BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Duke Energy:
Ohio, Inc., for Approval : Case No. 15-50-GA-RDR
to Modify Rider FBS, Rider:
EFBS, and Rider FRAS. :

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PROCEEDINGS

before Ms. Sarah Parrot, Attorney Examiner, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-D, Columbus, Ohio, called at 10 a.m. on Tuesday, August 4, 2015.

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APPEARANCES:

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On behalf of the Applicant.

Bruce E. Weston, Ohio Consumers' Counsel
By Mr. Joseph P. Serio,
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On behalf of the Residential Utility Customers of Duke Energy Ohio, Inc.

Vorys, Sater, Seymour & Pease, LLP
By Mr. Howard M. Petricoff
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On behalf of the Retail Electric Supply Association.

Mike DeWine, Ohio Attorney General
By Mr. William L. Wright,
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Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

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Tuesday Morning Session,
August 4, 2015.

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EXAMINER PARROT: Let's go on the record. The Public Utilities Commission of Ohio has called for hearing at this time and place Case No. 15-50-GA-RDR being in the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider FBS, Rider EFBS, Rider FRAS, and Rider GTS. My name is Sarah Parrot. I am the Attorney Examiner assigned by the Commission to hear this case.

At this time let's get started with appearances. We'll start with the company.

MS. WATTS: Thank you, your Honor. Good morning. On behalf of Duke Energy Ohio, Amy B. Spiller and Elizabeth H. Watts, 139 East Fourth Street, Cincinnati, Ohio.

EXAMINER PARROT: Thank you. On behalf of OCC.

MR. SERIO: Thank you, your Honor. On behalf of the residential utility customers of Duke Energy, Bruce J. Weston, Consumers' Counsel, by Joseph P. Serio.

EXAMINER PARROT: Thank you. On behalf of IGS.

MR. OLIKER: Good morning, your Honor. On behalf IGS Energy, Joe Oliker, 6100 Emerald Parkway, Dublin, Ohio 43016. Thank you.

EXAMINER PARROT: Thank you. RESA.

MR. PETRICOFF: On behalf of the Retail Energy Supply Association, Howard Petricoff and Gretchen Petrucci, law firm for Vorys, Sater, Seymour & Pease, 52 East Gay Street, Columbus, Ohio.

EXAMINER PARROT: Thank you. Staff.

MR. McNAMEE: On behalf of the staff of the Public Utilities Commission of Ohio, Mike DeWine, Attorney General, the State of Ohio, I am Thomas McNamee, Assistant Attorney General. The address is 180 East Broad Street, Columbus, Ohio.

EXAMINER PARROT: Thank you. I would just note for the record counsel for Direct Energy, which Direct Energy is also a party to the case, counsel notified me last week that he is out of the office this week and would, therefore, not be present today, although it's my understanding and I do see Ms. Ringenbach with us, so Direct Energy is represented in that fashion today.

Are there any preliminary matters from the parties?

MR. PETRICOFF: Yes, your Honor. One

thing I would like to put on the record there were depositions taken in this case of the RESA witnesses on Thursday and Friday. Normal procedure is we would have 10 days to do the review and file errata sheets. Because that's after the hearing date we've taken a cursory review of the -- of the depositions, didn't find anything in there that was on a conceptual level incorrect. We will note for the record that the acronym of RESA though is misspelled. It should be R-E-S-A. Thanks.

EXAMINER PARROT: Thank you. Anything else from the parties?

All right. I see nothing.

Ms. Watts, you may call your first witness.

MS. WATTS: Thank you, your Honor. Duke Energy Ohio calls Jeff Kern.

May I approach, your Honor?

EXAMINER PARROT: You may.

(Witness sworn.)

EXAMINER PARROT: Very good.

MS. WATTS: Your Honor, at this time may I ask that the application in this proceeding be marked as Duke Energy Ohio Exhibit 1.

EXAMINER PARROT: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. WATTS: And may I further request that Mr. Kern's testimony be marked as Duke Energy Ohio Exhibit 2.

EXAMINER PARROT: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

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JEFF L. KERN

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

DIRECT EXAMINATION

By Ms. Watts:

Q. Sir, do you have before you a document that has just now been marked as Duke Energy Ohio Exhibit 2?

A. Yes, I do.

Q. Could you identify that, please.

A. This is my testimony.

Q. And I should ask you to please state your name first.

A. It's Jeff Kern.

Q. Thank you. And so, Mr. Kern, that's the testimony that you caused to be filed in this proceeding?

A. Yes.

Q. And did you prepare that testimony yourself?
A. Yes, I did.
Q. And if I were to ask you the questions contained therein again today, would your responses be the same?
A. Yes, they would.
Q. Do you have any additions or corrections?
A. No, I do not.
Q. And are the responses true and accurate to the best of your knowledge?
A. Yes, they are.
MS. WATTS: Mr. Kern is available for cross-examination.
EXAMINER PARROT: Thank you. OCC, did you have any questions?
MR. SERIO: Yes, your Honor, just a few, thank you.

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CROSS-EXAMINATION

By Mr. Serio:
Q. Good morning, Mr. Kern.
A. Good morning.
Q. Can you tell me in making plans for GCR customers, does Duke rely on spot market purchases

for gas to meet the needs of GCR customers on peak days?

A. On a peak day absolutely not. We do on occasion need to purchase spot swing, but it is very, very rarely.

Q. Are you aware of any Ohio LDC that relies on spot market purchases to serve the needs of their GCR or standard offer customers on peak days?

A. Not to my knowledge.

Q. Are you aware of any marketers in Ohio that rely on spot purchases to serve the peak day needs of their residential customers?

A. I don't know the answer to that. I am not aware of any.

Q. Now, am I correct that the intent of the FBS and the EFBS services is that the costs that you charge to marketers for those services are supposed to cover the costs of that service that you pay to the pipelines, correct?

A. Correct.

Q. And the intent is the GCR customers would not pay for any of the charges resulting from FBS or EFBS services that are used for nonresidential customers, correct?

A. That is also correct.

Q. I should say nonGCR customers. Now, just so that we're clear, how does the FBS and EFBS work with -- to the extent that it's services that are paid for by the GCR, but then costs are charged or credited back to the GCR.

A. The actual -- all of the charges for the storage that we need to provide those services are paid directly to the pipelines and so that flows through our GCR just like any other cost of purchasing gas. The -- the amount that is collected from suppliers for FBS or EFBS is used to generate that -- all those dollars go into a credit and then that credit is given back to the GCR customers.

Q. What's the fundamental difference between the FBS service and the EFBS service?

A. Well, under E -- or under FBS the -- the suppliers do not need to, you know, really adjust how much they are buying, how much gas they are delivering. We publish a targeted supply quantity each day that tells the suppliers this is how much you need to deliver to meet your customers' load, and any difference between what those customers actually use and what that amount we asked them to deliver, that comes in to or out of our storage. Basically Duke Energy handles that daily balancing on behalf of those suppliers.

Under enhanced firm balancing service, the EFBS, there it's -- in a way we are allocating part of the storage capacity to the supplier. And the supplier then on a daily basis can make up their own mind on how much gas do they want to overdeliver and cause injections, do they want to underdeliver and have withdrawals. That's up to them to manage the storage as they see fit.

Q. And the EFBS service then, as I understand it, provides greater flexibility for a marketer than the FBS service; is that correct?

A. That's correct.

Q. And because it provides more flexibility, the EFBS service is more expensive than the FBS service, correct?

A. It's -- I guess the real -- I agree EFBS is more expensive than FBS, but I think the offshoot of why it is more expensive is that EFBS is designed to recover the full cost of storage. Because the suppliers get the full benefit of having that storage it reflects the full cost where FBS is designed to recover the cost of that daily balancing, so it is a portion of the storage it is recovering rather than all of it.

Q. Now, the proposal that Duke put forth in this proceeding, you've -- you've made that proposal because it's the company's position that if the EFBS services is undersubscribed, then depending on the weather conditions, Duke would be forced to potentially purchase gas or sell gas into the market, and depending on the weather, the sale or purchase could result in additional costs flowing to the GCR, correct?

MR. OLIKER: Objection.

EXAMINER PARROT: Grounds?

MR. OLIKER: Your Honor, this has gone on for quite a while and we have allowed it to go on but, now, we are getting into a point where counsel for OCC is continuing to develop on their case which relies upon arguments about spot gas purchases and positions that are in align with the company and this is something they presented in testimony and the company has presented in testimony. I don't think they should be allowed to continue to develop it through friendly cross-examination.

MR. SERIO: Your Honor, for the most part my questions are trying to make it clear what the services provide, who uses the services, and who pays for the services. I don't think I have crossed the line on anything that resembles friendly cross at this point.

EXAMINER PARROT: And I am going to overrule the objection. I think it will be of considerable benefit to the Commissioners to really understand how these -- both of these riders are intended to operate, so I am going to give a little bit of latitude here to Mr. Serio, and I agree at this point we haven't crossed into what I would consider a friendly type of cross-examination so proceed.

MR. SERIO: Could you please repeat that question.

(Record read.)

A. Yes, that's substantially correct. The issue comes in with EFBS since we are allocating some of our storage rights for withdrawal to the suppliers to provide that service, we have to get additional firm transportation to take its place and that additional firm transportation is what we use to manage the storage balances.

When we don't have enough suppliers voluntarily choosing EFBS, we get into the situation where almost all of the GCR load is being met with storage, and so the only way we have to control the storage, how much is coming in or out on a daily basis, is to go out into the spot market and, like you said, either buy or sell gas in order to control.

Q. If you could turn to page 5 of your testimony. Your answer beginning on line 9, at the end of your answer you talk about "based on how close the Company came to exceeding the contractual limits on certain days during that winter." Do you see that reference?

A. Yes, yes.

Q. So you're saying for the winter of November, '13, through March, '14, because of the lower subscription rate on EFBS, the company almost incurred interstate pipeline penalties; is that correct?

A. I don't know that I would characterize it that way. I think actually, you know, we came so close to exceeding the storage more from a function of weather forecasts not being accurate. And, you know, the point I was making with this part of my testimony is that, you know, one of the proposals -- one of the things we looked at as a solution to this problem was decontracting some of the storage, and then we would have to get more FT to replace it.

Then -- so what the point I was making

with this is that, you know, the level of storage that we have right now is really necessary to avoid penalties and because we can't control the weather and we can't control weather forecasters, you know, we sometimes need as much storage as we have in order to account for these situations where there's a lot more load than what the weather forecasters had predicted.

Q. On page 6 of your testimony, you talk about the company having to purchase 2 million dekatherms of spot gas during the 2014-15 winter?

A. Yes.

Q. As a result of those purchases, did the company end up incurring additional costs, or was the company able to purchase that gas at a level that did not exceed the market prices?

A. Right. It was a market price but, again, it is a market price that has got delivery charges built into it. Again, we are using our own capacity to deliver the gas. You know, there's just basically the commodity charge. But when you are buying spot gas, there are additional charges from the marketers, just the delivery charge to get the gas there so, yeah, the price would end up higher than what it would be if we were buying the gas, you know, in our normal purchasing practices.

Q. So the company did not incur any additional costs in purchasing those 2 million dekatherms?

A. I did not look at those -- each individual purchase but, yeah, there were additional costs that were incurred over what -- what we would have if we had the capacity to meet that load without going into the spot market.

Q. The 2 million dekatherms that you purchased, was that prorated between Choice and GCR customers?

A. No. That was all for GCR customers.

Q. On page 7 of your testimony, you indicate that as fewer suppliers take the EFBS service, then the GCR has more storage and less FT available to meet customers needs; is that correct?

A. Correct.

Q. Now, because of that, that's what limits your ability to serve GCR customers then, correct?

A. Correct.

Q. If you know, does Duke incur costs in order to provide Choice services to marketers?

A. Yes. There are various systems in place. You know, we do the billing for I think the vast majority of the suppliers and their costs associated with that. We have entire departments that are devoted to the Ohio customers' Choice Program. And our city gate operations department, the employees there devote the majority of their time to working on managing the customer Choice Program.

Q. Does Duke charge marketers fees in order to recover the costs that you incur in providing Choice?

A. No, we do not.

Q. You don't have any fees to marketers?

A. The only fees are the FBS and EFBS that are to recover the balancing services but there are no fees to recover these other costs that I mentioned.

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

Thank you, Mr. Kern.

EXAMINER PARROT: IGS.

MR. OLIKER: Your Honor, if the parties wouldn't mind, I would prefer RESA counsel goes first.

EXAMINER PARROT: Okay.

MR. PETRICOFF: Fine with us.

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CROSS-EXAMINATION

By Mr. Petricoff:

Q. Good morning, Mr. Kern.

A. Good morning, Mr. Petricoff.

Q. I am on behalf of the Retail Energy Supply Association, and if you have any trouble hearing -- hearing me or if my -- if there is some question about my question, please feel free to let me know and I will speak louder. I know I can hear the hum of the blowers back there. The acoustics here are less than ideal.

Is it Duke's responsibility to balance the demand behind the Duke city gates for shippers, transporters, competitive retail natural gas suppliers, and the standard service offer?

A. The standard service offer for one but is Duke Energy responsible for balancing the system as opposed to the Choice providers?

Q. Let me go a step further. That's a fine example of if you don't understand my question, let me know. I will fix it up. I'm looking to see -- we will start at a very basic level. You have the Duke distribution natural gas network, and it's connected to a city gate.

A. Right.

Q. And then you have the interstate pipeline, and it's connected to the city gate. And you will agree with me that anyone who is responsible for supplying gas, be they a competitive retail natural gas supplier or a large industrial transporter or for that matter Duke for the standard service offer, has to nominate gas to the city gate, and then the -- that -- the amount that's nominated has to be balanced out with the amount that actually goes through.

A. That is correct.

Q. And is the party that's responsible on a daily basis for balancing it out Duke?

A. Yes, yes, it is.

Q. So Duke has the responsibility of balancing the city gate and there's a word in your testimony called non -- no notice service. Explain how no notice service is used to balance the city gate.

A. No notice service is simply we do not know exactly how much gas is going to be used tomorrow. So the gas is nominated, and the gas that is nominated is brought to the city gate. That can be more or less than what actually is going to get used because all the nominations have taken place the day before. What a no notice service does it looks back after the fact and says X amount of gas came through the city gate and compares that to how much gas was nominated to the city gate and any difference either becomes an injection into storage or withdrawal from storage.

Q. Now, is it fair to refer to that as temperature balancing?

A. Sure.

Q. And the -- the -- if a shipper, be they a competitive retail natural gas supplier or a large industrial transporter, if a shipper is bringing gas into the system, will Duke charge them a firm balancing fee or the enhanced balancing fee in order to accomplish the temperature balancing?

A. I don't think it is charged to the large -- the interruptible transportation, the large transportation customers. They don't pay an FBS or EFBS but as far as the customer Choice Program, yes.

Q. So basically the balancing -- the temperature balancing is only paid by the firm customers.

A. Correct.

Q. All right. And is that because the interruptible customers, if things go bad, will it just be not delivered to?

A. A lot of the industrial customers, they are not temperature sensitive. A lot of them are a process load and so there is -- actually that's a separate, you know, how they balance they are allowed to carry so much over. You know, if they build up an imbalance, they can carry over to the next month or get cashed out. There is an entirely different system that's used for the interruptible transportation customers to account for their balancing.

Q. The firm balancing service that the firm -- the firm shippers, let's call them firm shippers, that the firm shippers use, the cost of that is embodied in the firm balancing service tariff rate?

A. The -- the cost of the we will say the temperature sensitive, the piece that's just going for daily balancing, that is included in the FBS rate.

Q. And earlier in this proceeding were the rates for the firm balancing and the enhanced balancing increased?

A. Yes, they were.

Q. Okay. And what was the nature of that increase?

A. Well, the cost of the -- we have to purchase the storage service from Columbia Gas Transmission and from Texas Gas Transmission. Columbia Gas has a FERC case where they have CCRM, I can't remember exactly what that stands for, but it's basically a rider to track the increases in their costs for replacing bare steel throughout their system. Because of that the rates that we pay to Columbia are changing annually as that rider changes. So we are reflecting that change in the rate we pay to Columbia Gas. We are reflecting that change in rates to the FBS and EFBS.

Q. And these changes are designed to make sure that the FBS rate does track the cost of the temperature balancing service.

A. Right.

Q. We talked about temperature balancing service. And can you confirm for me that the temperature balancing service started about 1997?

A. That sounds about right.

Q. And that's about the start of the Choice Program as well?

A. Yeah.

Q. And the two are linked together; that was to enable to have a Choice service.

A. That is correct.

Q. And then in 2006 we got the enhanced balancing service -- and because balancing services is in both names rather than use the acronym I will call one firm and one enhanced.

A. Okay.

Q. How does the enhanced balancing work?

A. Okay. One, it was 2007 I believe the EFBS -- or the enhanced came about. And the way that works is a more giving the suppliers full use of the storage. That came about through a collaborative process when some of the suppliers noted that they were paying for storage through the FBS but not getting full value for their storage. They wanted to be able to take advantage of that winter-summer spread of gas prices.

So enhanced firm balancing service was developed to say, okay, supplier, if you want to have the full advantage of that winter-summer spread, that's fine, but you pay the full cost of storage, and so the EFBS was developed, okay, you are now in effect getting a piece of our storage carved out for the supplier to use, and then they can take advantage of that winter-summer spread.

Q. Okay. Well, I am going to follow up with some questions from Mr. Serio here, just go down one gradation in detail. So for balancing purposes basically Duke sends out a target supply quantity to all firm shippers.

A. Correct.

Q. And you do that based on looking at the forecasts. You might say looks like the Alberta Clipper is going to come through, we know your load, please deliver, you know, X dekatherms at the gate?

A. Essentially correct.

Q. All right. And then just to use my same example turns out the Alberta Clipper didn't go through. So basically the demand was much less than the amount of gas that was tendered at the interstate at the city gate.

A. Yeah.

Q. So what happens to that -- to that surplus?

A. Well, it depends on if we were targeting a large amount of withdrawals. It might just mean we have fewer withdrawals. If we're targeting a lower amount, we might actually end up injecting that day rather than withdrawing. So it will increase injections or decrease withdrawals in the example you have given.

Q. And you will do that on a systemwide basis, the injections and withdrawals, so it could be that Mr. Oliker basically was under that day and I was over, but it would only have to be the net for the system --

A. Correct.

Q. -- that would be injected or withdrawn.

A. Correct.

Q. And the balancing is done on a systemwide basis.

A. Right.

Q. In fact, what we really do have then is -- and I think you call it a backcast where we then allocate for accounting purposes what actually happened versus the -- the target supply quantity.

A. Right. And that is still a backcast. It's still not perfect. It's not based on, you know, meter reads, but it is based on actual temperature data rather than a forecasted temperature.

Q. And let's talk about how difficult that meter read is. To really do a backcast, you would have to know on a daily basis what each customer had used that day?

A. Correct.

Q. We don't read everybody's customers every day --

A. Right.

Q. -- let alone process it on a daily basis.

A. Right.

Q. So this is part art/part science. So the -- to achieve the temperature balancing, the firm customer basically has to make up the difference between the backcast and the target. When does that have to be made up or adjusted?

A. The firm or the enhanced?

Q. The firm.

A. The firm, well, the backcast doesn't come into play for the firm customer. The suppliers on FBS there is no backcast.

Q. How --

A. It's trued up once a year in the summer because that way we can look at an annual and kind of gets rid of the unbilled issues by picking a summer month. So we look at the 12 months ended June each year and compare what the measurement was for all of the particular suppliers' customers and compare that to how much that supplier delivered throughout that entire year, and any difference is then we either owe them gas or they owe us gas and that will be spread out throughout the months. Depending on how much it is, we try to do it all in the month of August, but occasionally it gets -- it has to be dragged out to two or three months in order to get it back to zero.

Q. And that's a net cash out for the year.

A. Right.

Q. Okay. And then for those who -- who have selected the enhanced, they are the ones who get the backcast.

A. Right.

Q. And explain how that works.

A. Okay. The way that works at the end of the gas day when we know what the actual weather turned out to be, we can -- we calculate this backcast and that is used to compare for each day to what that supplier brought to the city gate and any difference. If they delivered more than what the backcast is, then they inject it into storage. If they delivered less than what this backcast is, then they withdraw from the EFBS bank, let's say.

And they are also trued up at the end through that same cycle because that still doesn't take actual meter reads into account. So on the same cycle as the FBS for the 12 months ended June, that's when they will look but they will compare the backcast on it since that's what, you know, they were trued up to to what was actually used by, you know, all those customers to determine how much either we owed the suppliers or the supplier owes to us.

Q. You would agree with me that the big benefit for a firm shipper who has selected the enhanced is that they can put gas into storage, the storage that is -- that contractually is owned by -- by Duke during the summer, and then take it out during the winter by use of the backcast.

A. That is correct.

Q. And that's an additional right that the enhanced have that the firm balancing shipper doesn't have.

A. Right.

Q. And what's the extra that the enhanced shippers have to pay for that service?

A. It's hard to quantify exactly because the FBS is just charged a volumetric rate, and EFBS there is a demand component and a volumetric rate, so it's -- it's kind of specific to each individual supplier depending on what, you know, their load factor is for their customers on what that difference would be so, you know, there is not a hard fast number that I can give you this is how much the difference is.

Q. But the major -- the major benefit is this idea of the winter-summer spread in prices.

A. Yeah. That and actually beyond that the FBS supplier can also take advantage of, you know, different -- price differentials even, you know, like within the winter months. At the beginning of the month if prices are low, they could say, hey, I'm going to withdraw less, I am going to be buying more in the market, I think prices are going up and withdraw more when prices are higher later in the month, so it's not just the winter-summer spread. It is also the flexibility that the supplier has to kind of judge the market for themselves and try to, you know, manage their own injections and withdrawals to their own advantage.

Q. Let's get into the mechanics of when these elections are made.

A. Okay.

Q. The election of whether to be firm or enhanced is made by the shipper on January 15 under the tariff?

A. That is correct.

Q. Okay. And basically if you -- if you are a firm shipper and you elect the enhanced, you then would begin filling storage then at the start of the storage injection season which is May or June?

A. April 1.

Q. April 1. Okay. And then the same rules -- in storage there are rules as to when you can inject and when you can take out and limits on both?

A. Right. That's correct.

Q. And, in fact, if I looked at your testimony, I think it's Exhibit -- or Attachment 1 -- yeah, Attachment 1 of your -- of your testimony, we have a chart that more or less depicts what -- the operation of storage.

A. Correct.

Q. And basically the -- the gray-shaded line, if you will, those are the tolerances of what you could put in or -- or take out on a daily basis?

A. Right. It's more showing -- that's the balance so that's showing where the balance can be at this particular moment in time. If we are over that balance, we run the risk of incurring penalties on the pipeline. If we are under that balance, we -- generally that's -- we could run out of storage before the winter storage or not fill up storage starting the summer so that's kind of the bound we need to operate within.

Q. So basically for the planning stage, and we will look at the -- at the first hump of the W, if you will, this is -- basically that's showing a withdrawal cycle so we -- we started with storage filled in October, and then we just drew it down for the -- for the rest of the season.

A. Right.

Q. I think you even have another chart that just shows that part of it later on here. And then likewise you have to -- then to get ready for next season you have to start the injection, and it goes over again. Knowing that you have to inject in order to withdraw and that there are limits on doing both, is it fair to say that for the storage season 2015-2016, the -- the elections and the systems are already made?

A. You mean the election between FBS and EFBS?

Q. We couldn't change those elections now.

A. Right. That was per -- that was made on January 15 of 2015, those elections were made, so that's set for April 1, 2015, through March 31 of 2016.

Q. Right. And the firm shippers then relied on that in terms of their planning to buy gas, to inject gas, and then be able to take out during the winter.

A. Correct.

Q. So your proposal that the election should be changed is -- starts on the year -- starts in January, 2016, for the year '16 -- the injection year, storage year, '16-17?

A. That wasn't our original proposal back when we first filed this in 2015 but now the hearing has been set and things have been postponed, yes, that is our proposal, now it would start with April 1 of 2016.

Q. And basically along that line for the past year that is now -- is now committed, were there any -- any pipeline penalties that were assessed on Duke?

A. No, we have not incurred any pipeline penalties.

Q. And what was the volume that signed up for the enhanced balancing?

A. For the year we are currently in?

Q. Year we are currently in.

A. I think it's -- yes, it's around 50,000. It's like 51,000.

Q. 51,500?
A. In that range, a little over 51,000.
Q. And what was it the year before?
A. The year before it was only 30 some thousand.
Q. So actually there was a greater sign up for it --
A. Right.
Q. -- in this past year.
MR. PETRICOFF: May I approach, your Honor?
EXAMINER PARROT: You may.
MR. PETRICOFF: I want to show you -- do we have one we can take to Elizabeth?
Q. There was -- yeah. Let me show you this discovery request. Have you seen that discovery request and response before?
A. Yes.
Q. In fact, are you the one who answered it?
A. I am the one who wrote it, yes.
Q. Could you then for the record tell us if -- what the exact number was.
A. The exact number -- well, what it was or what it is?
Q. What it is.

A. What it is right now is 52,200.

Q. Right. Okay.

MR. PETRICOFF: At this time, your Honor, I would like to get an exhibit marked. And since we have two pieces of testimony coming I will ask that this be marked as RESA Exhibit No. 3.

EXAMINER PARROT: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Kern, I am showing you what has been previously marked as Exhibit -- RESA Exhibit No. 3. Take a look at it. Would you agree with me that is the Exhibit 5 from the application in this proceeding?

A. It looks like it.

Q. Okay. And is it fair to say that Exhibit 5 lists for us all the assets that the company has at its disposal -- I should say the major assets that the company has at its disposal to meet peak day needs?

A. Right. By broad category the individual details but, yes.

Q. And if you would, let's -- let's start with the last line on here that says "Peak Day."

A. Okay.

Q. Okay. What is the source of that figure for peak day?

A. The peak -- that comes from our load forecasting department. They determine, you know, what is the peak design day that we will, you know, acquire a capacity to meet each year.

Q. Okay. So these aren't historic numbers?

A. No.

Q. These are the projected numbers.

A. These are the design peak day numbers for each year.

Q. Okay. And we say "design peak load." Let's make sure we are on the same page. That is the amount that not only -- that is the maximum amount that the -- well, actually I am going to turn this over to you because this is difficult. Please describe what a design peak day is.

A. What that is it is the maximum amount that the firm customers are expected to use. If we were to, you know, have an extremely cold day, you know, negative 11 degrees, I am not sure of the exact degrees the load forecasting uses for that extremely really cold day, that's the maximum that all the firm customers would use.

Q. Quite frankly that's the reason I put the broader question to you because in making this projection, you have to make some assumptions about what the weather will be and when.

A. Correct. Not when, just the fact that it could -- in any given winter you could have that negative 10-degree day so.

Q. Wouldn't there be a difference depending on when the minus 10-degree day came? I mean, aren't there cycles of gas used that are not related to weather?

A. As far as hitting a peak day, it's pretty much all weather driven.

Q. So there are like no large industrials --

A. Well, there are.

Q. -- that would be off with firm load that would be like during Christmas break or retooling?

A. Actually a lot of them are interruptible, so they are -- they don't come into the -- when we are calculating our peak day, it is based on just the firm load. All the large industrials that are interruptible, we don't consider them at all because they're interruptible. You hit that peak day they will be interrupted and not use that gas anyway.

Q. Okay. So basically I see that there are changes from year to year.

A. Yes.

Q. Since these are forecasting numbers what would cause the forecast to change year to year?

A. They take a lot of things into consideration. There is customer growth. It's also efficiencies. You know, as furnaces become more efficient, they, you know, might adjust their forecast down. I am kind of getting outside my field here. I am not a load forecaster myself. I take what our load forecasting department generates and, you know, design our capacity based on that design peak day without trying to figure out exactly how they came up with their numbers.

Q. Understanding that this is not -- not your point of expertise, per se, is it true though that in looking at these numbers and what you know from the industry that there is a general trend to -- for the load to be contracting because of efficiencies in equipment and conservation?

A. I believe that to be correct.

Q. And basically if we looked at these numbers, is it fair to say that we've come down from -- from a peak day in 2006-7 of 867,000 now to the last one was 815,000?

A. That is correct.

Q. And going out in time for purposes of the chart that you supplied in the application, we are just assuming that the 2014-2015 is what you used for planning to compare the effects of the enhanced firm balancing and the sign ups and the mandatory ones that you --

A. Yes.

Q. -- requested?

A. That is correct.

Q. Okay. So basically this chart shows us where we have to get for peak day and then all of the tools that -- the major tools at Duke's disposal to get there.

A. Right.

Q. To a degree, can you -- can you substitute one tool for another? Can you use more propane and use less storage -- use more propane and use less --

A. We have two propane plants available to us that are limited to how much they can produce on a peak day, so we cannot increase that any more. As I pointed out earlier, storage, we are pretty much at our optimal level of storage for the system, so we don't really want to move that. So between firm transportation, FT capacity, and peaking service, we might be able to ship some back and forth.

Q. Let me go through this then with you now at that level of detail. Actually before I go there I want to go back. I am not sure I understood the answer to my question. To a degree can -- if we were looking for the optimal mix of assets to meet peak day, can you trade off capacity against storage against propane against firm transportation?

A. I guess I am not sure what --

Q. Okay.

A. -- what you are getting at.

Q. Your design for a peak day we'll start at 2006 of 8,600 -- 867,000 dekatherms.

A. Right.

Q. Basically in getting to back -- to balance that off, you would have had some flexibility in the past to arrange your assets to meet that day; is that correct?

A. To a certain extent, correct, but certain things like the propane I mentioned, we don't really have a whole lot of leeway on how much. You know, the plants can only produce however much they can produce.

Q. I understand but you could -- you could depend less on propane and buy less propane, couldn't you?

A. Well, it's the peak day. What we are looking at here is a peak day.

Q. Oh, I see.

A. Unless we bought so little propane we couldn't even use it for one day.

Q. Even though -- even for peak day you are not required to use the maximum amount, are you?

A. We assume that we will use the maximum amount when we are designing the peak day.

Q. Let say, for example -- well, right now, which is more expensive, propane or natural gas?

A. Right now, I think propane is actually because propane is down. It's down to like 40 cents a gallon, so it's pretty cheap right now but that's not historically the case. Propane is usually more expensive.

Q. Let's go back. This may make more sense for the record. What you do with propane you basically mix propane with other -- with other gases to get it down to the same BT levels as natural gas.

A. You mix it with air and then we inject it into the system and it has to be mixed with a certain amount of natural gas. It has to be flowing past the plant at the time when we are injecting that in there, and it mixes with the natural gas to function.

Q. So when we were talking about costs before, one thing you could do if you were designing how to meet peak day, you would look to see what's -- what's the cost of propane, what's the cost of natural gas plus these other delivery systems, and you could optimize how you are going to meet peak day.

A. Except for the fact that the propane plants are predominantly used in order to maintain pressures on the system to -- we could design -- I could design a capacity portfolio that did not rely on propane at all, yet we would still need to use propane to keep isolated parts of our system in gas. So, in effect, like I said, we take that propane as a given, take our peak day and take the propane off of it and say, okay, that's the peak day that we have left that we have to meet the capacity that we are arranging for in my group.

Q. Okay. Well, explain this to me, in looking at the propane in 2006 in your exhibit, there are 139,000 dekatherms, and for last year we were down to 59,000. What happened that reduced the propane?

A. We used to have three plants; we now only have two.

Q. Right. But that was a conscious business decision --

A. No. That was forced upon us by the fact that we had arrangements at our northern propane facility enterprise, another company operated the cavern that provided propane to that plant, and in December of 2013, I hope I have that year right, they sent us a force majeure letter saying because the cavern was leaking they were shutting it down, so we ended up -- that plant was shut down not through any business decision to shut it down but through the fact we could no longer get propane to it.

Q. Okay. At the risk of not quibbling with you but isn't a terminated contract and a decision not -- a terminated contract for one supplier and a decision not to go find another supplier a business decision?

A. There was no other -- the cavern in that plant leaked. If the cavern is shut down, the plant can't work. There is no amount of trucks we could deliver to that plant and operate it in any way that would help in a peak situation. If the cavern is not functioning, the plant becomes useless, and so once they shut down that cavern, our plant was effectively useless. There was no contract or supply arrangement we could make with somebody else to make a business decision to close that down. It was forced upon us.

Q. Okay. Did you make a search for other propane, or did you just assume that you had to have other assets?

A. We were not interested in building another propane plant somewhere else so, yes, that -- once we lost that access to that propane plant, we had to make arrangements for other capacity for natural gas.

Q. And your point it wasn't a business decision because it was a fait accompli because there were no other options.

A. Correct.

Q. Fair enough. Let's take a look at the first line and this is FT capacity.

A. Okay.

Q. Okay. These are contracts that you have with the interstate pipelines for firm delivery and they are based on what the maximum day pool you can have on -- maximum day delivery of firm.

A. That is correct.

Q. Okay. And if I'm looking to see what you have under contract, I would have to sum the line under the GCR for FT capacity because that's the firm

capacity that's going to the standard service.
A. Right.
Q. And I would have to also sum the released capacity line that's under FT because that's also contracted gas.
A. Right.
Q. Okay. And the sum of those two is how much that Duke has under contract, how much firm they have under contract.
A. That is correct.
Q. And this chart is showing how much you could get on a peak day.
A. Right.
Q. This contract. Okay. In the course of the 10 years between 2006 and 2015, did -- did Duke change its contracts for firm --
A. Yes. They were substantially changed in -- the Texas gas contracts on April 1 of 2014, and the Columbia Gulf contracts were changed on November 1 of 2014.
Q. And why did the company make those decisions to decontract?
A. Because of the growth of the Choice Program we had excess capacity. We had more capacity than we really needed so, for example, in the 2013-14

winter we had 33,000 dekatherms of excess capacity that was recovered through the contract commitment cost rider, and rather than continue to have these excess capacity costs we decontracted to the amount to meet the customers that are still buying their gas from us.

Q. Well, when customers migrate to FRA -- I'm sorry. When they migrate to firm transportation, doesn't their supplier get an allotment of --

A. They get -- it's approximately 30 percent, so, you know, if they take away 100,000 dekatherms of capacity, they are really only getting firm capacity from us for 30,000.

Q. And then the supplier has to come up with the other two-thirds of the capacity.

A. Right.

Q. And actually we have that on your -- on your chart as well. That's the Choice providers' responsibility.

A. That is correct.

Q. And the whole idea is this totals up between the Choice responsibility, providers' responsibility, and what the company is bringing, the idea is to meet the peak day.

A. Right.

Q. It's still looked at on a systemwide basis.
A. Correct.
Q. Okay. Was some of the reason to reduce the firm transportation also because of the reduction in the peak day need?
A. I mean, the peak day did not reduce that much but, yeah, that's a factor.
Q. Well, just looking at here it seems to have gone from about 50,000, about 50,000 dekatherms.
A. But there's -- a lot of that FT, the contracts I talked about the decontracting in 2014, there is also a portion of FT, about 50, 60 thousand, that we tend to get year to year that we don't -- we get winter only capacity one year to the next. That gives us more flexibility as the peak day changes and the customer Choice Program makes contracts.
Q. Okay. Well, just then sort of summing this up, if we were trying to get a picture of the system as a whole -- oh, wait a minute. There is one more. I forgot to ask you about peaking service. Tell me about peaking service.
A. Peaking service is rather than getting capacity from a pipeline that will be paying a demand charge throughout the entire winter or actually our

entire year, we'll make an arrangement with a supplier to look -- to deliver gas to our city gate, and we will pay them a somewhat smaller demand charge than we would have paid the pipelines. And then we have a right to call on that gas on any 25 days, in the past it's been 15 days, some set number of days that we can call on that, and they will deliver it to our city gate.

Q. And earlier I had asked you about, you know, the ability to trade one of these assets off on another -- for another asset in order to meet the peak day. Is what you just described, peaking service, an example of that you can reduce storage and firm transmission rights by using a peaking service?

A. Not storage but, yes, we can trade off the peaking service with firm, but I would not want to try -- to try to trade the firm with peaking storage because if we have -- we had less storage than what we have we run a much greater risk in penalties from the pipeline.

Q. Okay. So peaking services is only an offset to the firm trans --

A. Yes.

Q. -- mission? Okay. I do want to nail

down this one point though, and in your testimony when we talk about storage, you have a chart and it is Attachment -- Attachment 2.

A. Okay.

Q. And I want to ask a few questions about that because I want to get on the record some feel for the limitations on -- on storage.

A. Okay.

Q. Isn't it true no matter how much you have in storage on a daily basis you are limited to how much you can take out?

A. That is correct.

Q. All right. And as we go deeper into the -- into the heating season, the amount you can take out actually contracts.

A. That is correct.

Q. And you've shown this -- you have depicted this on Exhibit 2 by showing these sort of stair steps down starting in February.

A. That is correct.

Q. And is that because the storage contracts have limits on how much you have to have out by a certain date?

A. That is more driven by in the tariffs in Columbia Gulf -- or Columbia Gas and Texas Gas's tariff there are, you know, they call them ratchets where if you get down under 30 percent in storage, then the amount you are allowed to withdraw on a day decreases, and it decreases again when you get under 20 percent and again under 10 percent.

Q. So for -- for purposes of getting a rough feel about this, when we talked about your right to withdraw, it's not a static number.

A. Correct.

Q. It has to do with how much you have in storage at the time.

A. Correct.

Q. And we know that's going to contract because you are going to have to take it out because of the ratchets.

A. Right.

Q. Couldn't you use the peaking service to fill in on a day that you may run into a ratchet-related withdrawal to make?

A. The peaking service, it can except the peaking service is not no notice, and if we are running into a problem, again, going to the chart here for my Attachment JLK-2, you know, that gray line represents that difference between what we are targeting and what actually happens, and we don't know that until the gas day is over or well underway. So a peaking service, again, you are nominating that a day ahead of time so it's not used. It's only that no notice storage service that's used to account for those differences in temperature.

Q. And so you are saying the limitation on using the no notice service is the temperature balancing aspect that we talked about earlier.

A. Correct.

Q. But the volumetric, it could be used.

A. Correct.

Q. Okay.

MR. PETRICOFF: Your Honor, at this time I would like to have another exhibit marked and this one I guess we'll -- I guess I should have asked may I approach?

EXAMINER PARROT: You may.

MR. PETRICOFF: This will be RESA Exhibit 4.

EXAMINER PARROT: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Kern, what I did was I was looking at the chart that we have in the application and the focus there was -- was on the GCR, and I was trying to get a feel for the system as a whole because when we are balancing, you will agree we balance the system as a whole.

A. Correct.

Q. And so I want to go through with you what I -- what I've done here, and you can take these numbers, assuming I have done them correctly, or that Excel has put the right formulas into the cells on Excel but what I did --

MS. WATTS: Objection, your Honor. Howard, I'm sorry, but I don't think you've set a foundation for this document, and I have no idea what we are looking at here so.

MR. PETRICOFF: Well, I am getting to that.

MS. WATTS: Okay. This is not Mr. Kern's document, correct?

THE WITNESS: Right. This is not mine.

MR. PETRICOFF: That's not Mr. Kern's document. That's where I am going.

Q. (By Mr. Petricoff) Okay. So, Mr. Kern, you will agree with me that the part that's in black, that's more or less a carryover from RESA Exhibit No. 3.

A. That looks to be the case, yes.

Q. And then going back to the series of

questions I've just asked you, it would be possible to calculate what the system has as a whole if we just summed the numbers that we had in this RESA Exhibit 3 which comes from the application. For example, on the first item on the top I have storage under contract and I could go -- if I wanted to see what the storage was under contract, I would -- I would go down to where you've got your storage number in GCR which was 241,514 plus you told me that I would have to look for -- for the EFBS because we have a portion of storage that's going to the firm which in the first year happens to be nothing, but as people signed up, we had it.

A. Correct.

Q. And total them together. So assuming that I've put the correct -- the correct formula into the cell, if I -- if I summed the -- the storage under GCR and the EFBS, I would have the total amount of storage that's available for peak day on a daily basis for the Duke system.

A. Right.

Q. Okay. And then moving down for -- for the firm -- the firm capacity, basically I would have to add the firm capacity from the GCR as well as the -- the FRAC, the part that's been released to the customers, and that -- if I sum those together, I should get to the total of the contract quantity available to Duke for the system in -- for firm transportation.

A. Correct.

MR. SERIO: Your Honor, I have an objection I would like to make. RESA has two witnesses in the proceeding. If they want to put a document like this onto the record, they can do it through their own witness. Instead what we have is Mr. Petricoff is essentially testifying as to what he did and not what the witness did and that's inappropriate and it shouldn't be allowed any further.

MS. WATTS: And, your Honor, I join in that objection. I was kind of waiting to see how far we are going down this path, but I too am very uncomfortable proceeding with this.

EXAMINER PARROT: Response?

MR. PETRICOFF: Your Honor, if I may, this is the application chart -- from the application chart. From the questions and answers we've gone through it appears that we can sum to find out what each of the components that are available to meet peak day are for the system as a whole. We are here to decide what the pattern should be for meeting the system as a whole. So this is very important information. The only data that I am using is the data that is supplied by the witness as part of the application which he is sponsoring. The rest of it is just mathematics and that is not subject to change.

MR. OLIKER: Your Honor, if I may add, the alternative, which will not be fun, is to go through every single one of these columns and have Mr. Kern do the math on the stand and that will take a very long time.

MS. WATTS: And, of course, we would object to that as well, Mr. Oliker, and frankly if you want to introduce any of this evidence through your own witness, we would not object to it, but trying to get it into evidence through our witness is objectionable.

MR. OLIKER: Elizabeth, you are entitled to cross-examine.

MS. WATTS: They are not his numbers, Mr. Oliker.

MR. OLIKER: Yes, they are.

MS. WATTS: They are not.

EXAMINER PARROT: Mr. Serio.

MR. SERIO: Your Honor, the point is the witness didn't do the math. The math was done by someone that's not on the stand, so you can't cross-examine the math behind it and, you know, that's the whole purpose of having a witness. If the witness sponsored by RESA wants to put this in their testimony, they can do it and quite frankly to the extent this is information that was in the application, it was available to RESA or IGS and they could have easily put this into the testimony that Mr. Scarpitti filed. They chose not to. At this point you shouldn't allow them to modify the testimony through the Duke witness.

MR. PETRICOFF: Your Honor, we don't seek to modify. We seek to cross-examine and where -- where we're going on this is to compare what the aspect will be. The math speaks for itself. If there are math errors, that certainly can be addressed. I am really much more important -- much more concerned about the contents and that's what we are trying to get on the -- on the record.

EXAMINER PARROT: Anything else?

All right. I am going to overrule the objections for now; and, again, I am still kind of with you, Ms. Watts, I am going to kind of wait and see where it goes. At this point I think Mr. Petricoff is sort of trying to explain -- explain the exhibit, and if the witness gets to a point at which he is not following along or questions math or any of those sorts of things, please pipe up at that point, Mr. Kern.

Mr. Petricoff.

MR. PETRICOFF: Thank you, your Honor.

Q. (By Mr. Petricoff) Going down the assets trying to see what are the assets that are available to Duke for -- for balancing the system, we've talked about the firm capacity. We talked about the peaking service. We talked about the propane. We've talked about the storage, and the storage contract you have indicated to me is one that where in the past several years they have been -- they have made adjustments. Now, I want to go over to --

A. What was that you said, the storage contracts? The firm transportation.

Q. The firm transportation. If I said storage, thank you, I misspoke. Now, in your -- in your chart, in your portion of the chart, under the GCR under the FT capacity, you have indicated that if no one signed up, so if this upcoming January 15 nobody signs up for the enhanced balancing, that the firm capacity would be reduced to 19,811 dollars -- 811 dekatherms.

A. Run that by again.

Q. Okay. Let's go back to Exhibit 3.

A. Okay.

Q. If I look at Exhibit 3, and this is the one that's just straight out of the application, I see that the firm transportation capacity is -- is reduced from 52,000 to 19,811 --

A. Okay. Right.

Q. -- if nobody signs up.

A. Correct.

Q. And I am assuming that -- that what caused that drop from the 52,000 in the previous year is -- is that with no one taking the EFBS, there would have -- there is going to be an increase in the -- in the amount of firm that is going to the -- going to the firm suppliers.

A. No. What causes that is when -- if nobody chooses EFBS, we then -- no amount of the storage is allocated to provide the EFBS service so you see that stays 241,000. If you look at the storage line under the GCR, you know, that under the "No EFBS" column, that is 241,514. That is our -- all of the storage then at that point is being used to meet GCR load. So the GCR doesn't need a whole lot of FT to meet their load. So we are only going to have 19,811 of FT load. We are not going to get that -- like I said, we get some FT year to year. We would not have purchased any additional FT for that winter because we wouldn't need it. We are meeting the load with storage instead. Otherwise we would have excess capacity.

Q. Well, that's just it. If you have a contract for -- for firm transport, and I understand the 19,811 now is basically the contracted number because you are meeting the GCR needs with storage rather than firm, are you releasing the excess capacity into the market?

A. Excess capacity wouldn't be acquired to begin with. Like I say, we do withhold a certain amount of capacity that we acquire year to year, so if January 5 comes, nobody signs up for EFBS, that spring as we are arranging our capacity for next season, we would not purchase any additional FT capacity, any winter only FT capacity, for that next winter.

We would also -- could release some of that capacity to either Duke Energy Kentucky or an affiliate because they also go out and get extra gas every winter, so rather than going out and contracting for extra winter on the supply, they could take a release from Duke Energy Ohio. If there was still excess capacity beyond that, we would either try to release it into the market through our asset manager, or it would be recovered through a -- through the contract commitment cost records so the GCR doesn't bear the burden of all that demand charge.

Q. And so basically when you release it, you will be getting revenues in, and those revenues would be credited against the GCR.

A. Well, it would be -- it would be more likely we wouldn't be paying for it to begin with depending on how -- like I said, if we don't get the capacity, we are not paying for it to begin with. If it's capacity like Duke Energy Ohio releases to Duke Energy Kentucky, they are just getting reimbursed the exact. They are paying $5 for that demand charge. They are getting reimbursed that $5 with the release; so, in effect, financially it's like they never have it.

Q. But in terms of the GCR, if you released it to Kentucky, then basically the cost of the capacity that you release, the firm capacity, is not going to be in the GCR?

A. Right. The GCR will not be paying for that.

Q. Right. So just out of interest why didn't -- why don't you release some storage as opposed to release the firm capacity?

A. Because we need -- when we look at storage, we look at storage for Duke Energy Ohio and Duke Energy Kentucky as separate entities, and we need -- the level of storage that we have for Duke Energy Ohio, we need that to meet Duke Energy Ohio's balancing needs. So if we released it to Kentucky, that would -- theoretically we could do that, but then I would be before the Kentucky Commission trying to explain why we dumped this storage gas on Kentucky when they didn't really need it.

Q. But you could also sell it into the market too, couldn't you, or asset manager?

A. Storage, if we did that, again, we would not have enough storage to met our daily balancing needs.

Q. This is the part then that I am confused about. The firm balancing service is the one that takes care of the temperature balancing and that is met by the fee -- the firm balancing fee, and you have some storage that -- that is set aside for that, correct?

A. It's not specifically set aside. Say this is the storage that's for daily balancing. The storage is the storage. We have two -- we have a contract with Columbia; we have a contract with Texas Gas. We don't differentiate and say this is for daily balancing, and this piece is for winter-summer spread. That's not -- it's all available for us to use and kind of all lumped together.

Q. But I am thinking of it in terms of the -- in terms of the system as a whole, in terms of temperature balancing, does it make a difference if I as a residential customer am taking standard service or purchasing from a -- from a marketer in terms of what is -- what are the assets that are necessary for temperature balancing?

A. No.

Q. And is it your testimony -- well, is it your testimony then that -- that all of the storage is necessary for the temperature balancing and meeting the demands of the GCR?

A. Correct. What I want to point out is that the -- I guess the best way to look at it is the what we were just looking at on the chart, the JLK --

Attachment JLK-2 from my testimony. There's a solid kind of stepped line through the middle. That is what we are targeting for storage withdrawals in order to stay within those bounds that the tariff sets up. Okay. So we might have -- you know, for a daily basis the load might fluctuate 100,000 dekatherms so you could say, well, we only need 100,000 dekatherms of storage to meet that temperature-sensitive load. And, in effect, you know, that's correct except that we need to target a certain level of withdrawals in order to stay within those limits.

So if we are targeting 100,000 dekatherms of withdrawals in the month of January, then we need 200,000 dekatherms of storage withdrawal rights, 100 to meet our target and 100 to meet the potential temperature difference if it comes in a lot colder than what forecasts were saying, so it's -- it's kind of beyond what -- just that temperature-sensitive load, the amount of storage that you needed.

Q. So basically is it your testimony then that all of the storage is necessary to achieve temperature balancing?

A. Yes.

Q. And as a side benefit of using that for temperature-sensitive balancing, it also can be used for supplying the gas cost recovery, the standard service customers.

A. The gas cost recovery, yes.

Q. And, further, when you do that for the gas cost recovery customers, you also get the advantage of the winter-summer price rate.

A. That is correct.

Q. If the Commission grants your requests in this application, will Duke be going out to buy any additional capacity, firm capacity?

A. Yeah, yeah. We will need most likely winter only firm capacity. We will be acquiring to make up for the amount of this storage which are allocated to provide the EFBS.

Q. And that will be an increase -- that will be an expense that goes into the GCR.

A. That will be offset by the demand -- since EFBS has a higher demand charge, storage has a higher demand charge in the FT from the GCR perspective, they are taking some of the storage demand charges away and replacing it with cheaper FT charges, so the net benefit of the GCR, the actual amount of the GCR, will become slightly lower if the -- if our proposal is accepted.

Q. Right. And the inverse is true for the customers that are -- that are served by the companies who are buying the enhanced balancing, their cost to serve the customers will go up.

A. Yes.

Q. How many customers have 20,000 dekatherms or more?

A. Customers.

Q. I'm sorry. How many shippers have -- firm shippers have 20,000 dekatherms or more demand?

A. I think the number is seven.

Q. Seven?

A. Seven. I am not 100 percent sure, but it's around there.

Q. Close enough. And those seven represent what percentage of the firm load -- the firm shopping load on Duke?

A. I don't know that. I know the majority of it is -- you know, that's why from one of the other charts there is not a whole lot of difference between setting that threshold at 20,000 or 10,000 or 6,000. Pretty much the bulk of the Choice Program is contained within those -- those seven suppliers.

Q. And that's the goal of the application, to get the bulk of the -- of the firm shopping load buying the enhanced service?

A. It is to get enough of the suppliers to have the enhanced firm balancing service so we can effectively manage the system.

Q. You managed the system last year without that, correct?

A. We managed the system last year with a lot of spot purchases. Even in November when it really wasn't all that cold, we had to go out and buy some spot swing in order to manage our storage for November. And we did -- we still had 30,000 dekatherms of EFBS.

Q. Don't others -- don't other suppliers use spot purchases as well to meet demands?

A. For a local distribution company that has provider of last resort responsibility we do not rely on spot purchases. It's very rare. Up until that winter of 2013-14, I can count on the fingers of one hand the times I had to go out in the winter and buy spot purchases. We get capacity and we get supply behind that capacity to meet not just the peak day but also a peak season.

MR. OLIKER: I'm sorry. Can I have that question read back again.

(Record read.)

MR. OLIKER: Actually can you read the answer now.

(Record read.)

Q. (By Mr. Petricoff) How often are you a seller -- or is your asset manager a seller of surplus?

A. I'm not sure if our asset manager is or not. That's part of our region within. We don't know what all exactly they do. But I would think there was one instance of, since I have been involved with it, where we sold some gas when it was towards the end of the season, the extremely warm winters, and we needed to get gas, I think it was 2012, and we needed to get gas out of storage to get underneath the thresholds that are set by their tariff, and we ended up selling some gas. But, again, that's not often.

Q. If we were designing -- if we were designing the system and designing the assets that we are going to hold to optimize, optimize meaning produce the lowest cost for all the customers on the system, it may be that you would buy a little less storage, a little less firm, a little less peaking service, and actually buy -- buy and sell -- buy more and sell less in the spot market.

A. I do not agree with that. We optimize our portfolio for meeting a peak day and peak season and that -- it gets audited it used to be every two years and, now, it's every three years and it is the optimal portfolio for meeting the entire system's needs and as optimally as possible.

Q. And you agree that in November we are going to get a report from the current management performance audit -- auditor who is looking at your -- your array or arrangement of assets to meet peak day.

A. Yes, that's correct.

Q. And they may have a different view than the company on that.

A. I don't know what their view is yet.

Q. We'll find out in November. When the company basically goes out to buy more firm capacity because it is shifting storage to the firm shippers over 20,000, won't those firm shippers have to decrease their contracts for -- for firm transportation if -- I'm sorry, firm transmission?

A. I would suppose so, but I don't -- I have never worked for one of the marketing suppliers so I don't know.

Q. Okay. I take it you wouldn't know then if there was going to be contractual problems, whether they can, you know, immediately reduce or have to pay penalties if they reduce or have to just pay -- pay for more capacity than they need?

A. That's -- I do not know.

Q. All right. But you do know that your requests would give those shippers -- it would take away from those shippers the option that they have now to choose either enhanced or firm.

A. Yes, that's correct.

Q. In terms of meeting the peak load requirements of the system, isn't it true that the firm shippers have to supply a significant portion of gas on peak day in order to meet the needs of the system?

A. That is correct.

Q. And that is -- that will be true even if all of the firm shippers elect the firm balancing service.

A. Correct.

Q. And it would be true if the -- if the company's application is granted and the -- and the over 20,000 firm shippers have to take the enhanced balancing.

A. Yes, that's still correct.

Q. If the auditor comes back and says you have too much storage, what are the contract options for Duke to reduce storage?

A. Well, first of all, if the auditor comes back and says we have too much storage, we don't necessarily have to accept that. I would argue strenuously that, no, we don't have too much storage. And so I guess that's -- that's my answer. You know, we would not -- I don't think we would accept that. And that would go through the hearing process beyond that because I have plenty of documented evidence that shows we have the right amount of storage currently.

Q. Well, let's assume that -- that the Commission agrees with the auditor and that the company has to reduce its storage, does the company have future commitments on storage and, if so, how long are the future commitments?

A. Our Texas Gas contracts go out to 2018, and our contracts with Columbia Gulf go to 2020.

MR. SERIO: I'm sorry. What was the date on that?

THE WITNESS: Texas Gas goes to 2018; the Columbia Gulf contracts go through 2020.

MR. SERIO: Thank you.

Q. And at that point if -- if it was decided you have too much storage, you would -- the company even under their contracts would still have the ability to either shift it to Kentucky or sell -- sell that storage in the open market?

A. We would probably try to release in the open market. Again, releasing it to Kentucky would be -- I don't think the Kentucky Commission would appreciate us doing that.

MR. PETRICOFF: At this point I have no further questions. Thank you very much.

EXAMINER PARROT: Did you have anything, Mr. Oliker?

MR. OLIKER: Yes, your Honor, thank you. Try not to be duplicative.

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CROSS-EXAMINATION

By Mr. Oliker:

Q. Good morning, Mr. Kern.

A. Good morning, Mr. Oliker.

Q. For at least a little while longer. Just a few questions today. I would like to follow up on what was marked as RESA Exhibit 4. And just so I understand that --

A. Which was what? They are not marked as

RESA exhibit anything what I have up here.

Q. Is the document that expands upon Attachment No. 5.

A. Oh, the one you guys made.

Q. Yes. And I just want to understand the relationships. If I were to look at the second line down, it says storage under contract 2006/2007, I took the 241,514 number for 2007/2008, is that the product of the GCR storage number and the FT -- or FT/RFT number?

MR. SERIO: Objection. He is asking the witness if this is the result of a number on numbers that the witness didn't do. They were done by counsel for RESA. It's inappropriate to ask this witness that question.

MS. WATTS: And I share that objection.

MR. OLIKER: Your Honor, it is a simple math question.

EXAMINER PARROT: Overruled. Again, I am going to see where this goes.

Q. So let me state it differently. Would you agree if I were to add 60,480 with -- which is the line on EFBS for 2007/2008 with 181,034 which is the storage number on GCR, that the product is up on the storage under contract for '06-07 of 241,541?

A. Yes. That's looks correct.

Q. And we can do that in each year for EFBS that shows the relationship between the two numbers in your Attachment 5.

A. Correct.

Q. Okay. And likewise for the FT capacity under contract, and let's use 2007-2008, if I were to look at the FT capacity under the GCR and add that to the released capacity which is pretty simple because we only have under capacity 1,600 plus the 226,952, then we get the 228,552 under the FT capacity for 2007-2008.

A. That's correct.

Q. That shows us the relationship. Now, as I go down further, if I were to look at all of the items that are included in the red -- is your copy red, Mr. Kern?

A. Yes.

Q. Now, if I were to add those up, would you agree the one thing that's not included under the system assets is the Choice provider responsibility.

A. Yes, that's correct.

Q. Okay. So and do you agree that is a large portion of the system that -- let me scratch that garble.

The Choice provider responsibility is a large portion of the total capacity of the system.

A. Yes.

Q. And looking at, for example, 2014-2015, would you agree to determine the percentage of the Choice provider responsibility of the system, we would just look at all of the system assets that Duke holds or releases and then subtract the Choice provider responsibility.

A. Could you repeat that?

Q. Maybe we can come from a different -- a different angle. You get the total assets of the system equals all of the assets Duke holds and assigns out plus the Choice provider responsibility.

A. That should equal the peak day.

Q. So a very simple way to find out the percentage of the Choice provider responsibility is to divide the Choice provider responsibility by the peak day.

A. Yes. That sounds reasonable.

Q. And would you agree that 271,000 is approximately 33 percent of 815,000?

A. Yeah. That looks about right.

Q. So, in other words, the converse of that equation is that the Duke-owned assets for 2014-15 is

approximately 67 percent of the system.
A. That would follow.
Q. And that number is reflected on the percent of peak day/peak assets for 2014-15.
A. Correct.
Q. Okay. Thank you. Switching questions, in your testimony you talk about ways of managing a portfolio through either EFBS or FBS, correct?
A. Yes.
MS. WATTS: If you could cite to a page in the testimony.
EXAMINER PARROT: I think he already answered the question but, yeah, if you could point us to a --
MR. OLIKER: I will do my best.
EXAMINER PARROT: -- to a page.
Q. This is, as a general concept, not necessarily on a particular page in your testimony, would you agree that if a supplier manages their portfolio of storage, they are going to be purchasing gas more likely in the warmer months to use in the colder months?
A. Using storage to meet your entire load or just any time you are using storage, yes, you are buying more in the summer and less in the winter.

Q. And that's the goal, correct?
A. Right.
Q. Okay. We will come back to that. With FBS Duke provides the target supply quantity to the supplier each day, correct?
A. Yes.
Q. When does the supplier receive the TSQ?
A. That time of the morning, I don't know. It's published out on our GTMS, and they can access that and get it, but the exact time that gets posted, that's not my area.
Q. But you would agree that a supplier receives their TSQ the day they have to provide gas to Duke.
A. Yes.
Q. And would you agree TSQ can vary largely between, you know, one day to the next?
A. Yes, it can.
Q. And would you agree that it's highly likely that a supplier cannot predict their TSQ down to the dekatherm?
A. The supplier doesn't have to predict the TSQ because the company is forecasting the TSQ, and under FBS the supplier doesn't have to worry about any temperature differential. They just need to

deliver what the TSQ is.

Q. Okay. Would you agree suppliers often purchase gas in advance of knowing what their TSQ is?

A. I do not know how suppliers purchase their gas.

Q. Okay. Assuming -- let me ask you a hypothetical. Assume a supplier buys, and let's just use easy numbers, 100,000 dekatherms of gas because they want to lock in a certain price.

A. Okay.

Q. And assume that the TSQ that they receive on, say, January 3 comes in at 150,000 dekatherms. Would you agree that if we only purchased 100,000 in advance, you would have to go to the spot market for the remaining dekatherms?

A. That sounds correct.

Q. And, conversely, if the TSQ came in 50,000 dekatherms, we would be holding 50,000 dekatherms of extra gas that we would have to sell in the spot market?

A. That sounds correct.

Q. Okay. We've talked about this a little bit. Can you turn to Attachment 5 in your testimony, please. And if it's easier, we can also use RESA Exhibit 4, I believe, because it's the same document largely. I'm sorry, Attachment 5 to the application, my mistake.

A. Oh, this, okay.

MS. WATTS: And, your Honor, just for the record, I object to counsel's representation it's essentially the same document.

EXAMINER PARROT: Noted.

MR. OLIKER: Fair enough.

Q. Are you looking at Attachment 5, Mr. Kern?

A. Yes, I am.

Q. If we look at FT and RFT which is what identifies the capacity portfolio of Choice suppliers, there are various ways that a Choice supplier can meet their peak day, and they are identified in this category, correct?

A. I'm not sure I follow you.

Q. Would you agree a Choice supplier has the ability to meet their peak day requirements either through EFBS, propane, FRAS released capacity, or the Choice provider responsibility?

A. To meet their total responsibility, the EFBS, that's a matter of whether they choose it; but the propane and release, they don't have any control over that. That's set out by our tariff to how much gets allocated to them and then Choice provider responsibility we have no idea. That's the supplier's responsibility.

Q. Okay. Let's do this, do you see on the line that says "Total" under "FT/RFT"?

A. Okay.

Q. Would you agree that the -- there are four categories above the total?

A. Yes, I agree.

Q. Would you agree those four categories add up to the total?

A. Yes.

Q. Okay. The EFBS, propane, and released capacity, would you agree those are assets that Duke assigns to a supplier?

A. Well, the released capacity and propane are assigned, but the EFBS is a choice currently so but, yes, that is coming from Duke, Duke Energy Ohio.

Q. Okay. And would you agree that the Choice provider responsibility are assets that are wholly purchased by a Choice supplier?

A. Correct.

Q. You would agree those assets have increased since the inception of -- scratch that.

Would you agree the assets have increased

since 2006 for a Choice supplier?
A. As the Choice Program has grown, that would make sense that would also increase.
Q. Going back to a question Mr. Petricoff asked you, you agree that the Choice supplier that procures their own capacity, they could potentially do that on a long-term basis?
A. I suppose they could.
Q. And there's the potential if your application is approved that they could be holding capacity assets they don't need?
A. I have no knowledge of that.
Q. And, for example, if I were to compare 2014 to 2015 under Choice provider responsibility and mandatory EFBS, would you agree that's a reduction of about 80,000 dekatherms?
A. From which year to which year?
Q. If I were to compare 2014-15 to mandatory EFBS.
A. Okay. Yes, correct.
Q. In your application is there any proposal to compensate Choice suppliers in the event their capacity is under water or unable to transfer it?
A. No, there is not.
Q. I would like to talk a little more about

some of the math. Can you look at the two columns for "No EFBS" and "Mandatory." First, can you look specifically at released FRAS capacity under the "No EFBS" and "Mandatory." And, first, are you sure that the released FRAS capacity number is correct if you compare it to the '14-15 number?

A. I believe it is, yes.

Q. Okay. We've talked before about FT capacity and if EFBS is made mandatory, Duke is going to go out and get additional FT capacity, right?

A. Yes.

Q. And you see that relationship between the '14-15 and the mandatory column where Duke would go from 52,000 dekatherms to 132,000 dekatherms, correct?

A. Correct.

Q. Would any of that FT capacity be released to suppliers?

A. Yeah, yes, it would.

Q. If that's the case, then why does the released FRAS capacity not increase between 2014-15 and the mandatory EFBS?

A. Well, it's an error in the spreadsheet. I did not include that but that's not, you know -- the released capacity FRAS, you know, that piece of it was not the -- kind of the focus of this exhibit was more at the EFBS and how much is -- you know, how much EFBS there is compared to FT.

Q. Let's take that a step further. All of the numbers on the FT/RFT have to add up to the total peak day for Choice suppliers, correct?

A. Correct.

Q. If the released FRAS capacity number should be higher, would you agree that also the Choice provider responsibility number should be lower?

A. That would follow.

Q. So the number that we previously described as 80,000 dekatherms is actually a larger amount.

A. Slightly, it might be slightly higher, but we are not talking huge amounts.

Q. How do you perform that calculation?

A. Hum? Well, it's the amount of -- it's a function of 30 percent of the MDQ for each individual supplier is what gets allocated through the FRAS capacity release. So without actually having done the calculation, you know, it's not going to double that number. I agree it will be higher.

Q. Okay. You mention on page 5 of your

testimony, and I think you are talking about Exhibits JLK-2 and JLK-5, that reducing Duke's storage rights would expose Duke to penalties.

A. Correct.

Q. Now, you agree that Duke would not merely reduce its storage, rather reduce its storage and procure more capacity and/or peaking service.

A. Under that scenario, yes.

Q. That's not the scenario you are discussing in your testimony, correct?

A. No.

Q. You are only discussing the scenario of reducing storage.

A. But if we -- what -- reducing storage puts us in danger of incurring penalties. We could have twice the amount of capacity, FT capacity, that doesn't help. This storage is a no notice service that we need so that when the weather forecasters blow it and it's 10 degrees colder than what they were forecasting, that we don't incur penalties so the fact that we would have to get additional FT or peaking service to make up for that lower amount of storage doesn't come into play.

Q. And is it your testimony that JLK-5 considers you also having additional capacity?

A. JLK-5 does not assume any amount of capacity at all. It is based on the difference between what we targeted for storage, injection, withdrawals, and what the difference between the forecast and the actual for each day. And so the amount of FT capacity is completely irrelevant to JLK-5.

Q. Page 9 you indicate that Duke could modify the TSQ of Choice suppliers, that this would not require suppliers to provide compensation for the value of the seasonal spread, correct?

A. I was looking for page 9. So could you repeat that?

Q. Sure. Page 9, the question starts at line 11.

A. Okay.

Q. And would you agree that you indicate, I am paraphrasing, that Duke could modify the TSQ of Choice suppliers to assist in managing its storage balances?

A. That is one of the options we looked at is a possibility for addressing this issue but it turned out that it would not -- on further examination turned out, no, that would not work.

Q. And that's where you describe the

seasonal differential for --

A. Right.

Q. -- the value of the summer-winter spread, correct?

A. Correct.

Q. Have you reviewed Mr. Scarpitti's testimony?

A. Yes, I have.

Q. Would you agree that Mr. Scarpitti proposes to modify the TSQ for suppliers, albeit on a much smaller scale?

A. That seems to be the -- there is a similarity between his proposal and this and it also won't work.

Q. And would you agree the value of the seasonal spread for summer and winter is largely a matter of speculation?

A. It varies from year to year.

Q. Have you reviewed the calculations of the potential value of the seasonal spread that Mr. Scarpitti performed?

A. Yes.

Q. Would you agree that he used historical numbers that are verifiable?

A. Yeah. I did not verify them. I didn't go back and double-check him but.

Q. Would you agree the 21 cent number that Mr. Scarpitti uses is within the range of reasonableness over the past 18 years?

A. Yes, as an average, correct.

Q. Would you agree you could use a modified TSQ -- let's talk about a modified TSQ. Can you explain what that is?

A. What it would be is for an FBS provider we give them the TSQ each day so they would -- if we can modify the TSQ to tell them in the summer deliver more than what your customers are going to use in order to build up storage and winter deliver less than what they are going to use, whatever we calculate that TSQ to be in order to effectuate withdrawals.

Q. Okay. And if you -- if Duke were to do that, would you agree that a supplier that was delivering in accordance with the modified TSQ wouldn't have the same level of flexibility with the storage assets that somebody electing EFBS might have?

A. That is correct. One of the reasons why, you know, we discarded that as an option of resolving that, it put too much power in our hands to decide how much should be injected or withdrawn in any given period. We figured that the suppliers through EFBS should have that choice to manage that for themselves.

Q. Okay. And regarding your proposal to make EFBS mandatory for any supplier with an MDQ over 20,000 dekatherms, correct?

A. That is correct.

Q. Would you agree that Duke's systems could handle making EFBS mandatory to suppliers at a lower MDQ?

A. It is possible -- as I pointed out earlier, there is very little difference as far as the effect on our capacity portfolio, 20,000, 10,000, 6,000, however low you get.

One thing that would definitely have to be taken into consideration we do have some customers that are process only load and they might -- if that threshold is lowered from 20,000, it could include them and having to be FBS and in some of those situations the one customer I am thinking about specifically uses gas for maybe five or six times a year, and so we really can't -- there is no way they could manage an FBS bank so there would have to be some kind of exception built in to exclude process only load from that because, yes, that could still, you know, meet the requirements of fixing this issue.

Q. Just to clarify you do believe you could identify those customers and create the appropriate safeguards to remove them from --

A. Yes.

Q. -- a lower MDQ level. Okay. You would agree, actually it's written into the Duke tariff, if you have an MDQ over 1,000, you have a right to elect FBS.

A. That's what it says in the tariff, yes.

Q. Okay. Going back to the earlier hypothetical about how Duke creates the TSQ and potential spot purchases that suppliers may make, does Duke share its forecasting methodology with suppliers?

A. Our forecasting methodology I don't think -- no, no, I don't think there is -- it's -- because it is not a simple formula that we can share. There's a lot of -- our gas controllers use a lot of their past experience and knowledge in -- to determine the load forecast for the next day and that's a major component in determining the TSQ so it's kind of hard to give that -- that process over to suppliers to calculate themselves unless we send them one of our gas controllers.

Q. Just a few more questions. Page 7 of your testimony, this is around line 10, you talk about the company's ability to withdraw dekatherms out of storage. Would you agree that the company can withdraw gas from storage regardless of its capacity portfolio, in other words, the amount of FT capacity that Duke holds isn't related to the amount of gas that you could pull out of storage, correct? You don't need the FT.

A. Yes, we do. Because the storage is a no notice service you don't nominate gas out of storage to meet load. Say, for example, we want to withdraw 100,000 dekatherms from storage, and we only have 20,000 of FT. The normal way you would withdraw 100,000 is by shortchanging the city gate the 100,000 in dekatherms. But if we only have 20,000 to begin with, we can't shortchange the city gate and cause that 100,000 dekatherm withdrawal because we only have 20,000 so, yeah, there is a definite relationship between the amount of storage we can withdraw or inject and the amount of FT capacity we have.

Q. Doesn't the storage have capacity itself as well that comes with the contract?

A. I'm not sure -- yes, I mean, the withdrawal, right, so the capacity that we have of the storage.

Q. Those -- those withdrawal rights exist exclusive of the FT capacity you hold, correct?

A. Right.

Q. Sorry to jump around, Mr. Kern.

A. That's all right.

Q. If I were to look -- we talked about the propane plants. There was three, now there's two, right?

A. Right.

Q. And that happened between 2013 in the winter and 2013-14 gas year, correct?

A. Right.

Q. Now, can you help me understand it looks like we saw a 35,000 dekatherm decrease in propane; is that correct?

A. You are talking just our propane or the combination of the propane for the GCR? Because there is also propane that's allocated to meet the FT/RFT. You have to look at them together.

Q. So with respect to the GCR, it was about a 30,000 decrease, correct?

A. Yep. That looks about right.

Q. And at the same time we see the FT capacity went down from 138 to 91, correct?

A. That's correct.

Q. So this is a situation where Duke is losing propane but also decontracting FT?

A. We weren't decontracting FT. Our FT, if you look at how much got allocated as released capacity for FRAS, in that same time period it went from 53 to 94, so a lot of that FT capacity that went down was because the amount that we are allocating through the FRAS capacity release went up.

Q. But Duke didn't choose to replace any of the FT for what it lost in propane, correct?

A. But we look at each winter -- or actually in the spring we are looking at the next winter. We, in effect, start over from scratch, and we look at how much propane we have available to us, how much capacity. We kind of take that peak day and back out what the FT providers are going to bring in and figure out how much FT, how much peaking that we are going to need to meet that load. So it's not a matter of decontracting. It's more a matter of not purchasing. We get a certain amount of FT capacity year to year.

MR. OLIKER: If I could have one minute,

your Honor, to look over my questions.

Q. One or two more questions, Mr. Kern. Would you agree that Duke has fully deployed or is close to fully deploying its smart meters for its gas customers?

A. I have no knowledge of that whatsoever.

Q. You are not involved in that process?

A. Nope, not at all.

Q. Do you know whether those meters are used for Duke's forecasting?

A. I don't know. Their forecasting is done now in Charlotte by the forecasting department that's down there, and I have no knowledge how they are doing that.

Q. Do you know whether those smart meters have improved Duke's ability to forecast?

A. Again, I do not know.

MR. OLIKER: That's all the questions I have, your Honor. Thank you, Mr. Kern.

EXAMINER PARROT: Staff?

MR. McNAMEE: No questions, thank you.

EXAMINER PARROT: Ms. Watts, are you going to have some redirect?

MS. WATTS: I believe I am. I may need a few moments.

EXAMINER PARROT: I think the witness has been on for nearly two hours, so we will take a 5- to 10-minute break so you can decide that.

We are off the record.

(Recess taken.)

EXAMINER PARROT: Let's go back on the record.

Any redirect?

MS. WATTS: Yes, thank you, your Honor, very briefly. Just one question actually.

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REDIRECT EXAMINATION

By Ms. Watts:

Q. Mr. Kern, do you recall some questions from counsel for IGS with respect to Mr. Scarpitti's proposal in this case?

A. Yes, I do.

Q. And you responded to one of his questions by saying that you believed his proposal would not work?

A. That is correct.

Q. Could you explain further why you believe that proposal will not work.

A. Okay. There's a couple -- four reasons mostly. One is the amount of -- where he set the threshold at 41,400 as the amount of EFBS we would need in order to effectively manage the system. That was based on the 2013-14 winter and the amount of the EFBS we had then. What it seemed like he didn't take into consideration was that we did have that excess capacity that year. We had 33,000 dekatherms of excess capacity which would bring his number up to 74,000. And even with that there is still about a million dekatherms that we had to buy spot swing that winter which would indicate even that's not the right amount which is -- which I believe is to be more around 100,000 dekatherms rather than just the 41 that he had proposed.

Another big issue I have with it is the unfair distribution of costs, that the GCR customers would still be paying the bulk of the demand charges for the storage that's partially alleviated through their proposal to have a charge to the suppliers of 21 cents that would then get credited to all customers. I mean, that's a problem. It's credited to all customers. If the GCR customers are paying the demand charges for it, then that should only be credited to the GCR customers, not all of them.

But I also don't agree with the 21 cents that they calculated. I agree the calculation was correct but for what they are proposing, which is a temporary fix to the problem, not one that we are going to be using for the next 20 years, to use a historical average is not the best thing to use in that case. You want to use a -- you know, the NYMEX price. The future prices are out there going out there far enough, and when I looked at that time the other day, that winter-summer spread is closer to 33 cents than 21 cents that they are proposing.

Another issue that I have with it, and I think I alluded to this in some of my other testimony, was that the -- you know, we need more flexibility than what they are proposing. They are, you know, setting an amount of injections and withdraws that we would be setting at the beginning of the year to then have that determine how much the suppliers would bring in extra in summer and less in the winter. We need more flexibility than that. We are actually adjusting our -- how we react to the market on a daily and monthly basis, you know, based on weather forecast. If the weather turns out to be colder than normal, you might have to withdraw -- reign back on those withdrawals to keep from withdrawing too much, but if the schedule has already been set, that limits our ability to react to that.

And, finally, the -- you know, again, the issue that it is just a temporary solution. It would take quite a bit of programming and personnel and system changes for us to be able to do that. We are just simply not set up to break suppliers into -- they have so much FBS and so much of this pseudo EFBS that it's not, you know, even totally EFBS. We are set up that, you know, suppliers can be FBS or EFBS, and our systems handle all that appropriately, but we would have to do a lot of changes in those systems for something that's being proposed. It's just a temporary solution.

MS. WATTS: Thank you, your Honor. I have nothing further.

EXAMINER PARROT: OCC?

MR. SERIO: Your Honor, one question.

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RECROSS-EXAMINATION

By Mr. Serio:

Q. You just mentioned that there would be a lot of additional costs that Duke would incur in order to put a marketing proposal in place. Would those costs be recovered through the FBS or EFBS charges?

A. There is no mechanism in place to do that at the moment.

MR. SERIO: Thank you. That's all I have, your Honor.

EXAMINER PARROT: Mr. Petricoff?

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RECROSS-EXAMINATION

By Mr. Petricoff:

Q. Physically assuming that you had 51,500, which is the current EFBS sign up for the next year, would you be able to run the system?

A. Not -- not effectively, not manage our storage the way it should be without going out -- like I say, without going out and potentially, depending on whether it's a cold winter or warm winter, and purchasing a lot of spot swing or selling gas into the market if it's warmer.

Q. So you could do it if you made spot purchases -- spot sales or purchases?

A. Right, but that -- with substantial additional cost. I should say potential additional cost that would then be borne by the GCR customers alone.

Q. So your concern is mainly money.

A. My concern is fairness between the GCR customers and the Choice customers. One shouldn't be overburdened over the other.

Q. Fairness in terms of money.

A. Correct.

Q. All right. And you agree that any customers can switch, become a shopping customers or become a standard service customer.

A. That is up to them, yes.

MR. PETRICOFF: No further questions.

EXAMINER PARROT: Mr. Oliker?

MR. OLIKER: Just very briefly.

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RECROSS-EXAMINATION

By Mr. Oliker:

Q. Mr. Kern, you talk about using the NYMEX price to determine the seasonal differential.

A. Right, yes.

Q. Would you agree the NYMEX price could change between now and April 1 of 2016?

A. Yes. The NYMEX price could change, but what a supplier could do if we went with Mr. Scarpitti's proposal is as soon as the Commission approves a 21 cent rate, they could go out and lock in -- you know, on NYMEX they could lock in that differential. If that differential is 33 cents, they would basically lock themselves in as a 10 cent profit.

Q. You would agree that this proposal though would not come into effect until April 1 of 2016, correct?

A. Well, the Commission would hopefully rule before then, and the suppliers would be aware as soon as the -- as soon as the Commission made that determination and as soon as they ruled, they would know that was coming down the pike, and they could lock that in.

Q. You agree the supplier wouldn't know what their book of business was until closer to the delivery period.

A. January 15 would be our weak -- whenever we notified them based on how many people -- you know, if enough suppliers choose EFBS voluntarily, then, you know, there would be nothing for the other suppliers to have to purchase, but they would find out shortly after January 15 if anything was being allocated, again, under Mr. Scarpitti's proposal.

Q. Right. So they could -- so following that vein, not knowing how much FBS -- or EFBS, I apologize, they would be allocated, it would be difficult to purchase gas now --

A. Right.

Q. -- right?
A. But what they could do is, again, we wouldn't set -- that NYMEX price wouldn't be set now. They could be set at the time, you know, on January 15. Whatever that summer-winter differential is that's what that credit would be based on rather than a historic number that, you know, is basically going to give a windfall to either the GCR customers will make out or the Choice supplier will make out, one of the two.
Q. You agree that is the nature of storage in general, correct, is that the summer-winter differential is either going to be more or less?
A. It can, yes. It can be beneficial, or it can burn them.
Q. And looking at Attachment 5.
A. Attachment 5 from the application?
Q. Yes.
A. Okay.
Q. Would you agree that the highest amount of EFBS elections on the Duke system at any point in time was 63,900?
A. Yes, that's the case.
MR. OLIKER: No more questions, your Honor.

EXAMINER PARROT: Mr. McNamee?

MR. McNAMEE: No questions.

EXAMINER PARROT: Thank you very much, Mr. Kern. You are excused.

THE WITNESS: Okay.

EXAMINER PARROT: Ms. Watts, your exhibits.

MS. WATTS: Yes, your Honor, thank you. I would move into evidence Duke Energy Ohio Exhibits 1 and 2.

EXAMINER PARROT: Are there any objections?

MR. PETRICOFF: No objection.

MR. SERIO: No objection.

EXAMINER PARROT: Hearing none Duke Exhibits 1 and 2 are admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER PARROT: Mr. Petricoff?

MR. PETRICOFF: Yes, your Honor. At this time I move to admit RESA Exhibits 3 and 4.

EXAMINER PARROT: Any objections?

MR. SERIO: Your Honor, I have no objection to RESA Exhibit 3, but I renew my objection to RESA Exhibit 4.

MS. WATTS: I'm sorry, your Honor.

EXAMINER PARROT: Wasn't sure you were with us.

MS. WATTS: I was not.

EXAMINER PARROT: I was waiting. I am guessing I am going to be hearing an objection, so I am going to give you a chance to make it.

MS. WATTS: With respect to RESA Exhibit 4, yes, most definitely, your Honor. I don't believe RESA has established a foundation for the document. It wasn't certainly a document that originated with our witness. Our witness had not ever seen it prior to having it placed in his hands in the hearing today, and I believe that it is entirely improper as an exhibit in this case.

EXAMINER PARROT: Mr. Petricoff.

MR. PETRICOFF: Yes, your Honor. This is a cross-examination document. The purpose was to take the exhibit that is in the record which is the Exhibit 5 from the application and just using the information that is contained on it, you know, draw some mathematical conclusions. It -- I think the last -- towards the end there was a set of Qs and As in which the -- in which the witness said, well, if you remember looking at propane, for example, for the system you have got to combine these lines.

EXAMINER PARROT: He did.
MR. PETRICOFF: And it's done for you on the chart and that was the purpose of the chart.
EXAMINER PARROT: And with that I am going to admit both RESA Exhibits 3 and 4.
(EXHIBITS ADMITTED INTO EVIDENCE.)
EXAMINER PARROT: All right. Let's go off the record for a moment.
(Discussion off the record.)
EXAMINER PARROT: Let's go back on the record.
OCC, you may call your witness. I'm sorry. I should ask Ms. Watts was there anything further from the company?
MS. WATTS: Nothing further from the company, thank you.
EXAMINER PARROT: Mr. Serio.
MR. SERIO: Thank you, your Honor. Call Bruce Hayes to the stand.
(Witness sworn.)
EXAMINER PARROT: Please have a seat.
(EXHIBIT MARKED FOR IDENTIFICATION.)
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BRUCE M. HAYES

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

DIRECT EXAMINATION

By Mr. Serio:

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

A. It's Bruce M. Hayes, H-A-Y-E-S. Business address is 10 West Broad Street, Suite 1800, Columbus, Ohio, for the office of the Consumers' Counsel.

Q. Do you have before you a document marked as OCC Exhibit No. 1 that's titled "Direct Testimony of Bruce M. Hayes" that was documented with the PUCO in this case on July 21, 2015?

A. Yes, I do.

Q. And was that prepared by you or at your direction?

A. Yes, it was.

Q. If I was to ask you the same questions that are in the testimony today, would your answers be the same?

A. Yes.

Q. Do you have any changes, additions, or corrections to the testimony?

A. Yes, I do. Page 4, line 12, there should be a comma between "fair" and "just." And then on page 7, line 19, strike the letter "T" between "2" and "GCR." That's it.

Q. I'm sorry, what line on page 7?

A. 19.

Q. Okay. And then with those two corrections, is the testimony correct to the best of your knowledge?

A. Yes, it is.

MR. SERIO: Your Honor, Mr. Hayes is available for cross-examination, and I have a copy of his testimony, if you would like it.

EXAMINER PARROT: I'm good, thank you. Make sure the court reporter has one. Thank you.

All right. Starting to jump around a little, Mr. Petricoff?

MR. PETRICOFF: Yes, thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Petricoff:

Q. Good afternoon, Mr. Hayes.

A. Hello.

Q. I just have a couple of questions for you. You were in the room earlier today for the cross-examination of Mr. Kern?

A. Yes.

Q. Did you hear Mr. Kern indicate that if the application was approved, the company would buy more firm capacity?

A. No, I did not hear that.

Q. Okay. Does the Consumers' Counsel approve and sanction the addition of additional firm capacity purchases by Duke for the GCR?

A. The Consumers' Counsel is concerned that spot purchases have to be made as a result of having problems balancing customers when speculating service. There is no customers electing that or suppliers electing that.

Q. My question was does the Consumers' Counsel approve and sanction the additional purchase of firm transmission service for the GCR?

A. If it's needed.

Q. Have you done any studies to see if it was needed?

A. I have not.

Q. Have you done any studies to see when the occasional purchase of spot gas may be advantageous vis-a-vis the cost of additional firm transportation?

A. I have not done any studies.
Q. Is it the Consumers' Counsel's office position that Duke should maintain all of its current storage contract service?
A. It is not our position.
Q. So it -- I'm sorry.
MR. PETRICOFF: May I have the answer -- the question and answer read back.
(Record read.)
A. We are waiting to see potential solutions to this problem besides this and what the GCR auditor has to say as well.
Q. So it may be possible that there is a more optimal plan in terms of designing the assets to meet Duke's peak load need than the application in the matter at bar?
A. It's possible.
Q. One last question for you, is the Consumers' Counsel also concerned about the cost of service for residential customers that shop?
A. Yes.
Q. Do you know what the increase to shopping customers would be if the company's application is approved?
A. I do not. Again, the concern is about

spot purchases, and we don't know what those will be.
Q. But the Consumers' Counsel's office would be concerned if there would be a significant increase to the cost of shopping customers because of the requirement to buy enhanced from a balancing service?
A. We want to see an equitable service between the -- costs between the two. And we don't want to see any actions being taken -- or let me say anything that shifts one cost to the other. We don't want to see --
Q. Right. In order to determine whether there is an actual -- an equitable balancing, don't you have to know what the monetary impact is going to be on the shopping customer, shopping residential customer?
A. You try to make it as equitable as possible, and I don't think that we can -- under a GCR you have to supply that peak day, and you generally know what assets are required to do that. But if the suppliers make some kind of change or react in some way that you are not expecting, then you may be the part that's doing the balancing or assuming the cost and we don't -- we want to try to avoid this type of surprise costs.
Q. I understand. But isn't the Consumers'

Counsel's office also concerned about what the impact of a Commission decision taking away firm balancing service to residential customers who are -- who are being supplied by suppliers who are using it?

A. We're concerned for both, yes.

MR. PETRICOFF: No further questions. Thank you.

EXAMINER PARROT: Mr. Oliker?

MR. OLIKER: Thank you, your Honor. Just a few quick questions.

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CROSS-EXAMINATION

By Mr. Oliker:

Q. Mr. Hayes, have you reviewed what is Attachment 5 to Duke's application for today?

A. I looked at it, yeah.

Q. Do you understand that Choice suppliers have a requirement to provide their own capacity to a certain degree?

A. Yes.

Q. And did you know that information before you filed your testimony?

A. Yes.

Q. Would you agree that it is a possibility that if Duke's application is approved, Choice providers may be holding capacity that was procured on a long-term basis that they no longer need?

A. I guess it's possible.

Q. Would you agree it is also possible that they would be holding capacity they don't need and have to pay a higher EFBS rate that they did not consider for purposes of a long-term contract?

A. I don't know what they -- how they look at that. I don't know how long -- how long-term suppliers go out and make transportation agreements.

Q. You recognize it's possible?

A. It's possible.

MR. OLIKER: Those are all the questions I have, your Honor. Thank you, Mr. Hayes.

EXAMINER PARROT: Anything from the company?

MS. WATTS: No, thank you, your Honor.

EXAMINER PARROT: Staff, any?

MR. McNAMEE: No questions.

EXAMINER PARROT: Any redirect?

MR. SERIO: Yes, your Honor.

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REDIRECT EXAMINATION

By Mr. Serio:

Q. Mr. Hayes, does OCC ever preapprove any of the gas purchasing policy decisions that any distribution company makes in advance?

A. No.

Q. Is it the OCC's position that whenever possible, that a cost should follow cost causation?

A. Yes.

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

EXAMINER PARROT: Mr. Petricoff?

MR. PETRICOFF: No redirect -- I mean no recross.

EXAMINER PARROT: Mr. Oliker?

MR. OLIKER: No, thank you, your Honor.

EXAMINER PARROT: Company, anything?

MS. WATTS: No, thank you.

EXAMINER PARROT: Staff?

MR. McNAMEE: No, thank you.

EXAMINER PARROT: Thank you, Mr. Hayes.

MR. SERIO: We would move OCC Exhibit 1 into the record.

EXAMINER PARROT: Mr. Hayes' testimony has been marked as OCC Exhibit No. 1. Are there any objections to its admission?

MS. WATTS: No objection.

MR. McNAMEE: No objection.

EXAMINER PARROT: It is admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PARROT: Let's go off the record for a moment.

(Discussion off the record.)

EXAMINER PARROT: At this time we are going to break for a one-hour lunch. We will reconvene at about 1:40 p.m.

(Thereupon, at 12:40 p.m., a lunch recess was taken.)

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Tuesday Afternoon Session,
August 4, 2015.

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EXAMINER PARROT: Let's go back on the record.

Mr. Petricoff.

MR. PETRICOFF: Yes, your Honor, at this time I would like to call to the stand Thomas Scarpitti. Also if I may approach, I would like to have marked as RESA Exhibit No. 1 the direct prepared testimony of Mr. Scarpitti.

EXAMINER PARROT: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

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THOMAS SCARPITTI

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

DIRECT EXAMINATION

By Mr. Petricoff:

Q. Good afternoon, Mr. Scarpitti.

A. Good afternoon.

Q. Do you have with you what has been previously marked as RESA Exhibit No. 1?

A. I do.

Q. And is that your direct prepared

testimony?
A. It is.
Q. And was it prepared by you or under your direction?
A. It was.
Q. Could you state for the record your name and business address.
A. Thomas Scarpitti, S-C-A-R-P-I-T-T-I, 6100 Emerald Parkway, Dublin, Ohio 43016.
Q. Mr. Scarpitti, on whose behalf do you appear today?
A. RESA.
Q. And that's an acronym for?
A. Retail Energy Supplier Association.
Q. Got your first question correct. The -- if I were to ask you today the same questions that appear in the direct prepared testimony, would your answers be the same?
A. They would.
Q. Are there any other changes or corrections that you would like to make to the testimony?
A. No.
MR. PETRICOFF: Your Honor, at this time the witness is available for cross-examination.

EXAMINER PARROT: Okay. Thank you.

Mr. Oliker, I am going to assume you are not going to try to ask any questions of this witness; is that correct?

MR. OLIKER: I think I'll pass, your Honor. Thank you.

EXAMINER PARROT: Very good. Thank you.

Ms. Watts.

MS. WATTS: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Watts:

Q. Sir, I am going to give you a couple of easy ones just to start out.

A. Yes.

Q. Your last is Scarpitti not Scarpetti.

A. Correct.

Q. And, sir, I had good morning in my notes, but I think we've gotten to the afternoon, so I'll say good afternoon.

A. Good afternoon.

Q. The opinions that you set forth in your testimony are all the opinions that are relevant to this matter, correct?

A. All of the opinions that anyone would have or all of the opinions?

Q. All of your opinions that you wish the Commission to consider in this matter.

A. Yes.

Q. Okay. And to prepare your testimony, it's my understanding that you read the testimony that was filed by the other parties in the case, and you reviewed discovery responses that the company provided to IGS in this case, correct?

A. Correct.

Q. And that was all that you reviewed.

A. Correct.

Q. Okay. And in preparing to write your testimony, you created the data analysis that's shown in your Attachments TS-1 and TS-2 and those are the only data analyses that you created for this case, correct?

A. Those and the table that's actually in my testimony, yes.

Q. Correct, I appreciate that clarification. And you are, as you said, testifying on behalf of RESA today, not IGS Energy, correct?

A. Correct.

Q. And if I asked you to name all the members of RESA in Ohio, you are not able to do that right now, correct?

A. No.

Q. And you are not aware of whether or not your testimony was approved by all the members of RESA, correct?

A. I'm not aware of all the members' opinion on my testimony, no.

Q. Okay.

A. All the members were given an opportunity to contribute to my testimony.

Q. But -- and when did you become aware of that, sir?

A. Of their ability to contribute?

Q. Yes.

A. I'm -- I'm not sure of the exact time.

MS. WATTS: May I approach, your Honor?

EXAMINER PARROT: You may.

Q. Mr. Scarpitti, do you recall your deposition was taken on Thursday of this past week?

A. I do.

Q. Would you turn to page 9 of your deposition, please.

A. Okay.

Q. Beginning on line 17, I am going to read it to you. "When you testify today, you don't know whether your testimony is approved by each of the members, correct?"

A. Correct.

Q. I am just going to read it and then you --

A. Oh, okay.

Q. "Not every one of those members was partaking in the discussion and I can't say that all of them are even aware of this case." Do you see that?

A. I do.

Q. Did I read it correctly?

A. Yes.

MR. OLIKER: Objection, improper impeachment. That was a different question than was asked to the witness.

EXAMINER PARROT: Do you wish to respond?

MS. WATTS: Well, your Honor, Mr. Scarpitti represented just now that all of the members were give an opportunity to review his testimony which I think conflicts with his earlier deposition testimony where he states the members -- some of the members may not even be aware of the case.

MR. PETRICOFF: Your Honor, I would join

to the objection because it's -- those are two distinctly different thoughts. Given the opportunity and taking part -- taking the -- exercising the opportunity are two vastly different items.

EXAMINER PARROT: I am going to overrule the objections.

Ms. Watts, please continue.

Mr. Scarpitti, I am going to give you the opportunity to clarify if you feel there is a discrepancy here. Explain how you understood the question, I guess.

THE WITNESS: Yeah. My understanding of the question was that those members were actively aware of and partaking in this, and I am saying they were given the opportunity to meaning no one was -- no one in the group was eliminated as having the possibility of partaking. The opportunity was there for them to partake.

MS. WATTS: And I -- I continue to believe that that's completely contrary to what his earlier testimony was, so I don't have any follow-up questions to that so.

EXAMINER PARROT: Okay. Let's proceed.

Q. (By Ms. Watts) Mr. Scarpitti, would you agree with me that one of the issues in this case is

the proper management of a gas portfolio?
A. Yes.
Q. And can you explain to me what you think the objectives should be in managing the gas portfolio?
A. To provide reliable service and at the lowest cost possible.
Q. Are there any other objectives?
A. To ensure that customers are served irrespective of the temperature and I guess that goes along with reliable service.
Q. Anything else?
A. No.
Q. And you're recommending the company manage its portfolio with a subscription level of 41,400 dekatherms, correct?
A. Correct.
Q. Because you believe the company managed to get through the winter of 2013 and '14 at that level, correct?
A. Correct, and the following winter at a lower level as well.
Q. Okay. It's possible that a winter colder than either of those winters could occur?
A. Yes.

Q. On page 3, lines 66 and 67, of your testimony, you refer to the inequities in the Choice Program. Do you see that?

A. Yes.

Q. Could you list for me what inequities you are referring to there.

A. I can only refer you to Mr. White's testimony. I don't know all the -- all the inequities.

Q. So you don't -- that's not an issue that you are capable of discussing?

A. Correct.

Q. Okay. Do you know when the EFBS tariff was approved by the Commission?

A. I believe it was 2007.

Q. Were you directly involved in the case where the Commission approved that tariff?

A. No. I was indirectly involved.

Q. On page 4 of your testimony, line 70, you state that there is no justifiable reason to discriminate against one set of competitive retail natural gas providers. Do you see that?

A. I do.

Q. But there is a separate class of customers in the 1,000 dekatherm category, correct?

A. Correct.
Q. And on page 4, line 79, of your testimony, you state that the company has not incurred any pipeline penalties. Do you see that?
A. On page -- could you repeat the page and line number, please?
Q. Yes, line 4, line 79.
A. I don't see where it talks about --
Q. How about line 80? I'm sorry.
A. Yes.
Q. Do you believe that the company should actually incur penalties before a change is necessary?
A. No.
Q. Would you agree with me that spot purchases are dynamic and unpredictable?
A. Yes.
Q. And your recommendation that the Commission select a level of 41,400 dekatherms as an acceptable amount of storage allocated to suppliers was based upon your observation of Duke Energy Ohio's ability to handle the system during the previous cold winters, correct?
A. Correct.
Q. And not based upon any other analyses.

A. Correct.

Q. And you believe that you are familiar with the company's entire capacity and supply portfolio based upon your review of the transportation contracts and storage contracts that the company provided in discovery response, correct?

A. Yes.

Q. But you would agree with me there may be other factors in the capacity and supply portfolios which you are not aware?

A. Yes, it's possible.

Q. And within Duke Energy Ohio's service territory, Duke Energy is a provider of last resort, correct?

A. Yes.

Q. IGS Energy and members of RESA do not serve as suppliers of last resort in Duke Energy Ohio's service territory, correct?

A. That's true.

Q. Okay. Turning in your testimony to page 7, please. Do you see the first two suppliers in that table?

A. Yes.

Q. They have zero MDQ storage assigned to them. Can you explain why that is?

A. There was no assignment because they elected the EFBS.

Q. Okay. Now, would you turn with me to Exhibit TS-1, please. Do you see in that exhibit the total supplier EFBS election at 20,000?

A. Yes.

Q. Let's look at the 30,000 column, if you would.

A. The 3,000?

Q. The 30,000.

A. Oh, 30,000 column, okay.

Q. Assuming -- what I am wondering is which of the suppliers in that column voluntarily chose to -- to elect for EFBS?

A. I couldn't -- there was a shortcoming in the spreadsheet because I couldn't fit so many variables into the spreadsheet to choose which suppliers were actually making an election. The purpose of the spreadsheet is to show the relative size of potential assignments given how the -- the different levels of 3,000 and 1,000 MDQ.

Q. So there should be some zeros in that column, correct?

A. Yes.

MS. WATTS: Okay. I have nothing

further, your Honor.

EXAMINER PARROT: Okay. Mr. Serio?

MR. SERIO: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Serio:

Q. Good afternoon, Mr. Scarpitti.

A. Good afternoon.

Q. Were you here this morning when Mr. Kern indicated he thought there were currently seven marketers that have over 20,000 MDQ?

A. Yes.

Q. Do you know how many of those seven are members of RESA?

A. I do not.

Q. Do you know if any of the RESA members are under 20,000 MDQ a day?

A. I do not.

Q. Do you know if any RESA members that are under 20,000 a day support your position that there should be no, to use your word, discrimination between those above 20,000 and those below?

A. I do not. That information is privileged for each supplier.

Q. Now, Mr. Kern this morning also indicated that if EFBS service is undersubscribed, it could lead to a situation where Duke might either have to purchase gas or sell gas to keep the system in balance, correct?

A. Correct.

Q. If that happens and Duke incurs additional costs, are those costs that should flow to the GCR?

A. Yes.

Q. Were those -- are those -- in that scenario are those costs that are incurred by the GCR to provide service to GCR customers?

A. Yes.

Q. Even though Mr. Kern indicated the GCR doesn't need -- strike that. Even though Mr. Kern indicated the GCR customers can receive all their service just from the storage service that they pay for directly.

A. Yes. The assets that the GCR pays for are -- are in the hands of the GCR and provide a benefit to the GCR. Suppliers that don't elect EFBS that are on FBS pay for the balancing portion of that asset.

Q. So to the extent that the company has to purchase or sell gas because of an undersubscription, you still think those are costs that are caused by GCR customers?

MR. OLIKER: Objection, lack of foundation.

MR. SERIO: That's follow-up to the two previous questions, your Honor.

EXAMINER PARROT: Overruled.

A. I'm sorry. Could you reask the question?

MR. SERIO: Would you mind reading that back, please. Thank you.

(Record read.)

A. I can't say for sure that the purchases or sales would be made because of an undersubscription. I can only assume that the rates that are out there for us to choose between EFBS and FBS are neutral to the GCR.

Q. So to the extent Mr. Kern says those purchases are made not to support the GCR, you're taking issue with his position.

A. I have no -- no evidence that that's the case, so I can't confirm that.

Q. Now, you indicated that the EFBS service started in 2007; is that correct?

A. Correct.

Q. Do you know if IGS signed that

stipulation?

A. I'm here representing RESA. Is it okay to answer IGS?

MR. PETRICOFF: If you can answer the question.

A. I believe IGS was party to that stipulation, yes.

Q. Okay. My question is did IGS sign the 2007 stipulation that resulted in the EFBS service?

A. Yes, I think they did.

MR. SERIO: Can I approach, your Honor?

EXAMINER PARROT: You may.

Q. I am going to show you a stipulation in the 05-732-EL-MER, the merger case. It's a stipulation and recommendation. And do you see on page 6 there the date is February 21, 2007, correct?

A. Yes.

Q. And if you want to look through that page to the next page, do you see a signature of IGS anywhere there?

A. I don't.

MR. PETRICOFF: Okay. Your Honor, I would object and move to strike the question and answer because he's here for RESA. He indicated he thought they signed it. There's been no foundation laid that that -- that looking at that document should -- should change that answer, so it's done for impeachment and it's improper.

MR. SERIO: Your Honor, he indicated that he knew whether I -- he said -- he said "If I know the answer, can I answer it," and he did and he's indicated that he believes that IGS signed the stipulation and the stipulation, which will speak for itself, shows that IGS nor any RESA member signed the stipulation.

EXAMINER PARROT: I agree, Mr. Serio. Proceed.

Q. (By Mr. Serio) Now, in your testimony on page 3 you talk about the discrimination between the larger and the smaller marketers under the company's proposal, correct?

A. Yes.

Q. And I believe you indicated that discrimination issue could be dealt with by just applying the requirement to all marketers, correct, instead of having it cut off at 20,000?

A. No. I suggested a cutoff of 1,000.

Q. I'm sorry, cutoff of 1,000 instead of 20 then you believe would be nondiscriminatory.

A. I believe my hybrid approach with a

cutoff of 1,000 would be nondiscriminatory, yes.

Q. If --

A. I don't believe making EFBS mandatory above 1,000 would have been a way to proceed.

Q. So if the company proposal were put into effect, is the cutoff at 20,000 then appropriate, or in your opinion is that discriminatory?

A. I believe it's discriminatory.

Q. So under the company's proposal to eliminate the discriminatory aspect, your recommendation to the Commission would be to just not have that 20,000 limitation, correct?

A. I would definitely get rid of the 20,000 limitation.

Q. On page 9 in your testimony you talk about the winter-summer differential, correct?

A. Yes.

Q. And you talk about that in the context of one of your alternative proposals for the Commission, correct?

A. Correct.

Q. Now, the winter-summer differential as you've calculated historically is -- has been on average a positive differential, correct?

A. Correct, over the 18 years I looked at.

Q. But there's nothing that would -- that guarantees that in going into the next winter heating season that differential couldn't reverse and there actually be a cost, correct?

A. That's correct.

Q. And if that was the case under your proposal, the GCR customers would get an additional cost, correct?

A. Actually the GCRs would get a gain because the suppliers would -- would pay 21 cents but there would be no spread there.

Q. So you're saying even if the differential was negative under your proposal, there would be a 21 cent payment.

A. Correct. In our -- in my -- I mean, ideally there would be no payment whatsoever but it -- if we were going to -- if the Commission were to agree we needed to take into account that spread, then there would be a positive payment.

Q. Could you look at page 10 of your testimony on line 201. When you indicate standard service customers, is that what you mean by GCR customers?

A. Correct.

Q. On page 13 of your testimony, on line

262, you indicate there that your proposal would give Duke increased certainty, but your proposal would not eliminate the possibility that Duke could incur additional costs, correct?

A. I agree my proposal doesn't eliminate that possibility.

Q. And if Duke were to incur additional costs under your proposal, would Duke have to pay those costs?

A. Additional costs or additional gains would both go to the GCR.

Q. Do you know if Duke relies on spot market purchases to meet GCR peak day needs?

A. I believe they do not rely on it from a planning purpose. I do believe they have to make spot purchases.

Q. Do you know if any Ohio LDCs rely on spot market purchases to serve their standard service or GCR customers on a peak day?

A. I don't know for sure, but I don't think that they do.

Q. Does -- are you aware of any marketer that replies on spot market purchases to serve the needs of the residential customers on peak days?

A. I can't speak for any other marketer

other than what I know which is just IGS.
Q. So are you aware of any that rely on spot market purchases?
A. I am not aware of any, no.
Q. Are you aware that Duke Energy Ohio made some spot market purchases in the recent past?
A. Yes.
Q. And when Duke made those purchases, do you know if those purchases were made to serve GCR customers or not?
A. I believe the vast majority of the purchases were made for GCR customers, yes.
Q. If Duke incurs costs to balance the system and those costs are not related to service that provides service to GCR customers, should GCR customers pay those costs?
A. No.
MR. SERIO: That's all I have. Thank you, Mr. Scarpitti.
THE WITNESS: You're welcome.
EXAMINER PARROT: Mr. McNamee?
MR. McNAMEE: Nothing.
EXAMINER PARROT: Any redirect?
MR. PETRICOFF: May we have a moment?
EXAMINER PARROT: You may.

(Discussion off the record.)

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REDIRECT EXAMINATION

By Mr. Petricoff:

Q. Mr. Scarpitti, earlier today Mr. Serio asked you a question about whether marketers plan to make spot market purchases. Do you recall that?

A. I do.

Q. Is there a difference between planning them and making spot market purchases?

A. Absolutely.

Q. Why would you make the purchase and not plan for it?

A. The -- in the case of Duke the TSQ changes daily. Having the right mix of assets and the right amount of gas every day may not be possible due to the dramatic swings that could occur in the TSQ, so IGS, and I am sure other marketers, are out in the spot market purchasing supply or selling supply to manage those changes in the TSQ.

Q. And that's fairly common in the industry?

A. It's very common, yes.

MR. PETRICOFF: Thank you. No further questions.

EXAMINER PARROT: Ms. Watts?

MS. WATTS: Just a quick question on recross. Mr. Scarpitti just indicated that those spot purchases are common in the industry.

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RECROSS-EXAMINATION

By Ms. Watts:

Q. Is it your testimony then that suppliers commonly make spot purchases to manage their portfolio or manage their requirements?

A. Suppliers definitely make spot purchases in sales to manage.

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

EXAMINER PARROT: Mr. Serio?

MR. SERIO: Thank you, your Honor.

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RECROSS-EXAMINATION

By Mr. Serio:

Q. Do marketers rely on spot purchases to serve the peak day needs of their residential customers?

A. Not necessarily. It's possible that some marketers do. I think marketers often rely on peaking service, their own storage, or other assets that they have to meet their peak days.

Q. Do you know if the PUCO has indicated that it's acceptable for marketers to rely on spot purchases to serve residential customers on peak days?

A. I don't know.

MR. SERIO: That's all I have, your Honor. Thank you.

EXAMINER PARROT: Mr. McNamee?

MR. McNAMEE: No, thank you.

EXAMINER PARROT: Very good. Thank you, Mr. Scarpitti.

THE WITNESS: All right. Thank you.

MR. PETRICOFF: Your Honor, at this time we would move for admission into the record of RESA Exhibit No. 1.

EXAMINER PARROT: Are there any objections to the admission of RESA Exhibit No. 1?

MS. WATTS: No objections, your Honor.

MR. SERIO: No objections.

EXAMINER PARROT: Hearing none it is admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. PETRICOFF: Your Honor, at this time we would like to call to the stand Matthew White. Also, your Honor, I would like to have marked as RESA

Exhibit No. 2 the direct prepared testimony of Mr. White.

EXAMINER PARROT: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

(Witness sworn.)

EXAMINER PARROT: Very good.

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MATTHEW WHITE

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

DIRECT EXAMINATION

By Mr. Petricoff:

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

A. Matthew White, 6100 Emerald Parkway, Dublin, Ohio 43016.

Q. And, Mr. White, can you tell me on whose behalf you appear today?

A. Retail Energy Supply Association.

Q. And do you have with you on the stand a copy of what's now been marked as RESA Exhibit No. 2?

A. I do not. I actually need that.

MR. PETRICOFF: May I, your Honor?

EXAMINER PARROT: You may.

THE WITNESS: Thank you.

Q. Mr. White, did you prepare -- or was the direct prepared testimony marked as Exhibit No. 2 prepared under your direction?
A. Yes, it was.
Q. And if I were to ask you the questions that are in that document today, would your answers be the same?
A. Yes.
Q. Are there any other changes or updates you would like to make to the testimony?
A. No.
MR. PETRICOFF: Your Honor, the witness is available for cross-examination.
EXAMINER PARROT: Very good. Mr. Oliker, again I am assuming no questions for this witness; is that correct?
MR. OLIKER: No, thank you, your Honor.
EXAMINER PARROT: All right. Very good.
Ms. Watts.
MS. WATTS: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Watts:
Q. Good afternoon, sir.
A. Good afternoon.

Q. Would you state your name, please.
A. Matthew White.
Q. And, sir, you are testifying today on behalf of RESA and not IGS, correct?
A. Yes.
Q. And you graduated from law school in 2007, correct?
A. Yes.
Q. The reason I ask that question is because there is not a vitae attached to your testimony, and I just want to make clear that that was the year. And in your legal career you have not worked on an antitrust case, correct?
A. No.
Q. And IGS Energy is a competitive supplier of retail natural gas and electricity, correct?
A. That is one of IGS -- they are part of IGS's businesses, yes.
Q. Okay. And IGS and its affiliates provide products and services, correct?
A. Yes.
Q. IGS Energy sells retail natural gas in Duke Energy Ohio's service territory, correct?
A. Yes.
Q. Okay. In your testimony you provide an

explanation of the history of the FBS and EFBS tariffs; isn't that correct?

A. Yes.

Q. And your research in this history was accomplished by talking to folks at IGS and by reviewing the dockets, correct?

A. Yes.

Q. At the bottom of page 4 of your testimony you describe the history of the Commission's approval of EFBS. Do you see that?

A. Yes.

Q. Likewise this description is based on your research, correct?

A. My research and talking with people at IGS.

Q. Okay. But you were not counsel of record for IGS at that time.

A. No.

Q. Okay. In preparation for writing your testimony you reviewed the stipulation and the opinion and order in Case No. 95-656-GA-AIR which was a Duke -- which was then a Cincinnati Gas & Electric rate case, correct?

A. Can you point me to somewhere in my testimony where I referenced that specific case?

Q. Sure. It's on page 3 in footnote 1.
A. The Duke merger case was with CG&E. Is that the case you were referring to?
Q. No. This is actually an AIR case in your footnote 1.
A. Okay.
Q. We both agree that's not the Duke merger case, correct?
A. Okay. I'm sorry. The case number was not in my testimony, so can you repeat the case number again that you used?
Q. Just to be clear we are looking at page 3 --
A. Yes.
Q. -- and footnote 1, footnote 1.
A. Yes.
Q. And the case number is in that footnote, correct?
A. Yes.
Q. And you reviewed that case prior to preparing your testimony.
A. I generally reviewed it, yes.
Q. Okay. And also you reviewed the stipulation and the order approving the stipulation in the Duke Energy merger case, correct?

MR. OLIKER: Objection, vague.
EXAMINER PARROT: Overruled.
A. Yes.
Q. And although your footnote -- let me ask you a question, footnote 3 refers to that Duke Energy merger case, correct? In fact, you have a specified reference to it as merger case there.
A. Yes.
Q. And you did not include a case number with that.
A. Yes.
Q. And below footnote 3 is footnote 4 where you again refer to the merger case, correct? But in footnote 4 we are talking about the stipulation?
A. Yes.
MS. WATTS: Okay. So, your Honor, I would like to have the stipulation in Case No. 05-732 which was entered into the Commission's record on December 15, 2005, marked as Duke Energy Ohio Exhibit 3. And I would like to have the finding and order in that same proceeding which was entered into the record on December 21, '05, marked as Duke Energy Exhibit 4.
EXAMINER PARROT: The exhibits are so marked.

MR. OLIKER: Elizabeth, for clarity you are not marking the stipulation that Mr. White cites.

MS. WATTS: I am marking the stipulation in his footnote 4.

MR. OLIKER: You stated December 15, 2005, correct?

MS. WATTS: Yeah.

MR. OLIKER: I believe his footnote says March 1, 2007.

MS. WATTS: Well, that's the wrong stipulation. We will just mark the finding and order.

EXAMINER PARROT: Ms. Watts, so you want the mark the finding and order as Duke Exhibit 3 then?

MS. WATTS: Yes, please.

EXAMINER PARROT: Okay. So the stipulation -- the stipulation is withdrawn. We are not marking that just so the record is clear. The finding and order is marked as Duke Exhibit No. 3.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. WATTS: Okay.

Q. (By Ms. Watts) Mr. White, as an attorney and as a regulatory attorney and as general counsel for IGS, it's your -- part of your job responsibilities to review Commission rulings, correct?

A. I have reviewed a ruling or two in my day.

Q. Okay. So would you take a look at the finding and order that was just marked as Duke Energy Ohio Exhibit 3 and tell me if that's the finding and order you are referring to in footnote 3.

A. This appears to be the same document.

Q. Okay. And your footnote refers to "at 18," and I am unclear as to whether that means page 18 or finding 18. I wonder if you could look at whichever you intended to refer to.

A. It would be page 18.

Q. Okay. Looking at page 18 then with reference to your statement at line 70 on page 4, you claim that rider EFBS as a result of the Commission's approval of a stipulation and recommendation entered into between Duke and parties in the merger of Cinergy and Duke Energy Corporation and then you cite this finding and order. Can you show me in this finding and order where the EFBS order was approved by the Commission?

A. The Commission approved the collab -- the Choice collaborative out of this tariff -- out of this finding and order and in that case in which the collaborative process resulted in EFBS being established as a rate for Choice customers. That's my understanding of how -- how it worked.

Q. So in this finding and order the Commission, in fact, did not approve the EFBS tariff, correct?

A. Again, this is my understanding, and I have to go back and read the whole order again, but my understanding is the Commission approved a Choice collaborative that came out of this particular case which then the Choice collaborative, which was a collaborative process among multiple interests that multiple parties participated in, established the EFBS rate for Choice customers.

Q. Okay. So I don't believe you answered my question though. The Commission did not approve that EFBS tariff in this finding and order, correct?

A. They approved the Choice collaborative that would result in the EFBS, yes.

Q. Okay. Thank you. Sir, you did not do any data analysis in order to prepare your testimony, correct?

A. My specific testimony does not reference data, numerical data.

Q. So to be clear you did not perform any data analysis in order to prepare your testimony.

A. Can you be more specific what you mean by data analysis?

Q. I don't know that I can be any more clear than that. Is there any data analysis that you performed in order to write your testimony?

A. You mean numerical data?

Q. Yes.

A. No, I did not provide any numerical data.

Q. Okay. On page 5, lines 83 through 90, you criticized Duke Energy Ohio for proposing the change terms that were agreed to in a stipulation, correct?

A. I state that -- I state that the terms were established based upon stipulations and collaborative processes.

Q. But the terms of at least the FRAS tariff have been modified since that stipulation was approved by the Commission, correct?

A. I believe the FRAS tariff may have been modified. I am not 100 percent sure about that but, again, that's not -- I don't know how that relates to the EFBS and FBS.

Q. On the bottom of page 6 at line 122, you reference your belief that there are subsidies flowing to the GCR embedded in distribution rates. Do you see that?

A. Yeah, yes, I do.

Q. Could you tell me what subsidies you are discussing there.

A. I believe I give examples in my testimony. Give me a second to find those examples. So the examples as a reference in -- starting on 151 of my testimony states that there are substantial costs that are required to provide natural gas product other than the costs of natural gas. Those costs include but are not limited to cost of scheduling and balancing the costs of providing customer information for commodity compliance of GCR customers, cash working capital, the cost of calculating GCR bills, GCR-related legal and regulatory costs, other costs, and I didn't list in my testimony includes cost of providing customer service to GCR, all those costs are recovered through distribution rates, are not charged to GCR directly. All those costs are necessary to provide GCR service to customers; and, thus, those costs are being subsidized through distribution rates.

Q. You don't know what the magnitude of any

of those costs are, correct?
A. To the extent that in my testimony I'm not testifying to the costs, much like Duke hasn't done any analysis of magnitude of any kind of costs as far as spot market purchases. My point in my testimony is that if you are going to change a fundamental part of the Choice Program, that you have to examine the entire costs and not just look at a single aspect of the Choice Program.
Q. But you do not know the magnitude of any of those costs, correct?
A. I have not done the calculation specifically for Duke on those costs.
Q. Nor have you done any discovery around those costs.
A. No, we haven't done discovery to identify those specific costs in this proceeding.
Q. And would you agree with me that Duke Energy Ohio incurs costs in managing the customer Choice Program?
A. I think there are costs to manage the customer Choice Program and Duke also charges suppliers fees to participate in the Choice Program.
Q. Okay. And do you know what the total revenue is from the fees that are charged to

suppliers for participation in the Choice Program?

A. I don't know what the total revenue is, but I know a general idea what the fees are.

Q. You would know what the fees are with respect to IGS participation, correct?

A. I don't know the total fees, but I do know specifically Duke charges switch fees for every time a customer switches to the Choice Program. Duke charges rate code fees. Duke charges registration fees to suppliers whenever there is an additional IT upgrade. They charge a per hour fee for any kind of service that suppliers need. There's customer list fees. There's a number of fees suppliers are required to pay in order to participate in the Choice Program that GCR customers don't pay fees.

Q. But you have no idea what the magnitude of those fees are?

A. Not -- no, I do not.

Q. Okay. And you have not done any discovery on this issue at all.

A. Beyond that identifying the actual fees, I haven't -- I haven't calculated the cumulative amount.

Q. And you also would not know then whether the fees charged by the company cover the costs incurred in managing the Choice Program?

A. I don't know.

Q. And, sir, do you know how many suppliers are currently registered with the Commission to serve customers in Duke Energy Ohio's service territory?

A. I don't know the exact number.

Q. And do you know what percentage of customers are served by competitive suppliers, competitive natural gas suppliers, in the company's service territory?

A. I recently looked at the data. It's approximately 50 percent.

Q. How recently did you look at that data?

A. Right after you asked me the same question in deposition.

Q. So you did not have that information available to you when you prepared your testimony, correct?

A. I didn't and, I mean, I didn't reference it in my testimony, so I was not aware of the specific.

Q. Okay. And other than what you learned from Mr. Kern's testimony, you -- when you prepared your testimony, you had no knowledge as to how the number of suppliers or the number of Choice customers have changed in recent years, correct?

A. At the time I wrote my testimony, I relied on Mr. Kern's testimony to -- and, again, I trust Mr. Kern's representation that Choice participation has increased since -- since the EFBS rate was established.

Q. And as far as you know, RESA has not done any market research related to competitive concentration levels in the Duke Energy Ohio service territory, correct?

A. Not that I am aware of.

Q. Are you aware of any market research in the Duke Energy Ohio service territory done by RESA at all?

A. Can you repeat the question?

Q. Are you aware of any market research done by RESA in the Duke Energy Ohio service territory?

A. I am not aware of any market research commissioned by RESA in the Duke Energy service territory.

Q. And you do not have any specific knowledge about how the Department of Justice or the Federal Trade Commission examined competitive markets for anti-competitive behavior, do you?

A. Not -- not specific knowledge.

Q. If you were to examine a market to measure the level of competition in that market, what metrics would you rely upon?

A. I -- I would rely on a number of metrics. Off the top of my head, including but not limited to, suppliers in the market, the knowledge of the customer about the availability of products in the market, the number of different products in the market, whether or not customers are specifically engaged in the market. Those are just some factors that I would look at.

Q. And you did not provide any data in your testimony with respect to those metrics, did you?

A. No, but I did cite the order where the merger case was implemented, and specifically in the order the Commission says "We note that CG&E's Gas Choice Program has not been as successful as the Commission anticipated and that is where they created the Choice collaborative process based on the fact that the" -- "the Duke" -- "now Duke Choice Program had not" -- "had not been as successful as the other Choice programs in Ohio." So they specifically required Duke to have this collaborative in which the EFBS rate came about which was a mechanism to -- to create a more competitive environment for the Duke

Choice Program which the Commission had previously determined that it was not as successful as the other programs. So to the extent I haven't done any data analysis, no, but I was relying on the Commission's representation in the opinion and order.

Q. So it's your testimony that you are relying on the Commission's finding and order from a 2005 case?

A. I was relying -- the case is directly relevant to establishment of the EFBS rider which is -- I'm sorry, the EFBS rate which is subject to this case.

Q. Sir, you believe there is cross-subsidy occurring presently between the GCR customers and Choice customers, correct?

A. I believe, yes, that the GCR customers are currently being subsidized, yes.

MS. WATTS: I have no further questions.

EXAMINER PARROT: Mr. Serio?

MR. SERIO: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Serio:

Q. Good afternoon, Mr. White.

A. Good afternoon.

Q. Let's pick up on this subsidization argument. So it's your belief that Duke's base rates are too high, correct?

A. It's my belief that there are a number of costs required to support the GCR that are being recovered through distribution rates that are paid for by all customers including Choice customers.

Q. So your fix would be to take those costs out of base rates, right?

A. As a general principle, I believe it's appropriate to unbundle all the costs required to support the GCR and charge them directly to the customers that are taking that service.

Q. Do you know when Duke had its most recent natural gas distribution base rate case?

A. I believe that was 2012.

Q. And would you accept, subject to check, that it was Case No. 12-1685-GA-AIR?

A. Yes.

Q. And do you know if IGS or RESA intervened in that case?

A. I believe IGS participated in that case.

Q. Do you know if IGS did any discovery to determine the magnitude of the subsidy issues that you've identified in your testimony as part of that

distribution base rate case?
A. I believe we attempted to do discovery, but we didn't get a whole lot of answers.
Q. Did IGS submit any testimony raising this subsidy issue in that distribution base rate case?
A. I believe that we did.
Q. Did the Commission order in that proceeding address your identification of this subsidy issue?
MR. PETRICOFF: Your Honor, at this point we would object for the question going forward. It is clear this has nothing to do with RESA, and it's clear it has nothing to do with the -- with the current matter at bar concerning the mandatory requirement that all shippers -- firm shippers over 20,000 buy the enhanced service so we will object.
MR. OLIKER: Your Honor, to the extent the questioning is allowed to go forward, I would also object if Mr. Serio is not going to give Mr. White an opportunity to look at the documents.
MR. SERIO: Well, your Honor, I didn't open the door to the subsidy issue. I would be more than happy to eliminate the subsidy issue, but as long as they are going to raise it, I think I have the opportunity to cross on it.

EXAMINER PARROT: I agree, Mr. Serio. Are you withdrawing your recommendation, Mr. White, in this case that the Commission needs to look at these issues?

THE WITNESS: No.

EXAMINER PARROT: I didn't think so. Then the objection is overruled.

Q. (by Mr. Serio) So, Mr. White, my question was did the Commission order in the Duke 12-1865, the most recent rate case, address the subsidy issue that you raised in that proceeding?

MR. OLIKER: Your Honor, I would still object in that he hasn't shown him the order, given him an opportunity.

EXAMINER PARROT: To the extent that the witness is able to answer the question without reading the document, I am going to instruct him to answer the question.

A. My recollection is that case was settled. There was a stipulation. So the issue of unbundling subsidies was not fully addressed in the Commission's order.

Q. Do you know if IGS took an application for rehearing or even an appeal to the Supreme Court arguing that the stipulation improperly failed to address the subsidy issue?

A. I don't recall.

Q. You indicated that you didn't think that RESA intervened in the Duke distribution rate case. Are you aware of anything that precluded RESA from intervening in that case?

A. I don't -- I don't think I said that I didn't think RESA intervened in that case. Maybe -- I don't remember if RESA intervened in that case. I am pretty sure IGS did, but I don't remember if RESA did or not.

Q. Are you aware of anything that would preclude RESA from intervening if they didn't?

A. Again, I don't know if they did or not. I can't remember.

Q. Are you aware of anything that would have precluded RESA from submitting testimony in the rate -- in the distribution rate case raising arguments about the subsidy issue?

A. Not that I am aware of.

Q. Are you aware of anything that precluded RESA if they had intervened in the case from taking an application for rehearing or an appeal to the court arguing that the Commission failed to address the subsidy issue?

A. I don't know anything that would prevent them from doing that.

Q. Your position is general counsel for IGS, correct?

A. My title is general counsel of legislative and regulatory affairs.

Q. And is part of your responsibility as general counsel to be involved in decisions regarding intervention in cases at the PUCO?

A. Yes.

Q. And does part of your role as general counsel include decisions on whether to submit discovery or testimony in proceedings before the PUCO?

A. Sometimes.

Q. And does your role as general counsel include involvement decisions on when to file a complaint case with the PUCO or an application for rehearing or an appeal of a PUCO proceeding to the Ohio Supreme Court?

A. Often I am involved in those decisions.

Q. Are you aware of any complaint that IGS or RESA or any marketer has filed against Duke alleging that there is subsidies embedded in base rates?

A. IGS, RESA, and a number of different companies in a retail community have taken positions all over the country that unbundling is proper and should -- should occur. We've -- we've -- and we've -- and a lot of commissions agreed with that. As I reference in Pennsylvania, the Commission has specifically ordered the gas utilities that provide gas cost recovery service to unbundle supply costs to provide those services.

MR. SERIO: Your Honor, I would move to strike the answer. I asked whether they had filed a complaint, and he never answered that question.

A. So my answer is that we -- we specifically have gotten involved in all kinds -- we've addressed the issue in a number of dockets, not just in Ohio but in other states. It's an ongoing issue. And we think that -- that after the markets evolve, the Commission could always continue to look at the rate -- the prices that are being recovered through distribution rates that are caused by the default service and continue to put -- place those costs properly on the default service.

Q. Are you familiar with the Commission's rule on complaint cases?

A. I generally am familiar with that, yes.

Q. Are you familiar with Revised Code 4929 -- 4905.26?

A. Specifically, I mean, I would need to see the rule to be able to speak on it.

Q. Do you know if RESA or IGS has filed a complaint, a formal complaint, with a docket number with the Public Utilities Commission of Ohio alleging that Duke has subsidies in their base rates?

A. We have not filed a formal complaint but that is what the whole evolution of the Choice Program has been about is identifying inequities that currently exist to make it a barrier to entry to and developing means to resolve those inequities. And it has been an evolution and that is the impetus of the order that came out in 2005 that established the Choice collaborative, and we continue to look at those issues to see if there are ways we can make the markets even more competitive and break down the remaining barriers which include the subsidies that are currently in -- being covered through distribution rates.

And my point is that we should not go backwards and remove a mechanism that was designed to move the markets forward without examining the current mechanism -- the current problems that exist through subsidies, the GCR through distribution rates.

Q. So your answer is neither IGS nor RESA has ever filed a complaint against Duke alleging that they are subsidies in base rates, correct?

A. We have not used that specific statute to file a complaint, but we have brought that up numerous times in numerous proceedings.

Q. Is there anything that would preclude RESA or IGS from filing a complaint if they are alleging there are subsidies in the base rates?

A. We certainly could file a complaint.

Q. Why haven't you?

A. Because we've -- we have chosen to address it in different mechanisms. We think it's an evolution of -- of Choice programs. And we did not think that that specific procedural mechanism is warranted at this time, although we don't preclude -- preclude ourselves from the opportunity of doing so.

Q. Do you know what level of participation the Choice Program had back in 2007?

A. Not specifically, no.

Q. Would you agree it was less than the 50 percent that we are at today?

A. I would agree it's less than 50 percent, and I also would agree that it had no small part due to the fact this Choice Program collaborative with the Commission, the increased migration had no small part in the Choice Program collaborative that was commissioned by the Commission which ultimately established the EFBS rate.

Q. Now, you've indicated that there's a number of costs that you specifically added as the alleged subsidies. Do you know if Duke incurs personnel, IT, or other costs for scheduling and balancing gas for choice marketers?

A. I know that we incur those costs.

Q. That's not my question. My question is does Duke incur costs for scheduling and balancing gas for Choice marketers?

A. To the extent that's our responsibility, then no.

Q. You don't believe Duke incurs any costs for scheduling and balancing gas for Choice marketers?

A. Duke provides balancing services which are recovered through distribution rates for customers, but as far as scheduling goes, IGS does all the scheduling for its customers and -- and we have to restrict those costs in our -- our price unlike the GCR where those costs are recovered through distribution rates, and it is not directly reflected into the price of the GCR.

Q. When marketers do scheduling and they interact with Duke, they are interacting with Duke personnel, correct?

A. Yes.

Q. Does Duke charge a specific fee to marketers to recover the costs of the personnel that interact with Choice marketers when they are involved with scheduling matters?

A. Duke charges us rate code fees. They charge a number of fees. I don't know specifically where those fees -- we don't get charged a fee every time someone from IGS picks up the phone and calls. We do get charged for fees for any IT we need to get done, but Duke definitely does charge us fees.

Q. Okay. I am asking specifically, not generally, are you aware of a specific fee that Duke charges to marketers that is involved with recovering the costs of Duke personnel that deal with marketers when it comes to scheduling gas for Choice marketers?

A. I don't -- I don't believe there's a specific fee every time that -- well, first of all, as I noted, I don't think Duke does the scheduling for marketers. Our group internally does the scheduling for all our customers, so if you mean every time our -- our personnel discusses, you know, scheduling issues with Duke, I do not believe every time that happens there is a specific fee charged to IGS.

Q. Is there a specific fee anywhere in the Duke tariff that says this is the charge to marketers to recover the costs of when marketers call and involve -- and talk to Duke personnel about scheduling matters? Is there a fee for that?

A. No. But as I note, there are --

Q. Thank you.

MR. SERIO: Your Honor, it was a simple "Yes" or "No."

MR. PETRICOFF: Your Honor, he was cut off.

EXAMINER PARROT: All right. Mr. White, go ahead and finish your answer.

A. So, Joe, to answer your question, you can't just say is there a specific fee because there are fees that are charged suppliers. I don't know specifically what those fees go to. They very well could go to covering the cost of the personnel that are required to interact with suppliers through the

Choice Program.

Q. But you don't --

A. I imagine it's you pay the money and it goes to Duke and I don't know where those go directly, but I will tell you this, that those fees go to reduce the costs and distribution rates, and those costs offset the Choice Program costs.

Q. Do you know if the fees that marketers paid Duke covers the costs that Duke incurs providing the service to marketers?

A. As I answered Ms. Watts, I don't know specifically whether they offset costs.

Q. If I was to hand you the Duke tariff, could you identify in the Duke tariff where there is any fees to marketers to recover the costs of the charges that Duke incurs from having employees deal with Choice marketers?

A. I could point you to the Duke fees' tariffs probably if I --

MR. SERIO: Could I approach, your Honor?

EXAMINER PARROT: You may.

Q. I am handing you the schedule of rates, classifications, rules, and regulations for gas service of Duke Energy Ohio PUCO No. 18. This tariff cancels and supercedes PUCO No. 15. And it looks like it's about a 200-page document. If you could show me where in those tariffs Duke has fees that specifically recovers the costs associated with Duke personnel that deal with Choice marketers.

A. To be clear I said that I could tell you where the fee -- the tariff lists the fees that are charged Choice suppliers. I also said that there's not a specific fee that says this fee goes directly towards recovering the costs every time a supplier interacts with Duke. So that's -- to the extent that you are asking me to find that in the tariff, I can tell you that won't be in the tariff. What I can tell you there is a tariff page that lists all the fees that are charged to Choice suppliers.

Q. And I don't know if you were here this morning when I asked Mr. Kern the question I asked him, if he -- if the fees that Duke charges for providing Choice service to marketers covers the cost the company incurs. Were you here then this morning?

A. No, I was not.

Q. So if I was to go through each of the items that you list on page 8, line 151 through 158, can you identify any of those specific items where there is a fee that is specifically charged to marketers listed in the tariff to provide any of

those services for Choice marketers?
A. Can you repeat the line numbers, please?
Q. Sure. Lines 151 to 158, your answer to question 13 basically.
A. So can you repeat the question?
Q. Sure. Can you identify any of the items that are listed in your answer and show me where in the tariff there is a specific fee to recover that specific cost related to that specific service as provided to Choice marketers.
A. Those services are provided by Choice marketers. They are not provided to Choice suppliers. Choice suppliers pay for those services based on their own, you know, use of -- they hire the employees to -- to -- to schedule and supply gas. We incur the cost of working capital when we check gas early and we don't get -- we don't get paid until later on in the season. We incur the costs related to IT service. We incur costs related to calculating customers' prices, so it wouldn't make any sense for us to also have to pay a fee to Duke when we already do that ourselves.
My point of this is that these are all the services -- the costs that we incur that Duke incurs the same or similar costs to provide GCR

service but those costs are recovered through distribution rates and not charged directly through the -- to the GCR.

Q. So is it your position that Duke does not incur any utility personnel costs to provide any of those services that you list in your answer to question 13?

A. No. My position is -- my position is that they incur substantial -- I am referring to the GCR costs in question 13, and my position is Duke incurs substantial costs for providing those services for the GCR, but it is recovered through distribution rates and not through the GCR rate.

Q. Does Duke incur any of those same costs with utility personnel to provide service to Choice marketers?

A. Largely, no.

Q. So any time a marketer picks up the phone and calls Duke, any costs associated with that, how is Duke reimbursed for that?

A. I think you've already answered this question but what I am saying is there is a lot of fees that we pay so from that and my second -- the second point is there's substantially more costs to provide the service to the GCR because when we are providing service to our customers, we are running our own call center to answer their questions with our sales. We are running our -- we have our own supply team that does -- that does the scheduling and purchasing and the deliveries. We have our own operations team that does that for our customers. Duke has -- does those exact same services for GCR customers and those costs are being recovered through distribution rates. They are not providing it to the Choice customers.

Q. Other than the PIPP customers is there any customers that pay base rates that aren't eligible to participate in Choice or choose to take the GCR?

A. Other than PIPP customers, I believe all customers are eligible to the take the GCR.

Q. Do you know how many states have Choice programs?

MR. PETRICOFF: I'm sorry. Could I have the question reread.

MR. SERIO: Do you know how many states have Choice programs?

MR. PETRICOFF: Thank you.

A. It varies on what the definition of a Choice Program is. Most, if not all, allow for some level of gas shopping for the larger customers. For residential maybe -- and, again, I am not -- I am guessing off the top of my head based on my general knowledge of the industry, residential 15 to 20 and small commercial.

Q. And you reference a proceeding in Pennsylvania in your testimony. Are there any states other than Pennsylvania that you have done similar proceedings?

A. Yes. New York, Illinois, Ohio is behind when it comes to unbundling, Maryland. There are a number of states that I am aware of, and I am not aware of every state and every market that have bundled non -- noncommodity costs and charge them directly to the default service rather than covers this cost through distribution rates. As a matter of fact, there is a statute in Ohio, and I think I cite this in my testimony, that -- that says that -- that there should be a policy in the state to promote the availability of unbundled and comparable natural gas service. It just hasn't happened yet for Duke.

Q. As an attorney, is it your understanding that the PUCO when they approve a stipulation retains continuing jurisdiction over its orders?

A. Can you repeat the question, please?

Q. Sure. Is it your understanding as an attorney when the PUCO issues an order, it retains continuing jurisdiction over a matter?

A. I think, yes, generally the PUCO has jurisdiction over matters before it.

Q. And if the PUCO approves a stipulation, the PUCO retains jurisdiction that at some point down the line they can revisit that stipulation and modify the terms if it's determined the circumstances warranted, correct?

A. I believe in the event that occurs then we have to look at all aspects of the program in this particular stipulation and evaluate whether or not there needs to be additional modifications if you are going to look at a single part of a stipulation.

Q. Can you cite any Supreme Court proceeding or any section of the Revised Code or any part of a PUCO rule that requires the Commission to look beyond the matters that they are addressing as changed circumstances?

A. I think it's a principle of utility ratemaking not to do single issue ratemaking and look at how the circumstances to -- when deciding to make changes.

Q. Is it your opinion that in Ohio there's no single issue ratemaking?

A. I think it's a general principle and I think -- and I think beyond just the fact that it is a principle of utility ratemaking, I think that it's a sound policy that when -- to not review a single aspect of a stipulation without examining broader aspects of the market when you make wholesale fundamental changes.

Q. When you say general ratemaking, what are you referring to? A rule? A law? A statute? A case? What?

A. I'm referring to general principles of utility ratemaking which you should be familiar with as a utility attorney.

Q. But if I want to look up these general principles, where would you find them?

A. I don't know.

Q. I believe you've indicated if the Commission were to modify the EFBS pursuant to what the company has proposed, it would materially alter the design of the Choice Program; is that correct?

A. Yes.

Q. And how would that material alteration of the Choice Program impact levels of competition?

A. If you take an aspect of the Choice

Program and basically eliminate the option for suppliers to choose between -- for larger suppliers to choose between EFBS and FBS, if you eliminate that option, you will increase suppliers' costs. You will increase -- you will decrease the flexibility suppliers have to serve their customers. You will as a general principle make it more difficult for suppliers and more costly for suppliers to serve customers. To the extent it becomes more costly to serve customers, it's going to impact the competitiveness of the Choice market.

Q. Have you done any analysis to determine how that would impact the level of competition in the Duke territory?

A. I haven't done any specific analysis.

Q. If Duke incurs a cost to provide service for nonGCR customers, should GCR customers pay that cost?

A. Can you repeat the question, please?

Q. If Duke incurs a cost to provide service to nonGCR customers, should GCR customers pay that cost?

A. I would have to know more specifics to answer that question about the type of costs.

Q. If Duke were to incur costs associated with purchasing gas or selling gas as a result of undersubscription of the EFBS service, and according to Mr. Kern those services do not provide service to GCR customers, should GCR customers have to pay those additional costs?

MR. OLIKER: Object to his characterization of Mr. Kern's testimony. It speaks for itself.

EXAMINER PARROT: Overruled.

A. So I would disagree with the premise of that question that Duke is -- A, that Duke is incurring a cost, but second is without -- the second point of my testimony is without examining fully what other subsidies exist in the market, you can't make that decision on a single issue basis.

Q. Are you familiar with the application that Duke filed in this case?

A. Generally, yes.

MR. SERIO: Could I approach, your Honor?

EXAMINER PARROT: You may.

MR. SERIO: I believe this was marked as Duke Exhibit 2. I don't know if you have got extra copies of it.

MS. WATTS: Is it the application?

MR. SERIO: Yeah.

MS. WATTS: It was 1.

MR. PETRICOFF: That's 1. I have got the application. What page?

MR. SERIO: Page 5. I would like to show it to the witness.

MR. PETRICOFF: Let me see if I have a clean copy.

MR. SERIO: I am looking at the first full paragraph on page 5.

MR. PETRICOFF: I don't know that my copy is any cleaner than yours.

MR. SERIO: I am looking at the second to last full sentence, "additional costs of these spot purchases."

MR. PETRICOFF: Okay.

Q. (By Mr. Serio) I am showing you Duke Exhibit No. 1 which is the application Duke filed in this case 15-50.

A. Yes.

Q. Looking at page 5, and this is a sentence in the first full paragraph, begins "The additional costs." Can you read that sentence?

A. It says "The additional costs for these spot purchases for any losses on sales would be borne by GCR customers, resulting in an inappropriate subsidy of the Choice Program by GCR customers."

Q. Are you aware of anywhere else in the Duke application where Duke acknowledges there is a subsidy flowing from either Choice to the GCR or the GCR to Choice?

A. Can you repeat the question?

Q. Are you aware of anywhere else in the application where Duke acknowledges that there is a subsidy flowing from either the GCR to Choice or from Choice to GCR other than this one on page 5?

A. I think what Duke said in that sentence is if there are spot purchases and there are losses as a result of spot purchases, then those costs would be incurred by the GCR. Now, what Duke does not mention if there are gains or if somehow those spot purchases are favorable for customers which is possible that those would also flow to the GCR but Duke also doesn't mention that if suppliers have to make spot purchases on a regular basis and those favorable or unfavorable losses or gains are reflected in our prices, in the prices we're able to make available to customers. So I would just disagree with the premise that -- that there is a subsidy flowing from the GCR and there really hasn't been any record or evidence that there is. And my point is if you are going to make that claim, you have to look at the totality of the subsidies and not just seeking to alter one aspect of the program.

Q. So your testimony is that you don't accept Duke acknowledging that costs for these spot purchases or any losses on sales would be borne by the GCR resulting in a subsidy; you don't agree with that statement.

A. No, I don't agree with that statement that there is an inappropriate subsidy.

Q. Are you aware of anywhere else in the application where Duke identifies subsidies one way or the other?

A. Not that I am aware of but, you know, I would have to read the entire application to know for sure again.

Q. Did you read the entire application before you presented your testimony?

A. I've read the application, but I would have to read it again to know for sure whether or not Duke references subsidies anywhere else in the application because I can't remember off the top of my head whether that occurred.

MR. SERIO: If I could have just one moment, your Honor.

That's all I have, your Honor.

Thank you, Mr. White.

EXAMINER PARROT: Mr. McNamee?

MR. McNAMEE: No, thank you.

EXAMINER PARROT: Any redirect?

MR. PETRICOFF: May we have a moment?

EXAMINER PARROT: You may.

(Discussion off the record.)

MR. PETRICOFF: Your Honor, I think there is only one item, and it may not be necessary at this point. Earlier in the cross-examination Ms. Watts was going to mark the December 15, 2005, entry -- stipulation, I'm sorry. It's on file at the Commission, and the question here is do we need to take administrative notice of it? Can we just cite it because it's filed? I guess my preference would be to take administrative notice of it, and then we would have no need for redirect.

MS. WATTS: Your Honor, that stipulation is referenced in a footnote in Mr. White's testimony.

MR. OLIKER: It's not.

MS. WATTS: It's not?

MR. OLIKER: The order approving it is six days later. I don't believe the stipulation that's referenced is the 2007 stipulation.

EXAMINER PARROT: Yes.
MR. OLIKER: That's why, to clear up all the confusion, it would be wonderful to put that into the record.
MR. PETRICOFF: The easiest thing is just to cite it in briefs because it is what it is. It's in the record. And I'm not sure we get greater clarity by having additional testimony on it.
MS. WATTS: There was actually no testimony on that -- on the wrong stipulation.
EXAMINER PARROT: Right. So if we are taking -- I am fine with taking administrative notice of the March 1, 2007, stipulation --
MR. PETRICOFF: Right.
EXAMINER PARROT: -- which is the one that's cited in Mr. White's testimony.
MR. PETRICOFF: That's correct.
MR. OLIKER: We would prefer -- I'm sorry. We would prefer administrative notice of the December 15, 2005, stipulation which was the subject of approval in footnote 3 on December 21, 2005.
MR. SERIO: Except, your Honor --
MS. WATTS: There is no testimony.
MR. SERIO: -- there's no order approving that stipulation.

MS. WATTS: Right. That's true too.
MR. PETRICOFF: Those are arguments on brief. The question is do we talk about it here, or do we just take administrative notice and discuss it?
MS. WATTS: Howard, you can certainly cite to a Commission stipulation and order without having administratively noticed.
MR. OLIKER: The stipulation itself too?
MS. WATTS: Yeah. It's in the record. It's a stipulation in a case. Anybody can cite to it.
MR. PETRICOFF: Actually that's what gave me pause because I know I can cite to an opinion and order. I am not sure I can cite to a stipulation.
MR. SERIO: I would object to references to a stipulation that the Commission did not approve. If the stipulation is approved by the Commission, you can cite the order and the stip, but if a stipulation is not approved, then we shouldn't get administrative notice because it doesn't mean anything. The December, 2005, stipulation --
MS. WATTS: Was never approved --
MR. SERIO: -- wasn't approved.
MS. WATTS: -- by the Commission.
MR. PETRICOFF: I mean, actually it's --

we will take administrative notice because it's on file here and that I think gets to the hearsay issue. The fact that -- whether the Commission approved it or not becomes a more complex question because it approved the final order coming out of the collaborative.

MS. WATTS: First of all, there is no hearsay because there was no testimony so it wasn't -- there was no testimony about that stipulation, the 2005 stipulation, and it was never approved by the Commission.

MR. SERIO: Your Honor, the Duke Exhibit 3 is the 12-2505 finding and order and there is no reference in that finding and order to the December 15, 2005, stipulation so if it's not referenced in the opinion and order that came out a week later, it doesn't deserve to get administrative notice because it's not something that the Commission relied on.

MR. PETRICOFF: Your Honor, we are checking the record now.

Your Honor, at this time having looked through this and since no one disagrees we can cite to the March 21, 2015, opinion and order in the 05-732 case, I think we will have no -- no redirect, and I think we can discuss this issue in brief.

EXAMINER PARROT: Thank you, Mr. White.

THE WITNESS: Thank you.

EXAMINER PARROT: Mr. Petricoff?

MR. PETRICOFF: Your Honor, at this time we would move to admit into the record RESA Exhibit No. 2, the direct prepared testimony of Mr. White.

EXAMINER PARROT: Are there any objections?

MR. SERIO: No, objections, your Honor.

MS. WATTS: No objections.

MR. McNAMEE: No objections.

EXAMINER PARROT: Hearing none RESA Exhibit 2 is admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PARROT: And, Ms. Watts, I do appreciate you marking for identification purposes the finding and order as Duke Exhibit No. 3, but I believe it is not necessary to admit it into the record in this proceeding. You may fully feel free to cite it to your heart's content.

MS. WATTS: Thank you, your Honor.

EXAMINER PARROT: It stands on its own.

Any other witnesses today?

MR. PETRICOFF: No, your Honor. We stand

on our direct case.

EXAMINER PARROT: Let's go off the record.

(Discussion off the record.)

EXAMINER PARROT: Let's go back on the record.

While we were off the record the parties discussed a briefing schedule. We have agreed that initial briefs will be filed by the parties on Friday, September 4; with reply briefs filed on September -- Friday, September 18.

Anything else to come before us today?

All right. Hearing nothing we are adjourned. Thank you all.

(Thereupon, the hearing was concluded at 3:20 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, August 4, 2015, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6074)

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Summary: Transcript in the matter of Duke Energy Ohio, Inc. hearing held on 08/04/15 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.