BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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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 an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service.	Case No. 14-841-EL-SSO

- - -

In the Matter of the Application of Duke Energy Ohio for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	Case No. 14-842-EL-ATA

- - -

PROCEEDINGS

before Ms. Christine M.T. Pirik and Mr. Nick Walstra, Attorney Examiners, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-A, Columbus, Ohio, called at 9:00 a.m. on Thursday, October 23, 2014.

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Thursday Morning Session,
October 23, 2014.
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EXAMINER WALSTRA: Then we will go back on the record. We did appearances yesterday. I think I see a few new faces. If there is anyone who needs to make a record of their appearance.

MR. VICKERS: Justin Vickers, 35 East Wacker Street, Suite 1600, Chicago, Illinois, 60601.

MR. SERIO: Your Honor, Dylan Borchers will also be appearing on behalf of OCC, with the law firm of Bricker & Eckler.

EXAMINER WALSTRA: Thank you.

MS. PETRUCCI: Your Honor, I believe Mr. Petricoff made an appearance since I was not here. I will just doublecheck. It's Gretchen Petrucci on behalf of the Retail Energy Supply Association, Exelon Generation, and Constellation NewEnergy.

EXAMINER WALSTRA: All right. Thank you.

Duke, would you like to call your witness.

MR. D'ASCENZO: Yes, please. For its next witness, Duke Energy Ohio would call Robert J. Lee.

(Witness sworn.)

EXAMINER WALSTRA: You may be seated.

MR. D'ASCENZO: Thank you.

Your Honor, for purposes of identification, we would like to mark the direct testimony of Robert J. Lee as Duke Energy Ohio Exhibit 3.

EXAMINER WALSTRA: It is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. D'ASCENZO: Thank you.

EXAMINER WALSTRA: If the witness could turn on the microphone, hit the middle button, hold it for a second, and it should flash and then wait. Once it stops flashing then hit it once, and you should be good to go. Thank you. Go ahead.

MR. D'ASCENZO: Thank you.

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ROBERT J. LEE

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

DIRECT EXAMINATION

By Mr. D'Ascenzo:

Q. Mr. Lee, would you please state your name, address, and position, please.

A. Sure. My name is Robert J. Lee. I'm a vice president in Charles River Associates. My business address is 200 Clarendon Street, Boston, Massachusetts.

Q. Thank you, Mr. Lee.

Do you have before you what has just been marked as Duke Ohio Exhibit 3?

A. I do.

Q. And could you please identify that.

A. This is the direct written testimony as submitted on behalf of Duke Energy Ohio.

Q. And is that your direct testimony?

A. It is.

Q. Do you have any corrections or changes to that testimony?

A. I don't.

Q. If you were asked those same questions today, would your responses be the same?

A. It would.

MR. D'ASCENZO: Your Honor, the witness is available for cross-examination.

EXAMINER WALSTRA: Thank you.

Mr. Darr.

MR. DARR: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Darr:

Q. Mr. Lee, my name is Frank Darr. I am here on behalf of Industrial Energy Users Ohio. As I understand it, you are the primary sponsor for Attachments B and F to the application; is that correct?

A. Yes, I'm the sponsor of those documents.

Q. Can you identify what those are?

A. Sure. One is the chart showing the schedule of auctions and the other is the master supply agreement.

Q. With regard to Attachment B, do you have that in front of you?

A. I do.

Q. This indicates the auctions will be staggered over the term of the ESP; is that correct?

A. That's correct.

Q. And there will also be laddering; is that correct?

A. That is also correct.

Q. Could you explain for the record what a staggered auction -- what you mean by a "staggered auction."

A. Sure. With this proposed competitive bid process, we're not securing all supplies associated with SSO load all at one time. We have a number of different auctions that take place over the full ESP period.

Q. And what do you mean by "staggered"?

A. That's what I describe --

Q. Excuse me. What do you mean by "laddered"?

A. The concept of the laddering is that all of the contracts, at least with the initial auctions in the CBP process, are for different terms, those contracts will roll off at different times, and the SSO supply will be replaced periodically throughout the term of the ESP. So the effect of the laddering is that there is always essentially an SSO supply that's blended based on different contract terms and different procurement dates.

Q. And on page 8, lines 10 through 12 of your testimony, this blending, is that what you refer to there as the price smoothing?

A. Page 8, what were the lines, please?

Q. 10 through 12.

A. That's correct, yes.

Q. And the notion here is that rather than taking the results of a single auction, you combine those and take the average or the averaging effects of those two auctions or multiple auctions, correct?

A. It would be the blending effects of the different procurement dates and different contract terms as well. So with the initial procurement we are going to be securing one-, two-, and three-year term contracts. Those will effectively have different prices, different clearing prices, so there is blending there as well.

Q. Could I ask a favor, could you move the microphone a little closer to you. I am competing with a very loud blowing on this side of the room.

A. I am actually having the same problem with your questions. We'll both concede an inch or 2. That may be the only thing we concede today.

MS. WATTS: Frank, your microphone is off now.

Q. I would like -- if you would, please turn to the master supply agreement which is Attachment F to your testimony -- or, excuse me, Attachment F to the application.

A. Yep.

Q. And, again, you are the sponsoring witness for this, correct?

A. That's correct.

Q. The section -- excuse me, Article 3 of the master supply agreement sets out the general terms and conditions and section 3.1 contains the supplier obligations; is that correct?

A. That's correct.

Q. Now, subsection A provides for a -- that the SSO supply be provided on a firm and continuing basis. Could you describe for us what is intended by that section.

A. Yes. The SSO suppliers are agreeing to supply a load-following product. Each of the SSO suppliers will be providing power on a continuing basis throughout the term of the master supply agreement. They don't have the option to deliver X number of megawatt-hours at some specific date. They are continually supplying as part of the SSO process.

Q. Is -- is the term "firm" here a term of art?

A. In the power industry, "firm" is a term of art contrasted with interruptible service, so firm service is -- there is a certain degree of reliability associated with that.

Q. And that level of reliability meaning what?

A. That it can't be withheld or curtailed for economic reasons.

Q. And subsection B provides for physical as opposed to financial settlement of the transaction. Could you explain what that means, please.

A. That means somebody is physically delivering power to PGM in association with this obligation.

Q. So the SSO supplier is contracting to assure that the electrons are available to the buyer.

A. Correct.

Q. In subsection C and D there are provisions with regard to additional costs that the SSO supplier is responsible for. Could you describe those for us, please.

A. Sure. So subsection C just lays out the fact that there are -- SSO suppliers are responsible for certain costs associated with PJM. The line items are outlined later in the document. And subsection D just notes that SSO suppliers are responsible for potential changes to PJM products and pricing over the term of the supply agreement.

Q. So in contractual terms, the risk of those particular price changes would be the responsibility of the supplier as opposed to the buyer, correct?

A. That's correct.

Q. The supplier is also responsible for adjustments for losses; is that correct?

A. The supplier is responsible for delivering to the delivery points sufficient megawatt-hours to supply the load of Duke Energy Ohio. I'm not sure if that answers your question or not.

Q. Let me see if I can ask it a different way. If the -- if there is line loss associated from the point of generation to the delivery point, that's the responsibility of the SSO supplier, correct?

A. Well, the SSO supplier is paid for and is required to deliver to the delivery point megawatt-hours sufficient to meet the needs of Duke Energy Ohio. So if there are losses between the point of generation and the delivery point, the supplier would have to make up for those.

Q. The SSO -- excuse me, let me try that again. The SSO supplier is also responsible for what are called the "load-serving entity obligations." Could you describe for us what that means under subsection G of 3.1.

A. Subsection D of 3.1?

Q. G.

A. G. I can't give you specific examples of LSE obligations; that would probably be something a witness who is more familiar with the PJM operations might.

Q. And, finally, under subsection I of section 3.1, the electricity must be delivered free of liens and security interests. Could you explain for the record what that means.

A. Sure. The SSO supplier is delivering the supply to Duke Energy Ohio, and nobody else has claim, either physical or financial, on those megawatt-hours.

Q. On the buyer's side of the transaction, in this case Duke, agrees to take delivery and make payment of a price, correct?

A. That's correct.

Q. And that's contained in section 3.2 of the master supply agreement?

A. That's correct.

Q. Now, "price" is a defined term under this agreement?

A. That's correct.

Q. And that is defined in Attachment A -- this is where it gets a little bit complicated of the agreement which is Attachment F to the application.

Okay?

A. I am on Attachment A.

Q. Attachment A defines the price that would be paid by the buyer, correct?

A. That's correct. And that's based on the auction.

Q. And the dollar amount is stated in a fixed dollar per megawatt-hour; am I correct in that as well?

A. That's correct.

Q. And the fixed dollar per megawatt-hour as I just indicated would be determined by the results of the auction process which your organization would be responsible for monitoring, correct?

A. That's correct.

Q. Now, under the buyer's obligations, the buyer would also be responsible for certain transmission costs under subsection D.

A. Subsection D of the master supply agreement?

Q. Yes.

A. Section --

Q. 3.2.

A. I'm sorry, I am having trouble getting there. Okay. Subsection D.

Q. If it would help, it's on pages 15 and 16 of the attachment.

A. Yeah, I've got it here. Yes, that's correct.

Q. And the buyer is also responsible for providing the renewable energy component of any state portfolio requirement, correct?

A. That's correct as well.

Q. Now, there's another section with regard to cost allocation contained in section 3.6 which we find on page 17 of Attachment F.

A. On page 17 of which document?

Q. Of Attachment F, section 3.6.

A. Okay. Can you repeat the question?

Q. Yes. There's a cost allocation of something called the PJM member default contained -- which is described in section 3.6, correct?

A. That's correct.

Q. Could you describe for the record what is a PJM member default.

A. I'm actually not completely familiar with the default cost allocation.

Q. Is it your understanding under this provision that if there is a charge for a PJM default, then the buyer can assign that cost, if it incurs it, back to the seller or sellers?

A. That's how I would interpret this, yes.

Q. Just to wrap this up then, as a result of the auction, the SSO supplier will be required to provide a firm and continuing load-responsive product and, for that, will receive a fixed-dollar per megawatt-hour price, correct?

A. That's correct.

MR. DARR: That's all I have. Thank you.

EXAMINER WALSTRA: Thank you.

Ms. Hussey.

MS. HUSSEY: Nothing from the Kroger Company, your Honor.

EXAMINER WALSTRA: Ms. Bojko.

MS. BOJKO: Nothing, thank you.

EXAMINER WALSTRA: OCC.

MR. BORCHERS: Yes, thank you, thank you.

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CROSS-EXAMINATION

By Mr. Borchers:

Q. Good morning, Mr. Lee.

A. Good morning.

Q. Your firm's implementation of the competitive bidding process will continue through the duration of this proposed electric security plan,

correct?

A. That's correct.

Q. And you are aware that Duke proposes that it had the unilateral right to terminate the electric security plan a year early?

A. I'm aware of that, yes.

Q. Under the competitive bidding process plan, the "full requirements product" includes energy, capacity, ancillary services, and other transmission services defined in the master SSO supply agreement, correct?

A. That's correct.

Q. And each tranche of this full requirements product is 1 percent of Duke's standard service offer load obligation at each hour during the term of the SSO supply contract, correct?

A. That's correct.

Q. And customers may migrate to and from Duke's standard service offer throughout the term of the electric security plan, correct?

A. That's correct.

Q. And due to this migration, Duke's SSO load may change, correct, throughout the term of the ESP?

A. Correct.

Q. There is no bidding or pricing for the individual components of the full requirements product such as capacity versus energy versus ancillary services, correct?

A. That's correct. Bidders submit a bid versus the announced price in the auction. The announced price is not broken up by energy, capacity, ancillary services.

Q. And the competitive bidding process plan also does not include bidding or pricing for different customer classes, correct?

A. No. It's a slice-of-system.

Q. You are aware, are you not, that separate auctions or bidding for different customer classes is conducted in other jurisdiction or has been conducted in other jurisdictions?

A. I'm aware of that, yes.

Q. Now, the master SSO supply agreement sets forth the contractual obligations of successful suppliers and the company in respect to each auction, correct?

A. Could you repeat that question?

Q. The master SSO supply agreement sets forth the contractual obligations of successful suppliers and the company with respect to each auction, correct?

A. Correct.

Q. And the master SSO agreement must be executed by each successful supplier, correct?

A. And by "successful" you are talking about winning bidders in the auction?

Q. Yes. And there are no exceptions to this requirement?

A. There are no exceptions.

Q. And under the master SSO supply agreement, Duke may terminate agreements with wholesale suppliers if Duke elects to exercise its unilateral right to terminate its ESP early, correct?

A. That's correct.

Q. And so, wholesale suppliers will be subject to the risk of having their master SSO supply agreement with Duke terminated due to the fact that Duke may unilaterally terminate its ESP early, correct?

A. That is correct.

MR. BORCHERS: Thank you. I have no further questions.

EXAMINER WALSTRA: Thank you.

MR. BORCHERS: Thank you, Mr. Lee.

EXAMINER WALSTRA: Mr. Allwein.

MR. ALLWEIN: We have no questions, your Honor.

EXAMINER WALSTRA: Thank you.

Mr. Boehm.

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CROSS-EXAMINATION

By Mr. K. Boehm:

Q. Mr. Lee, can you please turn to page 8 of your direct testimony.

A. I have it here.

Q. Beginning on line 12, you state "Regardless of the length of time to which a supplier commits, each successful supplier will provide full requirements SSO supply, including energy, capacity, transmission ancillaries, and other transmission services as defined in the Master SSO Supply Agreement."

So if I understand correctly, the -- when a bidder submits a bid, they -- they bundle all of these different products into a single bid, but what they bid in is a single bid per megawatt-hour price; is that correct?

A. Typically in the auction the bidders aren't bidding prices. The auction manager announces a price, and the bidders just tell us how many tranches they would be willing to serve at that announced price. It's -- the announced price is a bundled price. There's no breakout of energy versus capacity, for example.

Q. Okay. So the -- the price that's announced is a dollar -- is a single dollar per megawatt-hour price, correct?

A. That's correct.

Q. Why wouldn't you have an auction -- have separate auctions for energy, separate auctions for capacity, separate auctions for ancillary services?

A. Because there is a lot of different potential auction designs, and there's pluses and minuses associated with each of them. Part of the reason why we like a single product in this is to ensure that there are no products that have limited interest and clear, you know, unexpectedly high prices. We're looking to serve the load -- bundled load of SSO -- the bundled SSO load of Duke Energy Ohio and that's what bidders are bidding on in this case.

Q. So you -- one of the reasons that you go with the single price auction, bundled auction, is you just want to drive up the amount of bidders in an auction; is that right?

A. I don't know if I would say that I want to drive up the number of bidders.

Q. You want to attract as many bidders as possible.

A. What we want to try to avoid is we're trying to come up with a price that's -- is fair as we can for all Duke Energy Ohio customers. And if you break the products up either by customer class potentially or break the product into different components, you run the risk of there being individual components of the auction where there is very little interest and, as a result, a high price.

Q. Thank you.

Can you please turn to page 10 of your direct testimony. Beginning on line 13 with the question, you identify different information that -- that bidders receive prior to the auction; is that correct?

A. That's correct.

Q. I just wanted to ask you about a couple of these. The historical hourly load data for retail load and SSO load for a three-year period, why is that information that a bidder would be interested in?

A. Well, you know, bidders are bidding to serve the full requirements of Duke Energy Ohio customers. The load is not uniform at all hours. Market price of electricity might vary from hour to hour. And the bidders are bidding it at a fixed price so they need to understand the shape of Duke Energy Ohio's load.

You know, customer migration is a risk that suppliers are taking on. So they may want to know what the load shape is by customer class. And they want to know what the customer accounts are so they can assess what the range of supply obligations might be. And by providing it on an hourly basis we're giving the potential bidders in the auction the most granular information available.

Q. On line 19 you mention peak load contribution and NSPL. What's NSPL?

A. Network system peak load.

Q. What is -- can you describe what that is?

A. Yeah. You know what, as I said earlier, I am not a PJM expert, per se, but network peak system load, understanding the capacity obligation associated with these customers and what PJM peaks -- PJM's peak requirement is versus Duke Energy Ohio peak requirement.

Q. So you say "Peak Load Contribution and

NSPL for eligible and SSO load." Why is that information that a bidder be interested in that?

A.   It goes to the capacity obligation that potential suppliers to Duke Energy Ohio are going to have, and eligible versus SSO load that's essentially the full customer base of Duke Energy Ohio versus the customers that haven't decided to go with a CRES supplier.

MR. K. BOEHM: Thank you, Mr. Lee. Those are all the questions I have.

EXAMINER WALSTRA: Ms. Petrucci.

MS. PETRUCCI: Yes.

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CROSS-EXAMINATION

By Ms. Petrucci:

Q.   Good morning, Mr. Lee.

A.   Good morning.

Q.   Do you know who prepared the master supply agreement that's been attached to Duke's proposal in this proceeding?

A.   The master supply agreement was prepared by a number of people at Duke Energy Ohio, and I believe they started probably with the master supply agreement from the prior ESP.

Q.   Were you involved in preparing the MSA?

A. I was involved, you know, to some degree, yes.

Q. Do you have a working knowledge of this particular MSA that's proposed?

A. Yes.

Q. Did you review the testimony that has been filed in this proceeding by Lael Campbell of Exelon Generation?

A. I did, yes.

Q. Do you have any opinion about his suggested amendments to the proposed MSA?

A. You would have to ask me about them individually.

Q. Okay. I have a copy of his testimony with the specific suggestions. Do you need a copy of that?

A. That would probably help, yes.

MS. PETRUCCI: May I approach?

EXAMINER WALSTRA: Yes.

MS. PETRUCCI: Your Honors, can I have that marked as Exelon Exhibit 1.

EXAMINER WALSTRA: It is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER WALSTRA: I think there are two copies of his testimony, two versions.

MS. PETRUCCI: I believe what I handed out is a copy of the testimony that includes an attachment which is Mr. Campbell's proposed redlines to the master supply agreement.

EXAMINER PIRIK: Mr. Campbell filed two sets of testimony; one is on the master service agreement and one is on another agreement.

MS. PETRUCCI: Yes, what I just distributed -- yes, what I just distributed is his testimony for Exelon Generation Company and that's why I requested we mark it for Exelon's exhibit.

EXAMINER WALSTRA: Thank you.

Q. (By Ms. Petrucci) If you could turn to page 4 of the attachment and I think I have got a sticky on each of the particular pages I wanted to point folks to today. And do you recall he has made some suggestions to delete certain language in the proposed MSA?

A. I do recall that, yes.

Q. On the bottom of page 4 is some language that is in a "whereas" clause and can you tell me if the specific clause there that has been redlined and to be struck from the agreement would -- if it were not struck, would it require all bidders for the auctions to put generation into the base residual auction?

A. You know, as I read the original "whereas" clause and, you know, I am not an attorney, but when I read it, it said "including, without limitation, through participation in the base residual auction...," so, in my mind, there was the potential there for bidders to use an alternative means.

Q. But do you believe that the specific language would actually require the bidders to put the generation in the base residual auction?

A. I can't say that I know that it does require them to put their generation -- are you talking about the original language?

Q. Yes. What I'm specifically trying to understand is the effect of what he's proposed to strike, if it weren't stricken, would the effect of it require bidders to put generation in the base residual auction?

A. I don't know that it does.

Q. Do you know if it's a PJM requirement to put the generation in the base residual auction?

A. I don't know if it's a PJM requirement.

Q. What if the bidder doesn't own the generation and just has rights, contractual rights, to the generation? What would happen in that situation with this particular clause?

A. With respect to this particular clause, you know, again, I am not an attorney, in this sense there is no requirement by bidders in the auction, of suppliers, to Duke Energy Ohio -- there is no requirement that they own generation.

Q. Do you see any harm if the particular clause that Mr. Campbell has suggested be removed is actually removed from the MSA?

A. I guess I could answer this way, I'm not sure that I'm familiar enough with the -- the capacity requirements of PJM to understand what all the options are for suppliers to meet their capacity requirement associated with SSO load. So, in that sense, I'm not sure that we're removing -- I am not sure of removing this clause.

Q. Is it also correct you're not sure if this clause would be an additional requirement that's been proposed by Duke with regard to the capacity obligation?

A. Versus what? I mean, I'm familiar with this agreement, prior agreements, and the agreements of other Ohio utilities and they are all effectively the same.

Q. Let's turn to page 14 next. And specifically the provision in the MSA regarding termination of the ESP. And would you agree with me that the purpose of this provision is, it's 2.4, is to permit Duke to unilaterally terminate its obligation to buy power during the third year of the ESP?

A. I would agree that this is a termination provision that provides Duke Energy Ohio the unilateral option of terminating the ESP.

Q. Are there some tranches that are three-year tranches that would run through May, 2018?

A. There are three-year tranches available in the first and second auctions.

Q. And if there was an auction held and a bidder won the right to deliver from June, 2017, to May, 2018, that supplier would commit resources to being able to serve that winning load, correct?

A. That's what they are competing to do, yes.

Q. And, by definition, if they win, then they've committed.

A. Yes.

Q. Okay. And then, of course, the supplier would incur costs associated with committing to serve during that -- that third year of the ESP, correct?

A. That's correct.

Q. In pricing to serve that third year of the ESP, won't the supplier have to include a risk component that they may have the contract canceled because of the early termination provision that's proposed by Duke in this proceeding?

A. You know, I can't -- I can't tell you specifically how individual bidders will formulate their bids. You know, this -- if I were a bidder, I would look at all the risks associated with being an SSO supplier, and I would take those into account when I -- when I bid in the auction.

Q. By your answer you're acknowledging there is a risk that a bidder for the third year may have the contract canceled because of the early termination provision.

A. I would say it's -- it's consideration in bidding in the auction, all of the potential risks that are out there. I don't know if this is a major risk for bidders. I can't speak to how bidders would formulate their bids.

Q. If you accept that that risk exists, would you agree that the effect of it had -- would raise the cost of bids for the third year of service as opposed to the bids that would come in if the third year was actually firm and there was not an early termination right or provision?

A. You know, again, without -- since I can't know how bidders are going to bid, I can't know how winning bidders are going to price all the components they see of risk, I don't know that -- that it will have an effect on the clearing prices in the auction. I can't tell you how bidders are going to formulate their bids.

Q. But you've agreed with me that there is a risk to the supplier by virtue of this early termination provision being proposed that if they wanted to bid for a three-year tranche, that the third year may not actually come about if Duke exercises that provision; am I correct?

A. I think there is risk associated with being an SSO supplier through all the provisions of the contract that outline what their service obligations are. I can't tell you whether this is viewed -- would be viewed as a significant risk by the bulk of the bidders, and I can't tell you how they are going to price that risk into the way they bid in the auction.

Q. Okay. Well, let's assume you were a

bidder, and you want to bid on the three-year tranche opportunity and this early termination provision was in place. You would be exposed to a risk that that early -- that third year may not come about if Duke exercises and terminates the ESP; am I right?

A. First of all, I am not a bidder.

Q. I understand.

A. And I haven't done any kind of analysis on what I think might be driving any risk of termination. Nor do I have any understanding what the likelihood that is owned or what the cost might be so I can't answer that hypothetical.

Q. Why don't we go ahead and turn to page 16.

MR. D'ASCENZO: Was it 60, 6-0?

MS. PETRUCCI: 16.

MR. D'ASCENZO: Thank you.

Q. In the middle of that page, Mr. Campbell is recommending the addition of two costs, generation deactivation and emergency load response. Do you see that?

A. I do.

Q. Do you know if those charges are directly billed to the retail customer by Duke?

A. I'm not familiar enough with Duke's rate structure to answer that.

Q. If they have, and I am asking you to assume that for a moment, if both generation deactivation charges and emergency load response are directly billed to the retail customer by Duke, should they also be included in section 3.2, subparagraph (D)(1) of the MSA?

A. If you're asking me if Duke customers should be double billed for some cost, the answer is no, but I'm not familiar enough with Duke's rates to really understand how this charge may or may not be passed through to customers.

Q. My question, I think, was a little simpler. If Duke is actually doing that, is it appropriate to include those two costs, generation deactivation and emergency load response, in this provision of the MSA?

A. I think the answer depends on how you would -- how the process would work for charging customers. If Duke suppliers are the ones who are being charged by PJM for these and billing these costs into their auction price, then I don't think Duke Energy Ohio would be also charged by PJM, and any costs associated with these charges, while there may be a mechanism in rates to be passed through, but

I think it would be zero. I don't think they would be double charged, but I don't know enough about how Duke Energy's rate process works to answer.

Q. Do you know if these two charges, generation deactivation and emergency load response, are listed in the current existing MSA?

A. I believe they are, yes.

Q. And maybe I should make my question clearer. Do you believe they are listed in the current MSA under this particular provision as it exists in the current MSA?

A. Oh, I see. I'm not sure. I'm not sure where it is in the current MSA.

Q. Okay. Let's take a look at page 35.

A. 35 of?

Q. Attachment -- the attachment to Mr. Campbell's testimony. I think it will be the last tab.

A. I see, okay.

Q. And this section addresses billing. If you could review section C of 6.2 and the language that has been proposed to be removed by Mr. Campbell. Is the effect of that language the following: If Duke decided unilaterally that a resettlement or an adjustment was needed, does that language require the supplier to accept Duke's adjustment even if the supplier disagreed with it?

A. Can you ask the question one more time? I was a little confused with what you asked.

Q. Sure. As proposed by Duke, does the effect of this language mean that when Duke decides on its own, unilaterally, to -- that a resettlement or adjustment is needed, that the supplier must accept Duke's adjustment?

A. I believe that's what the language states, yes.

Q. Do you know, under PJM's rules, if Duke suggests an adjustment and the load-serving entity disagrees, what happens?

A. I don't know.

Q. Do you know, with respect to the bidding requirements, that a supplier must accept any Duke resettlement or adjustment?

A. Under the bidding requirements?

Q. Yes.

A. Are you talking about the bidding of the auction?

Q. Yes.

A. The bidders are bidding on supplying under the terms of this master SSO.

MS. PETRUCCI: I have no further questions. Thank you, Mr. Lee.

EXAMINER WALSTRA: Thank you.

Mr. Hart.

MR. HART: No questions.

EXAMINER WALSTRA: Mr. Vickers.

MR. VICKERS: No questions.

EXAMINER WALSTRA: Staff.

MR. LINDGREN: None, your Honor.

EXAMINER WALSTRA: Redirect?

MR. D'ASCENZO: No, your Honor.

EXAMINER WALSTRA: Thank you.

You may step down. Thank you.

THE WITNESS: Thank you.

EXAMINER WALSTRA: With regard to Duke Exhibit 3.

MR. D'ASCENZO: Thank you, your Honor. At this time Duke Energy Ohio would like to move Duke Energy Ohio Exhibit 3 into evidence.

EXAMINER WALSTRA: Any objections?

It will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. D'ASCENZO: Thank you.

EXAMINER WALSTRA: Next witness.

MS. SPILLER: Thank you, your Honor. At

this time Duke Energy Ohio would call Jonathan L. Byrd to the stand, please.

(Witness sworn.)

EXAMINER WALSTRA: You may be seated.

MS. SPILLER: And, your Honor, if I may, for purposes of identification, have marked as Duke Energy Ohio Exhibit 4, the direct testimony of Jonathan L. Byrd filed on May 29, 2014, in this docket.

EXAMINER WALSTRA: It is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. SPILLER: And may I approach the witness, your Honor?

EXAMINER WALSTRA: You may.

MS. SPILLER: Thank you.

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JONATHAN L. BYRD

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

DIRECT EXAMINATION

By Ms. Spiller:

Q. Good morning, Mr. Byrd.

A. Good morning.

Q. Could you identify yourself for the record, please.

A. Jonathan L. Byrd. My business address is 400 South Tyron Street, Charlotte, North Carolina 28202, and I'm employed by Duke Energy as the renewable strategy and compliance manager.

Q. Thank you.

And do you have before you, sir, what has been marked as Duke Energy Ohio Exhibit 4?

A. I do.

Q. And what is that, please?

A. That's my direct testimony filed on behalf of Duke Energy Ohio.

Q. And that testimony was filed on what date, please?

A. May 29, 2014.

Q. And since the submission of your testimony on May 29, 2014, do you have any changes or revisions?

A. I do not.

Q. And, Mr. Byrd, if I were to ask you today the questions that are set forth in Duke Energy Ohio Exhibit 4, would your answers be the same today as they are reflected in your testimony?

A. Yes, they would.

MS. SPILLER: Thank you, your Honor. The witness is available for cross.

EXAMINER WALSTRA: Thank you.

MR. O'BRIEN: No questions, your Honor.

MR. DARR: No questions.

MS. HUSSEY: No questions.

MS. BOJKO: No questions, your Honor.

MR. BERGER: Just a couple of questions, your Honor.

EXAMINER WALSTRA: Okay.

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CROSS-EXAMINATION

By Mr. Berger:

Q. Good morning, Mr. Byrd.

A. Good morning.

Q. I couldn't go without any questions.

Mr. Byrd, does the company understand that rider AER is subject to audit on a regular basis by the PUCO for both the actual amount of costs incurred and the prudence of those expenditures?

A. Yes.

Q. And does the company understand that if rider rate, if the audit costs, final costs reflected aren't the actual amount of costs or that some of the costs are not prudently incurred, that there will be a reconciliation that removes overcharges and improperly charged costs?

A. Yes, I understand that.

Q. Does the company understand that the appropriateness of rider AER as a form for recovery of renewable costs is subject to ongoing review by the Commission?

A. Could you repeat that?

Q. Yes. Does the company understand that the appropriateness of rider AER as a form for recovery of renewable costs is subject to ongoing review by the Commission?

A. Or is a mechanism maybe?

MS. SPILLER: And, I'm sorry, Mr. Berger, I am having trouble hearing you.

MR. BERGER: I'm sorry. Let me move the mic a little bit closer.

Q. Do you want the court reporter to repeat the question, or did you not understand the question?

A. I think I did.

Q. Okay.

A. We understand that it is a rider that is used to recover the cost of renewable energy credits that we procure as well as some other costs associated with that procurement effort.

Q. But in terms of mechanism, a rider mechanism, that adjusts for actual costs incurred, does the company understand that the use of that kind of mechanism is subject to ongoing review by the Commission, for the Commission to determine, well, should this be utilized or should renewable costs be recovered in base rates, for example, or through another mechanism in an ESP proceeding?

A. I'm not aware of any ongoing review.

Q. Okay. Rider AER provides a short recovery of prudently-incurred costs. Would you agree that other than prudence risk, there is no risk associated with the cost recovery under rider AER?

A. I think that prudency risk is the primary risk but it is a bypassable rider so I'm not sure what happens if we have 100 percent switching.

Q. So you're giving an example where there are no other -- no customers left to pay the balance?

A. Correct.

Q. Okay. And the company hasn't proposed any -- any mechanism to deal with should that ever occur?

A. Not that I'm aware of.

Q. And the company isn't anticipating that occurring any time in the near future; is that correct?

A. I'm not aware of a switching forecast that we maintain.

MR. BERGER: Okay. Thank you. That's all I have, your Honor.

EXAMINER WALSTRA: Thank you.

Mr. Allwein?

MR. ALLWEIN: Mr. Mendoza has some questions, your Honor.

MR. MENDOZA: Just a few questions.

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CROSS-EXAMINATION

By Mr. Mendoza:

Q. Good morning, Mr. Byrd.

A. Good morning.

Q. Would you please refer to page 5, lines 6 through 10 of your testimony.

A. Okay.

Q. Do you see where it says "The plan advances of state policy"?

A. I do.

Q. And let's look down to where it starts off one of the goals of Ohio policy under the code section 4928.02(C) is to "ensure diversity of electricity and electric suppliers." Do you see that?

A. Yes.

Q. Are you familiar with this policy in the state of Ohio?

A. Yes.

Q. And are you familiar with the concept of supply diversity generally?

A. I think this says ensure diversity of electricity -- electricity supplies and suppliers.

Q. Right. My question -- my question is do you -- do you understand the concept of, you know, ensuring diversity of different types of supply of electric, electric generation?

A. Yes, generally.

Q. And do you know why, generally speaking, regional transmission organizations prefer diversity of electric supply?

MS. SPILLER: Objection. This is beyond the scope of Mr. Byrd's testimony. We're talking about RTOs in this question and not Ohio policy.

MR. MENDOZA: His testimony says the plan advances state policy and then cites to the state policy and I asked him if he understood -- was familiar with the state policy and he said he was.

MS. SPILLER: But that's not an RTO policy.

MR. MENDOZA: I could ask about the state

if that -- if it would make this better.
EXAMINER WALSTRA: He can answer the question if he knows.
Q. Do you know why an RTO and ISO or a state would prefer to have diverse supply of electricity?
A. No. I'm not an RTO expert. I am just familiar with this policy as it's stated here, and I believe we are supportive of that policy. That's what my testimony is describing.
MR. MENDOZA: I have no further questions.
EXAMINER WALSTRA: Thank you.
Mr. Boehm.
MR. K. BOEHM: No questions, your Honor.
EXAMINER WALSTRA: Ms. Petrucci.
MS. PETRUCCI: No questions.
EXAMINER WALSTRA: Mr. Hart.
MR. HART: Yes, your Honor.
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CROSS-EXAMINATION
By Mr. Hart:
Q. Mr. Byrd, were you involved in Case 11-3549?
A. Can you clarify that?
Q. The last ESP case.

A. I was not in exactly the same role, but I was aware of and worked with those who were more directly involved in that.

Q. You understand that rider AER was created in that case?

A. I do understand that.

Q. And what -- the costs that go into rider AER are the renewable energy credit costs that are associated with generation service; is that correct?

A. The costs that go into rider AER are our costs for procuring RECs and broker fees and other costs associated with fulfilling our compliance obligations.

Q. And that obligation arises as a result of being a generation service supplier, correct?

A. As a result of sales through our SSO offer, that's correct.

Q. So if there were no SSO sales, there wouldn't be any requirement to get RECs?

A. For an extended period, that's correct, but our REC obligation is derived on historic SSO sales so that zero sales would have to persist for some time.

Q. I understand. You wouldn't have new expenses, but the reason you incur the expenses is to meet your requirements to have RECs as a generation supplier.

A. As a result of those prior year SSO sales, correct.

Q. And for CRES suppliers, if the customer switches, the CRES supplier has that REC requirement.

A. That's correct. Going forward, that obligation switches to the generation supplier or the from the CRES suppliers.

Q. And part of Duke's application in this case is to continue rider AER for the next term, correct?

MS. SPILLER: Objection. Misstates the application.

EXAMINER WALSTRA: Overruled.

A. Rider AER is already approved to continue so I don't --

Q. Is it your understanding it's approved to continue to accumulate new expenses after the term of the ESP, or is it permitted to continue to recover expenses that were already incurred during this ESP term?

A. So if we have sales this year, it creates an obligation for me to supply RECs for the three coming years. So that obligation is -- I can see that and I go out and secure RECs for that, and when I use those RECs, retire those RECs, I expense them, and those are the costs we are recovering.

Q. Those are costs that are incurred during this ESP period which has about nine months left to go or eight months left to go.

A. I don't expense them until I retire them. So cash goes out the door, RECs come in in inventory, but I would not describe that as a cost. That's not expensed.

Q. Well, the costs that you include into rider AER are the cash outlays, correct?

A. No.

Q. So you're not putting the money into the AER until you expense it?

A. Correct.

Q. Okay. Though it is part of Duke's proposal in this case to continue rider AER as it is, correct?

A. I believe it's already continuing as it is. I'm not sure that we proposed any changes to that as it is.

Q. But if the Commission were to reject this ESP plan, is it your belief that you are allowed to indefinitely add expenses to rider AER? New expenses after the term expires.

A. I haven't considered the scenario where the ESP is rejected. I'm not sure what happens with our SSO sales in that case or what my REC obligation is. We are just buying RECs to meet our obligation. And those are the ESP periods we would flow through in the future.

Q. All right. What I'm really getting at, do you believe that the current ESP plan allows you to accumulate REC expenses after the expiration of that plan if the proposal you have on the table today is rejected?

A. I'm not sure. I believe the rider is there for us to recoup the costs for RECs and, to the extent I have an obligation, I think that's the vehicle we would use to recover those expenses.

MR. HART: Thank you.

MR. VICKERS: No questions, your Honor.

EXAMINER WALSTRA: Staff?

MR. BEELER: No questions, your Honor.

EXAMINER WALSTRA: Redirect?

MS. SPILLER: Nothing, your Honor. Thank you.

EXAMINER WALSTRA: Thank you. You may step down.

THE WITNESS: Thank you.

EXAMINER WALSTRA: Would you like to move your exhibits in?

MS. SPILLER: Yes, thank you, your Honor. Duke Ohio would move into the record Duke Energy Exhibit 4, the direct testimony of Jonathan Byrd.

EXAMINER WALSTRA: Are there any objections?

If none, they will -- it will be admitted.

MS. SPILLER: Thank you, your Honor.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER WALSTRA: You can call your next witness.

MS. WATTS: Thank you, your Honor. Duke Energy Ohio calls Patricia Mullins.

(Witness sworn.)

EXAMINER WALSTRA: Thank you. You may be seated.

MS. WATTS: Your Honor, I would like to have Ms. Mullins's testimony marked as Duke Energy Ohio Exhibit 5, please.

EXAMINER WALSTRA: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. WATTS: May I approach?

EXAMINER WALSTRA: You may.

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PATRICIA W. MULLINS

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

DIRECT EXAMINATION

By Ms. Watts:

Q. Could you state your name and place of employment, please.

A. Patricia Mullins, Duke Energy Business Services, Director of Regional Financial Forecasting, 550 South Tyron Street, Charlotte, North Carolina.

Q. Thank you.

And do you have before you what's been marked as Duke Energy Ohio Exhibit 5?

A. I do.

Q. And is that the testimony that you caused to be filed in this proceeding?

A. Yes.

Q. Do you have any additions or corrections to that testimony?

A. No.

Q. And if I were to ask you the questions contained in that document again today, would your answers be the same?

A. Yes.

MS. WATTS: Ms. Mullins is available for cross-examination.

EXAMINER WALSTRA: Thank you.

IEU -- or, Mr. O'Brien?

MR. O'BRIEN: I have no questions, your Honor. Thank you.

EXAMINER WALSTRA: IEU?

MR. PRITCHARD: Thank you, your Honors.

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CROSS-EXAMINATION

By Mr. Pritchard:

Q. Good morning, Ms. Mullins. My name is Matt Pritchard. I represent the Industrial Energy Users of Ohio. On page -- at the bottom of page 3 and top of page 4, you state that the Commission requires that pro forma financial projections be provided when Duke files its ESP, correct?

A. Correct.

Q. And you testified that you were the witness responsible for providing the pro forma financial projections, correct?

A. Yes.

Q. And if you turn to page 5, you list the major assumptions that are contained in your pro forma financial projections, correct?

A. Correct.

Q. In regards to the fourth sub-bullet point on lines 11 and 12, you state that you assume a "continuation of certain existing riders." Do you see that statement?

A. Yes.

Q. And then after that, you -- it states "including but not limited to Riders DR-IM, BTR, and UE-GEN." Do you see that?

A. Yes.

Q. Other than the three riders here, what other riders did you assume would continue?

A. I don't have a list in front of me, but the ones that I can think of are a kilowatt-hour tax rider, a -- let's see, that's the only other one I can think of right now.

Q. Off the top of your head, sitting here today, did you assume any riders discontinued from the current ESP?

A. No.

Q. Do you know whether or not you included rider PSR in your pro forma financial projections?

A. For PSR we assumed the -- PSR, can you remind me which one's --

Q. That's the one related to OVEC.

A. Yes. We assumed that the entitlement margin is zero so we assumed it didn't have an impact on the financials.

Q. And when you say the "margin is zero," is it safe to say that the revenue and the expenses were equal?

A. Correct.

MR. PRITCHARD: No further questions, your Honor.

EXAMINER WALSTRA: Thank you.

Ms. Hussey.

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CROSS-EXAMINATION

By Ms. Hussey:

Q. Good morning, Ms. Mullins.

A. Good morning.

Q. Could you turn to page 2, line 6, in your testimony.

A. Okay.

Q. You testify that you are responsible for leading the financial planning and forecasting for Duke Energy Ohio; is that correct?

A. Correct.

Q. And you talked with Mr. Pritchard earlier that rider PSR -- or rider PSR you assume that the entitlement had no impact on the financials; is that correct?

A. Correct.

Q. Okay. On page 4 of your testimony, you indicate that several groups from within the company contributed input on certain issues including forecasting load, O&M expenses, and capital expenditures and financing; is that correct?

A. Correct.

Q. Okay. Were any projections or forecasts for rider PSR supplied to you?

A. No.

Q. No? Were you the individual who would have directed that such forecasts be developed?

A. No.

Q. On page 5, line 6 to 8 of your testimony, you state that projected income statement -- the projected income statement in your attachment EWM-1 includes the assumption of no new base rate increases, correct?

A. Correct.

Q. And to your knowledge has Duke formally committed to an electric base rate freeze over the term of the ESP?

A. Not that I'm aware of.

MS. HUSSEY: Thank you. No further questions.

EXAMINER WALSTRA: Thank you.

Ms. Bojko?

MS. BOJKO: Yes, thank you.

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CROSS-EXAMINATION

By Ms. Bojko:

Q. Good morning, Ms. Mullins.

A. Good morning.

Q. If the company were proposing to do a future base rate, would that be included in your projected financials or your -- I'm sorry, your pro forma financials?

A. In -- all I can say is in this forecast we have not assumed any base rate case impact.

Q. Right. And I guess if there was a pending case or if you knew about a case that was about to be filed, a base rate case, you would include that if you knew of that information; is that correct?

A. Yes.

Q. And when you stated, in response to a question, that you continued the certain riders on page 5 of your testimony, did you consider those riders continued in their current form and in their current level?

A. Yes.

Q. And you did consider the -- or you -- one of your assumptions made in your pro forma financial projections was the approval of the DCI which is the distribution capital investment rider; is that correct?

A. That's correct.

Q. And you considered that in the form that it is being proposed today, at the levels being proposed today; is that correct?

A. That's correct.

MS. BOJKO: Your Honor, may I approach, please?

EXAMINER WALSTRA: You may.

MS. BOJKO: Please allow the record to reflect I handed Ms. Mullins what's been identified as OCC-INT-02-01-10 and, excuse me, consistent with the Attorney Examiner's direction yesterday, I used the copy attached to OCC Witness Hixon's testimony so that would have a designation at the top Attachment BEH-3.

Q. Do you have that in front of you,

Ms. Mullins?

A. Yes, I do.

Q. Do you recognize this document, Ms. Mullins?

A. Yes.

Q. And this is a Duke response to a discovery request submitted by the Consumers' Counsel; is that correct?

A. That's correct.

Q. And in this response this indicates the projected revenue from the distribution capital investment rider; is that correct?

A. That's correct.

Q. And what you did was you calculated the rider based on calendar years '15, '16, '17, and '18; is that correct?

A. That's correct.

Q. However, the ESP is only proposed for a three-year term, so it would be half of 2015 and half of 2018; is that correct? Is that your understanding of the ESP?

A. The term of the ESP, I agree with the June of '15 through May of '18, yes.

Q. Okay. So for purposes of this discovery response, I did the full calendar years and the total amount for 2015 to 2018 is approximately 272 million, I believe; is that correct?

A. Yes, but the 2015 amount is the amount that we would recognize starting July.

Q. Oh, okay.

A. I mean June.

Q. So the 2015 amount has already been reduced to recognize only a half a year of 2015.

A. Correct. But '18 is a full year.

Q. Okay. So '18 and six months as well; is that correct?

A. The 104 represents the full year of '18.

Q. Okay. So if we were to only include half of 2018, would it be a fair projection to divide that by 2 and it would be 52 million?

A. Probably not exactly, but pretty close, yes.

Q. So your projection for the term of the ESP would be approximately $220 million; is that correct?

A. I don't have a calculator but, subject to your math, yes.

Q. And I guess, technically, the year 2018 would only be five months' worth instead of six months.

A. That's correct.

Q. So 272 would have to be reduced by approximately, you would think, 45 to 50 million dollars to arrive at the cost of the DCI during the term of the ESP.

A. Yes.

Q. Now, let's turn back to your testimony on page 4. On page 4 of your testimony, lines 11 and 12, you talk about the pro forma financial projections reflecting the full calendar years impacted by the three-year term of the next ESP, and I want to make sure that we're talking apples to apples here just as we did in the discovery response.

Are you saying that the pro forma financials were for 2015 and '18 for the full calendar years, or did you actually somehow do the financials where it would only reflect the term of the ESP, meaning June, 2015, to the end of May in 2018?

A. It's as it states in the testimony; it is financial statements for the calendar years '15 through '18.

Q. For the full calendar year?

A. Full calendar year.

Q. So '15, '16, '17, and '18, so four years.

A. Yes.

Q. And on the bottom of page 4, you use the term methodology utilized by the company for preparing its normal operating forecasts. Do you see that?

A. Which line?

Q. 19.

A. Yes.

Q. When you say normal operating forecasts for the company, are you talking about the distribution-only company's operating forecasts?

A. No. I'm responsible for the forecasts for Duke Energy Ohio regulated business so it would be the transmission distribution business.

Q. Okay. And would it include the operating information that's been asked -- or alluded to today of the OVEC entitlement owned by Duke Energy Ohio?

A. Repeat your question.

Q. Would it include the operating date for the OVEC generating units that Duke owns a portion of?

A. We assumed that the margin for OVEC was zero so we did not put in anything on the revenues or the expense.

Q. Okay. So your forecast would purely be on Duke Energy Ohio distribution and transmission facilities.

A. Correct.

Q. And could you turn to your first attachment, PWM-1.

A. Okay.

Q. Again, I am assuming then for projected statements of income, as you just said, nothing on this attachment would include income associated with the OVEC generating units; is that correct?

A. That's correct.

Q. Okay. So the line "Other Electric Revenue," what would that be?

A. I'm not sure. It's very small.

Q. Would the "Regulated Electric" mean the distribution -- the revenue associated with the distribution and transmission facilities we just talked about?

A. Yes.

Q. So where would "Other Electric Revenue" -- where would you get this information from if you don't know what it pertains to?

A. I don't have that in front of me. It is -- I'm sure the details are in our financial model. It may be based on historical or information that I received from -- from others within the company.

Q. From others in which department?

A. Since I'm not sure what it is, I'm not sure how to answer that.

Q. Okay. What about, can you go down to "Expense" and it says "Fuel used in Electric Generation and Purchased Power." What does that mean? If this is for distribution and transmission, what does fuel used for electric generation purchased power mean?

A. Yeah. It's actually the purchased power that we would expense as part of our service to the SSO so it's our RE and RC expense, retail energy and retail capacity.

Q. Is the company proposing to change how they collect for RE and RC in this proceeding?

A. No, not that I'm aware.

Q. So would the revenues associated with that be in the regulated electric revenues on the top half of this?

A. That's correct.

Q. And what about the operation and maintenance depreciation, is that all related to the D&T facilities that we talked about or does that also have a generation component?

A. No. It's just transmission and distribution.

Q. Could you turn back, please, to page 5 of your testimony. On the top -- on line 4, you talk about the most recent five-year plan. Do you see that?

A. Yes.

Q. Which five-year plan are you referencing?

A. Duke Energy Ohio five-year plan.

Q. For -- five-year plan for what?

A. 2014, '15, 16, '17, and '18.

Q. Okay. For what? I don't know what it is a plan for.

A. Sorry, a financial plan.

Q. It's your financial plan?

A. Correct.

Q. So do you update that annually?

A. We have several updates a year.

Q. So it's a projected financial plan for 2014 to 2018?

A. Correct.

MS. BOJKO: I have no further questions. Thank you, your Honor.

EXAMINER WALSTRA: Thank you.

MS. BOJKO: Thank you, Ms. Mullins.

EXAMINER WALSTRA: OCC.

MR. BERGER: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Berger:

Q. Good morning, Ms. Mullins. My name is Tad Berger. I am with the Office of Consumers' Counsel. I just have a few questions for you. Just following up on the questions Ms. Bojko was asking you, the RE and RC revenues and expenses reflected in your Exhibit P -- PMW-1 -- PWM-1, would those completely offset each other during the relevant periods that are shown on your -- on that exhibit?

A. Repeat the question. I couldn't hear you very well.

Q. Yes. Would the -- would the RC and RE revenues and expenses completely offset each other during the period shown in the exhibit?

A. Yes.

Q. Okay. So that would be a net zero, those two items.

A. Correct.

Q. So, effectively, this would still show just T&D net revenue and costs; is that correct?

A. State that question one more time.
Q. Yes. So this financial forecast would still show effectively just transmission and distribution net revenue or net costs; is that correct?
A. Correct.
Q. Okay. And is any -- is any of the revenue from OVEC -- did you say the revenue from OVEC is included?
A. It is not.
Q. It is not included. And the costs, the demand charges from OVEC would not be included either on this schedule; is that correct?
A. Right.
Q. And that's because the company considers those to be related to generation; is that right?
A. Our assumption was that the margin was zero, neutral, and so, therefore, not put into our forecast.
Q. Okay. Regarding that assumption, does -- you know who Bryan Dougherty is, right?
A. Yes.
Q. Mr. Dougherty, does he work for you?
A. No.
Q. Now, you are in the financial forecasting

division of Duke Energy Business Services; is that right?

A. Correct.

Q. And he is as well; is that correct?

A. That's correct.

Q. So what is his professional relationship with you?

A. We're in the same group, but he does a different forecast than I do. I'm responsible for the Ohio regulated.

Q. So he's director of -- you're director of regional financial forecasting. That doesn't include the area that he works in?

A. No. My responsibilities are separate from his.

Q. Okay. Do you know what his title is?

A. I do not.

Q. Okay. Do you and he have the same supervisor?

A. Yes.

Q. And who is that?

A. Myron Caldwell.

Q. What's his title?

A. I'm not sure exactly.

Q. Is he an employee of Duke Energy Business

Services?

A. Yes.

Q. And is he the individual who would have directed Mr. Dougherty to prepare the analysis in OEG --

MS. WATTS: Your Honor, I am going to object. We've moved considerably afield of Ms. Mullins' testimony at this point.

EXAMINER WALSTRA: I am going to overrule it at this time.

Q. Are you familiar with the projection that was done called the OVEC analysis in OEG-DR-01-1001 projecting the net cost or benefit of the price stabilization rider over the term of the --

A. I am not.

Q. Okay. You haven't reviewed that document at all?

A. I have not.

Q. You haven't discussed that document with Mr. Dougherty or any other person.

A. I have not.

Q. Now, your -- your department in Duke Energy Business Services, does it provide market price forecasts to Duke Energy Ohio on a regular basis?

A. My team does not.

Q. Is there a team at Duke Energy business service that provides market price forecasts to Duke Energy Ohio for Duke Energy Ohio's purposes?

A. I don't know.

Q. Do you know if there was a -- a business group in your department that provided that information to Duke Energy Ohio? Do you know which group it would be?

MS. WATTS: Objection, your Honor. She already answered that question.

EXAMINER WALSTRA: She can answer it if she knows.

A. I don't know.

Q. Okay. So when you say in your testimony that you currently lead forecasting for Duke Energy's regulated utility business of Duke Energy Ohio, is that limited to financial forecasting of operation results and does not extend it to market price forecasting for energy and capacity?

A. That's correct.

Q. So you're just looking at bottom line cash flow, bottom line operating results, and you're not looking at the nitty-gritty of where that comes from in terms of energy and capacity costs.

MS. WATTS: Objection as to the form of the question, your Honor.

Mr. Berger, could you use something other than "nitty-gritty" in your question?

MR. BERGER: Yes.

Q. You are not looking at the details underlying how those revenues are generated, including forecasts of energy costs and forecasts of energy -- of fuel expenses and things of that nature. Your division -- your group does not look at that.

A. What's your definition of "details"?

Q. Does your group look at market price forecasts for energy and coal prices and --

A. No.

Q. -- other components?

Okay. In terms of what details your group looks at, what details does your group look at? Do you look at operating expense details? Do you look at other kinds of details?

A. I think in my testimony on page 4, we talk about the key forecasting input, forecasting of load, operation and maintenance, capital expenditures and financing.

Q. And is that all in the T&D side?

A. Yes.

Q. Okay. And in terms of your testimony that the price stabilization rider has a net -- a net zero effect for purposes of your forecast, is it correct that that information was provided to you by somebody outside of your group then?

A. Yes.

Q. Who provided you with that information?

A. Don Wathen.

Q. Okay. Thank you.

So to the extent you relied on Mr. Wathen, your forecast would be entirely based on his projections with respect to the PSR, are there any other aspects of your financial forecasts that are based on information provided to you by another business group?

A. Again, in my testimony we get the key forecasting inputs from various groups. The forecasting of load is -- is a group within the -- a separate group within the company. O&M comes from each operational area and capital expenditures from each operational area as well.

Q. Are you familiar, Ms. Mullins, with the requirement in this case that the company provide rate impact to customers as part of a notice in this proceeding?

A. I'm not familiar with that.
Q. You're not -- so you don't know then who was responsible for developing a projected rate impact for purposes of issuing a newspaper publication for customers to understand what the impact of the proposed ESP was?
A. I was not involved in that.
Q. And your financial forecast does reflect the results, I think you indicated, of rate DCI.
A. Correct.
Q. With respect to the response you provided that was marked as OMA Exhibit 1, I believe.
MS. BOJKO: Your Honor, I didn't officially mark it as a separate exhibit because it was already identified as Attachment BEH-3. I'm not sure what the will of the Bench is. Would you like me to mark it as OMA Exhibit 1 or keep one identification of Attachment BEH-3?
EXAMINER WALSTRA: We can just mark it as OMA Exhibit 1.
MS. BOJKO: Okay. I would like to request that it be marked as such then, your Honor.
EXAMINER WALSTRA: It is so marked.
(EXHIBIT MARKED FOR IDENTIFICATION.)
Q. Okay. Looking at that OMA Exhibit 1, do

you have -- have you performed any breakdown of those numbers by month during the relevant period?

A. No, I did not.

Q. Okay. Would it be appropriate to assume that they could be evenly allocated within the years by month on --

A. I didn't do that analysis. I'm not sure.

Q. Okay. Will rider DCI costs be incurred as -- as on a -- on a cash basis or on an accrual basis?

A. What are you referring to, the recognition of revenue or the expenses or?

Q. The recognition of the expenses.

A. Our -- I am not in the accounting group, but I believe that we do accrual accounting.

Q. Okay. So if it was normal Duke Energy accounting, you expect this would be on an accrual basis?

A. Yes.

Q. Okay. And would the revenues be recorded on a cash or accrual basis?

A. I'm not sure. But I would again assume that we would be doing accrual accounting as normal.

Q. Okay. You're not -- you're not aware of a difference between accounting practices for revenues versus expenses at all at Duke Energy; is that correct?

A. Say that again.

Q. You're not aware of any difference in accounting practices for revenues versus expenses at Duke Energy.

A. No.

Q. Okay. Thank you.

You are a CPA, as I recall.

A. Yes.

Q. Okay. Now, your schedule PWM-1 reflects an increase in revenues over the term -- over the four-year period reflected in your schedule; is that right?

A. Restate the question.

Q. Yes. Your schedule -- your schedule PWM-1 reflects an increase of revenues for the four-year period, 2015 through '18; is that right?

A. Yes.

Q. Do you know what the reason is for -- the reasons for that increase in revenues over that period of time?

A. One of them is the DCI, also load growth and customer growth rejections.

Q. Anything else that stands out to you? I understand there might be some smaller items. Any significant increases in expenses over the same period of time that you are aware of? Or is the increase in expenses mostly related to inflation during this four-year period?

A. Nothing material that I can think of.

MR. BERGER: That's all I have. Thank you very much.

THE WITNESS: Thank you.

EXAMINER WALSTRA: Sierra Club.

MR. MENDOZA: I just had a few questions.

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CROSS-EXAMINATION

By Mr. Mendoza:

Q. Good morning, Ms. Mullins.

A. Good morning.

Q. Would you please refer to page 4, line 20 through 22. I think you looked at this with Mr. Berger a few minutes ago.

A. Which lines?

Q. I'm sorry, 20 through 22, the last sentence on that page.

A. Okay.

Q. Do you see where it says that you reviewed things like forecasting of load, operating and maintenance expenses, capital expenditures, and financing? Okay. Would when you turn to the first exhibit -- first attachment to your testimony, please. Are you there?

A. Yes.

Q. Do you see on the left side where it says things like revenue, expense, fuel used, operations and maintenance, depreciation, property tax, some other things that were forecasted?

A. Yes.

Q. Okay. In your work do you review or perform financial projections?

A. Yes.

Q. In your work do you review or perform cost and revenue projections?

A. Yes.

Q. In your opinion, which is more reliable, short-term cost projections or long-term cost projections?

A. Define what you're -- what you mean by short-term versus long-term.

Q. I could give you an example. I just mean as a general principle of forecasting, is time a relevant consideration? Would you trust a projection that came to your desk of, you know, where something might be in one year more or where something might be in ten years? I am talking about any type of cost projection, which is more reliable, short-term or long-term cost projections?

A. All forecasts have assumptions in them, but I would think the short-term would be more reliable based on those shorter-term assumptions.

Q. Okay. And which is more reliable, short-term revenue projections or long-term revenue projections? Just generally speaking as a matter of forecasting.

MS. WATTS: Your Honor, I am going to object because counsel hasn't provided a definition. The witness said she needed to have a definition of those terms before she could answer.

MR. MENDOZA: I'm just using terms as generally -- generally used. You know, none of these -- none of these are technical terms. I am just asking for the English language.

EXAMINER WALSTRA: She can answer if she knows or if she needs more information.

Q. Would you like me to provide examples on, you know, hypothetical years? I am just asking if time is a relevant consideration when you are looking at revenue projections. Is a short-term revenue projection or a long-term revenue projection more likely to be reliable?

A. I think there are lots of factors that make a forecast more reliable or less reliable besides time. The time is a consideration.

Q. I understand there are many, many factors that go into any forecast. But for a revenue projection would you say -- would you agree with me that a short-term projection is more likely to be reliable, all other things being equal, than a long-term projection?

A. It depends on the market, but, yes.

Q. Okay. Did you perform any analysis of the effect of rider PSR on Duke Energy Corporation's stock price?

A. No.

Q. At any time in the past five years have you or your team ever made any financial projections for Duke Energy Ohio regarding Duke Energy Ohio's OVEC entitlement?

A. No.

MR. MENDOZA: I have no further questions.

EXAMINER WALSTRA: Thank you.

Mr. Boehm?

MR. K. BOEHM: Nothing, your Honor.

EXAMINER WALSTRA: Mr. Oliker.

MR. OLIKER: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Oliker:

Q. Good afternoon. My name is Joseph Oliker. I think I just have one or two questions for you. If you turn to PWM-1.

A. Okay.

Q. And there is the line that says "Other Electric Revenue."

A. Yes.

Q. And I believe it says $1 million; is that correct?

A. Yes.

Q. Can you tell me what that pertains to?

A. I'm not sure. It's a miscellaneous revenue that's in our forecast. I don't have that information in front of me.

MS. WATTS: I'm sorry, I would like to interpose an objection because that question was answered earlier already and Mr. Oliker was not in here when it was proposed.

EXAMINER WALSTRA: I'll sustain.

MR. OLIKER: Thank you. That's all I have.

EXAMINER WALSTRA: Ms. Petrucci.

MS. PETRUCCI: No questions.

EXAMINER WALSTRA: Mr. Hart.

MR. HART: Yes, your Honor.

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CROSS-EXAMINATION

By Mr. Hart:

Q. Ms. Mullins, do the revenues and expenses associated with the OVEC entitlement flow through the Duke Energy Ohio financial statement?

A. Define "Duke Energy Ohio."

Q. Duke Energy Ohio, the company that's here applying for this rate case.

A. The financials that I have been responsible for forecasting are regulated and the OVEC has not flown through the financial in the past and in our forecast we've assumed that margin neutral, as I mentioned before, so in these -- in this forecast it's not in -- in this forecast.

Q. Okay. Would it be fair to say that the revenues and expenses of OVEC do not net to zero in real life?

A. I don't know.

Q. You don't know one way or the other? Okay. Would you agree that your projection assumes the approval of rider PSR?

A. Yes.

MR. HART: Okay. Thank you.

MR. VICKERS: No questions, your Honor.

EXAMINER WALSTRA: Staff?

MR. BEELER: No questions, your Honor.

EXAMINER WALSTRA: Redirect?

MS. WATTS: Your Honor, may I just have a minute or 2?

EXAMINER WALSTRA: Sure.

MS. WATTS: Thank you, your Honor. Just a couple of questions.

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REDIRECT EXAMINATION

By Ms. Watts:

Q. Ms. Mullins, is it your understanding, under rider PSR, the company would flow through any gains or losses related to its share of OVEC, 100 percent to customers?

A. Yes.

Q. So if the company is not making or losing any money on OVEC, how does that impact your forecast?

A. It wouldn't impact my forecast at all.

Q. Okay. And do you recall being asked some questions by Ms. Bojko about the years for which your forecast was created, and the last calendar year being a full calendar year as opposed to five months?

A. Yes.

Q. And is it your understanding that the company has proposed a sunsetting of rider DCI?

A. Yes.

Q. So it is proposed to be sunset or it's proposed to continue?

A. Define the sunset.

Q. I'm sorry.

A. I'm sorry.

Q. So is it your understanding that rider DCI is proposed to continue through the term of that year so, therefore, it would be logical to include the whole year's worth?

A. Yes, sorry. I think we've assumed that it continues, and we propose that it continues.

MS. WATTS: Okay. Thank you. I have no further questions.

MR. PRITCHARD: Your Honor, can I have the first question and answer read back?

EXAMINER WALSTRA: Sure.

(Record read.)

EXAMINER WALSTRA: Is there any recross?

MR. PRITCHARD: I believe briefly, your Honor.

EXAMINER WALSTRA: Go ahead.

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RECROSS-EXAMINATION

By Mr. Pritchard:

Q. Hello, again, Ms. Mullins.

A. Hi.

Q. Have you provided any financial projections in this case on the impact to Duke Energy Ohio if rider PSR is not approved?

A. I have not.

MR. PRITCHARD: That's my only question. Thank you.

EXAMINER WALSTRA: Ms. Bojko?

MS. BOJKO: Yes, thank you.

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RECROSS-EXAMINATION

By Ms. Bojko:

Q. Just to clarify back on the DCI issue. So you believe that you will receive revenue for the entire 2015 year, so the number that was on the discovery response of $104 million would be accurate;

is that correct?

A. I think -- can you restate the question? Because I think you said 2015, but 104 is '18.

Q. I'm sorry, if I did, I meant 2015.

A. Okay.

Q. So your -- the data response is accurate that you would get 22 million in '15, 63 million in '16, 83 in '17, and '18 would be $104 million.

A. That's correct.

Q. Okay. And so, through the ESP application, the company is requesting to continue the DCI beyond the term of the ESP; is that accurate?

A. That's correct.

Q. So the total cost of the DCI, you believe, will be the $272 million we discussed earlier?

A. The full sum of the numbers that were on that Exhibit 1.

Q. And it's your understanding the company specifically requests the DCI to continue beyond the ESP.

A. That's my understanding.

Q. Not just as a true-up, as a continuation of the rider.

A. Correct.

MS. BOJKO: Okay. No further questions. Thank you.

EXAMINER WALSTRA: Thank you.

OCC.

MR. BERGER: Yes.

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RECROSS-EXAMINATION

By Mr. Berger:

Q. Just following up on Ms. Bojko's questions. Is there somewhere in your testimony you specifically stated that you were looking for the recovery of rider DCI beyond the end of the ESP period?

A. Not in my testimony.

MR. BERGER: Okay. Thank you.

EXAMINER WALSTRA: Sierra Club.

MR. MENDOZA: Just one more question.

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RECROSS-EXAMINATION

By Mr. Mendoza:

Q. Mr. Pritchard just asked you if you performed any financial projections under a scenario where the rider PSR was not approved, and you told him you had not, correct?

A. Correct.

Q. Why have you not done that?

MS. WATTS: Your Honor, I am going to object to that question.

EXAMINER WALSTRA: I am going to overrule.

A. I was performing these pro forma statements for the application of Duke Energy Ohio and assumed that it would be approved.

MR. MENDOZA: Nothing more.

MR. K. BOEHM: No questions, your Honor.

MR. OLIKER: No questions, your Honor.

MS. PETRUCCI: No questions.

EXAMINER WALSTRA: Mr. Hart.

MR. HART: Yes, your Honor.

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RECROSS-EXAMINATION

By Mr. Hart:

Q. Ms. Watts asked you on redirect if all of the revenues and expenses would flow through to the customers, so I want to go back to a question I asked you earlier. When I asked you earlier if those revenue expenses flowed through the Duke Energy financial statement, you asked for a clarification, and then you stated that you're only responsible for the regulated part of the business; is that right?

A. That's correct.

Q. Isn't it true, though, that those revenues and expenses do flow through an unregulated portion of the Duke Energy financial statement?

MS. WATTS: Objection, your Honor. This is beyond the scope of redirect.

MR. HART: She testified those revenues and expenses are going to be passed through to the customers through a regulated rider so I'm trying to clarify exactly the nature of those revenues and expenses and how they are going to become regulated.

EXAMINER WALSTRA: Overruled.

Q. Do you need to hear the question again?

A. Yes, please.

MR. HART: Could you read it back?

(Record read.)

A. I think today they do. Upon approval of the application it would then be part of the regulated.

Q. Okay. So just to wrap up, what's, today, an unregulated portion of Duke Energy Ohio business would become a regulated part of the business that would be charged to customers.

MS. WATTS: Objection. Calls for a legal conclusion.

EXAMINER WALSTRA: Mr. Hart.

MR. HART: I think she can understand the difference between regulated and unregulated because her job is to do the unregulated portion of the accounting.

EXAMINER WALSTRA: Overruled.

THE WITNESS: I'm not -- I'm not sure of the question.

MR. HART: Okay. That's all.

EXAMINER WALSTRA: You may step down. Thank you.

MS. WATTS: Your Honor, we move Duke Energy Ohio Exhibit 5 into evidence, please.

EXAMINER WALSTRA: Any objections?

It will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MS. WATTS: Thank you.

EXAMINER WALSTRA: I think now is a good time as any to -- do you want -- OMA, do you want to move your --

MS. BOJKO: Yes, thank you. At this time, your Honor, I would like to move OMA Exhibit 1 and would like to offer that into evidence.

EXAMINER WALSTRA: Are there any objections?

Hearing none, it will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MS. BOJKO: Thank you.

EXAMINER WALSTRA: And we'll take a break for 15 minutes.

(Recess taken.)

EXAMINER WALSTRA: Okay. We'll go back on the record. Duke, you can call your next witness.

MS. SPILLER: Thank you, your Honor. At this time Duke Energy Ohio would call William Don Wathen, Junior.

(Witness sworn.)

MS. SPILLER: Your Honor, for purposes of the record, I would ask that Mr. Wathen's direct testimony, filed on May 29, 2014, in this docket, be marked as Duke Energy Ohio Exhibit 6.

EXAMINER WALSTRA: It is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. SPILLER: May I approach, please?

EXAMINER WALSTRA: You may.

MS. SPILLER: Thank you.

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WILLIAM DON WATHEN, JR.

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

DIRECT EXAMINATION

By Ms. Spiller:

Q. Good morning, Mr. Wathen.

A. Good morning.

Q. Would you identify yourself, please?

A. My name is William Don Wathen, Junior.

Q. And what is your position, sir?

A. I am currently the Director of Rates and Regulatory Strategy for Duke Energy Ohio and Duke Energy Kentucky.

Q. And, sir, do you have before you what has been marked as Duke Energy Ohio Exhibit 6?

A. I do.

Q. And what is that, please?

A. It's the direct testimony I filed in this case.

Q. And you filed that on what date, please?

A. May 29, 2014.

Q. And since the submission of your direct testimony on May 29, do you have any changes or corrections to that document?

A. I have a correction on, excuse me, on page 8 and line 4. The word -- the word "the prices" shows up twice. It's just a typo. So strike the word "the" and "prices" in that sentence.

Q. Any other changes or corrections, Mr. Wathen?

A. Not at this time.

Q. Sir, if I were to ask you the questions that are reflected in Duke Energy Ohio Exhibit 6, if I were to ask you those questions today, would your answers be the same as reflected in your direct testimony with the one caveat of the revision you provided just now?

A. Yes.

MS. SPILLER: Thank you, your Honor. The witness is available for cross.

EXAMINER WALSTRA: Thank you.

Mr. O'Brien.

MR. O'BRIEN: No, thank you, your Honor.

MR. DARR: Your Honor, we have got a recommendation because of a time conflict. I would defer to Ms. Bojko.

EXAMINER WALSTRA: Okay.

MS. BOJKO: Thank you.

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CROSS-EXAMINATION

By Ms. Bojko:

Q. Good morning, Mr. Wathen. Sir, when was Duke Energy Ohio's last base rate case?

A. When we filed it or when was it approved?

Q. When was it approved?

A. It was approved, I believe, early May of 2013.

Q. And that was in Case 12-1682; is that correct?

A. That's correct. That's correct.

Q. And did the company receive a revenue increase for that rate case?

A. We did.

Q. And the amount $49 million; is that correct?

A. That's correct.

Q. And when was the last base rate case prior to the 2012 case?

A. It was filed in the summer of 2008 and approved in the summer of 2009.

Q. And in that case, sir, was the company given a revenue increase of $51 million?

A. I think it was 51.5, but, that's correct.

Q. Can you turn to your testimony on page 5, please, sir.

A. Okay.

Q. Sir, is it your -- is it the company's position that the current level of funding is not sufficient to maintain the present level of service reliability to customers?

A. We are able to maintain reliability at the current funding. The question for DCI is whether we can improve that or not.

Q. And on lines 12 through 14, you state that the level of spending are not sufficient to maintain the present level of service reliability; is that accurate?

A. I'm rephrasing Mr. Arnold's testimony but that's what it says in my testimony, yes.

Q. So are you suggesting -- or, you're not suggesting that if Duke does not receive the DCI rider, that the service reliability will be negatively affected?

A. I am suggesting that we will -- I think Mr. Arnold can talk to this more clearly but we will meet the minimum reliability standards at least per the law.

Q. I just -- did you say "per the lawyer"?

A. Per the law.

Q. And you don't believe by not receiving the DCI rider that somehow the service will become unreliable; is that accurate?

A. Again, we have a legal requirement so we will meet those legal requirements.

Q. And that would be true regardless of the outcome of this case; is that correct, sir?

A. I don't know how to say it a different way. We will meet the legal requirements regardless, yes.

Q. And if the Commission does not prove -- approve the DCI rider in this case, could the company seek recovery for capital expenditures through a distribution rate case?

A. I think you meant DCI rider?

Q. I'm sorry, DCI.

A. Yeah. Well, the DCI rider, whether it's approved or not, if the time comes that we need a rate case, we will ask for a rate case.

Q. And through that rate case you could seek recovery for capital expenditures similar to what you were requesting through the DCI; is that correct?

A. In addition to O&M expense increases and other factors, right.

Q. And through that rate case, the other factors, you're suggesting that the Commission would look at all of Duke Energy Ohio's O&M and their revenues to make the decision as to whether a revenue increase is necessary; is that correct?

A. The staff conducts a very extensive audit in a rate case. They look at reliability, customer service, they look at our accounting procedures, our corporate separation rules, a variety of things to decide whether we're allowed to get a rate increase or not at the level we ask for.

Q. And that would be different than what is proposed in this case or what would occur for a single issue ratemaking; is that correct?

A. That the point of the rider is that it would allow us to recover these things a lot faster and more efficiently than having to go through a rate case.

Q. On pages -- on the bottom of 5 and 6, you discuss FirstEnergy and AEP ESP cases. Do you see that?

A. I do.

Q. And just so the record is clear in this case you're referencing the prior ESP cases per your citation. You're not referencing the current pending ESP cases; is that correct?

A. I think the footnote is very clear that it's referencing the prior cases, prior ESPs.

Q. And as you just stated and as you state on page 7 of your testimony, one of the reasons for the request of the DCI rider is for timely recovery of the investment; is that accurate?

A. That's correct.

Q. And in your opinion it would eliminate regulatory lag; is that correct?

A. It would not eliminate regulatory lag. It would mitigate regulatory lag.

Q. And is Duke proposing, in this case, an adjustment to its proposed ROE to account for that reduction in regulatory lag that you discuss?

A. We are not proposing a change in the ROE.

Q. This is a rider that's not bypassable and will assess -- be assessed to all customers; is that correct?

A. That's correct.

Q. And the rider, if approved, will increase customers' bills; is that correct?

A. This rider, if it were approved, would increase customers' bills, correct.

Q. And that would be true even if a customer shopped and had a fixed price contract with a supplier; is that correct?

A. And the definition of a nonbypassable charge, as you asked me earlier, is that it would be applicable to everyone.

Q. That wasn't my question, sir.

MS. BOJKO: Could you please reread my question.

MS. SPILLER: I would object.

A. Everyone would include customers that shopped and didn't shop.

Q. That's not my question, sir. I am asking if the customer's bill would increase based on a DCI rider even if the customer had a fixed price contract with their supplier.

MS. SPILLER: Objection. The witness has answered twice now that it would apply to everyone. He's answered the question, Ms. Bojko.

MS. BOJKO: He hasn't answered the question, your Honor.

EXAMINER WALSTRA: I am going to overrule.

A. I really don't know what you're saying. The customer's bill, no matter whether they shopped, will be impacted by this rider. Whether they have a fixed contract, variable contract, whether they take

SSO service, they will be charged this rider.

Q. Thank you.

On page 8 of your testimony you talk about customer expectations on -- on the top of the page, line 3, and you say that customers favor stability. Do you see that?

A. I see that.

Q. And this is in the same section as the discussion on the DCI rider; is that correct?

A. It appears to be.

Q. And so, are you suggesting that DCI rider offers stable prices?

A. As opposed to a distribution rate case process where we have a -- as you mentioned earlier, a 51 or 49 million dollars increase one time, that the trending of a DCI would be less impactful to customers at a single moment compared to what a rate case would do to customers, so it does provide a trend, a smoothing, if you will.

Q. But it provides increases to customers; isn't that true?

A. Steady increases, not increases.

Q. And automatic increases; is that correct?

A. Automatic is really a function whether the company would allow it or not, but we would have

an approval process.
Q. And how -- what about the true-up mechanism, what's the true-up mechanism for the DCI rider?
A. Well, what we are proposing is to use these forecasted balances so the true-up would be twofold. We would be truing up the revenue that we recover in a given quarter to the costs and we would also have to true-up the actual balance at the end of the quarter to what we projected.
Q. So the rate that a customer would be charged and the amount that they would see on the bill could change, under what I think you just said, twice a year; is that correct?
A. We would do it quarterly.
Q. So a customer's bill could change quarterly.
A. It could change -- it would change quarterly on, again, on -- as we spend money it would be a gradual increase in the rates.
Q. But it would change so it's not a stable price. It changes. It fluctuates.
A. I think it's stability and predictability. It's a predictable price. It's going to be smoothed.

Q. A predictable increase is what you are suggesting.

A. Yes, yes.

Q. Sir, through the DCI rider is Duke proposing to include collection for general and common plant?

A. We -- an allocation of common and general plant to distribution of gas, yes.

Q. And isn't it true, sir, staff opposes the inclusion of such general and common plant in a DCR-type rider.

A. Miss McCarthy is the only witness I am aware from the staff that talked about that. She opposed it.

Q. And, sir, Duke has not committed to a distribution rate -- rate freeze during the ESP, have they?

A. We have not.

Q. And talking -- going back to the stability, the DCI -- the stability you are discussing in that sentence on page 8 is different and separate from that claimed from the PSR, is that correct, or associated with the PSR?

A. Yeah. I'm not discussing the stability in that section as it relates to the PSR.

Q. And they're talking about the predictable increases that you discuss, there's no limit to the increase in that distribution and common plant investment allowed through your -- you haven't proposed any kind of cap or limit; is that correct?

A. The company has not proposed a limit.

Q. So since the company has not proposed a limit or cap, you could -- customers could see an increase that isn't necessarily gradual if the company makes a large investment; is that true?

A. Hypothetically, but that's not likely.

Q. Hypothetically, yes; is that right?

A. Hypothetically, it's possible, but not likely. And the Commission would obviously have a say in whether that's approved or not.

Q. Let's turn to page 8 of your testimony. I guess you are on page 8. On page 8 you discuss the storm rider; do you see that?

A. I do.

Q. And in this case, Duke is proposing that the rider, storm rider, recover only incremental storm costs above the 4.4 million that's already included in base rates; is that correct?

A. That's correct.

Q. And just to clarify, through this

proceeding Duke is not proposing to modify that 4.4 million baseline already included in base rates; is that correct?

A. That's correct.

Q. Okay. And you are proposing, however, in this case, to establish a threshold amount that when that threshold is hit, that the company would either create a regulatory liability or a regulatory asset that they would either charge or credit to customers; is that correct?

A. Yeah. The threshold is a cumulative number of the incremental expense over $4.4 million, however many years it takes to get there, and that would be the trigger for us to potentially come in for a rider.

Q. I'm sorry, what is the trigger amount?

A. $5 million cumulative.

Q. So under -- just so we understand that, I think you helped me with the example in the deposition. In one year, if you incur $6 million worth of storm costs, 1.6 million would be more than what was already included in base rates. And so under that scenario for that year, you would not request recovery from customers; is that correct?

A. That's correct. And that year I would debit the regulatory asset by $1.6 million and there would be no action from there.

Q. And so then, if in year 2 your costs are $5.6 million, what you would do in that scenario, you would take the 1.6 and you would add it to -- you would add it to .6 and you would get $1 million over the 4.4 threshold; is that correct?

A. Can I help you with that one?

Q. Sure.

A. If we have a storm expense of $5.4 million dollars, or you said $5 million in one year, we would be $600,000 over the bar. So I would debit the same reg asset by $600,000. My cumulative balance at that point would be $2.2 million.

Q. And then at that point you would request that $2.2 million from customers through the rider.

A. That's not correct. Until that balance reaches $5 million, I won't have to do anything.

Q. So you will continue to carry that with interest until it reaches the $5 million?

A. That's correct.

Q. Thank you for that clarification.

Let's turn to page 10 of your testimony. On page 10 of your testimony you discuss the proposal of the company to include rider PSR for the life of

the contract of OVEC; is that correct?
A. I begin that discussion on page 10, yes.
Q. And the life of the contract is currently 2040; is that correct?
A. The existing ICPA goes through June 30, 2040, that's correct.
Q. And the ICPA you just referred to is the company agreement that it had with the other sponsoring companies with regard to the OVEC generating assets?
A. It's the Intercompany Power Agreement among the 13 sponsoring companies that were approved by the FERC.
Q. For the OVEC generating assets?
A. For the allocation entitlements to the OVEC generation.
Q. And on page 11 of your testimony you talk about OVEC's fixed and variable costs; is that correct?
A. That's correct.
Q. And OVEC fixed and variable costs are provided to you by OVEC; is that accurate?
A. They are not provided to me by OVEC, but they are provided to the company.
Q. And so Duke does not determine what those

costs will be; is that accurate?

A. That's correct.

Q. And Duke is contractually obligated to pay those costs whatever they are provided by OVEC pursuant to that ICPA; is that correct?

A. The FERC approved ICPA, that's correct.

Q. And Duke has 9 percent entitlement to the OVEC fixed and variable costs associated with the two generating assets; is that correct?

A. I wouldn't characterize the allocation of costs as an entitlement, but we are allocated 9 percent of the costs. Our share of the variable costs is really a function of how much power we take.

Q. So 9 percent of the fixed costs is allocated to Duke, but Duke is also allocated 9 percent of the generating output of the units; is that correct?

A. We -- we are entitled to 9 percent of the generation output of the units.

Q. Do you know the estimated costs per megawatt-hour for OVEC?

A. For what year?

Q. For 2014.

A. I do not have the number at my disposal.

Q. Do you have the number for some year

since you asked for which year?

A. I was just clarifying which year you were asking about since there is a lot of years involved, but I do not have a number -- I don't have any documents in front of me that would have that number.

Q. Okay. And you used the term "fixed and variable costs." Well, I thought you used the "term fixed and variable costs" because you were aware that the ICPA had escalation causes -- clauses; is that correct?

A. I'm not aware of any escalation clauses, per se, in the ICPA. If you can point me to it, I'll look at it, but I'm not aware of an escalation clause, per se.

Q. Well, let's do it this way. If OVEC decides that the generating units need to add environmental controls, are those passed -- capital expenditures passed on to the sponsoring companies for further allocation?

A. That's true but that's not an escalation clause.

Q. Well, it's a clause that allows the fixed costs of OVEC to increase; is it not?

A. That is, but that is not an escalation clause in my vernacular, so.

Q. Escalation to you doesn't mean a cost that escalates or increases?

A. When I hear an "escalation clause," the contract would say it's going to go up by 2 percent, 3 percent, 4 percent, something like that, per year. That's not what the contract says.

Q. Do you also know that there are escalation clauses in legal contracts that mean other things, such as they are mechanisms to increase the fixed costs that's outlined in the agreement?

MS. SPILLER: Objection.

A. You are a lawyer. I'm not a lawyer, so.

Q. You told me of contracts that you are aware of and I'm asking if you know of other contracts that include different types of escalation clauses.

MS. SPILLER: Objection. The witness has given his understanding of what an escalation clause is and how he understands that to be used.

EXAMINER WALSTRA: He can answer if he knows.

A. I clarified that it was my vernacular. That's the way I understand it.

Q. Okay. I won't use the word "escalation clause" for you, but are there provisions in the IPCA that allows the fixed costs assessed or allocated to the operate -- the sponsoring companies for OVEC's generating units that will increase?

A. You meant the ICPA?

Q. Yes.

MS. SPILLER: You said the "IPCA."

A. There's several clauses in section 5 of the ICPA that spell out exactly how the costs are allocated. That's a matter of record. We can look at it any time you want, so.

Q. And I am asking you if it includes increases for certain costs that may occur during the life of that contract.

A. I don't think the word "increase" is in there. It just says the costs, whatever they are, will be passed through to customers, passed through to contractors at whatever the rate is.

Q. Okay. And that could include capital expenditures; is that correct?

A. It does include capital expenditures.

Q. And that could also include an increase in fuel prices; is that correct?

A. The increase in fuel prices is really going to be passed through depending on how much power we take. If the price is too high for us to

make money, we won't take any power, so.
Q. If you decide to take power, you will have to pay the increase in fuel costs or the costs, whatever it is.
A. That's correct.
Q. And is that what you're considering a variable cost in your testimony?
A. Well, the variable costs are defined in the ICPA as well, but, yes, that's one of the variable components.
Q. And would the sponsoring companies be responsible for their share or allocation of any future environmental regulations that have to be placed or utilized on the coal -- or, on the units?
A. I think that's spelled out in the ICPA that that's true.
Q. And is it your understanding that Duke controls the operations of OVEC?
A. Duke does not control the operations of OVEC.
Q. Do you know who controls the operations of OVEC?
A. OVEC controls the operations of OVEC.
Q. And OVEC is governed by a board; is that true?

A. It's a corporation. I would assume it's governed by a board.
Q. You don't know that Duke Ohio has a seat on that board?
A. I do know that Duke Energy Ohio has a seat on the board.
Q. So you do know it has a board.
A. It has -- the board is -- members of the board are listed in the Form 401 for OVEC.
Q. Do you know who does the day-to-day operations of OVEC?
A. I assume OVEC does.
Q. You don't know whether a sponsoring company takes responsibility for the day-to-day operations of OVEC?
A. Well, my understanding, from listening to John Brodt's deposition, is they manage the day-to-day operations. I think AEP Service Company handles some of the administrative work for them, planning, and so on, but the day-to-day operations are done by OVEC.
Q. So -- or, so Duke Ohio does not determine when or how the generating units run; is that correct?
A. Yeah, I believe when the FERC approved

the ICPA, it acknowledged that no company -- no sponsoring company has direct control over the unit. None of the sponsoring companies, that is.

Q. So the answer to my question is, yes, you are aware that Duke does not have control over the units' operations.

A. I think I just said that, yeah.

Q. And, sir, is it your understanding that the PSR could also include other purchased power arrangements?

A. There is a provision in our application to leave the option open to include other purchased power arrangements. As Mr. Henning described yesterday, we have none on the table at the moment.

Q. Also, as Mr. Henning stated yesterday it -- is the projection that the PSR will result in a net charge during the ESP period; is that true?

A. We had one forecast that shows that's the case.

Q. And then at any time, during or before the effective date of the electric security plan, Duke could also request the cost of the recovery of these additional purchased power agreements on top of the OVEC costs; is that true?

A. Would you repeat that, please? I'm

sorry.

Q. Sure. At any time, either during the term of the ESP or even before the ESP starts, Duke could come in and request recovery of additional purchased power agreements through the provision that allows that in their ESP; is that correct?

A. Well, in 25 years of working in rates, it's my experience that utilities can come in and ask for anything.

Q. You're specifically asking this Commission to leave open the option to add purchased power agreements and to actually approve that option to add purchased power agreements to the rider at a later time; is that correct?

A. We -- I just -- I said a minute ago, we have left that option open, yes.

Q. Okay. And so, it's your understanding that that option, you could invoke that option during the term of the ESP or even before the ESP starts; is that true?

MS. SPILLER: Objection. Asked and answered.

EXAMINER WALSTRA: Overruled.

A. I just said we can -- there is nothing that prohibits us from asking for anything.

Q. I am not asking about anything. I am --

A. Including the PSR.

Q. Thank you.

And then if you do ask for that purchase power agreement, if you ask for costs associated with that, that would be in addition to the OVEC costs that you are already seeking for approval of under this ESP.

MS. SPILLER: I am going to object to the form of the characterization of what we are requesting via rider PSR.

EXAMINER WALSTRA: Ms. Bojko?

MS. BOJKO: I mean, I think the question is clear. If the witness doesn't understand it, he can ask for clarification. Could I have the question reread?

(Record read.)

A. We are not asking for cost recovery of OVEC. We are asking to flow through the gains and losses on OVEC and that's all we would do for any future PPA as well.

Q. Okay. We just talked about how the projection is that it will be a cost to customers during the term of the ESP; is that correct?

A. It would be a charge to customers, but they're not -- we are not flowing through the costs; we are flowing through the gains and loses on the sale of OVEC.

Q. Well, you are. At the top of line 6, you say OVEC's fixed and variable costs associated with the generating assets is what you're seeking to pass on to customers, and if there is a revenue offset from the sale of the generation that that would be credited against, but you are passing on the fixed and variable costs, are you not?

A. Would you give me that citation again?

Q. Well, it's on page 11 of your testimony, you start with the fixed and variable costs.

A. I thought you said page 6, sorry.

MS. SPILLER: She did.

Q. I said line 6, page 11.

A. Okay. Now, what's your question?

Q. Isn't it true that you are asking the Ohio Commission to allow Duke to pass on the OVEC's fixed and variable costs, your allocation of that, to customers that are associated with the generating assets of OVEC?

A. That is not what we are asking.

Q. Well, if -- you just told me a few minutes ago that you do not have to sell the generation into the PJM market if you choose not to; is that correct?

A. We -- we will sell -- pursuant to the proposal we are making here, we've committed to sell the generation into the -- into PJM, whenever the price in the market exceeds our variable costs.

Q. Right. Whenever the price exceeds.

A. That's correct.

Q. So it's not a guaranteed bid into the market; is that right?

A. That's correct.

Q. Okay. So, but the costs, you will pass on to customers the fixed and variable costs that are allocated to Duke Ohio; is that true?

A. That's not -- that's not the way it works. We would have zero revenue and we would have a cost so it would be a loss that we are passing through to customers. It's not the direct cost. DE Ohio is responsible for the costs.

Q. And if it's a loss you're going to pass that through to customers.

A. That's correct. The loss goes to the customers; the gain goes to the customers.

Q. And the company is always made whole for its costs; is that true?

A. The company -- it gets a zero margin, I believe. So we forfeit gains and we passthrough losses.

Q. So the company is made whole.

A. The company has a zero margin.

Q. So the company will not pay OVEC's costs as you just stated.

A. The company will always pay OVEC's costs. We have a contractual requirement to do so.

Q. Right. And you are going to pass on any loss to customers; is that right?

A. Or gain.

Q. Okay. Now, let's go back to my question originally which was you -- Duke has projected that there is going to be a charge to customers for the loss that you are talking about; is that true for the first three years of the ESP?

A. This is the second time I answered that question, but we had one forecast that shows a loss in that period.

Q. Well, I'm sorry you are repeating the question -- the answers, but I'm repeating the questions to try to lay the foundation.

So, as my question posed earlier, any PPAs that are added to the PSR rider would be in addition to this charge that will be assessed to customers during the ESP period; is that true?

A. It would either add to the charge or credit that comes to customers.

Q. And if they are assessed a charge for this loss that you are discussing, they -- this will have the effect of increasing customers' bills; is that correct?

A. A charge typically does that.

Q. And this would be true whether or not the customer chose to shop or not, correct?

A. We propose it to be a nonbypassable rider so it doesn't matter whether they shop or not.

Q. And this is true whether the customer has a fixed price contract or not; is that true?

A. As a nonbypassable charge it's irrelevant what kind of contract they have.

Q. And how much did you state that the PSR will be updated, sir?

A. I haven't in this discussion, but, in my testimony, we mention it to be quarterly.

Q. So the net charge to customers would change quarterly; is that correct?

A. Potentially.

Q. And, again, this quarterly change would occur even if the customer entered into a long-term fixed-price contract with the supplier.

MS. SPILLER: Objection. Asked and answered.

EXAMINER WALSTRA: You can answer the question.

A. Same question as the nonbypassable charge, so it's irrelevant whether they shop or not or have a fixed contract or not.

Q. And this is a charge -- this is a distribution rider; is that correct?

A. I would characterize it as an other rider.

Q. Well, is it a generation rider?

A. It is not a generation rider.

Q. And it's not associated with the distribution costs or assets of Duke; is that correct?

A. It is not associated with that, and it's not associated with just transmission either, so, therefore, it's other.

Q. But you would assess it to the distribution bills of all customers.

A. And the transmission bills.

Q. What is the percentage of Duke's total load that OVEC -- that your entitlement to OVEC represents?

A. It depends.

Q. Could you explain.

A. We take different amounts of generation from OVEC, so, although our load is relatively constant, the megawatt-hours we take in OVEC can vary.

Q. Okay. What about if you took -- assuming that you took the 9 percent you are entitled to, what would that percentage be of Duke's load?

A. Well, if we took 9 percent and they ran 100 percent of the time, I don't have a calculator with me, but it would be 9 times 200 times 8,760 megawatt hours.

Q. Turning to page 14 of your testimony, please.

A. Did you ask me a question?

Q. I said could you turn to page 14 of your testimony, please. Lines 14 -- I'm sorry, lines 15 through 18. You state that confirms most customers are subject to varying degrees of volatility. Do you see that?

A. I see that.

Q. And here you're talking about the polar vortex; is that correct?

A. In this instance, yes.

Q. Sir, have you reviewed customer contracts to make this statement?

A. I have reviewed the Apples to Apples charts. I've reviewed the auction results for FirstEnergy in recent auctions. That's essentially what I've relied on.

Q. I'm sorry. Your statement is "the polar vortex confirms that most of Duke Energy Ohio's customers are subject to varying degrees of volatility in the price of capacity and energy...." I asked you whether you reviewed customers' contracts to determine whether they are specifically subject to varying degrees of volatility through their contracts.

A. I have not reviewed individual contracts. I have reviewed offers.

Q. So you have no idea whether customers that are under fixed price contracts have passthrough provisions that would allow them to be subject to volatility.

A. I am not aware of any Duke Energy Ohio contracts but I am aware there are some in the state that may.

Q. And have you reviewed those contracts?

A. Only a description of them and filings at the PUCO.

Q. And that's because you're basing that statement on the public knowledge that one supplier is attempting to passthrough costs associated with the polar vortex; is that correct?

A. That's correct.

Q. Do you know of any other suppliers, sir, that are attempting to do this?

A. I said a minute ago that's the only one I am aware of.

Q. So do you know that there are in fact suppliers who are not attempting to do this.

A. I would assume there are those that are not.

Q. And, sir, are you also aware that many customers are protesting this one supplier's attempt, whether it's even lawful or not to do it?

A. That was the genesis of the filing we're talking about, the complaint.

Q. So, yes, you are aware it is being protested.

A. I think I said that, yes.

Q. Did you review the complaint pending at

the Commission or in the courts?
A. Many months ago I did, but I can't recall much of it.
Q. Do you know how many of the customers listed on either of those complaints -- I guess there are two complaints -- three complaints at the Commission and one in the court system that I'm aware of, have you reviewed those to determine whether they are Duke Energy Ohio customers?
A. I think I answered this question too. They are FirstEnergy customers, so. They are FirstEnergy Solutions customers.
Q. I am talking about the distribution utility. You state in your comments that Duke Energy Ohio customers are subject -- I am asking if any of these customers are Duke Energy Ohio customers.
A. And when I answered a minute ago I said the only one I am aware of is in the territory outside of ours, so.
Q. No. I'm sorry, I didn't understand that. I thought you were talking about the supplier.
A. No. You asked me if I knew of any in Duke Energy Ohio's territory and I said I only know of the one in FirstEnergy's territory.
Q. So I guess you're suggesting that only

FirstEnergy distribution customers have been assessed this charge by a supplier that you are aware of?

A. I'm trying to be clear. The only -- the only complaint I'm aware of involves FirstEnergy customers in FirstEnergy's territory.

Q. So going back to your testimony on line 16, you are not specifically aware of any Duke Energy Ohio customer that's subject to varying degrees of volatility in the price of capacity and energy related to the polar vortex.

A. Well, I am. I said I looked at the Apples to Apples charts of offers and you can see a change in the prices as you go through time.

Q. What about -- you say "are subject" as if they are currently subject to. So you're not talking about fixed-price contract customers here.

A. The last question you asked me didn't ask me about contracts. It asked me about am I aware. I have not looked at contracts.

Q. So your statement here is in reliance on future offers, you're saying that customers may be subject to volatility because of future offers that you've obtained from Apples to Apples.

MS. SPILLER: Objection. That misstates Mr. Wathen's testimony.

MS. BOJKO: Actually, it's exactly what Mr. Wathen just stated. I'm trying to figure out what his sentence means on this page.

EXAMINER WALSTRA: Overruled. You can clarify it.

A. Existing; not future offers.

Q. You are saying the polar vortex confirms that most of Duke Ohio's customers are subject to varying degrees of volatility. When did the polar vortex occur?

A. In January, 2014.

Q. So does this sentence not mean that those customers were subject to the polar vortex; they just may be subject sometime in the future based on future offers?

MS. SPILLER: I am going to object. Again, this misstates Mr. Wathen's testimony.

EXAMINER WALSTRA: I am going to overrule. He can clarify it.

A. No matter what the term of the contract that a customer has, it's going to end at some point in time. They are going to experience an increase in the rates due to the vortex when they sign up for a new contract.

Q. But, sir, you're not suggesting they did incur costs associated with the January vortex, is that what -- you're not saying that then?

A. Well, anybody on a month-to-month contract certainly would have. The long-term contracts probably less so, but we have -- more than two-thirds of our contracts are short-term, that are of the offers out there. For residential.

Q. Are you done?

A. I'm done. Are you done?

Q. I wish.

I guess, so now we need to change the sentence to say most of Duke Energy Ohio's residential customers are subject to varying degrees of volatility?

MS. SPILLER: Objection. Again, it's misstating Mr. Wathen's testimony.

EXAMINER WALSTRA: Overruled.

A. I think it follows that any -- that anything that impacts residential is going to be felt by other customers as well so. The market -- the market is and views all customers classes, so it affects them all.

Q. Okay. But you specifically talk about the January, 2014, polar vortex here, right? That's on line 13.

A. That's correct.

Q. And then you make the conclusion -- and you even use the word "and," "and the polar vortex confirms that most of Duke Energy Ohio customers are subject to varying degrees of volatility in the price of capacity and energy...," right?

A. As -- the word subject does not -- does not say that they are immediately impacted by the vortex. It says they are potentially subject to volatility.

Q. Thank you. That was helpful.

And you're not here today to speak to the number of customers that may or may not have fixed-price contracts in Duke Energy's service territory.

A. That's correct.

Q. You use the word two-thirds, but then I thought you clarified your statement to say residential customers; is that right?

A. That's correct.

Q. So you haven't done an analysis of how many customers in Duke's service territory have or do not have long-term contracts.

A. Unfortunately, there is no easy way to do that with the publicly-available data.

Q. And, sir, if a supplier, as you suggest, let's assume the supplier is successful and can pass on a polar vortex charge through its contract, the price stability rider would be a charge in addition to whatever that supplier's contract says or doesn't say; isn't that true?

A. Well, most likely in the event of a polar vortex the charge would definitely be a credit so it would offset the customer's rates.

Q. During the polar vortex. This is after the polar vortex. Do you know when charges were assessed to customers for the incident of the polar vortex, sir?

A. Again, I don't know the contracts so I don't know -- I don't know what they would have had, so.

Q. Well, do you know that PJM has to do an accounting and a true-up and they do a settlement of all charges that may or may not happen during a particular point in time?

A. I do but I don't believe most retail customers are subject to PJM pricing so.

Q. You know that?

A. I would expect that most retail customers are not getting a passthrough of PJM prices in the realtime market.

Q. Most what -- I did not hear the first part of -- most what kind of customers?

A. Retail.

Q. Okay. Well, I thought you -- so you don't believe that customers, that commercial and industrial customers will -- I don't know what your word "most retail" means. I am assuming you're using the word "most" because you are including retail -- or, residential customers; is that right?

A. Well, retail customers would be all customers receiving distribution and transmission by DE Ohio and are subject to rates, so that would include residential, commercial, industrial, and so on.

Q. And the word "most" is because you were including residential. You don't believe most residential customers have PJM passthroughs in their contracts.

A. I think I used "most" because it's possible that some industrial customers have straight passthrough PJM. So out of 660,000 customers, it could be one or two that had a passthrough, so that's the reason I use the word "most."

Q. Well, there's two types of passthroughs.

I think we are getting confused here. You -- have you reviewed commercial and industrial customers' contracts to determine, first, whether there were any kind of passthrough charges related to the polar vortex?

A. As I indicated earlier, I haven't reviewed the contracts, so it follows I didn't review those components of the contracts.

Q. Okay. So then it's fair to say you haven't reviewed commercial and industrial contracts to know what kind of pricing mechanism they have to determine whether they have anything that's tied to PJM prices or not.

A. I don't have any personal knowledge of it but I have a lot of industry experience and knowledge of the business.

Q. Okay. So let's assume that they are allowed to assess or passthrough some charge that's specifically related to the polar vortex. Isn't it true that the PSR would be separate and apart from this, and that the PSR would incur regardless of whether they received that charge or didn't receive that charge?

A. The PSR is going to be charged to a customer independent of whether they get charged from the CRES or the SSO.

Q. I just didn't hear you. I'm sorry. Could you repeat that, please.

A. I said the PSR is going to be charged to customers regardless of whether they are taking power from CRES or SSO.

Q. Okay. And regardless of what their contract says; is that right?

A. That follows, yes.

Q. And that PSR is not going to affect the supplier contract that those customers may or may not have; is that correct?

A. Unless the supplier ties it into the PSR somehow.

Q. Sir, do you know whether some CRES providers in Duke's territory own generating assets?

A. I think Mr. Henning addressed this question too. I think we have 66 current CRES providers that are offering power to somebody, selling power to somebody, and I fully expect at least one of them has generation.

Q. And then you would have nothing -- strike that.

Would you also agree that the -- those same CRES providers could not come before the

Commission and seek cost recovery for fixed and variable costs associated with those generating assets?

A. There's no provision in the statute I'm aware of to allow the CRES to come in for cost-based rates.

Q. And turn to page 15 of your testimony. On lines 14 and 15, you state that Duke Ohio will have no generation business of its own. Do you see that?

A. That's correct.

Q. Do you mean except for the OVEC entitlement. They don't have a generation business, but you're not meaning not to include OVEC in that statement, correct?

A. The way we have described the OVEC is a financial contract. I wouldn't characterize it as a generation. There is no sale of generation to wholesale or retail customers in this case.

Q. But you actually are in the generating business as far as you have to take the output from the generating units and sell it into the PJM markets; is that correct?

A. We don't -- we don't generate power and we don't sell it to retailers or customers. So we have a financial contract that we are trying to propose here, but I wouldn't characterize it as being in the generation business.

MS. BOJKO: Could you read my question, please.

(Record read.)

Q. Would you answer that question, please?

MS. SPILLER: I am going to object. The witness just answered the question. He just told you he doesn't believe we are in the generation business.

MS. BOJKO: That's not what I asked.

Q. I asked if you took the output from the generation units of OVEC that you are entitled to and whether you sold that into the PJM market.

A. We do sell it into the market, that's correct.

Q. On line 17 of that same page 15, you state we observe -- you are talking about back to the polar vortex here. You say "during the recent polar vortex, plants such as these were on line, providing reliable service...." Do you see that?

A. I see it.

Q. And "plants such as these" is referring back to the OVEC generating units; is that correct?

A. Yeah. The "such as these" would be

assets that are -- have reliable power like gas and coal, yes.

Q. And isn't it true, sir, I believe you were in the room yesterday, didn't you learn yesterday that the OVEC generating units were not operating during the entire events caused or occurred during the polar vortex?

MS. SPILLER: Objection. That was not established yesterday with Mr. Henning. The witness didn't know yesterday.

MS. BOJKO: All right. I'll rephrase, your Honor.

Q. Isn't it true that OVEC's generating units were not operating during the entire events considered during the polar vortex?

A. It is not true that all the generating units were out in the polar vortex.

Q. Isn't it true some of the units during certain days were out during the polar vortex?

A. I believe one or more of the individual 11 units were out sometime during the polar vortex, that's true.

Q. And, sir, is it your understanding that during the polar vortex, 22 percent of the outages were due to forced outages?

A. I remember that document but it would be helpful to have it in front of me.
Q. It's Sierra Exhibit No. 2, you are referring to, that document?
A. I don't have it.
MS. BOJKO: Can Counsel provide.
MS. SPILLER: You don't have a copy for the witness?
MS. BOJKO: I have mine marked up. That was provided to all parties yesterday.
May I approach, your Honor?
EXAMINER WALSTRA: You may.
MS. BOJKO: Please let the record reflect I'm handing the witness what was previously marked as Sierra Exhibit No. 2.
Q. And is your memory refreshed?
A. That helps, yes, thank you.
Q. So now back to my question. Is it your understanding that during the polar vortex, 22 percent of the outages were due to forced outages?
A. That's what the document states, yes.
Q. And is it your understanding, sir, that those were due to maintenance -- maintenance issues on physical steel in the ground assets?
A. That's not correct. A portion of them

were maintenance and a portion of them were fuel interruptions.

Q. Besides the natural gas interruptions, it's your understanding that -- I think I said some were due to maintenance issues on physical assets, steel in the ground?

A. I think you said all.

Q. I apologize.

A. Some were definitely due to physical problems, that's correct.

Q. And 13,700 megawatts of coal was offline; is that your understanding?

A. That's what it says in the document.

Q. And, sir, during the polar vortex did the output from OVEC serve Ohio customers?

A. It would serve all customers in PJM. Whether the individual electrons run through somebody's light bulb in Ohio or not, I don't know. There is no way to track the flow.

Q. Right. So there's no way to determine if the OVEC units were serving Ohio customers during the polar vortex; isn't that true?

A. Well, since they serve PJM, and PJM serves Ohio, I would say that's true they did serve Ohio.

Q. You just said, sir, the electrons cannot be traced from PJM to Ohio.

A. I did, but the fact that OVEC contributed to the available generation for PJM, and PJM is a reliability organization for Ohio, then I would say that it did contribute.

Q. But you don't know that for sure, do you, sir?

A. I know it for sure.

Q. Do you know whether Ohio -- or, OVEC generating units actually served Ohio customers during the polar vortex, that the electrons actually served Ohio customers?

A. It stands to reason they would, yes.

Q. And, sir, it's your understanding that not all of the OVEC units are actually located in PJM; that true?

A. They are all -- they are all pseudo tied to PJM at least.

Q. So that's no; is that correct?

A. They are either indirectly in PJM or available through PJM through a pseudo tie.

Q. And available through would mean that they are not located in PJM; is that true?

A. My understanding of pseudo tie, I am not the expert, that would essentially mean it's effectively in PJM.

Q. I am asking if it's located in the PJM footprint.

A. It is -- the footprint would be the pseudo tie, would be the end of it, where the unit exists, so it's physically in PJM through a pseudo tie.

Q. Through a pseudo tie. The generating unit is not located physically in PJM.

A. There must be a path to PJM or it wouldn't be pseudo tied.

Q. Okay. Well, sir, are you dedicating -- has Duke agreed to dedicate the output of OVEC to Ohio customers?

A. Again, I was trying to be clear earlier. The proposal we have is not a physical contract. It's a financial contract that the assets are going to be dedicated to PJM and we will flow through the gains and losses on that contract. It's not a physical passthrough of generation.

Q. So that's a "no" to my question that Duke is not proposing to dedicate the generating output from OVEC to serve Ohio customers.

A. We're not allowed to sell generation to customers, any of our own generation.

Q. I didn't hear you. I'm sorry.

A. We are not allowed to sell any power to customers from DE Ohio. It has to be procured in the market or through CRES providers. We can't passthrough OVEC power to customers to replace anything they are receiving from CRES or SSO.

Q. Right. And there's been no agreements to somehow dedicate that power to Ohio customers.

A. Not that I'm aware of.

Q. In your testimony you discuss on page 18 the rider RC.

A. I'm sorry, 18, please; is that right?

Q. Yes.

A. 18?

Q. I said yes. I'm sorry, I said yes.

A. I'm sorry. Go ahead.

Q. On this page you discuss the changes to rider RC; is that correct?

A. That's correct.

Q. Does the company intend to change the manner in which certain costs are allocated in the calculation of the RC?

A. That's correct.

Q. And would that change in -- that

allocation change, would that affect the projected pro formas that we talked about with Ms. Mullins?

A. I'm sorry, would you repeat that, please.

Q. Would that change that you're proposing in the allocation of that, would that affect any kind of projected pro forma financials of the company?

A. It shouldn't.

Q. Duke's proposal is for a three-year term but Duke has also reserved a right to terminate early; is that correct?

A. I believe that's stated in our application.

Q. And in your analysis that you did of the in-the-aggregate benefit test, did you conduct a separate analysis that reduces the term of the ESP to two years?

A. I did not.

Q. And under that situation, the benefits of an ESP over an MRO would be only for the two-year period that the ESP is in effect; is that right?

A. As we sit here today, the ESP is being proposed for three years with an option to terminate early. The calculation was three years.

Q. And if the company terminated it early, then the benefits of -- that you've proposed in your calculation would only be for two years, right?

A. That's correct.

Q. And, sir, speaking of the, you call it the "better-in-the-aggregate test," if I call it the "MRO test" you'll understand what I mean, sir?

A. Yes.

Q. So you agree that the MRO test must determine whether the proposed ESP, including pricing and all other terms and conditions, is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO; is that correct?

A. That's correct.

Q. And you are familiar, as we've discussed, with the PSR rider that you proposed in the ESP; is that right?

A. I am familiar with it.

Q. And the company's requesting that that rider be established for the full-term of the ESP and even beyond the ESP; is that correct?

A. It's for the duration of our entitlement to OVEC.

Q. And that PSR rider will include the estimated OVEC contract, the ICPA contract price, beginning June, 2015; is that correct?

A. As of June 1, 2015, we will start passing through the gains and losses on the sale of that generation.

Q. And you've also told me today that it could include costs associated with other purchased power arrangements; is that right?

A. As I sit here today, we have nothing on the table to propose June 1, '15, but we have reserved that option.

Q. Okay. When you did the MRO test, it's true that you did not consider the PSR rider in your analysis; is that correct?

A. Well, I did consider the PSR rider. We consider it a value to the customers to stabilize rates.

Q. You didn't consider it in the cost category -- when you quantified it, you didn't consider the three-year protected cost of the PSR rider to customers, did you?

A. I wouldn't have considered the three-year costs anyway, but we didn't consider it, no.

Q. And you also didn't consider or reject any costs associated with future PPAs when you did your analysis; is that correct?

A. We don't have any planned right now. I didn't have anything to compare, so.

Q. But when you considered the -- when you did the projected pro forma financial analysis, you considered a zero cost; is that correct?

A. Are you alluding to what Ms. Mullins just testified to?

Q. I am.

A. Insofar as we are going to pass through the gains and losses, the margin that Ms. Mullins would show in her forecast would be zero, so there is nothing to show in the forecast.

Q. But the company's projections, themselves, the analysis that it did, showed a three-year charge for the PSR rider during the term of the ESP; is that correct?

A. But there would be an equivalent revenue in that case so there would be a zero impact on the forecast.

Q. Right. But for purposes of your MRO test, you did not consider the three-years' worth of charges that's been projected; is that correct?

MS. SPILLER: Objection. Asked and answered.

EXAMINER WALSTRA: Overruled.

A. I answered that question a minute ago. I wouldn't include just the three years, first of all, but I didn't include it at all anyway.

Q. And isn't it true, sir, the DCI rider would not exist under an MRO?

A. It's my understanding, under the rules for the MRO, there is no provision to include a DCI rider, but it doesn't mean that in the MRO environment we couldn't have one.

Q. And so, sir, did you conduct in your analysis comparing the differentials and benefits to customers, did you -- excuse me. Did you consider, in your MRO test analysis, the DCI costs?

A. I did not.

Q. And did you conduct any analysis comparing the differential and benefits to customers from having a rate case versus the DCI rider?

A. I did not quantify the value but there is obvious value.

Q. Did you do a cost/benefit analysis to customers of setting distribution rates through a distribution rate case?

A. That's kind of the same answer. I didn't quantify that value but there is value.

Q. And, sir, you're familiar with the discovery response that was shown to Ms. Mullins that talked about the cost of the DCI rider to be in the magnitude of, sounded like today that it's in the magnitude of 210, 220 million dollars for the term of the ESP?

A. I am familiar with it. I don't have it in front of me.

Q. Okay. Would you like a copy, sir?

MS. BOJKO: May I approach, your Honor?

A. If you are going to ask questions, I would.

MS. BOJKO: May I approach, your Honor?

EXAMINER WALSTRA: You may.

Q. This has previously been marked as OMA Exhibit 1. Is this the discovery response, sir, that you were just referring to?

A. I wasn't referring to it, you were, but this is the response you were talking about.

Q. And this refreshes your recollection of the costs of the DCI to be in the magnitude of, it's 272 million listed on this document and, as Ms. Mullins just testified, it should be reduced by probably six months' worth of revenues if we are going to look purely at the term of the ESP?

MS. SPILLER: I am going to object to the extent it misstates Ms. Mullins's testimony.

EXAMINER WALSTRA: Ms. Bojko?

MS. BOJKO: That was her testimony. She stated that this -- I'll rephrase, your Honor.

EXAMINER WALSTRA: Okay. Thank you.

Q. Let's back up and do this longer.

On OMA Exhibit 1 that you have in front of you, do you have that, sir?

A. It's not marked OMA Exhibit 1, but I'll take your word for it that's the one.

Q. Thank you, sir. When I handed it to you did I say this has previously been marked as OMA Exhibit 1?

A. I don't remember that but you may have.

Q. And it is Attachment BEH-3?

A. That's correct.

Q. Okay. And on this document it states that for rider DCI the costs for calendar years 2015 through 2018 is a total of $272 million; is that correct?

A. Only it doesn't say 272, but the sum of those numbers is 272.

Q. Were you in the room for Ms. Mullins, sir?

A. I was.

Q. And were you in the room when she

indicated that the $104 million for the whole entire year of 2018?

A. I was.

Q. And so, were you in the room when she responded to my question that if I was looking at the costs for the term of the ESP, that it would not be that entire amount and it would have to be reduced by some amount because it extends beyond the term of the ESP?

A. I recall the line of questions, yes.

Q. Well, since your counsel objected to the last question, do you recall her agreeing that the 272 million would have to be reduced by an amount because it goes beyond the ESP period?

A. I don't know if I would characterize it as it would have to be reduced. If you wanted to know how much revenue would be collected between June 1 of '15 and May 31 of '18, then the $104 million would be something less.

Q. So you want to use the word "something less" instead of "reduced"; is that your understanding?

A. Well, you're suggesting it would be reduced because of some limit on the recoverability, and I'm just telling you that between -- if you are looking at how much money is collected in the 36-month period then it would be something less than 104.

Q. That wasn't what I was implying, sir.

A. That's what it sounded like.

Q. So thank you for the clarification.

For the ESP period, the DCI amount would be something less than $272 million.

A. It would be whatever was being collected from -- the 22 for the first year, 63 for the second year, 83 for 2017, and five months of the 104.

Q. So something less than the total aggregated number of $272 million.

A. I think we've established that, yes.

Q. And, sir, did you consider the something less than $272 million in your MRO test analysis?

A. As I indicated earlier, I didn't factor in the dollars for DCI at all because it would be available under an MRO so it doesn't matter what the number is.

Q. You said it may be. Isn't it true that you said there is no provision in the MRO statute that allows for a distribution rider?

MS. SPILLER: Objection. That misstates

his testimony. He further indicated it would be obtained in a rate case.

EXAMINER WALSTRA: Overruled. He can answer.

A. I said that under an MRO environment we could ask for a distribution rate case and this could be approved under that environment.

Q. That wasn't my question, sir. Did you state to me previously that you reviewed the MRO statute and you believe that there is no provision in the MRO statute for a DCI rider?

A. I stated both things to you. I answered that question and I also followed up by saying that it's available under an MRO environment.

Q. It is available or it may be available?

A. The MRO rules do not provide for it. However, just because there is an MRO existing, doesn't mean we can't have a rider like this with a distribution rate case.

Q. A rider through a distribution rate case?

A. Yes.

Q. Or a rider without a distribution rate case.

A. We would file a distribution rate case seeking not only to increase our rates for O&M and capital at that point in time, but to implement a rider that would mirror this.

Q. You would have to get approval of that through the Commission through the distribution rate case; is that correct?

A. That's correct. Just like we do here.

Q. You could not -- this is a distribution rate case, sir?

A. No. But I have to get approval for it here just like a distribution rate case.

Q. So could you get approval without a rate case or a distribution -- or, for a distribution capital investment rider under an MRO?

A. I'm trying to be clear. Under the statute 142, there is no provision for a distribution rider.

Q. So the answer to my question is no, you could not get an individual rider under the MRO statute.

A. Not under the statute. In that environment I could. I think that's well established in other cases --

Q. I'm sorry.

A. I think that's well established in other cases between FE and AEP as well.

Q. You could not get an individual rider without a rate case; is that true?

A. My understanding of the rules is that's true.

Q. Okay. And, sir, isn't it also true that the collection of costs associated with generating assets of OVEC or any purchased power arrangement would not exist under an MRO?

A. Again, the same facts apply to that as the distribution rider. There is no provision in the MRO statute; however, it doesn't mean we couldn't ask for it in another forum.

Q. But in this -- in another forum, this situation you are distinguishing from a distribution rate case; is that correct?

A. That's correct. Or, even, we could ask for it in a distribution rate case as well.

Q. Right, but it's not -- in the ESP case, is it your position, Duke's position, that these riders are permissible under the statute?

A. Under the ESP statutes or the MRO statutes?

Q. In the ESP, under the ESP statute.

A. I'm sorry. I didn't hear you. Under the ESP statutes there are a number of single-issue ratemaking, that's correct?

Q. Under the MRO, you said that those similar types of provisions do not exist under the MRO statute.

A. That's correct.

Q. Okay. So when we are just comparing the two statutory provisions, the ESP statutory provision and the MRO statutory provision, the DCI would fall under the ESP, but it wouldn't fall under the MRO statutory provision; is that correct?

A. That's correct.

Q. And, similarly, the PSR would fall under the ESP statute, but it wouldn't fall under the MRO statute.

A. That's correct.

Q. Okay. And it's your understanding of the ESP statute that you're supposed to look at the ESP test, what you could get under an ESP and compare it to what you could get under the MRO statute?

A. That's correct. All the benefits and the costs that go with the DCI, we are saying the benefits outweigh the costs; go with the ESP statute.

Q. And the ESP statute actually specifically references the MRO statute; is that correct?

A. I don't remember the words exactly but I would expect so.

Q. Okay. Thank you. Let's -- let's turn to page 11 of your testimony. Okay. Based on your testimony, it's my understanding from your testimony that you do not -- Duke, when I say "you," I mean Duke, that Duke does not believe that they have an obligation to transfer the OVEC entitlement; is that correct?

A. That's correct.

Q. Okay. And Duke does not believe that to be true either by the stipulation signed in the last rate case, the last ESP case, or by Ohio law; is that correct?

A. Yeah. The stipulation is very explicit about what assets can be transferred, and 4298.17 does not suggest that we have to transfer that asset.

Q. I'm sorry. Let's take them separately. You do not believe you're obligated to transfer pursuant to the stipulation you signed in the last ESP case; is that correct?

A. That's correct.

Q. Okay. And you don't -- you also do not believe that you're obligated to transfer by Ohio law; is that correct?

A. That's correct.

Q. Okay. And you don't -- you believe that to be true even though you did obtain a waiver in the last ESP case.

MS. SPILLER: I am going to object to the reference to "a waiver." There's no mention of a waiver in Mr. Wathen's testimony.

Q. Sir, do you know whether you obtained a waiver in the last ESP case for corporate separation purposes for transferring generating assets?

A. The stipulation referred only to those generating assets directly owned by Duke Energy Ohio so the waiver would have been related to those.

Q. That's -- that's Duke's belief that you did obtain a waiver but it was related to specific assets; is that correct?

A. It's factual. It's not a belief.

Q. No. Is that Duke's opinion? Is that Duke's position?

A. It's not an opinion. It's a fact.

Q. I think other people around this table would respectfully disagree with your opinion. So I'm asking what your opinion is.

A. My opinion is that it's a fact.

Q. Okay. And under that opinion it's your position that Duke will continue to own the entitlement prior -- it's your position that Duke will continue to own this entitlement; is that correct?

A. Assuming approval of the ESP as we filed it, we would continue to own the entitlement to the OVEC generation.

Q. Well, and that's what you believe to be the case when you filed your testimony; is that correct?

A. Again, the filing anticipates that we would have the right of PSR to pass through the gains and losses. As long as we do that, we will own the asset. We will own the generating output from OVEC.

Q. That's, I guess, not what I am asking. I'm asking if Duke's intent is to retain the OVEC entitlement.

A. As long as we have the contract to the ICPA, we will own -- we will own that entitlement. So I don't -- there is nothing on the horizon that I know of that calls for us to dispose of that generation.

Q. Okay. And prior to your filing your testimony did the company attempt to transfer the OVEC entitlement to an affiliated company?

MS. SPILLER: I am going to object to the relevance. It's also outside the scope of Mr. Wathen's testimony.

EXAMINER WALSTRA: Ms. Bojko.

MS. BOJKO: Oh, this is the heart of the testimony and it's going to be foundation for what's to come in the next several weeks, I think. Mr. Wathen has stated a position, on behalf of Duke, that there was no obligation to transfer and that is why they are suggesting that they can and will retain the asset for purposes of the PSR. You're going to see there is a difference of opinion of whether that's true or not true or true fact as Mr. Wathen just stated, and it is within our rights to prove or disprove the truth of whether the statements made in this and the beliefs of the company and that would include whether or not they had prior intentions to fulfill some obligation.

MS. SPILLER: And, your Honor -- go ahead, I might have another comment depending on the ruling.

EXAMINER WALSTRA: Overruled.

MS. SPILLER: So, your Honor, I'm not sure how far down this line of questioning Ms. Bojko intends to go with this particular witness. But the activities, as we've been informed by OVEC's counsel, that happen within OVEC are confidential. And so, we just -- I wanted to just get that on the table.

EXAMINER WALSTRA: Okay. Thank you. We will proceed, but if something comes up.

MS. SPILLER: Thank you.

MS. BOJKO: Your Honor, everything that I have planned to ask him was talked about openly in the public depositions of this witnesses, so.

EXAMINER WALSTRA: Okay.

MS. SPILLER: Which -- which witnesses? There were confidential portions of certain witnesses; hence, the question.

MS. BOJKO: I said the public depositions of the witnesses.

MS. SPILLER: Okay. Thank you. Thank you.

A. If there is a pending question, I forgot it.

Q. There is. I can repeat it. Prior to filing your testimony, did the company attempt to transfer the OVEC entitlement that Duke Ohio has to an affiliate of Duke Ohio?

A. I believe you heard, through Chuck Whitlock's deposition, that that's the case.

Q. And, sir, to your knowledge have other

Ohio companies attempted to transfer their OVEC interests to an affiliate company or to a third party?

MS. SPILLER: Objection. What other Ohio utilities may do or not do in respect of their contractual entitlements is well beyond the scope of this proceeding.

MS. BOJKO: Your Honor, he has made a contention he has no obligation pursuant to Ohio law and we are going to test his contention.

MS. SPILLER: With respect to Duke Energy Ohio. What other utilities may do is not something that Mr. Wathen has any expertise on or should be even asked about.

MS. BOJKO: This is the witness that was presented, the only witness, might I add, that was presented by the company in this case to speak to this particular issue. We had to subpoena subsequent witnesses to talk to these issues, but this is the only witness that talks about this particular issue, your Honor.

MS. SPILLER: In respect of Duke Energy Ohio.

MS. BOJKO: And what Ohio law requires or doesn't require.

EXAMINER WALSTRA: I am going to overrule it. The witness can testify to what he actually knows.

A. I know what I read in the case documents for AEP and I'm aware that parts of OVEC has changed hands a number of times for different entities that owned entitlements to OVEC.

Q. Okay. That was my next question. So you are stating you do know that there are Ohio companies that have attempted to transfer and were unsuccessful at transferring or did not transfer for whatever reason.

A. I'm aware that's a-- that was a significant issue in the AEP case.

Q. Okay. And so then, by the latter part of your statement, you're also aware that there have been Ohio utilities that have successfully transferred the OVEC assets or their entitlement to the OVEC assets to affiliated companies?

A. I know at least FirstEnergy did, and I believe maybe one of the co-ops might have transferred some assets as well.

Q. Okay. Thank you.

And, sir, if the -- if the PSR rider is not approved and OVEC operates at a loss, who will cover that loss?

A. As long as Duke Energy Ohio owns the generation entitlement, it will take the loss.

Q. Duke Ohio will take the loss.

A. Or the gain, yes.

MS. BOJKO: If I may have one minute, your Honor, I may be done.

Thank you for your time, sir. I have no further questions.

EXAMINER WALSTRA: Thank you. Do we have -- are we going back in order?

MR. DARR: I assume, do you want to take a break?

EXAMINER WALSTRA: Do you want to go forward now or do you want to take a break for lunch?

MR. DARR: I would -- I am never going to raise my hand on that one. Lunch break would be fine.

EXAMINER WALSTRA: All right. We'll come back at a little after 2.

MR. OLIKER: Your Honor, at this point would it be a good time for IGS to make a clarification about an exhibit that was entered yesterday?

EXAMINER WALSTRA: Yeah, that would be

fine.

MR. OLIKER: I would just like to clarify for the record that IGS Exhibit 1, as previously admitted, contained an excerpt of PJM Market Monitor Report that was issued on May 15, 2014. The court reporter has been provided with the entire Section 12 from the PJM Market Monitor Report. That document will be circulated to the parties in the proceeding via e-mail and to the Examiners as well. It's already been provided to the court reporter with the website written on the document.

EXAMINER WALSTRA: Thank you.

MS. BOJKO: Your Honor, while we are doing clarifications may I? There are several deposition transcripts for the subpoenaed witnesses that have been called and they are quite lengthy and so my question for you, I'm assuming since they were filed publicly, that we would not need to bring copies. So I guess I'm seeking that clarification or asking if the Bench needs copies, if somebody needs copies, so that we could provide it.

MR. BERGER: We have copies here.

MS. BOJKO: You brought copies already? I just didn't want to kill anymore trees.

Are we off the record?

EXAMINER WALSTRA: We can go off the record.

(Discussion off the record.)

EXAMINER WALSTRA: Back at 2:10.

(Thereupon, at 12:54 p.m., a lunch recess was taken.)

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Thursday Afternoon Session,
October 23, 2014.

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EXAMINER WALSTRA: We'll go back on the record.

I believe we were at Mr. Darr.

MR. DARR: Thank you, your Honor.

- - -

WILLIAM DON WATHEN, JR.

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

CROSS-EXAMINATION

By Mr. Darr:

Q. Mr. Wathen, I want to follow up with some math that you started in the earlier cross-examination today. You indicated that the generation related to the OVEC entitlement, I believe, was about 200 megawatts; is that correct?

A. It's approximately 200 megawatts, yes.

Q. And that would be Duke's proportion of it, correct?

A. It's our 9 percent share of the total ICAP.

Q. And then you indicated that if the plant ran full out, you would multiply that 200 by 365 days times 24 out -- hours to get the megawatt-hours?

A. Times the nine percent, right.

Q. Times the nine percent.

A. That's correct.

Q. The nine percent already recognizes the nine percent interest, right? That's the 200.

A. 200 times 8,760 would be the math, right.

Q. And in terms of the total megawatt-hours sold at retail by Duke, we could find that number in the FERC Form 1 filings for 2013, correct?

A. I could find it for any year, yes.

Q. And would you agree, subject to check, and if you would like to see it, I've got it pulled up for you, that last year, Duke Energy Ohio reported retail sales of 20,010,063 megawatt-hours.

A. Yeah. It's about 20 million megawatt-hours, that's about right.

Q. And what we're talking about here is a retail charge for PSR, correct?

A. It would be a retail charge.

Q. So the hedging effect or the amount of generation that would be affected by the charge would be roughly, if my math is correct, about 7 percent; is that correct? Does that sound about right?

A. Assuming we took 100 percent of the

output of OVEC and its 100 percent load factor, yes.

Q. In fact, you seldom, over the last few years, have taken the full 100 percent; is that fair to say?

A. I don't know the percentages, but it's ranged anywhere from 800 million megawatt -- I mean, 800,000 megawatt-hours to about 1.5 million megawatt hours.

Q. So assuming that the full 9 percent is about 1.4 million, consistently you've taken a little bit less.

A. Recently we've taken less. But it's been more in the past.

Q. Now, the mechanics of the PSR, and I know they are laid out in some detail in your testimony, but just so that we understand what's going on here, and the following questions are clear, the notion, as you describe to Ms. Bojko and in your testimony in Duke Exhibit 6, is that Duke would incur the charges it receives from OVEC, pay those to OVEC, take the entitlement power that is sold into the PJM market, identify those revenues, net the two, and the positive or negative balance would be the PSR.

A. That's probably better than I would say it, but that's accurate.

Q. And then for purposes of assigning the charge to customers, are you looking at some sort of combined demand and energy allocation or a straight energy allocation?

A. I'm pretty sure in my testimony I described it as an energy allocation.

Q. So you take the megawatt-hours, 20 million, for example, divide it into the charge and come up with a number.

A. That's correct.

Q. So with regard to the going forward charges, we would take -- if we wanted to get an estimate, we would take the numbers that the company is providing in discovery on an annual basis, divide that by 20 million, and we could come up with a ballpark idea of what the PSR would be in terms of either a charge or a credit.

A. Which discovery are you talking about?

Q. The discovery that your company has provided with regard to the estimate or forecast of the netting of the charges and revenues associated with the OVEC entitlement.

A. So I assume you are talking about the forecast and snapshot forecast that we provided in OEG 1-1; is that right?

Q. Yes.

A. Yeah. If that's the -- the way that numbers fall out then you would take that revenue or loss and divide it by the 20 million megawatt-hours and there's your rate.

Q. Now, it's fair to say that the energy and capacity that we're talking about that comes from OVEC would not be identified as purchased power supplied under the standard service offer, correct?

A. It wouldn't be related to the standard service offer, that's true.

Q. And, in fact, there is no nexus between the stability rider and the SSO auction winners also, correct?

A. That's correct.

Q. And is it also fair to say that it's unrelated to the cost of the emission allowances that the company may seek to charge through the SSO?

A. We don't recover emission allowances through the SSO at all.

Q. So it's fair to say that OVEC wouldn't create any new charges of that nature, correct?

A. Well, to the extent OVEC charges include EAs, it would affect the margin on the OVEC transaction, but there's no direct recovery of EAs from SSO customers in our ESP.

Q. And so, it's fair to say there would be no -- no alignment of energy allowances -- or, excuse me, environmental allowances coming through the SSO through -- for the power that's being supplied to customers, correct?

A. I assume you mean emission allowances?

Q. Yes.

A. Again, there is no direct recovery of emission allowances in our SSO, period.

Q. And that would be true of any federally-mandated emissions taxes as well, correct? If there were any.

A. If there were any, I mean, that's unknown at this time. We have no idea what's coming down the pipe.

Q. And the PSR, as proposed, would be unrelated to any securitization; is that also correct?

A. We have no securitization in our ESP whatsoever.

Q. And the PSR is not related to any transmission, auxillary, or congestion service that might be offered by Duke Energy, Ohio, correct?

A. The PSR itself is simply a financial

transaction for the OVEC output and is not related to any other aspect of the SSO service, transmission, distribution, otherwise.

Q. Okay. Well, you've anticipated my next question. It's not related to distribution services.

A. That's correct.

Q. And is it fair to say that the PSR has no direct relationship to economic development?

A. I wouldn't say that.

Q. What direct relationship does it have?

A. Well, I think the ability to provide some insurance against price spikes and limit volatility does advance the economic development. Customers -- customers typically like stable rates and to the extent this provides stable rates, I think that's an incentive to ED.

Q. My question was did it have any direct relationship. Do you believe has a direct relationship to economic development?

A. The only relationship -- the relationship I described to you is the only one I can think of off the top of my head. And whether you can characterize that as direct or not, I can't tell you, but, to me, there is a relationship.

Q. Would you characterize it as direct?

A. I think -- I think it directly impacts ED, yes.

Q. Do you remember when you were deposed on September 16, 2014?

A. I'll take your word for it that's the date. I remember being deposed.

Q. Do you have a copy of your deposition in front of you?

A. I do not. I do not.

MR. PRITCHARD: May I approach?

EXAMINER WALSTRA: You may.

MR. DARR: Does Counsel have a copy of his deposition?

MS. SPILLER: I have my counsel -- or, I have my copy. Thank you.

Q. And at your deposition you were -- you received an oath; is that correct?

A. I'm sorry. I received an oath?

Q. Yes. You were asked -- you were asked to testify as to the truth of the matters that you were going to testify to that day.

A. Yes.

Q. And you agreed to do so, correct?

A. I did since it's obviously here.

Q. And if you would, turn to page 165 of your deposition beginning at line 21.

A. You are saying -- of the little numbers not the big numbers?

Q. Yeah. The ones that are in the 4-by-4 printout of your deposition, I believe, and I am looking at page 165.

A. Yep.

Q. Am I reading it correctly starting at line 21 on page 165:

"Question: And the PSR rider is not related to economic development, job retention, or energy efficiency programs, correct?"

"Answer: It's arguable whether it's related to economic development, but there's no direct relationship." Did I read that correctly?

A. You did.

Q. And it's fair to say that the PSR has no direct effect on energy efficiencies as well, correct?

A. Again, it may have a relationship on it to the extent it changes the variable cost of power the customer sees so they may be influenced to use or more or less power, but, again, whether that's correct or not is kind of squishy.

Q. Well, again, your testimony at the

deposition was that there was no direct relationship correct, beginning at line 25 on page 165 and carrying over to line 1 on page 166?

A. Yeah, I see what the words say.

MS. SPILLER: And I believe that testimony refers to economic development. Just note my objection to the reference.

Q. Good point. Well, Mr. Wathen, turning to page 166, line 2, going on through line 7, am I reading this correctly it is --

"Question: And as far as the other two categories I mentioned, job retention and energy efficiency, the PSR rider is not related to job retention or energy efficiency," and it ends, period.

"Answer: One could argue about job retention, but it's certainly not related to energy efficiency." Have I read that correctly?

A. You read it correctly.

Q. Is it fair to say you've done no analysis on the effect of the PSR on economic development?

A. Nothing more than just intuition.

Q. And is it also fair to say you've done no analysis of the effect of the PSR on job retention?

A. Same answer.

Q. So the answer is you haven't done any; is

that correct?
A. Nothing more than intuition.
Q. And it's also your view that the PSR does not limit customer shopping; is that correct?
A. That's correct.
Q. And the PSR does not provide standby service to customers?
A. That's correct.
Q. And it does not -- the PSR does not provide supplemental power service also, correct?
A. That's correct.
Q. And you've described the PSR as a financial hedge.
A. I've described it that way many times today, yes.
Q. And at this time are you aware of any requests for proposals to secure financial hedges for SSO customers and shopping customers?
A. Could you restate that, please? I'm not sure I digested right.
Q. Sure. Has Duke -- let me rephrase the question.
Did Duke issue any request for proposals to secure a financial hedge for SSO customers and shopping customers?

A. Only the PSR.
Q. And that's Duke's proposal, correct?
A. That's correct.
Q. You have not issued any requests for proposal from third parties; is that fair?
A. Oh, from third parties, no, there is no third party requests.
Q. Now, following up on this notion that the hedge is a -- excuse me, the PSR is a hedge, with regard to SSO customers is it fair to say that the only way to limit the volatility for three years of an ESP is to conduct an auction for the entire ESP on day one?
A. If conducting an auction for the period -- the entire period of the ESP, and one auction would definitely give you a fixed price for the duration of the -- of the ESP.
Q. Is that fixed price a definition of a hedge for you?
A. Not necessarily.
Q. But this would constitute a hedge, correct?
A. It would -- it would create a fixed price for the SSO service, but if that service is higher or lower than the prevailing CRES offers, then it's

really meaningless.

Q. I'm confused by that answer. The point of a hedge is to identify a risk and modify that risk by engaging in some sort of contract or other action; isn't that correct?

A. A hedge essentially just locks in a price. That's the way I look at it. But SSO -- if I hedge the SSO and everybody is shopping, then I am not giving them any benefit. All the shopping customers are exposed to volatility then.

Q. That's fair. That's not the situation here, is it?

A. They got 70 percent, 80 percent of the customers that have switched.

Q. That wasn't my question. That's not the situation here, is it?

A. What situation? That all customers have switched?

Q. Correct.

A. We have not lost all customers, that's true.

Q. Now, with regard to the customers that have switched, those that are on a fixed contract, they would not experience any weather-related volatility either; isn't that correct?

A. I would say for the duration of their fixed contract, it could be 6 months, 12 months or however long they won't experience any volatility unless they have a provision in their contract that allows for that.

Q. Unless there is a passthrough provision which would then make at least some portions of the contract not fixed; is that correct?

A. That's correct, yeah.

Q. And I believe you referenced the Apples to Apples chart as the means by which you determined what kinds of offers were outstanding?

A. That's the only means I know of.

Q. Well, that is sort of an answer to my question but let me ask it again. You -- did you look at the Apples to Apples charts available through the Commission website to determine what kinds of offers are out -- outstanding for residential and other customers?

A. Well, the offers -- Apples to Apples chart isn't very helpful for the C&I customers because it really is -- you have to input your load and price to get an answer. But, for residential customers, it populates the spreadsheet with all the offers that are out there, whether they are short-term, long-term, introductory rates, all that stuff, so you can get a pretty good idea of what the offers are for residential anyway.

Q. And that's what you looked at; is that correct?

A. That's correct.

Q. And when you looked at the -- when was the last time you looked at it?

A. This week.

Q. And when you looked at it, did you find long-term offers from such companies as Border for 22 months, DP&L Energy for 33 months, AEP Energy for 6, AEP Energy for 24 months, and Discount Energy for 3 months available at a fixed rate?

A. There are -- I would say approximately one-third of the offers are for more than a year. That none of those long-term offers, that I can tell, are lower than our price to compare.

Q. Well, would that reflect the fact that customers might find some value in a fixed contract for a term longer than, for example, one of the periods in your ESP, which, as I understand it, is one year?

A. If a customer is willing to take a price, the Apples to Apples doesn't tell me who takes the product, it just tells me what the offers are. So a customer who is willing to take a higher price than our PTC, then, obviously, they have some interest in long-term stability.

Q. And they could get that stability separate and apart from your ESP, correct?

A. For as long as their contract lasts.

MR. DARR: To simplify this, your Honor, and with permission of the company, since the Apples to Apples comparisons for Duke are available, publicly available, easily accessible except today because the website's down.

(Laughter.)

MR. DARR: What can I tell you. That's what I ran into. Would the parties be willing to stipulate or would the Bench be willing to do administrative notice of the Apples to Apples charts that are available on the Commission website. It would save us all about 15 minutes there.

MS. SPILLER: Just what chart particularly, Mr. Darr?

MR. DARR: There are four of them relevant to Duke and those are the ones that I would ask we take administrative notice of. There's one for residential, one for the DS, one for the DM, and one for the industrial.

MS. SPILLER: And this is just the summary page without going behind to the actual contract terms?

MR. DARR: That's correct. Just what's available to the public that Mr. Wathen just indicated that he looked at.

THE WITNESS: And what's the date of the chart you are putting in?

MR. DARR: I wish I could tell you, Mr. Wathen, I don't know.

THE WITNESS: Because they update them every week.

MR. DARR: I understand that.

MS. SPILLER: That's kind of the, I guess, maybe the quandary that we have. I don't know what you're giving the witness or asking for administrative notice of in terms of a date.

MR. DARR: I am asking for the current set of offers. That's all we're -- all we're looking at here.

MS. SPILLER: You just said you don't know what date that's from.

MR. DARR: We can use today. I have copies that were taken off the website two weeks ago, but what I'm suggesting is that since that information is publicly available that we simply take administrative notice of it and avoid cluttering the record with another four documents.

EXAMINER WALSTRA: Do you know when you -- is there a date on there that you printed those off?

MR. DARR: Unfortunately, there is not. The code is on there, but not the -- the code of the website is on there, but not the date of the print.

EXAMINER WALSTRA: We can take notice of it.

EXAMINER PIRIK: Mr. Darr, are you saying if we take administrative notice, then you are not going to submit the exhibits?

MR. DARR: That's correct. As I said, the information is publicly available, easy to see where it's at and on a day-to-day basis, and however it moves, it moves. But the reality is, you know, we could save a little bit of time and its administrative notice would appear to be appropriate under the circumstances.

EXAMINER WALSTRA: We will take notice of it.

MR. DARR: Very good. Thank you, your

Honor.

MS. SPILLER: And, your Honor, just for clarification, is that as of today's Apples to Apples chart? I'm just not sure exactly which version we're taking notice of.

MR. DARR: My suggestion was that we take administrative notice of it however it moves. I mean and that's one of the -- Mr. Wathen, I think is correct, offers come and the offers go. If you want to take it as of today then I think we ought to take a snapshot of it today and put that in the record and I am fine with that as well.

EXAMINER WALSTRA: What you are going to be showing him is from two weeks ago?

MR. DARR: I am not going to show him anything if you take administrative notice. I would simply move on at this point.

EXAMINER WALSTRA: Yeah. That sounds good.

MR. DARR: Very good. Thank you.

Q. (By Mr. Darr) There were a number of references earlier today by you and Ms. Bojko, to the Intercompany Power Agreement, the ICPA. Do you recall that?

A. I do.

Q. And I take it from your testimony today that you've reviewed the ICPA?

A. I have.

Q. The ICPA is a contract that's been filed with the Federal Energy Regulatory Commission and then accepted by the Commission; is that correct?

A. That's my understanding.

Q. And it's been the current version that has been in place since 2011?

A. I believe the date of the contract was '10 and it was approved in '11. I can't be sure but that's what I remember.

MR. DARR: And, again, your Honor, I would like, if it would be appropriate, I would like to have the record reflect administrative notice of Case No. ER-11-3441, and an entry dated May 23, 2011, in the FERC record in those -- in that case, in which the Commission issued its final agency action on the application filed, of the filing involving the ICPA. If you would like, I have a copy of the entry.

EXAMINER WALSTRA: We'll take notice. I will take a copy of it.

MR. PRITCHARD: May I approach?

EXAMINER WALSTRA: Yes. Thank you.

Q. Mr. Wathen, do you have a copy of the

ICPA in front of you?

A. I do not.

Q. I believe I'm up to IEU Exhibit No. 5. I would like to have marked, the ICPA, as IEU Exhibit 5.

EXAMINER WALSTRA: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. PRITCHARD: May I approach, your Honor?

EXAMINER WALSTRA: You may.

A. Would you tell me the number again? 6? 5?

Q. 5. Do you have in front of you what's been marked as IEU Exhibit 5?

A. I do.

Q. And do you recognize this document?

A. It appears to be the ICPA we've just discussed.

Q. Now, if we turn to page 5 of the ICPA.

A. Okay.

Q. This is the provision that indicates that the power participation rate -- ratio for Duke Ohio is 9 percent, correct?

A. That's correct.

Q. And if we look at Article 4, section

4.02, this defines the available power entitlement as the power participation ratio, correct?

A. That's correct.

Q. Now, the obligation to pay costs that you and Ms. Bojko were discussing is contained in Article 5 and Article 7, am I correct in that?

A. I'm familiar with Article 5 and I believe Article 7 has some additional provisions for costs in it.

Q. And subsection 5.021 provides that the energy charge will include fuel, reagent costs, and certain allowances, correct?

A. That's correct.

Q. And 509, is that the emissions allowances? Account 509?

A. Yeah. When I see the word "allowances," I think of emission allowances.

Q. Quite honestly, I forgot to check before I asked the question so I'm asking.

A. I believe in the Form 1, 509 is listed as the emissions allowances, yeah.

Q. Very good. And in section 5.022, it provides that there is also a determination of the total cost of fuel included in any minimum loading event that is also payable to the corporation. Do you see that section?

A. I do.

Q. What is the minimum loading event?

A. I'm not an expert on this, but I can give you my understanding, if you want.

Q. Well, let's start there and we can maybe define it under section -- it's a defined term, we can look to that as well.

A. There are times, with a coal unit, that it's better to continue to operate it below economic levels just to not have to start it up and start it back up again. So there may be a time when we have to take power that's not necessarily economic because the unit has to be loaded at a minimum level. That's my -- that's my financial understanding of an engineering issue.

Q. If we go back to page 3 in the definition section, you'll see the definition of "minimum loading event" contained in paragraph 1.0110. Do you see that?

A. I see it, yeah, that's probably a better answer than the one I gave you.

Q. Is it consistent with the answer you gave me?

A. I think it's generally consistent, yeah.

Q. And this minimum loading event then triggers a responsibility for some portion of the minimum loading event costs and those are defined in section 1.0111, correct?

A. I see the definition in 1.011.

Q. And that would make the company responsible for minimum loading event costs, burning fuel oil, and any additional estimated costs resulting from the minimal loading events including, without limitation, the incremental costs of additional emissions allowances, correct?

A. Well, this section defines the minimum loading event cost. I think section 5 is the one that requires the payment.

Q. Okay. But this tells us what goes into the -- into the sum of costs, correct?

A. That's the way I understand it, yeah.

Q. Now, under the ICPA Article 5 provision, the company is also responsible for a demand charge?

A. That's correct.

Q. And that demand charge is broken up into several parts which are known as components, correct?

A. That's per -- per the contract, yes.

Q. Component (A) basically is the interest charge?

A. It would be the interest and amortization of debt discount and amortization of the -- whatever -- whatever three -- there's three components, but one of them is interest.

Q. And Component (B) recovers the fixed labor maintenance and other O&M, correct?

A. That's correct. It identifies the accounts that are at issue, yeah.

Q. Component (C) picks up the taxes?

A. That's what it says.

Q. Component (D) is a -- basically a dividend, correct?

A. Yes. It's a dividend to -- to the sponsoring companies. Most of the sponsoring companies also get entitlements so it's essentially a wash for them.

Q. Component (E) is insurance premiums? Of various sorts, correct?

A. I would characterize that as mostly benefits and pensions and so on, yeah.

Q. And Component (F) is decommissioning costs and other related costs, correct?

A. That's correct.

Q. The next component in the charge from OVEC to a sponsoring company, such as Duke, is a transmission charge, correct?

A. That's it, 5.04, yes.

Q. That's found on page 11?

A. Yes.

Q. And 5.05 is a reference to the minimum loading event costs as well, correct?

A. That's correct.

Q. Now, if, as you suggested in one of your responses earlier this morning, OVEC is out of the market at any particular time, Duke and the other sponsoring companies remain liable for the demand costs, correct?

A. Regardless of where the market is, the sponsoring companies are liable for the demand costs. Some companies -- the companies like LGE, for example, really don't care about the market. They use it for retail load. So I'm hesitant to say there is market in their demand cost because for companies that are regulated it wouldn't matter so much.

Q. Right. But for a company like Duke which is out of the generation business, if the OVEC generation is marginally out of the market, the energy is marginally out of the market and the plant doesn't run or part of that facility doesn't run, you are still responsible for the related demand costs,

correct?
        A.   Well, I guess again I am struggling with the parameters here. Just because we don't take the power doesn't mean the unit isn't running. But if we -- if we do not take our entitlement we are still obliged to pay the demand charge.
        Q.   That's all I was asking, Mr. Wathen.
        A.   I was just trying to clarify, thanks.
        Q.   Under Article 7, you are also responsible for some other costs, correct? 7.01 makes a sponsoring company responsible for replacement costs?
        A.   Yeah, the header of Article 7 defines it as replacements and additional facilities, employee benefits; decommissioning, shutdown, and demolition, so.
        Q.   And those are the section 7 -- excuse me, Article 7, sections 1 through 4, correct?
        A.   That's correct.
        Q.   And then the monthly bill that OVEC sends the sponsoring companies is set out in Article 8, correct?
        A.   It's defined "Billing and Payment." I would gather that it's in there, yes.
        Q.   And Section 801 indicates that the bill will include the Article 5 costs and the Article 7

costs, correct?

A. That's correct.

Q. Section 8.03 indicates that the costs the company can be charged, and when I say "company" here I mean Duke, can be charged for minimum loading events, correct?

A. That's correct.

Q. And under section 8.04, as we discussed a few minutes ago, there's an unconditional obligation to pay the demand charge and related transmission charges and all Article 7 charges, correct?

A. That's correct. You've just about read the entire ICPA into the record, but that's correct.

Q. And there is an additional caveat there that those charges are required to be paid whether or not any available power or available energy is supplied, correct?

A. The demand charges, that's true.

Q. That's true of the other charges as well, correct? The other Article 7 charges?

A. I consider these all demand charges. They're -- they're fixed charges if you want to call them that. Maybe it's easier.

Q. Again, the language in the agreement is very specific. It says the demand charge, the transmission charge, and all charges under Article 7, correct?

A. All of the charges independent of the fuel charge would be paid regardless of whether we take power or not.

Q. To follow-up on a question I asked Mr. Henning yesterday, you are currently under FRR status, "you" meaning Duke Energy Ohio?

A. We are, yeah under -- until May 31, '15.

Q. And you are currently also receiving a stability charge of $110 million per year; is that correct?

MS. SPILLER: Objection, relevance. Outside Mr. Wathen's testimony.

MR. DARR: Well, I -- quickly in response to the second argument with regard to it being outside the scope of his testimony. First, it isn't; and, second, that's not a proper objection. I am allowed to inquire into any matter that's relevant in this proceeding of any witness. That's what the Rules of Evidence provide and that's what the Commission has consistently done.

Now, with regard to the relevance as to the scope, it goes to the financial stability of the company and how this all fits together which has been put into issue by Mr. Henning's testimony and by the application itself when it talks about stability.

MS. SPILLER: And these were questions that should have been asked of Mr. Henning.

MR. DARR: And again, the point of my second -- second point is it's not limited to Mr. Henning's testimony. It's available against any witness that testifies on the matter whether it's Mr. Wathen, Mr. Henning, or any -- or any other party that's answering the case presented by the company. That is the Ohio rule and that is the rule the Commission has used consistently in these proceedings.

EXAMINER WALSTRA: If the witness knows the answer, he can answer the question.

A. And the question was whether we are recovering a stability charge?

Q. Yes, sir.

A. Under the stipulation that we reached in 11-3549 we agreed to a stability charge that would end December 31, 2014. There is no stability charge like that being requested in the proposed ESP.

Q. And part of the additional term of the ESP stipulation was the divestiture of generation that you and Ms. Bojko discussed this morning,

correct?

A. There were a number of directly-owned generating assets that we agreed to transfer in that stipulation, that's true.

Q. And that transfer is to be completed by January 1, 2015, correct?

A. Before January 1, 2015, that's true.

Q. Like the day before?

A. No. Most of them have already been transferred.

Q. I understand. And some of them are scheduled to be sold, I understand that too.

A. Yes.

Q. But the date of the stipulation was that it be completed by December 31, 2014.

A. That's correct. I don't know which date we have in mind to finish it, but it will be before January 1.

Q. Now, the objective of transferring the legacy assets -- generation assets to an affiliate for a subsidiary was to allow Duke Energy to be fully -- to fully embrace competitive markets, correct?

A. I can't remember the exact terms of the stipulation or how it's worded but that's essentially correct, yeah.

Q. And as is evidenced from the stipulation, Duke Energy is exiting the retail electric generation function or generating function, correct?

A. Even now we don't provide a retail generation service to the customers.

Q. So the answer to my question is yes, correct?

A. We do not and won't provide generating service to customers.

Q. And Duke will rely upon market structures to provide customers with safe, reliable, and adequate generation service, correct?

A. We like to think we have a hand in it, too, but the generation service is mostly provided by the PJM markets.

Q. And after Duke Energy Ohio initiates the auctions or continues the auctions to serve its load, and to set the price of retail electric generation service -- and retail generation service as determined by the market, there is no reason for Duke Energy Ohio, as a pure electric distribution utility, to continue to legally own generation assets, correct?

MS. SPILLER: I am going to object to the question. We've already indicated that we're transferring the directly-owned generating assets.

MR. DARR: This is a slightly different question, your Honor.

EXAMINER WALSTRA: Overruled.

A. There's no reason to -- for us to own or disown assets that aren't being used for -- for generation service.

Q. Now, following up on some things that Ms. Bojko discussed with you about the obligation to transfer and the lack of obligation to transfer, believe me I am not going to hash that one over again, it's fair to say that the company has made a filing at the FERC and has authority to transfer to an affiliate, called "Duke Piketon," its interests in the OVEC entitlement, correct?

A. I don't know about the Duke Piketon part, but I know we had an application in the FERC and approval to transfer entitlement, yes.

MR. DARR: And for purposes of the record I would like to have administrative notice taken of the proceedings including the final order in EC12-90.

MS. SPILLER: I am going object to the relevance, your Honor.

EXAMINER WALSTRA: The Bench will take

notice.

MR. DARR: I'm sorry?

EXAMINER WALSTRA: We'll take notice.

MR. DARR: Thank you very much.

Q. Now, would you take a look again at the ICPA. IEU Exhibit No. 5?

A. I have got it in front of me. Which page?

Q. Turn to section 9.181.

A. Okay.

Q. Now, this is a provision that concerns the transfer or assignment to a third-party or an affiliate, correct?

A. That's my understanding.

Q. And if I could direct your attention to section 9.182. This allows for an assignment to permit an assignee, correct?

MS. SPILLER: I'm sorry, what section?

MR. DARR: 9.182.

MS. SPILLER: Your Honors, I'm again going to object to questions of this witness and with respect to this particular topic. We are discussing contractual interpretations of transfers. Mr. Wathen is not an attorney. He didn't rely upon this for purposes of his testimony. It doesn't speak to costs that would be included in rider PSR and I think it is somewhat an extension of the rules of procedure to cross-examine any witness on any topic which is where I think Mr. Darr suggested the Commission goes.

EXAMINER WALSTRA: Mr. Darr.

MR. DARR: The relevance of the inquiry, your Honor, goes to Mr. Wathen's testimony that they're not obligated to do the transfer, but there's a secondary issue involved in this case and that is whether or not customers should be responsible for paying something that there is the present ability to transfer, as the Commission has identified previously in, I believe, it's in the order in the DP&L case; or, in the alternative, whether or not it's appropriate for the company to hold onto this asset and charge customers for it.

The Commission has an -- several alternatives that will be presented to it with regard to the OVEC entitlement, not only in this case but the sames issues are appearing in other cases, and that's appropriate to explore those options that are going to be presented to the Commission as to how the OVEC entitlement should be treated.

MS. SPILLER: Your Honor, these options in respect to DP&L and/or even AEP are not relevant to this proceeding. Those are not the applicant. But in respect of OVEC, that was expressly the issue in AEP's corporate separation case, it was also identified expressly in the DP&L case. So what the Commission may or may not do or may have done with regard to those utilities has no bearing in this proceeding.

MR. DARR: That seems to suggest, your Honor, the precedent of the Commission is irrelevant to this proceeding which strikes me as a bit odd, but even if I accept the narrower position that Ms. Spiller is advancing, the question still remains for the Commission to decide whether or not it's appropriate for DP&L to retain the interest and recover the charge. I'm sorry. Duke not DP&L.

MR. BERGER: Your Honor, I am wondering if OCC can weigh in on this.

EXAMINER WALSTRA: Go ahead.

MR. BERGER: And I think we expressed this earlier in connection with the depositions but certainly the question of whether Duke has made good-faith efforts to transfer the OVEC assets is a question that goes to the merits of the PSR and that's why it's relevant to this case.

Is this the best alternative -- is the

best alternative for Duke to hold onto this asset and place the costs onto -- onto the retail customers in an environment where we're supposed to be divesting generation assets since 1999, or are we supposed to be moving forward and -- and seeing the company divest these assets and take every measure they can. That's what this issue goes to. Are they taking every reasonable measure they can to divest these assets so retail customers no longer bear that burden. Thank you.

EXAMINER WALSTRA: Thank you. I do think there is a relevancy connected to the PSR. Mr. Wathen does seem to have a knowledge of this agreement so, at this point, I am going to overrule the objection.

MR. DARR: Thank you, your Honor.

Q. Going back -- let me restart my question since we kind of got waylaid there for a couple of minutes.

Turning to section 9.182, this section allows for the assignment or transfer to a permitted assignee, correct?

A. I can read the language in 9.182. It speaks for itself.

Q. Okay. And have I correctly described it?

A. I assume. Again, I'm not the expert. You subpoenaed the CFO of OVEC and our representative on the OVEC board who has infinitely more knowledge than me.

Q. And if we turn to section 1.0115, you do have a definition of what constitutes a permitted assignee, correct?

A. You know, we're continuing to read the ICPA, but that's correct.

Q. And permitted assignee can either be a sponsoring company or an affiliate?

A. Those are the words on the page.

Q. Am I correct that that's the way it's described?

A. That's what the words say on the page.

Q. Now, the affiliate for the sponsoring company must have an S&P rating of BBB minus or better, or Moody's rating of Baa3 or better, correct?

A. You are reading it accurately.

Q. Now, there are two Duke affiliates, Duke Indiana and Duke Kentucky, correct?

A. Among others.

Q. And each of these companies is a company that provides a retail electric service?

A. In addition to wholesale service, at

least Indiana does.
Q. And am I correct that Duke Indiana has a Moody's rating for its secured debt of AA3 and unsecured debt of A2 under Moody's?
A. I have no idea what the ratings are. I'll take your word for it.
Q. Well, are you familiar with the creditor's page on the Duke Energy website?
A. I have not committed it to memory.
Q. Would you like to see it?
A. If you want me to develop those numbers it would be helpful.
Q. Just so the record is complete, I think it might be appropriate.
MR. DARR: May I approach?
EXAMINER WALSTRA: You may.
MS. SPILLER: Are there paper copies of this, Mr. Darr?
MR. DARR: No, there are not. Oh, wait. Yes, there are.
A. I am looking at it, Mr. Darr. I'm a little concerned that you know our web page better than I do.
Q. I'm sorry?
A. I'm a little concerned you know our web

page better than I do.

Q. I just had a couple of more minutes to prepare for that.

A. What was your question?

Q. With regard to Duke Energy Indiana, am I correct that the Moody's secured rating is A3 and the unsecured rating is A2?

A. That's correct.

Q. And the S&P rating is A for secured and BBB plus for unsecured?

A. That's correct.

Q. And if we look at Kentucky Energy -- excuse me, Duke Energy Kentucky, the secured rating is BAA1 under Moody's and the S&P rating is BBB-plus, correct?

A. That's correct.

Q. And if we look at the parent of Duke Energy Corp. senior unsecured rating for Moody's is A3, correct?

A. That's correct.

Q. And the S&P rating is BBB.

A. That's correct.

Q. I would like to turn to your testimony on page 14, lines 9 through 10, where you describe the costs associated with OVEC as being generally very

stable. Do you see that testimony?
A. Hang on a second. I will get it. 14 line 10?
Q. Yes.
A. Okay. Yes.
Q. And the basis for that statement is the materials that are available on the OVEC FERC Form 1s, correct?
A. And OVEC's annual report and some of the -- some of the forecasts they provided, yes.
Q. Mr. Wathen, as part of your review, did you review the OVEC annual report for 2012?
A. That's one.
MR. DARR: If we could please have marked the OVEC annual report for 2012 as IEU Exhibit No. 6.
EXAMINER WALSTRA: It is so marked.
(EXHIBIT MARKED FOR IDENTIFICATION.)
MR. PRITCHARD: May I approach?
EXAMINER WALSTRA: You may.
Q. Mr. Wathen, do you have in front of you what's been marked as IEU Exhibit 6?
A. I do.
Q. Do you recognize this as the annual report of OVEC for 2012?
A. I do.

Q. And I take it this is one of the documents you looked at in terms of your review to determine whether or not the cost structures were reasonably stable?

MS. SPILLER: Objection. Asked and answered.

Q. Or relatively stable?

MS. SPILLER: Objection. Asked and answered.

EXAMINER WALSTRA: Overruled.

A. It's one of many.

Q. If you would, please, would you turn to page 13 of this report.

A. Okay.

Q. One of the costs that gets passed through to customers is the cost of coal to operate the plants as part of the energy component, correct?

A. That's correct.

Q. And there's a discussion on page 13 of this report concerning the coal supply, correct?

A. That's correct.

Q. And it indicates that in 2012, OVEC failed to meet contractual obligations and this resulted in liquidated damages of $2.227 million, correct?

A. Yes. You read that accurately.

Q. And it is also apparent that OVEC anticipated that it would be -- that this charge would be payable to the vendor and recoverable from the sponsoring companies including Duke, correct?

MS. SPILLER: Objection, your Honor. I think we have settled into this routine of Mr. Darr simply reading documents and asking the witness to authenticate them. If there are particular questions that should -- can be asked of Mr. Wathen, I think that is more appropriate. Other than Mr. Darr testifying.

MR. DARR: Well, I am clearly not testifying, your Honor, but I am identifying problems with the passthrough provisions that are associated with this OVEC contract, which, on a net basis, Duke is attempting to passthrough to customers.

EXAMINER WALSTRA: I am going to overrule it. There does seem to be a lot of reading of what's going on but I am assuming you are setting something up and going somewhere with it, but at this point I will overrule it.

MR. DARR: Thank you, your Honor.

A. Is there a pending question?

Q. I'm sorry. Is there a pending question?

A. Yes.

Q. I think I was asking whether or not it was anticipated that this would be passed through -- paid to vendors and then passed through to the sponsoring companies.

A. I would expect so but I would assume they took this charge to avoid even more charges by taking the coal. You can ask Dr. -- Mr. Brodt that, but I would expect that's the problem.

Q. And if we turn to page 2 -- well, let me back up a second. In terms of assessing the viability or the cost to customers, what we are looking at is the total or all-in costs of a megawatt-hour, correct?

A. Are you speaking of the PSR?

Q. Yes.

A. I wouldn't put it that way, no.

Q. Well, we want to add up all the costs that you pay, "you" being Duke Energy Ohio, paid to OVEC, offset that with the revenues that you receive, "you" again being Duke, receive from PJM, and those are all-in costs, correct?

A. That's correct.

Q. And all-in revenues?

A. But the value of it really isn't

measuring the average cost. It's really how much more market price I can get than my energy cost. I mean that's what's going to create the value.

Q. And the way to calculate that, at least for purposes of the PSR, is that we take all the demand and energy charges and we take all of the revenues from the capacity and the energy and we offset them, correct?

A. Well, the way the math works is if the average rate for my market sales exceeds the average rate for my charges, then I will pass money back to customers. If it's less, then I'll collect money from customers.

Q. And so, we need to know what the average cost per megawatt hour is, correct?

A. No.

Q. Why not?

A. The average cost of megawatt-hours is just a -- just arithmetic. What I need to know is how much the market price is for power compared to my energy price for -- my energy cost, that's going to generate the margin along with capacity price. And if you want to convert it to an average price, that's your prerogative, but it doesn't mean anything to me.

Q. Would not the math be identical, if we took your average revenues and calculated your average costs per megawatt hour, took the difference over the total number of megawatt hours?

A. Yeah, that's the math I was just describing earlier that you would just -- if you wanted to calculate that for whatever reason, you could do it, but it doesn't really have any meaning.

Q. It comes out to the same result, right?

A. Exactly. But it's just -- that's not what generates the revenue.

Q. Well, am I correct that the average costs of a megawatt-hour in 2012 was $62.86 according to OVEC?

A. If you just take -- if you take -- well, are you referring to page 35 or so?

Q. No, I am on page 2.

A. It's the same as on page 35. 62.862, right. If you just take the total dollars divided by the total sales.

Q. Right. And for the year before that, in 2011, the average cost was $50.86, correct?

A. There was an outage at a -- one of the OVEC units to put in some environmental equipment. So they didn't have as many megawatt hours. So when you reduce the denominator, the average is going to go up, obviously, but, yes, the average price, if that means anything to you, is higher.

Q. And let's -- the explanation for that there was an outage and there was also mild weather and a soft energy market as well as low natural gas costs, correct?

A. There was a convergence of a lot of things including those, yes.

Q. And what you've described is basically the effect of the math, that as the amount of energy goes down, the effect of the number of megawatt-hours on the remaining costs cause the costs to appear higher on an average basis, correct?

A. One of the things I learned in college, if you have a fixed number on the numerator and a lower number on the denominator, it goes up.

Q. Now, did you also look at the annual report for 2013?

A. I did.

MR. DARR: If I may, I would like to have the Annual Report for 2013 marked as IEU Exhibit No. 7.

EXAMINER WALSTRA: It is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. PRITCHARD: May I approach?

EXAMINER WALSTRA: Yes.
Q. Do you have in front of you what's been marked IEU Exhibit 7?
A. I do.
Q. And is this the annual report of OVEC for 2013 that you looked at?
A. It's a copy of the one I looked at.
Q. And if we turn to page 2, we get again this average -- average number per megawatt-hour calculation, correct, in terms of the power costs?
A. Yes, that's the same number as on page 34 of the document, yes.
Q. Right. And now to be perfectly fair there's an anticipated reduction in the power costs in 2014 to possibly $55 per megawatt hour, correct, and that's mentioned in paragraph -- the second -- excuse me, third full paragraph in the second column on page 2.
A. Give me a moment to read it.
Q. Sure. Under the "2014 Energy Sales Outlook" --
A. I see it. Okay. I agree.
Q. But if we go back to 2013, the average costs per unit -- or, average cost per megawatt-hour had increase to $65.18, correct?

A. Yeah. If you look in the section on environmental, you can see the outage for the FTD was still going on in '13 so we had a reduction in the output.

Q. And the further explanation is contained in that same paragraph, correct, that it was related to mild weather, low energy market prices, competitive natural gas generation as contributing factors, correct?

A. Yes. We had a prolonged period of low economic activity.

Q. Now, is it fair to say that Duke Energy Ohio's average cost is higher than that of OVEC generally?

A. Do you have some information that you could share with me on that? I don't know -- I don't know offhand.

MR. DARR: If I could have marked as IEU Exhibits, I think it's 8 through 12.

EXAMINER WALSTRA: So marked.

(EXHIBITS MARKED FOR IDENTIFICATION.)

MR. DARR: And for purposes of this exhibit or set of exhibits, your Honor, these are pages from the OVEC FERC Form 1 documents for calendar years 2009 through 2013. I previously contacted counsel for Duke and indicated that in order to minimize the amount of paper that I would request that we take administrative notice of the FERC Form 1s. Those are located on the OVEC website notation for which I've already provided the court reporter this morning.

EXAMINER WALSTRA: The Bench will take notice.

MS. SPILLER: And, Mr. Darr, for purposes of assisting the witness.

MR. DARR: I am going to go through them here in a second.

MS. SPILLER: Okay.

MR. DARR: For purposes of the record, IEU Exhibit 8 would be the 2009/Q4 pages 310 through 311.

Q. (By Mr. Darr) Do you have that in front of you, Mr. Wathen?

A. So they're collectively Exhibit 8?

Q. Yes.

A. I do.

Q. And if we wanted to determine the cost to OVEC -- excuse me, the cost to, in this case, CG&E, the way it's listed if you go down to line 5 of this report, correct, on page 310?

A. Well, line -- yeah, line 5 of page 310 and 11, yeah.

Q. And then if we go to 311, we actually see the detailed information as to the megawatt-hours sold, the demand charges, the energy charges, and the total, correct?

A. That's correct.

Q. And continuing with the theme that we've already started for 2009, if we wanted to calculate the average demand cost or the average total cost, you take the total megawatt-hours and divide that into the demand charges for the total, correct?

A. To calculate the total charges per kilowatt hours, I would take the total dollars divided by the total megawatt-hours. I think you said demand charges.

Q. Okay. Well, I indicated both. If you want to figure out the average of the demand charges, you take the demand charges and divide them by the megawatt-hours, correct?

A. If you wanted to unitize that rate, that's how you would do it, yes.

Q. And the same with the total, if you wanted to unitize it, you divide the total by the total megawatt-hours and come up with a number,

correct?
A. That's correct.
Q. And would you agree with me, subject to check, that for 2009 the average cost of a megawatt hour was $46.18 cents?
A. I'll trust you this one time.
Q. I'm sorry?
A. I'll trust you this one time.
Q. Thank you, Mr. Wathen.
Turning to page -- IEU Exhibit 9 which is the 2010 Quarter 4 report, again, pages 310 through --
EXAMINER WALSTRA: Mr. Darr, what was that number you said again?
MR. DARR: IEU 9.
EXAMINER WALSTRA: No. The cost.
MR. DARR: $46.18.
EXAMINER WALSTRA: Thank you.
Q. Now, turning to IEU Exhibit No. 9.
A. And that's the 2010 Form 1?
Q. Yes, sir. We can go through the same process, correct?
A. Sure.
Q. We look at line 5, follow it all the way through, and if we did the math, the charge per

megawatt-hour would be $49.48, subject to check, correct?

A. You said 49, right?

Q. Yeah. 49.48.

A. Again, subject to check.

Q. I would like to turn your attention to IEU Exhibit 10 which is for the 2011 quarter -- which is the 2011 Quarter 4 report, pages 310 through 311. Do you have that in front of you?

A. I do.

Q. And again, we would look at line 5, go through the whole process that we just discussed, and subject to check, for 2011, the charge per megawatt-hour would be 55.15, correct?

A. I'll trust you one more time.

Q. I would like to turn your attention to IEU Exhibit 11 which is the 2012 Quarter 4 report. And in this case we would look at line 4, correct?

A. That's correct.

Q. And if we did the math for 2012, the charge per megawatt-hour would be $70.92, correct?

A. That's -- that's correct. And it reveals my point earlier that although the demand charge didn't change hardly any from year to year, the rate went up, which is the denominator issue.

Q. Right. There's less megawatt-hours divided into the total cost, correct?

A. That's correct.

Q. And if we looked at the document that's marked IEU-Ohio Exhibit 12, we would again look at pages 310 through 311, line 4, and if we do the calculation with regard to the 2013 report, the cost per megawatt-hour would be $70.61, correct?

A. Are we on '12 or '11 -- '12 or '13?

Q. 2013.

A. '13, 70 bucks, okay.

MS. SPILLER: I'm sorry. I'm a bit confused IEU 12 is the 2012 report?

MR. DARR: No. It's for 2013.

A. But I was -- as I noted earlier, if you follow the demand charges in those five years, they are very constant, very similar.

Q. Yes. They range from about $27 million to $32 million from 2009 to 2013, correct?

A. That's correct.

Q. So, functionally, they went up about $5 million.

A. That's correct.

Q. Or roughly using -- using 2009 as a base, a little under 20 percent.

A. That's correct, but considering they just added one and a half million dollars of all new FGD, that's not so bad.

Q. And, at the same time, the total charge, on an average basis, went -- for Duke, went from $46.18 to $70.61, correct?

A. Again, mostly because of the denominator issue.

MR. DARR: To assist the Bench and the parties with regard to what Mr. Wathen and I just went through, I prepared a summary exhibit which I would like to have marked as IEU Exhibit No. 13.

EXAMINER WALSTRA: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. PRITCHARD: May I approach?

EXAMINER WALSTRA: You may.

Q. Mr. Wathen, do you have in front of you what's been marked as IEU Exhibit 13?

A. I do.

Q. And would you agree, subject to check, that this summarizes the megawatt hours, demand cost, energy cost, total charges, and charge per megawatt hours that you and I just discussed that are contained in IEU Exhibits 8 through 12 for Duke Ohio, Duke Energy Ohio?

A. Subject to check, I will, yes.

Q. Thank you.

One last area of concern, Mr. Wathen. You have been with CG&E since the 1990s, correct?

A. I have been with Duke or its predecessors since 1998.

Q. And you and I have actually, I think, had this discussion once before. You've been -- you were not directly involved in the implementation of the electric transition plan; is that correct?

A. I was not in this role at the time.

Q. Did you have an indirect role in the implementation of the ETP?

MS. SPILLER: Objection, relevance.

MR. DARR: Relevance goes to the question of whether or not the company is entitled to an additional transition rider, an issue that's been raised in this and every other case involving these OVEC riders, your Honor.

EXAMINER WALSTRA: Overruled.

A. From 1998 until 2003, I was in the forecasting department and had no role in rates. No input in the ETP.

MR. DARR: That being the case, your Honor, I would like, for purposes of the record, the administrative notice of the opinion and order in 99-1658-EL-ETP and the stipulation that was entered into by Duke's predecessor in that same case.

MS. SPILLER: And I would just renew my objection with respect to that case, particularly attempting to do administrative notice through a witness who has not had any involvement with it.

MR. DARR: Well, administrative notice is not tied to a particular witness, your Honor. It's tied to whether or not the facts can be identified and proven in a particular -- in a particular situation. The fact that Mr. Wathen can't testify to it simply cuts off that line of questioning. It doesn't change the fact that the Commission can take administrative notice of its own decisions and records.

EXAMINER WALSTRA: The Bench will take notice and give it the appropriate weight.

MR. DARR: Thank you, your Honor. And if you give me just a moment.

Thank you very much. I'm concluded.

EXAMINER WALSTRA: Thank you. Ms. Hussey?

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CROSS-EXAMINATION

By Ms. Hussey:

Q. Good afternoon, Mr. Wathen. Would you please turn to page 5, line 16 through 19 of your testimony.

A. I'm sorry. Page what? 9?

Q. Page 9 -- excuse me, page 5, line 16 through 19. And there you discuss timely recovery in the context of rider DCI. You state the timely recovery mitigates the financial impact associated with capital spending needed to appropriately maintain and improve the distribution system; is that correct?

A. That's correct.

Q. It's my understanding that rider DCI proposes to recover projected additions to rate base rather than actual plant additions; is that correct?

A. Yeah. Our proposal was to mirror FE to use projected balances, yeah.

Q. Okay. And would the recovery of investments in the distribution system before they occur be necessary to avoid regulatory lag?

A. Again, it further mitigates regulatory lag.

Q. Okay. But it wouldn't be necessary to

completely avoid regulatory lag?
A. We can't avoid regulatory lag. It mitigates it further than using actuals would.
Q. Okay. Let's talk about PSR. Pursuant to Duke Energy Ohio's contractual entitlements in OVEC, it is entitled to a percentage of generation from the OVEC units at Kyger and Clifty Creek, correct?
A. Yes. As we discussed it, we have 9 percent.
Q. Okay. Does Duke Energy Ohio directly own the contractual entitlements?
A. Duke Energy Ohio is a signatory on that contract. I wouldn't -- I don't know how you characterize owning a contract, but we --
Q. It is the party that's entitled.
A. I'm sorry. Say that again.
Q. It's the party that's entitled.
A. Yeah, one of 13 parties that's entitled.
Q. Okay. And those interests entitle Duke to generation from OVEC, correct?
A. We're taking title to the capacity and the energy associated with that, right.
Q. Okay. On page 13, lines 5 through 7. You testify that Duke Energy Ohio is entitled to capacity and energy that it can sell into the

wholesale market but that Duke has no guaranteed return; is that correct?
A. You read that accurately.
Q. Thank you.
Is PSR designed to guarantee a return for Duke on its interest in the OVEC generation?
A. Effectively guarantees a zero return so that equates to no return.
Q. Okay. So it would, if approved, guarantee economic neutrality for Duke on its interests in OVEC?
A. If you consider zero return economic neutrality, then yes.
Q. So it would guarantee Duke no loses against -- excuse me, no losses associated with that OVEC entitlement?
A. Or gains.
Q. Does that, in and of itself, provide Duke with certainty?
A. Clearly.
Q. Okay. And so, by requesting removal of the PSR, isn't Duke just shifting the risk associated with this entitlement to its customers?
A. We are shifting the risk, but we're also shifting all the benefits to the customers and I'll

use a word that OEG's witness uses, because of the kind of cyclical nature of the model we have, it will act as a hedge that will stabilize rates, it will fill valleys and shave peaks on the prices. So we believe that's an insurance product that's worth the -- any of the costs we have.

Q. And as you said previously, Duke is provided with certainty through means of the PSR.

A. The certainty is that we'll have no earnings or no losses on it.

MS. HUSSEY: Okay. That's all I have. Thank you.

MS. SPILLER: Your Honor, excuse me, could we potentially consider a break shortly?

EXAMINER WALSTRA: Yeah. That's not a problem. We can take a 10-, 15-minute break right now.

(Recess taken.)

EXAMINER WALSTRA: We'll go back on the record with OCC.

MR. BERGER: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Berger:

Q. Good afternoon, Mr. Wathen. As you know

I'm Tad Berger with the OCC. Mr. Wathen, let me first discuss with you the better-in-the-aggregate test under 4928.143(C)(1). You discuss that on page 24 of your testimony and I might refer to that as the ESP versus MRO test.

As a starting point for that test, you note that (B)(1) on page 3 of your testimony requires an ESP to provide for the supply and pricing of electric generation service; is that correct?

A. On page 3 of my testimony?

Q. Yeah, that's on page 3, line 7.

A. That's correct.

Q. And going down there a little further, the supply is provided through the competitive bidding process, correct?

A. That's what's being proposed.

Q. And wholesale energy and capacity are procured in the auction and that's then converted into retail rates; is that correct?

A. That's what's being proposed.

Q. Right. And that's through rider RE and rider RC?

A. That's correct.

Q. And, in addition, there's a supply cost reconciliation rider to recover other costs associated with the auction process; is that correct?

A. SCR primarily just recovers the imbalance between the revenues we collect for RC and RE and what we pay to suppliers, but it also collects the costs of conducting the auction and auditors and so on.

Q. Okay. And there's an allocation process that Duke is proposing for rider RC; is that correct?

A. That's correct.

Q. And in converting the rates for rider RE and rider RC, does Duke engage in a process of validation that's similar to what's done in a base rate proceeding?

A. Currently or in the proposed plan?

Q. In the proposed filing. For the proposed ESP.

A. It's similar concept, I mean, the cost of service allocation is generally designed to allocate the costs to the customers in the manner in which they create those costs and, to that end, that's exactly what we are doing, yeah.

Q. And you engage in a rate design process where you allocate the demand charges associated with rider RC in this proceeding?

A. I'm not sure I would put it that way.

Q. Okay. Well, you're looking at PJM capacity costs and you're allocating those costs to the customer classes based upon PJM's 5 CP method for -- for allocating its capacity; is that right?

A. I'm going to try to restate it the way I understand it.

Q. Okay. Thank you.

A. We have a -- the result of the auction will be a fixed price per megawatt-hour. We know that there's an underlying capacity cost for that given planning year so we decouple the per-megawatt charge between capacity and energy. The capacity price that we assume is in there is the prevailing FZCP price in the PJM market. We assign that cost to customer classes. We're proposing to assign it to customer classes, again in the manner in which those costs are created, which is the 5 CP method.

Q. Now, you believe those costs are created in that way, but they're not charged to you in that way; is that correct?

A. The magnitude of our charges are the result of the 5 CP.

Q. But suppliers don't send you a bill. Your SSO suppliers don't send you a bill saying oh, these are capacity costs we received through the PJM

BRA auctions and these are your energy charges. They just send you a bill for the total charges, correct?

A. They send me a bill for a bundled product which includes capacity and energy.

Q. You don't know everything that's included in that charge; is that correct?

A. I know because the suppliers can't provide power without capacity and they are required to buy the capacity from PJM, so there is definitely capacity in that price.

Q. But they don't break down their charges to you, and you don't know what is included in their charges other than your -- this is your assumption as to what they've included in terms of capacity; is that correct?

A. The prevailing price in PJM is the price everyone will pay for capacity so it -- it follows that however they get the power to us, there is an implied capacity rate that equals the FZCP at the time.

Q. Well, that's my point, it's implied. They don't explicitly charge it to you, they don't tell you it's broken down; is that correct?

A. We don't explicitly call out certain riders in our tariff or kilowatt-hour tax or other things in our rates but they're there. I mean, they impact the customer's bill. Just because it's implied doesn't mean it isn't there.

Q. Okay. Well, my only point is that it was implied. It's not explicit and you agree with that, right?

A. Again, I've got implied net costs in my rates but I don't call it out on my bill.

Q. I'm sorry. You have implied what costs?

A. Like rent, A&G costs are implied in my customer rates. I just don't call it out on the bill. I mean, it's there. As a matter of fact.

Q. You're saying you don't -- you don't charge A&G costs on a separate line item in the bill to customers; is that what you're saying?

A. That's correct. I don't -- I do not itemize every cost on a customer's bill just like the suppliers don't itemize every cost they charge you for that supply.

Q. Okay. But they don't even break down the two primary charges they incurred which are capacity and energy, right?

A. They don't need to. Again, the rate for capacity is very clear and it's implied.

Q. Now, your view is you have to present a rate design.

A. My view is what?

Q. In an ESP proceeding such as this one you have to present a rate design with respect to taking charges and --

A. I am not aware of a requirement to do so but it certainly stands to reason we would be expected to, yeah.

Q. Okay. And is there any -- does the same apply in an MRO proceeding?

A. Again, I'm not aware of a requirement in the MRO statutes that says you must provide a rate design but it seems to follow that you would want to allocate costs in a manner that fairly represents how those costs are created.

Q. Now, is it your testimony that only generation-related costs will be quantified for inclusion in the costs of an ESP for purposes of the ESP versus MRO test or are there other costs included?

A. The MRO test that I'm -- as I'm familiar with it is whether the costs and benefits in the aggregate, which can be anything including qualitative benefits, are better than the MRO. So I don't know if it necessarily limits it to generation or not. That's a legal question, I guess.

Q. There are -- some distribution costs can also be included if they are authorized by either the ESP or MRO statutes; is that correct?

A. I'm not aware of an MRO statute allowing distribution costs but I would say that the benefits and costs of the distribution riders that we were proposing, for example, would be weighed, as part of the ESP, against the results we could expect in an MRO.

Q. I'm sorry. Could you repeat that last portion of your answer. I didn't understand that.

A. The -- the -- the cost and the benefit rider DCI, for example, or DSR, and there are definitely benefits to that, to the extent those aggregate benefits, along with all the other qualitative benefits in an ESP, whether that outweighs the MRO is the test.

Q. Okay. Now, is the test a test for -- with respect to the company or is it a test with respect to the benefit to customers?

A. I think that question has been asked a number of times throughout the ESP proceeding and I couldn't tell you the answer to that question. I think it's in the aggregate. And the Commission, I think, has to make up its mind what that means.

Q. Okay. In doing your analysis did you look at the benefits -- the cost of benefits to customers or did you look at the cost of benefits to the company or did you look at both?

A. We looked at the benefits to the customer. So, in the aggregate, we think the customer benefits are greater in the ESP than it would be in the MRO.

Q. Okay. Mr. Wathen, do you, in your analysis, compare the qualitative benefits of an MRO, the qualitative benefits of the ESP?

A. I don't know if there are any qualitative benefits to an MRO.

Q. Is it your opinion there are no qualitative benefits to an MRO?

A. I can't think of any.

Q. But it's your opinion that qualitative benefits, with respect to the ESP, should be included in doing the analysis.

A. The test clearly says in the aggregate which would include qualitative benefits. The Commission has been very clear on that. It's been upheld by the court that qualitative benefits would be included in that test.

Q. Okay. And the courts have never said there are no qualitative benefits associated with an MRO.

A. That -- I'm not aware they said that. That's true.

Q. And the Commission hasn't said that either.

A. I have never heard the Commission -- I've never heard the Commission say there were any qualitative benefits in the MRO but I have never heard them say there weren't either.

Q. Now, on page 6, line 16 of your testimony, you state on the advice of counsel, R.C. 4928.143(B)(2)(h) permits the ESP to include rider DCI; is that correct?

A. That's correct.

Q. And you indicate that there are four provisions of that law -- or, there are four provisions of that law under which distribution riders are permitted. Which provisions are applicable to rider DCI in your opinion?

A. You say that I indicated there's four provisions? Do you mean to quote from the statute?

Q. Actually, I think I asked you this in your deposition. I think that's what I'm referring to. Would you like to see your deposition?

MS. SPILLER: Your Honor, I think that's an inappropriate use of his deposition. Mr. Wathen was simply asking for clarification. Are you asking whether he quantified four provisions or simply are you referencing the block quote from the statute? Just looking for clarification.

MR. BERGER: Well, I'm just asking him the question.

Q. Under which of the provisions -- of these provisions is rider DCI permitted?

A. And I am asking you did you say it's in my testimony or is it in the quote from the statute? Is there a reference that I listed the four provisions or are you just referring to the statute?

Q. No. I am just asking you under which of these provisions from the statute is rider DCI.

A. Okay. That's a different question. Okay. And could you -- would you help me, which provisions you're talking about in line numbers, please?

Q. There's -- on the third line it's a provision regarding single issue ratemaking, a revenue decoupling mechanism, any other incentive rate making, and those are both on line 4 and 5, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. Do you see those four?

A. I do but, honestly, I can barely hear you.

Q. I'm sorry.

EXAMINER PIRIK: You really need to pull it closer to you. I know you're moving it but it's really not coming closer to you. That would be great.

MR. BERGER: Thank you.

Q. Okay. Can you hear me now?

A. I hear you. Thank you.

Q. All right.

A. So the single issue ratemaking, you're asking me what the DCI -- how the DCI addresses that issue?

Q. I'm asking you which of these four provisions is applicable to rider DCI. Are they all applicable to it or are you saying that DCI is being -- is authorized by one or which ones of these?

A. I would say the DCI probably addresses all of these.

Q. Okay.

MR. BERGER: Just one second, your Honor.

Q. Do you have your deposition there, Mr. Wathen?

A. I do.

Q. Would you turn to pages 18 to 19.

A. Of the quarter pages?

Q. Pardon?

A. In the little boxes, 18?

Q. I think at the top of the page is the page number.

A. There's two page numbers. There is one on the bottom and there is one in the boxes.

MR. DARR: He's got a 4-by-4 deposition.

MS. SPILLER: Your Honor, if I may, perhaps I can just give Mr. Wathen the larger print, that may help anyway with his eye. He's got tiny print to look at.

THE WITNESS: I'm okay.

MS. SPILLER: I've got the big one for you.

THE WITNESS: I can see that.

MS. SPILLER: I don't need you squinting.

A. So 18 and 19?

Q. Yeah, page 18 and 19.

A. Okay. Do you have a question?

Q. Yes. Do you see on page -- on page 19 where I ask you so that's the -- "So that's the portion" -- this is line 5, "that's the portion of the provision you're referencing when you say rider DCI is provided for?"

You say line -- on line 8 to 10, "Yeah. I would say incentive ratemaking is probably part of that and the single issue ratemaking is part of that as well."

And then on lines 11 to 14, I asked you, "So would it be under both of those, the provision regarding single issue ratemaking and provisions regarding distribution infrastructure and modernization incentives?"

And you said, "I think I said three. Other incentive ratemaking would be part of that, so." Is it all four or is it just three of them?

A. It's all four of them.

Q. Okay. Now, rider DCI costs will be collected from Duke's customers over the term of the proposed ESP and beyond as I think I heard your testimony earlier; is that right?

A. Which rider, I'm sorry?

Q. Rider DCI.

A. DCI, yeah, it would -- we have not proposed any sunset on it, so it would start right after the ESP is approved and go on until the Commission decides to discontinue it.

Q. And do you agree with company witness Mullins's testimony regarding the costs that the company is seeking to recover through rate DCI or forecasts will be recovered through rate DCI?

A. Are you talking about the discovery requests that --

Q. Yes, the 272 million.

A. Yeah, I have no reason to doubt those numbers.

Q. Did you -- did you quantify those costs in any way for purposes of the ESP versus MRO test?

A. I did not. As I said earlier I think the benefits outweigh those costs so I didn't need to quantify them.

Q. And when you say the benefits outweigh the costs, you're referring to the reliability benefits or are you referring to anything else?

A. The efficiency of not having new rate cases. I also think that, ultimately, we could -- we could get that in an MRO environment as well. So it's kind of a push anyway, but the benefits in this case, I think, do outweigh the costs.

Q. Now, when you say that Duke could get those -- those costs in a -- through an MRO, you're referring to your testimony earlier that they could be actually obtained in a base rate proceeding, correct?

A. I think that's been established in the AEP and FE cases that the companies could seek out those kinds of similar mechanisms in -- under an MRO environment.

Q. When you say "under an MRO environment," again, you're saying not necessarily in the context of an MRO case. You're saying in the context of a ratemaking -- a rate proceeding under 4909.18?

A. An MRO, if achieved, would be in perpetuity because the rule says there's no going back. So any -- at any time while we had an MRO, we could seek out a rider such as this through 4909.18, I think.

Q. But that would have to be evaluated in the context of all rates under 4909.18, under a rate base proceeding; is that correct?

A. My understanding a base rate case, itself, would consider all the rates, but, as part of that case, we could seek out a rider that would mirror this rider here.

Q. But those -- those rates and those costs would be looked at in the context of the entirety of the company's revenues and expenses; isn't that correct?

A. That's correct.

Q. Okay. And would you agree with me that in this case we're not looking at the entirety of the company's revenues and expenses and evaluating whether the company is or is not earning a reasonable rate of return in this case?

A. That's correct. We're not asking to track O&M, just capital.

Q. So there -- so you're proposing in this case to authorize rate DCI in -- outside the context of an evaluation of the company's revenues and expenses, correct?

A. In my opinion the rider -- and I think the staff shares this in the MRO versus ESP test, this could be achieved in a forum other than the ESP. So, in that context, I think it's a push at least. So there's no need to evaluate it compared to the MRO.

Q. But when you say it could be achieved in another forum, a rider would only be achieved, and the revenues that are realized through a rider would only be achieved if they were not offset by other

costs in a base rate proceeding; is that correct?
A. Can you break that down a little bit for me, that question?
Q. Sure. In a base rate proceeding we're looking at the totality of the revenues and expenses and assessing whether, under that level, the test period level of revenues and expenses, the company is or is not earning a fair rate of return. You would agree with that, right?
A. Insofar as it relates to the base rates, that's true, but a base rate case also offers an opportunity to ask for riders as well.
Q. Right. If you are considering a rider in a base rate proceeding, we are still going to consider the total level of expenses and compare that to the total level of revenues, right?
A. Well, typically, when we've set a rider before, we had the base rate case, we established our new base rates, established the rider at zero, and then, going forward, we would populate that rider with new activity so.
Q. Yes. But, as in the case of rate DSR, for example, rate DSR was set to recover a particular level of expenses in the last rate proceeding, correct?

A. Are you talking about the $4.4 million base underlying DSR?

Q. Yes.

A. Well, that was -- that case was settled so we never really litigated the number. We agreed to a number of $4.4 million as the baseline for any storm rider we would seek out in the future.

Q. But when -- when the base level was evaluated, it was evaluated in the context of all revenues and all expenses and that's something we're not doing in this cause, right?

A. I'm not aware that there is a requirement to do that in the ESP.

Q. Right. And I think you've testified to that. It's a different environment. But customer -- in evaluating the appropriate level of rates and appropriate level of rate DSR, it was evaluated in the context of all other revenues and expenses; is that correct?

A. Are we talking about DSR?

Q. Yes. The base level of DSR was evaluated in the context of all other revenues and expenses.

A. I wouldn't agree with that. It was only evaluated in the context of the storm amount in the base rates. All other rates had nothing to do with the magnitude of DSR base. It was only -- only the storm expense that was relevant to the DSR. It's a single issue --

Q. The base level of the DSR, wasn't that considered as one of the expenses in determining and evaluating the fair rate of return that was being achieved under rates in that proceeding?

A. The magnitude of the storm costs in our -- in our test year was one component of our base rates. For -- for purposes of creating this DSR, though, that we are only looking at that one element, single issue, to track those costs. Not all revenues and all expenses, just the storm costs.

Q. The company is not proposing to freeze distribution rates during the ESP, correct?

A. No.

MS. SPILLER: Objection. Asked and answered.

EXAMINER WALSTRA: Overruled.

Q. Is the company agreeing to an annual audit of the regulatory asset with respect to DSR?

A. I don't necessarily -- I don't know if we offered that in our testimony but I'm willing to stipulate to that. We'll agree to that.

Q. Okay. And you would also agree that with respect to carrying costs, carrying costs would go both ways. So that if there was a charge or a credit in the deferral or, I guess, a positive or negative deferral, that carrying costs would apply both ways; is that correct?

A. Absolutely. That's only fair.

Q. Would you also agree that the company would not claim at any point that it would be retroactive in ratemaking for dollars from rate DSR to be returned to customers at some point in the future simply because they related to a regulatory asset that was incurred years before?

MS. SPILLER: Objection. Calls for a legal conclusion.

MR. BERGER: I'm just asking whether the company would agree that, for equity's sake, if the company could use a regulatory asset and recover that later in time, that it would be agreeable to the opposite, that it would return the credit to customers later in time than the regulatory asset was incurred.

MS. SPILLER: Again, I think this calls for a legal conclusion with respect to what may or may not be retroactive ratemaking.

MR. BERGER: Your Honor, Mr. Wathen is a

policy witness. He is addressing numerous policy proposals. He addresses the statute and the application of the statute. I think he's -- he's quite capable of testifying regarding how the company would treat the regulatory asset years into the future and whether it would move to claim or not claim retroactive ratemaking in the application of that regulatory asset down the line.

EXAMINER WALSTRA: I'm going to overrule it.

A. I was trying to be clear with Ms. Bojko earlier today that the way the mechanism would work is the reg asset would have -- would be essentially an accumulation of the difference between our actual storm cost and baseline number. If that number, at the time of a rate case, for example, or if it ever exceeded $5 million as a liability, or a -- or a debit, so it would be a reg asset in our favor, we would seek to implement a rider. We have none proposed that we would change our mind. You know, once we put this mechanism in place, it would act in the manner we described.

Q. Okay. So in the event that there was $5 million or more of a credit due to customers under the deferred asset, you would propose a negative charge to customers -- or, credit to customers be implemented in rates at that time?

A. Either through a rider or, at the time of a rate case, it would be amortized against the base rates, that's correct.

Q. And it wouldn't matter if that deferred -- if that -- that deferred asset had accumulated years in the past.

A. That's correct.

Q. Thank you.

A. But, again, that's the one reason why we're proposing a carrying cost so that both customer and shareholder are fairly compensated for their time, value, and money for that asset because potentially it does set in reg asset for a while. So, again, being equitable.

Q. Do you expect there to be a credit from the DSR rider?

A. If we looked at 2013 storm costs, there would have been -- there would have been a credit to that reg asset. 2012, it would have been a debit. $4.4 million is an average so, year to year, it's going to be above and below.

Q. Is -- referring back to page 7 of your testimony, to the provision from 4928.143(B)(2)(h), does the DSR rider implicate all of those four provisions that I earlier referenced in single issue ratemaking, revenue decoupling mechanisms, other incentive ratemaking, or provisions regarding distribution infrastructure modernization incentives?

A. It certainly involves single issue ratemaking. It certainly involves distribution infrastructure. I wouldn't necessarily say that it's an incentive or modernization issue. Simply a reliability question. Mostly just single issue.

Q. And as I understand rider DSR, you are going to evaluate, at the end of each calendar year, whether the regulatory asset justifies a charge or not?

A. Well, the baseline is a calendar year so the only way to measure it against the baseline is to wait until the year is over.

Q. And as I understand, you did not quantify any rider DSR costs for the purposes of the ESP versus MRO test; is that right?

A. Well, assuming, which is all we can do that weather is normal, we would be -- it would always gravitate toward the 4.4 so the cost would be zero.

Q. And that's why you haven't included

anything in the ESP versus MRO test.

A. That's correct. But I do think that's a benefit to the customers and the company.

Q. Would the company file a -- a report then or make a filing at the end of the calendar year after it's done its evaluation?

A. Again, I can't remember exactly what we said in our testimony, but we would certainly agree to that.

MR. BERGER: Just one minute, your Honor.

Q. And on page 26 to 27 of your testimony, you list four qualitative benefits associated to support the ESP being more favorable in the aggregate with respect to the DSR; is that correct?

A. I don't know if I say that it's something you can't get in the MRO, but do I say it's a benefit of the ESP. The sentence doesn't say it's compared to the MRO; it says some of the most conspicuous benefits of the ESP.

Q. And those qualitative benefits include changes to rate design and elimination of non-market-based influences on customer behavior, further leveling the playing field between SSO auction winners and CRES providers; is that correct?

A. I don't see that on the page. Where are you referring to now?

Q. Oh, that's on --

A. It looks like you combined two of them. Changes to rate design are on page 18. The leveling of the playing field is on page 19.

Q. Page 26 to 27.

A. I'm sorry, 26 and 27, but the one's on one page and the other is on the other.

Q. Changes to rate design and the elimination of non-market based influences.

A. Right. On page 26.

Q. Yes. And leveling of the playing field on page 27.

A. That's correct.

Q. And is it your opinion that those benefits are not available to the company and customers in the current ESP?

A. The changes to the rate design we have -- first of all, for example, addresses some changes to rate design that we believe are going to move us from a period where rates are not that -- are not necessarily as level that as they can be to one where they are a little bit more lined up with the competitive markets so they're not -- they're not existing in the ESP currently. And the same is true for the competitive market. I believe we are taking action or at least making proposals to -- to further level the playing field between CRES and SSO, in a manner that doesn't exist now.

Q. And your viewpoint is what accomplishes that in particular? The leveling of the playing field?

A. The -- most of the market rate offers we see are for kilowatt-hour base. So residential rates we try to eliminate some of the blocks to the tail end. I know the staff objects to that but that's what we're proposing. For some of the C&I load we are eliminating demand charges.

We have a few things in our demand -- C&I rates that are really not consistent with the way the market works. We have a ratchet, for example, that does a number on low load factor customers. So we are trying to eliminate that and place it with hours-used demand rates which should continue to give benefits to high load factor customers, but it won't impact low load factor customers in the same -- as much as it does now.

We're eliminating the LFA because it's essentially it's a transfer from the low load factor customers and the high load factor customers for no reason other than a stipulation that was reached in the last case.

We have -- we are continuing the purchase of receivables program and the uncollectible rider because that levels the playing field between SSO auction winners and CRES providers in terms of both being able to collect all of their revenue from sales. And I'm sure there are others I haven't thought of right off the top of my head.

Q. Okay. Thank you.

MR. OLIKER: Could I hear the very last part of that read, just the last, maybe, 20 words?

(Record read.)

MR. OLIKER: Thank you.

Q. Would these -- isn't it true in conducting your analysis whether the ESP is better than an MRO, you didn't consider the changes in the context of an MRO?

A. That I didn't consider these changes?

Q. Yes, you didn't consider these changes.

A. I believe that one of the drawbacks of the MRO that's been described by the staff a number of times in Mr. Cahaan from the -- prior witness from the staff and Tammy Tarkenton both talk about the inflexibility of the MRO. So the ESP gives us an opportunity to periodically address rate design. In the MRO, there is no provision to come in again and redesign rates. So, in my mind, that is -- that is a benefit of the ESP as opposed to the MRO; the flexibility to design rates.

Q. But you didn't do any analysis of whether this could be accomplished under an MRO; is that correct?

MS. SPILLER: I am going to object to the form of the question in terms of the "this."

A. To my knowledge there are no provisions of the MRO for rate design or anything else like that so -- and to my knowledge nobody has successfully implemented an MRO, so we have not crossed that bridge yet. So I can't tell you what we can and can't do in an MRO ultimately or what the Commission would approve.

Q. So you haven't done any analysis; is that correct?

A. There's none to do.

Q. And so, that did not come into your assessment for the ESP versus MRO test; is that correct? Whether those rate design changes could be accomplished in the context of an MRO.

A. I just explained why it did come into my analysis. So the inflexibility that an MRO leaves us with, I mean, there's no going back and there's no requirement and probably no motive for the company to come back in for -- to revisit it. So there's really no opportunity, that I'm aware of, for the Commission to readdress a rate design that may be bad. So we have flexibility in that regard in an ESP that we probably won't have in an MRO. So I did consider it.

Q. Would you look at page 36 of your testimony, your deposition testimony.

A. Oh, deposition.

Q. And you'll see at lines 2 to 8 I asked you a question. "Did you do any quantification for what an MRO would look like," lines 2 to 3, and then I continued my question, lines 6 to 8, "Quantification as to what the impact of these changes in rate design would have on an MRO or if they could be applied in an MRO."

And on lines 13 to 14 you said, "My answer is I did no analysis on the MRO side in that regard."

Then I asked you, "If you did no analysis," this is at lines 15 to 17, "then that did not come into your assessment of the ESP versus MRO test, correct?"

A. Your question in that line of questioning is about quantification in an MRO, and our earlier discussion was about qualitative benefits of the MRO versus the ESP. So I did not do any quantification of the analysis; that's for sure.

Q. Okay. So you're saying that what I asked you earlier today had to do with qualitative benefits under the ESP versus MRO, and my use of the word "quantification" on line 6 of the deposition made that a different question; is that what you're saying?

A. Your question today was not specific to qualitative or quantitative, so I just assumed it was broader than that. Here you were specific about quantitative benefits.

Q. Okay. Thank you.

With respect to some of the other rate design changes, in particular eliminating the special provisions for demand response and interruptible credits, came through rider DR-ECF, changes to net metering and elimination of the PIPP customer discount which expires on May 31, 2005. Would you agree you did no analysis of whether those changes would or would not be available under an MRO?

A. The list was -- the list was demand

response, net metering, and the last one was again?

Q. The PIPP customers' discount.

A. I did no analysis. However, it -- I don't know that the demand response could or couldn't be done in an MRO. My expectation is an MRO, it wouldn't be available because that would be single issue ratemaking for demand response.

The net metering is really being conducted in a forum outside the ESP. So, obviously, it can be done in an MRO environment.

And the last one was, say what was the last one again.

Q. The PIPP customers' discount.

A. The PIPP customers. PIPP, my understanding is -- I can't remember the new name of their organization, but the DOD and its successor, they have the opportunity to auction off load at any time. So that's certainly an objection they can go under MRO.

EXAMINER PIRIK: Mr. Berger, I just want to be sure you said the PIPP discounts that ends in 2005. Is that what you meant?

MR. BERGER: '15.

EXAMINER PIRIK: 2015. Yeah, I wanted to be sure you -- okay. So it is 2015.

MR. BERGER: It ends on May 31, 2015.
EXAMINER PIRIK: Okay. Great.
A. Just to clarify, the PIPP discount is really a contract between FirstEnergy Solutions and that PIPP load. It's not really a discount that came out of the ESP. It was a contract that -- it was dealt with in the ESP stipulation, so.
Q. And that's what expires on May 31, 2015?
A. That's correct.
Q. Okay. And it's -- the third benefit you cite to on page 27, line 4, is that the proposed DCI, offers the company, the Commission, and customers an opportunity to improve the safety and reliability of the system in an economical and efficient manner. By "the system," you mean the distribution system; is that correct?
A. That's correct.
Q. And on page -- on page 5, lines 9 to 10 of your testimony, you say that rider DCI is "intended to allow the company to timely recover the incremental revenue requirement on distribution-related capital investments." And by "timely," you mean that it's more timely in the recovery in a base rate proceeding. You don't mean anything else by that, right?

A. That's correct.

Q. And the time -- the time between the period when the company actually filed its last base rate case and the time when its recovery commenced from that base rate case was 14 months; is that correct?

A. The time between the filing, somewhere around 14 months. The time between the date certain which is the capital issue and the time the rates are effective is about two years.

Q. Okay. But the company is delayed in recovery from the time that it filed the case, March of 2012, until its rate recovery commenced in May of 2013; is that right?

A. We filed our case in June of 2012 using March 31, 2012, plant balances. So from the time -- from that point in time, to the time we got our rates into effect was, I think, was probably 15 months or so, yeah. In that case. It's been longer; it's been shorter.

Q. Okay. And you would agree under rate DCI recovery commences contemporaneously, right?

A. As we propose it would commence contemporaneous with the capital, yes.

Q. Considering there is a lag in

distribution rate proceedings when costs are incurred and when costs are recovered, would you agree with me that under rider DCI, Duke will actually recover more dollars during the three-year ESP than it would recover during the same period if it had sought an SSO in the form of an ESP?

A. We would recover more in an ESP than we would in an ESP?

MR. BERGER: Just one minute, your Honor.

Let me clarify, your Honor.

Q. Recover more in the ESP through rider DCI than you would pursuing the recovery of the rider DCI costs in a base rate proceeding if you were doing that contemporaneous with an MRO.

A. I think your mic went off. I can't hear you very well.

MR. BERGER: Karen, did you hear the question? Can you reread it?

THE WITNESS: I missed part of it.

MR. BERGER: I am going to ask Karen to read it.

(Record read.)

A. I can't say that. And if we were doing a base rate case, we would be including O&M and other things, too, but if you are just looking at capital, I would say they would probably be about even.

Q. When you say it would be about even, now, there's a lag in the recovery in a base rate proceeding of what you say is a year and a half to two years, I believe. And during that period of time, you're not recovering any return on your investment in those improvements, correct?

A. That's true but if I -- you said if I file it contemporaneously. So if I filed my rate case at the same time I filed my ESP case, then my rates for my base rates ought to be going into effect about the same time my DCI would be going into effect under the ESP. So I would expect them to be similar.

You asked me if I filed them contemporaneously, so your assumption is I would file my rate case on May 29th of 2014, for rates effective about nine months later and that would line up to be about the same number, I would expect.

Q. Okay. So, in other words, if you had filed a base rate proceeding when we commenced this proceeding, you think it would probably go into effect around the same time as rider DCI if it were approved.

A. Yeah. I can hear you very well. I'm sorry.

Q. So if you were to file -- if you had filed a base rate case at the same time this proceeding commenced, it's your opinion that it would go into effect around the same time as rider DCI; is that right?

A. That's correct. And that time would be about consistent with how we have got our rates approved in the past.

Q. And is it your opinion that rate PSR is not available under an MRO, would not be available under an MRO?

A. That's not my opinion.

Q. Is it your opinion that a PSR would be available under an MRO?

A. It's my opinion that the company could certainly ask for it. If there was -- not as -- not under 142, but under an MRO environment, we could certainly ask for it.

Q. Looking at your testimony on page -- your deposition testimony on page 43, line 9 to line 13, where I asked you, "And would you -- is it your position that the PSR would not be available under an MRO?"

And you answered "Again, you're asking me a legal opinion about what 142 says, but I'm not aware of any provision that would allow that." Do you see that?

A. I do and I just -- I just answered the question the same way.

Q. You answered you're not aware of any provision that would allow that.

A. Under 142 I am not aware of a provision. However, if we had an MRO, it doesn't mean we couldn't ask for it in another form.

Q. Okay. So when you say "another form," you're talking about a base rate proceeding.

A. Or some other action. I mean the Commission -- it's uncharted territory so I don't know what we could do, but I would expect we could in a rate case.

Q. Okay. Now, you're familiar with the Stipulation and Recommendation from the last ESP case, correct?

A. I am.

MR. BERGER: Your Honor, at this time I would like to have marked for the record a copy of the Stipulation and Recommendation for the last ESP case, Case No. 11-354-EL-SSO.

EXAMINER WALSTRA: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. BERGER: Thank you. If we can mark that as OCC Exhibit No. 2.

MR. SERIO: May I approach, your Honor?

EXAMINER WALSTRA: You may.

MS. SPILLER: Your Honor, I'm assuming Mr. Berger will clarify for the record. This is not the entire document.

MR. BERGER: Yes, yes, this document is just the written portion of the stipulation. It does not include the exhibits to the document, your Honor, which I think are a couple of hundred pages long so we declined to include them. If anybody wants to take administrative notice of those, I'm perfectly happy to do so; agreeable to that.

Q. Mr. Wathen, you're familiar with this document; is that correct?

A. Yes. I just said so.

Q. And would you agree with me that the Stipulation and Recommendation in your view did not address contractual entitlements?

A. The stipulation as we -- as we negotiated it, talked about it for two or three months, never talked about OVEC or any contractual entitlement related to purchased power.

Q. Now, would you turn to page 26 of the stipulation. Do you see there on page 26 about four lines from the -- four or five lines from the bottom there is a proviso there? Where it says "...provided however, that contractual obligations arising before the signing of the Stipulation...." Do you see that?

A. I do but I think we should talk about the whole sentence and not that proviso.

Q. Well, please feel free to read the whole sentence. I'm just pointing you to the proviso because that's the portion I want to talk about.

A. I don't think it's necessary to read something that's already here.

Q. No, read it to yourself.

A. I read it.

Q. Okay. You're familiar with it. All right. Now, in your testimony on page 11 you say that the company -- see on lines 13 to 14 where you say that the stipulation did not address contractual entitlements?

A. I see that.

Q. Are contractual entitlements different in your view than contractual obligations? Do you think that means something different than what's intended here?

A. It certainly means something different than the stipulation.

Q. What is meant here by "contractual obligations"?

A. What's meant where by contractual obligation.

Q. In the stipulation in your viewpoint?

A. The stipulation, the entire sentence clearly says -- refers to the generating assets at issue in that case. On page 9, the generating assets are defined again clearly. And if that wasn't clear enough, Chuck Whitlock describes them in his testimony supporting the stipulation. So the only asset at issue in the stipulation were those assets directly owned by Duke Energy of Ohio.

Q. Okay. Well, let me ask you about a contractual obligation, okay? That's what is addressed on page 26.

A. And those contractual obligations --

Q. Does Duke own any contractual obligations in your viewpoint?

A. The contractual obligations alluded to here had to do with coal contracts, rent contracts, et cetera. The coal contracts with OVEC, that's the reason they were listed along with that in the sentence that discusses the generating assets that are defined in the stipulation. There's no ambiguity there.

Q. There's no ambiguity there?

A. No.

Q. Contractual obligations, does Duke have a contract with OVEC called the Intercompany Power Agreement?

A. This section of this stipulation refers to contractual obligations related to the generating assets at issue. OVEC is not related to those generating assets.

Q. Does -- can you answer the question? Does Duke Energy Ohio have a contract and contract obligations with the Ohio Valley Electric Corporation under the terms of the Amended and Restated Intercompany Power Agreement?

A. Duke Energy Ohio has a number of contracts -- contractual obligations including the one to -- to OVEC under the ICPA.

Q. Thank you.

Would you agree with me there is no explicit exclusions of OVEC from the language in this stipulation of the OVEC contract that we just referred to?

A. There's no explicit inclusion either.

However, the Commission in AEP's case did exclusively include OVEC and its corporate separation case, so I would assume if they felt compelled to include OVEC they would have been so inclined to do the same in our case. So the fact that it's not explicitly included doesn't mean it's explicitly out.

Q. Okay. But you agree with me that it's not explicitly excluded.

A. And it's not explicitly included, right.

Q. Okay. At the time of the ESP stipulation you would agree with me that the OVEC contractual entitlement was owned by Duke Energy Ohio.

A. Again, I don't know about the owned part but Duke Energy Ohio was a signatory to the ICPA, so.

Q. Okay. And Duke Energy Ohio is a 9 percent shareholder of OVEC, correct?

A. That's correct.

Q. Okay. What makes the coal contracts you were earlier referencing, contracts that are directly owned in your view? What makes that contract directly owned versus the OVEC contract?

MS. SPILLER: I am going to object. This misstates Mr. Wathen's testimony and the stipulation.

MR. BERGER: He can explain what he meant.

A. I never said anything about the contracts being owed -- owned. I just said they were contractual obligations associated with those generating assets.

Q. Well, your viewpoint is that the term "generating assets" refers to only directly-owned assets, and I'm asking you what makes those coal contracts you were earlier referencing directly owned by Duke Energy Ohio as opposed to OVEC, its interest in OVEC indirectly owned.

MS. SPILLER: I am again going to object. This misstates Mr. Wathen's testimony and the stipulation.

MR. BERGER: He can explain what he means, your Honor.

MS. SPILLER: Well, he has indicated he never told you the contracts were directly owned.

MR. BERGER: He said that the contracts applied under that provision and he indicated the generating assets meant only directly-owned generating assets and excluded the OVEC contract so, therefore, his testimony is quite inconsistent, but he can explain it if he can.

EXAMINER WALSTRA: The witness can explain it.

A. I don't understand your question. We don't -- we are not talking about the owned contracts. The contracts associated with the legacy generating assets, the directly-owned assets, are -- are, you know, I will give you coal contracts as an example. What the nexus is to the coal contracts and the asset is that the coal was being burned at that asset. I don't understand your question beyond that.

Q. And I certainly don't understand your answer.

MS. SPILLER: Objection. Move to strike.

MR. BERGER: Withdrawn, your Honor.

Q. The "directly owned" part you're referring to, Mr. Wathen, on page 9 is in footnote 4; is that right?

A. On the stipulation?

Q. Yeah, of the stipulation.

A. That's correct.

Q. And would you agree with me that there is not a definition provided there of what is meant by "directly owned"?

A. I don't think there needs to be a definition. "Directly owned" is kind of self-evident. I'm not sure you need a definition. If it wasn't clear enough Chuck Whitlock spells it out clearly what assets we were talking about.

Q. Chuck Whitlock --

A. The testimony supporting the stipulation in that case.

Q. I'm asking you, Mr. Wathen, there's no definition here of "directly owned." Do you agree with that?

MS. SPILLER: The witness has just answered the question, Mr. Berger.

A. It's self-evident. "Directly owned" is directly owned as opposed to indirectly owned, so.

Q. So explain to me again how contractual obligations can be directly owned.

A. I never said they were. We're not talking about owning contracts. We are talking about the assets at issue.

Q. But aren't you saying that page 26 pertains to generating assets, to directly-owned generating assets, including the contractual obligations pertaining only to directly-owned generating assets, and you're saying it excludes the OVEC entitlement. Aren't you saying that?

A. The contracts in page 26 are referring to contractual obligations associated with those plants.

Q. What makes them directly-owned as opposed to the OVEC contracts?

A. I don't know what "directly owned" means in the terms of a contract.

Q. All right. Do you consider OVEC to be an affiliate or subsidiary of Duke Energy Ohio?

A. It certainly is not a subsidiary and it doesn't meet the definition of an affiliate in the OAC.

Q. In the?

A. OAC.

Q. Okay. It's a 9 percent owner, Duke Energy Ohio is a 9 percent owner of OVEC, but it's not an affiliate according to you.

A. The definition of an affiliate in the OAC, as I remember it, the company has to have common ownership. We and OVEC don't have common ownership.

Q. Okay. According to -- according to your statement the term -- the term generation assets -- strike that.

Okay. Would you agree with me that there is -- there's no limit on the amount of OVEC loss that can be recovered under the proposed PSR?

A. Well, there is a limit.

Q. You want to tell me what that is.

A. It would be the demand charge.

Q. Okay. So whatever OVEC charges is the limit.

A. Whatever they charge less -- well, the demand charge would be the limit. They wouldn't charge us for energy if we are not taking energy, so the demand charge would be the limit.

Q. Okay. But there's no limit, assuming the demand charges can be an indefinite sum, there's no provision in your proposed DSR that would limit the amount of losses that could be passed through to customers.

A. There's no limit on what the auction price can be. We can come up with all kinds of hypotheticals but there's no limit -- there's no limit in the provision except the fact that the demand charges would be the date limit, whatever that is.

Q. Would you turn to page 52 of the transcript of your deposition where you were asked on line 12, "And, Mr. Wathen, Duke proposes no limit --

A. Hold on. Slow down.

Q. I'm sorry.

A. Line 12?

Q. Yeah. Where I asked you, "And, Mr. Wathen, Duke proposes no limit to the amount of

OVEC costs that can be recovered through the PSR; is that correct?"

And you say "There's no limit on the gains or losses flowing through the PSR." Do you see that?

A. I do.

Q. Okay. Thank you.

A. Theoretically there's no limit, but there is a practical limit.

Q. And would you agree with me that Duke is committing to sell off its capacity and energy from OVEC into PJM, selling capacity into the base residual auction as a price taker and selling energy into the day-ahead market at the go-ahead rate?

A. That's exactly what we're proposing.

Q. Would you agree that currently there is no guarantee to Duke Energy Ohio of recovery of its OVEC costs?

A. That's correct.

Q. And it's possible you'll be charged more in demand charges and fuel costs in OVEC than you recover in total from the sales of capacity and energy into the market?

A. That's true. It's also possible we'll end up with more revenue that cost.

Q. Now, the ICPA currently includes a 2 dollar and 8.9 cent per share dividend; is that correct?

A. Well, you corrected that a little bit. It's 2.089 -- 2.089 dollars per share, yes. I think you said 2 point 8 point 9 or something.

Q. I thought I said 2 dollars and 8.9 cents.

A. There you go, yeah.

Q. Okay. And that's included in OVEC's charges to each of the sponsoring companies; is that correct?

A. It's a dividend to the owners of the stock and a charge to the -- those taking power from it. So, for those who are both, it's a wash.

Q. It's a wash but -- but owners of OVEC would receive that -- would receive any -- any dividend from OVEC. It would be included in the -- is it going to be included in the net gain or loss that's charged through the PSR?

A. Well, let's put it this way: It will be revenue to the company as the owner of OVEC stock. It will be a charge to the company as -- as a signatory to the ICPA. So we'll get about $2.09 roughly for the share of the ownership and we'll pay 2.09 cents -- $2.09 for the -- as a contractual obligation, so, to the company, it's zero.

Q. So that's not going to be recovered from customers?

A. There's nothing to recover. It's zero. We'll give them credit for the $2.09 dividend and we are going to charge them for the $2.09 expense that comes with it. So that's a zero gain.

Q. Okay. So the dividend that you receive from OVEC will be reflected in the revenues.

A. That's correct.

Q. Okay. Now, would customers be able to request termination of the PSR under Duke's proposal if it got to be too costly for customers?

A. Customers obviously can request, I mean, I don't think that would be a plea to the Commission, I suppose, but that would be up to the Commission to determine.

Q. But you're not proposing -- Duke's not proposing any termination of the PSR if it turns out it's a net loss in every year or even a significant net loss in every year.

A. We're not proposing any termination other than at the end of the contractual obligation.

Q. And would the company be agreeable to a provision whereby if the costs of OVEC were to exceed a certain amount of capacity and energy in the market that the PSR would be terminated?

A. I don't think we would agree to that. It would be unbalanced.

Q. When you say "it would be unbalanced," what if -- what if there was a provision on the other side, if OVEC turned out to be equally beneficial to the company and could be terminated, would the company be agreeable to that?

A. We -- we are -- we would offer to -- as a provision of the PSR to commit to keep it in the hands of the customers throughout the period, and we are not proposing to sell or transfer the asset as soon as we get approval of the PSR. So we don't believe that it would be fair to -- to make that commitment and not -- and allow the customers to opt out or terminate it.

Q. You're familiar with Mr. Taylor's recommendation for an opt-out. Are you opposed to that?

A. We are opposed to that.

Q. Now, you define volatility as a sudden and abrupt change in price; is that correct?

A. That's one definition but that's a suitable one.

Q. Okay. Would it -- is it your opinion that SSO customers have been paying volatile rates for generation services since the beginning of the ESP II under that definition?

A. Volatility is kind of a subjective term. I would say that they've had fluctuations in price and certainly customers on CRES contracts would see more volatility because there are a number of contracts that are month to month, for example, but SSO service itself has not been volatile.

Q. Do you know what the range of prices has been for the SSO since the ESP came out?

A. It depends on the customer. The way we design the rates, whether you are an RS or a VS customer makes a difference. Whether you are a high or low customer makes a difference.

Q. How about if you are a residential customer?

A. It depends, are you all electric or are you, you know, they -- it depends on your usage. I mean lower levels are different than higher levels.

Q. Okay. Have you -- have you examined the range of fluctuation in SSO rates in suggesting that PSR because of your concerns over -- over volatility?

A. I'm sorry. I lost something there. Go ahead, would you mind repeating.

Q. Yes. Have you examined the fluctuations in SSO rates in proposing the PSR because of your concerns regarding volatility?

A. The nature of the PSR offer is to address volatility. We -- I did not look specifically at residential rate or a particular customer in residential. I know they change. Our concern is not just for SSO customers; it's for all customers.

The PSR is not just a day-to-day mitigation of volatility. I mean it's going to be a period -- period, meaning month to month or quarter to quarter, but it will affect the volatility, it will mitigate volatility.

Q. So your answer was no, you haven't examined the fluctuation in SSO rates during the ESP term?

A. I look at the typical bills all the time, so.

Q. Can you tell me is it a 1 percent, 2 percent fluctuation? What's been the fluctuation over the last three years?

A. I have a guess it's probably been within 5 to 10 percent of a typical bill over the ESP.

Q. It's 5 to 10 percent?

A. Just off the top of my head.
Q. So you haven't examined it. You're just saying that off the top your head.
A. I can't say that I haven't examined it. As I said earlier, I do look at this all the time and recalling the numbers that I've seen and doing math in my head it's probably within 5 to 10 percent.
Q. Would you turn to page 61 of your testimony, lines 22 to 24.
A. Did you say testimony or deposition?
Q. Your deposition testimony.
A. 61.
Q. Yes, page 61, lines 22 to 24. Do you see where I asked you what the rate change was for SSO customers at that time, referring to the earlier timeframe?
A. Okay.
Q. You said you don't recall off the top of your head. Did you go back after your deposition and look at the numbers?
A. In the, what, two months, month and a half since my deposition, yeah, I've looked at numbers.
Q. Okay. But you don't know any better today than you did then what the change -- the

fluctuation in the SSO rates have been; is that correct?

MS. SPILLER: Objection. The witness has just answered the question.

EXAMINER WALSTRA: Overruled.

A. The fact that I didn't recall off the top of my head, you know, doesn't necessarily mean I didn't know at the time. I just didn't recall. I recall now. I'm thinking about it more clearly.

Q. And you didn't perform any analysis of any particular change in customer rates to determine whether any customers were in fact experiencing volatility as a result of changes in capacity or energy prices in the market, did you?

A. I think I just answered all that but we -- I did not look at individual customers or that. I have a general idea of what volatility looks like for customers, but I did not look at individuals' typical bills.

Q. Okay. Thank you.

In your opinion did SSO customers experience zero rate volatility as a result of high prices in January of 2014?

A. At the moment the volatility was experienced, I would say the SSO customer experienced no impact. However, it does impact future prices that they will experience.

Q. You're saying -- when you say that it will impact future prices that they'll experience, you're saying because the market is adjusting to reflect the uncertainty associated with polar-vortex-like weather conditions, that's going to cause change in rates subsequent to the January, 2014, timeframe; is that right?

A. There is a very specific example that supports that claim and that's the FE auctions for their SSO service. One was conducted right before the vortex and one was conducted after for exactly the same period, the same number of tranches. And there was a 10 percent spike in price, so the vortex definitely affected at least their SSO prices.

Q. And you said that that auction was conducted right afterwards. Have you looked at auctions since to see whether they have settled down any and considered -- and given less of an impact to the polar vortex, especially given -- especially given PJM's consideration of market changes in that light?

A. The only auction that I've really studied recently was FE's most recent auction for '15-'16 and it was even higher, it was $74 a megawatt-hour or thereabouts.

Q. Okay. Have you conducted any analysis of how much Duke -- Duke Energy Ohio's customers' rates changed from before January, 2014, to after 2014, until after January, 2014?

MS. SPILLER: Objection. Asked and answered.

EXAMINER WALSTRA: Overruled.

A. You're asking me how much the SSO rates changed from December 31, '13, to January 1, '14?

Q. Yes.

A. They didn't change at all.

Q. Okay. And what about for -- have you conducted any analysis for CRES supplier customers on Duke's system and how much rates for those customers changed before January 1, 2014, and after January 31, 2014, as an example?

A. As we discussed with Mr. Darr a while ago, I did look -- I have looked at the Apples to Apples chart, and you can definitely see an impact in the offers. The Apples to Apples chart is available on a weekly basis in an archive so you can trend out the offers that are being made by the CRES providers and there was definitely movement among the offers out there, especially in the short-term.

Q. Okay. You didn't do any analysis of that, though. You didn't prepare any assessment where you wrote down what the numbers were and said it increased by a certain percentage or that supply year changed by this much or the overall impact? You didn't look at that, did you?

A. I had a working knowledge of Excel, so I downloaded it and sorted it and, you know, compared it for various lengths and so on. I don't know what you mean by "analysis" but I certainly analyzed the numbers.

Q. When did you do that analysis?

A. I've done it periodically over the last few months.

Q. Other than the polar vortex would you agree with me other factors may have affected those price changes?

A. Of course.

Q. You didn't provide that analysis in any discovery response in this proceeding.

A. I don't recall being asked for that type -- that particular type of analysis.

Q. Are you aware of any residential customers in Ohio or of Duke Energy Ohio who are passed through increased costs relating to the polar vortex?

A. Any customers or CRES customers or SSO customers?

Q. Both.

A. Well, any customer that was on a short-term one-month contract would certainly see the effect of the vortex because their prices track the market, but long-term contracts would be less so, including the SSO.

MS. BOJKO: I'm sorry. Can I have the response read back, please.

(Record read.)

Q. Mr. Wathen, on page 66 of your deposition testimony, at line 21 through 24, could you turn there.

A. I see it.

Q. And do you see where I say, "You're not aware of any evidence that residential customers in Ohio were passed through any of those increased costs."

And you said, "I'm not personally aware of that, no." Do you see that?

A. I see it. That's a different question than what you just asked me though.

Q. Would you agree with me that the relative volatility of coal prices as compared to other fuel prices will determine whether the PSR adds to or decreases volatility?

A. I would agree with that, but because coal is less volatile than other -- other prices, typically it shouldn't be part of the mitigating effect.

Q. And when you say "typically," you're comparing certain costs. Did you do an analysis comparing coal costs to other costs over a certain period of time?

A. I did not. However, the documents that Mr. Darr handed me in the coal contract discussion of the annual reports, I mean, they indicate they hedge their fuel for periods up to 2017. So they would have locked in a price for some period of time. So there shouldn't be much volatility. That's the nature of the hedge.

Q. But you did no analysis of historic coal versus other fuel prices in making your statement you just made.

A. I made no analysis related to this -- this case. However, there's abundant industry information about the relative volatility of natural gas to coal.

Q. Are you aware that OVEC's fuel costs increased by 32 percent from 2009 to 2013?

A. I think we had that discussion in the deposition, and I agreed that that was the number, yeah.

Q. And are you aware that OVEC's total costs increased from -- by 33 percent from 2009 to 2013?

A. When you say "total costs," are you talking about the total dollars or average rate?

Q. Total demand charges.

A. From 2000? When to when?

Q. 2009 to 2013.

A. I believe -- hang on a second.

Q. I'm sorry. Total demand -- total costs including demand charges and energy charges.

A. I've got the numbers here, 2009 to '13?

Q. Yes.

A. Their total charges or what we're charged for it?

Q. I think their total charges. I'm assuming that 9 percent of the total charges would be the same as --

A. Not necessarily.

Q. -- the changes in the costs? No? Okay.

My mistake. If you could advise me what document you're referencing.

A. I'm looking at the 2013 annual report from OVEC that has total costs allocated to the sponsor. From 2009 to 2013 the cost went from 632 to 671. So that would be about a 7-percent increase in total dollars allocated to the sponsors.

Q. 632?

A. This is -- if you want to look at it, it's IEU 7, page 34.

Q. And is that the figure for total costs or is that the figure for demand charges?

A. This is the total power cost allocated to its sponsoring companies which essentially is total costs.

Q. What page is that on?

A. On page 34 of IEU 7. I get about a 6 percent increase, give or take, in the total costs, give or take.

Q. Okay. Thank you.

And the company hasn't conducted any analysis of the nature and magnitude of Duke Energy Ohio customers' exposure to price volatility; is that correct?

A. I have not done any analysis.

Q. And the company has no forecast of the volatility of SSO auction prices that it's prepared?
A. You typically don't forecast volatility; you forecast price.
Q. Is there a forecast of SSO auction prices?
A. Not that I'm aware of.
Q. You're aware that Duke Energy Business Services conducts market price forecasts?
A. That company has various reasons to have forecasts. I would assume someone in DEBS does, yes.
Q. Okay. But DEBS has not provided any forecast to Duke Energy Ohio of what it expects SSO prices to be over the term of the ESP or beyond.
A. Well, the nature of forecasting the SSO price is a little bit more complicated than forecasting the market price. You have to make an assumption about switching because the load shape is going to change depending on among different classes. So I think it would be -- as far as the company is concerned, we don't care because it's a passthrough for us so there's no real need to forecast the prices, so we don't do it.
Q. Okay. And you're proposing to pass through the costs of OVEC to customers, too, so does

that mean you don't care about that?

A. We -- we don't need to forecast the OVEC price because what we're proposing is to dispatch it in a -- in a very restrictive manner so it's not a matter of forecasting it. We're going to dispatch it into the market at whatever price we get so, again, there is no need to forecast.

Q. And did you not ask DEBS for any market price forecasts to determine whether your projections, not only of energy prices but of energy costs, are consistent with their expectations?

A. With whose expectations?

Q. With DEBS's expectations as to whether it makes sense to -- to engage in the PSR.

A. So you're asking me if I asked Duke Energy Business Services to give me a forecast to meet with their expectations --

Q. No. I'm asking whether Duke Energy Ohio or you, on their behalf, asked DEBS to compare a market price forecast to help Duke Energy Ohio assess whether it was reasonable or made sense to propose something like the price stabilization rider where you would pass through the cost of OVEC to customers.

A. Well, DEBS wouldn't be the one responsible for the forecasts used in the OVEC rider.

That would have been the commercial business unit, midwest commercial group; a different group than DEBS. So we -- we would not have asked them anyway, DEBS.

As you mentioned, Bryan Dougherty and that group does the -- and Ben Zhang, they work for the commercial group and they do forecasts that would be part of the calculation of the OVEC entitlement benefit or loss, so.

Q. Okay. They're with Commercial Midwest Generation.

A. That's correct. And I don't know if they work for DEBS or another entity, but I consider them a different group than the service company.

Q. Okay. But you didn't ask them for any forecasting services related to this proceeding; is that correct?

A. Other than as a discovery request, we didn't, no.

Q. Other than OEG-DR-1-1 and related discovery requests?

A. Whatever discovery was asked. Nothing prior to that.

Q. All right. Does Duke Energy Ohio then not use market price forecasts if doing planning?

A. Duke Energy Ohio?
Q. Yeah.
A. I would expect we do some forecasting for planning. I know we have some load forecasts that would be dependent on price so they would use some forecasting to calculate load because there's some elasticity functions in our load forecast.
Q. And where do you get those forecasts?
A. Where?
Q. Yeah. Do you do those yourself, prepare those yourself?
A. Oh, no. I've got plenty to do.
Q. Do you receive those from Ben Zhang's unit?
A. Not for the forecasting I was just discussing, that would be someone else, but I don't know who that comes from. Ms. Mullins would know because she's the financial forecasting person, but I'm not in that group.
Q. Okay. Is that some -- is that somebody in Duke Energy Ohio or is that an affiliate that does that?
MS. SPILLER: Objection. The witness just said he doesn't know.
Q. Do you know whether it's in Duke Energy

Ohio or prepared outside of Duke Energy Ohio?

A. I'm certain it's not an employee of Duke Energy Ohio. It would be a Duke Energy Business Services employee that would be the source of it.

Q. Would you turn to page 72 of the transcript of your deposition, line 1, where I asked you: "But Duke Energy Ohio does receive market price forecasts prepared by affiliates. That's all I am trying to establish."

And line -- line 8, you answer: "I'm not personally aware of any forecasts provided to DE Ohio, the EDU."

MS. SPILLER: I'm going to object and move to strike. I don't think that is all -- that's a completely different question than the last exchange with Mr. Wathen.

MR. BERGER: I don't think so, your Honor. I think it's pretty clear.

EXAMINER WALSTRA: Overruled.

A. Well, as I indicated, I'm not in the financial forecasting group so I do not get possession of those forecasts. Subsequently, I'm not personally aware of those forecasts. So I think my answer is consistent with what I responded to in the deposition.

Q. Thank you.

And you're aware that Judah Rose presented forecasts of market prices in the ESP II on behalf of DEO.

MS. SPILLER: Objection, relevance.

EXAMINER WALSTRA: Overruled.

A. Who was it again? I'm sorry.

Q. Judah Rose.

A. Judah Rose, yes, he presented a forecast.

Q. But DEO decided in this case that it would not present any market price forecasts for purposes of assessing customer prices resulting from the ESP III; is that correct?

A. The nature of the proposal in 11-3549 was quite different than what we're asking for here. We were trying to compare the prices that result from DE Ohio continuing to own the generating assets and relying on our own capacity to supply those needs of customers compared to we wanted to prove that that was better than the market price that you would get in an MRO. Therefore, we used Judah Rose, an independent price forecaster in that case, to do that analysis.

Q. But you didn't see the same purpose with respect to the OVEC assets in the PSR in this case, right? You didn't see a similar objective?

A. The -- I think you've plowed this territory already, but we have no need to and didn't have -- find a reason to. I just -- based on what I know of OVEC and the value of the insurance premium that we have in terms of the hedging, I didn't see a need to. We had no need to do an MRO versus ESP market price test because, as we all agree, the generation price would be the same in the MRO and the ESP, so there's no need to do a price forecast to prove that it's the same. So we just had no need to do that. We didn't need to call in Judah Rose or anyone else to do it to give us a forecast.

Q. And you performed no analysis in this case of the value to customers of the PSR as a hedge; is that correct?

A. I think it's intuitive that it's a hedge, so there's no need, I didn't do an analysis, per se, but it's intuitive that it's a hedge.

Q. Well, no, I understand it's a hedge. I asked you whether you did any analysis of how valuable that hedge is to customers.

A. I did not do a quantitative analysis of that.

Q. And you performed no comparison between annual average energy prices in PJM and OVEC energy prices over any period of time, did you?

A. I did no analysis as part of my testimony, no.

Q. And you prepared no financial modeling of the rate impact of the proposed PSR; is that correct?

A. That's correct.

Q. Would you agree with me that OEG 1-1 was the only document prepared by the DEO or on behalf of DEO that assesses the economic value of Duke's share of capacity and energy from OVEC?

A. To my knowledge that's the only one we produced that culled out OVEC from our other generating assets in terms of evaluation. But, as you would have gotten from Ben Zhang, we do modeling every day on our generation portfolio which would include OVEC. So our -- our OVEC capacity. So the evaluation is done virtually. Whether we carved it out of the bigger model, we only did that in response to OEG-DR-1-1.

Q. And you would agree with me that that response just assesses the OVEC entitlement in 2024; are you familiar with that?

A. I think the request was through enthusiasm 2024, so that's what we did.

Q. It's not for the entire term of the -- of the proposed PSR which would be through January of 2040, as I understand it; is that right?

A. It follows if it only went to 2024 then it didn't go through the whole term.

Q. Okay. And Duke Energy Ohio has made no estimate, Mr. Wathen, of the risk premium included in CRES providers' offers to reflect volatility.

A. I wouldn't know where to begin. I know that CRES offers include -- the longer-term contracts include a, almost always include a significant early-termination fee, so I would characterize that as I premium that the CRES providers incorporate in their offers, but I've made no other analysis other than studying the CRES offers on the Apples to Apples page.

Q. Okay. You've not attempted to make any estimate of how much of their pricing is for the purpose of volatility or their price risk basically?

A. I wouldn't know where to begin.

Q. Okay. And you're not aware, Mr. Wathen, of any communication, oral or written, at Duke Energy Ohio, concerning its evaluation of alternatives to the PSR that were -- other than privileged communications; is that correct?

A. That's correct.

Q. And by "privileged communications" that would be anything that reflects advice of counsel as I understand it; is that correct?

A. I understand what it means.

Q. Okay. Would you -- your proposal is that there would be a one-month lag, am I correct, between the incurrence of -- of the costs that are reflected in a quarterly rate change and the application of the new rate change in the PSR; is that correct?

A. I believe we talked about this in the deposition. I think my expectation is that it would mirror what we do for the fuel, what we used to do for the fuel and purchased power tracker, we would file it at the first of any given month before a quarter and it would go into effect at the beginning of that quarter. So a one-month lag, yes.

MR. BERGER: I'm just about done. Can we take a 5-minute break?

EXAMINER WALSTRA: That's fine.

(Recess taken.)

EXAMINER WALSTRA: We'll go back on the record and try to wrap this up.

Q. (By Mr. Berger) Mr. Wathen, good evening. Do you recall testifying earlier that in your opinion it was -- that RC 4928.17 does not require divestiture of the OVEC assets to an affiliate?

A. If I'm recalling that 17 is the corporate separation rule?

Q. Yes.

A. Right. Then I agree, that's my opinion.

Q. And is there a particular language that you base that upon?

A. The -- there's no language I can tell in there that says you have to transfer assets.

Q. Are you familiar with the language in 4928.17(A)(1) that says the plan provides, at a minimum, for the provision of the competitive retail electric service for the non-electric product or service through a fully separated affiliate of the utility?

MS. SPILLER: Your Honor, I will just ask that Mr. Berger provide Mr. Wathen the benefit of the document he's reading from.

EXAMINER WALSTRA: Do you have a copy?

MR. BERGER: I think I just have the textual volume here, but I am happy to provide it to him. If I may approach?

EXAMINER WALSTRA: You may.

Q. Do you need to have the question

repeated?

A. Can you point -- can you tell me -- read the -- tell me what the statement was again so I can find it in here.

Q. Yes. It's 4928.17(A)(1) and I think it's the first part of the first sentence.

A. I read the paragraph but where -- Duke Energy Ohio is not offering any competitive retail electric service so we've satisfied that requirement.

Q. So you're saying because the OVEC asset is just being sold into the market, as I understand it -- I'm sorry, I'm having difficulty understanding, you're saying -- Duke Energy Ohio is not offering any competitive retail electric service through the use of the OVEC asset; is that what you're saying?

A. That's correct.

Q. Don't you agree that selling the energy and capacity from OVEC into the market is offering a competitive -- in the wholesale market is ultimately resulting in competitive retail electric service being provided?

A. I think you answered your own question. We're selling it in the wholesale market, not the retail market.

Q. So, in your viewpoint, because it's being sold into the wholesale market, the asset can be retained.

A. There's nothing in the rule that says competitive sales into the wholesale market have to be transferred. It's a competitive retail. That's quite different than wholesale.

MR. BERGER: All right. Thank you. That's all I have, your Honor. Thank you.

EXAMINER WALSTRA: Thank you. It is pretty close to 6 so I think we'll just wrap up for the day and start again tomorrow.

(Thereupon, at 5:53 p.m., the hearing was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, October 23, 2014, and carefully compared with my original stenographic notes.

Karen Sue Gibson,
Registered Merit Reporter.

(KSG-5947)

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