ratemaking?

2 A. It does have its roots in traditional
3 ratemaking, yes.

4 Q. Would you agree that the formula rate had
5 a revenue requirement?

6 A. The, again, the competitive retail rate
7 that we offered and the revenue from it anyway to set
8 the retail rate was essentially a revenue requirement
9 calculation that would develop a rate that would be a
10 direct transaction between us and customers for
11 competitive retail service.

12 Q. Would you agree that the formula rate
13 included a proposed rate of return?

14 A. There was a rate of return component.

15 Q. Would you agree that the formula rate
16 treated third-party purchases as an expense for
17 determining the revenue requirement?

18 A. Purchases of capacity?

19 Q. That's correct.

20 A. Yes, it did.

21 Q. Would you agree that the formula rate
22 Duke Energy Ohio proposed in the application was
23 consistent with the method that was proposed in
24 AEP Ohio's capacity case?

25 A. Well, at the time we filed the case it

1406

1 was more consistent with what they filed in the, I
2 guess it was, yeah, they had already filed their case
3 so it would be consistent with what they filed in
4 April or May of that year, yeah. It's also
5 consistent with filings we make at the transmission
6 level and FERC -- FERC rates.

7 Q. I think we covered this but just so I'm
8 clear, you'll agree the formula rate Duke proposed
9 used a FERC Form 1 to populate the formula.

10 A. We did cover that, and you're right, so.

11 Q. Would you agree that the formula
12 determined a level of expense associated with the
13 operation and maintenance of the legacy generation
14 assets?

15 A. Well, the, what I filed at the time would
16 only have had one year of actuals, so everything else
17 was forecasted data, but the intention was that it
18 would have been for actual expenses.

19 Q. The answer is yes with those
20 clarifications?

21 A. Yes, again, with the caveats.

22 Q. You would agree that the formula used
23 allocation factors?

24 A. It has to use allocation factors, yes.

25 Q. And you would agree that Duke Energy Ohio

1 entered a stipulation in that proceeding, correct?

2 A. In 3549?

3 Q. Yes.

4 A. Yes, we did.

5 Q. And the stipulation did not include a
6 cost-based capacity charge, correct?

7 A. The stipulation we reached in that case,
8 again, for competitive retail services did not
9 include a cost-based capacity charge for transactions
10 between us and customers.

11 Q. You were in the room when Mr. Trent
12 testified previously, right?

13 A. I was.

14 Q. Do you remember when he said he wasn't
15 sure whether customers had indicated in settlement
16 that they had a preference for market-based capacity?

17 A. I don't remember that specifically, but
18 if that's in the transcript, I'll take your word for
19 it.

20 Q. You would agree that customers did
21 indicate in settlement that they had a preference for
22 market-based generation prices, correct?

23 A. I believe that there was a, going back
24 throughout the history of the ESP when we filed our
25 MRO, I'd say customers were mixed on that.

1 Q. Do you have FES Exhibit 22 which is your
2 supplemental testimony in front of you?

3 A. I do.

4 Q. Could you turn to page 13, line 5, and
5 tell me if I read this correctly, and tell me when
6 you're there.

7 MS. SPILLER: I'm sorry, Mr. Oliker, what
8 page?

9 MR. OLIKER: 13, line 5.

10 MS. SPILLER: Thank you.

11 Q. Rate regulation, are you there,
12 Mr. Wathen?

13 A. I am.

14 Q. "During the settlement discussions of
15 this case, the Parties made it clear that a market
16 price for SSO service was preferred. This
17 necessitated a change to the Company's proposed Rider
18 RC." Did I read that correctly, Mr. Wathen?

19 A. You did.

20 MR. OLIKER: If I could have one minute
21 to look at my questions, your Honor, I may be done.

22 EXAMINER STENMAN: Yes.

23 MR. OLIKER: Thank you, Mr. Wathen.
24 Those are all the questions I have.

25 EXAMINER STENMAN: Thank you.

1 Staff?

2 MR. JONES: Yes, thank you, your Honor.

3 EXAMINER STENMAN: Please use your
4 microphone. Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Jones:

8 Q. Good afternoon, Mr. Wathen.

9 A. Hello.

10 Q. Mr. Wathen, I want to pick right back up
11 as to the last exhibit you were just referring to,
12 FES Exhibit 22 and page 13. If you could go there,
13 please.

14 A. Page 13?

15 Q. Yes. And I want to refer you to lines 8
16 and 9. It's there that Duke had agreed that under
17 rider RC that customers will pay a market price for
18 capacity at the FZCP for the FRR duration; is that
19 correct?

20 A. Rider RC will be a market price for the
21 duration of the ESP.

22 Q. For the duration that Duke is an FRR
23 entity, correct?

24 A. Well, yeah, now that's correct because
25 we're FRR through May 31, '13.

1410

1 Q. Yeah, and that's what that meant back
2 then.

3 A. Rider RC which is, again, a conduit
4 between us and our suppliers would be based at
5 market.

6 Q. Right. okay.

7 I further want to refer your attention
8 FES Exhibit 23. Could you get that, please.

9 A. Tami Turkenton's?

10 Q. That's correct. And I'd like to refer
11 you to page 4, lines 1 through 6. Tell me when
12 you're there. Mr. Wathen, are you there?

13 A. I am there.

14 Q. Okay. And there is where Staff Witness
15 Tami Turkenton had testified in support of the ESP
16 stipulation that while operating under its FRR
17 capacity construct, Duke committed to charge the RPM
18 FZCP to all CRES providers in its service territory.
19 Isn't that correct? Isn't that her testimony?

20 A. That's her testimony but she was
21 mistaken.

22 Q. That's her testimony.

23 A. That's her testimony.

24 Q. And, further, if you'd refer to GCHC
25 Exhibit 1 --

1411

1 A. Which one was that?

2 Q. That's the --

3 A. Oh, that's the testimony for the hearing.

4 Q. That's the transcript.

5 A. All right.

6 Q. And, Mr. Wathen, just to make the record
7 clear, before that hearing on that ESP stipulation,
8 you also testified at that hearing, correct? The
9 same hearing Ms. Turkenton testified on.

10 A. I don't see it in the transcript here but
11 I do remember testifying at the hearing.

12 Q. Okay. So on the previous exhibit we just
13 covered that was your supplemental testimony you
14 covered at the hearing, correct?

15 A. That's correct.

16 Q. Okay. So now going back to GCHC Exhibit
17 1, on Ms. Turkenton's testimony there was no
18 cross-examination by Duke of that testimony given by
19 Ms. Turkenton or objection to that testimony; isn't
20 that correct?

21 A. There's nothing in here about her
22 testimony, but, again, that statement she made was
23 incorrect.

24 MR. JONES: Your Honor, I wish to strike
25 the last part of his testimony as not responsive to

1 my question.

2 EXAMINER STENMAN: Motion denied.

3 A. She does express disappointment --

4 Q. There's no question pending, Mr. Wathen.

5 Now, Mr. Wathen, as it concerns rider
6 ESSC, Duke considered that rider to be generation
7 related; isn't that correct?

8 A. That rider ESSC will stay with the
9 distribution company even upon transfer so I don't
10 know if I would call it generation related or not.
11 It's a stabilization charge for a competitive retail
12 service.

13 Q. Well, you testified -- you had your
14 deposition taken, correct?

15 A. I did.

16 Q. And would you refer to your deposition
17 transcript for me, please.

18 A. If I can find it.

19 MS. SPILLER: I don't know, Mr. Wathen,
20 that you've been given one.

21 Q. If you would refer to page 14, lines 16
22 to 20, 16 to 20.

23 EXAMINER STENMAN: Does anyone have a
24 copy for the Bench?

25 MS. GRADY: Yes, your Honor.

1413

1 EXAMINER STENMAN: Thank you.

2 MR. JONES: I have one.

3 MS. GRADY: I've not several copies.

4 MS. SPILLER: And, I'm sorry, Mr. Jones,
5 is it page 16?

6 MR. JONES: Page 14.

7 MS. SPILLER: Thank you.

8 Q. And there, Mr. Wathen, at page 16 you're
9 saying that the ESSC was the product of the
10 settlement agreement in our SSO case, which is
11 competitive retail electric service, and insofar as
12 we consider that to be generation related. So there
13 you did say it was generation related, did you not?

14 MS. SPILLER: I'm going to object to the
15 improper use of the deposition transcript.

16 MR. JONES: He has previously testified
17 that it was not generation related and his deposition
18 transcript says -- in his testimony he said it was
19 related.

20 MS. SPILLER: He was answering a
21 different question.

22 EXAMINER STENMAN: Overruled.

23 MR. JONES: It's the same question.

24 Q. That's your testimony, correct,
25 Mr. Wathen?

1414

1 A. Yeah, the way, but it --

2 Q. All right. There's no other question,
3 thank you.

4 A. You're not --

5 Q. Thank you.

6 A. -- correct about that.

7 Q. Thank you. That's all I have.

8 MR. JONES: That's all the questions I
9 have. Thank you, Mr. Wathen.

10 EXAMINER STENMAN: Any redirect?

11 MS. SPILLER: Your Honor, would this be
12 an appropriate time for an afternoon break?

13 EXAMINER STENMAN: We can taken a break.
14 Before we go off the record just one housekeeping
15 matter, Examiner Pirik does have some revised
16 redactions with respect to OEG Exhibit 4 that she
17 will be providing and, again, please make those
18 redactions and provide an appropriate copy to the
19 court reporter. They're just based on the redactions
20 that were made to the transcripts.

21 MS. SPILLER: Yes, your Honor.

22 EXAMINER STENMAN: Let's take a
23 ten-minute break and come back at 25 till 4.

24 MS. SPILLER: Thank you.

25 (Recess taken.)

1415

1 EXAMINER STENMAN: Let's go back on the
2 record. Any redirect?

3 MS. SPILLER: Yes, your Honor.

4 EXAMINER STENMAN: Can you use your
5 microphone.

6 MS. SPILLER: Yes, your Honor.

7 - - -

8 REDIRECT EXAMINATION

9 By Ms. Spiller:

10 Q. Mr. Wathen, do you recall at the
11 beginning of your cross-examination this morning
12 questions from Mr. Lang regarding prudency reviews?

13 A. I do.

14 Q. And, sir, are you in your capacity as the
15 director of rates for Duke Energy Ohio familiar with
16 prudency reviews?

17 A. Again, generally. They take different
18 forms, but generally.

19 Q. And are all costs that are above market
20 necessarily imprudent costs?

21 A. Not at all.

22 Q. And why not, sir?

23 A. Prudency is a question about the prudence
24 of the expense. It doesn't have anything to do with
25 whether something's at market or not.

1 Q. To your knowledge, Mr. Wathen, has the
2 Ohio Commission conducted a prudency review of Duke
3 Energy Ohio's legacy coal assets?

4 A. It's before my time but the last time
5 there was a prudency review of Duke Energy Ohio's
6 generation assets goes back to 1992 or '91, one of
7 those, with Zimmer, and the conversion, but that's
8 the last time that I'm aware of any prudency review
9 that impacted the company's legacy generation assets.

10 Q. And, to your knowledge, Mr. Wathen, were
11 any of Duke Energy Ohio's legacy coal assets deemed
12 imprudent?

13 A. Other than that Zimmer issue, none in
14 '92, so. But those costs were -- what's written off
15 on the balance sheet are only what was deemed to be
16 prudent.

17 Q. Mr. Wathen, you were asked questions
18 about what I would call perhaps adjustments or the
19 lack of adjustments to your calculation with respect
20 to O&M costs associated with Beckjord and, for
21 example, accumulated amortization and related
22 expense. Do you recall those questions?

23 A. I do.

24 Q. And, sir, why did you not update the cost
25 calculation in this case with respect to those

1 adjustments?

2 A. Well, there are some adjustments that we
3 agree with, some we don't. We can go through
4 multiple iterations of continuing to make adjustments
5 but the Commission has all the facts in its
6 possession at this time, at least from the company's
7 side, and as it did in the AEP case it's within its
8 power to go through and make adjustments to our
9 revenue requirement calculation. I didn't find it
10 necessary to continually update our filing for
11 miscellaneous corrections, particularly when they
12 were very minor.

13 Q. Now, Mr. Wathen, do you have before what
14 you was previously marked as FirstEnergy Solutions
15 Exhibit 25? And do you also, sir, have FirstEnergy
16 Solutions Exhibit 26.

17 A. I have it.

18 Q. And, sir, just for purposes of refreshing
19 the record Exhibit -- FES Exhibit 25 pertained to a
20 breakdown of O&M expenses for calendar year 2011?

21 A. I believe 25 included '11 and 26 included
22 '12.

23 Q. And you have those documents, sir?

24 A. I do.

25 Q. And do the totals shown on FirstEnergy

1 Solutions Exhibit 25 and Exhibit 26 include both
2 fixed and variable O&M?

3 A. Yes, these are all the accounts under 500
4 accounts in the Form 1 and they include variable
5 costs such as fuel, emission allowances and other
6 variable costs.

7 Q. And in the calculation that you did for
8 purposes of this case, Mr. Wathen, and Duke
9 Energy Ohio costs associated with provision of its
10 FRR capacity service, did you include all fixed and
11 variable costs with regard to Duke Energy Ohio's
12 legacy coal assets?

13 A. No, we did not.

14 Q. What did you exclude, sir?

15 A. I'm trying to find the page in my
16 attachment. On page 20 of 24 of WDW-1 there's a
17 chart that essentially explains what costs, O&M
18 expenses costs are variable and which ones are fixed.
19 So much of the variance you see between '11 and '12
20 in FES Exhibits 25 and 26 is explained by variable
21 costs which aren't included in the calculation.

22 Q. Thank you.

23 Do you recall spending some time this
24 morning with Ms. Grady regarding the decisions in the
25 AEP Ohio case docketed under 10-2929?

1 A. Yes, I do.

2 Q. And you were asked questions with regard
3 to what occurred in the AEP Ohio case insofar as it
4 concerned SmartGrid costs, do you recall that?

5 A. I do.

6 Q. And you were asked questions about the
7 Commission's order and whether that order detailed
8 the treatment of SmartGrid costs by AEP Ohio.

9 A. I don't remember those questions
10 specifically, but that sounds familiar.

11 Q. You made a reference, sir, to the
12 testimony of Kelly Pearce and Staff Witness Smith.

13 A. That's correct.

14 Q. And what was the import of their
15 testimony?

16 A. As it relates to SmartGrid?

17 Q. Yes, sir.

18 A. I'm not aware that either one of them
19 addressed it.

20 Q. And so do you know how SmartGrid
21 investment was handled in the AEP Ohio capacity case
22 under 10-2929?

23 A. It was handled just like we did in our
24 case, it's a part of the total plant that's allocated
25 on the various factors that they used and that we

1 used.

2 Q. Would I be fair to state, Mr. Wathen,
3 that you remember the exchange with Mr. Kurtz
4 concerning a one -- one page of the exhibits or
5 attachments that were filed in connection with
6 Ms. Laub's testimony in the SEET filing last week?

7 A. I remember.

8 Q. And you were specifically asked questions
9 about what the number \$285 million, whether that
10 reflected a certain provision of the DECAM equity.

11 A. It was the equity and earnings of the
12 subsidiaries but I remember the question, yes.

13 Q. And so the total that is on that line,
14 approximately 285 million, that is total equity in
15 the earnings of all of Duke Energy Ohio's
16 subsidiaries?

17 A. That's not correct, no. The total
18 earnings on all of Duke Energy Ohio's subsidiaries is
19 about \$187 million.

20 Q. Mr. Wathen, you were asked questions by
21 Mr. Hart and then read excerpts of the Commission's
22 order in the ESP case by Ms. Bojko. I'd like to
23 focus on rider ESSC. Mr. Wathen, what is the purpose
24 of that rider?

25 A. Well, that rider is explained in the

1 totality of the stipulation and in my testimony
2 supporting the stipulation. There were a number of
3 provisions agreed to in that stipulation including
4 the various economic development proposals, some rate
5 design measures to help higher load factor customers,
6 there were some provisions for low-income customers,
7 there was a, I think the most important provision was
8 that we would go straight to market, that was a very
9 big concession on our part.

10 We had, at the time we filed this
11 application we still had approximately 60 percent of
12 our residential customers who hadn't switched and we
13 were collecting something in the neighborhood of
14 \$50 a megawatt-hour from those customers. Now,
15 admittedly we don't know how long that switching
16 would stay at that level, but at the time we were
17 collecting approximately \$300 million or so in base
18 generation revenues from those customers.

19 So in looking at the totality of the
20 stipulation in addition to all the various other
21 elements in there that the trade, if you will, for
22 my -- in my opinion for the ESSC was the concession
23 to give up 300 plus million dollars a year and go
24 straight to market. It provided certainty to the
25 company, it provided certainty to the customers, and

1 it achieved a goal that has been in the Commission's
2 line for the last 13 years.

3 Q. Mr. Wathen, do you have before you what
4 was previously marked as IEU-Ohio Exhibit 13?

5 A. I do. I do.

6 Q. And you were asked questions about Duke
7 Energy Ohio's receipt of regulatory transition
8 charges, correct?

9 A. I remember that, yes.

10 Q. And, Mr. Wathen, according to the
11 stipulation that IEU counsel presented to you, the
12 regulatory transition charges were provided for under
13 what provision of Ohio law?

14 A. In the -- Mr. Oliker referred me to the
15 stipulation paragraph 2 on page 6, at the very end of
16 that paragraph it says "Therefore all such regulatory
17 assets created and recovered pursuant to stipulation
18 are in compliance with the requirements under 4928.39
19 and 4928.40 of the Revised Code."

20 Q. And, Mr. Wathen, do you know how the Ohio
21 Commission has treated a claim of -- a claim for
22 transition charges in connection with an FRR entity's
23 request to recover its costs for providing its
24 noncompetitive wholesale capacity service?

25 A. I --

1 MS. GRADY: Objection. It's a
2 mischaracterization of the Commission's opinion and
3 order. We went through this morning that there is
4 no, there was no finding by the Commission that it is
5 noncompetitive.

6 MS. SPILLER: I'll be happy to rephrase,
7 your Honor.

8 Q. Mr. Wathen, are you aware of how the Ohio
9 Commission handled the claim that AEP Ohio's request
10 for a cost-based capacity charge was actually a
11 request for the recovery of transition charges?

12 A. In the -- excuse me. In the entry on
13 rehearing issued in the AEP 10-2929 case dated
14 October 17th, I believe, 2012, the Commission
15 addressed a concern raised by the IEU specifically on
16 this point, and the Commission responded by saying:
17 We do not believe the capacity costs associated with
18 AEP's obligations under the FRR constitute transition
19 costs. And pursuant to 4928.39, Revised Code,
20 transition costs that -- are costs that, among other
21 criteria, are directly assignable and allocable to
22 electric generation retail services provided to
23 electric consumers in this state. And AEP Ohio's
24 provisions of capacity to CRES customers, CRES
25 providers rather, as required by the company's FRR

1 obligation, is not a retail service as defined by
2 Section 4928.01(A)(27), Revised Code. The capacity
3 service is not provided directly to AEP's retail
4 customers, but is rather a wholesale transaction
5 between the Company and CRES providers. Because
6 AEP's capacity costs are not directly assignable or
7 allocable to retail generation, electric generation
8 service, they are not transition costs by definition.

9 Q. And, Mr. Wathen, has Duke Energy Ohio
10 filed its application in these proceedings under Ohio
11 Revised Code chapter 4928?

12 A. The pending application is not filed
13 under 4928.

14 Q. Mr. Wathen, you are familiar with revenue
15 requirement calculations, are you not?

16 A. I am.

17 Q. And is the basis for the revenue
18 requirement calculation that you utilized in this
19 proceeding a standard formula?

20 A. At the highest level the formula for
21 calculating a revenue requirement is very simple.
22 It's the O&M plus the return on rate base plus
23 depreciation plus other taxes plus income taxes net
24 of any credits and that's precisely what we used in
25 this case as you would in any case determining

1 revenue requirement.

2 Q. And so that basis that you just
3 described, would that be applicable to a case for the
4 establishment of distribution rates?

5 A. Any calculation of a revenue requirement
6 under a regulatory paradigm is going to involve all
7 those components in that same formula exactly.

8 Q. And is that the basis, sir, on which you
9 relied for purposes of the cost calculation in Duke
10 Energy Ohio's ESP application filed on June 20, 2011?

11 A. It's absolutely the highest level, that's
12 the formula.

13 MR. OLIKER: I'm sorry, could I have that
14 question and answer read back, please?

15 (Record read.)

16 Q. Mr. Wathen, you were asked questions by
17 Mr. Jones concerning the testimony that Ms. Turkenton
18 filed in the case 11-3549. Do you recall that
19 exchange?

20 A. I do.

21 Q. And I believe, sir, you attempted to
22 indicate that you thought her testimony incorrect.

23 A. Well, she clearly misspoke when she said
24 that the transaction was between the company and CRES
25 providers, because the stipulation is very clear how

1 the transaction is laid out.

2 Q. Thank you.

3 MS. SPILLER: Nothing further at this
4 time, certainly reserve pending the confidential
5 section, your Honor.

6 EXAMINER STENMAN: Thank you.

7 Mr. Lang?

8 MR. LANG: You're looking for recross?

9 EXAMINER STENMAN: Yes.

10 MR. LANG: Yes. No thank you.

11 EXAMINER STENMAN: Ms. Grady, recross?

12 MS. GRADY: No, your Honor.

13 EXAMINER STENMAN: Mr. Kurtz?

14 MR. KURTZ: No.

15 EXAMINER STENMAN: Ms. Petrucci?

16 MS. PETRUCCI: No questions, no.

17 EXAMINER STENMAN: Ms. Bojko?

18 MS. BOJKO: I do have a couple, your

19 Honor.

20 - - -

21 RE CROSS-EXAMINATION

22 By Ms. Bojko:

23 Q. Mr. Wathen, you just stated that
24 Ms. Turkenton misspoke. It was written testimony
25 that was filed that you were just discussing with

1 your counsel; is that correct?

2 A. That's correct.

3 Q. And you just talked with your counsel
4 about the deferral, and isn't it true that the
5 deferral of costs will ultimately be recovered from
6 customers?

7 MS. SPILLER: I'm going to object, your
8 Honor, beyond the scope of redirect examination.

9 MS. BOJKO: It's not, your Honor, it's
10 directly responding to her comment about an increase
11 in rates.

12 EXAMINER STENMAN: Overruled.

13 A. I don't recall a question from my counsel
14 about deferrals.

15 Q. You talked about the increase, that it
16 wasn't an increase in rates; is that correct?

17 A. I addressed that with Mr. Olikier, yes.

18 Q. And with your counsel as well. So,
19 Mr. Wathen, could you answer the question, please.

20 A. I did not address increase in rates with
21 my counsel.

22 Q. No, could you answer my pending question
23 about isn't it true that the deferral of cost will
24 ultimately be recovered from customers?

25 A. As we, as you and I discussed earlier,

1 yes, rider DR-CO would be the method of recovery.

2 Q. And when that amount is established, it
3 will be an actual charge on customers' bills; is that
4 correct?

5 A. It would have to be recovered from
6 customers through a charge.

7 Q. And the effect of collecting that rider
8 will have the effect of increasing the customers'
9 total bill; is that correct?

10 A. That really depends on when it's
11 implemented.

12 Q. Is the rider in this application proposed
13 to be zero?

14 A. No.

15 Q. You're not -- in this application before
16 you do the 60-day filing you're not requesting that
17 the rider be set at zero.

18 A. It is set at, yeah, we're asking it be
19 set at zero.

20 Q. Right. And when that's populated with an
21 amount and that initial rider rate is established,
22 that will be additive to the base rates of the
23 customer because it's a rider on their bill; is that
24 correct?

25 A. It will be a component of the bill but

1 depending on when it's implemented it may or may not
2 be an increase on their bill.

3 Q. Okay, fair enough. But it is an
4 additional charge that will be collected from
5 customers at the time that the Commission says it
6 will be collected from customers.

7 A. It will be a charge that will be --
8 proposed from customers and, that's correct, it will
9 be a charge on customers' bills.

10 Q. And it's an additional charge than what's
11 currently being collected from customers, correct?

12 A. It doesn't exist now so it would be an
13 additional charge.

14 MS. BOJKO: Thank you. No further
15 questions, your Honor.

16 EXAMINER STENMAN: Mr. Hart.

17 - - -

18 RECROSS-EXAMINATION

19 By Mr. Hart:

20 Q. I just want to clarify one thing you just
21 said. You said it may not be, their bill may not be
22 higher because of the rider, but that's because the
23 other rates may go down; is that right?

24 A. Well, there's a few elements involved.
25 We have, as you know, a load factor adjustment that

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1 we don't know how that will play out when, at the end
2 of -- May 31, 2015, that could implement whether or
3 not someone sees a bill, if this gets implemented on
4 June 1, for example, of '15, the ESSC terminates on
5 May 31, '14, so if this goes into effect on
6 January 1, '15, customers may not see an increase in
7 their bill. It depends on the customer and timing of
8 the increase.

9 Q. Let's make one thing clear. The capacity
10 rider you're proposing will never be a negative
11 number; is that correct?

12 A. Not withstanding some true-up it wouldn't
13 be a negative number.

14 MR. HART: Thank you.

15 EXAMINER STENMAN: Mr. Olikar.

16 - - -

17 RECROSS-EXAMINATION

18 By Mr. Olikar:

19 Q. Just a question or two. Mr. Wathen, on
20 redirect in response to counsel's question you stated
21 that the ESSC was primarily related to Duke Energy
22 Ohio giving up the right to receive the standard
23 service offer, correct?

24 A. In my view that's one of the many things
25 that was for, probably that's most -- the most

1 valuable thing we traded for.

2 Q. Could you please turn to FES Exhibit 22,
3 page 18, which contains your supplemental testimony
4 in support of the ESP stipulation.

5 A. Yeah.

6 Q. Tell me when you're there.

7 A. I've got it.

8 Q. Are you there?

9 A. I do.

10 Q. Tell me if I read this correctly starting
11 on line 8: "Why is Rider ESSC necessary?

12 "Answer: From the company's perspective
13 the need for Rider ESSC is simple, Duke Energy Ohio
14 is required to supply capacity for the Company's
15 entire footprint until at least 2015-2016 PJM
16 planning year, and Duke Energy Ohio will satisfy this
17 obligation, in part, with its legacy generation
18 assets because the BRA to secure capacity in PJM have
19 already occurred through the 2014-2015 planning year
20 which extends to the end of the ESP as provided for
21 in the stipulation." Did I read that correct?

22 A. I believe you read it correctly.

23 MR. OLIKER: Thank you. I have no more
24 questions, your Honor.

25 EXAMINER STENMAN: Thank you.

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1 Mr. Jones?

2 MR. JONES: No questions, your Honor.

3 EXAMINER STENMAN: Thank you.

4 Let's move into the confidential portion
5 of the transcript.

6 (Confidential Portion.)

7 EXAMINER STENMAN: I assume parties want
8 to go in the same order we've been proceeding in, so
9 Mr. Lang.

10 MR. LANG: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Lang:

14 Q. Mr. Wathen, I just wanted to have you
15 track the capacity revenue and cost through to page 3
16 of your Attachment WDW-1. And to do that I wanted to
17 use FES Exhibit No. 27A which has the, among other
18 things, the load estimate, the total position on it.

19 A. Can I get organized? I'm looking for it.

20 Q. Yeah.

21 A. So you want my testimony, WDW-1 and that
22 exhibit, yes?

23 Q. This exhibit and then also FES 28A which
24 is the capacity calculation workpaper.

25 A. WDW-1 page 3?

1 Q. Correct.

2 A. Okay.

3 Q. And let's start with the load requirement
4 and load sales on Exhibit FES No. 27A, this is the
5 one that you co-sponsored with Mr. Jennings, the load
6 requirement actual for planning year '12-'13 was
7 (REDACTED), and then the next two years are a little
8 over (REDACTED) megawatts. Did you follow that?

9 A. Yes.

10 Q. And then that load requirement is what
11 you used over on FES Exhibit No. 28A, the capacity
12 worksheet, that's in the second box from the bottom,
13 it's the load sales; is that right?

14 A. Well, I didn't -- I didn't create 28A but
15 that's what we used, yes, so.

16 Q. And, well, in terms of what's been marked
17 as 28A, when you were asked in advance of your
18 deposition to produce your workpapers, this is the
19 document that you produced, right?

20 A. It's the source document, right.

21 Q. Okay. And so -- and then what's shown on
22 28A for load sales, there's a calculation that's done
23 there in that second box from the bottom, and that's
24 what carries over to line 8 of your page 3 of 24 of
25 Attachment WDW-1; is that right?

1 A. That's correct.

2 Q. Okay. And then, similarly, on Exhibit
3 FES No. 27A, the "Total Position" line, which for the
4 first year, '12-'13, is (REDACTED) megawatts, it
5 increases to (REDACTED) megawatts, then increases
6 again to (REDACTED) megawatts, that is the capacity
7 purchases shown on FES No. 28A.

8 A. I can say numbers out loud right now,
9 right?

10 MS. SPILLER: You're in the confidential
11 portion.

12 Q. Yes.

13 A. Yeah, it's the \$(REDACTED)million, right.

14 Q. Okay. And you're jumping ahead of me, so
15 those -- the purchases that are required are then
16 multiplied by the prices, dollars per megawatt-day,
17 that are shown here, the days in the term, and that
18 gets you to the (REDACTED) which, then, apparently
19 with a slight change carries over to line 7 of your
20 WDW-1; is that right?

21 A. That's correct.

22 MR. LANG: Okay. Those are the
23 confidential questions I had, thank you, your Honors.

24 EXAMINER STENMAN: Thank you.

25 Ms. Grady?

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1 MS. GRADY: No questions, your Honor.

2 EXAMINER STENMAN: Mr. Kurtz?

3 MR. KURTZ: Thank you, your Honor.

4 Your Honor, could we have this marked as
5 OEG 12A.

6 EXAMINER STENMAN: What is it? The
7 document, does it have a name?

8 MR. KURTZ: Oh, it is the compilation of,
9 very similar to what Mr. Lang was going through in
10 terms of the calculation of the capacity revenues as
11 well as the purchased power costs. Now --

12 EXAMINER STENMAN: Before we go ahead and
13 mark this as an exhibit, are these schedules all
14 attached somewhere else?

15 MR. KURTZ: Yeah, the -- well, I can go
16 through them one by one. On page 1 of what's being
17 marked as OEG 12A is from the application which is
18 exactly the same as Mr. Wathen's exhibit, so that
19 would be his Exhibit 2, I think. The last page of
20 his testimony. Yes, Exhibit 2. But it's also part
21 of the application.

22 The next page is page 3 of 24 which is
23 also part of Mr. Wathen's testimony, confidential.

24 The next page is a workpaper from
25 Mr. Savoy.

1 And the next page are the capacity
2 purchases and sales similar to the information
3 Mr. Lang was going over.

4 EXAMINER STENMAN: Given that it appears
5 that we have all these documents already in the
6 record I don't see any reason to remark them. If you
7 want to refer to them as --

8 MR. KURTZ: It will be much easier to go
9 through this cross with just this packet, your Honor.

10 EXAMINER STENMAN: You can use these
11 documents. I think we've already identified where
12 they are in the record elsewhere so you can just
13 refer to them with the pages they are in this packet
14 but there's no reason to remark all these documents,
15 the company's already redacted them, we've already
16 discussed protective treatment.

17 MR. KURTZ: That's fine.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Kurtz:

21 Q. Mr. Wathen, do you have in front of you
22 the first page of this document, this package
23 Attachment C, page 1 of 1 to the application?

24 A. I do.

25 Q. Okay. Line 2 is the "(REDACTED,"

1 (REDACTED); is that correct?

2 A. That is the total for the period, yes.

3 Q. Right. Let's just go for the total
4 period questions, do it annually but that's the total
5 for the 34-month period, correct?

6 A. That's correct.

7 Q. Okay. And those are reflective of the
8 purchases of Duke Energy Ohio to meet its FRR
9 obligations, correct?

10 A. Well, that's what's included in our
11 filing, yes.

12 Q. Now, line 13, 729 million -- well, let
13 me -- line 1, (REDACTED) million (REDACTED), that's
14 the revenue you received from PJM for supplying
15 capacity at FZCP for RPM; is that correct?

16 A. Yeah, that's correct. It's shown on FES
17 28A.

18 Q. Okay. And it's shown on Exhibit 28A that
19 the load sales -- that's the -- that's the retail
20 load obligation of Duke Energy Ohio.

21 A. It's -- I don't know if the term retail
22 is, I'm not familiar with the PJM rules or not but it
23 is our FRR load obligation.

24 Q. Okay. That's your FRR obligation
25 including the reserve margin requirements?

1 A. That's my understanding, yes.

2 Q. Okay. So it's the load on the system
3 including 15 percent reserve margin as Dr. Niemann
4 testified, approximately.

5 A. Again, I'm like you relying on his
6 testimony but that's what I understood.

7 Q. Okay. Times the FZCP gets you
8 \$(REDACTED) million?

9 A. The load, yeah, the load obligation times
10 the projected FZCP was the (REDACTED).

11 Q. And on line 13 of page 1, the
12 729 million, that's the calculation of the revenue
13 requirement that you make to give Duke Energy Ohio an
14 11.15 percent return on equity on your legacy coal
15 generation, correct?

16 A. Yeah, that's correct. That column is
17 essentially a summary of what's shown on the WDW-1
18 calculation but, yes, that's correct.

19 Q. Okay. Now, on line 15 it's the same
20 729,122,000 revenue requirement, and you divide by,
21 on line 17, that's the total cost of capacity per
22 megawatt-day of Duke Energy Ohio, line 17; is it not,
23 before -- before the netting of -- before the netting
24 of the sales; is that correct?

25 A. That includes the (REDACTED) and.

1 (REDACTED) but it's before the
2 credit for sales of capacity.

3 Q. Right. Okay. So 224 million, which
4 is --

5 A. Can I stop you? That's not 224 million.

6 Q. I misspoke. \$224.15 per megawatt-day is
7 729 million divided by 4,459.85 megawatts divided by
8 365 days; is that correct?

9 A. No. It's -- the rate is the annualized
10 number, not the total number.

11 Q. Ah, you're right.

12 A. Yeah.

13 Q. So it's the 257 million on line 15
14 divided by 4,459 megawatts divided by 365.

15 A. That's correct.

16 Q. Okay. Now, the number, the \$158.08 per
17 megawatt-day on line 18 is the amount -- it's the net
18 amount after you credit the amount of money you
19 received from FZCP sales.

20 A. It's essentially the FZCP times our
21 legacy generation, right. So it's essentially the
22 value that PJM's giving us for capacity associated
23 with our legacy generation, right.

24 Q. Let me -- the difference between the
25 \$224 a megawatt-day and the \$158 a megawatt-day is

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1 the amount you get for FZCP of 66, what is it? \$66?
2 What's the difference here?

3 A. 66 is about right.

4 Q. Okay.

5 A. And that number is essentially a weighted
6 average, if you will, of the FZCPs times the days in
7 the planning year throughout the period, I'm talking
8 about in this case the 34 months.

9 Q. Okay. So let's turn the page. Now, this
10 is just another page detailing a lot of the same
11 things. On line 7 we have the (REDACTED),
12 (REDACTED) million over 34 months or
13 (REDACTED) million annualized; is that correct? Line
14 7.

15 A. That's correct. It's the same as line 2
16 on the prior page.

17 Q. Right. And line 8 is the same as line 1
18 on the prior page, correct?

19 A. That's correct.

20 Q. Okay. And the total revenue requirement
21 to get the 11.15 percent return on equity on legacy
22 coal is line 14, 729 million; is that right?

23 A. Including all the credits, that's
24 correct, yes.

25 Q. Okay. Just turn the page, this is BDS-1

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1 Confidential. His (REDACTED) if you add them
2 up across the row equal the same (REDACTED) million
3 that you have on your schedules, just another form of
4 checking that that's the number used throughout the
5 case. Do you accept that?

6 A. It comforts me.

7 Q. I'm sorry, what?

8 A. It comforts me.

9 Q. Okay, good. Turn to the fourth page.

10 EXAMINER STENMAN: Just to be clear,
11 Mr. Kurtz, it looks like page 4 and page 5 were
12 previously admitted as part of OEG 8A, just to be
13 clear for the record.

14 MR. KURTZ: That's -- that's good.

15 EXAMINER STENMAN: You don't necessarily
16 need to respond, I just wanted to clarify the record.

17 MR. KURTZ: Okay. Okay.

18 Q. (By Mr. Kurtz) Now, in terms of the --
19 let's go to the last page just to be clear. This is
20 what Mr. Lang and you were discussing. The load
21 requirement, that's, okay, this is FES Exhibit 27A,
22 you've got the Load Requirement (Actual), (REDACTED)
23 in the '12-'13 planning year then (REDACTED) and
24 (REDACTED), do you see those numbers?

25 A. I do.

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1 Q. Those are the load on the Duke system
2 including reserve margin, correct?

3 A. It's the Duke Energy Ohio load including
4 reserve margin, so that excludes the Duke -- Duke
5 Kentucky, for example. When you say Duke system it's
6 a little more comprehensive.

7 Q. Okay. Duke Energy Ohio system including
8 the reserve margin, correct?

9 A. That's correct.

10 Q. Okay. And you multiply that by the FZCP
11 we established to get the \$(REDACTED) million credit
12 over the 34-month period, correct?

13 A. That's correct.

14 Q. Okay. Let's turn back, I want to talk
15 about the purchases. The purchases, what have been
16 marked as, was it OEG 4A, do you see the net capacity
17 purchases? There's a megawatt number there in column
18 3.

19 EXAMINER STENMAN: That would be 8A.

20 Q. 8A, (REDACTED) megawatts and then
21 (REDACTED) and then (REDACTED) megawatts multiplied
22 by the projected market price gets you the
23 \$140 million purchased power cost; is that correct?

24 A. That's correct.

25 Q. Okay. Do you have OEG 4A which are the

1 bilateral contracts?

2 A. I do not.

3 They mysteriously appeared in front of
4 me.

5 Q. Do you have it?

6 A. Yes.

7 Q. Put next to you FES Exhibit 27A or the
8 last page of what I handed out to you and let's look
9 at the '13-'14 planning year.

10 A. You said the last page of what you
11 handed, of what I just got?

12 Q. Yeah, of what I handed you as well as --
13 no. The last page of what I handed out at the
14 beginning of the cross which is the same as FES
15 Exhibit 28A.

16 A. Oh.

17 Q. Okay. Do you have those in front of you?

18 EXAMINER STENMAN: I believe that's still
19 27A.

20 A. I do.

21 THE WITNESS: And I understand what he's
22 asking about.

23 Q. Let's look at the '13-'14 planning year.
24 You have total purchases of (REDACTED) megawatts; is
25 that correct?

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1 MS. SPILLER: I'm sorry, what planning
2 year?

3 MR. KURTZ: '13-'14.

4 A. (REDACTED), yes.

5 Q. Okay. And that includes a
6 (REDACTED)-megawatt purchase?

7 A. That's what it appears here.

8 Q. Okay. Now, on what I -- on the bilateral
9 contracts, 4A, there was a purchase from (REDACTED)
10 dated December 7th, 2011, for (REDACTED) megawatts.
11 That's the same, and it's maybe six pages from the
12 back, seven pages from the back. Oh, page 19 of 26.
13 Do you have that?

14 A. I do.

15 Q. Okay. Now, what is the contract price
16 per megawatt-day for this (REDACTED)-megawatt -- for
17 this (REDACTED)-megawatt purchase?

18 MS. SPILLER: Your Honor, I'm going to
19 object to the lack of foundation and the use of these
20 documents with Mr. Wathen. I don't know that his
21 familiarity's been established.

22 EXAMINER STENMAN: Overruled.

23 A. On the document shown here there's a line
24 identified as contract price and that says
25 \$(REDACTED) a megawatt-day.

1 Q. Okay. Is this the same
2 1,906-megawatt purchase on FES 27A?

3 A. I have to assume it is, yes.

4 Q. Okay. Now, for purposes of calculating
5 your capacity purchase costs, if you turn to OEG 8A,
6 you assumed that these planning year '13-'14
7 purchases would be at \$(REDACTED) per megawatt-day
8 not the actual contract price of \$(REDACTED) a
9 megawatt-day; is that correct?

10 A. That is correct.

11 Q. Okay. would you agree that if you used
12 the actual contract price, that there would be a
13 \$5,377,000 reduction to your purchased power expense?

14 A. I haven't done the math but that sounds
15 about right, so.

16 Q. Now, the (REDACTED) purchase in the
17 '12-'13 planning year, there is a purchase for
18 \$(REDACTED) per megawatt-day. Let me find it.

19 That will be on page 15 of 26.

20 A. You said 15?

21 Q. Yeah, 15 of 26. Do you have that?

22 A. I do.

23 Q. Okay. Here's (REDACTED)-megawatt
24 purchased in the '12-'13 planning year for
25 \$(REDACTED) per megawatt-day; is that correct?

1 A. Yeah, again, the line identified as
2 quantity says (REDACTED) megawatts and the line
3 identifies the contract price at (REDACTED).

4 Q. Okay. And what was OEG 8A, the purchased
5 power costs that got reflected in the revenue
6 requirement, has that being bought at \$(REDACTED) a
7 megawatt-day; is that correct?

8 A. That's correct.

9 Q. Okay. So you were kind of aware of this
10 before I walked through this?

11 A. I was aware of what?

12 Q. That the price reflected in the purchased
13 power expense was different than the actual contract
14 price.

15 A. I am aware that -- I am aware of that,
16 yes.

17 Q. Okay.

18 A. Yeah.

19 Q. And would you agree that if you put the
20 actual contract price of \$(REDACTED) in instead of
21 (REDACTED), that your purchased power expense would
22 be reduced by \$(REDACTED) million?

23 A. That's correct. And as I indicated to, I
24 can't remember who it was asked me a question about
25 truing up, but we intend to true up the cost to what

1 we actually pay. So this would be something that
2 would be trued up.

3 Q. Okay. So with those two adjustments,
4 (REDACTED) and (REDACTED), that's almost a
5 \$(REDACTED) million reduction to the purchased power
6 expense.

7 A. Thereabouts.

8 Q. Okay. So instead of 729 million it would
9 be (REDACTED) million, thereabouts?

10 A. If that's the correct number, yes.

11 Q. Okay. Now, I want to ask you about the
12 application. Do you have the application that you
13 filed in this case?

14 A. Not in front of me.

15 Q. Would you turn to that, or could that be
16 handed out by counsel.

17 MR. JONES: Could Mr. Kurtz use the
18 microphone there, too. Thank you.

19 MR. KURTZ: Sorry.

20 Q. (By Mr. Kurtz) Do you have it in front of
21 you?

22 A. I have two copies, I guess I have a
23 confidential version of the same thing.

24 Q. Okay. Could you also open your WDW-1
25 page 1 of 24 so can you just look at that while we're

1 going over -- I'd like you to look at page 8 of the
2 application.

3 A. Does it matter whether it's the redacted
4 version or not?

5 Q. Of?

6 A. Of the application.

7 Q. I don't know.

8 MS. SPILLER: There's nothing
9 confidential on page 8.

10 MR. KURTZ: Okay.

11 Q. On page 8, paragraph 14, I just want to
12 walk through this paragraph in conjunction with page
13 1 of 24 of your exhibit. "The average annual revenue
14 requirement required for the Company to achieve an
15 11.15 percent ROE on its investment in resources used
16 to provide the services to which Duke Energy Ohio is
17 obligated as an FRR entity from August 1, 2012,
18 through May 31, 2015, is 364,876,433, or
19 approximately 224.15/MW-Day." Did I read that right?

20 A. Yes, you did.

21 Q. Okay. And this is the same 224.15 per
22 megawatt-day on page 1 of 24, WDW-1, correct?

23 A. That's correct.

24 Q. Okay. I'm going to go on back to the
25 application. "This figure represents the cost of

1 providing capacity service consistent with the
2 Company's FRR obligation." And again, the capacity
3 you're providing is the load on the system including
4 reserve margin, correct?

5 A. The load on the Duke Energy Ohio system,
6 yes, including reserve margin.

7 Q. Okay. The application goes on:
8 "However, a portion of this revenue requirement is
9 being recovered via the FZCP." And, again, we
10 established the FZCP is times the total load
11 including the reserve margin on the system." That's
12 what you get paid for?

13 A. We get -- we really, we net payment. The
14 net payment we receive is on our legacy generation
15 supply.

16 Q. What I mean is the (REDACTED) million
17 that we talked about, that's FZCP times the load plus
18 the reservice, reserve margin.

19 A. Yeah, that's how much we're charged,
20 right.

21 Q. Okay. Let me go back. "Netting this
22 additional revenue against the Company's overall
23 costs results in a net annual revenue requirement for
24 Duke Energy Ohio's capacity service as an FRR entity
25 from August 1, 2012, through May 31, 2015, of

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1 \$257,337,205 or a cost-based charge of approximately
2 158.08/MW-Day above the market-based FZCP revenues."

3 Did I read that correctly?

4 A. That's correct.

5 Q. Okay. And that's the 158.08 a
6 megawatt-day that we have here on page 1 of 24,
7 correct?

8 A. That's correct.

9 Q. And what you did there is you took the
10 257 million and divided by 4,459.85 megawatts divided
11 by 365?

12 A. That's correct. That 4,460,
13 unfortunately, is the MISO load, it's actually about
14 (REDACTED) in the PJM, so it would drag everything
15 down, but...

16 Q. Okay. So, and this is the load without a
17 reserve margin.

18 A. The 4,460?

19 Q. Yes.

20 A. Yeah, the 4,460, again, is pretty much
21 straight off the Form 1 data. It's the retail
22 demand, the five highest monthly CPs.

23 Q. Without a reserve margin.

24 A. No reserves.

25 Q. Okay.

1 A. And that explains the difference pretty
2 much between the 5,000 and the 4,500.

3 Q. Right, you're providing 5,000
4 approximately as we saw from these various exhibits,
5 (REDACTED) megawatts of capacity, but for purposes of
6 calculating the dollar per megawatt-day rate you just
7 simply used the 4,460 megawatts which is the actual
8 peak load, five highest peaks.

9 A. Just to be clear we're not offering
10 (REDACTED) megawatts of capacity, we have
11 (REDACTED) megawatts of load.

12 Q. Right. You're getting paid -- you have
13 to provide (REDACTED) megawatts of capacity which is
14 approximately (REDACTED) from legacy and (REDACTED)
15 of purchases.

16 A. That's essentially correct, yes.

17 Q. Okay.

18 A. Yeah.

19 Q. All right. Let me just finish this last
20 paragraph. "This is the incremental amount of
21 revenue, and the average incremental capacity rate,
22 needed to ensure that the Company has the opportunity
23 to earn an 11.15 percent on its shareholders'
24 investment in capacity-related service through the
25 term of its FRR obligation." I guess maybe I didn't

1 need to read that. We know that that's the amount.

2 So what you're saying is the 158.08 is
3 the additional charge per megawatt-day that you need
4 to charge in addition to FZCP to make up your revenue
5 requirement.

6 A. As I went through with Mr. Lang this
7 morning, the charge -- this is kind of -- I wouldn't
8 characterize it as a charge so much as it's a
9 characterization of the revenue requirement in a
10 unitized way. If we actually did it on a PJM basis
11 the charge would be, you know, 10, 20 percent lower
12 because the basis, the denominator would be more like
13 (REDACTED) instead of 4,500.

14 Q. So the dollar per megawatt-day charge
15 would be lower if you used the load including the
16 reserve margin because you're dividing the same
17 dollar amount by a bigger denominator.

18 A. Yeah, I mean, again, if it was going to
19 be represented on a unitized basis, it would be lower
20 because the denominator would be higher but the way
21 that the Duke Energy Ohio proposal would work these
22 are not rates that would be applied to customers or
23 to wholesale. These are just a representation of
24 revenue requirement in a way that is comparable to
25 what AEP did.

1 Q. Well, that's -- let me ask you to refer
2 to your testimony, refer to your testimony. On
3 page -- just say page 2, do you have your testimony?

4 A. I do. Is it -- are you in the
5 confidential one or the nonconfidential one? Does it
6 matter?

7 Q. I don't think it matters.

8 A. Page 2?

9 Q. Yeah. Line 16, "The calculations I am
10 supporting result in the rate for the period of
11 August 1, 2012, through May 31, 2015." What is "the
12 rate"?

13 A. It's the rate that's shown on the
14 exhibit, on page 1 you were just describing on
15 Attachment WDW-1, but that's not -- that's not what
16 we're asking for in terms of a deferral. We're
17 talking about revenue requirements.

18 It's a -- the rate that results if you
19 take the revenue requirement and divide it by some
20 denominator in megawatts is what's represented on
21 WDW-1. At the time we did that we didn't have PJM
22 data because we weren't in their service, we relied
23 on MISO data, so if I updated it for '12 knowing what
24 I know about '12 it would be like (REDACTED)
25 megawatts as opposed to 4,500.

1 Q. Okay, but the rate used here is 158.08
2 per megawatt-day.

3 A. That's correct, yeah.

4 Q. Now, let's turn your testimony to page
5 14, and you're asked the question on line 17: "What
6 figure is the company using to calculate the amount
7 of cost recovery it is seeking in its capacity
8 obligation rider (Rider DRCO)?

9 "Answer: In any given period, the
10 Company will prepare its net fixed cost of providing
11 noncompetitive capacity service against the
12 below-cost market price being recovered in PJM. For
13 example, PJM's final zonal clearing price for '12-'13
14 planning year is \$16.73" -- you made that correction,
15 "per MW-day. Comparing Duke Energy Ohio's cost of
16 capacity is \$224.15 per MW-day to the \$16.73 per
17 MW-day revenue received from PJM would mean that the
18 Company would be seeking recovery through Rider DR-CO
19 of the difference between these amounts, (\$224.15
20 minus \$16.73) multiplied by the Duke Energy Ohio's
21 retail load obligation."

22 Okay. Did I read that correctly?

23 A. You read it correctly.

24 Q. Okay. So that differential multiplied by
25 the Duke Energy Ohio retail load obligation that is

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1 the (REDACTED) we've been talking about, the five CP
2 plus the reserve margin, correct?

3 A. That's correct. The load obligation I
4 believe is around (REDACTED).

5 Q. Let me go on on your testimony, "The
6 difference in the rates will change as the PJM market
7 price changes in planning years '13-'14, '14-'15. On
8 average, the PJM market price over the period
9 August 1, 2012, through May 31, '15, is \$66.06 per
10 MW-day. As such, on average, the Company will be
11 deferring for recovery via Rider DR-CO the difference
12 between \$224.15 per MW-day and \$66.06 per MW-day or
13 \$158.08 per MW-day." Did I read that right?

14 A. Yes.

15 Q. Okay. So you'll be deferring for future
16 recovery the 158.08 per megawatt-day over the 34-
17 month period times your retail load obligation which
18 is about the (REDACTED)-megawatt number, correct?

19 A. Well, that's not exactly how it would
20 work. I mean, that's the average of how it would
21 work, but that's not how it would work year to year.

22 Q. Well, I mean, on average over the
23 34-month period the 158.08 is the amount that you're
24 owed to get to your \$729 million revenue requirement,
25 right?

1 A. On average, yes.

2 Q. On average.

3 A. Yeah.

4 Q. And so you -- and you would be
5 charging -- you would be deferring the 158.08 times
6 the load you're supplying which is the
7 (REDACTED)-megawatt number, approximately.

8 A. Well, again, that's not how it would work
9 necessarily, but that's, you know, a description of a
10 way you could represent it.

11 Q. Okay, let me -- let me ask you --

12 MR. KURTZ: I'd like to hand out and mark
13 as, well, this would be 12A because the other one
14 wasn't marked, okay.

15 EXAMINER STENMAN: Correct.

16 Q. Mr. Wathen, this is really sort of an
17 exercise in algebra that I want to go through to make
18 sure I'm getting it right.

19 A. I'm a little worried this is handwritten.

20 Q. Well, that's why I tried to cite where
21 all the numbers came from.

22 EXAMINER STENMAN: Is anything in this
23 document that will be marked as OEG 12A confidential?

24 MR. KURTZ: Yeah, I think all of it is.

25 EXAMINER STENMAN: Well, I mean the

1 descriptions obviously --

2 MR. KURTZ: Well, maybe that's true, your
3 Honor, I don't think --

4 EXAMINER STENMAN: Ms. Spiller, would you
5 like to weigh in?

6 MS. SPILLER: Well, I guess I'm not quite
7 sure what to do with a handwritten note that my
8 witness doesn't even know the genesis of.

9 MR. KURTZ: None of it's confidential.
10 You're right. Mark it just as 12, if we could.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. (By Mr. Kurtz) Mr. Wathen, the average
13 demand five highest daily peaks 4,460, that's the
14 number we saw on your page 1 of 24 on Exhibit 1?

15 A. That's correct.

16 Q. Okay. And then the average deferral over
17 34 months is 158.08 per megawatt-day, page 15 of your
18 testimony we've been talking about.

19 A. That's correct.

20 Q. Okay. I just took average days per
21 month, it's simply 365 divided by 12, will you accept
22 that, subject to check, 30.4?

23 A. It's close to 30 so I accept that as
24 reasonable.

25 Q. Okay, 30.4. And then simply the 34-month

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1 period, check on the algebra, if you were charging,
2 okay, 4,460 megawatts times 158.08 a megawatt-day
3 times the 34 -- or 30.4167 days in a month times 34
4 is 729,125,557 which is \$3,000 different from your
5 revenue requirement \$729,122,082. So is this sort of
6 an algebraic check?

7 A. Yeah, as long as you're using apples and
8 apples staying with the MISO demand it works out that
9 way, yeah.

10 Q. Okay. But, in fact, the 4,460 is the
11 demand on the system without a reserve margin,
12 correct?

13 A. That's correct.

14 Q. And as I understand reading your
15 testimony, what you're going to defer is the
16 difference between -- you're going to defer the
17 158.08 times your retail load obligation which is the
18 (REDACTED)-megawatt number.

19 A. Again, what we're going to defer is the
20 revenue requirement, our revenue requirement in a
21 given year is a number, we've defined it in our case,
22 we're going to defer that difference of that revenue
23 requirement and what we collect from PJM net. The
24 calculation you've done here is a MISO number times a
25 unitized rate based on a MISO number. If I transform

1 this into PJM numbers then I would use
2 (REDACTED) megawatts or so instead of 4,460, but the
3 158 would be something less than that. The net
4 result would still be 729.

5 Q. Well, but if you're deferring a smaller
6 number, if it's not 158.08, it's some lesser number,
7 then as you're multiplying that lesser number times
8 the (REDACTED) --

9 A. That's right.

10 Q. -- you'll get the 729.

11 A. That's correct.

12 Q. But your application asked for to defer
13 the 158.08 times the (REDACTED).

14 A. Our application asked to defer the
15 difference between our revenue requirement and what
16 we're collecting in capacity charges, capacity
17 revenue.

18 Q. But the rate we established that you're
19 asking for, the rate, is the 158.08 a megawatt-day
20 that you've calculated on page 1 of your -- of the
21 exhibit.

22 A. I went through this with Mr. Lang this
23 morning and that rate is a representation for
24 purposes of comparison. That's not something we're
25 going to use in the deferral.

1 Q. Well, why don't you walk through the
2 mechanics of the deferral. How would it work for
3 next month assuming the Commission grants your
4 application today?

5 MS. SPILLER: Your Honor, I'm going to
6 object to the extent I think we've already covered
7 this with Ms. Bojko.

8 EXAMINER STENMAN: Overruled.

9 A. How would we calculate the deferral?

10 Q. Yeah.

11 A. We have a revenue requirement. We know
12 that it's -- we know that our revenue requirement
13 before any credits for capacity or cost is
14 approximately \$346 million a year, that's based on my
15 testimony on WDW-1. To get to that 158 number you
16 mentioned earlier we subtract out the capacity
17 revenue we receive and divide it by the load just to
18 get to a rate. But all we really need to know is
19 that revenue is 364, how much money am I collecting
20 from PJM for that capacity.

21 In the years when the rate is 1,673 and
22 we're collect a lot less I'll defer more in those
23 periods. When it's 126, it's a lot more, I'll defer
24 a lot less in those periods.

25 Q. Every month the actual load changes,

1 right, I mean you'll have less load in the next month
2 of May than you will August so this is not an average
3 per month thing, is it?

4 A. I believe -- I believe that we get paid
5 for the annual load obligation not the monthly.

6 Q. What is the purpose of the 108.08 as the
7 rate that you put into your application?

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

10 EXAMINER STENMAN: Overruled.

11 A. The AEP case was extremely intent on
12 describing things in terms of megawatt-day. The
13 Commission thought it would be helpful to put things
14 in a comparable term that we could characterize the
15 revenue requirement in terms of revenue hours,
16 megawatt hours, megawatt month. They have a basis
17 for comparison to AEP that I thought it would be
18 useful to represent it on that term.

19 Q. So when you call that the rate in your
20 testimony and you said that what you would do is
21 mechanically you would take the difference between --
22 would you take the difference between your cost-based
23 charge in FZCP multiplied by the retail load
24 obligation and you would defer that, that's what your
25 testimony on page 15 says.

1 A. Right, but that cost-based charge would
2 be calculated with the current -- whatever the
3 current load obligation is. I couldn't possibly use
4 MISO to represent something in PJM, so.

5 Q. That's what sort of occurred to me.

6 A. Yeah.

7 Q. So what we should really do is use the
8 (REDACTED)-megawatt denominator to use the rate, the
9 deferral rate, correct?

10 A. That's a possibility. And as I described
11 in your handwritten OEG 12A I mean it's possible to
12 just transform everything into representing the PJM
13 five CPs, the 158 would go down, the load obligation
14 would go up.

15 Q. Well --

16 A. And it would have -- we'd be back to the
17 729.

18 Q. Well, the load obligation wouldn't go up;
19 that is still going to be the (REDACTED).

20 A. Right, but the math you provided was
21 4,460 times that rate.

22 Q. My point is if you use 158.08 as the
23 rate, which is what your application says, and you
24 multiply that by the actual load you're serving, the
25 (REDACTED), you're going to overrecover the revenue

1 requirement, you're going to recover more than the
2 729 million mathematically.

3 A. I agree, but if the 158 was calculated on
4 a basis that -- would be unrepresentative of the rate
5 in PJM. The rate in PJM would be based on the, what
6 is it, the \$257 million divided by (REDACTED) on the
7 load.

8 Q. Oh, good. Now, I have not seen this
9 described -- I'm glad you're going to update the
10 rate. I have not seen it described in your testimony
11 or the application. Is it -- did I miss that?

12 MS. SPILLER: I will object to the
13 mischaracterization of the rate.

14 A. I'm not sure what you're talking about,
15 Mike.

16 Q. Are you going to recalculate the 158.08
17 to use a denominator of approximately
18 5,000 megawatts?

19 A. If the Commission desires to calculate
20 the rate that is really for information only, then we
21 can certainly do that.

22 Q. Well, I mean, when you filed the
23 application and say you want -- you need \$158.08 per
24 megawatt-day to be made whole, the way I took at it
25 is that's what you needed to charge to be made whole.

1 But is that -- so now I guess I'm learning that's not
2 the case.

3 A. And the way I look at it is we need to
4 charge \$257 million a year on whatever basis to be
5 made whole.

6 Q. Okay. So what you're saying is that
7 Exhibit 1 of the application -- or Exhibit 1, page 1,
8 where you calculate these rates as you described it
9 and as we walked through the application, really this
10 page 1 has no import, no meaning?

11 A. Well, it does except on the revenue
12 requirement components of it. Again, I thought it
13 would be useful for the Commission to see something
14 they're familiar with with the AEP case. They asked
15 for 188. They ended up getting 188 a megawatt-day,
16 89, and we wanted to show how comparable it was to
17 what we have.

18 Q. Well, let's talk about AEP. AEP is
19 deferring the difference between 188.88 a
20 megawatt-day and the FZCP for their load zone, that's
21 the amount multiplied by the amount of capacity
22 they're providing to shopping customers, that's what
23 they're deferring and that's what they will recover
24 at the end of their period. Correct?

25 A. Yeah. AEP is a little bit different

1 animal because the magnitude of their deferral is a
2 function of switching. And whereas we don't have
3 that question. Everything -- we have a full -- the
4 revenue requirement they need to collect varies with
5 the level of switching, ours does not.

6 Q. Right. We don't know the total dollar
7 amount that AEP will ultimately defer.

8 A. We won't know until the end of the ESP.

9 Q. Because they're deferring the difference
10 between their cost, 188.88, and what they're getting
11 paid, the FZCP times the load they're supplying.
12 That's what they're deferring. Correct?

13 A. And they have -- and in AEP's case they
14 have to do it on a unitized basis because of the
15 switching.

16 Q. Well, it's the same thing with Duke
17 Energy Ohio, it's just the entire footprint because
18 everything is switched it's either auction or
19 shopping.

20 A. The effect of it is, but there's no need
21 to calculate rates on a megawatt-day for Ohio for an
22 average rate because we have a revenue requirement.
23 We don't -- a full -- that's independent of
24 switching.

25 Q. Okay. So you provided Attachment page 1

1 just for -- just even though it doesn't have any
2 impact on how the deferral will operate.

3 A. Attachment 3 does the same thing, it
4 shows some comparisons to AEP on an apples-to-apples
5 basis.

6 Q. Okay. I think you did agree and it's
7 pure math that if you applied the 158.08 a
8 megawatt-day times the actual load you're serving,
9 the (REDACTED), you would overrecover the
10 729 million. Correct?

11 A. If I did not -- if I did not modify the
12 158 to reflect the appropriate denominator and
13 applied it to a different, you know, multiplier, then
14 I would get a different number than my 729, right.

15 Q. Okay. So if the Commission wanted to
16 know, like AEP, what you're deferring, the difference
17 between your cost and what you're getting paid, the
18 FZCP, we would need to redo the numbers to reflect
19 (REDACTED)-megawatt load.

20 A. If they want to know what it is on a per
21 megawatt-day basis and comparable to AEP then we'd
22 have to update it for our PJM load, you know.

23 MR. KURTZ: Your Honor, I think those are
24 all my confidential questions, or all my questions.

25 EXAMINER STENMAN: I'm not sure that most

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1 of them were confidential, but thank you.

2 Ms. Petrucci?

3 MS. PETRUCCI: No, I have no questions.

4 EXAMINER STENMAN: Ms. Bojko?

5 MS. BOJKO: No questions, your Honor.

6 EXAMINER STENMAN: Mr. Hart?

7 MR. HART: No questions.

8 EXAMINER STENMAN: Mr. Olikar?

9 MR. OLICKER: No, thank you, your Honor.

10 EXAMINER STENMAN: Mr. Jones?

11 MR. JONES: No questions, your Honor.

12 EXAMINER STENMAN: Redirect?

13 MS. SPILLER: Briefly, your Honor, if we
14 may.

15 EXAMINER STENMAN: Yes.

16 MS. SPILLER: If we can go off the
17 record.

18 EXAMINER STENMAN: Briefly.

19 MS. SPILLER: Thank you, and it will be
20 brief.

21 (Recess taken.)

22 EXAMINER STENMAN: Let's go back on the
23 record. Any redirect?

24 MS. SPILLER: Yes, your Honor. Briefly,
25 thank you.

1 REDIRECT EXAMINATION

2 By Ms. Spiller:

3 Q. Mr. Wathen, do you recall questions from
4 Mr. Kurtz about the reference to the number of
5 \$158.08 per megawatt-day?

6 A. I do.

7 Q. And although you have indicated that that
8 number was included for sake of comparison with the
9 AEP case, could you -- do you know how you would
10 update that number to reflect the PJM load?

11 A. Well, what I would do is take the -- and
12 we responded to a discovery request on this and I
13 can't remember which one it is, but we were asked for
14 the five CPs in PJM and I can't tell you the
15 individual numbers but I do remember that the total
16 average was (REDACTED), so what I would take is take
17 the annual revenue requirement on WDW-1, page 1, line
18 14, of \$257,337,205 and divide it by (REDACTED)
19 megawatts divided by 365 and on a PJM-type load basis
20 that number becomes \$(REDACTED) per megawatt-day.

21 MS. SPILLER: Thank you. Nothing
22 further, your Honor.

23 EXAMINER STENMAN: Any
24 recross-examination, Mr. Lang?

25 MR. LANG: Oh, no, your Honor.

1 EXAMINER STENMAN: Ms. Grady?

2 MS. GRADY: No.

3 EXAMINER STENMAN: Mr. Kurtz?

4 MR. KURTZ: No, your Honor.

5 EXAMINER STENMAN: Ms. Petrucci?

6 Ms. Bojko?

7 Mr. Oliker?

8 Mr. Jones?

9 MR. JONES: No.

10 EXAMINER STENMAN: Thank you, Mr. Wathen.

11 I believe we have some exhibits.

12 MS. SPILLER: Your Honor, if I may on
13 behalf of Duke Energy Ohio I would move for the
14 admission of Duke Energy Ohio Exhibits 12 and 12A,
15 both the public and confidential versions of
16 Mr. Wathen's direct testimony.

17 EXAMINER STENMAN: Any objection to the
18 admission of Duke Exhibits 12 and 12A?

19 Hearing none they will be admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 MS. SPILLER: Your Honor, before moving
22 to counsel for intervenors we did not dispose yet of
23 the formality of moving the application into the
24 record. With Mr. Wathen having testified we would
25 now ask for the admission into the record of Duke

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1 Energy Ohio Exhibits 1 and 1A, the application filed
2 in these proceedings.

3 EXAMINER STENMAN: Any objections?

4 Hearing none, Duke Energy Ohio Exhibits 1
5 and 1A many be admitted.

6 MS. SPILLER: Thank you, your Honor.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 EXAMINER STENMAN: FirstEnergy?

9 MR. LANG: Your Honor, FirstEnergy moves
10 Exhibit Nos. 22, 23, 24, 25, 26, 27A, 28A, and 29.

11 EXAMINER STENMAN: The Bench will take
12 administrative notice of FES Exhibits 22 and 23.
13 With respect to FES 24 through 29 are there any
14 objections?

15 MS. SPILLER: Your Honor, yes, we renew
16 the objection to FES 24, the allegations regarding
17 Duke Energy Ohio's distribution rate case is
18 irrelevant to this proceeding.

19 EXAMINER STENMAN: Response?

20 MR. LANG: Your Honor, it's relevant to
21 this proceeding because it shows a double counting of
22 costs between the distribution case and this case.

23 EXAMINER STENMAN: Thank you.

24 FES Exhibits 24 through 29 will be
25 admitted.

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1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 MS. BOJKO: I'm sorry, your Honor, I just
3 didn't hear you, did you say admitted?

4 EXAMINER STENMAN: Yes.

5 OCC?

6 MS. GRADY: Yes, your Honor, we move for
7 the admission of OCC Exhibits 16 through 22.

8 EXAMINER STENMAN: Any objections?

9 MS. SPILLER: No, your Honor.

10 EXAMINER STENMAN: OCC Exhibits 16
11 through 21 will be admitted.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 EXAMINER STENMAN: OEG?

14 MR. KURTZ: Your Honor, we move for the
15 admission of OEG 12.

16 EXAMINER STENMAN: Any objections?

17 MS. SPILLER: Your Honor, I would object
18 only that I have no idea as to the source of the
19 information and I don't believe a proper foundation
20 was laid with respect to Mr. Wathen.

21 EXAMINER STENMAN: Mr. Kurtz.

22 MR. KURTZ: Your Honor, I cited where the
23 4,460-megawatt number came from which is I guess the
24 MISO peak for that reserve margin, WDW-1 page 1 of
25 24, the 158.08 a megawatt-day is in Mr. Wathen's

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1 testimony. The average days in a month is a simple
2 mathematic calculation. And then number of days
3 in -- or number of months in the software, 34, is
4 mathematic. The rest is simple algebra that I walked
5 through with Mr. Wathen.

6 EXAMINER STENMAN: OEG Exhibit 12 will be
7 admitted.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER STENMAN: I believe that's it.

10 MS. BOJKO: No, your Honor. At this time
11 I would move the admission of Kroger Exhibits 8 and
12 9.

13 EXAMINER STENMAN: We took administrative
14 notice of those.

15 MS. BOJKO: Did you? Perfect, thank you.

16 MR. OLIKER: Your Honor, excuse me, I'm
17 sorry.

18 EXAMINER STENMAN: Yes.

19 MR. OLIKER: The understanding is
20 IEU-Ohio Exhibits 12 through 16 have already been
21 admitted through administrative notice?

22 EXAMINER STENMAN: Yes.

23 MR. OLIKER: I'd like to make a
24 clarification that Mr. Wathen has I believe the only
25 full copy of Mr. Pifer's testimony so I would ask

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1 that he please give that to the court reporter
2 because it's slightly more accurate than the one that
3 was distributed to the parties.

4 EXAMINER STENMAN: He can do that.

5 MR. OLIKER: Thank you, your Honor.

6 MS. SPILLER: I'm sorry, did you say he
7 has "the accurate copy"?

8 MR. OLIKER: He has the full copy.

9 MS. SPILLER: Just wondered what I was
10 looking at.

11 MR. OLIKER: There's two volumes on the
12 Commission website. He has both volumes.

13 EXAMINER STENMAN: Is there anything else
14 we need to talk about today?

15 MR. HART: Your Honor, can I just confirm
16 GCHC is admitted as well, GCHC 1, the notes?

17 EXAMINER STENMAN: We did.

18 MR. HART: Thank you.

19 EXAMINER STENMAN: All right. Hearing
20 nothing else we will be back here at 9 o'clock
21 tomorrow. Thank you.

22 (Thereupon, the hearing was adjourned at
23 5:03 p.m.)

24 - - -

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, April 22, 2013, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2016.

(72159-MDJ)

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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 04/22/13 - Volume VI
- Public Version electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc.
and Gibson, Karen Sue Mrs.