

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

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

- - -

PROCEEDINGS

before Ms. Christine M.T. Pirik and Mr. Nick Walstra,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:00 a.m. on Tuesday,
November 4, 2014.

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VOLUME X

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Tuesday Morning Session,
November 4, 2014.

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EXAMINER WALSTRA: We will go on the
record.

I believe it's Mr. Petricoff's witness.

MR. PETRICOFF: Thank you, your Honor.

At this time the Retail Energy Supply
Association would like to call Lael Campbell to the
stand.

(Witness sworn.)

MR. PETRICOFF: Your Honor, at this time
we'd like to have marked as RESA Exhibit 3 the direct
or prepared testimony of Lael Campbell on behalf of
RESA.

EXAMINER WALSTRA: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. PETRICOFF: And, your Honor, I'd also
like to note although we are marking it as RESA
Exhibit No. 3, the testimony is also being given on
behalf of Constellation.

EXAMINER WALSTRA: So noted.

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LAEL CAMPBELL

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

DIRECT EXAMINATION

By Mr. Petricoff:

Q. Going morning, Mr. Campbell.

A. Going morning.

Q. Do you have before you what has now been
marked as RESA Exhibit 3?

A. I do.

Q. And are there any changes or amendments
you'd like to make to that testimony?

A. There are two changes that I would like
to make. The first can be found on page 7, line 16.
In that line, there's the word "are," should be
"and."

Q. Are there any other changes?

A. On page 3, line 9, the word "over" should
be deleted.

Q. With those two changes, if I were going
to ask you the same questions today, would your
answers be the same?

A. Yes.

Q. And was this testimony prepared by you or
under your direction?

1 A. Yes.

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

4 EXAMINER WALSTRA: Thank you.

5 Ms. Hussey?

6 MS. HUSSEY: No questions, your Honor.

7 EXAMINER WALSTRA: OCC?

8 MR. BERGER: No questions, your Honor.

9 EXAMINER WALSTRA: Mr. Oliker?

10 MR. OLIKER: No questions, your Honor.

11 EXAMINER WALSTRA: Duke?

12 MS. WATTS: Yes. Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Watts:

16 Q. Good morning, Mr. Campbell.

17 A. Good morning.

18 Q. Mr. Campbell, you understand that Duke
19 Energy Ohio has a 9 percent contractual entitlement
20 in the Ohio Valley Electric Corporation?

21 A. That is my understanding, yes.

22 Q. And is it okay with you if I refer to
23 that as OVEC as we proceed?

24 A. Sure.

25 Q. Okay. And so is it also your

1 understanding that Duke Energy Ohio pays 9 percent of
2 the costs from OVEC for that generation?

3 A. Well, there is a PPA for which Duke pays
4 OVEC for the entitlement. I'm if not -- I don't know
5 exactly how much they pay as far as like a
6 percentage.

7 Q. Okay. And that PPA has been referred to
8 in this proceeding as the ICPA. Are you familiar
9 with that terminology?

10 A. I am not.

11 Q. So you have not read the ICPA?

12 A. I have not read the ICPA.

13 Q. But it is your understanding that that
14 power purchase agreement as you characterize it
15 governs the relationship between Duke Energy Ohio and
16 OVEC, correct?

17 A. The one PPA governs the relationship?
18 That's one document I am aware of. There may be
19 other -- I don't know about on the equity side, the
20 entitlement side. I don't know -- there may be
21 another document there. I've not seen it.

22 Q. So is it your understanding that there
23 are more documents than just that one document with
24 respect to the relationship between Duke Energy Ohio
25 and OVEC?

1 A. That would only be a guess. I don't
2 know.

3 Q. Okay. And so far as you know, the
4 relationship as you understand it between Duke Energy
5 Ohio and OVEC would continue regardless of what
6 decision the Public Utilities Commission makes with
7 respect to Duke Energy Ohio's proposed rider PSR,
8 correct?

9 A. Correct.

10 Q. And is it your understanding that the
11 energy and capacity from OVEC will not be used to
12 directly serve Duke Energy Ohio customers?

13 A. Under the proposal, the energy and
14 capacity will be sold into the PJM market, yes.

15 Q. And that energy and capacity will not be
16 used to displace any of the load procured in the SSO
17 option, correct?

18 A. That is correct.

19 Q. And whether or not rider PSR is approved,
20 that decision will not have any impact on the amount
21 of energy or capacity available from the OVEC plants,
22 correct?

23 A. I'm thinking about that only because if
24 Duke and some of the other utilities that are
25 requesting similar cost recovery get that cost

1 recovery, there may be an incentive to generate or
2 run the OVEC plants more than they otherwise would
3 run potentially. That's the only thing I could think
4 of, and that's, again, just more speculation than
5 anything.

6 Q. Do you recall, Mr. Campbell, when I took
7 your deposition on October 9th?

8 A. I do.

9 MS. WATTS: May I approach, your Honor?

10 EXAMINER WALSTRA: You may.

11 MR. PETRICOFF: Your Honor, could we have
12 a cite to when you get to the spot so we could follow
13 along?

14 MS. WATTS: Absolutely.

15 Q. Turning your attention, Mr. Campbell, to
16 page 14 of that deposition.

17 A. Yes.

18 Q. In particular, at line 19, I'm going to
19 read it to you so we are all understanding. I asked
20 you "To your knowledge, will approval or denial of
21 the company's proposal with respect to OVEC have any
22 impact on the amount of energy or capacity available
23 from the Kyger Creek or Clifty Creek plants?" Do you
24 see that?

25 A. I do.

1 Q. And your answer was, "No, it should not";
2 is that correct?

3 A. That is correct.

4 Q. Thank you. Moving, Mr. Campbell, to your
5 testimony with respect to proposed rider SCR.

6 A. Yes.

7 Q. On page 17 of your testimony, you're
8 advocating that the Commission not allow rider SCR to
9 be nonbypassable, correct?

10 A. I don't know if that's an accurate
11 characterization. I think what we are advocating for
12 is the elimination of the automatic trigger in rider
13 SCR that would automatically make it nonbypassable.
14 So I don't think ultimately we would be against
15 nonbypassability, but what we are asking for is that
16 not be an automatic trigger, that there be some other
17 process in between the trigger and the ultimate
18 nonbypassability, if that's what the Commission
19 ultimately decides.

20 Q. Okay. I appreciate that clarification.
21 And you advocate that Duke Energy Ohio should have to
22 file a case at the Commission to allow the Commission
23 to determine what best fits what the public interest
24 is at that point in time, correct?

25 A. That's correct.

1 Q. But you don't have any suggestions right
2 now for how to resolve that issue at this point in
3 time, right now?

4 A. I think one of the reasons why we're
5 asking for that is because if the 10 percent trigger
6 occurred, we don't know what the specific cause of
7 that would be, and we think it's a better process to
8 have a stakeholder proceeding where we can explore
9 out of the various elements that go into the rider
10 SCR which -- maybe there's one particular element
11 that's causing the problem. Maybe there's other
12 solutions to the problem other than just an automatic
13 nonbypassability.

14 Q. Okay. But you agree that the
15 distribution utility should be permitted to recover
16 those costs, correct?

17 A. I do believe that the distribution
18 utility should be able to recover its costs, yes.

19 Q. And going back to rider PSR now as
20 opposed to rider SCR, it's proposed also as a
21 nonbypassable rider, correct?

22 A. It is, yes.

23 Q. And so it would appear on both shopping
24 and nonshopping customer bills, correct?

25 A. Correct.

1 Q. And I believe you and I discussed
2 previously that as a result of that, Duke Energy Ohio
3 would be the only party that would be guaranteed a
4 return for rider PSR. Do you remember that
5 discussion?

6 A. I believe that's in my testimony, yes.

7 Q. And you further thought that Duke would
8 be immune from competitive forces of the market.

9 A. I believe that is the case as it relates
10 to the OVEC generation, yes.

11 Q. And you stated that if Duke is getting
12 cost recovery and if the market is below that point,
13 there would be dollars flowing to Duke for the
14 portion that's above the market. Do you recall that?

15 A. I do.

16 Q. Can you explain to me a scenario where
17 the dollars are flowing to Duke under rider PSR?

18 A. Sure. So the generation is sold into the
19 market. I believe in the example in my deposition, I
20 used a market price of \$45. So they're collecting
21 \$45 for that generation in the market; however, the
22 PPA price is \$50, so customers -- there would be a
23 nonbypassable charge to collect that \$5 gap between
24 the market price and the PPA price. That \$5 would
25 flow back to OVEC because that's the PPA price, and

1 Duke as a shareholder in OVEC would receive the
2 benefit of that full cost recovery on the back end.

3 Q. Turning to the chart to page 12 of your
4 testimony.

5 A. Yes.

6 Q. In particular, the column where you've
7 set forth weighted average cost of OVEC power. Do
8 you see that column?

9 A. I do.

10 Q. Would you agree with me that there's a
11 notable increase in price in the year 2011?

12 A. Yes.

13 Q. And do you know what the cause of that
14 was?

15 A. I do not know the specific cause of that.

16 Q. And you didn't do any research in order
17 to understand that further, correct?

18 A. I did no research.

19 Q. And you didn't do any research with
20 respect to retirement of plants in PJM, correct?

21 A. Not as part of preparing this testimony,
22 no.

23 Q. Okay. And you didn't in preparing for
24 your testimony know what plants might retire in the
25 PJM?

1 A. Specific plants, no.

2 Q. And with respect to generation that might
3 be built in the PJM footprint, can you tell me
4 anything about that right now?

5 A. Yes. My understanding is that there are
6 a few generators that have at least received siting
7 approval in Ohio, gas facilities.

8 Q. Do you know anything about the relative
9 sizes of those proposed?

10 A. I believe two of them are in the 700 to
11 1,000 megawatt range, and one is, I believe, a little
12 bit smaller.

13 Q. Do you have any further details about
14 those programs, construction proposals?

15 A. As far as -- just that they're all in
16 some level of the process, but as far as, you know,
17 specifics as to where each is, I don't have it.

18 Q. You did not do any independent modeling
19 of proposed rider PSR, correct?

20 A. That is correct.

21 Q. Does Constellation offer long-term hedge
22 contracts to its customers?

23 A. We do. We just checked the Apples to
24 Apples website to confirm we do offer a three-year
25 fixed price contract to customers.

1 Q. And you would agree with me that anything
2 over a year is long term?

3 A. I think I would say that, yes. If it's
4 over a year, it's long term. You're locking in a
5 price. You're hedging your risks for that period of
6 more than a year, it's long term.

7 MS. WATTS: One moment, your Honor.

8 I have nothing further, your Honor.

9 Thank you

10 EXAMINER WALSTRA: Thank you.

11 Staff?

12 MR. BEELER: No questions. Thank you.

13 EXAMINER WALSTRA: Any redirect?

14 MR. PETRICOFF: Your Honor, may we have a
15 second?

16 EXAMINER WALSTRA: Sure.

17 MR. PETRICOFF: We do have a couple of
18 redirect questions, your Honor.

19 EXAMINER WALSTRA: Sure.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Petricoff:

23 Q. Mr. Campbell, do you recall the question
24 from Ms. Watts concerning how the dollars would flow
25 in your example if, in fact, the market price was

1 below the OVEC cost of operation?

2 A. I do recall that question.

3 Q. Mechanically, would the dollars actually
4 flow from the customers to Duke or from the customers
5 to OVEC?

6 A. Mechanically, those dollars would flow to
7 OVEC.

8 Q. Okay. So it wouldn't be a matter of the
9 customers through rider PSR paying Duke and then Duke
10 paying OVEC for the power?

11 A. That's right. I mean, that's right.
12 Duke has an obligation under the contract, and then
13 there's a make whole payment being received from the
14 customers.

15 Q. Does OVEC publish annual reports?

16 A. They do, yes.

17 Q. Did you have a chance to look at any of
18 the annual reports for the period shown in your chart
19 on page 12?

20 MS. WATTS: Objection, your Honor. I
21 didn't ask any questions about annual reports.

22 MR. PETRICOFF: This is a foundation
23 question, your Honor.

24 EXAMINER WALSTRA: Overruled. I'll see
25 where it goes.

1 A. Yes, I did review the OVEC annual
2 reports.

3 Q. In the annual reports, is there an
4 explanation as to why the revenue for OVEC has gone
5 up or down?

6 A. Yes. As I recall in the annual reports
7 for, I want to say, '12 and '13 where the prices were
8 higher per megawatt-hour, they talked about limited
9 sales, less sales, which I would assume means that a
10 lot of the cost is being reflected in the O&M and
11 operating costs, and they're not really making many
12 sales into the market.

13 Q. From your analogy of the power market, is
14 there any correlation between the price of power and
15 ability to make sales?

16 A. Well, to the extent these units are being
17 offered into the market, they would be offered some
18 type of annual costs that would reflect the costs to
19 operate the units. And if that cost is higher than
20 what the market is willing to pay, then the units are
21 not going to get picked up. They're not going to
22 run.

23 MR. PETRICOFF: I have no further
24 questions. Thank you, your Honor.

25 EXAMINER WALSTRA: Thank you.

1 Ms. Hussey?

2 MS. HUSSEY: Nothing further, your Honor.

3 EXAMINER WALSTRA: OCC?

4 MR. BERGER: No questions.

5 EXAMINER WALSTRA: Mr. Oliker?

6 MR. OLIKER: No questions.

7 EXAMINER WALSTRA: Duke?

8 MS. WATTS: Yes. Thank you, Your Honor.

9 - - -

10 RECROSS-EXAMINATION

11 By Ms. Watts:

12 Q. Mr. Campbell, would you turn to page 23
13 of your deposition, please.

14 A. Sure.

15 Q. Let me know when you have that.

16 A. Yep.

17 Q. Starting at line 5, I asked you, "I think
18 you would agree with me that starting in 2012 that
19 costs, let's say, took a jump of some description."
20 And your answer was, "I'd say starting in 2011, it
21 jumped about \$12; in 2011, doing lawyer math, less
22 than that; and then jumped about \$13 in 2012. So you
23 see comparable jumps starting in between 2010 to '11
24 and then all the way to 2013." And I asked you, "And
25 do you have any speculation about what caused the

1 jump?" And you responded "It would be speculation.
2 My guess is that there could have been some
3 operations maintenance type costs during that time
4 period. Another theory could be that Duke was taking
5 less power, so those whatever costs there were
6 associated divided over less megawatt hours, those
7 are two things that pop to mind," and then I asked,
8 "But you didn't do any specific research into
9 anything at OVEC to understand what might have caused
10 that?" And you responded "No. Just looking at the
11 costs, these numbers were numbers provided to us by
12 Duke." Did I read that correctly?

13 MR. OLIKER: Objection. Your Honor, I
14 don't believe there was ever a question posed to
15 Mr. Campbell, and we had counsel for Duke Energy Ohio
16 immediately jump in to reading a deposition without
17 laying any foundation that there was any impeachment
18 going on. So it's improper use of the deposition
19 without first posing a question to the witness. It
20 may be appropriate later, but, first, we haven't
21 heard what the witness has to say, so I would also
22 move to strike.

23 EXAMINER WALSTRA: Ms. Watts?

24 MS. WATTS: Well, we could back up if you
25 like. I thought it was a direct response to the

1 redirect that his counsel asked him.

2 EXAMINER WALSTRA: Overruled.

3 MS. WATTS: I have nothing further, your
4 Honor.

5 MR. OLIKER: If the witness has a
6 clarification on his answer, I think he should at
7 least be allowed to provide it.

8 EXAMINER WALSTRA: I don't know if he
9 ever answered the question.

10 MS. WATTS: Do you want to start over?

11 EXAMINER WALSTRA: You don't need to read
12 that question again, but I just want to give him an
13 opportunity to answer because I don't think he ever
14 answered the question.

15 Q. (By Ms. Watts) Mr. Campbell, you recall
16 that Mr. Petricoff asked you some questions about
17 that increase in price that's on the chart in your
18 testimony, and you now provided some information
19 related to OVEC annual reports. That answer was
20 different than the one you gave me in deposition,
21 correct?

22 A. I don't know that that was different
23 because Mr. Petricoff specifically asked about annual
24 reports. Your question at the deposition was asking
25 about potential reasons why there would be an

1 increase in cost. And, frankly, even though at the
2 time of the deposition I was speculating based on
3 what was in the report, the speculation seems to be
4 in line with what's actually in the report.

5 Q. And did you read that report prior to
6 preparing your testimony?

7 A. The testimony, my direct testimony?

8 Q. Yes.

9 A. Yes, and we do reference the reports in
10 the direct testimony.

11 MS. WATTS: May I continue, your Honor?

12 EXAMINER WALSTRA: You may.

13 Q. Mr. Campbell, you've indicated that you
14 reviewed the OVEC annual reports, correct?

15 A. I have looked at them, yes.

16 Q. Do you have any of them here with you?

17 A. Not with me, on my person, no.

18 MS. WATTS: Mr. Petricoff, do you have
19 IEU Exhibit 7 handy?

20 MR. PETRICOFF: Not with me.

21 MS. SPILLER: May I approach, your Honor?

22 EXAMINER WALSTRA: You may.

23 Q. Mr. Campbell, I'll give you a moment to
24 look it over. Is this one of the annual reports you
25 reviewed?

1 A. I did review 2013, yes.

2 Q. Turning to page 2 of that report, in the
3 first column there's a paragraph that has a heading
4 on it that says "Flue Gas Desulfurization Projects,"
5 and "Future Environmental Compliance Obligations."
6 Do you see that?

7 A. I do.

8 Q. Were you aware of those operations and
9 efforts at the OVEC plants?

10 A. I have read that portion of the report,
11 yes, that talks about the scrubbers and the
12 environmental efforts.

13 Q. And isn't it true that while a plant is
14 undergoing those kinds of environmental control
15 construction projects, they're not generating
16 electricity?

17 A. That's probably a safe assumption. I
18 don't know for sure but --

19 Q. So is it a safe assumption that that
20 might have been what the cause for the jump in price
21 was?

22 A. It would be a safe assumption that that
23 could be another reason why the unit would not have
24 made as many sales into the market.

25 MS. WATTS: Thank you. I have nothing

1 further, your Honor.

2 EXAMINER WALSTRA: Thank you.

3 Mr. Petricoff, would you like to call
4 your next witness.

5 MR. PETRICOFF: First, I would like to
6 move for admission of RESA Exhibit No. 3.

7 EXAMINER WALSTRA: Are there any
8 objections?

9 Hearing none, it will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 MR. PETRICOFF: Your Honor, I would like
12 to keep Mr. Campbell on the stand and have marked
13 as -- this will be -- did we call it Constellation
14 last time?

15 EXAMINER PIRIK: I think it's already
16 been marked as Exelon 1.

17 MR. PETRICOFF: We've already marked it?

18 EXAMINER PIRIK: Yes.

19 MR. PETRICOFF: Your Honor, I would just
20 refer to it as Constellation Exhibit No. 1.

21 Your Honor, just for clarification, did
22 we mark it as Constellation or Exelon? Because it is
23 both.

24 EXAMINER PIRIK: I think we marked it as
25 Exelon.

1 MR. PETRICOFF: As Exelon. Thank you,
2 your Honor.

3 - - -

4 LAEL CAMPBELL

5 being previously first duly sworn, as prescribed by
6 law, was examined and testified further as follows:

7 DIRECT EXAMINATION

8 By Mr. Petricoff:

9 Q. Mr. Campbell, do you have a copy of what
10 has been marked as Exelon Exhibit No. 1?

11 A. This is my direct testimony on behalf of
12 Exelon Generation. Yes, I do.

13 Q. Thank you. And was this prepared by you
14 or under your supervision?

15 A. It was, yes.

16 Q. Are there any changes or amendments you'd
17 like to make to that testimony?

18 A. Not that I'm aware of.

19 Q. If I would ask you the same questions
20 today that appear in the exhibit, would your answers
21 be the same?

22 A. They would.

23 MR. PETRICOFF: Your Honor, the witness
24 is available for cross-examination.

25 EXAMINER WALSTRA: Thank you.

1 Ms. Hussey?

2 MS. HUSSEY: No questions, your Honor.

3 EXAMINER WALSTRA: OCC?

4 MR. BERGER: Just briefly.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Berger:

8 Q. Mr. Campbell, referencing your concerns
9 about the rider PSR on page 5 of your testimony at
10 lines 4 through 14, would you agree that the concerns
11 you have regarding rider PSR apply equally to both
12 SSO customers?

13 MS. WATTS: Objection. I'm sorry.

14 Q. Apply equally to both SSO customers and
15 CRES supplier customers?

16 A. I have a lot of concerns of rider PSR,
17 but certainly one of the concerns is that it is going
18 to raise prices across the board for all Ohio
19 consumers to provide full cost recovery on a
20 utility-owned generation. So as far as that concern
21 goes, as far as prices rising across the board, yes,
22 I think it would be consistent for both SSO and
23 non-SSO customers.

24 Q. And in terms of your concerns regarding
25 the loss of the incentive to operate efficiently,

1 that applies equally to both SSO customers and
2 non-SSO customers?

3 A. Yes.

4 Q. And you understand that neither SSO
5 customers nor non-SSO customers will end up with
6 power produced by OVEC as a result of this rider?
7 It's not a physical sale of energy; you understand
8 that?

9 A. The generation will be sold into the PJM
10 market. Where those electrons go after that is
11 anybody's guess, but, yes, it is -- this generation
12 is not going directly to customers.

13 Q. And under rider PSR, would you agree with
14 me that both SSO customers and non-SSO customers
15 would be paying to remove the risk from Duke
16 associated with OVEC?

17 A. That is correct.

18 MR. BERGER: Thank you. That's all I
19 have.

20 EXAMINER WALSTRA: Mr. Boehm?

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

22 EXAMINER WALSTRA: Mr. Oliker?

23 MR. OLIKER: No questions, your Honor.

24 EXAMINER WALSTRA: Ms. Watts?

25 MS. WATTS: Just one moment, please, your

1 Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Watts:

5 Q. Good morning, again, Mr. Campbell.

6 A. Good morning.

7 Q. You've proposed in your Exelon testimony
8 some changes to the master supply agreement which is
9 used in the Duke Energy Ohio SSO auction, correct?

10 A. Correct.

11 Q. And has Exelon Generation participated in
12 Duke Energy Ohio's SSO auction previously?

13 A. I'm going to assume, yes. I just don't
14 know that for sure, but I would assume we have.

15 Q. So you don't know definitively one way or
16 another.

17 A. I probably should, but I don't know
18 definitively.

19 Q. So you don't know then whether Exelon
20 Generation has signed previous iterations of the
21 master supply agreement, correct?

22 A. I believe we have, I believe we have.
23 That would make sense. Yeah, I believe we have.

24 Q. Are you guessing?

25 A. You put me on the spot. I don't know

1 definitively; but, yes, I guess that would be a
2 guess.

3 Q. And is it your understanding that Duke
4 Energy Ohio has committed to bidding the OVEC
5 capacity to which it is entitled into the PJM market
6 for the term of the PSR?

7 A. Under the PSR proposal, yes, that
8 generation would be offered into the market.

9 Q. Okay. And the capacity would bring with
10 it the price, the market price, at the time the bid
11 is made, correct?

12 A. So the OVEC capacity would be offered
13 into the PJM capacity market; and if it clears, I
14 guess we'd receive the capacity clearing price, yes.

15 Q. And the energy would be bid into the
16 realtime market and would, if it clears, receive the
17 appropriate market price at that time as well,
18 correct?

19 A. Right. I think it's a day-ahead market,
20 but yes.

21 MS. WATTS: Okay. One moment, please,
22 your Honor.

23 Q. Mr. Campbell, the Kyger Creek and Clifty
24 Creek plants are owned by OVEC, correct?

25 A. Correct.

1 Q. And OVEC is not a public utility,
2 correct?

3 MR. PETRICOFF: Your Honor, could we have
4 the question read back?

5 A. That seems like a legal -- I don't know.

6 EXAMINER WALSTRA: You can have the
7 question read.

8 MS. WATTS: Well, I can actually rephrase
9 the question if that's helpful.

10 EXAMINER WALSTRA: Would that be more
11 helpful?

12 MR. PETRICOFF: That would be more
13 helpful.

14 Q. Is it your understanding that Duke Energy
15 Ohio directly owns the Clifty Creek and Kyger Creek
16 plants?

17 A. I don't know what you mean by direct
18 ownership; but, yes, they own an entitlement, a
19 security interest in the OVEC entity.

20 Q. And that security interest is contained
21 within what you referred to as the PPA?

22 A. The security interest is referenced in
23 the PPA, yes.

24 Q. Is it your understanding that Duke Energy
25 Ohio has any control over the day-to-day operations

1 of the OVEC plants?

2 A. That is not my understanding.

3 Q. And, again, what OVEC receives in terms
4 of payment for costs from Duke Energy Ohio is
5 pursuant to the document that you referred to as the
6 PPA?

7 A. I believe that's correct.

8 Q. If I were to represent to you that the
9 chief financial officer from OVEC has stated that
10 Duke Energy Ohio has no title to the plants, do you
11 have any reasons to dispute that?

12 A. No.

13 MR. OLIKER: Objection. It's asking
14 about what another witness may or may not have stated
15 and whether he was here in the room. It's asking to
16 confirm somebody else's hearsay.

17 EXAMINER WALSTRA: Ms. Watts?

18 MS. WATTS: Mr. Brodt was here and has
19 testified. So it's not hearsay.

20 MR. OLIKER: Again, the witness doesn't
21 have any knowledge of the statement if he wasn't
22 here.

23 EXAMINER WALSTRA: I'm going to sustain.

24 Q. So, Mr. Campbell, if we assume that
25 Mr. Brodt were in the room and had so testified,

1 would you agree with that statement?

2 A. What was the statement again?

3 Q. That Duke Energy Ohio does not have any
4 title to the OVEC assets.

5 A. I would assume that that is correct.

6 MS. WATTS: I have nothing further.

7 Thank you, your Honor.

8 EXAMINER WALSTRA: Thank you.

9 Staff?

10 MR. BEELER: No questions. Thank you.

11 EXAMINER WALSTRA: Any redirect?

12 MR. PETRICOFF: One moment.

13 No redirect, your Honor.

14 EXAMINER WALSTRA: Thank you.

15 Thank you, Mr. Campbell.

16 MR. PETRICOFF: At this time, your Honor,
17 we'd move to admit into evidence Exelon Exhibit No.
18 1.

19 EXAMINER WALSTRA: Thank you. Any
20 objections?

21 Hearing none, it will be admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 MS. SPILLER: Your Honor, may we go off
24 the record.

25 (Discussion off the record.)

1 EXAMINER WALSTRA: In the break, OCC has
2 received business records pertaining to the subpoena
3 for Mr. Whitlock. We've been reviewing those for the
4 past half hour or so. There are redactions, both
5 confidential and attorney/client privilege, and,
6 Mr. Berger, you started talking off the record, but
7 on the record your argument regarding -- I guess does
8 it make more sense to start with Duke to make their
9 argument since they're the ones seeking the
10 privileged information and then --

11 MR. BERGER: Well, I did want to point
12 out, I'm not concerned if something is privileged
13 within Duke Energy Ohio and its communication between
14 Duke Energy Ohio counsel and Duke Energy Ohio
15 personnel regarding a matter that's of the subject of
16 a confidential attorney/client communication, that's
17 one thing.

18 But it seems to me some of the
19 communications here are between OVEC counsel and/or
20 OVEC personnel and Duke Energy Ohio personnel or Duke
21 Energy Ohio counsel, and regarding those issues, I'm
22 concerned that OVEC -- that the company may be
23 treating communications between it and OVEC or it and
24 OVEC counsel as privileged.

25 EXAMINER WALSTRA: I'll let Duke make

1 their argument as to that.

2 MS. SPILLER: Thank you, your Honor. We
3 do not have page numbers on the documents, so I will
4 certainly endeavor to identify documents to which
5 Mr. Berger may have been referring and also may just
6 discuss more generally, if I may.

7 EXAMINER WALSTRA: Yes.

8 MS. SPILLER: I would note there are
9 e-mail exchanges between Duke Energy Ohio and
10 attorneys from Bracewell & Giuliani. They happen to
11 be an outside counsel for Duke Energy Ohio. So
12 certainly those communications would be entitled to
13 the same protection of attorney/client privilege as
14 would any internal communications between Duke Energy
15 in-house lawyers and their clients.

16 I would also note that there are
17 communications between counsel for Duke Energy Ohio
18 and Mr. Chiseling. To the extent that these
19 exchanges reveal the work product or thought
20 processes of Duke Energy Ohio counsel, I believe they
21 would be entitled to protection similar to what the
22 interveners in this case are arguing in respect of
23 either oral or written joint defense agreements, that
24 if you do have a common interest, that your
25 privileged information, be it attorney work product

1 or attorney/client communication, is still entitled
2 to protection when, in fact, that is shared in
3 connection with the common interest here.

4 I would thus suggest, and again on the
5 public record, without divulging a whole lot of
6 detail to specific matters that have been afforded
7 confidential treatment, that communications as
8 between Duke Energy Ohio counsel and Mr. Chiseling
9 do, in fact, contain information reflective of
10 counsel's work product, and as such, that should be
11 afforded appropriate protection.

12 EXAMINER WALSTRA: Thank you.

13 Mr. Berger, I heard your argument.
14 Anything further or any other responses?

15 MR. BERGER: Yes. I mean, there is a
16 difference between a common defense privilege in the
17 context of actual litigation, your Honor, and what
18 was being done here, which was to show information
19 that was not part of a litigation relationship. So I
20 think that's a very distinct circumstance.

21 There was not even a proceeding that I'm
22 aware of going on that had to do with -- where a
23 common defense privilege would have applied. In
24 terms of -- I'd like to turn to the February 6, 2013,
25 e-mail that's document 3, and there's a communication

1 there from Mr. Espinoza of a firm, it appears to be a
2 law firm BG, LLP. The to line is omitted from the
3 public record and there is a CC to a John Klauberg.
4 This appears to be -- as I look further into this,
5 Mr. Espinoza with Bracewell & Giuliani and there
6 appears to be on the second e-mail in February 6,
7 2013, at 9:28 a.m., Mr.-- there's communication
8 saying here is OVEC's response to blank draft. What
9 are your thoughts on -- and so my thought had been,
10 well, this is a communication from somebody's counsel
11 other than OVEC regarding an OVEC communication, and
12 I don't think that the communications regarding --
13 between the parties should be treated as confidential
14 or privileged for purposes of attorney/client
15 communications, which is my understanding of why it's
16 blacked out here.

17 MS. SPILLER: And, your Honor, again, if
18 I may just briefly, in regard to this document again.
19 Bracewell & Giuliani is Duke's outside counsel, so
20 these are communications between attorneys between
21 Duke Energy Ohio, certainly whether inside or outside
22 attorneys, they're still protected the same
23 protection of attorney/client privilege.

24 MR. BERGER: And that's fine. My problem
25 is he's conveying a response from OVEC in that

1 particular e-mail, and I don't think the information
2 from OVEC or OVEC's response is appropriately treated
3 as privileged.

4 MS. SPILLER: I believe, your Honor, and
5 certainly John Klauberg is Mr. Espinoza's partner --
6 are you talking about just the February 6th one?

7 MR. BERGER: Well, I want to make -- I
8 don't know what else is blacked out that I can't see.
9 This is something that was brought to my attention
10 that there is a communication regarding a
11 communication between OVEC and Duke Energy that is
12 blacked out. I don't know if there are other
13 communications that I can't see that have been
14 blacked out. So I'm focusing in on this particular
15 one, but I would suggest that the same application
16 should apply to anything else that has been blacked
17 out that's communication between OVEC and Duke.

18 MS. SPILLER: But to be -- I guess so I
19 understand, Mr. Berger, you would agree that
20 communications between Duke Energy Ohio's counsel,
21 whether in-house or outside, are entitled to
22 protection?

23 MR. BERGER: To the extent that they
24 relate to client advice, yes.

25 EXAMINER WALSTRA: Since we also just got

1 this late last night, early this morning, and took a
2 while to even print this off in the break, we're
3 going to take a few minutes, say ten minutes or so,
4 for the Examiners to review what's considered
5 privileged or not. We do have a privilege log and
6 we're going to go over that and hopefully by 11:00,
7 we'll be able to know which way we're going to go.
8 So we'll take a break until then.

9 MR. BERGER: Thank you, your Honor.

10 MS. SPILLER: Thank you, your Honor.

11 (Recess taken.)

12 EXAMINER WALSTRA: You may call your
13 witness.

14 MR. BERGER: Yes. OCC calls Charles
15 Whitlock as on cross consistent with the treatment of
16 other Duke Energy Ohio personnel. Thank you.

17 (Witness sworn.)

18 EXAMINER WALSTRA: Thank you.

19 - - -

20 CHARLES R. WHITLOCK

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

23 CROSS-EXAMINATION

24 By Mr. Berger:

25 Q. Good morning, Mr. Whitlock.

1 A. Good morning.

2 Q. Would you please give your full name and
3 business address for the record.

4 A. Charles Robert Whitlock, 139 East Fourth
5 Street, Cincinnati, Ohio.

6 Q. And what is your position on behalf of
7 Duke Energy Ohio?

8 A. So I have two titles. One is the
9 president of midwest commercial generation, and then
10 I'm also the vice president of gas operations.

11 Q. And midwest commercial generation is a
12 company under the Duke Energy Corporation umbrella;
13 is that correct?

14 A. I believe so -- actually, I don't know
15 that it is a corporation. I think it's a title of --
16 I think it's like an organizational title. I don't
17 believe it's a legal entity.

18 Q. Do you know what company it's within
19 then?

20 A. I would think Duke Energy Commercial
21 Asset Management, but I'm not sure of that.

22 Q. And you're a member of the board of
23 directors of the Ohio Valley Electric Corporation?

24 A. I am.

25 Q. And you've been in that capacity for some

1 time?

2 A. Yes.

3 Q. Approximately how long?

4 A. So I think it was in June of 2006, in
5 that timeframe.

6 Q. And the board meets approximately three
7 to four times a year; is that correct?

8 A. I think that's close.

9 Q. And you're also on the executive
10 committee. Anybody who's a member of the board is on
11 the executive committee; is that right?

12 A. I don't believe that anybody is on the
13 board as part of the executive committee, but I am on
14 the executive committee.

15 Q. And what is the role of the executive
16 committee?

17 A. So I think the executive committee votes
18 on issues pertaining to HR, et cetera, and those are
19 the things that -- that's the one topic that sticks
20 in my mind about compensation of management, benefits
21 for OVEC staff, those types of things.

22 Q. And you're also a member at different
23 points in time of other committees and subcommittees
24 within OVEC; is that correct?

25 A. So I don't recall being a member of

1 any -- sometimes I'll participate in some of the
2 operating committee meetings, but I don't know that
3 I'm actually a member of those committees.

4 Q. Okay. Do you know whether you were a
5 member of the ICPA subcommittee that was formed in
6 December of 2012?

7 A. I don't recall.

8 Q. Do you recall participating in meetings
9 of the ICPA subcommittee?

10 A. Again, it's not memorable to me sitting
11 here today, so I don't recall.

12 Q. You don't recall participating in phone
13 calls?

14 A. I participate in phone calls a lot.

15 Q. Okay. But phone calls in particular
16 having to do with the Duke Energy of Ohio utility
17 interests in OVEC following changes in Ohio's law
18 regarding corporate separation and Commission orders
19 regarding corporate separation.

20 MS. SPILLER: I object to the form of the
21 question. I think it misstates the evidence that's
22 been introduced to date.

23 A. Could you read the question back or try
24 again on the question? It was a long question.

25 (Record read.)

1 A. So there's like three different questions
2 in there. I'll try.

3 MS. SPILLER: Excuse me, Mr. Whitlock.
4 Your Honor, I'll renew my objection to the form. I
5 think this misstates the evidence that's been
6 introduced to date in the record.

7 EXAMINER WALSTRA: Overruled.

8 You can answer

9 A. So I think there's three different
10 questions in there. One is did I participate in
11 phone calls around the potential to transfer Duke
12 Energy Ohio's interest in the ICPA. The answer is
13 yes. Were those conversations predicated upon a
14 change in law? I would say no. And were they
15 predicated on a Commission order to do such? I would
16 say no.

17 Q. Do you normally review the board of
18 director minutes following a meeting that are
19 produced by the secretary of the corporation of OVEC?

20 A. So I think the normal part of a board
21 meeting is an approval of the previous minutes. So
22 we vote on do the minutes accurately reflect what
23 happened in the previous meeting. There's some form
24 of a review.

25 Q. And my question was do you normally

1 review the OVEC minutes.

2 A. Yes. If I vote on the approval of the
3 minutes, I would review them.

4 MR. BERGER: Your Honor, we previously
5 had marked as OCC Exhibit 8 the board minutes for the
6 December 4th, 2012, meeting, I believe. I believe on
7 page 8 of the minutes, we have the artful paragraph
8 there that you determined was public information, and
9 I would just ask Mr. Whitlock to review these
10 minutes. If I may approach.

11 EXAMINER WALSTRA: You may.

12 Q. Mr. Whitlock, do you recall that document
13 and the paragraph I'm referring to in particular?

14 A. Just give me a second to review it. What
15 page in particular?

16 Q. I'm sorry. What's that?

17 A. What page in particular?

18 Q. Page 8 I had you turn to.

19 A. Where on page 8?

20 Q. Third paragraph.

21 A. The question is do I recall this?

22 Q. Yes. Do you recall --

23 A. I'm reading it now, but I don't recollect
24 the meeting in particular.

25 Q. Okay. Were you participating at that

1 meeting, the annual meeting of the board of
2 directors?

3 A. So there's a list on page 1 of the same
4 document, and it has the directors that were present
5 at the meeting, and my name does not show up there,
6 so I would assume that I was not present at the
7 meeting.

8 Q. Do you recall reviewing these minutes at
9 all?

10 A. I don't.

11 Q. Do you have any reason to disagree with
12 the description there of the purpose of the
13 subcommittee?

14 MS. SPILLER: Objection, your Honor. The
15 witness has indicated he wasn't there and wasn't
16 familiar with these meeting minutes.

17 MR. BERGER: He's indicated he's
18 participated in phone calls regarding this subject
19 matter.

20 EXAMINER WALSTRA: Overruled.

21 A. Could you repeat the question?

22 Q. Yes. Do you have any reason to disagree
23 with the description of the subject matter of those
24 subcommittees as referenced here?

25 A. I don't recall.

1 Q. My question wasn't whether you recalled.
2 My question was whether you had any reason to
3 disagree with the description given of what the
4 purpose of the subcommittees is.

5 A. Again, I'm just reading the third
6 paragraph and he's asking, Mr. Akins is asking Brian
7 Chisling to talk about the Ohio competition and
8 OVEC's interest, and your question to me is what
9 exactly?

10 Q. Whether you have any reason to disagree
11 with Mr. Akins' indication that the purpose of the
12 subcommittees is to report the impacts of Ohio
13 competition on OVEC's ownership.

14 A. I would tell you that it's difficult for
15 me to ascertain that right now being in a meeting and
16 not having a recollection of the meeting of whether
17 or not that's what actually happened. My sense of
18 meeting minutes is that meeting minutes are where
19 they get really accurate is where there was actually
20 a resolution and a vote, and other meeting minutes
21 are more informational, but I don't have any -- I
22 don't have any recollection, again, because I don't
23 think I was in this meeting.

24 Q. Are you familiar with the stipulation
25 that was entered into in the last ESP proceeding?

1 A. I believe so.

2 Q. Are you aware that Duke was directed to
3 divest generation assets as part of that stipulation
4 and order in that case?

5 A. Yes.

6 Q. Would you agree with me that the
7 inter-company power agreement between OVEC and its
8 sponsoring companies provides a means for Duke Energy
9 Ohio to divest its interest in OVEC?

10 A. Would I agree that the ICPA spells out
11 ways to transfer to a third party? Is that the
12 question?

13 Q. Or to sell to a third party?

14 A. Yes.

15 Q. And also ways to transfer to an
16 affiliate; is that correct?

17 A. Yes. So from memory the ICPA says that
18 you can transfer if everybody -- there's unanimous
19 consent and then you can transfer to an affiliate or
20 you can transfer to an unaffiliated third party when
21 they meet certain requirements. That's my
22 recollection of the ICPA.

23 Q. And those are primarily credit
24 requirements; is that correct?

25 A. Yes.

1 Q. Are you aware of other requirements other
2 than credit requirements?

3 MS. SPILLER: Mr. Berger, do you have a
4 document to share with the witness?

5 A. I was going to say we should get the
6 ICPA, right, and then we can look at the
7 requirements.

8 Q. You signed the ICPA on behalf of Duke
9 Energy Ohio; is that correct?

10 A. The amended CPA, I don't recall if I
11 signed it. It would be easy to figure out if my
12 signature is on it.

13 Q. You don't recall.

14 A. I don't. There's a lot of transactions
15 that I review and sign and I don't recall whether
16 that was one that I signed or not.

17 Q. Okay. Would you agree with me that --
18 did Duke Energy Ohio take steps to divest its
19 interest in OVEC?

20 MS. SPILLER: Your Honor, if I may, I
21 think we're dancing pretty closely to that which the
22 Commission has already afforded confidential
23 treatment. So I'm just not sure how we'd like to
24 handle that.

25 MR. BERGER: Your Honor, some of this is

1 not confidential. Duke Energy Ohio made a filing at
2 FERC. Mr. Whitlock can testify about things that are
3 not confidential in the public record, and certainly
4 if he doesn't understand the line, counsel can
5 explain it to him regarding where we might go into
6 confidential territory.

7 EXAMINER WALSTRA: Overruled.

8 A. Could you repeat the question, please?

9 MR. BERGER: Would you read it back?

10 (Record read.)

11 A. I think you could say we took steps to
12 divest our interest in OVEC.

13 Q. Do you understand what the line is
14 between public and confidential information in this
15 case?

16 A. Probably not even close.

17 Q. Did Duke make a filing with the Federal
18 Energy Regulatory Commission in order to receive
19 authorization to divest its OVEC assets?

20 A. We did.

21 Q. And when was that?

22 A. It was actually a transfer to a different
23 company.

24 Q. Yes.

25 A. It wasn't to divest. We didn't ask to

1 divest these assets. We said can we transfer them.

2 Q. Transfer is a form of divestiture, would
3 you agree with that?

4 A. You're the lawyer. I think there's a
5 difference between transfer and divesting.

6 Q. Okay. But in terms of Duke Energy Ohio's
7 giving up its ownership interest, that that filing
8 was made at the FERC for that purpose; is that
9 correct?

10 A. We asked to transfer the ownership
11 interest from DEO's interest in the ICPA to a
12 separate company.

13 Q. And can you tell me what happened to that
14 application? Was it approved?

15 A. I believe it was.

16 Q. And it's my understanding that the
17 purpose of that was to receive authorization that
18 Duke wasn't necessarily proposing in that filing that
19 it would definitively transfer the assets. It just
20 wanted to make sure that FERC was in agreement with
21 it if it chose to do so; is that correct?

22 A. Yeah. I think that's consistent with
23 what we talked about in my deposition.

24 Q. And would you agree with me that the
25 purpose of the ICPA subcommittee, to the best of your

1 recollection, from participating in telephone calls
2 of that subcommittee or meetings of that subcommittee
3 was to consider the means for Ohio utilities to
4 divest their interest in OVEC?

5 MS. SPILLER: I'm going to object. This
6 misstates Mr. Whitlock's testimony. He never said he
7 was on the subcommittee meeting.

8 MR. BERGER: I think he said he
9 participated in phone calls regarding this issue.

10 EXAMINER WALSTRA: He can testify to what
11 he knows.

12 A. So I think I testified that I
13 participated in a lot of phone calls. Again, I don't
14 recollect that I participated in phone calls of the
15 ICPA subcommittee, but we can go back and look at the
16 record.

17 Q. But you did participate in phone calls
18 concerning that subject matter that I just pointed
19 to.

20 A. The subject matter of the transfer of --
21 I participated in phone calls around our ability to
22 transfer our ownership of DEO's ownership of the
23 ICPA.

24 Q. Okay. And these were phone calls in
25 which Duke participated with other sponsoring

1 companies of OVEC; is that correct?

2 A. So I can recall one for sure where there
3 were conversations that went back and forth between,
4 you know, our lawyers, our credit people, trying to
5 develop a form of a guarantee where the other
6 sponsoring companies would be amenable to the
7 transfer.

8 Q. And my question to you was whether those
9 meetings were for the purpose of considering the
10 means of Ohio utilities to divest or -- to divest or
11 transfer their interest in OVEC to either an
12 unregulated affiliate or a third party.

13 MS. SPILLER: I object to the form of the
14 question. I think it misstates Mr. Whitlock's prior
15 testimony that he just rendered.

16 EXAMINER WALSTRA: Overruled.

17 A. So when you say Ohio utilities, what are
18 you talking about? I can tell you that DE Ohio had
19 an interest in ascertaining whether or not the
20 sponsoring companies would allow us to transfer by
21 unanimous vote or with some form of a guarantee, and
22 I was involved in those conversations.

23 Q. And did Duke intend to transfer its OVEC
24 interest?

25 A. So we intended to figure out whether or

1 not we had the ability to transfer it. Again, I
2 would characterize it as in the same vein as FERC,
3 right. I mean, to actually transfer it, we had to
4 have FERC approval and we also had to have the other
5 operating companies, the other sponsoring companies
6 of OVEC say they were amenable to that. So when you
7 say did we intend to transfer it, we were certainly
8 in the groundwork to create the flexibility to
9 transfer it if we so choose.

10 Q. And you understand that under Section
11 9.182 of the ICPA, that Duke could transfer to what's
12 termed a permitted assignee on a 30-day notice as
13 long as credit requirements were met? Are you
14 familiar with that?

15 MS. SPILLER: I think that misstates the
16 ICPA, and unless you have the document to share with
17 the witness, I think he's somewhat disadvantaged.

18 MR. BERGER: I'm asking what he knows.

19 A. So I was just going to say it would be
20 helpful to look at the document.

21 MR. BERGER: Your Honor, if I may
22 approach.

23 EXAMINER WALSTRA: You may.

24 MS. SPILLER: Mr. Berger, the exhibit
25 number, please?

1 MR. BERGER: I'm not sure. Just one
2 minute.

3 MS. SPILLER: Mr. Berger, it's IEU 5.

4 MR. BERGER: IEU 5? Thank you.

5 EXAMINER WALSTRA: Thank you.

6 Q. Mr. Whitlock, would you let me know when
7 you've had a chance to look at that provision?

8 A. Which provision was it again? I'm sorry.

9 Q. Section 9.182.

10 A. 9.182. Okay. I've read it.

11 MR. BERGER: Yes. Can you repeat the
12 question that I asked previously?

13 (Record read.)

14 MS. SPILLER: Object. I think, one,
15 there's been no foundation to establish with respect
16 to Mr. Whitlock testifying as to contractual
17 interpretations of this document. I think the
18 question also misstates the provisions of 9.182. I'd
19 further note that most of this document concerning
20 this section has already been read into the record in
21 this case, and I think the document speaks for
22 itself.

23 MR. BERGER: I'm just trying to establish
24 the witness' level of knowledge. He signed the
25 agreement so there's foundation for this.

1 EXAMINER WALSTRA: Overruled.

2 THE WITNESS: I hate to do this, but can
3 you go back to the question again. I'm sorry. There
4 will be a recurring theme whenever there's an
5 objection and discussion, that I've got to go back to
6 the question. I'll ask every time.

7 (Record read.)

8 A. Again, I would just tell you that the
9 language in 9.182 talks about a 30-day notification,
10 and the idea of doing that to a permitted assignee
11 and then permitted assignee is defined pretty clearly
12 in 1.0115 of the agreement.

13 Q. Yes. So you understand that permitted
14 assignee is defined mostly in terms of
15 creditworthiness, would you agree with that?

16 A. Permitted assignee certainly has a
17 definition of credit rating in it, but there's a
18 bunch of other provisions. It certainly talks about
19 credit rating.

20 Q. Would you agree with me that there are
21 other entities other than Duke Energy Ohio within the
22 Duke Energy Corporation umbrella that have credit
23 ratings consistent with those required for a
24 permitted assignee?

25 A. I would assume that to be the case.

1 Q. Do you know whether Duke Energy
2 Corporation maintains -- the parent company maintains
3 a credit rating that is equivalent or better than the
4 indicated credit ratings?

5 A. Again, I would believe so.

6 Q. Duke Energy Corporation, do you know of
7 any other corporations within the Duke Energy
8 Corporation umbrella that can't maintain a credit
9 rating, for example, that's equivalent to those
10 indicated credit ratings?

11 A. I don't recall.

12 Q. Do you know any other entities within the
13 Duke Energy Corporation umbrella that maintain credit
14 ratings that are equivalent or better than the
15 indicated credit ratings under the permitted assignee
16 definition?

17 A. I would assume there are, but sitting
18 here today, I don't know that I could say I know
19 that. It's easy to ascertain that.

20 Q. Was an effort made by Duke Energy Ohio to
21 the best of your knowledge, to transfer to an entity
22 that would have met the qualifications of a permitted
23 assignee its interest in OVEC?

24 A. Could you repeat the question, please.

25 MR. BERGER: Could you reread the

1 question, please.

2 MS. SPILLER: I'm going to object to the
3 extent that question states the definition of a
4 permitted assignee under the agreement.

5 MR. BERGER: The question makes no
6 assumption regarding the definition of permitted
7 assignee. It uses the term "permitted assignee" as
8 definitional to the question.

9 EXAMINER WALSTRA: Overruled.

10 (Record read.)

11 A. I don't recall.

12 Q. Would there be somebody at Duke Energy
13 Ohio who could testify on behalf of Duke Energy Ohio
14 who would have that information?

15 A. I'm not sure.

16 Q. You don't know somebody who would have
17 more information regarding this than you would.

18 A. I don't know.

19 Q. Are you familiar with section 9.183 of
20 the ICPA, which allows for a sale or transfer to a
21 third party subject to a right of first refusal to
22 the sponsoring companies as long as the third party
23 has the required creditworthiness?

24 A. So I can read Section 9.183 and it will
25 make me familiar with it, if you want.

1 Q. First of all, I'm wondering if you're
2 familiar enough with it that you can -- that you
3 understand that that is the general meaning of
4 Section 9.183, that it provides for a sale or
5 transfer to a third party with a right of first
6 refusal to the sponsoring companies as long as the
7 third party has the creditworthiness.

8 A. I think generally that's the content.

9 Q. Thank you. And would you agree with me
10 that Duke Energy Ohio never issued -- or do you know
11 whether Duke Energy Ohio ever issued an RFP, a
12 Request for Proposal, or other means to attempt to
13 sell its interest in OVEC to a third party?

14 MS. SPILLER: I'm going to object. I
15 think this gets well beyond the stipulation -- I'm
16 sorry, well beyond the subpoena that was issued in
17 this case. It's specific to the actual efforts of
18 transferring under the ICPA whether a formal
19 communication, if you will, between sponsoring
20 companies. We are now well beyond that.

21 EXAMINER WALSTRA: Mr. Berger.

22 MR. BERGER: Your Honor, the subpoena of
23 Mr. Whitlock -- I mean, we subpoenaed Mr. Whitlock
24 individually to testify about efforts that were made.
25 First of all, we subpoenaed him as an individual. We

1 did not limit our subpoena to him in terms of any
2 particular subject matter, but certainly our subpoena
3 was intended to address these issues of consent, and
4 I think that's pretty clear from the subpoena. If I
5 need to pull the subpoena out, I will.

6 MS. SPILLER: And, your Honor, I would
7 simply note that we did file a motion to quash
8 elements of that subpoena, but the subpoena very
9 clearly talks about requests under the terms of the
10 ICPA. And so to the extent Mr. Berger would like to
11 ask about actual requests under 9.183, that certainly
12 would be more consistent with the subpoena, but I
13 believe we're now getting well beyond that.

14 MR. BERGER: I think we're talking about
15 the terms of the ICPA.

16 EXAMINER WALSTRA: Overruled.

17 MS. SPILLER: And, your Honor, to the
18 extent this line of questioning would be permitted, I
19 would just ask that the witness be cautioned that
20 this is the public record and should not be compelled
21 to disclose information to the extent it would be
22 confidential, particularly in respect of interactions
23 with entities that are not at the table.

24 EXAMINER WALSTRA: Thank you.

25 MR. BERGER: Can you reread the question

1 for the witness, please.

2 (Record read.)

3 A. It's a bit of a tortured question. I
4 don't believe DE Ohio ever issued an RFP.

5 Q. Are there other means for a sale
6 transaction to have been initiated by DEO or anybody
7 acting on DEO's behalf with respect to a sale to a
8 third party or a transfer to a third party?

9 A. So I was prepared to answer the original
10 question, I think, but now I'm confused by the
11 question that you just asked so could we go back
12 to -- whichever question you want me to address.

13 Q. I'm sorry, Mr. Whitlock. I did not
14 understand what your request for clarification is.

15 A. So you had asked a question that I was in
16 the midst of answering the question, then you asked
17 another question. So I'm curious which question it
18 is that you want me to address.

19 Q. I'm sorry. I didn't realize that I had
20 interrupted your answer.

21 So obviously I wanted you to answer both
22 questions, so to the extent that you need the first
23 question reread in order to complete your answer, I
24 would ask the court reporter to reread that question.

25 (Record read.)

1 A. So the first part of the question says
2 did Duke Energy Ohio issue an RFP, the answer is no,
3 not to my knowledge. Did we pursue other means to
4 monetize our interest in the ICPA? The answer is
5 yes.

6 Q. And can you explain what means you
7 utilized?

8 A. So we responded to other entities'
9 request for proposal.

10 Q. Okay. And are you speaking now about
11 power purchase agreements with respect to selling the
12 output of Duke Energy Ohio's interest in OVEC as
13 opposed to selling its entitlement, all of its right,
14 title, and obligations that I'm referring to?

15 A. Let's take it piece by piece.

16 So do you want to read the question back.

17 (Record read.)

18 A. Sitting here today, it's the latter,
19 right, it would be -- again, from memory, it would be
20 somebody stepping into Duke Energy Ohio's shoes in
21 the ICPA.

22 Q. So are you saying Duke Energy Ohio
23 responded to an RFP or an RFP or RFPs -- strike that.

24 So are you staying that Duke Energy Ohio
25 responded to some form of proposal whereby a third

1 party proposed to purchase Duke Energy Ohio's
2 entitlement, including all of its right, title, and
3 obligations in OVEC?

4 A. So, again, from memory, I don't believe
5 that anybody that issued an RFP in which we engaged
6 in the RFP a third party said I would want to step
7 into -- their RFP was not explicit about stepping
8 into our shoes in OVEC in the ICPA. Our response to
9 an RFP would be we can allow you to step into Duke
10 Energy Ohio's shoes as a participant in the ICPA.

11 Q. So you responded even though the RFP or
12 proposal didn't ask for it, you responded saying, as
13 I understand what you said, saying that Duke Energy
14 Ohio could offer this as a response to your proposed
15 offer to transfer of its interest.

16 A. Yes.

17 Q. And I take it the details of that
18 particular transaction you would consider
19 confidential?

20 A. So there was no specific transaction.
21 Again, it was a response to an RFP. So if that's
22 what you mean by the transaction, then it's typical,
23 I think, for most RFPs to have some form of
24 confidentiality provision. But, again, sitting here
25 today, without looking at each RFP in its singular

1 nature, whether or not that's confidential or not,
2 I'm not sure.

3 Q. Okay. But Duke Energy Ohio never issued
4 an RFP for this purpose; is that correct?

5 MS. SPILLER: Objection. Asked and
6 answered.

7 A. No.

8 EXAMINER WALSTRA: Overruled.

9 Q. And Duke Energy Ohio never reached an
10 agreement with this third party that you're
11 referencing to sell that asset to them; is that
12 correct?

13 A. So both questions are one that I
14 previously answered that I don't recall Duke Energy
15 Ohio issuing an RFP, and the second one about did we
16 ever consummate a deal to transfer our interest in
17 the ICPA, the answer is no.

18 Q. Now, did Duke attempt to transfer its
19 interest under Section 9.181 of the agreement?

20 MS. SPILLER: And, your Honor, if I may
21 interject, these questions -- and I appreciate
22 Mr. Berger will respect the Commission's -- or the
23 Bench's prior rulings on confidentiality, I feel like
24 we're about to have conversations where you can't
25 help but talk about specifics or which the Bench has

1 already afforded confidential treatment. I just want
2 to note that as a cautionary statement as he
3 proceeds.

4 EXAMINER WALSTRA: I assume Mr. Berger
5 knows the line and obviously object if you think the
6 witness will be crossing that line as well.

7 MR. BERGER: Thank you. I'm trying to
8 respect the line, and I will continue to do so.

9 EXAMINER WALSTRA: Thank you.

10 THE WITNESS: Is it important for me to
11 know the line or is somebody going to help me
12 figure -- because I don't know where the line is.

13 EXAMINER WALSTRA: Hopefully between
14 Mr. Berger and your counsel, they'll kind of guide
15 you along the way. Just be cautious of what you
16 think might be confidential.

17 MR. OLIKER: Speak slowly.

18 THE WITNESS: So let's go back to the
19 question.

20 (Record read.)

21 A. I believe so.

22 Q. Now, do you know who does the forecasts
23 of fundamental prices on behalf of Duke Energy Ohio?

24 MS. SPILLER: Objection. Outside the
25 scope of the subpoena.

1 EXAMINER WALSTRA: Overruled.

2 A. I don't.

3 Q. And are you aware of any analysis of
4 EPA's carbon rules done by Duke Energy Corporation
5 with respect to Duke Energy Ohio's interest in OVEC?

6 A. It's kind of a tortured question. Am I
7 aware of any carbon assessment related to DE Ohio's
8 interest in OVEC? Is that the question?

9 Q. Well, let me ask you first are you aware
10 of any analysis of the EPA's proposed carbon rules
11 that has been done by Duke Energy Corporation?

12 A. So, again, I don't want to get trapped
13 in -- Duke Energy, whether it's the corporation or
14 not, is assessing EPA rules if that's the question.
15 I've seen some of those.

16 Q. Okay. Are you familiar with any analysis
17 of the economic impact of those carbon rules that
18 have been done?

19 MS. SPILLER: I'm going to object to the
20 relevance. If this does not include Duke Energy
21 Ohio's entitlement in OVEC, we are well beyond the
22 scope of the subpoena.

23 MR. BERGER: The subpoena goes to
24 Mr. Whitlock's knowledge. These are areas that were
25 inquired into during his deposition.

1 EXAMINER WALSTRA: Overruled.

2 A. I'm not aware of any.

3 Q. Now, is Duke Energy Ohio's interest
4 offered -- in OVEC offered into the day ahead market?

5 A. It is.

6 Q. Is there a must offer obligation
7 associated with Duke Energy Ohio's interest under
8 PJM's rules?

9 A. I believe so. If you are a capacity
10 resource in PJM, that you have a must offer
11 obligation in the day-ahead market.

12 Q. And are you familiar with how OVEC's
13 budget for 2013 compared to OVEC's actuals for 2013
14 in terms of its financial performance?

15 A. Not sitting here today I'm not.

16 Q. And are you familiar with ongoing efforts
17 to transfer Duke Energy Ohio's interest in OVEC to an
18 affiliate or third party? Are there any ongoing
19 efforts?

20 A. I'm not aware of any.

21 MR. BERGER: Your Honor, at this time I'd
22 like to mark for identification an OCC Exhibit, No.
23 44 and 44a. The document I'm providing is what has
24 been marked as a confidential document. I understand
25 that has been redacted for privileged information.

1 That will be attorney/client privilege and attorney
2 work product as I understand it, but other than that,
3 this will just be -- this would be the confidential
4 document and would be subject to redaction as your
5 Honors may rule on in this proceeding.

6 EXAMINER WALSTRA: It will be so marked.

7 (EXHIBITS MARKED FOR IDENTIFICATION.)

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

9 EXAMINER WALSTRA: You may.

10 MR. BERGER: Your Honor, I would note
11 that we were provided this morning with 27 documents.
12 We went through the documents and excluded certain
13 documents that had been numbered. You'll see the
14 numbers on these documents. Those numbers were put
15 there by Duke on the copy that was provided to us,
16 and we have included in this packet for Exhibit 44
17 and 44a all of the documents that Duke provided
18 except for the following, and I would point out the
19 following documents that we did not include in this
20 packet.

21 EXAMINER WALSTRA: Go ahead.

22 MR. BERGER: Document No. 4, document No.
23 6, document No. 7, document No. 9, document No. 10,
24 document No. 12, document No. 20, document No. 26,
25 and document No. 27. These documents were excluded

1 for various reasons, some of which because they were
2 duplicates we believe of documents that have already
3 been offered in this proceeding.

4 Q. (By Mr. Berger) So, Mr. Whitlock --

5 EXAMINER WALSTRA: Can you give us a
6 minute to just kind of organize based on that?

7 MR. BERGER: Yes.

8 EXAMINER WALSTRA: Thank you. You can go
9 ahead, Mr. Berger, thank you.

10 MR. BERGER: Thank you, your Honor.

11 Q. Mr. Whitlock, are you familiar with the
12 documents included in this exhibit?

13 A. No.

14 Q. Are you aware that they were provided in
15 response to a subpoena?

16 A. I don't know. You said you got the
17 documents this morning. I don't know why you were
18 given the documents.

19 Q. Okay. Are you aware that you're
20 appearing here under order of the subpoena?

21 A. I came here because I was told by Amy
22 Spiller to be here.

23 Q. Did you review a subpoena that was
24 provided to Duke Energy Ohio for your appearance
25 today?

1 A. I did not.

2 MR. BERGER: Your Honor, Mr. Serio, can
3 he approach to provide Mr. Whitlock a copy of the
4 subpoena?

5 EXAMINER WALSTRA: He may.

6 MS. SPILLER: And I would just ask that
7 the record reflect that Mr. Berger in his
8 communications with Ms. Kingery agreed that she would
9 accept service on behalf of this witness.

10 MR. BERGER: I'm just waiting for
11 Mr. Whitlock to review the subpoena.

12 Q. Let me know you've had a chance to look
13 at it.

14 A. Okay. Okay. I've read it.

15 Q. It's my understanding that the documents
16 we received this morning were produced in response to
17 the portion of the subpoena that asked you to bring
18 the indicated documents. So these are documents --
19 the documents in this package that I provided to you
20 are documents I did not see prior to this morning.
21 And what I'd like to do is talk about some of those
22 documents. So let's turn to document 1 --

23 EXAMINER WALSTRA: I would note for the
24 witness the stuff in the documents that are blocked
25 off, like squared off, those are considered

1 confidential. So just don't refer to those out loud.

2 THE WITNESS: All right. Thank you.

3 EXAMINER WALSTRA: Thank you.

4 Q. Looking at document 1 and focusing on the
5 information that is not confidential, are you
6 familiar with this e-mail as a recipient of the
7 e-mail?

8 A. Yes. So I received the e-mail. I can
9 see my name on there.

10 Q. And you sent an e-mail -- or strike that.
11 Did you participate in a telephone call
12 subsequent to this e-mail?

13 MS. SPILLER: I'm going to object to the
14 form. A telephone call on anything?

15 Q. Regarding the subject matter -- this
16 e-mail set up I believe a teleconference on
17 February 25, 2013. Do you know whether you
18 participated in that initial meeting? I shouldn't
19 have even said a conference call. It says "initial
20 meeting," but it also provides an opportunity for a
21 teleconference.

22 A. I don't recall.

23 Q. Do you know whether anybody from Duke
24 Energy Ohio participated in that meeting or
25 teleconference?

1 A. I don't.

2 Q. Document No. 2, which is Bates number 3
3 and following asks for clarification of OVEC's
4 subcommittees on which people are working on. Do you
5 recall this e-mail?

6 A. Again, I get probably 100 e-mails a day.
7 I don't recall this e-mail, but I can see my name on
8 the e-mail.

9 Q. I note that some names on the e-mail are
10 indicated to be confidential. I emphasize that when
11 you're responding to the questions you need to
12 be aware of that.

13 A. Yeah. So strike that.

14 EXAMINER WALSTRA: Can you hold on just a
15 second, Mr. Berger?

16 MR. BERGER: Yes.

17 EXAMINER WALSTRA: Go off the record a
18 second.

19 (Discussion off the record.)

20 (Thereupon, at 12:33 p.m., a lunch recess
21 was taken.)

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Tuesday Afternoon Session,
November 4, 2014.

- - -

EXAMINER WALSTRA: Are we ready to go
back on the record? Mr. Berger?

MR. BERGER: Thank you.

- - -

CHARLES R. WHITLOCK
being first previously sworn, as prescribed by law,
was examined and testified further as follows:

CROSS-EXAMINATION

By Mr. Berger:

Q. Good afternoon, Mr. Whitlock. Referring
back to the document that's been marked as OCC
Exhibit 44a. Do you have that available to you?

A. I do.

Q. And I just -- these documents reflect a
process that occurred before OVEC regarding
consideration of some possible transfer of some
sponsoring companies' OVEC interest; would you agree
with that?

A. It seems that the agreement contemplates
two different committees being set up, one about
assignment of the ICPA interest and the other one
about the future of OVEC's transmission.

1 Q. Okay. And I want to focus just on the
2 first one.

3 A. Okay.

4 Q. I think you indicated some knowledge of
5 the process that occurred with respect to that
6 subcommittee; is that correct?

7 A. You should look at what -- you asked
8 questions about the committee. You asked me if I was
9 on it, and I said I wasn't on it. So whatever we
10 said on the record, I mean, I would say that my
11 answer truthfully before.

12 Q. I'm not questioning that. I'm asking you
13 what was your knowledge of what was going on with
14 this subcommittee.

15 A. So I think it's exploring the idea of
16 what are the requirements to transfer under the ICPA,
17 and so there was a subcommittee that was established
18 to explore what the requirements were.

19 Q. Okay. And you'll see these documents
20 reflect a proposed form of guaranty in various
21 places. Are you familiar with that?

22 A. Yeah, remotely. Again, I wasn't on the
23 committee so the people that were working on it are
24 our credit experts and the team of legal experts.

25 Q. Okay. Do you understand what the purpose

1 of the proposed guaranty was?

2 A. To see that if we could get people to
3 approve transferring under that form of a guaranty.

4 Q. And I think you testified at your
5 deposition regarding what happened toward the end of
6 this process. Do you recall that?

7 MS. SPILLER: I'm going to object to the
8 improper use of the deposition transcript.

9 MR. BERGER: Definition of what?

10 MS. SPILLER: Your improper use of the
11 deposition.

12 MR. BERGER: I'm sorry. Did I use it?

13 MS. SPILLER: You're setting up questions
14 about "do you recall this conversation in your
15 deposition" and I think appropriate use of the
16 deposition is if you ask Mr. Whitlock a question
17 today and he answers differently than he did
18 previously, then you show him the deposition.

19 MR. BERGER: Thank you, Ms. Spiller. I'm
20 happy to rephrase my question.

21 MS. SPILLER: Thank you, Mr. Berger.

22 Q. Mr. Whitlock, these documents reflect
23 consideration of a circulation of a proposal in July
24 of 2013. Are you familiar with the fact that there
25 was a proposal circulated regarding the transfer of

1 interests?

2 A. Is there a specific document in this
3 package that you're referring to?

4 EXAMINER WALSTRA: Just so the record is
5 clear, we're going to refer to this packet as the
6 Whitlock subpoena responses, or OCC Exhibit 44a.

7 THE WITNESS: Nice.

8 Q. If you'd look at, Mr. Whitlock, at
9 Exhibit No. 25.

10 A. Is that the small numbers in the lower
11 right-hand corner?

12 Q. No. Let's look at page No. 140.

13 A. All right.

14 Q. Okay.

15 A. Lower right-hand corner?

16 Q. Yes, the Bates No. 140.

17 A. Got it.

18 Q. Do you see the e-mail there at the bottom
19 from Mr. Chiseling where he says "Please let me know
20 if you are okay with me providing PDFs of guaranty
21 and consent proposal exhibits against last proposal
22 sent to Subcommittee (if any). AEP has signed off on
23 this. I am running PDFs to see if there are any
24 changes." Do you see that?

25 A. I do see that.

1 Q. And then if you go to the next page, "We
2 plan to have our proposal signed in the morning."
3 And "Nick will forward it as soon as possible." Are
4 you familiar with this process where a proposal was
5 circulated?

6 A. So I'm aware of a proposal of a guaranty
7 that was circulated to the sponsoring companies of
8 OVEC, yes.

9 Q. And are you familiar with the outcome of
10 the circulation of that proposal?

11 A. When you say the outcome, are you talking
12 about what the vote was?

13 Q. If there was a vote, yes, if that was the
14 outcome.

15 A. I mean, we had asked the
16 sponsoring committee -- the sponsoring members of
17 OVEC does this form a guaranty of work.

18 Q. And do you remember whether --

19 A. It was not approved.

20 Q. And are you familiar with the reasons
21 that it was not approved?

22 MS. SPILLER: I would just again caution
23 Mr. Whitlock about the confidential nature of his
24 answer potentially.

25 A. Could you repeat the question?

1 Q. Are you familiar with the reasons the
2 proposal was not approved without mentioning any
3 names?

4 A. I don't know that I'm familiar with the
5 reasons why it wasn't approved, no.

6 Q. You're not familiar with the reasons?

7 A. No.

8 Q. Do you know whether it had to do with the
9 form of the proposed guaranty?

10 A. I think it's logical that it had to do
11 with the form of the guaranty, but I don't know for
12 sure. I know there was a vote. I know it wasn't
13 approved. The reason why it wasn't approved I'm not
14 privy to, or I can't recollect.

15 Q. Do you know anybody at Duke Energy Ohio
16 who would know?

17 A. No.

18 Q. Anybody acting on behalf of Duke Energy
19 Ohio who might know?

20 A. No.

21 Q. Do you know whether there was a Duke
22 Energy Ohio member of this subcommittee?

23 A. I believe there was.

24 Q. Do you know who that was?

25 A. So I'm a little stuck here.

1 Q. I'm sorry. What's that?

2 A. I'm sorry. I'm a little stuck on the
3 line of what I can say and not say about the names.

4 MR. BERGER: Your Honor, I don't think
5 the names of members of the subcommittee themselves
6 are confidential. We've discussed those at other
7 points in this proceeding. We had a list of people
8 who were participants in subcommittee calls. I don't
9 think that information has been treated as
10 confidential before, and I suggest that it shouldn't
11 be.

12 MS. SPILLER: Your Honor, I would simply
13 note there has been an indication of subcommittees
14 being established. I don't know that there's been in
15 any of the documents a delineation of the specific
16 individuals on the subcommittees. So I would just
17 offer that comment.

18 EXAMINER WALSTRA: I don't think who's on
19 the subcommittee was made confidential. So if the
20 witness knows.

21 A. I believe Greg Cecil and Nick Melillo and
22 then probably John Gatto from our credit department
23 and Dina Riemann from our legal department.

24 Q. So they would have more knowledge of the
25 matters that occurred before the subcommittee; is

1 that correct?

2 A. They were on the subcommittee.

3 Q. You'd agree they'd have more knowledge
4 because they were on the subcommittee.

5 A. Again, they were on the subcommittee. I
6 don't know whether they have more knowledge or not.

7 Q. Do you recall specifically any meeting
8 you participated in with respect to the objectives of
9 the ICPA subcommittee?

10 A. I don't recall today. Sitting here, I
11 don't.

12 Q. Mr. Whitlock, do you know whether Duke
13 has made any determination whether a transfer of its
14 OVEC interest would result in substantially increased
15 liabilities to Duke Energy Ohio?

16 A. Could you repeat the question? I'm
17 sorry.

18 Q. Do you know whether Duke has determined
19 whether a transfer of its OVEC interest would result
20 in substantially increased liabilities to Duke Energy
21 Ohio?

22 A. I'm not aware of that.

23 Q. Are you aware of whether Duke Energy Ohio
24 has made a determination of whether it is required to
25 transfer its interest in OVEC under the terms of the

1 stipulation from the last ESP proceeding?

2 A. Could you repeat the question, please?

3 MR. BERGER: Could the court reporter
4 read it back, please?

5 (Record read.)

6 A. The reason I struggle a little bit is the
7 DE Ohio, but I can tell you I was involved in the
8 negotiation of the stipulation and submitted
9 testimony in support of the stipulation, and the
10 requirement to transfer OVEC was never discussed. In
11 any of the negotiations that I was involved in as
12 part of that stipulation, and the testimony that I've
13 offered in support of the testimony -- or the
14 testimony that I offered in support of the
15 stipulation was very clear about what generating
16 assets would be transferred, and OVEC was not
17 enumerated in that list. So I'm not aware of a
18 determination by DE Ohio other than what I just
19 talked about that would say that it was not something
20 that would be transferred as part of the stipulation.

21 Q. Are you familiar with the provision in
22 the stipulation addressing the transfer of
23 contractual arrangements?

24 MS. SPILLER: I'm going to object. I
25 think that misstates the stipulation.

1 EXAMINER WALSTRA: Overruled.

2 A. So we should just get a copy of the
3 stipulation, and then we can look at it.

4 Q. I'm just asking you whether you're aware
5 of that.

6 MS. SPILLER: Your Honor, we're asking
7 this witness about a document that was signed three
8 years ago. He just asked to be provided a copy of
9 it.

10 MR. BERGER: I'm just asking if he's
11 aware of such a provision.

12 A. It doesn't feel unreasonable for me to
13 ask for a copy of the document to refresh my memory,
14 right? How about I just say I don't know and then we
15 can look at the document.

16 Q. But off the top of your head, you don't
17 recall one way or the other?

18 MS. SPILLER: I would again note to the
19 form of this questioning, several witnesses have been
20 presented documents so they could testify from those.
21 This witness has just indicated he doesn't know, and
22 Mr. Berger is misstating the language in the
23 stipulation.

24 MS. BOJKO: Your Honor, I'm going to
25 object at this point to counsel testifying. The

1 witness was about ready to respond, and her
2 objections are encouraging him to respond in a
3 different fashion. He was going to respond. He's
4 already responded to partial pieces of the
5 stipulation in the testimony that he filed, and he
6 was about ready to respond again until counsel
7 testified for him and said that we need to get a copy
8 of the document. She's leading the witness.

9 EXAMINER WALSTRA: He has already asked
10 for the document, and I think he answered the
11 question.

12 MR. BERGER: I think he answered the
13 question, yes.

14 Q. (By Mr. Berger) Mr. Whitlock, do you know
15 whether calculations of the net cash flow from OVEC
16 are regularly done by Duke Energy?

17 A. I would say, yeah, they're regularly
18 done.

19 Q. And I'm not sure if I asked you this
20 before, but in terms of the forecasting of the
21 development of Duke Energy's fundamental curves, did
22 you indicate you didn't know who developed those
23 curves at Duke Energy?

24 A. Yes. It's really not that good of a
25 question because I don't know that any one person's

1 involved. The development of a fundamental curve
2 starts with a consultancy and then certain
3 assumptions are changed by a variety of people that
4 are in Duke and then it gets run back through a model
5 again and so I don't know -- when you asked the
6 question is there an individual that's responsible
7 for that, I don't know that there is an individual
8 that's responsible for it.

9 Q. Well, is there an individual who's
10 responsible for the oversight of the process of
11 developing of the fundamental curve?

12 A. Again, I would say I don't know who that
13 individual is.

14 Q. Okay. Do you know what department that
15 would be done through?

16 A. I don't know the name of the department.
17 Probably in our planning function, strategic planning
18 maybe.

19 Q. Do you know how frequently the
20 fundamental curve is updated?

21 A. I think it's done twice a year, I
22 believe.

23 Q. Would you agree with me that it is the
24 sponsoring companies who determine how their share of
25 the OVEC entitlement is sold or used for their own

1 purposes?

2 A. Could you read the question back, please?

3 Q. Yes. Would you agree with me that it is
4 the sponsoring companies who determine how their
5 share of the OVEC entitlement is sold into the market
6 or whether it's used for their own purposes?

7 A. I can tell you under Article 4 of the
8 ICPA 4.031 that each sponsoring company, you can read
9 the language, schedules the delivery of any portion
10 of its megawatts, basically of its entitlement to
11 available energy in accordance with scheduling
12 procedures established by the operating committee
13 from time to time. So I don't think there's a
14 unilateral right to do what you asked and the
15 question was to determine how their energy is sold
16 and/or used.

17 Q. It sounded like they did have the right
18 to make that determination subject to scheduling
19 procedures that are established.

20 A. So I think that that's true of the ICPA,
21 but there might be other requirements by something in
22 LG&E or Sigeco that might have requirements put on
23 them by other regulatory agencies about how they in
24 your parlance have sold that energy or used that
25 energy. So I think that there are other people

1 outside of this that could have a determining factor
2 on how it's sold or used.

3 Q. Okay. Would you agree with me that Duke
4 does not have to take its full share of its 9 percent
5 entitlement of energy? It can decline to take any
6 portion of it; is that correct?

7 A. So it can and then, you know, I would
8 direct you to the ICPA that talks about being at
9 minimum loading events. You can do what you're
10 saying.

11 Q. And if Duke doesn't use its full
12 entitlement, other sponsoring companies can utilize
13 that portion of its entitlement?

14 A. So let me look at the ICPA and just
15 determine that. So 4.032 seems to spell out what
16 you're talking about.

17 MR. BERGER: Okay. Just one minute. I
18 may be done with my questions on the public record,
19 your Honor.

20 That's all I have on the public record,
21 your Honor.

22 EXAMINER WALSTRA: Thank you.

23 MR. BERGER: Thank you.

24 EXAMINER WALSTRA: Ms. Hussey?

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CROSS-EXAMINATION

By Ms. Hussey:

Q. Good afternoon, Mr. Whitlock. To your knowledge, do environmental control investments in OVEC units have an impact on the price or costs that sponsoring companies pay?

A. They would.

Q. Okay. And are you familiar with the proposed clean power plan?

A. I don't know that I am by that name.

Q. By 111(d) maybe?

A. So you're talking about the EPA rule?

Q. The proposed regulation.

A. Yeah. So I'm remotely familiar with it.

Q. Okay. And to your understanding, then, is it possible that additional environmental controls will be necessary for the OVEC generating units under that proposed rule?

A. I don't know.

Q. Okay. To your knowledge, do FGD controls reduce CO-2 emissions from generating units?

A. I don't believe they do, but I'm not a chemical engineer.

Q. Okay. What about SCR controls?

A. They're primarily for NOx reduction and

1 in conjunction with an FGD reduced Mercury. The
2 primary function of an SCR is to reduce NOx, but I
3 don't believe they reduce carbon, but I could be
4 wrong.

5 Q. Thank you. And to your knowledge, do the
6 OVEC generating units make use of subcritical or
7 supercritical boilers?

8 A. I think they're subcritical.

9 Q. Is it your understanding that the costs
10 of environmental control investments in the OVEC
11 units would be fixed costs that are associated with
12 the plants?

13 A. I think it would depend on what the
14 environmental control is. They typically have fixed
15 cost component as well as a variable cost component,
16 and then they also might allow you to change fuel
17 that I would consider to be variable in nature.

18 Q. But aside from a change in fuel, would
19 you characterize the costs as typically fixed costs?

20 A. Again, I would give you my previous
21 answer, that I think they are a -- they have a
22 component of fixed cost and a component of variable
23 cost.

24 Q. Okay. And to your knowledge, is Duke
25 Energy Ohio responsible to cover its share of the

1 fixed costs of the OVEC's units whether or not it
2 takes its contractual entitlement to generation from
3 those plants?

4 A. So I would point you to the ICPA is
5 pretty clear about what obligations Duke has. If
6 there's specific provisions, there are certain fixed
7 costs that we would pay and variable costs that are
8 going to be determined by what our take of energy is,
9 but those are all pretty clear in ICPA.

10 Q. Okay. And to your knowledge, without
11 having to examine the document, would environmental
12 capital costs, controlled capital costs be included
13 amongst those fixed costs that are due and owing
14 whether or not you take generation under your
15 entitlement?

16 A. So given your use of the word "fixed
17 costs" in your question, I would assume that those
18 are not going to be impacted by the amount of energy
19 that I take.

20 Q. Okay.

21 A. But just using your words as the
22 direction.

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

24 EXAMINER WALSTRA: Ms. Bojko?

25 MS. BOJKO: Thank you.

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CROSS-EXAMINATION

By Ms. Bojko:

Q. Good afternoon, Mr. Whitlock.

A. Good afternoon.

Q. Sir, what's your current title? What's your current position?

A. We covered that at the beginning. It's president of midwest commercial GEN and vice president of gas operations.

Q. Thank you. It's a foundation question for my next.

Do you currently today have any responsibilities for Duke Energy Ohio on the electric side?

A. I would say no.

Q. And you do have some responsibilities still currently for Duke Energy Ohio on the gas side? That's my understanding; is that right?

A. Yes.

Q. And I don't think you actually did answer Mr. Berger's question about whether you believe you ultimately did sign the amended ICPA which was restated on September 10th, 2010?

A. So I just so happen to have a copy of the ICPA, and it does have my signature on it.

1 Q. Great. Thank you. At the time -- so
2 that would have been December or September 10th,
3 2010. Is that date September?

4 A. It has September 10 on the title page.
5 It has September 10, 2010, and then I don't think on
6 the signatory line it has a day on it.

7 Q. Well, as of September 10th, 2010, did you
8 have responsibilities for Duke Energy Ohio?

9 A. So I'm an officer of Duke Energy Ohio,
10 Inc., right, which gave me the ability to sign this
11 on behalf of Duke Energy Ohio, Inc., so I would say,
12 yes, I did have some responsibilities. Signing this
13 agreement was one of them.

14 Q. You were an officer back in September,
15 2010. You're no longer an officer of Duke Energy
16 Ohio now?

17 A. I still might be an officer of Duke
18 Energy Ohio, Inc. You were asking me whether I had
19 responsibility for the electric operations, right?
20 So, again, I still might be an officer of Duke Energy
21 Ohio, Inc.

22 Q. But you have no responsibilities for the
23 electric side of Duke Energy Ohio now, and so my
24 question was did you have any responsibilities for
25 the electric side of Duke Energy Ohio then?

1 A. So I'm assuming -- and maybe this is a
2 bad -- when you say electric, could you tell me what
3 you mean by electric responsibilities for the
4 electric?

5 Q. I'm trying to understand the distinction
6 you're making that you might be an officer of Duke
7 Energy Ohio. Are you saying for total Duke Energy
8 Ohio company? You made a distinction, sir. I'm just
9 trying to understand it.

10 A. I'm trying to understand the distinction
11 that I made, so let's go back and take it step by
12 step.

13 I believe I'm an officer of Duke Energy
14 Ohio, Inc. I was on the date that I signed this
15 agreement. I believe I still am to this day.

16 Q. Okay. But currently you have no
17 operational responsibilities for Duke Energy Ohio.

18 MS. SPILLER: Objection. That misstates
19 Mr. Whitlock's testimony.

20 EXAMINER WALSTRA: He can clarify.

21 A. Could you repeat the question?

22 Q. Besides your responsibilities on the gas
23 side, it's my understanding that you do not currently
24 have any operational responsibilities on the electric
25 side of Duke Energy Ohio.

1 A. When you say the electric side, are you
2 saying the transmission and distribution?

3 Q. Yes.

4 A. Is that what you mean by that?

5 Q. I'm trying to understand -- it was your
6 terminology that you used. I'm trying to understand
7 what you believe you have responsibilities for and
8 don't have responsibilities for.

9 A. So I don't have responsibility for the
10 electric distribution or transmission system at Duke
11 Energy Ohio.

12 Q. Okay. And so are you trying to tell me
13 that you're making a distinction? Do you believe
14 that you have responsibilities for Duke Energy Ohio
15 generation?

16 A. So I certainly did during this time, the
17 assets that all -- of the assets that were
18 operational -- well, not all of the assets, but let
19 me refer to them as the legacy coal assets were in
20 Duke Energy Ohio, and I definitely had operational
21 responsibility for those power plants.

22 Q. And today given that those legacy assets
23 have been transferred out of Duke Energy Ohio, you no
24 longer have that responsibility; is that right?

25 A. So you're talking about the legacy assets

1 that were transferred?

2 Q. Yes.

3 A. Yes, I still have responsibility, but
4 it's not on behalf of Duke Energy Ohio.

5 Q. Thank you for that clarification. You
6 have responsibility but it's under the competitive
7 side of the business, DCAM?

8 A. Yeah, I think they're in DCAM.

9 Q. But it sounds like you still may have
10 responsibilities for the generating assets of OVEC
11 that are -- still remain with Duke Energy Ohio; is
12 that right?

13 MS. SPILLER: Objection. Lack of
14 foundation.

15 A. I'm not sure when you say I have
16 responsibility --

17 EXAMINER WALSTRA: Overruled.

18 A. -- for OVEC's generation, what you mean
19 by that.

20 Q. Well, do you believe that you have any
21 responsibilities for the generating assets that are
22 still owned by Duke Energy Ohio?

23 MS. SPILLER: I'm going to object to the
24 extent Mr. Whitlock has already discussed the
25 generating assets that used to be owned by Duke

1 Energy Ohio.

2 EXAMINER WALSTRA: Overruled.

3 THE WITNESS: Could you read the question
4 back to me, please?

5 (Record read.)

6 A. So I do for Beckjord power plant that's
7 not been -- it's still in Duke Energy Ohio. It's not
8 been transferred. I have responsibility for that
9 generating asset.

10 Q. That is in the process of being
11 transferred to Dynegy; is that correct?

12 A. That's not correct.

13 Q. It's in the process of being transferred
14 to a different entity?

15 A. That is correct.

16 Q. And which entity would that be?

17 A. I don't know.

18 Q. And I see you picked up on your
19 attorney's objection quite nicely, so --

20 A. I'm not sure what you mean by that.

21 Q. Do you have responsibility for the OVEC
22 entitlement and those generating assets that fall
23 under the Duke's entitlement to the OVEC output?

24 A. That's a complicated question. Could you
25 repeat the question for me, please?

1 Q. Do you have oversight responsibility for
2 the OVEC entitlement that Duke Energy Ohio holds?

3 A. What do you mean by oversight
4 responsibility?

5 Q. Well, we could break it down if you'd
6 like, Mr. Whitlock. I was hoping you could tell me.
7 But do you have responsibility for the generating
8 output that Duke receives from the OVEC generating
9 units? Do you bid those into PJM?

10 A. I do not bid them in.

11 Q. Do you have any other responsibility for
12 the output of that generation?

13 A. If you have a specific question, would
14 you ask it? I don't know what you mean by do I have
15 any responsibility for the output. I don't operate
16 the OVEC generating plant.

17 Q. Do you have any control over the price
18 that Duke Energy Ohio sells the OVEC generating
19 output into the PJM market?

20 A. Yes.

21 Q. Do you have any control over the decision
22 as to whether or not to actually sell the generating
23 output into PJM?

24 A. Yes.

25 Q. And you clearly are still on the OVEC

1 board, so that would be one of the responsibilities
2 that you have with regard to Duke Energy Ohio and the
3 OVEC entitlement; is that correct?

4 A. I am on the board.

5 Q. And so you have board responsibilities
6 that are concerning the OVEC entitlement that Duke
7 Energy Ohio holds.

8 A. I have board responsibilities as a member
9 of OVEC's board.

10 Q. Okay. As a member of OVEC's board, you
11 make the Duke Energy Ohio decisions of those OVEC
12 board issues that might come before you; isn't that
13 true?

14 A. I'm not sure I understand the question.

15 Q. Sure. If there's an issue that comes
16 before the board, say, another consent to transfer,
17 that would be your responsibility to either vote yes
18 or no on behalf of Duke Energy Ohio; is that correct?

19 A. Could you read the question back to me,
20 please?

21 (Record read.)

22 A. So the struggle I have with the question
23 is on the idea of transferring. I think I have an
24 obligation to vote as a member of OVEC's board and
25 it's really not DE Ohio's interest necessarily, but

1 it's the OVEC board, so that's why I struggle a
2 little bit with the question.

3 Q. Well, that's interesting to me, because I
4 believe that the -- well, let's look at one. That's
5 an interesting response. So you don't believe you're
6 voting on behalf of Duke Energy Ohio, one of the
7 sponsoring companies, when you make those kind of
8 votes.

9 A. I'm saying it's a little fuzzy to me
10 about -- so the idea of a transfer, I think that
11 again it's -- DE Ohio's a sponsoring company, but as
12 a board member, I feel like I'm voting on behalf of
13 the OVEC board, not necessarily DE Ohio's interest in
14 the example that you gave of the transfer, all right?

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

16 EXAMINER WALSTRA: You may.

17 MS. BOJKO: First, before I approach, may
18 I have marked as OMA Exhibit 7, it will be
19 interrogatory response OMA-POD-02-014, and there's a
20 confidential version that we will mark OMA Exhibit
21 7a.

22 EXAMINER WALSTRA: So marked.

23 (EXHIBITS MARKED FOR IDENTIFICATION.)

24 MS. BOJKO: Now, may I approach, your
25 Honor?

1 EXAMINER WALSTRA: You may.

2 MS. SPILLER: Your Honor, I would note
3 with regard to confidential information that this
4 witness may be provided with, the attachments to this
5 document are similar to -- probably identical to OCC
6 20 and OCC 27.

7 MS. BOJKO: You know, your Honor, I don't
8 know that to be true. These were produced under a
9 different discovery response. They appear -- I don't
10 think that they're in totality of what's already been
11 previously marked as an OCC Exhibit. They have a
12 different request for production document number on
13 them. The company did not direct me to different
14 discovery responses. They responded as if it was its
15 own response. So I can't confirm that.

16 MS. SPILLER: Ms. Bojko, they're already
17 exhibits in the case.

18 MS. BOJKO: I know what you're saying,
19 and my point is I don't believe that to be true.

20 MS. SPILLER: We can look at the
21 exhibits. My point was only that we're not rehashing
22 what's confidential and not. Decisions have been
23 made on these documents.

24 EXAMINER WALSTRA: OCC Exhibit 27a is
25 OMA-POD-02-014. I think that might just be the

1 attachment.

2 MS. BOJKO: I don't know if it is in its
3 totality because they didn't have the complete
4 response, and I believe yesterday I saw one missing,
5 but I said I cannot confirm or deny. I do not know.

6 EXAMINER WALSTRA: Okay. You can
7 approach, and you can examine documents.

8 MS. BOJKO: Which one did you believe to
9 be the same as?

10 EXAMINER WALSTRA: 27.

11 MS. SPILLER: It looks like 20 and 27,
12 and if you look at 27, there's actually the header.
13 If you look at 27, there's actually the header with
14 the page numbers on it.

15 EXAMINER WALSTRA: I'll still mark it as
16 OMA Exhibit 7a. Our ruling in regards to
17 confidentiality on the attachments will be the same
18 obviously.

19 Duke, is there anything confidential on
20 the one page that's different, the cover page?

21 MS. SPILLER: No, your Honor. I believe
22 that this is all general and not that -- there's no
23 confidential protection necessary of the cover page.

24 EXAMINER WALSTRA: Okay. Thank you. And
25 for the witness, on every page after the cover page,

1 the company names that are in the -- for example, in
2 line 2, that is confidential and every reference
3 thereafter to that same company.

4 THE WITNESS: Line 2, line 2 where?

5 EXAMINER WALSTRA: Right under -- do you
6 see where it says sponsoring company acknowledgment?

7 THE WITNESS: Yes.

8 EXAMINER WALSTRA: That line underneath
9 that, there's the company name and that is
10 confidential.

11 THE WITNESS: Okay.

12 EXAMINER WALSTRA: And every reference
13 after that to that same company is confidential.

14 THE WITNESS: Okay. Are all the company
15 names on here confidential?

16 EXAMINER WALSTRA: The sponsoring company
17 at the bottom.

18 THE WITNESS: Yes.

19 EXAMINER WALSTRA: That's open.

20 THE WITNESS: Okay.

21 EXAMINER WALSTRA: But the references
22 within the acknowledgment on each page after that --

23 THE WITNESS: Okay.

24 EXAMINER WALSTRA: -- is confidential.

25 MS. BOJKO: Your Honor, I have a version

1 that's marked confidential.

2 EXAMINER WALSTRA: That will be helpful
3 to the witness.

4 THE WITNESS: Is there one you can read
5 the page?

6 MS. BOJKO: That's actually how it was
7 produced.

8 EXAMINER WALSTRA: And that version, the
9 highlighted copy is -- that's what's confidential.

10 THE WITNESS: Okay. Thank you.

11 MS. SPILLER: Your Honor, if I may with
12 respect to -- I don't know if OCC 27 is more legible
13 for the witness.

14 EXAMINER WALSTRA: I think that's what he
15 has now.

16 MS. SPILLER: Okay. Thank you.

17 MS. BOJKO: As I explained to the
18 witness, those were how the copies were produced. So
19 I don't have anymore legible copy.

20 Q. (By Ms. Bojko) Mr. Whitlock, do you have
21 what's in front of you marked as OMA Exhibit 7a?

22 A. 7a.

23 Q. 7a, the confidential version?

24 A. Yes, ma'am.

25 Q. And does this appear to be a discovery

1 response from Duke Energy Ohio titled
2 "OMA-POD-02-014"?

3 A. I'm trying to follow all the zeros --
4 could you repeat that?

5 Q. It's the second block of the header.
6 It's called "OMA-POD-02-014."

7 A. It does have that.

8 Q. Okay. And, Mr. Whitlock, does the
9 discovery request state "Please provide copies of any
10 record of a vote, poll, or solicitation that occurred
11 among the Sponsoring Companies since January 1, 2012,
12 regarding any requests for consent of a sale or
13 transfer of a Sponsoring Company's interest in OVEC
14 under the ICPA, including, but not limited to, those
15 records discussed and referenced by Charles Whitlock
16 at his deposition on September 11, 2014"?

17 A. You read that very well.

18 Q. And, sir, you're the Mr. Charles Whitlock
19 that was deposed on September 11, 2014, that was
20 referenced in this request; is that right?

21 A. I'm assuming that's correct.

22 Q. Do you recall getting deposed on or about
23 September 11th?

24 A. I do.

25 Q. Okay. And, Mr. Whitlock, would this be

1 the vote or the -- I think you just called it a vote
2 in response to my prior questions. Would this be an
3 example of a vote that the OVEC-sponsoring companies
4 would receive and complete with regard to a board
5 issue that we were discussing previously?

6 A. It appears to be, yes.

7 Q. And if you turn to the first page as an
8 example, and, sir, you do recall, do you not,
9 providing a memorandum to the sponsoring companies
10 that did attach this form vote for those sponsoring
11 companies to, I guess, return indicating whether they
12 support or do not support the request.

13 A. Yeah. If you had the document, it would
14 be helpful to look at it.

15 MS. BOJKO: Just one moment, your Honor.

16 Q. I'm trying to find it for you, sir.

17 A. Thank you.

18 MS. BOJKO: Okay. Got it. May I
19 approach, your Honor?

20 EXAMINER WALSTRA: You may.

21 MS. BOJKO: Again, your Honor, this may
22 have been marked previously, but it wasn't marked
23 with the data response and in this same form and I
24 believe, if I'm not mistaken, it may have been
25 detached from the data response previously. I'm just

1 not sure.

2 EXAMINER WALSTRA: Okay.

3 MS. SPILLER: I'm sorry. Whatever you're
4 intending to use, Ms. Bojko, we don't know if it's
5 already in evidence? Is that the gist of your
6 statement?

7 MS. BOJKO: I believe it is. I just have
8 not gone back to parse out this entire response that
9 was provided to determine whether this particular
10 document is or is not. Portions of it have been,
11 Ms. Spiller. I'm just not sure if the entire
12 document has.

13 I believe it's previously been marked as
14 OCC Exhibit 17A. Your Honor, it hasn't been produced
15 in this form with the discovery response that I can
16 ascertain.

17 EXAMINER WALSTRA: It would probably be
18 easier if you just marked it.

19 MS. BOJKO: It's not produced in this
20 form. So let's just mark it as OMA Exhibit 8,
21 please.

22 EXAMINER WALSTRA: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. BOJKO: And then also the
25 confidential version would be OMA Exhibit 8A. And

1 for the record, this is RESA-POD-04-008 in its
2 entirety. I think portions have been marked here and
3 there but with the discovery response.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MS. BOJKO: May I approach, your Honor?

6 EXAMINER WALSTRA: You may.

7 Q. (By Ms. Bojko) Sir, do you have what's in
8 front of you, what has been marked as OMA 8a?

9 A. Yes.

10 Q. And does that, sir, state that it's a
11 discovery response RESA-POD-04-008?

12 A. Yes.

13 Q. And, sir, I won't read the whole request
14 in here, but does your name appear in this discovery
15 request as well?

16 A. Yes.

17 Q. As being correspondence between Brian
18 Chisling and Charles Whitlock?

19 A. Yes.

20 Q. Sir, if you would turn to page --

21 EXAMINER WALSTRA: Ms. Bojko, before we
22 go any further, I think we need to clarify what's
23 confidential in this document. All of these pages do
24 look familiar.

25 MS. SPILLER: Your Honor, I believe it's

1 OCC Exhibit 21.

2 EXAMINER WALSTRA: 21? Thank you.

3 MS. BOJKO: No, your Honor. This is not
4 the entirety of the document.

5 EXAMINER WALSTRA: I guess I'm -- I
6 realize what you gave is not the entirety -- or is
7 the entirety; is that right?

8 MS. BOJKO: Right. But what counsel just
9 referenced is only the first -- is only the e-mail --
10 is not even the first e-mail. I think it's what's
11 labeled as 1 of 31. It's second in the packet that I
12 produced.

13 MS. SPILLER: Your Honor, as I look at
14 Exhibit 21, it is the RESA attachment pages 1 through
15 31, all of that is included in OCC 21. So there were
16 two separate attachments to the discovery response,
17 the second attachment to the discovery response
18 represents OCC 21.

19 MS. BOJKO: If you look for
20 clarification, it's RESA-POD-04-008a is the document
21 that Ms. Spiller is referencing, which is OCC Exhibit
22 21. I have provided B which seems to be first in my
23 packet. I'm not sure why, but B is first. And then
24 I've also provided C, RESA POD-04-008C. So if
25 Ms. Spiller's point is OCC Exhibit 21 can be used for

1 the confidential treatment of the middle portion of
2 my exhibit, I would concur.

3 EXAMINER WALSTRA: In regards to
4 Attachment A, our confidentiality ruling will stay
5 the same as it was in OCC Exhibit 21. And I believe
6 the first page of Attachment C is the same as OCC
7 Exhibit 17, just the first page.

8 MS. BOJKO: Just one page even though it
9 says 1 of 19 is my understanding.

10 EXAMINER WALSTRA: Correct. So our
11 ruling of page 1 of 19 of Attachment C will be the
12 same. We'll make an official ruling on this later.
13 I think kind of looking at these documents, they are
14 pretty similar to other documents. In general, this
15 seems to be what has been made confidential is
16 references to specific companies. So I would just
17 ask Duke to submit versions that basically comply
18 with our prior rulings and assuming parties have a
19 basic understanding of the rulings we've made in the
20 past and what is considered confidential and go
21 forward from there.

22 MS. BOJKO: Thank you, your Honor.

23 EXAMINER WALSTRA: So, Mr. Whitlock, I
24 think you've hopefully kind of gotten the idea, but
25 basically any reference to the specific companies are

1 considered confidential.

2 THE WITNESS: Okay.

3 EXAMINER WALSTRA: So there are a few
4 numerical references as well that are also
5 confidential. Hopefully both Ms. Bojko and
6 Ms. Spiller understand what those references are and
7 can cut us off before we -- go ahead.

8 Q. (By Ms. Bojko) Mr. Whitlock, I'm sorry.
9 I think we already established that you have in front
10 of you what has been marked as OMA Exhibit 8a; is
11 that correct?

12 A. Yes.

13 Q. And if you turn, sir, to the
14 RESA-POD-04-008C attached. It says -- it's about
15 halfway into the packet, sir. It says page 1 of 19
16 at the top.

17 A. I see it.

18 Q. Okay. And, sir, do you see your name on
19 the CC line of this e-mail response?

20 A. No.

21 Q. Are you on page 1 of 19?

22 A. I am.

23 Q. In the middle right where the CC is, it
24 says "Whitlock, Chuck."

25 A. I see that.

1 Q. Okay. Oh, it's not the CC line. Is it
2 the to line? Is that why you said no to me?

3 A. I did.

4 Q. Sorry, my eyes were not in line.

5 A. That's fine.

6 Q. So you received this e-mail, right?

7 A. I did.

8 Q. And this e-mail is attaching a proposal
9 to it; is that correct?

10 A. The e-mail in the first sign says
11 attached, but I don't see an attachment.

12 Q. Right, because it appears if you turn to
13 the next page, it's another e-mail, and I'm assuming
14 for duplicative purposes, the company did not attach
15 the attachment multiple times, that they just
16 attached it on page 4 of 19?

17 MS. SPILLER: I'm going to object to the
18 form. Are you talking about Duke Energy Ohio's
19 production?

20 MS. BOJKO: Well, we received these as a
21 data response from Duke Energy Ohio, so, yes, I am
22 assuming for production purposes that you did not
23 duplicate the same document twice, but I guess that
24 could be incorrect, and you didn't produce the whole
25 e-mail and attachment.

1 MS. SPILLER: Well, I guess, Ms. Bojko, I
2 was asking because Duke Energy Ohio is not the author
3 of the e-mails.

4 MS. BOJKO: Duke Energy Ohio was the --

5 MS. SPILLER: We're not the sender of the
6 e-mails.

7 MS. BOJKO: I get that, but you produced
8 these documents, and Mr. Whitlock and I were just
9 talking about how the one e-mail says 1 of 19. And
10 it appears not to have the attachment attached. It
11 appears to be a string of e-mails that you produced.

12 MS. SPILLER: Okay.

13 MS. BOJKO: It's your production; it
14 wasn't my production.

15 MS. SPILLER: I understand.

16 MS. BOJKO: It appears that you produced
17 two e-mails and then an attachment. Okay.
18 Mr. Whitlock was mentioning that the first e-mail
19 even though it says attached is a proposal, it didn't
20 actually have the attachment directly behind it
21 because next was another e-mail regarding the same
22 document.

23 Q. And, Mr. Whitlock, you're on the second
24 e-mail as well; isn't that correct?

25 A. Yes.

1 Q. Okay. So let's turn to the actual
2 document that was attached to -- apparently attached
3 to these e-mails. Do you see that document?

4 A. 4 of 19, is that what you're referring
5 to?

6 Q. Yes, sir.

7 A. Yes.

8 Q. And that document appears to be a
9 proposal regarding the asset assignment.

10 EXAMINER WALSTRA: And, again, just for
11 clarification, all company names are confidential.

12 A. What was the question?

13 Q. This document appears to be a memorandum
14 or a document regarding an assignment of the OVEC
15 units; is that correct?

16 A. It appears to be, yes.

17 Q. Okay. And, sir, is this the memorandum
18 that you were just referencing in a prior discussion
19 where you requested a copy of the memorandum? Is
20 this the document you were referring to?

21 A. It appears to be, yes.

22 (Confidential Portion Excerpted.)

23 Q. Okay. And this is the document that was
24 authored by you, sir?

25 A. (Confidential). I don't believe

1 that I authored it.

2 Q. Okay. But it was (Confidential), sir,
3 in your capacity as -- it says (Confidential), so
4 you were (Confidential)--

5 MS. SPILLER: Your Honor, I'm fine with
6 redacting that part of the record.

7 EXAMINER WALSTRA: What reference are you
8 referring to?

9 MS. BOJKO: I don't understand. He's
10 already admitted to (Confidential) this document. It's
11 actually in a publicly filed deposition that he did
12 these activities and had the names of both companies
13 in the filed depositions. So I'm a little confused
14 of why it needs to be confidential, to be honest with
15 you, and it's already out in the public record now
16 because it was filed in his deposition transcript.

17 MS. SPILLER: We'll have to go back and
18 look at the depo between what's confidential and
19 what's not.

20 EXAMINER WALSTRA: What page of the
21 document were you referencing, Ms. Bojko?

22 MS. BOJKO: OMA Exhibit 8, sir.

23 EXAMINER WALSTRA: What page?

24 MS. BOJKO: 6 of 19 is where he said
25 there was (Confidential).

1 Your Honor, do you need a copy of the
2 deposition transcript to show the information has
3 already been released to the public?

4 EXAMINER WALSTRA: Please.

5 MS. BOJKO: Your Honor, OCC references to
6 both names on 49 -- 55 might be a good example.

7 MS. SPILLER: I think on that page,
8 Ms. Bojko, Mr. Whitlock indicated that page seemed
9 confidential.

10 MS. BOJKO: Okay. But it's already been
11 filed in the public --

12 MS. WATTS: Not by us.

13 MS. BOJKO: It doesn't matter who it was
14 filed by. It's already in the public record because
15 it was put in the public part of the deposition
16 transcript, and that public part of the deposition
17 transcript was filed. So it's on the PUCO docketing
18 site. You can't take the information off the PUCO
19 docketing site.

20 MS. SPILLER: He didn't answer the
21 question here. He says that feels confidential
22 because the question is asked in the public record,
23 and he says that feels confidential, and someone
24 elects to file the deposition, I don't know how that
25 makes his response --

1 MS. BOJKO: Look at page 55.

2 MS. SPILLER: I'm looking at it.

3 MS. BOJKO: "Did (Confidential) at any
4 point in a request for consent?

5 "Yes."

6 MS. SPILLER: Well, we object and,
7 Ms. Bojko, so you're filing information knowing that
8 we objected, and the witness said it feels
9 confidential. The OCC or OMA elected to file this
10 without any conversation with us knowing that the
11 witness said that feels confidential.

12 MS. BOJKO: I don't see where he says
13 right there when he answered yes, he said it feels
14 confidential.

15 MS. SPILLER: Look on line 16.

16 MS. BOJKO: Yeah, after that, sure.

17 MS. SPILLER: I objected. You know as
18 well as I do, depositions are very fluid. I
19 objected. He issues his response that it feels
20 confidential, and that's ignored by the attorneys
21 when they filed the deposition.

22 (Open Record.)

23 EXAMINER WALSTRA: We'll go off the
24 record.

25 (Discussion off the record.)

1 EXAMINER WALSTRA: We'll have to go back
2 and excerpt the last portion, add that to the
3 confidential record.

4 So now we're back on the open record, and
5 I believe -- I guess OCC Exhibit 18 -- OCC Exhibit
6 17, 18, and 21 we'll have a consistent ruling with
7 OMA Exhibit 8a. And you may proceed, Ms. Bojko.

8 MS. BOJKO: Thank you, your Honor. I'm
9 sorry. I don't know where we left off. I don't know
10 what is in the public record.

11 EXAMINER WALSTRA: Well, I can -- we're
12 going to go back and have to revise that, what was
13 discussed.

14 THE WITNESS: Can I ask a question? So
15 if there's exhibits that have the confidential stuff
16 blocked out, the exhibits that you just referenced,
17 the OCC exhibits, can I have those so that I don't
18 step over the line, or does that not work?

19 EXAMINER WALSTRA: I assume that would be
20 helpful for you, certainly, if anyone has a spare
21 copy.

22 MR. BERGER: I have two copies of the OCC
23 exhibits other than the one I gave to Ms. Bojko
24 earlier that she provided to the witness.

25 MS. SPILLER: But I think, Mr. Berger,

1 Mr. Whitlock is looking for ones that show what has
2 been redacted.

3 MS. BOJKO: That's correct. I did give
4 him OCC Exhibit 21 which was redacted.

5 MR. BERGER: These are ones that indicate
6 what Duke originally proposed for redaction because
7 we're still in the process of preparing the documents
8 that were ruled upon yesterday in terms of the final
9 decisions about redactions.

10 EXAMINER WALSTRA: I handed the witness a
11 copy of the Bench's version which I think was the
12 actual initial proposals. I think we should be able
13 to guide him from there and go forward.

14 Q. (By Ms. Bojko) Mr. Whitlock, could you
15 turn to --

16 EXAMINER WALSTRA: We'll go off the
17 record for a second.

18 (Discussion off the record.)

19 Q. (By Ms. Bojko) Sir, if you turn to page 7
20 of 19, which is the page after the memorandum or
21 proposal, do you see that?

22 A. Page 7 of 19 of that OMA Exhibit 8a?

23 Q. Yes, sir.

24 A. I do see that. Just for clarity, I'm
25 also looking at the -- I don't know -- it's No. 18.

1 I don't know if it's Exhibit OCC No. 18, just to make
2 sure that I don't cross the line.

3 Q. Okay. Is that acknowledgment form
4 attached to the proposal, is that the voting type
5 form that we talked about a few minutes ago?

6 A. So it's a voting form. I don't know if
7 we talked about it earlier.

8 Q. Okay. It's a voting form that would
9 reflect a sponsoring company's decision one way or
10 the other; is that right?

11 A. Correct.

12 Q. Okay. And, sir, then if we go back to
13 the OMA Exhibit 7a, and if we look at those voting
14 forms attached to that data response, those are
15 identical forms, but they're completed; is that
16 correct?

17 A. This is the exhibit marked 27 in the
18 upper right-hand corner?

19 Q. I handed you what was marked OMA Exhibit
20 7. But, yes, it's the same portion of OCC Exhibit 27
21 that was marked for your purposes for
22 confidentiality.

23 A. So just tell me the document you want me
24 to look at and I'll find it.

25 Q. You can look at OCC Exhibit 27.

1 A. Okay. I have it.

2 Q. Okay. Are those voting forms, is that
3 what we were discussing, that that's identical to the
4 one attached to the proposal and it's a returned form
5 that's been completed by a sponsoring company?

6 A. Yes.

7 Q. And I think we go back to what the
8 original question was, do those voting forms indicate
9 an entity on behalf -- on whose behalf that they were
10 signed?

11 A. Say the question again. I'm sorry.

12 Q. Do those voting forms that are completed
13 and sent back, do those indicate on whose behalf
14 they're signed?

15 A. It appears to me, yes.

16 Q. Okay. So they list a sponsoring company?

17 A. Yes.

18 Q. So my original question to you was
19 participating on the OVEC board on behalf of Duke
20 Energy Ohio, would you be responsible for signing
21 such forms or voting in a certain way for DEO?

22 A. In this instance, I did as -- I did vote
23 on behalf of DE Ohio.

24 Q. Okay. And so I think if we go back to my
25 original question. I was talking about what your

1 responsibilities were on OVEC with regard to OVEC on
2 behalf of Duke Energy Ohio, and I asked you if one of
3 your responsibilities on behalf of Duke Energy Ohio
4 was to vote or make decisions on votes or other
5 issues for DE Ohio.

6 A. Is that a question?

7 Q. Yes. Is that your responsibility?

8 A. Again, I would tell you what I tried to
9 say before, is that it's unclear in my mind about
10 when I'm voting as a board member and when I'm voting
11 DE Ohio's interest as a board member. I think again
12 in my head it's not perfectly clear. This is an
13 instance where it was me as a sponsoring company on
14 behalf of DE Ohio.

15 Q. But your seat on the board is as a
16 sponsoring company member; is that not correct?

17 A. Again, it probably goes to the heart of
18 my confusion. I believe so, but I also again -- and
19 I apologize that I'm not making perfect sense of
20 this. It's not crystal clear in my head. All I'm
21 trying to tell you is that there's an unclear
22 connection between my responsibility as a board
23 member of OVEC and my responsibility as a sponsoring
24 company of OVEC.

25 Q. Okay. Well, so what you're stating here

1 today is that when you make decisions, you're not
2 necessarily making decisions on behalf of DE Ohio?

3 A. I'm saying that it's unclear, and I think
4 what I would do is if there's specific instances
5 where you want to know how I was making a decision, I
6 would try to answer that. So in this instance,
7 that's what I would say.

8 Q. So you just take it question by question
9 or issue by issue is how you decide whether you're
10 going to answer on behalf of DEO or you're going to
11 answer on behalf of yourself as an OVEC board member?

12 A. Yes, as OVEC board member.

13 Q. So in your mind, there's a distinction of
14 issues between you as an OVEC board member and you as
15 a DEO employee?

16 A. Correct.

17 Q. Even though you're on OVEC's seat as the
18 DEO sponsoring company representative; is that right?

19 A. That's correct.

20 Q. But for DEO having this OVEC interest,
21 you would not be on the board; isn't that correct?

22 A. I believe that to be correct.

23 Q. Okay. And if you changed employment, if
24 you went from Duke Energy Ohio -- if you went from
25 being a service employee of Duke to New Jersey

1 Power & Light, you believe that you would lose your
2 seat; isn't that true?

3 A. Probably, yes.

4 Q. And would you have had a discussion with
5 Mr. Berger about the stipulation in the past ESP
6 case, case 11-3549? Did you participate on behalf of
7 Duke Energy Ohio?

8 A. I believe so.

9 Q. Okay. And at the time you believe that
10 you were president of midwest commercial generation
11 back in 2011; is that accurate?

12 A. I was president of midwest commercial
13 generation.

14 Q. And midwest commercial generation is an
15 unregulated affiliate of DE Ohio; is that --

16 A. It feels more like an organizational
17 title to me than a legal entity. I don't know
18 sitting here today.

19 Q. You don't know whether the commercial
20 generation business is an unregulated affiliate of
21 the regulated Duke Energy Ohio distribution company?

22 A. The question you asked was midwest
23 commercial generation an affiliate, and I'm saying
24 that I think it's an organizational title more than
25 it is a legal entity.

1 Q. Oh, so you don't believe that it's a
2 legal entity that's --

3 A. I'm saying I don't know that it's a legal
4 entity or not.

5 Q. Okay. Is it an entity that deals with
6 regulated or unregulated businesses of Duke?

7 A. So it deals primarily with unregulated --
8 all unregulated I would say, right, midwest
9 commercial GEN.

10 Q. And you're just saying you're sitting
11 here today, you don't know if it's a legal affiliate
12 of Duke Energy Ohio or not.

13 A. Correct.

14 Q. Okay. I want to go to your discussion I
15 believe with Mr. Berger. It's my understanding that
16 Duke's efforts to transfer the OVEC interest included
17 three efforts or three avenues. One was you
18 responded to RFPs that were provided by other
19 companies; is that correct?

20 A. Yes.

21 Q. And in responding to RFPs, they were
22 seeking some form of generation and you either
23 responded in providing an offer of the output of OVEC
24 generation or an offer of the sale of the OVEC
25 entitlement to generation; is that correct?

1 A. So I don't recall exactly how we
2 responded to each of the individual RFPs.

3 Q. But those would be two options that you
4 would have.

5 A. What were the two again? I'm sorry.

6 Q. To either offer the power, the output of
7 the generating assets through a purchase power
8 agreement, or offering the sale of the entitlement to
9 the generation output.

10 A. Those feel like the exact same thing to
11 me. The only thing that Duke Energy Ohio has in OVEC
12 is the ICPA. It's not a generating asset, like I own
13 and have title to the Zimmer power plant and Stewart
14 station. Those plants are -- their physical
15 ownership of those plants. In my head, what Duke
16 Energy Ohio has with OVEC is the power purchase
17 agreement that goes through 2040.

18 Q. Okay. Well, sir, you could sell your
19 power to a different entity; isn't that true? You
20 could sell the power from the generation output from
21 OVEC to another entity?

22 A. When you say sell the power, I'm going to
23 sell the power to PJM. That's where it's going to
24 get dispatched. What do you mean sell?

25 Q. You could have a purchase power agreement

1 with another entity, couldn't you?

2 A. Could Duke Energy Ohio enter into a --

3 Q. Yes.

4 A. Absolutely.

5 Q. And you could also actually offer the
6 sale of the OVEC assets and transfer the entitlement
7 to your ownership in those generating output to
8 another entity; isn't that correct?

9 MS. SPILLER: I'm going to object to the
10 form of the question.

11 A. So, again, the thing --

12 EXAMINER WALSTRA: Overruled.

13 A. Again, the thing that I would be selling
14 would be my participation -- Duke Energy Ohio's
15 participation in the ICPA.

16 Q. But you could also transfer ownership of
17 your ICPA rights to somebody else and that's exactly
18 what Duke endeavored to do; isn't it?

19 A. In what instance?

20 Q. Well, okay. We can get to the three
21 efforts, but I thought your response to some of the
22 RFP questions were that you actually looked to
23 transfer your entitlement to the generating assets of
24 OVEC to another entity in response to the RFP.

25 A. When you say entitlement to the

1 generating assets, are you referring to the ICPA?

2 Q. Yes.

3 A. Then yes.

4 Q. And the second effort that I was
5 referencing before, it's my understanding that you
6 made a 203 FERC filing to transfer OVEC and the
7 interest of OVEC; isn't that true?

8 A. Yes.

9 Q. And then the third thing I understood
10 from your testimony was that you actually did a
11 formal consent to transfer to an affiliate through or
12 pursuant to the ICPA?

13 A. Yes.

14 Q. Okay. And, Mr. Whitlock, do you know how
15 long you've been a board member of OVEC?

16 A. I think we talked about that before. I
17 think it was June of '06.

18 Q. Thank you.

19 MS. BOJKO: Your Honor, I'm going to mark
20 a series of documents. It might be faster if we mark
21 them and pass them all out at the same time.

22 EXAMINER WALSTRA: That works.

23 MS. BOJKO: I'd like to mark as OMA
24 Exhibit 9 OMA-POD-02-009.

25 EXAMINER WALSTRA: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MS. BOJKO: And I'd like to mark as OMA
3 Exhibit 10 OMA POD-02-0010.

4 EXAMINER WALSTRA: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MS. BOJKO: And I'd also like to mark
7 OMA-POD-02-011 as OMA Exhibit 11.

8 EXAMINER WALSTRA: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MS. BOJKO: These are not confidential so
11 they don't have corresponding confidential
12 designations.

13 EXAMINER WALSTRA: Good to hear.

14 MS. BOJKO: May I approach, your Honor?

15 EXAMINER WALSTRA: You may.

16 MS. BOJKO: May I approach, your Honor?

17 EXAMINER WALSTRA: You may.

18 Q. (By Ms. Bojko) Sir, I know I didn't mark
19 yours. 009 will be OMA Exhibit 9, 010 will be OMA
20 Exhibit 10, and 011 will be OMA Exhibit 11. That
21 worked out nicely. Do you have those, sir?

22 A. Yes.

23 MS. SPILLER: And I would just note
24 Mr. Whitlock is not the person responsible for these
25 responses.

1 Q. Mr. Whitlock, in looking at what has been
2 previously marked as OMA Exhibit 9, do you see,
3 again, sir, a reference to you in your deposition
4 taken on September 11th, 2014?

5 A. I do.

6 Q. And this document asks for any request
7 for consent of sale or transfer of a sponsoring
8 company's interest in OVEC under the amended ICPA.
9 Do you see that?

10 A. I do.

11 Q. Okay. And in the response, do you see a
12 legal objection provided?

13 A. I see the word objection and then a bunch
14 of words after that, sure.

15 Q. Okay. And, sir, this references
16 documents discussed and referenced by you at your
17 deposition; is that correct?

18 A. The request actually says but not limited
19 to those documents discussed.

20 Q. Okay. And do you see any reference to
21 particular documents or are there any documents
22 attached to this discovery response?

23 A. I don't see any.

24 Q. Okay. Could we look at OMA Exhibit 10.

25 MS. SPILLER: I would note there's not

1 been a foundation with respect to this response.

2 These responses were provided by legal.

3 EXAMINER WALSTRA: Overruled.

4 Q. Mr. Whitlock, do you have in front of you
5 OMA-POD-02-010?

6 A. Yes.

7 Q. And, sir, do you see that this request,
8 All written communications made or received by OVEC,
9 OVEC's board of directors and/or any sponsoring
10 companies since January 1, 2012, concerning any
11 request for consent of a transfer or sale of a
12 company's interest in OVEC, including but not limited
13 to, those communications discussed and referenced by
14 you, sir, at your deposition on September 11th, 2014?

15 A. I do see that request.

16 Q. And do you recall discussing written
17 communications made between you and OVEC employees
18 during your deposition, sir?

19 A. Sitting here today, I don't, but it was a
20 long deposition.

21 Q. You don't remember talking about e-mails
22 you had with OVEC or sponsoring companies?

23 MS. SPILLER: Objection to the extent you
24 have a portion of the deposition to share with
25 Mr. Whitlock. If not, I think this is an improper

1 reference to his deposition.

2 MS. BOJKO: It's not an improper
3 reference to the deposition, your Honor. I'm asking
4 him if he recalls discussing it.

5 EXAMINER WALSTRA: Overruled.

6 A. Is there a specific section you want
7 to --

8 Q. Well, we just talked about a memo and a
9 proposal that you agreed with me that you mentioned
10 in your deposition, and that would be a written
11 communication; isn't that true?

12 A. So that's one. Is that the one you're
13 referring to?

14 Q. That's one of them.

15 A. Are there others?

16 Q. Sure. Do you recall discussing board
17 minutes and other minutes and whether they were
18 recorded by OVEC or not recorded by OVEC?

19 A. Broadly, yes.

20 Q. Okay. Do you also remember discussing
21 e-mail correspondence and that between Duke and other
22 sponsoring companies?

23 A. Not specifically.

24 Q. Okay. Do you recall referencing the form
25 votes that we just looked at that were OMA Exhibit 8?

1 A. I don't recall that specifically.

2 Q. You don't recall the votes at your
3 deposition?

4 A. I don't recall discussing that in my
5 deposition, the forms.

6 Q. The forms, but you recall us discussing
7 votes and polls.

8 MS. SPILLER: Again, your Honor, I'm
9 going to object to the improper use of the
10 deposition. If there's a question that you have of
11 Mr. Whitlock that was asked in his deposition and he
12 answers differently today, then you can show him the
13 deposition.

14 EXAMINER WALSTRA: Overruled.

15 A. Your question was did you recall
16 discussing the forms, and I don't remember sitting
17 here today in a deposition.

18 Q. Do you recall votes and polls that were
19 taken and responses that were taken? Do you recall
20 that line of questioning?

21 A. I remember the votes discussion and polls
22 discussion.

23 Q. And, sir, if we look at OMA Exhibit 11,
24 if we look at this OMA-POD-02-011, the response to
25 the request that states "Please provide copies of any

1 documents since January 1, 2012 showing actions taken
2 by any Sponsoring Company or OVEC regarding any
3 requests for consent of a sale or transfer of a
4 Sponsoring Company's interest in OVEC, including, but
5 not limited to, those documents discussed and
6 referenced by Mr. Whitlock at his deposition." Do
7 you see that?

8 A. I do.

9 Q. And in response to this request for
10 documents, do you see an objection by the legal
11 department?

12 A. I see an objection.

13 Q. Okay. And do you see any relevant
14 documents attached to this discovery response?

15 A. I do not.

16 Q. And I think I forgot to ask you that same
17 question, sir, in response to OMA Exhibit 10. Do you
18 see there's an objection to the request for written
19 communications?

20 A. I do.

21 Q. And do you see that there are no
22 documents attached to this request or any reference
23 to any type of documents found in anybody else's
24 discovery requests?

25 MS. SPILLER: Your Honor, I'm going to

1 move to strike this line of questioning. Ms. Bojko
2 is trying to get in discovery responses through a
3 witness who was not even responsible for this
4 production. There's been no indication that he was
5 given this document request, that he reviewed the
6 responses, or was involved in the compilation of what
7 was provided.

8 EXAMINER WALSTRA: Overruled.

9 MS. BOJKO: I believe there's a question
10 pending, sir.

11 A. You're going to have to give it to me
12 again.

13 Q. I believe I asked if OMA Exhibit 10, if
14 there was any relevant information to written
15 communications or if there were any written
16 communications attached to these discovery responses
17 or any other kind of additional information
18 referencing a response to this discovery?

19 A. It's not apparent that there were any to
20 me given what you've given me.

21 Q. And, Mr. Whitlock, you are the entity
22 that's cited in each discovery request?

23 A. I'm the entity.

24 Q. I'm sorry. The person.

25 A. My name shows up, but I don't know --

1 Q. You're the person referenced in the
2 discovery request; is that true?

3 A. I'm the only name that shows up that I
4 can see on the document.

5 MS. BOJKO: Okay. And, your Honor, may I
6 have another document marked as OMA Exhibit 12? And
7 it would be the discovery response to OMA-POD-02-012.

8 EXAMINER WALSTRA: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MS. BOJKO: May I approach, your Honor?

11 EXAMINER WALSTRA: You may.

12 THE WITNESS: Not now but sometime in the
13 next 30 minutes, a break would be awesome.

14 EXAMINER WALSTRA: Do you know how much
15 longer you have, Ms. Bojko?

16 MS. BOJKO: Well, I didn't think I'd be
17 this long. 20 minutes. Almost done.

18 EXAMINER WALSTRA: Okay. Does that work
19 for you?

20 THE WITNESS: Any time in the next 30
21 minutes. Thank you.

22 MS. SPILLER: And, your Honor, I would
23 certainly note that the attachment has already been
24 produced as OCC Exhibit 16.

25 EXAMINER WALSTRA: Thank you.

1 MS. BOJKO: And for confidentiality
2 purposes, you know, I recognize that; however, I
3 don't believe it had the OMA response in the request,
4 which is why I'm marking it separately.

5 EXAMINER WALSTRA: Okay. Was there
6 confidential information in this?

7 MS. BOJKO: Which number did you say,
8 Ms. Spiller?

9 MS. SPILLER: 16. Your Honor, according
10 to my notes from yesterday, the Bench had ruled all
11 in the open record but for the dollar amount that
12 appears on the second full paragraph on page 2.

13 EXAMINER WALSTRA: Okay.

14 MS. SPILLER: At least that's what I had.

15 EXAMINER WALSTRA: I believe that's
16 correct. And assuming there's no confidential
17 information on the front page, our ruling will be the
18 same.

19 MS. SPILLER: Your Honor, I think the
20 front page is generic enough that no confidential
21 treatment is necessary.

22 EXAMINER WALSTRA: Okay. Thank you.

23 Q. (By Ms. Bojko) Mr. Whitlock, did you
24 understand that just the number is confidential in
25 the second page of the attachment? So please do not

1 state the number.

2 A. Number?

3 Q. It's on the second full paragraph on the
4 second page of the attachment.

5 EXAMINER WALSTRA: Towards the bottom of
6 the paragraph on the right side.

7 THE WITNESS: Okay. Thank you.

8 Q. Mr. Whitlock, does this request to
9 discovery, does this appear to be a discovery
10 response produced by Duke Energy Ohio?

11 A. It doesn't say clearly who's asked to
12 reply, so I don't know if it's Duke Energy Ohio or
13 not replying.

14 Q. Is there a label at the top that says
15 Duke Energy Ohio?

16 A. It says that for the case number.

17 Q. You don't believe that this is a Duke
18 Energy Ohio data response similar to the ones we've
19 looked at this afternoon?

20 A. I don't know.

21 Q. Okay. Do you believe that this is a data
22 request that asked to provide copies of OVEC board
23 meeting minutes, including resolutions regarding the
24 request for consent of a sale or transfer?

25 A. That is the request.

1 Q. Okay. And do you see in the response
2 that there's an objection made and then the last
3 line, it says "without waiving that objection," see
4 the attached document?

5 A. Yes.

6 Q. Okay. And if we look at that attached
7 document, sir, could you turn to that?

8 A. Yes.

9 Q. And does it appear to be minutes of a
10 special meeting of the board of directors held
11 July 26th, 2013, for OVEC?

12 A. It does.

13 Q. Okay. And, sir, you're listed on the
14 attendee list.

15 A. Yeah, by conference call, yes.

16 Q. And as I understood your previous
17 responses to Mr. Berger that you are listed and you
18 are in attendance, then you will receive copies of
19 the minutes and have to approve them; is that
20 accurate?

21 A. Yes. I think as a follow-up from the
22 next meeting, approval of the minutes is in the
23 normal course.

24 Q. Okay. And, sir, you believe that
25 everything in this document would be accurately

1 depicted by the OVEC secretary?

2 A. No, I wouldn't say that.

3 Q. Okay. You don't believe that Mr. -- is
4 Mr. Brodt the secretary of OVEC?

5 A. He is.

6 Q. And you're sitting here today questioning
7 the reproduction of board minutes or the summation of
8 board minutes by Mr. Brodt?

9 A. So, again, I mean, I'll tell you that my
10 sense of board meeting minutes that the very accurate
11 portion of board meeting minutes are resolutions and
12 the like and votes. The rest that are I'll call it
13 general statements about what happened at the board
14 meeting are the secretary's reflection on what
15 happened during that meeting, and I'll say this, as a
16 board member, I don't pay that much attention to the
17 specific, you know, how they recollected what
18 happened at the meeting, but I do pay attention to
19 the resolutions to make sure that they are accurate.

20 Q. So you're sitting here today saying you
21 don't necessarily agree these are accurate
22 representations by Mr. Brodt of OVEC?

23 A. I don't think that's what I said. I
24 think what I said was a lot more than that.

25 Q. Well, do you believe these are accurate

1 representations of Mr. Brodt, or do you not?

2 MS. SPILLER: Objection. Asked and
3 answered.

4 EXAMINER WALSTRA: Overruled.

5 A. I'll tell you what I said before.

6 Q. That you don't agree with his
7 representations; is that what you're stating here
8 today?

9 A. Well, let me just read it and we'll go in
10 some detail.

11 Q. I'm asking do you think Mr. Brodt
12 produces accurate board meeting minutes? I'm not
13 asking you about this document specifically. I'm
14 asking if you believe Mr. Brodt produces accurate
15 board meeting minutes that you ultimately approve?

16 A. So, again, I told you that when I read
17 board minutes, when there's a resolution, I pay
18 specific attention to the resolution. When there are
19 minutes that talk about the tone or questions or the
20 background of a certain issue, that those things are
21 not paid in as great a deal of attention as me and
22 they're the secretary's reflection of what happened
23 in that meeting. And so I don't think that -- I'll
24 just leave it at that.

25 Q. So you're sitting here saying when you

1 approved the minutes, you're not necessarily agreeing
2 with Mr. Brodt, or you believe his statements may be
3 inaccurate.

4 A. So let's talk specifically about this.

5 Q. I'm not asking you specifically.

6 A. Well, I want to talk about it
7 specifically because you're asking me a question, and
8 I think it will be helpful to answer it.

9 MS. BOJKO: Your Honor, I'm not asking
10 about this document. I need to know from a general
11 sense if the OVEC -- if he believes that the OVEC
12 board meetings are an accurate representation of the
13 meetings.

14 A. So I'll tell you again. I think to the
15 degree that the board minutes reflect a resolution,
16 that those are very accurate. To the degree that the
17 minutes reflect the tone or background information to
18 a decision or what other, that they're the
19 secretary's reflection on that meeting and, again,
20 subject to interpretation, the accuracy of those
21 things might or might not be according -- what was my
22 memory.

23 Q. Okay. And I have one more exhibit for
24 you, sir.

25 MS. BOJKO: Your Honors, at this time,

1 I'd like to mark as OMA-POD-02-013. It will be OMA
2 Exhibit 13.

3 EXAMINER WALSTRA: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MS. BOJKO: May I approach?

6 EXAMINER WALSTRA: You may.

7 Q. Sir, does this appear to be a Duke Energy
8 Ohio discovery response titled "OMA-POD-02-013"?

9 MS. SPILLER: I'm going to object to the
10 lack of foundation. This witness is not the person
11 responsible.

12 EXAMINER WALSTRA: Overruled.

13 A. Again, it seems to be a request for
14 information around a Duke Energy Ohio case that's
15 referenced in the upper right hand part of the
16 document.

17 Q. And the request talks about copies of all
18 OVEC committee or subcommittee meeting minutes
19 regarding the consent of sale or transfer of the
20 sponsoring company's interest in OVEC; is that
21 correct?

22 A. That's what the request is.

23 Q. And in the response, do you see an
24 objection?

25 A. Yes, ma'am.

1 Q. Do you see any other information
2 directing to another discovery sponsor directing to
3 any attachments?

4 A. No, ma'am.

5 Q. Thank you, sir. And, sir, you arrived
6 today with documents; is that correct? Sorry. I'll
7 rephrase. You said you arrived here with documents
8 that you believed were responsive to the subpoena
9 issued by the Ohio Consumers' Counsel for you to
10 appear and bring documents; is that correct?

11 A. Yes.

12 Q. And, sir, the documents that you have
13 brought, in part at least, have been marked as OCC
14 Exhibit 44a; is that correct?

15 A. Yes.

16 Q. Okay. And, Mr. Whitlock, this appears to
17 be -- the packet appears to be a very general high
18 scale or high level -- it appears to be e-mail
19 correspondence, and it also appears to contain
20 documents; is that correct?

21 A. I see an e-mail, and I see a couple
22 e-mails and other things that look like documents.

23

24 Q. And so these e-mails are written
25 communication, written correspondence, between (Confidential)

1 or (Confidential) and OVEC; is
2 that correct?

3 A. I don't know if -- I don't know who the
4 e-mails are to or from without going through each
5 one.

6 Q. Well, it appears at least the first one
7 is correspondence from (Confidential); is that correct?

8
9 MS. SPILLER: Your Honor, I believe we've
10 not yet had confidential rulings on these documents.

11 EXAMINER WALSTRA: We have not.

12 MS. BOJKO: I apologize.

13 EXAMINER WALSTRA: Don't need to go into
14 it. The last two questions and last answer will go
15 in the confidential record.

16 Q. Sir, is it fair to say these are e-mail
17 correspondence that you would be an individual that
18 would have received these correspondence since you
19 brought these correspondence with you in response to
20 the subpoena?

21 MS. SPILLER: I'm going to object. I
22 don't think that's an accurate representation of
23 these documents or their genesis.

24 EXAMINER WALSTRA: Overruled.

25 A. Repeat the question, please.

1 Q. I'll rephrase. Sir, I'm just trying to
2 understand do you believe you would have received
3 some of these e-mails, documents that are contained
4 in this exhibit.

5 MS. BOJKO: Your Honor, may we go off the
6 record for a minute?

7 EXAMINER WALSTRA: Sure.

8 (Discussion off the record.)

9 EXAMINER WALSTRA: We'll go back on the
10 open record.

11 Q. (By Ms. Bojko) Mr. Whitlock, I believe
12 that your name does appear on the first page as
13 receiving an e-mail regarding OVEC board of
14 directors' meeting and regarding the ICPA interest
15 and assignment of those interests; is that correct?

16 A. You're talking about the e-mail that says
17 OVEC board of directors' follow-up items.

18 Q. Yes.

19 A. My name is in there.

20 Q. Sir, I was trying to answer a general
21 question that your name does appear on these written
22 communications, and you have received the documents
23 that are referenced in this packet.

24 A. Again, from a cursory review, my review,
25 just sitting here for the last whatever, five minutes

1 or so, this is the only e-mail that has my name on
2 the "to" line.

3 Q. That's not redacted you mean.

4 A. Correct.

5 Q. Well, okay. So let's back up a minute.
6 So it's my understanding that you appeared here today
7 with these documents, is that correct, for purposes
8 of testifying today?

9 A. Yes.

10 Q. That's your understanding?

11 A. Yes.

12 Q. Okay. And, sir, you've just gone through
13 with me OMA's Exhibits 9, 10, 11, and 13 and these
14 documents were produced after those discovery
15 responses; is that correct?

16 MS. SPILLER: Your Honor, I'm going to
17 object. I have a suspicion as to what Ms. Bojko is
18 attempting to infer, but there were objections
19 asserted by legal in connection with the OMA's
20 discovery responses. She's essentially asking this
21 witness to somehow render some advice in respect of
22 those legal objections, and I think it completely
23 improper.

24 EXAMINER WALSTRA: Overruled.

25 THE WITNESS: Could you read the question

1 back to me, please.

2 (Record read.)

3 A. So I think a simple answer is that the
4 date of the OMA request 9, 10, 11, 12 all have
5 September 23rd and today is after that day.

6 Q. Thank you, sir. Who is Greg Cecil?

7 A. Greg Cecil. I don't even know how to
8 answer that question who he is. He's Greg Cecil.

9 Q. Is he an employee of Duke Energy?

10 A. He is. Shared service employee.

11 Q. Okay. And does he work for you?

12 A. He does.

13 Q. And what about Nick Melillo? Did I say
14 that properly?

15 A. You did.

16 Q. Is he a Duke shared service employee?

17 A. He is.

18 Q. And does he work for you?

19 A. Not directly, but yes.

20 Q. Sir, we were talking earlier about
21 certain documents that you would have approved or not
22 approved as an OVEC board member. Now, I want to ask
23 you a couple questions about documents that you would
24 have approved as a Duke employee and your
25 responsibilities as a Duke shared service employee,

1 okay? Would you have approved the ICPA as a Duke
2 shared service employee?

3 MS. SPILLER: Objection. Asked and
4 answered. The witness said he already approved as an
5 officer of Duke Energy Ohio.

6 EXAMINER WALSTRA: Overruled.

7 A. My signature is on the document.

8 Q. But that would have been in your capacity
9 as a Duke shared service employee; is that correct?

10 A. So you're asking me -- I'm not a lawyer.
11 I'm a shared service employee, but I also have the
12 authority to represent and bind certain legal
13 entities inside of Duke Energy Corporation. DE Ohio
14 is one of those.

15 Q. Okay. And any memorandums that you would
16 be sent on behalf of you would have been under your
17 authorization; is that correct?

18 A. Any memorandum --

19 Q. Well, you authored one of the documents
20 or memorandums regarding the transfer of assets and
21 that was done as a shared service employee; is that
22 correct?

23 A. So is there a specific document?

24 MS. SPILLER: Objection. That misstates
25 Mr. Whitlock's prior testimony.

1 EXAMINER WALSTRA: Overruled. He can
2 clarify.

3 A. So is there a specific document you're
4 referring to?

5 Q. I'm not allowed to reference a specific
6 document, sir. I'm asking in your capacity whether
7 you have authority to sign documents going to OVEC
8 board members or sponsoring companies regarding the
9 issue here, the OVEC transfer of the entitlement.

10 A. I would say yes.

11 Q. Okay. And you've already explained to me
12 that in your capacity, you have the authority to vote
13 or -- vote for or against other transfer, consent of
14 transfer proposals put before you; is that right?

15 A. In addition to other things, yes.

16 Q. Okay. And are you also authorized to
17 make decisions on behalf of Duke Energy -- Duke
18 shared services about guarantees and what the company
19 may or may not require with regard to guarantees?

20 A. Could you read the question back for me?
21 I'm sorry. Or just read it back, somebody.

22 Q. Do you have authority to sign guaranty
23 agreements or to make the decisions of whether Duke
24 entities can enter into certain guaranty proposals?

25 A. Up to certain limits and for certain

1 companies, I do.

2 Q. Okay. And you're talking about certain
3 dollar limits?

4 A. Both dollar limits and companies.

5 Q. And companies, you're talking -- you have
6 authority on behalf of DCAM up to a certain dollar
7 limit?

8 A. I believe so.

9 Q. And do you have that same authority on
10 behalf of Duke Energy Ohio?

11 A. I believe so.

12 Q. And, sir, would you have to have the same
13 final say or final approval authority over these
14 types of documents that may be produced by Greg
15 Cecil?

16 A. Cecil?

17 Q. Cecil. Sorry.

18 A. That's fine.

19 Q. By Mr. Cecil?

20 A. The question was what?

21 Q. Do you have to approve documents of this
22 type of nature? Would you be the one that would have
23 to approve those documents?

24 A. What type of nature?

25 Q. The ones we've just gone through, like

1 ICPA type agreement, documents regarding the consent
2 for transfer, any votes regarding consent for
3 transfer, any guarantees, would those be approved by
4 you, or does Mr. Cecil have his own authority?

5 A. So Greg has his own authority.

6 Q. Up to a certain limit, I'm assuming.

7 A. Yes.

8 Q. And you're limit is higher than his
9 limit.

10 A. Yes.

11 Q. And would the same be true for
12 Mr. Melillo?

13 A. Yes. Sitting here, I don't believe that
14 Nick Melillo has authority to under the delegation of
15 authority, but I don't know.

16 Q. But you would have the authority to
17 approve anything that he does; is that correct?

18 A. Yes.

19 Q. And could you turn to what has been
20 marked Bates stamped as page 30, please, on OCC
21 Exhibit 44a? Are you there?

22 A. I am.

23 Q. Okay. If you look at the prior page on
24 29, it appears that you are on the CC line of this
25 e-mail that I'm about ready to discuss with you; is

1 that correct? It's dated February 7th, 2013?

2 A. Yeah. I see my name.

3 Q. And, sir, this appears to be a follow-up
4 e-mail or to a follow-up e-mail regarding two
5 subcommittees that the OVEC board of directors has
6 created; is that correct?

7 A. Yes.

8 Q. And the first subcommittee that was
9 created is regarding the proposed transfers of the
10 interest in the ICPA to non-rated affiliates of
11 certain sponsoring companies, including consideration
12 of a proposed form of parent guarantee as a
13 replacement of any credit support requirements; is
14 that correct?

15 A. Yes.

16 Q. Okay. And, sir, you see on the -- then
17 we have a list of people that have actually been
18 assigned to the particular subcommittees; is that
19 correct?

20 A. Yes.

21 Q. Okay. And then -- so that initial ICPA
22 subcommittee will consist of the Duke employee,
23 Mr. Cecil; is that correct?

24 A. Yes.

25 Q. And also you see the name of Mr. Melillo?

1 A. Melillo, yes.

2 Q. So they were both on the ICPA
3 subcommittee; is that correct?

4 A. The initial ICPA subcommittee, yeah.

5 Q. And also attached to that e-mail, there
6 is what appears to be a sample guaranty arrangement
7 that was attached to -- provided to the e-mail
8 recipients as an example of a guaranty agreement
9 that's been executed previously; is that correct?

10 A. That's not readily apparent to me. Is
11 there a page, you call it a Bates page, that you're
12 referring to?

13 Q. 32 appears to be -- I believed it to be
14 attachment of a guaranty that's already been accepted
15 by OVEC. Do you have reason to believe that's not
16 the case?

17 A. Yes. So my point was that -- thank you
18 for clarifying. Yeah, it looks like this is a form
19 of a guaranty.

20 Q. That FirstEnergy has entered into with
21 regard to the OVEC assets; is that correct?

22 A. It appears to be, yes.

23 Q. And it's your understanding that this
24 being an OVEC board meeting, that this is the
25 guaranty that was accepted and approved by the board

1 members for FirstEnergy's transfer of its OVEC
2 assets?

3 A. That will take more time to read, but --
4 it looks like a guaranty and it looks like it's
5 between FirstEnergy Corp. and Ohio Valley Electric
6 Cooperative -- excuse me, Ohio Valley Electric
7 Corporation.

8 Q. And if it was attached to the e-mail
9 discussing guaranties, that's a fair assumption.

10 MS. SPILLER: I'm going to object. The
11 witness just said he needs more time to read this,
12 and he indicated that it appears to be a guaranty.

13 EXAMINER WALSTRA: Overruled.

14 A. So the e-mail -- again, I'm reading back
15 on the e-mail under the ICPA subcommittee, and it
16 says on the third line that there's a form of a
17 parent guaranty proposed for the use in connection
18 with the proposed ICPA of transfers to non-rated
19 subsidiaries. I can't really tell whether or not
20 this is the proposed form or if this is an example of
21 an agreement for a non-creditworthy counterpart.
22 It's not clear to me.

23 Q. Okay. Well, do you have any recollection
24 of whether -- of a OVEC board meeting that you had to
25 approve a guaranty for FirstEnergy to transfer its

1 OVEC entitlement to its generating assets of OVEC?

2 A. So sitting here today, I don't recall
3 that.

4 Q. You don't recall? And do you recall
5 voting on the FirstEnergy transfer similar to what
6 we've talked about with regard to other consent to
7 transfer votes?

8 A. I don't recall. It looks like the date
9 of this guaranty was July 28th of '05, which predated
10 me as an OVEC guy.

11 Q. Okay. Thank you. But there were
12 FirstEnergy transfers that occurred after that date?
13 You just don't recall --

14 A. Again, I don't recall.

15 Q. I'm accurate in stating that there were
16 transfers after that date; is that correct?

17 MS. SPILLER: Objection to the relevance
18 of FirstEnergy transfers.

19 A. I'm not sure when FirstEnergy
20 transferred.

21 Q. You don't recall that while you've been a
22 Board member that there's been a request to transfer?

23 MS. SPILLER: Objection, asked and
24 answered. He just said he wasn't sure.

25 MS. BOJKO: He said he wasn't sure of the

1 date.

2 EXAMINER WALSTRA: Overruled.

3 A. So what is the question?

4 Q. Since you've been a board member, do you
5 recall there being a transfer of FirstEnergy OVEC
6 entitlement to our assets?

7 A. I believe so.

8 MS. BOJKO: At this time, your Honor, I
9 have nothing further on the -- I don't think I have
10 anything on the public record.

11 EXAMINER WALSTRA: Thank you.

12 We'll take a 15-minute break.

13 (Recess taken.)

14 EXAMINER WALSTRA: Go back on the record.
15 And Mr. Allwein.

16 MR. ALLWEIN: I have no questions. Thank
17 you, your Honor.

18 EXAMINER WALSTRA: Mr. Boehm?

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

20 EXAMINER WALSTRA: Mr. Oliker?

21 MR. OLIKER: Just a few questions, your
22 Honor. Thank you.

23 - - -

24 CROSS-EXAMINATION

25 By Mr. Oliker:

1 Q. Good afternoon, Mr. Whitlock.

2 A. Good afternoon.

3 Q. Just a few questions for you today. I'm
4 not sure if you provided this answer earlier, but
5 could you tell me what the current status is of Duke
6 Energy Corporation's transfer of the generating
7 assets to Dynegy?

8 MS. SPILLER: Object to the relevance.

9 MR. OLIKER: Your Honor, I'm trying to
10 understand the commercial generation division's
11 current operation of generating assets and how long
12 that's going to continue.

13 EXAMINER WALSTRA: I'll allow it and see
14 where it goes.

15 A. So we have a definitive purchase and sale
16 agreement. We're seeking regulatory approval from
17 FERC and the Department of Justice, and pending the
18 receipt of those approvals, we will close in probably
19 the next -- I would say by the end of the first
20 quarter of 2015, no later.

21 Q. Thank you, Mr. Whitlock.

22 Regarding the OVEC generating assets,
23 Clifty Creek is located in Indiana, correct?

24 A. It is in Indiana.

25 Q. And Clifty Creek is located in a portion

1 of Indiana that is physically located in the MISO
2 RTO?

3 A. Clifty Falls actually, right? It's Kyger
4 Creek and Clifty Falls, I think, but I might be
5 wrong.

6 Q. I think it's Clifty Creek, Mr. Whitlock.

7 A. All right. Sure. Let's go with that.
8 Kyger and Clifty.

9 Q. Sure. I like your description.

10 You would agree that the Clifty is
11 located in a portion of Indiana that is physically
12 located in the MISO regional transmission operator?

13 A. I believe that's true, yeah.

14 Q. Okay. And Kyger Creek is located in
15 Ohio.

16 A. Yes.

17 Q. But Clifty and Kyger are not PJM internal
18 resources, correct?

19 A. Correct.

20 Q. And you agree that Clifty and Kyger are
21 both pseudo tied to PJM.

22 A. That's my understanding.

23 Q. And you would agree that a pseudo tie is
24 when you take a generator that is not connected
25 electrically to an RTO and make it look like it's

1 connected electrically to an RTO?

2 A. That's certainly a good layman's
3 definition, one I subscribe to.

4 Q. Thank you, Mr. Whitlock.

5 And you agree that Clifty and Kyger Creek
6 both clear for energy purposes at the OVEC node?

7 A. I believe that's true.

8 Q. And you agree that the OVEC node is an
9 external interface to PJM, if you know?

10 A. I don't know. It feels like the node is
11 in PJM, but I don't know. It's weird for me to think
12 about an LMP price that's external to PJM's
13 footprint.

14 Q. Thank you, Mr. Whitlock, for that
15 clarification.

16 And you agree that it's possible that PJM
17 could in the future preclude the OVEC resources from
18 offering generation into the PJM energy and capacity
19 markets.

20 A. I don't know the answer to that question.
21 I think that's a question of PJM's tariff, and I'm
22 not sure that I'm smart enough to know the answer to
23 that.

24 Q. But the high level answer is the tariff
25 could change, correct?

1 A. PJM can change its tariff. They are a
2 creature of tariff.

3 Q. Thank you. And you agree that Duke
4 Energy Ohio has in the past jointly owned generation
5 units with DP&L and AEP?

6 A. We have, yes.

7 Q. But you're not familiar --

8 A. -- and still do. Well, DE Ohio doesn't
9 now, but actually we do at Beckjord 6.

10 Q. But you're not familiar with the
11 ownership structure of those units; for example, you
12 don't know if Duke owns stock in those assets.

13 A. Does Duke own --

14 MS. SPILLER: I'm going to object to the
15 extent we're asking Mr. Whitlock for a legal opinion.

16 A. Does Duke own stock?

17 EXAMINER WALSTRA: Overruled.

18 Q. I'm just asking if you know.

19 A. Your question is does Duke own stock in
20 Stewart station?

21 Q. Yes, for example, the various jointly
22 owned generating assets, you don't know whether the
23 ownership structure was stock ownership.

24 A. Yes. So we don't own equity in Stewart
25 station. There's no stock certificates for Stewart

1 station.

2 Q. Could you turn to your deposition at page
3 123?

4 A. I don't have my deposition in front of
5 me.

6 Q. Let me -- before we go there, would you
7 agree you don't know exactly how the ownership
8 structure of the jointly-owned assets with DP&L and
9 AEP was structured?

10 A. I think I'm pretty familiar with how it's
11 structured, but exactly, I do not.

12 MR. OLIKER: May I approach the witness,
13 your Honor?

14 EXAMINER WALSTRA: You may.

15 Q. I think we were looking at -- would you
16 please turn to page 123, Mr. Whitlock.

17 A. Yes.

18 Q. And tell me if I read this right. On
19 page 123 at line 25, start of line 20, "Isn't it true
20 that Duke Energy Ohio previously owned
21 coal-generating assets with DP&L and AEP?" And
22 skipping over the objection, "Yes." And then the
23 next question, "Are you aware of how the ownership of
24 those generating assets were structured?" And then
25 again skipping over the objection going to line 5 --

1 actually line 8, "I don't know, Joe."

2 MS. SPILLER: Your Honor, I'm going to
3 object. Mr. Oliker conveniently omitted a question
4 that preceded the answer that he just read, and I
5 think this is an improper use of the deposition.

6 MR. OLIKER: I can go and read the other
7 question too, your Honor. It makes it even more
8 appropriate actually.

9 EXAMINER WALSTRA: Go ahead.

10 Q. Line 5, it says, "Let's -- in general,
11 would you agree that it was also the stock ownership
12 structure of the" -- I believe it should be "OVEC
13 generating units."

14 MS. SPILLER: Your Honor, now he's just
15 transposed a word that's not in the text, changing
16 the meaning of the question.

17 MR. OLIKER: Do you have the witness's
18 errata?

19 MS. SPILLER: We tendered it to the court
20 reporter.

21 Q. And we'll ask him when we get done, but
22 it says "the ownership structure of the CONE
23 generating units" and the answer witness said "I
24 don't know, Joe."

25 Now, first, Mr. Whitlock, did I read that

1 correctly?

2 A. Did you read the question at line 5?

3 Q. Yes.

4 A. I believe you did.

5 Q. Okay. And would you agree that the
6 reference to CONE-generating assets is a reference to
7 OVEC-generating assets?

8 MS. SPILLER: Your Honor, now we're
9 changing the meaning of the deposition. Mr. --

10 A. My assumption is that that's co-owned
11 units. But, again, we're talking about in context
12 AEP and DP&L generating assets. So in general, would
13 you agree it's also a stock ownership structure of
14 the CONE-generating units is what I would say.

15 Q. And your answer in the deposition was you
16 don't know, correct?

17 A. So yeah. Again, I'll tell you I did say
18 I don't know. And sitting here today, I don't
19 believe that we own stock in Stewart station.

20 Q. But at the time of your deposition, you
21 didn't know?

22 A. I said, "I don't know, Joe."

23 Q. Okay. Thank you. That's all I was
24 trying to get at.

25 Would you agree that the PPA between OVEC

1 and Duke Energy Ohio was a FERC jurisdictional
2 contract?

3 A. I believe it is. I believe so.

4 Q. And it's your belief that the contract is
5 binding on Duke Energy Ohio and that it must pay OVEC
6 under the contract regardless of anything the Public
7 Utilities Commission of Ohio does?

8 A. I believe so.

9 Q. And are you familiar with the PSR
10 proposal that Duke has made in this case?

11 A. I am not.

12 Q. I have a hypothetical, Mr. Whitlock. For
13 this hypothetical, can you assume that the ICPA
14 exists as it does today, and then assume that the
15 Commission approves a rider that allows Duke to
16 collect the difference between Duke's wholesale
17 market revenues related to its OVEC entitlement and
18 the cost-based rate that Duke must pay OVEC between
19 2015 and 2040. Assume also that the Commission
20 determines it wants to audit the cost that OVEC
21 charges to Duke for prudence purposes. Now assume
22 that the OVEC board approves the installation of
23 carbon capture sequestration technology at a cost of
24 \$5 billion.

25 Would you agree that if the Commission

1 determines those costs were not prudent, Duke will
2 still pay OVEC, will record a loss at the
3 distribution level?

4 MS. SPILLER: I'm going to object. One,
5 this assumes facts not in evidence, and I don't think
6 there's been established a proper foundation for this
7 witness to render an opinion in respect of Commission
8 authority.

9 MR. OLIKER: Your Honor, I'm asking for
10 his layman's opinion on this issue, and it is a
11 hypothetical that sets forth the facts in the
12 hypothetical.

13 EXAMINER WALSTRA: Overruled.

14 A. So, Joe, in your hypothetical, you said
15 that the PUCO had prudence review.

16 Q. That's correct.

17 A. And so if they said in your example, \$5
18 billion for carbon capture and sequestration, that
19 that expense was not prudent as part of their review,
20 and you also assumed that the ICPA correctly requires
21 Duke Energy Ohio to pay for the costs of OVEC, that
22 Duke Energy Ohio would have a loss; is that the
23 question?

24 Q. I guess my question is if Duke gets
25 charged for this carbon capture technology --

1 A. \$5 billion, 9 percent of \$5 billion.

2 Q. Exactly, but it can't recover it from its
3 customers, would you agree that Duke will still pay
4 OVEC but just record a loss at the utility level?

5 A. I'm not sure where the loss gets
6 recorded, but I have a contractual obligation under
7 the ICPA to pay my ownership share, Duke Energy
8 Ohio's ownership share. So you said in the
9 hypothetical that that ICPA stated in the way it was,
10 you would pay your proportional share of that
11 \$5 billion.

12 Q. Okay. And is the logical result it would
13 lower the return on equity for the electric
14 distribution utility?

15 A. Was part of your hypothetical assumption
16 that you didn't get remunerated for the \$5 billion in
17 the market?

18 Q. Yes.

19 A. So, again, I would tell you I'm not sure
20 where it gets recorded but assume for a second it
21 gets recorded at Duke Energy Ohio, the legal entity,
22 then it would have an impact on the return on equity.

23 Q. This may be my last question.

24 A. Let's hope so.

25 Q. Would you agree that one of the

1 definitions of a subsidy that you would have is a
2 form of payment or benefit that cannot be obtained in
3 the market?

4 A. I think that's fair. It's certainly an
5 acceptable definition. You could argue about whether
6 it's the best definition, but I think it's a fair
7 definition.

8 Q. Thank you, Mr. Whitlock.

9 MR. OLIKER: Your Honor, if I may have
10 just one moment, I think I'm done.

11 EXAMINER WALSTRA: Okay.

12 MR. OLIKER: Thank you, Mr. Whitlock.

13 THE WITNESS: Thank you.

14 EXAMINER WALSTRA: Ms. Petrucci?

15 MS. PETRUCCI: No questions.

16 EXAMINER WALSTRA: Ms. Spiller?

17 MS. SPILLER: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Spiller:

21 Q. Mr. Whitlock, I believe you indicated
22 you're not familiar with Duke Energy Ohio's proposed
23 rider PSR, correct?

24 A. I've not read the case.

25 Q. So, sir, I would ask you to assume that

1 Duke Energy Ohio has proposed a rider pursuant to
2 which it would sell its energy and capacity
3 associated with its 9 percent contractual entitlement
4 in the OVEC-owned generating assets into the PJM
5 markets. I'd further ask you to assume that under
6 the proposal, Duke Energy Ohio would provide to all
7 of its retail customers on a nonbypassable basis the
8 net benefits associated with transacting its
9 9 percent entitlement in the wholesale market. Sir,
10 based upon those assumptions, if rider PSR is
11 approved by the Ohio Commission, would that at all
12 change Duke Energy Ohio's obligations under the ICPA?

13 A. I don't believe so.

14 Q. Thank you. Mr. Whitlock, do you have
15 before you what was marked as OMA Exhibit 7a?

16 A. I'm sure I do somewhere.

17 Q. It's also OCC 27, the attachment, sir.

18 A. So I have an exhibit labeled, but I don't
19 know if it's OCC Exhibit 27.

20 Q. That's fine, sir. That will certainly
21 work for purposes of my question. Do you recall
22 questions from Ms. Bojko about whether you were
23 voting as a board member for OVEC or you were voting
24 as a sponsoring company?

25 A. So this would be a vote as a sponsoring

1 company.

2 Q. And you certainly can review the outcome
3 of these various votes. Would you agree with me that
4 there was not a unanimous decision with regard to the
5 issue discussed in these acknowledgment forms?

6 A. Yes.

7 MS. BOJKO: Objection. I don't think
8 that there's been any foundation of unanimous,
9 nonunanimous on the record of whether this is all the
10 votes, not all the votes, and what this is pertaining
11 to.

12 MS. SPILLER: Well, if it's one no, it
13 can't be unanimous.

14 A. I think I can answer the question.

15 EXAMINER WALSTRA: Overruled.

16 A. So there's, I don't know, one, two,
17 three, four, five, six, seven votes here, and they're
18 not all the same.

19 Q. And given that all of the votes were not
20 the same, would you agree that this was not a
21 unanimous outcome?

22 A. I think that's fair.

23 Q. Okay. And as a result of the outcome of
24 the vote as reflected in OCC Exhibit 27, was the
25 underlying issue discussed in this acknowledgment

1 form ever presented to the OVEC Board of Directors?

2 A. I don't recall it ever coming to the
3 board. I think it was taken in the subcommittee. I
4 don't ever recall it coming to the board.

5 Q. And, Mr. Whitlock, are sponsoring
6 companies required to disclose the reasons for why
7 they would have voted the way they did in connection
8 with the proposals set forth or described in the
9 acknowledgment forms that you have before you?

10 A. I don't believe that -- I don't believe
11 so.

12 Q. Do you have before you, sir, what was
13 marked as IEU Exhibit 5. It's the ICPA.

14 A. I do.

15 Q. And do you recall questions much earlier
16 today regarding -- or from Mr. Berger regarding a
17 permitted assignee?

18 A. I don't actually.

19 Q. If you could turn to page 4 of the
20 document, sir. And I believe you indicated that this
21 was where the definition of the permitted assignee is
22 set forth.

23 A. I do remember now, yeah.

24 Q. Is the definition of a permitted assignee
25 tied only to it having a certain credit rating?

1 A. No.

2 Q. What is the other requirement for a
3 permitted assignee under the ICPA?

4 A. I'm just reading the document, right. So
5 it says that the permitted assignee means a person
6 that has a credit rating. It spells out the credit
7 rating and Standard & Poor's and Mooney's or it says
8 be a sponsoring company or its affiliate. It doesn't
9 meet the requirement in A. So it could be an
10 affiliate. So creditworthy and affiliate of the
11 sponsoring company, and then if the sponsoring
12 company, reading further on, says that they're
13 willing to remain obligated to, quote, satisfy all
14 the obligations.

15 Q. Obligations related to what, please?

16 A. Obligations related to this document.

17 Q. And I believe you've indicated, sir, that
18 you've been on the OVEC board since 2006.

19 A. Yes.

20 Q. So in your understanding of the ICPA,
21 does this mean to you that a sponsoring company that
22 wishes to transfer its rights and obligations under
23 the ICPA to an affiliate that does not have the
24 required credit rating, that that sponsoring company
25 must remain liable for all obligations under the

1 ICPA?

2 A. That's what it seems like to me.

3 Q. You talked a little bit with Ms. Bojko
4 about your position as the president of midwest
5 commercial generation, and in that capacity, sir, did
6 you manage and oversee the day-to-day operations of
7 Duke Energy's non-regulated generating stations in
8 the midwest?

9 A. Yes.

10 Q. And did those assets include the
11 generating assets previously owned by Duke Energy
12 Ohio?

13 A. Yes, as well as others.

14 MS. BOJKO: Could I have that question
15 and answer read back, please.

16 (Record read.)

17 Q. And with respect to generating assets
18 owned by Duke Energy Ohio, sir, have some of those
19 been included in its rate base in the past?

20 A. Yes.

21 Q. And has Duke Energy Ohio owned generating
22 assets that have not been included in its rate base?

23 A. My struggle a little bit is whether or
24 not Duke Energy Ohio owned any of the combined cycle
25 plants. We'll call them legacy DENA plants.

1 Q. And, sir, perhaps we can help you there.
2 You were asked about the stipulation in the ESP II
3 case, correct?

4 A. I was.

5 Q. And you were -- I believe you indicated,
6 sir, that you also filed testimony in support of that
7 stipulation.

8 A. I did.

9 MS. SPILLER: And, your Honor, may we
10 approach, please?

11 MR. OLIKER: Your Honor, I don't know if
12 the witness was asked about his testimony. He was
13 asked about his stipulation. He volunteered the
14 information about the testimony.

15 Q. Sir, did you file testimony in connection
16 with Duke Energy Ohio's ESP II proceeding?

17 A. I did.

18 MS. SPILLER: May I approach, your Honor?

19 EXAMINER WALSTRA: You may.

20 MS. SPILLER: Your Honor, I would ask
21 that the direct testimony of Charles R. Whitlock
22 filed in case 11-3549 be marked as Duke Energy Ohio
23 Exhibit 25, please.

24 EXAMINER WALSTRA: So marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MS. SPILLER: Thank you.

2 Q. Sir, do you have before you what has been
3 marked as Duke Energy Ohio Exhibit 25?

4 A. Yes.

5 Q. And what is that, please?

6 A. It looks to be a copy of my testimony
7 filed on behalf of Duke Energy Ohio in the case
8 numbers that are enumerated, EL-11-3549-EL-SSO.

9 Q. And does this testimony, sir, include a
10 list of generating assets that have been included in
11 Duke Energy Ohio's rate base?

12 A. Yes.

13 Q. And where are those generating assets
14 identified in your testimony identified as Duke
15 Energy Ohio Exhibit 25, please?

16 A. So they're under the CRW-1 Attachment,
17 CRW-1 and CRW-2.

18 Q. And you have separated out these tables
19 by operating generation assets and retired generation
20 assets, correct?

21 A. Yes.

22 Q. Sir, did you collect -- how were these
23 assets collectively referred to in the body of your
24 testimony? Were they the legacy generating assets?

25 A. I believe so, yes. I know for sure that

1 the operating assets were referred to as legacy. I
2 mean, that's a term of art that I'm familiar with and
3 I use it here in my testimony. I don't know
4 whether -- I'd have to look for specific notations in
5 here about whether or not their retired assets were
6 legacy assets. I can look, if you want.

7 Q. Well, sir, just to expedite, if you look
8 on page 6, line 12.

9 A. Okay. So there you go, clear. So both
10 operating generation assets and retired generation
11 assets is legacy generation assets.

12 Q. And, sir, did you participate in Duke
13 Energy Ohio's ESP proceeding that culminated in a
14 stipulation in October of 2011?

15 A. I did.

16 MS. SPILLER: Your Honor, may we
17 approach?

18 EXAMINER WALSTRA: You may.

19 MS. SPILLER: Thank you.

20 Q. Mr. Whitlock, I've handed you what has
21 been marked as OCC Exhibit 2. Can you identify that,
22 please?

23 A. So it looks like the stipulation that was
24 tendered before the Public Utilities Commission in
25 the ESP II case.

1 Q. And the stipulation, sir, OCC Exhibit 2
2 and your direct testimony, Duke Energy Ohio Exhibit
3 25, were those filed in the same case, the same case
4 number, sir?

5 A. Yes.

6 Q. And with respect to your participation,
7 was that on behalf of Duke Energy Ohio, the applicant
8 in case 11-3549?

9 A. Yes.

10 Q. And in terms of participation, were you
11 involved in the settlement discussions concerning the
12 case?

13 A. Just about every one of them.

14 Q. And did you have an active role?

15 A. I would say absolutely.

16 Q. And were there several settlement
17 conferences held in connection with the ESP
18 proceeding?

19 A. Several, yes.

20 Q. And, to your knowledge, did all the
21 parties in the ESP proceeding under case 11-3549 have
22 an opportunity to review the content of the
23 stipulation?

24 A. Absolutely.

25 Q. And, to your knowledge, did parties

1 provide their recommendations on what the language in
2 the stipulation should be?

3 A. Yes.

4 Q. And does the final language in the
5 stipulation in your opinion, sir, reflect the
6 agreement of all of the signatories to that
7 stipulation?

8 MS. BOJKO: Objection, your Honor. He
9 cannot testify to what the signatory parties did or
10 did not agree to in a stipulation.

11 MS. SPILLER: I think their signature on
12 the document indicates what they agreed to.

13 MR. OLIKER: He can testify to what Duke
14 agreed to.

15 MS. BOJKO: Right.

16 EXAMINER WALSTRA: Rephrase.

17 MS. SPILLER: Sure. We'll go about it
18 another way.

19 Q. (By Ms. Spiller) Mr. Whitlock, beginning
20 on page 42 of OCC Exhibit 2, does this reflect the
21 signature of all entities that were signing on to and
22 agreeing with the stipulation?

23 A. Did you say starting on 44 or 2?

24 Q. 42.

25 A. Yes.

1 Q. And given your involvement in the ESP
2 proceeding, Mr. Whitlock, did any intervener in that
3 case oppose the stipulation?

4 A. I don't believe so. So there were some
5 parties that took no position and then there are
6 footnotes in various places in the agreement where
7 parties -- where you can read the footnotes, but
8 we're very careful around what it was that they were
9 approving and not approving.

10 Q. And, sir, if you would on OCC Exhibit 2,
11 turn to page 25, please.

12 A. Yes.

13 Q. And with respect to -- I'm sorry. 26,
14 paragraph B, under section 8, generating assets?

15 A. So page 26, paragraph B?

16 Q. Yes, sir.

17 A. Yes.

18 Q. Did any signatories to the stipulation
19 footnote out of or express a different view other
20 than that reflected in the document?

21 MS. BOJKO: Objection. He can't speak to
22 different views of parties. He can speak to what's
23 in the document. He can't speak to different views
24 of the parties.

25 MS. SPILLER: I'll rephrase.

1 Q. Mr. Whitlock, was there any footnote
2 reference to paragraph B in Section 8 of the ESP
3 stipulation?

4 A. No.

5 MR. OLIKER: For clarification is that
6 the generation asset transfer?

7 MS. SPILLER: Yes.

8 MR. OLIKER: Can you also ask him -- I
9 can do it later.

10 Q. Mr. Whitlock, you have before you Duke
11 Energy Ohio Exhibit 25, correct?

12 A. Yes.

13 Q. And the subject -- and this is testimony,
14 again, I believe you indicated you filed on behalf of
15 the -- in support of the ESP stipulation, correct?

16 A. I did.

17 Q. And the subject matter on what -- which
18 you testified was what, sir?

19 A. The transfer of the legacy generating
20 assets.

21 Q. Okay. And did you appear at a hearing in
22 November of 2011 on the stipulation?

23 A. November, 2011, is a long time ago.

24 Q. Do you recall coming and giving live
25 testimony in connection with the ESP stipulation and

1 the testimony that you had filed in support of it?

2 A. I think I did, but I don't remember
3 exactly.

4 Q. Do you recall, sir, at that hearing being
5 cross-examined by any of the interveners in respect
6 of your testimony?

7 MS. BOJKO: Objection, your Honor. He
8 just said he can't recall coming to Columbus and
9 testifying, so how is he going to recall her next
10 question?

11 EXAMINER WALSTRA: Overruled.

12 A. Honestly, Amy, I don't really remember.

13 Q. Okay. No problem.

14 A. I'm sure if I showed up -- if I was here,
15 I got cross-examined, and it seemed like there would
16 be a record of that event.

17 Q. And you would agree with me that we could
18 look at the transcript of that hearing to ascertain
19 whether any parties challenged the content of your
20 testimony, correct?

21 A. Absolutely.

22 Q. And, Mr. Whitlock, in the ESP
23 stipulation, OCC Exhibit 2 to this case, is Duke
24 Energy Ohio required to -- what is Duke Energy Ohio
25 required to transfer in terms of generating assets?

1 MS. BOJKO: Your Honor, I'm going to
2 object at this point to friendly cross. We have a
3 DEO employee, and now she's trying to do friendly
4 cross and rehabilitate the company's case on these
5 issues. We've allowed a lot of leeway, and now we're
6 getting down to asking him questions where she's gone
7 past the point, but I think this is friendly cross.

8 MS. SPILLER: Your Honor, if I may, this
9 witness -- this is cross-examination. This is a
10 witness who's being called in the OCC's case in
11 chief, and certainly I'm entitled to question him on
12 issues that the OCC as injected into this case, and I
13 think for purposes of the record, a general reference
14 to generating assets does not give the Commission the
15 full benefit of all of the history here, and here we
16 have the witness --

17 EXAMINER WALSTRA: Overruled.

18 MS. SPILLER: Thank you, your Honor.

19 THE WITNESS: Can you repeat the
20 question.

21 (Record read.)

22 A. So I'm just reading on page 25 8a the
23 parties agree Duke Energy will transfer title of all
24 of its generating assets out of Duke Energy Ohio,
25 and, again, I think the connection back to the

1 testimony, what that meant was the assets that are
2 enumerated in my testimony.

3 MS. BOJKO: Objection, your Honor. Now
4 the witness is telling us the interpretation of that
5 sentence on behalf of the parties, and that's
6 inappropriate speaking on behalf of the parties, and
7 it's also -- we're still on friendly cross.

8 EXAMINER WALSTRA: Overruled.

9 Q. Mr. Whitlock, does the stipulation define
10 generating assets as used in that document?

11 A. So, yeah, it does -- I think a footnote
12 on page 9, footnote No. 4 for purposes of this
13 stipulation generating assets -- generation assets
14 shall refer to all generating assets currently owned
15 by Duke Energy Ohio whether operating or retired but
16 shall not include any generating assets currently
17 owned by an affiliate or subsidiary of Duke Energy
18 Ohio.

19 Q. And, Mr. Whitlock, the list of generating
20 assets that you identified in your testimony in
21 support of the ESP stipulation, do either of those
22 list of assets, the operating generation assets or
23 the retired generation assets include Duke Energy
24 Ohio's contractual entitlement in OVEC?

25 MS. BOJKO: Objection, your Honor.

1 MR. OLIKER: She's leading the witness.

2 MS. BOJKO: We're going to be here all
3 night if she's going to rehabilitate her whole entire
4 case, and we get another round to dispute all of the
5 friendly cross that's going on.

6 MS. SPILLER: Your Honor, again, this is
7 cross-examination. I'm entitled to cross this
8 witness. This is a witness who's being called in the
9 OCC's case in chief. So I am entitled to
10 cross-examine the witness. There's no such boundary,
11 and cross-examination is expressly -- leading
12 questions are expressly permitted under the civil
13 rules on cross-examination.

14 MR. OLIKER: Technically I think this is
15 direct examination, but principles of
16 cross-examination allowed for intervening parties so
17 I'm not sure this is true, Ms. Spiller.

18 MS. SPILLER: This is case -- OCC
19 subpoenaed in their case in chief. They're allowed
20 to cross only because he's associated with an adverse
21 party.

22 MR. BERGER: He was called as on cross
23 suggesting that any --

24 EXAMINER WALSTRA: Overruled.

25 THE WITNESS: Could you read the question

1 back, please?

2 (Record read.)

3 A. Neither includes OVEC.

4 Q. Did Duke Energy Ohio's contractual
5 entitlement in OVEC ever come up during the
6 settlement discussions that culminated in the ESP II
7 stipulation, sir?

8 MS. BOJKO: Objection.

9 MR. BERGER: Objection, your Honor.

10 Those discussions were not -- to the extent not
11 incorporated into the stipulation, they should be
12 considered confidential settlement discussions and
13 whether or not they were addressed in a confidential
14 discussion and not --

15 EXAMINER WALSTRA: Sustained.

16 MR. BERGER: Thank you.

17 Q. Mr. Whitlock, is Duke Energy -- strike
18 that.

19 Do you recall questions earlier today
20 from Mr. Berger about transfers to a creditworthy
21 affiliate?

22 A. Yes.

23 Q. And I believe you indicated that you
24 suspected there to be creditworthy affiliates under
25 the Duke Energy umbrella, right?

1 A. Yes.

2 Q. And would some of those creditworthy
3 affiliates include public utilities in the states of
4 Indiana, Kentucky, North Carolina, South Carolina,
5 and Florida?

6 A. Yes, in addition to I think I said Duke
7 Energy Corporation, but yes.

8 Q. In your years of experience in the
9 utility industry, would you anticipate that Duke
10 Energy Ohio could transfer its contractual
11 entitlement in OVEC to a public utility in another
12 state without the approval of that other state's
13 regulatory commission?

14 MR. BERGER: Objection, your Honor. He
15 testified earlier that he didn't know what other
16 entities had appropriate credit to transfer to. Now
17 we're focusing in on utilities who have the
18 appropriate credit he believes, but we're completely
19 disregarding the fact that he has no -- he claimed no
20 recognition of any entities one way or the other,
21 utilities or non-utilities, and now we're just being
22 offered the utilities. I think it's unfair.

23 EXAMINER WALSTRA: Overruled.

24 THE WITNESS: Could you repeat the
25 question.

1 (Record read.)

2 A. Highly unlikely.

3 Q. Mr. Whitlock, OCC Exhibit 2, is Duke
4 Energy Ohio's contractual entitlement referenced in
5 that document?

6 MR. BERGER: Objection, your Honor. That
7 document speaks for itself.

8 EXAMINER WALSTRA: Overruled.

9 A. I don't believe so. No, it's not.

10 Q. With respect to the transfer,
11 Mr. Whitlock, the ESP stipulation provides that Duke
12 Energy Ohio shall transfer the generating assets --
13 strike that.

14 Does the ESP stipulation identify to whom
15 Duke Energy Ohio will transfer the generating assets?

16 A. Could you read the question back to me,
17 please?

18 Q. Sure. Page 26, section B of the
19 stipulation, does it identify to whom Duke Energy
20 Ohio would transfer the generating assets?

21 A. So it says that Duke Energy Ohio's
22 generation assets shall be transferred to an
23 affiliate.

24 Q. Thank you. Mr. Whitlock, do you still
25 have before you OMA Exhibits 9, 10, 11, 12, and 13,

1 sir?

2 A. 9, 10, 11, and 13. Let me see if I can
3 find 12. I do.

4 Q. Mr. Whitlock, were you the person for
5 answering any of those discovery responses?

6 A. It says person responsible on each of
7 those documents -- it says on the document that the
8 person responsible was legal.

9 Q. Have you received those -- have you seen
10 those responses, sir, OMA Exhibits 9 through 13
11 before today?

12 A. Not before today.

13 MS. SPILLER: I don't have any other
14 questions. Thank you, your Honor.

15 EXAMINER WALSTRA: Thank you. Staff?

16 MR. BEELER: No, thank you.

17 EXAMINER WALSTRA: Mr. Berger?

18 MR. BERGER: Yes, your Honor. Thank you.

19 - - -

20 RECROSS-EXAMINATION

21 By Mr. Berger:

22 Q. Mr. Whitlock, turning back to IEU Exhibit
23 5, the permitted assignee provision of the ICPA,
24 Section 1.0115, would you agree with me that the
25 permitted assignee is defined as A or B and that A

1 defines permitted assignee completely independently
2 of B?

3 A. I'm not sure I understand the question
4 exactly.

5 Q. Well, the use of the disjunctive or means
6 that a permitted assignee qualifies under either
7 provision. Would you agree with that?

8 A. Or means or, yes.

9 Q. Thank you. Okay. And would you agree
10 that under A the only limitation to a sponsoring
11 company or affiliate qualifying as permitted assignee
12 is creditworthiness?

13 A. So under the -- just under those words
14 under A, that's the only thing that's enumerated in
15 A. There are other parties of the -- you know,
16 further on in the definition of permitted assignee --

17 Q. But those relate to B, don't they?

18 A. I'm not a lawyer, man, so it feels to
19 me -- I'll just read it. "In no event shall a person
20 be deemed a permitted assignee if counsel for the
21 corporation reasonably determines that the assignment
22 of the rights, title, or interests in or obligations
23 under, this agreement to such person could cause a
24 termination, default." I don't know if that's
25 related just to A or B. It feels all encompassing to

1 me just sitting here reading it.

2 Q. Okay. But that's based on an opinion of
3 counsel that basically goes to creditworthiness,
4 correct?

5 MS. SPILLER: I'm going to object to the
6 opinion of counsel.

7 A. Again, I'm telling you how I read it.
8 I'm not a lawyer.

9 Q. Well, it says if counsel for the
10 corporation determines, that's based on an opinion of
11 counsel, do you see that?

12 A. Yeah. No. I thought you were talking
13 about like counsel of Duke Energy Ohio. It does say
14 it's counsel's opinion, absolutely.

15 Q. And that counsel opinion goes solely to
16 creditworthiness, don't you agree, since it talks
17 solely about could cause a termination, default, loss
18 or payment obligation under any security issue or
19 agreement entered into by the corporation prior to
20 such transfer? That's counsel's opinion that that
21 transfer would undermine the financial
22 creditworthiness of the agreement?

23 MS. SPILLER: I'm going to object. I
24 think we said before documents speak for themselves,
25 and now we're interpreting a document in a proviso

1 clause at the end of the document that would
2 certainly qualify both provisions above.

3 MR. BERGER: I don't know how Ms. Spiller
4 can make that argument when she just --

5 EXAMINER WALSTRA: Overruled.

6 A. What is the question?

7 Q. That proviso, the part that starts
8 provided that goes to be counsel's opinion regarding
9 the creditworthiness of the transfer, doesn't it?

10 A. So, again, my read of this is that it
11 applies to all of the provisions above. So whether
12 it was a creditworthy counterparty, it was an
13 affiliate or it was the obligation remained with the
14 sponsoring company. So, again, that's just my read
15 of it.

16 Q. No, I understand your read. And that
17 read that -- your read is that the proviso goes to
18 both A and B, as I understand it; is that correct?

19 A. Yes.

20 Q. And would you agree with me that in your
21 opinion, the proviso provides that counsel for the
22 corporation may contradict A or B if they are of the
23 opinion that the transfer would be -- would result in
24 a loss of creditworthiness?

25 A. There's no C in here, but there's a C

1 that -- I think there's three things that happened
2 and this seems to give counsel the ability in all
3 those circumstances to go like I'm not good with any
4 of them but that's my read. I'm sure you put ten
5 lawyers in a room, you get 100 different opinions.

6 Q. Okay. Now, in your testimony in 11-3549,
7 you would agree with me you didn't address in your
8 testimony any contractual obligations associated with
9 generating assets, did you? And let me expand that,
10 did you address any contractual obligations in your
11 testimony in that proceeding?

12 A. So I think on page 7, on line 17 where I
13 say, "In addition to FERC approval, a myriad of legal
14 and other internal issues needs to be completed,
15 including such matters as creating accounting
16 records, determining and executing on a capital
17 structure, systems migration, contract assignment,
18 employee matters and deed transfers." Those seem to
19 be contractual.

20 Q. Okay. And those are what you were
21 addressing, there were transactional issues
22 associated with the transfer of the assets; is that
23 correct?

24 A. I just -- I mean, I read the definition.
25 The words, I think, are pretty plain.

1 Q. Would you agree what you're addressing
2 transactional details that would be addressed
3 subsequent to approval, but associated with a
4 transfer of the generation assets?

5 A. I'm not sure I understand the question.

6 Q. Well, this question asked whether the
7 transfer would occur immediately after the
8 stipulation is approved, and my understanding of this
9 response that you just referenced was that there
10 would be transactional details that would take time
11 to address so that the transfer would not happen
12 immediately after approval; am I not understanding
13 your question and answer correctly?

14 A. No, I think that is the question and the
15 answer, but the question you asked me earlier was
16 were there any contractual obligations discussed in
17 my testimony, and I think those words say there's a
18 myriad of legal and other internal issues, that those
19 are contractual in nature.

20 Q. Right. And those contractual issues that
21 you're talking about there have to do with the
22 transactional details with transferring the assets is
23 all I'm trying to, that those transactional details
24 would take some additional time and so the assets
25 couldn't be transferred immediately.

1 four, five, six. Sorry.

2 Q. Do you know how many sponsoring companies
3 there are?

4 A. Yes. Let's just go to the ICPA and I'll
5 count them. I think this is -- it could have changed
6 some since then, but I don't believe it has
7 materially. So there's one, two, three, four, five,
8 six, seven, eight, nine, ten, eleven, twelve,
9 thirteen, fourteen.

10 Q. So is it fair to assume that you would
11 send or an entity would send a request that would
12 result in the acknowledgments that you just
13 referenced to 14 companies?

14 A. I believe that it was sent to 14
15 companies.

16 Q. And of those 14, you received 6 back.

17 A. Well, there was 6 in this -- that were
18 put in front of me today. I don't know if there were
19 more.

20 Q. Right. So I guess that's my question.
21 You don't know whether more people responded or not;
22 is that true?

23 A. I don't know.

24 Q. And isn't it also true that you don't
25 have before you a Duke response to that proposal, a

1 Duke vote, so to speak, Duke Energy Ohio?

2 A. I didn't see -- I did not see a Duke
3 response.

4 Q. And, sir, you discussed your testimony in
5 the proceeding 11-3549 case; is that correct?

6 A. Yes.

7 Q. Okay. And in this testimony -- well,
8 first of all, do you know if intervening parties
9 approved your testimony before you filed it?

10 MS. SPILLER: I'm going to object. I
11 mean, we certainly -- I'll withdraw it. Go ahead, if
12 you know.

13 A. I don't know.

14 Q. Do you know if you forwarded your
15 testimony to parties to approve before filing it?

16 A. I don't know if you mean necessarily
17 forwarded it for approval, but I think that they also
18 certainly saw it.

19 Q. You believe they saw it before they filed
20 the testimony?

21 A. No. I know they saw it when we filed it.
22 I don't know if they saw it before. I don't know.

23 Q. Okay. Sir, go back to page 25 of the OCC
24 Exhibit 2 that you have in front of you, which is the
25 stipulation that you referenced with Ms. Spiller.

1 A. Okay. Yes.

2 Q. It's your understanding that that
3 reference on 8a is -- it says, "the parties agree
4 that they will transfer title to all of its
5 generating assets out of Duke Energy Ohio"; is that
6 correct?

7 A. That's what it says.

8 Q. Okay. And, sir, is there a reference in
9 this section to your testimony that was filed?

10 A. I don't see it.

11 Q. Okay. And, sir, is there a reference in
12 this section to -- is there a reference in this
13 section to attachments such as those that were
14 attached to your testimony?

15 A. No.

16 Q. And, sir, in this stipulation, is there a
17 reference to the OVEC generating assets or the Duke's
18 entitlement to the OVEC generating assets?

19 A. Not that I'm familiar with.

20 Q. And, sir, in your testimony, is there a
21 reference to OVEC or OVEC's generating assets or the
22 entitlement to OVEC's generating assets?

23 A. No.

24 Q. Okay. And, sir, could you turn to OMA
25 Exhibit 2. Do you have that in front of you?

1 A. OMA Exhibit 2?

2 Q. It's the opinion and order in that same
3 case. I don't know if somebody gave it to you.

4 A. I have an OCC 2.

5 Q. Okay. I need to have you look at OMA
6 Exhibit 2.

7 MS. BOJKO: Does the company have a copy
8 you can provide your witness?

9 MS. SPILLER: I have my own.

10 MS. BOJKO: May I approach, your Honor?

11 EXAMINER WALSTRA: You may.

12 Q. Sir, does that appear to be the opinion
13 and order part of the stipulation that you referenced
14 here today with your counsel?

15 A. Yes.

16 Q. And, sir, could you turn to page 45 of
17 that opinion and order, please.

18 A. Yes.

19 Q. And do you see on the top paragraph, it
20 states that "the stipulation will constitute approval
21 of Duke's Third Amended CSP and full legal
22 separation, as contemplated by Section 4928.17(A),
23 Revised Code, such that the transmission and
24 distribution assets of Duke will continue to be held
25 by the distribution utility and all of Duke's

1 generation assets will be transferred to an
2 affiliate."

3 MS. SPILLER: I'm just going to note that
4 counsel omitted the parenthetical reference at the
5 end of the paragraph.

6 Q. It's "Joint Exhibit 1 at 26." Is that
7 what it says, sir?

8 A. I'm sorry. Could you repeat the
9 question?

10 Q. I just asked if that's what it says.

11 A. What did you say it says? Did you just
12 read it?

13 Q. I did.

14 A. Assuming you read it correctly, then
15 that's what it says.

16 Q. And since your counsel would like to talk
17 about the reference, if you turn to page 5 of that
18 order, do you see in the second full paragraph that
19 the order has a reference to a stipulation and
20 recommendation stipulation which was filed on
21 October 24th, 2011, to resolve all the issues in the
22 case?

23 A. So let me get there. Page 5?

24 Q. Yes.

25 A. Okay. I'm on page 5.

1 Q. Second full paragraph, starts with "On
2 October 24."

3 A. Okay.

4 Q. And it says that "a stipulation and
5 recommendation was filed in these cases," and that's
6 a stipulation as to how they define it, and it says
7 "purporting to resolve all of the issues in these
8 cases" and then there's the parenthetical again that
9 defines that as "Joint Exhibit 1." Do you see that?

10 A. Yes.

11 Q. Okay. So the stipulation was deemed
12 Joint Exhibit 1 in this opinion and order?

13 A. That's what it feels like to me just
14 reading it.

15 Q. Okay. So if we go back to page 45, the
16 reference to Joint Exhibit 1 in this Commission order
17 was referencing the stipulation at page 26. Is that
18 what it feels like?

19 A. So the only part I'm confused with is the
20 Joint Exhibit 1 at 26 part.

21 Q. Joint Exhibit 1 is referencing the
22 stipulation, and the citation would be to page 26 of
23 that stipulation. I just want to make sure the
24 opinion and order was defining Joint Exhibit 1 as the
25 stipulation.

1 A. That's apparent to me.

2 Q. Okay. And then if you go to page 46,
3 sir.

4 A. Page 46?

5 Q. Of the opinion and order.

6 A. Yes.

7 Q. And in the middle of the paragraph, it
8 says, "therefore, we conclude," and this is the
9 Commission's conclusion paragraph, do you see that?

10 A. Do I see it? It's actually highlighted
11 on this.

12 Q. It says to the extent -- I'm trying to
13 read this quickly, but it says to the extent
14 necessary, it provides waivers and then it says "Duke
15 should be authorized to transfer title to all of its
16 generation assets out of Duke, in accordance with the
17 provisions of the stipulation." Do you see that?

18 A. I do.

19 Q. Okay. Is there any reference in this
20 paragraph to anything other than the stipulation,
21 such as testimony filed?

22 A. It doesn't appear to.

23 Q. Okay. And, sir, who owns OVEC, Duke
24 Energy Ohio, correct, the OVEC entitlements?

25 I'm sorry. Does Duke Energy Ohio own

1 9 percent of the OVEC generating assets?

2 MS. SPILLER: I'm going to object to the
3 form of the question.

4 EXAMINER WALSTRA: Overruled.

5 A. So we own 9 percent of the ICPA is the
6 way I would phrase it.

7 Q. Okay. But when you say "we" --

8 A. Duke Energy Ohio owns 9 percent of the
9 ICPA.

10 Q. Okay. And the ICPA deals with OVEC, so
11 you're saying Duke Energy Ohio owns 9 percent of the
12 entitlement to the OVEC generation; is that right?

13 A. Again, I think we own 9 percent of the
14 contractual arrangement that's defined by the ICPA.
15 That's how I think about it.

16 Q. All I'm trying to say is you're
17 referencing the OVEC generating units in your
18 response and Duke Energy Ohio; is that right?

19 A. Why am I referencing OVEC's generating
20 assets?

21 Q. When you reference ICPA, you're talking
22 about OVEC's generating assets; is that correct?

23 A. I'm talking about the ICPA.

24 Q. Which the ICPA is an agreement regarding
25 OVEC generating units, right?

1 MS. SPILLER: Your Honor, I'm going to
2 object. I think it's beyond the scope of
3 cross-examination.

4 EXAMINER WALSTRA: Overruled.

5 A. I think that's fair.

6 Q. Okay. And, sir, you were asked questions
7 by Ms. Spiller regarding OMA Exhibits 9, 10, 11, and
8 I think 13. Do you recall that?

9 A. I think you omitted 12. I think she
10 asked me about 9, 10 -- because I struggled to find
11 12.

12 Q. Okay. So she asked you about 9, 10, 11,
13 12?

14 MS. SPILLER: And 13.

15 A. And 13.

16 Q. And 13? Okay.

17 A. I couldn't find 12.

18 Q. Sir, I take it your response to
19 Ms. Spiller that you weren't provided with these
20 discovery requests each though you were named in the
21 request and the request pertained to documents and
22 communications that you referenced in your
23 deposition.

24 A. Say the question again.

25 Q. I understand from what you responded to

1 Ms. Spiller is that you were never given the requests
2 that you just referenced in OMA Exhibits 9 through
3 13; is that correct?

4 A. I think she asked me if I saw them before
5 today, and the answer is I hadn't seen them before
6 today.

7 Q. I'm asking if counsel ever provided you
8 with the OMA request, the initial interrogatory that
9 was propounded. Did they ever produce those to you?

10 A. That feels like the same question. I
11 hadn't seen these before today.

12 Q. And just so we're clear, there's two
13 different things, one, a request is made of the
14 company and then what you saw today was the actual
15 Duke's response. I want to make sure that you didn't
16 see the request either; is that correct?

17 A. I don't recall seeing the request.

18 Q. Okay. And so, sir, are you aware why the
19 documents that you -- why those documents weren't
20 previously provided pursuant to the discovery
21 requests issued in this case?

22 MS. SPILLER: I'm going to object. This
23 is an improper question for this witness. These were
24 responses provided by legal. If counsel had an issue
25 with the responses, there needed to be a

1 communication with legal, and to the extent you're
2 requesting documents in a deposition which never
3 occurred, that request needs to go to legal as well.
4 So I think it's totally improper to ask a witness
5 who's not seen the documents his interpretation of
6 the discovery responses.

7 MS. BOJKO: Actually that's an excellent
8 point, your Honor.

9 EXAMINER WALSTRA: He can answer, if he
10 knows.

11 MS. BOJKO: Your Honor, I'd like a chance
12 to respond to that on the record, if I may. We
13 actually did reach out to counsel. We did object to
14 the discovery propounded, the responses given, and we
15 received e-mail communication as well as phone call
16 communication that the documents provided were the
17 full and complete documents, and that Duke Energy
18 Ohio did not have any additional documents, and then
19 I was also provided with at that time on
20 October 16th, a reference to one of the documents
21 propounded today, the OMA Exhibit 8, RESA-POD-04-008,
22 which was not considered in those original responses
23 either. So that is what happened.

24 It was questioned, and the response was
25 no documents exist. So now, today, we have received

1 documents, and I think that that is improper, and I
2 have a right to explore why if the witness that
3 brought the documents, why they were not provided
4 previously, if he knows.

5 MS. SPILLER: I think that misstates the
6 prior responses that you received, Ms. Bojko.

7 MS. BOJKO: It doesn't.

8 EXAMINER WALSTRA: I made my ruling. He
9 can answer if he knows.

10 THE WITNESS: Could I have the question.
11 (Record read.)

12 A. No.

13 Q. No, you're not aware of why they were
14 not?

15 A. That was the question, and the answer is
16 "no."

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

19 EXAMINER WALSTRA: Thank you.

20 Mr. Boehm?

21 EXAMINER WALSTRA: Mr. Oliker?

22 MR. OLIKER: Very briefly, your Honor.

23 - - -

24 RE-CROSS-EXAMINATION

25 By Mr. Oliker:

1 Q. Mr. Whitlock, from 2000 -- say 1999 until
2 2014, very recently, the midwest commercial
3 generation group operated Duke's legacy generation
4 assets because they had to be functionally separated
5 from the electric distribution utility, right?

6 A. Yes.

7 Q. That's the same reason why the midwest
8 commercial generation group operated and dispatched
9 the OVEC entitlement at PJM.

10 A. I'm not sure of that.

11 Q. Is it your belief that an electric
12 distribution utility -- let me clarify that.

13 Is it your belief that the same people
14 that control the distribution and transmission assets
15 for Duke Energy Ohio could also control the OVEC
16 entitlement from PJM?

17 A. I don't know why they couldn't but
18 that's --

19 Q. But you do believe that Duke Energy
20 Ohio's generation energy assets have been treated as
21 a separate affiliate and treat as merchant assets?

22 A. That feels like the same question you
23 asked me earlier. Yes.

24 Q. Okay. And do you agree that the midwest
25 commercial generation group will continue to operate

1 the OVEC entitlement in the future?

2 A. No.

3 Q. Could you explain who will operate the
4 OVEC entitlement?

5 A. So midwest commercial generation's -- at
6 the end of the sale with Dynegy, that organization is
7 going away.

8 Q. Do you know how Duke intends to operate
9 the OVEC entitlement after that occurs?

10 A. I don't.

11 MR. OLIKER: No more questions, your
12 Honor.

13 Thank you, Mr. Whitlock.

14 EXAMINER WALSTRA: Thank you.

15 MS. PETRUCCI: No questions.

16 EXAMINER WALSTRA: Ms. Spiller?

17 MS. SPILLER: Nothing, your Honor.

18 EXAMINER WALSTRA: Staff?

19 MR. BEELER: No, thank you.

20 EXAMINER WALSTRA: We'll go off the
21 record for a second.

22 (Discussion off the record.)

23 EXAMINER WALSTRA: We'll go on the
24 confidential record.

25 MR. BERGER: Thank you.

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CROSS-EXAMINATION

By Mr. Berger:

Q. Mr. Whitlock, we talked earlier about the efforts that were made to obtain unanimous consent to transfer the assets. It was my understanding from your testimony that that was what was engaged in as reflected in the exhibits that were shown to you earlier; is that correct? That was an effort to obtain unanimous consent in your viewpoint?

MS. SPILLER: Object to the question in reference to transfer the assets.

EXAMINER WALSTRA: He can clarify.

A. So I looked at a lot of documents. Can we get the documents in front of me? The ones we were talking about or the ones that your question goes to?

Q. Well, in terms of the voting document that Ms. Bojko referenced earlier.

A. So Exhibit 27?

Q. Yes, Exhibit 27.

A. Yes.

Q. Was that an effort to obtain unanimous consent? And if you want to also refer to Exhibit 8, OCC Exhibit 18, where the request was sent to the sponsoring companies under (Confidential) signature.

1 A. Let me find OCC Exhibit 18. The question
2 is what?

3 Q. Was this all part of (Confidential) effort
4 to obtain unanimous consent under Section 9.181 of the
5 ICPA?

6 A. Yes.

7 Q. And do you know what conversations were
8 held with the other sponsoring companies with respect
9 to those efforts? Were you involved in
10 conversations?

11 A. So I was not involved in conversations
12 that I can recall. I mean, most of that happened in
13 that subcommittee, and I think that there were -- as
14 evidenced by a lot of the e-mails, there was a lot of
15 conversations around what the form of the guaranty
16 should be, could be, ought to be, et cetera.

17 Q. Were you aware of the existence of a
18 subcommittee at the time of your deposition?

19 A. So the idea of the subcommittee was
20 really introduced by some of the documents that came
21 here today. Again, there's the one e-mail that was
22 in the package, but I probably should have been, you
23 know -- I'm referring to the OCC Exhibit 44a where
24 I'm like you want to participate -- I'm assuming we
25 can talk about the names that are in brackets to

1 (Confidential) and to assign (Confidential) on the question
2 of the assignment.

3 Q. Okay. Because you were involved in
4 selecting them to be on the subcommittee.

5 A. Right, but I don't think at my deposition
6 that I thought about it as this subcommittee, the
7 subcommittee idea.

8 Q. Okay. And you didn't -- in terms of
9 whether -- would you agree with me -- well, strike
10 that. Greg Cecil and Nick Melillo would be better
11 qualified to answer any questions then regarding
12 communications that happened during subcommittee
13 meetings; would you agree with that?

14 A. They were certainly in the subcommittee
15 meeting.

16 Q. And in terms of whether there were
17 communications outside of the subcommittee with other
18 sponsoring companies regarding (Confidential) effort to
19 obtain unanimous consent from the other sponsoring
20 companies, would you agree with me you have no
21 knowledge of any such conversations?

22 A. It's hard to say. I hate the definitive
23 nos and always.

24 Q. You don't recall.

25 A. I don't.

1 Q. Okay. If there were conversations, for
2 example, between (Confidential) and the (Confidential)
3 (Confidential) that indicated denial -- that it had
4 denied consent, you weren't involved in those
5 conversations, if there were any?

6 A. Sitting here today, I can't remember the
7 conversations.

8 Q. Okay. You don't know if the
9 conversations took place then.

10 A. I don't know.

11 Q. You don't recall any conversations you
12 had with (Confidential) regarding efforts
13 to try and convince (Confidential) and (Confidential)
14 to consent to the proposed guaranty?

15 A. So I can almost guarantee that I had
16 conversations with (Confidential) about we were trying to
17 get to a form of a guaranty that worked for (Confidential)
18 (Confidential) department that would allow for
19 a unanimous consent. So I'm sure I had those
20 conversations. I don't remember a specific
21 conversation that I had with (Confidential) sitting here
22 right now.

23 Q. But you think you had conversations with
24 (Confidential), but you don't
25 remember any of the specifics.

1 A. Yes.

2 Q. But you don't know whether any
3 conversations were had between (Confidential)
4 (Confidential) and
5 (Confidential) or its subsidiaries.

6 A. I do not know. I would assume that they
7 had conversations, right, as part of the -- again,
8 this operating subcommittee was formed to set aside
9 whether we should join PJM but talk about getting --
10 what are the requirements under the ICPA to transfer.
11 Everybody had a member on that thing, and the
12 subcommittee, I'm sure, had discussions about that
13 topic. It was the reason that it was established,
14 and (Confidential) was in that, as was (Confidential).

15 Q. Okay. But you're not personally familiar
16 with any such conversations.

17 A. No.

18 Q. Okay. And in terms of (Confidential)
19 (Confidential) is the parent company of either (Confidential)
20 or (Confidential), which is it?

21 A. I think it's (Confidential).

22 Q. Okay. And you're aware today that both
23 (Confidential) were opposed to the transfer?

24 A. Yes.

25 Q. Prior to today, were you familiar with

1 the reasons that they were opposed to the transfer?

2 A. So I think -- yeah, and I don't remember
3 where I got the idea, but I think that the reason
4 that they opposed the transfer was that they were
5 required as part of their transfer to have a parental
6 guaranty that required a certain degree of
7 creditworthiness, and they felt that that wasn't
8 fair, I guess, maybe in my lexicon and that they were
9 like you have to do the exact same thing that you
10 asked me to do.

11 Q. You're aware that the transfer earlier
12 this year of FirstEnergy's generation's interest to
13 FirstEnergy Solutions has similar form of parent
14 guaranty to that that was utilized or proposed by
15 (Confidential), are you aware of that?

16 MS. SPILLER: Objection to the relevance
17 and I think this certainly misstates the FE document
18 that's included in OCC Exhibit 44a.

19 MR. BERGER: That's not the same document
20 I talked to him about.

21 A. Sitting here today, I don't recall.
22 Again, the nuances of what form of guaranty and what
23 the genesis of the guaranty happened in that
24 subcommittee and I've told you a couple of different
25 times that I wasn't involved in the subcommittee. So

1 I don't know whether it had a form that was similar
2 to the one that FE used or not.

3 Q. Do you know who the point of contact was
4 at (Confidential)?

5 A. When you say point of contact, are you
6 talking about the people that were on the
7 subcommittee?

8 Q. Yes, the people on the subcommittee who
9 were involved in the decision-making on behalf of
10 (Confidential) regarding the denial of
11 consent.

12 A. It seemed like one of the exhibits had an
13 enumeration of who are the members of the committee.
14 If you know where that is, it would be helpful, and
15 then on the second part of your question about who
16 said -- you know, who at (Confidential) said
17 no, there's a signature on Exhibit 27, the sixth, not
18 seventh page.

19 Q. Okay. And in terms of the efforts, do
20 you know whether any efforts were made after (Confidential)
21 learned that (Confidential) would deny consent,
22 do you know whether any efforts were made to try to
23 change (Confidential) vote?

24 A. I don't recall. I don't know.

25 Q. Do you recall any discussions with

1 (Confidential), any other persons who might have
2 been involved in that effort?

3 A. Again, I would tell you I don't remember
4 a conversation with them and I don't remember any
5 topic. Again, I think in my head, what happened is
6 that the subcommittee went to work to try to create a
7 form of a guaranty that would allow for the transfer
8 and that culminated in Exhibit 27 where people voted
9 this is -- again, everybody -- everybody either voted
10 or I think that there was this idea of negative
11 affirmation that says if you don't vote, we're taking
12 it as a no just to make sure that it was clear about
13 how the vote was going to happen, and so I think that
14 that happened. And then subsequent to that, I don't
15 believe there was any effort after that. I think
16 that the effort was really around the subcommittee.

17 Q. (Confidential) knew in advance of the vote
18 that they were going to be turned down; is that
19 right?

20 A. So, I don't -- I can't speak for (Confidential),
21 and I can tell you for me, that I don't think that I knew
22 that we were going to be turned down.

23 Q. You're not aware of a document that
24 indicates that it was -- that the vote was simply a
25 formality at that point in time?

1 A. Sitting here, is there a document that
2 spells that out? We should look at it if there is.

3 Q. Yes, there is. I'm just trying to
4 understand whether you knew about that document.

5 A. Yes, so sitting here today, I would
6 say -- if I knew about it, I don't recall it.

7 Q. Okay. Are you aware -- were you aware of
8 any other entity other than (Confidential)
9 that opposed the transfer?

10 A. I'm not.

11 Q. Do you know what the credit requirements
12 were that (Confidential) believed that had
13 been unfair to them?

14 A. I don't.

15 MR. BERGER: Can I have just a couple
16 minutes, your Honor? I know we're in a hurry here,
17 but we received these documents today and I conducted
18 a review and I just want to make sure I didn't miss
19 something.

20 Q. Mr. Whitlock, just a couple more
21 questions. Were you involved -- were you involved in
22 the review of the guaranty proposal that (Confidential)
23 sent out other than (Confidential)?

24 A. Yeah. I'm not an expert on the form of
25 guaranties. We have people in our organization that

1 are experts, and so they crafted the guaranty again
2 through that subcommittee assigned it, sent it out to
3 them.

4 Q. Could you turn your mic back on?

5 A. I can.

6 Q. Thank you. I heard most of your
7 response.

8 A. Okay.

9 Q. In terms of the limitation of liability
10 provision that was put into that agreement, why did
11 (Confidential) believe it was necessary to have a limitation
12 of liability when it doesn't currently have a limitation
13 of liability with respect to its current obligation?

14 MS. SPILLER: I'm going to object to the
15 form and the reference to (Confidential) given the number
16 of (Confidential) entities referenced in that document.

17 Q. I'm referring to (Confidential).

18 A. So I can tell you that, again, I deal
19 with a lot of different guaranties in my business and
20 the idea of an uncapped guaranty is not really that
21 uncommon. So I think it's our credit department
22 saying that if you had an uncapped guaranty, kind of
23 don't let the uncapped guaranty get perpetuated. So
24 I think that was probably behind it. That's my
25 speculation.

1 Q. You're aware that (Confidential) has no
2 limitation of liability with respect to its OVEC
3 contractual obligation currently; is that correct?

4 A. I don't know that.

5 Q. There's nothing in the ICPA that limits
6 the contractual obligations of the sponsoring
7 companies.

8 A. It doesn't seem to, but I've been around
9 enough attorneys to know that readings of contracts
10 are not very clear. There's agreement and
11 disagreement attorneys. And so I think you could
12 probably find an attorney that thinks that you have a
13 way out, but.

14 Q. In terms of other provisions in the ICPA,
15 are you aware of any other specific aspects of the
16 guaranty proposal that (Confidential) had
17 concerns about?

18 A. I'm not.

19 Q. Are you aware of any other aspects of the
20 proposed guaranty that (Confidential)
21 indicated were things that they could not agree with?

22 A. Again, I told you, I think, pretty
23 clearly that I wasn't involved in the back and forth
24 about what was in the guaranty and what was
25 acceptable and what was not acceptable.

1 MR. BERGER: Thank you. That's all I
2 have for this witness on the confidential record.

3 EXAMINER WALSTRA: Ms. Hussey?

4 MS. HUSSEY: No questions, your Honor.

5 EXAMINER WALSTRA: Ms. Bojko?

6 MS. BOJKO: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION (Continued)

9 By Ms. Bojko:

10 Q. Mr. Whitlock, it's my understanding you
11 received on December 14th, 2012, an e-mail, and that
12 would be located on page 1 of OCC Exhibit 44a, and
13 this is in regard to OVEC board of directors
14 follow-up items?

15 A. Exhibit 44a?

16 Q. Yes, sir. Do you have it?

17 A. I do.

18 Q. Okay. So it's true that you received the
19 e-mail dated December 14, 2012, on the OVEC board of
20 directors' follow-up items?

21 A. Yes.

22 Q. Okay. And that e-mail in item No. 1
23 states that certain sponsoring companies currently
24 lead by (Confidential), are subject to
25 regulatory requirements to separate their electric

1 generating resources from existing utility companies;
2 is that correct?

3 A. That's what the e-mail says. I don't
4 believe that that's true, but --

5 Q. Did you -- are you finished, sir?

6 A. Yes.

7 Q. It appears that you didn't reply all to
8 this e-mail, but instead you forwarded it on Monday,
9 December 17th, to (Confidential); is that correct? It's
10 on the top of page --

11 A. No, I'm looking. So, yeah, that was me
12 forwarding an e-mail to (Confidential) saying do you want
13 to participate in this and should we put (Confidential) and
14 (Confidential) is (Confidential), on the assignment portion.

15 Q. And assignment --

16 A. It says assignment gig, G-I-G, gig.

17 Q. And this is -- when you talk about
18 assignment, there's a lot of assignments that we
19 talked about today, you just meant you were placing
20 them on the subcommittee which we talked about at the
21 public record, right?

22 A. Correct.

23 Q. And then it's your understanding, sir,
24 that the one employee that works for you and the
25 other employee that works, I think you said,

1 (Confidential) works tangentially with you.

2 A. So both of them work for me. (Confidential)
3 happens to be a direct report of mine, and then
4 (Confidential) is a direct report of a direct report --

5 Q. Okay. Thank you.

6 A. -- of a director report. He's a great
7 guy, (Confidential), for the record. I think a lot of
8 (Confidential). There you go.

9 Q. So he eventually reports up through you;
10 is that accurate?

11 A. Yes.

12 Q. So they worked on the guaranty issue as I
13 take it from the e-mail dated December 14th, that
14 that's one of the issues that they wanted to explore
15 the credit support to permit the assignment of the
16 sponsoring companies; is that correct?

17 A. Yeah, and I think (Confidential) worked on
18 both subcommittees, and (Confidential) worked on the
19 assignment subcommittee.

20 Q. Okay. And then if you could turn to
21 Bates stamp 11 on OCC Exhibit 44, please.

22 A. Yes.

23 Q. The fourth bullet in this line, it talks
24 about proposed language to protect against
25 post-assignment reorganizations around OVEC's debt

1 agreements, do you see that?

2 A. Yes. So let me catch up here.

3 Okay. I see the language.

4 Q. In this e-mail, sir, is authored and sent
5 by (Confidential); is that correct?

6 A. He definitely sent it.

7 Q. Okay. And it says -- the sentence after
8 the one I just had you read, it says "Since (Confidential)
9 intends to transfer its ICPA interest into a special
10 purpose entity, OVEC wants to make sure that such
11 entity remains a (Confidential)"; is that accurate?

12 A. Yes. I mean, you read it correctly.

13 Q. Okay. And that's your understanding of
14 the issues that they were working on were guarantor
15 arrangements for the transfer?

16 A. It seems to be issues related to the
17 asset transfer guaranty. I don't know that it's all
18 the issues, but it's enumerated here.

19 Q. Okay. And, sir, my next confidential
20 question for you is on page 136 of this packet, OCC
21 Exhibit 44.

22 A. Okay.

23 Q. Page 4 of 23. If you look in the chain,
24 this is discussions between (Confidential), and I can
25 see (Confidential) on this e-mail

1 correspondence on this page. Do you see that, sir?

2 A. I do.

3 Q. Okay. And this e-mail is talking about
4 that (Confidential) are aligned and are approaching
5 proposal going forward regarding the OVEC ICPA?

6 A. That's what it says.

7 Q. Okay. And just so I understand your
8 prior testimony, even though there might have been
9 some alignment or coordination efforts, you believe
10 that the request made by (Confidential) to transfer was separate
11 than the request made by (Confidential); is that correct?

12 A. You're talking about the vote?

13 Q. Yes, sir.

14 A. Yes. I believe the vote went separately.

15 Q. Okay. And then if we could turn to Bates
16 stamp 140, which is yellow sticky 24, page 2.

17 A. Say that again.

18 Q. It's yellow sticky 25. Sorry. Bates
19 stamp 140. Some people don't have the Bates stamped
20 copies, so I'm just providing them with reference.

21 A. Yellow sticky references?

22 Q. Yes.

23 A. All right. 140.

24 Q. And on this e-mail, the second e-mail
25 that's on July 19th, 2013, that is an e-mail from

1 (Confidential); is that correct?

2 A. So the one that -- let me see. The
3 e-mail that I'm looking at from Brian to (Confidential).

4 Q. I'm sorry. If you go down to the next
5 one, there's an e-mail --

6 A. Okay. Yeah, I see it.

7 Q. And this is what you were talking about
8 before, that (Confidential) prepared the document referencing
9 the guaranty document; is that the document they're
10 referencing here?

11 A. I believe so.

12 Q. Okay. And this is what you were saying
13 is that you didn't (Confidential) it, but you (Confidential)
14 it and this is referring to -- this e-mail is referring to
15 the fact, the event that the document, the (Confidential)
16 documents ready for signature, but (Confidential) is
17 out of the office all day and (Confidential) it and
18 (Confidential) will e-mail it to you; is that accurate?

19 A. It's what it says.

20 Q. I'm trying to put a reference -- you made
21 a comment earlier that you didn't (Confidential) it but
22 you (Confidential) it.

23 A. Right. I think that's accurate.

24 Q. Okay. And as I understand your response
25 to Mr. Berger, you were involved in the discussions

1 of the guarantor document, but you did not (Confidential),
2 it but you (Confidential); is that
3 correct?

4 A. Yeah, that's correct. So the form of the
5 guaranty, it's a legal document, and it has to have
6 credit expertise, neither of which I possess, but I
7 have the (Confidential), so I did.

8 Q. And (Confidential)?

9 A. (Confidential). I'm sorry.

10 Q. Thank you. And (Confidential) would not
11 have that (Confidential)?

12 A. Again, I would almost guarantee that
13 (Confidential) does not. (Confidential) might.

14 Q. But they were requesting that you (Confidential)
15 it, or they were stating that you were intending to
16 (Confidential) it.

17 A. Correct.

18 Q. Okay. Let's go just quickly -- I need to
19 draw the connection in the confidential record that
20 OMA Exhibit 7, which is also OCC Exhibit 27 that you
21 have up there. You just have 27, I believe.

22 A. Yes.

23 Q. The voting records, I just want to ask
24 you if (Confidential) is allowed to vote on (Confidential)
25 own request to transfer.

1 A. So I don't recall, but I would have voted
2 yes.

3 Q. Right, but are the sponsoring companies
4 permitted to vote on their own request?

5 A. I'm not sure. For some reason I believe
6 that we were, but I don't recall.

7 Q. And you said it in gist, but --

8 A. I wasn't kidding.

9 Q. But you don't know whether you actually
10 did take an affirmative vote or not.

11 A. So I think my affirmative vote was saying
12 I wanted people to say yes to the form of the
13 guaranty that came out of it. It had (Confidential) on
14 it and said -- part of that agreement says that
15 (Confidential) in certain ways.

16 Q. And you're referencing the memo or
17 proposal that we talked about earlier? It's
18 contained in OMA Exhibit 8, page 4 of 19?

19 A. So I can't find OMA Exhibit 8.

20 EXAMINER WALSTRA: In Attachment C; is
21 that correct?

22 MS. BOJKO: Yes, sir.

23 A. OMA Exhibit 8 I found. What page?

24 Q. It's Attachment C to RESA-POD-04-008
25 which is page 4 of 19.

1 A. Yes.

2 Q. Yes, that's (Confidential)

3 that you were just referencing that because you sent

4 that out, that that was your (Confidential)

5 (Confidential).

6 A. Yes. So I would tell you again -- I

7 can't remember, but I would have voted (Confidential).

8 I believe that I voted (Confidential), and I think that

9 the fact that I'm (Confidential) and (Confidential)

10 to me is (Confidential) to you is another data point that

11 says this was an (Confidential) to me.

12 Q. Okay. And you did, sir -- I'm not sure

13 if this made it into the record, but did you (Confidential)

14 this proposed document?

15 A. We talked about whether I authored it. I

16 did not (Confidential) it. I (Confidential).

17 Q. You didn't (Confidential) it, but you (Confidential)?

18 A. Correct.

19 Q. And (Confidential), I'm

20 assuming?

21 A. I'm not sure I know what (Confidential)

22 means.

23 Q. Well, you (Confidential) it to be sent on

24 behalf of (Confidential) to the sponsoring

25 companies?

1 A. Yeah, I think that's fair.

2 Q. And, sir, could you turn to page -- it's
3 the second page of the OMA Exhibit 8. It's
4 attachment RESA-POD-04-008B, page 1 of 2. And this
5 is an e-mail dated July 19th, 2013, from Brian
6 Chisling to -- and (Confidential) the "to" line; is that
7 correct?

8 A. Sorry. I don't -- so tell me where I am
9 again?

10 Q. This is RESA-POD-04-008B.

11 A. Yes.

12 Q. It's page 1 of 2.

13 A. Yes.

14 Q. And it's an e-mail from Brian Chisling
15 to -- and (Confidential) "to" line; is that correct?

16 A. Yes. This is the one we thought
17 (Confidential) the CC line.

18 Q. Yes. That e-mail (Confidential); is that
19 correct?

20 A. Yes.

21 Q. And in this e-mail -- well, (Confidential) is
22 listed in this e-mail and that would mean (Confidential)
23 to you as well, sir?

24 A. Yes.

25 Q. Okay. In here it's saying, "At the

1 request of (Confidential), attached is a proposal for
2 the consent of the sponsoring companies to permit
3 (Confidential) to comply with Ohio's corporate separation
4 requirements through the transfer of its interest in
5 the ICPA to a newly-formed subsidiary." Do you see
6 that?

7 A. I do.

8 Q. And then in the next paragraph, it
9 references (Confidential), and it says "(Confidential)
10 expects to provide its proposal which we expect
11 to include an identical form of a parent guaranty and
12 identical term sheet for the proposed consent to
13 assignment," and that it will be forwarded as soon as
14 they get it"; is that correct?

15 A. You read it absolutely correct.

16 Q. Okay. So this was an e-mail from OVEC's
17 counsel to the board members stating that there were
18 two proposals that were coming to them, one from (Confidential),
19 (Confidential), and one that would be forthcoming from
20 (Confidential) that were identical in form of
21 parent guaranty and identical interim sheet and the
22 proposed consent to assignment; is that correct?

23 A. That's what it says.

24 Q. So here we see the two separate
25 agreements or requests to transfer from two different

1 entities; is that right?

2 A. Yes, the two entities being (Confidential)
3 (Confidential).

4 Q. And it's your understanding, sir, that
5 that (Confidential) proposal did come and that came in
6 the form of the memorandum that we just talked about as
7 Attachment C to the same discovery response that
8 (Confidential).

9 A. Yes.

10 Q. Okay. Sir, do you know whether (Confidential)
11 (Confidential) at any time solicited the
12 opponents of their proposals? Did you reach out to
13 (Confidential) regarding your proposals?

14 A. Did (Confidential)? You asked a lot of
15 different questions in there.

16 Q. Did you specially or do you know of
17 anyone with (Confidential) that did?

18 A. (Confidential). Again, I would tell you that
19 I think that in that subcommittee, that there was a
20 lot of conversations about what is the form of the
21 guaranty. And so in those conversations, I would
22 think it's likely to have some reaching out to what's
23 acceptable and what's not acceptable.

24 Q. Do you know, sir, whether after the vote
25 there was any discussions with those entities of why

1 they did or did not vote for the proposals?

2 A. Again, I think we've covered a little bit
3 of this ground previously.

4 Q. I'm sorry. I didn't mean to reask. I
5 was trying to ask it -- do you know whether anybody
6 solicited -- did anybody advocate -- maybe that's a
7 better word. Did anybody ever advocate for the
8 opposition of (Confidential) proposal?

9 A. Did anybody advocate for the opposition?

10 Q. Yes. Do you know of any --

11 A. Did people go out and go, hey, vote no
12 for (Confidential)?

13 Q. Not (Confidential), but do you know whether
14 anybody was discussing why they shouldn't vote for
15 the proposals, whether there was any concerted effort
16 to obtain a no vote?

17 A. No.

18 Q. No, you don't think there was or you
19 don't know --

20 A. I think that's highly unlikely. I'm not
21 aware of it. Again, I think that for us, we were
22 trying to get to a form of a guaranty that worked for
23 (Confidential) that would allow (Confidential) to transfer.

24 Q. And, sir --

25 A. And so, again, we were trying to get to a

1 place that was (Confidential) us and acceptable
2 (Confidential). There was no design to get a
3 no answer.

4 Q. Okay. And just so I understand your
5 response, because you keep taking me back to the
6 guaranty. Do you believe that that was the only
7 issue that was being (Confidential) by those parties?
8 was that the only (Confidential) that they had, was
9 the guaranty?

10 A. I don't know if it was the only concern.

11 Q. But that's the only one you believe was
12 an active issue that was discussed.

13 A. It was the one sitting here today that
14 was certainly the active issue discussed. If there
15 were others, I was not aware of it.

16 Q. In your belief, that's why they voted
17 (Confidential) was because they (Confidential) with the
18 guarantor document that was ultimately provided to them?

19 MS. SPILLER: Objection. The witness
20 said he didn't know if that was the only (Confidential).

21 A. Yeah, I don't know.

22 MS. BOJKO: That's all I have. Thank
23 you, your Honor.

24 EXAMINER WALSTRA: Thank you.

25 Mr. Boehm?

1 MR. K. BOEHM: No questions.

2 EXAMINER WALSTRA: Mr. Oliker?

3 MR. OLIKER: No.

4 EXAMINER WALSTRA: Ms. Petrucci?

5 MS. PETRUCCI: No questions.

6 MS. SPILLER: Nothing, your Honor.

7 EXAMINER WALSTRA: Staff?

8 MR. BEELER: Nothing.

9 EXAMINER WALSTRA: Mr. Berger, do you
10 have anything else?

11 MR. BERGER: No, your Honor.

12

13 EXAMINER WALSTRA: You're all done, sir.

14 THE WITNESS: God bless. Did I say I
15 liked Nick Melillo on the record?

16 EXAMINER WALSTRA: So noted.

17 First regarding OCC Exhibit 44, we're
18 actually going to have three versions of that. There
19 will be OCC 44 which will be the redacted,
20 confidential, and privileged, and then there will be
21 44a which will be the unredacted confidential, but
22 the redacted privilege, and then there will be OCC
23 44b which will be the unredacted confidential and
24 privileged version given to the Bench and the
25 Commission.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. BERGER: So 44b would only be seen by
3 the Bench and the Commission as I understand it.

4 EXAMINER WALSTRA: Correct.

5 MS. BOJKO: Your Honor, I guess I have a
6 question about that. You're not making any kind of
7 in camera reviews about whether it is privileged or
8 not?

9 EXAMINER WALSTRA: We have reviewed it.
10 I guess we'll make -- we only had some minor changes,
11 but we'll, I guess, make the official ruling.

12 MS. SPILLER: Your Honor, if I may. Just
13 to be clear, 44b, understand completely open, that
14 would just go to the Bench, correct?

15 EXAMINER WALSTRA: Just to the Bench,
16 correct.

17 MS. SPILLER: Thank you.

18 EXAMINER WALSTRA: And we'll share those
19 rulings when we make the ruling on the
20 confidentiality as well.

21 EXAMINER PIRIK: Ms. Kingery, are you
22 saying obviously the Commissioners --

23 MS. KINGERY: That's what I thought I
24 heard.

25 EXAMINER PIRIK: Not as in staff, as in

1 Commission.

2 MS. SPILLER: I guess, your Honor, it's
3 somewhat of a new issue for us if it's claimed
4 attorney/client privilege, appreciate the in camera
5 review by the Bench, but just not certain that the
6 Commissioners should review -- they would not be
7 reviewing for purposes of an in camera review, I
8 would assume.

9 EXAMINER PIRIK: Well, the Bench speaks
10 on behalf of the Commissioners. That's our purpose
11 here. So anything we see, you know, if it's in the
12 record, and obviously the documents have to be marked
13 separately, and we're going to have to be very
14 careful that there's a cover note on each of the
15 confidential pieces since they will be part of, you
16 know, the, you know, redacted version in the
17 confidential files in docketing. So I'm not sure
18 what your question is as far as Commissioners.

19 MS. SPILLER: I think we don't know. I
20 think it's just a new issue for us, your Honor.

21 EXAMINER PIRIK: It's been many, many
22 years since we've had to deal with this issue. It
23 takes me back a long ways.

24 EXAMINER WALSTRA: OCC, do you want to
25 move your exhibits?

1 MR. BERGER: Yes. At this point, we
2 would move -- OCC would move OCC Exhibit 44, 44a, and
3 44b. I'm not sure that 44b comes into the recording.

4 EXAMINER PIRIK: The Bench is going to
5 have to rule on the confidentiality as well as the
6 privilege issue with regard to that document. We
7 haven't ruled on that yet because we haven't had a
8 chance. We were able to review it enough to make
9 sure that the privilege issue is something we're
10 willing to consider, and so -- but we haven't ruled
11 on it yet. So at some point we are going to have to
12 rule. I know that was your question. At some point
13 we're going to have to rule on it.

14 MR. BERGER: So the actual documents and
15 the way they're going to appear --

16 EXAMINER PIRIK: Since the documents
17 themselves contain privileged information, that is
18 considered -- we'll call it highly confidential
19 information, and then we have just regular
20 confidential information, and then we have OVEC
21 information. So we need to have three iterations of
22 it in order to protect the privileged information
23 because different levels of individuals can review
24 different things.

25 EXAMINER WALSTRA: But we get that you do

1 not have the full unredacted version.

2 MR. BERGER: No, I understand that. So
3 you're going to let us know subsequently what
4 document is what so we can redact it accordingly or
5 that the company can redact it accordingly.

6 EXAMINER WALSTRA: Yes. Any objections?

7 MS. SPILLER: I don't think so.

8 EXAMINER WALSTRA: Hearing none, it will
9 be admitted.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 MS. BOJKO: Your Honor, at this time OMA
12 moves the admittance of Exhibits 7 through 13.

13 MS. SPILLER: Your Honor, if we may, with
14 respect to OMA Exhibits 9 through 13, we would object
15 to their introduction into evidence. There was no
16 foundation established with respect to the witness
17 through whom OMA counsel attempted to introduce the
18 documents.

19 EXAMINER WALSTRA: Ms. Bojko?

20 MS. BOJKO: Your Honor, the request
21 clearly asks for documents from Mr. Whitlock. I
22 cannot control whether counsel gives the documents to
23 the request to Mr. Whitlock and allows him to respond
24 or not to respond. The requests were made of
25 Mr. Whitlock and his documents that he had and

1 referenced at the deposition.

2 They're very important because
3 Mr. Whitlock then showed up at hearing today with
4 documents, the same documents that were not produced
5 as requested in those discovery responses, and I
6 actually don't believe -- actually, with regard to
7 OMA 12, I'm not sure why there was an objection to
8 that one. That is board of directors meeting
9 minutes. We did establish that Mr. Whitlock was on
10 the meeting minutes, and we did discuss this document
11 at great length with Mr. Whitlock. So that would be
12 in addition to my arguments regarding 9 through 11
13 and 13.

14 MS. SPILLER: Your Honor, if I may very
15 briefly. This request talks about documents
16 referenced by Mr. Whitlock. It does not say
17 documents in the possession of Mr. Whitlock. I would
18 further note that these responses are objectionable.
19 They concern requests of any sponsoring company and,
20 so the appropriate objections were asserted, again
21 not by Mr. Whitlock but by legal because these
22 requests were objectionable, and as we began this
23 hearing almost two weeks ago, there was a
24 conversation about what was discussed in
25 Mr. Whitlock's deposition and what was produced in

1 discovery. The memorandum as it's been called today
2 and records of a vote which have already been
3 produced, and so, again, I think it completely
4 improper to utilize Mr. Whitlock to try to suggest
5 that somehow the company did not answer this
6 discovery or respond to Ms. Bojko, when, in fact, we
7 did.

8 MS. BOJKO: Your Honor, I obviously
9 disagree with that, and I had follow-up conversations
10 with counsel afterwards that told me that no such
11 documents exist, and then we are brought today to --
12 corporate documents brought here. I have it here.
13 There's two e-mails that say both that no
14 additional --

15 EXAMINER WALSTRA: We're ready to make
16 our ruling. The objections certainly are noted, but
17 we are going to allow the exhibits in, including --
18 there was no objections, but including 7a and 8a.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 MS. BOJKO: Thank you, your Honor.

21 EXAMINER WALSTRA: And Duke?

22 MS. SPILLER: Yes, your Honor. Thank
23 you. Duke Energy Ohio would move for admission into
24 evidence Duke Energy Ohio Exhibit 25 the direct
25 testimony of Charles R. Whitlock in case No. 11-3549.

1 EXAMINER WALSTRA: Any objections?

2 Hearing none, it will be admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 (Recess taken.)

5 EXAMINER WALSTRA: We'll take a quick
6 break.

7 (Recess taken.)

8 (Witness sworn.)

9 MR. BERGER: Your Honor, we call Mr. Ben
10 Zhang as on cross as part of OCC's direct case here.

11 - - -

12 BEN ZHANG

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

15 CROSS-EXAMINATION

16 By Mr. Berger:

17 Q. Mr. Zhang, would you please state your
18 full name and business address for the record.

19 A. Sure. My name is Ben Zhang. I'm at 139
20 East Fourth Street, Cincinnati.

21 Q. And what's your position with Duke
22 Energy?

23 A. Vice president commercial analytics.

24 Q. And what company is that in?

25 A. I'm working in the midwest commercial

1 generation organization, but I'm employed by Duke
2 Energy Commercial Enterprises.

3 Q. And do I understand you've worked for
4 Duke for 15 years, approximately?

5 A. Yes.

6 Q. And are you aware that your appearance
7 here was requested by subpoena?

8 A. Yes.

9 Q. Have you had opportunity to review the
10 subpoena for your appearance today?

11 A. No, I have not.

12 Q. Mr. Zhang, you manage four functional
13 areas on behalf of commercial analytics; is that
14 correct?

15 A. That's correct.

16 Q. Can you tell me what those functional
17 areas are?

18 A. Pricing structuring, commercial modeling,
19 market fundamentals, and generation analytics.

20 MR. BERGER: Your Honor, may we approach
21 the witness and provide him with a copy of his
22 subpoena so he knows the scope of the documents that
23 were requested?

24 EXAMINER WALSTRA: You may.

25 Q. Mr. Zhang, if you look at page 2 of the

1 subpoena, it has a list of the documents you were
2 asked to produce if you haven't already produced
3 them. And would you just look over that list and
4 advise me whether there are any documents requested
5 on this list, numbers 1 or 2, 2a, and 2b, that you
6 have not previous -- if there are any documents you
7 have not previously produced in this proceeding that
8 would be responsive to these requests.

9 A. All this information were prepared by
10 someone else, so I don't think I am the right person
11 to provide such documents.

12 Q. Okay. Are you familiar with
13 Mr. Dougherty's preparation of the response to
14 OEG-DR-1-001 and the workpapers that are part of
15 OEG -- IGS-POD-01-003 that was put into this record
16 as OCC Exhibit 4 and 4a?

17 A. Have I seen?

18 Q. Are you familiar with those documents? I
19 referenced them during your deposition. We discussed
20 them during your testimony.

21 MS. KINGERY: If perhaps the witness
22 could be allowed to see the documents.

23 MR. BERGER: Could counsel provide him a
24 copy of the redacted OCC Exhibit -- not the redacted
25 but the OCC Exhibit 4a with the information shown on

1 the confidential exhibit that would be confidential
2 so he would know?

3 MS. KINGERY: You don't have a copy for
4 him?

5 MR. BERGER: Well, I don't think we've
6 received the finalized exhibit.

7 MS. SPILLER: I thought Mr. Serio just
8 gave it to the Bench.

9 MR. BERGER: Is that the finalized
10 exhibit?

11 Okay. Then Mr. Serio does have it, and
12 he will approach the witness, your Honor, if that's
13 okay.

14 EXAMINER WALSTRA: It is.

15 Q. (By Mr. Berger) Just let me know if you
16 recall that document from our discussion at your
17 deposition.

18 A. I remember seeing this at my deposition,
19 yes.

20 Q. And are you aware of Mr. Dougherty's
21 testimony that the information underlying that
22 exhibit, much of that information was from a
23 production run of the dispatch model that is prepared
24 by your organization?

25 MS. KINGERY: Objection. I would just

1 note Mr. Dougherty was here under subpoena, and
2 Dr. Zhang was not here in attendance at the time when
3 Mr. Dougherty was testifying.

4 EXAMINER WALSTRA: Overruled.

5 Q. Are you familiar then, Mr. Zhang, with --

6 A. I am familiar with the process. As I
7 said before in my deposition, my team makes the model
8 runs. They run the model.

9 Q. And you developed this model, Mr. Zhang,
10 beginning in the year 2000; is that right?

11 A. I'm the architect, but there was a team
12 who worked together for the development of this
13 model.

14 Q. And the model went into production in
15 2002; is that correct?

16 A. About right, yeah.

17 Q. And are you aware, again, that
18 Mr. Dougherty used that model for purposes of
19 preparing OCC Exhibit 4a?

20 A. He used the output model. He does not
21 personally know how to run the model.

22 Q. He used the output of the model.

23 A. Yeah.

24 Q. And do you understand how he obtained the
25 output of that model?

1 A. He get the information from my team.

2 Q. Okay.

3 A. And also, I want to emphasize, the model
4 information is available in multiple forms.
5 Sometimes people just come -- either they can have
6 access on their own, but most of the time, they would
7 work with my team. We have a formal process for them
8 to gather data, either in electronic form or maybe in
9 hard copy form.

10 Q. Okay. And in obtaining that information
11 from your team, were there specific inputs or
12 assumptions that Mr. Dougherty asked to be utilized
13 for purposes of doing a production run, or did your
14 team just give him a production run to the best of
15 your knowledge that reflected the current
16 information?

17 A. Two things. First of all, I think
18 depending on the term. If the information is for the
19 next two years, I don't think he would need to do
20 anything. He simply gathered data. If it's
21 long-term, then we would have to use, for example, as
22 I said before, fundamental forecasting information
23 rather than the marketing information, which we may
24 or may not have in our hands. So my team might have
25 to get access to the information.

1 Secondly, I don't believe he would be
2 able to have either the authority or the knowledge to
3 determine what to use. He simply makes a request
4 saying this is what I need, so his request would be
5 completely neutral in terms of what inputs the model
6 should use, in terms of timing, in terms of source.
7 He would not give us any direction on that because,
8 number one, he does not have the knowledge, and
9 number two, he doesn't have the authority. So his
10 request, once again, would be what he needs and
11 that's it.

12 Q. And do you know what inputs and
13 assumptions would have been utilized in the
14 production run of the model that was provided -- the
15 outputs of which were provided to Mr. Dougherty and
16 reflected in OCC Exhibit 4 or 4a?

17 A. In terms of timing? You mean the date of
18 the model production?

19 Q. No, the inputs and assumptions that were
20 utilized. I understand there would be many.

21 A. Yeah.

22 MS. KINGERY: And I just want to caution
23 here we are in the open record, and I believe that
24 the inputs and assumptions into the model are
25 actually items that we have talked about being

1 confidential in the past.

2 A. Yeah, I'm aware in terms of the category,
3 for example, in terms of the market. There is the
4 market information or it is fundamental curve. So
5 I'm aware of that, yes.

6 Q. Well, in terms of -- can you describe
7 generally for me the inputs and assumptions that are
8 used in your model without getting into confidential
9 information? Is that possible?

10 A. Sure. So the model, once again, itself
11 is a Monte Carlo simulation-based system, and it
12 builds upon the traditional approaches of stochastic
13 and modeling. It combines financial theory with
14 operational features. The model uses the inputs
15 from, I would say, three categories. Category number
16 one is what we call the technical emphasis where
17 basically you have all the operational parameters and
18 downtime and uptime, all the forced outages, all
19 those things.

20 Q. And just let me stop you there for a
21 second. Are you talking about for all the generation
22 units in PJM, not just a single unit, not -- and
23 projected generation in PJM?

24 A. I'm talking about in general our
25 business. For example, I'm not touching on OVEC, per

1 se, right now. I'm just saying our model handles all
2 those things that way. It's Monte Carlo regardless
3 of 1 unit, 1 station, or 10 or 20. It doesn't
4 matter. We handle the portfolio the same way. So,
5 therefore, the inputs -- once again, I'm giving you a
6 general description of technical inputs and market
7 inputs and some of the other inputs sometimes kind of
8 between technical and markets, for example, and maybe
9 things to do with, you know, some O&M issues --
10 variable O&M, those kind of things.

11 Q. So you said there are technical inputs,
12 market inputs, and operational inputs.

13 A. No. I said somewhere in between. In
14 general, you can say just maybe just two, make it
15 simple, just market-related inputs which is dollars
16 and everything is measured in dollars. Then you have
17 technical inputs which I just mentioned, yeah.

18 Q. Okay. Would one of the technical inputs
19 include a simulation of weather?

20 MS. KINGERY: Again, I want to caution
21 that we're really treading the line here between
22 confidential and public. I think some of this would
23 be easier to talk about perhaps in the confidential
24 record and then redact as appropriate.

25 EXAMINER WALSTRA: I think we are getting

1 pretty close to that line.

2 MR. BERGER: I don't think the fact that
3 the model simulates the effects of weather is -- that
4 many models do that.

5 A. Well, how we simulate it is.

6 Q. Yes. And I'm not asking you how you
7 simulate it.

8 MS. KINGERY: And that's why I haven't
9 actually stopped and said this has to go into the
10 confidential record; but, again, we are just very
11 close to that line.

12 Q. And, again, as I'm sure you know,
13 Dr. Zhang, I'm not asking you for anything that you
14 would consider to be proprietary information, and if
15 you feel that anything is proprietary to your
16 business model, then certainly indicate that that
17 would be confidential, and we will hold that question
18 until later.

19 A. Sure.

20 Q. Dr. Zhang, with respect to -- is there
21 weather simulation as part of your model?

22 A. Yes.

23 Q. And in terms of forecast, if you're
24 forecasting into the future, you're obviously
25 forecasting pricing, and I think you indicated

1 earlier that you're able to forecast price -- or you
2 utilized forward curves -- would I be correct you
3 utilized forward curves to forecast prices in the
4 near term?

5 A. No, we don't forecast prices. We take
6 forward prices as inputs.

7 Q. Okay.

8 A. So, in other words, we use all those
9 information as inputs to the model. We don't
10 forecast prices.

11 Q. Okay. You use forward market information
12 as inputs to your model.

13 A. That's correct.

14 Q. And for longer-term projections, you use
15 fundamental curve price forecasts as inputs to your
16 model.

17 A. Yes, for longer-term projections of a
18 generation or other things, revenue as such, we use
19 forward prices or fundamental curves as inputs, yes.

20 Q. And do you know who prepares the
21 fundamental curves that are used as inputs for your
22 model?

23 A. I'm not sure I should mention the names,
24 but I know Duke Energy uses a consulting firm to help
25 them to build their fundamental curve.

1 Q. But Duke Energy itself ultimately builds
2 the curves; is that correct?

3 A. That's incorrect. Duke Energy does not
4 build the curves. They use -- once again, I
5 emphasize they use a consulting firm who has a very
6 complicated equilibrium economic model which takes
7 into consideration the regional supply demand,
8 economic situation, and national information about
9 supply and demand, which I don't know, but it's a
10 very complex model.

11 And Duke Energy is a user; however, Duke
12 Energy does do their inputs. And when I say inputs,
13 I don't mean give them inputs to the model. We give
14 them inputs, for example, certain, you know,
15 environmental issues. Duke may have one or two
16 things. We talk to them about it, you know, how do
17 they feel about that their assumption, how -- those
18 kind of things but generally that's kind of the
19 qualitative, but they ultimately have the model.
20 They determine the inputs. They have structure.
21 They make a projection. Duke is a user, is a
22 consumer of the information.

23 Q. But the information Duke provides to the
24 outside consultant may influence the outcome or the
25 ultimate fundamental curve that the outside

1 consultant determines to select; is that right?

2 A. I would have to say I am firmly not the
3 expert to speak on that. I don't know specifically
4 what information he gave them. I'm going to give you
5 maybe one example. They would say, oh, you burn this
6 type of coal; you know, we are thinking about making
7 projections about, you know, this supply and demand.
8 Do you agree with us this type of coal in the future
9 will be more expensive than now? Duke might say, oh,
10 we think so, maybe, maybe not. That's the type of
11 input we have. When I say input, we don't really
12 give them numbers, not that detail. And, once again,
13 I'm the wrong person to ask because I'm not involved
14 in the process.

15 Q. Okay. Is there somebody in your unit
16 that does provide that information to the outside
17 consultant?

18 A. No, I don't believe so. I have one guy
19 who's a fundamental person, but he sometimes has
20 conversations with some of the folks, but he's not
21 really able to influence anything. He's just -- once
22 again, he's on this side. He hears more than he
23 speaks. So I don't know what information he would be
24 able to give them.

25 Q. And you don't know who at Duke Energy

1 does have that interaction with the outside
2 consultant?

3 A. Say it again.

4 Q. You don't know who at Duke Energy
5 actually has that interaction with the outside --

6 A. I know the name of the person, but I
7 don't know I should.

8 MR. BERGER: Is that confidential,
9 Counsel?

10 MS. KINGERY: No.

11 A. We have a Kevin Delehanty.

12 Q. Kevin Delehanty?

13 A. Yes. He's a Duke corporate.

14 Q. Okay. Now, your model isn't limited to
15 any particular number of years; you can input as many
16 years as you like in your model; is that correct?

17 A. I would say yes, but you can't -- 1,000
18 years is probably too much.

19 Q. Would you agree with me that the model is
20 less and less reliable over time?

21 A. I would say that's -- I don't even know
22 what you mean. I mean, "less and less reliable,"
23 what do you mean?

24 Q. Are the outputs less accurate as we go
25 further out in time?

1 A. Okay. You tell me what you mean by
2 "accurate."

3 Q. Are they less likely to correspond with
4 the actual results?

5 A. Not necessarily. I know what you're
6 trying to get at, but I use this example so many
7 times, I don't mind using it again. Are you telling
8 me that you -- you make a prediction today for
9 something a month later, that's more accurate than
10 you predict something one year later, but you do it
11 today. Are you telling me that you could have a
12 better chance of getting it right; is that what
13 you're saying? If that's what you're saying --

14 Q. No. I'm asking you. I'm not saying.
15 I'm asking. Is it less and less -- is there less
16 reliability from the model the further you go out in
17 time? That's what I'm asking in terms of the
18 outputs.

19 A. I don't know.

20 Q. Okay. You've never studied the model to
21 see whether it's more or less accurate the further
22 you go out in time or whether it's more or less
23 accurate tomorrow versus ten years from now.

24 A. Once again, I think sometimes people use
25 this term "accurate" very casually. If you mean

1 accurately means what you project today matches what
2 you realize, then I don't know because you could make
3 a prediction today for 100 years. It might be a
4 perfect match. I don't know.

5 Q. Now, you haven't studied the accuracy of
6 your model in the sense that -- relative to the time
7 parameter, have you?

8 A. No. Once again, I emphasize we don't
9 mean to use the model to forecast what's going to
10 happen in the future. So the model is not trying to
11 predict what's going to happen in the future. So
12 when you say that I study the model and compare the
13 model and develop the model and also back test the
14 model, we test the model methodology.

15 Okay. Whether or not the model works
16 appropriately for a given set of reasonable inputs,
17 in other words, we don't really treat this model as a
18 magical forecasting model.

19 So that's why when you say I test, yes,
20 we do test. We do back test, but we don't back test
21 going back five years, I made a prediction and see
22 whether or not exactly I got it right. If I could, I
23 wouldn't be sitting here so.

24 Q. I understand. When you say you wouldn't
25 be sitting here, that's because you would be able to

1 predict the future and make a good living in the
2 stock market, something like that; is that what you
3 mean that?

4 A. You don't have to in the stock market.
5 Anything.

6 Q. Anyhow, looking at Mr. Dougherty's output
7 results from your model and his summation there, you
8 see the cash flow line on page 1 of that exhibit.

9 A. Yes.

10 Q. You agree that he is reflecting Duke
11 Energy Ohio's estimate of the cash flow from OVEC
12 over the period 2015 to 2024.

13 A. It says -- once again, I'm not an
14 accounting expert. I'm assuming he did all the
15 necessary adjustment. So this is a cash flow.

16 Q. Okay. But do you understand that his
17 purpose is actually to show an estimate of what the
18 outcome is likely to be over that period of time?

19 A. I would say for a given set of inputs,
20 this is a reasonable assessment on expected basis how
21 this can be. Yes. Once again, one set of input at
22 one time, it's a time estimate.

23 Q. Okay. And I think you -- when I talked
24 to you previously, you used the term end of the day
25 production run. Are you familiar with that?

1 A. That's correct, yes.

2 Q. Would Mr. Dougherty's numbers reflect an
3 end of the day production run?

4 A. If I remember correctly, when we talked
5 about it, I believe for his -- the information that
6 he has matches I think with our normal budget run.
7 In other words, it's basically what we use for our
8 own business planning and budgeting. So it's the
9 same sort of information on a particular day, of
10 course, that day he made his request.

11 Q. Okay. And the commercial business model,
12 that's how you refer to your model; is that right?

13 A. That's right, yes.

14 Q. The CBM, the primary output that it
15 produces is generation volumes -- and the primary
16 outputs it produces are generation volumes and energy
17 revenues; is that correct?

18 A. I wouldn't say that because, once again,
19 you know, this model has many functionalities. To
20 produce a load, you can get variable options. You
21 project the positions for power, for coal, for gas,
22 and a lot of other things, and also, of course, what
23 you said, the revenue line and also the market-based
24 cost.

25 Q. When you say "market-based cost" --

1 A. I mean --

2 Q. -- what do you mean?

3 A. I mean in the production run. We use the
4 concept of dispatching our units at market, not
5 contract. So I don't know. You want me to explain
6 or no?

7 Q. Yes, if you would.

8 A. Meaning you bought your coal at \$10.

9 MS. KINGERY: Dr. Zhang, is this
10 confidential, or is this now the public side?

11 THE WITNESS: I'm giving him an example.

12 A. If you bought coal at \$10 on a 24-hour
13 basis and, now, the coal is \$30, the power is 20. So
14 we don't produce power to make money thinking we're
15 making \$10. We sell the coal. That's what the model
16 does. So when the model says the cost, I'm talking
17 about strictly from the model. The cost is based on
18 market. The market is \$30. That's what I mean. I
19 don't know if that's.

20 Q. The cost of the coal is \$10 --

21 A. You bought it three months ago \$10, and,
22 now, it's \$30.

23 Q. The cost of coal now is \$30.

24 A. You can -- someone is buying, selling the
25 same coal at \$30. The power is 20.

1 Q. You would sell the coal rather than use
2 it to produce energy.

3 A. That's right. We don't produce the power
4 to make 10, but we sell it and make 20.

5 Q. So if your model had that prediction in
6 it, it would basically say we're selling the coal;
7 we're not producing the energy from the coal units.

8 A. If that's the coal unit, yes. I'm just
9 giving you an example, dispatching and marketing,
10 yeah.

11 Q. Now, your model produces revenues under
12 the model only when it would be economic for the
13 units to run or when there are must-run conditions;
14 is that correct?

15 A. That is correct, yes.

16 Q. And must-run conditions are operational
17 constraints that require the units to operate.

18 A. That's correct.

19 Q. And those are programmed into your model?

20 A. It's input. It's a flag. It's a check.
21 This is a must run. The model would know this is a
22 must run.

23 Q. Would you agree with me that under your
24 model lower cost units will tend to run more
25 frequently, and, therefore, the average revenue would

1 tend to reflect the operations during most, if not
2 all, hours?

3 A. That is correct, yes.

4 Q. And on the opposite side, higher cost
5 units will run less frequently and, therefore, will
6 not necessarily reflect the average revenue?

7 A. I would put -- the average revenue on a
8 per hour basis may or may not equal to the monthly
9 price. Sometimes people, they want an ATC price.
10 They have a monthly price. Around-the-clock price is
11 an ATC price or peak price or of peak price. But I'm
12 saying -- what I was saying is that if we have a
13 higher cost unit, the dollar per megawatt-hour
14 revenue may not necessarily equal to the monthly
15 price on the market because it only operates in the
16 hours where you make money.

17 Q. Okay. Now, your model, when a production
18 run is done, that production run reflects the
19 entirety of PJM, does it not?

20 A. That's actually not correct. We only
21 model the PJM market. When we signal the power
22 prices, that's how you get the price right. However,
23 our model, as I said, is a comprehensive model. When
24 our model models our units, now the market of the
25 power becomes an exogenous input, so meaning on the

1 equilibrium basis going forward, long-term, our one
2 unit would not be able to impact the PJM prices. You
3 have to make that assumption. Otherwise it becomes a
4 chicken and the egg, never ending game. That's
5 actually not correct. So we model our units, our
6 portfolio, on our production runs only.

7 Q. But doesn't your model reflect the
8 production and the efficiency of generation units
9 throughout PJM?

10 A. No. We model the supply and demand of
11 PJM in simulating the power prices, but that's what
12 we call the base model or step 1 and that is used to
13 build the distribution of power prices on an
14 hour-by-hour basis.

15 Then we have a second calibration where
16 we use a special stochastic calibration method. We
17 force the distribution to match the options that we
18 have. A good example would be talking about July,
19 and you have a \$100 option. You have a \$50 option.
20 We want to make sure the prices have a distribution
21 that will price a \$100 call option and a \$50 call
22 option just as the market -- of course, in the market
23 for options is not very deep, but I'm just giving an
24 example. So what you said is only true for the step
25 1. It's a generation distribution of the power

1 prices.

2 Q. Okay.

3 EXAMINER WALSTRA: I think we'll stop
4 here for the day. Since we do have a lot to get
5 through tomorrow, I think we'll start at 8:30
6 tomorrow. Start again with Mr. Zhang.

7 MS. KINGERY: Can we go off the record
8 for just a moment?

9 EXAMINER WALSTRA: Sure.

10 (Discussion off the record.)

11 EXAMINER WALSTRA: See you guys in the
12 morning.

13 (Thereupon, at 7:19 p.m., the hearing was
14 adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, November 4, 2014, and carefully compared with my original stenographic notes.

Carol A. Kirk, Registered
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 11/04/14 - Volume X - Public electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.