

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. :

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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 2:00 p.m. on Thursday,  
November 20, 2014.

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VOLUME XVI - REBUTTAL TESTIMONY

- - -

ARMSTRONG & OKEY, INC.  
222 East Town Street, Second Floor  
Columbus, Ohio 43215-5201  
(614) 224-9481 - (800) 223-9481  
Fax - (614) 224-5724

- - -

1 APPEARANCES:

2 Duke Energy  
3 By Ms. Amy B. Spiller  
4 Ms. Jeanne Kingery  
5 Ms. Elizabeth H. Watts  
6 Mr. Rocco D'Ascenzo  
7 139 East Fourth Street, 1303-Main  
8 Cincinnati, Ohio 45202

9 On behalf of the Applicant.

10 Bruce J. Weston, Ohio Consumers' Counsel  
11 By Mr. Edmund "Tad" Berger  
12 Ms. Maureen R. Grady  
13 Mr. Joseph P. Serio,  
14 Assistant Consumers' Counsel  
15 10 West Broad Street, Suite 1800  
16 Columbus, Ohio 43215-3485

17 and

18 Bricker & Eckler  
19 By Mr. Dane Stinson  
20 and Mr. Dylan F. Borchers  
21 100 South Third Street  
22 Columbus, Ohio 43215

23 On behalf of the Residential Ratepayers  
24 of Duke Energy Ohio.

25 McNees, Wallace & Nurick, LLC  
By Mr. Matthew R. Pritchard  
and Mr. Frank P. Darr  
Fifth Third Center, Suite 1700  
21 East State Street  
Columbus, Ohio 43215-4288

On behalf of the Industrial Energy  
Users - Ohio.

Carpenter, Lipps & Leland, LLP  
By Ms. Rebecca L. Hussey  
280 North High Street, Suite 1300  
Columbus, Ohio 43215

On behalf of The Kroger Company.

1 APPEARANCES: (Continued)

2 Carpenter, Lipps & Leland, LLP  
3 By Ms. Kimberly W. Bojko  
4 280 North High Street, Suite 1300  
5 Columbus, Ohio 43215

6 On behalf of the Ohio Manufacturers'  
7 Association.

8 Interstate Gas Supply, Inc.  
9 By Mr. Joseph Olikier  
10 6100 Emerald Parkway  
11 Dublin, Ohio 43016

12 On behalf of IGS Energy.

13 FirstEnergy Service Corporation  
14 By Mr. Jacob A. McDermott  
15 Mr. Scott J. Casto  
16 Mr. Mark A. Hayden  
17 76 South Main Street  
18 Akron, Ohio 44308

19 On behalf of FirstEnergy Solutions Corp.

20 Mike DeWine, Ohio Attorney General  
21 By Mr. William Wright, Section Chief  
22 Mr. Thomas Lindgren  
23 Mr. Ryan O'Rourke  
24 Mr. Steven Beeler  
25 Assistant Attorneys General  
Public Utilities  
180 East Broad Street, 6th floor  
Columbus, Ohio 43215

On behalf of the Staff of the Public  
Utilities Commission.

Boehm, Kurtz & Lowry  
By Ms. Jody Kyler Cohn  
Mr. Kurt Boehm  
Mr. Michael L. Kurtz  
36 East Seventh Street, Suite 1520  
Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

1 APPEARANCES: (Continued)

2 Ohio Partners for Affordable Energy  
3 By Ms. Colleen L. Mooney  
4 231 West Lima Street  
5 Findlay, Ohio 45839

6 On behalf of Ohio Partners for Affordable  
7 Energy.

8 Mr. Douglas E. Hart  
9 441 Vine Street, Suite 4192  
10 Cincinnati, Ohio 45202

11 On behalf of the Greater Cincinnati  
12 Health Council.

13 Vorys, Sater, Seymour & Pease, LLP  
14 By Mr. M. Howard Petricoff  
15 Mr. Michael Settineri  
16 Ms. Gretchen Petrucci  
17 52 East Gay Street  
18 Columbus, Ohio 43216-1008

19 On behalf of the Retail Energy Supply  
20 Association, Constellation NewEnergy, and  
21 Exelon Generation, LLC.

22 Ohio Environmental Council  
23 By Mr. Trent A. Dougherty  
24 1207 Grandview Avenue, Suite 201  
25 Columbus, Ohio 43212

On behalf of the Ohio Environmental  
Council.

American Electric Power  
By Mr. Steven T. Nourse  
and Mr. Matthew J. Satterwhite  
One Riverside Plaza, 29th Floor  
Columbus, Ohio 43215-2373

On behalf of the Ohio Power Company.

1 APPEARANCES: (Continued)

2 Roetzel & Andress, LPA  
3 By Mr. Michael R. Taven  
4 and Mr. Donald L. Mason  
5 155 East Broad Street, 12th Floor  
6 Columbus, Ohio 43215

7 and

8 Behrens Taylor Wheeler  
9 By Mr. Rick D. Chamberlain  
10 6 N.E. 63rd Street, Suite 400  
11 Oklahoma City, Oklahoma 73105

12 On behalf of the Wal-Mart Stores East, LP  
13 and Sam's East, Inc.

14 Bricker & Eckler, LLP  
15 By Mr. Thomas J. O'Brien  
16 100 South Third Street  
17 Columbus, Ohio 43215

18 On behalf of the City of Cincinnati.

19 Carpenter, Lipps & Leland, LLP  
20 By Mr. Joel E. Sechler  
21 280 North High Street, Suite 1300  
22 Columbus, Ohio 43215

23 On behalf of the EnerNOC, Inc.

24 Dayton Power and Light Company  
25 By Ms. Judi Sobeki  
1065 Woodman Drive  
Dayton, Ohio 45432

On behalf of the Dayton Power and Light  
Company.

Bricker & Eckler, LLP  
By Mr. Dane Stinson  
and Mr. Dylan F. Borchers  
100 South Third Street  
Columbus, Ohio 43215-4291

On behalf of the Ohio Development  
Services Agency.

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APPEARANCES: (Continued)

Direct Energy  
By Mr. Joseph M. Clark  
21 East State Street, 19th Floor  
Columbus, Ohio 43215

and

Eckert, Seamans, Cherin & Mellott  
By Mr. Gerit F. Hull  
1717 Pennsylvania Avenue NW, 12th Floor  
Washington, D.C. 20006

On behalf of the Direct Energy Services,  
LLC, and Direct Energy Business, LLC.

Williams, Allwein & Moser, LLC  
By Mr. Christopher J. Allwein  
and Mr. Todd M. Williams  
1500 West Third Avenue, Suite 330  
Columbus, Ohio 43212

and

Sierra Club  
By Mr. Tony G. Mendoza  
85 Second Street, 2nd Floor  
San Francisco, California 94105

On behalf of the Sierra Club.

Bricker & Eckler, LLP  
By Mr. Dane Stinson  
and Mr. Dylan F. Borchers  
100 South Third Street  
Columbus, Ohio 43215-4291

On behalf of the Ohio Development  
Services Agency.

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APPEARANCES: (Continued)

Vorys, Sater, Seymour & Pease, LLP  
By Mr. M. Howard Petricoff  
Special Assistant Attorney General  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

On behalf of the Miami University and  
University of Cincinnati.

Environmental Law & Policy Center  
By Mr. Justin M. Vickers  
35 East Wacker Drive, Suite 1600  
Chicago, Illinois 60601-2110

On behalf of the Environmental Law &  
Policy Center.

Simpson Thacher & Bartlett LLP  
By Mr. Michael J. Castiglione  
425 Lexington Avenue  
New York, New York 10017-3954

On behalf of OVEC.

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INDEX

- - -

WITNESSES	PAGE
Roger A. Morin	
Direct Examination by Ms. Watts	4194
Cross-Examination by Mr. Serio	4204
Kenneth J. Jennings	
Direct Examination by Ms. Kingery	4244
Cross-Examination by Mr. Olikier	4247
Cross-Examination by Mr. Darr	4287
Cross-Examination by Ms. Hussey	4290
Cross-Examination by Ms. Bojko	4295
Redirect Examination by Mr. Berger	4333
Recross-Examination by Mr. Petricoff	4344

- - -

COMPANY EXHIBITS	IDENTIFIED	ADMITTED
40 Rebuttal Testimony of Roger A. Morin	4194	4242
41 Rebuttal Testimony of Kenneth J. Jennings	4243	4373

- - -

OCC EXHIBITS	IDENTIFIED	ADMITTED
49 AUS Utility Report	4224	4243
50 OCC-INT-13-349	4232	4243

- - -

IGS EXHIBIT	IDENTIFIED	ADMITTED
14 PJM Manual 18: PJM Capacity Market; Revision 25: Effective Date: October 30, 2014	4254	4374



1  
2  
3  
4  
5  
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7  
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11  
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14  
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20  
21  
22  
23  
24  
25

INDEX (Continued)

- - -

OMA EXHIBITS	IDENTIFIED	ADMITTED
14	PJM Open Access Transmission Tariff, Effective Date: 09/10/2014	4318            4374
15	Letter from A. Spiller to B. McNeal, dated November 12, 2014, Re: Case No. 13-2385-EL-SSO	4330            --

- - -

1 Thursday Afternoon Session,  
2 November 20, 2014.

3 - - -

4 EXAMINER WALSTRA: We'll go on the record  
5 then.

6 I believe everyone has received a copy of  
7 the proposed redactions for Volume XV. Duke, if you  
8 would like to speak, I guess, generally. They seem  
9 to be pretty consistent and the same things, but if  
10 you want to speak generally about those proposed  
11 redactions.

12 MS. KINGERY: Yes, thank you, your Honor.  
13 I'll go page by page since I have to do that anyway  
14 as I flip through. So on page 4135 are the first  
15 redactions and those are showing direction --  
16 directional changes and sort of generally the amount  
17 of changes on forced outages.

18 The next page, 4136, is directional  
19 changes on certain assumptions.

20 And same thing on the next page, again,  
21 it's directional words. And again on 4138. So it's  
22 either outages or assumptions, so forecasts and  
23 assumptions to create them.

24 EXAMINER WALSTRA: Thank you.

25 Any responses?

1 MR. BERGER: Your Honor, on page 4136, I  
2 do not think there is any need for the first two  
3 words in that line to be redacted. Other than that,  
4 I'm fine.

5 EXAMINER WALSTRA: What line are you in  
6 reference to?

7 MR. BERGER: Line 14.

8 EXAMINER WALSTRA: Anyone else?

9 MS. BOJKO: We would concur with that.

10 MS. KINGERY: And I don't have any  
11 problem with that either. It looks like I left those  
12 two words out on line 5 of the following page.

13 EXAMINER WALSTRA: Okay. Okay. After  
14 hearing both sides, we will open up the first two  
15 words on page 4136 on line 14, and all the other  
16 proposed redactions, we will grant them.

17 MS. KINGERY: Thank you very much, your  
18 Honor.

19 EXAMINER WALSTRA: Would you like to call  
20 your first witness.

21 MS. WATTS: Yes, thank you, your Honor.  
22 Duke Energy Ohio calls Dr. Roger A. Morin.

23 (Witness sworn.)

24 EXAMINER WALSTRA: Thank you. You may be  
25 seated.

1 MS. WATTS: May we have Dr. Morin's  
2 testimony marked as Duke Energy Ohio Exhibit 40.  
3 And, your Honors, I placed extra copies on the Bench  
4 and I have given one to the court reporter.

5 EXAMINER WALSTRA: Got those. Thank you.  
6 The exhibit will be so marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MS. WATTS: Thank you.

9 - - -

10 ROGER A. MORIN

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

13 DIRECT EXAMINATION

14 By Ms. Watts:

15 Q. Mr. Morin, do you have before you what  
16 has been marked Duke Energy Exhibit 40?

17 A. I do.

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

20 A. Yes, it is.

21 Q. And do you have any corrections to that  
22 testimony?

23 A. No.

24 Q. And if I were to ask you the questions  
25 contained therein, would your answers be the same?

1           A.    They would be, yes.

2           Q.    Would you state your name, your address,  
3 and your title, please?

4           A.    My name is Roger Morin. My business  
5 address is Robinson College of Business, Georgia  
6 State University, University Plaza, Atlanta, Georgia  
7 30303, and my title is Emeritus Professor of Finance  
8 and Distinguished Professor of Finance for Regulated  
9 Industry at the Center for the Study of Regulated  
10 Industry also located at the Robinson College.

11           MS. WATTS: Dr. Morin is available for  
12 cross-examination.

13           EXAMINER WALSTRA: Thank you.

14           MR. SERIO: Your Honor, before we do  
15 that, I had a motion to strike.

16           EXAMINER WALSTRA: Okay.

17           MR. SERIO: And in order to make this a  
18 little easier for you I have -- can I approach?

19           EXAMINER WALSTRA: You may.

20           MR. SERIO: I have a copy of Dr. Morin's  
21 testimony that was filed on behalf of Duke in the  
22 recent Duke electric rate case, 12-1682-EL-AIR on  
23 July 20, 2012.

24           MS. WATTS: Mr. Serio, do you have a copy  
25 for the witness?

1 MR. SERIO: It is really for the  
2 examiners for the purposes of the motion to strike.

3 Rebuttal testimony is supposed to rebut,  
4 your Honor, but if you look at Dr. Morin's direct  
5 testimony in the rate case and you compare it to his  
6 alleged rebuttal testimony in this proceeding, you'll  
7 find that the vast majority of it is the identical  
8 testimony that was given in the rate case.

9 For example, if you start on page 10 of  
10 Exhibit 40, and you compare that to page 7 of the  
11 testimony from the rate case, the section "Regulatory  
12 Framework and Rate of Return" is identical to the  
13 extent that even questions and answers, page by page,  
14 are identical.

15 If you go to Exhibit 40, page 18, and the  
16 direct testimony, page 14, the same is true for cost  
17 of common equity capital estimates. Again, questions  
18 and answers are virtually identical.

19 If you go to Exhibit 40 at page 22, and  
20 the direct testimony at page 17, the DCF estimates  
21 again are identical.

22 On page 35 of Exhibit 40 and page 30 of  
23 the direct testimony, the CAPM estimates are  
24 identical.

25 On page 54 of Exhibit 40 and page 47 of

1 the direct testimony, the historic premium estimates  
2 are identical.

3 On page 57 of the Exhibit 40 and page 49  
4 of the direct testimony, the allowed risk premium  
5 discussion is identical.

6 And then on page 60 of the Exhibit 40 and  
7 page 52 of the direct testimony, the need -- the need  
8 for floatation cost adjustment is identical.

9 Finally, on page 66 of Exhibit 40 and  
10 page 57 of direct testimony, the summary cost of  
11 equity results is identical.

12 Rebuttal testimony is supposed to rebut.  
13 It is not supposed to be something that could have or  
14 should have been done in the direct case. The PUCO,  
15 in Case No. 98-1398-TP-AMT, I should say the Attorney  
16 Examiner in that case, rejected an attempt by the  
17 company to submit documents that could have been done  
18 as direct testimony in an entry dated July 16, 1999.

19 In Case No. 96-922-TP-UNC, in an entry  
20 dated January 29, 2001, again, the Examiner in that  
21 case granted a motion to strike rebuttal testimony  
22 that the CLECs tried to get in that proceeding noting  
23 that even a cursory review of the testimony revealed  
24 that the witnesses weren't rebutting new evidence,  
25 but they were simply representing what should have or

1 could have been done as direct evidence.

2 In addition to those two proceedings by  
3 the PUCO, we have the case of Weimer versus Anzevino,  
4 it's W-e-i-m-e-r versus A-n-z-e-v-i-n-o. It's the  
5 Seventh District Court of Appeals in Ohio, Mahoning  
6 County, at 122 Ohio Appellate 3d. 720, where the  
7 court recognized that rebutting evidence is that  
8 which is given to explain, repeal, counteract, or  
9 disprove facts given in evidence by the adverse  
10 party. It is that evidence which has become relevant  
11 or important only as an effect of some evidence  
12 introduced by the other side.

13 That finding was also held by the Ninth  
14 Court -- the Ninth Circuit -- the Ninth Appellate  
15 District in Ohio in the Nickey versus Brown,  
16 N-i-c-k-e-y versus Brown, at 7 Ohio Appellate 3d. 32,  
17 on July 14, 1992, quoting the same language, your  
18 Honor. And to help the Bench out, I do have copies  
19 of those orders.

20 MS. WATTS: Again, Mr. Serio, do you have  
21 copies for counsel and the witness? Apparently not.

22 MR. SERIO: Your Honor, the point is when  
23 you do the point-by-point comparison of the alleged  
24 rebuttal testimony and direct testimony, it's obvious  
25 it doesn't rebut anything.



1                   Supposedly the testimony rebuts the  
2 direct testimony of Matthew Kahal which was OCC  
3 Exhibit No. 32. Mr. Kahal addressed rate of return  
4 in the proposed rider DCI at pages 8 through 10 of  
5 his testimony. At no point in his testimony does he  
6 discuss regulatory framework and rate of return, cost  
7 of common equity capital estimates, DCF estimates,  
8 CAPM estimates, historic risk premium estimates,  
9 allowed risk premium, a need for a floatation cost  
10 adjustment or summary cost of equity results. So  
11 they are not rebutting anything that's in Mr. Kahal's  
12 testimony.

13                   The company could have easily filed  
14 direct testimony on rate of return in this proceeding  
15 had they chosen to. The company chose not to. That  
16 meant the parties had no opportunity to review that  
17 testimony, to do discovery on that testimony, and to  
18 present responsive testimony had they chosen to do  
19 so.

20                   Instead, the company came in at the 12th  
21 hour, presented direct testimony with the cover page  
22 calling it "Rebuttal" and gave the parties two and a  
23 half days to prepare for it. Obviously, there's no  
24 way we could prepare and present testimony to respond  
25 to this in the time given. So it's inappropriate

1 testimony and it should be stricken.

2 EXAMINER WALSTRA: Thank you.

3 Response from the company?

4 MS. WATTS: Yes, thank you, your Honor.

5 First of all, Revised Code 4928.143 has no  
6 requirement for an ROE -- element of ROE in a case.  
7 ROE is not relevant in an ESP case. The company  
8 provided information relevant to ROE in this case  
9 because of the additional rider requests that are  
10 pertinent. And so, in -- and we relied upon ROEs  
11 from previous cases because we thought that was  
12 relatively reasonable. They were -- those were ROE  
13 values that came from other ESP proceedings and the  
14 company's earlier distribution rate case which the  
15 Commission had ruled upon only just a year ago.

16 So it seemed to us to be a reasonable  
17 value. The range that the company proposed is at --  
18 was, in fact, agreed upon by the parties in that case  
19 and was the low end of the range that the company  
20 requested.

21 The intervenors have challenged ROE in a  
22 number of respects in the record in this proceeding.  
23 In fact, in addition to the direct testimony of  
24 Mr. Kahal, there was cross-examination of Duke Energy  
25 Ohio Witness Wathen by Ms. Bojko and by Ms. Hussey in

1 Volume II of the transcript, and I have specific  
2 pages references, if that's helpful.

3 There was cross-examination of Duke  
4 Energy Ohio Witness Laub by Ms. Bojko and by  
5 Mr. Serio. There was cross-examination of Duke  
6 Energy Ohio Witness Ziolkowski by Mr. Serio.

7 There was Duke -- there was  
8 cross-examination of Staff Witness Turkenton by  
9 Mr. Stinson, and there was cross-examination of Staff  
10 Witness McCarter by Mr. Serio.

11 The issue of ROE was raised far more  
12 frequently than the company could have anticipated  
13 and it's only reasonable to allow us to rebut what  
14 was raised in the record in that regard.

15 EXAMINER WALSTRA: Thank you.

16 MR. SERIO: If I can respond, OCC asked  
17 questions about whether the DCI rider would reduce  
18 risk. We didn't ask questions about fundamental rate  
19 of return principles which make up the vast bulk of  
20 the Exhibit 40, as I indicated previously, from  
21 regulatory framework through the floatation costs.

22 All the questions that we asked had to do  
23 with did this reduce the risk to the company. We  
24 never asked about CAPM or DCF or any of that. So  
25 that's not rebutting anything that was in Mr. Kahal's

1 testimony or anything in any of the questions. It's  
2 new testimony.

3 And the company's correct, there is no  
4 requirement to file rate of return testimony, but had  
5 they wanted to, they had the option to do so.  
6 Instead, the company is relying on the rate of return  
7 from the -- from the rate case which was based on a  
8 stipulation even though the stipulation said that the  
9 ROE agreed to in this stipulation shall not be used  
10 as precedent in any future electric proceeding except  
11 for the purpose of determining the revenue  
12 requirements for collection from customers and  
13 proceedings addressing the company's SmartGRID rider,  
14 rider DR-IM.

15 So not only did they file improper  
16 testimony, but now they are piggybacking that by  
17 relying on a rate of return that they are not  
18 supposed to use for that purpose. It's inappropriate  
19 testimony. It should be stricken.

20 MS. BOJKO: Your Honor, if I may have the  
21 opportunity since my name was just brought into this  
22 discussion. I would just like to clarify the record  
23 as well that that was a misrepresentation by  
24 Ms. Watts of what the questions were.

25 We also, like OCC, did not get into the

1 details of rate of return or anything about that. We  
2 asked about the risk to customers and it was nothing  
3 more than that. Thank you.

4 EXAMINER WALSTRA: Are there any other  
5 motions to strike outside of Mr. Serio's requests?

6 Hearing both arguments, all arguments, we  
7 are going to overrule the motion. We think that it  
8 is a proper rebuttal witness. I think obviously it's  
9 an extensive testimony but it goes into a lot of the  
10 background how he made his decisions which makes it  
11 more relevant. So we will overrule and allow the  
12 testimony to come in.

13 MS. WATTS: Thank you, your Honor.

14 EXAMINER WALSTRA: Mr. Darr.

15 MR. DARR: No questions, your Honor.

16 EXAMINER WALSTRA: Mr. O'Brien.

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

18 EXAMINER WALSTRA: Ms. Hussey.

19 MS. HUSSEY: No questions, your Honor.

20 EXAMINER WALSTRA: Ms. Bojko.

21 MS. BOJKO: No questions, your Honor.

22 EXAMINER WALSTRA: Mr. Serio.

23 MR. SERIO: Thank you, your Honor.

24 - - -

CROSS-EXAMINATION

1  
2 By Mr. Serio:

3 Q. Good afternoon, Mr. Morin.

4 A. Good afternoon.

5 Q. Can you tell me when did you begin your  
6 preparation on your rebuttal testimony?

7 MS. WATTS: Objection, your Honor.  
8 Attorney-client privileged and attorney work product  
9 privileged.

10 MR. SERIO: Your Honor, I am entitled to  
11 know when. I am not asking what anything counsel  
12 told him; simply when he began preparing for it. I  
13 think if I want to make an argument to the Commission  
14 that it was inappropriate, I should be able to point  
15 out to the Commission when the testimony was prepared  
16 in support of that argument. It's a factual  
17 question. It has nothing to do with attorney-client  
18 privilege.

19 EXAMINER WALSTRA: Overruled.

20 A. Approximately mid-October.

21 Q. Do you recall when you signed a contract  
22 to do the rebuttal testimony?

23 A. I never signed a contract.

24 Q. Now, can you tell me what specific  
25 documents you reviewed in preparation for your

1 testimony?

2 A. Yes. The Value Line Investment Survey  
3 which is the software version of Value Line. No. 2,  
4 the Yahoo Finance website where one can derive growth  
5 rates. The Morningstar Valuation Yearbook 2013  
6 Edition and that's it.

7 Q. So that's everything that you reviewed in  
8 preparation for your testimony, correct?

9 A. I also believe I read the credit rating  
10 reports as well.

11 Q. Now, I'm correct that Duke filed the  
12 testimony of various witnesses as part of its  
13 application in this case, correct?

14 A. Yes, sir.

15 Q. To your knowledge, did Duke sponsor any  
16 cost of equity testimony as part of its application?

17 A. No, sir.

18 Q. Do you know if Duke sponsored any  
19 testimony or evidence showing that the 9.84 return on  
20 equity is reasonable for use in the DCI rider?

21 A. They did not provide such testimony.  
22 Hence, my contribution.

23 Q. Do you know why Duke did not file any  
24 rate of return testimony as part of its application?

25 A. No. You would have to ask the company

1 witnesses.

2 Q. Are you aware of anything as in a rule or  
3 statute that would precluded Duke from filing rate of  
4 return testimony as part of its application?

5 A. I am not, sir.

6 Q. Are you aware if there was any type of  
7 stay out that precluded Duke from filing rate of  
8 return testimony as part of its application?

9 A. I am not aware of that, sir.

10 Q. Now, you've testified in numerous rate  
11 proceedings before the Ohio Commission, correct?

12 A. Yes, sir.

13 Q. And would you agree with me that  
14 generally when rate of return testimony is filed by a  
15 utility, staff and intervenors are given an  
16 opportunity to conduct extensive discovery on that  
17 testimony?

18 A. That's usually the case, but many  
19 attorneys are reluctant to cross-examine me, I find.

20 Q. I'm sorry. I was referring to discovery  
21 first.

22 A. Oh, discovery, same response, yes.

23 Q. And staff and intervenors also have the  
24 opportunity to file testimony in response to company  
25 rate of return testimony when it's filed in a rate



1 case as part of an application, correct?

2 A. Unless they accept the previous decision  
3 that was made by the Commission, in this case the  
4 9.84 percent ROE.

5 Q. Now, you were in the room when I compared  
6 your rebuttal testimony in this proceeding to your  
7 direct testimony in the Duke 12-1682-EL-AIR  
8 proceeding, correct?

9 A. Yes, sir.

10 Q. And you recall your testimony you filed  
11 in that proceeding?

12 A. Very well.

13 Q. And was I correct in pointing out there  
14 are large sections of your rebuttal testimony that  
15 are virtually identical to the direct testimony that  
16 you filed in the rate case?

17 A. Yes, sir, the hallmark of a good witness  
18 is consistency and you testified to that.

19 Q. And that consistency went as far as  
20 identical questions and identical answers, correct?

21 A. Yes, sir, except towards the end there is  
22 a section on the effect of rider mechanisms which was  
23 not in the 2012 testimony.

24 Q. So if I compared your two testimonies,  
25 your Exhibit 40, actually the only part that

1 addresses the DCI rider is your testimony beginning  
2 on page 68, Section V, at line 5, correct, through  
3 the end of your testimony?

4 A. There's a section which begins on page 67  
5 which basically points the Commission to other ROE  
6 benchmarks that the Commission should take into  
7 account to assess the reasonableness of the 9.4, so I  
8 talk about that on page 67 and 68. And also  
9 Section V on page 68 is -- discusses the impact of  
10 rider mechanisms on ROE, if any. So that's a new  
11 section. All the way up to the page -- to the end  
12 basically.

13 Q. Okay. Now, your testimony in the Duke  
14 rate case, 12-1682, you recommended a return on  
15 equity of 10.6 percent, correct?

16 A. Correct.

17 Q. And the stipulation in that proceeding  
18 was 9.84 percent, correct?

19 A. Correct.

20 Q. And the Commission adopted that  
21 stipulation without any modification, correct?

22 A. Yes, sir.

23 Q. Now, it's your understanding that in the  
24 rate case, Duke had the burden of proving that its  
25 rate of return was reasonable, correct?

1           A.    Correct.

2           Q.    Is it your understanding that Duke has  
3 the same burden in this proceeding?

4           A.    Yes.

5           Q.    Now, I think you were also in the room  
6 when I pointed out that the 9.84 percent came from  
7 the Duke stipulation in the rate case, correct?

8           A.    Yes, sir.

9           Q.    And did you read that stipulation?

10          A.    A long time ago.

11          Q.    And did you read the language that I read  
12 this morning in my motion to strike, pointing out  
13 that the rate of return in the stipulation was not to  
14 be used in any future proceedings?

15          A.    I heard you read it.

16          Q.    But you recall that when you read it  
17 yourself.

18          A.    Yeah, I do.

19          Q.    Now, even though the stipulation  
20 specifically said it was not to be used for that  
21 purpose, your testimony said that you were starting  
22 with that as a starting point, correct?

23          A.    My starting point was simply to determine  
24 if the 9.84 percent, which was stipulated in that  
25 case, is still a reasonable number, and I concluded

1 that it was. That's what my testimony is all about  
2 is the 9.84 still reasonable today in 2014 and the  
3 answer is yes.

4 Q. On page 4 of your rebuttal testimony at  
5 line 7 and 8, you indicate that your testimony is in  
6 response to cross-examination of the three company  
7 witnesses. Is there anything in their direct  
8 testimony that you're responding to or it was only  
9 their cross-examination?

10 A. The cross-examination mainly and the  
11 general idea that emerged from these witnesses that  
12 the rider has a risk reduction impact on ROE.

13 Q. Did you read the entire transcripts?

14 A. No, only the pages that were relevant to  
15 the ROE issue.

16 Q. How did you determine which pages were  
17 relevant?

18 A. The attorneys pointed that to me in order  
19 to reduce the time of reading thousands of pages of  
20 transcripts.

21 Q. So you only read pages of the transcript  
22 that counsel for Duke pointed out to you as being  
23 relevant?

24 A. That's right, that dealt with the ROE  
25 issue and the risk reduction issue.

1 Q. So you don't know if there is any other  
2 pages in the thousands of pages of transcript that  
3 might be pertinent to the rate of return or return on  
4 equity issue that counsel for Duke did not point out  
5 to you, correct?

6 A. No, I do not.

7 Q. On page 6 of your rebuttal testimony, at  
8 the top of the page you point out that empirical  
9 evidence supports the company having a higher rate --  
10 return on equity than the 9.84 percent, correct?

11 A. What lines are you on?

12 Q. Lines 2 through 4.

13 A. Yes, correct.

14 Q. And if Duke felt that the 9.48 that they  
15 are earning right now was insufficient, Duke could  
16 have filed a rate case proceeding, correct?

17 A. It could have.

18 Q. But Duke has chosen not to do so,  
19 correct?

20 A. Yes, that's correct.

21 Q. On page 8 of your testimony at the top of  
22 the page, you indicate that "Adopting a lower ROE  
23 would increase costs for ratepayers."

24 A. That's correct.

25 Q. Over what period of time would it take

1 before ratepayers experienced higher costs as a  
2 result of a lower ROE?

3 A. Until such a time that the bond rating  
4 agencies would react to having a lower ROE than the  
5 peer companies and this would probably launch a  
6 credit watch and the company's bond could be put on  
7 negative credit watch and then eventually downgraded  
8 if that's the case.

9 Q. How long would that take? Six months? A  
10 year? Two years?

11 A. It's hard to say. Bond rating agencies  
12 conduct their reviews on a quarterly basis usually  
13 for operating companies. So I would say next couple  
14 of quarters.

15 Q. And if that were to happen, the company  
16 would always have the option of filing another rate  
17 proceeding, correct?

18 A. Oh, yes, they do.

19 Q. And if they were to file a rate  
20 proceeding, that would probably preclude the bond  
21 agencies from taking any action until the resulting  
22 return from that proceeding were determined, correct?

23 A. Yeah. It would depend on the outcome of  
24 this case as well.

25 Q. Now --

1           A.     Rating agencies take a variety of factors  
2     into account including what you suggest.

3           Q.     Now, you indicated that it could result  
4     in their bonds being downgraded, et cetera. Now, if  
5     the Commission was to reduce the return on equity  
6     from 9.84 to let's say 9.50, did you do any analysis  
7     to quantify the impact that would have?

8           A.     The impact on what?

9           Q.     On Duke's earnings.

10          A.     No, not really, but it certainly would  
11     impact the risk in the last -- there has not been a  
12     reduction in ROE due to decoupling and riders since  
13     2011. In the 70 to 75 cases that I'm aware of where  
14     riders were discussed, 80 percent of them had zero  
15     reduction in ROE, and a few had a 10 basis point  
16     reduction in ROE, but all those cases were prior to  
17     2011.

18                     And what's happened since 2011 is, of  
19     course, the risks faced by the industry have  
20     intensified, and I am talking about renewable  
21     standards and I am talking about conservation, I'm  
22     talking about the slower economy. And the response  
23     of regulators has been extremely supportive and they  
24     have come up with risk mitigators like the rider that  
25     we are discussing here in this case. And that's why

1 there is no impact on ROE due to the presence of a  
2 rider because it's an offset to other risks that have  
3 emerged.

4 Q. On page 10 of your testimony, line 15,  
5 you talk about the traditional regulatory process.  
6 That's the process where the company files a rate  
7 case similar to what happened in the 12-1682  
8 proceeding, correct?

9 A. Yes, sir.

10 Q. And in a proceeding like that,  
11 regulatory -- you're familiar with the concept of  
12 regulatory lag, correct?

13 A. Very much so, yes.

14 Q. And regulatory lag is built into the  
15 traditional regulatory process, correct?

16 A. That's correct.

17 Q. So if you remove regulatory lag by  
18 allowing cost recovery through a rider, you're  
19 eliminating one of the components that's built into a  
20 traditional regulatory process, correct?

21 A. That's correct. But that's usually done  
22 again in response to other policy responses to other  
23 risks that have suddenly emerged like the ones I  
24 mentioned a few minutes ago.

25 Q. Now, you talk about a utility's financial



1 integrity being compromised by lower return on  
2 equity. At what -- how -- what would you have to  
3 quantify in return on equity drop in order to -- for  
4 it to be an impact on the utility's financial  
5 integrity? How much -- how much reduction?

6 A. Well, the bond rating agencies will  
7 engage in the same process I looked at on page 67.  
8 Additional benchmarks, they will certainly scrutinize  
9 the allowed returns for the peer companies which is  
10 somewhere in the 10.2 percent right now.

11 They will also examine recent ROE  
12 decisions which have averaged about 10 percent, and  
13 if you are out of line, they will take actions,  
14 possibly put you on negative credit watch and  
15 possible down grade.

16 So they will look at a variety of  
17 benchmarks. They will look at how supportive the  
18 regulator is to all these new risks that have  
19 suddenly appeared, the ones that I mentioned earlier.  
20 We have riders, we have appreciation trackers, we  
21 have DCI in this case, we have revenue decouplings,  
22 we have straight fixed variable rate design. We have  
23 a whole host of tools that regulators have come up  
24 with to support the -- and offset the rising risks in  
25 the industry. So they would look at a variety of

1 factors.

2 Q. The companies that you list on pages 67  
3 and 68, Exhibit 40, those have a range anywhere from  
4 8.72 up to, it looks like 11.48, correct?

5 A. Yeah, the average is 10.2.

6 Q. So if the Commission were to reduce the  
7 9.84 and stay above the 8.72, they would still fall  
8 within that range, wouldn't they?

9 A. The range page 68, yeah, that's correct.  
10 These are the currently-allowed returns in my peer  
11 group which average 10.22.

12 Q. Well, let's take a look at your peer  
13 review group there. Do you know what year each of  
14 those companies had that return on equity  
15 established?

16 A. They vary. Some are recent. Some date  
17 back. It depends on the last rate case for these  
18 subsidiaries of these operating -- of these parent  
19 companies. You can always say, well, if these  
20 companies are not earning their ROE, they can always  
21 file for a rate case. If they are earning too much,  
22 the regulators will say, hey, show cause, come in  
23 here and tell us why your rates are not too high. So  
24 that's a valid benchmark, one of many.

25 Q. But you don't list anywhere in your

1 testimony when those companies had that return set,  
2 so we don't know if it was last year or five years or  
3 ten years ago, correct?

4 A. No, we don't know, nor do we care because  
5 there is always the luxury that the regulator has to  
6 have a show cause order if they are deemed to be too  
7 high, or if they are too low, the company can come in  
8 and ask for a rate case.

9 Q. How often is it your experience that PUCs  
10 have show cause orders, ordering companies to come in  
11 to reduce rates?

12 A. I don't know the frequency of that. It  
13 does happen. I have been in a lot of cases like  
14 that.

15 Q. Have you ever experienced that in Ohio?

16 A. No.

17 Q. Do you know if any of the companies  
18 listed on page 67 or 68 had a show cause order by  
19 their Commission, asking them to come in to reduce  
20 their rate -- their return on equity?

21 A. No, I did not investigate that. I didn't  
22 think it was relevant.

23 Q. Now, you indicate that these numbers come  
24 from the current issue of AUS Utility Reports.

25 A. That's the paragraph on page 68, line 1

1 through 4.

2 Q. Actually, I was looking at page 67, lines  
3 10 through 12.

4 A. Okay. Yes, correct, yes, I follow you.

5 Q. Now, would that -- would that report list  
6 the years --

7 A. Yes, it does.

8 Q. It does for all those companies?

9 A. Yes, it does. I will be glad to supply  
10 you with that document.

11 MR. SERIO: Can I approach, your Honor?

12 EXAMINER WALSTRA: You may.

13 MR. SERIO: I wasn't planning on making  
14 this an exhibit, your Honor.

15 Q. The document I just handed you, it's  
16 titled, on the right-hand side, "AUS Utility Report,  
17 the investor's edge," is that the document you are  
18 talking about?

19 A. Yes, it is. Which month do you have  
20 here? Which date? Which edition?

21 Q. I am looking to see if it's on here.

22 A. It's not on here.

23 Q. I thought it was the most current one  
24 available at the time.

25 A. Okay. I think mine was August but

1 anyway, go ahead.

2 Q. If you go to page 10 of that document, is  
3 that the page where you got the companies that you  
4 list in the peer group?

5 A. Yes, it is in the last column -- the last  
6 two columns refer to allowed return and order date.

7 Q. And if I look at the last column, the  
8 order date, the only three companies that have an  
9 order date are MGE Energy --

10 EXAMINER WALSTRA: Mr. Serio, what is  
11 this document?

12 MR. SERIO: The AUS Utility Report.

13 MS. WATTS: And, your Honor, I would like  
14 to enter an objection because I don't have a copy  
15 either so --

16 EXAMINER WALSTRA: Nor does the Bench.

17 MS. WATTS: It also appears that  
18 Mr. Serio is using a version that is not necessarily  
19 the same as the one the witness had in his testimony.

20 Q. Dr. Morin, are you familiar with this  
21 particular copy of the AUS report?

22 A. I am familiar with the document. I use  
23 it fairly regularly.

24 Q. Are the allowed ROEs listed on the  
25 second-to-last column identical to those ROEs listed

1 in your testimony on page 67 and 68?

2 A. Yes, they are. So we must be using the  
3 same edition.

4 Q. Okay. And other than those three that  
5 have a date listed, is there any way from this --

6 MS. WATTS: Your Honor, again, I am going  
7 to object because I am not even able to look at what  
8 the witness is looking at.

9 EXAMINER WALSTRA: Do you have a copy?

10 MR. SERIO: No, I don't, your Honor. The  
11 witness didn't attach it to his testimony. I had to  
12 dig it up myself.

13 MS. WATTS: The witness stated that it  
14 was not relevant to his testimony.

15 EXAMINER PIRIK: Mr. Serio, the Bench  
16 doesn't have copies of the document you are referring  
17 to, so you can't proceed with something that you are  
18 not going to provide the Bench with copies.

19 THE WITNESS: I'll be glad to donate mine  
20 because I know the document pretty well.

21 EXAMINER PIRIK: You can't proceed with  
22 something that the record isn't going to understand  
23 because it is not marked as a document. You are  
24 referring to page numbers and there's no document for  
25 us to substantiate on the record.

1 MR. SERIO: Your Honor, thus far, he has  
2 substantiated in general terms --

3 EXAMINER PIRIK: You are referring to a  
4 document and you are referring to page numbers in a  
5 document that's not been marked as an exhibit.  
6 There's no website that you are referring to that we  
7 can even look at the document on the Bench. I mean,  
8 I understand that you all --

9 MR. SERIO: I can provide a website, your  
10 Honor.

11 EXAMINER PIRIK: Mr. Serio, I understand  
12 you understand what it is, but we don't have anything  
13 to look at. We need to have something to look at if  
14 you are going to refer to it. I mean, if you have  
15 one copy for the counsel and one copy for the Bench,  
16 that would be sufficient as long as we have something  
17 we can look at.

18 MR. SERIO: Your Honor, my concern with  
19 copying it was I did not have authorization to copy  
20 it and there's a copyright warning on the document.  
21 So I didn't want to make numerous copies and put it  
22 into the record because I hadn't had an opportunity  
23 to contact the company itself to see if I could use  
24 it as a document. You know, that's the only reason I  
25 didn't make copies. I didn't want to violate the

1 warning on the second page of this.

2 EXAMINER PIRIK: Is it on a website?

3 MR. SERIO: Yes, it is, your Honor. It's  
4 www.ausinc.com. Ausinc.com.

5 MS. WATTS: Mr. Serio, is it proprietary  
6 such that one must pay for the document?

7 MR. SERIO: It says "This publication  
8 covers all companies which have common stock  
9 available for public trading with the exception of a  
10 few companies which are omitted because of the small  
11 percentage in the hands of the public or the small  
12 size of the company."

13 "The material set forth here has been  
14 compiled from sources believed by the publisher to be  
15 reliable, but the accuracy is not guaranteed. It  
16 contains condensed, therefore incomplete, data which  
17 are intended for record and for reference only and  
18 not as representation. No portion of this Report may  
19 be copied or duplicated without the express written  
20 consent of the publisher." And it is something you  
21 have to pay to get. So that's why I didn't make  
22 copies, your Honor.

23 MR. BERGER: We are seeing if we can pull  
24 it up on the computer so we can provide you with a  
25 copy.



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

2 EXAMINER WALSTRA: You may.

3 MR. SERIO: Your Honor, I can give you my  
4 copy and I will point out on page 10 there are  
5 highlights. It is my highlights. It did not come  
6 this way, so not to indicate they are there for any  
7 reason other than my highlighting. If I get  
8 authorization from the publisher, I would be happy to  
9 mark it as an exhibit, but I have to do it and I  
10 didn't have the time to do it in the time I had  
11 allotted. So I guess I'll reserve a number for it  
12 and if the publisher allows me to do it, I can submit  
13 it as a document tomorrow after the hearing is over.

14 EXAMINER WALSTRA: That sounds  
15 reasonable. If we are going to be referencing it,  
16 our record needs to be clear what we are referring  
17 to.

18 MS. WATTS: So that solves the problem  
19 for the Bench. It doesn't solve my problem.

20 EXAMINER PIRIK: Can you pull it up on  
21 your computer?

22 MS. SPILLER: What's the website?

23 MS. WATTS: Your Honor, may I approach  
24 the witness?

25 EXAMINER WALSTRA: You may.

1 MS. WATTS: If it's okay, I'll just stand  
2 next to the witness if that's --

3 EXAMINER WALSTRA: That's fine.

4 MS. BOJKO: Joe, she needs the website.

5 MR. SERIO: It's ausinc.com, I believe.  
6 It's on the front of the -- I don't have my copy now.

7 EXAMINER WALSTRA: I believe that's the  
8 correct address.

9 Q. (By Mr. Serio) Okay. Dr. Morin.

10 A. Yes, sir.

11 Q. Just so that we are on the same page, you  
12 indicated that the ROE listed on what would be --

13 MR. SERIO: I am going to reserve No. 49  
14 to identify that as OCC Exhibit No. 49.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. On page 10, the ROE listed on the  
17 second-to-last column, those are the same ROEs that  
18 are listed on page 67 and 68 of your rebuttal  
19 testimony, correct?

20 A. Yes, sir.

21 Q. And the only three companies that have a  
22 date listed for when their return was set are MGE  
23 Energy, PG&E Corp. and UIL Holdings, correct?

24 A. That is correct, and I suspect that the  
25 reason why they are -- they do not show dates for the

1 other companies is because these are parent holding  
2 companies that have multiple subsidiaries in multiple  
3 states and they can't pinpoint one single date for  
4 one particular case since there is a variety of cases  
5 for many of these operating companies.

6 But, again, that's not relevant. If the  
7 ROEs are deemed to be too high, there will be show  
8 cause orders; if they are too low, the companies will  
9 seek redemption.

10 Q. Now, of the companies listed on page 67  
11 and 68 of your testimony, do you know how many of  
12 them have a rider similar to the DCI rider?

13 A. I looked at that and all of them have a  
14 variety of risk mitigators. Some of them have CAPEX  
15 riders, some of them have revenue decouplings, some  
16 of them have straight fixed variable rate design,  
17 some of them have formula ratemaking. They all have  
18 a variety of similar mechanisms that essentially do  
19 the same thing to reduce risk.

20 Q. But the amount of risk that each of those  
21 mechanisms reduces, differs from company to company,  
22 correct?

23 A. It probably does as some are a little  
24 different than others, but all of them have riders.  
25 And that's why I keep saying in my testimony that the

1 impact of riders is already embedded in the stock  
2 prices. It's already embedded in the bond ratings.  
3 And if you go ahead and further reduce the ROE, you  
4 are double counting the effects of these allowed  
5 ROEs.

6 Q. If the companies that were used as a  
7 proxy group when the company had its rate case a year  
8 and a half ago had riders and Duke did not, and Duke  
9 had its return set based on the proxy group, if you  
10 reduce the risk now, by having a rider come in after  
11 the fact, doesn't that give Duke an additional  
12 benefit?

13 A. No, it doesn't, because the peer group  
14 already has a variety of risk mitigators, and if you  
15 are going to reduce the ROE on the grounds that the  
16 DCI rider reduces risk, you are going to be double  
17 counting the impact of such riders.

18 Q. Is there any evidence from the rate case  
19 that Duke's return on equity was reduced because of  
20 riders that other companies have?

21 A. No, no. There isn't, but there is a  
22 variety of empirical evidence from an industry point  
23 of view that shows that the impact of revenue  
24 decoupling on ROE is zero. And that's because of the  
25 reasons that I've delineated, that is, that riders

1 tend to offset other risks that have arisen.

2 Q. There's different kinds of riders,  
3 correct, you identified?

4 A. Yes. There's placement for gas  
5 companies, in this case distribution infrastructure  
6 assets, there's trackers for environmentally-related  
7 capital expenditures. There's a whole variety, a  
8 whole panoply of different attempts to mitigate  
9 risks.

10 Q. Fuel riders are different than nonfuel  
11 riders, correct?

12 A. Yes. Every company in my group has a  
13 fuel clause, so.

14 Q. Would you agree with me that some of the  
15 riders that some of those companies have have  
16 true-ups and others do not?

17 A. Yes.

18 Q. And Duke did not propose a true-up with  
19 the DCI rider, correct?

20 A. That's correct. That's very low on the  
21 radar screen of investors.

22 Q. And some of -- some of the riders are  
23 based on projected costs and others are based on  
24 actual costs, correct?

25 A. That's true.

1 Q. And Duke's DCI rider is based on  
2 projected costs, correct?

3 A. That's correct.

4 Q. And some of the riders include O&M cost  
5 savings credit, correct?

6 A. Some of them do.

7 Q. And Duke did not propose an O&M cost  
8 savings credit, correct?

9 A. That's correct.

10 Q. So --

11 A. There is a whole variety of riders, I  
12 agree with you there.

13 Q. So if I was to ask you to specifically  
14 list which of the proxy companies have a DCI-type  
15 rider similar to Duke's, you can't identify those for  
16 me, can you?

17 A. Well, I can list all the riders or risk  
18 mitigators they have. I already have that. I can  
19 certainly do that.

20 Q. Is there anywhere in your testimony that  
21 identifies which of the 25 or 26 companies have a  
22 DCI-type rider?

23 A. Yeah, quite a few have similar, to  
24 mitigate risk. Some of them have CAPEX riders, some  
25 of them have renewable type of investment riders.

1 There is a whole variety of risk mitigators out  
2 there.

3 Q. But there is nothing in your testimony  
4 that identify which ones have a DCI-type rider,  
5 correct?

6 A. No. But I could provide that if you  
7 want.

8 Q. And you don't know when the riders for  
9 those other utilities might have been implemented or  
10 what the terms of the riders were, correct?

11 A. Some of them date back five, six, seven  
12 years, but since 2011, there's been roughly 50 cases  
13 with riders or risk mitigators I should say. And in  
14 all of those cases since 2011, the reduction in ROE  
15 was zero because, again, you are trying to offset  
16 other risks with these riders.

17 Q. On page 71 of your testimony, line 20,  
18 you indicate that risk-mitigating mechanisms, such as  
19 the DCI rider, reduces risk on an absolute basis,  
20 correct?

21 A. Yes, but not on the relative basis. It's  
22 the same idea as a fuel clause. A fuel clause  
23 reduces risk on an absolute basis, but relative to  
24 other utilities it does not because they all have it.  
25 So you don't want to double count.

1 Q. With regard to riders, especially the DCI  
2 rider that Duke proposed, is it your understanding  
3 that there's any kind of prudence review associated  
4 with the cost of the rider?

5 A. I'm not familiar with that.

6 Q. Do you know if companies that have  
7 similar riders to the Duke DCI rider have had  
8 prudence disallowances from costs included in their  
9 riders?

10 A. I am not aware of that.

11 Q. Would you turn to page 73 of your  
12 testimony.

13 A. I have it.

14 Q. On line 5, you indicate a low authorized  
15 ROE increases the likelihood a utility would have to  
16 rely increasingly on debt financing. Do you see  
17 that?

18 A. Yes.

19 Q. When you identify a "low authorized ROE,"  
20 what would be a low authorized ROE that would cause  
21 Duke to have to rely increasingly on debt financing?

22 A. Something less than 9.84.

23 Q. So you know for a fact --

24 A. Something that's outside a reasonable  
25 range.



1 Q. So there could be a number below 9.84  
2 where the company still would not have to use debt  
3 financing for capital needs, correct?

4 A. There could be, but it would be more  
5 expensive for the customers, if they can get access  
6 to their money at all.

7 Q. And have you done any analysis to  
8 determine what that number would be where Duke would  
9 begin to get higher costs for its financing?

10 A. Oh, I think if you set a low rate of  
11 return, the 9.8 is sort of near the bottom of my  
12 range. My range is 9.6 to about 11, the same as  
13 FERC's recent electric VCF models, the same range. I  
14 think if you are out of that range, I think there  
15 would be cause for concern.

16 Q. Do you know what the debt financing is in  
17 Duke's current 9.84?

18 A. The company has approximately a debt  
19 ratio of 50 percent.

20 Q. Do you know what the equity ratio is in  
21 the DCI rider?

22 A. No, I do not.

23 MR. SERIO: Can I approach, your Honor?

24 EXAMINER WALSTRA: You may.

25 MR. SERIO: I would like to mark for

1 purposes of identification OCC Exhibit 50.

2 EXAMINER WALSTRA: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. It's a two-page document indicating  
5 OCC-INT-13-349. Do you have that, Dr. Morin?

6 A. Yes, sir.

7 Q. And at the bottom it says "Person  
8 Responsible: Peggy Laub." Do you know who Peggy  
9 Laub is?

10 A. Yes.

11 Q. And if you look at the second page of OCC  
12 Exhibit No. 50, I believe under "Percent of Total"  
13 for common equity, it says 53.3 percent.

14 A. Yes, I see that.

15 Q. And that would be the debt equity ratio,  
16 correct?

17 A. That would be the common equity ratio.

18 Q. Or common equity ratio. And is that  
19 considered a low common equity ratio?

20 A. It's considered reasonable. The industry  
21 average is around 50, 51 percent, so I consider that  
22 okay.

23 Q. I'm sorry. You said the average was 50  
24 to 51 percent?

25 A. Somewhere in that area, yeah, depending

1 if you include short-term debt or exclude short-term  
2 debt.

3 Q. Now on page 73 of your testimony, on  
4 line 14, it says "As the company relies more on debt  
5 financing...." What constitutes "more"?

6 A. Well, obviously, if it has to deviate  
7 from the 53 percent and resort to debt, that -- the  
8 company obviously becomes riskier. The shareholders  
9 bear more financial risk if the company relies more  
10 and more on debt.

11 Q. So if they had to rely 1 percent more on  
12 debt, would that make the company riskier?

13 A. Oh, probably not. Investors -- the  
14 investment community doesn't react to decimal point  
15 changes, but if the company sees a trend -- if the  
16 investment community sees a trend towards increasing  
17 the debt ratio over subsequent debt issues, it will  
18 get very concerned, but I wouldn't worry too, too  
19 much if it went from 53 to 51 or 52.

20 Q. What would constitute a trend? How many  
21 offers before you had a trend?

22 A. Well, it depends on the size of the  
23 offering.

24 Q. So a single offering wouldn't constitute  
25 a trend under any circumstances, correct?

1           A.    No.  Again, it depends on the size of the  
2 offering and how much would it increase or decrease  
3 the equity ratio.  How much financial risk does the  
4 company have to bear as a result of this new debt  
5 issue.

6           Q.    On line 15, on page 73, you talk about  
7 decreasing the operating income available.  Have you  
8 quantified what level of decrease it would take  
9 before there was an impact on the company's ability  
10 to finance?

11          A.    This was a generic statement.

12          Q.    On line 17, you talk about greater  
13 uncertainty.  Can you quantify the greater  
14 uncertainty?

15          A.    It would be an increase in beta which is  
16 a very important measure of risk in financial  
17 circles.

18          Q.    How great an increase in beta?

19          A.    .1.

20          Q.    Then you talk about the risk of default  
21 on the company's bonds.  Has Duke ever defaulted on  
22 any of its company bonds?

23          A.    No.

24          Q.    Has any Ohio EDU defaulted on company  
25 bonds that you are aware of?

1 A. No.

2 Q. Now, you list 26 companies in your proxy  
3 group, correct, on pages 67 and 68, of Exhibit 40?

4 A. Yes, sir.

5 Q. And you use a screen to eliminate  
6 companies that have excessive nonutility operations,  
7 correct?

8 A. Yes, sir.

9 Q. But your proxy group does include some  
10 nonutility operations, correct?

11 A. Yes, some. I think the average was  
12 approximately 80 percent of revenues are from  
13 regulated operations, gas and electric, so I felt  
14 pretty confident this was a good peer group.

15 Q. Would you agree that most of your proxy  
16 group consists of vertically-integrated utilities?

17 A. Well, they have to because you don't have  
18 stock prices for operating subsidiaries, so you have  
19 to rely on parent company data.

20 Q. And would you agree with me that  
21 generation is riskier than distribution?

22 A. Yes.

23 Q. And would you agree that the majority of  
24 your proxy group has at least some regulated  
25 generation?

1           A.    They have some, yes.

2           Q.    Now, of the utilities listed in your  
3    rebuttal testimony, did you look at other utilities  
4    that have received an ROE since January 1 of 2013?

5           A.    No.  If you read right below the table at  
6    page 68, on line 1 through 4, the current issue of  
7    Regulatory Research's quarterly review reports ROE so  
8    far in 2014 and the average allowed ROE is 10  
9    percent.  That's the most recent that I could find.

10          Q.    Are you familiar with the company Cross  
11    Texas Transmission?

12          A.    No.

13          Q.    Are you familiar with Wind Energy  
14    Transmission Texas?

15          A.    No.

16          Q.    Do you know if Wind Energy Transmission  
17    Texas got a 9.6 return on equity on January 16, 2013?

18          A.    No, I didn't know that, but.

19          Q.    Are you familiar with Baltimore Gas and  
20    Electric?

21                MS. WATTS:  Objection, your Honor.  The  
22    lawyer is testifying into the record right now.

23                MR. SERIO:  Those are questions, your  
24    Honor.

25                EXAMINER WALSTRA:  Overruled.

1 Q. Are you familiar with Baltimore Gas and  
2 Electric?

3 A. Yes, I am.

4 Q. Did you know that Baltimore Gas and  
5 Electric got 9.75 percent ROE on February 22, 2013?

6 A. No, I do not.

7 Q. Are you familiar with Niagara Mohawk  
8 Power?

9 A. I know the company. I have testified for  
10 them.

11 Q. Did you know that Niagara Mohawk got an  
12 ROE of 9.30 on March 14, 2013?

13 A. No, I do not, but I know that the average  
14 allowed returned in 2014 is 10 percent.

15 Q. I'm sorry. 2013. It wasn't 2014. Are  
16 you familiar with Atlantic City Electric?

17 A. Yes.

18 Q. Did you know that Atlantic City Electric  
19 got an ROE of 9.75 percent on June 21, 2013?

20 A. Yes, but I'm sure there are as many  
21 companies that have received rates of return above  
22 the average of 10 percent.

23 Q. Are you familiar with Potomac Electric  
24 Power Company?

25 A. Yes.

1 Q. Did you know that Potomac Electric got an  
2 ROE of 9.36 on July 12, 2013?

3 A. I do now.

4 Q. Are you familiar with United  
5 Illuminating?

6 A. Yes.

7 MS. WATTS: Your Honor, I object.

8 EXAMINER WALSTRA: Mr. Serio, do you  
9 have --

10 MR. SERIO: I don't know what she is  
11 objecting about. She just said she objected.

12 MS. WATTS: Mr. Serio is just raising a  
13 litany of companies that have no connection to  
14 anything the witness is testifying to.

15 MR. SERIO: Well, your Honor, they are  
16 companies, most of which he is familiar with, some of  
17 which he has testified for, and they are companies  
18 that have a return lower than his average. Just  
19 asking if he is familiar with those. I'm entitled to  
20 do that.

21 EXAMINER WALSTRA: I'll overrule.

22 Q. I think the last one I asked you about  
23 was United Illuminating.

24 A. Yes.

25 Q. Do you know that United Illuminating got



1 a return of 9.15 on August 14, 2013?

2 A. No, I did not, but, again, respectfully,  
3 the nature of an average is you have some estimates  
4 above the average and some below. Hopefully, you  
5 will give me the ones that are above too.

6 Q. Are you familiar with Ameren Illinois?

7 A. Yes.

8 Q. Did you know that they got an 8.72 return  
9 on equity on December 9, 2013?

10 A. No, I am not familiar with that.

11 Q. I'm sorry?

12 A. I'm not familiar with that case.

13 MS. WATTS: Again, I object. A number of  
14 these companies that Mr. Serio has raised are not  
15 companies that the witness is even familiar with.

16 MR. SERIO: And a large number of  
17 companies that he is familiar with and at least on  
18 two of them he actually testified on their behalf.

19 MS. WATTS: So why don't we explore those  
20 then, Mr. Serio.

21 MR. SERIO: Your Honor --

22 EXAMINER WALSTRA: At this point you are  
23 basically reading stuff in and he hasn't expressed  
24 familiarity. He has expressed some familiarity with  
25 some companies, but he hasn't expressed any

1 familiarity with these numbers, and we aren't aware  
2 where these numbers are coming from or their  
3 accuracy.

4 Q. (By Mr. Serio) Dr. Morin, do you know why  
5 none of these cases that I've asked you about were  
6 included in your proxy group?

7 A. Yes, it's very simple. The proxy group  
8 consists of parent holding companies and the  
9 companies that you've enumerated are subsidiaries of  
10 these parent companies. That's the reason.

11 Q. And those subsidiaries would be -- would  
12 be comparable to Duke Energy Ohio, correct?

13 A. I did not make that determination. I  
14 don't know that.

15 Q. Well, they are subsidiaries similar to  
16 how Duke Energy Ohio is a subsidiary, correct?

17 A. There are some similarities, yes.

18 Q. And the return for those companies like  
19 the return for Duke Energy Ohio are set by their  
20 individual state PUCs, correct?

21 A. That's correct.

22 MS. WATTS: Objection again, because the  
23 return that Mr. Serio has put in the record has no  
24 foundation.

25 EXAMINER WALSTRA: Overruled.

1 Q. Is it your understanding that by the end  
2 of this year, that Duke Energy Ohio will no longer  
3 own any generation capacity?

4 A. I'm not familiar with that. Ask the  
5 company witness.

6 Q. If that is the case and they no longer  
7 owned any generation facilities, would that reduce  
8 the risk that the company faces?

9 A. No, not really. The amount of generation  
10 is Lilliputian compared to the amount of distribution  
11 assets and revenues.

12 MR. SERIO: Thank you, Dr. Morin.

13 That's all I have, your Honor.

14 THE WITNESS: Thank you, sir.

15 EXAMINER WALSTRA: Mr. Kurtz.

16 MR. KURTZ: No questions.

17 EXAMINER WALSTRA: Mr. Olikier.

18 MR. OLIKER: No, thank you.

19 EXAMINER WALSTRA: Mr. Petricoff.

20 MR. PETRICOFF: No questions, your Honor.

21 EXAMINER WALSTRA: Staff.

22 MR. BEELER: No questions, thank you.

23 EXAMINER WALSTRA: Any redirect?

24 MS. WATTS: May we have a moment, your  
25 Honor?

1 EXAMINER WALSTRA: Sure.

2 (Discussion off the record.)

3 EXAMINER WALSTRA: We'll go back on the  
4 record.

5 And, Ms. Watts, any redirect?

6 MS. WATTS: Thank you, your Honor. No  
7 redirect.

8 EXAMINER WALSTRA: Thank you.

9 Thank you, Dr. Morin.

10 THE WITNESS: Pleasure to appear before  
11 you, your Honors.

12 EXAMINER WALSTRA: Would you like to move  
13 your exhibit?

14 MS. WATTS: We'd move Duke Energy Exhibit  
15 40, please.

16 EXAMINER WALSTRA: Any objections?

17 MR. SERIO: Other than the one I made  
18 initially, no, your Honor.

19 EXAMINER WALSTRA: The exhibit will be  
20 admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 MR. SERIO: Your Honor, I would move  
23 admission of Exhibit 50, which everyone got a copy of  
24 and also OCC Exhibit No. 49, which hopefully tomorrow  
25 I will be able to provide to the parties, the court

1 reporter, and to the Bench.

2 EXAMINER WALSTRA: Any objections?

3 MS. WATTS: No, your Honor.

4 EXAMINER WALSTRA: Thank you. OCC  
5 exhibits will be admitted.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 EXAMINER WALSTRA: Would you like to call  
8 your next witness?

9 MS. KINGERY: Thank you, your Honor.  
10 Duke Energy Ohio would call Kenneth J. Jennings to  
11 the stand. And may I approach?

12 EXAMINER WALSTRA: You may.

13 (Witness sworn.)

14 MS. KINGERY: Your Honor, I would ask  
15 this be marked as Duke Energy Ohio Exhibit 41 and  
16 it's the direct testimony of Mr. Jennings. Do you  
17 need copies?

18 EXAMINER WALSTRA: Yeah, at this point.

19 MS. KINGERY: I took it from DIS so it  
20 should be good.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 (Witness sworn.)

23 EXAMINER WALSTRA: Thank you, you may be  
24 seated.

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KENNETH J. JENNINGS

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

DIRECT EXAMINATION

By Ms. Kingery:

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

A. My name is Kenneth Jennings. I work for Duke Energy Carolinas, LLC. My address is 411 Fayetteville Street, Raleigh, North Carolina 27601, and my title is Renewable Strategy and Policy Director.

Q. And did you have a different title until very recently?

A. I did.

Q. And what was that?

A. Director of Market Policy and RTO Services.

Q. And in that capacity, were you also working for Duke Energy Carolinas?

A. Indirectly as a shared service resource.

Q. So you were working for which -- you were actually employed by which company?

A. Duke Energy Commercial Enterprises which is a service organization.

1 Q. Thank you.

2 And do you have before you what has just  
3 been marked as Duke Energy Ohio Exhibit 41?

4 A. I do.

5 Q. And is this your rebuttal testimony filed  
6 in this case on November 17, 2014?

7 A. It is.

8 Q. And did you prepare this testimony or  
9 have it -- cause it to be prepared under your direct  
10 supervision?

11 A. I did.

12 Q. And do you have any changes or  
13 modifications to make to this testimony today?

14 A. I do.

15 Q. For the first page, what page would that  
16 change be on?

17 A. Page 4.

18 Q. What line, sir?

19 A. Line 12. It says "for the first time in  
20 the 2007/2008 delivery year." Change "in" to "for."

21 Q. For, f-o-r?

22 A. Yes.

23 Q. Thank you.

24 And do you have any other changes?

25 A. Yes. On page 9, line 8, the last word

1 says "PRA." It should say "BRA."

2 Q. "BRA." Okay. Thank you.

3 Do you have any other changes?

4 A. I do not.

5 Q. And if I were to ask you all of these  
6 questions today, would your answers be the same?

7 A. Yes.

8 MS. KINGERY: Thank you very much.

9 The witness is available for  
10 cross-examination.

11 EXAMINER WALSTRA: Thank you.

12 Any motions before we move forward?

13 Mr. O'Brien.

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

15 Mr. Darr.

16 MR. DARR: Several of us had discussions  
17 earlier today and I believe Mr. Oliker was going to  
18 proceed first. Is that still his intention or not?

19 MR. OLIKER: Yeah. Do you have any  
20 cross, Mike, before I go? Do you have any cross?  
21 I'm just curious.

22 MR. KURTZ: Do you have any cross?

23 MR. OLIKER: For this witness.

24 MR. KURTZ: I'm not the witness.

25 MR. OLIKER: Do you have any cross for



1 the witness.

2 MR. KURTZ: I don't have any cross, but I  
3 don't know why you are asking me that, Joe.

4 MR. OLIKER: I'm just curious. If that's  
5 the case.

6 MR. KURTZ: Your Honor, no objection to  
7 Mr. Oliker going first, and I probably don't have any  
8 cross for this witness for whatever that's worth.

9 EXAMINER WALSTRA: Thank you. Any  
10 objections?

11 MS. KINGERY: No, your Honor.

12 EXAMINER WALSTRA: Go ahead.

13 MR. OLIKER: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Oliker:

17 Q. Good afternoon, Mr. Jennings.

18 A. Good afternoon.

19 Q. My name is Joe Oliker and I represent IGS  
20 Energy. Just a few questions for you today. You  
21 mentioned your new position, it's Renewable Strategy  
22 and Policy Director.

23 A. Yes, it is.

24 Q. Now, just so we can understand that, are  
25 you working now exclusively with Duke Carolina?

1           A.    Not yet.

2           Q.    Besides what you are doing here today,  
3 are you doing work exclusively with Duke Carolina?

4           A.    No.  There are transitional  
5 responsibilities that I still retain associated with  
6 PJM and the divestiture of the Ohio assets.

7           Q.    Okay.  Let's -- let's talk a little about  
8 that in a second maybe.  Can you tell me what the  
9 Renewable Strategy and Policy Director -- what are  
10 your responsibilities under that new title?

11          A.    Well, I'll tell you what I told the  
12 people in Charlotte yesterday was that I'm kind of  
13 deciding what that is because I have been doing it  
14 for 30 days.

15                    But right now, it is working with -- with  
16 strategy folks in Raleigh that are in the state  
17 regulatory arena and other folks in Charlotte, around  
18 what are our renewable strategy is.  So I don't think  
19 that's completely defined yet, but I'm working on  
20 that and attending meetings, and meeting with a  
21 variety of stakeholders that have interests in  
22 renewables in the Carolinas.

23          Q.    And -- okay.  And I think you answered  
24 this, so you are going to be working -- the goal is  
25 to have you working in the regulated state of North

1 Carolina, South Carolina, doing renewable strategy.

2 A. I think -- I think once the assets are  
3 divested and the sale has closed, that I'll be pretty  
4 much dedicated to North Carolina.

5 Q. Okay. Just -- and if you don't mind me  
6 asking, why -- why the shift to renewable strategy?

7 A. I like working for Duke Energy. I  
8 wouldn't have had a job otherwise.

9 Q. I appreciate your candor. And Duke sees  
10 renewables as an important tool for the future?

11 A. Yeah --

12 MS. KINGERY: I am going to object at  
13 this point. This is totally irrelevant to this  
14 witness's testimony.

15 MR. OLIKER: It's just additional voir  
16 dire of the witness's background, your Honor.

17 EXAMINER WALSTRA: Overruled.

18 A. I think that's true.

19 Q. Okay. And you said that you were  
20 involved in Duke Energy's divestiture and you still  
21 are of its -- the resources that are currently held  
22 by Duke Energy Corp. that would be transferred to  
23 Dynegy?

24 A. Yes. So as the PJM expert, there's a lot  
25 of PJM administrative stuff around transferring the

1 assets to a new owner and that's my major  
2 contribution as associated with PJM-related issues.

3 Q. Okay.

4 MS. KINGERY: And, your Honor, if I  
5 could, I would like to just clarify the record. I  
6 believe Mr. Oliker asked about assets that are owned  
7 by Duke Energy Corp. that are being transferred to  
8 Dynegy. I don't know that that's what you really  
9 meant.

10 MR. OLIKER: Can the witness clarify for  
11 the record who the assets are owned by that are going  
12 to be transferred to Dynegy?

13 A. So the current owner is Duke Energy  
14 Commercial Asset Management, LLC.

15 Q. Okay. Thank you.

16 And shifting to your testimony, you  
17 mention, on page 13, that pseudo-tied resources  
18 calculates LMPs at the resource generator  
19 organization buss just like internal resources,  
20 correct?

21 A. Yes.

22 Q. But you agree that all of the generation  
23 units at Clifty Creek and Kyger Creek will have their  
24 LMP calculated at one interface.

25 A. So I don't know that for sure. And the

1 reason I say that is because there are multiple LMPs  
2 at every station and typically they are always the  
3 same. But so -- and some -- in some ways you're  
4 right and some ways you're wrong because there may  
5 actually be one for every unit, but they may all be  
6 the same price.

7 Q. But that's the difference between a  
8 pseudo-tied unit and internal unit. Say we take East  
9 Bend, if we look at East Bend, we are going to see  
10 probably, I think, four prices and there is going to  
11 be slight differentials between them on a  
12 megawatt-hour basis for the four different units.  
13 They will be similar, but they'll be -- they'll be  
14 different.

15 A. I'm not sure. I think they can be, but I  
16 don't know that they are.

17 Q. But it's true for a pseudo-tied unit you  
18 are only going to see one price for all of the units.

19 A. I disagree. I disagree because my  
20 experience with pseudo-ties is probably more relative  
21 to the joint-owned units that were in MISO and so,  
22 for example, Zimmer was actually in MISO but  
23 pseudo-tied to PJM. I think the joint owners had  
24 multiple LMPs at that unit.

25 Q. Isn't there only one interface for OVEC

1 for both units?

2 A. Once -- once the pseudo-tie is final and  
3 completed, which is in the process of being done,  
4 it's not required until the planning year 20 -- it's  
5 not required until June 1 of 2017, but it probably  
6 will be done before the end of the year. Once the  
7 pseudo-tie is complete, I think -- it won't be an  
8 interface. It will be treated like an internal unit.

9 Q. And that's just your belief. You don't  
10 know exactly, correct?

11 A. That's the way that -- so that's my  
12 understanding of PJM's filing and PJM's rules around  
13 pseudo-ties as -- as filed in ER 14-503, and then  
14 they've produced working papers associated with that  
15 and that's kind of how they've described it, it will  
16 be treated just like an internal unit, and then I am  
17 going back to looking at the way they treated  
18 pseudo-tied units that were -- that were jointly  
19 operated by co-owners in Ohio and Duke Energy Ohio.

20 Q. I think we'll come back to that. What is  
21 your -- do you know what network external designated  
22 transmission service is?

23 A. Yes.

24 Q. Could you give a definition, please.

25 A. It is the -- it is the allocation of

1 transmission costs that -- that are allocated to load  
2 provided by the transmission owners in RTO.

3 Q. There are limitations on the amount of  
4 network external designated transmission service,  
5 correct?

6 A. External? That's correct.

7 Q. Okay.

8 A. That's the reason for the -- the capacity  
9 import limit filing that was made in November of last  
10 year, ER 14-503.

11 Q. Okay. And let's talk about that.

12 A. Okay.

13 Q. There is an exception for pseudo-tied  
14 units. There's three -- there's three parts to the  
15 exception, correct?

16 A. Correct.

17 Q. But there's also another part which is  
18 the total megawatt quantity of exceptions granted for  
19 delivery year in the external source zone plus the  
20 capacity import limit for the external source zone  
21 may not exceed the total megawatt quantity of  
22 confirmed network external designated transmission  
23 service on such interface, correct?

24 A. No, that's not correct, because if you've  
25 already got the firm transmission service which --

1 which is the first -- the first requirement is you  
2 have firm transmission service, what happens is that  
3 if that's part of the capacity import limit, then  
4 it's removed from the capacity import limit.

5 If you look at the -- if you look at the  
6 planning parameters from the 2017-18 auction, what  
7 you'll see is many of the import zones were actually  
8 at zero and that was because the CIL was pulled to  
9 zero because all of the firm transmission had  
10 consumed the CIL. And that's -- that's the  
11 interpretation. You are just interpreting it  
12 differently, I think. Firm transmission subtracts  
13 from CIL, but CIL cannot take from firm transmission.

14 MR. OLIKER: Your Honor, may I please  
15 approach the witness?

16 EXAMINER WALSTRA: You may.

17 Q. I will give you the whole copy.

18 A. Okay.

19 MR. OLIKER: Your Honor, I would like to  
20 mark as IGS Exhibit 14, I believe, the PJM Manual 18.  
21 I have given the entire document to the witness, but  
22 I have only marked an excerpt.

23 EXAMINER WALSTRA: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Mr. Jennings --



1           A.    Yep.

2           Q.    -- do you recognize this document that's  
3    been marked as IGS 14?

4           A.    I probably haven't looked at it since  
5    it's been updated on October 30, but go ahead.  I'm  
6    familiar with the document.  I haven't looked at it  
7    since this has been updated, but go ahead.

8           Q.    So when was the last PJM manual you did  
9    look at?

10          A.    Probably would have been before I started  
11   my new job which was October 16.

12          Q.    So going back to a question I asked you a  
13   little while ago.  Could you turn to page 14, and  
14   would you agree that the document states, at the  
15   bottom paragraph, "The total megawatt quantity of  
16   exceptions granted for a Delivery Year in an external  
17   source zone, plus the Capacity Import Limit for the  
18   external source zone may not exceed the total  
19   megawatt quantity of confirmed Network External  
20   Designated Transmission service on such interface."

21          A.    Tell me where that's at again in this  
22   document?

23          Q.    Bottom -- very bottom paragraph on  
24   page 14.  It's the first sentence, four lines from  
25   the bottom.

1           A.    So I'm reading that, yes.

2           Q.    Okay. Thank you. And you would agree  
3 this manual controls --

4           A.    I will not agree that -- I would not  
5 agree that that has anything to do with what you  
6 asked me though.

7           Q.    That's fine. I will let the document  
8 speak for itself.

9           A.    It doesn't have anything to do with the  
10 CIL limits.

11          Q.    I don't believe there is a question.

12          A.    It says that the CIL limits are -- are  
13 additional to the -- are added to the exception  
14 amount.

15               MR. DARR: Move to strike, your Honor.

16          A.    That's what you asked me.

17               MR. OLIKER: Your Honor, there's no  
18 question pending. I would move to strike.

19               EXAMINER WALSTRA: Sustained.

20               MR. OLIKER: Thank you.

21          Q.    (By Mr. Oliker) Mr. Jennings, you agree  
22 that this document controls the rules of the PJM  
23 capacity market, correct?

24          A.    No, it doesn't. The tariff -- the tariff  
25 controls everything. The tariff overrides this

1 document. As a matter of fact, this document is not  
2 always consistent with the tariff.

3 Q. But you would agree this document is used  
4 to interpret the tariff and the rules for bidding as  
5 a capacity resource?

6 A. Not necessarily. It is an interpretation  
7 of the tariff, but not the final interpretation of  
8 the tariff.

9 Q. Thank you.

10 You would agree that there are rules that  
11 prevent a transmission owner from discriminating  
12 against the use of its transmission assets against  
13 other generation resources, correct? It's called  
14 FERC Order 88.

15 A. That sounds familiar.

16 Q. Okay. Moving to a different subject.  
17 Your testimony indicates that the PSR does not  
18 require the Commission to regulate wholesale power  
19 prices, correct?

20 MS. KINGERY: Would we have a page  
21 number, please?

22 MR. OLIKER: I think it's littered  
23 throughout, but.

24 Q. I think it's on page 3, but it's also  
25 elsewhere.

1 A. Three of what?

2 Q. Just in general --

3 A. Three of my testimony or.

4 Q. Your rebuttal testimony.

5 A. Okay.

6 Q. You agree that's one of the themes you  
7 discuss in your testimony, just from a high level.

8 A. Which is what again?

9 Q. That the P -- approval of the PSR would  
10 not require the Commission to regulate wholesale  
11 energy and capacity prices.

12 A. I agree.

13 Q. You are not an attorney, correct?

14 A. Correct.

15 Q. You do not know the standard for field  
16 preemption, correct?

17 A. Nope.

18 Q. You don't know the standard for conflict  
19 preemption.

20 A. Nope.

21 Q. You would agree that the PSR does allow  
22 Duke Energy Ohio to receive a different level of  
23 compensation than it would otherwise receive as a  
24 market participant.

25 MS. KINGERY: I am going to object. Even

1 I don't understand that question.

2 MR. OLIKER: If he doesn't understand  
3 it -- I think it's pretty clear.

4 EXAMINER WALSTRA: Overruled.

5 A. I think -- I think that, yeah, I would  
6 think that the revenue stream would be different than  
7 if they were a -- if they were only excluded to  
8 receiving market-based revenues. That's the purpose  
9 of the transaction on both sides typically, right?  
10 The buyer doesn't want to be exposed to the market  
11 price in the future and the seller wants to lock in  
12 the revenues for the future.

13 Q. Okay. And your testimony does indicate  
14 you are familiar with the PSR, and I think that you  
15 are from what you just said.

16 A. At a high level, yes.

17 Q. Okay. Now in its current form, the PSR  
18 relates to only the Ohio Valley Electric Corporation  
19 and Clifty Creek, Kyger Creek, correct?

20 A. That's my understanding.

21 Q. But Duke Energy Ohio has proposed that it  
22 could potentially include additional generation  
23 resources in the future, correct?

24 A. I wasn't aware of that.

25 Q. Okay. So -- thank you. That's helpful.

1                   When we are reading your testimony, we  
2                   should only look at it through the lens as you are  
3                   looking at this transaction with OVEC, correct?

4                   A.     That's the way I was looking at it.

5                   Q.     Okay. Thank you.

6                   So could you assume for a second --  
7                   assume for a second that the Commission decided not  
8                   to approve the PSR, and in that instance then Duke  
9                   Energy Ohio would have to bid the OVEC entitlement  
10                  into PJM energy and capacity markets.

11                  Now, assume Duke makes a decision that  
12                  these assets aren't profitable. Now, in that case,  
13                  it could transfer the assets to a third party or an  
14                  affiliate, correct?

15                  MS. KINGERY: I am going to object. This  
16                  witness is not here to interpret the terms of the  
17                  arrangement between Duke and the other co-owners and,  
18                  in addition, the hypothetical is assuming facts not  
19                  in the record.

20                  MR. OLIKER: Your Honor, I'm assuming  
21                  those things are possible. I am not going to get  
22                  into the details of the transfer. I am just talking  
23                  about what their options would be and what the impact  
24                  would be in the market.

25                  EXAMINER WALSTRA: Overruled.

1           A.     So I'm not sure because the -- the joint  
2     operating agreement of OVEC is very complicated, so I  
3     don't know that we have the right to transfer it to  
4     anyone. I don't know that for sure. I can't answer  
5     it either way.

6           Q.     Okay. Now, just assume for me for a  
7     second that Duke could transfer it. Would you agree  
8     that if Duke decided that its OVEC entitlement wasn't  
9     really profitable, that would be an option available  
10    to Duke, maybe even a prudent business decision.

11           MS. KINGERY: I am going to renew my  
12    objection. Again, Mr. Olikier is assuming facts that  
13    are not in the record.

14           EXAMINER WALSTRA: Overruled.

15           A.     I'm trying to understand why it would be  
16    a better decision to transfer a losing proposition to  
17    an affiliate because it's still going to be a drag on  
18    earnings for Duke Energy Corp.

19           Q.     Okay. That's a fair enough assessment.  
20    You could still transfer to a third party, correct?

21           MS. KINGERY: I'll object again. This  
22    witness has just said he does not know whether a  
23    transfer could be made to a third party or not.

24           EXAMINER WALSTRA: Objection is noted.  
25    Overruled.

1           A.     So I have to go back to your -- I would  
2     have to ask you to repeat your -- your scenario, how  
3     you worded the scenario question at the beginning  
4     again.

5           Q.     Okay.  Let's assume Duke Energy Ohio  
6     decides that on a long-term basis that the OVEC  
7     entitlement is not going to be profitable, and along  
8     with any other asset, Duke could determine it might  
9     make sense to transfer that entitlement to a third  
10    party, correct?

11          A.     Only if they were allowed to do so, yes.

12          Q.     Okay.  And in the case of OVEC, isn't it  
13    possible that third party could be located outside of  
14    PJM, maybe MISO?

15          A.     I suppose.  Could be anywhere, right?

16          Q.     Right.  And if it did transfer it to  
17    somebody in MISO, would you agree there is a  
18    possibility they might not bid the entitlement into  
19    PJM into the capacity market?

20          A.     So -- so I'm assuming that your -- your  
21    scenario includes that the PSR has already been  
22    approved?

23          Q.     No.  I am assuming it's not.  Duke's  
24    on -- Duke's on its own.  These are the choices that  
25    Duke has to make in the competitive market and --



1           A.    Okay.  So I can probably answer that  
2 question.  The answer would be the same no matter  
3 what, because regardless of whether PSR is approved  
4 or not, Duke is already committed to the pseudo-tie  
5 and committed to selling capacity into PJM.  So we're  
6 going to be -- that capacity is committed to PJM  
7 right now until May 31, 2018, and if it gets  
8 committed again in May, it will be committed through  
9 '19-'20.  There are current provisions to buy out of  
10 that, although those -- those can still change.

11                        But the only way that they can be  
12 committed to another control area or MISO would be by  
13 the approval of the market monitor first.

14           Q.    Okay.  Thank you.

15                        So I guess what you're saying is you  
16 could transfer to somebody in MISO but you would be  
17 limited to using it in the MISO capacity market  
18 while -- well, let's not call MISO capacity market  
19 that, but you would -- scratch that.

20                        Assuming that they transferred it to a  
21 party that was outside of PJM, then they could do  
22 whatever they liked with the asset after 2019 unless  
23 they get permission from the PJM market monitor and  
24 buy out of their commitment.

25           A.    I think that's true.

1 Q. Okay.

2 A. And I think that would be the case with  
3 any internal unit as well.

4 Q. Thank you.

5 And you would agree if you take capacity  
6 out of the PJM capacity market, all else being equal,  
7 you can impact the price.

8 A. I think that quantity is an important  
9 factor in that -- in that assumption. I mean, I  
10 suppose -- even a little bit could move things a  
11 little bit, I suppose. It depends on -- it depends  
12 on what the cost of the resource is that you are  
13 removing as well, right? And if whether or not  
14 you're a price taker in the market or a cost-based  
15 supplier.

16 Q. Thank you.

17 And you're aware that OVEC has several  
18 other Ohio utilities and utility -- and Ohio-based  
19 affiliates that are also owners, correct?

20 A. That's correct.

21 Q. And the number is about 40 percent.

22 A. For what?

23 Q. Of the ownership ratio.

24 A. For who?

25 Q. The Ohio-based utilities and their

1 affiliates.

2 A. I don't know that. I believe you.

3 Q. This might help our conversation.

4 MR. OLIKER: Do you mind if I approach  
5 the witness to refresh his recollection, your Honor?

6 EXAMINER WALSTRA: You may.

7 MR. OLIKER: And this is IEU Exhibit 5  
8 that I would show the witness.

9 A. I'm not familiar with it.

10 Q. Take your time, Mr. Jennings. I don't  
11 mean to rush you.

12 A. So I'm coming up with a different number.

13 Q. Is it close to 40 percent?

14 A. I came up with 70, but maybe I'm not  
15 looking at it correctly.

16 Q. Could you look at the footnote and see if  
17 part of that interest is involving some of AEP's Ohio  
18 non-Ohio affiliates? I think that will help you.

19 A. Okay.

20 MS. KINGERY: What page are you looking  
21 at, Mr. Oliker?

22 MR. OLIKER: It's the power  
23 participation. I think you are on the right page,  
24 Jeanne.

25 MS. KINGERY: I'm not seeing a footnote.

1 A. I'm not either.

2 Q. Well, would you accept, subject to check.

3 A. I will.

4 Q. 40 percent is close?

5 A. Yeah, I'll accept, subject to check.

6 Q. Okay. Now, assuming each of those other  
7 utilities have proposed similar mechanisms to PSR  
8 involving OVEC, and those requests are all rejected,  
9 would you agree that that could have a strong impact  
10 on the dynamic of order of discussions at OVEC?

11 A. What discussions?

12 Q. Discussions regarding the future of the  
13 units.

14 A. I suppose it could.

15 Q. So, for example, going back to the  
16 questions we asked earlier, you would agree that if  
17 those companies, that being AEP, Duke, FirstEnergy,  
18 and DP&L, they all determined that the OVEC  
19 entitlement was not profitable, they could all make  
20 the decision to transfer their entitlement to a third  
21 party.

22 MS. KINGERY: Objection. Once again this  
23 witness has already said that he doesn't know the  
24 terms of this agreement.

25 EXAMINER WALSTRA: Overruled.

1           A.    I really don't know what would happen to  
2   be quite honest with you.  I don't understand how  
3   that corporation is formed and what the obligations  
4   of the owners are to maintain its funding or anything  
5   like that.  But if there's a scenario that allows it,  
6   it could happen, I suppose.

7           Q.    Thank you.  Thank you.

8                   And like we established before, the third  
9   party could be located anywhere; it could be MISO.

10           MS. KINGERY:  Now, we are just supposing  
11   hypotheticals, your Honors.  There is no foundation  
12   whatsoever for any of these questions.

13                   EXAMINER WALSTRA:  Overruled.

14           A.    Well, like I said before, any resource  
15   that's currently committed to RPM could relocate  
16   itself to another RTO.

17           Q.    Okay.  And we talked about impacts on  
18   capacity prices.  Now, in this instance, we're  
19   looking at, what, 40 percent of something over  
20   2,000 megawatts, right?

21           A.    Just for Ohio?

22           Q.    For OVEC is over 2,000 megawatts for the  
23   two plants, correct?

24           A.    Yeah, I think that's correct.

25           Q.    And if -- if we transferred 40 percent of

1 that interest to a third party outside of PJM, we  
2 could influence the capacity price, couldn't we?

3 MS. KINGERY: Objection. There is no  
4 "we" here to transfer 40 percent. There's no showing  
5 whatsoever that 40 percent of OVEC interests are  
6 owned by any entity that would work together as a  
7 unit.

8 EXAMINER WALSTRA: Overruled.

9 MR. OLIKER: Thank you, your Honor.

10 A. I actually think there is a lot more than  
11 40 percent of it in PJM. I think it's more like  
12 90 -- over 90 percent of those resources are  
13 dedicated to PJM, and you have currently -- you've  
14 just kind of related it to Ohio utilities, but my  
15 understanding is almost all of it's completely  
16 dedicated to PJM, other than the 5 and a half percent  
17 from Louisville and a little bit for City Co.

18 Q. Right. But it's a possibility that the  
19 third party could be outside of PJM. I think you've  
20 testified to that earlier, correct?

21 A. Yeah. I agree, but I mean, they could --  
22 they could just as easily buy Zimmer and move it out  
23 of PJM as well.

24 Q. Right. But the one thing we do know is  
25 if the PSR is approved, then they will bid the asset

1 into PJM, right?

2 A. I think that's the commitment that we  
3 made in the PSR.

4 Q. And the point is if the PSR is not  
5 approved, it's very possible that the units could be  
6 bid someplace else and the capacity price could be  
7 different.

8 A. Yeah, I suppose. Where else would they  
9 go? That's what I am trying to figure out.

10 Q. And, again, the other thing we know is if  
11 the PSR is not approved, then the owner of OVEC, Duke  
12 Energy Ohio, needs to make decisions just like all  
13 the other market participants.

14 MS. KINGERY: Objection. Duke is not the  
15 sole owner of OVEC.

16 EXAMINER WALSTRA: Overruled.

17 A. So the problem is that decisions are made  
18 by committee and each company doesn't get to make  
19 their own decision in a vacuum, and only -- and one  
20 owner can actually veto the decision of the committee  
21 even if everyone else is unanimously in agreement.

22 Q. Okay. Let's talk about that too.  
23 Assume -- assume with me for a second -- assume the  
24 Commission approves the PSR. Let's forget about the  
25 other Ohio utilities. Just the PSR for Duke Energy

1 Ohio. And are you familiar with the carbon rules  
2 that have been proposed by the EPA?

3 A. I don't know that anyone is familiar with  
4 them yet, but.

5 Q. Okay. Assume for me for a second that  
6 the carbon rules that have been proposed, they are  
7 approved next summer.

8 A. Okay.

9 Q. And then Duke Energy Ohio does an  
10 analysis of the projected revenues that it will get  
11 in the market, and it makes a determination, starting  
12 in 2020, going through 2030, it's going to lose \$25  
13 million a year because the cash flows will be \$25  
14 million less than the cost it has to pay OVEC.

15 Assume that the other owners of OVEC have  
16 made similar -- similar determinations that the plant  
17 is just not going to be profitable. In that  
18 instance, those other owners might want to retire the  
19 plant, but Duke would have a PSR, guaranteed cost  
20 recovery, and it could veto that retirement, correct?

21 MS. KINGERY: And I am going to object.  
22 Once again, this witness has stated he is not  
23 familiar with the terms of the operating agreement.

24 EXAMINER WALSTRA: Overruled. He can  
25 answer if he knows.



1           A.    I suppose that's possible.

2           Q.    And you would agree that the decision to  
3 retire or not retire OVEC could have an influence on  
4 capacity prices in PJM.

5           A.    I think that's true.  I think that's one  
6 of the motivators that should be on the buyer side to  
7 have it in there, right?  So it doesn't retire.

8           Q.    Okay.  Let's -- make sure I get the right  
9 page.  You reference in your testimony part of the  
10 transcript where Don Wathen says that Duke, if the  
11 PSR is approved, will bid in OVEC into the day-ahead  
12 market when the variable cost is lower than the  
13 clearing price, correct?

14          A.    So I think what Don said was that -- that  
15 OVEC will be bid in the day-ahead market every day  
16 because they have a -- they will have a must-offer  
17 obligation and they will offer at their variable cost  
18 and when the -- when the clearing price is higher  
19 than the OVEC variable costs, then the OVEC unit will  
20 clear and receive the clearing price.

21          Q.    Have --

22          A.    So we are going to offer it in all the  
23 time.  Offering is not subject to the variable costs;  
24 clearing is subject to the variable costs.

25          Q.    Have you ever bid generation into PJM?

1 A. In what market?

2 Q. In PJM.

3 A. In energy or capacity markets?

4 Q. Energy markets.

5 A. No, I have not.

6 Q. Are you familiar with different bidding  
7 strategies?

8 A. I am not.

9 Q. So do you -- are you familiar with the  
10 term a "decrement bid"?

11 A. Yes.

12 Q. So one option is a generator can bid --  
13 who normally bids in the day-ahead market, they could  
14 make a decision that, you know, they think realtime  
15 price is going to be higher, so they could submit a  
16 decrement bid equal to their day-ahead bid and then  
17 take the realtime price, correct?

18 A. Yes, I think that's true.

19 Q. And that's not what Duke's proposing to  
20 do here, correct?

21 A. I don't think so.

22 Q. Okay. And are you familiar with  
23 Intercontinental Exchange?

24 A. No.

25 Q. You know that there are trading hubs for

1 forward energy contracts.

2 A. You're referring to ICE?

3 Q. Yes.

4 A. Yes, I'm familiar with ICE.

5 Q. And isn't it true that if futures  
6 contracts were at a price that is above what Duke  
7 believed its variable cost to be at that time, they  
8 could enter into a contract in the futures market and  
9 lock in a price that might be higher than the  
10 day-ahead price is in that year.

11 A. I don't know how you would know what the  
12 day-ahead price is for a year.

13 Q. Are you familiar with the term  
14 "contango"?

15 A. No.

16 Q. Isn't it true that somebody who is a  
17 market participant could make the decision that they  
18 believe future prices now for futures contract is  
19 actually higher than those prices will be in the  
20 future?

21 A. Yes, you could do that.

22 Q. So a market participant could make the  
23 decision that they are going to enter a futures  
24 contract instead of waiting and bidding in the  
25 day-ahead market.

1           A.    Yes, you can do that.  You still have to  
2 do both.

3           Q.    Yes.

4           A.    You still have to do both.

5           Q.    But it's a financial product, correct?

6           A.    Yes.  So you end up -- the offsets end up  
7 you getting the future price and the person you  
8 bought the option from is getting -- or, the product  
9 from is getting your realtime revenues.

10          Q.    Okay.  Now, also you talked about bidding  
11 in variable costs -- strike that.

12                    You talked about Duke bidding OVEC into  
13 the day-ahead market and having it run when variable  
14 cost is lower than the clearing price, correct?

15                   MS. KINGERY:  Would we have a page  
16 reference, please?

17                   MR. OLIKER:  I believe he is citing Don  
18 Wathen's testimony.  But I think we also discussed it  
19 previously.  It's -- I think it's on page 4.  Yes.  
20 It's on page 4, line 1 through 3.

21           A.    Can you start the question over again?  
22 I'm sorry.

23           Q.    Sure.  So -- and this part of your  
24 testimony you are talking about OVEC being offered in  
25 the day-ahead market and being dispatched when the

1 variable cost is lower than clearing price, correct?

2 A. Yes.

3 Q. Isn't it true that a generating unit  
4 doesn't have to offer in at variable cost. You can  
5 offer in at variable cost plus margin.

6 A. So there are two different -- there is  
7 two different ways that you can offer. There is a  
8 market-based offer and a cost-based offer.  
9 Cost-based offers are limited to costs defined by the  
10 market monitor. Market-based offers are -- are --  
11 are based on what the generation owner decides he  
12 wants to offer at. So I guess there are two  
13 different ways of offering.

14 Q. And Mr. Wathen is --

15 A. One thing about this is these decisions  
16 are made twice a year. You have to make a commitment  
17 whether you are going to be a market-based offer or a  
18 cost-based offer twice a year and you are stuck with  
19 that decision for six full months. If you are a  
20 market-based offer, you still have to submit a  
21 cost-based offer. And under any circumstances when  
22 the market monitor mitigates the market which is  
23 when -- when the market fails the three-prong test,  
24 he then mitigates you to your cost-based offer.

25 Q. I guess my point is here in your

1 testimony you are talking about submitting a  
2 cost-based offer, correct?

3 A. That's my understanding. I am only  
4 quoting Don Wathen's testimony though.

5 Q. Okay. Thank you for that clarification.

6 Now, you're familiar with the reliability  
7 pricing model, correct?

8 A. Yes.

9 Q. And I think you mentioned that you  
10 followed it since the beginning, back in 2006.

11 A. Yes.

12 Q. You agree the purpose of the reliability  
13 pricing model is to provide resource adequacy.

14 A. I am.

15 Q. And the purpose of uniform locational  
16 price signals is to provide transparent market  
17 signals to support infrastructure investment.

18 A. You are going to have to repeat that a  
19 little bit for me there. You said something about  
20 locational price signals.

21 Q. I'll take it slowly.

22 A. Okay.

23 Q. The purpose of uniform locational price  
24 signals is to provide transparent market signals to  
25 support infrastructure investment.

1           A.    Locational investment, yes.

2           Q.    The goal of RPM is to align pricing with  
3 system reliability requirements and to provide  
4 transparent information to all market participants  
5 far enough in advance for actionable response to  
6 information.

7           A.    It sounds like something you may have  
8 read from the PJM website, but yes.

9           Q.    Probably the PJM manual, too, right?

10          A.    Yeah.

11          Q.    Okay.  And I think we've already  
12 established this, but you would agree that the  
13 reliability pricing model uses a uniform clearing  
14 price for all resources in a locational delivery  
15 area?

16          A.    That's right.

17          Q.    And the reason that RPM uses a uniform  
18 clearing price is because in a competitive market  
19 prices do not differ for new and old plants or for  
20 efficient -- inefficient plants, and commodity  
21 markets clear prices based on location and timing of  
22 delivery, not the vintage of the production plants  
23 used to produce the commodity.

24          A.    There's a lot of questions in that  
25 question, but I would agree with your -- your usage

1 of the term "vintage," but there are ways of  
2 normalizing compensation for generators.

3 For example, the UCAP values for wind and  
4 solar are -- are prorated for their contribution to  
5 supplying the peak load. And, similarly, older units  
6 have their UCAP adjusted for EFOR for forced outage  
7 rates if they are not well maintained. If they are  
8 well maintained, then the vintage may be irrelevant.

9 I think -- I think that PJM is searching  
10 for ways to pay on performance, which I think will  
11 change -- change that outcome a little bit more so  
12 even. So I think there's a normalization.

13 You are exactly right, though. I don't  
14 think -- I think they are indifferent to the plant  
15 that provides the energy, but, at the same time,  
16 they're -- they're intent on compensating for  
17 performance.

18 Q. Okay. And thank you for that. And  
19 staying on the single clearing price, a competitive  
20 market with a single market clearing price creates  
21 incentives for sellers to minimize their costs  
22 because cost reduction increases the seller's profit.

23 A. Yeah, that might be what's wrong with the  
24 PJM market, but. So I think it's relative, right,  
25 because -- I would agree with you, but the problem is



1 the performance component of the market.

2 So if you -- if you don't invest in the  
3 plant and take care of the plant and it doesn't run,  
4 then you can lose -- in the first year you could lose  
5 25 percent of your revenues from -- from peak hour  
6 penalties. The second year you could lose 50 percent  
7 of your revenues in the peak hour penalties. The  
8 third year, you could lose all of your capacity  
9 revenues in peak hour penalties.

10 And the current -- the current plan is to  
11 escalate the penalty structure such that you could  
12 lose all of your money in the first couple of months.  
13 So there's reform going on with regard to  
14 performance. But you're exactly right on the basic  
15 fundamentals of the market, but the problem is you  
16 are ignoring the performance component.

17 Q. And, Mr. Jennings, I'm just focusing on  
18 the uniform clearing price.

19 A. I get it.

20 Q. And with the uniform clearing price, you  
21 would have an efficient seller that at times receives  
22 revenues that are above its average total costs, and  
23 the revenues to an inefficient seller may be below  
24 its average total costs and it may be driven out of  
25 business.

1           A.    Can you repeat it again?  I'm sorry.

2           Q.    With uniform clearing price, you have an  
3 efficient seller that, at times, may receive revenues  
4 that are above its average total costs, whereas the  
5 revenues to an inefficient seller may be below its  
6 average total costs and that person would be driven  
7 out of business.

8           A.    I think that's true.  I think what the  
9 market has shown in this market is because the  
10 investment is so great that it takes a long time for  
11 someone to give up.  They keep waiting for the market  
12 to turn around.  I guess that's what I'm suggesting.

13          Q.    And you agree that in a competitive  
14 market, capacity resources participating in the RPM  
15 auction should all be paid the same price.

16          A.    Do I agree with that?

17          Q.    Do you agree that that's the purpose of  
18 RPM?

19          A.    I think that's the purpose of RPM.  I  
20 don't necessarily agree with it, but.

21               MR. OLIKER:  And, your Honor, since we  
22 have been talking about, if you would prefer, we  
23 could take administrative notice of the order  
24 establishing the reliability pricing model, unless I  
25 am free to just cite it in my brief because it's

1 approved by FERC.

2 EXAMINER WALSTRA: We can take notice of  
3 it.

4 MR. OLIKER: It's ER-05-1410-001, et al.  
5 And it's issued -- this is the order issued  
6 December 22, 2006.

7 EXAMINER WALSTRA: ER-05-1410?

8 MR. OLIKER: Yes. ER 05-1410-001, which  
9 is the Order Denying Rehearing and Approving  
10 Settlement Subject to Conditions.

11 EXAMINER WALSTRA: Thank you. The Bench  
12 will take notice.

13 MR. OLIKER: Thank you. And if I could  
14 have just a minute or two to look through my  
15 questions, I may be done.

16 EXAMINER WALSTRA: Go ahead.

17 Q. Mr. Jennings, I think it was either -- I  
18 think it might have been in your subpoena testimony,  
19 you indicated you have a lot of respect for  
20 Dr. Joseph Bowring, correct?

21 A. I do.

22 Q. And you believe he is a capable and able  
23 market monitor?

24 A. I do.

25 Q. And if he were to intervene in an Ohio

1 Commission proceeding and recommend that a proposal  
2 was anti-competitive, would you agree with that?

3 MS. KINGERY: I am going to object here.  
4 This is not the time for cross-examining with regard  
5 to testimony that occurred last week or the week  
6 before. There's nothing about this issue in his  
7 rebuttal testimony.

8 MR. OLIKER: It's related to the PSR,  
9 your Honor.

10 MS. KINGERY: His testimony is not just  
11 in general about the PSR.

12 MR. OLIKER: It's about whether it  
13 influences wholesale capacity and energy prices which  
14 is what the market monitor is supposed to look into.

15 EXAMINER WALSTRA: I'll overrule.

16 A. So I have the utmost respect for  
17 Dr. Bowring and I will agree that he is very much a  
18 capable market monitor, but I will also say that he  
19 and I don't always agree. We don't agree on  
20 everything. We've had our differences at times and I  
21 would disagree that if -- I did not see his testimony  
22 in this docket, but if he claims that this -- this is  
23 anti-competitive, I would disagree with him.

24 Q. So I will ask you one last question.

25 A. Okay.

1 Q. Earlier you mentioned that Duke Energy  
2 Ohio -- that you're unaware that Duke had potentially  
3 offered to include additional resources in the PSR.  
4 Do you remember that?

5 A. I did say that.

6 Q. Now, assume that Duke -- the PSR is  
7 approved and Duke wants to add 3,000 additional  
8 megawatts to the PSR and it tells the Commission  
9 either approve these 3,000 megawatts or we are going  
10 to retire them and not offer them in future base  
11 residual auctions. You would agree that the  
12 Commission is going to be making a decision there  
13 that is likely to affect the capacity price?

14 MS. KINGERY: Objection. The question is  
15 based on suppositions that are contrary to fact. We  
16 all -- we have just heard that Duke Energy Ohio is  
17 not going to own generation assets after the end of  
18 the year. Indeed, other than the Beckjord units, it  
19 does not currently own any generation assets.

20 So Mr. Oliker's question supposing that  
21 Duke Energy Ohio is going to offer in 3,000 megawatts  
22 and threaten that they would retire them if they  
23 weren't allowed to be -- included in the PSR is  
24 contrary to fact.

25 MR. OLIKER: Jeanne, are you withdrawing

1 your proposal to potentially have a supplemental PSR?

2 MS. KINGERY: You are talking about --  
3 Mr. Oliker is talking about Duke Energy Ohio  
4 threatening to retire assets, but it doesn't own any  
5 assets.

6 EXAMINER WALSTRA: Can you clarify?

7 MR. OLIKER: I can change the  
8 hypothetical.

9 Q. (By Mr. Oliker) You are familiar with the  
10 deal with Dynegy, correct?

11 A. I am.

12 Q. Assume the deal falls through, and assume  
13 the Commission approves the PSR, and assume that  
14 those generating assets total about 3,000 megawatts,  
15 and Duke indicates that unless it approves a PSR that  
16 includes the assets owned by DECAM of 3,000  
17 megawatts, it will retire those units. Would you  
18 agree that in that circumstance, Duke would be asking  
19 the Commission to make a decision that will have an  
20 impact on the capacity price?

21 MS. KINGERY: Objection. Once again, we  
22 are talking about a hypothetical that is contrary to  
23 fact. As Mr. Oliker is well aware, corporate  
24 separation rules in Ohio would prohibit Duke Energy  
25 Ohio from controlling the retirement of assets that

1 are owned by an affiliate, DECAM.

2 MR. OLIKER: It's a hypothetical, your  
3 Honor.

4 EXAMINER WALSTRA: Overruled.

5 MS. BOJKO: Your Honor, at this point I  
6 am going to move to strike counsel's testimony  
7 regarding corporate separation and she is not the  
8 witness. Nothing was asked about corporate  
9 separation and she is gratuitously testifying now.

10 EXAMINER WALSTRA: Overruled.

11 MS. KINGERY: Your Honor, I would also  
12 object on the grounds that this is a collateral  
13 attack on FirstEnergy and AEP cases as this is not an  
14 issue in this case.

15 EXAMINER WALSTRA: Overruled.

16 MR. OLIKER: I can ask the question again  
17 for clarity of the record.

18 EXAMINER WALSTRA: Thank you.

19 Q. (By Mr. Oliker) Maybe I can make it  
20 really simple.

21 A. It has to be simpler than that, I think,  
22 before I can answer.

23 Q. Okay. Assume that the Commission has a  
24 proposal before it with the PSR to add 3,000  
25 additional megawatts of capacity to the PSR. And the

1 Commission is aware in the proposal that those 3,000  
2 megawatts will either be included in the PSR or they  
3 will be retired and no longer bid into PJM's capacity  
4 auctions. You would agree that the Commission will  
5 be making a determination that would influence the  
6 capacity price.

7 A. I don't know that it would impact the  
8 capacity price because I think that -- I think that  
9 at that level the response from new generation is  
10 going to be pretty rapid and there could be an offset  
11 at that point, but because it's such a large quantity  
12 I think -- I don't know what that impact would be.

13 Certainly if -- it seems like such a  
14 crazy scenario, first of all. It seems like you are  
15 implying that utility would be blackmailing the  
16 Commission and threatening them through some -- some  
17 subversive type of activity which we wouldn't -- we  
18 would call it -- we wouldn't think that the people  
19 could kind of do that, but.

20 If you were to change the scenario that  
21 if 3,000 -- so 3,000 megawatts has retired in the  
22 past and it did have an impact on price. I will  
23 agree with that.

24 Q. Okay. Let's just make it really simple.  
25 All else being equal, if you take 3,000 megawatts out



1 of the auction, you could likely influence the  
2 capacity price.

3 A. If it's low-priced capacity, it would  
4 change the price.

5 MR. OLIKER: Okay. And besides asking if  
6 you would be willing to testify in the FirstEnergy  
7 case, that's all I have, your Honor.

8 MS. KINGERY: Move to strike that  
9 comment.

10 EXAMINER WALSTRA: Sustained.

11 Mr. Darr.

12 MR. DARR: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Darr:

16 Q. Just to follow-up on a couple of things  
17 Mr. Oliker just asked you. You are aware there's  
18 about 20,000 megawatts that's proposed to retire by  
19 2019, correct?

20 A. Yeah, I think that's right.

21 Q. And based on your testimony a minute ago,  
22 you would expect that new generation would step up  
23 to -- because of the -- because of those retirements?

24 A. It will if they get the price right and  
25 they get the performance -- and the performance

1 metrics right it will. I think -- I think that there  
2 are -- there are things that could cause it to not  
3 show up, but I think it will eventually.

4 Q. Are you familiar with the current  
5 construction queue that is published by PJM?

6 A. I don't know all the details in it, but I  
7 do look at it, under different occasions and  
8 circumstances.

9 Q. And would you agree that that  
10 construction queue would give us some idea of what  
11 the response has been to the fact that there is  
12 20,000 megawatts of generation that's scheduled to  
13 retire?

14 A. There's more than that in the queue, but  
15 I don't know how -- how well it's correlated to the  
16 retirement queue.

17 Q. Fair enough.

18 Now, with regard to your testimony at  
19 page 8, beginning at line 8 -- excuse me, beginning  
20 at line 7, you indicate that Duke Energy only owns  
21 9 percent of the OVEC resources, and as a result of  
22 that, you cannot decide to unilaterally retire the  
23 units. Am I summarizing this correctly?

24 A. I think that's right.

25 Q. And from that you conclude that there is

1 no way that Duke Energy Ohio is unable to avoid the  
2 going-forward costs because it cannot unilaterally  
3 retire the units. Am I also summarizing that  
4 correctly?

5 A. As I define "going-forward cost," that's  
6 right.

7 Q. Now, in response to a question that  
8 Mr. Oliker asked you, you previously indicated you  
9 were not familiar with the provisions with regard to  
10 assignment that are currently in the operating  
11 agreement between OVEC and the sponsoring companies;  
12 is that correct?

13 A. That's right. I don't know all the  
14 details of it. I'm not on the operating committee.

15 Q. So is it fair to say for purposes of the  
16 statement that you make on page 8, line 7 through 8,  
17 you do not consider the effect of the operating  
18 agreement on whether or not the company could avoid  
19 the going-forward costs in future years?

20 A. I know for a fact we can't avoid the  
21 going-forward costs.

22 Q. That wasn't my question. Did you  
23 consider in your testimony whether or not the  
24 operating agreement would have any effect on the  
25 ability of Duke Energy Ohio to avoid the operating

1 cost -- the going-forward operating cost?

2 A. I don't know. I feel like I answered the  
3 question already.

4 MR. DARR: I have nothing further. Thank  
5 you.

6 EXAMINER WALSTRA: Thank you.

7 Ms. Hussey?

8 MS. HUSSEY: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Ms. Hussey:

12 Q. Could you turn to page 8, line 7 of your  
13 testimony. Here you refer to Duke's percent interest  
14 and specifically to OVEC resources at the end of that  
15 line. Could you clarify what you mean by  
16 "resources"?

17 A. I'm referring to the Kyger Creek and  
18 the -- the other ones.

19 Q. Clifty perhaps?

20 A. Clifty, correct.

21 Q. Okay. And the generation from those?

22 A. Yes.

23 Q. Okay.

24 A. I am referring to the assets themselves,  
25 the generators.

1 Q. Okay. Thank you.

2 A. PJM refers to capacity resources as  
3 "resources" rather than, so it's just a habit that I  
4 call them "resources."

5 Q. Okay. When you're -- basically by saying  
6 "resources" you are referring to the generators then?

7 A. Yeah. I think PJM tried to transfer the  
8 term "capacity resources" because they considered  
9 there would be a variety of types of resources that  
10 could provide capacity besides generators.

11 Q. Okay. And at line 9, you testify that if  
12 the units don't clear in the RPM auctions, Duke  
13 Energy Ohio remains obligated for the fixed costs  
14 associated with the assets without receiving any  
15 capacity revenues; is that correct?

16 A. That's correct.

17 Q. Okay. If rider PSR is approved as  
18 proposed by the Commission, wouldn't Duke Energy Ohio  
19 customers be the parties that are obligated for the  
20 fixed costs associated with the OVEC assets?

21 A. Yeah, that's right, but that's not  
22 exactly the intent of the comment. The intent of the  
23 comment was that -- that the impact on the market  
24 wouldn't be changed because -- because Duke cannot  
25 avoid the fixed costs, they are already offering the

1 resources at zero. So if they are offering at zero  
2 today and they offer them at zero after the approval  
3 of the PSR, nothing changes because the behavior  
4 doesn't change.

5 Q. Okay. But it remains that if the rider  
6 is approved by the Commission, as it has been  
7 proposed, it would be customers, rather than Duke,  
8 that would be on the hook for those fixed costs.

9 A. So the customers would be on the hook for  
10 the fixed price, but they would also be getting all  
11 the revenues from the capacity market.

12 Q. Okay. And you state without any way --  
13 line 11, you state without any way of avoiding future  
14 fixed costs that Duke Energy Ohio typically has and  
15 will likely continue to offer the OVEC units at zero;  
16 is that correct?

17 A. Yeah. That's what I said.

18 Q. Okay. And to your knowledge has Duke  
19 formally committed to this procedure?

20 A. That's what I believe that everyone has  
21 testified to so far.

22 Q. That Duke will offer the OVEC units at  
23 zero?

24 A. That was my understanding. I think  
25 that's what I read in Don Wathen's testimony.

1           Q.    Okay.  Line 17 and 18, on page 9, you  
2           indicate that "Duke Energy Ohio's objective is to  
3           maximize revenues subject to Rider PSR," correct?

4           A.    That's right.

5           Q.    Okay.  And if rider PSR is approved as  
6           designed, will Duke's interest in OVEC be revenue  
7           neutral?

8           A.    I think that's -- that's true.

9           Q.    Okay.  Would it be more accurate then to  
10          state that Duke Energy Ohio's main objective would be  
11          to cover the costs to which it's subject pursuant to  
12          its OVEC interest?

13          A.    Well, I think when we say "maximize,"  
14          what we're saying is that we'll offer them into the  
15          energy market economically.  "Economically" meaning  
16          at cost so we can clear as much generation as  
17          possible, which generation margins will be offsets or  
18          credits in the rider.  And, similarly, we will offer  
19          the capacity into RPM at zero and -- and the margins  
20          from that will be then credited to the PSR as well.

21                So I think the term optimizing means that  
22          we are going to -- we are going to optimize the  
23          amount of energy that's sold into the market, we are  
24          going to optimize the amount of capacity that's sold  
25          into the market, and we are going to pass all those

1 revenues back through the rider.

2 And those -- those -- those could be --  
3 so, it depends on the costs, that could be positive  
4 or negative and, in my opinion, it very well could be  
5 positive credits going forward in the future.

6 Q. Okay. And I'm sorry. Did you use the  
7 word "optimize"? Is there somewhere in your  
8 testimony that you use that word that I missed?

9 A. I thought you used it in the question.

10 Q. No, I'm sorry. I used the word  
11 "objective." And so, from what I read from your  
12 testimony, I believe that you indicate that Duke's  
13 objective is to maximize revenues subject to rider  
14 PSR.

15 A. Okay. So I was interpreting -- I was --  
16 objective of maximizing revenues, I was translating  
17 that into optimization, but I think that, in my mind,  
18 it's the same thing.

19 Q. But as an objective of rider PSR,  
20 wouldn't you agree that Duke has a different  
21 objective for the outcome for rider PSR for it as a  
22 company?

23 A. I don't think so. You think that -- I  
24 think that there is still an incentive to create a  
25 credit.



1 Q. Okay. But as approved -- excuse me, if  
2 it's approved as it's proposed, you do agree that its  
3 interest in OVEC would end up being revenue neutral?

4 A. It will be from the -- in the end it will  
5 be.

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

8 EXAMINER WALSTRA: Thank you.

9 Ms. Bojko?

10 MS. BOJKO: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Bojko:

14 Q. Good afternoon. Could I go -- so as I  
15 understood your testimony earlier today, you are no  
16 longer employed by the shared services company; is  
17 that correct?

18 A. That's correct. They don't -- they don't  
19 send my check anymore.

20 Q. Okay. And today, though, you are  
21 testifying on behalf of Duke Energy Ohio; is that  
22 right?

23 A. As part of my transitional  
24 responsibilities, I am.

25 Q. Okay. And so the duties that you list on

1 page 2, line 6 to 16 of your testimony, those are  
2 duties from your prior position; is that correct?

3 A. That's correct.

4 Q. And you no longer have those duties or at  
5 least you only have those for a transitional period;  
6 is that right?

7 A. That's correct.

8 Q. Okay. And that transitional period, is  
9 that until just the assets are sold to Dynegy or are  
10 you going to retain these responsibilities throughout  
11 the ownership of the OVEC entitlement in the  
12 generation output of OVEC?

13 A. It's my hope those will end at the --  
14 after the closure of the divestiture.

15 Q. Of the assets that are going to Dynegy?

16 A. Correct.

17 Q. So to answer my question, no, you won't  
18 still have responsibility for the OVEC generating  
19 units or you don't believe you will anyway.

20 A. I do not believe I will.

21 Q. And, today, do you have responsibility  
22 for the OVEC units?

23 MS. KINGERY: Objection. Could counsel  
24 clarify the meaning of "responsibility for the OVEC  
25 units"?

1           Q.    I'm sorry.  I am going to withdraw that  
2 question.  I didn't ask that correctly.  Let me try  
3 again.

4           A.    Okay.

5           Q.    Prior to your new position, did you have  
6 responsibility over control of the OVEC generating  
7 output or anything to do with the entitlement-owned  
8 by Duke?

9           A.    So my role -- my role until October 16  
10 was -- was policy adviser, market -- PJM market  
11 adviser.  So I was the PJM interface on behalf of  
12 those assets, but I didn't interact with the board or  
13 the operating committee or offer the resources or do  
14 any of that.

15          Q.    Okay.  So you didn't actually bid them  
16 into the energy -- or, the output into the energy or  
17 capacity markets.

18          A.    I probably worked on the capacity side of  
19 it at times.

20          Q.    But --

21          A.    But not the energy side.

22          Q.    Okay.  And when you testified previously  
23 before us, you testified as an OCC witness; is that  
24 correct?

25          A.    That's correct.

1 Q. And you were not part of Duke's direct  
2 case at that time; is that accurate?

3 A. That's correct.

4 Q. Okay. And were you deposed prior to  
5 giving that testimony before the Commission?

6 A. I was.

7 Q. And it was my understanding that prior to  
8 that deposition you were not familiar with Duke's  
9 electric security plan application and filing; is  
10 that correct?

11 A. I wasn't -- I wasn't intimate with it at  
12 all.

13 Q. Okay. And it's also true that then you  
14 didn't work on Duke's ESP application prior to it  
15 being filed; is that correct?

16 A. That's right.

17 Q. And so you testified in front of the  
18 Commission that after you were deposed, you did some  
19 independent research on the issues you were deposed  
20 on, and that included looking at the source of the  
21 UCAP number and reviewing discovery responses  
22 provided by Mr. Dougherty; is that correct?

23 A. That was mainly correct because my  
24 understanding was that the OCC staff needed a  
25 response and so I helped to find that response.

1           Q.    Okay.  So -- but my question was is that  
2    after your deposition is the time period, and before  
3    your testimony, when you did some independent  
4    research to look at the UCAP number and looked at  
5    some discovery responses.

6           MS. KINGERY:  Your Honor, I'll object to  
7    this line of questioning.  I don't understand what it  
8    has to do with his rebuttal testimony.  It might have  
9    had something to do with the testimony that he  
10   provided under the subpoena issued by OCC, but  
11   nothing to do with the rebuttal testimony that we're  
12   here for today.

13           EXAMINER WALSTRA:  Overruled.

14           A.    So what was your question again?

15           Q.    My question was is it true that after you  
16    were deposed, you began researching the issues in  
17    this case and reviewed some discovery responses?

18           A.    So there were discovery responses that I  
19    worked on before that I was deposed.  And then there  
20    were -- and then you're correct, after the  
21    deposition, then I looked for things to be responsive  
22    to the requests from the OCC staff.

23           Q.    So you are disputing your testimony that  
24    you provided here at the Commission that you did not  
25    review any of the discovery or look into the source

1 of the UCAP until after the deposition?

2 A. No, that's not what I'm saying. I'm  
3 saying there were questions that I answered and I  
4 said that in my testimony the last time that I  
5 answered questions that were in discovery.

6 Q. You actually answered discovery? Your  
7 name is on discovery.

8 A. There was one response, I think, that my  
9 -- answer -- my name was on. And then -- and then at  
10 the request of OCC staff, then I helped resolve  
11 questions that he had afterwards, after the  
12 deposition.

13 MS. BOJKO: Your Honor, may I approach  
14 the witness? I'm sorry I didn't bring copies. I'm  
15 referring to the transcript that was taken and filed  
16 in the docket in this proceeding where the witness  
17 answered differently than he is answering today, so I  
18 would like to have that read into the record.

19 MS. KINGERY: Are you talking about the  
20 transcript from the hearing or the transcript of the  
21 deposition?

22 MS. BOJKO: From the hearing.

23 EXAMINER WALSTRA: You may approach.

24 MS. KINGERY: Ms. Bojko, can you give us  
25 a page reference?

1 MS. BOJKO: Sure. It's several parts in  
2 here. It starts on 1680 and -81, -82, -83.

3 MS. WATTS: Which volume is that?

4 MS. BOJKO: VI.

5 Q. (By Ms. Bojko) Sir, the question starting  
6 on line --

7 MS. KINGERY: I just want to interrupt  
8 here. I just want the record to reflect I don't have  
9 a copy. I have no way of following along to see  
10 whether or not this is being read in correctly, so  
11 subject to that.

12 MS. BOJKO: Well, your Honor, it was a  
13 publicly-filed document in the record. It's a  
14 transcript. And just as we weren't provided  
15 deposition transcripts, I'm not obligated to provide  
16 a transcript of proceedings in this case.

17 EXAMINER WALSTRA: Okay.

18 MS. BOJKO: I mean, it's online. You can  
19 go online and look.

20 Q. (By Ms. Bojko) Sir, on line 5, do you see  
21 the answer -- actually, it starts on -- that's not  
22 very good. So line 12, says "So the answer to my  
23 question, yes, after the deposition --"

24 "Yes, in that regard, I did."

25 MS. KINGERY: Could we have the question,

1 first, rather than just his answers?

2 Q. That was the question.

3 A. What line?

4 Q. And did I read that correctly, sir?

5 A. I can't even see where you're at.

6 Q. I was on the question starting on  
7 line 12, page 1681.

8 A. Line 12. You say "So to my answer  
9 question" -- this is you speaking, I assume.

10 Q. Question would be me, yes.

11 A. "So to answer my question, yes, after the  
12 deposition --"

13 Q. And your response was "Yes, in that  
14 regard, I did." Is that correct?

15 A. I am going to look at the question before  
16 that because that's -- I don't know what heck -- the  
17 words are like five words. The question says "after  
18 the deposition." I have no clue when you're talking  
19 about.

20 Q. Okay. We can start and we can read the  
21 whole thing into the transcript. That's fine with  
22 me.

23 A. That's fine.

24 Q. Let's start on line 2 and my question was  
25 "Okay. And subsequent to you being deposed, you then



1 did independent research on the issues you were  
2 deposed upon; is that correct?"

3 Then the answer: "So I looked up the  
4 source of the UCAP number mainly because there wasn't  
5 really a source and the request was there had to be a  
6 source. The OCC was looking for a witness. And so  
7 when I looked in the PJM system, I found that number  
8 and realized that that was the source. The source  
9 had just been lost over time, but I found the  
10 source."

11 Question: "So to answer my question,  
12 yes, after the deposition --"

13 Answer: "Yes, in that regard, I did."

14 And then it goes on to talk about the  
15 discovery responses. "And apparently you also went  
16 back and reviewed some discovery responses from  
17 Mr. Dougherty; is that also true?"

18 Your answer: "I looked at the document  
19 that I had provided him, yes."

20 And then if we turn to page 1682.

21 A. Okay.

22 Q. Then question beginning on line 7, I  
23 asked you "Had you responded to that discovery  
24 response, you would have responded differently; is  
25 that correct?" And it was talking about the

1 Dougherty discovery response.

2 And your answer was: "I may have  
3 struggled with it as well initially. I'm not sure  
4 because I wasn't involved in the beginning." Is that  
5 what it -- is that what it states?

6 A. Yeah, that's right, but that discovery  
7 response is not the one that I worked on. There were  
8 a number of discovery requests and there was one that  
9 I worked on and it was very inconsequential and I  
10 can't even remember what it is right now.

11 MS. KINGERY: Your Honor, at this point I  
12 would object to this use of the transcript. It's  
13 improper use of the transcript. It doesn't impeach  
14 anything that he said here today.

15 MS. BOJKO: It most certainly does, your  
16 Honor, and it's not an improper use of the  
17 transcript.

18 May I approach the witness?

19 EXAMINER WALSTRA: You may.

20 A. You just want it back?

21 Q. Yes. So it's my understanding from your  
22 testimony on line -- on page 2, line 19, you're  
23 stating that you are now familiar with Duke's  
24 application; is that correct?

25 A. I'm familiar with the things that I have

1       been asked about, yes.

2               Q.     Okay.  So you're familiar with the PSR  
3       proposal contained in Duke's application.

4               A.     My understanding of the PSR is with  
5       regards to OVEC and its inclusion in the PSR.

6               Q.     Okay.  Have you read Duke's application?

7               A.     I have not.

8               Q.     So, as you referenced Mr. Oliker, you are  
9       not aware that the company has requested the OVEC to  
10      be included in the PSR, but then the company also  
11      proposes rider PSR as a rider in which additional  
12      contractual arrangements would be included to  
13      increase the benefits available to customers.

14              MS. KINGERY:  Objection.  It's misstating  
15      the application.

16              EXAMINER WALSTRA:  Overruled.

17              A.     Yeah, I have no clue what you just said,  
18      but.

19              Q.     Well, sir, page 13 of the application  
20      says the company further proposes rider PSR as a  
21      rider in which additional contractual arrangements  
22      could be included to increase the benefits available  
23      to customers.

24              A.     I was not aware of that.

25              Q.     And let's turn to page 3 of your

1 testimony, please, sir. Page 3, line 13, this goes  
2 to a discussion about what you are summarizing for  
3 Mr. Wathen. I still don't quite understand what you  
4 said to Mr. Oliker. At the bottom of page 3 you  
5 state that Duke has only committed to offering the  
6 output from the OVEC generating units that it's  
7 entitled to into the PJM market if it's economic to  
8 do so; is that correct?

9 A. So my understanding of our commitment is  
10 to offer our entitlement every day at cost. And it  
11 will clear if it's -- if it is economic, it will  
12 clear.

13 Q. Okay. And then, so turn to the next  
14 page, 4, you explain the basis of economic, and  
15 that's what you just said here, that when the market  
16 price exceeds the variable costs of generation for  
17 that share, Duke will offer it; is that what  
18 you're --

19 A. No, that's not what I meant. We'll offer  
20 it no matter what. It will clear if the variable  
21 costs are less than the clearing price. So if I --  
22 I'm not reading it, but if that's what it says, then  
23 I probably have another correction.

24 Q. Okay.

25 MS. KINGERY: Could we have the actual

1 words from his testimony considered? Could you  
2 direct the witness to exactly where you are reading  
3 from so he can see whether those are the words said?

4 MS. BOJKO: I did. I said at the top of  
5 page 4, the continuing sentence.

6 A. Just tell me what line. Line?

7 Q. Well, since it continues the sentence  
8 from the bottom of page 13 onto page 14, it's line 1.

9 A. You mean page 3? You said 4. So 13.  
10 Oh, line 13. So it starts at line 13? So can I read  
11 the answer?

12 Q. I don't have a question pending. You  
13 answered my response.

14 A. What did I answer? I didn't hear it.

15 Q. Look at line 2. You use the word "energy  
16 markets" on line 2. Page 4, line 2. Page 4. Still  
17 on page 4.

18 A. I am looking at it.

19 Q. Okay. So here, "energy markets," do you  
20 use energy only or are you talking about energy and  
21 capacity, because on line 4 you go to capacity and  
22 energy, and line 8 you --

23 A. I would never put energy and capacity  
24 together in the same sentence because they are  
25 completely different markets. So I don't think -- I

1 don't see where you are saying that I said that  
2 the -- that we would offer it if it was economic. I  
3 said that we will offer it, and if it's economic, it  
4 will clear, and "economic" meaning that when the  
5 variable costs are less than the clearing price.

6 Q. I'm just asking you questions, sir.

7 A. Show me where I said that.

8 Q. You can clarify.

9 A. I got the impression that -- that you  
10 were impeaching something I said in my testimony, and  
11 so if it -- if I didn't say it the way that I just  
12 said it, then we should probably fix it.

13 Q. You -- I asked you if -- what "economic"  
14 meant and you clarified that for me, so thank you.

15 A. Okay.

16 Q. But looking at the bottom -- I'm a little  
17 confused now about your comment you wouldn't put  
18 energy and capacity in the same sentence, because  
19 that's what I am trying to figure out what you mean  
20 on line 2, page 4, because on page 3, line 16, you do  
21 put energy and capacity markets in the same sentence.  
22 And then on line --

23 A. Could I say something like I would -- you  
24 would get the benefits of energy and capacity. But  
25 they are clearly different products.

1 Q. Okay. So look on -- that's -- I am just  
2 trying to ask you what you mean by your testimony  
3 "energy markets" on line 2, because you continue and  
4 then you talk about sales of capacity and energy on  
5 line 4, and then, on line 8, you talk about energy  
6 and capacity. So my question for you is when you say  
7 "energy" markets on line 2 in that sentence, are you  
8 only referring to energy only markets? That's my --  
9 that's my only question.

10 A. I am only referring to energy markets on  
11 that line.

12 Q. Okay. And this was what you were talking  
13 about with Mr. Olikier that in this sentence is what  
14 you were referring to that it would be a cost-based  
15 offer in the day-ahead market.

16 A. That's correct.

17 Q. Okay. And so when you talk about "market  
18 price" on line 2, do you see that?

19 A. Yes.

20 Q. Okay. What is the market price? You're  
21 talking about the energy market, market price in that  
22 sentence?

23 A. That's correct.

24 Q. Okay. And so who would determine -- when  
25 would the determination be made about whether Duke

1 will sell its share of OVEC into PJM when the market  
2 price exceeds the variable cost? Who makes that  
3 decision?

4 A. So there is no decision. It's offered  
5 every day, all of it, and then -- and then PJM clears  
6 the market and PJM decides how much they are going to  
7 take from the offer.

8 Q. Okay. So you're saying that you will  
9 always offer it and whether it clears or not is the  
10 determining factor.

11 A. That's PJM's decision whether it clears  
12 or not.

13 Q. Okay. So the market price would be the  
14 clearing price in this sentence.

15 A. It's also known as LMP.

16 Q. Okay. And also, it's your understanding  
17 that regardless of whether it clears PJM or not, the  
18 customers will still be responsible for the cost of  
19 those OVEC units; is that your understanding?

20 A. So they won't be responsible for the  
21 variable O&M because there will be no favorable O&M  
22 if they don't clear.

23 Q. But there will be other fixed O&M; isn't  
24 that true?

25 A. That's where I don't -- that's where I



1 keep energy and capacity separate because the fixed  
2 costs are associated with capacity. And they will  
3 get the revenues from the capacity market to offset  
4 their fixed costs.

5 Q. Well, if you bid into PJM, but it doesn't  
6 clear, there still may be some costs associated with  
7 that process, would there not be?

8 A. That's why we suggested we would offer  
9 the capacity at zero which ensures an offset to the  
10 fixed costs.

11 Q. So the answer to my question is yes,  
12 there still may be costs associated with that.

13 A. I don't know. I don't know how you  
14 relate that to my answer, but.

15 Q. Well, it sounded like to me you were  
16 saying there would be an offset, so there must be  
17 costs in order to offset.

18 A. There will be no variable costs  
19 associated with the energy that doesn't clear. There  
20 will be fixed costs associated with the capacity that  
21 does. And the capacity revenues are offsets to the  
22 fixed costs associated with that, so you're --

23 Q. And there --

24 A. -- as long as you keep them separate, I  
25 think I'm clear with you.

1 Q. And there could be fixed costs associated  
2 with operating the generating units, could there not  
3 be?

4 A. That's why you have a capacity market.

5 Q. So you're saying that if it doesn't  
6 ever -- if it's not running, that it will never have  
7 costs associated with it?

8 A. Not variable costs, no.

9 Q. I didn't say variable costs.

10 A. Well, when I talk about energy, I only  
11 refer to capacity. When I talk about capacity, then  
12 I talk about fixed costs. So which market are we  
13 talking about?

14 Q. Well, my question is would there be costs  
15 associated with the generating units if it was on an  
16 outage?

17 A. Yeah, and that's what's covered by the  
18 capacity market in the RPM revenues, that's the --  
19 that's the -- that's what the -- that's what the  
20 buyer gets in exchange for those fixed costs is the  
21 RPM revenues.

22 Q. But there may not be any revenues.  
23 That's -- that's the point.

24 A. Why wouldn't there be revenues?

25 Q. Well, if it doesn't -- if it's --

1           A.    Capacity revenues come 365 days a year  
2 even if you are not running capacity revenues.

3           Q.    Well --

4           A.    There's no doubt about that.  As long as  
5 the capacity market clears at something greater than  
6 zero, you get paid every day.

7           Q.    Okay.  And that's clarification.  As long  
8 as it clears above zero.

9           A.    That's right.

10          Q.    So there may be a time when there is no  
11 revenues if it doesn't clear above zero.

12          A.    I wouldn't take that bet.

13          Q.    That's true, though, a true statement,  
14 correct?

15          A.    It's -- it's possible, I suppose.  If  
16 everybody offered at zero, then it could clear at  
17 zero.

18          Q.    All right.  Let's go back to your  
19 testimony.  Let's look at --

20          A.    Well, actually, I will clarify that.  If  
21 everyone offered at zero and there was more capacity  
22 than load then it could clear at zero.  But if  
23 everybody offers at zero, but there's still not  
24 enough capacity in the market, it could still clear  
25 at over \$500 a megawatt-day.

1 Q. Okay. Let's turn to page 3 of your  
2 testimony, line 8. You explain one of the reasons  
3 you're here today or the reason you are here today,  
4 one, excuse me, is to confirm that rider PSR cannot  
5 affect the wholesale markets; is that right?

6 A. In this unique situation, I think that's  
7 true.

8 Q. Okay. And the unique situation you are  
9 referencing OVEC; is that right?

10 A. Correct.

11 Q. Okay. And it's the concept of having  
12 customers pay for the cost of those OVEC generating  
13 units and having the output sold into the wholesale  
14 energy markets, is that right, and also sold in the  
15 capacity markets?

16 A. So you are going to have to ask your  
17 question again. I am not sure I get that.

18 Q. You are saying in this unique situation,  
19 and that unique situation is having a rider where it  
20 will collect the costs from customers to pay for  
21 those OVEC generating units and having the output  
22 generating units sold into the PJM markets.

23 A. It has nothing to do with the PSR. What  
24 I said was is that -- is that the PSR would not have  
25 any impact on the markets because it doesn't change

1 the behavior of the market participant. If -- if --  
2 if Duke were to -- were offering it at cost, because  
3 they could avoid their fixed costs or going-forward  
4 costs, before the PSR was approved, and therefore,  
5 was setting price in the market and then they  
6 suddenly changed to offering at zero, then that would  
7 change the market.

8 But if they are offering zero before  
9 because they can't avoid their fixed costs and they  
10 offer zero after the PSR is approved, there is no  
11 change in behavior and therefore there is no impact  
12 on the capacity market.

13 Q. Okay. So you are now talking about  
14 offering at zero for capacity markets. We were  
15 talking about energy markets.

16 A. We never said we would offer zero in the  
17 energy markets. We said we would offer our variable  
18 costs.

19 Q. No, I am saying your response was to the  
20 capacity market. You are talking about bidding the  
21 share of OVEC into the BRA at zero; is that correct?

22 A. That's what I said.

23 Q. Okay. So --

24 A. I am not sure what we're talking about,  
25 but that's what I said. I thought we were talking

1 about can we affect the market. I thought that was  
2 the subject of the question.

3 Q. Right. And you -- on page 3, line 8, you  
4 are saying that you're here to confirm that rider  
5 PSR, so you are talking about rider PSR, cannot  
6 affect the wholesale market, right? You're the one  
7 that was talking about rider PSR.

8 A. I agree with that.

9 Q. And so then I asked you the concept that  
10 you are talking about with regard to rider PSR is  
11 having customers pay for the cost of the generating  
12 plants and then having the output of those generating  
13 plants sold into the wholesale energy and capacity  
14 markets and then offsetting any revenues that may or  
15 may not be received through that output being sold  
16 into the capacity and energy markets.

17 A. If you are asking me if that's my  
18 definition of this part of the PSR, I think that's  
19 right.

20 Q. Okay. So now you brought up the bidding  
21 into the BRA at zero. So my question for you is you  
22 keep talking about this bidding behavior of bidding  
23 into BRA, but there's no requirement that Duke  
24 currently bids in at zero, is there?

25 A. I don't know. I thought there was. I

1 thought -- I thought we testified that we would. I  
2 think I have, if no one else has.

3 Q. And I'm asking you today, without the  
4 PSR, is Duke somehow required to bid in the BRA at  
5 zero?

6 A. We're not required to, but it's only  
7 rational to do so.

8 Q. Okay. And in your testimony and then you  
9 also, in response to some questions, you've referred  
10 to the independent market monitor in PJM; is that  
11 correct?

12 A. Correct.

13 Q. And is it your understanding, sir, that  
14 the market monitor and the department was created by  
15 PJM's Open Access Transmission Tariff?

16 A. I would say that it was created  
17 originally that way. I would say that FERC has  
18 something to do with the way that it's independent.  
19 I think that the market monitor was created as a part  
20 of PJM, and then I forget what year it was but there  
21 was FERC proceedings and a settlement that made it  
22 independent.

23 Q. Okay. Well, I thought you said earlier  
24 to Mr. Oliker that PJM spoke through its tariffs; is  
25 that right?

1           A.    Yes.

2           MS. BOJKO:   Okay.   Your Honor --

3           EXAMINER WALSTRA:   Why don't we take a  
4   break here.   You can approach after the break.   Take  
5   a 15-minute break.

6           (Recess taken.)

7           EXAMINER WALSTRA:   All right.   We'll go  
8   back on the record.

9           Ms. Bojko.

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

11          EXAMINER WALSTRA:   You may.

12          MS. BOJKO:   Your Honor, at this time I  
13   would like to have marked as OMA Exhibit 14, it's a  
14   portion of the PJM Open Access Transmission Tariff.  
15   I did not print out the whole entire tariff.   I only  
16   printed out Attachment M, but I did provide, at the  
17   top of this document, the website link.

18          EXAMINER WALSTRA:   Okay.

19          (EXHIBIT MARKED FOR IDENTIFICATION.)

20          Q.    (By Ms. Bojko) Sir, before the break we  
21   were talking about the market monitor being created  
22   pursuant to the Open Access Transmission Tariff.   Do  
23   you recall that?

24          A.    Yes.

25          Q.    And you believe there was probably a FERC



1 order that went along with that, but I think you  
2 agreed that the PJM Open Access Tariff would -- did  
3 create the market monitor.

4 A. It defines his role, yes.

5 Q. Okay. And if you look at, it would be  
6 Attachment M which is titled "PJM Market Monitoring  
7 Plan," that's what you have before you that's been  
8 marked as OMA Exhibit 14?

9 A. Yes.

10 Q. And, sir, to your knowledge, this Open  
11 Access Tariff has been approved by FERC; is that  
12 correct?

13 A. I would -- yeah, I know that it has been.  
14 I assume that what you're showing me is -- it says  
15 2012, so yes.

16 Q. Well, you said 2012. If you look at the  
17 effective date on the front page, it says September  
18 10, 2014. I believe some portions were amended in  
19 2014, and the other one has an effective date of  
20 2010, and there's a docket number at the bottom of  
21 the page. Is that what you are referencing, sir?

22 A. Yes.

23 Q. So it appears that -- that this is a  
24 tariff that has different effective periods based on  
25 maybe the attachments; is that your understanding of

1 how they revise the PJM OATT?

2 A. That sounds right.

3 Q. And going back to Attachment M, the  
4 market monitoring unit has the exclusive authority to  
5 perform the functions set forth in this Attachment M;  
6 is that your understanding, sir?

7 A. Yes.

8 Q. And you understand that the purpose in  
9 creating the market monitor was, in part, to  
10 establish an objective expert to assist federal and  
11 state agencies in identifying instances of market  
12 power and ensuring compliance with market rules to  
13 promote a robust electricity market?

14 MS. KINGERY: Your Honor, I object.  
15 Perhaps if Ms. Bojko is reading from some particular  
16 place in this exhibit, we could have a reference.

17 MS. BOJKO: I wasn't reading.

18 EXAMINER WALSTRA: Okay.

19 MS. BOJKO: The reference, I guess, would  
20 be Attachment M, Sections IV.A. through IV.B. and  
21 IV.4. Talks about the market monitor's role and the  
22 purpose of creating the market monitoring unit.

23 Q. Is that your understanding, sir?

24 A. Yeah. I guess -- I think I agree with  
25 you that that's his role. It's supposed to be his

1 role. He doesn't necessarily get to change the  
2 tariff. He doesn't have -- he doesn't administer the  
3 tariff. PJM administers the tariff. So a lot of  
4 times he says things that he thinks that don't  
5 actually come to fruition. On a number of occasions,  
6 for the last several years, he's -- he's said that  
7 demand response should be removed from the market  
8 completely. It still hasn't been removed, but.

9 MS. BOJKO: Your Honor, I move to strike  
10 his response as being nonresponsive to my question.  
11 I asked if that was the purpose of creating the  
12 market monitor --

13 MS. KINGERY: And, your Honor --

14 MS. BOJKO: -- not about his opinions.

15 MS. KINGERY: -- he's explaining his  
16 answer.

17 EXAMINER WALSTRA: Overruled.

18 Q. Okay. Let's turn to Section IV then.  
19 Let's read from the document as your counsel  
20 suggested. Does it --

21 A. What page of Section IV?

22 Q. 1999.

23 A. All right.

24 Q. Do you see here where it says the market  
25 monitoring unit shall objectively monitor the

1 competitive -- competitiveness of PJM markets,  
2 investigate violations of FERC or PJM market rules,  
3 recommend changes, which is one I think you just  
4 suggested, and prepare reports; is that what A. says?

5 A. Yes. That's what A. says.

6 Q. Now, let's turn to B. And Section B. is  
7 talking about what the market monitoring unit is  
8 actually responsible for and it talks about it's  
9 responsible for the compliance with the PJM market  
10 rules, design flaws in the market rules, structural  
11 problems that may inhibit a robust and competitive  
12 market. And also, No. 4, the potential for a market  
13 participant to exercise market power or violate any  
14 of the PJM or FERC market rules or the actual  
15 exercise of market power or violation of those rules,  
16 right?

17 A. That's his role, but, like I said before,  
18 not all of his recommendations are adopted.

19 Q. Right. Because he's independent; isn't  
20 that right?

21 A. That has nothing to do with it. The fact  
22 is he doesn't get to set policy at FERC. He can make  
23 recommendations to FERC, but FERC doesn't always  
24 listen to him. He can make recommendations to PJM.  
25 PJM doesn't always listen to him.

1 Q. Okay. So in this section this is the  
2 tariff that we're talking about that sets forth the  
3 creation of the market -- market monitoring unit and  
4 states what it's responsible for; is that correct?

5 A. That's correct.

6 Q. Okay. That's all I am talking about  
7 right now. It says the market monitoring unit is  
8 responsible for the things that I listed; is that  
9 correct?

10 A. Yeah, but it feels like you're  
11 overexerting his authority, and he has very little,  
12 if any.

13 Q. Sir, I'm asking you if the PJM tariff  
14 says that the market monitoring unit shall, and it's  
15 mandatory, be responsible for certain items; is that  
16 correct?

17 A. I agree that you are reading from the  
18 tariff. The way that it's applied, I disagree with.

19 Q. Okay. And if you turn to section -- we  
20 will get back to that.

21 It's your understanding, sir, that the  
22 market monitor or the market monitoring unit is  
23 involved in state proceedings that raise market power  
24 or competitive issues?

25 A. I think he injects himself, from time to

1 time, but I don't think he has a place there.

2 Q. Okay. Well, let's read -- turn to  
3 Section H. which is on page 2002. Doesn't this  
4 specifically authorize his participation in those  
5 state proceedings? Doesn't this say "If during the  
6 ordinary course of its activities the Market  
7 Monitoring Unit discovers evidence of wrongdoing  
8 (other than minor misconduct) that the Market Monitor  
9 reasonably believes to be within a State Commission's  
10 jurisdiction, the Market Monitoring Unit shall report  
11 such information to the State Commission(s)"?

12 MS. KINGERY: I am going to object here.  
13 I don't understand how this can possibly be relevant  
14 to Mr. Jennings's testimony or this case at all.

15 EXAMINER WALSTRA: Ms. Bojko.

16 MS. BOJKO: Oh, it's relevant, your  
17 Honor. He references the market monitoring. He is  
18 talking about the wholesale market. He's talking  
19 about his opinion in the wholesale market. So I'm  
20 going to ask him some questions about other people's  
21 opinion of the wholesale market.

22 EXAMINER WALSTRA: Overruled.

23 A. It says that he can make referrals to the  
24 State Commission. I am not sure that it mandates it.

25 Q. Well, doesn't it say that if he finds

1 wrongdoing, he has to report? It's a requirement  
2 "shall report...to the State Commission(s)"?

3 A. I think that's true if he identifies  
4 wrongdoings. To me, wrongdoing is equivalent to  
5 market manipulation.

6 Q. Okay.

7 A. And so, yeah, I would say that's the  
8 case.

9 Q. And he has to report that.

10 A. He should.

11 Q. Okay. Well, he has to. It's required.  
12 It's a "shall," right?

13 A. Right.

14 Q. Okay. And is it your understanding that  
15 the --

16 A. That's not the only time he injects  
17 himself. He does inject himself when it's not market  
18 manipulation. He injects himself into mergers,  
19 acquisitions, divestitures, all kinds of things that  
20 he shouldn't.

21 Q. That's your opinion, right? He  
22 interjects -- he is required to interject himself if  
23 he believes that there is wrongdoing; isn't that  
24 true?

25 A. He should. And he should limit his

1 activity to that, but he goes beyond that on many  
2 occasions.

3 Q. Okay. And it's your understanding that  
4 he has -- the market monitor has intervened in cases  
5 similar to Duke, such as regarding the PSR?

6 A. So I don't know about that. I know that  
7 he intervened into Constellation-Exelon's merger.  
8 He's currently involved in the Exelon-PHI  
9 acquisition. He's willing to get into anything that  
10 he can get into.

11 Q. Okay. And he has intervened in front of  
12 the Ohio Commission in two cases presently pending  
13 before the Commission regarding a purchase power  
14 agreement of OVEC generating units; is that true?

15 A. I don't know that.

16 Q. Okay. Do you know whether Duke has  
17 intervened in another company's application for  
18 recovery of costs for similar OVEC-type costs through  
19 a PSR or a rider similar to that?

20 MS. KINGERY: Object. Totally  
21 irrelevant.

22 EXAMINER WALSTRA: Overruled.

23 A. I don't recall.

24 Q. Sir, do you recall the independent market  
25 monitoring -- or market monitor -- I'm sorry, you



1 don't recall if Duke has intervened. Was that your  
2 response?

3 A. I do not. I don't recall that.

4 Q. Okay. Did you answer my question of  
5 whether you know whether the market monitor has  
6 intervened in other cases?

7 A. I'm not aware of that either.

8 Q. Okay.

9 A. I said that I'm aware of him intervening  
10 in a variety of cases. I'm not aware of him  
11 intervening in PSR-like cases.

12 Q. Okay. And are you aware that the market  
13 monitor has stated that subsidies should not be  
14 permitted to interfere with the competitiveness of  
15 PJM markets and PJM's competition-based market  
16 design?

17 A. I've heard him say that.

18 Q. Are you -- are you aware, sir, that other  
19 PJM generators and suppliers have intervened in cases  
20 similar to Duke's proposed ESP with a PSR-type rider?

21 A. I'm not aware of that.

22 Q. And have you -- are you aware of  
23 economists and other entities, financial  
24 institutions, speaking about the proposals and  
25 potential subsidies of an item such as the PSR that

1 Duke's proposing?

2 A. I've heard lots of economists speak.  
3 I've never heard them talk about any kind of specific  
4 case like this before.

5 Q. Would you be surprised if there is -- are  
6 those people out there talking about this?

7 A. No, I'm not surprised.

8 Q. Sir, are you aware that Duke has  
9 participated by filing documents in -- in proceedings  
10 that contain a PSR-type filing, stating that they  
11 believe that their application is similar to that of  
12 the other utility companies in Ohio?

13 MS. KINGERY: Objection. It's totally  
14 irrelevant to this case whether or not Duke Energy  
15 Ohio has filed to intervene or participate in other  
16 cases or has made statements in those other cases.  
17 It has nothing to do with this case.

18 EXAMINER WALSTRA: Overruled.

19 A. I'm not aware of that.

20 Q. Do you know that other utilities have  
21 filed similar proposals to collect costs from  
22 customers for the OVEC generating assets as well as  
23 other purchase power arrangements?

24 A. Specific with OVEC, I'm not aware that  
25 OVEC is a part of it, but I've read articles about

1 other utilities doing something similar to PSR.

2 Q. So you're not aware that AEP has a  
3 current proposal pending that involves OVEC  
4 generating assets?

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

7 EXAMINER WALSTRA: Overruled.

8 A. I saw the headline recently.

9 Q. For AEP?

10 A. Yeah.

11 Q. And are you aware FirstEnergy owns OVEC  
12 generating assets and they have requested the same  
13 approval to pass those costs on to customers?

14 MS. KINGERY: Objection. There's no  
15 evidence whatsoever that FE's proposal is the same as  
16 Duke's.

17 EXAMINER WALSTRA: Overruled.

18 A. I read that there is a -- there is a  
19 proceeding associated with FE and AEP at the same  
20 time, but I'm not certain that it's identical to the  
21 PSR.

22 Q. Okay. And just so I understand, because  
23 I think that you made a distinction earlier, you're  
24 saying that they are not identical because you  
25 believe that Duke's proposal is only for the OVEC

1 generating units and those other cases might include  
2 or incorporate future purchase power agreements; is  
3 that the distinction you're making?

4 MS. KINGERY: Objection. Your Honor, the  
5 witness just explained that all -- the only knowledge  
6 he had about those other proceedings is that he had  
7 read some article that vaguely talked about them. So  
8 there's no reason to believe that this witness is  
9 distinguishing the Duke proposal from the other  
10 companies' proposals on any particular --

11 EXAMINER WALSTRA: He can clarify.

12 A. So I don't know the details of those --  
13 of those plans. I haven't read them. I haven't -- I  
14 haven't talked to anybody about them. So I'm  
15 headline knowledgeable and that's it. And so, I  
16 don't know that it's the same deal.

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

18 EXAMINER WALSTRA: You may.

19 MS. BOJKO: May I have marked, as OMA  
20 Exhibit 15, a letter by Duke Energy Ohio issued and  
21 filed in Case No. 13-2385-EL-SSO.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Sir, do you have in front of you what's  
24 been marked as OMA Exhibit 15?

25 A. Yes.

1           Q.    And does this appear to be a letter from  
2   Ms. Spiller or Duke Energy Ohio counsel?

3           A.    It appears to be.

4           Q.    And is it written on behalf of Duke  
5   Energy Ohio whereas the first line says "Duke Energy  
6   Ohio supports...."?

7           A.    I see that.

8           Q.    And, sir, in this letter, do you see the  
9   sentence, it starts "Furthermore"?

10           MS. KINGERY:  I am going to object.  
11   There is no showing that this witness has ever seen  
12   this letter before.

13           MS. BOJKO:  Your Honor, it's a letter  
14   written on behalf of Duke Energy Ohio.  He's  
15   testifying here on behalf of Duke Energy Ohio.  He  
16   said that he believed that there were other cases  
17   pending but he wasn't sure.  I am trying to show him  
18   a document to refresh his recollection about the  
19   positions that he said he thought were similar but  
20   wasn't sure.

21           MS. KINGERY:  But it's not his document,  
22   your Honor.  He didn't author it and there is no  
23   showing that he's ever seen it or has had any  
24   involvement with it.

25           MS. BOJKO:  Your Honor, it's a party

1       opponent's document. It is an admission by the  
2       company.

3                   EXAMINER WALSTRA: Are you trying to  
4       refresh his memory?

5                   MS. BOJKO: Well, he made some statements  
6       and I am trying to clarify on the record of the  
7       company's position, which he testified earlier today  
8       he is here to represent Duke Energy Ohio, and he is  
9       here to represent Duke Energy Ohio about the PSR. He  
10      wasn't a direct witness, but he is a rebuttal  
11      witness. So he made some statements and I'm trying  
12      to ascertain the truth of what he stated and how he  
13      came up with that statement.

14                  MS. KINGERY: But there's nothing in that  
15      statement from Ms. Bojko that would demonstrate this  
16      witness has any knowledge of this document whatsoever  
17      and he shouldn't be cross-examined about a document  
18      that is not his and he's never seen.

19                  EXAMINER WALSTRA: I am going to sustain  
20      the objection.

21                  Q.     (By Ms. Bojko) Mr. Jennings, you stated  
22      earlier you are aware of filings by other utility  
23      companies. You have stated AEP and FirstEnergy; is  
24      that correct?

25                  A.     So I'm not aware of the filings. I read

1 an article that said that they have made filings.  
2 That was all I saw.

3 Q. Okay. And your knowledge is that the  
4 filings were for a purchase power agreement or a  
5 similar type PSR mechanism where customers would be  
6 charged -- or, excuse me, the utility companies would  
7 assess a rider to customers that would collect the  
8 cost of generating units such as OVEC or other future  
9 purchase power agreements? I believe you said yes.

10 A. The article didn't go into that detail,  
11 but it sounded like an -- the article talked about a  
12 commitment of resources to their respective load.  
13 And so, in that way, I guess, it's similar.

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

16 EXAMINER WALSTRA: Thank you.

17 OCC?

18 MR. BERGER: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Berger:

22 Q. Good evening, Mr. Jennings. Nice to see  
23 you again.

24 A. Nice to see you.

25 Q. Mr. Jennings, on page 6 of your testimony

1 at line 20, you say that "Generation offers represent  
2 the prices at which each supplier is willing to sell  
3 energy in the day at various" -- "various levels of  
4 output." Do you see that?

5 A. Could you refer me to the line?

6 Q. Yes. It's page 6, at line 20.

7 A. Yes, I see that.

8 Q. You would agree that PJM does not  
9 determine what OVEC's marginal or variable  
10 operational costs are.

11 A. Yeah, I would agree with that.

12 Q. And OVEC or its sponsoring companies  
13 inform PJM what -- what its variable or marginal cost  
14 of operation in the day-ahead market is; is that  
15 right?

16 A. So I'm not the dispatch person, but I  
17 would think that they would report the cost to -- the  
18 variable cost to the representative of Duke and then  
19 someone from Duke would then offer that resource to  
20 PJM.

21 Q. So you think OVEC conveys the information  
22 to Duke, Duke or the other sponsoring companies then  
23 convey it to PJM for PJM's dispatch purposes.

24 A. Correct.

25 Q. So would you agree with me that to the



1 extent that OVEC determines what that variable cost  
2 is on a day-to-day basis, that it has some control  
3 over the -- over whether the units will be dispatched  
4 based upon its determination of that cost?

5 A. I don't think they have any determination  
6 of the dispatch.

7 Q. But whether the units will be dispatched  
8 depends on how that cost compares to the variable  
9 cost of other units in PJM, right?

10 A. So cost is well defined in -- in PJM's  
11 manuals and monitored, and this is the area that the  
12 market monitor does belong. He tracks the cost of --  
13 of what the units are, people are constantly updating  
14 their -- their full cost parameters. And so, I don't  
15 see how they can control anything other -- unless  
16 they were to change their costs or lie about their  
17 costs, I don't see how they could change their  
18 dispatch.

19 Q. Well, OVEC determines what -- what  
20 particular coal that it's going to utilize to -- to  
21 burn at any particular unit; isn't that right?

22 A. That's a fair point.

23 Q. And that different coal has different  
24 costs associated with it, right?

25 A. Yes.

1 Q. And different coal has different  
2 maintenance costs associated with it, doesn't it?

3 A. Yes.

4 Q. So, to that extent, you would agree that  
5 OVEC does have some control over what the variable  
6 costs will be at its -- at its units.

7 A. I would think that amount would be very  
8 marginal, but yes.

9 Q. You haven't looked in particular at the  
10 extent to which OVEC may have some control over that.

11 A. I have not.

12 Q. It's your understanding that -- I think  
13 earlier you talked about the fact that OVEC or its  
14 sponsoring companies could determine whether to offer  
15 at variable cost or at a market-based price every six  
16 months or something of that nature. Do you recall  
17 that?

18 A. That's just basic PJM rules, yeah.

19 Q. Are you aware of whether OVEC has -- OVEC  
20 or the sponsoring companies have ever made the  
21 decision to use anything other than variable costs,  
22 to use the market-based costs?

23 A. I don't know anything about the other  
24 sponsoring companies.

25 Q. Do you know whether Duke has used

1 market-based costs as opposed to the variable costs?

2 A. I don't know. I don't think so, but I  
3 don't know for sure.

4 Q. Do you know how the market-based cost is  
5 determined?

6 A. So, again, I am not the dispatch person,  
7 but since I did talk about clearing, Duke's typical  
8 practice has been that their market-based price was  
9 equal to their cost. The only time that it would  
10 vary was if there were certain actual costs that  
11 didn't -- were not consistent with the -- the cost  
12 manuals. So typically cost-based offers are the  
13 practice. And typically that's good economic  
14 behavior.

15 Q. Would you agree with me that the higher  
16 OVEC's variable costs are relative to the market, the  
17 less OVEC will dispatch?

18 A. Yes, that's correct.

19 Q. And would you agree also that to the  
20 extent that the OVEC dispatch is lower, OVEC will  
21 experience lower maintenance costs associated with  
22 its units?

23 A. I'm not sure I agree with that.

24 Q. Well, if dispatch is lower --

25 A. If dispatch is lower, the maintenance

1 costs should be lower, yes.

2 Q. Okay. So you do agree with that.

3 A. Yes.

4 Q. And in your testimony, do you recall you  
5 also talked about the fact that unanimous consent is  
6 required to retire the OVEC units. Do you recall  
7 that?

8 A. Yes.

9 Q. Are you -- in making that statement, is  
10 that something that you gathered from your review of  
11 the Intercompany Power Agreement or is that just  
12 something somebody told you? How do you know that?

13 A. It's been a topic of discussion in --  
14 before, at Duke, that it couldn't unilaterally retire  
15 the units.

16 Q. Are you aware of what provision in the  
17 ICPA provides that?

18 A. I think it's the contract that commits us  
19 to 2040.

20 Q. Does -- and -- when you say "the  
21 contract," you are talking about the ICPA?

22 A. Yeah, correct.

23 Q. And you don't know what -- I understand  
24 you're saying that it's the fact that there's an  
25 agreement through 2040. Would you agree with me that

1 there's nothing in the ICPA that says that the  
2 parties require that it -- that they are required  
3 unanimous consent to terminate the contract?

4 MS. KINGERY: I am going to be object.  
5 The witness has previously stated in testimony  
6 tonight that he is not familiar with the ICPA.

7 EXAMINER WALSTRA: Overruled.

8 A. I don't -- I don't agree. Because I  
9 think we would have -- we would have explored that in  
10 the past and I don't think we have.

11 Q. You don't know what provision in the  
12 ICPA --

13 A. I can't point it out. Not today.

14 Q. If I provided you a copy, would you be  
15 able to find it?

16 A. I guess if we had more time, yeah,  
17 probably.

18 MR. BERGER: Just one minute, your Honor.

19 MR. OLIKER: Mr. Jennings, do you still  
20 have the IEU Exhibit 5?

21 THE WITNESS: Excuse me?

22 MR. OLIKER: Do you still have IEU  
23 Exhibit 5 that I gave you? Or did I take it back?

24 THE WITNESS: Yep.

25 MR. OLIKER: Okay. He's got it.

1           Q.     (By Mr. Berger) Yeah, so if you could  
2     take a few minutes to look at that document and let  
3     me know what provision you are referring to.

4           MS. KINGERY: Your Honor, I don't believe  
5     there's been any showing at this point that the  
6     witness has ever reviewed this document.

7           MR. BERGER: Your Honor, he's testified  
8     about the fact that it's from the ICPA that he  
9     understands that unanimous consent is required to  
10    retire the units.

11          MS. KINGERY: That isn't actually what he  
12    said. He said he learned that from conversations  
13    with other people at Duke. He didn't say he had read  
14    the document.

15          MR. BERGER: He said it was his  
16    understanding that came from the agreement. So I'm  
17    asking him if -- otherwise, I would move to strike  
18    his testimony in this respect because otherwise he is  
19    just testifying on hearsay and he can't even identify  
20    the provision that he is referring to. He said it  
21    came from the agreement.

22          EXAMINER WALSTRA: Overruled.

23          A.     Is this the entire agreement?

24          Q.     It's not very long. It's not a very long  
25    agreement.

1           A.     So if you look at Section 8.03 -- or,  
2     8.04, it says that "Unconditional Obligation to Pay  
3     Demand and Other Charges. The obligation of each  
4     Sponsoring Company to pay its specified portion of  
5     the Demand Charge under Section 5.03, the  
6     Transmission Charge under Section 5.04, and all  
7     charges under Article 7 for any Month shall not be  
8     reduced irrespective of," and it talks about  
9     different reasons.

10           So if you go back to 5.03, it says  
11     "Demand Charge. During the period commencing with  
12     the Effective Date and for the remainder of the term  
13     of this Agreement," which I think means until 2040,  
14     "demand charges payable by the Sponsoring Companies  
15     to Corporation shall be determined by the Corporation  
16     as provided below in Section 5.03. Each Sponsoring  
17     Company's share of the aggregate demand charges shall  
18     be the percentage of such charges represented by its  
19     Power Participation Ratio." So I think that that  
20     alone demands that we pay it until the termination of  
21     the contract.

22           Q.     Right. But there's nothing in the ICPA  
23     that you are aware of that says that the parties  
24     can't agree by -- or, have to agree by unanimous  
25     consent --

1           A.    So I could decide --

2           Q.    -- to terminate the provision of the  
3 contract.

4           A.    I could decide to retire my share, but I  
5 am going to continue to pay the charges until 2040 is  
6 what I am telling you.  And someone else can take my  
7 shares, but I am going to still continue to pay the  
8 charges.

9           Q.    Right.  But you are not aware of any  
10 provision, Mr. Jennings, in the contract that says  
11 under what conditions an amendment or termination of  
12 the contract may be accomplished.

13           MS. KINGERY:  And, your Honor, if we are  
14 going to ask Mr. Jennings, at this point, whether  
15 there is any provision that says that, he needs to be  
16 provided with half an hour or so to read the  
17 document.

18           MR. BERGER:  I am asking him whether he  
19 is aware of any provision that specifies a certain  
20 number -- or, certain requirements for termination or  
21 amendment of the contract.

22           A.    It's an interpretation of this clause  
23 that we are committed to make those payments until  
24 2040.  All members are.  And so, if all members agree  
25 that they were going to retire them, then they would



1 basically be agreeing to terminate the agreement.  
2 But until the termination of the agreement, there's  
3 no retirement of the unit. That's -- that's what I  
4 am trying to say.

5 Q. So what I understand you're saying is  
6 that because it's a contract, it can't be terminated  
7 unless everybody agrees.

8 A. That's correct.

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

11 EXAMINER WALSTRA: Thank you.

12 Mr. Kurtz?

13 MR. KURTZ: No questions.

14 EXAMINER WALSTRA: Mr. Petricoff?

15 MR. PETRICOFF: Thank you, your Honor.

16 THE WITNESS: You have got to get that  
17 dog out, remember?

18 (Laughter.)

19 MR. PETRICOFF: No, no. I have been in  
20 this Commission long enough, I already -- at the  
21 break I already made arrangements to have the dog  
22 walked. Otherwise, he would have to wait too long.

23 Well, we can see that I'll have no  
24 problems with the SPCA.

25 (Laughter.)

1                   THE WITNESS: I might have to go to the  
2 bathroom now.

3                   - - -

4                   CROSS-EXAMINATION

5 By Mr. Petricoff:

6                   Q.    Okay. Well, on a lighter note, let's  
7 take a look -- I have got a couple of things I  
8 want -- in your testimony that I want to clean up  
9 here for the record. And we'll try to -- it will be  
10 somewhat disjointed because you have had a lot of  
11 cross-examination now and I will try to avoid.

12                  A.    They softened me up for you.

13                  Q.    Yeah. Or dug me into a huge hole.

14                  A.    Not with you, Howard.

15                  Q.    Let's start from the beginning. If you  
16 would turn to page 1 and I want you to look at the  
17 answer starting on line 5. I am going to ask you  
18 about the players here and let's find out. First,  
19 you are saying I'm employed by Duke Energy Carolinas,  
20 LLC, an affiliate of Duke Energy Ohio. Now, Duke  
21 Energy Ohio is the utility that serves a service  
22 district in southwest Ohio, right?

23                  A.    Yes.

24                  Q.    What does Duke Energy Carolinas do?

25                  A.    The same thing in North Carolina.

1 Charlotte.

2 Q. Okay. And -- okay. So basically Duke  
3 Energy Carolinas takes -- is devoted to a service  
4 area in -- in North Carolina, but it's a subsidiary  
5 of -- I'm sorry, it's an affiliate.

6 A. Affiliate, yes.

7 Q. Of Duke Energy.

8 A. Distant cousin.

9 Q. Right. So basically there's very little  
10 interlap then between Duke Energy Carolina and Duke  
11 Energy Ohio, in the normal course of business?

12 A. In the normal course of business, that's  
13 true.

14 Q. Okay. Now, Duke Energy Commercial  
15 Enterprise, that's on line -- line 7, who are they?

16 A. That's a service company that provides  
17 consulting and advice to -- to all affiliates.

18 Q. Now, did the legacy generation from Duke  
19 Energy Ohio go to Duke Energy Commercial Enterprises?

20 A. No.

21 Q. Okay. Where did the legacy generation go  
22 before it went to Dynegy?

23 A. It hasn't gone to Dynegy.

24 MS. KINGERY: Your Honor, could we get a  
25 clarification what exactly you mean by the "legacy

1 generation."

2 Q. Oh, sure. These would be the nine power  
3 plants and -- and OVEC -- oh, thank you -- the nine  
4 power plants and the right to the OVEC generation  
5 that was -- that's owned by Duke Energy Ohio. That's  
6 what I mean by the legacy generation.

7 A. So OVEC is still owned by Duke Energy  
8 Ohio and there was a transfer of some of the legacy  
9 Ohio assets from Duke Energy Ohio to Duke Energy  
10 Commercial Asset Management which is a different  
11 company from Duke Energy Commercial Enterprises.

12 Q. Well, what we are trying to do is get all  
13 the players down here. And what is the relationship  
14 between Duke Energy Assets, Duke Energy Ohio, and  
15 Duke Energy Commercial Enterprise?

16 A. Duke Energy Commercial Enterprise is a  
17 service company that houses certain shared service  
18 employees that provide services across different  
19 affiliate structures.

20 Q. Does Duke Energy assets hold any  
21 generation other than the generation that was  
22 transferred to it? What we've identified here as the  
23 legacy generation?

24 MS. KINGERY: Can we get a clarification?  
25 I'm sorry. When you say "Duke Energy Assets," are

1 you talking about Duke Energy Commercial Asset  
2 Management?

3 MR. PETRICOFF: Yes.

4 MS. KINGERY: Can you call it "DECAM."

5 THE WITNESS: DECAM, that's easier to  
6 remember.

7 MR. PETRICOFF: We'll use that.

8 Q. What does DECAM own at the moment?

9 A. They own the legacy Duke gas assets that  
10 are located in PJM which includes Lee, Fayette,  
11 Washington, Hanging Rock, and then it also owns the  
12 legacy Ohio assets, except for Beckjord right now,  
13 which is going to be spun and transferred to DECAM, I  
14 believe, on December 1 -- no. It's going to be  
15 transferred to an LLC, another LLC.

16 But DECAM owns Miami Fort, Zimmer --  
17 Miami Fort, Zimmer, what -- the Stewart, Killen,  
18 Conesville, I can't think if I am missing anything or  
19 not. Everything except -- everything that was in the  
20 old portfolio except for Beckjord is there right now.  
21 Natural gas assets.

22 Q. And Beckjord is going to be closed?

23 A. Yes. What is not closed already will be  
24 closed.

25 Q. And I think it's just like one unit

1 that's still running in Beckjord?

2 A. There is four combustion turbines that  
3 are still available.

4 Q. Okay. And what will DECAM own then  
5 after -- after the arrangement with Dynegy closes?

6 A. They will still own all of that because  
7 Dynegy is buying DECAM, the company.

8 Q. Okay. So at that point then DECAM will  
9 no longer be affiliated with Duke Energy Ohio.

10 A. That's correct.

11 Q. Okay. Now, earlier, I know you told  
12 Mr. Olikier you personally haven't done any  
13 dispatching. Are you aware though of how the OVEC  
14 generation is dispatched from the Kyger Creek and  
15 Clifty Creek plants?

16 A. Not more than what I've said in my  
17 testimony already which is basically just fundamental  
18 PJM energy market dispatch.

19 Q. I want to take you down one -- one level  
20 of detail below that. When the units are dispatched,  
21 does Duke dispatch its 9 percent, or are the units  
22 dispatched as a whole on behalf of OVEC?

23 A. So that's kind of a good question given  
24 that it's kind of mixed, a little bit of both. Units  
25 have to be committed as one unit. I can't

1 dispatch -- you can't start up 9 percent of the unit,  
2 but each of the sponsors offer their own shares  
3 separately to PJM. So the assumption is that the  
4 unit is started and then -- and then once it's  
5 started then it's dispatched off of incremental costs  
6 that are provided by each of the sponsors for their  
7 9 percent share. Duke would do 9 percent.

8 Q. So it's possible then that Duke could  
9 have a different dispatch instruction and a different  
10 set of prices that are sent to PJM than -- than the  
11 portion that's owned by AEP or the portion that's  
12 owned by Louisville?

13 A. That's where it gets complicated. The  
14 price would be the same. Although, I don't know how  
15 Louisville would be priced because their share is not  
16 in PJM. But let's just say another PJM member, the  
17 price should be the same. And the dispatch could be  
18 different, perhaps, depending on how the other party  
19 offers.

20 So, you know, if the other part is  
21 offering on a price-based offer, not necessarily  
22 cost-based offer, then -- and it was higher than  
23 Duke's offer, then Duke's -- Duke's share could be  
24 going up while the co- -- the joint owners' share  
25 could be going down at the same time.

1 Q. Okay. Now, if you will turn to page 10  
2 of your testimony. There is where you -- I will give  
3 you a line reference here in a moment.

4 A. Okay.

5 Q. I want you to look at lines 11 through  
6 14. This is where you're offering in the alternative  
7 that -- that Duke would submit to audits and an  
8 investigation or review and evaluation of its bidding  
9 strategies. Given what we've just been through,  
10 aren't they going to have to look at all of them  
11 for -- for OVEC, not just Duke's 9 percent?

12 A. I don't think so. Like I just said, if  
13 the joint owner was offering at a price higher than  
14 Duke was offering their share at the same time, it  
15 can actually dispatch Duke's share up and the  
16 co-owner's share down.

17 Q. But I thought you told me earlier that --  
18 that the -- the smallest granulation on which you  
19 could dispatch is a unit.

20 A. No. I didn't say that.

21 Q. Well, let's ask that. What's the  
22 smallest -- if, in fact, we have three different  
23 prices for -- for dispatching and everyone just owns  
24 a percentage, how does that get -- what are the  
25 instructions that go to -- to PJM?



1           A.    There's two sets of instructions.  One is  
2           called "unit commitment," and the second one is  
3           called "dispatch."  And so, we would dispatch  
4           individually commit together.

5           Q.    And when you say "commit," what would you  
6           be committing, committing the unit to run?

7           A.    It's called "start up."  Commitment and  
8           start up are synonymous.

9           Q.    Okay.  And clarify that for me.  What do  
10          you mean by start up?

11          A.    Putting -- putting coal in the boiler.

12          Q.    Okay.

13          A.    And lighting the boiler and sending steam  
14          to the turbine and generating megawatts pushing to  
15          the grid.

16          Q.    Okay.  You will agree with me that a  
17          steam plant like Clifty Creek and Kyger can't be  
18          turned on and off.  They can't be toggled on and off.  
19          You need days to warm them up and days to cool them  
20          down.

21          A.    That's correct.

22          Q.    That's right.  So when you are talking  
23          about committing them, you are just -- you would  
24          commit them so they would have to be, in other words,  
25          in a position where they could be ramped up to

1 deliver power all the time.

2 A. I don't think that's the case. It could  
3 be the case, but I don't know that that's the case.  
4 So this is common in coal plant operation. It's  
5 nothing new. People have to do this all the time.  
6 It's difficult to get a coal plant started if your  
7 start up is a million dollars, right?

8 So you actually have to have economic  
9 view of, you know, what pricing is going to be the  
10 next day or the day after or a week. And actually,  
11 you have to provide -- you have to provide cost-based  
12 offers for, like, I think it's the next seven days so  
13 that PJM can actually be looking at what your  
14 economics are in the future days.

15 So it's -- it's not like you are just  
16 going to -- you don't have to just self-schedule  
17 things to get them started. That's my point. You  
18 may actually be self-scheduling, but you are  
19 self-scheduling with -- under economic analysis.  
20 You're making an economic analysis that it's the  
21 right thing to do. You're not just running it.

22 Q. Well, the reason I am running through  
23 this is I am trying to get a feel about how much  
24 discretion, how many variables, and how easy an audit  
25 is going to be. And your indication to me is that

1 we -- it would be committed jointly by OVEC, but,  
2 after that, we would have to go through each of the  
3 12 owners, look at their percentages, and look at  
4 their pricing to get a feel as to whether the policy  
5 or the pricing selected by Duke was -- was prudent.

6 A. I disagree. I think that you could audit  
7 each -- each owner separately or only one owner. I  
8 think where it's more complicated is in the start up,  
9 but I think that you could actually talk to one owner  
10 and be able to audit the start up because I think  
11 everyone is going to have the same information on  
12 start up.

13 The part where you run into antitrust  
14 issues is when you get into the dispatch and that's  
15 where everybody has to keep their offers separate and  
16 dispatch separately. And that, you only need to know  
17 what we're doing for our share of that. You don't  
18 need to know -- as long as we are the only ones that  
19 need to be audited.

20 Q. Well, you know what you are doing, but  
21 you wouldn't know whether the assumptions that you  
22 made and the strategies that you were following in  
23 pricing were reasonable unless you looked at what  
24 others were doing for the same plan.

25 A. I don't understand why you have to know

1 that. If the costs -- if I'm offering my costs, you  
2 can see the costs. Why would you have to see someone  
3 else's offer if they are not -- if they are not being  
4 audited for the same reason?

5 Q. Isn't it possible that in terms of an  
6 audit you would want to know what -- what someone  
7 with a like unit, an absolutely like unit was  
8 offering in, and if they come to different  
9 conclusions on price?

10 A. I don't know why you would have to know  
11 that. If you are getting the costs from OVEC and you  
12 could -- I don't see why you wouldn't be able to  
13 audit what -- what we're receiving from OVEC in order  
14 to construct our offer. And if you're looking at  
15 actual costs, transcending that to the offer, and you  
16 see that I'm offering at my cost, why would you want  
17 to see if someone else is offering at a higher price  
18 if they are not being audited for the same reason?

19 Q. Well, let's just bring this discussion to  
20 a close. I guess I was thinking of auditing as sort  
21 of deconstructing. You're going back to break down  
22 the decision --

23 A. That's not the way dispatch works.  
24 Dispatch is more of a construction of bottoms-up  
25 rather than top-down.

1           Q.    I wasn't looking at the direction.  Let  
2   me put the question to you and then you can -- get  
3   your answer.  And my question to you is simply this:  
4   The offer that you are making on page 10 for an audit  
5   by the -- by the staff of the Commission is an audit  
6   only of the decisions that were made by Duke and  
7   without a pledge or a promise to look at what the  
8   co-owners have done at the same time with the same  
9   units?

10           A.   That's correct.

11           Q.    Okay.  Okay.  The next, if you would take  
12   a look on page --

13           A.    Are we still on a 20-minute schedule?

14                   (Laughter.)

15           A.    Sorry.

16           Q.    No, no.  You will notice my preface of my  
17   remarks I already made arrangements for the dog to be  
18   walked.

19           A.    I know, but you might have to walk me in  
20   a minute.

21           Q.    Fair enough.

22           A.    Okay.

23           Q.    Let's go to page 3 of your testimony,  
24   lines 14 to 16.

25           A.    Page 3?

1 Q. Yeah. Page 3.

2 A. Line?

3 Q. 14 to 16.

4 A. Okay.

5 Q. And you make the comment there that  
6 under -- under the rider PSR, Duke would commit to  
7 offering all of the economic value of its contractual  
8 entitlement into the day-ahead and capacity markets.

9 A. Yes.

10 Q. And my question for you is what's Duke  
11 doing right now? Isn't that what Duke is doing right  
12 now?

13 A. I think that's true.

14 Q. And you have done it for at least a year?

15 A. Yeah.

16 Q. And do you have any feel for whether at  
17 the moment, in comparing the revenues from -- the  
18 revenues from the capacity and energy sales versus  
19 the obligation to pay OVEC, whether this has been a  
20 money maker or money loser last year for Duke?

21 A. I don't review the P&Ls.

22 Q. Okay.

23 MS. KINGERY: And I do just want to  
24 caution that we might get, here, onto the edge of  
25 confidential information.

1 MR. PETRICOFF: I don't think so. If he  
2 says he doesn't review it, I'm moving on.

3 Q. Okay. Then the -- let's see, the next  
4 would be on the page 4, lines 17 to 20, this is where  
5 you talk about there are two ways -- I guess, in  
6 essence, two kinds of capacity pricing at PJM, FRR  
7 and the RPM. Would you agree with me that starting  
8 in 2015, it will only be RPM? There will be no FRRs  
9 left?

10 A. No. I disagree. I think AEP's  
11 Appalachian and their West Virginia utilities are  
12 still FRR.

13 Q. There will be no Ohio FRR.

14 A. I don't think there will be an Ohio FRR.

15 Q. Okay. Okay. Next, I would like you to  
16 turn to page 5 and look at line 16. And there you  
17 tell us that the -- that the MOPR, the pricing for  
18 new generation, is not applicable to existing  
19 generation that has previously cleared an RPM  
20 auction.

21 A. Yes.

22 Q. Okay. What if the existing generating  
23 unit had a major capital expansion and enlarged its  
24 output, would it have to go through MOPR?

25 A. Yes, it could.

1 Q. And what if the major capital  
2 expenditure -- I'm sorry.

3 A. I will clarify. I think it has to be an  
4 increase in capability, not -- not just a capital  
5 expansion. It's actually -- you have to increase the  
6 output, too --

7 Q. Okay. Actually, you --

8 A. -- a certain amount, too, I think.

9 Q. You foresaw my next question because I  
10 was going to ask if the capital investment was for  
11 environmental control equipment, in that case would  
12 you have to go through the MOPR as opposed to being  
13 cleared if you had previously been in the auction.

14 A. No, but you would have the option of  
15 including it in your capacity offer through the APIR.

16 Q. And you would do -- and you would do that  
17 to make sure that you will be able to cover the now  
18 higher fixed costs.

19 A. That's correct, you could, unless you are  
20 already subjected to them anyway and, therefore, you  
21 might not include them in there.

22 Q. Okay. Now, if you would, turn to page 7  
23 of your testimony on line 20 and 21. And this is  
24 where -- I know this is ground that's been treaded  
25 before, so I'll keep these questions short and



1 focused. Because Duke has a contractual entitlement  
2 until 2040 and because -- and let me just stop there.  
3 And that was the discussion you just had with  
4 Ms. Bojko about the obligation under the -- the  
5 intercompany partnership agreement?

6 A. I think it was -- I think the discussion  
7 was with OCC.

8 Q. Oh, I'm sorry. But the -- this was your  
9 previous testimony that -- that the 2040 limit comes  
10 out of the intercompany partnership agreement?

11 A. Correct.

12 Q. Okay. Was that agreement and the  
13 extension to 2040 a fairly recent event?

14 A. I don't recall.

15 Q. Okay.

16 A. I guess recent is relative, right?

17 Q. Okay. Didn't the original --

18 A. It happened while I was still at Duke,  
19 that's -- it happened sometime in the last 15 years,  
20 but it happened before -- I think it happened before  
21 Jim Rogers retired, so that seems like a while ago  
22 now.

23 Q. Well, but relatively speaking, the  
24 original partnership agreement expired, and then it  
25 was renewed five years ago? Did that get me to

1 Rogers?

2 A. I don't know if it expired, but it was  
3 renewed.

4 Q. It was renewed, right, and at that time  
5 it was renewed until the year 2040.

6 A. That's right.

7 Q. And do you know, did -- did Duke seek  
8 Commission approval before it extended its obligation  
9 to 2040?

10 A. I don't know.

11 Q. If you know, is it Duke's position that  
12 the customers have any obligation to pay costs for  
13 the OVEC units until 2040?

14 A. I don't know that. I don't have an  
15 opinion.

16 Q. I would like you to focus in on page 8 of  
17 your testimony, lines 2 -- 2 and 3. And, actually, I  
18 think this may be even more -- I'll point this out to  
19 you because there are words in here that are so  
20 important. This is where you say to maximize gains  
21 and minimize losses under the rider PSR, Duke Energy  
22 Ohio will bid its share into the BRA at zero, thereby  
23 guaranteeing that it will always receive capacity  
24 revenues at the BRA price. Do you see that --

25 A. Yes.

1           Q.    -- in that testimony? So I want to -- I  
2 want to break that -- I want to break that down.  
3 If -- let's see, if Duke -- when Duke bids at zero,  
4 you will agree with me that it's not going to get  
5 zero for capacity. It's going to get whatever that  
6 incremental price was that closed the auction,  
7 whatever that last increment, whatever that cost to  
8 close the BRA auction, that's what everybody gets.

9           A.    Are you saying ignoring the -- the PSR?  
10 Because I think if the PSR were approved, then  
11 customers would get that BRA price.

12          Q.    No, no. Right now we're ignoring it. I  
13 am just working on the concept of -- of bidding in at  
14 zero.

15          A.    You're basically building a foundation on  
16 the clearing market, right?

17          Q.    That's where I'm going, but we will get  
18 to that later. Your job now is just to answer the  
19 question, and the question before you is: When you  
20 bid zero in the BRA, isn't it true that you will get  
21 whatever the closing price is in the BRA?

22          A.    For that location, yes.

23          Q.    Okay. And the reason that you would bid  
24 zero is because if you bid something other than zero,  
25 it's possible that the BRA could close at a price

1 below your bid.

2 A. Yeah, you risk not clearing.

3 Q. Right. And what happens to those that  
4 don't clear?

5 A. They get zero.

6 Q. Now, you still could sell the energy and  
7 capacity, correct?

8 A. You could still sell the energy and  
9 ancillary services and you could still possibly clear  
10 in an incremental auction which there -- currently  
11 there are three incremental auctions that occur after  
12 the BRA. But, historically, the BRA price has been  
13 higher than the incremental auction price.

14 Q. Okay. So the reason that you say to  
15 maximize the gains and minimize the losses, Duke  
16 would bid zero in the BRA, is out of fear that  
17 your -- otherwise, if you bid more, it may not clear  
18 and you may get nothing for the capacity.

19 A. So I wouldn't -- I wouldn't characterize  
20 it like that.

21 Q. Well, I didn't ask how you would  
22 characterize it. I want to know if that statement is  
23 correct.

24 A. It sounded like you characterized it.

25 Q. That's right. I want to know if my

1       characterization is correct.

2               A.    I would disagree with you.  I would say  
3       no.  If you'll let me to clarify, then I might agree,  
4       but I don't understand your question the way you are  
5       stating it.  The reason I say that --

6               Q.    Let's stop there.  If you don't  
7       understand my question, I will ask it again.

8               A.    Okay.  Go ahead.

9               Q.    You will agree with me that the risk that  
10      one has in bidding in a price rather than zero, is  
11      that the price you bid may result in not having your  
12      bid clear the auction.

13              A.    So I still disagree with you because the  
14      reason -- this is really a concession more than  
15      anything.  People that enter into capacity contracts  
16      with units, specific units, if they are guaranteeing  
17      that they are going to pay somebody every month for  
18      that capacity, they don't want the risk of it not  
19      clearing.

20                      So if you are going to tell me you are  
21      going to pay me so much money a month to get the  
22      capacity revenues from me, I'll offer it at zero to  
23      make sure it clears.  Good, rational behavior, if I  
24      could actually avoid those costs, would be to offer  
25      at something else and then mothballing if it doesn't

1 clear.

2 But, in a contract, I think that -- I  
3 think that I would offer it at zero to make sure that  
4 you are going to get your revenues, because you are  
5 going to pay me no matter what.

6 Q. Okay. Well, let's take that a step  
7 further.

8 A. Okay.

9 Q. What if you -- if you did the  
10 calculations and you knew that in order to cover your  
11 fixed costs you would need \$100 a megawatt-day and  
12 you are pretty sure that the -- that the market  
13 price -- that the BRA price was not going to come in  
14 above \$70, would you still bid in?

15 A. Are we talking about a generic unit, or  
16 are we talking about the OVEC units?

17 Q. We are talking about a generic unit. We  
18 are on a theoretical basis now.

19 A. That's not the -- that's not the scenario  
20 that we are talking about here, though.

21 Q. No. But you have to answer my question.  
22 That's my question to you.

23 A. Okay. So if I was going to offer a \$100  
24 unit and I thought the price -- I will still offer it  
25 in, yeah, I would offer it at my cost if it wasn't --

1 if it wasn't committed to someone else.

2 Q. Even though you knew at that point that  
3 if your projection was correct, you would have a \$30  
4 loss.

5 A. Yeah, I would, yeah.

6 Q. Okay.

7 A. I don't know that I would have a \$30  
8 loss, though, because if I offered it at 100 and it  
9 clears at 70, I get zero, and I am waiting for the  
10 incremental auction, so I have a \$100 loss if that  
11 auction clears. But I am going to -- I am going to  
12 have to wait until I get to the next auction. That  
13 would be rational behavior is to offer at my cost  
14 which is 100 and hope that it clears at 100.

15 Q. As long as we are talking about rational  
16 behavior, it could be that if you foresaw that you  
17 were permanently going to be above what you thought  
18 the BRA prices were, you would close the unit.

19 A. Yes.

20 Q. Now, let's -- let me ask about OVEC.  
21 Does anything in this discussion that we have just  
22 had about how your bid would change, if we are  
23 talking about the OVEC units, assuming that we --  
24 well, let me just leave it there. Does anything  
25 change if we say instead of a theoretical \$100 unit,

1 it's OVEC at \$100 in what we think is a \$70 BRA  
2 market?

3 A. Yeah, it changes.

4 Q. Okay. What changes?

5 A. Well, what changes now is that -- is that  
6 because I can't -- I can't avoid the \$100, I am going  
7 to offer it at zero and take 70, because then I only  
8 lose 30.

9 Q. If this Commission does not approve PSR,  
10 that risk of losing 30 is the risk of Duke's  
11 shareholders, correct?

12 A. Could be, yeah.

13 Q. I'm sorry, what?

14 A. I said, yeah, it could be.

15 Q. Was there any -- any scenario where it  
16 wouldn't be?

17 A. If we found another counterparty to sell  
18 it to.

19 Q. Explain that to me.

20 A. If there was someone else -- so let's  
21 just assume that PJM gets approval of their capacity  
22 performance and the next auction clears at \$300 a  
23 megawatt-day, I think finding a counterparty will be  
24 pretty easy.

25 Q. Now, let's -- if, in fact, the -- the



1 rider PSR was approved by the Commission, at that  
2 point then, the risk of bidding in at -- bidding in  
3 zero, when your costs are 100, in a \$70 BRA market,  
4 that loss would be on the ratepayers.

5 A. Yes. If the auction clears at \$70, in  
6 that case it would be on the ratepayers. If it  
7 clears at \$300, as I just suggested, then the  
8 ratepayer would get \$230.

9 Q. Okay. Who knows the most about this --  
10 this unit? Duke or the ratepayer? I said "this  
11 unit," I mean Kyger Creek.

12 A. I think we are on equal ground here.

13 Q. We are on equal ground?

14 A. I think we are. I mean, I don't know  
15 that much about it. We don't go to the plants very  
16 often. I mean, this is -- this is an agreement  
17 that's somewhat of a grandfathered situation. So we  
18 know more about electric generation than the  
19 ratepayer. I don't know how much more we know about  
20 OVEC.

21 Q. That being the case that it's somewhat of  
22 a blind commitment on both sides as you've described  
23 it, shouldn't you at least offer to the -- to the  
24 customers, those who want to participate can, those  
25 who don't want to participate don't have to? Why

1 does it have to be mandatory?

2 A. I don't know. That's not my part.

3 Q. Okay.

4 A. I will say this, that the intimacy with  
5 the unit is somewhat irrelevant. It's really more  
6 about the financial situation that you're in, on  
7 either side, as the buyer or the -- the utility. If  
8 you expect -- if you understand the market and you  
9 expect that the cost of energy is going to be higher  
10 in the future, then this somehow reduces your  
11 expectation of costs in the future, then -- then you  
12 understand the situation. I think understanding how  
13 electric is made is somewhat irrelevant, right?

14 Q. Let's go back because I want to make  
15 sure. You said the cost of energy. Did you really  
16 mean the cost of capacity?

17 A. It's both, because -- because if -- if,  
18 next January, electric prices go to \$2,700 a  
19 megawatt-hour, ratepayers will be paying whatever it  
20 is at OVEC. Say it's -- we'll just say it's 50, I  
21 don't know what it is, but when it goes to \$2,700 a  
22 megawatt-hour, they are going to be paying for \$50  
23 worth of fuel and they are going to be getting 26 --  
24 \$2,700 worth of revenue back against that \$50  
25 investment in fuel.

1           Q.    Well, let's go back a second.  If you are  
2   in the capacity market, you don't have to run at all  
3   in order to get your capacity payment from PJM,  
4   correct?

5           A.    You do not, but why wouldn't you if you  
6   were in the money?

7           Q.    Well, I am just saying you are going --  
8   but that's a fixed sum you are going to get for the  
9   capacity.  In addition, you may get additional  
10  revenues if you run, assuming that we won't run  
11  unless we cover our variable price, correct?

12          A.    That's right.

13          Q.    Okay.  So --

14          A.    I think you're okay when it's \$2,700 a  
15  megawatt-hour, though.

16          Q.    Well, let's go back because we are here  
17  to -- even if it was \$2,700, you would agree with me  
18  you wouldn't run the plant if it was -- if the cost  
19  was below your variable cost.

20          A.    No.  If you mean if the LMP was lower  
21  than your variable cost.

22          Q.    Right.  You would never -- you would not  
23  dispatch.

24          A.    Probably not.

25          Q.    Okay.  And so, you're saying that you can

1 make money on energy if, in fact, the LMP price, the  
2 price in the zone, happens to be lower than the cost  
3 of the generation coming out of the OVEC units,  
4 right?

5 A. No. It has to be higher than the cost of  
6 the generation.

7 Q. I'm sorry. That's right. You would  
8 agree with me that -- no, the -- the price for energy  
9 has to be higher than the -- than the variable cost  
10 of generating out of the OVEC units.

11 A. I agree with you now.

12 Q. Okay. Good. Because it's late and we  
13 got to get this record in a readable form.

14 A. I understand.

15 Q. Okay. Now --

16 A. In your readable form, right?

17 (Laughter.)

18 Q. Now, with that in mind, should we revisit  
19 the question I asked you earlier, then doesn't a real  
20 familiarity with what costs it takes to run OVEC  
21 become important, the OVEC units?

22 A. I think it only matters if -- what my  
23 cost is if you are only interested in how much of my  
24 generation is clearing and how much of it is being  
25 dispatched. But, regardless, I think my opinion

1 about that is irrelevant. It really comes down to  
2 the joint owners, about whether they want to share  
3 that, and maybe they will. But I don't think that --  
4 that an auditor needs it.

5 Q. That's just the information. I am just  
6 talking about making the decision on -- on whether  
7 this should be a business risk of the shareholders or  
8 this being a business risk that the ratepayers take,  
9 wouldn't -- in order for them to really gauge whether  
10 or not there's going to be a revenue stream coming  
11 out of the energy side, you would really have to know  
12 what the costs are to produce that -- that energy out  
13 of the OVEC plants; isn't that true?

14 A. You would really have to know.

15 Q. You would really have to know.

16 A. Yeah, I think we do know. I think  
17 everyone knows, right? We know what it costs and we  
18 are going to share that information.

19 MR. PETRICOFF: Okay. Your Honor, may I  
20 just have a minute to see if there is anything else?

21 EXAMINER WALSTRA: Sure.

22 Q. Mr. Jennings, do you have any feel about  
23 what the decommissioning costs -- well, first of all,  
24 who would pay the decommissioning costs for the OVEC  
25 plants if it did appear that they were no longer

1 economic to run?

2 A. I don't know that at all. I have no  
3 clue. I don't know if it's defined anywhere.

4 Q. Do you know if that's covered in IEU  
5 Exhibit 5, the agreement, the intercompany  
6 partnership agreement?

7 A. It --

8 Q. I am not going to ask you to research it  
9 if you don't know.

10 A. It probably is. I don't know. I don't  
11 know.

12 Q. Let's assume that each of the -- each of  
13 the partners has their pro rata share of the  
14 decommissioning costs. If the Commission approves  
15 the rider PRS, would --

16 A. PSR.

17 Q. PSR, thank you, it didn't sound right.  
18 If they approve the PSR, would that change -- would  
19 the customers then become obligated for any of the  
20 decommissioning costs?

21 A. I don't know. I don't know how that's --  
22 I don't know the arrangement. I am not familiar with  
23 it.

24 Q. Is that something that the Commission  
25 ought to consider before it, in your opinion, before

1       it approves the rider?

2               A.    I don't have an opinion.

3               MR. PETRICOFF:   Okay.   I have no further  
4       questions.   Thank you very much.

5               THE WITNESS:   Thank you, Howard.

6               EXAMINER WALSTRA:   Staff?

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

9               EXAMINER WALSTRA:   Redirect?

10              MS. KINGERY:   May we have just a moment?

11              (Discussion off the record.)

12              MS. KINGERY:   We have no redirect.

13              EXAMINER WALSTRA:   Okay.   Thank you.   You  
14       may step down.

15              MS. KINGERY:   I would move for the  
16       admission of Duke Energy Ohio Exhibit 41.

17              EXAMINER WALSTRA:   Any objections?

18              MR. PETRICOFF:   No objection.

19              EXAMINER WALSTRA:   It will be admitted.

20              (EXHIBIT ADMITTED INTO EVIDENCE.)

21              MR. OLIKER:   Your Honor, IGS would move  
22       for the admission of Exhibit 14.

23              EXAMINER WALSTRA:   Any objections?

24              MS. KINGERY:   No objections.

25              EXAMINER WALSTRA:   That will be admitted.

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(EXHIBIT ADMITTED INTO EVIDENCE.)

MS. HUSSEY: Your Honor, on behalf of Ms. Bojko, I would like to move for the admission of OMA Exhibit 14.

EXAMINER WALSTRA: Any objections?

MS. KINGERY: No objection, your Honor.

EXAMINER WALSTRA: It will be admitted as well.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER WALSTRA: Since we are wrapping up here, we will go over the briefing schedule. As we discussed last time, initial briefs will be due December 15, with replies due on December 29. In regards to confidential information, since we have already ruled on everything, there will be no need to file an appeal. Anything else? We are adjourned then.

(Thereupon, at 6:39 p.m., the hearing was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, November 20, 2014, and carefully compared with my original stenographic notes.

\_\_\_\_\_  
Karen Sue Gibson,  
Registered Merit Reporter.

(KSG-5962)

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**11/26/2014 12:21:06 PM**

**in**

**Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA**

Summary: Transcript in the matter of Duke Energy Ohio hearing held on 11/20/14 - Volume XVI electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.