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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 9:10 a.m. on Thursday,  
 November 6, 2014.

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VOLUME XII

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1 Thursday Morning Session,

2 November 6, 2014.

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4 EXAMINER WALSTRA: We will go on the  
5 record.

6 Off the record we were talking with  
7 Mr. Clark about proposed redactions to testimony from  
8 the other day, and you have made proposed redactions.  
9 Do you want to make your argument towards that?

10 MR. CLARK: Your Honor, should we have  
11 the folks who haven't signed a confidentiality  
12 agreement maybe leave the room at this point in time?

13 EXAMINER WALSTRA: We're on the open  
14 record so we actually won't be referencing anything  
15 that's going to be redacted.

16 MR. CLARK: Okay. So try to be a little  
17 more vague?

18 EXAMINER WALSTRA: Yeah. Don't actually  
19 mention the words you want redacted.

20  
21 MR. CLARK: Very good. Thank you. So we  
22 are looking at page 2675 of the transcript, which  
23 would be Volume XIV. Looking at line 4, you have an  
24 amount there that we would like to see redacted,  
25 beginning the company name as well there for line 4.

1 And, I mean, obviously we have an amount that we  
2 think is confidential and trade secret because none  
3 of our competitors know and could derive significant  
4 from knowing that number, and then the company --  
5 (Confidential) is uniquely situated in this case  
6 because we're the only --

7 EXAMINER PIRIK: Stop.

8 EXAMINER WALSTRA: Unfortunately that's  
9 the word.

10 MR. CLARK: Oh, I understand. That  
11 entity is one of the only entities in this case.

12 EXAMINER PIRIK: Okay. That page --

13 EXAMINER WALSTRA: We will have to go off  
14 the record for a second.

15 (Discussion off the record.)

16  
17 EXAMINER WALSTRA: We'll go back on the  
18 open record.

19 And Mr. Clark.

20 MR. CLARK: Very good. Thank you. So  
21 line 4, the second, third, and fourth words have  
22 information that we believe to be confidential and  
23 would be valuable to our competitors. If you look  
24 then at the last two words of that sentence and the  
25 first word of line 5, that particular company could

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1 be disadvantaged by our competitors knowing which one  
2 it is.

3           Additionally, the second and third word  
4 of line 5 are -- they relate particularly to that  
5 company and is unique to that company in the market.  
6 On line 6, the fourth, fifth, sixth and seventh words  
7 are unique to our contracts or discuss items in the  
8 contracts that would be valuable to our competitors.  
9 And the same for the first word of line 7 relates to  
10 the words in line 6.

11           And then, additionally, the third,  
12 fourth, fifth, sixth and seventh words on line 7 also  
13 go to a particular item in the contract that is  
14 competitively sensitive as relates to what the  
15 customers agree to in that particular instance.

16           And then moving to line 9, the eighth  
17 word there is a descriptor word regarding those  
18 contracts, and then on line 10 you have got the first  
19 and second word. And the fifth, sixth, seventh and  
20 eighth word again goes to a similar item in the  
21 contract of the confidential nature that is a trade  
22 secret the same as line 7.

23           So that would be -- is that an okay  
24 description?

25           EXAMINER WALSTRA: It is. Any responses?

1 MR. SERIO: Your Honor, without having  
2 seen the data, the only response I would make is that  
3 in general OCC's preference and I believe is  
4 consistent with the Commission's preference and state  
5 law preference that as much be kept in the public  
6 record as possible, and I would simply urge that.

7 EXAMINER WALSTRA: Thank you.

8 The Bench having reviewed the document,  
9 in line 4, the second word, we will open that word  
10 up. The rest of the line we will grant protection.  
11 In line 5, the third word we will open up, and the  
12 rest will be granted protection.

13 In the sixth line, the fourth and fifth  
14 words will be opened up, and the rest of that line  
15 will be granted protection. The rest of line 7 will  
16 be granted protection as requested. The last word on  
17 line 9 will be opened up, and then the rest of the  
18 document will be granted protection as requested by  
19 Mr. Clark.

20 MR. CLARK: Thank you, your Honors. I  
21 appreciate it, and thank you for allowing me to come  
22 in first thing to take care of this.

23 EXAMINER WALSTRA: No problem.

24 MS. BOJKO: Your Honor, I'm sorry. Line  
25 4, which word is it?

1 EXAMINER WALSTRA: The second word.

2 MS. BOJKO: Thank you. The second word  
3 of the sentence?

4 EXAMINER WALSTRA: The second word of the  
5 sentence, yes.

6 MS. BOJKO: Thanks.

7 EXAMINER WALSTRA: And I believe,  
8 Mr. Dougherty, it's your witness.

9 MR. SERIO: Your Honor, just one other  
10 item. Just so you know, I have informed Mr. Williams  
11 to be on call after 3 o'clock today. And if it looks  
12 like it's going to get that fast and if I have enough  
13 notice, I could have Ms. Hixon here as well.

14 EXAMINER WALSTRA: Okay. Great. Thank  
15 you.

16 MR. DOUGHERTY: I would like to call OEC  
17 witness Dick Munson.

18 (Witness sworn.)

19 - - -

20 DICK MUNSON

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

23 DIRECT EXAMINATION

24 By Mr. Dougherty:

25 Q. Mr. Munson, can you state your name and

1 business address for the record.

2 A. My name is Dick Munson. My business  
3 address -- am I on? Dick Munson, 18 South Michigan  
4 Avenue in Chicago, Illinois.

5 Q. And did you file direct testimony in this  
6 proceeding?

7 A. I did.

8 MR. DOUGHERTY: Your Honors, I would like  
9 marked as OEC Exhibit 1 the direct testimony of Dick  
10 Munson.

11 EXAMINER WALSTRA: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Mr. Munson, do you have in front of you  
14 what has been marked as OEC Exhibit 1?

15 A. I do.

16 Q. And that is your direct testimony?

17 A. It is.

18 Q. And do you have any corrections to make  
19 to that testimony?

20 A. I do not.

21 Q. And if I asked you the same questions  
22 today, would your answers be the same?

23 A. They would.

24 MR. DOUGHERTY: Your Honors, the witness  
25 is available for cross-examination.



1 EXAMINER WALSTRA: Thank you.

2 Ms. Hussey?

3 MS. HUSSEY: No questions, your Honor.

4 EXAMINER WALSTRA: Ms. Bojko?

5 MS. BOJKO: No questions.

6 EXAMINER WALSTRA: Mr. Serio?

7 MR. SERIO: Thank you, your Honor. Just  
8 a couple of questions.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Serio:

12 Q. Good morning, Mr. Munson.

13 A. Good morning.

14 Q. If you could turn to page 2 of your  
15 testimony. You talk there on lines 12 and 13 about  
16 the companies being well on their way to implementing  
17 plans and obtaining substantial savings. Is your  
18 reference there just to Commonwealth Edison and  
19 Ameren?

20 A. Yes, that is correct. I should note it's  
21 Ameren Illinois just to be more specific.

22 Q. Do you know the status of the SmartGRID  
23 deployment in the Duke territory?

24 A. I am aware that they have made  
25 substantial progress, yes.

1           Q.    And do you know if there have been  
2 savings achieved as a result of the SmartGRID  
3 deployment?

4           A.    I don't know the exact number, but I am  
5 told that there are savings that have been achieved.

6           Q.    And what is your understanding regarding  
7 those savings? Are those credited back or flowed  
8 back to customers?

9           A.    I don't know how the PUCO has handled  
10 those savings.

11          Q.    Would I be correct in assuming that your  
12 recommendation would be that any savings achieved  
13 through the SmartGRID program be flowed back to  
14 customers?

15          A.    Again, I think that's a decision of the  
16 PUCO that -- what I'm commenting upon are developing  
17 a series of matrices by which the PUCO and consumers  
18 are aware that there has been made progress  
19 associated with the SmartGRID investments.

20          Q.    Well, when we are talking about that  
21 investment, is one of the aspects that's of  
22 importance to customers cost savings?

23          A.    I would imagine it's a rather key  
24 component, yes.

25          Q.    So customers should have at least some

1 idea of the cost savings achieved as a result of  
2 SmartGRID and that should be something that would be  
3 readily calculable, correct?

4 A. What I'm trying to do in the framework is  
5 to outline a series of metrics by which consumers  
6 would realize the savings that are being achieved  
7 associated with investments in AMI.

8 Q. Now, to the extent that SmartGRID results  
9 in service reliability improvements, is it important  
10 for customers to know how much specific reliability  
11 improvement is coming about as a result of their  
12 investment in SmartGRID?

13 A. Yes. I would encourage a factor such as  
14 that to also be a metric that is considered as to the  
15 performance of the AMI investments.

16 Q. Okay. And the metrics that you're  
17 talking about are your Exhibit DM-2, correct?

18 A. Those are the metrics, yes, that's  
19 correct.

20 Q. Can you point out which of those metrics  
21 would specifically measure any cost savings?

22 A. I think the intention was these metrics  
23 provide the overall framework by which to judge  
24 whether the investments reached the goal. And if it  
25 was the desire of the Public Utilities Commission of

1 Ohio to include other metrics within that that might  
2 include more specifically what you're talking about,  
3 that's obviously up to the PUCO.

4 Q. So you can't point to any of these that  
5 are specifically aimed at measuring costs?

6 A. It does not ask that specific question,  
7 that's correct.

8 Q. Now, can you tell me if any of the  
9 metrics that you've recommended would specifically  
10 show service reliability improvements?

11 A. I think the overall structure of this  
12 would suggest a variety of improvements relative  
13 to -- you know, we're looking at customer complaints.  
14 We're looking at the availability of time-of-use  
15 rates, a variety of other factors that deal with  
16 increased service associated with AMI investments.

17 Q. But would that be something you could  
18 then quantify as a result of any of these metrics?

19 A. Again, if the PUCO would like to be more  
20 specific about this, the intent here was to provide a  
21 framework that deals with what the state of Ohio  
22 thinks are important to judge relative to the  
23 investments in SmartGRID modernization.

24 Q. Can you give me any examples of what  
25 modifications would be necessary to any of your

1 measures or metrics in order to specifically be able  
2 to track cost savings or service reliability  
3 improvements?

4 A. I certainly would be happy to engage in  
5 subsequent discussions with yourself and others as  
6 the PUCO hopefully negotiates a series of such  
7 metrics.

8 MR. SERIO: That's all I have, your  
9 Honor.

10 Thank you, Mr. Munson.

11 THE WITNESS: Thank you.

12 EXAMINER WALSTRA: Thank you.

13 Mr. Kurtz?

14 MR. KURTZ: No questions, your Honor.

15 EXAMINER WALSTRA: Mr. Hart?

16 MR. HART: No questions.

17 EXAMINER WALSTRA: Ms. Watts?

18 THE WITNESS: I bet you do.

19 MS. WATTS: I do. Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Watts:

23 Q. Good morning, Mr. Munson.

24 A. Good morning.

25 Q. Now, if I am understanding your testimony

1 correctly, you're covering two significant areas.  
2 One would be data access, and the second area is  
3 SmartGRID metrics. Is that an accurate  
4 representation?

5 A. That is correct.

6 Q. And you've attached to your testimony as  
7 Exhibit DM-1 a document that's entitled "Open Data  
8 Access Framework"; is that correct?

9 A. That's correct.

10 Q. And, Mr. Munson, you are not an attorney;  
11 is that correct?

12 A. That is correct.

13 Q. Looking at DM-1, would you agree with me  
14 that this document was originally developed in  
15 Illinois by the Environmental Defense Fund for use in  
16 Illinois?

17 A. It was developed by the environmental  
18 defense fund, the citizens' utility board, as well as  
19 the negotiations with Commonwealth Edison and Ameren  
20 Illinois.

21 Q. Do those various entities represent a  
22 diversity of interest?

23 A. Yes, and I think the Illinois Commerce  
24 Commission ensured that there were other parties that  
25 engaged in discussions about how to develop that

1 framework from the Attorney General's Office to  
2 third-party providers.

3 Q. So it would be fair to understand that  
4 group to be a stakeholder group, so to speak?

5 A. That's correct.

6 Q. And DM-1 contains a framework or  
7 guidelines that you believe should be implemented by  
8 the Public Utilities Commission, correct?

9 A. Yes.

10 Q. And you did not modify that document in  
11 any way prior to attaching it to your testimony for  
12 use in Ohio, did you?

13 A. No. This is the same document that had  
14 been proposed in Illinois.

15 Q. And you would agree with me that the  
16 amount of time necessary to achieve the facilities or  
17 the elements that you recommend in DM-1 will vary  
18 depending on the applicable provision, correct?

19 A. Depending upon how the parties in Ohio  
20 would like to address and advance particular  
21 provisions. That's their call.

22 Q. And you focused your attention on Duke  
23 Energy Ohio because Duke Energy Ohio has deployed  
24 SmartGRID meters and the data that you deal with in  
25 DM-1 mostly comes potentially from SmartGRID meters,

1 correct?

2 A. Yes. I think stepping back, the purpose  
3 of this was to note that, yes, Duke Energy has  
4 advanced smart meters and has benefited from them  
5 either through, you know, reduced meter reading costs  
6 and other provisions. The notion here is to ensure  
7 that consumers also benefit by being able to have  
8 access to the data coming out of those smart meters.

9 Q. And you've not discussed cost for  
10 implementing any of the measures you recommend with  
11 any Ohio utilities, correct?

12 A. Not with Ohio utilities. We have with  
13 others, but not Ohio.

14 Q. And you've not had any discussions with  
15 anyone within Duke Energy Ohio about cost related to  
16 providing the data that you would like to see there  
17 be access to?

18 A. I have not.

19 Q. And as of right now, there are no  
20 third-party entities receiving access to customer  
21 energy usage data in Illinois, correct?

22 A. No, that's not correct actually. At  
23 least to the best of my understanding, there are  
24 stakeholders who have been in the room that claim  
25 that they are receiving such information.



1           Q.    And you're not familiar with any of the  
2           technical details regarding Duke Energy Ohio's  
3           specific hardware or software capabilities, correct?

4           A.    I am not an engineer.

5           Q.    Particularly as they relate to billing  
6           and data access?

7           A.    I don't know, that's correct.

8           Q.    And you are not aware of the status of  
9           time-of-use rates in Ohio, correct?

10          A.    No, I am not.

11          Q.    So you don't know if Duke Energy Ohio has  
12          provided any time-of-use rates for its customers?

13          A.    I do not know.

14          Q.    And you believe that customers should own  
15          their own energy usage data?

16          A.    I'm sorry?

17          Q.    You believe as a matter of policy that  
18          customers should own their own customer energy usage  
19          data?

20          A.    Yes, that would be my position. I  
21          believe that data is consumer data and, therefore, is  
22          theirs.

23          Q.    Do you have any reason to believe that  
24          Duke Energy Ohio believes otherwise?

25          A.    I do not.

1           Q.    And do you have any knowledge as to  
2           whether the Public Utilities Commission of Ohio has  
3           issued any statements or regulations that would be  
4           contrary to that policy?

5           A.    No.   In fact, on the Public Utilities  
6           Commission website, there is what I view from my  
7           perspective great language suggesting that smart  
8           meter data can empower consumers in ways that allow  
9           them to have better options and reduce their energy  
10          costs.   So I think what I'm proposing in this  
11          framework would compliment that empowerment goal of  
12          the PUCO.

13          Q.    Mr. Munson, you've not participated in  
14          any Duke Energy Ohio SmartGRID collaborative  
15          discussions, have you?

16          A.    Actually I did participate in one just  
17          for a very short amount of time.

18          Q.    And when was that?

19          A.    I can't remember.   A couple of months  
20          ago.

21          Q.    Okay.   And were you there on behalf of  
22          the Ohio Environmental Council?

23          A.    No.   I was there just with Environmental  
24          Defense Fund.

25          Q.    Okay.   And is it your understanding that

1 proposed rider DCI in this proceeding includes  
2 SmartGRID related capital investment?

3 A. I'm not sure that I know the designation  
4 DCI, but there are -- as I understand, there's a  
5 distribution rider that deals with recovery of  
6 distribution investments including SmartGRID.

7 Q. Okay. And do you know specifically what  
8 elements of SmartGRID are proposed in that rider?

9 A. Not off the top of my head. And I have  
10 read it, but I don't remember.

11 Q. Okay. And you are not aware of or have  
12 not viewed or worked with Duke Energy Ohio's supplier  
13 web portal, correct?

14 A. I have not.

15 Q. And you believe that the metrics you're  
16 proposing in your attachment DM-1 are necessary in  
17 order to allow the Commission to evaluate whether or  
18 not the company is managing its distribution system  
19 investment prudently, correct?

20 A. I think in DM-1 what we're doing is  
21 trying to ensure that consumers benefit from the  
22 investments that are being made in SmartGRID  
23 modernization. By having access to their data, as  
24 the PUCO website notes, they are becoming empowered.  
25 And as numerous studies would suggest, they also

1 benefit by having their -- that information leads  
2 them to reduce their energy costs.

3 Q. When you talk about investment in  
4 distribution system, you're generally referring to  
5 AMI or distribution automation investment, correct?

6 A. Yes.

7 Q. And you're not aware of whether Duke  
8 Energy Ohio currently reports any metrics with  
9 respect to SmartGRID technical difficulties, correct?

10 A. I am aware that Duke Energy, because it  
11 received \$204 million grant from the Federal  
12 Government with stimulus funds, is required to  
13 provide reports to the Department of Energy relative  
14 to a series of performance within a guidebook that  
15 the Department of Energy set out.

16 So the company is reporting on its  
17 investments. And I think what we're suggesting in  
18 the DM-2 is a series of metrics that are  
19 complimentary to what the Department of Energy has  
20 already asked Duke Energy to do. And, therefore, I  
21 guess I would further argue that as a result of that,  
22 Duke Energy has the IT systems and management  
23 practices, you know, to do such reporting. So this  
24 is not viewed as being burdensome on the utility.  
25 It's basically building on what you're already doing.

1           Q.    Okay.  And so far as you know, one way or  
2           the other, are you aware of whether Duke Energy Ohio,  
3           in fact, already provides that data to the Public  
4           Utilities Commission?

5           A.    They provide it to the Department of  
6           Energy.  I don't know if they provide it to the PUCO.

7           Q.    And do you know whether Duke Energy Ohio  
8           reports greenhouse gas reductions to the Public  
9           Utilities Commission?

10          A.    I do not know.

11          Q.    And, Mr. Munson, you did not participate  
12          in any of the meetings over the past year associated  
13          with the Public Utilities Commission of Ohio's  
14          investigation into the status of retail competition  
15          in Ohio, correct?

16          A.    I did not.

17          Q.    And to the extent you are recommending  
18          that utilities that deploy SmartGRID systems flow  
19          savings back to customers, that's part of your  
20          recommendation, correct?

21          A.    In the framework, what I'm suggesting  
22          flow back to customers is data associated with the  
23          customer's own energy usage, and with that data  
24          consumers become empowered to be able to reduce their  
25          costs.

1 MS. WATTS: Okay. I have nothing  
2 further. Thank you.

3 THE WITNESS: That's it?

4 MS. WATTS: That's it.

5 THE WITNESS: Okay.

6 EXAMINER WALSTRA: Staff?

7 MR. BEELER: No questions, your Honor.  
8 Thanks.

9 EXAMINER WALSTRA: Any redirect?

10 MR. DOUGHERTY: Can I have a minute?

11 EXAMINER WALSTRA: Sure.

12 MR. DOUGHERTY: No redirect.

13 EXAMINER WALSTRA: Thank you, Mr. Munson.

14 THE WITNESS: Okay. Thank you.

15 EXAMINER WALSTRA: Would you like to move  
16 your exhibit in?

17 MR. DOUGHERTY: Yes, thank you. I would  
18 then like to, your Honors, move OEC Exhibit 1 as  
19 evidence.

20 EXAMINER WALSTRA: Any objections?

21 MS. WATTS: No objections.

22 EXAMINER WALSTRA: It will be admitted.  
23 Thank you.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 MR. BEELER: Your Honor, we will have

1 Hisham up here in a few minutes. I sent him a  
2 message. He should be up.

3 (Discussion off the record.)

4 EXAMINER WALSTRA: We'll go on the  
5 record. Please raise your right hand.

6 (Witness sworn.)

7 EXAMINER WALSTRA: All right. Thank you.  
8 You may be seated.

9 MR. BEELER: Thank you, your Honor. This  
10 is staff's witness Dr. Hisham Choueiki.

11 - - -

12 HISHAM CHOUEIKI  
13 being first duly sworn, as prescribed by law, was  
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Beeler:

17 Q. Good morning, Mr. Choueiki.

18 A. Good morning.

19 Q. Would you please state your business  
20 address for the record.

21 A. Hisham Choueiki, 180 East Broad Street,  
22 Columbus, Ohio 43215.

23 Q. Who are you employed by and what is your  
24 position?

25 A. I'm energy adviser, energy specialist in

1 the planning and market analysis division at the  
2 PUCO.

3 Q. Do you have in front of you what has  
4 previously been marked as Staff Exhibit 1?

5 A. Yes.

6 MR. BEELER: At this time I would ask for  
7 it to be marked as Staff Exhibit 1.

8 EXAMINER WALSTRA: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. BEELER: Thank you, your Honor.

11 Q. Dr. Choueiki, what is Staff Exhibit 1?

12 A. That's my prefiled testimony.

13 Q. That was filed in this docket on  
14 October 2, 2014?

15 A. Yes.

16 Q. Was that filed on behalf of the staff of  
17 the Public Utilities Commission of Ohio?

18 A. Yes.

19 Q. Was it prepared by you or under your  
20 direction?

21 A. Yes.

22 Q. Do you have any changes to make to that  
23 testimony?

24 A. Just on the cover page.

25 Q. Okay.



1           A.    It's the -- the title of my division is  
2           planning and market analysis, not market and analysis  
3           planning.

4           Q.    With that change, if I asked you the  
5           questions in your direct testimony today, would your  
6           answers be the same?

7           A.    Yes.

8           MR. BEELER: Your Honor, at this time I  
9           would move for admission of Staff Exhibit 1, subject  
10          to cross-examination.

11          EXAMINER WALSTRA: Thank you.

12          Ms. Hussey?

13                   - - -

14                   CROSS-EXAMINATION

15          By Ms. Hussey:

16          Q.    Good morning, Dr. Choueiki.

17          A.    Good morning.

18          Q.    On page 5 of your testimony, you mention  
19          the stipulation in Case No. 11-3549-EL-SSO in  
20          connection with your testimony on the PSR; is that  
21          correct?

22          A.    Yes.

23          Q.    Did you participate personally in the  
24          negotiations in Case No. 11-3549 which led to the  
25          stipulation in that case?

1           A.    Yes, yes.  Myself and Ms. Tammy Turkenton  
2           were actually acting on behalf of staff in the  
3           negotiations in that case.

4           Q.    Thank you.  And specifically did you  
5           participate in negotiations leading to Section 8 of  
6           the stipulation in that case?

7           A.    Yes.  I think it was the total package.  
8           So one of the sections was Section 8.

9           Q.    Okay.  And I should add were you  
10          testifying on behalf of staff in this case?  Excuse  
11          me.  Not testifying but participating in the  
12          negotiations on behalf of staff?

13          A.    Yes.

14          Q.    Okay.  What is your understanding of  
15          what's required of Duke in relation to its generating  
16          assets under Section 8 of that stipulation?

17                MS. SPILLER:  Just note the friendly  
18          cross-examination.  Object to it.

19                EXAMINER WALSTRA:  Overruled.

20          A.    Basically the -- a couple of the  
21          objectives of the stipulation was that Duke will  
22          become a wires only company, and as of January 1,  
23          2012, they became a wires only company with the  
24          exception of the -- in terms of providing generation  
25          service, they were no longer providing generation

1 service directly to consumers. They were just  
2 providing the distribution of that service, but they  
3 weren't selling any more service. That was one of  
4 the objectives.

5 The second objective was to put their  
6 generation fleet on an equal footing with other  
7 generation, to go and compete in the retail and  
8 wholesale market for generation service. So Section  
9 8 was supposed to accomplish that objective.

10 Q. Thank you. In your opinion, is there a  
11 distinction between a generation asset and a  
12 contractual entitlement to generation?

13 A. Okay. So owning entitlement to the  
14 output in my mind is the same whether I own 46.5  
15 percent of Zimmer or I own 9 percent of OVEC that  
16 owns the generation assets of OVEC. In my mind, it's  
17 the same.

18 Q. Okay. And is it your understanding that  
19 Duke has proposed PSR as a financial hedge?

20 A. Yes.

21 Q. As proposed, would the PSR be possible  
22 without Duke's contractual entitlement to the  
23 generation from the OVEC units?

24 A. Could you repeat the question again?

25 Q. Sure. As it's been proposed, would the

1 PSR be possible without Duke's contractual  
2 entitlement to generation from the OVEC units?

3 MS. SPILLER: Again, objection to the  
4 friendly cross.

5 EXAMINER WALSTRA: So noted for the  
6 record. Overruled.

7 A. So you are asking if Duke did not own  
8 that contractual arrangement with OVEC or they just  
9 wanted to sell an insurance product, a financial  
10 hedge, would that matter?

11 Q. As it's structured, as it's proposed in  
12 the application, without the entitlement to the  
13 generation directly from the OVEC facilities, would  
14 it be possible?

15 A. I mean, they structure that with OVEC, so  
16 I don't know how it would be -- the way -- one of the  
17 conditions is that OVEC units would be the ones that  
18 would be -- customers will either enjoy the benefit  
19 or the cost to the extent the market is lower than  
20 the cost, but the way they structured it is OVEC is  
21 an input to that agreement. I don't see how it could  
22 be without it.

23 Q. Okay. Would you then consider that any  
24 cost to customers from that rider to be generation  
25 related?

1           A.    It's a function of generation.  Customers  
2   aren't getting any generation from the OVEC output --

3           Q.    Okay.  Thank you.

4           A.    -- unless it comes in a circle, you know,  
5   somehow but not directly.

6           MS. HUSSEY:  Thank you.  No further  
7   questions.

8           EXAMINER WALSTRA:  Ms. Bojko?

9           MS. BOJKO:  Yes, your Honor.  Thank you.

10                               - - -

11                               CROSS-EXAMINATION

12   By Ms. Bojko:

13           Q.    Could you pull your mic a little closer  
14   to you?  Thank you.

15                   On page 5 of your testimony, you talk  
16   about -- it starts on page 4 into 5.  You talk about  
17   Duke's filing at FERC, and then you state that you  
18   don't believe with the transfer to Dynegy that there  
19   is a possibility of expanding the PSR.  Do you see  
20   that?

21           A.    Yes.

22           Q.    So is it your -- could Duke have a  
23   purchase power agreement with a third party for any  
24   kind of generating assets and seek recovery through  
25   the PSR?

1           A.    Okay.  So in my mind, Duke doesn't  
2   provide any generation service, so why would they --  
3   I mean unless they are doing -- see, right now Duke  
4   Energy owns 9 percent of OVEC, but they don't -- once  
5   they sell all the other generation that they own,  
6   they no longer own generation.  So I'm not following  
7   you.  Why would they have -- you mean have a purchase  
8   power agreement for more insurance, to sell more  
9   insurance, more hedge?

10          Q.    I mean this question -- would it be  
11   possible for Duke Energy Ohio to have a purchase  
12   power agreement with a third party and then collect  
13   the costs of that purchase power agreement through  
14   customers through a PSR rider?

15          A.    I guess I wasn't thinking of purchase --  
16   more purchase power agreements.  When Duke filed  
17   this, there was no public information.  On this  
18   application, there was no public information about  
19   its sale to Dynegy, that was negotiating a sale, so  
20   all of its assets to Dynegy.

21                So staff was under the impression there's  
22   more generation that's owned by Duke Energy or an  
23   affiliate of Duke Energy Ohio like DECAM.  They would  
24   be -- that would be the generation, but now that that  
25   generation is out of the picture, we don't have a

1 strong concern. We no longer have a strong concern.  
2 But, you know, I didn't contemplate another purchase  
3 power agreement for a financial product.

4 Q. Because it wouldn't make sense for a  
5 distribution company to propose a purchase power  
6 agreement and pass the costs on through a PSR rider  
7 unless it was either owned by the distribution  
8 company or an affiliate of the company, right?

9 MS. SPILLER: Objection to the form.  
10 Lack of foundation and leading nature of the  
11 question.

12 EXAMINER WALSTRA: Overruled.

13 A. That is correct. I mean, I wouldn't see  
14 any other reason.

15 Q. On page 6 and as you just discussed with  
16 Ms. Hussey, you're familiar with the stipulation  
17 signed in the 11-3549, correct?

18 A. Yes.

19 Q. And you reference on page 6 of your  
20 testimony that witness Wathen testified that the  
21 company does not directly own the OVEC generating  
22 assets; is that right?

23 A. Yes.

24 Q. Okay. To your knowledge, sir, is the  
25 word or distinction -- is the word directly or that

1 distinction made in the stipulation in case 11-3549?

2 A. No.

3 Q. Is it staff's position that the corporate  
4 separation rules prohibit Duke Energy Ohio from  
5 owning OVEC generating assets without some kind of  
6 waiver in place?

7 A. Again, in my mind, they would need to  
8 come to the Commission and ask. To the extent they  
9 are unable to spin off the OVEC units to an affiliate  
10 or to a third party, sell to a third party, they  
11 would need to come and ask permission.

12 Q. And your response would be the same with  
13 regard to Duke's corporate separation plan that is  
14 approved currently before the Commission?

15 A. Well, that's one thing in the  
16 stipulation. It said that the stipulation --  
17 adopting the stipulation or approving the stipulation  
18 is -- gives Duke the waiver from the corporate so  
19 they no longer need to apply -- or they no longer  
20 need to get permission for the corporate separation  
21 plan. They still have to describe it to the  
22 Commission, but adopting the stipulation gives them  
23 the waiver, but it doesn't give them a waiver from a  
24 change in the stipulation. In my mind it's a change  
25 in the stipulation when Duke Energy Ohio only sells



1 its legacy assets or spins off its legacy assets and  
2 not all generation assets.

3 Q. So you believe I think I understood you  
4 to say that in their corporate separation plan, that  
5 they only have that authority to retain the OVEC  
6 generating assets until December 31, 2014?

7 A. Yes, unless they come and get a waiver  
8 and the Commission grants them like it did in the AEP  
9 case that I referenced.

10 Q. Okay. So after 12/31/14, you do not  
11 believe Duke currently has the authority to retain  
12 these OVEC generating assets?

13 A. Correct. Because there is again -- in  
14 the stipulation, there's a contractual agreement  
15 clause but only if the contract says you cannot sell  
16 that generation. In the contract, the ICPA, to my  
17 knowledge, doesn't have anything to do with you can't  
18 sell it. You can spin it off, but you have a lot of  
19 conditions on liability, on who can you spin it off  
20 to, but they have to come and demonstrate to the  
21 Commission why they are unable to do so.

22 Q. And if they don't retain that authority  
23 from the Commission after December 31, 2014, then you  
24 believe it's staff's position that they would be in  
25 violation of 4928.17, and I believe you cite to

1 4928.02 of Ohio law?

2 A. Okay. So now you are getting too legal  
3 for me. They will be in violation of the  
4 stipulation, and the 4928.02 I was referring to  
5 basically subsidizing competitive services by  
6 noncompetitive services, which is a different issue.

7 Q. Okay. And 4928.17 that I just referenced  
8 is the corporate separation statute that prohibits a  
9 utility from engaging in both competitive and  
10 noncompetitive services? Is that your recollection?

11 MR. BEELER: Your Honor, I just want to  
12 note Dr. Choueiki is not an attorney so his answer  
13 would be not a legal conclusion.

14 EXAMINER WALSTRA: Noted.

15 A. Yes. I mean, I've read 17. I don't know  
16 the details of 17.

17 Q. Okay. You've referred a couple times  
18 this morning to an insurance policy or a hedge. Do  
19 you agree with the company's characterization of  
20 rider PSR as a hedge?

21 A. It is a hedge in their mind. Whether  
22 it's an effective hedge and whether it is consistent  
23 with state policy, that's where the question is. In  
24 my mind, it's not. It's not consistent with state  
25 policy, and it's not an effective hedge.

1           Q.    And when you just referred me to the  
2   state policy, you're referring to that approval of a  
3   PSR rider would violate state policy of cross  
4   subsidies between Duke and an affiliate if Duke was  
5   to transfer the OVEC assets to an affiliate and then  
6   get approval of the PSR to compensate them for that  
7   cost?

8           A.    It's the subsidizing a competitive  
9   service with a noncompetitive service.

10          Q.    Okay.  And that would also be true with  
11   regard to some of the Commission rules in place such  
12   as 4901:1-37-04 regarding anti-competitive behavior  
13   in cross subsidies?

14          MS. SPILLER:  I am going to object again  
15   to the leading form of these questions.

16          EXAMINER WALSTRA:  Overruled.

17          MS. SPILLER:  The friendly  
18   cross-examination.

19          EXAMINER WALSTRA:  It is getting close,  
20   Ms. Bojko, but you can proceed.

21          A.    I don't think all the Administrative Code  
22   that you cite, but if that's corporate separation  
23   code then, chapter --

24          Q.    Okay.

25          A.    -- that's fair.

1           Q.    All right.  Just a couple more questions.  
2           It's my understanding as I read your testimony that  
3           you believe that Duke should retain both the costs  
4           and the benefits of the OVEC generating units when  
5           they're sold into the PJM market?

6           A.    Sure.  They ought to.  They are carrying  
7           the risk.  They ought to enjoy all the benefit they  
8           get from the OVEC generation.

9           Q.    Okay.  Then I want to talk one minute  
10          about the second part of your testimony that starts  
11          on page 13.  It's my understanding that you believe  
12          that the proposal of Duke for a PSR should not be  
13          approved.  However, if it is approved, you think that  
14          it should be adopted with substantial modifications?  
15          Is that how I understand your testimony?

16          A.    Yes.

17          Q.    And those modifications include limiting  
18          the rider to OVEC generating costs only or costs  
19          associated with the OVEC units only and not expanding  
20          it; is that right?

21                   MS. SPILLER:  Again, objection to the  
22          friendly cross.

23                   EXAMINER WALSTRA:  Overruled.

24          A.    Yes.

25          Q.    And you also are proposing to limit the

1       ESP -- or limit any kind of PSR approval to just the  
2       three-year term of the ESP; is that right?

3             A.     Yes.

4             Q.     And then you are also proposing to  
5       retain -- that the Commission retain jurisdiction to  
6       audit the expenses that go in the PSR?

7             A.     Prudence, correct, prudence with an audit  
8       and to the extent there is a finding here at the  
9       Commission in Columbus, Ohio, for disallowing  
10      specific expenses, then that should be part of the  
11      equation.

12            Q.     And then, sir, your fourth recommendation  
13      is that the staff would monitor and evaluate bidding  
14      strategies used for the OVEC generating stations; is  
15      that right?

16            A.     Yes.   So we had that discussion on  
17      without these steps what incentive would Duke have to  
18      minimize cost or maximize revenues.   They would not  
19      in staff's mind.   So those are ways to just monitor  
20      what's happening and compare the bidding strategies  
21      of the OVEC portion of Duke's with other competitive  
22      generation.

23            Q.     And then I'm not sure I understand your  
24      fifth modification.   You're concerned that the OVEC  
25      participates -- you are concerned about whether OVEC

1 participates in the SSO auction, whether the output  
2 of the generating units participates and can  
3 participate in the SSO auction but you don't have a  
4 recommendation for that; is that right?

5 A. Yeah. So five is a big concern of  
6 staff's, but at the same time staff didn't find a  
7 solution. We're just putting it in the  
8 Commission's -- we're just letting the Commission  
9 know that this is a big concern of ours, but we can't  
10 find a solution, and the best solution is to not  
11 grant the PSR.

12 Q. But the concern, sir, is that the  
13 generating units would be able to participate in the  
14 SSO auction or would not or would just somehow  
15 influence the market participants?

16 A. So let me explain that concern, okay? So  
17 right now the application states that Duke would bid  
18 into the market, into PJM market, energy capacity  
19 markets. So if that's what they are going to do,  
20 then it's going to be hard for them -- they can't  
21 sell the energy twice and their capacity twice.

22 So if they are selling capacity in the  
23 PJM market, for OVEC's capacity in the PJM market,  
24 then that's it. They can't go and sell it in an SSO  
25 auction. So our concern is you're taking 200

1 megawatts out of an SSO auction. For Duke, our SSO  
2 auctions are about 170 megawatts. If you assume a  
3 non-shopping load of a thousand, 17 tranches is  
4 170 megawatts. Well, that's 200 megawatts that could  
5 compete. Now, it's not enough because we generally  
6 want a lot more than 200 megawatts to offer into  
7 these SSO auctions when we start. But that's another  
8 200 megawatts that could compete and now it's not in  
9 the equation anymore.

10 Q. Oh, so your concern is that it would  
11 somehow influence the market if it doesn't  
12 participate in the -- if it's not available to  
13 participate I should say.

14 A. Could be potentially but not with  
15 certainty, but it could potentially influence the  
16 market.

17 MS. BOJKO: Okay. I have no further  
18 questions, your Honor.

19 EXAMINER WALSTRA: Thank you.

20 OCC?

21 MR. BERGER: Nothing, your Honor. Thank  
22 you?

23 EXAMINER WALSTRA: Mr. Dougherty?

24 MR. DOUGHERTY: I have no questions, your  
25 Honor.

1 EXAMINER WALSTRA: Mr. Kurtz?

2 MR. KURTZ: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Kurtz:

6 Q. Good morning, Mr. Choueiki.

7 A. Good morning.

8 Q. Dr. Choueiki, obviously staff and you are  
9 opposed to the PSR, correct?

10 A. Yes.

11 Q. Okay. Did you actually examine the  
12 economics and finances of the OVEC proposal to try to  
13 determine whether or not it would be a credit or a  
14 charge on consumer bills?

15 A. I looked at all the numbers.

16 Q. Well, let me ask you this, if you  
17 concluded or if you assumed that the PSR would be a  
18 credit on consumer bills from day one and always be a  
19 credit, would you still oppose the PSR?

20 A. Yes.

21 Q. Okay. If you assumed or determined that  
22 the PSR would stabilize consumer retail rates from  
23 day one, would you still oppose the PSR?

24 A. Okay. Now you are starting to get -- if  
25 you say hypothetically, yes, because in actuality,



1     you can't guarantee to me stability or benefit to  
2     customers. But hypothetically if you are saying  
3     someone can't tell me with certainty, then I may have  
4     a different answer than what I have in my testimony.

5           Q.     Okay. So if you assume that the PSR  
6     would provide a credit and would provide stability,  
7     just assume that from day one, your position may be  
8     different?

9           A.     Could be different, yes. But, again, I  
10    mean, I am having difficulty because your question is  
11    infeasible in my mind. I don't see it happening  
12    where someone will guarantee the future with  
13    certainty and assume that and guarantee that the  
14    consumers will benefit when we know for sure it looks  
15    like right now that the first three years there is a  
16    loss of \$22 million.

17          Q.     Yeah, I was just asking you to assume  
18    that there would be a credit and there would be  
19    stability. In other words, is this a philosophical  
20    position of yours or staff's, or is it a dollars and  
21    cents position that might change depending on the  
22    economics?

23          A.     No. It's against the policy of the state  
24    in staff's mind. That's what it boils down to.

25          Q.     You are sort of the Commission's chief

1 PJM person; is that correct?

2 A. No. We have a federal advocate.

3 Q. Right.

4 A. But I am on the technical side. We have  
5 a legal, and I advise the federal advocate on  
6 technical matters.

7 Q. Mr. Tauber is the federal advocate?

8 A. Yeah, he's the lawyer.

9 Q. Okay. Now, but you are -- you serve as  
10 the Ohio member on the staff's steering committee in  
11 the organization of PJM states?

12 A. Yes.

13 Q. And the co-chair of the staff modeling  
14 work group in the eastern interconnection states  
15 planning council; is that correct?

16 A. Yes, yes.

17 Q. Is that a PJM function?

18 A. No. That's bigger. That's an eastern  
19 interconnection. So it's 39 states.

20 Q. Okay. But the first one is the steering  
21 committee of --

22 A. That's PJM.

23 Q. -- PJM. Okay. So you're familiar with  
24 how the PJM process works?

25 A. Yes.

1           Q.    Okay.  Now, if the Commission were to  
2   adopt your recommendation that there would be no PSR,  
3   call it a hedge, then consumers in Ohio would -- tell  
4   me if you agree, would effectively get their energy  
5   and capacity through the PJM regulated markets?

6           A.    They will get -- consumers in Ohio will  
7   get their electricity service -- their generation  
8   service either from competitive retail electric  
9   service providers or through the standard service  
10   offer auctions.  Both of these sellers, whether you  
11   are an SSO auction winner or whether you are a CRES  
12   provider, buy their energy and capacity in the PJM  
13   market.

14          Q.    Thank you for the correction.  Okay.  So  
15   the wholesale provider of either the SOS auctions or  
16   the CRES would come from the PJM energy and capacity  
17   markets?

18          A.    Yes.  Or they could have bilateral  
19   contracts also.  Who knows how they buy their -- but  
20   generally, yes.

21          Q.    Okay.  And you're familiar with how the  
22   PJM energy and capacity markets work?

23          A.    Yes.

24          Q.    Are you familiar with the concept of net  
25   CONE cost of new entry?

1           A.    Yes.

2           Q.    What does the net cost of new entry mean?

3           A.    That's -- every year PJM -- when they are  
4 getting ready to administer their base residual  
5 auction, they have to come up with what is net CONE,  
6 the net cost of new entry, and that's the cost of a  
7 new combustion turbine. So every year there is an  
8 adjustment based on the RPM tariff, and the net CONE  
9 would be after you subtract the front D cost, the  
10 historical energy and ancillary services revenues in  
11 a specific region of PJM. That will determine what  
12 net CONE is.

13          Q.    That's the assumptions that PJM goes  
14 through to calculate net CONE, but what is the cost  
15 of new entry?

16          A.    It's about -- you mean in dollars how  
17 much it is?

18          Q.    No. Do you agree that the cost of new  
19 entry is the PJM calculation of how much you have to  
20 pay a developer to bring a new power plant online?

21          A.    To bring in a combustion turbine?

22          Q.    Rights.

23          A.    Because we've seen developers offer into  
24 the PJM market and clear at lower than cost of net  
25 cost of new entry.

1           Q.     The Brattle Group wanted to use a  
2     weighted average of combustion turbines and combined  
3     cycles in their last tri-annual review, but PJM said,  
4     no, we're sticking with combined cycle?

5           MR. OLIKER:   Objection.

6           Q.     Is that correct?

7           MR. OLIKER:   We are getting very far  
8     afield of Mr. Choueiki's testimony and I don't see  
9     where this is going.

10          MS. BOJKO:   Your Honor, I would also  
11     object, too. There is no foundation of the Brattle  
12     group, and now we are just testifying in the record  
13     without the basis of that.

14          MR. KURTZ:   I am not under oath and I am  
15     not testifying to anything.

16          EXAMINER WALSTRA:   Overruled.

17          Q.     (By Mr. Kurtz) So the cost of new entry  
18     is the PJM calculation of how much you have to pay a  
19     power plant developer to build a new power plant,  
20     that being a combustion turbine?

21          A.     That's correct. And then that's used for  
22     developing the variable resource requirement.

23          Q.     Right. The demand curve for the  
24     auctions. Do you think from your interaction with  
25     PJM that there is a realization that the RPM auctions

1 need to get up towards the cost of new entry in order  
2 to incent new generation to be built?

3 A. There is a realization that historical  
4 clearing prices have not compensated generation  
5 enough to stay in business or for generation to be  
6 built. And that's why PJM is in the process of  
7 developing -- of reviewing and revising the RPM  
8 construct, to make it more fair. In their mind,  
9 prices have been suppressed.

10 Q. There are at least a couple of examples  
11 of PJM efforts to get the RPM clearing price closer  
12 to net CONE, and that would be, if you agree, the  
13 capacity performance proposal as well as the proposal  
14 to change the slope and the shift of the demand  
15 curve?

16 MR. OLIKER: Object to  
17 mischaracterization of trying to move it toward net  
18 CONE. I don't think that is anywhere in PJM's  
19 proposal.

20 EXAMINER WALSTRA: Overruled.

21 A. Okay. So there are proposals. So you  
22 have the Brattle recommendations to just the variable  
23 resource requirement curve and make it convex instead  
24 of concave, which makes sense in my mind because when  
25 we participated a long time ago in the RPM

1 discussions, the objective was reliability, to  
2 improve reliability and maintain reliability. And  
3 Brattle was able through its experiments to  
4 demonstrate how it's more reliable to have a convex  
5 variable resource requirement.

6 And the other one is the capacity  
7 performance revisions that they are currently in the  
8 process of conducting, and we in Ohio have supported  
9 some of these recommendations and we've made filings  
10 at FERC or the chairman last week sent a letter to --  
11 to the PJM board letting them know how important  
12 reliability is to Ohio and how we support them on  
13 certain provisions, and certain provisions we  
14 recommended some changes. But I wouldn't say the  
15 objective is to go up to net CONE. The objective is  
16 to compensate them fairly.

17 Q. Okay. And by compensating the generators  
18 or the potential builders of new generation fairly,  
19 that would be by increasing the RPM price which has  
20 been suppressed?

21 A. It depends. I mean increasing it from  
22 what? From \$16? Yes. From 120? I'm not sure. But  
23 from \$16, yes, I think we can all agree that \$16 is  
24 not enough to compensate. It could be market price,  
25 that's the market price, but does it compensate a

1 generation owner fairly? That's the question.

2 Q. Well, right, but if the PJM process  
3 capacity performance of changing the VRR does  
4 increase the RPM, all else equal, wouldn't that raise  
5 costs on consumers to pay for the added reliability?

6 A. Yes. The current VRR curve would end up  
7 costing more, yes.

8 Q. The proposed VRR?

9 A. The proposed VRR. I apologize. The  
10 proposed VRR would cost more. Capacity performance,  
11 you know, we will have to see. The argument is it's  
12 going to also -- the folks that are having the  
13 discussions right now are saying it's going to be  
14 also more expensive. But we don't know if it's more  
15 expensive -- again, the discussion is, is it more  
16 expensive than \$16, yes, but maybe not more expensive  
17 than \$120 or \$130.

18 Q. Okay. If the RPM price for capacity goes  
19 up from whatever starting point, I guess all else  
20 equal, that makes the PSR more likely to be a credit,  
21 mathematically speaking, would you agree?

22 A. It depends how high it needs to get. I  
23 mean, I didn't look at the OVEC numbers to see -- I  
24 didn't look at them to see, for example, at the \$109  
25 a megawatt-day, customers are in the money.



1           Q.    No, I am saying no matter where you  
2           start, if it goes up, mathematically they get more  
3           capacity revenue, so the PSR is more likely to be a  
4           credit?

5           A.    All else being equal, because costs may  
6           go up, too. We are assuming costs are stable and you  
7           are telling me the capacity price increases, then I  
8           will buy your argument.

9           Q.    Okay. Now, I want to talk about the net  
10          CONE a little bit more. That's the beginning of the  
11          PJM VRR demand curve? That's the first spot on the  
12          graph, the starting point?

13          A.    Yes. So PJM has three points they build  
14          on the curve. One of them is net CONE. One of them  
15          is 20 percent of net CONE, and one of them is 1.5 of  
16          net CONE, 150 percent of net CONE. Those determine  
17          the three ordinants on the curve.

18          Q.    Okay. So we've had this discussion  
19          before. You firmly believe that the PJM energy  
20          market is competitive, correct?

21          A.    It's highly competitive most of the time.

22          Q.    Now, but the PJM capacity market is an  
23          administratively determined market simply by virtue  
24          of the fact you've got to have the Federal Government  
25          buildup of a demand curve that goes into the

1 equation?

2 A. It's the Federal Government.

3 Q. PJM --

4 A. PJM is regulated by FERC, correct, but  
5 it's a stakeholder process that everyone gets  
6 involved in. But, yes, so it's an  
7 administratively -- capacity is scarce, definitely.  
8 I mean, that's why the market monitor mitigates  
9 everyone to their offers -- to their costs, you know,  
10 every year.

11 Q. And in starting the net CONE, the  
12 administratively determined net CONE, you start  
13 off -- first you have to pick the technology combined  
14 cycles, combustion turbine or combination or  
15 something, correct?

16 A. Yes.

17 Q. And then you have to estimate the capital  
18 costs of the technology, correct?

19 A. Yes.

20 Q. Property taxes, land rights, gas  
21 transportation cost, transmission interconnection  
22 cost, all those types of things go into the equation?

23 A. Yes.

24 Q. Then you have to assume a cost of capital  
25 for the developer?

1           A.    Yes.

2           Q.    A capital structure for the developer?

3           A.    Those are all steps PJM does every year  
4 and that's under the RPM tariff.

5           Q.    That's an administrative process. That's  
6 not what we normally think about when we think about  
7 the free market. A regulator assuming all these  
8 different things to get the starting point for net  
9 CONE, that is an administrative process, isn't it?

10          A.    Yes, but my point is at the same time is  
11 I am seeing investors taking a chance and building.  
12 We have one in Ohio that has participated in the RPM  
13 market and will be on during the '17-'18 delivery  
14 year.

15          Q.    Okay. Oh, and then that just gets you to  
16 gross CONE. Then you have to make assumptions to net  
17 out the energy and the ancillary revenues, what gas  
18 prices are going to be, what market energy prices are  
19 going to be to get a net number, correct?

20          A.    The net CONE you look at historical. So  
21 you look at the historical revenues and energy and  
22 ancillary services market and you subtract those by  
23 region.

24          Q.    Okay. So the energy and the ancillaries  
25 is not a forecast. It's based upon historical.

1           A.    Brattle is recommending that you use  
2 forward-looking energy and ancillary service revenues  
3 instead of historical.

4           Q.    And there will be an offset of the gross  
5 cost to get to net CONE?

6           A.    Correct, but PJM did not accept that  
7 recommendation.

8           Q.    I want to go to your testimony just a  
9 little bit. Page 9, line 3, you said, "For over a  
10 decade now, the Commission has been transitioning the  
11 four electric distribution companies toward a  
12 fully-competitive retail market," and then on page  
13 11, line 7, you say it's the Commission's objective  
14 to transition the utilities to a fully-competitive  
15 market. I paraphrased, but that's generally -- is  
16 that correct?

17          A.    Yes.

18          Q.    You recognize that the Commission is a  
19 creature of statute?

20          A.    Yes.

21          Q.    And that the Commission has to accept the  
22 statutes passed by the legislature?

23          A.    That's correct. We follow the law.

24          Q.    Right. Sometimes it's hard to know what  
25 221 means, but at least the Commission tries to

1 accept it or follow it.

2 You are aware that Senate Bill 3 back in  
3 1999 was sort of full peer deregulation model I would  
4 call it. Tell me if you agree with that  
5 characterization.

6 A. Yes. It was basically deregulating  
7 generation service.

8 Q. And Senate Bill 221, whatever it did, it  
9 certainly changed Senate Bill 3; do you agree?

10 A. I agree.

11 Q. Okay. It added a renewable portfolio  
12 standard, correct?

13 A. Yes.

14 Q. A certain amount of power in Ohio had to  
15 come from advanced energy, what was it, advanced  
16 nuclear and IGCC type projects as well?

17 A. Yes.

18 Q. Okay. There was a provision that  
19 distribution utility could get a construction  
20 work-in-progress surcharge for the building of new  
21 environmental or generation equipment if it was  
22 dedicated to Ohio load; is that correct also?

23 A. Yes. As I recall, there was something  
24 about if it's dedicated to Ohio load, then they have  
25 several step necessity conditions. It has to be

1 competitively bid. There's a bunch of steps for  
2 that.

3 Q. So the policy of Ohio now, would you  
4 agree that -- and then it has -- under the 02 -- you  
5 quoted this in your testimony. It has lots of  
6 different policies for the state of Ohio.

7 A. Yes.

8 Q. So is it your opinion that it's the  
9 legislature's policy as evidenced by 221, Senate Bill  
10 221, to move the utilities towards a fully  
11 competitive market, or is it the Commission's  
12 objective?

13 A. So the legislators gave the Commission  
14 the tools, one of the tools in case something doesn't  
15 work out in the wholesale market, then we have that  
16 tool of granting recovery to an EDU to build  
17 generation for reliability to then dedicate it to  
18 Ohio, but we are not even there. I don't think we  
19 are even close to being there.

20 So it's a tool that hasn't been used for  
21 the EDU to ask for recovery after an assessment of  
22 need. So for us, we have to go through the  
23 forecasting statute, look at their demand, look at  
24 their generation. There's an assessment of need. To  
25 the extent the Commission makes a finding that there

1 is a need, then you can use the ESP statute to grant  
2 recovery if the Commission wishes.

3 Q. Do you understand that under Senate Bill  
4 221, there is a market rate option for the Commission  
5 for SOS service or the electric stability plan?

6 A. Security plan.

7 Q. Electric security plans, the ESPs, which  
8 is what we're in now?

9 A. Yeah, I understand that both of them are  
10 available. But right now, even under an electric  
11 security plan construct, we have the market option,  
12 at least for Duke and FirstEnergy, and very soon for  
13 Dayton Power and Light and AEP.

14 Q. Do you think that the market rate option,  
15 the MRO option under Senate Bill 221, is more of a  
16 market option than the ESP?

17 A. Nowadays it's not -- it's no longer -- in  
18 terms of just the price of generation, it's the same.  
19 It's under the electric security plan against -- the  
20 Commission has tools, like a safety valve, think of  
21 it as a safety valve. It's security for the electric  
22 distribution utility, and it's a security valve for  
23 the consumers.

24 To the extent we are not getting enough  
25 reliability and we are not there, right now we still

1 have an entirely reliable grid of PJM. So to the  
2 extent something happens that would cause the  
3 Commission to be concerned, then under the electric  
4 security plan, the Commission has the necessary tools  
5 to do something about it. Under the market rate  
6 option, it's not there. At least the recovery  
7 mechanism is not there for the electric distribution  
8 utility.

9 Q. Under the ESP statute, the Commission can  
10 put limitations on shopping also, can it not?

11 A. They may be able to, yes.

12 Q. Let me just finish out and shift gears.  
13 Clearly staff is opposed to the PSR, but then you  
14 hedge the staff position by saying, but if you do  
15 approve it against our recommendation, we have these  
16 five things you should consider; is that correct?

17 A. Yes.

18 Q. Okay. Three and four are audit the  
19 expenses and audit the revenues with the ability of  
20 the Ohio Commission to disallow expenses that are  
21 imprudent or revenues that were somehow unreasonable,  
22 I guess?

23 A. Yeah. 3 and 4 is basically -- right now  
24 we don't see an incentive for Duke to minimize costs  
25 or maximize revenues. So there is no risk on them at



1 all whatsoever.

2 Q. Are you familiar with the FirstEnergy ESP  
3 filing?

4 A. I am familiar with it, but I haven't read  
5 it yet.

6 Q. Have you looked at the provision of their  
7 giving the Commission and the staff audit rights?  
8 Have you looked at that part of it?

9 MR. BEELER: I'm going to object here.  
10 He just said he didn't read it.

11 MR. KURTZ: That's fine.

12 EXAMINER WALSTRA: Overruled.

13 Q. One last question then. You're familiar  
14 with the OEG proposal that if the Commission approves  
15 the PSR, Duke ought to retain 10 percent skin in the  
16 game, 10 percent interest in the transaction?

17 A. Yes, I'm familiar with it.

18 Q. Would that skin in the game, 10 percent  
19 proposal, better give Duke an incentive to control  
20 costs and maximize revenue?

21 A. 10 percent is a small incentive.  
22 50 percent is like Mr. Wilson in his testimony is  
23 more incentive. Our staff position is 100 percent.  
24 Then they have all the incentive to maximize their  
25 revenues and reduce their costs.

1           Q.    Right.  But then there would be no hedge  
2   to the extent you think it's a hedge?

3           A.    To the extent a consumer wants a hedge,  
4   maybe Duke ought to contract an affiliate of theirs  
5   to go sell insurance to all their residential  
6   consumers in Ohio and ask them, hey, for 30 cents,  
7   you can get a hedge.  Would you like it?  And they  
8   can say yes or no.

9           Q.    Well, is a 10 percent skin in the game  
10  better than a 0 percent from staff's point of view?

11          A.    Yes.

12          MR. KURTZ:  Okay.  Thank you, your Honor.

13          EXAMINER WALSTRA:  Thank you.

14          Mr. Oliker?

15          MR. OLIKER:  Just pretty briefly, your  
16  Honor, thank you.

17                                 - - -

18                                 CROSS-EXAMINATION

19   By Mr. Oliker:

20          Q.    Good morning, Mr. Choueiki.

21          A.    Good morning.

22          Q.    There's been a lot of talk of insurance  
23  and hedges this morning.  And just a quick question  
24  on that.

25                 Would you agree that if -- assuming the

1 PSR was approved and there's a large increase in  
2 market prices but OVEC has an equivalent increase of  
3 cost of production, would you agree in that scenario  
4 the OVEC generation does not provide a hedge?

5 MS. SPILLER: Objection. Assumes facts  
6 not in evidence and that have not been established in  
7 this case.

8 EXAMINER WALSTRA: Overruled.

9 MR. BEELER: Can I have that question  
10 reread, please?

11 (Record read.)

12 A. Yes. In this case, if cost is increasing  
13 at the same rate as the revenues and that's why my  
14 response to Mr. Kurtz was when he gave me that  
15 assumption, assume that prices on capacity market,  
16 prices would go up all else being equal, so if the  
17 cost stays the same, then you have a benefit. But if  
18 the cost goes up with the revenues, then basically  
19 there's no protection. We are just paying more.

20 Q. Thank you, Dr. Choueiki. And talking  
21 about -- let's call it your plan B recommendation and  
22 the prudence evaluation. I just want to test that  
23 for a second. Would you agree that a prudence review  
24 of very large scale expenditures at OVEC may not be  
25 very effective because it could have the tendency to

1 potentially bankrupt the distribution utility?

2 A. If the costs are --

3 Q. Let's assume a hypothetical, and you  
4 might have been in the room for this before.

5 Assuming the OVEC board approves carbon cap --  
6 sequestration, that's a very expensive environmental  
7 control, correct?

8 A. Correct.

9 Q. So assuming it's 5 billion, 10 billion  
10 dollars, the Ohio Commission does not agree, and if  
11 they determined in a prudence review that would still  
12 require Duke Energy Ohio to pay OVEC but they would  
13 have to record a loss at the distribution level,  
14 correct?

15 A. Yes.

16 Q. And the practical consequence of that is  
17 to reduce the return on equity of the distribution  
18 utility, correct?

19 A. Yes.

20 Q. And if the return on equity of the  
21 distribution utility is lowered to a significant  
22 degree, won't the distribution utility just come in  
23 with an emergency rate case and ask for more money to  
24 maintain reliability?

25 A. Yeah, they would have that right under

1 the statute to come in and ask for money. If they  
2 can't pay their bills, they have a protection under  
3 the statute to come.

4 Q. Okay. So assuming that there is a large  
5 scale expenditure that the Commission doesn't agree  
6 with, it's a possibility that the distribution  
7 utility could have the money disallowed but then just  
8 file an application to be made whole anyway?

9 A. That's correct. That's why, you know,  
10 we -- our preference would be to give them this three  
11 years to the extent the Commission approves it, but  
12 within that three years, either transfer it or sell  
13 it.

14 Q. Okay. And just one last question and now  
15 that Duke Energy Ohio has transferred its -- the  
16 majority of its generating assets to Duke Energy  
17 Corporation, would you agree that the -- there's a  
18 smaller capital structure at this point in time so a  
19 loss of distribution level will have a larger impact  
20 than it would have, say, two years ago?

21 A. Yeah. If you were looking only at the  
22 OVEC units in reference to a larger fleet of  
23 generation that Duke Energy owns and now suddenly  
24 that is gone, yes, I mean, that's because -- so you  
25 are looking at just the generation assets of OVEC

1 with all the distribution assets --

2 Q. Right.

3 A. -- of the EDU. Before you have a larger  
4 rate base. Now you have less.

5 MR. OLIKER: Okay. Thank you. No more  
6 questions, your Honor. And thank you, Dr. Choueiki.

7 EXAMINER WALSTRA: Thank you.

8 Mr. Hart?

9 MR. HART: Yes, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Hart:

13 Q. Dr. Choueiki, you testified that you  
14 reviewed the financial information regarding the OVEC  
15 proposal, correct?

16 A. Yes, I've looked at all the forecasts.

17 Q. And does that include information  
18 provided in discovery in this case?

19 A. Yes.

20 Q. And have you reviewed the alternative  
21 proposal from OEG?

22 A. OEG? I can't recall. I don't know  
23 what -- like what is the alternative proposal?

24 Q. Do you recall a proposal to have Duke  
25 fund the shortfalls so that it will levelize the

1 charges?

2 A. So basically instead of front ending the  
3 costs and having the benefits later, putting the  
4 benefits and the cost all together and making the  
5 cost a lot less in the first three years?

6 Q. Correct. That's what I am referring to.

7 A. Yes, yes.

8 Q. And you studied that proposal as well?

9 A. I didn't study it, but I looked at it. I  
10 looked at that proposal, yes.

11 Q. Now, I believe you've testified that you  
12 did not believe that OVEC entitlement would be an  
13 effective hedge. Could you explain what you mean by  
14 that?

15 MS. SPILLER: I am going to again object  
16 to the friendly cross.

17 EXAMINER WALSTRA: Overruled.

18 A. Well, first, I disagree with the concept  
19 of having anything with generation tied to an  
20 nonbypassable rider, but it's a very small -- and I  
21 can't say -- now I can't recall. I have to parse  
22 information what has been deemed confidential and  
23 what has not.

24 But in looking at the volume of  
25 distribution megawatt hours, the OVEC generation is

1 small. Duke's ownership of the OVEC entitlement of  
2 the OVEC output is very small, is diminimus. So  
3 that's why it's ineffective

4 Q. So there wouldn't be enough either profit  
5 or cost out of that to offset the larger market  
6 price?

7 A. Given the data I've looked at, yes. For  
8 example, we know exactly now what the revenues are  
9 going to be in the energy market and in the ancillary  
10 services market and in the capacity market at least  
11 for the next three years. Anything past that I don't  
12 believe in, you know, whether it's high or very high  
13 or medium or low. Past three years it's too hard to  
14 predict capacity prices. So it's not transparent to  
15 go past that.

16 Q. All right. Now, your alternative  
17 proposal is if rider PSR were to be approved to limit  
18 it to the term of the ESP, correct?

19 A. Yes.

20 Q. And that would be a three-year period?

21 A. Yes.

22 Q. Have you formed any conclusions about the  
23 economics of the OVEC entitlement over that  
24 three-year period?

25 A. Well, we know it's based on the



1 forecasted costs that were provided in discovery and  
2 we know what the market prices are. It's going to  
3 cost about \$22 million, right? So if you were to  
4 divide the \$22 million by 60 million megawatt hours  
5 of distributed generation service over a three-year  
6 period, that's about 36 cents a megawatt hour.

7 Q. Okay. Thank you.

8 A. Between 30 and 36 depending what is the  
9 distribution load.

10 Q. Have you formed any conclusions about how  
11 long the rider PSR would have to remain in place in  
12 order for it to be a break-even proposition?

13 A. No.

14 Q. Have you come to any conclusions about  
15 the economic results of the OEG proposal?

16 A. No. I mean, I heard testimony when I was  
17 here when Mr. -- I can't remember his name, if it's  
18 Taylor. Taylor? When he was presenting his case and  
19 where he said if you were to average it over a  
20 nine-year period, it ends up being about \$700,000 a  
21 year.

22 Q. As a charge?

23 A. As a charge, yeah.

24 Q. So it would still be a negative net  
25 result?

1           A.     Yes.

2           MR. HART:   Thank you.

3           EXAMINER WALSTRA:   Ms. Petrucci?

4           MS. PETRUCCI:   No questions.

5           EXAMINER WALSTRA:   Take maybe a quick  
6 break.

7           MS. SPILLER:   Oh, sure.   Thanks, your  
8 Honor.

9           (Recess taken.)

10          EXAMINER WALSTRA:   All right.   We will go  
11 back on record I believe with Ms. Spiller.

12          MS. SPILLER:   Thank you, your Honor.

13                               - - -

14                               CROSS-EXAMINATION

15          By Ms. Spiller:

16               Q.     Good morning, Mr. Choueiki.

17               A.     Good morning.

18                       I want to talk just very briefly about a  
19 question and answer that you just had with Mr. Hart.

20                       I believe, sir, you've indicated that we  
21 know today exactly what the energy and capacity  
22 revenues will be for the next three years.   Did I  
23 restate your testimony, correct?

24               A.     Capacity, yes.   Energy, it's more -- if I  
25 said that, then what I'm -- then I misstated, you're

1 right. On the energy side, basically it depends.  
2 For SOS auctions, for example, we know what the  
3 contracts are, what the forward contracts are  
4 actually right now. So I can tell you if I want to  
5 sell you electricity, I can go and get actual prices  
6 in the forward market.

7 Q. But with respect to Duke Energy Ohio's  
8 next ESP, the term of which commences on June 1,  
9 2015, we don't know today exactly what the energy  
10 revenues would be associated with Duke Energy Ohio's  
11 proposed PSR, correct?

12 A. We can look at contracts and get a very  
13 good estimate.

14 Q. But the energy associated with Duke  
15 Energy Ohio's 9 percent contractual entitlement will  
16 be bid into the PJM realtime and day-ahead markets,  
17 correct?

18 A. That's correct.

19 Q. And those markets have not yet  
20 materialized, have they, sir?

21 A. No. We weren't talking about that with  
22 Mr. Hart.

23 Q. And with respect to the SSO auction  
24 prices relative to Duke Energy Ohio's ESP that  
25 commences on June 1, 2015, we don't know what those

1 auction prices will yield in respect of energy, do  
2 we?

3 A. We can predict them quite accurately  
4 actually in-house nowadays because we look what the  
5 forward market is and we can predict a clearing  
6 price. We have the staff that is very highly  
7 creative and are able to predict within a very good  
8 accuracy.

9 Q. And have you done those predictions for  
10 purposes of your testimony in this case?

11 A. Not for this case, no.

12 Q. And you would agree with me that none of  
13 the wholesale SSO auctions for Duke Energy Ohio's 30  
14 ESP have yet occurred yet?

15 A. That's right.

16 Q. And, sir, you testified on behalf of  
17 staff in the AEP ESP proceeding that went to hearing  
18 in the summer of 2014, correct?

19 A. Yes.

20 Q. And you testified on matters similar to  
21 those on which you're testifying in this case,  
22 correct?

23 A. Yes.

24 Q. There is some distinction in that AEP  
25 called their rider PPA, correct?

1           A.    A couple of distinctions, one of them is  
2           that Duke is asking for more than three years.  And  
3           secondly -- second is the issue of how the  
4           adjustments, the true-ups are adjusted.  The AEP  
5           proposes an annual true-up.  Duke is proposing a  
6           quarterly true-up.

7           Q.    And certainly with respect to OVEC or the  
8           Ohio Valley Electric Corporation, you would agree  
9           with me that both AEP and Duke Energy Ohio are  
10          proposing to sell their contractual entitlements for  
11          energy and capacity into the PJM wholesale markets,  
12          correct?

13          A.    Yes.

14          Q.    And both companies, AEP and Duke Energy  
15          Ohio, do have contractual entitlements in OVEC,  
16          correct?

17          A.    Yes.  Ohio Power is about 19 -- almost 20  
18          percent and Duke is 9 percent.

19          Q.    Okay.  And as set forth in the ESP  
20          applications of both AEP Ohio and Duke Energy Ohio,  
21          these rider PPA and rider PSR proposals are similar  
22          with regard to the respective companies' OVEC  
23          contractual entitlements, correct?

24          A.    They both have the same ownership  
25          structure.  They are both signatories to the ICPA, so

1 both of them have the same contract, just different  
2 portions.

3 Q. In their respective ESP applications,  
4 both Duke Energy Ohio and AEP Ohio proposed these  
5 riders in respect of their OVEC entitlements,  
6 correct?

7 A. That's correct.

8 Q. And Duke Energy Ohio is proposing to  
9 provide to all retail customers in its service  
10 territory the net benefits associated with its  
11 contractual entitlement in OVEC, correct?

12 A. It could be net -- the net benefit could  
13 be positive or negative, which would be a cost.

14 Q. And, sir, you've indicated -- through  
15 some of your testimony this morning, you've  
16 referenced a \$22 million cost. And that's based upon  
17 one forecast that you reviewed, correct?

18 A. That's based on a data request that was  
19 given to Duke and Duke answered, or OVEC. Either  
20 Duke or OVEC answered. I don't recall.

21 Q. And do you recall, sir, whether that  
22 forecast concerned future years, 2015 and beyond?

23 A. Well, it was from 2015 to 2018.

24 Q. The forecast went beyond that, though,  
25 through 2024?

1           A.     Correct. I was looking only at the first  
2     three years.

3           Q.     Did you look at the cash flow lines for  
4     the entire year of that forecast -- for all of the  
5     years of that forecast?

6           A.     Yes. I think I discussed this earlier  
7     with another lawyer, that I've looked at all of them,  
8     and, you know, whether it's OEG's which had -- if you  
9     were to look at all of them together, the net cost  
10    was going to be about \$700,000 a year instead of \$7  
11    million a year for the first three years.

12          Q.     But you did not on behalf of staff  
13    perform your own forecast relative to Duke Energy  
14    Ohio's proposed rider PSR, correct?

15          A.     We don't forecast capacity. Capacity is  
16    a very hard number to forecast, so we did not.  
17    Neither are we in the business of forecasting  
18    revenues for generation given that we're going away  
19    from regulating generation in Ohio.

20          Q.     And why is capacity hard to forecast,  
21    Dr. Choueiki?

22          A.     Because it could be -- we've seen  
23    historically it could be \$16 or it could jump from  
24    \$16 -- from \$120 to \$16 then \$27 and then back to  
25    \$125. So it's very volatile.

1 Q. And the capacity here is the wholesale  
2 capacity in PJM, correct, that you are referring to?

3 A. PJM only has wholesale capacity. They  
4 don't do anything else.

5 Q. Sir, I would like to talk for a moment  
6 about the portion of your testimony that concerns  
7 corporate separation, and I believe this begins on  
8 pages 5 and 6 of your testimony.

9 A. Okay.

10 Q. The stipulation to which you refer in  
11 case 11-3549 is one to which staff was a party,  
12 correct?

13 A. Yes.

14 Q. And I believe, sir, you've indicated that  
15 you and Ms. Turkenton were part of the negotiating  
16 team for staff in connection with this proceeding and  
17 the resulting stipulation, correct?

18 A. Yes.

19 Q. And you would agree with me that staff  
20 certainly had the opportunity to read and provide  
21 comment on the various drafts of the stipulation as  
22 well as the final stipulation, correct?

23 A. Yes.

24 Q. And you would agree with me that staff,  
25 in fact, did propose particular language to be



1 included in the stipulation, correct?

2 A. Yes.

3 MS. BOJKO: Objection, your Honor. This  
4 sounds pretty close to settlement discussions if we  
5 are talking about drafts of documents.

6 MR. BEELER: Yeah.

7 MS. SPILLER: I am not asking any  
8 specifics as to language that was included, just the  
9 process, and I believe the door has been opened with  
10 questions already today.

11 EXAMINER WALSTRA: Overruled.

12 A. No, we are not discussing any content of  
13 the stipulation, so I agree with you.

14 Q. Thank you, sir. And you would expect --  
15 strike that.

16 And in addition to you and Ms. Turkenton,  
17 staff also had the benefit of staff counsel to assist  
18 in the review of the various drafts of the  
19 stipulation, correct?

20 A. Correct.

21 Q. And you would expect that staff and its  
22 counsel would have taken care to ensure that the  
23 stipulation accurately set forth all of the terms and  
24 conditions to which staff was agreeing, correct?

25 A. Correct.

1 Q. And, Dr. Choueiki, staff provided  
2 testimony in support of the stipulation, correct?

3 A. Yes.

4 Q. And were you at the hearing in November  
5 of 2011 in connection with the ESP stipulation?

6 A. I'm sorry. I can't recall. I may have  
7 been. I think Witness Turkenton was the one who  
8 filed testimony. I can't recall if I did. I don't  
9 think I did.

10 Q. She did. And are you aware of other  
11 individuals filing testimony in support of the  
12 stipulation?

13 A. I think Mr. Whitlock did, and maybe at  
14 that time the president --

15 Q. Ms. Janson?

16 A. -- of Duke. Ms. Janson, yeah.

17 Q. And Dr. Choueiki you -- strike that.

18 You are aware of the outcome of that  
19 hearing on the ESP stipulation, correct?

20 A. Yes.

21 Q. So the Commission reviewed the  
22 stipulation, considered the testimony offered in  
23 support of the stipulation and then rendered its  
24 opinion and order, correct?

25 A. Correct. I think the debate is not

1       whether we agree with the stipulation. The debate is  
2       how we interpret the stipulation, and we understood  
3       the stipulation. Everyone except Duke understood the  
4       stipulation to mean something. That's what it boils  
5       down to.

6               Q.     I feel a little deja vu here from last  
7       year's proceedings, sir. But, if you will, you're  
8       offering, I believe you said today, what you believe  
9       the stipulation to say, correct?

10              A.     What me and everyone else except Duke.

11              Q.     And, sir, you've been through most of  
12       this proceeding. You sat through a good portion of  
13       this proceeding, correct?

14              A.     A good portion, yes.

15              Q.     And so you would agree with me that there  
16       has not been the parade of witnesses similar to what  
17       we saw last year regarding the interpretation of this  
18       stipulation, has there?

19              A.     I can't recall how many folks testified  
20       in that previous one, the one -- you are talking  
21       about the Duke's capacity case --

22              Q.     Yes, sir.

23              A.     -- right? I can't recall. Did we have a  
24       lot more witnesses or less? I can't recall.

25              Q.     Well, in this case, Kroger has offered a

1 witness, correct?

2 A. In this case?

3 Q. Yes, sir.

4 A. I wasn't here if they did, no. I'm  
5 sorry.

6 Q. Okay. So you don't know whether or not  
7 Mr. Higgins has offered testimony in this case  
8 regarding what the ESP stipulation requires, correct?

9 MR. BEELER: Objection. He just said he  
10 didn't know.

11 EXAMINER WALSTRA: He can answer if he  
12 knows.

13 A. Mr. Higgins represents Kroger?

14 Q. He's one of the witnesses for -- he is  
15 the witness for Kroger, yes, sir.

16 A. I wasn't here for his testimony, so I  
17 don't know what he said, and I didn't read his  
18 testimony. I'm sorry.

19 Q. Did you read any of the intervenor  
20 testimony in this case?

21 A. A few.

22 Q. And the intervenor testimony that you  
23 read, did that provide any opinions or views of those  
24 witnesses concerning the interpretation of the ESP  
25 stipulation?

1           A.     So the ones that I read were Mr. Wilson's  
2     testimony and Mr. Taylor's testimony, and I don't  
3     recall if I read any others.

4           Q.     Okay. And you recall -- I'm sorry. Go  
5     ahead.

6           A.     Those are the two that I remember that  
7     I've read, you know, after they filed.

8           Q.     Okay. And, Dr. Choueiki, as I understand  
9     your written testimony, it's your opinion that Duke  
10    Energy Ohio is required to transfer its contractual  
11    entitlement in OVEC under the provision of the  
12    stipulation that says it is to transfer its  
13    generating assets.

14          A.     Yes. Because even Duke's position was --  
15    and actually after you introduced Mr. Whitlock's  
16    testimony in that case, I went and read it. And  
17    Duke's objective was to become a pure wires company.  
18    I mean, that's one of the benefits of the stipulation  
19    as Duke argued was it's in the benefit -- Duke Ohio  
20    will become a wires only company and then all the  
21    generation would go and compete in the wholesale and  
22    retail markets. Those are two objectives we like.

23          Q.     And you would agree with me that the  
24    stipulation -- and do you need a copy of it, sir?

25          A.     Oh, I'm sorry. Of what?

1 Q. The ESP stipulation?

2 A. I think I may have brought it with me.

3 Let me double-check here. I think I have it.

4 Q. Do you have the entire document, sir?

5 A. I have the entire stipulation.

6 Q. Probably minus the attachments. Those  
7 were rather voluminous.

8 A. Yeah, I don't have the attachments.

9 Q. And so it's your testimony that Duke --  
10 strike that.

11 It's your testimony that the generating  
12 assets as referenced in the ESP stipulation extend  
13 and include to Duke Energy Ohio's contractual  
14 entitlement in OVEC, correct?

15 A. With the exception to the extent that a  
16 contract does not allow you to spin off that  
17 generation, then there is language about that, and I  
18 can't remember in which paragraph.

19 Q. Well, sir, but let's go to page 6 of your  
20 written testimony that you filed in this case. On  
21 page 6, beginning on line 10, you express your  
22 disagreement with Mr. Wathen's testimony, and you  
23 indicate whether the company directly owns a  
24 generating asset or stock it's your opinion that the  
25 entitlement -- it's your opinion that the company

1 owns an entitlement to the energy and capacity that  
2 comes out of the asset, correct?

3 A. Correct. That's correct.

4 Q. So is it your view that Duke Energy  
5 Ohio's contractual entitlement in OVEC is tantamount  
6 to a generating asset as referred to in the  
7 stipulation?

8 A. Yes, because Duke Ohio owns 9 percent of  
9 OVEC. OVEC owns a bunch of stations, generation  
10 stations. So as far as I'm concerned, and that's my  
11 nonlegal opinion, they own 9 percent of every unit  
12 that fires.

13 Q. And, therefore, Duke Energy Ohio's  
14 contractual entitlement in OVEC is tantamount to a  
15 generating asset as referenced in the ESP  
16 stipulation, correct? That's your opinion?

17 A. Yes.

18 Q. Sir, would you look at page 9 of the  
19 stipulation, please.

20 A. Okay.

21 Q. The footnote there actually does provide  
22 a definition of generation assets, correct?

23 A. Yes.

24 Q. And this definition refers to all  
25 generation assets currently directly owned by Duke

1 Energy Ohio, correct?

2 A. Correct. And I understand OVEC to be  
3 directly owned by Duke Ohio.

4 Q. The OVEC generating assets, Kyger Creek  
5 and Clifty Creek, it's your position that Duke Energy  
6 Ohio directly owns those two generating assets?

7 A. Okay. I don't distinguish at all in my  
8 mind whether Duke Energy Ohio owns 39 percent again  
9 of Stewart or 9 percent of OVEC that owns lots of  
10 generation, 11 units. I don't see that -- I don't  
11 see a distinction in my nonlegal mind.

12 Q. Okay.

13 A. So that's how I understood it.

14 Q. And you understood that Mr. Whitlock  
15 delineated on his testimony in support of the ESP  
16 stipulation all of the then operating and retired  
17 generating assets that Duke Energy Ohio directly  
18 owned, correct?

19 A. Mr. Whitlock didn't talk about all  
20 generation assets. He only talked about the legacy  
21 generation assets of Duke Ohio. OVEC was never a  
22 legacy asset. As a matter of fact, you never used to  
23 report it in the long-term forecast report because it  
24 wasn't built for Ohio. Duke and OVEC was built for  
25 the U.S. Department of Energy. They were a one



1 customer company.

2 Q. And, sir, I appreciate that, but I'm  
3 going to go back to my question. You know that  
4 Mr. Whitlock delineated in his testimony filed in  
5 support of the stipulation all of the operating  
6 generating assets that Duke Energy Ohio directly  
7 owned as well as all of the retired generating assets  
8 that Duke Energy Ohio directly owned, correct?

9 MR. BEELER: I am going to object. He  
10 just answered that. He described what was listed in  
11 Mr. Whitlock's testimony.

12 MS. SPILLER: I don't -- I think we got  
13 off on a discussion about why OVEC was created.

14 MR. BEELER: No. He said that --

15 EXAMINER WALSTRA: Overruled.

16 A. I think I answered you. I said  
17 Mr. Whitlock defined all legacy assets. He didn't  
18 define all generation assets because Duke Energy Ohio  
19 owns more than the legacy assets.

20 Q. And so staff was aware of Mr. Whitlock's  
21 testimony when it was filed with this Commission on  
22 October 28, 2011, correct?

23 A. Yes.

24 Q. Staff was aware of this testimony when  
25 Mr. Whitlock took the stand in November of 2011 and

1 offered live testimony, correct?

2 A. Yes.

3 Q. Okay. And at no time did staff question  
4 the content of Mr. Whitlock's testimony in support of  
5 the stipulation until you filed your testimony in  
6 this case on October 2, 2014, correct?

7 A. Because I agreed with him what legacy  
8 assets meant at that time.

9 Q. And the legacy assets as defined in  
10 Mr. Whitlock's stipulation include both operating and  
11 retired generating assets directly owned by the  
12 company, correct?

13 A. That's correct.

14 Q. And those delineations in Mr. Whitlock's  
15 testimony did not at all mention the contractual  
16 entitlement in OVEC, correct?

17 A. That's correct. But that didn't mean  
18 that the OVEC entitlement was not going to be  
19 separated too.

20 Q. Is OVEC, sir, anywhere mentioned in the  
21 ESP stipulation filed in case 11-3549?

22 A. No, it's not. That's my point. There  
23 was no exclusion in the stipulation for OVEC  
24 generating stations.

25 Q. There was no inclusion, was there, sir?

1           A.     So I guess the Commission will have to  
2     decide whether they agree with the ones who are  
3     promoting exclusion of OVEC or the ones who are  
4     promoting inclusion of OVEC. That's what it boils  
5     down to.

6           Q.     Dr. Choueiki, when staff enters into  
7     regulatory settlements, does it identify in those  
8     settlements everything that is not, including in the  
9     agreement.

10          A.     We try as much as we can because we tried  
11     and then you disagreed with us last year when you  
12     filed your capacity case, right? So we try our best  
13     to address all issues.

14          Q.     And in the capacity case, staff took the  
15     position that compensation for the FRR obligation was  
16     included in the stipulation, correct?

17          A.     We took the position that the stipulation  
18     compensated Duke Ohio for capacity, yes.

19          Q.     And so, again, sir, when staff enters on  
20     to settlements in the regulatory arena, does it  
21     identify within the body of that agreement everything  
22     that's excluded?

23          A.     To the best of our ability, we try to  
24     identify all the issues that we need to address in  
25     the stipulation.

1           Q.    And you believe that this stipulation --  
2           strike that.

3                    You would agree that staff would take  
4           care to ensure that the stipulations are accurate,  
5           correct?

6           A.    To the best of our ability, yes.

7           Q.    Dr. Choueiki, if I understand your  
8           testimony correctly, to the extent Duke Energy Ohio  
9           enters into a PPA with, say, Exelon, Duke Energy Ohio  
10          would have direct ownership in the generating assets  
11          supporting that PPA?

12          A.    I don't know what type of a PPA you're  
13          thinking about. You would have to describe it for me  
14          to tell you what I think it is.

15          Q.    It is a PPA that entitles Duke Energy  
16          Ohio to a certain percentage of the output associated  
17          with the Exelon generating assets.

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

19          Q.    In that circumstance and based upon the  
20          testimony in this case, if Duke Energy Ohio has that  
21          purchase power agreement with Exelon as I've just  
22          described, it would also have a direct ownership  
23          right in the generating assets that support that PPA?

24          A.    Okay. When I was considering the  
25          expansion of the PPA, I was only looking at Duke

1 Energy owned generation, not PPAs at all.

2 Q. Okay. But I am not there yet, and we  
3 will get to the expanded PPA in a moment, sir. But  
4 is it your position that if Duke Energy Ohio has a  
5 purchase power agreement with Exelon that would  
6 entitle it to a certain percentage of the output  
7 associated with Exelon generating assets, that Duke  
8 Energy Ohio also has a direct ownership right in the  
9 generating assets supporting that PPA?

10 A. No, because your agreement is different.  
11 With OVEC, you don't have the PPA. Duke Energy owns  
12 9 percent of OVEC.

13 Q. It owns a corporation, correct?

14 A. Correct, that owns generation.

15 Q. And you were here -- were you here for  
16 Mr. Brodt's deposition?

17 A. I wasn't here for any of the depositions.

18 Q. I'm sorry. For his live testimony?

19 A. I don't think so.

20 Q. And so I would ask you to assume that  
21 John Brodt, the CFO for OVEC, has testified that Duke  
22 Energy Ohio does not hold title to either Kyger Creek  
23 or Clifty Creek, do you have any basis on which to  
24 disagree with Mr. Brodt?

25 A. I haven't heard that entire testimony, so

1 I don't know whether to agree or disagree. I know  
2 that Duke Energy Ohio owns title to the output of  
3 OVEC. I see because I know what you bid into the  
4 energy market.

5 Q. Okay. And I believe your exchange with  
6 Ms. Bojko this morning was that you believe Duke  
7 Energy Ohio to have an obligation to transfer its  
8 interests in OVEC by virtue of the stipulation in the  
9 ESP case, correct?

10 A. Correct. That's why I make the  
11 recommendation for Duke to do like AEP did, ask for a  
12 waiver if to the extent it looks like you have enough  
13 evidence to demonstrate to the Commission why you  
14 can't spin off or transfer OVEC ownership to someone  
15 else. So AEP asked for a waiver. I'm recommending  
16 that you ask for a waiver.

17 Q. And, sir, under the ESP stipulation, Duke  
18 Energy Ohio is required to transfer its generation  
19 assets as defined in that agreement to an affiliate,  
20 correct?

21 A. I'm trying to remember what the  
22 Commission said. The Commission, they adopted that  
23 stipulation. They said to transfer all generation  
24 assets.

25 Q. To an affiliate, correct?

1           A.     Right.

2           Q.     And, sir, are you aware what the  
3     Intercompany Power Agreement requires with respect to  
4     transfers to an affiliate of a sponsoring company?

5           A.     I've read it 100 times and I still don't  
6     understand it.

7           Q.     Okay.

8           A.     But I know that the conditions are quite  
9     stringent, but you are able to transfer title of  
10    ownership to an affiliate or to someone else who has  
11    a specific bond rating.

12          Q.     Able only if the requirements and  
13    conditions of the ICPA are met, correct?

14          A.     Correct. There are lots of conditions.

15          MS. SPILLER: Your Honor, may we  
16    approach, please?

17          EXAMINER WALSTRA: You may.

18          Q.     Dr. Choueiki, since you just mentioned  
19    AEP Ohio and their corporate separation, I would like  
20    to hand you what's been previously admitted into this  
21    case as Duke Energy Ohio Exhibit 7. This is AEP  
22    Ohio's application for approval for corporate  
23    separation, correct?

24          A.     That's what it says on it, yes.

25          Q.     And on page 4 of this document under

1 section 2, AEP Ohio identifies the scope of their  
2 proposed transfer, correct?

3 A. Yeah, there's a title, "Scope of proposed  
4 transfers."

5 Q. And this paragraph indicates that the  
6 transfer will include Ohio Power Company's or AEP  
7 Ohio's existing generating units and contractual  
8 entitlements, correct?

9 A. Yes.

10 Q. And then the footnoted reference  
11 refers -- for purposes of generating units refers to  
12 Mr. Nelson's testimony in the ESP II proceeding. The  
13 footnoted reference with respect to contractual  
14 entitlements expressly identifies various PPAs as  
15 well as the OVEC ICPA, correct?

16 A. Correct.

17 Q. And is it your recollection, sir, that  
18 the Commission approved AEP Ohio's corporate  
19 separation plan as described in Duke Energy Ohio  
20 Exhibit 7?

21 A. I'm pretty sure they did because they  
22 have been separated.

23 Q. They did.

24 A. They granted them a waiver on the OVEC  
25 because they demonstrated to the Commission why they



1 weren't able to.

2 Q. And so just so I'm clear of the history  
3 there, AEP Ohio made a request for corporate  
4 separation of its generation units and its  
5 contractual entitlements that included the OVEC ICPA,  
6 correct?

7 A. Yes, correct.

8 Q. The Commission then approved that  
9 corporate separation, correct?

10 A. Yes.

11 Q. AEP Ohio then went before the Commission  
12 and asked for a modification based upon their  
13 inability to transfer their contractual entitlement  
14 in OVEC, correct?

15 A. Correct.

16 Q. And to your knowledge, sir, the Ohio  
17 Commission granted that waiver, allowing AEP Ohio to  
18 retain their contractual entitlement in OVEC,  
19 correct?

20 A. Correct. Now, that's different than the  
21 Duke case. You are not in the same position at all  
22 because you have a stipulation.

23 Q. I understand the differences, sir. Thank  
24 you.

25 A. Okay.

1           Q.    You would agree with me that the Ohio  
2 Commission found that AEP Ohio had a legitimate  
3 reason to retain its contractual entitlement,  
4 correct?

5           A.    Yes.

6           Q.    And now AEP Ohio has included its OVEC  
7 entitlement in retail rates, correct?

8           A.    Only to June 1, 2015. After that, there  
9 is no more OVEC.

10          Q.    And to your knowledge, have the OVEC  
11 plants ever been dedicated to Duke Energy Ohio  
12 customers?

13          A.    If my recollection serves me right, the  
14 answer is no, they have not.

15          Q.    And to your knowledge, has Duke Energy  
16 Ohio ever included its contractual entitlement in  
17 OVEC in cost-based rates?

18          A.    I can't answer that question because I  
19 was never involved in developing rates at all.

20          Q.    Sir, if we could talk about your views on  
21 rider PSR and the company's proposal. Again, if I  
22 could just quickly refer back to the AEP case. You  
23 would agree that in both instances forecasts were  
24 provided reflecting the potential benefits under the  
25 respective proposals, correct?

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1           A.    Yes.  In AEP, the number was bigger than  
2           yours.  It was because AEP owns twice as much or  
3           more, so the number was larger how much it would cost  
4           in the first three years.

5           Q.    And you would agree with me that we don't  
6           know whether those forecasts are accurate until the  
7           events reflected in those forecasts are realized,  
8           correct?

9           A.    Correct.  We don't know what the  
10          day-ahead prices are going to be until they happen.

11          Q.    Okay.  So when you refer to a \$22 million  
12          cost, we don't know that to be true at this point in  
13          time, do we?

14          A.    No, we don't.

15          Q.    And if I understand correctly,  
16          Dr. Choueiki, you opposed AEP Ohio's proposed rider  
17          PPA on philosophical grounds, correct?

18          A.    Basically it's going in the opposite  
19          direction of where the state is going and it's  
20          inconsistent with some of the policy statements in  
21          4928.02.

22          Q.    And is that the same opinion, sir, that  
23          you hold today with respect to Duke Energy Ohio's  
24          proposed rider PSR?

25          A.    Yes.

1           Q.    So you similarly propose the rider on  
2 philosophical grounds, correct?

3           A.    On policy grounds.  It's against state  
4 policy.

5           Q.    And the state policy that you are  
6 referring to is that referenced in your testimony,  
7 sir?

8           A.    That's one of them.  The other one is  
9 that to transition all electric distribution  
10 utilities so that they are all wires-only companies.  
11 Basically you just appear before us for distribution  
12 rate cases and distribution riders, and we just  
13 administer SSO auctions where you are like the middle  
14 person between the SSO suppliers and your  
15 distribution customers.  That's it.

16          Q.    And, sir, I appreciate that.  We would  
17 just like to be clear we're speaking of the same  
18 policy goals.  I believe on page 11 of your  
19 testimony --

20          A.    Okay.  That one, the policy goal I am  
21 talking to is referring to -- is it 4928.02?

22          Q.    Yes, sir.

23          A.    Yes.  That is the policy goal that deals  
24 with subsidizing a competitive service with  
25 noncompetitive services like you are proposing.

1           Q.    The policies of the state under section  
2   4928 concern competitive retail service, correct?

3           A.    Yes.

4           Q.    And the corporate separation statute that  
5   Ms. Bojko referred you to, 4928.17, again, concerns  
6   competitive retail service, correct?

7           A.    Yes.  Although, you have corporate  
8   separation rules under FERC for wholesale matters.

9           Q.    So whether or not Duke Energy Ohio --  
10   given your opposition as predicated upon policy,  
11   whether or not Duke Energy Ohio had an obligation to  
12   transfer its contractual entitlement is really  
13   secondary or even immaterial to your opinions in this  
14   case, correct?

15          A.    No.  I mean, the main objective, as  
16   articulated by you, Duke Ohio, back in 2011 was to  
17   become a pure wires company.  That's an objective and  
18   that's a benefit of the stipulation that we all  
19   signed, is for Duke Ohio to become -- what does that  
20   mean?  It means you are only in the business of  
21   distributing and transmitting electricity.

22          Q.    And so you say there can be no proposal  
23   with a purchase power agreement if the utility  
24   doesn't own -- strike that.

25                But your opposition is on policy grounds,

1 correct?

2 A. It is not on numbers ground, let's put it  
3 this way, because I don't show any numbers that I  
4 conducted, no studies that I conducted to develop my  
5 conclusion, that's correct.

6 Q. So whether under rider PSR there was a  
7 net benefit demonstrated for the term of the  
8 company's proposal, that wouldn't matter to you for  
9 purposes of your testimony, correct?

10 A. Because -- again, I've already talked to  
11 Mr. Kurtz about that. Duke Ohio is not guaranteeing  
12 a net benefit. You just told me that forecasts are  
13 forecasts. We don't know if they are going to happen  
14 or not, those energy forecasts we were just talking  
15 about. So we have no idea if it's going to be a net  
16 benefit or a net cost. My position might change if  
17 there was something that guarantees a net benefit,  
18 but no one is going to guarantee a net benefit.

19 Q. And we can't guarantee the results of the  
20 SOS auctions held under the future ESP, can we?

21 A. Correct. But that's a policy that the  
22 Commission has adopted, is going to 100 percent SSO  
23 auctions right now, which is derived from the  
24 competitive market. Again, it's not cost based. We  
25 are going to the market, and we are getting the best

1 competitive price, clearing price, for the SSO load.

2 Q. And we'll talk about that market in a  
3 moment. I believe you've indicated -- or strike  
4 that.

5 Is it fair to say, Dr. Choueiki, that you  
6 could be deemed an in-house expert for the Commission  
7 on matters concerning PJM?

8 A. Everyone is claiming that today. Yes, of  
9 course. Everyone is giving me that title now. I  
10 understand the technical matters in the PJM markets,  
11 yes.

12 Q. And, in fact, you provide recommendations  
13 and advice to the Commission with regard to PJM  
14 matters, correct?

15 A. Yes, and I give them to PJM, too, and  
16 sometimes they listen to me.

17 Q. You participate in the PJM conferences,  
18 correct?

19 A. Yes, yes.

20 Q. And you agree with me that you're  
21 regularly informed with respect to what's happening  
22 at the FERC or PJM level, correct?

23 A. I try to get informed. I mean, we have a  
24 federal advocate who keeps me informed.

25 Q. Okay. And, Dr. Choueiki, you've

1 indicated that you didn't do an analysis with regard  
2 to the company's rider PSR proposal and the financial  
3 projections related to that. But you are familiar  
4 with the OVEC-owned plants, Kyger Creek and Clifty  
5 Creek, correct?

6 A. I'm familiar because I've gotten to look  
7 at them since the AEP. So I have been looking at  
8 their costs, yes.

9 Q. And you know them to be efficient units,  
10 correct?

11 A. Yes.

12 Q. And you know that they're fully  
13 environmentally compliant with all existing  
14 environmental regulations, correct?

15 A. Correct.

16 Q. And you would agree with me that coal  
17 prices are stable as compared to the prices for other  
18 fuel sources?

19 A. Yes. They are more stable than natural  
20 gas. Let's put it this way.

21 Q. And if we could talk, sir, about your  
22 testimony on page 9. A bit of a history of what's  
23 been occurring here at this state level under the  
24 law, correct? You indicate that the Commission has  
25 been transitioning the four EDU to a



1 fully-competitive retail market construct, correct?

2 A. Yes.

3 Q. And you would agree with me, sir, that  
4 this process has been on a long and winding path?

5 A. Yes, it has been.

6 Q. Okay. Prior to Senate Bill 3 the  
7 distribution utilities -- strike that. Generation  
8 was fully regulated by the Ohio Commission prior to  
9 Senate Bill 3, correct?

10 A. Correct.

11 Q. And then Senate Bill 3 deregulated  
12 generation and introduced competition into the Ohio  
13 market, correct?

14 A. Correct.

15 Q. And the EDUs were required to implement  
16 transition plans where they would separate their  
17 generation, correct?

18 A. Correct.

19 Q. And then at the end of those transition  
20 plans, there was concern that exposure to the full  
21 market would provide rate shock for customers, and so  
22 all of the distribution utilities were required to  
23 file rate stabilization plans, correct?

24 A. Correct.

25 Q. Do you recall, Dr. Choueiki, whether Ohio

1 law made provision for rate stabilization plans when  
2 the Commission encouraged the utilities to recommend  
3 them?

4 MR. OLIKER: Your Honor, I object to this  
5 question. It's calling for a legal conclusion from a  
6 staff member without a legal degree on something  
7 that's highly speculative. This case is going to the  
8 Supreme Court.

9 MS. SPILLER: Just asking if he knows.

10 EXAMINER WALSTRA: Overruled.

11 A. Not sure what Ohio law under Senate Bill  
12 3 required, but, you know, we implemented it, right.

13 Q. And the utilities were operating under  
14 rate stabilization plans, correct?

15 A. Correct.

16 Q. And at that time we're probably in the,  
17 what, 2000 --

18 A. '08.

19 Q. Prior to 2008, correct?

20 A. Right.

21 Q. And at that time, only one electric  
22 distribution utility had legally separated its  
23 generating assets, and those were the FirstEnergy  
24 entities, correct?

25 A. Correct.

1           Q.    And then in 2008, the Ohio legislature  
2 enacted Senate Bill 221, correct?

3           A.    Correct.

4           Q.    And in that instance, the Ohio  
5 legislature provided for the regulation of new  
6 generation in Ohio, correct?

7           MR. OLIKER:  Objection to the form of  
8 that question.

9           EXAMINER WALSTRA:  Overruled.  He can  
10 answer if he knows.

11          A.    They -- no, it wasn't that.  They gave a  
12 tool to the Commission to the extent it deemed it  
13 necessary for reliability to grant an EDU, because  
14 the Commission can't order independent merchant  
15 generators to go through.  The only ones they  
16 regulate are the electric distribution utilities.  So  
17 in order to order them to build generation if it's  
18 needed after an assessment of need, to grant them  
19 recovery under the ESP statute.

20          Q.    Now, I just want to be sure I understand  
21 your testimony, sir.  You believe that under Senate  
22 Bill 221, the Ohio Commission can order an electric  
23 distribution utility to construct generation?

24          A.    Okay.  No.  Thank you for correcting me.  
25 They have the authority to issue an order.  The EDU

1 would have to accept it.

2 Q. Okay.

3 A. So maybe it's not an order then.

4 Generally an electric security plan has to be  
5 accepted by the EDU. So then it's not an order I  
6 guess. You are right.

7 Q. And if there is the acceptance, that  
8 generation would be generation dedicated to Ohio  
9 customers, correct?

10 A. It would be competitively bid and would  
11 be dedicated to Ohio generation -- Ohio ratepayers.

12 Q. And the competitive bid relates to the  
13 construction of the generation, right?

14 A. Of the least cost generation.

15 Q. And then the costs associated with that  
16 generation would be fully recovered from all  
17 customers, correct?

18 A. I believe so.

19 Q. Senate Bill 222 when we talk about the  
20 path to --

21 A. 221.

22 Q. I'm sorry. 221. When we talk about the  
23 path to fully-competitive retail market construct,  
24 Senate Bill 221 provided for a standard service offer  
25 in one of two forms, correct?

1           A.     Correct, under the electric security plan  
2     or under the market rate option.

3           Q.     And the market rate option is a permanent  
4     election, correct?

5           A.     Correct.

6           Q.     Once the EDU files the MRO and the  
7     Commission approves it, the EDU is forever forward  
8     providing an SSO under an MRO, correct?

9           A.     That's correct.

10          Q.     And under the MRO, that SOS would consist  
11     of a competitive bidding process plan, correct?

12          A.     Similar to what Duke has right now.

13          MR. OLIKER: Your Honor, at this point I  
14     would like to object again that we just finished  
15     about maybe 25 continuous legal questions. Could we  
16     maybe get something that's not a legal question to  
17     the witness?

18          MS. SPILLER: Well, your Honor, I am not  
19     asking for legal opinions, but I think this is quite  
20     important to Dr. Choueiki's testimony in this case.

21          MS. BOJKO: Your Honor, could I at least  
22     ask that the witness be provided the statutes that  
23     she's asking him to interpret so there is no  
24     confusion over the provisions that she is asking  
25     about?

1                   EXAMINER WALSTRA: If he needs that, he  
2 can request it if he needs it. Overruled.

3                   A. I'm fine until she asks a specific  
4 question, and then I'll ask her to.

5                   Q. Okay. Thank you, sir.

6                   And you mentioned that -- what the MRO  
7 statute produces for in terms of an SSO is pretty  
8 much what we have today with Duke Energy Ohio,  
9 correct?

10                  A. Similar in terms acquiring the -- in an  
11 auction, yes.

12                  Q. But there are several other components  
13 under Duke Energy Ohio's current ESP, correct?

14                  A. ESP is complete -- ESP has a lot more  
15 things than an MRO, and that's why the Commission has  
16 not granted an MRO yet.

17                  Q. Would you agree with me that in granting  
18 an MRO an EDU would absolutely be in the  
19 fully-competitive retail market construct?

20                  A. There wouldn't be any more a chance for  
21 the Commission to approve or to do something to the  
22 extent it finds a reliability issue.

23                  Q. And do you believe it's important,  
24 Dr. Choueiki, for the Commission to have the  
25 opportunity to do something if it believes there is

1 an issue that could adversely affect retail customers  
2 in Ohio?

3 A. To the extent the Commission has a  
4 concern about reliability, then I hope they have the  
5 authority to address it if it's not being addressed  
6 in the wholesale market. But in this case, you know,  
7 there is no issue of reliability. No one has  
8 presented a case where there is a reliability issue  
9 or not a reliability issue if we grant or not grant a  
10 PPA.

11 Q. Do you believe that if the Commission had  
12 a concern about the rates that retail customers pay,  
13 that they would have the authority to address that  
14 concern?

15 A. Yes.

16 Q. And you believe, sir, that they would  
17 address that concern, don't you?

18 A. Under the electric security plan, yes,  
19 they would have that authority and they can address  
20 it.

21 Q. In a fully-competitive retail market,  
22 what retail customers pay for capacity is based upon  
23 the wholesale capacity prices, correct?

24 A. Correct.

25 Q. And the SSO auctions that you address in

1 your testimony follow the wholesale market and  
2 whatever risk is inherent in wholesale pricing is  
3 embedded in the auction price, correct?

4 A. Correct. And that's why we do several of  
5 them to procure a company's load. We don't do just  
6 one. We have a methodology for procuring several  
7 products during several portions during the year.

8 Q. And in a fully-competitive retail market,  
9 what retail customers pay for energy is based upon  
10 the wholesale energy prices, correct?

11 A. Correct. Based on the forward energy  
12 prices, not the day-ahead prices.

13 Q. Do you believe, Dr. Choueiki, that the  
14 Commission should not adopt proposals to mitigate the  
15 impacts resulting from complete dependence on these  
16 wholesale prices for energy and capacity?

17 A. No. I couldn't say that.

18 Q. So you believe that it would be  
19 appropriate for the Ohio Commission to adopt such  
20 proposals that would -- should adopt proposals that  
21 would have the impact of mitigating -- strike that.  
22 Let me try again.

23 Do you believe that it would be  
24 appropriate for the Commission to adopt proposals  
25 that would have the effect of mitigating the impacts



1 of a complete dependence on wholesale prices for  
2 energy and capacity?

3 A. Well, we have a methodology for doing  
4 that. I described it in my testimony, and Mr. Strom  
5 describes it in testimony. The staggering and  
6 laddering approach is an effective methodology for  
7 mitigating this volatility in the wholesale market  
8 and exposing consumers to polar vortex events.

9 Q. Is that the only tool, sir?

10 A. That's the most effective tool right now  
11 out of the two.

12 Q. Okay. And we'll get to that tool in a  
13 moment, but I would like to focus -- I believe --  
14 would you agree with me that the wholesale markets  
15 are volatile?

16 A. The hourly and daily are volatile but not  
17 the way we're conducting it. The way we're  
18 conducting it is as -- again, that volatility that  
19 you see even in the forward market when we procure 12  
20 months' products, 24 months' products and 36 months'  
21 products. And for Dayton, we did even a 41 months'  
22 product. And then we average them out. So basically  
23 even if one -- like, for example, the phenomenon that  
24 is very clear in my mind is the event during the  
25 '15-'16 delivery year for FirstEnergy. The price of

1 capacity tripled from \$125 -- almost tripled from  
2 \$125 a megawatt-day to \$357 a megawatt-day. That's  
3 almost three times as much. Consumers were exposed  
4 to 5 or 6 percent increase. Why? Because we  
5 averaged several products -- six of them, six  
6 products, and that's what consumers were exposed to.

7 Q. Sir, I am going to go back, if I can.  
8 The wholesale market for energy you would agree is  
9 volatile, correct?

10 A. Again, I said -- I thought I answered  
11 you. The hourly and daily is volatile, not the  
12 forward energy prices.

13 Q. Okay. And with respect to capacity,  
14 wholesale capacity, you would agree that wholesale  
15 capacity prices have been volatile, correct?

16 A. Yes.

17 Q. And you expect that volatility to  
18 continue, don't you?

19 A. I hope it doesn't or we will have to see.

20 Q. And we'll have to see as a result of the  
21 various reforms that are currently pending but with  
22 PJM, correct?

23 A. That's correct.

24 Q. Okay. And one of the reforms is that  
25 concerning the VRR curve that you've discussed with

1 Mr. Kurtz this morning, correct?

2 A. Correct.

3 Q. And the Ohio Commission agrees with PJM's  
4 proposed revision to the VRR curve because it does  
5 not believe the current VRR curve meets PJM's  
6 resource adequacy obligation, correct?

7 A. It improves on the reliability, so that  
8 is an important component. The VRR the way it is  
9 proposed now improves reliability. So basically it  
10 doesn't wait until you are very far away from the  
11 reserve margin target before you compensate  
12 generators higher -- give them a higher price  
13 basically.

14 Q. And PJM's proposals to modify the VRR  
15 curve or the demand curve are likely to result in an  
16 increase in capacity prices, correct?

17 A. Correct.

18 Q. There is also the capacity performance  
19 initiative that has been proposed by PJM, correct?

20 A. Correct.

21 Q. And that is one in which generators  
22 potentially receive a payment for improved  
23 reliability, correct?

24 A. Basically to make sure that generators  
25 are there because they weren't incented enough. As

1 we experienced during the polar vortex, we had  
2 22 percent outage, forced outage rate, which is a lot  
3 higher than what PJM assumes in their model. And  
4 that caused a concern that generators are being  
5 compensated for capacity yet they are not -- they are  
6 violating their commitment because lots of generators  
7 were not there.

8 Q. And it could be that they're not able to  
9 meet the commitment to be there because the capacity  
10 compensation they are receiving is not enough,  
11 correct?

12 A. That's probably what generators said.  
13 Although it's a violation of their commitment because  
14 that commitment didn't say if we compensate you less,  
15 then you don't have to be there. The commitment says  
16 when you are a capacity resource in PJM, then you  
17 need to be there when you're called upon and  
18 especially so when you're called upon during peak  
19 times.

20 Q. They weren't there, though, were they?

21 A. They weren't there.

22 Q. And we were close to a pretty  
23 catastrophic event in January, weren't we, sir?

24 A. I am not sure we were close, but we were  
25 close to our reserves.

1           Q.    And you understand that in January 2014  
2           during the polar vortex, about 7,000 megawatts of AEP  
3           Ohio generation that's slated for retirement was  
4           performing, correct?

5           A.    I'm not sure how much of it.  Lots of  
6           generation was not performed in Ohio, including  
7           yours, AEP's, Dayton's and everyone else.

8           Q.    Was not perform or was performing?

9           A.    Was not performing.

10          Q.    Sir, my question was whether you knew  
11          that 7,000 megawatts of AEP Ohio generation that is  
12          slated for retirement was running during the polar  
13          vortex?

14          A.    I'm not sure.

15          Q.    Do you know whether the OVEC units, the  
16          majority of those, were running for the polar vortex?

17          A.    The OVEC units were -- most of them were  
18          running during the polar vortex, that's correct.

19          Q.    And I believe the Ohio Commission has  
20          shared with the FERC their view that the capacity  
21          market does not provide enough compensation to incent  
22          new generation; is that correct?

23          A.    I can't recall.  We've said -- I don't  
24          know if we said that, but we've said we are concerned  
25          about reliability and we want generation to be

1 compensated further.

2 Q. And the Ohio Commission has a concern  
3 with respect to demand response and energy efficiency  
4 as capacity resources, correct?

5 A. Being compensated like a generator would.

6 Q. And currently --

7 A. They have a place. It's just we had a  
8 concern that they were compensating them close to  
9 what they would compensate iron in the ground  
10 generation.

11 Q. And is the concern there, sir, that  
12 demand response and energy efficiency should not be  
13 compensated similar to iron in the ground because  
14 they are not as reliable?

15 A. Yeah. The concern was like, for example,  
16 the annual -- there is an annual product in demand  
17 response. We have no problems with that being  
18 compensated because they are available any time they  
19 are called upon like a generator. We had a concern  
20 with the limited products, the ones that were  
21 available only ten times a year, six hours every  
22 time. You know, those types of products, we had a  
23 concern with those products.

24 Q. And since the passage of Senate Bill 221  
25 in 2008, how much new base load generation has been

1 constructed in Ohio?

2 A. None.

3 Q. There's also one of the -- I guess I'll  
4 call it a reform, for lack of a better word. One of  
5 the measures currently involving PJM is the issues  
6 regarding demand response in order 745, correct?

7 A. Correct.

8 Q. And you are aware, sir, that FirstEnergy  
9 has filed a complaint with the FERC concerning demand  
10 response, asking that it be removed from the base  
11 residual auctions, correct?

12 A. That was conducted in the '17-'18, yes.  
13 I'm aware of that complaint.

14 Q. Okay. And there's also been a stay of  
15 order 745, correct?

16 A. Correct, until December something. I  
17 mean, they gave FERC, I guess, a specific amount of  
18 time to decide whether they want to take it to a  
19 higher -- to the Supreme Court basically.

20 Q. And, Dr. Choueiki, would you agree with  
21 me that you can't have an energy obligation without a  
22 capacity obligation?

23 A. That's correct. Here in Ohio, the  
24 products that we generally ask the standard service  
25 offer to provide is a fully bundled product.

1           Q.    Do you expect that these reforms  
2           currently afoot at PJM would be completed by this  
3           coming January or so?

4           A.    PJM intends to file at FERC on  
5           December 1st, and they want an answer from them  
6           before February 1st.

7           Q.    And February 1st is an important date  
8           with respect to the base residual auction that PJM  
9           will conduct in May of 2015, correct?

10          A.    Correct. February 1st is the day PJM  
11          posts what they call the parameter, auction  
12          parameters. So that's exactly how much the reserve  
13          is going to be, how much in each zone the peak load  
14          is going to be, any transmission -- any separation of  
15          zones. All that gets to the market three months in  
16          advance so that the market has transparency. They  
17          can read all the parameters and then decide their  
18          bidding strategies.

19          Q.    Thank you. I believe you indicated that  
20          we know the wholesale capacity prices for the next  
21          three years. That would be through the 2017-2018  
22          planning year, correct?

23          A.    Correct.

24          Q.    But if FirstEnergy is successful and the  
25          '17-'18 base residual auction is redone, those prices



1       could change, couldn't they?

2               A.     They could. I don't think FirstEnergy  
3       would be successful, but who am I to figure out what  
4       FERC is going to do?

5               Q.     And at this point, we don't know what  
6       financial impact these reforms will have on wholesale  
7       capacity prices, do we?

8               A.     We've read in the market what some of the  
9       predictions will be. You know, the market monitor  
10      has posted some results. You know, it will have an  
11      impact. It may go \$50 up. Who knows. \$50 a  
12      megawatt-day, so it may go up from 120 to 170, 180.  
13      No one knows. But, of course, PJM is arguing against  
14      that.

15              Q.     And you would expect increased capacity  
16      prices to be reflected in supplier bids for SOS  
17      supply, correct?

18              A.     For future ones. I think for ones that  
19      have already occurred, like SOS auctions that have  
20      already -- so to the extent, for example, we have  
21      auctions that are going to happen, we are going to  
22      start planning for auctions now for the future ESPs,  
23      ESP III or IV, we would like PJM to make that very  
24      clear what they intend to do about addressing  
25      incremental auctions. And to the extent, for

1 example, there is a change that occurs in the  
2 capacity market, after the auctions have cleared SSO,  
3 bidders have bid into state auctions, that that be a  
4 nonbypassable transmission charge where basically it  
5 won't impact the SOS offer. It won't impact the CRES  
6 providers. So it will be competitively neutral to  
7 everyone, and it will be a transmission nonbypassable  
8 charge on everyone so that all contracts would be  
9 honored.

10 Q. And the incremental auctions to which you  
11 referred, Dr. Choueiki, just so that my memory is  
12 correct, there is a base residual auction held three  
13 years --

14 A. In advance.

15 Q. -- in advance of the planning year?

16 A. Correct.

17 Q. And then after that, there are a total of  
18 three incremental auctions relative to that same  
19 planning year, correct?

20 A. For adjustments or for someone who wants  
21 to buy their position back. Like to the extent I  
22 commit to a thousand megawatts, then I change my  
23 mind. I don't have that thousand megawatts. Then I  
24 can buy my position for a thousand megawatts from  
25 someone else. So that's what the incremental

1 auctions are all about, or PJM may want to adjust the  
2 load forecast, procure more or sell some that they  
3 bought.

4 Q. And you indicate, sir, if we could turn  
5 to page 10 of your testimony, on line 13, the  
6 sentence that begins on that line, sir, you indicate  
7 that "Duke Energy Ohio has not been in the business  
8 of selling electricity since January 1 of 2012,"  
9 correct?

10 A. Correct.

11 Q. And Duke Energy Ohio has the obligation  
12 as the EDU to provide a standard service offer,  
13 correct?

14 A. Correct.

15 Q. That obligation existed in 2012, correct?

16 A. That obligation continues to exist not --  
17 I am talking about the juice, the generation, not the  
18 distribution. You distribute the service, but you  
19 don't sell generation service.

20 Q. And that is retail generation service  
21 directly to end use customers to which you are  
22 referring, correct?

23 A. Correct. You do not sell -- what you  
24 sell is distribution service. So you buy on behalf  
25 of your consumers. You buy -- you collect from your

1 consumers and you give that money to the winners of  
2 the SOS auctions.

3 Q. And we've referenced just very briefly,  
4 sir, this morning the ICPA or Intercompany Power  
5 Agreement. That's the agreement between OVEC and  
6 sponsoring companies, correct?

7 A. Correct.

8 Q. And is it your understanding, sir, that  
9 the ICPA has been approved by the FERC?

10 A. I'm pretty sure it has been approved  
11 several times and revisions, too, right?

12 Q. And if the Ohio Commission had a concern  
13 with the cost structure or cost formulas set forth in  
14 the ICPA, it would have the ability to file a  
15 complaint at the FERC, correct?

16 A. Correct. And the burden of proof is on  
17 the Ohio Commission, of course.

18 Q. And when the ICPA was being amended and  
19 reviewed by the FERC in the 2011 timeframe, the Ohio  
20 Commission did not interject a protest in that  
21 docket, did it?

22 A. Well, because none of the customers were  
23 paying for Duke. In Duke's area, we're paying for  
24 OVEC generation, right? The OVEC generation was  
25 off-system sales.

1           Q.    And if rider PSR is approved, what Ohio  
2 Valley Electric Corporation receives under the ICPA  
3 will not change, will it?

4           A.    No.

5           Q.    And you understand, Dr. Choueiki, that  
6 under the proposed rider PSR, Duke Energy Ohio will  
7 not use the energy and capacity associated with its  
8 9 percent entitlement in OVEC to displace any of the  
9 SSO supply that would otherwise be procured under  
10 those SSO wholesale auctions, correct?

11          A.    Well, to the extent they sell in the  
12 energy market and PJM's energy and capacity markets,  
13 you're right, they're not displacing. That's a  
14 concern that actually in my mind if they were free,  
15 if Duke Energy Ohio was free to do whatever it wants  
16 with its OVEC generation instead of committing to  
17 liquidating it in the PJM market, they could.

18                If they are better off participating in  
19 an SSO auction and commit 200 -- all of Ohio -- your  
20 portion of the OVEC generation to an SSO auction. So  
21 with certainty, you get three years of revenues.  
22 That's an option that you have if you -- if we don't  
23 grant -- if the Commission doesn't grant you the PPA  
24 that you wouldn't have if the Commission grants you  
25 the PPA.

1           Q.    And I appreciate that.  But under the  
2   company's proposal, the energy and capacity  
3   associated with its 9 percent entitlement in the  
4   OVEC-owned assets will not be used to displace any of  
5   the load that will need to be procured under the SSO  
6   auctions, right?

7           A.    Oh, the load.  No, it does not displace  
8   load.  It would take away from the potential supply  
9   that would participate in the auction to bid for that  
10   load.  It does not displace anything.

11          Q.    And Duke Energy Ohio is not proposing to  
12   use the energy and capacity from its contractual  
13   entitlement to serve SSO customers, correct?

14          A.    No.  It intends to liquidate in the PJM  
15   market.

16          Q.    I would like to talk about that concern,  
17   and I believe you addressed it briefly with Ms. Bojko  
18   this morning.  It's the concern that you identify,  
19   sir, on page 16 of your testimony, the loss of a  
20   potential SSO supplier.

21          A.    Yes.  That was the one I was just  
22   answering you earlier about.

23          Q.    Thank you, sir.

24                   Duke Energy Ohio currently procures SSO  
25   supply through a series of wholesale auctions,

1 correct?

2 A. Correct.

3 Q. And do you believe that those auction  
4 results have been fair and competitive?

5 A. Yes.

6 Q. And you understand that pursuant to the  
7 current ESP stipulation Duke Energy Ohio was barred  
8 from participating in any of the SSO supply auctions,  
9 correct?

10 A. Correct.

11 Q. So even with OVEC excluded from those SSO  
12 auctions, you believe that there were an appropriate  
13 number of participants?

14 A. Correct.

15 Q. And competitive results, correct?

16 A. Correct. It would be just more. We'll  
17 have more suppliers. The more suppliers we have, the  
18 happier we are in these SSO auctions.

19 Q. And, sir, are you aware speaking of that  
20 with what's happening in retail auctions in other  
21 states?

22 A. I've read a little bit about them, yeah.

23 Q. And are you aware of SNL Energy or SNL  
24 Financial?

25 A. I read it every day.

1 Q. And rely upon it?

2 A. I don't rely on it. I read it for my  
3 education purposes, but that doesn't mean everything  
4 in it is true.

5 Q. It's a commercial publication that would  
6 generally be used upon -- in people in the energy  
7 sector, correct?

8 A. Yes.

9 Q. And in, fact, sir, I believe you  
10 indicated you read it every day?

11 A. Yes.

12 MS. SPILLER: May we approach, your  
13 Honor?

14 EXAMINER WALSTRA: You may.

15 MS. SPILLER: Your Honor, may we have  
16 this marked as Duke Energy Ohio Exhibit 28, please?  
17 I'm sorry. 29.

18 EXAMINER WALSTRA: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MS. SPILLER: Thank you.

21 Q. And, Dr. Choueiki, I've handed you what's  
22 been marked as Duke Energy Ohio Exhibit 29, an  
23 article from SNL Financial dated October 29, 2014.

24 A. Yes.

25 Q. This is an article discussing the October



1 20, 2014, retail auctions that occurred in Maryland,  
2 correct?

3 A. Correct.

4 Q. And the Maryland Commission's consultant  
5 in this case was Boston Pacific, correct?

6 A. Correct.

7 Q. And that is the same consultant that the  
8 Ohio Commission uses with regard to the SSO auctions  
9 that are held in Ohio, correct?

10 A. Correct.

11 Q. And according to this article, there were  
12 reduced bid levels in the retail auctions that  
13 occurred in Maryland, and that reduction in bids was  
14 blamed on the PJM capacity market uncertainty,  
15 correct?

16 MS. BOJKO: Objection, your Honor.

17 There's been no foundation. Just because he reads  
18 this daily doesn't mean that there's relevance to  
19 this case. This is talking about Maryland, not Ohio.  
20 There has been no foundation that he's actually read  
21 this particular article. There's no foundation --  
22 he's already said that just because they are produced  
23 doesn't mean they're true. So it can't even be  
24 relied upon for the truth of the matter asserted. So  
25 it's hearsay, and this witness has not had the proper

1 foundation to verify the document. Now we are just  
2 reading parts into the record.

3 EXAMINER WALSTRA: I agree on the  
4 foundation.

5 Q. Sir, have you seen this article before?

6 A. Have I read it? No. But I have heard  
7 about this article.

8 MR. OLIKER: Your Honor, I would object  
9 as well. It's still hearsay. Newspaper articles and  
10 other articles are not admissible for the truth of  
11 the matter asserted.

12 MS. SPILLER: Your Honor, there have been  
13 commercial publications introduced into this case,  
14 notably SNL articles that were admitted into the  
15 record by way of Mr. Baron's testimony. The NRRI  
16 article was admitted yesterday. Although, the  
17 witness in that particular instance admitted that he  
18 had not relied upon that article for purposes of  
19 forming his opinions in the case. I don't see how  
20 this article is any different than the other  
21 commercial publications that have been admitted into  
22 the record.

23 MS. BOJKO: Your Honor, it is  
24 significantly different than the article yesterday  
25 that was a treatise that was produced by an entity.

1 This is a newspaper publication. This is completely  
2 different. And, you know, whether or not -- I don't  
3 think we have had a challenge of a newspaper article  
4 yet. This has no foundation to this witness.

5 MR. BEELER: Staff joins the objection.

6 MR. OLIKER: It's textbook hearsay, and I  
7 would cite to the evidentiary rulings also in the  
8 AEP's long-term forecast report case where  
9 substantial amounts of newspaper articles were kept  
10 out of the record and then upheld by the Commission  
11 after cited in an application for a hearing.

12 MR. SERIO: Your Honor, to the extent  
13 that the NRRI article is being brought into play, I  
14 will point out that the witness had read it,  
15 acknowledged it and had used that document in the  
16 past.

17 EXAMINER WALSTRA: We will sustain the  
18 objection due to the fact there hasn't been enough  
19 foundation that he has actually read this article.

20 Q. (By Ms. Spiller) Dr. Choueiki, you've  
21 indicated you have not read the article and you are  
22 aware generally. What is your general awareness of  
23 these auctions in Maryland, sir?

24 MS. BOJKO: Objection. Now I am going to  
25 object to relevance. We're talking about Maryland,

1 and she's trying to side door this article into the  
2 record and -- backdoor. Excuse me. And I don't  
3 think that's appropriate.

4 MS. SPILLER: Your Honor, this is very  
5 relevant. We are talking about the PJM wholesale  
6 market and the comparison and contraction of the  
7 wholesale market and the retail tools discussed in  
8 Dr. Choueiki's testimony. I think it's very  
9 relevant, and I am not trying to backdoor the  
10 article. The witness acknowledged that he was  
11 generally aware.

12 MR. OLIKER: Your Honor, I would add that  
13 everybody knows there's transmission constraints in  
14 Maryland. So it's not an equivalent capacity market  
15 that we are comparing here.

16 MS. SPILLER: And, Mr. Olikier, if you  
17 would like to bring that up on recross, you could.

18 EXAMINER WALSTRA: Overruled.

19 A. Okay. What am I answering to?

20 Q. Your general awareness, sir, of the  
21 Maryland retail auctions.

22 A. Yes. I'm aware but, again, Maryland is a  
23 different zone. We are in the uncongested zone of  
24 PJM. They are in the congested zone of PJM. So they  
25 have a lot more headache. That's number one. Number

1 two is I read part of it right now, and their  
2 products are completely different than ours. They  
3 only procure -- I mean that product, he was concerned  
4 about in the article was about small residential and  
5 small business. We don't do by sector auctions here.  
6 We lump them all together for that reason.

7 Q. Before you read that section, you had a  
8 general --

9 MS. BOJKO: We can't hear him at all.

10 EXAMINER WALSTRA: Scoot up to the mic.

11 MS. BOJKO: Would you reread the answer,  
12 please.

13 (Record read.)

14 MS. SPILLER: And, your Honor, I am just  
15 going to note the witness has just testified as to  
16 what he read in the document. And now presumably  
17 there will be a barrage of objections from my right,  
18 but now I am going to be precluded from asking him  
19 questions about the balance of this document that he  
20 just read. So I guess I have -- if he is going to  
21 testify as to parts of the document, I should be  
22 allowed to ask him about other parts of the document.

23 MS. BOJKO: Are you looking to me for a  
24 response?

25 EXAMINER WALSTRA: Yes.

1 MS. BOJKO: I mean, there's still been no  
2 foundation. He may have read a sentence or two while  
3 he is sitting there on the stand. There's been no  
4 foundation that he has read the entire document or  
5 reviewed or analyzed it. So I don't think the  
6 document should be let in in the record.

7 MR. BEELER: And to add, your Honor,  
8 before today he hadn't seen the article.

9 MR. OLIKER: And I would add he just  
10 provided a few points that potentially provide  
11 balance to the previous points that are in the record  
12 from Ms. Spiller's cross-examination before the  
13 objections came in. We just have a more clear  
14 picture based upon his limited understanding of the  
15 document. He hasn't shown that he has a full grasp  
16 of everything that's going on there, but he has noted  
17 some minor points.

18 MS. SPILLER: Mr. Oliker, I would  
19 absolutely object to what you just said about  
20 questions from me and this providing balance. I  
21 didn't provide any discussion or --

22 EXAMINER PIRIK: Okay. Enough. Thanks.

23 EXAMINER WALSTRA: Dr. Choueiki, the  
24 article is not part of the record. So if you can  
25 just testify about your knowledge of the issues

1 Ms. Spiller brought up regardless of what's in the  
2 article.

3 THE WITNESS: Okay.

4 MS. SPILLER: And, your Honor, if I may,  
5 I would move to strike that portion of Dr. Choueiki's  
6 testimony that talked about what he just read in the  
7 article consistent with the ruling you just rendered.

8 EXAMINER WALSTRA: We'll sustain.

9 MR. OLIKER: Your Honor, if that's going  
10 to be the case, could we strike all of the  
11 cross-examination about this document in its entirety  
12 that led up to those questions when Ms. Spiller was  
13 just asking Dr. Choueiki to read off of the document?

14 MS. SPILLER: Your Honor, I don't --

15 MR. OLIKER: I think that would be only  
16 balanced ruling given the prior testimony when he  
17 didn't have any foundation for the article.

18 MS. SPILLER: Your Honor, I don't think  
19 we typically go through the practice of striking  
20 records when people are discussing the foundation for  
21 a document.

22 EXAMINER WALSTRA: I don't think -- he  
23 only spoke of his knowledge of the issue. I don't  
24 think he spoke of anything other than in that last  
25 answer. Overruled.

1 MR. OLIKER: Thank you, your Honor.

2 Q. (By Ms. Spiller) So I believe where we  
3 are, sir, if you could share with me your  
4 understanding of the Maryland retail auction as it  
5 existed before you saw this article.

6 A. Okay. The only thing I heard was that  
7 there were concerns about the Maryland auction, that  
8 the consultant was concerned about the Maryland  
9 auction, that there weren't enough participants of  
10 the sort, but that's it.

11 Q. Thank you, sir.

12 A. I didn't form an opinion or anything, but  
13 when you started asking other questions, that's when  
14 I started reading it.

15 Q. Thank you, sir.

16 Dr. Choueiki, I believe you have  
17 referenced in your testimony the direct testimony of  
18 Duke Energy Ohio President Jim Henning, and I'll look  
19 for the page reference if that's helpful. Yes, sir.  
20 It's on page 4.

21 A. Okay. It's footnote 2. All right.

22 Q. There's actually the reference, sir, to  
23 Mr. Henning's testimony there on page 4. Am I  
24 correct in assuming that you read all of  
25 Mr. Henning's testimony for purposes of forming your



1 opinions in this case?

2 A. Yes.

3 Q. Okay. And you would agree with me that  
4 Mr. Henning provided a brief discussion supporting  
5 the company's proposed ESP and the various components  
6 of that, correct?

7 A. Correct.

8 Q. And one of those components is the  
9 proposed rider PSR, correct?

10 A. Correct.

11 Q. And do you recall, sir, the reference in  
12 Mr. Henning's testimony to Governor Kasich's remarks  
13 from earlier this year that Ohio's energy market is  
14 in a challenging time?

15 A. I don't recall that, but that doesn't  
16 mean he didn't say it.

17 Q. Would you agree with --

18 A. That Mr. Henning didn't say it, not that  
19 the governor didn't say it. I heard the governor say  
20 it, so I know the governor said it. But I don't  
21 recall whether Mr. Henning said it.

22 Q. Okay. Thank you.

23 And would you agree with -- I guess now  
24 we would say newly reelected Governor Kasich, that  
25 Ohio's energy market is in a challenging time?

1 MR. OLIKER: Objection. Calls for  
2 hearsay.

3 MS. SPILLER: I'm asking his opinions.

4 EXAMINER WALSTRA: Overruled.

5 A. Fortunately I've already answered that  
6 question once before.

7 Q. Sir, I didn't hear the benefit of that  
8 prior answer, so if you could indulge me.

9 A. So my answer before, and it's still the  
10 same, I don't know what the context of the  
11 understanding of the governor when he said it. I  
12 don't know what things he had heard to form that  
13 conclusion. So I can't tell you whether I agree or  
14 disagree with him, because I know a lot more than the  
15 governor knows about that specific topic of the PPA.  
16 So I can't -- I wasn't with the governor when he  
17 formed his conclusion, neither did I ask him and  
18 converse with him how did he form his conclusion. So  
19 I can't agree or disagree. I can't answer that  
20 question.

21 Q. Sir, I guess I am a bit unclear in your  
22 reference to a PPA. Governor Kasich made this remark  
23 at the swearing in of Chairman Johnson, correct?

24 A. Correct.

25 Q. And at that point, he was not talking

1 about any PPA, was he?

2 A. Correct, no, he was not. But still my  
3 answer is still the same. I do not --

4 MS. BOJKO: Objection. I don't think we  
5 can draw that conclusion. I think the witness just  
6 said that he didn't know what the conversation was  
7 based upon. I don't think that we can draw the  
8 conclusion that Ms. Spiller drew in her testimony --  
9 or her question.

10 EXAMINER WALSTRA: Overruled.

11 Q. Dr. Choueiki, would you agree with me  
12 that a hedge mitigates price volatility?

13 A. It depends what type of a hedge.

14 Q. But a hedge can mitigate price  
15 volatility?

16 A. I mean, if I buy insurance, car  
17 insurance, and home insurance to hedge my losses.

18 Q. Even if those loses are never realized,  
19 correct?

20 A. Correct. But it's by choice.

21 MS. SPILLER: Move to strike, your Honor.  
22 There was no question pending.

23 MR. BEELER: He was just finishing his  
24 answer.

25 EXAMINER WALSTRA: Overruled.

1 MR. BEELER: Thank you.

2 Q. Dr. Choueiki, if rider PSR is approved  
3 and retail customers in Duke Energy Ohio service  
4 territory will still be allowed to engage in choice  
5 to choose their generation, their competitive  
6 generation supplier, correct?

7 A. Correct.

8 Q. Dr. Choueiki, is car insurance in Ohio by  
9 choice?

10 A. I knew you were going to ask me that  
11 question. You're right. My home insurance is by  
12 choice. My car insurance is by law. I have to buy  
13 car insurance. I have to buy liability insurance. I  
14 buy a lot more than liability insurance on my cars.

15 Q. Okay. Duke Energy Ohio's contractual  
16 entitlement in OVEC equates to roughly 200 megawatts,  
17 correct?

18 A. Yes, plus or minus, yes.

19 Q. Would you agree with me, subject to  
20 check, that in the base residual auction for the  
21 2016-2017 planning year, that PJM cleared almost  
22 170,000 megawatts of capacity?

23 A. Yeah, subject to check, that seems like a  
24 reasonable number.

25 Q. Okay. Removing the 200 megawatts

1 associated with Duke Energy Ohio's contractual  
2 entitlement in OVEC from the PJM capacity market,  
3 would that have an impact on the PJM market?

4 A. It depends if OVEC is the marginal unit  
5 or not, but in general, OVEC is not the marginal  
6 unit. So in terms of volume, it does not. My  
7 concern is not in the PJM market. My concern is in  
8 the SSO auctions.

9 Q. Okay. And let's talk about -- and I am  
10 sorry to send you back to that page. It's page 16,  
11 sir.

12 A. Of my --

13 Q. The concern that you identified in your  
14 testimony.

15 A. Yes.

16 Q. And you're indicating here it's your  
17 concern that if PSR is approved, that 200 megawatts  
18 of economic generation would be excluded from  
19 participating in the SSO auctions, correct?

20 A. That's correct because you would be  
21 liquidating it into PJM. You can't get money twice.  
22 So if you are getting money in the PJM capacity and  
23 energy market, then you can't commit it to the SSO  
24 auctions.

25 Q. And with respect to the base residual

1        auctions that have -- strike that.

2                With respect to the term of Duke Energy  
3        Ohio's proposed ESP which runs through May 31 of  
4        2018, the base residual auctions have already  
5        occurred, correct?

6                A.     That is correct.

7                Q.     And so if Duke Energy Ohio's capacity --  
8        strike that.

9                If the capacity associated with Duke  
10       Energy Ohio's contractual entitlement in OVEC  
11       participated in and cleared those base residual  
12       auctions, it's already committed, correct?

13               A.     It's already committed, but you can buy  
14       your position for a lot less than an incremental  
15       auction with something else and then go commit that  
16       capacity somewhere else. This can always be done.

17               Q.     And so you would potentially ask for the  
18       proposal for Duke Energy for the economic generation  
19       associated with Duke Energy Ohio's contractual  
20       entitlement to displace other SSO supply?

21               A.     Participate -- in general, I'm arguing in  
22       general now, okay? In general, OVEC generation being  
23       in the SSO auction, that's -- for Duke, it's about 20  
24       tranches. 20 tranches means 20 percent of the load,  
25       the SSO load that we procure. So that's a very large

1 number. Now, the mechanics of -- it's already  
2 committed right now. You are right. It's already  
3 committed. And I guess you said it, so it must be  
4 public information.

5 Q. I said if.

6 A. You said if?

7 Q. I said if. We can assume hypothetically.

8 A. So hypothetically if Duke has been  
9 committed, then that means presumably you are going  
10 \$120 a megawatt-day. So to the extent you can buy  
11 your position for \$10 a megawatt-day, then that's  
12 more revenues for OVEC. That means you, Duke, and  
13 you buy in an incremental auction to cover your OVEC  
14 commitment from someone else. And then you can take  
15 that money, that's revenues for consumers in Ohio, if  
16 the Commission grants you the PPA the -- the PSR, and  
17 then you take that 200 megawatts and participate in  
18 SSO auctions during that next ESP. That's an option  
19 that can be done.

20 Q. And how do you think competitive  
21 suppliers would feel about that option, sir?

22 A. They would not like that at all. And  
23 that's why I tell the Commission I can't solve that  
24 problem. That's one problem I cannot solve.

25 Q. Well, you can solve it by just

1 liquidating the entitlement into the PJM wholesale  
2 markets, right?

3 A. That's one option.

4 Q. You agree that the fact that customers'  
5 retail rates are predicated upon the wholesale prices  
6 for energy and capacity exposes them to volatility,  
7 correct?

8 A. That's how we hedge. We hedge against  
9 that volatility by procuring six times during an ESP  
10 for the products.

11 Q. And we'll talk about that in a moment,  
12 sir. But I guess the initial recognition is that  
13 retail customer rates, because they are predicated  
14 upon wholesale prices, are subject to the volatility  
15 of those wholesale markets, correct?

16 A. They are but not the hourly and daily,  
17 again. My argument is long-term volatility, not  
18 short-term. Short-term it's very volatile, and they  
19 are not exposed to that at all.

20 Q. And the tool, if you will, that you are  
21 recommending are the staggered laddered auctions,  
22 correct?

23 A. Correct.

24 Q. Staggering and laddering, that simply  
25 refers to a number of auctions, correct?



1           A.    Number of auctions during the year and  
2           number of product.

3           Q.    So different products of different terms  
4           in various auctions, correct?

5           A.    Correct. What that ends up doing is  
6           introducing the volatility.

7           Q.    And, sir, given that you've provided  
8           testimony on this tool, this staggered and laddered  
9           auction, you certainly reviewed the auction results  
10          of the various SSO auctions held in Ohio, correct?

11          A.    Yes.

12          Q.    Familiar with particularly those auctions  
13          that would have been performed this year?

14          A.    I mean, you would have to refresh my  
15          memory and show me something and I'll tell you.

16          Q.    Yes, sir, happy to do that, if I can find  
17          it.

18                MS. SPILLER: May we approach, your  
19          Honor?

20                EXAMINER WALSTRA: You may.

21                MS. SPILLER: Your Honor, I would like  
22          the following document marked as Duke Energy Ohio  
23          Exhibit 30, please.

24                EXAMINER WALSTRA: So marked.

25                (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MS. SPILLER: Thank you.

2 Q. Dr. Choueiki, are you familiar with what  
3 has been marked as Duke Energy Ohio Exhibit 30? This  
4 is an auction report prepared by CRA.

5 A. Yes.

6 Q. And these reports are submitted into the  
7 docket here with the Ohio Commission, correct?

8 A. Correct.

9 Q. And our Commissioners are all recipients  
10 of this report, correct?

11 A. Correct.

12 Q. As well as other members of staff,  
13 correct?

14 A. Some members of staff.

15 Q. And this particular report, Dr. Choueiki,  
16 refers to the SSO wholesale auctions that were  
17 related for the FirstEnergy distribution utilities it  
18 looks like on January 28 of this year, correct?

19 A. Correct.

20 Q. And this auction you would agree with me  
21 was held subsequent to the polar vortex, correct?

22 A. January 28?

23 Q. Yes, sir.

24 A. Well, the polar vortex was January 7. So  
25 I don't know when that auction was. Does it say in

1 the letter when the auction was?

2 Q. I believe, sir, yes, if you look at page  
3 2 of the attachment, the auction was held on Tuesday,  
4 January 28.

5 A. Oh, so it happened after.

6 MS. BOJKO: Excuse me, your Honor. Can  
7 we have some foundation for this document? Has it  
8 been filed in the docket? It appears to be addressed  
9 to a FirstEnergy attorney. I'm not sure of the  
10 source of this document.

11 MS. SPILLER: If you look at the last  
12 page, there's confirmation that these are all  
13 docketed in the Commission's website.

14 MS. BOJKO: Thank you.

15 MS. SPILLER: You're welcome.

16 Q. (By Ms. Spiller) And, Dr. Choueiki, this  
17 sort of report from the auction manager is filed  
18 subsequent to every SSO auction in Ohio, correct?

19 A. Correct.

20 Q. And this particular auction conducted in  
21 January of 2014, there were two different products  
22 included, correct?

23 A. Correct.

24 Q. A one-year term, June 1, '14 to May 31,  
25 2015; and then a two-year term, June 1, '14 to May

1 31, '16, correct?

2 A. Correct.

3 Q. And on the auctions for these two  
4 products held on the same day, there's about a  
5 22 percent difference in the auction clearing price,  
6 correct?

7 A. That's correct, but those are completely  
8 two different products and the consumers are not  
9 going to see 22 percent. I presume you know why.

10 Q. I understand why, sir. And, sir, I would  
11 ask -- your Honor, may we approach?

12 EXAMINER WALSTRA: You may.

13 MS. SPILLER: Thank you. We ask that the  
14 following be marked as Duke Energy Ohio Exhibit 31.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. And, Dr. Choueiki, this is again another  
17 auction report from CRA docketed with the Ohio  
18 Commission on November 5, 2014. Sir, again, this is  
19 a report reflecting an SSO auction that occurred for  
20 the FirstEnergy distribution utilities. The auction  
21 occurred it appears on October 14, 2014 as reflected  
22 in the second page of the attachment, correct?

23 A. Correct.

24 Q. And, similarly, this letter is submitted  
25 to the Ohio Commissioners as well as members of its

1 staff -- certain members of its staff, correct?

2 A. Correct.

3 Q. And the particular product in this  
4 instance was a one-year product, June 1, '15 through  
5 May 31 of '16, correct?

6 A. Yeah, that's the one product.

7 Q. I am not --

8 MS. BOJKO: Do you have any more copies  
9 of the document?

10 MS. SPILLER: Do we have more?

11 MS. BOJKO: Nobody down here has copies.

12 MS. SPILLER: Oh, I think we will have to  
13 share. We're happy to make copies at the break.

14 MS. BOJKO: Could you give us the case  
15 number at least that this one is filed in?

16 MS. SPILLER: Oh, sure. It's the same  
17 case number as the last one. Just a moment,  
18 Ms. Bojko.

19 MS. BOJKO: Just a what?

20 MS. SPILLER: Just a moment.

21 MS. BOJKO: It's a FirstEnergy auction  
22 again?

23 MS. PETRUCCI: 12-2742. It's on the  
24 filing.

25 MS. SPILLER: Thank you.

1 MS. BOJKO: Thank you.

2 Q. (By Ms. Spiller) And, Dr. Choueiki, the  
3 clearing price for this particular auction product  
4 was \$73.82?

5 A. That was the clearing price for one-sixth  
6 of the load for that specific year.

7 Q. And I can't do the math, but this 73.82  
8 is how many percentage --

9 A. From what?

10 Q. From the 68.

11 A. You can't compare the 55 to 68 to 73.  
12 That's my point. Each one of them is for a different  
13 product. What the consumer sees is an average of six  
14 numbers. So the consumers are not going to see the  
15 difference between \$68 and \$73 or between \$55 and  
16 \$68. That's why we do the staggering and the  
17 laddering so we can average in every year six  
18 numbers, and that reduces volatility tremendously.

19 Q. But the clearing prices have increased,  
20 correct?

21 A. The trend has gone up. But, again, that  
22 is an abnormal year. That's the year where the price  
23 of capacity went up to \$357 a megawatt-day in  
24 FirstEnergy's service territory. The following year  
25 it went back down to \$114.

1 Q. And we don't know today what's going to  
2 happen even with the '17-'18 capacity prices,  
3 correct?

4 A. Well, we know they're 120 right now.

5 Q. Right.

6 A. So --

7 Q. And they could change?

8 A. The price will not change, but there  
9 might be some adders that would be nonbypassable on  
10 every transmission customer in PJM.

11 Q. And that would result in an increase in  
12 the retail rates that Duke Energy Ohio's customers  
13 pay, correct?

14 A. That would be an increase in retail rates  
15 in all of PJM.

16 Q. And that would include Duke Energy Ohio's  
17 retail customers, correct?

18 A. Correct.

19 Q. Dr. Choueiki, just briefly, you had a  
20 conversation concerning the announced sale with  
21 Dynegy, Duke Energy Ohio and Dynegy.

22 A. Correct.

23 Q. And it's your understanding -- or is it  
24 your understanding, sir, that the nonregulated  
25 generating assets held under the Duke Energy

1 Corporate umbrella are being sold to Dynegy?

2 A. Yeah. My understanding is all DECAM coal  
3 and gas assets are being sold to Dynegy.

4 Q. And upon the consummation of that  
5 transaction, there will not be any affiliated  
6 nonregulated generation in the Duke Energy Corporate  
7 family, correct?

8 A. Duke Energy, Duke Energy Ohio?

9 Q. Let me back up. There will not be  
10 nonregulated generation in PJM, correct?

11 A. Nonregulated generation in PJM that Duke  
12 Energy owns?

13 Q. Correct.

14 A. I don't know. I'm sorry. I mean, I only  
15 know about Ohio, what's happening in Ohio. I don't  
16 know what Duke Energy has or the constructs,  
17 regulatory constructs, in other states.

18 Q. Okay. We can talk about Ohio, with  
19 respect to Ohio. Following the consummation of the  
20 sale to Dynegy, there will not be nonregulated  
21 generation that's affiliated with Duke Energy Ohio,  
22 correct?

23 A. Yeah. We still have to figure out what  
24 to do with OVEC or what OVEC is called. I'm not  
25 sure -- even Mr. Whitlock couldn't figure out who --



1       when someone asks him who is going to take care of  
2       the OVEC generation, bid that generation, he didn't  
3       know.

4               Q.     Do you believe OVEC is an affiliate of  
5       Duke Energy Ohio?

6               A.     No, no. Your question was about  
7       affiliates?

8               Q.     Yes, sir.

9               A.     I'm sorry. I missed that detail.

10              Q.     And, Dr. Choueiki, with respect to the  
11       SEET, the significantly excessive earnings test, are  
12       you aware that there are provisions in Ohio law  
13       concerning the parameters for that test?

14              A.     You are speaking way above me here. I am  
15       not sure exactly what the details of the SEET test  
16       are, but my proposal is somehow to -- to give --  
17       given that Duke Energy Ohio is carrying all the risk,  
18       they are carrying all the benefit or enjoy all the  
19       benefit that comes from the sale of that generation  
20       regardless what they want to do with it.

21              Q.     So you don't know whether the Ohio  
22       Commission has issued or adopted parameters for how  
23       this significantly excessive earnings test are to be  
24       administered, correct?

25              A.     I don't know the details.

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

3 Q. Dr. Choueiki, just a couple of questions,  
4 if I may, sir. Your testimony in this case is  
5 testimony that has been submitted only on behalf of  
6 the staff of the Public Utilities Commission,  
7 correct?

8 A. That's correct.

9 Q. And you understand that in connection  
10 with the wholesale SSO auctions, that Duke Energy  
11 Ohio enters into master SSO supply agreements with  
12 the successful auction participants, correct?

13 A. They do enter into contracts, yes.

14 Q. Do you believe that entering into those  
15 contracts puts Duke Energy Ohio in the generation  
16 business?

17 A. No.

18 MS. SPILLER: Thank you, your Honor. I  
19 don't have anything further.

20 EXAMINER WALSTRA: Thank you.

21 Redirect? Do you need a minute?

22 MR. BEELER: Can I have a minute, please?

23 EXAMINER WALSTRA: Sure.

24 (Discussion off the record.)

25 EXAMINER WALSTRA: Mr. Beeler?

1 MR. BEELER: No redirect, your Honor.

2 MS. BOJKO: Do we still have a recross  
3 opportunity as promised by Ms. Spiller?

4 MR. OLIKER: Yeah.

5 MS. SPILLER: That was struck from the  
6 record. There is nothing to recross on, Ms. Bojko.

7 EXAMINER WALSTRA: Thank you, Doctor.

8 THE WITNESS: My pleasure.

9 EXAMINER WALSTRA: Renew your motion.

10 MR. BEELER: Yes. Staff would move for  
11 the admission of Staff Exhibit 1.

12 EXAMINER WALSTRA: Any objections?

13 MS. SPILLER: No, your Honor.

14 EXAMINER WALSTRA: It will be admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER WALSTRA: And Duke?

17 MS. SPILLER: Your Honor, Duke Energy  
18 Ohio would move for the admission of Duke Energy Ohio  
19 Exhibits 30 and 31, the auction reports docketed with  
20 the Commission in case 12-4724.

21 EXAMINER WALSTRA: Any objections?

22 MS. BOJKO: Could you look at that case  
23 number again? I had 2742.

24 MS. SPILLER: Oh, 12-2742. Sorry.

25 MS. HUSSEY: Could you give us the date

1 for the second one, the date of the letter?

2 MR. HART: Docketed November 5th, 2014.

3 MS. BOJKO: 2013?

4 MR. HART: '14.

5 MS. SPILLER: '14.

6 MS. BOJKO: November 5?

7 MR. HART: As in yesterday.

8 EXAMINER WALSTRA: Hearing no objections,  
9 it will be admitted.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 EXAMINER WALSTRA: I guess we'll break  
12 for lunch at this point and come back at 1:45.

13 MR. SERIO: Your Honor, could I get  
14 clarification on whether we are going to need  
15 Ms. Hixon this afternoon? I am assuming Mr. Williams  
16 will go on.

17 EXAMINER WALSTRA: I think there's a good  
18 chance, yeah.

19 MS. SPILLER: So we have Mr. Yankel?

20 EXAMINER WALSTRA: Yankel.

21 MS. WATTS: Williams and then Hixon.

22 EXAMINER WALSTRA: Yeah, Williams,  
23 Yankel, and Hixon. Thank you.

24 (Thereupon, at 12:35 p.m., a lunch recess  
25 was taken.)

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Thursday Afternoon Session,  
November 6, 2014.

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EXAMINER WALSTRA: Go back on the record.  
And I believe it's OCC's witness.

MR. BERGER: Thank you, your Honor.

At this point in time, OCC calls Anthony  
Yankel.

(Witness sworn.)

EXAMINER WALSTRA: Thank you. You may be  
seated.

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

DIRECT EXAMINATION

By Mr. Berger:

Q. Mr. Yankel, would you please state your  
full name and your business address.

A. Anthony Yankel, Y-a-n-k-e-l, 29814 Lake  
Road, Bay Village, Ohio 44140.

Q. And, Mr. Yankel, did you cause to prepare  
testimony in this proceeding?

A. Yes.

MR. BERGER: Your Honor, at this time I  
would like to have marked for identification

1 Mr. Yankel's testimony as OCC Exhibit No. 46.

2 Mr. Yankel also has an errata sheet which we would  
3 ask be marked as OCC Exhibit 46.1.

4 EXAMINER WALSTRA: So marked.

5 (EXHIBITS MARKED FOR IDENTIFICATION.)

6 MR. BERGER: Thank you.

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

8 EXAMINER WALSTRA: You may.

9 Q. We're handing a copy of your testimony to  
10 the court reporter and the errata sheet.

11 Mr. Yankel, was this testimony prepared  
12 by you or under your direct supervision?

13 A. It was.

14 Q. And we're handing out the errata sheet as  
15 Exhibit 46.1. Do you have any additional changes or  
16 corrections to your testimony?

17 A. None that I'm aware of.

18 Q. And with the corrections reflected on the  
19 errata sheet, is your testimony true and correct to  
20 the best of your knowledge, information, and belief?

21 A. Yes.

22 Q. If I were to ask you the questions  
23 contained in your testimony today, would your answers  
24 be the same as reflected in the testimony and errata?

25 A. Yes.

1 MR. BERGER: With that, your Honor,  
2 Mr. Yankel is available for cross-examination, and  
3 we'll hold our motion for admission until after his  
4 examination. Thank you.

5 EXAMINER WALSTRA: Thank you.

6 Ms. Hussey?

7 - - -

8 CROSS-EXAMINATION

9 By Ms. Hussey:

10 Q. Good afternoon, Mr. Yankel.

11 A. Good afternoon.

12 Q. Would you please turn to page 20 of your  
13 testimony.

14 A. Yes.

15 Q. You're discussing your proposal for rider  
16 DCI there, correct?

17 A. For the allocation, yes.

18 Q. Okay. And your proposal appears to base  
19 the allocation on Duke's cost-of-service study  
20 performed in the last distribution rate case which  
21 was 12-1682-EL-SSO, correct?

22 A. Yes.

23 Q. And specifically the allocation for rider  
24 DCI would be based on the share of net distribution  
25 plant allocated to each class?



1           A.     Yes.

2           Q.     Okay.  Do you recollect that Duke's  
3     cost-of-service study was criticized in the last rate  
4     case for an error that allocated too much plant to  
5     rate to class DP?

6           A.     No, I'm not.

7           MS. HUSSEY:  May I approach, your Honor?

8           EXAMINER WALSTRA:  You may.  Could you  
9     mark this, Ms. Hussey?

10          MS. HUSSEY:  Sure.  Happy to do so.  
11     Could I please have marked the direct testimony of  
12     Neal Townsend on behalf of the Kroger Company filed  
13     on February 19, 2013 in Case No. 12-1682-EL-AIR and  
14     others marked Kroger Exhibit No. 2.

15          EXAMINER WALSTRA:  So marked.

16          (EXHIBIT MARKED FOR IDENTIFICATION.)

17          MS. KINGERY:  And, your Honors, I would  
18     object immediately just on the grounds that  
19     Mr. Townsend is not here.  This is absolutely  
20     hearsay.  And to the extent that she's going to ask  
21     Mr. Yankel about it, there's no foundation.

22          MS. HUSSEY:  I'm not actually asking him  
23     about anything directly involved, and there would be  
24     no need.  I'm just asking -- I gave this document to  
25     him in order to refresh his recollection.

1 EXAMINER WALSTRA: Okay.

2 Q. (By Ms. Hussey) Okay. Could you turn to  
3 page 3.

4 A. Yes.

5 Q. Okay. And if you review point 1 on page  
6 3, does that refresh your recollection about the  
7 objection that I mentioned to the cost-of-service  
8 study in the last case?

9 A. No, it does not. I did not see this, so  
10 it doesn't refresh my memory.

11 Q. Okay. With regard to the cost-of-service  
12 study, you're proposing to use that as the basis for  
13 allocating DCI costs; is that correct?

14 A. I'm proposing to use just a portion of  
15 the cost-of-service study, the portion that's most  
16 reflective of the type of costs that are going in the  
17 plant costs and try to take away the use of such  
18 things as meter reading, billing and whatnot. The  
19 costs certainly aren't associated with distribution  
20 plant additions.

21 Q. Okay. And are you aware that that  
22 allocation of distribution revenue responsibility to  
23 each rate schedule was addressed in the stipulation  
24 in the last rate case?

25 MS. KINGERY: Objection, your Honor. The

1 witness has just said that he didn't recollect what  
2 had happened in that case with regard to this issue.

3 EXAMINER WALSTRA: Overruled.

4 MS. KINGERY: At this point, Ms. Hussey  
5 is just testifying.

6 MS. HUSSEY: Your Honor -- okay.

7 A. Would you like to repeat the question?  
8 Do you want me to answer?

9 Q. I'm sorry. I didn't know there was a  
10 pending question.

11 A. Should I have it repeated?

12 Q. I can repeat it.

13 Were you aware that the allocation  
14 distribution revenue responsibility was addressed in  
15 the stipulation in the last rate case?

16 A. The responsibility certainly was. But,  
17 again, that's the numbers that the company had  
18 proposed under revenue distribution. I am looking at  
19 a different set of numbers which I don't believe is  
20 addressed specifically as a line item within a  
21 cost-of-service item. Again, more narrowly focused  
22 on the type of investment we're talking about as  
23 opposed to the overall revenue requirement.

24 Q. Okay. And you're testifying on behalf of  
25 OCC today, correct?

1           A.     That is correct.

2           Q.     Is it your understanding that the  
3 stipulation was signed by numerous parties including  
4 Duke, Kroger, and OCC in 12-1682-EL-SSO?

5           MR. BERGER: Your Honor, I am going to  
6 object to the use of this stipulation for any  
7 substantive purpose as having precedential value in  
8 this proceeding. The stipulation clearly provided it  
9 is non-precedential. Ms. Hussey is attempting to use  
10 it for that purpose by inquiring of this witness  
11 regarding whether a particular thing was adopted in  
12 this stipulation. I don't think that it's probative  
13 of the evidence in this case. Thank you.

14           EXAMINER WALSTRA: Overruled.

15           Q.     Would you like to see a copy of the  
16 stipulation, Mr. Yankel?

17           A.     Yes.

18           Q.     Okay.

19           MS. HUSSEY: May I approach, your Honor?

20           EXAMINER WALSTRA: You may.

21           A.     I can see where the staff has signed. I  
22 can see where the OCC has signed it.

23           MR. BERGER: Is there a question posed?

24           MS. HUSSEY: I believe there is a pending  
25 question about whether Duke, OCC and Kroger were

1 signatory parties to this stipulation.

2 MR. BERGER: Thank you.

3 MS. KINGERY: And I would renew my  
4 objection on the grounds this stipulation, as all  
5 stipulations are, was a package agreement. So what  
6 was agreed to on one particular issue in here is not  
7 relevant to its use in a subsequent case.

8 MS. HUSSEY: Your Honor, I am just trying  
9 to understand what the outcome of Mr. Yankel's  
10 proposal is going to be in relation to what currently  
11 is.

12 EXAMINER WALSTRA: I'll overrule it.  
13 Can you mark the exhibit?

14 MS. HUSSEY: Sure. I would like to have  
15 marked as Kroger Exhibit 3 Stipulation and  
16 Recommendation in Case No. 12-1682-EL-AIR and others  
17 filed on April 2, 2013.

18 EXAMINER WALSTRA: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. (By Ms. Hussey) Mr. Yankel, so by  
21 proposing to use Duke's cost-of-service study in the  
22 last distribution rate case to spread DCI costs, are  
23 you recommending bypassing the provisions in the  
24 stipulation that determined how costs would be  
25 spread?

1           MR. BERGER: Objection, your Honor. We  
2           are talking about a different case here than the  
3           case -- the settlement, again, only applied to the  
4           dollars that were being allocated in that case. The  
5           dollars being allocated in this case are different,  
6           and I believe this stipulation is not supposed to be  
7           precedential on any issue. And in addition, there is  
8           no foundation because Mr. Yankel, I don't believe,  
9           was a -- did not testify in that case, to the best of  
10          my recollection.

11          MS. HUSSEY: Your Honor, if I may, the  
12          last distribution rate case obviously is  
13          determinative of what current distribution rates are,  
14          and allocation was addressed, and he is depending on  
15          a cost-of-service study that was performed, to my  
16          understanding, in conjunction with that case. So I  
17          think that this should be admitted at this point.

18          MR. BERGER: Well, I am not asking about  
19          the admission of the stipulation. I'm asking about  
20          the question that you posed, which it was talking  
21          about different costs and the costs included in that  
22          stipulation.

23          EXAMINER WALSTRA: Overruled.

24          A.     Can I have --

25          MS. HUSSEY: Karen, can you read the

1 question back, please?

2 (Record read.)

3 A. No. I am looking at a specific line item  
4 in the cost-of-service study. The stipulation itself  
5 looks at, one, the entire cost-of-service study plus  
6 an agreement amongst all the parties. It's much  
7 broader than that.

8 What I'm looking for in this particular  
9 case is a way to allocate a very specific type of  
10 cost, and I am trying to find a place where the  
11 company has developed data from which to allocate  
12 that as opposed to a general here is what the overall  
13 revenue requirement is. I don't feel that the  
14 general revenue requirement is reflective of the type  
15 of costs going into this particular item.

16 Q. And we're talking about the costs  
17 associated with rider DCI, correct?

18 A. Correct, in this particular case.

19 Q. And you don't feel as though bypassing  
20 the rates for provisions in the settlement agreement  
21 deprives the signatory parties of the benefit of  
22 their bargain in that particular case?

23 MR. BERGER: Objection, again, your  
24 Honor. By talking about the bypassing what the  
25 parties agreed to, she is suggesting that it's

1 precedential. It's not precedential. It's clearly  
2 set forth on page 2 of the stipulation.

3 EXAMINER WALSTRA: Overruled.

4 A. Can I have it reread?

5 (Record read.)

6 A. No. The stipulation is directed at that  
7 particular case. It reflects what the revenue  
8 requirement will be coming out of that case. We're  
9 looking at something very different. We are looking  
10 at a very specific item in a very different case.

11 Q. And yet you have used the cost-of-service  
12 study as a part of the foundation or a large part of  
13 the foundation of what you've included for the  
14 allocation in your testimony; is that correct?

15 A. That is correct, because I looked at the  
16 specific items that we were talking about in this  
17 particular case, and I took from the cost-of-service  
18 study what essentially the company believes to be  
19 their costs for distribution plant, and I thought  
20 it's much better to use straight distribution plant  
21 than to use distribution plant plus again the cost of  
22 meter reading, the cost of billing and whatnot.

23 MS. HUSSEY: All right. Thank you.  
24 Nothing further.

25 EXAMINER WALSTRA: Thank you. Ms. Bojko?



1 MS. BOJKO: Yes. Thank you.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Bojko:

5 Q. Good afternoon, Mr. Yankel.

6 A. Good afternoon.

7 Q. Could you turn to page 20 of your  
8 testimony. I want to understand the chart that you  
9 have laid out there. It's my understanding from your  
10 chart that the column labeled "Distribution Revenue"  
11 is what Duke is proposing in this cause; is that  
12 correct?

13 A. Proposing to be used in this case, yes,  
14 for the allocation of these costs, yes.

15 Q. Okay. And then the last column which is  
16 titled "Net Distribution Plant," this is what you,  
17 sir, are proposing be the allocation in the current  
18 case with regard to DCI; is that correct?

19 A. Yes, yes.

20 Q. And it's my understanding from your  
21 discussions you just had that the utility proposal,  
22 Duke's proposal in the distribution revenue column  
23 was based on the last rate case and it was based on  
24 the settlement parameters; is that your  
25 understanding?

1           A.    Could you give it to me again?

2           Q.    The distribution revenue column that's  
3 proposed by Duke in this case, it's your  
4 understanding that that was based on the settlement  
5 allocation in the last case that you cite to on this  
6 page; is that correct?

7           A.    That's my understanding, yes.

8           Q.    Okay. And so your proposal is not to  
9 base it upon that, but instead base it on the  
10 cost-of-service study that was performed but in that  
11 last case; is that correct?

12          A.    That is correct, on those specific costs  
13 under question at this time, yes.

14          Q.    Okay. So just so I understand, the Duke  
15 proposal is to use the last rate case and the  
16 allocation that came out of the settlement, and your  
17 proposal is to use the last rate case but to use the  
18 cost-of-service study that was performed in that  
19 case; is that correct?

20          A.    Only a specific line item in that case.  
21 So, again, the overall revenue requirement, not the  
22 dollar amount but the allocation, would pretty much  
23 follow the cost-of-service study. So I'm just  
24 looking at, again, one line item in the  
25 cost-of-service study to reflect the one set of

1 conditions we're looking at here.

2 Q. Okay. But I'm just trying -- there were  
3 a lot of objections, so I am trying to make sure I  
4 understand your proposal. Both of these columns are  
5 based on something that came out of the last  
6 distribution rate case; is that right?

7 A. That is correct.

8 Q. Okay. And your proposal, sir, the effect  
9 of your proposal would be to shift costs from the  
10 residential class to the other classes, particularly  
11 the commercial classes; is that fair?

12 A. Certainly shifts it from the residential  
13 class. I didn't go through the others to see plus or  
14 minus which way it went, but obviously residential is  
15 getting less, other classes are getting more.

16 Q. Okay. And the two classes from your  
17 chart, sir, that appear to be getting the brunt of  
18 that shift or increase would be the DS class and the  
19 DP class; is that correct?

20 A. Yes, and lightning.

21 Q. Oh, excuse me. And the lightning.  
22 Actually it's the lightning and the DP class that get  
23 the majority of the increase; is that correct?

24 A. Yes.

25 Q. Okay. And, now, can we turn to page 23

1 of your testimony. Do I understand this chart to  
2 mean the exact same as what I just went through with  
3 you with the other chart, that the distribution  
4 revenue column is the utility proposal in this case  
5 and the distribution O&M expense column is your  
6 proposal in this case?

7 A. Yes. Again, from the last case, the last  
8 distribution rate case, yes.

9 Q. Okay. And both, again, have the  
10 underlining foundation of the last distribution case  
11 and Duke's proposals based on the settlement  
12 allocation and your proposals based on the  
13 cost-of-service allocation?

14 A. No. Mine is based upon, again, one  
15 specific line item within the cost-of-service study.  
16 The total -- the company's proposal, the distribution  
17 revenue column, is a total revenue column. So it  
18 includes all the expenses that the company has,  
19 including, again, meter reading, which obviously  
20 isn't a part of what we are talking about here.  
21 Whatever. Sales. There's a number of items in here  
22 that have nothing to do in this particular case with  
23 storm damage.

24 Q. Okay.

25 A. So, you know, I'm looking at -- looking

1 for something, an O&M expense that reflects storm  
2 damage. I'm only looking at one portion of the  
3 cost-of-service study. The overall cost-of-service  
4 study would be higher for residential because it does  
5 include a much higher amount of costs for billing,  
6 for meter reading and what have you for the  
7 residential class, but that has nothing to do with  
8 the storm damage.

9 Q. Okay. Thank you for that clarification  
10 that it's based on a line item in the cost-of-service  
11 study, your proposal, right?

12 Okay. So looking at this chart that  
13 you've put before us, the effect of your proposal  
14 from Duke's proposal is approximately a 10 percent  
15 decrease, 10.2 percent decrease, in residential  
16 rates; is that right?

17 A. That is correct.

18 Q. And then in this scenario for the O&M  
19 costs, it seems that the DP class is the one that's  
20 getting hit the hardest and it's over -- doubling the  
21 rate. It's going from 6.1 to 12.9 percent; is that  
22 correct?

23 A. That is correct. Also, the DM class does  
24 go down. So some other classes go down, yes.

25 Q. And it looks like the DS class gets a

1 more significant jump as well, goes from 29.4 to  
2 33.2; is that correct?

3 A. That is correct.

4 MS. BOJKO: Thank you, your Honor. I  
5 have no other questions.

6 EXAMINER WALSTRA: Thank you.

7 Mr. Kurtz?

8 MR. KURTZ: No questions, your Honor.

9 EXAMINER WALSTRA: Mr. Hart?

10 MR. HART: Yes, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Hart:

14 Q. Mr. Yankel, let's continue on the issue  
15 of the rate design for your proposal. I take it  
16 you're accepting the cost-of-service study from the  
17 2012 rate case as is with no changes?

18 A. I have not reviewed it, so I am accepting  
19 it as is, yes.

20 Q. And you haven't done any independent cost  
21 study of your own to determine what the proper class  
22 allocation would be; is that correct?

23 A. If we were to redo it this year, no, I  
24 have not.

25 Q. Okay. Now, do you understand that in

1 case 12-1682 that the cost-of-service study was  
2 sponsored by a witness, James Ziolkowski?

3 A. Yes.

4 Q. And are you aware that that case settled  
5 without a hearing?

6 A. I'm not aware of that.

7 Q. Okay. So you're not aware that  
8 Mr. Ziolkowski never actually testified as to the  
9 accuracy of that cost study?

10 MR. BERGER: Your Honor, at this point I  
11 just want to object. I mean that case did not settle  
12 without a hearing, as I understood it. I think  
13 with -- strike that.

14 There was a hearing on the stipulation,  
15 your Honor, in that case. I just wanted to make that  
16 clear. Thank you.

17 MR. HART: Could you read back the  
18 question?

19 (Record read.)

20 A. If there was no hearing with respect to  
21 the initial testimony filed, then I would assume no.

22 Q. Okay. And so he was not subject to  
23 cross-examination on any issue that's covered by that  
24 cost study, correct?

25 A. That I don't know. Again, if he's

1 testified with respect to the stipulation, that I  
2 don't know, whether he's testified with respect to  
3 the stipulation. But with respect to cost-of-service  
4 study, I assume that he did not -- he was not  
5 cross-examined on that.

6 Q. All right. And you've been shown by  
7 Kroger the testimony of Neal Townsend that was filed  
8 in that case, correct?

9 A. It's been handed to me, yes.

10 Q. Okay. And I guess you are aware that  
11 Mr. Townsend criticized certain aspects of the study.  
12 I don't want to get into the details of what he said  
13 but --

14 A. I would assume other people did as well.  
15 I have no idea, but I would assume other people would  
16 have done as well. Again, it's a distribution rate  
17 case. One of the primary things would be the  
18 cost-of-service study within a distribution rate  
19 case. So I would assume there would be several  
20 different points of view.

21 Q. And so it was never resolved whether the  
22 cost-of-service study was accurate or whether the  
23 challenges to the cost-of-service study were correct,  
24 correct?

25 MR. BERGER: Objection, your Honor. The



1 stipulation is a resolution of the entire proceeding.  
2 I think it's inaccurate to represent -- I think it  
3 creates a misunderstanding to say there was no  
4 resolution of issues in general. There's  
5 certainly -- I think we can stipulate that there was  
6 no specific -- the Commission's order -- either the  
7 stipulation nor the Commission's order specifically  
8 addressed the validity of the cost-of-service study.

9 EXAMINER WALSTRA: Your objection is  
10 noted but overruled.

11 Q. (By Mr. Hart ) I don't know if you  
12 answered or not.

13 A. I don't recall. I will have to ask.

14 (Record read.)

15 A. In my understanding, there would have  
16 been no determination one way or the other.

17 Q. All right. Now, you've in your chart on  
18 page 23 -- well, there was actually two charts. One  
19 is on page 20 and one is on 23. Am I correct both of  
20 those, the left column titled "Distribution Revenue"  
21 are the same numbers which were the stipulated  
22 numbers?

23 A. Yes.

24 Q. Okay. And would you agree that the  
25 cost-of-service study itself would have had a total

1 cost of service allocation?

2 A. That would be different than the ones  
3 that we have here? I would assume, yes.

4 Q. Okay. What I am getting at is you picked  
5 out a specific line item that you would use to  
6 allocate rider DCI, correct?

7 A. Correct.

8 Q. And you've picked out a different line  
9 item that you would use for the storm rider, correct?

10 A. Correct.

11 Q. Neither of which is the total cost of  
12 service.

13 A. Neither of which is total cost of  
14 service, but both of which are reflective of the  
15 specific riders we're talking about here as opposed  
16 to a total which I don't think is reflective of the  
17 specific riders we're talking about.

18 Q. All right. Well, let me get back to the  
19 total cost of study issue. You agree that the  
20 stipulated allocation among rate classes is different  
21 than what the cost-of-service study said the total  
22 cost-of-service allocation should be.

23 A. I said I assume. I did not check, but I  
24 would assume it's different, yes.

25 Q. Well, you used that to find the line item

1       you used, correct?

2               A.     Yes.

3               Q.     So if we were to look at the total  
4       cost-of-service line, we could see what those numbers  
5       were and whether they are the same as the stipulated  
6       numbers.

7               A.     We could.

8               Q.     Okay. Now, am I correct that for  
9       purposes of the stipulation in case 12-1682, the only  
10      number that was agreed upon was the ultimate total  
11      cost of service as opposed to components that go into  
12      that?

13              A.     You mean percentages? I am just not  
14      following the question.

15              Q.     Yeah.

16              A.     Percentages, right.

17              Q.     I am talking about percentage of  
18      allocation among rate classes.

19              A.     Yes.

20              Q.     There is only one set of numbers -- we  
21      didn't go through each line of the costs or  
22      cost-of-service study and settle on an allocation for  
23      that line, right?

24              A.     I certainly would assume not.

25              Q.     So there's no way to deconstruct from

1       that total number to determine what the relative  
2       weights of the components would have been, is there?

3           A.     What every -- yes, what everyone would  
4       have agreed to, there is no way of understanding what  
5       that would have been.  Again, I was looking at  
6       specific line items that reflect specific costs which  
7       I was trying to take away things that obviously  
8       didn't matter with respect to the cost-of-service  
9       study.  I was essentially subtracting out is what I  
10      was doing.

11          Q.     Well, let me ask it this way.  In order  
12      for the bottom line numbers to be allocated  
13      differently, would you agree that one or more of the  
14      subcomponents of the cost study would have had to  
15      change?

16               MR. BERGER:  Can you reread the question?  
17      I'm not sure I understood.

18               (Record read.)

19               MR. BERGER:  I object.  I think the  
20      question is unclear.  Is he talking about the  
21      stipulated bottom line number?  Is he talking about  
22      the cost-of-service study bottom line number?  It's  
23      unclear.

24               EXAMINER WALSTRA:  Can you clarify?

25               MR. HART:  Well, I think the witness can

1 say whether it is unclear to him, but I will try to  
2 do it a different way.

3 Q. We've established, have we not,  
4 Mr. Yankel, that the stipulated allocation of cost  
5 among the rate class is different than what the  
6 cost-of-service study would have told us to do,  
7 correct?

8 A. Yes.

9 Q. Okay. And in order to arrive at  
10 different totals in a cost-of-service study, you  
11 would have to change something in one of the  
12 component lines that adds up to that total, correct?

13 A. If one were doing that, but one probably  
14 wasn't doing that. When you are looking at a  
15 settlement, a stipulation, you are looking at the  
16 overall numbers and what's agreed to. You are not  
17 going back through a cost-of-service study and  
18 changing certain line items to come up with a certain  
19 number. You are essentially coming up with an  
20 agreement on what numbers everybody is going to go  
21 with, and it really has nothing to do with what's in  
22 the cost-of-service study.

23 Q. I think we agree with each other on that  
24 point, but what I am trying to get at is in order to  
25 come up with a different bottom line, one or more of

1 the components that total that bottom line has to  
2 change also, correct?

3 MR. BERGER: Again, Mr. Hart, are you  
4 talking about the bottom line number for a  
5 stipulation?

6 MR. HART: No. I am talking about the  
7 cost-of-service study.

8 MR. BERGER: So you're saying -- you're  
9 asking him whether in coming up with the bottom line  
10 number in the company's cost-of-service study, if you  
11 were to change the bottom line, one of the components  
12 would have to change? Is that what you are asking?

13 MR. HART: That's what I have asked about  
14 three times now, yes.

15 A. Mathematically, yes. You have -- if you  
16 change one number, you are going -- your bottom line  
17 number is going to change. If your bottom line  
18 numbers change, therefore, you had to change at least  
19 one of the components, maybe five of them. I have no  
20 idea. But it's a mathematical calculation. So in  
21 order to get a different number at the bottom, you  
22 have to change something on top.

23 Q. And do you know of any line items in the  
24 cost-of-service study other than the allocation of  
25 the plant expense and the O&M -- I'm sorry. The

1 allocation of plant and O&M expense were under  
2 challenge?

3 A. No, I do not know what was under  
4 challenge by Mr. Townsend or anyone else.

5 Q. So am I fair to say that you can't assume  
6 that if the case had been litigated, that the  
7 cost-of-service study would have been upheld with  
8 respect to line 8?

9 MR. BERGER: I'm sorry. Line 8?

10 MR. HART: Yes, on Schedule 3.2, page 20  
11 which he relies upon for his numbers.

12 A. There's no telling what would have  
13 happened as far as that goes without the litigation.

14 Q. And the same is true with respect to line  
15 38 on page 20 of Schedule E32, correct?

16 A. Correct.

17 MR. BERGER: I am sorry. I am not sure  
18 where counsel is.

19 Are you talking about his testimony or  
20 somewhere else?

21 MR. HART: I am talking about the lines  
22 he cited on pages 20, line 18 and page 23, line 17,  
23 which are his sources for his numbers.

24 MR. BERGER: The sources in terms of the  
25 cost-of-service study that you are referring to,

1       okay.   Thank you.

2               MR. HART:   That's all I have.

3               MS. BOJKO:   Mr. Hart, do you mean line  
4       38?

5               MR. HART:   I thought that's what I said.  
6       Maybe I misspoke.   On page 20, he refers to line 38;  
7       and on page 23, he refers to line 8.

8               MR. BERGER:   Of schedule E3.2 page 20 of  
9       the cost-of-service study?

10              MR. HART:   That's correct.

11              Thank you.   That's all I have.

12              EXAMINER WALSTRA:   Thank you.

13              Ms. Kingery?

14              MS. KINGERY:   Thank you, your Honor.

15                               - - -

16                               CROSS-EXAMINATION

17       By Ms. Kingery:

18              Q.   Mr. Yankel, is it fair to say that the  
19       focus of your testimony in this proceeding is limited  
20       to rate design issues?

21              A.   Yes, primarily.   It depends on what you  
22       call rate design, but yes, primarily.   Rate design is  
23       fine.

24              Q.   And you discuss four of the riders that  
25       Duke Energy Ohio has proposed in this case, correct?



1           A.    Well, one they didn't propose. One they  
2   proposed to get rid of, the interruptible. But, yes,  
3   the four different things that they were talking  
4   about, I believe, four different areas.

5           Q.    Okay. The interruptible, if you count  
6   the interruptible, then maybe it's five. You talk  
7   about RC, correct?

8           A.    RC.

9           Q.    And DCI?

10          A.    DCI.

11          Q.    And DSR?

12          A.    DSR.

13          Q.    And PSR?

14          A.    Yes. So there would be five, yes.

15          Q.    Okay. And it is your opinion that rider  
16   RC should not be approved, correct?

17          A.    Yes.

18          Q.    And as to rider DCI, you do not offer any  
19   opinion as to whether or not it should be approved,  
20   correct?

21          A.    That is correct.

22          Q.    And the same thing with rider DSR, you  
23   don't offer any opinion as to whether it should or  
24   should not be approved, correct?

25          A.    That is correct.

1           Q.    And you also do not offer any opinion as  
2   to whether rider PSR should be approved or should  
3   not, correct?

4           A.    Correct.

5           Q.    So for purposes of your work in this  
6   case, you assumed that rider DCI, DSR, and PSR were  
7   all approved by -- or will all be approved by the  
8   Commission, correct?

9           A.    I didn't assume that. I said if the  
10   Commission -- or at least my opinion, what I said was  
11   if it is approved by the Commission, then here is how  
12   the allocation should be, yes.

13          Q.    And then other than rider RC and the ones  
14   we've just discussed, the only other topic you  
15   testify on is the interruptible program that you  
16   mentioned a moment ago, correct?

17          A.    Correct.

18          Q.    How does Duke Energy Ohio propose to  
19   procure capacity for its standard service offer load  
20   under this ESP?

21          A.    Self-serve.

22                MR. BERGER: I'm sorry. Did you mean  
23   under the proposed ESP?

24                MS. KINGERY: Yes.

25                MR. BERGER: Okay. Thank you.

1           A.    Under the proposed?

2           Q.    Yes, the application we are considering  
3 here.

4           A.    I'm sorry. Through PJM in the market of  
5 self-supply.

6           Q.    Would you look at your testimony on page  
7 5, line 5.

8           A.    Yes.

9           Q.    And read the sentence that starts on that  
10 line.

11          A.    "Duke's SSO capacity requirement will be  
12 satisfied by the winners of the auction-based  
13 procurement process."

14          Q.    So it's --

15          A.    The suppliers, yes.

16          Q.    Okay.

17          A.    The marketers.

18          Q.    Wholesale marketers, correct?

19          A.    Wholesale marketers.

20          Q.    And those wholesale marketers will get  
21 the capacity from where?

22          A.    PJM. They will have to pay for it.

23          Q.    And so you would agree with me PJM then  
24 would bill those wholesale suppliers for that  
25 capacity, correct?

1           A.    Yes.

2           Q.    And PJM bills wholesale suppliers on the  
3   5 CP method, correct?

4           A.    Yes.

5           Q.    Now, if you turn to page 3 of your  
6   testimony, please, line 1, you say there -- and this  
7   is in a paragraph talking about rider RC.  You say,  
8   "These costs are charged to the utility on an energy  
9   basis."  What are these costs in that partial  
10  sentence I just read?

11          A.    I'm not sure what goes before, but  
12  basically all the costs.  I mean there's cost of  
13  labor.  There's cost of risk.  There's cost of  
14  energy.  There's essentially all costs including the  
15  capacity cost.

16          Q.    Well, let's look at what went before it.  
17  On the previous page starting on line 19, you're  
18  quoting from the direct testimony of Mr. Ziolkowski,  
19  and you say "On the basis of traditional  
20  cost-causation principles, it is reasonable to  
21  allocate the capacity cost on the basis of each  
22  class's contribution to the total Five Coincident  
23  Peak.  But, these costs are charged to the utility on  
24  an energy basis."

25                Were you referring to the quote that was

1 in the previous line?

2 A. Yes, in this particular case. Later on  
3 in my testimony, I talk about the other charges that,  
4 you know, get thrown in there. But, yes, in this  
5 particular case, it would just be the capacity.

6 Q. But I thought we just said that PJM bills  
7 on the 5 CP method.

8 A. For capacity to the marketers.

9 Q. Right. And, if you know, when the  
10 company collects costs under rider RC, the charges  
11 under rider RC, where does that money go?

12 A. In the future or today?

13 Q. Let's talk about today.

14 A. I believe it stays with the company  
15 today. I'm not sure. They are self-supplying, so  
16 I'm thinking it stays with the company today. I  
17 didn't look into that, I guess.

18 Q. Okay. And do you know under the proposed  
19 ESP what the rider RC revenues would be used for?

20 A. Essentially to pay the marketers, so  
21 it's -- that would be combined with the energy  
22 charges to pay the marketer the ultimate energy  
23 prices being charged.

24 Q. So Duke takes the revenues from rider RC  
25 and reimburses the auction winners for their costs

1 from PJM for capacity?

2 A. Duke collects money from the customers --

3 Q. Right.

4 A. -- and reimburses on the basis of energy  
5 only to the marketers.

6 Q. And where do you get that information?

7 A. Because the marketers are only charging  
8 them for energy. They are not charging for capacity.

9 Q. Mr. Yankel, have you read the application  
10 in this proceeding?

11 A. A long time ago.

12 Q. And are you aware that the auction that  
13 is proposed by the company is a full requirements  
14 auction?

15 A. Yes.

16 Q. And what does a full requirements auction  
17 mean to you?

18 A. Not as much as it does to you. But,  
19 anyhow, basically energy and capacity and ancillary  
20 services.

21 Q. Okay.

22 A. The total requirements.

23 Q. Okay. So if it means that the auction  
24 bidders have to bid to provide energy and capacity as  
25 well as ancillary services, doesn't that mean that

1       once they win, they are providing capacity as well as  
2       energy?

3               A.     They are providing that, but the terms of  
4       the auction, as I understand it, is based strictly on  
5       dollars per megawatt-hour. There's no breakout with  
6       respect to capacity costs at all. So the utility --  
7       Duke is not paying a specific capacity cost. It is  
8       paying strictly an energy cost for ancillary services  
9       and everything.

10              Q.     So, sir, do you believe that the  
11       wholesale providers who bid in the auction are not  
12       including a capacity component in their bids?

13              MR. BERGER: Objection, your Honor. He's  
14       already answered the question.

15              EXAMINER WALSTRA: Overruled.

16              A.     They are putting together a number of  
17       variables, costs into their bid, of which I assume  
18       some of that is capacity, yes.

19              Q.     And they are paying PJM for capacity that  
20       they obtain in the market on a 5 CP basis?

21              A.     Based on a 5 CP basis, yes.

22              Q.     Thank you. On page 4, line 6 of your  
23       testimony, you discuss the distribution storm rider,  
24       correct, on line 5?

25              A.     Yes, yes.

1           Q.    Is it your understanding that Duke Energy  
2 Ohio is intending to recover capital investments  
3 through this rider?

4           A.    No.

5           Q.    And moving forward to the PSR now on line  
6 18 of that same page, you agree with the company's  
7 proposed cost allocation, correct?

8           A.    Correct.

9           Q.    And on page 5, line 2, you agree with the  
10 company's proposal to terminate the industrial  
11 interruptible program, correct?

12          A.    Correct.

13          Q.    So going back a minute to the capacity  
14 rider, do you believe that the company needed a rider  
15 RC in the currently applicable ESP, the one that we  
16 are under right now?

17               MR. BERGER:  Objection, your Honor.  He  
18 didn't address this issue in his testimony.  It's  
19 outside the scope.

20               EXAMINER WALSTRA:  Overruled.

21          A.    No, I did not.  What the company needed  
22 to do is collect a certain dollar amount, and they  
23 didn't need a specific rider for that.  They just  
24 collected it someplace else, that's all.

25          Q.    And you believe they needed to collect a



1 certain dollar amount because they were  
2 self-supplying their own capacity obligations?

3 A. Yes. Well, I guess they didn't have to  
4 collect it actually, but that's beside the point.  
5 They decided they wanted it.

6 Q. That's a nice gift. So, in your opinion,  
7 again looking at the last ESP case that resulted in  
8 the one we are under now, what the company proposed  
9 in that case was to provide capacity to all customers  
10 in its service territory based largely on its own  
11 costs of providing that capacity, correct?

12 A. That's my understanding of reading the  
13 last case, yes.

14 Q. And you would agree with me, then, that  
15 in the initial application in that proceeding, the  
16 company specifically included the use of its own  
17 generating assets as capacity resources, correct?

18 A. Yes.

19 Q. And in that case, in that situation,  
20 using the 12 CP method was appropriate, correct?

21 MR. BERGER: Objection, your Honor. He  
22 is not testifying as -- did not testify in this case  
23 as to what was appropriate in the last case.

24 MS. KINGERY: I'm referring to his  
25 testimony on page 12, line 4.

1 MR. BERGER: Thank you.

2 A. Can we do the question again? Because my  
3 answer is probably different than what I am thinking  
4 it was.

5 Q. What I said was in that case, in the  
6 situation that we just discussed, you believe that it  
7 was appropriate to use the 12 CP method?

8 A. I believe it was more appropriate to use  
9 that method than, say, the 5 CP method or something  
10 else. But, yes, I think the 12 CP method was  
11 appropriate. I think I discuss there more that the  
12 Commission tends to have done that. So I like the 12  
13 CP method.

14 Q. Do you realize, sir, that what the  
15 company proposed in that ESP proceeding is not what  
16 materialized?

17 A. Yes.

18 Q. And so you realize in the currently  
19 effective ESP, the capacity for the SSO load is  
20 procured via competitive auctions, just as the  
21 company has proposed for the next ESP?

22 A. Could I have that again?

23 Q. Sure. You have discussed already the  
24 fact that in the current application that we're  
25 working on right now, the company has proposed that

1 it would get the capacity necessary from the  
2 wholesale auction winners, correct?

3 A. The future that we are looking at?

4 Q. The future that we are looking at.

5 A. Yes.

6 Q. Are you aware that what transpired in the  
7 previous proceeding that led to the one that's  
8 effective now, the company gets its capacity also  
9 from wholesale auction winners?

10 A. I was of the opinion they were getting it  
11 from their own self-supply during the current, today  
12 what's going on.

13 Q. Okay.

14 A. Did I say that wrong? I may have.  
15 That's what I believe.

16 Q. Okay. So you're not aware that the  
17 revenues that Duke receives under the current rider  
18 RC are remitted to the wholesale auction winners,  
19 correct?

20 A. Duke has to pay those people money, and  
21 I'm not sure where Duke gets that money from. It  
22 obviously gets it from the ratepayers, but I don't  
23 think there is a special pile that goes one place or  
24 the other.

25 The capacity that they are paying for,

1 Duke is -- it's an FRR plan is what it's doing, so  
2 it's backing up the capacity for its suppliers as  
3 opposed to PJM doing it. I'm not sure how the money  
4 is flowing.

5 Q. So the difference that you see between  
6 the current ESP and the one that's proposed is  
7 primarily that Duke would no longer be an FRR entity;  
8 is that correct?

9 A. It certainly will not. I'm not sure if  
10 that's the primary. But, yes, it certainly will not  
11 be anymore.

12 Q. And is the fact that it will no longer be  
13 an FRR entity the primary driver for your belief that  
14 rider RC is unnecessary?

15 A. No. There's a number of reasons,  
16 including -- I think the most obvious is the fact  
17 that the marketers and suppliers are not charging for  
18 capacity. They are charging only on an energy basis.  
19 And if the costs come down on an energy basis, one  
20 should allocate on an energy basis. If it's 50/50,  
21 then it should be 50/50 between the two, between  
22 capacity and energy, but it's 100 percent energy is  
23 how it's being allocated, is how it's being actually  
24 charged to Duke. If duke has more capacity -- or  
25 uses more capacity and uses a whole lot less energy,

1 they are going to pay a whole lot less because they  
2 are not going to give up the capacity charge. The  
3 charges are based on energy only.

4 Q. Is PJM's use of the 5 CP method for  
5 purposes of charging the wholesale suppliers for the  
6 capacity consistent with principles of cost  
7 causation?

8 A. It's not my choice. It's theirs.

9 Q. All right. And it's a given that they do  
10 so.

11 A. Yes.

12 Q. So would you agree that it would be  
13 reasonable to use that same method when converting  
14 those wholesale charges into retail rates?

15 A. No. Again, because those aren't the  
16 charges that the utility is seeing. The utility is  
17 seeing a dollars per megawatt-hour charge only.

18 Q. Could we turn to page 15, and starting on  
19 about line 10, you discuss what you believe to be an  
20 error with regard to how the company calculated the  
21 average capacity price, correct?

22 A. Correct.

23 Q. And the equation for determining the  
24 average capacity price is essentially PJM demand  
25 multiplied by the FZCP times the number of days in

1 the period and that gives us a capacity cost to  
2 recover. We take that and divide it by the  
3 megawatt-hours in the period to get an average  
4 capacity price, correct?

5 A. Correct.

6 Q. And you do not dispute the numeric  
7 information that the company used in identifying the  
8 FZCP, correct?

9 A. Correct.

10 Q. And you do not dispute the determination  
11 of the number of days in the period, correct?

12 A. Correct.

13 Q. But you do dispute the PJM demand that  
14 the company used in determining the capacity costs to  
15 recover, correct?

16 A. I have a problem -- actually I guess my  
17 problem is more the energy that's being used. You  
18 could do the capacity either way. It's one number or  
19 the other. They need to both be the same, and  
20 they're not.

21 Q. With regard to PJM demand as you've used  
22 that term in your testimony, this is the same as Duke  
23 Energy Ohio's reliability obligation as reported to  
24 PJM, correct?

25 A. No. My understanding is it's Ohio and

1 Kentucky. It's not just Duke Ohio.

2 Q. Okay. It is a reliability obligation?  
3 We'll come back to whether it's Duke Energy Ohio or  
4 Duke Energy Ohio and Kentucky. But it is a  
5 reliability obligation, correct?

6 A. That is correct.

7 Q. Okay. And the reliability obligation  
8 includes both load and a reserve requirement,  
9 correct?

10 A. I don't know about the reserve  
11 requirement. The reserve requirement is usually a  
12 percentage above the load itself. I don't know what  
13 the number is. I don't know whether it included the  
14 reserve requirement.

15 Q. And the reliability obligation that Duke  
16 used in its calculations was 4,732 megawatts,  
17 correct?

18 A. Correct.

19 Q. But you believe that that number actually  
20 reflects total load for both Duke Energy Ohio and  
21 Duke Energy Kentucky, correct?

22 A. That's what the response to the data  
23 request said.

24 Q. Okay. That was my next question.

25 MS. KINGERY: Your Honor, I would like to

1 mark an exhibit. This would be Duke Energy Ohio 32.

2 EXAMINER WALSTRA: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MS. KINGERY: And for the record this is  
5 a copy of OCC Interrogatory 11-322 and the company  
6 response to that interrogatory.

7 Q. Mr. Yankel, is this the interrogatory  
8 response that you were referring to?

9 A. Yes.

10 Q. And specifically you were looking at  
11 paragraph F, correct?

12 A. No.

13 Q. Okay.

14 A. We were talking about a 4,000 number.  
15 I'm not seeing that here. I certainly used this  
16 exhibit.

17 MS. KINGERY: Give me just a moment, sir.

18 Q. Okay. Mr. Yankel, if you would look at  
19 page 16, the carry-over sentence at the top of the  
20 page.

21 A. Just a moment.

22 MR. BERGER: You are referring to his  
23 testimony?

24 MS. KINGERY: Yes. I apologize.

25 A. Yes.



1           Q.    So if you look down at the footnote,  
2               footnote 13 is a reference to this interrogatory that  
3               we've just passed out and marked as Duke Energy Ohio  
4               Exhibit 32, correct?

5           A.    Correct.

6           Q.    And if you look at the response to  
7               paragraph F, it says, "The company reported 4,969  
8               megawatts," and it goes on and explains to say "This  
9               number includes Duke Energy Ohio and Duke Energy  
10              Kentucky."

11          A.    I apologize. I was lost. We are on the  
12               same page.

13          Q.    That's all right. And I see, as a matter  
14               of fact, that your footnote 13 in your testimony  
15               actually has the F in it.

16          A.    Right, right.

17          Q.    That would have helped us both. So your  
18               concern with the number that was used was that it  
19               included both Duke Energy Ohio and Duke Energy  
20               Kentucky, correct?

21          A.    That's correct.

22          Q.    But as we've seen, the number reported in  
23               the interrogatory response was 4,969 as being the  
24               entire Ohio and Kentucky zone, correct?

25          A.    Right, which is equivalent to the number

1 that we have in the stipulation. Again, the equation  
2 you just talked about of 4,732 which happened three  
3 years earlier -- or two years earlier.

4 Q. And, sir, if we look at the question for  
5 F on page 1 of the exhibit --

6 A. Yes.

7 Q. -- it asks what the total load was,  
8 correct?

9 A. Yes.

10 Q. It did not include any reserve  
11 requirement, correct?

12 A. Correct.

13 Q. Okay. I believe you have in front of you  
14 from prior questioning a copy of the stipulation in  
15 the last case; is that correct?

16 A. I have it in front of me. I have it.

17 Q. And I believe that there was an  
18 Attachment B.

19 A. Yes.

20 Q. And is that the same document that was  
21 attached to your testimony filed in this proceeding  
22 as AJY-1?

23 A. Yes.

24 Q. And, sir, would you please look at the --  
25 if there are two tables, we are going to look at the

1 top one, which is the methodology for calculating the  
2 average price for rider RC.

3 A. Yes.

4 Q. And if you look toward the left, there's  
5 a column called "Underlying Capacity Price." Do you  
6 see that?

7 A. Yes.

8 Q. And under the left-hand side of that is a  
9 column labeled "Demand," correct?

10 A. Correct.

11 Q. Would you read footnote 1 that applies to  
12 that column?

13 A. Flexibility obligation as reported to PJM  
14 will need --

15 Q. What was the first word?

16 A. Maybe I need my glasses.

17 Q. That would help. It's small print.

18 A. It's very small. "Reliability obligation  
19 as reported to PJM will need to be updated future  
20 years for any growth."

21 Q. Would you accept, subject to check, that  
22 the reliability obligation is not the same as demand?

23 A. Not at this time. I mean, if you can  
24 show me something, I would be more than happy to see  
25 what the difference is.

1           Q.    Okay.  Would you agree with me that the  
2           company has not in any place reported or disclosed  
3           that the 4,732 megawatt figure that was used in that  
4           exhibit includes Duke Energy Kentucky retail  
5           customers and all wholesale customers served by the  
6           Duke Energy Kentucky transmission system?

7           EXAMINER PIRIK:  Ms. Kingery, what  
8           exhibit are you pointing to?

9           MS. KINGERY:  I apologize.  There is an  
10          exhibit attached to Mr. Yankel's testimony, which is  
11          Exhibit -- it's the only exhibit attached.

12          EXAMINER PIRIK:  Correct.

13          MS. KINGERY:  And that is a copy of  
14          Attachment B to the stipulation in the last ESP case.

15          EXAMINER PIRIK:  Which is OCC 2.

16          MS. KINGERY:  Which is OCC 2, yes.  Yes,  
17          AJY-1 is the designation of the attachment as  
18          attached to the testimony.

19          MS. BOJKO:  Attached in the ESP case?

20          MS. KINGERY:  No.  In this case that  
21          we're hearing today, attached to Mr. Yankel's  
22          testimony is Attachment AJY-1, and it is a copy of  
23          Attachment B, Exhibit 1, page 2 from the last  
24          stipulation.

25          MS. BOJKO:  In the --

1 MS. KINGERY: In the Duke SSO case,  
2 11-3549.

3 EXAMINER PIRIK: OCC Exhibit 2?

4 MS. KINGERY: Yes.

5 THE WITNESS: And you are going to have  
6 to reask the question obviously.

7 MS. KINGERY: Karen, could you read that  
8 back?

9 (Record read.)

10 A. In my opinion, footnote 1 indicates the  
11 reliability obligation, which would mean that it is  
12 Kentucky and Ohio and wholesale as the footprint.  
13 It's a reliability obligation as reported in PJM.

14 Q. Even though it doesn't mention Duke  
15 Energy Kentucky anywhere on that page?

16 A. No. My understanding is that the  
17 footprint is those three entities.

18 Q. And the interrogatory that we looked at,  
19 the company's interrogatory in this case, Duke Energy  
20 Ohio Exhibit 32.

21 A. It says what was reported to Duke --  
22 excuse me. Duke reported to PJM and Duke would have  
23 reported those three entities combined, my  
24 understanding.

25 Q. But, again, going back to a question I

1 asked several minutes ago, you're not absolutely sure  
2 what reliability obligation includes?

3 A. My belief is that it includes essentially  
4 the 5 CP, which is an average of the 5 CPs. It is  
5 not a specific number meaning peak demand. It's the  
6 5 CPs averaged together.

7 Q. And no reserve requirement?

8 A. I don't know about the reserve  
9 requirement.

10 Q. So you don't know?

11 A. That's either a percentage or not. Yes,  
12 I don't know.

13 Q. And you believe that this calculation  
14 imposes more costs on Ohio customers than is fair,  
15 correct?

16 A. That is correct.

17 Q. But you're aware, are you not, that OCC  
18 agreed to this calculation under the terms of the  
19 stipulation in the current ESP, correct?

20 A. They agreed to the stipulation.

21 Q. And so did all of the other signatory  
22 parties to that stipulation, correct?

23 A. Agreed to the stipulation, yes.

24 Q. And Commission staff?

25 A. That would be my understanding.

1 Q. And the Commission approved it?

2 A. Yes.

3 Q. You're aware that the Ohio electricity  
4 market is deregulated, correct?

5 A. Yes.

6 Q. And CRES providers compete for load,  
7 correct?

8 A. Yes.

9 Q. And wholesale standard service offer  
10 auction winners also compete for load, correct?

11 A. Correct.

12 Q. And so you would agree, would you not,  
13 that customers should have sufficient information  
14 when deciding whether to take the standard service  
15 offer or to shop with a CRES provider?

16 A. Should have and do have are two different  
17 things. They should have. Whether or not you can  
18 ever provide enough information I don't know.

19 Q. Okay. That's fine. I agree. And would  
20 you agree that separating out capacity costs based  
21 upon known PJM market prices would afford customers  
22 more information and transparency than if they were  
23 charged one bundled amount for energy and capacity  
24 together?

25 A. As I've said before, that is how Duke is

1 being charged. And if there are variations in  
2 capacity or energy, those variations will show up  
3 with respect to only the energy change that Duke  
4 would have. They would not show up this year at  
5 least with respect to the capacity changes.

6 Q. So you think customers get sufficient  
7 information or just as much information with an  
8 all-in price than to see the capacity and energy  
9 separated out?

10 A. Well, Duke doesn't totally do that to  
11 begin with. I mean, in their present tariffs, the RC  
12 is not completely a capacity number to begin with,  
13 and they are moving more and more away from a  
14 capacity number. So it seems like the trend is to  
15 charge people more on the basis of energy than on  
16 demand right now.

17 MS. KINGERY: May I have just a moment?

18 That's all I have. Thank you.

19 EXAMINER WALSTRA: Staff?

20 MR. BEELER: No questions, your Honor.

21 EXAMINER WALSTRA: I did have one point  
22 of clarification. On your errata sheet, page 9 --

23 THE WITNESS: Yes.

24 EXAMINER WALSTRA: -- line 10, I don't  
25 see the word "case" on line 10 at all. My best guess



1 is you actually meant line 5.

2 THE WITNESS: Correct.

3 EXAMINER WALSTRA: Okay. So it should be  
4 line 5?

5 THE WITNESS: Correct. Another errata.

6 EXAMINER WALSTRA: Thank you.

7 MS. WATTS: Does that mean you have to  
8 have another errata sheet for the errata sheet?

9 THE WITNESS: .2.

10 EXAMINER WALSTRA: Any redirect?

11 MR. BERGER: Can we have 5 minutes, your  
12 Honor?

13 EXAMINER WALSTRA: Sure.

14 (Discussion off the record.)

15 EXAMINER WALSTRA: We'll go back on the  
16 record.

17 MR. BERGER: Yes, just one question, your  
18 Honor.

19 EXAMINER WALSTRA: Okay.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Berger:

23 Q. Mr. Yankel, you were asked some questions  
24 regarding how wholesale suppliers will obtain  
25 capacity in the market after beginning June 1, 2015,

1     how the SSO wholesale suppliers on Duke's system will  
2     obtain it. You indicated they would obtain it  
3     through PJM, which I take it you meant through the  
4     PJM capacity market. Are there other ways in which  
5     they can also obtain capacity to serve their load?

6           A.     Yes. They could obviously self-supply,  
7     and could purchase from someone else another  
8     bilateral agreement of some sort. So, yes, there's a  
9     lot of ways in which to meet capacity obligations.

10           MR. BERGER: Thank you. That's all I  
11     have.

12           EXAMINER WALSTRA: Ms. Hussey?

13           MS. HUSSEY: Nothing, your Honor.

14           EXAMINER WALSTRA: Ms. Bojko?

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

16           EXAMINER WALSTRA: Mr. Kurtz?

17           MR. KURTZ: Nothing, your Honor.

18           EXAMINER WALSTRA: Mr. Hart?

19           MR. HART: Nothing.

20           EXAMINER WALSTRA: Ms. Kingery?

21           MS. KINGERY: Nothing. Thank you.

22           EXAMINER WALSTRA: Staff?

23           MR. BEELER: No, thanks.

24           EXAMINER WALSTRA: Thank you, Mr. Yankel.

25           MR. BERGER: Your Honor, we would like to

1 move our OCC Exhibits 46 and 46.1 at this time.

2 EXAMINER WALSTRA: Any objections?

3 MS. KINGERY: Is that the testimony?

4 EXAMINER WALSTRA: It will be admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 MS. HUSSEY: Your Honor, I would like to  
7 move for Kroger Exhibits 2 and 3.

8 MR. BERGER: Objection, your Honor.

9 MS. KINGERY: Objection.

10 EXAMINER WALSTRA: Mr. Berger.

11 MR. BERGER: Your Honor, the testimony of  
12 Mr. Townsend that was used for purposes of  
13 cross-examination just to demonstrate that somebody  
14 opposed the company's proposed cost-of-service study  
15 in certain respect is not subject to  
16 cross-examination. Mr. Townsend is not here. He is  
17 not a witness in this proceeding. The question did  
18 not allow his entire testimony to be put into  
19 evidence here.

20 And I think Ms. Hussey established  
21 through her question all that can reasonably be  
22 established in the absence of Mr. Townsend, which is  
23 that the cost-of-service study in that proceeding has  
24 challenges.

25 MS. HUSSEY: Your Honor, if I may,

1 Mr. Yankel's advocated the use of various line items  
2 from a cost-of-service study that was performed in  
3 connection with 12-1682, and we think it's important  
4 to establish through at least a reference to that  
5 testimony that Kroger did, in fact, object to the  
6 cost-of-service study.

7 MS. KINGERY: And, your Honor, I would  
8 add to the objection of OCC on this. This document  
9 is hearsay. At this point, the witness is not  
10 present. There was no foundation. This witness had  
11 no knowledge of this testimony and had never seen it,  
12 and it's of questionable relevance. So I would  
13 object to its admission.

14 EXAMINER WALSTRA: Are you guys speaking  
15 to both of them or just 2?

16 MS. KINGERY: I was just speaking to 2.

17 MR. BERGER: And I am just speaking to 2  
18 in terms of the stipulation and recommendation in the  
19 last base rate proceeding. You know, we don't oppose  
20 taking administrative notice of the fact that there  
21 was a stipulation. Again, I would emphasize that the  
22 stipulation by its own terms is not precedential and  
23 has no weight in this proceeding.

24 EXAMINER WALSTRA: I'll sustain the  
25 objection to Exhibit 2 overall and admit Kroger

1 Exhibit 3.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 MR. HART: Your Honor, could I address  
4 No. 2, Kroger Exhibit 2?

5 EXAMINER WALSTRA: You may.

6 MR. HART: I don't think it's being  
7 offered in a manner that would make it hearsay. I  
8 think it's being offered for the fact that these  
9 challenges were made and that the examiner can take  
10 administrative notice of that because it's docketed  
11 with the Commission, and it's testimony that was  
12 filed in another case.

13 So the fact those challenges were made is  
14 just as relevant as the cost study that Mr. Yankel's  
15 relying on himself because it was never actually  
16 admitted into evidence either, and it's also hearsay.

17 EXAMINER WALSTRA: We'll take  
18 administrative notice of it.

19 MR. BERGER: I'm sorry. We are taking  
20 administrative notice of --

21 EXAMINER WALSTRA: The testimony of  
22 Kroger Exhibit 2. It won't be an exhibit, but  
23 administrative notice of the direct testimony of Neal  
24 Townsend in Case No. 12-1682-EL-AIR.

25 MR. BERGER: Are we limiting the scope of

1       that administrative notice to the fact that testimony  
2       was filed opposing the cost-of-service study, or are  
3       we --

4               MS. HUSSEY: That's what we were offering  
5       the exhibit for in the first place --

6               MR. BERGER: I understand that, but I  
7       think the scope of that admission for administrative  
8       notice should be limited to that observation and not  
9       to anything else included in that testimony, which is  
10      not subject to cross-examination, your Honor.

11              MS. KINGERY: So just to clarify,  
12      Mr. Berger, you're suggesting that it would be  
13      limited to the fact that testimony opposing the  
14      cost-of-service study had been filed but not as to  
15      the truth or veracity of the testimony itself?

16              MR. BERGER: That's exactly what I am  
17      saying, Ms. Kingery. Thank you.

18              EXAMINER WALSTRA: The Bench is taking  
19      notice of it without limitation.

20              Ms. Kingery, I believe you have an  
21      exhibit as well.

22              MS. KINGERY: Thank you. I would move  
23      for the admission of Duke Energy Ohio Exhibit 32.

24              EXAMINER WALSTRA: Any objections?

25              Hearing none, it will be admitted

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 MS. KINGERY: Thank you, your Honor.

3 EXAMINER WALSTRA: OCC, call your next  
4 witness.

5 MR. SERIO: Call Jim Williams to the  
6 stand.

7 (Witness sworn.)

8 EXAMINER WALSTRA: Thank you. You may be  
9 seated.

10 - - -

11 JAMES WILLIAMS

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

14 DIRECT EXAMINATION

15 BY MR. SERIO:

16 Q. Please state your name and business  
17 address for the record.

18 A. Yes, my name is James Williams, and my  
19 business address is 707 -- I'm sorry. It's 10 West  
20 Broad Street, Suite 1800, Columbus, Ohio 43215.

21 Q. And do you have in front of you a  
22 document that we've marked for purposes of  
23 identification as OCC Exhibit No. 47?

24 A. Yes, I do.

25 Q. Can you identify that document?

1           A.    This is my direct testimony.

2           Q.    Did you prepare that, or was it prepared  
3 under your supervision?

4           A.    Yes.

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

7           A.    I have one correction. This would be on  
8 page 13 in table 3, the second column. The number  
9 should be "457,392" as the number of residential  
10 customers of DP&L. And the fourth column, the third  
11 row should be "6.8 percent."

12          Q.    And is that the only correction that you  
13 are aware of?

14          A.    Yes, it is.

15          Q.    If I was to ask you the same questions  
16 again today, would your answers be the same?

17          A.    Yes, they would.

18               MR. SERIO: Mr. Williams is available for  
19 cross-examination, your Honor.

20               EXAMINER WALSTRA: Could we go over those  
21 corrections again?

22               THE WITNESS: Yes. This would be on page  
23 13 in table 3. The third row, the number of  
24 residential customers for DP&L should be "457,392."

25               EXAMINER PIRIK: Okay. I still don't --



1       that's the second column or the third column?

2               THE WITNESS: This is in the second  
3       column, the third row, second row of data but the  
4       third row in the table.

5               EXAMINER PIRIK: Okay.

6               EXAMINER WALSTRA: Okay.

7               THE WITNESS: And the disconnection rate  
8       in the fourth column on the third row should be  
9       "6.8."

10              EXAMINER PIRIK: For DP&L?

11              THE WITNESS: That's for DP&L.

12              EXAMINER PIRIK: Okay.

13              EXAMINER WALSTRA: I'm not sure I  
14       actually marked the exhibit, but it will be marked as  
15       Exhibit 47.

16              MR. SERIO: I'm sorry?

17              EXAMINER WALSTRA: I am not sure I  
18       actually marked the exhibit, but it will be marked as  
19       OCC Exhibit 47.

20              (EXHIBIT MARKED FOR IDENTIFICATION.)

21              MR. SERIO: Yes, that was what I was  
22       asking for.

23              EXAMINER WALSTRA: Ms. Hussey?

24              MS. HUSSEY: No questions, your Honor.

25              EXAMINER WALSTRA: Mr. Kurtz?

1 MR. KURTZ: No questions.

2 EXAMINER WALSTRA: Mr. Hart?

3 MR. HART: No questions.

4 EXAMINER WALSTRA: Duke?

5 MS. KINGERY: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Ms. Kingery:

9 Q. Good afternoon, Mr. Williams.

10 A. Good afternoon.

11 Q. Are all of the opinions that you are  
12 offering in this case set forth in your direct  
13 testimony just marked as OCC Exhibit 47?

14 A. Are all of the --

15 Q. Are all of the opinions that you are  
16 providing in your testimony?

17 A. Yes, all the opinions are included within  
18 my testimony.

19 Q. Thank you. And your primary purpose is  
20 to recommend that the Commission consider  
21 affordability and impact on at-risk customers when it  
22 makes its decision, correct?

23 A. That, as well as consider -- prior to  
24 approval of the rider DCI, consider the implications  
25 of the law, as well as the impact that that rider

1       could have on it.

2               Q.     And you recommend rejection of rider DCI  
3     or, in the alternative, a mandated cost/benefit  
4     analysis and annual quantification of reliability  
5     improvements, correct?

6               A.     Yes.   That's identified within my  
7     testimony.

8               Q.     Thank you.   And you have no other  
9     recommendations besides those items you just spoke  
10    about regarding the reasonableness of the proposed  
11    ESP, correct?

12              A.     No, I do not.

13              Q.     So let's talk about affordability first  
14    just a little bit.   So if we look at page 4 of your  
15    testimony, starting on line 10, you state that you  
16    were discussing Ohio policy with regard to reasonably  
17    priced electric service, correct?

18              A.     That's correct.

19              Q.     And you then go ahead and indicate that  
20    paragraphs A and L both set forth Ohio policies  
21    concerning reasonably priced electric service,  
22    correct?

23              A.     These are the two policies that I'm able  
24    to identify that seem to address issues involving  
25    affordability.

1 Q. Reasonableness of pricing only appears in  
2 paragraph A, correct?

3 A. That's the only place I can recall seeing  
4 it.

5 Q. And nothing in L, paragraph L, talks  
6 about reasonableness of pricing?

7 A. I believe L is just at risk.

8 Q. Okay. And "reasonably priced," that  
9 term, is not defined in the statute, correct?

10 A. I don't recall seeing a definition for  
11 "reasonably priced."

12 Q. Do you recall seeing a definition of  
13 "reasonably priced" in Chapter 4928?

14 A. I don't recall that I've seen that  
15 definition.

16 Q. How about anywhere in Title 49?

17 A. Could be. I don't recall as I sit here  
18 today seeing that.

19 Q. Do you recall whether the PUCO has ever  
20 issued an order or any kind of a finding of how that  
21 term "reasonably priced" should be defined?

22 A. I don't recall seeing a definition for  
23 that or an order in the PUCO specifying that.

24 Q. Your opinion is that reasonable pricing  
25 should be as low as possible reflecting customers'

1 ability to pay, correct?

2 A. As low as possible. You know, reasonable  
3 based upon the cost that the company would be  
4 expected to incur. Not more, not less.

5 Q. So the "as possible" part of the as low  
6 as possible relates to the company having the right  
7 to at least recover its costs and some return?

8 A. Yes.

9 Q. And looking at page 5, line 17.

10 A. I'm there.

11 Q. You say that at-risk populations are  
12 those that are at or below the federal poverty  
13 guidelines, as well as those who are as much as twice  
14 that level, correct? And I believe that's later in  
15 the testimony.

16 A. Yes. That is my testimony, that for  
17 purposes of this testimony, that the Commission  
18 should consider at risk to be Ohioans that have those  
19 income levels.

20 Q. Now, I won't go through the whole litany  
21 again, but have you seen any definitions either in  
22 the statute or rules or in any Commission order as to  
23 how the Commission looks at at-risk populations?

24 A. I've not seen a specific definition for  
25 at risk. I could say in the case of the at risk,

1     though, in Title 4928, there are specific provisions  
2     for low income customers in the percentage of income  
3     payment plan, that type of thing.  Although, I don't  
4     believe that it's specified that it's defined  
5     specifically as at risk.

6           Q.     Thank you.  In evaluating the extent to  
7     which the company's proposed ESP addresses these two  
8     Ohio policies, A and L, I believe it was, you  
9     consider various factors.  You look at a comparison  
10    between increases in customer bills and increases in  
11    inflation, changes in the Consumer Price Index.  You  
12    also look at disconnection rates and percentages of  
13    customers on PIPP or on payment plans; is that  
14    correct?

15          A.     Yes.  I also look at comparison of some  
16    disconnection data, though; Duke compared with other  
17    electric utilities.

18          Q.     Okay.  I thought I mentioned that.  If I  
19    didn't, I agree you do mention that.

20                 Would you also agree with me that another  
21    benchmark of reasonable pricing is a comparison with  
22    other utilities across the state?

23          A.     That is information that can used as a  
24    benchmark.

25          Q.     And have you in the past espoused such a

1 comparison before the Commission?

2 A. Yes, I have.

3 Q. And, indeed, in Dayton Power & Light's  
4 most recent ESP proceeding and also in AEP's pending  
5 ESP proceeding, you included in your testimony data  
6 comparing their proposed rates with other utilities  
7 around the state?

8 A. I have done that.

9 Q. You did not include that in your  
10 testimony in this proceeding, did you?

11 A. No, I did not.

12 Q. And as you sit here today, are you aware  
13 of how Duke Energy Ohio's rates compare with the  
14 other utilities in the state?

15 A. Yes. And I believe I've included within  
16 my testimony some data where I compared a period of  
17 time in 2004 with a bill from 2014 and just to show  
18 how that change has occurred in that bill over that  
19 ten-year period.

20 Q. But, of course, that was just looking at  
21 the comparison between Duke Energy Ohio bills and  
22 inflation, correct?

23 A. That's the context in which I used it,  
24 yes.

25 Q. Right, but there's nothing in here to

1 show a comparison between Duke's bills and other  
2 utilities' bills, correct?

3 A. There is not.

4 Q. And in other cases, am I correct that you  
5 have relied on information from the PUCO's rate  
6 surveys to establish these comparisons?

7 A. Yes, I have.

8 Q. And you have also looked at Consumer  
9 Price Index figures?

10 A. I've used inflation measures at different  
11 times. I'm not sure in those specific cases we've  
12 talked about today. Subject to check, I guess.

13 MS. KINGERY: Your Honor, I would like to  
14 mark an exhibit.

15 EXAMINER WALSTRA: Sure.

16 MS. KINGERY: And this would be Duke  
17 Energy Ohio 33, I believe.

18 EXAMINER WALSTRA: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. So, sir, do you recognize the document  
21 that I've had marked as Exhibit Duke Energy Ohio 33?

22 A. Yes, I do.

23 Q. And have you reviewed this previously?

24 A. I've not reviewed this specific moment of  
25 data. I believe I reviewed the period of time -- the



1 last one I reviewed was the period for July, 2014.

2 Q. And this is simply one month later,  
3 correct?

4 A. That's what it appears to be.

5 Q. And do you have any reason to doubt the  
6 accuracy of these figures any more than you might  
7 doubt the accuracy of the figures for July of 2014?

8 A. No, I do not.

9 Q. And would you look on page 2 of the  
10 exhibit where there's a comparison for residential  
11 customers for 16 major Ohio cities.

12 A. Yes, I'm there.

13 Q. And if we look at the electric standard  
14 service offer, which is the lowest figure there?

15 A. The lowest figure is -- it's ranked as  
16 city 14, Cincinnati at \$93.82.

17 Q. Thank you. Do you know who serves  
18 Cincinnati?

19 A. Yes, I do. Duke Energy Ohio.

20 Q. And what is the next lowest number?

21 A. Let's see here. The next lowest I see  
22 would be Marietta -- or in terms of the -- I'm just  
23 looking at the next highest. The next lowest would  
24 be Ashtabula.

25 Q. And would you agree with me that

1 Cleveland is also at that level?

2 A. Yes.

3 Q. And do you know what utility serves those  
4 areas?

5 A. Yes. This would be Cleveland Electric  
6 Illuminating.

7 Q. And which is the highest?

8 A. The highest one would be ranked the 15th  
9 city, Columbus, \$121.83.

10 Q. We are all happy to be living here.

11 And would you agree with me that at the  
12 same level as Columbus would be Chillicothe and  
13 Marietta?

14 A. Yes, I would.

15 Q. And do you know what utility serves those  
16 territories?

17 A. This would be Ohio Power/Columbus  
18 Southern Power rate zone.

19 Q. So let's do just a little bit of math. I  
20 hate to do that late in the day. But if we compare  
21 the bill for Cleveland with the one for Cincinnati,  
22 how much lower is Duke Energy Ohio's average  
23 residential bill?

24 A. It would be \$10.58, I believe.

25 Q. That's what I get as well. Can we do the

1 same thing and compare it to the Ohio Power bill for  
2 Columbus, Chillicothe, or Marietta?

3 A. I believe this would be \$28.

4 Q. That's what I get as well. Thank you.

5 Now, sir, if we would look for just a  
6 moment at page 15 of your testimony, in the answer  
7 that begins on line 9, you state there that if rider  
8 DCI were approved by the Commission, by 2018, the  
9 average residential bill on an annual basis would go  
10 up by nearly \$100. What would that be on a monthly  
11 basis since we have been looking at monthly bills?

12 A. That's \$8.33.

13 Q. I got that also. And would you agree  
14 with me then that adding the \$8.33, which is the  
15 projected increase for rider DCI in 2018, Duke Energy  
16 Ohio's bills would still be lower than any other  
17 utility in the state now?

18 A. That's if -- if all things stayed equal,  
19 but there's other parts of this proposal as well that  
20 would impact that.

21 Q. Absolutely, but you're talking about  
22 rider DCI and its effect on affordability in your  
23 testimony?

24 A. Yes. But I would also mention that I  
25 don't believe that DCI is supported in state statute,

1 and I would not support the Commission approving an  
2 item where given the high number of customer  
3 disconnect rates today, as well as the fact that I  
4 believe it's contradictory to state law, we would not  
5 support approval of DCI.

6 Q. Understand. And we'll talk about those  
7 things.

8 So the next thing that you did talk about  
9 in your testimony was comparing the rate of increase  
10 in Duke's bills against inflation; is that correct?

11 A. Yes. Can you --

12 Q. Sure. I believe page 9 is approximately  
13 where it starts.

14 A. Yes.

15 Q. And you're making that comparison by  
16 looking at the difference in the Consumer Price Index  
17 between 2004 and 2014 and the difference between  
18 Duke's average bill in 2004 versus 2014, correct?

19 A. Yes, I am.

20 Q. Now, would you agree with me that  
21 utilities in general, all other things being equal,  
22 will come to the Commission for a base rate case when  
23 its costs have increased such that its rates are not  
24 recovering those costs, correct?

25 A. Yes, that's correct.

1           Q.    Are you aware that there was a period of  
2           time of approximately a decade around the time of the  
3           start of deregulation and early into that time when  
4           utilities were not coming in for rate cases?

5           A.    I believe there was a period of time when  
6           Duke did not come in for a rate case. I believe  
7           there were maybe some gas rate cases. And then, of  
8           course, there were also the electric transition plan  
9           cases in '99 and 2000.

10          Q.    But no distribution rate cases?

11          A.    Yeah, I don't believe there was a base  
12          rate case.

13          Q.    Right.

14          A.    But I believe that part of the purpose of  
15          the electric transition plan case was to establish  
16          distribution rates as well.

17          Q.    Although it used -- those transition  
18          cases were based on the then existing distribution  
19          rates as set by the most recent rate case, correct?

20          A.    They were a bundled rate. As I recall  
21          the ETP cases, it was to just unbundle those --

22          Q.    Right.

23          A.    -- into various components.

24          Q.    But using the most recent rate case  
25          numbers?

1           A.    I believe that to be the case.

2           Q.    So would you agree with me that -- this  
3 is hard to do without drawing a photograph on a  
4 board, but I don't want to do that to us. It makes  
5 the record hard.

6           A.    Thank you.

7           Q.    If you're comparing rates of increase in  
8 two numbers and one number has increased not  
9 necessarily the same amount every year but relatively  
10 steadily over, say, 20 years, and the other number  
11 has stayed flat for the first ten years and then has  
12 increased, you would get one result if you look at  
13 the entire 20-year period. You might find that the  
14 total rate of increase was the same even though if  
15 you would start halfway through it, it might appear  
16 that the one that had stayed flat for the first ten  
17 years had a higher rate of increase?

18          A.    I don't follow where you're going with  
19 that.

20          Q.    Okay. Well, let's see whether we can  
21 test what Duke's rate of increase looks like compared  
22 to inflation in some other way. Okay? So let's look  
23 at a couple of different years. So if you are going  
24 to look at other years, am I correct that you would  
25 start with these same Ohio utility rate surveys and

1 compare them to the rate of inflation?

2 A. That's one measure.

3 MS. KINGERY: Okay. I have three more  
4 exhibits to mark. So these would be 34, 35, and 36.  
5 34 is going to be a rate survey for 2008. 35 will be  
6 a rate survey for 2011. And 36 is a table that I put  
7 together to try and summarize some of these numbers,  
8 the various entries into which I hope we can confirm.

9 EXAMINER WALSTRA: It will be so marked.

10 (EXHIBITS MARKED FOR IDENTIFICATION.)

11 Q. Mr. Williams, I see you are pouring over  
12 the exhibits. I would like to go over them on the  
13 record so we can confirm the numbers.

14 A. Thank you.

15 MS. KINGERY: Your Honor, I would like to  
16 ask that you take administrative notice of the Bureau  
17 of Labor Statistics' numbers on the Consumer Price  
18 Index for August of 2008, August of 2011, and August  
19 of 2014. They are reflected on the first line of the  
20 table.

21 EXAMINER WALSTRA: Of which table?

22 MS. KINGERY: The table that was  
23 distributed as Duke Energy Ohio Exhibit 36.

24 EXAMINER WALSTRA: The Bench will take  
25 notice.

1 MS. KINGERY: Thank you.

2 Q. (By Ms. Kingery) So, Mr. Williams, if you  
3 look at the first line in the table, the first three  
4 entries then are the Consumer Price Index for 2008,  
5 2011, and 2014 in August of each of those years.  
6 Subject to check, will you agree with those numbers?

7 A. Subject to check.

8 Q. Sure. And if you have a calculator there  
9 handy, if you could confirm that the percentages that  
10 I've indicated in the final two columns of that first  
11 line, 9 percent and 5 percent, are how much increase  
12 there has been since that date up to now.

13 A. I don't have a calculator here.

14 Q. I can loan you one, or you can accept my  
15 arithmetic if you would like.

16 A. Subject to check.

17 Q. Okay. Thank you. I appreciate that.  
18 Lawyer math is not always ...

19 So now let's look at the numbers that  
20 I've listed for the various utilities in each of  
21 those years. Let's look first at the August 2008,  
22 column, and I believe that would be Duke Energy Ohio  
23 35. Could you take a moment and compare the numbers  
24 that I have listed there with the numbers that you  
25 find on the survey.



1 A. I believe I have on 35 the 2011 data.

2 Q. Oh, I'm sorry. Use the '11 data for the  
3 '11 column. I probably put the wrong exhibit numbers  
4 on mine.

5 A. What is it you wanted me to do?

6 Q. I want you to, if you would, take the  
7 numbers that I've written in the August 2008 column  
8 on the chart and compare those to the data reported  
9 by staff of the PUCO for August 2008 on page 2 of  
10 that survey.

11 A. For the August 2008?

12 Q. I apologize.

13 A. The number that I see for Cincinnati is  
14 84.30, and I believe on your chart it's 81.68.

15 Q. You're right. That number that I have on  
16 there was for Dayton, so we'll correct that.

17 A. So this number should really be 84.30  
18 then for Cincinnati?

19 Q. Yes, I would agree with that.

20 A. Okay.

21 Q. Did I make any other errors? Take your  
22 time.

23 A. Thank you. Yes, the Dayton number at the  
24 bottom of the page should be 81.68.

25 Q. Those were switched. All right. And now

1 if we could run that same exercise to confirm my work  
2 or find its flaws for 2011.

3 A. The 2011 date appears to match.

4 Q. Good. And can we check 2014?

5 A. And the 2014 numbers appear to be correct  
6 also.

7 Q. Great. Thank you very much.

8 So while you were working on that, I  
9 recalculated the percentages for the amount of  
10 increase for Duke Energy Ohio for the 2008 number as  
11 well as the one for Dayton for the 2008 number. So  
12 the 15 percent that we have for Duke Energy Ohio  
13 should be, according to my quick calculation, 11  
14 percent, and the Dayton Power and Light number would  
15 go up to 48 percent.

16 So, Mr. Williams, we were talking -- just  
17 going back now to your main point of thinking about  
18 bill increases and inflation, we were trying to look  
19 at what a different view might be of the Duke  
20 increases. And so when you look at the Duke Energy  
21 line, how do you feel about the comparison -- what's  
22 your opinion about the comparison between the Duke  
23 Energy Ohio bill increases since 2008 or since 2011  
24 as compared with inflation?

25 A. Between '08 and '11, I would assume that

1 that's probably slightly higher than the inflation  
2 for that time period.

3 Q. You meant between '08 and now?

4 A. Yes, '08 and now.

5 Q. So the Consumer Price Index, inflation  
6 shows 9 percent, and the Duke Energy bills went up  
7 11.

8 A. That's correct.

9 Q. And from -- if you look at the 2011  
10 inflation from then until now?

11 A. It's below.

12 Q. Yes. And since we have agreed earlier in  
13 our conversation that comparing to other utilities  
14 also is relevant in determining reasonableness, if we  
15 compare Duke's percentage increases to, say, Columbus  
16 Southern Power or Dayton Power and Light or Ohio  
17 Power, would you agree with me that Duke's rates are  
18 looking pretty reasonable?

19 A. The rates are lower. I don't know that I  
20 would say reasonable because, again, I would look at  
21 other data as well and not just the inflation  
22 measures.

23 Q. Yes, absolutely, and we are doing that.  
24 We just looked at two. And so as you've just  
25 indicated, some of the factors that you've testified

1 we should look at are the disconnection rates and the  
2 numbers of customers in payment plans and on PIPP,  
3 correct?

4 A. That is correct.

5 Q. Okay. You're not suggesting that the  
6 only reason for disconnections is that the cost of  
7 the electric service is unreasonable, are you?

8 A. No. I suspect there could be a lot of  
9 reasons why the disconnection numbers are the way  
10 they are. I do believe, though, that the Commission  
11 should consider the high disconnection rate,  
12 especially with Duke, especially considering the  
13 other utilities. And the fact that this -- Duke's  
14 disconnection rate is as high as it is, even though  
15 the rates are perhaps the lowest, would indicate to  
16 me that perhaps some of the other data that I  
17 provided involving poverty levels might also be  
18 applied, and just the high proportion of customers  
19 that are living in poverty may result in customers  
20 that just can't pay their bills.

21 Q. And I certainly feel for people who are  
22 living in poverty. Does that, however, change what  
23 the utility's costs to providing service are?

24 A. The cost of the service is the cost of  
25 the service, but there needs to be provisions -- it's

1 not in anybody's interest -- or I think it may be  
2 better said it's in everybody's best interest to try  
3 to avoid disconnections whenever possible.

4 Q. You do agree that if a customer is not  
5 paying a bill, the customer should at some point be  
6 disconnected, correct?

7 A. I believe that the laws and the rules  
8 support that.

9 Q. And you do understand that if a customer  
10 doesn't pay his bill and it becomes an uncollectible,  
11 other customers will be saddled with that debt,  
12 correct?

13 A. Yes.

14 Q. And are you aware that the OCC has  
15 publicly taken a position opposing the escalation of  
16 rates under uncollectible riders?

17 A. I know that we have opposed uncollectible  
18 riders, and we've suggested in several cases that I  
19 can think of where UEXs have been the subject of the  
20 case, different ways in which the utility companies  
21 should be working with customers to try to avoid  
22 disconnections.

23 Q. And are you also aware that the  
24 Commission has encouraged utilities in certain  
25 circumstances to escalate their rate of

1       disconnections?

2               A.     I'm not necessarily comfortable with  
3       escalate the rate of inflation as much as --

4               Q.     Disconnections I said.

5               A.     Yes.   But I am aware that the Commission  
6       has looked at credit and collection policies and has  
7       tried to come up with more consistency in those  
8       policies, for the gas companies at least.  I don't  
9       believe anything like that has happened for the  
10      electric.

11              Q.     Well, I am glad you brought up gas  
12      companies.  You are aware that Duke Energy Ohio is a  
13      combined utility, correct?

14              A.     Yes, I am.

15              Q.     And are you familiar with the  
16      Commission's recent investigation into the natural  
17      gas company uncollectible riders in Case No. 08-1229?

18              A.     Yes, I am.

19              MS. KINGERY:  Your Honor, I am not sure  
20      exactly how you want to do this.  I think we should  
21      probably consider taking administrative notice of a  
22      finding and order in the case I just identified, and  
23      I would also mark if you would like that opinion and  
24      order -- or, I'm sorry, finding and order as Duke  
25      Energy Ohio Exhibit 37.

1 EXAMINER WALSTRA: Okay. Yeah, it will  
2 be so marked and the Bench will take notice.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MS. KINGERY: Thank you. I have copies  
5 for the Bench and the witness that are complete  
6 copies, and then I have just the pages I am going to  
7 use for the rest of the parties.

8 Q. Mr. Williams, is this the case that we  
9 were just referencing?

10 A. Yes, it is.

11 Q. And have you seen this finding and order  
12 before?

13 A. I have. I haven't reviewed this in a  
14 while, but I'm familiar with it.

15 Q. And I'm just going to ask you to look at  
16 a couple of little spots in it. So are you aware  
17 that in this proceeding, the Commission obtained an  
18 outside auditor, NorthStar, to perform an audit of  
19 the uncollectible riders of the gas companies?

20 A. Yes, I am.

21 Q. All right. Would you please turn to page  
22 3, finding 11. And if you could just read that for  
23 us, that would be great.

24 A. "Regarding Duke, NorthStar recommends the  
25 following moderate and minimal incremental cost

1 objectives: Acceleration of the collections process;  
2 performance of an analysis to determine if the risk  
3 model score threshold is appropriate to determine  
4 residential deposits; rigorous examination of the  
5 initial screening process; and increasing the  
6 aggressiveness of the disconnection program."

7 Q. And then if we turn to the Commission's  
8 conclusion on page 21, the last sentence in finding  
9 60. And in that sentence, does the Commission  
10 instruct the utilities to implement the NorthStar's  
11 minimal incremental cost and moderate incremental  
12 cost recommendations as set forth in findings 9  
13 through 15, one of which is the one you just read?

14 A. Yes.

15 MR. SERIO: Your Honor, I am going to  
16 impose an objection. We can talk about this all we  
17 want, but this has to do with Duke's gas side. It  
18 has nothing to do with Mr. Williams' chart. It has  
19 nothing to do with electric rates that electric Duke  
20 customers pay. So I don't understand what an order  
21 for the gas side has to do with the electric side  
22 when there's no connection here.

23 EXAMINER WALSTRA: Ms. Kingery?

24 MS. KINGERY: Yes. If you would allow me  
25 to get one more question on this topic, I think it



1 will all link up.

2 EXAMINER WALSTRA: Go ahead.

3 MS. KINGERY: Maybe two.

4 EXAMINER WALSTRA: Only two.

5 MS. KINGERY: Okay.

6 Q. Sir, as a combination gas and electric  
7 utility, would you expect Duke to take instruction  
8 about policy from the Commission on the gas side and  
9 use that same policy instruction on its electric side  
10 on the same exact issue?

11 A. Not necessarily, and the reason for that  
12 is that there are consumer protections that are  
13 specific to -- like the winter reconnect order, while  
14 it's applicable to both the gas and the electric,  
15 considering the number of gas customers that, you  
16 know, this -- this work by NorthStar was looking at  
17 those counsel protections and what the impact of  
18 those would be.

19 The second thing is, is that at the time  
20 when this was done, I believe the gas companies all  
21 had uncollectible riders, and there were specific  
22 provisions for those riders. I don't know if that  
23 existed for the electric at that time. So I would  
24 think that those kinds of provisions might be  
25 different.

1 I would also think that the technologies  
2 between gas and electric and some of the advanced  
3 metering could be different, and that certainly  
4 wasn't considered in 2008 when this NorthStar work  
5 was done.

6 Q. And, sir, are you aware that Duke Energy  
7 Ohio has only one billing system and sends out  
8 combined bills?

9 A. I know there's a combined bill. How the  
10 billing functions work, I don't know that myself.

11 Q. And certainly you were aware of the  
12 combination of the electric and gas and the  
13 ramifications of that combination when you testified  
14 in the other standard service offer cases and  
15 excluded Duke Energy Ohio's data on that basis,  
16 correct?

17 A. I would suspect so. But, again, these  
18 are unique -- this case was unique to the gas  
19 industry. I don't know that I would necessarily  
20 apply it to electric for all the reasons I've already  
21 mentioned.

22 Q. If you were a separate company and had  
23 separate billing systems, but with only one billing  
24 system, Duke Energy Ohio can't be expected to comply  
25 with an order on the gas side with regard to this

1 issue without affecting the electric side, correct?

2 MR. SERIO: Objection, your Honor. He  
3 has already indicated he doesn't know, and there is  
4 no testimony from any Duke witness indicating that  
5 there's a single billing system or that it has to be  
6 done on the same basis.

7 EXAMINER WALSTRA: Ms. Kingery?

8 MS. KINGERY: I'll withdraw the question.  
9 That's fine.

10 Q. Sir, are you also aware that Duke Energy  
11 Ohio has deployed more smart meters than other  
12 utilities in Ohio?

13 A. I am aware of that.

14 Q. And are you aware that with smart meters,  
15 it is possible to disconnect for nonpayment remotely  
16 and, therefore, more quickly?

17 A. I'm aware of the remote disconnection  
18 features. And, again, that's exactly the reason why  
19 that type of capability didn't exist in 2008 when  
20 this NorthStar work was done, and it's a major aspect  
21 that would need to be considered and why I think the  
22 Commission needs to look very carefully at Duke's  
23 disconnection number.

24 Q. Could you look at the front page of that  
25 order, Duke Energy Ohio 37?

1           A.    Are you talking about the order in  
2   08-1229?

3           Q.    Yes, I am.  If you look on finding 3, on  
4   what date was the audit report by NorthStar filed?

5           A.    The initial date was May 3, 2010, and  
6   then apparently there were some revisions on May 7,  
7   2010.

8           Q.    I just wanted to point out it wasn't in  
9   2008 even though the case started in that year.  The  
10  report was filed in the middle of 2010.

11          A.    My recollection of the case was that  
12  staff performed an initial audit or review of the  
13  credit and collection policies, and those were  
14  specific to the gas industry, and then the Commission  
15  decided to have NorthStar do a more comprehensive  
16  review of those policies specific to gas.

17          Q.    Yeah, I agree.  You've also referenced  
18  the number of customers in PIPP and also on payment  
19  plans within the company, correct?

20          A.    Yes.  In Table 2 of my testimony, I've  
21  included that data for two different years.

22          Q.    Okay.  And you would agree with me that  
23  there could be many reasons why a person would be  
24  either on a payment plan or on PIPP other than that  
25  the company's rates are unreasonable, correct?

1           A.    I would think they would be on a payment  
2 plan because they can't afford to pay the bill if  
3 they weren't on the payment plan.

4           Q.    Certainly. But there are many reasons  
5 why a person wouldn't be able to pay the bill other  
6 than the rates being unreasonable, correct?

7           A.    They had to buy food one day, and they  
8 had to put the bill off to another. I don't know.

9           Q.    Maybe they lost their job then and  
10 couldn't pay that month, right?

11          A.    All those possibilities exist.

12          Q.    So you could have a reasonable rate and  
13 have life circumstances keep a person from being able  
14 to pay the bill?

15          A.    I would suspect so.

16          Q.    And you don't think that the Commission  
17 would approve an unreasonable rate, do you?

18          A.    The Commission approves rates. I mean,  
19 whether they are reasonable or not is subject to the  
20 Commission's review.

21          Q.    But you would agree with me that the  
22 Commission endeavors to approve rates only if they  
23 are reasonable? That's its mandate, isn't it?

24          A.    That is a mandate. We could disagree on  
25 what are affordable rates.

1           Q.    You also state in your testimony that  
2 Duke has not addressed the affordability of rates in  
3 the proposed ESP, correct?

4           A.    That's correct.

5           Q.    You are aware that the company filed  
6 testimony with its application; are you not?

7           A.    There was quite a bit of testimony, as I  
8 recall.

9           Q.    Did you read any of that testimony?

10          A.    Yes, I did.

11          Q.    Did you read the testimony of  
12 Mr. Henning?

13          A.    Yes, I did.

14          Q.    Do you recollect that Mr. Henning filed  
15 direct testimony that addressed the compliance with  
16 state policies?

17          A.    I recall that he said that state policies  
18 were addressed. I wasn't convinced in reading it  
19 that it actually did, and that's the purpose of my  
20 testimony.

21          Q.    Okay. So what you're really meaning is  
22 not that our application didn't address the issue but  
23 rather you disagreed with how we addressed it?

24          A.    It put the words out there. I didn't  
25 necessarily see anything that addressed it at all.

1           Q.     But Mr. Henning's testimony did discuss  
2     the issue of affordable, at-risk populations, and  
3     reasonableness of prices, correct?

4           A.     He referenced those policies and the  
5     words of those policies. Beyond that, I didn't see  
6     it specifically addressed.

7           Q.     But you're not suggesting that we failed  
8     to meet a filing requirement? Our application did  
9     address the issues, correct?

10          A.     That was --

11                 MR. SERIO: Objection, your Honor.  
12     That's three times. He's answered it three times.

13                 EXAMINER WALSTRA: Overruled.

14          A.     What was the question?

15          Q.     I had asked you whether your intent with  
16     this testimony was to suggest that our application  
17     was deficient from a filing requirement standpoint.

18          A.     I'm not an expert on the filing  
19     requirements. I'm just saying that from a standpoint  
20     of looking at affordability and at-risk, I saw  
21     nothing in Mr. Henning's testimony or the testimony  
22     of any of the other Duke witnesses that indicated to  
23     me that either of those were considered.

24          Q.     Do you think that it's a benefit to  
25     at-risk customers or to customers in general

1 throughout the state that our rates are the lowest in  
2 the state?

3 A. I'm glad that you have lower rates, and I  
4 would urge you to keep the rates lower, not put  
5 things like DCIs in, DCI riders in, that are going to  
6 increase bills for customers and could potentially  
7 result in even more disconnections.

8 Q. You also opine that rider DCI does not  
9 fit within the parameters of an infrastructure  
10 modernization program; is that correct?

11 A. Can you refer me to where you're at?

12 Q. I will try. Your answer begins on page  
13 16 at the bottom of the page.

14 A. I'm there.

15 Q. So are you opining that rider DCI does  
16 not fit within the statutory parameters of an  
17 infrastructure modernization program?

18 A. No. Rate DCI as proposed does not fit  
19 the requirements as I would understand them for an  
20 infrastructure modernization program.

21 Q. So, yes, you are opining that it does not  
22 fit?

23 A. That's correct.

24 Q. You are not a lawyer, correct?

25 A. I'm not a lawyer.



1 Q. But you are testifying -- go ahead.

2 A. But I would also say that I've confirmed  
3 this understanding, though, with counsel.

4 Q. So is this counsel's opinion that it  
5 doesn't fit, or is it your opinion?

6 A. It's my opinion it doesn't fit.

7 Q. So you're testifying regarding the  
8 application of the law to this proposal, correct?

9 MR. SERIO: Objection, your Honor. He is  
10 simply indicating that as he works with it, that's  
11 his understanding, no different than virtually every  
12 other witness in this proceeding.

13 EXAMINER WALSTRA: Overruled.

14 Q. Would you agree with me that aging of  
15 infrastructure can cause outage -- let me start over.

16 Would you agree with me that the aging of  
17 infrastructure can cause an increase in outages?

18 A. I think aging infrastructure can result  
19 in outages when equipment fails. Of course, if the  
20 equipment is properly inspected, maintained following  
21 all the other Commission standards, as I believe that  
22 Duke's system is, I believe that, you know, the --  
23 when the equipment fails, it fails. Replace it and  
24 move on.

25 Q. So you would propose to wait until there

1 are outages and failures of the equipment before  
2 replacing it; is that what I hear?

3 A. No. I believe as part of the normal  
4 inspection, maintenance, and repair program that Duke  
5 would replace equipment as equipment needs to be  
6 replaced, upgraded, restructured, all those type of  
7 things. All those types of things are already  
8 included within base rates. It's part of what Duke  
9 does and justifies a base rate case.

10 I haven't seen anything in the testimony  
11 that was filed by the company that would indicate  
12 that there is any type of an infrastructure  
13 modernization going on with the rider DCI.

14 Q. Would you agree within that when the  
15 company has aging infrastructure that it needs to  
16 replace, it's not going to replace it with the same  
17 old-fashioned style of infrastructure, so it won't go  
18 to, you know, salvage yards and find old parts to  
19 replace it with?

20 A. I'm assuming that the company replaces  
21 equipment with the newest type of equipment that  
22 would be available --

23 Q. The most modern?

24 A. -- as it has for the last many decades.

25 Q. The most modern, correct?

1           A.    Yes.

2           Q.    And so if it is replacing old  
3 infrastructure with modern infrastructure, how is  
4 that not modernization?

5           A.    It's just a normal -- it's just replacing  
6 assets that are supposed to be replaced and the  
7 company can fulfill its statutory requirements. It's  
8 not modernization in the standpoint that it's going  
9 to -- I guess I would use an example, perhaps.

10                  You talked earlier about the smart  
11 meters. There the company had an infrastructure  
12 modernization program to do the SmartGRID program.  
13 And that was completely different equipment. It was  
14 new meters. It was distribution automation. It was  
15 lots of things. And that, I believe, would tend  
16 to -- tends to me to be more modernization, not just  
17 cutting down ash borer trees that happen to appear  
18 and need to be cut down, not assuming responsibility  
19 for customer service lines. That doesn't appear to  
20 be modernization to me.

21           Q.    But you would agree with me, would you  
22 not, that more modern infrastructure is going to  
23 increase reliability, correct?

24           A.    It might. It may not. It just depends  
25 on what the technical characteristics are of the

1 equipment that's put in. I think a classic example  
2 of that is in the testimony that's been provided by  
3 the company.

4 There is a lot of this equipment that's  
5 been in for decades. It doesn't appear to be causing  
6 any problems. The equipment, the company continues  
7 to inspect it, maintain it, do all the proper  
8 procedural things that need to be done to keep the  
9 equipment out and functioning. And from everything  
10 I'm seen of Duke's reliability data, it appears to be  
11 functioning just fine.

12 Q. Would you agree with me that older  
13 equipment, even if inspected and maintained  
14 appropriate, eventually gets to a point where it is  
15 less reliable and more likely to fail?

16 A. I believe equipment is going to fail.  
17 The older equipment will fail. I believe if you  
18 install new equipment, you would find new equipment  
19 fails too.

20 Q. We are talking likelihood.

21 A. I would say that, for example, some of  
22 the data that I've seen involved in the SmartGRID,  
23 there have been a number of the brand new smart  
24 meters that have failed as well. So I don't think  
25 that you can rely upon a general statement that if

1     it's old, it's somehow not reliable.  If it's  
2     properly inspected and maintained, I believe that  
3     equipment does just fine.

4             Q.     So I understand that you're saying that  
5     rider DCI is essentially not allowed under Ohio law;  
6     is that correct?

7             A.     My understanding of Ohio law is that it  
8     has to be distribution infrastructure modernization.  
9     I reviewed all 19 of the programs that were proposed.  
10    I didn't specifically see it as being distribution  
11    infrastructure modernization.  It appeared to me to  
12    be more a continuation of maintenance types of  
13    functions.  In fact, the responses to discovery I  
14    asked said just that.

15            Q.     So in your opinion, did the Commission  
16    violate the law when it approved almost identical  
17    distribution capital riders for FirstEnergy and AEP  
18    in their prior ESP?

19            MR. SERIO:  Objection.  There has been no  
20    showing that the riders that are proposed in this  
21    case and the riders that the other companies might  
22    have are identical or nearly identical.

23            EXAMINER WALSTRA:  Overruled.  He can  
24    answer if he knows.

25            A.     I don't know.

1           Q.    On page 19, line 4, you dispute the need  
2   to improve theft or vandalism deterrence because you  
3   say that they resulted -- theft and vandalism did not  
4   result in any interruptions in four of the last five  
5   years, correct?

6           A.    There were two different points that I  
7   was making in regards to that particular DCI rider  
8   initiative. The first one was that if it's a  
9   security type of a function, security cameras, things  
10  like that, that seemed to be pretty normal functions.  
11  It wasn't distribution infrastructure modernization.  
12  It was just a security program that was needed to  
13  protect that asset. Perhaps replacing cameras that  
14  exist today with a camera a little bit different. I  
15  don't know. But what I would also say is that given  
16  the -- that how few outages have occurred as a result  
17  of that, that did seem to be noteworthy.

18          Q.    So you're okay with there being outages,  
19  any outages, related to theft or vandalism?

20          A.    All I am saying is that in one of five  
21  years, there were some outages. I don't know the  
22  circumstances of that. I don't have enough facts to  
23  know. It doesn't seem to be a billing problem would  
24  be my point.

25          Q.    You said the SmartGRID meters, the new

1 meters, that was infrastructure modernization,  
2 correct?

3 A. I believe that that was justified as an  
4 infrastructure modernization program.

5 Q. But for some reason, a more modern  
6 security camera and security system isn't  
7 modernization?

8 A. Again, I don't know the specifics for --  
9 this was just taking off one camera and putting on  
10 another. I don't know. It didn't seem to me to be  
11 infrastructure modernization. It seemed to be more a  
12 protection of a substation, more of a security  
13 initiative, not necessarily a distribution  
14 infrastructure.

15 Q. But distribution infrastructure is  
16 certainly prone to vandalism and theft; is it not?

17 A. I suspect it could be. And in one of  
18 five years, there were a few outages associated with  
19 it at a substation.

20 Q. We don't have to look at newspapers to  
21 see that such things may be increasing in modern  
22 days, correct?

23 A. These things happen.

24 Q. And security systems get more modern as  
25 time goes on, correct?

1           A.    I suspect the company would upgrade from  
2           time to time. The company has upgraded security  
3           systems all along through distribution rate cases.  
4           If it put in a new security system, it had an  
5           opportunity later to recover on the costs of those.

6           Q.    And you have facts to support that?

7           A.    No. I'm just saying that's how a normal  
8           rate case process would work.

9           Q.    It might depending on what activities  
10          occurred during the test year, et cetera, correct?

11          MR. SERIO: Your Honor, I'll object. If  
12          the company wants to stipulate that they haven't  
13          modernized security over the past, we would be happy  
14          to stipulate that fact.

15          Q.    Starting on page 22, sir, you discuss a  
16          customer perception survey, correct?

17          A.    Yes, I do.

18          Q.    Do you have any special training in  
19          survey design?

20          A.    I do not.

21          Q.    Do you have any special training in  
22          statistical analysis of survey results?

23          A.    I do not. And that's the reason why I  
24          chose to use this particular survey because this  
25          would be the survey that's used -- that's required by



1 Commission rules for establishing reliability  
2 standards.

3 Q. And are you aware of how that survey was  
4 designed?

5 A. I don't know the specifics of it. I know  
6 that the company and staff work together to do these  
7 types of things.

8 Q. Are you aware that the questions in the  
9 survey are prepared by staff?

10 A. That seems appropriate.

11 Q. And do you believe that this survey  
12 provides adequate answers to every question that  
13 might be posed on the topic?

14 A. I suspect there could be a lot of  
15 different questions. And, again, I don't know all  
16 the questions that are asked by staff or the context  
17 in which those questions were asked.

18 I do know that from a standpoint of  
19 determining reliability standards, this is the survey  
20 that the company is supposed to consider and factor  
21 into its proposals for establishing standards. The  
22 questions that I have seen appear to be reasonable  
23 for that purpose.

24 Q. And are you aware that the company also  
25 takes surveys through J.D. Power?

1           A.    I've read about those surveys.  In fact,  
2   I've seen those surveys over the years.

3           Q.    And do you believe that the J.D. Power  
4   survey results are reliable?

5           A.    I don't necessary have an opinion on  
6   them.  I mean, I use them for my purposes just to  
7   look at the different utilities in Ohio and how they  
8   are doing compared to others.

9           Q.    So you don't have any basis to believe  
10   the J.D. Power's survey results are not reliable?

11          A.    No, nor did I say anything like that in  
12   my testimony.

13               MS. KINGERY:  Just a minute.

14               That's all I have, your Honor.

15               EXAMINER WALSTRA:  Thank you.

16               Staff?

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

19               EXAMINER WALSTRA:  Redirect?  Do you need  
20   a minute?

21               MR. SERIO:  Probably a couple of  
22   questions.  May I have a moment with my witness, your  
23   Honor?

24               EXAMINER WALSTRA:  Sure.

25               Why don't we just take a 10-minute break

1 here.

2 (Recess taken.)

3 EXAMINER WALSTRA: We will go back on the  
4 record.

5 MR. SERIO: Thank you, your Honor. Just  
6 a couple of questions.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. Serio:

10 Q. Mr. Williams, do you have Duke Exhibit 36  
11 in front of you?

12 A. Yes, I do.

13 Q. The column "August '14" for Duke Energy  
14 Ohio, I believe you discussed with counsel that it  
15 does not include any impact from the DCI rider,  
16 correct?

17 A. That is correct.

18 Q. And would you agree with me that to the  
19 extent the Commission approves any other riders  
20 proposed in this case, those are not included in that  
21 figure either, correct?

22 A. They are not.

23 Q. Counsel for Duke also asked you with  
24 regard to the finding and order in the 08-1229  
25 case -- you had some discussion. Do you recall that?

1           A.    Yes, I do.

2           Q.    And counsel mentioned to you that Duke  
3 was a combination company and that they had the same  
4 policies for gas and the electric side. Do you  
5 recall that?

6           A.    I do recall that.

7           Q.    Do you understand that Duke has an O&M  
8 cost savings credit mechanism in its SmartGRID  
9 program?

10          A.    Yes. There's a mechanism for shared  
11 savings to go back to customers.

12          Q.    And do you know if Duke has an O&M cost  
13 savings mechanism in its natural gas accelerated  
14 mains replacement program?

15          A.    Yes, they do. I don't know all the  
16 mechanics of it, but I know there is something like  
17 that in place.

18          Q.    And did Duke propose an O&M cost savings  
19 credit as part of the DCI rider?

20          A.    No, they did not. In fact, they  
21 specifically excluded that until -- those cost  
22 savings until the next base rate case.

23          Q.    And then I believe you had a discussion  
24 with counsel where you had indicated there was a  
25 discussion about the different reasons why the

1 disconnect rate might be too high, and you indicated  
2 there were lots of reasons for that, correct?

3 A. That's correct.

4 Q. And one of those could be that the rates  
5 are too high, correct?

6 A. That's correct.

7 MR. SERIO: That's all I have, your  
8 Honor.

9 EXAMINER WALSTRA: Thank you.

10 Ms. Hussey?

11 MS. HUSSEY: No questions your Honor.

12 EXAMINER WALSTRA: Ms. Bojko?

13 MS. BOJKO: I'll refrain, your Honor.

14 EXAMINER WALSTRA: Mr. Kurtz?

15 MR. KURTZ: No questions, your Honor.

16 MR. HART: I abstain as well.

17 MS. KINGERY: Nothing, your Honor.

18 EXAMINER WALSTRA: Nothing?

19 Staff?

20 MR. BEELER: Nothing. Thank you.

21 EXAMINER WALSTRA: Thank you,  
22 Mr. Williams.

23 THE WITNESS: Thank you.

24 MR. SERIO: Your Honor, OCC would move  
25 for admission of OCC Exhibit 47, Mr. Williams' direct

1 testimony.

2 EXAMINER WALSTRA: Any objections?

3 MS. KINGERY: No, your Honor.

4 EXAMINER WALSTRA: Then it will be  
5 admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 MR. SERIO: Thank you, your Honor.

8 MS. KINGERY: And I believe I have -- I  
9 would move for the admission of Duke Energy Ohio  
10 Exhibits 33 through 37.

11 EXAMINER WALSTRA: Any objections?

12 MR. SERIO: Your Honor, again, I would  
13 object to Duke Exhibit 37. That's a natural gas  
14 proceeding. It has nothing to do with the electric  
15 side of the business.

16 MS. KINGERY: And, your Honor, I believe  
17 through testimony we demonstrated that there was a  
18 connection, at least in regard to the fact that Duke  
19 Energy Ohio is a combination utility with a single  
20 billing system.

21 EXAMINER WALSTRA: We'll note the  
22 objections, but all the exhibits will be admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 MS. BOJKO: Your Honor, I'm sorry. I had  
25 a response to one.

1 EXAMINER WALSTRA: Okay.

2 MS. BOJKO: I would just request -- it  
3 was my understanding from cross-examination that the  
4 Duke-created table might need corrections made to it.  
5 I guess I would ask that a corrected version be  
6 admitted, not the incorrect version.

7 MS. KINGERY: I would be happy to do.

8 MR. SERIO: And I would echo that, yes,  
9 your Honor.

10 EXAMINER WALSTRA: That works.

11 MS. KINGERY: I will prepare that and get  
12 it to everybody.

13 EXAMINER WALSTRA: Thank you.

14 MR. SERIO: Your Honor, could we hold  
15 admission of that until we see the corrected  
16 document?

17 EXAMINER WALSTRA: Yes. I think that's  
18 fair.

19 OCC, your next witness.

20 MR. STINSON: Yes, your Honor. Our next  
21 witness is Ms. Hixon. If I may approach.

22 EXAMINER WALSTRA: Sure.

23 MS. WATTS: We are going to set speed  
24 records with this one.

25 EXAMINER WALSTRA: We'll see.

1 (Witness sworn.)

2 EXAMINER WALSTRA: Thank you.

3 - - -

4 BETH HIXON

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

7 DIRECT EXAMINATION

8 By Mr. Stinson:

9 Q. Ms. Hixon, would you state your full you  
10 name for the record, please.

11 A. My name is Beth Hixon, H-i-x-o-n.

12 Q. And your business address?

13 A. 10 West Broad Street, Suite 1800,  
14 Columbus, Ohio 43215-3485.

15 Q. I've placed before you what's been marked  
16 as OCC Exhibit No. 48. Do you have that?

17 A. Yes.

18 Q. And can you identify it for me.

19 A. Mine is marked as the confidential  
20 version of my testimony in this case.

21 MR. STINSON: At this point, your Honor,  
22 I would like to clarify that there is one figure in  
23 the testimony that was redacted. Pursuant to the  
24 Bench's rulings, that information is no longer deemed  
25 confidential. So we are only submitting the public



1 version -- this is the confidential pink version. We  
2 just crossed out the confidential version on the  
3 front page and admitted it in the public record.

4 EXAMINER WALSTRA: Was that your  
5 understanding, Ms. Kingery?

6 MS. WATTS: I actually haven't looked at  
7 it for that purpose. So could you point me to the  
8 page, Mr. Stinson? I see it. It's page 19, correct?

9 MR. STINSON: It's page 4, line 17; page  
10 5, line 8. It's the same number throughout.

11 MS. WATTS: Yeah, we are fine with  
12 unredacting that number. Thank you.

13 EXAMINER WALSTRA: Thank you. And it  
14 will be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. STINSON: Thank you.

17 Q. (By Mr. Stinson) And, Ms. Hixon, was this  
18 testimony prepared by you or under your supervision?

19 A. Yes.

20 Q. Do you have any changes or corrections to  
21 make to your testimony?

22 A. I do have a few corrections. The first  
23 one is on page 8, footnote 8. At the end of that  
24 footnote, it says Attachment "BEH-7," and I believe  
25 that should be "BEH-8." And then on page 16, at

1 footnote 22 there's a citation to Case No. 10-2586  
2 and that should be "11-3549." And, finally, on page  
3 17, the same correction for footnote 29.

4 Q. Are there any other corrections?

5 A. That's all that I'm aware of.

6 Q. If I were to ask you the same questions  
7 today that appear in your testimony, would your  
8 answers be the same?

9 A. Yes.

10 MR. STINSON: At this time, your Honor, I  
11 move the admission of OCC Exhibit 48, subject to  
12 cross-examination.

13 EXAMINER WALSTRA: Thank you.

14 Ms. Hussey?

15 MS. HUSSEY: No questions, your Honor.

16 EXAMINER WALSTRA: Ms. Bojko?

17 MS. BOJKO: Yes. Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Bojko:

21 Q. Good afternoon, Ms. Hixon.

22 A. Good afternoon.

23 Q. Have you had the opportunity to read  
24 staff witness Ms. Turkenton's testimony in this case?

25 A. Yes, I have.

1           Q.    And are you familiar with her conclusion  
2           that with staff's modifications, that she finds that  
3           the ESP may be better in the aggregate than the MRO  
4           or meets the test provided for by the statute?

5           A.    Yes, I'm aware of that.

6           Q.    Do you agree with that conclusion?

7           A.    No, I do not.

8           Q.    Could you explain why?

9           A.    I believe Ms. Turkenton's testimony, as I  
10          understand it, looks at the ESP with the  
11          modifications proposed by the staff and concluded  
12          that it's more favorable in the aggregate. She bases  
13          that on the benefits that she lists in her testimony,  
14          and I believe that my testimony does not agree with  
15          those benefits. And so, therefore, it would not be  
16          better in the aggregate.

17                MS. BOJKO: Thank you. I have no further  
18          questions.

19                EXAMINER WALSTRA: Thank you.

20                Mr. Kurtz?

21                MR. KURTZ: No questions.

22                EXAMINER WALSTRA: Ms. Petrucci?

23                MS. PETRUCCI: No questions.

24                EXAMINER WALSTRA: Mr. Hart?

25                MR. HART: No questions.

3600

1 EXAMINER WALSTRA: Ms. Watts?

2 MS. WATTS: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Watts:

6 Q. Good afternoon, Ms. Hixon.

7 A. Good afternoon.

8 Q. The purpose of your testimony is to  
9 compare the expected results under Duke Energy Ohio's  
10 application for an ESP to the results expected under  
11 a market rate option, correct?

12 A. Yes. As stated on page 3 of my  
13 testimony, the company's proposal is what I  
14 evaluated.

15 Q. Okay. And in conducting this analysis,  
16 you looked at three main factors which you point out  
17 the Commission uses in making such an evaluation,  
18 correct?

19 A. Yes. Again on page 3 and 4, I list those  
20 three elements that this Commission has considered.

21 Q. And for purposes of weighing the  
22 company's proposed rider PSR, you relied entirely  
23 upon the expertise of OCC Witness James Wilson,  
24 correct?

25 A. To the extent that the term "weighed" as

1       you described it was the evaluation of the cost, yes,  
2       I relied upon Mr. Wilson's testimony.

3               Q.     So you didn't do any independent analysis  
4       of that evaluation?

5               A.     No, I did not.

6               Q.     And you're aware, are you not, that the  
7       test you are conducting arises out of Section  
8       4928.143 of the Revised Code?

9               A.     Yes, I state so at line 9 of page 3 of my  
10      testimony.

11              MR. STINSON: Your Honor, I'll object to  
12      the extent that Ms. Hixon is not an attorney but  
13      allow the continued questioning if her testimony is  
14      taken based upon her working knowledge of the  
15      statutes.

16              EXAMINER WALSTRA: Overruled, but  
17      understanding that she is not an attorney.

18              Q.     And with that understanding, Ms. Hixon,  
19      you do have a working knowledge of that statute,  
20      correct?

21              A.     Yes, I do.

22              Q.     And the MRO that the ESP is compared to  
23      is a market rate offer, correct?

24              A.     Yes.

25              Q.     And the terms of an MRO are described,

1 likewise, in Revised Code 4928.142, correct?

2 A. That is correct.

3 Q. And pursuant to that statute, the 142  
4 statute, if an electric distribution utility has  
5 received Commission approval of its application for  
6 an MRO, it can never then seek an ESP, correct?

7 A. That's correct. It's my understanding,  
8 as you've just read, if you have an MRO approved, you  
9 cannot come back and then subsequently ask for an  
10 ESP.

11 Q. So at least as far as current statutory  
12 requirements pertain, once you are an MRO you are in  
13 it forever, correct?

14 MR. STINSON: Objection as to the form.  
15 I don't understand the fact that you are in --

16 MS. WATTS: I can rephrase.

17 Q. Until the law is changed, for now,  
18 pursuant to 4928.142, once an MRO is approved for an  
19 electric distribution utility, it can't then file an  
20 ESP, correct?

21 A. That's correct. It would have to  
22 continue to file for an MRO.

23 Q. Thank you. And could you describe for me  
24 your understanding of Duke Energy Ohio's proposed  
25 rider PSR.

1           A.     I think I describe that in my testimony.  
2     Generally what the company is asking for is to impose  
3     a rider that would either charge or credit customers  
4     for the costs or the benefits associated with its  
5     OVEC entitlement.

6           Q.     And OVEC, just so we're clear, is Ohio  
7     Valley Electric Corporation, correct?

8           A.     That's correct.

9           Q.     Okay. And Duke Energy Ohio is not  
10    proposing to sell generation directly to SSO  
11    customers, correct?

12          A.     No.

13          Q.     No, it is not proposing to do that?

14          A.     No, it is not proposing to do that.

15          Q.     Okay. Thank you. And Duke Energy Ohio  
16    is not proposing to sell generation directly to  
17    shopping customers either, correct?

18          A.     No, it is not proposing to do that.

19          Q.     And Duke Energy Ohio is not proposing to  
20    sell energy directly to any other customers, correct?

21          A.     No, it's not proposing to sell generation  
22    to any other customers.

23          Q.     Okay. Now, in respect of the three  
24    factors that you have indicated the Commission  
25    applies in evaluating the benefits of an ESP versus

1 an MRO, those factors are the price of generation,  
2 correct? That's one factor?

3 A. The standard service offer price of  
4 generation, yes.

5 Q. Okay. And quantifiable provisions,  
6 correct?

7 A. Yes.

8 Q. And qualitative benefits, correct?

9 A. Yes.

10 Q. Okay. And you agree that the price of  
11 generation under the ESP and the MRO as proposed in  
12 this case would be the same, correct, for standard  
13 service offers?

14 A. Yes. At page 4 of my testimony, I  
15 indicate that the price would be the same under an  
16 ESP and an MRO for the SSO generation.

17 Q. Okay. And as you evaluate quantifiable  
18 benefits, you believe customers would pay more under  
19 the proposed ESP, correct?

20 A. Yes.

21 Q. And as regarding qualitative benefits,  
22 you believe that anything that Duke Energy Ohio might  
23 consider as qualitative is equally available under an  
24 MRO, correct?

25 A. Yes. I say so at page 5 of my testimony.



1 To the extent that those qualitative benefits exist  
2 and to the extent that they can be considered, they  
3 would be equally available in the scenario of an MRO  
4 being filed.

5 Q. Okay. And, Ms. Hixon, were you a witness  
6 on behalf of the Office of the Ohio Consumers'  
7 Counsel in Dayton Power and Light's most recent ESP  
8 proceeding?

9 A. Yes, I was.

10 Q. And you filed testimony in that  
11 proceeding, correct?

12 A. Correct.

13 Q. And your testimony provided a similar  
14 comparison between the proposed ESP and MRO in that  
15 proceeding, correct?

16 A. Similar to the extent it was an  
17 evaluation of the ESP versus MRO. But, of course,  
18 the components were different.

19 Q. Understood. And the Commission reached a  
20 decision which was docketed, its opinion and order in  
21 that proceeding, correct?

22 A. Yes.

23 Q. And did you read that opinion and order?

24 A. Yes, I have.

25 Q. And would you agree with me that the

1 Commission in that opinion and order placed a value  
2 on qualitative aspects --

3 MR. STINSON: Objection. I don't  
4 understand the word "value."

5 Q. I'll rephrase. Would you agree with me,  
6 Ms. Hixon, that the Commission evaluated the Dayton  
7 Power and Light proposal and found that it met the --  
8 in the aggregate test, in other words, it found that  
9 the ESP was better in the aggregate than a proposed  
10 MRO based upon qualitative aspects?

11 MR. STINSON: I am going to object again  
12 because I believe the order is going to speak for  
13 itself. I don't think we need Ms. Hixon to reiterate  
14 what the order says. It speaks for itself.

15 EXAMINER WALSTRA: She can answer if she  
16 knows.

17 A. As far as the Commission's order in  
18 Dayton Power and Light, as I show on page 4 of my  
19 testimony at footnote 2, one of the elements that the  
20 Commission considered was qualitative provisions,  
21 yes.

22 Q. And so to the extent it considered  
23 qualitative provisions, even though -- strike that.

24 On the bottom of page 7 of your testimony  
25 and the top of page 8, you state that the cost of

1 rider PSR should be considered costs of the ESP  
2 because the PSR would not be available to Duke under  
3 an MRO scenario; is that correct?

4 A. Yes.

5 Q. Why would it not be available under an  
6 MRO?

7 A. Well, I think there's a number of  
8 reasons. As I've indicated in my testimony, the  
9 company itself indicates that it would not be  
10 available under an MRO and points to the fact that  
11 the benefits of the PSR are attributable or ascribed  
12 to an ESP. In addition, if you look at the MRO  
13 statute, there's no provision for this particular  
14 type of rider, period. Sorry.

15 Q. And for purposes of your statement that  
16 rider PSR would not provide price stability and  
17 certainty, you are again relying on the analysis  
18 performed by OCC Witness Wilson, correct?

19 A. Yes, that's correct.

20 Q. And you didn't mention the elimination of  
21 rider ECF that provided for above market credits to  
22 certain commercial/industrial customers, correct?

23 A. I'm not sure what you mean when you --  
24 when you say "don't mention," don't mention in terms  
25 of?

1           Q.    You didn't provide any analysis of that  
2 rider with respect to your weighting of the ESP  
3 versus the MRO for your comparison?

4           A.    The elements that I looked at related to  
5 riders and their elimination were the ones that the  
6 company indicated they considered to be either  
7 quantitative or qualitative benefits. So, for example,  
8 on page 14, I asked the company what provisions  
9 resulted in these qualitative benefits, and this is  
10 the list that the company gave me.

11                So, for example, not continuing rider LFA  
12 was one of those, and then I considered that and  
13 discussed it. I do not believe that the company  
14 responded that that was one of those qualitative  
15 benefits. So, no, I did not address that.

16           Q.    So did you base your analysis upon only  
17 what the company provided then?

18           A.    I read the company's testimony and asked  
19 them what provisions of the ESP provided the  
20 qualitative benefits that they considered made it  
21 superior to an MRO, and then I evaluated those that  
22 the company responded, yes.

23           Q.    Did you also consider the continuation of  
24 rider POR as a benefit? I'm sorry. Not rider POR,  
25 but the POR program.

1           A.    I don't think in my testimony because of  
2   the way I just described what I evaluated.  I  
3   evaluated what Duke said were the benefits.

4           Q.    And nothing more?

5           A.    And so in my testimony, I don't address  
6   whether or not I would consider that to be a benefit  
7   of this ESP.

8           Q.    Okay.  Thank you.

9                    Would you agree that by allowing PIPP  
10   load -- and do you understand what I mean when I  
11   refer to "PIPP load"?

12           A.    Those customers' load who -- those  
13   customers who are served on PIPP, what their load is,  
14   that's what I would expect it to be.

15           Q.    Okay.  That's what I mean for it to be,  
16   so we're on one page.

17           A.    Okay.

18           Q.    Would you agree that by allowing PIPP  
19   load to go back to the standard service offer, that  
20   Development Services Agency might be able to now bid  
21   it out and get a more favorable price?

22                   MR. STINSON:  I am going to object, your  
23   Honor.  I don't think that -- there's no  
24   facts that -- I'm sorry.  The question assumes facts  
25   not in evidence, your Honor.  That's not been

1 testified to.

2 EXAMINER WALSTRA: Overruled.

3 THE WITNESS: Could I have the question  
4 read, please?

5 (Record read.)

6 A. To the extent that PIPP load could have  
7 been bid by the department -- I'm not sure what they  
8 are called now. They used to be ODOD.

9 Q. Yes.

10 A. Development Services could at any time  
11 have bid that out since, I believe, 2001.

12 Q. And it's your understanding that ODSA  
13 could bid out that load despite the fact that there  
14 was a stipulation in 11-3549 to allow FirstEnergy  
15 Solutions to serve that load?

16 MR. STINSON: Objection, your Honor.  
17 None of those facts are in evidence.

18 EXAMINER WALSTRA: Ms. Watts?

19 MS. WATTS: If she knows.

20 MR. STINSON: Well, no. It's not in  
21 evidence. I object.

22 EXAMINER WALSTRA: Do you have a  
23 response?

24 MS. WATTS: I can create a foundation,  
25 your Honor.

1 EXAMINER WALSTRA: Okay. Thank you.

2 Q. (By Ms. Watts) Ms. Hixon, were you  
3 involved at all on behalf of OCC in Duke Energy  
4 Ohio's second ESP proceeding?

5 A. Could you possibly give me the case  
6 number so I can be sure?

7 Q. Sure. 11-3549.

8 A. I was involved to some extent in that  
9 case for the OCC.

10 Q. Okay. And I can put the stipulation  
11 before you if that will help refresh your  
12 recollection in any respect.

13 A. Sure.

14 Q. Do you have OCC 2?

15 MS. KINGERY: Do you want see it?

16 MR. STINSON: I would like to see it,  
17 too.

18 A. I have that document.

19 Q. Okay. Just one second. You have it, but  
20 I don't.

21 Ms. Hixon, in your work on behalf of OCC  
22 as it related to this case, did you read the  
23 stipulation? Have you read the stipulation  
24 previously?

25 A. I'm sure that I've read it, yes.

1           Q.    And were you aware prior to today that  
2           there was a provision in that stipulation that  
3           allowed for the PIPP load to be served by FirstEnergy  
4           Solutions?

5                   MR. STINSON:   Could we have a reference  
6           to the stipulation?

7                   MS. WATTS:   I am trying to find it, Dane.  
8           One second.

9           Q.    I would call your attending to page 17,  
10          paragraph D as in David.

11          A.    I have that.

12          Q.    And do you see that that paragraph allows  
13          for FirstEnergy Solutions to serve the PIPP load  
14          during the duration of that ESP period?

15          A.    Yes, I see that.

16          Q.    And, so, have you seen a similar proposal  
17          in the current ESP application of Duke Energy Ohio?

18          A.    No.

19          Q.    So that PIPP load can now be bid out  
20          pursuant to Development Services Agency's statutory  
21          authority, correct?

22                   MR. STINSON:   Objection.   I think we are  
23          calling for application of the law and what ODSA can  
24          do under the statutes that permits aggregation of  
25          PIPP load, how it can do it, when it can do it.



1 EXAMINER WALSTRA: She can answer to her  
2 understanding.

3 A. Could you repeat the question, please?

4 Q. So since there is not a proposal to allow  
5 for a competitive retail electric supplier to serve  
6 that PIPP load in this ESP application, is it your  
7 understanding that Development Services Agency can  
8 now bid that load out?

9 A. No. I think that you're making a  
10 connection that doesn't exist. First of all, Duke  
11 Energy entered into a wholesale bilateral contract  
12 with FirstEnergy Solutions according to the  
13 stipulation. There's no indication in the  
14 stipulation what this did or did not do to the  
15 department's ability to bid out. I don't know  
16 whether the department at that time of development  
17 was a party to this stipulation or what their  
18 understanding of it was. It simply provided that the  
19 PIPP customers would remain customers of Duke Energy  
20 and would get a discount because of that wholesale  
21 contract.

22 Q. Okay. Thank you for that clarification.

23 But you don't see any proposal like that  
24 in the current application, correct?

25 A. No. In fact, as I say on page 8 of my

1 testimony, the company claims that not having a PIPP  
2 discount is a benefit; whereas, before having a PIPP  
3 discount was a benefit. So taking it away is now a  
4 benefit.

5 Q. Okay. I understand your perspective.

6 A. Okay.

7 Q. Would you turn to your conclusions on  
8 page 19 of your testimony, please.

9 A. I have that.

10 Q. Okay. And correct me if this isn't a  
11 fair summation. But as I understand it, you're  
12 saying that for items 1 and 3 on page 19, it's your  
13 opinion that the ESP and the MRO would be equal,  
14 correct, with just those two provisions?

15 A. In terms of No. 1, equal in terms of  
16 price, I would agree with that. In terms of No. 3,  
17 in terms of qualitative benefits, again, if you are  
18 going to consider qualitative benefits, if they are  
19 available under both an ESP or an MRO scenario, then  
20 there is no difference.

21 Q. Okay. And so the only proposal that Duke  
22 Energy Ohio's ESP includes that tips the scales in  
23 your opinion is the cost of the proposed rider PSR;  
24 is that correct?

25 A. For quantifiable provisions, yes.

1 MS. WATTS: Thank you very much. I have  
2 nothing further.

3 EXAMINER WALSTRA: Staff?

4 MR. BEELER: No questions.

5 EXAMINER WALSTRA: Redirect?

6 MR. STINSON: Could we have a moment,  
7 your Honor?

8 EXAMINER WALSTRA: Sure.

9 (Discussion off the record.)

10 EXAMINER WALSTRA: Go ahead.

11 MR. STINSON: Just a quick question, your  
12 Honor.

13 - - -

14 REDIRECT EXAMINATION

15 By Mr. Stinson:

16 Q. Ms. Hixon, do you recall the line of  
17 questioning from Ms. Watts concerning rider DR-ECF  
18 and whether you had considered that in your  
19 testimony?

20 A. Yes, I did.

21 Q. And have you considered it?

22 A. Yes, your Honors, I want to admit I made  
23 a mistake here. You probably saw me searching for my  
24 testimony because I thought I did address that. And  
25 it's been brought to my attention that I did on page

1 17 of my testimony. This is in regards to the demand  
2 response program for certain transmission voltage  
3 customers, and that actually is funded through rider  
4 DR-ECF. And I think Ms. Watts' question was whether  
5 or not I had considered that. I could not find it in  
6 my testimony at the time she answered, but I wanted  
7 to point out that that was addressed here, and my  
8 opinion in regards to that is on page 17.

9 EXAMINER WALSTRA: Thank you.

10 MR. STINSON: No further questions, your  
11 Honor.

12 EXAMINER WALSTRA: Is there any recross?  
13 Thank you, Ms. Hixon.

14 MR. STINSON: At this time we would move  
15 the admission of OCC Exhibit 48, your Honor.

16 EXAMINER WALSTRA: Any objections?

17 MS. WATTS: No objection.

18 EXAMINER WALSTRA: It will be admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER WALSTRA: With that, I believe  
21 we will adjourn until tomorrow morning.

22 (Thereupon, at 5:20 p.m., the hearing was  
23 adjourned.)

24 - - -  
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CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Thursday, November 6,  
2014, and carefully compared with my original  
stenographic notes.

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Karen Sue Gibson,  
Registered Merit Reporter.

(KSG-5955)

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**Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA**

Summary: Transcript in the matter of Duke Energy Ohio hearing held on 11/06/14 - Volume XII  
- Public electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and  
Gibson, Karen Sue Mrs.