

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Duke Energy:
Ohio for Authority to :
Establish a Standard :
Service Offer Pursuant to :
Section 4928.143, Revised : Case No. 14-841-EL-SSO
Code, in the Form of an :
Electric Security Plan, :
Accounting Modifications :
and Tariffs for Generation:
Service. :

- - -

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

- - -

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 Tuesday,
October 28, 2014.

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VOLUME V

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Tuesday Morning Session,
October 28, 2014.

- - -

EXAMINER PIRIK: Go on the record.

Before we have Kroger call their first witness, I just want to note for the record that the Bench is aware of the fact that many of the documents that are provided in this docket were likewise provided -- similar documents were provided in a previous case involving AEP Ohio.

It is our intent to closely follow our review of confidential information in this docket as it relates to OVEC and other items with what occurred in the previous AEP case. Realizing that we were not present in that previous case, we will, to an extent, rely on the parties to make us aware of what information was kept open in the AEP case based upon their experience in that case.

That does not necessarily mean that the Bench will agree or disagree but we would hope, as we review confidential information, that all of the parties will keep us informed if they have a specific citation to a piece of the record in that previous case that we would be able to review at the time when we're making our ruling or considering the

1 information. I think it's important we try to be as
2 consistent as possible, but, again, that doesn't mean
3 we're going to make the same ruling. That just means
4 we want to be aware of what previous precedent was
5 for that situation.

6 That being said, anything else?

7 Ms. Hussey.

8 MS. HUSSEY: Good morning, your Honors.
9 The Kroger Company would request that Kevin Higgins
10 take the stand.

11 EXAMINER PIRIK: Thank you.

12 (Witness sworn.)

13 EXAMINER PIRIK: We need to get your
14 microphone on but it's -- oh.

15 Ms. Hussey.

16 MS. HUSSEY: Thank you.

17 - - -

18 KEVIN C. HIGGINS

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

21 DIRECT EXAMINATION

22 By Ms. Hussey:

23 Q. Good morning, Mr. Higgins.

24 A. Good morning.

25 Q. Would you please state your name and

1 business address for the record.

2 A. My name is Kevin C. Higgins. My business
3 address is 215 South State Street, Suite 200, Salt
4 Lake City, Utah 84111.

5 Q. And we're having a hard time hearing you.
6 Would you bring the microphone a little bit closer.

7 A. Sure.

8 Q. Okay. And by whom are you employed and
9 in what capacity, Mr. Higgins?

10 A. I'm a principal with the consulting firm
11 Energy Strategies.

12 Q. Is anybody else still having trouble
13 hearing? Okay.

14 A. Is there a volume button on here?

15 EXAMINER PIRIK: No. You just have to
16 pull it closer. Don't speak directly into it because
17 it cuts out just like it can -- just closer to the
18 side of your mouth.

19 A. Okay.

20 Q. Okay. And did you have testimony filed
21 under your name, prefiled in this docket on September
22 26, 2014?

23 A. Yes, I did.

24 MS. HUSSEY: Your Honors, I placed copies
25 of the referenced prefiled testimony on the Bench,

1 with the court reporter, and on the witness stand,
2 and I would request the testimony be marked as Kroger
3 Exhibit 1.

4 EXAMINER PIRIK: The document is so
5 marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. Mr. Higgins, do you see what has been
8 marked as Kroger Exhibit 1 on top of the witness
9 stand?

10 A. Yes, I do.

11 Q. And is this the testimony that you were
12 referring to that was filed in this docket under your
13 name?

14 A. Yes.

15 Q. Was this testimony prepared by you or
16 under your direction?

17 A. Yes, it was.

18 Q. Do you have any changes or corrections to
19 your testimony today?

20 A. No, I do not.

21 Q. Have you had the opportunity to review
22 Duke Exhibit 10, which is the updated PAL-1?

23 A. Yes, I have.

24 Q. Okay. And resulting from the changes
25 that were made in PAL-1, are there any resulting

1 changes to your testimony today?

2 A. If you refer to page 10 of my testimony,
3 a couple of the numbers I refer to are updated.

4 Q. Okay. And could you go through those,
5 please?

6 A. Sure. On line 9 of page 10, where I
7 refer to the share of costs allocated to rate DS and
8 DS-RTP, that number where I refer to "22.8 percent"
9 would be "22.6 percent" with respect to Duke's
10 corrected exhibit.

11 And then in the following line, on line
12 10, the resultant DCI charge in Duke's example is, in
13 its updated exhibit, would be "20 cents per kW"
14 instead of "21 cents per kW."

15 Q. Thank you.

16 And are those all the changes that have
17 resulted from the changes to PAL-1?

18 A. Yes.

19 Q. Okay. And as a result of those changes,
20 would you have any material changes in the position
21 advanced in your testimony today?

22 A. Not at all.

23 Q. Okay. And if I were to ask you the same
24 questions as contained in your prefiled testimony
25 today, would your answers be the same?

1 A. Yes.

2 Q. Do you adopt the testimony as your sworn
3 testimony for purposes of the proceeding today?

4 A. Yes, I do.

5 MS. HUSSEY: Okay. With that, your
6 Honors, I move for admission of Kroger Exhibit 1
7 pending cross-examination.

8 EXAMINER PIRIK: Thank you.

9 Mr. Darr?

10 MR. DARR: No questions, your Honor.

11 EXAMINER PIRIK: Ms. Bojko?

12 MS. BOJKO: No questions, your Honor.

13 EXAMINER PIRIK: Mr. Serio?

14 MR. SERIO: Thank you, your Honor.

15 MS. HUSSEY: Can we go off the record for
16 just a second?

17 EXAMINER PIRIK: Yes.

18 (Discussion off the record.)

19 EXAMINER PIRIK: We're back on the
20 record.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Serio:

24 Q. Good morning, Mr. Higgins.

25 A. Good morning.

1 Q. Am I correct that your testimony
2 basically opposes rider PSR and DCI and then, in the
3 alternative, you're suggesting if the Commission
4 approves them, then there should be a rate design or
5 an allocation change, correct?

6 MS. SPILLER: I am going to object. That
7 misstates his testimony.

8 EXAMINER PIRIK: I'll let him testify and
9 let him answer the question.

10 A. Not exactly. With respect to rider PSR,
11 I do oppose its adoption, and as you state, I do have
12 testimony that suggests that if it's adopted, then
13 there should be some changes with respect to how it
14 would be implemented.

15 Q. Okay. Let's --

16 A. Yes, sir.

17 Q. Let's take them one at a time. It will
18 be easier. And your alternative on rider PSR is if
19 the Commission approves it, then the rider should be
20 made nonbypassable -- should be made nonbypassable,
21 correct?

22 A. No. If it's approved, the rider should
23 be bypassable.

24 Q. And if it's made bypassable, as you
25 recommended, then any shopping customer would not pay

1 that charge, correct?

2 A. That is correct.

3 Q. Now, is there -- does rider -- would
4 rider PSR impact shopping customers any differently
5 than it impacts nonshopping customers?

6 A. As a general rule, no.

7 Q. Now, your second alternative with the PSR
8 is if the Commission did not make it bypassable and
9 made it a nonbypassable rider, then it should be
10 allocated based on fixed and variable costs, correct?

11 A. Yes. I specifically referred to demand
12 and energy, but I think that one could take fixed
13 costs as relating to demand or capacity and variable
14 as related to energy.

15 Q. Okay. Now, the fixed component of that,
16 what exactly constitutes the fixed component of
17 Duke's proposed PSR rider?

18 A. I would refer you to the confidential
19 exhibit which I will not describe in confidential
20 terms but there's a confidential Exhibit OEG-001 that
21 many parties refer to in their testimony because that
22 shows Duke's projections of costs and benefits from
23 sales -- sales out of OVEC and the costs that Duke
24 would face as -- due to its entitlement to OVEC.

25 And you can see in that exhibit that

1 there are capacity-related costs that Duke is subject
2 to per its entitlement as well as energy-related
3 costs that Duke projects it would be subject to as
4 well as sales of both capacity and energy.

5 And so, my recommendation for delineating
6 between those elements of costs and those components
7 of revenue really is intended to align with Duke's
8 own depiction of what its costs and revenues would be
9 from sales from OVEC.

10 So then specifically with respect to the
11 costs side, the demand-related costs would be the
12 costs that Duke is charged for capacity. And the --
13 any demand-related revenues would be revenues that
14 Duke received for sales of capacity.

15 Q. If the Commission was to --

16 EXAMINER PIRIK: Mr. Serio, I just want
17 to be sure -- I don't think the record is going to be
18 clear. Mr. Higgins referenced a specific document.
19 And it's not that I want to put more confidential
20 information on the docket, but it's not going to be
21 clear exactly what it is he's talking about if we
22 don't have the document. I don't think it's been
23 marked as an exhibit. I don't know what he's
24 referring to.

25 MR. SERIO: No, it hasn't been yet. I

1 was in -- intending to avoid talking about those
2 specific numbers.

3 EXAMINER PIRIK: Right.

4 MR. SERIO: I assume we will get into
5 those with the next witness possibly.

6 EXAMINER PIRIK: And I don't think we
7 have to talk about the specific numbers, but I think
8 I have to know where that document is. Is it
9 attached to someone's testimony?

10 Can we go off the record for a minute?

11 (Discussion off the record.)

12 EXAMINER PIRIK: Go back on the record.

13 MR. SERIO: May I approach?

14 EXAMINER PIRIK: Yes.

15 Q. (By Mr. Serio) Mr. Higgins, I am handing
16 you a two-page document that is similar to an
17 attachment to another witness in this proceeding,
18 Ms. Jackson's testimony. I believe it's SEJ-2,
19 attachment to her testimony. Is this the
20 confidential document that you were referring to in
21 your previous response?

22 A. Yes.

23 EXAMINER PIRIK: Similar to what we did
24 before, I think we'll -- we should go ahead and mark
25 Ms. Jackson's testimony so we know specifically what

1 the Sierra Club number is for her testimony, so that
2 then we have the appropriate reference.

3 MR. MENDOZA: I believe that's Sierra
4 Club 4.

5 EXAMINER PIRIK: Yes. The document,
6 Ms. Jackson's testimony, will be marked as Sierra
7 Club 4, and then as we refer to her exhibits in this
8 instance, it's Attachment 2 to Sierra Club 4.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. MENDOZA: Thank you, your Honor.

11 EXAMINER PIRIK: Thank you.

12 Q. (By Mr. Serio) Without disclosing any of
13 the numbers on that document, it's the two-page
14 document, and it basically is a chart showing
15 numbers, correct?

16 A. Yes.

17 Q. And it's basically years 2015 to 2024 on
18 both pages?

19 A. Yes.

20 Q. Okay. Now, when you refer to mixed
21 charges, which -- looking at the first of the two
22 pages under the column that is titled "OVEC
23 Analysis," which of those charges do you refer to as
24 fixed charges?

25 A. If you look at the section entitled

1 "Costs," you can see an entry for "Demand." That is
2 what I am referring to when I say that a portion of
3 the costs are demand related and they would
4 correspond to fixed costs.

5 Q. Now, of all the costs listed under the
6 OVEC analysis, those are the only ones you referred
7 to as fixed?

8 A. Those are the only costs I referred to as
9 fixed. There is also a projection of revenue and you
10 can see that some of the revenue that is projected is
11 capacity related. And so that capacity-related
12 revenue would also correspond to the sale of capacity
13 which roughly corresponds to the demand-related
14 portion of the product. And so the capacity revenue
15 and the demand costs are related to one another, and
16 they both speak to fixed costs and fixed costs
17 recovery.

18 Q. And your testimony is that you would take
19 the costs, subtract the revenues, and that balance,
20 positive or negative, would then be allocated as a
21 fixed cost, correct?

22 A. Correct, for those two components. And
23 then a similar -- a similar process would be
24 performed for the energy-related portion.

25 Q. Looking at those fixed costs, without

1 disclosing numbers, is it fair to say that for every
2 year listed the fixed costs would be greater than the
3 revenues?

4 A. That is correct, for every year listed.

5 Q. So under your allocation, the fixed costs
6 would always allocate a net cost to customers on the
7 fixed portion of your proposed allocation, correct?

8 A. On the fixed portion, yes.

9 Q. Now, looking at the variable, the two
10 variable items, it looks to me like for every year
11 the variable revenues are greater than the variable
12 costs, correct?

13 MS. SPILLER: Your Honor, I am just going
14 to assert an objection. I mean, we are beyond -- the
15 time period that's reflected in this document is
16 beyond what could be known in the observable market,
17 and we are moving into forecasted information. And
18 so I think we're treading potentially on confidential
19 information in respect to forecasted information.
20 And I appreciate the Bench's remarks in connection
21 with the AEP case, but their proposal is different in
22 terms of the term than is Duke Energy's proposal in
23 this case with regard to rider PSR.

24 So when you are showing the results, it's
25 indicative of the company's views in connection with

1 the forecast that is confidential.

2 MR. SERIO: Your Honor, I am
3 intentionally trying to stay away from any specific
4 years in order to avoid that. Trying to keep the
5 questions just general and I can ask additional
6 questions to focus just on the known ESP period, you
7 know, to make it even more clear, if you would like.

8 MS. HUSSEY: Your Honor, could I be heard
9 briefly?

10 EXAMINER PIRIK: Well, I think what we
11 might need to do I think we might need to take a
12 short break while I run upstairs and we get the
13 document that Duke had proposed is the confidential
14 document because what I'm kind of seeing is we're
15 asking questions, but we're not real sure, I mean,
16 what is confidential and what's not confidential.

17 And so, I think we may need to rule on
18 this exhibit prior to actually having Ms. Jackson on
19 the stand as far as the Bench's ruling on this
20 document. So why don't we just take a few-minute
21 break and I don't know -- we will go off the record.

22 (Recess taken.)

23 EXAMINER PIRIK: Go back on the record.
24 I appreciate everyone's patience. It's a pretty
25 important exhibit that the witness was referencing,

1 and we worked out the logistics of exactly how that
2 information, which is found in several places and
3 witnesses's testimony, will be handled at this
4 juncture. We are going to go ahead and allow OCC to
5 go forward to mark the exhibit, and then we will
6 discuss confidentiality proposals.

7 MR. SERIO: Thank you, your Honor.

8 Q. (By Mr. Serio) Mr. Higgins, do you have
9 in front of you a multiple-page document totaling 19
10 pages, two-sided, and in the upper right-hand corner
11 says "PUCO Case No. 14-841-EL-SSO, IGS-POD-01-003
12 Highly Confidential"? And if you look at the first
13 page of that document, that corresponds with the
14 two-page document that we were previously looking at,
15 correct?

16 A. Yes.

17 Q. So all the questions that I asked you
18 previously also apply to this document that we are
19 going to mark for purposes of identification as OCC
20 Exhibit No. 4?

21 A. Yes.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

23 EXAMINER PIRIK: I believe the document
24 that you have should be titled 4a because it is the
25 unredacted version of the document. So that's the

1 confidential one.

2 THE WITNESS: Yes.

3 EXAMINER PIRIK: And, at this time, we
4 are going to take arguments with regard to the
5 confidentiality of this exhibit.

6 Duke.

7 MS. SPILLER: Thank you, your Honor.
8 And, as a preliminary matter, before providing a
9 basis for the requested confidential treatment, I
10 would like to address the fact that the last two
11 pages of this document is actually information
12 generated by the Ohio Valley Electric Corporation.
13 It is information for which we are requesting
14 confidential treatment, and I will discuss that in a
15 moment.

16 But in respect of this document and its
17 author, I would note that the office of the Ohio
18 Consumers' Counsel has subpoenaed Mr. Brodt, the
19 chief financial officer for OVEC, via a subpoena
20 filed in this docket on October 17th, 2014.

21 Mr. Brodt is here today, accompanied by
22 his counsel, Mr. Castiglione, who I understand is a
23 licensed attorney practicing in the state of New York
24 in good standing and in compliance with all of the
25 requirements that the state bar of New York may

1 impose upon legals practicing in the state.

2 He has requested immediate -- immediately
3 upon receipt of this subpoena from the OCC pro hac
4 vice, and his certificate of standing with the
5 Supreme Court of New York for purposes of his motion
6 for admission. However, as he cannot control the
7 administration of that court, does not yet have that
8 certificate. I would thus move for his admission pro
9 hac vice so that Mr. Brodt, who has been subpoenaed
10 in this case, is afforded representation of counsel.

11 And, again, because these documents, some
12 of them are OVEC-generated materials that have been
13 produced in this case pursuant to confidentiality
14 agreements between OVEC and the parties, just want to
15 assure that we're respecting the confidential nature
16 of their information.

17 And with that, your Honor, if I may, I
18 will turn to what has been marked as OCC Exhibit
19 4a --

20 EXAMINER PIRIK: Ms. Spiller, with regard
21 to the motion for pro hac vice with regard to --
22 would you like to state your name and address for the
23 record for us.

24 MR. CASTIGLIONE: Sure. It's Michael
25 Castiglione, C-a-s-t-i-g-l-i-o-n-e, I represent OVEC,

1 and business address is Simpson Thacher & Bartlett,
2 425 Lexington Avenue, New York, New York 10017.

3 EXAMINER PIRIK: It's my understanding
4 that he has submitted his request for permission to
5 appear before the Commission with the Ohio Supreme
6 Court. I'm looking to the other parties in the case
7 to see if there are any objections to the Bench
8 accepting and granting his pro hac vice, subject to
9 the appropriate receipt of the documents from the
10 Ohio Supreme Court?

11 MR. SERIO: No objection, your Honor,
12 from OCC.

13 MS. HUSSEY: No objection.

14 MR. OLIKER: No objection.

15 MR. CASTIGLIONE: Thank you, your Honor.

16 EXAMINER PIRIK: Hearing none, the motion
17 will be granted.

18 I'm sorry, you may continue, Ms. Spiller.

19 MS. SPILLER: Thank you, your Honor.

20 I would refer, if I may, to OCC Exhibit
21 4a, an unredacted copy of what is a 19-page document,
22 the company has proposed redactions to this document
23 and I will take the pages largely in order starting,
24 first, with respect to page 1 of the 19-page
25 document.

1 The first number that we're proposing
2 redaction of is UCAP. This is the company's
3 assumption of what they expect the UCAP to be. This
4 is information that is confidential and privileged.
5 It is not disclosed. Putting this information in the
6 public domain could, in fact, work an unfair
7 competitive advantage to Duke Energy Ohio in that the
8 contractual entitlement that it holds in the
9 OVEC-owned generating assets is an entitlement that,
10 in fact, engages in a wholesale market, a competitive
11 market, and disclosure of this information would
12 reveal the company's assumptions and, further, work
13 again an unfair competitive advantage in respect of
14 it.

15 Similarly, the next line, "Generation
16 Volumes," reflects assumptions of the company. If I
17 may, your Honor, with respect to the "PJM Capacity"
18 line, the second line that is here, you will note
19 that this exhibit appears in calendar years.

20 And I would propose one modification to
21 what we have provided to the Bench, and that would
22 concern the full calendar years 2015, 2016, and 2017.
23 The known capacity prices for those years have, in
24 fact, been determined already via PJM's reliability
25 pricing model processes. So, with respect to those

1 three calendar years, I believe that we can unredact
2 the numeric figures that appear under the columns
3 "2015," "2016," and "2017," for PJM capacity.

4 However, once we move over to the column
5 "2018," only a partial year of that particular
6 calendar year has been -- is one in which capacity
7 prices have been already announced by PJM.

8 So the figure that you see here is a
9 compilation of both a published PJM capacity price
10 and information that reflects assumptions made by the
11 company. So, in disclosing that information, I
12 believe we're potentially disclosing information as
13 to how the company would view capacity prices for the
14 second half of 2018.

15 And if I may broadly talk about all of
16 the information for which we're seeking confidential
17 treatment on this page, it's confidential. This is
18 information that is derived from the company's
19 commercial business model. It's a generation
20 dispatch model or a model that reflects probabilistic
21 modeling. It is modeling that works with a series of
22 inputs and assumptions made by the company to
23 generate a series of outputs.

24 So all of the information that's
25 reflected on this page, save that which we've

1 discussed a moment ago, the known PJM capacity
2 prices, is information that the company uses in its
3 modeling, its forecasted information.

4 The one caveat that I have here, your
5 Honor, is the line that says "Demand" under "Costs."
6 That information is confidential but for a different
7 reason and I'll get to that no moment.

8 But because this information is based on
9 the company's proprietary modeling, disclosure of it,
10 again, would provide an unfair advantage to Duke
11 Energy Ohio in respect of its entitlement, and
12 entitlement, again, that's dispatched into the
13 competitive markets.

14 I would note that the Bench has
15 previously afforded Duke Energy Ohio confidential
16 information of its modeling -- its commercial
17 business modeling in terms of how that process works
18 and the output in that process in Case No. 12-2400.

19 The pages that follow on page 2 through
20 17 of OCC Exhibit 4a are what could generally be
21 called the -- generally be called the "workpapers."
22 This is actually the output from the commercial
23 business modeling for the particular dates that are
24 identified. So publicizing this information would
25 reveal the company's proprietary trade secret

1 information and work an unfair competitive advantage
2 to it vis-a-vis those who also interact in the PJM
3 competitive wholesale markets.

4 I will say, your Honor, as we've
5 demonstrated before, the company takes care to keep
6 this information confidential, only those within the
7 organization with the business need to know of the
8 information, in fact, have the opportunity to receive
9 it.

10 The final two pages of the document, your
11 Honor, pages 18 and 19, as I mentioned at the
12 beginning of our -- of my remarks, is information
13 that is provided by the Ohio Valley Electric
14 Corporation.

15 As has been established in this case,
16 Duke Energy Ohio has a 9 percent contractual
17 entitlement in OVEC. It receives, as a sponsoring
18 company, billing information and other cost-related
19 information. But, again, this information is
20 forecasted. It reflects OVEC's assumptions in
21 respect of its operations; operations that, again,
22 include generation that participates in the PJM
23 markets.

24 Disclosure of this information would
25 provide an unfair competitive advantage to OVEC as

1 well as those sponsoring companies who similarly have
2 contractual entitlements in OVEC. And so, we would,
3 for that reason, request confidential treatment of
4 the numeric information reflected in the red boxes.

5 Also, on page 18, in terms of projected
6 financing information, we are requesting confidential
7 treatment of that only in that that is, again, an
8 assumption as to how financing activities will occur
9 in the future. As that financing has yet to be
10 secured, there could be some challenges to securing
11 the financing as anticipated when OVEC actually goes
12 out to interact in the financial markets to secure
13 that financing.

14 And these two final pages, your Honor, if
15 I may just, to refer them back or tie them back to
16 the first page of the 19-page exhibit, under the
17 "Cost" on page 1 of 19, there is a line for "Demand,"
18 that line and that information is actually populated
19 with reference to OVEC's confidential information.

20 So when we look at page 18, if I may, the
21 line right above the dark line "Dividend," "Total
22 Projected Demand Costs," Duke Energy Ohio takes its
23 contractual entitlement share, its 9 percent of that
24 number, for purposes of -- for purposes arriving at
25 the financial information that is included in the

1 "Demand" line on page 1 of the exhibit.

2 So, again, confidential treatment should
3 be afforded that information because the basis for
4 our completing page 1 is OVEC's confidential
5 information.

6 EXAMINER PIRIK: Responses?

7 MR. SERIO: Your Honor, I guess I can go
8 first. I just have two points. To the extent that
9 the company is agreeing that the -- on page 1, the
10 PJM capacity dollars per megawatt per day numbers for
11 2015, '16, and '17 are known and should not be
12 confidential, we would ask that for 2018 it be broken
13 so that the portion that's known for the ESP period
14 be identified versus for the projected period outside
15 the ESP period.

16 And then, secondly, also on page 1, the
17 cash flow number, the comparable cash flow number in
18 the recent AEP case, involving the same OVEC issue,
19 were made public in that proceeding. And we think to
20 the extent that the Commission recognized that the
21 public has a right to know that number in the AEP
22 proceeding and to the extent that the public's being
23 asked to pay this cost, then we think it similarly
24 should be treated as a public number.

25 We have no objection to the remainder of

1 the document being retained as confidential.

2 EXAMINER PIRIK: Other responses?

3 Ms. Bojko.

4 MS. BOJKO: Your Honor, I concur that
5 2015, '16, '17 of the capacity costs should -- are
6 public numbers and are known. So, thank you, to the
7 company for the releasing those.

8 I would also agree with OCC that the
9 "Cash Flow" line was to my belief, my recollection,
10 it's been a while, but I think that was released in
11 the AEP proceeding as well.

12 The question, I guess, I have for OVEC's
13 counsel with regard to the last two pages, and there
14 were a lot of documents that have been flowing around
15 and there were quite a few documents in the
16 deposition of Mr. Brodt, I guess I would just confirm
17 with Counsel that none of these numbers were released
18 in the 2014 annual report and budget that is --
19 actually, I believe it was a public document. I
20 think once a year, Mr. Brodt explained to us, there's
21 a public document that is provided. So I guess it's
22 more a question -- or, I would like confirmation that
23 these numbers are not in the public.

24 MR. CASTIGLIONE: These numbers --

25 MS. BOJKO: I meant 2013. Obviously

1 there isn't 2014.

2 MR. CASTIGLIONE: I can speak very
3 loudly. I can confirm that those numbers, I've
4 conferred with Mr. Brodt, those numbers are not
5 available publicly.

6 MS. BOJKO: Thank you.

7 EXAMINER PIRIK: Other comments?

8 MR. MENDOZA: I would just say, your
9 Honor, with respect to the cash flow on the first
10 page that goes right to the issue of accountability
11 and transparency in the Commission's decision-making.
12 The customers of this company deserve to know, you
13 know, the top line numbers that the company is
14 predicting for total costs and total revenues.

15 EXAMINER PIRIK: Any other comments?

16 Your response, Ms. Spiller?

17 MS. SPILLER: Your Honor, yes, very
18 briefly, and I appreciate the Bench's remarks from
19 earlier today. I will tell you that I have not gone
20 back and studied the AEP transcript in terms of what
21 may have been released into the public domain. So to
22 the extent there is a ruling, I don't know if it
23 would be a provisional ruling until that confirmation
24 is made.

25 But it's the company's position that this

1 information is a compilation of what is proprietary
2 and privileged information inside of Duke Energy
3 Ohio. I believe we've made the arguments and will
4 defer to the Bench for a ruling.

5 I would note that information reflected
6 on this first page is in a calendar year form. Our
7 proposed ESP does not align with the calendar years,
8 but, instead, the PJM planning years. And so, to the
9 extent there are annual totals, those would not be
10 reflective necessarily of the term of the ESP.

11 MR. SERIO: Your Honor, with regard to
12 the cash flow number, I just point out when OCC filed
13 its testimony in the AEP case, counsel for AEP
14 acknowledged to OCC that that cash flow total number
15 was not confidential, so that particular number was
16 not confidential even when we filed our testimony.
17 So it wasn't a ruling that occurred during the
18 hearing. The company agreed with us, before the
19 hearing actually started, when we prefiled our
20 testimony.

21 EXAMINER PIRIK: Again, I would like to
22 thank everyone for their patience on this. It is the
23 Bench's understanding, with regard to the cash flow,
24 after looking at the AEP docket that those numbers
25 are available in the open record in AEP.

1 However, I hear, Ms. Spiller, what you're
2 asking. What we would like to do, perhaps OCC can
3 show you those numbers that they provided in the AEP
4 case, and you can see directly where that came from,
5 so you can verify it. But, at this time, our ruling
6 would be to put those numbers in the open record on
7 the "Cash Flow" line because we think that is an
8 important item to be in the public record.

9 But, again, we will make this a
10 provisional ruling, and we would ask that you verify
11 that and, hopefully, with the assistance of OCC.

12 MS. SPILLER: Certainly, your Honor.

13 EXAMINER PIRIK: And if you could get
14 back with us, I mean, I'm hoping by first thing
15 tomorrow morning and let us know exactly where we
16 stay with that. I mean, OCC is going to need to know
17 what you're redacting and what you're not redacting
18 in the exhibit.

19 MR. SERIO: Yes, your Honor. And if the
20 company wants, while we are in hearing today, they
21 can check Mr. Wilson or Mr. Kahal's testimony in the
22 AEP case, and you'll find that the total number was
23 unredacted in both cases. And we will, during the
24 break, pull it up electronically and confirm that
25 with the company, but if they want to do that in the

1 interim, that's where they would find the number.

2 MR. DARR: They will similarly find it in
3 Mr. Murray's testimony. And there's a reference, I
4 believe, throughout the transcript to IEU Exhibit 8,
5 which was the napkin -- what became know as the
6 "napkin calculation" performed by AEP on the stand,
7 the second day of the hearing. And, in each case,
8 the quantification, the net effect of the proposed
9 rider, was in the public domain.

10 EXAMINER PIRIK: With that in mind, I
11 think what we will be able to do is provide the
12 witness a copy of OCC Exhibit 4a with the -- the
13 other piece of the motion that I didn't address that
14 we do need to address is the 2018 numbers, and your
15 request, I believe it was Ms. Bojko that asked that
16 it be broken out, whoever made the request, is that
17 possible? Is it possible to break out the piece of
18 the projected 2018 so that as much as possible could
19 be in the open on that line item?

20 MS. SPILLER: Your Honor, I believe that
21 we can do that. It is, again, a published price for
22 capacity for the PJM planning year of 2017-2018. And
23 assuming other information is kept redacted, in
24 addition to the company's assumptions in respect of
25 the second half of 2018, I don't believe that they

1 could back into those assumptions. So we should
2 be -- yeah, we should be fine.

3 EXAMINER PIRIK: Okay. I don't think we
4 need to create a new document, but I think if you can
5 state it on the record, I think as soon as you have
6 that number today or tomorrow, then -- then we
7 will -- I think that will suffice to answer the
8 question.

9 MR. SERIO: What we'll do, your Honor, if
10 it's acceptable to you, is that on the copy that we
11 file, we'll footnote the 2018 number, and in the
12 footnote, we'll indicate which part is published --
13 the public number only refers to the January, I
14 believe, through May 31 time period. That way we
15 don't have any additional documents and it can all be
16 captured on Exhibit 4 and 4a.

17 EXAMINER PIRIK: That's a good result.
18 So if you could work with Duke on that, then I think
19 that would be appropriate. And then we'll have the
20 appropriately redacted version and unredacted
21 version.

22 In the meantime, the witness has one
23 that's appropriately -- that you know what's redacted
24 and what's not redacted?

25 THE WITNESS: Yes. And just to confirm,

1 I believe the cash flow is also considered to be
2 unredacted at this point?

3 EXAMINER PIRIK: I think at this point
4 we're going to consider that redacted until we verify
5 at the end of today. The Bench's provisional ruling
6 is that it's going to be in the open record, and
7 tomorrow morning we will make our final ruling on
8 that once we've given Duke an opportunity to actually
9 look at it.

10 MS. SPILLER: And, your Honor, that's
11 with respect to the company's proposed -- or, is it
12 in respect to the company's proposed ESP term?

13 EXAMINER PIRIK: Well, it's in --

14 MS. SPILLER: Because there's information
15 beyond -- that we carry this -- this actual
16 information out through 2040.

17 EXAMINER PIRIK: I think once you see the
18 information that Mr. Darr and Mr. Serio are referring
19 to, that's why it's a provisional discussion and
20 decision, so that you can make -- I think you have to
21 see that information before you can make whatever
22 arguments you were going to make.

23 MR. OLIKER: Amy, just to clarify, it
24 goes out to 2024, right?

25 MS. SPILLER: That's what I have on

1 OCC 4.

2 MR. OLIKER: I thought you said 2040.

3 MS. SPILLER: Oh, I'm sorry. 2024.

4 EXAMINER PIRIK: So, for now, the answer
5 is that line item will be considered confidential,
6 and then we'll figure it out once we make a final
7 ruling and hear the final arguments on behalf of that
8 line.

9 THE WITNESS: Thank you, your Honor.

10 EXAMINER PIRIK: Okay?

11 Okay. Mr. Serio.

12 MR. SERIO: Thank you, your Honor.

13 Q. (By Mr. Serio) Mr. Higgins, before we
14 broke, I think the last thing we talked about was
15 that you acknowledged that if you looked at the
16 demand number under "OVEC Analysis" on page 1 of OCC
17 Exhibit 4 -- or, 4a, that the cost of demand
18 throughout the period, without getting into the
19 numbers, was greater than the revenues from the
20 demand, correct?

21 A. Correct.

22 Q. And, similarly, if I look at the energy
23 numbers which will be the variable, the costs are
24 less than the revenues throughout the period by year,
25 correct?

1 A. That is correct.

2 Q. So to the extent that your proposed
3 allocation puts costs into the demand piece, the
4 demand would be always a charge and the energy would
5 always be a credit.

6 A. Yes, sir.

7 Q. Now, under your proposed allocation, can
8 you identify for me which rate classes would see an
9 increase in costs and which rate classes would see a
10 decrease?

11 A. I had not performed that analysis. I
12 would say that, as a general proposition, classes
13 that had higher-than-average load factors would have
14 a lower allocation of costs, and classes with a
15 below-average load factor would see a higher
16 allocation of costs.

17 Q. Would you agree with me that, generally
18 speaking, residential customers, under that
19 allocation, would fall into the lower-than-average
20 and, therefore, see an increase?

21 A. I think that's a fair assumption.

22 Q. And would you agree with me that Kroger
23 generally would fall in the higher-than-average load
24 factor category and that your recommendation would
25 reduce costs to Kroger?

1 A. Generally. Although, I would also --
2 Mr. Serio pointed you to page 8, line 21 of my
3 testimony in which I suggested that there could also
4 be an alternative way to get to the heart of this
5 issue that there are capacity-related costs that
6 should be properly allocated.

7 And, in that alternative, I suggested
8 that one could take the net of whether the total
9 costs in a year were a cost to customers or whether
10 the net was a benefit to customers and allocate that
11 based on demand and energy weighting rather than
12 doing it by separate component. And so, in that
13 case, one would be looking at a net cost in a year or
14 a net credit in a year.

15 And so, that approach would -- would
16 produce probably a somewhat different result, but my
17 intention was really to try to reflect the fact that
18 there are fixed costs involved here that should be
19 properly allocated and that there isn't any
20 necessarily one precise way you could do it. And so,
21 I offered a couple of options for that purpose.

22 Q. This alternative option, you identify
23 rate schedules DP and DS as having revenue
24 shortfalls.

25 A. I do not. I think, Mr. Serio, I am still

1 talking about PSR --

2 Q. Right.

3 A. -- rider PSR, and I don't make any
4 reference to revenue shortfalls for those classes in
5 that discussion.

6 Q. Well, if you look at line 16 of your
7 testimony on page 10, is that discussion still
8 regarding the PSR rider?

9 A. No. That's regarding rider DCI.

10 Q. Okay. We will get to that. Let's take
11 them one at a time.

12 Okay. So your alternative for -- your
13 second alternative for rider PSR is what's captured
14 on lines 19 through 21 on page 10 of your testimony.

15 A. Correct.

16 Q. And you said that would have a generally
17 different outcome than the first outcome which was
18 generally higher-than-average load factor customers
19 getting less costs, and lower-than-average load
20 factor customers getting more costs.

21 A. Yes, sir.

22 Q. What would be the general outcome of your
23 alternative recommendation?

24 A. In my alternative recommendation, when or
25 if this rider produced a credit to customers, then by

1 having a demand weight in that credit, it would
2 actual -- demand weight in that credit, it would
3 actually produce a net benefit to the
4 lower-load-factor customers. So in years in which it
5 was a net cost, it would produce a higher cost to
6 lower-load-factor customers, but in years in which it
7 was a net credit, it would produce a higher benefit
8 to lower-load-factor customers.

9 Q. So, essentially, you would take your
10 original, the impact --

11 MS. HUSSEY: Excuse me, your Honor.

12 EXAMINER PIRIK: Ms. Spiller -- or, I'm
13 not sure who is speaking.

14 MS. SPILLER: Ms. Hussey.

15 MS. HUSSEY: Let me, could I just clarify
16 whether we are speaking about rider DCI or PSR right
17 now? It appears that you're looking at page 9 of
18 Mr. Higgins's testimony.

19 MR. SERIO: No. I'm on page 10.

20 MS. HUSSEY: Okay. But his testimony on
21 page 10 goes to DCI.

22 THE WITNESS: I am speaking about page 8
23 of my testimony. Which begins on line 21 where it
24 says "In the alternative...."

25 Q. Okay.

1 A. And this is all about rider P -- PSR.

2 Q. Okay. So your alternative recommendation
3 would mean that the impact from your original
4 recommendation, when it's a credit year, would be a
5 greater credit for lower-than-average load factor
6 customers, and when it's a cost, the cost would be
7 greater for the lower-than-average customers,
8 correct?

9 A. That's correct. And I really simply
10 offer two options that could be -- that could be
11 implemented. What they have in common is that they
12 both recognize that this is not simply a matter of
13 energy charges to Duke and energy sales from Duke,
14 but that it involves fixed costs as well and
15 there's -- I point out that there's more than one way
16 to try to fairly apportion responsibility for those
17 fixed costs.

18 Q. Now, I believe I asked you the question
19 earlier, does the PSR rider impact shopping customers
20 different than nonshopping customers?

21 A. Yes, you did, and I said it has the same
22 impact.

23 Q. Okay. Would you agree that with rider
24 DCI, again, there is no impact on whether your -- the
25 impact is no different whether you are a shopping

1 customer or a nonshopping customer?

2 A. For rider DCI, yes, I agree.

3 Q. So to the extent that neither rider
4 impacts shopping versus the nonshopping customers
5 differently, that -- scratch that.

6 Would you agree with me that it's the
7 generation charge that is consistent with both
8 shopping and nonshopping customers?

9 A. I'm not sure I follow your question.

10 Q. The cost of generation is consistent with
11 whether you are a shopping customer or nonshopping
12 customer, correct?

13 A. No. If you're a shopping customer,
14 you're purchasing your generation in the marketplace,
15 and if you are a nonshopping customer, you're taking
16 the SSO product, and so we would not necessarily be
17 the same.

18 Q. Now, to the extent that your original
19 recommendation for both riders is that if the
20 Commission approves them, then they should be
21 bypassable, is the reason they should be bypassable
22 because that -- that would give shopping customers
23 the opportunity to avoid those costs?

24 A. You did not state my testimony correctly.
25 I make the argument that if rider PSR is adopted,

1 then it should be bypassable because it involves
2 generation-related costs. However, I did not
3 recommend that rider DCI be bypassable.

4 Q. Okay. Then let's stick with rider PSR.
5 To the extent you are recommending it should be
6 bypassable, your argument is it should be bypassable
7 because those costs are not appropriate for shopping
8 customers.

9 A. Correct. And I think that if the
10 Commission were to be persuaded, my recommendation
11 notwithstanding, if the Commission should be -- were
12 to be persuaded that PSR produces some type of hedge
13 against generation costs, then it would seem to me
14 that, as a policy matter, the Commission would want
15 to limit the effect of that product to those
16 customers who were not taking action to enter the
17 competitive marketplace.

18 And so, to the extent that this argument
19 that the company has advanced is persuasive to the
20 Commission, then I think it's worth asking the
21 question: Is that product, is that hedge, something
22 that ought to be imposed on customers who are
23 otherwise actively shopping in the marketplace?

24 And so, I believe that it's appropriate
25 for the Commission to address the question of whether

1 it would make sense for this rider to be bypassable.
2 And I believe it does make sense if a rider like this
3 were adopted.

4 Q. Am I correct that your assumption there
5 is based on if a customer is shopping, then that
6 means they're taking an action, and if they are not
7 shopping, then they are just doing that by default?

8 A. Well, they are making -- customers, in
9 Ohio, have a choice, and if customers are preferring
10 the SSO option, if that's their choice, then they are
11 taking the product that the company is putting
12 together through its auction process, and if the
13 Commission is persuaded that there is a hedge value
14 to the PSR, then I believe it's more appropriate for
15 those customers who were choosing the SSO option, and
16 I would imagine a great number of those have chosen
17 that or, perhaps, defaulted to that because they have
18 not entered the competitive market.

19 Q. Would you agree with me that shopping
20 customers, whatever product they purchase, there is
21 some type of hedging built into that shopping
22 product, correct?

23 A. That would really be up to the individual
24 customer that's doing the shopping. I can imagine
25 that there would be some hedges that a customer would

1 take as part of the product, implicit or explicit,
2 but that would really vary depending on the
3 individual customers.

4 Q. I am not talking about the customers. I
5 am talking about the CRES provider that offers a
6 product in the market that customers can choose from,
7 there's some level of hedging built in to any of
8 those products from CRES providers, correct?

9 A. I would imagine so, yes.

10 Q. And the SSO product is based on an
11 auction, correct?

12 A. Yes.

13 Q. And CRES providers that bid into that
14 auction, also build hedging into their SSO bid,
15 correct?

16 A. I think that's reasonable.

17 Q. Okay. Now, on the rider DCI, I believe
18 that's your testimony on page 10, correct?

19 A. It starts on page 9 and continues on to
20 page 10 through page 12.

21 Q. Okay. On page 10 of your testimony, you
22 identify rate schedules DS and DS-RT [verbatim] and
23 you're indicating there that those two rate schedules
24 were overallocated costs, correct? That's your
25 testimony.

1 A. No.

2 Q. No. They were under-allocated costs?

3 A. My testimony is that the allocation
4 methodology that Ms. Laub had recommended winds up
5 distorting class cost responsibility, and what I
6 pointed out with respect to D -- the DS and DS-RTP
7 class is that this is a class, in the last general
8 rate case, was allocated 29 percent of base
9 distribution revenues. You can see that on page 10,
10 line 8 of my testimony. It lines up with what's in
11 Ms. Laub's exhibit, her Exhibit 10.

12 However, when she allocates the
13 incremental cost responsibility of the rider, this
14 class winds up with only 22.6 percent of cost
15 responsibility. And so, this class is not -- that
16 raises some questions, I would say, okay? So this
17 class, you have to ask yourself the question: Why is
18 this class getting such a smaller share of the
19 increment when it's a larger share of the base?

20 And then I point out that the opposite
21 happens with DP. DP has only 6.1 percent of base
22 distribution revenues, but winds up with 11.3 percent
23 of the incremental cost responsibility of the rider.

24 So these two classes wind up on opposite
25 sides, if you will. One is getting an

1 under-allocation of cost going forward, that would be
2 DS; and DP is getting an overallocation of costs
3 going forward. And I point out that that's due to
4 some perverse mechanics in the way that Ms. Laub had
5 proposed the rider to work.

6 Q. Okay. Before we get to the mechanics,
7 rate schedule DS is what -- what rate schedule? What
8 kind of customers are rate schedule DS?

9 A. Generally, they are going to be
10 commercial-type customers.

11 Q. And how about DS-RTP?

12 A. I would say the same, it's also
13 commercial-type customers. You might have some small
14 industrial customers on that rate.

15 Q. Would you agree with me it would be
16 unusual to find residential customers in those
17 classes?

18 A. Yes.

19 Q. Okay. And rate schedule DP would be what
20 type of customers generally?

21 A. Generally, large commercial and some
22 smaller or mid-size industrial customers.

23 Q. So to the extent that the Commission was
24 to agree with you that there's a problem with the
25 allocation between those schedules, your recommended

1 fix would suggest that there be reallocation just
2 between those three schedules, correct?

3 A. No.

4 Q. No.

5 A. My recommendation is that in lieu of the
6 very cumbersome mechanics that Ms. Laub had
7 recommended, that the Commission adopt a simple,
8 equal percentage rider applicable to all distribution
9 building components, just as AEP Ohio has in place
10 and which was approved by the Commission. That would
11 affect all rate schedules. However, it would have a
12 small beneficial effect on residential customers, for
13 example.

14 So while all rate schedules would be
15 affected, the largest impact, to your question, would
16 be on DS and DP because those two are significantly
17 out of balance under the company's proposal; but,
18 under my proposal, every rate schedule, every
19 customer would be treated exactly the same. They
20 would all get an equal percent increase.

21 Q. All right. So, basically, what you just
22 said is if you took the company's proposed allocation
23 here and your proposal to follow the straight
24 allocation similar to AEP, the greatest impact and
25 the difference between those two would be for rates

1 DS, DS-RTP, and DP schedules, correct?

2 A. Yes.

3 Q. Okay.

4 A. And that's where the biggest problem is
5 with the company's proposal and that's why it would
6 have the biggest effect from switching to an equal
7 percentage of energy.

8 MR. SERIO: With that, I have no more
9 questions, your Honor.

10 Thank you very much, Mr. Higgins.

11 THE WITNESS: Thank you, Mr. Serio.

12 EXAMINER PIRIK: Mr. Mendoza?

13 MR. MENDOZA: I have no questions.

14 EXAMINER PIRIK: Ms. Kyler?

15 MS. KYLER COHN: No questions.

16 EXAMINER PIRIK: Mr. Oliker?

17 MR. OLIKER: No questions, your Honor.

18 EXAMINER PIRIK: Ms. Petrucci?

19 MS. PETRUCCI: No questions.

20 EXAMINER PIRIK: Mr. Hart?

21 MR. HART: No questions.

22 EXAMINER PIRIK: Ms. Spiller?

23 MS. SPILLER: Yes, your Honor. Thank
24 you.

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CROSS-EXAMINATION

By Ms. Spiller:

Q. Good morning, Mr. Higgins.

A. Good morning.

Q. How are you today?

A. Great. Thank you.

Q. Good. And I see, sir, you have a binder with you up on the witness stand.

A. Yes.

Q. Can you tell me what documents you have, other than your direct testimony filed in this case, please?

A. Sure. I have with me a workpaper, one-page workpaper that I used to prepare to evaluate Ms. -- Ms. Laub's Exhibit 10. I have various copies of the testimonies of various Duke witnesses. I have the -- I have the company's response to OEG-DR-01-001, confidential attachment.

Q. Yes, sir.

A. I have the company's response to company's data requests. I have a copy of AEP's distribution investment -- distribution investment rider from its approved tariff. I have a copy of the stipulation and recommendation in Duke's latest proceeding, 11-349-EL-SSO. I have a copy of excerpts

1 from the Form 10-K that was attached to its annual
2 report for 2013, the excerpts that are referred to in
3 my testimony. I have a copy of Ohio Revised Code
4 4928.31 through 4928.40. I have the Amended and
5 Restated Intercompany Power Agreement that OVEC had
6 filed at FERC as -- along with the -- well, with the
7 contract that was filed at FERC. And that's the
8 extent of what's in my binder.

9 Q. Mr. Higgins, you had mentioned testimony
10 of Duke Energy Ohio witnesses in this matter. In
11 addition to that company testimony, you've already
12 reviewed the company's application, correct?

13 A. Yes, yes. And I have a copy of the
14 application with me as well.

15 Q. And the direct testimony that you have
16 filed in this proceeding, sir, under Kroger Exhibit
17 No. 1, reflects all of the opinions that you are
18 offering in this case in connection with the
19 company's proposed ESP, correct?

20 A. Yes.

21 Q. And, Mr. Higgins, would you agree with me
22 Kroger has been involved with all of Duke Energy
23 Ohio's SSO filings since the effective date of Senate
24 Bill 221?

25 A. I believe that's correct.

1 Q. And you have served as Kroger's witness
2 in connection with all of those SSO filings, correct?

3 A. Yes.

4 Q. And with respect to the former SSO
5 filings that have since been resolved by the Ohio
6 Commission, you are generally aware of the outcome of
7 those filings, correct?

8 A. Yes.

9 Q. And, Mr. Higgins, in addition to
10 testifying on behalf of Kroger in connection with
11 Duke Energy Ohio's SSO filings, you have also
12 testified on behalf of Kroger in connection with the
13 SSO filings of other Ohio distribution utilities,
14 correct?

15 A. Yes.

16 Q. And, sir, you have done your best to
17 follow the regulatory developments in Ohio since the
18 passage of both Senate Bill 3 and Senate Bill 221,
19 correct?

20 A. Yes.

21 Q. And you would agree with me, sir, that
22 under Senate Bill 221, all Ohio electric distribution
23 utilities are required to offer a standard service
24 offer for all retail customers.

25 A. I agree.

1 Q. And that standard service offer, sir, is
2 available to any retail customer within Duke Energy
3 Ohio's service territory, correct?

4 A. Correct.

5 Q. And, sir, you have acknowledged that
6 under an SSO, in the form of an ESP, charges that
7 have the effect of providing stabilization can be
8 permitted, correct?

9 A. I've acknowledged that the Commission has
10 made that determination, yes.

11 Q. And, sir, the company's second ESP
12 application which was filed under Case 11-3549, you
13 know resolved by way of stipulation, correct?

14 A. Correct.

15 Q. And, in fact, sir, you have that
16 stipulation with you this morning, right?

17 A. Yes.

18 Q. And the Kroger Company was a party to
19 that stipulation, correct?

20 A. Yes.

21 Q. And, in fact, on behalf of Kroger, you
22 offered testimony in support of the stipulation,
23 correct?

24 A. Yes.

25 Q. And, sir, you have provided expert

1 assistance to Kroger for some period of time,
2 correct?

3 A. Yes.

4 Q. And given your history with Kroger, you
5 would agree with me that before Kroger enters into
6 regulatory -- into regulatory settlements that it
7 takes care to ensure that those written settlements
8 accurately reflect the terms and conditions to which
9 Kroger is agreeing, correct?

10 A. Yes.

11 Q. And, in fact, one of your
12 responsibilities for Kroger is to evaluate settlement
13 agreements that are proposed and to provide a
14 recommendation to Kroger as to whether or not it
15 would be in Kroger's interest to sign that
16 settlement, correct?

17 A. Yes.

18 Q. And before Kroger signs a settlement
19 agreement, you, acting on its behalf, want to be sure
20 that the settlement agreement clearly and accurately
21 reflects all of the terms to which Kroger would be
22 bound, correct?

23 A. Yes.

24 Q. Sir, the stipulation that you have from
25 the company's second ESP, case 11-3549, that was a

1 near unanimous settlement, correct?

2 A. To the best of my recollection, yes.

3 Q. And, sir, would you agree with me that 30
4 parties to the proceeding affirmatively signed and
5 accepted the stipulation?

6 A. I believe that's correct.

7 Q. And there were two parties that neither
8 objected nor agreed to the stipulation, correct?

9 A. I accept that.

10 Q. And, sir, as -- as is the case with
11 settlements, the company's ESP II stipulation was the
12 result of a compromise made by all parties to that
13 proceeding, correct?

14 A. Yes.

15 Q. In fact, sir, do you recall giving
16 testimony in the ESP II proceeding that the agreement
17 reflects a comprehensive and fair compromise among
18 diverse parties with competing interests?

19 A. Yes.

20 Q. And, Mr. Higgins, subsequent to the
21 testimony you provided in connection with Case
22 No. 11-3549, you provided other testimony concerning
23 that stipulation, correct?

24 A. Correct.

25 Q. And, sir, do you recall testifying that

1 the stipulation and recommendation that the company
2 modified and approved in Case No. 11-3549 does not
3 contain an out clause for buyer's remorse?

4 A. Yes.

5 Q. And that provision, sir, or your
6 testimony would relate to all signatories to the ESP
7 stipulation in Case 11-3549, correct?

8 A. Yes.

9 Q. Mr. Higgins, in this particular case,
10 you're offering testimony on two components of the
11 company's proposed ESP, correct?

12 A. Yes.

13 Q. You would agree me that the energy and
14 capacity associated with Duke Energy Ohio's
15 contractual entitlement in OVEC will not be used to
16 directly serve retail customers in the company's
17 service territory, correct?

18 A. Correct.

19 Q. Duke Energy Ohio is not proposing,
20 through rider PSR, to displace any of the supply that
21 would be procured through the competitive bidding
22 process for SSO customers, correct?

23 A. Correct.

24 Q. Duke Energy Ohio is not proposing to
25 offer the energy and capacity associated with its 9

1 percent contractual entitlement in OVEC to CRES
2 providers for purposes of their competitive offers,
3 correct?

4 A. That's my understanding, yes.

5 Q. And rider PSR is not proposed -- strike
6 that.

7 Rider PSR is not a proposal intended to
8 provide generation service to retail customers in
9 Duke Energy Ohio's service territory, correct?

10 A. Correct.

11 Q. To your knowledge, sir, have the
12 OVEC-owned generating assets ever been included
13 in Duke Energy Ohio's rate base?

14 A. To my knowledge, I don't believe they
15 have.

16 Q. And, sir, the OVEC-owned generating
17 assets have not been used to directly serve Duke
18 Energy Ohio's retail customers, correct?

19 A. I am not aware of whether they have been
20 directly used to serve Duke Energy Ohio's retail
21 customers.

22 Q. And because you're not aware, you can't
23 dispute one way or another whether they may have --
24 may not have been, correct?

25 A. Correct.

1 Q. Mr. Higgins, if we could refer to your
2 testimony, please. Do you have that handy?

3 A. I do.

4 Q. Page 5, if I may.

5 A. Okay.

6 Q. And on page 5, line 19, you make a
7 reference to "Duke's legacy generation costs,"
8 correct? Do you see that reference?

9 A. I do.

10 Q. And when you reference "legacy generation
11 costs," you're simply referring to the OVEC contract
12 as a contract that Duke Energy Ohio has had for a
13 while, and a contract pursuant to which it has both
14 obligations and entitlements, correct?

15 A. Yes.

16 Q. Mr. Higgins, Duke Energy Ohio is not
17 providing competitive generation service directly to
18 retail customers under its current ESP, correct?

19 A. Correct.

20 Q. We use a competitive bidding process for
21 purposes of procuring supply for SSO customers,
22 correct?

23 A. Yes.

24 Q. And that proposal to use a competitive
25 bidding process plan to procure supply for SSO

1 customers is being renewed in the context of this ESP
2 application, correct?

3 A. Yes.

4 Q. With respect to the company's proposed
5 rider PSR, you have recommended that the Commission
6 reject that proposal for two reasons, correct?

7 A. Yes.

8 Q. And the one reason on which you base your
9 opinion is that you believe rider PSR is seeking some
10 variant of transition charges, correct?

11 A. Yes.

12 Q. And your other bases, sir, is that you
13 believe rider PSR is not a good deal for customers,
14 correct?

15 A. Correct.

16 Q. And those are the only reasons,
17 Mr. Higgins, that you have offered for purposes of
18 your recommendation that the Commission reject the
19 company's proposed rider PSR, correct?

20 A. Yes.

21 Q. Now, with regard to your opinion
22 concerning transition charges, you have relied upon
23 certain provisions of Ohio Revised Code, correct?

24 A. Yes.

25 Q. And those, sir, are the provision that

1 you mentioned to me earlier this morning, Ohio
2 Revised Code Section 4928.31 through 4928.40,
3 correct?

4 A. Yes.

5 Q. And the definition of "transition
6 charges" within those statutory provisions were what
7 you relied upon to form your opinions in this case,
8 correct?

9 A. Well, I would add that, yes, I certainly
10 relied upon that definition, but I also used my
11 experience in this industry and my knowledge and
12 understanding of what "stranded costs" mean and what
13 they are, and so -- but, certainly, it's grounded in
14 the statute.

15 Q. Okay. And let's talk a little bit about
16 your experience, particularly in respect of Ohio
17 regulatory proceedings. You're aware that the Ohio
18 Commission has found that stabilization charges under
19 an ESP are not transition revenues, correct?

20 A. Under certain conditions, correct.

21 Q. And you are aware that the Ohio
22 Commission has found that a cost-based capacity
23 charge is not an impermissible transition charge
24 under Ohio law, correct?

25 A. That's my understanding, yes.

1 Q. Mr. Higgins, would you agree with me that
2 the company's proposed rider PSR will not change the
3 compensation that is provided to OVEC under the
4 Intercompany Power Agreement?

5 A. I would agree with that.

6 Q. Your second bases concerning rider PSR
7 concerns customer impact, and, sir, you have not
8 performed an independent analysis of Duke Energy
9 Ohio's contractual entitlement in the OVEC-owned
10 assets, have you?

11 A. No. I've relied on the information that
12 Duke has provided in discovery.

13 Q. And that information, sir, is what you
14 have referenced as the response to an OEG data
15 request, correct?

16 A. Yes.

17 Q. And that two-page document is now part of
18 a larger series of pages that has been identified
19 during your examination this morning as OCC Exhibit
20 4a, correct?

21 A. Correct.

22 Q. Sir, you have not received any updated
23 financial information in connection with the
24 operation of the OVEC-owned generating units, have
25 you?

1 A. No.

2 Q. And, sir, for purposes of your work in
3 this case, you have not performed an independent
4 analysis of future wholesale energy prices, have you?

5 A. I did not.

6 Q. And, sir, you also, for purposes of this
7 case, did not perform an independent analysis of
8 future wholesale capacity prices, correct?

9 A. Correct. I mean, I'm aware that a
10 certain portion of future capacity prices in PJM are
11 known today. But I did not conduct an independent
12 analysis of what those capacity prices might be after
13 that time.

14 Q. Sure. And you are certainly familiar
15 with the workings of the PJM market, correct?

16 A. Yes.

17 Q. And you are aware -- strike that.

18 With respect to known capacity prices,
19 PJM conducts base residual auctions on a three -- a
20 three-year forward basis, correct?

21 A. Yes.

22 Q. So an auction that was conducted in May
23 of 2014 would have been for capacity for the
24 2017-2018 PJM planning year, correct?

25 A. Yes.

1 Q. And those -- are those the published
2 prices to which you're referring, sir?

3 A. Yes.

4 Q. And you are aware that there is activity
5 underway at PJM concerning the PJM capacity market,
6 correct?

7 A. I'm aware that there is activity, yes.

8 Q. And are you aware that PJM is reviewing
9 a -- a capacity performance proposal?

10 A. I've heard talk of that. I haven't
11 looked at that discussion carefully.

12 Q. Okay. Would you agree with me though,
13 Mr. Higgins, that wholesale energy and capacity
14 prices have been volatile?

15 A. Over the years there certainly has been,
16 you know, some volatility in those prices. You know,
17 there are periods where prices appear to be stable
18 for a while, and then it's fluctuated from time to
19 time where with a price spike that later corrects.

20 Q. And you would have no reason to think
21 that that trend would go away or that volatility in
22 the wholesale prices would be eliminated in the
23 future, do you?

24 A. I'm not expecting that volatility would
25 be eliminated in the future.

1 Q. Sir, on page 7 of your testimony, there
2 is a question and answer that begins on line 4 and
3 that references proposed environmental -- that
4 discussion references "proposed environmental
5 rulemaking," correct?

6 A. Yes.

7 Q. And you believe that the proposed
8 environmental regulations could increase the cost of
9 the OVEC-owned generating assets, correct?

10 A. I believe so, and I believe that, you
11 know, the company, itself, referenced the potential
12 risks and costs of future environmental actions.

13 Q. Sir, you are not familiar with the
14 current environmental controls in place at the
15 OVEC-owned generating assets, are you?

16 A. No.

17 Q. And, sir, you cannot dispute that OVEC
18 anticipates that the pollution control systems
19 installed at its plants are expected to meet the
20 emission limitations under MATS, can you?

21 A. No.

22 Q. You have not performed, for purposes of
23 your work in this case, any analysis as to the impact
24 of future environmental regulations on the wholesale
25 prices for energy or capacity, have you?

1 A. That's correct.

2 Q. And, sir, you would agree with me that
3 there is still a great deal of uncertainty with
4 respect to the impact of the proposed 111(d)
5 regulations.

6 A. I agree that there is a great deal of
7 uncertainty with respect to the impact of those
8 regulations; although, I think it's fair to guess
9 that it will likely have a greater impact on coal
10 plants than on other plants.

11 Q. And that would be all coal plants,
12 correct?

13 A. Yes.

14 Q. Mr. Higgins, if more coal plants retire
15 because of environmental regulation, there would be
16 less diversity in the PJM resource mix, correct?

17 A. I agree.

18 Q. And if more coal plants retire because of
19 environmental regulation, there will be more
20 dependence on fewer fuel sources, correct?

21 A. As a general rule, if the plans retire,
22 then you have fewer remaining fuel sources, so I
23 don't disagree with that.

24 Q. Thank you.

25 And fuel diversity provides a hedge

1 against the risk of supply disruption from certain
2 fuel sources, correct?

3 A. I agree.

4 Q. Fuel diversity also provides a hedge
5 against the risk of price spikes from certain
6 specific fuels, correct?

7 A. I agree.

8 Q. And having fuel diversity allows you to
9 try to mitigate the exposure to the risks of supply
10 disruption and price spikes, correct?

11 A. I agree. As with any hedge, one has to
12 ask themselves what they want to pay for that hedge,
13 but I don't disagree with the qualitative with what
14 you just said.

15 Q. Sir, with respect to your recommendation
16 that rider PSR be bypassable if approved, do you
17 believe that a bypassable rider PSR could influence
18 customers' participation in retail choice?

19 A. The -- I suppose that to the extent that
20 it's a charge, which it looks like it would be for
21 some time, that could influence customers' decisions,
22 but to the extent that customers believe that it's
23 going to provide a hedge or a benefit over the long
24 term, it could also influence them not to shop, I
25 suppose. So I guess -- it might have an influence,

1 but it could cut either way, I suppose.

2 Q. Thank you.

3 And you're generally aware of the level
4 of shopping activity in the company's service
5 territory, correct?

6 A. Generally, yes.

7 Q. And, in fact, you would describe retail
8 choice as quite widespread in Duke Energy Ohio's
9 service territory, correct?

10 A. Yes.

11 Q. And retail customers, in the company's
12 service territory, have the ability to shop, correct?

13 A. Yes.

14 Q. And, in fact, you believe, as a general
15 proposition, customers remaining on the SSO have
16 affirmatively decided to do so, correct?

17 A. As a general proposition, yes.

18 Q. With respect to your recommendations
19 concerning the allocations under rider PSR, are those
20 predicated upon the principles of cost causation?

21 A. Yes.

22 Q. And do you believe that cost causation is
23 an appropriate principle within the context of a
24 deregulated generation market?

25 A. If you're going to be assigning customers

1 responsibility for a cost which is a Duke Ohio cost,
2 yes. Of course, you recognize that my recommendation
3 is not to assign that cost responsibility to
4 customers in the first instance.

5 However, if the Commission elects to
6 assign that cost responsibility, then I think it
7 ought to follow the principles of cost causation.

8 Q. An accepted principle within the
9 regulatory environment here in Ohio, correct?

10 A. Yes.

11 Q. Thank you.

12 And you would agree with me, Mr. Higgins,
13 an Ohio electric distribution utility is entitled to
14 recover for its capital investments, correct?

15 A. Entitled to an opportunity to recover its
16 costs and its investment cost, yes.

17 Q. And you have referenced the AEP
18 distribution investment rider, and you reviewed that,
19 sir, for purposes of forming your opinions in this
20 case, correct?

21 A. Yes.

22 Q. And based upon what is occurring in the
23 AEP distribution investment rider, do you believe
24 that the company's proposed rider DCI should be
25 allocated using an equal percentage approach,

1 correct?

2 A. Yes.

3 Q. And for clarification, sir, is the equal
4 percentage applicable to base distribution -- base
5 distribution rates under your recommendation?

6 A. Yes.

7 Q. And having reviewed the AEP Ohio
8 distribution investment rider, would you agree that
9 that rider does not include O&M savings?

10 A. Yes.

11 Q. Yes, you agree it does not include them?

12 A. Yes, I agree.

13 Q. Thank you. Sorry. Poor question.

14 And, Mr. Higgins, you are not
15 recommending in this case that rider DCI be rejected
16 by the Commission, correct?

17 A. Correct.

18 Q. You are certainly familiar, in your
19 experience, with forecasts, correct?

20 A. Yes.

21 Q. And you would agree with me that we don't
22 know the accuracy of a forecast until the events
23 reflected in that forecast actually occur, correct?

24 A. In general, yes.

25 Q. Mr. Higgins, would you agree that CRES

1 offers will have, as a basis, wholesale market prices
2 for energy and capacity?

3 A. I wasn't -- I didn't quite follow your
4 question.

5 Q. Sure. With respect to wholesale
6 prices -- I'm sorry, with respect to CRES offers.

7 A. Okay.

8 Q. Do you believe that those would include,
9 as a bases for pricing, wholesale energy and capacity
10 markets?

11 A. Yes.

12 Q. And so, as there are changes in the
13 wholesale prices for capacity and energy, there could
14 be changes in the CRES offers, correct?

15 A. Sure. I would imagine, just to be clear,
16 that customers may enter multi-year contracts and
17 that might insulate them from the frequency of
18 changes in the prices, but, certainly, over time, the
19 offering from CRES providers will reflect the
20 wholesale market conditions and the prospects for it,
21 under which they are operating.

22 Q. And a variable-priced CRES offer, would
23 you expect that to fluctuate with changes in the
24 wholesale market prices?

25 A. In general, if that's the product that a

1 customer has purchased, I would expect that it would
2 move with -- with the market to some degree, yes.

3 Q. The company's rider PSR is proposed to
4 extend beyond the term of this ESP, correct?

5 A. Yes.

6 Q. And you are aware, sir, that the
7 company's contractual entitlement in OVEC is
8 currently expected to last through calendar --
9 through June of 2040, correct?

10 A. Yes.

11 Q. And so, the information that you've
12 reviewed in terms of rider PSR includes information
13 beyond the term of the ESP, correct?

14 A. Yes.

15 Q. And, sir, trying to stay away from
16 confidential information, the -- the exhibit that you
17 have before you, OCC Exhibit 4a, on the "Cash Flow"
18 line, there are changes reflected in '19 -- beginning
19 in calendar year 2019 as opposed to the four prior
20 calendar years, correct?

21 A. That is correct.

22 MS. SPILLER: One moment, please, your
23 Honor.

24 Nothing further, Mr. Higgins. Thank you.

25 THE WITNESS: Thank you, Ms. Spiller.

1 EXAMINER PIRIK: Staff?

2 MR. LINDGREN: No questions, your Honor.

3 EXAMINER PIRIK: Kroger?

4 MS. HUSSEY: Could we have just 5
5 minutes, your Honor?

6 EXAMINER PIRIK: Yes.

7 MS. HUSSEY: Thank you.

8 (Recess taken.)

9 EXAMINER PIRIK: Go back on the record.

10 MS. HUSSEY: Thank you, your Honor.

11 - - -

12 REDIRECT EXAMINATION

13 By Ms. Hussey:

14 Q. Just a few questions for you,
15 Mr. Higgins. Ms. Spiller referenced Kroger's
16 participation in Case No. 11-3549-EL-SSO?

17 A. Yes.

18 Q. And I wondered if your testimony in this
19 particular case conflicts in any way or is consistent
20 with the settlement of the last ESP case.

21 A. No. The settlement in the last ESP case
22 was a comprehensive compromise which Kroger supported
23 and which I recommended adoption of. But nothing in
24 my testimony in this case is inconsistent with my
25 support for that settlement agreement.

1 Q. Thank you.

2 In your discussion with Ms. Spiller, you
3 reference certain conditions under which stability
4 charges have been approved by the Commission?

5 A. Yes.

6 Q. Can you explain that further?

7 A. Yes. I was a participant in the AEP Ohio
8 ESP case in which the Commission did allow an RSR
9 charge to be adopted and -- and despite, for example,
10 my recommendation or my position that it -- that it
11 was transition-based.

12 But, in that case, the Commission in
13 its -- certainly in its order on rehearing drew a
14 clear nexus between AEP Ohio's FRR -- AEP's Ohio
15 status as an FRR entity in PJM, and clearly indicated
16 that because of that, the Commission felt the RSR
17 charge that AEP Ohio had proposed was permissible.
18 And so, that was certainly a condition and a strong
19 nexus that the Commission drew in that case to
20 distinguish what AEP Ohio is asking for from
21 transition revenues.

22 Q. Okay. And do those same conditions apply
23 in this case?

24 A. No. As I understand it, Duke Ohio's
25 status as an FRR entity will end in June, 2015. And

1 so, that clear connection that the Commission had
2 made in the AEP Ohio case does not appear to apply in
3 this case.

4 Q. Thank you.

5 And I would like to refer you to OCC
6 Exhibit 4a as referenced by Ms. Spiller.

7 A. Yes.

8 Q. Without getting into any numbers, she
9 referenced you to the "Cash Flow" line --

10 A. Yes.

11 Q. -- and if there was a change as of 2019.
12 For the term of this ESP, are we looking at a net
13 loss, a net cost to customers, or otherwise?

14 A. Over the term of this ESP, the
15 projections are for a net cost to customers.

16 MS. HUSSEY: Okay. Thank you. No
17 further questions.

18 EXAMINER PIRIK: Mr. Darr?

19 MR. DARR: No redirect -- no recross,
20 your Honor.

21 EXAMINER PIRIK: Ms. Bojko?

22 MS. BOJKO: No, thank you, your Honor.

23 EXAMINER PIRIK: Mr. Serio?

24 MR. SERIO: Thank you, your Honor.

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RECROSS-EXAMINATION

By Mr. Serio:

Q. Mr. Higgins, OCC Exhibit 4a, the "Cash Flow" line.

A. Yes.

Q. Am I correct in assuming that all those numbers are projections?

A. That's my understanding.

Q. Would you agree with me that the further out in time you get, the less reliable projections are?

A. I agree.

MR. SERIO: Thank you.

No more questions, your Honor.

EXAMINER PIRIK: Mr. Mendoza?

MR. MENDOZA: Just two quick questions.

- - -

CROSS-EXAMINATION

By Mr. Mendoza:

Q. I just have two quick questions. I think Ms. Spiller asked you to talk about whether you thought the current controls at these plants were capable of meeting the Mercury Air Toxic Standard regulations that are coming into effect. Do you remember that question?

1 A. I --

2 MS. SPILLER: Objection, excuse me,
3 Mr. Higgins, your Honor. This is outside the scope
4 of redirect. Ms. Hussey did not ask any questions
5 about environmental controls.

6 EXAMINER PIRIK: Mr. Mendoza.

7 MR. MENDOZA: I was just responding to
8 the question Ms. Spiller asked.

9 EXAMINER PIRIK: But this is recross, so
10 you'll have to limit your questions to that.

11 MR. MENDOZA: Okay. Then I'll raise this
12 at another time then. Thank you.

13 EXAMINER PIRIK: Thank you.

14 Ms. Kyler?

15 MS. KYLER COHN: No questions.

16 EXAMINER PIRIK: Mr. Oliker?

17 MR. OLIKER: No questions, your Honor.

18 EXAMINER PIRIK: Ms. Petrucci?

19 MS. PETRUCCI: No questions.

20 EXAMINER PIRIK: Mr. Hart?

21 MR. HART: No questions.

22 EXAMINER PIRIK: Ms. Spiller?

23 MS. SPILLER: Thank you, your Honor.

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RECROSS-EXAMINATION

By Ms. Spiller:

Q. Is the Dayton Power and Light Company an FRR entity?

A. I don't recall.

Q. And the Dayton Power and Light Company has received stability charges under an ESP proceeding, correct?

A. Correct.

Q. And, sir, you would agree with me that Revised Code Section 49 -- strike that.

Do you know whether the ESP provisions of the Ohio Revised Code at all tie the receipt of stability charges to an electric distribution utility company's status as an FRR entity?

A. The Code does not.

MS. SPILLER: Thank you, sir.

Nothing further.

EXAMINER PIRIK: Staff?

MR. BEELER: Nothing, your Honor. Thank you.

EXAMINER PIRIK: Thank you, Mr. Higgins.

THE WITNESS: Thank you, your Honor.

MS. HUSSEY: Your Honor, I would like to move for admission of Kroger Exhibit 1.

1 EXAMINER PIRIK: Are there any objections
2 to Kroger Exhibit 1?

3 MS. SPILLER: No, your Honor.

4 EXAMINER PIRIK: It will be admitted into
5 the record.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 MR. SERIO: Your Honor, OCC would move
8 Exhibits 4 and 4a into the record pending our getting
9 a clear answer from the company that we've redacted
10 the documents properly.

11 EXAMINER PIRIK: And we will resolve that
12 first thing in the morning. Are there any objections
13 to OCC Exhibits 4 and 4a?

14 MS. SPILLER: No, your Honor.

15 EXAMINER PIRIK: Hearing none, they will
16 be admitted into the record, subject to further
17 review of the protected piece of 4a.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 EXAMINER PIRIK: It's our intent to start
20 Mr. Brodt for approximately a half-hour and then
21 proceed from there. So if we want to just take a
22 couple minutes to shift positions, then we'll get
23 started.

24 (Discussion off the record.)

25 EXAMINER PIRIK: We'll go back on the

1 record. We had discussions off the record with
2 regard to how OCC will be calling this witness,
3 Mr. Brodt, which has not -- he has not been
4 introduced as of yet.

5 Based on -- I think that we need to have
6 the arguments on the record, and I think OCC needs to
7 state their preference as to how they wish to call
8 this witness. I understand what Ms. Spiller's
9 saying, but I think we need to have those arguments
10 on the record.

11 So, I guess, first, we would look to OCC
12 of the intent of how you intended on calling this
13 witness on subpoena.

14 MR. BERGER: Yes, your Honor. It was our
15 intent -- I'm sorry. It was our intent to call
16 Mr. Brodt in our direct case, but as on cross,
17 because he is a hostile witness, in our viewpoint,
18 not that he has tremendous hostility toward us, but
19 just that his position as -- as the Chief Financial
20 Officer of a company that is affiliated, has
21 9 percent -- that is owned 9 percent by the applicant
22 in this case, creates an adverse relationship between
23 our -- between the Office of the Ohio Consumers'
24 Counsel, which is seeking to protect the consumers
25 from charges that we believe -- are from a proposal

1 in this case that we believe would be adverse to our
2 interests and that would sustain the operations of
3 OVEC through the year 2040.

4 So, yes, we do believe our interests are
5 hostile; and, therefore, we would seek to treat him
6 as on cross even though it's -- we are presenting him
7 as a witness. Thank you.

8 EXAMINER PIRIK: Is there any intervenors
9 before I call on Duke for a response?

10 Mr. Oliker.

11 MR. OLIKER: IGS would support the
12 comments of the OCC and agree that because he is
13 employed by a company that has an affiliate
14 relationship with Duke Energy Ohio, it would be
15 appropriate to treat him as adverse, not that he is a
16 typically adverse person; but, understanding his
17 relationship to Duke Energy Ohio, it would be
18 appropriate in these circumstances.

19 EXAMINER PIRIK: Thank you.

20 Anything else?

21 MS. BOJKO: We concur, your Honor.

22 EXAMINER PIRIK: Ms. Spiller.

23 MS. SPILLER: Thank you, your Honor. The
24 OCC has acknowledged that they are calling Mr. Brodt
25 as if on direct examination. So I believe the

1 outstanding question is whether or not the OCC, as an
2 initial matter, should be allowed to lead Mr. Brodt.
3 Ordinarily, leading questions are permitted only on
4 cross-examination. However, they may be allowed in
5 other circumstances where there's been a
6 demonstration that the witness is an adverse party or
7 is hostile. And, here, we have not seen any of that
8 yet established with this particular witness.

9 There have been allegations by IGS
10 counsel as well as OCC counsel that somehow OVEC is a
11 legally -- a legal affiliate of Duke Energy Ohio and,
12 therefore, is adverse to all of the intervenors in
13 this proceeding.

14 There has been no demonstration
15 whatsoever in the record, yet to date, that Duke
16 Energy Ohio and the Ohio Valley Electric
17 Corporation -- Ohio Valley Electric Corporation are
18 affiliates as that term is defined under the law.
19 There are assumptions that somehow 9 percent of a
20 corporation equates to control and that simply is not
21 true. It has not been established through any
22 witness yet in this proceeding.

23 So I believe that until the OCC lays the
24 appropriate foundation, they should not be permitted
25 to lead Mr. Brodt during their direct examination of

1 him.

2 MR. OLIKER: May I respond briefly, your
3 Honor? There has been evidence that was presented
4 that Duke Energy Ohio has a vote in the governance of
5 OVEC; and, as an employee of OVEC, Duke, therefore,
6 has the ability to influence decisions regarding his
7 ongoing employment, salary, other aspects of his
8 employment. So I think that you can see a nexus
9 between their ability to influence Mr. Brodt based on
10 their ownership.

11 MS. BOJKO: Your Honor, I would just add
12 that I think Ms. Spiller misstated our day of hearing
13 yesterday. There was quite a bit of testimony that
14 Duke has presented in its corporate separation plan
15 that OVEC is, in fact, an affiliate. That came out
16 yesterday and was discussed at great length.

17 So I don't think the company can now have
18 it both ways and say that they are not an affiliate;
19 and, if they are claiming that, then the approval of
20 the company's corporate separation plan that was
21 based on the corporate separation plan and the
22 attachments thereto are erroneous in that the opinion
23 and order was based on false assumptions and false
24 documents made by the company. So I don't think the
25 company can have it both ways.

1 EXAMINER PIRIK: After hearing the
2 arguments on behalf of the parties, we do understand
3 that there needs to be some foundation for allowing
4 OCC to move forward as on cross. We do think that
5 information that was in the record as of yesterday
6 provides sufficient foundation to allow more leeway
7 with OCC in their questioning of the witness and
8 questions being presented as on cross. So we will
9 allow OCC to call this witness as on cross.

10 MR. BERGER: Thank you, your Honor.

11 EXAMINER PIRIK: Understanding they are a
12 subpoenaed witness.

13 MR. BERGER: Thank you, your Honor.

14 MS. BOJKO: And, your Honor, may I seek a
15 clarification? In light of your past rulings and
16 order of cross-examination, would it be appropriate
17 to have the companies go forward first as to prohibit
18 or preclude friendly cross?

19 MS. SPILLER: I'm sorry, have who go
20 first?

21 MS. BOJKO: I said "companies" plural
22 because we were doing multiple companies the last
23 week. I see no -- I don't see AEP here or Dayton
24 here today, but that's how we had discussed it
25 previously.

1 MS. SPILLER: But, your Honor, I would
2 think if we are worried about friendly cross, it is
3 the intervenors who need to go first. They are all
4 aligned in respect to their position regarding the
5 PSR. They are now all aligned in respect of an
6 affiliate as defined under the law. They are all
7 aligned with respect to the value of rider PSR and
8 their interpretation of it. So if there is any
9 alignment, it is between the intervenors in this case
10 and that's where the threat for friendly
11 cross-examination exists.

12 And, Mr. Brodt, I would further note is a
13 subpoenaed witness. He has not offered any direct
14 testimony in this case, and friendly
15 cross-examination typically is used in those
16 circumstances where someone is trying to prop up the
17 testimony of someone with whom they are similarly
18 situated. So I think here it's the intervenors who
19 should go first.

20 MS. BOJKO: Your Honor, may -- the
21 determination is with the witness itself, not with
22 the alignment of the parties; it's with the witness.
23 So if the company has alignments with the witness and
24 would use cross in a way that would bolster his
25 arguments and the arguments that would be more

1 favorable to the company, that's the determination of
2 friendly cross, not whether other people agree or
3 disagree with cross-examination of the witnesses.
4 It's what that witness is responsible for.

5 EXAMINER PIRIK: I think what we will do
6 is we will go ahead and let OCC get started and then,
7 before we go into cross-examination, we will make
8 a -- the determination at that point in time.

9 MR. BERGER: Thank you, your Honor. Has
10 the witness been sworn?

11 EXAMINER PIRIK: No, he hasn't.

12 (Witness sworn.)

13 EXAMINER PIRIK: Thank you.

14 - - -

15 JOHN D. BRODT
16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 CROSS-EXAMINATION

19 By Mr. Berger:

20 Q. Good afternoon, Mr. Brodt. It's nice to
21 see you again.

22 A. Thank you.

23 Q. And we will try to keep this as friendly
24 as possible.

25 Mr. Brodt, I think you're the Chief

1 Financial Officer of Ohio Valley Electric
2 Corporation; is that right?

3 A. That's correct.

4 Q. And how long have you been in that
5 position?

6 A. I've been Chief Financial Officer since
7 1988.

8 Q. And you've worked for OVEC for ten years
9 longer than that, right?

10 A. Yes.

11 Q. Your background, your professional
12 background is what?

13 A. I have a Bachelor of business degree from
14 Eastern Kentucky University with a focus in
15 accounting.

16 Q. But you are not a certified financial
17 accountant; is that right?

18 A. That's correct.

19 Q. And would you describe your
20 responsibilities in your position as Chief Financial
21 Officer?

22 A. Yes. I have organizations underneath me
23 that provide such functions as budgeting, finance,
24 accounts payables, information services, office
25 services, and taxes and insurance.

1 Q. And are you familiar with this -- with
2 this proceeding at all?

3 A. Not -- not very much, no.

4 Q. Okay. Are you familiar with Duke's
5 proposal in this case for a price stabilization
6 rider?

7 A. I really do not have much knowledge of
8 that.

9 Q. Okay. But you're aware that the Public
10 Utilities Commission of Ohio has directed the
11 publicly-regulated electric utilities to divest their
12 generation assets in Ohio. Are you familiar with
13 that?

14 A. Yes, I am.

15 Q. And are you familiar with requests that
16 had been made or efforts that had been -- have been
17 taken to divest the OVEC generating assets of the
18 publicly-regulated electric utilities that own those
19 assets in Ohio?

20 MS. SPILLER: Objection, your Honor. I
21 think we are expanding the scope of this cross to
22 include entities other than the applicant, so this
23 goes beyond the scope of the subpoena that was issued
24 to Mr. Brodt in this case, and it invites irrelevant
25 issues into the -- into the proceeding.

1 EXAMINER PIRIK: I'll allow the question.

2 A. Could you repeat the question?

3 Q. Yes. Are you familiar with the efforts
4 that have been made by several publicly-regulated
5 electric utilities in Ohio to divest their interests
6 in OVEC in accordance with the Commission's
7 directions?

8 A. Yes.

9 Q. Okay. And which -- which entities that
10 you're aware of have attempted to accomplish that
11 objective?

12 MS. SPILLER: Your Honor, excuse me, if I
13 may. I don't know how the Bench would like to handle
14 confidential issues. And I don't know how far down
15 this line of questioning Mr. Berger intends to go, I
16 have an idea, but don't know for certain, but there
17 are activities that occur within OVEC as between and
18 among sponsoring companies or their representatives
19 that are deemed confidential.

20 MR. BERGER: Your Honor, AEP Ohio has
21 made it public by filing their corporate separation
22 proposal that they attempted to divest their -- they
23 requested consent to divest their OVEC assets.

24 I don't know if Duke is saying here --
25 or, Ms. Spiller is saying whether or not Duke made

1 such a request they consider confidential. She
2 should state that clearly. I don't know if that's
3 something that they are still considering
4 confidential or not.

5 EXAMINER PIRIK: I think that's the
6 question. The question is, one, I think the witness
7 needs to be aware of what is being considered
8 confidential, at least by the company, and I would
9 think he would know what OVEC considers confidential
10 and know that we are in the open record at this point
11 and that at the conclusion of the open record, if
12 there is a need to have additional questioning, we
13 would close the record for confidential discussions.

14 So I think that's really the question
15 that I'm looking to OVEC's counsel as well as Duke
16 and as well as the witness to see -- I mean,
17 obviously a question can be asked, but we need to
18 stop the witness before an answer is given that's
19 going to divulge information.

20 MS. SPILLER: Certainly. And, your
21 Honor, if I may just briefly respond that AEP put
22 this in a public docket is AEP's business. AEP Ohio
23 also included, in their initial request to transfer,
24 not only directly-owned generating assets but PPAs
25 and their contractual entitlement in OVEC. There's

1 no such similarity in that respect as between AEP
2 Ohio and Duke Energy Ohio.

3 Duke Energy Ohio views its handling of a
4 contractual entitlement and any disposition or not of
5 that entitlement to be confidential, and I believe
6 that OVEC, as well, treats conversations among and
7 between their sponsoring companies to be confidential
8 unless there is a result that would require board
9 approval that is ultimately the -- ultimately
10 reflected in their FERC Form 1 filings.

11 EXAMINER PIRIK: So I take that to mean
12 that Duke may consider something confidential that,
13 perhaps, the witness and OVEC do not.

14 MS. SPILLER: I think OVEC and Duke
15 Energy Ohio are aligned. I believe the OCC is
16 looking for publication in respect of Duke's views
17 simply because of an AEP affirmative request to
18 transfer their OVEC entitlement.

19 EXAMINER PIRIK: Okay. I'm not asking
20 the witness to answer questions just because AEP --
21 they may be in the AEP record. I recognize that you
22 allege that certain information is confidential that
23 we may or may not agree with, and it may or may not
24 be consistent with what's determined in the AEP
25 docket.

1 What's important here is that the -- that
2 any question can be asked as long as they don't --
3 you know, OCC knows where the line is when it comes
4 to confidential information in this case. They can
5 ask any question in the open record.

6 What's important to me is that the
7 witness understands where the line has been drawn for
8 purposes of the company alleging confidential
9 information, so that we don't have something
10 accidentally in the open record that we have to
11 redact later.

12 MS. SPILLER: Sure.

13 EXAMINER PIRIK: I don't know, based upon
14 your answer, whether that is true or not, whether --
15 you say that OVEC is in alignment with Duke as far as
16 confidential but, you know, if you think that an
17 answer is going to divulge confidential information,
18 I don't know whether that means you need to have an
19 off-the-record conversation with OVEC's counsel or.

20 MS. SPILLER: And, your Honor, I am just
21 basing on the public and confidential portions of
22 Mr. Brodt's depositions and statements that he made
23 in respect of OVEC and how they view interactions. I
24 will confirm that Duke Energy Ohio views its
25 activities, its decisions with regard to this

1 confidential -- strike that, with this contractual
2 entitlement to be confidential.

3 EXAMINER PIRIK: Let's go off the record
4 for a minute.

5 (Discussion off the record.)

6 EXAMINER PIRIK: Okay. We'll go back on
7 the record. And, just to clarify, we're going to do
8 as much of this in the open record which is where we
9 are right now. We are going to try to align it with
10 the deposition of this witness, and then we will sort
11 out the confidential record once we get to that
12 point. But, right now, we are in the public record,
13 all of this is open, and I am just asking all the
14 parties to be aware of that and ask and answer
15 questions accordingly.

16 Q. (By Mr. Berger) And, Mr. Brodt, you
17 should also, if you believe something crosses the
18 line that I'm asking, you indicate that your answer
19 would reveal confidential information and then we
20 will hold that question -- or, your response to it
21 until the confidential record. Thank you.

22 So, Mr. Brodt, I think in 2013 were --
23 were some companies within OVEC seeking to obtain
24 consent to transfer their interests in accordance
25 with the Ohio Public Utilities Commission of Ohio's

1 directive? Are you familiar with that?

2 A. Yes.

3 Q. Okay. And my understanding is, certainly
4 it's in the public record, that AEP Ohio was one of
5 the companies requesting that, and whether anybody
6 else made that request we're going to treat that as
7 confidential for now. Do you understand that?

8 A. Yes.

9 Q. And were those requests made pursuant to
10 the Amended and Restated Intercompany Power Agreement
11 which is already an exhibit in this proceeding?

12 A. There was discussion about such requests
13 in connection with the Intercompany Power Agreement,
14 yes.

15 Q. Okay. And you're familiar with the
16 process under which a transfer or a sale of assets
17 can be made under section 9.18 of the Intercompany
18 Power Agreement?

19 A. Yes.

20 Q. Can you just describe for me the three
21 different possible routes by which a sponsoring
22 company of OVEC can transfer its interests?

23 A. A sponsoring company can transfer its
24 interests to an affiliate of that company that has
25 the proper credit rating; and a sponsoring company

1 can transfer to a third party after there is a review
2 by the other sponsoring companies; and a sponsoring
3 company can transfer to someone within -- an
4 affiliate that doesn't have the proper credit rating
5 based on approval of all the other companies.

6 Q. And the last one you mentioned is what we
7 typically had referred to in the deposition as the
8 "unanimous consent process" and that's under section
9 9.181 of the agreement; is that right?

10 A. I would have to see the agreement to see
11 the proper reference.

12 MR. BERGER: It's -- your Honor, this is
13 IEU Exhibit 5, and if the court reporter does not
14 have a copy there, we will hand the witness our copy
15 of IEU Exhibit 5. Turning to page -- section 9.18.

16 EXAMINER PIRIK: Yeah. I would ask if
17 parties are going to refer to a document, that you
18 have one available for the witness.

19 MR. SERIO: There was a whole set -- can
20 I approach, your Honor?

21 EXAMINER PIRIK: Yes. We are talking
22 about IEU Exhibit 5?

23 MR. BERGER: Yes, your Honor.

24 Do you have that, your Honor?

25 EXAMINER PIRIK: Yes, we have it.

1 MR. BERGER: Okay.

2 Q. (By Mr. Berger) Mr. Brodt, on section
3 9.181, that is the unanimous consent provision?

4 A. Yes, it is.

5 Q. And can you just basically describe for
6 me the process that would typically be utilized for
7 attempting to transfer an asset through a unanimous
8 consent? What would be the process that the
9 sponsoring companies in OVEC would be involved in?

10 A. The process would essentially be with the
11 sponsoring companies themselves with some
12 notification to OVEC that this process was taking
13 place and that they are seeking an agreement among
14 the sponsoring companies to enable the transfer.

15 Q. Okay. And for purposes of the public
16 record, I am going to refer to the AEP process
17 because it was public -- I believe it's considered
18 public. For purposes of AEP, when was that -- when
19 did that process begin?

20 MS. SPILLER: Objection, your Honor, to
21 the relevance. AEP is not the applicant in this
22 proceeding so what they may or may not have done with
23 respect to their OVEC entitlement is not relevant.

24 EXAMINER PIRIK: Mr. Berger.

25 MR. BERGER: Your Honor, I am just trying

1 to provide, on the public record, an explanation of
2 the process using a company that has acknowledged
3 that process occurred, publicly. And, I mean, I can
4 do this on the confidential record, but it is a
5 public process that AEP has described in its
6 corporate separation application.

7 MS. BOJKO: Your Honor, if I may be
8 heard? I disagree with the relevance argument of
9 Ms. Spiller. I think that we've used, throughout the
10 last week, examples of many of the Ohio utilities,
11 and we also discussed this in detail, I believe with
12 Mr. Wathen, about how the different utilities do
13 things in different manners. So -- and what is
14 required or not required under the law, which was a
15 direct part of Mr. Wathen's testimony and this is why
16 I asked him specific questions regarding his
17 testimony with regard to the request for transfer and
18 his interpretation of Ohio law.

19 And we talked about the other parties and
20 how they may have -- may or may not have reacted to
21 Ohio law as being very relevant to this proceeding.
22 And, Ms. Spiller, just this morning referenced DP&L's
23 FRR and AEP's last ESP, so I think that it is
24 relevant.

25 MS. SPILLER: Your Honor, if I may

1 briefly, the distinction and, as Ms. Bojko noted, is
2 what's required under the law. There's no
3 requirement under the law that's been demonstrated
4 with any witness that Duke Energy Ohio was obligated
5 to transfer a contractual interest in OVEC. There's
6 an assumption and the intervenors want to create that
7 assumption. They want to misread the prior ESP
8 stipulation. But there is no requirement under the
9 law.

10 The references to other utilities and
11 Commission decisions in respect of those other
12 utilities concern outcomes that are provided for
13 under the law. There's no such showing here and I
14 think a discussion about AEP is irrelevant in
15 connection with the transfer.

16 EXAMINER PIRIK: The Commission will take
17 the weight into consideration. We'll allow the
18 question and overrule.

19 MR. BERGER: Thank you.

20 Q. (By Mr. Berger) You just described,
21 Mr. Brodt, the process that was utilized with respect
22 to the AEP request to -- or, efforts to transfer
23 their interests in OVEC to its unregulated affiliate.

24 A. Just let me say OVEC is a private company
25 and we do consider our communications to our owners

1 and our -- the parties to the Intercompany Power
2 Agreement to be confidential, and I understand you're
3 telling me that this was divulged in another case,
4 that's why I'm responding.

5 Q. Thank you.

6 A. Could you ask the question again? I'm
7 sorry.

8 Q. Yeah. I just want you to describe the
9 process through which AEP's efforts to obtain consent
10 from the other sponsoring companies and to have that
11 approved at OVEC occurred.

12 A. The process began about a year in advance
13 and there was communication among the sponsoring
14 companies to determine a method to --

15 EXAMINER PIRIK: Mr. Brodt, could you
16 turn the microphone a little closer. I'm kind of
17 having a hard time hearing. I don't know.

18 THE WITNESS: Okay. Is that better?

19 EXAMINER PIRIK: That's better.

20 A. Okay. Like I say, the process started
21 about a year before AEP was considering doing the
22 transfer. There was communication among the
23 sponsoring companies as to the method to be used to
24 do the transfer, possible methods to be used to do
25 the transfer, and communication -- they communicated

1 that information to OVEC.

2 Q. And was there a board meeting initially
3 to set up a committee to consider these requests?

4 A. Yes. At one of our annual board meetings
5 there was a request to set up a subcommittee to
6 review this process since there were multiple --
7 multiple companies that may be impacted, and there
8 was a subcommittee that was formed with -- of the
9 sponsoring companies and that's where these
10 discussions took place.

11 Q. And that was the board meeting in
12 December of 2012; is that correct?

13 A. That's correct.

14 Q. And was -- was Mr. -- tell me, I'm
15 assuming, who was -- who took charge of those -- of
16 that subcommittee that you just referenced? And,
17 again, if you think I'm going over the line of
18 confidential information, let me know. Some of these
19 questions were not in the public record. They
20 weren't discussed at the time. More information has
21 come out since the deposition, as you know.

22 A. Yeah. I would think that would be
23 considered private information at this point.

24 Q. Okay. Then I will hold it for that
25 portion of the record.

1 Did the -- and I think on the public
2 record of your deposition you acknowledged that there
3 were two requests of -- of OVEC-sponsoring companies
4 to transfer their interests. Did those requests ever
5 end up with OVEC's -- with the OVEC's board ever
6 having to consider those?

7 MS. SPILLER: Your Honor, I am going to
8 object to the form of the question. Mr. Berger is
9 referring to statements made in the deposition.
10 That's an entirely improper use of Mr. Brodt's
11 deposition. If this witness is asked a question
12 today similar to what he was asked previously and
13 provides a different answer, the deposition can be
14 used at that point, but to set up a question by
15 saying "remember in your deposition" or "we stated in
16 your deposition," is just an improper use of that
17 deposition. So I would ask that Mr. Berger revise
18 his questions accordingly.

19 EXAMINER PIRIK: Mr. Berger, just, could
20 you rephrase your question?

21 MS. SPILLER: Thank you, your Honor.

22 Q. All I did actually was mention that you
23 acknowledged that there were two requests. And my
24 question was, simply, did those requests ever come to
25 the board, to the OVEC board?

1 A. The subcommittee that we mentioned before
2 did meet, and there was a call with the board to
3 divulge the progress that that subcommittee made at
4 that point. And there was -- but there was no
5 request that came to the board.

6 Q. Now, is it your understanding of the
7 process that for the unanimous consent that the board
8 does not actually -- the OVEC does not actually have
9 the say and that it's solely up to the sponsoring
10 companies to proceed with that unanimous consent?

11 A. That is correct.

12 Q. Was there an intermediary at OVEC who --
13 however, who participated in that process?

14 A. Intermediary? I don't understand.

15 Q. There was an OVEC employee or contractor
16 who participated or facilitated the process by which
17 the two -- the two requests or efforts to obtain
18 consent were considered?

19 A. There was someone who was in charge of
20 the subcommittees, yes.

21 Q. Okay.

22 A. If that's your question.

23 Q. Yes. And was that an employee or a
24 contractor of OVEC? I'm not divulging his name, so.

25 A. It was a contractor.

1 Q. Thank you.

2 And did I understand your testimony
3 earlier that there was never any formal board meeting
4 on the requests; although, board participants
5 participated in a call, I think you said?

6 A. There were -- that was a formal board
7 meeting.

8 Q. And when was that formal board meeting?

9 A. I believe it was in July of 2013.

10 Q. So just to be clear, that was a formal
11 board meeting. Were there minutes maintained of that
12 board meeting?

13 A. Yes.

14 Q. Do you know if those minutes were
15 provided to OCC in the discovery responses -- your
16 response to the subpoena?

17 A. The last subpoena?

18 Q. Yes.

19 A. Yes, I believe so.

20 MR. BERGER: Can we go off the record for
21 a minute, or do you want to take a lunch break at
22 this point?

23 EXAMINER PIRIK: Why don't we take our
24 lunch break now and we'll come back at 2 o'clock.

25 (Thereupon, at 12:50 p.m., a lunch recess

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was taken.)

- - -

1 Tuesday Afternoon Session,
2 October 28, 2014.

3 - - -

4 EXAMINER PIRIK: We'll go back on the
5 record.

6 Mr. Berger.

7 MR. BERGER: Thank you, your Honor.

8 - - -

9 JOHN D. BRODT

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

12 CROSS-EXAMINATION (Continued)

13 By Mr. Berger:

14 Q. Good afternoon, Mr. Brodt. Continuing
15 where we left off, you had been talking about the
16 July 16 board meeting, which was a call, as I recall
17 you stating, and you indicated that at that board
18 meeting there was some discussion about how to move
19 forward with the Public Utilities Commission's
20 mandate of divestment of the OVEC generating assets.
21 Do you recall that?

22 MS. SPILLER: I am going to object to the
23 form of the question and the mandate to divest OVEC
24 generating assets.

25 EXAMINER PIRIK: Could you rephrase?

1 Q. The mandate to -- the PUCO's order of
2 corporate separation with respect to R.C. 4928.17 and
3 how that applied to the Ohio regulated utilities. Do
4 you recall our discussion of that?

5 A. Yes, I do.

6 Q. And I don't want to -- I believe the
7 actual contents of the call itself was confidential,
8 so I don't want to get into that at this point. But,
9 at that board meeting, then, I just wanted to discuss
10 with you what process was then implemented to move
11 ahead with those -- with those proposals.

12 A. Okay. The board meeting on -- in July of
13 2013, was a -- a report -- part of the board meeting
14 was a report on the -- the results of the
15 subcommittee.

16 Q. Could you move closer to the micro -- I
17 don't --

18 A. Is that better?

19 Q. No, I can't hear anything. Something is
20 wrong with the microphone.

21 EXAMINER PIRIK: You have to push the
22 button again.

23 A. Sorry. Is that better?

24 Q. Okay. I think it's back on.

25 A. Okay. Yeah, the -- as I said, the board

1 meeting in July, 2013, was a -- in part, a report out
2 to the subcommittee -- or, from the subcommittee to
3 the board on its findings to that point.

4 EXAMINER PIRIK: You know what happens
5 with the microphone, just because they're so
6 sensitive, that if you -- some of us, and I do it
7 too, we like -- I don't want to say "spit," but when
8 we put our P's into the microphone, it stops. I
9 don't know why that is. It's just real sensitive.

10 So, like, if you put it on the side of
11 your mouth like this and you talk, then it's better
12 than if you speak directly into it.

13 THE WITNESS: Okay. Thank you.

14 Q. Again, there was a report out at that
15 meeting and the information that the subcommittee had
16 gathered to that point was reported to the board.

17 The findings were that the parties did
18 not agree with the transfer and there was a letter to
19 be sent out to the sponsoring companies where they
20 would confirm that either they agree or didn't -- or,
21 disagreed with the transfer at that point in time.

22 And then what happens -- what happened
23 subsequent to that meeting in terms of the sponsoring
24 companies, if you have knowledge, of how that was
25 disposed of? Was there a meeting scheduled

1 subsequent to that?

2 A. I do not have any recollection that -- of
3 a meeting. I think the information was that each of
4 the sponsoring companies was to get back to -- their
5 response to that letter and then the decision would
6 be made whether the transfer was going to go forward
7 or not.

8 Q. And that response would be pursuant so
9 section 9.181, the unanimous consent provision? Is
10 that your understanding?

11 A. That's my understanding, yes.

12 Q. To that point in time -- now, let's talk
13 about section 9.182. Are you familiar with that
14 section, the permitted assignee's section?

15 A. Yes.

16 Q. Do you have in front of you the OVEC --
17 that provision?

18 A. Yes, I do.

19 Q. And the permitted assignee's section,
20 does that require -- the definition of "permitted
21 assignee," would that be a party with a certain
22 credit rating? Are you familiar with that?

23 A. Yes.

24 Q. And would it have to be an affiliate
25 of -- of one of the sponsoring companies?

1 A. Yes, it would.

2 Q. Okay. Any other important provisions of
3 the definition of "permitted assignee"?

4 A. No.

5 Q. And is there any requirement that the
6 sponsoring companies consent to the transfer of their
7 interest to a permitted assignee?

8 A. There's a 30-day notice period, but
9 there's no -- they can -- that transfer can take
10 place without sponsoring companies' approval.

11 Q. And do you know what the credit rating
12 required for a permitted assignee is?

13 A. Yes. It's BBB- or Baa3.

14 MR. OLIKER: I'm sorry, could I hear two
15 questions ago and the answer, please?

16 (Record read.)

17 Q. And you just gave us the credit ratings
18 required under the ICPA. Those were Standard &
19 Poor's and Mooney's credit ratings or --

20 A. Yes, they were.

21 Q. Okay. And was any effort, to your
22 knowledge, made to trans -- made by these parties
23 seeking to transfer the assets under section 9.182?

24 A. I think that was discussed in the
25 subcommittee meetings, but I don't know to what

1 extent.

2 Q. Under section 9.182, it says that the --
3 the assignee and the assignor must execute "an
4 assignment agreement in form and substance acceptable
5 to the Corporation and its reasonable discretion...."
6 Are you familiar with that provision of section
7 9.182?

8 A. Yes. That would be the final piece that
9 they would complete and send to us which would
10 indicate to us that the transfer is to take place.

11 Q. And are you aware of whether any of the
12 efforts that were made were designed to determine, by
13 the corporation, what would be an acceptable form of
14 assignment agreement?

15 A. There's a standard form of assignment --
16 form of assignment agreement that is used.

17 Q. Okay. So as far as you -- you are aware,
18 no -- none of the Ohio regulated utilities that were
19 seeking a request -- or, seeking to transfer their
20 assets attempted to utilize this process under
21 section 9.182.

22 MS. SPILLER: Objection to the form of
23 reference to transferring their assets.

24 Q. Transferring their OVEC interest.

25 A. What I'm saying is it never got to the

1 point where that form was submitted which would be
2 the end of the process.

3 Q. I think I'll have to save the remaining
4 questions about that for the confidential record.

5 Now, Mr. Brodt, this wasn't the first
6 time where there has been transfer of interests
7 between sponsoring companies or sales of interests to
8 other parties; is that right?

9 A. That's correct.

10 MS. SPILLER: I am going to object to the
11 relevance. We are now talking beyond Ohio
12 distribution utility companies.

13 EXAMINER PIRIK: Overruled.

14 Q. Has OVEC approved transfer requests in
15 the past?

16 A. Yes.

17 Q. And, in fact, there's been three, I
18 believe, that you've testified have been approved
19 since the year 2000; is that correct?

20 A. That's correct.

21 Q. Did OVEC allow the transfer of interests
22 to Buckeye Power, Wolverine Power, and FirstEnergy
23 Solutions since then, since 2000?

24 A. Yes.

25 Q. Do you know specifically when those

1 transfers occurred?

2 A. My -- I do not recall the exact year.

3 Q. Okay. And what party transferred their
4 interests to Buckeye and Wolverine Power?

5 A. FirstEnergy who owned -- who now owns
6 Allegheny Power. Allegheny Power was the first
7 transfer to Buckeye. FirstEnergy also transferred
8 some interest to Buckeye independently of that. And
9 FirstEnergy transferred part of their interest to
10 Wolverine.

11 Q. And did Allegheny Power also transfer
12 interests to FirstEnergy Generation before the FES
13 transaction? Wasn't there a transfer in 2005, on or
14 about that time?

15 A. Yes. FirstEnergy trans -- yes, that's
16 correct, FirstEnergy transferred to FirstEnergy
17 Generation Corporation in 2005.

18 Q. And that was part of its divestiture of
19 its assets.

20 A. I believe so.

21 Q. Okay. And then just this -- I believe it
22 was this past year that FirstEnergy Generation
23 transferred part of its interests to FirstEnergy
24 Solutions; is that correct?

25 A. That's correct.

1 Q. And was that a transfer, the FES
2 transfer, was that under section 9.182, to the best
3 of your recollection?

4 A. Yes, it was.

5 Q. FES had the appropriate credit
6 required -- credit rating required by this provision;
7 is that correct?

8 A. That's correct.

9 Q. Do you know what that credit rating was
10 at the time?

11 A. I believe it was BBB-.

12 Q. Now, my understanding is that OVEC
13 prepares one-year and five-year budgets and does
14 forecasts of its costs as well as revenues beyond
15 that period of time; is that correct?

16 A. That's correct.

17 Q. And would you agree with me that the
18 forecast beyond the five-year period, you would not
19 consider to be very reliable?

20 A. That's correct.

21 Q. OVEC's budgets are adjusted monthly; is
22 that correct?

23 A. That's correct.

24 Q. And significant changes can happen within
25 a year in terms of an OVEC budget; is that correct?

1 A. It's possible, yes.

2 Q. Now, OVEC used to exist for the purpose
3 of serving the Portsmouth facility owned by the
4 Department of Energy; is that correct?

5 A. That's correct. That's the reason it was
6 formed.

7 Q. And then that changed in 2003 at the end
8 of the contract with DOE; is that correct?

9 A. We quit doing business with the
10 Department of Energy in -- in the business of
11 supplying power to them in 2003, yes.

12 Q. But OVEC continues to act as an
13 intermediary, with DOE providing -- providing a
14 service in terms of marketing service, I guess, for
15 DOE's power for that facility; is that correct?

16 A. OVEC provides arranged power for the
17 Department of Energy at that location and that energy
18 is from a third party. It does not come from our
19 generation.

20 Q. Is OVEC prohibited, by the ICPA, from
21 selling energy to any entity or person other than the
22 sponsoring companies?

23 A. Yes.

24 Q. Now, in performing its assessment of --
25 in developing its budget, and I don't know if you saw

1 the document that was marked earlier as OCC Exhibit
2 4 -- 4a? Do we have that?

3 MR. BERGER: Can you provide --

4 THE WITNESS: I don't have that, no.

5 MR. BERGER: You don't have that there.
6 That's all right. I have copies.

7 EXAMINER PIRIK: Do you have copies of
8 the version that shows what's confidential? I mean
9 we have extra copies up here. Since we're not
10 really -- don't really have the actual version.

11 MR. SERIO: We haven't redacted it yet.

12 MR. BERGER: Right. He obviously can see
13 the information since it's his -- well, I am talking
14 -- I want to talk to him about the last two pages
15 which are the OVEC information, your Honor, and I do
16 have other copies of that document, just not with the
17 markings on it. But I thought we could use the one
18 that's already here.

19 Q. (By Mr. Berger) Now, you have what's
20 indicated to be the 12-11-13 version of the ICPA
21 budget before you called the "Billable Cost Summary";
22 is that correct? Calendar years 2014 through 2040?
23 Is that -- or is this a different document?

24 MS. SPILLER: Mr. Berger, I believe this
25 document does not go through that extended period.

1 MR. BERGER: Your Honor, should I refrain
2 from marking any exhibit that would be confidential
3 on this portion of the record? I would like to talk
4 to him about the general framework of the exhibit
5 which I think I can -- actually, I can do that by
6 referencing the document he has. But I'm just
7 wondering if there would be a problem marking an
8 exhibit on the public record.

9 EXAMINER PIRIK: No. Actually, that
10 would be on the public record anyway. I mean, it
11 would eventually end up on there, as long as you are
12 not using any confidential information to reference
13 the document.

14 MR. BERGER: Okay. Let's mark this
15 exhibit which is the full projection through 2040.

16 MR. SERIO: May I approach, your Honor?

17 EXAMINER PIRIK: Yes.

18 MR. SERIO: OCC Exhibit 5.

19 EXAMINER PIRIK: Our understanding is
20 this document, which OCC has been asked to be marked
21 as OCC Exhibit 5, contains confidential information,
22 alleged confidential information by the company. We
23 would ask, then, that the company mark out those
24 items which you view as confidential. Looking at the
25 document, are you able to do that now based upon what

1 our previous ruling was?

2 MS. SPILLER: Your Honor, just one
3 clarification. This is a document that was produced
4 by OVEC in response to a subpoena. It was provided
5 to certain parties in the case pursuant to a
6 confidentiality agreement as between OVEC and those
7 parties with whom they've entered into a
8 confidentiality agreement as indicated by the Bates
9 number in the bottom right of the page.

10 I can certainly speak, for purposes of
11 Duke Energy Ohio's perspective, that we, in fact,
12 treat this information as confidential. It is
13 forecasted information for calendar years 2014
14 through 2040, derived with analyses prepared and
15 completed by OVEC. So we have treated this
16 information as confidential. It was provided to Duke
17 Energy Ohio as a sponsoring company, but within the
18 purview of that relationship only, and we've taken
19 care, upon receipt, to keep it confidential.

20 EXAMINER PIRIK: So what you're saying
21 is, with regard to the confidentiality issue, we
22 would need to turn to OVEC's counsel to delineate
23 specifically what is confidential and to make those
24 arguments.

25 MS. SPILLER: Your Honor, I would

1 certainly propose that or suggest that the same
2 redactions that the company made with respect to OCC
3 Exhibit 4a, pages 18 and 19, would be applicable
4 certainly to the information under the "Demand
5 Charge" section of this particular OCC Exhibit 5.

6 OCC Exhibit 5 differs from OCC Exhibit 4
7 in connection with the demand charge insofar as it
8 adds an additional 16 years, but I don't think the
9 arguments would at all change with respect to
10 confidentiality.

11 With respect to the top category,
12 "Generation Sales," again, I believe, as would be
13 elicited through Mr. Brodt's testimony today, that
14 these are assumptions and estimations that OVEC uses
15 in connection with their operation of these
16 generating assets that, again, participate in the
17 competitive PJM wholesale market.

18 I believe the same would hold true with
19 respect to "Energy Charges," "Transmission Charges,"
20 insofar as this is forecasted information that OVEC
21 relies upon in preparing its budgets for its
22 competitive operations.

23 I think at the bottom you have different
24 summaries, again, dependent upon or derived from the
25 confidential information.

1 As to the "Critical Assumptions," I would
2 defer to OVEC with respect to those. Again, can only
3 indicate that our receipt of this information is,
4 again, assumed to be confidential in nature.

5 So the numeric information, we would
6 request confidential treatment of with respect to the
7 line under -- I am looking just for the projected
8 financing. There's a line under the "Demand Charge"
9 section, right above the bolded line "Projected
10 Capital Improvements," there is projected financing
11 information there that we would, again, believe to be
12 confidential based upon the fact that that financing
13 has yet to be secured. OVEC needs to go and engage
14 in the financial markets to do that, and one would
15 not want them to be at any disadvantage when engaging
16 in those discussions.

17 I do think, your Honor, if I may, I
18 believe it's in IEU Exhibit 7, which is a 2013 annual
19 report from OVEC, that there is reference to -- I
20 believe the projected average power costs in 2014,
21 that number is slightly different than what appears
22 here in this document. So I don't believe that the
23 publication of the annual report would otherwise
24 negate the confidential nature of what's reflected in
25 OCC Exhibit 5.

1 EXAMINER PIRIK: Could you point us in
2 the direction of IEU Exhibit 7 where you found that
3 number?

4 MS. SPILLER: Certainly, your Honor. It
5 is IEU Exhibit 7, on page 2, under the section "A
6 Message from the President," there is, on the
7 right-hand column, "2014 Energy Sales Outlook." And
8 there is provided there an averaged power cost of
9 less than \$55 per megawatt-hour.

10 EXAMINER PIRIK: And you're saying that
11 corresponds to something in this document?

12 MS. SPILLER: There is -- if you would
13 look, your Honor, right above the "Critical
14 Assumptions," you will see a line that says
15 "Projected Power Production Costs Less Projected
16 Dividend Dollar Per Megawatt-Hour" and then there are
17 figures along that row for each of the years
18 identified on the exhibit.

19 The numbers are different and, as a
20 result, I believe that the publication, in 2013, of
21 OVEC of projected power prices in '14 would not
22 otherwise diminish the confidential nature of the
23 numeric information contained in OCC Exhibit 5.

24 EXAMINER PIRIK: So --

25 MS. SPILLER: So I think the numeric

1 information should be confidential on this exhibit.

2 I wanted to identify the -- what's in the
3 public record in anticipation of what could be
4 comments from intervenors.

5 EXAMINER PIRIK: Okay. I see. You're
6 not saying that you're okay with that bottom line
7 figure under "2014" being open.

8 MS. SPILLER: Correct.

9 EXAMINER PIRIK: Okay.

10 MS. BOJKO: I'm sorry, your Honor. If
11 this is OVEC's document, can we hear from OVEC's
12 counsel --

13 EXAMINER PIRIK: Yes.

14 MS. BOJKO: -- what they determine to be
15 confidential?

16 EXAMINER PIRIK: Just a moment. I think
17 that would be appropriate.

18 MR. CASTIGLIONE: OVEC has marked this
19 document confidential pursuant to confidentiality
20 agreement with almost all the parties in this room.
21 OVEC used this document to be confidential. These
22 are proprietary, internal cost projections going from
23 2014 through 2040.

24 You know, if that information were to be
25 publicly disclosed, OVEC believes they would be

1 harmed by having their cost of production publicly
2 available. Their sponsors would -- their sponsoring
3 companies would also be harmed because they buy power
4 from OVEC at cost, so OVEC's costs of production are
5 really their sponsors' costs of production as well
6 given that they buy power at cost.

7 So we would propose that all of the
8 numeric information on this document be redacted
9 consistent with the fact that the entirety of the
10 document are forward-looking cost projections that
11 OVEC has created internally.

12 EXAMINER PIRIK: With regard to the last
13 figure at the bottom of the "2014" date.

14 MR. CASTIGLIONE: With regards to the
15 last figure -- you are referring to the "Projected
16 Power Production Costs"?

17 EXAMINER PIRIK: Correct.

18 MR. CASTIGLIONE: Our position would be
19 that that would also be confidential given -- given
20 there is some information disclosed in the annual
21 report, it's not this exact information, and there
22 are different versions of this document that are
23 within OVEC. So our position would be that it should
24 remain confidential given that this exact figure has
25 not been disclosed publicly.

1 My understanding is that Mr. Berger was
2 intending to ask questions generally about the
3 document at this point, and defer the rest of the
4 specific questions to confidential portion.

5 EXAMINER PIRIK: That's correct.

6 MR. CASTIGLIONE: We have no problem with
7 that.

8 EXAMINER PIRIK: Right, right. It's just
9 our responsibility, at this point in time, to mark
10 off specifically what the confidential portions are
11 so that we don't cross over.

12 MR. CASTIGLIONE: No, I understand.

13 EXAMINER PIRIK: Are there any responses
14 from any of the parties?

15 MR. BERGER: No. I think what's been
16 proposed is consistent with the way we marked OCC
17 Exhibit 4 and 4a, so.

18 MS. BOJKO: But, your Honor, I guess I
19 would like some clarification. Some of the numbers,
20 with what I just heard counsel say, are in OVEC's
21 annual report including projected power production
22 costs. So I guess I'm un -- and that's a public
23 document.

24 EXAMINER PIRIK: Yes, I understand that.
25 And in looking at IEU Exhibit 7 and comparing it to

1 that number, I see that it is not the exact number,
2 and hearing what OVEC had to say about that, I think
3 that with regard to this document, in order to stay
4 consistent, we can leave that in the closed record.

5 With that being said, are there any other
6 comments with regard to the motion?

7 MS. SPILLER: Your Honor, if I may just,
8 for clarification, and appreciate the ruling in
9 connection with numeric information as to the
10 assumptions, I will defer to OVEC as to those. I
11 just want to be sure we address those, as well, for
12 purposes of the record.

13 EXAMINER PIRIK: You mean the section
14 that's above the bolded?

15 MS. SPILLER: So right above the
16 "Confidential" label on the bottom left, there is a
17 listing of "Critical Assumptions" that I'm assuming
18 were relevant to the forecasting. I would expect
19 those to be confidential, but, again, would defer to
20 OVEC on that.

21 MR. CASTIGLIONE: Our position would be
22 that those assumptions, which, to us, are really part
23 and parcel of how these numbers are created, and
24 they're internal assumptions that OVEC uses in making
25 these projections, our position would be that the

1 numeric information, as well as the critical
2 assumptions at the bottom left-hand corner of the
3 page would also be confidential. However, the
4 left-hand column of labels showing what these columns
5 and rows signify, we wouldn't maintain are
6 confidential.

7 MS. BOJKO: Your Honor --

8 EXAMINER PIRIK: Yes, I am going to ask
9 for responses because I was not aware that was part
10 of what the request was. Go ahead.

11 MS. BOJKO: Well, two of the items I see
12 embedded in the left column, so I'm not sure how
13 those critical assumptions are not already disclosed
14 if you're disclosing the left side of the column.

15 For instance, the first one of the major
16 assumptions can be found in the first two labeling --
17 I'm sorry, I'm trying to talk without talking about
18 what the critical assumption says.

19 And then the third critical assumption is
20 a public-known fact, as well so I'm not sure how that
21 is confidential. We've talked about that in the
22 public record today, as a matter of fact.

23 EXAMINER PIRIK: Are there any other
24 responses?

25 MR. BERGER: Well, I would think that the

1 "Election of Five-Year Funding on Holiday," I would
2 be surprised if that's not reported. Strike that.

3 EXAMINER PIRIK: We need to keep a note
4 there in case we decide that is part of the
5 confidential record.

6 MR. BERGER: I apologize, your Honor. I
7 apologize to counsel.

8 MR. CASTIGLIONE: Your Honor, I just
9 wondered with Mr. Brodt, and we would be fine
10 disclosing the critical assumptions given the level
11 of generality on these are fairly high, so it would
12 just be the numeric information, not the critical
13 assumptions or anything in the left-hand column
14 labeling.

15 EXAMINER PIRIK: With regard to above
16 the -- where it says "Projected Capital Improvements
17 and Debt Costs," there was a calculation there that
18 had been requested confidential. Do you view that as
19 confidential?

20 MR. CASTIGLIONE: Where are you viewing
21 that, your Honor?

22 EXAMINER PIRIK: Without saying it, it's
23 under the --

24 MR. CASTIGLIONE: Your Honor, I see what
25 you are referring to, and that would be the one

1 exception to the information in the left-hand column
2 would be what you are referencing.

3 EXAMINER PIRIK: Okay. Okay. Are there
4 any other comments, responses?

5 Mr. Berger is off the hook, we can put
6 that in the open record.

7 MR. BERGER: Thank you.

8 EXAMINER PIRIK: So with regard to OCC
9 Exhibit 5, we shall redact figures. I want to be
10 sure I'm getting this right. The dates along the top
11 of the columns are in the open record, correct?

12 MR. CASTIGLIONE: Correct.

13 EXAMINER PIRIK: Okay. And then all of
14 the figures below that, those columns, all the
15 numerical representations will be confidential on
16 page 1 and page 2.

17 And then the one phrase after the word
18 "Projected" in the left-hand column will be kept
19 confidential. I think we all know what phrase that
20 is so that it would be OCC's responsibility to make
21 the redacted version and share it with the company
22 and be sure that it's done correctly, but I think we
23 all know what that is. The redacted version will be
24 marked as OCC Exhibit 5, and the unredacted,
25 confidential version will be marked OCC Exhibit 5a.

1 Are we all good?

2 (EXHIBITS MARKED FOR IDENTIFICATION.)

3 MS. SPILLER: Thank you, your Honor.

4 EXAMINER PIRIK: Mr. Berger.

5 MR. BERGER: Thank you, your Honor.

6 Q. (By Mr. Berger) Now, the use of the --
7 the phrase on the first line under "Generation
8 Sales," Mr. Brodt, on this exhibit, where it says
9 "Estimated Delivered Power Sales from OVEC
10 Generation," that's -- that's a projection of how
11 much power that OVEC can deliver, is that correct, in
12 any particular year?

13 A. That is an estimate of how much power we
14 anticipate that we will deliver based on the use
15 factor that's underneath of it.

16 Q. Okay. And tell me what is the estimated
17 surplus energy use factor percentage. How is that
18 derived?

19 A. That's -- that's an estimate of how much
20 power we anticipate the sponsoring companies will
21 take of our power that's available during those
22 periods of time.

23 Q. And so, that number comes from the
24 sponsoring companies; is that correct?

25 A. No. The projection is our projection.

1 Q. And it's a projection. Who develops that
2 projection at OVEC?

3 A. We have a production department that
4 comes up with the use factor forecast.

5 Q. Now, all of the sponsoring companies,
6 themselves, decide how much power they want at any
7 particular time; is that correct?

8 A. They do.

9 Q. Within their entitlement.

10 A. That's correct.

11 Q. They can take energy up to the level of
12 their entitlement, and if other sponsoring companies
13 are not using it, they can take energy up to the use
14 that other companies aren't making of it; is that
15 correct?

16 A. That's correct.

17 Q. And OVEC does not, itself, make the
18 decision whether to dispatch power for any of the
19 sponsoring companies, the sponsoring companies make
20 that decision and inform OVEC and then it's
21 dispatched; is that correct?

22 A. That's correct.

23 Q. When OVEC takes -- strike that.

24 And based upon the requests of the
25 sponsoring companies, OVEC then decides which units

1 will run; is that correct?

2 A. That's correct.

3 Q. And how many units are there in total at
4 OVEC?

5 A. There are 11 units.

6 Q. But there are minimum operating loads to
7 keep all the units available; is that correct?

8 A. There are minimum operating loads to keep
9 units that are necessary to provide the power on
10 line.

11 Q. And how do you define "units that are
12 necessary to provide the power"? How is that
13 determined?

14 A. It's based on the sponsoring companies'
15 request. These are 200-megawatt units. So, based on
16 the request, you have to determine how many units you
17 have to have on line. If you don't have to have all
18 the units on line, and some of them are shut down, so
19 there are no minimum requirements on the units that
20 are shut down. During that timeframe.

21 Q. Okay. So these are 200-megawatt units,
22 so if there are requests for 350 megawatts in total,
23 you would only have two units on line at that time,
24 for example.

25 A. That's correct, and minimum load would

1 apply to those two units.

2 Q. Okay. Now, on this exhibit, the
3 phrase -- or, the section that's titled "Demand
4 Charge," that includes, generally, operating
5 expenses, taxes, and payroll; is that correct?

6 A. Demand charges include everything except
7 fuel costs.

8 Q. Okay.

9 A. So it's more far reaching than what you
10 just said.

11 Q. And operating expenses, you would agree
12 with me, are generally going to vary with the level
13 of production.

14 A. That's correct.

15 Q. Okay. Fuel costs will also vary with the
16 level of production.

17 A. That's correct.

18 Q. And, generally, would you agree with me
19 the lower the marginal cost of production that the
20 company has, versus the marginal cost of production
21 in PJM, the more OVEC will dispatch?

22 A. That's generally correct. We have some
23 sponsoring companies that are not at PJM and some
24 that do not -- that operate differently than -- than
25 some of the investor-owned utilities.

1 Q. Okay. And some of the utilities operate
2 in states that -- some of the sponsoring companies
3 operate in states that aren't -- don't have the
4 deregulated commodity; is that correct?

5 A. That's correct.

6 Q. And those companies may dispatch even
7 though the cost is above marginal cost?

8 A. It's possible, yes.

9 Q. Now, would you agree with me that OVEC's
10 fuel cost increased significantly from 2009 to 2013?
11 Not -- I am not referencing this exhibit in
12 particular. I'm referencing -- are you aware of that
13 fact?

14 A. I don't have that information in front of
15 me to be able to verify that correctly.

16 Q. Would you accept, subject to check, it
17 increased 32 percent from 2009 to 2013, based on
18 OVEC's annual report?

19 A. I would expect that it increased. I
20 don't know the amount.

21 Q. Now, the amount of OVEC's generation
22 doesn't change the cost of its fuel. It's still
23 going to have to pay incrementally for each -- for
24 coal, regardless of how much it generates. That's --
25 the amount of generation is not going to influence

1 coal prices, is it?

2 A. No. The amount of the generation should
3 not in -- well, it would affect coal prices if we
4 generated more than what we anticipated and we had to
5 buy spot coal.

6 Q. Okay. So an increase in your demand
7 could increase your price.

8 A. It could.

9 Q. And as I understand it, a majority -- if
10 the sponsoring companies wanted to -- if a sponsoring
11 company or a number of sponsoring companies decided
12 they didn't want to participate in OVEC anymore and
13 they thought the plants should shut down, a majority
14 of sponsoring company interests would not be
15 sufficient to shut down the OVEC facilities, would
16 it?

17 A. The facilities run based on the terms of
18 the Intercompany Power Agreement. Changes to the
19 Intercompany Power Agreement need to be unanimous.

20 Q. And so, even though the vast majority of
21 company interests might favor the shut down of these
22 facilities, that could not happen without unanimous
23 consent, is what you're saying.

24 A. That is my understanding.

25 Q. And the transfers to Buckeye and

1 Wolverine and to First -- back in, I think it was the
2 2005-'6 timeframe, those were third-party transfers,
3 correct?

4 A. That's correct.

5 Q. And third-party transfers are covered by
6 the ICPA under section 9.183; is that correct?

7 MS. SPILLER: Objection. Asked and
8 answered.

9 EXAMINER PIRIK: Overruled.

10 A. That's correct.

11 Q. And the first right of refusal to the
12 sponsoring companies at the indicated purchase price;
13 is that correct?

14 A. That's correct.

15 Q. Now, assuming Duke Energy Ohio, this is
16 just a hypothetical, brought a proposal to the board
17 or the other sponsoring companies that it wanted to
18 transfer its interest in OVEC to a third party under
19 that provision, and that third party had a sufficient
20 credit rating to meet the requirements of a
21 third-party transfer, other than through the right of
22 first refusal, none of the sponsoring companies could
23 deny that sponsoring company its right to transfer
24 its interest to that third party; is that correct?

25 A. That's correct.

1 Q. And it's similar, in that way, to section
2 9.182, there's a credit rating requirement, but,
3 beyond, that there is no other limitation, no voting
4 rights of the other parties, no requirement of
5 agreement; is that correct?

6 A. That's correct.

7 Q. Now, OVEC has invested substantial sums
8 in capital improvements for environmental purposes
9 over the years; is that correct?

10 A. That's correct.

11 Q. It built -- it added precipitators in the
12 1980s; is that correct?

13 A. That's correct.

14 Q. It added SCRs in the 2005 to 2006
15 timeframe?

16 A. That's correct.

17 Q. That's -- "SCR" stands for selective
18 catalytic reduction; is that correct?

19 A. Yes, selective catalytic reduction
20 equipment.

21 Q. And what do those do?

22 A. They remove nitrogen oxide from the flue
23 gas stream.

24 Q. And was -- the cost of doing that in the
25 2005 to '6 timeframe was about \$365 million; is that

1 correct?

2 A. That's correct.

3 Q. And over the last two years, the company
4 has installed scrubbers; is that correct?

5 A. It's more like the last five or six
6 years.

7 Q. Okay. But they only recently went into
8 operation.

9 A. That's correct.

10 Q. And that was installed at a cost of
11 approximately \$1.3 billion?

12 A. That's correct.

13 Q. Does the company currently have plans to
14 add other environmental upgrades?

15 A. There's some capital improvements for
16 environmental upgrades starting in 2017.

17 Q. And do you know, is the cost of
18 compliance with -- with the EPA's recent carbon
19 rules, is that known at this point in time?

20 A. No, it's not.

21 Q. And that cost is not reflected anywhere
22 in the Billable Cost Summary, Exhibit 5 or Exhibit 4;
23 is that correct?

24 A. That's correct.

25 Q. And the company has not yet budgeted for

1 this possibility; is that correct?

2 A. That's correct.

3 MR. BERGER: Your Honor, at this point in
4 time, that's all the questions I have on the public
5 record. We'll have questions on the confidential
6 record.

7 EXAMINER PIRIK: Okay.

8 MR. BERGER: Thank you.

9 EXAMINER PIRIK: Mr. Darr?

10 MR. DARR: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Darr:

14 Q. Mr. Brodt, my name is Frank Darr. I am
15 here on behalf of Industrial Energy Users of Ohio.

16 I want to follow-up on one of the things
17 that you were asked by counsel for OCC. I just want
18 to understand your use of the term "price" in
19 response to his question. He asked you a question
20 with regard to the effect of an increase in demand
21 that could result in an increase of price. Do you
22 remember that question that he asked you about that?

23 A. Not particularly.

24 Q. Let me see if I can help. I believe he
25 asked you a series of questions about the marginal

1 cost of additional power as reflected in the cost of
2 coal. Do you remember that?

3 A. Yes.

4 Q. And then in response to one of those
5 questions, you indicated that if you were required to
6 buy coal on the spot market, that could increase the
7 and I believe you use the term "price." Do you
8 remember that?

9 A. Yes.

10 Q. When you used the term "price" there, did
11 you mean the price of coal that OVEC would be
12 required to purchase?

13 A. Yes.

14 Q. And then that price that OVEC would be
15 required to purchase would be translated into a cost
16 that would then be passed on to the sponsoring
17 companies; is that correct?

18 A. That's correct.

19 Q. Now, with regard to OCC Exhibit 5, the
20 budget that's marked as Version 12-11-13. That
21 projects a -- a budget out through 2040; is that
22 correct?

23 A. That's correct.

24 Q. And this would be the remaining contract
25 period for the ICPA?

1 A. That's correct.

2 Q. So the working assumption -- and does
3 this reflect the budget for both the Clifty Creek
4 facility and the Kyger Creek facility?

5 A. Yes. That's a consolidated budget.

6 Q. So the budget assumption that you have
7 made assumes that there is no current plan to close
8 Clifty Creek; is that correct?

9 A. That's correct.

10 Q. And the budget assumption assumes that
11 there is no current plan to retire or close Kyger
12 Creek as well, correct?

13 A. That's correct.

14 MR. DARR: Thank you. I have nothing
15 further in the public section.

16 EXAMINER PIRIK: Ms. Hussey.

17 MS. HUSSEY: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Hussey:

21 Q. Just one brief question. Would you
22 please reference OCC Exhibit 5. And if you could
23 scan down the left-hand column of the document and
24 answer for me which of the items listed along the
25 left-hand side of the chart must a sponsoring company

1 pay regardless of whether it takes power from OVEC?

2 A. All of the demand charges, everything in
3 the demand -- under the "Demand Charge" heading.

4 Q. Okay. And for the sake of clarity, is
5 there anything else reflected here that a company not
6 taking power would need to pay, a sponsoring company,
7 I should clarify?

8 A. No.

9 MS. HUSSEY: Okay. Thank you very much.

10 EXAMINER PIRIK: Ms. Bojko.

11 MS. BOJKO: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Bojko:

15 Q. Good afternoon, Mr. Brodt. To follow-up
16 on that, take it one step further. So it's true that
17 there are costs that OVEC has and that those costs
18 will be passed on to the sponsoring companies
19 regardless of whether the units run, as well.

20 A. That's correct.

21 Q. So the costs are passed on regardless of
22 whether the sponsoring companies take power, and then
23 costs are also passed on regardless of whether the
24 units run or not.

25 A. That's correct.

1 Q. And when I say the terms "whether the
2 units run or not," you understand that to mean both
3 forced outages as well as unforced outages?

4 A. That's correct.

5 Q. And that would include maintenance, as
6 well?

7 A. That's correct.

8 Q. And you were asked some questions about
9 different environmental upgrades and, I guess, for
10 clarity, do you believe that a document titled
11 "Environmental Capital Projects - BOD Update," dated
12 October 22, 2014, that the entirety of the document
13 would be deemed confidential, or which portions?

14 A. I think the entire portion would be --
15 it's all communication directly with our sponsoring
16 companies.

17 MS. BOJKO: Your Honor, I am trying to be
18 responsive to your request to keep as much in the
19 public record as possible. Does it make more sense
20 to do it conversely, which is ask the questions about
21 the document in the confidential portion and then,
22 hopefully, be able to unredact those?

23 EXAMINER PIRIK: What document are you
24 referring to?

25 MS. BOJKO: Well --

1 EXAMINER PIRIK: I mean, do you have an
2 actual document?

3 MS. BOJKO: I have a document that was
4 provided in response to the subpoena. The problem is
5 some of the questions Mr. Berger asked would be
6 incorporated in this document and they weren't deemed
7 confidential when Mr. Brodt just answered the
8 questions, but they are contained in the document
9 that is considered confidential, so I am trying to
10 distinguish it.

11 EXAMINER PIRIK: Can we see a copy of it,
12 please?

13 MR. BERGER: Your Honor, it was my
14 understanding -- the questions I asked had to do with
15 the process, so I was just talking about the process,
16 and it was my understanding that -- that you were
17 going to utilize the procedure that Ms. Bojko
18 referred to, where if, after we introduced these
19 documents that have been marked confidential, if we
20 then discuss them in the confidential record and
21 subsequently decide they are going -- that they
22 should be public, that you would make that
23 determination subsequent to that. That's why I did
24 not go forward with any confidential documents other
25 than the limited one I did.

1 EXAMINER PIRIK: Yes, I understand.

2 MR. BERGER: Thank you.

3 MS. BOJKO: Would you like me to do the
4 same?

5 EXAMINER PIRIK: Yeah. We are going to
6 mark all exhibits in the open record, and then when
7 we go into the confidential, you can -- which is
8 exactly what Mr. Berger and I discussed. We need to
9 mark it in the open record. But we haven't seen the
10 document. Could we have a copy of the document?

11 MR. BERGER: Yeah. I didn't think we
12 were going to mark them all in the public record,
13 because I have many documents to mark that I intended
14 to mark in the confidential record because they are
15 marked "Confidential."

16 EXAMINER PIRIK: Marking documents is not
17 a problem. All -- marking documents is going to be
18 in the open record. We are never going to make that
19 confidential. You have to be careful what you label
20 it, so that you don't reveal confidential information
21 in your labeling of it, but all documents need to be
22 labeled and marked in the open record.

23 MR. BERGER: Okay. I did not mark them
24 before. I don't know if you want me to do that
25 before we go to the general confidential record.

1 EXAMINER PIRIK: Why don't we go ahead
2 and we will do that, but before we get to the
3 confidential record since you are already done with
4 your piece of cross.

5 MR. BERGER: Okay. Thank you.

6 EXAMINER PIRIK: At this time we need to
7 mark -- it sounds like we need to mark an exhibit
8 that OMA has.

9 MS. BOJKO: Well, your Honor, in the
10 spirit of trying to conserve paper, we coordinated,
11 last night, and I did not make copies because it was
12 my understanding that Mr. Berger was going to make
13 some of these copies. So --

14 MR. BERGER: Do you want me to mark all
15 my documents now?

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

17 (Discussion off the record.)

18 EXAMINER PIRIK: We'll go back on the
19 record. I understand there is a number of documents
20 that we just marked off the record that OCC will be
21 marking at this time in the open record and
22 completing authentication of those documents,
23 discussing those with the witness.

24 I also want to point out that while at
25 this point in time we're going to consider these

1 documents, which I believe we're marking at this time
2 as confidential, it will be determined, at the close
3 of the confidential section of the testimony, whether
4 or not it will be confidential.

5 And I know we've had conversations before
6 with the other parties, but haven't had the pleasure
7 of having OVEC here and OVEC's counsel here, that we
8 want as minimal amount of information in the closed
9 record as we possibly can. So that means if there's
10 a dollar amount that's in an exhibit, the dollar sign
11 needs to be in the open record. If there are names
12 that can be revealed, if there's headers that can be
13 revealed, if there's a chart that the axis can be
14 revealed, then we need to reveal them.

15 So I'm hoping that even though we will be
16 able to look at these after the close of the record
17 today and determine what is and what isn't
18 confidential, that we will be able to put as much in
19 the open record as we can.

20 So, at this time, we are going to mark
21 all of these exhibits that OCC is about to enter as
22 Exhibit "a" of each of the documents that are going
23 to be listed because "a" represents that it is a
24 confidential exhibit, but that is not to indicate it
25 will remain such depending on what our ultimate

1 ruling is.

2 So, with that being said, Mr. Berger.

3 MR. BERGER: Yes, your Honor. At this
4 time we would like to have marked for
5 identification -- do you want me to go individually
6 through each document, I take it?

7 EXAMINER PIRIK: I think I would mark
8 each one and label it and then continue your
9 discussion with the witness about the documents.

10 MR. BERGER: Okay, your Honor. We would
11 like to have marked as OCC Exhibit 6a, the OVEC
12 attendance list, board meeting attendance list and
13 agenda for the December 4, 2012, OVEC board meeting.

14 And I will ask the witness whether this
15 is a document that is an official --

16 EXAMINER PIRIK: What I would ask you to
17 do is go ahead and label each one. I'm not going to
18 say -- at the conclusion of that I'll say that they
19 are all marked like that, and then you can ask the
20 witness to go through the items, one by one.

21 MR. BERGER: Okay. Thank you.

22 OCC Exhibit 7a, we would ask to be marked
23 for identification. This is a communication dated
24 June 17, 2013. I assume I can identify the names of
25 the parties, your Honor, for purposes of

1 identification?

2 EXAMINER PIRIK: I think you can
3 identify, perhaps, the header at the top of the page
4 and the date of the document.

5 MR. BERGER: The header being "OVEC
6 IKEC," June 17, 2013, correspondence, and a
7 conference call agenda for the Board of Directors
8 meeting and a -- and a conference call quorum list
9 for a Board of Directors meeting.

10 OCC -- I would ask OCC Exhibit 8a would
11 be marked for identification. This is minutes of the
12 special meeting of the Board of Directors, held on
13 December 14, 2012.

14 I would ask OCC Exhibit 9a to be marked
15 for identification. This is a list of attendees at
16 the ICPA subcommittee meeting; no date.

17 I would ask to be marked for
18 identification, OCC Exhibit 10a --

19 EXAMINER PIRIK: I'm sorry. Wait a
20 second. I think another item you could reference,
21 which I think would be easier, is if you did the -- I
22 mean, definitely say the title but, for example, on
23 9a, there are no identification marks, but you could
24 say OVEC data beta 189 which is --

25 MR. BERGER: I said ICPA subcommittee

1 attendance list.

2 EXAMINER PIRIK: Right. And in the lower
3 right-hand corner of each of these documents is a
4 beta mark.

5 MR. BERGER: Okay. The Bates mark?

6 EXAMINER PIRIK: Yeah, I would title it
7 and then I would say what that mark is.

8 MR. BERGER: Okay.

9 EXAMINER PIRIK: Okay?

10 MR. BERGER: With reference to OVEC --
11 I'm sorry, OCC Exhibit 9a, that's Bates number OVEC
12 00189.

13 OCC Exhibit 10a is OVEC Bates number
14 00191. We'd ask that be marked for identification as
15 OCC Exhibit 10a.

16 EXAMINER PIRIK: You still have to say
17 what the title of it is, but your final -- and you
18 can say that that's -- that it's the Bates mark at
19 the bottom, okay?

20 MR. BERGER: Thank you. Which is an
21 e-mail correspondence regarding the "OVEC ICPA
22 Subcommittee Meetings."

23 EXAMINER PIRIK: Dated April 1, 2013?

24 MR. BERGER: April -- thank you, your
25 Honor.

1 EXAMINER PIRIK: Thank you.

2 MR. BERGER: And next we would ask to be
3 marked for identification OCC Exhibit 11a which is
4 correspondence -- e-mail correspondence dated
5 April 2, 2013.

6 EXAMINER PIRIK: April 12?

7 MR. BERGER: That's not what I have.
8 Exhibit 11a?

9 EXAMINER PIRIK: I have 11a, it's dated
10 Friday, April 12, 2013.

11 MS. SPILLER: That's what I have.

12 MR. BERGER: I'm afraid I have that as
13 12. Is it possible these got mixed together?

14 EXAMINER PIRIK: Yes. Okay. Who has
15 April 12 as Exhibit 11a?

16 (Show of hands.)

17 (Laughter.)

18 EXAMINER PIRIK: April 12 will be Exhibit
19 11a, and the beta mark is 193.

20 MR. BERGER: Okay. Okay. That's -- can
21 I move to 12, then? Is that adequately identified?

22 EXAMINER PIRIK: Yes.

23 MR. BERGER: Thank you.

24 Exhibit 12, then, I would have as e-mail
25 correspondence -- 12a, dated April 2, 2013,

1 1:19 p.m., regarding "OVEC ICPA Subcommittee
2 Meetings," OVEC Bates number 00190.

3 I would asked to be marked for
4 identification as OCC Exhibit 13a which is e-mail
5 correspondence dated April 16, 2013, 5:51 p.m., with
6 Bates number OVEC 00227 and 228.

7 Your Honor, at this time, I would ask to
8 be marked for identification as OCC Exhibit 14a which
9 is e-mail correspondence dated August 12, 2013,
10 1:25 p.m., regarding "Ohio Power OVEC Proposal."
11 OVEC Bates number 00271.

12 At this time, your Honor, I would ask to
13 be marked for identification OCC Exhibit 15a which is
14 a form of "Guaranty Agreement," Bates number OVEC
15 000195 through OVEC 209.

16 At this time, your Honor, I would like to
17 ask that OCC Exhibit 16a be marked for identification
18 which is Ohio -- OVEC "Minutes of Special Meeting of
19 the Board of Directors held July 16, 2013." Two
20 pages, no Bates number, your Honor.

21 EXAMINER PIRIK: At the top it's
22 OMA-POD-02-012?

23 MR. BERGER: Yes. Thank you for the
24 additional description, your Honor.

25 EXAMINER PIRIK: Thank you.

1 MR. BERGER: At this time I would like to
2 mark for identification OCC Exhibit 17a which is
3 e-mail correspondence dated July 22, 2013, 12:31 p.m.
4 Again, the reference to a RESA discovery response,
5 POD-04-008(C)-Attachment, page 1.

6 At this time, your Honor, I would like to
7 mark for identification OCC Exhibit 18a which is an
8 e-mail correspondence and attached document dated
9 July 22, 2013, 10:05 a.m. OVEC Bates number 00229 to
10 0022 -- I'm sorry, 246.

11 Your Honor, I would ask to mark for
12 identification OCC Exhibit 19a which is e-mail
13 correspondence dated July 24, 2013, at 12:52 p.m.
14 Bates number OVEC 00246 to 00251. Concerning the
15 "OVEC ICPA Subcommittee Meeting."

16 I would like to mark, your Honor, OCC
17 Exhibit 20a which is e-mail correspondence dated
18 August 12, 2013, at 10:11 a.m. I am going to avoid
19 identifying the subject matter, but the Bates number
20 is OVEC 00252 to OVEC 00296.

21 Your Honor, I would like to have marked
22 for identification OCC Exhibit 21a which is a copy of
23 the response to RESA-POD-04-008(a), Attachment. It's
24 an e-mail and attached documents dated April 1, 2013,
25 at 1:54 p.m.

1 Your Honor, at this time I would like to
2 mark for identification OCC Exhibit 22a which is OVEC
3 Intercompany Power Agreement Billable Cost Summary,
4 calendar years 2013 to 2040, Bates number OVEC 0001
5 and 00002.

6 Your Honor, at this time I would like to
7 mark for identification OCC Exhibit 23a which is,
8 again, an OVEC Forecasted ICPA Billable Cost Summary,
9 calendar year 2013, version 11-12-13, and Bates
10 number OVEC 00101 through OVEC 00103.

11 Your Honor, at this time I would like to
12 have marked for identification OCC Exhibit 24a.
13 Again, an OVEC ICPA billable cost summary, dated 2014
14 to 2040, which has a version forecast of 7/24/14 and
15 Bates numbered OVEC 00297 to 00298.

16 I would like to be marked for
17 identification OCC Exhibit 25a which is titled "OVEC
18 IKEC Future Major Environmental Projects," Bates
19 number OVEC 00005.

20 Your Honor, I would like to have marked
21 for identification OCC Exhibit 26a, titled "OVEC IKEC
22 Environmental Capital Projects - BOD Update," and
23 dated October 22, 2014, Bates numbered OVEC 00299
24 through OVEC 00311.

25 And finally, your Honor, I would like to

1 have marked for identification OCC Exhibit 27a which
2 is indicated to be a response to OMA-POD-02-014,
3 Attachment, pages 1 through 6 of 6.

4 Thank you very much.

5 EXAMINER PIRIK: Thank you. Those
6 documents will be so marked.

7 (EXHIBITS MARKED FOR IDENTIFICATION.)

8 EXAMINER PIRIK: You may proceed with the
9 witness.

10 MS. BOJKO: Your Honor, may we have one
11 minute?

12 EXAMINER PIRIK: Yes.

13 MS. BOJKO: Thank you. I sought
14 clarification on an exhibit, thank you, and I also
15 have -- thank you to Ms. Turkenton, I have Exhibit 8,
16 if you would like me to pass that out now.

17 EXAMINER PIRIK: Thank you,
18 Ms. Turkenton.

19 MR. BERGER: As I understand it, your
20 Honor, you want us to authenticate these on the
21 public record as well; is that correct?

22 EXAMINER PIRIK: Yes. To the extent you
23 can do so without going into confidential
24 information.

25 - - -

1 CROSS-EXAMINATION (Continued)

2 By Mr. Berger:

3 Q. Mr. Brodt, are you familiar with all the
4 documents, OCC Exhibit 5 through Exhibit 27 --
5 Exhibit 5a through Exhibit 27a? And if there's a
6 particular document you're not familiar with or
7 haven't seen at this point in time, please advise me.

8 EXAMINER PIRIK: You can take your time
9 if you need to through them.

10 A. I have been through most of them and,
11 yeah, I'm familiar with all of them. Some of the
12 e-mails don't have my -- they are not e-mails to me,
13 so I'm -- they appear to be e-mails that are sent
14 from our legal counsel, but have I seen them before?
15 Some I have not.

16 Q. Okay. Do they all constitute OVEC
17 business records?

18 A. Yes, I would -- I would say they all
19 constitute business records -- OVEC business records.

20 MS. SPILLER: I'm sorry. Can I have a
21 clarification? I believe the witness said he had
22 seen before; some he has not? I just wanted to be
23 sure I heard that correctly.

24 EXAMINER PIRIK: Could you clarify, the
25 witness?

1 THE WITNESS: Yes, I said some of the
2 e-mails -- copies of e-mails were not addressed to me
3 so I had not seen them before, but they appear to
4 come from our legal counsel.

5 MR. BERGER: Your Honor, since they are
6 business records of the organization on which
7 Mr. Brodt is testifying, although he did not prepare
8 or direct the preparation of a number of them,
9 although I could ask him whether he prepared -- I
10 believe he prepared some of them.

11 I don't think it's necessary, since
12 they're business records, unless there is an
13 objection on hearsay, for him to state that he
14 prepared them. So I would just ask him, to the best
15 of his knowledge, are these correct and accurate
16 copies -- true and accurate copies of the business
17 records in OVEC's possession?

18 MS. SPILLER: Your Honor, if I may,
19 Mr. Berger just asked -- suggested that somehow
20 Mr. Brodt may have prepared these. There are e-mails
21 authored by Duke Energy Ohio. So I don't know that
22 Mr. -- I doubt highly that Mr. Brodt would have
23 prepared those whatsoever. There is also an
24 attachment to a Duke Energy Ohio discovery response.

25 So, again, there has been a rather

1 sweeping characterization of a category of documents
2 and I just want to be sure we're addressing them
3 accurately.

4 MR. BERGER: Your Honor, at this point
5 I'm just trying to authenticate them as OVEC business
6 records. Mr. Brodt is able to certify that they are
7 true and accurate copies of those business records,
8 and what I indicated is not that -- was that he had
9 only prepared some of these records and many others
10 he had not prepared himself. So I was just trying to
11 point out that it was -- that we were introducing
12 them primarily as business records which is an
13 exception to the hearsay rules.

14 EXAMINER PIRIK: I do understand where
15 you're going with this, Mr. Berger. I don't know
16 that -- as a general course, I think we can go
17 through and we will be able to get into more detail
18 when we get to the question in the closed record,
19 but, at this time, you're going to have to go through
20 the documents. Some of them are OVEC, have stamps on
21 it, some of them don't, so I think we need to have an
22 understanding from this witness -- I don't know that
23 we can do this in bulk.

24 MR. BERGER: Okay. Do you want me to go
25 through, individually, each record at this point in

1 time or do you want to save that for the confidential
2 record?

3 EXAMINER PIRIK: I think you should ask
4 him generally about his knowledge of these and if
5 they are a business record and we will put that in
6 the open record, and then we will move on and do the
7 actual discussion of the items in the closed record.

8 MR. CASTIGLIONE: Just to streamline
9 things a little bit, I can stipulate on the record,
10 every document with an OVEC Bates number in the
11 bottom right-hand corner was produced in this
12 litigation from OVEC's files or the files of OVEC's
13 legal counsel if that's helpful.

14 EXAMINER PIRIK: Okay. Then I think all
15 we need to do is go to the documents that do not have
16 the OVEC stamps on them. You can ask him about those
17 documents and we'll see what his answers are there
18 and then we can get into more detail when we get into
19 the closed record.

20 I'm not going to rule at this point in
21 time whether or not, you know, they are appropriate
22 for this witness or not, because I don't know that
23 you are going to be able to get into detail, but.

24 Q. (By Mr. Berger) Mr. Brodt, would you turn
25 to OCC Exhibit 16a. I believe I spoke to your

1 counsel earlier about this document. It is a
2 document that was produced by Duke Energy Ohio in
3 this litigation. It is a response to OMA-POD-02-012,
4 and it is the minutes of the Board of Directors
5 special meeting in July 16, 2013. Was this document
6 prepared by you or under your supervision?

7 A. It was prepared by me, yes.

8 Q. Thank you.

9 You are the secretary of the corporation,
10 correct?

11 A. That's correct.

12 Q. And let's turn to OCC Exhibit 17a, and
13 this is an e-mail correspondence, also provided in a
14 company response to a discovery response,
15 RESA-POD-04-008(c) Attachment, page 1 of that
16 attachment. Is this document an OVEC business record
17 and is it familiar to you?

18 A. It looks like it has my e-mail address on
19 here, so it appears to be a document that was sent to
20 me from our legal counsel, yes.

21 Q. Thank you.

22 Okay. And again, OCC Exhibit 21a, the
23 document that was produced by Duke Energy Ohio in
24 response to RESA-POD-04-008(a) Attachment, pages 1
25 through 31, again, is this document familiar to you

1 as an OVEC business record?

2 A. Again, it has my e-mail address on here.
3 Appears to be from my -- our legal counsel and
4 appears to be information I'm familiar with, yes.

5 Q. And is it -- does it appear to be a true
6 and accurate copy of a business record?

7 A. Yes.

8 MR. BERGER: And I believe all the others
9 are OVEC Bates-numbered documents, your Honor.

10 EXAMINER PIRIK: I believe OCC Exhibit
11 27a.

12 MR. BERGER: Except for OCC Exhibit 27a,
13 which, again, is a Duke Energy Ohio response to
14 discovery request OMA-POD-02-014, the attachment,
15 pages 1 through 6.

16 Q. Mr. Brodt, are you familiar with this
17 document?

18 A. I believe I've seen the document before.
19 I think it's an attachment to one of the other
20 documents that's in here already. The names are
21 familiar and the signatures. Yes, it looks familiar
22 to me.

23 Q. And I believe the other document you
24 referenced was a Bates-numbered document. Does this
25 appear to be an OVEC business record?

1 A. I think it's a document that's in our
2 records, yes. It didn't originate from us, but it
3 appears to be in our records, yes.

4 MR. BERGER: Thank you, your Honor.
5 That's all I have for identification and
6 authentication pending -- pending examination of the
7 witness on these exhibits. Thank you.

8 EXAMINER PIRIK: Thank you.

9 Ms. Bojko.

10 MS. BOJKO: Your Honor, is there any way
11 we could take a 5-minute recess?

12 EXAMINER PIRIK: Let's take a 5-minute
13 break.

14 MS. BOJKO: Thank you.

15 (Recess taken.)

16 EXAMINER PIRIK: We will go back on the
17 record.

18 Ms. Bojko.

19 MS. BOJKO: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION (Continued)

22 By Ms. Bojko:

23 Q. I don't remember where I left off.
24 Mr. Brodt, I am going to reserve -- I had started
25 asking you questions about an environmental update,

1 but that's now been marked as an exhibit, and I am
2 going to reserve that for the confidential section.

3 So I just have a couple of follow-up
4 questions to what Mr. Berger asked you in the public
5 record. It's your understanding or -- strike that.

6 The OVEC is made up of Board of
7 Directors; is that correct?

8 A. OVEC has Board of Directors, yes.

9 Q. And OVEC also has committee members; is
10 that correct?

11 A. We -- OVEC has a few committees, yes.

12 Q. And then it's my understanding that you
13 can also create special committees or subcommittees
14 to discuss pertinent issues that may arise at a
15 pertinent time?

16 A. That's correct.

17 Q. Okay. And OVEC Board of Directors, who
18 from the Board of Directors is -- is on -- or, who is
19 on the Board of Directors from the Ohio utilities, if
20 you could tell me?

21 A. Who are the members -- who are the
22 members from the Ohio utilities?

23 Q. Yes. We can start more general. I will
24 try to speed this up. Is Duke Ohio on the Board of
25 Directors? Does it have a person?

1 A. Yes.

2 Q. And is it the entity Duke Ohio or is it
3 some other entity? Do you know?

4 A. Duke Ohio owns the stock in Ohio Valley
5 Electric Corporation and is represented on the board
6 and is a party to the Intercompany Power Agreement.

7 Q. So the person that's on the board would
8 be representing Duke Ohio.

9 A. That's correct.

10 Q. And, sir, do you know who that is?

11 A. Yes. It's Chuck Whitlock.

12 Q. And is it your understanding that the
13 other Ohio utilities have a seat on the board as
14 well?

15 A. Yes, they do.

16 Q. Maybe we should clarify. AEP Ohio has a
17 seat on the board; is that right?

18 A. OVEC stock -- OVEC stock that AEP owns,
19 I'm not sure that it's in AEP Ohio's name. It's in
20 multiple companies' names.

21 Q. And one of those would be Ohio Power
22 Company; is that true?

23 A. That's correct.

24 Q. But AEP Ohio has, it's your
25 understanding, has one member, one seat on that Board

1 of Directors?

2 A. Yes. Each of the sponsoring companies,
3 each of the original sponsoring companies were
4 assigned seats on the board.

5 Q. Okay. And when I asked you "other
6 utilities," FirstEnergy Ohio, the distribution
7 utility, would no longer have a seat on the board
8 because they've transferred their asset to their
9 affiliate; is that correct?

10 A. FirstEnergy would have a seat on the
11 board representing the original sponsoring companies,
12 so just because they transferred it to another
13 company doesn't mean that they would lose their seat
14 on the board.

15 Q. Okay. And the same would be true for
16 Dayton Power and Light, they have a seat on the board
17 as well?

18 A. They do.

19 Q. I'm not sure I heard the answer to this,
20 so I apologize if you said it before, but I believe
21 you stated that you are aware of requests that were
22 made by sponsoring companies to sell or transfer
23 their interests in OVEC to an affiliate; is that
24 correct?

25 A. I was aware of the process of trying to

1 figure out whether that would be possible or not,
2 yes.

3 Q. Okay. And you were actually, when you
4 said you were aware of the process, you're familiar
5 with actual companies that are actually making the
6 requests from the other sponsoring companies.

7 A. Yes.

8 Q. And I believe you said that since 2010,
9 is it correct, that you recalled two requests; is
10 that correct?

11 A. There have been three, three, I believe.

12 Q. Three requests since 2010?

13 A. Three discussions of transfers, yes.

14 Q. And from -- I guess you did talk about a
15 recent request, and prior to that request there were
16 two from the time period of 2010 to 2014; is that
17 correct?

18 A. That's correct.

19 Q. And did you say the 2014 request was
20 approved?

21 A. Yes.

22 Q. And did you -- can you tell me the
23 outcome of the two prior requests from 2010 to 2014?

24 A. We did not ultimately receive information
25 [verbatim] that those transfers had been approved at

1 the sponsoring-company level.

2 Q. You said "affirmation"; is that right?

3 A. Confirmation.

4 Q. Oh, confirmation. I just didn't hear
5 you.

6 A. I'm sorry.

7 Q. And it's my understanding, you talked a
8 little bit about the process, so for those two
9 requests between 2010 and 2013, the process would
10 have been that you had discussions regarding the
11 possibility of the requests, and then you had
12 follow-up letters and e-mails about the requests, and
13 then you had -- a vote would have occurred about the
14 requests; is that accurate?

15 A. Basically, yes.

16 Q. Am I missing a step? You hesitated.

17 A. I was trying to make sure that everything
18 that you said was true, yes.

19 Q. Okay. Sir, for clarification, are board
20 meeting minutes kept confidential by OVEC?

21 A. Yes.

22 Q. And it's my understanding that you have
23 projections and forecasts that are done on a -- I
24 think you told me on a monthly basis, is that
25 correct, or quarterly?

1 A. We have monthly forecasts that are --
2 forecasts that are updated monthly.

3 Q. And the budget is updated periodically
4 throughout the year as well; is that correct?

5 A. That's true.

6 Q. But you only officially adopt one budget
7 at the end of the year; is that correct?

8 A. That's correct.

9 Q. And that budget would be in -- around the
10 November, December timeframe of each preceding year?

11 A. Yes.

12 Q. So the most recent that you have would
13 be, I think it was dated December, 2014, or end of
14 November, 20 -- or, '13, excuse me?

15 A. Yes.

16 MS. BOJKO: That's all I have in the
17 public record. Thank you.

18 EXAMINER PIRIK: Thank you.

19 Mr. Mendoza.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Mendoza:

23 Q. Good afternoon, Mr. Brodt. I am Tony
24 Mendoza with the Sierra Club.

25 Do you agree that it's common in the

1 industry to refer to flue gas desulfurization units
2 as "scrubbers"?

3 A. Yes.

4 Q. How long have the scrubbers at these
5 units been in operation?

6 A. The scrubbers that are at the Kyger Creek
7 facility have been in operation since 20 -- late in
8 2011 and the scrubbers that are at the Clifty Creek
9 facility have been in operation since 2013.

10 Q. And are those units operated continuously
11 when the units, themselves, are operational?

12 A. Yes.

13 Q. Is that -- is this a requirement in your
14 operational permits to operate them continuously? Do
15 you know?

16 A. Mechanically, they can't be operated
17 without the scrubbers.

18 Q. Okay. And have O&M costs increased at
19 the plants due to the addition of the scrubbers?

20 A. Yes.

21 Q. And are -- those costs are reflected in
22 your -- the billable --

23 A. Forecast.

24 Q. -- forecast we have been looking at
25 today?

1 A. Yes.

2 Q. Okay. And I would like you to look at
3 what was marked as OCC Exhibit 26a, it's this
4 environmental update. Do you have one of those in
5 front of you? I can get you one if you do not. If
6 you have it, would you please turn to page 12. The
7 document is titled "Environmental Capital Projects -
8 BOD Update, October 22, 2014." And I recognize this
9 is a confidential document. I am not going to ask
10 you about specific numbers.

11 But if you turn to page 12, I think you
12 answered, in response to a question from Mr. Berger,
13 that these total major environmental project costs do
14 not include greenhouse gas costs coming out of EPA's
15 new proposed rules; is that correct? They do not
16 include. Those costs are not included here; is that
17 correct?

18 A. They do not include any carbon rules.

19 Q. And are you aware that OVEC has
20 identified a need for a new SCR, a selective
21 catalytic reduction unit at Clifty Creek Unit 6?

22 A. It does not have an SCR unit, that's
23 correct.

24 Q. Okay. Would you -- I would like to refer
25 you to IEU Exhibit 7. I have a copy right here. I

1 assume -- do you happen to have IEU Exhibit 7, it's
2 the annual OVEC report from 2013?

3 A. I do not have that.

4 MR. MENDOZA: May I approach, your Honor?

5 EXAMINER PIRIK: Yes.

6 Q. And if you would turn to page 29, please,
7 Mr. Brodt. Are you there?

8 A. Yes.

9 Q. Do you see the paragraph that starts "Now
10 that all," it's a little bit more than halfway down?

11 A. Yes.

12 Q. And do you see the second clause in that
13 long sentence that says "...additional NOx allowances
14 or additional NOx controls may be necessary for
15 Clifty Creek Unit 6 under a reinstated CASPR rule or
16 any promulgated replacement rule"?

17 A. Yes.

18 Q. Are you aware that the U.S. Supreme Court
19 upheld the CASPR rule this summer?

20 A. I believe that was recently announced.

21 Q. Yeah. I think it was in June or July.

22 A. Yes.

23 Q. So going back to page 12 on your future
24 cost charts, is there any -- is the cost of the SCR
25 unit at Clifty Creek 6 included in this chart of your

1 future environmental capital projects?

2 A. No.

3 Q. Have you performed any cost estimates for
4 what that would be -- what that cost of the SCR Unit
5 6 would be?

6 A. I believe there was an analysis done a
7 year or so ago.

8 Q. And, perhaps, is the result -- is the
9 results of that analysis confidential? Does the
10 company consider that the cost of that projected cost
11 to be confidential?

12 A. Yes.

13 Q. I'll defer that for the confidential part
14 of the discussion.

15 Have the boiler tube replacement
16 projects, that have been ongoing in the past several
17 years, been completed at the various units?

18 A. We always have boiler tube replacements.
19 There is maintenance, boiler tube maintenance, we're
20 replacing sections that need replaced due to wear and
21 tear.

22 Q. Okay. And so, those are ongoing
23 continuously.

24 A. Yes.

25 Q. Okay. Have the turbines at the units

1 been replaced in the last 10 years or 20 years?

2 A. They are inspected on a 5- to 10-year
3 cycle, and repairs are made to them, but there's been
4 no replacements.

5 Q. So the turbines are the same as were
6 originally installed when the plants came into
7 operation; is that correct?

8 A. We may have some turbine parts that
9 have -- that are new, since the plant -- since the
10 plant was originally installed, but I don't recall
11 exactly.

12 Q. Okay. And, related, could you tell me
13 the two years these two plants came into operation?

14 A. 1956, 1957.

15 Q. Would you turn to page 1 of that annual
16 report that I just handed you. Do you see the bottom
17 paragraph on the -- in the left column?

18 A. Yes.

19 Q. Where it says both -- both plants began
20 operation in 1955?

21 A. I was off by a year.

22 Q. You were close. Assuming that 1955 is
23 the correct year, would you agree with me that the
24 plants are now 59 years old?

25 A. Yes.

1 Q. And so, that would make both plants 85
2 years in 2040, correct?

3 A. Yes.

4 Q. In general, would you agree that O&M
5 costs increase as a plant like this ages?

6 A. Yes.

7 Q. Do you know the average age of a coal
8 plant at retirement over the last few years?

9 A. I do not.

10 MR. MENDOZA: Your Honor, may I approach?

11 EXAMINER PIRIK: Yes.

12 MR. MENDOZA: And I would like to mark
13 this as Sierra Club Exhibit 5.

14 EXAMINER PIRIK: The document is so
15 marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. MENDOZA: We have marked Sarah
18 Jackson's Exhibit as 4, but we have not moved to
19 enter it, so that's why I'm going to 5.

20 EXAMINER PIRIK: Correct.

21 Q. Mr. Brodt, do you see at the top left of
22 the first page it says "United States Energy
23 Information Administration"?

24 A. Yes.

25 Q. Okay. Do you recognize that as a

1 department -- as an agency of the Department of
2 Energy?

3 A. Yes.

4 Q. Would you look at page 2 where there is a
5 table entitled "Coal-fired generating unit
6 retirements"?

7 A. Okay.

8 Q. And you see on the left there's a line
9 for "average age at retirement"?

10 A. Yes.

11 Q. And do you see that in 2010, the average
12 age, at least according to the Department of Energy,
13 was 58 years?

14 A. Yes.

15 Q. And would you agree with me that is
16 younger than the OVEC plants are today?

17 A. That's correct.

18 Q. And then for 2011, you see that the
19 average age at retirement was 63 years?

20 A. Yes.

21 Q. And that's -- I think we can agree that's
22 four years older than the plants are today?

23 A. Yes.

24 Q. And then for 2012, do you see the average
25 age at retirement was 51 years?

1 A. Yes.

2 Q. Which is also younger than the plant --
3 than the OVEC plants are today, correct?

4 A. That's correct.

5 Q. Okay. And, finally, have you budgeted --
6 not, finally, but in this section have you budgeted
7 increased operation and maintenance costs during the
8 2020s and 2030s as the plants age?

9 A. There is a factor in there for increased
10 maintenance, yes.

11 Q. And so, we would see that in the billable
12 cost forms we've been looking at today?

13 A. Yes.

14 Q. Okay. And now I want to talk briefly
15 about the greenhouse gas regulations that are
16 proposed by EPA. Do you understand the basic purpose
17 of EPA's proposed, what they have called the "Clean
18 Power Plant," or often referred to as the "111(d)
19 rule"?

20 A. I'm not that familiar with it, no.

21 Q. Okay. Do you understand that coal
22 combustion is generally more carbon intensive than
23 burning natural gas for electricity?

24 A. That's what I understand, yes.

25 Q. And you would agree they are the same for

1 nuclear facilities, that they are less carbon
2 intensive than coal plants?

3 A. Yes.

4 Q. And would you agree that if the EPA's
5 greenhouse rule is finalized, emission reductions
6 will be required from coal-burning fire plants?

7 A. I'm not in a position to answer that. I
8 can't answer that.

9 Q. Fair enough, Mr. Brodt.

10 I have just one more question.

11 Would you turn to page 9 of that Board of
12 Directors presentation that I asked you to look at
13 previously.

14 A. You mean the annual report?

15 Q. No, not the annual report, the
16 October 22, 2014, presentation.

17 A. Okay. Which page?

18 Q. Page 9. And do you see at the top where
19 it talks about "Coal Combustion Residuals"?

20 A. Yes.

21 Q. And do you see where it says "CCR
22 regulated as non --

23 EXAMINER PIRIK: Okay. Hold on just a
24 minute. We agreed that we were going to keep the
25 documents confidential and deal with them in the

1 confidential record. So even though some of it may
2 appear not to be, we need to wait with those
3 questions.

4 MR. MENDOZA: Okay. Then I'll defer my
5 remaining questions to the confidential part of the
6 discussion.

7 EXAMINER PIRIK: Okay. I just want to be
8 sure, before we go too far in the record, I
9 understand that we're keeping these confidential, but
10 is there a reason for us to go back and have this
11 page redacted? I would hate to have the court
12 reporters do that, but we need to decide that now.

13 MR. CASTIGLIONE: You are referring to
14 page 9 of this?

15 EXAMINER PIRIK: No. I am referring to
16 what Mr. Mendoza said on the record. I know they are
17 looking at it over there. He is referring to this
18 document. Are you okay with that being in the open
19 record?

20 MR. CASTIGLIONE: It's not necessary.

21 EXAMINER PIRIK: Okay. That's good.

22 MR. MENDOZA: My apologies.

23 EXAMINER PIRIK: No. That's fine. Okay.

24 So were you concluded?

25 MR. MENDOZA: I'll defer my remaining

1 questions for the confidential section of the
2 questions.

3 EXAMINER PIRIK: Sounds good.

4 Ms. Kyler?

5 MS. KYLER COHN: No questions.

6 EXAMINER PIRIK: Mr. Oliker?

7 MR. OLIKER: Thank you, your Honor.

8 Before we go on the record -- actually, can we go off
9 the record?

10 EXAMINER PIRIK: Yes.

11 (Discussion off the record.)

12 EXAMINER PIRIK: We'll go back on the
13 record.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Oliker:

17 Q. Good afternoon, Mr. Brodt. I will try to
18 be as quick as I can today. You're familiar with the
19 locations of Clifty Creek and Kyger Creek, correct?

20 A. That's correct.

21 Q. And would you agree that Clifty Creek is
22 physically located in the geographic -- geographic
23 footprint of what is known as the "MISO Regional
24 Transmission Operator?"

25 A. I don't know that I can verify that, but.

1 Q. Would you agree it's located in Indiana?

2 A. Yes.

3 Q. Okay. Would you agree that Kyger Creek
4 is physically located in Ohio, but it is not actually
5 a PJM internal resource?

6 A. I can agree that it's located in Ohio.

7 Q. So do you not know -- do you or do you
8 not know whether Kyger Creek is a PJM resource?

9 A. I do not know.

10 Q. So, and then going back to Clifty Creek,
11 do you know whether Clifty Creek is a PJM internal
12 resource?

13 A. I do not know.

14 Q. Would you agree that it is your belief
15 that some of the power from Clifty Creek and Kyger
16 Creek is dispatched into MISO?

17 A. I'm not sure.

18 Q. Did you previously testify in your
19 deposition that you believed that was the case?

20 MS. SPILLER: Objection, your Honor.
21 This is an improper use of the deposition.

22 EXAMINER PIRIK: Do you have the
23 deposition you can show him?

24 MR. OLIKER: I do. One of the
25 prerequisites is usually to ask him if you asked him

1 the question before.

2 MS. SPILLER: You need to show him the
3 deposition.

4 MR. OLIKER: And then I was going to show
5 it to him.

6 EXAMINER PIRIK: Okay. That's fine. You
7 may proceed.

8 MR. OLIKER: Make sure that's not a
9 confidential question. I apologize, your Honor. May
10 I approach, your Honor?

11 EXAMINER PIRIK: Yes.

12 MR. OLIKER: Thank you.

13 Q. (By Mr. Oliker) Mr. Brodt, could you
14 please turn to page 65 of your deposition. Take your
15 time. Are you there?

16 A. I'm --

17 Q. I'm sorry, the numbering is a little
18 strange.

19 A. It is.

20 MR. SERIO: If it would be helpful, I
21 have a big version.

22 MR. OLIKER: Do you have a big version,
23 Joe?

24 A. I think I have got it here. I think this
25 is 65.

1 Q. Okay. Now --

2 EXAMINER PIRIK: Why don't we give the
3 witness a copy that OCC has.

4 MR. OLIKER: Thank you, Joe.

5 THE WITNESS: Thank you. Okay.

6 Q. On your deposition page 65, line 6, you
7 were asked the question: "And would you agree that
8 some of the power from Clifty Creek is sometimes
9 dispatched in a MISO?"

10 And the answer was: "I expect that
11 that's probably true. I don't know that to be a
12 fact." Did I read that correctly?

13 A. Yes.

14 Q. Okay. Thank you.

15 You've talked earlier with counsel for
16 various parties about billable cost forecasts,
17 correct?

18 A. Yes.

19 Q. Or billable cost summaries, is that a
20 better way to describe them?

21 A. Yes.

22 Q. And these are cost projections for OVEC,
23 correct?

24 A. That's correct.

25 Q. And they go out until 2040?

1 A. That's correct.

2 Q. And I'm not going to ask you questions
3 about this in the public record, but I think I should
4 probably mark the document now.

5 EXAMINER PIRIK: Yes.

6 MR. OLIKER: May I approach, your Honor?

7 EXAMINER PIRIK: Yes.

8 MR. OLIKER: Thank you. Unfortunately,
9 OCC submitted every single one but the one I wanted
10 to talk about. And I would like to mark this
11 document -- this is actually a portion of Tim
12 Hamilton's testimony. This is specifically Exhibit
13 TH-9, which is a confidential document, but I would
14 like to mark this as IGS Exhibit 7.

15 EXAMINER PIRIK: The document is so
16 marked. It should be IGS Exhibit 7a.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MS. SPILLER: Your Honor, to be clear, we
19 will have two copies of this?

20 MR. OLIKER: I can replace it with Tim
21 Hamilton's testimony. Due to exigent circumstances,
22 I was not able to get to a printer that was able to
23 get a full copy of his testimony. But this is his
24 TH-7 -- or, TH-9 that was attached to his testimony.

25 MS. BOJKO: What number is his testimony

1 going to be marked?

2 MR. OLIKER: IGS Exhibit 7, which I
3 believe is the next document in the IGS exhibit list.

4 MS. SPILLER: And, Joe, the date on this
5 one?

6 MR. OLIKER: The date is June 24, 2014,
7 which is found underneath the 2014 column.

8 EXAMINER PIRIK: And this is already
9 attached to his testimony?

10 MR. OLIKER: Yes, it is, your Honor.

11 EXAMINER PIRIK: Okay. I think we will
12 go ahead and mark this as a separate exhibit, IGS
13 Exhibit 7. I think these types of exhibits, though,
14 we've already had confidential rulings on. This is
15 just another of the same type of exhibit that we've
16 had before.

17 MR. OLIKER: I would agree, your Honor.

18 EXAMINER PIRIK: So, in light of that --

19 MS. SPILLER: Joe, what's the discovery
20 number because the copy is a little difficult to make
21 out?

22 MR. OLIKER: That's my home printer. I
23 think it's OCC-POD-09-64, I think is what that says.
24 And it's also attached to Tim's confidential
25 testimony very clearly. I could pull it up for you.

1 Yes, it is 9-64.

2 MS. SPILLER: Okay. Great. Thank you.

3 EXAMINER PIRIK: I think we would like to
4 go ahead with this exhibit, since we have basically
5 ruled upon many of these items already in a previous
6 exhibit. We have before us the proposal that Duke
7 has given us with regard to Mr. Hamilton's exhibit,
8 prefiled testimony and Attachment 9. I think we can
9 go ahead and mark this IGS Exhibit 7 and 7a and rule
10 on this at this time as far as confidentiality goes.

11 MR. OLIKER: Thank you, your Honor. And
12 will it be -- I am trying to think the entire
13 testimony -- would we consider this Tim Hamilton's
14 testimony or would this be a separate exhibit?

15 EXAMINER PIRIK: We will just mark it as
16 a separate exhibit for purposes of this exhibit.

17 MR. OLIKER: Thank you, your Honor.

18 EXAMINER PIRIK: Oh, Ms. Kingery is right
19 there.

20 I just want to be sure that as we go
21 through this document, I mean, at this time I am
22 going to ask Duke to notify the other parties as to
23 what you're requesting confidential treatment of.

24 MS. SPILLER: Your Honor, if I may, with
25 respect to IGS Exhibit 7, this is certainly similar

1 to OCC Exhibit 5 for which we previously had a
2 discussion concerning the confidential proprietary
3 nature of the content, in fact it looks like both of
4 the documents reflect the same period of time, 2014
5 through 2040.

6 So for the reasons previously advanced
7 with regard to OCC Exhibit 5, I believe that IGS
8 Exhibit 7 should be afforded the same confidential
9 treatment and, in that regard, the numeric
10 information that appears under each of the calendar
11 years 2014 through 2040 should be given confidential
12 treatment and redacted from the public record.

13 There is also, in the "Demand Charge"
14 section, the bolded line, a little more than midway
15 through "Projected Capital Improvements," right above
16 that, after the word "Projected" we would propose
17 that that text be redacted on both pages of IGS
18 Exhibit 7 similar to what was done with regard to OCC
19 Exhibit 5.

20 And I'm trying to read Mr. Oliker's copy.
21 It appears that the critical assumptions, there may
22 be an additional one in IGS 7 that does not appear on
23 OCC Exhibit 5. I would defer to OVEC, to Mr. Brodt
24 and his counsel with regard to the confidential
25 nature of these critical assumptions on the IGS 7

1 exhibit.

2 EXAMINER PIRIK: Has OVEC had a chance to
3 look at this?

4 MR. CASTIGLIONE: Yes, your Honor. We
5 propose to treat it in the same manner as the prior
6 document, OCC Exhibit 5. The critical assumptions do
7 look different on this document, but we won't request
8 that any of them be redacted.

9 EXAMINER PIRIK: Okay. Are there any
10 objections to the proposal from Duke and OVEC with
11 regard to the confidentiality of this agreement --
12 or, this IGS Exhibit 7a?

13 Hearing none, it will be treated
14 accordingly. And I would ask IGS to prepare a
15 redacted version, share it with Duke, to ensure that
16 it covers what we just discussed, and be sure that
17 the court reporter gets a copy of that document.

18 MR. OLIKER: And so I understand, we are
19 not going to redact the critical assumptions or are
20 we?

21 EXAMINER PIRIK: Not. We are not.

22 MR. OLIKER: Thank you. That's what I
23 thought. Thank you, your Honor. Would you like me
24 to proceed?

25 EXAMINER PIRIK: Yes.

1 Q. (By Mr. Oliker) Okay. Mr. Brodt, looking
2 at IGS Exhibit 7a, would you agree that this is the
3 billable cost summary that was prepared by OVEC, a
4 forecast, on June 24, 2014?

5 A. Yes.

6 Q. Does this document appear to be true and
7 accurate?

8 A. Yes.

9 Q. And this document was provided by OVEC to
10 Duke in this proceeding -- or, actually, not in this
11 proceeding, in the ordinary course of business?

12 A. This document would have been posted on
13 our website that's accessed by our sponsoring
14 companies. That's where they would have gotten it.

15 Q. Okay. And you agree that this is a
16 projection of OVEC's costs through 2040 that it would
17 bill to the sponsoring companies?

18 A. Yes.

19 MR. OLIKER: Okay. Thank you. And I'll
20 come back to this document later.

21 I believe that's all I have for the
22 public record, your Honor. Thank you.

23 EXAMINER PIRIK: Thank you.

24 Ms. Petrucci.

25 MS. PETRUCCI: No questions.

1 EXAMINER PIRIK: Mr. Hart.

2 MR. HART: No questions.

3 EXAMINER PIRIK: Ms. Spiller.

4 MS. SPILLER: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Spiller:

8 Q. Mr. Brodt, do you recall questions from
9 Mr. Berger concerning the accuracy or reliability of
10 long-term forecasts?

11 A. Yes.

12 Q. Would you agree with me, sir, that we
13 don't know how accurate a forecast is until the
14 events identified in that forecast are actually
15 realized?

16 A. That's correct.

17 Q. And when those events are actually
18 realized, the actual numbers could be lower than what
19 was forecasted, correct?

20 A. That's correct.

21 Q. Mr. Brodt, would you agree that not all
22 operating expenses -- not all of OVEC's operating
23 expenses vary with generation output?

24 A. That's correct.

25 Q. You were asked a question concerning

1 whether OVEC would -- whether it was fair to assume
2 that OVEC would dispatch when the cost of OVEC is
3 higher than PJM's marginal cost. Do you remember
4 that, sir?

5 A. Yes.

6 Q. Does PJM have a marginal cost or is it a
7 market cost?

8 A. I don't know what PJM has. We dispatch
9 based on the sponsor's demand.

10 Q. Thank you.

11 You were asked questions about an
12 increase in generation production and the potential
13 to secure coal in the spot market. Do you recall
14 that line of questioning from both Mr. Berger and
15 Mr. Darr?

16 A. Yes.

17 Q. Mr. Brodt, would you agree with me that
18 spot purchases are just as likely to be less
19 expensive than contracted-for coal prices?

20 A. They can be, yes.

21 Q. Mr. Brodt, did Duke Energy Ohio consult
22 with you prior to making their filing in this case on
23 approximately May 29, 2014?

24 A. Consult with me?

25 Q. As to the content of their filing, sir.

1 A. No.

2 Q. Has there been any suggestion by Duke
3 Energy Ohio that your compensation as the Chief
4 Financial Officer of OVEC will be enhanced as a
5 result of the outcome in this proceeding?

6 A. No.

7 Q. Mr. Brodt, you have no knowledge of Duke
8 Energy Ohio's current electric security plan that was
9 approved by the Ohio Commission on November 22, 2011,
10 do you?

11 A. No.

12 Q. And you have not reviewed the
13 Commission's order of the company's current electric
14 security plan, have you?

15 A. No.

16 Q. And, sir, you have not read the
17 stipulation in the company's current electric
18 security plan, have you?

19 A. No.

20 Q. And, sir, you cannot dispute that Duke
21 Energy Ohio is required, under its current electric
22 security plan, to transfer its directly-owned legacy
23 generating assets, can you?

24 A. No.

25 Q. Do you know, Mr. Brodt, whether AEP Ohio

1 included, in a state regulatory filing, a proposal to
2 transfer its contractual entitlement in OVEC?

3 A. I do not know.

4 Q. Are you aware of any requirement in Ohio
5 that compels Duke Energy Ohio to transfer its
6 contractual -- contractual entitlement in OVEC to an
7 unrelated third party?

8 A. I am not aware of anything.

9 Q. Are you aware, sir, of any requirement in
10 Ohio that compels Duke Energy Ohio to transfer its
11 contractual entitlement in OVEC to an affiliate?

12 A. No.

13 Q. You were asked questions about a
14 retirement of Ohio utilities to divest their OVEC
15 generating assets. Is your information about any
16 requirement of the Ohio Commission based upon what
17 other individuals may have told you?

18 A. That's the only information I have.

19 Q. And, again, sir, you've not reviewed any
20 pleadings from the Ohio Commission concerning
21 corporate separation plans of any Ohio utility, have
22 you?

23 A. That's correct.

24 Q. Mr. Brodt, given that you have been
25 subpoenaed in this proceeding and you've been asked

1 questions by counsel, are you generally aware of a
2 proposal that Duke Energy Ohio has pending before the
3 Ohio Commission concerning its OVEC entitlement?

4 A. Generally aware, yes.

5 Q. Okay. Will that proposal change any of
6 the costs that are paid to OVEC?

7 A. No.

8 Q. Mr. Brodt, does OVEC have a parent
9 company?

10 A. Ohio Valley Electric is the parent
11 company.

12 Q. Okay. And given that OVEC does not have
13 a parent company, then it is not under the same
14 common control as Duke Energy Ohio, correct?

15 MR. DARR: Objection.

16 MR. BERGER: Objection.

17 MS. SPILLER: Your Honor, this is -- I
18 guess I'll wait for the basis of the objection.

19 EXAMINER PIRIK: Yes, I am waiting for
20 the basis.

21 MR. BERGER: The basis, your Honors, this
22 is all friendly cross, and unless the other parties
23 have an opportunity to follow-up on this
24 cross-examination, Duke is seeking to establish as --
25 basically through direct testimony, effectively,

1 through Mr. Brodt, without any opportunity for
2 cross-examination of other parties.

3 EXAMINER PIRIK: Mr. Darr.

4 MR. DARR: More fundamentally, your
5 Honor, --

6 EXAMINER PIRIK: Can you turn on your
7 microphone?

8 MR. DARR: Sure. More fundamentally,
9 your Honor, the question refers to legal terms that
10 are embedded in Ohio law, and it has not been
11 represented that Mr. Brodt is qualified to answer
12 that sort of a question. It's up to the Commission
13 to decide whether or not the representations, based
14 on fact, based on the application and approved
15 corporate separation plan, created a relationship
16 that -- that's at issue here. So it's an improper
17 question.

18 MS. SPILLER: Your Honor, if I may, this
19 question has been introduced into this case by the
20 intervenors, as Mr. Darr remarked during his
21 cross-examination of Mr. Wathen. I'm allowed to
22 inquire into any matter that's relevant in the
23 proceeding of any witness.

24 This is a witness that the OCC has
25 admitted they were calling in direct -- or, in their

1 case in chief. I am allowed to cross-examine
2 Mr. Brodt on any issue that is relevant. I'm not
3 asking him for a legal interpretation, but,
4 certainly, as the Chief Financial Officer of OVEC, he
5 would know the corporate structure of that entity and
6 whether or not it has any common control -- is under
7 the same common control as Duke Energy Ohio. And,
8 again, this is an issue that the intervenors have
9 introduced into this case, and I'm entitled to
10 inquire of this witness.

11 EXAMINER PIRIK: I think, in response to
12 what Mr. Darr stated, I think you do need to set some
13 foundation for this witness as far as what his
14 knowledge is and see where that goes. But also, I do
15 intend on allowing another round of questions. This
16 is a unique situation and I think that while we have
17 the witness here, we need to get the information on
18 the record, so, you may proceed.

19 MS. SPILLER: Thank you, your Honor.

20 Q. (By Ms. Spiller) Mr. Brodt, you just
21 mentioned to me that OVEC does not have a parent
22 company, correct?

23 A. OVEC does not have a parent company.
24 OVEC is the parent company for Indiana-Kentucky
25 Electric Corporation and Ohio Valley Electric

1 Corporation. So the entity, itself, Ohio Valley
2 Electric Corporation, is the parent.

3 Q. And within that corporate chain, are
4 there only those two entities, the parent, OVEC, and
5 its wholly-owned subsidiary Indiana-Kentucky Electric
6 Corporation?

7 A. That's correct.

8 Q. So OVEC does not have any other
9 subsidiaries, correct?

10 A. That's correct.

11 Q. And, sir, you are aware of the identity
12 of the sponsoring companies in OVEC, correct?

13 A. Yes.

14 Q. And you are aware also, sir, of the
15 identity of the parent companies for those sponsoring
16 companies, correct?

17 A. Yes.

18 Q. Do you have before you, sir, in that
19 stack of papers, OCC Exhibit No. 6?

20 A. Yes.

21 Q. And, sir, on that is there an
22 identification of both a sponsoring company and then,
23 in parens, its parent company?

24 A. Yes.

25 Q. And is this information, sir, published

1 in the FERC Form 1 for OVEC, the identity of the
2 sponsoring companies and their parent companies?

3 A. I believe it is, but I'm not sure.

4 Q. And, sir, is Duke Energy Corporation,
5 Duke Energy Ohio's parent corporation?

6 A. Yes.

7 Q. Does OVEC have any affiliation with Duke
8 Energy Corporation?

9 MR. BERGER: Same objection, your Honor.
10 I'll join in Mr. Darr's objection in that he's
11 testifying -- he is being asked to testify regarding
12 a legal issue as to what the meaning of "affiliation"
13 is. He hasn't indicated any familiarity with that
14 subject from a legal standpoint or from a policy
15 standpoint, so I would object to that.

16 MS. SPILLER: Your Honor --

17 EXAMINER PIRIK: Could you clarify with
18 this witness what you mean by that term? I know
19 that's been a term that has been gone back and forth,
20 and objections, so.

21 Q. Mr. Brodt, does Duke Energy Corporation
22 own stock in OVEC?

23 A. No.

24 Q. And OVEC is not a subsidiary of Duke
25 Energy Corporation, correct?

1 A. That's correct.

2 Q. Does Duke Energy Corporation control
3 OVEC?

4 MR. BERGER: Objection, your Honor.

5 MR. DARR: Objection.

6 MR. BERGER: Again, these are legal terms
7 that he is being asked to testify to. She hasn't
8 established that he has familiarity with the legal
9 terminology. Yesterday, we used a -- we referenced a
10 regulation specifically that addressed common
11 ownership or control. She hasn't shown that he even
12 knows of that regulation. So I would object. He is
13 being asked to testify on subject matter to which he
14 has not been qualified. Thank you.

15 MS. SPILLER: Your Honor, if I may
16 briefly. If Mr. Brodt doesn't know what I mean, I
17 would certainly expect that he would ask me to
18 restate the question. But, again, he is the CFO, and
19 my question is simply who controls OVEC. As the CFO,
20 he should know that.

21 EXAMINER PIRIK: Mr. Darr, do you have
22 anything to add?

23 MR. DARR: Join in OCC's objection. What
24 she's asking for is -- is going to the ultimate legal
25 issue. Certainly, if he were qualified as an expert

1 in corporate control, which hasn't been done, he
2 might be able to testify to that, but, until that's
3 established, all he can testify is to, on the record
4 as we have it today, is the ownership interest of the
5 various parties, which, quite honestly, are already
6 described in the ICPA, so this cross-examination is
7 completely redundant of evidence that's already in
8 the record.

9 So, not only is it improper because she's
10 asking to do something that he's not qualified to do
11 but it's also duplicative of information that's
12 already in the record.

13 MS. SPILLER: And, your Honor, if I may.
14 Again, I'm entitled to inquire of issues that the
15 intervenors have injected into this case. I am not
16 asking Mr. Brodt for a legal opinion. I am asking
17 him, as the CFO of a corporation for the past 28
18 years, about operational issues, and if he does not
19 know, he can simply tell me he doesn't know. I'm not
20 asking for a legal determination.

21 I would say that there were legal
22 opinions solicited of Duke Energy Ohio witnesses
23 yesterday. Those witnesses were allowed to answer
24 with the understanding that they were not providing
25 legal opinions, but their opinions based upon their

1 particular expertise.

2 MS. BOJKO: Your Honor, if I may be
3 heard?

4 EXAMINER PIRIK: Yes.

5 MS. BOJKO: There's a distinction between
6 the witnesses that we actually asked that. We
7 established that. First of all, they filed prefiled
8 testimony that spoke to legal issues and actually
9 quoted citations. Secondly, they were determined, as
10 Mr. Darr suggested, to be experts in regulatory
11 policy, and also had experience with regulatory
12 proceedings, so it was asked in that context.

13 None of that has been established for
14 this witness, and I believe it can't be established
15 with this witness, so that is the distinction between
16 regulatory policy and stating statutory provisions,
17 and his recollection of those or interpretation of
18 that.

19 EXAMINER PIRIK: I do hear what you're
20 saying, Ms. Spiller, but yesterday we spent a lot of
21 time with the witness and some of the terms that you
22 are using with this witness are defined terms that
23 are within statute and with rules that the Commission
24 operates under. I understand you're trying to use
25 his expertise to answer some of these questions, but

1 they do go to the heart of some of the issues that
2 were brought up yesterday.

3 So, unless you can show that this witness
4 has knowledge or understanding of what some of those
5 defined terms are, the terms being "affiliate," being
6 "control," some of those terms, I don't know that I
7 can allow you to continue with this line of
8 questioning.

9 MS. SPILLER: I'll rephrase and step
10 back, your Honor. Thank you.

11 Q. (By Ms. Spiller) Mr. Brodt, do you know
12 what a subsidiary is?

13 A. Yes.

14 Q. And what is that, please, to your
15 understanding?

16 A. A subsidiary is a corporate that's --
17 that is owned by another corporation.

18 Q. Okay. And is Duke Energy Ohio a
19 subsidiary of OVEC?

20 A. No.

21 Q. And what is an affiliate, sir, in your
22 understanding?

23 A. An affiliate is an entity that has some
24 connection to another entity.

25 Q. And how do they have that connection, if

1 you know?

2 A. By some form of ownership or stock
3 or --

4 Q. And do you know what it means to "control
5 a corporation," sir?

6 A. No.

7 Q. Okay. OVEC has a contract with Duke
8 Energy Ohio and 12 other companies, correct?

9 A. That is correct.

10 Q. And, sir, you've indicated previously
11 that you have been the Chief Financial Officer of
12 OVEC for the past 28 years. As a result of that, is
13 it fair to say you're familiar with the terms of the
14 Intercompany Power Agreement?

15 A. Yes.

16 Q. And under the Intercompany Power
17 Agreement, Duke Energy Ohio has a 9 percent
18 contractual interest in OVEC, correct?

19 A. That's correct.

20 Q. And I believe you've indicated that Duke
21 Energy Ohio also has a seat on the Board of Directors
22 of OVEC, correct?

23 A. That's correct.

24 Q. Do the decisions of the OVEC Board of
25 Directors require either a majority or unanimous vote

1 by the Board of Directors?

2 A. The decisions of the Board of Directors
3 require a majority vote.

4 Q. And if there are 13 sponsoring companies,
5 would it mean, sir, that there are 13 votes by the
6 Board of Directors?

7 A. That is correct.

8 Q. And so, one -- would one vote equal a
9 majority?

10 A. I don't understand the question.

11 Q. Sure. If there are 13 board of directors
12 and, thus, 3 votes associated with the Board of
13 Directors, would just one vote constitute a majority
14 for purposes of a board decision?

15 A. No.

16 Q. Does Mr. Chuck Whitlock dictate the
17 day-to-day operations of OVEC?

18 A. No.

19 Q. Does Mr. Whitlock control any of the
20 operations of OVEC?

21 A. No.

22 Q. OVEC directly owns the Kyger Creek
23 generating station, correct?

24 A. That's correct.

25 Q. Duke Energy Ohio does not hold title to

1 the Kyger Creek generating station, does it?

2 A. That's correct.

3 Q. And you've identified Indiana-Kentucky
4 Electric Corporation as the wholly-owned subsidiary
5 of OVEC, correct?

6 A. That's correct.

7 Q. And that entity is also known as IKEC,
8 correct?

9 A. That's correct.

10 Q. And IKEC directly owns the Clifty Creek
11 generating station, correct?

12 A. That's correct.

13 Q. Duke Energy Ohio does not hold title to
14 the Clifty Creek generating station, does it?

15 A. No, it does not.

16 Q. And, sir, for purposes of your
17 examination, can we, when referring to "OVEC" and
18 "IKEC" just refer to them as "OVEC"?

19 A. Yes.

20 Q. Thank you.

21 And OVEC has employees, correct?

22 A. Yes.

23 Q. And OVEC's employees are responsible for
24 managing the day-to-day operations of both of the
25 OVEC-owned generating assets, Kyger Creek and Clifty

1 Creek, correct?

2 A. That's correct.

3 Q. And, sir, do you have before you --
4 strike that.

5 Do Duke Energy Ohio employees manage the
6 day-to-day operations of Kyger Creek or Clifty Creek?

7 A. No.

8 Q. Sir, do you have before you what was
9 previously marked as IEU Exhibit No. 5? That's the
10 ICPA, sir.

11 A. Yes. Yes.

12 Q. And that's the Intercompany Power
13 Agreement between OVEC and the sponsoring companies,
14 correct?

15 A. That's correct.

16 Q. And this agreement was most recently
17 revised in 2011, correct?

18 A. Yes.

19 Q. And upon the revision of the ICPA, OVEC
20 submitted this to the Federal Energy Regulatory
21 Commission for approval, correct?

22 A. That's correct.

23 MS. SPILLER: And, your Honor, may we
24 approach the witness?

25 EXAMINER PIRIK: Yes.

1 MS. SPILLER: And we would like a
2 document marked as Duke Energy Ohio Exhibit 14.

3 EXAMINER PIRIK: The document is so
4 marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. And, Mr. Brodt, as the CFO for OVEC, are
7 you aware of the filings that are made on its behalf
8 before the FERC?

9 A. Yes.

10 Q. And do you have before you what's been
11 marked as Duke Energy Ohio Exhibit 14. This is a
12 cover letter showing electronic filing of a docket
13 before the FERC, correct?

14 A. Yes.

15 Q. And is this the filing, sir, in which
16 OVEC requested FERC approval of its amended ICPA?

17 A. Yes, it is.

18 EXAMINER PIRIK: What's the docket number
19 on that?

20 MS. SPILLER: It is, your Honor, it is
21 docket No. 11 -- I'm sorry, ER11-3441.

22 EXAMINER PIRIK: Thank you.

23 Q. And, sir, if you could please turn to
24 page 7 -- and let me back up. It looks like, sir,
25 OVEC initially made its filing on March 23, 2011,

1 with the FERC, correct? About 8 pages in you will
2 see a cover letter dated March 23, 2011?

3 A. Yes.

4 Q. And then it looks like OVEC resubmitted
5 its filing on April 27, 2011 as indicated on the
6 first cover page of Duke Energy Ohio Exhibit 14,
7 correct?

8 A. Right.

9 Q. And the resubmission was due to, it looks
10 like, an incorrect filing type when the filing was
11 initially submitted, correct?

12 A. Yes.

13 Q. And, sir, if you could refer to what is
14 page 7 of the March 23, 2011, submission.

15 A. Yes.

16 Q. And the first sentence that appears at
17 the top of that page 7, it would be immediately after
18 the footnote 7, OVEC represented to the FERC that
19 "none of OVEC's owners can direct the management or
20 operations of OVEC." Do you see that, sir?

21 A. Yes.

22 Q. And do you agree with that submission
23 that was made to the FERC on behalf of OVEC?

24 A. Yes, I do.

25 Q. And further on in this paragraph, sir, it

1 looks like the third sentence that begins with
2 "Furthermore"?

3 A. Yes.

4 Q. Do you see that sentence?

5 A. Yes, I do.

6 Q. OVEC submitted to the FERC that none of
7 the -- "none of OVEC's owners has the incentive to
8 grant 'undue influence' or otherwise cross-subsidize
9 OVEC's operations through the Amended ICPA because
10 between 55.8 percent and 98.5 percent...of the
11 benefits of such activities would flow to the other
12 holding company systems, each of which is a
13 competitor in the wholesale market," correct?

14 A. Yes.

15 Q. And, sir, do you agree with that
16 submission that was made to the FERC?

17 A. Yes.

18 Q. And the final sentence in this paragraph
19 on page 7, sir, that begins with "As a result," OVEC
20 indicated that "OVEC does not believe that any of its
21 owners exercise the type of control necessary to make
22 it an 'affiliate' of any of the owners for these
23 purposes." Do you see that language, sir?

24 A. Yes, I do.

25 Q. And you would expect OVEC's filings

1 before the FERC to be accurate representations,
2 correct?

3 MR. BERGER: Objection, your Honor.
4 Again, he is being asked to testify regarding a legal
5 issue and he's being asked to testify regarding
6 representations of other persons on his own.

7 MS. SPILLER: Your Honor, he has been
8 asked to identify comments of Mr. Chisling quite
9 extensively in connection with the documents filed by
10 the OCC, and my question was not one of a legal
11 opinion, but, simply, whether Mr. Brodt, as the Chief
12 Financial Officer, would expect the filings of OVEC
13 before the FERC to be accurate.

14 EXAMINER PIRIK: I am going to overrule
15 the objection and allow this document and this
16 testimony in the record. But, again, this is a
17 document that's filed in an open docket and we're
18 going to have to give it appropriate weight. I don't
19 know necessarily, since this witness did not author
20 this document, but it will be given what -- you know,
21 what weight it is warranted on the record.

22 MS. SPILLER: And, your Honor, I would
23 note that the Bench has taken, and according to your
24 chart, just administrative notice of the entry in the
25 docket, in this FERC filing. So, certainly, I wanted

1 to ensure that the Commission had the underlying
2 papers that would have culminated in that entry and
3 this is -- these are those papers.

4 EXAMINER PIRIK: Okay. Thank you.

5 MS. SPILLER: Thank you, your Honor.

6 Q. (By Ms. Spiller) Mr. Brodt, for purposes
7 of the filing before the FERC concerning approval of
8 the revised ICPA, OVEC had prepared a benchmark study
9 to show that the ICPA represents a low-cost, low-term
10 power supply option as compared to available
11 alternatives, correct? If you look at attach --
12 Exhibit A to Duke Energy Ohio 14, that would follow
13 after page 18 and Mr. Chisling's signature.

14 A. Yes.

15 EXAMINER PIRIK: I'm sorry, we're not
16 there. There are so many multiple pages in the
17 document I really don't know where you are.

18 MS. SPILLER: So it is -- I'm looking to
19 see if -- FERC, your Honor, does not have page
20 numbers at the top, but there is the first -- the
21 first, it looks, like seven pages of the exhibit are
22 the April 27, 2011, cover letter that resubmitted the
23 prior filing.

24 The prior filing was made on March 23,
25 2011, under cover from Mr. Chisling, and that is the

1 series of documents that actually have page numbers
2 at the bottom. So what appears as page 2 about nine
3 pages into the attachment is page 2 of Mr. Chisling's
4 March 23, 2011, submission.

5 Peering through and looking at those page
6 numbers, we signed the pleading on page 18 with a
7 certificate of service. The next page in the series
8 is Exhibit A to that submission. And then we start
9 over, numbering sequentially, page 1, within Exhibit
10 A.

11 MR. SERIO: So what's the page we're on?

12 EXAMINER PIRIK: What's really hard with
13 these -- with this type of cross is it makes the
14 record very difficult to follow and actually
15 understand exactly what -- what page we're talking
16 about through the description.

17 If you needed to cite this somehow, I am
18 not even sure how you would cite it because it's not
19 page numbers. I really don't want to say this, but
20 I'm going to say this: We need to number the pages,
21 starting with the first one being "1" and we will go
22 all the way through.

23 MS. SPILLER: Okay.

24 MR. SERIO: You were -- you are starting
25 with the very first page?

1 EXAMINER PIRIK: The first page is No. 1.

2 MR. OLIKER: Amy, are you actually going
3 to ask questions about the ICPA within the document?

4 MS. SPILLER: Not within the document.
5 That is separately marked.

6 MR. OLIKER: So is it okay to stop
7 numbering once we get to the ICPA?

8 MS. SPILLER: I think that's fine.

9 MR. OLIKER: If the Bench is okay with
10 that.

11 EXAMINER PIRIK: Yeah, I think that's a
12 good suggestion. Whereabouts are we with that?

13 MS. SPILLER: So I have, your Honor, I've
14 only numbered odd-numbered pages, but I have
15 Exhibit A would actually begin on page 26.

16 EXAMINER PIRIK: No. I'm asking where
17 the ICPA agreement begins in the document.

18 MR. OLIKER: I think it's page 37 -- no,
19 36. I'm sorry.

20 MS. SPILLER: It starts on page 36.

21 EXAMINER PIRIK: And that's the same
22 document as IEU Exhibit 5?

23 MS. SPILLER: So the approved ICPA is
24 Exhibit 5. Within this filing, your Honor, you would
25 have the original -- you are going to have a clean

1 version as well as redlined versions.

2 EXAMINER PIRIK: Okay. As long as you're
3 questioning, you know, if we end up with questioning
4 that goes beyond the other pages, then we're going to
5 have to mark those other pages, but I don't have any
6 problem with stopping at page 36 at this point if
7 that's the extent of your questions.

8 MS. SPILLER: Thank you.

9 EXAMINER PIRIK: I would just recommend,
10 because I know this is hard, but in the future, if
11 you have an exhibit that is like this that has, like,
12 numerous documents that are labeled, please number
13 them before we give -- make copies, before you make
14 copies for exhibits, because, otherwise, there's no
15 way to cite an exhibit by a party in a brief or in an
16 order. Okay?

17 You may continue.

18 MS. SPILLER: Thank you, your Honor.

19 Q. (By Ms. Spiller) Mr. Brodt, before we
20 took that short recess, I had asked whether, in
21 connection with the submission to the FERC, seeking
22 approval of the amended ICPA, whether OVEC had
23 prepared a benchmark study, and I believe you had
24 answered in the affirmative. That benchmark study,
25 sir, appears on what has been marked as page 26 of

1 Duke Energy Ohio Exhibit 14, correct?

2 A. Yes.

3 Q. And given the amended term of the ICPA
4 through 2040, OVEC indicated in this study that the
5 comparable alternative, for purposes of that study,
6 was a base load power plant, according to page 27,
7 correct?

8 A. Yes.

9 MS. SPILLER: And, your Honor, I am just
10 looking for reference for ease of the witness.

11 Q. And, Mr. Brodt, if you could please refer
12 to page 29 of Duke Energy Ohio Exhibit 14. And the
13 benchmark study that was presented to the FERC found
14 that the cost of the I -- the second paragraph, full
15 paragraph, sir, on page 29, the benchmark study
16 submitted to the FERC found that the cost of the ICPA
17 was expected to be about 21 percent less than the
18 least-expensive alternative, which was a combined
19 cycle plant without carbon sequestration, correct?

20 A. Yes.

21 Q. And the benchmark study went on to
22 perform an analysis regarding the exclusion of CO-2
23 costs, and in the benchmark study OVEC represented to
24 the FERC that the ICPA is expected to be
25 approximately 30 percent less than the least

1 expensive alternative of a new combined cycle plant,
2 correct?

3 MR. OLIKER: Your Honor, I would object.
4 There's no relevance for this line of questions which
5 talks about alternative power plant construction.
6 How is that relevant to this case on what the OVEC
7 sponsoring companies told FERC about whether to enter
8 this agreement or build something else?

9 MS. SPILLER: Your Honor, if I may, I
10 think it's incredibly relevant. The Sierra Club is
11 arguing these coal plants should be retired.
12 Certainly, as indicated by the number of letters that
13 the Sierra Club has caused to be filed in this
14 docket, as well as their cross-examination of our
15 witnesses, the anticipated exam -- or, testimony of
16 their witness, OVEC is going to -- or, Sierra Club is
17 going to argue that these are old coal plants that
18 should be retired. Certainly, we have an opportunity
19 to explore, with this witness, the -- the cost
20 associated with this power supply arrangement.

21 EXAMINER PIRIK: Overruled.

22 MS. SPILLER: Thank you, your Honor.

23 Q. Mr. Brodt, did the FERC approve the
24 amended ICPA?

25 A. Yes, they did.

1 Q. And, sir, do you have before you what has
2 previously been marked as IEU Exhibit No. 5 which is
3 the Amended and Restated ICPA as approved by the
4 FERC?

5 A. Yes, I do.

6 Q. And I believe you have expressed to
7 Mr. Berger that you're familiar with that document,
8 correct?

9 A. Yes.

10 Q. And, sir, you were asked questions about
11 the provisions for a transfer of a sponsoring
12 company's rights, titles, interests, or obligations
13 in the ICPA. Would you agree with me that that
14 document governs the process by which a sponsoring
15 company may seek to transfer its contractual
16 entitlement in OVEC?

17 A. Yes, it does.

18 Q. And, sir, there are only three ways by
19 which a sponsoring company may transfer its rights,
20 titles, interests, and obligations in OVEC under the
21 ICPA, correct?

22 A. That's correct.

23 Q. And you've indicated, sir, if we may
24 refer to section 9.183 of the ICPA, which appears on
25 page 21 of IEU Exhibit 5.

1 A. Yes.

2 Q. This is a provision within the ICPA that
3 allows for transfer of a sponsoring company's
4 interest to a third party, correct?

5 A. That's correct.

6 Q. And for purposes of the ICPA and a
7 transfer to a third party, a "third party" is
8 actually defined, correct?

9 A. Yes.

10 Q. Okay. And under the ICPA definitions,
11 and particularly one that occurs on -- appears on
12 page 5 of IEU Exhibit 5, a "Third Party" is a "person
13 other than a Sponsoring Company or its Affiliate,"
14 correct?

15 A. That's correct.

16 Q. And as used in that definition,
17 "affiliate" is also a defined term, correct?

18 A. That's correct.

19 Q. And, sir, the definition of an
20 "affiliate" within the ICPA appears on page 2 of IEU
21 Exhibit 5, correct?

22 A. Yes, it does.

23 Q. And the ICPA defines an "Affiliate" as
24 "with respect to a specified person, any other person
25 that directly or indirectly through one or more

1 intermediaries controls, is controlled by, or is
2 under common control with, such specified person;
3 provided that 'control' for these purposes means the
4 possession, directly or indirectly, of the power to
5 direct or cause the direction of the management and
6 policies of a person, whether through the ownership
7 of voting securities, by contract or otherwise,"
8 correct?

9 MR. OLIKER: Objection. Counsel is
10 referring to federal law, and I believe it's fairly
11 misleading given that we are in an Ohio case, and
12 counsel has not discussed Ohio law or its definition
13 of affiliates, and it's muddying the record.

14 MS. SPILLER: Your Honor, Mr. Berger has
15 asked repeated questions about this document, as well
16 as other counsel have, concerning transfers may occur
17 under this document. This document contains defined
18 terms which are relevant to transfers within the
19 process established by the ICPA. So I think it's
20 entirely appropriate to establish what an affiliate
21 is for purposes of a transfer under this ICPA.

22 MR. OLIKER: Your Honor, there are
23 complete different rules for what affiliates are from
24 a federal perspective and there is different reasons
25 for them than what we have in Ohio law, so it's

1 completely irrelevant.

2 MS. SPILLER: But the transfer, under the
3 ICPA, can only happen under the terms of the ICPA.

4 MR. OLIKER: That's a different issue
5 that we are not talking about here. You're talking
6 about the definition of "affiliate" and what you
7 represented to FERC. It's a different issue.

8 MS. SPILLER: This is the affiliate --

9 EXAMINER PIRIK: I think the definition
10 of "affiliate" in this document speaks for itself,
11 and I'm sure there will be arguments on the
12 specificity, so how this actually applies in
13 different forums, when it comes brief time.

14 But, you know, if this witness has any
15 knowledge specifically and has a foundation for a
16 definition of "affiliate," then we'll allow those
17 questions. Otherwise, I think this document speaks
18 for itself.

19 MS. SPILLER: That's fine, your Honor.
20 Thank you.

21 Q. (By Ms. Spiller) So, Mr. Brodt, if we
22 could please refer back to section 9.18 that begins
23 on page 20 of IEU Exhibit 5, and the ways in which a
24 transfer under the ICPA may occur.

25 We've established that there is one way

1 to transfer to a third party and that's under section
2 9.183, correct?

3 A. That's correct.

4 Q. A sponsoring company, sir, may also seek
5 to transfer its rights, titles, obligations, under
6 the OVEC contract, with unanimous consent of all
7 other sponsoring companies, correct?

8 A. That's correct.

9 Q. And by "unanimous," sir, does that mean
10 every sponsoring company has to affirmatively approve
11 or accept the transfer?

12 A. Yes.

13 Q. There is a final provision for transfer
14 of rights, titles, interests, and obligations under
15 the ICPA, and that appears, sir, in section 9.182 of
16 IEU Exhibit 5, correct?

17 A. Yes.

18 Q. So without unanimous consent of all other
19 sponsoring companies, a sponsoring company can only
20 transfer its rights, titles, interests, and
21 obligations to an affiliate if that affiliate meets
22 the definition of a "permitted assignee," correct?

23 A. That's correct.

24 Q. And Mr. Berger asked you questions about
25 a permitted assignee; that is a defined term under

1 the ICPA, correct?

2 A. That's correct.

3 Q. And the definition of a "permitted
4 assignee" appears on page 4 of IEU Exhibit 5,
5 correct?

6 A. Yes.

7 Q. And is it fair, sir, to summarize that a
8 permitted assignee must be an affiliate with an
9 established credit rating consistent with the
10 requirements set forth in the ICPA?

11 A. Yes.

12 Q. And if that permitted assignee does not
13 have the credit ratings as required under the ICPA,
14 then a transfer to that affiliate can only occur if
15 the sponsoring company and transferor retains all
16 liability for all future obligations, correct?

17 A. Yes, that is a method in which it can
18 occur.

19 Q. So, under the ICPA, if a sponsoring
20 company wanted to transfer its contractual interest
21 in OVEC to an affiliate, it needed either to obtain
22 unanimous consent from all other sponsoring companies
23 or transfer to a permitted assignee, correct?

24 A. That's correct.

25 Q. And if the permitted assignee did not

1 meet the credit ratings required under the ICPA, then
2 in order to accomplish a transfer to an affiliate,
3 the sponsoring company would have to agree to remain
4 liable, on a going-forward basis, for all obligations
5 under the ICPA, correct?

6 A. Yes.

7 Q. And that ongoing liability would be
8 unlimited under the terms of the ICPA, correct?

9 A. Yes.

10 Q. And if a sponsoring company did not have
11 unanimous consent, or the affiliate to whom it sought
12 to transfer its interests was not a permitted
13 assignee as defined under the ICPA, then the ICPA
14 would preclude the transfer, correct?

15 A. That's correct.

16 Q. Mr. Brodt, you are familiar with the list
17 of sponsoring companies, and I believe they are
18 actually reflected, sir, on page 5 of IEU Exhibit 5.

19 A. Yes.

20 Q. Do you know whether some of these
21 sponsoring companies operate in vertically-integrated
22 jurisdictions such that their costs for generation
23 service are rate-based?

24 A. I do not know which do or which don't.

25 Q. Okay. You do know, sir, that some of the

1 sponsoring companies use the power from their
2 contractual entitlement in OVEC for internal
3 purposes, correct?

4 A. That's correct.

5 Q. You've previously mentioned, there's been
6 a couple of terms, a "billable cost summary" as well
7 as a "budget." Are those terms synonymous to you,
8 sir?

9 A. Yes.

10 Q. And the billable cost summary is one that
11 OVEC prepares both for the upcoming current calendar
12 year as well as further out, correct?

13 A. That's correct.

14 Q. And these billable cost summaries are
15 approved by the OVEC Board of Directors, correct?

16 A. Yes.

17 Q. And then after the billable cost summary
18 or budget is approved by the OVEC board, OVEC refines
19 that budget as the year progresses, correct?

20 A. That's correct.

21 Q. In fact, OVEC regularly revises its
22 billable cost summary or budget to reflect changes,
23 correct?

24 A. That's correct.

25 Q. Mr. Brodt, the "IVEC" owned -- the

1 OVEC-owned generating assets, Kyger Creek and Clifty
2 Creek, have environmental controls in place, correct?

3 A. That's correct.

4 Q. In fact, since you have been with OVEC,
5 OVEC has and continues to make substantial
6 environmental investments in its owned generating
7 assets, correct?

8 A. That's correct.

9 Q. You've indicated investments that include
10 precipitators, SCRs, and FGDs or scrubbers, correct?

11 A. That's correct.

12 Q. And the most recent of these
13 environmental controls would have been the scrubbers
14 at both the OVEC-owned generating stations, Kyger
15 Creek and Clifty Creek, correct?

16 A. That's correct.

17 Q. The installation of these scrubbers, sir,
18 was that work completed in 2013?

19 A. Yes.

20 Q. And during the installation of these
21 environmental controls, the OVEC-owned generating
22 assets would not have been generating power for some
23 period of time, correct?

24 A. I'm sorry. Please?

25 Q. Sure. During the installation of the

1 environmental controls, the scrubbers, the OVEC-owned
2 assets would not have been generating power, correct?

3 A. During the installation -- or, during the
4 connection of the facilities, yes, that's true.

5 Q. Outages would have been needed to allow
6 for those controls to be put in place, correct?

7 A. That's correct.

8 Q. Sir, do you have before you what was
9 previously marked as IEU Exhibit 7 which is the
10 annual report of OVEC from 2013? If you don't have
11 it readily handy, we're happy to get one for you.

12 A. No. I've got one right here.

13 Q. On page 2 of IEU Exhibit 7, under the
14 section "Flu Gas Desulfurization Projects," do you
15 see that in the left column, sir?

16 A. Yes.

17 Q. OVEC has indicated in its 2013 annual
18 report that "The pollution control systems installed
19 at both plants are expected to meet emission
20 limitations under MATS," correct?

21 A. That's correct.

22 Q. OVEC has also indicated that with these
23 environmental controls, the plants are expected to
24 meet the future requirements under CASPR, correct?

25 A. That's correct.

1 Q. And in the 2013 annual report, OVEC
2 projected an average cost of power of less than \$55
3 per megawatt-day for calendar year 2014, correct?

4 A. Yes.

5 Q. And in the 2013 annual report, OVEC also
6 projected a use factor for calendar year 2014 of 90
7 percent, correct?

8 A. That's correct.

9 Q. OVEC has implemented a continuous
10 improvement initiative, correct?

11 A. That's correct.

12 Q. And the purpose of this initiative is to
13 control costs, correct?

14 A. Yes.

15 Q. Another purpose of this continuous
16 improvement initiative is to improve operating
17 performance of the two OVEC-owned generating assets,
18 correct?

19 A. That's correct.

20 Q. And, sir, were the scrubbers being
21 installed on the OVEC-owned generating assets in 2012
22 and 2013?

23 A. Yes.

24 Q. And, Mr. Brodt, I apologize, I may have
25 given a wrong reference when referring to IEU Exhibit

1 7. I believe in referring to the cost of energy, I
2 defaulted to a capacity price reference. It's
3 actually \$55 per megawatt-hour not per megawatt-day,
4 correct?

5 A. That's correct.

6 Q. Thank you.

7 And, Mr. Brodt, I believe you've
8 indicated "use factor" is OVEC's estimate of how
9 much -- of how much power OVEC thinks the sponsoring
10 companies are going to take in a given year, correct?

11 A. That's correct.

12 Q. And if the plants aren't running, there
13 is no power to be taken, correct?

14 A. That's correct.

15 Q. And, sir, do you have before you what's
16 been previously marked as IEU Exhibit No. 6?

17 A. Is that 2012 annual report?

18 Q. Yes, sir, the 2012 annual report.

19 A. It doesn't have a number on it.

20 MS. SPILLER: Jeanne, it's fine.

21 Q. According to the 2012 annual report for
22 OVEC, the use factor at the OVEC-owned stations was
23 69.4 percent, correct?

24 A. Yes.

25 Q. And again, sir, this was a period of time

1 during which environmental controls were being
2 installed, correct?

3 A. That's correct.

4 Q. And would you agree with me, sir, if the
5 use factor decreases, the average cost of power would
6 increase?

7 A. That's correct.

8 Q. Mr. Brodt, the fixed costs for OVEC's two
9 generating assets are stable as compared to PJM
10 market prices, correct?

11 A. I don't know that I can make that
12 determination about PJM market prices.

13 Q. You do believe OVEC's prices are stable,
14 correct?

15 A. Yes, they are.

16 Q. Mr. Brodt, you were asked questions from
17 the Sierra Club in connection with what has been
18 marked as Sierra Club Exhibit No. 5. Do you have
19 that document, sir?

20 A. Which one is 5?

21 Q. Sierra Club 5, sir, is the U.S. Energy
22 Administration document.

23 A. Yes, I've got it.

24 Q. Mr. Brodt, in your opinion, has the major
25 maintenance at the OVEC-owned generating plants

1 enhanced the life of those generating units?

2 A. I don't know that it's enhanced the life,
3 but it's certainly kept the units well maintained and
4 able to function with the type of capacity that we
5 need to supply the sponsoring companies.

6 Q. And, sir, do you still have before you a
7 copy of your deposition?

8 A. Yes, I do.

9 Q. And if you could turn to page 52, please.

10 A. Yes.

11 Q. You were asked the question on line --
12 beginning on line 12, sir: "Do you know whether the
13 life expectancy of the plants has been extended due
14 to upgrades since they were initially constructed?"

15 Answer: "I think the major maintenance
16 that's been done at OVEC on the plants has enhanced
17 the life of the units. I don't recall there ever
18 being a retirement date of those units." Did I read
19 that correctly, sir?

20 A. Yes, you did.

21 MR. DARR: Objection.

22 EXAMINER PIRIK: Mr. Darr.

23 MR. DARR: I have no idea why reading the
24 deposition into the record was appropriate under
25 those circumstances.

1 MR. OLIKER: It was not impeaching.

2 EXAMINER PIRIK: Pardon me?

3 MR. OLIKER: I am agreeing with Mr. Darr.

4 EXAMINER PIRIK: I thought we had agreed
5 that we weren't reading in, in fact I think that was
6 an earlier objection, reading in the deposition. We
7 were just going to ask questions, and if we needed to
8 refresh his memory, we were going to use the
9 deposition.

10 MS. SPILLER: And, your Honor, I am just
11 looking for the question.

12 Your Honor, and I am doing the best I can
13 with the text. The question was, in his opinion,
14 whether the major maintenance has enhanced the life
15 of those generating units, and he did not agree that
16 they were enhanced. He indicated the units were kept
17 well maintained and able to function.

18 EXAMINER PIRIK: And that's what you are
19 referring to?

20 MS. SPILLER: Yes, your Honor.

21 EXAMINER PIRIK: Okay.

22 Q. (By Ms. Spiller) Mr. Brodt, do you recall
23 OVEC contracting with URS for an independent
24 technical review of the condition and operational and
25 maintenance plans of OVEC's two owned generating

1 stations?

2 A. Yes.

3 Q. Okay. And, sir, before we go to that, do
4 you have before you Sierra Club No. 5?

5 A. Yes.

6 Q. Okay. And this is a document, sir, where
7 there is commentary, from the U.S. Energy
8 Information, about coal-fired plants being subject to
9 MATS, correct?

10 A. Yes.

11 Q. And OVEC already believes that it's two
12 plants, Kyger Creek and Clifty Creek, are well suited
13 to comply with MATS because of the existing
14 environmental controls, correct?

15 A. That's correct.

16 Q. And this document, sir, is talking about
17 generation retirements between 2010 and 2012,
18 correct?

19 A. Yes.

20 Q. Okay. And, sir, if I may go back. Do
21 you recall OVEC contracting with URS for a technical
22 review or analysis of its plants?

23 A. Yes.

24 MS. SPILLER: Your Honor, may we
25 approach?

1 EXAMINER PIRIK: Yes.

2 MS. SPILLER: Your Honor, if I may, for
3 purposes of the record, we have marked, as Duke
4 Energy Ohio Exhibit 15, the Independent Technical
5 Review of Kyger Creek and Clifty Creek plants by URS
6 Corporation.

7 EXAMINER PIRIK: The document is so
8 marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MS. SPILLER: Thank you.

11 Q. Mr. Brodt, do you have before you what
12 has been marked as Duke Energy Ohio Exhibit 15?

13 A. Yes.

14 Q. And is this the Independent Technical
15 Review that OVEC had contracted with -- strike that.

16 Is this the Independent Technical Review
17 prepared or conducted by URS?

18 A. Yes, it is.

19 Q. And this is a review that OVEC had
20 requested URS to perform, correct?

21 A. Yes.

22 Q. And this was done, the report was dated
23 June 27, 2011, correct?

24 A. That's correct.

25 Q. And it appears from this report, sir,

1 that this was a very detailed -- detailed analysis as
2 to the current condition of both the Clifty Creek and
3 Kyger Creek plants as well as the operational and
4 maintenance plans for those two plants, correct?

5 A. That's correct.

6 Q. And the purpose of this report, sir,
7 according to the Executive Summary, page 1, was "to
8 assess the potential for successful operation of the
9 plants through the year 2040," correct?

10 MR. DARR: Objection.

11 A. That's correct.

12 EXAMINER PIRIK: Mr. Darr.

13 MR. DARR: Now, Ms. Spiller is asking
14 Mr. Brodt to testify as to the scope and conclusions
15 of URS. He's certainly not a proper witness to do
16 that. The proper witness would be a representative
17 of URS, under circumstances where the representative
18 of URS could testify as to the contents of the report
19 and the conclusions reached received. Without the
20 person or group that conducted this study, there is
21 no proper way to examine this report. I object.

22 MS. SPILLER: Well, your Honor we've had
23 a little bit of that already in this proceeding, most
24 recently with the Sierra Club Exhibit EIA, and
25 questions as to whether a particular source would be

1 reliable, has allowed for introduction of documents
2 into the record. This is a document that OVEC
3 commissioned to be prepared.

4 MR. OLIKER: Your Honor, there are
5 hearsay objections for data compilations by
6 government entities. There are not exceptions for
7 independent analysis that do not have a witness to
8 sponsor those exhibits and to provide foundation for
9 the exhibit and to explain its contents. This is
10 hearsay.

11 MR. MENDOZA: Your Honor, if I may, I
12 would also note we requested in discovery any
13 analysis of the retirement date or life -- "life
14 expectancy" is not the right term, but the, you know,
15 the productive life of these units, and we did not
16 receive this document in discovery from the company.

17 MS. SPILLER: Your Honor, I would take
18 exception with that. The request was made first with
19 an OEG request. There was reference to this document
20 which is actually of public record in a Kentucky
21 Public Service Commission filing by one of the
22 Kentucky-sponsoring companies. We referenced the
23 filing, and so it is publicly available. And
24 consistent with the Commission rules on discovery,
25 had referenced the public nature of this document, as

1 has been done by all of the parties in this case
2 where public documents exist. There typically is the
3 reference that you need not produce documents that
4 are of public record.

5 MR. BERGER: Your Honor, OCC agrees with
6 the objection and that this is an independent
7 technical review by an organization that is not here
8 to testify.

9 MR. OLIKER: Your Honor, could I give an
10 example of one of the problems we run into with this
11 document?

12 EXAMINER PIRIK: Just a minute.

13 MR. OLIKER: Thank you.

14 EXAMINER PIRIK: Go ahead, Mr. Oliker.

15 MR. OLIKER: For example, this document,
16 on pages 3 and 4, talks about potential things that
17 could cause the plant to retire before 2040, but then
18 you see it says, on page 4, "Major new environmental
19 or other regulatory requirements, such as enhanced
20 'new source review.'" I have no way of asking URS
21 what that means.

22 The same thing with the following
23 statement: "Major shift in fuel prices and
24 technologies...." I can't explore any of those
25 statements because they are just not here.

1 EXAMINER PIRIK: I agree. I don't think
2 that -- without a sponsoring witness that actually
3 can testify to this document from firsthand knowledge
4 and respond to it, we can't consider -- obviously, it
5 appears, based upon what you said that it's filed in
6 a docket, but that doesn't make it a public document,
7 per se. It's not an order. It's not a stipulation.
8 It's not -- and I don't see how it relates to the
9 previous EIA document that has been marked as an
10 exhibit.

11 MS. SPILLER: Your Honor, I think the
12 reference there was simply that there has -- it has
13 been found to be sufficient for other exhibits in
14 this case that a source was reliable. I think that
15 has been the lead-in question when exhibits not
16 authored by a particular witness are presented to
17 that witness for purposes of authentication.

18 EXAMINER PIRIK: And I think this
19 situation is different. This was an independent
20 review by an actual entity, URS Corporation, and I
21 don't see any other document that we've allowed in
22 that's like an audit or a review done by a separate
23 independent organization, and allowed a witness that
24 was not party or part of the compilation of that
25 document to testify to it.

1 MS. SPILLER: I think, your Honor, if I
2 may just briefly be heard. I believe there are
3 several PJM documents that have been authored, I
4 believe even references to the Market Monitor. So,
5 again, if memory serves from the transcript of this
6 proceeding, the question was whether or not the
7 Market Monitor was reliable or PJM was reliable, and
8 that was sufficient foundation for other exhibits.

9 MR. DARR: That wasn't the foundation of
10 those exhibits, though, your Honor. The foundation
11 of those exhibits were that they were relied upon by
12 the witness specifically in support of his testimony.
13 In fact, one of them is footnoted in his testimony.
14 Every other document was presented to Mr. Wathen, in
15 particular, as to whether or not he had personal
16 knowledge of the contents, and then we explored what
17 the contents of those documents were.

18 That is a significantly different
19 situation to the one presented here where,
20 essentially, what the company is attempting to do is
21 incorporate the conclusions of URS into the record of
22 this hearing. That's improper.

23 MS. SPILLER: Your Honor, if I may, not
24 all of the exhibits --

25 EXAMINER PIRIK: Mr. Oliker.

1 MR. OLIKER: If I may add to that. The
2 document submitted by the independent Market Monitor
3 also include largely data compilations of information
4 that is available in the market and that is an
5 exception to the hearsay requirement. So,
6 definitely, some major differences.

7 EXAMINER PIRIK: Ms. Spiller.

8 MS. SPILLER: Your Honor, thank you. I
9 believe Mr. -- Mr. Darr to be incorrect in that not
10 all of the exhibits presented to Mr. Henning were, in
11 fact, referenced or footnoted in his testimony. For
12 example, Sierra Club Exhibit 1, a PJM document
13 prepared by Gary Helm and updated October 17, 2013,
14 was not relied upon in Mr. Henning's testimony.

15 So while there were some other documents
16 that may have been, not all of the documents that
17 have been admitted into this record have been relied
18 upon by witnesses for purposes of the preparation of
19 their testimony in this case.

20 EXAMINER PIRIK: I hear what you're
21 saying, Ms. Spiller, but I still see this document
22 different than those other documents and I will
23 sustain the objection.

24 MS. SPILLER: Your Honor, am I permitted
25 to cross Mr. -- or, question Mr. Brodt as to his

1 understanding of the results?

2 EXAMINER PIRIK: I'll allow a limited
3 amount of questions, but they can't refer to the
4 document itself. If he has a personal understanding,
5 we'll see where this goes.

6 MS. SPILLER: Thank you, your Honor.

7 Q. (By Ms. Spiller) Mr. Brodt, were you
8 informed of the -- in your capacity as the CFO, are
9 you informed of analyses and -- analysis and
10 evaluations of the OVEC-owned generating units?

11 A. Yes.

12 Q. And, sir, are you aware, have you been
13 informed of the outcome of any reviews concerning
14 ongoing operations of the OVEC-owned generating
15 plants?

16 A. Yes.

17 Q. And, sir, you've indicated URS completed
18 a technical review in 2011. What is your
19 understanding of the results of that review, sir?

20 MR. OLIKER: Objection.

21 MR. DARR: Objection.

22 MR. BERGER: Objection.

23 MR. OLIKER: Would you like to go first,
24 Frank?

25 MR. DARR: Sure. We're getting to the

1 same result, just taking another path. Mr. Brodt,
2 again, is being asked as to what his understanding is
3 of information provided to him by a third party.
4 Again, there is no way to test the information
5 provided by the third party. And so, it's just as
6 improper to do it this way as it was to attempt to do
7 it by admitting the -- what has been marked as
8 Exhibit 15.

9 EXAMINER PIRIK: I'll sustain the
10 objection.

11 MS. SPILLER: Thank you, your Honor.

12 Your Honor, a few other documents. I
13 think the balance of my questions are probably for
14 the confidential, but a few other documents we would
15 like marked for purposes of the record, please.

16 EXAMINER PIRIK: Okay. Are you alleging
17 that these are confidential documents?

18 MS. SPILLER: Pardon me, your Honor?

19 EXAMINER PIRIK: Will you be alleging
20 these are confidential documents?

21 MS. SPILLER: Yes, your Honor. These are
22 OVEC-generated documents, budget information for
23 future years, so arguments consistent with what we've
24 raised previously produced via the confidentiality
25 agreement with OVEC.

1 EXAMINER PIRIK: Are these the only two
2 documents we are marking at this time?

3 MR. DARR: 16 and 17?

4 MS. SPILLER: Yes. Yes, your Honor, the
5 other documents have already been identified.

6 MR. SERIO: Is this going to be 16 and
7 17?

8 EXAMINER PIRIK: I am waiting for
9 Ms. Spiller to decide which is which.

10 MS. SPILLER: Your Honor, I am going to
11 mark them consistent with the pagination from OVEC.
12 So OVEC 85 would be DEO 16. OVEC 86 would be DEO 17.

13 EXAMINER PIRIK: The documents are marked
14 and we'll put an "a" beside them until we rule on the
15 confidential nature of those.

16 (EXHIBITS MARKED FOR IDENTIFICATION.)

17 EXAMINER PIRIK: Actually, what I think I
18 would like to do, given the shortness of these
19 documents, is rather than -- I mean, we are in a
20 situation with OCC exhibits that we need to hold
21 those off until the confidential part of the record
22 to give us more time to review them.

23 But, with regard to these two documents,
24 they appear to be, especially since we have OVEC's
25 attorney here, I would rather look at the documents

1 and see whether or not we can pair down what the
2 confidential request is. I'm hoping that it will be
3 relatively simple. Could you pair down? I mean
4 there's obviously items on these two documents that
5 are not confidential.

6 MS. SPILLER: Yes, your Honor. I believe
7 and, certainly subject to check with OVEC's counsel,
8 but turning, first, to Duke Energy Ohio Exhibit 16,
9 this is information that would be forecasting
10 information. And so, I believe the numeric
11 information that appears in the graph should be
12 redacted for reasons that we've previously discussed
13 in terms of other OVEC billable cost summaries.

14 MS. BOJKO: Your Honor, if I may
15 interrupt. I'm still uncertain why Duke's attorney
16 is telling me what OVEC believes is confidential or
17 not confidential. And one of the concerns I have is
18 related to the FERC filing that we just discussed.
19 Ms. Spiller just made a general statement about
20 billable costs summary, but we have page 34 of the
21 FERC filing, which is a public filing, that has
22 billable cost summary in it from calendar years 2011
23 to 2040.

24 So I think we need to hear from the
25 entity that's claiming it because, clearly, they are

1 not claiming it to be confidential in other places;
2 that they make the filings.

3 EXAMINER PIRIK: I agree. I'm looking to
4 Ms. Spiller first, but, like I said, with OVEC's
5 attorney here, I need him to help us with the
6 arguments on this. So, I mean, I hear what you're
7 saying, but I have no intention of just leaving it
8 with what Ms. Spiller says.

9 MS. BOJKO: Okay.

10 EXAMINER PIRIK: But thank you for
11 pointing that out to us. I think we need to look at
12 page 34, also, of Duke Exhibit 14 for some guidance.

13 MS. SPILLER: Duke Exhibit -- oh, your
14 Honor, I would simply submit what is prepared and
15 reflected in the FERC filing is not the same as
16 what's reflected in the various OVEC billable cost
17 summaries that have been identified in this case
18 already. By way of example, IGS 7, OCC No. 5. There
19 is significant detail contained within those OVEC
20 billable cost summaries that is not included here in
21 this FERC filing.

22 I would also note, and I believe as the
23 Bench has indicated in the past, this is a forecast
24 that, just by virtue of the filing date, would have
25 been prepared some time prior to April of 20 -- March

1 of 2011. I don't know when it was prepared. But I
2 believe the Bench has previously expressed a question
3 as to whether or not a forecast could become stale at
4 some point in time.

5 And, again, this is something that OVEC's
6 counsel would have to comment on. But I don't think
7 it a fair comparison as between IGS Exhibit 7, OCC
8 Exhibit 5, and what's contained in the FERC filing.

9 EXAMINER PIRIK: Mr. Castiglione, do you
10 have anything to say about these two exhibits?

11 MR. CASTIGLIONE: Well, what I would say
12 is that document on page 34, referred to as the
13 "billable cost summary," I believe is an attachment
14 referring back to what's referred to as a "benchmark
15 study" on page 26, which -- excuse me, page 26, where
16 it references that AEP had performed a benchmark
17 study in support of the proposed 14-year extension of
18 the Intercompany Power Agreement. That work product
19 there is AEP's work product presumably within that
20 study.

21 I would also point out that's not the
22 same document that has been marked as confidential or
23 the various iterations of the same document that have
24 been marked confidential earlier today. The billable
25 cost summary that is OVEC's document produced in this

1 litigation is much more detailed, and this document
2 here is merely a very high-level document that is not
3 the same version as what was produced in this
4 litigation. I think multiple versions of it have
5 been produced in this litigation.

6 You'll see in the upper left-hand corner
7 of OVEC's billable cost summaries produced by OVEC in
8 this litigation there's always a date in terms of
9 which version it is. And these are continually
10 updated and continually changed as circumstances
11 change.

12 So I will say that, first, it's not --
13 it's not the same projections as what has been
14 produced in this litigation which are internal, Board
15 of Directors level projections that are relied upon
16 by the board in running OVEC.

17 EXAMINER PIRIK: Well, first of all, I
18 want to assure I am not going back to look at those
19 documents and reconsider the ruling on the
20 confidentiality of the documents that we've already
21 ruled on.

22 But if you could help us out with
23 Exhibits Duke 17 and 16. Yes, yes.

24 MR. CASTIGLIONE: If I could address
25 those, I'll start with OVEC 85, which is -- we would

1 propose here, these are -- as it says on top 2014 to
2 2016, "Total OVEC Operating and Capital Costs,
3 Submission versus Prior Published Budget." And you
4 can see that there's various figures within the chart
5 itself. We propose to redact those projections
6 just -- just the bars and the figures next to the
7 bars, but the remainder of the document would not
8 have to be redacted, including the notable impacts on
9 the right-hand side.

10 And the text on the bottom or the labels
11 to the -- to the chart. We would request that OVEC
12 '86 be treated in a similar manner, where the bar
13 graphs and the numbers on those -- on the graph would
14 be treated as confidential, but the remainder of the
15 document not having to be redacted with the exception
16 of, this is OVEC 86, in the upper right there's
17 something called "Navigant Benchmarks," which my
18 understanding of these is just basically an
19 interpretation of the numbers within the chart. I
20 don't think that the descriptions need to be
21 redacted, but the numbers starting with 2.07 and it
22 goes down to 9.21.

23 EXAMINER PIRIK: Okay. Are you sure they
24 need to be redacted because now we are kind of in a
25 situation where you have just put it in the open

1 record.

2 MR. CASTIGLIONE: Oh, my apologies.

3 EXAMINER PIRIK: I don't know that it
4 gives away anything that's in the chart. We still
5 have to have the arguments on the chart itself.

6 MR. CASTIGLIONE: I think we can let
7 those through on the right, on the upper right-hand
8 side, the numbers in the Navigant benchmark bubble.

9 EXAMINER PIRIK: Thank you. And then
10 what is your rationale for the information within the
11 chart?

12 MR. CASTIGLIONE: I think it would be the
13 same rationale as the prior OVEC documents containing
14 projections going forward. I believe that this is
15 part of a presentation at the board level of OVEC. I
16 think this is one piece of a presentation presented
17 to OVEC's board, and I think these two charts reflect
18 going-forward targets and going-forward budgets going
19 into through 2016, and these are confidential,
20 proprietary, internal OVEC planning documents that
21 they use to run their business, and I think that they
22 would be competitively harmed, and certainly their
23 sponsors would be competitively harmed if that sort
24 of information was publicly disclosed.

25 EXAMINER PIRIK: Responses?

1 Go ahead, Ms. Bojko. I can tell you want
2 to say something.

3 MS. BOJKO: No. I don't want to perverse
4 your ruling on not going back to review documents,
5 but I still don't understand how we can have
6 generation projections in one document and we can't
7 have generation productions in a different document.
8 It doesn't make sense to me. I mean, I can ask the
9 witness questions about how they differ, but I fail
10 to see how it's proprietary and that concerns me with
11 regard to your first statement.

12 I mean, you're basically -- he is
13 rendering the bar graphs meaningless if you take away
14 the bar graphs, so I'm not sure how you can have a
15 meaningful exhibit in the record of a bar graph
16 when there's nothing -- as I understand it, he wants
17 to eliminate bar graphs and all the numbers. So that
18 would be my comment to that.

19 MS. SPILLER: But, your Honor, if I may,
20 if you eliminate just the numbers, you could still
21 deduce the information from everything else that
22 would be left in the public record.

23 MS. BOJKO: You take away the colors.

24 MS. SPILLER: The key for the bar graphs
25 are down at the bottom. The financial information is

1 on the -- is on the left, so you would be able to
2 identify what the numeric figures are.

3 MS. BOJKO: I thought she said take away
4 the bars, not the coloring. There is a distinction
5 in that.

6 MS. SPILLER: Oh, absolutely. I still
7 think you're -- I don't think it would be too hard to
8 figure out the numeric information if you left the
9 bars in there even if you took the coloring out.
10 Clearly, there are different segments.

11 And if I just may, your Honor, on the
12 FERC filing, I mean that -- that is not an OVEC
13 generated piece of information. So I think different
14 confidentiality provisions would apply to what OVEC
15 generates and the assumptions that it uses.

16 MS. BOJKO: You know, that's not --
17 that's a foundation question that I would love to ask
18 the witness. I don't know this to be true. We
19 actually believe AEP does a lot of this kind of work
20 for --

21 EXAMINER PIRIK: I'm sorry. Can we hold
22 on just a minute?

23 We will grant confidentiality to the bars
24 and the numerical configurations within the chart.
25 As far as the words on the page of both Exhibits 16a

1 and 17a, that is all open. And, obviously, the parts
2 of the chart that are not internal are open. As well
3 as the numbers in the "Navigant Benchmarks," those
4 are all open. I think -- I think that's enough
5 direction for Duke to create a redacted version.

6 Okay. So those two documents are marked.

7 Is there anything else, Ms. Spiller?

8 MS. SPILLER: Just briefly with respect
9 to these documents in the public record, your Honor.

10 Q. (By Ms. Spiller) Mr. Brodt, do you have
11 before you what has been marked as Duke Energy Ohio
12 Exhibit 16 and Duke Energy Ohio Exhibit 17?

13 A. Yes, I do.

14 Q. And are these documents that OVEC has
15 prepared, sir?

16 A. Yes.

17 Q. And were they -- for what purposes were
18 they prepared?

19 A. They were prepared for a board meeting.

20 Q. And that is a board meeting of the OVEC
21 Board of Directors?

22 A. Yes.

23 Q. And, sir, just a couple of questions
24 concerning definitions. There is, up at the top in
25 the box, below the main title, a subtitle that says

1 "Submission Versus Prior Published Budget" on Duke
2 Energy Ohio Exhibit 16. Do you see that?

3 A. Yes.

4 Q. And then down in the bottom line of the
5 graph, there's reference to an "original budget" and
6 a "submitted." Is the original budget the prior
7 published budget?

8 A. Yes.

9 Q. And then what is a submitted budget, sir?

10 A. The submitted budget would have been the
11 budget that we were submitting at that Board of
12 Directors meeting along with this presentation.

13 Q. And are those submitted -- are those
14 budgets submitted to the Board of Directors for
15 approval?

16 A. Yes.

17 Q. Mr. Brodt, as the Chief Financial Officer
18 of OVEC, do you know whether OVEC has any current
19 plans to retire Clifty Creek or Kyger Creek?

20 A. No.

21 Q. No, it has no plans?

22 A. No, it has no plans.

23 MS. SPILLER: Thank you, sir.

24 Your Honor, I believe that's all the
25 questions I have for the public record.

1 EXAMINER PIRIK: Thank you.

2 Staff?

3 MR. BEELER: No questions.

4 EXAMINER PIRIK: I am going to allow a
5 brief recross, so to speak, by various parties in the
6 open record, and I will start with OCC.

7 MR. BERGER: Thank you, your Honor.

8 - - -

9 RECROSS-EXAMINATION

10 By Mr. Berger:

11 Q. Mr. Brodt, you indicated you were not
12 privy to conversations, and I am trying to recall
13 what it was, not privy to conversations involving a
14 transfer of OVEC interests. And -- strike that
15 question.

16 You testified regarding whether Duke
17 Energy Corporation, which is the parent company of
18 Duke Energy Ohio, and OVEC -- and OVEC were
19 affiliates or not. Do you remember that?

20 A. Vaguely.

21 Q. Okay. And my recollection is you
22 testified they were not affiliates, Duke Energy
23 Corporation and OVEC. Was that your opinion? Do you
24 recall?

25 A. That's my opinion, yes.

1 Q. And that's because -- do you disagree
2 that Duke Energy Ohio and OVEC are affiliates?

3 MS. SPILLER: Your Honor, I am going to
4 object. These -- counsel, including OCC, objected
5 vehemently when I asked Mr. Brodt about the status of
6 affiliate relationships. And, yet, now they're
7 attempting to turn the table.

8 MR. BERGER: Your Honor, we objected to
9 his use of the definition, I -- I objected to the use
10 of "common ownership" or "control," use of language
11 that was in regulations. But he did testify that
12 Duke Energy Corporation and OVEC were not affiliates.
13 I am just trying to follow-up with that.

14 EXAMINER PIRIK: I am going to sustain
15 the objection.

16 Q. (By Mr. Berger) The use factor, you were
17 asked some questions about the use factor in the
18 exhibits. I think it was OCC Exhibit 5. Is that use
19 factor relative to the unforced capacity of the unit
20 or do you know if that's relative to the unforced
21 capacity or is that relative to the installed
22 capacity of the unit?

23 A. The use factor is calculated based on the
24 calculated capacity of the units in any given year,
25 less the maintenance that is anticipated to take

1 place, and our projection of how much power the
2 sponsoring companies are going to utilize in any
3 given year.

4 Q. If it's, as stated in Exhibit 14, that
5 OVEC's forecasted costs are less expensive than other
6 alternatives for power production, couldn't OVEC just
7 sell power into the PJM market on its own, taking the
8 risk on itself and make money from its operations?

9 A. The Intercompany Power Agreement
10 describes that the generation belongs to sponsoring
11 companies. It does not belong to OVEC to sell into
12 the PJM market.

13 Q. But the sponsoring companies could sell
14 the power into the market, given OVEC's forecasted
15 costs, and compete against other alternative
16 production sources.

17 A. Sponsoring companies do with the power
18 what they want.

19 Q. Now, since a sponsoring company needs
20 unanimous consent to transfer ownership, is it
21 possible that any -- that two or more sponsoring
22 companies could reach an agreement between each other
23 to vote against their common -- to vote against such
24 transfer in order to maintain the status quo?

25 MS. SPILLER: I'm sorry. Can I have that

1 read back?

2 (Question read.)

3 Q. Do you understand the question,
4 Mr. Brodt?

5 A. Yes, I understand the question.

6 MS. SPILLER: I'm just going to object to
7 the references. I think this assumes a lot of facts
8 not in evidence. There's a suggestion of collusion,
9 for lack of a better word, and I don't think there is
10 anything in this record to indicate as much.

11 MR. BERGER: I'm just asking, your Honor,
12 whether that's a possible thing that could happen
13 under the terms of the agreement.

14 EXAMINER PIRIK: I understand the
15 question. I understand where you are going with
16 this. I'm wondering what the relevance is and
17 whether this was something that was brought up in an
18 appropriate type of recross or whether it was
19 something that should have been asked previously.

20 I don't -- I don't want to rehash things.
21 I don't want to start talking about things that we
22 don't need to go down in the open record at this
23 point. That's why I said a "brief recross" because,
24 you know, we obviously still have a confidential
25 recross, and I want everything out in the open

1 record, but if it is something that could have been
2 or should have been explored earlier, I do not want
3 to go down that road now.

4 MR. BERGER: That's fine, your Honor.

5 EXAMINER PIRIK: I just didn't know if
6 you had something you were referencing. Okay. So I
7 would move on.

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

10 EXAMINER PIRIK: Mr. Darr.

11 MR. DARR: Very briefly, your Honor.

12 - - -

13 RE-CROSS-EXAMINATION

14 By Mr. Darr:

15 Q. Mr. Brodt, would you turn to what has
16 been marked as Duke exhibit 14, which is the filing
17 document for the ICPA. I would like you to turn to
18 page 34 for me.

19 MS. WATTS: Frank, can you move the
20 microphone closer? Thank you.

21 Q. Are you there?

22 A. Page 34?

23 Q. Yes, sir.

24 A. Yes.

25 Q. Now, I want to go back to something

1 Ms. Spiller asked you a little bit before we were
2 introduced to Duke Exhibit 14. You were asked a
3 series of questions about the implementation of the
4 environmental controls added to the plants and I
5 believe that you indicated that the last
6 implementation was a process that took place over
7 several years; am I correct in that?

8 A. That's correct.

9 Q. And when did that implementation,
10 starting with, I assume, design, start?

11 A. I believe it was in around 2005, 2006.

12 Q. And by the time you filed the application
13 that's contained in Duke Exhibit No. 14, the
14 implementation of that last round of environmental
15 improvements had not been completed; is that correct?

16 A. That's correct.

17 Q. And this was a fact known to all of the
18 members of the ICPA, and when I am speaking of
19 "members," I am talking about the sponsoring
20 companies.

21 A. Yes, they are all represented on the
22 board, and they voted for the -- on the project, so,
23 yes, they were aware of it.

24 Q. Now, the document that was filed with the
25 Federal Energy Regulatory Commission, Duke exhibit

1 numbered OVEC 14, contains, on page 34, what is
2 described as the "billable cost summary." Have I
3 described that correctly?

4 A. That's what it says, yes.

5 Q. And at the time this billable cost
6 summary was prepared, the effects of the
7 implementation of the environmental changes was known
8 to be in the future, correct? That it would be in
9 2012 or 2013?

10 A. Yes.

11 Q. And so, that should have been factored
12 into the price or cost, to use the term more
13 correctly, of the bill -- in the billable cost
14 summary; am I correct in that as well?

15 A. Yes, it should have been.

16 Q. And if we do a unitized cost, would you
17 accept, subject to check, and given my ability to
18 mess up numbers, which you weren't here to enjoy the
19 other day, but I'll share with you I missed a digit
20 the other day or reversed a digit, would you agree
21 with me that for 2012, in recognition of the fact
22 that the company would be -- when I refer to "the
23 company," I mean OVEC, that OVEC would be
24 implementing environmental changes, the unitized cost
25 would be \$41.38 a megawatt-hour. And by that I mean

1 it's \$605 million -- \$605,983,000 -- \$605,983,000
2 divided by the anticipated generation of 14.645
3 gigawatts -- 14,645 gigawatts.

4 A. If that's what the calculation says, yes.

5 Q. And for 2013, subject to check, would you
6 agree that the anticipated cost per megawatt-hour was
7 going to be \$42.45?

8 A. Again, if that's the -- if that
9 calculation is correct.

10 Q. And if we go out all the way to 2022, we
11 see that beginning in 2018 there is some adjustment
12 being made to include the effects of CO-2 regulation.
13 Do you see that?

14 A. Yes.

15 Q. And if we look at, for example, 2022, we
16 could make the same calculation and we get a range of
17 \$36.53 per megawatt-hour to \$48.55 per megawatt-hour
18 depending on the effects of the carbon regulation,
19 correct?

20 A. Again, I haven't done the calculation.

21 Q. But you would agree with me, subject to
22 check, if you take the billable cost, divide it by
23 the hours of generation, you would come up with the
24 correct number, correct?

25 A. That's correct.

1 Q. And, in fact, that's exactly what was
2 done in the bottom section of the page where the
3 company, again meaning OVEC, identified the levelized
4 power production cost in dollars per megawatt hour as
5 ranging from \$60.9 per megawatt-hour to \$84.23 per
6 megawatt-hour, correct?

7 A. That's correct.

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

9 EXAMINER PIRIK: Thank you .

10 Ms. Hussey.

11 - - -

12 REXCROSS-EXAMINATION

13 By Ms. Hussey:

14 Q. Mr. Brodt, would you turn your attention
15 to Duke Energy Ohio 16a. Could you tell me was this
16 document internally prepared by OVEC?

17 A. Which document? 16a?

18 Q. 16a.

19 A. Which document is that?

20 MS. SPILLER: Duke Energy Ohio.

21 THE WITNESS: Okay.

22 A. Okay. What was the question? I'm sorry.

23 Q. Was this document produced by OVEC
24 internally?

25 A. Yes, it was.

1 Q. Okay. And by an OVEC employee?

2 A. Yes.

3 Q. Okay. And do you know of a date that can
4 be ascribed to this document?

5 A. This was used for the board meeting in
6 2013, so probably November, 2013.

7 Q. Okay. And could you turn to Duke Energy
8 Ohio Exhibit 17a. And I'll ask you the same
9 questions. Was this document produced by OVEC
10 internally?

11 A. Yes, it was.

12 Q. Okay. And would the date be the same?

13 A. Yes.

14 Q. Okay. So November, 2013, in preparation
15 for the board meeting?

16 A. Yes.

17 MS. HUSSEY: Thank you.

18 EXAMINER PIRIK: Ms. Bojko.

19 MS. BOJKO: Thank you.

20 - - -

21 RECROSS-EXAMINATION

22 By Ms. Bojko:

23 Q. Were these two documents part of a larger
24 presentation given at the Board of Directors meeting?

25 MR. DARR: Can I have a clarification,

1 please? What document are you referring to?

2 MS. BOJKO: I'm sorry. Duke 16 and 17.

3 MR. DARR: Thank you.

4 A. Yes. It had to do with our forecasts.

5 Q. So -- so these are two slides in a larger
6 presentation?

7 A. They are two slides that describe our
8 forecasts that was being presented to the board for
9 approval.

10 Q. All right. And isn't it true that you
11 often have presentations given to your Board of
12 Directors at the various meetings?

13 A. Yes.

14 Q. Okay. And aren't some of those
15 presentations prepared by AEP -- well, let's back up.

16 Isn't it true you have a contract with
17 AEP to do some of your operations and maintenance at
18 OVEC?

19 A. We have a contract with AEP to use their
20 AEP Service Corporation to perform certain services
21 for us, yes.

22 Q. And those services would include
23 providing presentations to OVEC internally or to the
24 board about various topics; is that true?

25 A. They could, yes.

1 Q. And it wouldn't be unusual if AEP
2 provided forecasts or projections in those documents
3 either, would it?

4 A. No.

5 Q. Can we turn back to page 34 of Duke
6 Exhibit 14? Sir, would the generation output numbers
7 on this document -- well, I will ask you does the
8 line entitled "Generation" mean OVEC's expected
9 generation output?

10 A. Yes, it does.

11 Q. And, to you, does that mean anything
12 differently than -- different from the estimated
13 delivered power sales from OVEC generation? Would
14 those be comparable figures?

15 A. No. These numbers appear to be full
16 generation capability because they are extremely
17 high. So it doesn't look to me like they are -- they
18 have any use factor applied to them and it doesn't
19 look like it would be numbers that would be
20 associated with what the sponsoring companies might
21 be taking in a given year.

22 Q. Okay. So you are making a distinction
23 that this generation number might be nameplate
24 capacity whereas other numbers you've provided are
25 power sales from OVEC?

1 A. That's correct.

2 Q. Okay. And just so we're clear about your
3 terminology that you are using, "power sales from
4 OVEC generation," as it appears on many of the
5 billable cost summaries that we've discussed today,
6 that, to you, means expected -- what sponsoring
7 companies are expected to take from OVEC; is that
8 true in?

9 A. That's correct.

10 Q. And that usage factor used in that
11 calculation, that would decline if the utility -- if
12 the sponsoring companies do not, in fact, take the
13 generation that you expect; is that true?

14 A. That's correct.

15 Q. And, similarly, if the EPA passes
16 environmental regulations such as 111(d) and it --
17 and it goes to change the dispatch of coal units,
18 that would reduce the usage factor as well; is that
19 true?

20 A. I don't know that I can determine what
21 the 111(d) rules will do to us.

22 Q. Well, sir, are you familiar with 111(d)
23 rules?

24 A. I am vaguely familiar with them.

25 Q. Are you familiar that the second building

1 block of the rules is a -- is a revision to the
2 dispatch -- dispatch modeling that currently occurs
3 for the units?

4 A. I do not have that kind of knowledge, no.

5 Q. If the units are not allowed to run for
6 different environmental reasons, that would reduce
7 the usage factor; is that your understanding?

8 A. That is correct.

9 Q. And under that scenario, even if the
10 usage factor is reduced, the costs associated with
11 the OVEC units will -- will not be reduced or
12 sponsoring companies will not be alleviated from
13 paying the fixed costs of OVEC; is that true?

14 A. That's correct.

15 Q. And the environmental capital investments
16 that you referenced in response to Ms. Spiller,
17 excuse me, those environmental capital investments
18 are passed on to the sponsoring companies; is that
19 correct?

20 A. That's correct.

21 Q. Sir, you're not an attorney, are you?

22 A. No, I am not.

23 Q. Okay. And did you review the Ohio law
24 before you came here and testified today?

25 A. No, I did not.

1 Q. You're not here to provide a legal
2 interpretation of Duke's corporate separation
3 structure, are you?

4 A. No, I'm not.

5 Q. And you're not here to provide a legal
6 interpretation of any corporate structure items
7 related to Duke's affiliates, are you?

8 A. No, I am not.

9 Q. And you're not here today to testify
10 about whether Duke has or has not complied with
11 Ohio's corporate separation rules or laws, are you?

12 A. No.

13 Q. And you're not here today to testify
14 whether Duke meets its filing requirements for the
15 current proceeding of its electric security plan
16 before the Commission, are you?

17 A. No.

18 MS. SPILLER: Your Honor, I would object
19 to the extent this is well beyond the scope of the
20 prior examination of Mr. Brodt.

21 EXAMINER PIRIK: Overruled.

22 Q. And, sir, you were asked a series of
23 questions about definitions in the ICPA. Do you
24 recall that?

25 A. Yes.

1 Q. You're not -- you have not, sir, compared
2 the definitions, contained in the ICPA, to
3 definitions in Ohio law, have you?

4 A. No.

5 Q. And you're not here today to testify
6 about whether any activities of Duke satisfy Ohio law
7 or conflict with Ohio law, are you?

8 A. No.

9 Q. And isn't it true, sir, that you have
10 been informed that some of the Ohio utilities did
11 actually believe that they had an obligation to
12 transfer their generating assets?

13 MS. SPILLER: Objection. This misstates
14 the prior testimony.

15 EXAMINER PIRIK: I will allow him to
16 clarify.

17 A. Could you ask the question again, please?

18 Q. Sure. Isn't it true that you've been
19 informed and it's your belief that some of the Ohio
20 utilities believe that they do have an obligation to
21 transfer their generating assets?

22 MS. SPILLER: Your Honor, I am also going
23 to object in that Ms. Bojko has just established that
24 Mr. Brodt is not an attorney, he is not here to offer
25 any testimony in respect of corporate separation, he

1 is not here to offer any testimony in respect of Duke
2 Energy Ohio's compliance with the law or its
3 corporate separation plan, and yet, now, she's asking
4 him questions with respect to what may be required of
5 Ohio utilities.

6 EXAMINER PIRIK: I am going to overrule
7 the objection, but I want to be sure we're going
8 down -- we are not going down a new road.

9 MS. BOJKO: This is actually in response
10 to a question that Ms. Spiller asked him about
11 whether he believed the affiliates were required by
12 Ohio law, and so I'm exploring what his true belief
13 is, and what he has been informed in his dealings
14 during his OVEC experience with these transfer
15 requests.

16 EXAMINER PIRIK: I'll allow the question.

17 A. My understanding, our role, in
18 transferring rights and responsibilities under the
19 Intercompany Power Agreement, is to receive -- once
20 the -- once the sponsoring companies decide they want
21 to transfer something and they make that decision, we
22 do not, they give us the information and then we
23 agree to it or not.

24 Q. And it's your understanding, through the
25 process, that some of the Ohio utilities believe that

1 they had an obligation to transfer pursuant to Ohio
2 law.

3 A. I know that they formed a subcommittee to
4 explore it. That's all I know.

5 Q. Well, sir, in OVEC documentation that
6 you've provided that you said was OVEC business
7 records, isn't it true that that claim or assertion
8 was made?

9 MS. SPILLER: Your Honor, we are now
10 going into confidential information and this witness
11 has answered the question.

12 EXAMINER PIRIK: Is that information
13 that's in one of the OCC exhibits that we haven't
14 explored yet?

15 MS. BOJKO: It is, your Honor, but
16 counsel asked it in the public record in the -- and
17 the -- and the witness gave his direct opinion in the
18 public record, so I am trying to ask in the public
19 record what is the basis of that opinion and why
20 there -- it isn't the basis of -- shouldn't be the
21 basis of his opinion.

22 EXAMINER PIRIK: I will allow the
23 question.

24 THE WITNESS: Would you repeat the
25 question?

1 MS. BOJKO: Could you please reread the
2 question?

3 (Record read.)

4 Q. Would you like me to expand?

5 A. Or complete the sentence, yes.

6 Q. Well, it was in response to the prior
7 question. Isn't it true that the assertion -- claim
8 was made that the Ohio utilities believed that they
9 did have to transfer such -- they had an obligation
10 to transfer their generating assets per the
11 Commission's rules and law?

12 A. They didn't make that assertion to me.
13 They formed a subcommittee to explore what they were
14 required to do.

15 Q. And you weren't, sir, on e-mails that had
16 that underlying premise of their request in it?

17 A. I was on some of the e-mails that had
18 information going back and forth about discussions in
19 the subcommittee about whether they had to transfer
20 their rights and responsibilities under the
21 Intercompany Power Agreement or not.

22 Q. Okay. And some of those assertions were
23 that they did have to transfer their generating
24 assets under Commission Ohio law.

25 MR. CASTIGLIONE: Your Honor, I am just

1 going to object here. He has answered the question a
2 couple of times. He doesn't recall. If you want to
3 show him a document in the confidential portion, you
4 can show him any document you want, but we are kind
5 of going in circles here. He doesn't remember.

6 MS. BOJKO: Well, I don't know if I am
7 allowed to show the document. I would be happy to
8 show the document, but I was trying to be respectful
9 of the Bench's decision to hold off on those
10 questions.

11 EXAMINER PIRIK: Why don't we wait for
12 this line of questioning in the confidential record.

13 MS. BOJKO: Okay. Thank you, your Honor.

14 Q. Sir, could you turn to Duke Exhibit 14,
15 page --

16 EXAMINER PIRIK: Why don't we -- I think
17 the witness probably needs a few minutes. He has
18 been sitting there a long time. Why don't we -- I
19 was hoping we could get through the nonconfidential
20 before we took a break, but -- and the court
21 reporters, too. So let's just take a break until
22 7:15. And then my hope is we can limit some of the
23 questioning and we can get on to the confidential
24 piece of the -- of the record.

25 MR. DARR: Your Honor? We're not going

1 to finish this in any reasonable -- at any reasonable
2 hour at this point from what I'm seeing and hearing.
3 So I'm wondering if it might be more appropriate to
4 find a good date when Mr. Brodt's schedule will
5 accommodate and return. Otherwise, I have -- this
6 seems like it's getting to the point where not only
7 the witness but all the rest of us are at the point
8 where this is resulting in diminishing returns.

9 EXAMINER PIRIK: Let's take a 15-minute
10 break. You can discuss this, Ms. Spiller, with the
11 witness and see what the possibilities are.

12 MS. SPILLER: Yes, your Honor.

13 (Recess taken.)

14 EXAMINER PIRIK: We're back on the
15 record.

16 Q. (By Ms. Bojko) Mr. Brodt, could you tell
17 me, it's my understanding that the date of the FERC
18 filing was March 27, 2011, and then that was updated
19 April 27, 2011; is that your understanding?

20 A. Yes.

21 Q. Okay. So this document was filed prior
22 to Duke's application in this case. Obviously,
23 Duke's application in this case was filed in 2014; is
24 that your understanding?

25 A. I don't know when Duke's application was

1 filed.

2 Q. But it's your belief that the FERC
3 document referenced was submitted to FERC prior to
4 the filing of the application in front of the Ohio
5 Commission.

6 A. I mean, yes, it was submitted in 2011.

7 Q. Okay. And so, the representations of
8 this FERC document, submitted on behalf of OVEC --
9 well, let's take a step back. Was this document
10 submitted on behalf of OVEC?

11 A. It was submitted by OVEC, yes.

12 Q. Okay. So it was submitted by OVEC's
13 counsel?

14 A. Right.

15 Q. Is that correct?

16 A. That's correct.

17 Q. Okay. So the representations in this
18 document did not consider the current electric
19 security plan filings by Duke; is that correct?

20 A. I assume not.

21 Q. And it didn't consider the proposal by
22 Duke with regard to the OVEC plants in this case or
23 the -- having the Duke distribution customers pay for
24 the OVEC plants in this case; is that correct?

25 A. I assume --

1 MS. SPILLER: I am going to object to the
2 form of the question.

3 EXAMINER PIRIK: Overruled.

4 Q. And could you look at page 7 of the
5 document. On page 7, footnote 7, do you see there,
6 sir, that it says "Ownership of OVEC's stock is held
7 (directly or indirectly) by the following holding
8 companies" and it has Duke Energy Corporate listed
9 with 9 percent?

10 A. What page are you on? I'm sorry.

11 Q. Page 7, footnote 7. Oh, I'm sorry. We
12 renumbered the document, so it's page 14 of the
13 packet, but it was page 7 of the FERC document. Are
14 you there?

15 A. So what page number is it?

16 Q. Page 14 of the handwritten numbering that
17 you would have done.

18 A. Okay. Okay.

19 Q. And do you see footnote 7, sir?

20 A. Yes.

21 Q. And does footnote 7 state what I just
22 stated that "OVEC's stock is held (directly or
23 indirectly) by the following holding companies" and
24 it lists Duke Energy Corporation with a 9 percent?

25 A. Yes.

1 MS. BOJKO: Okay. That's all I have in
2 the public record. Thank you.

3 EXAMINER PIRIK: Thank you.

4 Mr. Mendoza?

5 MR. MENDOZA: No questions on the public
6 record.

7 EXAMINER PIRIK: Mr. Oliker?

8 MR. OLIKER: Just a few questions, your
9 Honor. Hoping I can bring my mic back to life.

10 EXAMINER PIRIK: Is it flashing at all?

11 MR. OLIKER: No. There we go.

12 EXAMINER PIRIK: Try another one.

13 MR. OLIKER: There we go.

14 - - -

15 RECROSS-EXAMINATION

16 By Mr. Oliker:

17 Q. Good morning, Mr. Brodt. Just a few
18 questions for you. Do you remember earlier in your
19 cross-examination that you indicated that you hadn't
20 performed any analysis or OVEC hadn't performed any
21 analysis of the impact of CO-2 regulations?

22 A. I don't recall that I said that, but
23 that's fine.

24 Q. Okay. You would agree that if you look
25 at Duke Energy Ohio Exhibit 14, OVEC did submit

1 projections of the impact of CO-2 regulations to the
2 FERC.

3 A. In this study that AEP did, yes.

4 Q. Okay. And you would agree, looking at
5 page -- let me make sure, I have the right page
6 numbers. If you look at what's been now marked as
7 page 29. There is a projection of the average
8 forecast costs of the ICPA contract of \$60.90 per
9 megawatt-hour if there is no CO-2; and then, if there
10 is CO-2 regulations, a projection of \$84.23 per
11 megawatt-hour, correct?

12 A. That's what it says.

13 Q. So you would agree that OVEC has
14 indicated to the Federal Energy Regulatory Commission
15 that CO-2 regulations could have a significant cost
16 increase on its cost of production?

17 A. That's what it says, yes.

18 Q. Okay. And staying within this section of
19 the document that was previously identified as a
20 comparable analysis of the economics of OVEC's power,
21 would you agree that that's what this part of the
22 document indicates?

23 A. Which part?

24 Q. Particularly pages 26 through 34.

25 A. What was your question again? I'm sorry.

1 Q. Maybe I can come at it from a different
2 direction.

3 Earlier you had a discussion with counsel
4 for Duke Energy about the comparability of OVEC
5 generation to other products in the market. Do you
6 remember that?

7 A. Vaguely.

8 Q. Okay. Would you agree that the analysis
9 that was submitted to the FERC did not examine OVEC's
10 competitiveness against existing power plants or
11 long-term purchase contracts?

12 A. I didn't do the analysis. This was a --
13 this was a benchmark study that was done by AEP.

14 Q. Okay.

15 A. I'm not sure what all they looked at.

16 Q. So if you look at page 27, would you
17 agree, in the bottom paragraph, it says "Other
18 products such as power plant acquisition and
19 long-term power contracts were not considered
20 comparable products...."?

21 A. Yes.

22 MR. OLIKER: That's all the questions I
23 have, your Honor. Thank you, Mr. Brodt.

24 EXAMINER PIRIK: Mr. Hart?

25 MR. HART: No questions.

1 EXAMINER PIRIK: Ms. Spiller?

2 MS. SPILLER: Briefly, your Honor. Thank
3 you.

4 - - -

5 RECROSS-EXAMINATION

6 By Ms. Spiller:

7 Q. Mr. Brodt, you were asked questions by
8 Ms. Bojko concerning work that may have been
9 performed by AEP, and just for purposes of clarity of
10 the record, is that AEP's Service Company?

11 A. Yes.

12 Q. And that is not Ohio Power or AEP Ohio,
13 the regulated utility, correct?

14 A. That's correct.

15 Q. The information that both Mr. Oliker and
16 Ms. Bojko referred you to, Duke Energy Ohio Exhibit
17 14, page 34, sir, is that an analysis that was
18 prepared by AEP Service Company? And it's the
19 numbered.

20 A. Yes, it was.

21 Q. And, sir, that was prepared prior to the
22 filing of this document initially in March of 2011,
23 correct?

24 A. Yes.

25 Q. And this reflects a series of forecasted

1 information, correct?

2 A. Yes.

3 Q. In your experience as the Chief Financial
4 Officer for OVEC, do you agree that a forecast is
5 based upon a set of assumptions?

6 A. Yes.

7 Q. And those assumptions can change as one
8 passes through time, correct?

9 A. That's correct.

10 Q. And so, information that may have
11 appeared on a forecast that was created in 2011
12 could, in effect, be different today, correct?

13 A. That's correct.

14 Q. And I believe, sir, you've indicated you
15 don't know what the final impact will be of the
16 USEPA's proposed regulations on carbon, correct?

17 A. That's correct.

18 MS. SPILLER: Thank you, sir.

19 Nothing further for this point, your
20 Honor.

21 EXAMINER PIRIK: Thank you.

22 Staff?

23 MR. BEELER: No questions.

24 EXAMINER PIRIK: At this time we will go
25 into the confidential portion of the record,

1 beginning with Mr. Berger.

2 MS. BOJKO: Your Honor, before we
3 proceed, may I do one procedural issue?

4 EXAMINER PIRIK: Yes.

5 MS. BOJKO: Duke Energy Ohio has
6 identified two documents, and the witness indicated
7 to me that it was a partial document, it was part of
8 a slide presentation, and I think, consistent with
9 the rulings thus far, we have been putting entire
10 documents in to give the entire picture and not do
11 partial documents, so I would request that that be
12 done in this case with regard to Duke's Exhibits 16
13 and 17.

14 MS. SPILLER: And, your Honor, we were
15 simply trying to limit this to information that is
16 relevant to the anticipated line of questioning from
17 OCC's counsel. There is much about the OVEC board
18 that's not relevant at all to this case and I don't
19 know that any party would really dispute that.

20 MR. OLIKER: I would have to see it to
21 know.

22 MR. CASTIGLIONE: Your Honor, am I
23 familiar with the documents OVEC produced, and there
24 actually isn't a larger slide presentation, it's just
25 a packet of materials sent to the board. So there

1 isn't a whole slide show beyond those two, so I think
2 that's probably fair to let it in without it, but I
3 don't have a position either way, but.

4 MS. BOJKO: I guess I don't -- I have two
5 more, at least two to three more slides in the
6 same -- that do have the same markings, that appear
7 to be the same types of slides.

8 EXAMINER PIRIK: And they're in the
9 document that these were part of?

10 MS. BOJKO: Yes.

11 EXAMINER PIRIK: So you have the document
12 that these were part of?

13 MS. BOJKO: Yes.

14 MS. SPILLER: But they've not been
15 previously marked?

16 MS. BOJKO: Yes.

17 MS. SPILLER: They're part of what's
18 already been marked here?

19 MS. BOJKO: No. She asked if I had the
20 documents. I have the documents. They have not been
21 previously marked. They were filed with the
22 deposition, so they are part of the deposition that
23 was filed in this case. Hence, my knowledge of the
24 presentation and such documents because they were
25 used in the deposition, so that's why I thought it

1 was unusual that two slides were pulled out. I can't
2 argue with Counsel that they weren't part of a bigger
3 presentation because they were in the same packet
4 that was provided.

5 EXAMINER PIRIK: Can we see the packet?

6 MR. CASTIGLIONE: I have it right here;
7 unfortunately, I only have one copy.

8 EXAMINER PIRIK: That's fine.

9 MS. BOJKO: This is better. This is not
10 readable.

11 MR. OLIKER: Kim, can you confirm this is
12 the same packet you are referring to?

13 MR. CASTIGLIONE: It's got the Bates
14 number on it.

15 EXAMINER PIRIK: We can go off the
16 record.

17 (Discussion off the record.)

18 EXAMINER PIRIK: Go back on the record.

19 Ms. Bojko, your request is noted.

20 However, after looking at the packet, I think we
21 could maybe clarify exactly what type of packet it is
22 that these two exhibits came from. However, you
23 know, unless there are other items in that packet
24 that could be relevant for the proceeding, I don't
25 see -- I do see this different than some of the other

1 situations where we asked for whole documents to
2 be -- to be submitted, at least for reference
3 purposes. It doesn't appear as if there is anything
4 else in the packet that would be relevant or need to
5 be brought to light.

6 If, at some point, there are additional
7 pages that need to be brought out, then maybe we
8 would consider it. But, at this point, I would
9 rather not have additional confidential information
10 in the record that isn't going to be used for
11 cross-examination or other purposes in the docket. I
12 don't see a need to do that.

13 It doesn't appear to be a slide show as
14 it was previously referenced. It appears to be a
15 packet of information, as OVEC has pointed out, that
16 was given to the board for the Board of Directors
17 meeting, dated December 11, 2013. It's a number of
18 various documents that are in that packet. So I
19 don't really see a need to have the whole packet
20 submitted.

21 MS. BOJKO: I wasn't referring to the
22 entire packet. I was referring to the slides that I
23 thought they were connected, but you have a better
24 copy than I do. I was talking about slide 89, 88,
25 and 87 to -- appear to be a -- the same slides. Is

1 that not the indication in your packet?

2 EXAMINER PIRIK: I don't know if they are
3 the same slides or not. I mean there's pages in
4 between those pages and this page -- these pages. So
5 I don't think, at least in the packet that we have, I
6 don't think we can assume that they are all part of a
7 slide show. They seem to be documents that are put
8 into a packet that were given to the Board of
9 Directors. Please correct me if I'm wrong.

10 MR. CASTIGLIONE: That's what they appear
11 to be to us, as you described.

12 EXAMINER PIRIK: So, I mean, while it
13 appears as if they may have made them all look the
14 same for consistency purposes in the packet, it
15 doesn't really appear to be a slide-show-type of
16 presentation that's in the document.

17 MS. BOJKO: Okay.

18 EXAMINER PIRIK: So I think that was a
19 good point and that was good to clarify it. If, at a
20 later time, for some reason additional pages need to
21 be brought in, maybe we'll have to reconsider, but,
22 right now, I think these two documents are fine.

23 MS. BOJKO: Okay. Thank you, your Honor.

24 EXAMINER PIRIK: So thanks for bringing
25 that up. Okay. Now, are we ready to go in the

1 confidential portion?

2 MR. BERGER: Yes, your Honor.

3 EXAMINER PIRIK: Go ahead, Mr. Berger.

4 MR. BERGER: Thank you.

5

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8

CROSS-EXAMINATION (Continued)

9

By Mr. Berger:

10

Q. Mr. Brodt, you have the group of exhibits that I earlier identified for the confidential record which would go from Exhibit 4a, I think, until Exhibit 27, correct?

11

12

13

14

A. Yes.

15

16

17

18

MR. BERGER: Your Honor, I don't know, as I go through these exhibits, do you want to make a determination individually for each exhibit what should be redacted and what shouldn't?

19

20

21

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23

EXAMINER PIRIK: No. I think what I prefer, since it's such a large packet, is to allow Duke some time to review the information before we do that. So we're just going, for now, we've already ruled on Exhibit 4a and 5a.

24

MR. BERGER: Right.

25

EXAMINER PIRIK: So there is not a need

1 for those to be ruled on, it's the other ones, and
2 we'll do that once we conclude this portion, in the
3 open record we'll give directives exactly on timing
4 and whatnot as to when we need to have the
5 information, but, for now, I think you should go
6 ahead and do your cross and we will clean it up
7 later.

8 MR. BERGER: Okay. Thank you.

9 Q. (By Mr. Berger) So, Mr. Brodt, what I
10 would like to do, starting with Exhibit 6a, is go
11 through with you the course of what happened with the
12 request for transfer of the assets that were made.

13 So looking at OCC Exhibit 6a, was the
14 first occurrence where the issue was brought to the
15 attention of OVEC and the board, the December 4,
16 2012, Board of Directors' meeting?

17 A. Yes.

18 Q. And Exhibit 6a on page 2, No. 17,
19 indicates "Impacts of Ohio Competition on OVEC's
20 Ownership." Do you see that?

21 A. Yes.

22 Q. Was that the agenda item?

23 A. Yes.

24 Q. And it was discussed at that board
25 meeting; is that correct?

1 A. That's correct.

2 Q. And I'm going to have you skip to OCC
3 Exhibit 8, because I got these out of order, but OCC
4 Exhibit 8 is the minutes of that board meeting; is
5 that correct?

6 A. Yes.

7 Q. And would you turn to page 8, third
8 paragraph down, is that the paragraph where the
9 discussion is summarized as to what happened at the
10 board meeting regarding that subject matter?

11 A. Yes.

12 Q. Is there anything else in this document
13 that you are aware of pertaining to that subject
14 matter?

15 A. No.

16 Q. So the outcome of that meeting was simply
17 to set up two subcommittees for the board to explore
18 the impact of these regulations on OVEC?

19 A. Yes.

20 Q. Thank you.

21 Subsequent to that meeting, was there a
22 subcommittee meeting in which you were in attendance
23 or on the phone? Were you in attendance on the first
24 subcommittee meeting in February? Do you recall?

25 A. I was in attendance at the first

1 subcommittee meeting, yes, I don't know what the date
2 was, but I was at the first subcommittee meeting.

3 Q. Now, there is a document, OCC Exhibit 9.
4 Do you see that? Do you know if that is an
5 attendance list for that meeting or for some other
6 meeting?

7 A. This is not my document. I don't believe
8 it was from that meeting.

9 Q. Okay.

10 A. But I don't know that. I shouldn't say
11 that. It's not my document.

12 Q. Okay. Would you turn to Exhibit 10, OCC
13 Exhibit 10. This is an e-mail from Mr. Chisling to
14 various people, a copy which went to you, concerning
15 the subcommittee meeting follow-up information and
16 call. Do you recall attending the February -- he
17 references a February 25, 2013, subcommittee meeting.
18 Do you see that?

19 A. Yes.

20 Q. Do you recall attending that meeting?

21 A. That must have been the date of the first
22 subcommittee meeting.

23 Q. Okay. And do you recall what was
24 discussed at that meeting?

25 A. From my recollection, what was discussed

1 at that meeting was the credit ratings of what a
2 transfer company would have and whether it met the
3 criteria of the Intercompany Power Agreement and
4 whether -- just how -- just how the companies thought
5 they were going to manage these regulations.

6 Q. And when you refer to the "criteria of
7 the ICPA," do you mean the permitted assignee credit
8 rating criteria under section 9.182 and the
9 definitional section of the document?

10 A. I'm referring to that entire section. I
11 don't think it was -- I don't think there was any --
12 I don't think that there was any path towards any one
13 of those sections. They were considering all
14 avenues.

15 Q. So is there a specific portion of the
16 ICPA that addresses parent guaranties?

17 A. No, there's not.

18 Q. Okay. And so, as far as you're
19 concerned, what was being discussed at -- in this
20 document was a possible transfer pursuant to either
21 9.181, unanimous consent, or 9.182, transfer to a
22 permitted assignee.

23 A. That would be my interpretation, yes.

24 Q. Okay. And what was being done at this
25 point was to find a gar -- since a transfer to a --

1 an affiliate, an unregulated affiliate that was --
2 did not yet have a credit rating was being discussed,
3 this was for purposes of the determining whether a
4 parent guaranty would be sufficient to satisfy the
5 OVEC members under either 9.181 or 9.182; is that
6 right?

7 A. That's correct.

8 Q. And Mr. Chisling suggested a follow-up
9 meeting after he had provided a draft of a straw --
10 when he calls a "strawman" proposal of a form of
11 parent guaranty; is that right?

12 A. Yes.

13 Q. What does he mean, do you know, by
14 "strawman proposal"?

15 A. He was trying to work on a guaranty that
16 would satisfy -- a parent guaranty that would satisfy
17 all the different sponsoring companies.

18 Q. And do you remember at this meeting
19 whether certain sponsoring companies indicated that
20 they would have a real problem with a parent guaranty
21 of some sort?

22 A. There was an indication that some of the
23 sponsoring companies might have that problem, yes.

24 Q. And was that from (Confidential) and
25 (Confidential) (Confidential)?

1 A. Yes.

2 Q. Did they indicate, to the best of your
3 recollection, the reason for their concern?

4 A. I think that their concern was back to
5 that they had to provide the -- those types of credit
6 guaranties when they did their transfers and that,
7 now, the conversation was about the parent guaranty
8 which they weren't afforded that kind of option.

9 Q. Okay. And do you remember particular
10 details of the parent guaranty that they were
11 dissatisfied with?

12 A. I don't think there was a lot of details
13 at that point as to what the parent guaranty was
14 going to be.

15 Q. And would you turn to OCC Exhibit 11.
16 This is an e-mail from (Confidential),
17 dated April 12, 2013, which he sent to certain
18 sponsoring companies. It doesn't look like you were
19 included on this e-mail, but were you aware that
20 (Confidential) circulated some revisions to the draft
21 guaranty?

22 A. I may have been at the time. I don't
23 recall.

24 Q. Okay. And then were you aware that a
25 call followed from that discussion, as indicated on

1 OCC Exhibit 12? Again, it does not look like you
2 were included in these e-mails.

3 A. Again, I don't recall whether I was on
4 any of those other calls. Again, I was at the first
5 meeting, but I'm not sure that I attended some of the
6 other meetings.

7 Q. Now, turning to OCC Exhibit 13, another
8 e-mail from Mr. Chisling, dated April 16, 2013, to
9 John -- an exchange with (Confidential) of one of the
10 sponsoring companies. Do you see that?

11 A. Yes.

12 Q. And here it's indicated that there was
13 difficulty -- the "group was unable to agree on
14 further revisions that would be acceptable to each of
15 (Confidential)" Do you see that?

16 A. Yes.

17 Q. And he did not hold out much hope at that
18 point in time that there would be a way to accomplish
19 this through a permitted, and he put it in quotes,
20 "permitted" transfers under the ICPA. Would you
21 agree with me, he was probably talking there, at that
22 point, about the permitted assignee form of transfer
23 under section 9.182?

24 MS. SPILLER: I am going to object, your
25 Honor. I think, one, the document speaks for itself.

1 It was not authored by Mr. Brodt, and so we are
2 asking him to decipher what another individual might
3 have meant.

4 EXAMINER PIRIK: If he is aware of the
5 situation, I'll allow him to testify as to the
6 situation.

7 A. No. I was not copied on this. I'm
8 not -- I can't translate what the language really
9 means here. I wasn't involved in this conversation.

10 Q. Okay. Thank you.

11 And then OCC Exhibit 14 -- let's hold
12 that exhibit until later.

13 And then, I'm sorry, OCC Exhibit 15 is
14 the draft Guaranty Agreement with, I believe this is
15 (Confidential) markup of that agreement. I don't know --
16 this should have followed the other e-mail. Were you
17 aware -- did you receive a copy of that -- of
18 (Confidential) markup at the time? Do you recall?

19 MS. SPILLER: I'm going to object. I
20 don't think there has been any foundation that this
21 is (Confidential) markup.

22 EXAMINER PIRIK: I think you can ask the
23 witness if he recognizes this document. You need to
24 lay some foundation.

25 MR. BERGER: Thank you, your Honor.

1 Q. (By Mr. Berger) Mr. Brodt, do you
2 recognize the markup on this document?

3 A. Yeah. I've seen the document. I've seen
4 several different versions of the document. I don't
5 know who is markup this is, unless it references it
6 somewhere that I haven't seen.

7 Q. I think it's attached to another.

8 EXAMINER PIRIK: 11a.

9 MS. BOJKO: Yeah, it's attached to
10 operations of OCC Exhibit 11a.

11 MS. SPILLER: I'm sorry. It's attached
12 to what?

13 MS. BOJKO: OCC Exhibit 11a.

14 MR. BERGER: Your Honor, it was provided,
15 and somehow it got separated when we were doing the
16 numbering before. As Ms. Bojko points out, the
17 numbers immediately follow the e-mail that is OCC
18 Exhibit 11a. And I -- and I'm just -- that's the
19 reason that I believed it was the markup in addition
20 to the fact that it generally corresponds with the
21 language in the -- in the e-mail that preceded it.
22 Right. It says "please find attached."

23 Q. (By Mr. Berger) But I guess, Mr. Brodt,
24 would you know whether it was intended to be an
25 attachment in your document production to the e-mail

1 that is OCC Exhibit 11a?

2 A. It didn't come from me. It came from
3 legal counsel. They had this document. So I'm not
4 sure.

5 Q. Okay. And then after --

6 MR. CASTIGLIONE: I can stipulate that
7 it's supposed to -- if it's consecutively Bates
8 numbered, it's supposed to be an attachment to that
9 e-mail.

10 EXAMINER PIRIK: Thank you.

11 MR. BERGER: Thank you.

12 Q. (By Mr. Berger) Now, going back to OCC
13 Exhibit 7, was there a board meeting that was then
14 scheduled by an e-mail -- I don't know, if it's an
15 e-mail or a letter, that went out on June 17, 2013,
16 with an agenda for that meeting to discuss, if we
17 look at page 2, "Discussion of feedback from the
18 subcommittee reviewing proposed transfer of interests
19 in the Inter-Company Power Agreement by Sponsoring
20 Companies with Ohio corporate separation plans"? Was
21 that meeting then scheduled for July 16?

22 A. Yes.

23 Q. And the last page of that exhibit, is
24 that the attendance for that meeting?

25 A. Yes.

1 Q. Was this a special meeting called for the
2 purpose of considering these limited items?

3 A. Yes.

4 Q. Thank you.

5 And with respect to that meeting, did you
6 prepare the minutes that are shown on Exhibit 16, OCC
7 Exhibit 16a?

8 MR. BERGER: Sorry, I'm not putting the
9 "a" in here, your Honor.

10 A. Yes, I did.

11 Q. And is it indicated here that the
12 subcommittee reviewed several proposals, if you'll
13 look at the first paragraph below the names of the
14 attendees, last two sentences, "the subcommittee
15 reviewed proposals including requiring the new
16 unregulated company secure an investment grade credit
17 rating or issue a parent company guaranty with an
18 annual liability limit for the unregulated company
19 without a credit rating," and "that the subcommittee
20 was unable to reach unanimous consent upon which
21 credit rating format was agreeable to all parties of
22 the ICPA." Do you recall that being the outcome of
23 the meeting?

24 A. Yes.

25 Q. And was it then decided that the

1 sponsoring companies that "have not yet complied with
2 the PUCO order to send a compliance proposal to the
3 remaining Sponsoring Companies," that's in the
4 following paragraph," to accept or reject the
5 proposal...?"

6 A. Yes.

7 Q. Was it your understanding, at the time of
8 that board meeting, that they would just be sending
9 out their proposed form of parent guaranty and see
10 whether that parties, including (Confidential) and
11 (Confidential), would, nonetheless, agree?

12 A. I think, by this time, they had already
13 been through all that process, and they just sent out
14 a letter that asked them whether they would agree or
15 disagree with the proposals that had already been put
16 out there.

17 Q. So the point of doing that was simply to
18 put on the record that there wouldn't be able -- that
19 there wasn't an agreement and that the utilities,
20 (Confidential), would have to seek other remedies
21 through the Public Utilities Commission of Ohio; is
22 that right?

23 A. Yes.

24 Q. Okay. Thank you.

25 And then (Confidential), actually, in Exhibit 17,

1 sent out its proposal the following day -- I'm sorry,
2 not the following day, the following week, July 22.
3 There is an e-mail from Bryan Chisling, OCC Exhibit
4 17a, sending out that (Confidential) proposal.
5 That proposal is shown in OCC Exhibits 18a, under
6 cover of an e-mail from (Confidential) to Bryan Chisling;
7 is that correct?

8 A. Yes.

9 Q. And are you aware of the fact that there
10 was a proposed limit on the liability of the parent
11 company under both (Confidential) proposals?

12 A. Yes, that was part of the discussion.

13 Q. And do any of the other sponsoring
14 companies have a limit on their liability with
15 respect to OVEC, that you are aware of?

16 A. The -- there was a parent guaranty with
17 FirstEnergy Generation Corporation, back in 2005,
18 that had a limited guaranty, limited parent guaranty.

19 Q. And that was -- the limited parent
20 guaranty was for FirstEnergy Corporation or?

21 A. It was from FirstEnergy the parent -- or,
22 FirstEnergy Corporate to FirstEnergy Generation
23 Corporation.

24 Q. And FirstEnergy Generation, at that point
25 in time, did not have the necessary credit rating

1 under the ICPA; is that correct?

2 A. That's correct.

3 Q. Do you understand the calculation of the
4 annual calculation of maximum amount as shown on OVEC
5 00245 as part of Exhibit 18a?

6 A. Yes.

7 Q. Could you describe that calculation to me
8 and your understanding of why (Confidential) considered
9 it adequate, if you know?

10 A. Yeah. I think the process was try to
11 come up with an annual calculation of what the --
12 what the -- what the maximum obligation would be for
13 that sponsoring company in any given year and it
14 would be adjusted annually. So it talks about the --
15 all the debt and any obligations that the sponsoring
16 companies would owe OVEC as a result of termination
17 of the agreement.

18 Q. And under -- looking at this page, the
19 total guaranty that (Confidential) would
20 give for the new -- new (Confidential) generating entity
21 would be (Confidential), is that --

22 A. That would be their -- their parent
23 guaranty amount, yes.

24 Q. Was this calculation of maximum amount
25 consistent with the guaranty that was given by

1 FirstEnergy Generation in 2005 -- by FirstEnergy
2 Corporation to FirstEnergy Generation in 2005?

3 A. It was a form of this calculation, yes.

4 Q. Do you know if there were any significant
5 differences?

6 A. I think this one is more advanced than
7 the one in 2005. The one in 2005 didn't adjust
8 annually and probably wasn't as accurate as this
9 version.

10 Q. Subsequent to that document being sent
11 out, there was a meeting -- a phone call that was
12 scheduled on Thursday, August 8, as shown on OCC
13 Exhibit 19a?

14 A. I -- again, I don't recall. I don't know
15 that I'm copied on that.

16 Q. On the following e-mail, you're copied on
17 that.

18 A. Am I? Okay. Then I must have been aware
19 at the time, but I just don't recall.

20 Q. And you participated in that call,
21 correct?

22 A. I don't recall whether I did or not.

23 Q. Okay. You don't recall -- strike that.

24 And I note that on OVEC 00249,
25 Mr. Chisling indicated he had not had any feedback

1 from the sponsors at that point in time.

2 Okay. I just want to skip to looking at
3 OCC Exhibit 21a, Mr. Brodt, do you know what the
4 reason for the -- this is a document that was
5 provided by (Confidential). Do you know what the reason,
6 on this document, for the third through the sixth pages
7 providing the guaranty information -- or, the S&P
8 credit rating of the various companies who are
9 members was?

10 A. I don't recall --

11 Q. Okay.

12 A. -- why they are in there.

13 Q. Would you turn back to OCC Exhibit 18a.

14 And this is the document that was sent on behalf of
15 (Confidential) to be circulated; is that correct? Would
16 you look at page 00232.

17 A. Yes.

18 Q. Do you see the last paragraph? Am I
19 correct in reading this paragraph that if a
20 sponsoring company chose not to return the
21 acknowledgment form to (Confidential) and identified --
22 either -- identified either its agreement or disagreement
23 with the (Confidential) proposal by the response
24 due date, (Confidential) shall presume that the sponsoring
25 company is in disagreement with the (Confidential) proposal.

1 MS. SPILLER: Your Honor, I am going to
2 object. The document speaks for itself. It is not a
3 document authored by Mr. Brodt.

4 EXAMINER PIRIK: I'll allow him to
5 testify if he knows.

6 A. Yeah. I don't know much about this
7 document other than what it says, so.

8 Q. Were you aware that at the time that the
9 vote was being tallied, that it was being assumed
10 that companies that did not return the vote would be
11 presumed to have voted against the proposal?

12 A. I don't recall that that was what was
13 being done.

14 Q. Okay. Thank you.

15 A. If that's what it says.

16 Q. And then OCC Exhibit 20, Mr. Brodt, is a
17 tally -- or, OVEC's documents related to the vote on
18 the (Confidential) proposal; is that correct?

19 A. It appears to be, yes.

20 Q. And the company that voted against the
21 proposal that returned the ballot was (Confidential)
22 (Confidential), is that the parent company of
23 (Confidential) and (Confidential)?

24 A. (Confidential) is the subsidiary of (Confidential).

25 Q. Okay. Did (Confidential), do you know, return a

1 ballot or not?

2 A. I don't know. I don't see one here.

3 Q. Now, I wanted to ask you, Mr. Brodt,
4 about -- about the projections that were included in
5 Exhibit 5 -- 5a. And would you just briefly explain
6 the reason there was a five-year funding holiday on
7 contributions to postretirement benefits?

8 A. Yes. We had --

9 MS. SPILLER: Your Honor, excuse me, if I
10 may. This is information that was identified in the
11 public record by virtue of the discussion of OCC
12 Exhibit 5. I think this is information that the
13 opportunity to inquire of has passed because we are
14 beyond the public record.

15 MR. BERGER: All we were doing, your
16 Honor, at that point in time, was identifying the
17 assumption. I'm talking about the numbers here, the
18 five-year funding holiday, which would indicate there
19 is no postretirement benefits being funded during
20 those five years.

21 MS. SPILLER: I'm sorry, I thought you
22 asked why it was done, which is a different question.

23 EXAMINER PIRIK: You can continue.

24 A. The post-retirement benefits, it's a
25 component of the billing under the Intercompany Power

1 Agreement. And the funding level was close to
2 100 percent, and we were making some changes in our
3 benefit plans, and also recognize that other
4 companies were not funding postretirement benefits to
5 those levels. So we decided to take a five-year
6 holiday to let the funding level drift down.

7 Q. And would this result in any reduction in
8 benefits to employees?

9 A. Absolutely not. These are for future
10 funding.

11 Q. Mr. Brodt, if you'll look at the year
12 2040, there are (Confidential), are there not,
13 related to the FGD scrubber projects, and which are
14 identified there that have (Confidential) payments in
15 that year? Do you see the one -- it's hard for me to
16 tell exactly which number relates to which item, but I
17 think the "\$ (Confidential) - Floating Rate LOC Backed
18 Bonds."

19 A. Yeah. There's several components of the
20 financing for the FGDs and the SCRs that were -- are
21 floating at this point in time, and assuming that we
22 do not start (Confidential) some of this (Confidential)
23 in, like, the 2026 time period where there's a
24 (Confidential) where the (Confidential), because that
25 was the former termination date, then there would be

1 some (Confidential) payments left at the end, in 2040,
2 that would have to be covered.

3 Q. That would have to be covered by demand
4 charges at that point in time is what you're saying?

5 A. Yes.

6 Q. Okay. And just so we're clear, all of
7 the financing costs that you have here, starting with
8 the \$(Confidential) on the third line under "Demand
9 Charge," would relate to the environmental compliance
10 projects?

11 A. Yes.

12 Q. And those are the ones that are excluded
13 on lines 1 and 2; is that right?

14 A. Yes. Lines 1 and 2 are for annual
15 capital improvements that we make to our facilities.
16 They don't include these environmental costs that
17 were financed over a longer period of time.

18 Q. And just, OCC Exhibit 22a, would you
19 agree that was your previous year budget?

20 EXAMINER PIRIK: You mean previous to OCC
21 Exhibit 5a?

22 MR. BERGER: I'm talking about 2000 --

23 EXAMINER PIRIK: I know what you're
24 talking about. I'm saying you just asked a question
25 if OCC Exhibit 22 is the previous year budget. My

1 question is do you mean is OCC Exhibit 22, the year
2 previous to the year set forth in OCC Exhibit 5?

3 MR. BERGER: Yes, I do. Thank you, your
4 Honor, for the clarification.

5 EXAMINER PIRIK: Thank you.

6 A. Yes, that's true.

7 Q. And Exhibit 23a shows the performance of
8 your budget for 2013 relative to the projected budget
9 for 2013, as of November 22, 2013; is that correct?

10 A. Yes, it does. It looks like it's got
11 some lines missing, but it does.

12 Q. This is the document you provided us, so.
13 Would that have been part of the board -- I believe
14 it was part of the board package -- the preboard
15 package for the 2013 annual meeting.

16 A. Right. But it should have had -- should
17 have had totals at the bottom.

18 Q. And OCC Exhibit 24a, Mr. Brodt, is that
19 the updated forecast you provided to us either Monday
20 of this week or, I don't remember, was it Friday of
21 last week?

22 A. Yes.

23 Q. This is the most recent forecast?

24 A. Yes.

25 Q. Now, earlier in the -- in your

1 production, at the time of your deposition, you
2 provided OCC Exhibit 25a as your -- as the company's
3 estimate of future major environmental projects; is
4 that correct?

5 A. Yes.

6 Q. And that does not include any carbon
7 emission limits; is that correct?

8 A. That's correct.

9 Q. And that was updated in OCC Exhibit 26a,
10 which is -- and if you look in particular on page
11 OVEC 00310, this is the most current estimate, again
12 excluding carbon emission limitations.

13 A. What page are you on?

14 Q. OVEC 00310.

15 A. Yes.

16 Q. And has the total cost from OCC Exhibit
17 25 to OCC Exhibit 26a increased or decreased? Do you
18 know?

19 A. I don't know. I think it's still about
20 the same. I think we still have the \$(Confidential)
21 forecast to cover all these costs. It's still about
22 the same as it was before.

23 Q. Thank you.

24 And OCC Exhibit 27a is simply Duke Energy
25 Ohio's document they provided in responses to

1 discovery, indicating the votes that were received.

2 I think it pretty much accords with the document that
3 we earlier had; although, I think you don't remember
4 seeing the -- one of the companies on this one. So
5 that's why I included it here.

6 Mr. Chisling, OVEC's counsel, was
7 responsible for facilitating and guiding this effort
8 that was made for the ICPA subcommittee; is that
9 correct?

10 A. That's correct.

11 Q. And are you aware that there was a
12 (Confidential) that was put in place in the
13 capital budget between 2012 and 2013, (Confidential)
14 the capital budget by approximately \$(Confidential)? Are
15 you familiar with that (Confidential)?

16 A. Yes.

17 Q. Do you know what the reason was for that
18 (Confidential)?

19 A. Yes. It has to do with our (Confidential)
20 in our annual capital improvement costs. We looked at
21 some of the maintenance work that we had planned for
22 those time periods and we pushed them out to future
23 years. Plus, at that time, our use factor was lower
24 which meant we weren't running our units as hard, so
25 we didn't need all of our units in service as we had

1 formerly projected.

2 Q. And your use factor in those earlier
3 years, I think you're talking about 2011 or 2012 or
4 2013, was around (Confidential) percent?

5 A. That's correct.

6 Q. But this year it (Confidential),
7 didn't it?

8 A. Yes.

9 Q. And so, your ability to postpone
10 maintenance will depend, on some extent, on your use
11 factor, I think you just indicated, right?

12 A. To some extent, yes.

13 Q. And so far, you are running at about
14 (Confidential) percent this year; is that correct?

15 A. That's correct.

16 Q. And the reason the use factor has been
17 (Confidential) is due to (Confidential) market prices?

18 A. It's been increasing due to sponsors'
19 demand for electricity, scheduling power.

20 Q. And does that typically have to do with
21 (Confidential) market prices?

22 A. That could be one of the factors, yes.

23 Q. And might it also have to do with coal
24 competing more favorably with natural gas?

25 A. I'm sure that that's part of it too.

1 Q. Now, the forecast -- the use factor
2 forecast, I think we've discussed that briefly
3 earlier, but it was on the confidential transcript of
4 the deposition that those forecasts come from the
5 operating companies and are interpreted by a
6 gentleman named Randy Keefer?

7 MS. SPILLER: Objection, your Honor. I
8 am going to, again, object to the form of the
9 question and the reference to the deposition. I
10 don't think this is a proper way to use a deposition.

11 MR. BERGER: I am happy to remove the
12 reference to the deposition circumstances, your
13 Honor.

14 EXAMINER PIRIK: Thank you.

15 Q. Those forecasts come from Randy Keefer or
16 prepared by Randy Keefer from information regarding
17 the operating companies?

18 A. Yes. He prepares that information.

19 Q. Do you know how he prepares that
20 information?

21 A. I think some of it is based on history;
22 some of it is based on some modeling done by AEP
23 Service Corporation for Randy.

24 Q. And does AEP provide -- provide the
25 generation forecast, the use factor forecast, and a

1 fuel forecast to Randy?

2 A. No. Randy -- or, the production
3 department. Sometimes Randy creates those forecasts
4 based on the information they gather.

5 Q. Okay. But the information he gets to
6 prepare that forecast is from AEP; is that correct?

7 A. Some of the information that he gets from
8 AEP would be used in those forecasts. Generation
9 would be based on our -- the generation number that
10 he starts with would be based on how we intend to run
11 the units, what the unit outages look like for the
12 year, what the projection is for forced outages,
13 those type of calculations.

14 Q. Would lower maintenance on the boilers
15 increase forced outages?

16 A. Possibly over time, yes.

17 MR. BERGER: That's all we have at this
18 time, your Honor. Thank you.

19 EXAMINER PIRIK: Thank you.

20 Mr. Darr.

21 MR. DARR: No questions, your Honor.

22 EXAMINER PIRIK: Ms. Hussey.

23 MS. HUSSEY: Nothing, your Honor.

24 EXAMINER PIRIK: Ms. Bojko.

25 MS. BOJKO: Thank you, your Honor.

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CROSS-EXAMINATION (Continued)

By Ms. Bojko:

Q. Mr. Brodt, just to clarify, you were asked some questions about e-mails. Bryan Chisling is the author of those, that's OVEC's attorney; is that correct?

A. Yes. He's part of our legal counsel.

Q. And in the public record you mentioned through 2010 to '14 there were two requests to transfer the entitlement of OVEC to an affiliate or third party. Do you recall that?

A. Yes.

Q. And now that we're in the confidential record, to close the loop, it is your understanding that those requests were made by (Confidential); is that correct?

A. That's correct.

MS. SPILLER: Your Honor, can I just have a clarification of the use of "AEP"? There are a couple of AEP entities that have been referenced. And I just think, for clarity of the record, it might be helpful if we stuck to, perhaps, more detailed corporate names.

EXAMINER PIRIK: I think that would be appropriate. Could you just clarify and have the

1 witness clarify?

2 MS. BOJKO: Unfortunately, the documents
3 don't always clarify, so I have to assume, and I
4 thought I was pretty clear earlier about AEP Service
5 Corp. doing the work for OVEC, but that was
6 clarified, so I'll do the best that I can with the
7 documents.

8 EXAMINER PIRIK: I appreciate it.

9 Q. (By Ms. Bojko) The -- let's turn to OCC
10 Exhibit 10, please. Are you there?

11 A. Yes, uh-huh.

12 Q. Okay. OVEC's counsel talks about the
13 "strawman proposal" and he calls it "(Confidential)"
14 and (Confidential); is that true?

15 A. Yes.

16 Q. I mean, is your understanding that in the
17 context of the transfer of the generating assets, as
18 it pertains to (Confidential), and the request between 2010
19 and '14, were with regard to (Confidential)?

20 A. Yes.

21 Q. And it's your understanding, sir, that
22 (Confidential) requested that the maximum amount of
23 liability be included in the parent guaranty; is that
24 your understanding?

25 A. Where are you referencing that from?

1 Q. I'm summarizing some statements, I think,
2 that I heard you talk about with Mr. Berger. That
3 was your understanding of the process? I mean,
4 Exhibit 11 is the (Confidential) comments to that
5 regard, but I thought you stated it was your
6 understanding that (Confidential) had concerns with the
7 maximum liability amount.

8 A. Yes.

9 Q. And it's your understanding that (Confidential)
10 proposed changes to the guarantor option that you
11 said you were familiar with, and they provided that
12 they had proposed changes, but they also had
13 preferences to go forward with a different kind of
14 guaranty; is that correct?

15 A. I think their preferable method was a
16 credit rating.

17 Q. Credit rating?

18 A. Yes.

19 Q. And, sir, it's also your recollection
20 that (Confidential) had comments and concerns regarding
21 the structure of the guaranty; is that true?

22 A. I think everyone had comments about the
23 structure of the guaranty.

24 Q. And the result of these subcommittees and
25 the discussions and the e-mail, it's your

1 understanding that (Confidential) and (Confidential)
2 couldn't come to an acceptable guarantor arrangement; is
3 that correct?

4 A. I think that they had some concerns;
5 whether that was the entire issue, I'm not sure.

6 Q. And if you turn to OCC Exhibit 13, is it
7 your understanding that in this document OVEC's
8 counsel was explaining to the group that they
9 couldn't come to an acceptable agreement, and other
10 options and alternatives were going to be considered
11 to seek Commission relief, PUCO relief, from the
12 requirement to transfer the ICPA interests?

13 MS. SPILLER: Again, your Honor,
14 objection. This is not a document that Mr. Brodt
15 authored or received. We are simply now reading a
16 communication between Mr. Chisling and Mr. Fendig
17 into the record and trying to get it in through this
18 witness.

19 MS. BOJKO: Actually, this goes back to
20 the line of questioning that the witness did say he
21 was familiar with, when we were talking in the public
22 sector, and we agreed to hold those off to the
23 confidential document. This one is -- and there will
24 be two more that I am referencing, your Honor. He
25 did say he was aware of the discussions and the

1 information that was given to him by -- through the
2 subcommittee group and through the correspondence.

3 EXAMINER PIRIK: If he is aware, I will
4 allow him to testify.

5 A. Again, as I stated before, this e-mail
6 was not sent to me. What it says is what it says.
7 Was I aware of what was going on? Was I aware of
8 that there were problems in coming to reconciliation
9 between all of these entities? Yes.

10 Q. And you were also aware, sir, that there
11 were -- there was a belief among certain individuals
12 in the subcommittee that there was an obligation to
13 transfer the ICPA interests; isn't that true?

14 MS. SPILLER: I'm going to object to the
15 extent Ms. Bojko is asking Mr. Brodt for what
16 unidentified individuals may have believed. I don't
17 know how he is expected to know that.

18 EXAMINER PIRIK: If he is aware, I will
19 allow him to testify.

20 A. Again, I'm not aware of whether there is
21 an obligation or not an obligation. All I was aware
22 of, there was a subcommittee set up to explore this
23 and that's what they did, and to try to find options
24 to comply with -- a possible transfer.

25 Q. Okay. Well, let's explore -- explore

1 that a little further. Can you turn to OCC
2 Exhibit 14. Now, here you were copied on this
3 e-mail; isn't that true, sir? This is part -- were
4 you copied on this e-mail?

5 A. I was -- it depends on which e-mail you
6 are talking about. It looks like there is one on top
7 and there is one on the bottom.

8 Q. I'm sorry. I am talking about the
9 middle, from Bryan Chisling.

10 A. Yes.

11 Q. July 19, 2013, e-mail.

12 A. Yes.

13 Q. You were copied on that?

14 A. Yes.

15 Q. And in that e-mail that you were copied
16 on, it was OVEC's understanding that (Confidential) was
17 requesting the transfer due to Ohio's corporate
18 separation requirements; is that correct?

19 A. That's what it says, yes.

20 Q. And to your knowledge, sir, did anybody
21 respond or somehow object to the characterization in
22 this e-mail?

23 A. I don't know.

24 Q. And if we turn and look at OCC 16, sir.

25 A. Yes.

1 Q. And this is minutes of a special meeting
2 and this is -- this was drafted by you, sir, as the
3 secretary of OVEC?

4 A. Yes. Yes.

5 Q. Okay. So you assumed that this was a
6 fair and accurate summary that you made yourself of
7 the special meeting?

8 A. Yes.

9 Q. And in this summary, isn't it true, on
10 the fourth full paragraph, you state that Mr. Akins
11 asked OVEC's counsel to provide feedback about the
12 subcommittee to review the proposed transfer of
13 interests in the ICPA by the sponsoring companies
14 with Ohio corporate separation plans?

15 A. Yes.

16 Q. Okay. Then if you -- and, Mr. Akins,
17 sir, is the -- was the (Confidential) representative in
18 this subcommittee, sir; is that correct?

19 A. No. Mr. Akins is the president of our
20 company.

21 Q. Oh, I'm sorry. Okay. I apologize for
22 that.

23 And the next paragraph at the bottom of
24 page 1 of OCC Exhibit 16, it says that "Mr. Akins
25 advised that the Ohio Sponsoring Companies are

1 obligated by orders of the Public Utilities
2 Commission of Ohio...to separate their generating
3 from their regulated entities"; is that true?

4 A. Evidently that's what I recorded
5 Mr. Akins said.

6 Q. Okay. And then if you could turn to the
7 next page. You also indicated that Mr. Akins stated
8 that he expected all the Ohio Sponsoring Companies
9 that have not yet complied with the Commission order
10 to send a compliance proposal to the remaining
11 Sponsoring Companies to accept or reject the
12 proposals so that each impacted Ohio Sponsoring
13 Companies can comply or file with the Commission to
14 modify their Commission order; is that correct?

15 A. That's what it says.

16 Q. And when -- when you stated "each
17 impacted Ohio Sponsoring Company," it's your
18 understanding, when you drafted this language, that
19 that was to include both (Confidential) and (Confidential);
20 is that correct, sir?

21 A. Yes.

22 Q. And the next paragraph says the Board
23 discussed certain options and agreed that the
24 Sponsoring Companies should respond to the individual
25 proposals from any Ohio Sponsoring Company as to the

1 plans to comply with its Commission order; is that
2 correct?

3 A. Yes.

4 Q. And it's your understanding, sir, that
5 (Confidential) entities ultimately disagreed with the --
6 with (Confidential) and (Confidential) -- (Confidential)
7 transfer requests; is that correct?

8 A. I don't know that I ever saw the final
9 tally. I just know that it wasn't unanimous.

10 Q. I thought you indicated previously that
11 you believed that both (Confidential) and (Confidential) did
12 not agree to the proposal.

13 A. They were the ones that during the
14 meetings that I attended and the phone calls I was
15 involved, they were the ones that had problems with
16 the transfer scenarios that were being drawn up.

17 Q. And so, that's what your belief was based
18 on?

19 A. Yes.

20 MR. OLIKER: Could we go off the record
21 for a second?

22 (Discussion off the record.)

23 EXAMINER PIRIK: We'll go back on the
24 record.

25 Q. (By Ms. Bojko) Sure. Let's take a look

1 at OCC, what's been identified previously as OCC
2 Exhibit 8. Do you have that?

3 A. Yes.

4 Q. On page 7 of that document, in the middle
5 of -- it's the to be "Resolved." This is an action
6 of the directors. Is that accurate?

7 A. What section?

8 Q. Where it says "resolved."

9 A. That's a resolution of the board, yes.

10 Q. Okay. And here the board created or
11 authorized a \$5.7 million study; is that correct?

12 A. Yes.

13 Q. And that's in addition to the capital
14 improvement numbers planned to be spent on the OVEC
15 units; is that correct?

16 A. This was a study that was authorized to
17 determine whether -- or, what the needs were with
18 regard to dry fly ash and what it would cost. I
19 think this study ended up costing about \$2 million.

20 Q. And this type of study is a fixed cost;
21 is that accurate?

22 A. The study ended up costing \$2 million.

23 Q. But, I mean, it's considered a fixed cost
24 that's passed on to the sponsoring companies?

25 A. It's a -- yes, it's part of the fixed

1 cost, yes.

2 Q. And it's additional to any capital
3 improvement costs, right? That ultimately
4 resulted --

5 A. Most capital improvement costs,
6 especially being environmental cost -- being
7 environmental capital improvements, start with a
8 study such as this.

9 Q. Okay. And so, would those costs for such
10 a study be identified in your forecast, your billable
11 cost summary that we have been discussing?

12 A. Well, this was in 2012 so it was probably
13 incurred in 2013. So these for -- these studies are
14 from '14 on, so it's probably already been incurred.

15 Q. I'm sorry if my question wasn't clear. I
16 meant would it be in the billable cost summary
17 forecast projection as a line item in these --

18 A. No, it would not be as a line item. It
19 would either be incorporated into the capital
20 improvement cost or be part of the operating
21 expenses.

22 MS. SPILLER: Your Honor, I believe, I'm
23 not entirely sure, but there have been several
24 communications between counsel, passing notes and the
25 like.

1 EXAMINER PIRIK: Can we just continue?
2 We are not -- it's too late to be picking about that.
3 So, let's just conclude with cross-examination here
4 and move on.

5 I just have to say, I'm a little
6 disappointed because there is no doubt, when you look
7 at the estimate of time that people said they were
8 going to cross-examine, that it has far -- gone far
9 beyond that, and that goes for a number of the
10 parties. So it's a little frustrating from this end
11 of it. If we could just continue.

12 MS. BOJKO: I was trying not to reask the
13 same question.

14 EXAMINER PIRIK: I appreciate that.

15 MS. BOJKO: No notes passing. I am
16 trying to make sure I don't repeat questions.

17 Q. And now, if you could turn to what's been
18 marked as OCC Exhibit 26.

19 A. Yes.

20 Q. Okay. It's your understanding that the
21 presentation is an Environmental Capital Projects
22 Update; is that correct?

23 A. Yes.

24 Q. And that this is a summary of various
25 environmental projects that culminated into a summary

1 document on -- on the second-to-last page which is
2 OVEC 00310?

3 A. Yes.

4 Q. Could you turn to page 7 of this
5 presentation, sir?

6 A. Yes.

7 Q. The last bullet of page 7 talks about
8 wedge wire screens.

9 A. Yes.

10 Q. Do you see that? What does "current"
11 mean in this bullet?

12 A. "Current" means that capital improvement
13 projects evolve over time, and technologies change,
14 and compliance rules are final or not final, and at
15 the point of time that this update was issued, that
16 was the current capital forecast for installing wedge
17 wire screens.

18 Q. Okay. Would that line item, the (Confidential)
19 million for Clifty, and (Confidential) million for Kyger be
20 on the summary sheet that we just discussed?

21 A. It would be incorporated in several of
22 those years, for 316(b) compliance, in the 2017
23 through 2021 time period.

24 Q. And then if we could turn to the summary
25 page, on the capital projects listed on this summary

1 page, these are -- are these identified on the
2 billable cost summary forecast that you produced?

3 A. They are -- they are all incorporated in
4 that line item that is titled \$(Confidential) --
5 "Projected (Confidential) Finance Capital
6 Improvements."

7 Q. So for the billable cost summaries where
8 there is a (Confidential) for 2015, '16, '17, the cost
9 listed on this summary would be in addition to the billable
10 cost summary that you provided?

11 EXAMINER PIRIK: Ms. Bojko, when you're
12 talking about the "summary page," are you talking
13 about page 12 of the document which is 00310?

14 MS. BOJKO: Yes.

15 EXAMINER PIRIK: Okay. Just to make
16 sure.

17 MS. BOJKO: And I'm comparing it to the
18 billable cost summaries that OVEC provided which
19 are -- there are numerous of them, so I asked a
20 general question.

21 EXAMINER PIRIK: Okay.

22 A. The general answer is that this is the
23 most recent update which is newer than any of the
24 cost summaries. The dollars are the same. The
25 spread may be different in the capital improvement

1 costs. And what we do is -- the \$(Confidential) that
2 we're talking about financing is (Confidential) financing.
3 The actual expenditures may occur in a (Confidential)
4 period of time and we utilize (Confidential) financing to
5 cover those costs and in the near term and then they are
6 termed out in the (Confidential) financing at some
7 specific period in time.

8 Q. But the -- this update was done
9 October 22, 2014; is that correct?

10 A. That's correct.

11 Q. So when we look at the latest projections
12 provided by OVEC, which you stated earlier was
13 7/24/14; is that correct?

14 A. That's correct.

15 Q. And if there is a (Confidential) in the column
16 2015, '16, and '17, we would take the updated sheet
17 from OCC Exhibit 26 and add the -- the projected
18 numbers on to your billable cost summary; is that
19 accurate?

20 A. No. We, again, what I said we utilized
21 (Confidential) financing to cover near-term costs and
22 then, at some specific point in time, the specific
23 point in time is what we have projected in the -- in
24 the long -- in the forecast is we would go out for
25 (Confidential) financing which would cover these

1 environmental projects.

2 Q. But I'm looking at 00310 and it says
3 "Total Debt Expense (ICPA Component A)," and I don't
4 see these projected numbers on your latest billable
5 cost summary.

6 A. This is for comparison purposes. This is
7 just to illustrate what the cost might be in a
8 specific period of time had we not -- if we did not
9 utilize our (Confidential) financing. This is an update
10 for our directors just to see, on a year-by-year
11 basis, what the cost might be.

12 Q. And these costs are not incorporated into
13 the capital improvement line item either; is that
14 correct?

15 A. They are incorporated in as a total,
16 \$(Confidential) total.

17 Q. But not in the line item termed
18 "Projected Annual Capital Improvement Costs"; is that
19 correct?

20 A. You are -- you lost me. Which?

21 Q. On your billable cost summaries there is
22 a "Projected Annual Capital Improvement Costs" line
23 item, and it says excluding a variety of
24 environmental projects, and I just want to make sure
25 that none of these projects, the cost of such, would

1 be listed in that first line item under "Demand
2 Charge" in your billable cost summary.

3 A. They are not in the first line item.
4 They are in the projected (Confidential), (Confidential),
5 \$(Confidential) in 2019, \$(Confidential) in 2020, and
6 \$(Confidential) in 2027, on Exhibit No. 5, for example.

7 Q. And that would just -- but this summary
8 that you provided is illustrative of when the charges
9 could be assessed, I guess, to the companies to the
10 units?

11 A. This is for example purposes, just to
12 show them what the cost might be if we actually
13 incurred these costs during that period of time. The
14 intention is, as I mentioned, that we would utilize
15 short-term financing to cover some of the costs
16 early, and term this stuff out later on.

17 Q. And the environmental capital projects
18 listed in this summary page on OVEC 310 are
19 considered fixed costs that the sponsoring companies
20 would be responsible for paying regardless of whether
21 the units run or don't run; is that correct?

22 A. The debt component is a fixed cost, yes,
23 it would be.

24 Q. And the true would be with regard to
25 these environmental capital projects on this sheet

1 whether or not the sponsoring company took the power
2 that they were entitled to under the ICPA; is that
3 correct?

4 A. That's correct.

5 MS. BOJKO: I have nothing further.

6 Thank you.

7 EXAMINER PIRIK: Mr. Mendoza.

8 MR. MENDOZA: I have just one question.

9 - - -

10 CROSS-EXAMINATION (Continued)

11 By Mr. Mendoza:

12 Q. What are your best estimates for the
13 costs of SCR units at Clifty Unit 6?

14 A. I know there was a study done and I
15 don't -- I don't recall what the -- what the costs
16 were. There was a study done, I think it was 2012 or
17 something like that, and I just don't remember what
18 the Unit 6 costs were.

19 Q. Was it around \$(Confidential)? Do you
20 remember?

21 A. I would hate to say because I just don't
22 remember.

23 MR. MENDOZA: Nothing further.

24 EXAMINER PIRIK: Mr. Oliker?

25 MR. OLIKER: Thank you, your Honor.

1 CROSS-EXAMINATION (Continued)

2 By Mr. Oliker:

3 Q. Mr. Brodt, I will try to be relatively
4 quick. Could you please look -- actually, let's just
5 back up for a second. Would you agree that the
6 sponsoring companies have proposed for Clifty Creek
7 and Kyger Creek to join PJM?

8 A. Yes.

9 Q. And would you agree the sponsoring
10 companies rejected this suggestion that OVEC join PJM
11 due to difficulties moving power and future cost
12 uncertainty?

13 MS. SPILLER: Objection, your Honor.
14 There has been no discussion in the examination today
15 about any move to PJM.

16 EXAMINER PIRIK: Overruled.

17 Q. Would you like me to restate the
18 question, Mr. Brodt?

19 A. Please.

20 Q. Would you agree that the sponsoring
21 companies rejected the suggestion that OVEC join PJM
22 due to difficulties in moving power and future cost
23 uncertainty?

24 A. I don't know that to be true. I don't
25 know any more about the circumstances other than the

1 fact that there was a -- some talk about joining PJM.

2 Q. Could you please look at OCC Exhibit 16,
3 especially the second page. And just be sure, this
4 is a document that you recorded minutes from the July
5 16, 2013, special subcommittee meeting?

6 A. Yes.

7 Q. And, just to be clear, you recorded that
8 "the subcommittee reviewed the pros and cons of
9 joining," there is a parenthesis, "PJM
10 interconnection...an adjoining regional transmission
11 organization...." And then if you go, after the
12 sentence is over, "Mr. Chisling advised that these
13 options could produce a cost savings of approximately
14 \$(Confidential) per year, but that difficulties in moving
15 power and future cost uncertainty prevented the
16 Sponsors from agreeing on these alternatives."

17 A. That's what it says.

18 Q. And regarding this -- these minutes from
19 the July 16 meeting, would you agree that these
20 minutes were subsequently approved in the
21 December 11, 2013, Board of Directors meeting?

22 A. Yes.

23 Q. Would you agree that Charles Whitlock was
24 there on behalf of Duke Energy Ohio?

25 A. I don't know if I -- do I have something

1 that tells me that? I don't know that he was present
2 at that meeting.

3 Q. Could I ask you to accept, that subject
4 to check, or I could refresh your recollection with a
5 document that hasn't been marked yet, but I would
6 rather not go through that step.

7 A. I don't recall off the top of my head
8 without seeing something that would tell me.

9 MR. OLIKER: Your Honor, previously there
10 were documents that were marked regarding, I believe
11 it was Duke Energy Exhibit 16 and 17 that was part of
12 a packet submitted to the Board of Directors.

13 Could -- Mr. Castiglione, do you have
14 those documents? It's OVEC exhibit -- or, 71 to 75.
15 I would just like to hand those to the witness for a
16 second to help our conversation. We don't need to
17 mark this.

18 Q. Mr. Brodt, could you refresh your
19 recollection and determine if Charles Whitlock was at
20 the December 11, 2013 meeting?

21 A. Yes, he was.

22 Q. Okay. And also, you would agree that, I
23 think you already said this, I just want to be sure,
24 the July 16 minutes were approved at this meeting,
25 correct?

1 A. Yes.

2 Q. Okay. Thank you.

3 A document was previously mark as IGS
4 Exhibit 7. Do you still have that document? It has
5 "TH-9" in the top right-hand corner and is the
6 billable cost summary for -- submitted on June 24,
7 2014. Do you have that document?

8 A. Yes.

9 Q. Okay. Could you please look at the year
10 2039?

11 A. Yes.

12 Q. And I know the writing is small, but if
13 you look under the "Demand Charge" on the total line,
14 would you agree that the demand charge indicates that
15 the sponsoring companies will make \$(Confidential) pay
16 OVEC?

17 A. Yes.

18 Q. And if we look at 2040, would you agree
19 the number rises from (Confidential) to (Confidential)?

20 A. Yes.

21 Q. Would you agree that what is happening in
22 2040 is that the ICPA is set to expire and all the
23 outstanding debt must be repaid which is forecasted
24 to result in a \$(Confidential) cost (Confidential) from
25 the level that existed 2039?

1 unanimous consent from the other sponsoring companies
2 or it needed to provide an unlimited guaranty,
3 correct?

4 A. Yes.

5 Q. And, sir, "unanimous" means all of the
6 sponsoring companies needed to say "yes," correct?

7 A. That's correct.

8 Q. And one "no" vote would preclude the
9 transfer under the ICPA, correct?

10 A. That's correct.

11 Q. Mr. Brodt, you were asked questions
12 concerning the parental guaranty that was identified
13 in the exhibits that -- that the OCC has shared with
14 you. Specifically, sir, there is a reference to the
15 parental guaranty in OCC Exhibit 18. There's also,
16 sir, a reference to another form of the parental
17 guaranty in OCC Exhibit 21, correct?

18 A. Yes.

19 Q. And I believe you stated, sir, with
20 respect to OCC Exhibit 21 -- I'm sorry, it's 21a and
21 the parental guaranty that's identified there, this
22 was, you said "more advanced" than the prior parental
23 guaranty that had been used in connection with a
24 FirstEnergy transfer, correct?

25 MR. DARR: Objection. That wasn't the

1 testimony.

2 EXAMINER PIRIK: He can clarify.

3 A. Yes, that was my testimony.

4 Q. And by "more advanced," do you mean that
5 there would be a greater deal of financial protection
6 afforded the nontransferring sponsoring companies
7 under the parental guaranty that was offered or
8 suggested in connection (Confidential)?

9 A. Yes.

10 Q. And the parental guaranty that's
11 reflected in OCC Exhibit No. 21, that's one pursuant
12 to which (Confidential) would be issuing the
13 guaranty, correct?

14 A. Yes.

15 Q. And, Mr. Brodt, (Confidential)
16 is not a sponsoring company under the ICPA, is it?

17 A. No.

18 Q. So the requirement of an unlimited
19 guaranty between a sponsoring company and a permitted
20 assignee, under the ICPA, would not apply to
21 (Confidential), correct?

22 A. That's correct.

23 Q. Mr. Brodt, you were asked questions about
24 OCC Exhibit No. 16. Do you have that document, sir?

25 A. Yes.

1 Q. And the subcommittee was formed by OVEC
2 to explore options to enable the transfer of
3 sponsoring companies' contractual entitlements in
4 OVEC, correct?

5 A. Yes.

6 Q. And with regard to these minutes, sir,
7 you record what individuals state, correct?

8 A. That's correct.

9 Q. Did you go behind Mr. Akins to review any
10 PUCO orders --

11 A. No.

12 Q. -- that may have been filed?

13 A. No.

14 Q. You were asked a question, sir, about
15 some capital improvements. OCC asked you to compare
16 the capital -- the capital expenditure projections
17 between 2012 and 2013, referencing a (Confidential) in
18 the capital expenditures between those two years. Do you
19 recall that, sir?

20 A. Yes.

21 Q. Mr. Brodt, is OVEC intending to forego
22 capital investments?

23 A. No, no. None of the capital investments
24 that we talked about deferring from 2012 and 2013
25 were going to be foregone. They were just pushed to

1 future years.

2 Q. And I believe, sir, you indicated that
3 the OVEC billable cost summary that is dated July,
4 2014, is the most recent billable cost summary for
5 OVEC, correct?

6 A. That's correct.

7 Q. And, sir, within this document for
8 calendar year 2014, OVEC is projecting an annual
9 power production cost of \$53.96 per megawatt-hour,
10 correct?

11 A. Which one is it?

12 Q. I'm sorry, sir. It's OCC Exhibit 24a,
13 please.

14 A. Yes.

15 Q. And OVEC is also projecting a use factor
16 of (Confidential) percent, correct?

17 A. That's correct.

18 Q. And with over three quarters of 2004 --
19 2014 behind, sir, are these numbers -- do you find
20 these numbers to still be accurate?

21 A. Yes.

22 Q. Mr. Brodt, if you could please refer to
23 Duke Energy Ohio Exhibits 16 and 17, please. And,
24 sir, I believe you've indicated those were documents
25 that were prepared by OVEC and presented to the

1 board, correct?

2 A. Yes.

3 Q. And they were presented to the board
4 prior to the year-end board meeting for calendar year
5 2013, correct?

6 A. That's correct.

7 Q. And, sir, let's start with Duke Energy
8 Ohio Exhibit 16, please. As compared to what OVEC
9 previously forecasted with respect to its operating
10 budget for 2014 through 2016, at the end of 2013,
11 OVEC projected a decrease in costs for calendar year
12 2014 of \$(Confidential), correct?

13 A. That's correct.

14 Q. And that decrease is associated with the
15 ongoing continuous improvement process in place at
16 OVEC in respect of its two owned generating assets,
17 correct?

18 A. That's correct.

19 Q. OVEC also is indicating or anticipating a
20 \$(Confidential) (Confidential) in capital costs for
21 calendar year 2014 as compared to a prior budget, correct?

22 A. That's correct.

23 Q. And, sir, with respect to calendar years
24 '15 and '16, OVEC is projecting a \$(Confidential) and
25 an \$(Confidential) (Confidential) respectively in operating

1 costs as compared to what was originally proposed in
2 the budget, correct?

3 A. That's correct.

4 Q. For calendar 2015, OVEC is -- strike
5 that.

6 Those reductions in operating costs for
7 calendar years 2015 and 2016 are a result of OVEC's
8 ongoing continuous improvement process, correct?

9 A. That's correct.

10 Q. OVEC is projecting, in more recent
11 information presented to the Board of Directors in --
12 at the end of 2013, a reduction in 2015 of capital
13 expenditures in the amount of \$(Confidential), correct?

14 A. Yes, that's correct.

15 Q. And OVEC presented to its Board of
16 Directors at the end of 2013 an anticipated reduction
17 in capital costs of \$(Confidential) for 2016, correct?

18 A. That's correct.

19 Q. Mr. Brodt, with respect to Duke Energy
20 Ohio Exhibit 17, this is a document, again, prepared
21 by OVEC and presented to the board at the end of
22 calender year 2013, correct?

23 A. Yes.

24 Q. Showing additional focus by OVEC on
25 operations, maintenance, and capital costs, correct?

1 A. Yes.

2 Q. And OVEC is focused on reducing its
3 plant, operating, maintenance, and capital costs to
4 the Navigant first quartile, correct?

5 A. That's correct.

6 Q. And Navigant is a consultant that OVEC
7 retained to conduct an extensive look at OVEC's
8 operations, correct?

9 A. That's correct.

10 Q. And, sir, if we look at the totals here,
11 based upon OVEC's focus and its intent to reduce its
12 cost to the Navigant first quartile, by the first
13 quarter of 2016, OVEC is rejecting a \$(Confidential)
14 reduction in operating, maintenance, and capital
15 costs, correct?

16 A. That's correct.

17 Q. Mr. Brodt, OVEC hedges its coal costs for
18 the two plants it owns and operates, correct?

19 A. Yes.

20 Q. And that hedging serves to keep
21 volatility out of the production costs for those two
22 plants, correct?

23 A. Yes.

24 Q. Mr. Brodt, to your knowledge, is
25 (Confidential) associated with (Confidential)?

1 A. Yes, he is.

2 Q. I'm sorry. It may be Haynes.

3 A. Haynes, I'm sorry, yes.

4 Q. And, sir, if you would look at OCC
5 Exhibit No. 27, please. Did the (Confidential) affiliates
6 that are sponsoring companies of OVEC consent to
7 (Confidential) transfer?

8 A. Yes, they did.

9 Q. And prior to 2013, had OVEC formed
10 special subcommittees to explore a transfer of a
11 sponsoring company's contractual entitlement?

12 A. No.

13 Q. Was there additional work and focus that
14 was -- that was made in connection with (Confidential)
15 and (Confidential) request to transfer their
16 contractual entitlement?

17 A. I think there was substantial work that
18 was done with regard to those -- those reviews.

19 MS. SPILLER: Thank you, sir.

20 One moment, please, your Honor.

21 Q. Mr. Brodt, do you know whether (Confidential)
22 voted in favor of (Confidential) transfer of
23 its contractual entitlement in 2013?

24 A. Again, I don't have the votes so I don't
25 know who voted for or against.

1 Q. Other than what we've --

2 A. Other than what we've shown here, yes.

3 MS. SPILLER: Thank you, sir.

4 Nothing further, your Honor.

5 EXAMINER PIRIK: Thank you.

6 Staff?

7 MR. BEELER: Nothing, your Honor.

8 EXAMINER PIRIK: I hesitate to do this,
9 but I am going to be consistent, so if there are
10 additional issues, I hope they are really short.

11 Mr. Berger?

12 MR. BERGER: I don't have anything.

13 Thank you, your Honor.

14 EXAMINER PIRIK: Thank you.

15 Mr. Darr?

16 MR. DARR: Just one area, your Honor,
17 because I think the record was, at least in my mind,
18 unclear.

19 - - -

20 FURTHER RECROSS-EXAMINATION

21 By Mr. Darr:

22 Q. Do you have in front of you what's been
23 previously marked as OCC Exhibit 18?

24 A. Yes.

25 Q. In response to a question that

1 Ms. Spiller asked you, you indicated this was a more
2 sophisticated guaranty; is that correct? Maybe I am
3 using the wrong term and, if I am, please correct me.

4 A. No. I said with regard to the guaranty,
5 the parent guaranty calculation, it was a more
6 advanced calculation that was used previously in
7 2005.

8 Q. Okay. And you are comparing that to the
9 parent guaranty that was given to -- given by
10 FirstEnergy, correct?

11 A. That's correct.

12 Q. And when you are talking about it being a
13 more sophisticated or more comprehensive guaranty,
14 you're talking about the calculation that's contained
15 in Exhibit A to the guaranty, that which is OVEC
16 Bates number 00245?

17 A. Yes, that's what I'm talking about.

18 MR. DARR: Okay. That's what I thought I
19 understood you to say in your original examination.
20 I just wanted to confirm that. Thank you, sir.

21 EXAMINER PIRIK: Thank you.

22 Ms. Hussey?

23 MS. HUSSEY: Thank you, your Honor. I
24 just have one question.

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FURTHER RECROSS-EXAMINATION

By Ms. Hussey:

Q. If I could direct your attention to Duke Energy Ohio Exhibit 17a. I believe -- actually, could you focus your attention on the bottom, the green bar marked "Focus on Reducing Plant OMC Costs to Navigant First Quartile," and then that parentheses, "(Excludes FGD and SCR Chemicals)." Could you give me some idea of the degree of costs that we're talking about when you reference FGD and SCR chemicals?

A. Yeah. The calculation that -- that we were comparing with the Navigant benchmark study, I think it was unclear whether -- whether all of the benchmarking that they were doing were with plants that have had FGDs or SCRs. So we took those out of the -- out of our calculation to make sure it was a comparable benchmark.

Q. Okay. And do you have any idea, sitting here today, about the degree of what those costs are?

A. No, I don't.

MS. HUSSEY: Okay. Thank you.

EXAMINER PIRIK: Ms. Bojko?

MS. BOJKO: Thank you, your Honor.

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FURTHER RECROSS-EXAMINATION

By Ms. Bojko:

Q. Just so we're clear, DEO Exhibit 16 and 17, what are the dates that should be attached to those two documents?

A. Well, they were prepared for the 2013 board meetings so they should have been prepared in November prior to the board meeting in December.

Q. So just so we're clear, prepared November of 2013?

A. Yes.

Q. Both documents?

A. Yes.

Q. And, sir, these are forecasts; is that correct?

A. Yes, they are.

Q. And forecasts are forecasts, and they are subject to change going forward; is that correct?

A. Absolutely.

MS. BOJKO: Nothing further. Thank you, your Honor.

EXAMINER PIRIK: Thank you.

Mr. Mendoza.

MR. MENDOZA: No questions.

EXAMINER PIRIK: Mr. Oliker.

1 MR. OLIKER: Just very briefly.

2 - - -

3 FURTHER RE-CROSS-EXAMINATION

4 By Mr. Olikier:

5 Q. Now, I think you mentioned the timing of
6 these forecasts, 16 -- for Duke Exhibit 16 and 17,
7 that was November. And those were incorporated into
8 the budget at that time, right, those reductions?

9 A. I'm trying to think whether these CIP
10 numbers are actually incorporated into the budget. I
11 do not know that they are. The CIP -- I do not
12 believe that the CIP savings are incorporated into
13 the budgets at this point in time.

14 Q. Would you look at Exhibit -- OCC Exhibit
15 24 and OCC 5. Just the two of these together, would
16 you agree if you compare 2018 on OCC Exhibit 24 and
17 2018 on OCC 5, there is a \$(Confidential) (Confidential)
18 in the demand charge in that year? And also -- sorry,
19 you can answer the question.

20 A. Are you talking 2018 in both years -- or
21 both -- on both Exhibit 5 and Exhibit 24?

22 Q. Yes. Would you agree the demand charge
23 is (Confidential) in Exhibit 24, by about \$(Confidential)
24 in that year?

25 A. Yes.

1 Q. And it's also higher in 2019 and 2020, in
2 the more recent forecasts of OCC 24, relative to
3 OCC 5, right?

4 A. Yes.

5 Q. Okay. And you mentioned deferring
6 capital expenditures. You agree that when you do
7 that, you take on additional risk?

8 A. Yes, we do.

9 Q. And what you mean by additional risk, it
10 means there is a higher likelihood of forced outages.

11 A. Yes, there is that possibility.

12 Q. And just going back one more step. You
13 would agree that --

14 MR. OLIKER: Could I have one minute,
15 your Honor?

16 Q. If I look at Duke Exhibit 17, you would
17 agree that it does say "2014 Submitted Budget."

18 A. Yes, it does.

19 Q. And, as well as, if I look on -- if I
20 look on Duke 16, it says "2015 Submitted Budget,"
21 correct?

22 A. Yes.

23 Q. It also says "2016 Submitted Budget,"
24 correct?

25 A. Yes.

1 MR. OLIKER: I have no more questions,
2 your Honor.

3 Thank you, Mr. Brodt.

4 EXAMINER PIRIK: Mr. Hart?

5 MR. HART: You will be glad to hear I
6 have no questions.

7 EXAMINER PIRIK: Yes. Thank you.

8 Ms. Spiller?

9 MS. SPILLER: Yes. Thank you, your
10 Honor. Just briefly.

11 - - -

12 FURTHER RE-CROSS-EXAMINATION

13 By Ms. Spiller:

14 Q. Mr. Brodt, you've just indicated to
15 Mr. Oliker that the projected savings associated with
16 OVEC's capital -- or, continuous improvement process
17 you do not believe to be incorporated into the
18 billable cost summary. If those savings were to be
19 incorporated into the billable cost summary, on what
20 particular line or detail item would we find those,
21 sir?

22 MR. OLIKER: Your Honor, I would object.
23 I think the record is characterized a little
24 differently on what these documents say.

25 MS. SPILLER: This was the witness's

1 testimony that the savings were not within the
2 budget.

3 EXAMINER PIRIK: I'll allow him to
4 answer.

5 A. When there are -- when they are
6 incorporated into the budget, they would be in the
7 operating costs of the company. So it would be -- it
8 would be the O&M costs for the administrative and
9 general costs, for the transmission and dispatch
10 costs.

11 Q. And when you say -- when you say
12 "incorporated," would those savings result in a
13 reduction of the costs, sir?

14 A. They would.

15 MS. SPILLER: Nothing further, your
16 Honor. Thank you.

17 EXAMINER PIRIK: Thank you.

18 Staff?

19 MR. BEELER: No questions.

20 EXAMINER PIRIK: We will go off the
21 record for a minute.

22 (Discussion off the record.)

23 EXAMINER PIRIK: We will go back on the
24 record. Thank you very much, Mr. Brodt. Thank you
25 very much for attending. We will recess for tonight,

1 but then I want to go off the record again.

2 (Discussion off the record.)

3 EXAMINER PIRIK: Given the stellar
4 performance of our court reporters today, and the
5 fact that Karen has to come back with us tomorrow, I
6 know we said we are going to start at 8:30, but we
7 are not going to start until 9:30 tomorrow. We are
8 going to allow the court reporters to get that and
9 because they are going to be up quite a while, as I
10 am sure a lot of parties are also.

11 So, with that being said, we'll also try
12 to shorten the lunch hour tomorrow, shorten some of
13 the breaks, make them a little quicker tomorrow
14 because we can't do this again. We did this because
15 I think it was a circumstance that we needed to deal
16 with, but -- and we appreciate the witness and
17 counsel for coming, but I think we also have to say I
18 would really appreciate it if everyone would look at
19 their cross-examination times and review those and
20 if, you know, 15 minutes turns into an hour and a
21 half, we need to know that ahead of time.

22 I know today we had a couple extra things
23 but -- that were difficult and we had to deal with
24 and were frustrating, but we just can't do this
25 again. We need to have more accurate times. So if

1 there are any times that need to be updated, please
2 give those to Ms. Kingery.

3 Also, I would ask Duke, we know we have
4 these outstanding Exhibits 6 through 27, just
5 continue to review them. Tomorrow we'll talk more
6 about exhibits and we'll go from there.

7 MS. SPILLER: Your Honor, your comments
8 earlier about the redactions for the confidential
9 portion, I'm assuming we -- we probably need rulings
10 on the exhibits first. So I just wanted to be sure
11 there wasn't an expectation, this evening, as to --

12 EXAMINER PIRIK: No. We are not
13 expecting -- we will just talk more about exhibits
14 tomorrow. That's why I said just keep working on the
15 exhibits themselves, 6 through 27, so that we can
16 move forward, but we'll talk more about timing
17 tomorrow.

18 MS. SPILLER: Thank you.

19 MR. CASTIGLIONE: Your Honor, just before
20 you stop. I can be here tomorrow morning if we can
21 deal with the exhibits first thing, I prefer to be
22 here, but I don't know if that will comport with the
23 schedule.

24 EXAMINER PIRIK: If OVEC and Duke have
25 time to look over the exhibits and then provide

1 copies to all the parties in the morning as far as
2 what, you know, proposed redactions are, we can deal
3 with them then; but, you know, we also have to
4 realize that will be an effort for this evening, but
5 we are fine with that.

6 MR. CASTIGLIONE: I'll confer with Duke
7 and work it out.

8 EXAMINER PIRIK: Okay. We will touch
9 base again tomorrow. Now, our schedules -- we are
10 off the record now.

11 (Discussion off the record.)

12 (Thereupon, at 9:25 p.m., the hearing was
13 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 Tuesday, October 28, 2014, and carefully compared with my original stenographic notes.

Karen Sue Gibson,
Registered Merit Reporter.

(KSG-5950)

- - -

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Summary: Transcript in the matter of Duke Energy Ohio hearing held on 10/28/14 - Volume V - Public electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.