

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

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

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

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PROCEEDINGS

before Christine M. T. Pirik and Ms. Katie Stenman,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 8:30 a.m. on Thursday,
April 25, 2013.

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VOLUME IX

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1 Thursday Morning Session,
2 April 25, 2013.

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4 EXAMINER PIRIK: Go back on the record.

5 The examiners just handed out their
6 rulings on transcripts IV and V with regard to the
7 confidential information. We've already handed out
8 II and III. Those rulings will stand as described in
9 those documents and the company will be responsible
10 for getting us redacted versions.

11 We will need to work with the court
12 reporters, the Bench will be discussing with them
13 tomorrow exactly how the confidential transcripts are
14 going to be filed and what manner they're going to be
15 filed in, but hopefully what you've been provided
16 will help you in your planning as far as briefing and
17 whatnot as what, you know, at this point in time
18 we're looking forward to.

19 Also, if the company could provide us
20 their proposals for transcripts VI and VII, hopefully
21 by lunch is what we're looking for, then we will be
22 able to finalize those before the end of the day and
23 probably all we'll have to deal with then is
24 transcript VIII that potentially could have
25 confidential information on it.

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SHARON L. NOEWER

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

CROSS-EXAMINATION (Continued)

By Ms. Kingery:

Q. Good morning, Ms. Noewer.

A. Good morning.

Q. In 2011 during the negotiation of the ESP stipulation in Duke Energy Ohio's case you were in charge of the innovative changes to the processes by which utilities and CRES providers would interact; is that correct?

A. Could you be more specific?

Q. Sure. Do you recall that in the ESP stipulation there were a number of requirements that were set out in quite some detail about CRES -- information that would be provided by the utility to CRES providers and how that would occur? Would you like to look at the ESP stipulation?

A. No. I'm still not sure what you're asking me, though. I was involved with the stipulation in discussing all of the issues.

EXAMINER PIRIK: Could you pull the microphone, I don't know why, but.

THE WITNESS: Is that better, your Honor?

1 EXAMINER PIRIK: That will be fine, thank
2 you.

3 Q. Do you have the stipulation in front of
4 you?

5 A. I have what you provided me yesterday,
6 it's the stipulation, it does not have the
7 attachments attached, though.

8 Q. That's fine. Would you turn to page 33.

9 A. Yes.

10 Q. If you look at paragraph O --

11 A. Yes.

12 Q. -- you will see that goes on for a number
13 of pages and it discusses CRES provider data, how
14 they would communicate with the -- with Duke Energy
15 Ohio, et cetera; do you see that? And many other
16 things.

17 A. Yes, I do.

18 Q. And was that something that specifically
19 fell within your supervisory authority and the area
20 that you worked on?

21 A. In 2011 I did not supervise the
22 operations unit at FES, no.

23 Q. So you're saying you did not work on this
24 section of the stipulation.

25 A. I thought you asked me whether I had

1 supervisory responsibility for these activities, and
2 no. I certainly did work on this part of the
3 stipulation as well as the rest of the stipulation.

4 Q. And did the negotiation of this section
5 go on at the same time as the rest of the
6 stipulation?

7 A. We met for many days, so in that sense
8 yes.

9 Q. Were you the primary FES representative
10 working on this section?

11 A. I certainly have a lot of knowledge about
12 these issues. I would not consider myself primary on
13 any issue. We were a combined team working on the
14 stipulation.

15 Q. And that combined team included your
16 general counsel; is that correct?

17 A. Yes.

18 Q. And as well as other attorneys?

19 A. Yes.

20 Q. Would you turn to page 9 of your
21 testimony, please. And if you look at your answer
22 that begins on line 12, you indicate in the first
23 sentence of that response that if this application,
24 in the present proceeding, were to be adopted, the
25 Commission would have to redetermine whether the ESP

1 was more favorable in the aggregate than the expected
2 results of an MRO. Do you see that?

3 A. Yes.

4 Q. Are you aware that this issue has already
5 been addressed by the PUCO?

6 A. What do you mean by "this issue"?

7 Q. The issue of whether the capacity charges
8 that are greater than the market-based capacity
9 charges would have to be considered in that MRO
10 versus ESP test.

11 A. That's not what I'm referring to here.
12 What I'm referring to here is that if Duke Energy
13 Ohio, as they're requesting in this proceeding,
14 chooses not to honor its commitment in the
15 stipulation, which the Commission has already
16 approved as an ESP. If it were to reopen that, then
17 it needs to look at all of the issues that were
18 decided in that ESP, including the ESP versus MRO
19 test that Dr. Lesser describes.

20 Q. And why do you believe that the company
21 would fail that test?

22 A. It's described in Mr. Lesser's testimony.

23 Q. So you don't know.

24 A. I relied on Dr. Lesser's analysis which
25 indicates that it would.

1 Q. And are you aware of whether the
2 Commission has previously determined whether a
3 capacity charge calculated in general in the way that
4 is calculated here would have to be considered in the
5 ESP versus MRO test?

6 MR. KUTIK: Your Honor, I'll object to
7 the extent the question assumes that -- I'll object
8 to the extent the question assumes there has been
9 such a determination or consideration by the
10 Commission.

11 EXAMINER PIRIK: I'll allow the witness
12 to answer if she's aware.

13 A. I do not believe that the Commission has
14 determined that there has been something that has
15 been approved that is at all relative to what Duke is
16 requesting. If you're referring to the AEP order,
17 they were requesting, first of all, embedded costs
18 that they allege were their embedded costs for CRES
19 suppliers and, again, what Duke is requesting in this
20 case is capacity for CRES suppliers and for SSO, both
21 pieces, which is completely distinctively different.
22 And AEP did not have a stipulation as Duke does in
23 this case which covers capacity.

24 So no, I don't think that it's the same
25 and I don't think that it's been determined, and the

1 AEP order is also on an appeal.

2 Q. I'm aware that the AEP order is on
3 appeal, but I didn't ask that. I asked about the
4 Commission's decision.

5 A. That's the one that I'm aware of.

6 Q. So are you aware that the Commission has
7 decided in the AEP case that the MRO versus ESP test
8 did not need to include consideration of the capacity
9 charge that the Commission authorized to AEP?

10 A. Dr. Lesser was the appropriate witness to
11 talk about the MRO versus ESP case. My point in my
12 testimony is that Duke has a stipulation already
13 decided and approved by the Commission. Going back
14 now to ask for something different, capacity based on
15 embedded costs, should reopen the stipulation and the
16 Commission should look at all the issues that it
17 approved.

18 Q. Do you know how much AEP SSO customers
19 are paying for capacity?

20 A. There are a couple of components to that.
21 The Commission approved for CRESs -- to be able to
22 charge CRESs for the difference between 188 per
23 megawatt-day and RPM and defer that recovery for
24 collection at a later date.

25 In terms of what customers are paying,

1 that was a debate in the AEP case itself. So I don't
2 know that AEP demonstrated what customers were paying
3 for capacity that were nonshopping customers; there's
4 some debate on that issue and that was a very highly
5 litigated issue in the case.

6 Q. And do you recall what AEP claimed in
7 that case was what their standard service offer
8 customers were paying?

9 A. I don't recall what amounts they claimed
10 were included in their embedded costs.

11 Q. Would you agree with me that it was more
12 than market?

13 A. I do believe that what they alleged was
14 the amount that they requested was well above market.
15 Again, though, it was not for the nonshopping
16 customers that they were requesting from the
17 Commission that they get any additional recovery. It
18 was just for and from CRES suppliers, and CRES
19 suppliers, then, charge their customers based on
20 whatever price that they agree to with those
21 customers.

22 MS. KINGERY: Your Honor, I would move to
23 strike everything in the response after "well above
24 market" as it was nonresponsive.

25 EXAMINER PIRIK: Denied.

1 Q. Do you recall from the AEP hearing that
2 it was \$355 per megawatt-day that the company claimed
3 was being paid by their standard service offer
4 customers?

5 A. I remember it was a number of different
6 numbers.

7 Q. You were aware that an electric
8 distribution utility's charges are reviewed and
9 approved by the Commission, correct?

10 A. I do believe that an electric
11 distribution utility's distribution charges are
12 approved by -- by the Commission, yes.

13 Q. And are the generation charges reviewed
14 and approved by the Commission?

15 A. I believe that the tariffs are approved
16 by the Commission for generation. I don't believe
17 that, for example, when there's an SSO procurement,
18 that the Commission has to actually approve the
19 price. What it does approve is the results of the
20 auction.

21 Q. And does it approve the process by which
22 those prices would be determined?

23 A. I would assume so, yes.

24 Q. Isn't that what an SSO proceeding is,
25 such as 11-346 or such as Duke's ESP stipulation, the

1 case that resulted in that stipulation?

2 A. The way I understood your question was
3 that you were looking at how the actual charges were
4 set, for example, in an SSO procurement auction.

5 Q. I asked whether the Commission --

6 MR. KUTIK: Had you finished your answer,
7 Ms. Noewer?

8 THE WITNESS: Yes.

9 Q. I asked whether the Commission has
10 approval authority over the setting of generation
11 rates by an EDU.

12 A. I believe that they have, through the ESP
13 and MRO, the ability to approve the ESP or MRO and
14 the process for how the prices for nonshopping
15 customers are set.

16 Q. Good. And, likewise, the Commission has
17 the authority to approve rates for riders that may be
18 charged by the EDU whether those riders are related
19 to generation service or distribution service or
20 transmission service, correct?

21 A. I do believe that the Commission has
22 approval for an EDU's tariffs, yes.

23 Q. And you're certainly aware that the
24 Commission does not have the authority to approve or
25 disapprove of the rates that FES or any other CRES

1 provider might charge its customers, correct?

2 A. I would distinguish, though, between the
3 actual amount of the rate and the types of rates and
4 the process that a CRES supplier uses. The
5 Commission has very prescribed rules about how a CRES
6 provider might interact and provide pricing to
7 customers in the territories in Ohio.

8 Q. But as to the determination of what price
9 you're going to charge in your contracts, the
10 Commission has no say, correct?

11 A. In terms of the amount of the rate,
12 correct.

13 Q. Thank you.

14 Are you aware that in AEP's capacity
15 proceeding FES took the position that electric
16 distribution utilities are not competitors in the
17 Ohio market?

18 A. I don't recall specifically.

19 Q. Might it refresh your recollection if I
20 showed you an FES brief filed in that proceeding?

21 A. It might.

22 Q. Okay.

23 MS. KINGERY: May we approach, your
24 Honor?

25 EXAMINER PIRIK: Yes.

1 MR. KUTIK: Do I get a copy? Thank you.

2 MS. KINGERY: Just a moment, your Honor.

3 Sorry, I failed to write down my page number.

4 Q. Ms. Noewer, if you want to just hold on
5 to that, we'll come back to this question.

6 A. Okay.

7 Q. Ms. Noewer, this case concerns Duke
8 Energy Ohio's request for approval of a capacity
9 charge that is based on embedded costs, correct?

10 A. Well, I believe that this case is based
11 on Duke's request for what it believes is its
12 embedded cost above market for capacity that had
13 already been decided upon in the stipulation and it
14 includes two components, the first is for what it
15 alleges is its embedded cost compared to RPM, that
16 difference for both CRES service and for SSO service,
17 both of which were covered in the stipulation in the
18 specific citations that we mentioned yesterday in
19 I.B, in II.C, II.B which covered the wholesale supply
20 for SSO customers and capacity, and also IV.A which
21 covered the capacity for CRESs.

22 MS. KINGERY: And, your Honor, I would
23 move to strike everything after "embedded cost above
24 market for capacity" as it is nonresponsive.

25 EXAMINER PIRIK: Motion denied.

1 Q. And you believe that market cost is the
2 appropriate measure, correct?

3 A. I do believe that market is the
4 appropriate measure, and, in addition to that, in
5 this case it was already decided --

6 Q. Thank you.

7 A. -- so regardless of whether --

8 Q. We've already gone through that.

9 A. -- I thought that it was above or
10 something different, I do believe that it's already
11 been decided.

12 Q. So you believe that market cost is
13 appropriate.

14 A. Yes, I do believe that market is
15 appropriate --

16 Q. Thank you.

17 A. -- and I do not believe that any
18 above-market subsidy above market is appropriate in
19 this case.

20 Q. And it is your contention, is it not,
21 that the authorization of any capacity charges
22 greater than market would have an anticompetitive
23 impact? Correct?

24 A. I believe that market -- market is the
25 best method for establishing prices in the market,

1 yes.

2 Q. So anything over market would be an
3 anticompetitive subsidy.

4 A. In this case I do believe what Duke has
5 proposed is a subsidy, yes, an anticompetitive
6 subsidy in a number of ways.

7 Q. I asked more broadly than this case. I
8 asked you whether any charge, capacity charge, over
9 market is anticompetitive.

10 MR. KUTIK: Your Honor, I'll object at
11 this point on the grounds of relevance. She's talked
12 about, the witness has talked about what she feels
13 with respect to the charges that are relevant in this
14 case. What -- it might be relevant for charges
15 elsewhere not at issue in this case; it's irrelevant
16 as a matter of definition.

17 EXAMINER PIRIK: Objection overruled.

18 A. That's a very, very broad question. I
19 mean, subsidies can be, you know, I'm sure there are
20 millions of examples of those including tax subsidies
21 for economic development. So --

22 Q. But I asked about --

23 MR. KUTIK: Excuse me. Can she finish
24 her answer, please.

25 A. So in terms of my response to you, I was

1 referring to this case and the types of issues that
2 we're dealing with here.

3 Q. I believe I asked about capacity charges.
4 We can limit it to capacity charges in Ohio if you'd
5 like.

6 A. Could you rephrase the question then,
7 please?

8 Q. Sure. Do you believe that any capacity
9 charge authorized by the PUCO that might -- no, I'm
10 going to rephrase. Strike that.

11 Do you believe that any capacity charge
12 in Ohio that is greater than a market price is going
13 to have an anticompetitive impact on the Ohio
14 electric market?

15 A. If you're using the term "market price,"
16 you're including in that anything that's established
17 at market which would include RPM, would include base
18 residual auctions, would include incremental
19 auctions, it would include bilateral transactions,
20 would include whatever actions that PJM may choose to
21 impose upon generation owners in the market, which I
22 consider all to be market which may not be the same
23 number, then yes.

24 Q. All right. Let's limit it to the BRA and
25 incremental auction process because that's what we've

1 been talking about. Are there any circumstances in
2 which a capacity price greater than the price
3 established under PJM auctions, the BRA and the
4 incremental, would not be anticompetitive?

5 THE WITNESS: Could I hear that question
6 again, please.

7 (Record read.)

8 A. Your question did not limit it to the BRA
9 and incremental auctions because the end of the
10 question asked me about were there any circumstances
11 in which it could be different than that in the
12 market. So I'm still confused by your question.

13 I do believe that there are circumstances
14 where there are bilaterals that take place that might
15 be different from the RPM BRA auction that are still
16 established at market that could be above or below
17 that price that, no, I would not consider to be an
18 anticompetitive subsidy, as an example.

19 Q. Okay. As a person at FES who is in
20 charge of PJM matters you're certainly aware of
21 reliability must-run contracts, correct?

22 A. I'm aware of what reliability must-run
23 units are, yes.

24 Q. And could you explain them, your
25 understanding of them, please?

1 A. Reliability must-run units are units that
2 are required by PJM through PJM's transmission tariff
3 for generation owners who have chosen to shut down
4 those units because they are inefficient or from a
5 financial standpoint they choose not to run those
6 units, they're required by PJM to bring those units
7 back on line for a temporary period until the
8 transmission reliability issue can be fixed, or
9 there's a more least-cost -- a least-cost alternative
10 in the temporary timeframe that would bring the
11 transmission reliability back to the standard that's
12 needed.

13 So it is a, again, through the PJM
14 transmission tariff across its footprint, it's not
15 limited to any particular area, any generation owner
16 who has chosen to shut down a unit could be required
17 to bring one back on line for transmission
18 reliability purposes.

19 Q. Thank you.

20 And has this happened in FES's experience
21 with regard to units that you own?

22 A. Yes.

23 Q. And for those units the capacity charge
24 is substantially higher than market; isn't it?

25 A. Could you repeat that, please?

1 Q. Sure. The amount that FES receives for
2 the capacity from those units is higher than the PJM
3 auction-based prices, correct?

4 A. No. I don't think that's correct at all.
5 What FES receives is an avoided cost on keeping those
6 RMR units running and, again, it's something that
7 from a financial standpoint FES chose to shut down
8 those units because it was not economically viable to
9 keep them running, and it was PJM's request that for
10 a temporary period we keep those units on line until
11 they could get the transmission reliability -- and
12 put in transmission projects to get the reliability
13 that they needed in that area, or other generating
14 owners decided to build facilities that would bring
15 back the reliability that was needed in that
16 particular area.

17 And it is not a capacity payment, it's
18 based on avoided cost. From our perspective, from a
19 financial standpoint, we would rather this had not
20 been imposed upon us.

21 Q. How do your avoided costs compare with
22 the auction-based capacity rates?

23 A. I don't know specifically. I do know
24 that avoided costs don't recover all of your costs,
25 they're just based on, you know, as Dr. Tabors

1 discussed, it's just your, you know, variable costs.

2 Q. So you don't know whether your avoided
3 costs are higher than the auction-based prices.

4 A. I don't specifically know. I do know
5 that it was our choice -- I mean, our perspective
6 from a financial standpoint to shut those units down.
7 And, in fact, I think as Dr. Tabors discussed
8 yesterday, or Dr. Lesser, this is exactly how the
9 market should work, that it's based on market
10 transactions and the effects of the market that PJM
11 then has units that they require to be run for a
12 temporary period so that the transmission reliability
13 gets to the level, again, where they expect that it
14 should be and then puts other fixes in place.

15 Q. So, again, you don't know whether the
16 avoided costs are higher than the market costs,
17 correct?

18 A. I don't specifically know, but they are
19 not an above-market subsidy. They are a result of
20 the market forces in place at the time through PJM
21 and it's designed to be that way.

22 Q. So, again, you don't know, correct?

23 A. With the same commentary that I just
24 said, I already answered that I don't know
25 specifically --

1 Q. Thank you.

2 A. -- and it's still a result of the way
3 that the market works. It is not an above-market
4 subsidy like Duke is requesting in this case.

5 Q. So you believe that rider ESSC is an
6 above-market subsidy -- anticompetitive subsidy?

7 A. It's not something that I discussed in my
8 testimony. You did ask me about it on deposition, so
9 I did offer that opinion when asked. We, in the
10 stipulation itself, excepted out of that provision
11 and did not support it for that reason.

12 Q. So you do believe that it's an
13 anticompetitive subsidy.

14 A. Yes, I do.

15 Q. How about AEP's capacity charge to the
16 extent that it's above market, is that an
17 anticompetitive subsidy?

18 A. Our position in the AEP case was that
19 the -- what AEP was requesting above market was an
20 anticompetitive subsidy, yes.

21 Q. And was what the Commission authorized,
22 in your opinion at this point, an anticompetitive
23 subsidy?

24 A. Yes, and that's on appeal right now.

25 MS. KINGERY: Your Honor, we would like

1 to mark two exhibits at this point. While those are
2 being distributed, just a couple other questions
3 around that.

4 Q. I presume that you would count FES as
5 being among the group that is impacted by that
6 anticompetitive subsidy. In other words, you
7 participate in the market, correct?

8 A. Which subsidy are you referring to?

9 Q. I'll get there. Do you participate in
10 the market?

11 MR. KUTIK: Objection. What market are
12 we talking about?

13 EXAMINER PIRIK: Could you please
14 clarify.

15 Q. I'm talking about the electric market in
16 Ohio for competitive generation services.

17 A. Is the question do we participate in the
18 market in Ohio?

19 Q. Yes.

20 A. Yes. I'm sorry, I thought you had asked
21 me a different question before that.

22 Q. Yes, and then I backed up so I'll
23 withdraw the prior one if that helps.

24 A. Thank you.

25 Q. Okay. So if there is an anticompetitive

1 impact of a subsidy that has been authorized,
2 presumably FES would be impacted by that, correct?

3 THE WITNESS: Could you repeat that,
4 please, for me?

5 Q. I'll restate it.

6 A. Okay.

7 Q. Since you are a member of the market
8 group, you participate in the Ohio electric market,
9 if there is an anticompetitive charge that has been
10 authorized --

11 EXAMINER PIRIK: Ms. Kingery. Could we
12 wait while we do the exhibits?

13 MS. KINGERY: Sure, I apologize.

14 EXAMINER PIRIK: There's too much going
15 on and the witness needs to be able to focus.

16 MS. KINGERY: We would mark these as
17 Exhibits, Duke Energy Ohio Exhibits I believe 25 and
18 26.

19 EXAMINER PIRIK: The documents are so
20 marked.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 EXAMINER PIRIK: Are you going to
23 identify them now?

24 MS. KINGERY: Yes, I am. Duke Energy
25 Ohio 25 will be several pages beginning with a letter

1 that reads "Dear Cincinnati Resident," and it's dated
2 May 25, 2012. And Duke Energy Ohio Exhibit 26 is a
3 series of pages beginning with a letter that says
4 "Dear Resident" and it's dated January 14, 2013.

5 EXAMINER PIRIK: Are you going to focus
6 on these now?

7 MS. KINGERY: Yes, we'll just go ahead
8 and go to these.

9 EXAMINER PIRIK: Okay.

10 Q. (By Ms. Kingery) Ms. Noewer, would you
11 look at Duke Energy Ohio Exhibit 25 that has just
12 been marked.

13 A. Yes.

14 Q. And would you identify that for us,
15 please.

16 A. I've not seen this before. Is there
17 something particular you would like me to call out?

18 Q. I just want you to tell us what it is.
19 Are you familiar with such documents?

20 A. I've not -- I've not seen this before,
21 Ms. Kingery.

22 Q. Are you familiar with such documents is
23 what I asked.

24 EXAMINER PIRIK: Ms. Kingery, I have a
25 question. I'm confused by the last page of the

1 document.

2 MS. KINGERY: Yes.

3 EXAMINER PIRIK: Is this, has this been
4 docketed in a docket?

5 MS. KINGERY: Yes, it has.

6 EXAMINER PIRIK: Is this a complete
7 filing of what the document was?

8 MS. KINGERY: I hope so. It was intended
9 to be.

10 We're trying to check.

11 EXAMINER PIRIK: Okay. Because I don't
12 understand what entity's case is this.

13 MS. KINGERY: It is FirstEnergy
14 Solutions.

15 MR. KUTIK: Well, it says it's filed on
16 behalf of City of Cincinnati.

17 EXAMINER PIRIK: Yeah.

18 MS. KINGERY: By FirstEnergy Solutions, I
19 presume.

20 MR. KUTIK: Filed by and on behalf of and
21 there would normally be a cover letter, among other
22 things, some document that would have a time stamp on
23 it.

24 MS. KINGERY: That's correct, and I
25 apologize. I did not pull these copies so I can't

1 tell you why that front page is not there, but I
2 would agree it normally would have that.

3 Just a moment.

4 I am looking at the docket card for case
5 12-671-EL-GAG, which is the City of Cincinnati's
6 governmental aggregation docket, and indeed on
7 May 15, 2012, an opt-out notice was filed in this
8 docket.

9 EXAMINER PIRIK: Is this the complete
10 document?

11 MR. KUTIK: It is not.

12 MS. KINGERY: It does start out exactly
13 like that, I'll be happy to let you see it. And the
14 docket card says it's 11 pages. And this exhibit is
15 11 pages. And there is no cover letter on it.

16 EXAMINER PIRIK: Let's go off the record.

17 (Discussion off the record.)

18 Q. (By Ms. Kingery) Ms. Noewer, I've just
19 handed you two exhibits that have been marked Duke
20 Energy Ohio Exhibits 25 and 26. Exhibit 25, although
21 it does not have a transmission type of cover letter,
22 that is a cover letter that would transmit the
23 document to Docketing, it is a complete copy of what
24 was docketed in the Cincinnati governmental
25 aggregation docket which is Case No. 12-671-EL-GAG.

1 The other exhibit, Exhibit 26, similarly
2 does not have a cover letter with it but it is a
3 complete copy of the document as docketed with the
4 PUCO on January 3, 2013, in case 10-2366-EL-GAG,
5 which is the City of Reynoldsburg's governmental
6 aggregation docket.

7 MS. KINGERY: And, your Honor, as these
8 are both documents that were filed with the PUCO, I
9 would ask that you take administrative notice of
10 them.

11 EXAMINER PIRIK: We'll take
12 administrative notice.

13 MS. KINGERY: Thank you, your Honor.

14 MR. KUTIK: Your Honor, may I have one
15 moment?

16 EXAMINER PIRIK: Yes.

17 MR. KUTIK: Thank you, your Honor.

18 EXAMINER PIRIK: I think they're done, go
19 ahead, Ms. Kingery.

20 MS. KINGERY: Thank you.

21 Q. (By Ms. Kingery) Ms. Noewer, a few
22 minutes ago we gave you a copy of the Post-Hearing
23 Brief of FirstEnergy Solutions in case 10-2929. Do
24 you recall FES's position in this proceeding with
25 regard to the importance of governmental aggregation?

1 A. Not specifically, no.

2 Q. All right. To refresh your recollection
3 would you please glance at page 54, and I would ask
4 that you take all the time you need to read the first
5 full paragraph on that page.

6 MR. KUTIK: Your Honor, may I have the
7 question read, please?

8 EXAMINER PIRIK: Yes.

9 (Record read.)

10 MR. KUTIK: Thank you.

11 A. I've read the paragraph.

12 Q. Is it true that FES believes that
13 governmental aggregation is one of the most
14 significant mechanisms for residential and smaller
15 commercial customers to shop?

16 A. Yes, and that's stated here and quoted to
17 Mr. Banks' direct testimony in that case.

18 Q. And who is Mr. Banks, please?

19 A. He was the former VP of competitive
20 market policies. He's no longer with the company.

21 Q. Thank you.

22 Would you look at what has been marked as
23 Duke Energy Ohio Exhibit 25, and does this appear to
24 be opt-out materials for the city of Cincinnati's
25 governmental aggregation program?

1 A. As I said, I've not seen this before. I
2 used to be in charge of government aggregation for a
3 number of years and that ended in 2010. This does
4 not look like the form or format that I ever used.
5 That's what it appears to say on its face.

6 Q. Thank you.

7 And who is the provider of generation
8 service under this program?

9 A. It says at the top under the date
10 "Regarding FirstEnergy Solutions' Cincinnati
11 aggregation program," so I would assume that is what
12 that means.

13 Q. And are you aware of the fact that
14 FirstEnergy Solutions does, indeed, serve the City of
15 Cincinnati through its governmental aggregation
16 program?

17 A. I know we did at one time. I don't know
18 what the term of that agreement is and whether or not
19 we presently do.

20 Q. And what is the date of this letter?

21 A. May 25th, 2012.

22 Q. So that occurred during the time when
23 rider ESSC was being charged, correct?

24 A. Yes.

25 Q. And would you look at the second full

1 paragraph on that letter, it says "After researching
2 competitive electricity pricing options, FirstEnergy
3 Solutions Corp., a subsidiary of FirstEnergy Corp.,
4 has been selected to provide 100 % renewable electric
5 generation through May 2014." Did I read that
6 correctly?

7 A. Yes, you did.

8 Q. Let's move to Exhibit 26. So does this
9 seem also to be a -- the opt-out materials for a
10 governmental aggregation program?

11 A. I've not seen this before. It says that,
12 again, at the top of the paper.

13 Q. And this is for what city, please?

14 MR. KUTIK: Your Honor, at this point I
15 object. The witness isn't familiar with the
16 document, it hasn't been established she's familiar
17 with this program so asking her about the document
18 and what it says is improper.

19 MS. KINGERY: Your Honor, this witness
20 has previously been in charge of the part of the
21 company that issued -- that dealt with governmental
22 aggregations, she's very familiar with opt-out
23 materials, she says she's familiar with contracts.
24 And if you look on the fourth page of this packet,
25 there is a contract here that has FirstEnergy

1 Solutions' name right at the top of it. She's aware
2 of governmental aggregation efforts.

3 MR. KUTIK: She testified -- go ahead.

4 MS. KINGERY: I should be able to
5 cross-examine her on it.

6 MR. KUTIK: She testified she had not
7 been involved in this area since 2010, she said with
8 respect to the prior document that it wasn't a format
9 that she had used before and all she was doing and
10 all that she's being asked to do is read from the
11 document. That's improper.

12 MS. KINGERY: It's irrelevant what the
13 format of the document is, your Honor. She's aware
14 of governmental aggregation, she knows how it works,
15 she's told us that she's very experienced with regard
16 to contracts. This is a little more than that.

17 MR. KUTIK: That's not the question she's
18 being asked.

19 EXAMINER PIRIK: I'll allow the question.
20 The witness can answer if she knows, if she's able
21 to.

22 MS. KINGERY: I think my questions are
23 quite simple so she should be able to --

24 EXAMINER PIRIK: They'll be given the
25 weight according to --

1 MS. KINGERY: Thank you.

2 Q. (By Ms. Kingery) So what city are these
3 opt-out materials referring to?

4 MR. KUTIK: Again, your Honor, all she's
5 doing at this point is reading the document. The
6 document is what it is, you've already taken
7 administrative notice. What's the point?

8 MS. KINGERY: Through this entire --

9 EXAMINER PIRIK: I agree. I'm going to
10 allow the witness to answer. Thank you.

11 A. At the top of the first page of the
12 exhibit it says "Reynoldsburg's Aggregation Program."

13 Q. Thank you. And what's the date?

14 A. January 14th, 2013.

15 Q. Thank you.

16 And is that during the time period when
17 AEP was charging a market -- strike that -- a
18 capacity price that was greater than market?

19 I'll withdraw the question. Let's make
20 it a little easier. Is it after the Commission
21 approved the -- or, issued the opinion and order in
22 the capacity order?

23 A. Well, it's after the time that it issued
24 the order. The deferral for the difference between
25 what AEP alleges as its submitted cost of capacity

1 compared to market was put into a deferral that they
2 haven't yet started to recover.

3 Q. Have you read the Commission's order in
4 AEP's ESP proceeding?

5 A. Yes.

6 Q. And did the ESP proceeding address the
7 beginning of the collection of the deferred amounts
8 for capacity?

9 A. What I recall about the recovery of the
10 deferred asset is that they currently have a rate
11 stability rider in place, AEP does, and a dollar per
12 megawatt-hour out of the 350 to \$4 in the RSR would
13 be used to offset the deferral and the deferral
14 itself, I believe, will begin to be recovered at some
15 future period, and it appears as though it will be
16 used as a replacement for the RSR at that point.

17 So I don't believe that they've begun to
18 recover that -- that difference yet.

19 Q. I'm sorry, I thought you said earlier
20 that AEP's capacity order allowed an anticompetitive
21 subsidy.

22 A. Yes. And I do believe that it did.

23 Q. But you've just said now that it's not
24 anticompetitive because they're not collecting it.

25 A. Well, they are collecting the RSR.

1 Q. Okay. So since the RSR is currently
2 being collected -- and you believe the RSR is
3 anticompetitive?

4 A. Both the RSR as well as the Commission's
5 agreement to have collected an above-market amount
6 for deferred recovery, yes, I believe that both of
7 those are, and those are what was decided in the
8 Commission's order that's on appeal.

9 Q. And just so I understand, the deferral
10 itself, prior to its actual collection, is not -- has
11 no anticompetitive impact, correct?

12 A. I believe the approval of it has an
13 anticompetitive impact, yes. I believe that it still
14 is just because it hasn't begun to be collected yet,
15 much like I believe that Duke's request in this case,
16 beyond the fact that it was already decided in the
17 stipulation, that even though the charge itself
18 hasn't been allocated to the customer tariffs
19 specifically yet, it's still an anticompetitive
20 subsidy that's being requested.

21 Q. I thought just a moment ago you said that
22 the -- AEP was not yet charging its deferred capacity
23 amounts and, therefore, it wasn't an anticompetitive
24 subsidy as with regard to Reynoldsburg.

25 A. I don't believe I said that.

1 Q. Okay. Then I misunderstood your
2 testimony, because that's what I heard.

3 So --

4 MR. KUTIK: Your Honor, I move to strike.

5 EXAMINER PIRIK: Denied.

6 Q. So just to close up with regard to
7 Reynoldsburg, January 14, 2013, when the Reynoldsburg
8 aggregation opt-out materials were sent out, or at
9 least the date of the letter, that was after the
10 Commission had approved the capacity order and the
11 ESP for AEP and, thus, was while those
12 anticompetitive charges were in place, correct?

13 MR. KUTIK: Again, note my objection,
14 your Honor, with respect to the reference to this
15 document.

16 EXAMINER PIRIK: It's noted for the
17 record.

18 You can answer.

19 THE WITNESS: Could you repeat the
20 question, please?

21 (Record read.)

22 A. It's while the RSR was in place and where
23 the anticompetitive subsidy for above-market capacity
24 had been approved.

25 Q. Both of which you deem to be

1 anticompetitive, correct?

2 A. Correct.

3 Q. If we look at your testimony on pages 12
4 and 13, you're talking about other state policy
5 issues, is that correct, in both of those questions,
6 as a general statement?

7 A. Yes.

8 Q. And with regard to both of those answers
9 you rely primarily on the testimonies of Dr. Lesser
10 and Dr. Tabors, correct?

11 MR. KUTIK: May I have the question read,
12 your Honor?

13 EXAMINER PIRIK: Yes.

14 (Record read.)

15 A. No.

16 Q. On page 12, line 13, you do reference
17 Dr. Tabors' testimony, correct?

18 A. Yes. I say "As discussed further."

19 Q. Okay. That's fine.

20 And on page 13, line 10, you make
21 reference to Dr. Lesser's testimony, correct?

22 A. Yes.

23 Q. So you have reviewed their testimonies,
24 correct?

25 A. Yes.

1 Q. And you are aware that they also
2 reference the stipulation in Duke Energy Ohio's
3 transmission rider cases, they may have called it the
4 PJM stipulation.

5 A. I recall Dr. Tabors referencing that.

6 Q. Okay.

7 A. I don't recall Dr. Lesser off the top of
8 my head.

9 Q. All right. That's fine.

10 So you are aware of the commitment in the
11 stipulation in that proceeding that Duke Energy Ohio
12 would not file a Section 205 application at FERC,
13 correct?

14 A. I don't recall the specific number, the
15 205.

16 Q. Do you recall that that stipulation
17 included a commitment by Duke that it would not ask
18 FERC for a cost-based capacity rate?

19 A. I would prefer if you have that to put it
20 in front of me so I could read it.

21 Q. Just a minute.

22 MS. KINGERY: I believe this is Duke
23 Energy Ohio Exhibit 15.

24 EXAMINER PIRIK: Yes.

25 Q. We'll get a copy for you, just a minute.

1 A. Thank you.

2 Q. Would you look on page 12, please,
3 paragraph 21. Never mind. Try paragraph 20 that
4 starts on page 11.

5 A. I see -- I see that paragraph.

6 Q. Okay. Thank you.

7 And you are aware that FirstEnergy
8 Solutions participated in the -- in that transmission
9 rider case, Case No. 11-2641, correct?

10 A. I do recall that FES was an intervenor in
11 that case, yes.

12 Q. And participated actively.

13 A. I don't recall how active we were or not.

14 MS. KINGERY: We would mark two exhibits
15 at this point. And I believe these would be 27 and
16 28.

17 EXAMINER PIRIK: The documents are so
18 marked.

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 MS. KINGERY: And we would also ask that
21 you take administrative notice of these as they're
22 both docketed items.

23 EXAMINER PIRIK: We'll need to see them
24 first.

25 MS. KINGERY: Yes.

1 MR. KUTIK: Your Honor, may we go off the
2 record for a minute?

3 EXAMINER PIRIK: Yes.

4 (Discussion off the record.)

5 EXAMINER PIRIK: We'll take a ten-minute
6 break. We'll come back at 10.

7 MS. SPILLER: Thank you, your Honor.

8 (Recess taken.)

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

11 MS. KINGERY: Thank you, your Honor.

12 Q. (By Ms. Kingery) So we had just, I
13 believe, before the break presented you with Duke
14 Energy Ohio Exhibits 27 and 28.

15 MS. KINGERY: And, for the record, Duke
16 Energy Ohio Exhibit 27 is the transcript of the
17 hearing in Case No. 11-2641-EL-RDR, and Duke Energy
18 Ohio Exhibit 28 is an exhibit that was filed in that
19 case and is referenced in the transcript. And I
20 would now renew my motion for administrative notice
21 of these two documents.

22 MR. KUTIK: Your Honor, if the point of
23 these documents is to establish that FirstEnergy
24 Solutions participated in this case, we'll stipulate
25 to that fact.

1 MS. KINGERY: It is not.

2 EXAMINER PIRIK: We'll take
3 administrative notice.

4 Q. (By Ms. Kingery) Ms. Noewer, would you
5 turn to page 6 of the transcript, please, that's
6 Exhibit 27.

7 A. I'm there.

8 Q. Okay. And do you see, starting on line
9 22, that Mr. Garber made an appearance on behalf of
10 FirstEnergy Solutions?

11 A. I see that.

12 Q. And if you look on page 4 of the
13 transcript, on line 14-1/2, there's a reference to an
14 FES exhibit which is identified as interrogatories.

15 A. I see that.

16 Q. And does it say there that that exhibit
17 was both identified and admitted for the record?

18 A. It does say that.

19 Q. Thank you.

20 Now let's turn to page 28 -- not page 28,
21 I'm sorry, Exhibit 28. I misspoke.

22 MR. KUTIK: Your Honor, I'll object at
23 this point. Other than the witness's ability to read
24 I'm not sure what the point of doing this is. It
25 hasn't established that she was participating in this

1 particular hearing, that she's familiar with the
2 transcript other than knowing that it is a transcript
3 and being able to say it is a transcript. To say
4 what's in it, to read it, again, what's the point?

5 EXAMINER PIRIK: Ms. Kingery.

6 MS. KINGERY: Yes. She has indicated
7 that she's familiar with the outcome of this
8 proceeding, and I would also note that many other
9 witnesses in this proceeding have been asked simply
10 to read things into the record.

11 EXAMINER PIRIK: I'll allow the
12 questions.

13 Q. Could you pull out Exhibit 28, please.

14 A. Yes, I have it.

15 Q. And does this appear to be
16 interrogatories submitted by FES in this proceeding?
17 "This proceeding" being the 11-2641.

18 MR. KUTIK: Your Honor, I'll object at
19 this point on the grounds that this document is
20 hearsay. It is being offered by Duke with respect to
21 the statements made by Duke elsewhere. It is not
22 being offered by Duke against FirstEnergy in terms of
23 statements FirstEnergy made.

24 MS. KINGERY: I am not --

25 MR. KUTIK: So any substantive value that

1 this document might have would be hearsay.

2 MS. KINGERY: That might or might not be
3 the case if I were introducing it for purposes of the
4 statements being made by Duke in the responses to the
5 interrogatories --

6 MR. KUTIK: Then what is the purpose --

7 MS. KINGERY: -- but I am not.

8 MR. KUTIK: -- other than to show
9 FirstEnergy participated in this proceeding which we
10 are willing to stipulate?

11 MS. KINGERY: I'll get to my purpose if
12 I'm allowed to ask my questions.

13 EXAMINER PIRIK: I'll allow you to ask
14 about this document.

15 MS. KINGERY: Thank you.

16 Q. (By Ms. Kingery) Ms. Noewer, does that
17 appear to be FirstEnergy Solutions' interrogatories
18 in Case No. 11-2641?

19 A. Just a moment, please, I'm almost through
20 the end.

21 Q. Certainly.

22 A. Yes, it is.

23 Q. And, indeed, if you go back to Exhibit
24 27, page 37, you can see that Mr. Garber asked:

25 "Mr. Wathen, you are aware that FirstEnergy Solutions

1 served interrogatories on Duke in this proceeding?

2 "I am.

3 "And the document that I just handed you,
4 FES Exhibit 1, is a true, completed, accurate copy of
5 those responses?

6 "You are going to make me go through all
7 of these?

8 "Well, I am just asking you -- take your
9 time in flipping through that but I just wanted --
10 I'm just asking if it's a complete copy of Duke's
11 responses.

12 "Answer: My copy seems to be complete."

13 MR. KUTIK: Your Honors, is this a
14 back-door attempt to establish foundation for this
15 document, that is, the interrogatories?

16 EXAMINER PIRIK: I'm just not sure where
17 this is going. I mean, I've allowed you a couple
18 questions but --

19 MS. KINGERY: And I'm about to get there.

20 EXAMINER PIRIK: Okay. Well, let's see
21 where we are.

22 Q. (By Ms. Kingery) Ms. Noewer, what is
23 FES's internal procedures -- procedure with regard to
24 asking discovery questions in the parties -- in the
25 cases that they are parties to?

1 MR. KUTIK: Your Honor, I'll object.
2 Relevance gets to work product, gets to
3 attorney-client privilege. We're way far afield
4 here.

5 EXAMINER PIRIK: I just, I really don't
6 see where this is going. I just don't see how this
7 is relevant to the case, so -- I'll allow one --
8 what's your next question? Without the witness
9 answering this question, what's your next question?

10 Q. (By Ms. Kingery) Ms. Noewer, if you refer
11 back to Exhibit 28, is there any discovery that was
12 propounded by FES with regard to the commitment not
13 to seek a cost-based charge?

14 MR. KUTIK: Objection.

15 MS. KINGERY: Your Honor, that is
16 directly related to this case.

17 MR. KUTIK: How?

18 MS. KINGERY: Your witnesses have brought
19 up the stipulation in this proceeding and have said
20 that it prohibits Duke from making the application
21 that it has made here.

22 MR. KUTIK: Your Honor --

23 EXAMINER PIRIK: Go ahead, Mr. Kutik.

24 MR. KUTIK: I'm sorry?

25 EXAMINER PIRIK: Go ahead.

1 MR. KUTIK: Whether FirstEnergy asked a
2 question in discovery about prohibiting Duke from
3 going forward with the 205 filing is not more likely
4 than not to establish a certain fact and, therefore,
5 isn't probative of anything in this case, any
6 position the company took or is taking in this case.

7 MS. KINGERY: This witness has provided
8 testimony indicating her interpretation of a variety
9 of stipulation provisions and she's relying on the
10 testimony of Dr. Lesser and Dr. Tabors, and we know
11 that there has been other testimony from FES's
12 witnesses about the interrelationship between the
13 transmission case stipulation and the ESP stipulation
14 and how that might impact the present application.

15 MR. KUTIK: So is --

16 MS. KINGERY: I'm just trying to get an
17 understanding of what FES's intent was in the
18 transmission case with regard to that stipulation and
19 that particular provision.

20 MR. KUTIK: Well, why don't you ask that
21 question. It doesn't matter --

22 EXAMINER PIRIK: Yeah, I understand. I
23 don't see where these two documents are, and we took
24 administrative notice of them, FES is obviously
25 involved in that docket. If you have a specific

1 question that this witness is knowledgeable about
2 with regard to this case, then perhaps she'll be able
3 to answer that, but I don't see where this is going
4 with these two documents.

5 Q. (By Ms. Kingery) Ms. Noewer, do you have
6 any understanding of what FirstEnergy Solutions'
7 intent was in the transmission rider case with regard
8 to the provision in the stipulation that I asked you
9 to read a few minutes ago?

10 A. Do you mean the stipulation that you just
11 handed me, the exhibit -- mine doesn't have an
12 exhibit number on it, in 11-2641?

13 Q. Yes, ma'am.

14 A. Our intent here was to ask questions.

15 Q. No. I asked you about the stipulation in
16 Case No. 2641. And if you recall, I've asked you to
17 look at a particular provision in which Duke Energy
18 Ohio committed not to go to FERC for a cost-based
19 rate for its capacity.

20 MR. KUTIK: Your Honor --

21 Q. Do you recall that?

22 MR. KUTIK: -- there's been no evidence
23 established that FirstEnergy was a signatory to the
24 stipulation. So asking what FirstEnergy's intent was
25 with respect to the stipulation is a non sequitur.

1 They had no intent in entering into the stipulation
2 since they didn't enter into the stipulation.

3 MS. KINGERY: Your Honor, I didn't ask, I
4 don't believe, about whether -- what their intent was
5 in entering the stipulation. If I did, I misspoke
6 and I would rephrase to say -- to ask what their
7 intent was with regard to the stipulation.

8 A stipulation that I would note they did
9 not oppose even though they participated in the
10 hearing on this case.

11 MR. KUTIK: Well, I believe, your Honor,
12 the witness asked -- answered that question which was
13 to ask questions. And then Ms. Kingery was
14 dissatisfied with that answer and repeated the
15 question. So I'm not sure where we are.

16 MS. KINGERY: I don't believe the witness
17 was looking at the stipulation at that point. It
18 seemed to me that she was looking at the
19 interrogatories that had just been handed to her.

20 EXAMINER PIRIK: Okay.

21 MS. GRADY: Your Honor.

22 EXAMINER PIRIK: I think to the extent
23 that you're asking what FES's intent was in this
24 docket, I would just caution the witness that if it
25 hinges on attorney-client privilege as far as what

1 their intent was in signing or, rather, not signing
2 the stipulation, that would not be appropriate for
3 cross-examination. But, I mean, to the extent that
4 there's anything that's not privileged, then I think
5 it's fine to answer.

6 Do you remember what the question was?

7 THE WITNESS: I'd like to have it
8 restated, please, thank you.

9 MS. GRADY: Your Honor.

10 EXAMINER PIRIK: No, I just ruled on
11 this, we're done.

12 MS. GRADY: I just --

13 EXAMINER PIRIK: We're done.

14 MS. GRADY: A clarification as to what
15 the exhibit was, the number. I don't know what
16 stipulation we're talking about.

17 EXAMINER PIRIK: We've been talking about
18 Duke's Exhibit 15.

19 MS. GRADY: 15, thank you.

20 EXAMINER PIRIK: I think it's back at
21 10:16. I'll read it.

22 "Do you have any understanding of what
23 FERC's -- or FES Solutions' intent was in the
24 transmission rider case with regard to the provision
25 in the stipulation that I asked you to read a few

1 minutes ago?"

2 MS. KINGERY: Thank you, your Honor.

3 A. No, I don't remember any specific intent
4 with respect to that provision. I recall our being
5 very interested in understanding, since this was a
6 transmission case, it was about BTR and RTO splitting
7 the transmission between market based and nonmarket
8 based that we were very interested in making sure we
9 had a very clear understanding of how that process
10 would work and the transmission riders would be
11 split. Any other -- I don't recall anything else.

12 Q. All right. Thank you.

13 And one final thing that I wanted to go
14 back to, some time ago we had presented you with a
15 copy of the post-hearing brief filed by FES in Case
16 No. 10-2929. Do you still have that in front of you?

17 A. Give me a minute here to locate that.

18 Q. We did not mark this as an exhibit, we
19 just presented it to you to help you refresh your
20 recollection.

21 A. Okay, I have it.

22 Q. All right. Thank you.

23 And we had been talking at that time
24 about whether you recalled FES's position in that
25 case with regard to whether an electric distribution

1 utility should be deemed a competitor in the electric
2 market in Ohio. Do you recall that discussion?

3 A. I do.

4 Q. Would you turn to page 59, please. And
5 could you read the -- or, I'll just go ahead and read
6 it and see whether this helps you. And I'm starting
7 under the heading that says "3" I'm sorry the print
8 is so small. "AEP Ohio is apparently a 'bundled
9 company.' As such, it has powers and
10 opportunities --"

11 A. I'm sorry, Ms. Kingery, could you direct
12 me to the place you're reading again?

13 Q. Yeah, page 59 right under the heading
14 "3."

15 A. Okay.

16 Q. "AEP Ohio is apparently a 'bundled
17 company.' As such, it has powers and opportunities
18 not available to other CRES providers against whom it
19 competes to provide electric generation service both
20 in and outside of its service territory. AEP Ohio's
21 status as a bundled company and its associated market
22 power are antithetical to an effective competitive
23 market. '[T]he distribution utility should not be
24 viewed as a competitor. They should be viewed as
25 indifferent to the power that flows on their lines.

1 That attribute is a key attribute to a well
2 functioning, competitive market.'" "

3 Did I read that correctly?

4 A. Yes, you did.

5 Q. And does that refresh your recollection
6 about FirstEnergy Solutions' position with regard to
7 the EDU as a competitor?

8 A. It does refresh my recollection. If you
9 look at the language there, what it's referring to is
10 the utility portion, the wires business of an
11 electric utility, and it's distinct from this case.

12 If you're looking at Duke Energy Ohio,
13 Duke Energy Ohio as a generation owner does compete
14 in the market every day. They already competed with
15 FES in the '15-'16 base residual auction and competes
16 next month in the '16-'17 base residual auction. It
17 also competes in the PJM energy markets on a daily
18 basis.

19 So to the extent that it receives any
20 subsidy, it can use that to invest in its generating
21 facilities and add upgrades like environmental
22 controls, keeping those inefficient generating units
23 in the market, and that depresses energy prices in
24 the short term, but -- because more efficient units
25 then don't come on line, it raises energy prices in

1 the long term and, therefore, then, that's harmful to
2 the competitive market.

3 Now, DEO also, as DERS, D-E-R-S, is a
4 retail competitor, a direct retail competitor of
5 FirstEnergy Solutions in the market and any affiliate
6 that DEO transfers its generating units to could also
7 become a retail competitor of FES to the extent that
8 it just applies for a license in Ohio.

9 So any subsidy that DEO receives as the
10 generating owner, as well as with the subsidiaries,
11 could use those funds to allow those retail
12 competitors to bid below their cost structure in
13 offering retail services to customers and that is an
14 anticompetitive subsidy. There's also DERS as DECAM,
15 which is the Commercial Asset Management Group, which
16 is a wholesale supplier and a competitor in Ohio, and
17 a winning bidder in those SSO procurements in Ohio.
18 So in that sense they compete with wholesale
19 suppliers like FES.

20 And DECAM as well is a generation owner,
21 so they compete in the BRAs as competitors. So for
22 all of those reasons I believe that this is referring
23 to the utility itself and not necessarily generation
24 owner, retail competitors and suppliers, and
25 wholesale suppliers. Those are all DEO entities that

1 compete with FES.

2 MS. KINGERY: Your Honor, I would first
3 move to strike all of that response after the first
4 sentence, in part because it was nonresponsive to my
5 question, and in part because she is talking about
6 entities that are entirely irrelevant to this case
7 such as DECAM and Duke Energy Retail.

8 EXAMINER PIRIK: Denied.

9 Q. And all of the competition that you were
10 just talking about was at the wholesale level,
11 correct?

12 A. No.

13 Q. You were talking about wholesale
14 competition in the PJM auctions, correct?

15 A. In part. I also mentioned retail
16 competition at SSO procurements. I said retail
17 suppliers, wholesale suppliers, and wholesale
18 suppliers as generation owners, all of those entities
19 that Duke are competitors with FES and others in the
20 market.

21 Q. Is Duke Energy Retail part of Duke Energy
22 Ohio?

23 A. It's a subsidiary, yes.

24 Q. Is it part of Duke Energy Ohio?

25 A. It's a subsidiary, yes.

1 Q. On what do you base that belief?

2 A. That it's a subsidiary? It's in their
3 10-K, in your 10-K. Or 10-Q.

4 Q. And the involvement with the PJM auctions
5 is wholesale, correct?

6 A. Could you be more specific about what you
7 mean by "the involvement"?

8 Q. When FirstEnergy Solutions participates
9 in the PJM auctions, do you believe that those are
10 wholesale transactions that are being bid on?

11 A. When I was referring to the base residual
12 auction and the incremental auctions in the PJM
13 capacity market as a whole, yes, those are wholesale.

14 Q. And the auctions that Duke Energy Ohio
15 runs for its SSO load providers, those are wholesale
16 transactions; are they not?

17 A. It's for service to retail customers, the
18 auction itself is for wholesale suppliers to provide
19 the competitive wholesale service -- I apologize.

20 EXAMINER PIRIK: It's fine.

21 MR. KUTIK: Just don't lean into it.

22 EXAMINER PIRIK: Yeah, don't lean into
23 it.

24 THE WITNESS: I'm sorry, I forgot where I
25 left off.

1 (Record read.)

2 A. Yes. So wholesale suppliers provide that
3 competitive service in bids which then Duke Energy
4 uses as its supply for its SSO customers.

5 MS. KINGERY: Thank you.

6 We have nothing further, your Honor.

7 EXAMINER PIRIK: Thank you.

8 Staff?

9 MR. BEELER: No questions, your Honor.

10 EXAMINER PIRIK: Redirect?

11 MR. KUTIK: Yes, your Honor.

12 - - -

13 REDIRECT EXAMINATION

14 By Mr. Kutik:

15 Q. Ms. Noewer, you were shown some documents
16 which were filed apparently at the PUCO, and these
17 were letters and other forms that went out to, in one
18 case Cincinnati residents, apparently, and in another
19 case residents to the City of Reynoldsburg with
20 respect to government aggregation.

21 Does the fact that FirstEnergy Solutions
22 may have been successful in obtaining government
23 aggregation agreements with Reynoldsburg and
24 Cincinnati potentially beating out Duke, Duke's
25 affiliates, mean, in your view, that the subsidies

1 that you've discussed with respect to AEP or with
2 respect to DEO are not anticompetitive?

3 A. No. It doesn't change my opinion that
4 the subsidies that Duke is requesting are
5 anticompetitive. And, in fact, we have seen already,
6 had an example of the ESSC charge that was placed on
7 customers' bills, and on the bill format it's listed
8 as a generation charge. And we've had customers call
9 us and say that they are very upset because they
10 believe that the charge that FirstEnergy Solutions
11 had given them, their offer, covered their
12 generation, and you could see from the bill that they
13 felt like they were being charged twice.

14 So we have already seen customer impacts
15 from that, and customers basically questioned their
16 decision of shopping and whether they made the right
17 choice. And not only that, those customers are the
18 customers that called. There are customers who don't
19 call, and that might even be worse, and they just
20 don't call and give us a chance to explain that
21 that's not a charge from us, that's a charge from the
22 utility itself.

23 MR. KUTIK: That's all I have, your
24 Honor.

25 EXAMINER PIRIK: Recross?

1 MS. KINGERY: Just a couple, your Honor.

2 - - -

3 RE-CROSS-EXAMINATION

4 By Ms. Kingery:

5 Q. Do you know how bill formats are
6 approved?

7 A. Yes.

8 Q. Who approves them?

9 A. The Commission.

10 Q. Thank you.

11 And --

12 MS. KINGERY: That's it. Thank you, your
13 Honor.

14 EXAMINER PIRIK: Okay. Thank you.
15 Thank you very much.

16 THE WITNESS: Thank you.

17 MR. KUTIK: At this time, your Honor, we
18 move for admission of FES Exhibit 3.

19 EXAMINER PIRIK: Are there any
20 objections?

21 Hearing none, FES Exhibit 3 shall be
22 admitted.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 EXAMINER PIRIK: I believe the company
25 has two exhibits.

1 MS. KINGERY: Yes, your Honor. We had
2 Exhibits 25 and 26 that we took administrative notice
3 of, I believe, and 27 and 28 also were administrative
4 notice.

5 EXAMINER PIRIK: I believe we have 23 and
6 24.

7 MR. KUTIK: What is 23, your Honor?

8 EXAMINER PIRIK: It's a one-page e-mail.
9 I think we're just talking about 23.

10 MS. KINGERY: 23 which was the e-mail?

11 EXAMINER PIRIK: Unless you, I mean -- 24
12 I think the Bench had already decided was not
13 appropriate so we're not going to --

14 MS. KINGERY: Okay, well, we would move
15 for the admission of Duke Energy Ohio Exhibit 23.

16 MR. KUTIK: No objections.

17 EXAMINER PIRIK: No objections, it shall
18 be admitted into the record.

19 MS. KINGERY: Thank you.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 EXAMINER PIRIK: Thank you very much.

22 Before we go forward with our next
23 witness, we had talked about marking the comments and
24 I think we have representatives from all of the
25 parties, so why don't we do that so that if they have

1 other things they need to do, we can move on.

2 So I'm going to, I think the most
3 efficient way to do this is I have a list of what I
4 understand the parties who filed comments are, I will
5 call them off and you can tell me what you want to
6 mark them as. We will mark them accordingly. And
7 then we'll kind of do a review.

8 OPAE.

9 MS. MOONEY: Yes, your Honor. OPAE would
10 mark as OPAE Exhibit 1 OPAE's comments filed
11 January 2nd, 2013.

12 EXAMINER PIRIK: Thank you.

13 IEU.

14 MR. DARR: These would be IEU Exhibits 17
15 and 18, IEU initial comments will be 17 filed on
16 January 2nd, 2013, and Exhibit 18 will be IEU's reply
17 comments filed on February 1st, 2013.

18 EXAMINER PIRIK: Okay.

19 Cincinnati?

20 MR. O'BRIEN: Thank you, your Honor. The
21 City of Cincinnati would mark as Cincinnati Exhibit
22 No. 1 the comments of the City of Cincinnati filed on
23 January 2nd, 2013.

24 EXAMINER PIRIK: OMA. I think you're OMA
25 also. Are you doing OMA?

1 MR. O'BRIEN: I'm not OMA, your Honor.

2 EXAMINER PIRIK: Who's doing OMA?

3 I guess we don't have everybody here.
4 Staff?

5 MR. BEELER: Thank you, your Honor.
6 Staff would like to mark as Staff Exhibit 2 the
7 initial comments submitted on behalf of the staff
8 submitted January 2nd, 2013.

9 EXAMINER PIRIK: FES?

10 MR. HAYDEN: Thank you, your Honor. FES
11 would ask to mark as FES Exhibit 30 the comments of
12 FirstEnergy Solutions filed on January 2nd, 2013.

13 EXAMINER PIRIK: OCC.

14 MS. COHN: Thank you, your Honor, on
15 behalf of OCC and OEG we would ask that the comments
16 filed January 2nd, 2013, by OCC and OEG, would be
17 marked as OCC-OEG Joint Exhibit 1 and the letter
18 filed in reply -- in lieu of reply comments filed
19 February 1st be marked as OCC-OEG Exhibit 2.

20 EXAMINER PIRIK: Thank you.

21 AEP?

22 MR. NOURSE: Thank you, your Honor. On
23 behalf of Ohio Power Company could we mark the
24 initial comments of Ohio Power Company dated
25 January 2nd, 2013, as Ohio Power Exhibit 1, please.

1 EXAMINER PIRIK: Okay.

2 Kroger.

3 MS. BOJKO: Yes. Thank you, your Honor.

4 Could we please mark as Kroger Exhibit No. 2 the
5 initial comments filed on January 2nd, 2013, and then
6 additionally as Kroger Exhibit No. 3 the reply
7 comments that were filed on February 1st, 2013.

8 Thank you.

9 EXAMINER PIRIK: Duke?

10 MS. SPILLER: Yes, your Honor. Thank
11 you. Duke Energy Ohio would ask that its reply
12 comments be marked as Duke Energy Ohio Exhibit No.
13 29.

14 EXAMINER PIRIK: Is there anyone that I
15 missed?

16 MS. PETRUCCI: Your Honors, I would just
17 note that RESA did not file comments but filed a
18 letter on February 3rd, I believe, 2013, indicating
19 that it wasn't filing comments but had stated its
20 position in its motion to intervene in the
21 proceeding.

22 Similarly, Constellation NewEnergy and
23 Exelon Generation filed a similar letter on
24 January 3rd, 2013. And Interstate Gas Supply also
25 filed a similar letter on January 3rd, 2013.

1 EXAMINER PIRIK: I think, in keeping with
2 the other things that we have marked, do you want to
3 mark each of those as those entities' Exhibits 1?

4 MS. PETRUCCI: We can certainly do that.

5 EXAMINER PIRIK: Why don't we do that,
6 just so everyone's clear on what everyone's initial
7 positions were.

8 Anyone else? I know OMA is not here, if
9 they do arrive later, we will mark their comments, if
10 not, they won't get to do that. Anything else?

11 All of the comments and replies and
12 letters will be marked according to what counsel has
13 designated.

14 (EXHIBITS MARKED FOR IDENTIFICATION.)

15 EXAMINER PIRIK: Are there any objections
16 to admitting them into the record?

17 None. They will be admitted into the
18 record.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

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

21 (Discussion off the record.)

22 MS. GRADY: OCC calls to the witness
23 stand David J. Efron.

24 EXAMINER PIRIK: Please raise your right
25 hand.

1 (Witness sworn.)

2 EXAMINER PIRIK: Thank you.

3 - - -

4 DAVID J. EFFRON

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

7 DIRECT EXAMINATION

8 By Ms. Grady:

9 Q. Good morning, Mr. Effron.

10 A. Good morning.

11 Q. Can you state your name and your business
12 address for the record, please.

13 A. Yes. My name is David J. Effron --

14 MR. KUTIK: You need to turn your
15 microphone on.

16 A. My name is David J. Effron. My address
17 is 12 Pond Path, North Hampton, New Hampshire.

18 Q. And, Mr. Effron, for purposes of this
19 proceeding by whom are you employed and in what
20 capacity?

21 A. Well, I'm self-employed doing business as
22 Berkshire Consulting Service, I've been retained by
23 the Office of Consumers' Counsel to provide testimony
24 in this case.

25 MS. GRADY: Your Honor, at this time I

1 would like to mark four exhibits which have been --
2 which we have taken the liberty of passing out to the
3 Bench as well as the court reporter. The first
4 exhibit that I want marked as OCC Exhibit No. 25 is
5 the direct testimony of David J. Effron filed
6 March 26, 2013.

7 EXAMINER PIRIK: Why don't you go ahead
8 and mark -- hold on just a second but we'll go ahead
9 and mark all of them.

10 MS. GRADY: Your Honor, thank you. The
11 next exhibit that I want marked as OCC Exhibit 25A is
12 the Direct Testimony of David J. Effron, the
13 confidential version, filed March 26, 2013.

14 EXAMINER PIRIK: Those documents will be
15 so marked.

16 (EXHIBITS MARKED FOR IDENTIFICATION.)

17 MS. GRADY: The third document I want
18 marked for identification purposes as OCC Exhibit No.
19 26 is the Supplemental Direct Testimony of David J.
20 Effron, public version, filed April 9th, 2013.

21 EXAMINER PIRIK: Those documents will be
22 marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. GRADY: And, finally, your Honor, we
25 would like marked for identification purposes as OCC

1 Exhibit No. 26A, the Supplemental Direct Testimony of
2 David J. Effron, confidential version, filed
3 April 9th, 2013.

4 EXAMINER PIRIK: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. (By Ms. Grady) Mr. Effron, do you have
7 before you the exhibits that have been marked as 25,
8 25A, 26, and 26A?

9 A. Yes, I do.

10 Q. And let's start with the documents 25 and
11 25A. Can you identify those documents.

12 A. Yes. That's my prefiled direct
13 testimony, the public version and the confidential
14 version.

15 Q. And with respect to those documents,
16 Mr. Effron, do you have any additions, corrections,
17 or deletions to those documents?

18 A. I do have a few clerical-type corrections
19 to them. I'll just take a couple minutes and read
20 them into the record. If you could refer first to
21 page 3, line 9, at the second-to-last word from the
22 end of the line, the word "the," T-H-E, should be
23 stricken.

24 Next, on page 5 at line 15, after the
25 second word on the line, utilities, rather than a

1 comma there should be a period, and the three words
2 after that, "but that rather" should be stricken.

3 Next, on page 7 at line 16 the reference
4 to "Mr. Woolridge" should be to "Dr. Woolridge."

5 On page 9 at line 12 the first words
6 after the opening quotes about midway through the
7 line, the words "capacity charge" should read "the
8 cost-based capacity charge."

9 On page 12 at line 6 the words "general
10 and intangible function" should be changed to
11 "general plant to the production function." I'll
12 read that again. The words "general and intangible
13 function" should read "general plant to the
14 production function."

15 Q. Quickly, Mr. Effron, so the sentence that
16 you have corrected should read "Second, the
17 allocation factor used to allocate the general plant
18 to the production function should be modified"; is
19 that correct"?

20 A. That's correct, that's the way it should
21 read.

22 Q. Thank you.

23 A. On page 13 at line 15 after the word
24 "consistent" the word "with" should be inserted.

25 On page 15, line 4, the number there

1 should be "6,056,000" rather than "6,036,000."

2 On page 23 at line 18, towards the end of
3 the line there should be a hyphen between
4 "generation" and "related."

5 And, finally, on page 25, line 10, the
6 year there in the middle of the line rather than
7 "2012" should be "2000."

8 That completes my corrections.

9 Q. Did you have any additions, corrections,
10 or deletions to Exhibit 26?

11 A. No, I do not.

12 Q. Mr. Effron, if I were to ask you -- or,
13 let me strike that.

14 Were these documents prepared by you or
15 under your direct supervision and control?

16 A. Yes, they were.

17 Q. And, again, just so the record is clear,
18 we're talking about the direct testimony as well as
19 the supplemental direct testimony.

20 A. That applies to both of them, that's
21 correct.

22 Q. Now, Mr. Effron, if I were to ask you the
23 questions that are posed in your direct testimony and
24 your supplemental direct testimony today, would your
25 answers be the same?

1 A. Yes, they would.

2 MS. GRADY: Your Honor, at this time I
3 would tender Mr. Effron for cross-examination.

4 EXAMINER PIRIK: Do any of the
5 intervenors have any cross-examination?

6 We're going to turn to Duke now but we
7 need to do the confidential pieces.

8 MS. SPILLER: Yes, your Honor. And I
9 will start with 25 and 25A, please. And the first
10 proposed redaction from the Consumers' Counsel that I
11 show is on page 19 of Mr. Effron's testimony,
12 proposed redactions on lines 10, 11, and 13. I
13 certainly would agree that the numeric information,
14 understanding that dollar signs would not be
15 redacted, but that the numeric information be
16 identified -- or, be identified as confidential. I
17 believe that the line -- the word on line 11 is in
18 the public record.

19 EXAMINER PIRIK: Okay.

20 MS. SPILLER: And then, your Honor, we
21 move forward to the attachments or schedules as
22 they've been identified. With respect to Schedule
23 DJE-1, Duke Energy Ohio is proposing for purposes of
24 confidential information it would be the -- under
25 line (G), Operation and Maintenance, the final number

1 under the Revenue Requirement column, as well as the
2 number under the Revenue and Expense column.

3 EXAMINER PIRIK: I'm not seeing line (G).

4 MS. SPILLER: Yes, on that same line (G).
5 So the two proposed redactions on that line (G) we
6 believe are appropriate.

7 The information, the numeric information
8 above line (G), the footnotes were provided that link
9 you to other schedules which were not confidential,
10 which is why we're requesting the confidential
11 treatment of line (G), but in addition to that we
12 believe that actually from Total Adjustments down
13 should be redacted, otherwise you can back into line
14 (G).

15 EXAMINER PIRIK: But that's already in
16 the open record and we can't do anything about that.
17 It's already been filed.

18 MS. SPILLER: Your Honor, the line, the
19 information on (G) we believe is confidential
20 consistent with DJE-5. At this point I suspect it
21 can probably be deduced from what's in the record,
22 though.

23 EXAMINER PIRIK: Yeah, we can't do
24 anything about what's already been filed.

25 MS. SPILLER: Right.

1 With that said, your Honor, DJE-5, I'm
2 assuming, would still be kept confidential but for
3 the allocation to demand which I believe has already
4 been released.

5 EXAMINER PIRIK: So we're looking at
6 DJE-5.

7 MS. SPILLER: 5 and 1 are the only
8 confidential documents in terms of Mr. Effron's
9 schedules.

10 EXAMINER PIRIK: On DJE-5, line (A),
11 after the (A), and then you're saying after
12 "Adjustment to O&M Expenses"?

13 MS. SPILLER: Correct.

14 EXAMINER PIRIK: And then after
15 "Adjustment to Demand Related Production Expenses."

16 MS. SPILLER: Correct.

17 EXAMINER PIRIK: The other item on the
18 second would be open.

19 MS. SPILLER: Correct. I believe that's
20 already on the record, your Honor.

21 EXAMINER PIRIK: So just to be clear,
22 we're looking at line (G), everything to the right on
23 DJE-1, those two items would be confidential.

24 MS. SPILLER: Yes, your Honor.

25 EXAMINER PIRIK: And then the ones I just

1 mentioned on DJE-5 would be confidential?

2 MS. SPILLER: Yes, your Honor.

3 EXAMINER PIRIK: Are there any objections
4 to those items being confidential in Exhibit 25A?
5 Yes, 25A.

6 Hearing none, those items will be --
7 protective order will be granted.

8 Moving on to 26A.

9 MS. SPILLER: And, your Honor, with
10 respect to 26A, before we address the confidential
11 elements of Mr. Effron's testimony I would move to
12 strike the testimony. The testimony deadline for the
13 intervenors was March 26, 2013. This testimony was
14 filed well after that filing date.

15 EXAMINER PIRIK: I think that's a good
16 point. The Bench was wondering that also. And there
17 was no motion requesting that this even be accepted.
18 So I guess I'm looking to OCC to explain exactly or,
19 you know, I guess I'm giving you an opportunity to
20 move that we accept this.

21 MS. GRADY: Thank you, your Honor. I
22 would move that we accept the supplemental direct
23 testimony of Mr. Effron filed April 9th, 2013. We
24 believe it's well within your authority to do so.
25 There is good cause. As you may be aware, Mr. Effron

1 reserved his right to incorporate new information
2 that subsequently became available after the timing
3 of the filing of his testimony, as do many witnesses
4 in this proceeding. We received discovery responses
5 subsequent to the filing of Mr. Effron's testimony on
6 March 26, 2013, and that is the purpose of the
7 supplemental direct testimony, to present the
8 discovery -- the information that was subsequently
9 discovered that is highly relevant to this
10 proceeding. And on that basis we believe there is
11 good cause shown and that we would move to file
12 the -- or move for the Commission to accept the
13 supplemental direct testimony of Mr. Effron.

14 MS. SPILLER: And, your Honor, I would
15 just briefly, if I may, when we were before the Bench
16 on March 7, 2013, an expedited discovery process was
17 identified. The filing date for intervenor testimony
18 was also identified. So Consumers' Counsel
19 understood at that time what needed to be done in
20 terms of discovery so that they could prepare their
21 intervenor testimony.

22 The fact that they went and issued
23 discovery after the date by which their intervenor
24 testimony needed to be filed was a decision fully on
25 the shoulders of the Consumers' Counsel and now they

1 want to rely upon that fact to allow for the
2 submission of untimely supplemental discovery. It
3 was discovery that was provided to the company after
4 Mr. Effron had been deposed, and I think an
5 opportunity to further inquire of him was not -- was
6 not fair to Duke Energy Ohio. So if we're talking
7 about weighing the equities, I don't think Duke
8 Energy Ohio should be prejudiced by the fact that the
9 Consumers' Counsel did not tender in a timely fashion
10 the discovery that they believed they needed for
11 their witness.

12 MS. GRADY: If I may --

13 EXAMINER PIRIK: Go ahead.

14 MS. GRADY: -- briefly respond. Your
15 Honor, we do not think it prejudicial to the company.
16 Mr. Effron was deposed and there was no indication
17 after his testimony was filed that the company had
18 any questions or would seek to further depose
19 Mr. Effron. We would have been happy to offer
20 Mr. Effron up for subsequent deposition but we were
21 never informed that this was an issue.

22 This is the first that we have heard that
23 there is a problem with the supplemental direct
24 testimony. I would have expected, had this issue
25 been raised or I would have expected the company to

1 raise this issue with OCC, we would have been very
2 happy to provide Mr. Effron.

3 Additionally, your Honor, the information
4 received is not prejudicial to the company. The
5 company is well aware of the information that is
6 presented by David J. Effron because it came from the
7 company's deposition of Mr. Savoy and came from
8 company exhibits. So there is no surprise, nor
9 should there be any prejudice, from permitting
10 Mr. Effron's supplemental testimony to be presented.

11 EXAMINER PIRIK: I do hear what you're
12 saying, but we would have also expected a motion and
13 some reason as to why this supplemental testimony was
14 appropriate and, yet, it's today and we're
15 receiving -- actually we're giving you the
16 opportunity to tell us that.

17 But what you didn't respond to is exactly
18 the timeliness of requesting this information. It
19 doesn't sound, from what Ms. Spiller said, and maybe
20 you can clarify, it doesn't sound as if this was a
21 timely submission of discovery to the company that,
22 in fact, the Bench had set deadlines and had set
23 specific testimony filing deadlines, and I understand
24 that there was a single sentence at the end of this
25 witness's testimony where there was a right reserve

1 but in fact there was no motion submitted, there was
2 no motion granted so we need to understand the timing
3 and why this discovery apparently was requested after
4 the deadline.

5 MS. GRADY: Your Honor, and I would have
6 to go back to look at the timing, but if I recall
7 correctly, Mr. Effron's original testimony was filed
8 March 26, 2013. The deposition of Mr. Savoy was
9 noticed prior to that point. The deposition of
10 Mr. Savoy occurred. At the deposition of Mr. Savoy
11 we were informed that the company had filed updated
12 testimony -- or, had updates to the information they
13 presented on BDS-1, which are highly relevant to
14 setting rates in this proceeding and looking and
15 determining the nature of the financial integrity
16 claim.

17 And so following the deposition, one or
18 two days following the deposition we followed up with
19 discovery and that discovery, for the most part, if I
20 recall, had to be worked out. It was not immediate.
21 It was late. It was responded to late, and we did
22 have to do some follow-up, so it did take a bit of
23 time to get that information. But we do believe we
24 were well within the discovery period that your
25 Honors set. So it was not necessarily untimely

1 discovery. It was well within the discovery time
2 period.

3 MS. SPILLER: And, your Honor, without
4 going back to look at those specific requests at
5 issue, I will not agree that we were not timely with
6 respect to this discovery. The OCC was given the
7 information of which Ms. Grady speaks which was the
8 12 & 0 that Mr. Savoy identified in his testimony a
9 week ago.

10 And so this information, again, they
11 understood the deadlines, understood the need for the
12 deadlines, and I -- I cannot agree without seeing
13 this discovery chain that we were untimely.

14 MS. GRADY: My reference was to the fact
15 that we most certainly received this discovery after
16 3 o'clock, 3 o'clock deadline was never adhered to by
17 the company.

18 MS. SPILLER: Well, Ms. Grady, I don't
19 have the discovery chain before me so, again, I'm not
20 going to agree with your representations.

21 MS. GRADY: We can produce that if the
22 record requires it.

23 EXAMINER PIRIK: Ms. Spiller, do you have
24 the specific dates as to when you received -- I mean,
25 I don't have the transcript of our -- where we set

1 the dates and whatnot, but the dates that discovery
2 was set and the date that you actually received this
3 request for discovery? I mean, I know you said it
4 was untimely, it was after the deadline but I don't
5 have that in front of me so I don't know what those
6 dates were.

7 MS. SPILLER: I don't -- your Honor, I
8 don't know which particular discovery Ms. Grady is
9 referring to. You know, I think my point is
10 simply --

11 EXAMINER PIRIK: No, I think you referred
12 to it when you initially spoke. You mentioned the
13 fact that they were beyond the discovery deadline
14 that was set by the Bench when we set the time frames
15 for the filing of testimony.

16 MS. SPILLER: And if I said that, I may
17 have not been clear. I know on March 7 you
18 established the truncated discovery process, so the
19 expedited process, and also at that date on March 7
20 addressed the date for submission of intervenor
21 testimony. I do recall on that day that we also
22 talked about when discovery would close indicating
23 that with the expedited, and I believe it was a
24 seven-day turnaround, the discovery would have to be
25 issued by April 8.

1 But I don't think that negates the fact
2 that the OCC understood the March 26 filing for their
3 intervenor testimony and understood what information
4 they would have been required to ascertain from the
5 company via discovery for purposes of complying with
6 that deadline.

7 And I would further note, your Honor,
8 that --

9 EXAMINER PIRIK: Okay. Just a second,
10 okay.

11 MS. SPILLER: Sure.

12 EXAMINER PIRIK: Ms. Spiller, I'm sorry,
13 what were going to say?

14 MS. SPILLER: The only other comment,
15 your Honor, and thank you for allowing me to again
16 comment, is on page 2 of Mr. Effron's supplemental
17 testimony. This is not to incorporate some
18 information that came in through discovery but
19 appears, instead, to be a correction which I don't
20 deem as supplemental.

21 MS. GRADY: Your Honor.

22 EXAMINER PIRIK: Just a moment, please.
23 Ms. Grady.

24 MS. GRADY: Yes, your Honor. To give
25 some dates to the discovery request, the requests

1 were served on March 19th, they were responded, our
2 records indicate the response came on the 26th. We
3 do not have the e-mail as to the time but recall that
4 our testimony was due on the 26th and that the -- I
5 believe the deposition from which the discovery came
6 from would have occurred, I believe, on the -- at or
7 around the 16th.

8 MS. SPILLER: And, Ms. Grady, what
9 particular response are you referring to because you
10 also were --

11 MS. GRADY: Set 17, 108, the financial
12 projection, the 12 & 0.

13 MS. SPILLER: But I thought Mr. Efron in
14 his supplemental referenced OCC 18-119 which was
15 tendered on March 25, 2013.

16 EXAMINER PIRIK: Okay, I think -- I think
17 probably what we need to do is, you know, it's not
18 appropriate supplemental testimony. It may be
19 appropriate for updating, for making corrections to
20 schedules that are attached to Mr. Efron's testimony
21 to the extent they are. And I believe, you know,
22 these are corrections to certain calculations that
23 are within his schedules.

24 So to the extent that you want to correct
25 those numbers within his schedule, we will allow you

1 to do that. But it's not appropriate supplemental
2 testimony. It wasn't requested by the Bench. It
3 wasn't asked for by the party. But we do understand
4 that he has some changes to the numbers that are
5 within his schedules and why don't we just take a
6 couple minutes so you can talk with Mr. Effron and
7 then we'll go back on the record and allow those
8 corrections to be made to his schedules.

9 MS. GRADY: I appreciate that. Thank
10 you, your Honor.

11 EXAMINER PIRIK: Thank you.

12 MS. SPILLER: Thank you, your Honor.

13 EXAMINER PIRIK: We'll just stay right
14 here while you do that.

15 (Recess taken.)

16 EXAMINER PIRIK: We're going to go back
17 on the record. The Bench is going to grant the
18 motion to strike the supplemental testimony of
19 Mr. Effron that has been marked as Exhibits 26 and
20 26A, however, we're going to allow OCC to correct DJE
21 schedule 1, schedule 5, and schedule 6. For the
22 parties that are here those are actually attached to
23 what had been marked as OCC Exhibit 26. So you can
24 pull those off of those exhibits for the corrected
25 exhibits.

1 These exhibits coincide and are marked as
2 schedules DJE-1R, DJE-5R, and DJE-6R, and these three
3 pages will be marked as OCC Exhibit 25B. And they
4 will be the corrections to Mr. Effron's direct
5 testimony that was marked in this docket as Exhibit
6 25 and 25A. So these three pages will be Exhibit
7 25B.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 EXAMINER PIRIK: The confidential
10 treatment on DJE-1R and 5R will be the same as we
11 granted with regard to DJE-1 and DJE-5 in Exhibit
12 25A.

13 Are there any questions about what was
14 just decided?

15 MS. GRADY: No, your Honor. I just would
16 like the opportunity to go through these schedules
17 with Mr. Effron, if the Bench would allow, just to
18 explain the corrections to make the record very
19 clear.

20 EXAMINER PIRIK: Mr. Effron, do you have
21 any questions about what we just did? Would you like
22 to see the version of what I have in front of me?

23 THE WITNESS: I think I understand what
24 you did.

25 EXAMINER PIRIK: And you understand

1 what's confidential and what's not, that's the most
2 important thing.

3 THE WITNESS: I believe I do, yes.

4 EXAMINER PIRIK: I mean, literally you
5 take your 1R, 5R, and 6R and those will be the
6 corrections and replacement for the initial 1, the
7 initial 5, and the initial 6.

8 THE WITNESS: I understand that.

9 EXAMINER PIRIK: And you're okay with
10 that.

11 THE WITNESS: Yes.

12 EXAMINER PIRIK: Good.

13 So with regard to confidential treatment,
14 I believe we've addressed -- we've addressed all the
15 confidential treatment and that has been granted
16 accordingly. We would also just note at this time
17 that with regard to all of our rulings on
18 confidential treatment of documents, we would like
19 those to be prepared and provided to the court
20 reporters no later than noon tomorrow.

21 MS. SPILLER: Yes, your Honor.

22 EXAMINER PIRIK: So that we can move
23 forward and I believe transcripts will start being
24 filed next week. So we want to make sure we get
25 those on the record.

1 MS. SPILLER: Certainly, your Honor.

2 EXAMINER PIRIK: Are you ready?

3 MS. SPILLER: Yes.

4 MS. BOJKO: Your Honor, may I just
5 clarify. 25B, is there a public and a confidential
6 version of that, of the three new exhibits?

7 EXAMINER PIRIK: No, there will be no
8 need to have a confidential because the revised
9 version, the redacted version is in 25.

10 MS. BOJKO: Okay.

11 EXAMINER PIRIK: These are just new
12 numbers.

13 MS. BOJKO: Okay, I thought they were
14 going to be a new pack, like a new marked Exhibit
15 25B.

16 EXAMINER PIRIK: Which will be
17 unredacted. The unredacted version will be 25B.
18 Does that make sense?

19 MS. BOJKO: Yes.

20 EXAMINER PIRIK: So there will only be
21 one redacted version which is 25A.

22 MS. BOJKO: Thank you. That makes sense.

23 EXAMINER PIRIK: I think we're all set,
24 then. But I think we're on cross-examination by the
25 company unless you had something further, Ms. Grady.

1 MS. GRADY: Other than I just wanted to
2 have him identify these, I think we skipped that
3 step. I would ask Mr. Effron to identify these so
4 that we -- to be clear on the record what they are
5 and what they've been marked as.

6 EXAMINER PIRIK: Okay. That would be
7 fine.

8 Q. (By Ms. Grady) Mr. Effron, do you have
9 before you what has been marked as OCC Exhibit 25B?

10 A. Yes, I do.

11 Q. And can you identify that document,
12 please.

13 A. Yes. Those were corrections to my
14 original direct testimony.

15 Q. And if we go to DJE-6R, that was a
16 correction to your property tax adjustment?

17 A. That's correct, yes.

18 Q. And can you explain to me the purpose of
19 that correction.

20 A. Well, yes. After I had reviewed my
21 testimony I noticed that there was a correction that
22 had to be made to it, a couple corrections had to be
23 made to it to account for the correcting for the
24 taxes on the assets that had been transferred to
25 DECAM and also to properly account for the materials

1 and supplies portion of the assets that were subject
2 to property taxes.

3 MS. SPILLER: Your Honor, I'm going to
4 move to strike. I thought the purpose of the
5 questioning from Ms. Grady was to identify the
6 exhibits and not explain the basis for them which
7 really just offers Mr. Effron's supplemental
8 testimony into the record.

9 EXAMINER PIRIK: Yes, I agree. And I
10 think I did the necessary documentation on the
11 record. I think Mr. Effron's aware of what these
12 documents are and we're going to move on with
13 cross-examination.

14 Thank you, Ms. Grady.

15 MS. GRADY: Thank you.

16 MS. SPILLER: Thank you, your Honor. And
17 briefly a motion to strike Mr. Effron's direct
18 testimony, both the confidential and public versions
19 filed on March 26, 2013. I will first identify the
20 relevant pages at issue.

21 Turning first to page 4, lines 9 through
22 19.

23 Page 5, lines 1 through 9.

24 Page 6, lines 6 through 16. Actually,
25 your Honor, go up to page 5, the sentence beginning

1 on line 5 -- I'm sorry, page 6, line 5, carrying
2 through to the sentence that concludes on line 16 on
3 page 6.

4 Page 10, line 4 through line 12.

5 Finally, your Honor, page 11, lines 2 and
6 3. So the first part of line 3 that states "based
7 capacity charge."

8 These proposed redactions that are
9 subject to the motion to strike, your Honor, are
10 predicated upon the fact that through this testimony
11 Mr. Effron is identifying legal opinions that he is
12 not qualified to make, offering his interpretation of
13 legal documents. I would further note that this
14 testimony at this point is unduly cumulative given
15 the prior testimony of the three OCC witnesses.

16 EXAMINER PIRIK: Ms. Grady.

17 MS. GRADY: Yes. Briefly, your Honor.
18 Mr. Effron is an expert. The legal conclusions are
19 intertwined with the regulatory conclusions. It
20 would be consistent with all the prior rulings you
21 have made throughout this proceeding to reject the
22 motion to strike.

23 EXAMINER PIRIK: The motion to strike
24 will be denied.

25 MS. SPILLER: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Spiller:

Q. Good morning, Mr. Effron.

A. Good morning, Ms. Spiller.

Q. Sir, you are not an attorney, correct?

A. I am not.

Q. You are not qualified by training to render legal opinions or legal conclusions, correct?

A. As far as I know, that's correct, yes.

Q. And, sir, you were not retained by the OCC to serve as a witness on their behalf in connection with Duke Energy Ohio's ESP proceeding docketed under case 11-3549, correct?

A. I was not.

Q. So fair to say, sir, that you did not draft that stipulation, correct?

A. That would be a fair assumption.

Q. Also fair to say, sir, that you did not provide any input into the content of that stipulation, correct?

A. That's correct.

Q. Sir, would you also agree with me that what you know about Duke Energy Ohio's ESP stipulation is based upon your reading of that document and what others may have told you about that

1 document?

2 A. It's based on the reading of the
3 stipulation, the Commission order accepting it, and
4 my discussions with the OCC attorneys.

5 Q. Sir, you read the motion to dismiss that
6 was filed by OCC and other intervenors in this case,
7 correct?

8 A. Yes.

9 Q. But as you were not retained by the OCC
10 for purposes of this matter until approximately
11 December of 2012, you did not contribute to the
12 drafting of that document, correct?

13 A. I did not.

14 Q. And, sir, as you are not an attorney, you
15 do not know the legal criteria applicable to the
16 disposition of a motion to dismiss, correct?

17 A. That's correct.

18 Q. Mr. Effron, in your testimony you do not
19 dispute Duke Energy Ohio's obligations as a fixed
20 resource requirement, or FRR, entity, correct?

21 A. I do not address that in my testimony.

22 Q. And you do not dispute, sir, that Duke
23 Energy Ohio has committed its legacy generating
24 assets to fulfilling its FRR capacity service
25 obligations, correct?

1 A. Yeah, I have no reason to dispute that.

2 Q. And, sir, for purposes of your work in
3 this proceeding you have not done any independent
4 analysis of the company's financial condition,
5 correct?

6 A. I have not.

7 Q. Mr. Effron, is it fair to say that you
8 frequently provide expert testimony in the area of
9 revenue requirement?

10 A. That's an area that I've offered often in
11 my testimony as well as others, yes.

12 Q. And the purpose of your testimony in such
13 instance, sir, is to provide the regulatory agency or
14 commission with expert opinion to aid it in its
15 determination of just and reasonable rates for public
16 utilities, correct?

17 A. Yes, I would say that's generally
18 correct.

19 Q. And, sir, that would hold true with
20 respect to your testimony before the Ohio Commission,
21 your testimony is offered for purposes of aiding the
22 Commission in its review of a rate case, correct?

23 THE WITNESS: If I could have that
24 question again, please.

25 (Record read.)

1 A. I've testified frequently in rate cases
2 before the Commission, yes.

3 Q. But in offering your opinion as to the
4 disposition of OCC's motion to dismiss in this case
5 you did not apply any specialized knowledge in the
6 area of revenue requirements, correct?

7 A. I don't think I offered an opinion of the
8 OCC's motion to dismiss other than to say that -- to
9 put -- to use that to formulate the context of my
10 testimony. When I said the motion to dismiss should
11 be granted, obviously that's based on the legal
12 opinion, but I just wanted to be sure in making that
13 statement or in -- I made that statement to put my
14 testimony in context that I'm not agreeing that the
15 company's request for a cost-based capacity charge is
16 correct.

17 Q. Well, sir, you offered opinion in your
18 testimony that the joint motion to dismiss should be
19 granted, correct?

20 MS. GRADY: If counsel could give a
21 specific point within Mr. Efron's testimony, that
22 would be helpful.

23 Q. Well, sir, if you look on page 4 of your
24 testimony -- and let me ask it another way.

25 Mr. Efron, do you have any opinion as to the

1 disposition of the motion to dismiss that had been
2 filed by the OCC and other parties?

3 A. Not as an attorney, I don't. Certainly
4 as a layperson everything I've read would indicate
5 that it's appropriate, but, again, what I stated on
6 page 4 of my testimony was to put the rest of my
7 testimony in context, that by addressing specific
8 revenue requirement issues, that I'm not agreeing
9 that a cost-based capacity charge is correct.

10 Q. Sir, did you take into account the
11 company's reply to the motion to dismiss in forming
12 your opinions as to its disposition?

13 A. Can I have the reference as to where
14 the -- my opinion as to its disposition is in my
15 testimony?

16 Q. Well, sir, I believe you just offered it
17 indicating that you read the motion and thought it
18 was appropriate.

19 A. I responded to a question that you asked.

20 Q. Well, sir, my question to you is for
21 purposes of your direct testimony in this proceeding
22 are you offering an opinion to the Ohio Commission
23 with respect to the disposition of the motion to
24 dismiss?

25 A. Not as an attorney I'm not, no. I could

1 only -- I could only offer my own personal opinion
2 but I don't think that's something that the
3 Commission as a legal matter would take into account
4 in deciding on the motion to dismiss.

5 Q. And you are not offering your opinion on
6 the motion to dismiss in your capacity as an expert
7 with regard to revenue requirements, correct?

8 A. Well, my testimony with capacity to the
9 revenue requirement is what it is, but all I'm saying
10 is that obviously can't supersede the OCC's motion to
11 dismiss.

12 Q. Sir, are your references to the motion to
13 dismiss and your opinion that you've shared with us
14 as a layperson, are those predicated upon your
15 conversations with the Consumers' Counsel?

16 A. Yes, and what I've read myself.

17 Q. And, sir, did you read the company's
18 reply to the motion to dismiss for purposes of
19 forming your opinions as a layperson?

20 A. At some point I did.

21 Q. Did you do that for purposes of forming
22 your opinions that you've just shared with me?

23 A. Well, I don't have it in front of me now.
24 I had read it, though, so I'm generally aware of it.
25 I didn't commit it to memory, but I have read it.

1 Q. Sir, you are not -- you do not consider
2 yourself an expert in the PJM capacity market,
3 correct?

4 A. I do not.

5 Q. In your testimony on pages 4 and carrying
6 over to page 5 you render an opinion with regard to
7 Duke Energy Ohio's existing rider ESSC, correct?

8 A. I'm having a little difficulty with
9 saying I'm rendering an opinion there. I think if
10 you read that in context, it's just the rendition of
11 what was in the OCC's joint motion.

12 Q. So, sir, is this your testimony or is
13 this simply incorporating into your testimony the
14 legal arguments of the Consumers' Counsel?

15 A. I'm not making legal arguments. Again,
16 I'm stating what's laid out here as a predicate for
17 my testimony. I mentioned, to start out with, my own
18 opinion as to why the capacity-based charge would not
19 be appropriate, and I cited in addition the existence
20 of the joint motion to dismiss, I continued with an
21 explanation of what's in the joint motion to dismiss,
22 but that's what it is. This is the OCC's position.
23 I don't tell the OCC what its position is.

24 Q. And, sir, I'm just trying to understand
25 what's your testimony versus that of the OCC.

1 A. I think I explained that.

2 Q. And you would agree with me, sir, that on
3 page 4, lines 17 through 19, carrying over to the top
4 of page 5, that's the OCC's legal position with
5 respect to rider ESSC, correct?

6 A. Again, yes, it's a description of what's
7 in the OCC's -- well, and the other parties' joint
8 motion to dismiss.

9 Q. And, sir, you do not have an independent
10 opinion with regard to the purpose of rider ESSC,
11 correct? Rather, you mention it for purposes of
12 putting in context work that you did in respect of a
13 revenue requirement, correct?

14 A. As it relates to my testimony on pages 4
15 and 5 here, yes. I did have later testimony on the
16 revenues that are derived from the rider ESSC and
17 that is my own testimony.

18 Q. But with respect to the testimony that
19 appears on pages 4 and 5, that reflects the OCC's
20 legal positions with regard to this case, correct?

21 A. I'll say what I've said again. It's a
22 description of what's in the joint motion to dismiss
23 that, by nature, would be the OCC as well as the
24 other parties to the joint motion to dismiss, what
25 their legal opinion is.

1 Q. Mr. Effron, if you could -- I lost the
2 spot -- oh, here we go, page 10 of your testimony,
3 please.

4 A. Yes.

5 Q. At the bottom of that page you are
6 discussing the revenues associated with rider ESSC,
7 correct?

8 A. Yes.

9 Q. And on line 21 you indicate that the
10 revenues from rider ESSC reflect "money for nothing,"
11 correct?

12 A. That's what's stated there, yes.

13 Q. That is not any statement that's
14 attributed to Duke Energy Ohio, correct?

15 A. No. Just to be clear, I didn't mean to
16 imply by this that these were Duke's words. I put it
17 in quotes because it's not an original terminology
18 so, given that, I thought it should be in quotes.
19 But it's not words that Duke used itself.

20 Q. But you believe, having included this
21 reference in your testimony, that Duke thinks rider
22 ESSC is really money for nothing, correct?

23 A. That seems to be what their position is.

24 Q. And what causes you to base -- to form
25 that position or that opinion, sir?

1 A. Well, what I stated in my testimony here,
2 that there's \$110 million for a service with no
3 assets and no expenses.

4 Q. And, sir, is that, again, based upon what
5 you've read in the OCC's motion to dismiss?

6 A. Absolutely not.

7 Q. Sir, what do you know about the genesis
8 of rider ESSC?

9 A. I know about from what I read about it in
10 the stipulation and the Commission order and my
11 discussions with OCC.

12 Q. So you read the entire ESP stipulation,
13 correct?

14 A. Yes.

15 Q. And you read the Commission's order
16 approving the stipulation, correct?

17 A. Yes.

18 Q. And you know that the ESP stipulation was
19 a settlement of a number of terms and conditions,
20 correct?

21 A. Yes.

22 Q. You understand that in signing the ESP
23 stipulation Duke Energy Ohio agreed to go immediately
24 to market effective January 1, 2012, for purposes of
25 procuring supply for its standard service offer load,

1 correct?

2 A. I haven't committed it to memory. If
3 that's -- it says what it says.

4 Q. Would you like to review the stipulation
5 as we talk about it this morning, sir?

6 A. I don't have it in front of me. Again,
7 it says what it says, so I don't know what the
8 purpose of that would be.

9 Q. Well, sir, you're offering testimony as
10 to rider ESSC identifying that it was money for
11 nothing, so I'd like to understand the basis for that
12 opinion, so I'll get you a copy of the ESP
13 settlement, okay.

14 A. The basis for my opinion is not the
15 settlement.

16 Q. What is the basis for your opinion, then,
17 sir?

18 A. The documents I cited in my testimony.

19 Q. Well, you reference the ESP stipulation
20 because that's where the rider ESSC was derived,
21 correct?

22 A. Not in this part of my testimony I did
23 not, no.

24 Q. Do you know where rider ESSC was derived?
25 Do you know where it was established?

1 A. To my understanding, it was established
2 in the settlement.

3 Q. And you reference on page 4 the ESP
4 stipulation in case 11-3549, correct?

5 A. That's a different part of my testimony.

6 Q. Well, let's go back up to the top of page
7 10, on line 4 you reference the stipulation and
8 recommendation in case 11-3549, correct?

9 A. Yes.

10 Q. Okay. So you are referencing here in
11 this part of your testimony the ESP stipulation,
12 correct?

13 A. At lines 4 through 12 I am. I think if
14 you read lines 14 through 20, my conclusion there is
15 based on a different set of documents.

16 Q. Well, sir, I'd like to get to your
17 understanding of rider ESSC and so we'll --

18 MS. SPILLER: Your Honor, may we
19 approach?

20 EXAMINER PIRIK: Yes.

21 MS. SPILLER: Thank you. And the ESP
22 stipulation has previously been marked.

23 EXAMINER PIRIK: IEU 5.

24 MS. SPILLER: IEU 5. Thank you, your
25 Honor.

1 Q. (By Ms. Spiller) Mr. Effron, you have
2 before you what was previously marked for purposes of
3 this proceeding as IEU Exhibit 5. That's the ESP
4 stipulation and recommendation that you reviewed for
5 purposes of this case, correct?

6 A. Yes.

7 Q. And, sir, having -- and you relied upon
8 this stipulation for purposes of your opinions in
9 this case, correct?

10 A. For some of them.

11 Q. And, sir, having reviewed the stipulation
12 and recommendation and relied upon it, you understand
13 that Duke Energy Ohio agreed to conduct competitive
14 auctions for its SSO load beginning January 1, 2012,
15 correct?

16 A. The stipulation states what it states. I
17 don't know what the purpose of having me sitting here
18 trying to characterize it in that way is.

19 Q. Well, sir, again, I'm going back to your
20 understanding of rider ESSC. And you derived that
21 from reading the stipulation and talking to the
22 Consumers' Counsel, correct?

23 MS. GRADY: Objection.

24 EXAMINER PIRIK: What's the basis?

25 MS. GRADY: Asked and answered, your

1 Honor.

2 EXAMINER PIRIK: I think it has been
3 asked but I don't think the questions are being
4 answered.

5 THE WITNESS: Could I have the question
6 again, please?

7 (Record read.)

8 A. As to the origination of the rider ESSC,
9 yes. But as to my testimony on page 10 at lines 14
10 through 21, that is not reliant on the purpose of
11 rider ESSC in the stipulation.

12 Q. Well, sir, for purposes of your work in
13 this case you're recommending that the Ohio
14 Commission remove from the company's proposed revenue
15 requirement the revenue associated with rider ESSC,
16 correct?

17 A. I am proposing that it be credited to the
18 fixed cost revenue requirement, yes.

19 Q. And for purposes of doing that you must
20 have had an opinion with regard to what rider ESSC
21 does and what it compensates the company for,
22 correct?

23 A. In general, yes.

24 Q. And so what is it you believe rider ESSC
25 does?

1 A. Well, that's stated on lines 4 through 12
2 of my testimony.

3 Q. And that's --

4 A. On page 10, just to be clear.

5 Q. And, to be clear, on lines 5 through 7
6 you're simply quoting portions from the stipulation,
7 correct?

8 A. I do quote a portion from the stipulation
9 there, yes.

10 Q. Did you inquire into other reasons that
11 may have resulted in the creation of rider ESSC as
12 reflected in the ESP stipulation?

13 A. I don't recall. I might have discussed
14 that with the OCC but I don't recall as I sit here.

15 Q. Did you consider for purposes of drafting
16 your views of rider ESSC that Duke Energy Ohio did
17 agree to go immediately to market January 1, 2012,
18 for purposes of procuring supply for its SSO load?

19 A. I was generally aware of that. I
20 didn't -- I didn't have that in the front of my mind
21 when I was drafting my testimony, but I'm generally
22 aware of it.

23 Q. Did you consider the fact that Duke
24 Energy Ohio agreed not to participate in those
25 competitive auctions for its SSO load?

1 A. Again, if that's relevant to my testimony
2 here, I'm not sure how it is. Again, I read the
3 stipulation, to the extent that's in the stipulation,
4 I was generally aware of it.

5 Q. Well, understanding that the stipulation
6 was a package deal and resolved a multitude of issues
7 did you consider all of the other issues set forth in
8 the ESP stipulation for purposes of identifying what
9 you believed to be the purpose for rider ESSC?

10 MS. GRADY: Your Honor, may I have that
11 question reread, please.

12 EXAMINER PIRIK: Yes.

13 (Record read.)

14 A. I'm not sure I understand what the
15 question is or how it relates to my position here.
16 Again, I read the stipulation, I discussed it with
17 the OCC, I read the Commission's order, I was aware
18 of it, I didn't go through and parse every separate
19 phrase and clause in there to determine what the
20 intent of everything in there was. Again, to the
21 extent it was relevant I believe I took it into
22 account in formulating my testimony.

23 Q. Sir, would you believe that the consumers
24 represented by the Ohio Consumers' Counsel in Duke
25 Energy Ohio's service territory benefited from Duke

1 Energy Ohio agreeing to go immediately to market
2 beginning January 1, 2012?

3 A. I haven't analyzed that.

4 Q. It wasn't relevant to your opinions in
5 this case.

6 A. Not that I know of, no.

7 Q. Sir, you provide testimony on lines 7
8 through 12 on page 10 comparing and contrasting the
9 terms "noncompetitive capacity service" and
10 "competitive retail electric service," correct?

11 A. I believe I stated what was in the
12 stipulation as compared to what Duke's present
13 position is.

14 Q. And you are aware that under Ohio law
15 electric distribution utilities are required to offer
16 standard service offers of competitive retail
17 electric service, correct?

18 A. I'm aware that they do. I have not done
19 an analysis of what the legal requirements are.

20 Q. But you do understand that the law
21 provides for standard service offers of competitive
22 retail electric service, correct?

23 A. Well, there are -- they're offering it so
24 I'm assuming that it's within the law.

25 Q. And competitive retail electric services

1 are those for which customers can shop, correct?

2 A. Yes.

3 Q. And having reviewed the stipulation in
4 Duke Energy Ohio's ESP proceeding what you have
5 before you as IEU Exhibit 5, you know that that ESP
6 for Duke Energy's standard service offer was approved
7 under Chapter 4928 of the Revised Code, correct?

8 A. It says what it says. I didn't attempt
9 to trace the settlement back to the authorizing
10 legislation or anything like that.

11 Q. Well, sir, turning back to page 5 of your
12 direct testimony, you mention the AEP Ohio capacity
13 case decision, correct?

14 A. There's a reference to it here, yes.

15 Q. Have you reviewed the Commission's
16 opinion and order issued July 2, 2012, in that case
17 for purposes of your testimony in this case?

18 A. I don't have the date here in front of
19 me, but I did review the Commission's order in that
20 case.

21 Q. Did you also read the entry on rehearing
22 that was filed October 17, 2012, by the Ohio
23 Commission in that case?

24 A. I believe I did, yes.

25 Q. And so you understood that the Ohio

1 Commission made a distinction between competitive
2 retail electric services provided under Chapter 4928
3 and wholesale services, correct?

4 A. You're asking me to cite something from
5 memory here that I'm not really comfortable doing. I
6 can tell you what my recollection is. There was a
7 distinction between wholesale and retail services.

8 Q. Would it be helpful --

9 A. My recollection is that they didn't make
10 a finding on whether and what was -- what was before
11 them in that case was competitive or noncompetitive
12 but, again, I'm speaking from memory on that.

13 Q. Would it be helpful, sir, to take a look
14 at those decisions to refresh your memory?

15 A. They say what they say. I really don't
16 see what point it would serve to have me sit here and
17 attempt to characterize it.

18 Q. So the testimony on page 4 beginning on
19 line 11 and carrying through to line -- I'm sorry,
20 page 5 beginning on line 11 and carrying through to
21 line 18 are really the conclusions and opinions of
22 the OCC's counsel, correct?

23 A. What I stated on line 13 is it is the
24 position of the OCC that the Ohio Power capacity case
25 was not a generic PUCO decision and what follows from

1 that is the statement of what the OCC's position is.

2 Q. So you don't have an opinion one way or
3 the other as to the applicability of the Commission's
4 decision in case 10-2929 to Duke Energy Ohio,
5 correct?

6 A. Well, I did read the order and I saw what
7 it said. I really am not comfortable sitting here
8 trying to tell the Commission what its own words
9 mean. As I recall, there was something in there at
10 the end about the order not being binding for other
11 cases but, again, I'm not an attorney.

12 Q. And, Mr. Effron, with regard to the
13 determination of an Ohio public utilities' revenue
14 requirement, you would agree with me that the Ohio
15 Commission has adopted standard filing requirements,
16 correct?

17 A. For rate cases, yes, they're standard
18 filing requirements that are submitted pursuant to
19 whatever the law governing rate cases is.

20 Q. And being that they're standard filing
21 requirements, all the public utilities are subject to
22 them, correct?

23 A. Again, I'm not really comfortable
24 offering a legal opinion on that. All I can say is
25 that in the cases that I've been involved in I

1 believe in all of the base rate cases they -- the
2 testimony, exhibits, and application has been
3 accompanied by standard filing requirements but I
4 don't -- I don't know if it's possible waivers from
5 that and I'm really not comfortable saying what the
6 legal requirements are.

7 Q. Well, sir, I wasn't asking for legal
8 requirements but certainly as an expert with respect
9 to revenue requirements you're familiar with the
10 filing requirements, right?

11 A. Yes.

12 Q. And you, in your experience, find that
13 those standard filing requirements are applicable to
14 the public utilities in Ohio regardless of which
15 utility it may be seeking the rate increase, correct?

16 A. To acknowledge there's not individualized
17 requirements for each utility, they wouldn't be
18 standard if that were the case. They're standard
19 filing requirements.

20 Q. Thank you.

21 And, Mr. Effron, you do agree that the
22 Ohio Commission can authorize a deferral of
23 previously incurred costs, correct?

24 A. They found that so I assume they're
25 legally authorized to do it.

1 Q. And you would agree that the Ohio
2 Commission has the authority to oversee the books,
3 record, and accounts of public utilities under its
4 jurisdiction, correct?

5 A. Again, I'm not comfortable offering a
6 legal opinion on that. That would generally pertain
7 to utilities commissions, though.

8 Q. Well, sir, having just acknowledged that
9 the Ohio Commission has in the past authorized the
10 deferral of previously incurred costs, I'm curious as
11 to why here you're saying that the deferral should be
12 rejected as retroactive ratemaking.

13 MS. GRADY: Your Honor, I object. I
14 think that's a mischaracterization. Her question --

15 EXAMINER PIRIK: I'll allow the witness
16 to clarify.

17 A. Can you cite me to my testimony?

18 Q. Sure. Page 6. You opine there that Duke
19 Energy Ohio's deferral request in this case reflects
20 impermissible retroactive ratemaking, correct?

21 A. I would say it would be retroactive
22 ratemaking. To the extent that it's ultimately
23 permissible or impermissible is a legal conclusion.
24 I think what Duke is requesting here is very distinct
25 from allowing a deferral, for example, for something

1 like storm damage, which is a specific identifiable
2 cost, that in the case of storm damage anyway would
3 be something outside the company's control.

4 I understand the company's filing here
5 asking for a deferral as requesting to be allowed to
6 recover all the costs in excess of revenues from the
7 time that it filed its application. I think,
8 actually, maybe even before they filed the
9 application but, basically, going back to August of
10 2012.

11 Q. And, sir, you --

12 A. Can I continue on that answer?

13 Q. I'm sorry, I thought you were done.

14 A. Thank you. I was not.

15 To me, that's a textbook definition of
16 what I would consider to be retroactive ratemaking.
17 If being allowed to defer retroactively a shortfall
18 between the revenues that were being collected and
19 all of the costs pertaining to a given service for a
20 historic period of time, if that is not retroactive
21 ratemaking, I don't think anything is.

22 Q. And, sir, would you agree with me that
23 whether something is retroactive ratemaking is a
24 legal conclusion?

25 A. I think whether it's permissible

1 retroactive ratemaking is a legal conclusion. The
2 term "retroactive ratemaking" is one that I think
3 also has some applicability in a technical sense as
4 well.

5 Q. So you can offer an opinion as to
6 retroactive ratemaking in terms of its legal
7 characteristic but you cannot otherwise, I guess I'm
8 just struggling with --

9 A. You have it backwards. What I'm saying
10 is the request to defer the difference between what
11 the authorized revenues were and what the costs
12 incurred were inclusively for a period going
13 backwards, to me that is what I understand, as a
14 technical expert, to be retroactive ratemaking.

15 Again, that is what retroactive
16 ratemaking is. If that is not retroactive
17 ratemaking, the word has no meaning. Now, to the
18 extent it's legally recoverable, that obviously is a
19 matter for the Commission.

20 Q. Sir, you are aware of prior instances in
21 which the Ohio Commission has allowed the deferral of
22 previously incurred costs, correct?

23 A. Again, I haven't done a complete review
24 of that for my testimony. I'm aware in matters like
25 storm damage that that has been -- that has been

1 authorized.

2 Q. Do you have any knowledge of deferral of
3 previously incurred costs in instances other than
4 storm damage?

5 A. I think there might have been other
6 instances as well, yes.

7 Q. And, sir, do you understand that the
8 company's request here is to recover its costs for
9 providing a capacity service, correct?

10 A. To recover the cost in excess of revenues
11 for providing capacity service in the past.

12 Q. Sir, in the -- and for purposes of
13 illustration on page 6 of your testimony you
14 reference the Duke Energy Ohio's most recent electric
15 rate case, correct?

16 A. Yes.

17 Q. And you were a witness for the Consumers'
18 Counsel in connection with that case, correct?

19 A. Yes.

20 Q. So you reviewed the company's filing,
21 correct?

22 A. Yes.

23 Q. And other than existing riders that
24 may -- may have already been approved by the Ohio
25 Commission, Duke Energy Ohio did not seek any new

1 deferral authority in its most recent electric rate
2 case, correct?

3 A. I don't have that in front of me now.
4 They did what they did. I'm not going to try to
5 characterize that from memory.

6 Q. And with respect to your work in the
7 distribution rate case of Duke Energy Ohio you
8 presented testimony in the area of a revenue
9 requirement, correct?

10 A. On some discrete issues I did.

11 Q. Did you in that case consider the
12 earnings and expenses of Duke Energy Ohio's
13 generation business in forming your opinions?

14 A. No.

15 Q. And, sir, I would suspect you did not
16 because the revenues and expenses associated with
17 Duke Energy Ohio's generation business are not
18 relevant to the Commission's determination of Duke
19 Energy Ohio's rates for providing electric
20 distribution service, correct?

21 A. They're not directly relevant. There
22 would be an allocation of costs between the various
23 functions so they would be relevant only in terms of
24 absence. In other words, none of the generation
25 cost, at least in theory, should be allocated to

1 distribution operations.

2 Q. And given your work with revenue
3 requirement issues and including those that involve
4 Duke Energy Ohio you would agree with me that the
5 rates that Duke Energy Ohio recovers for its natural
6 gas distribution service cover the cost of providing
7 that natural gas service, correct?

8 A. They cover the cost of providing natural
9 gas distribution service.

10 Q. And when the Commission affixes rates for
11 Duke Energy Ohio's natural gas distribution service,
12 it does not consider the rates associated with its
13 provision of electric distribution service, correct?

14 A. That's correct, yes.

15 Q. Mr. Effron, you do agree that the Ohio
16 Commission has an obligation to ensure that its
17 jurisdictional utilities are fairly and justly
18 compensated for the services they provide, correct?

19 A. Yes, that's generally true based on my
20 understanding of cost-based rate regulation.

21 Q. Sir, I'd like to move forward just for a
22 moment to page 21 of your direct testimony, please.
23 And there you are offering an opinion on page 21 and
24 the next few following pages regarding stranded
25 costs, correct?

1 A. Yes.

2 Q. And stranded costs, Mr. Efron, are those
3 costs that are not otherwise recoverable in a
4 competitive market, correct?

5 A. Yes. They -- it's typically used in
6 electric restructuring matters. They would be --
7 they would be costs that had been recovered from a
8 cost-based utility service that would not be
9 recoverable if that service was subject to
10 competition.

11 Q. And so, sir, would you agree with me that
12 the corollary to that is that noncompetitive costs
13 cannot be stranded costs?

14 A. There's kind of a circularity problem
15 there, I think. I would put it the other way, if a
16 service isn't subject to competition, then by
17 definition it wouldn't have stranded costs because
18 whatever costs it had would be recovered through the
19 monopoly service rates that it charged.

20 Q. And, sir, you do not dispute that Duke
21 Energy Ohio is the only entity providing capacity
22 service in its footprint through May 31, 2015,
23 correct?

24 A. It's my understanding they would be the
25 only one providing capacity service as an FFR -- FRR

1 entity.

2 Q. Yes, sir. And I got hung up on that
3 acronym yesterday as well.

4 And, sir, transition costs can include
5 stranded costs, correct?

6 A. In theory the transition costs should be
7 structured to recover stranded costs.

8 Q. And is it your opinion in this case,
9 Mr. Efron, that Duke Energy Ohio's request, you
10 believe, is actually a request to recover stranded
11 costs or transition costs, or both?

12 A. It's my opinion that's a request to
13 recover stranded costs, transition costs, would be
14 what the Commission authorizes them to recover. So
15 it's my opinion what they're seeking to recover is
16 what is generally considered to be stranded costs.

17 Q. Okay. And, sir, on page 25 of your
18 testimony, please, you indicate on this page that
19 Duke Energy Ohio finds itself where it does because
20 of decisions of its own making, correct?

21 A. Yes.

22 Q. You suggest that Duke Energy Ohio could
23 have transferred its assets to an affiliate long
24 before now, correct?

25 A. Transferred them to an affiliate or

1 divested them to an independent entity, yes.

2 Q. And for purposes of rendering that
3 conclusion you reference on page 26 Duke Energy
4 Ohio's electric transition plan as well as its rate
5 stability plan, correct?

6 A. Yes.

7 Q. And you do realize that in the rate
8 stability plan filed in 2003 that the Commission,
9 when it eventually issued its order in this case,
10 indicated that Duke Energy Ohio would be permitted to
11 retain its assets, correct?

12 A. They would not be required to separate
13 them or divest them.

14 Q. Correct.

15 A. Yes.

16 Q. And, sir, you did not, for purposes of
17 your work in this case, identify or make reference to
18 Duke Energy Ohio's first ESP, correct?

19 A. It's kind of hard to ask for a cite to
20 something I did not make reference to. But I refer
21 to what I refer to here.

22 Q. Well, sir, on page 27 of your testimony
23 you say 2008 came and went and Duke Energy Ohio still
24 retained ownership of its generating assets, correct?

25 A. Yes.

1 Q. You further state on lines 4 and 5 that
2 Duke Energy Ohio's continued retention of its
3 generating assets as of 2008 forward was not at the
4 behest of the Commission or customer representatives,
5 correct?

6 A. That's what it states there, yes.

7 Q. Sir, you are familiar that Duke Energy
8 Ohio filed an ESP under case 08-920, correct?

9 A. I don't have the docket number in front
10 of me. I can accept that.

11 MS. SPILLER: Your Honor, may we
12 approach, please?

13 EXAMINER PIRIK: Yes.

14 Q. Mr. Effron, we would like to present to
15 you what has previously been marked and admitted in
16 this case as Duke Energy Ohio Exhibit 21. And, sir,
17 this is a filing made under case 08-920 in the Matter
18 of the Application of Duke Energy Ohio for Approval
19 of an Electric Security Plan, correct?

20 A. Yes.

21 MS. GRADY: Could we have a moment, your
22 Honor, to find that.

23 MS. SPILLER: Oh, sorry.

24 MS. GRADY: Thank you.

25 Q. And, sir, the date stamp at the bottom

1 shows that this Opinion and Order was docketed on
2 December 17, 2008, correct?

3 A. Yes.

4 Q. And, sir, this is a case that was
5 resolved in part by way of stipulation, correct?

6 A. Yes.

7 Q. And if we turn to page 20 of the
8 document, sir, there's a Section 4, Other Matters,
9 that pertains to corporate separation.

10 A. Yes.

11 Q. And in the first paragraph, that last
12 sentence of paragraph 1 under 4(a) indicates that in
13 this application, Duke Energy Ohio had sought
14 approval to transfer its generating assets to
15 affiliated -- to an affiliated entity or entities,
16 correct?

17 A. That's what it states here.

18 Q. And then the second paragraph under 4(a),
19 Corporate Separation, the second sentence of that
20 paragraph indicates that Duke Energy Ohio agreed to
21 withdraw both from this case as well as proceedings
22 from the FERC its request to transfer its previously
23 used and useful assets, correct?

24 A. That's what it states here.

25 Q. And, sir, did you consider this opinion

1 and order for purposes of drafting your direct
2 testimony in this case?

3 A. I was aware of it.

4 Q. But you did not incorporate this ESP
5 stipulation into your direct testimony, correct?

6 A. I don't recall citing it as I sit here.

7 Q. And, sir, you cannot dispute that the
8 Ohio Consumers' Counsel was a signatory to the
9 stipulation that the Commission addressed in its
10 December 17, 2008, opinion and order, correct?

11 A. I don't recall as I sit here. If they
12 were, they were.

13 Q. And, sir, you are familiar with Senate
14 Bill 221, correct?

15 A. I haven't committed the bills that are
16 relevant, numbers of the bills that might be relevant
17 to why we're here to memory, I might or might not be,
18 I don't know.

19 Q. Do you know, sir, whether Ohio law
20 requires electric distribution utilities to obtain
21 Commission approval before selling or transferring
22 any generating assets that they own?

23 A. The law is what it is.

24 Q. Mr. Effron, you've reviewed Duke Energy
25 Ohio's formula rate that Mr. Wathen utilized for

1 purposes of deriving a revenue requirement in this
2 case, correct?

3 A. When you say "formula rate," I'm not sure
4 what formula rate you're referring to.

5 Q. Well, you know that he did a revenue
6 requirement calculation, correct?

7 A. He did a revenue requirement calculation,
8 that I do know, yes.

9 Q. And would you agree with me that that
10 employed a formulaic methodology?

11 A. It employed a methodology. I guess
12 whether it was formulaic or not is a matter of
13 opinion. It is what it is. There was no set formula
14 that I'm familiar with that he used.

15 Q. Are you aware of the formula that the
16 Ohio Commission approved for AEP Ohio for purposes of
17 establishing its costs in providing FRR capacity
18 service?

19 A. I'm not sure they approved a formula per
20 se. Do you have a reference on that for me?

21 Q. Sure.

22 MS. SPILLER: Your Honor, may we
23 approach?

24 EXAMINER PIRIK: Yes.

25 Q. OCC Exhibit 1, please.

1 MS. GRADY: May I have a moment, your
2 Honor.

3 EXAMINER PIRIK: Yes.

4 Q. Do you have the document, sir?

5 A. I do.

6 Q. And this document has previously been
7 marked as OCC Exhibit 1 in this proceeding. If you
8 could turn to page 24, please. And on page 24 and
9 the next several following pages the Ohio Commission
10 set forth in detail its determination of the
11 appropriate cost-based charge for AEP Ohio in
12 providing FRR capacity service, correct?

13 A. Yes, that seems to be what they're doing
14 here.

15 Q. And would you agree with me, based upon
16 3a, the second sentence under 3a on page 24, that a
17 starting point for the Commission's review was the
18 formula rate approach recommended by AEP Ohio?

19 MS. GRADY: Objection. That's a
20 mischaracterization of that sentence. It does say
21 "AEP notes that the formula rate approach
22 recommended." I don't think that the Commission is
23 using that term, it's AEP.

24 EXAMINER PIRIK: Thanks for the
25 clarification.

1 You may answer.

2 A. Yeah, what they said here, it says "AEP
3 notes that the formula rate approach recommended by
4 Company witness Pearce is based upon the average cost
5 of serving the company's LSE obligation," et cetera,
6 et cetera, they're referring to what -- to what AEP
7 was presenting. I don't know whether they
8 characterized it -- their decision as being a formula
9 rate.

10 Q. Well, sir --

11 A. If you have a cite for me, I'll take a
12 look.

13 Q. My question, sir, was whether you would
14 agree that the Commission started its review of AEP's
15 cost-based rate with the formula rate that had been
16 recommended by AEP Ohio.

17 A. They started with what AEP presented.
18 They characterize AEP's description of it as a
19 formula rate approach. I don't know that the
20 Commission accepted AEP's characterization of what
21 they were presenting as a formula rate approach.
22 This is what they said AEP stated. I don't see where
23 they stated it, that they called it that. Maybe they
24 did, I don't know. But from what I'm seeing here
25 there's nothing in what I see where the Commission

1 said it was adopting a formula rate approach or using
2 a formula rate approach.

3 Q. Well, it started with AEP Ohio's
4 recommended formula rate and made modifications to
5 that, correct?

6 A. They state they started with what AEP
7 submitted. They noted here that AEP characterized it
8 as a formula rate approach. That's as much as I know
9 from reading this.

10 Q. But on the subsequent pages the Ohio
11 Commission made adjustments to AEP Ohio's proposed
12 formula rate, correct?

13 A. They made adjustments to AEP's
14 presentation.

15 Q. And after making adjustments to AEP's
16 presentation, as you call it, the Ohio Commission
17 approved a cost for AEP Ohio in respect of its
18 provision of capacity service, correct?

19 A. They made a revenue requirement finding
20 for AEP, yes.

21 Q. And how does the revenue requirement
22 finding that the Ohio Commission made for AEP Ohio
23 differ from the revenue requirement that Mr. Wathen
24 offered in this case on behalf of Duke Energy Ohio?

25 A. Well, I guess, to start with, they're

1 different companies.

2 Q. Anything else, sir?

3 A. I haven't done a complete analysis of
4 that. You know, I just -- well, maybe I can cite
5 some way in which it differs.

6 If you can refer to page 34 of the order.
7 If you see there, the Commission is addressing some
8 issues, I guess, that staff raised. And if you look
9 at the first full paragraph there, I guess it's about
10 five lines down, there's a statement there "With
11 regard to AEP-Ohio's prepaid pension asset, however,
12 we agree with the Company that Mr. Smith's exclusion
13 of this item was inconsistent with Staff's
14 recommendation in the Company's recent distribution
15 case."

16 And there's another issue there that the
17 Commission found that the staff's proposed treatment
18 was inconsistent with their treatment in the
19 company's distribution rate case.

20 I think there's a number of matters, and
21 I discussed in my testimony that Mr. Wathen's
22 presentation here is inconsistent with Duke's
23 presentation --

24 Q. Well --

25 A. Can I finish --

1 Q. Sure. I'm sorry.

2 A. -- if I may? Thank you.

3 I believe there's a number of matters
4 here where in my opinion Mr. Wathen's presentation is
5 inconsistent with what Duke did in its recent
6 electric distribution rate case. I address those
7 issues in my testimony, and in that regard I think
8 Mr. Wathen's method is inconsistent with what the
9 Commission stated in this section I just cited to
10 you.

11 Q. So you believe that Mr. Wathen --
12 Mr. Wathen's calculation of a revenue requirement for
13 Duke Energy Ohio differed from that formula that the
14 Commission approved in respect of AEP Ohio's capacity
15 case.

16 A. Where did the Commission approve a
17 formula in AEP Ohio's capacity case? I'm not
18 familiar with where they approved any formula. I see
19 what they did. Again, I'm not altogether comfortable
20 sitting here and telling the Commission what its own
21 practice is or what it meant. I can only say what I
22 read and how I interpret it.

23 Again, the Commission expressed here, to
24 me anyway, a concern that there be consistency
25 between the distribution case and the capacity case

1 revenue requirement. I did the best I could to
2 achieve that myself. I don't think Mr. Wathen did in
3 all instances.

4 Q. Sir, I won't call it a formula, but you
5 do understand that the Ohio Commission started with
6 AEP's presentation, as you called it, made
7 adjustments to that, and ultimately arrived at a
8 cost-based charge for AEP Ohio's FRR capacity service
9 obligation, correct?

10 A. I believe I've answered that already.
11 Yes, that's what they did.

12 Q. And my question, sir, is: In your
13 opinion, how does Duke Energy Ohio's proposed revenue
14 requirement and the establishment of that revenue
15 requirement differ from that which the Ohio
16 Commission utilized in AEP Ohio's case?

17 A. Again, I hate to be repetitive here, but
18 I think as a matter of principle the Commission there
19 was concerned about consistency. I don't believe
20 Mr. Wathen's presentation was in all respects
21 consistent with the company's presentation in its
22 electric distribution case. And I discuss those
23 areas in my testimony.

24 Q. The differences that you just identified
25 on page 34, do you know if those existed as between

1 AEP Ohio's capacity case and its most recent electric
2 distribution case?

3 A. It seems to be what it says here.

4 "Inconsistent with Staff's recommendation in the
5 Company's recent distribution rate case."

6 Q. So what you know is based upon what
7 you're reading in the order, correct?

8 A. You got that right.

9 Q. Sir, do you know whether AEP Ohio has a
10 grid modernization program?

11 A. I do not know.

12 Q. So you don't know whether the, and we'll
13 call it "presentation," that the Ohio Commission
14 utilized for purposes of establishing AEP Ohio's
15 cost-based capacity rate excluded any costs
16 associated with grid modernization, correct?

17 A. I did not do that analysis. I would hope
18 it didn't. If it did include it, I would urge them
19 to reconsider that, but I have no knowledge of their
20 having included any costs associated with the grid
21 modernization in the capacity based charge.

22 Q. Mr. Effron, you are aware of the concept
23 of formula rates, correct?

24 A. I'm generally aware of it, yes.

25 Q. And you do know that Duke Energy Ohio,

1 similar to AEP Ohio and Dayton Power & Light, uses a
2 formula rate to set transmission rates, correct?

3 A. I know that Duke does. The other
4 companies, I haven't reviewed that, but many
5 companies do use a formula rate for their
6 transmission service, so I can accept that other
7 companies do as well.

8 Q. And, sir, you have participated in the
9 discovery that has occurred in this case to the
10 extent -- in the sense that you've reviewed discovery
11 issued by the Ohio Consumers' Counsel to the company,
12 correct?

13 A. Yes.

14 Q. And you've incorporated some of those
15 responses into your work in this proceeding in your
16 testimony, correct?

17 A. Yes.

18 MS. SPILLER: Your Honor, may we
19 approach, please?

20 EXAMINER PIRIK: Yes.

21 MS. SPILLER: And we would ask that the
22 following be identified for purposes of the record as
23 Duke Energy Ohio Exhibit No. 30, it is a response of
24 Duke Energy Ohio to a discovery request issued by the
25 Consumers' Counsel under OCC-POD-01-015.

1 EXAMINER PIRIK: The document is so
2 marked.

3 MS. SPILLER: Thank you.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Mr. Effron, do you recognize Duke Energy
6 Ohio Exhibit 30 as a request for Consumers' Counsel
7 for the company's formula rate under Attachment H-22
8 of PJM's as open access tariff?

9 A. That's what it states, yes.

10 Q. And would you agree with me, sir, that
11 this formula rate is what's used by Duke Energy Ohio
12 to establish its revenue requirement for network
13 integrated transmission service?

14 A. It appears to be the formula rate for
15 transmission service.

16 Q. And you are aware, sir, being familiar
17 with Duke Energy Ohio's formula rates, that this is
18 filed annually with the FERC and Duke Energy Ohio's
19 transmission rates are updated annually, correct?

20 A. I'm generally familiar with that, yes.

21 Q. And, sir, if you could turn to what would
22 be page 3 of the attachment, and on the upper right
23 portion we note that this is for the 12 months ended
24 December 31, 2011, correct?

25 A. Yes.

1 Q. And line 4 under rate base you'll see
2 general and intangible, correct?

3 A. Could I have that reference again?

4 Q. Sure. It's page 3 of 20 -- if you look
5 at the very top, upper right, page 3 of 34 of the
6 attachment.

7 A. I might have the wrong page here.

8 EXAMINER PIRIK: I want to be sure that
9 it's clear. I mean, what's confusing about it and I
10 don't know if this is confusing but there are a
11 couple of sets of page numbers and there's -- okay,
12 so you're doing the very top page number.

13 Q. Do you see the reference to the case page
14 number, sir?

15 A. Yes, I wasn't on the page but I have now.

16 Q. Line 4 under rate base is general and
17 intangible, correct?

18 A. That's correct.

19 Q. And that's general and intangible gross
20 plant in service, correct?

21 A. Yes.

22 Q. And if we look over at column 4, that's
23 the allocator, correct?

24 A. Correct.

25 Q. And then there's the total under column

1 5, or there's a Company Total, correct?

2 A. The Company Total is under column 3 on
3 what I have here.

4 Q. And, sir, would you agree with me that
5 the total reflected under column 3, Company Total, on
6 Duke Energy Ohio Exhibit 30 is the same amount as
7 appears in the general plant figure as shown on WDW-1
8 of Mr. Wathen's attachments?

9 MS. GRADY: Can we have the specific
10 reference to Mr. Wathen's attachments. It is a
11 24-page document.

12 MS. SPILLER: Sure. Page 5 of 24.

13 MS. GRADY: And may I have a moment to
14 get that, your Honor.

15 Q. And do you have Mr. Wathen's workpapers,
16 sir, or his attachments?

17 A. I don't think I do.

18 Q. We'll get them for you.

19 EXAMINER PIRIK: While we're doing that,
20 how much more do you have?

21 MS. SPILLER: I don't have that much
22 more, your Honor, at all.

23 EXAMINER PIRIK: Minuteswise?

24 MS. SPILLER: I would say 30 minutes.

25 EXAMINER PIRIK: 30 minutes.

1 MS. GRADY: Does counsel have another
2 copy of that because I cannot locate mine, WDW
3 schedules.

4 MS. SPILLER: Maureen, do you have the
5 application?

6 MS. GRADY: I should have it.

7 EXAMINER PIRIK: We'll go off the record.
8 (Discussion off the record.)

9 EXAMINER PIRIK: We'll go back on the
10 record. In looking at attachment -- or Exhibit 25B
11 that's the redacted version, the corrected redacted
12 version, it is somewhat different and has some
13 different elements on it than the original 25A, and
14 in light of that we agree that we need to have a
15 redacted and an unredacted version.

16 MS. SPILLER: Okay.

17 EXAMINER PIRIK: So the redacted version
18 of 25 will be 25B and the unredacted version of that
19 same B will be 25C since it's not exactly the same as
20 25A.

21 MS. SPILLER: Thank you, your Honor.

22 EXAMINER PIRIK: You may proceed.

23 A. I have that now. Yeah, the numbers
24 appear to be the same.

25 Q. And this page, Mr. Effron, page 3 of 34

1 of Exhibit, Duke Energy Ohio Exhibit 30, did you see
2 any adjustments to general plant before costs were
3 allocated?

4 A. They don't appear to be, no.

5 Q. And the allocator under column 4 is wages
6 and salaries, correct?

7 A. Correct.

8 Q. And, sir, you have no reason to dispute
9 that the FERC did not approve this formula rate for
10 Duke Energy Ohio, do you?

11 A. They did or they didn't. I have no idea
12 whether they approved it or.

13 Q. And, sir, would you agree with me that
14 the FERC's standard with respect to setting rates is
15 to ensure that those rates are just and reasonable?

16 A. I have no reason to believe otherwise.

17 Q. And, sir, would you agree with me that
18 the formula rate in WDW-1 uses the same methodology
19 as reflected in this transmission formula rate in
20 that there was no adjustment before the allocation
21 for wages and salaries for general and intangible
22 plant?

23 A. Yeah, there's no adjustments in either of
24 these schedules.

25 Q. And, sir, before we leave this exhibit

1 just if you would turn to page 4, please.

2 A. Page 4 of what?

3 Q. Page 4 of 34 in Exhibit 30, not
4 Mr. Wathen's WDW-1. In line 16 is Property, correct?

5 A. It's -- the caption on that line is
6 "Property."

7 Q. Correct. And the main heading under this
8 line is taxes other than income taxes, correct?

9 A. Yes.

10 Q. And under column 4, Allocator, the
11 allocator was GP, correct?

12 A. Yes.

13 Q. And, sir, do you know that to mean gross
14 plant?

15 A. If I had to guess, that's what I'd say it
16 was.

17 Q. Well, sir, just to be sure, because I
18 don't want you to guess, back on page 3 of the
19 document you have, under Rate Base line 6 is a Total
20 Gross Plant, correct?

21 A. Yes.

22 Q. And then you would see under the
23 Allocator column the abbreviation "GP," correct?

24 A. Yes, I see that.

25 Q. And so for purposes of Duke Energy Ohio's

1 submission to the FERC for purposes of its formula
2 rate template, would you agree with me that property
3 taxes are allocated based upon the relative
4 proportion of transmission plant to total plant?

5 A. Yeah, that appears to be the case in this
6 transmission rate filing, yes.

7 Q. And, sir, you do have Mr. Wathen's
8 Attachment WDW-1 before you still, correct?

9 A. Yes.

10 Q. If you could turn to page 22 of that
11 document, please.

12 A. Yes, I have that.

13 Q. And you have on line 2 footnote C. Do
14 you see that reference, sir?

15 A. Yes.

16 Q. And therein Mr. Wathen indicates that he
17 allocated property taxes using a gross plant
18 allocation factor, correct?

19 A. Yes.

20 Q. And wouldn't you agree with me, sir, that
21 Mr. Wathen's allocation to production plant, the
22 basis for that allocation was the same as in the
23 formula rate that Duke Energy Ohio submitted to the
24 FERC?

25 A. They both seem to use gross plant

1 allocators if that's what you're asking.

2 Q. Yes, sir.

3 And do you know how Mr. Wathen's
4 allocations for general and intangible plant and
5 property taxes differ from those that the Ohio
6 Commission approved in establishing AEP Ohio's
7 cost-based rate for capacity service?

8 A. I have not done that analysis, nor have I
9 analyzed how the, in the AEP case, what was done
10 there was consistent with what had been done in the
11 previous AEP distribution case. So I have not done
12 that analysis.

13 Q. Thank you.

14 Mr. Effron, would you agree with me that
15 the Ohio Commission typically allows adjustments to
16 revenue requirement for cost items that are known and
17 measurable?

18 A. That's a standard that's typically used,
19 yes.

20 Q. And would you also agree with me, sir,
21 that if there are anticipated cost savings included
22 in a revenue requirement calculation, that the fair
23 balance would be to include any anticipated cost
24 increases such as those for labor and health care?

25 A. To the extent they're directly related,

1 yes.

2 Q. Mr. Effron, I'd like to turn back to your
3 testimony, please, sir, page 15.

4 A. Yes.

5 Q. And here on page 15 of your direct
6 testimony is discussion around accumulated
7 amortization intangible plant, correct?

8 A. Yes.

9 Q. And for purposes of forming your opinions
10 on this part of your testimony you reviewed the
11 revenue requirement that Mr. Wathen prepared,
12 correct?

13 A. Yes.

14 Q. And you are aware, sir, that the revenue
15 requirement that Mr. Wathen prepared was determined,
16 in part, with regard to Duke Energy Ohio's costs as
17 reflected in its FERC Form 1, correct?

18 A. Yes.

19 Q. And that was the FERC Form 1 for year
20 ending 2011, correct?

21 A. Yes.

22 Q. And, sir, you are familiar in your
23 profession with utility companies' FERC Form 1s,
24 correct?

25 A. Generally familiar, yes.

1 MS. SPILLER: Your Honor, may we
2 approach?

3 EXAMINER PIRIK: Yes.

4 MS. SPILLER: We would ask that the
5 following be marked for purposes of identification as
6 Duke Energy Ohio Exhibit 31, it is Duke Energy Ohio's
7 FERC Form 1 for the year ending 2011.

8 EXAMINER PIRIK: The document is so
9 marked.

10 MS. SPILLER: Thank you.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Now, Mr. Effron, on page 15 of your
13 direct testimony you noted that the depreciation
14 reserve on Attachment WDW-1 did not reflect
15 accumulated amortization of intangible plant,
16 correct?

17 A. Yes. Yes.

18 Q. And you made an adjustment as a result of
19 that, correct?

20 A. Yes.

21 Q. And, sir, if you could turn to page 336
22 of Duke Energy Ohio Exhibit 31, the FERC Form 1.

23 A. Yes.

24 Q. And there, sir, you do see within the
25 box, it's A titled "Summary of Depreciation and

1 Amortization Charges," correct?

2 A. Yes.

3 Q. And there is, on line 1, intangible
4 plant, correct?

5 A. Yes.

6 Q. And would you agree with me, Mr. Effron,
7 that in the revenue calculation prepared by
8 Mr. Wathen, that Duke Energy Ohio did not include the
9 annual amortization expense associated with
10 intangible plant?

11 A. I would have to review that. As I sit
12 here I don't recall that, whether that was excluded
13 or not.

14 Q. If it was excluded, would you believe it
15 appropriate to include the annual amortization
16 expense associated with intangible plant in the
17 revenue -- in the revenue requirement calculation?

18 A. I'd have to review the reasons why it was
19 excluded.

20 Q. Did you review the reasons why the
21 depreciation reserve was excluded? I'm sorry, that
22 the accumulated amortization was excluded?

23 A. As I analyzed the exhibits the reason it
24 appeared to me it was excluded was that it wasn't
25 included in the Accumulated Depreciation Reserve

1 Account 108.

2 Q. Mr. Effron, in the calculations that you
3 did as reflected in your schedules, and I would like
4 to turn to DJE-1, please, and your first adjustment,
5 there, sir, concerns the ESSC revenues, correct?

6 A. Yes.

7 Q. And you understand, sir, that the ESSC is
8 in effect from January 1, 2012, through December 31,
9 2014, correct?

10 A. Yes.

11 Q. And you understand that the company's
12 request in this case reflects the discrete time
13 period of August 1, 2012, through May 31, 2015,
14 correct?

15 A. Yes.

16 Q. And yet, sir, you are including an
17 annualized amount for rider ESSC of \$110 million per
18 year, correct?

19 A. Yes.

20 Q. You did not adjust that to coincide with
21 the term at issue in this proceeding, correct?

22 A. I believe it's the OCC's position that
23 any charge established here would not continue after
24 December 31st, 2014. Make sure I'm getting my years
25 right. So I did not adjust that to take it out past

1 then.

2 Q. And so that adjustment was one that the
3 OCC attorneys suggested you make?

4 A. No. That was the way I did it based on
5 my understanding of what the OCC's position was.

6 Q. And there also wasn't an adjustment on
7 the front end for 2012, correct? You included an
8 entire year's worth of rider ESSC's revenues,
9 correct?

10 A. Yes.

11 Q. And why did you include ESSC revenues
12 from the first seven months of 2012 in your
13 calculation?

14 A. I just -- I just did everything on an
15 annual basis. These schedules are all presented on
16 an annual basis and I presented that particular
17 adjustment on a basis consistent with the other
18 adjustments on the schedule.

19 MS. SPILLER: Thank you, sir.

20 Nothing further at this time, your Honor.

21 EXAMINER PIRIK: Thank you.

22 Staff?

23 MR. BEELER: No questions, your Honor,
24 thank you.

25 EXAMINER PIRIK: Redirect?

1 MS. GRADY: Could we have five minutes,
2 your Honor?

3 EXAMINER PIRIK: Yes.

4 MS. GRADY: Thank you.

5 (Recess taken.)

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

8 MS. GRADY: Thank you, your Honor.

9 - - -

10 REDIRECT EXAMINATION

11 By Ms. Grady:

12 Q. Mr. Effron, do you recall a series of
13 questions from the company counsel with respect to
14 allocations and how the allocations are treated for
15 purposes of FERC?

16 A. Yes, I recall a series of questions on
17 the development of allocations in the formula
18 transmission rate that the company uses.

19 Q. And does the fact that FERC may allocate
20 on the basis of a formula using a specific production
21 factor different than what you recommend change your
22 recommendation?

23 A. No. The allocation used in the FERC
24 formula rate I don't really think should necessarily
25 be deemed to be the appropriate method for the

1 purpose of determining the appropriate allocation
2 factors in determining the capacity cost of service
3 in the present case.

4 As I state in my testimony, the main
5 problem was an overlap between the distribution case
6 and the present case. The company is recovering
7 92 percent of the general plant costs as part of its
8 distribution revenue requirement. To me it would be
9 clearly inappropriate to allow recovery of 50 percent
10 of the general plant costs as part of the revenue
11 requirement of the capacity service.

12 Q. Is it your understanding that under FERC
13 transmission filings that companies are permitted to
14 recover more than a hundred percent of their
15 investment?

16 A. I have difficulty believing that would
17 knowingly be allowed.

18 Q. Now, you also were asked by Ms. Spiller a
19 couple questions about anticipated cost savings and
20 whether or not you believe that if anticipated cost
21 savings are included in the filing, whether the
22 company should also include the cost increases, and I
23 think your response was if directly related. Do you
24 recall those?

25 A. I do, yes.

1 Q. And can you tell me whether the analysis
2 that you present in this case takes into account the
3 cost increases.

4 A. With regard to the operation and
5 maintenance expense adjustment that I'm proposing, I
6 believe that it does because I use 2013 as my basis
7 for the adjustment I quantified. So to the extent
8 that there were any cost increases, that would
9 automatically be reflected in the forecast for the
10 2013 expenses.

11 MS. GRADY: That's all the questions I
12 have, thank you, Mr. Efron.

13 - - -

14 RE-CROSS-EXAMINATION

15 By Ms. Spiller:

16 Q. Mr. Efron, very briefly, with respect to
17 the transmission rates that are approved at the FERC,
18 you are aware that those approved rates are collected
19 from Duke Energy Ohio's retail customers here in Ohio
20 through rider BTR, correct?

21 A. I assume that the wholesale cost would be
22 passed on to the retail entity and there would be a
23 mechanism to recover them. I don't know what the
24 actual name of the rider is, though.

25 Q. And are --

1 A. Or if it is a rider for that matter.

2 Q. And the recovery from retail ratepayers
3 of network integration transmission service charges,
4 do you believe the Ohio Commission would approve
5 recovery of rates it found to be unjust and
6 unreasonable?

7 A. I would hope not.

8 Q. And you have no reason to believe that
9 they would, sir, do you?

10 A. I don't think they knowingly would, no.

11 Q. And, sir, in approving rates for
12 transmission service do you believe that the FERC
13 considers the existing rates of the distribution
14 utility that is offering those, that is making that
15 filing?

16 A. I really have never been involved in a
17 FERC transmission case in any level of detail that I
18 recall. I doubt that they would.

19 Q. And you just made reference to some
20 proposed adjustments as reflected in your testimony
21 predicated upon 2013 information, correct?

22 A. That's correct, yes.

23 Q. And at the time that that information was
24 prepared at the end of 2012, you would agree with me
25 that it was forecasted information, correct?

1 A. It would have to be, yes.

2 Q. And I believe you just described it as
3 such, as forecasted information, correct?

4 A. I might have when I spoke of it, but
5 obviously if it was prepared at the end of 2012, it's
6 for 2013, it would have to be forecasted.

7 Q. And forecasted information is not
8 indicative of a known or measurable cost, correct?

9 A. It might or might not be. Things change
10 and if there -- if the forecast reflects those
11 changes and we know the changes have taken place, to
12 the extent those changes are known, then the
13 forecast -- it could be known and measurable, it's
14 not necessarily known and measurable, but I think it
15 could be known and measurable.

16 Q. But we don't know if the forecast
17 accurately reflects the item until that -- until it
18 actually is incurred, correct?

19 A. We don't know it obviously to the last
20 dollar but that's, from my experience, that's never
21 been a standard or that's never what's meant by
22 "known and measurable."

23 Q. But, sir, there's forecasted information
24 and there's actual information, correct?

25 A. Yes.

1 MS. SPILLER: No further questions, thank
2 you.

3 EXAMINER PIRIK: Thank you.

4 Thank you, Mr. Effron.

5 Exhibits? OCC.

6 MS. GRADY: Yes, your Honor. At this
7 time we would move for the admission of OCC Exhibit
8 25, 25A, 25B, and 25C.

9 EXAMINER PIRIK: Any objections?

10 MS. SPILLER: Your Honor, I would renew,
11 based upon Mr. Effron's testimony here today, the
12 motion to strike given that much of this testimony is
13 not his but he attributed it to Consumers' Counsel.

14 EXAMINER PIRIK: Your motion is noted for
15 the record, however, these exhibits will be admitted.

16 MS. SPILLER: Thank you, your Honor.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 MS. SPILLER: And at this time Duke
19 Energy Ohio would move for the admission into the
20 record of Duke Energy Ohio Exhibit 30 and Duke Energy
21 Ohio Exhibit 31, please.

22 EXAMINER PIRIK: Any objections?

23 MS. GRADY: Yes, your Honor. If I may be
24 heard. With respect to Exhibit No. 31, that is the
25 FERC Form 1. Ms. Spiller did not authenticate this

1 properly. She showed the, merely showed the document
2 to Mr. Effron. Mr. Effron cannot vouch for this
3 document, he was basically shown a page and asked if
4 the numbers there tied into the numbers that are
5 presented in his testimony. I don't think that's
6 proper authentication under the Ohio Rules of
7 Evidence. He is not -- he is not necessarily a
8 witness who has familiarity and can vouch that this
9 is an accurate and -- accurate copy of this document
10 and I think it's improper.

11 MS. SPILLER: And, your Honor, if I may
12 just very briefly, this is a public record or report
13 of a public entity or agency and as such would not
14 qualify as hearsay and, in fact, is described as not
15 being hearsay under the evidence rules.

16 I would further note that this document
17 is filed annually with the Ohio Commission.

18 EXAMINER PIRIK: The document will be
19 admitted into the record.

20 MS. SPILLER: Thank you, your Honor.

21 EXAMINER PIRIK: As well as Exhibit 30.

22 MS. SPILLER: Thank you.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER PIRIK: We have one
25 clarification before we go for lunch and that is

1 redacted exhibits. I think we can go off the record
2 for this.

3 (Thereupon, at 1:02 p.m., a lunch recess
4 was taken until 1:50 p.m.)

5 - - -

6

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Thursday Afternoon Session,
April 25, 2013.

- - -

EXAMINER PIRIK: Go back on the record.
I believe our next witness is Kroger.

MS. BOJKO: Yes, your Honor. At this
time I would like to call to the stand Mr. Kevin C.
Higgins.

(Witness sworn.)

EXAMINER PIRIK: Thank you.

MS. BOJKO: Your Honor, at this time I
would like to mark as Kroger Exhibit No. 1 the Direct
Testimony of Kevin C. Higgins on behalf of the Kroger
Company.

EXAMINER PIRIK: The document will be so
marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. BOJKO: May I approach, your Honor?

EXAMINER PIRIK: Yes.

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KEVIN C. HIGGINS

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

DIRECT EXAMINATION

By Ms. Bojko:

Q. Mr. Higgins, do you have in front of you
what's been previously marked as Kroger Exhibit
No. 1?

A. Yes, I do.

Q. Could you please explain what that is.

A. Yes. That is my direct testimony filed
in this proceeding on behalf of the Kroger Company.

Q. And could you please state your name and
address for the record.

A. Yes. My name is Kevin C. Higgins. My
address is 215 South State Street, Suite 200, Salt
Lake City, Utah.

Q. And on whose behalf are you testifying
today, sir?

A. I'm here on behalf of the Kroger Company.

Q. And was this testimony prepared by or
under your direction?

A. Yes, it was.

Q. Do you have any corrections to your
testimony?

1 A. I do not.

2 Q. And if I were to ask you the same
3 questions provided in the testimony today as you were
4 asked previously, would your answers be the same?

5 A. Yes.

6 MS. BOJKO: Your Honors, I tender the
7 witness for cross-examination.

8 EXAMINER PIRIK: Thank you. Do any
9 intervenors have any questions?

10 Duke.

11 MS. SPILLER: Thank you, your Honor. And
12 before proceeding with cross-examination we'd move
13 for a motion to strike, please.

14 EXAMINER PIRIK: Okay.

15 MS. SPILLER: Turning first to page 4 of
16 Mr. Higgins' direct testimony, lines 9 through 13.

17 Page 5, lines 6 through 12, moving down
18 to line 18 the sentence that begins on line 18
19 through the balance of that sentence on line 21.

20 Turning to page 6, the sentence that
21 appears on lines 2 and 3 beginning with "Duke's
22 attempt."

23 Page 7, lines 8 through 15.

24 Page 8, lines 8 through 11. Additionally
25 on page 8 in line 22 the sentence that begins

1 approximately two-thirds of the way through that
2 line, "Duke apparently believes," so that sentence
3 carrying over to page 9 through line 5. Additionally
4 on this page lines 7 through the sentence that
5 concludes on line 10. Additionally on page 9, lines
6 19 through 25 carrying over to page 10, lines 1
7 through 10.

8 Carrying over to page 11, on line 7 the
9 sentence that begins "He is now attempting," through
10 the sentence that concludes on line 13.

11 Page 12, lines 1 through 5.

12 Page 13, lines 18 through 22.

13 Page 14, lines 1 through 3.

14 And the basis for the motion to strike,
15 your Honors, is the same as that previously set forth
16 by Duke Energy Ohio, that in this document
17 Mr. Higgins is offering legal opinions and
18 conclusions with respect to the interpretation of an
19 agreement and is not qualified to render those
20 opinions in his expert capacity.

21 EXAMINER PIRIK: Ms. Bojko.

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

23 Mr. Higgins is an expert in regulatory ratemaking and
24 policy and he was a stakeholder and a witness in the
25 prior proceeding that he is giving his opinion on

1 and, consistent with other prior rulings in this
2 case, he is able to give the regulatory framework as
3 well as the regulatory policy opinions as an expert
4 in these arenas -- in this arena, excuse me.

5 EXAMINER PIRIK: The motion is denied.

6 MS. SPILLER: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Ms. Spiller:

10 Q. Good afternoon, Mr. Higgins.

11 A. Good afternoon, Ms. Spiller.

12 Q. It's been a couple years but nice to see
13 you again.

14 A. Same here.

15 Q. Sir, in your direct testimony in this
16 proceeding you do not dispute Duke Energy Ohio's
17 obligations as a fixed resource requirement, or FRR,
18 entity, correct?

19 A. I don't dispute that, no.

20 Q. And you do not dispute, Mr. Higgins, that
21 Duke Energy Ohio has committed its legacy generating
22 assets to fulfilling its obligation to provide
23 capacity for its footprint, correct?

24 A. I don't dispute that.

25 Q. And, sir, you do not dispute through your

1 testimony Duke Energy Ohio's embedded cost for
2 fulfilling its FRR capacity service obligations,
3 correct?

4 A. I don't address the subject of its
5 embedded costs.

6 Q. And, sir, for purposes of this testimony
7 you also have not done any independent analysis of
8 the company's financial condition, correct?

9 A. That is correct.

10 Q. And as such, Mr. Higgins, you cannot
11 dispute that Duke Energy Ohio incurred negative
12 returns on equity for its legacy generation business
13 in 2012, correct?

14 A. I don't dispute that particular claim.

15 Q. And you cannot dispute, sir, that Duke
16 Energy Ohio incurred a negative return on equity with
17 regard to its electric transmission and generation
18 businesses in 2012, correct?

19 A. I did not dispute that claim.

20 Q. And, sir, you have not, for purposes of
21 this case, done any independent analysis to challenge
22 any of the company's projected negative returns on
23 equity through 2015, correct?

24 A. That's correct.

25 Q. Mr. Higgins, your only purpose in this

1 case is to offer testimony in respect of your
2 interpretation of the ESP stipulation docketed under
3 case 11-3549, correct?

4 A. In general, yes, I would agree with that.

5 Q. And, sir, you have testified in
6 connection with the applications for approval of
7 standard service offers that have been filed by the
8 various electric distribution utilities in Ohio,
9 correct?

10 A. That's correct.

11 Q. And, fair to say, sir, that you have done
12 your best to follow the regulatory developments in
13 Ohio since the passage of Senate Bill 3?

14 A. Yes.

15 Q. And you are thus aware, sir, that Ohio
16 law requires an electric distribution utility to
17 provide a standard service offer of competitive
18 retail electric service, correct?

19 A. Yes.

20 Q. And, sir, I would be fair to conclude
21 that you do know that can take the form of either a
22 market rate offer, or MRO, or an electric security
23 plan, or ESP, correct?

24 A. Correct.

25 Q. And the requirements applicable to

1 standard service offers for the provision of
2 competitive retail electric service are set forth in
3 Chapter 4928 of the Ohio Revised Code, correct?

4 A. That is correct.

5 Q. And, sir, given your familiarity with
6 Ohio regulatory proceedings you are aware that the
7 Ohio Commission has found that capacity service
8 provided by an FRR entity is not a competitive retail
9 service, correct?

10 A. My reading of the Commission's AEP
11 capacity order is that --

12 EXAMINER PIRIK: Mr. Higgins, can you
13 move the microphone.

14 THE WITNESS: I'm sorry, sure.

15 EXAMINER PIRIK: Thank you.

16 A. -- is that, as I recall, the Commission
17 did not distinguish whether or not the capacity
18 product being discussed was competitive or
19 noncompetitive. The Commission, I believe, did
20 determine that it was a wholesale transaction or a
21 wholesale arrangement as opposed to a retail
22 arrangement even though the implications are that
23 there's a rate that retail customers would pay.
24 Nevertheless the Commission did make that distinction
25 between a wholesale and retail and elected in its

1 order to pass on the question as to whether it was
2 competitive or noncompetitive, to the best my
3 recollection.

4 Q. Well, sir, as we've just discussed, under
5 that Chapter 4928 sets forth the requirements
6 applicable to the standard service offer for
7 competitive retail electric service, correct?

8 A. That is correct.

9 Q. And, sir, you are aware, having reviewed
10 the AEP Ohio capacity case decision, that the Ohio
11 Commission found that the provisions of 4928 were not
12 applicable to its decision, correct?

13 MS. BOJKO: Your Honor, could there be a
14 citation provided to that order.

15 EXAMINER PIRIK: Yes.

16 Q. Sure. And, sir, I noted you have a
17 binder of material with you at the witness stand. Do
18 you have the capacity case decision, and if not,
19 we're happy to provide.

20 A. I have excerpts from it so if you have a
21 specific section you'd like me to see, I'd appreciate
22 being able to look at it.

23 MS. SPILLER: We are handing, Ms. Bojko,
24 OCC Exhibits 1 and 3 to your witness.

25 MS. BOJKO: I'm sorry, I don't know, 1 is

1 the opinion and order. Could you please identify
2 what you're handing him with regard to No. 3.

3 MS. SPILLER: It's OCC No. 3, the entry
4 on rehearing.

5 MS. BOJKO: Thank you.

6 Q. (By Ms. Spiller) Sir, I'm going to turn
7 you to OCC Exhibit No. 3, the entry on rehearing in
8 case 10-2929.

9 A. Yes.

10 Q. And if you could go to page 28, sir.

11 A. Yes. I'm there.

12 Q. Okay. About 16 lines up from the bottom
13 do you see a sentence that begins with "Because the
14 capacity service"? About midway through that line.

15 A. Yes, I do.

16 Q. And therein the Commission found that
17 because capacity service was a wholesale rather than
18 retail electric service, it found that the
19 market-based pricing under Chapter 4928 was not
20 applicable, correct?

21 A. Yes.

22 Q. Mr. Higgins, having testified in the
23 standard service offer proceedings of Ohio's electric
24 distribution utilities you do know that an ESP may
25 include terms, conditions, or charges that would have

1 the effect of stabilizing or providing certainty with
2 regard to the provision of competitive retail
3 electric service, correct?

4 A. I am aware that charges that have the
5 effect of providing stabilization can be permitted,
6 among other things.

7 Q. And, sir, thank you for the reference,
8 they have now become commonly known as stabilization
9 or stability charges, correct?

10 A. I believe that that is what they have
11 commonly been called.

12 Q. And you have testified as to such
13 stability charges over the course of the last two
14 years, correct?

15 A. Yes.

16 Q. And in the AEP ESP proceeding filed under
17 case 11-346 you testified as to AEP Ohio's proposed
18 stability charge or rider RSR, correct?

19 A. Yes.

20 Q. And certainly you're aware of the
21 decision in that case, correct?

22 A. I am.

23 Q. And in connection with AEP Ohio's current
24 ESP, the Ohio Commission approved a stability rider
25 for it under the provisions of 4928.143 of the

1 Revised Code, correct?

2 A. Yes.

3 Q. And, sir, Duke Energy Ohio's rider ESSC
4 was approved in the context of its ESP, correct?

5 A. That is correct.

6 Q. And so the ESP was approved under Chapter
7 4928 of the Revised Code, correct?

8 A. Yes.

9 Q. And you are aware, sir, that Dayton
10 Power & Light is also seeking a stability charge in
11 connection with its pending ESP application, correct?

12 A. Yes.

13 Q. And they have justified that request for
14 a stability charge under Chapter 4928.143, correct?

15 A. Yes.

16 Q. Mr. Higgins, you have served as an expert
17 witness on behalf of Kroger for some period, correct?

18 A. Yes.

19 Q. And you have in that role, sir, been --
20 understood that Kroger enters into regulatory
21 settlements or stipulations and recommendations,
22 correct?

23 A. Yes.

24 Q. And given your involvement with Kroger
25 would you agree with me that when Kroger enters into

1 regulatory settlements, it takes care to ensure that
2 those written settlements accurately reflect the
3 terms and conditions to which Kroger has agreed?

4 A. That is correct. And, in fact, one of my
5 responsibilities is to evaluate a settlement
6 agreement that's proposed and to provide a
7 recommendation to my client as to whether or not it
8 would be in my client's interest to sign it.

9 Q. And before signing you would want to be
10 sure that the settlement agreement clearly and
11 accurately reflects all of the terms to which Kroger
12 may become a signatory, correct?

13 A. Absolutely. And that is one of the
14 things I did in this particular case at issue here.

15 Q. And that, sir, would be true with regard
16 to provisions in a stipulation or settlement
17 regarding pricing, correct?

18 A. Yes.

19 Q. And that would be true with regard to
20 provisions in a settlement agreement concerning
21 compensation, correct?

22 A. Yes.

23 Q. Now, sir, you are not an attorney,
24 correct?

25 A. Correct.

1 Q. You are not qualified by training to
2 offer legal opinions or conclusions, correct?

3 A. Correct.

4 Q. Mr. Higgins, if we could turn, please, to
5 page 6 of your direct testimony, therein, sir, on
6 line 16 --

7 A. Yes.

8 Q. -- actually, the sentence begins at the
9 end of line 14, carries through to line 17, you
10 indicate that with regard to Duke Energy Ohio's ESP
11 filed under case 11-3549, that its shopping customers
12 had an interest in resolving Duke's pricing claims
13 regarding the provision of capacity service, correct?

14 A. Yes.

15 Q. And Kroger would have been included in
16 that category of interested customers?

17 A. Absolutely. In fact, Kroger found Duke's
18 proposed capacity pricing in its ESP application to
19 be quite alarming and it was a major issue of concern
20 for Kroger.

21 Q. And, sir, you're familiar with the
22 company's application, correct?

23 A. Yes, I am.

24 Q. It was a proposal in which Duke Energy
25 Ohio would provide capacity services directly to all

1 of its retail customers, correct?

2 A. Yes, and charge a cost-based rate for it.

3 Q. Over a nine year five month period for
4 it, correct?

5 A. Correct.

6 Q. And, sir, the stipulation that was
7 presented to the Ohio Commission, the ESP
8 stipulation, was one on which the Ohio Commission
9 rendered an opinion and order, correct?

10 A. Yes.

11 Q. They modified it and then approved the
12 stipulation, correct?

13 A. Yes.

14 Q. In rendering that opinion the Ohio
15 Commission reviewed the stipulation for purposes of
16 ascertaining whether it was just and reasonable,
17 correct?

18 A. Yes.

19 Q. And, given your familiarity with the
20 opinion and order in this case, you know that the
21 Commission, as they often do, applied their
22 three-part test to reviewing the stipulation,
23 correct?

24 A. Correct. In fact, I recommended as a
25 witness that they approve the test -- that they

1 approve the stipulation.

2 Q. And, in fact, you believed that the
3 stipulation satisfied the three-part test that the
4 Commission adopts to reviewing stipulations, correct?

5 A. I testified to that effect, yes.

6 Q. Well, sir, do you have your testimony in
7 support of the ESP stipulation in front of you?

8 A. I do.

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

11 EXAMINER PIRIK: Yes.

12 MS. SPILLER: Your Honor, if we could ask
13 that the following document be marked for purposes of
14 identification as Duke Energy Ohio Exhibit 32, it is
15 the Direct Testimony of Kevin C. Higgins submitted in
16 case 11-3549 on October 28, 2011.

17 EXAMINER PIRIK: The document is so
18 marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. And, sir, do you have before you what has
21 been marked as Duke Energy Ohio Exhibit 32 in this
22 proceeding?

23 A. Yes.

24 Q. And as I have represented for the record,
25 this is your direct testimony filed in case 11-3549

1 and docketed with the Ohio Commission on October 28,
2 2011, correct?

3 A. Correct.

4 Q. And the purpose of your direct testimony
5 in Duke Energy Ohio's ESP proceeding was to support
6 the Commission's approval of that stipulation,
7 correct?

8 A. That is correct.

9 Q. And, Mr. Higgins, you testified in
10 support of the stipulation that as a result of that
11 stipulation Duke Energy -- or, strike that, Kroger's
12 energy costs would be lower; is that correct?

13 A. It would be lower than under the
14 company's original proposal.

15 Q. But, sir, you did not address in your
16 testimony in support of the ESP stipulation that that
17 stipulation would, or that that stipulation also
18 resolved what you've just described as the alarming
19 capacity proposal of Duke Energy Ohio, correct?

20 A. I stated that Kroger believed, on page 4
21 of my testimony, line 3, "Kroger believes that its
22 concerns with respect to Duke's ESP Application were
23 reasonably addressed in the negotiated Stipulation."
24 And in that statement that includes Kroger's large
25 concern over the company's proposed treatment of

1 capacity charges.

2 Q. But Kroger's concerns were never
3 identified for purposes of this evidentiary record,
4 correct?

5 A. The ESP settlement was entered into
6 before parties had an opportunity to file direct
7 testimony in opposition to the company's filing, so
8 it was as part of that process in which the
9 settlement agreement preempted filed testimony that
10 would have articulated intervenors' concerns, yes.

11 By the time I filed my settlement
12 testimony in support of the agreement, the agreement
13 that was negotiated by the parties, by the time that
14 occurred there was no longer a dispute because the
15 issue that the company had raised in its direct
16 filing, namely the treatment of capacity prices, did
17 not find its way into the final settlement agreement
18 and was resolved. Therefore, there was no need to
19 leave a or to identify particular issues with which
20 Kroger disagreed because by the time I filed this we
21 had come to an agreement.

22 Q. Sir, I'm going to go back to my question.

23 A. Okay.

24 Q. Kroger's concerns were never identified
25 for purposes of the evidentiary record in case

1 11-3549, correct?

2 A. Yes. And I answered your question.
3 There was no direct testimony in that case that
4 responded to the company's filing.

5 Q. Thank you.

6 And, sir, although you have acknowledged
7 in your direct testimony in this proceeding that
8 capacity -- that compensation for capacity service
9 was in interest of shopping customers including
10 Kroger, you did not articulate the pricing for
11 compensation service in your testimony in support of
12 the application -- or, in support of the stipulation,
13 correct?

14 MS. BOJKO: Could I have the question
15 reread, please?

16 EXAMINER PIRIK: Yes.

17 (Record read.)

18 A. And I've answered that question. That is
19 subsumed within my statement that we felt our
20 concerns with respect to Duke's ESP application were
21 addressed. I did not specifically call out that one
22 item because I had no foreknowledge that the company
23 was ultimately going to renege on it.

24 Q. Well, sir, let's talk about the ESP
25 stipulation and rider ESSC. It's your testimony that

1 that rider was intended solely to compensate the
2 company for its provision of FRR capacity service,
3 correct?

4 A. That is -- it is a primary consideration
5 because it is called out as a -- being paid in
6 recognition of the company's role as an FFR -- FFR
7 provider -- FRR provider, pardon me. That may not
8 have been the only element that was considered
9 because every settlement agreement's a package deal,
10 so there are many elements that go into a settlement
11 agreement, one may have agreed, one party may have
12 agreed to a particular provision for their own
13 reasons, however, as stated in the settlement
14 agreement, the payment for the ESSC is in recognition
15 of Duke's role and responsibilities as an FFR -- FRR
16 entity.

17 Q. And, sir, before I move on, were you the
18 sole author of your testimony here?

19 A. Yes.

20 Q. And I'm going to go back to my question.
21 Is it your testimony that the FRR was intended solely
22 to compensate Duke Energy Ohio for its provision of
23 capacity services as an FRR entity?

24 MR. KUTIK: May I have the question read,
25 please.

1 EXAMINER PIRIK: Yeah, could you read it
2 again, please.

3 MS. SPILLER: Oh, I'm sorry. I did. I'm
4 focused on that FRR now.

5 Q. (By Ms. Spiller) Sir, is it your
6 testimony in this case that rider ESSC was intended
7 solely to compensate the company for its provision of
8 capacity as an FRR entity?

9 A. It is my testimony that I believe the
10 ESSC was justified in the settlement agreement in
11 significant part because of Duke's responsibilities
12 as an FRR entity.

13 Q. But, sir, is it your opinion that that
14 rider, rider ESSC, is intended only to compensate the
15 company for its provision of capacity service as an
16 FRR entity?

17 A. I do not know what Duke considered the
18 ESSC to be compensation for. At the end of the day
19 it's dollars to the company, and I'm sure that the
20 company ran the math on the dollars to the company
21 and took that into account as part of the entire
22 package.

23 But insofar as the stipulation is
24 concerned, and insofar as the justification offered
25 in the stipulation, that points to Duke's role as an

1 FRR entity.

2 Q. And it also points to Duke's provision of
3 competitive retail electric service, correct?

4 A. Yes.

5 Q. And, sir, in connection with your direct
6 testimony in this case you did not mention that as
7 part of the overall ESP settlement that Duke Energy
8 Ohio agreed to conduct competitive auctions for its
9 SSO load effective January 1, 2012, correct?

10 A. As part of my testimony in this case?

11 Q. Yes, sir.

12 A. I did not. As I recall, that was part of
13 the company's original ESP filing. I did not see
14 that the -- that the January 1st, 2012, date that
15 ultimately resulted was a date that was particularly
16 influenced by the negotiations and, therefore, did
17 not appear to me to be a quid pro quo because in
18 Duke's original ESP filing the company was proposing
19 to go to market prices for its SSO as of January 1st,
20 2012.

21 So it seemed not to be representative or
22 indicative of a quid pro quo that resulted from the
23 settlement discussions.

24 Q. Auctions for energy only in the original
25 application, correct?

1 A. Correct.

2 Q. That's not the same as what resulted in
3 the ESP stipulation, correct?

4 A. I'm -- please provide me the distinction
5 you're looking for.

6 Q. Well, sir, under the ESP application Duke
7 Energy Ohio agreed to provide capacity to all retail
8 customers in its footprint.

9 A. Right.

10 Q. Under its standard service offer of
11 competitive retail electric service for a period of
12 nine years and five months, correct?

13 A. Correct.

14 Q. It also agreed to energy-only auctions
15 for that SSO load, correct?

16 A. Correct.

17 Q. That's not what materialized in the ESP
18 stipulation, correct?

19 A. Well, in the ESP stipulation the,
20 clearly, the capacity component of that changed
21 significantly. The capacity component of the
22 company's initial filing was withdrawn. It became
23 irrelevant and resolved, but the company did go ahead
24 and agree to price its SSO service at market prices
25 through the auction.

1 Q. And, sir, you certainly are aware of the
2 two standard service offer filings that Duke Energy
3 Ohio made in November, 2010, and in June, 2011,
4 respectively, correct?

5 A. Yes.

6 Q. The first was one for a market rate
7 offer, correct?

8 A. Correct.

9 Q. And then Duke Energy Ohio filed its
10 application for an ESP on approximately June 15, I'm
11 sorry, June 20, 2011, correct?

12 A. Correct.

13 Q. And you're aware, sir, that the
14 then-existing ESP was scheduled to terminate on
15 December 31, 2011, correct?

16 A. Yes.

17 Q. And you also understand, sir, that had
18 Duke Energy Ohio's ESP as docketed under case 11-3549
19 not been approved that its then-current ESP would
20 continue in force and effect, correct?

21 A. Yes.

22 Q. You also understood, sir, that in 2011
23 Duke Energy Ohio was serving some portion of its
24 retail load, correct? Not all customers were
25 shopping, correct?

1 A. Correct.

2 Q. And had Duke Energy Ohio's then-current
3 ESP continued, Duke Energy Ohio would have continued
4 serving its SSO load, correct?

5 A. Yes.

6 Q. It would have continued serving that SSO
7 load under the then-current ESP rates, correct?

8 A. Yes.

9 Q. And you have no reason, sir, to dispute
10 that Duke Energy Ohio may have been earning a margin
11 on those SSO rates, do you?

12 A. No.

13 Q. And, sir, by going immediately to market
14 January 1, 2012, Duke Energy Ohio gave up whatever
15 SSO load it may have been serving under its
16 then-current ESP, correct?

17 A. Correct.

18 Q. Sir, in your direct testimony you -- in
19 this proceeding, you did not mention that as a part
20 of overall ESP settlement Duke Energy Ohio agreed not
21 to participate in the auctions for its SSO load, did
22 you?

23 A. No.

24 Q. And, sir, in your testimony you also did
25 not mention that as part of the overall settlement

1 Duke Energy Ohio agreed not to renew its status as an
2 FRR entity, correct?

3 A. I did not -- no, I didn't discuss that.

4 Q. And you also did not, for purposes of
5 this case, mention that as part of the overall ESP
6 settlement Duke Energy Ohio committed to seeking an
7 early termination of its FRR obligations, correct?

8 A. I did not discuss that.

9 Q. Mr. Higgins, turning to page 10 of your
10 testimony, please. On lines 8 through 10 you
11 indicate that it is incontrovertible that Duke Energy
12 Ohio receives compensation for the capacity it has
13 committed to supply under the terms of the ESP
14 stipulation, correct?

15 A. Yes.

16 Q. And based upon that rather decisive
17 language it's your opinion that the ESP stipulation
18 would clearly and unambiguously establish Duke Energy
19 Ohio's level of compensation for its capacity
20 service, correct?

21 A. Yes. I mean, I believe there's -- let me
22 elaborate. I believe when one looks at the
23 stipulation as a whole and when one looks at the
24 record that was produced in support of the
25 stipulation, including Duke's own testimony, that it

1 is incontrovertible the parties knew and understood
2 what Duke's compensation was going to be as part of
3 that agreement.

4 Q. But it's your testimony that the ESP
5 stipulation and the language in the ESP stipulation
6 would clearly and unambiguously establish the level
7 of compensation that Duke Energy Ohio was to receive
8 for its capacity obligations, correct?

9 A. That is correct. But, as I said, it was
10 the language in the stipulation. In particular,
11 there was language in the stipulation that the
12 parties actually signed. The language that the
13 parties actually signed identified the compensation
14 to Duke. It was only the change after the hearing
15 when Duke indicated that there had been a
16 typographical error in one of the provisions that
17 Duke then inserted, with the parties' permission, the
18 words "PJM" for "Duke" in one of the paragraphs that
19 made it clear how Duke was going to be compensated.

20 That was depicted as a typographical
21 error but, nevertheless, it didn't change the
22 substance of what parties' understanding was and is,
23 and that is that Duke -- that there was an agreement
24 as to how Duke was going to be compensated.

25 PJM was the billing agent for collecting

1 these charges, but it was well understood that Duke
2 would be compensated by the billing agent for
3 providing the capacity and, in fact, there are other
4 parts of the stipulation that were not changed for a
5 typographical error that make that clear. For
6 example, if you look at the master supply agreement,
7 which is Attachment F --

8 Q. Well, sir, I'm still --

9 A. Okay, I'm just pointing out that there
10 are other elements of the stipulation that make it
11 clear that -- as to how Duke was going to be
12 compensated.

13 MS. BOJKO: Your Honor, may the witness
14 be allowed to finish his response?

15 EXAMINER PIRIK: Yes.

16 MS. BOJKO: Please finish.

17 THE WITNESS: Attachment F --

18 MS. SPILLER: Well, your Honor, I'm going
19 to move to strike. My question -- and this is not at
20 all responsive to my question.

21 MS. BOJKO: Your Honor, it actually is.
22 She asked where he made -- or what he viewed and how
23 he determined it to be incontrovertible evidence and
24 he's explaining that right now.

25 MS. SPILLER: My question was whether he

1 would agree that the ESP stipulation would clearly
2 and unambiguously set forth Duke Energy Ohio's
3 compensation. It was a question intended to elicit a
4 "yes" or "no" response.

5 A. Yes.

6 Q. Sir, you brought up this revision to the
7 stipulation. And you understand what the revision
8 was, correct?

9 A. Yes.

10 Q. And you understand what the languages in
11 the stipulation was that the parties signed in that
12 same paragraph, correct?

13 A. Correct.

14 Q. And the paragraph at issue in the -- do
15 you have the stipulation, sir?

16 A. I do.

17 MS. SPILLER: Your Honor, IEU 5 for
18 purposes of the record.

19 EXAMINER PIRIK: Thank you.

20 Q. On page 12, sir --

21 A. Yes.

22 Q. -- Section 4, and when the parties,
23 including Kroger, signed the stipulation, the first
24 sentence of Section IV.A indicated that the parties
25 agreed that PJM will charge for capacity resources,

1 correct?

2 A. Yes.

3 Q. And the second sentence in this paragraph
4 was revised such that it would be consistent with
5 that first paragraph, correct?

6 A. The second sentence as originally drafted
7 and as signed by the parties said "The Parties
8 further agree that, during the term of the ESP, Duke
9 Energy Ohio shall charge CRES providers for capacity
10 as determined by the PJM RTO." And the -- in that
11 sentence the words "Duke Energy Ohio" were replaced
12 with "PJM," with the representation from Duke that
13 that was simply correcting a typographical error, but
14 it didn't change the substance of parties'
15 understanding as to how Duke was going to be
16 compensated.

17 Q. Well, sir, what the Commission approved
18 was a stipulation wherein it's provided in Section
19 IV.A that PJM would charge CRES suppliers, correct?

20 A. PJM as the agent for Duke.

21 Q. Does it say "PJM as the agent for Duke"
22 in Section IV.A?

23 A. Not in Section IV.A but it says it
24 elsewhere in the settlement -- in the stipulation.

25 Q. Where else in the stipulation, where in

1 the stipulation in respect of shopping load does it
2 say that "PJM will serve as the billing agent for
3 Duke Energy Ohio"?

4 A. It says it with respect to the SSO
5 supplier.

6 Q. Well, sir, I'm focused on the shopping
7 load right now and the paragraph that you were
8 talking about.

9 A. There is -- that particular phrase
10 "billing agent for shopping load" I do not see in the
11 stipulation. I see it in the stipulation for SSO
12 supplier.

13 Q. And, sir, Kroger was informed of the
14 requested change to Section IV.A, correct?

15 A. I personally was not informed, but the
16 representation has been made that the parties were
17 asked about this and I imagine that, based on that
18 representation, counsel for Kroger was probably
19 informed of that.

20 Q. Well, sir, you state in your testimony on
21 page 11 that Duke represented that no party opposed
22 the correction, correct?

23 A. That is what it says in the memorandum
24 filed.

25 MS. SPILLER: And, your Honor, may we

1 approach, please?

2 EXAMINER PIRIK: Yes.

3 MS. SPILLER: Duke Energy Ohio Exhibit
4 33.

5 EXAMINER PIRIK: Yes, it will be marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MS. SPILLER: And for purposes of the
8 record Duke Energy Ohio's Exhibit 33 is an e-mail
9 exchange between me and Mark Yurick.

10 Q. And, Mr. Higgins, at the time of this
11 ESP --

12 EXAMINER PIRIK: Can you wait until we
13 get the document?

14 MS. SPILLER: Oh, I'm sorry, your Honor.

15 EXAMINER PIRIK: Okay.

16 Q. And, Mr. Higgins, Mark Yurick was
17 representing Kroger in connection with Duke Energy
18 Ohio's case 11-3549, correct?

19 A. Yes.

20 Q. Certainly authorized to make
21 representation on behalf of Kroger, correct?

22 A. Certainly.

23 Q. And, sir, you have before you what has
24 been marked as Duke Energy Ohio Exhibit 33 which
25 includes Mark Yurick's response to me in connection

1 with the proposed revision to Section IV.A of the ESP
2 stipulation, correct?

3 MS. BOJKO: Objection. I think that
4 mischaracterizes the e-mail. The e-mail references a
5 small change -- or an error, I'm sorry, not the word
6 "change." It represents a small error, it says "The
7 error appears." Down below it says "Agreement of
8 the" -- in the bullets then it says "agreement with
9 the change in the section and consent to expedited
10 treatment," but all that is stated with regard to the
11 response "It's fine." It doesn't mention anything of
12 the word "revision" or "change."

13 EXAMINER PIRIK: I think the e-mail
14 speaks for itself as far as what the language is, but
15 I'll allow the witness to respond.

16 A. And could you repeat the question,
17 please?

18 Q. Sure. My question is simply is this a
19 response from Mr. Yurick responding to my request?

20 A. It appears to be.

21 Q. And, sir, he responded in about 15
22 minutes of my request having been made, correct?

23 A. Well, you know, parties acting in good
24 faith trust that the representations, that these are
25 small matters, are likely to respond quickly and give

1 their consent.

2 Q. So you believe that the identity of a
3 charging entity is a small matter.

4 A. It was described as being a typographical
5 error in Duke's memorandum to the Commission, and so
6 it was depicted as simply housekeeping and there was
7 no representation, that I can see, that this was a
8 substantive change that would be later used to give
9 Duke the opportunity to file and seek increased
10 charges from customers, essentially replicating its
11 original proposal in the ESP that had been negotiated
12 away. No, I didn't believe that any party who agreed
13 to this understood that that was what was implicated
14 by this correction of a supposed typographical error.

15 Q. The implication being what, sir, that
16 Duke Energy Ohio would make a filing for a cost-based
17 charge for its capacity service after the Ohio
18 Commission declared such service to be a
19 noncompetitive wholesale service?

20 A. The implication that Duke Energy Ohio
21 would file for a cost-based capacity service after
22 entering into a stipulation in which it was resolved
23 and in which Duke had agreed to the terms and
24 conditions of an agreement that effectively waived
25 that provision. That was the implication.

1 No one would have agreed to that
2 implication, irrespective of whether the Commission
3 later made a finding in a litigated case with another
4 utility that found that a different state
5 compensation mechanism was appropriate for that
6 utility.

7 Q. Well, sir, this ESP is one under which
8 Duke Energy Ohio is providing competitive retail
9 electric service, correct?

10 A. Correct.

11 Q. And the capacity service as between an
12 FRR entity and suppliers is not a competitive retail
13 electric service, correct?

14 A. The Commission has found that it is a
15 wholesale service, but it is -- it is essentially
16 irrelevant to the stipulation that the parties
17 entered into.

18 Q. Sir, the Commission also found that the
19 FRR service is a noncompetitive service, correct?

20 A. The Commission found that the FRR
21 service -- in the Commission's order the Commission
22 passed on the question of whether it was competitive
23 or noncompetitive. At least in the Commission's AEP
24 order it said that the Commission did not have to
25 resolve that question.

1 Q. Sir, do you have the opinion and order,
2 the entry on rehearing before you?

3 A. I have the entry on rehearing. I'm
4 referring to the Commission's order. The
5 Commission's order said that the Commission did not
6 have to resolve that matter as to competitive or
7 noncompetitive in its order.

8 Q. Sir, do you have the entry on rehearing
9 before you?

10 A. You had given me a copy of it, so I'll
11 find it.

12 Q. Page 39, please.

13 MR. KUTIK: Your Honor, I'm going to
14 object at this point. Obviously, this is one of
15 Ms. Spiller's favorite line of questions but at this
16 point in time, your Honor, this has been beaten to
17 death, and for what purpose and to what end?

18 The Commission is perfectly able to read
19 its own orders and interpret what it said and what it
20 did in the AEP order. What this witness thinks about
21 it is irrelevant and doesn't further our case. We
22 should move on.

23 MS. SPILLER: Well, your Honor, he just
24 offered his opinions as to what the Commission said,
25 certainly allowed to test his testimony or -- his

1 testimony in that regard, and to suggest now that I
2 am reiterating when, in fact, all of these
3 intervenors have conveniently offered the same
4 testimony in respect of this document, I think it a
5 bit disingenuous to claim that I now am being
6 redundant.

7 EXAMINER PIRIK: I'm going allow the
8 question but I also want to point out that if the
9 witness wants to point back to the order as well, I
10 mean it's fine that he's going to answer something
11 that is being asked on the entry on rehearing but if
12 he wants to point back to the order he can have
13 plenty of time to look for his reference in the order
14 as well.

15 MS. BOJKO: Thank you, your Honor.
16 That's what I was about to add was that the question
17 was about the opinion and order not the entry on
18 rehearing.

19 A. So I am on page -- is this OCC No. 3 that
20 you're referring to, Ms. Spiller?

21 Q. Yes, sir.

22 A. Page 39.

23 Q. Yes, sir. First full paragraph. Midway
24 through, about midway through that paragraph.

25 Therein, the Commission indicates that it found that

1 the capacity service at issue was not a retail
2 electric service and, thus, not a competitive retail
3 electric service, correct?

4 A. I'm -- I'm actually not seeing that
5 reference. Page 39 --

6 Q. First full paragraph.

7 A. -- first full paragraph. It begins with
8 the --

9 Q. About five lines down.

10 A. And please begin reading.

11 Q. "Having found that the capacity service
12 at issue is not a retail electric service and thus
13 not a competitive retail electric service."

14 A. Yes, I see that.

15 Q. Okay. So the Commission has indicated
16 that FRR capacity service is not a competitive retail
17 electric service, correct?

18 A. In this entry on rehearing, that is what
19 the Commission states.

20 Q. Sir, would you agree with me that the
21 Ohio Commission has an obligation to ensure that
22 jurisdictional utilities are justly and reasonably
23 compensated for the services they provide?

24 A. To a certain extent. I believe that the
25 statute also provides that after the transition

1 periods to electric competition that at some point
2 utilities that own generation and are in the
3 competitive business will be on their own and so I
4 believe that while there are circumstances in which
5 the Commission does have to be concerned about just
6 and reasonable compensation, I also believe that
7 there are circumstances as well in which the statute
8 indicates that utilities in some fashion would be on
9 their own. So there are certain circumstances I
10 believe in which the commission would not have to
11 take into account the traditional notions of just and
12 reasonable compensation.

13 Q. But likewise circumstances in which they
14 would, correct?

15 A. Correct.

16 Q. Sir, on what do you base the contention
17 that Duke Energy Ohio had an obligation to disclose
18 in writing that it does not utilize the terms
19 "pricing and compensation synonymously?

20 A. The principle of fair dealing. Under
21 normal transactions when a price is set, most parties
22 anticipate that the price represents both what the
23 buyer is going to pay and what the seller is going to
24 receive. Moreover, in the context of this settlement
25 agreement, given that the agreement the parties had

1 signed gave a clear indication that the intent was
2 that Duke would be compensated using the RPM price,
3 that if, in fact, Duke had a different interpretation
4 of its compensation, then it did have a
5 responsibility as a matter of fair dealing to
6 disclose that not just to the other parties, but also
7 to the Commission as part of getting this stipulation
8 approved by the Commission.

9 But if -- it was important for parties to
10 understand that if Duke had a different
11 interpretation between the concept of price and the
12 concept of compensation, that it was very important
13 for the other parties to understand that.

14 Q. In your mind are pricing and compensation
15 always synonymous?

16 A. They are in normal parlance. They are
17 two sides of the same coin. There may be some
18 unusual exceptions in which there is a distinction
19 drawn between those, but in a normal transaction
20 price and compensation are, essentially, a single
21 concept.

22 Q. Well, here Duke Energy Ohio was not
23 charging suppliers for capacity, correct?

24 A. Can you repeat your question, please.

25 Q. Sure. Duke Energy Ohio is not under the

1 ESP provision directly charging suppliers for
2 capacity, correct?

3 A. As a technical matter, it is PJM that is
4 billing the suppliers for capacity.

5 Q. And as a technical matter there is a PJM
6 tariff that would dictate Duke Energy Ohio's receipt
7 of FZCP market-based prices for its capacity directly
8 from PJM, correct?

9 A. Correct.

10 Q. And a PJM tariff is a FERC jurisdictional
11 document, correct?

12 A. Correct. I mean, PJM is collecting
13 moneys on behalf of Duke and remitting them to Duke.

14 MS. SPILLER: Objection, move to strike.
15 There was no question pending.

16 EXAMINER PIRIK: Overruled.

17 Q. Mr. Higgins, you do know that the Ohio
18 Commission cannot approve an ESP that contains items
19 that are not otherwise delineated in Section 4928.143
20 of the Revised Code, correct?

21 A. I am -- I don't know that I have an
22 opinion on whether the Commission can accept or not
23 accept that based on your question. As I understood
24 your question, I'm not sure that I know where the
25 limits of the Commission's ability to accept an ESP

1 are in that context.

2 Q. But you do agree that 4928.43 sets out
3 the items that must be included in an ESP, correct?

4 A. Yes.

5 Q. And you are -- agree that Section
6 4928.143 sets out what may be included in an ESP,
7 correct?

8 A. To my understanding, yes.

9 Q. And the Ohio Supreme Court has determined
10 that that which is in an ESP must be one of the
11 elements reflected in 4928.143, correct?

12 A. I'm not personally --

13 MS. BOJKO: Objection. Now I think we're
14 specifically asking for Supreme Court decisions and
15 legal opinions referencing statute. The witness has
16 clearly said that he is not an attorney and we've
17 stipulated to that fact.

18 MS. SPILLER: I'm just asking for his
19 opinion as an expert as you've described him.

20 EXAMINER PIRIK: Sustained.

21 A. I'm not --

22 MS. BOJKO: Whoa, sustained.

23 Q. Mr. Higgins, would you agree with me that
24 in reviewing this application the Commission should
25 consider the interests of Duke Energy Ohio?

1 A. In consideration this application I
2 believe that the Commission -- well, I believe the
3 Commission should reject this application squarely,
4 and to the extent that the rejection of the
5 application considers the interests of Duke Energy
6 Ohio, it would consider the interests of Duke Energy
7 Ohio in broader context of regulatory policy and
8 upholding the credibility and integrity of
9 stipulations.

10 I do not believe that the Commission's
11 consideration of the interests of Duke Energy Ohio
12 should go beyond that in this particular proceeding.

13 Q. And, sir, what was the evidentiary record
14 on which the Ohio Commission relied for purposes of
15 approving the ESP stipulation?

16 A. The evidentiary record that they relied
17 upon, as I understood it, was the -- as I read the
18 Commission's order, the Commission reviewed the
19 initial application of the ESP, the Commission also
20 reviewed the testimony that was provided in support
21 of the stipulation, and that was testimony that was
22 provided by Duke Energy Ohio, it was testimony
23 provided by a number of other parties, myself
24 included, and I also imagine, although I did not
25 attend the hearing, that it relied on the

1 presentation at hearing.

2 MS. SPILLER: One moment, please, your
3 Honor. I'm close to done.

4 No further questions, your Honor.

5 EXAMINER PIRIK: Thank you. Staff?

6 MR. BEELER: No questions, your Honor.

7 EXAMINER PIRIK: Thank you. Redirect?

8 MS. BOJKO: I do just have a few.

9 - - -

10 REDIRECT EXAMINATION

11 By Ms. Bojko:

12 Q. Mr. Higgins, you just made a listing of
13 possible things that the Commission would have listed
14 and would the ESP stipulation actually have been one
15 of those probably?

16 A. Competitive retail electric services --

17 MS. SPILLER: Objection to the leading
18 nature of the question.

19 EXAMINER PIRIK: I'll allow him to
20 answer.

21 A. I was asked about the evidence that the
22 Commission would have considered, and while certainly
23 the stipulation would have been one of the items that
24 the Commission would have reviewed, certainly.

25 Q. And in questions from co-counsel -- or,

1 counsel, you've been stating that there were other
2 places in the ESP stipulation but I think you've
3 gotten cut off twice. Could you please explain the
4 other places in the stipulation that you believe this
5 issue, capacity issue, has been addressed?

6 A. Yes, it's in Attachment F to the
7 stipulation. And it describes PJM billing, and
8 specifically Section 6.2(b) of Attachment F states
9 "For capacity purchased from Duke Energy Ohio at the
10 Final Zonal Capacity Price for the unconstrained
11 portion of the RTO region by an SSO supplier pursuant
12 to Section 3.1(b), such SSO Supplier shall, unless
13 Duke Energy Ohio directs otherwise, be invoiced and
14 submit payment for such Capacity on behalf of Duke
15 Energy Ohio directly to PJM in accordance with the
16 billing practices set forth in the PJM Agreements."

17 So this provision makes it clear that the
18 payment for capacity was going to be made on behalf
19 of Duke Energy Ohio, and when you're making a payment
20 on behalf of someone, that clearly speaks to
21 compensation, it clearly speaks to the intention and
22 the understanding of that concept of compensation.

23 Q. Mr. Higgins, do you have any reason to
24 believe that PJM did not, in turn, as the billing
25 agent, remit payment back to Duke Energy Ohio?

1 A. I have no reason to believe -- I haven't
2 read anything in the trade press about that.

3 Q. And, Mr. Higgins, did you review the ESP
4 stipulation before it was executed by your client?

5 A. Absolutely.

6 Q. And did you make a recommendation to your
7 client on that?

8 A. I recommended to Kroger that Kroger sign
9 the stipulation, that stipulation fairly addressed
10 the concerns that Kroger had in the case, and I
11 recommended to them that, you know, the very large
12 overarching concern that Kroger had about Duke Energy
13 Ohio's proposed capacity charge had been favorably
14 resolved in the settlement.

15 Q. And do you recall from counsel from Duke
16 that you were asked some questions about whether you
17 performed certain technical analyses of issues in
18 this proceeding?

19 A. Yes.

20 Q. And can you explain for the Bench why you
21 did not perform such analysis?

22 A. Yes. I believe that this is a very black
23 and white issue. Normally as a regulatory consultant
24 I recognize that I am often discussing issues that
25 have a lot of gray area to them and that, therefore,

1 there are reasonable ranges of disagreement that
2 might occur, and analyses that need to be undertaken
3 to evaluate those gray areas.

4 In this particular case I believe that it
5 is a black and white matter of Duke Energy Ohio
6 reneging on the settlement agreement and I do -- and
7 I don't believe that, as a threshold matter, that it
8 is necessary to conduct other layers of analysis
9 because the fundamental question is that -- well,
10 fundamental question is what was agreed to in the ESP
11 stipulation, and it clearly indicated that all
12 matters were being resolved, that the matter that
13 Duke has brought in this filing is fundamentally the
14 same matter that Duke had raised in the ESP filing,
15 and was one of the issues that was resolved.

16 So I did not conduct further analysis
17 because I felt as a threshold matter they really
18 weren't germane to the basic issue in this case.

19 MS. BOJKO: Thank you. No further
20 questions.

21 EXAMINER PIRIK: Thank you. I just --
22 before we do recross I just want to make a point of
23 clarification, the witness referred to Section 6.2(b)
24 of Attachment F of the stipulation which is fine and
25 appropriate, but the IEU 5 that we have only is the

1 stipulation without the attachments. It is located
2 in FES 2 --

3 MR. KUTIK: Yes.

4 EXAMINER PIRIK: -- however, I think the
5 purpose of citing and doing exhibits with documents
6 that we're taking administrative notice is for ease
7 of citing in the future.

8 So if the parties have no objection, what
9 we could do is for purposes of referring to the
10 entire stipulation continue with IEU Exhibit 5 as the
11 stipulation and the attachments since we're taking
12 administrative notice of the whole document anyway.

13 MS. BOJKO: That would be great, thank
14 you very much.

15 EXAMINER PIRIK: And then when we're
16 referring to FES 2 and any attachments thereto, I
17 mean, we can cite it that way too when we're
18 referring to that witness's testimony and the
19 attachments to his testimony. I just think it would
20 be confusing to refer to -- if we're talking about
21 the stipulation, refer to anything other than the
22 primary document that we've been using for the
23 stipulation purposes.

24 MS. BOJKO: For the court reporter, for
25 the Bench, do we need to provide Attachment F

1 actually to that exhibit?

2 EXAMINER PIRIK: I don't think so, I mean
3 we're taking administrative notice of it, so I mean
4 it's a document that's filed in the docket, we stated
5 earlier when we marked it the date that it was filed.

6 MR. KUTIK: So to be clear, your Honor,
7 if we want to refer to the attachment to the
8 stipulation we should refer to Dr. Tabors'
9 attachment.

10 EXAMINER PIRIK: No. I mean, I guess
11 what my question to the -- I don't have a problem
12 referring to FES 2 and the attachment to his
13 testimony if that's how we want to get to the
14 attachments to the stipulation, but it just seems
15 awkward to me since we've always been referring to
16 IEU 5 as the stipulation and we took administrative
17 notice of it. So my recommendation is since we're
18 taking administrative notice of it anyway,
19 administrative notice of the document in total be
20 taken, not just the body of the stipulation for IEU
21 5.

22 So when we're generically talking in your
23 briefing about the stipulation citing to IEU 5, and
24 if you're going to talk about Attachment F, then IEU
25 5 at Attachment F would be appropriate. If we're

1 talking about your witness's testimony and
2 attachments to his testimony, one of which is the
3 stipulation in total, then --

4 MR. KUTIK: Well, should we then, your
5 Honor, just as a matter of physically putting a
6 document into the record, have those other
7 attachments -- the stipulation attachments attached
8 to IEU 5?

9 MR. DARR: And I would agree with that,
10 your Honor, and the reason I suggest this is that for
11 purposes of a third party reviewing this file.

12 MR. KUTIK: Exactly.

13 MR. DARR: It's going to be absolutely
14 necessary for that third party to be able to figure
15 out what we pointed to.

16 EXAMINER PIRIK: And I don't have a
17 problem with that but I think we only need one copy
18 of that for the court reporters.

19 MR. DARR: And I understand that.

20 EXAMINER PIRIK: Are you okay with that?

21 MR. DARR: I'm more than willing to do
22 that and it should be part of IEU 5 at this point.

23 EXAMINER PIRIK: I'm good with that.

24 MR. DARR: Okay. So one of us will
25 volunteer to get that to the court reporter. And I

1 think it's probably me.

2 EXAMINER PIRIK: I'm thinking it was you
3 since it's your exhibit.

4 MS. GRADY: I like that, "one of us."

5 MR. DARR: I'll get it over here tomorrow
6 morning.

7 EXAMINER PIRIK: I think that would be
8 appropriate, thank you.

9 MR. DARR: Thank you, your Honor.

10 MS. BOJKO: Thank you.

11 EXAMINER PIRIK: Is there any recross?

12 MS. SPILLER: Briefly, your Honor, thank
13 you.

14 - - -

15 RE-CROSS-EXAMINATION

16 By Ms. Spiller:

17 Q. Mr. Higgins, you are aware of the
18 existence of rider RC as approved by the Commission
19 in the context of Duke Energy Ohio's ESP stipulation,
20 correct?

21 MS. BOJKO: Objection. Beyond the scope
22 of recross.

23 MS. SPILLER: This has to do with the SSO
24 suppliers as you just discussed with Mr. Higgins.

25 MS. BOJKO: I didn't discuss anything

1 about rider RC.

2 MS. SPILLER: It has to do with the SSO
3 load and the suppliers that you just identified.

4 MS. BOJKO: I did not identify such.

5 EXAMINER PIRIK: I don't believe there
6 was any discussion about rider RC.

7 MS. SPILLER: I'll rephrase, your Honor.

8 Q. (By Ms. Spiller) Mr. Higgins, with
9 respect to the SSO load, you do know that that is
10 procured pursuant to competitive auctions, correct?

11 MS. BOJKO: Objection. Beyond the scope
12 of cross -- recross -- or, redirect. Sorry.

13 EXAMINER PIRIK: Sustained.

14 MS. SPILLER: Nothing further, your
15 Honor, thank you.

16 EXAMINER PIRIK: Thank you.

17 Thank you, Mr. Higgins.

18 THE WITNESS: Thank you, your Honor.

19 EXAMINER PIRIK: With regard to exhibits.

20 MS. BOJKO: Yes, your Honor. At this
21 time I would move to admit the direct testimony of
22 Kevin C. Higgins which is Kroger Exhibit No. 1.

23 EXAMINER PIRIK: Are there any
24 objections?

25 MS. SPILLER: No, your Honor.

1 EXAMINER PIRIK: The exhibit shall be
2 admitted.

3 MS. BOJKO: Thank you.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER PIRIK: With regard to Duke
6 Exhibit 32, it would be appropriate based on our past
7 practice to take administrative notice of that
8 document.

9 MS. SPILLER: Thank you, your Honor. And
10 then Duke Energy Ohio also moves for admission of
11 Duke Energy Ohio Exhibit 33.

12 EXAMINER PIRIK: Are there any
13 objections?

14 MS. BOJKO: Yes, your Honor. This
15 document has not been authenticated. None of the
16 parties on the e-mail to and from, Mr. Yurick is not
17 present, Mr. Higgins has indicated that he did not
18 see this prior to counsel showing it to him today,
19 and he had no knowledge of it prior to counsel. His
20 representation was based on the motion that Duke
21 filed of the typographical error.

22 MS. SPILLER: And, your Honor, very
23 briefly, Mr. Higgins did acknowledge that Mr. Yurick
24 was Kroger's counsel in connection with the ESP, had
25 authority to speak on their behalf, identified the

1 response and further indicated during
2 cross-examination with respect to that portion of his
3 testimony that addresses this revision that he
4 assumed that Kroger would have been included in the
5 parties that did not object.

6 MS. BOJKO: I think that mischaracterizes
7 what he said, your Honor, but with regard to --
8 regardless of that, no foundation has been laid for
9 this particular e-mail. Just because the counsel
10 read it to him doesn't mean that he had seen it
11 before and could authenticate it.

12 EXAMINER PIRIK: Your objection's noted
13 for the record but the exhibit shall be admitted.

14 MS. SPILLER: Thank you, your Honor.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER PIRIK: Thank you, Mr. Higgins.
17 Our next witness -- do you want to mark,
18 exhibits?

19 MR. SIWO: Yes, ma'am.

20 EXAMINER PIRIK: With regard to OMA.

21 MR. SIWO: Yes, ma'am. Good afternoon,
22 your Honor. At this time the OMA would like to move
23 to admit OMA Exhibit 101 which are the comments that
24 were --

25 EXAMINER PIRIK: Exhibit 1?

1 MR. SIWO: Yes, ma'am, which were filed
2 on January 2nd, 2013.

3 EXAMINER PIRIK: The document will be
4 marked as OMA Exhibit 1.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 EXAMINER PIRIK: Are there any objections
7 to admitting this exhibit?

8 Hearing none, it will be admitted into
9 the record. Thank you.

10 MR. SIWO: Thank you.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 EXAMINER PIRIK: Staff I believe.

13 MR. BEELER: Thank you, your Honor.

14 Staff calls Ralph L. Luciani.

15 (Witness sworn.)

16 EXAMINER PIRIK: Thank you.

17 MR. BEELER: Your Honors, at this time I
18 would like to mark for identification purposes Staff
19 Exhibits 1 and 1A which are the public and
20 confidentiality versions of the Direct Testimony of
21 Ralph L. Luciani on Behalf of the Staff of the Public
22 Utilities Commission of Ohio filed on April 9th,
23 2013, in these dockets.

24 EXAMINER PIRIK: The documents shall be
25 so marked.

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(EXHIBITS MARKED FOR IDENTIFICATION.)

MR. BEELER: May I approach?

EXAMINER PIRIK: Yes.

- - -

RALPH L. LUCIANI

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

DIRECT EXAMINATION

By Mr. Beeler:

Q. Would you please state your name for the
record.

A. Ralph L. Luciani.

Q. Where are you employed?

A. At Navigant Consulting.

Q. What are your job duties at Navigant?

A. I'm a director at Navigant Consulting.

Q. Are you a consultant under contract with
the Commission to testify on behalf of the staff in
this proceeding?

A. Yes, I am.

Q. Do you have in front of you what has been
previously marked as Staff Exhibits 1 and 1A?

A. Yes.

Q. Please identify those documents for the
record.

1 A. There is a redacted public version of my
2 Direct Testimony of Ralph L. Luciani on Behalf of the
3 Staff of the Public Utilities Commission of Ohio, as
4 well as a confidential version Staff Exhibit 1A,
5 Direct Testimony of Ralph L. Luciani on Behalf of the
6 Staff of the Public Utilities Commission of Ohio.

7 Q. Were those documents prepared by you or
8 under your direction?

9 A. Yes, they were.

10 Q. Do you have any corrections to make to
11 those documents?

12 A. I do not.

13 Q. If I were ask you the same questions in
14 Staff Exhibits 1 and 1A, would your answers be the
15 same?

16 A. Yes, they would.

17 Q. Are the answers in those documents true
18 and accurate to the best of your knowledge?

19 A. Yes.

20 MR. BEELER: Your Honor, at this time
21 Mr. Luciani is available for cross.

22 EXAMINER PIRIK: Thank you. Before we do
23 cross we need to go through the confidential
24 information.

25 I thought you were still talking. You

1 may proceed.

2 MS. KINGERY: Thank you. In the text of
3 the testimony I believe that the only redacted
4 information is the description of Exhibit RLL-3.
5 This is on page 3, lines 20 to 21, and I believe that
6 that description has previously been kept
7 confidential.

8 EXAMINER PIRIK: That's the only thing in
9 the text?

10 MS. KINGERY: In the body as opposed to
11 the attachments. Oh, that's not true, sorry.

12 Then page 4, line 1, again it's a
13 description of an exhibit and I believe that
14 information has been kept confidential.

15 Page 5 --

16 MS. GRADY: I'm sorry, I lost you. Page
17 4, line 1?

18 MS. KINGERY: 1 to 2. It's just the
19 description of RLL-5.

20 MS. GRADY: Thank you.

21 MS. KINGERY: On page 5, line 18, we
22 would propose that just the number be kept
23 confidential.

24 EXAMINER PIRIK: Okay.

25 MS. KINGERY: On line 6 -- I'm sorry,

1 page 6, okay, on this the retirement date that is
2 identified there is not a public date, so we would
3 suggest that that be confidential.

4 EXAMINER PIRIK: The date on lines 2 and
5 3?

6 MS. KINGERY: Yes, that's correct, your
7 Honor. And then the number farther along in line 3,
8 and the number on line 4.

9 Then in the next bullet point just the
10 number on line 9.

11 EXAMINER PIRIK: Just for a second, I
12 want to be sure, Mr. Luciani or staff, are you
13 marking up one for the witness so he will have one in
14 front of him so he will know what is confidential so
15 he can put as much as he can in the open record? If
16 someone can mark one of those for him, I think that
17 will help him so that you would know what your.

18 THE WITNESS: That would help. I can try
19 to mark it.

20 MR. BEELER: Okay.

21 EXAMINER PIRIK: We'll continue on page
22 6. I just wanted to be sure --

23 MS. KINGERY: Yes.

24 EXAMINER PIRIK: -- for the most part
25 it's numbers. Okay, we're still on page 6?

1 MS. KINGERY: Yes. As far as Duke Energy
2 is concerned, I think the redactions of the bullet
3 point at the bottom of the page and carrying over to
4 page 7 are really redactions of the recommendation of
5 Mr. Luciani as opposed to our information.

6 EXAMINER PIRIK: So Duke is okay with
7 that being open?

8 MS. KINGERY: Yes, your Honor.

9 EXAMINER PIRIK: Okay.

10 MS. KINGERY: Yeah.

11 EXAMINER PIRIK: Page 8.

12 MS. KINGERY: Okay. The top of page 8
13 there's a proposed redaction on lines 1, 2, and 3, it
14 begins after the "2014-'15," it goes to the end of
15 the sentence. And we would request that that remain
16 confidential. I'm sorry, it's actually two
17 sentences, it goes down to the middle of line 3.

18 EXAMINER PIRIK: I don't think that's
19 consistent with our previous rulings. I mean, it
20 needs to be pared down more than that.

21 MS. KINGERY: How about if we do the
22 names of the units that are identified there and the
23 references to the years in each sentence.

24 EXAMINER PIRIK: I -- you know, because
25 it's open on page 7, though, going on to page 8,

1 planning years that is, I don't see where the --

2 MS. KINGERY: May we look just for
3 another moment?

4 EXAMINER PIRIK: Yeah.

5 Should we take a break so the company can
6 go through this?

7 MS. KINGERY: That would be very helpful,
8 thank you.

9 EXAMINER PIRIK: Why don't we take a
10 ten-minute break, we'll come back and you can pare it
11 down.

12 MS. KINGERY: Yes, we will.

13 EXAMINER PIRIK: Thank you.

14 (Recess taken.)

15 EXAMINER PIRIK: We'll go back on the
16 record. We handed out the transcript for No. VII,
17 the redacted portions and the examiners' ruling as to
18 what we agreed can be kept confidential and the
19 company is directed to make the appropriate
20 redactions and submit the redacted version to the
21 court reporters.

22 MS. KINGERY: Your Honor, I'm sorry, but
23 I don't -- do we have it now? Okay.

24 EXAMINER PIRIK: Are you okay? You got
25 it? Okay.

1 MS. KINGERY: Thank you.

2 EXAMINER PIRIK: Let's continue with
3 where we were, I believe on page 8.

4 MS. KINGERY: Yes, your Honor. In the
5 proposed redactions on lines 1 through 3 we would
6 propose only to redact the names of the units.

7 EXAMINER PIRIK: Okay.

8 MS. KINGERY: Then in the next paragraph
9 there's a name of the unit on lines 8 to 9 that we
10 would redact and another unit on line 11. And the
11 remainder could be in the public record.

12 EXAMINER PIRIK: Okay.

13 MS. KINGERY: Footnote 3 at the bottom of
14 the page, there's a number on the fourth line and
15 there's the name of the unit or some units on the
16 fifth line and a number on the fifth line, we would
17 redact those.

18 EXAMINER PIRIK: So just to be clear, the
19 numbers are before the word "million."

20 MS. KINGERY: Correct.

21 EXAMINER PIRIK: Okay.

22 MS. KINGERY: And per your previous
23 rulings the dollar sign would be out as well as the
24 word "million."

25 EXAMINER PIRIK: Would be public.

1 MS. KINGERY: Public, yes.

2 On page 9, the only things we would
3 redact are the numbers on lines 14 and 15.

4 EXAMINER PIRIK: Okay.

5 MS. KINGERY: Then we move to page 11, we
6 would redact the number on line 16, and in footnote 6
7 we would redact the unit names in lines 2 and 3.

8 And that's all we would redact in the
9 body of the testimony. So now we're moving to the
10 exhibits.

11 Exhibit RLL-1 is all public as it was
12 submitted.

13 I'm sorry, just a moment.

14 The problem here is that the witness is
15 making adjustments to certain items that are
16 otherwise public but the fact that he's adjusting
17 these specific things is not public. That made
18 probably little sense but we're trying to figure out
19 how to keep everything public that should be public.

20 EXAMINER PIRIK: Let's go off the record
21 for a minute.

22 (Discussion off the record.)

23 EXAMINER PIRIK: Go back on the record.
24 RLL-2.

25 MS. KINGERY: Thank you, your Honor. We

1 would ask that we redact the names of the units in
2 the title of the document as well as four places on
3 column headings.

4 EXAMINER PIRIK: Okay.

5 MS. KINGERY: Then on RLL-3, page 1 of 5,
6 I'm going to try to be consistent with prior rulings
7 on similar items, the line entitled "Capacity
8 Purchases," the numbers in that row would be
9 redacted. Also the numbers in the row entitled
10 "Total Capacity Purchase Costs," and then the same
11 thing in the second table, understanding that that is
12 the witness's changes, but, nevertheless, if we don't
13 redact those numbers, then can you back into the
14 first ones. And hoping to keep the results of his
15 work confidential -- I'm sorry, public.

16 EXAMINER PIRIK: Okay.

17 MS. KINGERY: RLL-3, page 2 of 5, again,
18 this corresponds to a prior exhibit and I believe
19 what had happened in the prior one is the names of
20 the units were out as well as all of the numbers in
21 the table.

22 And then that would have to be the same
23 in the second table but we would propose leaving the
24 differential that's below the two tables public.

25 EXAMINER PIRIK: Okay.

1 MS. KINGERY: Moving to page 3 of 5, this
2 is comparable to a prior exhibit from Scott Niemann's
3 workpapers and in that exhibit I believe we had the
4 last three columns, the numbers only, confidential.

5 EXAMINER PIRIK: Okay.

6 MS. KINGERY: And page 4 of 5 would be
7 the same thing.

8 EXAMINER PIRIK: Only the last three?

9 MS. KINGERY: Only the last three. Oh,
10 wait, no, last four. Thank you.

11 EXAMINER PIRIK: Okay.

12 MS. KINGERY: And page 5 of 5 would also
13 be the last four columns that would be confidential.

14 EXAMINER PIRIK: Is that all the way down
15 through A?

16 MS. KINGERY: Yeah.

17 Exhibit RLL-4, I believe, is public.
18 Yes, and it was filed publicly.

19 RLL-5, all of the numbers in the top
20 table should be redacted, as well as in the second
21 table and then we would propose that the differential
22 that appears below the two tables be public.

23 EXAMINER PIRIK: Okay.

24 MS. KINGERY: And RLL-6, the only things
25 that we would propose to redact would be the names of

1 the units on the second and third items under the
2 heading "Capacity Rate Increase or Decrease."

3 EXAMINER PIRIK: Okay.

4 MS. KINGERY: And we would propose to
5 leave his background information public.

6 EXAMINER PIRIK: Thank you. That's the
7 motion. Are there any objections?

8 MS. GRADY: Your Honor, if we may, on
9 page 3, the proposed redaction on line --

10 EXAMINER PIRIK: Can you put your
11 microphone a little closer.

12 MS. GRADY: On page 3, lines 20 through
13 21, we believe that the description of the exhibit is
14 not confidential and we believe that could be on the
15 open record.

16 EXAMINER PIRIK: I think that's true. As
17 far as what you were proposing at least in the
18 exhibit itself.

19 MS. KINGERY: All right. That's fine
20 with us.

21 EXAMINER PIRIK: So that will be in the
22 open.

23 MS. GRADY: And page 4, similarly, the
24 heading on that exhibit -- the heading on the exhibit
25 we believe could be, and that's on lines 1 and 2,

1 could be in the open record.

2 EXAMINER PIRIK: Yeah, that's true also.

3 MS. KINGERY: We're okay with that.

4 EXAMINER PIRIK: Okay. Thank you.

5 So other than that are there any --

6 MS. GRADY: I am still looking, I'm
7 sorry.

8 EXAMINER PIRIK: Okay.

9 MS. GRADY: I'm trying to remember why I
10 dog-eared these.

11 EXAMINER PIRIK: That's okay.

12 MS. GRADY: I think that's it.

13 EXAMINER PIRIK: That's it? Okay.

14 Anything else, objections or otherwise?

15 Hearing none, the motion for protective
16 order with regard to those items just discussed will
17 be granted and the company will provide the court
18 reporters with the appropriate copies by noon
19 tomorrow.

20 MS. KINGERY: We will do that.

21 EXAMINER PIRIK: Okay. Now with regard
22 to cross-examination of the witness, my question is
23 do we have an order of cross?

24 MS. GRADY: Your Honor, in terms of the
25 intervenors I think we have worked out the cross. We

1 would request that the company, though, being the
2 least adverse to this witness go first and that then
3 it be followed by OCC, OEG, FES, AEP, and IEU, and
4 others.

5 (Discussion off the record.)

6 MS. GRADY: They are our Exhibit No. 1,
7 AEP order.

8 EXAMINER PIRIK: I think that would be
9 appropriate for the company to go first and then
10 assuming that there's no argument in the meantime
11 we'll go by the order that Ms. Grady suggested.

12 MS. KINGERY: We were going to ask to go
13 last but if your pleasure is that we will go first,
14 we will do that.

15 EXAMINER PIRIK: Staff always goes last.

16 MS. KINGERY: But it's their witness.

17 EXAMINER PIRIK: Oh, it's their witness,
18 they still get to go last.

19 MS. GRADY: Your Honor, I hesitate to
20 mention this, that there are two exhibits that I
21 informed counsel about that are considered
22 confidential and we will -- at least one for sure
23 will be an exhibit and I'm not sure where we stand on
24 the redactions for that which is Mr. Luciani's
25 workpapers.

1 EXAMINER PIRIK: Okay. Has the company
2 had a chance to look them over?

3 MS. KINGERY: We've been trying to, your
4 Honor.

5 MS. SPILLER: Your Honor, we have, and
6 one question we spoke to Mr. Beeler about this, is
7 some of the output is not Duke Energy's output that
8 Dr. Zhang testified to but I believe it's output that
9 Mr. Luciani produced in utilizing their modeling and
10 so I don't know whether that is -- would consider
11 that proprietary confidential modeling information
12 from his perspective.

13 THE WITNESS: We do not.

14 EXAMINER PIRIK: Is the company prepared,
15 though, to go through the redactions that Duke is
16 requesting?

17 MS. SPILLER: Yes.

18 EXAMINER PIRIK: Let's hand out the
19 exhibits and do this so that we know what's on the
20 open.

21 MS. GRADY: Your Honor, we apologize in
22 advance. We had to do some magic marker magic on the
23 exhibits.

24 EXAMINER PIRIK: You know there's no
25 highlighting allowed.

1 MS. GRADY: That was Mr. Kurtz's original
2 so we had to scribble a little bit.

3 EXAMINER PIRIK: And what will we be
4 marking this Exhibit?

5 MS. GRADY: This will be, I believe it's
6 OCC Exhibit -- it will be 27 and 27A for the
7 redacted.

8 (EXHIBITS MARKED FOR IDENTIFICATION.)

9 EXAMINER PIRIK: Is this the only
10 exhibit? I thought you mentioned two.

11 MS. GRADY: Well, your Honor, we have a
12 potential exhibit but not real certain that it will
13 be used as an exhibit. It may be just used in the
14 event the witness cannot answer questions on that
15 particular subject. So I -- depending on how the
16 cross goes.

17 EXAMINER PIRIK: Okay, that's fine. Duke.

18 MS. SPILLER: Thank you, your Honor. The
19 first page of Mr. Luciani's workpapers, this
20 information, as Ms. Kingery just discussed, was
21 already introduced through a FirstEnergy Solutions'
22 exhibit and that is information from the FERC Form 1
23 so not confidential.

24 The same would be said of page 2 of 33,
25 this is year-end 2012, again now in the published

1 FERC Form 1.

2 The next page, your Honor, and I believe
3 in discussing this with Mr. Beeler, actually if we
4 look at pages 3 of 33, through what I believe is 26
5 of 33, this is all of the output from Mr. Luciani's
6 modeling and his evaluation in this case, so this
7 would not be attributed to Duke Energy but I believe
8 Mr. Luciani.

9 EXAMINER PIRIK: So it's not
10 confidential?

11 MR. BEELER: Correct.

12 EXAMINER PIRIK: Okay. So that can all
13 be in the open, turn to page 27.

14 MS. SPILLER: Page 27, your Honor, with
15 respect to this information Duke Energy Ohio would
16 ask for confidential treatment of the numeric
17 information that would be below the columns that
18 start midway through this table, "Average Heat Rate
19 at Minimum Load," all the way through the table at
20 the end that says "Ramp Rate." Asks for redaction of
21 the numeric information. The reason being that these
22 first two identified columns, "Average Heat Rate at
23 Minimum Load" and "Average Heat Rate at Maximum
24 Load," this information is not provided in this level
25 of detail in any public document in the FERC Form 1,

1 it would be more of a generating asset depiction as
2 opposed to a generating unit depiction.

3 The information under "Forced Outage
4 Rate" through "Ramp Rate" is not publicly available
5 via the FERC Form 1 or any other documents.

6 Turning to page 28 of Mr. Luciani's
7 workpapers, the gas price comparison, here
8 Mr. Luciani is comparing the output of his modeling
9 versus that of Dr. Zhang on behalf of Duke Energy
10 Ohio. We have previously obtained confidential
11 treatment of the generating output in respect of the
12 Duke Energy Ohio commercial business model and would
13 ask that the numeric information under "Duke Model
14 Henry Hub" be redacted, the average at the end is
15 fine to be placed in the public record.

16 Moving to page 29, again, this is a
17 comparison of the two modeling exercises. We would
18 ask for confidential treatment of the information
19 under "DEO Model Average Heat Rate." Again, the
20 average is fine for disclosure in the public record.

21 The same would be said of page 30 of 33,
22 asking for confidential treatment of the "On Peak"
23 "Off Peak" numeric information under the Duke columns
24 of the comparison, simple average number is fine for
25 disclosure.

1 With respect to the variable O&M
2 comparison for coal units would ask for the
3 confidential treatment of those -- of the numeric
4 information under the "Duke Variable O&M" category.
5 The average is fine.

6 With respect to, your Honor, page 32,
7 would ask for confidential treatment of the numeric
8 information under the main heading of "Duke Energy
9 Ohio Model." This is a coal price comparison. The
10 averages are fine for disclosure.

11 And then, if I'm reading the final page
12 of Mr. Luciani's workpapers correctly, this page
13 actually is just a representation or duplication of
14 the Duke model outputs for forced outage rates. So
15 based on this it's -- I don't see any comparison of
16 the Navigant outputs and thus I'm attributing all of
17 the numeric information here to Duke Energy Ohio's
18 model. The bottom three lines "Average," "Navigant,"
19 "indifferent" are fine.

20 EXAMINER PIRIK: So just the numeric, I
21 mean, above?

22 MS. SPILLER: Correct. So essentially
23 that which is in the table as opposed to those three
24 lines at the bottom. And just to confirm with
25 Mr. Beeler and with Mr. Luciani, I don't know that

1 there is as detailed an output for the Navigant
2 modeling so I am assuming that all of this in the
3 table is attributed to Duke Energy's work.

4 THE WITNESS: That's correct.

5 MS. SPILLER: Thank you.

6 EXAMINER PIRIK: Are there any responses?

7 MS. GRADY: Yes, your Honor, with respect
8 to page 27 of 33, and this certainly may be cleared
9 up by Mr. Luciani, I'm wondering where the
10 information in the columns that were asked to be
11 redacted has come from, if it did not come from --
12 I'm wondering what source it came from. Because if
13 it was independent derived, then I would imagine that
14 it should not be subject to protection.

15 THE WITNESS: Page 27 of 33 are the
16 Navigant assumptions about the Duke Energy Ohio's
17 legacy generation units.

18 MS. GRADY: And they are not considered
19 to be confidential by Navigant.

20 THE WITNESS: By Navigant.

21 MS. SPILLER: But these were not all
22 obtained from the company I think is the question.

23 THE WITNESS: They were not.

24 MS. SPILLER: And, your Honor, I
25 apologize, I thought they would have been.

1 EXAMINER PIRIK: That's fine, so on page
2 27, those can be in the open record as far as Duke's
3 concerned?

4 MS. SPILLER: Yes, sir -- or, yes, your
5 Honor.

6 EXAMINER PIRIK: As far as the witness,
7 are you okay with these numbers being in the open
8 record also?

9 THE WITNESS: Yes.

10 EXAMINER PIRIK: Okay. Anything else,
11 Ms. Grady?

12 MS. GRADY: I believe that's it, your
13 Honor.

14 EXAMINER PIRIK: Okay. Anyone else?
15 Hearing none, we will grant protective
16 treatment for those items that we just discussed with
17 the exception of the information on page 27.

18 Moving forward, Duke.

19 MS. KINGERY: Thank you, your Honor. We
20 have no questions.

21 EXAMINER PIRIK: Ms. Grady?

22 MS. GRADY: I think we should have had
23 them going first on all the cross.

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CROSS-EXAMINATION

By Ms. Grady:

Q. Good afternoon, Mr. Luciani.

A. Good afternoon.

Q. Now, on page 1 of your testimony you speak of your experience and your educational background. Do you see that?

A. I do.

Q. Have you done any work with respect to determining what an appropriate return on equity is for a regulated utility?

A. I have worked on various aspects of ROE for regulated utilities. I have not put forth a full blown ROE analysis, though.

Q. And if I asked you that same question, if you have done work for -- regarding determining an appropriate ROE for an unregulated utility, would your answer be the same?

A. I certainly have come up with ROEs to apply for unregulated utilities in analyses that we've done over the years. I don't know that it's been put forth in testimony with the type of exhibits you would normally see in an ROE piece of testimony.

Q. Now, you testified that you recently, in 2012 I believe, became engaged with Navigant

1 Consulting.

2 A. That's correct.

3 Q. And can you tell me what kind of clients
4 Navigant services?

5 A. Sure. It's a whole array of clients from
6 the Department of Energy to energy -- electric
7 utilities to natural gas utilities, pipelines, NARUC,
8 the regulatory counsel, EISPC, the Eastern
9 Interconnection States' group, a whole variety of
10 clients.

11 EXAMINER PIRIK: Mr. Luciani, I would
12 just advise you that the microphones are very
13 sensitive so that if we tend to say our Ps into the
14 microphone directly that it cuts out, so it will
15 keep -- so kind of talk to the side and it works a
16 lot better.

17 THE WITNESS: I will do so.

18 EXAMINER PIRIK: Okay.

19 Q. Now, Mr. Luciani, you indicate on page 3
20 that you were contracted by the PUCO on March 25th,
21 2013, to provide an independent assessment of this
22 cost-based capacity rate. Do you see that?

23 A. I do.

24 Q. And can you tell me what you mean by the
25 term "contracted"?

1 A. Yes. A contract was entered between
2 Navigant and the Commission.

3 Q. And when did you begin your work, then,
4 under that contract?

5 A. On or about March 25th.

6 Q. Now, is it your understanding the
7 contract is between yourself and the Public Utilities
8 Commission of Ohio?

9 A. I would have to check the contract again.
10 My understanding it was between Navigant and the
11 Commission.

12 Q. As opposed to the Commission staff, if
13 you know.

14 A. I don't recall. I would have to look at
15 the contract.

16 Q. Now, Mr. Luciani, when were you contacted
17 by the PUCO or the PUCO staff for purposes of being
18 retained in this proceeding?

19 A. It was a few days earlier than that,
20 maybe a week before that.

21 Q. And I assume under the contract you had a
22 scope of work to be done; is that correct?

23 A. Yes, I believe the scope of work is
24 listed in the contract.

25 Q. And do you recall the scope of work, if

1 you know?

2 A. Generally, it was to review the revenue
3 requirement for the Duke existing generating units.

4 Q. And were you provided with any other
5 direction in terms of the scope of the work you were
6 to do?

7 A. Other than to look at that revenue
8 requirement from an independent perspective including
9 performing a separate and independent margin
10 analysis, no.

11 Q. Now, Mr. Luciani, can you tell me to date
12 how many hours you have spent in conjunction with the
13 work that you've done for purposes of this
14 proceeding?

15 A. Yes. This question came up in the
16 technical conference we had on Friday, so since that
17 time I did manage to check. Roughly I spent about 50
18 hours in the preparation and completion of the
19 testimony.

20 Q. And when you say 50 hours were spent in
21 the preparation of your testimony, are you including
22 time done to do runs that you produced as part of
23 your workpapers?

24 A. That was predominantly performed by my
25 staff, but yes, it included my work in reviewing

1 those runs.

2 Q. And the 50 hours that you quoted, does
3 that include just your time or does it include part
4 of your staff's time?

5 A. That was just my time.

6 Q. Now, Mr. Luciani, you did not engage in
7 discovery for purposes of your testimony, did you?

8 A. I did have a conversation with Mr. Wathen
9 in early-April, but other than that I believe we
10 arrived too late into the case to submit discovery.

11 Q. And what would your conversation with
12 Mr. Wathen have been concerning?

13 A. I talked with him about the 2012 FERC
14 Form 1, when it might become available, the 2012 O&M
15 for the legacy generating units, I believe we
16 discussed the error in the accumulated deferred
17 income taxes that was ultimately corrected in one of
18 my exhibits, we talked about the FRR plan that was
19 mentioned in Dr. Niemann's workpapers and whether
20 those were the most recent applicable plan as filed
21 with Duke at PJM.

22 Q. Is there anything else that you can
23 recall that you spoke to Mr. Wathen about with
24 respect to the --

25 A. That's all I can recall at this point.

1 Q. Thank you.

2 Did you speak to any other party or
3 intervenor in this case?

4 A. Other than staff, no.

5 Q. Now, on page 3, lines 7 through 9, you
6 indicate that it's your understanding that staff does
7 not support the approval of a cost-based capacity
8 rate for Duke Energy Ohio. Do you see that?

9 A. I do.

10 Q. And how did you come to that conclusion?

11 A. In discussions with staff, with
12 Mr. Beeler and Mr. Johnson, it was mentioned that
13 staff did not support the institution of a cost-based
14 rate in this proceeding.

15 Q. Did you have a chance to review the
16 staff's comments which were filed in this proceeding?

17 A. I did not review those comments.

18 Q. And you are aware that the staff did file
19 comments in this proceeding.

20 A. I do not know specifically. I think in
21 discussions with Mr. Beeler I did hear that comments
22 were supplied by staff.

23 Q. And do you have an understanding that
24 numerous intervenors would have filed comments in
25 this case?

1 A. Yes.

2 Q. And is it also your understanding that
3 intervenors may have filed reply comments as well?

4 A. Yes. Yes, I did at an early stage review
5 Duke Energy Ohio's reply to comments just as a
6 beginning step to understand the case a little bit,
7 so I generally got the understanding of various
8 arguments that were put forth.

9 Q. But those would have been the only
10 comments that you would have reviewed; is that
11 correct?

12 A. Yes.

13 Q. And you did not review anyone else's
14 comments or reply comments other than Duke's.

15 A. I don't believe so other than Duke's
16 reply to the comments.

17 Q. Thank you.

18 Now, we're going to jump for a moment
19 back to your exhibits and I want to discuss with you
20 a little bit Exhibit RLL-6.

21 A. Yes.

22 Q. Now, this document purports to be a
23 summary of different capacity rate changes, correct?

24 A. Yes. It is intended as a summary of the
25 various recommendations and calculations that I had

1 done prior in the testimony.

2 Q. And what is the purpose of this schedule,
3 Mr. Luciani?

4 A. Simply to put all the numbers in one
5 place, to combine them for potential Commission use.

6 Q. Now, am I correct that on lines -- on the
7 second full line you have a range of rate of return
8 starting from 7 percent to 11.15 percent?

9 A. That's correct.

10 Q. And you also indicate on this schedule
11 that Duke Energy Ohio's proposed capacity rate is
12 \$224.15, correct?

13 A. Yes. After credit from margins from
14 sales and ancillary services.

15 Q. Now, if we look at the column entitled
16 "9.5 percent," that would be the 9.5 percent ROE, we
17 look at the very bottom of that column and we see the
18 adjusted capacity rate of \$224.75. Do you see that?

19 A. I do.

20 Q. Am I correct in my understanding that
21 that adjusted -- that that adjusted capacity rate
22 that you show at 9.5 percent is higher than the
23 adjusted capacity rate proposed by DEO in this
24 proceeding?

25 A. Yes, at 9.5 percent you get a total of

1 224.75 in comparison to the 224.15.

2 Q. And so am I correct in reading this
3 schedule that any return above 9.5 percent would
4 result in adjusted capacity rates for Duke that are
5 higher than those proposed by Duke in this case?

6 A. Yes. Assuming all of the recommendations
7 were implemented.

8 Q. Mr. Luciani, have you ever been involved
9 in a rate -- traditional rate proceeding where you
10 made a recommendation that was greater than the
11 amount of revenue increase that the utility
12 requested?

13 A. I've been involved in many rate
14 proceedings over the years so I can't say whether I
15 have or have not ever done that. Many times I'm
16 working for the utility itself, so my recommendation
17 is consistent with that of the utility.

18 Q. When you were doing work for the
19 nonutility, can you recall any cases where you would
20 have made a recommendation for a revenue increase
21 that was higher than that proposed by the utility?

22 A. I cannot remember any offhand.

23 Q. Do you have an understanding of whether
24 there is a legal principle that prohibits a
25 regulatory body from granting more rate relief than

1 is requested?

2 A. I do not.

3 Q. Now I want to talk -- go back to your
4 testimony on page 4 and talk a little bit about the
5 information that you reviewed in preparing your
6 testimony.

7 You indicate on lines 6 through 7 that
8 you reviewed Duke Energy Ohio's testimony and
9 exhibits in this proceeding. Do you see that
10 reference?

11 A. I do.

12 Q. Can you tell me which of Duke Energy
13 Ohio's testimony and exhibits you reviewed?

14 A. I believe I read at least quickly through
15 them all. Again, I was focusing on the calculation
16 or derivation of the capacity rate so I focused on
17 those -- in particular on those two pieces of
18 testimony that dealt with the calculation itself,
19 Mr. Wathen's and Dr. Zhang's.

20 Q. And with respect to the exhibits that you
21 would have reviewed, would those have been -- you're
22 referring to their -- their testimony and the
23 exhibits attached to their testimony as opposed to
24 evidentiary exhibits introduced at the hearing.

25 A. Yes, I'd be referring to the exhibits

1 attached to their testimony.

2 Q. Have you reviewed any of the exhibits
3 that have been entered into evidence in this
4 proceeding beyond the testimony that you may have --
5 the prefiled exhibits?

6 A. I'm not aware specifically what's been
7 filed as an exhibit in this proceeding other than
8 perhaps what I've overheard today. I'm sure I may
9 have looked at some of those given that they may have
10 been exhibits to testimony.

11 Q. But, obviously, you didn't look at those
12 exhibits prior to your preparation of your testimony,
13 correct?

14 A. Other than what's listed here, correct.

15 Q. Now, you also mention that you reviewed
16 Duke Energy Ohio's responses to the data requests of
17 other parties. Do you see that reference?

18 A. Yes.

19 Q. Can you tell me which data or which
20 responses to data requests you might have reviewed
21 from other parties?

22 A. I tried to read through them all quickly
23 and, again, focused on those that seemed particularly
24 on point for the calculation of the capacity rate.

25 Q. And am I correct that the data requests

1 that you would have reviewed in the preparation of
2 your testimony would have been those data requests
3 that were responded to by April 8th, 2013?

4 A. Yes.

5 Q. In fact, did you look at anything after
6 March 25th, 2013, in terms of data responses?

7 A. Yes. Mr. Beeler has continued to forward
8 any and all discovery responses in this proceeding to
9 me. I have looked at each and every one of them as
10 they've come through.

11 Q. For purposes of preparing your testimony.

12 A. Yes. And on the notion that perhaps
13 anything I might see that might change my testimony.

14 Q. So you have continued to look at data
15 responses that may have come in subsequent to the
16 filing of your testimony.

17 A. Any that Mr. Beeler sent I looked at.

18 Q. Now, you also indicate that you reviewed
19 the testimony of intervenor witnesses in this
20 proceeding.

21 A. Yes.

22 Q. And can you tell me which intervenor
23 witnesses' testimony you reviewed?

24 A. Again, I tried to read through them all
25 and focused on those that seemed directly addressing

1 the actual calculation of the capacity rate, so those
2 were the ones I focused upon.

3 Q. And can you identify which ones you
4 referred to as focusing on the same -- on the
5 capacity cost calculation?

6 A. Yes. Mr. Effron's and Mr. Kollen's, in
7 particular, I spent additional time looking through.

8 Q. Are there any others that come to mind
9 that you would have focused on for purposes of
10 preparing your testimony?

11 A. Others may have had varying degrees to
12 the extent they may have focused on the calculation
13 of the capacity rate, but those were the two main
14 ones.

15 Q. Now, you also indicate that you reviewed
16 the information from Case No. 10-29-EL-UNC related to
17 the derivation of the cost-based state compensation
18 method -- mechanism adopted for Ohio Power.

19 A. Yes.

20 Q. Can you tell me what specific information
21 you would have reviewed for purposes of preparing
22 your testimony in this case?

23 A. Again, the focus was on the actual
24 calculation of the capacity rate, so I read through
25 the testimony of Mr. -- or, Kelly Pearce and I

1 believe a couple other AEP witnesses that dealt with
2 the derivation of the capacity rate, I read through
3 the testimony of Mr. Smith and the other -- I think
4 there were two other staff witnesses, and I read the
5 Commission's order, again, focusing on the section of
6 the order that dealt with the derivation of the
7 capacity rate itself.

8 EXAMINER PIRIK: I want to be sure the
9 record's clear. It was Case No. 10-2929.

10 MS. GRADY: Yes.

11 EXAMINER PIRIK: I think we missed a
12 "29."

13 MS. GRADY: Thank you.

14 EXAMINER PIRIK: Go ahead.

15 Q. When I was questioning, did you
16 understand my questions were relating to the capacity
17 case 10-2929?

18 A. Yes, I did.

19 Q. Thank you.

20 Now, you also indicate that you reviewed
21 the Commission's opinion and order in 11-346-EL-SSO
22 with respect to return on equity. Can you tell me,
23 is that the extent of what you looked at in that
24 opinion and order?

25 A. Yes. There were a couple of paragraphs

1 perhaps that dealt with ROE, maybe it was a page or
2 so of that particular opinion and order that I looked
3 at.

4 Q. So your review of that order was very
5 limited; is that correct?

6 A. Yes, it was.

7 Q. Now, you indicate that you, I think
8 earlier you may have indicated that you didn't
9 participate in a discovery process. Can you tell me
10 why you did not participate in the discovery process?

11 A. As we were retained very late in the
12 process and needing, of course, to do a
13 margin analysis and look through what seemed to be
14 hundreds of interrogatory requests and data requests
15 I was reading through all of those and doing the
16 margin analysis and then I had the discussion with
17 Mr. Wathen.

18 Q. Now, just so the record is clear, did you
19 have more than one discussion with Mr. Wathen?

20 A. Just one.

21 Q. And as a result of your discussion with
22 Mr. Wathen did you receive any information from
23 Mr. Wathen?

24 A. Yes, in the sense that some subsequent
25 responses to data requests that others had asked

1 included information that I asked about in our
2 conversation, so to that extent some things were
3 supplied.

4 Q. And so your analysis would have reflected
5 that information that you received from Mr. Wathen
6 because you relied upon that information, correct?

7 A. Yes.

8 Q. And can you tell me specifically, and you
9 may have generally discussed this, but specifically
10 what information did you receive from Mr. Wathen that
11 you relied upon for purpose of your analysis and
12 testimony in this proceeding?

13 A. Through the discovery, through the
14 response to discovery the -- I think I referred to
15 them all in my testimony, there was a confirmation
16 that the FRR plan in Dr. Niemann's workpapers were
17 the latest plan that had been filed with PJM. I
18 think some -- 2012 O&M for the legacy generating
19 units that was supplied in a supplemental response
20 was also used in my workpapers.

21 Q. I'm sorry, you trailed off a bit.

22 MS. GRADY: Can the court reporter please
23 reread the response of the witness.

24 (Record read.)

25 Q. Now, did you review, Mr. Luciani, Duke's

1 application in its distribution rate case?

2 A. No, I did not.

3 Q. And when I say its distribution rate
4 case, do you understand that to mean the rate case
5 that is presently filed and before the Commission?

6 A. I'll accept that it is. My only
7 knowledge of that was through references in various
8 pieces of testimony in this proceeding.

9 MS. KINGERY: And, your Honors, if I
10 might just clarify since we do have two rate cases
11 currently pending I presume you're asking about the
12 electric rate case.

13 MS. GRADY: Yes, thank you, counsel.

14 MS. KINGERY: Thank you.

15 EXAMINER PIRIK: 12-1682, et al.

16 MS. GRADY: Yes, that is the number I
17 guess. Happy not to be familiar with that number.

18 Q. (By Ms. Grady) Now, on page 5 of your
19 testimony you summarize your conclusions and
20 recommendations. Do you see that?

21 A. On pages 5 and 6 through 7.

22 Q. Yes. Thank you.

23 Now, there are a number of recommended
24 adjustments to Duke Energy Ohio's cost-based capacity
25 rate that you recommend, correct?

1 A. Yes.

2 Q. And we would see those recommendations in
3 summary form on pages 5 through 6.

4 A. Correct.

5 MS. GRADY: Your Honor, may I go off the
6 record?

7 EXAMINER PIRIK: Yes.

8 (Discussion off the record.)

9 EXAMINER PIRIK: Go back on the record.

10 Q. Now, Mr. Luciani, you recommend a number
11 of capacity rate reductions to Duke's calculation, do
12 you not?

13 A. I do.

14 Q. And you then -- then have an offsetting
15 recommendation that increases the capacity rate,
16 correct?

17 A. My independent assessment of margins does
18 increase the capacity rate above that --

19 Q. And if we net the capacity rate
20 reductions that you make against the capacity rate
21 increases you recommend, we can see that you
22 recommend a positive amount for the capacity rate
23 increase, correct?

24 A. I performed a range of ROEs. Absent that
25 calculation on various ROEs, yes, you can see in

1 Exhibit RLL-6 the ultimate impact of that.

2 Q. Would you agree that if your
3 recommendations are followed, then a \$236.53 capacity
4 rate would be set?

5 A. Could you refer to the location of that
6 number?

7 Q. That was a number I added, so we hope
8 that that's correct addition. I would just ask you
9 to add up the recommendations that you make with
10 regard to the capacity rate reductions and balance
11 those against the capacity rate increase that you
12 recommend --

13 A. Sure.

14 Q. -- related to the energy margins.

15 A. Sure, the easiest place to see that is in
16 Exhibit RLL-6 in the last column. Absent the ROE
17 adjustment where I did calculations at various
18 potential ROEs, you can see in the final column what
19 it would be without any ROE adjustment.

20 Q. And that number is the 237.70?

21 A. That's correct.

22 Q. So I was off a little bit. I came up
23 with 236.53.

24 A. I'm not exactly sure how, but I believe
25 these are correct.

1 Q. We will accept your numbers as opposed to
2 mine. I think that's a safe bet.

3 Now, you discuss in your testimony --
4 we've been discussing the summary -- the place in
5 your testimony where you talk about your summary
6 recommendations, and I just wanted to ask you how you
7 determined what modifications you should make to the
8 capacity-based rate calculation.

9 A. Sure. As a general matter I looked at
10 the Commission's decision in the AEP case that we
11 were discussing earlier as to how it derived or how
12 it accepted the capacity rate in that case, what it
13 accepted, what it did not in coming up with a final
14 determination of what the capacity rate for AEP
15 should be. So I looked to see whether Duke Energy
16 Ohio had followed a similar procedure in its filing.
17 That was the general thrust of my approach.

18 Q. And so you made adjustments if you
19 believed that Duke Energy Ohio did not follow the
20 standard proposed in the -- or, the standard that the
21 Commission accepted in the AEP capacity case.

22 A. As a general matter, yes.

23 Q. And did you independently make any
24 determination as to whether or not the standard
25 proposed by the Commission in the AEP capacity case

1 was reasonable and appropriate?

2 A. I did not directly. Of course, I'm
3 familiar with transmission ratemaking using a formula
4 similar to what was applied by AEP in that case and
5 accepted by the Commission, so the general approach
6 I'm familiar with as a general way to calculate
7 rates.

8 Q. Now, you indicated earlier that you had
9 reviewed some of the intervenor testimony, in fact
10 you indicated that you had reviewed Mr. Effron's
11 testimony.

12 A. Yes, I did.

13 Q. And you understand Mr. Effron is OCC's
14 witness, correct?

15 A. Yes.

16 Q. And that's one of four OCC witnesses,
17 correct?

18 A. I'll accept that.

19 Q. Thank you.

20 Now, from your review of Mr. Effron's
21 testimony do you understand that one of the issues
22 that he raised is the allocation of general plant?

23 A. Yes.

24 Q. Now, Mr. Luciani, did you compare the
25 allocation of general plant in this case to the way

1 that Duke allocated general plant to the distribution
2 function in its pending electric distribution rate
3 case?

4 A. No, I did not. As I noted earlier, I had
5 not reviewed that distribution case.

6 Q. Are you aware from the review of
7 Mr. Effron's testimony that Mr. Effron testifies that
8 the company allocated 92.257 percent of its general
9 plant to the distribution function in the
10 distribution rate case?

11 A. I saw Mr. Effron's reference to that.

12 Q. And are you aware, Mr. Luciani, that the
13 company is proposing to allocate 51.42 percent of
14 general plant to the production function in the
15 present case?

16 A. Yes, that's my understanding, a wages and
17 salary allocator as also used in the transmission
18 rates.

19 Q. In your opinion, is it consistent to
20 allocate 92.257 percent of general plant to the
21 distribution function and 51.42 percent of general
22 plant to the production function?

23 A. There may be an inconsistency there. The
24 actual application in this case of the capacity rate
25 that I looked at was consistent with the wages and

1 salary allocator.

2 Q. Now, did you review -- and you indicate
3 that you reviewed portions of the AEP capacity order,
4 correct?

5 A. Yes, those dealing with the actual
6 computation of the rate.

7 Q. Did you review what AEP Ohio did in its
8 distribution case, its last distribution case?

9 A. No, I did not.

10 Q. Do you know if -- let me strike that.
11 So you wouldn't know whether or not AEP
12 removed from its general plant allocated to
13 production before allocating the general plant
14 between transmission and distribution; is that
15 correct?

16 A. I'm not sure I caught that full question,
17 but since I did not look at the AEP distribution case
18 I don't think I would be aware.

19 MS. GRADY: Now, your Honor, I would like
20 to approach the witness.

21 EXAMINER PIRIK: Okay.

22 Q. Mr. Luciani, I am going to show you what
23 has been marked for identification purposes and
24 entered into evidence as OCC Exhibit No. 1 which is
25 the Commission's order in Case No. 10-2929 and ask

1 you -- I will ask you to look at that for a moment,
2 or as long as you'd like.

3 A. Sure.

4 Q. Now, Mr. Luciani, is that the opinion and
5 order that you reviewed for purposes of preparing
6 your testimony?

7 A. Yes, those pieces related to the
8 calculation of the capacity rate.

9 Q. And can you direct me to those pieces of
10 the Commission's opinion and order in that case that
11 you reviewed by page reference.

12 A. I will try to do so.

13 Q. Thank you.

14 A. I believe the section starting at the
15 bottom of page 24.

16 Q. Yes. Through what page, Mr. Luciani?

17 A. Through page -- the top of page 30, and
18 then the conclusion on page 33 that continues through
19 page 36.

20 Q. Continues through page 36; is that what
21 you said?

22 A. Yes.

23 Q. Okay. Now, I want to direct your
24 attention to part of the conclusion that was on
25 page -- actually page 24 -- 34, the first full

1 paragraph and have you read that to refresh your
2 recollection as to that portion of the order which
3 you read and relied upon for purposes of your
4 analysis.

5 A. The first full paragraph on page 34?

6 Q. Yes.

7 A. I've read the paragraph.

8 Q. And do you recall reading that paragraph
9 for purposes of preparing your testimony?

10 A. I do.

11 Q. And now that you're -- let me strike
12 that.

13 Is it your understanding that in this
14 portion of the Commission's order that the Commission
15 rejected certain of the staff recommendations because
16 they were inconsistent with the treatment in the
17 company's, and there by "company's" they're referring
18 to AEP's distribution rate case. Do you see that
19 reference?

20 A. I do see that reference.

21 Q. And, specifically, with regard to the
22 Commission made this determination with respect to
23 prepaid pension costs and the severance program
24 costs, correct?

25 A. I see the prepaid pension. What line is

1 the severance?

2 Q. Farther on down near the \$4.07 figure.

3 A. Yes, I see that reference as well.

4 Q. Now, in your opinion is Duke's allocation
5 of the 51.42 percent of general plant to the
6 production function in this case consistent with
7 Duke's allocation of 92.257 percent of general plant
8 to the distribution function in the distribution rate
9 case?

10 A. Again, I have not reviewed the
11 distribution rate case of Duke so I cannot speak to
12 that directly. I do know that it is consistent with
13 the allocation used by AEP and accepted by the
14 Commission in this case.

15 Q. If we accept, Mr. Luciani, that Duke has
16 allocated 51.42 percent of its general plant to the
17 production function in this general case, that's
18 what -- something you agreed they had done, correct?

19 A. Yes, they did do that using the wages and
20 salary indicator.

21 Q. And given, let's assume that they did do
22 that, in fact, they did, and let's also assume that
23 Duke allocated 92.257 percent of general plant to the
24 distribution function in the distribution rate case.
25 Are you following me?

1 A. Yes.

2 Q. Given that scenario, in your opinion, is
3 that consistent with the -- are those treatments
4 that -- are the treatments that Duke made with
5 respect to this case consistent with the assumed
6 treatment in its general distribution rate case?

7 A. It is consistent with the Duke approach
8 in the derivation of transmission rates. I accept
9 that there is some inconsistency with what is being
10 applied in the distribution case, not having reviewed
11 that, but I'll accept that that may be the case.

12 Q. I'm sorry, I didn't mean to interrupt.

13 A. That may be the case, yes.

14 Q. Now, the transmission rate allocation
15 that you referred to, that was not done in a
16 distribution rate case; is that correct?

17 A. No, it would be done through a formula
18 rate filing through FERC.

19 Q. Thank you.

20 Now, are you also aware, Mr. Luciani,
21 that OCC has raised an issue with respect to the
22 treatment of SmartGrid assets?

23 A. Yes.

24 Q. And do you have in front of you

25 Attachment WDW-1?

1 A. I don't.

2 MS. GRADY: May I approach?

3 EXAMINER PIRIK: Yes.

4 Q. First of all, Mr. Luciani, do you
5 recognize that document?

6 A. Yes. This appears to be a copy of
7 Mr. Wathen's Exhibit WD-1 -- WDW-1.

8 Q. And you have seen that document before
9 and, in fact, relied upon that document as part of
10 your analysis in this proceeding.

11 A. I used it as a starting point for my
12 calculations.

13 Q. Now, I want to direct you to page 14 and
14 in particular I want to focus on line 12.

15 A. Page 14 in the upper -- very upper right?

16 Q. Yes. I apologize on behalf of the
17 company.

18 A. And line 12, yes.

19 Q. Yes.

20 Now, the caption on that line is
21 "Communication Equipment Non-SmartGrid." Do you see
22 that?

23 A. I see that.

24 Q. Did you verify that the dollar amount for
25 that account includes only non-SmartGrid

1 communication equipment?

2 A. I did not specifically verify that, no.

3 Q. Are you aware, Mr. Luciani, that the
4 company did not remove the SmartGrid assets from
5 general plant before allocating the general plant to
6 the production function?

7 A. I saw a reference to that in Mr. Efron's
8 testimony, so from that perspective, yes.

9 Q. Are you aware also, Mr. Luciani, that the
10 company recovers SmartGrid costs by means of a
11 separate rider?

12 A. Again, I saw that mentioned in
13 Mr. Efron's testimony.

14 Q. Mr. Luciani, is it reasonable to recover
15 SmartGrid costs by means of a separate rider and to
16 also allocate SmartGrid costs to the production
17 revenue requirement?

18 A. Yes, I believe so. If you're using an
19 allocation of wages and salaries that is meant to
20 take into account those types of things, if indeed
21 there was a -- some -- let me back up.

22 All costs of a regulated utility are
23 recovered in some way whether through a rider, a
24 distribution case, a transmission case, a generation
25 case if it's regulated and so on. These allocation

1 factors are meant to parse those costs to the
2 applicable rate segment. So if you start to remove
3 bits and piece, then you also have to adjust the
4 allocators, which starts to get you further afield
5 from the formula applied in the AEP case.

6 Q. And, in your opinion, getting far afield
7 from the standard used in the AEP case is not a good
8 thing.

9 A. Again, that was my general approach was
10 the Commission had approved this rate based on the
11 formula as adjusted by the Commission applied by AEP
12 and that's what I wanted to follow.

13 Q. And when you indicate that it is
14 reasonable to recover SmartGrid costs by both a
15 separate rider and to allocate the SmartGrids to the
16 production revenue, your judgment is -- is governed
17 by the need to comply with the AEP order; is that
18 correct?

19 A. And -- yes, the need to -- the general
20 desirability following the AEP order plus also the
21 way the allocation factor is derived using wages and
22 salaries for O&M as parsed out.

23 Q. And is it your understanding that the
24 allocator that the company used is consistent with
25 the AEP allocator that was used?

1 A. Yes, that's what I checked.

2 Q. And do you know if AEP had included in
3 its application of the Commission's -- in its test
4 SmartGrid costs that are being recovered by a
5 separate rider?

6 A. I do not know that specifically. I did
7 not see a SmartGrid adjustment mentioned in the AEP
8 case, but I do not know the specifics.

9 Q. So are you able to conclude whether or
10 not the AEP had SmartGrid costs recovered by a rider
11 and also allocated the same costs to the production
12 revenue requirement?

13 A. I cannot say that for sure. I did not
14 see a SmartGrid adjustment out of general plant that
15 would make me think that they did do that, but I
16 cannot say so for sure.

17 Q. Thank you.

18 Now, with respect to intangible plant,
19 are you aware of whether or not -- let me strike
20 that.

21 You are aware, Mr. Luciani, that there is
22 an issue with respect to the accumulated amortization
23 of intangible plant, correct?

24 A. Yes.

25 Q. And you are aware that the company

1 includes intangible plant in its rate base, correct?

2 A. Yes, they do.

3 Q. Would you agree that if intangible plant
4 is included in rate base, the accumulated
5 amortization on that intangible plant should also be
6 taken into account?

7 A. Yes. I would agree. And there was a
8 discussion about this on our Friday technical call.
9 I had originally looked at it and believed that what
10 Duke had done was consistent with how the intangible
11 plant would normally be treated. When I went back to
12 look, I did confirm that I did not see the
13 accumulated amortization of intangible plant netted
14 from rate base, so I agree with Mr. Effron on that.

15 Q. Thank you very much, Mr. Luciani.

16 Now, I want to refer you to WDW-1, page
17 22.

18 A. Yes, I'm there.

19 Q. Now, Mr. Luciani, did you compare the
20 property tax -- property taxes allocated to the
21 production function on this schedule to the property
22 taxes in the income statements on Attachment BDS-1
23 that accompanied the testimony of Mr. Savoy?

24 A. I did see the reference to the property
25 taxes that were mentioned I think by Mr. Kollen --

1 both Mr. Kollen and Mr. Effron, and both of whom I
2 think cited Mr. Savoy's exhibits showing the actual
3 property taxes paid for the legacy generating units
4 were significantly less than what the allocator was
5 yielding.

6 Q. So is it your understanding that for
7 property tax purposes the production plant is valued
8 differently than distribution plant?

9 A. I don't know that per se. I do know that
10 the gross plant allocator in this particular case may
11 not be doing a good job of allocating. That said, I
12 did accept it, it was the same allocation used in the
13 Duke transmission rates and in the AEP case; however,
14 the adjustments by Mr. Kollen and Mr. Effron are
15 reasonable ones if the Commission wanted to not
16 completely follow the AEP formula approach and make
17 an adjustment in this case.

18 MS. GRADY: May I have that last answer
19 reread, please?

20 EXAMINER PIRIK: Yes.

21 (Record read.)

22 Q. Now, you indicated, Mr. Luciani, in your
23 response that the allocator that the company is using
24 may not be doing a good job of allocating that --
25 those taxes. Can you explain to me what you mean by

1 that?

2 A. Yes. I mean, any allocator, of course,
3 is going to be simply an estimate of how things
4 should be allocated. In this particular case it does
5 appear the actual property taxes paid on these legacy
6 generating units are significantly less than what the
7 allocator is yielding.

8 That said, we haven't circled back and
9 looked at all the potential items that the allocator
10 might be underestimating or overestimating, so I
11 ultimately did not make a property tax adjustment,
12 but knowing that there is a fairly large distinction
13 between actual property taxes paid and what the gross
14 plant allocator is yielding I do believe what
15 Mr. Kollen and Mr. Effron are recommending are
16 acceptable, reasonable, if the Commission were to
17 wish to deviate from the AEP formula approach in this
18 instance.

19 Q. And would it be your recommendation
20 that -- let me strike that.

21 You would agree with me, Mr. Luciani,
22 that as a general matter direct assignment of costs
23 where feasible is a better method of attributing
24 costs to a particular function than allocating by
25 means of a broad-based allocation factor, correct?

1 A. As a general matter, yes. As a general
2 matter, yes.

3 Q. Mr. Luciani, would you recommend, for
4 purposes of this proceeding, that the Commission
5 deviate from the AEP formula to recognize the
6 adjustments proposed by Mr. Kollen and Mr. Effron
7 with respect to the property tax issue?

8 A. I have not recommended that but, as you
9 can tell, I would not view it as unreasonable to go
10 the other way and use the -- use the actual property
11 taxes against what can be derived.

12 Q. Would you view it as reasonable? I know
13 you said you would not view it as unreasonable, but
14 is it your testimony today that the use of the actual
15 property tax as opposed to a general allocator as
16 proposed by Mr. Kollen and Mr. Effron for property
17 taxes is reasonable?

18 A. Yes.

19 Q. Thank you.

20 And for purposes of this proceeding do
21 you believe the use of the actual taxes paid as
22 opposed to the general allocator proposed by the
23 company is more reasonable than the company's
24 proposed allocation methodology?

25 A. No. If I would have thought that, I

1 would have recommended it. Ultimately, I did come
2 down on using the formula rate as applied by AEP
3 noting that both -- both methodologies are reasonable
4 and the Commission can decide now that the various
5 witnesses have put forth the numbers.

6 Q. And is your recommendation that both --
7 that the recommendation by the company with respect
8 to the allocation factor for property taxes is
9 reasonable because it is consistent with the AEP
10 standard that the commission approved?

11 A. It's Commission -- it's, excuse me, it's
12 consistent with the AEP formula approach and the
13 approach used in the derivation of transmission
14 rates.

15 Q. And, to be clear, you have not compared
16 the property tax expense allocated to the production
17 function in this case to the property tax expense
18 allocated to the distribution function in the
19 company's pending distribution case.

20 A. No, I have not.

21 Q. Would you agree with me that the company
22 should not be able to allocate more than 100 percent
23 of its actual property tax among the functions for
24 purposes of determining revenue requirements?

25 A. As a general matter, good ratemaking

1 would not want that to happen.

2 Q. Now, I believe you indicated in your
3 interview that you did not review the settlement in
4 Case No. 11-3549-EL-SSO; is that correct?

5 A. Would you remind me which case that was?

6 Q. I'm sorry. That was the company's
7 previous electric security plan case.

8 A. Yes. My only reference to that
9 stipulation, there was an interrogatory or discovery
10 request asking about an FRR plan or a unit commitment
11 plan that had been referenced in that stipulation, so
12 I did look at that one, I think one reference in the
13 stipulation to an FRR plan, but other than that, I
14 did not review it.

15 Q. Are you aware, Mr. Luciani, that Duke is
16 recovering \$110 million annually under a rider called
17 the rider ESSC?

18 A. I do not know that specifically. I saw
19 reference to that in certain of the intervenor
20 testimonies.

21 Q. You then would be aware that the company
22 is recovering \$110 million annually through rider
23 ESSC?

24 A. Again, I don't know that specifically.

25 Q. Are you aware as to what the \$110 million

1 rider ESSC was intended for?

2 A. No.

3 Q. Do you know, Mr. Luciani, whether the
4 company credited the ESSC revenues to fixed
5 production costs in the present case?

6 A. I do not know.

7 Q. Do you know, Mr. Luciani, whether or not
8 the company assigns or allocates to its legacy
9 generation any of the -- let me strike that.

10 Do you know whether or not, Mr. Luciani,
11 Duke assigns or allocates its legacy generation
12 between competitive retail electric service and a
13 noncompetitive -- noncompetitive capacity service?

14 A. I do not.

15 Q. Mr. Luciani, in your experience as a
16 regulatory consultant can you -- are you aware of any
17 instance where a regulated utility is authorized to
18 recover revenues for a service with no assets and no
19 expenses?

20 A. I don't know of one specifically offhand.

21 Q. Mr. Luciani, do you have an understanding
22 as to whether the company credits the margins on
23 energy sales to the fixed production revenue
24 requirement?

25 A. I do not.

1 Q. And, Mr. Luciani, do you know whether the
2 ESSC revenues are compensating Duke for its status as
3 an FRR entity?

4 A. I do not.

5 Q. Now, going to your testimony on page 10,
6 you refer to an ROE of 11.15 percent on line 2. Do
7 you see that?

8 A. I do.

9 Q. Do you have an understanding of where
10 that figure is derived from?

11 A. It was the ROE applied in the AEP case
12 we've been referring to.

13 Q. And in terms of where that number came
14 from, what is your understanding of how that number
15 was developed in the AEP case?

16 A. I may have seen a reference to that in
17 the -- in the Commission's order, but I don't recall
18 it at this point.

19 Q. But for purposes of your analysis you
20 accepted the range of rate of return to show the
21 Commission what would happen at various rates of
22 return with your capacity cost recommendation,
23 correct?

24 A. Yes. I performed the ROE calculation at
25 various potential ROEs between 7 and 11 percent.

1 Q. And you are not making a recommendation,
2 Mr. Luciani, as to whether or not the 11 percent is a
3 reasonable return on equity recommendation.

4 A. I am not.

5 Q. And you are not making a recommendation
6 as to whether any of the rate of return ranges listed
7 on your schedule RLL-6 are a reasonable return on
8 equity recommendations, correct?

9 A. I have not.

10 Q. Now, Mr. Luciani, I would like to go to
11 your workpapers.

12 MS. GRADY: At this time I would like to
13 mark for identification purposes as OCC --

14 Q. I believe it's already been marked as OCC
15 Exhibit No. 26, a 33-page document, and ask you if
16 you can identify that document.

17 A. I have a 33-page document in front of me
18 which are my workpapers. I don't recall the exact
19 identification of it.

20 Q. Can you accept, subject to check, that
21 that has been designated as OCC Exhibit No. 26?

22 A. Yes.

23 Q. Thank you.

24 Now, I want to go to page 3 of 33 on that
25 document.

1 A. Yes.

2 Q. And can you tell me what this page shows,
3 what this is intended to show.

4 A. Sure. It shows the energy revenues,
5 expenses, and the energy margins for each individual
6 plant as it was pushed through our modeling.

7 Q. And it is a summary, is it not, of the
8 years 2013 through 2015? Correct?

9 A. Yes, it is. It's essentially a summary
10 of all the individual unit outputs contained in the
11 following pages. Also multiplied by the ownership
12 share here in the summary.

13 Q. Now, if we looked at the line entitled
14 Total Energy Revenue on the bottom box of this
15 document, can you tell me whether or not that
16 includes capacity revenue plus revenue from ancillary
17 services?

18 A. This would just be energy revenue, it
19 would not be capacity or ancillary.

20 Q. Now, on page 12 of your testimony, and
21 keep that open because I'm going to try to link up
22 the two, on page 12 of your testimony you begin
23 testifying about how your results compare to the
24 results provided by Mr. Wathen; is that a fair
25 characterization of your testimony on page 12, the

1 top paragraph?

2 A. Yes. I don't know whether it's
3 Mr. Wathen, Dr. Zhang, but the combination of those
4 two.

5 Q. And you say on lines 4 that your margin
6 analysis estimates both higher revenue and higher
7 costs from January, 2013, to May, 2015, for the
8 legacy generating units. Do you see that reference?

9 A. Yes.

10 Q. Can you tell me, when you use -- let's
11 first focus on the higher revenue that your
12 margin analysis estimates. When you say "higher
13 revenues," higher than what?

14 A. Higher than those estimated by Dr. Zhang.

15 Q. Now, when you say the revenues estimated
16 by Dr. Zhang, are you talking about the revenues that
17 are estimated for purposes of his filed testimony?

18 A. That's my understanding, yes.

19 Q. And is it your understanding that the
20 revenues estimated by Dr. Zhang find their way into
21 Mr. Savoy's testimony?

22 A. Yes, I believe Mr. Savoy pulls in the
23 results of Dr. Zhang's analysis.

24 Q. And if we went to Mr. Savoy's testimony,
25 could you identify where in Mr. Savoy's testimony

1 those numbers tie in?

2 A. I don't know that I could specifically do
3 that. I may be able to do so.

4 Q. Can we give it a try?

5 A. Sure.

6 Q. Thank you.

7 MS. GRADY: May I have a moment, your
8 Honor.

9 May I approach?

10 EXAMINER PIRIK: Yes.

11 Q. Now, Mr. Luciani, I've handed you a --
12 one of the Exhibit BDS-1 page 1 of 1 which is an
13 excerpt from Mr. Savoy's testimony. Do you recognize
14 that?

15 EXAMINER PIRIK: Okay, before -- I want
16 to be sure, is it clearly marked what's confidential
17 on the page that the witness has?

18 MS. GRADY: I'm sorry, your Honor, it is
19 not. I can take it back and --

20 EXAMINER PIRIK: No, we just need to be
21 sure he knows what's confidential so he doesn't
22 accidentally say something. Do you have something
23 can you share with him?

24 MS. GRADY: I can mark, I'll have to mark
25 it up because the version I have is not marked, but I

1 think I can figure out what is confidential and what
2 is not if you could perhaps let me have a moment with
3 the company.

4 EXAMINER PIRIK: That would be fine.

5 MS. KINGERY: Your Honor, I believe that
6 it's only line 19 that's public and all of the other
7 numbers on the page are confidential.

8 EXAMINER PIRIK: Okay.

9 MS. GRADY: Thank you, Ms. Kingery.

10 MS. KINGERY: Certainly.

11 Q. (By Ms. Grady) Do you know for purposes
12 of the energy margins that were produced by Mr. Zhang
13 where on BDS-1, what line those energy revenues would
14 be shown?

15 THE WITNESS: Your Honor, just a point of
16 clarification, I understand these specific numbers
17 are confidential but I can refer to lines without
18 referring to the numbers?

19 EXAMINER PIRIK: Yes. And are you
20 comfortable with what numbers? Do you want us to
21 block it out for you real quick?

22 THE WITNESS: I'm okay as long as I can
23 refer to it generally without citing a number, if
24 that is appropriate, that would be fine.

25 EXAMINER PIRIK: You can refer to

1 anything on line 19, even the numbers, but all the
2 other numbers on the page you cannot refer to. So
3 headings and everything in the column on the left you
4 can refer to.

5 MS. KINGERY: Including line numbers, I
6 think that's what he was asking.

7 EXAMINER PIRIK: Including line numbers,
8 correct.

9 THE WITNESS: I can refer to line
10 numbers.

11 EXAMINER PIRIK: Yes.

12 THE WITNESS: Thank you.

13 Can you repeat your question?

14 Q. (By Ms. Grady) Sure. We've been
15 discussing your testimony that your analysis shows
16 higher revenues than what revenues were reported for
17 energy margins in the -- than the company -- let me
18 strike that.

19 Your testimony on page 12 indicates on
20 lines 3 through 4 that your margin analysis estimates
21 higher revenue and my question is: If we wanted to
22 see, for comparison purposes, your revenue number and
23 compare it to the company's revenue number, could we
24 look at BDS-1 and point to lines that would add up to
25 an apples-to-apples comparison with your revenue

1 number of 579, let's just take 2013, the 579.21?

2 MS. KINGERY: Your Honor, I think that
3 was a confidential number. Sorry.

4 MS. GRADY: I apologize.

5 MR. KURTZ: That was a Navigant number.

6 MS. KINGERY: The problem is that if we
7 have his numbers out, then we have to have the result
8 not out, otherwise you back into ours.

9 MR. KURTZ: Not from that you don't.

10 EXAMINER PIRIK: Let's not have that
11 conversation. Let me look at this real quick.

12 Ms. Kingery, can you point to me what
13 you're looking at?

14 MS. KINGERY: This was on the workpapers,
15 page 3 of 33, there's a table at the bottom that's
16 called Margin on Sale of Legacy Generation, and I see
17 that number in the table. And I believe it's circled
18 on my page --

19 EXAMINER PIRIK: No, I don't believe
20 that's confidential.

21 MS. KINGERY: Okay. All right, I'm
22 corrected.

23 EXAMINER PIRIK: Okay. So we're all
24 right.

25 MS. KINGERY: I apologize.

1 Q. (By Ms. Grady) Did you understand what I
2 was trying to do, Mr. Luciani?

3 A. I think I understand the gist, the number
4 is listed -- that you just mentioned was marked as
5 confidential in Exhibit RLL-5 did not, to my
6 understanding, get marked as confidential on page 3
7 of 33 of my workpapers so perhaps that's the
8 inconsistency we're referring to.

9 I can simply say perhaps, to work around
10 this, that line 3 of Mr. Savoy's exhibit should align
11 with the energy revenue I'm comparing to.

12 Q. And is that because, as you established
13 earlier, your energy revenue does not include -- is
14 solely energy revenue and does not include capacity
15 nor ancillary services revenue?

16 A. That's correct. Those are picked up in
17 other lines in Mr. Wathen's attachment.

18 Q. Now, when you were testifying on page 12
19 that your margin analysis estimates higher revenue,
20 were you only speaking of higher energy sales
21 revenue?

22 A. Yes.

23 EXAMINER PIRIK: Can we hold on just a
24 minute. Okay, I just think we need to clarify, you
25 know, since there is an inconsistency between the

1 document. OCC Exhibit 26A and RLL-5, as far as those
2 numbers go I want to be sure going forward that we're
3 going on the right numbers and I think since the
4 company has said that they can be open in the record
5 on 26A that, you know, and I understand the company's
6 argument, but I think we need to go back to RLL-5 and
7 make those numbers likewise on the open record.

8 Under the Navigant analysis I mean, as the witness
9 pointed out, they're the same numbers, and they are.

10 MS. KINGERY: Yes, they are.

11 Is the comparison between the Navigant
12 results and our results already in the public? I
13 mean, we're trying not to get it so that people can
14 just back into our results, obviously.

15 MR. KURTZ: Your Honor, can I make one
16 statement about RLL-5?

17 EXAMINER PIRIK: Yes.

18 MR. KURTZ: Clearly the Navigant numbers,
19 Mr. Luciani doesn't consider confidential. These
20 gross total dollar numbers for Duke in no way
21 implicate anything confidential. You can't tell
22 anything from the total sales from ten power plants
23 and total costs from ten power plants netted against
24 each other. There's nothing competitively sensitive
25 about that at all.

1 EXAMINER PIRIK: I think we made those
2 lines open on RLL-5, the ones under the Navigant
3 analysis that correspond with the workpapers on page
4 3 of 33.

5 MS. KINGERY: In the table.

6 EXAMINER PIRIK: In the table.

7 MS. GRADY: The second table.

8 EXAMINER PIRIK: The Navigant analysis,
9 correct.

10 MS. GRADY: Thank you.

11 EXAMINER PIRIK: On RLL-5, page 1 of 1,
12 the numbers on that whole table under Navigant
13 Analysis will be open.

14 MS. KINGERY: Would you consider, on the
15 line below it, keeping the average annualized figure
16 public but keeping the individual years'
17 differentials between the two tables confidential?

18 EXAMINER PIRIK: I just think the whole
19 table, since the whole table in 26A is open, I think
20 that table's open.

21 Okay. I'm sorry, we can move forward
22 now, go ahead, Ms. Grady.

23 Q. (By Ms. Grady) Now, am I reading BDS-1
24 correctly when I conclude that when we compare line 3
25 to the years -- when we compare line 3, energy sales,

1 in the years 2014 and January through May, 2015, you
2 also -- your margin analysis also estimates higher
3 revenues?

4 A. I'm not sure I captured all of that
5 question. I believe each year we -- the Navigant
6 Analysis had higher energy revenues.

7 Q. And would you consider the magnitude of
8 difference that your analysis produces on the energy
9 sales revenue in any one of those years to be a
10 significant difference?

11 A. They certainly are different. You would
12 probably have to view them in the context of the
13 expenses as well. Again, I could not see all the
14 details of the -- of Dr. Zhang's proprietary model or
15 the analysis that was done. I can only speak to the
16 Navigant analysis.

17 Q. Now, with respect to the details of
18 Mr. Zhang's analysis, are you aware that the company
19 provided details of Mr. Zhang's analysis in discovery
20 to intervenors?

21 A. I certainly saw some inputs, assumptions
22 that Dr. Zhang applied that I did compare in my
23 workpapers to our inputs.

24 MS. GRADY: May I have his previous
25 answer read back, please?

1 (Record read.)

2 MS. GRADY: Thank you.

3 Q. Now, you indicated that in order to
4 determine whether they were significant you would
5 have to view them in context with the expenses,
6 correct?

7 A. That would be a better approach, yes.

8 Q. And you did not do that; is that correct?

9 A. I think I compared both the revenues and
10 the expenses back on page 12.

11 Q. And since you did that, can you now tell
12 me whether or not you view the difference in energy
13 sales revenues between your model and what
14 Mr. Zhang's model produced to be significant?

15 A. Again, they are certainly different.
16 Significance implies some probabilistic analysis of
17 what is statistically different. I certainly have
18 not done that analysis nor could do one given what I
19 know about Dr. Zhang's analysis. They are different.
20 Ours was calculated completely independently of
21 Dr. Zhang's model.

22 Q. Now, Mr. Luciani, were you present during
23 the cross-examination of Mr. Zhang in this
24 proceeding?

25 A. No.

1 Q. Now, with respect to the energy sales
2 revenue that Mr. Savoy reports on BDS-1 -- let me
3 strike that.

4 With respect to Mr. Zhang's runs which
5 would have produced the energy sales revenues shown
6 on BDS-1, line 3, do you know what date Mr. Zhang's
7 CBM model runs were done?

8 A. I'm not recalling the specific date. It
9 would have been done right around the time of the
10 Duke application.

11 Q. Would you accept, subject to check, that
12 those runs were done June 28th, 2012?

13 A. I'll accept that.

14 Q. Now, Mr. Luciani, are you aware that
15 Mr. Zhang -- are you aware that the CBM model that
16 Mr. Zhang relies upon does daily runs?

17 A. I think I saw a reference to that in
18 the -- in the discovery. I don't know whether it's
19 actually done on a Saturday and Sunday, but I know
20 that it's quite commonly updated.

21 Q. Could be. Could be.

22 A. Potentially.

23 Q. Do you know, are you aware, Mr. Luciani,
24 that for purposes of discovery the company produced
25 the runs that were done December 27th of 2012?

1 A. I don't know the specific dates. I do
2 know that subsequent data was requested in discovery
3 and some of it may have been supplied.

4 Q. And would you have had occasion to look
5 at the results of the December 27th, 2012, runs?

6 A. Only to the extent I looked at the
7 discovery responses, determined whether they were
8 actually used in the filing or not. So I would not
9 have focused on them in the time that I had to
10 review.

11 Q. And are you aware of when those runs
12 would have been produced?

13 A. Not specifically. I know certain of them
14 have come in relatively recently.

15 Q. Am I correct, then, in assuming that the
16 December 27th, 2012, runs from the CBM model were
17 not -- have not been reviewed by you?

18 A. I may have seen them in an attachment to
19 discovery, but I did not do a complete and full
20 analysis of them in any way.

21 Q. And so, Mr. Luciani, you would not know,
22 for instance, what energy sales revenues were
23 produced under the December 27th, 2012, CBM runs by
24 Mr. Zhang.

25 A. I know that subsequent runs were done,

1 presumably every day, certain of those have been
2 isolated and identified and provided, I presume that
3 they are different than what was used in the actual
4 filing.

5 Q. And, Mr. Luciani, do you have an
6 understanding of what the December 27th, 2012, runs
7 would have been used for?

8 A. Not specifically.

9 Q. Do you have a general understanding that
10 the December 27th, 2012, runs would have been used in
11 conjunction with the company's latest approved
12 operating budget for the next five years?

13 A. I do not know that specifically.

14 Q. Now --

15 MS. GRADY: May I approach the witness,
16 your Honor?

17 EXAMINER PIRIK: Yes.

18 Q. Mr. Luciani, I'm going to show you what
19 has been moved into evidence and is OCC Exhibit No.
20 8A, and I'm going to block out the confidential
21 information so that you have what is confidential.

22 Mr. Luciani, I have handed you what is in
23 evidence as OCC Exhibit 8A and, for purposes of my --
24 for purposes of my cross-examination I have circled
25 the information that is public, the remainder of the

1 information on that document is confidential, and I
2 want to see if we can go through this on the public
3 record, so I would advise you not to reveal the
4 answer or any information that is considered
5 confidential.

6 A. Okay. Two numbers are circled, those two
7 numbers are public?

8 Q. Yes, and as well as the headings on, the
9 headings to the left are all public information.

10 A. And the column headings?

11 Q. I believe the column headings are
12 nonconfidential as well.

13 EXAMINER PIRIK: And the dates are
14 nonconfidential.

15 MS. GRADY: Yes, the dates are
16 nonconfidential.

17 A. Okay.

18 Q. First of all, do you recognize this
19 document?

20 A. I may have seen this document somewhere
21 in the discovery. I'm not recalling it specifically.

22 Q. Do you know what this document purports
23 to show?

24 A. I'm presuming that the column headings
25 labeled BDS-1 reflect the information in the exhibit

1 we were just talking about previously.

2 Q. Okay. Do you know what the first column
3 entitled "12 & 0 V3" stands for?

4 A. I don't know what V3 stands for. I
5 believe 12 & 0 might reflect something done towards
6 the end of 2012.

7 Q. Would you accept, subject to check, that
8 the 12 & 0 does represent the company's latest
9 approved 12 & 0 five-year operating budget
10 information?

11 A. I'm not sure what a 12 & 0 budget is but
12 I will accept that that could be what it is being
13 used at Duke.

14 Q. And do you have an understanding as to
15 what the final column on that, the heading would be,
16 do you understand what the variance columns
17 represent?

18 A. Likely it would be a difference between
19 the two.

20 Q. And is it your understanding that the
21 variance column would show the difference between the
22 12 & 0 V3 and BDS-1?

23 A. That would be my basic understanding.

24 Q. And for purposes of this proceeding --
25 let me strike that.

1 By looking at this document can you
2 discern that the energy revenues that are project --
3 or, that are associated with the 12 & 0 V3 have
4 increased from the energy revenues shown on BDS-1?

5 A. I can't tell that from the
6 nonconfidential data.

7 Q. Can you tell it from the confidential
8 data?

9 A. Which lines are you referring to again?

10 Q. Again, my discussion is limited to the
11 energy revenues shown on the second line and I'm
12 looking in particular at the variance columns shown
13 for 2013 and 2014.

14 A. At least as shown on this exhibit
15 answering this using the confidential information the
16 variance is positive, meaning the columns listed 12 &
17 0 V3 for energy are higher than those for BDS-1 in
18 both 2013 and 2014.

19 Q. And to the extent that those variances
20 shown in -- on this exhibit are higher than those
21 shown on BDS-1, would you agree with me that that
22 increases the gap between the energy revenues you
23 project and the energy revenues projected by the
24 company vis-a-vis the 12 & 0 V3?

25 A. No. I believe it would do the reverse

1 since our energy revenues were higher than those in
2 Dr. Zhang's testimony.

3 Q. Thank you. So it would narrow the gap;
4 is that your testimony? In fact, let me strike that.

5 In fact, if we looked at the 12 & 0 V3
6 energy revenues listed on 2013 and 2014, they are
7 above the energy revenues that you produced as a
8 result of your model. At least for 2013.

9 A. Yes. Using the confidential numbers it
10 appears that they are higher in 2013 and lower in
11 2014 for energy revenues.

12 Q. So for purposes of 2014, the gap is
13 narrowed between your model results and the
14 company's.

15 A. We'll have to define what "gap is
16 narrowed" means. If ultimately it is closer, I would
17 just have to look at it a little bit more. One
18 pushes -- one year it pushes up and past our number,
19 the other year it pushes up towards that number.

20 Q. And we can't tell from this schedule what
21 the 2015 energy revenues calculated are, can we?

22 A. I don't see that on this confidential
23 schedule.

24 Q. Now, when we go back to your testimony on
25 page 12, you also indicate that your margin analysis

1 estimates higher costs from January, 2013, to May,
2 2015. Do you see that reference?

3 A. Yes, I do.

4 Q. And if we wanted to see those higher
5 costs, we would look -- let me strike that.

6 When you say that your margin analysis
7 estimates higher costs, you are comparing those costs
8 under your model to the costs shown on BDS-1 from
9 Mr. Zhang's June 27th, or 28th, 2012, CBM run.

10 A. Yes. It would be line 7 on Attachment
11 BDS-1.

12 Q. Now, we talked earlier about Mr. Zhang's
13 CBM runs that supported the energy margins that are
14 reported on BDS-1, the -- did we not? Do you recall
15 that?

16 A. Yes.

17 Q. Okay. And can you tell me exactly what
18 information you looked at with respect to Mr. Zhang's
19 CBM runs?

20 A. Yes. Most of it is detailed on -- in the
21 paragraph on page 12 of my testimony carrying over to
22 page 13. I did a comparison of each of those items
23 that I could pull out of Dr. Zhang's input files that
24 he had provided.

25 Q. And when you say "the input files that he

1 provided," can you tell me what you're referring to
2 and when those were provided?

3 A. They were part of the discovery material,
4 yeah -- yes, in footnote 8 a number that you can see,
5 a number of the Duke Energy Ohio margin analysis
6 input assumptions were provided in their response
7 OCC-POD-05-031.

8 Q. Thank you.

9 Now, Mr. Zhang -- I'm sorry, Mr. Luciani,
10 it's been a long week, you -- you calculate that the
11 annualized difference in energy margins between your
12 model and the June 28th, 2012, CBM run results in
13 \$35 million in annualized differences in energy
14 margins; is that correct?

15 A. Yes. Annualized difference of 35 million
16 with the as-filed numbers by Dr. Zhang.

17 Q. And, just to be clear, under your model
18 the energy -- you conclude that the energy margins
19 that Duke estimated are too high; is that right?

20 A. My margins that I calculated were lower
21 than those produced by Duke Energy Ohio's analysis.

22 Q. Now, one of the differences in -- between
23 your model and the company's CBM model is with
24 respect to the energy forwards; is that correct?

25 A. I noted a difference in the forwards in

1 one of my workpapers. There is a difference that
2 shows up there.

3 Q. I guess one of my -- this is a much more
4 fundamental question, Mr. Luciani. In your model the
5 energy forwards are an output, correct, that is
6 pushed through the EVM model?

7 A. That is correct.

8 Q. And is it your understanding that in the
9 CBM model used by the company the energy forwards are
10 inputs?

11 A. That's my basic understanding, yes.

12 Q. And have you reviewed, Mr. Luciani, the
13 energy forward inputs used by Dr. Zhang for purposes
14 of his June 28th, 2012, analysis?

15 A. Yes. I refer to those -- I did a
16 comparison at one price point mentioned I believe on
17 page 13 of my testimony, the first full sentence on
18 page 13.

19 Q. Mr. Luciani, have you reviewed the energy
20 forward inputs that Mr. Zhang used for purposes of
21 the December 27th, 2012, CBM run?

22 A. Not specifically, no.

23 Q. Are you generally familiar with the
24 energy forward inputs used for the purposes of that
25 December 27th, 2012, run?

1 A. I did not review the inputs to that run.

2 Q. So you wouldn't know how those energy
3 inputs vary from the inputs that the company used for
4 the CBM model run in June of 2012.

5 A. I do not.

6 Q. Is it your understanding, Mr. Luciani,
7 that if you reran your model today, that the energy
8 prices would go up and the gas forwards have moved up
9 as well?

10 A. No, I don't believe that's the case from
11 the perspective of our models. As we discussed on
12 our technical call on Friday, we have a semiannual
13 update --

14 Q. Yes.

15 A. -- that was completed in this past
16 December and that's the one we relied upon.
17 Obviously, forwards move each and every day,
18 presumably that's why Dr. Zhang runs his model each
19 and every day, and forwards have been increasing as
20 of late.

21 But our modeling relies on a gas price
22 forecast that is synced up with our fundamental
23 modeling of PROMOD, the gas demand that comes out of
24 the electrical system is fed back into the gas
25 modeling to come up with an equilibrium price

1 forecast for both gas and the capacity expansion of
2 the electricity system. So that full sync-up takes
3 place, effectively, every six months in our
4 semiannual update.

5 Q. Am I correct that if you reran the PROMOD
6 today the energy prices would be up from the
7 December, 2012, run under your model?

8 A. Again, if -- are you saying if we
9 completed a new semiannual update might they be
10 higher?

11 Q. Yes.

12 A. I don't know that until we complete the
13 update but potentially they might be higher here in
14 the short term. I don't know if that would be true
15 in the out years, I don't know that until we run it.

16 Q. Are you generally aware of the energy
17 prices, the movement of energy prices from the time
18 period that you ran the PROMOD model that you
19 present?

20 A. I'm generally aware how forwards have
21 been moving over time. Both gas and power forwards
22 in the Ohio region have been moving upward recently.

23 Q. And do you know by how much the energy
24 price forwards have been moving up recently?

25 A. I don't have a number in mind. They have

1 been moving up.

2 Q. Do you know if it's a significant moveup?

3 A. Again, I can't speak to significance.
4 It's not lost in the rounding, it's more than -- it
5 is a noticeable movement.

6 Q. Now, if you had more time to devote to
7 your analysis, would you have engaged in the
8 discovery process?

9 A. If I had been retained earlier in the
10 process or deadlines had been extended, yes, I would
11 likely have asked some questions in discovery.

12 Q. And would you likely have had -- would
13 you likely have asked some discovery with respect to
14 the underlying assumptions and the justifications
15 associated with the company's application and
16 Mr. Zhang's model?

17 A. The company's application, of course,
18 covers the entire capacity rate calculation, so I'm
19 sure I would have asked some questions about the
20 capacity rate derivation along with Dr. Zhang's
21 analysis.

22 Q. Mr. Luciani, do you have a concern that
23 the utility knows more about its plants than you do
24 for purposes of producing projections related to
25 energy margins?

1 A. This came up in our technical call. I
2 always like to ask the company itself about its
3 units, particularly where our assumptions may differ
4 from what the company is using internally because
5 they may know more about the units specifically than
6 I can obtain from public data. So it's always a
7 concern in any project that I do.

8 Q. Now, you mentioned that the company has
9 or is privy to more data than you are privy to,
10 correct?

11 A. About the technical nature of its plants,
12 current forced outage rates and plans around the
13 plant, yes.

14 Q. And you indicate that that information is
15 not available to you because it is not public
16 information?

17 A. Typically it would not be public.

18 Q. And can you tell me exactly what kinds of
19 information the company would have to use for
20 purposes of their model that you did not have for
21 purposes of running your model?

22 A. Well, I had all the assumptions I needed.
23 Some differed as best I could tell from Dr. Zhang's
24 response to interrogatories from what we were using
25 in our standard PROMOD dataset.

1 For example, the forced outage rates on
2 the units were different. Duke Energy Ohio was
3 assuming some fairly high forced outage rates on two
4 of their units relative to what our standard dataset
5 would have. I would have asked about that in
6 discovery given enough time.

7 Q. And can you give me some other examples
8 of what information the company would have had that
9 was not available to you -- that it was not available
10 in the public domain for you to utilize for purposes
11 of running your model?

12 A. It may know something about specific
13 planned outages for improvements for any other
14 reasons other than what are available publicly. It
15 may know about forced outages, rates, again, that we
16 may not be aware of, any particular heat rates
17 associated with the units, there may be something
18 going on at the unit at least temporarily that could
19 be impacting the actual operation of the units, those
20 types of things are known by the company engineers
21 internally that may not be available publicly.

22 Q. Is there any other specific examples or
23 any other specific information that you can identify
24 that the company would have had and been able to use
25 in their model that you would not have had via a

1 public information source?

2 A. Yes. They may know more about the
3 delivered coal prices for the plants, but those are
4 the major ones, the heat rates, the delivered coal
5 prices, the forced outages.

6 Q. Beyond the major ones, are there any
7 other ones that you can identify that would be
8 information that the company would have that you
9 would not necessarily have and that would not
10 necessarily be in the public domain?

11 A. No more come to mind.

12 Q. Would you assume that the company would
13 have information about cost reduction operations on a
14 plant-by-plant basis that would not necessarily be
15 public information?

16 A. For an energy margin calculation that
17 wouldn't be a first concern of mine, no.

18 Q. But are you saying you don't -- I guess
19 perhaps you didn't understand my question. Would it
20 be your understanding that the company would have
21 cost reduction information on a plant-by-plant basis
22 that would not be available in the public domain for
23 you to utilize?

24 A. I don't know that that would be a
25 specific concern in my modeling of the plants unless

1 it had some impingement, for example, if they were
2 cutting the budget in order for the plant -- and the
3 plant would perform more poorly because it was not
4 being maintained as well, that would be a concern
5 that I would want to know about.

6 Q. Do you have, as part of the information
7 in the public domain, access to the company's FRR
8 plan?

9 A. I could not find or get access to the FRR
10 plan from a public perspective. I don't know that
11 it's impossible to do. I could not do it which is
12 why I requested or actually ultimately found it in
13 Dr. Niemann's workpapers and used that.

14 Q. I'm sorry, you found it in?

15 A. Dr. Niemann's workpapers.

16 MS. GRADY: Your Honor, if I may have a
17 moment, I think I'm ready to -- I may be done.

18 EXAMINER PIRIK: A moment.

19 MS. GRADY: Thank you. Thank you,
20 Mr. Luciani.

21 Thank you, your Honor.

22 EXAMINER PIRIK: Thank you. We're going
23 to take a brief ten-minute break.

24 (Recess taken.)

25 EXAMINER PIRIK: Go back on the record.

1 The court reporters brought to our attention that we
2 have marked two OCC Exhibits 26, therefore, we're
3 going to clarify the record and make sure that OCC 26
4 and 26A refer to the supplemental, the proposed
5 supplemental testimony of Mr. Effron which were
6 struck from the record. So the record will be
7 reflective of OCC 26 and 26A as his supplemental
8 testimony.

9 Therefore, the document that is
10 Mr. Luciani's workpapers which has been referred to
11 as OCC Exhibit 26 and 26A will now be designated as
12 OCC 27 and 27A, and to the extent the court reporters
13 can correct that error in the record, they should do
14 so and parties should refer to Mr. Luciani's
15 workpapers, pages 1 through 33, as OCC Exhibits 27
16 and 27A.

17 Is there any question?

18 Okay. We'll move forward. Mr. Kurtz.

19 MR. KURTZ: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Kurtz:

23 Q. Good evening, Mr. Luciani. Page 11 of
24 your testimony, please. I just want to get some
25 understanding of the modeling process here. Line 1,

1 the analysis used results in Navigant's most recent
2 PROMOD base case for the eastern interconnection
3 prepared under our semiannual updating process. So I
4 take it that, first of all, Navigant has a licensing
5 agreement with Ventyx for the PROMOD model?

6 A. Yes, it does.

7 Q. And twice a year you make your eastern
8 interconnection PROMOD run?

9 A. Twice a year we do a full sync-up across
10 the entire U.S., not just the eastern
11 interconnection, we use the eastern interconnection
12 model here but twice a year we do a full update and
13 synchronization of the gas price forecast and the
14 capacity expansion on the legacy system.

15 Q. For the eastern interconnection, how many
16 power plants would Navigant be inputting?

17 A. I don't know offhand. There are likely
18 hundreds. When you say "inputting," we of course are
19 using a starting database that's provided by Ventyx
20 and that we've used throughout the years so we're
21 focusing more on changes in the semiannual update as
22 opposed to reinventing the entire wheel.

23 Q. Got it. But, still, you're inputting
24 information on hundreds of individual power plants
25 that goes into your PROMOD model, correct?

1 A. Yes.

2 Q. Hydro, nuclear, coal, wind, solar, gas,
3 the whole gamut?

4 A. They are all in there.

5 Q. Okay. And how many nodes do you model in
6 the eastern interconnection?

7 A. Again I can't answer offhand, there are
8 many.

9 Q. Transmission line constraints, hundreds
10 would be modeled into your program?

11 A. Yes. Yes.

12 Q. And in terms of the inputs that you
13 update or use to start the PROMOD model, those would
14 be operating parameters of all the power plants, for
15 example I think you mentioned heat rate would be one?

16 A. Those would be looked at to the extent,
17 again, for our semiannual update, most of the focus
18 would be any changes in environmental regulations
19 that might impact any particular plants, gas prices,
20 coal fuel prices, things that change in a
21 marketing -- in a market sense more often than not.
22 The heat rates typically don't change very much for
23 most plants.

24 But we would -- we would be using the
25 latest Ventyx dataset and if there are changes, we

1 might investigate those, but I wouldn't, I don't want
2 to give the impression that we are looking at each
3 and every plant's heat rate on an every six months.
4 We will look at those things that we believe have
5 changed every six months; that would be the focus.

6 Q. Okay. Well, the things that would be
7 modeled would be things I think you mentioned, heat
8 rate, maintenance, forced outage rates, O&M costs,
9 start-up costs, ramping rates, emission allowance
10 rates, all those go into the PROMOD modeling?

11 A. Yes. Just with the clarification it
12 would be variable O&M rates.

13 Q. Variable.

14 And, as I understand it now, you don't
15 update every power plant every six months. You make
16 changes to the power plants in the PROMOD database
17 that you think are appropriate each six-month run.

18 A. Yes. And through that updating process
19 we would hope that all the plants are up to date.

20 Q. Is the PROMOD -- does PROMOD, then, give
21 you LMP energy as an output after you put those
22 inputs in?

23 A. Yes. The LMPs at any particular node are
24 an output of the PROMOD model.

25 Q. I think earlier with Ms. Grady you had

1 mentioned that the LMP pricing was an output of the
2 EMV [VERBATIM] model but maybe I misheard. That
3 would not be correct, is it?

4 A. That would not be correct. I thought she
5 said it correctly which is the output of the PROMOD
6 model, the LMPs are an output of the PROMOD model as
7 opposed to being an input to Dr. Zhang's model.

8 Q. Right. Right. Okay.

9 The next sentence on line 3, using
10 projected locational marginal prices LMPs nearest
11 pricing hub to each legacy unit from this PROMOD case
12 and the operating parameters from the legacy units
13 from the PROMOD input dataset. Let me stop there,
14 again, did you do any special updating for the Duke
15 Energy Ohio legacy generation or did you use your
16 standard PROMOD dataset?

17 A. We used the standard PROMOD dataset as of
18 December.

19 Q. Okay. Continuing. Each of the legacy
20 generating units was then dispatched through
21 Navigant's extrinsic value model, EVM, to calculate
22 essentially the margins; is that correct?

23 A. That's correct.

24 Q. Okay. You describe the EVM model in an
25 attachment, do you not?

1 A. Yes. In Appendix RLL-2.

2 Q. Okay. Can we go to that? I think it's
3 on the second page. Third page.

4 A. Sure.

5 Q. At the bottom, Navigant's extrinsic value
6 model. This is a model developed by Navigant?

7 A. Yes, it is.

8 Q. Okay. So with the PROMOD input dataset
9 of the operating parameters of the plants and the
10 PROMOD output of the LMPs, this dispatch is to try to
11 simulate a profit-maximizing behavior of the owners.

12 A. Yes, it is.

13 Q. Now, you have EVM explicitly accounts for
14 additional volatility. Do you let the model run or
15 are there extrinsic things you do to the model to --
16 what is this called in the modeling world where you
17 make certain hard assumptions that the model has to
18 then operate around?

19 A. I'm not following that question.

20 Q. And that was definitely a bad question.
21 Let me go back to this. Okay, the EVM is attempting
22 to replicate the bidding patterns that reflect the
23 plant operator's profit-maximizing strategy. So
24 you're trying to do, in this job, to re-create what
25 Duke Energy Ohio would do in maximizing the energy

1 margins from its plants.

2 A. Yes. I thought you were going to say as
3 Duke Energy Ohio does in its model, its CBM model. I
4 don't know that. But, yes, the intent is to
5 determine what any particular owner might do in
6 practice.

7 Q. You, of course, recognize that the DEO
8 plants are jointly owned by Duke Energy Ohio, Dayton
9 Power & Light, and Ohio Power and each of them
10 operates the plants depending on which one it is.

11 A. Yes, I think some are wholly owned by
12 Duke Energy Ohio, but there is -- some of the plants
13 are jointly owned.

14 Q. Right. Okay.

15 Now, are you aware that Dr. Zhang has
16 developed his CBM model over at least the last
17 decade?

18 A. I'm not specifically aware about the
19 decade.

20 Q. Okay. Do you understand that DEO Ohio
21 and Dr. Zhang have tried to customize or refine the
22 CBM model with respect to those units as much as
23 possible?

24 A. Again, I don't know Duke Energy Ohio's
25 motivation for hiring Dr. Zhang.

1 Q. Well, did you understand from your
2 counsel or from his testimony that it's really his
3 job and he's got a whole department of people, at
4 least some people work for him whose only job is to
5 make sure the CBM model operates as accurately as
6 possible?

7 A. I'll accept that as a general
8 understanding of his job. I don't know that it's his
9 only job but I know it's one of his key jobs.

10 Q. And that would be very important to have
11 how many thousands of megawatts of legacy coal and
12 the DECAM gas assets, those are now dispatched into
13 the market and, of course, they want to make as much
14 margin from those units as they can.

15 A. Yes. I don't know, in fact, whether
16 Dr. Zhang's model is used more for a prediction of
17 the next several years as opposed to what to do
18 tomorrow.

19 Q. I think he testified it was both. He may
20 change the CBM model midday if there's been a major
21 change, for some reason the hourly LMPs were
22 changing, I mean, it's that refined.

23 A. I would accept he may change it every
24 day, I just don't know if they use the model to
25 determine what to do tomorrow as opposed to they just

1 updated the forecast.

2 Q. They used the CBM model output for
3 budgeting purposes and the output is approved by both
4 the DEO board and the Duke corporation board?

5 A. I don't know all the uses --

6 MS. KINGERY: I would object just to the
7 extent he's mischaracterizing the testimony of
8 Dr. Zhang who's not present.

9 MR. KURTZ: Certainly not trying to.

10 EXAMINER PIRIK: That's fine. I mean, if
11 you can rephrase it and try to keep it as close to,
12 you know, a question for the witness.

13 Q. Do you understand that the output of
14 Dr. Zhang's CBM model is used to develop the budget
15 for Duke Energy Ohio?

16 A. It appears to be used some way in the
17 budgeting process, I could tell that from the
18 discovery.

19 Q. Do you know if Dr. Zhang's CBM model has
20 produced unreliable results in the past?

21 A. I don't know that.

22 Q. In other words, you haven't made any
23 effort to look at -- go back in the past, see what
24 the CBM predicted their energy margins would have
25 been to determine whether or not the CBM is right on

1 the money or way far off from actual results.

2 A. I have not done that. I'll simply note
3 that any model is using a forecast in the future and
4 as various inputs change any model will not
5 necessarily always reflect what happens.

6 Q. No question. Absolutely true. Because
7 what you're really saying is you believe that your
8 PROMOD, which is a more generic model, should be used
9 in place of Dr. Zhang's more specific model, but you
10 don't know if Dr. Zhang's model has historically been
11 very accurate or very inaccurate.

12 A. I don't know the specifics of Dr. Zhang's
13 model, it is proprietary, it is a Monte Carlo
14 probabilistic model which obviously likely involves
15 any number of probabilities about the future and
16 what's underlying all those I simply do not know.

17 Q. And this was the first PROMOD run that
18 you've made of the Duke Energy Ohio legacy plants,
19 correct?

20 A. No. No. We run the eastern
21 interconnection all the time so we would -- those
22 plants would always be a part of our eastern
23 interconnection modeling.

24 Q. That's not what I meant. You haven't
25 gone back and checked historically whether this

1 subset of your eastern interconnection has turned out
2 to be accurate or not, have you?

3 A. Are you saying as forwards and actual
4 prices have come down?

5 Q. Yes.

6 A. I don't believe we've done that, no.

7 Q. Because you're asking the Commission or
8 staff is asking the Commission to really substitute
9 your judgment. And there's no question, in my mind
10 anyway, the PROMOD model in Navigant is a highly
11 credible model, but you're asking the Commission to
12 substitute that model with Dr. Zhang's specific
13 tailor-made model without having any understanding
14 whether that model's been accurate or inaccurate in
15 practice.

16 A. Yes. It's our independent assessment of
17 the market using our modeling suite that, the same
18 modeling suite is being used for a number of projects
19 for market transactions, so yes, I believe it is an
20 independent view that should be endorsed.

21 Q. Why should the Commission give more
22 weight to your more generic PROMOD output than
23 Dr. Zhang's tailor-made, so to speak, model? I'll
24 just leave it at that. Why, I mean, obviously you're
25 credible and smart. Why should they believe you

1 instead of Dr. Zhang?

2 A. I'll simply note it was a different
3 modeling process. We do a ground-up buildup
4 dispatching all of the plants in the entire eastern
5 interconnection simultaneously to come up with the
6 actual prices at various nodes and then run our EVM
7 model using those prices, it's an accepted and
8 standard way for predicting these prices.

9 I understand that Dr. Zhang has developed
10 a model, I just don't know enough about the model to
11 say that it would be typically used to support market
12 transactions out there. I don't know that it
13 wouldn't. Again, I'm sure it's got a number of
14 assumptions behind it, it is a proprietary model, as
15 opposed to PROMOD, of course, which is generically
16 available and testable in that sense.

17 Q. I'd like to ask you some questions about
18 your testimony. You did, maybe on page 12, go
19 through a comparison of some of the inputs between
20 your model and Dr. Zhang's model. I believe you
21 discussed this with Ms. Grady. I want to ask you
22 about page 13, line 4.

23 A. Yes. Hold on just a moment until I get
24 there.

25 Page 13, line 4?

1 Q. Delivered coal prices for the legacy
2 generating units in the Navigant analysis are about
3 4 percent higher on average than those used in the
4 Duke Energy Ohio analysis.

5 A. Yes.

6 Q. Okay. And I think in the public portion
7 of OCC 27, let me ask you to turn to page 32 of 33
8 and just look at the totals at the bottom which are
9 public, we don't need to get into the individual...

10 A. Page 32 of 33 down at the bottom, yes.

11 Q. Is this in the right-hand corner, is this
12 the 4 percent differential that you've referred to?

13 A. Yes, it is.

14 Q. Let me, one thing before I forget about
15 this, would you look at the Duke Energy model for
16 Stuart 4 and Killen, see at the bottom Stuart 1, 2, 3
17 have the same MMBtu fuel cost. Is Killen -- and I've
18 noticed that Stuart 1, 2, and 3 always have the same
19 everything. Was this, should those be reversed?

20 A. Would those be reversed. I'm not sure
21 what you mean.

22 Q. In other words, should the 2.33 Stuart 1,
23 2.33 Stuart 2, 2.33 Stuart 3, and then you've got
24 2.33 for Killen. Should that be the number for
25 Stuart 4? Is that just sort of a typo?

1 A. It's possible. I don't believe so.

2 Q. Well, look at --

3 A. I would have to go back and check.

4 Q. Well, look at your Stuart, 1, 2, and 3,
5 2.49, 2.49, 2.49, 2.49.

6 A. Yes. I see that.

7 Q. Is it possible that that's just a
8 mislabeling?

9 A. It's possible. It's relatively easily
10 checked looking at Dr. Zhang's inputs, which I don't
11 have right in front of me, but it's conceivable. I
12 see your point that perhaps these columns were
13 switched, it would still I believe yield the same
14 4 percent.

15 Q. It surely would mathematically.

16 Let me ask you about coal pricing, for
17 coal, that's obviously the major variable cost in the
18 energy margin analysis, the cost of coal, correct?

19 A. For the energy margins for the legacy
20 generating units it is a key input.

21 Q. And for coal you would have to know --
22 let's talk about the things that Duke Energy Ohio
23 would know that you would not know in your general
24 PROMOD, I think you talked about some of this. Duke
25 would know if they were going to buy spot coal, spot

1 market coal, in the very near future and add it to
2 the coal pile. That wouldn't show up in your PROMOD
3 run necessarily, would it?

4 A. It might not necessarily. We do obtain
5 our coal price forecasts from EVA who have an expert
6 coal team who predicts coal prices and we purchase
7 that forecast from them. That said, they may not
8 know certain things that a coal switch that the
9 company may be taking into account.

10 Q. And these units generally have a hedge
11 strategy of contract coal of one year, two years, and
12 then spot coal, and there could be blending of
13 high-sulfur coal and lower-sulfur coal to get to the
14 right mix; that's what goes on with these coal units
15 typically?

16 A. I would say that goes on with a typical
17 coal unit. I don't know specifically what's going on
18 with these Duke units in that sense.

19 Q. And, of course, the transportation rate
20 is very important because we are concerned about the
21 delivered cost, so you would need to know the barge
22 or the rail, primarily barge for these units on the
23 river, the barge contract rates and how that works,
24 correct?

25 A. The delivered cost is what matters in the

1 PROMOD, is what we put into PROMOD.

2 Q. And it's really unlikely, it's more
3 likely that Duke Energy Ohio would know more about
4 their delivery costs than anybody else, correct?

5 A. It's likely they know a lot about their
6 delivery costs. I wouldn't discount that EVA knows
7 more or potentially knows more from a bigger picture
8 standpoint that might help the forecast improve.
9 That said, Duke of course knows what's it's paying
10 right now.

11 Q. And when you buy coal as a function of
12 the Btu, the ash content, the sulfur content,
13 mercury -- did I say "ash"? All those go into the
14 pricing of the coal and the utility's in a better
15 position to know that than anyone else; isn't that
16 true?

17 A. All of those things go into the coal
18 pricing and, again, the coal experts at EVA would be
19 taking that into account.

20 Q. Okay. Now, when you said -- let's go
21 back to page 32. The 4 percent difference on
22 average, I actually indicated that to be 4.7 percent.
23 Is that maybe a little bit more accurate?

24 A. I doubt it in a sense that it was done in
25 Excel.

1 Q. Well, I took the 2.45 minus 2.34 divided
2 by 2.34 and got 4.7 percent as a differential.

3 A. Using the unrounded numbers that Excel
4 would use, presumably it found something closer to 4,
5 otherwise it would have rounded it to 5.

6 Q. In any event, this 4 percent is not a
7 weighted average 4 percent. In other words, it gives
8 the same weight to the coal, the MMBtu price
9 differential on Zimmer, the biggest unit, that would
10 on Beckjord 6, correct?

11 A. It is a simple average and not weighted
12 by output.

13 Q. Okay. Let me hand you an exhibit, and
14 it's, pardon my handwriting, that's what I did, and
15 we'll mark it as OEG 14.

16 MR. KURTZ: OEG 14 if we could.

17 EXAMINER PIRIK: Yes, it will be so
18 marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. And, again, this is in the public record
21 because I took the bottom numbers, the final
22 summation.

23 So from this page 32 of 33 what I did is
24 took the DEO numbers versus the Navigant numbers by
25 unit to get a -- to get the fuel price differential

1 by unit, and you'll see on the Stuart 4 Killen I made
2 that adjustment assuming that the Stuarts are all on
3 the same price.

4 And can you -- if you want to check, can
5 you just check one to, I think I got it right, the
6 Miami Fort 7, the 9.9 percent differential.

7 A. I see your numbers. I don't have a
8 calculator with me, but it appears, for example, a
9 22-cent differential would be around 10 percent so
10 I'll accept your numbers.

11 Q. Now, that's a pretty big -- a 10 percent
12 differential on the major component of the variable
13 cost for the energy margin, that's a pretty big
14 differential, would you not agree?

15 A. 10 percent is a difference, yes.

16 Q. Okay. And you simply went down, we've
17 got 10 percent, 9.9 percent difference on Miami Fort
18 7, 9.9 percent difference on Miami Fort 8, Zimmer,
19 the biggest output, 9.8 percent, and then there's
20 some negatives where your numbers were lower than
21 Duke's for Killen and Conesville.

22 But anyway, mathematically I did this the
23 same way you did your 4 percent except I did it by
24 unit; is that a fair assessment?

25 A. Yes. And, again, I don't know until I

1 would check about the Stuart 4 -- Killen 2 switch.

2 Q. Okay. Now, then if you turn the page,
3 page 2 of this document, I took the Navigant fuel
4 cost which is not public, thankfully, the DE-Ohio
5 share, and I did it by plant and just multiplied it
6 by the DE-Ohio share to get the total fuel cost over
7 the 29-month study period, multiplied it by the
8 difference by which your forecast is higher than Duke
9 Energy Ohio's and simply added those numbers up.

10 That's a fairly straightforward fair
11 calculation, do you think?

12 A. You'll have to tell me where you obtained
13 these fuel costs.

14 Q. Okay, let's go through one. Let's go
15 through the very first one. Beckjord 6 would be page
16 433. Where's fuel? Fuel cost is -- oh, under
17 expense, it's at the bottom, it's 55 million 853 and
18 59 million and 22 million, but as you show on the
19 prior page, Duke Energy Ohio has 37.5 percent of
20 Beckjord 6, so I took the total, multiplied it by
21 37.5 percent, got the DEO share then multiplied it by
22 the price differential to see a dollar amount that
23 your coal -- that your coal forecast was higher than
24 Duke's.

25 A. I'm still not following all the

1 calculations. Are you -- you're summing up all the
2 years, or what are you doing?

3 Q. Yes. Let's just go to page 433, at the
4 bottom, you see the fuel number for Beckjord 6, 55
5 million 853? I added that then -- I added 59,421,
6 then I added 22,098, multiplied it by .375 and got
7 51,514. So that would be the Duke Energy share of
8 the total plant fuel cost under the Navigant model
9 runs.

10 A. I don't think that would be true for
11 Beckjord 6 because we did eliminate it in 2015.

12 Q. I saw that in the footnote in your
13 testimony, yet you have output from it here.

14 A. Yes.

15 Q. Well, I used your output.

16 A. It was zeroed out on page 3 of 33.

17 Q. Ah. Okay. Well, there will be a small
18 error on Beckjord then because I included the 2015.
19 But that's the only one that was retired in 2015,
20 correct?

21 A. Yes.

22 Q. So, in any event, I did the same thing
23 for all the other units shown in your Navigant model
24 runs and I just really tried to understand the dollar
25 amount by which you're estimating higher fuel cost

1 than Duke, you see I came up with 56,856,000 at the
2 bottom with this Beckjord small error in the five
3 months of 2015 eliminated I guess, so it would be a
4 little different.

5 A. I think I have a basic understanding of
6 what you did. Again, I would need to check through
7 the calculations before I could confirm this.

8 Q. Assume that I did the math right, I mean
9 we'll take out Beckjord 6 and the five months of
10 2015, but this would be a substantial differential in
11 terms of your \$99-1/2 million --

12 A. Well, I mean, you have to understand of
13 course that the coal prices are a key component to
14 how often the plant runs. And it's -- the heat rate
15 point at which it runs. If you were to use
16 alternative coal price forecasts in the model, you
17 would likely get a different output for the plants.

18 Q. But it goes in the favor of what I'm
19 saying, if you lower the fuel price, it's going to
20 dispatch more and you'll get higher margins, isn't
21 that right?

22 A. If you -- if you -- I'm sorry, which way?

23 Q. If we use Duke's fuel forecast and your
24 model, the plants will all dispatch more and you'll
25 get greater margins, you'll have not only higher

1 profit per megawatt-hour, but more megawatt-hours of
2 volume too.

3 A. It's likely with lower coal price
4 forecasts you'll get a higher output of the plants
5 all else equal.

6 Q. Right.

7 MS. KINGERY: Excuse me, I'd like to
8 interrupt for just a moment, because with this
9 exhibit and a conversation that you're having on the
10 record, you can back into our coal prices which have
11 been kept confidential. You have the percentage here
12 and turn it into a dollar number and compare it to
13 the Navigant number and it's simple arithmetic then
14 to come with ours.

15 MR. KURTZ: Let me just say this,
16 Ms. Kingery, I think the confidential nature of these
17 units on a gross three-year basis is highly
18 speculative and really provides -- presents no
19 competitive disadvantage to Duke Energy Ohio and I
20 think you're just using that to muddy up the record
21 among other things.

22 MS. KINGERY: We're certainly not trying
23 to muddy up the record, we've tried to be as limited
24 as we possibly can, as you are fully aware.

25 MR. KURTZ: If this exhibit goes in the

1 confidential, that's fine. I have one other -- I
2 don't care. I've given up worrying about the
3 confidential stuff.

4 MS. KINGERY: But I would also note that
5 the conversation you've just been having also used
6 some numbers, if I recollect correctly. If it
7 didn't, that's fine.

8 EXAMINER PIRIK: That's fine, we're going
9 to keep this document in the open record but thank
10 you for pointing out that there could be a concern.

11 Q. (By Mr. Kurtz) So, Mr. Luciani, again,
12 fuel pricing in the energy margins is a very
13 important component, we've agreed to that, correct?

14 A. Yes.

15 Q. And we, I think, agreed that Duke is in a
16 better position to know their delivered fuel costs
17 than EVA or who you get -- or anyone else really, for
18 that matter; isn't that correct?

19 A. They would certainly know a lot about
20 their delivered coal prices in the near term. Their
21 projection of them may or may not be better than
22 EVA's projection.

23 Q. Okay. But in any event, if the Duke
24 Energy coal prices or Dr. Zhang's, I guess, turned
25 out to be more accurate than the EVA service you

1 subscribe to, then there would be a major
2 differential in the energy margins that you've
3 calculated, correct?

4 A. I think I note in my testimony the impact
5 of the -- of the delivered, all else equal, higher
6 coal prices would reduce margins and that we had
7 somewhat higher fuel prices on average. So with that
8 I would agree.

9 I'd just, again, note that we ran PROMOD
10 again with these EVA prices in them for all plants
11 throughout the eastern interconnect and before I
12 would want to make a one-off adjustment for any
13 particular plant I would, in a more perfect -- more
14 time world rerun PROMOD with a perhaps a, if the Duke
15 assumptions are more right about some particular
16 units, maybe that they would be more right for a
17 broader set in the PROMOD runs and it might affect
18 the LMPs that we would use.

19 Q. And, in fact, that's really the type of
20 work you would do if you had more time, isn't it?

21 A. If we had more time, we would have worked
22 with the company ideally through discovery to find
23 out a little bit more about any differences between
24 our assumptions in our standard set and their
25 assumptions that they're using. That may not mean

1 we'd accept all of what they've done, but we would
2 certainly want to look at it.

3 Q. Again, recognizing that the Navigant
4 PROMOD, the whole thing you do is entirely credible
5 and good, but in terms of balancing as to who to
6 believe, that or Dr. Zhang, the fact that you have
7 had very little time to actually do your work
8 should -- don't you think that should weigh in the
9 Commission's decision?

10 A. The Commission may weigh that in its
11 decision. I believe we had enough time using --
12 using the PROMOD model that we had to come up with a
13 credible, independent view of the margins. So I'll
14 stop there.

15 Q. Okay. One last thing in the public
16 section, I want to ask you about -- every one of your
17 adjustments was translated into a dollar per megawatt
18 year metric, correct?

19 A. A dollar per megawatt-day.

20 Q. Ah, sorry. Dollar per megawatt-day. You
21 translated all of your adjustments up and down into a
22 dollar per megawatt-day metric so to speak; is that
23 correct?

24 A. Yes. It's a useful shorthand for the
25 changes. I think if you go through the underlying

1 exhibits, you'll see the actual revenue requirement
2 change.

3 Q. Yeah, you did it in the exact same way
4 Duke did it. In other words, you used the
5 denominator 4460 -- or 4459.85 megawatts?

6 A. Yes, I accepted that for purposes of
7 calculating this megawatt dollar per megawatt-day
8 figure.

9 Q. Do you understand that that is the Duke
10 load without the required PJM reserve margin?

11 A. I did not investigate the actual
12 specifics of that number. I think there was a
13 discovery request associated with it. As I sit here
14 I just don't recall the specifics behind it.

15 Q. One place we can see it is on your
16 Exhibit RLL-3, page 2 of 5, where you have the load
17 estimates, we don't need to say exactly what they
18 are, maybe they're confidential, but they're around
19 5,000 megawatts. Do I understand that's the amount
20 of load Duke Energy Ohio is required to supply as an
21 FRR entity?

22 A. My understanding is that that is a load
23 estimate for purposes of the FRR plan.

24 Q. Right. I just want to, just, again, why
25 is it important, in your mind, to come up with a

1 dollar per megawatt-day number?

2 A. Again, it was just a useful shorthand for
3 adjustments. I think everybody can understand a
4 dollar 44 a megawatt-day as opposed to 500,000,
5 1 million. It just brings it home a little bit as to
6 how it compares to the original rate.

7 Q. And in the Duke filing do you remember
8 that, it's in your testimony, that \$224 per
9 megawatt-day is the embedded cost of capacity after
10 the energy margins?

11 A. Yes, that's correct.

12 Q. And then when you take out the \$66 per
13 megawatt-day, which is the capacity contribution, the
14 FZCP contribution, you get the 158 a megawatt-day?

15 A. I think I'd have to look at Mr. Wathen's
16 attachment to confirm that. I do know he made a,
17 there is a second step using --

18 Q. Go ahead. Go ahead. It's on the first
19 page of his exhibit. It's also on the application,
20 the first page.

21 A. I see an ultimate figure of 158.08.

22 Q. Do you understand that that's the dollar
23 per megawatt-day incremental amount that the original
24 filing claimed was needed to meet the revenue
25 requirement of \$729 million?

1 A. I'm not recalling the 729 million figure
2 as I sit here. I do believe it's just simply netting
3 the capacity payments that would be received through
4 PJM.

5 Q. What are you looking at, and we can
6 point --

7 A. Page 1 of Mr. Wathen's attachment.

8 Q. Turn two more pages in, I think. Do you
9 see the 729 highlighted?

10 A. Oh, yes, the 729,122,082, yes.

11 Q. Do you understand that to be the
12 incremental revenue requirement over the 34-month
13 period that the company claims it needed to get to
14 the 11.15 percent return on equity on their embedded
15 cost?

16 A. Yes. Net of, net of the capacity payment
17 receipts from PJM.

18 Q. Right. Right. Okay. One -- this is
19 just --

20 MR. KURTZ: If we could have this marked,
21 your Honor, as OEG 15.

22 Q. I just want to walk through a simple
23 mathematical equation with you.

24 EXAMINER PIRIK: Thank you. The document
25 will be so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Mr. Luciani, this doesn't change the
3 effect of any of your recommended adjustments, it's
4 just a question of how to translate this into the
5 dollar per megawatt-day metric.

6 MS. KINGERY: Excuse me, can you wait
7 just a moment until we have a copy.

8 MR. KURTZ: Sorry.

9 Q. Do you see at the top where, it's simple
10 algebra in the company's filings, 4,460 megawatts,
11 which was the divisor you adopted, you accept the
12 company's, times the 158 a megawatt-day, times the
13 number of days in a month times the 34 months equals
14 the revenue requirement the company is asking for?

15 A. Yes.

16 Q. Okay.

17 A. Their numbers are slightly different but
18 I think I followed the math.

19 Q. Right. Now there's been evidence that
20 the real amount of load that Duke Energy Ohio is
21 going to have to provide as an FRR, which is the 5
22 PLCs plus a 15 percent reserve and the amount of load
23 upon which it will be paid, FZCP, and if this -- and
24 if the Commission gives it some incremental dollars
25 per megawatt-day, it would be applied to that as

1 well, if we looked at the (REDACTED).

2 MS. KINGERY: Excuse me. Sorry. That's
3 been redacted previously.

4 MR. KURTZ: What has?

5 MS. KINGERY: The number you just said.

6 MR. KURTZ: If we use approximately
7 5,000 megawatts --

8 EXAMINER PIRIK: Mr. Kurtz, just a
9 minute.

10 MR. KURTZ: Okay.

11 EXAMINER PIRIK: You know, I understand
12 your frustration, we all have the same frustration,
13 we've all been here the same amount of time, but I
14 would expect you to be respectful of the Bench and
15 the company for the fact that we have made rulings on
16 protective information so we just need to be calm and
17 we'll be fine.

18 What's the company's -- I'm thinking I
19 have a protective motion on this document?

20 MS. KINGERY: I would ask that you keep
21 the load obligation from PJM confidential consistent
22 with prior rulings.

23 EXAMINER PIRIK: And on this document
24 there's a long line --

25 MS. KINGERY: Yes, there is.

1 EXAMINER PIRIK: -- at the bottom that
2 goes over into the margin. Can you just mark on that
3 document what you believe and bring it up here so we
4 can see it. Mr. Kurtz needs to be able to see it too
5 so that he knows --

6 MS. KINGERY: Yes, we'll do that.

7 MR. KURTZ: And I can actually ask
8 Mr. Luciani questions without using that number if
9 you want to just eliminate it.

10 EXAMINER PIRIK: Okay, we'll go off the
11 record.

12 (Discussion off the record.)

13 EXAMINER PIRIK: We'll go back on the
14 record. So that it can be clear, and we will share
15 this with the court reporters because the court
16 reporters are going to need to know what number to
17 redact also, so if you could provide them with a
18 highlighted copy so that they'll know and you'll
19 provide them with a redacted version at a later time,
20 they'll go back and redact.

21 I believe that number is in one location
22 in the transcript and there are two numbers on this
23 document that the company is proposing to redact, and
24 can you please explain those numbers?

25 MS. KINGERY: Thank you, your Honor.

1 Yes, it would be in the second calculation on the
2 page, the first number which is a number of
3 megawatts, and then the total result of the
4 calculation at the bottom of the page.

5 EXAMINER PIRIK: Okay. That motion is
6 granted.

7 MS. KINGERY: Thank you.

8 EXAMINER PIRIK: Go ahead, Mr. Kurtz.
9 Thank you very much.

10 MR. KURTZ: Thank you, your Honor, and I
11 apologize.

12 EXAMINER PIRIK: No, you're fine.

13 Q. (By Mr. Kurtz) Mathematically speaking,
14 Mr. Luciani, if the load of Duke Energy Ohio, the
15 actual 5 PLC plus the 15 percent reserve, the amount
16 that they have to supply and the amount they get
17 paid, is more than 4,460 megawatts, then
18 mathematically they would recover over \$729 million
19 if the Commission were to grant their request.

20 A. If the rate were assessed on a dollar per
21 megawatt-day basis. I don't know that Duke has
22 actually asked for a dollar per megawatt-day as
23 opposed to simply a recognition of the revenue
24 requirement.

25 Q. There was some, I could walk you through

1 the application where it's very clear that that is
2 what is being asked for but that's fine, but you
3 just, if the Commission were to go for a dollar per
4 megawatt-day number, wouldn't you agree that the
5 proper denominator should be used so as to not
6 overstate the incremental amount needed to meet a
7 particular revenue requirement?

8 A. I would agree that the proper denominator
9 should be used. I don't know specifically what that
10 would be.

11 Q. Okay. And if the proper denominator was
12 different than 4,460 megawatts that you adopted, then
13 your dollar per megawatt-day calculation should be
14 adjusted accordingly.

15 A. Yes. If it's 10 percent higher, all the
16 figures would move down proportionately, for example.

17 MR. KURTZ: All right. Thank you,
18 Mr. Luciani.

19 Thank you, your Honor.

20 EXAMINER PIRIK: Thank you.

21 Mr. Lang?

22 MR. LANG: Thank you, your Honors.

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CROSS-EXAMINATION

By Mr. Lang:

Q. Good evening.

A. Good evening.

Q. Now, although you're recommending several adjustments to Duke Energy Ohio's proposed cost-based capacity rate, is it fair to say that you are not recommending that the Commission adopt a cost-based capacity rate?

A. I have no recommendation on whether the commission should adopt such a rate.

Q. And is it also fair to say you're not testifying that the adjustments reflected in your testimony are the only valid adjustments?

A. There may be other adjustments the Commission could accept. I mean, these are the ones I've recommended.

Q. And, as an example, you are not offering an opinion regarding how to adjust Duke Energy Ohio's revenue calculation to incorporate ESSC revenue that Ms. Grady mentioned earlier, correct?

A. I have no recommendation on the ESSC rider inclusion in this rate.

Q. And you're not offering an opinion regarding the impact of the ESP stipulation on Duke

1 Energy Ohio's revenue requirement, correct?

2 A. I have not.

3 Q. Is it also fair to say you're not
4 offering an opinion that an FRR entity is entitled to
5 full embedded cost recovery either under the RAA
6 rules or under Ohio law?

7 A. I have made no recommendation about the
8 entitlement to the rate.

9 Q. Now, you do understand that Duke Energy
10 Ohio has committed to moving its generation assets,
11 these legacy generation assets, out of Duke Energy
12 Ohio to an affiliate on or before December 31, 2014?

13 A. I saw reference to that in the discovery
14 material.

15 Q. And do you also understand that there is
16 a market in PJM for capacity that is outside of the
17 PJM base residual auction and the incremental
18 auctions to a market that's characterized through
19 bilateral transactions for capacity?

20 A. I'll accept that there are some bilateral
21 transactions for capacity.

22 Q. And that market would exist in all of PJM
23 including in Duke Energy Ohio's region?

24 A. I don't know specifically about the type
25 of transactions that are taking place, but I believe

1 bilateral transactions of capacity are -- do take
2 place throughout PJM and throughout the eastern
3 interconnection.

4 Q. And you certainly recognized as part of
5 your testimony, one of your adjustments is reflecting
6 capacity purchases through bilateral transactions
7 that Duke Energy Ohio is entering into, correct?

8 A. I'll have to hear that question again.

9 MR. LANG: Could I have it read, please?

10 (Record read.)

11 A. Yes, one of my adjustments is related to
12 the amount of capacity purchases that Duke would be
13 required to make.

14 Q. And so your understanding is that Duke
15 Energy Ohio has access to this capacity market where
16 it can purchase capacity in order to satisfy its FRR
17 obligations?

18 A. When you say "this market," which market
19 do you mean?

20 Q. The PJM capacity market as we talked
21 about that is through purchases through bilateral
22 transactions.

23 A. Yes. It could purchase any shortfall in
24 capacity through a bilateral arrangement, yes.

25 Q. Now, for the time after Duke Energy Ohio

1 moves its assets, its generation assets, to a
2 separate company after which Duke Energy Ohio becomes
3 a wires company, is it correct that you did not make
4 an adjustment to the revenue requirement to reflect
5 that Duke Energy Ohio would be able to purchase
6 market-priced capacity from this capacity market
7 we've been discussing?

8 A. I did not make an adjustment for any
9 timing of diversification.

10 Q. Okay. Now, you've had several questions
11 about the PROMOD model. Fair to say that you did not
12 run that model specifically for this assignment?

13 A. No. In the time permitted we basically
14 took a PROMOD run that we had recently completed.

15 Q. And at the top of page 13, line 1 of your
16 testimony, where you refer to the projected power
17 prices at the AEP-Dayton hub, that's what you had
18 referred to as one of the outputs of the PROMOD
19 model; is that correct?

20 A. I just now turned to page 13. The line
21 reference was?

22 Q. I'm sorry, page 13, line 1 where it
23 refers to the projected power prices at the
24 AEP-Dayton hub, that would be one of the outputs of
25 the PROMOD?

1 A. Yes, it would be an output of PROMOD.

2 Q. Is that what's reflected on page 30 of 33
3 of your workpapers, particularly under the columns
4 that -- under the word "Navigant"?

5 A. In the workpapers?

6 Q. Correct. Page 30 of 33.

7 A. Those are the LMPs that we used in the
8 EVM modeling. Page 30 of 33, yes.

9 Q. So, and so I'm clear, you said those are
10 the LMPs. Are those the -- is that the projected
11 power prices that come out of PROMOD or are those
12 something else?

13 A. Out of the PROMOD model, the EVM analysis
14 does a profit maximization against those power prices
15 and an adjustment for volatility of the power prices.
16 So this is post that adjustment.

17 Q. So this reflects an adjustment that's
18 made as part of the EVM?

19 A. That's correct.

20 Q. Now, you did not use market forwards as
21 an input to the model, correct?

22 A. We did not.

23 Q. Is it correct that market forwards are
24 readily available for the time period at issue here,
25 2013 through May, 2015?

1 A. For the short term market forwards are
2 available at certain highly traded hubs.

3 Q. And the A-D hub would be one?

4 A. It would be one of those.

5 Q. Would you agree that market forwards are
6 an economic instrument?

7 A. I would have to have defined what you
8 mean by "economic instrument."

9 Q. Well, to put it another way, if Duke
10 wanted to purchase or sell at a -- the market forward
11 price, that market forward price represents what they
12 can actually buy or sell, correct?

13 A. It represents at any given time the
14 demand and supply for forwards. If you have a large
15 amount you wished to sell at that forward price, you
16 would affect the price particularly if it's all at a
17 particular bus. So it affects the supply and demand
18 of the marginal trade for forwards.

19 Q. And Duke Energy Ohio would be able to
20 hedge today at forward prices for 2013 through May,
21 2015, and by hedging, meaning they would be able to
22 lock in a particular forward market price; is that
23 right?

24 A. Again, I don't know the depth, the
25 liquidity of the market for how much volume could be

1 used but, yes, at some small amount of volume they
2 could lock in that price.

3 Q. Now, for the 2013 to May, 2015, period
4 your PROMOD run from December projected energy prices
5 that were lower than the A-D hub forward market
6 prices at the time, at the time you did the run in
7 December; is that fair?

8 A. I don't -- I don't know that.

9 Q. So when the PROMOD run was done in
10 December and it produced forward energy prices, would
11 it be correct that you did not compare those to
12 actual energy forwards?

13 A. I don't know that we did a specific
14 comparison on any particular day to the forwards.

15 Q. Do you know whether the PROMOD energy
16 forwards from the December run are higher or lower
17 than the actual energy forwards today for 2013
18 through May, 2015?

19 A. Yes, the forwards have been moving up.
20 Certainly in the last couple months.

21 Q. Okay. Can you give any kind of, any kind
22 of meaning to what you mean by "going up" in terms of
23 a percentage, what the kind of increase has been?

24 A. It has, when I looked at it, it's, as I
25 noted before, it's not rounding, it's moved up

1 several dollars per megawatt-hour for example, and it
2 follows the gas price forecast or the gas forwards
3 which have also increased.

4 Q. Now, the PROMOD, over the short term, you
5 would agree, has less volatility in the energy
6 forward estimates?

7 A. Yes. It will have less volatility. It
8 basically models a more fundamentally smooth, less --
9 no-surprise system, if you will.

10 Q. So, in other words, it would not -- among
11 other things, it doesn't capture changes in types of
12 outages, changes in weather variability?

13 A. That's certainly, in weather variability
14 or perhaps a transmission outage.

15 Q. On page 7 of your testimony, line 18, you
16 have a reference there to the confidential attachment
17 to OCC-POD-01-005. Do you have that with you?

18 A. I do not.

19 MR. LANG: Your Honors, I think that I
20 have three questions that are confidential about that
21 particular document and I'd like to -- I'll hold
22 those for the end.

23 EXAMINER PIRIK: Okay. Are you going to
24 mark an exhibit, then?

25 MR. LANG: It's an exhibit that's already

1 marked. This attachment has already been marked
2 previously. It's OEG 11A.

3 EXAMINER PIRIK: Okay. Thank you.

4 Mr. Nourse?

5 MR. NOURSE: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Nourse:

9 Q. Good afternoon, Mr. Luciani. I represent
10 Ohio Power Company. Do you have the Ohio Power
11 decision up there in front of you?

12 A. I believe it was supplied as an -- as a
13 exhibit. Yes, I do have it. Case 10-2929?

14 Q. Opinion and order.

15 A. Yes.

16 Q. Okay. Can you turn to page 33.

17 A. Yes.

18 Q. Okay. And the last, next-to-last full
19 sentence on the page starts with "Given that." Can
20 you read that sentence.

21 A. "Given that." "Given that compensation
22 for AEP-Ohio's FRR capacity obligations from CRES
23 providers is wholesale in nature, we find that
24 AEP-Ohio's formula rate template is an appropriate
25 starting point for" the -- "for determination of its

1 capacity costs."

2 Q. Okay. So in this case it's your
3 understanding in the 10-2929 case that the Commission
4 adopted the formula rate template for AEP Ohio,
5 correct?

6 A. Yes. That was my basic premise, that AEP
7 had put forward a formula type rate, that the
8 Commission had made various adjustments to those
9 rates but had basically accepted the general premise
10 of the derivation.

11 Q. And that formula rate, to be specific, is
12 applicable or calculates the demand charge, what I
13 would call the demand charge?

14 A. I don't know that I necessarily think of
15 it that way. I ordinarily see it as a similar
16 formula in developing transmission rates, for
17 example.

18 Q. Okay. But for your capacity rate that
19 you've, the template you've used, isn't it true that
20 you've developed a demand charge and then an energy
21 credit and then a net capacity rate or charge?

22 A. Yes. Effectively, yes.

23 Q. Okay. So with respect to the formula
24 template that the Commission was talking about on
25 page 33, is it your understanding that that related

1 to what I called the demand charge?

2 A. I think they are referring to this dollar
3 per megawatt-day charge that we've been referring to.

4 Q. The net capacity rate?

5 A. Ultimately I think they decided that it
6 should be net of energy.

7 Q. Okay.

8 A. I don't, you won't necessarily see that
9 in a typical transmission rate, of course, that uses
10 a similar formula, you won't see a netting of energy
11 or an energy credit like the one you're seeing here.
12 But I think the Commission was referring in general
13 to the general approach.

14 Q. Okay. And then just if you turn the page
15 to page 34 and the paragraph at the bottom of the
16 page that carries over to page 35, can you read the
17 first sentence; additionally?

18 A. "Additionally, the Commission finds, on
19 the whole, that staff's recommended energy credit, as
20 put forth by EVA, is reasonable."

21 Q. Okay. So there would it be your
22 understanding that the Commission adopted EVA's
23 method for establishing an energy credit?

24 A. I believe they accepted EVA's energy
25 credit. I don't know that they fully accepted the

1 methodology per se.

2 Q. Okay. They went on to -- well, okay.
3 Two sentences later where it says -- does it say that
4 "We find that EVA's methodology should be adopted, we
5 agree with AEP Ohio that," it goes on to make an
6 adjustment?

7 A. Yes. I guess we should try to define
8 what might have been meant by the word "methodology"
9 there. I interpret it as netting of an energy
10 credit.

11 Q. Okay. In point of fact, on page 35 of
12 the order, the 10-2929 case, the Commission reduced
13 EVA's recommended energy credit of \$152 and change to
14 \$147.41 per megawatt-day.

15 A. You'll have to point me to the numbers.
16 I see the 147.41.

17 Q. It's in the same paragraph. So they make
18 a, they state on page 35 the result of this
19 adjustment reduces Staff's recommended energy credit
20 by \$5 to 147. Do you see that?

21 A. I see that.

22 Q. Okay. Now, as I understand your
23 testimony earlier today, I think you were talking
24 with Ms. Grady from OCC, and I believe you basically
25 stated that you looked to the AEP Ohio decision and

1 made adjustments if Duke didn't follow the method
2 approved in the 10-2929 case, correct?

3 A. That was my general approach as I could
4 best interpret the Commission's decision in this case
5 and the formula that was followed and the rate
6 derivation that was followed, I checked and
7 determined whether Duke had followed a similar
8 methodology.

9 Q. Okay. And the rest of my questions I
10 want to focus on the energy credit portions of this
11 formula, okay. First of all, what is your
12 recommended energy credit?

13 A. I would have to go to my RLL-5, I can see
14 that I calculated the adjustment off of Duke's
15 estimate. I would have to find Duke's actual number,
16 but we recommended an adjustment of \$21.58 per
17 megawatt-day higher than that recommended by Duke.

18 Q. You don't recall what your recommended
19 energy credit is as compared to the \$147 in the AEP
20 order?

21 A. Oh, to the AEP order?

22 Q. The AEP order is \$147, as we just
23 reviewed. Do you know what the comparable
24 recommendation you have in this case?

25 A. I would -- I could come up with it, I'd

1 have to look at Mr. Wathen's exhibit and then adjust
2 it by \$21 a megawatt-day.

3 Q. If you believe it's in there, go ahead
4 and do that, please.

5 A. Sure.

6 I think this may go into the confidential
7 numbers of Duke.

8 Q. So you're saying you can't -- there's
9 nothing in the public record that indicates your
10 recommended energy credit?

11 A. I don't think so because I did it as a
12 differential off of the Duke number.

13 Q. And Duke doesn't disclose its energy
14 credit in its public testimony?

15 A. Not -- I have the confidential Mr. Wathen
16 attachment, I guess before I answered that I would
17 probably want to look at the nonconfidential portion.

18 Q. Yeah, okay. You have RLL-5 in front of
19 you.

20 A. I do.

21 Q. Are you able to do it from the Navigant
22 analysis portion of the exhibit that's public?

23 A. No, because that only calculates the
24 differential.

25 Q. The generation margin line, is that a

1 differential?

2 A. Yes, it -- that is the actual generation
3 margin relative to, then it's compared to the Duke
4 Energy Ohio generation margin to come up with a
5 differential.

6 Q. Okay. But let me ask you, if I could
7 calculate it, and you tell me if it is correct or
8 not.

9 A. Sure. It's certainly calculable, I just
10 don't know that I can do it as I sit here.

11 Q. Okay. Is that because you don't have a
12 calculator?

13 A. A computer more like it.

14 Q. Okay. Well, let's see, because -- if we
15 add up the 2013, 2014, and Jan through May, 2015,
16 generation margin, that would give you approximately
17 319 million? That would be the total margin for that
18 period?

19 A. I'll accept the 319, yes.

20 Q. Okay. And then we would divide that by
21 34, multiply it by 12 to get the average annualized
22 revenue, correct? Or, I'm sorry, 29 in this case
23 because you don't have the August through December,
24 2012, period, right?

25 A. It depends on exactly how you want to

1 approach the problem, whether you divide by 29 or 34.

2 Q. Okay. Well, that's what you do for your
3 capacity rate differential, correct? \$21.58 --

4 A. That is done using the 34-month
5 calculation with a zero installed for the
6 differential from August to December, 2012.

7 Q. Okay. And if you do it, can you do it
8 that way? That would be --

9 A. Like I said, that would be one way to do
10 it.

11 Q. Okay. 319 divided by 34 times 12, would
12 that be the formula?

13 A. Again, that's one way to do it. That's
14 not necessarily the only way to do it. You might
15 want to use the (REDACTED) in there.

16 Q. Okay. And you don't have -- and so that
17 would produce the average annualized revenue or
18 margin, correct?

19 A. I guess as I sit here I would take the
20 319 million, I would add the (REDACTED) because we
21 accepted that from August-December, 2012, from the
22 Duke filing, add that into the 319, so 319 plus
23 (REDACTED) or (REDACTED) divided by 34 times 12.

24 Q. Okay. And then you would divide that by
25 the average demand?

1 A. Yes. Divide by the 4,460 and then
2 further divide by 365, multiplied by a thousand.

3 Q. Okay. And do you have any idea how that
4 compares to the \$147 the Commission adopted in the
5 AEP case?

6 A. I mean, we've worked it out, we would
7 just need to calculate that number.

8 Q. You didn't do that comparison?

9 A. No, I did not.

10 Q. Okay. So unlike on the demand charge
11 where you said you went through and conformed to the
12 formula and even adjustments you think would be
13 reasonable you didn't make, you didn't do any
14 comparison to the energy credit side for EVA's
15 analysis?

16 A. No, I didn't do that in the sense that I
17 know you've got a different set of units, you've got
18 a different set of fuel prices, margins, a different
19 timeframe for the analysis and all, so no, I did not
20 do that one. I understood it was an energy margin
21 calculation as performed by EVA using their models
22 and we did the same.

23 MS. KINGERY: Your Honors, we would
24 object to this, the line of questioning that appears
25 to have just finished. It's difficult to know where

1 the line is and when someone's going to step over it
2 but clearly Mr. Nourse just demonstrated why it's so
3 critical to keep the second table on page 1 of 1,
4 RLL-5, confidential, because they were just able to
5 back into the Duke number that has been kept
6 confidential previously and we now have on the record
7 exactly how to do that.

8 So we would renew our -- recognizing that
9 your Honors have ruled on the confidentiality of this
10 second table, we would renew our request that that be
11 confidential and that this entire conversation with
12 Mr. Nourse be put into the confidential transcript so
13 that we can redact appropriately.

14 MR. NOURSE: Well, your Honor, first of
15 all, I guess all I was asking for was the
16 recommendation. I don't see how the overall
17 aggregate total, you know, recommendation for the
18 rate could be confidential, honestly. But certainly
19 I was trying to conform with the ruling that you had
20 earlier and stuck to the public numbers.

21 EXAMINER PIRIK: And I appreciate that.
22 Can we go off the record for just a minute.

23 (Discussion off the record.)

24 EXAMINER PIRIK: We'll go back on the
25 record. The company's motion is understood, however,

1 the ruling with regard to the Navigant analysis
2 stands that that will be in the open record, however,
3 we're asking the court reporters, there was one
4 number that dealt with the August to December, 2012,
5 time period that we're asking the court reporters to
6 go back and put in the closed record.

7 So for that period of this conversation
8 if you could hold that as confidential and the
9 company can go through it.

10 All right. We'll move forward.

11 MR. NOURSE: Thank you.

12 Q. So, Mr. Luciani, again, just discussing
13 the data that's been public and discussing your
14 overall aggregate recommendation you did not compare
15 that -- well, first of all, you didn't even know what
16 that number was as we talked a few minutes ago.

17 A. Yeah, nor did I know what the capacity,
18 nor did I do a direct comparison to the capacity
19 numbers with what AEP had. They're different units,
20 different O&M, I wouldn't expect them to necessarily
21 align.

22 Q. Okay. But would you expect them to be
23 wildly different?

24 A. They could be. It depends on the age of
25 the plants, gross book value, the environmental

1 controls on the plant, how often they run, the
2 variable O&M, the fuel cost, any variety of things
3 could affect a plant's margins, its book value.

4 Q. Okay. But another thing that would
5 affect it is if you didn't use -- you did not use the
6 same methodology that was adopted by the Commission
7 for AEP in the 10-2929 case, correct?

8 A. I'm not sure what you mean, if I did not
9 use the same methodology.

10 Q. Did you use the same methodology?

11 A. Did I use the AURORA model of EVA, no.

12 Q. What other differences would you
13 identify?

14 A. To that, to the extent that I used a
15 margin calculation using a fundamental model to
16 predict the energy revenues net of -- net of fuel
17 costs, variable O&M and emissions costs for the
18 units, I think I did a similar methodology using our
19 modeling suite, of course, as opposed to EVA's.

20 I'd be surprised if they did do anything
21 differently. If they did do something differently, I
22 don't think it would have been appropriate.

23 Q. Okay. Well, that may be something we
24 agree on, but let's just go back and clarify what you
25 said earlier.

1 You said they're a different set of
2 units. There are some units that are the same in
3 both EVA's analysis and your analysis, correct?

4 A. I would think that would be the case,
5 yes.

6 Q. The jointly owned units.

7 A. I presume that would be the case.

8 Q. Okay. So when it comes to inputs that
9 you use such as fuel cost or heat rate, those are --
10 those would be major drivers of margin levels,
11 correct?

12 A. Yes.

13 Q. And for large units like Zimmer that have
14 a high capacity factor and it's just a large unit,
15 that could drive major differences in the margin
16 levels if you didn't use the same; would you agree
17 with that?

18 A. If you used different assumptions about
19 specific units, you would get different results.

20 Q. Okay. And with respect to fuel cost
21 specifically, do I understand that you used EVA's
22 fuel cost as your -- in your modeling?

23 A. We used an EVA forecast that we purchased
24 for coal.

25 Q. Okay.

1 A. Coal prices.

2 Q. By the way, that's the same Energy
3 Ventures Analysis that was the staff witness and
4 position in the 10-2929 case, we're talking about the
5 same firm, right?

6 A. It was the same firm.

7 Q. Okay.

8 A. I don't know that it was the same group
9 at EVA but, yes, it was the same firm.

10 Q. Okay. Do you think they sell you
11 different fuel numbers than they use for their own
12 modeling?

13 A. There's a timing issue, of course, when
14 did the EVA do the analysis as opposed to when we did
15 a purchase from the EVA. My reference to the group
16 was I don't know who ran the margin analysis for EVA
17 as opposed to who prepares their coal price forecast.
18 I wouldn't think that EVA would not use their own
19 coal price forecast.

20 Q. Would you expect, if we're talking about
21 the same unit for the same years that we're looking
22 at, the same time period, would you expect a
23 significant differential like 50 percent difference
24 in fuel cost for one of these units?

25 A. I don't know what type of differential

1 you might have. There's certainly a timing
2 difference and if EVA has changed their coal price
3 forecast, of course, we would have incorporated it.

4 Q. Well, you used the -- the data you used
5 was from last year, correct?

6 A. It was from the December timeframe during
7 our semiannual update, so as of the writing of the
8 testimony, less than four months.

9 Q. Okay. Would you expect fuel costs at a
10 large unit like Zimmer with a large coal pile to
11 change, for example, within the year 2012 by
12 50 percent?

13 A. Absent a coal switch I wouldn't think
14 that would take place.

15 Q. Okay. Did you do any calibration of your
16 model or did you use the off-the-shelf data that you
17 had available?

18 A. We used the PROMOD model as was developed
19 in our semiannual updating process which is a
20 calibration technique to calibrate gas price
21 forecasts with capacity expansion.

22 Q. You didn't calibrate it for Duke or for
23 this case for that matter, you just used what you had
24 on the shelf, correct?

25 A. Yes, that's correct, we did not do a

1 specific run for this case.

2 Q. And did you, for LMPs, did you use zonal
3 or nodal pricing?

4 A. We used nodal.

5 Q. And do you think it's inappropriate to
6 use zonal?

7 A. There may be some cases where zonal is
8 appropriate. I would tend to think that in PJM where
9 nodal pricing is in effect that nodal is the best
10 approach.

11 Q. Okay. And you incorporated start-up
12 costs for those units that cycle?

13 A. Yes, we did.

14 Q. Yeah, okay.

15 Does your, either your demand charge or
16 your energy credit vary based on the shopping levels
17 that are experienced by DEO?

18 A. It does not.

19 MR. NOURSE: Okay. I think that's all
20 the questions I have, thank you, Mr. Luciani.

21 EXAMINER PIRIK: IEU?

22 MR. PRITCHARD: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Pritchard:

Q. Good evening, Mr. Luciani. My name is Matt Pritchard, I represent the Industrial Energy Users of Ohio. I have a few questions going back to what Mr. Lang and Ms. Grady asked you about, what you had reviewed.

In preparing your testimony did you review Chapter 4909 of the Revised Code?

A. I did not.

Q. And along those lines did you review the Commission's standard filing requirements for cost-based ratemaking?

A. I did not.

Q. Did you review any particular cost-based applications for an increase in rates?

A. I reviewed the AEP case as we've been discussing, the 10-2929.

Q. I'm referring to base distribution rate cases.

A. I did not review any specific base distribution cases as part of the preparation for this case.

Q. As part of your testimony did you review the information that Duke supplied, the plant

1 information, to determine if the plant balances were
2 accurate?

3 A. I worked through the FERC Form 1 data
4 that was used by Mr. Wathen in his attachment. I
5 don't -- I did not check each and every number that
6 you pulled in from the FERC Form 1 data, but as a
7 general matter I did compare the FERC Form 1 data to
8 what he was pulling.

9 Q. In regard to the FERC Form 1 data did you
10 do any independent analysis to determine if the
11 information on the FERC Form 1 was accurate?

12 A. No. I accepted the FERC Form 1 as filed.

13 Q. In your discussions with Mr. Wathen did
14 you discuss the plant balances that were on the FERC
15 Form 1?

16 A. We did not specifically.

17 Q. Did you, and along these lines of
18 auditing that data, did you do any sort of on-site
19 audit of any of the actual physical properties?

20 A. No.

21 Q. As part of your testimony in this case I
22 believe in regard to Ms. Grady you discussed the
23 scope of your testimony. Did you address transition
24 cost recovery?

25 A. No.

1 Q. But you previously have testified before
2 the Public Utilities Commission on transition cost
3 recovery, correct?

4 A. If you're referring to the Dayton case in
5 1999.

6 Q. Yes.

7 A. I did testimony that compared the value
8 of the plants in an open market relative to their net
9 book value and that was used by Dayton in their
10 filing.

11 Q. And that's the testimony you represent I
12 believe on page 2 of your testimony?

13 A. Yes.

14 MR. PRITCHARD: Your Honor, at this time
15 may I mark an exhibit?

16 EXAMINER PIRIK: Yes.

17 MR. PRITCHARD: I'd like to mark, I
18 believe we're at 19.

19 EXAMINER PIRIK: Yes.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Mr. Luciani, would you take a quick --

22 MS. KINGERY: Excuse me a second. Can I
23 have a chance to look at it first for any possible
24 confidentiality.

25 MR. PRITCHARD: This is his public filed

1 testimony in --

2 MS. KINGERY: Okay, I hadn't seen it yet
3 so I didn't know.

4 MR. PRITCHARD: Sorry.

5 Q. (By Mr. Pritchard) Mr. Luciani, would you
6 take a minute to review what I've handed you. And
7 let me know when you've had time to finish reviewing
8 that.

9 EXAMINER PIRIK: Mr. Pritchard, do you
10 have the case number on this case?

11 MR. PRITCHARD: It's referenced on page 2
12 of Mr. Luciani's testimony, just one second, your
13 Honor. It's 99-1687-EL-ETP.

14 EXAMINER PIRIK: Thank you.

15 A. Yes, I've had a chance to look at it.

16 Q. Does this appear to be a true and
17 accurate copy of the testimony you previously
18 submitted in Dayton Power & Light Company's electric
19 transition plan proceeding?

20 A. Yes, it is.

21 Q. And I believe you discussed this a minute
22 ago, but the purpose of your testimony was to
23 quantify DP&L's stranded costs associated with its
24 generation assets, correct?

25 A. Yes.

1 Q. And to quantify DP&L's generation-related
2 stranded costs you discussed several different
3 valuation methods, correct?

4 A. Yes.

5 Q. Specifically, if you'll look at pages 9
6 through 13, am I correct that you discussed three
7 different discounted cash flow methodologies as well
8 as a comparable sale of generation assets
9 methodology?

10 A. Yes, I see DCF method 1, 2, and 3.

11 Q. And then if you look at page 13, you
12 discuss a comparable sales approach as well; is that
13 correct?

14 A. Yes, I see that.

15 Q. And if you turn your attention to page
16 13, lines 3 through 8, you indicate that to calculate
17 DP&L's generation related stranded cost you utilized
18 a discounted cash flow model based upon lost book
19 value assuming the generation assets remained under
20 The Dayton Power & Light Company's continued
21 ownership, correct?

22 A. Yes.

23 Q. And if you turn to pages 11 and 12, here
24 you discuss the second discounted cash flow
25 methodology, correct?

1 A. Yes, I see that discussion.

2 Q. And that methodology was based upon an
3 analysis of the lost revenue that The Dayton Power &
4 Light Company would face assuming that the generation
5 assets remained under their continued ownership,
6 correct?

7 A. Now I'm not following your question. Are
8 you referring to DCF method 2?

9 Q. Yes, DCF method 2 is an analysis that
10 quantifies stranded costs under a discounted cost
11 flow methodology [VERBATIM] that looks at the lost
12 revenue, correct?

13 A. It discusses it, I don't know that an
14 analysis was performed.

15 Q. You're getting a little ahead of me on
16 the questions but --

17 A. Sure.

18 Q. On your answers. You anticipated where I
19 was going next.

20 You discuss, if you draw your attention
21 to page 11, lines 16 to 17, you discuss that the cash
22 flow methodology you used, the lost book value, was
23 mathematically equivalent to the second discounted
24 cash flow methodology; is that correct?

25 A. Under consistent assumptions about market

1 prices for power, future operating costs, cost of
2 capital.

3 Q. And turning to page 11, drawing your
4 attention to lines 6 through 10, to calculate
5 generation-related stranded costs under this
6 methodology you would take an annualized revenue
7 requirement and subtract out annualized market
8 revenue and discount the difference back to present
9 value, correct?

10 A. You said "this methodology," you're
11 talking again about the second approach?

12 Q. Correct.

13 A. Lost revenue under continued operations?

14 Q. Correct.

15 A. Continued ownership, excuse me.

16 I'm now looking at the paragraph, go
17 ahead and ask your question.

18 Q. To calculate the generation-related
19 stranded cost under this methodology you would take
20 the annualized revenue requirement and subtract the
21 annualized market revenue and then apply a
22 discounting to discount the difference back to
23 present value, correct?

24 A. I wouldn't quite say it that way. I
25 would -- you would take the future revenue

1 requirements on an annual basis is the ordinary way
2 you would think of it and you would compare that to
3 the revenues and discount the differential.

4 Q. Yes. That's what I was getting at.
5 Thank you.

6 And the annual revenue requirement,
7 sorry, the annualized revenue requirement portion of
8 that calculation was based on the initial invested
9 capital in future operating costs, correct?

10 A. Again, I don't think a calculation was
11 done, you mentioned the actual calculation or the
12 calculation that was performed. I don't think a
13 calculation was performed.

14 Q. I'll clarify my question. If you're
15 going to calculate stranded costs under this
16 methodology that you discuss, you would look at the
17 annualized revenue requirement and at lines 14 to 15
18 that annualized revenue requirement would be based on
19 the initial invested capital in future operating
20 costs, correct?

21 A. The annual revenue requirements would be
22 based on the amount invested in the plant, likely
23 inclusive of future capital additions and the
24 depreciation of those capital additions. So you
25 mentioned initial capital costs, yes, it would be the

1 gross book, the various accounts related to the plant
2 plus future investment in the plant.

3 Q. And your testimony today, it does not
4 address, I believe you stated this earlier, it does
5 not address transition costs, correct?

6 A. My testimony in this proceeding does not
7 address the impact of transition costs on this
8 potential capacity rate that may be applied through
9 this proceeding.

10 Q. Is it your understanding that Ohio law
11 only provided electric distribution utilities a
12 one-time recovery mechanism to recover transition
13 costs?

14 A. I have no understanding of that.

15 Q. Would you turn to page 8, lines 7 through
16 9, and take a minute to review the first question and
17 answer on this page.

18 A. Yes, I see that.

19 Q. Does this refresh your recollection of
20 whether Ohio law only provided for a one-time
21 recovery mechanism of transition costs?

22 A. Looking at this some 14 years later I
23 don't know that it supports Ohio law. I can't
24 address a question about Ohio law per se. This
25 sentence says what it is.

1 Q. But your understanding was, when you
2 filed that testimony, that it was your belief at that
3 time that transition costs could only be covered
4 through a one-time recovery mechanism.

5 MS. KINGERY: Your Honor, we would
6 object. This entire line of questioning is outside
7 the scope of this witness's testimony.

8 EXAMINER PIRIK: Objection overruled.

9 A. The sentence mentions that the whole
10 process could be completed through a one-time
11 recovery mechanism, yes.

12 MR. PRITCHARD: Could I have just one
13 second, your Honor?

14 EXAMINER PIRIK: Yes.

15 Q. Mr. Luciani, one final question for you.
16 Is it fair to say that stranded generation station
17 costs resulted from investments in generation assets
18 made with the expectation of regulated recovery but
19 are no longer recoverable in competitive generation
20 market?

21 A. I would say that stranded generation
22 costs result from ongoing investment by the utility
23 that is transitioned to a market environment at such
24 a time as the value of those generating assets are
25 less than the net book value of the plants.

1 Q. So, judging from your answer, it would be
2 your opinion that they would, that those costs that
3 were -- the costs that were already invested in the
4 plants would no longer be recoverable in a
5 competitive market.

6 A. As of that time, using the market
7 forecast as of that time.

8 MR. PRITCHARD: Thank you. No further
9 questions.

10 EXAMINER PIRIK: Thank you.

11 Ms. Petrucci.

12 MS. PETRUCCI: Yes, I have a few.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Petrucci:

16 Q. Good evening. The study that you
17 conducted focused only on the electric generating
18 assets of Duke and did not review or take into
19 consideration any revenues from Duke's electric
20 transmission and distribution services, correct?

21 A. That's correct.

22 Q. And earlier you stated that you were not
23 aware of Duke's recovery of moneys through rider
24 ESSC, correct?

25 A. I've heard reference to the rider. I do

1 not know the specifics of that rider.

2 Q. Okay. Then it's fair to say that your
3 assessment did not include or recognize any of the
4 revenues that Duke receives from the rider ESSC,
5 correct?

6 A. That is correct.

7 Q. Your assessment also does not show Duke's
8 total rate of return on the company's regulated
9 assets; is that correct?

10 A. I did not do a full-blown estimate of the
11 return on regulated assets, no.

12 Q. Did you independently investigate the
13 revenue that Duke receives from its jurisdictional
14 generation assets during the ESP period from
15 off-system sales?

16 A. I'm not sure what you mean by "ESP
17 period."

18 Q. Well, for the time period that you looked
19 at did you independently investigate the revenue that
20 Duke would receive from its jurisdictional generation
21 assets?

22 A. I looked at the revenue that Duke would
23 receive from the legacy generating assets from 2013
24 through May of 2015.

25 Q. Okay. And would that include off-system

1 sales?

2 A. That would be all sales from the plant.
3 As far as the energy margins, yes, the net energy
4 margins.

5 Q. Okay. And you relied on -- scratch that.
6 With respect to Navigant's model, is
7 there a margin of error with that model?

8 A. There's a margin of error in all
9 modeling.

10 Q. What would that be with this, with your
11 particular model?

12 A. I don't have a specific estimate of it.

13 Q. Now, you stated just a moment ago that
14 the period that you covered was January, 2013, to
15 May, 2015.

16 A. Yes.

17 Q. For the portion of 2013 that took place
18 prior to you completing your testimony, were any of
19 the energy sales based on actual realtime sales?

20 A. They were not.

21 Q. So does that mean for all of the -- it
22 was all projected data for 2013.

23 A. Correct.

24 Q. And given that you covered the time
25 period of January, 2013, to May, 2015, are you

1 actually recommending that particular time period to
2 the Commission for this case?

3 A. For application of the capacity rate for
4 its actual institution?

5 Q. Yes.

6 A. No, I have no -- no specific opinion on
7 that.

8 Q. And you chose to begin the assessment in
9 January, 2013, well, actually, let me step back.

10 You chose to exclude August to December,
11 2012, correct?

12 A. We did not run August through December,
13 2012.

14 Q. Okay. And can you explain why that
15 occurred?

16 A. When we do our semiannual updating, of
17 course, we're looking ahead, the modeling is almost,
18 is typically done for a forward forecast, not just of
19 the next three years but potentially the next 20
20 years, and so as we update our analysis sitting there
21 in late-2012, we would be using a model that starts
22 in 2013.

23 Q. Was it the amount of time that you had to
24 accomplish the task a factor for using projected data
25 for January to April -- or January through March of

1 2013? Or was it simply because of the fact that you
2 had already run the PROMOD model and it had included
3 that time period for 2013?

4 A. Well, we certainly had that time period
5 run starting in January, 2013, and that was available
6 in the time that we had. I don't think any amount of
7 time short of months of work would have allowed us to
8 go backward in time for 2012. I think that was your
9 question.

10 Q. Did you take into consideration that
11 after December, 2014, Duke will not own the
12 generating assets upon which it's basing this
13 proposed charge?

14 A. I did not take that into account.

15 Q. Was that something you were not asked to
16 look at and -- for purposes of the scope of your
17 work?

18 A. I was not asked to look at that, no.

19 MS. PETRUCCI: I have no further
20 questions, thank you.

21 EXAMINER PIRIK: Mr. Hart?

22 MR. HART: Thank you, your Honor. I may
23 end up renegeing on my five-minute commitment here but
24 I will do my best.

25 EXAMINER PIRIK: Do you mean it will be

1 shorter?

2 MR. HART: No, it won't be.

3 MS. PETRUCCI: I was shorter. I was
4 shorter.

5 MR. HART: I'll use her extra time.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Hart:

9 Q. Mr. Luciani, let's start with your
10 summary Exhibit RLL-6 and that's where you draw your
11 conclusions together, correct?

12 A. All right, I'm at RLL-6.

13 Q. That's where you draw your proposed
14 adjustments together in one chart?

15 A. They're all pulled together. All my
16 calculations are pulled together in one chart.

17 Q. Of the various, there appear to be six or
18 seven different adjustments you're recommending, the
19 only one that is a positive adjustment is the margin
20 on sales?

21 A. Yes. It is the -- it's the only upward
22 adjustment to the Duke estimation.

23 Q. Okay. And that comes from Exhibit RLL-5,
24 correct?

25 A. That's correct.

1 Q. So let's go to that and see where this
2 comes from. As I understand, and I'm going to try to
3 not use any numbers whatsoever, but the dollar per
4 day, per megawatt-day, increase that you're
5 recommending is derived from your calculation of the
6 margins on this chart, correct?

7 A. That's correct.

8 Q. And we don't need to go into the details
9 of that, but you've done a comparison of WDW-1 in the
10 top box to your Navigant analysis in the second box,
11 correct?

12 A. Yes. The numbers as used in WDW-1, I
13 don't know that the numbers, these numbers that are
14 confidential would actually appear in WDW-1 --

15 Q. Right.

16 A. -- as opposed to the workpapers.

17 Q. I'm trying not to use any numbers just so
18 we can talk relative here.

19 If you look at your line for energy
20 revenue for each of the three years you looked at,
21 one's a partial year, that number is always higher
22 than the comparable number in WDW-1, correct?

23 A. Yes. As noted on page 12 of my
24 testimony.

25 Q. And, similarly, your expense line is

1 consistently higher than the expense line on the Duke
2 chart, correct?

3 A. That's correct.

4 Q. But your margins are consistently lower
5 in each case, correct?

6 A. Yes. The cost increase is higher than
7 the revenue increase leading to lower margins than
8 those estimated by Duke Energy Ohio.

9 Q. So you're projecting a higher expense
10 ratio in each year than Duke did. Is that fair?

11 A. Our expense estimate is higher, moves up
12 more than our revenue estimate moved up from Duke's.

13 Q. So the ratio of expense to revenue is
14 higher every year.

15 A. Yes.

16 Q. It's the same thing as margin, correct?
17 It's reciprocal of the margin; is that right?

18 A. I don't follow the reciprocal of the
19 margin.

20 Q. Well, let's move on.

21 The chart that you have under Navigant
22 analysis I believe that comes from your workpapers on
23 page 3; is that right?

24 A. I'm sorry, restate your question.

25 Q. The chart on RLL-5 that shows Navigant

1 analysis appears to have come directly from page 3 of
2 your workpapers.

3 A. Yes, it does.

4 Q. Okay. And page 3, that chart's at the
5 bottom, and what you've done is apply some inflation
6 factors to a summary chart that appears at the top of
7 that page, correct?

8 A. That's correct.

9 Q. And that summary chart at the top of the
10 page has a line for each of the Duke plants showing
11 revenue, expense, and margin, correct?

12 A. That's correct.

13 Q. And you've applied a Duke share
14 percentage to an individual page in the worksheet for
15 each of those plants?

16 A. That's correct.

17 Q. And if we looked at pages 4 through 26 of
18 your workpapers, we would see the individual pages
19 that build up each of these plants.

20 A. That's correct.

21 Q. And I take it each of those pages, 4
22 through 26, is the output of your model that --

23 A. The EVM model, yes.

24 Q. And these are just numbers that come out
25 of that model but we can't really see the formulas

1 that drive those.

2 A. That's correct.

3 Q. Just as an example, if we can turn to
4 page 4 of your workpapers, and I'm not even going to
5 name the plant, but you see at the bottom of that, or
6 near the bottom there's a line that says "Total
7 Revenue" and there's another that says "Total
8 Expenses"?

9 A. Yes.

10 Q. Are those the lines you then draw into
11 the summary chart on page 3?

12 A. Yes, they should be pulled into the
13 summary chart and multiplied by the ownership share.

14 Q. So if we look at individual plants, the
15 total revenue, am I correct that's basically the
16 product of the LMP price and the hours that the plant
17 runs? Or the number of megawatts it produces I
18 should say. Megawatt-hours.

19 A. Yes, it would be effectively the LMP in
20 that hour multiplied by the output in that hour,
21 summed up over the year.

22 Q. Is that net capacity rate revenue number
23 then directly sensitive to the LMP price?

24 A. Yes.

25 Q. Okay. And if we look at the expense end,

1 and we don't need to do this right now, but just
2 paging through this it looks to me as if, well, first
3 let me ask, the fuel line, is that basically the coal
4 for a coal plant?

5 A. For a coal plant it would be the coal
6 fuel.

7 Q. Okay. If we wanted to know how much of
8 the total expenses represented coal, we would take
9 the fuel line and divide that by the total expense
10 line?

11 A. If you wanted to know the proportion of
12 coal fuel to total expense, yes, you would divide one
13 into the other.

14 Q. Okay. And just the time I've had waiting
15 here I've done a little calculating and it looks like
16 the range is pretty tight in a 90 to 95 percent range
17 coal to total expense; does that seem right to you?

18 A. That sounds about right. The variable
19 O&M that would be added to the emission costs are
20 relatively low and the start-up fuel is relatively
21 low as well.

22 Q. Is it fair to say, then, that the total
23 expense number is going to have a 90 to 95 percent
24 relationship to the coal price?

25 A. Again, when you say that, I start to

1 think that you're drawing a statistical inference. I
2 would say that the coal fuel is a predominant portion
3 of the fuel, of the total expense --

4 Q. Well --

5 A. -- for the coal plants.

6 Q. If coal goes up a dollar a ton, your
7 expenses are going to go up approximately 90, well,
8 95 percent of your expense increase is going to be
9 the coal.

10 A. If your coal goes up, your expenses are
11 likely to go up. It may dictate how much the plant
12 runs as well.

13 Q. Okay. So we know the revenue number's
14 directly sensitive to the power price and the total
15 expense is very sensitive to coal price, correct?

16 A. Well, yes. Although power price, of
17 course, is sensitive to fuel prices as well.

18 Q. Okay. And we know from your testimony,
19 and there's another chart that demonstrates it here,
20 that you assumed power prices that are about
21 6 percent lower than what Duke assumed?

22 A. Going back to the earlier questions, the
23 output of our modeling, our power prices are an
24 output and so I didn't assume those prices. I
25 assumed inputs that were run through the models to

1 come up with those power prices.

2 Q. Well --

3 A. They are the clearing LMPs as a result of
4 the modeling at those buses.

5 Q. Maybe I misunderstood. I thought there
6 were two models involved here, one that generated the
7 power price and then one that uses the power price to
8 calculate the margins.

9 A. That's correct.

10 Q. Okay. So your model that generated the
11 power prices generated prices that were, on average,
12 6 percent, give or take, less than what Duke uses in
13 their model.

14 A. No. There was an earlier set of
15 questions, the power prices listed in that workpaper
16 you're referencing with the 6 percent are after --
17 are the power prices used in the EVM modeling which
18 are derived from the PROMOD modeling.

19 Q. And the EVM modeling is what generates
20 pages 4 through 26 of your --

21 A. That's correct.

22 Q. -- exhibit. So the power prices you used
23 in the EVM modeling were approximately 6 percent
24 lower than the prices that Duke used in its modeling.

25 A. That's fair.

1 Q. Okay. Now we're talking apples to
2 apples, okay?

3 A. That's better.

4 Q. All right. And your fuel prices were on
5 average actually expanded, the decimal point is 4.44
6 using a straight line average; does that sound
7 correct?

8 A. I'll accept that. It sounds better than
9 4.7.

10 Q. And if we did a weighted average, it may
11 be some different number, correct?

12 A. Yes.

13 Q. Okay. So your EVM model is -- is that
14 the right acronym? I have the letters mixed up?

15 A. Yes, that's right, EVM.

16 Q. It assumes a power input, a power price
17 input 6 percent lower than Duke's, correct?

18 A. Correct.

19 Q. And a coal expense input that's 4.4, give
20 or take, higher than Duke's, correct?

21 A. That's correct.

22 Q. And those directly drive to the margins.

23 A. Yes. As I noted in my testimony.

24 MR. HART: Okay. Thank you. That's all
25 I have.

1 EXAMINER PIRIK: Thank you, Mr. Hart.

2 MR. HART: How did I do on time?

3 EXAMINER PIRIK: Staff?

4 MR. BEELER: A few, just a few minutes.

5 EXAMINER PIRIK: Yeah, a few minutes.

6 MR. BEELER: Three minutes.

7 EXAMINER PIRIK: Three minutes.

8 (Recess taken.)

9 EXAMINER PIRIK: Mr. Beeler.

10 MR. BEELER: No redirect, your Honor.

11 EXAMINER PIRIK: Thank you. Now we're
12 getting ready to move into the confidential portion
13 of the record. Go off the record for a minute.

14 (Discussion off the record.)

15 EXAMINER PIRIK: We'll go into the
16 confidential portion of the record.

17 (Confidential Portion.)

18 EXAMINER PIRIK: Company?

19 MS. KINGERY: No, your Honor.

20 EXAMINER PIRIK: OCC?

21 MS. GRADY: No questions, your Honor.

22 EXAMINER PIRIK: OEG?

23 MR. KURTZ: Thank you, your Honor, very
24 quickly.

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CROSS-EXAMINATION

By Mr. Kurtz:

Q. Mr. Luciani, on page 13 of your testimony you describe about how your variable O&M expense is the -- or, excuse me, 90 cents a megawatt-hour higher than the Duke modeling. Do you see that?

A. Yes.

Q. Okay. This is the confidential portion. On page 31 of 33 of your workpapers, is that where the 90 cents is derived?

A. Yes.

Q. Okay. Again, it's a simple average, it's not a weighted average, correct?

A. Again, it's a simple average across the legacy coal units.

Q. Okay. We're going to have handed to you what we ask to have marked as OEG 16A and I'll explain to you -- I'll wait till everyone gets it.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. And, again, what we did here was on a unit-by-unit basis --

EXAMINER PIRIK: I'm sorry, Mr. Kurtz, I mean, without the company looking at this, because I know some of this isn't confidential --

MR. KURTZ: Well, the Duke variable O&M I

1 thought --

2 EXAMINER PIRIK: No, I know. I mean, I
3 know, but the company needs to look at it and we need
4 to decide what's confidential.

5 MR. KURTZ: I'm sorry.

6 EXAMINER PIRIK: I'm sorry.

7 MR. KURTZ: That's what I'm trying to do.

8 EXAMINER PIRIK: Do you have any more
9 documents?

10 MR. KURTZ: That's it.

11 (Discussion off the record.)

12 EXAMINER PIRIK: Go ahead, I'm asking
13 Duke with regard to Exhibit OEG 16A what the
14 confidential portions are requested.

15 MS. KINGERY: Thank you, your Honor. We
16 would ask that you treat confidentially the second
17 column, the numbers only not the heading, and the
18 final column. So that would be the "O&M Delta" and
19 the "Total Dollars." The O&M Delta I understand is a
20 simple, the result of a simple subtraction of the
21 Navigant numbers for variable O&M less the Duke
22 numbers for variable O&M, so we need to, if we keep
23 that column confidential, then no one will be able to
24 back into the Duke numbers. And of course the total
25 dollars are multiplied across.

1 EXAMINER PIRIK: So you're asking for the
2 first column --

3 MS. KINGERY: Well, it's really the
4 second. The first column is the names. So the
5 column that's headed "O&M Delta \$/Megawatt-Hour."

6 EXAMINER PIRIK: Right.

7 MS. KINGERY: And then the final column
8 which is "Total Dollars."

9 EXAMINER PIRIK: Of course the dollar
10 signs will remain in, right?

11 MS. SPILLER: Certainly.

12 MS. KINGERY: We'll leave the dollar
13 signs in.

14 EXAMINER PIRIK: Thank you.

15 MS. KINGERY: And the total at the
16 bottom.

17 EXAMINER PIRIK: Are there any
18 objections?

19 MS. KINGERY: Yeah, we don't need the
20 total at the bottom, that can be out.

21 EXAMINER PIRIK: The total at the bottom
22 is open. Okay. Are there any objections?

23 Hearing none, the motion for protective
24 order will be granted.

25 Mr. Kurtz.

1 MR. KURTZ: Thank you.

2 Q. (By Mr. Kurtz) Mr. Luciani, have you had
3 a chance to look over this exhibit a little bit?

4 A. Yes, I'm looking at it.

5 Q. Okay. Essentially, it's the same
6 methodology that we used before. If, in fact, you
7 had used the Duke variable O&M, the lower variable
8 O&M, multiplied by the generation at the plant and I
9 guess the Beckjord 6, the May, 2015, five months are
10 still in there, and then the Duke Energy share and
11 then saw the dollar differential, we would get
12 approximately \$34.9 million reduction to the expense
13 from the Navigant model, correct?

14 A. I obviously, as I sit here, I can't
15 verify all these calculations. I see your
16 calculation of \$34.9 million, but I can't verify that
17 calculation as we sit here.

18 And as far as the adjustment, I think I
19 noted in my testimony all else equal higher variable
20 O&M rates would reduce margins.

21 Q. Right. And I don't want you to go
22 through all the math but just the methodology, if you
23 reduce the variable O&M from the Navigant model and
24 you multiply it by the generation output of the
25 units, the margins would go up by that product.

1 A. Assuming the plants would run at the same
2 amount with that differential O&M, yes.

3 Q. Yeah. And the same thing with the lower
4 coal costs, if you lower the variable O&M, all else
5 equal, it will dispatch more and it would be more
6 economic, correct?

7 A. Say that again.

8 Q. All else equal, if you lower the variable
9 O&M expense, the plant will dispatch more, certainly
10 won't dispatch less.

11 A. All else equal, the lower variable O&M
12 would likely lead to greater generation.

13 Q. So just to sum up, if, in fact, you had
14 used Duke's variable O&M expense and Duke's fuel
15 cost, essentially the \$99-1/2 million adjustment that
16 you made would predominantly be eliminated.

17 A. Again, I can't -- I can't answer that
18 without checking the math. Obviously, you haven't
19 taken into account in a similar fashion the forced
20 outage rate differential which worked the other way,
21 I mean, you'd have to work through those various
22 things but, I mean, yes, that's -- we are getting
23 different results, some no doubt are driven by
24 differences in variable O&M as I pointed out,
25 difference in coal prices as I pointed out, offset

1 perhaps by differentials in forced outage rates and
2 perhaps to a lesser extent the heat rates.

3 There's -- I tried to identify the
4 various components of why we might be getting
5 different results in my testimony.

6 Q. As an aside, that forced outage rate is
7 an interesting one because that affects the UCAP
8 number of the generation and it gets into the amount
9 of power you have to -- the capacity you have to
10 purchase and there's a lot of things with that, but
11 in any event --

12 A. I'll just, yes, that is true, although I
13 think it's based on some historical GADS figure.

14 MR. KURTZ: Thank you, your Honor. No
15 more questions.

16 EXAMINER PIRIK: Thank you.

17 FES, Mr. Lang?

18 MR. LANG: Thank you, your Honor. If I
19 could approach and show him what's previously been
20 marked as OEG 11A.

21 EXAMINER PIRIK: Yes.

22 MS. SPILLER: Mr. Lang, what is that? Is
23 it a response in a discovery response?

24 - - -

25

1 CROSS-EXAMINATION

2 By Mr. Lang:

3 Q. Mr. Luciani, when we left off in the
4 public section of the transcript I'd asked you about
5 the -- on page 7 of your testimony, line 18, you
6 referred to the confidential attachment to
7 OCC-POD-1-005, do you recognize the OEG exhibit I
8 just handed to you as that confidential attachment?

9 A. Yes, I do.

10 Q. And this is the document that you relied
11 upon to make your (REDACTED) adjustments with regard
12 to (REDACTED) because it's, for all
13 the years at issue for those units it shows that
14 they're not committed to the FRR obligation.

15 A. This was one of the two documents I
16 cited. There were also the Niemann workpapers.

17 Q. And then also for the Beckjord 6 unit
18 that this shows, it's not committed for the '14-'15
19 year with regard to the FRR obligation.

20 A. Yes. (REDACTED) was not included as an
21 FRR resource in the 2014 and '15 planning years.

22 Q. Do you also see that for purposes of this
23 FRR plan it includes demand response for both
24 2012-'13 and 2013-'14, it's a demand response of
25 (REDACTED) megawatts on the UCAP? And to help find

1 it if you look under the "Resource Type" column, it's
2 easy to find because it's the only one that says
3 "Demand."

4 A. Yes, I see two different demands listed.
5 One (REDACTED) and one DE-Ohio.

6 Q. That would be for the, are you looking at
7 the January through May, 2012, time period?

8 A. I may not be.

9 Q. Well, in terms of, if you refer to the
10 two demands listed, is that the January, 2012,
11 through May, 2012, period?

12 A. Yes. That's correct.

13 Q. And so for that period, January through
14 May, 2012, there's over (REDACTED) megawatts of
15 demand -- demand response?

16 A. Yes, there appears to be.

17 Q. And then if you look at the next page for
18 2012-2013 planning year, there's demand of
19 (REDACTED) megawatts. Do you see that?

20 A. UCAP of (REDACTED), yes.

21 Q. And then for the next planning year, 2013
22 to 2014, at the bottom there's demand response UCAP,
23 again (REDACTED)140.5 megawatts.

24 A. I'm sorry. Say that one again. I'm on
25 the last page?

1 Q. For the 2013-2014 planning year, it
2 should be the second-to-last page on the exhibit.

3 A. Ah, yes, I see the (REDACTED).

4 Q. And then for the final planning year at
5 issue, 2014-2015, there's no listing of demand
6 response in that year.

7 A. That's correct.

8 Q. And your understanding, certainly, is
9 that demand response can be used to satisfy the FRR
10 obligation by Duke Energy Ohio?

11 A. I believe that's correct.

12 Q. It's fair to say you did not consider
13 making an adjustment to the calculation done by Duke
14 to reflect demand response that they may have
15 available to them in the 2014-2015 planning year.

16 A. I did not do an adjustment of the values
17 that they used.

18 MR. LANG: Okay. That's all I have, your
19 Honor, thank you.

20 EXAMINER PIRIK: Thank you.

21 Mr. Nourse?

22 MR. NOURSE: No, thank you.

23 EXAMINER PIRIK: Mr. Pritchard?

24 MR. PRITCHARD: No questions, your Honor.

25 EXAMINER PIRIK: Ms. Petrucci?

1 MS. PETRUCCI: No questions.

2 EXAMINER PIRIK: Mr. Hart?

3 MR. HART: Sure, I have a few more.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Hart:

7 Q. Mr. Luciani, let me take you back to your
8 RLL-5 for a moment.

9 A. I'm there.

10 Q. The energy revenues that you show in the
11 Navigant analysis, if we just summed up those three
12 years across the three columns, am I correct we come
13 up with something close to 1.5 billion?

14 A. I'll accept that.

15 Q. And 6 percent of that would be about
16 90 million?

17 A. I'm not sure where the 6 percent came
18 from, but 6 percent of 1.5 billion is 90 million.

19 Q. Okay. And if we added up the expense
20 side, roughly a billion 175 million?

21 A. You're talking about the line labeled
22 "Energy Expenses"?

23 Q. Yes.

24 A. And your number again was?

25 Q. 1,175,000,000, roughly.

1 A. I'll accept that.

2 Q. And 4 percent of that would be about 47,
3 48 million?

4 A. Again, I don't know where the 4 percent
5 is coming from, but 4 percent of that number would
6 be -- say your number again, I'm sorry.

7 Q. About 48 million.

8 A. I'll accept that.

9 Q. So if we add the 90 and the 48, you come
10 up with 138, roughly.

11 A. 90 and 38 is 148.

12 Q. 138, correct.

13 A. 90 and 38 --

14 Q. 90 and 48.

15 A. Excuse me. 90 and 48.

16 Q. It's getting late.

17 A. Is 138.

18 Q. Okay, if we take your differentials and
19 margins for the three years, the 32, the 44, and the
20 22, I'm coming up with not quite a hundred million;
21 is that right?

22 A. Correct.

23 MR. HART: Thank you.

24 EXAMINER PIRIK: Staff? Do you have any
25 redirect?

1 MR. BEELER: No redirect, your Honor.

2 (Public Record.)

3 EXAMINER PIRIK: Thank you very much,
4 you're excused.

5 With regard to exhibits, staff.

6 MR. BEELER: At this time, your Honor,
7 the staff would move for the admission of Staff
8 Exhibits 1 and 1A.

9 EXAMINER PIRIK: Are there any objections
10 to Staff Exhibit 1 and 1A?

11 MS. KINGERY: Yes, your Honor, we would
12 object to the admission of the testimony only as to
13 the extent of Exhibit RLL-5 as release of the
14 admission of this exhibit would result in the release
15 of confidential information into the public record
16 with regard to margins calculated through the use of
17 our proprietary CBM model.

18 EXAMINER PIRIK: Any other objections?

19 No?

20 Your objection is noted for the record,
21 the exhibit shall be admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 EXAMINER PIRIK: OCC?

24 MS. GRADY: Yes, your Honor. OCC would
25 move for the admission of 27 and 27A.

1 EXAMINER PIRIK: Objections?

2 MS. KINGERY: Yes, your Honor. We would
3 object to the admission only as to page 3 of 33, the
4 bottom table, as it would result in the release of
5 information into the public record that is
6 proprietary, same margin issue as we just talked
7 about.

8 EXAMINER PIRIK: Your objection's noted.
9 It shall be admitted into the record.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER PIRIK: OEG.

12 MR. KURTZ: Your Honor, we move the
13 admission of OEG 14A, 15A, and 16A. I think they're
14 As.

15 EXAMINER PIRIK: As well as the non-As.

16 MR. KURTZ: As well as the non-As.

17 MS. KINGERY: It was my understanding
18 there was not a 14A and hence I was going to object
19 to it. If there is a 14A, I'd be interested in
20 knowing what's redacted.

21 MR. KURTZ: I apologize. 14, 15A, and
22 16A.

23 EXAMINER PIRIK: And 15 and 16.

24 MS. GRADY: 15 and 16A.

25 EXAMINER PIRIK: Okay, I will clarify the

1 record, but thank you, Ms. Grady.

2 MS. GRADY: I'm sorry.

3 EXAMINER PIRIK: Five exhibits, are there
4 any objections?

5 MS. KINGERY: We would object to the
6 admission of OEG 14 as the second page would result
7 in the release of information about our coal prices
8 into the public record which would prejudice DEO in
9 its ability to compete in the coal market.

10 And, your Honors, we would note that this
11 could be resolved by redacting one column as well as
12 likely some conversation in the open record.

13 EXAMINER PIRIK: Your objection's noted
14 for the record. However, OEG 14 will be admitted
15 into the open record as well as the other four
16 documents will be admitted, the As will be kept
17 redacted as appropriate and the company then can
18 provide the redacted versions by noon tomorrow.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER PIRIK: IEU?

21 MR. PRITCHARD: Yes, I would move for the
22 admission of IEU-Ohio Exhibit 19.

23 EXAMINER PIRIK: Objections?

24 MS. KINGERY: We would contend that it's
25 irrelevant to this proceeding and therefore object to

1 its admission.

2 EXAMINER PIRIK: Objection is noted. The
3 document shall be admitted into the record.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER PIRIK: I think the one
6 remaining exhibit that we have to deal with is OCC
7 Exhibit 11A. Ms. Grady.

8 MS. GRADY: I didn't mean to interrupt.
9 I think there's two exhibits that we have to deal
10 with, one was the page JRH-3, page 6 of 6, that was
11 not moved as part of Mr. Hornby's exhibit. We had a
12 discussion with the company with respect to the
13 source of the redacted information and I think we
14 have resolved that so that now it can be moved in
15 with Mr. Hornby's testimony.

16 EXAMINER STENMAN: Can you bring the
17 Bench up a copy of the exhibit?

18 MS. GRADY: Yes.

19 EXAMINER PIRIK: Did we have a redacted
20 copy?

21 MS. GRADY: Yes. That is the redacted
22 copy, I'm sorry.

23 EXAMINER PIRIK: It all looks open.

24 Oh, I see.

25 MS. GRADY: Your Honor, it is a part of

1 his testimony. We just, there was an issue about the
2 source of the redaction, this is not a separate
3 exhibit so really we had moved for the entire exhibit
4 except with respect to that page, and we were able to
5 resolve that page with the company so it can now be
6 considered as part of the entire exhibit if that
7 would work.

8 EXAMINER STENMAN: That will be fine.

9 MS. GRADY: Thank you.

10 MS. KINGERY: And I do believe that was a
11 confidential exhibit, was it not?

12 MS. GRADY: Yes.

13 EXAMINER PIRIK: Okay. Now, with regard
14 to OCC Exhibit 11A, this is what the Bench proposes:
15 We're not going to rule on this, I think this is two
16 controversial at this point. I think we're just
17 going to give the parties direction on what our
18 intent is then we'll move on from there.

19 First of all, we would like to note that
20 the creators of this document, that there have been
21 some allegations that they -- that their names and
22 types of entities are, in fact, confidential,
23 however, it's readily available on the internet as to
24 the fact that this document was created and who it
25 was created by.

1 So, you know, any reference to the
2 individuals that -- the entities that created this
3 document, you know, the Bench does not believe that
4 confidential treatment should be granted for that
5 purpose.

6 With regard to the document itself, you
7 know, we understand that there's an agreement between
8 the company and these individuals to keep it
9 confidential, however, you know, from our perspective
10 we don't believe that it is confidential. Although
11 we acknowledge that there's some number references in
12 the document that we have kept confidential in the
13 remainder of the document.

14 So in order to just cut to the chase, we
15 are not going to ask that the entire document be
16 submitted on the record. Our proposal is to just go
17 through the document and with regard to those pages
18 where the witness that was crossed, Mr. Savoy, on
19 this document, where he could actually answer the
20 questions because he was aware of the document,
21 propose that those pages be considered and that the
22 company go through those pages and determine what on
23 Duke's behalf is confidential based upon our previous
24 rulings in this docket.

25 If, in fact, those pages are pages that

1 the entities that created the document want to argue
2 confidentiality for, then they would need to be here
3 on the day of rebuttal so that they can make those
4 arguments because that's when we're going to make our
5 ruling.

6 So we will tell you those pages that we
7 identify as being pages that would be subject to
8 being put into the record, you all can look at the
9 transcript and make sure you agree, you know, perhaps
10 we missed something, OCC also, I mean, to be sure
11 that you agree with what we're doing.

12 We do not want, if the witness was not
13 able to answer a question because he was not aware of
14 the information on that page and had never seen it
15 before, we are not going to put that page in the
16 record. So, I mean, you can make those arguments,
17 but we really don't think that it should be in the
18 record.

19 So those pages which we are considering
20 entering into the record include -- and I'm not
21 saying whether we're considering it confidential or
22 not, we're going to leave that to the company, but,
23 you know, we're very hopeful that these entities
24 won't make any arguments as to the document being
25 confidential because we really don't think we should

1 entertain that.

2 Page 9 of 59 is one we're considering
3 entering into the record.

4 Page 11 of 59.

5 Page 12 of 59.

6 Page 14 of 59.

7 Page 15 of 59.

8 Page 17. I take that back, not page 17.

9 We are not considering page 17.

10 Page 24.

11 And that's all. So look at the document,
12 we'll take that up when we -- well, you know, we
13 really haven't talked about rebuttal. I guess I'm
14 assuming based upon previous conversations, so --

15 MR. D'ASCENZO: Yes, your Honor, the
16 company would like to submit rebuttal testimony.

17 EXAMINER PIRIK: And do you know
18 specifically at this time the issues that you're
19 requesting rebuttal on or at least --

20 MR. D'ASCENZO: We have a general scope
21 of issues, your Honor. First, rebuttal with respect
22 to return on equity and cost of capital rebutting the
23 testimony of OCC's witness Dr. Woolridge and the
24 recommendations he made.

25 Also rebuttal testimony regarding various

1 adjustments proposed by intervenors in the case to
2 the company's cost-based capacity model including,
3 but not limited to, the use of financial forecasts
4 other than what Duke Energy Ohio submitted as part of
5 its application, the inclusion of revenues from
6 generating assets that are not directly owned by Duke
7 Energy Ohio but, rather, are owned by indirect
8 subsidiaries, specifically, without reference to the
9 cost of those particular assets as part of the
10 company's calculation of its cost-based capacity.

11 And even more specific, going to the
12 company's actual financial position with respect to
13 those assets.

14 Also to -- regarding rebutting claims
15 about the company's financial condition, that there's
16 some confusion about the company's legal structure
17 versus its financial reporting segments. So for
18 purposes of clarifying the record, because of issues
19 raised by parties, we feel that there needs to be
20 testimony in that regard.

21 And, finally, your Honor, the third area
22 that we anticipate rebuttal testimony has to do with
23 our FRR plan that was originally submitted several
24 years ago, what actually is included in that plan
25 that -- the FRR plan has been raised as an issue by

1 parties in this proceeding including the assets that
2 are used, what the plan is, and what it isn't, and we
3 only became aware of those particular issues that
4 I've outlined after the submittal of our direct
5 testimony through intervenor testimony as well as on
6 cross-examination in this case.

7 So generally those issues.

8 EXAMINER PIRIK: Okay.

9 MR. D'ASCENZO: And we would envision
10 that would be probably three, maybe four witnesses.

11 EXAMINER PIRIK: Okay. Then we will set
12 our rebuttal schedule. Since, I know that the
13 question was asked this morning what the timing of
14 this would be, and since then we have gone back and
15 looked at our calendars to try to come to actual
16 dates certain. What we would like to do and, you
17 know, so we need input from the parties, is to have
18 company rebuttal testimony filed on Monday, May 6th,
19 and then reconvene on Monday, May 13th to begin
20 rebuttal. Do those dates work for everyone?

21 MS. SPILLER: Your Honor, I hate to be
22 difficult, but I actually have a commitment with my
23 mother that I can't, I can't renege on, and I don't
24 know if there's a way to move things forward a little
25 bit in that respect. We certainly would endeavor and

1 I believe we would be in a position to get our
2 rebuttal testimony filed by I would say mid next
3 week.

4 EXAMINER PIRIK: No, we're going to do it
5 the week of the 13th. Is the whole week of the
6 13th a bad week or --

7 MS. SPILLER: It is a bad week for me.

8 EXAMINER PIRIK: For that week. Can you
9 get your rebuttal testimony filed by the 13th?

10 MS. SPILLER: I guess my question is, is
11 it possible to move up the hearing to the week prior?

12 EXAMINER PIRIK: I mean, I know that's
13 your question, but, no, it's not possible. But no, I
14 understand, you know, a commitment, I obviously had
15 an emergency the other day that I had to take care
16 of. So I do understand that and I don't want to you
17 renege on that. And rest assured that, you know,
18 we're doing the best we can.

19 MS. SPILLER: I understand. I
20 understand.

21 EXAMINER PIRIK: So, I mean, I think if
22 we can have the rebuttal testimony filed by the
23 30th and we go to hearing on the 20th?

24 MS. SPILLER: I don't want to --

25 EXAMINER PIRIK: No. Is the 20th bad

1 also?

2 MS. SPILLER: No. No. No. I will just
3 confer, I'd probably rather like to confer with my
4 client, I mean if they're okay to proceed on the
5 13th, I'm not going to -- I don't want to be the
6 impediment to that schedule.

7 EXAMINER PIRIK: No. I understand that.
8 But, I mean, we were actually thinking the week of
9 the 20th anyway, so.

10 MS. SPILLER: I'm sorry.

11 EXAMINER PIRIK: That was preferential to
12 us. No, you're right, we were talking the 13th but
13 the 20th was actually preferential to us.

14 MS. SPILLER: Okay. Could we have just a
15 minute, your Honor?

16 EXAMINER PIRIK: Yes.

17 MS. SPILLER: Thank you.

18 (Discussion off the record.)

19 MS. SPILLER: Your Honor, is it possible
20 for us to discuss this, the decision-makers obviously
21 are not here and I was hoping we could just file a
22 letter in the morning, copy the parties?

23 EXAMINER PIRIK: No, I understand that
24 but, I mean, again, it's process. I mean, I do
25 understand what you're saying but I don't think that

1 a week makes a difference. So I understand where the
2 company's coming from but I think what we're going to
3 have to do, we will have the rebuttal testimony due
4 on the 13th and we will begin rebuttal on the 20th.
5 Is that okay with all the other parties?

6 MS. GRADY: Your Honor, I understand it's
7 been a long evening, we would expect to conduct our
8 depositions on the rebuttal testimony and I think
9 that that will give us sufficient time. We will
10 work -- we will endeavor to work through a schedule
11 that works with the company. We have noticed
12 depositions and our deposition notice always includes
13 the right to depose on the rebuttal testimony.

14 EXAMINER PIRIK: And I understand. I do
15 understand where the company's coming from, but I
16 think what we also have to understand is that the
17 parties sitting around this table have been through
18 fast and furious over the last month and a half and
19 there has been no break for any of them. And
20 obviously we're beginning a hearing with you again on
21 Monday. So, you know, based upon our schedules and
22 the rest of the parties I think it's appropriate to
23 do that.

24 So we will begin the rebuttal testimony
25 on the 20th and at that time we'll take up

1 discussions about OCC Exhibit 11A. We need to have
2 all the redactions by noon tomorrow to the court
3 reporters; the ones from last week should be to them
4 by now.

5 MS. SPILLER: We have them.

6 EXAMINER PIRIK: Is there anything else
7 we need to do on the record other than we beg you to
8 clean up your spaces on your table and around you on
9 the floor because if not, believe it or not, we're
10 the ones that end up doing it. There is no one else
11 who does it. They'll come in and empty the trash
12 cans but they don't do anything else and since we're
13 starting in here again on Monday, we need to have a
14 clean space.

15 MS. SPILLER: And I think, your Honor,
16 just one final question if I may. To the extent
17 upon, you know, further contemplation of the record
18 the decision is made not to file rebuttal, I just
19 didn't know your thoughts on entertaining the
20 briefing schedule.

21 EXAMINER PIRIK: Yeah, we'll do that by
22 entry. If you decide that we aren't going to do, you
23 aren't going to do rebuttal, then we will set a
24 briefing schedule.

25 MS. SPILLER: Okay.

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EXAMINER PIRIK: Okay.

MS. SPILLER: Thank you, your Honor.

MS. GRADY: Thank you.

EXAMINER PIRIK: Anything else?

Hearing none we are recessed.

(Thereupon, the hearing was adjourned at
8:59 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, April 25, 2013, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2016.

(72162-MDJ)

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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 04/25/13 - Volume IX
- Public Version electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc.
and Gibson, Karen Sue Mrs.