

1 APPEARANCES:

2 Duke Energy
3 By Ms. Amy B. Spiller
4 and Ms. Jeanne Kingery (via speakerphone)
139 East Fourth Street, 1303-Main
Cincinnati, Ohio 45202

5 On behalf of the Applicant.

6 Bruce J. Weston, Ohio Consumers' Counsel
7 By Mr. Edmund "Tad" Berger
8 and Ms. Maureen R. Grady,
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

9 On behalf of the Residential Ratepayers
10 of Duke Energy Ohio.

11 McNees, Wallace & Nurick, LLC
12 By Mr. Matthew R. Pritchard
Fifth Third Center, Suite 1700
21 East State Street
13 Columbus, Ohio 43215-4288

14 On behalf of the Industrial Energy
15 Users - Ohio.

16 Carpenter, Lipps & Leland, LLP
17 By Ms. Kimberly W. Bojko
280 North High Street, Suite 1300
Columbus, Ohio 43215

18 On behalf of the Ohio Manufacturers'
19 Association.

20 Carpenter, Lipps & Leland, LLP
21 By Ms. Rebecca L. Hussey
280 North High Street, Suite 1300
Columbus, Ohio 43215

22 On behalf of The Kroger Company.

23 - - -

24

25

1 APPEARANCES: (Continued)

2 IGS Energy
3 By Mr. Joseph Olikier
4 6100 Emerald Parkway
5 Dublin, Ohio 43016

6 On behalf of IGS Energy.

7 FirstEnergy Service Corporation
8 By Mr. Jacob A. McDermott (via speakerphone)
9 and Mr. Scott J. Casto (via speakerphone)
10 76 South Main Street
11 Akron, Ohio 44308

12 On behalf of FirstEnergy Solutions Corp.

13 Mike DeWine, Ohio Attorney General
14 By Mr. William Wright, Section Chief
15 Mr. Thomas Lindgren (via speakerphone)
16 Mr. Ryan O'Rourke (via speakerphone)
17 Mr. Steven Beeler (via speakerphone)
18 Assistant Attorneys General
19 Public Utilities
20 180 East Broad Street, 6th floor
21 Columbus, Ohio 43215

22 On behalf of the Staff of the Public
23 Utilities Commission.

24 Boehm, Kurtz & Lowry
25 By Ms. Jody Kyler-Cohn (via speakerphone)
36 East Seventh Street, Suite 1520
Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

Ohio Partners for Affordable Energy
By Ms. Colleen L. Mooney (via speakerphone)
231 West Lima Street
Findlay, Ohio 45839

On behalf of Ohio Partners for Affordable
Energy.

- - -

1 APPEARANCES: (Continued)

2 Mr. Douglas E. Hart (via speakerphone)
3 441 Vine Street, Suite 4192
Cincinnati, Ohio 45202

4 On behalf of the Greater Cincinnati
5 Health Council.

6 Vorys, Sater, Seymour & Pease, LLP
7 By Mr. Michael Settineri (via speakerphone)
52 East Gay Street
Columbus, Ohio 43216-1008

8 On behalf of the Retail Energy Supply
9 Association.

ALSO PRESENT:

10 Mr. Greg Slone, OCC.
11 Ms. Tammy Turkenton, PUCO (via speakerphone).
12 Mr. Hisham Choueiki, PUCO (via speakerphone).
- - -

13

14

15

16

17

18

19

20

21

22

23

24

25

1 INDEX

2 - - -

3 Witness Page

4	Charles R. Whitlock	
	Cross-Examination by Mr. Berger	11
5	Cross-Examination by Mr. Pritchard	80
	Cross-Examination by Ms. Bojko	102
6	Cross-Examination by Mr. Olikier	114
	Cross-Examination by Mr. Settineri	151
7	Cross-Examination (Continued) by Mr. Berger	158
	Cross-Examination (Continued) by Mr. Pritchard	201
8	Cross-Examination (Continued) by Ms. Bojko	209
	Cross-Examination (Continued) by Mr. Olikier	232
9	Cross-Examination (Continued) by Mr. Settineri	247

10 - - -

11 Whitlock Deposition Exhibit Identified

12	1 Notice to Take Depositions	11
13	2 11-3549 Stipulation and Recommendation	25
14	3 Amended and Restated Inter-Company	
	Power Agreement, 9-10-10	31
15		
16	4 OVEC Analysis (Confidential)	177
17	5 OVEC ICPA Billable Cost Summary	
	Calendar Years 2014-2040 (Confidential)	185
18	6 OVEC ICPA Billable Cost Summary	
	Calendar Years 2014-2040 (Confidential)	188
19		
20	7 OVEC ICPA Billable Cost Summary	
	Calendar Years 2012-2016 (Confidential)	191
21	8 OCC-POD-09-065	198
22	9 OCC-POD-05-048	199

23 - - -

24

25

1	INDEX (Continued)		
2	- - -		
3	IEU-Ohio Whitlock Deposition Exhibit	Identified	
4	1 FERC 2012	92	
5	2 FERC 2013	93	
6	3 OVEC and Subsidiary Company Consolidated		
7	Financial Statements 12-31-13 and 2012		
	and Independent Auditor's Report	94	
8	4 OVEC and Subsidiary Indiana-Kentucky		
9	Electric Corporation Annual Report 2012	97	
10	5 OVEC and Subsidiary Indiana-Kentucky		
	Electric Corporation Annual Report 2013	97	
11	- - -		
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 Thursday Morning Session,
2 September 11, 2014.

3 - - -

4 MR. PRITCHARD: Matt Pritchard, on behalf
5 of IEU-Ohio, I'm with the law firm of McNees, Wallace
6 & Nurick, 21 East State Street, Columbus, Ohio 43215.

7 MR. BERGER: Good morning. I'm Edmund
8 "Tad" Berger from the Office of Ohio Consumers'
9 Counsel, 10 West Broad Street, Suite 1800, Columbus,
10 Ohio 43215. With me is Greg Slone also from our
11 office. Thank you.

12 MR. OLIKER: Joseph Olikier on behalf of
13 IGS Energy, 6100 Emerald Parkway, Dublin, Ohio 43016.

14 MS. BOJKO: Kim Bojko, Carpenter, Lipps &
15 Leland, 280 North High Street, Suite 1300, on behalf
16 of Ohio Manufacturers' Association.

17 MS. HUSSEY: Rebecca Hussey with the law
18 firm of Carpenter, Lipps & Leland, 280 North High
19 Street, Suite 1300, Columbus, Ohio 43215 on behalf of
20 The Kroger Company.

21 MS. SPILLER: Amy Spiller for Duke Energy
22 Ohio, 139 East Fourth Street, Cincinnati, Ohio 45202.

23 And then who is on the phone, please.

24 MR. SETTINERI: This is Mike Settineri
25 with the law firm Vorys, Sater, Seymour & Pease, 52

1 East Gay Street, Columbus, Ohio, Settineri is S as in
2 Sam E-T-T-I-N-E-R-I, on behalf of the Retail Energy
3 Supply Association.

4 MS. MOONEY: This is Colleen Mooney on
5 behalf of Ohio Partners for Affordable Energy.

6 MS. COHN: This is Jody Kyler-Cohn with
7 the law firm of Boehm, Kurtz & Lowery, 36 East
8 Seventh Street, Suite 1510, Cincinnati, Ohio 45202,
9 on behalf of the Ohio Energy Group.

10 MR. HART: Douglas E. Hart, 441 Vine
11 Street, Suite 4192, Cincinnati, Ohio 45202, for the
12 Greater Cincinnati Health Council.

13 MR. CASTO: Scott Casto and Jacob
14 McDermott on behalf of the FirstEnergy Solutions, 76
15 South Main Street, Akron, Ohio 44308.

16 MR. BEELER: Steve Beeler, Thomas
17 Lindgren, and Ryan O'Rourke on behalf of staff of the
18 Public Utilities Commission, 180 East Broad Street,
19 Columbus, Ohio 43215.

20 MS. KINGERY: Jeanne Kingery also on
21 behalf of Duke Energy Ohio.

22 MS. SPILLER: And are there nonattorneys
23 on the phone as well, please?

24 MR. CHOUÉIKI: Hisham Choueiki with
25 staff.

1 MS. TURKENTON: And Tammy Turkenton with
2 staff.

3 MS. SPILLER: Okay. And we are -- we are
4 here for the deposition of Chuck Whitlock. And I
5 guess just a procedural issue. We have had some
6 activity as folks are aware with respect to
7 confidentiality agreements. As I interpret the
8 Commission's most recent decision, we are to provide
9 those who have requested confidential information
10 confidential information even if they have yet to
11 enter into a confidentiality agreement.

12 Consistent with that directive we have
13 provided those parties requesting the material
14 confidential information. We've also entered into
15 confidentiality agreements. I fully anticipate there
16 will be confidential topics addressed during
17 Mr. Whitlock's deposition. For those entities that
18 have not requested confidential information we're
19 going to have to just bifurcate the deposition into
20 two different -- two different parts. At this point
21 there are parties who have not expressed interest in
22 confidential information, but I don't believe any of
23 them to be on the phone this morning. But we'll just
24 have to confirm, I guess, Tad, when you want to delve
25 into confidential material.

14 And just one final housekeeping matter,
15 if you could put your phones on mute in the event
16 people may engage in some other activities, we don't
17 get a lot of that background disruption here in the
18 conference room.

21 - - -

1 CHARLES R. WHITLOCK

2 being by me first duly sworn, as hereinafter
3 certified, deposes and says as follows:

4 CROSS-EXAMINATION

5 By Mr. Berger:

6 Q. Good morning, Mr. Whitlock. My name is
7 Tad Berger. I am with the Office of Ohio Consumers'
8 Counsel. As you know, we sent out a deposition --
9 notice of deposition. Are you familiar with that
10 notice of deposition?

11 A. No.

12 Q. Did you review the notice of deposition?

13 A. I did not.

14 Q. I have a copy here for you.

15 MS. SPILLER: Are you going to mark it?

16 MR. BERGER: Yes. Let's mark that as
17 Whitlock Deposition Exhibit 1. If counsel doesn't
18 have a copy, I have some extra copies too. Just let
19 me know.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Mr. Whitlock, just for your reference,
22 if -- we obviously noticed two specific individuals
23 if you read this notice of deposition for this -- for
24 depositions. There's also No. 3. Did you have a
25 chance to review No. 3 on the notice of deposition?

1 MS. SPILLER: I am just going to note an
2 objection to your part 3B which has absolutely
3 nothing to do with the issues in this case.

4 MR. BERGER: Noted.

5 MR. OLIKER: For the record could we
6 identify what 3B is.

7 MS. SPILLER: It's "Requests for consent
8 of a sale or transfer of a Sponsoring Company's
9 interest in OVEC."

10 MR. OLIKER: Thank you.

11 MS. SPILLER: I would further note that
12 same objection, Mr. Berger, to 3A which asks about
13 the terms of the ICPA in respect of sale or transfer
14 of a Sponsoring Company's OVEC interest, issues
15 wholly unrelated to this case and, thus, irrelevant.

16 Q. Okay. Let me know when you are done
17 reviewing the notice of deposition.

18 A. Okay.

19 Q. And with respect to No. 3 on the notice
20 of deposition, can you tell me with respect to parts
21 A, B, C, and D whether you would be the most
22 qualified person at Duke Energy to be able to answer
23 questions related to those parts noting that
24 Ms. Spiller has stated an objection with respect
25 to -- to the subject matter of sections A and B?

1 A. What do you mean by most qualified?

2 Q. Well, are you qualified to answer
3 questions regarding these subject matters?

4 A. Well, I think that will be determined by
5 how well I answer the questions, right? I think I
6 can answer some of the questions but we'll see.

7 Q. Is there another person who would be more
8 qualified than you to answer the questions to the
9 best of your knowledge who is a Duke Energy Ohio
10 employee or somebody who would represent Duke Energy
11 Ohio in a capacity related to this proceeding?

12 A. There might be under C and D, potentially
13 under B and maybe under A also.

14 Q. And who would those persons be?

15 A. Well, the ICPA is a legal document. I am
16 not a lawyer so maybe a lawyer under A, same thing
17 under B. Again, a lot of those things are dealt with
18 under the ICPA.

19 Q. You signed the ICPA, didn't you?

20 A. I did.

21 Q. Okay. And C and D, were there particular
22 individuals who you feel are more qualified?

23 A. So in C I have a question about what you
24 mean by the value of its share of capacity and energy
25 from OVEC to its retail customers. I'm not familiar

1 with who the retail customers of OVEC are.

2 Q. Would you be -- if it said "wholesale
3 customers," would that change your understanding of
4 this question? All OVEC customers are wholesale
5 customers; is that correct?

6 MS. SPILLER: I am going to object to the
7 extent you are revising this notice of deposition to
8 an issue that's way far afield of the subject matter
9 of this -- of this case.

10 Q. You can answer the question.

11 A. Could you repeat the question?

12 Q. Yes. If the word "retail" was replaced
13 with "wholesale" -- with "wholesale," would you be
14 comfortable that you are qualified to testify with
15 respect to questions pertaining to this notice of
16 deposition part 3C?

17 A. Again, I mean, so the wholesale customers
18 of OVEC would be who?

19 Q. Would be all of the jurisdictional
20 customers who receive power from -- from OVEC.

21 A. So if that's dispatched into PJM, would
22 it be all of PJM's customers?

23 Q. Yes. I think that's the understanding I
24 would have.

25 A. Okay.

1 Q. Is that the understanding you would have?

2 A. I'm not sure. I'm trying to divine what
3 you're asking me, what question you are asking me.

4 Q. Well, who would you define as OVEC's
5 customers?

6 MS. SPILLER: Wholesale customers?

7 MR. BERGER: I am asking who he would
8 define.

9 Q. Are they wholesale or retail customers?
10 Does OVEC have wholesale or retail customers or both?

11 A. I think OVEC has both.

12 Q. Okay. And who would be the wholesale
13 customers and who would be the retail customers?

14 A. So I think the wholesale customers would
15 be the owners in some circumstances and then PJM in
16 other circumstances.

17 Q. And who would be the retail customers?

18 A. I think that certain -- certain owner
19 members of OVEC have retail customers, but I'm not
20 sure how those deals are structured.

21 Q. But those customers would not be retail
22 customers of OVEC. They would be retail customers of
23 the sponsoring companies who are the owners of OVEC;
24 isn't that right?

25 A. Right. So I don't -- I guess I would go

1 back to I'm not familiar with how the owner of OVEC
2 transfers those interests to their retail customers.

3 Q. Is there somebody who is more qualified
4 to testify on this subject matter that you are
5 familiar with?

6 MS. SPILLER: I am going to object to the
7 form of the question to the extent OVEC has many
8 sponsoring companies, and you are asking us about how
9 individual sponsoring companies may treat their
10 retail rates.

11 Q. Again, I'll just ask my question, are you
12 aware of somebody that is at Duke Energy Ohio that is
13 more familiar with this subject matter and could
14 testify more capably regarding this subject matter?

15 MS. SPILLER: Again, object to the form.
16 If you can answer.

17 A. I'm not sure I can answer. So we went
18 down a couple of different tracks, and so are you
19 asking me is there somebody at DE Ohio who can opine
20 on the retail -- the wholesale or retail nature of
21 each of the individual owners of OVEC?

22 Q. That could opine regarding the economic
23 value of its capacity and energy is really what this
24 question goes to in the marketplace.

25 A. Again, I'm struggling with the idea of

1 the value to retail customers. I'm not trying to be
2 difficult. I am trying to understand what the
3 question is.

4 Q. I am just talking about the value of
5 energy and capacity in the marketplace, whether you
6 define it as wholesale or retail.

7 MS. SPILLER: Again, objection to the
8 form.

9 Q. You can answer the question.

10 MS. SPILLER: If you can.

11 Q. If you can, yes. Are you the most
12 capable person, or is there somebody who is more
13 qualified to testify on behalf of Duke Energy Ohio
14 regarding the economic value of the OVEC income and
15 capacity in the current marketplace?

16 A. Again, I think I can comment on it. I
17 don't know if I am the most qualified.

18 Q. Is there somebody who you think is more
19 qualified to testify on behalf of Duke Energy Ohio?

20 MS. SPILLER: I am going to object to the
21 form of this most qualified designation.

22 A. I don't know.

23 MS. SPILLER: The notice didn't indicate
24 as such.

25 MS. BOJKO: I'm sorry, I didn't hear the

1 response.

2 THE WITNESS: I said I don't know if
3 there is somebody more qualified or not.

4 Q. Thank you. And with respect to part D,
5 do you know if you are -- do you know if you are --
6 do you consider yourself qualified to testify on that
7 subject matter?

8 A. So I haven't made any estimates of the
9 benefit to customers and projected rate impacts.

10 Q. Has Duke Energy Ohio made those
11 estimates --

12 A. I'm not sure.

13 Q. Are you familiar with those estimates?

14 A. I'm not sure if they have or not, and I
15 am not familiar with them if they were -- they did do
16 them.

17 Q. Did you do any assessment to determine
18 for parts A through D whether you -- whether there is
19 a more qualified person to testify with knowledge and
20 expertise regarding the subject matter in section 3
21 regarding these areas of testimony?

22 A. Again --

23 MS. SPILLER: I am just going to object
24 for a moment, Mr. Berger. With respect to this
25 notice of deposition, after it was received by us, we

1 were informed by your co-counsel that they were
2 interested in pursuing the depositions of
3 Mr. Whitlock and Mr. Wathen and not beyond that. So
4 to the suggestion that Mr. Whitlock needs to be here
5 to respond to 3A through D, I just want to clarify
6 that we responded in good faith to the request of
7 your co-counsel.

8 Q. Were you consulted, Mr. Whitlock,
9 regarding the scope of this deposition and whether it
10 covered these subject matters prior to your
11 appearance today?

12 A. Again, when I read this, right, I read
13 this -- I was to come, Don Wathen was to come, and
14 then people with knowledge and/or expertise in 3A
15 through D should show up. And it might be me. It
16 might not be me. So I'll tell you the same thing I
17 told you related to A, that I'm familiar with the
18 ICPA but there might be somebody that's most
19 qualified to answer the questions because it's a
20 legal document, same thing under B. C, we went
21 around the mulberry bush on C and D. I have not done
22 any estimates. I don't have any in my possession,
23 control. I don't have anything relative to D.

24 Q. And with respect to D, did you make any
25 inquiry whether Duke Energy Ohio had conducted any --

1 or performed any such estimates?

2 A. I did not.

3 MS. SPILLER: I am going to object.

4 THE WITNESS: Sorry.

5 MS. SPILLER: You're all right.

6 We were asked to produce Mr. Whitlock.

7 We were not asked to address other elements of this
8 notice based upon communications with your
9 co-counsel. We would like the record to be very
10 clear in that regard because there's suggestion that
11 perhaps we're not responding in good faith to the
12 notice.

13 MR. BERGER: I appreciate your statement,
14 Amy. I did not have that conversation with you.

15 MS. SPILLER: Understood.

16 MR. BERGER: Co-counsel is here and she
17 can clarify that.

18 Do we have anything further to say on
19 that, Maureen?

20 MS. GRADY: I don't think we need to get
21 into that on the record here. I think we should
22 proceed.

23 MR. BERGER: Thank you.

24 Q. (By Mr. Berger) Mr. Whitlock, would you
25 please state your name and business address for the

1 record.

2 A. My name is Charles R. Whitlock. My
3 address is 319 East Fourth Street, Cincinnati, Ohio
4 45202.

5 Q. And what is your current position?

6 A. So I have two positions. I'm the
7 president of Midwest Commercial Generation. I'm also
8 the vice president of Gas Operations.

9 Q. And these are positions within Duke
10 Energy Corporation, not Duke Energy Ohio
11 specifically; is that correct?

12 A. Correct.

13 Q. And you are here testifying today on
14 behalf of Duke Energy Ohio though; is that correct?

15 A. I'm not sure.

16 Q. Okay.

17 MS. SPILLER: We're here in a response to
18 a notice of deposition that we are responding to.

19 Q. I understand. You participate in
20 proceedings on behalf of the subsidiary companies?

21 A. I have in the past.

22 Q. Okay. And how long have you worked for
23 Duke Energy Corporation?

24 A. Since June of 2000.

25 Q. And can you tell me progressively what

1 your positions have been within Duke Energy
2 Corporation since that period of time?

3 A. So they end with the jobs I just told you
4 about, and they started where I was on the trading
5 desk in various capacities. So I started in
6 supervising basically the hourly trading. Then I
7 managed the short-term trading business. Then I
8 managed the entirety of the power trading business.
9 I got responsibility in 2004 for a function they
10 called portfolio optimization which was essentially
11 the risk management for the generation so coal
12 procurement, monetizing -- managing the emission
13 allowance position, monetizing power into either
14 bilateral or wholesale markets.

15 And then in 2009, I got responsibility
16 for the operations of the power plants. I also
17 had -- I have responsibility for our competitive
18 retail business. And then in the spring of 2014, I
19 got responsibility for the gas operations business.

20 Q. And have you always worked for Duke
21 Energy Corporation as opposed to any of its operating
22 subsidiaries?

23 A. So I -- I'm not sure that I'm actually --
24 I might have misspoke. I'm not sure I'm actually an
25 employee of Duke Energy Ohio. I think I am employed

1 by Duke Energy Business Services which is the last
2 time -- last time I was deposed I got into this loop
3 about who I actually worked for.

4 Q. Okay. Have you always worked for Duke
5 Energy Business Services or has that changed from
6 time to time?

7 A. It's changed. It was Cinergy Services
8 for a while. I think it was Duke Energy Services and
9 so that pay rail -- that payroll company, if you
10 will, changes from time to time.

11 Q. Now, are you familiar with Duke
12 Energy's position in this case regarding whether the
13 Duke Energy Ohio interest in OVEC is required to be
14 transferred or not to a competitive operating
15 affiliate?

16 MS. SPILLER: I am going to object to the
17 relevance of the question.

18 Q. You can answer the question.

19 A. Could you restate the question?

20 Q. Are you familiar with Duke
21 Energy's position in this proceeding regarding
22 whether the Duke Energy Ohio interest in the OVEC
23 assets -- in the OVEC entitlement and assets and
24 liability is required to be transferred to an
25 affiliate, competitive generation affiliate, or not?

1 A. I'm not familiar with it.

2 Q. Have you reviewed the discovery in this
3 proceeding regarding OVEC?

4 A. No.

5 Q. Do you know whether Duke has taken a
6 position regarding that issue?

7 A. I do not.

8 Q. Are you familiar with the stipulation in
9 Duke's rate case at Case No. 11-3549-EL-SSO?

10 MS. SPILLER: I am going to object to the
11 form. And also if you could help in terms of some
12 indication other than a case number, it might be
13 helpful for the witness.

14 A. I would agree with my counsel. I don't
15 think about -- I don't think about them by case
16 number.

17 Q. Okay. Why don't I show you a copy of the
18 stipulation.

19 A. Okay.

20 Q. That's probably the best way to
21 familiarize yourself with the case. Actually this is
22 the -- did I say rate case? This is an electric
23 security plan proceeding. Docket -- what I am
24 showing you is just a couple of pages -- well, I
25 think I have a whole copy of the stipulation.

1 MS. SPILLER: I think that may be
2 helpful.

3 MR. BERGER: Yes. Can we mark this as --
4 as Whitlock Deposition Exhibit 2, Karen. This is the
5 copy of the stipulation without the attachments to
6 that stipulation.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. I am just asking, Mr. Whitlock, whether
9 you are generally familiar with this stipulation. I
10 am not expecting you to read the whole stipulation.

11 A. Okay. I wasn't reading the whole thing.
12 I was just trying to make sure I was familiar with
13 it. I am.

14 Q. Okay. And I am going to be focusing in
15 particular on pages 25 through 28 of the stipulation.

16 MS. SPILLER: I am just going to object
17 to the relevance to any line of questioning regarding
18 this prior stipulation.

19 I'm sorry, Tad, the paragraphs were what?

20 MR. BERGER: 25 to 28, Amy, Section 8. I
21 have copies of just that section here for people who
22 want to see that section.

23 MS. SPILLER: Thank you.

24 Q. I just wanted you to look over those
25 pages and see if you are familiar with those

1 provisions.

2 A. Do you want me to read it all?

3 Q. I just am asking you if you are familiar
4 with those provisions of the stipulation.

5 A. I would answer the same way I answered
6 the previous question.

7 Q. Were you involved, Mr. Whitlock, in the
8 review of the draft stipulation in that case?

9 A. I believe so.

10 Q. Were you involved in the decision making
11 regarding the stipulation in that case on behalf of
12 Duke Energy Ohio?

13 A. I believe so.

14 Q. And are you familiar with the -- turning
15 you to page -- page 26, where it says under paragraph
16 B toward the bottom and the sentence starts
17 "Following the transfers of the generation assets,"
18 do you see that?

19 A. Yes.

20 Q. And then there is a proviso starting
21 about five lines from the bottom where it says
22 "Provided, however, that contractual obligations," do
23 you see that?

24 A. Yes.

25 Q. Would you please read that to the end of

1 that sentence, that proviso.

2 MS. SPILLER: I am going to object. This
3 is irrelevant to the scope of the ESP that's pending
4 before the Commission. I further think reading
5 pieces and parts of this entire stipulation without
6 the necessary definitions of terms used in this
7 particular paragraph results in an incorrect
8 interpretation of what was stated here.

9 MR. OLIKER: Amy, would you consent to a
10 continuing objection on all questions on this topic
11 so we can move along faster?

12 MS. SPILLER: Well, I am not the one that
13 is asking questions that are irrelevant, but to the
14 extent I need to lodge an objection, I will do so. I
15 have objected notely -- I have objected fundamentally
16 to this topic but there are particular questions that
17 demand further objection.

18 MR. BERGER: We have no problem with you
19 having a continuing objection regarding the relevance
20 of the questions at issue concerning whether Duke
21 Energy Ohio's required or not to transfer its assets
22 to an affiliate.

23 MS. SPILLER: Well, there are further
24 objections.

25 MR. BERGER: If you want to keep

1 repeating those objections, that's fine.

2 MS. SPILLER: Okay.

3 MR. BERGER: However, you know, obviously
4 it's unnecessary given that you've lodged that
5 objection.

6 MS. SPILLER: Well, I think there are
7 additional objections beyond relevance. And I just
8 note it. So to the extent those are required to be
9 asserted, I am going to do that.

10 MR. BERGER: So beyond relevance your
11 current objection is what?

12 MS. SPILLER: Well, you're -- you're
13 misconstruing the nature by asking the witness to
14 read only parts of this particular provision. You've
15 also referenced an aspect of this stipulation that
16 includes terms previously defined. But the focus of
17 your inquiry doesn't bother to include those pages in
18 which the definition occurs, again, misconstruing the
19 very nature and scope of the stipulation.

20 MR. BERGER: I object to your
21 characterization of misconstruction. The settlement
22 will provide what it is. I am asking him to read a
23 particular scope -- a particular portion. Your
24 objection is noted.

25 Q. Would you read that portion of the

1 deposition starting with "provided, however."

2 A. I lost it. Where is it?

3 Q. Toward the bottom of page 26.

4 A. Just starting with "provided, however"?

5 Q. Yes.

6 MR. OLIKER: Tad, you are referring to
7 the document, not the deposition?

8 MR. BERGMANN: I'm sorry. Did I say
9 deposition? Yes, to the stipulation.

10 A. Page 26.

11 Q. Yes.

12 A. B starting in the middle of 3, I guess,
13 "provided, however, the contractual obligations
14 arising before the signing of the Stipulation shall
15 be permitted to remain with Duke Energy Ohio without
16 Commission approval for the remaining period of the
17 contract but only to the extent that assuming or
18 transferring such obligations is prohibited by the
19 terms of the contract or would result in
20 substantially increased liabilities for Duke Energy
21 Ohio." Do you want me to keep reading?

22 Q. To the end of the sentence, yes.

23 A. "If Duke -- liabilities for Duke Energy
24 Ohio if Duke Energy Ohio were to transfer such
25 obligations to its subsidiary or affiliate."

1 Q. Now, with respect to that sentence, are
2 you aware of -- that there are provisions in the OVEC
3 ICPA that allow Duke Energy Ohio to transfer its
4 interest in OVEC to an affiliate?

5 MS. SPILLER: Objection, relevance.

6 A. There are provisions in the ICPA that
7 allow a transfer.

8 Q. And can you tell me what those provisions
9 are?

10 A. It would be helpful to have the ICPA.

11 Q. Sure.

12 MR. BERGER: I have a copy of the
13 executed copy filed with FERC of the ICPA.

14 A. I am not sure if -- I am not sure of the
15 confidentiality provisions of the ICPA. I probably
16 doubt it, but it might be confidential. I don't
17 know.

18 MS. SPILLER: What I have been told by
19 counsel for OVEC is that I know that document was
20 filed with the FERC. I think that is a public
21 record. However, I've understood that sort of the
22 circumstances giving rise to that or communications
23 concerning that document would all be deemed
24 confidential in the eyes of OVEC --

25 MR. BERGER: Okay.

1 MS. SPILLER: -- so just to get that out
2 there.

3 MR. OLIKER: Is OVEC on the phone?

4 MS. SPILLER: No.

5 MR. BERGER: Can we mark this document as
6 Whitlock Deposition Exhibit 3.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. And you're familiar with this document.
9 You already signed this document I think you
10 indicated.

11 A. Yes, I did sign it.

12 Q. Do you recall the question I asked a few
13 minutes ago regarding whether that document provides
14 a right for Duke Energy Ohio to transfer its
15 interests in OVEC to an affiliate?

16 A. I do recall the question.

17 Q. And are you familiar with Section 9.18 of
18 the agreement?

19 MS. SPILLER: I am going to object to the
20 relevance.

21 MR. BERGER: Objection noted.

22 Q. You can answer the question.

23 MR. BERGER: Counsel, if anybody needs a
24 copy of Section 9.18.

25 MS. SPILLER: And, I'm sorry, you gave

1 Mr. Whitlock the entire --

2 MR. BERGER: I gave him the entire
3 agreement.

4 MR. PRITCHARD: Would you like the entire
5 copy?

6 MS. SPILLER: I have got one back at the
7 office. Thank you though.

8 MS. BOJKO: I'm sorry. Can I interrupt
9 for a second? I hate to rehash this, but I am really
10 starting to not understand your continuing objection
11 to relevance. You're objecting to relevance for
12 anything regarding OVEC?

13 MS. SPILLER: I'm objecting to the
14 relevance of the questions about the transfer.

15 MS. BOJKO: Transfer or the IPA? I think
16 I heard an objection to the IPA, and I am just trying
17 to understand where -- where your line is on your
18 objection of relevance.

19 MS. SPILLER: The questions relate to a
20 section of the ICPA that concerns the transfer of
21 assignment.

22 MS. BOJKO: Okay. So that's the extent
23 of your objection.

24 MS. SPILLER: To that question, yeah.

25 MS. BOJKO: Okay. Thank you.

1 A. So I didn't read all of 9.81, but it
2 looks like it's the provision of the contract that
3 allows for successors or assignment of the contract.

4 Q. Would you agree with me that the transfer
5 of the OVEC entitlement is not prohibited by the
6 ICPA?

7 MS. SPILLER: Objection, relevance. I
8 further think the document speaks for itself.

9 A. Is there a specific portion that you
10 direct my attention to? Again, it looks like --
11 unless you want me to read it all, it looks like you
12 have the ability to transfer and sign it, right,
13 without -- it takes unanimous consent.

14 Q. It takes unanimous consent under one
15 provision.

16 A. 9.81. Again, I haven't read the whole
17 thing so if there is a specific provision that you
18 could point me to, that would be helpful.

19 Q. Yeah. Are you aware under certain
20 provision -- under 9.181 unanimous consent is
21 required of the other sponsoring companies?

22 A. Correct.

23 Q. But that's not required under other
24 subsections of Section 9.81; is that correct?

25 MS. SPILLER: I am going to object to the

1 form of the question.

2 Q. You can answer the question.

3 MS. SPILLER: If you can.

4 A. So I read 9.181 so it looks like it
5 requires unanimous consent. And then your question
6 is do other provisions allow for the transfer to take
7 place without unanimous consent?

8 Q. Yes.

9 A. Well, let me read them. So it looks like
10 under 9.183 you can transfer notwithstanding the
11 provisions of 181 if you meet those requirements
12 under A, B, C, D, and E.

13 Q. You are looking at 9.183?

14 A. Yeah.

15 Q. Under 9.182 there is no unanimous consent
16 either, is there?

17 A. So it's a little confusing to me in that
18 there is an agreement, I am assuming it's the
19 transfer agreement, that would have to be executed in
20 a form such -- acceptable to the corporation. And so
21 I'm not -- it feels to me like that agreement would
22 also require the unanimous consent, but I'm not sure.
23 I don't know that you could bind the corporation
24 without unanimous consent. You would probably have
25 to look at the bylaws of OVEC. It feels to me like

1 9.182 also would require unanimous consent.

2 Q. Have you consulted with counsel about
3 that question?

4 A. I have not.

5 Q. Okay. And --

6 A. Again, I am not a lawyer either so.

7 Q. I appreciate that.

8 A. I am just reading it.

9 Q. Would you also agree with me that the
10 terms of Section 9.18 permits the sale or transfer to
11 a third party of a sponsoring company's OVEC
12 entitlement under certain conditions?

13 MS. SPILLER: I'm sorry, what section
14 were you referencing?

15 MR. BERGER: Section 9.18.

16 A. Is there a specific section you could
17 direct me to?

18 Q. A subsection?

19 A. Yeah, if you can. 9.181 is three pages.

20 Q. 9.183 where it says "to a Third Party
21 without any further action." I think you just
22 referenced parts -- subparts A through G of that --

23 A. Yeah.

24 Q. -- section.

25 A. So which part -- which subpart of 9.183

1 are you talking about?

2 Q. If you look at sub -- if you look at
3 9.183, the introductory paragraph, where it says
4 "shall be permitted."

5 MS. SPILLER: I am going to object to the
6 extent we are skipping some words.

7 Q. Feel free to read the entire introductory
8 section.

9 A. "Notwithstanding the provisions of
10 Section 9.181, any Sponsoring Company shall be
11 permitted to, subject compliance with all of the
12 requirements of this Section 9.183, assign all or
13 part of its rights, title and interests in, and
14 obligations under this Agreement to a Third Party
15 without any further action by the Corporation or the
16 other Sponsoring Companies."

17 Q. Is it your understanding then that under
18 this provision with the conditions stated
19 subsequently that the OVEC entitlement of the
20 sponsoring company can be transferred to a third
21 party?

22 MS. SPILLER: I am going to object to the
23 relevance and also to the extent you are asking this
24 witness for a legal conclusion.

25 MR. BERGER: I am asking for his

1 understanding. He signed the agreement.

2 MS. SPILLER: Same objection. Go ahead.

3 A. Again, when I read it, it says that you
4 can transfer to a third party as long as you meet the
5 requirements of this section.

6 Q. With respect to -- as a member of the
7 OVEC Executive Committee, are you aware of any
8 prohibition or do you have an understanding of any
9 prohibition to Duke Energy transferring its OVEC
10 interest to an affiliate or to a third party beyond
11 what's already stated in the agreement?

12 MS. SPILLER: I'm sorry, Karen. Can you
13 read that back.

14 (Record read.)

15 MS. SPILLER: For purposes of Duke Energy
16 Ohio?

17 MR. BERGER: Yes. I am talking here
18 about Duke Energy Ohio interests.

19 THE WITNESS: So I am going to apologize.
20 Could you read the question back to me, or you can
21 restate it. I don't care.

22 (Record read.)

23 A. I'm not sure I understand the question
24 exactly. So it's Duke Energy?

25 Q. I'm talking about as a member of the OVEC

1 Executive Committee, are you aware of any
2 prohibitions other than what's stated in the
3 agreement with respect to allowing Duke Energy Ohio
4 to transfer or -- its interests and obligation in
5 OVEC to an affiliate or third party?

6 A. I'm struggling with the part outside of
7 this agreement because I think that it's contained in
8 this agreement, right?

9 Q. I'm asking for your understanding. Is
10 this agreement the scope of what limits the ability
11 to transfer or sell Duke Energy Ohio's --

12 A. I am not aware of any other -- I am not
13 aware of any other provisions outside of this that
14 have been codified by the executive committee --

15 Q. Thank you.

16 A. -- or that didn't emanate from this,
17 right?

18 Q. Well, if they emanated from this, what do
19 you mean by that?

20 A. The ICPA is the document that governs
21 the -- how you can transfer assets. And so if --

22 Q. When you say emanate, you mean --

23 A. Started with, came from, was born out of,
24 I don't know what the official definition of emanated
25 is but that's what I mean.

1 Q. So when you're saying emanated, you mean
2 the OVEC Executive Committee may interpret this
3 agreement in a particular way; is that what you are
4 saying?

5 MS. SPILLER: I am going to object to the
6 extent you are asking him about the interpretation of
7 other entities or individuals.

8 MR. BERGER: I am asking what he means by
9 emanate.

10 MS. SPILLER: I think he just defined for
11 you how he used the term.

12 MR. BERGER: I am asking him --

13 A. I mean, it starts with this agreement.

14 Q. I understand that. So when you say the
15 OVEC Executive Committee, would you agree with me the
16 OVEC Executive Committee interprets this agreement
17 from time to time?

18 A. I would say each OVEC member interprets
19 this agreement often --

20 Q. Okay.

21 A. -- right?

22 Q. No, that's fair.

23 A. The parties to this agreement are going
24 to have interpretation of this agreement.

25 Q. And would it be fair to say when you say

1 emanate, the -- when you said emanate earlier, you
2 were referring to the interpretations that are
3 given -- the varying interpretations that may be
4 given to this agreement by the OVEC Executive
5 Committee members; is that right?

6 MS. SPILLER: Objection. I think that
7 misstates Mr. Whitlock's answer.

8 Q. Or do you mean something else?

9 A. Again, I would say each of the members --
10 each of the executive committee members, each of the
11 signatories of this agreement, are going to have
12 interpretations of what this agreement means and when
13 they vote as part of a -- the executive committee or
14 a member of OVEC, those interpretations that come out
15 of this document are what they are voting about.

16 Q. Okay. Would you agree with me that
17 there -- that there has been no interpretation of
18 this agreement that would prohibit Duke Energy Ohio
19 from transferring its interests and obligations in
20 OVEC to an affiliate or third party if it meets the
21 conditions of Section 9.18 and the subparts thereto?

22 MS. SPILLER: I am going to object to the
23 relevance.

24 A. That was -- could you restate -- could
25 you make the question a little simpler?

1 MR. BERGER: Would you read back the
2 question, please, Karen.

3 (Record read.)

4 MS. SPILLER: I am going to object to the
5 form, also seeks attorney-client communication.

6 A. So that feels like a funny question to
7 me, again, just listening to the words played back to
8 me, but it sounds like if it meets the requirement
9 9.183 -- or if it meets that there was a restriction
10 and that feels like wouldn't be the case.

11 Q. So you're agreeing that there would be
12 no -- other than 9.18 there is no other -- anything
13 else that would prohibit the transfer. That's all I
14 am asking.

15 MS. SPILLER: Within the context of this
16 document?

17 MR. BERGER: I'm asking him speaking of
18 anything else, is there anything other than 9.18 that
19 limits the transfer of --

20 A. I think I've answered that question
21 before. That was the whole emanate from. We are
22 going to be in that loop again. I think I answered
23 that question but maybe not.

24 Q. If I understand your answer, you are not
25 aware of anything else that would limit it.

1 A. That didn't come out of this document.

2 Q. Yes. That's your answer, correct?

3 A. It didn't start with this document or
4 somebody's interpretation of this document.

5 Q. And I would turn you back briefly to the
6 stipulation from the ESP II proceeding and that
7 language on page 26 at the bottom. We talked about
8 whether there was any prohibition regarding -- in the
9 contract regarding the transfer. There is another
10 provision here regarding whether the transfer would
11 result in substantially increased liabilities for
12 Duke Energy Ohio.

13 Are you aware of whether there has been
14 any calculation by Duke Energy Ohio or OVEC committee
15 members as to whether there would be substantially
16 increased liabilities for Duke Energy Ohio if Duke
17 Energy Ohio were to transfer its obligations under
18 the OVEC contract to a subsidiary or affiliate?

19 MS. SPILLER: I am going object to the
20 interpretations of the ESP stipulation in Case
21 11-3549. I don't think they are accurate.

22 Q. You can answer the question.

23 THE WITNESS: Could you restate -- could
24 you read back the question.

25 (Record read.)

1 A. I am not.

2 Q. You are not aware of any calculation by
3 OVEC or Duke Energy Ohio regarding that.

4 A. I am not.

5 Q. Are you aware of whether Duke Energy Ohio
6 or Duke Energy Corporation made any assessment of
7 whether it could meet the limitations provided under
8 the proviso on page 26 of the stipulation in
9 determining that it need not transfer its interest in
10 OVEC to an affiliate?

11 MS. SPILLER: I am going to object to the
12 misinterpretation of the stipulation.

13 Q. You can answer the question.

14 A. So it's hard for me to keep track of the
15 question when there is an objection, so we will just
16 have to go back and read it again.

17 MR. BERGER: Karen, can you reread the
18 question.

19 I certainly understand that,
20 Mr. Whitlock.

21 (Record read.)

22 MS. SPILLER: Again, same objection.

23 A. I don't believe so.

24 Q. Are you aware of whether Duke Energy Ohio
25 or any of its affiliates on Duke Energy Ohio's behalf

1 made any effort to transfer the interests and
2 obligations of Duke Energy Ohio in OVEC to an
3 affiliate or third party?

4 MS. SPILLER: I am going to object to the
5 form, the relevance, failure to include a time
6 period.

7 Q. You can answer the question if you can.

8 A. I am.

9 Q. And are you saying that Duke Energy Ohio
10 did make such efforts?

11 A. You said Duke Energy Ohio or Duke Energy
12 Corporation?

13 Q. On behalf of Duke Energy Ohio.

14 A. Yeah. So I am aware of that.

15 Q. And what efforts were made?

16 MS. SPILLER: Objection, relevance. I
17 would also just again raise the precaution based upon
18 the instruction from OVEC's counsel about what may or
19 may not be confidential as dictated by OVEC.

20 Q. Do you understand, Mr. Whitlock, that you
21 are not to provide privileged attorney-client
22 communications as part of your answer? You are
23 supposed -- you can answer it from your knowledge.

24 MR. OLIKER: Before you even answer can
25 we have a clarification whether we are talking about

1 trade secret information or privileged
2 attorney-client communications?

3 MS. SPILLER: I can only share with you,
4 Joe, what counsel for OVEC shared with us, and it was
5 their position that communications as among
6 sponsoring companies and board members of OVEC was
7 confidential. To the extent you want to take that up
8 with OVEC's counsel, that's fine. I'm only sharing
9 with you what we were instructed.

10 MR. OLIKER: And the only reason it's
11 important, Amy, is because we can have confidential
12 discussions on this deposition, but we cannot talk
13 about privileged communications, so it may matter.

14 MS. SPILLER: Well, I mean, you are not
15 going to get privileged communication regardless. He
16 just claimed confidential.

17 MR. OLIKER: Okay. I just wanted to.

18 Q. So you can answer the question to your
19 knowledge if you are aware of what efforts -- the
20 question was what efforts were made to transfer the
21 OVEC interests.

22 A. Again, I am not sure what is confidential
23 or not, but we had asked -- we had asked --

24 MS. SPILLER: I am going to stop there
25 because I think it was a "yes" or "no" question that

1 led into more further communication which I think
2 would per OVEC counsel's instruction qualify as
3 confidential.

4 MR. BERGER: You're saying the efforts
5 that were made to transfer --

6 MS. SPILLER: You asked if he was aware.

7 MR. BERGER: No, no. I asked that
8 question before. He already said he was aware. And
9 the question I asked subsequently is what efforts
10 were made.

11 A. So that's where I am not sure what's
12 confidential and what's not.

13 MS. SPILLER: Yeah. That feels to me
14 like it's falling into the confidential section so.

15 Karen, can we go off the record?

16 MR. BERGER: Let's go off the record.

17 (Discussion off the record.)

18 MR. BERGER: Can we go back on the
19 record, Karen?

20 Q. Are you familiar with the transfer
21 process that was initiated by AEP when they sought to
22 transfer their interests?

23 MS. SPILLER: I am going to object. OCC
24 has admitted that AEP, their interest in OVEC and
25 their efforts to transfer, are irrelevant and have no

1 connection whatsoever to this case.

2 MR. BERGER: I'm sorry, who said that?

3 MS. SPILLER: You said that.

4 MR. BERGER: When did we say that?

5 MS. SPILLER: In answering discovery OCC
6 has admitted that questions about AEP are not
7 reasonably calculated to lead to the discovery of
8 admissible evidence here. So Mr. Whitlock is not
9 going to go into questions that even questioning
10 counsel admits are irrelevant.

11 MR. OLIKER: He can still answer.

12 MS. SPILLER: No, we're not. I mean,
13 this is beyond any way, shape, or form related to our
14 case.

15 MR. BERGER: The transfer process and
16 whether the transfer should or shouldn't be done is
17 certainly relevant to this case.

18 MS. SPILLER: AEP's transfer of its
19 interests has no bearing on this case. This is now a
20 fishing expectation in respect of AEP Ohio. And we
21 are not going to go there.

22 MR. BERGER: I am going to the transfer
23 process and if he is familiar with the transfer
24 process that was initiated by AEP.

25 MS. SPILLER: Again, OCC has admitted

1 it's not relevant. It's not reasonably calculated --

2 MR. BERGER: Could you provide the
3 response you are referring to?

4 MS. BOJKO: Obviously there are other
5 counsel in the room that would disagree with that.

6 MS. SPILLER: How is AEP's transfer
7 relevant to Duke Energy Ohio?

8 MR. OLIKER: Context.

9 MS. BOJKO: It's not the question he
10 asked, but for deposition purposes it's not not
11 answerable. That's my point.

12 MS. SPILLER: The same rules apply for
13 deposition. It has to be relevant or reasonably
14 calculated to lead to the discovery of admissible
15 evidence. AEP's transfer efforts are neither of
16 those things.

17 MR. BERGER: Well, this doesn't even talk
18 about -- these discovery requests you're talking
19 about only ask whether AEP is the applicant in this
20 case. It doesn't talk anything in any way
21 specifically about the transfer process and how it
22 may pertain.

23 MS. SPILLER: Well, we have them. We
24 sent you other requests for admissions. If I have
25 gathered the wrong ones, we will get them to you. We

1 are not going to debate AEP Ohio in this case.

2 MR. BERGER: So we are off the record?

3 THE NOTARY: No.

4 MR. BERGER: Oh, we are on the record.

5 So you are prohibiting Mr. Whitlock from answering
6 any questions that relate to the transfer process for
7 the transfer request made by AEP; is that correct?

8 MS. SPILLER: Well, can you help me
9 understand how you think it's relevant to this case?

10 MR. BERGER: Yes. The transfer process
11 and whether Duke could adhere to the same transfer
12 process or did adhere to the same transfer process
13 and the considerations involved in that transfer
14 process that AEP utilized when it sought to transfer
15 its interest as it admitted it tried to is relevant
16 to determining whether Duke's efforts, if it made
17 such efforts, were implemented in the same manner and
18 whether those efforts were appropriate and
19 comprehensible.

20 MS. SPILLER: What does that have to do
21 with this case?

22 MR. BERGER: What does it have to do with
23 this case?

24 MS. SPILLER: Yes. What does it have to
25 do? I am still struggling to see and you've admit --

1 I am going to go back. We have asked you about AEP.
2 There is no request for AEP Ohio in these proceedings
3 to transfer. You objected and then admitted. We've
4 indicated that this case is not about AEP Ohio
5 seeking Commission approval to transfer its interests
6 in OVEC. You objected and admitted that to be true.
7 So I'm struggling with respect to all of these
8 questions about AEP Ohio, particularly in a case
9 where there is no obligation by Duke Energy Ohio to
10 transfer.

11 MR. BERGER: Again, as I just explained,
12 it goes to the process and whether you -- you as Duke
13 Energy Ohio exercises the same procedures and
14 protocols that AEP exercised when they sought to
15 transfer those -- their assets.

16 MS. SPILLER: What does that matter?

17 MR. BERGER: Well, it goes to what the
18 process is. We are trying to determine what the
19 process is and how it should be implemented.

20 MS. SPILLER: Again, why does that
21 matter? The contract spells out what the process is.

22 MR. BERGER: The contract does not
23 specify how the communications take place. The
24 contract does not specify who is to be contacted.
25 The contract does not specify what unanimous consent

1 means. There is a lot -- there is a lot of specifics
2 how the voting process takes place. We are trying to
3 determine all of those things and how Duke Energy
4 implemented them and whether they implemented them in
5 the same way that AEP did, so we are entitled to find
6 out how AEP did it.

7 MS. SPILLER: You could have asked AEP
8 Ohio.

9 MR. BERGER: AEP Ohio, we could certainly
10 ask them, but we can certainly ask Mr. Whitlock. He
11 is here. He is a member of the OVEC committee,
12 executive committee, and he is certainly capable of
13 testifying on these issues. It's relevant. It's
14 reasonably calculated to lead to admissible evidence,
15 and it should be answered. As I understand it, Amy,
16 you're saying you are not going to answer it.

17 MS. SPILLER: We are not going to answer
18 about AEP Ohio when, in fact, you have admitted AEP
19 Ohio and their ownership interest in OVEC isn't part
20 and parcel of this case. If you would like to ask
21 about Duke Energy Ohio and their efforts, that's
22 fine. But the fact you asked AEP Ohio presumably in
23 their ESP proceeding and either didn't know or didn't
24 answer is not a consequence that Duke Energy Ohio
25 should have to reconcile today. So if you would like

1 to ask him about Duke Energy Ohio and the
2 confidential section, I think that's fine.

3 MR. BERGER: I am just trying to
4 determine you are saying we can't ask those questions
5 regarding AEP?

6 MS. SPILLER: I think it's an abuse of
7 the discovery process.

8 MS. BOJKO: For the record since we are
9 on the record I would state an objection to that. I
10 strongly disagree. I disagree with your testimony
11 that Duke has no obligation to transfer. I think
12 that's one of the issues that is trying to get
13 flushed out in this case, so making that underlying
14 assumption to prevent discovery is problematic in and
15 of itself. And we asked AEP these questions, and AEP
16 did answer questions about other companies without
17 similar -- or they might have objected, but they
18 still allowed their witness to answer the questions.

19 MS. SPILLER: Well, again, I am not Steve
20 Nourse or Matt Satterwhite, and so, you know, we
21 are -- we're not -- we're not here to talk about AEP
22 Ohio. And if you all have a record of what AEP Ohio
23 did, you can then utilize that for purposes later as
24 to whether or not that's consistent with what Duke
25 Energy Ohio did.

1 MS. BOJKO: I think you're missing the
2 companies are all part owners of this one facility
3 OVEC.

4 MS. SPILLER: They are owners of a
5 corporation.

6 MS. BOJKO: Right. And that owns the
7 facility and they all have ownership obligations and
8 liabilities and assets under that -- those agreements
9 and so we are entitled to explore those and the
10 interaction of those and the interaction between the
11 companies when making such decisions with regard to
12 that entity, particularly when you are seeking cost
13 recovery for certain aspects of that in this case.

14 MS. SPILLER: But you're not asking about
15 operation of these facilities by a corporation. You
16 are asking whether AEP Ohio tried to transfer its
17 interests in what it did in that regard.

18 MR. OLIKER: We are asking about his
19 experience.

20 MS. BOJKO: We are asking about the
21 process, and as a member of that board, he can speak
22 to that process and how it was handled.

23 MS. SPILLER: But his experience in
24 respect to AEP Ohio doesn't matter.

25 MS. BOJKO: It matters if he is on the

1 board and his interactions in the decisions made by
2 the board as to whether a transfer was allowed or not
3 allowed under the contract of that company, then,
4 yes, it does. Maybe it seems --

5 MS. SPILLER: For AEP Ohio?

6 MS. BOJKO: For all the companies. Maybe
7 it seems a little out of context because we jumped
8 out of the confidential portion, but I think if we
9 could have kept going -- that was my next question,
10 are we saving all the confidential to the end, but if
11 Mr. Berger would have been allowed to keep going, my
12 assumption is he would have asked him what Duke's
13 efforts were and what Duke did; and then it would
14 have been a better tie-in to this sort of question
15 about how it was handled in a similar situation
16 through the corporation or through the board but
17 because we weren't allowed to go down --

18 MR. BERGER: I think the tie-in has been
19 made.

20 MS. SPILLER: It's not out of context. I
21 understand exactly where he is trying to go, and
22 based on the OCC admissions that AEP Ohio in this is
23 not -- the applicant in this case is not asking to
24 transfer in this case, that you all have already had
25 the opportunity to discover AEP's efforts, it's so

1 far afield, so if you would like to ask Mr. Whitlock
2 about Duke Energy Ohio, that's fine.

3 MR. BERGER: It is not that far afield.

4 At this point in time I think we need to move on or
5 contact the Attorney Examiner which we can hold that
6 to later in the deposition.

7 MS. SPILLER: That's fine. That's fine.

8 MR. BERGER: Thank you.

9 Q. (By Mr. Berger) Mr. Whitlock, was -- did
10 Duke join AEP at any point in a request for consent
11 to transfer assets, OVEC assets?

12 MS. SPILLER: Again, objection.

13 A. Yes.

14 Q. Was that a "yes"? I'm sorry, did you say
15 "yes"?

16 A. Yeah. Again, I think that -- again, I am
17 not sure how -- whether this is confidential or not,
18 but it feels confidential.

19 Q. So we'll come back to it during the
20 confidential portion of the deposition.

21 Are you aware that AEP has said that they
22 were unable to obtain unanimous consent to the
23 transfer?

24 MS. SPILLER: Again, objection,
25 relevance.

1 MR. BERGER: I'm probing his knowledge of
2 the AEP transfer which he has just said was joined in
3 by Duke.

4 MS. SPILLER: Again, relevance. I also
5 think what AEP has said is public record.

6 If you know.

7 A. So I don't believe they -- I don't
8 believe they received unanimous consent to transfer.

9 Q. Do you know who refused to consent to
10 that transfer?

11 MS. SPILLER: Objection. This is
12 confidential. Tad, we've covered this already.

13 MR. BERGER: Okay. You are making it
14 confidential.

15 MS. SPILLER: It's also completely
16 irrelevant.

17 Q. Who is Bryan Dougherty, B-R-Y-A-N
18 D-O-U-G-H-E-R-T-Y?

19 A. Bryan Dougherty works in finance for
20 Duke.

21 Q. And what is his role with respect to
22 Duke's interest in OVEC? Does he have a role? He
23 answered certain questions pertaining to OVEC in this
24 matter.

25 A. Yeah. So he -- he probably --

1 MS. SPILLER: You don't have to guess.

2 If they have discovery to show you, that may be
3 helpful.

4 THE WITNESS: Fair.

5 A. So what were the questions he answered?

6 Q. You haven't reviewed the discovery,
7 correct?

8 A. No.

9 Q. He answered OCC Interrogatory 5-105.
10 Some of these are confidential responses, and I am
11 not going to show them -- well, I can show them to
12 you, but I am not going to put them into evidence at
13 this time. He answered OEG-DR-1-001. He answered a
14 number of other ones. You haven't reviewed them so
15 you wouldn't know but, for example, let me give you
16 OCC-INT-5-105, and you can just get a sense of what
17 he answered.

18 A. Okay.

19 Q. He also answered INT-175 part H. I'll
20 show you that.

21 A. Which part of this? I'm sorry. I was
22 reading this one. You said --

23 Q. Part H.

24 A. Part H, okay.

25 Q. You said earlier that Mr. Dougherty was

1 in finance.

2 A. Right.

3 Q. Can you tell me what his position is?

4 A. I don't know his title.

5 Q. Do you know which entity he worked for?

6 A. I believe he is a shared service
7 employee, but I'm not sure.

8 Q. And just to -- what is a shared service
9 employee?

10 A. So let's just -- let's call it the
11 payroll company that provides services for both
12 regulated and unregulated companies, and most
13 employees inside of Duke Corporation are shared
14 service employees.

15 Q. So they work for different entities --

16 A. Correct.

17 Q. -- at different times. They wear
18 different hats all the time.

19 A. Correct.

20 Q. Okay. Thank you. Can you hand me back
21 those responses?

22 All right. Do you know what information
23 that Mr. Dougherty would have regarding OVEC that
24 you're not familiar with? He obviously answered some
25 of these questions --

1 A. I am not even sure how to answer that
2 question. What he might have that I'm not aware of?

3 Q. What knowledge regarding OVEC that he
4 would have that you would not have. For some reason
5 he answered some questions you did not.

6 A. I mean, again -- I am not sure -- I am
7 not sure I know what the question is. Is there stuff
8 Bryan knows about OVEC that I don't know about? Yes.

9 Q. Do you know what that is?

10 A. I have no clue. I don't know -- that
11 feels like a really circular question.

12 Q. So you don't know the areas of expertise
13 regarding OVEC that he would have that you don't
14 have?

15 A. I don't.

16 Q. Thank you. Now, are you familiar with
17 whether Duke Energy Ohio considered alternatives to
18 the price stabilization rider for purposes of filing
19 its electric security plan in this case?

20 A. No -- I'm sorry.

21 MS. SPILLER: Go ahead. That's seeking
22 to elicit attorney-client information.

23 MR. BERGER: I am not trying to elicit
24 any attorney-client communications.

25 Q. What you know.

1 A. So I wasn't involved in any price
2 stabilization calculations.

3 Q. Were you involved in considering any
4 alternatives to proposing a price stabilization
5 rider?

6 MS. SPILLER: Again, same objection. If
7 you can answer without divulging confidences.

8 THE WITNESS: No.

9 MS. BOJKO: I'm sorry, no to the question
10 or, no, you can't divulge it without breaking
11 confidence?

12 THE WITNESS: No to the latter.

13 MS. BOJKO: Okay.

14 Q. You can't say whether --

15 A. So I would say any conversations that I
16 had about that were with my attorney.

17 Q. Well, I am not asking whether you had
18 conversations. I am asking whether you're aware of
19 other alternatives that were considered to the
20 proposal for the PSR. I am asking your knowledge. I
21 am not asking for communications.

22 MS. SPILLER: But if that knowledge is
23 the product of communication, that's privileged. The
24 witness doesn't have to disclose that.

25 MR. BERGER: I am not asking him to

1 disclose communications. I am asking him to disclose
2 his knowledge.

3 MS. SPILLER: I think he's indicated his
4 communications were with counsel.

5 Q. You're saying you have no knowledge
6 outside of communications with counsel; is that
7 correct?

8 A. That's correct.

9 Q. Okay. Do you know whether OVEC has
10 performed any analysis impact of recent EPA
11 regulations that were proposed on June 2 involving
12 carbon emissions on the cost of generation at OVEC?

13 A. I have not seen that. If they have done
14 them, I have not seen them.

15 Q. And you are not aware of whether they
16 have done them; is that correct?

17 A. I would answer it the same way.

18 Q. Are you aware whether Duke Energy Ohio or
19 any of its affiliates has done such calculations?

20 A. I'm not.

21 Q. And you're not familiar with the
22 discovery response that was produced in this case
23 showing environmental costs associated with OVEC over
24 a future timeframe, are you?

25 A. So I told you before I didn't review the

1 discovery so if there is a specific question and
2 answer that you would like to point me to, I am
3 willing to look at it.

4 Q. It's confidential so I don't want to ask
5 you anything specific about it. I just wanted to
6 know whether you were aware of the discovery
7 response.

8 A. Again, I didn't review the discovery
9 responses.

10 Q. Okay. Did you review the discovery
11 responses that were provided with your name on them?

12 A. Probably.

13 Q. Okay. Thank you. Are you familiar with
14 a response to OEG-DR-1-001?

15 A. No. Can you show it to me?

16 Q. Again, that's a confidential response. I
17 just wanted to --

18 A. Certainly not by the designation that you
19 just referred to it.

20 Q. Okay. Are you familiar with data
21 response -- interrogatory responses or document
22 responses that provided information regarding the net
23 costs and benefits of operating OVEC to customers
24 over the term of the P -- of post-term PSR?

25 A. Again, I would want to see the

1 interrogatory. If this is confidential, we should
2 just do it in the confidential section.

3 Q. Right. I'm just -- some of these
4 questions --

5 MR. BERGER: Amy, some of the questions
6 might be relate -- might be confidential. Some of
7 them might not be confidential depending on whether
8 they have confidential information in them.

9 MS. SPILLER: Right. No, I understand.

10 MR. BERGER: I am trying to create as
11 much of a public record as I can rather than going
12 back and forth. However, it may be I have to do that
13 and just --

14 MR. OLIKER: Can we go off the record for
15 a second?

16 (Discussion off the record.)

17 MR. BERGER: Back on the record.

18 Q. I am going to show you a document that's
19 an attachment to OEG Data Request 1-001 and ask you
20 if you have seen that before.

21 MS. SPILLER: We don't have the question
22 that went with?

23 MR. OLIKER: It's OEG's first question, I
24 believe.

25 MS. SPILLER: That -- that doesn't help

1 me much but I appreciate it.

2 MR. BERGER: I probably have it here
3 somewhere.

4 MR. OLIKER: I can show him a copy on my
5 computer if that helps.

6 Q. Here is a copy of the response.

7 A. What's the question?

8 Q. Are you familiar with that attachment to
9 DR-1-001?

10 A. So the second page I would say yes. The
11 first page I can't recall.

12 Q. So you're not familiar with the
13 calculation of the net costs and benefits to
14 customers of the PSR over the term of the PSR; is
15 that correct?

16 A. That's a separate question?

17 Q. I believe that's what's shown on
18 Attachment 1.

19 A. It doesn't say anything about PSR on here
20 at all.

21 Q. Would you agree that that's an analysis
22 of the net cost of the OVEC entitlement including the
23 period of the PSR?

24 MS. SPILLER: I am going to object to the
25 form.

1 A. Could you read the question back?

2 Q. Would you agree with me that the first
3 page of that exhibit is a calculation of the net cost
4 of -- of OVEC over the -- over a period of time
5 including the term of the PSR?

6 MS. SPILLER: I am going to object to the
7 form.

8 Q. Do you understand the question?

9 A. I think I do. It doesn't look like --
10 again, this looks like it shows generation volumes at
11 PJM capacity price, revenue, costs, and cash flow,
12 has energy prices and cost rate on the bottom. It
13 doesn't say anything about a PSR or net costs or net
14 benefits or anything that you said in the question.

15 Q. We can agree it doesn't state "PSR" on
16 this exhibit, correct?

17 A. I can agree to that. I don't see it on
18 here.

19 Q. But it does show a calculation of the net
20 cost in terms of the cash flow from operating OVEC
21 over the indicated period on the schedule -- that's
22 not confidential, is it?

23 MR. BERGER: The period that's shown on
24 this schedule, Amy, would not be confidential?

25 MS. SPILLER: Probably not. The 2015 to

1 2024?

2 MR. BERGER: Yes.

3 MS. SPILLER: Okay. No, that's fine.

4 That's not the PSR term but that's fine.

5 Q. Would you agree this shows a calculation
6 of a net cost or benefit over 2015 to 2024?

7 A. Again, it shows a cash flow calculation
8 for a period of time.

9 Q. Are you aware of any cash flow
10 calculation from OVEC that includes the period -- the
11 period of the PSR in this case other than this
12 exhibit?

13 A. I am sure there are others but. This one
14 has values as of June, 2014, and values as of
15 January, 2014, so those change.

16 Q. When you say you're sure there are other
17 calculations, are you referring to anything specific
18 that you are aware of?

19 A. Again, on the bottom of this document it
20 has dates and so change the dates and there is a
21 different calculation.

22 Q. Are you aware of any other calculation
23 that's been specifically performed regarding the net
24 cost or benefit of OVEC --

25 A. Again, you keeping taking me back to this

1 net cost or benefit so what I am looking at here is
2 the cash flow over a period of time for OVEC.

3 Q. Cash flow/cost of benefit I'm
4 interpreting as the same thing.

5 A. Yeah. So I think there could be other
6 benefits outside of just cash flow but if you want to
7 just talk about cash flow, there is a statement of
8 cash flows here, and I would tell you there are other
9 calculations if you change the time. These are as of
10 June, 2014, and as of January, 2014, for different
11 periods of time on the document. And so you could
12 change those dates and get a different calculation.

13 Q. And you're familiar with other
14 calculations like this?

15 A. No. What I am saying is that there is --
16 again, it looks like this was a spreadsheet, so you
17 could change the dates as to what the forward energy
18 prices were or forward capacity prices were, and you
19 would get a different value.

20 Q. And all I am asking you is you know that
21 the other analyses like this have been done at
22 different dates.

23 A. I would assume so.

24 Q. I'm not asking whether you would assume.
25 I am asking whether you know.

1 A. Sure, I know.

2 Q. Okay. And this particular analysis you
3 are aware of when this was done?

4 A. There's no date on here that I can --

5 Q. On page 2 it indicates December 11, 2013.

6 A. Oh, okay. I'm sorry, I was looking at
7 page 1. So those are the -- that's the ICPA billable
8 costs that was published on 12-11-13.

9 Q. And there have been a number of these
10 that have been done.

11 MS. SPILLER: A number of?

12 A. A number of what?

13 Q. Analyses such as this.

14 MS. SPILLER: I am going object. Are you
15 referring to page 1 or page 2 now? Because I think
16 we've already talked about page 1.

17 Q. Are you aware of any other analyses in
18 the forms shown on page 1 that have been performed?

19 A. I'm sure -- I am not aware of them, but I
20 am sure there have been changing the date, and I
21 would say the same thing on the ICPA, the billable
22 costs, those change, although probably not as readily
23 as the first sheet.

24 Q. The costs of OVEC are pretty stable, but
25 they do change.

1 MS. SPILLER: He just asked if we were
2 ever going to take a break. I've indicated to the
3 witness whenever he needs --

4 THE WITNESS: So whenever it's convenient
5 for you.

6 MR. BERGER: That's fine. Now would be a
7 good time.

8 THE WITNESS: That's fine with me if it
9 works.

10 MR. BERGER: Do you want to take 5
11 minutes or 10 minutes?

12 MS. SPILLER: Sure. To those on the
13 phone we are going to mute you. We will unmute you
14 in 10 minutes.

15 (Recess taken.)

16 MR. BERGER: Back on the record.

17 Q. Mr. Whitlock, Duke -- Duke Energy Ohio or
18 Duke Energy Corporation on its behalf developed
19 forecasts of future electric commodity prices; is
20 that correct?

21 A. They do.

22 Q. Does it also forecast future capacity
23 prices for electricity?

24 A. Yeah. And they are related, right.

25 Q. Are those forecasts both on a short-term

1 basis and long-term basis extending out years at a
2 time?

3 A. So my familiarity with the fundamental
4 forecast that Duke does has a market for a certain
5 period of time, transactable market, and then after
6 that, it becomes a fundamental curve.

7 Q. Okay. What department is responsible for
8 developing those forecasts?

9 A. I don't know -- I don't know the name of
10 the department.

11 Q. Is that developed at the Duke Energy
12 Corporation level for all of the subsidiaries or is
13 that something that's done on an
14 affiliate-by-affiliate basis?

15 A. No. I would say -- my familiarity with
16 it, again, is it's done at a corporate level. It's
17 called a Duke fundamental curve, right.

18 MS. BOJKO: Called what?

19 THE WITNESS: It's a Duke fundamental
20 curve is how I have always heard it referred to.

21 Q. Is this done internally or do you hire
22 outside experts for this type of forecasting?

23 A. So I believe we have outside help.
24 Again, I am not super familiar with it, but my
25 understanding is that we -- we probably see a lot of

1 third-party forecasts, and then we retain a
2 consultant that helps us develop a fundamental curve.
3 And then we -- my guess is we probably make changes
4 to some of those things. We don't take those
5 verbatim and will change other things that we think
6 are going to materialize and then it gets fed back
7 through their model and then we get a result in the
8 fundamental curve.

9 Q. Do you know how often the forecasts are
10 updated?

11 A. I want to say annually but they might be
12 done biannually but I don't recall.

13 Q. And when you say that, you're talking
14 about the fundamental long-term forecast.

15 A. Correct.

16 Q. For those short-term forecasting,
17 however, is there --

18 A. So I wouldn't call it a forecast there,
19 right? Again, it's a market price that's observable.

20 Q. And when you say observable market price,
21 is there a limit to the timeframe for that? What is
22 the limit?

23 A. So it would depend on which commodity
24 you're talking about.

25 Q. If we're talking about energy prices.

1 A. So energy is probably, again, depending
2 on the location. Did you have a specific location in
3 mind?

4 Q. No, wherever the Duke hub is or in
5 Cincinnati.

6 A. There is no Duke hub.

7 Q. Isn't there -- the AD Hub.

8 A. So the AD Hub so probably three years
9 maybe out to five.

10 Q. Okay. Is there a particular individual
11 who is primarily responsible for these forecasting
12 efforts?

13 MS. SPILLER: I am going to object to the
14 relevance. Go ahead.

15 A. Again, you are talking about the
16 forecasting beyond the -- beyond the observable
17 market. Again, I think it's a team of people that do
18 the work.

19 Q. You don't know what department that is.

20 A. I told you I can't remember.

21 Q. And with respect to the observable market
22 prices, when you are talking about the forward market
23 price, do you -- does Duke to the best of your
24 knowledge rely on any particular publication for
25 the -- for those prices?

1 A. Yeah. So there is a procedure every
2 night that the curves are marked so we observe
3 tradeable commodities and we mark those and then the
4 risk group that sits outside of, reports to the chief
5 risk officer, actually validates those curves. And
6 they would be -- you would be better off asking them
7 how that validation process takes place. They
8 probably use a variety of different ICME broker
9 quotes to make sure that we're -- where we had marked
10 the curve on that day.

11 Q. Now, the OEG data request response that I
12 earlier referenced you to, the Attachment 1, do you
13 recall that?

14 MS. SPILLER: Do you need it back?

15 A. Exhibit 1 or Attachment 1?

16 Q. We did not make this an exhibit yet.

17 A. So this, yeah.

18 Q. Do you know -- do you know what forecast
19 that utilized?

20 A. Again, I just refer to the notes on the
21 bottom of the page and assume that they are accurate.

22 Q. Was this -- was this document by the way
23 prepared by OVEC, or was it prepared by Duke Energy
24 Ohio?

25 A. So there's two pages to the document.

1 The second page is prepared by -- it looks like it's
2 prepared by OVEC, and then the first page appears to
3 be prepared by Duke.

4 Q. What makes you believe the first page is
5 prepared by Duke?

6 A. It's similar to a format that I see
7 for -- it looks like something that Bryan Dougherty
8 would prepare.

9 Q. Okay. Now we know what Bryan does.
10 Okay.

11 A. Prepares similar documents.

12 Q. Yes. Do you know whether Duke Energy
13 Ohio notified PJM that it no longer wants to have FRR
14 entity status and when that occurred?

15 MS. SPILLER: Whoa, whoa. Objection,
16 Tad. Come on. What does FRR participation have to
17 do with this ESP III?

18 MR. BERGER: It goes to the -- it goes to
19 the characterization of OVEC costs as a necessary
20 capacity to be retained.

21 MS. SPILLER: For what? We're not
22 looking to retain OVEC to serve any supply or
23 capacity obligations. That's not what the structure
24 of the price stabilization rider even is so help me
25 understand. Otherwise we are not going to spend time

1 on fixed resource requirement.

2 MR. BERGER: All right. I'll pass on to
3 something else. Thank you.

4 MS. SPILLER: Thank you.

5 Q. And, Mr. Whitlock, are you familiar in
6 this proceeding with whether Duke Energy Ohio
7 presented a forecast of -- of the net cost or benefit
8 of OVEC in its application in this case?

9 A. I'm not familiar.

10 Q. Are you -- are you aware of whether or
11 not Duke Energy Ohio said that -- that OVEC would be
12 revenue neutral over the term of the ESP?

13 A. That feels like the same question but so
14 I'm not -- again, I am not -- I haven't read it.

15 MS. BOJKO: Did you say you haven't read
16 it?

17 THE WITNESS: Have not.

18 MS. BOJKO: Thank you.

19 Q. And other than OEG-DR-01-01, the
20 attachment that you are looking at, and just looking
21 at page 1, are you aware of -- I think you answered
22 earlier that you could see other analyses like this
23 being prepared. Have you -- I think you said you
24 haven't seen other specific analysis though; is that
25 correct?

1 A. Again, I don't recall seeing any specific
2 analysis; but, again, I would say that it's likely
3 that there are others.

4 Q. Okay. Are you on any other committees
5 other than the Executive Committee of OVEC?

6 MS. SPILLER: Within OVEC?

7 MR. BERGER: Within OVEC.

8 MS. SPILLER: Thank you.

9 A. No.

10 Q. Are you aware of any other Duke Energy
11 Ohio personnel or Duke Energy Corporation personnel
12 that are on other committees within OVEC?

13 A. I believe there are other shared service
14 employees that are on committees but not Duke
15 Energy -- again, I don't know who a Duke Energy
16 employee is.

17 Q. Well, I am talking about a shared
18 services employee when I am talking about that
19 umbrella corporation.

20 A. Okay. So then I would say yes.

21 Q. Can you tell me who they are?

22 A. So Greg Cecil is on the production
23 subcommittee. I'm not sure. There is a fuels group.
24 I'm not sure who is on that now.

25 Q. Are you currently serving on the board of

1 OVEC?

2 A. I am.

3 Q. And other than fuels group and
4 production, do you know of any other?

5 A. There is a list of subcommittees that --

6 Q. So you're saying you believe there is a
7 number of Duke Energy shared services employees who
8 are on different committees and subcommittees at
9 OVEC?

10 A. Correct.

11 Q. You're just not familiar with the whole
12 list?

13 A. Correct. It's not something that I keep
14 track of.

15 Q. Okay. Other than Greg Cecil, is there
16 anybody who is involved in operations at OVEC from
17 Duke Energy shared services or Duke Energy Ohio?

18 MS. SPILLER: I'm sorry. Karen, can you
19 read that back?

20 (Record read.)

21 A. Yes.

22 MS. SPILLER: I am going to object to the
23 form. Are you suggesting Greg Cecil is involved in
24 operations for OVEC?

25 MR. BERGER: Well, he was stated to be on

1 the production committee or subcommittee.

2 A. He doesn't operate OVEC.

3 Q. Okay. I withdraw that suggestion then.

4 Can you -- is there anybody at Duke Energy Ohio or
5 Duke Energy shared services that is involved in the
6 operations of OVEC?

7 A. No.

8 Q. Would you agree with me Duke -- that OVEC
9 currently sells 100 percent of its energy and
10 capacity into the PJM market, wholesale market?

11 A. I don't know.

12 Q. Do you know if it has any -- strike that.
13 What makes -- what makes you believe that
14 other than selling its energy and capacity into the
15 wholesale market there might be some other sales that
16 take place?

17 A. So there are owners that are outside of
18 PJM that I'm not sure how that works.

19 Q. With respect to the owners in PJM, would
20 that all be sold into the wholesale market, or would
21 that be directed to any specific utilities who were
22 sponsoring companies?

23 A. Again, I think you're asking me to
24 understand how each of the owners handled their OVEC
25 ownership and I don't know. I could guess but I'm

1 not inclined to guess.

2 MS. SPILLER: I would rather you not.

3 THE WITNESS: Might even be a pretty good
4 guess.

5 Q. Can you -- can you indicate to me the
6 activities in which the OVEC Executive Committee of
7 which you are a member is involved?

8 A. Yes. So we deal with capital -- capital
9 budgets, O&M budgets. We deal with financing. We
10 deal with compensation issues. We deal with legal
11 issues. We'll deal with the preparation. You know,
12 we have an accountant that prepares financial
13 statements, provides guidance to the management team
14 at OVEC around issues that they would bring to us.

15 MR. BERGER: Okay. Well, at this point
16 that's all the questions I have on the -- on the
17 public record. And so I would hold my other
18 questions until we go into the confidential record.

19 I would ask other counsel if they have
20 questions for the public record before we do that.

21 MR. PRITCHARD: I would be happy to go
22 next.

23 MS. SPILLER: Ladies? Gentlemen? Thank
24 you. Matt.

25

1 CROSS-EXAMINATION

2 By Mr. Pritchard:

3 Q. Good morning, Mr. Whitlock.

4 A. It's afternoon.

5 Q. A little bit after. My name is Matt
6 Pritchard. I represent the Industrial Energy Users
7 of Ohio. I have a couple follow-up questions to some
8 of your responses you gave to Mr. Berger this
9 morning.

10 Referencing what you have in front of
11 you, you had indicated that you had seen spreadsheets
12 similar to that from another shared services
13 employee. I believe his name was Bryan Dougherty; is
14 that correct? Did you make that statement?

15 A. So we probably -- we should probably go
16 back. If that's what I said on the record, I will
17 stipulate to that or whatever.

18 Q. I can ask that again. Have you seen
19 spreadsheets similar to that provided to you or
20 prepared by Bryan Dougherty?

21 A. So, again, I would tell you that I think
22 this document looks like a pretty standard document,
23 and when you update prices on the observable market,
24 it wouldn't surprise me if I had seen other documents
25 like it but I can't recollect right now whether or

1 not that's true but I believe it to be true.

2 Q. Would some of those other similar
3 documents have information instead of related to OVEC
4 would it be related to other generation plants
5 previously owned by Duke Energy Ohio?

6 A. So would I see a similar document with --
7 similar cash flow document for other generation
8 assets; is that the question?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. And on to a couple of questions
12 about the operation of OVEC. Who operates OVEC?

13 A. So the management team of OVEC are the
14 operators --

15 Q. And --

16 A. -- and the employees of OVEC.

17 Q. As far as Duke's ownership share of OVEC,
18 what percent of OVEC's capacity and energy is Duke
19 Energy Ohio entitled to?

20 A. I want to say it's 9 percent. It's on --
21 let me refer to the ICPA.

22 MR. WATHEN: Page 5, Chuck.

23 A. Nine.

24 Q. And with Duke Energy Ohio's 9 percent,
25 that 9 percent means they are entitled to 9 percent

1 of any capacity revenues that OVEC receives? Let me
2 back that up a little bit. Strike that question.

3 Does OVEC receive any -- or does Duke
4 Energy Ohio receive any capacity revenues associated
5 with its OVEC interest?

6 A. Yes.

7 Q. And those capacity revenues are a
8 function of the OVEC units being bid into PJM's RPM
9 markets, correct?

10 A. Yes.

11 Q. How does Duke -- does Duke decide whether
12 to bid its 9 percent ownership -- or, sorry,
13 9 percent entitlement into the RPM markets, or does
14 someone else make that decision?

15 A. Duke does.

16 Q. And with the energy portion, the 9
17 percent energy that Duke Energy Ohio is entitled to,
18 is Duke Energy Ohio obligated to take all 9 percent?

19 A. So there are some -- there are some
20 provisions of the agreement that make the obligation
21 not an obligation, and I'm not that faciled with what
22 those provisions are.

23 Q. For general terms for the energy portion
24 Duke does not have -- can take up to 9 percent or
25 does not have to take any energy from the output of

1 OVEC? Would you characterize that as how it -- the
2 ICPA generally governs?

3 A. So repeat the question, please.

4 Q. General -- in general terms Duke can take
5 up to 9 percent of the energy output of OVEC assuming
6 all the other sponsoring companies take their full
7 allotment.

8 A. I think generally that's probably fair.

9 Q. And with the amount of energy that Duke
10 decides to take, does Duke itself sell the energy, or
11 does someone at OVEC sell the energy either into a
12 bilateral contract or PJM's markets?

13 THE WITNESS: Can you read the question
14 back?

15 (Record read.)

16 A. Duke does.

17 Q. And those questions I asked are how Duke
18 currently operates, correct?

19 A. Yes.

20 Q. If the PSR rider is approved, would Duke
21 then continue to be the entity that would operate --
22 that would sell the energy into the PJM market?

23 A. I'm not familiar with the PSR.

24 Q. If OVEC is not transferred over the next
25 four years, would Duke Energy Ohio continue to be

1 responsible for making decisions about whether to
2 take up to its -- to take its 9 percent share of
3 energy from OVEC?

4 A. So I would say the owner -- the owner --
5 the owner of the ICPA would do exactly what you are
6 talking about, energy --

7 Q. So as long as --

8 A. -- and capacity.

9 Q. As long as Duke Energy Ohio is a
10 sponsoring company of OVEC, it will decide whether it
11 wants to take the out -- the energy output that its
12 entitled to from OVEC, correct?

13 A. Again, I -- it feels like that to me, but
14 you -- you could have somebody else do that for you
15 if you wanted to. I'm not sure -- I'm not sure what
16 Duke Ohio's plans are.

17 Q. And turning to one of the final subjects
18 you talked about with Mr. Berger with OCC, you
19 indicated that you were on the executive committee,
20 and one of the things the executive committee is
21 responsible for is OVEC's capital budget; is that
22 correct?

23 A. Yes.

24 Q. Are you aware -- and stop me -- is -- are
25 the individual elements of OVEC's capital budget

1 confidential?

2 A. I would assume that they are.

3 Q. Okay. I will save those questions for
4 the confidential portion.

5 MR. PRITCHARD: And just to clarify
6 questions regarding Duke Energy Ohio's decisions to
7 transfer or not transfer its interests in OVEC are
8 going to be confidential? I believe that's what you
9 discussed with Mr. Berger this morning; is that
10 correct?

11 MS. SPILLER: That the conversations that
12 would have been had among sponsoring companies would
13 be confidential based upon the communication we've
14 received from OVEC's counsel.

15 MR. PRITCHARD: Are Duke's internal
16 decisions whether they would pursue a transfer or
17 retain its OVEC interests confidential?

18 MS. SPILLER: Those are privileged,
19 attorney-client privileged.

20 MR. PRITCHARD: Some statements have been
21 publicly made in filings so they are not all --

22 MS. SPILLER: Well, you have asked me
23 about internal conversations so.

24 MR. PRITCHARD: Well, I will just proceed
25 to ask some questions, and you can stop me if they

1 are confidential.

2 MS. SPILLER: We will take it from there.

3 Q. (By Mr. Pritchard) Earlier you went
4 through a stipulation in a Duke electric security
5 plan case that -- in Case 11-3549, correct?

6 A. Yes.

7 Q. And you went through some provisions
8 about -- that were generally related to Duke Energy
9 Ohio's -- what it planned to do in regards to
10 divesting certain generation assets that at the time
11 were owned by Duke Energy Ohio, correct?

12 A. Yeah. So, I mean, I read into -- I read
13 into the record, I guess, or into my deposition a
14 section off of -- a section of the stipulation.

15 Q. Is it your general understanding that as
16 a result of this stipulation, that Duke committed to
17 trans -- Duke Energy Ohio committed to transferring
18 certain generation assets to an affiliate?

19 A. Yes.

20 Q. And is it your understanding of -- that
21 this stipulation required Duke Energy Ohio to
22 transfer its interests in OVEC to an affiliate?

23 MS. SPILLER: I am going to object to the
24 relevance of this line of questioning.

25 Q. If you know, you may answer.

1 A. I would say no.

2 Q. And following this stipulation, did Duke
3 Energy Ohio have plans to transfer its interest in
4 OVEC to an affiliate?

5 MS. SPILLER: Objection, relevance.

6 A. Yes.

7 Q. And did Duke Energy Ohio, in fact, follow
8 through with those plans and transfer its interests
9 in OVEC to an affiliate?

10 A. No.

11 MS. SPILLER: Objection, relevance.

12 THE WITNESS: Sorry.

13 Q. What -- in between the time when Duke had
14 planned to transfer its interests and today where it
15 has not transferred -- well, let me back up.

16 Currently does Duke Energy Ohio plan to
17 transfer its interests in OVEC to an affiliate?

18 MS. SPILLER: Objection. To the extent
19 you can answer without waiving privileges.

20 A. I don't know.

21 Q. You don't know whether or not Duke Energy
22 Ohio proposes to transfer its interests in OVEC.

23 A. That was your question.

24 Q. And your answer is you don't know?

25 A. Currently.

1 Q. Currently.

2 A. Right.

3 Q. Okay. Between the time when -- following
4 that stipulation when Duke Energy Ohio had planned to
5 transfer its interests in OVEC to an affiliate, what
6 has transpired to change Duke Energy Ohio's position
7 about whether it was going to transfer -- let me back
8 that up.

9 Are you familiar with Duke Energy Ohio's
10 application before the Federal Energy Regulatory
11 Commission regarding Duke Energy Ohio's proposal to
12 transfer assets that were owned by Duke Energy Ohio
13 to affiliates?

14 A. Yes.

15 Q. Are you aware -- as part of that request
16 to FERC, are you aware of whether or not Duke Energy
17 Ohio also proposed to transfer its interests in OVEC
18 to an affiliate?

19 A. Do you have -- is that the 203 filing?
20 Do you have the request?

21 Q. Yeah, I have that if that would refresh
22 your recollection.

23 A. Let's look at it instead of speculating
24 whether or not it's in there or not.

25 Q. I don't plan to mark this as an exhibit

1 but maybe this can refresh your recollection.

2 A. Is there a section that lists them?

3 Q. There is -- there is a table of contents
4 at the beginning.

5 A. Okay.

6 Q. And I believe around page 15 it -- at the
7 beginning in the table of contents it references what
8 section of that document contains the terms of the
9 proposed transfer.

10 MR. OLIKER: Do you have the case number,
11 Matt?

12 MR. PRITCHARD: It's FERC Docket EC12-90.

13 A. So this doesn't even have that docket
14 number on it.

15 Q. Correct. That was your application.

16 A. Oh, okay. Fair enough. So did it change
17 from this and what actually went into the docket?

18 Q. No, when you filed.

19 A. So they put a number on it.

20 Q. Yes.

21 MS. SPILLER: I think you've got the
22 legend up here and I am -- that I would suspect is a
23 designation of receipt by the FERC, I think, right?

24 THE WITNESS: I don't know. It says
25 "FERC PDF unofficial." I don't know.

1 A. Okay.

2 Q. Does that refresh your recollection as to
3 whether or not that application included a proposal
4 by Duke Energy Ohio to transfer its interests in OVEC
5 to an affiliate?

6 A. Yes.

7 Q. And with your refreshed recollection, is
8 it your recollection that Duke Energy Ohio did, in
9 fact, propose such a transfer?

10 A. It planned -- it planned a transfer for
11 Duke Energy Piketon, right, DE Ohio's share of OVEC.
12 And I think it says subject to various tax and
13 commercial issues but.

14 Q. Correct. Are you aware that Duke Energy
15 Ohio transferred all of its generation assets but did
16 not transfer its interest in OVEC to its affiliates?

17 A. Yes.

18 Q. And do you know why Duke Energy Ohio
19 decided not to transfer its interests in OVEC to an
20 affiliate?

21 MS. SPILLER: I am going to object. To
22 the extent you can answer without divulging
23 privileges and also relevance.

24 A. So that feels like a topic that was board
25 conversations of OVEC's board members that I don't

1 believe are public.

2 Q. That's fine. I can ask that in the
3 confidential portion.

4 A. Okay.

5 Q. I have questions about a few OVEC-related
6 documents. As a member of OVEC's Executive
7 Committee, are you familiar with the annual FERC Form
8 1s that OVEC files?

9 A. Do you have them?

10 Q. I do have them in front of me. Are you
11 familiar that Duke does file -- OVEC does file a FERC
12 Form 1?

13 A. Yes.

14 Q. I'm handing you what is the 2012 FERC
15 Form 1.

16 MS. SPILLER: How are you going to mark
17 it?

18 MR. PRITCHARD: I am going to mark this
19 IEU Ohio Deposition Exhibit 1.

20 Q. Does what I handed you appear to be --

21 A. Do I need to give it to the reporter?

22 MS. GRADY: You don't get a sticker.

23 THE WITNESS: I got a sticker on the
24 other three. This is confusing.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. Does what I have handed you and what's
2 been marked as IEU-Ohio Deposition Exhibit 1 appear
3 to be the FERC Form 1 for OVEC for 2012?

4 A. Yes.

5 Q. Now, this report is made each -- each
6 year so for the report for -- this report for 2012
7 will be produced and filed at FERC in the beginning
8 portion of 2013, correct?

9 A. Yes.

10 Q. And would you say that this report is
11 prepared by knowledgeable people within OVEC?

12 A. So John Brodt signed it, and I think he
13 is knowledgeable.

14 Q. Okay.

15 A. And then it looks like Deloitte Touche
16 actually audited it so I would say yes.

17 Q. And does OVEC regularly produce -- sorry.
18 Does OVEC regularly produce these documents to FERC?

19 A. They are going to produce them as FERC
20 requests them. They are going to follow the rules.

21 Q. And do the FERC rules require the FERC
22 Form 1 to be filed each year?

23 A. I believe so but I'm not sure.

24 Q. All right. Those are all the questions I
25 have for the 2012 FERC Form 1.

1 A. Just -- so the answer it looks look FERC
2 Form 1s is an annual regulatory requirement. Page I,
3 I guess the first page where there is instructions
4 for the filing of the FERC form.

5 Q. And -- and the information contained in
6 here is regularly kept by OVEC?

7 A. Yes, for OVEC's stuff.

8 Q. Correct.

9 A. Right, yeah.

10 MR. PRITCHARD: I would like to have
11 another exhibit, this exhibit, marked as IEU-Ohio
12 Deposition Exhibit 2.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. And does this document that's been marked
15 as IEU-Ohio Deposition Exhibit 2 appear to be OVEC's
16 2013 FERC Form 1?

17 A. Yes.

18 Q. And the same questions I asked you about
19 the 2012 report but these -- this report would have
20 been made at or near the time of 2013. It would have
21 been filed at the beginning part of 2014, correct?

22 A. You can see the date that John submitted
23 it.

24 Q. Okay. So your answer is --

25 A. You can see the date.

1 Q. And the date is?

2 A. It looks like 5-15-2014.

3 Q. Thank you. And would you say that this
4 report was prepared by a person with knowledge?

5 A. Again, I would say John Brodt has
6 knowledge as the CFO and secretary of OVEC.

7 Q. And the information contained in this
8 report is regularly maintained by OVEC, correct?

9 A. Again, I would say yes.

10 Q. And this report is regularly filed with
11 FERC each year, correct?

12 A. Yes.

13 MS. SPILLER: Going through your piles
14 quickly.

15 MR. PRITCHARD: I know. I am trying to
16 be efficient.

17 MS. SPILLER: Appreciate that,
18 Mr. Pritchard.

19 MR. PRITCHARD: I would like to mark an
20 exhibit as IEU-Ohio Deposition Exhibit 3. Let the
21 record reflect this document is labeled Ohio Valley
22 Electric Corporation and Subsidiary Company
23 Consolidated Financial Statements as of and for the
24 Years Ended December 31, 2013, and 2012, and
25 Independent Auditor's Report.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Are you familiar with this report,
3 Mr. Whitlock?

4 A. Yes.

5 Q. And would this report have been made
6 shortly after December 31, 2013?

7 A. Again, you can see the date that at least
8 the auditor's report was.

9 Q. And the date of the auditor's report is
10 reflected on page 2 as what?

11 A. April 16, 2014.

12 Q. And was this report prepared by a person
13 with knowledge?

14 A. Yes.

15 Q. And is the information contained in this
16 report regularly maintained by OVEC?

17 A. Yes.

18 Q. And does OVEC regularly produce a report
19 like this?

20 A. So they produce it at least annually, if
21 that's regularly.

22 Q. Thank you.

23 MR. PRITCHARD: I would like to mark an
24 exhibit as IEU-Ohio Deposition Exhibit 4. And let
25 the record reflect this exhibit is titled "Annual

1 Report 2012 Ohio Valley Electric Corporation and
2 Subsidiary Indiana-Kentucky Electric Corporation."

3 Are you familiar with this report?

4 A. Yes.

5 Q. And in your opinion was this report
6 prepared by a person with knowledge?

7 A. Yes.

8 Q. And is the information that's maintained
9 or reflected in this report information that's about
10 OVEC's regularly conducted business activities?

11 A. Could you repeat the question?

12 Q. Yes. Is the information that's reflected
13 in this report, does it reflect OVEC's regularly
14 conducted business activities?

15 A. So I would say that it reflects the
16 business activities in that year. I don't know if
17 they are regular without -- I can't remember all the
18 activities that would have took place in this year.
19 Whether they are regular or not I'm not sure.

20 Q. More generally speaking you said you are
21 familiar with this report. Would you -- do you need
22 to take a minute to peruse through the report --

23 A. Is there a specific section you want to
24 take me to?

25 Q. I am referring to the entire report so if

1 you need a minute to refresh your recollection of --

2 A. Why don't we see where the questions go.

3 Q. Same questions I've asked you before,
4 just asking if the information that's contained in
5 the -- in the report is information that is kept in
6 the course of OVEC's regularly conducted business
7 activities.

8 MS. SPILLER: I am going to object to the
9 extent Mr. Whitlock has already answered.

10 A. It appears to. I would say without --
11 with the exception of maybe the message from the
12 president but the rest is an annual report. That
13 should reflect the normal business or the regularly
14 recurring business of OVEC.

15 MR. PRITCHARD: And I would like to mark
16 a final exhibit as IEU-Ohio Deposition Exhibit 5.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. PRITCHARD: And let the record
19 reflect that this document is titled "Annual Report
20 2013 Ohio Valley Electric Corporation and Subsidiary
21 Indiana-Kentucky Electric Corporation."

22 Q. Are you familiar with this report?

23 A. Yes.

24 Q. And is this report prepared by a person
25 with knowledge?

1 A. Yes.

2 Q. And does OVEC regularly keep -- I'm
3 sorry. Is this report kept in the course of
4 regularly conducted business activity?

5 A. Yes.

6 Q. And is it a regular practice of OVEC to
7 make this report?

8 A. Again, if regular is defined annually, we
9 get an annual report.

10 Q. That's all the questions about this
11 document. Thank you.

12 A. Thank you.

13 MR. PRITCHARD: If you will allow me one
14 second, I think I've finished up my public
15 cross-examination.

16 MS. SPILLER: Sure.

17 Q. A couple of additional questions, are you
18 familiar with the -- what consists of the individual
19 cost billed to Duke by OVEC as part of the ICPA?

20 A. Yes.

21 Q. And what are the -- let me back up.

22 As far as the costs that OVEC bills to
23 Duke, there is a demand charge portion, correct?

24 A. Yes.

25 Q. Or fixed charge?

1 A. So I would refer you to the ICPA. It's
2 pretty explicit in how -- what the costs are billed.
3 So on 5.03 it spells out the demand charge in pretty
4 significant detail.

5 Q. And if we look at -- well, all of Article
6 5 of the ICPA is titled "Charges for Available Power
7 and Minimum Loading Event Costs," correct --

8 A. Yes.

9 Q. -- is the title? And if we look through
10 Article 5, we see 5.01 details the total monthly
11 charge, correct?

12 A. Yes.

13 Q. And 5.02 breaks down the energy charge?

14 A. Yes.

15 Q. And similarly 5.03 breaks down the demand
16 charge?

17 A. Yes.

18 Q. And the demand charge continues for
19 several pages, but then on page 11 of the ICPA 5.04
20 details the transmission charge?

21 A. Yes.

22 Q. And 5.05 details minimum loading event
23 cost, correct?

24 A. Yes.

25 Q. And that these sections of the ICPA, if

1 we go through them in detail, they would describe how
2 OVEC bills the monthly cost to Duke Energy Ohio,
3 correct?

4 A. To the best of my knowledge, yes.

5 MR. PRITCHARD: Okay. Are you familiar
6 with -- strike that. I have no further public
7 questions.

8 MS. SPILLER: Thanks, Matt.
9 Joe?

10 MR. OLIKER: Do you have any, Kim?

11 MS. BOJKO: I do.

12 MR. OLIKER: You do. I'm trying to
13 streamline so I have less.

14 MR. BERGER: Could we either take a 5
15 minute --

16 MS. SPILLER: Is it going to be 5 minutes
17 or lunch?

18 THE WITNESS: That works for me.

19 MS. SPILLER: Okay. So what time would
20 you like folks to dial back in who are on the line?

21 MR. BERGER: 20 after?

22 MS. SPILLER: So I've got -- I've got a
23 quarter till.

24 MR. BERGER: I have a quarter till so I'm
25 suggesting 1:20. Is that enough?

1 MS. BOJKO: 1:30.

2 MS. SPILLER: 1:30.

3 (Thereupon, at 12:45 p.m., a lunch recess
4 was taken.)

5 - - -

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Thursday Afternoon Session,
2 September 11, 2014.

3 - - -

4 CHARLES R. WHITLOCK

5 being previously duly sworn, as hereinafter
6 certified, deposes and says further as follows:

7 CROSS-EXAMINATION

8 By Ms. Bojko:

9 Q. Good afternoon, Mr. Whitlock. As you
10 know, I'm Kim Bojko, and I'm here on behalf of the
11 OMA, Ohio Manufacturers' Association, today. I have
12 a couple of follow-up questions.

13 MS. SPILLER: Can you on the line put
14 your phones on mute? We're getting a lot of
15 background noise.

16 Hi, Ryan. We are just resuming with Kim
17 Bojko's cross-examination of Mr. Whitlock.

18 Q. Mr. Whitlock, I am going to follow up on
19 a couple of questions that were asked of you from the
20 blanks that I have, so it will be -- we will kind of
21 jump around to fill in those holes. Do you have any
22 responsibilities currently for Duke Energy Ohio? I
23 know you discussed earlier that you are with Duke
24 Energy services company, but do you have any direct
25 responsibilities for Duke Energy Ohio?

1 A. So I do in my gas LDC job.

2 Q. Okay. Do you have any for electric?

3 A. No.

4 Q. Okay. And who actually has the ownership
5 interest in OVEC? Which Duke company?

6 A. I believe it's Duke Energy Ohio.

7 Q. Okay. So would it have been Duke
8 Energy -- would it have been Duke Energy Ohio that
9 you signed the ICPA document that we have been
10 discussing today?

11 A. Yeah. So it says Duke Energy Ohio, yeah.

12 Q. And that's on whose behalf you signed the
13 agreement for?

14 MS. SPILLER: I'm sorry, who just joined?

15 MR. SETTINERI: This is Mike Settineri.

16 A. Duke Energy Ohio.

17 Q. Okay. And that's who you were signing on
18 behalf of?

19 A. Yes.

20 Q. Do you know is -- in this current ESP
21 proceeding is the recovery of costs associated with
22 OVEC a part of this proceeding?

23 A. So I'm not familiar with the proceeding
24 actually. I don't know.

25 Q. Okay. So who from Duke, DEO, Duke Energy

1 Ohio -- you understand when I say DEO, I mean Duke
2 Energy Ohio.

3 A. Yes.

4 Q. Who from DEO is testifying to the OVEC
5 issue in this case?

6 A. I'm not sure.

7 Q. It's not you; is that right?

8 A. It's not me.

9 Q. And do you know in this proceeding who is
10 testifying with regard to the OVEC ICPA that we have
11 been discussing today?

12 A. I do not.

13 Q. Have you previously participated in Ohio
14 proceedings on behalf of Duke Ohio?

15 A. I have.

16 MS. SPILLER: Objection, asked and
17 answered.

18 Q. Did you -- have you previously testified
19 on behalf of Duke Energy Ohio in Ohio proceedings?

20 A. I believe so, yes.

21 Q. Okay. But besides your gas affiliation
22 currently you do not believe that you have any Duke
23 Energy Ohio responsibilities with the company?

24 A. That's correct.

25 Q. Do you know which year you signed the

1 OVEC ICPA?

2 A. We could look at the date of it. Does
3 the date on the cover -- it was reamended and
4 restated on September 10, 2010.

5 Q. And at that time, December 10 of 2010,
6 did you have responsibilities for Duke Energy Ohio?

7 A. I did.

8 Q. And you currently participate on the
9 executive board for Duke Energy Ohio; is that
10 correct?

11 A. I participate on the executive board for
12 Duke Energy Ohio?

13 Q. I'm sorry, for OVEC on behalf of DEO.

14 A. Yes.

15 Q. Okay. You discussed earlier regarding a
16 stipulation about the transfer of generating assets
17 in the last ESP case. Do you recall that discussion?

18 A. Yeah. I think we were reading off the
19 page -- I think I basically read part of the
20 stipulation into the record.

21 Q. And is it your understanding that the
22 Commission did approve that stipulation with the
23 provision that you discussed earlier with Mr. Berger?

24 MS. SPILLER: Objection, relevance. Go
25 ahead.

1 A. Yeah, I believe so. Yeah, I think the
2 Commission approved it. It had that section that I
3 read.

4 Q. And you stated you participated in that
5 specific proceeding?

6 A. I did.

7 Q. And that was on behalf of DE Ohio that
8 you participated in that proceeding?

9 A. Yes.

10 Q. In what capacity?

11 MS. SPILLER: Objection, relevance.

12 A. I'm not sure what capacity actually. I
13 was president of Midwest Commercial Generation.

14 Q. The unregulated affiliate of DE Ohio,
15 right?

16 A. So I'm not -- the legal structure it's --
17 it is an unregulated affiliate so, yes.

18 Q. And to your knowledge has DEO transferred
19 its OVEC obligations to date?

20 MS. SPILLER: Objection, asked and
21 answered.

22 A. So we have not transferred.

23 Q. And to your knowledge does DEO intend to
24 do so by December 31, 2014?

25 MS. SPILLER: Objection, relevance.

1 A. You would have to ask somebody that is
2 working for DE Ohio.

3 Q. So you have no understanding of what DE
4 Ohio is going to do or not do by December 31, 2014;
5 is that your testimony?

6 MS. SPILLER: Objection to form.

7 A. Can you restate the question?

8 Q. Sure. Are you telling me that you have
9 no knowledge of what DEO may or may not do by
10 December 31, 2014, with regard to the transfer of
11 assets?

12 A. I'm saying I don't know what they are
13 going to do.

14 Q. And would you be privy to what DEO
15 decides to do given that you are on the board of OVEC
16 on behalf of DEO?

17 A. I think ultimately -- ultimately that
18 that would come before the board because it's -- if
19 it entailed an assignment or dealt with the
20 succession or clause of the ICPA, then I would.

21 Q. But you would not know -- you would not
22 be involved in the internal DEO discussions prior to
23 it going to the board as being a member representing
24 DEO on the board?

25 A. Correct.

1 Q. You discussed a little bit today about
2 Bryan Dougherty. Is that how you?

3 A. Dougherty is how I pronounce it.

4 Q. Could you tell me what working
5 relationship you have with him? When do you work
6 with him or when do you not work with him? I know
7 you stated you are not sure what department he is
8 exactly in.

9 A. So Bryan actually works up through the
10 finance organization. He doesn't work for me, but he
11 is assigned to the business Midwest Commercial
12 Generation. So he does the financial reporting up
13 through the controller's organization.

14 Q. Okay. So he -- even though he is an
15 employer of the what you're calling business
16 services, I believe shared services, he actually is
17 assigned to the unregulated affiliate company.

18 A. Yeah. Sure.

19 Q. And did he in the past work directly for
20 or with you?

21 A. No.

22 Q. So in your capacity of -- I'm sorry. Are
23 you president of the commercial side?

24 A. I am -- yeah.

25 Q. Still?

1 A. Still.

2 Q. Okay. As the president, you work with
3 him with regard to finances of the unregulated
4 affiliate?

5 A. So I actually work with Sarah Lawler more
6 than I work with Bryan himself. Bryan works for
7 Sarah. So most of my interaction is with Sarah but
8 I -- but I --

9 Q. Is Sarah in the finance department of the
10 business services?

11 A. Yes, yes.

12 Q. Earlier today you had a discussion of
13 forecasting, and you called Duke's forecasting
14 modeling Duke fundamental curve; is that a fair
15 characterization?

16 A. Yes.

17 Q. Okay. And in that Duke fundamental
18 curve, when you say Duke, is this a fundamental curve
19 for all Duke entities? Is it a fundamental curve by
20 state? Can you explain that a little further?

21 A. So the fundamental curve is -- that
22 question was asked too, was there a different
23 fundamental curve for each of the utilities. And so
24 to the degree they are in a different market, then
25 they would have a different curve, all right? But

1 the curves are internally consistent so it's --
2 that's why it's a Duke fundamental curve.

3 Q. Okay. So that meaning that it would be
4 for all of Duke's PJM entities; is that fair?

5 A. Yeah. So if there were assets that
6 were -- so there were assets -- in PJM any asset that
7 was in PJM that was under the Duke umbrella would use
8 the same fundamental curve.

9 Q. And just to take it one step further, if
10 we could, you do not in any way do one on a
11 state-by-state basis?

12 A. So the curves don't make sense by state.
13 They make sense by location of the commodity.

14 Q. And that statement would be true even if
15 it's a regulated state versus an unregulated state?

16 A. Yes.

17 Q. Now, I think you've said the word today
18 executive committee a couple of times, and then I
19 think I've also heard you say executive board. Just
20 to be clear is there a distinction, or are you using
21 those interchangeably?

22 A. So --

23 Q. With regard to OVEC, sorry.

24 A. Right. So there is an executive
25 committee inside of OVEC's board.

1 Q. Okay.

2 A. And so we have to go back to the
3 questions, but I was probably using them
4 interchangeably because I don't think there was any
5 question specific to the executive committee of the
6 board.

7 Q. Okay. So to be on the executive
8 committee, you would also have to be on the board of
9 OVEC.

10 A. Correct.

11 Q. So you are on the board of OVEC, and you
12 are part of this subcommittee called executive
13 committee.

14 A. Yes.

15 Q. Okay. Who -- which other entities are on
16 the executive committee with you?

17 A. So that would be a better question for
18 either Bryan Chiseling or John Brodt. I could
19 speculate but there's a list of them.

20 Q. Okay. And it would be the owners of the
21 OVEC entitlement similar to Duke; is that correct?

22 A. So there's nobody on the board that's not
23 an owner and there is nobody on the executive
24 committee that's not a board member.

25 MS. BOJKO: I think my remaining

1 questions are actually confidential. I would request
2 of you, Ms. Spiller, at this time there was some
3 discussion with Mr. Whitlock about OEG-DR-1-001 which
4 was a confidential OVEC analysis, and I would request
5 that any supplemental versions of that or subsequent
6 versions of that be provided under the supplemental
7 discovery obligation that you have.

8 MS. SPILLER: You are asking me a new
9 question now, right? Are you asking me the question?

10 MS. BOJKO: No. I'm saying that
11 Mr. Whitlock referenced the likelihood of updated
12 documents, and I'm saying that I would request that
13 that be supplemented per discovery. If you -- you
14 were asked -- I believe that one question was what
15 are the OVEC analyses and if there are additional
16 analyses that have been produced since you have
17 responded to that question, I would ask that we
18 receive that -- those analyses.

19 MS. SPILLER: I think that's a new
20 question because the answer when we gave it at the
21 time was correct.

22 MR. OLIKER: Supplement --

23 MS. BOJKO: I am saying if there are
24 additional ones -- and I don't have the question in
25 front of me. Does someone have the question in

1 front, the OEG question?

2 MS. SPILLER: No, I know what the
3 question is. I think my point is the Administrative
4 Code spells out the circumstances when I'm to
5 supplement. I don't think a request for updated
6 information is within those particular provisions
7 because the answer as he gave it to you was correct
8 when he gave it, so I'm interpreting your request as
9 a new one.

10 MS. BOJKO: Okay. You can interpret all
11 you want. I think if the question is written to
12 provide all analyses, just as you've asked us to
13 supplement our discovery, I think it falls under that
14 supplemental, but if you need me to put it in
15 additional writing or writing, we can do that.

16 MS. SPILLER: Well, we asked you to
17 supplement because we thought your response may not
18 have been correct when given.

19 MS. BOJKO: And it was correct when
20 given.

21 MS. SPILLER: I think that's -- we can
22 debate that interpretation later, Kim.

23 MS. BOJKO: I mean, if you want to
24 consider it a new request, then you can consider it.
25 I think it falls under the supplemental language of

1 the rules but. There's no timeframe. It says all
2 forecasts or analyses.

3 MS. SPILLER: As of the date the question
4 was answered.

5 MS. BOJKO: So all my other questions are
6 in the confidential portion.

7 MS. SPILLER: Okay.

8 Joe.

9 MR. OLIKER: My turn.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Oliker:

13 Q. Good afternoon, Mr. Whitlock.

14 A. Good afternoon.

15 Q. My name is Joe Oliker, and I represent
16 IGS Energy. I just have a few. We are going to
17 start relatively high level, more kind of questions
18 about your experience in markets. Initially do you
19 have a definition of what a subsidy would be, energy
20 markets? What would come to mind? This is an open
21 ended question. Give me whatever answer you can
22 think of.

23 MS. SPILLER: I am going to object to the
24 form and relevance. Go ahead.

25 A. What's a subsidy? Geez, I don't know.

1 Can I use Google?

2 Q. Just if you don't know, you don't know.

3 Whatever you can think of.

4 A. Subsidy would be a benefit, a gift, I
5 don't know.

6 Q. So just take that a step further, it's a
7 form of payment or benefit that cannot be obtained in
8 the market. Is that another definition potentially?

9 A. So benefit, gift, sure.

10 Q. Okay. And would you agree -- let's take
11 a step back.

12 A. It could actually be not a benefit. We
13 could have a subsidy that was negative in a way.

14 Q. Could but thank you for that
15 clarification. Now, you have a lot of experience
16 with energy markets, right? That's sort of the
17 profile of your job is you run the Midwest Generation
18 for Duke.

19 A. Yes.

20 Q. So you are familiar with the markets, and
21 you evaluate markets for Duke, correct?

22 A. I don't know what you mean by evaluate
23 markets but. What's the word "evaluate" mean?

24 Q. You analyze markets for Duke; is that
25 correct?

1 A. I think I pay attention to markets for
2 Duke, that's for sure.

3 Q. Okay. And do you -- are you involved in
4 investment divisions for generating assets for Duke?

5 MS. SPILLER: I am going to object to the
6 relevance. What Duke are we referring to?

7 Q. I am referring to all of Duke. It can be
8 Duke North Carolina. It can be Duke Ohio. It could
9 be Duke Indiana. This is just a background question.

10 MS. SPILLER: Whether or not he is
11 involved in generating -- generating asset decisions
12 in respect to Duke Energy Carolinas? I am just
13 trying to understand the question.

14 Q. Let's start with all of the various
15 utilities that Duke owns. Are you involved in
16 investment divisions in each of Duke's service
17 territories?

18 MS. SPILLER: Objection to the relevance.

19 A. Yes.

20 Q. Okay. Now, would you agree that
21 subsidies may have the potential to distort markets?

22 MS. SPILLER: Objection, relevance.

23 A. I think they could.

24 Q. And --

25 MS. SPILLER: I'm sorry. Who just

1 joined?

2 MS. MOONEY: Colleen Mooney, sorry.

3 MS. SPILLER: Thank you.

4 Q. Would you agree that making an investment
5 decision for generating assets an important
6 consideration is whether other market participants
7 are receiving subsidies?

8 MS. SPILLER: Objection, relevance.

9 A. Could you say the question again?

10 Q. Would you agree when you are making
11 decisions regarding investment and generating assets,
12 whether or not other market participants are
13 receiving subsidies is an important consideration?

14 MS. SPILLER: Same objection.

15 A. I'm not sure.

16 Q. And if you don't know the answer, that's
17 fine.

18 A. I just said I'm not sure.

19 Q. Okay. Now, are you familiar with the
20 operation of the PJM interconnection?

21 A. I am.

22 Q. Would you agree that Duke's transmission
23 assets are under the control of PJM?

24 MS. SPILLER: Can I get a clarification
25 on Duke? Is this every Duke?

1 Q. Would you agree that Duke Energy Ohio's
2 transmission assets are under the control of PJM?

3 A. Yes.

4 Q. And just to clarify this, if I just say
5 Duke for the purposes of this deposition, I mean Duke
6 Energy Ohio, and I will try to clarify when speaking
7 of another entity.

8 MS. SPILLER: That's helpful because Duke
9 earlier was the familial Duke.

10 Q. Now, would you agree that Duke Energy
11 Ohio Generating assets are under the control of the
12 PJM interconnection with respect to dispatch?

13 MS. SPILLER: Duke Energy Ohio generating
14 assets.

15 MR. OLIKER: That's correct.

16 MS. SPILLER: Okay. I am going to object
17 to relevance while the witness is contemplating.

18 Q. I didn't think this one was
19 controversial.

20 A. I am playing it through my head. So Duke
21 Energy transferred a bunch of assets out of Duke so
22 those are not Duke Energy Ohio assets.

23 Q. Maybe we can clarify.

24 A. Let me tell you what -- you can clarify.
25 Go ahead.

1 Q. You go ahead and I will try to drill it
2 down.

3 A. You go.

4 Q. No, you go.

5 MS. SPILLER: If you don't understand the
6 question.

7 A. Go ahead and ask the question again.

8 Q. Maybe I can --

9 A. It was supposed to be easy because I was
10 going to make it complicated.

11 Q. Let's just focus on OVEC.

12 A. Yeah.

13 Q. OVEC currently dispatches into PJM,
14 correct?

15 A. Yes.

16 Q. Now, OVEC doesn't get to run unless PJM
17 tells OVEC to run, correct?

18 A. That's not true.

19 Q. Can you explain why that's not true?

20 A. So OVEC could run. PJM said it didn't
21 run. OVEC could offer its generation and be a price
22 taker --

23 Q. Okay.

24 A. -- without PJM. PJM could tell them you
25 can't run, but OVEC could say I want to run even if

1 PJM says it's not economic. They could make the
2 decision to run.

3 Q. Okay. Generally speaking in PJM if you
4 are a generating asset, you only dispatch when PJM
5 tells you to run.

6 A. So I hate the word "generally," right? I
7 mean, there are provisions in PJM tariffs that allow
8 you to run. You can self-schedule the generation and
9 that's inside PJM's tariff so that's my struggle.

10 Q. Okay. So if you don't self-schedule and
11 you aren't a price taker, you can't run unless PJM
12 dispatches you; is that correct?

13 A. Now, you are asking me for the
14 exclusions, right? So those are the two that I am
15 aware of. I am not aware of any other reason that
16 you would -- that are under PJM's tariff that you
17 could run without PJM saying it was okay. But,
18 again, their tariff is probably a thousand pages.

19 Q. Okay. Now, let's get to assuming OVEC
20 doesn't run. None of Duke Energy Ohio which you said
21 does not have generation assets any more, none of
22 those assets are dispatched, isn't it true that PJM
23 will just pick other generating assets to serve the
24 load in Duke Energy Ohio's service territory?

25 A. Say the question again.

1 Q. This discussion is about economic
2 dispatch.

3 A. Okay.

4 Q. PJM will take the least cost generating
5 assets to run, correct?

6 A. Subject to reliability constraints I
7 would say yes.

8 Q. Okay. And if Duke Energy Ohio or OVEC,
9 none of the assets formerly owned by Duke, OVEC, if
10 that doesn't run, PJM will just pick different
11 generating assets, and it will serve the load in
12 Duke's territory; isn't that correct?

13 MS. SPILLER: I am going to object to
14 relevance.

15 A. I think that's true.

16 Q. Okay. Now, let me ask another question
17 about that. OVEC consists of Clifty Creek and Kyger
18 Creek, correct?

19 A. Correct.

20 Q. Now, Kyger Creek is in Ohio, right?

21 A. Correct.

22 Q. Clifty Creek is in Indiana, correct?

23 A. Correct.

24 Q. Now, isn't it true Indiana is located in
25 MISO?

1 A. Yes.

2 Q. Are you aware, is Clifty Creek --

3 A. I think that's true, man. So, again, I
4 don't think about PJM by state, but I think that's
5 true.

6 Q. Is Clifty Creek pseudo tied to PJM?

7 A. I believe so.

8 Q. Does Clifty Creek have a firm
9 transmission path to PJM?

10 A. I don't know. I think -- I don't know.

11 Q. Okay. And for the record could you
12 please explain what it is to pseudo tie a generating
13 asset to a regional transmission operator.

14 A. So I can give you a layman's definition.
15 It's probably not the definition what a pseudo tie
16 is, but it essentially takes an electrical gen --
17 generator that's not connected electrically and makes
18 it look like it's connected electrically to that RTO.

19 Q. Okay. So although Clifty Creek is not
20 necessarily physically located in PJM, it is allowed
21 to bid into the PJM reliability pricing model
22 capacity auction, correct?

23 A. Yes.

24 Q. Are you aware of the rules and
25 circumstances that allow that to occur, if you know?

1 MS. SPILLER: Object to the relevance.

2 Go ahead.

3 A. We should -- is there a specific
4 provision of the tariff?

5 Q. I was hoping you could tell me.

6 A. Yeah. We could get PJM's tariff and look
7 at -- it's spelled out in PJM's tariff what's
8 required to participate in.

9 Q. Do you know if it's allowed to
10 participate as an external resource or as an internal
11 resource?

12 A. I don't. I believe it's an external
13 resource, but I don't know. I shouldn't speculate.

14 Q. Yeah, if you know. Thank you. Now,
15 talking about the Duke ownership structure of OVEC,
16 Duke owns stock in OVEC; isn't that correct?

17 A. Yes.

18 Q. And that's Duke Energy Ohio.

19 A. Yes.

20 Q. Okay. Isn't it true that Duke Energy
21 Ohio previously owned coal generating assets with DPL
22 and AEP?

23 MS. SPILLER: Objection, relevance.

24 A. Yes.

25 Q. Are you aware how the ownership of those

1 generating assets was structured?

2 MS. SPILLER: Objection, relevance. Are
3 we talking -- you want to question about every asset
4 that was co-owned?

5 Q. Let's -- in general would you agree that
6 it was also the stock ownership structure of the CONE
7 generating units?

8 A. I don't know, Joe.

9 Q. If you don't know, that's fine. And I
10 apologize if this came up earlier and I missed it,
11 but Duke has -- Duke Energy Ohio has agreed to sell
12 its generating assets to Dynegy, correct?

13 A. No, no.

14 Q. No? Could you explain how that's
15 incorrect?

16 A. Duke Energy Ohio is not selling its
17 generating assets to Dynegy.

18 Q. Has Duke agreed to sell its generating
19 assets?

20 MS. SPILLER: Is this --

21 A. Which Duke?

22 Q. Duke Energy Ohio.

23 A. I'm not aware of Duke Energy Ohio making
24 a decision to sell its assets.

25 Q. Has Duke Energy North America agreed to

1 sell any of its generating assets?

2 A. I don't know.

3 Q. Which is the gas units. Okay. Moving to
4 the history of OVEC just a little bit, are you
5 familiar with OVEC's long history?

6 A. The long history probably not. Familiar
7 would be a -- let's figure out what familiar means.

8 Q. Was -- are you aware whether OVEC was
9 ever in Duke Energy Ohio's rate base?

10 A. I don't believe that OVEC was ever in
11 Duke Energy Ohio's rate base.

12 Q. Okay. And you would agree though that
13 OVEC previously had a contract with the Department of
14 Energy and that contract terminated in 2003.

15 A. So subject to check on the dates, I think
16 that's true, and I still believe that there is some
17 energy that's still supplied to the Department of
18 Energy.

19 Q. Okay. But would you agree that the
20 Department of Energy notified Duke of that
21 termination in 2000? If you know.

22 A. So I am not sure they notified Duke. I
23 think they probably notified OVEC.

24 Q. Right. Okay. Thank you for that
25 clarification. But you would agree after that

1 notification in 2002, OVEC started investing in
2 substantial environmental controls?

3 A. To go back you had asked me about -- the
4 previous question was about 2003; and, now, we are
5 after that in 2002 doesn't work.

6 Q. My question was after being notified --

7 A. In 2003, you said 2003 was when we were
8 notified and I said subject to check and you said
9 after that in 2002.

10 Q. I thought I said 2000, so maybe we'll
11 back up. I may have misstated that if I said 2003.
12 Let's lay that one more time. Would you agree in
13 2000 the Department of Energy notified Duke -- or I
14 apologize. In 2000 the Department of Energy notified
15 OVEC that it would cancel the contract with OVEC in
16 2003; isn't that correct?

17 A. Again, subject to check. That
18 notification is going to be in OVEC's documents,
19 right.

20 Q. But would you also agree that after
21 receiving notification from the Department of Energy,
22 OVEC started investing in environmental controls?

23 A. Yes.

24 Q. And OVEC continued to do that in the
25 2006-2007 time period, invested in additional

1 environmental controls?

2 MS. SPILLER: I am going to object to
3 relevance.

4 A. I think OVEC to this day still makes
5 investments in environmental controls. We spent
6 money on FTDs, SCRs.

7 Q. And because the OVEC relationship with
8 sponsoring companies is a traditional rate base rate
9 of return contract, those investments have increased
10 the revenue requirement for OVEC, correct?

11 A. Could you restate that? I'm sorry.

12 MR. OLIKER: Could you read the question
13 back, please.

14 (Record read.)

15 A. So I would tell you that -- I'm not sure
16 whether it's traditional ratemaking. The ICPA spells
17 out in that section we talked about, I think it was
18 Section 5, how the -- how the components -- how we
19 are billed for a demand charge and how we are billed
20 for an energy charge, and I refer you to that
21 document.

22 Q. But you would agree that the
23 environmental control investments has an impact on
24 the price the sponsoring companies pay through the
25 participation power agreement.

1 MS. SPILLER: I am going to object. Go
2 ahead.

3 A. Again, you can read the ICPA; and the
4 ICPA demand charge component, there are environmental
5 charges that are embedded in that.

6 Q. Okay. I am trying to see what's
7 confidential and what's not. Now, if we could just
8 refer back to the ICPA for a minute, that contract.
9 If -- and I am just asking for your lay
10 understanding. I am not asking for a legal opinion.
11 Would you agree that there's two basic options? Duke
12 can request permission from the other sponsoring
13 companies, or it can submit an offer to those
14 companies which gives them a right of first refusal.

15 A. Is there a section of the -- let's just
16 look at the agreement, right, for the sections and
17 then we'll read it.

18 Q. I am just trying to understand if that is
19 the way you view the document.

20 A. What section?

21 Q. I believe it was 1.181 and 2 and 3.

22 A. 9.181 or 1.181?

23 MS. SPILLER: 9.181.

24 Q. Yeah, 9.181. I have got it somewhere in
25 here. Would you agree there's two high level

1 options?

2 A. Which section do you want me to read?

3 Q. I don't necessarily need to read it. I
4 am saying --

5 A. I would like to read it.

6 Q. Okay. 9.181 and 9.182.

7 A. Okay. All right.

8 Q. And 9.183.

9 A. So what's the question?

10 Q. From a high level do you agree that Duke
11 can either ask for permission from all of the
12 companies to transfer its interest in OVEC or it can
13 give a right of first refusal to the other companies?

14 MS. SPILLER: I am going to object to the
15 relevance and also to the fact that the document
16 speaks for itself. To the extent you are asking for
17 a legal opinion, Mr. Whitlock is not an attorney.

18 Q. And if you know. If you don't know,
19 that's fine.

20 A. I would just let the document speak to
21 itself, right?

22 Q. If you don't know the answer, that's
23 fine. Now, just some -- strike that.

24 Would you agree that the ICPA is a FERC
25 jurisdictional document that deals with wholesale

1 transactions?

2 A. Yes.

3 Q. And do you have experience dealing with
4 wholesale power transactions, Mr. Whitlock?

5 A. Yes.

6 Q. Now, this is just a hypothetical but
7 assuming Duke Energy Ohio -- strike that.

8 The OVEC contract is effectively a take
9 or pay contract; would you agree with that, that
10 characterization? You take power or you pay?

11 A. I think there's elements of it that are
12 take or pay and then elements that are not.

13 Q. Okay. Either way the amount of money
14 that OVEC wants to collect from Duke Energy Ohio,
15 OVEC gets their money, right?

16 THE WITNESS: Could you read the question
17 back to me.

18 MS. SPILLER: I am going to object to the
19 form.

20 (Record read.)

21 A. No. OVEC is constrained by the
22 agreement, right? So they can't just collect
23 whatever money they want from me or any of the
24 participants, right? I mean, it's prescribed what
25 they can collect and what they can't collect.

1 Q. Okay.

2 A. It's not a wish -- it's not determined by
3 their will to collect.

4 Q. I think you actually led to my next
5 question. This agreement, the OVEC agreement, the
6 ICPA, is binding on the sponsoring companies so
7 according to this FERC jurisdictional document they
8 have to pay pursuant to its terms no matter what may
9 happen regarding energy markets or the Public
10 Utilities Commission of Ohio decisions regarding what
11 they can collect from their customers.

12 A. I think that's true regardless of whether
13 it was FERC jurisdictional or not. It's a contract
14 that spells out terms and conditions of paying money.

15 Q. Okay. So let me take it one step
16 further. This is just a hypothetical.

17 A. Yeah. It's not hypothetical because you
18 are talking about the ICPA.

19 Q. It's a hypothetical for any FERC
20 jurisdictional energy contract.

21 A. Okay.

22 Q. Assuming Duke Energy Ohio has a contract
23 with another company and they have some rate
24 mechanism from the Ohio Commission to collect the
25 costs from that contract, but then because the

1 Commission has jurisdiction over that mechanism they
2 determine a certain amount of those costs should be
3 disallowed. Would you agree that that loss would be
4 recorded as Duke Energy Ohio, and Duke Energy Ohio
5 would still have to pay in accordance with the
6 wholesale contract terms?

7 A. So can we take it in pieces?

8 Q. Sure.

9 A. So if Duke Energy -- if Duke -- any
10 entity inside of Duke has a contract, they are
11 going -- Duke is going to abide by the terms of the
12 contract --

13 Q. Okay.

14 A. -- that's No. 1, and then the second
15 question is if I had -- if those were deemed
16 imprudent -- or what was the word that you used?

17 Q. Disallowance.

18 A. Disallowed, what would be -- what's the
19 question?

20 Q. If those costs were disallowed from
21 collection from ratepayers, then Duke Energy Ohio
22 would not be able to flow that disallowance upstream
23 to the other company that's in the other side of the
24 transaction. They would still have to pay the party
25 on the other side of the wholesale contract.

1 MS. SPILLER: Objection, relevance.

2 A. Upstream to what?

3 Q. I am trying to help you understand this,
4 the hypothetical. If there's a disallowance at the
5 Public Utilities' level --

6 A. Yes.

7 Q. -- it doesn't affect Duke's obligation to
8 pay the other party that's involved with the
9 wholesale contract; isn't that correct?

10 MS. SPILLER: I don't know that there are
11 enough facts to answer this hypothetical. You are
12 asking him to make a whole lot of assumptions as to
13 what that contract says.

14 Q. Let's assume it's the ICPA.

15 A. Okay. Let's assume it's the ICPA. So I
16 have an obligation to pay under the ICPA; I am going
17 to pay that money. And then what's the question?

18 Q. Okay. You have an obligation to pay
19 under the ICPA.

20 A. Correct.

21 Q. And then you sell all the revenue from
22 OVEC into the market. Those revenues are less than
23 the amount you have to pay to OVEC.

24 MS. SPILLER: Is this part of the
25 hypothetical?

1 MR. OLIKER: It's part of the
2 hypothetical.

3 A. Wait. I'm confused. So, now, we are
4 talking about the ICPA. Okay. We are saying it's
5 not a hypothetical.

6 Q. It's a hypothetical, but we are going to
7 use the ICPA to add additional facts to it.

8 A. Okay.

9 Q. Let's assume this wholesale contract is
10 the ICPA so Duke has an obligation to pay OVEC. But
11 then there's a collection mechanism for any
12 difference between the amount Duke has to pay to OVEC
13 and the amount of market-based revenues that they
14 receive. But then assume -- assume that, say, Duke
15 loses \$10 million in the market.

16 But then assume the Commission decides,
17 well, we thought what you were doing was imprudent.
18 That number is actually \$20 million. So then there
19 is \$10 million that Duke's allowed to collect from
20 ratepayers and \$10 million that they have to eat.
21 They don't get to collect that money from customers,
22 but they record a lose at the distribution utility;
23 isn't that correct? They still have to pay all of
24 that extra \$20 million to OVEC. I am trying to add
25 as many facts for you as possible.

1 A. I hate the hypothetical fact where you're
2 blending the ICPA and then a hypothetical situation
3 and then it's more complicated that you use \$10
4 million in both examples, right, where I was allowed
5 to collect 10 million and then not another 10
6 million. So we're paying -- Duke Energy Ohio is
7 going to pay under the ICPA contract.

8 Q. Okay.

9 A. That's No. 1. So can you ask a question
10 that goes to the second piece that you wanted?

11 Q. Sure. Let's use easier numbers then.

12 A. All right.

13 Q. Assume -- assume that embedded in the
14 amount that Duke has to pay under the ICPA is \$10
15 million that the Ohio Commission doesn't think Duke
16 should have paid. Then -- and then Duke, they still
17 have to pay the ICPA for the entire 10 million no
18 matter what, right? So assuming Duke can collect all
19 of its costs from the ICPA from customers but the
20 Commission disallows some of those costs, Duke still
21 has to pay OVEC, right?

22 A. So I think -- I think that's answered in
23 my first -- the answer I gave you in the first
24 question, that we are going to pay what we are
25 obligated under the ICPA.

1 Q. Okay. So if --

2 A. I feels like I answered that.

3 Q. So then the second question if you have
4 to pay but you have a loss, the loss is recorded at
5 the distribution utility.

6 A. And the loss is the difference between
7 what I paid and what the Commission allows me to
8 collect?

9 Q. That's correct.

10 A. I guess it would depend on what the -- so
11 the hypothetical is the Commission says you can't
12 collect it. Then I would be -- I am paying the
13 money. It feels like that's -- it feels like that's
14 answering the first question.

15 Q. Okay. So -- so here's the summary
16 question which makes all of this much easier, the
17 fact that the Ohio Commission would have no control
18 over the amount of money Duke Energy Ohio pays to
19 OVEC.

20 MS. SPILLER: Under the ICPA.

21 Q. For the ICPA.

22 MS. SPILLER: Are there any hypothetical
23 facts here?

24 MR. OLIKER: No.

25 A. I don't think Duke Energy -- I don't

1 think the PUCO has any say in what Duke Energy Ohio
2 pays to OVEC.

3 Q. Thank you. I should have asked that
4 first.

5 A. That would have been a lot easier. There
6 were some great examples in there hypothetically,
7 great examples.

8 Q. Okay. Now, moving on from that let's --
9 actually let's do one more example. One more
10 example. Okay. Let's assume OVEC decides to install
11 an IGCC or a carbon captured sequestration facility,
12 and it costs \$5 million. Ohio Commission does not
13 agree with that decision. Would you agree that Duke
14 Energy Ohio would still have to pay?

15 A. So I'm not sure that the members would
16 agree to investing that money.

17 Q. Assuming they were ambitious.

18 A. Or crazy?

19 Q. Or crazy.

20 MS. SPILLER: Do you have enough assumed
21 facts to even?

22 THE WITNESS: I don't know.

23 A. Assume that it was approved as the
24 capital budget?

25 Q. Absolutely.

1 A. I would have to look at the rules, man,
2 about \$5 billion. I don't think -- I don't think
3 they could spend 5 -- that feels like that would
4 require unanimity among the members not a majority,
5 but I would have to look at what the --

6 Q. Assume there is -- assume there is
7 unanimity the whole way. Everybody wants to build
8 this. They are excited to build the CCS facilities.

9 A. I am assuming it makes economic sense.

10 Q. Okay. And I understand that but take all
11 those other facts off the table but if they do --

12 A. What other facts off the table?

13 Q. If they build a \$5 billion facility --

14 A. And it makes sense to build the \$5
15 billion dollar --

16 MS. SPILLER: Don't think about it making
17 sense.

18 Q. It's irrelevant for purposes of this
19 hypothetical. Say they think it makes sense but the
20 Ohio Commission doesn't and then there is a
21 disallowance in Ohio at the distribution level. The
22 distribution utility still has to pay though, right?

23 MS. SPILLER: What's the disallowance for
24 and under what mechanism?

25 A. Joe, that feels like the same question

1 you asked me before, right?

2 Q. It is pretty much. It's just more money.

3 A. So why are we asking it again?

4 Q. I am just trying to make sure it's still
5 the same.

6 A. I think I was pretty clear in the first
7 answer. The hypothetical to me, \$5 billion, the
8 terms of the ICPA are spelled out in the ICPA. We
9 have an obligation to pay though money because we are
10 a signator of the ICPA. If the ICPA can be amended
11 and changed as you go through time, we are going to
12 pay that money.

13 Q. Okay. Moving to a different subject, you
14 would agree that Clifty Creek and Kyger Creek are
15 both coal facilities, right?

16 A. I would.

17 Q. And you're familiar with the fact that
18 the EPA recently issued emission rules for --
19 proposed emission rules for existing power plants.

20 A. I am.

21 Q. And would you agree that those rules
22 could increase the production costs for both coal
23 power plants?

24 A. So I haven't read the rules in detail,
25 and I think it's yet to be determined what the impact

1 is about costs and/or benefits as it relates to a
2 coal facility like Kyger or Clifty.

3 Q. In general would you agree that it will
4 increase the production costs for coal power plants?

5 A. I think it could increase it; but, again,
6 I don't think cost is the only piece of the
7 calculation. I think you have to look at capacity
8 prices and energy prices, but the cost would go up.

9 Q. Okay. Let's ask another hypothetical.

10 A. Oh, boy.

11 Q. Much easier.

12 A. Sure.

13 Q. Okay. Margin is -- what's your
14 definition of margin?

15 A. Revenue less costs, less marginal costs,
16 right.

17 Q. Okay.

18 A. So for me it's energy prices less fuel
19 and emission allowances typically for a plant.

20 Q. Okay. And the wholesale energy market,
21 would you agree that CO-2 emission rules could
22 increase power prices?

23 A. Yes.

24 Q. Wholesale energy. What's the theory
25 behind power prices increasing?

1 A. What would make -- a lot of things could
2 make power prices go up.

3 Q. Okay. Would you agree it could be
4 related to an underlying increase in production
5 costs?

6 A. It could.

7 Q. And if power prices increases -- increase
8 but production costs increase, there could be no
9 additional margin.

10 A. Again, so in --

11 MS. SPILLER: Is this another
12 hypothetical?

13 THE WITNESS: Yeah, it was hypothetical,
14 right?

15 A. So you could have three circumstances
16 where costs go up faster than your energy prices go
17 up. I think you could have costs go up slower than
18 energy prices, and I think you could have them go up
19 where they went up the same. Those are the three
20 outcomes. Maybe there is a third one in some
21 parallel universe but those are the three I would
22 think would exist.

23 Q. Okay.

24 A. And I don't know which one the greenhouse
25 gas rule for existing generation -- I'm not sure

1 which one will end up being the fact.

2 Q. Understood. And your job in Midwest
3 Generation, you deal with heat rates a lot, I bet.

4 A. I did. Now, I am trying to just close a
5 sale.

6 Q. Okay. Would you agree that if the output
7 of OVEC is reduced from current provisions, the heat
8 rate would likely go down or up, I suppose.

9 A. So go ahead again.

10 Q. Would you agree output of a unit can be
11 tied to heat rate?

12 A. When you calculate heat rate?

13 Q. The heat rates of a unit --

14 MS. SPILLER: Is everyone still on the
15 line?

16 MS. MOONEY: Colleen Mooney still is.

17 MS. SPILLER: We had Columbus drop off.
18 That was us so we wanted to make sure we were still
19 connected.

20 MS. MOONEY: Yeah, you are still
21 connected.

22 MS. SPILLER: Thank you.

23 Q. Okay. The heat rate, would you agree
24 that the heat rate is the amount of BTUs it takes to
25 produce kWh?

1 A. Are we talking about the specific heat
2 rate of Kyger and Clifty?

3 Q. That's fine. We can talk about that,
4 yeah.

5 A. Okay.

6 Q. Would you agree it's the amount of BTUs
7 per kilowatt hour?

8 A. Absolutely.

9 Q. The higher the heat rate the less
10 efficient the unit.

11 A. Absolutely.

12 Q. And the less often a unit runs the more
13 likely its heat rate will go up, all other things
14 being equal, if you reduce the amount of output.

15 A. So are you talking about the average heat
16 rate or the incremental heat rate?

17 Q. Let's talk about both.

18 A. Which one do you want to talk about?

19 Q. You go -- take them one at a time.

20 A. So the incremental heat rate -- so the
21 average heat rate is a number --

22 Q. Right.

23 A. -- that probably -- that doesn't change
24 over time, right? The heat rate of the unit --

25 THE WITNESS: Can you read the question

1 back to me? Let's do that.

2 (Record read.)

3 A. No.

4 Q. Why is it not true?

5 A. Because the amount of time that a unit
6 runs does not affect its heat rate.

7 Q. Okay. I am trying to get as many
8 questions in the public record as I can here. You're
9 familiar with the word "unforced capacity."

10 A. Yes.

11 Q. And you can only bid -- unforced
12 capacity, what's your definition?

13 A. So it's the installed capacity less what
14 you think the forced outage rate of that unit is
15 going to be.

16 Q. And you can only bid on forced capacity
17 in the PJM capacity auctions, right?

18 A. PJM's capacity market is a UCAP market.

19 Q. Right.

20 A. I think that's different than your
21 question.

22 Q. I think it's where I was going. Thank
23 you.

24 A. Okay.

25 Q. Okay. And unforced capacity rates are

1 determined by PJM, right?

2 A. So PJM gives you a UCAP, but you can vary
3 your offer based on PJM's calculation.

4 Q. Okay. So can you clear more capacity
5 than your UCAP?

6 A. So by definition when you clear, you're
7 clearing UCAP.

8 Q. Okay. That's what I thought. When a
9 unit moves -- I am going to save that for
10 confidential actually. Let me see if I have anything
11 else. Mr. Wathen -- Mr. Whitlock.

12 A. I'll take that as a compliment.

13 Q. I think it's IEU Deposition Exhibit 5. I
14 would like to ask you some questions from "A Message
15 from the President," maybe just one or two. Could
16 you go to "2014 Energy Sales Outlook."

17 A. Uh-huh.

18 Q. Do you know when this statement was made,
19 when this paragraph was crafted?

20 A. I'm assuming it was after the first
21 quarter and before -- before -- no later than June 30
22 of 2014.

23 Q. Would you agree that it's been a very
24 cool summer?

25 A. What do you mean by "very cool summer"?

1 Q. Okay. Would you agree that temperature
2 impacts power prices?

3 A. Yes.

4 Q. Would you agree that this summer has been
5 cooler than last summer, for example?

6 A. So when you say "summer," what do you
7 mean? What months do you mean?

8 Q. Let's do June through the end of August.

9 A. Subject to check, I think June was a
10 little bit warmer than normal, July less so, and
11 August about normal. And I'm talking about cooling
12 degree days in Cincinnati, but subject to check the
13 data.

14 Q. And try to keep this public, would you
15 agree that July and August showed lower earnings for
16 coal-fired power plants than last July and August?

17 MS. SPILLER: Are we just speaking
18 generically?

19 Q. General, I don't want to be confidential.

20 MS. SPILLER: If you know. I would
21 object to the relevance.

22 A. In any specific area of the country or?

23 Q. How about Ohio?

24 A. That's probably not true.

25 Q. And is that because of higher natural gas

1 prices?

2 A. No.

3 Q. If you know. And, Mr. Whitlock, have you
4 reviewed OVEC's earnings for July and August of 2014?

5 A. I have not.

6 Q. Have you reviewed April, May, or June?

7 A. I don't think I specifically looked at
8 OVEC for any one of those months.

9 Q. Would you agree that OVEC makes
10 projections of its earnings for each month?

11 A. If they do, I haven't paid attention to
12 them. What OVEC thinks their earnings are going to
13 be? Yeah.

14 Q. Okay. That's fair enough. Looking at
15 OVEC's projection at 20 -- in the 2014 Energy Sales
16 Outlook, would you agree that if OVEC's earnings were
17 lower than projected at the time this statement was
18 issued, then it's likely that costs of production
19 would be higher than \$55 per megawatt-hour?

20 A. Can you say --

21 THE WITNESS: Or can you read the
22 question back?

23 (Record read.)

24 THE WITNESS: Say the last part again.

25 (Record read.)

1 A. So it could be energy prices were lower
2 or costs were higher?

3 Q. Okay. Let's say it differently. If
4 OVEC's output was lower than projected, total kWh,
5 would you agree that the production costs would be
6 higher than \$55 per megawatt-hour?

7 A. I think it's indeterminate.

8 Q. Okay. Why is that?

9 A. There's a demand component and an energy
10 component and the energy component could be lower.

11 Q. Okay. Fair enough. One last question on
12 CO-2 emissions.

13 A. Okay.

14 Q. Would you agree that one of the possible
15 outcomes of the EPA regulations is that coal-fired
16 power plants may have to run less than currently
17 projected?

18 A. I think there's a potential for that. I
19 think there's potential they run the same and
20 potential that they run more. I am not sure which
21 one, but I think that's one of the outcomes we talked
22 about.

23 Q. Okay. And if Duke were to determine to
24 go to the OVEC board, said they wanted to transfer
25 their interest in OVEC, would you be the person that

1 brought that request to the board?

2 A. How about -- yes.

3 MR. PRITCHARD: Could I have that
4 question and answer read back.

5 THE WITNESS: That "yes"?

6 MR. PRITCHARD: And the question.

7 THE WITNESS: Oh.

8 (Record read.)

9 Q. The answer was "yes"?

10 A. Yeah. I mean, I think I'm the board
11 member, right, so I think I would interface as other
12 people could come and do it, but I think I would be
13 the likely person to do it.

14 Q. Okay. This may really be the last
15 question.

16 A. I don't believe it.

17 Q. Five parts. I'm just kidding.

18 MS. GRADY: Hypothetical.

19 MS. SPILLER: No.

20 Q. Not a hypothetical but it's --

21 MS. SPILLER: Close?

22 MS. BOJKO: Two hypotheticals.

23 Q. We talked about the physical location of
24 I believe it's Clifty Creek. Now, isn't it possible
25 that PJM could change its capacity market rules and

1 no longer allow Clifty Creek to bid into the capacity
2 market?

3 MS. SPILLER: I am going to object to the
4 extent it calls for you to speculate.

5 A. I think there is potential PJM can change
6 their tariff, and if they change their tariff that
7 precluded OVEC from offering its generation, I don't
8 think it's likely, but they can change their tariff.
9 They are a creature of their tariff.

10 Q. And if that was the case, then OVEC would
11 be dispatched into MISO most likely, correct?

12 A. Now, that's kind of -- those aren't
13 the -- those aren't the only two choices.

14 Q. Okay. But would you agree MISO does not
15 have a functioning capacity market that's equivalent
16 to PJM?

17 A. I'll say since you added the word
18 "equivalent," I would say it's not equivalent to PJM.

19 Q. And by that I mean the compensation is --

20 A. They are different markets.

21 Q. Much less.

22 A. Historically they have been much less.

23 Q. Okay. Thank you.

24 A. But they're different and I think that's
25 important. One is three-year forward looking and one

1 is volunteer -- three-year forward looking and
2 binding, and the other one is elective and one year.
3 So they are different.

4 Q. Thank you for that clarification.

5 A. You're welcome.

6 MR. OLIKER: I think besides some small
7 foundational questions I think that's all I have for
8 the public record.

9 MS. SPILLER: So it's about 5 after 3.
10 We are going to take a quick --

11 THE WITNESS: Unless we are not finished
12 with before we go into the confidential section. So
13 I don't know if there is more.

14 MR. BERGER: Yeah, people on the phone.

15 THE WITNESS: Let's do that.

16 MS. SPILLER: So we are asking people if
17 they have any questions for Mr. Whitlock during the
18 public section, and then we will take a short break.

19 So Jody? Jody, do you have any questions
20 for Chuck? Jody, you might be on mute. Jody?

21 Scott or Jake?

22 MR. CASTO: No questions from us.

23 MS. SPILLER: Thank you.

24 Doug?

25 MR. HART: No.

1 MS. SPILLER: Steve?

2 MR. BEELER: No.

3 MS. SPILLER: Thank you. Becky?

4 MS. HUSSEY: No questions.

5 MS. SPILLER: Thanks. Mike?

6 MR. SETTINERI: Yeah, I have just a few
7 quick questions. This is Mike Settineri on behalf of
8 RESA, Retail Energy Supply Association. Can you hear
9 me okay?

10 MS. SPILLER: We can, thank you.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Settineri:

14 Q. Okay. Good afternoon, Mr. Whitlock.

15 Again, my name is Mike Settineri. I represent the
16 Retail Energy Supply Association. I wanted to ask
17 you some quick questions.

18 No. 1, you are an OVEC -- member of the
19 OVEC Executive Committee, correct?

20 A. Yes.

21 Q. Okay. And are you also -- by in turn you
22 are a member of the OVEC board.

23 A. Yes.

24 Q. All right. How long have you been a
25 member of the OVEC Executive Committee?

1 A. Can we check and we'll -- we'll get the
2 documents? I don't remember the dates.

3 Q. Can you give me an approximate?

4 A. I just prefer to check and give you the
5 right dates.

6 MR. SETTINERI: That's fine. Counsel,
7 you will agree to provide that in an e-mail --

8 MS. SPILLER: Certainly, Mike.

9 MR. SETTINERI: -- in an interrogatory
10 response?

11 MS. SPILLER: Yeah.

12 Q. Can you tell me generally in terms of how
13 would you generally describe the difference to
14 participation on the board versus participation on
15 the executive committee?

16 A. So the executive -- the board, the
17 executive -- let me just tell you what the
18 executive -- the executive committee will deal with,
19 you know, employee matters that are more private.
20 They don't involve all the members. They're -- those
21 are typically the conversations that happen in the
22 executive committee.

23 Q. Okay. What about matters relating to the
24 ICPA?

25 A. So those are all -- the ICPA is going to

1 every member of the OVEC board.

2 Q. Okay. Does the OVEC board meet on a
3 regular basis?

4 A. Yes.

5 Q. And how much does it meet?

6 A. So we -- probably three or four times a
7 year and then we will have special meetings every now
8 and then.

9 Q. Okay. And that three or four times a
10 year, is that scheduled in advance on a yearly basis?

11 A. Typically scheduled in advance.

12 Q. Okay. And if you can repeat your answer
13 or I would be glad to have it read back. I asked you
14 how often the board meets, and you said three to four
15 times yearly. And then that second part of your
16 answer are there other additional meetings?

17 A. Yeah. I think there are some special
18 meetings that take place.

19 Q. Okay. And what -- under what
20 circumstances would a special meeting be called?

21 MS. SPILLER: That's getting into
22 confidential. We can save that.

23 MR. SETTINERI: I don't see why the
24 nature of the meeting -- I am not asking for the
25 contents of the meeting, but just generally I am

1 asking for a general answer.

2 A. So I don't know how to answer the
3 question without referring to the content of the
4 discussion.

5 Q. Okay. We'll save that for later then.

6 A. I am not sure I can answer it either way.

7 Q. What's the last time the executive
8 committee met?

9 A. I think it was two board meetings ago.
10 So I want to say it was in the fourth quarter of '13,
11 subject to check.

12 Q. Okay. And we are talking about the
13 executive committee, correct?

14 A. Correct. That was your question.

15 Q. Okay. All right. Going back to the
16 regular, the OVEC board itself, does the OVEC board
17 have regularly scheduled meetings?

18 A. Yes.

19 Q. And how often are those meetings
20 scheduled?

21 MS. SPILLER: Objection, asked and
22 answered.

23 A. I think I already answered it.

24 Q. Three or four times a year; is that
25 correct?

1 A. Again, I don't -- I can't recall a time
2 when the executive committee didn't meet apart from
3 Regular -- regular board meeting. So the question
4 that I had answered previously was around board
5 meetings and then the executive --

6 Q. So in general the executive committee
7 meets on the same -- at the same basis as a meeting
8 of the full OVEC board?

9 A. It's a subset of the full OVEC meeting.

10 Q. Has the executive committee ever met in a
11 separate date other than the full OVEC board?

12 A. Not that I can remember.

13 Q. Okay. And am I correct then that the
14 last meeting of the full OVEC board -- let me
15 rephrase that. The last meeting of the OVEC board
16 was approximately in the fourth quarter of 2013?

17 A. That was the last executive meeting.

18 Q. Well, you also -- you're saying then that
19 the OVEC board did not meet on that date?

20 A. That's not what I'm saying.

21 Q. Okay. Let me ask the question again.

22 A. Okay.

23 Q. Okay. When was the last time that the
24 OVEC board met?

25 A. I want to say the second quarter of '14,

1 subject to check.

2 Q. Okay. And you had mentioned previously
3 that the executive committee -- last time the
4 executive committee met was in December of 2014 -- or
5 at least fourth quarter of 2013, excuse me; is that
6 correct?

7 A. Yeah, subject to check, yes.

8 Q. All right. Okay. So when the OVEC board
9 meetings are held, sometimes there is not an
10 executive committee meeting, correct?

11 A. That's correct.

12 Q. All right. But there are never separate
13 meetings of the executive committee where on the same
14 day there would be a meeting of the OVEC board; is
15 that correct?

16 A. Again, to the best of my recollection. I
17 haven't been involved in an executive committee
18 meeting outside of --

19 Q. Have you missed any -- or let's say you
20 attended the 2014 OVEC board meeting?

21 MS. SPILLER: I am going to object to the
22 relevance. Go ahead.

23 A. I try to attend all the meetings. If
24 not, there is a proxy that goes.

25 Q. Okay. Did you attend the 2014 OVEC board

1 meeting?

2 A. I don't remember.

3 Q. You don't recall whether you attended the
4 2014 board meeting this year?

5 A. That's what I just said.

6 Q. Okay. Do you recall attending the 2013
7 fourth quarter executive committee meeting?

8 A. Yes.

9 MR. SETTINERI: Okay. All right. I have
10 no further questions. Thank you.

11 MS. SPILLER: Colleen?

12 MS. MOONEY: I have no questions. Thank
13 you.

14 MS. SPILLER: Thank you. We are going to
15 take a 5-minute break, and we are going to -- then we
16 will continue with the confidential section.

17 (Recess taken.)

18 MS. SPILLER: We are in the confidential
19 portion now of Mr. Whitlock's deposition.

20 (CONFIDENTIAL PORTION EXCERPTED.)

21 - - -

22

23

24

25

1 State of Ohio :
 : SS:
 2 County of _____ :

3 I, Charles R. Whitlock, do hereby certify that
 4 I have read the foregoing transcript of my deposition
 given on Thursday, September 11, 2014; that together
 5 with the correction page attached hereto noting
 changes in form or substance, if any, it is true and
 correct.
 6

7 _____
 Charles R. Whitlock
 8

9 I do hereby certify that the foregoing
 transcript of the deposition of Charles R. Whitlock
 10 was submitted to the witness for reading and signing;
 that after he had stated to the undersigned Notary
 11 Public that he had read and examined his deposition,
 he signed the same in my presence on the _____ day
 12 of _____, 2014.

13
 14 _____
 Notary Public

15
 16 My commission expires _____, _____.

17 - - -

18

19

20

21

22

23

24

25

1 CERTIFICATE

2 State of Ohio :
 : SS:
 3 County of Franklin :

4 I, Karen Sue Gibson, Notary Public in and for
 the State of Ohio, duly commissioned and qualified,
 5 certify that the within named Charles R. Whitlock was
 by me duly sworn to testify to the whole truth in the
 6 cause aforesaid; that the testimony was taken down by
 me in stenotypy in the presence of said witness,
 7 afterwards transcribed upon a computer; that the
 foregoing is a true and correct transcript of the
 8 testimony given by said witness taken at the time and
 place in the foregoing caption specified and
 9 completed without adjournment.

10 I certify that I am not a relative, employee,
 or attorney of any of the parties hereto, or of any
 11 attorney or counsel employed by the parties, or
 financially interested in the action.

12
 13 IN WITNESS WHEREOF, I have hereunto set my
 hand and affixed my seal of office at Columbus, Ohio,
 on this 15th day of September, 2014.

14
 15
 16 Karen Sue Gibson, Registered
 Merit Reporter and Notary Public
 in and for the State of Ohio.

17 My commission expires August 14, 2015.

18 (KSG-5931)

19 - - -

20

21

22

23

24

25

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

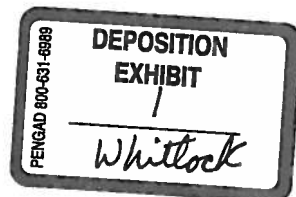
In the Matter of the Application of Duke)
Energy Ohio for Authority to Establish a) Case No. 14-841-EL-SSO
Standard Service Offer Pursuant to)
Section 4928.143, Revised Code, in the)
Form of an Electric Security Plan,)
Accounting Modifications and Tariffs for)
Generation Service.)

In the Matter of the Application of Duke)
Energy Ohio for Authority to Amend its) Case No. 14-842-EL-ATA
Certified Supplier Tariff, P.U.C.O.)
No. 20.)

**NOTICE TO TAKE DEPOSITIONS
AND REQUESTS FOR PRODUCTION OF DOCUMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Pursuant to Ohio Adm. Code Rule 4901-1-21(B), please take notice that the
Office of the Ohio Consumers' Counsel ("OCC") will take the oral deposition of the
following individuals:

1. Charles Whitlock, Director and Member of Executive Committee of Ohio Valley Electric Corporation; President of Midwest Commercial Generation, Duke Energy Corporation
2. William Don Wathen Jr., Director of Rates and Regulatory Strategy, Duke Energy Business Services LLC.
3. Person(s) with knowledge and expertise regarding:
 - a. The Amended and Restated Inter-Company Power Agreement ("ICPA") between the Sponsoring Companies and OVEC including provisions under Section 9.18 of the ICPA providing for sale or transfer of a Sponsoring Companies' OVEC Interest.



- b. Requests for consent of a sale or transfer of a Sponsoring Company's interest in OVEC under Section 9.18 of the ICPA and any and all communications and/or actions taken by any Sponsoring Company regarding such requests for consent.
 - c. Estimates made by Duke Energy Ohio, Inc., or in its possession or control, regarding the economic value of its share of the capacity and energy from OVEC to its retail customers for the duration of Duke Energy Ohio's entitlement, including persons familiar with assumptions, calculations, and workpapers underlying such estimates.
 - d. Estimates made by Duke Energy Ohio, Inc., or in its possession or control, of the net cost or benefit to customers and projected rate impacts of the Price Stabilization Rider, including persons familiar with assumptions, calculations, and workpapers underlying such estimates.
- 4. All persons who will be called by Duke Energy Ohio, Inc. to present testimony, including direct, rebuttal, surrebuttal, and any other form of testimony filed, or to be filed in these proceedings.
 - 5. All persons responsible for answering OCC's interrogatories responding to requests for production of documents (including responses that state that no documents are responsive to a request to produce), and/or requests for admissions served in these proceedings upon Duke Energy Ohio, Inc.

OCC seeks to conduct the depositions upon oral examination of persons identified in paragraphs 1 through 3 at OCC's offices, 10 W. Broad St., 18th Floor, Columbus, Ohio, at 10:00 a.m. beginning on August 1, 2014, or such other time that is mutually agreed upon by the Parties. Persons identified in paragraphs 4 and 5, will be deposed at a

later date, to be determined following the conduct of the depositions scheduled for August 1, 2014. The depositions will continue, one-after-the-other, from day to day, except for holidays and weekends, until completed. Each deponent will appear at the OCC at the designated time and date with all requested documents (identified below) and remain present until deposed.

The depositions will be taken of the aforementioned deponents on relevant topics within the scope of these proceedings, including but not limited to, the subject matter of the deponent's testimony and the deponent's knowledge and expertise with the subject matter of these proceedings. The depositions will be taken upon oral examination (as upon cross-examination) before an officer authorized by law to take depositions.

Pursuant to Ohio Adm. Code Rules 4901-1-21(E) and 4901-1-20, each deponent is requested to produce, two hours prior to his/her deposition, all documents relating to his/her responsibilities with respect to Case Nos. 14-841-EL-SSO and 14-842-EL-ATA and responses to discovery that were authored by the deponent or were provided to OCC with input from the deponent. Additionally, each deponent shall bring documents, including, but not limited to, the results of any studies done for these proceedings and any backup documents, including raw data for such studies, any documents relied upon or cited in the pre-filed testimony, and any workpapers that support the pre-filed testimony.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Grady

Maureen R. Grady, Counsel of Record

Joseph P. Serio

Edmund "Tad" Berger

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (Grady) (614) 466-9567

Telephone: (Serio) (614) 466-9565

Telephone: (Berger) (614) 466-1292

Maureen.grady@occ.ohio.gov

Joseph.serio@occ.ohio.gov

Edmund.berger@occ.ohio.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice to Take Depositions and Requests for Production of Documents was served via electronic service upon the parties this 28th day of July, 2014.

/s/ Maureen R. Grady
Maureen R. Grady
Assistant Consumers' Counsel

SERVICE LIST

Steven.beeler@puc.state.oh.us
Thomas.lindgren@puc.state.oh.us
Ryan.orourke@puc.state.oh.us
dboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
Schmidt@sppgrp.com
Judi.sobecki@aes.com
Bojko@carpenterlipps.com
mohler@carpenterlipps.com
cmooney@ohiopartners.org
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com
asonderman@keglerbrown.com
mkimbrough@keglerbrown.com
hussey@carpenterlipps.com
mhpetricoff@vorys.com
mjsettineri@vorys.com
glpetrucci@vorys.com
dmason@ralaw.com
mtraven@ralaw.com

Amy.Spiller@duke-energy.com
Elizabeth.watts@duke-energy.com
Rocco.dascenzo@duke-energy.com
Jeanne.Kingery@duke-energy.com
haydenm@firstenergycorp.com
jmcdermott@firstenergycorp.com
scasto@firstenergycorp.com
joliker@igsenergy.com
mswhite@igsenergy.com
joseph.clark@directenergy.com
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
callwein@wamenergylaw.com
tdougherty@theOEC.org
dhart@douglasshart.com
cloucas@ohiopartners.org
gpoulos@enernoc.com
swilliams@nrdc.org
tobrien@bricker.com
ghull@eckertseamans.com
jvickers@elpc.org

Attorney Examiner:

Christine.pirik@puc.state.oh.us

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio for Authority to Establish a)
Standard Service Offer Pursuant to Section)
4928.143, Revised Code, in the Form of) Case No. 11-3549-EL-SSO
an Electric Security Plan, Accounting)
Modifications and Tariffs for Generation)
Service.)

In the Matter of the Application of Duke)
Energy Ohio for Authority to Amend its) Case No. 11-3550-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.)

In the Matter of the Application of Duke)
Energy Ohio for Authority to Amend its) Case No. 11-3551-EL-UNC
Corporate Separation Plan.)

STIPULATION AND RECOMMENDATION

Rule 4901-1-30, Ohio Administrative Code (O.A.C.), provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties that have signed below (Signatory Parties or Parties) and to recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation and Recommendation (Stipulation), which resolves all of the issues raised by the parties in this case relative to Duke Energy Ohio's Application for Approval of an Electric Security Plan and Associated Tariffs, for Approval to Amend its Certified Supplier Tariff, and for Approval to Amend its Corporate Separation Plan (Application). This Stipulation is supported by adequate

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician SM Date Processed OCT-25-2011



215

RECEIVED
OCT 24 PM 3:20
P.U.C.O.

data and information including, but not limited to, Duke Energy Ohio's Application and testimony filed on June 20, 2011, and the Attachments filed herewith.

The Stipulation represents a just and reasonable resolution of the issues raised in these proceedings, violates no regulatory principle or precedent, and is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process, encouraged by this Commission and undertaken by the Parties representing a wide range of interests, including the Commission's Staff, to resolve the aforementioned issues. Although this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving all issues raised by these proceedings, the Parties stipulate, agree, and recommend as set forth below.

This Stipulation is a reasonable compromise that balances diverse and competing interests and does not necessarily reflect the position that any one or more of the Parties would have taken had these issues been fully litigated. This Stipulation represents an agreement by all Parties to a package of provisions rather than an agreement to each of the individual provisions included within the Stipulation. The Signatory Parties' agreement to this Stipulation, in its entirety, shall not be interpreted in a future proceeding before this Commission as their agreement to only an isolated provision of this Stipulation.

This Stipulation is submitted for purposes of these proceedings only, and neither this Stipulation nor any Commission Order considering this Stipulation shall be deemed binding in any other proceeding nor shall this Stipulation or any such Order be offered or relied upon in any other proceedings, except as necessary to enforce the terms of this Stipulation.

The Signatory Parties agree that the settlement and resulting Stipulation are a product of serious bargaining among capable, knowledgeable Parties. This Stipulation is the product of an

open process in which all parties were represented by able counsel and technical experts. The Stipulation represents a comprehensive compromise of issues raised by Parties with diverse interests. The Signatory Parties, which include Duke Energy Ohio, Ohio Energy Group, Industrial Energy Users-Ohio, The Office of the Ohio Consumers' Counsel, Ohio Manufacturer's Association, the Commission Staff,¹ City of Cincinnati, Ohio Partners for Affordable Energy, Retail Energy Supply Association, The Greater Cincinnati Health Council, The Ohio Environmental Council, People Working Cooperatively, Inc., Environmental Law & Policy Center, the Kroger Company, Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., FirstEnergy Solutions Corp., EnerNOC, Inc., Vectren Retail, LLC d/b/a/ Vectren Source, AEP Retail Energy Partners LLC, PJM Power Providers Group, Direct Energy Services, LLC, Direct Energy Business LLC, Miami University, the University of Cincinnati, COMPETE Coalition, Duke Energy Retail Sales, LLC, American Municipal Power, Inc., Interstate Gas Supply, Inc., Exelon Generation Company, LLC, the Natural Resources Defense Council, Wal-Mart Stores East, LP, Sam's East, Inc., Cincinnati Bell Inc., and the Council of Smaller Enterprises have signed the Stipulation and adopted it as a reasonable resolution of all issues.² The Signatory Parties believe that the Stipulation that they are recommending for Commission adoption presents a fair and reasonable result.

The Signatory Parties agree that the settlement, as a package, benefits ratepayers, and is in the public interest. The Signatory Parties agree that the settlement package does not violate any important regulatory principle or practice.

¹ The Commission Staff is a party for the purpose of entering into this Stipulation by virtue of O.A.C. 4901-1-10(C).

² Industrial Energy Users-Ohio (IEU-Ohio) supports the Stipulation. However, IEU-Ohio takes no position regarding Sections VI.B., VII.A., VII.M., VIII.A., IX.M., IX.U.(ii), and IX.AA., or does not support or oppose such sections, so that IEU-Ohio's support for the Stipulation may not be used as precedent in any other proceeding.

WHEREAS, all of the related issues and concerns raised by the Parties have been addressed in the substantive provisions of this Stipulation, and reflect, as a result of such discussions and compromises by the Parties, an overall reasonable resolution of all such issues;

WHEREAS, this Stipulation is the product of the discussions and negotiations of the Parties and is not intended to reflect the views or proposals that any individual Party may have advanced acting unilaterally;

WHEREAS, this Stipulation represents an accommodation of the diverse interests represented by the Parties and is entitled to careful consideration by the Commission;

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

WHEREAS, the Parties believe that the agreements herein represent a fair and reasonable resolution to the issues raised in the case set forth above concerning Duke Energy Ohio's Application;

NOW, THEREFORE, the Parties stipulate, agree, and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings approving this Stipulation in accordance with the following:

I. TERM

- A. The Parties agree that Duke Energy Ohio's Electric Security Plan (ESP) will be for the period of January 1, 2012, through May 31, 2015. The Parties further agree that Duke Energy Ohio shall file its next application, pursuant to R.C. 4928.141, for a standard service offer (SSO) no later than June 1, 2014. This subsequent application shall make provision for SSO supply procurements via a descending-clock format, competitive bid process (CBP) and the Parties hereby expressly

waive any rights that they may have to contest the use of such a CBP for the purpose of establishing Duke Energy Ohio's next SSO. The Parties agree to hold a collaborative meeting prior to March 31, 2014, to discuss lessons learned and potential improvements to the bid process, including, but not limited to, the need, if any, to address changes to the rules regarding switching between SSO and CRES providers, for consideration in Duke Energy Ohio's next SSO. Through the CBP to be included in its next SSO application, Duke Energy Ohio will seek to procure, on a slice of system basis, the aggregate wholesale full requirements SSO supply, which includes energy and capacity, market-based transmission service,³ and market-based transmission ancillary services requirements, for the period of its next SSO. Said process shall be conducted by an independent bid manager and consistent with the bid documents submitted as a part of Duke Energy Ohio's Application in the above-referenced proceeding, as modified in this Stipulation and the Attachments hereto. The Parties further acknowledge and agree that they shall expressly support the use, by Duke Energy Ohio, of such a CBP for purposes of acquiring all of the supply needed to serve its SSO load under the next SSO. The Parties reserve all other rights that they may have to support, contest, or recommend modification of Duke Energy Ohio's next SSO. Consistent with paragraph B, below, Duke Energy Ohio expressly reserves all rights to withdraw its next SSO application.

³ "Market-based transmission services," for purposes of this Stipulation, include those PJM (as defined below) charges and credits assigned to competitive retail electric service providers and those identified on the sample PJM Invoice as being assigned to wholesale suppliers. The PJM Sample Invoice is provided in the Master Supply Agreement, Attachment D to this Stipulation.

- B. In the event the Commission rejects Duke Energy Ohio's next SSO application or substantially modifies it such that Duke Energy Ohio withdraws the application, the Parties expressly acknowledge and agree that the auction-based pricing and cost-recovery provisions of the SSO structure under which Duke Energy Ohio is operating as of May 31, 2015, shall persist until such time as a subsequent SSO is approved and not withdrawn, as provided for in R.C. 4928.143(C)(2)(a), by Duke Energy Ohio. Any such withdrawal by Duke Energy Ohio shall be filed within 30 days following the issuance of the Commission's final order. Specifically, for the term commencing June 1, 2015, unless a new SSO is approved by the Commission and not withdrawn by Duke Energy Ohio, prior to April 1, 2015, Duke Energy Ohio will procure, through a descending clock, auction-based SSO procurement process substantially similar to the auctions conducted under the ESP described herein, a full requirements load following product for a term that is not less than quarterly or more than annually until a new SSO is approved and not withdrawn, with retail generation rates being determined based on the results of those auction-based SSO load procurements. The Parties agree and recommend that the Commission determine the term for the procurement process upon the filing of any Duke Energy Ohio withdrawal of its next SSO application. For purposes of this paragraph, the Parties also agree that, for so long as Duke Energy Ohio is a Fixed Resource Requirements (FRR) entity under PJM Interconnection, LCC, (PJM), it will provide capacity at the Final Zonal Capacity Price (FZCP) in the unconstrained regional transmission organization (RTO) region. For the period during which Duke Energy Ohio participates in PJM's Reliability Pricing

Model (RPM) and Base Residual Auction (BRA), the capacity price is the FCZP for the DEOK load zone region, and capacity shall be provided pursuant to the PJM RPM process. The Parties agree that the Commission's oversight of said procurement process shall be consistent with the oversight afforded it in the ESP discussed herein. For purposes of this paragraph, a full requirements load following product shall include energy and capacity delivered to the DEOK load zone, as well as market-based transmission service, and market-based transmission ancillary service, plus the reasonable costs to procure.

II. SSO SUPPLY

- A. Duke Energy Ohio agrees to procure all of its energy, capacity, market-based transmission service, and market-based transmission ancillary services requirements for its SSO load, for the duration of the ESP, through the CBP outlined in Duke Energy Ohio's Application in these proceedings and testimony filed in support thereof, except as modified in this Stipulation and the Attachments hereto. The auction schedule shall proceed consistent with Attachment A, hereto.
- B. Acknowledging Duke Energy Ohio's status as an FRR entity in PJM, the Parties agree that Duke Energy Ohio shall supply capacity to PJM, which, in turn, will charge for capacity to all wholesale supply auction winners for the applicable time periods of Duke Energy Ohio's ESP with the charge for said capacity determined by the PJM RTO, which is the FZCP in the unconstrained RTO region.
- C. Duke Energy Ohio will implement Rider RC (Retail Capacity) and Rider RE (Retail Energy) to recover the costs associated with serving its SSO load, with the

aggregate sum of the revenues under said riders equal to the auction clearing prices, as converted into retail rates. Rider RC shall recover the cost of capacity consistent with paragraph B above and Rider RE shall recover all remaining auction costs, including energy, market-based transmission service, and market-based transmission ancillary services. Rider RC and Rider RE are unconditionally bypassable by all non-SSO customers. Rider RC and Rider RE will be put into effect through updated rates for each of the PJM planning years for which all tranches for the delivery period have been approved by the Commission.

- D. Duke Energy Ohio shall implement conditionally bypassable Rider SCR (Supplier Cost Reconciliation) to recover any difference between the payments made to suppliers for SSO service and the amount of revenue collected from Rider RC and Rider RE. Rider SCR will also be used to recover all prudently incurred costs associated with conducting the auctions for SSO service and any costs resulting from supplier default. Rider SCR will be filed quarterly in this docket and will be subject to annual audits by the Commission at its discretion. The monthly accumulated balance of over- or under-recovery will accrue a carrying charge equal to Duke Energy Ohio's overall cost of long-term debt, as approved in its most recent distribution rate case (*e.g.*, Case No. 08-709-EL-AIR, *et al.*).

Rider SCR shall be bypassable by shopping customers during the time that they purchase retail electric generation service from a competitive retail electric service (CRES) provider, as long as the balance of said Rider is less than 10 percent of Duke Energy Ohio's overall actual SSO revenue (*i.e.*, all revenue

collected for SSO service under Riders RE, RC, RECON, and AER-R) for the most recent quarter for which data is available at the time of the filing. If the balance of Rider SCR becomes equal to or greater than 10 percent of Duke Energy Ohio's overall actual SSO revenue, Duke Energy Ohio shall apply to the Commission for confirmation that Duke Energy Ohio should modify the Rider such that it becomes non-bypassable (whether the balance in the Rider results from over- or under-recovery). Rider SCR will again become bypassable for shopping customers if the balance of said Rider falls below 10 percent of Duke Energy Ohio's overall actual SSO revenue.

- E. Upon Commission approval of the bids, Duke Energy Ohio shall determine the rates for Rider RE and Rider RC by converting the clearing prices from each auction into retail rates pursuant to the methodology contained in Attachment B. The conversion of the auction prices into Rider RC and Rider RE will include applicable losses.
- F. Affiliates and subsidiaries of Duke Energy Ohio shall be permitted to participate and compete in the SSO auctions on the same fair and non-discriminatory manner as all other participants. Duke Energy Ohio shall not give any competitive advantage to an affiliate or subsidiary participating in the SSO auctions. Notwithstanding the above, Duke Energy Ohio agrees that, for the period during which Rider ESSC (referenced and defined below in Section VII.A.) is in place, and irrespective of ownership of its generation assets (Generation Assets),⁴ it shall not participate in the SSO auctions. Rather, during said period and irrespective of

⁴ For purposes of this Stipulation, "Generation Assets" shall refer to all generation assets currently, directly owned by Duke Energy Ohio, whether operating or retired, but shall not include any generation assets currently owned by an affiliate or subsidiary of Duke Energy Ohio.

ownership, Duke Energy Ohio shall cause the energy from all of its Generation Assets to be sold into the Day Ahead or Real Time PJM energy markets, or on a forward basis through a bilateral arrangement. Any forward bilateral sales must be done at a liquid trading hub (*i.e.*, Western Hub, AD-Hub, Cinergy Hub) at the then current market wholesale equivalent price. ICE (Intercontinental Exchange) or a similar publicly available document shall be used as a form of measure of the then current market wholesale equivalent pricing. The Commission Staff, or, at the Commission's discretion, an independent auditor, shall semi-annually audit Duke Energy Ohio records to ensure compliance with this provision. The cost of any such audits shall be recovered through Rider SCR.

- G. The Parties agree that there shall be load caps applicable to each auction conducted during the term of the ESP, with no one supplier being able to bid upon or awarded more than 80 percent of the tranches in any one auction.
- H. The Parties agree that the bidding process as described in the Company's Application, and as modified herein, shall be conducted by an independent bidding manager, CRA International, dba Charles River & Associates (CRA International), except as provided below in Section II.I. The Parties further agree that the Commission may also retain a consultant who may monitor the bidding process and the costs of such consultant shall be recovered under Rider SCR.
- I. Within the first 30 days following Commission approval of the results of each auction, Commission Staff may notify Duke Energy Ohio of its desire to evaluate the use of an independent auction manager other than CRA International. Within 30 days of such notification, Duke Energy Ohio and Commission Staff shall

jointly: (1) confirm whether CRA International will continue to serve as the independent auction manager; or (2) identify a new independent auction manager; or (3) identify a process to determine the new auction manager. In order to avoid disruption to the auction schedule, the substitution of the independent auction manager shall occur no sooner than 6 months after confirmation of such a substitution. If Commission Staff does not provide notice, as set forth above, CRA International shall continue to serve as the auction manager until such time as a substitution is confirmed. In no event shall the substitution of the independent auction manager delay or otherwise alter the bidding schedule as delineated in Attachment A or result in a modification of the CBP or bidding documents detailed in Duke Energy Ohio's Application, and as modified herein, except to revise the identification of, and contact information for, the auction manager. The Parties agree that any costs associated with the substitution of independent auction managers shall be recovered through Rider SCR.

J. The Parties agree that the Commission may reject the results of any auction, by means of an order filed within 48 hours of the conclusion of each such auction, based upon a report from the independent auction manager or the Commission's consultant that the auction violates a specific CBP rule in such a manner so as to invalidate the auction or if the Commission determines that one or more of the following criteria were not met:

- i. The bidding process was oversubscribed based upon bidder indicative offers submitted as part of the Part 2 Application, such that the amount of the supply bid upon was greater than the amount of the load bid out;

- ii. There were four or more bidders; or,
- iii. Consistent with the load cap, no bidder won more than 80 percent of the tranches in any one auction.

III. TRANSMISSION SERVICES

- A. Transmission services shall be provided consistent with the Opinion and Order issued by the Commission on May 25, 2011, in Case No. 11-2641-EL-RDR, *et al.*, except that the Parties hereby agree that PJM Schedule 1 (Scheduling, System Control, and Dispatch) shall not be included in Rider BTR and will be billed directly to wholesale auction winners and CRES providers by PJM.

IV. CAPACITY FOR SHOPPING CUSTOMERS

- A. Consistent with Section II.B., above, the Parties agree that Duke Energy Ohio shall supply capacity resources to PJM, which, in turn, will charge for capacity resources to all CRES providers in its service territory for the term of the ESP, with the exception of those CRES providers that have opted out of Duke Energy Ohio's FRR plan, for the period during which they opted out. The Parties further agree that, during the term of the ESP, Duke Energy Ohio shall charge CRES providers for capacity as determined by the PJM RTO, which is the FZCP in the unconstrained RTO region, for the applicable time periods of its ESP. When computing the capacity allocations for PJM, Duke Energy Ohio shall use an allocation formula in common use in PJM.

V. FUTURE CAPACITY SUPPLY

- A. Upon Duke Energy Ohio's signing of this Stipulation, it will provide its generating unit commitment information to PJM as soon as reasonably possible

but no later than February 1, 2012. Provided that Duke Energy Ohio does not withdraw the ESP approved in a Commission Order prior to February 29, 2012, it will terminate its election of an FRR plan and provide written notice by March 2, 2012, to the PJM Office of the Interconnection of its intent to participate in the RPM and the BRA for the 2015/2016 planning year. If Duke Energy Ohio is required to make a filing with the Federal Energy Regulatory Commission (FERC) to terminate its FRR status for the 2015/2016 planning year, the Parties agree not to intervene in said proceeding for the purpose of contesting, opposing, or otherwise objecting to the termination of the election; nor shall the Parties seek to delay the proceeding. Nothing herein prohibits the Parties from intervening in such proceeding for the purpose of supporting the filing. In the event Duke Energy Ohio is precluded from terminating its FRR plan for the 2015/2016 planning year and, in addition, the Commission's final order in these proceedings permits full legal corporate separation as set forth in this Stipulation, Duke Energy Ohio will provide notice to PJM (pursuant to Schedule 8.1 of the Reliability Assurance Agreement) no later than March 2013 that it intends to participate in the RPM and BRA for the 2016/2017 planning year. Further, in the event Duke Energy Ohio is precluded from terminating its FRR plan for the 2015/2016 planning year, it shall supply capacity to PJM, which, in turn, shall charge all wholesale auction winners, generation suppliers for the PIPP (as defined below) contract load, and CRES providers for capacity as determined by the PJM RTO, which is the FZCP in the unconstrained RTO region.

VI. RENEWABLE ENERGY CREDITS

- A. Duke Energy Ohio will implement Rider AER-R as proposed in its Application to recover the costs incurred in complying with the requirements of R.C. 4928.64, *et seq.* The Parties agree and recommend that Rider AER-R shall not expire upon the termination of the ESP on May 31, 2015, but instead shall continue in order to enable recovery of all reasonable and prudently incurred costs for the acquisition of renewable energy credits (RECs), including brokerage fees, REC tracking participation expenses, gains and losses realized from the sale of RECs, and carrying costs at the long term cost of debt, as approved in Duke Energy Ohio's most recent distribution rate case (*e.g.*, Case No. 08-709-EL-AIR, *et al.*). Rider AER-R shall remain bypassable for customers taking generation service from a CRES provider. Rider AER-R will be filed quarterly and will include true-up provisions, with annual audits conducted by Commission Staff, or an independent auditor at the discretion of the Commission, in a manner similar to that employed in Duke Energy Ohio's current fuel and purchased power tracker.
- B. Within 60 days of Commission issuance of a final order adopting the Stipulation that does not result in Duke Energy Ohio's withdrawal of its SSO Application, Duke Energy Ohio will engage in collaborative discussions with interested parties to prepare an application to revise certain elements of the current R.C. 4928.64 residential solar REC (SREC) purchase program. With the common goal of expanding customer participation in the program, Duke Energy Ohio will work with the Signatory Parties to identify mutually agreeable modifications aimed at

enhancing clarity, transparency, and certainty of contractual terms. These changes may include, but may not be limited to, features such as the assignment of a known SREC price over the length of the contract, an up-front rebate with certain output standards, or another, mutually agreed solution as yet to be developed. AEP Ohio's program, as stated and approved in Case No. 09-1872-EL-ACP, will be evaluated as a potential model for Duke Energy Ohio's modified program, in addition to other potential program modifications. If the Parties are unable, within 60 days of the start of the collaborative process, to agree on changes to Duke Energy Ohio's existing SREC tariff, Duke Energy Ohio shall file a letter at the Commission indicating that the Parties could not reach agreement. In such event, the other Parties retain the right to petition the Commission to make changes to Duke Energy Ohio's existing SREC tariff. The Commission will become the final arbiter in the event of such a dispute.

- C. Within 60 days of the Commission's issuance of a final order adopting the Stipulation that does not result in Duke Energy Ohio's withdrawal of its SSO application, Duke Energy Ohio will initiate collaborative work in consultation with the Ohio Environmental Council, Environmental Law & Policy Center, and other interested Signatory Parties on an evaluation and report on Combined Heat and Power. This commitment is identified in the stipulation filed in Case No. 10-503-EL-FOR on March 21, 2011.

VII. OHIO POLICY

- A. For the calendar years 2012, 2013, and 2014 of the ESP, Duke Energy Ohio shall recover annually, via a non-bypassable generation charge called the Electric

Service Stability Charge Rider (Rider ESSC), an amount intended to provide stability and certainty regarding Duke Energy Ohio's provision of retail electric service as an FRR entity while continuing to operate under an ESP.⁵ Duke Energy Ohio shall be permitted to implement an ESSC rate to collect \$110 million per year for a period of three years commencing January 1, 2012, with the collection to be trued-up annually and the total equal to \$330 million, allocated in accordance with Attachment B. The revenue collected under Rider ESSC shall stay with Duke Energy Ohio and shall not be transferred to any subsidiary or affiliate.

- B. For calendar year 2012, Duke Energy Ohio commits to a \$1,000,000 contribution to support economic development efforts in its service territory. For each of the two remaining calendar years of the ESP, Duke Energy Ohio agrees to provide \$1,000,000, annually, to support economic development efforts, provided Duke Energy Ohio's return on equity (ROE), as determined in its then most recent annual significantly excessive earnings test (SEET) review, exceeds 10 percent for the prior calendar year. Said funds will be provided from Duke Energy Corporation shareholders and Duke Energy Ohio shall have sole discretion to direct the use and allocation of the funding, which shall be available to customers in Duke Energy Ohio's service territory on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer.

⁵ The Office of the Ohio Consumers' Counsel (OCC), FirstEnergy Solutions, and the Ohio Manufacturer's Association (OMA) support the Stipulation. However, the OCC, FirstEnergy Solutions, and OMA take no position regarding Section VII.A., or do not support or oppose the paragraph, so that the OCC's, FirstEnergy Solutions', and OMA's support for the Stipulation may not be used as precedent in any other proceeding.

- C. For calendar year 2012, Duke Energy Ohio commits to a \$100,000 contribution to the OMA to support economic development and energy efficiency initiatives among its members within Duke Energy Ohio's service territory. For each of the remaining two calendar years of the ESP, Duke Energy Ohio agrees to provide \$100,000 annually, to support economic development and energy efficiency efforts provided Duke Energy Ohio's ROE, as determined in its then most recent annual SEET review, exceeds 10 percent for the prior calendar year. Said funds will be provided from Duke Energy Corporation shareholders and shall be available to OMA members in Duke Energy Ohio's service territory on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer.
- D. For the term of this ESP, while percentage of income payment plan (PIPP) customers will remain retail generation customers of Duke Energy Ohio, their metered, retail load and usage will be supplied by FirstEnergy Solutions at a 5 percent discount off the applicable residential price to compare, excluding Rider AER-R. Duke Energy Ohio will enter into a wholesale bilateral contract with FirstEnergy Solutions at such pricing for the full requirements supply including capacity, energy, market-based transmission services, and market-based transmission ancillary services for the term of the ESP, with power flow under such wholesale contract commencing January 1, 2012. While Duke Energy Ohio is an FRR entity, it will continue to supply the capacity at the FZCP for the unconstrained RTO region. Duke Energy Ohio will continue to supply RECs associated with the PIPP load, as required under the alternative energy resource

requirements of the Commission, with cost recovery through Rider AER-R. Under the bilateral contract, FirstEnergy Solutions will supply power to Duke Energy Ohio at wholesale in an amount sufficient to meet the requirements of all PIPP customers taking service under Duke Energy Ohio's tariffs and riders for generation service. For purposes of this section, a PIPP customer shall be defined as any customer who is a PIPP customer as of January 1, 2012, and any customer who thereafter is enrolled in the PIPP program during the period of this ESP. Within five days of the filing of this Stipulation, Duke Energy Ohio will enter into the bilateral agreement with FirstEnergy Solutions as referred to herein, with performance obligations thereunder expressly conditioned upon Duke Energy Ohio's acceptance of the Commission's order approving or modifying and approving the Stipulation.⁶

- E. For calendar year 2012, Duke Energy Ohio commits to a \$1,000,000 contribution for low-income weatherization efforts in its service territory, to be administered by People Working Cooperatively (PWC). For each of the two remaining calendar years of the ESP, the Company agrees to provide \$1,000,000 annually to support low-income weatherization, provided Duke Energy Ohio's ROE, as determined in its then most recent annual SEET review, exceeds 10 percent for the prior calendar year. Said funds will be provided from Duke Energy Corporation shareholders and shall be available to customers in Duke Energy Ohio's service

⁶ The Retail Energy Supply Association; Constellation NewEnergy, Inc.; Constellation Energy Commodities Group, Exelon Generation Company, LLC; Direct Energy Services, LLC; Direct Energy Business LLC; Interstate Gas Supply, Inc; Vectren Retail, LLC d/b/a Vectren Source; Wal-Mart East, LP; Sam's East, Inc.; PJM Power Providers Group; and AEP Retail Energy Partners LLC support the Stipulation but do not endorse Section VII, Paragraph D.

territory on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer.

- F. Duke Energy Ohio and PWC will jointly undertake a pilot energy efficiency project. This pilot will utilize Duke Energy Ohio funds provided to PWC for low-income weatherization. PWC will use Duke Energy Ohio dollars to leverage additional energy efficiency funds from non-utility public and private sources for both electric and gas energy efficiency for low-income households. The leveraged energy efficiency funds will provide funding for low-income weatherization services that will yield energy efficiency that is enhanced by additional improvements in the home and funded by other sources. It is anticipated that the enhanced energy efficiency services will yield better results as measured by the total resource cost test. Duke Energy Ohio and PWC will provide the results of the pilot energy efficiency project to the energy efficiency collaborative and will jointly file such results with the Commission and seek the Commission's approval of inclusion of the enhanced energy efficiency attributes in Duke Energy Ohio's portfolio of programs for energy efficiency. The project shall be available to customers in Duke Energy Ohio's service territory on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer.
- G. For calendar year 2012, Duke Energy Ohio commits to a \$350,000 fuel fund contribution to benefit electric consumers in its service territory who are at or below 200 percent of poverty level. The fund will be managed in conjunction with the Ohio Department of Development or its successor, in a manner

consistent with the operation of the fuel fund provided by Duke Energy Ohio during the current ESP. Assistance will be provided through the agencies in the Duke Energy Ohio service territory that provide assistance under the Emergency Home Energy Assistance Program in the Duke Energy Ohio service territory. For each of the two remaining calendar years of the ESP, Duke Energy Ohio agrees to provide \$350,000 in continued support of the fuel fund, provided Duke Energy Ohio's ROE, as determined in its then most recent annual SEET review, exceeds 10 percent for the prior calendar year. Said funds will be provided from Duke Energy Corporation shareholders and shall be available to customers in Duke Energy Ohio's service territory on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer.

- H. For calendar year 2012, Duke Energy Ohio commits to a \$325,000 contribution for low-income weatherization efforts in its service territory in Adams, Brown, Butler, Clermont, Clinton, Highland, Montgomery, and Warren Counties. The contribution shall be made to OPAE, which shall receive an administrative fee of \$25,000. The funds shall be available until expended for the benefit of the appropriate agencies within Duke Energy Ohio's service territory. Duke Energy Ohio and OPAE shall agree to the amount of distribution to each agency, program parameters, and reporting requirements.⁷ For each of the two remaining calendar years of the ESP, Duke Energy Ohio agrees to provide \$325,000 annually to support low-income weatherization programs of OPAE member organizations, provided Duke Energy Ohio's ROE, as determined in its then most recent annual

⁷ The program parameters shall be substantially similar to the programs currently managed by OPAE for American Electric Power, The Dayton Power & Light Company, and FirstEnergy operating companies.

SEET review, exceeds 10 percent for the prior calendar year. Said funds will be provided from Duke Energy Corporation shareholders and shall be available to customers in Duke Energy Ohio's service territory on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer. The Duke Energy Community Partnership shall review the results of the program and make recommendations regarding continuation of the program as a part of Duke Energy Ohio's demand-side management portfolio.

- I. The Parties expressly agree that Duke Energy Ohio will continue to provide existing distribution reserve capacity at no charge for existing load for Greater Cincinnati Health Council (GCHC) member hospitals for the term of this ESP. Duke Energy Ohio agrees to consider similar reasonable arrangements for new hospital construction and/or expansion up to 4,000 kVa during the term of this ESP, provided the requesting hospital(s) and Duke Energy Ohio can reach agreement on appropriate compensation to Duke Energy Ohio if it is necessary to upgrade facilities for the purpose of (i) a secondary distribution service; and/or (ii) reserve capacity. Duke Energy Ohio agrees to meet with any requesting GCHC member hospitals to discuss Duke Energy Ohio's electric distribution system serving the member hospital, including but not limited to any system enhancements planned and the age and performance of the system. Also, for the term of the ESP, Duke Energy Ohio will work with GCHC member hospitals to understand and evaluate service quality concerns, particularly with regard to secondary feeders for reliability purposes, and to enhance communication between members and Duke Energy Ohio to facilitate better understanding of

overall service quality. Duke Energy Ohio and GCHC will hold meetings upon request to discuss, at least annually, any service quality or reliability concerns. Within 90 days of the approval of this Stipulation, Duke Energy Ohio will meet with GCHC to identify ways to leverage and better utilize Duke Energy Ohio's non-residential custom and prescriptive energy efficiency programs to benefit GCHC member hospitals.

For the term of the ESP, Duke Energy Ohio agrees to continue to compensate GCHC member hospitals that participate in PowerShare agreements consistent with the terms of the PowerShare program as approved by the Commission in Case No. 09-1999-EL-POR and any subsequent program approved by the Commission.

- J. For the term of the ESP, the Parties agree to establish, on a revenue neutral basis among all demand metered customer classes, a non-bypassable demand charge and non-bypassable energy credit designed to stabilize electric service by enhancing some of the benefits associated with high load factor customers under current rates. For customers served under Rates DS, DP, and TS, there will be a non-bypassable demand charge of \$8/kW per month and a non-bypassable energy credit of \$0.020961/kWh to produce net revenues of \$0 for Rates DS, DP, and TS as a group. The energy credit referred to in this paragraph is to be trued up quarterly to maintain net revenue neutrality.
- K. The University of Cincinnati (UC) operates a Commission-certified renewable energy generation facility at its Main Campus in Cincinnati (See Case No. 10-1382-EL-REN), which is not directly metered by Duke Energy Ohio. For the

term of this ESP, UC will establish for its Main Campus demand usage for rate purposes including for Rider ESSC (Section VII.A.) and the load factor adjustment (Section VII.J.) by using the 5 CP demand determinate established by PJM for purposes of assessing capacity costs. Until PJM establishes an actual demand determinate for PJM 2012/2013 planning year, which is anticipated to occur in October 2011, Duke Energy Ohio shall use 12,475 kW, which is the 5 CP demand factor for UC for the 2011/2012 PJM planning year. The commodity billing determinates for both Rider ESSC and the load factor adjustment shall be the kWh received by UC at its side of the substation.

- L. Council of Smaller Enterprises (COSE) and Duke Energy Ohio will work with small and mid-sized businesses in the Duke Energy Ohio service territory to educate such entities with respect to services provided by both Duke Energy Ohio and COSE related to energy efficiency during the term of this ESP.

To the extent such customers can provide energy savings as a result of implementing energy efficiency measures, Duke Energy Ohio will compensate COSE through its Commission-approved energy efficiency programs for services performed on behalf of the businesses that they work with, at a rate to be determined in the future and similar to the compensation rate paid to other vendors, provided the savings contribute to Duke Energy Ohio's mandated energy efficiency requirements.

COSE will participate in Duke Energy Ohio's Energy Efficiency Collaborative and provide its views and input with respect to the design of energy efficiency products and programs for small- and mid-sized businesses.

M. The Parties agree that, in the aggregate, the ESP as agreed to herein is better than the results that would be expected under a market rate offer (MRO) and that the ESP is consistent with and advances state policy, as set forth in R.C. 4928.02, as it:

- Is quantitatively better than the results expected under the MRO, as provided in Attachment D;
- Allows customers to benefit from a fully competitive market as soon as practicable;
- Encourages and supports the development of competitive retail markets in Ohio;
- Results in stability and certainty in respect of retail electric service;
- Provides for a stable electric distribution utility;
- Encourages the development of renewable resources in Ohio;
- Supports economic development;
- Provides low-income assistance;
- Ensures PIPP customers a discount from the SSO;
- Continues and expands the ability of retail electric consumers served by Duke Energy Ohio to choose from among CRES providers on a competitive basis;
- Expands wholesale competition;
- Mandates divestiture of Duke Energy Ohio's Generation Assets;

- Constitutes a State Regulatory Structural Change, within the meaning of Section 1.81 and Section C.3 of Schedule 8.1 of the PJM Reliability Assurance Agreement; and
- Allows Duke Energy Ohio to terminate its FRR plan due to such State Regulatory Structural Change, subject to any necessary governmental approvals, by providing notice of termination pursuant to Section C.3 of Schedule 8.1 of the PJM RAA at least two months prior to the May 2012 PJM Base Residual Auction.⁸

VIII. GENERATING ASSETS

- A. The Parties agree that Duke Energy Ohio will transfer title, at net book value, to all of its Generation Assets out of Duke Energy Ohio. Such transfer shall occur on or before December 31, 2014, and Duke Energy Ohio commits to using its best commercial efforts to complete the transfer as soon as practicable upon its acceptance of a Commission order approving the Stipulation and upon receipt of necessary regulatory approvals. Staff, or an independent auditor at the Commission's discretion and with costs thereof to be recovered through Rider SCR, shall audit the terms and conditions of the transfer of the Generation Assets to ensure compliance with this Section VIII of the Stipulation and shall also audit Duke Energy Ohio's compliance with R.C. 4928.17 and the Commission's Corporate Separation Rule, O.A.C. 4901:1-37 and any successors to that rule, to ensure that no subsidiary or affiliate of Duke Energy Ohio that owns competitive generation assets has any competitive advantage due to its affiliation with Duke

⁸ The OCC supports the Stipulation. However, the OCC takes no position regarding Section VII.M., or does not support or oppose that paragraph, so that the OCC's support for the Stipulation may not be used as precedent in any other proceeding.

Energy Ohio. The Parties further expressly support Duke Energy Ohio's request for a waiver of the Commission's rule requirements, as set forth in O.A.C. 4901:1-37-09(B), (C), and (D), relating to the sale or transfer of generating assets. The Parties agree that approval of this Stipulation shall constitute the Commission consent required by paragraphs (A) and (E) of that rule, and that no hearing is required under paragraphs (D) and (E) of that rule. Further, the Parties agree that this paragraph provides the Commission Staff with access to books and records in compliance with paragraph (F) of that rule.

- B. Approval of this Stipulation will serve as the Commission's approval of full legal corporate separation (as contemplated by R.C. 4928.17(A) and also known as structural corporate separation) such that the transmission and distribution assets of Duke Energy Ohio will continue to be held by the distribution utility and all of Duke Energy Ohio's Generation Assets shall be transferred to an affiliate. Full legal corporate separation will be implemented as soon as reasonably possible after necessary regulatory approvals are obtained. Following the transfer of the Generation Assets, Duke Energy Ohio shall not without prior Commission approval: 1) provide or loan funds to; 2) provide any parental guarantee or other security for any financing for; and/or 3) assume any liability or responsibility for any obligation of subsidiaries or affiliates that own generating assets, provided however, that contractual obligations arising before the signing of the Stipulation shall be permitted to remain with Duke Energy Ohio without Commission approval for the remaining period of the contract but only to the extent that assuming or transferring such obligations is prohibited by the terms of the

contract or would result in substantially increased liabilities for Duke Energy Ohio if Duke Energy Ohio were to transfer such obligations to its subsidiary or affiliate. On and after the signing of this Stipulation, Duke Energy Ohio shall ensure that all new contractual obligations have a successor-in-interest clause that transfers all Duke Energy Ohio responsibilities and obligations under such contracts and relieves Duke Energy Ohio from any performance or liability under the contracts upon the transfer of the Generation Assets to its subsidiaries. This provision does not restrict Duke Energy Ohio's ability to receive and pass through to the subsidiary(ies) that own the Generation Assets equity contributions from its parent that are in support of the Generation Assets, nor does it restrict Duke Energy Ohio's ability to receive dividends from the subsidiary(ies) that own the Generation Assets and pass through such dividend(s) to its parent. Generation-related costs associated with implementing corporate separation shall not be recoverable from customers. Any subsidiary of Duke Energy Ohio to which Generation Assets are transferred shall not use or rely upon the rating(s) from credit rating agency(ies) for Duke Energy Ohio. If such subsidiary currently does not maintain separate rating(s) from the credit rating agency(ies), then upon transfer of any of the Generation Assets, it shall either seek to establish such rating(s) or shall tie its credit rating to Duke Energy Corp. as soon as practicable but no later than six months following such transfer.

- C. The Parties expressly agree that full legal corporate separation is in the public interest and, as such, will not intervene in the FERC proceeding to transfer Duke Energy Ohio's Generation Assets to contest, challenge, or in any way oppose the

transfer. Parties are not precluded from intervening in said FERC proceeding for purposes other than those prohibited by this paragraph.⁹

IX. MISCELLANEOUS

- A. The Parties agree that Duke Energy Ohio shall implement Rider RECON as proposed in Duke Energy Ohio's Application and testimony filed in support thereof. The Parties further agree that Rider RECON shall terminate no later than two quarters after the filing of a final entry in the docket initiated by the Commission for purposes of conducting its final audit of Rider PTC-FPP.
- B. Effective January 1, 2012, Duke Energy Ohio shall implement an uncollectible expense rider, Rider UE-GEN, applicable to all retail jurisdictional customers including those taking generation service from a CRES provider, except for those customer accounts designated by CRES providers as not part of Duke Energy Ohio's Purchase of Accounts Receivable (PAR) Program. Rider UE-GEN shall be bypassable by dual-billed customer accounts and customer accounts designated by CRES providers as not part of the PAR Program, but shall be non-bypassable by all other retail customers, including SSO customers and customer accounts designated by CRES providers as part of the PAR Program. Accordingly, uncollectible expense generated by customer accounts of CRES providers that utilize dual billing and customer accounts of CRES providers that utilize consolidated billing but are not designated as part of the PAR program are excluded from Rider UE-GEN and, instead, remain the liability of said CRES provider. Rider UE-GEN will initially be set at zero in these proceedings. Duke

⁹ The OMA supports the Stipulation. However, the OMA takes no position regarding Section VIII.C., or does not support or oppose that paragraph, so that the OMA's support for the Stipulation may not be used as precedent in any other proceeding.

Energy Ohio's initial application to establish a rate for Rider UE-GEN shall be filed in conjunction with Duke Energy Ohio's UE-ED filing. Thereafter, Duke Energy Ohio will file annual applications to adjust Rider UE-GEN in conjunction with and governed by the same review process applicable to adjustments to Rider UE-ED as provided in the March 31, 2009, stipulation approved by the Commission in Case No. 08-709-EL-AIR, *et al.* As with Rider UE-ED, Duke Energy Ohio shall not accrue carrying charges on the monthly unrecovered uncollectible expense balances for which recovery is sought through Rider UE-GEN. Rider UE-GEN shall be in form set forth in Attachment E.

- C. After the effective date of Rider UE-GEN, Duke Energy Ohio shall purchase the customer accounts receivable of CRES providers that designate accounts to participate in the PAR Program at no discount and shall pay such CRES providers for such receivables no later than twentieth day of the month after the month in which the billing occurs. Paragraph 11.6 of Duke Energy Ohio's Supplier Tariff shall be amended as shown in Attachment E to memorialize this change to the PAR Program. Duke Energy Ohio agrees to amend any existing Account Receivables Purchase Agreements with CRES providers participating in the PAR Program to make them consistent with this Section IX.C. of the Stipulation.
- D. Duke Energy Ohio agrees to modify Section XI, Sheet No. 40.4, Paragraph 11.6, and Sheet 26.5, Paragraph 7.5, of its Certified Supplier Tariff and to modify Section III, Sheet No. 22.7, Section 4(d) and Section 10 of its Electric Tariff, and to make any other tariff modifications that are necessary to eliminate the

prohibition against customers enrolling in the PAR Program where such customers have outstanding arrears of more than \$50 or 30 days.

- E. CRES providers may designate which of their customer accounts will be billed using a dual billing method, which of their customer accounts will be billed using consolidated billing but with no purchase of receivables by Duke Energy Ohio, and which of their customer accounts will be billed using consolidated billing with purchase of receivables. Duke Energy Ohio will accommodate different methods of billing and collections by a CRES provider so long as alternative methods of billing and collection are distinguished as sub-accounts to PJM. The responsibility for, and PJM costs related to, creating a PJM sub account shall be that of the CRES providers.
- F. Duke Energy Ohio withdraws its proposed Rider PSM and Advance Southwest Ohio Fund, as well as the funding for same.
- G. The bid documents pursuant to which the auctions will be conducted are those attached as Attachments C through G of Duke Energy Ohio's Application, except as modified herein in Stipulation Attachments C, F, and G.
- H. Duke Energy Ohio withdraws its Rider DR as proposed in these proceedings. Within 45 days of an executed Stipulation in these proceedings, Duke Energy Ohio shall file, in a separate proceeding, for Commission approval of a distribution revenue decoupling mechanism that will adjust rates between rate cases to effectively remove Duke Energy Ohio's through-put incentive, with all parties retaining their rights to due process in such proceeding. The decoupling mechanism to be filed through such application shall not be applicable to Rates

TS, DS, and DP. Nothing in this Stipulation is intended, or shall be interpreted, to signify Parties' agreement with such application. Further, nothing in this Stipulation shall affect Duke Energy Ohio's existing SmartGrid recovery mechanism, which shall continue under Rider DR-IM.

- I. The Parties recommend that the Commission approve this settlement on or before November 15, 2011, so that Duke Energy Ohio may conduct, in December 2011, its first auction under the CBP for the procurement of supply necessary to serve its SSO load effective January 1, 2012.
- J. Duke Energy Ohio shall conduct collaborative meetings, on or before November 15, 2011, with all interested wholesale suppliers, retail suppliers, and transmission owners to confirm the charges from PJM that shall be paid by Duke Energy Ohio and the charges from PJM that shall be paid by CRES providers.
- K. Duke Energy Ohio shall be permitted to amend its certified supplier tariff, as proposed in its Application and testimony filed in support thereof, as modified herein.
- L. Duke Energy Ohio agrees to withdraw from these proceedings the proposed amendment to Section XIV.C. of its Third Amended Corporate Separation Plan that, if approved, would enable Duke Energy Ohio to provide Special Customer Services, as described in proposed Tariff 19, Sheet 23, Section 6. Duke Energy Ohio expressly reserves the right to seek revision of its Corporate Separation Plan to incorporate this proposal to provide Special Customer Services in a subsequent proceeding. Except as modified herein, Duke Energy Ohio shall be permitted to adopt its Third Amended Corporate Separation Plan, as proposed in its

Application and testimony filed in support thereof. The Parties also recognize that the Third Amended Corporate Separation Plan will be amended to identify additional affiliates and parties to agreements following the anticipated merger of Duke Energy Corporation and Progress Energy, Inc., and the Parties agree not to oppose such amendment. Within ninety days after the effective date of full legal corporate separation, Duke Energy Ohio agrees to file for approval of a Fourth Amended Corporate Separation Plan that will address any issues with the full legal corporate separation.

- M. The Parties agree that the SEET, as provided for under R.C. 4928.143(F), shall be administered to Duke Energy Ohio with an ROE threshold of 15 percent for the term of this ESP. The methodology for applying the SEET is outlined in Attachment H.
- N. During the term of this ESP, transmission voltage customers, whether shopping or non-shopping, with loads in excess of 10 MW at a single site shall have the option to annually nominate any part of their load as being subject to interruption through Duke Energy Ohio. Any such nomination shall have an effective date no earlier than June 1, 2012. For any customer electing to nominate load subject to interruption through Duke Energy Ohio, such load: (1) must be registered with PJM and abide by all of PJM's requirements for the demand response (DR) program chosen by the customer, by March 1 of the upcoming PJM planning year; (2) must not have been previously sold or committed to PJM or another party as a DR resource for the same planning year; and, (3) will have Duke Energy Ohio serve as its curtailment service provider (CSP). The customer

acknowledges that Duke Energy Ohio may use such interruptible load in Duke Energy Ohio's FRR plan and any capacity resource revenues associated with this DR resource will be credited to the economic competitiveness fund (Rider DR-ECF). The interruptible credit for load subject to interruption will be one half of the PJM Net Cost Of New Entry (CONE) on a \$/MW-day basis for the planning year in which the interruptible load is nominated (net CONE equals 2011/2012 = \$160.76, 2012/2013 = \$276.09, 2013/2014 = \$317.95, 2014/2015 = \$342.23 per MW-day). The maximum amount of interruptible load under this program shall be 250 MW in the DEOK zone. The amount of this interruptible credit shall be recoverable by Duke Energy Ohio through Rider DR-ECF. Duke Energy Ohio shall file a separate application to amend Rider DR-ECF.

- O. Duke Energy Ohio agrees to work with interested CRES providers and Commission Staff to jointly develop a secure, web-based system that will provide electronic access to key customer usage and account data that can be accessed via a secure, supplier website that presents the following data and information in a format that can be automatically retrieved, by the CRES provider authorized by the customer, subject to appropriate limitations reflecting legally mandated customer privacy issues, including compliance with protections addressed in the Ohio Administrative Code and specifically including but not limited to Rules 4901:1-10-29, 4901:1-10-24, O.A.C., and any successors to such Rules. The following data and information, in a format that can be automatically retrieved, will be the subject of the web-based system:

- Account Numbers

- Meter numbers
- Names
- Service Address, including zip codes
- Billing Address, including zip code
- Email address (if available)
- Meter Reading Cycle Dates
- Meter Types
- Indicator if Customer has an Interval Meter
- Rate Code Indicator
- Load Profile Group Indicators
- PLC and NSPL values (capacity and transmission obligations)
- 24 months of consumption data (in kWh) by billing period including
- 24 months of demand data (in kW)
- 24 months of interval data
- Indicator if SSO customer
- Identifier as to whether customer is participating in the Budget Billing Plan

Duke Energy Ohio shall use commercially reasonable efforts to add to the existing web system the Load Profile Group Indicators and the customer service addresses by March 1, 2012, but shall complete such additions no later than June 1, 2012. Duke Energy Ohio shall make a commercially reasonable effort to add the other items by June 1, 2013, but agrees to complete the additional data items no later than June 1, 2014, and will work with Commission Staff and interested

CRES providers to stage the implementation of various portions of this website, as possible. Additionally, Duke Energy Ohio shall add an indicator to the pre-enrollment list, noting whether a customer is an SSO customer or is shopping, by no later than June 1, 2012.

Duke Energy Ohio shall recover the actual costs to develop said web-based system, recovery not to exceed \$500,000, on a non-bypassable basis. Duke Energy Ohio shall be permitted to create a regulatory asset for purposes of recording said costs for future recovery through electric distribution rates. The carrying charge on said regulatory asset shall not exceed Duke Energy Ohio's long-term cost of debt from the then most recent distribution rate case (*e.g.*, Case No. 08-709-EL-AIR, *et al.*).

In addition, the following types of data would be provided via EDI transactions:

- 867 Historical Usage (HU) and Historical Interval (HI)
- 867 Monthly Usage (MU) and Monthly Interval (MI) data
- Network Service Peak Load (NSPL) and Peak Load Contribution (PLC) in 867HUs, 867HIs, and 814 Accepted Enrollment Responses
- Meter read cycle and load profile segment information to be in 867HUs no later than 12/31/12, as agreed to in the Ohio EDI Working Group – Change Control #82 (current rate code already included in 867HUs)

Duke Energy Ohio shall confirm that accounts requested together in the same EDI envelope come back together, unless there would be an unnecessary delay for a particular subset of accounts. Duke Energy Ohio shall make available,

upon request, a quarterly updated sync list to CRES providers on a confidential basis showing the accounts that are enrolled with the CRES provider. The list would contain information such as service start date, bill method, NSPL values, and PLC values. Duke Energy Ohio confirms that Validation, Error Detection, and Editing (VEE) rules and processes are now in place and will continue to be applied to raw meter read data before Duke Energy Ohio transmits such usage data to the CRES providers via EDI.

Effective January 1, 2012, Duke Energy Ohio shall increase the required interval meter threshold size requirement from 100kW to 200kW and will make such tariff changes as are necessary to accomplish this result.

Duke Energy Ohio agrees to conduct a collaborative process to discuss the deployment of an electric vehicle (EV) ecosystem that works in tandem with a competitive retail market, including, but not limited to customer education and additional billing system functionality to support various EV deployment programs and charging platforms. All interested persons shall be encouraged to participate in the EV collaborative process. The first such EV collaborative meeting shall occur in the first quarter of 2012 and continue to be held periodically, but not less often than three times a year for the first two years thereafter. At the conclusion of the EV collaborative process, the participants in the EV Collaborative shall prepare a report to the Commission discussing the progress of the collaborative and any recommended regulatory or legislative changes to facilitate the development of an EV ecosystem.

Duke Energy Ohio shall host annual meetings or conference calls with registered CRES providers to discuss supplier coordination issues affecting CRES providers, including but not limited to CRES consolidated billing.

- P. All energy efficiency programs and rebates shall be made available at the same terms and conditions to customers, regardless of whether they purchase generation service from a CRES provider or Duke Energy Ohio. Duke Energy Ohio shall maintain its policy to make SmartGrid meters and data available to all customers on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer.
- Q. Duke Energy Ohio shall provide, from shareholder funds, a one-time economic development/energy efficiency grant of \$50,000 for Industrial Energy Users-Ohio to be distributed among its members.
- R. For the term of this ESP, Duke Energy Ohio will maintain its existing procedures contained in its tariff (*e.g.*, bulking of meters, power factor adjustments, demand ratchets) for metering and calculating billing determinants that are used in the calculation of retail bills.
- S. For the term of this ESP, Duke Energy Ohio will continue the retail Real Time Pricing Program (Rate RTP, Sheet No. 90). Current Customer Base Line (CBL) and Billing Demand History (BDH) values will continue for each customer taking service under RTP as of October 18, 2011, subject to the terms of Rate RTP, as modified to be consistent with this Stipulation.
- T. Duke Energy Ohio agrees to reduce its switching fee, as set forth in Rate CS, Sheet No. 52.2, of its Certified Supplier Tariff, from \$7.00 to \$5.00. Duke

Energy Ohio will make bill-ready billing functional and available as soon as commercially and reasonably practicable, but in no event later than September 30, 2013. In addition, Sheet 52.2 of the Certified Supplier Tariff shall be modified to reduce the per-bill charges for consolidated, bill-ready billing to 50 percent of the existing rate. Duke Energy Ohio agrees to continue its current practice of not imposing a per-bill charge for rate-ready consolidated billing services.

U. Retail customers in Duke Energy Ohio's territory are permitted to participate in PJM DR programs including through Aggregators of Retail Customers (ARCs) or CSPs and the following conditions apply:

- i. Duke Energy Ohio retail customer DR capacity may be utilized to satisfy either FRR or non-FRR capacity obligations (such as DR that clears in a PJM RPM auction);
- ii. The Parties agree that any customer that is already receiving an incentive payment through a reasonable arrangement, including but not limited to EE/PDR, economic development arrangements, unique arrangements, and other special tariff schedules that offer service discounts from the applicable tariff rates and would currently or would like to participate in PJM programs must agree to commit to the electric distribution utility the peak demand response attributes that have cleared in the PJM market in a manner consistent with applicable statutes and rules at no cost to the utility for the duration of the arrangement. This provision shall not be interpreted as modifying the express specific terms of any agreement; and

- iii. Duke Energy Ohio may issue a request for proposal to meet its peak demand reduction mandates under Amended Sub. Senate Bill 221.
- V. The Parties agree that the "Summary of Riders Impacted by the ESP," attached as Attachment I, provides an accurate recitation of Duke Energy Ohio's riders for electric distribution, transmission, and generation service, effective January 1, 2012. In this regard, the Parties agree to the elimination Rider RTC (regulatory transition charge) and Rider DRI (distribution reliability investment), as said riders expired for all customers on December 31, 2010.
- W. Duke Energy Ohio shall make all applicable changes to customer or supplier tariffs and to all operational rules or procedures, in order to ensure compliance and consistency with all applicable provisions of this Stipulation.
- X. All Attachments to this Stipulation are incorporated herein and are an integral part of this Stipulation.
- Y. In the event the Commission approves Duke Energy Ohio's next SSO, and Duke Energy Ohio does not withdraw the application therefor, for the period beginning June 1, 2015, by an order issued on or before March 1, 2015, the Parties agree that the Commission's approval will function to demonstrate compliance with the requirement, under R.C. 4928.143(E), to compare the prospective results of the ESP detailed herein with the prospective results under the MRO provisions. Nothing in this paragraph shall be interpreted to limit Parties' rights to object at any time, in whole or in part, to any proposal by Duke Energy Ohio regarding its next SSO.

Z. The Signatory Parties' agreement to this Stipulation, in its entirety, shall not be interpreted in a future proceeding before this Commission as their agreement to only an isolated provision of this Stipulation. The agreement of the Signatory Parties reflected in this document is expressly conditioned upon its acceptance in its entirety and without alteration by the Commission. The Signatory Parties agree that if the Commission or any court of competent jurisdiction rejects all or any material part of this Stipulation, or otherwise materially modifies its terms, all Signatory Parties agree to work in good faith with all other Signatory Parties to achieve a revised stipulation that substantially satisfies the intent of the original agreement or make such other agreements as may be necessary to maintain the economic benefit to each party that would have been achieved had the Stipulation not been so modified. Any such revised stipulation will be filed with the Commission for approval and all Signatory Parties agree to fully support such modifications or agreements. Should the Signatory Parties be unable to reach a modified agreement, any adversely affected Signatory Party shall have the right to file, in this docket and with service to all parties, an application for rehearing, a motion for reconsideration, or a notice withdrawing from the Stipulation.¹⁰ Other Parties agree that they will not oppose or argue against any other Party's application for rehearing or motion for reconsideration that seeks to uphold the original, unmodified Stipulation. If such application or motion is filed, and if the Commission or court does not, on rehearing or reconsideration, accept the Stipulation without material modification within 45 days of the filing of such

¹⁰ Parties have the right, at their sole discretion, to determine what constitutes a "material" part for purposes of withdrawing from the Stipulation.

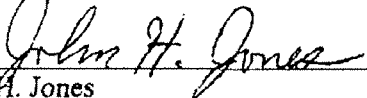
application or motion, then, within 30 days thereafter, the adversely affected Signatory Party may terminate its Signatory Party status without penalty or cost and regain its rights as a non-Signatory Party as if it had never executed the Stipulation by filing a notice with the Commission and the other Signatory Parties. Other Parties agree not to oppose a termination and withdrawal from the Stipulation by any other Party.

- AA. Unless the Signatory Party exercises its right to terminate its Signatory Party status as described above, each Signatory Party agrees to and will support the reasonableness of this ESP and this Stipulation before the Commission in these proceedings and to take no position contrary to the support for the reasonableness of the ESP and this Stipulation in any appeal from the Commission's adoption and/or enforcement of this ESP and this Stipulation. The Parties agree that testimony and related exhibits that support this Stipulation will be offered at a hearing, provided that such testimony and related exhibits may be used only for the purpose of the Commission's approval of this Stipulation. At any hearing and in any documents or briefs filed with the Commission in respect of the Stipulation, each Signatory Party agrees to support the Stipulation and to do nothing, directly or indirectly, to undermine the Stipulation or the Commission's approval of it, including through cross-examination or taking positions that are contrary to supporting the Commission's approval of the Stipulation without modification.
- BB. This Stipulation is submitted for purposes of these proceedings only and neither this Stipulation nor any Commission order considering this Stipulation shall be

deemed binding in any other proceeding nor shall this Stipulation or any such Order be offered or relied upon by any Party in any proceedings except as necessary to enforce the terms of this Stipulation.

CC. This Stipulation contains the entire agreement between the Parties (including persons who belong to membership organizations that are Parties hereto) and no additional consideration with regard to the above-captioned proceedings has been promised or agreed to by any Party (including persons who belong to membership organizations that are Parties hereto).

On Behalf of Staff of the Public Utilities Commission of Ohio



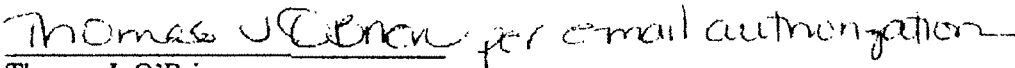
John H. Jones
Steven Beeler
Assistant Attorneys General
180 E. Broad Street
Columbus, Ohio 43215

On Behalf of Duke Energy Ohio, Inc.



Amy B. Spiller
Rocco O. D'Ascenzo
Elizabeth H. Watts
Jeanne W. Kingery
Duke Energy Business Services LLC
139 E. Fourth Street, 1303 Main
Cincinnati, Ohio 45202

On Behalf of City of Cincinnati



Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third
Columbus, Ohio 43215

On Behalf of Ohio Partners for Affordable Energy

Colleen L. Mooney per verbal authorization

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45839

On Behalf of Industrial Energy Users-Ohio

Samuel C. Randazzo

Frank P. Darr
Joseph E. Olikar
McNees Wallace & Nurick LLC
21 E. State Street, 17th Floor
Columbus, Ohio 43215

On Behalf of Ohio Energy Group

Michael L. Kurtz

David F. Boehm
Michael L. Kurtz
Jody Kyler
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

On Behalf of Retail Energy Supply Association

M. Howard Petricoff

M. Howard Petricoff
Stephen Howard
Vorys, Sater, Seymour, and Pease, LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

On Behalf of the Greater Cincinnati Health Council

Douglas E. Hart per verbal authorization

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, Ohio 45202

On Behalf of the Ohio Environmental Council

Trent A. Dougherty per e-mail authorization

Trent A. Dougherty

Nolan Moser

Ohio Environmental Council

1207 Grandview Avenue, Suite 201

Columbus, Ohio 43212-3449

On Behalf of People Working Cooperatively, Inc.

Mary Christensen per verbal authorization

Mary Christensen

Christensen & Christensen, LLP

8760 Orion Place, Suite 300

Columbus, OH 43240

On Behalf of Environmental Law & Policy Center

Tara C. Santarelli

Tara C. Santarelli

Environmental Law & Policy Center

1207 Grandview Ave., Suite 201

Columbus, Ohio 43212

On Behalf of the Office of the Ohio Consumers' Counsel

Jeffrey L. Small

Jeffrey L. Small

Joseph P. Serio

Melissa R. Yost

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

On Behalf of Ohio Manufacturers Association

Lisa G. McAlister

Lisa G. McAlister


Matthew W. Warnock

Bricker & Eckler LLP

100 South Third Street


Columbus, OH 43215

On Behalf of the Kroger Company


Mark S. Yurick, Esq.

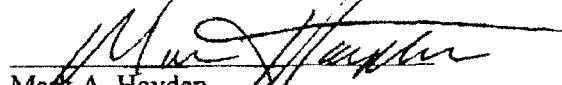
Zachary D. Kravitz, Esq.
Chester, Wilcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215-4213

On Behalf of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.



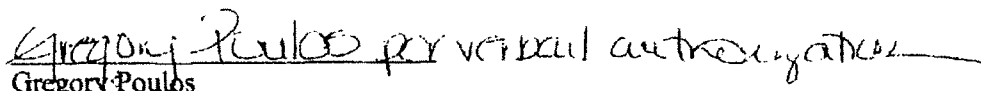
M. Howard Petricoff
Michael J. Settineri
Vorys, Sater, Seymour, and Pease, LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

On Behalf of FirstEnergy Solutions Corp.



Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

On Behalf of EnerNOC, Inc.



Gregory Poulos
EnerNOC, Inc.
101 Federal Street, Suite 1100
Boston, MA 02110

On Behalf of Vectren Retail, LLC d/b/a/ Vectren Source



Joseph M. Clark
Vectren Retail, LLC d/b/a Vectren Source
6641 North High Street, Suite 200
Worthington, OH 43085

On Behalf of AEP Retail Energy Partners LLC

Anne M. Vogel per email authorization
Anne M. Vogel

American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus OH 43215

On Behalf of PJM Power Providers Group

M. Howard Petricoff

M. Howard Petricoff
Stephen Howard
Vorys, Sater, Seymour, and Pease, LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

On Behalf of Direct Energy Services, LLC, and Direct Energy Business, LLC

Dane Stinson

Dane Stinson
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, Ohio 43215

On Behalf of Miami University and the University of Cincinnati

M. Howard Petricoff

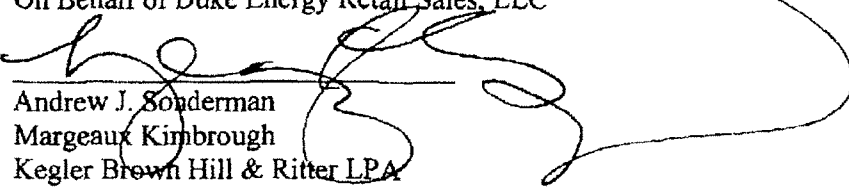
M. Howard Petricoff
Special Assistant Attorney General
Vorys, Sater, Seymour, and Pease, LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

On Behalf of COMPETE Coalition

M. Howard Petricoff

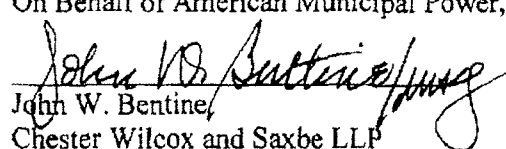
William L. Massey / M. Howard Petricoff
Covington & Burling, LLP
1201 Pennsylvania Ave., NW
Washington, DC. 20004

On Behalf of Duke Energy Retail Sales, LLC



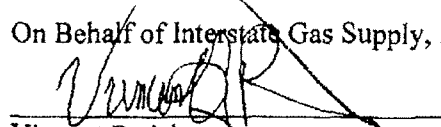
Andrew J. Sonderman
Margeaux Kimbrough
Kegler Brown Hill & Ritter LPA
Capitol Square, Suite 1800
65 East State Street
Columbus, Ohio 43215

On Behalf of American Municipal Power, Inc.



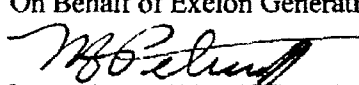
John W. Bentine
Chester Wilcox and Saxbe LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215

On Behalf of Interstate Gas Supply, Inc.



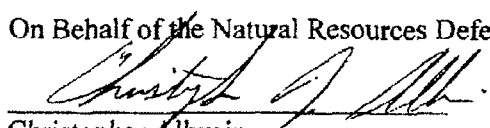
Vincent Parisi
Matthew White
Interstate Gas Supply, Inc
6100 Emerald Parkway
Dublin OH 43016

On Behalf of Exelon Generation Company, LLC



M. Howard Petricoff
Lija Kaleps- Clark
Vorys, Sater, Seymour, and Pease, LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

On Behalf of the Natural Resources Defense Council



Christopher Allwein
Williams, Allwein and Moser, LLC
1373 Grandview Ave., Suite 212
Columbus, Ohio 43212

On Behalf of Wal-Mart Stores East, LP and Sam's East, Inc.

Richard Chamberlain per verbal authorization

Richard Chamberlain
6 Northeast 63rd St, Suite 400
Oklahoma City, OK 73105

On Behalf of Cincinnati Bell Inc.

Douglas E. Hart per verbal authorization

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, OH 45202

On Behalf of Council of Smaller Enterprises

Matthew R. Cox per verbal authorization

Matthew R. Cox
McDonald Hopkins
41 South High Street
Suite 3550
Columbus, OH 43215

The following parties in these proceedings take no position with regard to the Stipulation:

On Behalf of Columbus Southern Power Company and Ohio Power Company

Matthew Satterwhite per email authorization

Matthew Satterwhite
Erin Miller
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus OH 43215

On Behalf of Dominion Retail, Inc.

Barth E. Royer per verbal authorization

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927

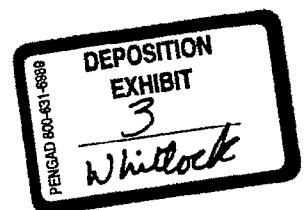
Execution Copy

AMENDED AND RESTATED
INTER-COMPANY POWER AGREEMENT

DATED AS OF SEPTEMBER 10, 2010

AMONG

OHIO VALLEY ELECTRIC CORPORATION,
ALLEGHENY ENERGY SUPPLY COMPANY, L.L.C.
APPALACHIAN POWER COMPANY,
BUCKEYE POWER GENERATING, LLC,
COLUMBUS SOUTHERN POWER COMPANY,
THE DAYTON POWER AND LIGHT COMPANY,
DUKE ENERGY OHIO, INC.,
FIRSTENERGY GENERATION CORP.,
INDIANA MICHIGAN POWER COMPANY,
KENTUCKY UTILITIES COMPANY,
LOUISVILLE GAS AND ELECTRIC COMPANY,
MONONGAHELA POWER COMPANY,
OHIO POWER COMPANY,
PENINSULA GENERATION COOPERATIVE, and
SOUTHERN INDIANA GAS AND ELECTRIC COMPANY



AMENDED AND RESTATED
INTER-COMPANY POWER AGREEMENT

THIS AGREEMENT, dated as of September 10, 2010 (the "Agreement"), by and among OHIO VALLEY ELECTRIC CORPORATION (herein called OVEC), ALLEGHENY ENERGY SUPPLY COMPANY, L.L.C. (herein called Allegheny), APPALACHIAN POWER COMPANY (herein called Appalachian), BUCKEYE POWER GENERATING, LLC (herein called Buckeye), COLUMBUS SOUTHERN POWER COMPANY (herein called Columbus), THE DAYTON POWER AND LIGHT COMPANY (herein called Dayton), DUKE ENERGY OHIO, INC. (formerly known as The Cincinnati Gas & Electric Company and herein called Duke Ohio), FIRSTENERGY GENERATION CORP. (herein called FirstEnergy), INDIANA MICHIGAN POWER COMPANY (herein called Indiana), KENTUCKY UTILITIES COMPANY (herein called Kentucky), LOUISVILLE GAS AND ELECTRIC COMPANY (herein called Louisville), MONONGAHELA POWER COMPANY (herein called Monongahela), OHIO POWER COMPANY (herein called Ohio Power), PENINSULA GENERATION COOPERATIVE (herein called Peninsula), and SOUTHERN INDIANA GAS AND ELECTRIC COMPANY (herein called Southern Indiana, and all of the foregoing, other than OVEC, being herein sometimes collectively referred to as the Sponsoring Companies and individually as a Sponsoring Company) hereby amends and restates in its entirety, the Inter-Company Power Agreement dated as of March 13, 2006, as amended by Modification No. 1, dated as of March 13, 2006 (herein called the Current Agreement), by and among OVEC and the Sponsoring Companies.

WITNESSETH THAT:

WHEREAS, the Current Agreement amended and restated the original Inter-Company Power Agreement, dated as of July 10, 1953, as amended by Modification No. 1, dated as of June 3, 1966; Modification No. 2, dated as of January 7, 1967; Modification No. 3, dated as of November 15, 1967; Modification No. 4, dated as of November 5, 1975; Modification No. 5, dated as of September 1, 1979; Modification No. 6, dated as of August 1, 1981; Modification No. 7, dated as of January 15, 1992; Modification No. 8, dated as of January 19, 1994; Modification No. 9, dated as of August 17, 1995; Modification No. 10, dated as of January 1, 1998; Modification No. 11, dated as of April 1, 1999; Modification No. 12, dated as of November 1, 1999; Modification No. 13, dated as of May 24, 2000; Modification No. 14, dated as of April 1, 2001; and Modification No. 15, dated as of April 30, 2004 (together, herein called the Original Agreement); and

WHEREAS, OVEC designed, purchased, and constructed, and continues to operate and maintain two steam-electric generating stations, one station (herein called Ohio Station) consisting of five turbo-generators and all other necessary equipment, at a location on the Ohio River near Cheshire, Ohio, and the other station (herein called Indiana Station) consisting of six turbogenerators and all other necessary equipment, at a location on the Ohio River near Madison,

Indiana, (the Ohio Station and the Indiana Station being herein called the Project Generating Stations); and

WHEREAS, OVEC also designed, purchased, and constructed, and continues to operate and maintain necessary transmission and general plant facilities (herein called the Project Transmission Facilities) and OVEC established or cause to be established interconnections between the Project Generating Stations and the systems of certain of the Sponsoring Companies; and

WHEREAS, OVEC entered into an agreement, attached hereto as Exhibit A, with Indiana-Kentucky Electric Corporation (herein called IKEC), a corporation organized under the laws of the State of Indiana as a wholly owned subsidiary corporation of OVEC, which has been amended and restated as of the date of this Agreement and embodies the terms and conditions for the ownership and operation by IKEC of the Indiana Station and such portion of the Project Transmission Facilities which are to be owned and operated by it; and

WHEREAS, transmission facilities were constructed by certain of the Sponsoring Companies to interconnect the systems of such Sponsoring Companies, directly or indirectly, with the Project Generating Stations and/or the Project Transmission Facilities, and the Sponsoring Companies have agreed to pay for Available Power, as hereinafter defined, as may be available at the Project Generating Stations; and

WHEREAS, the parties hereto desire to amend and restate in their entirety, the Current Agreement to define the terms and conditions governing the rights of the Sponsoring Companies to receive Available Power from the Project Generating Stations and the obligations of the Sponsoring Companies to pay therefor.

NOW, THEREFORE, the parties hereto agree with each other as follows:

ARTICLE 1

DEFINITIONS

1.01. For the purposes of this Agreement, the following terms, wherever used herein, shall have the following meanings:

1.011 "Affiliate" means, with respect to a specified person, any other person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such specified person; provided that "control" for these purposes means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

1.012 "Arbitration Board" has the meaning set forth in Section 9.10.

1.013 "Available Energy" of the Project Generating Stations means the energy associated with Available Power.

1.014 "Available Power" of the Project Generating Stations at any particular time means the total net kilowatts at the 345-kV busses of the Project Generating Stations which Corporation in its sole discretion will determine that the Project Generating Stations will be capable of safely delivering under conditions then prevailing, including all conditions affecting capability.

1.015 "Corporation" means OVEC, IKEC, and all other subsidiary corporations of OVEC.

1.016 "Decommissioning and Demolition Obligation" has the meaning set forth in Section 5.03(f) hereof.

1.017 "Effective Date" means September 10, 2010, or to the extent necessary, such later date on which Corporation notifies the Sponsoring Companies that all conditions to effectiveness, including all required waiting periods and all required regulatory acceptances or approvals, of this Agreement have been satisfied in form and substance satisfactory to the Corporation.

1.018 "Election Period" has the meaning set forth in Section 9.183(a) hereof.

1.019 "Minimum Generating Unit Output" means 80 MW (net) for each of the Corporation's generation units; provided that such "Minimum Generating Unit Output" shall be confirmed from time to time by operating tests on the Corporation's generation units and shall be adjusted by the Operating Committee as appropriate following such tests.

1.0110 "Minimum Loading Event" means a period of time during which one or more of the Corporation's generation units are operating at below the Minimum Generating Output as a result of the Sponsoring Companies' failure to schedule and take delivery of sufficient Available Energy.

1.0111 "Minimum Loading Event Costs" means the sum of the following costs caused by one or more Minimum Loading Events: (i) the actual costs of any of the Corporation's generating units burning fuel oil; and (ii) the estimated actual additional costs to the Corporation resulting from Minimum Loading Events, including without limitation the incremental costs of additional emissions allowances, reflected in the schedule of charges prepared by the Operating Committee and in effect as of the commencement of any Minimum Loading Event, which schedule may be adjusted from time to time as necessary by the Operating Committee.

1.0112 "Month" means a calendar month.

1.0113 "Nominal Power Available" means an individual Sponsoring Company's Power Participation Ratio share of the Corporation's current estimate of the maximum amount of Available Power available for delivery at any given time.

1.0114 "Offer Notice" means the notice required to be given to the other Sponsoring Companies by a Transferring Sponsor offering to sell all or a portion of such Transferring Sponsor's rights, title and interests in, and obligations under this Agreement. At a minimum, the Offer Notice shall be in writing and shall contain (i) the rights, title and interests in, and obligations under this Agreement that the Transferring Sponsor proposes to Transfer; and (ii) the cash purchase price and any other material terms and conditions of such proposed transfer. An Offer Notice may not contain terms or conditions requiring the purchase of any non-OVEC interests.

1.0115 "Permitted Assignee" means a person that is (a) a Sponsoring Company or its Affiliate whose long-term unsecured non-credit enhanced indebtedness, as of the date of such assignment, has a Standard & Poor's credit rating of at least BBB- and a Moody's Investors Service, Inc. credit rating of at least Baa3 (provided that, if the proposed assignee's long-term unsecured non-credit enhanced indebtedness is not currently rated by one of Standard & Poor's or Moody, such assignee's long-term unsecured non-credit enhanced indebtedness, as of the date of such assignment, must have either a Standard & Poor's credit rating of at least BBB- or a Moody's Investors Service, Inc. credit rating of at least Baa3); or (b) a Sponsoring Company or its Affiliate that does not meet the criteria in subsection (a) above, if the Sponsoring Company or its Affiliate that is assigning its rights, title and interests in, and obligations under, this Agreement agrees in writing (in form and substance satisfactory to Corporation) to remain obligated to satisfy all of the obligations related to the assigned rights, title and interests to the extent such obligations are not satisfied by the assignee of such rights, title and interests; provided that, in no event shall a person be deemed a "Permitted Assignee" if counsel for the Corporation reasonably determines that the assignment of the rights, title or interests in, or obligations under, this Agreement to such person could cause a termination, default, loss or payment obligation under any security issued, or agreement entered into, by the Corporation prior to such transfer.

1.0116 "Postretirement Benefit Obligation" has the meaning set forth in Section 5.03(e) hereof.

1.0117 "Power Participation Ratio" as applied to each of the Sponsoring Companies refers to the percentage set forth opposite its respective name in the tabulation below:

Company	Power Participation Ratio—Percent
---------	--------------------------------------

Allegheny	3.01
Appalachian.....	15.69
Buckeye.....	18.00
Columbus	4.44
Dayton	4.90
Duke Ohio.....	9.00
FirstEnergy.....	4.85
Indiana.....	7.85
Kentucky	2.50
Louisville	5.63
Monongahela.....	0.49
Ohio Power	15.49
Peninsula	6.65
Southern Indiana	<u>1.50</u>
Total	100.0

1.0118 "Tariff" means the open access transmission tariff of the Corporation, as amended from time to time, or any successor tariff, as accepted by the Federal Energy Regulatory Commission or any successor agency.

1.0119 "Third Party" means any person other than a Sponsoring Company or its Affiliate.

1.0120 "Total Minimum Generating Output" means the product of the Minimum Generating Unit Output times the number of the Corporation's generation units available for service at that time.

1.0121 "Transferring Sponsor" has the meaning set forth in Section 9.183(a) hereof.

1.0122 "Uniform System of Accounts" means the Uniform System of Accounts prescribed by the Federal Energy Regulatory Commission as in effect on January 1, 2004.

ARTICLE 2

TRANSMISSION AGREEMENT AND FACILITIES

2.01. *Transmission Agreement.* The Corporation shall enter into a transmission service agreement under the Tariff, and the Corporation shall reserve and schedule transmission service, ancillary services and other transmission-related services in accordance with the Tariff to provide for the delivery of Available Power and Available Energy to the applicable delivery point under this Agreement.

2.02. *Limited Burdening of Corporation's Transmission Facilities.*

Transmission facilities owned by the Corporation, including the Project Transmission Facilities, shall not be burdened by power and energy flows of any Sponsoring Company to an extent which would impair or prevent the transmission of Available Power.

ARTICLE 3

[RESERVED]

ARTICLE 4

AVAILABLE POWER SUPPLY

4.01. *Operation of Project Generating Stations.* Corporation shall operate and maintain the Project Generating Stations in a manner consistent with safe, prudent, and efficient operating practice so that the Available Power available from said stations shall be at the highest practicable level attainable consistent with OVEC's obligations under ReliabilityFirst Reliability Standard BAL-002-RFC throughout the term of this Agreement.

4.02. *Available Power Entitlement.* The Sponsoring Companies collectively shall be entitled to take from Corporation and Corporation shall be obligated to supply to the Sponsoring Companies any and all Available Power and Available Energy pursuant to the provisions of this Agreement. Each Sponsoring Company's Available Power Entitlement hereunder shall be its Power Participation Ratio, as defined in subsection 1.0117, of Available Power.

4.03. *Available Energy.* Corporation shall make Available Energy available to each Sponsoring Company in proportion to said Sponsoring Company's Power Participation Ratio. No Sponsoring Company, however, shall be obligated to avail itself of any Available Energy. Available Energy shall be scheduled and taken by the Sponsoring Companies in accordance with the following procedures:

4.031 Each Sponsoring Company shall schedule the delivery of all or any portion (in whole MW increments) of its entitlement to Available Energy in accordance with scheduling procedures established by the Operating Committee from time to time.

4.032 In the event that any Sponsoring Company does not schedule the delivery of all of its Power Participation Ratio share of Available Energy, then each such other Sponsoring Company may schedule the delivery of all or any portion (in whole MW increments) of any such unscheduled share of Available Energy (through successive allotments if necessary) in proportion to their Power Participation Ratios.

4.033 Notwithstanding any Available Energy schedules made in accordance with this Section 4.03 and the applicable scheduling procedures, (i) the Corporation shall adjust all schedules to the extent that the Corporation's actual generation output is less than or more than the expected Nominal Power Available to all Sponsoring Companies, or to the extent that the Corporation is unable to obtain sufficient transmission service under the Tariff for the delivery of all scheduled Available Energy; and (ii) immediately following a Minimum Loading Event, any Sponsoring Company causing (in whole or part) such Minimum Loading Event shall have its Available Energy schedules increased after the schedules of the Sponsoring Companies not causing such Minimum Load Event, in accordance with the estimated ramp rates associated with the shutdown and start-up of the Corporation's generation units as reflected in the schedules prepared by the Operating Committee and in effect as of the commencement of any Minimum Loading Event, which schedules may be adjusted from time to time as necessary by the Operating Committee.

4.034 Each Sponsoring Company availing itself of Available Energy shall be entitled to an amount of energy (herein called billing kilowatt-hours of Available Energy) equal to its portion, determined as provided in this Section 4.03, of the total Available Energy after deducting therefrom such Sponsoring Company's proportionate share, as defined in this Section 4.03, of all losses as determined in accordance with the Tariff incurred in transmitting the total of such Available Energy from the 345-kV busses of the Project Generating Stations to the applicable delivery points, as scheduled pursuant to Section 9.01, of all Sponsoring Companies availing themselves of Available Energy. The proportionate share of all such losses that shall be so deducted from such Sponsoring Company's portion of Available Energy shall be equal to all such losses multiplied by the ratio of such portion of Available Energy to the total of such Available Energy. Each Sponsoring Company shall have the right, pursuant to this Section 4.03, to avail itself of Available Energy for the purpose of meeting the loads of its own system and/or of supplying energy to other systems in accordance with agreements, other than this Agreement, to which such Sponsoring Company is a party.

4.035 To the extent that, as a result of the failure by one or more Sponsoring Companies to take its respective Power Participation Ratio share of the applicable Total Minimum Generating Output during any hour, a Minimum Loading Event shall occur, then such one or more Sponsoring Companies shall be assessed charges for any Minimum Loading Event Costs in accordance with Section 5.05.

ARTICLE 5

CHARGES FOR AVAILABLE POWER AND MINIMUM LOADING EVENT COSTS

5.01. *Total Monthly Charge.* The amount to be paid to Corporation each month by the Sponsoring Companies for Available Power and Available Energy supplied under this

Agreement shall consist of the sum of an energy charge, a demand charge, and a transmission charge, all determined as set forth in this *Article 5*.

5.02. *Energy Charge*. The energy charge to be paid each month by the Sponsoring Companies for Available Energy shall be determined by Corporation as follows:

5.021 Determine the aggregate of all expenses for fuel incurred in the operation of the Project Generating Stations, in accordance with Account 501 (Fuel), Account 506.5 (Variable Reagent Costs Associated With Pollution Control Facilities) and 509 (Allowances) of the Uniform System of Accounts.

5.022 Determine for such month the difference between the total cost of fuel as described in subsection 5.021 above and the total cost of fuel included in any Minimum Loading Event Costs payable to the Corporation for such month pursuant to Section 8.03. For the purposes hereof the difference so determined shall be the fuel cost allocable for such month to the total kilowatt-hours of energy generated at the Project Generating Stations for the supply of Available Energy. For Available Energy availed of by the Sponsoring Companies, each Sponsoring Company shall pay Corporation for each such month an amount obtained by multiplying the ratio of the billing kilowatt-hours of such Available Energy availed of by such Sponsoring Company during such month to the aggregate of the billing kilowatt-hours of all Available Energy availed of by all Sponsoring Companies during such month times the total cost of fuel as described in this subsection 5.022 for such month.

5.03. *Demand Charge*. During the period commencing with the Effective Date and for the remainder of the term of this Agreement, demand charges payable by the Sponsoring Companies to Corporation shall be determined by the Corporation as provided below in this Section 5.03. Each Sponsoring Company's share of the aggregate demand charges shall be the percentage of such charges represented by its Power Participation Ratio.

The aggregate demand charge payable each month by the Sponsoring Companies to Corporation shall be equal to the total costs incurred for such month by Corporation resulting from its ownership, operation, and maintenance of the Project Generating Stations and Project Transmission Facilities determined as follows:

As soon as practicable after the close of each calendar month the following components of costs of Corporation (eliminating any duplication of costs which might otherwise be reflected among the corporate entities comprising Corporation) applicable for such month to the ownership, operation and maintenance of the Project Generating Stations and the Project Transmission Facilities, including additional facilities and/or spare parts (such as fuel processing plants, flue gas or waste product processing facilities, and facilities reasonably required to enable the Corporation to limit the emission of pollutants or the discharge of wastes in compliance with governmental requirements) and

replacements necessary or desirable to keep the Project Generating Stations and the Project Transmission Facilities in a dependable and efficient operating condition, and any provision for any taxes that may be applicable to such charges, to be determined and recorded in the following manner:

(a) Component (A) shall consist of fixed charges made up of (i) the amounts of interest properly chargeable to Accounts 427, 430 and 431, less the amount thereof credited to Account 432, of the Uniform System of Accounts, including the interest component of any purchase price, interest, rental or other payment under an installment sale, loan, lease or similar agreement relating to the purchase, lease or acquisition by Corporation of additional facilities and replacements (whether or not such interest or other amounts have come due or are actually payable during such Month), (ii) the amounts of amortization of debt discount or premium and expenses properly chargeable to Accounts 428 and 429, and (iii) an amount equal to the sum of (I) the applicable amount of the debt amortization component for such month required to retire the total amount of indebtedness of Corporation issued and outstanding, (II) the amortization requirement for such month in respect of indebtedness of Corporation incurred in respect of additional facilities and replacements, and (III) to the extent not provided for pursuant to clause (II) of this clause (iii), an appropriate allowance for depreciation of additional facilities and replacements.

(b) Component (B) shall consist of the total operating expenses for labor, maintenance, materials, supplies, services, insurance, administrative and general expense, etc., properly chargeable to the Operation and Maintenance Expense Accounts of the Uniform System of Accounts (exclusive of Accounts 501, 509, 555, 911, 912, 913, 916, and 917 of the Uniform System of Accounts), minus the total of all non-fuel costs included in any Minimum Loading Event Costs payable to the Corporation for such month pursuant to Section 8.03, minus the total of all transmission charges payable to the Corporation for such month pursuant to Section 5.04, and plus any additional amounts which, after provision for all income taxes on such amounts (which shall be included in Component (C) below), shall equal any amounts paid or payable by Corporation as fines or penalties with respect to occasions where it is asserted that Corporation failed to comply with a law or regulation relating to the emission of pollutants or the discharge of wastes.

(c) Component (C) shall consist of the total expenses for taxes, including all taxes on income but excluding any federal income taxes arising from payments to Corporation under Component (D) below, and all operating or other costs or expenses, net of income, not included or

specifically excluded in Components (A) or (B) above, including tax adjustments, regulatory adjustments, net losses for the disposition of property and other net costs or expenses associated with the operation of a utility.

(d) Component (D) shall consist of an amount equal to the product of \$2.089 multiplied by the total number of shares of capital stock of the par value of \$100 per share of Ohio Valley Electric Corporation which shall have been issued and which are outstanding on the last day of such month.

(e) Component (E) shall consist of an amount to be sufficient to pay the costs and other expenses relating to the establishment, maintenance and administration of life insurance, medical insurance and other postretirement benefits other than pensions attributable to the employment and employee service of active employees, retirees, or other employees, including without limitation any premiums due or expected to become due, as well as administrative fees and costs, such amounts being sufficient to provide payment with respect to all periods for which Corporation has committed or is otherwise obligated to make such payments, including amounts attributable to current employee service and any unamortized prior service cost, gain or loss attributable to prior service years ("Postretirement Benefit Obligation"); provided that, the amount payable for Postretirement Benefit Obligations during any month shall be determined by the Corporation based on, among other factors, the Statement of Financial Accounting Standards No. 106 (Employers' Accounting For Postretirement Benefits Other Than Pensions) and any applicable accounting standards, policies or practices as adopted from time to time relating to accruals with respect to all or any portion of such Postretirement Benefit Obligation.

(f) Component (F) shall consist of an amount that may be incurred in connection with the decommissioning, shutdown, demolition and closing of the Project Generating Stations when production of electric power and energy is discontinued at such Project Generating Stations, which amount shall include, without limitation the following costs (net of any salvage credits): the costs of demolishing the plants' building structures, disposal of non-salvageable materials, removal and disposal of insulating materials, removal and disposal of storage tanks and associated piping, disposal or removal of materials and supplies (including fuel oil and coal), grading, covering and reclaiming storage and disposal areas, disposing of ash in ash ponds to the extent required by regulatory authorities, undertaking corrective or remedial action required by regulatory authorities, and any other costs incurred in putting the facilities

in a condition necessary to protect health or the environment or which are required by regulatory authorities, or which are incurred to fund continuing obligations to monitor or to correct environmental problems which result, or are later discovered to result, from the facilities' operation, closure or post-closure activities ("Decommissioning and Demolition Obligation") provided that, the amount payable for Decommissioning and Demolition Obligations during any month shall be calculated by Corporation based on, among other factors, the then-estimated useful life of the Project Generating Stations and any applicable accounting standards, policies or practices as adopted from time to time relating to accruals with respect to all or any portion of such Decommissioning and Demolition Obligation, and provided further that, the Corporation shall recalculate the amount payable under this Component (F) for future months from time to time, but in no event later than five (5) years after the most recent calculation.

5.04. *Transmission Charge.* The transmission charges to be paid each month by the Sponsoring Companies shall be equal to the total costs incurred for such month by Corporation for the purchase of transmission service, ancillary services and other transmission-related services under the Tariff as reserved and scheduled by the Corporation to provide for the delivery of Available Power and Available Energy to the applicable delivery point under this Agreement. Each Sponsoring Company's share of the aggregate transmission charges shall be the percentage of such charges represented by its Power Participation Ratio.

5.05. *Minimum Loading Event Costs.* To the extent that, as a result of the failure by one or more Sponsoring Companies to take its respective Power Participation Ratio share of the applicable Total Minimum Generating Output during any hour, a Minimum Loading Event shall occur, then the sum of all Minimum Loading Event Costs relating to such Minimum Loading Event shall be charged to such Sponsoring Company or group of Sponsoring Companies that failed take its respective Power Participation Ratio share of the applicable Total Minimum Generating Output during such period, with such Minimum Loading Event Costs allocated among such Sponsoring Companies on a pro-rata basis in accordance with such Sponsoring Company's MWh share of the MWh reduction in the delivery of Available Energy causing any Minimum Loading Event. The applicable charges for Minimum Loading Event Costs as determined by the corporation in accordance with Section 5.05 shall be paid each month by the applicable Sponsoring Companies.

ARTICLE 6

Metering of Energy Supplied

6.01. *Measuring Instruments.* The parties hereto shall own and maintain such metering equipment as may be necessary to provide complete information regarding the delivery of power and energy to or for the account of any of the parties hereto; and the ownership and

expense of such metering shall be in accordance with agreements among them. Each party will at its own expense make such periodic tests and inspections of its meters as may be necessary to maintain them at the highest practical commercial standard of accuracy and will advise all other interested parties hereto promptly of the results of any such test showing an inaccuracy of more than 1%. Each party will make additional tests of its meters at the request of any other interested party. Other interested parties shall be given notice of, and may have representatives present at, any test and inspection made by another party.

ARTICLE 7

COSTS OF REPLACEMENTS AND ADDITIONAL FACILITIES; PAYMENTS FOR EMPLOYEE BENEFITS; DECOMMISSIONING, SHUTDOWN, DEMOLITION AND CLOSING CHARGES

7.01. *Replacement Costs.* The Sponsoring Companies shall reimburse Corporation for the difference between (a) the total cost of replacements chargeable to property and plant made by Corporation during any month prior thereto (and not previously reimbursed) and (b) the amounts received by Corporation as proceeds of fire or other applicable insurance protection, or amounts recovered from third parties responsible for damages requiring replacement, plus provision for all taxes on income on such difference; provided that, to the extent that the Corporation arranges for the financing of any replacements, the payments due under this Section 7.01 shall equal the amount of all principal, interest, taxes and other costs and expenses related to such financing during any month. Each Sponsoring Company's share of such payment shall be the percentage of such costs represented by its Power Participation Ratio. The term cost of replacements, as used herein, shall include all components of cost, plus removal expense, less salvage.

7.02. *Additional Facility Costs.* The Sponsoring Companies shall reimburse Corporation for the total cost of additional facilities and/or spare parts purchased and/or installed by Corporation during any month prior thereto (and not previously reimbursed), plus provision for all taxes on income on such costs; provided that, to the extent that the Corporation arranges for the financing of any additional facilities and/or spare parts, the payments due under this Section 7.02 shall equal the amount of all principal, interest, taxes and other costs and expenses related to such financing during any month. Each Sponsoring Company's share of such payment shall be the percentage of such costs represented by its Power Participation Ratio.

7.03. *Payments for Employee Benefits.* Not later than the effective date of termination of this Agreement, each Sponsoring Company will pay to Corporation its Power Participation Ratio share of additional amounts, after provision for any taxes that may be applicable thereto, sufficient to cover any shortfall if the amount of the Postretirement Benefit Obligation collected by the Corporation prior to the effective date of termination of the Agreement is insufficient to permit Corporation to fulfill its commitments or obligations with respect to both postemployment benefit obligations under the Statement of Financial Accounting Standards No. 112 and postretirement benefits other than pensions, as determined by Corporation

with the aid of an actuary or actuaries selected by the Corporation based on the terms of the Corporation's then-applicable plans.

7.04. *Decommissioning, Shutdown, Demolition and Closing.* The Sponsoring Companies recognize that a part of the cost of supplying power to it under this Agreement is the amount that may be incurred in connection with the decommissioning, shutdown, demolition and closing of the Project Generating Stations when production of electric power and energy is discontinued at such Project Generating Stations. Not later than the effective date of termination of this Agreement, each Sponsoring Company will pay to Corporation its Power Participation Ratio share of additional amounts, after provision for any taxes that may be applicable thereto, sufficient to cover any shortfall if the amount of the Decommissioning and Demolition Obligation collected by the Corporation prior to the effective date of termination of the Agreement is insufficient to permit Corporation to complete the decommissioning, shutdown, demolition and closing of the Project Generating Stations, based on the Corporation's recalculation of the Decommissioning and Demolition Obligation in accordance with Section 5.03(f) of this Agreement no earlier than twelve (12) months before the effective date of termination of this Agreement.

ARTICLE 8

BILLING AND PAYMENT

8.01. *Available Power, and Replacement and Additional Facility Costs.* As soon as practicable after the end of each month Corporation shall render to each Sponsoring Company a statement of all Available Power and Available Energy supplied to or for the account of such Sponsoring Company during such month, specifying the amount due to the Corporation therefor, including any amounts for reimbursement for the cost of replacements and additional facilities and/or spare parts incurred during such month, pursuant to *Articles 5 and 7* above. Such Sponsoring Company shall make payment therefor promptly upon the receipt of such statement, but in no event later than fifteen (15) days after the date of receipt of such statement. In case any factor entering into the computation of the amount due for Available Power and Available Energy cannot be determined at the time, it shall be estimated subject to adjustment when the actual determination can be made.

8.02. *Provisional Payments for Available Power.* The Sponsoring Companies shall, from time to time, at the request of the Corporation, make provisional semi-monthly payments for Available Power in amounts approximately equal to the estimated amounts payable for Available Power delivered by Corporation to the Sponsoring Companies during each semi-monthly period. As soon as practicable after the end of each semi-monthly period with respect to which Corporation has requested the Sponsoring Companies to make provisional semi-monthly payments for Available Power, Corporation shall render to each Sponsoring Company a separate statement indicating the amount payable by such Sponsoring Company for such semi-monthly period. Such Sponsoring Company shall make payment therefor promptly upon receipt of such statement, but in no event later than fifteen (15) days after the date of receipt of such

statement and the amounts so paid by such Sponsoring Company shall be credited to the account of such Sponsoring Company with respect to future payments to be made pursuant to *Articles 5 and 7* above by such Sponsoring Company to Corporation for Available Power.

8.03. *Minimum Loading Event Costs.* As soon as practicable after the end of each month, Corporation shall render to each Sponsoring Company a statement indicating any applicable charges for Minimum Loading Event Costs pursuant to Section 5.05 during such month, specifying the amount due to the Corporation therefor pursuant to *Article 5* above. Such Sponsoring Company shall make payment therefor promptly upon the receipt of such statement, but in no event later than fifteen (15) days after the date of receipt of such statement. In case the computation of the amount due for Minimum Loading Event Costs cannot be determined at the time, it shall be estimated subject to adjustment when the actual determination can be made, and all payments shall be subject to subsequent adjustment.

8.04. *Unconditional Obligation to Pay Demand and Other Charges.* The obligation of each Sponsoring Company to pay its specified portion of the Demand Charge under Section 5.03, the Transmission Charge under Section 5.04, and all charges under *Article 7* for any Month shall not be reduced irrespective of:

- (a) whether or not any Available Power or Available Energy are supplied by the Corporation during such calendar month and whether or not any Available Power or Available Energy are accepted by any Sponsoring Company during such calendar month;
- (b) the existence of any claim, set-off, defense, reduction, abatement or other right (other than irrevocable payment, performance, satisfaction or discharge in full) that such Sponsoring Company may have, or which may at any time be available to or be asserted by such Sponsoring Company, against the Corporation, any other Sponsoring Company, any creditor of the Corporation or any other Person (including, without limitation, arising as a result of any breach or alleged breach by either the Corporation, any other Sponsoring Company, any creditor of the Corporation or any other Person under this Agreement or any other agreement (whether or not related to the transactions contemplated by this Agreement or any other agreement) to which such party is a party); or
- (c) the validity or enforceability against any other Sponsoring Company of this Agreement or any right or obligation hereunder (or any release or discharge thereof) at any time.

ARTICLE 9

GENERAL PROVISIONS

9.01. *Characteristics of Supply and Points of Delivery.* All power and energy delivered hereunder shall be 3-phase, 60-cycle, alternating current, at a nominal unregulated voltage designated for the point of delivery as described in this *Article 9*. Available Power and Available Energy to be delivered between Corporation and the Sponsoring Companies pursuant to this Agreement shall be delivered under the terms and conditions of the Tariff at the points, as scheduled by the Sponsoring Company in accordance with procedures established by the Operating Committee and in accordance with Section 9.02, where the transmission facilities of Corporation interconnect with the transmission facilities of any Sponsoring Company (or its successor or predecessor); provided that, to the extent that a joint and common market is established for the sale of power and energy by Sponsoring Companies within one or more of the regional transmission organizations or independent system operators approved by the Federal Energy Regulatory Commission in which the Sponsoring Companies are members or otherwise participate, then Corporation and the Sponsoring Companies shall take such action as reasonably necessary to permit the Sponsoring Companies to bid their entitlement to power and energy from Corporation into such market(s) in accordance with the procedures established for such market(s).

9.02. *Modification of Delivery Schedules Based on Available Transmission Capability.* To the extent that transmission capability available for the delivery of Available Power and Available Energy at any delivery point is less than the total amount of Available Power and Available Energy scheduled for delivery by the Sponsoring Companies at such delivery point in accordance with Section 9.01, then the following procedures shall apply and the Corporation and the applicable Sponsoring Companies shall modify their delivery schedules accordingly until the total amount of Available Power and Available Energy scheduled for delivery at such delivery point is equal to or less than the transmission capability available for the delivery of Available Power and Available Energy: (a) the transmission capability available for the delivery of Available Power and Available Energy at the following delivery points shall be allocated first on a pro rata basis (in whole MW increments) to the following Sponsoring Companies up to their Power Participation Ratio share of the total amount of Available Energy available to all Sponsoring Companies (and as applicable, further allocated among Sponsoring Companies entitled to allocation under this Section 9.02(a) in accordance with their Power Participation Ratios): (i) to Allegheny, Appalachian, Buckeye, Columbus, FirstEnergy, Indiana, Monongahela, Ohio Power and Peninsula (or their successors) for deliveries at the points of interconnection between the Corporation and Appalachian, Columbus, Indiana or Ohio Power, or their successors; (ii) to Duke Ohio (or its successor) for deliveries at the points of interconnection between the Corporation and Duke Ohio or its successor; (iii) to Dayton (or its successor) for deliveries at the points of interconnection between the Corporation and Dayton or its successor; and (iv) to Kentucky, Louisville and Southern Indiana (or their successors) for deliveries at the points of interconnection between the Corporation and Louisville or Kentucky, or their successors; and (b) any remaining transmission capability available for the delivery of

Available Power and Available Energy shall be allocated on a pro rata basis (in whole MW increments) to the Sponsoring Companies in accordance with their Power Participation Ratios.

9.03. *Operation and Maintenance of Systems Involved.* Corporation and the Sponsoring Companies shall operate their systems in parallel, directly or indirectly, except during emergencies that temporarily preclude parallel operation. The parties hereto agree to coordinate their operations to assure maximum continuity of service from the Project Generating Stations, and with relation thereto shall cooperate with one another in the establishment of schedules for maintenance and operation of equipment and shall cooperate in the coordination of relay protection, frequency control, and communication and telemetering systems. The parties shall build, maintain and operate their respective systems in such a manner as to minimize so far as practicable rapid fluctuations in energy flow among the systems. The parties shall cooperate with one another in the operation of reactive capacity so as to assure mutually satisfactory power factor conditions among themselves.

The parties hereto shall exercise due diligence and foresight in carrying out all matters related to the providing and operating of their respective power resources so as to minimize to the extent practicable deviations between actual and scheduled deliveries of power and energy among their systems. The parties hereto shall provide and/or install on their respective systems such communication, telemetering, frequency and/or tie-line control facilities essential to so minimizing such deviations; and shall fully cooperate with one another and with third parties (such third parties whose systems are either directly or indirectly interconnected with the systems of the Sponsoring Companies and who of necessity together with the parties hereto must unify their efforts cooperatively to achieve effective and efficient interconnected systems operation) in developing and executing operating procedures that will enable the parties hereto to avoid to the extent practicable deviations from scheduled deliveries.

In order to foster coordination of the operation and maintenance of Corporation's transmission facilities with those facilities of Sponsoring Companies that are owned or functionally controlled by a regional transmission organization or independent system operator, Corporation shall use commercially reasonable efforts to enter into a coordination agreement with any regional transmission organization or independent system operator approved by the Federal Energy Regulatory Commission that operates transmission facilities that interconnect with Corporation's transmission facilities, and to enter into a mutually agreeable services agreement with a regional transmission organization or independent system operator to provide the Corporation with reliability and security coordination services and other related services.

9.04. *Power Deliveries as Affected by Physical Characteristics of Systems.* It is recognized that the physical and electrical characteristics of the transmission facilities of the interconnected network of which the transmission systems of the Sponsoring Companies, Corporation, and other systems of third parties not parties hereto are a part, may at times preclude the direct delivery at the points of interconnection between the transmission systems of one or more of the Sponsoring Companies and Corporation, of some portion of the energy supplied under this Agreement, and that in each such case, because of said characteristics, some

of the energy will be delivered at points which interconnect the system of one or more of the Sponsoring Companies with systems of companies not parties to this Agreement. The parties hereto shall cooperate in the development of mutually satisfactory arrangements among themselves and with such companies not parties hereto whereby the supply of power and energy contemplated hereunder can be fulfilled.

9.05. *Operating Committee.* There shall be an "Operating Committee" consisting of one member appointed by the Corporation and one member appointed by each of the Sponsoring Companies electing so to do; provided that, if any two or more Sponsoring Companies are Affiliates, then such Affiliates shall together be entitled to appoint only one member to the Operating Committee. The "Operating Committee" shall establish (and modify as necessary) scheduling, operating, testing and maintenance procedures of the Corporation in support of this Agreement, including establishing: (i) procedures for scheduling delivery of Available Energy under Section 4.03, (ii) procedures for power and energy accounting, (iii) procedures for the reservation and scheduling of firm and non-firm transmission service under the Tariff for the delivery of Available Power and Available Energy, (iv) the Minimum Generating Unit Output, and (v) the form of notifications relating to power and energy and the price thereof. In addition, the Operating Committee shall consider and make recommendations to Corporation's Board of Directors with respect to such other problems as may arise affecting the transactions under this Agreement. The decisions of the Operating Committee, including the adoption or modification of any procedure by the Operating Committee pursuant to this Section 9.04, must receive the affirmative vote of at least two-thirds of the members of the Operating Committee, regardless of the number of members of the Operating Committee present at any meeting.

9.06. *Acknowledgment of Certain Rights.* For the avoidance of doubt, all of the parties to this Agreement acknowledge and agree that (i) as of the effective date of the Current Agreement, certain rights and obligations of the Sponsoring Companies or their predecessors under the Original Agreement were changed, modified or otherwise removed, (ii) to the extent that the rights of any Sponsoring Company or their predecessors were thereby changed, modified or otherwise removed as of the effective date of the Current Agreement, such Sponsoring Company may be entitled to rights under applicable law, regulation, rules or orders under the Federal Power Act or otherwise adopted by the Federal Energy Regulatory Commission ("FERC"), (iii) as a result of the elimination as of the effective date of the Current Agreement of the firm transmission service previously provided during the term of the Original Agreement to Sponsoring Companies or their predecessors whose transmission systems were only indirectly connected to the Corporation's facilities through intervening transmission systems by certain Sponsoring Companies or their predecessors whose transmission systems were directly connected to the Corporation's facilities, such Sponsoring Companies or their predecessors whose transmission systems were only indirectly connected to the Corporation's facilities through intervening transmission systems shall have been entitled to such "roll over" firm transmission service for delivery of their entitlement to their Power Participation Ratio share of Surplus Power and Surplus Energy under this Agreement, to the border of such Sponsoring Company system and intervening Sponsoring Company system, as would be accorded a long-

term firm point-to-point transmission service reservation under the then otherwise applicable FERC Open Access Transmission Tariff ("OATT"), (iv) the obligation of any Sponsoring Company to maintain or expand transmission capacity to accommodate another Sponsoring Company's "roll over" rights to transmission service for delivery of their entitlement to their Power Participation Ratio share of Surplus Power and Surplus Energy under this Agreement shall be consistent with the obligations it would have for long-term firm point-to-point transmission service provided pursuant to the then otherwise applicable OATT, and (v) the parties shall cooperate with any Sponsoring Company that seeks to obtain and/or exercise any such rights available under applicable law, regulation, rules or orders under the Federal Power Act or otherwise adopted by the FERC.

9.07. *Term of Agreement.* This Agreement shall become effective upon the Effective Date and shall terminate upon the earlier of: (1) June 30, 2040 or (2) the sale or other disposition of all of the facilities of the Project Generating Stations or the permanent cessation of operation of such facilities; provided that, the provisions of *Articles 5, 7 and 8*, this Section 9.07 and Sections 9.08, 9.09, 9.10, 9.11, 9.12, 9.14, 9.15, 9.16, 9.17 and 9.18 shall survive the termination of this Agreement, and no termination of this Agreement, for whatever reason, shall release any Sponsoring Company of any obligations or liabilities incurred prior to such termination.

9.08. *Access to Records.* Corporation shall, at all reasonable times, upon the request of any Sponsoring Company, grant to its representatives reasonable access to the books, records and accounts of the Corporation, and furnish such Sponsoring Company such information as it may reasonably request, to enable it to determine the accuracy and reasonableness of payments made for energy supplied under this Agreement.

9.09. *Modification of Agreement.* Absent the agreement of all parties to this Agreement, the standard for changes to provisions of this Agreement related to rates proposed by a party, a non-party or the Federal Energy Regulatory Commission (or a successor agency) acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

9.10. *Arbitration.* Any controversy, dispute or claim arising out of this Agreement or the refusal by any party hereto to perform the whole or any part thereof, shall be determined by arbitration, in the City of Columbus, Franklin County, Ohio, in accordance with the Commercial Arbitration Rules of the American Arbitration Association or any successor organization, except as otherwise set forth in this Section 9.10.

The party demanding arbitration shall serve notice in writing upon all other parties hereto, setting forth in detail the controversy, dispute or claim with respect to which arbitration is demanded, and the parties shall thereupon endeavor to agree upon an arbitration board, which shall consist of three members ("Arbitration Board"). If all the parties hereto fail so to agree within a period of thirty (30) days from the original notice, the party demanding

arbitration may, by written notice to all other parties hereto, direct that any members of the Arbitration Board that have not been agreed to by the parties shall be selected by the American Arbitration Association, or any successor organization. No person shall be eligible for appointment to the Arbitration Board who is an officer, employee, shareholder of or otherwise interested in any of the parties hereto or in the matter sought to be arbitrated.

The Arbitration Board shall afford adequate opportunity to all parties hereto to present information with respect to the controversy, dispute or claim submitted to arbitration and may request further information from any party hereto; provided, however, that the parties hereto may, by mutual agreement, specify the rules which are to govern any proceeding before the Arbitration Board and limit the matters to be considered by the Arbitration Board, in which event the Arbitration Board shall be governed by the terms and conditions of such agreement.

The determination or award of the Arbitration Board shall be made upon a determination of a majority of the members thereof. The findings and award of the Arbitration Board shall be final and conclusive with respect to the controversy, dispute or claim submitted for arbitration and shall be binding upon the parties hereto, except as otherwise provided by law. The award of the Arbitration Board shall specify the manner and extent of the division of the costs of the arbitration proceeding among the parties hereto.

9.11. *Liability.* The rights and obligations of all the parties hereto shall be several and not joint or joint and several.

9.12. *Force Majeure.* No party hereto shall be held responsible or liable for any loss or damage on account of non-delivery of energy hereunder at any time caused by an event of Force Majeure. "Force Majeure" shall mean the occurrence or non-occurrence of any act or event that could not reasonably have been expected and avoided by exercise of due diligence and foresight and such act or event is beyond the reasonable control of such party, including to the extent caused by act of God, fire, flood, explosion, strike, civil or military authority, insurrection or riot, act of the elements, or failure of equipment. For the avoidance of doubt, "Force Majeure" shall in no event be based on any Sponsoring Company's financial or economic conditions, including without limitation (i) the loss of the Sponsoring Company's markets; or (ii) the Sponsoring Company's inability economically to use or resell the Available Power or Available Energy purchased hereunder.

9.13. *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio.

9.14. *Regulatory Approvals.* This Agreement is made subject to the jurisdiction of any governmental authority or authorities having jurisdiction in the premises and the performance thereof shall be subject to the following:

- (a) The receipt of all regulatory approvals, in form and substance satisfactory to Corporation, necessary to permit Corporation to perform all the duties and obligations to be performed by Corporation hereunder.

(b) The receipt of all regulatory approvals, in form and substance satisfactory to the Sponsoring Companies, necessary to permit the Sponsoring Companies to carry out all transactions contemplated herein.

9.15. *Notices.* All notices, requests or other communications under this Agreement shall be in writing and shall be sufficient in all respects: (i) if delivered in person or by courier, upon receipt by the intended recipient or an employee that routinely accepts packages or letters from couriers or other persons for delivery to personnel at the address identified above (as confirmed by, if delivered by courier, the records of such courier), (ii) if sent by facsimile transmission, when the sender receives confirmation from the sending facsimile machine that such facsimile transmission was transmitted to the facsimile number of the addressee, or (iii) if mailed, upon the date of delivery as shown by the return receipt therefor.

9.16. *Waiver.* Performance by any party to this Agreement of any responsibility or obligation to be performed by such party or compliance by such party with any condition contained in this Agreement may by a written instrument signed by all other parties to this Agreement be waived in any one or more instances, but the failure of any party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

9.17. *Titles of Articles and Sections.* The titles of the Articles and Sections in this Agreement have been inserted as a matter of convenience of reference and are not a part of this Agreement.

9.18. *Successors and Assigns.* This Agreement may be executed in any number of counterparts, all of which shall constitute but one and the same document.

9.181 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, but a party to this Agreement may not assign this Agreement or any of its rights, title or interests in or obligations (including without limitation the assumption of debt obligations) under this Agreement, except to a successor to all or substantially all the properties and assets of such party or as provided in Section 9.182 or 9.183, without the written consent of all the other parties hereto.

9.182 Notwithstanding the provisions of Section 9.181, any Sponsoring Company shall be permitted to, upon thirty (30) days notice to the Corporation and each other Sponsoring Company, without any further action by the Corporation or the other Sponsoring Companies, assign all or part of its rights, title and interests in, and obligations under this Agreement to a Permitted Assignee, provided that, the assignee and assignor of the rights, title and interests in, and obligations under, this Agreement have executed an assignment agreement in form and substance acceptable to the Corporation

in its reasonable discretion (including, without limitation, the agreement by the Sponsoring Company assigning such rights, title and interests in, and obligations under, this Agreement to reimburse the Corporation and the other Sponsoring Companies for any fees or expenses required under any security issued, or agreement entered into, by the Corporation as a result of such assignment, including without limitation any consent fee or additional financing costs to the Corporation under the Corporation's then-existing securities or agreements resulting from such assignment).

9.183 Notwithstanding the provisions of Section 9.181, any Sponsoring Company shall be permitted to, subject to compliance with all of the requirements of this Section 9.183, assign all or part of its rights, title and interests in, and obligations under this Agreement to a Third Party without any further action by the Corporation or the other Sponsoring Companies.

(a) A Sponsoring Company (the "Transferring Sponsor") that desires to assign all or part of its rights, title and interests in, and obligations under this Agreement to a Third Party shall deliver an Offer Notice to the Corporation and each other Sponsoring Company. The Offer Notice shall be deemed to be an irrevocable offer of the subject rights, title and interests in, and obligations under this Agreement to each of the other Sponsoring Companies that is not an Affiliate of the Transferring Sponsor, which offer must be held open for no less than thirty (30) days from the date of the Offer Notice (the "Election Period").

(b) The Sponsoring Companies (other than the Transferring Sponsor and its Affiliates) shall first have the right, but not the obligation, to purchase all of the rights, title and interests in, and obligations under this Agreement described in the Offer Notice at the price and on the terms specified therein by delivering written notice of such election to the Transferring Sponsor and the Corporation within the Election Period; provided that, irrespective of the terms and conditions of the Offer Notice, a Sponsoring Company may condition its election to purchase the interest described in the Offer Notice on the receipt of approval or consent from such Sponsoring Company's Board of Directors; provided further that, written notice of such conditional election must be delivered to the Transferring Sponsor and the Corporation within the Election Period and such conditional election shall be deemed withdrawn (as if it had never been provided) unless the Sponsoring Company that delivered such conditional election subsequently delivers written notice to the Transferring Sponsor and the Corporation on or before the tenth (10th) day after the expiration of the Election Period that all necessary approval or consent of such Sponsoring Company's Board of Directors have been obtained. To the extent that more than one Sponsoring Company exercises its right to purchase all of the rights, title and interests in, and

obligations under this Agreement described in the Offer Notice in accordance with the previous sentence, such rights, title and interests in, and obligations under this Agreement shall be allotted (successively if necessary) among the Sponsoring Companies exercising such right in proportion to their respective Power Participation Ratios.

(c) Each Sponsoring Company exercising its right to purchase any rights, title and interests in, and obligations under this Agreement pursuant to this Section 9.183 may choose to have an Affiliate purchase such rights, title and interests in, and obligations under this Agreement; provided that, notwithstanding anything in this Section 9.183 to the contrary, any assignment to a Sponsoring Company or its Affiliate hereunder must comply with the requirements of Section 9.182.

(d) If one or more Sponsoring Companies have elected to purchase all of the rights, title and interests in, and obligations under this Agreement of the Transferring Sponsor pursuant to the Offer Notice, the assignment of such rights, title and interests in, and obligations under this Agreement shall be consummated as soon as practical after the delivery of the election notices, but in any event no later than fifteen (15) days after the filing and receipt, as applicable, of all necessary governmental filings, consents or other approvals and the expiration of all applicable waiting periods. At the closing of the purchase of such rights, title and interests in, and obligations under this Agreement from the Transferring Sponsor, the Transferring Sponsor shall provide representations and warranties customary for transactions of this type, including those as to its title to such securities and that there are no liens or other encumbrances on such securities (other than pursuant to this Agreement) and shall sign such documents as may reasonably be requested by the Corporation and the other Sponsoring Companies. The Sponsoring Companies or their Affiliates shall only be required to pay cash for the rights, title and interests in, and obligations under this Agreement being assigned by the Transferring Sponsor.

(e) To the extent that the Sponsoring Companies have not elected to purchase all of the rights, title and interests in, and obligations under this Agreement described in the Offer Notice, the Transferring Sponsor may, within one-hundred and eighty (180) days after the later of the expiration of the Election Period or the deemed withdrawal of a conditional election by a Sponsoring Company under Section 9.183(b) hereof (if applicable), enter into a definitive agreement to, assign such rights, title and interests in, and obligations under this Agreement to a Third Party at a price no less than 92.5% of the purchase price specified in the Offer Notice and on other material terms and conditions no more

favorable to the such Third Party than those specified in the Offer Notice; provided that such purchases shall be conditioned upon: (i) such Third Party having long-term unsecured non-credit enhanced indebtedness, as of the date of such assignment, with a Standard & Poor's credit rating of at least BBB- and a Moody's Investors Service, Inc. credit rating of at least Baa3 (provided that, if such Third Party's long-term unsecured non-credit enhanced indebtedness is not currently rated by one of Standard & Poor's or Moody, such Third Party's long-term unsecured non-credit enhanced indebtedness, as of the date of such assignment, must have either a Standard & Poor's credit rating of at least BBB- or a Moody's Investors Service, Inc. credit rating of at least Baa3); (ii) the filing or receipt, as applicable, of any necessary governmental filings, consents or other approvals; (iii) the determination by counsel for the Corporation that the assignment of the rights, title or interests in, or obligations under, this Agreement to such Third Party would not cause a termination, default, loss or payment obligation under any security issued, or agreement entered into, by the Corporation prior to such transfer; and (iv) such Third Party executing a counterpart of this Agreement, and both such Third Party and the Sponsoring Company which is assigning its rights, title and interests in, and obligations under, this Agreement executing such other documents as may be reasonably requested by the Corporation (including, without limitation, an assignment agreement in form and substance acceptable to the Corporation in its reasonable discretion and containing the agreement by such Sponsoring Company to reimburse the Corporation and the other Sponsoring Companies for any fees or expenses required under any security issued, or agreement entered into, by the Corporation as a result of such assignment, including without limitation any consent fee or additional financing costs to the Corporation under the Corporation's then-existing securities or agreements resulting from such assignment). In the event that the Sponsoring Company and a Third Party have not entered into a definitive agreement to assign the interests specified in the Offer Notice to such Third Party within the later of one-hundred and eighty (180) days after the expiration of the Election Period or the deemed withdrawal of a conditional election by a Sponsoring Company under Section 9.183(b) hereof (if applicable) for any reason or if either the price to be paid by such Third Party would be less than 92.5% of the purchase price specified in the Offer Notice or the other material terms of such assignment would be more favorable to such Third Party than the terms specified in the Offer Notice, then the restrictions provided for herein shall again be effective, and no assignment of any rights, title and interests in, and obligations under this Agreement may be made thereafter without again offering the same to Sponsoring Companies in accordance with this Section 9.183.

ARTICLE 10

REPRESENTATIONS AND WARRANTIES

10.01. *Representations and Warranties.* Each Sponsoring Company hereby represents and warrants for itself, on and as of the date of this Agreement, as follows:

- (a) it is duly organized, validly existing and in good standing under the laws of its state of organization, with full corporate power, authority and legal right to execute and deliver this Agreement and to perform its obligations hereunder;
- (b) it has duly authorized, executed and delivered this Agreement, and upon the execution and delivery by all of the parties hereto, this Agreement will be in full force and effect, and will constitute a legal, valid and binding obligation of such Sponsoring Company, enforceable in accordance with the terms hereof, except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally;
- (c) Except as set forth in Schedule 10.01(c) hereto, no consents or approvals of, or filings or registrations with, any governmental authority or public regulatory authority or agency, federal state or local, or any other entity or person are required in connection with the execution, delivery and performance by it of this Agreement, except for those which have been duly obtained or made and are in full force and effect, have not been revoked, and are not the subject of a pending appeal; and
- (d) the execution, delivery and performance by it of this Agreement will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under its charter or by-laws or any indenture or other material agreement or instrument to which it is a party or by which it may be bound or result in the imposition of any liens, claims or encumbrances on any of its property.

ARTICLE 11

EVENTS OF DEFAULT AND REMEDIES

11.01. *Payment Default.* If any Sponsoring Company fails to make full payment to Corporation under this Agreement when due and such failure is not remedied within ten (10) days after receipt of notice of such failure from the Corporation, then such failure shall constitute a "Payment Default" on the part of such Sponsoring Company. Upon a Payment Default, the

Corporation may suspend service to the Sponsoring Company that has caused such Payment Default for all or part of the period of continuing default (and such Sponsoring Company shall be deemed to have notified the Corporation and the other Sponsoring Companies that any Available Energy shall be available for scheduling by such other Sponsoring Companies in accordance with Section 4.032). The Corporation's right to suspend service shall not be exclusive, but shall be in addition to all remedies available to the Corporation at law or in equity. No suspension of service or termination of this Agreement shall relieve any Sponsoring Company of its obligations under this Agreement, which are absolute and unconditional.

11.02. *Performance Default.* If the Corporation or any Sponsoring Company fails to comply in any material respect with any of the material terms, conditions and covenants of this Agreement (and such failure does not constitute a Payment Default under Section 11.01), the Corporation (in the case of a default by any Sponsoring Company) and any Sponsoring Company (in the case of a default by the Corporation) shall give the defaulting party written notice of the default ("Performance Default"). To the extent that a Performance Default is not cured within thirty (30) days after receipt of notice thereof (or within such longer period of time, not to exceed sixty (60) additional days, as necessary for the defaulting party with the exercise of reasonable diligence to cure such default), then the Corporation (in the case of a default by any Sponsoring Company) and any Sponsoring Company (in the case of a default by the Corporation) shall have all of the rights and remedies provided at law and in equity, other than termination of this Agreement or any release of the obligation of the Sponsoring Companies to make payments pursuant to this Agreement, which obligation shall remain absolute and unconditional.

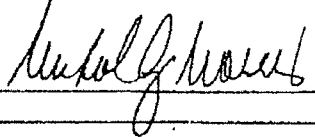
11.03. *Waiver.* No waiver by the Corporation or any Sponsoring Company of any one or more defaults in the performance of any provision of this Agreement shall be construed as a waiver of any other default or defaults, whether of a like kind or different nature.

11.04. *Limitation of Liability and Damages.* TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER THE CORPORATION, NOR ANY SPONSORING COMPANY SHALL BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST REVENUES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Inter-Company Power Agreement to be duly executed and delivered by their proper and duly authorized officers as of September 10, 2010.

**OHIO VALLEY ELECTRIC
CORPORATION**

By 
Its _____

**ALLEGHENY ENERGY SUPPLY
COMPANY, L.L.C.**

By _____
Its _____

APPALACHIAN POWER COMPANY

By _____
Its _____

**BUCKEYE POWER GENERATING,
LLC**

By _____
Its _____

**COLUMBUS SOUTHERN POWER
COMPANY**

By _____
Its _____

**THE DAYTON POWER AND
LIGHT COMPANY**

By _____
Its _____

DUKE ENERGY OHIO, INC.

By _____
Its _____

**FIRSTENERGY GENERATION
CORP.**

By _____
Its _____

**INDIANA MICHIGAN POWER
COMPANY**

By _____
Its _____

**KENTUCKY UTILITIES
COMPANY**

By _____
Its _____

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Inter-Company Power Agreement to be duly executed and delivered by their proper and duly authorized officers as of September 10, 2010.


**OHIO VALLEY ELECTRIC
CORPORATION**

By _____
Its _____

**ALLEGHENY ENERGY SUPPLY
COMPANY, L.L.C.**

By _____
Its _____

APPALACHIAN POWER COMPANY

By 
Its _____

**BUCKEYE POWER GENERATING,
LLC**

By _____
Its _____

**COLUMBUS SOUTHERN POWER
COMPANY**

By _____
Its _____

**THE DAYTON POWER AND
LIGHT COMPANY**

By _____
Its _____

DUKE ENERGY OHIO, INC.

By _____
Its _____

**FIRSTENERGY GENERATION
CORP.**

By _____
Its _____

**INDIANA MICHIGAN POWER
COMPANY**

By _____
Its _____

**KENTUCKY UTILITIES
COMPANY**

By _____
Its _____

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Inter-Company Power Agreement to be duly executed and delivered by their proper and duly authorized officers as of September 10, 2010.

**OHIO VALLEY ELECTRIC
CORPORATION**

By _____
Its _____

APPALACHIAN POWER COMPANY

By _____
Its _____

**COLUMBUS SOUTHERN POWER
COMPANY**

By  _____
Its _____

DUKE ENERGY OHIO, INC.

By _____
Its _____

**INDIANA MICHIGAN POWER
COMPANY**

By _____
Its _____

**ALLEGHENY ENERGY SUPPLY
COMPANY, L.L.C.**

By _____
Its _____

**BUCKEYE POWER GENERATING,
LLC**

By _____
Its _____

**THE DAYTON POWER AND
LIGHT COMPANY**

By _____
Its _____

**FIRSTENERGY GENERATION
CORP.**

By _____
Its _____

**KENTUCKY UTILITIES
COMPANY**

By _____
Its _____

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Inter-Company Power Agreement to be duly executed and delivered by their proper and duly authorized officers as of September 10, 2010.

**OHIO VALLEY ELECTRIC
CORPORATION**

By _____
Its _____

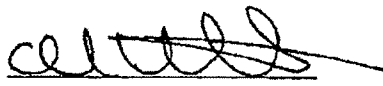
APPALACHIAN POWER COMPANY

By _____
Its _____

**COLUMBUS SOUTHERN POWER
COMPANY**

By _____
Its _____

DUKE ENERGY OHIO, INC.

By 
Its VICE PRESIDENT

**INDIANA MICHIGAN POWER
COMPANY**

By _____
Its _____

**ALLEGHENY ENERGY SUPPLY
COMPANY, L.L.C.**

By _____
Its _____

**BUCKEYE POWER GENERATING,
LLC**

By _____
Its _____

**THE DAYTON POWER AND
LIGHT COMPANY**

By _____
Its _____

**FIRSTENERGY GENERATION
CORP.**

By _____
Its _____

**KENTUCKY UTILITIES
COMPANY**

By _____
Its _____

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Inter-Company Power Agreement to be duly executed and delivered by their proper and duly authorized officers as of September 10, 2010.

**OHIO VALLEY ELECTRIC
CORPORATION**

By _____
Its _____

**ALLEGHENY ENERGY SUPPLY
COMPANY, L.L.C.**

By _____
Its _____

APPALACHIAN POWER COMPANY

By _____
Its _____

**BUCKEYE POWER GENERATING,
LLC**

By _____
Its _____

**COLUMBUS SOUTHERN POWER
COMPANY**

By _____
Its _____

**THE DAYTON POWER AND
LIGHT COMPANY**

By _____
Its _____

DUKE ENERGY OHIO, INC.

By _____
Its _____

**FIRSTENERGY GENERATION
CORP.**

By _____
Its _____

**INDIANA MICHIGAN POWER
COMPANY**

By *M. G. Lewis*
Its *Vice President*

**KENTUCKY UTILITIES
COMPANY**

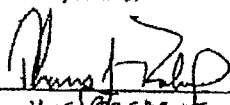
By _____
Its _____

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Inter-Company Power Agreement to be duly executed and delivered by their proper and duly authorized officers as of September 10, 2010.

**OHIO VALLEY ELECTRIC
CORPORATION**

By _____
Its _____

**ALLEGHENY ENERGY SUPPLY
COMPANY, L.L.C.**

By 
Its VICE PRESIDENT

APPALACHIAN POWER COMPANY

By _____
Its _____

**BUCKEYE POWER GENERATING,
LLC**

By _____
Its _____

**COLUMBUS SOUTHERN POWER
COMPANY**

By _____
Its _____

**THE DAYTON POWER AND
LIGHT COMPANY**

By _____
Its _____

DUKE ENERGY OHIO, INC.

By _____
Its _____

**FIRSTENERGY GENERATION
CORP.**

By _____
Its _____

**INDIANA MICHIGAN POWER
COMPANY**

By _____
Its _____

**KENTUCKY UTILITIES
COMPANY**

By _____
Its _____

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Inter-Company Power Agreement to be duly executed and delivered by their proper and duly authorized officers as of September 10, 2010.

**OHIO VALLEY ELECTRIC
CORPORATION**

By _____
Its _____

APPALACHIAN POWER COMPANY

By _____
Its _____

**COLUMBUS SOUTHERN POWER
COMPANY**

By _____
Its _____

DUKE ENERGY OHIO, INC.

By _____
Its _____

**INDIANA MICHIGAN POWER
COMPANY**

By _____
Its _____

**ALLEGHENY ENERGY SUPPLY
COMPANY, L.L.C.**

By _____
Its _____

**BUCKEYE POWER GENERATING,
LLC**

By Anthony J. Ahern
Its President & CEO

**THE DAYTON POWER AND
LIGHT COMPANY**

By _____
Its _____

**FIRSTENERGY GENERATION
CORP.**

By _____
Its _____

**KENTUCKY UTILITIES
COMPANY**

By _____
Its _____

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Inter-Company Power Agreement to be duly executed and delivered by their proper and duly authorized officers as of September 10, 2010.

**OHIO VALLEY ELECTRIC
CORPORATION**

By _____
Its _____

APPALACHIAN POWER COMPANY

By _____
Its _____

**COLUMBUS SOUTHERN POWER
COMPANY**

By _____
Its _____

DUKE ENERGY OHIO, INC.

By _____
Its _____

**INDIANA MICHIGAN POWER
COMPANY**

By _____
Its _____

**ALLEGHENY ENERGY SUPPLY
COMPANY, L.L.C.**

By _____
Its _____

**BUCKEYE POWER GENERATING,
LLC**

By _____
Its _____

**THE DAYTON POWER AND
LIGHT COMPANY**

By *Gary Stephenson*
Its EXECUTIVE VICE PRESIDENT
Gary Stephenson

**FIRSTENERGY GENERATION
CORP.**

By _____
Its _____

**KENTUCKY UTILITIES
COMPANY**

By _____
Its _____

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Inter-Company Power Agreement to be duly executed and delivered by their proper and duly authorized officers as of September 10, 2010.

OHIO VALLEY ELECTRIC
CORPORATION

ALLEGHENY ENERGY SUPPLY
COMPANY, L.L.C.

By _____
Its _____

By _____
Its _____

APPALACHIAN POWER COMPANY.

BUCKEYE POWER GENERATING,
LLC

By _____
Its _____

By _____
Its _____

COLUMBUS SOUTHERN POWER
COMPANY

THE DAYTON POWER AND
LIGHT COMPANY

By _____
Its _____

By _____
Its _____

DUKE ENERGY OHIO, INC.

FIRSTENERGY GENERATION
CORP.

By _____
Its _____

By Mary R. Lerdahl
Its President

INDIANA MICHIGAN POWER
COMPANY

KENTUCKY UTILITIES
COMPANY

By _____
Its _____

By _____
Its _____

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Inter-Company Power Agreement to be duly executed and delivered by their proper and duly authorized officers as of September 10, 2010.

**OHIO VALLEY ELECTRIC
CORPORATION**

By _____
Its _____

APPALACHIAN POWER COMPANY

By _____
Its _____

**COLUMBUS SOUTHERN POWER
COMPANY**

By _____
Its _____

DUKE ENERGY OHIO, INC.

By _____
Its _____

**INDIANA MICHIGAN POWER
COMPANY**

By _____
Its _____

**ALLEGHENY ENERGY SUPPLY
COMPANY, L.L.C.**

By _____
Its _____

**BUCKEYE POWER GENERATING,
LLC**

By _____
Its _____

**THE DAYTON POWER AND
LIGHT COMPANY**

By _____
Its _____

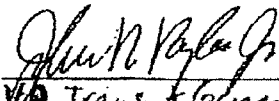
**FIRSTENERGY GENERATION
CORP.**

By _____
Its _____

**KENTUCKY UTILITIES
COMPANY**

By *[Signature]*
Its *5th Vice President*

LOUISVILLE GAS AND ELECTRIC
COMPANY

By 
Its VP Trans & Generation
SERVICES

MONONGAHELA POWER
COMPANY

By _____
Its _____

OHIO POWER COMPANY

By _____
Its _____

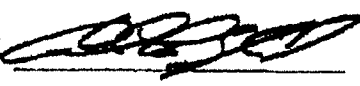
SOUTHERN INDIANA GAS AND
ELECTRIC COMPANY

By _____
Its _____

LOUISVILLE GAS AND ELECTRIC
COMPANY

By _____
Its _____

OHIO POWER COMPANY

By  _____
Its _____

MONONGAHELA POWER
COMPANY

By _____
Its _____

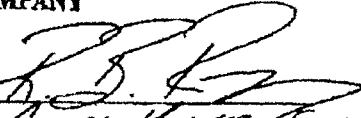
SOUTHERN INDIANA GAS AND
ELECTRIC COMPANY

By _____
Its _____

LOUISVILLE GAS AND ELECTRIC
COMPANY

By _____
Its _____

MONONGAHELA POWER
COMPANY

By 
Its General Manager, Electric Supply

OHIO POWER COMPANY

By _____
Its _____

SOUTHERN INDIANA GAS AND
ELECTRIC COMPANY

By _____
Its _____

**LOUISVILLE GAS AND ELECTRIC
COMPANY**

By _____
Its _____

**MONONGAHELA POWER
COMPANY**

By _____
Its _____

OHIO POWER COMPANY

By _____
Its _____

**SOUTHERN INDIANA GAS AND
ELECTRIC COMPANY**

By Donald E. Christman
Its President

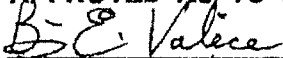
PENINSULA GENERATION COOPERATIVE



By Daniel H. DeCoeur

Its President

APPROVED AS TO FORM:



BRIAN E. VALICE
ATTORNEY FOR PENINSULA
GENERATION COOPERATIVE

SCHEDULE 10.01(c)

Allegheny Energy Supply Company, L.L.C.

and

Monongahela Power Company

Filing with, or consent or approval of, the Federal Energy Regulatory Commission

SCHEDULE 10.01(c)

Appalachian Power Company

Filing with, or consent or approval of, the Federal Energy Regulatory Commission

Approval of the Virginia State Corporation Commission

Filing with the Public Service Commission of West Virginia

SCHEDULE 10.01(c)

Buckeye Power Generating, LLC

None

SCHEDULE 10.01(c)

Columbus Southern Power Company

Filing with, or consent or approval of, the Federal Energy Regulatory Commission

SCHEDULE 10.01(c)

The Dayton Power and Light Company

Filing with, or consent or approval of, the Federal Energy Regulatory Commission

SCHEDULE 10.01(c)

Duke Energy Ohio, Inc.

Filing with, or consent or approval of, the Federal Energy Regulatory Commission

SCHEDULE 10.01(c)

FirstEnergy Generation Corp.

Filing with, or consent or approval of, the Federal Energy Regulatory Commission

SCHEDULE 10.01(c)

Indiana Michigan Power Company

Filing with, or consent or approval of, the Federal Energy Regulatory Commission

Filing with the Indiana Utility Regulatory Commission

SCHEDULE 10.01(c)

Kentucky Utilities Company

Filing with, or consent or approval of, the Federal Energy Regulatory Commission

Consent or approval of, or filings or registrations with, the Kentucky Public Service Commission
may be required

SCHEDULE 10.01(c)

Louisville Gas and Electric Company

Filing with, or consent or approval of, the Federal Energy Regulatory Commission

Consent or approval of, or filings or registrations with, the Kentucky Public Service Commission
may be required

SCHEDULE 10.01(c)

Ohio Power Company

Filing with, or consent or approval of, the Federal Energy Regulatory Commission

SCHEDULE 10.01(c)

None

Peninsula Generation Cooperative

SCHEDULE 10.01(c)

Southern Indiana Gas and Electric Company

Filing with, or consent or approval of, the Federal Energy Regulatory Commission

Duke Energy Ohio
Case No. 14-841-EL-SSO, 14-842-EL-ATA
OCC Ninth Set Production of Documents
Date Received: July 25, 2014

OCC-POD-09-065

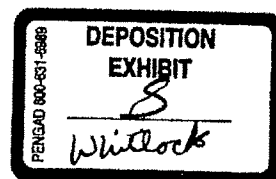
REQUEST:

Please provide any and all documentation in your possession or control regarding requests for consent by OVEC members to sell or transfer their interest in OVEC under Section 9.18 (and its subparts) of the Inter-Company Power Agreement that have been made since 2010. This documentation should include, but not be limited to, all correspondence (including electronic correspondence and e-mail), regarding such requests, all documents reflecting any party's consent or withholding or denial of consent to such requests, all OVEC corporate documents indicating whether consent was granted or denied to such requests, and all internal documents Duke has regarding such requests, Duke's position on such requests, and the disposition of such requests. "Duke" refers to both Duke Energy Corporation and Duke Energy Ohio.

RESPONSE:

Objection. This Document Request seeks to elicit information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence. Decisions surrounding any Sponsoring Company's actions in respect of a sale or transfer of their interest in OVEC are not relevant to these proceedings and this misdirected question of the Office of Ohio Consumers' Counsel must, therefore, be seen as intended to harass. This Document Request is also objectionable to the extent it seeks to elicit information that is protected by the attorney client privilege and/or work product doctrine or is otherwise business proprietary, trade secret, and confidential.

PERSON RESPONSIBLE: Legal



Duke Energy Ohio
Case No. 14-841-EL-SSO, 14-842-EL-ATA
OCC Fifth Set Production of Documents
Date Received: July 14, 2014

OCC-POD-05-048

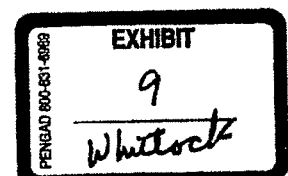
REQUEST:

Referring to Duke's response to INT-111, part (d), please provide all documents relating to Duke's consideration and decision making regarding disposition of Duke's entitlement to OVEC.

RESPONSE:

Objection. This Document Request is overly broad, unduly burdensome, irrelevant, and not otherwise reasonably calculated to lead to the discovery of admissible evidence. Further, this Document seeks to elicit information that is protected from disclosure in that it is attorney-client communication or attorney work product. Without waiving said objection, to the extent discoverable and in the spirit of discovery, no non-privileged information exists.

PERSON RESPONSIBLE: Legal



THIS FILING IS	
Item 1: <input checked="" type="checkbox"/> An Initial (Original) Submission	OR <input type="checkbox"/> Resubmission No. _____

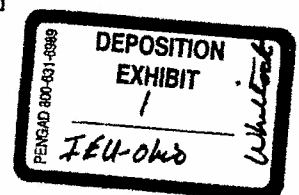
Form 1 Approved
OMB No.1902-0021
(Expires 12/31/2014)
Form 1-F Approved
OMB No.1902-0029
(Expires 12/31/2014)
Form 3-Q Approved
OMB No.1902-0205
(Expires 05/31/2014)



FERC FINANCIAL REPORT

FERC FORM No. 1: Annual Report of Major Electric Utilities, Licensees and Others and Supplemental Form 3-Q: Quarterly Financial Report

These reports are mandatory under the Federal Power Act, Sections 3, 4(a), 304 and 309, and 18 CFR 141.1 and 141.400. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider these reports to be of confidential nature



Exact Legal Name of Respondent (Company) Ohio Valley Electric Corporation	Year/Period of Report End of <u>2012/Q4</u>
--	--

INSTRUCTIONS FOR FILING FERC FORM NOS. 1 and 3-Q

GENERAL INFORMATION

I. Purpose

FERC Form No. 1 (FERC Form 1) is an annual regulatory requirement for Major electric utilities, licensees and others (18 C.F.R. § 141.1). FERC Form No. 3-Q (FERC Form 3-Q) is a quarterly regulatory requirement which supplements the annual financial reporting requirement (18 C.F.R. § 141.400). These reports are designed to collect financial and operational information from electric utilities, licensees and others subject to the jurisdiction of the Federal Energy Regulatory Commission. These reports are also considered to be non-confidential public use forms.

II. Who Must Submit

Each Major electric utility, licensee, or other, as classified in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject To the Provisions of The Federal Power Act (18 C.F.R. Part 101), must submit FERC Form 1 (18 C.F.R. § 141.1), and FERC Form 3-Q (18 C.F.R. § 141.400).

Note: Major means having, in each of the three previous calendar years, sales or transmission service that exceeds one of the following:

- (1) one million megawatt hours of total annual sales,
- (2) 100 megawatt hours of annual sales for resale,
- (3) 500 megawatt hours of annual power exchanges delivered, or
- (4) 500 megawatt hours of annual wheeling for others (deliveries plus losses).

III. What and Where to Submit

(a) Submit FERC Forms 1 and 3-Q electronically through the forms submission software. Retain one copy of each report for your files. Any electronic submission must be created by using the forms submission software provided free by the Commission at its web site: <http://www.ferc.gov/docs-filing/eforms/form-1/elec-subm-soft.asp>. The software is used to submit the electronic filing to the Commission via the Internet.

(b) The Corporate Officer Certification must be submitted electronically as part of the FERC Forms 1 and 3-Q filings.

(c) Submit immediately upon publication, by either eFiling or mail, two (2) copies to the Secretary of the Commission, the latest Annual Report to Stockholders. Unless eFiling the Annual Report to Stockholders, mail the stockholders report to the Secretary of the Commission at:

Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

(d) For the CPA Certification Statement, submit within 30 days after filing the FERC Form 1, a letter or report (not applicable to filers classified as Class C or Class D prior to January 1, 1984). The CPA Certification Statement can be either eFiled or mailed to the Secretary of the Commission at the address above.

The CPA Certification Statement should:

- a) Attest to the conformity, in all material aspects, of the below listed (schedules and pages) with the Commission's applicable Uniform System of Accounts (including applicable notes relating thereto and the Chief Accountant's published accounting releases), and
- b) Be signed by independent certified public accountants or an independent licensed public accountant certified or licensed by a regulatory authority of a State or other political subdivision of the U. S. (See 18 C.F.R. §§ 41.10-41.12 for specific qualifications.)

<u>Reference Schedules</u>	<u>Pages</u>
Comparative Balance Sheet	110-113
Statement of Income	114-117
Statement of Retained Earnings	118-119
Statement of Cash Flows	120-121
Notes to Financial Statements	122-123

- e) The following format must be used for the CPA Certification Statement unless unusual circumstances or conditions, explained in the letter or report, demand that it be varied. Insert parenthetical phrases only when exceptions are reported.

"In connection with our regular examination of the financial statements of _____ for the year ended on which we have reported separately under date of _____, we have also reviewed schedules

_____ of FERC Form No. 1 for the year filed with the Federal Energy Regulatory Commission, for conformity in all material respects with the requirements of the Federal Energy Regulatory Commission as set forth in its applicable Uniform System of Accounts and published accounting releases. Our review for this purpose included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Based on our review, in our opinion the accompanying schedules identified in the preceding paragraph (except as noted below) conform in all material respects with the accounting requirements of the Federal Energy Regulatory Commission as set forth in its applicable Uniform System of Accounts and published accounting releases."

The letter or report must state which, if any, of the pages above do not conform to the Commission's requirements. Describe the discrepancies that exist.

- (f) Filers are encouraged to file their Annual Report to Stockholders, and the CPA Certification Statement using eFiling. To further that effort, new selections, "Annual Report to Stockholders," and "CPA Certification Statement" have been added to the dropdown "pick list" from which companies must choose when eFiling. Further instructions are found on the Commission's website at <http://www.ferc.gov/help/how-to.asp>.

- (g) Federal, State and Local Governments and other authorized users may obtain additional blank copies of FERC Form 1 and 3-Q free of charge from <http://www.ferc.gov/docs-filing/eforms/form-1/form-1.pdf> and <http://www.ferc.gov/docs-filing/eforms.asp#3Q-gas>.

IV. When to Submit:

FERC Forms 1 and 3-Q must be filed by the following schedule:

- a) FERC Form 1 for each year ending December 31 must be filed by April 18th of the following year (18 CFR § 141.1), and
- b) FERC Form 3-Q for each calendar quarter must be filed within 60 days after the reporting quarter (18 C.F.R. § 141.400).

V. Where to Send Comments on Public Reporting Burden.

The public reporting burden for the FERC Form 1 collection of information is estimated to average 1,144 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data-needed, and completing and reviewing the collection of information. The public reporting burden for the FERC Form 3-Q collection of information is estimated to average 150 hours per response.

Send comments regarding these burden estimates or any aspect of these collections of information, including suggestions for reducing burden, to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 (Attention: Information Clearance Officer); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission). No person shall be subject to any penalty if any collection of information does not display a valid control number (44 U.S.C. § 3512 (a)).

GENERAL INSTRUCTIONS

- I. Prepare this report in conformity with the Uniform System of Accounts (18 CFR Part 101) (USofA). Interpret all accounting words and phrases in accordance with the USofA.
- II. Enter in whole numbers (dollars or MWH) only, except where otherwise noted. (Enter cents for averages and figures per unit where cents are important. The truncating of cents is allowed except on the four basic financial statements where rounding is required.) The amounts shown on all supporting pages must agree with the amounts entered on the statements that they support. When applying thresholds to determine significance for reporting purposes, use for balance sheet accounts the balances at the end of the current reporting period, and use for statement of income accounts the current year's year to date amounts.
- III. Complete each question fully and accurately, even if it has been answered in a previous report. Enter the word "None" where it truly and completely states the fact.
- IV. For any page(s) that is not applicable to the respondent, omit the page(s) and enter "NA," "NONE," or "Not Applicable" in column (d) on the List of Schedules, pages 2 and 3.
- V. Enter the month, day, and year for all dates. Use customary abbreviations. **The "Date of Report" included in the header of each page is to be completed only for resubmissions** (see VII. below).
- VI. Generally, except for certain schedules, all numbers, whether they are expected to be debits or credits, must be reported as positive. Numbers having a sign that is different from the expected sign must be reported by enclosing the numbers in parentheses.
- VII. For any resubmissions, submit the electronic filing using the form submission software only. Please explain the reason for the resubmission in a footnote to the data field.
- VIII. Do not make references to reports of previous periods/years or to other reports in lieu of required entries, except as specifically authorized.
- IX. Wherever (schedule) pages refer to figures from a previous period/year, the figures reported must be based upon those shown by the report of the previous period/year, or an appropriate explanation given as to why the different figures were used.

Definitions for statistical classifications used for completing schedules for transmission system reporting are as follows:

FNS - Firm Network Transmission Service for Self. "Firm" means service that can not be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. "Network Service" is Network Transmission Service as described in Order No. 888 and the Open Access Transmission Tariff. "Self" means the respondent.

FNO - Firm Network Service for Others. "Firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. "Network Service" is Network Transmission Service as described in Order No. 888 and the Open Access Transmission Tariff.

LFP - for Long-Term Firm Point-to-Point Transmission Reservations. "Long-Term" means one year or longer and "firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. "Point-to-Point Transmission Reservations" are described in Order No. 888 and the Open Access Transmission Tariff. For all transactions identified as LFP, provide in a footnote the

termination date of the contract defined as the earliest date either buyer or seller can unilaterally cancel the contract.

OLF - Other Long-Term Firm Transmission Service. Report service provided under contracts which do not conform to the terms of the Open Access Transmission Tariff. "Long-Term" means one year or longer and "firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. For all transactions identified as OLF, provide in a footnote the termination date of the contract defined as the earliest date either buyer or seller can unilaterally get out of the contract.

SFP - Short-Term Firm Point-to-Point Transmission Reservations. Use this classification for all firm point-to-point transmission reservations, where the duration of each period of reservation is less than one-year.

NF - Non-Firm Transmission Service, where firm means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions.

OS - Other Transmission Service. Use this classification only for those services which can not be placed in the above-mentioned classifications, such as all other service regardless of the length of the contract and service FERC Form. Describe the type of service in a footnote for each entry.

AD - Out-of-Period Adjustments. Use this code for any accounting adjustments or "true-ups" for service provided in prior reporting periods. Provide an explanation in a footnote for each adjustment.

DEFINITIONS

I. Commission Authorization (Comm. Auth.) -- The authorization of the Federal Energy Regulatory Commission, or any other Commission. Name the commission whose authorization was obtained and give date of the authorization.

II. Respondent -- The person, corporation, licensee, agency, authority, or other Legal entity or instrumentality in whose behalf the report is made.

EXCERPTS FROM THE LAW

Federal Power Act, 16 U.S.C. § 791a-825r

Sec. 3. The words defined in this section shall have the following meanings for purposes of this Act, to wit:

(3) 'Corporation' means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include 'municipalities, as hereinafter defined;

(4) 'Person' means an individual or a corporation;

(5) 'Licensee, means any person, State, or municipality Licensed under the provisions of section 4 of this Act, and any assignee or successor in interest thereof;

(7) 'municipality means a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the Laws thereof to carry and the business of developing, transmitting, unitizing, or distributing power;

(11) "project' means. a complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or fore bay reservoirs directly connected therewith, the primary line or lines transmitting power there from to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water rights, rights-of-way, ditches, dams, reservoirs, Lands, or interest in Lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit;

"Sec. 4. The Commission is hereby authorized and empowered

(a) To make investigations and to collect and record data concerning the utilization of the water 'resources of any region to be developed, the water-power industry and its relation to other industries and to interstate or foreign commerce, and concerning the location, capacity, development -costs, and relation to markets of power sites; ... to the extent the Commission may deem necessary or useful for the purposes of this Act."

"Sec. 304. (a) Every Licensee and every public utility shall file with the Commission such annual and other periodic or special* reports as the Commission may by rules and regulations or other prescribe as necessary or appropriate to assist the Commission in the -proper administration of this Act. The Commission may prescribe the manner and FERC Form in which such reports shall be made, and require from such persons specific answers to all questions upon which the Commission may need information. The Commission may require that such reports shall include, among other things, full information as to assets and Liabilities, capitalization, net investment, and reduction thereof, gross receipts, interest due and paid, depreciation, and other reserves, cost of project and other facilities, cost of maintenance and operation of the project and other facilities, cost of renewals and replacement of the project works and other facilities, depreciation, generation, transmission, distribution, delivery, use, and sale of electric energy. The Commission may require any such person to make adequate provision for currently determining such costs and other facts. Such reports shall be made under oath unless the Commission otherwise specifies*.10

"Sec. 309. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this Act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this Act; and may prescribe the FERC Form or FERC Forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed..."

General Penalties

The Commission may assess up to \$1 million per day per violation of its rules and regulations. *See* FPA § 316(a) (2005), 16 U.S.C. § 825o(a).



Deloitte & Touche LLP
111 Monument Circle
Suite 2000
Indianapolis, IN 46204-5120
USA
Tel: +1 317 464 8600
Fax: +1 317 464 8500
www.deloitte.com

INDEPENDENT AUDITORS' REPORT

Ohio Valley Electric Corporation
Piketon, Ohio

We have audited the accompanying financial statements of Ohio Valley Electric Corporation (the "Company"), which comprise the balance sheet — regulatory basis as of December 31, 2012, and the related statements of income — regulatory basis, retained earnings — regulatory basis, and cash flows — regulatory basis for the year then ended, included on pages 110 through 123 of the accompanying Federal Energy Regulatory Commission Form 1, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with the accounting requirements of the Federal Energy Regulatory Commission as set forth in its applicable Uniform System of Accounts and published accounting releases; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Company's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the regulatory-basis financial statements referred to above present fairly, in all material respects, the assets, liabilities, and proprietary capital of the Company as of December 31, 2012, and the results of its operations and its cash flows for the year then ended in accordance with the accounting requirements of the Federal Energy Regulatory Commission as set forth in its applicable Uniform System of Accounts and published accounting releases.

Basis of Accounting


As discussed in Note 1 to the financial statements, these financial statements were prepared in accordance with the accounting requirements of the Federal Energy Regulatory Commission as set forth in its applicable Uniform System of Accounts and published accounting releases, which is a basis of accounting other than accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

Restricted Use

This report is intended solely for the information and use of the board of directors and management of the Company and for filing with the Federal Energy Regulatory Commission and is not intended to be and should not be used by anyone other than these specified parties.

May 15, 2013

**FERC FORM NO. 1/3-Q:
REPORT OF MAJOR ELECTRIC UTILITIES, LICENSEES AND OTHER**

IDENTIFICATION		
01 Exact Legal Name of Respondent Ohio Valley Electric Corporation		02 Year/Period of Report End of <u>2012/Q4</u>
03 Previous Name and Date of Change (if name changed during year) / /		
04 Address of Principal Office at End of Period (Street, City, State, Zip Code) 3932 U.S. Route 23, Piketon, Ohio 45661		
05 Name of Contact Person John D. Brodt		06 Title of Contact Person Secretary and Treasurer
07 Address of Contact Person (Street, City, State, Zip Code) 3932 U.S. Route 23, Piketon, Ohio 45661		
08 Telephone of Contact Person, including Area Code (740) 289-7200	09 This Report Is (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	10 Date of Report (Mo, Da, Yr) 12/31/2012
ANNUAL CORPORATE OFFICER CERTIFICATION		
<p>The undersigned officer certifies that:</p> <p>I have examined this report and to the best of my knowledge, information, and belief all statements of fact contained in this report are correct statements of the business affairs of the respondent and the financial statements, and other financial information contained in this report, conform in all material respects to the Uniform System of Accounts.</p>		
01 Name John D. Brodt	03 Signature  John D. Brodt	04 Date Signed (Mo, Da, Yr) 05/15/2013
02 Title Chief Financial Officer, Secretary		
<p>Title 18, U.S.C. 1001 makes it a crime for any person to knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.</p>		

Name of Respondent Ohio Valley Electric Corporation		This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 12/31/2012	Year/Period of Report End of 2012/Q4
LIST OF SCHEDULES (Electric Utility)				
Enter in column (c) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA".				
Line No.	Title of Schedule (a)	Reference Page No. (b)	Remarks (c)	
1	General Information	101		
2	Control Over Respondent	102		
3	Corporations Controlled by Respondent	103		
4	Officers	104		
5	Directors	105		
6	Information on Formula Rates	106(a)(b)	NA	
7	Important Changes During the Year	108-109		
8	Comparative Balance Sheet	110-113		
9	Statement of Income for the Year	114-117		
10	Statement of Retained Earnings for the Year	118-119		
11	Statement of Cash Flows	120-121		
12	Notes to Financial Statements	122-123		
13	Statement of Accum Comp Income, Comp Income, and Hedging Activities	122(a)(b)		
14	Summary of Utility Plant & Accumulated Provisions for Dep, Amort & Dep	200-201		
15	Nuclear Fuel Materials	202-203	NA	
16	Electric Plant in Service	204-207		
17	Electric Plant Leased to Others	213	NONE	
18	Electric Plant Held for Future Use	214	NONE	
19	Construction Work in Progress-Electric	216		
20	Accumulated Provision for Depreciation of Electric Utility Plant	219		
21	Investment of Subsidiary Companies	224-225		
22	Materials and Supplies	227		
23	Allowances	228(ab)-229(ab)		
24	Extraordinary Property Losses	230	NONE	
25	Unrecovered Plant and Regulatory Study Costs	230	NONE	
26	Transmission Service and Generation Interconnection Study Costs	231	NONE	
27	Other Regulatory Assets	232		
28	Miscellaneous Deferred Debits	233		
29	Accumulated Deferred Income Taxes	234		
30	Capital Stock	250-251		
31	Other Paid-in Capital	253	NONE	
32	Capital Stock Expense	254	NONE	
33	Long-Term Debt	256-257		
34	Reconciliation of Reported Net Income with Taxable Inc for Fed Inc Tax	261		
35	Taxes Accrued, Prepaid and Charged During the Year	262-263		
36	Accumulated Deferred Investment Tax Credits	266-267		

Name of Respondent Ohio Valley Electric Corporation		This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission		Date of Report (Mo, Da, Yr) 12/31/2012	Year/Period of Report End of 2012/Q4
LIST OF SCHEDULES (Electric Utility) (continued)					
Enter in column (c) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA".					
Line No.	Title of Schedule (a)	Reference Page No. (b)	Remarks (c)		
37	Other Deferred Credits	269	NONE		
38	Accumulated Deferred Income Taxes-Accelerated Amortization Property	272-273	NONE		
39	Accumulated Deferred Income Taxes-Other Property	274-275	NONE		
40	Accumulated Deferred Income Taxes-Other	276-277	NONE		
41	Other Regulatory Liabilities	278			
42	Electric Operating Revenues	300-301			
43	Regional Transmission Service Revenues (Account 457.1)	302			
44	Sales of Electricity by Rate Schedules	304			
45	Sales for Resale	310-311			
46	Electric Operation and Maintenance Expenses	320-323			
47	Purchased Power	326-327			
48	Transmission of Electricity for Others	328-330	NONE		
49	Transmission of Electricity by ISO/RTOs	331	NONE		
50	Transmission of Electricity by Others	332	NONE		
51	Miscellaneous General Expenses-Electric	335			
52	Depreciation and Amortization of Electric Plant	336-337			
53	Regulatory Commission Expenses	350-351			
54	Research, Development and Demonstration Activities	352-353			
55	Distribution of Salaries and Wages	354-355			
56	Common Utility Plant and Expenses	356	NONE		
57	Amounts included in ISO/RTO Settlement Statements	397	NONE		
58	Purchase and Sale of Ancillary Services	398	NONE		
59	Monthly Transmission System Peak Load	400			
60	Monthly ISO/RTO Transmission System Peak Load	400a	NONE		
61	Electric Energy Account	401			
62	Monthly Peaks and Output	401			
63	Steam Electric Generating Plant Statistics	402-403			
64	Hydroelectric Generating Plant Statistics	406-407	NONE		
65	Pumped Storage Generating Plant Statistics	408-409	NONE		
66	Generating Plant Statistics Pages	410-411	NONE		

Name of Respondent Ohio Valley Electric Corporation		This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission		Date of Report (Mo, Da, Yr) 12/31/2012	Year/Period of Report End of 2012/Q4
LIST OF SCHEDULES (Electric Utility) (continued)					
Enter in column (c) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA".					
Line No.	Title of Schedule (a)	Reference Page No. (b)	Remarks (c)		
67	Transmission Line Statistics Pages	422-423			
68	Transmission Lines Added During the Year	424-425	NONE		
69	Substations	426-427			
70	Transactions with Associated (Affiliated) Companies	429			
71	Footnote Data	450			
	Stockholders' Reports Check appropriate box: <input checked="" type="checkbox"/> Two copies will be submitted <input type="checkbox"/> No annual report to stockholders is prepared				

Name of Respondent Ohio Valley Electric Corporation	This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report <i>(Mo, Da, Yr)</i> 12/31/2012	Year/Period of Report End of <u>2012/Q4</u>
GENERAL INFORMATION			
<p>1. Provide name and title of officer having custody of the general corporate books of account and address of office where the general corporate books are kept, and address of office where any other corporate books of account are kept, if different from that where the general corporate books are kept.</p> <p>John D. Brodt, Secretary and Treasurer 3932 U.S. Route 23 P.O. Box 468 Piketon, OH 45661</p>			
<p>2. Provide the name of the State under the laws of which respondent is incorporated, and date of incorporation. If incorporated under a special law, give reference to such law. If not incorporated, state that fact and give the type of organization and the date organized.</p> <p>Incorporated under the General Corporation Laws of the State of Ohio on October 1, 1952.</p>			
<p>3. If at any time during the year the property of respondent was held by a receiver or trustee, give (a) name of receiver or trustee, (b) date such receiver or trustee took possession, (c) the authority by which the receivership or trusteeship was created, and (d) date when possession by receiver or trustee ceased.</p> <p>Not Applicable</p>			
<p>4. State the classes or utility and other services furnished by respondent during the year in each State in which the respondent operated.</p> <p>Major - Electric Utility - Ohio</p>			
<p>5. Have you engaged as the principal accountant to audit your financial statements an accountant who is not the principal accountant for your previous year's certified financial statements?</p> <p>(1) <input type="checkbox"/> Yes...Enter the date when such independent accountant was initially engaged: (2) <input checked="" type="checkbox"/> No</p>			

Name of Respondent Ohio Valley Electric Corporation	This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 12/31/2012	Year/Period of Report End of <u>2012/Q4</u>
--	---	--	--

CONTROL OVER RESPONDENT

1. If any corporation, business trust, or similar organization or a combination of such organizations jointly held control over the respondent at the end of the year, state name of controlling corporation or organization, manner in which control was held, and extent of control. If control was in a holding company organization, show the chain of ownership or control to the main parent company or organization. If control was held by a trustee(s), state name of trustee(s), name of beneficiary or beneficiaries for whom trust was maintained, and purpose of the trust.

Ohio Valley Electric Corporation is owned by twelve entities consisting of ten investor-owned utilities or utility holding companies and two affiliates of generation and transmission rural electric cooperatives. American Electric Power Company, Inc., and its subsidiary, Columbus Southern Power Company held 43.47% of Ohio Valley Electric Corporation's capital stock at December 31, 2012.

Name of Respondent Ohio Valley Electric Corporation	This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 12/31/2012	Year/Period of Report End of 2012/Q4
---	--	---	--

CORPORATIONS CONTROLLED BY RESPONDENT

1. Report below the names of all corporations, business trusts, and similar organizations, controlled directly or indirectly by respondent at any time during the year. If control ceased prior to end of year, give particulars (details) in a footnote.

2. If control was by other means than a direct holding of voting rights, state in a footnote the manner in which control was held, naming any intermediaries involved.

3. If control was held jointly with one or more other interests, state the fact in a footnote and name the other interests.

Definitions

1. See the Uniform System of Accounts for a definition of control.

2. Direct control is that which is exercised without interposition of an intermediary.

3. Indirect control is that which is exercised by the interposition of an intermediary which exercises direct control.

4. Joint control is that in which neither interest can effectively control or direct action without the consent of the other, as where the voting control is equally divided between two holders, or each party holds a veto power over the other. Joint control may exist by mutual agreement or understanding between two or more parties who together have control within the meaning of the definition of control in the Uniform System of Accounts, regardless of the relative voting rights of each party.

Line No.	Name of Company Controlled (a)	Kind of Business (b)	Percent Voting Stock Owned (c)	Footnote Ref. (d)
1	Indiana-Kentucky Electric Corp.	Electric Utility	100%	
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				

Name of Respondent Ohio Valley Electric Corporation		This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission		Date of Report (Mo, Da, Yr) 12/31/2012	Year/Period of Report End of 2012/Q4
OFFICERS					
<p>1. Report below the name, title and salary for each executive officer whose salary is \$50,000 or more. An "executive officer" of a respondent includes its president, secretary, treasurer, and vice president in charge of a principal business unit, division or function (such as sales, administration or finance), and any other person who performs similar policy making functions.</p> <p>2. If a change was made during the year in the incumbent of any position, show name and total remuneration of the previous incumbent, and the date the change in incumbency was made.</p>					
Line No.	Title (a)	Name of Officer (b)	Salary for Year (c)		
1	President	Nicholas K. Akins			
2	Vice President and Chief Operating Officer	Mark A. Peller			
3	Vice President - Operations	David E. Jones			
4	Chief Financial Officer, Secretary and Treasurer	John D. Brodt			
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
32					
33					
34					
35					
36					
37					
38					
39					
40					
41					
42					
43					
44					

Name of Respondent	This Report is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 12/31/2012	Year/Period of Report 2012/Q4
Ohio Valley Electric Corporation			
FOOTNOTE DATA			

Schedule Page: 104 Line No.: 1 Column: c

Salaries are none.

Schedule Page: 104 Line No.: 2 Column: b

Mark A. Peifer replaced Scott N. Smith, effective January 1, 2012.

Schedule Page: 104 Line No.: 2 Column: c

Salaries are none.

Schedule Page: 104 Line No.: 3 Column: c

Information was reported to FERC and is also kept in the Corporation file retained by the respondent.

Schedule Page: 104 Line No.: 4 Column: c

Information was reported to FERC and is also kept in the Corporation file retained by the respondent.

Name of Respondent Ohio Valley Electric Corporation		This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission		Date of Report (Mo. Da. Yr) 12/31/2012	Year/Period of Report End of 2012/Q4
DIRECTORS					
1. Report below the information called for concerning each director of the respondent who held office at any time during the year. Include in column (a), abbreviated titles of the directors who are officers of the respondent.					
2. Designate members of the Executive Committee by a triple asterisk and the Chairman of the Executive Committee by a double asterisk.					
Line No.	Name (and Title) of Director (a)	Principal Business Address (b)			
1	Anthony J. Ahern***	6677 Busch Blvd., Columbus, OH 43226			
2	Nicholas K. Akins, President **	1 Riverside Plaza, Columbus, OH 43215			
3	Eric D. Baker	10125 West Watergate Road, Cadillac, MI 49601			
4	Kevin W. Crawford	1065 Woodman Drive, Dayton, OH 45432			
5	William S. Doty	One Vectren Square, Evansville, IN 47708			
6	Carl L. English	1 Riverside Plaza, Columbus, OH 43215			
7	Joseph Hamrock	1 Riverside Plaza, Columbus, OH 43215			
8	James R. Haney	76 South Main St., Akron, OH 44308			
9	Dennis A. Lantzy	1065 Woodman Drive, Dayton, OH 45432			
10	Charles D. Lasky***	341 White Pond Drive, WAC-A3, Akron, OH 44320			
11	Mark C. McCullough	1 Riverside Plaza, Columbus, OH 43215			
12	Steven K. Nelson	6677 Busch Blvd., Columbus, OH 43226			
13	Patrick W. O'Loughlin	6677 Busch Blvd., Columbus, OH 43226			
14	Robert P. Powers	1 Riverside Plaza, Columbus, OH 43215			
15	Gary G. Stephenson	1065 Woodman Drive, Dayton, OH 45432			
16	Stanley F. Szwed***	76 South Main St., Akron, OH 44308			
17	Paul W. Thompson	220 West Main St., Louisville, KY 40202			
18	Pablo A. Vegas	850 Tech Center Dr., Gahanna, OH 43230			
19	John N. Voyles, Jr.***	220 West Main St., Louisville, KY 40202			
20	Charles Whitlock ***	221 East Fourth St., 5th Floor, Cincinnati, OH 45202			
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
32					
33					
34					
35					
36					
37					
38					
39					
40					
41					
42					
43					
44					
45					
46					
47					
48					

Name of Respondent	This Report is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 12/31/2012	Year/Period of Report 2012/Q4
Ohio Valley Electric Corporation			
FOOTNOTE DATA			

Schedule Page: 105 Line No.: 4 Column: a

Kevin W. Crawford was elected to replace Gary G. Stephenson, effective February 2012.

Schedule Page: 105 Line No.: 8 Column: a

James R. Haney was elected to replace Stanley F. Szwed, effective December 2012.

Schedule Page: 105 Line No.: 9 Column: a

Dennis A. Lantzy was elected to replace Kevin W. Crawford, effective March 2012.

Schedule Page: 105 Line No.: 14 Column: a

Robert P. Powers was elected to replace Carl L. English, effective February 2012.

Schedule Page: 105 Line No.: 18 Column: a

Pablo A. Vegas was elected to replace Joseph Hamrock, effective May 2012.

Name of Respondent Ohio Valley Electric Corporation	This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report 12/31/2012	Year/Period of Report End of 2012/Q4
IMPORTANT CHANGES DURING THE QUARTER/YEAR			
<p>Give particulars (details) concerning the matters indicated below. Make the statements explicit and precise, and number them in accordance with the inquiries. Each inquiry should be answered. Enter "none," "not applicable," or "NA" where applicable. If information which answers an inquiry is given elsewhere in the report, make a reference to the schedule in which it appears.</p> <ol style="list-style-type: none"> Changes in and important additions to franchise rights: Describe the actual consideration given therefore and state from whom the franchise rights were acquired. If acquired without the payment of consideration, state that fact. Acquisition of ownership in other companies by reorganization, merger, or consolidation with other companies: Give names of companies involved, particulars concerning the transactions, name of the Commission authorizing the transaction, and reference to Commission authorization. Purchase or sale of an operating unit or system: Give a brief description of the property, and of the transactions relating thereto, and reference to Commission authorization, if any was required. Give date journal entries called for by the Uniform System of Accounts were submitted to the Commission. Important leaseholds (other than leaseholds for natural gas lands) that have been acquired or given, assigned or surrendered: Give effective dates, lengths of terms, names of parties, rents, and other condition. State name of Commission authorizing lease and give reference to such authorization. Important extension or reduction of transmission or distribution system: State territory added or relinquished and date operations began or ceased and give reference to Commission authorization, if any was required. State also the approximate number of customers added or lost and approximate annual revenues of each class of service. Each natural gas company must also state major new continuing sources of gas made available to it from purchases, development, purchase contract or otherwise, giving location and approximate total gas volumes available, period of contracts, and other parties to any such arrangements, etc. Obligations incurred as a result of issuance of securities or assumption of liabilities or guarantees including issuance of short-term debt and commercial paper having a maturity of one year or less. Give reference to FERC or State Commission authorization, as appropriate, and the amount of obligation or guarantee. Changes in articles of incorporation or amendments to charter: Explain the nature and purpose of such changes or amendments. State the estimated annual effect and nature of any important wage scale changes during the year. State briefly the status of any materially important legal proceedings pending at the end of the year, and the results of any such proceedings culminated during the year. Describe briefly any materially important transactions of the respondent not disclosed elsewhere in this report in which an officer, director, security holder reported on Page 104 or 105 of the Annual Report Form No. 1, voting trustee, associated company or known associate of any of these persons was a party or in which any such person had a material interest. (Reserved.) If the important changes during the year relating to the respondent company appearing in the annual report to stockholders are applicable in every respect and furnish the data required by Instructions 1 to 11 above, such notes may be included on this page. Describe fully any changes in officers, directors, major security holders and voting powers of the respondent that may have occurred during the reporting period. In the event that the respondent participates in a cash management program(s) and its proprietary capital ratio is less than 30 percent please describe the significant events or transactions causing the proprietary capital ratio to be less than 30 percent, and the extent to which the respondent has amounts loaned or money advanced to its parent, subsidiary, or affiliated companies through a cash management program(s). Additionally, please describe plans, if any to regain at least a 30 percent proprietary ratio. 			
<p>PAGE 108 INTENTIONALLY LEFT BLANK SEE PAGE 109 FOR REQUIRED INFORMATION.</p>			

Name of Respondent	This Report is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 12/31/2012	Year/Period of Report 2012/Q4
Ohio Valley Electric Corporation			
IMPORTANT CHANGES DURING THE QUARTER/YEAR (Continued)			

1. Not Applicable
2. Not Applicable
3. Not Applicable
4. Not Applicable
5. Not Applicable
6. None
7. Not Applicable
8. All 2011 employees shared a \$2,400,364 bonus that was paid in 2012. Effective September 1, 2012, a general wage increase of approximately 2.3% was given to employees except management and clerical personnel.
9. Not Applicable
10. Not Applicable
11. Not Applicable
12. See Notes to the Financial Statements beginning on page 122.
13. See pages 104 and 105.
14. Not Applicable

Name of Respondent Ohio Valley Electric Corporation	This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 12/31/2012	Year/Period of Report End of 2012/Q4
--	---	--	---

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS)

Line No.	Title of Account (a)	Ref. Page No. (b)	Current Year End of Quarter/Year Balance (c)	Prior Year End Balance 12/31 (d)
1	UTILITY PLANT			
2	Utility Plant (101-106, 114)	200-201	1,276,438,565	1,102,960,779
3	Construction Work in Progress (107)	200-201	32,847,537	175,025,535
4	TOTAL Utility Plant (Enter Total of lines 2 and 3)		1,309,286,102	1,277,986,314
5	(Less) Accum. Prov. for Depr. Amort. Depl. (108, 110, 111, 115)	200-201	531,480,132	477,412,407
6	Net Utility Plant (Enter Total of line 4 less 5)		777,805,970	800,573,907
7	Nuclear Fuel in Process of Ref., Conv., Enrich., and Fab. (120.1)	202-203	0	0
8	Nuclear Fuel Materials and Assemblies-Stock Account (120.2)		0	0
9	Nuclear Fuel Assemblies in Reactor (120.3)		0	0
10	Spent Nuclear Fuel (120.4)		0	0
11	Nuclear Fuel Under Capital Leases (120.6)		0	0
12	(Less) Accum. Prov. for Amort. of Nucl. Fuel Assemblies (120.5)	202-203	0	0
13	Net Nuclear Fuel (Enter Total of lines 7-11 less 12)		0	0
14	Net Utility Plant (Enter Total of lines 6 and 13)		777,805,970	800,573,907
15	Utility Plant Adjustments (116)		0	0
16	Gas Stored Underground - Noncurrent (117)		0	0
17	OTHER PROPERTY AND INVESTMENTS			
18	Nonutility Property (121)		0	0
19	(Less) Accum. Prov. for Depr. and Amort. (122)		0	0
20	Investments in Associated Companies (123)		0	0
21	Investment in Subsidiary Companies (123.1)	224-225	112,803,661	120,348,741
22	(For Cost of Account 123.1. See Footnote Page 224, line 42)			
23	Noncurrent Portion of Allowances	228-229	0	0
24	Other Investments (124)		0	0
25	Sinking Funds (125)		0	0
26	Depreciation Fund (126)		0	0
27	Amortization Fund - Federal (127)		0	0
28	Other Special Funds (128)		157,823,427	88,444,080
29	Special Funds (Non Major Only) (129)		0	0
30	Long-Term Portion of Derivative Assets (175)		0	0
31	Long-Term Portion of Derivative Assets - Hedges (176)		0	0
32	TOTAL Other Property and Investments (Lines 18-21 and 23-31)		270,627,088	208,792,821
33	CURRENT AND ACCRUED ASSETS			
34	Cash and Working Funds (Non-major Only) (130)		0	0
35	Cash (131)		558,113	4,719,549
36	Special Deposits (132-134)		2,000	2,000
37	Working Fund (135)		10,699	12,599
38	Temporary Cash Investments (136)		19,330,793	0
39	Notes Receivable (141)		0	0
40	Customer Accounts Receivable (142)		34,841,120	37,346,522
41	Other Accounts Receivable (143)		17,371,823	4,536,302
42	(Less) Accum. Prov. for Uncollectible Acct.-Credit (144)		0	0
43	Notes Receivable from Associated Companies (145)		0	0
44	Accounts Receivable from Assoc. Companies (146)		632,985,163	494,263,276
45	Fuel Stock (151)	227	28,067,453	17,414,166
46	Fuel Stock Expenses Undistributed (152)	227	0	0
47	Residuals (Elec) and Extracted Products (153)	227	0	0
48	Plant Materials and Operating Supplies (154)	227	15,489,802	14,308,322
49	Merchandise (155)	227	0	0
50	Other Materials and Supplies (156)	227	0	0
51	Nuclear Materials Held for Sale (157)	202-203/227	0	0
52	Allowances (158.1 and 158.2)	228-229	86,649	28,519

Name of Respondent Ohio Valley Electric Corporation	This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 12/31/2012	Year/Period of Report End of 2012/Q4
--	---	--	---

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS)Continued)

Line No.	Title of Account (a)	Ref. Page No. (b)	Current Year End of Quarter/Year Balance (c)	Prior Year End Balance 12/31 (d)
53	(Less) Noncurrent Portion of Allowances		0	0
54	Stores Expense Undistributed (163)	227	0	0
55	Gas Stored Underground - Current (164.1)		0	0
56	Liquefied Natural Gas Stored and Held for Processing (164.2-164.3)		0	0
57	Prepayments (165)		1,169,331	979,005
58	Advances for Gas (166-167)		0	0
59	Interest and Dividends Receivable (171)		0	0
60	Rents Receivable (172)		0	0
61	Accrued Utility Revenues (173)		0	0
62	Miscellaneous Current and Accrued Assets (174)		2,503,440	2,521,920
63	Derivative Instrument Assets (175)		0	0
64	(Less) Long-Term Portion of Derivative Instrument Assets (175)		0	0
65	Derivative Instrument Assets - Hedges (176)		0	0
66	(Less) Long-Term Portion of Derivative Instrument Assets - Hedges (176)		0	0
67	Total Current and Accrued Assets (Lines 34 through 66)		752,416,386	576,132,180
68	DEFERRED DEBITS			
69	Unamortized Debt Expenses (181)		14,485,787	13,714,625
70	Extraordinary Property Losses (182.1)	230a	0	0
71	Unrecovered Plant and Regulatory Study Costs (182.2)	230b	0	0
72	Other Regulatory Assets (182.3)	232	39,394,887	33,242,142
73	Prelim. Survey and Investigation Charges (Electric) (183)		5,250	179,135
74	Preliminary Natural Gas Survey and Investigation Charges 183.1)		0	0
75	Other Preliminary Survey and Investigation Charges (183.2)		0	0
76	Clearing Accounts (184)		0	0
77	Temporary Facilities (185)		0	0
78	Miscellaneous Deferred Debits (186)	233	103,107	222,482
79	Def. Losses from Disposition of Utility P/L (187)		0	0
80	Research, Devel. and Demonstration Expend. (188)	352-353	0	0
81	Unamortized Loss on Reaquired Debt (189)		0	0
82	Accumulated Deferred Income Taxes (190)	234	15,008,843	8,218,042
83	Unrecovered Purchased Gas Costs (191)		0	0
84	Total Deferred Debits (lines 69 through 83)		68,997,874	55,576,426
85	TOTAL ASSETS (lines 14-16, 32, 67, and 84)		1,869,847,318	1,641,075,334

Name of Respondent Ohio Valley Electric Corporation		This Report is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (mo, da, yr) 12/31/2012	Year/Period of Report end of 2012/Q4
COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)				
Line No.	Title of Account (a)	Ref. Page No. (b)	Current Year End of Quarter/Year Balance (c)	Prior Year End Balance 12/31 (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251	10,000,000	10,000,000
3	Preferred Stock Issued (204)	250-251	0	0
4	Capital Stock Subscribed (202, 205)		0	0
5	Stock Liability for Conversion (203, 206)		0	0
6	Premium on Capital Stock (207)		0	0
7	Other Paid-In Capital (208-211)	253	0	0
8	Installments Received on Capital Stock (212)	252	0	0
9	(Less) Discount on Capital Stock (213)	254	0	0
10	(Less) Capital Stock Expense (214)	254b	0	0
11	Retained Earnings (215, 215.1, 216)	118-119	5,293,968	4,037,278
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119	0	0
13	(Less) Required Capital Stock (217)	250-251	0	0
14	Noncorporate Proprietorship (Non-major only) (218)		0	0
15	Accumulated Other Comprehensive Income (219)	122(a)(b)	0	0
16	Total Proprietary Capital (lines 2 through 15)		15,293,968	14,037,278
17	LONG-TERM DEBT			
18	Bonds (221)	256-257	600,000,000	300,000,000
19	(Less) Required Bonds (222)	256-257	0	0
20	Advances from Associated Companies (223)	256-257	0	0
21	Other Long-Term Debt (224)	256-257	1,057,082,302	1,133,002,486
22	Unamortized Premium on Long-Term Debt (225)		291,235	0
23	(Less) Unamortized Discount on Long-Term Debt-Debit (226)		887,297	0
24	Total Long-Term Debt (lines 18 through 23)		1,656,486,240	1,433,002,486
25	OTHER NONCURRENT LIABILITIES			
26	Obligations Under Capital Leases - Noncurrent (227)		808,057	776,364
27	Accumulated Provision for Property Insurance (228.1)		0	0
28	Accumulated Provision for Injuries and Damages (228.2)		0	0
29	Accumulated Provision for Pensions and Benefits (228.3)		64,980,165	72,477,946
30	Accumulated Miscellaneous Operating Provisions (228.4)		0	0
31	Accumulated Provision for Rate Refunds (229)		0	0
32	Long-Term Portion of Derivative Instrument Liabilities		0	0
33	Long-Term Portion of Derivative Instrument Liabilities - Hedges		0	0
34	Asset Retirement Obligations (230)		7,954,543	7,461,168
35	Total Other Noncurrent Liabilities (lines 26 through 34)		73,742,765	80,715,478
36	CURRENT AND ACCRUED LIABILITIES			
37	Notes Payable (231)		0	0
38	Accounts Payable (232)		29,144,859	37,473,503
39	Notes Payable to Associated Companies (233)		0	0
40	Accounts Payable to Associated Companies (234)		0	0
41	Customer Deposits (235)		0	0
42	Taxes Accrued (236)	262-263	5,631,604	5,648,598
43	Interest Accrued (237)		15,284,211	14,184,462
44	Dividends Declared (238)		0	0
45	Matured Long-Term Debt (239)		0	0

FERC FORM NO. 1 (rev. 12-03)

Page 112

Name of Respondent Ohio Valley Electric Corporation	This Report is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (mo, da, yr) 12/31/2012	Year/Period of Report end of 2012/Q4
--	---	--	---

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No.	Title of Account (a)	Ref. Page No. (b)	Current Year End of Quarter/Year Balance (c)	Prior Year End Balance 12/31 (d)
46	Matured Interest (240)		0	0
47	Tax Collections Payable (241)		20,516	19,621
48	Miscellaneous Current and Accrued Liabilities (242)		4,893,327	4,696,037
49	Obligations Under Capital Leases-Current (243)		147,992	8,278
50	Derivative Instrument Liabilities (244)		0	0
51	(Less) Long-Term Portion of Derivative Instrument Liabilities		0	0
52	Derivative Instrument Liabilities - Hedges (245)		0	0
53	(Less) Long-Term Portion of Derivative Instrument Liabilities-Hedges		0	0
54	Total Current and Accrued Liabilities (lines 37 through 53)		55,122,509	62,030,499
55	DEFERRED CREDITS			
56	Customer Advances for Construction (252)		12,257,277	19,225,121
57	Accumulated Deferred Investment Tax Credits (255)	266-267	3,393,146	3,393,146
58	Deferred Gains from Disposition of Utility Plant (256)		0	0
59	Other Deferred Credits (253)	269	28,029,955	0
60	Other Regulatory Liabilities (254)	278	25,521,458	28,671,326
61	Unamortized Gain on Reacquired Debt (257)		0	0
62	Accum. Deferred Income Taxes-Accel. Amort.(281)	272-277	0	0
63	Accum. Deferred Income Taxes-Other Property (282)		0	0
64	Accum. Deferred Income Taxes-Other (283)		0	0
65	Total Deferred Credits (lines 56 through 64)		69,201,836	51,289,593
66	TOTAL LIABILITIES AND STOCKHOLDER EQUITY (lines 16, 24, 35, 54 and 65)		1,869,847,318	1,641,075,334

Name of Respondent Ohio Valley Electric Corporation		This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission		Date of Report (Mo, Da, Yr) 12/31/2012		Year/Period of Report End of 2012/Q4	
STATEMENT OF INCOME							
<p>Quarterly</p> <p>1. Report in column (c) the current year to date balance. Column (c) equals the total of adding the data in column (g) plus the data in column (l) plus the data in column (k). Report in column (d) similar data for the previous year. This information is reported in the annual filing only.</p> <p>2. Enter in column (e) the balance for the reporting quarter and in column (f) the balance for the same three month period for the prior year.</p> <p>3. Report in column (g) the quarter to date amounts for electric utility function; in column (i) the quarter to date amounts for gas utility, and in column (k) the quarter to date amounts for other utility function for the current year quarter.</p> <p>4. Report in column (h) the quarter to date amounts for electric utility function; in column (j) the quarter to date amounts for gas utility, and in column (l) the quarter to date amounts for other utility function for the prior year quarter.</p> <p>5. If additional columns are needed, place them in a footnote.</p> <p>Annual or Quarterly if applicable</p> <p>5. Do not report fourth quarter data in columns (e) and (f)</p> <p>6. Report amounts for accounts 412 and 413, Revenues and Expenses from Utility Plant Leased to Others, in another utility column in a similar manner to a utility department. Spread the amount(s) over lines 2 thru 26 as appropriate. Include these amounts in columns (c) and (d) totals.</p> <p>7. Report amounts in account 414, Other Utility Operating Income, in the same manner as accounts 412 and 413 above.</p>							
Line No.	Title of Account (a)	(Ref.) Page No. (b)	Total Current Year to Date Balance for Quarter/Year (c)	Total Prior Year to Date Balance for Quarter/Year (d)	Current 3 Months Ended Quarterly Only No 4th Quarter (e)	Prior 3 Months Ended Quarterly Only No 4th Quarter (f)	
1	UTILITY OPERATING INCOME						
2	Operating Revenues (400)	300-301	670,819,257	716,938,129			
3	Operating Expenses						
4	Operation Expenses (401)	320-323	486,106,413	569,589,375			
5	Maintenance Expenses (402)	320-323	46,001,591	38,163,186			
6	Depreciation Expense (403)	336-337	58,453,907	39,273,020			
7	Depreciation Expense for Asset Retirement Costs (403.1)	336-337					
8	Amort. & Depl. of Utility Plant (404-405)	336-337					
9	Amort. of Utility Plant Acq. Adj. (406)	336-337					
10	Amort. Property Losses, Unrecov Plant and Regulatory Study Costs (407)						
11	Amort. of Conversion Expenses (407)						
12	Regulatory Debits (407.3)						
13	(Less) Regulatory Credits (407.4)						
14	Taxes Other Than Income Taxes (408.1)	262-263	6,198,472	6,182,742			
15	Income Taxes - Federal (409.1)	262-263	6,903,830	13,252,631			
16	- Other (409.1)	262-263	877,380	-7,380			
17	Provision for Deferred Income Taxes (410.1)	234, 272-277	-6,888,521	-12,121,744			
18	(Less) Provision for Deferred Income Taxes-Cr. (411.1)	234, 272-277					
19	Investment Tax Credit Adj. - Net (411.4)	266					
20	(Less) Gains from Disp. of Utility Plant (411.6)						
21	Losses from Disp. of Utility Plant (411.7)						
22	(Less) Gains from Disposition of Allowances (411.8)						
23	Losses from Disposition of Allowances (411.9)						
24	Accretion Expense (411.10)						
25	TOTAL Utility Operating Expenses (Enter Total of lines 4 thru 24)		597,653,072	654,331,830			
26	Net Util Oper Inc (Enter Tot line 2 less 25) Carry to Pg 117, line 27		73,166,185	62,606,299			

Name of Respondent Ohio Valley Electric Corporation		This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission		Date of Report (Mo, Da, Yr) 12/31/2012		Year/Period of Report End of 2012/Q4	
STATEMENT OF INCOME FOR THE YEAR (continued)							
Line No.	Title of Account (a)	(Ref.) Page No. (b)	TOTAL		Current 3 Months Ended Quarterly Only No 4th Quarter (e)	Prior 3 Months Ended Quarterly Only No 4th Quarter (f)	
			Current Year (c)	Previous Year (d)			
27	Net Utility Operating Income (Carried forward from page 114)		73,166,185	62,606,299			
28	Other Income and Deductions						
29	Other Income						
30	Nonutility Operating Income						
31	Revenues From Merchandising, Jobbing and Contract Work (415)						
32	(Less) Costs and Exp. of Merchandising, Job. & Contract Work (416)						
33	Revenues From Nonutility Operations (417)						
34	(Less) Expenses of Nonutility Operations (417.1)						
35	Nonoperating Rental Income (418)						
36	Equity in Earnings of Subsidiary Companies (418.1)	119					
37	Interest and Dividend Income (419)		8,608,674	10,564,153			
38	Allowance for Other Funds Used During Construction (419.1)						
39	Miscellaneous Nonoperating Income (421)		84,779	205,500			
40	Gain on Disposition of Property (421.1)						
41	TOTAL Other Income (Enter Total of lines 31 thru 40)		8,693,453	10,869,653			
42	Other Income Deductions						
43	Loss on Disposition of Property (421.2)						
44	Miscellaneous Amortization (425)						
45	Donations (426.1)		48,206	37,924			
46	Life Insurance (426.2)						
47	Penalties (426.3)		153	37,677			
48	Exp. for Certain Civic, Political & Related Activities (426.4)		10,980	5,030			
49	Other Deductions (426.5)		375				
50	TOTAL Other Income Deductions (Total of lines 43 thru 49)		59,714	80,631			
51	Taxes Applicable to Other Income and Deductions						
52	Taxes Other Than Income Taxes (408.2)	262-263					
53	Income Taxes-Federal (409.2)	262-263					
54	Income Taxes-Other (409.2)	262-263					
55	Provision for Deferred Inc. Taxes (410.2)	234, 272-277					
56	(Less) Provision for Deferred Income Taxes-Cr. (411.2)	234, 272-277					
57	Investment Tax Credit Adj.-Net (411.5)						
58	(Less) Investment Tax Credits (420)						
59	TOTAL Taxes on Other Income and Deductions (Total of lines 52-58)						
60	Net Other Income and Deductions (Total of lines 41, 50, 59)		8,633,739	10,789,022			
61	Interest Charges						
62	Interest on Long-Term Debt (427)		71,728,456	67,019,894			
63	Amort. of Debt Disc. and Expense (428)		4,612,598	1,478,943			
64	Amortization of Loss on Required Debt (428.1)						
65	(Less) Amort. of Premium on Debt-Credit (429)		5,981				
66	(Less) Amortization of Gain on Required Debt-Credit (429.1)						
67	Interest on Debt to Assoc. Companies (430)						
68	Other Interest Expense (431)		3,208,161	2,226,380			
69	(Less) Allowance for Borrowed Funds Used During Construction-Cr. (432)						
70	Net Interest Charges (Total of lines 62 thru 69)		79,543,234	70,725,217			
71	Income Before Extraordinary Items (Total of lines 27, 60 and 70)		2,256,690	2,670,104			
72	Extraordinary Items						
73	Extraordinary Income (434)						
74	(Less) Extraordinary Deductions (435)						
75	Net Extraordinary Items (Total of line 73 less line 74)						
76	Income Taxes-Federal and Other (409.3)	262-263					
77	Extraordinary Items After Taxes (line 75 less line 76)						
78	Net Income (Total of line 71 and 77)		2,256,690	2,670,104			

Name of Respondent Ohio Valley Electric Corporation	This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 12/31/2012	Year/Period of Report End of 2012/Q4
--	---	--	---

STATEMENT OF RETAINED EARNINGS

1. Do not report Lines 49-53 on the quarterly version.
2. Report all changes in appropriated retained earnings, unappropriated retained earnings, year to date, and unappropriated undistributed subsidiary earnings for the year.
3. Each credit and debit during the year should be identified as to the retained earnings account in which recorded (Accounts 433, 436 - 439 inclusive). Show the contra primary account affected in column (b)
4. State the purpose and amount of each reservation or appropriation of retained earnings.
5. List first account 439, Adjustments to Retained Earnings, reflecting adjustments to the opening balance of retained earnings. Follow by credit, then debit items in that order.
6. Show dividends for each class and series of capital stock.
7. Show separately the State and Federal income tax effect of items shown in account 439, Adjustments to Retained Earnings.
8. Explain in a footnote the basis for determining the amount reserved or appropriated. If such reservation or appropriation is to be recurrent, state the number and annual amounts to be reserved or appropriated as well as the totals eventually to be accumulated.
9. If any notes appearing in the report to stockholders are applicable to this statement, include them on pages 122-123.

Line No.	Item (a)	Contra Primary Account Affected (b)	Current Quarter/Year Year to Date Balance (c)	Previous Quarter/Year Year to Date Balance (d)
	UNAPPROPRIATED RETAINED EARNINGS (Account 216)			
1	Balance-Beginning of Period		4,037,278	2,367,174
2	Changes			
3	Adjustments to Retained Earnings (Account 439)			
4				
5				
6				
7				
8				
9	TOTAL Credits to Retained Earnings (Acct. 439)			
10				
11				
12				
13				
14				
15	TOTAL Debits to Retained Earnings (Acct. 439)			
16	Balance Transferred from Income (Account 433 less Account 418.1)		2,256,690	2,670,104
17	Appropriations of Retained Earnings (Acct. 436)			
18				
19				
20				
21				
22	TOTAL Appropriations of Retained Earnings (Acct. 436)			
23	Dividends Declared-Preferred Stock (Account 437)			
24				
25				
26				
27				
28				
29	TOTAL Dividends Declared-Preferred Stock (Acct. 437)			
30	Dividends Declared-Common Stock (Account 438)			
31			-1,000,000	(1,000,000)
32				
33				
34				
35				
36	TOTAL Dividends Declared-Common Stock (Acct. 438)		-1,000,000	(1,000,000)
37	Transfers from Acct 216.1, Unapprop. Undistrib. Subsidiary Earnings			
38	Balance - End of Period (Total 1,9,15,16,22,29,36,37)		5,293,968	4,037,278
	APPROPRIATED RETAINED EARNINGS (Account 215)			

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/20/2014 1:55:44 PM

in

Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA

Summary: Deposition Public Deposition of Charles Whitlock, Part 1, Filed by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.