

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Ohio Power :
Company to Establish a :
Competitive Bidding : Case No. 12-3254-EL-UNC
Process for Procurement :
of Energy to Support its :
Standard Service Offer. :

- - -

PROCEEDINGS

before Mr. Jonathan J. Tauber and Ms. Sarah J.
Parrot, Hearing Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:00 a.m. on Tuesday, June
25, 2013.

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VOLUME II

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Tuesday Morning Session,
June 25, 2013.

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EXAMINER PARROT: Let's go back on the record.

Let's start this morning with brief appearances of the parties, just names only, please, and we'll start again with the company and work our way around the room.

MR. NOURSE: Thank you, your Honor. On behalf of Ohio Power Company, Steven T. Nourse, Daniel R. Conway.

MR. PETRICOFF: Thank you, your Honor. On behalf of Constellation Energy and Exelon Generation, LLC, Howard Petricoff.

MR. LANG: On behalf of FirstEnergy Solutions, Mark Hayden, Jim Lang, and Trevor Alexander.

MR. KURTZ: For OEG, Mike Kurtz.

MS. GRADY: For the residential customers, Maureen Grady.

MR. PRITCHARD: For Industrial Energy Users-Ohio, Matt Pritchard.

MR. REILLY: For the staff of the Ohio PUCO, Steve Reilly.

1 EXAMINER PARROT: Thank you.

2 I believe Mr. Petricoff has our next
3 witness.

4 MR. PETRICOFF: Yes, your Honor. At this
5 time we'd like to call Dr. Jonathan Lesser to the
6 stand. And while Dr. Lesser is coming to the stand,
7 I'd like to have marked as Exhibit 1 his direct
8 prepared testimony, and I would like to have marked
9 as Exhibit 1A an errata sheet to that testimony.

10 EXAMINER PARROT: And, Mr. Petricoff,
11 would you like to mark these as Exelon Exhibit 1 and
12 1A?

13 MR. PETRICOFF: Yes, Exelon 1 and Exelon
14 1A.

15 EXAMINER PARROT: That's what we'll do,
16 thank you.

17 (EXHIBITS MARKED FOR IDENTIFICATION.)

18 MR. PETRICOFF: And I have previously
19 given copies to the court reporter.

20 EXAMINER PARROT: Please raise your right
21 hand.

22 (Witness sworn.)

23 EXAMINER PARROT: Please be seated.

24 - - -

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JONATHAN A. LESSER

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

DIRECT EXAMINATION

By Mr. Petricoff:

Q. Would you please state your name and business address for the record.

A. My name is Jonathan A. Lesser, my business address is Continental Economics, Incorporated, 6 Real Place, Sandia Park, New Mexico, 87047.

Q. And on whose behalf do you appear today?

A. I'm here on behalf of Constellation NewEnergy and Exelon Generation, LLC.

Q. And do you have before you what has been marked as Exelon Exhibit 1 and Exelon Exhibit 1A?

A. I do.

Q. Could you please describe Exelon Exhibit 1.

A. Exelon Exhibit 1 is a copy of my direct testimony in this case.

Q. And Exelon Exhibit 1A?

A. Exelon Exhibit 1A is the errata sheet with several corrections to my testimony.

Q. Could you please explain the corrections

1 that you are offering to your direct prepared
2 testimony.

3 A. Yes. On page 6, lines 5 through 8 of my
4 testimony, the sentence "The Commission itself has
5 determined that AEP Ohio should not be able to
6 participate in the SSO auctions until after it has
7 completed corporate separation, which is scheduled to
8 be finalized by December 31st, 2014," that sentence
9 should be removed.

10 In 11-346-EL-SSO, et al., the Commission
11 determined that AEP Ohio and its affiliates could
12 participate in the auction prior to corporate
13 separation.

14 The second change is on page 20, line 17,
15 which is to remove the phrase, quote, "In 2015, when
16 AEP Ohio's" end quote, and replace it with "Since
17 AEP Ohio and its" end quote, for the same reasons,
18 that AEP Ohio and its affiliates are allowed to
19 participate.

20 And there's a typographical error on
21 page 23, line 18. The apostrophe s after the word
22 AEP Ohio should be removed.

23 Q. With those changes if I asked you all the
24 other questions that are contained in your direct
25 prepared testimony, would your answers be the same?

1 A. They would.

2 MR. PETRICOFF: Your Honor, the witness
3 is available for cross-examination.

4 EXAMINER PARROT: Thank you.

5 Mr. Lang.

6 MR. LANG: No, thank you.

7 EXAMINER PARROT: Mr. Kurtz.

8 MR. KURTZ: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Kurtz:

12 Q. Good morning, Dr. Lesser.

13 A. Good morning, Mr. Kurtz.

14 Q. Very briefly, as I understand your
15 proposal, you would take the difference between the
16 energy clearing prices from the auction and compare
17 that to the actual FAC rates --

18 A. That's correct.

19 Q. Okay. And you would then quantify a
20 dollar amount of money.

21 A. Correct.

22 Q. Okay. And you would take that dollar
23 amount and reduce the deferral that AEP Ohio is
24 booking in the 2929 case, the difference between 188
25 and RPM, so you would reduce the deferral by the

1 amount that the energy auction price is greater than
2 the FAC.

3 A. That's correct. In my opinion, that's
4 just the most straightforward, easily administrative
5 way of crediting back to customers any additional
6 moneys that AEP would earn, in my view it's
7 consistent with standard ratemaking which is to --
8 under cost-of-service ratemaking, because customers
9 are paying embedded costs of capacity for AEP Ohio's
10 legacy generation assets, they're entitled to the
11 profits from wholesale energy sales as well as
12 wholesale capacity sales.

13 And rather than trying to figure out who
14 is best someone who might be an SSO customer but is
15 not, once the regulatory asset is -- starts to be
16 collected or someone who wasn't -- isn't an SSO
17 customer but later is an SSO customer, in my view
18 this is just an administratively simpler approach to
19 do this.

20 Q. Now, if we assume that the energy auction
21 price is higher than the FAC so that there is a
22 deferral, what will happen is mechanically the
23 nonshopping customers, the SSO customers, would pay
24 higher rates today, correct?

25 A. That's correct.

1 Q. Okay. And then in the future the
2 deferral would be -- well, then the deferral would be
3 reduced lowering the costs that all customers have to
4 repay, shopping and nonshopping.

5 A. That's correct. But, again, it's -- and
6 there might be other ways to sort of track the
7 dollars to individual customers who are SSO
8 customers.

9 For example, you might be able to credit
10 it back against the FAC itself, the variable portion
11 of the FAC, but, again, I just found that
12 administratively the easiest approach would be just
13 to do this credit rather than trying to affect the
14 actual prices people are paying right now and,
15 therefore, you know, skew some of the competitive
16 markets and decisions of whether or not to shop.
17 Just reducing, in my view, that regulatory asset
18 later on is just the simplest approach.

19 Q. If the Commission were concerned about
20 not having undue rate increases on SSO customers
21 today, your proposal would not solve that problem,
22 would it?

23 A. No, it would not.

24 Q. Okay. Does your proposal assume that
25 AEP Ohio wins all of the tranches in the auction?

1 A. No, not at all.

2 Q. What if they don't win any tranches,
3 would you be crediting back against the future
4 deferral for moneys that AEP Ohio never received?

5 A. Well, if AEP does not win any of the
6 tranches in the auction, then that much energy -- and
7 let's assume the price is above -- the auction price
8 is above the FAC, then AEP will have that much
9 additional energy which it can then sell in the
10 wholesale market.

11 Now, as I explained in my testimony, if
12 the auction price is -- clearing price is higher than
13 the FAC, then AEP's, the variable costs, because AEP
14 has high capital costs, low variable cost resources,
15 is certainly going to be able to sell power into the
16 wholesale market.

17 So, again, that money that's freed up for
18 wholesale energy sales should properly be credited
19 back to AEP customers -- AEP Ohio customers who are
20 required under 10-2929 to pay for embedded capacity
21 costs.

22 Q. Do you know what type of customer is a
23 nonshopping customer, as a general matter?

24 A. There are -- probably the majority are
25 residential customers. There are, you know, the

1 customers that are represented by you who are on the
2 special IRP-D rates. There are also a few customers
3 who are not allowed to shop because they're on the
4 income -- I can't remember the exact name.

5 Q. PIPP. The PIPP?

6 A. Yeah, thank you.

7 Q. So that's what I want to -- so you've
8 really got the relatively nonsophisticated
9 residential and low-income customers as well as the
10 customers on reasonable arrangements who get discount
11 off tariffs, which would be my client Timken as well
12 as Eramet as well as Ormet, those type of customers.
13 Would you agree with that? Those are the nonshopping
14 customers --

15 A. Right. The difference, of course, is
16 that, for example, your clients, unlike, say, some of
17 the PIPP customers, are perfectly capable of shopping
18 if they so desire.

19 Q. Right. Now, contrast what is the -- do
20 you know the shopping percentages in the commercial
21 class, for example?

22 A. I don't know the percentage off the top
23 of my head, no.

24 Q. But, in any event, so the mechanics of
25 your proposal would be -- the rates would go up on

1 the nonshoppers and then the money would be used to
2 offset the deferral that all customers have to
3 eventually repay.

4 A. That's right. And, of course, the
5 nonshoppers are still, with the exception of the PIPP
6 customers, can always go shopping.

7 MR. KURTZ: Thank you, Dr. Lesser.

8 EXAMINER PARROT: Ms. Grady.

9 MS. GRADY: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Grady:

13 Q. Good morning, Dr. Lesser.

14 A. Good morning, Ms. Grady.

15 Q. Can you turn to page 14 of your
16 testimony.

17 A. I'm there.

18 Q. And in the example that you depict
19 graphically at the top of that page the auction
20 clearing price is less than the FAC?

21 A. That's right.

22 Q. Now, on the following page, on page 15, I
23 want to direct your attention to lines 8 through 10,
24 and you're explaining your example and your
25 conclusion is that, and you're referring to -- and

1 I'm looking at lines 8 through 10, you say "In that
2 case, SSO customers will lose all of the benefits of
3 competition, or the amount Q*." Do you see that?

4 A. Yes.

5 Q. And when you're referring specifically
6 right there, you mean that customers would lose out
7 on the benefits of an auction clearing price, in your
8 example, that is lower than FAC; is that correct?

9 A. That's correct. Because the -- if you
10 artificially restrict the auction to imposing -- by
11 imposing a reserve price at the FAC, what this
12 example shows is that you're essentially reducing the
13 number of bidders and increasing the regulatory
14 uncertainty associated with the auction, and that
15 can -- could in this example shift the supply curve
16 inwards and result in what otherwise would be a
17 below-FAC price to actually the FAC price, to private
18 consumers of that law, that benefit.

19 Q. Thank you.

20 Now, on page 17 of your testimony you
21 discuss the fact that IEU and OEG members can
22 purchase electricity directly from CRES providers if
23 they believe that the blended or full auction SSO
24 price is too high; is that correct?

25 A. That's correct.

1 Q. Is the same statement true for
2 residential customers?

3 A. Other than the PIP customers, I believe
4 that is true.

5 Q. So your opinion is that residential
6 customers could purchase electricity directly from
7 CRES providers.

8 A. That would be my opinion. I'm not aware
9 of any residential customers or -- that have -- other
10 than the PIPP customers where there's specific
11 prohibitions against shopping by those residential
12 customers.

13 Q. And would it be your opinion also that
14 individual residential customers could negotiate
15 lower-priced contracts than the prices that prevail
16 in an unfettered CBP because of their load factor?

17 A. It's possible. I don't -- I really don't
18 know. It would really depend on the customer and the
19 CRES provider. My main point is that for residential
20 customers they still have the option of shopping and
21 with my crediting mechanism later on, all those
22 customers will pay less whether they're shopping or
23 not.

24 MS. GRADY: That's all the questions I
25 have. Thank you, Dr. Lesser.

1 THE WITNESS: Thank you.

2 EXAMINER PARROT: Mr. Pritchard.

3 MR. PRITCHARD: No questions, your Honor.

4 EXAMINER PARROT: Mr. Nourse or
5 Mr. Conway.

6 MR. NOURSE: Yes, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Nourse:

10 Q. Good morning, Dr. Lesser.

11 A. Good morning, Mr. Nourse.

12 Q. I'd first like to ask you, you're
13 representing Exelon and Constellation NewEnergy; is
14 that correct?

15 A. That's correct.

16 Q. And I want to start with the general
17 interests of the parties you're representing relative
18 to this case.

19 A. Okay.

20 Q. And so as a general matter does -- if
21 it's okay, I'll just refer to it as "Exelon."

22 A. That's fine.

23 Q. Does Exelon benefit when bypassable rates
24 of AEP Ohio are increased or does that harm Exelon's
25 interest?

1 A. Well, Exelon and Constellation are retail
2 competitors, so if you increase the bypassable rates,
3 then the potential benefits of shopping, and again
4 holding all other things equal, will increase.

5 Q. So higher bypassable charges of AEP Ohio
6 would give more headroom for retail competition and,
7 thus, would benefit or potentially benefit Exelon; do
8 you agree?

9 A. Again, if you hold everything else equal,
10 then sure.

11 Q. Okay. So that's the factor that I'm
12 asking you about; bypassable rates, higher or lower,
13 higher helps Exelon, correct?

14 A. If you -- all other things equal, that's
15 correct.

16 Q. So how about the auction clearing price
17 that results -- if that results in lower SSO rates
18 for AEP Ohio, does that help Exelon compete?

19 A. Well, you have to look at in the context
20 of, you know, essentially your question is assuming
21 that there's a lower SSO rate, but somehow the
22 wholesale market rates don't change or, you know,
23 that Exelon as a, say, bidder in the auction, which
24 it can do, and therefore benefit from that, that if
25 the auction clearing price is lower, then there's

1 less of an incentive to shop if you assume that the
2 CRES provider cannot provide a similarly lower price,
3 which is probably not the case.

4 The auction price is part of the market,
5 it's a market price, so it's always going to be
6 related to the price in the market offered by CRES
7 providers. There's not a complete disconnect between
8 those.

9 Q. Okay. So Exelon would like a higher
10 auction clearing price as a supplier, but they'd like
11 a higher bypassable rate as a competitor; is that
12 fair?

13 THE WITNESS: Let me -- may I have that
14 read again? Just see if I got that correct.

15 (Record read.)

16 Q. "As a retail competitor" was the second
17 part.

18 A. As a retail competitor, holding all other
19 things equal, Exelon would probably -- as a
20 competitive supplier, would prefer a higher
21 bypassable rate. In terms of would it prefer a
22 higher auction price, you know, certainly as a seller
23 in the auction to succeed, Exelon, like every other
24 company, including AEP Ohio, would prefer a higher
25 auction price.

1 Q. Okay. Now, you testified recently in
2 AEP Ohio's capacity charge case. Do you recall that?

3 A. I do.

4 Q. And you also testified in AEP Ohio's ESP
5 case. I'm sure you recall that.

6 A. Both cases, yes.

7 Q. And in both of those cases you
8 represented or testified on behalf of FirstEnergy
9 Solutions, correct?

10 A. That's right.

11 Q. Okay. And has your position changed from
12 the positions you took in those proceedings on behalf
13 of FirstEnergy Solutions?

14 A. Could you be more specific on which
15 positions? I covered a lot of ground in those case,
16 so perhaps you'd be --

17 Q. Have any of your positions that you're
18 talking about in your testimony today, are they
19 different than they were in those cases?

20 A. I don't think so. I continue to believe
21 that AEP Ohio should not be granted any embedded cost
22 treatment of its capacity, but that ship has
23 apparently sailed for now. And I believe in as much
24 competition as possible.

25 Q. Okay. So just for the record, you do

1 disagree with the capacity charge decision that the
2 Commission issued last summer insofar as it allows
3 AEP Ohio to recover what you would call above-market
4 capacity charges, correct?

5 A. Yes. In combination with the
6 Commission's order in 11-346 that allows AEP Ohio or
7 its affiliates especially to participate in the
8 auctions.

9 I see that as a gross cross-subsidy that
10 should not be allowed by the Commission and I see AEP
11 getting embedded capacity costs as inappropriate in
12 general because, as I said in my testimony, they had
13 already recovered all their stranded costs and really
14 have no -- no right even as an FRR entity to
15 collecting those funds.

16 Q. Okay, so --

17 A. But, again, that ship has sailed.

18 Q. But you still disagree with it and you
19 disagree with the capacity deferral, and you'd like
20 to find a way to get around that, correct?

21 A. Well, if it were up to me and I was the
22 one writing the Commission order, then I would have
23 set the capacity price AEP could charge to the PJM
24 market price. I would probably also allow
25 100 percent -- a 100 percent auction right away.

1 Q. Okay. Now, did you have to get
2 FirstEnergy Solutions' permission to file testimony
3 in this case?

4 A. No, I did not.

5 Q. You did not get their consent to testify
6 on behalf of --

7 A. No, I did not.

8 Q. -- Exelon?

9 A. No.

10 Q. Okay. And but you are advancing
11 positions in this case that FES paid you to develop
12 in the capacity and the ESP cases, correct?

13 A. I don't really think so, Mr. Nourse.
14 Again, I take no position in this testimony on those
15 previous cases in terms of, I think you just
16 mentioned the capacity price, I take no -- as I said
17 in my testimony, I take no position on that except
18 that the Commission has decided, I understand the
19 decision is currently on appeal before the Ohio
20 Supreme Court, but that's where we are.

21 So it really has nothing to do with AEP
22 recovering stranded generation costs or being allowed
23 to charge an embedded capacity cost basis, not in
24 this testimony here.

25 Q. All right. Well, we'll get back to your

1 credit notion in a little bit.

2 So did you coordinate the development of
3 your testimony with FES or the other intervenors in
4 this case, or did Exelon develop it independent?

5 A. I developed it independently and, of
6 course, coordinated with Mr. Petricoff.

7 Q. Okay. Let me ask you to turn to page 3
8 and 4 of your testimony. You summarize your
9 positions I believe here in question and answer 6.

10 A. I see that.

11 Q. So I'll ask you to clarify a couple of
12 these items. If you look at item No. 4 on page 4,
13 you are stating "The Commission should reaffirm its
14 previous rejection of AEP Ohio's proposal to freeze
15 its Base Generation Rate throughout the entire term
16 of the ESP." Do you see that?

17 A. I do.

18 Q. Okay. Now, is this a reference to the
19 January through May 2015 time period?

20 A. No, it's not.

21 Q. What is it a reference to?

22 A. It's a reference to AEP's -- well, the
23 statement in No. 4 speaks for itself, throughout the
24 entire term of the ESP which is what AEP was
25 proposing is to freeze its base generation rate for

1 that entire period.

2 Q. Right. But you're referencing the
3 Commission's ruling and using that language so I'm
4 trying to understand what -- let me ask you to flip
5 back to page 25 at the end of your testimony, I
6 believe page 25, lines 3 through 5, you say beginning
7 January 1st, 2015, 100 percent AEP Ohio's SSO load
8 will be auctioned off and the Commission has set the
9 capacity cost to 188.88 per megawatt-day. Do you see
10 that?

11 A. Yes.

12 Q. That's a reference to base generation
13 rates for January through May 2015?

14 A. It would affect base generation rates,
15 yes.

16 Q. Yeah. And so is it your understanding
17 that the company under the ESP order, as you
18 understand it, the company has to reduce its base
19 generation rates prior to January 1st, 2015?

20 A. May I see the copy of the rehearing
21 order?

22 Q. Actually, I'll go ahead and make it an
23 exhibit because I'm going to use that anyway.

24 A. All right.

25 MR. NOURSE: Your Honor, I'd like to mark

1 as AEP Ohio, is it Exhibit 3?

2 EXAMINER PARROT: Yes. So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. PETRICOFF: Counsel, is this the
5 rehearing order of February the 23rd?

6 MR. NOURSE: This is the entry on
7 rehearing of January 30th, 2013, in the 11-346,
8 et al. cases, the ESP proceeding.

9 MR. PETRICOFF: We've got three entries
10 on rehearing, so this was January 30th?

11 MR. NOURSE: Yes.

12 Q. (By Mr. Nourse) Is that the rehearing
13 entry, Dr. Lesser, that you wanted to consult?

14 A. Yes.

15 Q. Okay. I think we had a question pending,
16 but I can --

17 A. Would you mind repeating the question?

18 Q. Okay. So I was trying to clarify your
19 statement in testimony here about freezing the base
20 rate throughout the entire term and -- as opposed to
21 scaling it back to the 188 level as you reference on
22 page 25 of your testimony beginning January 1st,
23 2015. And my question was whether it was your
24 understanding of the orders, the ESP orders, that
25 AEP Ohio needs to reduce its base generation rates

1 prior to January 1st, 2015.

2 A. Well, I don't address this directly in my
3 testimony in terms of, say, the rate blending
4 process. The problem is that the base generation
5 rate, as AEP represented that rate in the ESP
6 hearings, is somewhat different than how it's been
7 represented in this proceeding.

8 In this proceeding you're representing
9 the base generation rate as solely consisting of
10 capacity costs. In the ESP proceeding you didn't do
11 that, you said there's energy, capacity, and
12 ancillary services costs included in the base
13 generation rate, but none of them are cost based.

14 So in my view all I'm saying is that the
15 base generation rates should not be frozen for the
16 period of the auction during the auction process
17 which is what the Commission said.

18 Now, in terms of how to reduce those base
19 generation rates or change them, either you could use
20 the FERC -- the formula rate approach AEP has, which
21 changes every year and thus changes throughout the
22 auction process, and then in 2015 it's very clear
23 that the only legitimate price is \$188.88 per
24 megawatt-day as the capacity component of the base
25 generation rate.

1 Now, that component, what AEP proposed is
2 to, in fact, not base the base generation rate on
3 that \$188 value, but said we're going to use the 2014
4 FERC costs in 2015, which is clearly inappropriate.

5 Q. Okay. Well, you know, I'm going to avoid
6 getting too far into your characterizations of what
7 we said in that case and what we're saying in this
8 case; I'll let our witnesses' testimony stand. And
9 you certainly had an opportunity, Exelon did, to
10 cross-examine our witnesses on those kind of points.

11 But all I was asking you about was your
12 understanding of the Commission order, since you're
13 making a statement here on page 4 as one of your
14 recommendations and you're citing the Commission
15 order, so it's a very simple question. And I don't
16 think any of the stuff you -- points you made in your
17 answer really went to response to that question.

18 A. Well, I would disagree with you, and you
19 can certainly make a motion to strike my answer if
20 you think it's nonresponsive, but I think I answered
21 your question citing to the Commission order which
22 says, and I quote, "We find that AEP Ohio's request
23 to continue to freeze base generations through the
24 auction process is inappropriate and should be
25 rejected."

1 Now, at the time this was written, and to
2 this day, we still have not set a time what will the
3 specific timing of the auction process be, that's
4 part of this proceeding. So the Commission cannot,
5 obviously cannot point to a specific time frame, they
6 simply said this is the -- during the auction
7 process, presumably in this proceeding we'll find out
8 what that timing is.

9 Q. Okay. But you're -- so would you agree,
10 then, that based on the ESP order you don't glean a
11 conclusion that there's a particular time, other than
12 January 1st, 2015, by which the company has to
13 reduce its base rates to reflect 188?

14 A. I have no opinion on that.

15 Q. Okay. Thank you. That will shorten
16 things up quite a bit. I'm going past a couple pages
17 of notes.

18 All right. Can I ask you to turn to
19 page 12 of your testimony here.

20 A. I'm there.

21 Q. And in question and answer 17, my
22 understanding of this statement, you're basically
23 saying that it would not be a failure of the auction
24 if it produces a rate higher than the FAC because the
25 results of a competitive SSO energy auction are

1 completely different from AEP Ohio's variable costs.

2 Is that an accurate summary?

3 A. I think that's an accurate summary.

4 Q. So you're saying there's no reason to
5 link energy auction prices with the FAC cost
6 recovery, correct?

7 A. No. I'm saying that the mere fact that
8 an auction process results in auction clearing prices
9 that are higher than the FAC does not mean that
10 auction has failed. Assuming that the auction
11 manager, whoever you decide to hire as the auction
12 manager, determines that the auction was competitive,
13 was well run, all the different characteristics they
14 would evaluate, then that's a -- if that's a
15 competitive result, that's not an indication of
16 failure.

17 Q. Okay. But here in answer 17 you're
18 saying that those are completely different,
19 quote/unquote, the two items, FAC cost on one hand
20 and competitive market auction price on the other
21 hand, correct?

22 A. I'm saying that the results of a
23 competitive auction, yes, are different than
24 AEP Ohio's variable costs.

25 Q. They're two different things, completely

1 different. That's what you're saying, correct?

2 A. I believe I've answered your question.

3 Q. And I asked you if I was correct or not
4 that you're saying they're two different things,
5 they're completely different.

6 A. Well, I believe you're attempting to take
7 my answer out of context. Again, I'll state it that
8 AEP's FAC, its variable costs under schedule F of its
9 application are different than the results of a
10 competitive auction.

11 Now, if AEP happens to win in the
12 auction, that -- there presumably is some
13 relationship between AEP's costs, variable costs, and
14 what it would bid in the auction, but in general the
15 mere fact that, again, if I see -- observe that a
16 competitive auction results in a price greater than
17 AEP's FAC, that does not mean the auction has failed.

18 Q. Is your credit recommendation linked to
19 an AEP affiliate winning auction tranches?

20 A. No, it's not.

21 Q. Okay. On page 11 of your testimony you
22 state -- you're referencing an OEG argument there
23 starting at line 7.

24 A. I'm there.

25 Q. The quid pro quo for receiving a

1 cost-based rate for legacy generation is the
2 provision of energy from these coal units at cost.

3 Do you see that?

4 A. I do.

5 Q. Okay. Is that quid pro quo argument, is
6 that something you agree with, first of all?

7 A. Yes, I do agree with it as -- because all
8 customers, both shopping and nonshopping, have been
9 ordered by the Commission to pay AEP's embedded
10 capacity costs contrary to what I believe is a
11 correct decision. Then those customers under, and
12 let's just focus on nonshopping customers, those
13 customers under the traditional regulatory compact
14 essentially have a claim to the variable cost energy.

15 Q. Okay. So you kind of answered my next
16 question. So you're saying this quid pro quo theory
17 is really grounded in the traditional regulatory
18 compact; is that fair?

19 A. In terms of -- yeah, I think that's a
20 reasonably fair statement.

21 Q. And is that traditional regulatory
22 compact quid pro quo, is that the basis for your --
23 underlying your credit recommendation as well?

24 A. Actually, the credit recommendation, I
25 mean, that can certainly be part of it, but it also

1 goes directly to the calculation of the net embedded
2 capacity costs, which is that if AEP is selling
3 capacity either at -- in the auction and if AEP wins
4 the auction tranches and sells it at above its FAC,
5 then the way AEP would calculate the net embedded
6 capacity cost under the FERC formula rate would, in
7 fact, credit back those additional revenues.

8 And if AEP did not win the auction and
9 the result was above the FAC, then AEP, again, is
10 freed up to sell that additional energy into the
11 wholesale market, which will be at a higher price
12 than its FAC. And, again, therefore SSO customers
13 and all customers should be credited back all of
14 those profits AEP earns.

15 Q. Okay. So if AEP or its affiliates don't
16 win any auction tranches, or certainly if they don't
17 win all of the tranches, either way, your credit
18 proposal would capture and impute, really assume that
19 there would be market sales for all of those same
20 megawatt-hours at the same price that the auction
21 clears at; is that correct?

22 A. No, that's not correct.

23 Q. Okay. Please explain.

24 A. What I'm saying is let's take the example
25 of AEP not winning any auction tranches, but the

1 auction is nevertheless above AEP's FAC. In that
2 case, as I argue in my testimony, the market --
3 wholesale market price is almost certainly going to
4 be higher than AEP's FAC because AEP's high capital
5 cost generation, the trade-off with that is it has
6 low variable costs.

7 In that case AEP would be selling that
8 energy into the market and earning a profit, and so
9 what I do is approximate that by the difference
10 between the auction clearing price and the FAC.

11 Q. Right. That's what I just said. You're
12 assuming that all the same megawatt-hours that were
13 sold in the auction can be sold at the exact same
14 price in the market for the same period, correct?

15 A. Yeah, I'm essentially making that
16 simplifying assumption.

17 Q. Okay. So under the ESP order and the
18 capacity order as you understand them today does AEP
19 or its affiliates have to disgorge off-system sales
20 profits or margins and credit them to retail
21 ratepayers?

22 A. The way AEP -- the way the Commission
23 derived the 188.88 per megawatt-day value includes a
24 credit for off-system wholesale energy sales as well
25 as wholesale capacity sales and ancillary service

1 revenues, so my mechanism simply is an administrative
2 mechanism to try to address the concerns raised by
3 some of the parties that retail customers should not
4 be required to pay above -- above AEP's FAC costs for
5 energy when they're forced to also pay the embedded
6 costs.

7 Q. Okay. So your point about the capacity
8 charge order is that the Commission incorporate an
9 energy credit?

10 A. Correct.

11 Q. For the capacity that was priced in that
12 order; is that correct?

13 A. That's correct.

14 Q. And the capacity that was priced in that
15 order was what capacity?

16 A. The AEP capacity that is used to provide
17 FRR service.

18 Q. Specifically was the capacity pricing
19 that was decided in the 10-2929 case for shopping
20 capacity?

21 A. It was.

22 Q. And it was not applicable to nonshopping
23 capacity as part of the order.

24 A. I would disagree with that. No, I
25 believe that that same price should be applied to

1 nonshopping capacity and I believe that's the basis
2 for the FirstEnergy blending proposal which is not
3 exclusive of my crediting mechanism at all.

4 Q. Okay. Well, I understand you may believe
5 that it should be applied to nonshopping capacity,
6 but I was asking you as we sit here today and as we
7 look at the capacity orders what's your
8 understanding, does it apply -- not looking at the
9 ESP order which did different things, but the
10 capacity decision, did it apply to nonshopping
11 capacity?

12 A. The capacity order, in my understanding,
13 applied to shopping customers. The capacity order
14 was silent on its application to nonshopping SSO
15 customers. However, charging a different price to
16 customers for capacity is price discrimination and
17 should not be allowed.

18 Q. Okay. Are you stating that as a matter
19 of your understanding of Ohio law? Your price
20 discrimination statement.

21 A. I'm stating price discrimination is
22 anticompetitive, therefore, to the extent that Ohio
23 policies is to promote electric -- retail electric
24 competition under SB 3 and SB 221, pricing
25 discrimination is counterproductive and will restrict

1 competition, therefore, it's not whether Ohio law
2 specifically prevents price discrimination, federal
3 antitrust law certainly prevents price
4 discrimination.

5 Q. Okay. So you're making statements of
6 federal and Ohio law.

7 A. No, I'm not, sir. What I'm saying is --
8 I'll go back to my initial statement that from a --
9 if the policy of the state of Ohio is to promote
10 retail electric competition, which is how I interpret
11 SB 3 and SB 221, then price discrimination does not
12 promote retail competition.

13 Q. Okay. So you're making an economic
14 theory point.

15 A. That's correct.

16 Q. Okay. So, and in that economic theory is
17 it also correct that in order to conclude there's
18 price discrimination in any context, you also have to
19 conclude that the two situations being compared are
20 similarly situated and they're comparable
21 circumstances?

22 MR. PETRICOFF: Could I have that
23 question read back?

24 (Record read.)

25 A. Your question is so vague I can't answer.

1 Perhaps you can try to be a little clearer on what
2 you mean by "comparable circumstances." Are you
3 talking about economically comparable or legally
4 comparable?

5 Q. Well, I'm asking you to explain your
6 statement about price discrimination and your
7 economic point that -- you just said it was an
8 economic point, so we don't need to talk about the
9 legal distinction at this point, to explain your
10 statement about price discrimination. And isn't it
11 true that just because you have two different prices
12 doesn't mean there's discrimination unless there's
13 like and contemporaneous service and there are
14 comparable circumstances involved and comparable
15 services?

16 A. If the services are the same -- so let --
17 for example, I think it's easiest to answer your
18 question with just an example. AEP provides -- is an
19 FRR provider or FRR entity so it's providing capacity
20 support to all customers whether they receive
21 power -- buy power from CRES providers or they buy
22 power under the default service from --

23 Q. Dr. Lesser, I'm not asking you for any
24 extended example here or hypothetical. I asked you a
25 simple question about the theory that you just

1 stated.

2 MR. PETRICOFF: Your Honor, the witness
3 has been interrupted mid answer. He should be
4 permitted to complete his answer.

5 EXAMINER PARROT: Please continue,
6 Dr. Lesser.

7 THE WITNESS: Thank you, your Honor.

8 Well, you're talking about a comparable
9 product, that's why I'm using that example. It's the
10 same exact capacity that's being provided to all
11 customers. Therefore, charging one set of customers
12 a price of \$188 and another set of customers a price
13 of 350 or 250, or who knows what is in the base
14 generation rate, but if it's a different price than
15 188, that's price discrimination.

16 Q. Okay. Well, that --

17 A. And that's anticompetitive.

18 Q. Yeah. Okay. Was that your position in
19 the ESP and the capacity cases?

20 A. That's been my constant position, yes.

21 Q. Did the Commission adopt that position?

22 A. No. I believe the Commission erred in
23 not adopting that position.

24 Q. All right. I don't believe they erred on
25 that point but let's move on since we disagree.

1 Let me get back to my original question
2 that started all this, Dr. Lesser, and I asked you if
3 your understanding of the ESP order requires AEP Ohio
4 or its affiliates to disgorge off-system sales
5 margins or credit them to retail customers as it
6 stands today.

7 A. I don't know if AEP is legally required
8 to do that under the ESP orders. Under standard
9 regulatory practice if customers are going to be
10 required by the Commission to pay embedded capacity
11 costs, then the quid pro quo, as I explain in my
12 testimony, is that customers receive -- also receive
13 the profits earned by AEP on wholesale energy sales
14 that are supported by those retail customers who are
15 forced to pay embedded capacity costs.

16 Q. Okay. So by your answer, and my question
17 was about the ESP order and your understanding of it,
18 are you saying the Commission didn't follow standard
19 regulatory practice in the ESP order? Is that
20 what --

21 A. You're asking me a legal question. I'm
22 not -- I'm not saying that at all. I'm just telling
23 you, and as I've answered, under traditional
24 regulation here's what would apply.

25 Now, the Commission in 10-2929, when it

1 determined a capacity price, considered wholesale
2 energy sales margins, profits, and credited those
3 back against AEP's full-embedded capacity costs.
4 That is certainly proper, that's -- that is
5 consistent with the FERC formula rate. It's not what
6 AEP initially wanted in the 10-2929, but that's what
7 the Commission did.

8 Q. Okay. But let's clarify that and then
9 we'll get back to my other question again.

10 So the 10-2929 decision and the energy
11 credit that was applied to price shopping capacity
12 included off-system sales margins as part of the
13 credit -- the energy credit mechanism, correct?

14 A. That's correct.

15 MR. PETRICOFF: Your Honor.

16 Q. And that's -- what you're citing as your
17 reliance to support your theory in this case that
18 there should be a capture of off-system sales margins
19 and an offsetting credit to the benefit of retail
20 customers.

21 MR. PETRICOFF: Your Honor, I want to
22 object. That's a mischaracterization of the
23 testimony, unless counsel wants to indicate where in
24 his testimony he makes that statement.

25 MR. NOURSE: His verbal testimony today,

1 I think he just cited that as an example when I asked
2 him about whether the company's required to share or,
3 not just share, disgorge off-system sales margins to
4 retail customers and he cited that as an example.

5 MR. PETRICOFF: In that case, your Honor,
6 I want to object. These questions are far off the
7 written testimony. We are now delving into a
8 discussion about what the 10-2929 order did or didn't
9 do; that's outside the scope of the hearing.

10 MR. NOURSE: Your Honor, he's making a
11 very novel crediting argument here and he's relying
12 on principles that don't match up with the
13 Commission's existing orders, that are binding and
14 applicable, so I'm entitled to explore that.

15 EXAMINER PARROT: Overruled.

16 Q. (By Mr. Nourse) So, Dr. Lesser, you
17 mentioned the energy credit from the 10-2929 case.
18 Is it your understanding that the energy credit that
19 the staff contractor, Energy Ventures Analysis, had
20 recommended and the Commission adopted included
21 off-system sales margins in -- as part of the credit?

22 A. I don't believe the Commission actually
23 adopted the specific value that staff came up with.

24 Q. Okay. Dr. Lesser, I've got the opinion
25 and order here in the 10-2929 case.

1 MR. NOURSE: Your Honor, I'd like to mark
2 that as an exhibit, AEP No. 4.

3 EXAMINER PARROT: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. And I'd ask you to turn to page 34.

6 A. Did you say "34," sir?

7 Q. 34, yes.

8 A. Thank you.

9 Q. And can you read the bottom paragraph on
10 page 34 that carries over to page 35 and tell me
11 whether that refreshes your recollection about
12 whether the Commission adopted EVA's energy credit
13 methodology.

14 A. Do you want me to read that into the
15 record or just read it to myself?

16 Q. Read it to yourself and see if it
17 refreshes your recollection.

18 A. Well, on page 25 of this order it states
19 that staff's alternative recommendation is \$146.41
20 per megawatt-day, so -- and based on what you had me
21 look at on pages 34 and 35, the Commission is saying
22 it finds on the whole that staff's recommended energy
23 credit is reasonable, but that the Commission, in
24 adopting 188.88 per megawatt-day, as far as I can
25 tell, that's not the same as 146.41 per megawatt-day.

1 Q. Okay. Well, do you recall how -- let me
2 ask you this way: Is it your understanding that as
3 part of the staff's recommendation and as part of the
4 Commission's approach in deciding the capacity charge
5 case they adopted a demand charge as step 1, they
6 applied an energy credit as step 2, and then they
7 came up with 188.88 as the net capacity charge? Is
8 that your understanding?

9 A. Not -- no, not really.

10 Q. What's incorrect about that?

11 A. Well, I think you're oversimplifying the
12 first step of setting the demand charge. You're
13 grossly oversimplifying that.

14 Q. How so?

15 A. The demand charge that staff came up
16 with, as I recall, and I certainly don't have staff's
17 testimony in front of me so I'm recalling from
18 memory, included numerous adjustments to AEP Ohio's
19 proposed number, which was \$355 per megawatt-day.

20 Q. Right. So since we're on that same
21 section at page 34, you're referring to Staff Witness
22 Smith who sponsored the demand charge portion of the
23 analysis.

24 A. Where are you reading, sir?

25 Q. The first full paragraph on page 34.

1 It's talking about the Staff Witness Smith's demand
2 charge testimony.

3 A. All right.

4 Q. And if you read that whole paragraph,
5 you'll see that there's specific adjustments made to
6 staff's demand charge and they come up with an
7 adjusted demand charge as step 1. That's what I was
8 referring to before.

9 A. All right.

10 Q. And then step 2 is the energy credit.
11 And you agree that, bottom line on page 34 says
12 "...we find that EVA's methodology should be
13 adopted...", and it goes on at the top of page 35 to
14 make a single adjustment to the staff's energy credit
15 based on the Wheeling Power Company's allocation of
16 \$5, and then they go on to apply the 147.41 to the
17 net effect of a net capacity charge of 188.88 per
18 megawatt-day, so that's what I was describing before.
19 Does that refresh your recollection?

20 A. Well, I'm reading the order, so I, you
21 know, I'm -- if you want to look at it that way,
22 that's fine, you subtract off an energy credit.
23 Fine. That's consistent with what I'm recommending
24 in this case --

25 Q. Okay.

1 A. -- that there be a energy credit. I'm
2 not basing my credit on this decision. What I'm
3 saying is that it's consistent with using -- putting
4 in an energy credit that was done also in this case
5 and accepted by the Commission.

6 Q. Okay. Well, if one aspect of this is if
7 the staff's energy credit already included -- it
8 already attributed off sales -- excuse me. Let me
9 back up and start over on this question.

10 If the staff's energy credit that the
11 Commission adopted in that 10-2929 case also
12 incorporated SSO margins, standard service offer
13 margins, as part of that calculation, wouldn't that
14 undercut rather than be consistent with your
15 crediting proposal?

16 A. I'm sorry, under included SSO margins?

17 Q. You just stated --

18 A. So you're saying that -- let me see if I
19 understand your question. You're saying that staff's
20 calculation includes margins made on sales to SSO --
21 retail SSO customers rather than not -- than
22 wholesale customers. Is that what . . .

23 Q. If the staff's energy credit included
24 across-the-board margins on SSO and off-system sales,
25 ironically we're talking about SSO and OSS being the

1 two categories, but yes.

2 A. I don't recall. I'd have to review the
3 staff's testimony and all the workpapers at this
4 point. I just don't recall.

5 Q. And if it did, would you agree that
6 undercuts your credit rather than being consistent?

7 A. No, not at all, because you're, again,
8 you're misinterpreting my testimony. What I'm
9 suggesting is that staff's, as I recall, the staff
10 analysis did not take into account auction revenues.
11 The staff -- so, in other words, the staff didn't
12 assume that, for example, AEP would be winning, say,
13 tranches in an auction or not winning tranches in an
14 auction and then selling that additional power. So
15 it doesn't affect my recommendations whatsoever.

16 Q. But your auction tranches that you're
17 using as an example there, those are chunks of power,
18 chunks of energy that were previously served by
19 AEP Ohio as SSO, nonshopping load, correct?

20 A. That's correct.

21 Q. So if the staff's energy credit in the
22 capacity charge proceeding already incorporated SSO
23 margins in calculating their energy credit, wouldn't
24 it be double-counting to try to do that again here?

25 A. Nice try, but no. You're completely

1 wrong, because the SSO, the way the staff
2 calculated -- in that case we weren't looking at
3 auction prices clearing above the FAC. In the ESP
4 cases the ESP price -- the SSO price within the ESP
5 is based on AEP Ohio's FAC, not a blending of the --
6 of an above-market auction price on top of that FAC.

7 Q. So are you saying you don't think the
8 staff, when it calculates a margin, would back out
9 the cost which is identical to the fuel cost that
10 goes through the FAC? Isn't that the definition of a
11 margin?

12 A. That would be part of the margin estimate
13 is what the variable costs are.

14 Q. Okay. You spoke of this trade-off that
15 relates back to your regulatory compact notion that
16 paying for capacity entitles someone to low-cost or
17 cost-based energy, correct?

18 A. That would be my interpretation of the
19 regulatory compact, yes. One part of it, certainly.

20 Q. Okay. And is it your understanding that
21 the Commission incorporated that traditional
22 regulatory compact theory in the ESP orders?

23 A. I have no opinion on what the Commission
24 did or did not incorporate. The regulatory compact,
25 as you recall, is not written down law anywhere, it's

1 an unwritten rule. So whether the Commission in its
2 decision incorporated an unwritten rule, you'd have
3 to ask the Commission.

4 Q. It's an unwritten rule for traditional
5 regulatory jurisdictions, correct?

6 A. It's a -- well, it applies a little more
7 broadly than that probably, but it certainly applies
8 to traditional regulation and traditional regulation
9 includes being guaranteed full cost recovery.

10 Q. And would you characterize the Senate
11 Bill 221 regulatory regime in Ohio as a
12 traditional -- as traditional regulation?

13 A. Well, the idea behind SB 221 was to
14 promote retail competition, but, you know, since AEP
15 is -- seems to have been fighting it bitterly, AEP
16 has wanted to recover its costs that it could recover
17 in a traditional regulatory environment. That's the
18 whole purpose for your 10-2929 case where you asked
19 for full embedded cost recovery based on various
20 theories on your requirements as an FRR entity
21 somehow being different than everyone else providing
22 capacity, you know, and receiving a wholesale market
23 price.

24 Q. Okay. Well, I understand, as we've gone
25 over several times, that you disagree with the

1 Commission's decision in the capacity case, but what
2 I'm asking you is whether the Senate Bill 221
3 regulatory regime is traditional regulation, in your
4 view. Yes or no?

5 A. It's not traditional regulation.

6 Q. Okay.

7 A. It was designed to encourage a move to
8 full retail competition.

9 Q. So even if we look to a state or a
10 jurisdiction that employs traditional cost-based rate
11 of return regulation principles, is it common or
12 uncommon to capture 100 percent of off-system sales
13 margins in those jurisdictions and credit them
14 entirely to retail customers?

15 A. I'm sorry, in a traditional system?

16 Q. Yeah.

17 A. That's quite common.

18 Q. To capture 100 percent.

19 A. That's often the case, especially in
20 cases -- well, before there were really wholesale
21 markets and you had just economy energy transactions,
22 utilities would always credit all the revenues back
23 to customers.

24 Q. Is that the case for AEP, AEP East
25 companies, to your knowledge, that they all --

1 A. No. There's a wholesale market in PJM.
2 But, again, in my view AEP should be credit -- as
3 long as AEP is being paid its full embedded costs,
4 the quid pro quo of that is to credit back to those
5 customers the additional wholesale energy margins
6 that AEP earns from sales into the market.

7 Q. Okay. So that's the theory you're
8 resting your credit recommendation on.

9 A. That's one of them, yes.

10 Q. What are the other theories?

11 A. Well, again, you just asked me about the
12 regulatory compact.

13 Q. Okay. That's the main rationale, right?

14 A. Well, to essentially to prevent -- to try
15 to come up with a way to forward competition in
16 competitive markets to get us through this transition
17 to full competition while not, you know, addressing
18 OEG's concerns and IEU's concerns and OCC's concerns
19 that SSO customers will be further harmed.

20 Q. So how about a -- how about a
21 less-pervasive purchase that AEP Ohio would make not,
22 say, from a large energy auction like we're talking
23 about but just a purchased power transaction? Do you
24 follow me?

25 A. I'm not sure what you mean by

1 "less-pervasive purchase."

2 Q. Well, not as many tranches, a more
3 routine purchased power contract that AEP Ohio
4 purchases energy to support SSO load, that's very
5 common; would you agree?

6 A. I don't know if AEP, what -- you know,
7 other than OVEC, I'm not sure what AEP's purchased
8 power contracts are.

9 Q. Okay. But if AEP Ohio makes a purchase
10 externally rather than generating its own electricity
11 and recovering fuel costs related to that, is it your
12 understanding they're permitted to recover purchased
13 power costs through the fuel adjustment clause?

14 A. If the purchased power is found to be
15 prudent, then AEP should be allowed to recover that.

16 Q. Okay.

17 A. So presumably AEP would be purchasing
18 power when the cost is, in fact, less than the
19 variable cost of its own generating units.

20 Q. And does that mean that the generating
21 units wouldn't run or they would support any
22 contractual or wholesale obligations that may be out
23 there, or does it just mean that they're not charged
24 to ratepayers because they're not the lowest cost in
25 the stack?

1 A. Well, it could mean a variety of things.
2 I mean, you don't tag electrons so you can't say that
3 this electron from this plant is serving this
4 customer. It could mean that AEP is using that
5 generation for some other reliability-related
6 purpose; it just depends.

7 Q. Okay. Have you done any financial impact
8 analysis of your proposed credit on AEP Ohio?

9 A. No, I have not.

10 Q. Do you have any idea how much it would
11 cost?

12 A. No, because I don't know what the auction
13 clearing prices will be. And I don't know what AEP's
14 future FAC will be either.

15 Q. Do you know what the capacity deferral
16 amount is?

17 A. In total? No.

18 Q. And does -- could your credit actually
19 exceed the amount of the deferral or completely
20 extinguish the deferral under your proposal?

21 A. I would very much doubt that.

22 Q. But you'd very much like that, wouldn't
23 you?

24 A. Would I like that?

25 Q. Yeah.

1 A. What I like or don't want -- like is
2 immaterial.

3 Q. Okay. That's not what your
4 recommendation is all about, reducing the deferral?

5 A. My recommendation is not to eliminate the
6 deferral account.

7 Q. Okay. Well, it's pretty transparent to
8 me that you linked these two up. Why did you link --
9 why did you link this energy auction result to
10 eliminating the capacity deferral?

11 A. First off, you're mischaracterizing my
12 testimony. I did not say eliminate the capacity
13 deferral anywhere in my testimony.

14 Q. Reducing it or eliminate.

15 A. I would reduce the deferral based on this
16 credit because I believe that is an administratively
17 simple approach to address the problem that OEG, IEU,
18 and OCC have raised, that rather than trying to map
19 the credits back to specific SSO customers because
20 whoever -- who is an SSO customer can change over
21 time, in my view establishing this credit would not
22 affect -- would not distort market prices, it would
23 not distort the auction, it would allow for a
24 competitive auction to take place, but it would
25 recognize that if the auction prices are, in fact,

1 higher than the FAC, that some of that -- that money
2 should go back to benefit customers, and I thought
3 the easiest administrative way to do that is just to
4 credit it against whatever the regulatory asset will
5 be because at this point we don't know how much that
6 regulatory asset will total, we don't know how the
7 Commission will have AEP recover it over what time
8 period.

9 Q. Okay. Well, being easy doesn't
10 necessarily mean that it's fair or logical or legal
11 or anything else, does it? Just because it's easy.

12 A. Well, I would suggest that AEP Ohio's
13 approach is one of the most convoluted solutions
14 possible, but that's my own opinion.

15 Q. So you're just deflecting --

16 A. I think it's logical. I think it's
17 administratively simple, which is important, it is an
18 important consideration when you're doing rate
19 regulation to have something that's understandable,
20 and it's certainly logical and it's appropriate.

21 Q. Okay. Well, it would be easy to take a
22 pile of money off of a table that wasn't yours
23 either, but that doesn't make it right, does it?

24 MR. PETRICOFF: Objection.

25 Argumentative.

1 EXAMINER PARROT: Sustained.

2 Q. Dr. Lesser, doesn't your credit proposal
3 just transfer money from AEP to auction suppliers?
4 Isn't that the net effect?

5 A. No. That's completely wrong.

6 Q. The alternative that you're addressing
7 from OEG and IEU is that AEP would continue to serve
8 the energy load at the cost, presumably at or near
9 the cost that it has in the past and would otherwise
10 incur; that's the proposal -- that's the proposal
11 you're addressing with your alternative credit.

12 A. No, you've got that --

13 Q. I thought that's what you just stated in
14 your answer.

15 A. No, it's not what I just stated,
16 Counselor. You're misinterpreting what I said. We
17 haven't -- there is going to be an auction for some
18 of the SSO load, 10 percent, then 60 percent, then
19 100 percent.

20 If AEP wins tranches in that auction, it
21 will serve that load at whatever the auction price --
22 auction clearing price is. That clearing price could
23 be below the FAC, it could be above the FAC, I don't
24 know what the clearing price is going to be. Just
25 like your witness Dr. LaCasse said yesterday, she

1 didn't know what the clearing price would be.

2 So I'm not proposing to take money and
3 put it into the hands of auction suppliers; that
4 makes no sense.

5 Q. You're advocating that we do the auction,
6 if it produces higher rates, the auction suppliers
7 would have a margin on that or else they wouldn't
8 have bid in voluntarily, and you're saying AEP and
9 any of its affiliates would be obligated, then, to
10 sell all the same power into the market at the same
11 exact price and then disgorge the entire margin for
12 the benefit of retail customers just to be able to
13 offset the higher price that the auction suppliers
14 would be offering through the auction.

15 A. I'm not saying -- I'm not suggesting any
16 obligation on AEP's part to sell power into the
17 wholesale market. I'm saying that AEP Ohio would be,
18 under -- I would assume would be receiving additional
19 revenues above its variable costs that would
20 otherwise collect through the FAC if the market price
21 in the auction was higher than the FAC.

22 Therefore, in my view, it's appropriate
23 to credit back those additional revenues earned by
24 AEP Ohio or its affiliates back to customers.

25 Q. So your only difference between my

1 statement and your answer is that you're not
2 obligating AEP to go sell it, but you're assuming
3 that that would happen and you're imputing that
4 margin as a credit to offset the very real costs that
5 are involved with the capacity deferrals, correct?

6 A. Only -- there's only an offset if the
7 auction price, clearing price, is greater than the
8 FAC. If the auction price is the same as the FAC or
9 below, there's no credit whatsoever.

10 Q. Right. And everything else I said was
11 correct, that's the only thing you wanted to add.

12 A. I'm making an assumption that the market
13 price AEP would receive is either the auction price
14 or is a wholesale market price that would be --
15 approximate that auction clearing price.

16 Q. Okay. And if there were no concerns like
17 those that have been raised from OEG and IEU about
18 the potential for the auction clearing price to be
19 above the legacy fuel rate price, you wouldn't even
20 need to go down this road about pursuing the credit,
21 would you?

22 A. So you're saying if we somehow knew that
23 the auction price was going to be at or below the FAC
24 price? Yeah, that's correct.

25 Q. No, what I'm asking is, you know, the

1 Commission chose to order the energy auctions as part
2 of the ESP, correct?

3 A. That's correct.

4 Q. And is it your recollection that the
5 Commission rejected the notion that there would be
6 any rate impacts related to the auction as a reason
7 not to do the auction?

8 A. Well, the Commission has language about
9 rate caps, I believe there's a figure, a 12 percent
10 value that was discussed yesterday.

11 Q. Okay. That's not what I'm talking about.
12 Just let me ask you this way: The reason you're
13 doing your credit is to avoid an adverse impact on
14 retail customers of the energy auction, correct?

15 A. No. That's not correct. The purpose of
16 the crediting mechanism is -- needs to be considered
17 in the context of full transition to competition. So
18 we have less than 24 months where -- before there's
19 full, complete competition, retail competition.
20 That's the ultimate goal that has to be recognized.

21 What I'm suggesting is that in this
22 transition we want to preserve the auction because
23 that's part of the transition to competition, but at
24 the same time I'm trying to recognize that, well,
25 because of the auction customers may be further

1 impacted, SSO customers may be further affected by
2 higher prices than they would otherwise pay if there
3 was no auction and were just paying the FAC.

4 So if the -- if the SSO rate was the
5 traditional, you know, we're paying embedded capacity
6 and we're paying the variable costs under, say that's
7 the old brick cost-of-service method, because the
8 auction could result in higher prices, here's a way
9 to provide some protection down the road to customers
10 without skewing the resulting market prices, without
11 damaging the auction or preventing the auction from
12 being cleared, and getting us to that transition.

13 Q. Thank you. You say the things I say more
14 eloquently with more words but I think we're agreeing
15 on some things.

16 A. I get paid by the word, Counselor.

17 Q. Okay. Let me actually change topics here
18 and ask you to turn to pages 24 and 25 of your
19 testimony, the, I guess the final topic you address
20 here regarding the FAC fixed-cost rider and the
21 demand charge recovery. Are you there?

22 A. I'm there.

23 Q. Okay.

24 MR. PETRICOFF: I'm sorry, Counselor,
25 what page was that?

1 MR. NOURSE: 24 and 25, it's Roman
2 numeral IV.

3 Q. Okay. So you're basically saying for the
4 last five months of the ESP, the January through
5 May 2015 period, that you don't believe the fixed or
6 nonenergy component of the FAC should be recovered?

7 A. There should be no FAC starting -- fixed
8 or variable starting January 1st, 2015, because
9 100 percent of the power will be supplied by auction
10 and the Commission set the price at 188, so all --
11 everyone who's supplying power in the auction will be
12 supplied by capacity by AEP during that five-month
13 period at the 188 price.

14 So the Commission set the price, there's
15 no other additional cost to recover.

16 Q. Well, there will be an FAC at a minimum
17 for over/underrecoveries during that period; is that
18 correct?

19 A. If we ignore that the complexities of the
20 administrative portion, if, for example, it had fully
21 recovered exactly, then there would be no FAC, but
22 you're absolutely right, there is -- there could be
23 an administrative, you know, essentially balancing
24 the remainder out.

25 Q. Okay. But to clarify, your point here in

1 Roman numeral IV relates to January through May 2015
2 period, you're not advocating that prior to
3 January 2015 the company should not be permitted to
4 recover its demand charges in the FAC, are you?

5 A. Unless it's found that the company's
6 proposal to split up the FAC into that fixed
7 component is, in fact, double recovering capacity
8 that's already included in the base generation rate,
9 if that's the case, then yes, I would oppose that,
10 but I have no evidence of that.

11 So assuming that the existing FAC is just
12 split off into fixed and variable components that the
13 company would otherwise recover, then that's fine.

14 MR. NOURSE: Thank you, Dr. Lesser.
15 That's all I have.

16 EXAMINER PARROT: Mr. Reilly.

17 MR. REILLY: We have nothing, your Honor.

18 EXAMINER PARROT: Any redirect,
19 Mr. Petricoff?

20 MR. PETRICOFF: Could I have a couple
21 minutes first?

22 EXAMINER PARROT: You may. Actually,
23 let's go off the record and we'll take a five-minute
24 break.

25 (Recess taken.)

1 EXAMINER PARROT: Let's go back on the
2 record.

3 Any redirect?

4 MR. PETRICOFF: Yes, your Honor. I have
5 a couple of questions.

6 - - -

7 REDIRECT EXAMINATION

8 By Mr. Petricoff:

9 Q. Dr. Lesser, earlier today Mr. Nourse
10 asked you questions concerning your opinion of the
11 Commission's order as it applies to capacity in the
12 docket 10-2929 and the docket 11-346 cases. Were the
13 answers you'd given your personal answers or the
14 opinions of the Exelon Generation Company,
15 Constellation NewEnergy Corporation?

16 A. Those were just my personal views.

17 Q. And do you happen to know whether Exelon
18 Generation and Constellation NewEnergy have appealed
19 the capacity decisions in 10 --

20 A. I don't believe they have.

21 Q. Also, Mr. Nourse asked you some questions
22 concerning the 10-2929 opinion and I think that
23 was -- gave you AEP Exhibit 4. Do you still have
24 that with you?

25 A. I do.

1 Q. Does AEP Exhibit 4, the 10-2929 opinion,
2 address the capacity or rates for nonshopping
3 customers?

4 A. No. It was solely focused on shopping --
5 or, shopping customers.

6 Q. Did it address having a capacity -- I'm
7 sorry, a fuel adjustment or energy auction for SSO
8 customers?

9 A. No, it came out, gosh, six months before
10 the orders on -- for auctions started coming out.

11 Q. In fact, let's get that date specifically
12 on the record, if you have it in front of you. Do
13 you see what the date was for the 10-2929 decision
14 you were referring to?

15 A. Yes. It says it was dated July 2nd,
16 2012.

17 Q. Okay. And do you still have with you AEP
18 Exhibit No. 3?

19 A. I do.

20 Q. And what's the date of that opinion?

21 A. That's dated January 30th, 2013. So
22 approximately seven months later.

23 Q. In your opinion, did the 10-2929 case
24 foresee an energy auction and prescribe how it should
25 be priced?

1 A. No, not at all.

2 MR. PETRICOFF: No further questions,
3 thank you.

4 EXAMINER PARROT: Any recross, Mr. Lang?

5 MR. LANG: No, your Honor.

6 EXAMINER PARROT: Mr. Kurtz, Ms. Grady,
7 Mr. Pritchard?

8 MR. PRITCHARD: None.

9 EXAMINER PARROT: Mr. Nourse?

10 MR. NOURSE: No, thank you.

11 EXAMINER PARROT: You're excused. Thank
12 you, Dr. Lesser.

13 Mr. Petricoff.

14 MR. PETRICOFF: Yes, your Honor, at this
15 time we would like to move for admission of Exelon
16 Exhibit No. 1 and I assume there's no reason to move
17 for 1A.

18 EXAMINER PARROT: Well.

19 MR. PETRICOFF: Well, go ahead, let's put
20 them both in.

21 EXAMINER PARROT: Okay. Any objections
22 to the admission of either Exelon Exhibit 1 or 1A?

23 MR. NOURSE: No.

24 EXAMINER PARROT: Hearing none, Exelon
25 Exhibits 1 and 1A are admitted.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 EXAMINER PARROT: Mr. Nourse, with
3 respect to your exhibits, I don't believe they are
4 Commission orders, I don't believe it's necessary to
5 move them into the record. They are Commission
6 orders and stand for themselves. I believe it would
7 be appropriate to mark them for purposes of --

8 MR. NOURSE: They were mainly for
9 purposes of cross-examination.

10 EXAMINER PARROT: Exactly.

11 MR. NOURSE: How about if we take
12 administrative notice of them.

13 EXAMINER PARROT: We can do that.

14 MR. NOURSE: If we're going to do that I
15 guess it probably makes sense to, because we're going
16 to also talk about it with the next witness, take
17 administrative notice of the opinion and order in the
18 ESP as well as the entry on rehearing in the 10-2929
19 case, so that it rounds it out. The entry on
20 rehearing in the 10-2929 case I'm talking about the
21 October 17th, 2012, entry on rehearing. Thank you,
22 your Honor.

23 EXAMINER PARROT: Okay. That's fine.

24 Anything further from Mr. Petricoff?

25 MR. PETRICOFF: No, your Honor.

1 EXAMINER TAUBER: Mr. Lang?

2 MR. LANG: Thank you, your Honor.

3 FirstEnergy Solutions would call Sharon Noewer.

4 EXAMINER TAUBER: Ms. Noewer, please
5 raise your right hand.

6 (Witness sworn.)

7 EXAMINER TAUBER: Thank you.

8 THE WITNESS: Thank you.

9 MR. LANG: And, your Honor, if I could
10 approach, we do have premarked copies of her
11 testimony --

12 EXAMINER TAUBER: You may.

13 MR. LANG: -- with the changes discussed
14 yesterday morning.

15 - - -

16 SHARON L. NOEWER

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

19 DIRECT EXAMINATION

20 By Mr. Lang:

21 Q. Ms. Noewer, can you introduce yourself,
22 please?

23 A. Yes. My name is Sharon Noewer, I'm the
24 Director of Competitive Market Policies for
25 FirstEnergy Solutions.

1 MR. LANG: Your Honors, we'd like to mark
2 Ms. Noewer's prefiled testimony and we'll indicate
3 the changes to it as FES Exhibit 7, please.

4 EXAMINER TAUBER: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. Ms. Noewer, do you have before you what's
7 been marked as FES Exhibit No. 7 as your prefiled
8 testimony?

9 A. Yes, I do.

10 Q. Was this prepared by you or under your
11 supervision?

12 A. Yes, it was.

13 Q. And as was discussed yesterday, there
14 were some changes and deletions from your testimony
15 that resulted from discussions with AEP. Could you
16 cover those again so that it's clear in the record,
17 please.

18 A. Sure. Turning to page 1 starting with
19 line 14 through the end of line 16, that should be
20 stricken.

21 Going to page 3, line 17, the fourth --
22 the fifth word in, "four" should be changed to the
23 word "three."

24 Line 23 on that page right before the
25 number 3 should be inserted the word "and."

1 On the top of page 4 beginning at the end
2 of line 1 there should be a period after the word
3 "rates." And the whole rest of that sentence
4 including the "and," all of line 2, and line 3
5 through the end of the sentence with the word
6 "auction" should be deleted.

7 Turning to page 13 starting at line 10
8 through line 22, that should be deleted. All of page
9 14 would be deleted. And then page 15, line 1
10 through the end of line 12 should be deleted.

11 Q. Thank you. And would you have any other
12 corrections to make to your testimony?

13 A. I have one typographical error that I
14 wanted to correct on page 11, line 20. It now reads
15 "The FCR and APR should rejected," and I want to
16 inserted the word "be" between "should" and
17 "rejected" so it will read "should be rejected."

18 Q. If I were to ask you the questions in
19 your testimony with the modifications that you've
20 just stated, would you provide the same answers?

21 A. Yes.

22 MR. LANG: Your Honors, the witness is
23 available.

24 EXAMINER TAUBER: Thank you.

25 Mr. Petricoff?

1 MR. PETRICOFF: No questions, your Honor.

2 EXAMINER TAUBER: Mr. Kurtz?

3 MR. KURTZ: Just a couple.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Kurtz:

7 Q. Good morning.

8 A. Good morning.

9 Q. Would you characterize your proposal
10 similar to the blending envisioned through the MRO
11 process?

12 A. I would say it's similar to that, yes.

13 Q. How so?

14 A. Well, when you have an MRO, what you're
15 doing is blending in percentage that you get in an
16 auction that's usually energy and capacity with the
17 existing rates if it's a partial auction.

18 Q. So the main difference would be that with
19 an MRO blending you would blend in actual market
20 capacity rates whereas you're proposing to blend in
21 what is higher than market, the 188 for capacity.

22 A. That's correct, as the Commission
23 determined.

24 Q. Right. So an MRO blending would be
25 better for consumers, all else equal, than your

1 proposal, would you agree?

2 A. I don't know what "all else equal" means,
3 Mr. Kurtz, but I do agree that the 188 is above
4 market capacity, yes.

5 Q. But your proposal is, well, for consumers
6 who -- you would agree that your proposal is better
7 for consumers than AEP's proposal for nonshopping
8 consumers.

9 A. Yes.

10 Q. Okay.

11 MR. KURTZ: Thank you. Those are all my
12 questions.

13 EXAMINER TAUBER: Thank you.

14 Ms. Grady?

15 MS. GRADY: No questions, your Honor.

16 EXAMINER TAUBER: Mr. Pritchard?

17 MR. PRITCHARD: No questions, your Honor.

18 EXAMINER TAUBER: Mr. Nourse?

19 MR. NOURSE: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Nourse:

23 Q. Good morning, Ms. Noewer.

24 A. Good morning.

25 Q. I want to first talk about FES's interest

1 in this case and positions overall. So does FES have
2 an interest in AEP Ohio's bypassable rates going up
3 or going down?

4 A. Well, FES's interest is making sure that
5 the AEP rates transition to market, whether that's up
6 or down, and FES is both a retail supplier and a
7 wholesale supplier, so we also have an interest in
8 this case in understanding what AEP will be
9 translating the auction results into retail rates so
10 that consumers, when they look at AEP's rates and
11 they make their shopping decisions, they can have a
12 good understanding of what that is and we can help
13 them with that.

14 In terms of the wholesale side, what
15 we're interested in in this case is understanding
16 what the competitive bid process itself will look
17 like to make sure that it's fair and
18 nondiscriminatory so we can participate in that.

19 Our other interest in this case in our
20 blending proposal, which we think is the most
21 reasonable, is that customers have the opportunity to
22 take advantage of market-based pricing and whether
23 that is, you know, higher or lower or bypassable in
24 this case is -- our interest is moving to market.

25 Q. So is your third point there -- you

1 mentioned retail, you mentioned wholesale, and then
2 you mentioned AEP Ohio customers, is that third
3 point, is that something different than your
4 wholesale and retail interests, you're just looking
5 out for our customers' interests independent of
6 FES's?

7 A. I think it's all related because when I
8 think about the competitive marketplace, to the
9 extent that the auctions don't get blended in
10 accordance with FES's proposal and the Commission's
11 decision is my fair reading of what's in those
12 orders, then customers might in the end pay more or
13 the auctions might fail because they pay more because
14 the blending isn't done properly.

15 I think that gives customers, then, a
16 sour taste about the competitive market, so in that
17 case I really do believe that customers' view of the
18 competitive market are inextricably linked to FES as
19 a wholesale and retail provider.

20 And, in addition to that, I mean, you
21 know, in parts the competitive market -- if AEP's
22 proposal is accepted in this case, it would have an
23 additional, at least in my illustrative example,
24 roughly \$180 million in a subsidy that other market
25 participants don't get, so -- like FES. So we have a

1 number of interests in this case and they're all
2 linked together in terms of pursuing a viable and
3 robust competitive market.

4 Q. All right. So breaking it down with the
5 retail interest, you're indifferent as to whether the
6 price to compare goes down or up as long as there's
7 good competition; is that your answer?

8 A. I'm interested in having the price to
9 compare reflect market as indicated in our proposal.

10 Q. In FES's financial interests it's okay if
11 AEP Ohio's price to compare goes down, you're
12 indifferent to that, is that what you're saying?

13 A. No, I said that overall in my view
14 there's many more reasons to consider for FES's
15 interests than just the price to compare. Notably
16 the ones I raised about the additional subsidy that I
17 think has broader implications than your narrow
18 question to me on just the price to compare.

19 Q. So on the wholesale side would you say
20 that FES would be more interested in bringing in a
21 lower clearing price in order to facilitate
22 competition or would it be more interested in getting
23 a higher auction clearing price?

24 A. We're interested in the market working,
25 whatever that means, because any time you use the

1 word "higher" or lower," you're comparing it to
2 something, and in this case and in every case what
3 we're interested in is moving the market, whatever
4 that means, higher or lower.

5 Q. And is it your general understanding that
6 the -- between the capacity decision and the ESP
7 decision for AEP Ohio the Commission has adopted a
8 plan to move AEP Ohio fully to market?

9 A. I think the Commission has set forth in
10 their ESP a plan to move AEP to market.

11 Q. Do you agree with that plan?

12 A. I think that as we both know those issues
13 were really litigated quite extensively and that some
14 are also on appeal, so I can't say that I fully agree
15 with the Commission's plan. What my proposal in this
16 case does is implement what I believe is a fair
17 reading of the Commission's orders in this case on
18 how to transition the auctions to market. And I
19 think it actually has the plan that adheres to the
20 Commission's orders and interested individuals in
21 this case, which is moving towards a market-based
22 system.

23 Q. Okay. We'll get to your reading of the
24 Commission order shortly, but are you implementing
25 the plan that the Commission's adopted or are you

1 trying to add to the plan?

2 A. I'm implementing the plan.

3 Q. And you're not trying to add to it?

4 A. No, I don't believe I'm trying to add to
5 it. My reading of the Commission's orders, I've set
6 forth what I believe is FES's proposal, the most
7 reasonable proposal, to implement the Commission's
8 orders.

9 Q. Okay. Now, you're recommending a lower
10 base G and a reduction to the fixed costs currently
11 recovered through the FAC, correct?

12 A. What I'm recommending is a blending of
13 the auction, so you have a 10 percent energy auction,
14 and as AEP Ohio recognizes, there's two pieces to
15 generation service, there's energy and then there's
16 the capacity to support that auction. So that's been
17 recognized in the case.

18 And what I'm suggesting is that all of
19 that ought to be blended in per the Commission's
20 order with the base generation rates and the fixed --
21 and all of the FAC.

22 Q. Okay. But what I'm getting at is, just a
23 background question, so your recommendation to reduce
24 the FAC, to reduce base G, would you agree that both
25 of those have the impact of lowering the price to

1 compare for AEP Ohio?

2 A. When you say "reducing," what, again, I'm
3 referring to is the blending in of the 10 percent as
4 indicated by the Commission's order, but I do think
5 the effect of the blend will be to reduce the price
6 to compare.

7 Q. And the FAC is the other part of my
8 question.

9 A. I thought I addressed both of those.

10 Q. Both of your recommendations reduce the
11 price to compare; is that correct?

12 A. Well, I won't know what the -- there's
13 two pieces to the FAC, the FCR, the fixed cost
14 component; my recommendation is to blend that down as
15 a part of the FAC. The variable portion, I don't
16 know what the auction clearing price will be for
17 energy so I can't really say what will happen with
18 that piece.

19 Q. But you're reducing what it otherwise
20 would have been if both components were in, correct?

21 A. I'm reducing for the base generation
22 replacing the 10 percent with the Commission-ordered
23 188.88 per megawatt-day which would reduce the base
24 generation rate, it would keep the base generation
25 rate for the nonauction portion frozen, but it would

1 blend in the 10 percent. And then for the FCR, which
2 is the fixed portion of the FAC, it would as well
3 blend in 10 percent.

4 Q. Right. So both of your recommendations
5 would reduce the price to compare, correct?

6 A. I have more recommendations than that,
7 which is why I keep going back to this, but for those
8 pieces, yes, the piece that I do not know is that the
9 variable portion of the FAC will have the auction
10 results blended there. Since I don't know what the
11 auction results will be, I don't know if that piece
12 will be higher or lower.

13 Q. Okay. Now, you've been with FES since
14 1998; is that correct?

15 A. I started with FES, at that time it was
16 known as FirstEnergy Services, then it became
17 FirstEnergy Solutions, but I've been with that
18 general entity that entire time, yes.

19 Q. Okay. And what did FES do before it
20 received the legacy generation assets from
21 FirstEnergy utilities?

22 A. Before 1998?

23 Q. No. All right, let me back up. When did
24 FES receive the generation -- legacy generation
25 assets from the FE utilities?

1 A. I'm not sure of the exact date.

2 Q. Well, it was after 1998, wasn't it?

3 A. Yes.

4 Q. So what did FES do between '98 and
5 whenever it was they received the legacy assets?

6 A. What do you mean, what did we do? I'm
7 confused.

8 Q. What was FES's business? What was its
9 role within FirstEnergy?

10 A. We were a retail provider, CRES provider,
11 in Ohio and Pennsylvania.

12 Q. Okay. Thank you.

13 So do you in your position advise folks
14 within the FES organization that are involved with
15 marketing and sales to retail customers?

16 A. I don't advise them in their business
17 practices. I'm not a part of the retail group. I do
18 work with them if there are questions about policies
19 at the regulatory level that they need to be aware
20 of.

21 For example, Ohio now has this retail
22 markets investigation, so we work with the retail
23 group to understand if there are some rules or
24 practices or standards that are confusing that we as
25 a group then would need to know what those were and

1 would take those to the workshop so that we could
2 incorporate it. But I don't advise them about their
3 business.

4 Q. So you work with competitive policy
5 issues in the regulatory arena; is that accurate?

6 A. Regulatory arena and then also the FERC
7 and RTOs are part of my responsibility.

8 Q. Okay. Are you involved with things like
9 the Commission investigation involving renewable
10 energy credits for FirstEnergy?

11 A. For FirstEnergy, no.

12 Q. And FES's involvement in that docket.

13 A. I don't know that we're an intervenor in
14 that docket or that we're a party to that case.

15 Q. Do you know what case I'm talking about?

16 A. I think I do. It was in the news the
17 last couple of days, if that's the one you're
18 referring to.

19 Q. What was the news item you were referring
20 to?

21 A. There was -- I don't know the details but
22 I recall the news item I read was that there was a
23 request, it may actually have been by Ohio Power, to
24 participate in that case that I had thought was
25 already concluded, but I'm not that close to the

1 details.

2 Q. Okay. Now, you mentioned part of your
3 answer earlier about FES's interest in this case, you
4 mentioned the wholesale aspect of the business,
5 correct?

6 A. Yes.

7 Q. And I believe you stated, you can correct
8 me if I'm summarizing this wrong, but you're looking
9 out to make sure that AEP, the GenCo as AEP Ohio does
10 generation divestiture, that there's no unfair
11 subsidies or anticompetitive impacts; is that fair?

12 A. Could you repeat that question?

13 Q. Okay. Why don't you remind me of what
14 you said earlier about FES's wholesale interest in
15 this case.

16 A. Okay. Well, really there are two. The
17 first is that in this case, which is the CBP process,
18 we're interested in making sure that the auctions are
19 conducted in a fair and nondiscriminatory manner so
20 that we can be a participant. We have a good
21 understanding of what the details of those are.

22 And the other thing that I mentioned was
23 that in this case, if you look at my example that I
24 have attached to my testimony, if, in fact, the AEP
25 proposal is accepted by the Commission, then they

1 would be receiving roughly, there's a lot of
2 assumptions in there, it's illustrative, but
3 \$180 million in additional that the Commission did
4 not authorize which is a subsidy which other
5 competitors in the market like FES, not just as a
6 wholesale supplier but also a retail supplier, don't
7 have.

8 Q. Okay. And since you mentioned that
9 exhibit let's talk about that a little bit. You're
10 talking about Attachment 2?

11 A. The calculation is on Attachment 2.

12 Q. Okay. The bottom line grand total there
13 under your analysis is 180 million, approximately?

14 A. Yes.

15 Q. Okay. And that's the amount which you're
16 claiming in your prior answer would be unfair to
17 receive by AEP or its affiliates, correct?

18 A. Yes.

19 Q. And that would also be the same kind of
20 estimate of the financial impact on AEP Ohio of your
21 recommendations, correct?

22 A. Compared to what it has proposed in this
23 case, not compared to what I believe the Commission
24 ordered.

25 Q. Right. So compared to the company's

1 position and yours, the impact would be approximately
2 \$180 million according to your estimate.

3 A. Yes.

4 Q. Okay. Now, you mentioned the wholesale
5 interest about avoiding this flow of \$180 million
6 which you believe is inappropriate, and you indicated
7 that FES had not had any kind of a similar advantage.
8 Now, you were with FES during the 2006 through 2008
9 period I gather?

10 A. Yes.

11 Q. And so is it your recollection that FES,
12 during a transition to competition for FirstEnergy,
13 had served the SSO load and collected all of the
14 retail SSO revenues that the FirstEnergy utilities
15 collected and were passed through? Is that true?

16 A. I don't think I understand what you just
17 said.

18 Q. Okay. Let me break it down. So during
19 2006 through 2008, which in Ohio we affectionately
20 refer to as the "rate stabilization period"; are you
21 familiar with that?

22 A. Yes.

23 Q. And so during that period is it your
24 understanding that FirstEnergy Solutions had a
25 FERC-approved contract to get -- supply the capacity

1 and energy for the entire SSO load in exchange for
2 which they got to receive a pass-through of the
3 FirstEnergy utilities' SSO revenue? Is that
4 accurate?

5 A. During that period I was in the retail
6 group; I don't know what was going on in the
7 wholesale side of the business during that time. I
8 think in this case what I'm referring to is what the
9 implementation of the Commission's order in this case
10 and the \$180 million represents what I believe the
11 Commission has ordered and doesn't have anything to
12 do, in my view, with past history.

13 Q. I understand we disagree on that point,
14 Ms. Noewer.

15 MR. NOURSE: Your Honor, I'd like to mark
16 as the next AEP Ohio exhibit a document which would
17 be, I believe it's No. 5.

18 EXAMINER TAUBER: You're up to 5. The
19 exhibit is so marked.

20 MR. NOURSE: Thank you, your Honor.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Ms. Noewer, do you have the document
23 marked AEP Ohio Exhibit 5?

24 A. Yes.

25 Q. And would you agree this is a contract,

1 an electric power supply agreement between
2 FirstEnergy Solutions, seller, and FirstEnergy
3 Operating Companies, buyer?

4 A. I have never seen this before. That's
5 what the title is.

6 Q. Okay. And if you turn to page 2 under
7 the term, part A, does that indicate that the term is
8 2006 through 2008?

9 MR. LANG: Your Honor, at this time I
10 would object on several bases; number one, with
11 respect to this document she hasn't -- she stated
12 she's never seen it before, she's not a witness in
13 the position to authenticate the document, and more
14 generally, we're going down a road which is
15 irrelevant to the issues presented in this case.
16 Your Honor had in the entry of May 23rd identified
17 specific issues in this case that deal with the
18 implementation of Commission orders for AEP.

19 This, the supply agreement, if this is
20 the supply agreement between FES and the FE
21 utilities, doesn't have anything to do with that.

22 MR. NOURSE: Your Honor, the fact that
23 she's not seen it, it doesn't matter. That's why I
24 asked her first if she was aware of that arrangement;
25 she wasn't, so that's why I'm using it to have the

1 discussion.

2 As far as the relevance, yes, she in her
3 testimony, and again just verified on the stand, that
4 she's making an allegation that it would be unfair
5 for AEP Ohio to receive SSO revenue -- excuse me, for
6 the AEP GenCo to get pass-through revenue as a part
7 of the Commission-approved order, so I think it's
8 certainly fair to remind her, if she really didn't
9 already know, that this situation existed for
10 FirstEnergy.

11 I don't think there's any -- I don't
12 think counsel for FES could contest the authenticity
13 of these documents. I've got a FERC order as well
14 that we can try out, if we need to, that verifies the
15 same thing.

16 MR. LANG: And again, your Honor, his
17 argument is she's not familiar with this transaction
18 so he's trying to use a document that she's not
19 familiar with to further examine the transaction.

20 But, you know, in the larger picture this
21 doesn't have anything to do with this case, it
22 doesn't have anything to do with an auction process,
23 and the transition from rates using auction process
24 to market.

25 EXAMINER TAUBER: At this time I think

1 the witness opened the door by testifying towards the
2 competitive process in the markets, however, we are
3 in kind of a gray area right now, we'll see where
4 you're going, Mr. Nourse, with this, and I assume
5 this is going toward retail rate prices.

6 MR. NOURSE: Thank you, your Honor. I've
7 only got a couple quick questions on this. The first
8 was the term of 2006 through 2008.

9 Q. (By Mr. Nourse) Do you see that,
10 Ms. Noewer, page 2, paragraph 1A?

11 A. I see that it says "...shall begin on
12 January 1st, 2006, or such later effective date
13 authorized by the Federal Energy Regulatory
14 Commission, and unless terminated by mutual agreement
15 of the Parties shall remain in effect until
16 December 31st, 2008."

17 Q. Okay. And if you turn to page 4,
18 paragraph 4A, can you refer to that.

19 A. Yes, I see it.

20 Q. Okay. And is it true and accurate that
21 the first sentence indicates that the FirstEnergy
22 utilities will pay FirstEnergy Solutions an amount up
23 to, but not exceeding, the amount of money that
24 buyer, which is FirstEnergy utilities, bills its
25 retail customers taking capacity and energy from

1 FirstEnergy utilities as the generation charge, fuel
2 cost adder, and rate stabilization charge under the
3 buyer's retail tariffs and special contracts approved
4 by the PUCO?

5 A. You read that correctly. You inserted a
6 couple words differently explaining who the buyer and
7 seller were.

8 EXAMINER TAUBER: Yes.

9 A. But generally.

10 Q. So were you with FirstEnergy Solutions
11 during the 2006 through 2008 period?

12 A. Yes.

13 Q. In what capacity?

14 A. I was in the retail group in sales and
15 marketing.

16 Q. Okay. So you shifted back and forth
17 between retail and regulatory policy through your
18 tenure at FES?

19 A. There really wasn't a competitive market
20 policy group at FES until 2011. It was a newly
21 formed group. We had in prior periods, you know,
22 still tracked regulatory activities in the retail
23 group and in another area.

24 Q. Okay. Thank you.

25 And, Ms. Noewer, are you aware of the

1 stranded cost recovery that the FirstEnergy utilities
2 received following the enactment of Senate Bill 3 in
3 1999 in Ohio?

4 A. Not specifically.

5 Q. I'm not sure what you mean by that, but
6 are you aware that FirstEnergy utilities received
7 approximately \$6 billion from ratepayers to write
8 down the generation assets that FES owns today?

9 MR. LANG: Further objection on the basis
10 of relevance and mischaracterization.

11 EXAMINER TAUBER: Mr. Nourse.

12 MR. NOURSE: Again, your Honor, she
13 raised the issue of unfair receipt of ratepayer money
14 and unfair competitive advantage merely by getting
15 the revenues passed through that the Commission
16 already approved in the ESP order, and so I think
17 it's fair game to simply point out that FirstEnergy
18 Solutions, what they've received in a similar
19 context.

20 MS. GRADY: Your Honor, we would join in
21 that objection. I think we're getting way far
22 afield, we're talking about retail rates in
23 competitive auction specifically related to AEP Ohio,
24 not FirstEnergy.

25 MR. NOURSE: Your Honor, to talk about

1 what's fair you have to talk about an equal
2 treatment, you have to talk about both sides of the
3 equation, and, again, this is not -- this is a
4 background point which she should already be aware of
5 and be able to acknowledge so that we can move on.

6 EXAMINER TAUBER: At this point I think
7 the way the question was worded it was directed
8 outside the scope of this hearing. Perhaps you can
9 rephrase based on the explanation you just provided,
10 Mr. Nourse.

11 MR. NOURSE: Sure.

12 Q. (By Mr. Nourse) So, Ms. Noewer, are you
13 aware that the FirstEnergy utilities received
14 approximately \$6 billion relating to the generation
15 assets that FES now owns today?

16 MR. LANG: Further objection, again.
17 Again, it's a mischaracterization. There was a
18 write-down, but it's a gross mischaracterization with
19 regard to the assets of the -- what at the time were
20 the FE utilities many years ago. And, again, it's
21 outside the scope of this hearing.

22 MR. NOURSE: Your Honor, I think it's a
23 simple question, you know, we're all talking about
24 regulatory fairness and part of the regulatory
25 history in Ohio is Senate Bill 3 and part of the path

1 to competition that Ms. Noewer's trying to address
2 and argue for equal footing on has to be -- has to be
3 discussed in that context. It's only fair. You
4 can't just look at AEP Ohio with blinders on and
5 ignore what happened in the other utilities in Ohio.

6 EXAMINER TAUBER: I'm going to allow this
7 question.

8 Do you need it read back?

9 THE WITNESS: Yes, please.

10 (Record read.)

11 THE WITNESS: Could you read it again
12 just a little slower.

13 (Record read.)

14 A. I don't know the details of those cases
15 enough to know whether that's a correct statement or
16 not. I don't know.

17 Q. And is it the dollar amount that you
18 don't know or is it the general idea that there was a
19 write-down or a reduction in the net book value of
20 the generation assets; which part?

21 A. It was actually more than that. I don't
22 know the amount. I don't know what the reduction in
23 the net book, if there was one, that occurred. And I
24 don't know -- specifically you asked about whether or
25 not they were the same assets, and I don't know that.

1 So those are three of the things that I don't know.
2 Along with I don't know what the details of the cases
3 were.

4 Q. So are you the ranking regulatory officer
5 within FES or do you report to somebody else in the
6 regulatory side of FES?

7 A. I do have a Vice President of Strategy
8 and Planning that is my boss that has regulatory as
9 part of her responsibilities.

10 Q. But you're the highest person that has
11 regulatory responsibility alone?

12 A. My area of concentration is regulatory.
13 I would not go so far as to say I have regulatory
14 without my vice president and president included in
15 that.

16 Q. Okay. Let me ask you to assume for the
17 next couple questions that FirstEnergy Solutions --
18 well, let me back up.

19 So the generation assets that FES owns
20 today, are you unsure whether they used to be owned
21 by the FirstEnergy utilities?

22 A. Yes. Absolutely. I mean, I've been
23 through four mergers, I don't know what assets were
24 part of that or not part of that, bought/sold since
25 then, I really don't know.

1 Q. Okay. I understand they may hold
2 additional or other generation assets, but is it your
3 understanding that a portion of the fleet that FES
4 owns came from the FirstEnergy utilities?

5 A. I don't specifically know. I assume that
6 there are some.

7 Q. Okay. Let me change topics.

8 With respect to auction design and the
9 issues that you're addressing in your testimony that
10 do not relate to the retail rate issues, for example,
11 I guess since you eliminated Roman numeral V in your
12 table of contents, Roman numeral VI falls in that
13 category I believe; is that correct?

14 A. It falls in what category?

15 Q. Relating to auction design and wholesale
16 procurement in a competitive bidding process.

17 A. Yes, I think all of this does, yes.

18 Q. Okay. So do you have any formal training
19 or experience with conducting either energy auctions
20 or any wholesale power auction?

21 A. I have not conducted any wholesale power
22 auctions. I have been involved in retail power
23 auctions with customers when I was in the retail
24 group. I also have all of my years of experience at
25 FES. We've participated in many auctions, so I have

1 a good understanding of what the auction process is.

2 I've testified in Pennsylvania in two
3 cases, default service cases, where I dealt with
4 auction issues as well as in Ohio here in the Dayton
5 Power & Light case we dealt with auction issues as
6 well and I was a witness. So I'm very familiar with
7 it.

8 Q. So you've never designed or conducted an
9 auction, either an energy auction or a wholesale
10 power auction?

11 A. I think I said I've never designed an
12 auction but I certainly have provided input onto the
13 structure of an auction that makes sense, and I have
14 implemented a retail auction and participated in one
15 with customers.

16 Q. And you say you provided input into the
17 structure of an auction, what is that referring to?
18 Comments in a docket somewhere or --

19 A. Comments or testifying on behalf of FES.

20 Q. Okay. Now let's get to the ESP orders;
21 you mentioned several times your understanding of the
22 ESP orders. And I guess a place to start is your
23 question and answer line 19 on page 6 that carries
24 over to the top part of page 7. Do you see that?

25 A. Yes.

1 Q. Okay. So it's your -- it's your
2 understanding, interpretation, of the ESP orders that
3 AEP Ohio is required to reduce its base generation
4 rate prior to January 1st, 2015, correct?

5 A. The way I would characterize it is I
6 believe that it's the Commission's order that it
7 blend its base generation rate with the auction so
8 that the 188.88 for capacity which is required to
9 support the 10 percent auction and the Commission
10 determined that the 188.88 per megawatt-day is AEP's
11 cost of capacity and you need capacity to support the
12 auction, so the only question is, then, how do you
13 blend that in.

14 And so you blend it in with the base
15 generation rate and you blend that with the FAC as
16 well, and that's what FES's proposal is.

17 Q. We're probably going to be here all day
18 if we can't do simple, direct questions and answers
19 and if you want to repeat your general position every
20 time I ask you a specific question. So let me ask
21 you to try to do that so we can move forward.

22 MR. LANG: Objection to the argument
23 provided by counsel. If he can ask his next
24 question.

25 Q. So, Ms. Noewer, you stated a couple

1 concepts there that you're saying that you think your
2 particular form of blending is required under the
3 Commission's orders. Can you point to me anywhere in
4 the orders that talk about this blending that you've
5 laid out in your testimony?

6 A. I lay it out in my testimony the
7 different cites where I refer to the Commission's
8 order, so if you look at page 7, the top of page 7,
9 AEP Ohio's request to continue to freeze base
10 generation rates through the auction process is
11 inappropriate and should be rejected. So that was
12 one of the places that I refer to here that's in the
13 Commission's order.

14 Q. Okay, let's take that one individually
15 since -- and my question was whether there's
16 something in the Commission orders that endorses a
17 requirement to blend generation, base generation
18 rates, and so you're saying that the holding that
19 you're quoting on page 36 and 37 of the entry on
20 rehearing in your mind requires the blending that
21 you've laid out in your testimony.

22 A. I think it holds to the blending in
23 AEP-Ohio's request to freeze base generation and in
24 the section of the Commission's order where it talks
25 about the auction it refers to these paragraphs, and

1 so yes, I do believe that the Commission is -- what
2 the Commission's objectives are in this case, their
3 goals and objectives --

4 Q. Okay.

5 A. -- our blending proposal fits with that.

6 Q. Okay. Well, that might be a different
7 statement than what you made, but I'm asking you
8 whether the order itself supports your base G
9 blending. So you're --

10 A. Yes.

11 Q. Let's take this item that you cited here
12 from page 37 of the entry on rehearing. So the
13 statement is "AEP Ohio's request to continue to
14 freeze base rates through the auction process." Now,
15 do you know what AEP Ohio's request was being
16 addressed as part of this particular passage in the
17 order?

18 A. Yeah, I do believe that AEP Ohio was
19 requesting some clarification related to a portion of
20 the ESP, and the Commission did not limit its finding
21 to that. It talked about through the auction process
22 and "auction's" plural.

23 Q. Yeah, so AEP Ohio, to your understanding,
24 was asking that the base G be frozen for the entire
25 ESP term; is that correct?

1 A. I don't think that's what I said.

2 Q. Well, I didn't say you said that. But
3 I'm asking you if that's your understanding of the
4 request that was being addressed in this passage.

5 A. I was just reading what the Commission's
6 order said that they find that AEP Ohio's request to
7 continue to freeze through the auction process is
8 inappropriate and should be rejected.

9 Q. Okay. Do you think when interpreting
10 Commission orders language should be read in context
11 or out of context?

12 A. In general I would think in context,
13 which is really an issue that I have with AEP's
14 proposal is I think that these particular sections,
15 which I cite, which really are the basis for the
16 blending proposal that I've proposed, are ignored.

17 Q. Okay. Well, you can state that, and
18 you've stated that several times, but I'm asking you
19 to go beyond that and actually look at the
20 interpretation you're advocating here and that you've
21 opened up through these selective quotations --

22 MR. LANG: Your Honor, again, Mr. Nourse
23 likes to talk in between questions, state his own
24 arguments. I would object to his argumentative
25 approach to the witness. If he could ask a

1 question --

2 EXAMINER TAUBER: I will sustain.

3 MR. LANG: -- I think that would be the
4 best approach.

5 EXAMINER TAUBER: I will sustain the
6 objection.

7 Mr. Nourse.

8 MR. NOURSE: Okay.

9 Q. So my question was do you know what the
10 AEP Ohio request was that this passage is addressing,
11 specifically what did the company ask for?

12 A. I remember reading it. I don't remember
13 exactly at this point.

14 Q. Okay.

15 A. I do know, however, the finding referred
16 to the entire term regardless of what AEP was asking.

17 Q. So if the Commission rejected the notion
18 of freezing base G for the entire ESP term, how does
19 that translate into the blending that you're
20 advocating to fluctuate with each of the energy
21 auctions that were required?

22 A. The portion of the order that this is
23 addressed in was referring to the energy auctions, so
24 when the request was to freeze the base generation,
25 which, in fact, in my proposal I do freeze the

1 nonauction portion of the base generation rates, it's
2 only blending in the auction results and the 188.88
3 that goes along with the auction percentage blend.
4 So that's what my proposal does. So it's a freeze
5 and blend.

6 Q. Okay. Well, you stated that you think
7 that there needs to be capacity that supports the
8 energy auction and now you're talking about the
9 capacity that goes along with the auction percentage
10 blend, and what I'm asking you is where does that
11 concept come from? The Commission ordered
12 energy-only auctions, correct?

13 A. They did indicate energy-only auctions,
14 but AEP Ohio as well in the ESP case supported and
15 understood and presented the fact that the
16 energy-only auctions need capacity support with them,
17 and that was discussed yesterday --

18 Q. Okay.

19 A. -- with Mr. Roush.

20 Q. Well, I'll let the record stand on that
21 point, but let me ask you your understanding. What
22 does an energy auction mean to you? What does that
23 mean?

24 A. Well, it's clear that the energy-only
25 auction that they're procuring, AEP is procuring in

1 this case is for energy, but that doesn't dispute the
2 fact that when you have an energy auction, it
3 requires capacity support, and it's in keeping with
4 the Commission's order as well as what their goals
5 and objectives are for customers to be able to take
6 advantage of market-based rates.

7 It would not have expanded the auctions
8 to 10 and 60 percent without expecting that customers
9 would be able to take advantage of market-based
10 pricing for that entire time.

11 Q. Okay. Well, again, that's your opinion,
12 but what I was asking you about was the energy
13 auction, not the rest of that. So, Ms. Noewer,
14 didn't AEP Ohio already have the obligation to
15 provide capacity and to provide default generation
16 service to anyone who doesn't shop in their
17 territory?

18 A. They do have the FRR responsibility to
19 provide the capacity support. What I'm referring to
20 is that the exhibits that were introduced yesterday
21 with Mr. Roush clearly indicate that for the energy
22 auction that they would provide capacity support, at
23 that point it was at 255, and in this case the
24 Commission determined that that price should be 188.
25 So AEP's cost of capacity for auction should be 188.

1 Their cost of capacity, period.

2 Q. Yeah, so the 255, the component of the
3 ESP application that AEP Ohio offered for \$255 per
4 megawatt-day capacity support but was referred to as
5 a discount in the testimony, based on the company's
6 position that cost was higher, correct?

7 A. I don't know exactly how it was
8 characterized. It probably was as a discount to the
9 355, but the 355 was what Witness Pearce said was
10 AEP's cost of capacity which, again, Witness Smith
11 from the staff generally agreed with the same amount
12 except he had a few changes to that, and it was from
13 there, then, the Commission applied the energy credit
14 and came up with 188. So the Commission has
15 determined that the price of capacity is 188 for AEP,
16 period.

17 Q. Okay. Well, that determination was for
18 shopping capacity, correct?

19 A. No. I think in the 10-2929 it was for
20 the state compensation mechanism but it said in that
21 order that they would refer to the 11-346 for
22 incorporation of that order into whatever decisions
23 were made there, and it's clear on the entry on
24 rehearings, and I do quote some different portions of
25 the order as well, that -- where AEP actually

1 requested of the Commission to confirm that the state
2 compensation mechanism was only for shopping
3 customers, and the Commission denied that request.
4 And that's in my testimony.

5 Q. Okay. Let's go back to the 255, which is
6 what I was asking you about. You referred to the 255
7 as a connection with your blending and why you're
8 connecting that with an energy auction, correct?

9 A. I'm not referring specifically to the 255
10 as the connection, I'm referring to the discovery as
11 well as Powers' testimony that offers and recognizes
12 that there would be capacity support for the auction.

13 Q. Well, I'm not going to -- okay, I'm not
14 going to argue about what his testimony was, it's
15 already been taken administrative notice, we'll argue
16 about that later, but all I'm asking you is about the
17 255. Was that an offer by the company as part of the
18 total package in the ESP filing that was not
19 accepted, by the way, but also was only for the term
20 of January through May 2015? That's your
21 recollection.

22 A. I do recall that the 5 percent auction
23 was not accepted by the Commission and that they did
24 expand it to the 10 percent and 60 percent auctions.

25 Q. But I'm asking you about the 255

1 capacity -- what we call the discounted capacity
2 support for SSO service during the period of the
3 100 percent auction from May to -- from January to
4 May 2015. Is that your recollection of what the 255
5 number came from?

6 A. I don't recall that specific time period.
7 I think regardless of what that was, it was an
8 energy-only auction and the point is that AEP
9 recognized that there needed to be support for that.

10 Q. Okay. Well, you're saying because there
11 were two components in the ESP plan that relate to
12 the same period of time, January through May 2015,
13 you're saying that's a recognition by AEP that there
14 needs to be support for the energy auction? Is that
15 what your testimony is?

16 A. I'm not sure how you characterized that
17 so I'll repeat it in my words. I think in my view
18 the discovery and Powers' testimony indicated and
19 recognized the fact that when there's an energy-only
20 auction, that AEP recognized that it needed capacity
21 support, and once you -- once you admit and recognize
22 that an auction needs capacity support, the only
23 question left is at what price.

24 And in the Commission's order they have
25 set forth that AEP's cost of capacity is 188, so

1 that's how I get to the 188 per megawatt-day, and
2 that's what's set forth in my testimony.

3 Q. Okay. Well, that's fine. We'll move on.
4 I think we disagree but I appreciate your
5 explanation.

6 So going back to your interpretation of
7 the order somehow supporting your blending proposal,
8 I'd like to ask you about the frozen base G concept
9 that's in the ESP orders. Do you recall that frozen
10 base G component of the ESP was something that the
11 Commission discussed in various places in the ESP
12 orders?

13 A. I do recall that the Commission did
14 discuss frozen base generation and I think, as I
15 pointed out, and as you did, that you need to
16 consider things in context and I think you need to
17 consider pages 36 and 37 of the Commission's order
18 which talks about the auction and denies AEP's
19 request to continue to freeze base generation rates.

20 In my example I do freeze the base
21 generation rates, I don't lower it for the nonauction
22 portion. It's only for the auction that I blend it
23 in.

24 Q. So how long is the base G frozen under
25 your proposal?

1 A. Well, the base G is frozen for the
2 percentage of nonauction, so varying percentages for
3 the period up to January 1st, 2015.

4 Q. Well, taking away part of the base G and
5 then reducing it and then blending it together
6 doesn't mean it's frozen, does it?

7 A. The rate for the nonauction portion, I
8 haven't reduced it.

9 Q. Yeah. So the base G -- but you're
10 blending it together so you come up with a new
11 base G, right?

12 A. Blended together, yes.

13 Q. And that's a reduced base G, right?

14 A. It is, yes.

15 Q. So how long is base G frozen under your
16 proposal?

17 A. For the nonauction portion of the --

18 Q. No.

19 A. -- up until January 1st of 2015.

20 Q. I'm asking you about the final product.
21 You just said you blend them together to come up with
22 a reduced base G, so how long does the final product
23 of the base G remain frozen under your proposal?

24 A. I've already answered that.

25 Q. No, I don't think you have.

1 A. It stays frozen for the nonauction
2 portion until January 1st of '15. You blend in the
3 auction portion, both the base Gen and the FAC get
4 blended, and then you come up with a result as shown
5 on my pages. It might be helpful to look at the
6 attachments, you can see the difference in prices.

7 Q. Okay. So the base G -- let me ask you
8 this directly and you can tell me if I'm wrong or
9 not. Based on your recommendation the base G would
10 only stay frozen until the FirstEnergy auction
11 delivery period?

12 A. What?

13 MR. LANG: I'm sorry, I have to object.
14 Just as to form when he's referring to base G, we've
15 been going back and forth between like base
16 generation concept and the actual base generation
17 rate and I just, it's unclear in the record what
18 we're talking about.

19 MR. NOURSE: Let me rephrase that
20 question.

21 EXAMINER TAUBER: Thank you.

22 Q. So under your proposal, Ms. Noewer, how
23 long does the base generation rate remain frozen is
24 my question? And my proposed answer -- you tell me
25 if this is wrong, my understanding of your testimony

1 is that the base generation rate only remains frozen
2 until the very first energy auction delivery period;
3 is that correct?

4 A. No.

5 Q. Okay. So you're proposing to reduce the
6 base generation rate before or after that date?

7 A. The base generation rate gets blended in
8 with the auction percentage and that gets blended
9 with the current base generation rate. I am not
10 changing the rate for the nonauction portion.

11 Overall when you combine the auction result and the
12 reduction in the capacity and the base generation
13 rate for the 188, the result of adding those two
14 together is a decreased overall rate.

15 Q. Starting on the first energy auction
16 delivery date?

17 A. I'm not sure what "the first energy
18 auction delivery date" is.

19 Q. The very first. I'm not saying
20 "FirstEnergy."

21 A. That's what confusing me.

22 Q. The very first energy-only auction.
23 There are multiple energy auctions.

24 Okay, let me try again, Ms. Noewer. This
25 is really just a clarification of your testimony so

1 I'm not sure why this is so difficult. The -- today
2 AEP Ohio charges a base generation rate; do you
3 understand that?

4 A. Yes, I do, and I have that listed on
5 Attachment 1, base generation rate, 22.86.

6 Q. Okay. So when under your proposal, no
7 matter what you call it, no matter what your formula
8 is for blending, when does that base generation rate
9 today, 22.86, get reduced?

10 A. If you look at my Attachment 1, that
11 first blending approach, the price for auction
12 Phase I for the base generation for the base
13 generation line is 90 percent, so it's 20.57. So it
14 shows you there the combined freezing the generation,
15 base generation, at 22.86, combined with the auction
16 blending will reduce the overall base generation
17 component to 20.57.

18 And then what you have to do is add back
19 a component which is on line 16 for capacity at 188
20 per megawatt-day for that base generation component.

21 Q. So those changes under your
22 recommendation occur as of the initial energy-only
23 auction delivery period, correct?

24 A. The changes as I've described in
25 Attachment 1, that's what auction Phase I is.

1 Q. Okay.

2 A. The one thing that I would say, just to
3 clarify, under base generation from listening to
4 Mr. Roush's testimony yesterday, there were a couple
5 of components that he referred to as being included
6 in base generation, the CAT, which is the commercial
7 activity tax --

8 Q. I'm not asking you about that. If your
9 council wants to cover that on redirect, perhaps if
10 it's within the scope of cross, he can, but Ms.
11 Noewer, so what I'm asking you is so based on your
12 answer that the base rates as they exist today are
13 only frozen under your proposal as of the point of
14 the initial energy-only auction, what I want to ask
15 you about is whether in your review of the ESP orders
16 do you agree that there are multiple references, I'm
17 not going to go through them all now unless you want
18 to, to frozen base G being a component of the ESP
19 plan? Do you recall that?

20 A. That was a long question with some
21 commentary at the beginning. I don't think I agreed
22 with the way you characterized what my position was
23 at the beginning, but if I answer the last part of it
24 which was the question, I do recall that in the
25 orders there were places that referred to frozen base

1 generation rates.

2 Q. Okay. And under the Commission's orders
3 and those references to the frozen base G component
4 of the ESP, is it your understanding that the
5 Commission was only referring to the period leading
6 up to the initial energy-only auction?

7 A. I'm not sure I understand the question.
8 What I believe is that the Commission considered
9 frozen base generation rates and indicated to AEP in
10 its order, as I say in my testimony, that we find
11 that AEP Ohio's request to continue to freeze base
12 generation rates throughout the auction process is
13 inappropriate and should be rejected. So that's my
14 position, that I believe that, that no, the
15 Commission believed that through the auction process
16 they should not be completely frozen, therefore,
17 blending in the auction --

18 Q. Okay.

19 A. -- and the 188.

20 Q. I'm not asking you to go back to your
21 favorite quote from the order. What I'm asking you
22 is all the other references to base G being frozen as
23 a component of the ESP that the Commission adopted,
24 and all those references in the order, is it your
25 testimony and your understanding that in each one of

1 those places the Commission is referring to a period
2 that begins at the beginning of the ESP term and ends
3 with the initial auction -- energy-only auction
4 delivery period?

5 A. I don't know that I can say without going
6 back to read the order. I don't believe so because,
7 again, you can't just take part of the order and not
8 all of the order.

9 Q. Thank you.

10 Now, do you know when the Commission
11 established the retail stability rider as part of the
12 ESP whether it assumed or modeled any base G revenue
13 reductions like the ones you're recommending?

14 A. Whether who modeled, excuse me?

15 Q. Whether the Commission in developing the
16 RSR had assumed or incorporated the base G reductions
17 that you're recommending.

18 A. I wouldn't characterize what I'm
19 recommending as a base G reduction. I consider it to
20 be a blending of the auction. But, no, further than
21 that I don't recall specifically what had been
22 modeled.

23 Q. Well, you agree that your recommendation
24 reduces AEP Ohio's base G revenue, correct?

25 A. As you blend in the auction, yes.

1 Q. In fact, you've shown that in part of
2 your exhibit of the 180 million we talked about
3 earlier, correct?

4 A. Right. But I think it's important to tie
5 it to the auction.

6 Q. And did the Commission, in establishing
7 the RSR, incorporate your interpretation by reducing
8 base G revenues as part of the RSR? Do you know?

9 A. I don't know that the Commission
10 considered -- what they considered in terms of
11 blending in the auction results and its impact on the
12 RSR. I do know that, you know, the Commission
13 indicated that when they expanded the auctions to 10
14 and 60 percent, that clearly it expected that
15 customers would be able to take -- benefit or have
16 the benefit of market-based prices for those auctions
17 and the market-based advantages of having both energy
18 and capacity blended in. I think that's why in the
19 order they refer to having the auctions as being a
20 nonquantifiable benefit.

21 Q. Okay.

22 MR. NOURSE: Your Honor, I tried to, you
23 know, indulge the witness but she keeps going back
24 and making other points when I ask her questions, so
25 she did answer my question in the first sentence and

1 then she added some extraneous points after that.
2 I'd move to strike the rest of the answer after the
3 first sentence.

4 EXAMINER TAUBER: I'm going to deny the
5 motion to strike but I will remind the witness that
6 if you can answer the question with "yes," "no," or
7 "I don't know," and then provide a brief context as
8 necessary.

9 THE WITNESS: Yes, your Honor.

10 EXAMINER TAUBER: Okay.

11 Q. Ms. Noewer, do you still have the ESP
12 opinion and order up there with you? If you don't
13 have it, we can provide a copy.

14 MR. LANG: You're asking the 11-346
15 opinion and order?

16 MR. NOURSE: The ESP opinion and order.

17 MR. LANG: And that's not one you guys
18 have marked yet, right?

19 MR. NOURSE: Well, we just did
20 administrative notice. We marked a couple of them, I
21 think Exhibits 3 and 4, 3 was the entry on
22 rehearing --

23 A. That's what I have, the entry on
24 rehearing.

25 Q. Well, I've got a copy of the opinion and

1 order if you don't or your counsel doesn't want to
2 provide it.

3 MR. ALEXANDER: It's marked up.

4 MR. LANG: We don't have a clean.

5 Q. All right. I really just want to ask you
6 about page 35, so I don't know if you have a clean
7 copy of that page.

8 MR. ALEXANDER: Yeah.

9 THE WITNESS: Thank you.

10 Q. Ms. Noewer, if there are any notes from
11 your counsel in there, just please don't refer to
12 them or read them out loud. Okay. So page 35, are
13 you familiar with this table at the top of the page
14 where the Commission laid out its adjustments and RSP
15 development? RSR, excuse me.

16 A. I read it at some point. I don't recall.

17 MR. NOURSE: Okay. Well, I'd like to
18 mark an exhibit, your Honor, that uses this
19 information.

20 Q. And I'd like to discuss with you --

21 MR. NOURSE: This would be AEP Ohio
22 Exhibit 6, I believe.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Okay. So you see this table that I've
25 handed you replicates a portion of the table that's

1 in the Commission order and we'll walk through that
2 in a minute. The first line retail nonfuel
3 generation revenues is the same as the opinion and
4 order table. And then there's a line 4, total
5 AEP Ohio load, and it's 48,000 megawatts. Do you see
6 that?

7 A. Yes.

8 Q. Is that your understanding of the
9 AEP Ohio connected load, it's approximately
10 48,000 megawatts?

11 A. I would have said 48 million
12 megawatt-hours.

13 Q. Okay, 48 million megawatt-hours.

14 A. That's not what this says.

15 Q. I'm sorry. I guess this is in thousands
16 just like the Commission table. The Commission table
17 says all figures in millions but then it has -- we
18 have the million dollars marked here.

19 Okay, so but you agree that
20 48,000 megawatts or 48 million megawatts is the --
21 I'm used to saying 48 gigawatts, 48,000 gigawatts,
22 right? Is that the same thing?

23 A. 48,000 gigawatt-hours would be --

24 Q. I'm sorry, okay. So all we've done here
25 is you see the shopping load of 52, 62, and

1 72 percent?

2 A. I see that.

3 Q. Okay.

4 A. But I don't see it in the Commission's
5 table.

6 Q. And if you wouldn't mind turning back to
7 page 34 if it's there, that statement is made on page
8 34 in the latter part of the middle paragraph, it
9 says "Therefore, we will estimate shopping in the
10 first year at 52 percent, increase it for years two
11 and three to 62 and 72 percent." Do you see that?

12 A. Yes, I do see that.

13 Q. So those are the shopping levels that the
14 Commission assumed in developing the RSR. And so --

15 A. I would say that the 52 percent is
16 overstated since the current shopping is, as I state
17 in my table, is 49 percent.

18 Q. Yeah, and these were assumptions, okay.

19 A. Okay.

20 Q. So the megawatt, the next line 7 is just
21 a function of the 52 percent of 48 is 25 and so on.
22 Do you see that?

23 A. Yes.

24 Q. And do you accept those numbers, subject
25 to check?

1 A. I'm not sure what that means.

2 Q. Okay. Well, does 52 percent of 48 sound
3 about like 25?

4 A. Yes.

5 Q. And does 48 percent of 48 sound about
6 like 23?

7 A. I think you said -- what did you just
8 say?

9 Q. In line 9, the residual SSO load --

10 A. Oh.

11 Q. -- is the balance of a hundred percent,
12 48 percent, and 48 percent of 48 is about 23,
13 correct?

14 A. Yes.

15 Q. Okay. So can you glance at the rest of
16 those numbers and see if you think they're
17 reasonable.

18 A. Yes.

19 Q. Okay. So the final line, 12, is simply
20 the product of the generation, the nonfuel generation
21 revenues, which is the same thing as base G revenues,
22 that the Commission used to develop the RSR and that
23 shows that the retail nonfuel generation rate was
24 frozen at \$22.80 per megawatt-hour throughout the
25 entire term; is that true?

1 A. The math works out looks like correctly
2 on your exhibit. I don't know how that related to
3 the table on page 35, I haven't --

4 Q. Okay.

5 A. -- cross-checked that, nor do I know that
6 that was -- your conclusion was correct.

7 Q. Okay. Well, you can look at the order
8 and the context there, but what I'm representing is
9 the table shows the Commission's adjustments as it
10 says in the lead-in paragraph, the adjustments in its
11 development of the RSR and that's where we started
12 with this line of questioning.

13 So my question, then, is would it be fair
14 to answer my earlier question whether the Commission
15 reduced the base G in developing the RSR, the answer
16 would be no, not based on this table or the opinion
17 and order passages we just looked at?

18 A. I'm sorry, was that a question?

19 Q. Yeah.

20 A. Could you restate that?

21 Q. Okay, sure. So I'd asked you about
22 whether you understood whether the Commission had
23 reduced base G revenues in developing the RSR, and
24 you didn't know, so we went through this exercise and
25 did the math based on the table and the passage in

1 the opinion and order, so now that we've done that
2 exercise would you agree it doesn't appear the
3 Commission reduced base G revenue when it developed
4 the RSR?

5 A. I have not studied the whole order
6 related to the RSR and how it was calculated so I've
7 just been following along with your example. I don't
8 know. I haven't studied it recently. I'm not sure
9 that I can draw the same conclusion you are. I don't
10 know.

11 Q. Okay. But this table and the top line of
12 the table on page 35 of the opinion and order does
13 indicate the nonfuel generation revenues, correct?
14 Those are what was used to develop the RSR amount at
15 the bottom line of that table; is that correct?

16 A. I don't know, Mr. Nourse. I really don't
17 know. I see what it's listed here, I haven't studied
18 it, I haven't read the whole thing. Again, I don't
19 know. I see that it says here retail stability rider
20 amount, that's the best that I can say.

21 I don't know if later in the order it
22 makes some comment on this or what these resulting
23 paragraphs that follow it and precede it mean and
24 say. I haven't gone back to review the RSR
25 calculations.

1 Q. Understood. And that's why my question
2 was based on this table and the passages we just
3 reviewed, would you agree that the Commission did not
4 incorporate base revenue reductions in developing the
5 RSR?

6 MR. LANG: Objection, asked and answered.

7 EXAMINER TAUBER: Sustained.

8 Q. Okay, Ms. Noewer, do you know if the
9 Commission assumed declining revenues for base G when
10 it did the MRO test in the ESP decision?

11 A. I don't recall the specifics of the MRO
12 versus the ESP test. I focused on the auction
13 process and blending that we refer to in this CBP
14 case, I didn't broaden it further than that in my
15 review for my testimony.

16 Q. Okay. So you did not review the entirety
17 of the orders when you reached your conclusion about
18 interpreting the passage that you cite in your
19 testimony.

20 A. I didn't say that I didn't read them. I
21 said I didn't go back and study the details of the
22 calculations for the RSR or for the others. If I
23 stated it differently in my prior answer, that's not
24 exactly what I meant. I didn't study each of the
25 pieces that aren't relevant today.

1 Q. Okay. Can you turn to page 8 of your
2 testimony. And down near the bottom of the page you
3 make a statement about blending with increasing
4 percentages of market-based pricing for generation
5 service, in line 20 there. Do you see that?

6 A. Yes.

7 Q. So this has been FES's position
8 throughout the capacity and ESP and now this case,
9 that there should be market-based generation prices
10 and market-based capacity prices, correct?

11 A. It's FES's position as we've talked
12 through this cross-examination, too, that moving to
13 market is important and we think that the
14 Commission's orders maybe not as quickly or in the
15 same manner as we would agree moving AEP toward
16 market. So I think, yes, market-based pricing is
17 consistent with our philosophy.

18 Q. But this idea of linking up market-based
19 capacity pricing with the energy-only auction, I
20 mean, that's your idea, right? That's your proposal.
21 It's not something that the Commission required in
22 the opinion and order or the entry on rehearing, is
23 it?

24 A. I think that the portions of my testimony
25 that I quoted to you that are inherent in here talk

1 about both; talking about the auction itself, not
2 freezing base generation rates. That's all energy
3 and capacity as well as the FAC being the energy and
4 capacity portion. All three of the components. So
5 I -- no, I disagree.

6 Q. So to you energy-only means energy plus
7 capacity? Both should be based at market rates?

8 A. Well, in this case energy-only auction is
9 for the energy portion and because the energy
10 auction, as AEP recognizes, needs capacity support,
11 the question is what is the price. And the
12 Commission has determined that the price for capacity
13 for AEP is 188, so I would not still consider the 188
14 to be market based, but irregardless, the Commission
15 determined that, so I believe that, yes, the
16 Commission's order and FES's proposal meets with what
17 the Commission's goals and objectives in the orders
18 say.

19 Q. But when the Commission ordered
20 energy-only auctions, and you're saying now it's
21 inherent that you need capacity to support that,
22 you're suggesting that the capacity that would
23 otherwise be provided already without an additional
24 order from the Commission in the order needs to be
25 pulled out of base G and provided on this

1 market-based rate; isn't that what you're
2 recommending?

3 A. It's not just the base G, it's also the
4 capacity that's in the non -- in the fixed portion of
5 the FAC, so the FCR, all of the six items there that
6 are in the FCR are also capacity, so it's both the
7 base G which is capacity and the other items that
8 Mr. Roush noted, and then the FCR portion.

9 And no, I don't believe that it's just my
10 view. I do believe that it was AEP Ohio's view which
11 we talked about earlier in Powers' testimony and then
12 the discovery that was entered in as these exhibits
13 yesterday.

14 Q. Okay. I'll ask you to turn to page 18.
15 Now, you state on line 12 and line 23 that the energy
16 auctions are, quote, destined to fail, unquote, and
17 would be, quote, preordained to fail, unquote, if the
18 auction has to come out lower than AEP Ohio's FAC
19 rates. Do you see that?

20 A. I do say that they -- it's the most
21 likely outcome. That's on lines 9 and 10. And
22 that's a concern. I do believe that our proposal is
23 the most reasonable proposal customers have and the
24 opportunity for auctions to be favorable and a result
25 that will actually be instituted.

1 Q. Okay. But, again, those are not my
2 words. You said that the auction would be destined
3 to fail and preordained to fail if it has to beat the
4 FAC rate, correct?

5 A. And my word are "the most likely
6 outcome." I can't possibly know exactly what the
7 energy auction result would be, whether it would be
8 higher or lower than today.

9 What I'm saying is that FES's proposal is
10 the proposal that is most reasonable.

11 Q. Okay. But did you perform an analysis to
12 support this conclusion that the auction's destined
13 to fail?

14 A. The analysis -- not specifically about
15 what the auction would be and how the price would
16 come out, but my analysis does show on Attachments 1
17 and 2 how I believe our proposal, which accounts for
18 an assumption on the auction, would benefit
19 customers.

20 Q. Well, yeah, the rate reductions you
21 advocate for outside of the auction context, outside
22 of the auction clearing price, are not what I'm
23 asking you about. I'm asking you about the auction
24 clearing price which I believe is what you're
25 discussing in the context of the OEG starting price

1 proposal, and you concluded that they are destined to
2 fail.

3 Now, my question is: What analysis did
4 you perform to support this conclusion? In other
5 words, do you have a projected auction clearing price
6 that you assumed in reaching that conclusion?

7 MR. LANG: Just an objection to the
8 characterization, again. They've gone back and
9 forth, Mr. Nourse keeps saying "destined to fail,"
10 the witness keeps saying "the likely outcome" which
11 is in her testimony. He keeps ignoring that part.

12 But I think, again, putting the
13 characterization to the side, the actual question
14 that he asked, I think if we can have her answer that
15 question, that would be great.

16 EXAMINER TAUBER: I'll allow the witness
17 to answer the question.

18 THE WITNESS: Could you reread it,
19 please?

20 (Record read.)

21 A. No, I don't have a projected auction
22 price.

23 Q. Okay. So you don't really know whether
24 it is the most likely outcome that the auction
25 clearing price will be above or below the FAC, do

1 you?

2 A. No, I clearly don't know what the
3 energy-only auction price would be. My point is that
4 that, in conjunction with the proper blending, would
5 be the best outcome for customers and most likely for
6 customers to see a benefit.

7 Q. So, but again, clarifying your most
8 likely outcome statement, you're not speaking to the
9 outcome of the auction in this section, you're not
10 speaking to the auction clearing price's relation to
11 being above or below the FAC; is that correct?

12 A. If we look at page 18, what we're
13 referring to here is about the cap proposal or IEU
14 and OEG's proposal, so in that case what this is
15 referring to is the energy auction itself, and if, in
16 fact, there's a cap on the auction, that it might
17 reduce bidder interest which would, in fact -- would
18 be more likely to cause the auction to fail. So it's
19 more than just whether the price would be higher or
20 lower, it's also the mechanics of the auction.

21 Q. But doesn't the question of whether the
22 cap will render it most likely destined to fail,
23 isn't that question of what the cap is in
24 relationship to the FAC rate the key point to support
25 any conclusions in this regard?

1 A. I think it's definitely one of those.
2 It's also how the auction mechanics work, though,
3 that if there's a cap, that right off the bat you get
4 bidder, you know, bidder concerns about starting out
5 at that starting point and then you definitely go
6 down from there. So it's both.

7 Q. But there is a starting price to the
8 auction in any case, correct?

9 A. There is, but as Dr. LaCasse said
10 yesterday, you set that price sufficiently high to
11 bring in bidder interest. So when it's set at like
12 the FAC rate which is a lower rate, it can impact
13 bidders coming to the table at all regardless about
14 whether or not the ultimate result will be lower.

15 Q. That's only true, isn't it, Ms. Noewer,
16 if the FAC rate is lower than what the auction
17 manager would otherwise select as the auction
18 starting price?

19 A. Could you repeat that?

20 MR. NOURSE: Can you read it back.

21 (Record read.)

22 A. I think that's true.

23 Q. And you would try to disguise such an
24 energy auction failure scenario through reducing
25 rates unrelated to energy, correct?

1 A. I don't understand the question.

2 Q. You would like to mask or offset the
3 energy price -- auction clearing price being higher
4 than the FAC by reducing SSO rates that are unrelated
5 to energy; isn't that your proposal?

6 A. I think that mischaracterizes my
7 testimony. I've already described that my testimony
8 is that it is the proposal that most reasonably meets
9 the goals and objectives of the Commission in the
10 orders and, no, I don't think it's a matter of
11 masking or disguising.

12 Q. But you're so concerned about that
13 because you want to create headroom or a cushion for
14 the energy auction to come in above the FAC; do you
15 not?

16 A. I'm not trying to force a result, so no,
17 I'm not trying to force headroom. I'm just trying to
18 allow the market-based mechanism of an auction to
19 work in these two paragraphs by not setting an
20 artificial cap.

21 And, in addition to that, I'm attempting
22 as best we can to do a fair reading of the
23 Commission's orders and implement what I believe is a
24 reasonable and the most reasonable approach to
25 implementing those orders in this case.

1 MR. NOURSE: Thank you, your Honor.

2 That's all the questions I have.

3 EXAMINER TAUBER: Thank you.

4 Mr. Reilly.

5 MR. NOURSE: Thank you, Ms. Noewer.

6 THE WITNESS: Thank you.

7 MR. REILLY: We have nothing, your Honor.

8 EXAMINER TAUBER: Mr. Lang, redirect?

9 MR. LANG: One second, your Honor.

10 EXAMINER TAUBER: Sure. Let's go off the
11 record. Let's take five minutes.

12 (Recess taken.)

13 EXAMINER TAUBER: Mr. Lang?

14 MR. LANG: No redirect, your Honor.

15 Thank you.

16 EXAMINER TAUBER: Thank you.

17 Thank you. You may be excused.

18 THE WITNESS: Thank you.

19 MR. NOURSE: Your Honor? Oh, I'm sorry.

20 When you're done, I've got a comment.

21 EXAMINER TAUBER: Mr. Lang.

22 MR. LANG: If we could move FES Exhibit
23 No. 7 into the record, please.

24 EXAMINER TAUBER: Are there any
25 objections to FES Exhibit No. 7?

1 MR. NOURSE: No.

2 EXAMINER TAUBER: Hearing none, it shall
3 be admitted into the record.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER TAUBER: Mr. Nourse.

6 MR. NOURSE: We'd like to move AEP Ohio
7 Exhibit 5 and 6.

8 EXAMINER TAUBER: Are there any
9 objections to AEP Ohio Exhibits No. 5 and No. 6?

10 MR. LANG: We have objections to
11 Exhibit 5 as not properly authenticated and not
12 relevant to the proceeding, your Honor.

13 EXAMINER TAUBER: Mr. Nourse, do you have
14 a response?

15 MR. NOURSE: Yeah, your Honor, I mean,
16 this is a FERC-approved contract that I would have
17 expected Ms. Noewer to be familiar with since she
18 worked at FirstEnergy, but the fact she wasn't, I
19 still was able to use it to ask her questions and,
20 you know, I don't know if Mr. Lang is saying he
21 questions the authenticity or just wants to keep it
22 out of the record, but, you know, that's really a
23 relevancy argument, not an authenticity argument.

24 EXAMINER TAUBER: Mr. Lang?

25 MR. LANG: Your Honor, the only thing we

1 know about this document is what Mr. Nourse is
2 willing to tell us about it. The witness did not
3 testify to anything about the document other than the
4 fact that he read a couple -- he read some words from
5 it and she said that he read it correctly.

6 EXAMINER TAUBER: I think the transcript
7 should reflect everything we need from this document
8 so at this time we're not going to admit it in the
9 record. We'll go ahead and admit AEP Exhibit No. 6
10 into the record.

11 MR. NOURSE: Thank you, your Honor.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER PARROT: Did you say you had a
14 comment, Mr. Nourse?

15 MR. NOURSE: About the scheduling, I
16 don't know if you were thinking about taking a lunch
17 break, but we do, of course, we have another witness
18 that probably might be an hour, we don't know what
19 other questions there are, but the company also
20 wanted to discuss and kind of finalize its request
21 for rebuttal testimony, discuss that over lunch. So
22 I don't know if it makes sense to do Mr. Murray and
23 then take a break and come back or just take a break
24 now and do all the above when we come back.

25 EXAMINER PARROT: Let's go off the

1 record.

2 (Discussion off the record.)

3 EXAMINER PARROT: Let's go back on the
4 record.

5 At this point we're going to take a
6 15-minute break and then reconvene at that point.
7 Thank you.

8 (Recess taken.)

9 EXAMINER PARROT: Let's go back on the
10 record.

11 Mr. Pritchard, I believe you have our
12 last witness of the day anyway.

13 MR. PRITCHARD: Thank you, your Honor.
14 At this time Industrial Energy Users of Ohio would
15 like to call Kevin Murray to the stand.

16 EXAMINER PARROT: Please raise your right
17 hand.

18 (Witness sworn.)

19 EXAMINER PARROT: Thank you.

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KEVIN M. MURRAY

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

DIRECT EXAMINATION

By Mr. Pritchard:

Q. Mr. Murray, would you state your name and business address for the record?

A. My name is Kevin Murray. My business address is McNees, Wallace & Nurick, 21 East State Street, 17th floor, Columbus, Ohio, 43215.

Q. And on whose behalf are you testifying here today?

A. The Industrial Energy Users-Ohio.

MR. PRITCHARD: At this time, your Honors, I'd like to mark the direct testimony of Kevin Murray as IEU-Ohio Exhibit 8.

EXAMINER PARROT: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Murray, do you have in front of you your prefiled direct testimony?

A. Yes, I do.

Q. Do you have any corrections?

A. No, I do not.

Q. Was this testimony prepared on your behalf -- or, sorry, by you or under your

1 supervision?

2 A. It was prepared by me.

3 Q. If I asked you all the questions in your
4 prefiled testimony today, would you give the same
5 answers?

6 A. Yes, I would.

7 MR. PRITCHARD: I tender the witness for
8 cross-examination.

9 EXAMINER PARROT: Thank you,
10 Mr. Pritchard.

11 Mr. Petricoff?

12 MR. PETRICOFF: No questions, your Honor.

13 EXAMINER PARROT: Mr. Lang?

14 MR. LANG: No, thank you.

15 EXAMINER PARROT: Mr. Kurtz?

16 MR. KURTZ: No questions, your Honor.

17 EXAMINER PARROT: Mr. Conway or
18 Mr. Nourse.

19 MR. CONWAY: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Conway:

23 Q. Good afternoon, Mr. Murray.

24 A. Good afternoon.

25 Q. Just a few questions regarding your

1 background experience, Mr. Murray. You went to the
2 University of Cincinnati and got a degree, an
3 engineering degree there?

4 A. Yes, sir.

5 Q. And did you do research on competitive
6 bidding processes in the course of your formal
7 education at UC?

8 A. No, I did not.

9 Q. And you didn't take any coursework in
10 that subject matter, did you?

11 A. That's correct.

12 Q. Have you designed and implemented
13 competitive bidding processes for the procurement of
14 default service for electric utilities?

15 A. I have been active in proceedings in
16 which the design of competitive bidding process has
17 been in play, primarily here at the Commission.

18 Q. But you have not been the person
19 principally responsible for the design and
20 implementation of any competitive bidding process for
21 procurement of default service, have you?

22 A. That's correct; I've provided input but I
23 have not been responsible for the design.

24 Q. Or implementation, right?

25 A. That's correct.

1 Q. And, of course, then I take it then you
2 haven't served as an auction manager for any
3 competitive bid auction.

4 A. That's correct.

5 Q. Okay. Now, I believe around page 8 of
6 your testimony you indicate that -- well, you
7 describe your recommendation that the energy-only
8 auctions approved by the Commission for AEP Ohio
9 should use separate reserve prices for the CSP and
10 Ohio Power rate zones to reflect the fact that each
11 company currently has a separate FAC rate; is that
12 right?

13 A. That's correct.

14 Q. And so that by that recommendation I take
15 it that you would set a reserve price at the FAC rate
16 currently in effect for each rate zone at the time
17 that the auction is held; is that right?

18 A. Actually, my testimony talks about using
19 the forecasted FAC rate.

20 Q. Okay.

21 A. So I believe we know, for example, what
22 the actual projected fuel cost is for the -- working
23 from memory here I think it's July through
24 September 2013 period. My recommendation would
25 require the Commission to do a bit more

1 information-gathering in terms of looking at what the
2 fuel rate would be to link up with the delivery
3 period whenever the auction takes place.

4 Q. Let me see if I understand this. Correct
5 me if I got it wrong, but what you would do is you
6 would set a reserve price at the forecasted FAC rate
7 for each rate zone prior to the -- when the auctions
8 are held; is that right?

9 A. That's correct.

10 Q. Okay. And would you agree that setting
11 and then publicizing a reserve price before the
12 auction has started will affect bidder interest as
13 some of the other witnesses have testified?

14 A. It certainly may.

15 Q. And would you -- when you say it "may," I
16 assume you mean there's some probability or there's
17 some chance that it would?

18 A. Well, if you presume that the reserve
19 price is lower than what the auction manager would
20 set as a otherwise beginning starting price, it
21 obviously may detract from bidder interest, there may
22 be some bidders that simply say at that price I'm not
23 going to participate.

24 Q. And you may have answered my next
25 question, then. So you would agree that doing that,

1 setting a reserve price prior to the auctions that
2 you recommend be held, might cause some potential
3 bidders to decide not to participate in the auction.

4 A. Absolutely.

5 Q. Okay. A few questions about the fuel
6 adjustment clause and its components. You're
7 familiar, of course, with -- well, let me not
8 prejudge it.

9 Are you familiar with the orders that the
10 Commission issued in the AEP Ohio's first and second
11 ESP cases?

12 A. I've certainly reviewed them in the past.

13 Q. Okay. And in the first ESP is it your
14 understanding that the Commission approved a fuel
15 adjustment clause for AEP Ohio, actually for each of
16 the two companies that have since been merged, CSP
17 and OPGCo, that allowed, among other things, for
18 recovery of purchased power expenses for each
19 company?

20 A. That's my recollection.

21 Q. Okay. And included within those
22 purchased power expenses that were approved for
23 recovery through the fuel adjustment clauses were
24 demand charges or fixed costs, right?

25 A. I don't recall.

1 Q. You don't recall?

2 A. That's correct, I don't recall.

3 Q. Okay. And then in the ESP 2 case is it
4 your understanding that the Commission reauthorized
5 the use of the fuel adjustment clause for AEP Ohio?

6 A. Just so we're clear, when you say "ESP 2
7 case," which case are you referring to?

8 Q. I'm referring to the case that has as one
9 of its numbers 11-346, if that helps.

10 A. The Commission authorized the
11 continuation of a fuel adjustment clause mechanism
12 for AEP.

13 Q. And is it your understanding that the
14 Commission's approval was for a fuel adjustment
15 clause that was the same as the FAC that was approved
16 in the first ESP?

17 A. I don't recall.

18 Q. Okay. Let me ask you about your estimate
19 of the range of expected bids for the energy auctions
20 that AEP Ohio may be holding. I think you discuss it
21 at least in part at or around page 10 of your
22 testimony. Actually, Mr. Murray, I think you start
23 the discussion at page 9 where you discuss, as I
24 understand it, your analysis of a comparison of the
25 AEP Ohio FAC rates versus the likely results of an

1 energy-only auction.

2 And as I understand your testimony, you
3 develop an estimate that the range of bids that you
4 expect would result from the auctions would be in the
5 range of \$46.37 to \$48.30 per megawatt-hour; is that
6 correct or did I misstate your testimony?

7 A. I think there needs to be a
8 clarification. What I did was estimate a bidding
9 price that would result if you did an auction for
10 delivery of power for the July through September
11 period, and it's my understanding that the company's
12 proposing to do a different -- the initial auction
13 will be for a different delivery period.

14 So what I attempted to do was compare
15 current prevailing market prices to the actual fuel
16 cost that the company has filed in its most recent
17 case to update its FAC.

18 Q. So you didn't really come up with an
19 estimate then of what the range of expected bids
20 might be for, say, the 10 percent auction that will
21 be held sometime possibly fourth quarter this year or
22 thereabouts?

23 A. That's correct. Because, again, we don't
24 have -- as I recommend in my testimony, we set a
25 reserve price based upon the forecasted FAC to be in

1 effect for the delivery period and we don't have that
2 number as a part of the record in this case.

3 MR. CONWAY: I'm sorry. Could you read
4 that back for me, please?

5 (Record read.)

6 Q. Okay. So the exercise that you've
7 conducted really is illustrative of what would happen
8 in your view if we were having an auction that would
9 have a delivery period of, I think you said third
10 quarter 2013 and comparing that to what the expected
11 FAC rate is for third quarter?

12 A. Yeah. As illustrated on my Exhibit
13 KMM-2, what I have done is compare prevailing market
14 prices for -- energy market prices for July, August,
15 and September versus what the company projected its
16 actual fuel costs to be during that same period.

17 Q. Okay. And is it your -- I mean, is it
18 your view that it's -- what you have done provides an
19 illustration of what the results would produce for
20 the auctions that are scheduled either on the
21 10 percent side auction, say fourth quarter of this
22 year, some point in the fourth quarter of this year,
23 and then, secondly, the 50 percent incremental
24 auction starting sometime in the third quarter,
25 second, third quarter of next year?

1 A. No. Again, I have not attempted to look
2 forward and project what the results of an auction
3 for those delivery periods would be.

4 Q. Okay. You have an attachment or an
5 exhibit to your testimony where I believe you explain
6 how you develop the \$46.37 to \$48.30 range for the
7 expected results of an auction for delivery in the
8 third quarter of this year; is that right?

9 A. That's correct.

10 Q. Okay. And what you did is you weighted
11 the on-peak and off-peak price for each of the three
12 months that you evaluated and then averaged them; is
13 that right?

14 A. That was the starting point of the
15 calculation.

16 Q. Okay. And I noticed that the on-peak
17 prices were substantially higher than the off-peak
18 prices for the three months; is that accurate?

19 A. Yes.

20 Q. Okay. And the on-peak prices for the
21 three months look to me, and would you agree with me,
22 that they were more volatile than the off-peak
23 prices? The on-peak prices were more volatile than
24 the off-peak prices for the three months.

25 A. I don't know that I agree with that.

1 What I took was trade data as reported off of the
2 Intercontinental Exchange for trade date June 10th.
3 I didn't attempt to look at whether or not on-peak
4 prices were more volatile than off-peak prices.

5 Q. Okay, that's fair, you didn't look at it.
6 But the values that you show, they start out at
7 \$40.60 on-peak for -- at the low end for the
8 September month for the period, and they are as high
9 as \$54 for the July month of the period, which is a
10 difference of about 13-1/2 dollars, right?

11 A. That's correct.

12 Q. And then on the off-peak period there's a
13 low, again, for the September period month of \$28.55
14 and a high of \$31.85 for the July, period, right?

15 A. That's correct.

16 Q. And the difference between that high and
17 low is, oh, somewhere less than two-and-a-half
18 dollars?

19 A. That's correct.

20 Q. Okay. So my observation was, would you
21 agree with me, that the on-peak prices are, they
22 fluctuate more widely than do the prices for the
23 off-peak?

24 A. Again, I don't necessarily agree with
25 you. I think you're confusing the issue of

1 volatility with relative pricing. The fact that the
2 prices fluctuate over the summer are a function of
3 the fact that power prices tend to be weather driven
4 and people are projecting we'll have hot temperatures
5 in July and August; that drives the market price for
6 power.

7 You can have equal degrees of volatility
8 in off-peak to the extent that there's volatility and
9 underlying inputs like natural gas prices.

10 Q. Okay. I was just trying to -- I was just
11 observing that the range and the difference in the
12 price was lower both absolutely and as a percentage
13 on the off-peak compared to the on-peak periods.
14 Would you agree with that?

15 A. Yeah. And if we had -- if I had
16 attempted to look at a different time period, for
17 example, say the fall months, there would have been
18 more compression between the on-peak and off-peak
19 price, they would be closer together.

20 Q. More compression in the range for, say,
21 any three-month period in the fall like October,
22 November, December, there would be less -- you would
23 expect less of a range between the high and the low
24 both for the on-peak and the off-peak during those
25 months?

1 A. Absolutely. But you have to recognize
2 that I was comparing this to AEP's forecasted fuel
3 FAC rate which includes purchased power for the same
4 period of time. So you would expect to see the
5 similar type of pattern in the forecasted FAC rate as
6 it varies over time.

7 Q. And the summer months of, well, the
8 months of July, August, and September, those are
9 three of the months that occur during the peak period
10 of consumption by AEP Ohio's customers, right?

11 A. July and August certainly are; I think
12 September actually falls outside of what's classified
13 as the peak period.

14 Q. Okay. But two out of the three months
15 you would agree are peak monthly periods for
16 consumption, right?

17 A. Historically, and you would expect that
18 to be the case if weather is normal.

19 Q. Okay. And if you had looked at 12 months
20 worth of prices, would you expect that they --
21 including the 3 months you used but also the other 9
22 months within the 12-month period that included those
23 3 months, would you expect that the balance of the
24 months would have prices which on the on-peak side of
25 it are lower than the prices that you have selected

1 for the 3 months that you studied?

2 A. The current market trends for power, if
3 you went out and looked at the, for example, the
4 winter of 2014, you would certainly see numbers that
5 in an absolute sense are lower than the projected
6 market prices for the summer of 2013. But there's a
7 generally upwardly increasing trend in power prices
8 as you go forward. It generally mimics a forward
9 price curve for natural gas prices.

10 Q. But nominally the prices are lower than
11 the monthly season on-peak prices for the remainder
12 of the 12 months projected out?

13 A. I didn't do that calculation.

14 Q. Okay. The --

15 A. It's publicly available data, so
16 certainly anybody that wants to can do that
17 calculation fairly easily.

18 Q. Which months of the year do you see the
19 highest level of demand for AEP Ohio's service area?

20 A. Historically it's been the summer months
21 if there's normal weather.

22 Q. And which months are those?

23 A. June, July, and August.

24 Q. Okay. And then what period will be
25 served by the upcoming auctions? What monthly

1 period? I mean, beginning to end.

2 A. For the Phase I auction it's difficult to
3 say because that's a function of when the Commission
4 issues an order and how quickly thereafter you can
5 conduct and implement an auction.

6 Q. Let's assume just for purposes of
7 discussion that the earliest it could be is November
8 as a beginning point and then we'll just assume that
9 it is November for purposes of our discussion, okay?
10 In that instance what monthly periods will be covered
11 by the 10 percent, the 50 percent, and the 40 percent
12 auctions?

13 A. I'd have to go back and look at the
14 company's proposal to refresh my memory.

15 Q. Well, isn't it true that the 10 percent
16 auction lasts until May 15, 2015, and starts
17 whenever, you know, the Commission completes its work
18 here and the auction is conducted?

19 A. Again, I don't recall the specific
20 details, I'd have to go back and look at the
21 company's proposal. My recollection is the timing of
22 the auctions is laddered.

23 Q. Laddered?

24 A. Yeah.

25 Q. Okay. So --

1 A. And at the end they run through delivery
2 through May of 2015.

3 Q. Okay. So the 10 percent auction then,
4 assuming it starts -- delivery starts in November at
5 the earliest, it will go from November of 2013 to May
6 of 2015, right?

7 A. That's my recollection but, again, I
8 think that's one of the issues that's perhaps up for
9 debate in the context of this proceeding.

10 Q. Okay. And then with regard to the
11 incremental 50 percent energy-only auction, the
12 schedule at this point for that auction is that it
13 will begin so that deliveries start in June of 2014
14 and then continue until May of 2015, right?

15 A. My recollection is delivery certainly
16 starts in June of '14. I don't recall the end date
17 but I'll accept your characterization.

18 Q. You don't have any reason to think it's
19 anything different than --

20 A. No. Again, my recollection is the
21 auctions were structured as laddered and run through
22 the end of the May 2015 delivery period.

23 Q. And then the 100 percent auction will be
24 conducted so that deliveries begin in January of 2015
25 and continue through May of 2015, right?

1 A. That's correct.

2 Q. Okay. So even though the auctions are
3 laddered in the fashion we just discussed or that
4 they -- they're likely to be or they're tentatively
5 scheduled to be laddered in the fashion that we just
6 discussed, the earliest under the illustration we
7 just described is, the earliest it would start is
8 November of this year, 2013, and the latest for any
9 of the auctions is -- all the auction is then May of
10 2015 for delivery, right?

11 A. Again, you asked me to presume November
12 for the earliest date.

13 Q. Okay.

14 A. So it's going to be a function of when
15 the Commission issues an order and how quickly the
16 company can respond to that order.

17 Q. Sure. Okay. But if we do assume that it
18 takes place along that -- along that timeline, how
19 many of the months for any of the auctions will --
20 how many months out of that period, that November of
21 2013 through May of 2015 period, will be composed of
22 the months of July, August, September?

23 A. Math on the fly was never a strong suit
24 so let me think about this here.

25 Q. Sure. Take your time.

1 A. If we presume a starting delivery period
2 of November 1 running through May of 2015, you would
3 actually only have the three summer months of 2014 in
4 the delivery period.

5 Q. Okay. And so the balance of the months
6 in any of the delivery period will be off-peak
7 months, seasonally off-peak months, right, for
8 AEP Ohio?

9 A. That's correct.

10 Q. Okay. And so if we were to weight the
11 price for the expected results of the competitively
12 bid auctions using all of the months within which
13 deliveries are going to be made, you would expect,
14 then, that because you only include one
15 summer-peaking season worth of months in it and
16 include, then, the remainder of the months in the
17 delivery periods which are composed of off-peak
18 months, that the weighted average price throughout
19 the auction period would then be less than an average
20 weighted price that only relied upon monthly prices
21 from the peak period, the peak summer period,
22 correct?

23 A. I don't understand your question in part
24 because you were referring to off-peak months and in
25 my analysis I was looking at off-peak and on-peak

1 prices which relates to the time of day.

2 Q. Okay. Well, I wasn't referring to that.
3 I was referring to the use of -- in the weighting
4 process, not just the three months that you selected,
5 the July, August, September months, which include at
6 least two, if not three, of the summer-peaking months
7 for the company, but rather included all the months
8 of the delivery period that's going to result from
9 the auctions.

10 And my question is: If you used pricing
11 from all of the months of the delivery period of the
12 auction, would you agree with me that you would then
13 having weighted all those months in the calculation,
14 come up with a lower value than if you only used
15 three months including being, or being July, August,
16 and September?

17 A. I haven't done that calculation and,
18 again, I think I testified and agreed that generally
19 prices in the -- on-peak prices in the summer tend to
20 be higher than the remainder of the year but the
21 trend line of market prices going forward is
22 escalating over time.

23 So, again, somebody could pretty easily
24 do that calculation; I did not for the purpose of my
25 testimony today.

1 Q. And why is it that you did not?

2 A. We really have nothing to compare it to.
3 We don't have AEP's forecasted fuel rate for the
4 comparable period, so I would produce a number that
5 is a number but really can't do anything with it. My
6 recommendation is that the Commission dig into what
7 AEP's forecasted fuel rate is for the relevant
8 delivery period and use that to establish the reserve
9 price.

10 Q. Well, did you look at the monthly period
11 of, like a prior selection of months for which you
12 had FAC rates and also then monthly competitively
13 priced energy rates that covered a period prior to
14 the three months that you did evaluate so that you
15 could have assessed how the FAC rate compared to the
16 pricing from periods other than the peak-month
17 periods that you looked at?

18 A. No.

19 Q. Okay. You didn't consider doing that.

20 A. Again, I didn't believe it was necessary.
21 The relevant observation is what is AEP's forecasted
22 fuel cost going to be on a going-forward basis, not
23 what they've been in the past, and we simply don't
24 have that information.

25 Q. And would you agree with me that your --

1 the comparison that you conducted is biased because
2 of the selection of months that you made focusing
3 only on the summer -- summer-peak demand months?

4 A. No, I wouldn't agree.

5 Q. Okay. Let me ask you a few questions,
6 then, about the 20 to 25 percent adder that you used
7 to gross up the per megawatt-hour energy prices from
8 the AEP-Dayton hub to the final price, the prices you
9 used to compose your range. First of all, you
10 used -- you settled on a 20 to 25 percent markup,
11 right?

12 A. That's correct.

13 Q. And where you got that is from the recent
14 FirstEnergy auction; is that right?

15 A. Actually, no. I got that from the
16 testimony of Teresa Marrinan that was filed in Dayton
17 Power & Light's proposed electric security plan
18 proceeding in which she did an analysis of auction
19 results from both recent FirstEnergy as well as Duke
20 Energy Ohio auctions and came up with a weighted
21 average of -- markup of 1.24 percent.

22 Her testimony in that case was
23 uncontested.

24 Q. And what was the type of auction that
25 Ms. Marrinan was looking at?

1 A. It was an auction to secure default
2 generation service for standard service offer load in
3 the case of FirstEnergy and Duke that is a full
4 requirements auction so it includes not only energy
5 but capacity as well, but she stripped out the
6 capacity numbers to calculate her markup of the
7 energy prices.

8 MR. CONWAY: Thank you, Mr. Murray.

9 That's all I have, your Honor.

10 EXAMINER PARROT: Mr. Reilly.

11 MR. REILLY: We have nothing, your Honor.

12 EXAMINER PARROT: Any redirect,
13 Mr. Pritchard?

14 MR. PRITCHARD: May I have one minute
15 with the witness?

16 EXAMINER PARROT: You sure may.

17 (Off the record.)

18 MR. PRITCHARD: Just one question, your
19 Honor.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Pritchard:

23 Q. Mr. Murray, do you recall a question by
24 Mr. Conway about whether or not your analysis would
25 be biased because it included summer months?

1 A. Yes, sir.

2 Q. And do you recall answering no, that you
3 do not believe it was biased?

4 A. Yes, I do.

5 Q. Could you explain why you do not think it
6 would be biased?

7 A. Again, my comparison was market prices
8 for July, August, and September as reflected on the
9 Intercontinental Exchange to the company's forecasted
10 FAC rate or underlying fuel cost in their FAC rate
11 for the same delivery period.

12 the forecasted FAC rate includes
13 projected purchased power costs which in summer
14 months are going to be higher, normally, than what
15 you would see in winter or spring or fall months.
16 Again, my analysis was trying to do an
17 apples-and-apples comparison to the best extent
18 possible which is why I focused on the summer months.

19 MR. PRITCHARD: No further questions.

20 EXAMINER PARROT: Any recross,
21 Mr. Petricoff?

22 MR. PETRICOFF: No, your Honor.

23 EXAMINER PARROT: Mr. Lang?

24 MR. LANG: No, thank you.

25 EXAMINER PARROT: Ms. Grady?

1 MS. GRADY: No, your Honor.

2 EXAMINER PARROT: Mr. Conway?

3 MR. CONWAY: Maybe just a couple
4 questions to follow up on that redirect.

5 - - -

6 RECROSS-EXAMINATION

7 By Mr. Conway:

8 Q. Mr. Murray, did you evaluate the
9 purchased power elements within the fuel adjustment
10 clause for the period that you reviewed and compare
11 it to purchased power costs included in other periods
12 prior to that period?

13 A. No.

14 Q. Okay. So you don't know whether, in
15 fact, purchased power costs included in the fuel
16 adjustment clause were higher or lower than they were
17 in prior periods.

18 A. That's correct; I didn't do that
19 analysis.

20 MR. CONWAY: Nothing further, your Honor.
21 Thank you.

22 EXAMINER PARROT: Mr. Reilly?

23 MR. REILLY: We have nothing, your Honor.

24 EXAMINER PARROT: Thank you, Mr. Murray.
25 You are excused.

1 Mr. Pritchard?

2 MR. PRITCHARD: At this time IEU-Ohio
3 would move for admission of Exhibit 6.

4 EXAMINER PARROT: Are there any
5 objections to the admission of IEU Exhibit 8?

6 MR. PRITCHARD: My apologies.

7 MR. CONWAY: No, your Honor.

8 EXAMINER PARROT: Hearing none, IEU
9 Exhibit 8 is admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER PARROT: I believe that was our
12 last witness.

13 Mr. Nourse.

14 MR. NOURSE: Thank you, your Honor. The
15 company would like to ask for permission to address a
16 single set of issues on rebuttal, and I'd like to
17 propose two alternatives. We could file written
18 rebuttal testimony and the topic that we'd like to
19 address is really focused on Dr. Lesser's credit
20 proposal which is not something that was reflected in
21 any of the comments or queued up previously in this
22 docket so we had no way of knowing that it would be
23 proposed or an opportunity to address it in our, you
24 know, in our direct testimony. So we do want to have
25 an opportunity to address it beyond just the

1 cross-examination method.

2 And so I have two proposals, actually the
3 first one would be to take administrative notice of
4 certain documents, which I'll go through in a second,
5 from the capacity proceeding, the 10-2929 case, and
6 if, you know, if we take that approach, then we could
7 forego filing rebuttal testimony in this case and,
8 you know, coming back for another hearing and so it
9 might speed things along.

10 But if you don't like option A, our
11 option B would be to have, you know, file testimony
12 and come back for a rebuttal phase of the hearing.

13 The documents from the 10-2929 case that
14 we'd like to, you know, take administrative notice of
15 would be the direct testimony of staff witness Ryan
16 Harter, Staff Witness Emily Medine, and then the
17 rebuttal testimony of Company Witness Nelson and
18 Company Witness Allen. So those basically those four
19 pieces of testimony.

20 And then also the cross-examination
21 transcripts for those four pieces of testimony, those
22 witnesses, and the exhibits, you know, that were
23 admitted in connection with the cross-examination
24 that were admitted in those transcript portions.

25 EXAMINER TAUBER: Just to clarify, the

1 request for administrative notice is limited to those
2 four witnesses and then the corresponding transcripts
3 and exhibits associated with the testimony.

4 MR. NOURSE: That's correct. Which, you
5 know, all that testimony or a portion of the
6 witnesses' testimony deals with the energy credit.

7 MR. PRITCHARD: Your Honor, to the extent
8 you're considering taking administrative notice of
9 these specific testimonies, I think it would be
10 easier to take administrative notice of the entire
11 records, because without reviewing the exact portions
12 here I'm not sure, for instance, if our witness has
13 addressed some of the issues that were in here,
14 therefore, the cross and testimony might -- of our
15 position might be somewhere else in the record and
16 without taking some time to think about it and review
17 it, I'm not sure what exactly would be coming in and
18 what wouldn't be.

19 MR. NOURSE: Well, your Honor, if I could
20 just briefly address that. I mean, again, we're
21 putting this out as an alternative to the company
22 filing rebuttal. So it's already an established
23 record that we would, you know, rely on those
24 testimonies and related cross and exhibits in lieu of
25 filing rebuttal testimony, so I don't think it's

1 particularly pertinent to have IEU testimony come in
2 in connection with our rebuttal.

3 But, you know, those witnesses were the
4 ones that addressed the energy credit that we'd like
5 to be able to rely on in lieu of filing rebuttal
6 testimony here.

7 EXAMINER TAUBER: Mr. Petricoff.

8 MR. PETRICOFF: A couple of thoughts.
9 First, I appreciate the company's offering two ways
10 of approaching this because I think that if we can
11 avoid rebuttal testimony, it's good for all parties
12 given the amount of time.

13 Also, we think that this may be a tempest
14 in a teapot in terms of that, the narrow issue.

15 That being said, I think maybe the way to
16 approach this is I assume that we're -- what we're
17 going to see is that when we get the initial briefs,
18 that they will have citations to that, to those
19 testimonies, then I assume if we're going to have
20 reply briefs in this case, maybe at that time what we
21 ought to do is have a very liberal policy about
22 taking judicial notice about anything else in the
23 record if we are now going to re-litigate portions or
24 at least compare memories or interpretations of the
25 10-2929 case.

1 EXAMINER TAUBER: Thank you.

2 Any other parties wish to weigh in?

3 MR. LANG: Your Honor, on behalf of
4 FirstEnergy Solutions, we actually think what
5 Mr. Nourse has proposed is pretty reasonable. The
6 one thing we might suggest is kind of looking at the
7 calculation that was done in the 10-2929 case, I
8 believe we had admitted Dr. Pearce's direct testimony
9 already as an exhibit. The one piece that's probably
10 missing would be, I can't remember if he was -- if he
11 was a doctor or Mr. but Smith's --

12 EXAMINER PARROT: I was wondering about
13 that one.

14 MR. LANG: -- direct.

15 MR. NOURSE: He didn't address the energy
16 credit but he was demand charge only. Staff had a
17 clean break between those two topics.

18 MR. LANG: Yeah, I think there was an
19 issue and I remember it being in the Commission entry
20 as to kind of the, I guess I was going to say
21 overlap, but the lack of an overlap on kind of energy
22 and capacity, so I think it is, and the energy credit
23 is like being applied to that.

24 But with that one suggestion we think
25 it's a fair proposal.

1 MS. GRADY: Your Honor, if we could weigh
2 in. We are not in favor of the proposal to take
3 administrative notice. I think Mr. Pritchard raised
4 the fairness issue. If we're going to be considering
5 bits and pieces of the record in 10-2929, it would
6 seem in all fairness that other pieces that other
7 parties might want to put in the record should be
8 given administrative notice as well.

9 I think it's a somewhat skewed picture of
10 what occurred in 10-2929, it was a very complex case
11 with many issues and the issues are very much related
12 to the issues presented in this case, so I would
13 agree with Mr. Pritchard that if we're going to
14 start -- if we're going to go that route, then we
15 need to talk about taking administrative notice of
16 the entire case.

17 MR. REILLY: Your Honor, if I could just
18 respond to that, and I just raise the point of
19 experience having been in a case where that was done,
20 its complexities that when you finally get around to
21 briefing that are -- I don't think anybody can
22 anticipate them all at this point. And my
23 understanding of the 10-2929 case, although I wasn't
24 in it, is that it was a highly complex case.

25 The issues in this case have been

1 carefully honed I think to try to simplify it. I
2 think that's defeated by taking -- whatever the Bench
3 does, taking administrative notice of the whole
4 10-2929 record.

5 MR. NOURSE: Yeah, and I just would like
6 to add that, you know, I agree with Mr. Reilly that
7 it was a huge record and just taking the whole thing
8 is probably, you know, overblown and could create or
9 cause parties to raise issues that aren't really at
10 issue here.

11 What we, you know, again stated would
12 be -- this relates to the energy credit issue and as
13 it relates to Dr. Lesser's credit proposal would be
14 the testimony that the Commission addressed and
15 adopted in the capacity charge decision. And we
16 certainly want to keep the issues narrow and what
17 they are already, we're not trying to add issues.

18 But, again, Dr. Lesser raised a proposal
19 that was not previously in any comments or any
20 positions that have been stated in the docket here,
21 so we had no way of knowing he would argue that and,
22 you know, do need an opportunity to respond since we
23 are the, you know, we bear the burden of proof and
24 et cetera.

25 So I think, again, it's a limited

1 proposal in the context of being in lieu of rebuttal.

2 I agree with Howard's approach that --

3 Mr. Petricoff's suggestion, rather, that if parties
4 want to ask permission to bring in other stuff later
5 in the reply phase of briefing, and they can justify
6 why they need to do that, you know, that would be
7 something the Bench could give permission for at that
8 point based on demonstrated good cause.

9 EXAMINER TAUBER: Let's go off the
10 record.

11 (Discussion off the record.)

12 EXAMINER PARROT: Let's go back on the
13 record.

14 All right. We have considered both
15 proposals. We do appreciate I guess what I would
16 call AEP's creativity in proposing the first
17 alternative that was mentioned, we appreciate that,
18 but in light of the fact that we had some objection
19 to that proposal from IEU and OCC, perhaps staff to
20 some extent anyway, and the Bench is unwilling to
21 take administrative notice of the entire capacity
22 docket, we are going to adopt your second proposal
23 which was to kind of use our traditional process and
24 have a witness prefile rebuttal testimony and we will
25 reconvene, then, at a later date to deal with that

1 testimony.

2 So with that, in terms of a schedule, I
3 think what we would perhaps propose, if the company
4 could file by the end of the day, close of business
5 Thursday of this week, and then we could reconvene
6 next Tuesday, July 2nd. Does that work for
7 parties?

8 MR. NOURSE: I'm not sure if two days is
9 enough, your Honor. I was going to suggest next
10 week. I think we can do it by the end of this week,
11 Friday, and still come back next week for hearing.

12 EXAMINER PARROT: I'm just hesitant
13 because next week is a holiday week and I just don't
14 know what availability is going to be, otherwise I
15 think we would have the flexibility, but with that in
16 mind I don't know -- are counsel even around next
17 week?

18 MR. KURTZ: Not July 2.

19 EXAMINER PARROT: Okay.

20 MR. ALEXANDER: And, your Honor, I
21 understand there may be a conflict --

22 EXAMINER PARROT: Actually, I'm sorry,
23 let's go off the record briefly to talk schedules and
24 then we'll come back.

25 (Discussion off the record.)

1 EXAMINER PARROT: Let's go back on the
2 record. All right. After some discussion of witness
3 availability and the parties' availability for
4 rebuttal testimony, we have agreed that the company
5 will file its rebuttal testimony by the close of
6 business on July 2nd, and we will reconvene on
7 Monday, July 15th at 10:00 o'clock.

8 I will have to check on availability of
9 this room. I'm going to hope that it's open and we
10 will be meeting in this room on that date, but I will
11 confirm that with all of you by electronic mail. And
12 if there's nothing else today, we are adjourned until
13 the 15th. Thank you.

14 (Hearing adjourned at 1:56 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 Tuesday, June 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.

(72730-MDJ)

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Summary: Transcript in the matter of Ohio Power Company hearing held on 06/25/13 - Volume II electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.