

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. :

- - -

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 Wednesday,  
April 24, 2013.

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VOLUME VIII

- - -

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## FES EXHIBITS

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## OCC EXHIBIT

IDFD ADMTD

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1816

1 Wednesday Morning Session,  
2 April 24, 2013.

3 - - -

4 EXAMINER PIRIK: We'll go on the record.  
5 I believe the next witness is OCC's.

6 MS. KERN: Yes, OCC calls J. Randall  
7 Woolridge to the stand.

8 (Witness sworn.)

9 EXAMINER PIRIK: We'll go back on the  
10 record. OCC.

11 - - -

12 J. RANDALL WOOLRIDGE, PH.D.  
13 being first duly sworn, as prescribed by law, was  
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Ms. Kern:

17 Q. Good morning, Dr. Woolridge. Could you  
18 please identify yourself for the record, sir?

19 A. My name is the initial J. Randall  
20 Woolridge, that's spelled W-O-O-L-R-I-D-G-E.

21 Q. And are you the same Randall Woolridge  
22 whose direct testimony was filed in this proceeding  
23 on March 26th, 2013?

24 A. Yes.

25 MS. KERN: Your Honors, I would like to



1 have marked for purposes of identification OCC  
2 Exhibit 24, the prefiled testimony of Randall  
3 Woolridge.

4 EXAMINER PIRIK: It is so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. And on whose behalf do you appear today?

7 A. OCC.

8 Q. Do you have your prepared testimony here  
9 with you on the stand?

10 A. Yes, I do.

11 Q. And did you prepare this testimony or  
12 have it prepared at your direction?

13 A. I did.

14 Q. Do you have any changes or corrections to  
15 your direct testimony?

16 A. None that I know of.

17 Q. Okay. If I asked you the same questions  
18 that are in your direct testimony today, would your  
19 answers be the same?

20 A. Yes, they would.

21 MS. KERN: Your Honors, I tender  
22 Dr. Woolridge for cross-examination.

23 EXAMINER PIRIK: Is there any  
24 cross-examination from the intervenors?

25 Staff will go last.

1                   Hearing none, Duke.

2                   MS. KINGERY: Thank you, your Honor. I'd  
3 like to start with a motion to strike.

4                   EXAMINER PIRIK: Yes.

5                   MS. KINGERY: And this is very brief.  
6 Pages 2 and 3 we would move to strike in their  
7 entirety. The witness is not an attorney and these  
8 are legal conclusions.

9                   EXAMINER PIRIK: That's it?

10                  MS. KINGERY: Yes.

11                  EXAMINER PIRIK: Response?

12                  MS. KERN: Your Honors, Dr. Woolridge  
13 does have testimony that addresses the ESP  
14 stipulation. He has reviewed this document and other  
15 documents that are related to this test -- or, to  
16 this case for purposes of preparing his direct  
17 testimony. He is not professing to be an attorney or  
18 providing legal opinion in this case but, instead,  
19 using his vast experience in the regulatory field to  
20 opine on these documents.

21                  Secondly, the Bench and attorney  
22 examiners have the expertise to weigh the evidence  
23 and the testimony presented by witnesses in this  
24 case.

25                  Finally, it would be consistent with your

1 previous rulings on motions to strike by the company  
2 to admit this testimony by Dr. Woolridge.

3 EXAMINER PIRIK: Thank you. Consistent  
4 with our previous rulings the motion to strike will  
5 be denied.

6 MS. KINGERY: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Ms. Kingery:

10 Q. Good morning, Dr. Woolridge.

11 A. Good morning.

12 Q. The purpose of your testimony is set  
13 forth on page 4, beginning at line 18, correct?

14 A. Yes.

15 (Discussion off the record.)

16 EXAMINER PIRIK: Go back on the record.

17 MS. KINGERY: Thank you, your Honor.

18 EXAMINER PIRIK: You might need to  
19 restate your question.

20 MS. KINGERY: I will.

21 Q. (By Ms. Kingery) If we start looking at  
22 page 4 of your testimony on line 18, you set forth at  
23 that point the purpose of your testimony in this  
24 proceeding; is that correct?

25 A. Yes.

1           Q.    And the purpose, to summarize what you've  
2    said here, is to evaluate the testimony of Duke  
3    Energy Ohio's Witnesses Cannell and DeMay regarding  
4    financial integrity of the company and to provide a  
5    recommendation for an overall return on equity and  
6    cost of capital, correct?

7           A.    Yes.  The primary, my primary emphasis  
8    has been in this area.  Now I've obviously reviewed a  
9    lot of other documents associated with the case.

10          Q.    Thank you.

11                And your expertise is in the area of  
12    economics and finance; is that a fair generalization?

13          A.    Yes.

14          Q.    And you're not an attorney as we have  
15    previously discussed, correct?

16          A.    That's correct.

17          Q.    And you have no special expertise or  
18    training in the area of contract interpretation.

19          A.    No.

20          Q.    So with that purpose in mind and that  
21    expertise, if we go back to page 2, you state on --  
22    in response to the question that begins on line 1  
23    that your primary recommendation in this case is that  
24    the Commission should grant the motion to dismiss; is  
25    that correct?

1 A. Yes.

2 Q. Was any of your technical expertise in  
3 economics or finance required for you to reach that  
4 conclusion?

5 A. No, it was based on my reading of  
6 documents associated with the case and the  
7 stipulation. The other, I mean, other documents,  
8 especially the joint -- the OCC and OEG's request to  
9 dismiss the case, that sort of thing, so it was other  
10 documents in addition to the testimonies that I'm  
11 focusing on.

12 Q. So it wasn't based on your expertise in  
13 economics?

14 A. No. It was just based on a reading of  
15 the stipulation.

16 Q. So, essentially, as anybody else might  
17 read the stipulation and associated documents.

18 A. Yes.

19 MS. KINGERY: I would renew my motion to  
20 strike this section of the testimony because this  
21 witness is offering the testimony not as an expert,  
22 but merely as a layperson reading the documents.  
23 This is not expert testimony.

24 EXAMINER PIRIK: And I do understand your  
25 motion, and I appreciate that, the Commission will

1 give this the appropriate weight, but the motion is  
2 denied.

3 MS. KINGERY: Thank you.

4 Q. So if we look in a little more detail at  
5 your recommendation, on line 11 you talk about the  
6 stipulation in Duke Energy Ohio's recent ESP  
7 proceeding, correct?

8 A. Yes.

9 Q. And you believe, you say there, "The  
10 company agreed to provide capacity for all load (both  
11 shopping and Standard Service Offer) at market-based  
12 Reliability Pricing Model rates." Did I read that  
13 correctly?

14 A. Yes.

15 Q. And your belief is that the part of the  
16 stipulation that so provides is found on pages 6 to  
17 7, correct?

18 A. Yes.

19 Q. And could you identify for me the  
20 language on pages 6 to 7 that you believe states  
21 that?

22 A. I don't have a copy of the stipulation  
23 with me.

24 MS. KINGERY: IEU Exhibit 5. Can counsel  
25 provide that, please?

1 MS. KERN: Counsel can provide it.

2 MS. KINGERY: Thank you.

3 A. I'm ready.

4 Q. Go ahead.

5 A. Yeah, on page 6 of the stipulation at the  
6 bottom of the paragraph -- of the page the sentence  
7 that starts "For purposes of this paragraph, the  
8 Parties also agree that, for so long as Duke Energy  
9 Ohio is a Fixed Resource Requirement entity under PJM  
10 Interconnection, LLC, it will provide capacity to  
11 Final Zonal Capacity Price in the unconstrained  
12 regional transmission organization region."

13 Q. Thank you. And I would agree you read  
14 that correctly.

15 But the first few words are critically  
16 important. "For purposes of this paragraph." So  
17 let's see if we can figure out what this paragraph is  
18 about.

19 MS. KERN: Objection. I would move to  
20 strike counsel's commentary about what's critically  
21 important in this paragraph.

22 EXAMINER PIRIK: Objection overruled.  
23 The witness can answer.

24 Q. So could you go to the beginning of the  
25 paragraph, please, and read the first sentence.

1           A.    "In the event the Commission rejects Duke  
2   Energy Ohio's next SSO application or substantially  
3   modifies it such that Duke Energy Ohio withdraws the  
4   application, the Parties expressly acknowledge and  
5   agree that the auction-based pricing and  
6   cost-recovery provisions of the SSO structure under  
7   which Duke Energy Ohio is operating as of May 31,  
8   2015, shall persist until such time as a subsequent  
9   SSO is approved and not withdrawn, as provided for in  
10  R.C. 4928.143(C)(2)(a), by Duke Energy Ohio."

11           Q.    Thank you.  So would you agree with me  
12  that this paragraph does not refer to what is  
13  happening during the time period of the current ESP?

14           A.    No.

15           Q.    All right.  Let's go back and look at  
16  those words again that you just read.  "In the event  
17  the Commission rejects Duke Energy Ohio's next SSO  
18  application."

19           A.    I mean, I think that's --

20           Q.    That's not this one.

21           A.    I agree in that part.  But the way I read  
22  the sentence that I read initially, it says that "for  
23  so long as Duke Energy Ohio's a Fixed Resource  
24  Requirement."  For so long as they are given that  
25  they currently are, I read that as saying that they



1 agree, since they currently are it doesn't  
2 necessarily reflect fast forward to 2015 till when  
3 they become this and they're going to provide  
4 capacity at FZCP.

5 Q. Are you aware of when Duke Energy Ohio's  
6 status as an FRR entity ended, was set to end, at the  
7 time this stipulation was signed?

8 A. No.

9 Q. If you learned that Duke Energy Ohio's  
10 FRR status at that time was set to end a year after  
11 the ESP would end, would that change your  
12 interpretation of this paragraph?

13 A. I don't believe so.

14 Q. And if your interpretation were correct,  
15 what do you think would be the meaning of the words  
16 "for purposes of this paragraph"?

17 A. Well, I believe that, I mean, obviously  
18 "for purposes of this paragraph" refers to the above.  
19 However, the way I read that sentence is that it is  
20 that Duke Energy Ohio is a fixed -- FRR under PJM.  
21 It says that they already are. And as a result,  
22 since they are, it's just continuing through beyond  
23 2015. Now, that's just the way I read it.

24 Q. But, again, you have no training in  
25 contract interpretation.

1 MS. KERN: Objection. Asked and  
2 answered.

3 EXAMINER PIRIK: Overruled.

4 Q. And you're not an attorney.

5 A. No. It's just how I read this.

6 Q. As a layman.

7 A. Yes.

8 Q. Thank you.

9 And you don't believe there's anything  
10 else in the stipulation that would set an amount that  
11 Duke Energy Ohio would receive for its services as an  
12 FRR provider of capacity, correct?

13 A. I don't believe I -- I don't see anything  
14 in the stipulation about a cost-based system or  
15 anything else.

16 Q. I didn't ask about a cost-based system.

17 A. Okay, but I mean I didn't see other --  
18 other mechanisms.

19 Q. All right. Thank you.

20 Dr. Woolridge, you had your deposition  
21 taken recently, correct?

22 A. Yes.

23 Q. And at that deposition you took an oath  
24 to tell the truth, correct?

25 A. Yes.

1 MS. KINGERY: Can we get a copy of the  
2 deposition.

3 Q. I assume you don't have a transcript in  
4 front of you.

5 A. No.

6 Q. Okay. I'd like you to turn to page 14,  
7 please, and look at line 24. There are several lines  
8 here in this interchange so I'll read it to you. You  
9 can tell me if I've read it correctly.

10 "Question: Okay. Well, the sentence  
11 that you pointed to begins, 'For purposes of this  
12 paragraph the parties also agree,' correct?"

13 Your response: "Yes.

14 "Question: Okay. And this paragraph  
15 would be Paragraph 1A, correct?

16 "Answer: I don't understand what you  
17 mean.

18 "Question: Well, the sentence that you  
19 just read pertains to the information set forth in  
20 that paragraph, correct?

21 "Answer: Yes. I believe.

22 "Question: And the paragraph to which  
23 you are referring, sir, concerns provision for Duke  
24 Energy Ohio's next ESP that would take effect June 1  
25 of 2015, correct?

1 "Answer: Yes."

2 And then the discussion moved on at that  
3 point to other items, and I would like you now to  
4 move forward --

5 MS. KERN: Objection. This is an  
6 improper use of a deposition transcript. Counsel  
7 hasn't shown that there's inconsistency with  
8 Dr. Woolridge's answers here today to what he  
9 testified to in his deposition.

10 EXAMINER PIRIK: Objection overruled.

11 Q. Did I read that section correctly?

12 A. Yes.

13 Q. So far.

14 A. Yes.

15 Q. Thank you.

16 All right. Now, if you move down on that  
17 page, page 15, and start at line 16, you were asked:  
18 "Is there anywhere in Exhibit 3 to your deposition,  
19 Dr. Woolridge" -- and I would note that that is the  
20 stipulation -- "where it provides that Duke Energy  
21 Ohio agreed to be compensated at market-based RPM  
22 capacity rates for the term between January 1, 2012,  
23 and May 31, 2015?"

24 "Answer: I guess, no. I guess it was my  
25 presumption that that's how the capacity rates would

1 be -- would be -- how they would be priced."

2 Did I read that correctly?

3 A. Yes.

4 Q. Thank you.

5 You've been testifying on the subject of  
6 the appropriate rate of return for setting utility  
7 rates for quite a few years; is that correct?

8 A. Yes.

9 Q. Do you have an estimate of how many cases  
10 you've testified in?

11 A. I don't know. 200.

12 Q. Okay. In all of those cases have you  
13 ever recommended a negative return on equity for a  
14 public utility?

15 A. No. And I'm not recommending a negative  
16 return here either.

17 Q. And you would agree, wouldn't you, that a  
18 negative return on equity would not be sufficient to  
19 attract investors to a company?

20 A. Well, if it was a specific utility, I  
21 would say it would have difficulty attracting  
22 capital. Duke Energy does not have a negative return  
23 on equity and it certainly doesn't have any trouble  
24 attracting capital.

25 Q. But we're talking about Duke Energy Ohio

1 here, are we not?

2 A. Yeah, and Duke Energy Ohio. If you look  
3 at -- you look at bond ratings, credit ratings, Duke  
4 Energy, Duke Energy Ohio has very good -- they're  
5 clearly less risky than most other electric  
6 utilities.

7 Q. And if Duke Energy Ohio were unsupported  
8 by its corporate parent, do you believe that it would  
9 be able to access debt currently?

10 A. Definitely. It has a bond rating by  
11 itself, the bond rating met -- it has a better bond  
12 rating than most electric utilities and its financial  
13 metrics are very strong.

14 Q. How about the generation side of Duke  
15 Energy Ohio?

16 A. Duke, the generation side is part of Duke  
17 Energy Ohio, I mean it's --

18 Q. I'm aware --

19 A. -- an integrated utility.

20 Q. I'm aware of that, thank you.

21 A. And there are many integrated utilities.  
22 Most of them are integrated utilities.

23 Q. You are familiar with rider ESSC, are you  
24 not?

25 A. In a general term, yes.

1 Q. And what is your understanding of that  
2 rider?

3 A. It's a stability charge for three years  
4 at \$110 million a year.

5 Q. And what is your understanding of what  
6 that is for?

7 A. I take it from what I've read it's a  
8 transition-type stability charge that customers pay.

9 Q. And that understanding came from what  
10 source?

11 A. Just reading lots of documents.

12 Q. Isn't it true that your understanding  
13 came primarily from reading the testimony of  
14 Mr. Hornby in this case?

15 A. I have read his testimony. I don't  
16 remember the specifics.

17 Q. Any other particular sources?

18 A. No.

19 Q. Could you turn to page 24 in your  
20 deposition transcript, please. Starting at line 1,  
21 "Now did you come to the understand the Rider ESSC  
22 reflects a transition charge to the competitive  
23 markets?

24 "Answer: Oh, I guess I read the  
25 testimony of Mr. Hornby who discussed that element.

1                   "Question: Okay. And then so Mr. Hornby  
2 is a witness in these proceedings, correct?

3                   "Answer: Yes.

4                   "Question: A witness on behalf of the  
5 OCC, correct?

6                   "Answer: Yes.

7                   "Question: And is your review of  
8 Mr. Hornby's testimony the only source for your  
9 understanding as to the purpose for Rider ESSC?

10                  "Answer: I'd say that was my primary  
11 source and discussions with counsel.

12                  "Question: Well, you said that this was  
13 your primary source, sir, was reading Mr. Hornby's  
14 testimony. Are there secondary sources?

15                  "Answer: Well, I said discussion with  
16 counsel."

17                  Did I read that correctly?

18                  A. Yes.

19                  Q. So in truth you have no independent  
20 knowledge -- excuse me -- no independent knowledge of  
21 the purpose for rider ESSC, correct?

22                  MS. KERN: Objection. Mischaracterizes  
23 the witness's testimony.

24                  EXAMINER PIRIK: Objection overruled.

25                  A. No. I mean, obviously it's in the ESP,



1 it's in other documents as well.

2 Q. But you primarily read about it through  
3 Mr. Hornby's testimony.

4 A. Yes. And -- but it's in the, yeah, in  
5 terms of an opinion, yes.

6 Q. So your opinion about it is based on  
7 Mr. Hornby's opinion.

8 A. Generally, yeah. I mean, it's obviously  
9 also in the company's 10-K statements and that sort  
10 of thing, so you see it at different places.

11 Q. But you developed your opinion about it  
12 based on Mr. Hornby's opinion.

13 A. Primarily, yes.

14 Q. So if we look again at your testimony,  
15 the paragraph starting on page 2 and carrying over to  
16 page 3, one of your primary reasons for believing  
17 that the motion to dismiss should be granted is that  
18 you believe that the stipulation is being -- from the  
19 ESP case is violated by the application here,  
20 correct?

21 A. Well, I believe that the wording on page  
22 6, the way I read it, indicates that the capacity  
23 would be at RPM pricing, yes.

24 Q. But in that paragraph you also cite as a  
25 justification for your belief the collection of the

1 ESSC charge. Do you see that?

2 A. Yes.

3 Q. So your opinion about the ESSC charge is  
4 from a different witness primarily.

5 A. Mr. Hornby.

6 Q. And we've talked through your reading of  
7 the language on page 6, and those are the  
8 justifications for your first item here starting on  
9 page 11.

10 A. Yes.

11 Q. I'm sorry, line 11 of page 2.

12 A. Yes.

13 Q. Okay. Now, secondarily, starting on page  
14 3, starting on line 8, you indicate your belief that  
15 Case No. 10-2929 is solely applicable to AEP Ohio,  
16 correct?

17 A. That's what my -- that's my  
18 understanding.

19 Q. And from where did you get that opinion?

20 A. I believe it was -- I believe it was from  
21 discussions with other witnesses about that case and  
22 particular places in that case where it was  
23 highlighted that was specific to AEP.

24 Q. Dr. Woolridge, when you participate as a  
25 witness in a proceeding and develop a recommended

1 ROE, that ROE is only applicable to that particular  
2 case and that particular utility, correct?

3 A. Usually, that's correct.

4 Q. Do you generally use the same structure  
5 to your investigation, the same tests, the same  
6 models?

7 A. As a general idea, yes.

8 Q. So your approach to developing an ROE is  
9 not just applicable to one company.

10 A. No, but there may be unique elements why  
11 one ROE is specific to one company versus another,  
12 and it --

13 Q. Absolutely.

14 A. -- depends on elements of risk.

15 Q. Absolutely. So the number that you get  
16 at the end is specific to the company, but your  
17 methodology remains the same, roughly.

18 A. As a general notion, yes.

19 Q. Dr. Woolridge, what is your understanding  
20 of Duke Energy Ohio's FRR obligation?

21 A. Primarily my understanding is from what  
22 I've read in the testimony of Dr. Vander Weide.

23 Q. And what is that understanding?

24 A. That it has an obligation to provide  
25 capacity to PJM.

1 Q. And do you understand that AEP Ohio is  
2 also an FRR entity, or Ohio Power?

3 A. I believe they are. I'm not sure. I  
4 believe they are.

5 Q. You've read the Commission's order in  
6 Case No. 10-2929, correct?

7 A. Yes, but I don't remember everything I  
8 read. But I --

9 Q. Was one --

10 A. I agree with you, I believe they are,  
11 yes.

12 Q. Okay. Thank you.

13 So they too, AEP Ohio also has to provide  
14 capacity in its footprint, correct?

15 A. Yes.

16 Q. And do you understand from having read  
17 the Commission's order in that case that the  
18 Commission has determined that FRR capacity services  
19 do not fall within the statutorily defined term  
20 "competitive retail electric service"?

21 MS. KERN: Objection. If counsel could  
22 show him a reference to what she's asking him about,  
23 that would be helpful.

24 MS. KINGERY: Sure. Let's pull out  
25 10-2929, the opinion and order.

1 EXAMINER PIRIK: I believe that's OCC 1.

2 MS. KINGERY: Yes, it is, your Honor.

3 MS. KERN: May I approach?

4 EXAMINER PIRIK: Yes.

5 Q. (By Ms. Kingery) I'd like you to turn to  
6 page 13, sir. Okay, the top paragraph, I'm going to  
7 read some selected sentences so that we don't have to  
8 go through the entire paragraph. "IEU-Ohio contends  
9 that the Commission must determine whether capacity  
10 service is a competitive or noncompetitive retail  
11 electric service pursuant to Chapter 4928 Revised  
12 Code."

13 Did I read that correctly?

14 A. Yes.

15 Q. Now I'm going to jump down about six or  
16 seven lines and there's a sentence that begins with  
17 the word "Prior." Do you see that?

18 A. Yes.

19 Q. "Prior to determining whether a retail  
20 electric service is competitive or noncompetitive,  
21 however, we must first confirm that it is indeed a  
22 retail electric service." Did I read that correctly?

23 A. Yes.

24 Q. Now I'm going to go to the bottom of that  
25 paragraph, about four lines up. "We agree that the

1 provision of capacity for CRES providers by AEP-Ohio,  
2 pursuant to the Company's FRR capacity obligations,  
3 is not a retail electric service as defined by Ohio  
4 law." Did I read that correctly?

5 A. Yes.

6 Q. So from that do you understand that the  
7 Commission in its evaluation of capacity rates under  
8 10-2929 did not apply the provisions of Chapter 4928  
9 which relate to competitive retail electric services?

10 A. I believe I agree with that, but I'm not  
11 real sure. I don't know the details of some of the  
12 law that you -- the statutes you mentioned.

13 Q. That's fine.

14 And have you read the entry on rehearing  
15 in that proceeding also?

16 A. I've seen it. I don't remember it.

17 Q. Do you recall whether the Commission  
18 decided in the entry on rehearing that they have an  
19 obligation under traditional rate regulation to  
20 ensure that jurisdictional utilities receive just and  
21 reasonable compensation?

22 A. I don't remember that -- that -- I don't  
23 remember those -- that thought or -- those sentences.

24 Q. Do you remember discussing that at your  
25 deposition?

1           A.    No.

2           MS. KINGERY:  Could counsel provide a  
3 copy of the entry on rehearing?

4           MS. GRADY:  Which entry on rehearing?

5           MS. KINGERY:  10-2929.

6           MS. GRADY:  There were several.

7           EXAMINER PIRIK:  It's OCC 3.

8           MS. KINGERY:  Yes, OCC 3, thank you.

9           Q.    (By Ms. Kingery) I'd like you to turn to  
10 page 28, there's a paragraph entitled -- that's  
11 numbered 71.  And if you look about two inches up  
12 from the bottom there's some language that I'll read.  
13 "The Commission concluded that we have an obligation  
14 under traditional rate regulation to ensure that the  
15 jurisdictional utilities receive just and reasonable  
16 compensation for the services that they render."  Did  
17 I read that correctly?

18          A.    Yes, you did.

19          Q.    Thank you.

20                Did that sentence say that the Commission  
21 had an obligation to ensure that AEP Ohio has the  
22 right to receive jurisdiction -- just and reasonable  
23 compensation for its services?

24           MS. KERN:  Objection, your Honor.  The  
25 entry on rehearing speaks for itself.

1 EXAMINER PIRIK: Objection overruled.

2 A. That's what it says, yes.

3 Q. It says AEP Ohio?

4 A. No. No. I'm sorry. I'm sorry. I  
5 thought you said did I agree with the sentence you  
6 read.

7 Q. No. Let me ask it a different way.

8 A. Okay.

9 Q. Does that sentence apply only to  
10 AEP Ohio?

11 A. It looks like it's a general statement  
12 about what the Commission views its responsibilities  
13 are.

14 Q. So would you agree, then, that the order  
15 in Case No. 10-2929 has at least some legal  
16 applicability beyond AEP Ohio?

17 A. Yeah, I can't really state as to the  
18 legal application. Certainly the wording suggests  
19 that. I assume that the order -- the stipulation  
20 would -- Duke has priority, but I'm not a lawyer.

21 Q. Right. And so the language in your  
22 testimony on page 3, the second paragraph there where  
23 you say "But the Ohio Power capacity case decision  
24 was not a generic PUCO decision that applies to all  
25 electric distribution utilities including Duke."



1 Since you can't answer my question about the legal  
2 applicability of the order when I read to you a  
3 section about the Commission's obligation, apparently  
4 you can, however, make a statement in your testimony.

5 A. Well, yeah --

6 MS. BOJKO: Objection.

7 EXAMINER PIRIK: Objection overruled.  
8 I'll allow the witness to clarify his testimony.

9 A. No, I mean, and I'd have to go back  
10 through it, but I was under -- I recall reading  
11 something in the -- in the 2929 case that -- and it  
12 was obviously part of the OCC's documentation about  
13 why, you know, for the rehearing that -- that said  
14 that the -- that this hearing wasn't -- the AEP case  
15 wasn't a generic case.

16 MS. BOJKO: Your Honor, may I have the  
17 question and answer reread, please?

18 EXAMINER PIRIK: Yes.

19 (Record read.)

20 MS. BOJKO: Thank you.

21 Q. (By Ms. Kingery) Let's move forward to  
22 page 12 of your testimony. Starting on line 14 you  
23 talk about Duke Energy Ohio and its agreed-upon  
24 transfer of the generation assets, and you used the  
25 fact that the assets have not been transferred out

1 yet as a justification for basing your recommended  
2 ROE on the entire company; is that correct?

3 A. That's one reason, yes.

4 Q. So let's talk about that transfer for  
5 just a minute. The company committed in the ESP  
6 stipulation to transfer those assets out by  
7 December 31, 2014, correct?

8 A. Yes.

9 Q. And the agreed-upon transfer can go to an  
10 affiliate of Duke Energy Ohio, correct?

11 A. I don't know.

12 Q. Do you have a copy of the stipulation  
13 there with you?

14 A. No.

15 MS. KINGERY: Can you provide the ESP  
16 stipulation, please.

17 MS. KERN: Sure.

18 Q. Okay. Can you turn to page 25.

19 It's actually page 26, I apologize.

20 So I'm going to read at the beginning of  
21 paragraph B. "Approval of this stipulation will  
22 serve as the Commission's approval of full legal  
23 corporate separation," then there's a parenthetical,  
24 "such that the transmission and distribution assets  
25 of Duke Energy Ohio will continue to be held by the

1 distribution utility and all of Duke Energy Ohio's  
2 generation assets," and that's a defined term, "shall  
3 be transferred to an affiliate," did I read that  
4 correctly?

5 A. Yes.

6 EXAMINER PIRIK: I just want to be sure  
7 the record reflects that we're reading off of IEU 5.

8 MS. KINGERY: Yes. Thank you, your  
9 Honor.

10 Q. And are you aware, Dr. Woolridge, that  
11 although Duke Energy Ohio is now in the process of  
12 transferring its legacy generation assets, the  
13 Commission has previously authorized functional  
14 separation of the generation business from the  
15 transmission and distribution side of the business?

16 A. No, I'm not aware that they've -- I mean,  
17 obviously they have separate reporting in terms of  
18 their financial statements, but I'm not aware of any  
19 legal separation that has begun. Or functional  
20 separation either.

21 Q. And hence your statement on line 7, page  
22 12 of your testimony "There is no legal or  
23 operational entity that owns the generation assets of  
24 Duke Energy Ohio." Correct?

25 A. I mean, their financial statements are

1 still, I mean, as I see them, they're still the same.  
2 It's -- Duke Energy includes both sides of the  
3 business.

4 MS. KINGERY: We'd like to mark an  
5 exhibit, please.

6 EXAMINER PIRIK: Yes.

7 MS. KINGERY: This will be Duke Energy  
8 Ohio 20. And this is the opinion and order in Duke  
9 Energy Ohio's ETP case, Case No. 99-1658.

10 May we approach?

11 EXAMINER PIRIK: Yes.

12 The document is so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. KINGERY: And I would ask also that  
15 administrative notice be taken of this document.

16 EXAMINER PIRIK: Yes. That would be  
17 appropriate.

18 Q. (By Ms. Kingery) Do you have it now? I'm  
19 sorry.

20 All right. I'd like you to turn, sir, to  
21 page 45. I'll give you a minute just to look and see  
22 what that section is about but you don't have to read  
23 it closely. I mean, you're welcome to if you'd like.

24 MS. KERN: Dr. Woolridge, take your time  
25 and read the document.

1 Q. Let me know whenever you want to go on.

2 A. Go ahead.

3 Q. Thank you.

4 If you'd just hold on to that page but I  
5 want you to make sure you understand what document  
6 you're looking at. If you go to the beginning of the  
7 document, it would be the third piece of paper that  
8 you have is the first page of the actual opinion and  
9 order. So is this the opinion and order of the PUCO  
10 in CG&E's electric transition plan?

11 A. That's what it looks like, yes.

12 Q. All right. Thank you.

13 So if we go back to the section that I  
14 pointed out to you previously, pages 45 to 47, is it  
15 correct that this appears to be the place where the  
16 Commission is considering the company's proposed  
17 corporate separation plan?

18 A. That's what it appears to be.

19 Q. Okay. And I'd like to draw your  
20 attention to the bottom of page 46, the paragraph  
21 that carries over there, that paragraph starts out  
22 stating "We find that CG&E's proposed interim plan  
23 achieves the structural separation contemplated by  
24 Section 4928.17(A)(1), Revised Code, and the  
25 corresponding Commission rules." Did I read that

1 correctly?

2 A. Yes.

3 Q. And then going on to the next page, the  
4 carryover paragraph, about an inch and a half up from  
5 the bottom there's a sentence that starts with the  
6 word "therefore" and that appears right at the right  
7 margin. Do you see that? Do you see the  
8 "therefore"?

9 A. No.

10 Q. If you look at the right-hand edge of the  
11 text --

12 A. Oh, okay, I see it now, yeah.

13 Q. All right. "Therefore, the Company has  
14 met its burden of showing 'good cause' for this  
15 Commission to approve the interim functional  
16 separation plan." Did I read that correctly?

17 A. Yes.

18 Q. So let's move to the next stage in the  
19 history of the separation of Duke Energy Ohio's  
20 business segments, and that would be in Case No.  
21 03-93, CG&E's rate stabilization plan and that, I  
22 believe, is IEU Exhibit 15. The opinion and order.

23 MS. BOJKO: Your Honor, I'm going to  
24 object and move to strike counsel's commentary.  
25 She's testifying on the record. There's been no

1 questions presented the last couple statements that  
2 she's made --

3 EXAMINER PIRIK: Thank you, Ms. Bojko.  
4 Objection overruled.

5 Q. Do you have that in front of you, sir?

6 A. No.

7 Q. And what is this document?

8 A. I don't know.

9 Q. If you go to the second piece of paper in  
10 your -- in the document does appear to be the opinion  
11 and order of the PUCO in CG&E's application to modify  
12 its nonresidential generation rates to provide for  
13 market-based standard service offer pricing and to  
14 establish an alternative competitive bid service rate  
15 option subsequent to the market development period?

16 MS. KERN: Objection, your Honor.

17 EXAMINER PIRIK: Objection overruled.

18 A. That's what it says it is, yes.

19 Q. Thank you.

20 Please turn to page 33, and can you tell  
21 me in the section that starts on this page what the  
22 general topics the Commission is discussing?

23 A. The subheading said "Should the  
24 Stipulation Require CG&E to Complete its Corporate  
25 Separation?"

1           Q.    Thank you.  Now turn to the next page,  
2   the first paragraph on the page, "The Commission  
3   finds that it is reasonable for CG&E to retain its  
4   generating assets during the period in which it is  
5   committing to provide stabilized rates.  It would not  
6   be appropriate to ask the company to stabilize its  
7   rates and then to deny it the opportunity to do so.  
8   Therefore, CG&E's corporate separation plan shall be  
9   amended to allow it to retain its generating assets  
10  through 2008, after which time the stabilized prices  
11  under the stipulation will terminate and corporate  
12  separation should be reconsidered."

13               Did I read that correctly?

14           A.   Yes.

15           Q.    So would you agree with me that this  
16  conclusion from the Commission extended the  
17  conclusion that had been made in the ETP case that we  
18  had previously read?

19           A.    I don't know if I can agree with that  
20  without having read this entire document.

21           Q.    That's fair.

22           A.    I would say as a general notion that's  
23  what appears to be going on.

24           Q.    Thank you.

25               MS. KINGERY:  We'd like to mark another



1 exhibit, please. So this will be Duke Energy Ohio 21  
2 and this will be the opinion and order in Case No.  
3 08-920.

4 EXAMINER PIRIK: The document is so  
5 marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MS. KINGERY: And we would ask that you  
8 take administrative notice of that.

9 EXAMINER PIRIK: That would be  
10 appropriate.

11 Q. Sir, does this appear to be the  
12 Commission's opinion and order in Case No.  
13 08-920-EL-SSO?

14 A. Yes.

15 Q. And could you turn, please, to page 20.

16 A. Yes.

17 Q. Before you get there, I apologize, start  
18 on page 9. And does the heading in the middle of  
19 page 9 indicate that the order is, starting there,  
20 going to be summarizing the application and  
21 stipulation in that case?

22 A. Yes.

23 Q. All right. So moving forward now to the  
24 page 20, as part of that summary is there a paragraph  
25 there that appears to be discussing corporate

1 separation?

2 A. Yes.

3 Q. Okay. So let's read the second  
4 paragraph. "The stipulation states that Duke's  
5 corporate separation plan shall remain in effect as  
6 filed in these proceedings." Is that correct?

7 A. Yes.

8 Q. And I would also note that it goes on to  
9 indicate that "Duke may transfer to an affiliate or  
10 sell to an unaffiliated party five gas-fired  
11 generating assets," correct?

12 A. Yes.

13 Q. And if you turn to page 43, the first  
14 ordering paragraph, the Commission indicates that the  
15 stipulation is adopted, although as modified.

16 A. Yes.

17 Q. So, again, the corporate separation plan  
18 allowing Duke to continue owning its generation  
19 assets but operating on a functionally separated  
20 basis is apparently continued by this order, correct?  
21 Understanding that you have not read the entire  
22 document.

23 A. I haven't read the order so I don't know  
24 that I can agree. It appears so but I really don't  
25 know.

1 Q. That's fine.

2 MS. KINGERY: We'd like to mark one more  
3 exhibit. This will be Duke Energy Ohio Exhibit 22  
4 and this will be the opinion and order in Case No.  
5 09-495, and we would also ask that you take  
6 administrative notice of this.

7 EXAMINER PIRIK: The document is so  
8 marked and that would be appropriate.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. Can you take a moment to glance through  
11 this, please. Take all the time you need.

12 A. Yes.

13 Q. Would you agree that this is an opinion  
14 and order in a proceeding in which the Commission  
15 apparently was auditing Duke Energy Ohio's corporate  
16 separation pursuant to its corporate separation plan?

17 A. Yes.

18 Q. Thank you. And if you look at the first  
19 ordering paragraph -- no, let's look at the tenth  
20 finding of fact and conclusion of law, that would be  
21 on page 10 wherein the Commission said "Duke Ohio's  
22 second amended CSP is in compliance with Section  
23 4928.17, Revised Code, and the rules contained in  
24 Chapter 4901:1-37, OAC, and should be approved."

25 A. Yes.

1 Q. Did I read that correctly?

2 A. Yes.

3 Q. Thank you.

4 All right, let's move ahead to page 14 of  
5 your testimony. Starting on line 12 you talk about  
6 the way in which you set the minimum level of your  
7 recommended range, the 4.11 percent; is that correct?

8 A. Yes.

9 Q. And you base that on what you believe  
10 would be appropriate if this had been an emergency  
11 rate increase case, correct?

12 A. Yes.

13 Q. But Duke Energy Ohio did not file an  
14 application for an emergency rate increase, correct?

15 A. No, there was discussion about the  
16 financial integrity and that's the only reason that I  
17 brought this up.

18 Q. Did you see discussion about financial  
19 integrity in Case No. 10-2929?

20 A. I don't remember the specific elements of  
21 it, but now in this case I was just -- as if the  
22 Commission considered this to be an emergency case,  
23 this was another -- a number to look at.

24 Q. But, just to be clear, it's not --

25 A. Right.

1 Q. -- a case for -- yeah.

2 And isn't it true that you only reviewed  
3 one Ohio case that actually addressed emergency rate  
4 relief?

5 A. Yes, it was the Akron case.

6 Q. And are you suggesting that the company's  
7 long-term debt rate is the only way to determine the  
8 minimum return necessary to avert or relieve an  
9 emergency?

10 A. No.

11 Q. Have you studied other possible  
12 approaches?

13 A. No.

14 Q. Are you aware that even with the ESSC  
15 revenues the company is still earning a negative  
16 return?

17 A. I am not aware of that specifically. I  
18 know I've -- I've seen testimony, I believe it was  
19 Mr. Wathen who made that. No, it wasn't, it was  
20 another -- I saw testimony someplace, I forget where.

21 Q. It may have been Mr. Wathen.

22 MS. KINGERY: Could counsel provide a  
23 copy of Kroger 9.

24 A. Yes.

25 Q. Are you aware of the significantly

1 excessive earnings test that's required under Ohio  
2 law?

3 A. Yes.

4 Q. And this is, indeed, Duke Energy Ohio's  
5 application for administration of that test with  
6 regard to its 2012 results, correct?

7 A. Yes.

8 Q. And are you aware of whether the ESSC is  
9 included for purposes of that test?

10 A. Yes.

11 Q. And you're aware that it is included,  
12 correct?

13 A. It says so in -- on page 3.

14 Q. And what is the return that is set forth  
15 in this application?

16 A. It says it's a negative 2.76 percent.

17 Q. Thank you.

18 I want to go back to page 12 of your  
19 testimony, and in lines 11 through 14 you talk about  
20 the risk that would be appropriate to consider for  
21 these assets, correct?

22 A. Yes.

23 Q. And you indicate there, particularly on  
24 line 14, that the assets would "face less risk than  
25 an independent power producer" if this application is

1 granted, correct?

2 A. Yes.

3 Q. But you don't know whether any Ohio  
4 utility generated negative returns in 2008, do you?

5 A. I do not know that.

6 Q. Or in 2009.

7 A. No, I do not know that.

8 Q. And you don't know whether any other  
9 independent power producer in Duke Energy Ohio's  
10 service territory has the obligation to provide  
11 capacity as an FRR entity, do you?

12 A. No.

13 Q. And do you know if any other independent  
14 power producer has to provide capacity for load that  
15 is served by alternate suppliers in Duke Energy  
16 Ohio's territory?

17 A. No. I mean, I don't, you know, that's  
18 not what I'm saying here.

19 Q. I understand.

20 A. I'm looking at this as if this is a  
21 regulated entity with a cost of service rate of  
22 return, then I'd say that's less risky than an  
23 independent power producer.

24 Q. And do you know whether Duke Energy Ohio  
25 can participate in its own SSO auctions?

1           A.    I've seen discussion of that.  I don't  
2 recall.

3           Q.    Would you say that most investors  
4 consider risk and potential returns before making an  
5 investment?

6           A.    Yes.

7           Q.    And if you were considering making an  
8 investment in a very risky project, would you expect  
9 a higher return than if it were a low-risk project?

10          A.    Generally, yes.

11          Q.    And if one of your investments had a  
12 negative return, it was actually losing money, would  
13 you continue to invest?

14          A.    Well, you invest based on expectations of  
15 the future.

16          Q.    So if you --

17          A.    I mean, they could have a negative return  
18 today.  I mean, look at Netflix, something like that,  
19 they have negative returns and people are investing,  
20 it's based on expectations in the future.

21          Q.    That's fair.

22                    Have you looked at the company's  
23 projections in this case?

24          A.    Yes.

25          Q.    Does the company project positive



1 returns?

2 A. Yes.

3 Q. And where did you find that?

4 A. I saw that in a document that was marked  
5 February 6th which showed -- it was a confidential  
6 document that showed projected returns on equity, I  
7 think it was 2012 through 2016.

8 Q. And what entity was that?

9 A. What's that? It was Duke. It was a  
10 document from Duke. I forget which one.

11 Q. Well, don't you think it's important that  
12 we know what entity, what part of Duke you're talking  
13 about?

14 A. It was just for DEO, the whole company.

15 Q. DEO the whole company.

16 A. Yes.

17 Q. So including Duke Energy Kentucky.

18 A. It's for -- well, I don't know. It was  
19 produced by -- I could find it if I -- in my papers,  
20 but it was something -- and the returns were, you  
21 know, not negative.

22 Q. Do you think it would be important to  
23 know whether, in evaluating that, to know whether it  
24 included Duke Energy Kentucky, a wholly-owned  
25 subsidiary that's also fully regulated?

1           A.    Oh, yes.  I mean, I understand that, yes.

2           Q.    And would it be important to understand  
3 if it included other assets that are not under this  
4 Commission's jurisdiction?

5           A.    Yeah.  I mean, it was part of this case  
6 so I assume it was part of -- I don't remember the  
7 specifics, no.

8           Q.    Is it possible that any of the parties in  
9 this case asked for information that covered more  
10 than just the generating assets?

11          A.    They could have.  I believe it -- I  
12 believe it included both the, you know, the  
13 distribution and the generation assets, but I don't  
14 know.

15          Q.    And the distribution assets, that part of  
16 the business is regulated, correct?

17          A.    Yes.

18          Q.    So it's not surprising that they -- that  
19 part of the business would have a positive return,  
20 correct?

21          A.    Well, no, and, again, my opinion is if  
22 they, you know, if they use this cost-based system,  
23 then that's effectively putting in regulated  
24 generation which, again, would produce a rate of  
25 return based on what this Commission decides is

1 appropriate.

2 Q. Even though we just went through the  
3 history and we understand now that the company is  
4 functionally separated.

5 A. It's separated, but, you know, I disagree  
6 with you in some sense. I mean, it's functionally  
7 separated. Financially it's not separated. You read  
8 a credit report, you read a 10-K, it's one company.  
9 But I also go back to this Duke Energy Exhibit 20  
10 that, I guess this was the beginning of it, and if --  
11 I'm on page 46.

12 And at the beginning, at the top, it says  
13 "CG&E notes that its corporate separation financing  
14 plan provides for a program to complete the transfer  
15 of generating assets to an EWG by December 31, 2004,  
16 and it describes the expected costs CG&E would incur  
17 if it is forced to transfer its generating assets to  
18 the EWG by December 31, 2000. It is CG&E's intention  
19 to achieve the transfer of assets to the EWG at the  
20 lowest cost practicable by seeking to minimize the  
21 transaction costs, including tax obligations;  
22 minimize the capital expenditures related to  
23 recapitalization of CG&E; and optimize the capital  
24 structure of CG&E."

25 It goes on to talk about this and the

1     timeframe involved, but if you read the company --  
2     this was over ten years ago, and you read the  
3     company's credit reports, you read the 10-K, you  
4     don't see the separation in terms of the financial  
5     separation. And, obviously, investors care about,  
6     you know, if they're buying bonds, is it bonds of the  
7     generating side or the T and D side, that sort of  
8     thing.

9             And, you know, as I see it today it's not  
10     separated. And financially it's certainly not. The  
11     credit report is for Duke Energy Ohio, it's not for  
12     the generating assets versus the distribution assets.

13            Q.    Do you think that the auditors in the  
14     case that we looked at which was Duke Energy Ohio 22,  
15     I believe, do you think that they looked at whether  
16     financial transactions were appropriately separated?

17            A.    Oh, I do. But their capital -- the  
18     capital structure is not changed. Now, the balance  
19     sheet is where you achieve separation. There's not a  
20     separate balance sheet.

21            Q.    Who is Duke Energy Ohio's equity  
22     investor?

23            A.    Well, ultimately it's Duke Energy.

24            Q.    Duke Energy Corporation.

25            A.    Yes.

1 Q. And do you think Duke Energy Corporation  
2 watches the returns of its investments?

3 A. Well, yes, because ultimately it is going  
4 to be a driver of the returns they provide to  
5 their -- their investors.

6 Q. And do you think that Duke Energy  
7 Corporation might determine where it wants to direct  
8 its capital spending based on where it gets the best  
9 return?

10 A. Well, over time it's going to. It's  
11 going to be guided by that.

12 Q. You believe that the ROE for the  
13 generation assets should not be higher than the ROE  
14 for the distribution side, correct?

15 A. No, I believe there's one ROE for the  
16 company, whether it -- I mean, I think Dr. Vander  
17 Weide lays out in his electric proxy group these are  
18 regulated -- these are primarily regulated electric  
19 utilities, some of them have unregulated entities, so  
20 they're not totally regulated entities, and he, you  
21 know, says they have distribution, transmission, and  
22 generation.

23 And so I've used his group of electric  
24 utility companies because he --

25 Q. But you --

1           A.    -- feels that they're the appropriate  
2           entity to measure the return on equity.

3           Q.    You are aware, however, that the return  
4           that was approved by this Commission for AEP's  
5           capacity case was higher than the return approved in  
6           their distribution rate case, correct?

7           A.    Well, and I also -- if you go back, as I  
8           do in my testimony, you trace where that  
9           11.15 percent came from, it really had very little --  
10          very little analysis. I mean, it was a proposed  
11          return by Dr. Avera in a distribution case. It had  
12          nothing about generation written on it. And  
13          Dr. Pearce picked that up and used that. The company  
14          had settled its distribution case at 10.3 percent.

15                So, I mean, there was no analytical  
16          analysis other than a testimony several years ago  
17          when capital costs were much lower than they are  
18          today by Dr. Avera which had nothing to do with a  
19          separate generation versus distribution ROE.

20          Q.    But, nevertheless, the Commission did  
21          approve those two rates, correct?

22          A.    It was approved. And, again, there was  
23          no study done, there was no analysis, there was just  
24          a number somebody through out there and the  
25          Commission grabbed it.

1           Q.    So you're disputing the Commission's  
2 wisdom in doing so.

3           A.    Well, again, you're talking about,  
4 effectively, a regulated entity and what's the  
5 appropriate return on equity. Obviously, today, you  
6 know, numbers like that are, you know -- you know,  
7 interest rates, where they are today, capital costs  
8 are much lower than they were just a couple of years  
9 ago.

10          Q.    Which brings me to my next question. If  
11 you look at the top of page 10 of your testimony,  
12 you're talking about that very topic. And I'd just  
13 like to understand what you say here because you  
14 point out that the market conditions, et cetera, are  
15 very different today than they were, and now I'm  
16 quoting, "In early 2011 when the Ohio Power capacity  
17 and distribution rate cases were decided."

18                Are you aware that those cases were not  
19 decided in early-2011?

20          A.    Well, there was a settlement in that  
21 case.

22          Q.    You're talking about two cases --

23          A.    Yes.

24          Q.    -- right? And what's important is, what  
25 the Commission decided.

1           A.    Yeah.  And the note -- the numbers I  
2   refer to are the dates that Dr. Avera used his -- had  
3   his analysis done and how do those interest rates  
4   compare to where interest rates are today.

5           Q.    So you're, what you really meant was  
6   they're different today than they were in early-2011  
7   when Dr. Avera did his work.

8           A.    Yes.

9           Q.    Not when they were decided.

10          A.    No.

11          Q.    Okay.

12          A.    But they're much lower than they were  
13   when they were decided as well.

14          Q.    Understood.  But what we're doing is  
15   asking for the Commission to approve a rate so the  
16   Commission approved these rates much more recently  
17   than early-2011, correct?

18          A.    And Dr. Vander Weide provides testimony  
19   which he claims to support that rate and, again,  
20   those -- the markets were significantly different.  I  
21   mean, interest rates now are, and they've been low,  
22   but today they're, you know, you have to go back to  
23   the time of Sputnik to find interest rates this low.  
24   Now, you may not remember Sputnik.

25          Q.    I do.



1 A. That was a long time ago.

2 Q. I do.

3 But, indeed, the capacity case was  
4 decided just last year in July, correct?

5 A. And interest rates are much lower now.

6 Q. But not as much lower, perhaps, as if we  
7 were looking back to early-2011, correct?

8 A. Yes. But --

9 Q. Thank you.

10 A. -- the testimony was Dr. Avera's. The  
11 11.15 percent was picked off from his attorney -- his  
12 testimony in the distribution cases. And, you know,  
13 again, it was -- he did not use -- he didn't specify  
14 distribution versus generation. It was a -- he used  
15 diversified utilities.

16 Q. So let's move, we're going to really fly  
17 forward in your testimony now to page 64. And this  
18 is where you're talking about Dr. Vander Weide's  
19 proxy group and the fact that it included the gas  
20 pipeline companies.

21 A. Yes.

22 Q. And is my understanding that you disagree  
23 with this, he chose them, I understand, because they  
24 were -- it was an example of a business that was  
25 subject to both regulated and open market

1 competition, correct? Is that what Dr. Vander Weide  
2 said?

3 A. He said that he did no analysis of it.  
4 There was absolutely none. And he didn't compare  
5 this to any type of other entity in terms of risk,  
6 about how much is regulated, how much is unregulated.  
7 So there's no empirical analysis to justify anything  
8 he said.

9 Q. And the justification for your concern  
10 about it, in addition to your questioning his  
11 analysis, is the fact that you believe that the  
12 generation assets, again, should be included all in  
13 one entity, they're not separated, correct?

14 A. Well, yeah, if they -- if you go to a  
15 cost-based system, yes.

16 Q. So if the Commission were to disagree  
17 with your conclusion that it should all be treated  
18 together as one company without a separation into  
19 regulated and unregulated, then your concern about  
20 the pipeline companies would be, to some extent,  
21 undermined, correct?

22 A. No.

23 Q. Why is that?

24 A. Well, I mean, first of all, I mean, if  
25 the company's request is granted in terms of what

1 return, in the end it's an integrated utility  
2 because, effectively, you're applying, you know, a  
3 cost-based system to capacity. So, effectively, it's  
4 a regulated capacity payment.

5 Q. Yeah, I understand. But I said if the  
6 Commission decides not to go that direction, that  
7 would make the pipeline companies look more plausible  
8 than under your way of evaluating them.

9 A. Well, not this group of pipeline  
10 companies.

11 Q. Well, that's a different issue.

12 And isn't it also true that you  
13 disapprove of his proxy group on the grounds that  
14 they are -- he used master limited partnerships?

15 A. Yeah, his gas line -- yeah. I mean, this  
16 is -- he calls it a gas line group but they have  
17 gasoline, they have lots of other things that go  
18 through those pipes, not just gas, natural gas.

19 Q. But you also were concerned about the  
20 structure of them, that they were master limited  
21 partnerships.

22 A. Yes.

23 Q. Don't master limited partnerships also  
24 raise capital from investors that are interested in  
25 income?

1 A. Yes. Oh, yeah.

2 Q. And they issue debt.

3 A. Yeah.

4 Q. And Duke has used debt.

5 A. But they have a different corporate --  
6 different organization.

7 Q. Absolutely.

8 A. Their dividends are taxed differently.  
9 You don't just put them in Turbo Tax and get your  
10 tax, you have to -- there's a much different tax  
11 treatment of how these things are dealt with.

12 Q. Yes, I understand. And they distribute  
13 earnings too, right?

14 A. Yes.

15 MS. KINGERY: We have no further  
16 questions at this point.

17 EXAMINER PIRIK: Thank you.

18 Staff?

19 MR. JONES: No questions, your Honor.

20 EXAMINER PIRIK: Thank you.

21 Redirect? Do you want to take some time?

22 MS. KERN: If I could have a moment.

23 EXAMINER PIRIK: Yes.

24 MS. KERN: Five minutes.

25 EXAMINER PIRIK: Let's just take a

1 ten-minute break and we'll come back.

2 (Recess taken.)

3 EXAMINER PIRIK: We'll go back on the  
4 record. Redirect.

5 MS. KERN: Just a few questions.

6 - - -

7 REDIRECT EXAMINATION

8 By Ms. Kern:

9 Q. Dr. Woolridge, during your testimony you  
10 indicated that you have reviewed Duke Energy Ohio's  
11 10-K forms for 2011 and 2012 for purposes of drafting  
12 your testimony; is that correct?

13 A. Yes.

14 Q. And why did you review those 10-K forms?

15 A. Well, investors look at, obviously, the  
16 10-K is the primary SEC form that investors look at  
17 for information. It's not just financial statements  
18 but also the, obviously, the summary of operations,  
19 especially with respect to utilities dealing with  
20 rate matters and that sort of thing. The footnotes  
21 are extremely important.

22 And for Duke Energy Corporation they  
23 discuss state-by-state results and that sort of  
24 thing, and they have a specific section. They have  
25 sections that discuss rate matters and that sort of

1 thing.

2           Actually, for Duke Energy Ohio I think  
3 last year they showed that the company had a profit  
4 of about \$175 million. But they have -- they don't  
5 separate -- they separate out the operations in terms  
6 of revenues and expenses. They do not separate out  
7 the balance sheet, and so they have one balance sheet  
8 for Duke Energy Ohio, not separate balance sheets for  
9 distribution and generation.

10           Q. So the fact that -- would you agree with  
11 me, first, that for purposes of reporting, again,  
12 referring to the 10-K, that there's no indication of  
13 any separation for Duke Energy Ohio?

14           A. No. When you separate a company is when  
15 you separate its balance sheet, its assets and its  
16 liabilities, and there is no separation. And you see  
17 that especially in credit reports and that sort of  
18 thing. Credit reports are for one entity, Duke  
19 Energy Ohio, not for separate entities.

20           Q. So the fact that Duke Energy Ohio is  
21 functionally separated does not change your opinion  
22 or analysis; is that correct?

23           A. No, I mean the -- I forget, I mean, they  
24 have separate accounts and that sort of thing, but  
25 many companies have separate accounts for separate

1 divisions, that sort of thing. That's not a big  
2 issue.

3 You create corporate separation when you  
4 separate the balance sheet.

5 Q. And I think you just mentioned the credit  
6 reporting agencies and, for purposes of drafting your  
7 testimony, you reviewed credit reports by Moody's and  
8 Standard & Poor's; is that correct?

9 A. Yes.

10 Q. And do the credit rating agencies view  
11 Duke Energy Ohio as a corporate separated entity?

12 A. No. It's, I mean, Duke Energy Ohio --  
13 Moody's has separate ratings for Duke Energy and Duke  
14 Energy Ohio. S&P rates Duke Energy Ohio as part of  
15 Duke Energy itself. It really doesn't -- if you look  
16 at the S&P reports, they talk about -- they look at  
17 it on a consolidated basis. So they don't separate  
18 out the subsidiary from the -- from the parent.  
19 Maybe Moody's does.

20 But, again, the financial metrics  
21 reported by Moody's in the January credit report on  
22 Duke Energy Ohio showed very strong financial metrics  
23 and, as it turns out, they had, as I think I  
24 indicated earlier, Duke Energy is one of the lowest,  
25 Duke Energy the parent is one of the lowest-risk

1 electric utilities in the country.

2 Q. And when you were mentioning the 10-K I  
3 believe you said that it shows a net income of  
4 175 million for Duke Energy Ohio; is that correct?

5 A. Yes.

6 MS. KERN: Okay. Thank you. No further  
7 questions.

8 EXAMINER STENMAN: Recross?

9 MS. KINGERY: Very briefly, your Honor.

10 - - -

11 RECROSS-EXAMINATION

12 By Ms. Kingery:

13 Q. The 10-Ks are filed, prepared and filed,  
14 pursuant to very detailed rules that the SEC has,  
15 correct?

16 A. Yes.

17 Q. And are those rules different rules than  
18 the PUCO follows?

19 A. Well, they have, I mean, obvious --  
20 there's separate reporting that's done but,  
21 obviously, from the standpoint of investors, they  
22 focus on the 10-K.

23 Q. But from the standpoint of the PUCO, they  
24 don't use the SEC's rules, correct?

25 A. Not that I'm aware of, no.



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1 MS. KINGERY: Thank you. Nothing  
2 further.

3 EXAMINER PIRIK: Thank you very much.  
4 (Discussion off the record.)

5 EXAMINER PIRIK: With regard to exhibits.  
6 OCC?

7 MS. KERN: OCC would move for the  
8 admission of OCC Exhibit 24.

9 EXAMINER PIRIK: Are there any  
10 objections?

11 MS. KINGERY: No, your Honor.

12 EXAMINER PIRIK: OCC 24 shall be  
13 admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER PIRIK: I believe everything  
16 else was administrative notice.

17 MS. KINGERY: Yes, it was.

18 EXAMINER PIRIK: Okay.

19 Our next witness is I believe FES.  
20 Mr. Lang.

21 MR. LANG: Thank you, your Honor. And  
22 FirstEnergy Solutions would call Dr. Jonathan A.  
23 Lesser.

24 (Witness sworn.)

25 EXAMINER PIRIK: Thank you. You may be

1 seated.

2 MR. LANG: Your Honor, we ask that  
3 Dr. Lesser's prefiled testimony, the public version,  
4 be marked as FES Exhibit No. 1 and his confidential  
5 version be marked as FES Exhibit No. 1A.

6 EXAMINER PIRIK: The documents are so  
7 marked.

8 (EXHIBITS MARKED FOR IDENTIFICATION.)

9 MR. LANG: May I approach, your Honor?

10 EXAMINER PIRIK: Yes.

11 - - -

12 JONATHAN A. LESSER, PH.D.  
13 being first duly sworn, as prescribed by law, was  
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Lang:

17 Q. Good morning, Dr. Lesser. Can you  
18 identify yourself, please?

19 A. Yes. My name is Jonathan Lesser, I'm the  
20 president of Continental Economics, 6 Real Place,  
21 Sandia Parke, New Mexico, 87047.

22 Q. And did you prepare written testimony for  
23 this case?

24 A. I did.

25 Q. Can you identify FES Exhibit No. 1 as the

1 public version of your testimony and 1A as the  
2 confidential version?

3 A. I can.

4 Q. Do you have any corrections to make to  
5 your testimony?

6 A. I have one correction. If you'll turn to  
7 page 3, line 7 where it says "11-3459," it should be  
8 "11-3549."

9 Q. Dr. Lesser, if I were to ask you the same  
10 questions in your prefiled testimony, would you  
11 provide the same answers today?

12 A. I would.

13 MR. LANG: Your Honors, I would note with  
14 regard to the public version of Dr. Lesser's  
15 testimony, on the encouragement of the hearing  
16 examiners, with regard to several of the exhibits,  
17 several of the exhibits were originally redacted in  
18 full.

19 We have gone back through those exhibits,  
20 and in particular Exhibits 3, 6, 7, 8, and 14, we've  
21 sought to limit those to the confidential numerics  
22 and, in particular, upon discussion with the  
23 company's counsel we were able to determine that  
24 Exhibit 6, even though it had a confidential  
25 designation on it, does not include confidential

1 information so that has been I guess unredacted in  
2 full.

3 And then, I believe, would it be Exhibit  
4 8?

5 MS. SPILLER: 7, Mr. Lang.

6 MR. LANG: I'm sorry, Exhibit 7. Also in  
7 discussion with counsel we would -- it's been  
8 determined that that exhibit should also be  
9 unredacted. So we would also make that change in the  
10 public version.

11 MS. SPILLER: And, your Honor, if I may,  
12 we did consult with Mr. Lang regarding the proposed  
13 redactions to Dr. Lesser's testimony. We'd certainly  
14 like to identify Dr. Lesser's Exhibit 14, which I  
15 believe is the last attachment to his testimony, this  
16 is similar to a document that the Bench has already  
17 addressed in respect of confidential treatment and in  
18 that ruling allowed confidential treatment of the  
19 numeric information on all but that which was line  
20 19.

21 So, again, we'd just like to maintain the  
22 consistency with regards to that which is  
23 confidential.

24 EXAMINER PIRIK: I want to be sure -- I'm  
25 not sure I'm looking at the same document that

1 Mr. Lang is referencing. It does say "public  
2 version" on the front, but the version that I have  
3 still has -- let me make sure.

4 It still has the front cover of Exhibit 7  
5 as partially confidential.

6 MR. LANG: Correct, your Honor. We  
7 actually just learned this morning that those -- the  
8 numbers on Exhibit 7 could be unredacted.

9 EXAMINER PIRIK: Oh, I see what you're  
10 saying. You're saying this document doesn't  
11 necessarily contain that.

12 MR. LANG: That would -- it would require  
13 that one additional change, yes, your Honor.

14 EXAMINER PIRIK: Okay. I think probably  
15 the easiest way to do it is to go through the filed  
16 version, you can just go through the different items  
17 that you're requesting redaction from from the  
18 beginning and then we can rule accordingly once  
19 you're through everything.

20 MS. SPILLER: Certainly, your Honor.

21 And turning first to the text of  
22 Dr. Lesser's direct testimony in this proceeding, the  
23 first redactions that were identified in the public  
24 version appear on page 15, lines 18 and 19. And  
25 would you like me to address the basis for each

1 redaction as we go?

2 EXAMINER PIRIK: No, I think we can  
3 generally do this as we go through it, but I also  
4 want to note that it's only the numbers. Any  
5 verbiage, any dollar signs, whatnot, will end up  
6 needing to be in the public record. So as long as  
7 you agree with that. I know some of the redactions  
8 include words and dollar signs.

9 MS. SPILLER: Okay. So we will -- so I  
10 think here we would need to unredact the dollar sign  
11 and then there is a word that follows.

12 EXAMINER PIRIK: Right.

13 MS. SPILLER: So we'll unredact.

14 EXAMINER PIRIK: As you agree -- as you  
15 go through, if there is one that you don't agree  
16 with, if one or the other of those items need to be  
17 in the confidential version, then just say so as you  
18 go through the pages.

19 MS. SPILLER: Certainly.

20 The next redaction is on page 16, line 5,  
21 so the numbers I believe would be appropriately  
22 redacted. The dollar sign should be unredacted.

23 With respect to the table, Table 3 on  
24 page 17, I would note that in terms of the actual  
25 text under the Item column there was previous ruling

1 from the Bench with regard to line, the text of lines  
2 2 and lines 4 which correspond with lines 7 and 8 of  
3 Mr. Wathen's Exhibit WDW-1, so we believe that that  
4 text needs to be -- needs to remain redacted.

5 The descriptions otherwise in that Item  
6 column are fine.

7 EXAMINER PIRIK: Is that likewise on line  
8 14? In the description in line 14?

9 MS. SPILLER: Oh, yes, your Honor.

10 The next page on which testimony was  
11 redacted is page 19, lines 3, 5, 8, 11, and 12.  
12 Consistent with the Bench's instruction we'd redact  
13 the numeric information and not text.

14 EXAMINER PIRIK: Okay.

15 MS. SPILLER: The next redaction that I  
16 have is on page 22, table 5, which is simply a  
17 different iteration of Table 3 so I would expect the  
18 redactions therewith that we just discussed with  
19 respect to page 17.

20 EXAMINER PIRIK: So the words in lines 2,  
21 the descriptors in lines 2 and 4 are -- you're  
22 requesting confidential and the other descriptors  
23 would be in the open.

24 MS. SPILLER: Correct, your Honor.

25 And on page 24, Table 6 is, again, a

1 different iteration of the table first appearing on  
2 page 19, similar redactions would be requested with  
3 respect to that.

4 EXAMINER PIRIK: Okay.

5 MS. SPILLER: There's a table 7, the  
6 release of the descriptive items is fine.

7 EXAMINER PIRIK: Okay.

8 MS. SPILLER: The next spot on which I  
9 see proposed redactions is page 43 of Dr. Lesser's  
10 testimony, this would be lines 12 and lines 18, we'd  
11 redact just the numeric information.

12 Page 44, line 8, we'd redact just the  
13 numeric information.

14 The next page I have, your Honor, is page  
15 49, lines 3 and 4, we'd redact the numeric  
16 information.

17 Next page I have is page 52, line 1,  
18 redact the numeric information.

19 Page 53, lines 14 -- I'm sorry, 15 and  
20 16, redact the numeric information.

21 On page 54, the proposed redaction is in  
22 footnote 59. And, your Honor, on this one there --  
23 it's a little tricky with respect to just the numeric  
24 information given the signs that precede it. And  
25 then if you don't redact the fifth word -- the sixth



1 word from the end of that sentence, I guess I'm just  
2 not sure how to handle this one without allowing that  
3 to be released into the public which would be  
4 informative of the confidential information.

5 EXAMINER PIRIK: So you're asking for,  
6 after the parens begin confidential everything up to  
7 the verbiage to be redacted?

8 MS. SPILLER: Your Honor, I wonder if  
9 it's possible on this one to redact the two marks  
10 that appear prior to the numeric in both instances  
11 and then the sixth word from the end of the sentence.  
12 And that would include dollar signs.

13 EXAMINER PIRIK: So up to the letters.

14 MS. SPILLER: Yes, please.

15 EXAMINER PIRIK: Okay. And then the  
16 sixth from the end.

17 MS. SPILLER: Yes, please.

18 EXAMINER PIRIK: Okay.

19 MS. SPILLER: The next portion I have,  
20 your Honor, is page 56 of Dr. Lesser's testimony,  
21 there is actually proposed redaction in line 2, line  
22 18, and line 20, we'd propose redaction of the  
23 numeric.

24 And then I think we move forward to the  
25 exhibits at that point. We have already discussed

1 Exhibit JAL-6, and that is not a document for which  
2 we are seeking confidential treatment.

3 EXAMINER PIRIK: I'm sorry, what about 3?  
4 I think this is --

5 MS. SPILLER: Oh, yes, your Honor. And I  
6 concur with Mr. Lang's proposed redactions on 3 and I  
7 think we've already addressed that in prior  
8 submissions to the Bench in that this is identical to  
9 prior exhibits that have been submitted.

10 EXAMINER PIRIK: Okay.

11 MS. SPILLER: So JAL-6, no confidential  
12 treatment requested.

13 JAL-7, no confidential treatment  
14 requested.

15 I have it looks like a duplicate copy of  
16 JAL-3 after JAL-8 which I suspect is maybe just a  
17 copying error.

18 And then so moving forward to Exhibit  
19 JAL-8, and again some additional duplicates in  
20 between, but we'd request confidential treatment of  
21 the numeric information as proposed by Mr. Lang on  
22 that exhibit.

23 And then I move forward to JAL-14.

24 EXAMINER PIRIK: Hold on just a minute.

25 MS. SPILLER: Sure.

1 EXAMINER PIRIK: Okay. I'm sorry, 14?

2 MS. SPILLER: Yes. And that's the final  
3 that I have, but I think there might be another  
4 exhibit, a 15?

5 EXAMINER PIRIK: Yes, there's a 15.

6 MS. SPILLER: Okay. So with respect to  
7 JAL-14, I believe the appropriate redactions would be  
8 as Mr. Lang proposes but for line 19 as that would be  
9 consistent with prior rulings from the Bench.

10 And then JAL-15, the redactions in lines  
11 1 and 2 would be appropriate; line 3, the Bench has  
12 already ruled on this in that it is not confidential.

13 EXAMINER PIRIK: Do you want to briefly  
14 state your grounds?

15 MS. SPILLER: Certainly, your Honor. The  
16 information that we have just reviewed in  
17 Dr. Lesser's direct testimony filed in these  
18 proceedings is information for which we have  
19 previously requested and received confidential  
20 treatment.

21 The information is predicated upon  
22 financial information, future forecasts, future  
23 financial projections of Duke Energy Ohio,  
24 information that is not released into the public  
25 record and certainly not released into the public

1 record in the form as presented herein, more  
2 particularly, the discrete business operations and  
3 financial projections concerning a segment of the  
4 larger Commercial Power segment within Duke Energy  
5 Ohio.

6 Release of this information into the  
7 public domain would result in an unfair, prejudicial  
8 advantage, an unfair advantage to Duke Energy Ohio  
9 vis-a-vis those in the marketplace with whom it  
10 interacts. This information is the type of  
11 information that the company does guard internally  
12 and does not disseminate it within the company beyond  
13 those who have a need to know and, consequently, the  
14 company would move for confidential treatment of this  
15 material.

16 EXAMINER PIRIK: Thank you.

17 Are there any objections?

18 MS. BOJKO: Your Honor.

19 EXAMINER PIRIK: Yes.

20 MS. BOJKO: I think this is the  
21 appropriate time just to note an objection we  
22 discussed yesterday to the extent that words such as  
23 "or, and, additional," those kinds of words that  
24 appear for example on page 56 should not be deemed  
25 confidential and kept from the public domain. We

1 discussed that yesterday and that has been consistent  
2 with the rulings of the Bench to date.

3 MS. SPILLER: And, your Honor, we  
4 certainly understood that from the discussion a  
5 moment ago.

6 EXAMINER PIRIK: Right. And I believe as  
7 you went through it you just noted numbers which is  
8 consistent with what our rulings have been, so. I  
9 mean, there will need to be a new copy provided to  
10 the court reporters showing as we just went through.

11 MS. SPILLER: Certainly.

12 EXAMINER PIRIK: The motion for  
13 protective order on those numeric items will be  
14 granted.

15 MS. SPILLER: Thank you, your Honor. And  
16 at this time, your Honor, may I present a motion to  
17 strike, please?

18 EXAMINER PIRIK: Yes.

19 MS. SPILLER: Duke Energy Ohio hereby  
20 moves to strike the following portions of  
21 Dr. Lesser's testimony, I will identify the portions  
22 at issue and then briefly state the basis for the  
23 motion.

24 Turning first to page 3, lines 7 through  
25 11. Page 3, the sentence that begins midway through

1 line 19 through line 20 carrying over to page 4,  
2 lines 1 through 3.

3 EXAMINER PIRIK: Can you just go just a  
4 little slower.

5 MS. SPILLER: I'm sorry.

6 EXAMINER PIRIK: I'm sorry. Carrying  
7 over to page 4.

8 MS. SPILLER: Lines 1 through 3.

9 Page 5 on line 22 asking that the -- that  
10 the second portion of that sentence, so after  
11 "stipulation," asking that the balance of that  
12 sentence be stricken so carrying over to the text on  
13 line 23.

14 Moving forward to page 11, your Honor,  
15 the sentence that appears on lines 11 through 13.

16 Page 12, lines 14 and 15.

17 Page 17, line 8 asking to be stricken the  
18 word that appears midway through that sentence on  
19 either side of "any" and "embedded."

20 Moving forward to page 25, on line 15 the  
21 word at issue midway through the line preceded by  
22 "and" and followed by "729."

23 Page 26, lines 1 through 3 and then the  
24 first two words on line 4.

25 Page 28, just the complete sentence that

1 appears in line 4.

2 Page 28, line 7, the fourth word in  
3 preceded by "in" followed by "moneys."

4 Page 30, and this would be, your Honor,  
5 line 10 so the fourth word in after the "MRO," the  
6 balance of that sentence carrying through to the  
7 sentence that concludes on line 17.

8 Page 31, the sentence beginning on line  
9 7, the sentence that begins midway through that line,  
10 and that sentence concludes on line 9. So asking  
11 only that that sentence be stricken from this page.

12 Page 32, line 5, the fourth word in  
13 preceded by "and" followed by "729."

14 Page 38, line 10, the sentence that  
15 begins toward the end of that line carrying forward  
16 through line 14.

17 Page 42, lines 22 through 24 carrying  
18 over to page 43, the sentence that concludes in line  
19 1.

20 And those are the portions of the  
21 testimony at issue, your Honor. And with respect to  
22 the identified portions of Dr. Lesser's testimony,  
23 this is testimony in which he is rendering an  
24 interpretation of what I would call a binding  
25 agreement offering an interpretation that is

1 appropriate for those with legal training to render  
2 and in this capacity Dr. Lesser is not qualified to  
3 interpret the ESP stipulation and would ask that his  
4 testimony be stricken in that regard.

5 EXAMINER PIRIK: Mr. Lang.

6 MR. LANG: Thank you, your Honor. And  
7 consistent with prior rulings I believe the motion is  
8 improper. Dr. Lesser is here as an expert economist  
9 and an expert in energy regulation. In fact, he has  
10 written a book on it.

11 To the extent that, I believe most if not  
12 all of these motions really deal with the fact that  
13 they don't -- that they conflict with Duke's view of  
14 their case. Obviously, that would go to the weight  
15 not to the admissibility. I would ask the motion be  
16 denied.

17 EXAMINER PIRIK: The motion will be  
18 denied.

19 MS. SPILLER: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Spiller:

23 Q. Good morning, Dr. Lesser.

24 A. Good morning.

25 Q. The first conclusion in your direct



1 testimony is that Duke Energy Ohio's filing in this  
2 case violates the ESP stipulation docketed under case  
3 11-3549, correct?

4 A. That's correct.

5 Q. And, sir, you were not a witness for any  
6 party with respect to Duke Energy Ohio's ESP  
7 proceeding, correct?

8 A. Because the case settled prior to  
9 testimony being filed. Had it not, I would have been  
10 a witness.

11 Q. But you did not file live in that case --  
12 you did not testify live in that proceeding, correct?

13 A. That's correct.

14 Q. You did not submit any -- any testimony  
15 in connection with Duke Energy Ohio's ESP proceeding,  
16 correct?

17 A. That's correct.

18 Q. You did not draft the ESP stipulation,  
19 correct?

20 A. I did not.

21 Q. You did not provide any legal analysis or  
22 legal conclusions with respect to the content of the  
23 ESP stipulation, correct?

24 A. I did not.

25 Q. And, Dr. Lesser, you would agree with me

1 that you do not know what evidence the Commission  
2 relied upon in modifying and then approving the ESP  
3 stipulation, correct?

4 A. Well, I would assume the Commission  
5 relied on the record because I believe it has to rely  
6 on the record and can't rely on anything else.

7 EXAMINER PIRIK: Doctor, could you pull  
8 the microphone, like not directly into it but a  
9 little closer.

10 THE WITNESS: Okay.

11 EXAMINER PIRIK: It's hard to hear.

12 THE WITNESS: Should I repeat that, my  
13 answer?

14 EXAMINER PIRIK: No, you can go forward  
15 wherever you feel best.

16 A. Did you hear my response?

17 Q. I did. And, sir, you're assuming what  
18 the Commission may have relied upon, correct?

19 A. I'm making an assumption that the  
20 Commission does what it's required to do which is to  
21 make a decision based on the record of the evidence  
22 before it. I'm not sure what else the Commission  
23 would rely on outside of the record.

24 Q. But you don't know what -- you do not  
25 know what the record consisted of and thus you do not

1 know that upon which the Commission relied for  
2 purposes of making its decision, correct?

3 A. Not the complete record. I've certainly  
4 seen testimony filed by your clients in support of  
5 the stipulation, for example testimony filed by  
6 Mr. Wathen and Ms., is it Duncan?

7 Q. Dr. Lesser, you were not involved in the  
8 settlement proceedings at the FERC that culminated in  
9 the creation of the fixed resource requirement or FRR  
10 alternative, correct?

11 A. That's correct.

12 Q. But it's fair to say, sir, that you are  
13 familiar with Schedule 8 of the RAA?

14 A. I am.

15 Q. And that is the schedule of the RAA that  
16 created the FRR or fixed resource requirement  
17 alternative, correct?

18 A. That's correct.

19 Q. Sir, the RAA does not prescribe the  
20 manner in which an FRR entity must meet its load  
21 obligations, correct?

22 A. That's correct.

23 Q. As you understand it, the one prohibition  
24 that an FRR entity has is that it cannot participate  
25 in the base residual auction, correct?

1           A.     That's correct.

2           Q.     You do understand, Dr. Lesser, that an  
3 FRR entity is required to utilize unit-specific  
4 capacity for purposes of meeting their fixed load  
5 obligations, correct?

6           A.     Under the RAA an FRR entity has to  
7 designate certain units that it intends to use to  
8 meet its FRR requirements; however, if the entity, in  
9 this case Duke Energy Ohio, decides to change the  
10 units, retire a unit, it's free to do so. There's no  
11 penalty involved.

12          Q.     But the capacity utilized in the FRR plan  
13 must be unit-specific capacity, correct?

14          A.     That's correct.

15          Q.     And, sir, you are here this morning on  
16 behalf of FirstEnergy Solutions, correct?

17          A.     That's correct.

18          Q.     And you are here rendering opinions on  
19 behalf of FirstEnergy Solutions as a competitive  
20 retail electric service, or CRES, provider in the  
21 state of Ohio, correct?

22          A.     That's correct.

23          Q.     And, sir, for purposes of drafting your  
24 direct testimony in this case you reviewed and relied  
25 upon the Commission's -- I'm sorry, the company's

1 application, correct?

2 A. I did.

3 Q. And in having reviewed and relied upon  
4 that application for purposes of your direct  
5 testimony you are aware that Duke Energy Ohio does  
6 not propose through this proceeding to change the  
7 amount that PJM charges competitive retail electric  
8 service providers for capacity, correct?

9 A. That's not correct, counselor. That's  
10 just an accounting fiction and you're quite aware of  
11 that. PJM serves --

12 MS. SPILLER: Your Honor, I'm going to  
13 move to strike the commentary about my awareness.

14 MR. LANG: Your Honor, if he could finish  
15 his answer, please.

16 EXAMINER PIRIK: Yeah, objection  
17 overruled.

18 A. PJM simply bills CRES providers on behalf  
19 of Duke Energy Ohio. The charge is -- or Duke Energy  
20 Ohio is compensated by CRES providers, however, Duke  
21 Energy Ohio does not directly bill those CRES  
22 providers. The money is billed by PJM. PJM then  
23 gives the money to CRES -- to Duke Energy Ohio.

24 Q. Well, Doctor, I'm going to go back to my  
25 question. My question was: Under this application,

1 as you've reviewed and relied upon it, Duke Energy  
2 Ohio is not proposing to change the amount that PJM  
3 charges to CRES providers, correct?

4 A. That is correct that DEO is not -- is  
5 asking for a regulatory asset, creation of a  
6 regulatory asset to collect its embedded costs and it  
7 will then collect those from -- proposes to collect  
8 those from all customers.

9 MS. SPILLER: Move to strike everything  
10 after "that is correct" as nonresponsive.

11 EXAMINER PIRIK: Overruled.

12 Q. And, Doctor, Duke Energy Ohio's  
13 application, if approved in this proceeding, will not  
14 affect retail customers' ability to shop, correct?

15 A. It will not affect their ability to shop.  
16 It will, as I testified in my deposition before you,  
17 it will reduce the incentive to shop because it will  
18 reduce the percentage savings those customers will  
19 receive, therefore, there will be less of an  
20 incentive, less percentage gain on a relative basis  
21 with which to shop, which is one reason I think this  
22 is anticompetitive.

23 Q. Well, sir, let's talk about that for a  
24 moment. You reviewed the proposed rider DR-CO,  
25 correct?

1           A.    Yes.

2           Q.    You know that in this case Duke Energy  
3 Ohio is not seeking Commission approval to establish  
4 rates under rider DR-CO, correct?

5           A.    That's correct.

6           Q.    There has been no rate design proposed in  
7 this proceeding for rider DR-CO, correct?

8           A.    That's correct.

9           Q.    There have been no rate allocations for  
10 rider DR-CO proposed in this proceeding, correct?

11          A.    That's correct.

12          Q.    There has been no proposal with respect  
13 to when recovery under rider DR-CO would commence in  
14 this case, correct?

15          A.    That is correct.

16          Q.    And, sir, you have done no analysis or  
17 attempt to quantify the impact of the Commission's  
18 approval of the company's application in this case  
19 upon the likelihood of retail customers to shop,  
20 correct?

21          A.    I have not done any empirical analysis.  
22 However, as I discussed in my deposition with you,  
23 basic economics suggest that when that -- those  
24 charges go into effect, when you start charging all  
25 retail customers, both SSO customers and customers

1 who shop, that will reduce the likelihood of  
2 shopping, therefore, it is inconsistent with Ohio  
3 policy.

4 Q. Doctor, are you familiar with the term  
5 "price to compare"?

6 A. I am.

7 Q. And that is the price that is relevant to  
8 CRES providers when they -- when they extend offers  
9 to retail customers in the state of Ohio, correct?

10 A. That may be one price relevant to CRES  
11 providers, but CRES providers are -- what's going to  
12 be relevant in terms of shopping is not what CRES  
13 providers think, it's what ratepayers who are  
14 currently customers of Duke Energy Ohio decide upon,  
15 how they make their economic decisions.

16 Those decisions will be affected by the  
17 prospect of new charges including a nonbypassable  
18 regulatory asset.

19 Q. And, sir, does an increase in  
20 distribution rates affect a customer's incentive to  
21 switch?

22 A. No, because, and this is very different,  
23 because it's different because there's no -- CRES  
24 providers are not providing any sort of distribution  
25 service. They're not collecting any sort of



1 distribution rates.

2 In this case, however, you're proposing  
3 to overcollect, essentially double collect, capacity  
4 charges that CRES providers must also pay in order to  
5 serve retail customers. So there's a huge  
6 difference.

7 Q. The only price that a customer avoids --  
8 strike that.

9 When a customer avoids in engaging in  
10 choice is the price to compare, correct? So a  
11 customer of Duke Energy Ohio, that is a shopping  
12 customer, does not pay Duke Energy Ohio's price to  
13 compare, correct?

14 A. That's correct. Unless Duke starts  
15 levying all sorts of nonbypassable charges, in which  
16 case customers do pay that.

17 Q. Well, sir, that wasn't my question. My  
18 question is: When a customer of Duke Energy Ohio  
19 that is also a shopping customer, that customer  
20 doesn't pay Duke Energy Ohio's price to compare,  
21 correct?

22 A. That's correct.

23 Q. That customer still pays nonbypassable  
24 charges, correct?

25 A. That's correct.

1 Q. Dr. Lesser, you do know that Duke Energy  
2 Ohio is an FRR entity, correct?

3 A. That's correct.

4 Q. And it will have that status through  
5 May 31, 2015, correct?

6 A. Correct.

7 Q. And as the FRR entity Duke Energy Ohio is  
8 responsible for satisfying all of the capacity load  
9 obligations in its footprint, correct?

10 A. That's correct.

11 Q. And, sir, no CRES provider in Duke  
12 Energy Ohio's service territory has any obligation to  
13 provide capacity, correct?

14 A. That's correct, and the reason they --  
15 one of the reasons they don't have that obligation is  
16 because, based on Duke Energy's previous  
17 representations charging the PJM final clearing price  
18 for capacity, CRES providers would have no economic  
19 incentive to seek other alternatives than to rely on  
20 Duke Energy.

21 MS. SPILLER: Move to strike everything  
22 after "that's correct" as nonresponsive.

23 EXAMINER PIRIK: Motion denied.

24 Q. Sir, I'm going to go back to the  
25 questions. You have not attempted to quantify the

1 impact of the company's subsequent recovery of its  
2 costs for providing capacity service on the  
3 likelihood of retail customers to shop, correct?

4 A. I have not done an empirical numeric  
5 quantification. Again, I rely on basic economic  
6 theory.

7 Q. And your basic economic theory is  
8 predicated upon a lot of assumptions with respect to  
9 rate recovery, when it would occur, how it would  
10 occur, correct?

11 A. It's presumed -- no, it's based on one  
12 assumption, that Duke would, in fact, seek to recover  
13 the moneys collected in the form of a non -- of a  
14 regulatory asset. If Duke, in fact, decides that it  
15 doesn't want to collect all the moneys that go into a  
16 regulatory asset, then there might not be any effect  
17 on competition.

18 Q. Sir, you have not done any studies or  
19 analysis of the alleged economic impact in Duke  
20 Energy Ohio's service territory should its  
21 application in this case be approved, correct?

22 A. I have done economic impacts for the  
23 entire state of Ohio on the impacts of above-market  
24 electricity costs.

25 Q. Well, sir --

1           A.    My understanding -- let me finish,  
2 Counselor. My understanding is that Duke Energy  
3 Ohio's service territory is within the state of Ohio,  
4 therefore, it would be affected.

5           Q.    Sir, let me go back to my question. You  
6 have not done any studies or analysis of the alleged  
7 economic impact in Duke Energy Ohio's service  
8 territory specifically should the application in this  
9 case be approved.

10          A.    No, because the economic impacts of that  
11 application, if it were approved, would extend to the  
12 entire state of Ohio. If one simply limited it to  
13 Duke Energy Ohio's service territory, you would be  
14 missing a lot of the impacts.

15          Q.    And the economic impact that you did,  
16 sir, was prior to Duke Energy Ohio's filing of this  
17 case, correct?

18          A.    That's correct.

19          Q.    It was in connection with AEP Ohio's  
20 capacity case, correct?

21          A.    That's correct.

22          Q.    So, again, sir, with respect to this  
23 case, you have not done any analysis or studies of  
24 the alleged economic impact to the Ohio -- to the  
25 state of Ohio should this application be approved.

1901

1           A.    If you charge, Counselor -- let's take a  
2           simple example.  Let's say Duke is going to collect,  
3           in total, approximately \$1 billion when I add up the  
4           ESSC charges and what you've requested in this case  
5           in above-market costs, that's a billion dollars of  
6           essentially nonmarket revenues that will have -- if  
7           AEP collected that or if Duke Energy Ohio collected  
8           that, the economic impacts to the state of Ohio would  
9           be very similar.

10          Q.    Doctor, I'm going to go back to my  
11          question.

12          A.    Go right ahead.

13          Q.    You have not done any analysis of the  
14          alleged economic impact in Duke Energy Ohio's service  
15          territory should its application in this case be  
16          approved.

17          A.    I just answered your question, Counselor.  
18          The economic impacts, if -- if I did a study for  
19          AEP Ohio that said the costs go up by a hundred  
20          million dollars and that will have an economic impact  
21          of X, if I do the same study for Duke saying we want  
22          to collect an additional \$100 million, the economic  
23          impacts will be X, the same thing.

24          Q.    You don't know how Duke Energy Ohio's  
25          rates for electric service would compare to the rates

1 of other electric distribution utilities in Ohio  
2 after this application is approved, correct?

3 A. Are you talking about distribution rates?  
4 Transmission rates? Or generation rates?

5 Q. Electric service, sir.

6 A. Well, it would depend on how Duke  
7 structures that regulatory asset recovery and what  
8 the Commission allows.

9 Q. So, sir, you don't know how Duke Energy  
10 Ohio's rates for electric service would compare to  
11 the rates of other electric distribution utilities in  
12 Ohio should its application in this case be approved,  
13 correct?

14 A. I do not know that comparison. All I do  
15 know is that they would be higher than the  
16 competitive market prices that would otherwise  
17 prevail.

18 Q. And the competitive market prices for  
19 what services, sir?

20 A. For generation service.

21 Q. Generation service as what, sir?

22 A. For -- are you speaking of Duke Energy  
23 Ohio's generation service or a CRES provider?

24 Q. It's a term that you've utilized, I'd  
25 just like to get your understanding of how you're

1 using the term.

2 A. Typically, generation service includes  
3 providing energy and capacity. It may also include  
4 other services. For example, it may include some  
5 form of risk hedging.

6 Q. Sir, you don't know how Duke's rates for  
7 electric service would compare to the rates of other  
8 electric distribution utilities in Ohio after this  
9 application is approved and after the Commission  
10 approves rates under proposed rider DR-CO, correct?

11 A. Because the Commission has not approved  
12 those rates, no, I do not.

13 Q. And, sir, do you believe that it's  
14 possible to determine the economic impact of any one  
15 price without knowing that against which the price is  
16 compared?

17 A. I'm not sure I understand your question.  
18 Are you suggesting that if we don't know what Duke's  
19 going to charge, we then can't compare it to what,  
20 say, AEP Ohio is charging and therefore we can't  
21 figure out what the impact will be?

22 Q. Well, let me ask it another way. You  
23 talk about economic impacts to the state of Ohio.  
24 You have not -- you cannot identify the impact to  
25 Ohio's economy resulting from the \$357 per

1 megawatt-day auction results for the ATSI zone,  
2 correct?

3 A. No, but what I can tell you is that the  
4 ATSI auction results are based on a market. So if  
5 economic -- the whole purpose, the whole theory  
6 behind the PJM RPM is that those high -- that  
7 \$357 per megawatt-day price is a market price and  
8 that's the big difference here. That will encourage  
9 and sends a price signal to potential investors to  
10 develop new capacity, to develop new demand response  
11 resources, to make additional transmission system  
12 investments into that area to lower those prices,  
13 because the market signals are saying invest here.

14 Q. And, sir, have you done any  
15 quantification of the economic impact as a result of  
16 the transmission upgrades that will be required in  
17 northern Ohio as a result of the \$357 per megawatt  
18 charge resulting from the recent auction?

19 A. I have not done any numerical analysis.  
20 I would expect the results to be lower prices for  
21 capacity.

22 Q. Well, customers in northern Ohio will be  
23 paying for those transmission upgrades, correct?

24 A. It depends on what the upgrades are and  
25 how they're socialized across PJM.



1           Q.   Fair to say that customers in northern  
2 Ohio will be paying some portion of those  
3 transmission charges, correct?

4           A.   They will probably pay some portion of  
5 the charges, we just don't know what.

6           Q.   And you don't know when, correct?

7           A.   I don't know when they'll pay those  
8 charges?

9           Q.   Yes, sir.

10          A.   I don't know when they'll pay unspecified  
11 charges, that's correct.

12          Q.   Doctor, you were involved in AEP Ohio's  
13 capacity case, correct?

14          A.   Yes, I was.

15          Q.   Aware of the outcome in this case,  
16 correct?

17          A.   I am.

18          Q.   Understand that AEP Ohio has been  
19 authorized by the Ohio Commission to collect its  
20 embedded costs for providing capacity service as an  
21 FRR entity, correct?

22          A.   Correct. My understanding is that case  
23 is under appeal to the Ohio Supreme Court at this  
24 time.

25          Q.   But the Commission's order is final,

1 correct?

2 A. As far as I know, yes.

3 Q. And in authorizing AEP Ohio, an FRR  
4 entity with capacity service obligations, to collect  
5 \$188 per megawatt-day for its provision of capacity  
6 the Ohio Commission further -- further instructed  
7 that AEP would collect those amounts through two  
8 payment components, correct?

9 A. Can you refer me to the page of the  
10 order?

11 Q. Well, sir, do you know that --

12 A. I'm aware of the two different payments.

13 Q. And in approving the cost-based charge  
14 for AEP Ohio for its FRR capacity service the  
15 Commission found that that would not affect the  
16 competitive market, correct?

17 A. I don't recall the specific language. If  
18 you'd refer me to a page in that order.

19 Q. We would be happy to do so. Do you have  
20 it up there with you, sir?

21 A. I have a copy of that order.

22 Q. And as we go through just for ease of  
23 perhaps expediting what other documents do you have  
24 up there with you, sir?

25 A. I have a copy of my deposition

1 transcript, I have a copy of the stipulation and  
2 recommendation in the Duke ESP case 11-3549, and I  
3 have a copy of your application in this proceeding,  
4 12-2400.

5 Q. And, sir, if you could turn -- this has  
6 been marked previously as OCC Exhibit 1, the opinion  
7 and order in Case No. 10-2929.

8 A. I have it.

9 Q. Page 23, sir.

10 A. Oh, page 23. I'm sorry.

11 Q. And do you have that page, sir?

12 A. I do.

13 Q. And this is the portion of the order  
14 wherein the Commission was discussing its rationale  
15 for the two payment components under which AEP Ohio  
16 would ultimately collect its embedded cost for  
17 capacity service, correct?

18 A. Correct.

19 Q. And in this discussion, sir, the Ohio  
20 Commission was giving attention to state policy, its  
21 desire to stimulate competition among suppliers in  
22 AEP Ohio's service territory, correct?

23 A. Can you tell me exactly where you're  
24 reading on the page?

25 Q. Sure. In the first full paragraph on the

1 page.

2 A. Yes, I see that.

3 Q. And when we're talking about suppliers  
4 here, this would be CRES suppliers, correct?

5 A. That's correct.

6 Q. And the Commission found that recovering  
7 RPM-based capacity pricing from suppliers would  
8 stimulate competition, transition AEP Ohio to full  
9 participation in the competitive market, and incent  
10 shopping, correct?

11 A. That's true.

12 Q. And that would be shopping for retail  
13 services in the AEP Ohio service territory, correct?

14 A. That's true.

15 Q. The Commission then went on in the  
16 following paragraph and indicated that it would allow  
17 AEP Ohio to establish a deferral for the difference  
18 between its embedded cost of capacity and that which  
19 is recovered from competitive suppliers at RPM-based  
20 pricing, correct?

21 A. Correct.

22 Q. And, sir, given your involvement in the  
23 AEP Ohio case you do know that it, like Duke Energy  
24 Ohio, is an FRR entity, correct?

25 A. Correct.

1           Q.    It, like Duke Energy Ohio, has an  
2           obligation to self-supply capacity resources in its  
3           footprint through May 31, 2015, correct?

4           A.    Correct.

5           Q.    And AEP Ohio is currently meeting that  
6           obligation to supply -- to self-supply capacity  
7           resources with its currently owned generation,  
8           correct?

9           A.    So far as I know they are.

10          Q.    Sir, you also know that AEP Ohio will  
11          continue to have an FRR capacity obligation after its  
12          generating assets are transferred to an affiliate,  
13          correct?

14          A.    That's correct.

15          Q.    And AEP Ohio is scheduled to transfer its  
16          generating assets to an affiliate by no later than  
17          January 1, 2014, correct?

18          A.    That's correct.

19          Q.    And you are aware, sir, that Duke Energy  
20          Ohio is utilizing some of the -- strike that.

21                   Do you know that Duke Energy Ohio jointly  
22          owns generating assets with AEP Ohio?

23          A.    I'm aware of that.

24          Q.    And Duke Energy Ohio is utilizing those  
25          same generating assets that it owns, jointly owns

1 with AEP Ohio for purposes of meeting its FRR  
2 capacity obligations, correct?

3 A. That's correct.

4 Q. And Duke Energy Ohio must transfer its  
5 generating assets to an affiliate by December 31,  
6 2014, correct?

7 A. That's correct.

8 Q. And Duke Energy Ohio's capacity  
9 obligations, similar to those of AEP Ohio, will  
10 persist after it transfers its generating assets,  
11 correct?

12 A. Well, the capacity obligation numerically  
13 is not the same, but Duke will have an FRR obligation  
14 through May 31st, 2015, just like AEP.

15 Q. And that obligation will stay with Duke  
16 Energy Ohio even after the transfer of assets,  
17 correct?

18 A. That's true.

19 Q. And, sir, you're familiar with the term  
20 "legacy generating assets" as it has been used in  
21 Duke Energy Ohio's papers in this case, correct?

22 A. I am.

23 Q. And you understand the legacy generating  
24 assets to be those that were constructed prior to the  
25 passage of Senate Bill 3, correct?

1           A.    That's correct.

2           Q.    And, Dr. Lesser, in the AEP Ohio case the  
3 Ohio Commission did not require AEP Ohio to utilize  
4 least cost sources for capacity, correct?

5           A.    You'll have to be more specific.  Where  
6 in the order are you referring?

7           Q.    Well, sir, it's your proposition in this  
8 case that Duke Energy Ohio is required to adopt or  
9 that the Commission should require Duke Energy Ohio  
10 to utilize least-cost capacity resources, correct?

11          A.    Well, that's correct, because Duke Energy  
12 Ohio is saying we want to treat our legacy generating  
13 assets under traditional rate regulation.  That's  
14 your theory of the case.  That if by treating it as  
15 these assets despite under 4928.38 saying all assets  
16 will be on their own by December 31st, 2005,  
17 (VERBATIM) meaning they will all be on their own in  
18 the competitive market, Duke is requesting an  
19 additional \$700 million, on top of 330 million ESSC  
20 subsidy payments it's already receiving, to  
21 provided -- to meet its FRR obligations and, in fact,  
22 actually to pay, just to pay its embedded cost for  
23 all of its generation which is different for  
24 AEP Ohio.

25               Now, under traditional rate regulation

1 Duke has an obligation to provide that service at a  
2 prudent, just, and reasonable cost. And so what I'm  
3 saying is that that should be a least cost. That  
4 should be at a least cost. A least cost is at the  
5 market. And since Duke Energy Ohio's assets are  
6 above market, that's not least cost.

7 Q. Are AEP Ohio's assets above market?

8 A. Depends what the analysis is.

9 Q. Well, sir, you know that the AEP Ohio is  
10 authorized to recover \$188 per megawatt-day for its  
11 capacity resources, correct?

12 A. Yes. The number itself is meaningless,  
13 but as you're -- your witness Mr. Wathen has  
14 testified about the Duke Energy Ohio number, it's  
15 really the total dollar amount, so AEP Ohio is  
16 collecting I believe it's 508 million approximately  
17 in above-market costs. That was what the Commission  
18 determined in 10-2929.

19 Q. And so, sir, based upon the answer that  
20 you've just rendered you would agree with me that  
21 it's your position that AEP Ohio's generating assets  
22 committed to its FRR plan are above market.

23 A. They are, the difference with AEP Ohio is  
24 that it's been a vertically integrated utility and  
25 it's moving -- it will be transitioning away from



1 that when it spins off its generation into a  
2 structural separate entity.

3 Duke treats its generation including its  
4 legacy generation under the -- the competitive  
5 generation segment of its business and does not  
6 perform regulatory accounting. So, in other words,  
7 Duke already treats those assets as part of its  
8 competitive services not as its regulated  
9 distribution and transmission service, so that's a  
10 huge difference.

11 Q. And, sir, is it your position that  
12 AEP Ohio is a vertically integrated utility because  
13 it applies regulatory accounting?

14 A. AEP Ohio does not have a separate -- it's  
15 my opinion that AEP has been treated as a vertically  
16 integrated utility and is transitioning away from  
17 that. AEP does use regulatory accounting, whereas  
18 Duke does not.

19 Q. And is that the distinction, sir, in your  
20 mind, that would render AEP Ohio as a vertically  
21 integrated utility, that it utilizes regulatory  
22 accounting?

23 A. That's one of the distinctions.

24 Q. And it utilizes now regulatory accounting  
25 for a fuel deferral, correct?

1           A.    I believe that's correct.

2           Q.    And it utilizes regulatory accounting now  
3 with respect to the capacity deferral that the  
4 Commission authorized in case 10-2929, correct?

5           A.    That's correct.

6           Q.    Are you aware of any other elements of  
7 Duke -- of AEP Ohio's generation business for which  
8 it utilizes regulatory accounting?

9           A.    I would have to review their -- their  
10 filings to tell you an answer. I'm not sure.

11          Q.    Agree with me that we could probably  
12 consult AEP Ohio's 10-K and FERC Form 1 for purposes  
13 of that?

14          A.    You could look at the 10-K report to  
15 find -- get some information from that. It should  
16 say whether they use regulatory accounting for their  
17 generation assets.

18          Q.    Sir, is it fair to say that you're pretty  
19 familiar with the development of Ohio's restructuring  
20 laws?

21          A.    Well, "pretty familiar" is a vague term.  
22 I'll accept that I'm familiar with them.

23          Q.    Well, you've heard of Senate Bill 3  
24 before, correct?

25          A.    I have.

1 Q. And you've heard of Senate Bill 221,  
2 before, correct?

3 A. I have.

4 Q. And under Senate Bill 3 Ohio's  
5 electricity market was restructured, correct?

6 A. That's correct.

7 Q. Services for generation, distribution,  
8 and transmission were unbundled, correct?

9 A. That's correct.

10 Q. And do you believe that AEP Ohio operates  
11 the generation function of its business separate and  
12 apart from its distribution and transmission  
13 businesses?

14 A. Well, in some respects of course it does.

15 Q. And that's because that would be  
16 consistent with Ohio law concerning corporate  
17 separation, correct?

18 A. Well, AEP has functionally separated.

19 Q. And you were here for the direct and  
20 cross-examination of Dr. Woolridge, correct?

21 A. Yes, I was.

22 Q. And you know that Duke Energy Ohio has  
23 similarly functionally separated, correct?

24 A. Correct.

25 Q. Sir, going back to Senate Bill 221, you

1 do know that that law requires electric distribution  
2 utilities in Ohio to offer a standard service offer  
3 of competitive retail electric service, correct?

4 A. That's correct.

5 Q. And that standard service offer, sir, can  
6 take the form of either an MRO, market rate offer, or  
7 an electric security plan, or ESP, correct?

8 A. That's correct.

9 Q. And the ESP stipulation that is  
10 referenced in your direct testimony in these  
11 proceedings is the one pursuant to which Duke Energy  
12 Ohio is providing a standard service offer of  
13 competitive retail electric service, correct?

14 A. That's correct.

15 Q. And the rider RC that was approved as  
16 part of Duke Energy Ohio's ESP is a rider applicable  
17 to its provision of a standard service offer,  
18 correct?

19 A. That's correct.

20 Q. And, sir, do you have your direct  
21 testimony before you?

22 A. I do.

23 Q. So that we don't get crossways with  
24 pagination I'm going to refer to your confidential  
25 version.

1           A.    All right.

2           Q.    Page 11, please.  And just for purposes  
3 of clarification, on line 8 when you're referring to  
4 Duke Energy Ohio's customers, where you say "DEO  
5 agreed that its customers," you are referring to its  
6 standard service offer customers, correct?

7           A.    Well, to double-check I would want to  
8 look at Mr. Wathen's supplemental testimony that I  
9 cite to, which I don't have with me.

10          Q.    Would it also be helpful, sir, to cite to  
11 your deposition?

12          A.    Why don't we go to the deposition.  What  
13 page?

14          Q.    Page 37.

15               EXAMINER PIRIK:  Could the Bench have  
16 copies of the deposition?

17               MS. SPILLER:  Oh, I'm sorry, your Honor.  
18 The witness did and I got a little ahead of myself.

19               MR. LANG:  Are you intending to refresh  
20 recollection or impeach?  I don't think there's  
21 anything to impeach yet.

22          Q.    (By Ms. Spiller) Sir, do you have your  
23 deposition?

24          A.    I do.

25               MS. SPILLER:  Okay.  And the witness

1 suggested that we go to his deposition so we went  
2 there, Mr. Lang.

3 Q. The question on line 1, sir, if you want  
4 to just read the question and answer to yourself and  
5 see if that refreshes your recollection.

6 A. Yes, and I said I believe that the  
7 reference applied to SSO customers but I believe Duke  
8 was, in fact, planning to charge -- or, was not  
9 proposing in the stipulation different capacity  
10 prices for SSO and CRES customers.

11 Q. Well, sir, but that's a different issue  
12 here. Duke Energy Ohio does not charge shopping  
13 customers under its ESP, correct?

14 A. That's --

15 Q. For the services they receive from CRES  
16 providers.

17 A. Duke Energy Ohio is compensated by PJM  
18 and, again, this goes back to the accounting fiction  
19 I discussed earlier with you, that Duke Energy Ohio  
20 is, in fact, collecting money from PJM which serves  
21 as its billing agent for the FRR service it provides  
22 to CRES providers.

23 So to say that Duke Energy does not  
24 charge CRES providers for capacity is simply fiction.

25 Q. Sir, that wasn't my question. Shopping

1 customers in Duke Energy Ohio's service territory do  
2 not pay Duke Energy Ohio's price to compare, correct?

3 A. That's correct.

4 Q. And rider RC, that currently exists as  
5 part of Duke Energy Ohio's overall rates and tariffs,  
6 would be an element of its price to compare, correct?

7 A. That's correct.

8 Q. And so shopping customers do not pay Duke  
9 Energy Ohio's rider RC, correct?

10 A. That's correct.

11 Q. Thank you. Dr. Lesser, you are aware,  
12 having reviewed the company's application in this  
13 case, that rider RC will not be changed as a result  
14 of the company's proposals, correct?

15 A. That's correct.

16 Q. And, Dr. Lesser, you understand the  
17 proposed recovery mechanisms that Duke Energy Ohio is  
18 seeking here, correct?

19 A. Through a regulatory asset.

20 Q. And that regulatory asset, sir, would  
21 reflect the difference, if you will, between Duke  
22 Energy Ohio's embedded cost for providing FRR  
23 capacity service and that which it recovers from PJM  
24 in the form of RPM or market-based rates, correct?

25 A. Well, it's a net embedded cost that

1 you're asking for that nets out the revenues from  
2 energy -- energy sales in the wholesale market and  
3 ancillary service revenues.

4 Q. And then we arrive at a netted embedded  
5 cost, correct?

6 A. Correct.

7 Q. But that for which Duke Energy Ohio is  
8 seeking deferral authority is the incremental between  
9 its net and embedded cost of service and that which  
10 it receives from PJM in the RPM or market-based  
11 prices for capacity, correct?

12 A. That's the above market anticompetitive  
13 part, that's correct.

14 MS. SPILLER: Well, I move to strike the  
15 description, your Honor.

16 EXAMINER PIRIK: Overruled.

17 Q. But, Dr. Lesser, that deferred amount for  
18 which Duke Energy Ohio is seeking regulatory  
19 accounting treatment, that is not the full amount of  
20 Duke Energy Ohio's embedded cost of capacity service,  
21 correct?

22 A. Well, as I just answered, maybe I don't  
23 understand your question, it's net of the energy and  
24 ancillary service revenues.

25 Now, if Duke proposed, as AEP originally



1 proposed in its case, to recover all of those costs,  
2 essentially keep them, that essentially it would be  
3 charging -- recovering the same costs twice, it would  
4 be recovering all of its embedded costs as well as  
5 including all the energy revenues.

6 So it would be effectively charging  
7 customers twice for the same thing which is,  
8 obviously, inconsistent with basic rate regulation.  
9 So what Duke has done in this case is to subtract out  
10 its estimate of those energy and ancillary services  
11 revenues.

12 Q. Sir, that wasn't my question. And I  
13 didn't intend it to be a question that elicited such  
14 a lengthy response. It's simply that Duke Energy  
15 Ohio is not intending to recover through the deferral  
16 the full amount of its embedded cost of capacity,  
17 correct?

18 A. I guess I don't understand your question.  
19 You estimate a -- the overall embedded costs,  
20 Mr. Wathen has come up with an estimate of the full  
21 embedded cost of Duke Energy's legacy generating  
22 assets, is that correct?

23 Q. Correct.

24 A. And has Duke Energy, what Mr. Wathen then  
25 said is I'm going to subtract out the revenues we get

1922

1 from actually capacity sales in the wholesale market,  
2 the energy sales we -- revenues we get in the  
3 wholesale market, and the ancillary service charges.  
4 But the net result is they recover -- that the bottom  
5 line is you would recover the full embedded cost of  
6 what Mr. Wathen identified as those dollars -- that  
7 dollar value.

8 Q. But not directly from retail customers,  
9 correct?

10 A. Once you start recovering it through a  
11 regulatory asset charge you would be collecting those  
12 from retail customers.

13 Q. But not the full amount, sir, because we  
14 would have already stripped away the margins for  
15 energy and ancillary services, correct?

16 A. No. No, counselor. Let's try something  
17 simple. Let's say Duke Energy's full capacity costs  
18 are -- I think Mr. Wathen estimated for ease of  
19 expedition let's say a hundred dollars.

20 Q. I think I can handle a hundred, sir.

21 A. All right. Good. With lawyers you never  
22 know how numeric they are.

23 If Duke identifies its energy and  
24 ancillary services revenues and capacity services  
25 revenues as \$50, then Duke would propose to put in

1923

1 the regulatory asset a total of \$50, the remaining  
2 \$50. Therefore, Duke would collect \$50 in the form  
3 of a regulatory asset plus the \$50 it collects in  
4 capacity sales, energy sales, and ancillary revenue  
5 charges. The total would be the full \$100 embedded  
6 cost.

7 Q. Well, sir, let's stick with your numbers  
8 because I can hang with a hundred and 50.

9 A. No, just a hundred.

10 Q. Let's assume, as you just did, that Duke  
11 Energy Ohio's embedded -- full embedded cost for  
12 capacity is a hundred dollars. You've eliminated  
13 \$50 for proposed energy and ancillary services  
14 margins, correct?

15 A. That's correct.

16 Q. And then the remainder is another \$50,  
17 correct?

18 A. That's correct.

19 Q. Let's also add in the \$25 that Duke  
20 Energy Ohio recovers from the PJM -- from PJM for its  
21 capacity, correct?

22 A. Correct.

23 Q. We're left with \$25, correct?

24 A. That's correct.

25 Q. And that is the amount under your --

1 using your math here this morning, for which Duke  
2 Energy Ohio is seeking deferral treatment, correct?

3 A. That's correct.

4 Q. And so, sir, the deferral, the \$25, is  
5 that for which Duke Energy Ohio is proposing recovery  
6 from its retail customers, correct?

7 A. On top of the whatever the market charges  
8 are, yes.

9 Q. Well, let's talk about retail customers.  
10 The deferral would be the \$25 that Duke Energy Ohio  
11 is proposing to recover from its retail customers,  
12 correct?

13 A. That's correct. And so that would be on  
14 top of the amount Duke Energy recovers from retail  
15 customers through rider RC.

16 Q. Well, let's put rider RC to the side and,  
17 again, the \$25 would be the deferral amount that Duke  
18 Energy Ohio is seeking to recover from its retail  
19 customers for its embedded cost of capacity, correct?

20 A. That's correct.

21 Q. And, sir, 25 is not equal to a hundred,  
22 is it?

23 A. No; that's correct.

24 Q. And rider RC is an element of Duke Energy  
25 Ohio's price to compare, correct?

1 A. Correct.

2 Q. And under its ESP Duke Energy Ohio is  
3 obligated to provide the wholesale auction winners  
4 compensation for their portion of the load that they  
5 are serving, correct?

6 A. The energy portion, that's correct.

7 Q. And suppliers are -- SSO suppliers are  
8 also compensated for capacity, correct?

9 A. Suppliers are -- well, no. Suppliers are  
10 not obtaining their own capacity because Duke Energy  
11 is an FRR entity.

12 Q. And so --

13 A. Therefore --

14 Q. I'm sorry, go ahead.

15 A. Therefore, as an FRR entity Duke has  
16 assumed responsibility, as you've said earlier, for  
17 the capacity requirements of those CRES suppliers.  
18 And Duke Energy collects from those CRES suppliers  
19 the moneys for that from PJM.

20 Q. And so within rider -- strike that.

21 So is it your belief that Duke Energy  
22 Ohio recovers from customers under rider RC and does  
23 not remit any funds to wholesale competitive  
24 suppliers associated with that which is collected  
25 through rider RC?

1           A.    Well, Duke certainly collects from  
2 customers rider RC. What you're saying is they then  
3 remit all that amount to CRES providers? I don't  
4 think that's correct.

5           Q.    Well, sir, I'm just asking you what your  
6 understanding of the rider is. So is it your  
7 understanding that Duke Energy Ohio collects revenues  
8 under rider RC and retains those revenues?

9           A.    As far as I know.

10          Q.    Okay. And, Dr. Lesser, it's your opinion  
11 that, to the extent customers pay anything above  
12 market for capacity, they are paying twice, correct?

13          A.    That's correct.

14          Q.    And this would be true even if ultimately  
15 customers simply paid the embedded cost of receiving  
16 the service, correct?

17          A.    If they're paying embedded cost that's  
18 above market, yes.

19          Q.    Now, Dr. Lesser, you certainly have  
20 familiarity with rider ESSC, correct?

21          A.    I do.

22          Q.    And that is a rider that is in effect  
23 from January 1, 2012, through December 31, 2014,  
24 correct?

25          A.    That's my understanding, yes.

1           Q.   And you also, sir, are aware that the  
2 relevant time period for purposes of this filing is  
3 August 1, 2012, through May 31, 2015, correct?

4           A.   That's what you've requested, yes.

5           Q.   Now, on page 14 of your testimony, sir,  
6 it's a little bit more than a hundred but I think I  
7 got your math here, you simply took \$729 million and  
8 you subtracted from that the full amount that Duke  
9 Energy Ohio will collect under rider ESSC pursuant to  
10 the approved ESP stipulation, correct?

11          A.   That's correct.

12          Q.   You did not, sir, account for the fact  
13 that the term relevant to this case and the company's  
14 request in this case is August 1 of 2012, correct?

15          A.   That's correct. The reason I did not  
16 make that adjustment is because the rider ESSC,  
17 according to your witnesses, or at least Mr. Wathen's  
18 testimony, said that one of the purposes of rider  
19 ESC -- ESSC was to preserve the financial integrity  
20 of Duke Energy Ohio.

21               Your witness Mr. Trent in this  
22 proceeding, as I -- as I quote in my testimony, also  
23 states that it's to preserve the financial integrity  
24 of Duke Energy Ohio.

25               Since the -- your witnesses are saying

1 the purposes of the ESSC and this proposed regulatory  
2 account and deferral is -- are exactly the same, then  
3 it's appropriate to subtract out all of the revenues  
4 that you already asked for and will collect under the  
5 ESSC, that's why I did not adjust for that time  
6 period.

7 Q. Well, let's talk about rider ESSC, sir.  
8 You know that that was approved as part of the  
9 company's SSO under Chapter 4928, correct?

10 A. That's correct.

11 Q. And you know that particularly rider ESSC  
12 was approved under Chapter -- or Section 4928.143,  
13 correct?

14 A. Well, I'm looking at Section 7, page 15  
15 of the stipulation and recommendation which is item  
16 VII.A which discusses the services -- the ESSC  
17 charge, and I don't see a specific reference to  
18 4928.143. That may be because I don't have the  
19 Commission's order in front of me.

20 Q. Well, sir, you're familiar, having  
21 testified on behalf of FirstEnergy Solutions in  
22 AEP Ohio's recent ESP proceeding, and then again in  
23 connection with Dayton Power & Light's recent ESP  
24 proceeding, you're familiar with stability charges,  
25 correct?



1           A.    Yes, I am.

2           Q.    And you are aware that the Commission has  
3 authorized a stability charge for AEP Ohio in the  
4 context of its recent ESP, correct?

5           A.    They did.

6           Q.    And do you recall, sir, in your  
7 involvement in the AEP case whether such stability  
8 charges are, in fact, authorized under 4928.143 of  
9 the Revised Code?

10          A.    I'd have to -- I don't recall so I'd have  
11 to look at the specific language in that section.

12          Q.    And, sir, having reviewed Duke Energy  
13 Ohio's ESP stipulation in this proceeding you  
14 understand that it was a resolution or an overall  
15 package of terms, correct?

16          A.    That's correct.

17          Q.    A comprehensive settlement of various and  
18 complex issues, correct?

19          A.    Correct.

20          Q.    And in reviewing rider ESSC for purposes  
21 of your direct testimony in this case did you take  
22 into consideration Duke Energy Ohio's agreement to go  
23 immediately to market January 1, 2012, and give up  
24 the approximate 32 percent of its total load that it  
25 was serving under its then-existing ESP?

1           A.    No, because that was not in the order.  
2           In other words, I followed -- what the basis of my  
3           testimony is is the language in the ESSC, what the  
4           ESC says -- or, what the stipulation and  
5           recommendation says the ESC -- ESSC is for as well as  
6           the reasons for your witness, Mr. Wathen, testified  
7           to in support of that stipulation, his testimony that  
8           it was for financial integrity. He did not say  
9           anything about moving quicker to market, for example.

10          Q.    I'm sorry and, sir, you certainly would  
11          have read the entirety of Mr. Wathen's testimony,  
12          correct?

13          A.    I read his -- in this case or in the  
14          previous case?

15          Q.    Well, the testimony to which you are, did  
16          you read his --

17          A.    I read his complete testimony in the  
18          testimony that he provided in support of the  
19          stipulation. I also read his complete testimony in  
20          this proceeding.

21          Q.    Okay. And so for purposes of the  
22          testimony that Mr. Wathen filed in support of the ESP  
23          stipulation you would have read that in its entirety,  
24          correct?

25          A.    I did.

1           Q.    Sir, but in reading that -- strike that.

2                   In this case, for purposes of forming  
3   your opinions, you did not give consideration to Duke  
4   Energy Ohio's agreement to move immediately to market  
5   January 1, 2012, and give up the remaining  
6   approximate 32 percent of its total load that it was  
7   serving under its then-existing ESP, correct?

8           A.    No, because I think it's irrelevant.

9           Q.    And you also, sir, did not give  
10   consideration to Duke Energy Ohio's agreement not to  
11   participate in the load auctions that would be held  
12   for its SSO supply, correct?

13          A.    Well, because doing so and receiving the  
14   ESSC would be clearly anticompetitive. So the fact  
15   that Duke gave that ability to exercise  
16   anticompetitive behavior I don't consider much of  
17   a -- not an agreement, call it a give if you like.  
18   You're giving up the right to say we won't compete  
19   unfairly in our auctions because we're getting a  
20   \$330 million -- \$330 million subsidy. Yeah, okay. I  
21   doubt anyone who had negotiated that settlement and  
22   perhaps you can ask some of the FirstEnergy witnesses  
23   who were involved, whether they would have agreed to  
24   ESSC payments that would have allowed Duke Energy to  
25   outcompete them because of a nice \$330 million

1       subsidy for its generating assets with which to serve  
2       that load.

3               Q.     So your answer is no, you didn't consider  
4       it, correct?

5               A.     I did not consider it because it's  
6       irrelevant.

7               Q.     So, Dr. Lesser, is it your position that  
8       Duke Energy Ohio agreed to go immediately to market  
9       and give up serving any SSO load simply for nothing?

10              A.     Well, it's Ohio policy to promote retail  
11       competition. I would presume that Duke Energy Ohio  
12       intends to comport with actions that promote stated  
13       Ohio policy. As you said also, this was a  
14       comprehensive settlement, so Duke Energy Ohio may  
15       have gotten other things as part of the negotiations  
16       in exchange for receiving \$330 million in subsidy  
17       payments.

18              Q.     But you don't identify what any of those  
19       other things are, correct?

20              A.     No, I don't.

21              Q.     Dr. Lesser, although you are familiar  
22       with the AEP Ohio capacity case under 10-2929, and I  
23       believe, sir, you were a witness in that proceeding,  
24       you cannot identify how, if at all, Duke Energy  
25       Ohio's cost calculation for its FRR service

1 obligation differs from that -- differs from that  
2 which the Commission approved for AEP Ohio, correct?

3 A. Well, what Duke Energy has proposed, in  
4 other words, what Mr. Wathen has proposed is very  
5 different from what the Commission ended up with in  
6 the AEP case.

7 Q. In terms of the calculation of the  
8 embedded cost of capacity?

9 A. In terms of the overall, yeah, the  
10 overall calculation, that's correct.

11 Q. Well, do you know how the calculation was  
12 performed in the AEP Ohio case?

13 A. Well, what the -- it was called a formula  
14 rate. Now, Mr. Wathen also used what's called a  
15 formula rate. But the -- what AEP proposed was a --  
16 essentially a full recovery of \$355 per megawatt-day  
17 or so, without any consideration for offsetting  
18 energy revenues, ancillary service revenues,  
19 et cetera.

20 Now, the Commission did not accept what  
21 AEP did, they modified it. Mr. Wathen has used the  
22 same sort of formula rate application but, obviously,  
23 the numbers are different and so there's not a direct  
24 comparison between the two, between what the  
25 Commission approved and what Mr. Wathen has done.

1           Q.    In terms of the general framework in  
2   respect of what the Ohio Commission approved for  
3   AEP Ohio and what Duke Energy Ohio through Mr. Wathen  
4   has proposed in this case, is the framework and  
5   methodology the same?

6           A.    It's similar.  It's a -- there's a --  
7   it's a formula rate.  A formula rate is not  
8   necessarily a unique formula wherever one applies the  
9   same thing.  For example, at FERC the different types  
10  of formula rates.

11                But it's called -- the term is called  
12  "formula rate" because it's a general application.

13           Q.    And so that general application is  
14  consistent as between the AEP Ohio capacity case and  
15  this case, correct?

16           A.    There's some consistency between them,  
17  yes.

18           Q.    And to the extent there is inconsistency  
19  Duke Energy Ohio did not incorporate adjustments that  
20  the Ohio Commission applied to AEP Ohio's case  
21  because those adjustments weren't -- were  
22  inapplicable, correct?

23           A.    I'm not sure your -- well, I mean, the  
24  adjustments the Commission made for AEP Ohio,  
25  specific numbers obviously don't apply to Duke

1 Energy.

2 Q. Well, the Ohio Commission made an  
3 adjustment for AEP Ohio because of their pooling  
4 agreement, correct?

5 A. They did, and they adjusted for energy  
6 revenues, so there's -- again, there's a similarity  
7 in terms of the general methodologies, the numbers  
8 are different.

9 Q. And Duke Energy Ohio doesn't have a  
10 pooling agreement, correct?

11 A. Not as far as I know.

12 Q. Dr. Lesser, in your work here for Duke  
13 Energy Ohio in your direct testimony, in making  
14 adjustments to account for anticipated net income  
15 improvements you did not consider any changes in  
16 capital structure resulting from the refinancing of  
17 debt previously held by Duke Energy Ohio, correct?

18 A. Do you mean the anticipated refinancing  
19 of debt?

20 Q. Are you aware that refinancing of debt  
21 has occurred?

22 A. I'm aware that Duke Energy recently  
23 refinanced some of its debt with its parent.

24 Q. Did you account for the changes in Duke  
25 Energy Ohio's capital structure resulting from this

1 refinancing for purposes of your work in this case?

2 A. No, I did not because at the time I did  
3 my analysis that refinancing had not occurred.

4 Q. And you did your analysis when, sir?

5 A. I'm trying to think. Probably February.  
6 I can't give you exact dates.

7 Q. And would you agree that it would be  
8 appropriate to account for changes in Duke Energy  
9 Ohio's capital structure resulting from the  
10 refinancing of debt?

11 A. In terms -- well, let's talk about that.  
12 Why don't you refer to me to a specific table you'd  
13 like to consider.

14 Q. Sir, I'm just asking you a question if  
15 you think that's appropriate. This is information  
16 that you're now aware of.

17 A. Well, in terms of calculating return  
18 on -- it would be appropriate first because you would  
19 reduce the interest expense that Duke Energy was  
20 claiming in its net income calculations. For  
21 example, Mr. Savoy's calculations.

22 Q. I'm aware. I'm with you. And attempting  
23 to stay in the public record, sir.

24 A. I'm trying to do the same thing.

25 Given my -- and, counselor, forgive me



1 I'm trying to state this carefully so I don't --

2 Q. Understood.

3 A. -- say anything. What I did, for  
4 example, if we look at page 17, Table 3 and the  
5 adjustments therein, it was appropriate for me to  
6 begin with the total -- I was working off the total  
7 revenue requirement of line 1 in Table 3 which is  
8 what Mr. Wathen determined. So my adjustments, it  
9 would be appropriate to go off that.

10 Now, Mr. Wathen's analysis used the  
11 capital structure, I believe it was from 20 -- the  
12 2011 Form 1 in his calculations to determine that  
13 total revenue requirements. So, in other words, he  
14 used 2011 Form 1 data.

15 For purposes of my analysis, it was,  
16 therefore, appropriate to use the same data, work off  
17 his same calculations, and make the adjustments to  
18 come up with the net revenue to be collected value I  
19 have.

20 So, in that respect no, it would not be  
21 appropriate to make adjustments for Duke Energy's  
22 refinancing in that case because then I'd essentially  
23 have a problem of I'd be comparing Mr. Wathen's apple  
24 with my orange, which would confuse the record.

25 Q. Well, now, sir, ratemaking uses weighted

1 average cost of capital and not actual interest,  
2 correct?

3 A. Your question really makes no sense.  
4 For -- for estimating a return in a cost-of-service  
5 case typically you use weighted average cost of  
6 capital, and so you estimate the return on rate base,  
7 which is the remaining undepreciated value, capital  
8 asset value, to calculate that return on rate base.

9 Now, in terms of cost of service, yeah,  
10 you may not consider the interest expense, the actual  
11 interest expense that's being incurred, depending on  
12 how you do the workup of cost of service.

13 Q. Thank you for answering my nonsensical  
14 question.

15 And, sir, would you agree with me that  
16 the cost of debt is generally lower than the cost of  
17 equity, correct?

18 A. Generally, yes.

19 Q. And you would agree with me that the Ohio  
20 Commission does not generally adjust revenue  
21 requirements for costs that are unknown or  
22 unmeasurable, correct?

23 A. Under -- well, A, I can't speak for what  
24 the Ohio Commission does or does not do. Under  
25 traditional rate regulation costs to be included must

1 be known as measurable and just and reasonable and  
2 prudently incurred. That, for example, is one of the  
3 problems with Mr. Wathen's calculation in that he  
4 double counts general plant compared to what was in  
5 the distribution rate case. Mr. Wathen is proposing  
6 that Duke collects far in excess of that amount for  
7 general plant that he allocated wrongly to the  
8 generation assets. Now that under traditional rate  
9 regulation is just not allowed.

10 MS. SPILLER: Your Honor, move to strike  
11 everything after "prudently incurred" as there was no  
12 question pending for Dr. Lesser.

13 EXAMINER PIRIK: Motion denied.

14 Q. And, Dr. Lesser, you would not expect the  
15 Ohio Commission to allow recovery of costs that it  
16 deemed to be imprudently incurred, correct?

17 A. Again, I cannot speak for the Commission.  
18 I would suggest under traditional rate regulation  
19 costs that are imprudent are typically not allowed to  
20 be recovered.

21 Q. And do you think that the Ohio Commission  
22 adopts and adheres to that same principle of  
23 traditional rate regulation?

24 A. I would certainly hope it does.

25 Q. Well, you have no reason, sir, to believe

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1       that the Ohio Commission does not, correct?

2               A.     I have no -- certainly no evidence of  
3       that, no.

4               EXAMINER PIRIK:   Ms. Spiller.

5               MS. SPILLER:   Yes, your Honor.

6               EXAMINER PIRIK:   About how much more  
7       cross do you have?

8               MS. SPILLER:   I would suspect at this  
9       rate a little bit.   I mean, at least an hour and a  
10      half.

11              EXAMINER PIRIK:   I mean, it is our intent  
12      today to try to get through the witnesses that we  
13      have because I believe they're date-certain witnesses  
14      and so we're going to try to do that.   And we may be  
15      a little later than we normally have been.   But right  
16      now we need to take our lunch break.

17              MS. SPILLER:   Certainly.

18              EXAMINER PIRIK:   We have a Commission  
19      meeting at 1:30, so our intent would -- and usually  
20      those go rather quickly, and our intent would be to  
21      come right back here after the Commission meeting so  
22      be prepared I guess at 1:35.

23              MS. SPILLER:   Okay, thank you, your  
24      Honor.

25              MR. HAYDEN:   Your Honor.

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EXAMINER PIRIK: Yes.

Go off the record.

(Discussion off the record.)

(Thereupon, at 12:28 p.m., a lunch recess  
was taken until 1:35 p.m.)

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1 Wednesday Afternoon Session,

2 April 24, 2013.

3 - - -

4 EXAMINER PIRIK: We'll go back on the  
5 record.

6 MS. SPILLER: Thank you, your Honor.

7 - - -

8 JONATHAN A. LESSER, PH.D.  
9 being previously duly sworn, as prescribed by law,  
10 was examined and testified further as follows:

11 CROSS-EXAMINATION (Continued)

12 By Ms. Spiller:

13 Q. Dr. Lesser, if you could turn to page 23  
14 of your testimony, please.

15 A. I'm there.

16 Q. And therein you are, at the top of the  
17 page, discussing the anticipated contract between  
18 Duke Energy Ohio and its generation affiliate for the  
19 remaining five months of Duke Energy Ohio's FRR plan,  
20 correct?

21 A. That's correct.

22 Q. And it's your opinion, sir, that the  
23 contract between Duke Energy Ohio and its affiliated  
24 gen co. would not be accepted by the FERC, correct?

25 A. A contract that was based on an embedded

1 cost or any above-market price would violate the  
2 Edgar policy because while Duke Energy Ohio is an FRR  
3 entity, CRES providers in Duke's service territory  
4 are captive customers. They can't get capacity  
5 anywhere else. That's the Edgar standard. And so,  
6 in my view, I'm sorry --

7 Q. Go ahead.

8 A. In my view that contract would clearly --  
9 any contract between Duke's generation affiliate and  
10 Duke Energy Ohio after corporate separation would,  
11 therefore, violate FERC's Edgar standard.

12 Q. And is that the only FERC standard, sir,  
13 upon which you rely for purposes of your testimony on  
14 page 23?

15 A. With regard to that point, yes.

16 Q. Yes, sir.

17 A. Yes, it is.

18 Q. And you do not opine that a contract  
19 between Duke Energy Ohio and its generation affiliate  
20 would run afoul of state law, correct?

21 A. I don't know because a contract between  
22 Duke Energy's generation affiliate and Duke Energy  
23 Ohio is a wholesale contract which would be regulated  
24 by FERC.

25 Q. And you do know that the Ohio Commission

1 has concluded that such a contract would not be  
2 contrary to state law, correct?

3 A. I don't agree with that, actually. There  
4 is no such contract. And, in fact, in the AEP order  
5 the Commission, I believe, acknowledged that FERC  
6 would oversee contracts between, in that case  
7 AEP Ohio's generation subsidiary and AEP Ohio.

8 Q. But, sir, that wasn't my question. My  
9 question was that you do know that the Ohio  
10 Commission has concluded that such a contract would  
11 not be contrary to state law.

12 A. I don't -- no, I don't accept that,  
13 actually. That's not my reading of the AEP capacity  
14 order or the rehearing order and, again, whether or  
15 not it was -- I think it's also irrelevant because  
16 even if such an above-market contract between  
17 affiliates was -- did not violate Ohio law, it's  
18 clearly in conflict with established FERC policy.  
19 And FERC policy would over -- FERC would oversee such  
20 a wholesale contract.

21 Q. Well, sir, do you believe that the Ohio  
22 Commission, in reviewing the anticipated transfer of  
23 AEP Ohio's assets and the anticipated contract  
24 between AEP Ohio and its gen co, if in that exercise  
25 the Ohio Commission thought that such a contract



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1 would violate Ohio's corporate separation rules, that  
2 it would have found that?

3 A. I don't know what the Commission would  
4 have done. I can't speculate for the Commission.  
5 All I'm telling you is that such a contract, an  
6 above-market contract between affiliates, which is  
7 what we're talking about, would be in clear violation  
8 of FERC's Edgar policy, as I understand that policy.

9 Q. Now, sir, given your familiarity with  
10 both the AEP Ohio capacity case and its ESP case, you  
11 do know that the Ohio Commission addressed those  
12 revenues that AEP Ohio would be permitted to continue  
13 to collect from its retail customer after January 1,  
14 2014, and then remit to its affiliated gen co,  
15 correct?

16 A. I'm familiar with that aspect of the  
17 order, yes.

18 Q. And the Ohio Commission has authorized  
19 AEP Ohio to collect capacity charges for its cost of  
20 providing FRR service through the balance of its FRR  
21 term or through May 31, 2015, correct?

22 A. Would you repeat that question, again.

23 Q. Sure. The Ohio Commission has authorized  
24 Duke -- or strike that.

25 The Ohio Commission has authorized

1 AEP Ohio to collect its costs for providing capacity  
2 service through the balance of the term of its FRR  
3 plan or through May 31, 2015, correct?

4 A. I believe what the Commission did was to  
5 establish a regulatory asset, so that AEP is not  
6 recovering that full amount at this time. The other  
7 thing is there's a, I think there's a really big  
8 difference between what AEP's -- the Commission  
9 authorized in the AEP case because AEP in that case  
10 is charging, that order is about what AEP is charging  
11 CRES providers. That's not what Duke is asking for  
12 here. Duke is simply asking to recover all of its  
13 embedded capacity costs from everybody.

14 Q. Sir, my question wasn't about recovery.  
15 My question was, to your knowledge, has the Ohio  
16 Commission authorized AEP Ohio to collect its costs  
17 for providing capacity service through the balance of  
18 its FRR term or through May 31, 2015?

19 A. My understanding is that the Commission  
20 has authorized the establishment of a regulatory  
21 asset for AEP Ohio but my understanding is that the  
22 Commission has not yet approved the actual recovery  
23 of those costs.

24 Q. And, sir, I'm not asking about recovery.

25 A. You just said to -- I thought you just --

1       you used the word "recovery."

2               Q.     "Collect." So AEP Ohio can collect its  
3       embedded costs for capacity which the Ohio Commission  
4       has established at \$188 per megawatt-day for the term  
5       of its FRR plan, correct?

6               A.     The Commission established that price,  
7       that's correct.

8               Q.     And they also established that AEP Ohio  
9       could collect that price through the expiration of  
10      its FRR obligations, correct?

11              A.     Why don't we go to the AEP capacity order  
12      and if you'll refer me to a specific page, we can  
13      probably discuss it more efficiently.

14              Q.     I'm just asking what you recall but happy  
15      to do that.

16              MS. SPILLER: Your Honor, just a moment,  
17      please.

18              Q.     Dr. Lesser, we're going to, not to waste  
19      any more time because I know we have a schedule here  
20      today, we'll come back to that question.

21              Dr. Lesser, you are aware that the MRO  
22      versus ESP test applies with regard to the  
23      Commission's approval of an ESP, correct?

24              A.     That's correct.

25              Q.     And this case is not one in which Duke

1 Energy Ohio is asking for approval of an ESP,  
2 correct?

3 A. No. This is a case where Duke has  
4 unilaterally modified its ESP and is asking for  
5 approval of that. That's why I included my updated  
6 ESP versus MRO test which clearly demonstrate that  
7 under the new proposal Duke Energy's new proposal in  
8 this case clearly fails that test.

9 Q. And, sir, in your testimony you have  
10 proposed an updated MRO versus ESP test, correct?

11 A. That is correct.

12 Q. And you are familiar with the factors  
13 that the Ohio Commission considers in applying the  
14 MRO versus ESP test, correct?

15 A. I'm generally familiar with them, yes.

16 Q. And in this particular circumstance you  
17 merely updated one component of the MRO versus ESP  
18 test that was utilized for purposes of case 11-3549,  
19 correct?

20 A. Well, I included -- yes. I included the  
21 additional revenues Duke is proposing to collect  
22 through a nonbypassable charge. Now, I suppose I  
23 could have -- for example, the projected retail  
24 market price under the ESP I don't believe is  
25 changing; that's fixed.

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1 But to the extent that market prices  
2 have, in fact, dropped in the last two years, the  
3 wholesale market prices, then I suppose I could have  
4 changed that market price, lowered that, which would  
5 have made the MRO that much better and so this can be  
6 viewed as a conservative assessment because I kept  
7 the market prices constant.

8 Q. So in adjusting just one number you were  
9 being helpful to Duke Energy Ohio?

10 A. In adjusting the -- in not adjusting the  
11 market rate offer cost down, that probably benefits  
12 Duke Energy Ohio.

13 Q. And in making the adjustments you did not  
14 update the market price for capacity consistent with  
15 what the Ohio Commission did in its application of  
16 the MRO versus ESP test for AEP Ohio, correct?

17 A. I guess I'm not following your question  
18 exactly.

19 Q. I'll restate it.

20 A. Well, let me see if I understand it  
21 first. You're asking whether I updated, instead of  
22 using the BRA prices, used the updated auction  
23 prices --

24 Q. No.

25 A. -- for the final -- well then I don't

1 understand the question.

2 Q. You updated the MRO versus ESP test by  
3 simply adjusting one side of the ledger, the ledger  
4 being Duke Energy Ohio's ESP, correct?

5 A. That's correct.

6 Q. And you made an adjustment to include  
7 Duke Energy Ohio's recovery on the ESP side of the  
8 ledger for its embedded cost of capacity, correct?

9 A. That's correct. And the reason I did  
10 that is because, again, it goes back to what I  
11 testified earlier, that the -- according to your own  
12 witnesses, the additional \$729 million revenue is  
13 necessary to maintain Duke's financial integrity.

14 Now, in the AEP case, as you recall, what  
15 the Commission said for AEP is they included the ESSC  
16 charge as part of the ESP side but they -- because it  
17 was for financial integrity, but they did not include  
18 that on the MRO side hence I did the exact same  
19 thing.

20 MS. SPILLER: Move to strike everything  
21 after "that's correct" as nonresponsive.

22 EXAMINER PIRIK: Overruled.

23 Q. And, sir, you understand in the AEP Ohio  
24 ESP proceeding that for purposes of the MRO versus  
25 ESP test the Ohio Commission adopted a price of

1     \$188 per megawatt-day for the market price of  
2     capacity, correct?

3             A.     That's correct.

4             Q.     And that adoption of \$188 per  
5     megawatt-day for the market price of capacity would  
6     have been included on the MRO side of the ledger,  
7     correct?

8             A.     That's correct.

9             Q.     And the Ohio Commission further concluded  
10    in respect of AEP Ohio in the application of the MRO  
11    versus ESP test to it that the deferral associated  
12    with its capacity cost didn't have an effect on the  
13    MRO versus ESP test because that deferral would  
14    appear on both sides of the ledger, correct?

15            A.     Well, again, I think there's a large  
16    difference between this case and AEP Ohio despite  
17    your attempting to essentially say we are exactly the  
18    same as AEP Ohio, we're asking for the exact same  
19    treatment.

20                    What Duke Energy Ohio's asked for is  
21    quite different, and the way I interpret it,  
22    regardless of the Commission, is that the additional  
23    moneys Duke Energy was asking for was for financial  
24    integrity similar to AEP's revenue stability charge  
25    which the Commission did not include on both sides of

1 the ledger. The Commission only included it on the  
2 ESP side of the ledger.

3 Therefore, it was appropriate for me to  
4 include those charges, the additional 729 million  
5 you're asking for, on the ESP side of the ledger  
6 similarly to the way the ESSC revenues were accounted  
7 only on the ESP side of the ledger.

8 Q. Sir, is it your position that Duke Energy  
9 Ohio's request in this proceeding is one brought  
10 under Chapter 4928 of the Ohio Revised Code?

11 A. Well, I can check Duke's application to  
12 see what you're filing under.

13 Q. I'm just asking for your opinion.

14 A. According to paragraph 2 of your  
15 application, it's under 4905.04, 4905.05, 4905.06,  
16 4905.13, and 4905.18 therefore since you're not  
17 saying anything about 4920 -- 49 -- gosh, I can't  
18 talk, the other, the other statute, it's not there.

19 Q. And you do not dispute the statutory  
20 basis under which Duke Energy Ohio filed its  
21 application in this case, correct?

22 A. I'm not evaluating that, no. I'm simply  
23 saying that, based on my economic conclusions of  
24 evaluating the application.

25 Q. But in terms of the statutory basis for a



1 filing, that does not require the application of  
2 economic conclusions or expertise, that's a function  
3 of what the law provides, correct?

4 A. I'm not -- I'm not making any  
5 representations on whether the application Duke  
6 filed, whether those statutory -- the different  
7 statutes I just stated, five different statutes, are  
8 appropriate or not.

9 Q. And you are aware, Dr. Lesser, that the  
10 Ohio Commission has found that capacity services  
11 provided in the fulfillment of FRR obligations are  
12 not subject to regulation under Chapter 4928 of the  
13 Revised Code, correct?

14 A. I have seen that, yes.

15 Q. And, sir, I'm going to go back to our  
16 conversation about AEP Ohio's collection of its  
17 capacity costs and the duration of that period. And  
18 you have before you the order in -- the original --  
19 strike that -- the July 2, 2012, order in case  
20 10-2929, correct?

21 A. I do.

22 Q. And that was previously marked as OCC  
23 Exhibit 1 for purposes of this proceeding. And, sir,  
24 if you can turn to page 24. The second full  
25 paragraph on the page. And therein the Commission

1 found that the state compensation mechanism would  
2 remain in effect until AEP Ohio's full transition --  
3 or full participation in the RPM market is complete  
4 and AEP Ohio is no longer subject to FRR capacity  
5 obligations, correct?

6 A. I see that. And the other difference  
7 here is that Duke Energy has a state compensation  
8 mechanism that was set forth in the stipulation which  
9 calls for Duke collecting the market price.  
10 That's -- and what you're trying to do is  
11 unilaterally change that state market compensation.

12 Q. Sir, all I'm trying to do is ask you  
13 about the period of time during which AEP Ohio would  
14 recover its costs for providing capacity service.  
15 And in case 10-2929 the Ohio Commission said that  
16 that would occur through the period of May 31, 2015,  
17 correct?

18 A. That's correct. What -- the Commission  
19 authorized AEP to collect those costs from CRES  
20 providers through that period.

21 Q. With the deferral to be recovered from  
22 retail customers, correct?

23 A. I'm not sure where they specify how the  
24 costs would be recovered.

25 Q. Well, sir, you do know in respect to

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1 AEP Ohio they are recovering market-based prices from  
2 CRES providers and the balance will be collected from  
3 retail customers pursuant to a deferral, correct?

4 A. That's my understanding.

5 Q. And you also are aware, sir, that the  
6 Ohio Commission has indicated that AEP Ohio, the  
7 collection of its capacity costs through June --  
8 strike that -- through May 31, 2015, can remit  
9 revenues to its affiliated gen co for those capacity  
10 services after the assets are transferred, correct?

11 A. I have seen that.

12 Q. So you're aware of the Commission's  
13 finding in that regard.

14 A. I'm aware of that, yes.

15 Q. Dr. Lesser, you do know that Duke Energy  
16 Ohio is a dual service company and that it provides  
17 both natural gas and electric service, correct?

18 A. I am aware of that, yes.

19 Q. And you would agree with me that the  
20 rates that Duke Energy Ohio recovers for providing  
21 natural gas service do not compensate the company for  
22 providing electric distribution service, correct?

23 A. They're not supposed to.

24 Q. Would you have any reason to believe that  
25 they do?

1           A.    I haven't studied it so I don't know.

2           Q.    And you would agree with me that under  
3 cost-of-service regulation a utility recovers the  
4 costs associated with a service based upon the  
5 service provided, correct?

6           A.    For a regulated service, that's correct.  
7 Of course, we're talking about a service that's  
8 competitive and we're talking about a service that's  
9 provided on a competitive basis in the market, in  
10 which case traditional cost-of-service regulation  
11 need not apply.

12                       So really you can either have it one of  
13 two ways, either it's at the market, it's a market  
14 service, in which case any price at the market, the  
15 market price is fully compensatory, or you can  
16 subject yourself to traditional rate regulation in  
17 which case least cost and prudence apply.

18           Q.    And the Ohio Commission found that  
19 capacity service provided by an FRR entity is not a  
20 competitive retail service subject to market  
21 regulation under Chapter 4928 of the Ohio Revised  
22 Code, correct?

23           A.    They found it was not a competitive  
24 retail service. Now, in point of fact, it is being  
25 provided as part of retail service, so Duke Energy

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1 Ohio through -- provides SSO service to customers.  
2 That generation service includes, to retail  
3 customers, that service includes Duke providing  
4 capacity.

5 Q. Well, sir, the Ohio Commission found that  
6 capacity service provided by an FRR entity is not a  
7 competitive retail service subject to regulation and  
8 market price limitations imposed under Chapter 4928  
9 of the Ohio Revised Code, correct?

10 A. Well, let's look at the order again, the  
11 AEP order, to get the exact language of what the  
12 Commission said.

13 Q. Well, do you recall that or not?

14 A. I recall something similar, but if we're  
15 going to talk about that, let's look at the exact  
16 language.

17 Q. Sure. Do you have the Commission's entry  
18 on rehearing in case 10-2929 before you, sir?

19 A. No, I do not. I only have the original  
20 order.

21 Q. Well, we'll be sure to get that for you.

22 MS. SPILLER: OCC 3.

23 Q. Do you have the opinion and order, sir?

24 A. I still don't have it.

25 Q. You have the opinion and order, right?

1           A.    Yes, but I don't have the one on  
2 rehearing that you asked me about.

3           Q.    Okay. Well, we'll start with the opinion  
4 and order while that document's being gathered.

5                   On page 13, sir, in the first full  
6 paragraph, please.

7           A.    I see that.

8           Q.    Okay.

9           A.    And what the Commission is saying at the  
10 bottom of that paragraph is that they found that the  
11 provision of capacity to CRES providers was not a  
12 retail electric service. And I would agree with  
13 that. That's a wholesale service.

14          Q.    And they also found that it is not a  
15 competitive service, correct?

16          A.    No. They say "Accordingly, we find it  
17 unnecessary to determine whether capacity service is  
18 considered a competitive or noncompetitive service  
19 under Chapter 4928, Revised Code." I read that to  
20 mean they have no opinion.

21          Q.    Well, we'll get there. But let's go back  
22 up to the top of the paragraph. In the second  
23 sentence the Ohio Commission found that "Section  
24 4928.05(A)(1), Revised Code, provides that  
25 competitive retail electric service is, to a large

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1 extent, exempt from supervision and regulation by the  
2 Commission, including pursuant to the Commission's  
3 general supervisory authority contained in Sections  
4 4905.04, 4905.05, and 4905.06, Revised Code,"  
5 correct?

6 A. You've read that correctly.

7 Q. And, sir, would you agree with me that  
8 Chapter 4928 applies to competitive retail electric  
9 service?

10 A. Would you repeat your question, please?

11 Q. Sure. Would you agree with me that  
12 Chapter 4928 of the Ohio Revised Code applies to  
13 competitive retail electric service?

14 A. Well, when I look at the next sentence in  
15 that same paragraph, it says "Section 4928.05(A)(2),  
16 Revised Code, provides that noncompetitive retail  
17 electric service, on the other hand, generally  
18 remains subject to supervision or regulation by the  
19 Commission." So, therefore, 4928.05 apparently  
20 applies to non -- no retail electric service --  
21 noncompetitive retail electric service as well.

22 Q. And, sir, you do have before you what's  
23 been marked as OCC Exhibit 3, the entry on rehearing,  
24 correct?

25 A. I do.

1960

1 Q. And if you could, sir, turn to page 39.

2 A. I'm there.

3 Q. And in the first full paragraph on this  
4 page midway through the paragraph the Commission  
5 indicated "Having found that the capacity service at  
6 issue is not a retail electric service and thus not a  
7 competitive retail electric service, IEU-Ohio's  
8 argument that the Commission may not rely upon  
9 Section 4905.13, Revised Code, is unavailing."  
10 Correct?

11 A. You read that correctly.

12 Q. And, sir, the Ohio Commission further  
13 found that FRR capacity service is not subject to the  
14 market-based pricing limitations codified at Section  
15 4928 of the Revised Code, correct?

16 A. Where are you reading, Counselor?

17 Q. One moment, sir. I know it's here.

18 In the interest of time we'll come back  
19 to that.

20 Dr. Lesser, you do agree that the Ohio  
21 Commission has an obligation to ensure that  
22 jurisdictional utilities are fairly compensated for  
23 the services they provide, correct?

24 A. For a regulated, a fully regulated  
25 utility, that's correct. That's consistent with



1 traditional rate regulation.

2 Q. Well, sir, you realize that that was one  
3 of the important criteria for the Ohio Commission in  
4 its decision in respect of AEP Ohio's capacity case,  
5 correct?

6 A. I'm not sure how -- what importance the  
7 Commission set for -- if that's what they said. In  
8 my view we're talking about a service that's  
9 available in the market and, therefore, any -- I'll  
10 say it again, I've said it before, compensation at  
11 the market is fully compensatory.

12 Q. Well, the FRR entity, Duke Energy Ohio,  
13 is the only entity providing capacity in its  
14 footprint through May 31, 2015, correct?

15 A. That's correct. And one of the reasons  
16 it is the only entity is because previously Duke had  
17 agreed to charge a market price in which case CRES  
18 providers would rationally be willing to rely on Duke  
19 Energy for provision of capacity and would not have  
20 had an economic incentive to opt out of that and  
21 secure their own capacity at a much lower market  
22 rate.

23 Q. Well, let's talk about that. You  
24 reviewed Duke Energy Ohio's filings at the FERC  
25 relative to its migration to PJM, correct?

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1 MS. SPILLER: Bless you.

2 Q. You didn't review them?

3 A. No, I did not. I reviewed your witness  
4 Mr. Jennings' testimony as to the reasons for why  
5 Duke wanted to migrate.

6 Q. So you have -- you have no knowledge as  
7 to when Duke Energy Ohio initiated its filings at the  
8 FERC for its realignment to PJM, correct?

9 A. I don't have the specific date, no.

10 Q. And you have no knowledge with respect to  
11 the opt-out provisions that were offered to alternate  
12 load-serving entities including CRES providers in  
13 connection with Duke Energy Ohio's request to realign  
14 to PJM, correct?

15 A. Well, my understanding is Duke originally  
16 was going to wait to join PJM and initially  
17 participate in the auctions, or then do incremental  
18 auctions similar to what FirstEnergy did. But then  
19 Duke decided to join PJM January 1st, 2012, and as  
20 such it was required to become an FRR entity joining  
21 at that date because the auction -- period for  
22 auctions had passed.

23 Q. Well, sir, your understanding is not  
24 gleaned from anything you've read at the FERC  
25 regarding Duke Energy Ohio's realignment, correct?

1963

1           A.    It's not gleaned -- it's gleaned from  
2 Mr. Jennings' testimony.

3           Q.    And Mr. Jennings' testimony was filed on  
4 November 15, 2010, correct?

5           A.    I have to check the exact date. I don't  
6 recall.

7           Q.    Did you read his MRO testimony?

8           A.    I don't have his testimony with me, so  
9 I'm not sure what the dates are, counselor. If you  
10 have a copy of his testimony, I'm happy to look at  
11 it.

12          Q.    Well, you cited it in your testimony,  
13 correct?

14          A.    And I'm trying to find that reference  
15 right now.

16                I'm on page 27 of my testimony, and what  
17 I did -- the date of Mr. Jennings' testimony in  
18 footnote 21 is November 15, 2010.

19          Q.    So all you know about Duke Energy Ohio's  
20 realignment in its FRR plan is that which you read in  
21 Mr. Jennings' testimony filed on November 15, 2010,  
22 correct?

23          A.    That's the basis for the question in  
24 terms of my question on why did DEO decide to  
25 withdraw from MISO and join PJM. My response is

1964

1 based on Mr. Jennings' testimony and I assume  
2 Mr. Jennings was representing the facts.

3 Q. Well, sir, my question was what you know  
4 about Duke Energy Ohio's realignment and its FRR plan  
5 is that which is reflected only in Mr. Jennings'  
6 testimony, correct?

7 A. That's correct.

8 Q. And you don't know the deadline for CRES  
9 providers with regard to their ability to opt out of  
10 Duke Energy Ohio's FRR plan, do you?

11 A. I don't know that -- that's probably a  
12 question for Dr. Tabors in terms of the specific  
13 dates when the CRES provider is -- up to which a CRES  
14 provider is allowed to opt out. I don't recall the  
15 exact date.

16 Q. But with regard to Duke, with regard to  
17 Duke Energy Ohio's plan you simply have no idea,  
18 correct?

19 A. I just answered your question. I don't  
20 know the exact date.

21 Q. Do you have an estimated date?

22 A. It's -- I believe it's three years in  
23 advance.

24 Q. And that's with respect to the typical  
25 FRR status or election, correct?

1965

1           A.    That's my understanding, but I would,  
2           again, defer to Dr. Tabors who has more of a  
3           knowledge on that than I do.

4           Q.    Well, and when Duke Energy Ohio aligned  
5           to PJM effective January 1, 2001, it did so in --

6           A.    I'm sorry, you said 2001.

7           Q.    I'm sorry. When Duke Energy Ohio  
8           realigned to PJM effective January 1, 2012, it had a  
9           transitional FRR plan, correct?

10          A.    I'm not exactly sure what plan it had in  
11          place on the day it -- I would call it an FRR plan.  
12          It was an FRR entity. But in terms of what specific  
13          plan it had, I'm not aware.

14          Q.    So did you read all of Mr. Jennings'  
15          testimony in connection with your work in this case?

16          A.    I certainly scanned all of his testimony.  
17          I just don't recall language on a transitional FRR  
18          plan.

19          Q.    And so in this case, sir, you are opining  
20          that CRES providers would have made or could have  
21          made different decisions had they known that Duke  
22          Energy Ohio would seek to recover its full costs for  
23          providing capacity service, correct?

24          A.    That's correct.

25          Q.    But you have no idea when CRES providers

1966

1 were required to opt out of Duke Energy Ohio's FRR  
2 plan, correct?

3 A. I do not know the specific date.

4 Q. Did you --

5 A. What I'm saying is that had CRES  
6 providers -- they cannot opt out now. CRES providers  
7 cannot opt out when Duke filed its application in  
8 this proceeding. They cannot say, oh, here's Duke's  
9 application, I think I'll opt out before this takes  
10 effect and become -- and secure my own capacity from  
11 the market. They're captive to Duke Energy for the  
12 remainder of the period through May 31st, 2015.

13 What I'm saying is that had CRES  
14 providers known Duke was going to abrogate the terms  
15 of the ESP stipulation, or attempt to at least in  
16 this case, they would very likely have made different  
17 economic decisions. It would make no sense for a  
18 CRES provider to say, oh, I think I'll rely on Duke  
19 and pay much higher -- end up my customers or  
20 potential customers having to pay higher costs for  
21 capacity when instead I could have simply secured my  
22 own capacity in the market for a much lower price.

23 Q. Well, sir, don't you think the decision  
24 of opt-out would be one that would be made with  
25 reference to that which was known at the time of the

1 opt-out decision?

2 A. That's precisely my point, Counselor.  
3 Before you filed the application in this case CRES  
4 providers were operating under the assumption that  
5 Duke Energy would be charging a -- you know, was  
6 charging and collecting from PJM the market price for  
7 capacity. That's what's in the stipulation.

8 Duke Energy's state compensation  
9 mechanism as part of this stipulation was set at the  
10 PJM final zone clearing price, so CRES providers,  
11 based on that assumption, there would be no economic  
12 incentive to say -- to opt out, because the expected  
13 gain for a CRES provider seeking to provide -- to  
14 obtain its own capacity would, in fact, be zero.

15 Now, what happened was with the  
16 application, Duke is now trying to change the terms  
17 unilaterally. Had CRES providers known that, and  
18 known that Duke intended to change that, and somehow  
19 could have divined Duke's intention when it filed the  
20 application last year they may have made very  
21 different decisions.

22 Q. Well, now, Doctor, you just said that  
23 Duke Energy Ohio's state compensation mechanism as  
24 part of its ESP stipulation was relevant to the  
25 decisions that CRES providers made at that time,

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1 correct?

2 A. Since January 1st, 2012, after Duke was  
3 a -- joined PJM and was an FRR provider, what I'm  
4 saying is that CRES providers at that time, and given  
5 that Duke was charging the market price for capacity  
6 was, the capacity price in effect, there's no notion  
7 of charging embedded costs for capacity and trying to  
8 collect that from Duke's retail customers which would  
9 affect competition, would have no economic incentive  
10 to have made any other decision than to rely on Duke  
11 for capacity.

12 Q. Do you know if CRES providers could have  
13 opted out of Duke Energy Ohio's FRR plan January 1,  
14 2012?

15 A. I do not know if on that date they could  
16 have opted out.

17 Q. Do you know if CRES providers could have  
18 opted out of Duke Energy Ohio's FRR plan on  
19 October 24, 2011, when they filed the ESP  
20 stipulation?

21 A. I do not know the exact date they could  
22 have opted out.

23 Q. So you indicated, sir, just now that CRES  
24 providers were making decisions about whether to opt  
25 out at the time they signed the ESP stipulation. You



1 don't know that to be true, correct?

2 A. What I'm suggesting is from an economic  
3 standpoint, Counselor, a CRES provider who is looking  
4 at the terms of the stipulation, when it was signed,  
5 would reasonably conclude that the price for capacity  
6 was going to be the final zone clearing price. A  
7 CRES provider at that time would not have, and  
8 perhaps CRES providers who participated in those  
9 negotiations, I would assume -- presume that Duke  
10 Energy meant the final zone clearing price as the  
11 price and that Duke Energy was not intending to go  
12 back months later and say, oh, no, now we want to  
13 charge -- we want to collect our full embedded costs.  
14 That's my point.

15 Q. But, sir, my question is about the  
16 opt-out. You are claiming in your testimony that  
17 CRES providers could and perhaps would have made  
18 different decisions. At the time the ESP stipulation  
19 was filed on October 24, 2011, could the signatory  
20 CRES providers to that ESP stipulation have opted out  
21 of Duke Energy Ohio's FRR plan?

22 A. On that specific date; is that what  
23 you're asking?

24 Q. I'm asking that, yes, sir.

25 A. I don't know the answer to that, but what

1970

1 I'm saying is that even if they -- let's suppose,  
2 let's take case one, there's two alternatives, either  
3 they could have or they would not have been able to.

4 Had they been able to, hypothetically,  
5 let's assume that they could -- on that day that the  
6 stipulation was signed they could opt out of the --  
7 of Duke's FRR and secured their own capacity, and  
8 secure it, say, right away. Again, this is a  
9 hypothetical. Given the terms of the stipulation,  
10 they'd have no economic incentive to do so. Had they  
11 known that Duke intended to file months later this  
12 proceeding asking to recover its full embedded costs,  
13 they may very well have made a very different  
14 decision to opt out and to avoid those above-market  
15 costs.

16 Now, had -- if, on the other hand, CRES  
17 suppliers were simply unable, they were captive to  
18 Duke, when the stipulation was signed, then they  
19 couldn't have done anything and that's just simply  
20 bait and switch. So it's one of the two.

21 Q. How does the opt-out work with respect to  
22 an FRR plan?

23 A. I'm going to defer that to Dr. Tabors.  
24 He knows more about that than I do.

25 Q. So you're offering opinions about the

1971

1 opt-out and yet you don't know how it works?

2 A. In terms of the specific dates, I don't  
3 know the specific dates of the opt-out. I'm  
4 suggesting from an economic perspective, and that was  
5 my hypothetical, that either they could have opted  
6 out or not. And I went through both of those cases.  
7 And in both cases essentially FR -- CRES providers  
8 would have had an incentive to, if possible, opt out  
9 had they known Duke was going to unilaterally change  
10 the terms of the stipulation.

11 Q. So --

12 A. Or they'd be -- they are captive to Duke  
13 through the remainder of the FRR and are, thereby,  
14 the victims of bait and switch.

15 Q. So, sir, you are here offering an  
16 economic perspective and do you feel -- strike that.

17 How can you offer an economic perspective  
18 on opt-out if you don't know how it works?

19 A. Counselor, you're asking me about the  
20 specific administrative aspects of an opt-out; is  
21 that correct?

22 Q. I asked you how it worked, sir, and you  
23 referred to Dr. Tabors but you offered your economic  
24 perspective and I'm simply trying to understand how  
25 you provide an economic perspective if you don't

1972

1 understand how this works.

2 A. I understand the general framework of  
3 opting out in terms of a CRES provider can opt out  
4 and obtain its own capacity instead of relying on an  
5 FRR entity, essentially to become its own FRR entity.  
6 So what I'm suggesting and what I'm opining on are  
7 the economic consequences that would drive such a  
8 decision. And to understand the economic  
9 consequences of such a decision I don't have to know  
10 the specific administrative specifics of the exact  
11 date they could opt out or not.

12 Q. Is the timing of a transaction important  
13 with respect to the economic consequences of that  
14 transaction?

15 A. Your question is so vague, you're going  
16 to have to provide some more details. What sort of  
17 transaction are we talking about and what are -- what  
18 do you mean by "economic consequences"?

19 Q. Well, sir, you're offering here the  
20 economic consequences indicating that you're opining  
21 on the economic consequences that would drive a CRES  
22 provider's decision to opt out. My question, is the  
23 timing related to that decision important with  
24 respect to the economic consequences of that  
25 decision?

1973

1           A.   Well, let's go back to one of the two  
2 alternatives. So Duke decides to change the terms of  
3 the stipulation and let's suppose that CRES providers  
4 have no ability to opt out, that they're, in fact,  
5 captive customers to Duke for the remainder of the  
6 FRR period until May 31st, 2015.

7           So in that case the economic consequences  
8 are that CRES providers, well, they'll suffer adverse  
9 economic consequences to the extent that it adversely  
10 affects retail competition because Duke is trying to  
11 unilaterally change the terms of the state  
12 compensation mechanism.

13           If, on the other hand, they can -- they  
14 could opt out, then the economic consequences would  
15 clearly be less.

16           Q.   So timing does matter.

17           A.   Timing matters in terms of are they  
18 captive customers or not. At this time they're  
19 captive.

20           Q.   At this time, today.

21           A.   That's correct.

22           Q.   And you, again, sir, have no idea when  
23 CRES providers could have opted out of Duke Energy  
24 Ohio's FRR plan vis-a-vis the date on which they  
25 signed the stipulation, correct?

1974

1           A.    I do not know the specific date.

2           Q.    And, sir, you have represented  
3 FirstEnergy Solutions in more than just this  
4 proceeding, correct?

5           A.    That's correct.

6           Q.    You are aware, sir, that FirstEnergy  
7 Solutions is a signatory to the RAA, or reliability  
8 assurance agreement, correct?

9           A.    I am.

10          Q.    Would you agree with me, sir, that at the  
11 time FirstEnergy Solutions signed Duke Energy Ohio's  
12 ESP stipulation it was aware of the three  
13 compensation mechanisms for FRR entities as provided  
14 for under the RAA?

15          A.    That's a question that's better directed  
16 to FirstEnergy Solutions.

17          Q.    You don't know.

18          A.    I would assume they are aware of it, but  
19 for a definitive answer I can't speculate as to what  
20 they knew or didn't know.

21          Q.    Well, sir, you were involved with  
22 FirstEnergy Solutions in connection with AEP Ohio's  
23 capacity case, correct?

24          A.    I was.

25          Q.    And the relevant provisions of the RAA

1975

1 governing FRR status was the issue in AEP Ohio's  
2 capacity case, correct?

3 A. It was certainly one of the issues.

4 Q. And, sir, you were also a witness for  
5 FirstEnergy Solutions in connection with the Michigan  
6 proceeding involving Indiana and Michigan Power  
7 Company pursuant to which a state compensation  
8 mechanism was established under the RAA, correct?

9 A. That's correct.

10 Q. Agree with me, sir, that in that  
11 proceeding as well as the provisions of the RAA  
12 allowing for a state compensation mechanism was at  
13 issue?

14 A. That was one of the issues in the case.

15 Q. Sir, before I switch topic here, going  
16 back to case 10-2929, the entry on rehearing, you  
17 have that before you, OCC 3?

18 A. I do.

19 Q. Page 28, please.

20 A. I'm there.

21 Q. And the sentence that is about two-thirds  
22 down in that paragraph 71 begins with "Because the  
23 capacity service."

24 A. I see that.

25 Q. And therein the Commission found that the

1976

1 capacity service provided by an FRR entity is a  
2 wholesale rather than electric -- rather than a  
3 retail electric service and is not subject to the  
4 market-based pricing contemplated under Chapter 4928,  
5 correct?

6 A. Well, the key words there, because the  
7 capacity service at issue, and that was capacity  
8 being sold to CRES providers, and I would agree  
9 that's a wholesale service.

10 Q. You did not have any role in Duke Energy  
11 Ohio's electric transition plan case, correct?

12 A. I was not involved in that case and as I  
13 recall Duke Energy Ohio didn't exist. It was  
14 Cincinnati Gas & Electric.

15 Q. Well, you certainly understand Duke  
16 Energy Ohio to be the predecessor in interest to  
17 CG&E, correct?

18 A. I do.

19 Q. Dr. Lesser, under the PJM construct for  
20 capacity resources there are two options, correct?

21 A. You're referring to either using the RPM  
22 mechanism or the FRR?

23 Q. Yes.

24 A. Those are the two options.

25 Q. And Duke Energy Ohio was originally



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1 slated to be an FRR entity for the period of  
2 January 1, 2012, through May 31, 2016, correct?

3 A. Under -- that's my understanding, that's  
4 correct.

5 Q. And in the ESP stipulation Duke Energy  
6 Ohio agreed that it would participate in the base  
7 residual auction for the 2016-2017 planning year,  
8 correct?

9 MR. LANG: Can I have that question read  
10 back, please?

11 (Record read.)

12 A. Actually, I don't think that's correct.

13 Q. Happy to go there with you.

14 A. Isn't it in the 2015-2016 auction?

15 Q. Page 13, sir. The paragraph actually  
16 starts on page 12, section 5, "Future Capacity  
17 Supply."

18 A. Right. But what that's talking about,  
19 Counselor, is in the event Duke Energy Ohio is  
20 precluded from terminating its FRR plan for the  
21 2015-2016 planning year, blah, blah, blah, then it  
22 will participate in the BRA for the 2016-2017  
23 planning year.

24 Because Duke is terminating its FRR as of  
25 May 31st, 2015, it has to have participated in the

1978

1 2015-'16 RPM auction. Because that's its source of  
2 supply if it's not an FRR supplier.

3 Q. But through the stipulation Duke Energy  
4 Ohio agreed that it would not renew its FRR status  
5 after the '15-'16 planning year and would participate  
6 in the base residual auction for the '16-'17 planning  
7 year, correct? In other words, Duke Energy Ohio  
8 indicated that it would not renew its FRR status upon  
9 the expiration of its FRR term, correct?

10 A. I guess I'm having a hard time following,  
11 Counselor. At the top of that page it says "Provided  
12 that Duke Energy Ohio does not withdraw the ESP  
13 approved in the Commission order prior to  
14 February 29, 2012, it will terminate its election of  
15 an FRR plan and provide written notice by March 2,  
16 2012, to the PJM office of the interconnection of its  
17 intent to participate in the RPM and the BRA for the  
18 2015-2016 planning year."

19 Q. At the time the stipulation was filed  
20 Duke Energy Ohio was scheduled to be an FRR entity  
21 through '15-'16, correct? That was the original term  
22 of its plan.

23 A. The original term was scheduled to expire  
24 May 31st, 2016.

25 Q. And in the ESP stipulation Duke Energy

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1 Ohio agreed that it would not renew its status as an  
2 FRR entity following the expiration of its term,  
3 correct?

4 A. Well, I believe that it agreed to not --  
5 that its FRR status would end May 31st, 2015. I do  
6 apologize if I'm just missing the point of your  
7 question.

8 Q. It agreed not to renew its FRR status  
9 upon its expiration. And it further agreed to seek  
10 early termination of its FRR term, correct?

11 A. That's correct.

12 Q. And the early termination would have  
13 provided that the FRR commitment expire May 31, 2015,  
14 correct?

15 A. And that's my understanding of when it,  
16 in fact, now expires.

17 Q. But at the time the stipulation was filed  
18 in October of 2011, Duke Energy Ohio had not  
19 terminated its FRR plan one year early, correct?

20 A. That's my understanding.

21 Q. So there were two alternatives for how  
22 Duke Energy Ohio would function in the PJM capacity  
23 market as of October, 2011, in connection with its  
24 next SSO, correct? It was either going to be BRA or  
25 FRR.

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1           A.    Those are the only two options available.

2           Q.    And at that time that determination could  
3 not have been made -- in October of 2011, that  
4 determination could not have been made because Duke  
5 Energy Ohio was required, subsequent to October,  
6 2011, to seek early termination of its FRR plan,  
7 correct?

8           A.    That's correct.

9           Q.    Sir, the Michigan case in which you  
10 testified on behalf of FirstEnergy Solutions was a  
11 case in which another FRR entity was awarded its  
12 embedded costs for providing capacity service,  
13 correct?

14          A.    What they claimed were its embedded  
15 costs, yes.

16          Q.    And that's what the Michigan commission  
17 allowed, correct?

18          A.    That's right.

19          Q.    Dr. Lesser, can generating units operate  
20 if they are in violation of EPA regulation?

21          A.    That's a very broad question. They may  
22 be granted a temporary waiver of those regulations  
23 and continue operating.

24          Q.    Sir, do you have your direct testimony  
25 there in front of you still?

1           A.    I do.

2           Q.    If you could turn to, it's actually -- I  
3    want to ask you about your testimony at the top of  
4    page 28 wherein you are interpreting Mr. Jennings'  
5    MRO testimony.

6           A.    I see that.

7           Q.    And on line 3 of your testimony on page  
8    28 you indicate that through Mr. Jennings' testimony  
9    it's your opinion that Duke Energy Ohio intended to  
10   charge its customers the RPM market price for  
11   capacity. And when you indicate "its customers," are  
12   those Duke Energy Ohio's retail customers?

13          A.    If you'll just give me a minute,  
14   Counselor.

15                Now, Mr. Jennings' testimony is saying  
16   that the price paid by wholesale load under the  
17   out-of-time FRR plan will be the final zone capacity  
18   price. And, again, we go back to the whole issue of  
19   the accounting issue of DEO being -- or, PJM acting  
20   as DEO's collection mechanism. So DEO is compensated  
21   by PJM at the FZCP -- FZCP for its capacity.

22          Q.    Well, sir, this particular testimony, as  
23   we have established, was filed on November 15, 2010,  
24   correct?

25          A.    That's correct.

1982

1           Q.   And it concerned Duke Energy Ohio's  
2   filings at the FERC which you have not reviewed,  
3   correct?

4           A.   That's correct.

5           Q.   And therein you cite to Mr. Jennings'  
6   testimony underscoring that portion of his testimony  
7   that speaks to what Duke Energy Ohio would charge  
8   alternative load-serving entities or wholesale load,  
9   correct?

10          A.   That's correct.

11          Q.   And it is based solely upon Mr. Jennings'  
12   November 15, 2010, testimony in which you conclude  
13   that through his testimony Duke Energy Ohio intended  
14   to charge its customers the RPM market price for  
15   capacity, correct?

16          A.   And that's also reflected in the  
17   stipulation.

18          Q.   Well, sir, you didn't say that in your  
19   testimony, did you?

20          A.   I believe I refer to the stipulation in  
21   my testimony. At that point I'm referring to  
22   Mr. Jennings' testimony.

23          Q.   And what you're saying is Mr. Jennings'  
24   testimony makes quite clear that Duke Energy Ohio  
25   intended to charge its customers the RPM market price

1983

1 for capacity, correct?

2 A. That's what my testimony says.

3 Q. Sir, on page 54 of your testimony the  
4 question and answer that appear at the top of that  
5 page, it's your opinion that there would have been  
6 sufficient capacity in PJM for Duke Energy Ohio to  
7 rely solely upon bilateral purchases for purposes of  
8 meeting its FRR obligation, correct?

9 A. That's correct.

10 Q. And, sir, is that a statement that you  
11 believe applicable to the entire term of Duke Energy  
12 Ohio's FRR plan?

13 A. Well, the testimony refers to capacity  
14 for the 2013-'14 and 2014-'15 planning years. And I  
15 have not evaluated the 2012-'13 planning year.

16 Q. And you are aware that when Duke Energy  
17 Ohio migrated to PJM, the base residual auction for  
18 the '13-'14 planning year had already occurred,  
19 correct?

20 A. That's why Duke was required to be --  
21 because it chose to join PJM January 1st, 2012, and  
22 those auctions had taken place, Duke was required to  
23 become an FRR entity.

24 Q. Okay. Well, I would like to talk about  
25 the '13-'14 planning year and the capacity that you

1 identified as not clearing in that base residual  
2 auction for that year. The base residual auction for  
3 the 2013-2014 planning year occurred in May of 2010,  
4 correct?

5 A. That's correct.

6 Q. And that was before Duke Energy Ohio even  
7 initiated its proceedings to realign to PJM, correct?

8 A. Again, I don't know the specific date  
9 when Duke initiated those proceedings. I'll accept  
10 that.

11 Q. And you don't recall reading that in  
12 Mr. Jennings' testimony?

13 A. I don't recall a specific date, no.

14 Q. Well, sir, I would ask you to assume that  
15 Duke Energy Ohio made its initial filing at the FERC  
16 in June of 2010.

17 A. That's fine.

18 Q. And with that in mind, the base residual  
19 auctions for the '13-'14 planning year had occurred a  
20 month before Duke Energy Ohio even initiated the  
21 process at FERC, correct?

22 A. That's true. Of course, none of the  
23 three incremental auctions had taken place at that  
24 time.

25 Q. And the final and third incremental



1985

1 auction for the '13-'14 planning year would have  
2 occurred when?

3 A. I don't know the specific date when it  
4 occurred.

5 Q. And so is it your position, Dr. Lesser,  
6 that of the approximate 8,100 megawatts of uncleared  
7 capacity from the May, 2010, base residual auction  
8 that Duke Energy Ohio could have used some of that  
9 uncleared capacity for purposes of fulfilling its FRR  
10 commitments?

11 A. Well, Duke already purchases to meet its  
12 FRR commitment. Duke does not currently rely solely  
13 on its own legacy generating assets. It currently  
14 purchases wholesale capacity to meet that obligation.

15 In Mr. Wathen's workpapers he -- and of  
16 course I can't -- I can't reveal the exact megawatt  
17 amounts in the public record, he talks about  
18 anticipated purchased levels of additional capacity  
19 that would be purchased bilaterally. That capacity  
20 is most likely -- it's not going -- that capacity  
21 cannot be purchased bilaterally if that same capacity  
22 has been accepted in the RPM auction.

23 Q. But, sir, my question is about the  
24 '13-'14 planning year and your testimony that Duke  
25 Energy Ohio could have relied solely upon bilateral

1986

1 transactions for purposes of fulfilling its FRR  
2 obligations.

3 A. In my view there was sufficient surplus  
4 capacity for Duke Energy Ohio to be able to rely on  
5 that without having to rely on its own legacy  
6 generating assets.

7 Q. So it's your position that -- well,  
8 strike that.

9 Of the approximately 8,100 megawatts of  
10 uncleared capacity from the May, 2010, BRA for the  
11 '13-'14 planning year how much was available in the  
12 bilateral capacity market in the fall of 2011?

13 A. I don't know the specific megawatt amount  
14 that was available.

15 Q. And how much of that would have been  
16 unit-specific?

17 A. I don't know the specific amount.

18 Q. So you don't know that Duke Energy Ohio  
19 could have acquired sufficient unit-specific capacity  
20 to fulfill its FRR obligations for the '13-'14  
21 planning year, correct?

22 A. It's conceivable it could have not.

23 Q. And then, sir, the other planning year on  
24 which you rely is the -- strike that.

25 The other planning year which you

1987

1 reference in your direct testimony on page 54 was the  
2 '14-'15 planning year, correct?

3 A. That's correct.

4 Q. And this was a planning year that was not  
5 included in Duke Energy Ohio's out-of-time FRR plan,  
6 correct?

7 A. I don't know.

8 Q. Well, are you aware, sir, that Duke  
9 Energy Ohio was required to submit an FRR plan to PJM  
10 prior to the base residual auction for the '14-'15  
11 planning year?

12 A. Oh, yes, that's correct.

13 Q. And, in fact, FRR entities are required  
14 to submit their FRR plans at least 30 days prior to  
15 the base residual auction for the planning year that  
16 will occur three years hence, correct?

17 A. I don't know the specific dates. So I'll  
18 accept that.

19 Q. And that FRR plan is one in which Duke  
20 Energy Ohio needs to identify the generating unit  
21 commitment relative to meeting its obligations,  
22 correct?

23 A. That's correct, it's unit-specific.  
24 However, there's no penalty for essentially changing  
25 those units afterwards.

1988

1           Q.    But by April, 2011, Duke Energy Ohio was  
2 required to identify the generating unit commitments  
3 relative to its '14-'15 FRR obligates, correct?

4           A.    Given your timeframe, yes.

5           Q.    And so to the extent necessary Duke  
6 Energy Ohio would have needed capacity resource  
7 supply under contract by April, 2011, when it  
8 submitted that FRR plan, correct?

9           A.    Presumably it would have needed that  
10 capacity.

11          Q.    Otherwise, it would have been at risk of  
12 submitting a noncompliant FRR plan, correct?

13          A.    Possible. That's probably a question  
14 better asked of Dr. Tabors.

15          Q.    Sure.

16                And when Duke Energy Ohio submitted its  
17 FRR plan in 2011 including any capacity resources as  
18 necessary that would have been under bilateral  
19 contract, there was no uncleared capacity in the  
20 yet-anticipated May, 2011, auction, right?

21          A.    I'm not sure I understand your question.  
22 If the auction had not taken place, then by  
23 definition there could have -- there could not have  
24 been capacity that was not accepted in the auction.

25          Q.    But it's your testimony, sir, that Duke

1989

1 Energy Ohio could have relied upon the uncleared  
2 capacity from the May, 2011, auction for purposes of  
3 fulfilling its capacity obligations, correct?

4 A. Well, the capacity existed out there.  
5 Duke -- there's no -- what you're suggesting is that  
6 Duke could only -- was in a position where it had to  
7 declare all of the unit-specific generation to meet  
8 its FRR obligation, but that the BRA auction had not  
9 taken place yet. And so, therefore, suddenly there  
10 was no capacity available.

11 Now, if the capacity existed out in the  
12 market, Duke could have gone out and secured  
13 bilateral contracts similar to what it already has  
14 secured with other suppliers.

15 I'm simply pointing out that at the end  
16 of that BRA auction there was 8,100 megawatts of  
17 capacity that hadn't cleared and -- compared to  
18 Duke's, if we look at Duke's, the amount that it  
19 would have required in lieu of the FRR, that my  
20 opinion Duke could have contracted for that.

21 Q. Well, sir --

22 A. That was out in the market.

23 Q. You're saying that with respect to the  
24 '14-'15 planning year over 10,000 megawatts of  
25 capacity was offered into the BRA and did not clear,

1990

1 correct?

2 A. That's correct.

3 Q. And the auction for that planning year  
4 was May of 2011, correct?

5 A. That's correct.

6 Q. And by that time Duke Energy Ohio had  
7 already submitted its compliant FRR plan for the  
8 '14-'15 planning year, correct?

9 A. That's correct but, again, Duke could  
10 change the units that -- to comply. Duke is not  
11 compelled to use those units.

12 Q. Well, and how much of the uncleared  
13 10,000 megawatts of capacity from the May, '11, base  
14 residual auction was unit-specific?

15 A. I don't have the numbers in front of me.

16 Q. Do you know if there was any?

17 A. I just answered your question. I don't  
18 have the numbers in front of me. But if you compare  
19 the amounts -- if you go to, and I won't talk about  
20 the numbers, but if you go to confidential Exhibit  
21 JAL-3 and you look at the amount of incremental  
22 capacity that Duke would have compared the total  
23 capacity requirement to what Duke purchased in the  
24 market with a difference being what Duke would have  
25 otherwise -- what Duke would have otherwise needed to

1991

1 buy, the number's much smaller than the amount of  
2 uncleared capacity. So it's very likely that there  
3 was sufficient capacity.

4 Q. But, you, sir, don't have the numbers so  
5 you don't know, right?

6 A. I can't -- no, I don't have the exact  
7 numbers, no.

8 Q. Thank you.

9 Dr. Lesser, you offer comment about Duke  
10 Energy Ohio's realignment to PJM. Are you aware of  
11 the exposure that Duke Energy Ohio's retail customers  
12 would have faced in the form of multivalued projects  
13 within MISO had Duke Energy Ohio delayed its  
14 realignment?

15 A. Could you point me to where in my  
16 testimony you're referring to, please?

17 Q. And I had it just a moment ago.

18 On page 27, and you thought it important  
19 to include in your testimony information concerning  
20 Duke Energy Ohio's realignment to PJM, correct?

21 A. I -- yes, I included it in my testimony.  
22 Where on page 27 are you looking exactly?

23 Q. Well, I'm just asking what you -- are you  
24 aware of the exposure that Duke Energy Ohio's retail  
25 customers would have had to multivalued projects

1992

1 within MISO if Duke Energy Ohio had delayed its  
2 realignment?

3 A. I'm not aware of the dollar value of  
4 those multivalue projects.

5 Q. Now, Dr. Lesser, in establishing returns  
6 on equity for a utility under its jurisdiction does  
7 the Ohio Commission typically consider the following  
8 for purposes of setting distribution -- electric  
9 distribution rates: Does it consider the earnings  
10 and revenues of wholly-owned subsidiaries?

11 A. Well, I don't know specifically what the  
12 Ohio Commission does or does not address when it sets  
13 the return for a regulated utility. Typically you  
14 look at the -- for a regulated utility you look at  
15 the business and financial risks faced by that  
16 regulated utility and, under the Hope standard, you  
17 set that return at a return that's comparable. But,  
18 again, that's for a fully regulated utility. It  
19 doesn't apply in a market -- in a competitive market  
20 situation at all.

21 Q. But in terms of looking at the regulated  
22 utility, the Ohio Commission does not consider the  
23 earnings and revenues of subsidiaries, correct?

24 A. Well, again, what the Ohio Commission  
25 specifically incorporates, I don't know. I'm



1993

1 saying -- I gave you my understanding of how I would  
2 set allowed rate of return on equity which I believe  
3 is what you're asking.

4 Q. Would you expect the Ohio Commission, for  
5 purposes of Duke Energy Ohio's electric distribution  
6 rates, to consider the earnings and revenues and  
7 costs of Duke Energy Kentucky, its regulated  
8 affiliate?

9 A. It's possible that if Duke Energy  
10 Kentucky, the affiliate, was -- had -- its financial  
11 situation is affecting all of Duke Energy Ohio, that  
12 that would be a consideration in assessing the  
13 business and financial risk of Duke Energy Ohio.

14 Q. Do you believe that the Ohio Commission  
15 in setting rates for Duke Energy Ohio's electric  
16 distribution service considers its legacy generation  
17 operations?

18 A. Well, once again, I cannot speak for the  
19 Commission and what it does or does not consider. My  
20 own view is that I would consider the business and  
21 financial risks of the distribution entity. I would  
22 not consider the risks of assets that are operated  
23 under a competitive -- in a competitive framework.

24 Q. Sir, if you could turn to page 48 of your  
25 testimony, please.

1994

1           A.    I'm there.

2           Q.    Therein you are making a reference to the  
3 earnings before interest and taxes, or EBIT, of Duke  
4 Energy Ohio's Commercial Power segment, correct?

5           A.    That's correct.

6           Q.    And you indicate that EBIT for 2012 was  
7 \$75 million; EBIT for 2011, \$84 million, correct?

8           A.    That's what it says, yes.

9           Q.    And forgive me as the lawyer here and not  
10 the economist, but income before interest and taxes  
11 does not mean net income, correct?

12          A.    That's correct.

13          Q.    And, sir, if you were to account for  
14 interest and taxes to arrive at a net profit or loss,  
15 that would be the appropriate number to look at in  
16 terms of Commercial Power's financial status as of  
17 year end 2012 and year end 2011, correct?

18          A.    I'm going to ask you to repeat that  
19 question, please.

20          Q.    I'll rephrase.

21                Wouldn't the net profit or net loss of  
22 the Commercial Power segment be reflected after --  
23 after accounting for interest and taxes?

24          A.    By definition, net income includes  
25 accounts for interest and taxes.

1995

1 Q. And you did not account for net income or  
2 interest and taxes in your testimony, correct?

3 A. Well, if you go to Exhibit 11, that shows  
4 net income, that's directly from the 2012 10-K. So  
5 saying that I -- I'm just simply reporting what that  
6 number is, and then for Duke Energy for the year  
7 ending December 31st, 2012, if you look under the row  
8 Net Income in the rightmost column, net income for  
9 Duke Energy Ohio in 2012 was 175 million.

10 Q. And the number that you are referring to,  
11 sir, is that on a consolidated company basis such  
12 that it would include the Ohio operations of Duke  
13 Energy Ohio as well as those operations of its  
14 wholly-owned subsidiary -- subsidiary in Kentucky?

15 A. It should, yes.

16 Q. Would it also include the operations also  
17 held below Duke Energy Ohio such as KO Transmission  
18 and Duke Energy Commercial Asset Management, correct?

19 A. Well, by definition since it's a Duke  
20 Energy Ohio consolidated statement that's the  
21 definition.

22 Q. Thank you.

23 Now, sir, on page 21 of your testimony  
24 you made adjustments to gross plant, correct?

25 A. Could you -- I'm sorry, page 20?

1996

1 Q. Page 21, I'm sorry.

2 A. I don't see anything about gross plant.  
3 It talks about general plant. Is that what you mean?

4 Q. Yes, sir. And in that process did you  
5 further adjust accumulated depreciation?

6 A. I don't -- I would have to look at my  
7 workpapers. I don't recall adjusting the accumulated  
8 general plant depreciation.

9 Q. Well, can you make the adjustment to  
10 plant without adjusting for accumulated depreciation?

11 A. Well, by not taking into account the  
12 depreciation you end up reducing the depreciation  
13 expense, so if I understand your question I included  
14 too much depreciation expense which should have been  
15 removed. So that would lead to a lower net revenue  
16 to be collected amount.

17 Q. So is it your testimony, sir, that  
18 incorporating accumulated depreciation would increase  
19 rate base?

20 A. I'm sorry, would you repeat the question,  
21 please?

22 Q. Sure. You indicated that you included  
23 too much depreciation expense and if that were  
24 removed, you would lower the net revenue to be  
25 collected, correct?

1997

1           A.    That's correct.

2           Q.    And my question was: Is it your  
3 testimony, then, that removing the depreciation  
4 expense would increase rate base?

5           A.    No. What I was referring to was if you  
6 start with rate base and you're taking out less --  
7 you have a depreciation expense that includes general  
8 plant. If you have -- and there's -- there's a  
9 depreciation expense associated with general plant,  
10 so if you take out general plant, then the  
11 depreciation expense associated with that general  
12 plant goes down. So the depreciation expense  
13 decreases.

14          Q.    And you believe it's a depreciation  
15 expense as opposed to the amortization of accumulated  
16 depreciation.

17          A.    Again, I guess I don't -- I'm sorry, I  
18 don't understand your question. I mean, there are  
19 depreciation expenses, so there's a revenue  
20 requirement which includes general plant, general and  
21 tangible plant. If you remove that general and  
22 tangible plant, you reduce the rate base; that  
23 reduces the revenue requirement.

24                In addition, you also reduce the  
25 depreciation expense because you're not -- you're

1998

1 essentially excluding more, more of the general plant  
2 so you would reduce the depreciation expense. So  
3 that's going to reduce the revenue requirement as  
4 well.

5 Q. What is net plant?

6 A. Net plant is net undepreciated plant. So  
7 it's gross plant less accumulated depreciation.

8 Q. And is the -- accumulated depreciation,  
9 in your opinion, is an expense; it's not something  
10 that you amortize.

11 A. No. No. Accumulated depreciation is not  
12 an expense.

13 MS. SPILLER: One moment, please, your  
14 Honor. I believe I'm close to done.

15 No questions, your Honor, thank you.

16 EXAMINER PIRIK: I'll ask staff if they  
17 have any questions.

18 MR. JONES: No questions, your Honor.

19 EXAMINER PIRIK: Mr. Lang, do you have  
20 redirect?

21 MR. LANG: Your Honor, could we have a  
22 short refreshment break, five minutes?

23 EXAMINER PIRIK: Yes, why don't we do  
24 that. We'll come back in ten minutes.

25 (Recess taken.)

1999

1 EXAMINER PIRIK: Mr. Lang.

2 MR. LANG: Thank you, your Honor.

3 - - -

4 REDIRECT EXAMINATION

5 By Mr. Lang:

6 Q. Dr. Lesser, you were asked a series of  
7 questions about the FRR opt-out and what the deadline  
8 might be for opting out. If I can ask you to assume  
9 that the FRR plan filed August of 2010 by Duke  
10 Energy Ohio, that the opt-out would have been  
11 March 31, 2011, would that change your position in  
12 this case?

13 A. No, it would not. The reason it would  
14 not is that if Duke Energy Ohio was filing its FRR  
15 and had said, as it did in the FRR, that they were  
16 planning to charge the final zone clearing price  
17 then, again, CRES providers would have had no  
18 economic incentive to opt out in 2011 because their  
19 expected gain would be zero. They'd be getting  
20 capacity at the market price. The expectation would  
21 be that they're not going to do any better than that,  
22 therefore, they have no incentive to have opted out.

23 MR. LANG: No further questions, your  
24 Honor, thank you.

25 EXAMINER PRICE: Thank you.

2000

1 Recross?

2 - - -

3 RECROSS-EXAMINATION

4 By Ms. Spiller:

5 Q. Dr. Lesser, you just indicated that in  
6 the FRR plan Duke Energy Ohio agreed to charge  
7 wholesale load market prices for capacity, correct?

8 A. That's correct.

9 Q. And you believe that that was  
10 determinative of the decision regarding opt-out,  
11 correct?

12 A. That's based on Mr. Lang's hypothetical,  
13 yes, that's correct.

14 Q. And you have not read the June, 2010,  
15 filing that Duke Energy Ohio made at the FERC,  
16 correct?

17 A. I did not read that, I read Mr. Jennings'  
18 testimony.

19 Q. You also did not read the August 16,  
20 2010, filing that Duke Energy Ohio made at the FERC  
21 that reflected its FRR plan, correct?

22 A. I did not read that.

23 Q. So, sir, you are not aware of any filings  
24 at the FERC in which Duke Energy Ohio said that they  
25 would not seek a cost-based charge for its FRR



2001

1 capacity obligations, correct?

2 A. I'm not aware of any FERC filings that  
3 Duke -- let me step back. I'm not aware that Duke  
4 filed anything with FERC saying it would request to  
5 recover, was requesting a cost-based recovery for  
6 capacity. My understanding is that -- based on  
7 Mr. Jennings' testimony is that Duke intended to  
8 collect the final zone capacity price and the market  
9 price for capacity. And there was no indication of  
10 anything other than that until the filing in this  
11 proceeding.

12 (Recess taken.)

13 EXAMINER PIRIK: We'll go back on the  
14 record. Ms. Spiller.

15 MS. SPILLER: Can I just have the last  
16 answer reread, please?

17 (Record read.)

18 Q. And, Dr. Lesser, you are not aware of any  
19 filing at the FERC that Duke Energy Ohio made in  
20 which it said it would not seek to recover its full  
21 costs for providing capacity service, correct?

22 A. Not any FERC filing. I think in the  
23 stipulation it says it will not try to collect  
24 costs -- cost-based capacity charge. But I'm not  
25 aware of any FERC filing it made.

2002

1 Q. And that is not the ESP stipulation to  
2 which you are referring, correct?

3 A. No; I am referring to the ESP  
4 stipulation.

5 Q. So you're saying in the ESP stipulation  
6 Duke Energy Ohio said that it would not seek any  
7 filing to recover its full cost for providing  
8 capacity service.

9 A. If you'll just bear with me a minute.

10 Q. Certainly.

11 A. Well, if you go to page 6, Section I.B of  
12 the stipulation near the bottom of the page, it says  
13 "For purposes of this paragraph the parties also  
14 agree that for so long as Duke Energy Ohio is a fixed  
15 resource requirements, FRR, entity under PJM  
16 Interconnection," LLC -- this says "LCC, PJM it will  
17 provide capacity at the final zonal capacity price in  
18 the unconstrained regional transmission organization  
19 region."

20 I would interpret that as not going back  
21 to FERC.

22 Q. And the paragraph to which you just  
23 referred, sir, is the paragraph that makes provision  
24 for what would occur in the event Duke Energy Ohio's  
25 next SSO is either rejected by the Commission or

2003

1 modified to the extent that Duke Energy Ohio  
2 withdraws its application, correct?

3 A. That's correct. But if you go to page 7,  
4 Item II.B, that's referring -- that says  
5 "Acknowledging Duke Energy's status as an FRR entity,  
6 the parties agree that Duke Energy Ohio shall supply  
7 capacity to PJM which, in turn, will charge for  
8 capacity to all wholesale supply auction winners for  
9 the applicable time periods of Duke Energy Ohio's  
10 ESP," in the current ESP, I believe, "with the charge  
11 for said capacity determined by the PJM RTO which is  
12 the final zone capacity price in the unconstrained  
13 region."

14 Q. And so that is the portion of the  
15 stipulation upon which you've relied for purposes of  
16 your -- your testimony this afternoon in terms of  
17 what Duke Energy Ohio would and -- what it would and  
18 would not do.

19 A. Well, and then if -- well, also there's  
20 Section IV.A on page 12.

21 Q. And, sir, are you utilizing the corrected  
22 IV.A?

23 A. I am, with the one word modification in  
24 that which -- the sentence, "The Parties further  
25 agree that during the term of the ESP, Duke Energy

2004

1 Ohio," "Duke Energy Ohio" was changed to "PJM."

2 Q. And, sir, it is the ESP stipulation on  
3 which you rely for purposes of concluding that, in  
4 your opinion, Duke Energy Ohio agreed that it would  
5 not seek a cost-based charge for its capacity  
6 services, correct?

7 A. That's correct.

8 MS. SPILLER: Nothing further, your  
9 Honor. Thank you.

10 EXAMINER PIRIK: Thank you.

11 Thank you very much.

12 THE WITNESS: Thank you.

13 EXAMINER PIRIK: We'll go to exhibits,  
14 Mr. Lang.

15 MR. LANG: Your Honors, FES would move  
16 FES Exhibits No. 1 and 1A.

17 EXAMINER PIRIK: Are there any  
18 objections?

19 MS. SPILLER: No, your Honor.

20 EXAMINER PIRIK: FES Exhibits 1 and 1A  
21 shall be admitted into the record.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 EXAMINER PIRIK: Mr. Kutik.

24 MR. KUTIK: Yes, your Honor, for our next  
25 witness we call Dr. Richard D. Tabors. And may I

2005

1 approach?

2 EXAMINER PIRIK: Yes.

3 Please raise your right hand.

4 (Witness sworn.)

5 EXAMINER PIRIK: Thank you. You may be  
6 seated.

7 MR. KUTIK: Your Honors, at this time  
8 we'd like to have marked as FES Exhibit 3 a document  
9 entitled "Direct Testimony of Richard D. Tabors on  
10 Behalf of the FirstEnergy Solution" -- "FirstEnergy  
11 Solutions Corp.

12 EXAMINER PIRIK: The document will be so  
13 marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. KUTIK: May I proceed, your Honor?

16 EXAMINER PIRIK: Yes.

17 - - -

18 RICHARD D. TABORS, PH.D.  
19 being first duly sworn, as prescribed by law, was  
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Kutik:

23 Q. Please introduce yourself.

24 A. Yes. My name is Richard D. Tabors, I am  
25 president of Across the Charles and a senior

2006

1 consultant at Greylock McKinnon as well as being  
2 project director of the Utility in the Future project  
3 at MIT in Boston. My home is Cambridge,  
4 Massachusetts.

5 Q. Dr. Tabors, do you have before you what's  
6 been marked for identification as FES Exhibit 3?

7 A. Yes, I do.

8 Q. What is that, please?

9 A. That's my testimony.

10 Q. Does it also include Attachments RDT-1  
11 through 9?

12 A. Yes, it does.

13 Q. Do you have additions or corrections to  
14 make to your testimony?

15 A. Yes, I do. The first correction --  
16 excuse me, the first correction is on page 18, line  
17 13, insert the word "to" after "agreed" to read  
18 "agreed to a state compensation."

19 Q. And that was on page 18 --

20 A. That is on page 18.

21 Q. -- line 13. Are there any others?

22 A. Yes, sir. The second correction is on  
23 page 27 and there are two corrections on page 27, the  
24 first one is in line 6, strike the words "Killen 2,"  
25 and add after the word "Fort" "7," the digit 7 and so

2007

1 it now reads "Only Miami Fort 7 and 8 and Zimmer 1."

2 And on line 19 on page 27 the word  
3 "shows," strike the S so it now reads "My analyses  
4 show."

5 Q. Do you have any other corrections?

6 A. Yes, there is one more, sir. And that is  
7 on page 32, line 21, there should be a space between  
8 "old" and "and" so it reads "when old" space "and  
9 inefficient."

10 Q. If I asked you the questions that appear  
11 in FES Exhibit 2, would your answers be the same as  
12 appear in FES Exhibit 2 as corrected today?

13 A. Yes, they would.

14 MR. KUTIK: I have no further questions,  
15 your Honor, thank you.

16 EXAMINER PIRIK: We have a couple of  
17 corrections or questions that we have. First of all,  
18 I believe we first marked it as Exhibit 3 but now  
19 we're calling it Exhibit 2, so we want to be sure  
20 what the number on the exhibit is.

21 MR. KUTIK: I thought it was Exhibit 2,  
22 your Honor.

23 EXAMINER PIRIK: Okay. Exhibit 2.

24 And then also I think you mentioned that  
25 there were nine attachments to his testimony, but I

2008

1 believe I have ten, so I want to be sure.

2 MR. KUTIK: You're right, your Honor,  
3 there are ten.

4 EXAMINER PIRIK: So it's Exhibit 2 and  
5 there's ten attachments.

6 MR. KUTIK: Yes, your Honor, thank you.

7 EXAMINER PIRIK: Do any intervenors have  
8 any questions for this witness?

9 Duke?

10 MS. SPILLER: Yes, your Honor. Thank  
11 you. First, I would like to commence with a motion  
12 to strike, please.

13 EXAMINER PIRIK: Yes, go ahead. Just go  
14 slowly.

15 MS. SPILLER: I will, thank you.

16 Starting on page 4 of the direct  
17 testimony, at lines 4 through 15.

18 Page 6, lines 14 and 15.

19 Moving forward to page 17, line 22  
20 carrying through the balance of that page through to  
21 line 15 on page 18.

22 Continuing on page 18, line 21 through  
23 25.

24 The entirety of page 19, page 20, the  
25 entirety of that page.



2009

1 Page 21, lines 1 through 10.

2 Page 22, the sentence that begins at the  
3 end of line 15 and concludes on line 17.

4 Page 22 as well, the sentence that begins  
5 midway through line 19 through line 23.

6 Page 23, the sentence line 1 and then the  
7 remainder of that sentence that appears on line 2.

8 And then, finally, your Honor, page 30,  
9 lines 15 through 22.

10 And similar to the arguments espoused by  
11 Duke Energy Ohio in connection with other intervenor  
12 testimony in this proceeding, the identified  
13 testimony from Dr. Tabors is that in which he offers  
14 legal conclusions, legal interpretations, and these  
15 are areas beyond his expertise and areas on which he  
16 cannot provide such expert testimony.

17 The inclusion of this testimony as well  
18 as the second of the FirstEnergy Solutions' witnesses  
19 to offer an interpretation of the ESP stipulation is  
20 unnecessarily cumulative and thus prejudicial given  
21 that Dr. Lesser has submitted similar testimony.

22 EXAMINER PIRIK: Mr. Kutik.

23 MR. KUTIK: Your Honor, the record thus  
24 far is rife with witnesses providing opinions about  
25 what various orders and other documents within the

2010

1 Commission's dockets mean, particularly starting with  
2 the company's case.

3 The company opened the door to that type  
4 of testimony.

5 Consistent with the Bench's prior rulings  
6 we would urge that the motion be denied given that  
7 the relevance -- the ESP and what the company agreed  
8 to or didn't agree to with respect to the stipulation  
9 is certainly relevant to the intervenors' case,  
10 certainly FES's case with respect to the company not  
11 being entitled to the relief it seeks.

12 EXAMINER PIRIK: The Bench would agree  
13 and we will deny the motion to strike.

14 MS. SPILLER: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Ms. Spiller:

18 Q. Good afternoon, Dr. Tabors.

19 A. Good afternoon, Ms. Spiller.

20 Q. I think first and foremost are things all  
21 right in Boston now?

22 A. Things are much better in Boston now. I  
23 haven't heard about any gunshots or anything quite  
24 that exciting in the last two days, so hopefully.  
25 It's been a little longer than that, since last

2011

1 Friday.

2 Q. Well, that's very nice to hear.

3 A. It's very nice to be there when there are  
4 no gunshots.

5 Q. Understood.

6 And, sir, you are not an attorney,  
7 correct?

8 A. That is correct.

9 Q. You are not qualified by training to  
10 offer legal opinions or legal conclusions, correct?

11 A. That's correct.

12 Q. And, sir, you were not a witness for  
13 FirstEnergy Solutions in connection with Duke Energy  
14 Ohio's ESP proceeding docketed under case 11-3549,  
15 correct?

16 A. No, I was not.

17 Q. Were you at all involved in that case on  
18 behalf of FirstEnergy Solutions?

19 A. Not involved in the case, no.

20 Q. And so, sir, you did not participate in  
21 the drafting of the ESP stipulation, correct?

22 A. No, I did not.

23 Q. And for purposes of your testimony this  
24 afternoon, sir, can we agree that when we reference  
25 the ESP stipulation, that that is, in fact, Duke

2012

1 Energy Ohio's stipulation filed under case 11-3549?

2 A. Yes.

3 Q. Thank you.

4 And, sir, having not been involved in the  
5 ESP proceeding, you do not know the evidence on which  
6 the Commission relied for purposes of modifying and  
7 approving the ESP stipulation, correct?

8 A. Only to the extent that I saw the final  
9 version, so I don't know what they relied upon other  
10 than the assumption that they relied upon the  
11 witnesses who prepared testimony and provided  
12 testimony in support of the stipulation.

13 Q. And, sir, you have reviewed for purposes  
14 of your work in this case Duke Energy Ohio's  
15 application, correct?

16 A. Yes.

17 Q. And having reviewed that document you are  
18 aware that Duke Energy Ohio is not proposing to  
19 change the charge that competitive retail electric  
20 service, or CRES, providers or SSO auction winners  
21 pay for capacity, correct?

22 A. While they're not attempting to create --  
23 to change those charges, they are proposing to add  
24 charges that the ultimate customer will pay and since  
25 the ultimate customer is the only one who pays there

2013

1 is a change taking place that customers will see.

2 Q. But there isn't -- there is not a change  
3 taking place that competitive suppliers will see,  
4 correct?

5 A. No, that's not correct. Competitive  
6 suppliers supply a package to customers and those  
7 customers are seeing a change, so if the change has  
8 bits and pieces in it that are changes and are  
9 increasing, then the customer sees it and that is,  
10 after all, the competitive suppliers' market.

11 Q. But in respect of capacity, CRES  
12 suppliers will not see a change in the charge that  
13 they pay for capacity, correct?

14 A. That is correct.

15 Q. And the SSO auction winners will also not  
16 see a change in the price that they pay for capacity,  
17 correct?

18 A. With the caveat that they're actually not  
19 paying anything because it ends up that the only  
20 people who ever pay anything are consumers, so with  
21 that caveat, I agree with you.

22 Q. And, sir, you do know that Duke Energy  
23 Ohio is a fixed resource requirement, or FRR, entity,  
24 correct?

25 A. Yes, I do.

2014

1           Q.   And it will hold that status until  
2   May 31, 2015, correct?

3           A.   Yes, ma'am.

4           Q.   And as an FRR entity Duke Energy Ohio  
5   must satisfy the unforced capacity obligation for all  
6   loads in its FRR service area including all expected  
7   load growth in that area for the duration of its  
8   participation in FRR, correct?

9           A.   That is correct.

10          Q.   And, sir, you are here offering testimony  
11   on behalf of FirstEnergy Solutions because you  
12   understand that FirstEnergy Solutions wants the PJM  
13   capacity market and the Ohio retail market to work  
14   efficiently, correct?

15          A.   They want that, but in addition they  
16   would like to have the market act competitively and  
17   within the capacity market they would like that  
18   market to have in it those units that are efficient  
19   and have a reason to continue to exist.

20          Q.   And certainly through May 31, 2015,  
21   there's no CRES supplier in Duke Energy Ohio's  
22   service territory that has a capacity obligation,  
23   correct?

24          A.   I'm sorry, can you say that again, I  
25   apologize.

2015

1           Q.    Sure, there is no credit supplier in Duke  
2   Energy Ohio's service territory that has a capacity  
3   obligation through May 31, 2015, correct?

4           A.    That is correct.

5           Q.    Sir, you are aware that Duke Energy Ohio  
6   migrated or realigned to PJM effective January 1,  
7   2012, correct?

8           A.    Yes, ma'am.

9           Q.    And you are aware that Duke Energy Ohio  
10   initiated that process at the FERC in June of 2010,  
11   correct?

12          A.    They initiated at the FERC in June of  
13   2010 but certainly initiated it inside the halls of  
14   Duke prior to that time, yes.

15          Q.    But the first formal filing that was made  
16   at the FERC was in June of 2010, correct?

17          A.    That's when the first one was done, yes.

18          Q.    And, sir, you were not involved in the  
19   settlement process at PJM that culminated in the  
20   creation of the FRR alternative, correct?

21          A.    That is correct.

22          Q.    But you are aware, sir, that the FRR  
23   alternative is provided for under the reliability  
24   assurance agreement, or RAA, correct?

25          A.    Yes, ma'am.

2016

1 Q. And FirstEnergy Solutions is a signatory  
2 to the RAA, correct?

3 A. All players in PJM are signatories to the  
4 RAA.

5 Q. And with respect to capacity and the  
6 capacity construct under PJM, there are two separate  
7 alternatives, if you will, correct?

8 A. Yes.

9 Q. There is the base residual and  
10 incremental auction process and then there is the FRR  
11 construct, correct?

12 A. Yes.

13 Q. And with respect to the base residual  
14 auction for any planning year, that is conducted in  
15 May three years prior to that particular planning  
16 year, correct?

17 A. Yes.

18 Q. And so in May of 2010 the base residual  
19 auction for the 2013-2014 PJM planning year was  
20 conducted, correct?

21 A. Yes.

22 Q. Sir, you are aware that FRR entities are  
23 required under the RAA to submit FRR plans, correct?

24 A. Yes.

25 Q. And the normal requirement is that an FRR



2017

1 entity submit its FRR plan at least 30 days prior to  
2 the base residual auction for the planning year that  
3 will happen three years hence, correct?

4 A. Yes, they are.

5 Q. And have you reviewed Duke Energy Ohio's  
6 FRR plans in this proceeding -- FRR plans?

7 A. Yes, I have.

8 Q. And what plan or plans did you review,  
9 sir?

10 A. I reviewed the plan that, I guess it was  
11 the final plan or something with that title on it  
12 that was dated, I believe August of 2010.

13 Q. And that would have been the FRR plan  
14 with respect to that -- with respect to the first 29  
15 months of Duke Energy Ohio's participation in PJM,  
16 correct?

17 A. Well, that was the -- that was the FRR  
18 plan that then became incorporated into and basically  
19 in part of the filing to the FERC, the FRR filing to  
20 FERC as I think of it.

21 Q. Well, let's back up a little bit. When  
22 Duke Energy Ohio initiated its filing at the FERC to  
23 realign to PJM, it indicated its intention to realign  
24 effective January 1, 2012, correct?

25 A. In that first, you're saying in the June

2018

1 of 2010 filing.

2 Q. Yes, sir.

3 A. Yes, that was the date that they chose at  
4 that point. But that wasn't the first date that had  
5 been considered. But that -- I'll go with 2012, yes.

6 Q. Okay. And as of June, 2010, we do know  
7 that there had just been a month prior a base  
8 residual auction, correct?

9 A. There was, true.

10 Q. And that would have been for the '13-'14  
11 planning year, correct?

12 A. Yes, that would have been then.

13 Q. So when Duke Energy Ohio initiated its  
14 realignment to PJM, the base residual auctions for  
15 the planning years 2011-2012, 2012-2013, and  
16 2013-2014 had already occurred, correct?

17 A. They had, but I think you have to,  
18 there's a sense you need to ask, you know, what was  
19 available, how much of the capacity was in those  
20 auctions. The answer to that is that there is a fair  
21 amount of excess capacity in the PJM region so, you  
22 know, whether they were ahead of the game or behind  
23 the game at that time is really not very relevant to  
24 this particular market.

25 Q. But neither Duke Energy Ohio's load nor

2019

1 its generation were in the base residual auctions for  
2 any of those three planning years that I just  
3 identified, correct?

4 A. While they weren't in those auctions,  
5 they certainly had access to capacity that was excess  
6 from those auctions. So it's a bilateral market and  
7 there was plenty of capacity out there, so the fact  
8 that they weren't in them has very little meaning to  
9 whether or not they could get capacity, had capacity  
10 of their own and so on.

11 Q. I'm not at that point, yet, sir. Just  
12 asking what had -- just asking whether or not Duke  
13 Energy Ohio's load and generation had been in the  
14 base residual auctions that had occurred prior to its  
15 formal initiation at the FERC to realign to PJM.

16 A. They had -- those auctions were over.  
17 They were dead. Somebody said when you're dead,  
18 you're dead. So that's the answer on this one.

19 Q. Okay. Thank you.

20 And you understood, Dr. Tabors, that upon  
21 its realignment to PJM Duke Energy Ohio was intending  
22 to be an FRR entity through May 31, 2016, correct?

23 A. Yes.

24 Q. And you also understand, sir, that that  
25 FRR status ended one year early, correct?

2020

1           A.    That it was planned to end one year  
2 early, yes.

3           Q.    And that the plan to terminate Duke  
4 Energy Ohio's FRR plan one year early occurred as a  
5 result of the ESP stipulation, correct?

6           A.    That -- yes.

7           Q.    And so today Duke Energy Ohio's FRR  
8 status will terminate May 31, 2015, correct?

9           A.    Yes.

10          Q.    Now, the RAA does not prescribe the  
11 manner in which an FRR entity meets its obligations  
12 to self-supply capacity for its fixed load  
13 obligations, correct?

14          A.    Correct to a point, but not entirely.  
15 The RAA provides a default, if you will, for entities  
16 that are inside of retail access states like Ohio,  
17 and a set of instructions as to what the alternatives  
18 are under those circumstances.

19          Q.    But under -- and you're speaking of the  
20 compensation mechanisms, correct?

21          A.    Yes. Yes. In addition to other things,  
22 but yes.

23          Q.    But the RAA does not prescribe how an FRR  
24 entity self-supplies its capacity resources, correct?

25          A.    No. The RAA says how -- says how -- it

2021

1 effectively lists out how much it has to supply.

2 Q. And then the obligation is upon the FRR  
3 entity to provide the capacity resources to meet that  
4 obligation, correct?

5 A. That is correct, yes.

6 Q. The one requirement for an FRR entity  
7 being that it must utilize unit-specific capacity for  
8 meeting its obligations, correct?

9 A. While the statement is correct, reality  
10 is that every piece of capacity inside of PJM is  
11 unit-specific. There is no such thing as  
12 non-unit-specific capacity in PJM. All capacity is  
13 attached to a unit. That's the nature of the  
14 physical structure of PJM.

15 So I don't know quite how to answer that  
16 question except to say "yes, all capacity is  
17 physical."

18 Q. And what is by-bid capacity, sir?

19 A. I'm sorry, say that again.

20 Q. By-bid capacity.

21 A. I have to say I've never heard that term.

22 Q. Sir, having reviewed Duke Energy Ohio's  
23 filing at the FERC that was made in August of 2010,  
24 you understand that alternative load-serving entities  
25 as well as wholesale load was given the opportunity

2022

1 to opt out of Duke Energy Ohio's FRR plan, correct?

2 A. Well, they had a very short period of  
3 time in which to do it, so they -- the magic date was  
4 tell us before March 31, 2011, so you're looking at  
5 an incredibly short window -- a small window of time  
6 to do that.

7 Q. But the opportunity was given, correct?

8 A. The opportunity was given, but not a very  
9 long one.

10 Q. To your knowledge, sir, did any  
11 alternative load-serving entities opt out of Duke  
12 Energy Ohio's FRR plan?

13 A. While nobody opted out you really have to  
14 say why would they. This was a pretty good  
15 opportunity to stay where you were and the timing was  
16 just not really appropriate for anybody to be able to  
17 get out in that length of time.

18 Q. And, sir, are you basing that upon your  
19 conversations with FirstEnergy Solutions?

20 A. No. I'm basing it upon the simple fact  
21 of knowing that it takes time to put together  
22 capacity plans, it took time to put together an FRR,  
23 which is what they would have had to have filed on  
24 their own, and to go between August and March 31 to  
25 get that in, get it to FERC, get it approved, get

2023

1 back and tell Duke Ohio that they didn't want to play  
2 with Duke Ohio anymore would have been a rather  
3 onerous activity for an entity that was a CRES.

4 So I think it's not -- it could have been  
5 done, I suppose, but it was really tight.

6 Q. And if a CRES entity had opted out of  
7 Duke Energy Ohio's FRR plan, it would have been  
8 required, as you just noted, to submit its own FRR  
9 plan, correct?

10 A. Yes, ma'am.

11 Q. It would have been required to go out and  
12 procure capacity resources sufficient to meet its  
13 load obligation, correct?

14 A. Yes.

15 Q. And that would have been for the period  
16 of Duke Energy Ohio's FRR term, correct?

17 A. While it would have been for the length  
18 of the plan, and I think everybody who was involved  
19 in that, the CRESs would have been looking and saying  
20 at the end of this time period Duke's going to go  
21 over and be a, what I call a full market participant  
22 in the capacity market, why would I want to do this.

23 But bearing in mind the theoretically  
24 possible -- it was theoretically possible, yes.

25 Q. So between August, 2010, and March, 2011,

2024

1 CRES suppliers were under the impression that Duke  
2 Energy Ohio was going to be a participant in BRA  
3 effective for the 2016-2017 auction?

4 A. At that point, yes. The 2016-'17  
5 auction. Unless I've blown my arithmetic which is  
6 certainly possible.

7 Q. Now, sir, having reviewed Duke Energy  
8 Ohio's application in this proceeding you are aware  
9 that the company is proposing a rider DR-CO, correct?

10 A. Yes.

11 Q. But in this particular case Duke Energy  
12 Ohio is not seeking Commission approval of the rates  
13 that would be applicable to rider DR-CO, correct?

14 A. That's correct.

15 Q. And you understand that to be a  
16 nonbypassable charge should the Commission approve  
17 the rider as proposed, correct?

18 A. Should the Commission approve the rider,  
19 yes, it would be a nonbypassable charge of an at the  
20 moment unknown volume or unknown quantity.

21 Q. And so at this point you do not know the  
22 allocations that would be applicable under rider  
23 DR-CO should the Commission approve it, correct?

24 A. No, I do not.

25 Q. And you do not know when recovery would



2025

1       commence under rider DR-CO should the Commission  
2       approve it, correct?

3               A.     Sitting here at this moment, no, I don't  
4       remember the -- or, I don't know that.

5               Q.     And you don't know the rate design that  
6       would be applicable to rider DR-CO should the  
7       Commission approve it as proposed, correct?

8               A.     That's correct.

9               Q.     And, sir, you have not done any analysis  
10      of whether Duke Energy Ohio's existing nonbypassable  
11      charges have adversely affected the retail market in  
12      Ohio, correct?

13              A.     Can you repeat that question?

14              Q.     Sure. You have not done any analysis on  
15      whether Duke Energy Ohio's existing nonbypassable  
16      charges have adversely affected the retail market in  
17      Ohio, correct?

18              A.     That is correct. In terms of existing,  
19      that's correct.

20              Q.     Well, and, sir, the same would be true  
21      with respect to Duke Energy Ohio's proposed rider  
22      DR-CO, correct?

23              A.     While I haven't done any analysis on that  
24      one I have opined upon that in my testimony, and I'll  
25      do it again, which is that anytime you add money, add

1 a cost to the rates that people are paying, it has an  
2 impact on the economy by taking money out of  
3 someone's pocket that would otherwise be used for  
4 other purposes and having them pay that to Duke Ohio.

5 So it will have an impact on the economy  
6 in Ohio from that perspective, yes.

7 Q. The impact's certainly a function of rate  
8 design, rate allocation, and the time upon which the  
9 recovery commences, correct?

10 A. No. That has nothing to do with any of  
11 those things. It has to do with its -- its existence  
12 versus its nonexistence.

13 Q. Dr. Tabors, you mentioned a moment ago  
14 the RAA and the compensation methods available under  
15 the RAA for FRR entities, correct?

16 A. Yes, I did.

17 Q. And there are three such mechanisms,  
18 correct?

19 A. Yes, there are.

20 Q. And the first, if it exists, is the  
21 prevailing mechanism and that is the state  
22 compensation mechanism, correct?

23 A. Well, I always turn it the other way  
24 around, so the answer is the first as far as I'm  
25 concerned, again being an economist and being in

2027

1     this, is that the first one is that you would go to  
2     the default and the default is to have a -- to have  
3     the rate set based on the BRA auction. And so to me  
4     that's the first one, not the state compensation  
5     mechanism.

6           Q.     But you would agree with me, sir, that  
7     the RAA provides that if a state compensation  
8     mechanism exists, that it prevails.

9           A.     I would have to preface my comment by  
10    saying that's partially correct, from my perspective.  
11    The rest of the correctness is that it works only in  
12    a state where there's retail access, and the question  
13    about what that mechanism can be or should be under  
14    those circumstances finds its way back into the  
15    purpose of having a retail access state in the first  
16    place which is to improve competition.

17                   And so, effectively, you're moving back  
18    into a logic that says whatever that state mechanism  
19    is is most likely to be or should be a market based  
20    mechanism.

21           Q.     Well, sir, the RAA does not provide that  
22    a state compensation mechanism must be a market-based  
23    mechanism, correct?

24           A.     While it doesn't say that it must be, the  
25    logic of it is that it should be.

1           Q.   Well, sir, if the logic is such that the  
2   state compensation mechanism should be a market-based  
3   mechanism, why was there the need to include the  
4   state compensation mechanism alternative if, in fact,  
5   RPM is the default mechanism?

6           A.   Covering one's bases and because there is  
7   a question that always arises as to whether you're in  
8   a wholesale world or a retail world, and if you're in  
9   a retail world, then state compensation mechanisms  
10   are important, so that this was covering the case for  
11   a -- for an issue where the world was defined as  
12   being retail.

13          Q.   But, sir, is it your position that where  
14   the world was defined as retail the state  
15   compensation mechanism was intended to be a  
16   cost-based -- or, a market-based mechanism?

17          A.   My position is that that state mechanism  
18   was always intended to be market based given the  
19   structure within which this was occurring, which was  
20   two structures that are market based.  You have the  
21   market-based structure, which is RAA, period, BRA  
22   down the line, and then the second part of it this  
23   only applies in a situation in which you're in a  
24   retail access state, and that is a market-based  
25   structure.  So I'm looking at it saying it's very

1       difficult not to -- not to make the -- not the  
2       assumption, but not to make the logical step that  
3       says, therefore, the intent was that this would be,  
4       that this would be market based.

5               Q.     So going back to the three compensation  
6       mechanisms available under the RAA for FRR entities,  
7       there is the state compensation mechanism, correct?

8               A.     That's one of three.

9               Q.     There is the RPM price mechanism,  
10      correct?

11              A.     Well, the RPM default if you don't have  
12      something else.

13              Q.     There is also -- the final mechanism is  
14      one in which an FRR entity may make a filing under  
15      Section 205 of the Federal Power Act for a cost-based  
16      charge, correct?

17              A.     It may make a filing under 205 for a  
18      cost-based rate. The question is cost meaning what  
19      under those circumstances. And in the context that  
20      we're dealing with here that would be, because we're  
21      talking about capacity, that would be avoidable  
22      costs, not embedded costs.

23              Q.     So you believe that the reference to the  
24      state compensation mechanism was negotiated and  
25      included in the RAA simply so that bases would be

1 covered, correct?

2 A. I think it was included so that bases  
3 would be covered and so that someone who might  
4 otherwise be or decide to be an FRR that would have a  
5 very different structure in a different structure  
6 than a non -- and the possibility of a different  
7 structure in the state, in the state itself. That  
8 was poorly stated, I apologize.

9 My impression of why it is there and my  
10 belief as to why it is there is to cover the bases  
11 for a situation where there is a state with retail  
12 regulation, yes.

13 Q. And, sir, to your knowledge, has the FERC  
14 ever approved a Section 205 filing based on avoidable  
15 costs?

16 MR. KUTIK: I'll object, your Honor. In  
17 what context? Are we talking about with respect to  
18 FRR entities, or are we talking about Section 205  
19 files for any purpose?

20 EXAMINER PIRIK: Can you clarify the  
21 question, please.

22 A. I think you would need to reask -- thank  
23 you. You would need to reask, reask the question and  
24 be more specific with regard to a 205 filing. I  
25 mean, I've worked on 205 filings and they cover a

1 multitude of sins, so if you would narrow the level  
2 of sin down for me on what the 205 filing would  
3 cover, that would be helpful, thank you.

4 Q. Do you know that with respect to an FRR  
5 entity and its provision of capacity?

6 A. I don't believe there's ever been a 205  
7 filing done, to the best of my knowledge, on an FRR  
8 filing basis, for an FRR or by an FRR.

9 Q. Well, what about a non-FRR entity and its  
10 filing under Section 205 of the Federal Power Act for  
11 recovery of capacity costs?

12 MR. KUTIK: At this point, your Honor,  
13 I'll object on the grounds of relevance.

14 EXAMINER PIRIK: Ms. Spiller.

15 MS. SPILLER: Well, he's giving -- it's  
16 his interpretation and intention behind the RAA and I  
17 think very important the provisions of the RAA that  
18 make provision for the pricing of capacity indicating  
19 that, in his mind, this particular provision is  
20 intended to be market-based or avoidable costs and  
21 not embedded costs.

22 MR. KUTIK: The reference --

23 EXAMINER PIRIK: That's fine, I'll  
24 overrule. Thank you.

25 A. In an attempt to answer the question, my

1 reading of the RAA, the location of the RAA within  
2 the set of documents that it's within, and the  
3 structure of the -- of the three alternatives, when  
4 you look at 205 and you think of where it is being  
5 applied, which is inside PJM, the likelihood, from my  
6 work on PJM as well as before the federal commission,  
7 indicates that the probability of this being for  
8 embedded cost purposes is close to zero, largely  
9 because this is a market structure that we're dealing  
10 with, that this is a market structure that the  
11 federal commission really likes and, as a result,  
12 their perception is very difficult to take it  
13 anywhere else.

14 But to say any 205 filing based on that  
15 particular section 8, or that paragraph 8, is going  
16 to end up having to look like either if we want to  
17 use the cost -- word market based or it's going to  
18 have to be avoidable costs, either of those two  
19 pieces of vocabulary is what that is going to end up  
20 looking like. That is my informed, I hope, opinion.

21 Q. Sir, is it your testimony that the FERC  
22 rules preclude Duke Energy Ohio from seeking full  
23 compensation for its capacity obligations?

24 A. While I don't think that the FERC rules  
25 per se preclude it, they certainly aim one very



1 quickly at the fact that the FERC rules and  
2 preferences are to market-based rates.

3 Q. Dr. Tabors, you were not privy to Duke  
4 Energy Ohio's evaluation of its realignment from the  
5 Midwest ISO to PJM, correct?

6 A. While I wasn't privy to it and I didn't  
7 participate in it, I have seen documents that -- as  
8 part of this case that indicate some of the decision  
9 parameters certainly that were put forth by Duke  
10 management in thinking about moving from MISO over to  
11 PJM.

12 Q. And, sir, you state in your direct  
13 testimony that you believe Duke Energy Ohio could  
14 have stayed in the Midwest ISO through May 31, 2015,  
15 and while still in the Midwest ISO participated in  
16 the May base residual auctions in 2012, 2013, and  
17 2014 for the planning years associated with those  
18 respective base residual auctions, correct?

19 A. I do. But I also have that knowledge  
20 from what I believe is FES Exhibit 4 which indicates  
21 a PowerPoint presentation in which that particular  
22 alternative is discussed or presented as being the  
23 dominant alternative up until the point at which that  
24 PowerPoint says, well, from here on we're going to go  
25 the other route.

1           So that was certainly an alternative that  
2           was being considered by Duke management.

3           Q.    And that was an alternative that was  
4           discarded as of the FERC filing done in June of 2010,  
5           correct?

6           A.    I believe it was actually discarded  
7           before that, but it was certainly something that was  
8           considered.

9           Q.    Well, sir, do you believe that Duke  
10          Energy Ohio should have stayed in the Midwest ISO  
11          through May 31, 2015, and yet participated in the  
12          base residual auctions for PJM that would have  
13          occurred in '12 -- 2012, 2013, and 2014?

14          A.    I would say quite honestly that that's  
15          way above my pay grade.

16          Q.    Well, sir, you do indicate on page 12 of  
17          your testimony that Duke Energy Ohio is not required  
18          to become an FRR entity, correct?

19          A.    That's correct.

20          Q.    You indicate that Duke Energy Ohio had  
21          the option of staying in the Midwest ISO until June  
22          of 2015, correct?

23          A.    Yes.

24          Q.    You indicated that Duke Energy Ohio  
25          staying in the Midwest ISO would have allowed it to

1 complete -- to meet its capacity obligations entirely  
2 through RPM auctions once it migrated to PJM,  
3 correct?

4 A. Yes.

5 Q. Sir, with regard to your testimony to  
6 which we just referred, you have not performed any  
7 analysis of the relative benefits or harms of Duke  
8 Energy Ohio staying in the Midwest ISO until June 1,  
9 2015, correct?

10 A. While I didn't do it certainly Duke did  
11 it and I trust the judgment of Duke in making that  
12 choice.

13 Q. And you don't know what future financial  
14 obligations Duke Energy Ohio would have been required  
15 to undertake at PJM while staying in the Midwest ISO  
16 as you suggest, correct?

17 A. Financial obligations, no, I don't know.

18 Q. And you did not, for purposes of your  
19 direct testimony in this case, compare any issues  
20 related to reliability concerning to your proposal  
21 that Duke Energy Ohio remain in the Midwest ISO,  
22 correct?

23 A. Can you repeat that question?

24 Q. Sure. You did not for purposes of your  
25 direct testimony in this case address any issues

1 related to reliability that may have been involved  
2 with your proposal that Duke Energy Ohio remain in  
3 the Midwest ISO.

4 A. While I didn't look at that, I looked  
5 more at what the implications were coming the other  
6 direction. So no, I didn't look at that.

7 Q. And you did not, for purposes of  
8 rendering your opinion, factor in the multivalue  
9 project costs that Duke Energy Ohio's customers would  
10 have faced if Duke Energy Ohio had stayed in the  
11 Midwest ISO through June 1, 2015, correct?

12 A. As I said earlier, my assumption is that  
13 people that should be doing that are -- and who did  
14 it and obviously made a good choice were Duke Ohio.

15 Q. So are you saying, sir, that Duke Energy  
16 Ohio made the right decision in realigning to PJM  
17 when it did?

18 A. I think I said before that that's above  
19 my pay grade to make that -- to make that conclusion.  
20 I didn't do the analysis. I'm sure that Duke did do  
21 the analysis. Duke has a lot of very bright people  
22 who are very good at this, so I believe they probably  
23 did come up with a cost-benefit ratio that said the  
24 benefits far exceed the costs, we're going to go for  
25 it.

1 Q. Benefits to customers as well, correct?

2 A. Benefits to customers, benefits to  
3 stockholders, yes.

4 Q. And, Dr. Tabors, you don't know whether  
5 the Midwest ISO has anything comparable to the RAA  
6 for purposes of pricing capacity, correct?

7 A. Well, when I did my deposition, I didn't  
8 know very much about the Midwest ISO but,  
9 unfortunately for me, I've had an entire project that  
10 I've had to stick in between those two things so  
11 right now I know more than I ever wanted to know  
12 about capacity in the midwest, and so the answer is  
13 they do have something that's kind of sort of vaguely  
14 like it, it's called I think Module E or something  
15 like that. Part of the original agreement.

16 Otherwise, most of the agreements within  
17 the Midwest ISO are based on state-based agreements,  
18 IRP structures, very, very different from the issue  
19 that we have here at PJM.

20 In addition, they've instituted an effort  
21 to get a capacity auction structure going, but it's  
22 voluntary and so far has had almost no liquidity in  
23 it.

24 Q. And it's not the three-year forward  
25 established capacity auction that PJM has, correct?

1           A.    No, it's almost -- basically  
2 month-by-month, it's not quite that, but basically  
3 month-by-month.

4           Q.    The load obligation of an FRR entity is a  
5 fixed obligation, correct?

6           A.    Would you define what you mean by  
7 "fixed"?

8           Q.    Well, sure, PJM will give an FRR its load  
9 obligation for a particular planning year, correct?

10          A.    Yes.

11          Q.    And that obligation is the obligation on  
12 which the FRR entity relies for purposes of  
13 fulfilling its FRR plan, correct?

14          A.    That's correct. But on -- but, sorry,  
15 excuse me.

16                While I agree that's correct, what's  
17 missing in that is that there are adjustments then  
18 year on year as you go through the FRR period.

19          Q.    And if there are adjustments up such that  
20 the load obligation increases, the FRR entity is  
21 required to procure the additional capacity necessary  
22 to satisfy that increase, correct?

23          A.    That is correct.

24          Q.    A BRA participant does not have that  
25 similar obligation, correct?

1           A.    That's correct.

2           Q.    Sir, you are aware that electric  
3 distribution utilities in Ohio are required to  
4 provide a standard service offer of competitive  
5 retail electric service, correct?

6           A.    Yes.

7           Q.    And a standard service offer of  
8 competitive retail electric service can take the form  
9 of either a market rate offer, MRO, or an electric  
10 security plan, or ESP, correct?

11          A.    It can, but as best I have understood no  
12 MRO has ever made it through the system.

13          Q.    And I will confirm for you, sir, that  
14 that is accurate.

15                You are aware that Duke Energy Ohio is  
16 operating under an ESP currently, correct?

17          A.    Yes.

18          Q.    And Duke Energy Ohio's rider ESSC was  
19 approved as part of that ESP under Chapter 4928,  
20 correct?

21          A.    Yes.

22          Q.    And it's your understanding that a  
23 competitive retail electric service, as that term is  
24 used with regard to standard service offers, means  
25 that a customer can shop for their supplier of

1 electricity, correct?

2 A. The answer is a customer can shop, but  
3 the real definition is in 4928(A)(27) I think for  
4 what is a retail, what are retail services and what  
5 is retail electric service.

6 Q. And, sir, you're citing to a definitional  
7 portion of the statute?

8 A. That's the definition of what is retail  
9 electric service, yes.

10 Q. A competitive service is one for which  
11 customers can shop, correct?

12 A. A competitive service is one that  
13 customers can shop for.

14 Q. Thank you.

15 PJM calculates offer caps based upon  
16 historical numbers, correct?

17 A. Well, offer caps, yes.

18 Q. And, sir, for purposes of your work in  
19 this case you calculated avoidable cost rates  
20 beginning in, I believe it was calendar year 2012,  
21 correct?

22 A. Yes.

23 Q. And with regard to 2012, would you agree  
24 with me, Dr. Tabors, that the calculation of net  
25 avoidable costs using 2013-2014 projections would



1 yield a different result than if you had used actual  
2 information from 2009 through 2011?

3 A. While I would agree with you, it's kind  
4 of irrelevant in this case because I wasn't trying to  
5 calculate an offer cap as the MM does -- or the IMM  
6 does in PJM. My goal was to calculate the avoidable  
7 cost going forward -- going back one year, because we  
8 already had -- 2012 existed, and then looking forward  
9 to the two forward years.

10 So my purpose in my analysis was quite  
11 different from what the -- from what the IMM does.  
12 Same methodology, same logic, but a different reason  
13 involved.

14 The second part of that is I didn't have  
15 the data to go back to 2009. There were no LMPs for  
16 the Ohio -- for the Ohio -- Duke Ohio zone at that  
17 time so I couldn't do it anyway unless I wanted to  
18 largely fabricate the numbers; they just don't exist.

19 Q. And so you calculated avoidable cost  
20 rates for 2012 and then the 2013-2014 planning year?

21 A. I calculated historical values for  
22 avoidable costs for 2012. And for 2013 and 2014 I  
23 calculated the avoidable costs based on the market  
24 price, the forward market price, which does exist for  
25 those two years for the so-called AEP hub in Ohio.

1                   So I don't -- what I was doing was  
2     calculating history and then calculating the  
3     avoidable costs based on what the market value is, or  
4     the market value says it is, for '13 and '14.

5                 Q.    And, sir, are you familiar with the term  
6     "legacy generating fleet" as used with respect to  
7     Duke Energy Ohio?

8                 A.    Yes, I am.

9                 Q.    And you understand Duke Energy Ohio's  
10    legacy generating fleet to be those assets that were  
11    used and useful prior to restructuring of the  
12    electricity market here in Ohio, correct?

13                A.    Yes.

14                Q.    Primarily the coal fleet, correct, sir?

15                A.    Yeah, right. And some gas plants that  
16    never run, but yes.

17                Q.    And, sir, you would agree with me that  
18    Duke Energy Ohio's legacy generating fleet is  
19    economic, correct?

20                A.    No. I wouldn't necessarily agree with  
21    that. I think that my analysis showed that the Duke  
22    Energy fleet as a fleet, I think the word I was using  
23    is "marginal," and that some of the units in the Duke  
24    Energy fleet are not economic, and you don't have to  
25    count on my word for that, Duke is closing or has

1 announced the closing of six units, the Beckjord  
2 units, one's closed already, based on the fact that  
3 certainly with new environmental regulations those  
4 units will not be economic.

5 Q. But the fleet as a whole, sir, is it your  
6 opinion that it is economic?

7 A. The fleet as a whole, it is very  
8 difficult to talk about the fleet as a whole. This  
9 is a class act averaging problem and outside of Lake  
10 Wobegon where all of the children are above average;  
11 we don't have that situation here.

12 Duke has some very good units and it has  
13 some units that are just barely making it and it has  
14 some units that by my criteria are, in fact, not  
15 making it. And so it's, you have to -- can't go at  
16 this and say here's the fleet. You've basically got  
17 to go at it and say, okay, I've taken Beckjord off,  
18 Duke did that, now I've got Zimmer and I've got Miami  
19 Fort 7 and 8 that look pretty good, and then I've got  
20 some others that are mixed, and then I've got some  
21 that don't look very good still at this point given  
22 today's market conditions.

23 Q. Well, sir, you did an analysis and  
24 arrived at an average with respect to the legacy  
25 fleet as a whole, correct?

1           A.    I did.

2           Q.    And, sir, a generating asset, if it is  
3           economic, cannot distort the market on the basis of  
4           being inefficient or uneconomic, correct?

5           A.    If it's economic, then it is in the  
6           market.

7           Q.    So it won't distort the market, correct?

8           A.    It's in the market. It won't distort the  
9           market. If it's economic. Not the fleet, but the  
10          unit.

11          Q.    Sir, I'd like to ask you about the, and  
12          you call it the PJM, I believe, migration stipulation  
13          that you reviewed for purposes of this case.

14          A.    Yes.

15          Q.    And, sir, I believe you referenced this  
16          stipulation in part on page 21 of your direct  
17          testimony, correct?

18          A.    Let me just check.

19          Q.    Sure.

20          A.    I'm actually not seeing that on page 21.

21          Q.    It could be a carryover, sir, from the  
22          prior page.

23          A.    Oh. Okay. But there I'm saying a  
24          reasonable interpretation of the PJM and the ESP  
25          stipulations.

1           Q.    Okay.  But then you carry over, sir, on  
2   the top of page 21 of your testimony making specific  
3   reference to just the PJM stipulation, correct?

4           A.    That second -- the first full sentence,  
5   yes.

6           Q.    And, sir, do you have that stipulation  
7   before you?

8           A.    Yes, I do.

9           Q.    And I believe that that has previously  
10  been marked as, it's the stipulation in case 11-2641  
11  previously marked as a Kroger exhibit.

12           MR. KUTIK:  It's also attachment RDT-2.

13           Q.    And, sir, am I correct in reading your  
14  testimony on page 21 that it's your belief that the  
15  PJM stipulation precluded Duke Energy Ohio from  
16  seeking cost-based recovery of its capacity  
17  obligations whether at the state level or the federal  
18  level?

19           MR. KUTIK:  Your Honor, may I have the  
20  question read?

21           EXAMINER PIRIK:  Yes.

22           (Record read.)

23           A.    Well, what I said in this was that I do  
24  not believe that -- sorry, to go back up.  It says  
25  "While DOE [VERBATIM] appears to believe that the PJM

1 stipulation covers only the application to FERC  
2 allowed under Section D of Schedule 8.1 of the PJM  
3 RAA, I do not believe that such an interpretation is  
4 warranted. It's difficult to believe that any of the  
5 signatory powers to that stipulation would have  
6 signed an agreement that would not have protected  
7 Ohio consumers from all future charges and wholesale  
8 capacity."

9 So that was my interpretation of it. And  
10 it's a significant list of people who did sign on to  
11 it.

12 Q. And, sir, going back to my question, is  
13 it your opinion that you believe the PJM stipulation  
14 precluded Duke Energy Ohio from seeking cost recovery  
15 of its FRR capacity obligations whether at the FERC  
16 or at the state level?

17 A. Explicitly no. Implicitly yes.

18 Q. And you believe that would have been the  
19 implicit conclusion or understanding of the  
20 signatories to that stipulation, correct?

21 A. The comment in that paragraph really  
22 refers to both stipulations. So it would have been  
23 the conclusion -- would be my conclusion that that  
24 would have been the conclusion of the signatories to  
25 the combined stipulations.

1           Q.    Okay.  But so that we're clear, your  
2 testimony on page 21 at the top is referring only to  
3 the, what you call the PJM stipulation, correct?

4           MR. KUTIK:  Objection, your Honor.

5           A.    But the paragraph --

6           MR. KUTIK:  Objection.

7           EXAMINER PIRIK:  Mr. Kutik.

8           MR. KUTIK:  Your Honor, the witness has  
9 previously said that this is a commentary that's  
10 carried over from page 20 which clearly refers to  
11 both stipulations.  The witness has also said that.  
12 For Ms. Spiller to try to limit him and say it only  
13 refers to the PJM stipulation misreads the clear  
14 testimony and also misconstrues and misrepresents  
15 what this witness said.

16           EXAMINER PIRIK:  I think the witness is  
17 trying to clarify, so I think you should move forward  
18 with your question but I think he has clarified it.

19           Q.    I'm just trying to make sure we're on the  
20 same page with respect to the clarification.  So the  
21 testimony as originally written reflected or  
22 referenced the PJM stipulation, correct?

23           A.    No.  The testimony as originally written  
24 refers to both the PJM and the ESP stipulations; that  
25 starts on page 20.  Then it says one thing about the

1 PJM stipulation, then it goes on to make a conclusion  
2 which clearly refers back to both stipulations.

3 Clearly to me, I'm sorry.

4 Q. So you believe that lines 4 and 5 of your  
5 direct testimony on page 21 refer to more than just  
6 the PJM stipulation.

7 A. It says the PJM stipulation in the  
8 sentence, but the paragraph itself goes with both  
9 stipulations, so do I believe that that's true of  
10 this stipulation? Yes. But do I agree that it's  
11 true of both stipulations? Yes.

12 And its the final sentence, from a  
13 layman's perspective, DEO appears to believe there  
14 was a loophole in the agreements it signed that  
15 allowed DEA -- DEO, sorry, to take another bite at  
16 the apple.

17 A full reading of these agreements with  
18 an understanding of Section D of Schedule 8.1 of the  
19 RAA makes it clear to me that no such loophole  
20 exists.

21 Q. Sir, I'm just trying to get an  
22 understanding of your -- your interpretation of the  
23 PJM stipulation.

24 A. PJM stipulation along with the other one  
25 says there is -- there aren't any loopholes, we've



1 covered, you know, all of the bases. The PJM one  
2 specifically makes reference to the fact that there  
3 shouldn't be any double -- double-billing, so if you  
4 look at I think it's paragraph 7 in that particular,  
5 sorry, in that particular stipulation, it says, it  
6 basically says no double-billing.

7 With regard to standard service offer  
8 that will supersede the ESP approved case in XXXXX  
9 Duke Energy Ohio commits to not charging its SSO  
10 customers twice for the same capacity so that, to me,  
11 gets me partway there.

12 And Duke Energy customers, paragraph 21,  
13 I'm sorry, Duke Energy Ohio customers shall not incur  
14 an obligation as a result of any settlement or final  
15 disposition filed by the Midwest -- sorry, wrong one.  
16 I thought it was 21. I may have just read --

17 Okay. Scratch that last part. I will  
18 stay with just the comment I made about paragraph 7.  
19 Sorry.

20 Q. And you believe that paragraph 7 is  
21 intended to provide that Duke Energy Ohio would not  
22 seek to recover its costs for providing capacity  
23 service through a state filing, correct?

24 A. I believe that what's in, what I call the  
25 PJM stipulation combined with what's in the ESP

1 stipulation, that that's the case. These are two  
2 stipulations that have had multiple people signing  
3 them and working on them that have all added to one  
4 direction which is that DEO would not go forward with  
5 another request for additional money.

6 Q. But, sir, with respect to the PJM  
7 stipulation alone, putting aside for a moment the ESP  
8 stipulation, is it your testimony that that  
9 stipulation is one that precludes Duke Energy Ohio  
10 from seeking a cost-based charge for its capacity  
11 services?

12 A. The words that are in it do not preclude  
13 it. The intent of the process does. My  
14 interpretation.

15 Q. And the process to which you refer, sir,  
16 is that the process concerning or involving the  
17 execution of the PJM migration stipulation alone?

18 A. It's the process that has PJM, as I've  
19 said, and the ESP stipulation as a package. It's a  
20 process.

21 Q. And, sir, do you believe that Duke Energy  
22 Ohio's receipt of its full costs for providing  
23 capacity service is equivalent with Duke -- with its  
24 customers paying twice for that service?

25 A. Yes.

1           Q.    So is it your position, sir, that  
2 customers paying anything above market means that  
3 customers are paying twice for capacity?

4           A.    It means to me as an economist that  
5 anyone who's paying -- anytime you're paying above  
6 market you're -- you're paying above market, you are  
7 overpaying in a market-based structure which this is.

8           Q.    So in that analysis or with that  
9 conclusion, sir, is it your belief that AEP Ohio's  
10 customers are paying twice for capacity?

11          A.    Yes, it is.

12          Q.    And is it your conclusion, sir, based  
13 upon your statement that any entity that receives  
14 more than market prices for its services is being  
15 overcompensated?

16          A.    Yes.

17          Q.    So to the extent an affiliate is  
18 transferring generation at book value and that book  
19 value is higher than market value, is there some  
20 overcompensation being afforded the transferor?

21               MR. KUTIK:  Objection.

22          A.    Could you --

23               MR. KUTIK:  Objection.

24               EXAMINER PIRIK:  Grounds?

25               MR. KUTIK:  Relevance, your Honor.

1 EXAMINER PIRIK: I'll overrule.

2 A. Can you repeat the question?

3 Q. Sure. I'll rephrase. To the extent an  
4 affiliate is transferring generation assets to  
5 another affiliate at book value and that book value  
6 for those assets is higher than market value, is the  
7 transferor facility being overcompensated?

8 A. I would have to know an awful lot more  
9 about what goes behind that question before I could  
10 answer it. I would need to know what the legal  
11 responsibilities are between the two entities prior  
12 to it, after it, and then where, in fact, that  
13 overcompensation was going to end up at the end of  
14 the deal.

15 Q. Dr. Tabors, if offer caps are below the  
16 net avoided cost rate, can a generator in the BRA bid  
17 above the net avoided cost rate?

18 MR. KUTIK: May I have the question read,  
19 your Honor.

20 A. Can you --

21 EXAMINER PIRIK: Yes.

22 A. Can you repeat that question very slowly?

23 MR. KUTIK: She is going to repeat it,  
24 yes.

25 THE WITNESS: Sure.

1 Q. Sure.

2 A. Well, somebody.

3 Q. I'll restate it.

4 EXAMINER PIRIK: Okay.

5 Q. If offer caps are below the net avoided  
6 cost rate, can a generator in the BRA bid above the  
7 net avoided cost rate?

8 A. You said if the offer caps are below.

9 Q. Yes, sir.

10 A. The net avoided cost rate.

11 Q. Can a generator in the BRA bid above the  
12 net avoided cost rate.

13 A. Well, within PJM -- within PJM you  
14 don't -- you really have to bid your net avoided cost  
15 rate. So that's not a -- that's not an option inside  
16 of PJM. If...

17 Q. So would you have bid your net avoided  
18 cost rate even if that were higher than the offer  
19 caps?

20 A. The net avoided cost rate is your offer  
21 cap. That's what the IMM calculates.

22 Q. Sir, I'd like to switch gears for a  
23 moment and talk about the dynamic dispatch model that  
24 you reference in your testimony.

25 A. Yes.

1           Q.    I believe the reference appears on page  
2 26, sir.  At least one of the places.

3           A.    Yes.

4           Q.    And you utilize the optimal dynamic  
5 dispatch model for purposes of projecting energy  
6 revenues for 2013 through 2015, correct?

7           A.    Yes.

8           Q.    Now, with regard to the model that you  
9 used, and specifically with respect to dispatch, you  
10 used a minimum 24-hour window, correct?

11          A.    No.

12          Q.    You did not?

13          A.    No.  It says in my testimony, I think on  
14 page 26, that I've used an operating margin for a  
15 period of 24 hours with a look ahead for 24 hours or  
16 more.  So my testimony is very explicit about that.  
17 It's on line 6, page 26.

18          Q.    And, sir, do you have your deposition  
19 handy?

20          A.    No.

21          Q.    Sir, if you could turn to page 88,  
22 please.  And, sir, this was a deposition that was  
23 taken on April 8, 2013, correct?

24               MR. KUTIK:  I'm sorry.  What page are you  
25 on?

1 MS. SPILLER: 88.

2 Q. And you recall the deposition, correct,  
3 sir?

4 A. I have my deposition, yes. Yes, I have  
5 the deposition, sorry.

6 Q. And you recall it being -- your  
7 deposition being taken on April 8, 2013, correct?

8 A. I do.

9 Q. And on line 19 of your deposition at page  
10 88 I asked you: "With regard to dispatch, you used a  
11 minimum 24-hour window, correct?"

12 Your answer was: "I believe so, yes."

13 Did I read that correctly?

14 A. Yes, you did. And then you pointed to  
15 page 26, line 6, and then asked me another question  
16 which didn't have anything to do with the previous  
17 statement I don't think. I said "I believe so, yes."  
18 Then we looked at line 26 which says "It's a 24-hour  
19 with a look-ahead of 24 hours or more."

20 MS. SPILLER: I'm going to move to strike  
21 as nonresponsive after "yes, I did," your Honor.

22 EXAMINER PIRIK: Denied.

23 Q. Well, sir, does a minimum 24-hour window  
24 capture the actual minimum run time of all units?

25 A. Given that that's not what the model

1 does, as I say on the -- in the testimony and have  
2 said here, I can answer the question that if, in  
3 fact, that were the characteristic of the model, then  
4 no, it wouldn't necessarily capture everything, but  
5 would capture the lion's share of it anyway. But  
6 it's not relevant to the model or to the testimony.

7 Q. But with respect to your deposition you  
8 did indicate that you used a 24 -- that you used a  
9 minimum 24-hour window with respect to dispatch,  
10 correct?

11 A. Yes. And then you asked -- could I go to  
12 page 26, line 6, which says, and I quote again, "Unit  
13 operating margin for a period of 24 hours with a  
14 look-ahead of 24 hours or more."

15 Q. Dr. Tabors, does the PJM independent  
16 market monitor verify that vertically integrated  
17 utilities recover only their avoided costs for  
18 providing capacity?

19 A. No.

20 Q. Does the --

21 A. Can I finish the sentence?

22 Q. Sure. I thought you were done.

23 A. No. No, the independent monitor -- no,  
24 the case is that if people only -- only got that  
25 amount of money, they wouldn't recover any capital



1 costs. No, because, under the circumstances, they  
2 wouldn't recover any capital costs.

3 Q. And with regard to those utilities that  
4 are not vertically integrated, does the PJM  
5 independent market monitor verify that they recover  
6 only their avoided costs from ratepayers?

7 A. No, because the -- it is necessary in the  
8 power market the way it's designed for generators to  
9 earn more than their own marginal cost or their own  
10 avoided cost in order for them to be able to pay for  
11 the capital, that's the basis on which generators  
12 earn sufficient money to stay in the market and  
13 actually earn a reasonable return in a market.

14 Q. Dr. Tabors, if an affiliate were to  
15 transfer a competitive generation asset in PJM to a  
16 regulated affiliate in PJM at book value seeking  
17 cost-based rates, would that violate your belief that  
18 market prices should prevail in PJM?

19 MR. KUTIK: Objection.

20 EXAMINER PIRIK: Grounds?

21 MR. KUTIK: Relevance.

22 EXAMINER PIRIK: Ms. Spiller.

23 MS. SPILLER: Well, again, your Honor,  
24 this witness has indicated that he believes that  
25 market prices should prevail and I think it is

1 important to solicit his opinions with respect to  
2 prevailing market prices in PJM and whether that  
3 occurs.

4 MR. KUTIK: This is for services like  
5 capacity, energy, not assets.

6 EXAMINER PIRIK: I'll allow the witness  
7 to answer and you can clarify as you see fit.

8 A. Well, as I indicated in the nearly  
9 identical question that was asked before, I can't  
10 answer that question without knowing a tremendous  
11 amount about what the transaction is, what the two  
12 entities are, where -- and where and if any cost  
13 above avoidable cost is being allocated within the  
14 system.

15 It's not, you know, I just don't have  
16 enough information to be able to answer that  
17 question.

18 Q. And when you say "allocated within the  
19 system," is that the PJM system or is that allocated  
20 to retail ratepayers?

21 A. It would be -- where it's allocated to  
22 the individual players, it never gets into the PJM  
23 system.

24 Q. And the individual players being whom,  
25 sir?

1           A.    Well, you said that I had two entities,  
2    an A and a B.  Somewhere between A and B in your  
3    hypothesis, your hypothetical, there is a transfer  
4    taking place with additional, more than market value  
5    on the asset.  I don't know where it's coming from.  
6    I don't know where it's going to.  And I don't know  
7    what the structure of the initial or final entities  
8    are.

9           MS. SPILLER:  One moment, please, your  
10   Honor, I may be close to through.

11          Q.    Dr. Tabors, I'd like to go back to your  
12   testimony about overcompensation and customers paying  
13   twice for capacity.  I believe, sir, you indicated  
14   that with respect to AEP Ohio you believe it's being  
15   overcompensated for capacity that it provided as an  
16   FRR entity, correct?

17          A.    Yes.

18          Q.    And in that instance, sir, do you believe  
19   that AEP Ohio's customers are being charged twice?

20          A.    Well, what I'm saying is they're being  
21   charged too much.  I don't -- I was not part of the  
22   AEP case so I don't know the details of the AEP case.  
23   All I can comment on is that from my perspective the  
24   customers are being charged more than the avoidable  
25   cost for capacity and, as a result, are being

1 overcharged.

2 Q. Well, sir, given your prior response  
3 about needing more information in respect of my  
4 hypothetical, is it possible that the Ohio Commission  
5 determined that there was additional information that  
6 they considered such that they concluded AEP Ohio's  
7 customers -- AEP Ohio's customers were not being  
8 overcharged for capacity?

9 MR. KUTIK: Objection.

10 EXAMINER PIRIK: Objection overruled.

11 A. I'm assuming that the Public Utility  
12 Commission of Ohio had some basis on which they made  
13 their decision. I'm not privy to that basis even  
14 though I've looked through many of the things that  
15 came out of that case.

16 However, as an economist and anyone  
17 interested in markets, my statement holds that that  
18 was not a good decision because effectively it goes  
19 against good market behavior and good market rules.

20 Q. Sir, can changes in energy prices affect  
21 Ohio's economy?

22 A. Yes. Up and down.

23 MS. SPILLER: I don't have anything  
24 further, thank you, your Honor.

25 EXAMINER PIRIK: Thank you.

1 Staff?

2 MR. JONES: No questions, your Honor.

3 EXAMINER PIRIK: Redirect?

4 MR. KUTIK: May we have a few minutes,  
5 your Honor?

6 EXAMINER PIRIK: Yes.

7 (Recess taken.)

8 EXAMINER PIRIK: Mr. Kutik.

9 MR. KUTIK: Thank you, your Honor.

10 - - -

11 REDIRECT EXAMINATION

12 By Mr. Kutik:

13 Q. Dr. Tabors, you were asked some questions  
14 about the possibility of an FRR entity having to meet  
15 an increasing load and the obligation of that.

16 A. Yes, I remember those.

17 Q. Has that ever happened with DEO?

18 A. No. I've looked at the numbers and  
19 that's not happened in PJM hardly at all anyway.

20 Q. Let me describe to you a situation.  
21 Assume for me that you have a service territory in  
22 Ohio where the SSO load is being supplied by  
23 wholesale suppliers through, say, an auction. And  
24 the wholesale suppliers are being charged for  
25 capacity from an FRR entity on the basis of RPM

1 prices. Are you with me so far?

2 A. Yes, sir.

3 Q. And then assume for me that retail  
4 customers are charged for capacity above and beyond  
5 the RPM price. How would you describe that  
6 situation?

7 A. I would say they were clearly being  
8 double charged under those circumstances for  
9 capacity.

10 MR. KUTIK: I have no further questions,  
11 thank you.

12 EXAMINER PIRIK: Thank you.

13 MS. SPILLER: Briefly, your Honor.

14 - - -

15 RECROSS-EXAMINATION

16 By Ms. Spiller:

17 Q. Dr. Tabors, with respect to the  
18 hypothetical that counsel just posed to you is that  
19 your position even if the net effect of those charges  
20 is such that the provider of capacity ultimately  
21 recovers just their full cost of providing capacity?

22 A. I don't see how that is a possibility  
23 given that with the BRA process if they're, I'm  
24 sorry, if they're in it, they would be getting the  
25 correct amount for their capacity at that point from

1 an economic perspective, so if they were getting some  
2 additional money, it would have to be a double  
3 charge.

4 Q. And so for purposes of Mr. Kutik's  
5 hypothetical you assumed that the supplier of  
6 capacity was a BRA participant, correct?

7 A. That was his hypothesis.

8 MS. SPILLER: Okay. Thank you, sir.  
9 No further questions, your Honor.

10 EXAMINER PIRIK: Thank you.

11 MR. KUTIK: Your Honor, at this time --

12 EXAMINER PIRIK: I was just going to  
13 excuse the witness and thank him.

14 MR. KUTIK: Your Honor, at this time we  
15 move for the admission of FES Exhibit 2.

16 EXAMINER PIRIK: Are there any  
17 objections?

18 Hearing none, FES 2 will be admitted to  
19 the record.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 EXAMINER PIRIK: I don't believe there  
22 are any other exhibits.

23 Thank you very much.

24 THE WITNESS: Thank you.

25 MR. KUTIK: Your Honor, I understand that

1 we will proceed to our next witness at this time?

2 EXAMINER PIRIK: Yes.

3 MR. KUTIK: Your Honor, at this time we  
4 call Sharon L. Noewer, and may I approach?

5 EXAMINER PIRIK: Yes.

6 (Witness sworn.)

7 EXAMINER PIRIK: You may be seated.

8 MR. KUTIK: Your Honor, at this time we  
9 would like to have marked as FES Exhibit 3 a document  
10 entitled Direct Testimony of Sharon L. Noewer on  
11 Behalf of FirstEnergy Solutions, Corp.

12 EXAMINER PIRIK: The document is so  
13 marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. KUTIK: May I proceed?

16 EXAMINER PIRIK: Yes.

17 - - -

18 SHARON L. NOEWER

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

21 DIRECT EXAMINATION

22 By Mr. Kutik:

23 Q. Please introduce yourself.

24 A. My name is Sharon Noewer. I'm the  
25 director of competitive market policies for



1 FirstEnergy Solutions.

2 EXAMINER PIRIK: You'll need to sit a  
3 little bit closer to the microphone but don't talk  
4 directly into the tip of it because it knocks out.  
5 So kind of talk to the side of it and it works fine.

6 THE WITNESS: Okay.

7 Q. (By Mr. Kutik) Ms. Noewer, do you have  
8 before you what has been marked for identification as  
9 FES Exhibit 3?

10 A. Yes, I do.

11 Q. What is that?

12 A. It is my direct testimony in this case.

13 Q. Do you have any additions or corrections  
14 to make?

15 A. No, I don't.

16 Q. If I asked you the questions that appear  
17 in FES Exhibit 3, would your answers be as appear in  
18 this exhibit?

19 A. Yes.

20 MR. KUTIK: No further questions.

21 EXAMINER PIRIK: Thank you.

22 Do any of the intervenors have any cross?  
23 Duke?

24 MS. KINGERY: Thank you, your Honor.

25

1 I'd like to start with a motion to  
2 strike.

3 EXAMINER PIRIK: Yes, you may proceed.

4 MS. KINGERY: I have three different  
5 categories of motions to strike so I'm going to start  
6 with the largest one first. And this one is on the  
7 grounds that she's providing legal opinions and  
8 making legal recommendations to the Commission which  
9 takes the province of the Commission and as she's not  
10 an attorney that's not her place.

11 So the portions that we would strike  
12 start page 3, lines 9 to 10, and that's from the  
13 beginning of the sentence in the middle of line 9  
14 through the comma after the word "stipulation."

15 And then page 3, line 18, through page 4,  
16 line 10.

17 Then page 5, lines 13 and 14.

18 And page 5, lines 20 through the end, and  
19 the remainder of that answer which takes us all the  
20 way to the middle of page 7, that would be line 13.

21 And then page 7, line 16 through page 8,  
22 line 17.

23 Page 9, lines 5 through 9 and 12 through  
24 20.

25 Page 10, the final sentence of the answer

1 that ends in the middle of the page which is lines 12  
2 through 14. And that's it on that one.

3 The second group which is smaller is  
4 based on the ground that she is merely testifying  
5 about the opinion of other people, not about her own  
6 opinions, so it's merely duplicative and prejudicial  
7 and that would be pages 4, line 11, through 5, line  
8 12.

9 Page 12, lines 13 through 19 --

10 MR. KUTIK: I'm sorry, what was that  
11 again?

12 MS. KINGERY: That was 12, lines 13  
13 through 19.

14 And page 13, lines 3 through 11.

15 And then one more, and this one is page  
16 8, line 21 through page 9, line 2, this is a  
17 discussion of confidential negotiations among parties  
18 in a proceeding, it's not this proceeding, and I  
19 believe it is not the Commission's practice to accept  
20 testimony about confidential stipulation  
21 negotiations.

22 EXAMINER PIRIK: Mr. Kutik.

23 MR. KUTIK: Yes, your Honor. With  
24 respect to the first part of the motion to strike, as  
25 I went through Ms. Kingery's excerpts she called out

1 several of them deal with the FirstEnergy Solutions'  
2 recommendations as to what the Commission should do.  
3 For example, that it should reject the application,  
4 or that it should affirm the stipulation. That in no  
5 way, shape, or form is a legal opinion in any way and  
6 it's the right of testimony, particularly of an  
7 intervenor, to be able to state before the  
8 Commission.

9 With respect to the rest of the excerpts  
10 in the first part of her -- or the first part of her  
11 motion to strike, again, these are discussions of the  
12 stipulation. Ms. Noewer was someone who was  
13 intimately involved in that stipulation process and  
14 certainly can testify about what she thinks it means.  
15 And, again, the company has opened the door for this  
16 type of testimony and other witnesses have been  
17 allowed to similarly testify.

18 With respect to the second part of her  
19 motion, with respect to the opinion of other people,  
20 this is no different than the testimony that -- parts  
21 of the testimony of Mr. Trent. It's very common  
22 before the Commission to have certain witnesses  
23 introduce other witnesses or be so-called policy  
24 witnesses and that's what Mr. Trent did and that's  
25 what Ms. Noewer is doing here.

1           And with respect to the third part of  
2       Ms. Kingery's motion, with respect to Ms. Noewer's  
3       impression of what was going on with respect to the  
4       stipulation, again, this is testimony that we believe  
5       the company opened the door about when they came in  
6       to talk about what they thought the stipulation meant  
7       and the process by which the stipulation was entered.  
8       And so it is fair game for them to testify about it  
9       and it's fair game for us to respond to it.

10           EXAMINER PIRIK: Your objection's noted  
11       for the record. The motions to deny -- or to strike  
12       are denied.

13           MS. KINGERY: Thank you, your Honor.

14                           - - -

15                           CROSS-EXAMINATION

16       By Ms. Kingery:

17           Q.     Good afternoon, Ms. Noewer.

18           A.     Good afternoon.

19           Q.     Almost this evening.

20                   Your experience in the regulatory world  
21       is in the area of the competitive market in Ohio for  
22       electric services, correct?

23           A.     No, not just the competitive market in  
24       Ohio. My responsibilities span six states in which  
25       we are active as well as other policy investments in

1 some of the states and FERC and RTO responsibilities  
2 were added recently as well.

3 Q. So competitive market as well as  
4 regulated side.

5 A. No, I didn't say regulated side. I said  
6 "competitive markets." But FirstEnergy Solutions is  
7 a competitive retail supplier as well as a wholesale  
8 supplier and a generation owner.

9 Q. So when you corrected my first question,  
10 it was because I said "in Ohio."

11 A. Yes.

12 Q. Okay, thank you.

13 A. Partially, and then I added to it.

14 Q. That's fine.

15 EXAMINER PIRIK: Can you move your  
16 microphone just a little closer.

17 MR. KUTIK: Just bend it down.

18 Q. And you're not an attorney, correct?

19 A. Correct.

20 Q. And you have not had any education with  
21 regard to contract interpretation.

22 A. Oh, I think I've had a lot of on-the-job  
23 education with respect to contract interpretation.  
24 In my 30 years of -- nearly 30 years of experience  
25 I've spent a significant amount of time drafting

1 contracts, interpreting contracts, managing  
2 contracts, in both the regulatory as well as  
3 commercial side. I mean, certainly with respect to  
4 this case in terms of the stipulation I was present  
5 at the negotiations so I'm very qualified to be able  
6 to discuss that today.

7 Q. But with regard to contract  
8 interpretation generally, it sounds like you've had  
9 lots of on-the-job experience but no formal  
10 education.

11 A. I consider on-the-job experience very  
12 formal education.

13 Q. You have not taken classes with a teacher  
14 with regard to contract interpretation.

15 A. No, I haven't taken job a teacher -- an  
16 assignment with a teacher, no.

17 Q. Thank you.

18 A. I still don't think that changes the  
19 on-the-job experience, though.

20 Q. Oh, it doesn't. I agree that on-the-job  
21 experience is great.

22 MR. KUTIK: We'll stipulate to that, your  
23 Honor.

24 EXAMINER PIRIK: Thank you.

25 Q. And the purpose of your testimony in this

1 proceeding is to address competitive market issues,  
2 Duke's ESP stipulation, and the benefits of  
3 market-priced capacity as well as state policy  
4 matters, correct?

5 A. I'd say that's generally correct. And  
6 that's outlined in my testimony.

7 Q. Yes. And your recommendation is that the  
8 Commission should reject the application --

9 A. Yes.

10 Q. -- correct?

11 And I believe you identify four bases for  
12 that recommendation, if we look in your testimony on  
13 page 3.

14 A. Yes.

15 Q. So the first basis is your belief that  
16 the application violates the ESP stipulation,  
17 correct?

18 A. Yes.

19 Q. And you indicate that the stipulation  
20 already provides for capacity pricing; isn't that  
21 correct?

22 A. Yes, it does.

23 Q. And the first contract provision that you  
24 point to is paragraph I.B on page 6; is that correct?

25 A. Yes, I do.



1           Q.    Do you by any chance have the stipulation  
2   in front of you?

3           A.    No, I don't.

4           Q.    It's IEU 5.

5           MS. KINGERY:   Could counsel provide it?

6           MR. KUTIK:   I only have one copy so,  
7   Counsel, I think you'll have to provide your own  
8   copies.

9           Q.    So could you turn to page 6, please.

10          A.    Yes, I'm there.

11          Q.    And could you point to or identify for us  
12   the language in -- on that page that you believe sets  
13   a price.

14          A.    The language that I'm referring to  
15   specifically is five lines up from the bottom on page  
16   6, "For purposes of this paragraph, the Parties also  
17   agree that, for so long as Duke Energy Ohio is a  
18   Fixed Resource Requirement entity under PJM  
19   Interconnection, LLC, it will provide capacity at the  
20   Final Zonal Capacity Price in the unconstrained  
21   regional transmission organization (RTO) region."

22          Q.    Great. Thank you. And you've been here  
23   for most of the hearing; is that correct?

24          A.    I've been here for quite a few witnesses,  
25   not for all, particularly the last couple days I

1       wasn't here.

2               Q.     Too many probably, right?

3                     And presumably you've heard other  
4       witnesses talk about this provision, we've certainly  
5       gone over it a few times. What is your reading of  
6       the first five words of the sentence that you read?

7               A.     Well, I take that sentence as a whole  
8       rather than the first five words. Generally, this  
9       paragraph refers to contingencies as it goes into the  
10      next ESP plan. That particular sentence, as you can  
11      see from the "for so long as" clause as we discussed  
12      that during the negotiations, the purpose of that  
13      sentence was to ensure that the current pricing  
14      regime that's set forth in the other provisions in  
15      the stipulation will continue into the next  
16      stipulation.

17                    If we had meant something different, and  
18      we did discuss this language, we would have said  
19      something like "as of" or "by a certain date" if we  
20      had meant it was just for the next period. So it was  
21      a continuation.

22               Q.     Of course, the parties could have chosen  
23      to put that language in as well, correct?

24               A.     They could have chosen to put in by a  
25      date if it meant just for the next period, correct.

1 And we didn't. We treated it as a continuation of  
2 the pricing regime that we had set forth in the rest  
3 of the document in II.B, II.C, IV.A, that describes  
4 the capacity that's covered under this entire  
5 agreement, not only for capacity for wholesale  
6 suppliers but also capacity for the CRES. So those  
7 are the two pieces of capacity pricing that are  
8 covered in the stipulation that was expected to be  
9 contained within that period as well as continue into  
10 the next ESP for so long as Duke was an FRR entity.

11 Q. And the parties could have chosen to put  
12 this language into a separate provision to make it  
13 clearer that it was not simply applying to the  
14 future, but they did not. Correct?

15 A. I'm not sure I understand the question.  
16 Can you repeat that?

17 Q. Sure. You're saying that you have a  
18 different reading of the words "for purposes of this  
19 paragraph." Essentially, you've read them out of the  
20 sentence. So the parties could have chosen to use  
21 words that would have said exactly what you said in  
22 your testimony, but they did not.

23 A. I --

24 Q. They chose these words, correct?

25 A. I'm sorry to interrupt you. I could not

1 disagree with you more. I did not read out the first  
2 five words of that paragraph at all -- or that  
3 sentence at all.

4 Q. Okay. Well, I think we understand what  
5 your reading of it is and that was our purpose in  
6 talking about this one, so let's move on to the next  
7 section.

8 I believe you identified Section II.B,  
9 correct?

10 A. Yes.

11 Q. And that says "Acknowledging Duke Energy  
12 Ohio's status as an FRR entity in PJM, the Parties  
13 agree that Duke Energy Ohio shall supply capacity to  
14 PJM which, in turn, will charge for capacity to all  
15 wholesale supply auction winners for the applicable  
16 time periods of Duke Energy Ohio's ESP with the  
17 charge for said capacity determined by the PJM RTO,  
18 which is the FZCP in the unconstrained RTO region."  
19 Did I read that correctly?

20 A. Yes.

21 Q. And that language clearly states that PJM  
22 will charge the auction winners, does it not?

23 A. PJM does charge the auction winners so  
24 that -- so that Duke can get paid. It's a billing  
25 agent in the process. So the compensation goes back

1 to Duke.

2 Q. I don't see anything in here about a  
3 billing agent; do you?

4 A. That's the process, though, so if you  
5 read this Duke Energy Ohio shall supply the capacity  
6 to PJM and then, in turn, Duke Energy -- then in  
7 turning PJM will charge for it because that's the way  
8 that the process is billed.

9 Q. But the words don't say that.

10 A. Yes, they do.

11 Q. Okay. Well --

12 A. And that's what we agreed to during the  
13 settlement negotiations is that's what that meant.

14 Q. Okay, well --

15 A. And that's what it says.

16 Q. We'll argue about that, then.

17 And the next section then would be IV.A,  
18 can you flip to that.

19 A. I'm there.

20 Q. And you understand that this section was  
21 amended, correct?

22 A. I understand that there was a  
23 typographical error and that was corrected.

24 MS. KINGERY: Okay. And just for the  
25 sake of the record, we would like to introduce an

1 exhibit at this time, I believe it would be Exhibit  
2 Duke Energy Ohio 23.

3 EXAMINER PIRIK: Yes. The document will  
4 be so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MS. KINGERY: And this document is some  
7 e-mail correspondence concerning that amendment.  
8 This was FirstEnergy Solutions' agreement to the  
9 motion that was filed.

10 Q. (By Ms. Kingery) Ms. Noewer, do you  
11 recognize this document, have you ever seen it?

12 A. I recall seeing the bottom part of the  
13 e-mail, not the top.

14 Q. And who does the document appear to come  
15 from?

16 A. Mark Hayden.

17 Q. And he's your counsel, in-house counsel?

18 A. Yes.

19 Q. And it's from Amy Spiller; is that  
20 correct?

21 A. Yes.

22 Q. And in it Mr. Hayden states "Amy, FES  
23 agrees with the change as well as expedited  
24 treatment." Is that correct?

25 A. That's what it says.

1           Q.    Thank you.

2                        So as amended paragraph IV.A says  
3       "Consistent with Section II.B above," which is of  
4       course the one what we just read, "the Parties agree  
5       that Duke Energy Ohio shall supply capacity resources  
6       to PJM, which, in turn, will charge for capacity  
7       resources to all CRES providers in its service  
8       territory for the term of the ESP, with the exception  
9       of those CRES providers that have opted out of Duke  
10      Energy Ohio's FRR plan, for the period during which  
11      they opted out. The Parties further agree that,  
12      during the term of the ESP, Duke Energy Ohio shall  
13      charge CRES providers for capacity as determined by  
14      the PJM RTO, which is the FZCP in the unconstrained  
15      RTO region, for the applicable time periods of its  
16      ESP." And then there's one more sentence.

17                       Did I read that correctly?

18           A.    Yes, you did.

19           Q.    So the second sentence, the one that has  
20      the amendment in it --

21           A.    Yes.

22           Q.    -- sets forth the amount that PJM will  
23      charge CRES providers; would you agree with that?

24           A.    In conjunction with the first sentence,  
25      you can't -- you can't decouple that. Again, PJM is

1 the billing agent. So PJM does not charge and then  
2 keep that money. It charges and provides a bill to  
3 the CRES so that it can get paid.

4 So you have to look at it with the first  
5 sentence as well.

6 Q. Based on the, I think you said 30 years  
7 that you've been doing this? 30 years of on-the-job  
8 training and --

9 A. Yes.

10 Q. -- all the contracts that you've drafted  
11 and reviewed --

12 A. Yes.

13 Q. -- do you find it important to make sure  
14 that contract language is clear and unambiguous?

15 A. Oh, I think it's important to do that.  
16 And to me and to the people at the negotiation  
17 sessions that's what this meant, because it was a  
18 typographical error and we agreed that it needed to  
19 be changed from Duke Energy to PJM because that was  
20 the one that properly sent the bill to the CRESs so  
21 that Duke could be paid.

22 Q. But the "so that Duke can be paid" is not  
23 in this document, is it?

24 A. It's in the first sentence, though. So  
25 that they could supply capacity resources.



1 Q. It goes on and off.

2 EXAMINER PIRIK: The problem is when you  
3 speak directly into it, it has a cutoff in it, so if  
4 you kind of put it sideways and you put your face  
5 kind of beside it, it picks you up just fine.

6 MR. KUTIK: Speak across it.

7 EXAMINER PIRIK: Yeah, speak across it,  
8 that's a better way to say it.

9 THE WITNESS: I'm sorry, your Honor.

10 EXAMINER PIRIK: No, you're fine.

11 MR. KUTIK: Put it between you and  
12 Ms. Kingery.

13 MS. KINGERY: And then don't look at me?

14 MS. PETRUCCI: It's very awkward. The  
15 whole thing is awkward.

16 MR. KUTIK: Perfect.

17 EXAMINER PIRIK: Kind of like this where  
18 you're kind of beside it but not directly in it.

19 THE WITNESS: I'm sorry, could I have my  
20 answer reread? I'm not sure if I was finished.

21 (Record read.)

22 A. Correct. So when you supply capacity  
23 resources to PJM and PJM bills that for you and  
24 charges the CRES, the obvious conclusion from all of  
25 this is that Duke expects to get paid. So it doesn't

1 need to be written explicitly there. That's what  
2 this means.

3 Q. If Duke is to be paid by PJM, since under  
4 your scenario PJM has collected moneys for Duke,  
5 correct?

6 A. Yes.

7 Q. So if Duke is going to be paid by PJM, is  
8 it not likely that there would be a document of PJM's  
9 that would control that arrangement? Like its  
10 tariffs, perhaps.

11 A. There is a settlement process that PJM  
12 goes through, so there are documents that control the  
13 processing and settlement of payments and billing.

14 Q. Have you reviewed any PJM tariffs?

15 A. I'm certain that I have in my career. I  
16 can't think of any at the moment.

17 Q. Have you ever read the RAA?

18 A. Yes.

19 Q. Okay. Does it control the pricing of  
20 capacity supplied to PJM?

21 A. The RAA is designed to ensure that  
22 there's adequate capacity for the region and it does  
23 set forth in there some of the different options that  
24 are available for LSEs in supplying that adequate  
25 capacity as well as it takes into account what the

1 emergency procedures are, but I was not suggesting  
2 that PJM set the price. I was suggesting that PJM  
3 was the billing agent so that it could remit the  
4 funds, charge the CRESSs so they could remit that back  
5 to Duke so that they would get paid. And the price  
6 was already set as set forth in the stipulation, that  
7 it's the final zonal clearing price in the  
8 unconstrained region.

9 Q. I believe I had just asked whether the  
10 RAA includes provisions that control the pricing for  
11 capacity that's provided to PJM. And I don't believe  
12 you answered that question.

13 MR. KUTIK: Well, I'll object, your  
14 Honor, to the extent that's a statement. If she has  
15 another question, she can pose the question to her.

16 Q. Does it?

17 A. I'm generally familiar with the RRA --  
18 RAA and I just gave you my view on what I thought it  
19 represented. So if you have it and want to put it in  
20 front of me, I can look at it more clearly.

21 I don't recall a specific pricing  
22 provision.

23 MS. KINGERY: This is IEU 9.

24 Q. I will direct you to page 122.

25 MR. KUTIK: Your Honor, may I have a

1 moment, please?

2 EXAMINER PIRIK: Yes.

3 MS. KINGERY: That page may be slightly  
4 off. Hold on.

5 THE WITNESS: I'm there.

6 MR. KUTIK: But I'm not.

7 Q. So could you read --

8 MR. KUTIK: Excuse me.

9 MS. KINGERY: I'm sorry.

10 EXAMINER PIRIK: I don't think counsel's  
11 ready yet.

12 MR. KUTIK: Did you say page 22?

13 MS. KINGERY: 122.

14 MR. KUTIK: I don't have that. Are you  
15 talking about the RAA?

16 MS. SPILLER: Are you going off of IEU 9?  
17 That's what we're reading off of.

18 MR. KUTIK: All right. I have it. Thank  
19 you.

20 Q. (By Ms. Kingery) And do you see there a  
21 paragraph that's numbered 8?

22 A. Oh, yes, I do. I'm familiar with this  
23 paragraph.

24 Q. Okay. Good. So with your memory  
25 refreshed now looking at that paragraph would you say

1     that this paragraph controls the pricing of capacity  
2     services that are provided to PJM?

3           A.     The reason I didn't say it the first time  
4     is that this is related to an FRR entity.  So with  
5     respect to an FRR entity it says that in the case of  
6     load reflected in the FRR capacity plan that switches  
7     to an alternative retail LSE where state regulatory  
8     jurisdiction requires customers, which is in this  
9     case in Ohio, or the LSE to compensate the FRR entity  
10    for its FRR capacity obligations, such state  
11    compensation mechanism will prevail.

12           And that's really what capacity for  
13    shopping customers in the stipulation IV.A is, as the  
14    Commission approved it, it's the state compensation  
15    mechanism for how Duke would be reimbursed for  
16    capacity for shopping customers for CRESs at the  
17    final zonal clearing price in the unconstrained  
18    region.

19           Q.     Okay.  That's an interesting theory, and  
20    I know we've heard from --

21           MR. KUTIK:  Your Honor, I move to strike  
22    comments.  If we could just have the questions.

23           EXAMINER PIRIK:  Yes.  Do you have a  
24    question?

25           MS. KINGERY:  Yes, I would like to ask

1 it.

2 Q. (By Ms. Kingery) It's an interesting  
3 reading and we have heard it from some other  
4 witnesses as well, however, that wasn't my question.  
5 I had asked, if you recall, whether there was some  
6 other document, a PJM document, perhaps, that would  
7 control the pricing as between Duke and PJM rather  
8 than this document, the stipulation. And I've now  
9 shown you the RAA which I believe you agreed was --  
10 does address pricing, correct?

11 A. What the --

12 MR. KUTIK: Wait. Your Honor, I move to  
13 strike her comments as to what she shows and what her  
14 questions were because the record doesn't show that  
15 that's what she did. If she wants to ask a question  
16 about what this document shows, she should do that.

17 EXAMINER PIRIK: I think, I'm not sure, I  
18 think the witness -- I think you need some  
19 clarification and I think you should go ahead and ask  
20 counsel for the clarification and see if the question  
21 can be more clear for you.

22 THE WITNESS: Thank you.

23 A. Could you rephrase that, please?

24 Q. I'd be happy to.

25 So let's start back at the beginning of

1     this progression. We were talking about whether the  
2     language in the stipulation, the ESP stipulation,  
3     addresses directly the amount that Duke would receive  
4     for its capacity services. Correct? Do you recall  
5     that conversation?

6             A.    Yes, I do.

7             Q.    Okay.

8             A.    And I said that it's clearly stated in  
9     IV.A how Duke would be compensated for capacity for  
10    shopping customers for CRESs. And in my view that's  
11    what the Commission approved and that's how Duke  
12    should be compensated and how they agreed to be  
13    compensated.

14            Q.    Can you identify any words in IV.A that  
15    say Duke shall be compensated in some particular way?

16            A.    Yes. And we've already been through  
17    that, that was the first couple of sentences which  
18    includes the sentence that "PJM shall charge CRESs."  
19    That is how Duke gets paid.

20            Q.    Do you review the retail contracts that  
21    FES enters into with its customers?

22            A.    I don't in this role, no. In my prior  
23    roles I did when I was responsible for mass marketing  
24    and government aggregation and the retail group, but  
25    not as the director of competitive market policies I

1 don't.

2 Q. Okay. And when you were in that previous  
3 role and you were reviewing those contracts, did you  
4 make sure that how FES would get paid was clearly  
5 stated in black and white or did you leave it open to  
6 any kind of potential misunderstanding?

7 MR. KUTIK: Objection, your Honor.  
8 Assumes that there is a "potential misunderstanding."

9 EXAMINER PIRIK: Objection overruled.

10 A. We are always as clear as possible in our  
11 contracts, and I think there's no question that in  
12 the stipulation it's clear as to what we meant, and  
13 the parties that were in the negotiations were very  
14 clear about how Duke would be compensated based on  
15 the final zonal clearing price in the unconstrained  
16 region for both CRESSs and for SSO, and that's all the  
17 load that there is in Duke's territory.

18 Q. Looking at your testimony on page 7, on  
19 line 3 you indicate that you believe that the ESSC  
20 was agreed to in exchange for certain commitments; is  
21 that correct? It's the beginning of line 3.

22 A. Yes.

23 Q. And when you say "these commitments,"  
24 presumably you are referring to the commitments that  
25 you had described previously in that answer where



1     you're referring to the capacity price at FZCP that  
2     we were just discussing; is that correct? Is that  
3     what you meant?

4             A.    No. What I meant was, if you look a  
5     little further down where the quote is on line 7,  
6     that the amount was intended in the ESSC to provide  
7     stability and certainty regarding Duke Energy Ohio's  
8     provision of retail electric service as an FRR  
9     entity. So that quote is what I believe the ESSC was  
10    intended to do in exchange for.

11            Q.    So when you said "in exchange for these  
12    commitments," "these commitments" was referring  
13    forward in your testimony, not backward. Is that --  
14    I'm just trying to understand.

15            A.    Well, the prior commitments as well we're  
16    referring to Duke's role as an FRR entity and how it  
17    would be compensated, so it's both before and after.

18            Q.    Is there anything in the quoted language  
19    from line 7 to line 13 that uses the words "in  
20    exchange"?

21            A.    I think that the words obviously in that  
22    paragraph, "in exchange," does not exist. I think  
23    that it is synonymous with "an amount intended to  
24    provide."

25            Q.    Okay. And is the word "capacity" in that

1       quoted section?

2               A.     Being an FRR entity is related to  
3       capacity, so yes.   That's what that means.

4               Q.     But the word "capacity" is not there, is  
5       it?

6               A.     That's what an FRR entity is related to,  
7       capacity, so it doesn't -- the word doesn't need to  
8       be there to mean that.

9               Q.     But the word, nevertheless is not there.

10              MR. KUTIK:  Objection.

11              EXAMINER PIRIK:  Overruled.

12              A.     The word is not there.

13              Q.     Thank you.

14                     Are you aware of whether Duke Energy Ohio  
15       made any other substantial commitments in the  
16       stipulation that might have been intended to be in  
17       exchange for the ESSC charge?

18              A.     There was a lot of discussion in the  
19       negotiations on both sides.  I think, for example, I  
20       recall that Duke was interested in retaining the  
21       right to still provide the renewables and that's  
22       something in the stipulation that was agreed to.  I  
23       recall that some of the parties wished to have  
24       corporate separation sooner, and what we agreed upon  
25       was a date that Duke thought it could have it

1 completed by, which was December 31st, 2014.

2 So there were a number of things that  
3 were give and take for different reasons.

4 Q. And was one of those that Duke agreed to  
5 go straight to market, in other words, it gave up the  
6 standard service offer customers that it then had  
7 going immediately to 100 percent auction for its  
8 standard service offer?

9 A. I don't think that Duke gave that up. In  
10 my recollection the discussion was that you were --  
11 or, Duke was willing to go to 100 percent market,  
12 they had already previously filed an MRO with the  
13 intent to do that, and so no, I don't consider  
14 that -- that to be a give-up.

15 Q. Of course, the MRO had a glide path, we  
16 may have debated over how long that glide path would  
17 be but it wasn't straight to market, correct?

18 A. That's correct. However, that is the  
19 first MRO, and in my reading of the statute in 4928  
20 that, you know, once you pass the first MRO, it's the  
21 intent that, you know, you would move directly to  
22 market.

23 Q. And did Duke agree in the stipulation to  
24 attempt to end its FRR election a year earlier than  
25 was planned?

1 A. Yes.

2 Q. But it's your understanding that at least  
3 for FES the critical point was that capacity would be  
4 priced at FRR; is that correct?

5 A. I don't know what you mean by "the  
6 critical point." There were a number of things in  
7 the stipulation that were important to all the  
8 parties.

9 Q. Could you turn to page 10 of your  
10 testimony. And could you read the sentence that  
11 starts in the middle of line 6, please.

12 A. "FES, for one, considered capacity  
13 pricing to be a critical part of the agreement."

14 Q. Thank you.

15 MS. KINGERY: We'd like to mark an  
16 exhibit at this point. This would be Exhibit -- Duke  
17 Exhibit 24.

18 EXAMINER PIRIK: The document is so  
19 marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MS. KINGERY: And this is a Transcript of  
22 a FirstEnergy Third Quarter 2011 Earnings Call.

23 EXAMINER PIRIK: Ms. Kingery, how are we  
24 doing?

25 MS. KINGERY: We've still got a ways to

1 go.

2 EXAMINER PIRIK: How long, do you think?

3 MS. KINGERY: A ways.

4 EXAMINER PIRIK: I'm thinking rather  
5 than, since we're going to start at 8:30, perhaps,  
6 you know, we'll mark this exhibit but then we will --

7 MS. KINGERY: I have just one question on  
8 this so maybe I can ask her this question and then --

9 EXAMINER PIRIK: And then we'll move on.

10 MS. KINGERY: Perfect.

11 Q. (By Ms. Kingery) Ms. Noewer, do you  
12 recognize this document?

13 A. No, I don't.

14 Q. Does it appear to be a transcript of the  
15 FirstEnergy third quarter 2011 earnings call?

16 MR. KUTIK: Objection. She's not  
17 familiar with it.

18 Q. Are you aware that the company, that  
19 FirstEnergy has earnings calls each quarter?

20 MS. KINGERY: I'll withdraw the previous  
21 question.

22 EXAMINER PIRIK: I'll allow you to go  
23 forward for foundation.

24 MS. KINGERY: Okay.

25 Q. (By Ms. Kingery) Are you aware that

1 FirstEnergy has earnings calls periodically?

2 A. Yes.

3 Q. And have you ever heard any of those  
4 earnings calls?

5 A. Yes.

6 Q. And are you aware that they are reported  
7 in some form for posterity?

8 A. No, I didn't realize that they all were.

9 Q. Are you aware that any of them are?

10 A. I don't know.

11 Q. Were you here in the hearing room during  
12 Stephen DeMay's testimony?

13 A. No.

14 Q. How about during Keith Trent's testimony?

15 A. Yes.

16 Q. Do you recall some discussion about Duke  
17 Energy's transcripts of earnings calls?

18 A. I'm sorry, I don't.

19 Q. If you could look at page 2 of this  
20 document or the second page, I don't know if it has a  
21 number, do you see at the top there's a heading that  
22 says "Corporate Participants"?

23 MR. KUTIK: Your Honor, I object at this  
24 point.

25 MS. KINGERY: I'm still trying to

1 identify whether she knows anything about this.

2 MR. KUTIK: She's indicated she's not  
3 familiar with the document, she's indicated she's not  
4 familiar with the frequency or the practice of  
5 transcription. This is a document that on its face  
6 is not a company document.

7 EXAMINER PIRIK: I understand, but I'm --  
8 I know she's still trying to work through foundation  
9 and we'll see where it goes. But this, at the bottom  
10 right-hand corner it has a page No. 1.

11 MS. KINGERY: Oh, thank you. Yes, it  
12 does.

13 Q. (By Ms. Kingery) So this is numbered page  
14 1, the second piece of paper.

15 A. I'm there.

16 Q. Okay. Thank you. Under "Corporate  
17 Participants" do you recognize the names of any of  
18 those people?

19 A. Yes, I recognize all of them.

20 Q. And who are they? Are they as they are  
21 identified on the page?

22 A. Tony Alexander is.

23 Q. Okay. And Tony Alexander is, indeed, the  
24 CEO of FirstEnergy?

25 A. Yes.

1           Q.    And would you agree with me that he is  
2           authorized to make statements on behalf of  
3           FirstEnergy?

4           A.    I would assume so, yes.

5                   MS. KINGERY:  Your Honor, I would submit  
6           that this is a document that is clearly a  
7           transcription of a conversation run by the CEO of  
8           FirstEnergy, this witness knows who it is and knows  
9           that he's authorized to speak for the company.

10                  MR. KUTIK:  Your Honor.

11                  EXAMINER PIRIK:  Mr. Kutik.

12                  MR. KUTIK:  Yes, your Honor.  One of the  
13           necessary requirements to go forward and discuss or  
14           much less admit a document into the record is  
15           authentication which is, to understand and develop a  
16           record, an evidentiary basis that shows it's more  
17           likely than not the document is what it purports to  
18           be.  Ms. Kingery hasn't gone anywhere close to that.

19                   The witness hasn't indicated she's  
20           familiar with the document, the witness hasn't  
21           indicated she's familiar with any type of  
22           transcription practice, the witness hasn't indicated  
23           whether this particular reading was done.  All she's  
24           able to do -- Ms. Kingery -- is identify that Tony  
25           Alexander is the CEO of FirstEnergy Corp. and that



1 he's authorized to speak on behalf of the company.

2 That's not enough.

3 EXAMINER PIRIK: Ms. Kingery.

4 MS. KINGERY: I recognize that it's not a  
5 company document. I have tried to find these  
6 transcriptions on FirstEnergy's website and I have  
7 not been able to find them although I know that Duke  
8 provides them, but Thompson Reuters is certainly a  
9 well-known firm and reputable in the industry for  
10 providing accurate and complete documents, so I think  
11 it should be accepted as what it purports to be.

12 MR. KUTIK: But none of those statements  
13 are on the record, your Honor, with respect to  
14 Thompson Reuters and whether this is an accurate  
15 transcription or any of those representations that  
16 Ms. Kingery just made. You can't make it through  
17 assertions of counsel.

18 EXAMINER PIRIK: I'm going to take the  
19 objection under consideration and we're going to  
20 recess for the evening and we'll rule in the morning.

21 I also want to point out that assuming  
22 that tomorrow's our last day of hearing we do need to  
23 mark the comments, and I know that not all the  
24 parties that have submitted comments have typically  
25 been here for all the days that we've been here, so

1 if there is any communication that anyone could maybe  
2 send out an e-mail, kind of looking at staff, if  
3 somebody on staff could send out an e-mail to just  
4 all the parties on your contact list for your e-mails  
5 and just say we are going to mark comments and, you  
6 know, most people won't be here first thing in the  
7 morning, but we need to have everybody here at some  
8 point.

9 MR. JONES: Okay. Yes, your Honor.

10 EXAMINER PIRIK: I would really  
11 appreciate it.

12 MR. KUTIK: Your Honor, and is it the  
13 purpose of marking the comments just so that the  
14 parties have a reference to a particular comment by  
15 referring to it as an exhibit, or are the comments to  
16 be taken as evidence?

17 EXAMINER PIRIK: So that they have the  
18 ability to refer to them as exhibits. The evidence  
19 will be the testimony and the cross-examination.

20 MR. KUTIK: Thank you, your Honor.

21 EXAMINER PIRIK: Are there any questions  
22 before we go off the record?

23 MS. SPILLER: No, your Honor.

24 EXAMINER PIRIK: If not, we will see  
25 you -- thank you very much, we'll see you in the

2099

1 morning.

2 (Thereupon, the hearing was concluded at  
3 6:10 p.m.)

4 - - -

2100

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, April 24, 2013, and carefully compared with my original stenographic notes.

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Maria DiPaolo Jones, Registered  
Diplomate Reporter and CRR and  
Notary Public in and for the  
State of Ohio.

My commission expires June 19, 2016.

(72161-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 04/24/13 - Volume VIII electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.