

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 9:30 a.m. on Wednesday,  
October 29, 2014.

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VOLUME VI

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1 Wednesday Morning Session,  
2 October 29, 2014.

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4 EXAMINER WALSTRA: We will go on the  
5 record then. Last night we finished late and held  
6 off the exhibits until today, Mr. Brodt's testimony,  
7 so if we could go over those now.

8 OCC, if you want to go first.

9 MR. BERGER: Starting with OCC Exhibit  
10 6a, this is simply the the attendance list and the  
11 agenda for the December 4, 2012, board of directors  
12 meeting. I don't think it reveals anything  
13 confidential, and I would suggest there's no reason  
14 to maintain it as confidential, but that's up to --  
15 oh, I'm sorry.

16 EXAMINER WALSTRA: We're just moving  
17 right now.

18 MR. BERGER: We would move OCC Exhibits  
19 6a through 27a.

20 EXAMINER WALSTRA: You guys moved 5a yet?

21 MR. BERGER: I'm sorry.

22 EXAMINER WALSTRA: 5a and --

23 MR. BERGER: 4a and 5a too, your Honor.

24 EXAMINER WALSTRA: Are there any  
25 objections?

1 MS. SPILLER: One moment, please, your  
2 Honor.

3 EXAMINER WALSTRA: Certainly.

4 MS. SPILLER: I'm sorry. This is, Mr.  
5 Berger, 4a and 5a.

6 MR. BERGER: 5a through 27a.

7 MS. SPILLER: Do it that way then.

8 MS. WATTS: Mr. Berger, our first exhibit  
9 says OCC Exhibit 6 at the top, but it's got a sticker  
10 on it that says OCC 4 on it.

11 MR. BERGER: That's because it was a  
12 deposition exhibit.

13 MS. WATTS: Okay. Thank you.

14 MS. SPILLER: Your Honor, just a couple  
15 comments. OCC Exhibit No. 9, Mr. Brodt was not at  
16 all able to identify what this document even  
17 pertained to. There was no indication -- we have no  
18 idea as to what this document means, and so I think  
19 its relevance in connection with this case is  
20 certainly in question.

21 I would also note that OCC Exhibit No. 10  
22 is cumulative in the sense that this e-mail is  
23 duplicative of an e-mail provided in OCC Exhibit No.  
24 21, that later exhibit containing the attachment  
25 referenced in the e-mail. So I think OCC Exhibit No.

1 10 is just unnecessarily cumulative. Certainly, we  
2 would reserve comment with respect to the  
3 confidential nature of these documents, and then just  
4 generally, I think some of these documents -- strike  
5 that.

6 We'll just reserve comment on the  
7 confidential portion of these documents.

8 EXAMINER WALSTRA: Mr. Berger, any  
9 response?

10 MR. BERGER: Your honor, I wasn't sure  
11 regarding Exhibit 10 and Exhibit 21, whether Exhibit  
12 10 was the exact same e-mail. Exhibit 10 has a  
13 header with Duke Energy on it. It is sent at the  
14 same time and the same place. There are attachments,  
15 however, indicated on Exhibit 21 that are not  
16 indicated on Exhibit 10, and with caution, I wanted  
17 to include both of them because they seem to be  
18 somewhat different in terms of whether the  
19 attachments were identified. I did not specifically  
20 go over whether all the names were the same.

21 In terms of Exhibit 9, Mr. Brodt's name  
22 is on this document. It does reflect an ICPA  
23 subcommittee meeting that he was a participant in. I  
24 agree he was unable to identify what meeting it  
25 related to or the reason for the information on the



1 exhibit. It has marginal value because of that. I  
2 don't think there is any harm in indicating for the  
3 record that there was a meeting. Apparently the  
4 meeting with people in attendance

5 MS. BOJKO: Your Honor, may I be heard  
6 with regard to Exhibit 10?

7 EXAMINER WALSTRA: Certainly.

8 MS. BOJKO: I referenced OCC 10  
9 throughout my examination numerous times. So if we  
10 eliminate OCC Exhibit 10, then the whole  
11 cross-examination is going to have no meaning or  
12 probative value. So I think that OCC Exhibit 10 is  
13 important to have in the record as a document. Thank  
14 you.

15 EXAMINER WALSTRA: I would admit -- we  
16 will admit Exhibit 10, and then we can sort out of  
17 what is duplicitous in our review, and then we'll  
18 make the record a lot more clear.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER WALSTRA: In regards to OCC  
21 Exhibit 9a, we will not admit that. He didn't seem  
22 to have any knowledge of it. It's undated and, as  
23 Mr. Berger said, it really doesn't have much  
24 information on it as is. And hearing no objections  
25 in regards to the other exhibits, they will be

1 admitted as well.

2 (EXHIBITS ADMITTED INTO EVIDENCE.)

3 MR. BERGER: Thank you, your Honor.

4 EXAMINER WALSTRA: Sierra Club, I think.

5 MR. MENDOZA: Sierra Club moves -- thank  
6 you, your Honor. Sierra Club moves to admit Sierra  
7 Club 5.

8 EXAMINER WALSTRA: Any objections?

9 MS. SPILLER: Your Honor, I would object  
10 to the relevance. That was a study that was  
11 performed certainly several years ago in connection  
12 with retirements in 2010, 2011, and 2012, time  
13 periods that have since passed. I don't think it has  
14 any relevance in connection with the company's ESP  
15 term or events that may occur thereafter.

16 EXAMINER WALSTRA: Mr. Mendoza.

17 MR. MENDOZA: The date on the document is  
18 February 14th, 2014. The relevance of this document  
19 is that the company has asked for its customers to  
20 bear the risk of essentially owning these two plants.  
21 Both plants are aging. They've reached the age that  
22 they're, in fact, older than many other plants that  
23 are being retired.

24 As the witness said yesterday, the age of  
25 a plant is relevant in consideration of its cost. So

1 Sierra Club submits that the age of these plants is  
2 relevant in comparison to other plants that are  
3 retiring, and the age of other coal plants is a  
4 relevant consideration for the Commission as it  
5 considers the PSR.

6 EXAMINER WALSTRA: Thank you. Hearing  
7 both sides, we will admit the exhibit.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER WALSTRA: Duke, I believe you  
10 had a couple exhibits.

11 MS. SPILLER: Thank you, your Honor.  
12 Duke Energy Ohio would move for the admission of Duke  
13 Energy Ohio Exhibits 14, 15, 16, and 17. Excuse me,  
14 17.

15 EXAMINER WALSTRA: Are there any  
16 objections?

17 MR. OLIKER: Your Honor, I would object  
18 to the admission of Exhibit 16 and 17 unless the rest  
19 of the packet that pertains to those exhibits is also  
20 admitted. At the time those exhibits were marked,  
21 the company -- there was a discussion of whether or  
22 not the entire bundle related to those exhibits  
23 should be provided to the parties, and I think the  
24 Bench did on very quick review determined that it  
25 didn't see anything that pertained to it. But having

1       seen the exhibits at the time, I didn't know there  
2       were other documents in there, so I couldn't  
3       determine that until after the cross-examination  
4       ended. And then once I was able to find those  
5       documents, as it turns out, there's about four pages  
6       that pertains to the cost projections that are  
7       contained in Exhibit 16, and I brought copies for all  
8       the parties to hand out so they can have the  
9       opportunity the look at it as well and also the pages  
10      that I would add to that exhibit.

11               But I can do that now, if you like me to,  
12      or you can rule on that. But particularly, I would  
13      point you to pages 101 through 104, if you still have  
14      those documents in front of you.

15               EXAMINER WALSTRA: I do not.

16               MS. SPILLER: Your Honor, if I may, I  
17      think this is not proper. Mr. Olikier was provided  
18      with these documents days ahead of Mr. Brodt's  
19      deposition. These particular documents, your Honor,  
20      I believe were produced on September 12th, even prior  
21      to Mr. Brodt's deposition.

22               There was an opportunity yesterday when  
23      this witness was on the stand to offer exhibits to  
24      him to, ask him questions about those exhibits. That  
25      witness has now been excused and he's gone.

1           The Bench reviewed these yesterday and  
2       found many of the documents to be irrelevant. I just  
3       think this is improper. We're now deprived of the  
4       opportunity to ask questions about documents that  
5       Mr. Olikar is intending to offer as substantive  
6       evidence in this case when, in fact, he had the  
7       opportunity to do so yesterday.

8           MR. OLICKER: Your Honor, if I may respond  
9       briefly. I think the Bench noted the danger of  
10      marking portions of documents without providing them  
11      to all the parties. So when we do mark exhibits,  
12      everybody should have an opportunity to see what's in  
13      there. We did not have that benefit, and later after  
14      it was too late, we have discovered that there was  
15      additional information. So we had no opportunity.  
16      What would I have done? Maybe find it in my  
17      discovery folder in my laptop? And then what could I  
18      do? I can't mark it as an exhibit. It's a virtual  
19      document that I have to sift through a discovery  
20      folder just to find.

21           MS. SPILLER: Your Honor, we all have to  
22      sift through a lot of discovery in preparation for  
23      the hearing.

24           MR. OLICKER: Also if you look at the  
25      prior precedent in this case with the IGS exhibit

1 regarding independent marketing monitor, I provided  
2 an excerpt. I was directed to provide the rest of  
3 that section and supplement the record. I'm merely  
4 asking to do the same thing regarding relevant  
5 information that in my opinion corrects what is  
6 either -- I won't weigh in whether it was deliberate  
7 or inadvertent, but the record is very unclear.  
8 Ms. Spiller cross examined the witness substantially  
9 about costs reductions on page 16. I believe the  
10 ( Confidential ) as if it was relevant, but then  
11 if you --

12 EXAMINER PIRIK: Hold on. Just stop.  
13 That's confidential information that we marked as  
14 confidential yesterday.

15 MR. OLIKER: I apologize, your Honor.

16 EXAMINER PIRIK: So you need to redact  
17 that monetary number from the record and submit that  
18 page in the confidential section.

19 MR. OLIKER: I apologize.

20 But if you look at cross-examination in  
21 the transcript, there was cross-examination about  
22 cost reductions and whether they were or were not in  
23 the billable cost summary. If you look at page 103  
24 of the document that I just handed out, they're  
25 clearly in there.

1 MS. SPILLER: Your Honor, I just renew --  
2 I mean, this is not the way trial practice works  
3 where you get to come in after a witness has been  
4 excused and introduce evidence before closing the  
5 opportunity for any examination on those documents.

6 MR. OLIKER: Also not the way it works  
7 when you provide a portion of the document and don't  
8 let everybody see the rest of it.

9 MS. SPILLER: Everybody saw the rest of  
10 this, Joe, September 12.

11 EXAMINER WALSTRA: I think this was  
12 something that was brought up yesterday and that the  
13 Bench ruled on yesterday. We did review this as it  
14 was, and we decided then to go forward with just the  
15 pages that were provided. So I think we're going to  
16 stay the course of that, and we'll admit 16, 17 as  
17 they've been submitted.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 MS. SPILLER: Thank you, your Honor.

20 MR. OLIKER: Your Honor, if that is the  
21 case, I will proffer several pages of the exhibit.

22 EXAMINER WALSTRA: Okay.

23 MS. SPILLER: Is it going to be several  
24 pages or the entire exhibit?

25 MR. OLIKER: I will do -- well, I

1 hesitate to do what Duke has done. I will only  
2 submit four pages for simplicity as -- let me call it  
3 Duke Energy Exhibit 16b as a proffered exhibit, or we  
4 can call it IGS 8, whatever the Bench prefers.

5 EXAMINER WALSTRA: We'll go with IGS.

6 MR. OLIKER: IGS Exhibit 8.

7 EXAMINER WALSTRA: It will have to be 8a  
8 as well.

9 MR. DARR: Could we have the Bates  
10 numbers for the record?

11 MR. OLIKER: For the record, these are  
12 Bates numbers 101 through 103.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. BOJKO: Your Honor, for the record  
15 we'd like to support as I raised yesterday. It was  
16 improper. I think there were misrepresentations that  
17 the following presentation pages had nothing to do  
18 with the two. We weren't provided with an entire  
19 copy, so we could not make a determination of what  
20 was excluded or what was not excluded at the time.  
21 And entering partial exhibits, as I stated yesterday,  
22 is not proper and we looked through the packet  
23 quickly to determine they weren't related and we were  
24 misrepresented that they are, in fact, related and  
25 that's the distinction that I would make from what



1 was determined yesterday from what is being offered  
2 this morning.

3 MR. OLIKER: Your Honor, I'll make my  
4 proffer as well on the record just to make sure it's  
5 clear. For purposes of the record, IGS has proffered  
6 Exhibit No. 8 which contains the Bates stamps OVEC  
7 101 through 103 which contains a summary of OVEC's  
8 cost reductions which have included in the billable  
9 cost summary dated 11/22/13, which demonstrates on  
10 OVEC 103 that the original demand forecast for 2014,  
11 and this is the demand chart, those 380 million --

12 EXAMINER PIRIK: You're just -- you're  
13 talking -- I don't think you need to be more specific  
14 because we haven't determined what, if any, of this  
15 is confidential.

16 MR. OLIKER: I'm sorry.

17 EXAMINER PIRIK: So I would be more  
18 general.

19 MR. OLIKER: I apologize again. This is  
20 difficult. OVEC 103 contains what the original  
21 billable cost summary would have been in 2014, and it  
22 also demonstrates what it was on the November 22nd,  
23 2013, billable cost summary. It also contains the  
24 difference between the original 2015 billable cost  
25 summary and the projected 2015 cost summary with the

1 reductions the same for the year 2016 and 2017 and  
2 2018.

3 EXAMINER WALSTRA: Thank you.

4 MR. OLIKER: Thank you, your Honor.

5 EXAMINER WALSTRA: Anything else before  
6 we get started?

7 MS. SPILLER: Your Honor, if I may just  
8 briefly be heard on this. I would renew the comments  
9 that I made when Mr. Olier was first discussing  
10 other documents. I would further note that with  
11 respect to OVEC 103, there has been no authentication  
12 of this document by Mr. Brodt. There are no dates  
13 associated with this document. There are an awful  
14 lot of assumptions that are associated with this  
15 document that Mr. Olier is intending to inject into  
16 this record; and, again, your Honor, I think it just  
17 entirely is improper to try to assert this document  
18 now when, in fact, the witness who could have  
19 testified to it and its content dates and the like  
20 and the purposes for this document has since been  
21 excused from the stand.

22 MR. OLIKER: I would disagree, your  
23 Honor, that it was not authenticated. It was  
24 stipulated by counsel that all OVEC-stamped documents  
25 are authentic. He also identified this was part of a

1 packet that was submitted to the board of directors  
2 for the December meeting.

3 MR. BERGER: Your Honor, OCC Exhibit No.  
4 23, which was Bates stamped OVEC 00101 through OVEC  
5 00103 within that document, during his testimony  
6 yesterday, Mr. Brodt indicated that there appeared to  
7 be some numbers missing from this document, and those  
8 numbers appear on the document Mr. Olier is  
9 proffering at this time on the first page of the  
10 exhibit and also on the second page of the exhibit.  
11 I don't know if this was a revised or corrected  
12 response.

13 Mr. Castiglione, that was not -- that had  
14 the same Bates number on it. Perhaps you could  
15 clarify.

16 MR. CASTIGLIONE: I can clarify. Some  
17 documents were originally produced by OVEC, and it  
18 was an error in the production where some of the  
19 documents were missing information and were not  
20 readable. Everybody, all the parties were provided  
21 replacement copies where that issue was fixed. So I  
22 think what probably happened is you inadvertently  
23 used the prior version, and today we're seeing the  
24 replacement version that was -- where the formatting  
25 was fixed.

1           MR. BERGER: I would submit that the  
2 document has already been authenticated for all  
3 practical purposes and should be admitted because, in  
4 particular, it includes numbers that Mr. Brodt  
5 recognized appeared to be missing given the nature of  
6 the procedures last night where we were moving at a  
7 very rapid pace to try and get this proceeding --  
8 Mr. Brodt's testimony completed given his time  
9 constraints.

10           I think it's reasonable that we admit  
11 this document into the record which includes the  
12 missing information. It does not include anything  
13 that Mr. Brodt was not aware of was intending to be  
14 offered.

15           MS. SPILLER: I'm sorry, Mr. Berger. Are  
16 you saying that OVEC 101 is supplemented by OVEC 102?

17           MR. OLIKER: Hold on. Mr. Castiglione,  
18 are you saying the document that I just proffered is  
19 the corrected version of OCC 23?

20           MS. BOJKO: Yes.

21           MS. SPILLER: They're entirely different  
22 documents.

23           MR. OLIKER: Now that I look at OCC 23,  
24 it does look like the same, except the one that I  
25 provided that has missing information.

1 MS. SPILLER: Can we do the OVEC Bates  
2 numbers?

3 MR. OLIKER: 101 through 103.

4 MR. CASTIGLIONE: The version that --

5 MR. OLIKER: Your Honor, that being the  
6 case, I would withdraw my proffer if IGS could  
7 replace OCC 23.

8 MS. SPILLER: Your Honor, these are  
9 documents that all counsel had in their possession.  
10 Mr. Brodt was questioned about the document. We're  
11 now attempting to supplement after the witness has  
12 been excused with a different document. I don't  
13 think that's appropriate. The witness was questioned  
14 on a document that was presented to him. We can't  
15 somehow now supplement his testimony by virtue of a  
16 different document that wasn't presented to him and  
17 about which he was not asked the questions.

18 MS. BOJKO: Your Honor, counsel has just  
19 admitted it was an error in the document and it was  
20 corrected. It's not a different document. It's one  
21 that was fully corrected. I think the record needs  
22 to have the corrected version of the document in it.

23 EXAMINER PIRIK: Stop. That's enough.

24 EXAMINER WALSTRA: Looking at this  
25 document, it appears to be very similar to OCC

1 Exhibit 23, but it just has the totals. If I recall  
2 Mr. Brodt's testimony from yesterday, he did talk  
3 about the fact that it was missing the totals. So in  
4 regards to the first two pages, I will admit those.  
5 There was no discussion about the third page. So if  
6 you want to proffer that specifically, you can do  
7 that, but we'll admit the first two, but there's no  
8 discussion about that last page.

9 MR. OLIKER: Your Honor, I think the last  
10 page -- if I can just verify quickly, is the last  
11 page exactly the same and it was not missing  
12 information?

13 EXAMINER WALSTRA: The last page is a  
14 chart. It's a graph. You gave me three pages.

15 MR. OLIKER: Thank you, your Honor. I  
16 think -- if I could just have one moment. I may be  
17 willing to withdraw my proffer if I can verify that  
18 they're exactly the same, if we could replace the  
19 first two.

20 EXAMINER WALSTRA: Okay.

21 MR. OLIKER: Thank you.

22 MR. BERGER: Your Honor, I just wanted to  
23 point out OCC Exhibit 23 did include that page 103,  
24 OVEC 103. So there would be no reason to put another  
25 copy in. I think Mr. Olikier is just trying to verify

1 that it's the same. It didn't change because of the  
2 corrections that were made on 101 and 102.

3 MR. OLIKER: So close.

4 Your Honor, subject to that  
5 clarification, if the first two pages identified in  
6 IGS Exhibit 8 are replacing the first two pages of  
7 OCC Exhibit 23, then I will withdraw my proffer.

8 EXAMINER WALSTRA: They're not replacing  
9 them. That's what he referenced in his testimony,  
10 but we can admit --

11 MR. OLIKER: The first two pages of IGS  
12 Exhibit 8.

13 EXAMINER WALSTRA: Yes.

14 MR. OLIKER: Thank you, your Honor. And  
15 we will call that 8a.

16 MS. BOJKO: Would that be IGS Exhibit 8  
17 then?

18 EXAMINER WALSTRA: 8a.

19 MS. SPILLER: Your Honor, we'd like our  
20 objection noted for the record.

21 EXAMINER WALSTRA: Noted.

22 Mr. Oliker, I believe you also have  
23 Exhibit 7a out there as well.

24 MR. OLIKER: Thank you, your Honor. I  
25 would move for the admission of IGS Exhibit 7a and

1 Exhibit 7, which we could provide to the court  
2 reporter this afternoon.

3 EXAMINER WALSTRA: Any objections?

4 MS. SPILLER: Your Honor, not so much an  
5 objection in as much as a question about process.  
6 This is an exhibit to Mr. Hamilton's deposition --  
7 I'm sorry, his direct testimony. So it would be, I'm  
8 assuming, admitted as well as part of Mr. Hamilton's  
9 direct. So I don't know that we necessarily want  
10 multiple copies of the exhibits. I would just note  
11 that this document has another originating source  
12 within the file, within the docket already.

13 EXAMINER WALSTRA: Noted. And, yeah,  
14 unfortunately I muddled the record a little bit, but  
15 we'll proceed then with that.

16 MR. OLIKER: Thank you, your Honor. And  
17 I apologize for not having Mr. Hamilton's testimony  
18 when I produced it.

19 EXAMINER WALSTRA: Anything else?

20 Duke, you can call your witness.

21 MS. KINGERY: I thought we were going to  
22 do confidential --

23 MS. SPILLER: I think that's up to the  
24 Bench as to whether they want to do the various  
25 exhibits. At least, your Honor, when we left here



1 last night, we were under the assumption that we were  
2 to provide some proposed redactions to the exhibits.

3 EXAMINER WALSTRA: Right, and I think  
4 everyone is going to review those.

5 MS. WATTS: We thought, your Honor, we  
6 made copies for everybody so it could be discussed.

7 EXAMINER PIRIK: You don't have copies of  
8 everything?

9 MS. WATTS: I have copies of everything.  
10 So we can do it or not do it. It's your choice.  
11 That's why Mr. Castiglione is here.

12 EXAMINER WALSTRA: Since OVEC is here, we  
13 can take a few minutes, and you can review those.  
14 We'll go off the record.

15 (Discussion off the record.)

16 EXAMINER WALSTRA: What we'll do is we'll  
17 go through the documents that are here now. In  
18 reviewing some of this stuff, we might have to go  
19 back and check the transcript for some of this stuff.  
20 I thought some of this stuff might have been  
21 referenced in the open transcript, so we want to  
22 double check that. So we'll hear arguments from Duke  
23 and from OVEC and from the intervenors, and then  
24 we'll wait to make a ruling on what we're going to  
25 actually do, but we'll go through and make the

1 arguments now.

2 In regards to OCC Exhibit 6, anything?

3 MS. SPILLER: No, your Honor, and I would  
4 just, I guess, a point of procedure, these are some  
5 of the documents that OCC marked for purposes of the  
6 confidential portion of Mr. Brodt's examination. We  
7 are in the process of bringing the other grouping of  
8 materials over, but certainly happy to proceed with  
9 respect to the first grouping of documents. I don't  
10 believe that there's any proposed redactions with  
11 regard to OCC Exhibit 6 from our perspective.

12 EXAMINER WALSTRA: Okay.

13 MR. CASTIGLIONE: That's correct. This  
14 appears to be an attendance list, a board agenda at a  
15 very high level, so we have no proposed redaction to  
16 that.

17 EXAMINER WALSTRA: Go to OCC Exhibit 7.

18 MS. SPILLER: Certainly, your Honor. At  
19 least from Duke Energy Ohio's perspective as a  
20 sponsoring company within OVEC, we would recommend  
21 the proposed redactions that appear on page 186. I  
22 would also note just inadvertently we failed to  
23 redact similar text that appears on OVEC 187 so that  
24 second discussion of feedback reference, we believe  
25 that after exploring the balance of that agenda item,

1       should be redacted from the public record.

2               From Duke Energy Ohio's perspective,  
3       again as a sponsoring company within OVEC, these a  
4       internal business decisions of an organization that  
5       are being made, discussions that would be had before  
6       the board, and I think there certainly is the  
7       expectation within a board that their internal  
8       decision-making, their processes, the different items  
9       that they may consider for purposes of their future  
10      business endeavors, that there's an expectation of  
11      privacy with respect to those so that there can be a  
12      full exchange. And so we believe that this  
13      information should be redacted from the public  
14      record.

15             I would further note, your Honor, that  
16      it's not an issue that we think has been introduced  
17      into this case further underscoring the need to keep  
18      the business pursuits of OVEC confidential.

19             MR. CASTIGLIONE: OVEC takes the same  
20      position with regard to its board materials. To  
21      OVEC, those are confidential, private communications  
22      among the board members in making decisions about how  
23      to run their company. The board members consider it  
24      to be confidential, and they are operating under the  
25      assumption that since the Board decision-making

1 documents are not going to be publicly revealed.

2 That being said, I think for this  
3 document, I think the limited redactions that Duke  
4 has proposed I think are reasonable and I think  
5 ensure at least the substance of some of the more  
6 sensitive issues being discussed at board level would  
7 not become public.

8 EXAMINER WALSTRA: Any objections?

9 MR. BERGER: Your Honor, I don't think  
10 the words "cost and benefits and divesting of OVEC's  
11 transmission facilities." If you look at the  
12 previous document, OCC Exhibit 6, one of the board  
13 agenda items --

14 EXAMINER WALSTRA: Mr. Berger, we're not  
15 on a confidential record right now.

16 MR. BERGER: Oh, I apologize, your Honor.

17 EXAMINER WALSTRA: I need to make that  
18 aware of everyone going forward, be careful.

19 MR. BERGER: I thought we were because we  
20 were discussing confidential documents and redactions  
21 to them. I think maybe they need to be on a  
22 confidential record.

23 EXAMINER WALSTRA: We're trying to keep  
24 this open right now, so we're going to probably have  
25 to hold that --

1 MR. BERGER: Okay.

2 EXAMINER WALSTRA: -- from the transcript  
3 and mark that as confidential.

4 MR. BERGER: Can we -- I mean, I'm not  
5 sure how to discuss these things without being on the  
6 confidential record if we can't reference the  
7 language that's been discussed. Just reference --

8 EXAMINER WALSTRA: I think you can  
9 articulate why they need to be open without  
10 referencing them specifically in terms of identifying  
11 where they are and use the words around there to  
12 illustrate where they are in the document.

13 MR. BERGER: Thank you, your Honor. I  
14 will do my best.

15 If you look at OCC Exhibit 6, referring  
16 to line item 18, there's a reference there to the  
17 same subject matter as on OCC Exhibit 7 that's been  
18 redacted. The words -- the words on OCC Exhibit 7 I  
19 don't think say much more than that.

20 EXAMINER WALSTRA: What line was that on?  
21 6?

22 MR. BERGER: OVEC -- OCC Exhibit 6, the  
23 second page, No. 18 on the list of the agenda items,  
24 the second item under there, I do not believe there's  
25 really anything that is disclosed here that really

1 merits confidential treatment.

2 EXAMINER WALSTRA: Anyone else?

3 MS. BOJKO: Your Honor, I would concur  
4 that at least the first three words are concepts  
5 considered every day in businesses. So I don't think  
6 that that is confidential. And I don't think that  
7 there's been a stated reason, rationale for the last  
8 phrase to be deemed confidential, but certainly not  
9 the first three words.

10 EXAMINER WALSTRA: Thank you.

11 MS. BOJKO: And the similar words on the  
12 next page, too.

13 EXAMINER WALSTRA: In regards to OCC  
14 Exhibit 8.

15 MS. SPILLER: Yes, your Honor. These are  
16 board of director minute meetings from OVEC. And,  
17 again, Duke Energy Ohio's perspective as having a  
18 seat on the board, we operate under the expectation  
19 that these meetings are, in fact, confidential. The  
20 information that is discussed therein is  
21 confidential. Certainly not a regular practice to  
22 disclose board meeting minutes in the public domain.  
23 I would note with respect to this document, you will  
24 see some proposed shading of financial information,  
25 particularly sensitive information with respect to

1 OVEC and their future operations.

2 In that regard, I would also note, and I  
3 believe OVEC counsel can provide further  
4 clarification, but the treasurer's report that  
5 appears on OVEC Bates No. 177 is actually not a  
6 published report. So this, too, should be  
7 afforded -- this should receive the similar  
8 sensitivities as other financial information within  
9 the document.

10 MR. CASTIGLIONE: With regards to Exhibit  
11 8, these are obviously minutes of a Board meeting,  
12 and I think that OVEC views those minutes as being  
13 highly confidential and to be very important to OVEC  
14 as well as any other corporation that these sensitive  
15 deliberations at a board level should be given  
16 confidential treatment where appropriate. And in  
17 this document, I would note that it's actually a very  
18 lengthy document, it's 12 pages, and it relates to a  
19 lot of issues dealt with by OVEC's board that are  
20 completely irrelevant to the issues in this case.

21 The only questioning to my recollection  
22 is with regards to one paragraph on page 8. I won't  
23 reference what it says, but that, to my recollection,  
24 is the only actual questioning with regards to this  
25 document. And as you can see, there's a lot of board

1 resolutions about various items and financial  
2 information that, to my recollection, Mr. Brodt  
3 wasn't even asked about.

4 So on this document, I would propose that  
5 at a minimum we redact the financial information  
6 throughout because I think it contains a lot of  
7 budgeting information that is similar to the  
8 projections that we spoke about yesterday. I also  
9 think that given the fact that none of this is  
10 relevant to this matter as evidenced by the fact that  
11 Mr. Brodt wasn't asked about any of this with the  
12 exception of the one paragraph that I referenced on  
13 page 8, I would propose that our preference would be  
14 to redact out everything except for the passages that  
15 Mr. Brodt was asked about yesterday, which would  
16 really be the paragraph on page 8.

17 And then we would obviously be fine  
18 leaving the introductory part on the first page, just  
19 listing who attended and the date of the meeting.  
20 That would be our preference given that board minutes  
21 are very sensitive to OVEC as they are to every  
22 corporation, and the information in here, it's not  
23 particularly relevant to this litigation with the  
24 exception of the paragraph that I referenced.

25 EXAMINER WALSTRA: Any objections?



1           MR. DARR: Your Honor, not so much to the  
2 suggestion by counsel for OVEC that everything but a  
3 couple of paragraphs be excluded. I am troubled,  
4 though, by the notion that all this information can  
5 be treated as confidential offered by Ms. Spiller.

6           Starting with page 4, consolidated  
7 financial statement, OVEC regularly publishes a  
8 consolidated financial statement in its annual  
9 reports. There's nothing particularly open -- and  
10 I'm reading from what has already been marked in the  
11 public record as IEU Exhibit 6. There's nothing  
12 particularly confidential about the fact that the  
13 outstanding stock of OVEC is \$10 million reading it  
14 from the annual report, and yet we're being told that  
15 all this has to be treated in some special way.

16           Turning to page 7, there's a reference  
17 to -- in the second paragraph, to some work done for  
18 OVEC. We learned yesterday that that work has  
19 already been completed. We also learned yesterday  
20 the price at which it was completed. So there's  
21 nothing competitively sensitive about that  
22 information. It's not as if we're going to go out  
23 into the marketplace and try to secure a contract to  
24 do that particular project.

25           Going on to the next paragraph -- excuse

1 me, the next to last paragraph on page 7, there's  
2 proposal to redact certain information with regard to  
3 the operations of the plant. Again, if you look at  
4 the annual reports, the information contained in this  
5 document is historic. It's already been produced in  
6 the annual reports as to the operations of the plant.  
7 Again, nothing -- there's no reason to treat this  
8 information confidential.

9 Again, I leave the issue of the relevance  
10 of the entire document up to you, but the notion that  
11 we can somehow start to strike information that is  
12 already publicly available strikes me as a bit odd.

13 EXAMINER WALSTRA: Thank you.

14 Anyone else?

15 MS. BOJKO: Yes, your Honor. I don't  
16 believe that this is the time and place to discuss  
17 relevancy; am I correct? We're just merely  
18 discussing confidential, confidentiality?

19 EXAMINER WALSTRA: Correct.

20 MS. BOJKO: Okay. I believe that the --  
21 I concur with Mr. Darr's statement, but I would add  
22 to it that the chart on page 6 is also historical  
23 data that there was a lot of discussions about  
24 outages of the generating units. It's already  
25 occurred. There should not be anything competitively

1 sensitive about 2010, 2011 data, or 2012 which is the  
2 last column. So this is all stuff that's happened,  
3 and I believe outage reports as well as availability.  
4 And the usage factors, we've seen many annual reports  
5 that have the usage factors already in them. So the  
6 usage factors should not be redacted or publicly  
7 available information for the historic data of 2010  
8 through 2012.

9 MR. CASTIGLIONE: If I could briefly  
10 respond, and I'll leave it at that. It is true  
11 iterations of certain pieces of information are  
12 publicly disclosed in the annual report, for example,  
13 the balance sheet information on page 4, year-end  
14 balance sheet information is provided in the annual  
15 report. This is an interim report created for  
16 purposes of this board meeting. I think you can see  
17 that based on the paragraph that precedes it and the  
18 date on top which is not a year-end date. This  
19 iteration is not publicly disclosed, although,  
20 year-end numbers are generally publicly disclosed.

21 I think again OVEC is a non-party to this  
22 action. I don't think anyone thinks this information  
23 is particularly relevant to what's going on here, and  
24 I think that given that this is information that was  
25 created for purposes of keeping the OVEC board

1 informed, to help them make the decisions to run  
2 their company, I think it's unfair to ask that  
3 those -- the decision-making made at a board level of  
4 issues that are largely irrelevant to what's going on  
5 here should be publicly disclosed, and it is unfair  
6 to OVEC. And I think OVEC has been very cooperative  
7 in terms of providing a witness for lengthy  
8 testimony, providing documents in this case.

9 And I don't think that their board  
10 minutes to the extent not relevant to what's going on  
11 here to be -- should be publicly disclosed,  
12 especially when you're talking about financial  
13 information that is of a nature that was prepared  
14 specifically for the Board, not publicly disclosed in  
15 that form. Thank you.

16 EXAMINER WALSTRA: Mr. Berger?

17 MR. BERGER: Yes, your Honor. Some of  
18 the issues that are being asserted not to be  
19 relevant, and, again, I agree with Ms. Bojko that the  
20 question of refusals is not what we're addressing  
21 here. The question is confidential. So the issue of  
22 whether budgets are relevant, this certainly should  
23 be in the public domain to the extent that they don't  
24 request forecasted information that's not already  
25 published. Construction budgets, for example, that

1       were done in 2013 certainly relate to historic  
2       periods of time and have no bearing, no reason to be  
3       protected as trade secrets anymore or its proprietary  
4       information, and those construction budgets are  
5       relevant to the considerations of this case and  
6       should be left to the public domain unless there's  
7       need to protect them because they're trade sensitive.

8               I don't think the dividend information is  
9       in the public -- I don't think there's any --  
10       certainly the historic dividend information that is  
11       referencing that relates to 2013 is in the public  
12       domain in the annual report. So I don't think  
13       there's any reason to keep that out.

14              And I agree with Mr. Darr's comments on  
15       the treasurer's report on page 4 and Ms. Bojko's  
16       comments with respect to the OVEC operation  
17       statistics. And, again, if it is numbers related to  
18       2013 or 2012, which is indicated on page 7 of the  
19       report, again, those numbers -- there's no reason for  
20       those numbers to be kept from the public as trade  
21       sensitive information. Thank you.

22              EXAMINER WALSTRA: Thank you.

23              Anyone else?

24              MS. SPILLER: Your Honor, yes, if I may.

25       I guess I'm not entirely clear on Mr. Berger's

1        comments. When I look at page 2, this is information  
2        that extends into the future. And so I at least  
3        heard his suggestion that this information should be  
4        released because it's historical. At this point, I  
5        don't think that is a fair characterization of all of  
6        the information that is reflected on page 2.

7                I would note on page 6, I mean, there was  
8        certainly an attempt to identify that which would  
9        have been otherwise publicly disclosed, including use  
10       factor information, and the information that was left  
11       to be unredacted is the information consistent with  
12       what would have been disclosed in other materials.  
13       So certainly there was an attention to that.

14               Finally, your Honor, Mr. Darr's reference  
15       to page 7 and the resolution indicated there, I would  
16       have to confer with the transcript of last night's  
17       proceeding, but memory serves that that was a  
18       discussion that took place on the confidential  
19       portion of the record.

20               EXAMINER WALSTRA: Thank you. In regards  
21       to Exhibit 10?

22               MS. SPILLER: Thank you, your Honor. And  
23       I will begin this comment, it's a comment that will  
24       carry through many of the exhibits identified by the  
25       OCC last night with respect to their examination of

1 Mr. Brodt, as Mr. Brodt indicated yesterday, the  
2 conversations and the activities that took place  
3 among the sponsoring companies were considered to be  
4 confidential. And as a result of that, we certainly  
5 believe there was an expectation of confidence when  
6 sponsoring companies or their representatives were  
7 having conversations about issues of transfers of  
8 entitlements.

9 We have attempted to be, I think, as  
10 reasonable as possible in respect of that particular  
11 discussion. There was conversation yesterday on the  
12 public record very generally about processes and  
13 events that may have occurred in the recent past. On  
14 the confidential record, there was more detail  
15 identified with respect to specific entities and  
16 specific responses from other sponsoring companies.

17 So what we have done, particularly with  
18 regard to e-mails, and I will just very generally  
19 refer at this point to OCC Exhibit 10, 11, 12, 13,  
20 and 14. We have identified to delete names as those  
21 names would be revealing of the specific actions  
22 taken by specific parties.

23 Again, I think, your Honor, when we think  
24 about OVEC, the are sponsoring companies,  
25 representatives on the boards of directors, they have

1 an expectation of confidence when they went through  
2 this process, as Mr. Brodt confirmed yesterday in  
3 releasing into the public record, the specific  
4 actions, the specific responses of sponsoring  
5 companies who collectively represent a board of  
6 directors we think just compromises their business  
7 dealings. They should have an expectation that what  
8 they talked about would, in fact, be confidential.

9 We, again, are trying to be respectful of  
10 the Commission's desire for putting as much  
11 information in the public record as possible, which  
12 is why we redacted the particular names and  
13 references that would be indicative of names. And I  
14 would note and I anticipate some suggestion that some  
15 information may already be in the public record, but  
16 if we release part of it here, it's pretty easy to  
17 back into the information for which we would want  
18 redacted treatment, and, hence, the nature of the  
19 redactions and the way that we did them.

20 EXAMINER WALSTRA: Thank you.

21 MR. CASTIGLIONE: With regards to these  
22 e-mails, OVEC takes the same position as Ms. Spiller  
23 for the same reasons that she stated.

24 MS. SPILLER: And, your Honor, if I may,  
25 on OCC Exhibit 14 in the subject line after the



1 "board of directors hyphen," that information should  
2 have been redacted as well consistent with the other  
3 redactions on that page.

4 MS. BOJKO: I'm sorry. Would you repeat  
5 that, please?

6 MS. SPILLER: It is OCC Exhibit 14 in the  
7 information on the e-mail to, from, et cetera, the  
8 subject line after "Board of Directors hyphen," the  
9 balance of that subject line should be redacted.

10 And, your Honor --

11 MR. BERGER: I think it's already  
12 indicated to be redacted.

13 MS. SPILLER: There are two, Mr. Berger.  
14 If you look, there's a reference to attachments and  
15 above that subject.

16 MR. BERGER: Oh, okay. Thank you.

17 MS. SPILLER: And then your Honor, OCC  
18 Exhibit No. 12, that particular subcommittee  
19 reference again was just one we've already addressed  
20 the comments with respect to that. They would be no  
21 different than what we previously indicated.

22 EXAMINER WALSTRA: Thank you.

23 Any objections?

24 MS. BOJKO: Your Honor, are we taking  
25 these one by one, or would you like me to have

1 general comments to either one?

2 EXAMINER WALSTRA: If you need to be  
3 specific, you can, otherwise generally.

4 MS. BOJKO: Okay. With regard to the  
5 company disclosure name, I think that it has been in  
6 the public record in this case as well as in another  
7 proceeding before the Commission with regard to one  
8 entity. I'm not sure it's confidential. I know it's  
9 not confidential, and asserting this for another  
10 company in this case is not appropriate.

11 I would also add, if you turn to Exhibit  
12 12, the two words redacted in that first e-mail after  
13 "OVEC," talking about a forward meeting or a next  
14 meeting, it is not something that would be  
15 proprietary or trade secret. So those two words  
16 should not be redacted. That give us nothing --  
17 there are many issues regarding the first word on  
18 that page, and the second word is merely a point in  
19 time. So I don't think that that's appropriate. I  
20 would also argue on that case the name redaction of  
21 at least one entity is inappropriate.

22 If we go to Exhibit 13, the subject line,  
23 even if you decided that names should be redacted, I  
24 don't think the words in the subject line after the  
25 name, the three words before the hyphen, should be

1 redacted. That is not appropriate. And, again,  
2 after the hyphen, if you go to the name of the  
3 entity, that should be separate and distinct from the  
4 last two words.

5 We are going to attach that item to these  
6 documents. It's an exhibit and it hasn't been deemed  
7 confidential. So I'm not sure why those last two  
8 words of that document would be confidential. It  
9 doesn't make sense that those would be confidential  
10 in that subject line.

11 And similarly, I would say the second  
12 e-mail at the bottom after -- besides the two names  
13 listed on the subject matter, everything else should  
14 be public.

15 Did you go to 14, Ms. Spiller?

16 MS. SPILLER: Again, the same comments,  
17 Ms. Bojko, that we had identified were applicable to  
18 OCC Exhibit 14 as well.

19 MS. BOJKO: So if you look at 14, then, I  
20 would argue that the attachment line after the name  
21 of the entity, the words in between the names of the  
22 entity and the date should not be redacted. I would  
23 also argue that similarly on the subject line on the  
24 e-mail, the second e-mail, I don't believe all of  
25 those words on the subject matter line should be

1 redacted, and there's an entity on here that has been  
2 publicly released, I don't think that should be  
3 redacted.

4 Then if you go to the last redacted  
5 paragraph on page 1, the words after the name, the  
6 words that are highlighted, those words are not trade  
7 secret or proprietary, talking about a particular  
8 document or form of document would not be proprietary  
9 and neither would the next identifying term of the  
10 document. Sorry. It's hard to speak about these  
11 things.

12 Those are general terms and statements  
13 and document forms. The company cannot show that any  
14 of that is trade secret or proprietary information  
15 under the rules.

16 That's all I have from 10 to 14.

17 EXAMINER WALSTRA: Thank you.

18 Anyone else?

19 MR. BERGER: Yes, your Honor. I will do  
20 my best to refrain from any reference to the actual  
21 words.

22 EXAMINER WALSTRA: Thank you.

23 MR. BERGER: I will note, first of all,  
24 that as we all know, AEP filed at 12-1126 an amended  
25 application to the corporate separation application,

1 and they stated in there that they requested a parent  
2 guarantee, and they stated in there that they were  
3 denied consent.

4 So to the extent that any of these  
5 documents reference AEP that pertain to any of those  
6 issues, AEP has already made that public. And I'm  
7 not saying that these documents do. I'm just saying  
8 to the extent that they do, that information is  
9 public.

10 So with respect to OCC Exhibit 10, with  
11 respect to all these documents, we would argue that  
12 that should be done.

13 EXAMINER WALSTRA: Thank you.

14 MR. BERGER: With respect to any  
15 references to any other utility that requested  
16 consent, it was established on the public record of  
17 this proceeding that two utilities requested consent.  
18 So to the extent that any other utility requested  
19 consent, we do not believe that that information  
20 should be withheld from the public. We believe the  
21 fact that there was -- in the context of this  
22 proceeding where the PSR has been requested in other  
23 proceedings as well, the fact that those kinds of  
24 issues bear upon the merits of proposals like that,  
25 like the PSR, that that should be public information.

1 We believe that as we've argued before, that the  
2 issue of request for consent bears upon the merits of  
3 proposals to recover charges like the PSR.

4 EXAMINER WALSTRA: Thank you.

5 MR. BERGER: So we don't believe that  
6 those entities should be excluded from disclosure.

7 With respect to the identity of those  
8 parties, for example, that denied AEP consent, it's  
9 public record that AEP was denied consent. To the  
10 extent that these documents identify any denials of  
11 consent, we think that's significant to a public  
12 issue and a public debate about the manner in which  
13 this operation is occurring.

14 So we do not believe that the identity of  
15 those entities to the extent they're identified in  
16 these documents should be subject to redaction. And  
17 I think to the extent that the individual identities  
18 of those individuals who are associated with entities  
19 requesting or denying consent, we don't think there's  
20 any reason to exclude those identities. It's  
21 relatively public information as to who is in charge  
22 of decisions -- it's public information who the board  
23 members are of OVEC.

24 The fact that there may be other  
25 individuals of the sponsoring companies who

1 participate in committees, make decisions or make  
2 recommendations, we don't think those identities need  
3 to be excluded to the extent that you ruled that any  
4 of the parties requesting consent or denying consent  
5 should be publicly disclosed.

6 I think that largely addresses all of the  
7 concerns that we have regarding the balance of the  
8 documents. We're just talking through 14, right, at  
9 this point?

10 EXAMINER WALSTRA: Correct.

11 MR. BERGER: Thank you.

12 EXAMINER WALSTRA: Thank you.

13 Anyone else?

14 MS. SPILLER: Your Honor, I guess I'm not  
15 entirely clear of one of Mr. Berger's arguments.  
16 He's suggesting that information should be released  
17 in this docket in connection with matters that were  
18 raised in another docket. And as I recall in that  
19 other docket, there was no indication whatsoever that  
20 would suggest a disclosure of the names of  
21 individuals who took particular actions.

22 I'm not sure if Mr. Berger is attempting  
23 to supplement that presumably closed evidentiary  
24 record with information in this case but references  
25 to another docket and decisions in respect of another

1 utility, I don't think that is grounds for releasing  
2 information here. And, again, we've indicated that  
3 we have attempted to make redactions in a way that  
4 would protect identities within the context of  
5 confidential conversations. And if you release one,  
6 you necessarily get to the other pretty readily,  
7 which was why we proposed the redactions in the  
8 manner in which we did.

9 EXAMINER WALSTRA: Thank you.

10 MR. BERGER: Can I respond to that, your  
11 Honor?

12 EXAMINER WALSTRA: Briefly.

13 MR. BERGER: Yes. I would just say I  
14 think it was readily apparent what I was talking  
15 about and that if we were on the confidential record,  
16 I could make that even more apparent. So I don't  
17 think unless you want further clarification, I  
18 would -- if you want further clarification on that, I  
19 would ask that we go on the confidential record so we  
20 can mention the names of the entities and so I could  
21 make more clear what I meant. Thank you.

22 EXAMINER WALSTRA: I think the Bench  
23 understood.

24 In regards to Exhibit 15.

25 MS. SPILLER: Certainly, your Honor.



1 Again, these were limited redactions solely intended  
2 for purposes of keeping confidential the names of the  
3 entities that were involved in the activities  
4 described I believe in the 2013 calendar year, and  
5 the same arguments as those just indicated in respect  
6 of the exhibits -- it would have been 10 through 14.

7 The Exhibit 16, this is one, your Honor,  
8 again, the comments concerning the board of directors  
9 and their expectations of privacy reiterated would  
10 cause specific attention, if I may, to page 2 of the  
11 attachment, the second full paragraph on that  
12 attachment for reasons previously discussed with  
13 proposed redaction of that entire paragraph, and then  
14 the second to last paragraph which consists of three  
15 lines in that third line of the paragraph, the three  
16 words that follow whether or not we believe should be  
17 redacted for reasons previously given.

18 And then a lot of this, your Honor, I  
19 think will be at least for many of these documents  
20 until we get to OCC Exhibit 22 will be very similar  
21 to comments previously expressed, and, in fact, some  
22 degree of duplication of various attachments but the  
23 company has again proposed redaction that would be  
24 reflective of names.

25 I would note also that the identity of

1 OVEC board members may, in fact, be public, but  
2 information as to other employees of other  
3 organizations not so readily available in public  
4 filings made by OVEC, but I would suspect that it  
5 probably doesn't take too much more than a Google  
6 search to figure out by whom these individuals may be  
7 employed, hence, the redactions in the manner in  
8 which they were proposed.

9 Again, your Honor, I think these  
10 redactions are self-explanatory given the prior  
11 comments that were made. I would, if I could, call  
12 special attention to OCC Exhibit No. 20, and after  
13 that --

14 EXAMINER WALSTRA: Ms. Spiller, I only  
15 have through 16.

16 MS. SPILLER: I'm sorry, your Honor.

17 MS. WATTS: We have the balance of that  
18 now, your Honor.

19 EXAMINER WALSTRA: Yeah, that would be  
20 great.

21 MS. WATTS: I would like to recognize my  
22 certified professional collating team that's  
23 underpaid and overworked.

24 MS. SPILLER: Your Honor, Exhibit 15 and  
25 16 redactions made consistent with the previous

1 remarks that I had given. Do you want me to rehash  
2 all those same comments?

3 EXAMINER WALSTRA: No. I only had 15 and  
4 16. I didn't know how far you were going. We can  
5 just address 15 and 16 now.

6 MS. SPILLER: Okay.

7 MR. CASTIGLIONE: OVEC takes the same  
8 position as Duke. I won't repeat everything she  
9 said.

10 I would like to address 16 just very  
11 briefly. Again, these are minutes at a board level  
12 which are highly sensitive to OVEC. I realize that  
13 these minutes, the entirety of these minutes, are  
14 information that is relevant to the issues raised in  
15 this proceeding. So I'm not going to request that  
16 the entirety of the document be redacted. I would  
17 request that the same redactions as indicated by  
18 Duke, and I would at a minimum -- because I think  
19 that the paragraph on page 2 that is proposed to be  
20 redacted does contain very specific information about  
21 the internal deliberations of the board of OVEC, and  
22 it also contains a dollar figure on the third line up  
23 from the bottom on the right-hand side that is a  
24 projection into the future. So at a minimum, we'd  
25 support these redactions, but at a minimum, that that

1 dollar amount figure be redacted from these minutes.

2 EXAMINER WALSTRA: Thank you.

3 Any objections?

4 MS. BOJKO: Quickly, I don't have an  
5 objection to deleting the name in the first  
6 paragraph, but I think that it's been well  
7 established what the ownership percentage is on page  
8 203. So I don't know what the point of doing that  
9 is.

10 I would also -- I don't think it's  
11 necessary -- you're calling the title -- the title is  
12 not disclosed -- or the title is disclosed so I'm not  
13 sure why in the last document and the other documents  
14 that we've been discussing today would you redact --  
15 I don't know why we would redact the title elsewhere  
16 in the document when the title itself is not  
17 redacted. So that applies to numerous other  
18 documents that we're talking about today.

19 I agree with OVEC. I don't think that  
20 the whole entire Exhibit 16 should be redacted. I  
21 think we should only redact pieces that are  
22 confidential trade secret proprietary. I don't  
23 believe the whole paragraph that is highlighted falls  
24 under that category. I think you can select out  
25 dollar amounts or words that might be proprietary,

1 but I don't think the concept is and I don't think  
2 that discussing the issues are proprietary.

3 Decisions have a better argument, but  
4 actually discussing issues do not.

5 EXAMINER WALSTRA: Thank you.

6 Anyone else?

7 MR. BERGER: Your Honor, I would  
8 reiterate that the stance we have regarding the  
9 identities of the requesting parties and the  
10 identities of the denying parties, that those should  
11 be public as per my earlier comments.

12 I think the numerical information is  
13 consistent, your Honor -- to the extent it is  
14 consistent, I think it is mostly consistent. I  
15 haven't completely reviewed Exhibit 6.

16 EXAMINER WALSTRA: We're only talking  
17 about 15 and 16.

18 MR. BERGER: Oh, we're only talking 15  
19 and 16? Then I don't have any further comments.  
20 Thank you.

21 EXAMINER WALSTRA: Thank you.

22 MS. SPILLER: Your Honor, if I may just  
23 very briefly with regard to Ms. Bojko's one comment  
24 concerning what would be OVEC's Bates 303 in OCC  
25 Exhibit 15, those redactions at the bottom of the

1 page were proposed because unless you redact them, we  
2 know who it is, hence, the reason for the redaction.  
3 It's the only clarification or response that I would  
4 make.

5 EXAMINER WALSTRA: Thank you.

6 Regarding the next document.

7 MS. SPILLER: At the Bench's pleasure, we  
8 will continue to move forward. OCC Exhibit 17, again  
9 redactions proposed consistent with prior comments.

10 OCC Exhibit 18, redactions again proposed  
11 consistent with prior comments.

12 OCC Exhibit 19, redactions that have been  
13 proposed consistent with prior comments previously  
14 made.

15 OCC Exhibit 20, this was one, your Honor,  
16 that -- again redactions that were proposed here with  
17 respect to what would be the acknowledgments that are  
18 reflected within the body of this particular  
19 document.

20 We are proposing redaction of certain  
21 information understanding that the identity of  
22 sponsoring companies is public, but by redacting the  
23 information as we've suggested, we protect the  
24 confidential nature of the discussions that the  
25 sponsoring companies will have had in connection with

1 this particular issue, hence, the proposed redactions  
2 in the way in which they've been presented.

3 OCC Exhibit 21, again, redactions that  
4 would have been proposed consistent with what was  
5 previously discussed by Duke Energy Ohio. And I'm  
6 happy to continue -- will continue forward. Some of  
7 these proposed redactions, your Honor, should be very  
8 familiar to the parties in this case, and I can, I  
9 believe, take collectively OCC Exhibits, 22, 23, and  
10 24. This is information, again, billable cost  
11 summaries similar to other documents that the Bench  
12 has reviewed, projected information, detailed  
13 information that OVEC uses for purposes of  
14 forecasting its activities, activities that include  
15 participation in a competitive market, consistent  
16 with prior arguments that have been advanced by both  
17 Duke Energy Ohio and OVEC. We would propose  
18 redaction of the financial information as reflected  
19 on these exhibits.

20 I would note, your Honor, particularly  
21 with regard to OCC Exhibit 23, OVEC Bates No. 103, I  
22 believe that the entire draft probably needs to be  
23 redacted. Again, this is just a bar graph depicting  
24 the financial information for which confidential  
25 treatment has previously been discussed. But if you

1 simply block out the graphs, I think that that  
2 information would allow one very readily and easily  
3 to back into the financial information, hence, the  
4 redaction in the manner in which it's been proposed  
5 on OCC Exhibit No. 23.

6 OCC Exhibit No. 25, again, forecasts of  
7 information that will occur yet in the future,  
8 confidential forecasting information of OVEC in  
9 connection with the conduct of its business. The  
10 information for which we've sought protection here is  
11 consistent with that previously discussed with the  
12 Bench. OCC Exhibit --

13 MS. BOJKO: Excuse me, Ms. Spiller.  
14 Before you go on, I don't have 22, 23, and 24 or 25.

15 Thank you. I just wanted to see what you  
16 were referencing.

17 MS. SPILLER: Your Honor, OCC Exhibit 27,  
18 again similar to prior documents that have been  
19 contained in other exhibits discussed by me this  
20 morning. Again, the redactions here are consistent  
21 with prior comments and to protect the identity of  
22 the individuals participating in confidential  
23 discussions.

24 I also have OVEC -- I'm sorry. OCC  
25 Exhibit No. 26, which is an update to the board of



1 directors by OVEC -- or, to the OVEC board of  
2 directors dated October 22, 2014. Certainly as a  
3 member of the board of directors, redactions that  
4 have been proposed here by Duke Energy Ohio, this  
5 information contains assumptions or forecasted  
6 information, activity indicative of the future  
7 operations of OVEC, again generating plants that  
8 participate in some form in competitive wholesale  
9 markets.

10 And I would certainly defer to OVEC's  
11 counsel for further commentary in respect of OCC  
12 Exhibit 26.

13 EXAMINER WALSTRA: Thank you.

14 MR. CASTIGLIONE: OVEC takes the same  
15 position as Duke, and I won't repeat everything here,  
16 but I would just like to focus on two things. The  
17 billable cost summary, there's various iterations of  
18 that. Again, I think we dealt with that yesterday,  
19 so we can take the position that we'll deal with it  
20 in the same way we have in the past.

21 I just want to briefly address Exhibit  
22 26, and specifically to page 12 of that exhibit,  
23 contains a chart containing projected costs going  
24 into the future through 2021. Consistent with the  
25 redactions here, OVEC takes the position that, again,

1     these are, as we've seen in other documents,  
2     projected costs going out into the future that are  
3     relied upon by OVEC that are confidential and  
4     proprietary. We ask that the numbers on this chart  
5     be redacted.

6             And there are other redactions throughout  
7     here proposed by Duke. At a minimum, there are  
8     dollar amounts in some of these slides that all tie  
9     into that slide. So, for example, on slide 6, there  
10    are dollar amounts that sort of tie into the analysis  
11    done in the end. At a minimum, we'd ask that those  
12    dollar amounts also be redacted out of the remainder  
13    of the documents because it's really just the same  
14    numbers that are incorporated into those cost  
15    projections.

16            EXAMINER WALSTRA: Thank you.

17            Responses?

18            MS. BOJKO: Yes, your Honor. I don't see  
19    any responses to the first couple on Exhibit 20, I  
20    would say dates and words describing documents,  
21    again, our same arguments, should not be redacted. I  
22    won't repeat my argument regarding the identity of  
23    the company names.

24            So then if we go to Exhibit 22 and 23, I  
25    will say as was recognized by witnesses on the stand

1 yesterday and previously, the OVEC generation numbers  
2 and what they generate has been disclosed in public  
3 filings and should not be deemed confidential, the  
4 generation number.

5 I also believe that there were some  
6 projected costs and projected numbers at the bottom  
7 of Exhibit 22 that were released to FERC as well. So  
8 if you're filing FERC documents, they shouldn't be  
9 deemed confidential in this case, and I think that  
10 would apply as well to Exhibit 24.

11 I'll not comment on 25. As far as 26, I  
12 think that words describing compliance initiatives  
13 that happened in 2012 are not proprietary or trade  
14 secret. I would also state that these documents have  
15 inconsistent redactions. So redacting the type of  
16 facility is not a proprietary item. Redacting the  
17 type of environmental compliance initiative that was  
18 taken has already been released to the public through  
19 the FERC document that we looked at. It's also been  
20 released with annual reports. They talk about the  
21 different environmental compliance initiatives that  
22 have to be taken. The charts reference different  
23 initiatives as well as the billable cost summaries.  
24 The words on the side reference different  
25 initiatives.

1           So I don't think the initiatives -- I  
2     will concur that I think that the dollar figures  
3     might be proprietary, but I don't think that the  
4     words that describe the compliance initiatives are in  
5     26.

6           27, I have no further comments, thank  
7     you.

8           EXAMINER WALSTRA: On 22, you mentioned  
9     some stuff that was mentioned in FERC filings. Could  
10    you be more specific of what lines you're in  
11    reference to?

12          MS. BOJKO: Sure. The top line, the OVEC  
13    generation numbers, and I believe the last two  
14    numbers on the bottom of the production costs were  
15    discussed yesterday as well.

16          MR. DARR: If I may, your Honor.

17          EXAMINER WALSTRA: Go ahead.

18          MR. DARR: If you look at Duke Exhibit  
19    14, they provided a supporting study. When OVEC  
20    filed its application to the FERC to modify the ICPA,  
21    they provided that supporting study prepared by AEP  
22    Service Corp. It contains in it the same general  
23    information that's contained in line 1 of Exhibit 22.  
24    It also contains a total cost production number, and  
25    it also includes an average cost of production

1 number, which is basically a numeric average.

2 And I would concur with Ms. Bojko that  
3 with regard to the total generation and the total  
4 generation cost information on 22 and OCC 24 and also  
5 OCC 5a, that information -- there's no apparent claim  
6 by OVEC or consistent claim by OVEC that that  
7 information should be treated as confidential if you  
8 go back to the filing it made in 2011.

9 Also, with regard to Exhibit OCC Exhibit  
10 23, as far as I can tell here, there's no current  
11 projected financial data included in that. It's a  
12 reconciliation for a past year. The past year has  
13 already been addressed in a public filing. It's hard  
14 to understand what is the point of holding at least  
15 the total GEN number and the total cost number in the  
16 confidential side of the docket.

17 With regard to the internals of the  
18 calculation, I guess I don't care one way or the  
19 other with regard to that, so I won't address that  
20 issue.

21 EXAMINER WALSTRA: Thank you.

22 MS. HUSSEY: Your Honor, I'd like to turn  
23 to OCC Exhibit 26 just briefly, page 4. I'm  
24 concerned that the third bullet point down has no  
25 redactions, others do, and it seems to describe a

1 compliance method that the other three bullet points  
2 are also trying to describe. So I propose that the  
3 other compliance methods not be redacted either.

4 MR. CASTIGLIONE: To make things easier,  
5 OVEC would be fine with just sticking to the dollar  
6 amounts and letting the words go through. We're fine  
7 with that.

8 MS. BOJKO: Thank you.

9 MR. MENDOZA: That's throughout Exhibit  
10 26?

11 MR. CASTIGLIONE: That's throughout  
12 Exhibit 26, yes.

13 I do want to respond to the billable cost  
14 summary arguments that were made.

15 EXAMINER WALSTRA: Go ahead.

16 MR. CASTIGLIONE: Reference was made for  
17 filing, I would point out this FERC filing was made  
18 in 2011. So these are numbers from years ago that  
19 were prepared by AEP, not OVEC. And also, Mr. Brodt  
20 testified yesterday that the top line numbers for  
21 power production are not the same numbers that are in  
22 the billable cost summary that OVEC provides. These  
23 are numbers in the FERC filing that not only are  
24 years old but are making the assumption that the  
25 capacity is operating at 100 percent. These are

1 different numbers prepared by AEP and I don't  
2 understand how just because of FERC filing from years  
3 ago contained different numbers, that somehow means  
4 that OVEC has waived confidentiality for a totally  
5 different set of projections that its board is  
6 currently operating under and projecting out to 2040.

7 So I think we already dealt with the  
8 billable cost summary yesterday, and we just ask it  
9 be treated in the same manner as we agreed to  
10 yesterday.

11 EXAMINER WALSTRA: Thank you.

12 MS. BOJKO: Your Honor, may I briefly  
13 respond to that?

14 Two issues. Timing, the FERC filing was  
15 made in April, 2011. The cost data provided in that  
16 FERC filing was in 2011. So the timing of when it  
17 was filed is not historical when it was filed with  
18 FERC. So that's not a true indication that it was  
19 old. It would be true if the '11 data was filed  
20 today. That's not what occurred in that filing. It  
21 was filed the same year.

22 Secondly, the point about testimony  
23 yesterday is we were saying that these general  
24 indications are not deemed proprietary in some  
25 circumstances by OVEC, but they are being deemed

1       proprietary here, and that's the inconsistent  
2       treatment that we were talking about yesterday.

3               So there is a distinction. It was filed  
4       timely when it was filed at FERC. And although the  
5       numbers are historical today, that's right, they  
6       weren't historical when it was filed. So I don't  
7       think that that's an accurate representation.

8               I would also point out -- there's another  
9       item. So I just don't believe that those are the  
10      same, and they are different in the numbers and the  
11      general belief of what OVEC thought was confidential  
12      at FERC seems to be inconsistent and different from  
13      what they are deeming confidential in this case.

14              EXAMINER WALSTRA: Thank you.

15              Mr. Berger.

16              MR. BERGER: Your Honor, I would just  
17      reiterate our viewpoint regarding identities of the  
18      parties who requested and denied consent and  
19      recognize I'm in agreement with my colleagues on all  
20      the other issues. Thank you.

21              EXAMINER WALSTRA: Thank you.

22              MS. SPILLER: Your Honor, if I may just  
23      very briefly. I think it important to focus on the  
24      distinction. Mr. Brodt specifically testified  
25      yesterday that the assumptions underlying that



1 benchmark study were such that the OVEC-owned units  
2 were operating at 100 percent. There are entirely  
3 different assumptions that OVEC uses with respect to  
4 the day-to-day operation of this plant with respect  
5 to the current annual budget and the forecasted  
6 budgeting information.

7           So they're entirely different.  
8 Assumptions were made for a particular purpose, to  
9 compare the ICPA to other power supply options.  
10 Those assumptions should not control how OVEC today  
11 manages its business and forecasts its business. And  
12 Mr. Brodt clearly said that they were not the same  
13 and that OVEC absolutely viewed their information  
14 with regard to generation to be confidential.

15           EXAMINER WALSTRA: Thank you.

16           We can take a short break, come back at  
17 11:30 and hopefully get a witness. Thank you.

18           MS. SPILLER: Thank you, your Honor.

19           (Recess taken.)

20           EXAMINER WALSTRA: All right. We'll go  
21 back on the record.

22           Are we already for Duke to call your  
23 witness?

24           MS. KINGERY: Thank you, your Honor.

25           Duke Energy Ohio would call James Ziolkowski to the

1 stand.

2 MS. WATTS: Your Honor, may I approach?

3 EXAMINER WALSTRA: Thank you for being  
4 patient. We appreciate it.

5 (Witness sworn.)

6 MS. KINGERY: And, your Honor, I would  
7 ask that the testimony of James Ziolkowski be marked  
8 as Duke Energy Ohio -- I have no idea.

9 EXAMINER WALSTRA: 18.

10 MS. KINGERY: All right. Thank you.

11 EXAMINER WALSTRA: And it is so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MS. KINGERY: I'm sorry. Has the witness  
14 been sworn?

15 EXAMINER WALSTRA: Yes.

16 - - -

17 JAMES E. ZIOLKOWSKI

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

20 DIRECT EXAMINATION

21 By Ms. Kingery:

22 Q. Good morning.

23 A. Good morning.

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

1           A.    My name is James E. Ziolkowski.  My  
2   address is 139 East Fourth Street, Cincinnati, Ohio,  
3   45202.

4           Q.    And do you have before you what has been  
5   marked as Duke Energy Ohio Exhibit 18?

6           A.    Yes, I do.

7           Q.    And is this your prefiled testimony filed  
8   in this docket on May 29, 2014?

9           A.    Yes.

10          Q.    And do you also have -- excuse me, just a  
11   moment.

12                You also have two additional supplements  
13   to your testimony in that pack of information?

14          A.    Yes, I do.

15          Q.    Thank you.  And would you describe those  
16   two supplements for the record.

17          A.    The two supplements were some corrections  
18   to my direct filed testimony that contained some  
19   corrected tariff sheets, in particular, rider RC and  
20   rider RE, and then the other supplement contained a  
21   revised version of rider BDP.

22          Q.    Thank you.  And were these two  
23   supplements filed on June 2 and July 10, 2014?

24          A.    Yes.

25          Q.    And did you prepare or have caused to be

1 prepared on your behalf the testimony and the two  
2 supplements?

3 A. Yes.

4 Q. Do you have any corrections to make to  
5 any of those three items today?

6 A. No.

7 Q. And if I asked you all of the questions  
8 that are contained in your direct testimony today,  
9 would your answers be the same accounting for those  
10 two supplemental filings that were included?

11 A. Yes.

12 MS. KINGERY: Thank you. The witness is  
13 available for cross-examination.

14 EXAMINER WALSTRA: Ms. Kingery, could we  
15 have those supplements marked as an exhibit?

16 MS. KINGERY: As a separate exhibit?

17 EXAMINER WALSTRA: Yes.

18 MS. KINGERY: So I would ask that we mark  
19 the first supplement filed on June 2, 2014, as Duke  
20 Energy Ohio Exhibit 19 and the second supplement  
21 filed on July 10, 2014, as Duke Energy Ohio Exhibit  
22 20.

23 EXAMINER WALSTRA: Thank you. They'll  
24 both be so admitted.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)

1 MR. SERIO: Could you give me those dates  
2 again?

3 MS. KINGERY: Sure. The first one was  
4 June 2, and the second was July 10.

5 MR. SERIO: Thank you.

6 EXAMINER WALSTRA: Thank you.

7 MS. KINGERY: You're welcome.

8 EXAMINER WALSTRA: Ms. Hussey.

9 MS. HUSSEY: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Hussey:

13 Q. Mr. Ziolkowski, I just have a couple  
14 quick questions for you. Would you turn to page 6 of  
15 your testimony, and it appears beginning on line 20,  
16 you discussed Duke Energy Ohio's proposal to  
17 eliminate rider LFA; is that correct?

18 A. Yes.

19 Q. Just on a very high level, are you aware  
20 of Staff Witness Donlon's recommending the LFA be  
21 phased out during the term of the ESP?

22 A. Yes, I am.

23 Q. And are you aware of Duke Energy Ohio  
24 opposes or supports Mr. Donlon's proposal?

25 A. Duke Energy Ohio opposes that proposal,

1 and Duke Energy Ohio proposes to completely eliminate  
2 rider LFA or let it expire per -- at the end of this  
3 current ESP per our application.

4 Q. Okay. And could you explain the reasons  
5 behind Duke's opposition on Mr. Donlon's proposal?

6 A. First off, rider LFA went into effect --  
7 well, rider LFA was part of the stipulation that was  
8 established in the fall of 2011 in Case No.  
9 11-3549-EL-SSO and as part of the stipulated package,  
10 rider LFA went into effect without any phase-in on  
11 January 1st, 2012.

12 Rider LFA has caused some customers,  
13 especially some very high load factor large  
14 customers, to see big dramatic bill decreases paid by  
15 lower load factor customers, thousands of low load  
16 factor customers, including schools, churches, small  
17 industrials, and smaller businesses. And, once  
18 again, that rider was not phased in on January 1st,  
19 2012. It was part of the stipulated package in  
20 11-3549, and Duke Energy Ohio believes that it should  
21 just terminate after May 31st, 2015.

22 Q. Okay. So is it your position that Duke  
23 should just let it expire and not necessarily  
24 eliminate it because of extraneous factors?

25 A. Duke's position is that rider LFA should

1 expire at the end of the current ESP, and there's no  
2 reason to continue it. Rider LFA as a stand-alone  
3 rider simply creates winners and losers. High factor  
4 load customers are winners; lower load factor  
5 customers are losers. And it's, in essence, a  
6 transfer of dollars from low load factor to high load  
7 factor customers.

8 Q. And have you analyzed how that would  
9 be -- your comments now would be impacted by  
10 Mr. Donlon's proposal?

11 A. I'm not sure I understand your question.

12 Q. If his suggestion is adopted, for  
13 instance.

14 A. If rider LFA were phased out, for  
15 example, I recall Mr. Donlon proposed cutting the  
16 demand charge in half from \$8 to \$4 for a period of  
17 time, well, then the impacts would also be cut in  
18 half, but there would still be what I'll call winners  
19 and losers by doing that; and, once again, rider LFA  
20 was not phased in on January 1st, 2012. There's no  
21 reason to phase it out.

22 Q. Okay. Is it your understanding, though,  
23 that Mr. Donlon's proposal would essentially cushion  
24 the fall-off associated with the elimination of rider  
25 LFA immediately at the beginning -- or, excuse me,

1 with regard to what your proposal is?

2 A. Well, in a way, it would act as a  
3 cushion, but for some customers, it would be a soft  
4 cushion, but for other customers, it would be a  
5 spike, a spikey cushion, sort of like -- customers  
6 that currently receive a benefit from rider LFA  
7 certainly would want the rider LFA to continue, but  
8 those benefits are paid for by lower load factor  
9 customers such as schools, small manufacturers, and  
10 those customers have seen some big bill increases.  
11 So they'll be thrilled to see the rider LFA expire on  
12 May 31st, 2015.

13 So yet the customers, the big  
14 industrials, they would certainly like that cushion.  
15 But the customers that are paying for rider LFA, they  
16 want it to expire. In fact, they would be happy if  
17 it expired today.

18 Q. And perhaps maybe the word "cushion" was  
19 not the word to use. So to your understanding, would  
20 Mr. Donlon's proposal help to levelize the impacts of  
21 eliminating rider LFA immediately?

22 A. Well, certainly it provides some  
23 gradualism which is where I think you're going with  
24 your question, but gradualism usually applies to  
25 customers that are seeing a big bill increase, but in



1       this case, the big bill increase for the high load  
2       factor customers, those customers that are currently  
3       seeing a benefit, getting a large benefit, that's  
4       being paid for by other customers whose bills might  
5       be 20 percent or 30 percent higher than they would  
6       otherwise be, and in that case, they don't want  
7       gradualism. So I would think that in this case,  
8       there's no need for gradualism. Once again, rider  
9       LFA was not put in gradually, so why should it be  
10      terminated gradually.

11             Q.    Okay. And I understand your  
12      qualifications; however, to the extent all other  
13      things aside that Mr. Donlon's proposal is  
14      implemented, there would be an element of gradualism  
15      introduced.

16             A.    Certainly.

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

18                    EXAMINER WALSTRA:  Thank you.

19                    Ms. Bojko.

20                    MS. BOJKO:  Thank you, your Honor.

21                                   - - -

22                                   CROSS-EXAMINATION

23      By Ms. Bojko:

24             Q.    Good afternoon, sir.  Let's stick with  
25      the LFA for one minute.  The company's proposal to

1 eliminate the LFA is comparable to the way that it  
2 was enacted. If a customer received a 10 percent  
3 increase under the last stipulation, they would  
4 receive a 10 percent decrease under your proposal; is  
5 that accurate?

6 A. Well, that's correct. The LFA is a  
7 pretty simple rider, and to the extent that a  
8 customer saw benefits beginning January 1st, 2012,  
9 when rider LFA is eliminated, those benefits, those  
10 exact benefits would go away which would result in a  
11 bill increase, so it's quite symmetrical.

12 Q. From your comments, sir, I take it that  
13 you believe that the LFA was a form of subsidy; is  
14 that correct?

15 A. LFA was revenue neutral to Duke Energy  
16 Ohio. It was part of the stipulation, and it was, as  
17 you know, a very large stipulated package in 11-3549,  
18 the net effect of rider LFA is that low load factor  
19 customers pay more. High load factor customers  
20 receive money. Its value was being part of the  
21 stipulation in 11-3549. But as a continuing  
22 stand-alone rider, in my opinion, it is just a  
23 subsidy. It's a dollars going from low load factor  
24 customers to high load factor customers.

25 Q. Turning to rider NM, it's my

1 understanding that Duke's proposal in this case is  
2 not to change rider NM or change any procedural  
3 treatment of NM. It's just to clarify some language  
4 in the tariff; is that correct?

5 A. That's correct, and specifically to  
6 codifying the tariff and correcting that tariff, that  
7 for net generators, that is, net metering customers  
8 who generate more electricity during the month than  
9 they actually use, the credits are going to be based  
10 on our total auction price which is rider RC, and  
11 that was our practice anyways, and that's actually  
12 consistent with the recent Commission rule-making.  
13 And so I don't know if we were just really good  
14 guessers, but anyway, that's how we've been doing it  
15 for a few years anyways. The administrative code or  
16 the Ohio Revised Code wasn't real clear on details  
17 like that.

18 So there will be no changes. And also we  
19 want to clarify in our tariff how we calculate the  
20 billing determinants, because obviously legislation  
21 doesn't get down to that level of detail either. So  
22 no changes.

23 Q. Sir, I believe you've been at the hearing  
24 for the past week; is that correct?

25 A. That's correct.

1           Q.    And you were here for Mr. Henning's  
2 testimony.

3           A.    Yes.

4           Q.    Mr. Henning punted a few questions to  
5 you, so I'm going to ask you those questions.

6                   In Mr. Henning's testimony, there was a  
7 table. Do you recall discussions regarding that  
8 table?

9           A.    I don't recall specifically what table  
10 you're referring to.

11          Q.    It was a table on page 13 of  
12 Mr. Henning's testimony that talked about the current  
13 rates of the various utilities in Ohio.

14          A.    I recall that discussion, but I cannot  
15 visualize what the table looks like.

16          Q.    Do you recall if you provided the  
17 information to Mr. Henning or actually provided the  
18 table to Mr. Henning that discussed the current rates  
19 of Ohio utilities?

20                   MS. KINGERY: Objection. The witness has  
21 just said he doesn't recollect what the table looks  
22 like or what it is. Perhaps if he could see a copy  
23 of it, he might be able to refresh his recollection.

24                   EXAMINER WALSTRA: Do you have something  
25 you can reference?

1           Q.    I'm trying to do this on an expedited  
2           basis.  Sure.  It's in Mr. Henning's testimony on  
3           page 13, and that testimony has previously been  
4           marked as Duke Energy Ohio Exhibit 2.

5                     May I approach your Honor?

6           EXAMINER WALSTRA:  You may.

7           Q.    I'll let the record reflect I'm showing  
8           the witness what has been previously marked as Duke  
9           Energy Exhibit 2, which is page 13, a table of  
10          Mr. Henning's testimony.

11                    Sir, do you recognize that table?

12          A.    I do not recognize this table.  I don't  
13          think I prepared this.  It looks like something that  
14          probably came out of my department, but it might have  
15          been Mr. Wathen who prepared this.

16          Q.    That was actually my question.  So you  
17          did not prepare the table for Mr. Henning.  Did you  
18          believe that you provided the current Duke Energy  
19          rate in that table.  Is that not accurate?

20          A.    I just don't recall the answer.  We do  
21          lots of number crunching and tables, and I just don't  
22          recall.

23          Q.    Let's focus.  That was really just a  
24          foundation for my next question.  I believe that that  
25          number listed for Duke Energy Ohio is a residential

1 customer rate that's provided in your JEZ-3?

2 A. That's correct.

3 Q. Okay. So you do recognize that that  
4 amount was contained in JEZ-3; is that correct?

5 A. Yes. That dollar amount looks familiar.

6 Q. Okay. So looking at JEZ-3, sir, the rate  
7 that's provided on that table appears to be what's  
8 listed as current bill rate for 1,000 KWH customer,  
9 summer and winter rates; is that correct?

10 A. That's correct.

11 Q. Okay. And --

12 MS. KINGERY: Excuse me. Just for the  
13 record to be more clear, could you identify which  
14 page of that exhibit you're looking at?

15 MS. HUSSEY: One of 6.

16 MS. KINGERY: Thank you.

17 BY MS. BOJKO:

18 Q. Speaking now about the table in general,  
19 you have provided a table that has the current bills  
20 which is where that information came from, and then  
21 your tables also in JEZ-3 look at -- go all the way  
22 out to do a total proposed bill; is that correct?

23 A. That's correct.

24 Q. Okay. And then you've also provided in  
25 this table a percentage increase; is that accurate?

1           A.     That's correct, yes.

2           Q.     And, sir, when you prepared this table in  
3     the proposed bill and the percentage increase, isn't  
4     it true that you did not consider all of the  
5     components of the proposed ESP?

6           A.     We considered only the rate changes,  
7     structural changes, to riders RC and RE in this  
8     attachment JEZ-3, but you're correct that there are  
9     some other proposed riders in this proceeding that we  
10    did not include.

11          Q.     And one of those other riders, the table  
12    does not include the effect of the OVEC costs or that  
13    PSR rider; is that correct?

14          A.     That's correct.

15          Q.     Okay. And this table also does not  
16    reflect the DCI rider; is that correct?

17          A.     That's correct.

18          Q.     And, sir, the timing of your proposed  
19    bill, is this over the life of the ESP, or is this  
20    proposed bill column for a point in time of the ESP?

21          A.     The proposed bill was the effect on  
22    residential bills on this sheet of changing our rate  
23    design at the time we did the calculation, which  
24    would have been around May of this year. Yeah, May  
25    of this year.

1           Q.    So it's fair to say it's not an average  
2 of the life of the ESP.  It was a point in time.

3           A.    Yes.

4           Q.    Okay.  And the point in time of your  
5 consideration, it was assuming that all the  
6 components of the ESP, the rate design allocations,  
7 all those components were proposed, is that correct,  
8 except for the riders that we discussed?

9           A.    That's correct, it shows the changes to  
10 riders RC and RE as we proposed in the application.

11          Q.    Okay.  And you mentioned residential, and  
12 I pointed out residential because that was in  
13 Mr. Henning's table, but your JEZ-3 actually does  
14 all -- it represents all classes of customers?  It  
15 indicates the current bill plus a proposed bill for  
16 all classes of customers; is that correct?

17          A.    Well, all the major classes.  We did not  
18 include a sheet in here for lighting, for example,  
19 but all the major rate classes.

20          Q.    And your responses to me were about the  
21 entire table, and so your responses to all my  
22 questions would be applicable to all the classes, the  
23 commercial and industrial classes, and what you  
24 represented in your tables are the same for those as  
25 the residential classes?



1           A.     That's correct.

2                     MS. BOJKO:   I have nothing further.

3     Thank you.

4                     EXAMINER WALSTRA:   Thank you.

5                     Mr. Serio.

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

7                     EXAMINER WALSTRA:   Yes, you may.

8                     MR. SERIO:   Thank you, your Honor.

9                                     - - -

10                                    CROSS-EXAMINATION

11     By Mr. Serio:

12                     Q.     Good morning, Mr. Ziolkowski, or at least  
13     for a few more minutes.

14                     A.     Good morning.

15                     Q.     You're the director of rates and  
16     regulatory planning, correct?

17                     A.     That's my title, but Ms. Laub also has  
18     the same title.  When you say "the," maybe "a"  
19     director.

20                     Q.     How about we approach it this way.  Why  
21     don't you give me a quick run-down on what your  
22     specific duties are.

23                     A.     I prepare various regulatory filings,  
24     some rider filings in particular, the decoupling  
25     energy efficient filings, the uncollectible filings I

1 prepare. I do tariff work, compile the tariff. I  
2 assist with rate design in base rate cases; and also  
3 in this particular instance, service offer filing. I  
4 conduct internal training, and I give many  
5 presentations to external groups, too, on rate  
6 matters.

7 Q. Now, in your testimony, you referenced  
8 Duke of Kentucky. So your work is for Duke Energy  
9 Ohio and Duke Energy Kentucky, correct?

10 A. That's correct.

11 Q. Now, is it Duke Energy Ohio electric only  
12 or Duke Energy Ohio electric and gas?

13 A. Is your question Duke Energy Ohio  
14 electric?

15 Q. Do you do work for both the gas and  
16 electric sides?

17 A. Four jurisdictions, gas and electric in  
18 Ohio and gas and electric in Kentucky.

19 Q. And to the extent that you gave me your  
20 responsibilities, those apply to both gas and  
21 electric in Ohio?

22 A. Correct.

23 Q. Now, can you tell me what your role was  
24 in developing rider DCI?

25 A. My role was minimal, except I did provide

1 some billing determinant information to Ms. Laub when  
2 she was preparing her attachment to her testimony,  
3 and we also discussed how those billing determinants  
4 should be structured, what type of billing  
5 determinants or how to calculate the final rider  
6 rate.

7 Q. Okay. Let me take one step back.

8 With regard to your responsibilities with  
9 rate filings for Duke on both the gas and electric  
10 side, how long have you had those responsibilities?

11 A. I've been doing my current job -- I've  
12 had my title, current title, for a couple years. But  
13 prior to that, essentially I've been doing my current  
14 job since late 2010, but I've been a member of the  
15 rate department doing all kinds of rate work since  
16 1998. So I've been in rates since '98.

17 Q. Okay. Now, with regard to rider DCI --  
18 let me take a step back.

19 On page 6 of your testimony, you  
20 reference eliminating rider ESSC, correct, the  
21 electric security stabilization rider?

22 A. That's correct.

23 Q. And that's going to terminate  
24 December 31st, 2014 this year, correct?

25 A. Correct.

1           Q.    Now, are there any circumstances under  
2           which that rider would continue beyond December 31st,  
3           2014?

4           A.    Well, I believe -- this is obviously a  
5           call for the -- legal call, but my understanding is  
6           in the stipulation in 11-3549, Duke Energy Ohio is  
7           authorized to collect \$330 million over a three-year  
8           period, \$110 million a year for three years. And  
9           with any fixed dollar amount collection, it's  
10          unlikely that we'll hit \$330 million exactly on  
11          December 31st, 2014. So some form of limited true-up  
12          will be required, whether it's an overrecovery or  
13          underrecovery. So for a short period of time, we  
14          expect to have a very small true-up.

15          Q.    Other than any actions to reconcile a  
16          credit or debit, are you aware of any plan on the  
17          part of the company under any circumstances to  
18          continue rider ESSC beyond December 31st?

19          A.    No, absolutely not.

20          Q.    Okay. Now, with regard to the  
21          information that you provided to Mr. Henning that you  
22          discussed with Ms. Bojko, you indicated that you did  
23          provide the Duke Energy Ohio data, but you weren't  
24          sure if you provided the other data.

25          A.    Correct. I'm not sure if I did. It was

1 my guess it could have been me or someone who reports  
2 to me, or it could have been Don Wathen, too.

3 Q. Do you know why the data, at least for  
4 Duke Energy Ohio, was requested by Mr. Henning from  
5 you?

6 A. I don't know.

7 Q. So you're not sure why he requested that  
8 particular information or why he wanted to use it or  
9 how he wanted to use it?

10 A. No.

11 Q. Now, it's your understanding that rider  
12 DCI is proposed to maintain or improve service  
13 reliability, correct?

14 A. I was not very much involved with the  
15 development of that. However, I sat through six days  
16 of testimony now.

17 Q. So you've been educated?

18 A. Yes.

19 Q. Are you familiar with how service  
20 reliability is measured?

21 A. Just in the most general of terms. I  
22 mean, I'm aware that the State of Ohio has various  
23 metrics such as SAIFI and SAIDI and things like that,  
24 but I don't get involved with monitoring those.

25 Q. Are you familiar with what Duke's current

1 CAIDI or SAIFI or SAIDI standards are?

2 MS. KINGERY: Objection. The witness  
3 just said he doesn't get involved with this matter  
4 and is just vaguely familiar with the topic.

5 MR. SERIO: I'm just exploring where his  
6 knowledge goes. If he tells me he doesn't know in  
7 response to the question, I'll drop it, but he did at  
8 least understand what they were.

9 EXAMINER WALSTRA: Overruled.

10 Q. I'm simply asking what his knowledge is.

11 A. Could you quickly repeat the question.

12 Q. Sure. Do you know what CAIDI and SAIDI  
13 and SAIFI measure?

14 A. No. I'd have to look them up.

15 Q. And are you familiar with how Duke has  
16 done with regards to its rankings with regards to  
17 CAIDI, SAIDI and SAIFI over the last few years?

18 MS. KINGERY: Objection. The witness  
19 just said he doesn't get involved with it and he  
20 doesn't even know what they measure.

21 EXAMINER WALSTRA: Overruled.

22 A. The answer is I don't know.

23 Q. Okay. Now, because you're in the rate  
24 department, you understand how cost recovery in a  
25 base rate proceeding works, correct?

1           A.     Yes.

2           Q.     And you're familiar with how cost  
3 recovery using a rider works, correct?

4           A.     Yes.

5           Q.     Would you agree with me that when the  
6 company gets to recover costs in a rider versus base  
7 rate cost recovery, that the company gets to recover  
8 its costs on an accelerated basis?

9           MS. KINGERY:  Objection.  There's no  
10 showing that all riders are the same.  I believe that  
11 the question is asking the witness to make an  
12 assumption about a global universe that isn't all  
13 identical.

14           MR. SERIO:  Your Honor, he's in the rate  
15 department.  If he's got a problem with a rider's  
16 definition, he's more than capable of explaining it  
17 without counseling telling him that he should explain  
18 it.

19           EXAMINER WALSTRA:  He can clarify or  
20 answer if he knows.

21           A.     Depending upon the structure of the rider  
22 and depending upon how frequently the utility intends  
23 to go in for base rate cases, that could happen.  You  
24 get more accelerated cost recovery.  But if we have  
25 annual base rate cases, then --

1           Q.    In your tenure with Duke or its  
2 predecessors, has the company ever filed annual base  
3 rate cases?

4           A.    I don't recall that.

5           Q.    It hasn't at least since 1998 when you  
6 were in the rate department, has it?

7           A.    No, and I don't recall since the early  
8 '90s either.

9           Q.    So we just established that Duke at least  
10 since '98, to your knowledge, has not filed annual  
11 base rate cases. Let's look at rider DCI. Rider DCI  
12 is going to be modified once a year, correct, as  
13 proposed?

14          A.    I don't recall, but -- I don't recall  
15 whether it was going to be annual, semiannual or  
16 quarter, but I think it would be at least annual.

17          Q.    Okay. To the extent that rider DCI is  
18 trued up or modified on an annual basis and the  
19 company has not had a history of annual base rate  
20 cases, would you agree with me that collecting costs  
21 through rider DCI instead of a base rate case means  
22 the company will collect those costs on a more  
23 accelerated basis?

24               MS. KINGERY: Objection. The witness  
25 just said he doesn't know how often it would be



1 updated.

2 MR. SERIO: Your Honor, my question was  
3 assuming it was done annually.

4 EXAMINER WALSTRA: Overruled.

5 A. One thing I recall from hearing a prior  
6 witness' testimony is rider DCI refers only to  
7 capital, I believe, to plant, and not to O&M  
8 expenses. So when we talk about costs, I believe  
9 we're just talking capital, but certainly when you  
10 have a rate proceeding more often than cost recovery  
11 associated with investment or return on investment  
12 would occur more frequently than just waiting for a  
13 base rate case.

14 Q. So if we're looking at the capital costs  
15 associated with rider DCI, you're agreeing with me  
16 that the company by using rider DCI will get to  
17 recover those costs on a more accelerated basis than  
18 if they were relying on base rate cost recovery?

19 A. I would agree with that.

20 Q. Okay. Now, to the extent that the  
21 company gets to collect those capital costs on a more  
22 accelerated basis, would you agree with me that it  
23 reduces the company's business risk?

24 MS. KINGERY: Objection, your Honor.  
25 This is not a policy witness. This is the type of

1 question that would have been more appropriately  
2 directed to Mr. Wathen, and it goes far beyond the  
3 scope of this witness' testimony.

4 EXAMINER WALSTRA: He can answer, if he  
5 knows.

6 A. As a member of the rate department and,  
7 in fact, our rate department as a whole, to my  
8 knowledge in the 16 years that I've been in rates,  
9 we've never analyzed business risks, so to speak.  
10 Companies typically have another risk department, or  
11 that would be under the CFO organization, but we  
12 don't get involved with business risk. So I don't  
13 know all the measures that would go into assessing a  
14 company's business risk.

15 So for me -- I'm not sure I can make a  
16 general response to your question about timeliness or  
17 recovery and the company's overall business risk,  
18 because I really -- I know enough about business risk  
19 to know that I really know very little about the  
20 concept of business risk

21 Q. Okay. I understand you're not a policy  
22 witness, and I'm not asking you about all the  
23 company's business risk. I'm simply referring to  
24 business risk associated with recovery of capital  
25 costs. If the company gets to recover them on a more

1 accelerated basis, would you agree with me that that  
2 would reduce the company's business risk associated  
3 with recovery of those costs?

4 A. Well, as a non-expert in risk, I would  
5 certainly say that sooner is better than later.

6 Q. Thank you. Now, do you know what level  
7 of capital investment the company makes today to  
8 maintain the reliability of the distribution system?

9 A. No.

10 Q. Do you know if the level of capital  
11 spending for maintaining the reliability of  
12 distribution system has changed since the last  
13 distribution rate case?

14 A. I don't know.

15 Q. Is the company claiming in this  
16 proceeding that relying on distribution rates to  
17 recover costs of capital investment are insufficient  
18 to maintain the level of capital spending necessary  
19 to maintain the reliability of the distribution  
20 system?

21 MS. KINGERY: Your Honor, I apologize,  
22 but I have to object again. This witness is not here  
23 to testify about rider DCI. Ms. Laub was here. She  
24 testified about this rider. Mr. Wathen has done so.  
25 Mr. Arnold will be on the stand whenever we get to

1 him. These are the appropriate witnesses for these  
2 questions, not Mr. Ziolkowski.

3 MR. SERIO: Your Honor, rider DCI is  
4 throughout his testimony, and we did ask the  
5 questions of Ms. Laub. We will ask the questions of  
6 Mr. Arnold. But to the extent that he's a witness  
7 testifying and supporting the capital investment  
8 rider, I think I have the opportunity to explore his  
9 knowledge regarding the capital investment rider.

10 EXAMINER WALSTRA: I'm going to allow the  
11 question.

12 A. I was not involved with any discussions,  
13 any analyses regarding rider DCI. I am not aware of  
14 the company's capital investment in distribution or  
15 any changes. So I really know little to nothing  
16 about rider DCI.

17 Q. Do you have any knowledge regarding  
18 customer expectations regarding service reliability  
19 regarding the DCI rider?

20 A. I'm not aware of any expectations or lack  
21 of expectations. I have not seen anything on that  
22 topic.

23 Q. Do you know what steps Duke takes today  
24 to maintain or improve its distribution system  
25 reliability?

1           A.     Just in the most general terms, I'm aware  
2     that the company has been deploying SmartGRID. But,  
3     once again, I'm not involved with the calculation or  
4     the details associated with the SmartGRID deployment  
5     either.

6           Q.     You indicated that one of your  
7     responsibilities was uncollectible filings.

8           A.     That's correct.

9           Q.     So you're familiar with the company's  
10    purchase of receivables program?

11          A.     Yes, generally, to the extent that they  
12    impact the uncollectible rider.

13          Q.     And would you agree with me that as a  
14    result of the company's POR program, any  
15    uncollectibles associated with shopping customers are  
16    collected from all customers because Duke purchases  
17    receivables at 100 percent from CRES providers,  
18    correct?

19          A.     That's correct.

20          Q.     Now, earlier when you were talking about  
21    one of the other riders with Ms. Bojko and  
22    Ms. Hussey, you indicated that the company wanted to  
23    discontinue the rider because it constituted a  
24    subsidy. Do you recall that?

25               MS. KINGERY: Objection. I don't believe

1 the witness ever said it was a subsidy.

2 EXAMINER WALSTRA: He can clarify.

3 Q. It was with regard to the rider LFA.

4 A. I recall my discussion on rider LFA.

5 Q. And you did refer to it as a subsidy; did  
6 you not?

7 A. I might have used that term, "subsidy."

8 Q. And you indicated it was a subsidy from  
9 lower load factor customers to higher load factor  
10 customers, correct?

11 A. I believe I used that phrase, yes.

12 Q. Okay. When you used the word "subsidy,"  
13 how do you define the word "subsidy"?

14 A. In the context of rates, I define a  
15 subsidy as one class of paying more than they  
16 otherwise might have, and another class of customers  
17 paying less than they otherwise might have paid, and  
18 with the utility being held neutral.

19 Q. Okay. With regard to the purchase of  
20 receivable program and the uncollectibles, is Duke  
21 held neutral?

22 A. Yes.

23 Q. And would you agree with me that all  
24 customers pay the uncollectible costs or the bad debt  
25 costs associated with shopping customers; therefore,

1       they pay more costs than they should, correct?

2             A.     Well, rider UE-GEN, which is what you're  
3       referring to is nonbypassable rider, so all customers  
4       pay for rider UE-GEN. I think that that answers your  
5       question. So all customers pay rider UE-GEN.

6             Q.     But shopping customers don't pay the cost  
7       of bad debt within the rates that they pay to CRES  
8       providers because CRES providers get their bad debt  
9       purchased by the company at 100 percent, correct?

10            A.     I don't know what the components are of  
11       CRES provider offers to their customer. So I don't  
12       know what they include.

13            Q.     You would agree with me that CRES  
14       providers are paid 100 percent for their receivables,  
15       correct?

16            A.     Correct.

17            Q.     So if CRES providers are paid 100 percent  
18       of their receivables, if they were in turn to turn  
19       around and build bad debt into their rates to  
20       customers, they'd be charging those customers twice  
21       for the same component, correct?

22            A.     Well, CRES offers are not regulated  
23       offers. They can do whatever they want. They can  
24       bill whatever they want into their rates, but  
25       customers also don't have to take that price either.

1 So I don't know what CRES providers build into their  
2 rates. So I'm not sure it would be appropriate for  
3 me to say yes or no in response to that.

4 Q. I understand. What I was asking you was  
5 if a CRES gets cost recovery from the company and  
6 also turned around and billed it to its customer,  
7 they would be collecting twice for the bad debt,  
8 correct?

9 MR. OLIKER: Your Honor, I would just  
10 object. I think the witness answered that question.

11 MR. SERIO: I think if you listen to his  
12 answer, he didn't answer the question.

13 EXAMINER WALSTRA: Overruled. You can  
14 answer.

15 A. When we talk about CRES providers  
16 collecting twice for the bad debt, this concept of  
17 collecting really only applies to a regulated tariff  
18 and regulated pricing, in my opinion. CRES providers  
19 can build whatever they want into their rates. So  
20 what it would mean is that they could sharpen their  
21 pencil and lower their rates a little bit more when  
22 they're making their offer to customers, but CRES  
23 providers aren't specifically collecting for anything  
24 in their offers. They're offering a price to their  
25 customers, in my opinion, with the caveat I've never



1 worked for a CRES provider, but I'm talking general  
2 business terms.

3 Q. Okay. Let me change the wording, because  
4 I think you're focusing on the word billing versus  
5 cost. If a CRES provider collects all of its costs  
6 from Duke and then bills a customer for bad debt,  
7 would they in a sense then be getting that bad debt  
8 paid twice?

9 MR. PETRICOFF: Your Honor, at this point  
10 I would like to pose an objection. There's nothing  
11 in this witness's testimony on the purchase of  
12 receivables or CRES contracts or CRES rate design,  
13 and this appears to be just a collateral attack on  
14 purchase of adjustables on a witness who happens to  
15 be handy.

16 EXAMINER WALSTRA: Mr. Serio?

17 MR. SERIO: He's not a handy witness.  
18 He's the uncollectible filing witness, and  
19 uncollectibles are directly impacted by the purchase  
20 of receivables program. So it is in his expertise,  
21 your Honor.

22 MR. PETRICOFF: It may be within his  
23 expertise. It's just not within the scope of his  
24 testimony.

25 EXAMINER WALSTRA: I'm going to allow the

1 question.

2 A. Could you repeat the question?

3 Q. Sure. I'm changing the word to billings.  
4 If CRES gets cost recovery from Duke for bad debt and  
5 then if the CRES bills bad debt to its customer, they  
6 would get collection of the bad debt twice, correct?

7 A. Well --

8 MS. KINGERY: Objection. Assumes facts  
9 not in evidence.

10 MR. SERIO: That's the purpose of a  
11 hypothetical, your Honor.

12 EXAMINER WALSTRA: Overruled.

13 A. In a sense, they would, but CRES offers  
14 are not regulated offers. They could bill whatever  
15 they want, and so it's really -- CRES providers in  
16 theory -- and this is just general business sense,  
17 because, once again, I've never worked for a CRES  
18 provider, but they want to maximize their revenue.  
19 So if they think that they can continue to get full  
20 cost recovery and continue to offer a higher price,  
21 they're going to get the highest price that they can  
22 from their customers. But on the other hand, they  
23 could sharpen their pencil if they wanted to and  
24 reduce it a little bit by the uncollectibles. But  
25 it's up -- CRES providers can offer whatever they

1 want to their customers.

2 Q. Okay. CRES providers can charge whatever  
3 they want to their customers. The pricing of CRES  
4 service is deregulated, correct?

5 A. Yes.

6 Q. But CRES providers get the protection of  
7 regulated service because Duke purchases receivables  
8 at 100 percent, correct?

9 A. I don't know if I would say the term  
10 protection of regulated service, but I'm aware that  
11 CRES providers antidotally like the purchase of  
12 receivables program, because Duke purchases the  
13 receivables at a 0 percent discount.

14 Q. Well, if there's a 0 percent discount,  
15 that means they collect 100 percent, so there's no  
16 risk and that's protected, correct?

17 A. That's correct.

18 Q. Okay. Are you familiar with any other  
19 product that is a deregulated price product that has  
20 guaranteed cost recovery of bad debt?

21 MR. PETRICOFF: Your Honor, at this point  
22 I'd like to renew my objection of this line of  
23 questioning. We are now on to price comparisons on  
24 all products in the deregulated market. That's  
25 pretty far from his testimony.

1 MR. SERIO: Your Honor, he brought in the  
2 fact that he's familiar with regulated versus  
3 deregulated. I'm simply asking him if he's familiar  
4 with any other product where a deregulated pricing  
5 product gets 100 percent cost recovery of bad debt.  
6 I think it's within his expertise.

7 MR. PETRICOFF: Your Honor, anybody who  
8 shops at Starbuck's is familiar with the deregulated  
9 product. This is really far beyond the scope.

10 EXAMINER WALSTRA: We do seem to be  
11 deviating away from what his testimony was even  
12 allowing for broader cross. At this point, I'm going  
13 to sustain. We need to move on.

14 Q. Mr. Ziolkowski, are you familiar with the  
15 amount of bad debt that Duke incurs in a year?

16 A. Although I prepare those filings, I do  
17 not recall the number off the top of my head, and it  
18 certainly could be easily looked up in one of the  
19 most recent UEX filings.

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

21 EXAMINER WALSTRA: You may.

22 MR. SERIO: I'd like to mark for purposes  
23 of identification OCC Exhibit 28, a one-page document  
24 titled OCC Interrogatory 12-345.

25 EXAMINER WALSTRA: Will be so marked.

1 MR. SERIO: 12-345. It's No. 28.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. (By Mr. Serio) Mr. Ziolkowski, you have  
4 in front of you what has been marked as OCC Exhibit  
5 No. 28.

6 A. Yes, I do.

7 Q. And are you familiar with this document?

8 A. Yes.

9 Q. And, in fact, you're the person  
10 identified as responsible for responding to this  
11 interrogatory, correct?

12 A. That's correct.

13 Q. And it requested the most recent 12-month  
14 data regarding the utility's total bad debt expense,  
15 correct?

16 A. Correct.

17 Q. And that total was \$2,154,941 for the 12  
18 months ended March 31st, 2014, for residential  
19 customers, correct?

20 A. Correct.

21 Q. So that's the money that's built into the  
22 company's uncollectible rider.

23 A. Yes, for residential accounts.

24 Q. And that amount includes any of the bad  
25 debt or chargeoffs associated with shopping customers

1       also, correct?

2               A.     Yes.

3               Q.     Do you know what percentage of that  
4       amount would be associated with shopping customers  
5       versus non-shopping customers?

6               A.     I don't have that number offhand.  
7       Possibly it could be estimated through -- well,  
8       actually, and let me make one statement, that this  
9       \$2.15 million is total retail bad debt and that I  
10      believe that that includes both the electric  
11      distribution and, you know, associated with rider  
12      UEED and also the generation piece. So this is not  
13      generation bad debt.

14              Q.     Do you know how much of it is associated  
15      with generation versus how much for retail?

16              A.     That's just ballpark estimate, about 60  
17      percent would be generation related.

18              Q.     Now, you indicated you thought it  
19      included generation. Do you know that for a fact?

20              A.     I don't know that for a fact, but -- in  
21      the way the question is phrased and a response refers  
22      to total retail bad debt and it did not say total  
23      generation-related retail bad debt. So we would have  
24      answered the question exactly as it was phrased.

25              Q.     So if this included generation and 40

1 percent was retail, that would mean roughly maybe  
2 \$900,000 is related to retail bad debt.

3 MS. KINGERY: Objection. Could you  
4 clarify what you mean by retail bad debt there?

5 MR. SERIO: Well, he said 60 percent was  
6 generation; the remaining 40 percent was retail.

7 Q. Correct?

8 A. Well, it's all retail. There's total  
9 retail chargeoffs, but what I'm saying 60 percent of  
10 that number would be generation and 40 percent would  
11 be distribution, non-generation bad debt. So if you  
12 took 60 percent of the 2.15, then that would be an  
13 estimate of the generation-related chargeoffs, bad  
14 debt.

15 Q. So the 40 percent that you're estimating  
16 as distribution related, that would be the bad debt  
17 associated with shopping customers bad debt and also  
18 the bad debt associated with non-shopping customers  
19 who incur bad debt with the company, correct?

20 A. No. The 40 percent I'm discussing is  
21 electric distribution, which is the regulated side of  
22 the business. It is not related to SSO or CRES. The  
23 60 percent number is the CRES/SSO piece of that total  
24 chargeoff.

25 Q. Okay. I had them backwards.

1           A.    Yes.

2           Q.    All right.  So if I took that 60 percent  
3 then and I broke it down by the number of customers  
4 that are shopping versus non-shopping, would that  
5 give me a similar ballpark estimate of how much of  
6 that was associated with CRES or shopping customer  
7 bad debt?

8                   MR. OLIKER:  Objection.  Assumes facts  
9 not in evidence.  There's no demonstration what  
10 portion is related to shopping or non-shopping.

11                   EXAMINER WALSTRA:  Overruled.

12           A.    I believe that if we took switching  
13 percentages, it would give us -- well, actually could  
14 you rephrase the question?

15           Q.    Sure.  If you looked at -- if you looked  
16 at the company's monthly statistics and you looked at  
17 the percentage of residential customers that are  
18 shopping and you took that percentage and applied it  
19 to the dollar amount associated with the 60 percent,  
20 would that give me an estimate of how much bad debt  
21 is associated with shopping customers?

22           A.    That's a methodology that I would use to  
23 estimate it.

24           Q.    Okay.  Thank you.

25                   Now, I had a couple questions about the 5



1 CP method, and the 5 CP method was used by PJM when  
2 you testified in Duke's last ESP proceeding, correct?

3 A. Can you be more specific regarding the  
4 last ESP proceeding?

5 Q. The company's -- the current ESP that's  
6 in place right now, the 11-3549, and you testified in  
7 Duke's ESP II proceeding, correct?

8 A. Yes, I did.

9 Q. And at the time that you testified in  
10 that proceeding, was PJM using the 5 CP methodology?

11 A. I believe they were, but I want to state  
12 that I'm not a PJM expert, and I believe that they  
13 were doing that, yes.

14 Q. And I would be correct that charges from  
15 SSO suppliers are charged to Duke on a per kilowatt  
16 basis and not as a separate capacity or energy  
17 charge, correct?

18 MR. PETRICOFF: Could I have that read  
19 back, please?

20 (Record read.)

21 A. Well, the way he stated that would  
22 actually be incorrect because our SSO auction price  
23 is a dollar per megawatt-hour number, not a kilowatt  
24 or a megawatt number. It's a dollars per  
25 megawatt-hour price, but it is a single price, and

1 the winning bidders in the auction price receive a  
2 single dollar per megawatt price for the term -- for  
3 the duration of that auction product around the  
4 clock.

5 Q. To the extent that the SSO supplier has a  
6 single charge, you don't know how that is broken down  
7 as far as components for the SSO provider, correct?

8 A. You're referring to capacity and energy  
9 specifically?

10 Q. Yes.

11 A. The auction is just for a single price  
12 that contains capacity and energy; however, we do not  
13 know nor from a retail rate making standpoint are we  
14 particularly necessarily concerned with exactly the  
15 capacity price as charged to the auction winners by  
16 PJM.

17 Q. A couple other questions. To the extent  
18 that you're involved with uncollectible filings and  
19 you also handle the gas side of the business, you're  
20 familiar with -- are you also familiar with Duke's  
21 AMRP program on the natural gas side?

22 A. Just in general terms, but I have not  
23 been involved with preparation of the filings, except  
24 on a very peripheral basis. It only impacts things  
25 like that.

1           Q.    To the extent you're familiar with  
2           impacts to the AMRP, are you familiar with the fact  
3           that Duke has an operation and cost savings credit  
4           that's applied to the AMRP on an annual basis?

5                   MS. KINGERY:  Objection, your Honor.  
6           This is entirely irrelevant to our application for  
7           approval of an ESP and this witness has just said  
8           that he does not work on the AMRP and is only  
9           generally familiar with it.

10                   EXAMINER WALSTRA:  Mr. Serio?

11                   MR. SERIO:  He's familiar with the AMRP,  
12           and the AMRP on the gas side is to provide Duke with  
13           accelerated cost recovery of investments for  
14           infrastructure which is similar to the DCI rider on  
15           the electric side.  So I'm exploring if he's familiar  
16           with how they design the gas one versus how they  
17           design the electric one.  I think it's within his  
18           expertise, your Honor.

19                   EXAMINER WALSTRA:  Overruled.

20                   A.    I've never been involved with the  
21           calculation of the ARMP rider, nor have I reviewed  
22           any Commission orders or stipulations related to the  
23           AMRP rider.  Once again, my involvement has been just  
24           very peripheral.  I mentioned the riders that I do  
25           work on previously in my testimony.  So I don't know

1 the answer to your question.

2 MR. SERIO: That's all I have. Thank  
3 you, Mr. Ziolkowski.

4 EXAMINER WALSTRA: Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. K. Boehm:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. On page 3 of your direct testimony, you  
11 have a proposal to eliminate the LFA rider; is that  
12 correct?

13 A. Well, I propose that in my testimony. I  
14 just don't see the reference on page 3.

15 Q. I think I might have gotten the page  
16 number wrong. That's on page 6.

17 Did you do any rate impact analysis to  
18 determine what impact this proposal would have on  
19 customers?

20 A. No. We specifically did not include the  
21 impact of eliminating rider LFA in my Attachment  
22 JEZ-3; however, since January 1st, 2012, on a few  
23 occasions I have prepared a complete data set of all  
24 DS, DP, and TS customers to see what the impact of  
25 rider LFA was on each of those customers. By

1 eliminating rider LFA, the impact on those customers  
2 is exactly equal and opposite to the impact that they  
3 got from implementing rider LFA. So it's two sides  
4 of the same point.

5 Q. Have you reviewed staff witness  
6 Mr. Donlon's testimony?

7 A. Yes, I have.

8 Q. And have you reviewed the rate impact  
9 analysis that he conducted on page 3 of that  
10 testimony?

11 A. I've seen it, but I don't recall it. I  
12 would need to look at it.

13 Q. When you reviewed that, did you identify  
14 any obvious errors in that testimony, or do you have  
15 any reason to doubt the accuracy of his analysis?

16 A. No.

17 Q. I realize you don't have it in front of  
18 you, and I don't have a copy here. On page 3 of that  
19 testimony, he indicates that an 83 percent load  
20 factor TS customer would experience a 15 percent rate  
21 increase due to the elimination of the LFA. Do you  
22 have any reason to doubt that information?

23 A. No.

24 MS. KINGERY: Objection, your Honor. The  
25 witness just said that he's seen it. He doesn't

1 recall it. He doesn't have it in front of him. He  
2 can't be asked whether it looks correct at this  
3 point.

4 MR. K. BOEHM: The witness indicated he  
5 doesn't have any reason to doubt the accuracy of  
6 Mr. Donlon's analysis.

7 EXAMINER WALSTRA: I'm going to allow the  
8 question.

9 A. I do not doubt the accuracy, and I am  
10 aware that some very high load factor customers will  
11 see some fairly substantial increases on their bills,  
12 but that's just indicative in my opinion of the big  
13 decreases that they got starting January 1st, 2012.

14 Q. Assuming that Mr. Donlon's analysis is  
15 correct, an 83 percent load factor TS customer would  
16 experience a 15 percent rate increase due to your  
17 proposal. Would a TS customer with a load factor  
18 higher than 83 percent experience a higher than 15  
19 percent rate increase?

20 A. Yes.

21 Q. Would staff's proposal of phasing down  
22 the LFA rider, would that dull the rate impact to  
23 high load factor customers?

24 A. Yes, it would be, but as I previously  
25 stated, it would also dull the relief that is

1 desperately being sought by the low load factor  
2 customers who are currently paying high bills right  
3 now.

4 Q. Those customers wouldn't receive a rate  
5 increase due to your proposal in this case, correct?

6 A. Are you referring to the low load factor  
7 customers?

8 Q. Yes.

9 A. The low load factor customers, no, they  
10 would see a rate decrease, but they saw a big rate  
11 increase on January 1st, 2012, and these are  
12 important constituents, schools, churches, small  
13 industrials, commercial, and we heard the message  
14 from them. In our opinion rider LFA should just be  
15 let it expire May 31, 2015.

16 Q. Does the concept of gradualism, is that  
17 largely concerned with the rate impact of customers  
18 that will experience a rate increase or customers  
19 experiencing a rate decrease?

20 A. Well, gradualism can be applied in my  
21 opinion however people want to apply it. Generally  
22 utilities are asking for rate increases so the  
23 concept of gradualism mitigates rate increases, but  
24 to the extent a customer already feels like they're  
25 paying way more than they should for no reason, then

1 they don't want gradualism. They want that pain to  
2 go away right now in my opinion.

3 MR. K. BOEHM: Thank you. That's all the  
4 questions I have.

5 EXAMINER WALSTRA: Thank you.

6 Mr. Oliker.

7 MR. OLIKER: Your Honor, I've spoken with  
8 Mr. Petricoff, and we would be touching on  
9 substantially similar issues except Mr. Petricoff has  
10 a lot more cross. I'm of the belief he can cover all  
11 my questions. So would you mind allowing  
12 Mr. Petricoff going first, and if he doesn't cover  
13 them, I'll follow very briefly?

14 EXAMINER WALSTRA: Are there any  
15 objections to that?

16 MS. KINGERY: No objections, your Honor.

17 EXAMINER WALSTRA: We'll probably break  
18 for lunch right around probably 15 minutes because  
19 there's a Commission's meeting that will be going on  
20 at 1:30. So we'll probably go for about 15 minutes  
21 or so.

22 MR. OLIKER: Thank you, your Honor.

23 - - -  
24  
25



## CROSS-EXAMINATION

By Mr. Petricoff:

Q. Good afternoon, Mr. Ziolkowski, almost afternoon. I guess it is afternoon, Mr. Ziolkowski.

First, I just want to go back to a couple questions you answered earlier this morning and ask you about those. Mr. Serio asked you a question about how you would calculate the amount of bad debt that would be attributable to either shopping customers or non-shopping customers. Do you recall that question?

A. Yes.

Q. And I think you indicated that one method would just be to look over what the shopping percentage was and just allocate out using that percentage; is that correct?

A. That's correct, but when I responded earlier, I was really thinking in terms of residential class, which is fairly homogeneous, but I'm not sure I would apply that to a nonresidential class because, for example, currently we have about 80 percent switching based on kWh for nonresidential customers but that still is only 50 percent of the number of customers; whereas, residential, the switching as measured by customer is roughly equal to

1 the switching as measured by kilowatt hours.

2 Q. And then for that method to be accurate,  
3 there's an underlying assumption that basically the  
4 default rate is the same for shopping and nonshopping  
5 customers.

6 A. That simplistic methodology would assume  
7 the default rate would be the same, which once again  
8 works well for residential but not for  
9 nonresidential.

10 Q. Okay. We've had a lot of conversation  
11 about the rider LFA, and unfortunately I'll probably  
12 walk you through that a little bit more. Let's take  
13 it down maybe one degree of granularity. First,  
14 let's talk about the rider itself mechanically. Is  
15 it accurate to say that basically the way rider LFA  
16 works is that all DS, DP, and TS customers pay a  
17 demand rate and all DS, DP, and TS customers then get  
18 a credit back based on the number of kilowatt hours  
19 they use.

20 A. Yes, it's very simple. \$8 per kW or kVA  
21 for the transmission customers of demand charge and  
22 approximately a 12.1 cent for kWh credit, very  
23 simple.

24 Q. And the company is revenue neutral  
25 because it's basically just funds that are being

1 transferred within the DS, DP, and TS classes?

2 A. Well, the company's revenue neutral  
3 because that's what was stipulated and approved by  
4 the Commission in 11-3549. So to the extent that in  
5 any given month there's an imbalance between the  
6 demand charges and the credits, those go into a  
7 regulatory asset or regulatory liability account. So  
8 we're revenue neutral by permission of the  
9 Commission. So that's why we're revenue neutral.

10 But with that stated, could you repeat  
11 your question?

12 Q. No, actually I think you've answered it.  
13 Mechanically it's basically designed that the money  
14 that's going out in credits on a kWh basis is coming  
15 in on a demand fee that's paid by the customers in  
16 those classes.

17 A. That's correct.

18 Q. Okay. And so we were talking before, I  
19 think Mr. Serio -- and this may just be my age  
20 catching up with me. Mr. Serio said that you had  
21 called it a subsidy, but it's really just more of a  
22 transfer payment, correct?

23 A. If we are going to categorize it -- I  
24 like -- that terminology works, transfer payment,  
25 yes.

1           Q.   Well, I'll tell you, as a memory check,  
2   we'll go back and look at the record because I think  
3   I got that from you. I think that's what you called  
4   it.

5                   Now, we're just continuing down at this  
6   level of investigation on how the LFA works. So  
7   since it's only the DS, DP, and TS customers that are  
8   paying in and it's only the DS, DP, and TS customers  
9   who are getting credits out of it, fair to say that  
10  the rider LFA doesn't affect residential and the  
11  small commercial customers?

12           A.   Rider LFA does not affect residential.  
13  It does not affect -- it could affect small  
14  commercial customers to the extent they're served on  
15  rider DS. It only affects customers on rates DS, DP,  
16  and TS.

17           Q.   How many customers all together does the  
18  company have? When I say "the company," Duke Energy  
19  Ohio.

20           A.   Including residential, approximately  
21  700,000.

22           Q.   Okay. And how many DS customers are  
23  there?

24           A.   Approximately 20,000.

25           Q.   And DP?

1           A.    Approximately 300.

2           Q.    And the TS?

3           A.    Approximately 30.

4           Q.    So basically we're looking at about 5  
5 percent of the customers that are affected by rider  
6 LFA.

7           A.    Out of the 700,000 -- is your question is  
8 20 --

9           Q.    20,000 divided by 700,000.

10          A.    700,000, 5 percent, that's probably  
11 approximately the math, yes.

12          Q.    Order of magnitude?

13          A.    But that statistic is somewhat  
14 meaningless because only DS, DP customers are  
15 affected by rider LFA.  Residentials aren't.  So I'm  
16 not sure how that statistic is useful.

17          Q.    Well, we'll see how it shows up in the  
18 briefs, but the point I want to get across is that  
19 this is a very limited rider for a very limited  
20 number of customers.  You'd agree with that?

21          A.    Correct.

22          Q.    Now that we're down in this level of  
23 detail about how the LFA works, fair to say that we  
24 can sort of calculate who the winners and losers are  
25 based on what their load factors are, those who have

1 good load factors are going to get more credits than  
2 they have in demands. Those that have low load  
3 factors are going to pay out more in demand than  
4 they're going to get back in credits; is that  
5 correct?

6 A. The calculation is simple. Any customer  
7 who has a load factor that's above average for the  
8 group of DS, DP, and TS customers will receive a net  
9 credit. If it's below, they'll have a net charge,  
10 and if their load factor is exactly equal to the  
11 average, then they'll be completely held harmless  
12 from rider LFA.

13 Q. And so the rider serves as an incentive  
14 to improve load factor, correct?

15 A. I don't know that. I'm not aware of any  
16 customer that has considered rider LFA to be an  
17 incentive to do anything. It's just a charge that  
18 appeared on their bill January 1st, 2012, or a  
19 credit.

20 Q. Let me look at my clients, University of  
21 Cincinnati and Miami University. If, in fact, they  
22 wanted to reduce their utility bill, then what they  
23 would need to do is to reduce their peak load number,  
24 and if they could reduce their peak load number, they  
25 could get a bigger credit out of the rider LFA.

1           A.     That's correct, yes.

2           Q.     And I guess maybe so I make sure the  
3 record is clean here. And both University of  
4 Cincinnati and Miami University are customers who are  
5 subject to rider LFA.

6           A.     Yes.

7           Q.     And for the universities, the peak load  
8 that they'd be working on would be the PJM 5 CP.

9           A.     Would you restate that question?

10          Q.     Sure. We're talking about a load factor,  
11 so one of the things for calculating a load factor is  
12 you have to know what the demand number is that  
13 you're using in the calculation, and I'm asking you  
14 for the University of Cincinnati, is the demand  
15 number we're looking at their contribution to the PJM  
16 5 CP?

17          A.     Normally when we calculate rider LFA for  
18 most customers is their standard billing demand that  
19 comes out of our billing system. I recall that in  
20 the stipulation in Case No. 11-3549 that there was a  
21 special provision for University of Cincinnati where  
22 the rider LFA demand would be based on their PJM 5 CP  
23 demand.

24          Q.     Okay. And that was part of the  
25 stipulation in the case?

1           A.     In 11-3549, yes.

2           Q.     And if the Commission decides to continue  
3 on with the rider LFA, do you see any reason that  
4 that should be changed?

5           A.     To the extent that the Commission decided  
6 to continue on with our rider, yes. I mean, that's  
7 fine. Our position is that it should just terminate  
8 completely.

9           Q.     So back to the universities then for one  
10 would have -- for all customers, for the  
11 universities, the idea then is in order to get a  
12 positive credit out of the rider LFA, you need to  
13 reduce your 1 CP, if you will, load, and for the  
14 universities you need to reduce your 5 CP load.

15          A.     That's right, but the majority of  
16 customers cannot reduce their demands very well.  
17 Schools, churches, and a lot of smaller industrials  
18 especially, they cannot reduce their demands.  
19 University of Cincinnati has extensive generation. I  
20 believe Miami University does too. And so they can  
21 reduce their demands and take advantage of rider LFA.  
22 But the majority of the customers that are actually  
23 paying the LFA charges do not have the ability to do  
24 so, to reduce their demand.

25          Q.     Well, but in addition to generation, you



1 can also reduce your demand by reducing your  
2 consumption at those peak levels.

3 A. You can, but most small DS customers do  
4 not have the ability to do that, especially schools  
5 and churches. They're restricted to -- car washes,  
6 for example, they're restricted to how and when they  
7 can operate, and they can't shift their operations to  
8 offpeak times.

9 Q. But they may be able to put in  
10 equipment -- well, first of all, they may be able  
11 to -- a small customer may be able to change their  
12 operation so they do reduce their peak; isn't that  
13 true?

14 A. Some, but our experience since  
15 January 1st, 2012, and having seen some formal  
16 complaint cases is that many of these customers  
17 cannot change their operation, and granted, they  
18 could put in more energy-efficient equipment, but  
19 then basically they're in a position of -- energy  
20 efficiency is a good thing so I'm not sure I want to  
21 bring up an argument on that, but these -- all of a  
22 sudden these customers are being forced to install  
23 energy-efficient equipment simply to comply with and  
24 reduce their perceived harm from rider LFA. That's  
25 why, in our opinion, LFA should just expire.

1           Q.    But the company's position is not to  
2   oppose putting in conservation equipment?  Your point  
3   is just that we don't need the extra incentive of  
4   LFA.

5           A.    My point is that customers in my opinion  
6   do not appreciate the extra incentive to install  
7   energy-efficient equipment.

8           Q.    So that may be a task for -- of education  
9   for both the Commission and maybe the trade  
10   associations as well.

11          A.    Was that a question?

12          Q.    That was a question.  We have some  
13   education to do if people don't realize that they can  
14   save money by employing conservation.

15          A.    Maybe that's an argument for another  
16   forum.  I don't know.

17          Q.    That's fine.  I'll take that no further.

18                EXAMINER WALSTRA:  Now, would be a good  
19   time to break for lunch?

20                MR. PETRICOFF:  Yeah, your Honor.  That  
21   takes me through the rider LFA.

22                EXAMINER WALSTRA:  We'll come back at  
23   2:00.  Thank you.

24                (Thereupon, at 12:55 p.m., a lunch recess  
25   was taken.)

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1 Wednesday Afternoon Session,  
2 October 29, 2014.

3 - - -

4 EXAMINER WALSTRA: We'll go back on the  
5 record. Go ahead.

6 MR. PETRICOFF: Thank you, your Honor.

7 - - -

8 JAMES E. ZIOLKOWSKI  
9 being previously duly sworn, as prescribed by law,  
10 was examined and testified further as follows:

11 CROSS-EXAMINATION (Continued)

12 By Mr. Petricoff:

13 Q. Good afternoon, Mr. Ziolkowski.

14 A. Good afternoon.

15 Q. Unfortunately, I did find a couple of  
16 rider LFA questions that I didn't ask you, but we'll  
17 get them out of the way quickly.

18 The first, isn't it true that in your  
19 Exhibit JEZ-3 where you did the typical bill  
20 statements, you did not factor the impact of the  
21 rider LFA in.

22 A. That's correct.

23 EXAMINER WALSTRA: Mr. Petricoff, can you  
24 turn on your microphone?

25 MR. PETRICOFF: I'm sorry.

1 EXAMINER WALSTRA: Thank you.

2 Q. And then second, you said you had taken a  
3 look to see what the impacts are on some of these DS,  
4 DP, and TS customers, and you'd agree with me that  
5 some of them we'll probably see an impact of greater  
6 than 10 percent.

7 A. Yes.

8 Q. And isn't it true that Duke today is  
9 under a statutory obligation to reduce the peak load  
10 on the system?

11 A. That's correct.

12 Q. And, in fact, Duke runs programs for  
13 customers that help them reduce their peak load and  
14 their overall consumption.

15 A. That's correct.

16 Q. And the final question, even though you  
17 and I may disagree on the merits of rider LFA,  
18 wouldn't you agree with me that the determination of  
19 whether to maintain it will be made by the five  
20 Commissioners?

21 A. Yes.

22 Q. Now, I'm done with the LFA questions.  
23 Thank you.

24 We're going to now switch, and I want to  
25 talk to you about rate design in general and then

1 specifically about some of the rate design  
2 adjustments that you have proposed in your testimony  
3 and the company is sponsoring in their application.

4 In terms of the Commission reviewing the  
5 changes that you have made or you are suggesting to  
6 rate design, should the Commission take into  
7 consideration the principle of cost causation? And  
8 by that I mean the rates should be designed so that  
9 customers that create an expense pay that expense.

10 A. I think as a general rule, that is a good  
11 thing that should be taken into account. However,  
12 when changes -- if changes are made to a rate design,  
13 the principle that was previously brought up,  
14 gradualism, should also be taken into account, too.

15 Q. Well, and that's good because actually  
16 that was my third question, but we'll move it up.  
17 When the Commission does review the suggested changes  
18 that you are sponsoring in your testimony, should the  
19 Commission take into account a gradualism? By that I  
20 mean that no customer would see a large or dramatic  
21 increase in their rates.

22 A. As a general rule, through rate design,  
23 and I just want to recognize that that term  
24 gradualism was brought up in our previous discussion  
25 about rider LFA. So I still stick with my previous

1        comments about rider LFA.

2            Q.    I wasn't asking you to renege on that,  
3        but in general, that's something the Commission  
4        should consider when they make their decision on  
5        these rates. And the last one is price transparency.  
6        Should the rates be designed in such a fashion that  
7        the customers understand when they pay the rates what  
8        they're paying for and have the information to adjust  
9        their usage of the service to become more efficient?

10          A.    That's a good thing.

11          Q.    That's a good thing, too. Okay. With  
12        that in mind, I want to now switch and talk to you  
13        about capacity charge. You'll agree with me that  
14        basically if you're going to take electric service,  
15        if you're an end user going to take electric service  
16        in the PJM's market, the 11-state service area,  
17        you're going to have to contribute to capacity  
18        charges.

19          A.    An end-use customer doesn't have to  
20        contribute to capacity charges according to my  
21        understanding. It's whoever is providing capacity or  
22        serving load who owes capacity charges to PJM, but  
23        theoretically, those charges would be reflected in  
24        the final retail rates for customers.

25          Q.    Fair enough. Because I think we do want

1 to present a record here where it's sort of easy to  
2 follow. So let's start with capacity charges. The  
3 PJM interconnection, our regional transmission  
4 organization, charges all load serving entities,  
5 their term for suppliers, a capacity charge for being  
6 on their system; is that correct?

7 A. That's my understanding.

8 Q. And the purpose of this capacity charge  
9 is basically to make a payment to generators to  
10 dedicate their generation to the system.

11 A. That's my understanding.

12 Q. And for this upcoming ESP III period for  
13 Duke, basically the capacity charge is going to be  
14 based on the outcome of the base residual auction  
15 which PJM conducted plus any scaling that may be  
16 necessary for service to the Duke delivery zone.

17 A. Are you referring to our standard service  
18 offer price; is that what you're referring to?

19 Q. No. I'm one level ahead. What I'm  
20 trying to do here is I want to establish where  
21 capacity charges come from, who pays them, and how  
22 they end up in the retail bills. That's where we're  
23 going. This is difficult stuff. So we're going to  
24 break it up and take it slowly.

25 So, first, we're starting with capacity

1 charges, and you agreed with me capacity charges are  
2 something that PJM charges all suppliers on their  
3 system.

4 A. That's my understanding.

5 Q. And that goes to pay the generators to  
6 dedicate their generation into the system.

7 A. Yes.

8 Q. And while we're on that topic, if you put  
9 your generation into the auction and you're selected  
10 to be a server on PJM, then basically when PJM calls  
11 you, you've got to run that unit, and you've got to  
12 supply that power.

13 A. That's my understanding, but I do want to  
14 just reiterate. I'm not really a PJM expert, but  
15 that's my understanding.

16 Q. We're not going to go any deeper than  
17 that.

18 Okay. Now, I want to take the next  
19 thing. We have these PJM charges. Now, I want to  
20 take it down to the next level. So PJM then charges  
21 the load-serving entity these capacity charges, and  
22 then it takes those capacity charges and then with  
23 that it pays the generators, correct?

24 A. I'm aware that PJM charges load-serving  
25 entities capacity charges.



1           Q.     Right. And that would include basically  
2     our competitive retail electric suppliers as well as  
3     the SSO suppliers for the Duke standard service  
4     offer.

5           A.     That's my understanding.

6           Q.     And so those suppliers, be they the SSO  
7     supplier for the standard service offer or the CRES  
8     supplier, have got to work these capacity charges  
9     into the rates that they collect if they're going to  
10    stay in business?

11          A.     Correct.

12          Q.     Now, we're going to switch and just talk  
13    about the standard service offer, standard service  
14    offer customers. Basically Duke Energy Ohio charges  
15    the standard service customer a rate that's  
16    established by the auction for the energy.

17          A.     The result of the auctions that are held  
18    is a blended auction price which is one number for a  
19    fixed period of time, around-the-clock price,  
20    currently about \$53 per megawatt-hour around the  
21    clock, but we do not charge our retail customers that  
22    exact price of \$53 per megawatt-hour. We convert  
23    that price into retail rates that appear on rider RC  
24    and rider RE.

25          Q.     Okay. And but that combined price that

1 you're paying the suppliers, the suppliers have  
2 included in that price what they have paid PJM for  
3 capacity.

4 A. Well, I would presume so, but I don't  
5 know that, because as we discussed earlier with one  
6 of the parties here, suppliers can price whatever  
7 they want. They don't have to include anything.  
8 They include everything or nothing. It's their  
9 choice.

10 Q. But the mere fact that you are charged --  
11 the mere fact that -- when I say you are charged, the  
12 mere fact that Duke pays the SSO supplier a uniform  
13 price per megawatt-hour doesn't mean that there isn't  
14 a capacity component in that price.

15 A. I agree.

16 Q. And, in fact, no supplier is going to  
17 stay in business if they don't cover all of their  
18 component costs.

19 A. Correct, and have a little profit on top  
20 of that.

21 Q. That's right. And the same way that  
22 when we set utility rates, we give a return for the  
23 investment that's been made.

24 A. Yes.

25 Q. Okay. Now, we're to the point where Duke

1 Energy Ohio has made the payment to the suppliers,  
2 and now, they've got to turn around and collect the  
3 money from the individual customers, and basically  
4 there is a demand component that's in those rates for  
5 the DS, DP, and TS customers, correct?

6 A. Rider RC, which recovers a portion of the  
7 auction cost does contain currently demand charges  
8 for rates DS, DP, and TS.

9 MR. PETRICOFF: Your Honor, at this time  
10 I'd like to have an exhibit marked. I think we're at  
11 RESA No. 2.

12 EXAMINER WALSTRA: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 EXAMINER WALSTRA: Do we have another  
15 exhibit?

16 MR. PETRICOFF: I thought on  
17 cross-examination I had a RESA 1.

18 MR. HART: There is.

19 MR. PETRICOFF: Subject to check, RESA  
20 No. 1, and if there isn't a RESA No. 1, we can always  
21 come back and change this one and make it RESA No. 1.

22 Q. (By Mr. Petricoff) Mr. Ziolkowski, have  
23 you ever seen RESA Exhibit 2 before?

24 A. Yes.

25 Q. And can you tell me what it is?

1           A.     This looks like one of the pages from  
2     Attachment B to the stipulation in Case No.  
3     11-3549-EL-SSO.

4           Q.     That is correct. And the purpose of this  
5     exhibit was to explain how the RC charge was going to  
6     be allocated to the customers who were taking SSO  
7     service, correct?

8           A.     Correct.

9           Q.     And it still does serve that function?

10          A.     We still use that as a template in our  
11     current RC and RE calculations.

12          Q.     And if you could just very briefly, today  
13     how is the capacity charge for the TS -- I'm sorry,  
14     DS, DP, and TS customer, SSO customer calculated,  
15     just the very high level?

16          A.     Well, very high level, note 1 -- footnote  
17     1 says that first the total capacity costs, which is  
18     the total expected demand times the RPM price, the  
19     final zone of capacity price is calculated to figure  
20     out how many total dollars of capacity costs there  
21     would be in the footprint in Duke Energy Ohio service  
22     territory. Then those dollars are allocated  
23     according to note 1 here which says first total  
24     amount is allocated to DP and TS based on 1 CP and  
25     all other -- then costs for other classes are based

1 on kWh. So that methodology was also agreed to on  
2 the stipulation.

3 Q. When we say 1 CP, we're talking about the  
4 top coincidental peak from the customer.

5 A. Correct.

6 Q. Okay. Now, the company's making in their  
7 application proposal to change this method and to  
8 apply a 5 CP system that is based on the 5  
9 coincidental peaks of PJM.

10 A. Correct.

11 Q. And why are you making that change?

12 A. Because the company felt and I felt it  
13 was reasonable. Auction winners, as we noted  
14 earlier, are required to pay PJM capacity costs, and  
15 their capacity costs are going to generally be based  
16 on 5 CP through a 5 CP allocation methodology, and,  
17 therefore, even though I acknowledge it's not  
18 identical, therefore, we proposed to use a similar  
19 process in allocating costs here on this schedule  
20 that's in front of me.

21 And so that's why. We just felt it was a  
22 reasonable thing. But it is not identical to exactly  
23 how a CRES provider might purchase capacity or be  
24 charged for capacity from PJM.

25 Q. Okay. Let's go back and fill in. First,

1     when you said it's not exactly how a CRES provider  
2     would do it, what is your understanding of how a CRES  
3     provider would do it?

4             A.     My understanding is that a CRES provider  
5     would get charged for capacity from PJM based upon  
6     what all -- when PJM looks at all that CRES  
7     provider's customers' load, then the charges of PJM  
8     would be based on the aggregate load of that CRES  
9     provider and there's going to be some -- it's going  
10    to be a mix of customers. There's going to be a lot  
11    of demand diversity associated with those customers.

12            Q.     But couldn't the CRES basically -- right  
13    now -- let's restrict our conversation to just DS,  
14    DP, and TS customers, just the big accounts, because  
15    we may come up to something a bit different when we  
16    get to the residential customers, but for the larger,  
17    for the larger customers, a CRES would certainly be  
18    able, if they were getting integral meter readings,  
19    to basically charge the customer based on exactly  
20    what their contribution was to the 5 CP.

21            A.     Oh, I agree with you.

22            Q.     And if we were really following those  
23    principles of cost causation and price transparency,  
24    that would be the way to do it, to just charge for  
25    capacity what PJM was charging for capacity to serve

1       that customer? That would be the ideal, wouldn't it?

2               A.     In an ideal world, which does not exist  
3       today, I agree.

4               Q.     We'll stipulate we're not living in the  
5       ideal world.

6               A.     Correct.

7               Q.     Go on.

8               A.     That's all. I agree.

9               Q.     In the ideal world, that would work.

10              Well, let's see how close we are to the  
11     ideal world. At the moment, are all the -- do all  
12     the TS customers have integral meters?

13              A.     Yes.

14              Q.     And they're really watching their power  
15     use on an hourly basis, or could be watching their  
16     power usage on an hourly basis.

17              A.     I would agree that they all could be, and  
18     I would say that most are, but I'm not willing to say  
19     that all are.

20              Q.     Do you know whether my client, the  
21     University of Cincinnati, has a small team of  
22     graduate students that spend their day watching the  
23     hourly peaks?

24              A.     I don't know that, but it would not  
25     surprise me.

1           Q.    And the reason, of course, is because  
2           they can -- if you are a customer of that size, you  
3           might be able to do things to control that peak and  
4           lower your cost.

5           A.    (Witness nods head.)

6           Q.    When I say lower the cost, I mean lower  
7           the cost PJM is going to charge for capacity.

8                   MR. PETRICOFF:  Let the record reflect he  
9           was shaking his head.

10          Q.    You affirmed that last statement,  
11          correct?

12          A.    Yes.

13          Q.    Nodding in affirmation.

14                   Okay.  So we're off -- now, let's talk  
15          about -- we've got 300 DP customers, right --

16          A.    Yes.

17          Q.    -- roughly?  Do they fall in the same  
18          category?  Do they have integral meters and do a lot  
19          of them watch their usage and control it?

20          A.    Yes.

21          Q.    Now, we get down to the DS.  Do all the  
22          DS meters currently in Duke have integral meters?

23          A.    My understanding is no, they do not all  
24          have them.

25          Q.    Do you know whether when the rollout of



1 the 700,000 smart meters are complete, whether all  
2 the DS customers will have integral meters?

3 A. My understanding, and I'm not an expert  
4 on the SmartGRID rollout is that all customers will  
5 have smart meters eventually, or the vast majority of  
6 them.

7 Q. Okay. So in some time when the rollout  
8 is complete, the data would be available so that  
9 every customer could know what their peak usage is  
10 and if they cared to, could take steps to control it?

11 A. Well, the data is there with an integral  
12 meter, but the second part of your question would be  
13 available and I think this gets to the heart of some  
14 of the other testimony, I think, by Company Witness  
15 Dan Jones about the availability and the ability to  
16 transmit or provide that data to various parties, and  
17 that's beyond my knowledge.

18 Q. So let's go back and we'll just -- let's  
19 see what we can agree to on the high level. And on  
20 the high level, we've agreed that using principles of  
21 cost causation and price transparency, it would be  
22 ideal to give everybody their exact PJM expense and  
23 show them what they're using. It appears that that's  
24 correct, do you agree?

25 A. As a general principal, all things being

1 equal, if there's low or no cost, more is better than  
2 less.

3 Q. And so we have that as the goal. We are  
4 going to have the meters that are actually going to  
5 provide the integral data when the rollout is  
6 complete, correct?

7 A. Would you rephrase that?

8 Q. Yes. When everybody gets a smart meter,  
9 then basically we'll be able -- we will be able to  
10 track usage on an hourly basis by meter, correct?

11 A. The best I can say is when everybody has  
12 a smart meter, everybody will have a smart meter, but  
13 I am not really the right person to talk about who  
14 can get what data or who can track what data. That's  
15 really beyond the scope of my testimony.

16 Q. But just in finaling down then, at the  
17 moment you are aware that to the degree that we are  
18 facing a bottleneck, if you will, it's in the IT  
19 section. It's taking that information and converting  
20 that into billing, that's where the problem lies.

21 A. Once again, that's not an area that I  
22 normally work with, and so any response I give would  
23 be based simply on testimony that I heard from Dan  
24 Jones.

25 Q. Okay. Well, let's go back. Now, we're

1 going back to your proposal now. We've left the  
2 ideal, and we're back to what we have proposed. And  
3 so the first step is you're proposing to allocate on  
4 a 5 CP basis to each class?

5 A. Correct.

6 Q. And then how are we going to allocate out  
7 from the class to the individual customer? And at  
8 this point, I'm going to let you talk about all  
9 customers, not just the large ones.

10 A. The way we've done it during ESP II is  
11 once dollars have been allocated to each class,  
12 dollars are then allocated to each step within the  
13 base rates, each demand step, each kWh step within  
14 the tariff sheets based on the revenues that were  
15 previously collected in ESP I for base generation.  
16 And we did that simply for consistency, gradualism,  
17 and to not cause bill swings simply due to a change  
18 in rate design.

19 Q. Thank you. For the smaller customers,  
20 the residential customers, and the -- and the small  
21 commercial customers, the allocation of these  
22 capacity costs are going to be done on a kWh basis,  
23 correct?

24 A. Are you talking about in our proposed?

25 Q. Yes, in your proposed.

1           A.     Allocation of capacity costs would be  
2     based on each rate class's contribution in a 5 CP,  
3     PJM 5 CP contribution. So that's how the total  
4     capacity dollars would be allocated to each rate  
5     class, to each rate.

6           Q.     Okay. Thank you. Now, I want to take it  
7     one step down. So residential class gets -- let's  
8     say it's \$100, just to make an easy example. Their  
9     allocated cost from the 5 PC is \$100. They have  
10    100-kilowatt hours, therefore, the charge then would  
11    be a dollar a kilowatt hour, and I as a customer if I  
12    use the kilowatt hour would be charged a dollar? It  
13    would just be a step down in that fashion?

14          A.     We're proposing to continue the  
15    current -- once we've allocated dollars to each rate  
16    class using the PJM 5 CP, then we would allocate  
17    dollars and design the rates for each step in the  
18    tariff in a manner consistent with how we've been  
19    doing it during the current ESP.

20          Q.     Okay. So we're going back to RESA  
21    Exhibit No. 2 in terms of how the cost is then broken  
22    out from the class to the individual customer.

23          A.     Yes.

24          Q.     Now, I want to focus in on the larger  
25    customers, the DS, DP, and TS customers. Under the

1 current method that they have, they are charged part  
2 of their capacity as a demand charge. Now, you're  
3 doing away with that, aren't you?

4 A. Yes, we are.

5 Q. Okay. What are we going to do then  
6 for -- once we have the dollars allocated using the 5  
7 PC to the class, how is the DP, DS, and TS classes  
8 going to have those capacity charges allocated to  
9 them?

10 A. Rider RC recovers the capacity piece that  
11 we've calculated using this schedule that you  
12 presented. So rider RC recovers those costs. And as  
13 you mentioned for the three demand rates, DS, DP, and  
14 TS, those retail tariffs contain two steps of demand  
15 charges and two steps of per kWh charges consistent  
16 with how tariffs have been -- the tariffs have looked  
17 for many years.

18 We're proposing to revise that tariff  
19 structure from a demand and energy rate and instead  
20 replace those two demand charges and two kWh charges  
21 with four load factor based kWh charges. Those four  
22 kWh charges are designed and set at levels such that  
23 for any given load factor except for the very lowest  
24 load factors, for any given load factor, the end  
25 result charge per kWh will be very close to the

1 charge per kWh that results under the current tariff  
2 structure.

3 We feel that this is a very nice way of  
4 calculating the capacity charges. We still provide  
5 the same benefits to high load factor customers that  
6 they enjoy now, yet this new structure will protect  
7 very low load factor customers from the high -- very  
8 high average rates that result when you combine kW  
9 and kWh charges in the same calculation.

10 Q. Thank you. That's a good overview.

11 Let's deal with that first assumption,  
12 and that is is there a correlation between load  
13 factor and what the contribution is to the PJM 5 CP?

14 A. In my opinion, I think there is somewhat  
15 of a correlation. It may be weak, but I do think  
16 that the higher load factor -- the higher the load  
17 factor, the more correlation there is.

18 Q. Let's examine the weakness in the  
19 correlation. If I'm a 100 percent load factor  
20 customer, then we know by definition that come the 5  
21 PC hours, I'm going to be running full bore, and,  
22 therefore, I'm going to get -- I'm going to cause an  
23 expense from PJM for all the capacity that I use  
24 during their 5 PCs, correct?

25 A. Yes.

1           Q.    You might remember this from our  
2           deposition.  Let me use the example of the sleep  
3           doctors, and by way of background, those are  
4           customers of one of the RESA clients because the  
5           world is much more imaginative than I am.  These are  
6           doctors who basically run a sleep research lab.  They  
7           open at 6:00 p.m; they close at 6:00 a.m.  They are  
8           off during all of the high peak hours because they're  
9           not there.

10                You would agree with me that the sleep  
11           doctors probably would get a capacity cost if you  
12           were doing it strictly on price causation of zero  
13           because they're not going to contribute anything.

14           A.    I agree.

15           Q.    Okay.  But if we do this on load factor,  
16           since they're closed half the day, the best they  
17           could do is maybe a 50 percent load factor and  
18           probably worse than that if they have any equipment  
19           that's spikey.

20           A.    That's probably correct.

21           Q.    So that's why you said it's a weak  
22           correlation between load factor and cost causation on  
23           a 5 CP PJM system.

24           A.    Yes.

25           Q.    Okay.  Well, let's move on to another

1 topic, and this is my last topic. I want to talk to  
2 you about the net metering tariff. You are  
3 sponsoring amendments to the net metering tariff,  
4 correct?

5 A. Yes.

6 Q. I'm going to need a minute to go -- okay.  
7 And that is rider NM. And I think earlier today you  
8 indicated that the purpose of this amendment was to  
9 try to -- to bring the tariff -- to try to supply  
10 additional tariff language so that the tariff  
11 reflects what the current practice is; is that a fair  
12 summary?

13 A. That's correct.

14 Q. And the language you're adding is  
15 basically saying that we're going to do all the  
16 calculations based upon the net meter reading itself.

17 A. What page are you on?

18 Q. I am on the rider NM which is, you know,  
19 your attachment JEZ-2, page 48 of 122.

20 A. I'm there.

21 Q. Okay. Well, let me give you a second  
22 to -- take a look at the language. And then after  
23 you do that, if you could, because you've done such a  
24 great job up until now, give me a brief explanation  
25 of how the meter is going to be used, our net meter



1 is going to be used, to calculate the billing charge.

2 A. Net metering is a pretty complex topic,  
3 but I will try to do this simply. There's two  
4 general categories, situations that occur in net  
5 metering. For an individual customer that's on net  
6 metering, they can either be a net purchaser of power  
7 during the month or a net generator of power during  
8 the month. If they are a net purchaser of power,  
9 that means that they still buy more power from Duke  
10 than they actually generated during the month and so  
11 that's why they're a net purchaser.

12 In that situation, billing is done  
13 essentially how it is done now. However, this tariff  
14 is simply codifying that for a customer that's on a  
15 demand rate DS, DP, or TS, the kW charge will be  
16 based on the inflow power, the inflow channel. These  
17 meters have multiple channels. Channel 1 measures  
18 power from the customer to the utility. Channel 3  
19 measures power from the utility to the customer.

20 So what we are saying is we want to  
21 codify, which is consistent how our current practice  
22 is, that for a net purchaser of power during the  
23 month, the kWh charges will be based on the net kWh  
24 and there shouldn't be any question about that.

25 However, the Ohio laws and rules do not get down to

1 the level of detail about demand charges, and we want  
2 to codify in the tariff that if they're a net  
3 purchaser, the demand charges will be based on  
4 channel 1, which is power, the demand reading from  
5 Duke to the customer. So that's the first situation.

6 Q. Let me stop there. Now, net metering is  
7 open for both shopping and nonshopping customers.

8 A. Yes.

9 Q. Okay. So let's take a look at -- for the  
10 nonshopping customer at the moment. When we look at  
11 the RC charge, we just got done going through how  
12 we're going to redo the RC charge. Are we going to  
13 do the RC charge based on the allocation out of the  
14 class, or are we going to do the RC charge based on  
15 what their actual demand was?

16 A. For all customers, RC charges are based  
17 on the billed demand as metered by Duke, which is the  
18 same practice that the company has for many years.  
19 There's no change to our calculation of billing  
20 determinants.

21 Q. Let me go back. So basically it's going  
22 to be an individual -- you're going to use the  
23 individual 1 PC method for doing the demonstrated and  
24 you're going to do it monthly?

25 A. Correct. I think a better term would be

1       it's a noncoincident demand, the monthly billing  
2       demand.

3               Q.     The monthly demand.   Okay.   Now, I  
4       understand.   And that's what this new language is  
5       trying to capture?

6               A.     Correct.   We just -- the purpose of this  
7       language is to clarify that channel -- if they're a  
8       net purchaser will use the channel 1 demand.   Without  
9       any guidance, well -- we need some guidance and we've  
10      done what we think is the right thing to do and, now,  
11      we want to put it to the tariff and we can point to  
12      the tariff and everybody can read the tariff and say  
13      this is how it should be done.   As I mentioned, that  
14      metering is relatively new and it's getting bigger  
15      and bigger and we're just looking for some -- we want  
16      to provide this clarification.

17              Q.     Okay.   Well, I think I understand now.  
18      One other unrelated item.   At the beginning of the  
19      tariff, we have the availability section, and you are  
20      not proposing any changes to that, but basically, as  
21      you can see, it's open to solar and wind and biomass  
22      and landfill gas and hydropower, your alternative  
23      energy sources, if you will.

24                     Since this tariff was put into effect,  
25      the General Assembly has added combined heat and

1 power to the list of alternative energy sources.  
2 What would be the company's view of expanding the  
3 availability to include combined heat and power if  
4 the owner had a renewable energy certificate from the  
5 Commission?

6 A. I don't know. I don't think that I can  
7 answer that question here. I think that that's a  
8 bigger question that should be brought up to  
9 management at the company.

10 MR. PETRICOFF: Okay. Fair enough. I  
11 have no further questions.

12 Thank you very much, Mr. Ziolkowski.

13 EXAMINER WALSTRA: Thank you. Did he  
14 cover everything for you?

15 MR. OLIKER: Close. Just a few  
16 questions, your Honor.

17 EXAMINER WALSTRA: Go ahead.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Oliker:

21 Q. Mr. Ziolkowski, my name is Joe Oliker. I  
22 represent IGS Energy. Just a few questions to follow  
23 up on a few areas Mr. Petricoff talked about with  
24 you.

25 Now, just to be clear, you're allocating

1 capacity in two different ways for the SSO,  
2 residential customers and switch customers; is that  
3 correct?

4 Maybe I can step back. You have a  
5 process for allocating capacity to the SSO, but it  
6 deviates from the way the 5 PLCs would be allocated  
7 for an individual customer; is that correct?

8 A. Well, it's correct to the extent it's  
9 different really from a CRES provider, and I want to  
10 emphasize that, first off, we don't make any -- Duke  
11 Ohio has no earnings related to our SSO offering, and  
12 we are putting forth this proposal for recovering the  
13 SSO auction prices as a reasonable and consistent  
14 methodology consistent with the current practice, but  
15 I will -- there are obviously differences between  
16 what we are doing and what a CRES provider does  
17 regarding PJM capacity costs.

18 Q. And that's what I'm trying to understand  
19 because there's an allocation capacity cost for the  
20 residential class, but let's say we took two  
21 identical customers, one was on the SSO and one was  
22 taking service from a CRES provider. Would the  
23 customer on the SSO be paying for a smaller portion  
24 of capacity than the customer being served by the  
25 CRES provider?

1           A.    I don't know that we can answer that.  
2    I'd be surprised if those two numbers were exactly  
3    the same.

4           Q.    Okay.  And that's fair enough.

5                   Assuming the CRES provider is serving a  
6    shopping customer, you would agree that you profile  
7    the peak load contribution of that residential  
8    customer, and then you report that information, Duke  
9    does, to PJM?

10          A.    Duke does report some data to PJM, but I  
11    don't get involved with that, so I'm not sure that I  
12    can actually answer that question.

13          Q.    Okay.  And I want -- I definitely want  
14    the record to be clear, so to the extent you don't  
15    understand what I'm asking, then don't speculate, but  
16    I'm just trying to see if I can drill this down.

17                   Duke is reporting information to PJM  
18    regarding a customer's capacity contribution and then  
19    PJM is billing the CRES provider, correct?

20          A.    I don't even know that Duke reports  
21    individual customers as the contributions to PJM.  My  
22    understanding is that Duke occasionally, or maybe  
23    it's daily, but I'm not sure, reports aggregate load  
24    information to PJM, but perhaps divided into SSO and  
25    nonshopper -- shoppers and nonshoppers but even there

1 I'm not sure -- so maybe I shouldn't even go any  
2 further because I really don't know.

3 Q. Okay. If you don't know, that's always  
4 the right answer.

5 If you know, still need to know, does  
6 Duke calculate the capacity contribution for all  
7 residential customers as being the same amount?

8 A. For what purpose?

9 Q. For -- assume IGS Energy serves a  
10 shopping customer and then assume, for example --  
11 let's take a step back.

12 You would agree that the five peak loads  
13 happen in June, July?

14 A. In the summer, during the hot months.

15 Q. It's usually between 4:00 and 6:00,  
16 right?

17 A. In the afternoon, yeah.

18 Q. Okay. So assume -- say we've got two  
19 customers, one of them decides to preprogram their  
20 air conditioner not to run between 4:00 and 6:00 in  
21 June and July. And, now, we have another customer  
22 that let's it run full bore. Do you know if there  
23 will be any difference in the amount of capacity  
24 that's assigned to each of those customers?

25 A. By Duke?

1 Q. By Duke or PJM.

2 A. For reporting to PJM?

3 Q. Yes.

4 A. I don't know.

5 Q. That's okay. That's fair enough. But  
6 you would agree that Duke Energy has rolled out  
7 several hundred thousand smart readers, and they've  
8 almost completed that process of having a smart meter  
9 for all their customers.

10 A. That's my understanding.

11 MS. KINGERY: Objection. This is not the  
12 witness to talk about smart meters.

13 EXAMINER WALSTRA: If he knows, he can  
14 answer.

15 A. I'm aware that the company has  
16 substantially completed much of its smart meter  
17 rollout. Beyond that, I don't know any more than the  
18 public does.

19 Q. So you would agree that Duke will  
20 eventually have the data for each hour of usage for  
21 every customer eventually?

22 MS. KINGERY: Objection. The witness  
23 doesn't know anything about SmartGRID. He just said  
24 that.

25 MR. OLIKER: If he doesn't know --



1 EXAMINER WALSTRA: If he doesn't know, he  
2 can answer.

3 A. To the best I can answer that, I'm not  
4 trying to be flippant, but once everybody has a smart  
5 meter, then that's what I can say, is everybody has a  
6 smart meter, and I'm aware that smart meters  
7 typically contain integral data, but I don't know the  
8 availability, accessibility, or transmittability of  
9 that data. That's beyond what I can talk about.

10 Q. And that's okay. I don't want to get  
11 into details how we get that to a CRES provider. I  
12 just want to know at some point you could at least  
13 have the information where you know how much the guy  
14 who ran his air conditioner at full bore contributed  
15 to the 5 PLCs and how much the customer that  
16 preprogrammed their thermostat, how much they  
17 contributed to the 5 PLCs?

18 MS. KINGERY: Objection. The witness  
19 just said he didn't know that kind of information.  
20 He didn't have that level of detail.

21 EXAMINER WALSTRA: Overruled.

22 A. I do feel like we're getting into  
23 speculative areas where I'm simply just giving almost  
24 a lay person's opinion so maybe I should just say I  
25 don't know.

1           Q.    That's fine if you don't, Mr. Ziolkowski.  
2    I don't want to go into that.   Okay.

3                    Just really briefly, you mentioned  
4    earlier that Duke is reporting an aggregate amount to  
5    PJM for capacity for each CRES provider and that  
6    amount was billed to the CRES provider, correct?

7           A.    I don't know what's billed to the CRES  
8    providers by PJM.   I'm aware through the discovery  
9    process and working with some people at Duke Ohio,  
10   that Duke does report load data to PJM for the  
11   customers in our service territory, but beyond that,  
12   I really cannot speak to who's billed what by whom.

13           Q.    Okay.   And this is only if you know.   The  
14   CRES provider, they receive just a bill for their  
15   capacity.   It's total amount for the year, right, for  
16   delivery year?

17                   MS. KINGERY:   Objection.   He doesn't even  
18   know that a bill is sent to the CRES provider.

19           Q.    That's why I prefaced it "if you know."

20           A.    Yeah, and I really don't know.

21                   MR. OLIKER:   Okay.   I have no more  
22   questions right now.

23                   Thank you, Mr. Ziolkowski.

24                   EXAMINER WALSTRA:   Mr. Hart?

25                                   - - -

CROSS-EXAMINATION

By Mr. Hart:

Q. Mr. Ziolkowski, do you have access to Exhibit 10 there, which was the chart that Ms. Laub presented?

MR. HART: Does the company have that?

A. I do not have that.

MR. HART: Could the reporter supply Duke Exhibit 10 to the witness? I just want him to look at it.

Q. I believe this was Attachment PAL-1. Is that what you have there?

A. Yes.

Q. Okay. And I believe you were here for Ms. Laub's testimony, correct?

A. Yes.

Q. And she indicated that you had assisted her with this calculation, correct?

A. Yes.

Q. Okay. I believe you testified today that you provided the fill-in determinant information.

A. Yes.

Q. Would that be columns D and F?

1 A. Yes.

2 Q. Which are shown in blue on the copy I  
3 have. And then I assume you assisted with the  
4 calculation that extends out to the right of column  
5 F.

6 A. Yes.

7 Q. So you understand the mechanics of this  
8 sheet, right?

9 A. Yes.

10 Q. Okay. Now, if we look at the top four  
11 lines, which are "residential," "small commercial,"  
12 "DS," and "DP," am I correct that they represent 97  
13 percent of distribution revenues?

14 A. I don't have a calculator in front of me,  
15 but that looks reasonable.

16 Q. If we were to add up the columns, the  
17 numbers in column B, we could get to that answer,  
18 right?

19 A. Yes.

20 Q. So what we see here is the base revenue  
21 for all distribution is \$404 million and that which  
22 is allocated to capital component is 240 million,  
23 approximately, correct?

24 A. Yes.

25 Q. And that represents about 59 percent of

1 the distribution revenues as attributable to capital  
2 cost, subject to check. It's 240 divided by 404,  
3 right?

4 A. Correct, 240 divided by 404, and it's  
5 the -- the schedule here says track components and it  
6 doesn't say capital, so. Since I didn't prepare and  
7 I didn't prepare the filing or the DCI, I didn't  
8 really work on it other than the billing  
9 determinants.

10 Q. Okay.

11 A. It says track components are not capital  
12 costs.

13 Q. Fair enough. Do you understand that the  
14 purpose of DCI is to capture incremental capital  
15 expense until the next rate case?

16 A. That's my understanding.

17 Q. Okay. And if you look at column H which  
18 totals \$260 million, that, I understand, is what  
19 Ms. Laub calculated to be the revenue requirement for  
20 the same track components, current dollars; is that  
21 correct?

22 A. Yes.

23 Q. Now, column G, am I correct, represents  
24 revenue at base rates with the billing determinants  
25 that were in effect year-end 2013?

1           A.    Yes.

2           Q.    And that would indicate that base rates  
3           at that point in time with those billing determinants  
4           were covering the revenue requirement for the track  
5           components, correct?

6                   MS. KINGERY:  Your Honor, I'm going to  
7           object here.  I haven't actually spoken with the  
8           witness about where the line is between his work and  
9           Ms. Laub's work but this certainly is Ms. Laub's  
10          schedule, and Mr. Ziolkowski only provided the  
11          billing determinants.  That's what he said.  And,  
12          now, we're going through the meaning of each column.

13                  MR. HART:  Your Honor, he testified he  
14          assisted with the calculation going out to the right  
15          and understood the calculation.  This is all kind of  
16          foundation to get to how that calculation works.

17                  EXAMINER WALSTRA:  I'll overrule.

18           Q.    I understand the mechanics, and the  
19          mechanics are pretty well laid out.  They're in the  
20          column headers.

21           A.    I hesitate since this wasn't in my area  
22          of testimony about drawing conclusions from some of  
23          the numbers that are in here.  That's really  
24          Ms. Laub's area to testify.  So I haven't done any  
25          analysis or even given a lot of thought about it.

1           Q.    That's fair.  Let me try it this way.  
2    You agree according to what she has identified as  
3    track components, the revenue requirement for that  
4    portion is \$240 million.

5           A.    Yes.

6           Q.    Plus a little bit, right?  And the  
7    revenue at current billing determinants at base rates  
8    is a little over \$241 million, right?

9           A.    Correct.

10          Q.    And her testimony was that the company is  
11   seeking an additional 18.7 million, which is shown in  
12   column I?

13          A.    Correct.

14          Q.    Which is really what the basis of her  
15   testimony was, was to develop that number, correct?

16          A.    I'm not sure what the basis of her  
17   testimony was, since it was her testimony, but --

18          Q.    All right.  Now, I think in regard to  
19   certain other riders you were asked about today, you  
20   indicated that the company is indifferent to how a  
21   cost is recovered as long as the company is revenue  
22   neutral; is that a fair statement?

23          A.    I'm not willing to say that the company  
24   is indifferent to how a cost is recovered even if  
25   we're revenue neutral because Duke Energy Ohio

1 doesn't want to have customers with high bills and  
2 low bills simply because of rate structures, rate  
3 designs, and things like that.

4 Q. Okay. I appreciate that answer. Let me  
5 ask this mechanical question since you are a rate  
6 designer. If one -- well, if we took the 18 million,  
7 divide it by the \$241 million, subject to check,  
8 would you accept that 7.8 percent?

9 A. Yes.

10 Q. And that's essentially the rate increase  
11 that rider DCI would attempt to capture as of that  
12 point in time?

13 A. If we were going to calculate a retail  
14 rate, it seems to me that we should take 18 divided  
15 by the base revenue because that's what would  
16 actually appear on a bill. So it would be 18 divided  
17 by 404 instead of 18 divided by 241.

18 Q. Aren't we just tracking the track  
19 components, though?

20 A. Well, the track components from my  
21 reading of this is not what's actually billed.  
22 That's just a piece of our base revenue. So if we  
23 wanted to calculate a rate to apply to a bill or a  
24 percentage on a total bill or on a distribution  
25 charge, it would be 18 divided by 404 and not 18



1 divided by 242.

2 Q. If we did that, we'd get a different  
3 percentage, but it would be some fixed percentage  
4 number, correct?

5 A. Correct.

6 Q. And then if we took that fixed percentage  
7 number and multiplied it times all of the individual  
8 base rates, that would result in an increased amount  
9 of revenue of the \$18 million.

10 A. Correct, and that is a reasonable way to  
11 calculate rates and from sitting in on previous  
12 testimony, I understand that's how AEP does it.

13 Q. Okay. And so that would result in all  
14 customer classes getting exactly the same percentage  
15 rate increase?

16 MS. KINGERY: Your Honor, I'd like to  
17 renew my objection. We're going -- you continue to  
18 try to evaluate these numbers, and the witness is  
19 responding with things like, "well, if I'm reading  
20 the schedule," "if I read the schedule, that's what  
21 it looks like." He's not the witness for this  
22 particular rider.

23 EXAMINER WALSTRA: I'm going to overrule  
24 right now. If he knows what he's talking about.

25 MR. HART: Could you read back the

1 question and whether or not there was an answer.

2 (Record read.)

3 MR. HART: Thank you.

4 Q. Now, Mr. Ziolkowski, I want to focus on  
5 the billing determinants that you provided. If we  
6 look at line 1, the residential commercial class,  
7 would you agree the number, and I assume this is the  
8 number of bills issued during the year, went up  
9 slightly?

10 A. Yes.

11 Q. And if we look at small commercial, the  
12 DM class, that's also true, they went up slightly?

13 A. Yes.

14 Q. Now, the next two classes, DS and DP, are  
15 billed according to kilowatt, correct?

16 A. Yes.

17 Q. And for that billing determinant, the DS  
18 class went up about 464,000 kilowatts, correct?

19 A. Correct.

20 Q. Which is a little over 2 percent. And  
21 for the DP class, the billing determinants went down  
22 by about 332,000 kilowatts, correct?

23 A. Correct.

24 Q. And if we did a percentage, subject to  
25 check, would you agree that's a little over 6 percent

1 decrease?

2 A. That sounds reasonable.

3 Q. Okay. Now, the effect of the mechanics  
4 of this calculation would result in that DP class  
5 having a rate increase of about 15 percent, correct?  
6 And how I'm getting there is comparing the 42-cent  
7 rider to the \$2.70 base bill in column E.

8 A. Column E does say "base per bill." It's  
9 the rate for the track components. It's not the  
10 actual base rate that's in the tariff. It's just a  
11 portion of the tariff base rate.

12 Q. Okay. Do you understand that the rate  
13 for track components shown in column E is a fixed  
14 percentage of the base rate?

15 A. Could you restate that again?

16 Q. The rate for track components shown in  
17 column E is a fixed percentage of the base rate for  
18 each of these customer classes.

19 A. I see how the math flows through for  
20 column A, B, C, D to E, so yes.

21 Q. Okay. So while the numbers may be  
22 different, the relative magnitude of increases to the  
23 different customer classes would be the same whether  
24 we looked at the track component piece or the entire  
25 base rate piece.

1           A.    I think that's correct.

2           Q.    Now, just as a hypothetical, if the DP  
3 customer class were to change such as there was only  
4 one customer left there, would that mean following  
5 the mechanics of this calculation, that that one  
6 customer would get a \$2 million rate increase?

7           A.    I don't know the answer to that. My  
8 guess is you would not allow that to happen, or if  
9 that was your client. I don't know.

10          Q.    I'm trying not to let that happen. I'm  
11 asking if this methodology would lead to that result  
12 under those circumstances.

13               MS. KINGERY: And, again, your Honor,  
14 this is not the expert for this particular rider. So  
15 I think it's relatively unfair to expect him to be  
16 able to make an educated guess about what would  
17 happen in that hypothetical situation.

18               EXAMINER WALSTRA: Overruled.

19          Q.    Can you answer?

20          A.    So your question is if there were just  
21 one DP customer left, would they see a \$2 million  
22 increase.

23          Q.    Correct.

24          A.    I mean, I think that that's according to  
25 the schedule. Assuming that there are no adjustments

1 to the schedule over time, I think that's what  
2 would -- that would result.

3 Q. Okay. Thank you.

4 Now, I want to turn your attention to  
5 Duke Exhibit 20, which I think you sponsor. Do you  
6 have that?

7 (Discussion off the record.)

8 Q. Have you found that yet?

9 A. Yes. This is my supplemental testimony.

10 Q. Right. This, I believe, was docketed  
11 with the Commission on July 10th; is that right?

12 A. Yes.

13 Q. And as I understand it, when you filed  
14 your original testimony with the clean and the markup  
15 of the tariff, there were no changes to rider BDP; is  
16 that right?

17 A. As filed, we found that -- in our  
18 original filing, we had failed to include the changes  
19 that we had made to rider BDP, and they simply did  
20 not get included with the packet that was filed with  
21 my direct testimony so we did the subsequent filing.  
22 We did not do the -- we made this filing subsequent  
23 to that to correct my testimony because this wasn't  
24 what was -- what was supposed to be filed in the  
25 first place.

1           Q.    Right.  And if we look at I guess it's  
2           the third page or fourth page, I guess, after the  
3           cover letter, you go to two pages, clean tariff, and  
4           then there's the marked-up version of the tariff,  
5           correct?

6           A.    Yes.

7           Q.    And the change that was made, other than  
8           the citing at the bottom, was to eliminate the last  
9           sentence of the first paragraph dealing with  
10          hospitals that are members of the Greater Cincinnati  
11          Health Council, right?

12          A.    Correct.

13          Q.    Am I correct that in the previous two ESP  
14          cases, that Duke agreed that hospitals that are  
15          members of the Greater Cincinnati Health Council  
16          would have an exemption from rider BDP; is that  
17          right?

18          A.    Yes.

19          Q.    And that's why the reference to the  
20          stipulation in case 11-3549, right?

21          A.    Correct.

22          Q.    And so the effect of this change is to  
23          eliminate that exemption in ESP III?

24          A.    Correct.

25          Q.    Now, let's talk about what that means.

1 Under the section of net monthly bill, paragraph 2  
2 says monthly charges will be based on the unbundled  
3 distribution and/or transmission rates of the  
4 customer's most applicable rate schedule. What would  
5 that rate be for a DP customer?

6 A. Well, that would be the distribution  
7 charge that's contained in the rate DP tariff for  
8 their base distribution and certainly flip through  
9 the pages here to --

10 Q. Well, subject to check, would you accept  
11 that's \$4.334 per kilowatt?

12 A. That sounds correct.

13 Q. Okay. Now, you say also there could be a  
14 transmission rate. When would that apply?

15 A. That would apply if the second feed comes  
16 from a different transmission circuit than the first  
17 feed. So capacity has to be reserved on not just one  
18 transmission circuit but on two transmission  
19 circuits.

20 Q. Okay. And, subject to check, would you  
21 accept that the total of the distribution and  
22 transmission rates would be \$5.58 a kilowatt?

23 A. Yes.

24 Q. All right. Now, you said you study large  
25 customer load patterns, correct? You said you had

1 some kind of spreadsheet where you studied customers.

2 A. I think my comment was in referring to  
3 LFA.

4 Q. Yeah, that you tracked who was the winner  
5 and who was the loser in that?

6 A. Yes.

7 Q. So you were kind of familiar with who the  
8 big customers are?

9 A. Yes.

10 Q. And you're familiar with the loads that  
11 hospitals have?

12 A. Yes.

13 Q. And would a typical hospital load be  
14 6,000 kilowatts?

15 A. Yes.

16 Q. Okay. So if we took these rates that you  
17 cited me times that load, would you agree that a  
18 60,00-kilowatt load would incur a charge under rider  
19 BDP for distribution of approximately \$300,000 a  
20 year?

21 A. Yes.

22 Q. And the same load, if it involves  
23 transmission rates, would incur a cost of \$400,000  
24 plus per year?

25 A. That sounds reasonable, yes.



1           Q.    Okay.  And it's Duke's proposal that  
2           those rates go immediately into effect on June 1st of  
3           2015.

4           A.    Well, Duke intends to work with each  
5           customer to develop agreements with each customer but  
6           eventually after June 1st, 2015, then the company  
7           intends to begin putting these rates into effect.

8           Q.    Now, am I correct that the capital and  
9           O&M costs of providing the service that's described  
10          in rider BDP is currently embedded in base rates?

11          A.    Correct.

12          Q.    And Duke, as we've seen from Duke Exhibit  
13          10, under current billing determinants and rates,  
14          Duke is covering its revenue requirement.

15          A.    What exhibit was that?

16          Q.    Duke Exhibit 10, the Laub calculation we  
17          were looking at before.

18          A.    As far as I'm aware, we are recovering  
19          our revenue.

20          Q.    And it's Duke's proposal in this case not  
21          to make any adjustments to base rates, correct?

22                  MS. KINGERY:  Objection, your Honor.  
23          This is obviously not a base rate case.

24                  EXAMINER WALSTRA:  If he knows, he can  
25          answer.

1           A.    Well, this is not a base rate case and  
2           we're not proposing adjustments to base rates.

3           Q.    Isn't that what you testified to on page  
4           22 of your testimony? The question is actually at  
5           the bottom of page 21, and the answer is on top of  
6           page 22.

7           A.    That's what I testified to. The only  
8           changes we're making to the distribution base tariff  
9           sheets is to update the applicable riders section.

10          Q.    So the elimination of the hospital  
11          exemption for rider BDP will all be new revenue to  
12          Duke that's already included in base rate revenue  
13          requirement?

14          A.    Correct.

15          MR. HART: Thank you.

16          EXAMINER WALSTRA: Staff?

17          MR. BEELER: No questions, your Honor.

18          EXAMINER WALSTRA: Duke?

19          MS. KINGERY: Can we have just a moment?

20          EXAMINER WALSTRA: Sure.

21          (Recess taken.)

22          EXAMINER WALSTRA: Redirect?

23          MS. KINGERY: We have nothing, your  
24          Honor.

25          EXAMINER WALSTRA: Thank you.

1                   Thank you for your time.

2                   I guess we'll clear up our witness order  
3 now for the rest of the day. From my understanding,  
4 the plan is for Mr. Jennings to go next?

5                   MS. KINGERY: Yes, your Honor, I believe  
6 so.

7                   EXAMINER WALSTRA: And after that --

8                   MS. KINGERY: We have two other possible  
9 witnesses. There's Mr. Arnold and Mr. Dougherty,  
10 both are present. I think it may depend on what time  
11 we get done with Mr. Jennings.

12                  EXAMINER WALSTRA: Just play it by ear?

13                  MS. KINGERY: Yeah, that seems reasonable  
14 to us.

15                  EXAMINER WALSTRA: All right. Do you  
16 want to move your exhibits?

17                  MS. KINGERY: Yes, your Honor. Thank  
18 you. Duke Energy Ohio would move for the admission  
19 of Duke Energy Ohio Exhibits 18, 19, and 20.

20                  EXAMINER WALSTRA: Are there any  
21 objections?

22                  MR. BERGER: No objection, your Honor.

23                  EXAMINER WALSTRA: The exhibits will be  
24 admitted.

25                  MS. KINGERY: Thank you, your Honor.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 EXAMINER WALSTRA: OCC.

3 MR. SERIO: Thank you, your Honor. OCC  
4 would move OCC Exhibit 28 into the record.

5 EXAMINER WALSTRA: Are there any  
6 objections?

7 With that, it will be admitted.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER WALSTRA: And RESA.

10 MR. PETRICOFF: Yes. RESA moves Exhibit  
11 No. 2 into evidence.

12 EXAMINER WALSTRA: Are there any  
13 objections?

14 MS. KINGERY: No, your Honor.

15 EXAMINER WALSTRA: And that it will be  
16 admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER WALSTRA: Next witness is OCC's.

19 MR. BERGER: Yes, your Honor. I'll call  
20 Mr. Jennings as on cross as to our previous  
21 discussion.

22 MS. SPILLER: Mr. Berger, we can't hear  
23 you.

24 MR. BERGER: Yes. Thank you, your Honor.  
25 At this point we would call Mr. Kenneth Jennings to

1 the stand as on cross as part of OCC's case, and we  
2 would ask that he be presented in the same fashion  
3 that Mr. Brodt was presented.

4 - - -

5 KENNETH JENNINGS

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

8 CROSS-EXAMINATION

9 By Mr. Berger:

10 Q. Good afternoon, Mr. Jennings.

11 A. Good afternoon.

12 Q. My name is Tad Berger. I'm at the Office  
13 of Ohio Consumers' Counsel. As you know, we deposed  
14 you previously, and I'll be asking you some questions  
15 regarding the same topics.

16 As I understand it, Mr. Jennings, you're  
17 the director of market policy and RTO services for  
18 Duke Energy Business Services; is that correct?

19 A. That is my recent title. I recently took  
20 on a new role as well, which actually in lieu of that  
21 now. I'm no longer in that position, but it's a  
22 recent change.

23 Q. And what is your new role?

24 A. My new role is renewable policy and  
25 strategy director.

1           Q.    Okay.  And you've been with Duke or its  
2 predecessor for 15 years; is that correct?

3           A.    Correct.

4           Q.    Did you bring any documents with you  
5 today?

6           A.    I did not.

7           Q.    Did you review the subpoena that was sent  
8 regarding this hearing?

9           A.    I did not.

10          Q.    So you're not aware of what -- the fact  
11 that it asked you to bring certain documents.

12          A.    No.

13          Q.    Did you prepare any discovery responses  
14 in this proceeding?

15          A.    Yes.

16          Q.    Do you know which ones they are?

17          A.    I don't recall.

18          Q.    And you don't have them available to you.

19          A.    No, I don't.

20                MS. KINGERY:  Your Honor, if I might  
21 clarify one moment.

22                EXAMINER WALSTRA:  Please.

23                MS. KINGERY:  We were told by the Bench I  
24 believe that we did not have to produce anything in  
25 response to the subpoena if it had already been

1 produced. And with Mr. Jennings, there was nothing  
2 that he had not already produced.

3 EXAMINER WALSTRA: Okay. Thank you.

4 Q. Mr. Jennings, I just want to go over what  
5 the subpoena asked for and ask you whether everything  
6 requested in the subpoena with respect to you has  
7 been produced.

8 A. Okay.

9 Q. All documents related to the estimates  
10 described below in A and B below and all documents  
11 showing assumptions, calculations, and workpapers  
12 underlying such estimates which you prepared or which  
13 were prepared under your direction. And the specific  
14 A and B are as follows: "Any and all estimates made  
15 by Duke Energy Ohio, Inc., or in its possession or  
16 control regarding the economic value of its share of  
17 the capacity and energy from OVEC to its retail  
18 customers for the duration of Duke Energy Ohio's  
19 entitlement." Are you aware of any other documents  
20 other than what you've produced that you were  
21 responsible for producing related to a calculation of  
22 the economic value of OVEC?

23 A. To the best of my knowledge, all  
24 documents were provided. When I looked at the  
25 exhibits -- and I don't remember the exhibit number,

1 but the one exhibit that was provided to the OCC  
2 actually was the only exhibit or the only workpaper  
3 that I had associated with any estimates that I  
4 worked on.

5 Q. Do you know what -- you don't know what  
6 interrogatory number that was provided in response  
7 to?

8 A. Not right now I don't.

9 MR. BERGER: Okay. Does counsel?  
10 Workpaper that he's referencing?

11 MS. KINGERY: I do not. I'm sorry.

12 Q. In section B of the subpoena, of the 2B  
13 of the subpoena, "Any and all estimates made by Duke  
14 Energy Ohio or in its possession or control in the  
15 net cost or benefit to customers of projected rate  
16 impacts or price stabilization rider." Similar  
17 scope. Anything else that occurs to you to be  
18 responsive to that that you've prepared?

19 A. I have no other documents associated with  
20 any of this.

21 Q. Are you familiar with the workpaper  
22 produced by Mr. Dougherty in discovery which has been  
23 identified as OEG-DR-01-001 and another workpaper  
24 IGS-POD-01-003 that included Mr. Dougherty's  
25 workpaper from the OEG response plus, total of 19



1 pages. Are you familiar with that?

2 A. May I see it?

3 Q. Yes. I think we went over it in your  
4 deposition.

5 A. Okay.

6 Q. I have here --

7 A. It sounds familiar, but I'd like to see  
8 it before I make any confirmation.

9 Q. I have here a copy of the exhibit from  
10 your deposition, and I'm going to turn you to the  
11 first page of that portion of the exhibit that has  
12 that information.

13 A. Should I have a copy of my deposition  
14 too?

15 MR. BERGER: Your Honor, this is a  
16 confidential document and we won't be discussing any  
17 numbers on this portion of the record.

18 EXAMINER WALSTRA: Has this been marked?

19 MR. BERGER: Yeah, your Honor, I think  
20 this has been marked in Mr. Henning's testimony.

21 MS. BOJKO: I don't know if that's the  
22 document you're talking about.

23 MR. BERGER: It's Exhibit 4a.

24 EXAMINER WALSTRA: 4a?

25 MR. BERGER: Yes.

1 MR. OLIKER: Tad, to be clear does this  
2 document also have the workpapers attached to it?

3 MR. BERGER: IGS-POD-01-003.

4 Q. Do you have that document in front of  
5 you?

6 A. Yes, sir.

7 Q. Now, that document, are you aware,  
8 reflects capacity prices going forward?

9 A. Yes.

10 Q. On the line that says PJM capacity, I'm  
11 going to refrain from discussing the numbers at this  
12 point.

13 A. Okay.

14 Q. And as I understand it, you gave some  
15 actual projected capacity prices to Mr. Dougherty  
16 that he incorporated into the analysis on this first  
17 page of this exhibit; is that correct?

18 A. Yes.

19 Q. Okay. And as far as you know, none of  
20 your other -- none of the other pages of that 19-page  
21 response to discovery had any of your other  
22 information in it?

23 MS. KINGERY: I'm sorry, Mr. Berger. You  
24 are talking about page 5 of your exhibit, correct?

25 MR. BERGER: Yes, I am. I think I gave

1 him Mr. Dougherty's document, but I'm --

2 A. The number written on the page that was  
3 given to me has a 10 written on it and a circle. I  
4 don't know if that's page 10.

5 Q. Okay. I'm sorry.

6 A. The top corner says 1 of 19.

7 Q. That's what I'm referring to, the 1 of  
8 19.

9 Do you know if any of the other  
10 information in the accompanying workpapers was  
11 provided by you to Mr. Dougherty is the question? So  
12 when you have a chance.

13 A. I'm not seeing it in the 19 pages that  
14 are associated with this.

15 Q. Okay. Do you understand that the line  
16 "PJM capacity prices" on the first page incorporated  
17 your capacity prices; is that correct?

18 A. Yes, that was my understanding.

19 Q. And as I understand it, through year 2000  
20 -- May of 2018, you utilized the published PJM's BRA  
21 capacity price results; is that correct?

22 A. That's not exactly correct. So the  
23 forecast that I -- actually the forecast that ended  
24 up in the hands of Mr. Dougherty was a forecast that  
25 I did over a year ago, and it included future numbers

1 and forecasts, and it included historic numbers. So  
2 I think my numbers, my actual numbers that were not  
3 forecasted, would have ended with the delivery year  
4 '16-'17, and then when Mr. Dougherty got the numbers,  
5 then -- there had been no renewed forecasts since the  
6 '16-'17 auction, and he used the forecast that I  
7 provided and combined it with the other corporate  
8 fundamental curve.

9 Q. Okay. And he updated it then for the '17  
10 to '18 auction.

11 A. Yes, with actual numbers.

12 Q. Okay. And the forecasted information  
13 that's shown then on this page 1 of IGS-POD-01-003,  
14 the forecasted numbers that you gave him were the  
15 numbers for 2019 through 2024; is that correct?

16 A. So the numbers that I gave him for those  
17 periods are a part of that average that you see in  
18 those columns.

19 Q. Okay. In other words, he averaged those  
20 with some other numbers is what you're saying?

21 A. The corporate fundamental curve.

22 Q. Okay. In coming up with your forecast of  
23 capacity prices, is that the corporate fundamental  
24 curve?

25 A. Excuse me?

1 Q. Is the corporate fundamental curve --

2 A. My microphone is broke.

3 Q. Is the corporate fundamental curve your  
4 forecast of capacity prices?

5 A. No.

6 Q. Okay. It's the combined average  
7 that's --

8 A. So there's a corporate fundamental curve  
9 that's actually provided annually by EVA, and then  
10 historically there's been a commercial view that was  
11 provided by me. So basically the corporation has two  
12 competing views of future capacity prices. So  
13 essentially what Mr. Dougherty did was took the two  
14 competing views from the company and averaged them  
15 together.

16 MS. KINGERY: Your Honor, if I could just  
17 caution everybody, we're getting very close to the  
18 line on confidential versus not. I think that was  
19 fine.

20 EXAMINER WALSTRA: Okay. Thank you.

21 Q. Now, with respect to -- and you're here  
22 to testify regarding the forecasts you prepared that  
23 you say was averaged by Mr. Dougherty with the EVA  
24 curve. Would you just describe for me the  
25 methodology you utilized to develop your forecast?

1           A.     So I have a tool --

2                   MS. KINGERY: I would, again, caution  
3     that to the extent that your methodology is  
4     proprietary and confidential, you treat it  
5     confidentially, then you either need to wait until  
6     the confidential section of our cross or we can -- if  
7     you could talk about it in high level terms.

8                   THE WITNESS: I think I can talk about it  
9     in high level terms.

10                  MR. BERGER: And I would just note during  
11     his deposition, the witness gave a description of his  
12     methodology on the public record.

13                 A.     There is a tool that we have. It's not  
14     currently used any longer, but there was a tool that  
15     we had that was developed by Charles Rivers  
16     Associates that we used that you would input the  
17     actual PJM planning parameters, and then you would  
18     input the last supply curve, the last supply curve  
19     that was part of the most recent base residual  
20     auction, and then you would just basically -- you  
21     would run basically a visual basic script against it  
22     and it would actually optimize the price and it would  
23     give you the intersection of supply and demand.

24                   And so using that tool, I could run it  
25     for the last year, adjust it for the load growth and

1 some shift in the supply curve, and usually shifts in  
2 the supply curve had something to do with assumptions  
3 around demand response or something of that nature.  
4 But the driver tends to be load growth.

5 So if you make an assumption about  
6 historic load growth and say it's half a percent or  
7 something like that, you get very linear trajectory  
8 of prices. So that's basically the methodology  
9 associated with that tool. You would run the tool.  
10 You would write the number down, input it into the  
11 spreadsheet that went into the input for Bryan  
12 Dougherty.

13 Q. Okay. And your forecast, you run it  
14 until you reach net CONE as a planning parameter and  
15 CONE would refer to cost of new entry?

16 A. That's correct, and then just apply some  
17 type of escalation net CONE.

18 Q. And do you know at what point in time --  
19 tell me if this is confidential, you reached net CONE  
20 in your analysis.

21 A. So you asked me that in my deposition,  
22 and I didn't know at the time. I did look -- I  
23 looked at the document that was provided, and I don't  
24 think that net CONE was ever achieved in that model.

25 Q. It wasn't achieved through --

1 A. It was never achieved, I don't think.

2 Q. And the model ran through what year?

3 A. I think 2035 or something like that.

4 Q. And did you -- you said that in your  
5 deposition that there was a workpaper or a  
6 spreadsheet that was used to do your analysis.

7 A. So the spreadsheet that I mentioned is  
8 the tool that I just talked to you about that was  
9 developed by Charles Rivers Associates that has a  
10 visual basic kind of program that runs in the  
11 background.

12 It doesn't actually create an output  
13 document. It's just a tool that I would run and I  
14 would write the number down and then I would put that  
15 into a spreadsheet and I would run it again for the  
16 next year and I'd write the number down and put it  
17 into a spreadsheet. So everything that I wrote down,  
18 I provided.

19 MR. BERGER: Your Honor, at this time I'd  
20 like to have marked for identification OCC --  
21 Response to OCC-INT-16-416 as OCC Exhibit 29. This  
22 is a confidential -- it is marked confidential.

23 EXAMINER WALSTRA: So marked.

24 MR. BERGER: We'll mark it as 29a, your  
25 Honor.



1 (EXHIBITS MARKED FOR IDENTIFICATION.)

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

3 EXAMINER WALSTRA: You may.

4 Q. Do you have that before you,  
5 Mr. Jennings?

6 A. Yes, sir.

7 Q. Now, this response is signed by Mr. --  
8 not signed, but he's indicated to be the --  
9 Mr. Dougherty is indicated to be the responsible  
10 person. Was the information on it, though, provided  
11 by you?

12 A. No.

13 Q. And the actual inputs that you were  
14 talking about that you printed out by year, do you  
15 know what interrogatory response that was provided  
16 in?

17 A. I don't. I saw a spreadsheet that had an  
18 OCC exhibit number on it, and it was a tab within  
19 that spreadsheet that was a spreadsheet that  
20 Mr. Dougherty received.

21 MR. BERGER: And since you didn't bring  
22 that with you as per the subpoena, I'm wondering,  
23 your Honor, if we can avail upon counsel to identify  
24 for Duke, identify what response that was. We  
25 haven't been able to locate it.

1 MS. KINGERY: If you'll give me just a  
2 moment, I'll see whether we can locate that.

3 EXAMINER WALSTRA: Sure. While we're  
4 doing that, maybe we can discuss the confidentiality  
5 of this document.

6 MR. BERGER: I don't know if you want us  
7 to weigh in or not.

8 EXAMINER WALSTRA: I was going to allow  
9 Duke to go first.

10 MS. KINGERY: If you'll just give me a  
11 moment.

12 EXAMINER WALSTRA: Sure. Why don't we  
13 just take a ten-minute break and come back at 4:00.

14 (Recess taken.)

15 EXAMINER WALSTRA: I was thinking it  
16 would be best if you want to do these other exhibits,  
17 and then we can go over the confidentiality of them.

18 MR. BERGER: Yes. You want me to mark  
19 the other exhibits. So I think we marked Exhibit  
20 29a.

21 EXAMINER WALSTRA: Yeah, that was already  
22 marked.

23 MR. BERGER: And at this time, your  
24 Honor, I'd like to have marked for identification OCC  
25 Exhibit 30a, which is the company's response to

1 OCC-INT-16-417, confidential response.

2 And I'd also like to have marked for  
3 identification OCC Exhibit 31a, which is the  
4 confidential response to SIERRA-INT-03-072.

5 EXAMINER WALSTRA: They'll be so marked.

6 (EXHIBITS MARKED FOR IDENTIFICATION.)

7 Has the company had a change to review  
8 these documents?

9 MS. KINGERY: Certainly I'm prepared on  
10 the first two and working on the third.

11 EXAMINER WALSTRA: We'll start with 29  
12 then, if you want to go over what you believe to be  
13 confidential.

14 MS. KINGERY: Thank you very much. In  
15 the request section, there is nothing that we would  
16 claim is confidential. In the response, in paragraph  
17 A, the second line, it says 2018 plus an estimate for  
18 June to December, 2018. That is -- and then I would  
19 redact the next two words and then we would not  
20 redact "of the," and then redact the next two words.

21 And then going on to the next line, we  
22 would redact the years and the word at the very end  
23 of the sentence, and here that's an effort to be  
24 consistent with what we did on redactions with  
25 Mr. Brodt. These are items that are generally kept

1 out of the public eye, and these explain how  
2 Mr. Dougherty arrived at his -- the prices that he  
3 used.

4 And then on the next page in the table,  
5 all of the years can be in the public record, and the  
6 first four numbers in the column on the right are  
7 fine. That would be up through the \$120 for the 2017  
8 through 2018 auction, as those are publicly known,  
9 and the remainder are forecasts that we have prepared  
10 internally.

11 MS. BOJKO: For clarification, your  
12 Honor, Ms. Kingery, did you say you wanted to redact  
13 the auction dates that are in this document?

14 MS. KINGERY: On the table?

15 MS. BOJKO: No, in A.

16 MS. KINGERY: Yes, because it tells how  
17 the forecast was derived.

18 EXAMINER WALSTRA: Nothing in B?

19 MS. KINGERY: No. B would be fine. That  
20 was just testified to I believe on the open record by  
21 Mr. Jennings.

22 EXAMINER WALSTRA: Any objections?

23 MS. BOJKO: Yes, your Honor. I mean,  
24 it's common knowledge as labeled in the chart on the  
25 next page that the auctions occur and the prices are

1 for the 2014-'15 years, '15-'16 auction years. Those  
2 types of indications are already known and publicly  
3 available. As far as the claim that it's the  
4 calculation, I mean, I think what we're talking about  
5 here is the -- it was to show a January through May  
6 period. I think that you can determine that on how  
7 many days are in that period without redacting the  
8 years. I just don't see the point of redacting the  
9 capacity auction years.

10 MS. KINGERY: And I would note that I  
11 specifically said that the word at the end of the  
12 sentence was also one that we claimed confidentiality  
13 of. We're trying not to publish how it was -- how it  
14 is that these prices were determined by  
15 Mr. Dougherty.

16 MR. BERGER: Your Honor, just in regard  
17 to that section A, I note that B talks about an  
18 averaging methodology. A also talks about a  
19 methodology. I won't say what it is, but I find it  
20 hard to believe that that methodology is so  
21 competitively sensitive for the seven months we're  
22 talking about to make it -- to warrant its being  
23 treated as confidential. Thank you.

24 EXAMINER WALSTRA: Sorry. After hearing  
25 both sides, for the most part, we will follow Duke's

1 recommendations. We will not redact the word  
2 "auctions" however. We believe that's evident from  
3 the discovery response what that's talking about, but  
4 everything else we feel does go to the methodology.

5 MS. KINGERY: Thank you, your Honor. On  
6 OCC 30a, in the request itself, there are several  
7 items that are confidential, specifically the number  
8 of megawatts that were offered and cleared in the RPM  
9 base residual auctions. And then in paragraph A  
10 under the request, the fourth word, and then in  
11 paragraph B, the number of megawatts used as a  
12 forecasted UCAP, and in the response, we would redact  
13 in paragraph A, second line, "treated as part of an,"  
14 and the next two words would be redacted. And then  
15 the last word on the line and the first three words  
16 on the next line.

17 Then we see the word "consequently they,"  
18 and then we would redact the next two words and the  
19 final word.

20 And in the next paragraph under A, we  
21 would redact the last word in the first line and the  
22 second word in the second line.

23 EXAMINER WALSTRA: Would you say that  
24 again?

25 MS. KINGERY: The last word in the first

1 line, the second word in the second line, and then  
2 the final three words in the sentence. And just  
3 finishing up, in response to A, we have to move to  
4 the next page, it says "Consequently, the combination  
5 of assumed" and then the next word would be redacted.  
6 And then on the final line of part A, the third word.  
7 So 2017 to '18 was blank, that word would then be  
8 redacted.

9 And here the goal is to talk about -- to  
10 try and keep out of the public eye anything related  
11 to changes in the capacity over time and how we  
12 treated it, what assumptions were used in our  
13 forecasts.

14 EXAMINER WALSTRA: Is there anything in  
15 B?

16 MS. KINGERY: Yes. In B, then again the  
17 number of megawatts in the first line, and then in  
18 the second line, the first word, then the words "for  
19 the" would be out and then the next three words,  
20 finishing the sentence would be redacted. And then  
21 in the next sentence, the fourth word would be  
22 redacted, and then the following two words,  
23 "assumption that," would be public, and the remainder  
24 of the sentence would be redacted.

25 And, again, here we're talking about our

1 forecasted UCAP and how we got to that and what  
2 assumptions were made in reaching that conclusion.

3 EXAMINER WALSTRA: Thank you.

4 Responses?

5 MS. BOJKO: Your Honor, I'm sitting here  
6 looking at Mr. Dougherty's deposition filed in the  
7 public domain, already filed with the Commission,  
8 pages 13 and 14 has a complete discussion of this  
9 exact issue, has a complete discussion of the UCAP,  
10 what the assumptions were, what those assumptions  
11 meant. It has a discussion of the two words redacted  
12 in the A, the first three words, it has a discussion  
13 of that so.

14 MS. KINGERY: Your Honor, if you could  
15 just give us a moment. We're pulling the depo to  
16 confirm that.

17 Your Honor, on page 13 and 14, we see  
18 definitions, but nothing about our internal  
19 assumptions. Maybe there was some place else in the  
20 deposition.

21 EXAMINER WALSTRA: I think we'll probably  
22 need to take a look at that.

23 MS. BOJKO: I'm sorry?

24 EXAMINER WALSTRA: I think we'll probably  
25 need to take a look at that, the deposition.



1 MS. BOJKO: I didn't hear you.

2 MS. KINGERY: Ms. Bojko, was there any  
3 place other than pages 13 and 14 that you were  
4 pointing to? I may just not have heard right.

5 MS. BOJKO: I mean, this -- I just read  
6 this again. I mean, there is a whole discussion in  
7 here about what was -- what were the assumptions of  
8 OCC Exhibit 4.

9 MS. KINGERY: Are you looking at page 13  
10 to 14?

11 MS. BOJKO: Yes. It's talking about  
12 IGS-POD-01-003, which is the OCC Exhibit 4. It talks  
13 about what the terms mean, and then it goes into  
14 talking about the difference between the I word, U  
15 word.

16 MS. SPILLER: Excuse me, your Honors, do  
17 you have a copy of this?

18 EXAMINER WALSTRA: The deposition? Yes,  
19 that's what I was asking for.

20 MS. SPILLER: Here's page 14 and this is  
21 the other part of it.

22 EXAMINER WALSTRA: Thank you.

23 MS. SPILLER: You're welcome.

24 MS. BOJKO: Did you get a copy? Mine was  
25 all written on.

1 MS. KINGERY: Yes, we gave them a clean  
2 copy.

3 EXAMINER WALSTRA: Ms. Bojko, what were  
4 you requesting to be open in the open record?

5 MS. BOJKO: I was specifically talking  
6 about an A -- I don't think any of A -- I think it's  
7 been clearly discussed in his depo, so I would have  
8 said A. And then I guess the same with -- well, all  
9 of A. And then I don't understand why anything in B  
10 would be redacted except for the numerical value.

11 EXAMINER WALSTRA: Response?

12 MS. KINGERY: Yes. Thank you, your  
13 Honor. The items in A were absolutely not discussed  
14 in the deposition that was identified by Ms. Bojko.  
15 If they're there, you know, I certainly don't see  
16 them. It appears to me that that conversation was  
17 about what the definition of UCAP is and the  
18 difference between UCAP and ICAP. And, absolutely,  
19 that's a public matter.

20 But this paragraph, the response in A,  
21 talks about our assumptions and how we -- what  
22 numbers we reached and how we got there. And the  
23 paragraph in B is the same. Again, it's describing  
24 why we assumed that particular UCAP value.

25 EXAMINER WALSTRA: Page 2 on the top

1 line, what you're recommending be confidential, can  
2 you talk about what that is more?

3 MS. KINGERY: The word that you're  
4 concerned about, the word on the top line?

5 EXAMINER WALSTRA: Yes.

6 MS. KINGERY: So the item on the top  
7 line -- can you give me just a moment?

8 MS. BOJKO: Can you tell us which word?

9 EXAMINER WALSTRA: There's only one  
10 recommended word for redaction.

11 MS. BOJKO: It's the third line down on  
12 that page.

13 EXAMINER WALSTRA: The first line on page  
14 2 after "assumed."

15 MS. BOJKO: The letters?

16 EXAMINER WALSTRA: Make up words.  
17 Between that and rates, yes.

18 MS. BOJKO: Okay. Thank you.

19 MS. KINGERY: Your Honor, we can release  
20 that word.

21 EXAMINER WALSTRA: Okay. Thank you.

22 In regards to the information in the  
23 request, we will keep that confidential. In regards  
24 to everything of part A on page 1, we will open that  
25 to the public record. On page 2, line 3, the one

1 word that was recommended for confidentiality will  
2 remain confidential. And the number under B will  
3 remain confidential, and everything else will be  
4 open.

5 MS. KINGERY: Thank you, your Honor. And  
6 OCC Exhibit 31a, this is a document where the  
7 redactions that we're going to identify are ones that  
8 discuss Duke's assumptions and outcomes of  
9 assumptions which, if we would release, would  
10 allow -- potentially allow people to back in to  
11 creating numbers or some understanding of numbers  
12 that you'll also find on the following page.

13 So in paragraph A of the request, in the  
14 first line after the parenthetical that says "row 8,"  
15 that word could be redacted, and then it says "in  
16 2019 to" and there's a number of gigawatt-hours, that  
17 number would be redacted, and then on the next line,  
18 "remain at" would be public and the next two words  
19 redacted.

20 Then we can jump down to the response.  
21 Go down about halfway on this page to a line that  
22 begins with the word "curves," and we would take  
23 out -- we would redact the last word on that line, so  
24 it would be "the data shows," and then redact that  
25 word and the next three words.

1           Then moving down to the following line,  
2           and I'll read from the beginning of the line, "low  
3           off-peak margins for 2015-2018 and then a" and then  
4           redact that word, "in the," and then redact the next  
5           three words, two of which are hyphenated.

6           Then we go to the next line. There's a  
7           sentence that starts in the middle of the line,  
8           "this" and the next word would be redacted, "of  
9           almost," and then we would redact the number, not the  
10          dollar sign or the units.

11          And then the next hyphenated pair of  
12          words there would be redacted, and then moving to the  
13          end of that line, "that there will be," and then we  
14          would redact the next word and hyphenated pair of  
15          words, "hours in the," and then the next word would  
16          be redacted.

17          And we move to the next page, the first  
18          two words on that first line would be redacted, and  
19          then "between 2018 and 2019 is due to" and the  
20          remainder of the sentence would be redacted.

21          And in that first table, we would redact  
22          only the numbers and this is, again, I think  
23          consistent with what we have talked about before, the  
24          energy cost line was certainly provided by OVEC and  
25          has been treated confidentially elsewhere. So these

1 are forecasted figures that are kept confidential  
2 inside of Duke Energy.

3 And then the next table is reflecting  
4 capacity price forecasts and all of the numbers there  
5 would be redacted, but not the column headings or the  
6 line labels. And in paragraph C, the first line,  
7 fifth word would be redacted, and the next line "due  
8 the," and then the next four words finishing out that  
9 sentence would be redacted.

10 The next sentence, "The further increase  
11 in 2020 from 2019 is primarily due to the," and then  
12 we would redact the next three words, "associated  
13 with," and redact the next word.

14 We move down to paragraph D, "the power  
15 prices in the fundamental curve dataset show a," and  
16 then redact two words, "from 2019 to 2020 and this is  
17 reflected in the," and then redact the next three  
18 words. "Per the response to c. above, 2020 includes  
19 costs for," and redact that word, and then the last  
20 line, redact the third word.

21 And, again, these redactions other than  
22 the numbers themselves, which are forecasted  
23 information, are intended to avoid allowing public  
24 view of the assumptions and the outcomes of  
25 assumptions.

1 EXAMINER WALSTRA: Thank you.

2 Response?

3 Hearing none, those will --

4 MR. BERGER: Your Honor, there's just  
5 some -- the words, for example, in the question on  
6 the second line of A, I mean, they don't really --  
7 certainly the fourth word there would be redacted,  
8 and unless something is indicating a direction, I  
9 don't think it really needs to be redacted.

10 For example, on the response to A, the  
11 first redaction that they did on the response to A  
12 which is about six line -- the last word in that line  
13 was redacted, but the next three words starting on  
14 the next line were also redacted, and I don't think  
15 they show a direction. And when it's not  
16 directional, I don't think it's revealing anything.  
17 And the last line in the response to A, the fifth  
18 word was redacted. Again, I don't think that's  
19 revealing anything.

20 In C, the response to C, I thought they  
21 said the first line had something -- I think it was  
22 the second word.

23 MS. KINGERY: Fifth word, Tad.

24 MR. BERGER: The fifth word? Not the  
25 second one? Not the third one? That's why I'm

1     wondering -- I thought we were redacting the  
2     information that indicated a direction, and I think  
3     rather than redacting information that indicated a  
4     direction in that one, they took out the information  
5     as to what the response was about.

6             And in the second line, they redacted  
7     four words there when they only needed to redact one  
8     that indicated the direction. So those are -- and I  
9     think they redacted on the third line there the  
10    seventh through ninth word which has no meaning if  
11    you take out the other word they redacted on that  
12    line. So I don't see any reason why it would be  
13    redacted.

14            I believe they also took out on D on the  
15    second line three words at the end of that -- at the  
16    end of that sentence there, and I don't think that  
17    indicates any direction. It just indicates the  
18    subject matter. Again, I don't think we're trying to  
19    redact the subject matter. We're just trying to  
20    redact the information that indicates the tendency of  
21    information to submit to reveal competitive results  
22    of analysis. So that would be my commentary about  
23    the redactions which I do think are slightly, and I  
24    will say slightly, larger than necessary.

25            MS. KINGERY: And, your Honor, if I might



1 respond to that. I agree with Mr. Berger that  
2 directional indicators are certainly important, but  
3 that's not the only reason we're interested in these  
4 particular items.

5 The items that we are proposing to redact  
6 are indicative of what assumptions we use in our  
7 competitive business model which, as we've discussed  
8 in other proceedings, is something that we keep as a  
9 proprietary item, and I think it's appropriate that  
10 the assumptions that -- the items that are -- as  
11 Mr. Berger called them, the subject matter. They may  
12 look like a subject matter, but they are what we are  
13 looking at in making assumptions and reaching our  
14 conclusions about forecasts.

15 EXAMINER WALSTRA: In the request, the  
16 first line which you mention, those will stay  
17 redacted, and the second line, "remain at" blank  
18 levels will be opened up to 2024. And response A,  
19 about six lines down at the end, that will remain  
20 confidential into the next line, the first word,  
21 remain confidential. Do you have a rationale for  
22 keeping the noun confidential?

23 MS. KINGERY: The third word in the line  
24 there.

25 EXAMINER WALSTRA: Yes, the third word.

1 MR. BERGER: Do you mean second and  
2 third?

3 EXAMINER WALSTRA: Second and third,  
4 excuse me.

5 MS. KINGERY: Oh, the second and third.  
6 Well, again, that's one of the assumptions, one of  
7 the things that we look at in the CBM.

8 MR. BERGER: There are many things that  
9 they look like in the CBM that are discussed in the  
10 sections of this response that they have not claimed  
11 confidentiality for. Just look at the first six  
12 lines of that response. There are subject matters  
13 discussed.

14 EXAMINER WALSTRA: The second and third  
15 words, those will be open. The line after that, the  
16 first recommended redaction will remain redacted, and  
17 the off-peak margins will open up. And the next  
18 line, that same word that was previously redacted  
19 will be redacted. The number will be redacted.  
20 Topic margins will be opened up, and the second to  
21 last word in that line will be redacted. And the  
22 rest of that page will be opened up from page 2, the  
23 second word will remain redacted and "it's due to"  
24 the next word will be redacted, and the rest will be  
25 opened up.

1 Both charts will remain redacted, the  
2 numbers, physical line, and C, the third word, second  
3 line, will remain redacted. And in the third line,  
4 third from the end, that will remain redacted.  
5 Everything else will be opened up.

6 In D, the second and third words from the  
7 end of line one D will remain redacted. In line 3,  
8 in the middle there, 2020 includes cost for the next  
9 word will be redacted. And the third word of the  
10 last line will remain redacted.

11 MS. KINGERY: Thank you, your Honor.

12 EXAMINER WALSTRA: Thank you.

13 MR. BERGER: Thank you, your Honor.

14 EXAMINER WALSTRA: Thank you for your  
15 patience with that. We can proceed.

16 MR. BERGER: Thank you, your Honor.

17 Q. (By Mr. Berger) Mr. Jennings, I think  
18 when we stopped earlier to do the confidentiality  
19 designations, we were discussing the fact that your  
20 estimates don't ever reach net CONE; is that correct?

21 A. That's correct.

22 Q. And BRA prices even for the 2017 to '18  
23 auction were still substantially below net CONE at  
24 that point in time, perhaps like a third of what --  
25 do you know what net CONE is?

1           A.     It's approximately \$340 a megawatt-day.

2           Q.     And the auction price for 2017 to '18 is  
3     what?

4           A.     \$120 per megawatt day.

5           Q.     In the estimate you developed, you did  
6     not use the commercial business model in any respect;  
7     is that correct?

8           A.     No, sir.

9                     MS. KINGERY: Excuse me. I'd just like  
10    to clarify. You said not, but he had said "is that  
11    correct." I just want the record to be clear.

12          A.     Thank you. That was correct. I did not  
13    use the commercial business model for anything.

14          Q.     And your forecasts of PJM capacity prices  
15    don't take into consideration at all the effect of  
16    the recent carbon emission rules or other carbon  
17    emission reduction requirements that may be  
18    implemented during the forecast period that your  
19    estimate pertains to; is that right?

20                 MS. KINGERY: Objection. Your Honor, I  
21    think we just ruled on that particular word and said  
22    it would be confidential.

23                 MR. BERGER: I don't think the word is  
24    confidential. I'm not talking about any particular  
25    document.

1 MS. KINGERY: He's asking if  
2 Mr. Jennings' calculations included the effect of  
3 that.

4 MR. BERGER: Your Honor, we've talked  
5 about that with many witnesses on the public record  
6 as to whether they took into consideration the effect  
7 of carbon emission limits.

8 MS. KINGERY: I believe those  
9 conversations have been in the confidential record  
10 without looking at it.

11 MR. BERGER: I have no idea why --

12 EXAMINER WALSTRA: Overruled.

13 MR. BERGER: Thank you, your Honor.

14 THE WITNESS: Should I answer, right?

15 EXAMINER WALSTRA: Yes.

16 A. Okay. So the analysis that I did that  
17 was part of the numbers that Mr. Dougherty used did  
18 not incorporate any carbon input to it at all, but I  
19 think it's important to note that the assumption --  
20 the reason that it didn't incorporate it is because  
21 there's a certain assumption that that has already  
22 been built into the supply curve for PJM. During the  
23 '14-'15 and '15-'16 auctions, there were substantial  
24 retirements of uncontrolled resources that had  
25 already gone away and had already been removed by the

1 supply curve.

2 Therefore, by using the supply curve from  
3 the '16-'17 auction, you could assume that most of  
4 the resources that are uncontrolled and not  
5 necessarily going to be compliant for the future  
6 carbon rules would have already been eliminated.

7 So for the most part, you could say that  
8 I didn't but I did because I assumed that it was  
9 already built into the PJM supply curve.

10 MR. BERGER: Your Honor, I'd like to hand  
11 out copies of Mr. Jennings' deposition transcript, if  
12 you don't mind.

13 EXAMINER WALSTRA: Okay.

14 MS. KINGERY: Your Honor, if this is not  
15 being used to impeach, then I would object to its  
16 use.

17 MR. BERGER: It is being used to impeach.

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

19 EXAMINER WALSTRA: You may.

20 Q. Mr. Jennings, would you turn to page 26  
21 of that exhibit and read the question and answer,  
22 lines 11 through 16.

23 MS. KINGERY: Your Honor, Mr. Berger  
24 referred to an exhibit. Is this being made an  
25 exhibit?

1 MR. BERGER: No, just a document. Sorry.

2 MS. KINGERY: Thank you.

3 A. Which line?

4 Q. Lines 11 to 16. Did you testify at your  
5 deposition in response to the question "Do your  
6 forecasts of PJM capacity requirements take into  
7 consideration at all the recent carbon emission  
8 reduction rule or other carbon emission reduction  
9 requirements that may be implemented during the  
10 forecasted period" and you answered "No"; is that  
11 correct?

12 A. I think I just answered that the same  
13 way. I said that I did not take that into  
14 consideration because it had already been built into  
15 the supply curve. I did go into the explanation of  
16 how the forecasting is done. It uses an existing  
17 supply curve which is already embedded, all of the  
18 carbon compliance for the future, or at least a large  
19 portion of it.

20 Q. And you're saying that carbon emission  
21 reduction requirements is embedded in the curve.

22 A. Correct.

23 Q. The fundamental curve?

24 A. No.

25 Q. In the 2000 -- okay. Explain to me.

1 Maybe I did not understand.

2 A. So earlier when I described to you the  
3 forecasting methodology that's used on the internal  
4 forecast, I said that we used the supply and demand  
5 parameters that are supplied by PJM and the most  
6 recent supply curve that PJM used in clearing the  
7 BRA. That supply curve actually eliminated a large  
8 portion of the uncontrolled resources in the '14 and  
9 '15 auctions, '14-'15, '15-'16. Over that period, I  
10 think PJM estimated that about 20,000 megawatts  
11 retired. Of that 20,000 megawatts, that was pretty  
12 much the population of uncontrolled resources that  
13 were certain to go away under carbon legislation.  
14 And so it was already embedded. I didn't do anything  
15 different. I just took the supply curve that PJM had  
16 provided because it was already removed for future  
17 years.

18 Q. Okay. You agree that I asked you the  
19 same question in your deposition essentially and that  
20 you answered without that explanation.

21 A. Yes, that's true. You didn't ask me if  
22 there were any other assumptions that were in it,  
23 though. I just said, no, I didn't take any  
24 consideration.

25 Q. I didn't ask you here if there were any



1 other assumptions either. But you did respond that  
2 those prices are embedded in the elimination of un --  
3 I think you used the term uncontrolled capacity.

4 A. Uncontrolled resources.

5 Q. Uncontrolled resources? And by  
6 uncontrolled resources, you mean facilities in PJM  
7 that are no longer economical to operate?

8 A. No.

9 Q. Please explain that.

10 A. When I say uncontrolled, I'm referring to  
11 resources that -- when I say an uncontrolled  
12 resource, I'm referring to a resource that has no  
13 environmental controls on it.

14 Q. Okay. And you say 20,000 megawatts.

15 A. It was at least 20,000, I think, that's  
16 already retired --

17 Q. And the definition --

18 A. -- or if planned to retire.

19 Q. And the definition PJM gave of those  
20 resources was that they were lacking environmental  
21 controls that were necessary in the current  
22 environment or in the future environment.

23 A. It was the future environment. So I  
24 think it's important to bear in mind that the PJM  
25 capacity market is a forward-capacity market. The

1 auctions have already been held through '17-'18.  
2 People that know that they have a resource that is  
3 not going to be compliant in '17-'18 have already  
4 taken those resources out. They've maybe not retired  
5 them, but they've requested retirement. So they  
6 wouldn't have to offer them, and they haven't cleared  
7 at an auction. They're uncommitted for future years.

8 Q. I understand your point. But the June 2,  
9 2014, carbon emission rules weren't even proposed at  
10 that time; is that correct?

11 A. I think they were already being discussed  
12 and people were taking strategic measures to get  
13 there so that they wouldn't get stuck with a  
14 commitment in PJM without a resource that would  
15 comply.

16 Q. You're saying these weren't even in the  
17 2016 to '17 auction. They were removed from the 2016  
18 to '17 auction; is that what you said?

19 A. They were removed in '14-'15, '15-'16. I  
20 think most of the resources, the uncontrolled  
21 resources, were taken out -- for the most part, most  
22 people believe that controlled resources, resources  
23 that possess scrubbers and SERs will comply under the  
24 new carbon rules. So what people have been doing  
25 over the last several years is retiring those units

1 that don't have those technologies implemented. PJM  
2 did a complete study on it, called it the at-risk  
3 resources, and they identified those resources that  
4 they thought would retire, and most of them have.  
5 They were resources that were between -- that were  
6 less than 250 megawatts, didn't have scrubbers,  
7 didn't have SERs and those are the resources that  
8 have gone away and those are the resources that we  
9 would assume would go away under carbon and they  
10 have.

11 Q. And you're saying these decisions were  
12 made in the 2013 timeframe?

13 A. So everyone knew what was coming with  
14 regards to environmental legislation. They knew that  
15 it was coming eventually. And so people planned for  
16 it. They didn't go into it blindly and make three-  
17 or four-year commitments without any intentions of  
18 delivering capacity into the market.

19 Q. When were these decisions made?

20 A. I think before the '14-'15 auction.

21 Q. The '14-'15 auction would have taken  
22 place in 2011.

23 A. My point is people recognized what the  
24 compliance would be. Most people realized that  
25 resources that have scrubbers and have SERs are going

1 to be compliant under the carbon rules.

2 Q. And I'm just trying to determine, are you  
3 saying that they made these decisions in 2011 because  
4 that's when the 2014 to '15 auction took place?

5 A. Yes. I'm saying that people began to  
6 make those decisions at that time. Why else would  
7 PJM provide an at-risk generation report?

8 Q. I think you've explained your position.  
9 Sir, you're saying also, with regard to facilities  
10 that have FGGs and SCRs, I think I heard you say  
11 earlier that those facilities are going to be  
12 compliant with carbon emission rules in your view?

13 A. I think that most experts believe that  
14 they will be.

15 MR. BERGER: Your Honor, I'd move to  
16 strike his reference to most experts. He's neither  
17 an expert on this issue. He's giving hearsay  
18 testimony regarding what other people are saying  
19 about this. He has no basis for this statement.

20 EXAMINER WALSTRA: He says that's what he  
21 thinks. He's not saying he knows.

22 MR. BERGER: He can testify what he  
23 believes to the extent he has any expertise about it.

24 A. So what I'm testifying to is what I read  
25 in PJM's at-risk generation report.

1 MR. BERGER: And that's why I'm moving to  
2 strike this. He's talking about something he read.  
3 It's not something I can cross-examine him about. He  
4 doesn't have any expertise to testify about it.

5 MS. KINGERY: Your Honor, I would note  
6 that Mr. Berger is saying our witness does not have  
7 the expertise to talk about it, but there's no  
8 showing of that either.

9 EXAMINER WALSTRA: Overruled.

10 Q. Now, you're also testifying here today  
11 about the development of a UCAP number that's  
12 included in Mr. Dougherty's analysis; is that right?

13 A. I can, yes.

14 Q. At the time of your deposition,  
15 Mr. Jennings, you weren't familiar with the  
16 development of that number.

17 MS. KINGERY: Objection. Mr. Berger is  
18 again referring to the deposition as if that's part  
19 of the evidence. He can use that to impeach.  
20 There's nothing here on this topic yet to impeach.

21 MR. BERGER: I'm just providing  
22 background as to a fact that I did not have an  
23 opportunity to cross-examine him at the deposition  
24 on. He's being presented here as the witness on this  
25 topic because he's been brought up to date.

1 EXAMINER WALSTRA: Keep in mind, we don't  
2 have the deposition. It's not part of evidence right  
3 now. So just keep that in mind.

4 MR. BERGER: I understand.

5 Q. (By Mr. Berger) Do you have OCC Exhibit  
6 31a there?

7 A. I do.

8 Q. I'm sorry. Refer to 30a.

9 A. Okay.

10 Q. This response, does this indicate that  
11 the development of the manner in which the UCAP  
12 number was developed for the timeframes that were  
13 utilized in this case?

14 A. I'm not sure what you're asking me there.

15 Q. Well, do you see where on Part B it talks  
16 about development of the UCAP number between the 2015  
17 to 2024?

18 A. I do.

19 Q. And does the response to Part B -- part A  
20 and B explain generally how the UCAP was developed?

21 A. So this was -- this response is actually  
22 assigned to Mr. Dougherty, and I think that that was  
23 the extent of his understanding of how it was  
24 developed, and actually even after talking to  
25 Mr. Dougherty, I wasn't sure where the number came

1 from, but I was able to go back to PJM's system, it's  
2 called ERPM, it's the capacity application that PJM  
3 uses to manage capacity positions, sales, clearing  
4 the market, all that stuff.

5 And when I looked at the historic value  
6 for UCAP in PJM's system, it had that number. So I  
7 was able to identify the source by looking at PJM's  
8 system. Up until recently, I had not looked at the  
9 system to identify where that source was because I  
10 really wasn't a part of this proceeding until just  
11 recently.

12 Q. Okay. Would you just briefly describe  
13 what UCAP stands for and what it means relative to  
14 installing capacity?

15 A. I'm not sure I would say it's relative to  
16 installed capacity, but it is a function of installed  
17 capacity. You know, forced capacity -- or, UCAP  
18 stands for unforced capacity, meaning that it is  
19 capacity that has been adjusted for forced outage  
20 rates.

21 Q. So, basically, you subtract forced outage  
22 rate and you come up with the UCAP.

23 A. So to be more specific, it is equal to  
24 one minus the forced outage rate times the ICAP.

25 Q. I'm not sure your definition utilizes the

1 ICAP. I'm not sure why you said it wasn't  
2 necessarily related to the ICAP.

3 A. I said it's a function of the ICAP.

4 Q. Oh, okay.

5 A. Function means ICAP is an input to the  
6 formula.

7 Q. And on Exhibit 31a, your internal  
8 capacity, the line that has internal capacity  
9 forecast, those are your projections for 2019 to 2024  
10 under B; is that right?

11 A. Yes, sir.

12 Q. Okay. That's what came out of your --  
13 the modeling that you did that we discussed earlier;  
14 is that right?

15 A. Correct. It's adjusted for calendar  
16 years.

17 Q. And the comment you made earlier  
18 regarding the carbon emission rules and whether it  
19 was considered by you, would in your viewpoint that  
20 also apply to any external forecast that was  
21 conducted?

22 MS. KINGERY: Objection, your Honor. It  
23 was an external forecast, that Mr. Jennings didn't  
24 conduct it, and he -- that is not -- he does not have  
25 any firsthand knowledge about one that would include



1       that.

2                   EXAMINER WALSTRA:   And even if he has  
3       knowledge, he can testify.

4           A.     So I have no knowledge, but I would  
5       assume that it could have been in some other form  
6       because I would say not considering carbon or not  
7       assuming any aggressive adjustments to supply based  
8       on carbon would be a more conservative approach to  
9       forecasting.  If I made aggressive assumptions about  
10      generation that's going to go away as a result of  
11      carbon, I think that the prices would be much higher.

12           Q.     The price of capacity would be much  
13      higher.

14           A.     Correct.  Yeah.  It's a simple supply and  
15      demand balance.  As supply diminishes, prices go up.

16                   MR. BERGER:  That's all I have on the  
17      public record, your Honor.  Thank you.

18                   EXAMINER WALSTRA:  Thank you.

19                   Mr. Pritchard.

20                   MR. PRITCHARD:  No questions, your Honor.

21                   MS. BOJKO:  Your Honor, at this time, may  
22      I renew my request?  I know you were going to see how  
23      yesterday went and then maybe consider it over the  
24      evening, but it's apparent to me from what's occurred  
25      thus far that Duke is going to use these witnesses to

1 rehabilitate their case in chief as well as other  
2 witnesses. We just had a witness that has not filed  
3 testimony in this case, correct discovery responses,  
4 and other witness testimony.

5 So I think it is very unfair and  
6 inappropriate if Duke is allowed to go last in this  
7 cross-examination order. We let OCC put him on. I  
8 think the proper order is to let Duke go first and  
9 then let the rest of the interveners cross-examine  
10 the witnesses if Duke is using a Duke employee and  
11 has, you know, the wherewithal as well as the  
12 motivation to use that to their advantage.

13 MS. KINGERY: Your Honor, if I might  
14 respond?

15 MR. BERGER: I would second Ms. Bojko's  
16 comments, by the way. Thank you.

17 MS. KINGERY: First of all, this is not  
18 our witness. We did not bring him here to  
19 rehabilitate our case. We are not attempting to  
20 rehabilitation our case, and I certainly don't recall  
21 Mr. Jennings correcting discovery responses or other  
22 witness testimony.

23 Mr. Jennings is here solely because OCC  
24 subpoenaed him and for no other reason. He's part of  
25 OCC's case in their direct case. So I see no reason

1       why we should assume that this witness is ours and  
2       force us to go first.

3               EXAMINER WALSTRA: I do agree. This is  
4       OCC's witness. We'll go in the manner we did  
5       yesterday, and like yesterday, we'll have an  
6       opportunity for a recross.

7               MR. DARR: No questions, your Honor.

8               EXAMINER WALSTRA: Ms. Hussey?

9               MS. HUSSEY: Thank you, your Honor.

10              - - -

11              CROSS-EXAMINATION

12       By Ms. Hussey:

13              Q. Just one brief set of questions,  
14       Mr. Jennings. Could you please turn to your  
15       deposition at page 26.

16              MS. KINGERY: I'm sorry, the deposition  
17       is not an evidentiary source. Again, it can be used  
18       only for impeachment.

19              Q. Okay. Earlier today we had been talking  
20       about your forecast; is that correct?

21              A. Yes.

22              Q. And could you tell me when your forecasts  
23       were performed?

24              A. Probably in mid June of 2013.

25              Q. Okay. And then could you tell me on what

1 date the USEPA proposed emission guidelines for  
2 states to follow in developing plans to address  
3 greenhouse gas emissions from existing fossil  
4 fuel-fired electric generating units which is also  
5 known as the Clean Power Plan?

6 A. I don't remember the date. I know that  
7 it was recently.

8 Q. Okay. Say in 2014 then?

9 A. Yeah.

10 MS. HUSSEY: Okay. Thank you.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Bojko:

14 Q. Good afternoon, Mr. Jennings. Just so I  
15 can get some timing because I thought I heard  
16 something and your counsel corrected me, so I want to  
17 make sure we understand your testimony very clearly  
18 here today. You did not work on Duke's ESP  
19 application prior to it being filed; is that fair?

20 A. That's correct.

21 Q. Okay. And then you were deposed in this  
22 case. Do you recall the date, sir?

23 A. No.

24 Q. Would you believe it would be Thursday,  
25 October 2nd, 2014?

1           A.     That sounds about right.

2           Q.     Okay.  And subsequent to you being  
3     deposed, you then did independent research on the  
4     issues you were deposed upon; is that correct?

5           A.     So I looked up the source of the UCAP  
6     number mainly because there wasn't really a source  
7     and the request was there had to be a source.  The  
8     OCC was looking for a witness.  And so when I looked  
9     in the PJM system, I found that number and realized  
10    that that was the source.  The source had just been  
11    lost over time, but I found the source.

12          Q.     So to answer my question, yes, after the  
13    deposition --

14          A.     Yes, in that regard, I did.

15          Q.     And apparently you also went back and  
16    reviewed some discovery responses from Mr. Dougherty;  
17    is that also true?

18          A.     I looked at the document that I had  
19    provided him, yes.

20          Q.     And I thought you said in response to  
21    Mr. Berger, but please correct me, I thought you said  
22    that there were some misstatements in that discovery  
23    response that Mr. Dougherty did not understand the  
24    UCAP calculation; is that not what you said?

25          A.     No.  I said that that was his

1 understanding of where that number came from, and it  
2 is his understanding. It was provided to him by  
3 somebody else, and he didn't know where it came from.  
4 It was something they had used historically, and when  
5 I looked at the ERMP system, I was able to identify  
6 the source of it.

7 Q. Had you responded to that discovery  
8 response, you would have responded differently; is  
9 that correct?

10 A. I may have struggled with it as well  
11 initially. I'm not sure because I wasn't involved in  
12 the beginning.

13 Q. But today you're responding to it  
14 differently; isn't that true?

15 A. I'm responding to it differently because  
16 I found the source of the number, and I think that's  
17 the most important piece.

18 Q. Right, and couldn't Mr. Dougherty have  
19 found the source of that number back when he  
20 responded to Duke's discovery response?

21 A. No.

22 Q. Mr. Dougherty couldn't have gone to the  
23 PJM website?

24 A. It's not on the PJM website.

25 Q. Where did you say you got it?

1           A.    It's out of the ERPM system which  
2 requires clearance to get into it.

3           Q.    ERMP system?

4           A.    ERPM.

5           Q.    Sorry. That stands for?

6           A.    The E stands for the E suite applications  
7 that PJM utilizes, and RPM stands for the reliability  
8 pricing model which is the capacity construct of PJM.

9           Q.    Right. And so it's a PJM. So when I  
10 referenced a PJM document, that was correct, right?

11          A.    It's a PJM system.

12          Q.    You went to a portion of the PJM website?

13          A.    It's a PJM system. Not everyone can look  
14 at Duke's RPM account and not everyone in Duke can  
15 look at Duke's RPM account.

16          Q.    And you said Mr. Dougherty cannot look at  
17 it?

18          A.    He doesn't have access.

19          Q.    Mr. Dougherty is the one that Duke  
20 offered as the witness to respond to that discovery  
21 response, correct?

22          A.    I think that's because Mr. Dougherty  
23 works in planning and financial analysis and that's  
24 where that analysis was performed.

25          Q.    Okay. That's not the question I asked.

1           A.    What was your question again?

2                   (Record read.)

3           A.    Yes, because he's from planning and  
4 forecasting.

5           Q.    Was Duke limited to someone from planning  
6 and forecast, or could Duke look to all of its  
7 employees and ask for someone to respond to a  
8 discovery response?

9           A.    He was the most -- he was the most well  
10 suited person for that.  If they would have asked me,  
11 all I would have been able to give them was that  
12 number.  I wouldn't have been able to do all the  
13 financial analysis that was required for the  
14 application.

15          Q.    And do you know if Mr. Dougherty was  
16 listed as a witness in this case and filed prefiled  
17 direct testimony on behalf of Duke.

18          A.    I'm not aware.

19          Q.    Do you know if Mr. Dougherty was  
20 subpoenaed like yourself?

21          A.    I believe he was.

22          Q.    And you just stated that you conducted  
23 your forecasting analysis in mid-June, 2013; is that  
24 correct?

25          A.    That's correct.



1 Q. And you also agreed that the EPA, the new  
2 111(d) carbon emissions rules came out in June 1 of  
3 2014; is that correct?

4 A. Yes.

5 Q. And it's also true, sir, that 111(d)  
6 rules have not yet been passed; is that correct?

7 A. That's correct.

8 Q. And the proposal is not for the rules to  
9 even be passed until now, it's been pushed back to  
10 late 2016, I believe; is that right?

11 A. That's right. So I'll add again one more  
12 time --

13 Q. That's not my question.

14 A. -- had I included it, I would have  
15 removed supply in the supply and demand balance and  
16 that would have made prices higher.

17 MS. BOJKO: Your Honor, I move to strike.  
18 I asked him if the rules had been passed and what the  
19 projected date of the rules was.

20 EXAMINER WALSTRA: Overruled.

21 Q. Sir, isn't it true that the 2017-'18  
22 capacity auction occurred in May, 2014?

23 A. That's correct.

24 Q. And that auction -- strike that.

25 And so is it your testimony here today,

1       sir, that the only information you provided to  
2       Mr. Dougherty was that which was produced in the  
3       Sierra response that we marked previously today?

4           A.     That's correct.

5           Q.     And at the time, isn't it true that you  
6       did -- sorry to back up a minute.

7                     You did an internal forecast and EVA did  
8       an external forecast; is that correct?

9           A.     That is correct.

10          Q.     And the numbers, 2014 through May 31st,  
11       2018, in your analysis were actual BRA prices that  
12       were published on the PJM's website; is that correct?

13          A.     Can you repeat that again?

14          Q.     The numbers that you used in your  
15       forecast from 2014 through May 31st, 2018, were  
16       actual BRA prices that were published on PJM's  
17       website?

18          A.     That's not exactly true. So the numbers  
19       that were provided to Bryan were actual numbers to  
20       the date that I had actual numbers. And so I think  
21       the last actual number that I had was for the '16-'17  
22       auction. So the numbers that were actually provided  
23       to Mr. Dougherty would have had a forecast for  
24       '17-'18, but he used it -- he used it after the  
25       '17-'18 auction. So I think he had the actual number

1 for '17-'18. And then -- so the numbers that I would  
2 have provided started with forecasts on '17-'18.

3 Q. And it was my understanding that he  
4 didn't have the '17-'18 auction number and that's why  
5 he took the -- you think he did have that '17-'18  
6 number?

7 A. Yeah, he didn't have the '18-'19 number,  
8 so for the second half of '18, he used the average.

9 Q. Right. I'm sorry. So he used the  
10 average for the second half of 2018?

11 A. Correct.

12 Q. And that would have been a ten-year  
13 average; is that correct?

14 A. I think that goes to the confidential  
15 stuff that we were just talking about, but if it's  
16 okay to answer it, I will.

17 EXAMINER WALSTRA: I think it does.

18 THE WITNESS: Does what?

19 EXAMINER WALSTRA: Goes into the  
20 confidential.

21 MS. BOJKO: Your Honor, I'm reading from  
22 the deposition transcript that was in the public  
23 record.

24 MS. KINGERY: Ms. Bojko, are you talking  
25 about Mr. Jennings' deposition?

1 MS. BOJKO: Yes.

2 MS. KINGERY: What page?

3 MS. BOJKO: 27.

4 MS. KINGERY: I couldn't hear you.

5 MS. BOJKO: 27.

6 EXAMINER WALSTRA: You may proceed,  
7 Ms. Bojko.

8 Do you have more questions?

9 MS. BOJKO: Oh, he didn't answer that  
10 question because we were waiting to determine if it  
11 was confidential or not.

12 EXAMINER WALSTRA: I told you you could  
13 go ahead.

14 THE WITNESS: Go ahead and answer?

15 EXAMINER WALSTRA: Yes.

16 A. Yes, it was.

17 Q. And beginning in January, 2019,  
18 Mr. Dougherty then would have used average or  
19 projected numbers; is that true?

20 A. Say that again.

21 Q. For 2019 and on in his forecast, he would  
22 have used average or projected numbers?

23 A. So no.

24 MS. KINGERY: I'm going to object here.  
25 You're asking how Mr. Dougherty performed his

1 calculations and this is Mr. Jennings.

2 MS. BOJKO: Right, but he provided the  
3 data to Mr. Dougherty.

4 MS. KINGERY: But he didn't make the  
5 calculations.

6 MR. PRITCHARD; If I might respond, this  
7 witness testified in length with regards to  
8 Mr. Berger about what other people did and what other  
9 people thought, and I believe the ruling was if this  
10 witness knew what the others did, that it was then  
11 appropriate.

12 EXAMINER WALSTRA: Overruled. You can  
13 answer.

14 A. So my understanding of what Mr. Dougherty  
15 did was for the period in the '18 calendar year,  
16 because his -- the work that he was applying was for  
17 calendar years and PJM's capacity market transcends  
18 the calendar year. It begins on June 1 and goes  
19 through May 31st of the successive year. So since  
20 Mr. Dougherty had values for the '17-'18 planning  
21 year for the remaining seven months of '18, he used  
22 that average that we talked about. Going forward,  
23 starting with '19, he used forecasted numbers that  
24 were provided by me and averaged with the competing  
25 view that the corporation had.

1 Q. Okay. So you're disagreeing with my  
2 question that the forecasts are projected numbers?

3 A. Starting in '19, they are forecasted  
4 numbers. You used the term average, and I was  
5 thinking you were talking about another average.

6 Q. Okay. So they were forecasted numbers.  
7 They were projected numbers, both by yourself and by  
8 EVA and they were average so they were average and  
9 projected; is that true?

10 A. There was an average of two projections,  
11 correct.

12 Q. And it's true -- or, I thought you stated  
13 that you had provided a spreadsheet to Mr. Dougherty;  
14 is that right?

15 A. Yes.

16 Q. Is the spreadsheet you're talking about  
17 what has been marked as OCC Exhibit 31a, this chart  
18 that's listed in response B?

19 A. 31a; is that what you said?

20 Q. Yes.

21 A. No, that is not the spreadsheet. I think  
22 the spreadsheet was actually in a POD.

23 Q. Okay. So when I asked you earlier  
24 whether this was the only information you provided to  
25 Mr. Dougherty, there's a subsequent workpaper or

1 spreadsheet.

2 A. Yes.

3 Q. And you do believe that's been also  
4 provided.

5 A. Yes.

6 Q. I want to make sure I understand exactly  
7 what you provided to Mr. Dougherty. You provided the  
8 PJM capacity dollar per megawatt-day number that  
9 we've been talking about; is that right?

10 A. From where? Are you talking about from  
11 that line?

12 Q. Yes.

13 A. From 31a?

14 Q. Yes.

15 A. Yes, that's correct.

16 Q. Okay. And if we turn to -- you're  
17 familiar, sir, with OCC Exhibit 4, which has been  
18 called the OVEC analysis; is that correct?

19 A. So that's page 1 of 19 from the package?

20 Q. Yes.

21 A. Yes.

22 Q. Okay. And that's what you were just  
23 referring to, the PJM capacity line? Your numbers  
24 were inputs to the PJM capacity line?

25 A. So I said that my numbers were the

1 numbers that were in Part B of Exhibit 31a, right.

2 Q. Yes.

3 A. And those numbers are -- my understanding  
4 is they are an input to the PJM capacity price on  
5 this exhibit.

6 Q. I was trying to tie back your response to  
7 this exhibit.

8 A. Yes, I did.

9 Q. And then you also talked today about the  
10 UCAP number that's listed on the top of this page; is  
11 that correct?

12 A. Yes.

13 Q. That you did not initially provide that  
14 number to Mr. Dougherty; is that correct?

15 A. No, I did not.

16 Q. Okay. And so besides the one -- and just  
17 so we're clear, the input was then averaged with  
18 another projection, so your input to the PJM capacity  
19 number is not actually reflected on this graph that  
20 Mr. Dougherty created, correct?

21 A. It was averaged with.

22 Q. With the EVA numbers?

23 A. Yes.

24 Q. So it wasn't actually -- your numbers are  
25 not reflected on this exhibit; is that correct?



1           A.     That's correct.

2           Q.     Okay.  So besides the input, you did not  
3 provide any other numbers or data or information for  
4 this OVEC analysis; is that correct?

5           A.     I did not.

6           Q.     And it's my understanding you do know  
7 what -- I think you referenced the CBM earlier today;  
8 is that right?  You know what that is?

9           A.     I know what it is.

10          Q.     And it's my understanding that you did  
11 not provide any kind of numbers or data for any  
12 inputs in the CBM that was run in conjunction with  
13 this case; is that correct?

14          A.     No, I don't think I did, no.

15                 MS. BOJKO:  I have nothing further.

16                 Thank you.

17                 EXAMINER WALSTRA:  Thank you.

18                         - - -

19                         CROSS-EXAMINATION

20                 By Mr. Mendoza:

21                 Q.     Good afternoon, Mr. Jennings, just a few  
22 questions for the public record.  The UCAP figure for  
23 OVEC's plants was reduced due the installation of  
24 environmental controls in the recent years.

25                 A.     That's correct.

1           Q.    Do you know the magnitude of that  
2           reduction?

3           A.    I think it's about -- I think that the  
4           actual UCAP -- because of the change of the  
5           environmental controls, I think that the UCAP goes  
6           down by about 10 megawatts.

7           Q.    And would you agree with me that those  
8           plants are now -- because of the installation of the  
9           FGD and SCRs are less efficient than they were  
10          previously in the sense that less energy is produced  
11          per amount of coal burned; is that correct?

12          A.    I don't know that.

13          Q.    Okay. And you were discussing this  
14          previously with Ms. Bojko, but it's fair to say that  
15          the actual capacity prices through 2018 are more  
16          reliable than the forecasted figures for 2019 and  
17          beyond, correct?

18          A.    Absolutely, because the volatility of  
19          capacity markets is huge, things change all the time,  
20          and at the moment right now there are several policy  
21          changes that are being considered. As a result of  
22          the polar vortex in January, PJM has embarked on a  
23          new capacity product called the capacity performance  
24          product, which will actually -- it's expected to  
25          increase the value of capacity closer to the net CONE

1 price. In addition to that, recently the DC Circuit  
2 Court vacated Order 745, and in July the market  
3 monitor analyzed the last capacity auction and said  
4 that had demand response not been included the way it  
5 was around 745, that the prices would have been as  
6 high as \$396 a megawatt-day. So I think that we all  
7 know forecasts are long, and policy changes are one  
8 of the things that drive that, but I think that, if  
9 anything, our estimates have been conservative.

10 Q. Okay. Thank you.

11 Do you know if PJM's -- well, and the  
12 supply curve that you used for your forecast, does  
13 that account for new natural gas generation coming  
14 online, you know, from today going forward through  
15 the life of that forecast?

16 A. Through the life of the forecast.

17 Q. Or for each forecasted year, does your  
18 supply curve account for new natural gas generation  
19 that's going to come on line?

20 A. It includes some, yes.

21 Q. And why do you say "some"? I gather it  
22 doesn't include all new natural gas generation that's  
23 going to come online; is that correct?

24 A. It tends to be a function of what cleared  
25 in the last auction, and so if 5,000 megawatts

1 cleared in the last auction, I might assume that  
2 5,000 megawatts will clear in the next one,  
3 5,000 megawatts of new generation.

4 Q. I'm talking about for the forecast though  
5 for years beyond --

6 A. That's what I'm talking about.

7 Q. So for, say, 2020, there will be  
8 additional natural gas megawatt capacity that doesn't  
9 exist today?

10 A. That's correct.

11 Q. And the supply curve does account for  
12 that?

13 A. Yes.

14 Q. Okay. And then I think you said that  
15 units with FGDs and SCRs will comply with the  
16 greenhouse gas regulations; is that correct?

17 A. It's my belief.

18 Q. Okay. And what is your understanding of  
19 the purpose of EPA's greenhouse gas regulations,  
20 proposed regulations?

21 A. Reduce carbon.

22 Q. And is it your belief that flue gas  
23 desulfurization units reduce carbon emissions?

24 A. I'm not exactly sure how it works. My  
25 understanding is that it -- those will be the

1 resources that are remaining.

2 Q. Okay. And is it your belief that  
3 selective catalytic reduction units reduce carbon  
4 emission?

5 A. No.

6 MR. MENDOZA: Okay. The rest of my  
7 questions can go to the confidential part of the  
8 discussion.

9 EXAMINER WALSTRA: Mr. Boehm?

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

11 EXAMINER WALSTRA: Mr. Oliker?

12 MR. OLIKER: Just a few questions, your  
13 Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Oliker:

17 Q. It's been a few years Mr. Jennings, good  
18 to see you again.

19 A. Good to see you again.

20 Q. My name is Joe Oliker, and I represent  
21 IGS Energy. Just quickly, you're aware that PJM has  
22 submitted a proposal that would allow for demand  
23 response to participate in the base residual auction  
24 even if, let's say, FERC Order 745 is determined to  
25 be invalid, correct?

1           A.     So I guess I would have to disagree.  
2     They provided a proposal where demand response can  
3     participate on the demand side but not on the supply  
4     side, and I think that's completely different. The  
5     ability for demand response to participate on the  
6     demand side has been there since at least the last  
7     two auctions and not one megawatt has participated on  
8     the demand side because the requirements are much  
9     more onerous.

10               Most people do not want control. They  
11     don't want to seek control, and the PRD program that  
12     you're referring to requires supervisory control  
13     which means that you can be disconnected at any time,  
14     and most people are not willing to -- I will agree  
15     some will participate though, but not as much as has  
16     been.

17               As a matter of fact, recent auctions have  
18     seen as much as 15,000 megawatts of demand response  
19     clear in an auction. I don't think more than 5,000  
20     has ever actually registered and delivered in the  
21     deliver year.

22           Q.     And you would agree that they have not  
23     made any decisions on what that product would look  
24     like? Nothing has been approved, so you can't tell  
25     me today what FERC may or may not approve regarding

1 demand response participation?

2 A. So PRD has been approved, and PJM's  
3 proposal has postulated the use of PRD.

4 Q. PJM's proposal has not been approved, it  
5 is something new.

6 A. That is correct, the proposal is but PRD  
7 was --

8 Q. That's all I had on that issue.

9 Are you involved at all in the management  
10 decisions of Clifty Creek or Kyger Creek?

11 A. No.

12 Q. So you have no personal knowledge of what  
13 management decisions have been made regarding those  
14 units may affect the forced outage rate of Clifty  
15 Creek and Kyger Creek?

16 A. No, I do not.

17 Q. Would you agree that a forced outage is  
18 when a unit goes offline at an unintended time?

19 A. So I would agree, except that specific  
20 definition is not the specific definition that  
21 determines UCAP. The forced outage definition that  
22 determines UCAP is actually called EFORD which is  
23 forced outage rates in demand which means that the  
24 unit is in the money, and so I think generally you're  
25 correct.

1 MR. OLIKER: Thank you for that  
2 clarification. I liked it better than mine. I think  
3 that's all the questions I have, your Honor.

4 Thank you, Mr. Jennings.

5 EXAMINER WALSTRA: Thank you.

6 Ms. Petrucci?

7 MS. PETRUCCI: No questions.

8 EXAMINER WALSTRA: Mr. Hart?

9 MR. HART: No questions.

10 EXAMINER WALSTRA: Staff?

11 MR. BEELER: No questions. Thank you.

12 EXAMINER WALSTRA: Duke?

13 MS. KINGERY: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Kingery:

17 Q. Mr. Jennings, just to clarify what your  
18 involvement has been in the development of Duke  
19 Energy Ohio's application in this case, were you  
20 consulted by Duke Energy Ohio, any personnel within  
21 Duke Energy Ohio or on behalf of Duke Energy Ohio,  
22 the regulated utility, with regard to the preparation  
23 of the proposed ESP in this case?

24 A. No.

25 Q. And did you provide any inputs into any



1 of the elements of the proposed ESP other than has  
2 been discussed with regard to your contribution to  
3 Mr. Dougherty?

4 A. I have not.

5 Q. Thank you. There's been some discussion  
6 earlier in your cross-examination about the PJM base  
7 residual auction. Just so that the record will be  
8 complete, could you please describe the PJM capacity  
9 market and how it functions, just briefly?

10 A. So in general terms, approximately three  
11 years before delivery occurs, PJM forecasts the peak  
12 load requirement for the period three years in  
13 advance, and they post those requirements around  
14 January of the year, three years before the delivery  
15 year, which as an example, this year in January, they  
16 would have posted the capacity requirements for the  
17 '17-'18 auction.

18 Then around five months later, they hold  
19 an auction for capacity, and they use an  
20 administratively determined demand curve, which looks  
21 rectangular for the most part, and people have a week  
22 to offer into that auction electronically at their  
23 cost or at some price below their cost, and PJM  
24 clears that auction at the intersection of the supply  
25 curve and the demand curve, and supply curves are

1 drawn using price quantity pairs, like any other  
2 supply and demand curve.

3 When that auction clears, then they have  
4 the price, and then as you move towards the delivery  
5 year, there are subsequent balancing auctions called  
6 incremental auctions for people to, if they've  
7 overcommitted capacity, to buy back capacity or if  
8 they have extra capacity, they can sell the extra  
9 capacity as their EFOR change, and then when you get  
10 to the delivery year, you have that capacity  
11 obligation starting June 1st of the delivery year,  
12 and part of that capacity obligation is to make a  
13 day-ahead energy offer every day at your -- at an  
14 economic price or cost, and to allow that unit to be  
15 dispatched as needed by the RTO.

16 Q. Thank you. Do you recall the exchange  
17 with counsel for OCC regarding the supply and demand  
18 parameters that are provided by PJM?

19 A. Yes.

20 Q. And could you just clarify for us, in the  
21 PJM world, what is supply?

22 A. So up until recently, it's been defined  
23 as generating resources of a specific type typically.  
24 Different resources, different generation resources,  
25 have different characteristics and are treated

1 differently sometimes. But generation resources,  
2 demand response resources, energy efficient resources  
3 and there are supposed to be a resource called a  
4 transmission solution resource as well.

5 Q. And all of those sound like capacity; is  
6 that correct?

7 A. They are all capacity.

8 Q. You also talked to Mr. Berger, counsel  
9 for OCC, about the fact that you understand about  
10 20,000 megawatts of capacity either has or is going  
11 to retire. What is the time parameter that you're  
12 talking about there?

13 A. Most of what we saw in that study would  
14 be going away at the end of I believe '16, so  
15 May 31st, 2016.

16 Q. And in your opinion, will those  
17 retirements have an impact on the supply resources  
18 available in PJM in the capacity market?

19 A. Yes, absolutely. More recently, I think  
20 as a result of the polar vortex, I think it was AEP  
21 that said that during the polar vortex there were  
22 about 7,000 megawatts of generation that they had  
23 running that was slated for retirement.

24 MR. OLICKER: Your Honor, I object and  
25 move to strike, hearsay.

1 EXAMINER WALSTRA: Overruled.

2 Q. Mr. Jennings, just a couple questions  
3 about your involvement in policy matters regarding  
4 PJM. So do you participate in any PJM committees?

5 A. Up until a couple weeks ago, I  
6 participated in all of them.

7 Q. And what sort of participation did you  
8 have in those committees?

9 A. So I was the -- I was the Duke  
10 representative and had the voting responsibility for  
11 Duke Energy Corporation.

12 Q. And in that role, did you keep yourself  
13 regularly informed about policy decisions and  
14 considerations at PJM?

15 A. Yes.

16 Q. And did you have an opportunity to follow  
17 and understand some of the events that were going on  
18 at PJM during the polar vortex that you just  
19 mentioned and the others of your cold weather events  
20 during January of this year?

21 A. I did --

22 MS. BOJKO: Objection, your Honor. Now,  
23 this is the exact problem that I was referencing.  
24 Not one of us spoke about the polar vortex, and now  
25 we're starting in a whole line of questioning about

1 the polar vortex. We haven't had an opportunity to  
2 use all our documents about the polar vortex. This  
3 witness is now -- she just asked him a whole bunch of  
4 policy questions. Now, he's being put on as a policy  
5 witness for Duke Energy Ohio. I think this is  
6 unfair. It's beyond the scope of what he was brought  
7 here for the subpoena purposes, and I think that it's  
8 inappropriate cross-examination. It should be part  
9 of a direct case, if at all.

10 MR. OLIKER: I'll join the objection that  
11 it appears to be beyond the scope of the subpoena. I  
12 don't think I saw anything about the winter  
13 conditions mentioned in that at all. I think he's  
14 here to testify about UCAP calculations and forecast  
15 in a document that another witness has provided.

16 MS. KINGERY: Your Honor, if I could just  
17 briefly respond. We've seen many witnesses so far in  
18 this hearing where questions have exceeded the  
19 parameters of the direct testimony that was -- I  
20 think I said that wrong. Yes, the questions.

21 The cross-examination was going beyond  
22 the scope of the direct testimony filed by Duke  
23 Energy Ohio. And the response that we heard from  
24 other attorneys around the table was that they're  
25 allowed to cross-examine on anything that is relevant

1 to the case and is within the witness's knowledge.  
2 So I'm just exploring his knowledge with regard to  
3 the polar vortex that has been discussed previously  
4 in this case.

5 MS. BOJKO: Your Honor, this is a  
6 completely different situation. We do not have  
7 direct testimony. We did not ask him. He just  
8 testified he had nothing to do with the ESP. So why  
9 she's asking him about the polar vortex that is part  
10 of the ESP is beyond the scope.

11 He was brought here for a limited  
12 purpose. He's not a policy witness. We did not go  
13 beyond that in depositions. He doesn't have any  
14 direct testimony for us to rely upon, and now, he's  
15 talking about the polar vortex. I mean, it's  
16 completely out of line.

17 We have nothing to base any kind of  
18 cross-examination on, and we have no ability to  
19 depose him to see what he may or may not know on this  
20 subject. It's a completely different issue than  
21 direct testimony that was prefiled by their witnesses  
22 in the case.

23 So counsel just stated that she wants to  
24 explore the polar vortex because it's been an issue  
25 in this case. That's not what he's here for, and

1 they can't rehabilitate their case outside of the  
2 issues that he was brought here for.

3 MS. KINGERY: Again, I'm not trying to  
4 rehabilitate our case. I'm trying to pursue a topic  
5 that the intervenors have brought up in other regards  
6 with other witnesses.

7 And with regard to whether there's direct  
8 testimony, the questioning by Mr. Berger was the  
9 direct testimony -- elicited the direct testimony of  
10 this witness in this proceeding. So there is direct  
11 testimony.

12 MR. BERGER: I did not elicit any  
13 testimony, however, on the polar vortex or the impact  
14 of that on capacity prices, if that's what he's about  
15 to talk about.

16 MR. MENDOZA: Just to be clear, the  
17 witnesses we asked about the polar vortex were the  
18 witnesses who mentioned winter reliability in their  
19 filed testimony, Mr. Wathen, and Mr. Henning.

20 MS. KINGERY: I believe it was also  
21 raised yesterday with regard to Mr. Brodt, although  
22 I'm not positive. I think it was. It was a long  
23 day.

24 EXAMINER WALSTRA: At this point, I think  
25 we are going to sustain the objection. I think even

1 considering a broad scope, we're definitely getting  
2 away from that, especially keeping in mind the fact  
3 that they haven't had -- didn't get discovery about  
4 his knowledge about this, and they haven't had a  
5 chance to question on this beforehand. We will  
6 sustain -- the polar vortex does seem to be getting  
7 away from the scope of his testimony.

8 Q. (By Ms. Kingery) Mr. Jennings, do you  
9 recall a few minutes ago counsel for Sierra Club  
10 asked you about capacity prices and reliability, and  
11 you mentioned a capacity performance product?

12 A. Yes.

13 Q. What is the capacity performance product  
14 that you were referring to?

15 A. So PJM recently identified gaps in the  
16 existing capacity market. Prior to the last delivery  
17 year, PJM had always been agnostic towards fuel and  
18 technology with regard to capacity, and actually they  
19 merely planned for the five peak hours of the year,  
20 which were only allowed to occur in the summer. What  
21 they found was that sometimes that peak may occur in  
22 the winter, and --

23 MS. BOJKO: Objection, your Honor. She's  
24 cleverly asked the question to now get back to the  
25 polar vortex, and he's following right along and



1 going into the polar vortex, summer/winter peak,  
2 demand response, because this demand response  
3 component was only done after the polar vortex. I  
4 gave him leeway, and he took me right where I knew he  
5 was going to take me. That's inappropriate. We're  
6 going right back to the polar vortex, and I also will  
7 object to his use of PJM being agnostic and other  
8 adjectives to describe PJM. It's hearsay. He does  
9 not know what PJM -- his use of the word merely, he  
10 is putting words out there into PJM that do not exist  
11 and, frankly, I disagree with.

12 MS. KINGERY: Your Honor, if I might.  
13 Counsel for Sierra Club asked questions and discussed  
14 with him the capacity performance product that I'm  
15 inquiring about.

16 MS. BOJKO: No, he didn't.

17 MR. OLIKER: That's not true.

18 MR. MENDOZA: I think what they're trying  
19 to do is amend their capacity forecast kind of in  
20 this qualitative way through this witness. The  
21 witness is here to discuss the actual forecasted  
22 numbers. We are here to probe the assumptions that  
23 went into those. Now, we're learning for the first  
24 time -- I've never heard of this FERC order in this  
25 case until it was mentioned by Mr. Jennings.

1 I would have been happy to -- you know,  
2 if they included that assumption in their original  
3 forecast, it would have been nice if that would have  
4 been disclosed, and we could have probed it, but I  
5 think it's too late for them to inject this new issue  
6 into the case.

7 EXAMINER WALSTRA: Ms. Kingery?

8 MS. KINGERY: We certainly did not plan  
9 our case around having employees subpoenaed. So that  
10 would be unheard of. This is something that has  
11 already come up in cross by other parties. I see no  
12 reason why Duke should not be allowed to talk about  
13 the same issue that has already come up. Order 745  
14 did come up.

15 MR. OLIKER: The witness offered that  
16 information, and then she's further bolstering  
17 answers the witness has already provided.

18 MR. PRITCHARD: If I might, your Honor,  
19 we've been asking questions on cross-examination  
20 with -- instead of yes-no answers, lengthy responses,  
21 and the parties have been trying to move on. I don't  
22 believe Sierra Club's questions on cross asked about  
23 that specific product. That was given voluntarily by  
24 the witness in the answer.

25 So, I mean, we could be here -- we need

1 to do another round of cross on polar vortex and  
2 everything, we can be here, but I agree with the  
3 earlier statements that this is beyond the UCAP  
4 numbers that he was subpoenaed for and the forecast.  
5 I'll leave it at that.

6 MR. MENDOZA: If I could add, the  
7 question which elicited the silique about the FERC  
8 order, are the actual bid prices from the auctions  
9 more reliable than the forecast, and the witness said  
10 they were, and then went on to tell us a lot of other  
11 things, which was, you know, beyond the question.

12 EXAMINER WALSTRA: I'm going to sustain  
13 the objection. Move on.

14 Q. (By Ms. Kingery) Mr. Jennings, do you  
15 recall a few minutes ago Mr. Olier, counsel for IGS,  
16 asked you a question about PJM's proposal to FERC to  
17 allow -- or that would allow demand response in the  
18 BRA?

19 A. Yes.

20 Q. And your response, if I recall, was that  
21 the demand response could participate on the demand  
22 side; is that correct?

23 MR. OLIER: Objection, asked and  
24 answered.

25 MS. KINGERY: I asked if that was

1 correct.

2 MR. OLIKER: He was already asked these  
3 questions by myself, and now, he's answering them  
4 again.

5 EXAMINER WALSTRA: Overruled.

6 Q. So my question for you is what would be  
7 the effect of having no demand response on the supply  
8 side?

9 MR. OLIKER: Objection. I didn't ask  
10 that question.

11 MR. MENDOZA: Again, they're trying to  
12 amend their forecasts through -- by adding in  
13 consideration of this issue that was not -- unless  
14 they -- if they did include consideration of demand  
15 response or FERC orders in their forecast, that's  
16 news to everyone here, and they could revise their  
17 application if they'd like. But they're attempting  
18 to revise their forecast through this witness, and  
19 it's inappropriate.

20 MS. KINGERY: We're making no effort to  
21 amend our forecast through this witness. I am merely  
22 following up on Mr. Oliker's questions to this  
23 witness regarding demand response.

24 EXAMINER WALSTRA: I'll overrule. I'll  
25 see where it's going.

1 MS. KINGERY: This is really my last  
2 question.

3 A. So in July after the '17-'18 BRA, the PJM  
4 independent market monitor published a paper where he  
5 described what effect that would have been to the  
6 market, and he said, all else being equal, the price  
7 would be \$396 a megawatt-day.

8 Q. And in your opinion, is that a reasonable  
9 prediction as to what would happen?

10 MS. BOJKO: Objection.

11 MS. KINGERY: I asked whether his opinion  
12 was that that's correct.

13 MS. BOJKO: Now, we've turned this  
14 witness into a demand response witness.

15 EXAMINER WALSTRA: Overruled.

16 A. So I would -- I have the utmost respect  
17 in Dr. Bowring. I believe that his analysis is  
18 correct. With all things being equal, that would  
19 have been the price. However, I do believe that  
20 there would have been a lot more generation, new  
21 generation, that would have come in and cleared that  
22 would have suppressed that price somewhat. Probably  
23 the price would have been suppressed closer to around  
24 something like net CONE or maybe even something  
25 slightly below net CONE.

1 MS. BOJKO: Your Honor, for clarification  
2 on the record, can we at least have the document he's  
3 referencing? He's now thrown out a new name, and  
4 he's referencing a particular document and a  
5 particular price and then also gave us a new price.  
6 So we need to have that document.

7 MS. KINGERY: We could certainly supply  
8 the document if that's important, but I would also  
9 note that Ms. Bojko does have an opportunity in just  
10 a few minutes here for recross.

11 MR. OLIKER: Not the document.

12 MS. KINGERY: And I am done.

13 MS. BOJKO: I would like the document  
14 because I have no idea to verify the witness's  
15 statement. He said it off the top of his head  
16 without referring to a document. I think we have a  
17 right to see the document that is now being brought  
18 into this as evidence.

19 EXAMINER WALSTRA: Is there a document  
20 that can be provided?

21 THE WITNESS: Yes. I have it. Do you  
22 want it now?

23 EXAMINER WALSTRA: Ideally.

24 THE WITNESS: Okay.

25 EXAMINER WALSTRA: Were you done,

1 Ms. Kingery?

2 MS. KINGERY: Yes, your Honor.

3 EXAMINER WALSTRA: I guess since it's  
4 already past 6:00, we'll go off the record for a  
5 second.

6 (Discussion off the record.)

7 EXAMINER WALSTRA: We'll go back on the  
8 record. I believe we were with recross with Mr.  
9 Pritchard.

10 MS. BOJKO: Can we address this document  
11 real quick?

12 EXAMINER WALSTRA: Sure. I guess go back  
13 to --

14 MS. BOJKO: Before we spend a lot of time  
15 on the document, I mean this document is dated  
16 July 10th, 2014. It's after the witness both  
17 provided his forecasting prices, it's after the  
18 witness provided his number to Mr. Dougherty. It was  
19 after the case was filed. It was used -- I mean,  
20 it's a pretty lengthy document. For us to sit here  
21 and attempt to try to cross him on this document that  
22 is lengthy, that we've never seen before, and that he  
23 is attempting to inject into the record I think is  
24 prejudicial and unfair.

25 MR. BERGER: Your Honor, can we have read

1 back the last question on the record that introduced  
2 this exhibit, the question and answer?

3 (Record read.)

4 MR. BERGER: Was there a question? Could  
5 you read the question before it?

6 MS. BOJKO: And provided numbers from the  
7 document so I asked what he was referencing.

8 MR. BERGER: Can you read the question  
9 and answer immediately before the one you read.

10 (Record read.)

11 EXAMINER WALSTRA: We're going to strike  
12 his last two answers.

13 And, Mr. Jennings, if you can answer the  
14 question to what the effect of having no demand  
15 response on the supply side would be without having  
16 to refer to anything in this document, if you're able  
17 to.

18 THE WITNESS: Okay. So the effect would  
19 be if I were to use the model that I used to do the  
20 forecast and if I were to eliminate the amount of DR  
21 that was in the last BRA, which was about  
22 12,500 megawatts, if I were to take that out, because  
23 it typically offers at a very low price, the  
24 intersection of supply and demand would have probably  
25 been closer to \$300 a megawatt day.



1 MS. KINGERY: Thank you. Nothing  
2 further.

3 EXAMINER WALSTRA: Mr. Pritchard.

4 MR. PRITCHARD: Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Pritchard:

8 Q. In your last answer there, when you say  
9 the price would have been closer to \$300 a megawatt  
10 day, and you referenced the supply demand curve, does  
11 that \$300 a day calculation assume the same level of  
12 generation offered into that BRA, and you are just  
13 simply shifting the intersection of supply and demand  
14 on the existing offers?

15 A. Yeah, I would assume that the same amount  
16 of generation offers that were in the auction offer  
17 again. I don't know why that would be different  
18 without knowing that -- I'm not sure why that would  
19 be different.

20 Q. Well, earlier you testified that  
21 approximately -- that new generation, gas-fired  
22 generation, was included in your forecast, correct?

23 A. Yes, sir.

24 Q. And that gas-fired generation, new  
25 generation was offered at a base residual auction

1 clearinghouse of less than \$300 a megawatt-day,  
2 correct?

3 A. What would have cleared, would have, yes,  
4 what had cleared, yes, but there's other new  
5 generation that was offered as well that didn't clear  
6 that offered at a higher price. I would assume that  
7 the same amount would offer, just more would clear at  
8 a higher price.

9 Q. So when you say more had offered than had  
10 cleared --

11 A. Yes.

12 Q. -- you are referring to the actual  
13 clearing price of the base residual auction and not  
14 the \$300 number, correct?

15 A. No, I'm not referring to the price at  
16 all. I'm telling you that generation clears. They  
17 don't know what the price is going to be when they  
18 offer. That's the whole function of markets. People  
19 don't -- people enter into markets not knowing what  
20 the expectation is, so they offer at what they think  
21 their costs are. So there's a stack of new  
22 generation resources that are in the auction every  
23 year. And so I don't know why that would make a  
24 difference.

25 Merely by shifting the demand curve,

1       there is still more gas that's going to clear. I  
2       don't know how much it is, but there's more gas  
3       that's going to clear.

4               Q.     So if someone -- if we have RPM prices  
5       clearing, you would agree that recently they've  
6       cleared at levels significantly less than \$300 a  
7       megawatt day, correct?

8               A.     Yes.

9               Q.     And do you know sitting here today if the  
10      price was \$300 a megawatt-day instead of what they  
11      had been, how that will affect the business decisions  
12      of individuals, and whether they would offer into the  
13      base residual auction when they had not offered into  
14      the existing auctions?

15              A.     So I would posit that rational actors in  
16      the market would not change their behavior because  
17      they know what the price is. They're not going to  
18      want to clear unless their cost -- just because they  
19      want to clear at 300 doesn't mean they're going to  
20      offer a resource that costs \$400 at -- less.  
21      They're -- if it's a \$400 resource, they're still  
22      going to offer it at \$400. The \$300 resource that  
23      didn't clear before would have cleared if all the DR  
24      was removed.

25              Q.     And your explanation was for a resource

1 that had bid into the existing auction but just not  
2 cleared, correct?

3 A. Correct.

4 Q. My question goes to --

5 A. If they knew what the price was going to  
6 be, would they be different; is that what you're  
7 asking me?

8 Q. My question is for a resource that had  
9 not bid in because the price had been significantly  
10 less than \$300, have you done any analysis to  
11 determine how many people would bid in additional  
12 resources knowing that the price was going to be  
13 \$300?

14 A. I mean, that's an irrational statement.  
15 There is a lot of new generation and offers in every  
16 auction. As much as probably 30,000 megawatts of new  
17 generation is offered in every auction. You have to  
18 have an interconnection queue request in order to  
19 offer. So everyone that's got an interconnection  
20 queue in is offering. That would not have changed  
21 the results of that analysis whatsoever.

22 Q. And that analysis, you're referring again  
23 back to --

24 A. Either my analysis or Dr. Bowring's  
25 analysis would have been the same.

1 MR. OLIKER: Objection. Testifying to  
2 what somebody else's analysis would have done.

3 EXAMINER WALSTRA: Strike that part.

4 Q. Would you agree with me that as the RPM  
5 base residual auction price is cleared higher, more  
6 people would be rather than less likely -- they will  
7 be more likely to offer in new generation?

8 A. So I think I have a parallel to your  
9 question, and I think what you're asking me is if I  
10 knew that Ford Motor Company stock would sell for  
11 \$100 next year, would I buy it today for \$13. If  
12 that's the question, yeah, I would do that.

13 Q. That's not my question.

14 You've testified that -- one second. Let  
15 me try to rephrase the question again.

16 In your analysis that the price would be  
17 \$300 a megawatt-day, what assumptions did you make  
18 about the level of additional generation that would  
19 be bid that has not already been registered in the  
20 PJM queue?

21 A. You're going to have to reword that  
22 again. I didn't understand the question.

23 Q. You indicated that there are generation,  
24 I believe you referenced 30,000 megawatts of  
25 generation, in the PJM queue interconnection.

1           A.     Actually there's 75,000 megawatts in the  
2     queue. But I'm saying approximately 30,000 probably  
3     offered in the last auction.

4           Q.     So there's 75,000. And that would be  
5     potential new billed generation?

6           A.     Yes, of all varieties.

7           Q.     And approximately 30,000 of that 75,000  
8     would have been into the last base residual auction?

9           A.     Possibly. I don't remember exactly how  
10    much offered, but a lot offers is what my point is.  
11    A lot of offers and a lot has cleared.

12          Q.     And if the market participants, those  
13    people between, say, the \$30,000 approximate and the  
14    75,000 approximate, have you done any analysis to  
15    whether if the RPM clearing price had doubled, how  
16    many of that additional 45,000 would be inclined to  
17    offer in the base residual auction?

18          A.     I think people would say typically if you  
19    see the price clear there, then you might see a  
20    reaction to that, but without seeing that price, then  
21    no, you're not going to get that reaction, but you  
22    have to get that price first.

23          Q.     I apologize. That is where my long line  
24    of questions was leading to.

25          A.     Right.

1 Q. So if we did see a price of 3 --

2 A. It doesn't change the outcome though.  
3 Even if you see more come in, it doesn't change the  
4 outcome. You will still have \$300 a megawatt-day all  
5 still be close to 300 megawatt-day next time.

6 Q. Well, on a supply demand curve, if  
7 \$30,000 megawatts of additional generation bid in  
8 under the hypothetical and it cleared at \$300 a  
9 megawatt-day, there was 45,000 megawatts in the  
10 queue, if they see the price cleared at 300 instead  
11 of where it had cleared significantly less than prior  
12 years, have you done any analysis as to how much of  
13 that 45,000 megawatts would bid into future years to  
14 impact whether that \$300 number is going to remain  
15 year after year?

16 A. I have done that analysis. I don't have  
17 that in front of me, and I don't recall how that  
18 would work. We typically believe that on average  
19 what clears in one auction is approximately what  
20 would clear in a future auction.

21 Q. And in response -- at the beginning of  
22 Ms. Kingery's questions, she had asked you questions  
23 about capacity resources, and you had defined several  
24 different types of capacity resources. Do you  
25 remember that line of questioning?

1 A. Yes.

2 Q. And I believe you had started your  
3 response with "up until recently." Do you remember  
4 that reference that you made?

5 A. Yes.

6 Q. Would that "up until recently" reference  
7 have to do with the FERC order of the DC Circuit and  
8 their ruling on demand response?

9 A. Yes.

10 Q. And do you know if there's been any  
11 ruling on demand response participation in PJM's base  
12 residual auctions?

13 A. With regard to what case?

14 Q. What is your recollection of what that  
15 federal court order applied to?

16 A. So there's a number of -- there's a  
17 number of linked cases associated with that order,  
18 745 going on right now. Currently FirstEnergy has  
19 filed a complaint at FERC requesting that PJM be  
20 ordered to rerun the auction of '17-'18 which would  
21 actually provide that results of \$396 a megawatt-day.  
22 That has not been decided yet.

23 There's another case or another step in  
24 the whole vacating of order 745 where FERC requested  
25 of the DC Circuit Court that they stay that order.



1 And so that has been stayed, which somewhat  
2 complicates things.

3 Q. Is it your recollection that the court  
4 case emanated out of PJM, or would it have emanated  
5 out of challenges to another capacity market?

6 A. No, it emanated from PJM. It was a  
7 complaint filed by EPSA.

8 Q. But currently there's been no order at  
9 FERC or federal court that would impact the ability  
10 of demand response in the current base residual  
11 auctions, correct?

12 A. No. The vacating of order 745 says that  
13 PJM cannot pay demand response curtailment service  
14 providers, which would actually eliminate them from  
15 the capacity market, and that's why PJM has provided  
16 an alternative solution to that.

17 MS. BOJKO: Objection, your Honor.

18 MR. OLIKER: Objection. The answer is  
19 not responsive to his question.

20 MS. BOJKO: It also misstates the DC  
21 Circuit Court decision.

22 MR. MENDOZA: It also ignores PJM's  
23 contrary view.

24 MR. PRITCHARD: If it helps, I can move  
25 on.

1 EXAMINER WALSTRA: That would be great.

2 MS. KINGERY: I would note for the record  
3 we can't correct the witness's testimony if it needs  
4 to be corrected, by testimony of the various  
5 attorneys.

6 MR. OLIKER: That's why I moved to  
7 strike, because it was non-responsive.

8 Q. (By Mr. Pritchard) You also testified in  
9 response to a question by Ms. Kingery --

10 MR. OLIKER: I think there's an objection  
11 outstanding. Sorry.

12 EXAMINER WALSTRA: We'll strike that last  
13 answer.

14 MR. OLIKER: Thank you, your Honor.

15 Q. In response to a question by Ms. Kingery,  
16 you referenced AEP's power plants that were running  
17 during the polar vortex. Do you have any personal  
18 knowledge about AEP's power plants and when they  
19 dispatch and don't dispatch?

20 A. No.

21 MR. PRITCHARD: I have no further  
22 questions.

23 EXAMINER WALSTRA: Thank you.

24 Ms. Hussey.

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RECROSS-EXAMINATION

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By Ms. Hussey:

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Q. Just one question, Mr. Jennings. I believe you mentioned early that neither FGD nor SCR technologies reduce or capture CO-2 emissions; is that correct?

9

A. That's correct.

10

11

12

Q. And to the extent that you know, would you agree that existing carbon controlled technologies are extremely expensive?

13

A. Yes.

14

MS. HUSSEY: Okay. Thank you.

15

EXAMINER WALSTRA: Ms. Bojko.

16

MS. BOJKO: Thank you, your Honor.

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RECROSS-EXAMINATION

19

By Ms. Bojko:

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Q. Sir, isn't it true that the DC Circuit Court decision that you just referenced is about DR in the energy market and has nothing to do with the capacity market? It's a "yes" or "no" question.

24

25

A. Well, I think it's an interpretation. Clearly it's been an interpretation because it was

1 the core of FirstEnergy's complaint.

2 Q. Thank you. Have you read the DC Circuit  
3 Court decision?

4 A. No, I've not read the order.

5 Q. Thank you. Does PJM include DR today?

6 A. Yes.

7 Q. Did PJM include DR when you created your  
8 forecast that you provided for Mr. Dougherty?

9 A. Yes.

10 Q. And, sir, I believe you said -- I just  
11 want to make sure I understand one of your statements  
12 correctly. I believe you said it would be irrational  
13 for a generator owner to bid into an auction if the  
14 generating unit's costs were higher than what the  
15 revenue would be received for that energy output; is  
16 that correct?

17 A. Yeah, for a new generator, I think that's  
18 true. It's not necessarily true for an existing  
19 generator. An existing generator can't avoid costs.  
20 So the new generator can choose to avoid the cost by  
21 not billing.

22 Q. And they could choose to avoid some of  
23 the variable costs by not bidding into the auctions;  
24 isn't that true?

25 A. I don't think so.

1           Q.   Really?  Every generating unit runs at  
2   100 percent capacity factor?

3           A.   Those are variable costs that are  
4   included in the energy price.

5           Q.   Variable costs that are based on fuel and  
6   if you're not running your general generating unit,  
7   you do not have those variable costs; isn't that  
8   true?

9           A.   No, that's not true.  So the whole  
10  concept of capacity --

11          Q.   There --

12          A.   Excuse me?

13          Q.   There wasn't a question --

14          A.   Okay.

15          Q.   -- pending.

16          A.   I was going to explain why it's wrong.

17          Q.   You're disagreeing with other testimony  
18  from other Duke witnesses that stated there's a fixed  
19  cost component and a variable cost component.

20          A.   That's why you can't avoid it.  If you  
21  can't run the generator, you can't avoid fixed costs.

22          Q.   I didn't say fixed costs.  If you don't  
23  run the generating unit, you can avoid some variable  
24  costs such as fuel.  That was my question.

25          A.   Yes.

1 MS. BOJKO: I don't have any other  
2 questions. Thank you.

3 EXAMINER WALSTRA: Mr. Berger?

4 MR. BERGER: No questions, your Honor.

5 EXAMINER WALSTRA: Mr. Mendoza?

6 MR. MENDOZA: No questions.

7 EXAMINER WALSTRA: Mr. Boehm?

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

9 MR. OLIKER: Just a few questions, your  
10 Honor.

11 - - -

12 RECROSS-EXAMINATION

13 By Mr. Oliker:

14 Q. Duke Energy Ohio has an interruptible  
15 tariff, does it not?

16 A. I believe so.

17 Q. FirstEnergy has an interruptible tariff,  
18 does it not?

19 A. I don't know about that.

20 MS. KINGERY: I'm going to object to this  
21 line of questioning. It's clearly beyond the scope  
22 of this witness's direct, if we want to call it that,  
23 certainly beyond the scope of the subpoena.

24 MR. OLIKER: I'll tie it right back to  
25 his testimony about capacity prices, I promise.

1 EXAMINER WALSTRA: Overruled.

2 Q. (By Mr. Olikar) Would you agree that the  
3 Commission could establish Duke Energy's  
4 interruptible tariff price at any price it wanted to?

5 A. I would agree.

6 Q. And do you know whether the interruptible  
7 tariff price is currently higher than the PJM  
8 capacity price?

9 A. I do not know.

10 Q. Assuming the price was higher than the  
11 PJM capacity price, would you believe that a customer  
12 would participate in Duke's interruptible tariff?

13 A. Assuming they had set capability, I don't  
14 think it's linked to the capacity price.

15 Q. Okay. Let me ask you this question. Say  
16 you have an option of participating in an  
17 interruptible tariff.

18 A. Option for what?

19 Q. An option to take service under an  
20 interruptible tariff that's at a higher compensation  
21 than the PJM capacity price?

22 A. Okay.

23 Q. Do you think you have more incentive if  
24 you just got the PJM price signal or if you have the  
25 higher price signal from Duke Energy Ohio?

1           A.    What is it that you're looking for again?

2           Q.    I'm trying to determine --

3           A.    I think I get what you're asking but  
4 would you ask it again?

5           Q.    Say you're a steel mill.

6           A.    Right.

7           Q.    You're making decisions on whether to  
8 participate as a demand response resource.

9           A.    Uh-huh.

10          Q.    Say the price for capacity is \$120 a  
11 megawatt-day from PJM.

12          A.    Uh-huh.

13          Q.    But Duke's providing compensation through  
14 its interruptible tariff at \$185 a megawatt day. Say  
15 you're not happy with \$120 price but you are happy  
16 with the \$185 price.

17          A.    Uh-huh.

18          Q.    Would you agree that additional amount of  
19 compensation could keep you as a demand response  
20 resource?

21          A.    So if I'm a steel mill and I can provide  
22 DR for 120 or 185, I'm going to take 185.

23          Q.    Right. Okay. And isn't it true that you  
24 could commit to do that for three years in a row if  
25 the Commission decided to include those terms in the



1 interruptible contract?

2 A. Yes, as long as it's provided for under  
3 the tariff, yeah.

4 Q. And there's no reason why PJM would not  
5 remove that demand from its planning parameters?

6 A. If those resources comply with the tariff  
7 for PRD, then, yes, they could.

8 Q. So the answer to my question is "yes."

9 A. Yes, with that clarification.

10 MR. OLIKER: I have no more questions of  
11 this witness, your Honor. Thank you, Mr. Jennings.

12 MS. PETRUCCI: No questions.

13 EXAMINER WALSTRA: Staff?

14 MR. BEELER: No questions.

15 EXAMINER WALSTRA: Ms. Kingery?

16 MS. KINGERY: Thank you. I just have two  
17 questions.

18 - - -

19 RECROSS-EXAMINATION

20 By Ms. Kingery:

21 Q. Mr. Jennings, do you know the details of  
22 Duke Energy Ohio's interruptible tariff?

23 A. I know no details, but I know general  
24 things about it.

25 Q. And do you know how many customers are

1 served under that tariff?

2 A. No.

3 MS. KINGERY: That's all I have.

4 EXAMINER WALSTRA: Thank you. We'll go  
5 into the confidential portion now.

6 MR. BERGER: I have no questions on the  
7 confidential portion.

8 EXAMINER WALSTRA: Mr. Mendoza?

9 MR. MENDOZA: Yeah, I have a question or  
10 two.

11 - - -

12 CROSS-EXAMINATION (Continued)

13 By Mr. Mendoza:

14 Q. Mr. Jennings, can we look at OCC Exhibit  
15 31a, please, and if you look on the second page,  
16 you'll see a table called "Capacity Prices" that has  
17 an external capacity price forecast and internal  
18 price forecast.

19 A. Yes.

20 Q. Just to be clear, so the internal  
21 capacity forecast is the one that you provided,  
22 correct?

23 A. Yes.

24 Q. And if you look starting in 2009 through  
25 2024, would you say that the prices that you

1 predicted kind of (Confidential)?

2 MS. KINGERY: Excuse me. If I could  
3 correct that. I think you meant "2019."

4 MR. MENDOZA: I definitely meant 2019.  
5 Thank you very much.

6 A. Yes.

7 Q. And what accounts for that (Confidential)  
8 (Confidential)?

9 A. Typically load growth.

10 Q. So essentially increasing demand.

11 A. Yes.

12 Q. Okay. What accounts for -- and then if  
13 you look at the external capacity price forecast,  
14 what accounts for the (Confidential) between  
15 your price in 2019 and the external capacity price?

16 A. I don't know. It's a different company  
17 that provides that.

18 Q. Okay. And then I think you said earlier  
19 that you had originally given Mr. Dougherty, if I'm  
20 saying his name correctly, a forecasted capacity  
21 price for June, 2017, to May, 2018; is that right?

22 A. I think I said that it was more than  
23 that, but it's --

24 Q. Wasn't there a year where -- you  
25 originally gave them the numbers a year ago, and

1       there was a year where there hadn't yet been an  
2       auction, so you gave them a forecasted number?

3             A.     For '17-'18, there was a forecast.

4             Q.     Do you recall what that forecasted price  
5       was?

6             A.     Yes, sir.

7             Q.     What was that?

8             A.     (Confidential)

9             THE WITNESS: I can't say that, can I?

10            EXAMINER WALSTRA: We're on the  
11       confidential record.

12            A.     It was (Confidential).

13            Q.     (Confidential)?

14            A.     (Confidential).

15            MR. MENDOZA: That's it. That's all I  
16       have.

17            EXAMINER WALSTRA: Thank you.

18            Anything else?

19            Ms. Kingery?

20            MS. KINGERY: No. Thank you.

21            EXAMINER WALSTRA: Thank you very much  
22       for your time, sir.

23            THE WITNESS: Thank you.

24            EXAMINER WALSTRA: We'll go back on the  
25       open record to do exhibits.

1 OCC?

2 MR. BERGER: Your Honor, we would move  
3 the admission of OCC Exhibits 29, 29a, 30, 30a, and  
4 31, and 31a.

5 EXAMINER WALSTRA: Are there any  
6 objections?

7 MS. KINGERY: I have no objections, but,  
8 of course, we still do have to prepare the public  
9 versions.

10 EXAMINER WALSTRA: Understood. Those  
11 will be admitted subject to review of  
12 confidentiality.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 MS. KINGERY: I'm sorry. Our numbering  
15 is a little confused. Was there an OCC 28 that's not  
16 yet in?

17 MS. BOJKO: Yes.

18 MR. SERIO: OCC 28 was OCC Interrogatory  
19 12-345.

20 MR. BERGER: Mr. Serio knew that better  
21 than me.

22 MS. KINGERY: All right. That's fine.  
23 We just hadn't noted it.

24 EXAMINER WALSTRA: Thank you. See you  
25 guys tomorrow at 9.

1           (Thereupon, at 7:08 p.m., the hearing was  
2 adjourned.

3                   - - -

4                   CERTIFICATE

5           I do hereby certify that the foregoing is  
6 a true and correct transcript of the proceedings  
7 taken by me in this matter on Wednesday, October 29,  
8 2014, and carefully compared with my original  
9 stenographic notes.

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12                   \_\_\_\_\_  
Carol A. Kirk, Registered  
13 Merit Reporter.

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**in**

**Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA**

Summary: Transcript in the matter of Duke Energy Ohio hearing held on 10/29/14 - Volume VI  
- Public electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and  
Gibson, Karen Sue Mrs.