

## 1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

2 - - -

3 In the Matter of the :  
4 Consolidated Duke Energy : Case Nos. 03-93-EL-ATA  
5 Ohio, Inc., Rate : 03-2079-EL-AAM  
6 Stabilization Plan : 03-2081-EL-AAM  
7 Remand and Rider : 03-2080-EL-ATA  
8 Adjustment Cases. : 05-724-EL-UNC  
9 : 05-725-EL-UNC  
10 : 06-1068-EL-UNC  
11 : 06-1069-EL-UNC  
12 : 06-1085-EL-UNC

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## 14 PROCEEDINGS

15 before Ms. Jeanne Kingery and Mr. Scott Farkas,  
16 Hearing Examiners, at the Public Utilities Commission  
17 of Ohio, 180 East Broad Street, Room 11-C, Columbus,  
18 Ohio, called at 10:00 a.m. on Tuesday, April 10,  
19 2007.

20 - - -

## 21 REMAND RIDER - VOLUME I

22 - - -

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4 and Mr. Rocco O. D'Ascenzo  
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6 Cincinnati, Ohio 45202

7 On behalf of Duke Energy - Ohio.

8 McNeese, Wallace & Nurick, LLC  
9 By Mr. Daniel J. Neilsen  
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11 21 East State Street  
12 Columbus, Ohio 43215-4228

13 On behalf of IEU-Ohio.

14 Boehm, Kurtz & Lowry  
15 By Mr. David F. Boehm  
16 1500 URS Center  
17 36 East Seventh Street  
18 Cincinnati, Ohio 45202

19 On behalf of AK Steel and Ohio Energy  
20 Group.

21 Janine L. Migden-Ostrander  
22 Ohio Consumers' Counsel  
23 By Mr. Jeffrey L. Small,  
24 Ms. Ann M. Hotz,  
and Mr. Larry Sauer  
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On behalf of the Ohio Consumers' Counsel.

Bell, Royer & Sanders Co., LPA  
By Mr. Barth Royer  
33 South Grant Avenue  
Columbus, Ohio 43215

On behalf of Dominion Retail, Inc.

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## 1 APPEARANCES (continued):

2 Marc Dann,  
3 Ohio Attorney General  
4 Duane W. Luckey,  
5 Acting Director, Section Chief  
6 Public Utilities Section  
7 By Mr. Stephen Reilly,  
8 Mr. Werner Margard,  
9 and Mr. Thomas McNamee  
10 Assistant Attorneys General  
11 180 East Broad Street, 9th Floor  
12 Columbus, Ohio 43215

13 On behalf of the Staff of the PUCO.

14 Bricker & Eckler, LLP  
15 By Mr. Thomas J. O'Brien  
16 and Ms. Sally W. Bloomfield  
17 100 South Third Street  
18 Columbus, Ohio 43215

19 On behalf of the city of Cincinnati.

20 Mr. David c. Rinebolt  
21 and Ms. Colleen L. Mooney  
22 231 West Lima Street  
23 Findlay, Ohio

24 On behalf of Ohio Partners for  
Affordable Energy.

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1 - Stipulation 133 --

1 2 3

1 Tuesday Morning Session,  
2 April 10, 2007.

3 - - -

4 EXAMINER KINGERY: Let's go back on the  
5 record, then. The Public Utilities Commission of  
6 Ohio has called for hearing at this time and place  
7 case number 03-93-EL-ATA and several other  
8 consolidated cases being In the Matter of the  
9 Consolidated Duke Energy - Ohio, Inc. Rate  
10 Stabilization Plan Remand and Rider Adjustment cases.

11 My name is Jeanne Kingery, this is Scott  
12 Farkas, we're the hearing examiners who have been  
13 assigned to this proceeding.

14 This morning we are here for the start of  
15 the second phase of this hearing, this being the  
16 phase that relates to the rider adjustment cases.  
17 Since we have a little bit different grouping here at  
18 the table, we will go ahead and take appearances.

19 MR. D'ASCENZO: On behalf of Duke  
20 Energy - Ohio, Rocco D'Ascenzo and Paul Colbert, 139  
21 East Fourth Street, Cincinnati, Ohio 45201.

22 MR. NEILSEN: For Industrial Energy  
23 Users - Ohio I am Daniel J. Nielsen with the offices  
24 of McNees, Wallace & Nurick, 21 East State Street,

1 17th floor, Columbus, Ohio 43215.

2 EXAMINER KINGERY: Thank you.

3 MR. O'BRIEN: On behalf of the city of  
4 Cincinnati, Bricker & Eckler, LLP, by Sally W.  
5 Bloomfield and Thomas J. O'Brien, 100 South Third  
6 Street, Columbus, Ohio 43215.

7 MR. BOEHM: Good morning. On behalf of  
8 AK Steel and the Ohio Energy Group, I am David Boehm  
9 of the law firm of Boehm, Kurtz & Lowry, 36 East  
10 7th Street, Cincinnati, Ohio 45202. Thank you.

11 MS. MOONEY: On behalf of Ohio Partners  
12 for Affordable Energy, David C. Rinebolt and Colleen  
13 L. Mooney, 231 West Lima Street, Findlay, Ohio.

14 MR. SMALL: On behalf of the residential  
15 customers of Duke Energy - Ohio, Janine  
16 Migden-Ostrander, Consumers' Counsel, Jeffrey L.  
17 Small, Trial Counsel, Assistant Consumers' Counsels  
18 Ann Hotz, Larry Sauer, Office of the Ohio Consumers'  
19 Counsel, Ten West Broad Street, Suite 1800, Columbus,  
20 Ohio 43215. Thank you.

21 MR. REILLY: Thank you, your Honor. On  
22 behalf of the staff of the Public Utilities  
23 Commission of Ohio, Marc Dann, Ohio Attorney General,  
24 Duane Luckey, Section Chief, Tom McNamee, Werner

1 Margard, and Steve Reilly, Assistant Attorneys  
2 General, 180 East Broad Street, Columbus, Ohio 43215.

3 MR. ROYER: Barth Royer, Bell & Royer  
4 Co., LPA, 33 South Grant Avenue, Columbus, Ohio, on  
5 behalf of Dominion Retail, Inc.

6 EXAMINER KINGERY: Anybody else?

7 Okay. Before proceeding with anything  
8 else I would note that we have a motion to intervene  
9 from the city of Cincinnati that I believe has not  
10 been dealt with and there was no opposition, as I  
11 recall, to that intervention, and the intervention  
12 will be granted.

13 MR. O'BRIEN: Thank you, your Honor.

14 EXAMINER KINGERY: At this point we would  
15 like to discuss procedure a little bit. We're aware  
16 that just last night a stipulation was filed in our  
17 docketing division; was signed by some of the parties  
18 but not all the parties. It's not obvious from just  
19 a cursory glance whether it covers all of the issues  
20 according to those parties; it may.

21 Testimony in support of that stipulation  
22 was also filed and our first question would be, then,  
23 for those parties who did not sign the stipulation,  
24 are you planning to oppose?

1 MR. SMALL: Your Honor, the Ohio  
2 Consumers' Counsel does oppose the stipulation that  
3 was filed, and I'm not sure if you're just taking a  
4 poll here, but we would like to bring up the matter  
5 of opening up discovery regarding the stipulation at  
6 the appropriate time.

7 EXAMINER KINGERY: Thank you.

8 MS. MOONEY: OPAE also opposes the  
9 stipulation.

10 MR. NEILSEN: Your Honor, right now IEU -  
11 Ohio does not support the stipulation, we do not  
12 necessarily oppose it, but our position now is not  
13 supporting. We have sent some suggestions around to  
14 all parties regarding our issues and are attempting  
15 to work that out with the companies, so to the extent  
16 that is able to happen, we are willing to work with  
17 the companies and other parties. At this point,  
18 though, it's not supporting.

19 EXAMINER KINGERY: Thank you.

20 MR. ROYER: Dominion Retail, Inc. takes  
21 no position on the stipulation.

22 EXAMINER KINGERY: For those parties,  
23 certainly those two parties who have stated that you  
24 will be planning to oppose, are we correct in

1 assuming that you will be wishing to put on testimony  
2 in opposition, or do you plan merely to cross-examine  
3 the witnesses in support of the stipulation?

4 MR. SMALL: For the OCC it would be our  
5 plan to put on one witness in opposition of the  
6 stipulation.

7 MS. MOONEY: We don't have any witnesses.

8 EXAMINER KINGERY: Thank you. Just a  
9 minute.

10 Okay, sorry for the break there. In  
11 light of the fact that we have an incomplete  
12 stipulation, we will need to create a record, a  
13 complete record, on the original underlying  
14 application as well as on the stipulation. The  
15 Commission may or may not adopt the stipulation, and  
16 we want to make sure that the Commission has a full  
17 record so that it can appropriately set the rates if  
18 it does not determine that it wishes to accept the  
19 stipulation as filed.

20 In addition, since we have testimony that  
21 was just filed in support of the stipulation, we will  
22 need to allow time for opposing parties to create and  
23 file testimony in opposition to the stipulation.

24 Now, I understand, Mr. Small, that you

1 had suggested that you would need time for discovery.  
2 Would you fill us in on what you're looking at in  
3 terms of discovery so we can make some determination  
4 about how that might fit in a schedule if it's  
5 appropriate?

6 MR. SMALL: Do you mean as far as timing  
7 or as far as substance?

8 EXAMINER KINGERY: Not substance from a  
9 substantive standpoint, but are you looking for  
10 something more than depositions?

11 MR. SMALL: Well, actually less than  
12 depositions. What we're interested in doing is  
13 sending out discovery, e-mail service, and would like  
14 to suggest that we shorten the discovery response. I  
15 don't think it would be lengthy, it would probably  
16 involve more than the company, but it probably would  
17 not be lengthy, and I would suggest that we set a  
18 schedule that has an even tighter turnaround to the  
19 discovery than we have established earlier in the  
20 proceeding.

21 I'm not sure if I've answered --  
22 completely answered your question, but I'm willing to  
23 discuss the schedule and other matters.

24 EXAMINER KINGERY: Does the stipulation

1 cover -- I'm trying to figure out why it is that at  
2 this point you would need additional discovery. Does  
3 the stipulation cover new substantive areas that you  
4 had not previously looked into?

5 MR. SMALL: Well, among other things I  
6 would like to explore any additional agreements that  
7 may exist considering the proceeding and considering  
8 the parties, and I think that's a reasonable concern  
9 in this case.

10 MR. COLBERT: Your Honor, if we may, we  
11 will state for the record that there are no other  
12 agreements of any type between at least the company  
13 and any other party. So we'll state that on the  
14 record now.

15 Regardless of OCC's suspicions in that  
16 regard, there are no new facts introduced by the  
17 stipulation, there's been full discovery in these  
18 cases. We would oppose additional discovery.  
19 There's simply no reason to prolong these cases for  
20 additional discovery when there are no new facts or  
21 issues that have been introduced. And the  
22 stipulation most certainly does not introduce  
23 anything new.

24 MR. SMALL: And it is not adequate for us

1 to accept Mr. Colbert's representation purely on the  
2 part of Duke Energy - Ohio for obvious reasons.

3 MR. BOEHM: If it would help at all, your  
4 Honor, I'd certainly be willing to do it, to make the  
5 same representation on behalf of Ohio Energy Group.  
6 I can understand where his suspicions come from, but  
7 we're not that stupid.

8 EXAMINER KINGERY: Thank you.

9 MR. O'BRIEN: As would I, your Honors.

10 EXAMINER KINGERY: Thank you.

11 MR. REILLY: Your Honor, if I might, I  
12 would just note that you have attorneys who are  
13 certified or accepted to the bar before this  
14 Commission making representations on the record to  
15 this Commission that can have dire consequences if  
16 they are, in fact, intentionally not true. I would  
17 think that that would go to some degree to allay  
18 Mr. Small's fears.

19 EXAMINER KINGERY: Mr. Small?

20 MR. SMALL: Well, I've already stated on  
21 the record that we have not had such representations  
22 to this point, so the argument is moot because we  
23 haven't had such representations by counsel.

24 MR. REILLY: Mr. Colbert just made it.

1 MR. SMALL: He made it on behalf of Duke  
2 Energy - Ohio.

3 MR. COLBERT: I will make that  
4 representation on behalf of every Duke Energy company  
5 and affiliate whether in this case or not.

6 EXAMINER KINGERY: Thank you.

7 MR. COLBERT: You're welcome.

8 EXAMINER KINGERY: Does that help?

9 MR. SMALL: No.

10 MR. BOEHM: May I ask, your Honor?

11 I don't want to get involved, but is this  
12 because you have something beyond the side agreements  
13 you want to know, Jeff, or is this because you want  
14 some greater degree of certainty than these  
15 representations?

16 MR. SMALL: I do have a matter that I'm  
17 particularly interested in inquiring into and I'm not  
18 satisfied that -- the answer might be -- the answer  
19 very well might be "No, there's nothing responsive,  
20 Mr. Small, to your inquiry," but, you know, I want to  
21 ask the question. And as I said, the discovery would  
22 be very, very short and should be answered very  
23 quickly.

24 MR. BOEHM: Can we get it today? Is it

1 that -- I'm not trying to press you, but is it that  
2 simple? Because maybe we could get you a turnaround  
3 today.

4 EXAMINER FARKAS: Mr. Small, who is it  
5 that you want to ask these questions of?

6 MR. SMALL: Well, generally the  
7 stipulating parties, but the --

8 EXAMINER FARKAS: Well, if all the  
9 stipulating parties --

10 MR. SMALL: If I could complete my  
11 statement.

12 EXAMINER FARKAS: Sure.

13 MR. SMALL: One party in particular that  
14 I would like to inquire of is People Working  
15 Cooperatively.

16 MR. COLBERT: I will state on the record  
17 there's no agreement between the companies and People  
18 Working Cooperatively in regard to this case at all  
19 from 2003 to the present.

20 MR. SMALL: Well, People Working  
21 Cooperatively does have agreements with this company  
22 that stem from the stipulation, at least I believe  
23 that they do, stemming from the stipulation as far as  
24 the weatherization programs that are conducted by the

1 company in Cincinnati. I would like to inquire  
2 into -- more into that matter.

3 MR. REILLY: I'm sorry, the  
4 weatherization programs in Cincinnati, do they have  
5 anything to do with this case?

6 MR. SMALL: Yes.

7 MR. REILLY: I'm a little concerned about  
8 this getting beyond the bounds of the rider cases.  
9 We're not here on the broader remand case, we're here  
10 on the rider cases.

11 MS. MOONEY: Well, did People Working  
12 Cooperatively sign the stipulation?

13 MR. COLBERT: Yeah, they have signed the  
14 stipulation. The various weatherization contracts  
15 that People Working Cooperatively has, there are none  
16 of them that have anything to do -- certainly none of  
17 them recently that have anything to do with the  
18 stipulations in these cases.

19 On the public record in the original  
20 cases there was an extension of certain contracts not  
21 only for People Working Cooperatively, but for other  
22 parties as well. But those contracts preexisted and,  
23 again, were public, there's been an opportunity for  
24 full discovery on those, and there are no other --

1 there are no unknown agreements with People Working  
2 Cooperatively and certainly nothing regarding  
3 weatherization programs, energy efficiency programs,  
4 or the like, and certainly nothing in relation to  
5 these cases as they have developed over the last  
6 number of years.

7 MR. SMALL: With that being said, the  
8 schedule that I would propose wouldn't really be  
9 delayed by the discovery that I propose; however,  
10 there are additional questions other than side  
11 agreements that the OCC would like to pose especially  
12 in light of Mr. Smith's testimony which basically  
13 says, and the stipulating parties say that they're  
14 not going to follow certain recommendations of the  
15 auditor in this case, and what the bounds or how that  
16 procedure would work if they're not going to observe  
17 the auditor's recommendations is also subject to the  
18 discovery that I'd like to conduct.

19 MS. MOONEY: Your Honor.

20 EXAMINER KINGERY: Yes, go ahead.

21 MS. MOONEY: Also, Mr. Smith testified  
22 that the stipulation was a product of serious  
23 bargaining among capable and knowledgeable people,  
24 didn't violate any important regulatory principle or

1 practices and other things involving a three-prong  
2 test.

3           And I also want to point out that I don't  
4 think the Commission wants to be in a position again  
5 of denying discovery on possible side agreements  
6 involved when a stipulation has been signed because  
7 the court's already said that such things are  
8 discoverable and you don't want to -- I wouldn't want  
9 to deny discovery, and I think a short recess to  
10 allow just a very short brief discovery period to get  
11 a discovery response -- formal discovery response  
12 regarding side agreements, determine if there's  
13 serious bargaining, I think that's what the Supreme  
14 Court has recommended the Commission do. So I want  
15 to add that.

16           MR. SMALL: I might elaborate on my  
17 comment that I don't think the discovery would  
18 actually cause any delay. We just received a  
19 stipulation in its final form, we just received the  
20 testimony in support of it. I stated earlier the  
21 OCC's intention to put on a witness, that testimony  
22 has not been drafted. We are going to work on it.  
23 We are going to need a little bit of time to do that.  
24 That could be the same time that we use for the

1 turnaround for a few questions of discovery.

2           Therefore, we could get out the discovery  
3 by noon tomorrow, if the responses to the discovery  
4 could be received electronically by noon on Friday,  
5 and barring responses that say this is all irrelevant  
6 so that we don't have to have motions that compel  
7 that further delay this proceeding, we could be ready  
8 to go and serve the testimony in opposition to the  
9 stipulation by close of day on Tuesday and this  
10 proceeding could continue on Wednesday.

11           I don't see that the discovery matter is  
12 really delaying anything since we need time to draft  
13 the testimony anyway.

14           MR. BOEHM: Your Honor, may I ask counsel  
15 whether this means that he would be prepared to go  
16 ahead and cross-examine the company's testimony in  
17 support of the stipulation today?

18           MR. SMALL: Well, no, the concept is that  
19 we would put on three witnesses, the staff would put  
20 on a witness, the company would put on a witness, and  
21 the OCC would put on a witness next Wednesday is what  
22 I'm proposing.

23           MR. BOEHM: Instead of today?

24           MR. SMALL: That's correct.

1 MR. REILLY: Your Honor --

2 MR. COLBERT: If I may, your Honor,  
3 first, we have two witnesses here whose testimony was  
4 prefiled and everybody was aware of them, you know,  
5 long ago, Mr. Whitlock and Mr. Wathen, they're from  
6 out of town and we're prepared to go ahead with them  
7 today as we are, for that matter, with Mr. Smith.

8 I believe that at OCC's request the staff  
9 has brought in the auditors and Staff can certainly  
10 address that, but they are also here from out of town  
11 and there shouldn't be any reason why they can't go  
12 on today as well.

13 Regarding any further delay, frankly if  
14 Mr. Small gives us his discovery questions today, if  
15 they are in the nature that he has represented, we  
16 will answer them today because there is nothing to  
17 answer.

18 Finally, we would oppose any discovery  
19 that goes beyond the stipulation. Discovery in the  
20 prior round of this case that's been fully litigated  
21 should not be permitted at this point, and repetitive  
22 discovery over the substance of the auditor's report  
23 and the testimony that's been filed and the  
24 relationships between the people involved except as

1 to the stipulation should not be permitted as all  
2 parties have had an opportunity to do that, discovery  
3 has been conducted and closed.

4 EXAMINER KINGERY: Last comment.

5 MR. REILLY: We would support what the  
6 company has just said. I wish to underline that the  
7 auditors are here from out of town on short notice,  
8 and "out of town" is states away. We would -- I see  
9 no reason they should not go on, and we would ask  
10 that they be allowed to go on today to avoid what is  
11 an extreme inconvenience.

12 I've heard Mr. Small say nothing that  
13 would indicate that there's any disadvantage to OCC  
14 from having the auditors going on today. They've  
15 known since yesterday afternoon that the auditors  
16 would be here.

17 MR. SMALL: You've also heard nothing  
18 from Mr. Small saying we oppose that. We're prepared  
19 and ready to go ahead with the prefiled testimony  
20 except for those that were filed in support of the  
21 stipulation.

22 MR. REILLY: I would note one other  
23 thing, certainly there's nothing wrong with prefiled  
24 testimony from whatever parties, for or against the

1 stipulation, but it certainly should not be a ruse  
2 for filing additional direct testimony against -- in  
3 opposition or in favor of any new positions that  
4 somebody wishes to put forward in the case.

5 MR. SMALL: Of course, Mr. Reilly and  
6 others will have an opportunity to have motions to  
7 strike at the appropriate time.

8 EXAMINER KINGERY: Thank you. We'll go  
9 off the record for just a minute.

10 (Discussion held off the record.)

11 EXAMINER KINGERY: Okay, let's go back on  
12 the record.

13 What we will do is today we will go  
14 forward with the testimony that was prefiled prior to  
15 yesterday. The company can put on its witnesses, the  
16 auditors are welcome to go, any of that testimony can  
17 go forward.

18 We will allow a brief time for discovery  
19 by parties who are in opposition to the stipulation,  
20 that discovery should be limited to matters that are  
21 covered by the stipulation, nothing else. And that  
22 discovery should be propounded by noon tomorrow.  
23 Answers to the discovery will be due noon on Friday  
24 the 13th.

1           The testimony by parties who are going to  
2       oppose the stipulation should be filed by the end of  
3       the business day on Tuesday, the 17th, and that  
4       testimony, once again, should relate only to the  
5       stipulation, not to any other matters.

6           As to the continuation of this hearing,  
7       we are not available on Wednesday the 18th, but we  
8       can go forward on Thursday the 19th. So we would  
9       propose starting on the 19th perhaps at 9 o'clock  
10      instead of 10 o'clock, make sure we get through by  
11      the end of the week.

12           Does anybody have any problem with that  
13      schedule?

14           MR. SMALL: No, your Honor. Just to make  
15      things clear, everything electronic.

16           EXAMINER KINGERY: Yes, everything should  
17      be filed -- should be served on other parties  
18      electronically as we have been doing previously.

19           MR. SMALL: Right.

20           EXAMINER KINGERY: Okay. Then keeping in  
21      mind also what we said at the start which is that we  
22      want a full record on the application as well as on  
23      the stipulation, we will go ahead now with the  
24      company's -- yes.

1 MR. COLBERT: Your Honor, one matter in  
2 terms of the schedule. We think that we can  
3 rearrange it, but we do have a settlement conference  
4 in a somewhat sizable complaint case before the  
5 Commission here scheduled for the 19th. As I said,  
6 I believe we can reschedule that as opposed to this,  
7 so let us keep it and we will let you and the parties  
8 know by tomorrow whether or not we can change that  
9 and be prepared to go ahead on the 19th.

10 EXAMINER KINGERY: And perhaps we can  
11 handle something on a break as well if there's  
12 someone upstairs we can talk to.

13 MR. COLBERT: Sure.

14 EXAMINER KINGERY: That's fine, then at  
15 this point --

16 MR. REILLY: Excuse me, your Honor, point  
17 of clarification. When you said "prefiled  
18 testimony," did you mean -- include the testimony  
19 that was prefiled yesterday?

20 EXAMINER KINGERY: The testimony that  
21 we're going forward with now?

22 MR. REILLY: Yes. Yes.

23 EXAMINER KINGERY: No, we are only going  
24 forward on testimony that was filed prior to

1 yesterday.

2 MR. REILLY: Prior to yesterday.

3 EXAMINER KINGERY: I believe I said that.  
4 Yes.

5 MR. REILLY: Thank you, your Honor.

6 EXAMINER KINGERY: That's fine.

7 Okay, you may go ahead with your first  
8 witness.

9 MR. COLBERT: Do you want the company to  
10 proceed or do you want the auditors to go on first,  
11 your Honor? I don't know what time their planes are.

12 EXAMINER KINGERY: Let's go off the  
13 record.

14 (Discussion held off the record.)

15 EXAMINER KINGERY: Let's go back on the  
16 record, then.

17 At this point we will call the auditors.  
18 Mr. Reilly.

19 MR. REILLY: Thank you, your Honor. I  
20 would call Mr. Seth Schwartz.

21 EXAMINER KINGERY: Good morning. Would  
22 you raise your right hand?

23 (Witness sworn.)

24 EXAMINER KINGERY: You may be seated.

1 SETH SCHWARTZ

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

4 DIRECT TESTIMONY

5 By Mr. Reilly:

6 Q. Good morning, Mr. Schwartz. I'm handing  
7 you two documents, one's identified as  
8 Commission-Ordered Exhibit 1 and it's the  
9 Confidential Report of the Financial and  
10 Management/Performance Audit of the Fuel and  
11 Purchased Power Rider of Duke Energy, and that's  
12 identified as Commission-Ordered Exhibit 1. And then  
13 the other document is the public version of that  
14 document, and it's labeled 1A of that report.

15 EXAMINER KINGERY: They will be so  
16 marked.

17 (EXHIBITS MARKED FOR IDENTIFICATION.)

18 MR. SMALL: I'm sorry, your Honor, I  
19 missed the designation.

20 MR. REILLY: Commission-Ordered Exhibit 1  
21 is the full report of the --

22 MR. SMALL: You designated that as  
23 Remand? We've been putting "Remand" on everything.

24 EXAMINER KINGERY: Commission-Ordered

1 Remand Exhibit 1 and Commission-Ordered Remand  
2 Exhibit 1A, thank you.

3 MR. REILLY: Can we go off the record for  
4 just a second?

5 EXAMINER KINGERY: Yes.

6 (Discussion held off the record.)

7 EXAMINER KINGERY: We would note at this  
8 point that we will be discussing confidential matters  
9 at various times through this hearing. As we  
10 discussed in the first phase of this hearing, we will  
11 allow attorneys to stay in the room even if their  
12 clients have not signed confidentiality agreements.  
13 Any clients who may be here will have to leave the  
14 room during confidential portions if they have not  
15 signed confidentiality agreements.

16 Thank you.

17 MR. REILLY: Thank you, your Honor.

18 EXAMINER KINGERY: People should also be  
19 advised that if you're starting to ask questions that  
20 go into confidential matters, we should let the  
21 reporter know so that we can segregate those portions  
22 of the transcript.

23 MR. REILLY: Your Honor, I would note  
24 that I expect that for Mr. Schwartz's testimony and

1 Mr. Smith's testimony, they're the auditors, that  
2 probably all of it should be treated as confidential.  
3 I'm sure that some of it may not be, but I think the  
4 large majority of it would be is my guess.

5 EXAMINER KINGERY: Okay. Well, then at  
6 this point let's go into a confidential session.

7 (Confidential Portion.)  
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(End Confidential Portion.)

CHARLES WHITLOCK

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

DIRECT EXAMINATION

By Mr. Colbert:

Q. Mr. Whitlock, do you have the two

1 exhibits that we just marked as Remand Rider Exhibits  
2 1 and 2 in front of you, and are they your direct and  
3 supplemental testimony that you have filed in this  
4 case?

5 A. I do, and they are.

6 Q. And would you state your name and  
7 business address for the record, please?

8 A. It's Charles R. Whitlock, 139 East Fourth  
9 Street, Cincinnati, Ohio 45202.

10 Q. And, Mr. Whitlock, do you have any  
11 changes or amendments to the documents that are  
12 marked as your supplemental and direct testimony?

13 A. We should probably change the -- on both  
14 my title is changed, and it says that I work for Duke  
15 Energy Americas. I actually work for Duke Energy  
16 Shared Services, and my title has changed from  
17 President to Senior Vice-President, Commercial Asset  
18 Management.

19 Q. Do you have any other changes?

20 A. I don't believe so.

21 MR. COLBERT: Your Honor, Mr. Whitlock is  
22 available for cross-examination.

23 EXAMINER KINGERY: Thank you very much.

24 OCC?

1 MR. SAUER: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Sauer:

5 Q. Good afternoon, Mr. Whitlock. My name is  
6 Larry Sauer and I represent the Office of the Ohio  
7 Consumers' Counsel.

8 THE WITNESS: Your Honor, could we get a  
9 microphone?

10 EXAMINER KINGERY: Yes.

11 Could you use the one over there? Thank  
12 you.

13 THE WITNESS: Sorry.

14 MR. SAUER: That's all right. Thank you.

15 Q. Is this better?

16 A. Yes. Thank you.

17 Q. I have a few questions for you this  
18 afternoon, Mr. Whitlock. Initially if you could turn  
19 to page 10 of your testimony.

20 MR. COLBERT: Mr. Sauer, which testimony?

21 MR. SAUER: His supplemental.

22 MR. COLBERT: Thank you.

23 Q. At line 19 you talk about 15 percent  
24 capacity reserve margin that DE-Ohio relies upon in

1 their SRT charge calculations; do you see that?

2 A. Yes, sir.

3 Q. And what is the basis for that 15  
4 percent?

5 A. That 15 percent itself is a calculation  
6 that's really kind of industry practice that looks at  
7 loss of load expectation over a planning horizon, it  
8 takes into account the E4 rate, the required  
9 operating reserves, and then deviations for  
10 temperature above normal, weather-normal  
11 temperatures.

12 Q. And when you say an industry practice, is  
13 that something that MISO or PJM have built into their  
14 standards, or where exactly does that come from?

15 A. I mean, various structured markets have  
16 different requirements, PJM does have a capacity  
17 reserve margin, and I believe it is 15 percent. MISO  
18 has a day-ahead operating reserve requirement. Some  
19 of the New England markets have -- they are various  
20 and sundry, but they're in or around 15 percent.  
21 They're basically made up of the same components that  
22 I talked about, right, the planned E4 rate, changes  
23 in weather, and what you have to have from a capacity  
24 standpoint to meet operating reserve requirements.

1           Q.   And staying on page 10 in your  
2 supplemental testimony you refer to something as a  
3 designated network resource --

4           A.   Uh-huh.

5           Q.   -- that MISO has. Can you explain what  
6 a, you refer to as a DNR, what is that?

7           A.   A designated network resource is a  
8 resource that's available to meet an energy  
9 requirement on a firm basis so that it works on  
10 network transmission on a firm basis. It's the  
11 firmest supply that you can have.

12          Q.   And is this in a longer term planning  
13 mode or more of a day-ahead?

14          A.   If it's a DNR on a longer term basis, it  
15 would be a DNR on a shorter term basis. Again, a  
16 designated network resource doesn't have time, it  
17 works or it doesn't work as a designated network  
18 resource. Does that help?

19          Q.   This, again, is in the long-term planning  
20 mode then?

21          A.   I don't -- what is "it"?

22          Q.   The DNR. The reference to a DNR, is that  
23 only if you're discussing long-term planning?

24          A.   Again, a DNR -- if a DNR meets it on a

1 long-term basis, it will meet it on a short-term  
2 basis so I'm struggling a little bit with the  
3 question.

4 Q. Okay. I'm wasn't sure if it only applied  
5 in your SRT calculations as part of the longer term  
6 capacity requirement.

7 A. Let me try it this way, I mean, the SRT  
8 is a long-term resource planning, it's where we  
9 recover our costs for our long-term resource plan,  
10 right? So it's a long-term capacity obligation.  
11 It's the company's approach to procure those assets  
12 on a long-term basis, right?

13 Now, a long-term basis, again, we're  
14 restricted by approval, we get preapproval for those  
15 SRT costs, so we basically go out a year in advance.  
16 It's my opinion that we should procure longer term  
17 resource capacity, you know, through like last year  
18 we should have bought some in '7 and some in '8, but  
19 we get annual approval to do those types of things.

20 If in the short-term we do not have  
21 enough designated network resource capacity to meet  
22 MISO's operating requirements, that 4 percent, it's  
23 4.1 percent of our forecasted load, we will buy a  
24 designated network resource to make sure that we meet

1 MISO's module E. Does that help?

2 Q. I think so, yes.

3 So when you say it's a firm contract  
4 or -- did you say it was a firm contract? Was that  
5 your reference to a DNR, as a firm contract?

6 A. You asked me what a DNR was and I said a  
7 DNR is a resource that will allow you to use network  
8 transmission to meet a load obligation. It's the  
9 firmest of resources.

10 Q. And when you say "network transmission,"  
11 is that --

12 A. As opposed to like point-to-point  
13 transmission.

14 Q. Okay. And if that's the firmest of firm,  
15 what other resource options are there below a DNR?

16 A. For capacity?

17 Q. Yes.

18 A. There really aren't any. I mean, the  
19 idea of -- I don't think there are. I mean, I guess  
20 you could buy nonfirm capacity; I don't know why you  
21 would buy it, I don't think it gives you anything,  
22 right? If the capacity can be recalled from you, it  
23 doesn't do anything to help you meet your load  
24 obligation.

1 Q. So then an option, for example, wouldn't  
2 be a DNR.

3 A. An option for capacity or an option for  
4 energy?

5 Q. An option for capacity.

6 A. Once I exercise the option is it a firm  
7 option --

8 Q. Well, I don't know --

9 A. -- that would qualify as a DNR, then  
10 yeah, it would be a DNR once I exercised it.

11 Q. Okay. Of the DENA assets, Mr. Whitlock,  
12 how many of those assets are within the Midwest ISO?

13 A. Vermilion.

14 Q. So just one?

15 A. Yes.

16 Q. And you consider DENA assets outside of  
17 the MISO footprint to be DNR.

18 A. You would have to request transmission  
19 from PJM and then have transmission, firm  
20 transmission, granted out of PJM, and then MISO would  
21 do a transmission study to see if those were -- or  
22 could qualify as a designated network resource inside  
23 of MISO.

24 Q. Has such a study been done?

1 A. I don't recall.

2 Q. And have you reviewed the stipulation  
3 that was filed in these proceedings yesterday?

4 A. I'd like to have one in front of me if  
5 you're going to ask me some questions on it.

6 Q. I believe if you look at, under the stip,  
7 paragraph No. 8 -- do you have the stip?

8 A. I do.

9 Q. Okay. And did you see paragraph 8?

10 A. Yeah, I'm looking at it.

11 Q. Okay. And if I understand your  
12 supplemental testimony, you're advocating for the  
13 DENA assets to be included within DE-Ohio's capacity  
14 purchases as part of the SRT rider, correct?

15 A. I do.

16 Q. And the stipulation that was filed in  
17 this case yesterday essentially changes your  
18 recommendations regarding the DENA assets; does it  
19 not?

20 A. Could you repeat the question?

21 MR. SAUER: Could I have the question  
22 reread, please?

23 (Question read.)

24 A. Not insofar as it relates to recovery of

1 those costs through the SRT, right? I mean, in my  
2 testimony I say we should recover the costs if we use  
3 those assets to meet our capacity requirements and  
4 recover those dollars through the SRT.

5 Q. But does this -- I'm sorry.

6 A. The stipulation says basically the same  
7 thing, that they will be recovered, in the first  
8 sentence, through the SRT.

9 Q. Is it your perspective that through the  
10 stipulation there's a limitation as to the usage of  
11 these DENA assets?

12 A. Yes.

13 Q. And what would that limitation be?

14 A. It says seven days or less.

15 Q. And what does that mean to you?

16 A. Seven days or less.

17 Q. Would that limit it to use in, say, in an  
18 emergency situation only?

19 A. No. It means seven days or less.

20 Q. Could you have a series of seven-day  
21 events?

22 A. I believe if they -- I believe so. If  
23 they were seven days or less, you could have multiple  
24 of those occurrences. Just my reading of it.

1           Q.    Is this the first time you're really  
2   seeing this stipulation, or were you involved in the  
3   discussions that led up to this?

4           A.    No; I was on vacation two weeks and I  
5   came back, the first day I saw it was yesterday and  
6   it was fluid yesterday, right, so it was changing.  
7   So I saw it yesterday.

8           Q.    Okay. Under 8 there are several  
9   subpoints, A, B, and C. Do you see those in the  
10   stipulation that was filed yesterday?

11          A.    I do.

12          Q.    In a situation where from your  
13   perspective we're in a seven-day period where the  
14   DENA assets are appropriate for cost recovery, how  
15   many broker quotes would you anticipate might be  
16   available to help establish a market price under the  
17   stipulation?

18          A.    It's going to depend but, again, the  
19   majority of the capacity, the majority of the  
20   capacity market is going to be procured over a  
21   long -- over a longer period of time. Let's make it  
22   a year, right, that I'll procure a year in advance a  
23   15 percent reserve margin. Now, if weather is a lot  
24   hotter or I lose more than my historic E4 rate, that

1 will put me in a situation where I would be in this  
2 circumstance. And so it's rare when capacity is  
3 transacted in a very short-term market.

4           You know, how many broker quotes would I  
5 receive? I'll tell you what, if I had to -- again,  
6 we're going to be a buyer to maintain our module E  
7 requirements in this example, so I'm going to call  
8 all of the brokers that I deal with to have them help  
9 me get quotes for this period of time, and there  
10 might be -- I might get one. I might get five  
11 different quotes.

12           Q.   How many brokers do you typically deal  
13 with?

14           A.   Around that number, right? I mean,  
15 fivish, we'll call it, for power and capacity. Now  
16 all of those won't have quotes at the same time,  
17 right? They all might. They all might have the same  
18 quote, I don't know.

19           Q.   Well, of these brokers that are providing  
20 the quotes, would you say that the capacity market is  
21 a large or small portion of their business?

22           A.   The term "capacity market's" a  
23 significant part of their business, right? The  
24 short-term capacity market, again, is not.

1           Q.    Okay.  And in the long-term capacity  
2 market how many capacity transactions occur per day?

3           A.    I don't know.  On average?  Probably less  
4 than one a day, or one a day, two a day, I don't  
5 know.

6           Q.    Now, if I understood what you had said  
7 earlier, because the capacity market is typically  
8 traded in a long-term basis, that it takes some  
9 unusual event like an extreme weather situation or a  
10 unit goes down or something like that.  When was the  
11 last time that Duke experienced a situation like  
12 that?

13          A.    You know, we had one this -- we had one,  
14 I want to say it was like two months ago, maybe three  
15 months ago, where we did not have -- we were not  
16 going to comply with module E and we actually used  
17 the Vermilion capacity that was not committed in the  
18 marketplace to satisfy our module E requirement, and  
19 we charged zero through -- we don't recover any of  
20 those costs, right?

21                I mean, we basically used that Vermilion  
22 asset or the DENA -- the legacy DENA asset to satisfy  
23 our module E requirement.  And I believe it was two  
24 or three months ago.  And it was because of outages.

1 Q. And did the cost of that capacity get  
2 included in the SRT calculation?

3 A. No, it didn't.

4 Q. During that event that you're talking  
5 about what was the market price that was being  
6 experienced at that time?

7 A. For capacity or for --

8 Q. For capacity, yes.

9 A. Again, we basically polled the market for  
10 offers and the offers that we got, I don't remember  
11 the exact numbers, we probably have them recorded,  
12 but the offers were -- they were high-priced offers,  
13 right? And we were like -- we felt like it was not  
14 prudent for us to buy that when we had excess  
15 capacity of our own, again, it wasn't dedicated to  
16 the FPP, to the MBSSO customer, so we used that  
17 instead.

18 So we were basically the buyer, right,  
19 because we were the one that had the shortfall.  
20 There weren't other buyers. There were sellers, but  
21 their price was high, and we didn't buy it and  
22 instead used Vermilion resources at no charge.

23 Q. When you say the price was high, can you  
24 kind of give me a range?

1           A.    Yeah, you know, I want to say it was --  
2    I'd hate to do it and then be wrong, so is there some  
3    way that we could --

4           Q.    Subject to check?

5           A.    Is there a mechanism that we can provide  
6    you that data with --

7           MR. COLBERT:   Sure.

8           A.    -- other than me speculating about it?

9           MR. COLBERT:   Your Honor, DE-Ohio will be  
10   happy to provide the parties with the data that  
11   Mr. Whitlock is referring to. We will get it. I  
12   mean, if Mr. Whitlock can do an estimate subject to  
13   check, we have no objection to that as well.

14           MR. SAUER:   Mr. Colbert, you're offering  
15   to put that into the record, then?

16           MR. COLBERT:   Yes.

17           MR. SAUER:   Not just get it to the  
18   parties, but put it into the record?

19           MR. COLBERT:   We can do that, too.

20           EXAMINER KINGERY:   We'll have another day  
21   of hearings; you can bring it at that time.

22           MR. COLBERT:   I need to confer with them  
23   to see whether it should be confidential, but if it  
24   is, we'll file it under seal.

1 EXAMINER KINGERY: That's fine.

2 MR. SAUER: Thank you.

3 Q. (By Mr. Sauer) And so given the situation  
4 that you've just kind of been talking about here, you  
5 would anticipate, if this event now occurs under this  
6 stipulation, that the capacity costs for DENA would  
7 be a midpoint of the broker quotes that are received  
8 and, admittedly, there aren't going to be very many  
9 of those, correct?

10 A. Yeah. Again, there would be the, I mean,  
11 there are going to be broker quotes to the degree I  
12 can get broker quotes, right? I mean, in that event  
13 I would do the exact same thing I did before, I would  
14 call counterparties and I would call brokers and ask  
15 them what's the market for capacity for whatever the  
16 time period -- for the next day. And I would get the  
17 number of quotes that I got, and I would get the  
18 number of offers that I got, and they would be at the  
19 level at which they gave them to me.

20 Q. And then under B it says the average  
21 price of third-party purchases transacted, and how do  
22 you envision that would be -- those transactions  
23 would be identified?

24 A. How would the transactions be identified

1 or consummated?

2 Q. How would they be I guess initially  
3 identified and then if they become consummated, how  
4 would they be --

5 A. I would poll the market. I mean, I would  
6 call counterparties that I know that have capacity  
7 that qualifies, again, that will fulfill my module E  
8 requirement, and I would call those counterparties  
9 and see if they had capacity available tomorrow, and  
10 if they did, I would ask them what their offer was  
11 for that capacity.

12 And if it was -- say I called three  
13 different counterparties and the first two didn't  
14 have any and the last one had it, then I would buy  
15 it, and they would tell me the price and I would buy  
16 it.

17 Q. And, again, is it your anticipation that  
18 only the Vermilion plant would be available in these  
19 situations?

20 A. Yeah. I mean --

21 Q. Realistically.

22 A. The PJM capacity, right, at the end of  
23 this year, right, I will have sold in the new PJM  
24 capacity market -- by Friday I'll find out -- we

1 offered it all into PJM and we'll get a clearing  
2 price from PJM on this Friday, so that capacity will  
3 be sold.

4 Now, I'll have the ability to go out and  
5 buy capacity from PJM, again, subsequent -- if we  
6 said that we wanted to use those assets, we would do  
7 the transmission studies, et cetera, and we could buy  
8 back the capacity that we sold from PJM and use the  
9 PJM capacity to meet this requirement. But likely,  
10 you're right, that it's Vermilion.

11 Candidly, there probably will not be  
12 excess legacy DENA capacity available for the MBSSO  
13 customer because we'll sell it because, again, that  
14 market is a long-term market.

15 Q. And did I understand you earlier to say  
16 that you've not been actively managing your  
17 generation portfolio beyond 2008?

18 A. Are you referring to something in my  
19 testimony?

20 Q. No, something you said earlier on the  
21 stand where if you had your way, you would have been  
22 doing something in 2007-2008 already.

23 A. I think what I was talking about was,  
24 again, this 15 percent, or X percent, reserve margin

1 is designed for a longer period of time than the  
2 next-day planning. It's a long-term resource  
3 planning, right? It's saying do I have enough  
4 resource.

5 Because, again, this is steel in the  
6 ground that we're talking about. I mean, that's  
7 probably in laymen's term. A designated network  
8 resource is that steel in the ground kind of idea and  
9 that's a much longer lead time than seven days or a  
10 day or even a year, right? It says we need to have  
11 so many resources available to produce the energy to  
12 light the light bulbs.

13 So what I said was is that instead of us  
14 planning for kind of a one-year or one year at a time  
15 approach, we should plan for a longer period of time;  
16 that's what I said.

17 Q. Okay.

18 A. But I don't think I said actively manage.  
19 I don't know.

20 Q. I'm sorry.

21 A. We can talk about active management.

22 Q. Mr. Whitlock, I believe in your direct  
23 testimony you had estimated SRT purchases for 2007 to  
24 be \$8 million or approximately \$8 million. Do you

1 recall that?

2 A. What page is that?

3 Q. I think it was on one of your schedules.

4 A. Yeah, I see it.

5 Q. And that is --

6 A. It's almost 9 million.

7 Q. Is that a projection for 2007?

8 A. Yes.

9 Q. And do you know what your final SRT costs  
10 for 2006 were?

11 A. I don't, but I'm sure we can provide it.  
12 I don't.

13 MR. COLBERT: Your Honor, just to  
14 clarify, we are still under seal, right?

15 EXAMINER KINGERY: Yes, we are.

16 MR. COLBERT: Thank you.

17 EXAMINER KINGERY: We've been under seal  
18 all day.

19 MR. COLBERT: Just wanted to make sure.

20 Q. (By Mr. Sauer) I apologize, I didn't mark  
21 it in your testimony but I think you had an estimate  
22 in here, maybe an actual number through September of  
23 '06 of approximately -- yes, on page 8, line 4, I  
24 think you're estimating your SRT expenses to be

1 \$4 million. Does that look right?

2 A. Yeah, I see -- yeah.

3 Q. So do you know what the difference was or  
4 what you're anticipating the difference to be between  
5 an SRT charge in 2006 of \$4 million to an SRT charge  
6 in 2007 of almost \$9 million?

7 A. When we do the estimate, I mean, the  
8 actuals are what we actually paid, right, and for the  
9 products that we buy. And then the estimate is a  
10 calculation based on the products that we think we're  
11 going to buy at the prices that we think we'll be  
12 able to execute those, right?

13 I haven't done a line-by-line comparison,  
14 although it would be easy to do to say here are the  
15 products in 2006, here are the similar products in  
16 2007, and here are the prices and the various prices.  
17 So it would be easy to do that, I just -- I don't  
18 have that in front of me.

19 Q. And to the extent that you do  
20 overestimate the SRT charges and there's a true-up,  
21 the actual costs that you incur are actually charged  
22 back to the customers, then?

23 A. If we overestimate it, it wouldn't be  
24 charged back, right? We would give them a credit.

1 Q. A credit coming back to the customers.

2 A. Yes.

3 Q. And that's with interest?

4 A. I don't know.

5 MR. SAUER: Thank you. That's all we  
6 have, your Honor.

7 EXAMINER KINGERY: Thank you.

8 Mr. Boehm, do you have any?

9 MR. BOEHM: No cross.

10 EXAMINER KINGERY: Staff?

11 MR. REILLY: Thank you, your Honor.

12

- - -

13 CROSS-EXAMINATION

14 By Mr. Reilly:

15 Q. Good afternoon, Mr. Whitlock. My name is  
16 Steve Reilly. I'm here on behalf of the staff of the  
17 Commission. I just have a few questions for you.

18 I'd like to direct your attention to what  
19 Mr. Sauer called the stipulation that was filed  
20 yesterday. Do you have a copy of that up there?

21 A. Yes, sir.

22 Q. Thank you.

23 If you could turn to page 7, I'd like to  
24 talk to you about paragraph 8 on that page for a

1 second. And I would like you to take a look at the  
2 first sentence in paragraph 8. And you were talking  
3 with Mr. Sauer about the term as used in that  
4 paragraph, "short-term." Do you recall that  
5 discussion with Mr. Sauer?

6 A. I believe so.

7 Q. All right. Now, you weren't involved, I  
8 think you said, in the discussions that led up to  
9 this stipulation; is that correct?

10 A. Yeah; I was on vacation. I mean, I was  
11 involved in some discussions starting yesterday,  
12 right.

13 Q. Were you involved in discussion with any  
14 party aside from your own company, Duke - Ohio?

15 A. No, sir.

16 Q. Okay. So you weren't involved with  
17 discussions with any other party to this stipulation  
18 besides Duke, correct?

19 A. No, sir. Or, I mean, ask that question  
20 again. I think I -- I was not involved with any  
21 other parties other than, I mean, I talked to Paul  
22 Colbert about it.

23 Q. All right. Mr. Colbert works for Duke -  
24 Ohio, correct?

1 A. Duke Energy Shared Services.

2 Q. Very good.

3 A. I got in that conundrum before.

4 Q. So you don't know how any other party may  
5 view the term "short-term," correct?

6 A. It defines short-term as seven days or  
7 less.

8 Q. All right. Now, when you were talking  
9 with Mr. Sauer, the question of multiple occurrences  
10 came up; do you recall that?

11 A. I do.

12 Q. You would not be in a position to say how  
13 any other party would view multiple occurrences being  
14 tacked together, are you?

15 A. I'm not.

16 Q. All right. That would be a subject that  
17 would be ultimately decided, if there was great  
18 disagreement, in an enforcement proceeding; is it  
19 not -- is that not correct?

20 A. I don't know where it would be decided,  
21 but --

22 Q. All right.

23 MR. REILLY: Nothing further.

24 EXAMINER KINGERY: Redirect?

1 MR. COLBERT: No redirect, your Honor.

2 EXAMINER KINGERY: Thank you very much.

3 You may step down.

4 (Witness excused.)

5 EXAMINER KINGERY: Would you like to call  
6 one more witness?

7 MR. COLBERT: Yes. Your Honor, the  
8 company's going to call Mr. Don Wathen.

9 EXAMINER KINGERY: Would you raise your  
10 right hand?

11 (Witness sworn.)

12 EXAMINER KINGERY: You may be seated.

13 MR. COLBERT: Your Honor, we would mark  
14 the FPP testimony as DE-Ohio Remand Rider 3.

15 EXAMINER KINGERY: Yes.

16 MR. COLBERT: And the direct and  
17 supplemental of the AAC as Remand Riders 4 and 5.  
18 DE-Ohio Remand Riders 4 and 5.

19 EXAMINER KINGERY: That's direct and  
20 supplemental in that order.

21 MR. COLBERT: That's correct. Trying to  
22 keep them in the order they were filed.

23 EXAMINER KINGERY: They will be so  
24 marked.

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MR. COLBERT: Thank you, your Honor.

(EXHIBITS MARKED FOR IDENTIFICATION.)

(Confidential Portion.)

1  
2 CERTIFICATE

3 We do hereby certify that the foregoing is a  
4 true and correct transcript of the proceedings taken  
5 by us in this matter on Tuesday, April 10, 2007, and  
6 carefully compared with our original stenographic  
7 notes.

8 Maria DiPaolo Jones (SR)  
9 Maria DiPaolo Jones, Registered  
10 Diplomate Reporter and CRR.

11 Karen Sue Gibson (SR)  
12 Karen Sue Gibson, Registered  
13 Merit Reporter.

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EXHIBIT

Transcript Vol I

The following exhibit(s) were prefiled and can be located with the pleadings:

Exhibits	Date Filed
DE-OHIO REMAND RIDER EXHIBITS	
1 - Direct Testimony of Charles R. Whitlock	
2 - Supplemental Direct Testimony of Charles R. Whitlock	
3 - Direct Testimony regarding FPP of William Don Wathen, Jr.	
4 - Direct Testimony regarding AAC of William Don Wathen, Jr. 06-1085-EL-UNC	Sept. 5, 2006
5 - Supplemental Testimony regarding ACC of William Don Wathen, Jr.	Feb 28, 2007
COMMISSION-ORDERED REMAND RIDER EXHIBITS	
1 - Confidential Report of the Financial and Management/ Performance Audit of the Fuel and Purchased Power Rider of Duke Energy - Ohio	Oct 12, 2006
1A - Report of the Financial and Management/Performance Audit of the Fuel and Purchased Power Rider of Duke Energy - Ohio	Oct 12, 2006
1B - 10/20/06 letter from Larkin & Associates, PLLC 05-724-EL-UNC + 05-725-EL-UNC	Oct 24, 2006
JOINT REMAND RIDER EXHIBIT	
1 - Stipulation	April 9, 2007