

IN THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Ohio Edison :
Company, The Cleveland :
Electric Illuminating :
Company, and The Toledo :
Edison Company for : Case No. 14-1297-EL-SSO
Authority to Provide for :
a Standard Service Offer :
Pursuant to R.C. 4928.143 :
in the Form of an Electric :
Security Plan. :

- - -

DEPOSITION

of Jay A. Ruberto, taken before me, Carolyn D. Ross,
Registered Professional Reporter, and a Notary Public
in and for the State of Ohio, at the offices of
FirstEnergy Corporation, 76 South Main Street, Akron,
Ohio, on Thursday, January 8, 2015, at 8:00 a.m.

- - -

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21 Electric Illuminating Company, and The
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On behalf of the Environmental Law &
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ALSO PRESENT:

Ms. Kathleen Kline,
Mr. Hisham Choueiki.

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1 Thursday Morning Session,
2 January 8, 2015.

3 - - -

4 MS. DUNN: Okay. Everyone, we're ready
5 to get started.

6 MR. LANG: This is Jim Lang, again, from
7 Calfee, Halter representing FirstEnergy here with
8 Carrie Dunn, and we have Jay Ruberto, the deponent.

9 We'll be doing the public version of the
10 deposition. I don't know if you guys have
11 confidential, but we're at least starting with the
12 public version, and anything that is confidential
13 we'll reserve for later and pick up in a second
14 portion of the deposition.

15 If you guys want to go ahead if you have
16 anything to say, or you just want to swear in the
17 witness and then we'll take appearances and find out
18 who's on the phone.

19 MR. SOULES: Yeah. That sounds fine.

20 (Witness placed under oath.)

21 MR. LANG: This is Jim Lang from Calfee,
22 Halter representing FirstEnergy, and also have Carrie
23 Dunn representing FirstEnergy.

24 MR. SOULES: Michael Soules representing

1 Sierra Club.

2 MR. FISK: Shannon Fisk representing
3 Sierra Club.

4 MS. KLINE: Kathleen Kline representing
5 Sierra Club.

6 MR. LANG: That's everyone that's in the
7 conference room here in Akron. If the folks on the
8 phone could identify themselves, please.

9 MR. SAUER: Larry Sauer, Mike Schuler,
10 and probably at some point today Kevin Moore from
11 OCC.

12 MR. STINSON: Dane Stinson, NOPEC.

13 MR. OLIKER: Joe Olikier on behalf of IGS
14 Energy.

15 MS. MOONEY: Colleen Mooney on behalf of
16 Ohio Partners for Affordable Energy.

17 MS. FLEISHER: Madeline Fleisher, ELPC.

18 MR. SETTINERI: Mike Settineri on behalf
19 of Retail Energy Supply Association and the PJM Power
20 Providers Group.

21 MR. LANG: Anyone else? Sounds like a
22 fine crew.

23 MR. CHOUYEIKI: Yes. This is Hisham
24 Choueiki with the staff.

1 MR. LANG: Good morning, Hisham.

2 MR. CHOUETIKI: Good morning.

3 MR. LANG: All right. Why don't you get
4 started.

5 MR. SOULES: Okay.

6 - - -

7 JAY A. RUBERTO,
8 being by me first duly sworn, as hereinafter
9 certified, deposes and says as follows:

10 CROSS-EXAMINATION

11 BY MR. SOULES:

12 Q. Good morning, Mister -- is it Ruberto?

13 A. Uh-huh.

14 Q. Okay. My name is Michael Soules, I'm
15 representing Sierra Club in this proceeding.

16 Could you please state your full name
17 for the record?

18 A. Jay Ruberto.

19 Q. Ruberto?

20 A. Uh-huh.

21 Q. And what is your business address?

22 A. 5001 NASA Boulevard, Fairmont, West
23 Virginia.

24 Q. Okay. Great.

1 And what's your educational background,
2 Mr. Ruberto?

3 A. I have a Bachelor of Science in
4 Electrical Engineering.

5 Q. Okay. From which college?

6 A. Penn State.

7 Q. Okay. Do you have any graduate-level
8 education?

9 A. No.

10 Q. Okay. And have you had any formal
11 training or education since you graduated from Penn
12 State?

13 A. No.

14 Q. Okay. Have you had any training in
15 economic dispatch modeling of power plants?

16 A. No.

17 Q. Okay. If we could talk a little bit
18 more about the employment experience that you
19 described in your testimony. You stated that you
20 held several different positions at Allegheny Energy
21 from 1984 to 2006; is that correct?

22 A. From '84 through 2006, yes.

23 Q. Okay. And it appears that many of these
24 positions related to the Customer Service Department

1 of Allegheny Energy.

2 A. That's correct.

3 Q. And what were your specific
4 responsibilities in those positions?

5 A. Early on in my career, I was responsible
6 for the electric supply needs of industrial
7 customers, large customers, and I moved to a position
8 that supported other engineers that had that role
9 later in my career, and I became supervisor of
10 customer services in accounting in one of our field
11 offices.

12 I later moved to our Customer Service
13 Center, where I was in charge of technology and
14 installing technology systems; then I became general
15 manager of the Customer Service Center and director
16 of Customer Service Center.

17 Later in 2006, I moved to Transmission
18 Siting where I was responsible for generally large
19 multi-state transmission siting projects.

20 Q. Okay. Thank you.

21 So how long were you involved in the
22 customer service-related positions at Allegheny
23 Energy?

24 A. I would say all but probably two years

1 from 1984 to 2006; so 20 years.

2 Q. Okay. In those customer service
3 positions at Allegheny Energy, were you involved in
4 the management of generating units?

5 A. No.

6 Q. Okay. And then starting in 2006, you
7 became the director of Transmission Siting for
8 Allegheny service -- Allegheny Energy Service
9 Company?

10 A. Correct.

11 Q. Okay. And what were your
12 responsibilities -- your principal responsibilities
13 in that position?

14 A. I was responsible for transmission
15 siting, permitting related to siting, drafting
16 document records, surveying, real estate,
17 right-of-way.

18 Q. Okay. So would it be fair to say that
19 most of your responsibilities in that position
20 related to transmission siting writ large?

21 A. Yes, yes.

22 Q. Okay. Did you have any other unrelated
23 responsibilities in that position?

24 A. Not beyond what I just mentioned, no.

1 Q. Okay. And then when Allegheny merged
2 with FirstEnergy in 2011, you became a senior advisor
3 for Transmission and Substation Engineering?

4 A. Correct.

5 Q. Okay. And what were your
6 responsibilities in that position?

7 A. It was similar to my transmission siting
8 role at Allegheny, I was responsible for large
9 transmission siting projects.

10 Q. Okay. And when did you begin your
11 current position at FirstEnergy?

12 A. Late 2013.

13 Q. Okay. And what is your current job
14 title?

15 A. Director, Regulated Generation and
16 Dispatch.

17 Q. Okay. For which company within the
18 FirstEnergy Corporation?

19 A. Service Company, FirstEnergy Service.

20 Q. Okay. Prior to beginning your current
21 position in late 2013, did you have any
22 responsibility for managing generating units?

23 A. In the middle of 2013, I moved into this
24 group as an advisor, and then it was late 2013 when I

1 became director of the group.

2 Q. And what were your responsibilities as
3 an advisor to the group?

4 A. Asset management, and my roles would
5 have been related to PJM offers, daily offers,
6 those -- those type of things, asset management,
7 reviewing the -- this is for regulated generation
8 only.

9 Q. Right. Okay. So prior to mid 2013,
10 did -- had you previously managed any generating
11 units?

12 A. No.

13 Q. Okay. And now you're currently employed
14 directly by the FirstEnergy Service Company; is that
15 correct?

16 A. Yes.

17 Q. Okay. And that's the company from which
18 you receive a paycheck?

19 A. Yes.

20 Q. Prior to your current position, did you
21 have any experience with the modeling of power
22 plants?

23 A. No.

24 Q. Okay. And now your current job

1 responsibilities relate to asset management,
2 strategic optimization and dispatch of the regulated
3 assets of MonPower and Jersey Central; is that
4 correct?

5 A. In addition to others, but, yes.

6 Q. Okay. In addition to other
7 responsibilities or other --

8 A. Other generation.

9 Q. Okay. Okay. So if we could sort of
10 piece out those three items I just mentioned. What
11 are your specific responsibilities with respect to
12 asset management?

13 A. Well, the regulated generation units, my
14 group is responsible for PJM offers, we're
15 responsible for the dispatching. So part of the
16 asset management responsibilities are everything from
17 outage planning, the generation units come to us to
18 help determine the best time to have outages where
19 you have planned outages to maximize revenues.

20 Q. Okay. When you refer to strategic
21 optimization, what does that entail?

22 A. Exactly what I was just referring to.

23 Q. Okay.

24 A. We would want to make sure we are

1 running units in a manner that maximizes revenue.

2 Q. Okay. Okay. In your -- so you're
3 responsible for managing the generation assets of
4 MonPower and Jersey Central Power & Light, correct?

5 A. Not -- not exactly.

6 Q. Not exactly. How is that not an
7 accurate statement?

8 A. There's two components of the
9 generation.

10 Q. Okay.

11 A. The generation fleet manages their
12 generation.

13 Q. Okay.

14 A. Our role, I will say, is the marketing
15 side of the generation.

16 Q. Okay. With respect to PJM and --

17 A. Correct.

18 Q. Okay.

19 A. Correct.

20 Q. All right. And you provide that
21 marketing role with respect to MonPower and Jersey
22 Central Power & Light?

23 A. Correct.

24 Q. And other utilities in the FirstEnergy

1 corporate family?

2 A. Correct.

3 Q. And what other utilities are you
4 responsible for?

5 A. There's -- there's some PURPA projects
6 where the regulated utilities own the output, and I'm
7 not sure I can remember, Potomac Edison, Met Ed.
8 There might be a couple other ones. They're
9 generally fairly small, but we handle the marketing
10 aspects of those generation units as well for those
11 utilities.

12 Q. Okay. And collectively, do you know how
13 much generating capacity you're -- for which you
14 provide marketing services?

15 A. It's about 4,000 megawatts.

16 Q. Okay. And talking about this marketing
17 responsibility a bit further, are you personally
18 responsible for deciding whether or not a generating
19 unit gets offered into the PJM energy market?

20 A. Yes.

21 Q. Okay. So without delving into any
22 specifics whatsoever regarding FirstEnergy's offer
23 strategy, do you as a general matter offer generating
24 units into PJM's day-ahead energy market?

1 A. Yes.

2 Q. Okay. And, again, without delving into
3 any specifics whatsoever regarding strategy, do you
4 offer these generating units into PJM's real-time
5 energy market?

6 A. Yes.

7 Q. Okay. And do you understand in general
8 terms how generating units are dispatched by PJM?

9 A. Yes.

10 Q. Okay. Could you describe that for us?

11 A. They -- they -- when we -- when we offer
12 our units in -- particularly in the day-ahead market,
13 which is typical, units that clear, then our PJM
14 signals will indicate whether those units need to
15 change.

16 Additionally, the LMP market signals
17 give you some indication. So from that point, PJM is
18 under control of how much -- how much power is going
19 to be generated, and we follow those signals.

20 Q. Okay. And does PJM dispatch generating
21 units on a minute-by-minute basis, an hourly basis, a
22 daily basis? Do you have an understanding of that?

23 A. I -- I don't know.

24 Q. Okay. So you wouldn't know whether or

1 not PJM dispatches on an hourly basis; is that
2 correct?

3 A. Well, it's -- it's certainly at least on
4 an hourly basis.

5 Q. But possibly an even shorter time
6 increment?

7 A. I just don't know that, right.

8 Q. Okay. And putting aside potential
9 issues related to transmission or reliability
10 concerns, PJM is going to dispatch the generating
11 unit that has the lowest variable operating cost
12 first in order; is that correct?

13 A. The market is -- is more complex to the
14 point where I can't -- I can't say I know that
15 answer.

16 Q. Okay. Would you say in general terms
17 that PJM's dispatch of generating units is affected
18 not just by an individual generating unit's cost, but
19 also by the costs collectively of other units in the
20 system?

21 A. Could you rephrase that?

22 Q. Yeah. So when PJM is making a decision
23 about whether or not to dispatch a unit, they're
24 looking at kind of the entire system; is that

1 correct?

2 A. Sure, yes.

3 Q. Okay. And then they would look at both
4 FirstEnergy generating assets, as well as
5 non-FirstEnergy assets in deciding which units to
6 dispatch; is that correct?

7 A. Yes.

8 Q. Okay. Do you make -- do you personally
9 make decisions about FirstEnergy's bids into the PJM
10 capacity market or capacity auction?

11 A. Yes.

12 Q. Okay. Now, in your testimony, in
13 addition to asset management, strategic optimization
14 and dispatch, you had mentioned that you have some
15 other duties in your current position; is that
16 correct?

17 A. I'm not sure what you're referring to.

18 Q. If you -- do you have your direct
19 testimony?

20 A. Uh-huh.

21 Q. So looking at the top of -- or the
22 bottom of Page 1, top of Page 2, you state, and tell
23 me if I have this incorrect, "...I am responsible for
24 asset management, strategic optimization, and

1 dispatch of the regulated assets of MonPower and
2 Jersey Central Power & Light, among other duties."

3 I was wondering what the other duties
4 were.

5 A. Well, they could be whatever is -- is
6 asked of me. For instance, this project is another
7 duty.

8 Q. Okay.

9 A. But it could be -- it could be things
10 that are loosely associated or not as needed.

11 Q. Okay. Okay. And apart from this
12 particular project, which obviously we're going to
13 talk about in a bit more detail, do you have any job
14 responsibilities that are wholly unrelated to the
15 asset management and marketing of these regulated
16 units?

17 A. Yes.

18 Q. And what -- what are those?

19 A. In my previous role, I did some work on
20 transmission projects.

21 Q. Okay.

22 A. And some of those projects still have
23 some legal proceedings that I'm still involved in.

24 Q. Okay. Okay. Anything else apart from

1 that?

2 A. I can't think of anything.

3 Q. Okay. Now, in your current position, do
4 you do any work for Ohio Edison Company?

5 A. I don't believe so.

6 Q. Okay. Do you receive any financial
7 compensation from Ohio Edison Company?

8 A. All my compensation is through
9 FirstEnergy Service Corp.

10 Q. Okay. So you don't provide any services
11 in -- apart from this particular project, you don't
12 provide any services to Ohio Edison Company; is that
13 correct?

14 A. Correct.

15 Q. Okay. Do you report to anyone who works
16 for Ohio Edison Company?

17 A. No.

18 Q. Okay. Does anyone from Ohio Edison
19 Company report to you?

20 A. No.

21 Q. Okay. And in your current position, do
22 you do any work for The Cleveland Electric
23 Illuminating Company?

24 A. No.

1 Q. Okay. And you don't receive any
2 compensation from The Cleveland Electric Illuminating
3 Company?

4 A. That's correct.

5 Q. Okay. Do you report to anyone at The
6 Cleveland Electric Illuminating Company?

7 A. No.

8 Q. All right. And no one from that company
9 reports to you?

10 A. That's correct.

11 Q. Okay. I'm sure you can guess what I'm
12 going to ask next. Do you do any work for The Toledo
13 Edison Company?

14 A. No.

15 Q. Okay. And you don't receive any
16 compensation from Toledo Edison?

17 A. Correct.

18 Q. All right. And does anyone from Toledo
19 Edison report to you?

20 A. No.

21 Q. And do you report to anyone at Toledo
22 Edison Company?

23 A. No.

24 Q. Okay. If I refer to FirstEnergy

1 Solutions Corp. as FES, will you understand what I
2 mean?

3 A. Yes.

4 Q. Okay. Do you provide any services to
5 FES?

6 A. No.

7 Q. And you don't work for FES, correct?

8 A. No.

9 Q. All right. And you don't receive any
10 financial compensation from FES --

11 A. No.

12 Q. -- correct?

13 Do you report to anyone at FES?

14 A. No.

15 Q. All right. And does anyone at FES
16 report to you?

17 A. No.

18 Q. Okay. In your career at FirstEnergy,
19 have you ever provided services to FES?

20 A. No.

21 Q. So your current position involves the
22 marketing of generating units into PJM. That's what
23 we talked about before, right?

24 A. Correct.

1 Q. Does your current position involve any
2 economic dispatch modeling of generating units?

3 A. Yes.

4 Q. Okay. In what respect?

5 A. We -- we -- we in particular with pumped
6 storage, it's a little more involved than with
7 baseload plants; so we do evaluate with pumped
8 storage when is the best time to economically pump
9 versus generate.

10 Q. Okay. But not for baseload units?

11 A. We do, but it's a little different.
12 Certainly if you're planning an outage, we will do
13 some economic analysis to determine the best time to
14 do that.

15 Q. Okay. And apart from outages, are there
16 other circumstances that involve dispatch modeling?

17 A. Because I don't work with it personally
18 day-to-day, I can't say with certainty.

19 Q. Okay. For any situations where you're
20 considering an outage, would the normal procedure be
21 to go to the personnel at the Business Development
22 Department and ask them to perform the dispatch
23 modeling for you?

24 A. No.

1 Q. No. What would be the normal process?

2 A. We would -- because outages generally
3 we're looking at periods that aren't 15 years into
4 the future, we would be looking at shorter terms
5 where we would look at what the market looks like,
6 what -- obviously you wouldn't do an outage in
7 August, you know, so we would look at times where we
8 would expect the market prices to be lower.

9 Q. Okay. And then would your own
10 department perform dispatch modeling?

11 A. They would perform that analysis.

12 Q. Okay. And is that using
13 FirstEnergy's -- and I'm not asking about the
14 specific confidential portions of the model, but that
15 would involve FirstEnergy's proprietary dispatch
16 model?

17 A. No.

18 Q. What would -- what would that involve?

19 A. Our own analysis.

20 Q. Okay. Does your own department have its
21 own dispatch model?

22 A. When you say "dispatch model," can I ask
23 what you mean by a dispatch model?

24 Q. Sure. So the -- well, you're aware of

1 the dispatch model that -- if I refer to the EDU
2 team, do you understand that reference?

3 A. Yes.

4 Q. Okay. The EDU team, am I correct in
5 stating that the EDU team asked the Business
6 Development Department to perform economic dispatch
7 modeling --

8 A. Yes.

9 Q. -- for this?

10 Okay. So that's the understanding in
11 which that type of a dispatch model --

12 A. We do not use that type of dispatch
13 model.

14 Q. Okay. Are you aware of any -- apart
15 from the Business Development Department's dispatch
16 model, are you aware of any other dispatch models
17 FirstEnergy regularly uses?

18 A. No.

19 Q. Okay. So your analysis would be, I
20 guess, more -- and not in a pejorative term, but a
21 more basic analysis of, like, it doesn't make sense
22 to you an outage in August maybe we would push it,
23 because of energy prices, to a shorter month or
24 something?

1 A. Correct.

2 Q. Okay. You've never personally performed
3 economic dispatch modeling, correct?

4 A. Correct.

5 Q. Okay. Do you supervise other employees
6 at FirstEnergy?

7 A. Yes.

8 Q. Okay. And how many?

9 A. Fourteen.

10 Q. Okay. And what are those employees'
11 responsibilities?

12 A. Basically it's two groups; one group
13 handles dispatch and the other group handles the --
14 I'll call it the PJM marketing activities, you know,
15 the PJM offers and that type of work.

16 Q. Okay. And how many people are within
17 each group?

18 A. It -- they're pretty equal. There might
19 be -- dispatch group might be a little bit bigger. I
20 can't recall exact number, but it's probably slightly
21 more than half in the dispatch group, slightly less
22 than half in the other group.

23 Q. Okay. Where are those employees
24 located?

1 A. The dispatch group is in Reading,
2 Pennsylvania, and the marketing group is in
3 Greensburg, Pennsylvania.

4 Q. Okay. So no one in Ohio reports to you;
5 is that correct?

6 A. That's correct.

7 Q. Okay. And who do you report to?

8 A. I report to the vice-president of
9 Compliance and Regulated Services.

10 Q. And who is that?

11 A. Jim Haney.

12 Q. Jim Haney, okay.

13 Who does Mr. Haney report to?

14 A. He did report to Chuck Jones. Chuck, as
15 you may have heard, has another position now; so
16 Chuck's position is currently vacant. So I'm unsure
17 where he reports, but that's the position he reported
18 to.

19 Q. Chuck Jones is -- became the CEO,
20 correct?

21 A. Right.

22 Q. Okay. All right. Are you familiar with
23 the proposed agreement under which FirstEnergy
24 Solutions would sell its capacity, energy and

1 ancillary services to Ohio Edison Company, The
2 Cleveland Electric Illuminating Company and The
3 Toledo Edison Company?

4 A. Yes.

5 Q. Okay. And the generating assets that
6 are the subject of that agreement are the Sammis
7 plant, the Davis-Besse plant and FES's share of the
8 OVEC plants; is that correct?

9 A. Can I ask what you mean by "agreement"?

10 Q. The proposed agreement under which FES
11 would sell its energy, capacity and ancillary
12 services to?

13 A. Okay. Yes. Then the answer is yes.

14 Q. Okay. Okay. If I refer to that
15 proposed agreement as the proposed transaction, will
16 you understand what I mean?

17 A. Yes.

18 Q. Okay. And if I refer to the three
19 utilities as the companies collectively, will you
20 understand what I mean?

21 A. Yes.

22 Q. Okay. Do you know what the start date
23 would be for the proposed transaction?

24 A. June 1, 2016.

1 Q. Okay. And do you know what the length
2 of the proposed transaction would be?

3 A. Fifteen years.

4 Q. So ending on May 31st, 2031?

5 A. Correct.

6 Q. Okay. Now, FES was a company that
7 initially proposed entering into the proposed
8 transaction; is that correct?

9 A. Correct.

10 Q. Okay. When did you personally first
11 learn that FES had suggested entering into a purchase
12 power agreement with the companies?

13 A. In May of last year.

14 Q. And how did you learn about it?

15 A. Jim Haney would have informed me about
16 it.

17 Q. Do you remember anything about that
18 communication?

19 A. Yeah.

20 Q. Okay. Could you describe what Mr. Haney
21 told you?

22 A. Well, he called me.

23 Q. Okay.

24 A. So I do remember that part. And he --

1 he didn't go into much detail about the potential
2 transaction other than discussing my involvement to
3 help review that transaction.

4 Q. Okay. And what did you discuss
5 regarding your involvement in reviewing it?

6 A. That I would be involved in helping
7 review it.

8 Q. Okay. You don't remember -- do you
9 remember exactly when that conversation occurred?

10 A. No.

11 Q. Okay. And when you first learned about
12 this proposed transaction, did Mr. Haney or anyone
13 else tell you why FES wanted to enter into it?

14 A. I don't believe so.

15 Q. Okay. You just heard that there was
16 this proposed transaction and could you help review
17 it, is that an accurate summary?

18 A. Generally, yes.

19 Q. Okay. Was there anything else you
20 remember about that initial communication?

21 A. No.

22 Q. Okay. What is your personal
23 understanding as to why FES offered to enter into the
24 proposed transaction with the companies?

1 A. Realizing my understanding is based upon
2 what FES has -- has said, they indicate that these
3 units are at risk in the near term, and that's their
4 motivation. Beyond that, I -- I can't speak to their
5 motivation beyond that.

6 Q. Okay. What do you mean by "at risk"?

7 A. It's more what they mean by at risk.

8 Q. Oh, okay.

9 A. They -- they indicate they're at risk of
10 not continuing to operate based upon the near-term
11 market conditions.

12 Q. Okay. And the understanding that you
13 have developed from communicating with FES, did
14 they -- from whom did you develop that understanding?
15 Was it someone you spoke to at FES?

16 A. I don't remember.

17 Q. Okay. But your understanding is that
18 FES was or is concerned that these plants might shut
19 down given the near-term market conditions?

20 A. Yes.

21 Q. Okay. And what's your understanding of
22 the timeframe for the near-term market conditions?

23 A. I don't know.

24 Q. Okay. Do you have a general sense, in

1 the next year, next three years, five years?

2 A. I don't recall them providing me with
3 that information; so I don't know.

4 Q. Okay. And have you seen anything in
5 writing describing FES's motivation for wanting to
6 enter into the proposed transaction?

7 A. I've read testimony that's been filed by
8 Mr. Moul.

9 Q. Apart from Mr. Moul's written testimony,
10 is there anything in writing?

11 A. No, no.

12 Q. Okay. And at the time that the EDU team
13 was active, was there anything in writing that you
14 saw describing FES's motivation for wanting to enter
15 into the proposed transaction?

16 A. No.

17 Q. Okay. Going back to that initial
18 conversation with Jim Haney, did you take any notes
19 during that phone conversation?

20 A. No. It was a brief conversation.

21 Q. Okay. When you -- when you first heard
22 about the proposed transaction, were you given any
23 details about which specific plants would be included
24 within it?

1 A. I don't remember.

2 Q. Okay. Have you at any point heard -- at
3 any point since May 2014 heard about FES offering to
4 enter into a proposed transaction apart from -- that
5 would not involve, you know, the Sammis, Davis-Besse,
6 and the OVEC share?

7 A. I'm sorry, did you say after May 20th
8 did I?

9 Q. After May 20 -- once you first heard
10 about the proposed transaction.

11 A. Can you rephrase that all as one
12 question? I'm confused.

13 Q. Yeah. No, I'm sorry. I'm sorry.

14 So when you -- since the time that you
15 heard about this proposed transaction, have you
16 always heard it being described in terms of a PPA
17 that would relate specifically to Sammis,
18 Davis-Besse, and the OVEC share?

19 A. No.

20 Q. Okay. What else have you heard?

21 A. Initially, and this was before I was
22 involved, FES expressed interest in possibly all of
23 their Ohio units; so that would have been in addition
24 to these units, of course.

1 Q. Okay. And when did you learn about
2 FES's interest in possibly offering all of its Ohio
3 units?

4 A. It would have been very early on. It
5 would have been in May.

6 Q. Okay. And was that something you
7 learned -- you first learned through the conversation
8 with Jim Haney?

9 A. I really don't recall.

10 Q. Okay. When you -- strike that.
11 When FES made the offer to enter into
12 the proposed transaction that would relate to Sammis,
13 Davis-Besse, and the OVEC share, are you aware of the
14 company evaluating any other mix of generation
15 assets?

16 A. No.

17 Q. Okay. And the companies -- are you
18 aware of the companies making any offer to -- or,
19 issuing a request for proposal for other resource
20 options?

21 A. No.

22 Q. Have FES and the companies actually
23 created a final agreement for this transaction?

24 A. No.

1 Q. Okay. But they did prepare a term sheet
2 for the proposed transaction; is that correct?

3 A. Correct.

4 Q. But at present, the companies and FES
5 have not yet written up the actual contract for the
6 proposed transaction, correct?

7 A. That's correct.

8 Q. Okay. Are you familiar with the
9 Economic Stability Program that the companies had
10 proposed for the Commission approval?

11 A. Yes.

12 Q. Okay. And what is that program?

13 A. The -- the program is designed to use
14 the power purchase agreement where the -- the EDUs
15 pay a cost-based rate for the energy, and they
16 receive all the benefit of the revenues with the
17 intent that as revenues exceed costs, it's a benefit
18 to customers, and, of course, if revenues do not,
19 then the customers would have a charge. The idea of
20 the Economic Stability Program, though, is over time
21 it will allow the rates to be stabilized because as
22 market rates go up, the customers would get a
23 benefit.

24 Additionally, of course, the other

1 economic benefits of keeping plants operational
2 remain to be other benefits as well as the economic
3 stability.

4 Q. Okay. And the Economic Stability
5 Program is part of the larger Electric Security Plan
6 that the companies have filed with the Commission?

7 A. Yes.

8 Q. Okay. Are you familiar with the
9 companies' proposed Retail Rate Stability Rider?

10 A. Yes.

11 Q. If I refer to that as Rider RRS, will
12 you understand what I mean?

13 A. Yes.

14 Q. Okay. And what is Rider RRS?

15 A. That -- that is the rider that would
16 allow the charges and credits to pass through to the
17 customers.

18 Q. Okay. Would it be fair to characterize
19 the proposed transaction and Rider RRS as two
20 subcomponents of the broader Economic Stability
21 Program?

22 A. Yes.

23 Q. Okay. And so that rider is also part of
24 the proposed Electric Security Plan?

1 A. Correct.

2 Q. Okay.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 BY MR. SOULES:

5 Q. So I'm passing you a document that's
6 been marked as Sierra Club Exhibit 1.

7 THE COURT REPORTER: Ruberto.

8 BY MR. SOULES:

9 Q. Ruberto Exhibit 1, sorry about that.
10 This document was attached to a discovery response to
11 IEU Set 1-INT-25, and the document is entitled "IEU
12 Set 1-INT-25 Attachment 1."

13 Are you familiar with this document?

14 A. Yes.

15 Q. Okay. And what is this document?

16 A. This is the term sheet that FES and the
17 EDU team reached agreement on.

18 Q. Okay. And did you sponsor the discovery
19 response to which this document was attached?

20 A. Yes.

21 Q. Okay. And do you know whether the
22 Economic Stability Program was developed based on
23 this term sheet?

24 A. I'm not sure I understand that. I don't

1 know. I don't know.

2 Q. When the companies proposed the Economic
3 Stability Program in the ESP, did they use this term
4 sheet as the basis for that proposal?

5 A. I'm not sure in my mind if that -- how
6 that relates. I'm struggling to answer that one.
7 This -- this certainly was a component of developing
8 the -- the rider. Certainly it has it. So if you're
9 tying it all back together, I guess the answer is
10 yes, but I'm struggling with that question.

11 Q. Okay. When you refer to "this," are you
12 referring to this version of the term sheet or
13 perhaps an earlier draft of the term sheet?

14 A. This term sheet.

15 Q. Okay. And are you aware of -- there's
16 not a later draft of this term sheet, correct?

17 A. No.

18 Q. Okay. And was this term sheet also a
19 component of the Rider RRS that was proposed in the
20 ESP?

21 A. No.

22 Q. No?

23 A. I mean, this term sheet's not a
24 component of RRS or the ESP, it's not a component of

1 that. This term sheet is -- is an agreement -- or
2 even -- it's a term sheet between FES and EDU.

3 Q. Okay.

4 A. Not -- not the rider.

5 Q. Okay. Do you know whether or not the
6 rider was developed based on this term sheet?

7 A. Can you -- can you rephrase by based
8 upon this term sheet? I'm not sure I'm understanding
9 what you're asking.

10 Q. The -- so the proposed transaction --
11 there's an interplay between the proposed transaction
12 and the Rider RRS, correct?

13 A. Correct.

14 Q. And Rider RRS was part of the ESP
15 application, right?

16 A. Correct.

17 Q. The version of the proposed transaction
18 that interplays with RRS, is it the one that's based
19 on this term sheet?

20 A. Yes.

21 Q. Okay. And do you know when the term
22 sheet was finalized?

23 A. It would have been late July, middle
24 July. I don't remember exactly.

1 Q. Okay. Sometime in late -- middle to
2 late July then?

3 A. Yes.

4 Q. Okay. And when the -- when the term
5 sheet was finalized, were there certain individuals
6 in the companies that had to approve it?

7 A. Yes.

8 Q. Okay. Whose approval was necessary for
9 the companies to sign off on the term sheet?

10 A. Chuck Jones.

11 Q. Okay. And how about at FES, was there
12 someone there that had to sign off on it?

13 A. Donny Schneider, which was the president
14 of FES.

15 Q. Okay. And would Jim Haney also have had
16 to approve this?

17 A. Jim Haney was not responsible for the
18 approval of this.

19 Q. Okay. And when those approvals were --
20 at the point in time in which those approvals were
21 sought, the EDU team had already concluded -- or, was
22 recommending its approval; is that correct?

23 A. Yes.

24 Q. Okay. So I think we can set aside this

1 for a little bit. We may come back to this a little
2 later.

3 So I think we talked earlier that you
4 led the team that represented the companies in
5 evaluating and negotiating the proposed transaction.

6 A. Correct.

7 Q. And that was the EDU team?

8 A. Yes.

9 Q. Okay. And who are the members of the
10 EDU team?

11 A. Obviously besides myself, Rich Ziegler,
12 Anne Rericha, Jim Burk, Joanne Savage, Tracy Ashton.

13 Q. Anyone else?

14 A. I'm trying to think.

15 Q. Okay. Take your time.

16 A. That's what I'm recalling right now.

17 Q. Okay.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 BY MR. SOULES:

20 Q. So I passed to you a discovery response,
21 or a document that's been marked Ruberto Exhibit 2.
22 This is a response to a discovery request listed as
23 OCC Set 1-INT-19. Are you familiar with this
24 document?

1 A. I am.

2 Q. Okay. And were you the sponsoring
3 witness for the responses?

4 A. Yes.

5 Q. Okay. And reviewing this, would
6 reviewing this document refresh your recollection as
7 to who the members of the EDU team are?

8 A. Yes.

9 Q. Okay. Could you take a minute to review
10 the document and then identify anyone else who was on
11 the team?

12 A. Marlene Barwood.

13 Q. Okay.

14 A. The other names listed were not directly
15 members, but they did assist the team, and that would
16 include Mike Thorn and Amy Morrow.

17 Q. Okay. And how did they assist the EDU
18 team?

19 A. They attended some of the meetings, they
20 did some -- some investigating and other research
21 that we were looking for.

22 Q. But they weren't official members of the
23 team?

24 A. Right.

1 Q. And what is the significance of them
2 helping to investigate the proposed transaction, but
3 not being an official member of the team?

4 A. Nothing really.

5 Q. Okay. Do you recall what Michael Thorn
6 investigated?

7 A. Mike Thorn did some communications with
8 the transmission side, on transmission-type issues.

9 Q. Okay. And how about Ms. Morrow?

10 A. Accounting-related issues.

11 Q. Okay. Did -- generally speaking, did
12 the members of the EDU team have specific
13 responsibilities or assignments?

14 A. No.

15 Q. No. How did you -- were you in charge
16 of distributing assignments among the members of the
17 team?

18 A. Yes.

19 Q. And how did you decide how to distribute
20 those assignments?

21 A. The members have expertise in certain
22 areas; so you would naturally expect members with
23 expertise in accounting to be the ones that would
24 research accounting issues. So that would be

1 typical, for example.

2 Q. Okay. With respect to the -- the team
3 membership, did Marlene Barwood have specific
4 expertise in a given area?

5 A. I'm sure she has specific expertise,
6 yes.

7 Q. Did she have a specific role within the
8 EDU team?

9 A. No.

10 Q. Okay. And how about Tracy Ashton, did
11 she bring a particular set of skills or expertise to
12 the team?

13 A. Yes. The accounting, financial, she
14 brought those -- those skills.

15 Q. Okay. And James Burk?

16 A. Legal.

17 Q. Okay. And Anne -- is it?

18 A. It's Rericha.

19 Q. Rericha, okay.

20 A. Yeah.

21 Q. All right.

22 A. Also legal.

23 Q. Also legal, okay.

24 And Richard Ziegler?

1 A. His experience, you can see by his
2 title, FERC and RTO support; so he brought that
3 background.

4 Q. Okay. And how about Joanne Savage?

5 A. Rates.

6 Q. Rates, okay.

7 And who selected the members of the EDU
8 team?

9 A. Mark Julian.

10 Q. Who's Mark Julian?

11 A. Vice-president of Utilities.

12 Q. Okay. And does Jim Haney report to him?

13 A. No.

14 Q. Does he report to Jim Haney?

15 A. No.

16 Q. Are they coequals?

17 A. Yes.

18 Q. Okay.

19 A. They both reported to the same -- the
20 same person.

21 Q. Okay. Who is Chuck Jones?

22 A. Correct.

23 Q. Got it, okay.

24 A. Was.

1 Q. Or was, yes.

2 A. Either way. It may still be is, I'm
3 unclear on -- for the transition period.

4 Q. Yeah. Okay. Okay. That makes sense.

5 Do you -- do you know why Mr. Julian was
6 in charge of selecting the members of the EDU team?

7 A. No.

8 Q. Okay. The membership of the EDU team is
9 composed of employees of the first service -- or
10 FirstEnergy Service Company; is that correct?

11 A. Yes.

12 Q. The entire membership?

13 A. Yes.

14 Q. Okay. Do you know why there are no
15 employees of the companies that were designated to
16 join the EDU team?

17 A. Most -- most employees work for the
18 Service Corp.; so it's normal that you have employees
19 that support multiple companies. So it's not --
20 there would be no reason to specifically pull out an
21 employee that worked for just one company when the
22 Service Company supports all the companies.

23 Q. Okay. So when you say "most employees,"
24 you mean most employees within the entire FirstEnergy

1 corporate family?

2 A. You know, I don't know that. I don't
3 know that to be certain. It's certainly common.

4 Q. Okay.

5 A. I'll say that. I'm not sure of the
6 reporting structure of the thousands of linemen and
7 other employees; so I'll say it's certainly common.

8 Q. Okay. Do you have a sense of how many
9 employees the various utilities in FirstEnergy have?

10 A. I don't know.

11 Q. Okay. And Mark Julian selected you to
12 lead the EDU team?

13 A. Yes.

14 Q. But the request for you to join the EDU
15 team was made by Jim Haney?

16 A. Because I report to Jim Haney.

17 Q. Got it, okay.

18 A. Yeah.

19 Q. Are you aware of whether Jim Haney and
20 Mark Julian had discussed the creation of the team?

21 A. I don't know.

22 Q. Do you know why you personally were
23 selected to lead the team?

24 A. Some of the things that were indicated

1 to me; so I can only speak to those.

2 Q. Yeah.

3 A. My role is regulated generation; so very
4 specifically, I have no involvement with the
5 unregulated side, the FES side. So I have a -- a
6 very hard wall between myself, my group, and FES.

7 So I was viewed as someone that can view
8 this from the regulated side and from the utilities
9 side because I don't share any -- any work, there is
10 that wall between us; so I think that's why, as well
11 as my group would also be the group that would be
12 responsible for the marketing of this generation
13 should the deal be consummated.

14 Q. Okay. Great.

15 With respect to this hard wall between
16 the regulated generation and FES, could you describe
17 in a bit more detail how that plays out in actual
18 practice?

19 A. Anything we do with our regulated
20 generation, marketing offers, outages, whatever we're
21 doing, they have no knowledge of; likewise, whatever
22 they're doing, we have absolutely no knowledge of.
23 We don't -- we don't communicate with them on what
24 their plants are doing and they don't communicate

1 with us what our plants are doing. So there's a very
2 strict code of conduct --

3 Q. Okay.

4 A. -- where there is that wall of
5 communication.

6 Q. And do you know where that code of
7 conduct is enshrined?

8 A. Well, I think certain requirements of
9 FERC, I believe, require certain restrictions.

10 Q. Okay. And do the regulated -- does
11 regulated generation and FES, do they share, like,
12 electronic files?

13 A. No.

14 Q. Okay. And are the employees who work in
15 those different divisions in different physical
16 locations?

17 A. Yes.

18 Q. Okay. Do you know why the other members
19 of the EDU team were selected?

20 A. I could only speak to the piece that I
21 do know, that they did bring a broad level of
22 experience in different areas.

23 Q. Okay. Thank you.

24 Do you know when the EDU team was

1 formed?

2 A. May 20th.

3 Q. May 20th, 2014?

4 A. Yep.

5 Q. Okay. And was -- was the team formed
6 through an e-mail communication, or was there an
7 in-person meeting or some other mechanism?

8 A. The team members were informed, but then
9 we did have, I believe -- a conference call was our
10 first meeting.

11 Q. Okay. Did you take any notes during
12 that conference call?

13 A. Yes.

14 Q. Okay. Were there e-mails -- so there
15 were e-mails exchanged among the members of the EDU
16 team on or around May 20th, 2014?

17 A. I don't recall. I don't know.

18 Q. Okay. But you said there was -- did you
19 say there was an e-mail that went out announcing the
20 formation of the team?

21 A. I don't know what the -- the team
22 members received. I don't recall what they would
23 have received. They were certainly informed that
24 they were part of the team, but I don't recall what

1 they received.

2 Q. Okay.

3 A. Yeah. I just don't recall what they --
4 I don't know what they received. I just don't
5 recall.

6 Q. Okay. Did you send out an e-mail to the
7 team members setting up that May 20th conference
8 call?

9 A. I sent out an appointment notice.

10 Q. Okay. I'm familiar with those.

11 A. Yep.

12 Q. Was the EDU team given any directions
13 regarding its responsibilities or duties?

14 A. Yes.

15 Q. And by whom?

16 A. I think the direction, I'm trying to
17 recall who -- I spoke -- I spoke with Ebony Yeboah,
18 who gave me the most detailed instructions of -- for
19 the team.

20 Q. Okay. So she provided the directions
21 through a phone conversation?

22 A. Yes.

23 Q. And did you take notes of that phone
24 conversation?

1 A. I don't know.

2 Q. Okay. What -- what specific directions
3 did she provide to you?

4 A. She -- she described the potential
5 transaction, she asked that I and the team evaluate
6 whether this transaction made sense for our
7 customers, for our companies, and to look at what
8 benefits it would provide, and ultimately if we
9 thought there were benefits to continue on and
10 negotiate a transaction.

11 Q. Okay. Do you remember when you had that
12 call?

13 A. It would have been a few days before the
14 May 20th formation of the team.

15 Q. Okay. Just going back to the notes you
16 took during the May 20th call, did you personally
17 keep, like, a set of files related to your evaluation
18 of the proposed transaction?

19 A. Say that again.

20 Q. Did you keep some kind of file in which
21 you kept notes of your evaluation?

22 A. The notes I kept were -- were at the
23 request of legal counsel, and I forwarded those notes
24 to legal counsel; so they were electronic notes that

1 I forwarded to legal counsel.

2 Q. Okay. So then all the notes that you
3 took throughout the evaluation process, you took
4 because of the instructions of legal counsel?

5 A. The creation of the notes, yes.

6 Q. Okay.

7 A. Yes, those notes were, yes.

8 Q. Including the notes that you took on May
9 20th?

10 A. I don't think I said May 20th, though.

11 Q. Didn't you tell me that you took notes
12 during the May 20th conference call?

13 A. I don't recall saying there was a May
14 20th conference call. The team was formed on May
15 20th, and I did set up a conference call.

16 Q. Oh.

17 A. I don't recall that -- I don't recall
18 that it was on May 20th.

19 Q. Okay. So it may have been a few days
20 after?

21 A. I don't -- I don't know the date of it,
22 yes, yes.

23 Q. Okay. But on that conference call that
24 occurred soon after the formation of the team, you

1 took notes?

2 A. Yes.

3 Q. Okay. And those notes were -- the only
4 reason you took those notes was because of the
5 directions of legal counsel?

6 A. Legal counsel asked that I record those
7 notes for that meeting, and I did.

8 Q. Okay. Thank you.

9 Apart from the -- the verbal directions
10 that you were provided by Ebony Ebola (sic)? I'm
11 sorry.

12 A. Yeboah.

13 Q. Yeboah. Sorry, there's too much in the
14 news. Yeboah. Okay. Sorry about that.

15 MS. DUNN: Good thing she's not in here.

16 BY MR. SOULES:

17 Q. So apart from the verbal instructions
18 that she provided you in mid to late May, were there
19 any other directions provided to the EDU team?

20 A. No.

21 Q. Okay. Were there any -- do you recall
22 any directions in writing?

23 A. I -- I don't.

24 Q. Okay. So to the best of your

1 recollection, the only instructions that the EDU team
2 was given were those provided verbally to you by
3 Ebony Yeboah?

4 A. Those were the initial instructions. I
5 can't say we didn't talk to anybody during the
6 three-month period. So I'm reluctant to say that is
7 the only time anybody ever gave any -- any
8 instruction, but that certainly was the initial
9 instructions.

10 Q. Okay. Okay. So to the best of your
11 recollection, the EDU team performed its
12 responsibilities without any written instructions or
13 guidance; is that correct?

14 A. I don't remember any written
15 instructions.

16 Q. Did the EDU team receive assistance from
17 any outside experts in evaluating the proposed
18 transaction?

19 A. Can I ask what you mean by "evaluating"?

20 Q. So I think -- well, your direct
21 testimony discusses an evaluation process that the
22 EDU team undertook, correct?

23 A. (Nods head.)

24 Q. During that evaluation process, did the

1 EDU team engage any outside consultants or experts to
2 consider the benefits and disadvantages of the
3 proposed transaction?

4 A. There was an outside consultant that
5 provided information that was used for the
6 evaluation.

7 Q. And do you -- who was that outside
8 consultant?

9 A. Rose.

10 Q. Judah Rose?

11 A. Yes.

12 Q. Okay. And what information did Mr. Rose
13 provide?

14 A. He projected the market prices for the
15 15-year term.

16 Q. And when you say "market prices," do you
17 mean market energy prices?

18 A. Yes.

19 Q. And market capacity prices?

20 A. Correct.

21 Q. And carbon prices?

22 A. Correct.

23 Q. Okay. Was there any other information
24 that he provided?

1 A. Those -- those were the main ones that
2 were the basis of calculating the benefits for the
3 customers, but obviously his -- the information he
4 provided was much more voluminous than just a couple
5 numbers.

6 Q. Yeah, yeah. Having looked at his
7 testimony, I can agree it's more voluminous.

8 A. Yes.

9 Q. Did the -- did the EDU team retain
10 Mr. Rose to provide those figures?

11 A. No.

12 Q. Do you know who did?

13 A. The companies did, but the EDU team
14 specifically did not.

15 Q. Okay. Do you know why the companies
16 asked Mr. Rose to provide those price projections?

17 A. Yes. Because -- because we -- the
18 companies were aware that a significant portion of
19 the analysis is going to require 15-year projections
20 of prices.

21 Q. Okay. Do you know whether or not FES
22 has its own price projections?

23 A. I did not know at the time.

24 Q. Okay.

1 A. But I -- I've since -- as you have seen,
2 that they do have projects, but I -- I did not know
3 at the time.

4 Q. Okay. When did you learn that they had
5 their own price projections?

6 A. Probably pretty recently, I mean, weeks
7 or months at most.

8 Q. So would it be fair to say that that was
9 long after the proposed -- the term sheet had been
10 finalized?

11 A. Yes.

12 Q. Okay. And does the Regulated Generation
13 Department have its own set of future price
14 projections?

15 A. Not to that extent, no.

16 Q. Okay. Does the department have any at
17 all?

18 A. We don't look out more than a few years.
19 We don't go anywhere near what they do.

20 Q. Okay. The -- the Business Development
21 Department, is that -- that's within FirstEnergy
22 Service Company?

23 A. Yes.

24 Q. And does that department provide

1 services to both FES and to regulated generation?

2 A. They can.

3 Q. Okay. And are you aware of whether or
4 not they -- that department specifically has its own
5 set of price projections?

6 A. I don't know.

7 Q. Okay. So apart from the members of the
8 EDU team, and Mr. Thorn, and Ms. Morrow, and Judah
9 Rose, was there anyone else that helped assist in
10 evaluating the proposed transaction on behalf of the
11 companies?

12 A. Again, can you -- can you rephrase that
13 and clarify what you're asking?

14 Q. Sure. So the members of the EDU team,
15 including -- maybe for purposes of this discussion,
16 let's talk about the EDU team in terms of all the
17 individuals listed in Discovery Response 19.a.

18 A. Yes, okay.

19 Q. So including Mr. Thorn and Ms. Morrow?

20 A. Okay.

21 Q. Is that --

22 A. That's fine, uh-huh.

23 Q. Okay. So apart from the members of the
24 EDU team and apart from Mr. Rose, was there anyone

1 else who helped evaluate the proposed transaction?

2 A. No.

3 Q. No, okay.

4 A. Mr. Rose didn't evaluate the
5 transaction, though. I just want to make clear, the
6 way you phrased that, I'm not sure if that's what you
7 were saying.

8 Q. Oh. That was not my intent, but I'm
9 glad you clarified.

10 A. Okay.

11 Q. Thank you. He just provided the market
12 price information?

13 A. Correct.

14 Q. Okay. What is Mr. Haney's role at
15 FirstEnergy?

16 A. As I mentioned, he's vice-president of
17 Compliance and Regulated Services.

18 Q. Okay. And he was not involved in
19 evaluating the proposed transaction?

20 A. Correct.

21 Q. Okay. Are you familiar with Cecilia
22 Liang-Nicol?

23 A. Yes.

24 Q. What is her role with FirstEnergy?

1 A. She is a manager who reports to me. She
2 is the manager of the group that I mentioned earlier
3 that handles the marketing-related activities through
4 PJM.

5 Q. Okay. Who's the manager of the dispatch
6 side of your group?

7 A. Gary Pleiss.

8 Q. Gary Pleiss. And was -- did I pronounce
9 that correctly?

10 A. You did.

11 Q. All right. Did Ms. Liang-Nicol play a
12 part in evaluating the proposed transaction?

13 A. No.

14 Q. So she didn't provide you any assistance
15 in evaluating the costs of Sammis, Davis-Besse, or
16 the OVEC plants?

17 A. Can you rephrase that?

18 Q. Sure. As part of the evaluation
19 process, the EDU team looked at the projected future
20 costs of Sammis, Davis-Besse, and the OVEC plants,
21 right?

22 A. Correct.

23 Q. And in looking at those costs, did --
24 did Ms. Liang-Nicol provide any assistance in

1 reviewing those costs?

2 A. No.

3 Q. Okay. Some of the members of the EDU
4 team toured the Davis-Besse and Sammis plants,
5 correct?

6 A. Correct.

7 Q. And Ms. Liang-Nicol joined those plant
8 tours; is that correct?

9 A. Correct.

10 Q. Why did she join?

11 A. Because I was going anyway. And if this
12 transaction did come to be, her group would, as she
13 does with the regulated generation, be responsible
14 for the marketing efforts of those plants. So I took
15 the opportunity to bring her so she could view the
16 plants.

17 Q. Okay. Okay. Thank you.

18 And was Charles Jones involved in
19 evaluating the proposed transaction?

20 A. No.

21 Q. Okay. Apart from the members of the EDU
22 team, was there anyone else that helped negotiate the
23 proposed transaction on behalf of the companies?

24 A. No.

1 Q. Okay. So Mr. Haney was not involved in
2 negotiating the proposed transaction?

3 A. That's correct.

4 Q. And Mr. Jones was also not involved in
5 negotiating the proposed transaction?

6 A. That's correct.

7 Q. So his role was simply limited to
8 approving the final term sheet?

9 A. That was certainly one of his roles.

10 Q. Okay.

11 A. I --

12 Q. Did he have other roles related to the
13 proposed transaction?

14 A. I don't know.

15 Q. Okay. And Ms. Liang-Nicol was not
16 involved in any negotiations at all?

17 A. Correct.

18 Q. Okay. Now, FES had its own group that
19 represented its interests in negotiating the proposed
20 transaction, correct?

21 A. Yes.

22 Q. And if I refer to that group as the FES
23 team, you understand what I mean?

24 A. I do.

1 Q. Okay. And who were the members of the
2 FES team?

3 A. I -- I wouldn't be able to tell you the
4 members.

5 Q. Would -- would reviewing Ruberto
6 Exhibit 2 help refresh your recollection?

7 A. Very much.

8 Q. Okay. Would you like to take a minute?

9 A. Yeah.

10 Q. I'm sorry.

11 A. That's okay. I'm here all day, take
12 your time.

13 Q. We're trying to get you out of here as
14 quick as we can, want to be sensitive to your time.

15 A. Yeah.

16 Q. Okay. So do you know who are the
17 members of the FES team?

18 A. Sharon Noewer led the team.

19 Q. Okay.

20 A. And -- I mean, do you want me to read
21 the names?

22 Q. If you wouldn't mind.

23 A. Yes. Nick Fernandez, Jason Lisowski,
24 Dave Pinter, Paul Harden, Celia Hashlamoun, Karen

1 Sealy, Brian Knipe, Fred VonAhn, Jacob McDermott, and
2 Scott Casto.

3 Q. And are these the -- in your
4 recollection, are these the individuals that were
5 involved in negotiating on the other side of this
6 transaction?

7 A. I can't -- I can't confirm with
8 certainty, because I don't recall every single name.

9 Q. Okay.

10 A. But generally speaking, these are --
11 certainly include the major players that were there.

12 Q. Okay. In providing your answer to this
13 discovery request, how did you come up with this list
14 of names?

15 A. I don't recall. I'm sure I had to ask
16 the FES team to provide the list.

17 Q. Okay. All right. Apart from the
18 members of the EDU team, the members of the FES team,
19 and Mr. Haney and Mr. Jones, was there anyone else
20 with whom you communicated regarding the proposed
21 transaction?

22 A. Yes.

23 Q. And who are those individuals?

24 A. I mean, I -- I won't -- I won't be able

1 to recall everybody, but there certainly were updates
2 given to various people, including Eileen Mikkelsen,
3 for example.

4 Q. Okay.

5 A. Steve Strah.

6 I mean, there would be so many people,
7 when you say communicate, we're getting data, we're
8 talking to other people.

9 Q. Yeah.

10 A. So there's people that we had to
11 communicate with. I can't remember everybody we
12 communicated with.

13 Q. Okay. Okay. I understand. With
14 respect to these updates you just referenced, were
15 there regular updates you were providing to
16 Ms. Mikkelsen and Mr. Strah?

17 A. There were updates that were provided to
18 Mark Julian, and sometimes he had others like that in
19 the room that -- they were -- they were approximately
20 every other week during this three-month period.

21 Q. Okay. And how were those -- was this a
22 phone call, a meeting?

23 A. They were mostly in person.

24 Q. Mostly in person?

1 A. Right.

2 Q. Okay.

3 A. It was about a 30-minute meeting.

4 Q. Okay. Did you send any e-mail updates
5 of the process?

6 A. Not that I recall, no, no.

7 Q. Okay. So recognizing that, you know,
8 you're talking to people, you're gathering data, do
9 you remember anyone else -- you know, we've talked
10 about these updates, is there anyone else that you
11 remember discussing the proposed transaction with
12 apart from, you know, maybe a data-gathering role?

13 A. Well, there would have been other
14 people. Let me try to think of some names. Ebony
15 Yeboah would have been in some of those meetings,
16 Mark Hayden would have been in some of those
17 meetings, I think I mentioned Steve Strah.

18 Q. Uh-huh.

19 A. Jim Haney, Eileen, that -- that's all
20 that's coming to me.

21 Q. Okay. Were those meetings held in
22 Akron?

23 A. Yes.

24 Q. Okay. So you had a lot of back and

1 forth probably during that time?

2 A. Not too bad, every couple weeks.

3 Q. Okay. Who's Mark Hayden?

4 A. Legal. I don't know his title.

5 Q. Okay. Did you speak with anyone at Ohio
6 Edison Company about the proposed transaction?

7 A. Other than Mark Julian, of course, who
8 is vice-president of those utilities.

9 Q. Okay. No one besides him, though?

10 A. I mean, Steve Strah, of course, has some
11 association, but, no, not beyond that that I can
12 recall.

13 Q. Okay. And apart from the members of the
14 FES team who are employed by FES, was there anyone at
15 FES that you spoke to regarding the proposed
16 transaction?

17 A. No.

18 Q. Okay. Anyone outside of FirstEnergy
19 Corporation generally that you spoke to?

20 A. No.

21 Q. Okay. Now, as the leader of the EDU
22 team representing the companies, is it fair to say
23 that you're knowledgeable about the companies'
24 assessment of the proposed transaction?

1 A. Yes.

2 Q. Okay. How about FES's evaluation of the
3 proposed transaction, did FES share with you its
4 internal assessment of the transaction's --

5 A. No.

6 Q. -- potential costs and benefits?

7 A. No.

8 Q. And the only information -- the only
9 personal knowledge you have about FES's internal
10 assessment of the proposed transaction is what you
11 read in Mr. Moul's testimony; is that correct?

12 A. And I'm not even sure that's a -- I
13 don't know if that's an assessment of the
14 transaction, but, yes, I have no knowledge of FES's
15 evaluation of it.

16 Q. Okay. And you were never assigned to
17 assist FES in evaluating the proposed transaction?

18 A. No.

19 Q. Okay. So you must not have discussed
20 FES's evaluation with anyone within FirstEnergy
21 companies because you don't know, is that --

22 A. That is correct.

23 Q. Okay. So you're -- you're familiar with
24 Mr. Hayden, is that -- that's correct?

1 A. I'm familiar with him, yes.

2 Q. Okay. And are you aware of whether
3 he -- what part of FirstEnergy Corporation he
4 represents specifically?

5 A. I don't know.

6 Q. Okay. Well, I will represent to you
7 that in this proceeding he has appeared on behalf of
8 FES at a prehearing conference that was held last
9 week, and at that hearing Mr. Hayden had identified
10 you as someone who could testify regarding FES's
11 evaluation of the proposed transaction.

12 Just so the record is clear, you have no
13 knowledge about FES's evaluation of the proposed
14 transaction; is that correct?

15 A. That's correct.

16 MR. LANG: Just objection to the
17 characterization with what Mr. Hayden said or is
18 supposed to have said, because I don't think you have
19 it -- I don't think your characterization is
20 accurate.

21 MR. SOULES: Okay. And I -- I don't yet
22 have a transcript, but --

23 BY MR. SOULES:

24 Q. But just so the record is absolutely

1 clear, you have no personal knowledge about FES's
2 evaluation of the proposed transaction?

3 A. Correct.

4 Q. Okay. All right. Thank you.

5 Do you want to take a short break?

6 A. Sure.

7 Q. Okay.

8 MR. LANG: That's fine.

9 (Recess taken.)

10 BY MR. SOULES:

11 Q. Hello again, Mr. Ruberto.

12 So the EDU team, as we were talking
13 earlier, was responsible for evaluating the proposed
14 transaction?

15 A. Yes.

16 Q. And the team evaluated the proposed
17 transaction's potential impact on the companies'
18 customers, retail -- retail system reliability, the
19 Ohio economy, and the companies themselves; is that
20 accurate?

21 A. Yes.

22 Q. Okay. During the confidential session
23 that we're going to have later today, we'll probably
24 spend a bit more time walking you through the

1 specific steps of the evaluation process and some of
2 the details of that. For now, though, I just wanted
3 to start by seeing if we could list out in general
4 terms the different steps that the EDU team took in
5 evaluating the proposed transaction.

6 So in terms of those steps that the EDU
7 team took, the team requested and received data from
8 FES regarding the operation of Sammis, Davis-Besse,
9 and the OVEC plants; is that correct?

10 A. Yes.

11 Q. Okay. And the team compared those
12 plants to other coal and nuclear units?

13 A. Yes.

14 Q. Okay. And the EDU team received a
15 forecast from Jason Lisowski that projected the
16 plant's future output, costs and revenues; is that
17 correct?

18 A. Correct.

19 Q. Okay. And Mr. Lisowski's projections
20 were based in part on the market price projections
21 that Judah Rose had provided, correct?

22 A. Correct.

23 Q. Okay. And then the EDU team
24 subsequently verified Mr. Lisowski's cost and revenue

1 projections, correct?

2 A. Correct.

3 Q. Okay. And the team toured the Sammis
4 and Davis-Besse plants, correct, or members of the
5 EDU team toured the Sammis and Davis-Besse plants?

6 A. Correct.

7 Q. And those plant tours were part of the
8 EDU team's evaluation process, correct?

9 A. Correct.

10 Q. Okay. Apart from those steps that we
11 just walked through, is there anything else that the
12 EDU team did to evaluate the proposed transaction?

13 A. We -- we did look at the economic impact
14 that these plants have for the region. We looked at
15 the impact on -- if the plants -- if the plants did
16 retire, the potential impact on transmission costs
17 that might be necessary.

18 Q. Okay.

19 A. That's all I can recall right now, but
20 there obviously was a couple months' worth of
21 reviewing, but I can't recall every detail.

22 Q. Okay. Have we -- at least in broad
23 terms, have we listed out now all the major
24 categories of review that the team performed?

1 A. Yeah.

2 Q. Okay. And the EDU team was formed on
3 May 20th, 2014, right?

4 A. Correct.

5 Q. When did the EDU team actually begin
6 evaluating the proposed transaction with FES?

7 A. Sometime in June, June, July. I don't
8 recall exactly the dates.

9 Q. And do you know when the EDU team
10 completed its evaluation process?

11 A. In July.

12 Q. Do you remember with more specificity
13 when in July?

14 A. Not early July; so probably at least mid
15 July.

16 Q. Okay.

17 A. Toward late July, in that range.

18 Q. Mid to late July?

19 A. Yeah, yeah.

20 Q. And just so I understand the time line
21 here, the evaluation process, was that largely
22 completed before the negotiations began with FES?

23 A. No. Well, a lot of it was complete, but
24 not all of it.

1 Q. Okay. And when you say "a lot of it was
2 complete," what do you mean?

3 A. The -- the financial components,
4 those -- those were getting pretty solid at that
5 point, but we were still reviewing -- for instance,
6 plant tours didn't take place until a little bit
7 later, I think July 23rd and 24th. So we wanted to
8 see the plants before -- before we'd complete our
9 evaluation.

10 Q. Okay. But the financial components of
11 the evaluation process were complete before then?

12 A. Largely.

13 Q. Okay.

14 A. Yeah.

15 Q. And the team began meeting in May 2014;
16 is that correct?

17 A. Around late May, yeah.

18 Q. Okay. How many times did the EDU team
19 meet in person?

20 A. We generally met weekly. Most of them
21 were in person, but not all of them.

22 Q. And those meetings were held in West
23 Virginia?

24 A. No; in Akron.

1 Q. Akron, okay. And do you know when the
2 EDU team stopped holding these meetings?

3 A. Toward the end of July.

4 Q. Okay. And when the EDU team, you know,
5 held these meetings, did you take notes during those
6 meetings?

7 A. Yes.

8 Q. Okay. And were those -- were the notes
9 that you took taken at the request of counsel?

10 A. Yes.

11 Q. Okay. So that -- that request to take
12 notes was consistent throughout the entire EDU team
13 evaluation process?

14 A. For those team meetings, yes.

15 Q. For the team meetings, okay.

16 And you said sometimes the EDU team held
17 calls instead of in-person meetings?

18 A. Yes.

19 Q. Okay. Do you remember how many times
20 the team held conference calls?

21 A. I don't remember.

22 Q. Okay. But the first meeting of the EDU
23 team was a conference call?

24 A. Yes.

1 Q. Okay. So in terms of these general --
2 generally weekly meetings, what were the purposes of
3 the meetings?

4 A. To discuss the data we were receiving,
5 data we needed, and then to begin to evaluate that
6 data that we received.

7 Q. Okay. Did -- did you -- did anyone
8 create an agenda for these meetings?

9 A. Yes.

10 Q. Okay. And who was that?

11 A. Me.

12 Q. Okay. Did you distribute those agendas
13 to the team members before the meeting?

14 A. Generally, yes.

15 Q. Okay. How did you distribute those?

16 A. Electronically.

17 Q. Through e-mail?

18 A. Yeah.

19 Q. Okay. And -- and I want to be sensitive
20 to the fact that some of these discussions were
21 confidential; so if we get near that line, let me
22 know.

23 But do you recall what was discussed
24 during these weekly meetings?

1 MR. LANG: Just state an objection to
2 the extent that there was any legal communications,
3 legal advice would be privileged, you shouldn't
4 discuss those issues. But to the extent that you can
5 answer his question without legal advice, you can
6 certainly do so.

7 THE WITNESS: Okay. We -- we early on
8 looked for what information we might need. So we had
9 discussions about what information was going to be
10 important for us to evaluate the transaction, not
11 just the PPA, itself, but other benefits that such an
12 agreement might provide such as the economic benefit
13 of keeping the plants in operation, for instance, and
14 transmission and those other things. So we would
15 discuss that.

16 As -- as the meetings moved on, of
17 course, we had more and more data. So we would
18 discuss the data, evaluate the data, and determine if
19 there is additional information we need. As -- as --
20 as the -- the evaluation concluded, of course, we had
21 a lot of results to discuss to evaluate how we felt
22 that would impact the companies' customers and the
23 companies, et cetera.

24 BY MR. SOULES:

1 Q. Okay. So much of the discussion related
2 to the financial aspects of the proposed transaction;
3 is that accurate?

4 A. That was part of it.

5 Q. Okay. As well as the potential economic
6 impacts of the proposed transaction for Ohio or the
7 region?

8 A. Correct.

9 Q. Okay. Is there anything else you
10 remember being discussed at the meetings apart from
11 legal stuff, which --

12 A. No.

13 Q. -- absolutely --

14 A. No.

15 Q. Okay. In the -- the financial review
16 and the -- the financial review that the EDU team
17 undertook, that was something that was not just done
18 because counsel instructed you to do it, correct, it
19 was because the purpose was to evaluate whether this
20 was a good deal for the companies?

21 A. Right.

22 Q. Okay.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 BY MR. SOULES:

1 Q. So, Mr. Ruberto, you've been passed a
2 copy of Exhibit 3, which contains the companies'
3 response to Discovery Request SC Set 1-RPD-49.
4 Because this response has been designated
5 competitively sensitive confidential and because
6 we're in the public portion of the deposition, I'm
7 not going to ask you any questions about the specific
8 contents of the document.

9 For now, though, I just want to know:
10 Are you familiar with this document?

11 A. Yes.

12 MR. OLIKER: Can I have a clarification?

13 MR. SOULES: Go ahead, Joe.

14 MR. OLIKER: Is this the entire RPD-49?
15 Isn't that, like, a 147-page document?

16 MR. SOULES: So this is the -- just of
17 the discovery response, which is six or seven pages,
18 not all the attachments.

19 MR. OLIKER: Okay. Thank you. I
20 appreciate that.

21 MR. SOULES: Yeah.

22 BY MR. SOULES:

23 Q. So, I'm sorry, Mr. Ruberto, you said you
24 are familiar with this document?

1 A. Yes.

2 Q. Okay. And under the response to
3 Part a., there is a competitively sensitive
4 confidential report, correct? Please take a few
5 minutes to review the document if that would be
6 helpful.

7 A. Okay. Yes.

8 Q. Okay. Are you familiar with this
9 report?

10 A. I am.

11 Q. Okay. Are you the author of this
12 report?

13 A. Yes.

14 Q. Okay. When was this report prepared?

15 A. At the time of this response. I don't
16 recall the date, but it was -- it was in response to
17 this request.

18 Q. Okay. All right. So after the
19 companies had filed their ESP application?

20 A. Yes.

21 Q. Okay. To the best of your knowledge, is
22 this report factually accurate?

23 A. Yes.

24 Q. Okay. So let's set this aside for now.

1 We'll discuss this in some more detail this
2 afternoon.

3 A. All right.

4 Q. Now, following the evaluation process,
5 you concluded that the proposed transaction would
6 provide the companies' customers with benefits whose
7 net present value is over \$800 million, correct?

8 A. It was later revised to 770 million,
9 but, yes.

10 Q. Okay. And when was it later revised to
11 770 million?

12 A. Last fall. I -- I don't remember
13 exactly when.

14 Q. Okay. Putting aside the revision for
15 right now, that \$800 million figure was based on a
16 calculation that was provided by Mr. Lisowski; is
17 that correct?

18 A. Yes.

19 Q. Okay. And during the EDU team's
20 evaluation process, the team verified Mr. Lisowski's
21 cost and revenue projections, correct?

22 A. Yes.

23 Q. Okay. But the -- the companies -- or,
24 your understanding of the proposed transaction's

1 current net present value to customers is now 770
2 million?

3 A. Yes.

4 Q. Okay. And do you know why that number
5 changed by 30-some million dollars?

6 A. Yes.

7 Q. Why?

8 A. There was -- there was an error in
9 OVEC's costs, it inadvertently did not include
10 potential carbon impacts later.

11 Q. Okay.

12 A. The market prices did, but the costs for
13 OVEC did not. That was later added.

14 Q. Okay. And during the EDU team's
15 evaluation process, you were not aware that the OVEC
16 costs were inaccurate?

17 A. Correct.

18 Q. Okay. So just to be clear, the original
19 revenue analysis that Mr. Lisowski provided to you
20 was inaccurate, correct?

21 A. It omitted that particular item.

22 Q. Okay. So talking about the proposed
23 transaction specifically, one of the issues that the
24 EDU team considered was the duration or term of the

1 proposed transaction; is that correct?

2 A. Correct.

3 Q. Okay. And if you could turn to Page 5,
4 Lines 17 to 23, of your direct testimony. If you
5 want to take a second to review that.

6 A. All right.

7 Q. In that portion of your testimony you
8 state that, "Because forecasted revenues and costs
9 indicate the early years will experience costs in
10 excess of revenues with the latter years producing
11 revenues in excess of costs, a term sufficiently long
12 was considered necessary to improve the value to the
13 Companies, their customers and the State of Ohio. A
14 fifteen-year term was viewed as sufficiently long to
15 provide substantial benefits to the Companies'
16 customers, to retail system reliability and to Ohio's
17 economy." Is that your testimony?

18 A. Yes.

19 Q. Okay. When you refer to the views, the
20 15-year term was viewed, whose views are you
21 referring to there?

22 A. The EDU team.

23 Q. Okay. And the basic concern with the
24 shorter contract term is that the companies -- or is

1 it the plants are projected to lose money during the
2 first several years of the proposed transaction,
3 correct?

4 A. Correct.

5 Q. Okay. Let's assume that the companies
6 were to enter into the proposed transaction with FES,
7 and that a few years from now the plants start
8 producing money -- or, start producing revenues in
9 excess of costs. In that circumstance, are you aware
10 of any provision in the agreement that would prevent
11 FES from terminating the agreement prior to May 2031?

12 A. The only thing in the term sheet that
13 has any termination provisions is in Section 20, and
14 that -- that is strictly limited to lack of
15 government approvals. Otherwise, FES does not have
16 the option of terminating the contract regardless.

17 Q. So will -- let's set aside Section 20
18 for a minute, we'll come back to that.

19 But the term sheet is not the actual
20 purchase power agreement, correct?

21 A. That's correct.

22 Q. And no purchase power agreement has been
23 drafted yet, correct?

24 A. Correct.

1 Q. So given that the actual agreement has
2 not been drafted, you can't point to any provision in
3 the agreement that would prevent FES from terminating
4 the agreement early, correct?

5 A. The terms that we've agreed to at this
6 point does not give them an option to cancel.

7 Q. As laid out in the term sheet?

8 A. Correct.

9 Q. Okay. But you don't know what the
10 actual purchase power agreement will look like
11 specifically, correct?

12 A. Correct, it doesn't exist.

13 Q. Right, okay. And if we could -- if we
14 could go back to Exhibit 1, which is that term sheet,
15 for a minute. Where did I put my copy? Oh, all
16 right. Could we look at Section 20 for a minute?

17 A. Sure.

18 Q. Okay. And for reference, that's on
19 Page 10 of the term sheet, correct?

20 A. Yes.

21 Q. Okay. And this section is entitled
22 "Conditions," correct?

23 A. Correct.

24 Q. And this is a -- this section is

1 addressed to a situation where FES would not be able
2 to consummate the transaction because it couldn't get
3 a certain government approval, correct?

4 A. Correct.

5 Q. So this section is really focused on
6 what happens at the front end of the transaction, not
7 on whether FES could or couldn't terminate at some
8 point later in the 15 years, correct?

9 A. No.

10 Q. No. What -- it -- no, meaning? I'm
11 sorry, that's my fault for a confusing question.

12 So you're agreeing that this is focused
13 on the front end of the transaction?

14 A. No.

15 Q. Why not?

16 A. While it is focused on the front end,
17 should an approval that should have been in place at
18 the beginning be withdrawn, then that would cause --
19 that would cause this -- this section. So if there
20 is a government approval that is withdrawn for some
21 reason, that could cause this to happen, but -- but
22 it is generally focused on the approvals that are
23 needed at consummation, not approvals that may be new
24 approvals eight years down the road that didn't

1 exist. It's not -- it's not those, it's approvals
2 that are needed at consummation.

3 Q. Okay. But you're saying it could apply
4 to a later approval or --

5 A. Only if it's those approvals that were
6 needed at consummation, not if it's an approval that
7 arises later. This does not apply to those
8 approvals.

9 Q. Okay. Would this apply to the
10 Davis-Besse NRC license?

11 A. No.

12 Q. Okay.

13 A. That -- different section, Section 3,
14 4 -- I don't know, Section 4 applies to that.

15 Q. I'm sorry. Could you --

16 A. Section 4 on Page 1.

17 Q. Oh, right, subject to the conditions
18 that the NRC renews the license?

19 A. Correct, correct.

20 Q. Okay. If the NRC were to renew the
21 Davis-Besse license, but then in 2025 they yanked the
22 license for some reason, would this -- would Section
23 20 apply in that circumstance?

24 A. I don't believe so.

1 Q. Okay. In this section -- so this
2 section discusses certain circumstances in which FES
3 would have the right to terminate the agreement,
4 right?

5 A. Very limited, but, yes, yes.

6 Q. Right, okay. Is there any other
7 language in the term sheet explicitly prohibiting FES
8 from terminating the agreement?

9 A. Well, the delivery period is defined in
10 the term sheet; so they would not have the unilateral
11 right to void that period.

12 Q. You're referring to Section 10?

13 A. Correct.

14 Q. But there's no explicit language stating
15 that they can't terminate, correct?

16 A. But that would violate Section 10; so in
17 my view Section 10 says this is the delivery period.

18 Q. Okay. All right. Suppose at some point
19 during the 15-year period FES decided unilaterally to
20 terminate, what would be the penalties to FES for
21 doing so under the proposed transaction?

22 A. I would have to have Legal's advice on
23 what remedies there are for breach of contract. I
24 can't answer that.

1 Q. Okay. Do you know if Section 19 speaks
2 to those penalties?

3 A. Yes.

4 Q. Okay. But to understand the meaning of
5 this, you would have to have advice of counsel?

6 A. Correct.

7 Q. Okay. Now, in your testimony, you
8 stated that the EDU team considered various lengths
9 for the proposed transaction; is that correct?

10 A. Various lengths?

11 Q. Yeah, various term lengths for the
12 agreement.

13 A. Yes.

14 Q. Okay. And what contract lengths did the
15 EDU team consider?

16 A. No -- no specific one, other than
17 looking at the broader period. We could see that if
18 you had a term, five years, for instance, it would
19 not be in the -- in our customers' best interest; so
20 it was -- it was more of a discussion analysis of
21 where the benefits seemed to be appropriate in our
22 judgment.

23 Q. Okay. Did you discuss any contract term
24 length greater than 15 years?

1 A. No.

2 Q. Okay. And throughout the evaluation
3 process, was there a general understanding that the
4 term would probably be 15 years?

5 A. I'm sorry, say that again.

6 Q. Throughout the evaluation process, was
7 there a general understanding within the EDU team
8 that the contract would probably last 15 years?

9 A. Certainly there was a point in the
10 process where that's true, but not throughout.

11 Q. Okay. Do you know if at the outset of
12 the process there was a focus on a 15-year contract
13 length?

14 A. At the outset we discussed that; so
15 there wasn't a determination at the outset.

16 Q. Okay. But you were looking at 15 years,
17 and then there was discussion of whether something
18 shorter might make sense or not; is that accurate?

19 A. I don't recall. I don't know. I don't
20 remember.

21 Q. Okay. Do you remember when the EDU
22 team -- or, strike that.

23 Do you remember when the decision was
24 made to adopt a 15-year contract term?

1 A. Can you rephrase that?

2 Q. At some point in the process, a decision
3 was made that the term of the contract should be 15
4 years, correct?

5 A. I -- I don't know what you mean by
6 "decision." Whose decision?

7 Q. Well, that's what I'm actually trying to
8 understand. The contract -- the proposed transaction
9 is 15 years in length, right?

10 A. Correct.

11 Q. At some point someone must have decided
12 that 15 years made sense, right?

13 A. No.

14 Q. Okay. Tell me how I'm wrong.

15 A. It's not someone decided. The 15 years
16 ultimately was a result of a negotiation with the EDU
17 and FES. So the EDU team and the FES team needed to
18 reach agreement that 15 was going to be appropriate
19 for both sides.

20 Q. Okay. So -- so is it fair to say there
21 was a joint decision between the two teams that 15
22 years was the appropriate term?

23 A. A joint recommendation.

24 Q. A joint recommendation?

1 A. Yes.

2 Q. Okay. All right. Okay. Thank you.

3 And if the proposed transaction is
4 executed, the companies will be responsible for
5 offering the output of Sammis and Davis-Besse into
6 the PJM energy and ancillary services markets, and
7 for offering those plants capacity into the capacity
8 auctions; is that correct?

9 A. Correct.

10 Q. Okay. And you personally would be
11 responsible for offering the output of those plants
12 into the PJM markets?

13 A. Correct.

14 Q. Okay. A bit earlier we were discussing
15 the analyses that the Regulated Generation Department
16 takes as a general matter, and how -- and the extent
17 to which you do or don't look to the Business
18 Development Department for the projections.

19 I think you said that the analyses that
20 your department performs generally only look out a
21 few years; is that correct?

22 A. I -- yes. I said we don't -- we do not
23 look out as far as Business Development did.

24 Q. Okay. And what kind of situations do

1 you do some sort of forecasting within your
2 department?

3 A. It has more to do with outage planning.

4 Q. Okay. All right. What kind of analysis
5 is actually performed?

6 A. We review the length of the outage, the
7 needs for the outage, how urgent the outage is, and
8 then we look at market prices that we can expect, and
9 we try to settle the outage within a period that is
10 most beneficial from a revenue perspective.

11 Q. Okay. Apart from the outage planning,
12 are there any other revenue analyses that your
13 department performs you can think of?

14 A. Yes.

15 Q. Okay. And what are those?

16 A. We look at revenues that the plants
17 generate, we compare that to the cost of the
18 generation; so we do those analyses to see how the
19 plants are doing.

20 Q. Okay. How far out do those analyses
21 look?

22 A. Those are more historical --

23 Q. Okay.

24 A. -- than projected.

1 Q. Okay. Does your department perform
2 analyses related to the offering of the units into
3 the PJM markets?

4 A. Yes.

5 Q. Okay. And those analyses are -- are
6 done only within your department, you don't go to the
7 Business Development Department?

8 A. Correct.

9 Q. Okay. And how far out do those
10 forecasts look?

11 A. In the capacity market, we would look
12 at -- of course, that's a three-year ahead you're
13 looking at; so you're -- you're making decisions
14 based upon the RPM or incremental auctions. So
15 that's probably about as far as it goes.

16 Q. Okay. And earlier we were discussing
17 the strict wall between FES and the regulated
18 generation arm of FirstEnergy. Do you remember that
19 discussion?

20 A. Yes.

21 Q. Okay. And I think you said that that
22 wall was mandated by FERC policies.

23 A. I believe so, yes.

24 Q. Okay. Does FirstEnergy have any written

1 policies describing that wall of separation?

2 A. Yes.

3 Q. Okay. What are those written policies?

4 A. They define where communications can and
5 can't occur; so they define a regulated marketing
6 function employee, which is myself. I am prohibited
7 from exchanging information with a competitive market
8 function employee, which is FES.

9 Q. Okay. And that's -- like, is there a
10 code of conduct specifically?

11 A. Yes.

12 Q. Okay. And apart -- setting aside for a
13 moment the couple members of the FES team that were
14 actual FES employees, have you ever communicated with
15 any employee of FES?

16 A. The -- the only communications I have
17 with FES is we do have some joint-owned generation.

18 Q. Okay.

19 A. So to the extent we need to have joint
20 discussions about that operation, then we would have
21 discussions. But it's more with generation
22 operations and it is -- it is strictly not about
23 their market offers and how they are marketing their
24 ownership share, it's purely an operational

1 standpoint.

2 Q. Okay. Do you know which units you had
3 those discussions?

4 A. Bath County Pumped Storage is the only
5 one.

6 Q. Okay. And so apart from discussions you
7 would have had regarding Bath County Pumped Storage,
8 are there any other communications that you had with
9 FES?

10 A. No.

11 Q. Could we briefly look back at I think it
12 was Exhibit 2, the discovery response to OCC's Set 1,
13 19. Do you have yours?

14 MR. FISK: Sorry, yeah.

15 MR. SOULES: Sorry.

16 BY MR. SOULES:

17 Q. Mr. Ruberto, could you look at Part e.
18 of your response?

19 A. Okay.

20 Q. Would you agree with me that nearly
21 every member of the FES team is an employee of
22 FirstEnergy Service Company?

23 A. Yes.

24 Q. Okay. And earlier we established that

1 all the members of the EDU team were FirstEnergy
2 Service Company employees, correct?

3 A. Correct.

4 Q. Is there a written policy prohibiting
5 members of FirstEnergy Service who work with FES from
6 communicating with employees of FirstEnergy Service
7 that work with regulated generation?

8 A. I'm sorry, rephrase that again.

9 Q. Well, so would you agree that on both
10 sides of the negotiations, virtually every employee
11 was employed by FirstEnergy Service Company?

12 A. Right.

13 Q. And on the EDU team side, none of you
14 had -- or, as a general matter none of you are
15 working for FES, correct?

16 A. Correct.

17 Q. Do you know whether or not the FES team
18 members generally work for FES?

19 A. I don't know.

20 Q. Okay. And are you aware of within --
21 just purely within FirstEnergy Service Company, if
22 there's a wall of separation between Service Company
23 employees who work with regulated generation and
24 Service Company employees who work with FES?

1 A. There are code-of-conduct behaviors for
2 people that do that.

3 Q. Okay. What are those codes of conduct?

4 A. For example, while I work for
5 FirstEnergy Service Corp., within that there is a
6 code of conduct for different classifications of
7 employees.

8 Q. Okay.

9 A. So where my paycheck comes from is
10 somewhat irrelevant, just like theirs. I am a
11 regulated marketing function employee; so I'm
12 prohibited from communicating with competitive
13 marketing function.

14 Now, also within FirstEnergy Service
15 Corp., though, you may have shared service employees,
16 which is someone that is allowed to work with the
17 regulated side and the competitive side, but they are
18 strictly forbidden from being a conduit of
19 information that would be prohibited to be passed
20 from one to another.

21 Q. Okay.

22 A. So while they can do work, they need to
23 isolate that work and complete it without providing
24 that conduit.

1 Q. Okay. In the shared -- you said shared
2 service?

3 A. I said shared service just as an
4 example.

5 Q. Okay. And do you know what type of
6 services those employees provide?

7 A. It could be anything from legal,
8 accounting, it's -- it's typical functions that
9 generally you would not expect to be limited by
10 whether you're competitive or not.

11 Q. Okay. Thank you.

12 MR. SOULES: Can we go off the record
13 for, like, two minutes?

14 MR. LANG: Sure.

15 (Discussion held off the record.)

16 BY MR. SOULES:

17 Q. So, Mr. Ruberto, a couple moments ago we
18 were discussing the wall between regulated generation
19 and FES. Do you recall that discussion?

20 A. Yes.

21 Q. Are all the -- and you said that within
22 FirstEnergy Service Company, there are walls of
23 separation between the regulated marketing employees
24 and those who work with FES, right?

1 A. And the competitive marketing function,
2 yes.

3 Q. Okay.

4 A. Yes.

5 Q. So the competitive marketing function is
6 broader than just FES?

7 A. Correct.

8 Q. Okay.

9 A. Correct.

10 Q. Were all the members of the EDU team,
11 are they on that regulated marketing function side of
12 FirstEnergy Service Company?

13 A. No.

14 Q. Okay. And which ones aren't?

15 A. I was.

16 Q. You were the only one?

17 A. I was the only one.

18 Q. Okay. And so which -- which employee --
19 or do you know what side of FirstEnergy Service
20 Company the other members of the EDU team worked for?

21 A. They were all shared services or
22 something similar. I don't know exactly, but they
23 were all in that light, yeah.

24 Q. Okay. So they would -- they're all

1 FirstEnergy Service employees who sometimes work with
2 FES; is that correct?

3 A. I don't know that they work with FES.

4 Q. Okay. But they're not -- to the best of
5 your knowledge, they're not strictly prohibited from
6 working with FES the way that you are?

7 A. Correct.

8 Q. Okay. Do you know whether all the
9 members -- or, do you know whether any members of the
10 FES team are on that competitive marketing side of
11 FirstEnergy Service Company?

12 A. I don't know.

13 Q. Okay. Do you know if Sharon Noewer is
14 or isn't?

15 A. I don't know.

16 Q. Okay. One of the earlier -- when we
17 were talking about the different steps in the
18 evaluation process that the EDU team took, I think we
19 discussed how Jason Lisowski provided a revenue
20 analysis to the EDU team. Do you remember that
21 discussion?

22 A. Yes.

23 Q. So do you remember when he provided that
24 revenue analysis to the EDU team?

1 A. I don't remember.

2 Q. Okay. And his revenue analysis included
3 the -- your knowledge is that his revenue analysis
4 included the market price projections that Judah Rose
5 provided; is that correct?

6 A. I believe so. I don't -- I don't
7 recall, but I -- I'll say I don't know.

8 Q. Okay. Do you -- do you recall how
9 Mr. Lisowski provided you those projections?

10 A. They came through Joanne Savage, who was
11 on our team.

12 Q. So did -- do you know, did he e-mail
13 those to her?

14 A. I don't know.

15 Q. Okay. And then she -- did she e-mail
16 them to you?

17 A. I don't know.

18 Q. Okay. When do you first recall
19 reviewing those forecasts?

20 A. It would have been in that June, July
21 timeframe.

22 Q. Okay. And were those forecasts
23 discussed during the EDU team's weekly meetings?

24 A. Yes.

1 Q. Okay. What was discussed with them?

2 A. The results, what was there.

3 Q. Okay. What about the results, were
4 there -- was there a discussion of their
5 significance?

6 A. Yes.

7 Q. Okay. And what conclusions or
8 discussion was there?

9 A. We would have discussed not only the
10 costs and how the costs escalated through the years,
11 but the market revenues. We would look at the
12 projected megawatt-hour/gigawatt-hour generation to
13 see if that made sense. Of course, that analysis
14 also included calculations for return on equity and
15 all those type of things, debt ratios, we looked --
16 we looked at that. We looked at how the net present
17 value would provide benefits to the utilities and our
18 customers.

19 Q. Okay. And just a question about the net
20 present value. And if we're getting into something
21 that is in the confidential territory, just let me
22 know, but did the EDU team separately look at the net
23 present value of Sammis, Davis-Besse, and the OVEC
24 share?

1 A. Yes.

2 Q. And what -- do you recall what the net
3 present value of those three different facilities
4 were?

5 MR. LANG: Yeah, and I think that should
6 be saved for the next set of --

7 MR. SOULES: Absolutely, yeah.

8 MR. LANG: What we tried to do, and the
9 reason it was produced together was we could manage
10 to make that nonconfidential, but the individual
11 parts of it are confidential.

12 MR. SOULES: Okay. Okay. Then we will
13 take that up maybe a little later. Thank you.

14 BY MR. SOULES:

15 Q. Do you know which company or companies
16 within the FirstEnergy corporate family Mr. Lisowski
17 generally works for?

18 A. I only know by his title, but I don't
19 know.

20 Q. And what -- what is his title again?

21 A. Assistant controller for FES/FEG.

22 Q. Do you have any understanding of the
23 significance of that title and what it means in terms
24 of who he provides services for?

1 A. I've never worked with Jason before; so
2 I'm only familiar with his role in this study. So I
3 can't speak to what he does.

4 Q. Okay. Okay. The projections that he
5 provided to Joanne Savage, I can't recall, were those
6 projections made at your request?

7 A. Well, the EDU team broadly requested all
8 those numbers, yes.

9 Q. Okay. So the EDU team said to FES, "We
10 need these numbers"?

11 A. Yes.

12 Q. Okay. And then someone on the FES side
13 decided that Jason Lisowski would be the person to do
14 that work?

15 A. I can't speak for the FES side.

16 Q. Okay. But no one from the EDU team side
17 said, "We want Mr. Lisowski to do that work for us"?

18 A. I did not.

19 Q. Okay. And you're not aware of anyone
20 who did?

21 A. Correct.

22 Q. Okay. I'm sorry, Jim Haney is a
23 FirstEnergy Service Company employee?

24 A. Correct.

1 Q. Does he only work with regulated
2 generation or does he also work with FES, if you
3 know?

4 A. I don't know if he works with FES.

5 Q. Okay. So you don't know if --

6 A. I have no knowledge of him working for
7 FES. I'll even go that far, I have no knowledge of
8 him working for FES.

9 Q. Okay. One way or the other, right?

10 A. Correct.

11 Q. Okay. All right. But he does do a lot
12 of work with regulated generation as your boss?

13 A. But I'm only one component of his
14 responsibility.

15 Q. Right, okay.

16 A. So you understand that regulated
17 generation is one -- one slice.

18 Q. Okay.

19 A. He has broader responsibilities, none of
20 which are FES responsibilities. I just can't speak
21 to whether he talks to FES for any other reasons, I
22 just don't know.

23 Q. Okay.

24 A. But he has no organizational FES

1 responsibilities.

2 Q. Okay. And is he based in the
3 headquarters office in Akron?

4 A. Yes.

5 Q. Okay. Did the EDU team ever consider
6 getting the raw data -- actually, strike that.
7 Sorry.

8 Do you know when the EDU team requested
9 that forecast information from FES, were there
10 specific directions that were provided at FES in
11 terms of what you were looking to review, looking to
12 get?

13 A. We sent data requests.

14 Q. Okay.

15 A. So those lists are the things that we
16 wanted to receive back from them.

17 Q. Okay. And then at some point,
18 Mr. Lisowski sent forecasts to Ms. Savage, correct?

19 A. Yes.

20 Q. Now, I know this is a few months ago.
21 In terms of the data that the EDU team initially
22 requested from FES, did you receive all the data that
23 you had requested?

24 A. We received the data we needed. I did

1 not audit whether every single request was fulfilled.

2 Q. Okay. And you received that data in
3 time to be able to evaluate it to decide whether or
4 not the proposed transaction was a good deal?

5 A. Yes.

6 Q. Okay. Once you received the forecast
7 information from Mr. Lisowski, did you submit any
8 follow-up data requests concerning specifics of that
9 forecast?

10 A. Yes.

11 Q. And what were those requests? Well,
12 again, if we're treading into a --

13 A. I think I can still be okay.

14 Q. Okay. All right.

15 A. The initial request only went out to
16 2030. We needed an extra year; so we asked for that.
17 We also asked for some historical data. So we did
18 request some additional data.

19 Q. Okay. Anything else besides requesting
20 the historical data and the extra year?

21 A. I don't believe so.

22 Q. Okay. And do you know whether
23 Mr. Lisowski was the one who provided that -- the
24 extra year of data?

1 A. I don't know.

2 Q. Okay. And you don't know whether or not
3 he was the one who provided the historical data?

4 A. I don't know.

5 Q. Okay. And there -- there was no one
6 within your department who would have been capable of
7 performing that forecast; is that accurate?

8 A. Correct.

9 Q. Okay. Did you ever speak directly with
10 Jason Lisowski that you recall?

11 A. Only in the negotiation meetings. I did
12 not speak to him outside of that.

13 Q. Okay. And did you ever e-mail or trade
14 e-mails with Mr. Lisowski?

15 A. No.

16 Q. Okay. So the only time that you've met
17 Mr. Lisowski was at the negotiation meetings?

18 A. Up -- up until during this period, yes.

19 Q. Okay. And when you say "during this
20 period," do you mean after the ESP application was
21 filed?

22 A. Yes.

23 Q. Okay. Just a few more questions.

24 In your -- as we talked about earlier,

1 you're involved with the process of offering
2 generating units into PJM, correct?

3 A. Correct.

4 Q. Including making bids into the capacity
5 auctions, right?

6 A. Correct.

7 Q. Are you aware that PJM recently filed
8 with FERC a capacity performance proposal?

9 A. Yes.

10 Q. Okay. And that proposal creates a new
11 capacity performance resource product; is that
12 correct?

13 A. Correct.

14 Q. Okay. Could you describe what that
15 proposal is in broad terms?

16 A. Generally speaking, it was PJM's
17 recognition that it needed to have more certainties
18 around generators being available during emergency
19 periods. So the intent is -- through PJM is that the
20 generators would likely get a little more revenue in
21 the capacity performance market, but in exchange for
22 that they need to harden their assets and would
23 suffer large penalties if they failed to perform
24 during those critical periods.

1 Q. What do you mean by "harden those
2 assets"?

3 A. If you have a unit that is subject to
4 shutting down if it's really cold because a coal pile
5 freezes, whatever it might be, they need to make sure
6 they can handle all the weather conditions and
7 continue to operate.

8 And then in the -- for gas plants, for
9 example, they need to have firm gas supplies, you
10 can't have interruptible supplies.

11 Q. Okay. And the capacity performance
12 resource product, that's essentially what you're
13 talking about; is that correct?

14 A. Yes.

15 Q. Okay. Have you evaluated whether the
16 Sammis units would qualify for that product?

17 A. Yes.

18 Q. Okay. And what -- when did you
19 evaluate -- make that evaluation?

20 A. During the whole time PJM has been
21 proposing this, because there's been -- there's been
22 multiple things, I did consider whether Sammis,
23 Davis-Besse, OVEC, our own units; so, yeah, we would
24 have just looked at those to see if we believed they

1 would qualify.

2 Q. Okay. And did that -- that evaluation
3 that you did, was that as part of the EDU team
4 process or is that something you've done
5 subsequently?

6 A. Subsequent.

7 Q. Okay. Could you tell me when
8 approximately?

9 A. The -- the capacity performance product
10 has been evolving for most of the summer into the
11 fall and, in fact, it's still evolving; so it would
12 be during that time, but there's no specific time.

13 Q. Okay. Have you evaluated whether the
14 Sammis units would need to make additional
15 investments to qualify for that product?

16 A. I have not evaluated.

17 Q. Okay. Has anyone else at FirstEnergy
18 evaluated that?

19 A. I don't know.

20 Q. Okay. What about with respect to
21 Davis-Besse, have you evaluated whether additional
22 investments would be needed?

23 A. I have not.

24 Q. Okay. And the same with respect to

1 OVEC?

2 A. Correct.

3 Q. Okay. And you're not aware of anyone
4 within FirstEnergy who's made those evaluations for
5 either Davis-Besse, or the OVEC plants?

6 A. I am aware that people in FirstEnergy
7 certainly have evaluated that. I just don't know.

8 Q. Okay. Have you seen those evaluations?

9 A. No.

10 Q. Okay. How are you then -- how are you
11 aware that those evaluations were done?

12 A. Because they are subject to the same
13 issues that we are on the regulated side.

14 Q. Okay.

15 A. And the -- the filings that we have to
16 make through PJM require certain evaluations to be
17 done.

18 Q. Okay. So --

19 A. So they are part of PJM, they are bound
20 by PJM's rules; so they would need to make sure that
21 they're doing those evaluations.

22 Q. Okay. And with respect to the
23 evaluations of those Sammis, Davis-Besse, and OVEC
24 that you did subsequent to the filing of the ESP, did

1 you reach any conclusions about whether those
2 facilities would qualify?

3 A. Yes.

4 Q. And what did you conclude?

5 A. It's extremely likely they would all
6 qualify.

7 Q. Okay. And what's the basis for that
8 conclusion?

9 A. The -- the main issues of the capacity
10 performance product is --

11 MR. LANG: Just ask that do you know
12 whether this analysis is confidential or is it high
13 enough level that it's public?

14 THE WITNESS: I'll be high enough level,
15 yeah, I think I can.

16 MR. LANG: Okay. Go ahead.

17 BY MR. SOULES:

18 Q. Thank you.

19 A. The capacity performance product
20 requires fuel on the ground, you need to be able to
21 run for so many hours, and it -- and it requires
22 operating during all weather conditions. My
23 evaluation in looking at those plants --

24 Q. Uh-huh.

1 A. -- and anybody can see they have fuel,
2 they have demonstrated running through all weather
3 conditions already; so they've already demonstrated
4 the ability that generally leads me with a high
5 degree of certainty -- granted, I did not do an
6 analysis of every piece of equipment there, and that
7 would be better suited for the plant engineers and
8 those responsible -- but I have a high degree of
9 certainty that they should qualify.

10 Q. Okay. Thank you.

11 Do you know whether the Sammis units are
12 supplied by Powder River Basin coal?

13 A. That probably would be.

14 MR. LANG: Is that confidential? Maybe
15 you can hold that for later.

16 MR. SOULES: Okay. Absolutely. Yeah.
17 Thank you.

18 BY MR. SOULES:

19 Q. Did you prepare -- without asking about
20 the specifics of it, but did you prepare any written
21 analysis of your evaluation of whether those plants
22 would qualify?

23 A. No.

24 Q. Okay. So you have nothing in writing,

1 this is just kind of your personal assessment with
2 nothing in writing?

3 A. Yes.

4 Q. Okay. Mr. Ruberto, you're probably
5 aware of the polar vortex that occurred last January
6 and February, is that --

7 MR. LANG: Objection. Go ahead.

8 BY MR. SOULES:

9 Q. Are you --

10 A. Be more specific.

11 Q. Are you aware of it generally?

12 A. Yes.

13 Q. Okay. Kind of feels like it out there
14 today.

15 Are you aware that some generating units
16 experienced operational difficulties including forced
17 outages as a result of the extreme cold weather
18 during the polar vortex?

19 A. Yes.

20 Q. Okay. Do you know whether any of the
21 Sammis units experienced operational difficulties
22 during the polar vortex?

23 MR. LANG: Objection, and I -- I think
24 that's confidential.

1 MR. SOULES: Okay.

2 MR. LANG: I believe.

3 MR. SOULES: We can discuss that in the
4 next session.

5 MR. LANG: That would be great.

6 MR. SOULES: Yeah.

7 BY MR. SOULES:

8 Q. So earlier this morning, we were talking
9 about your understanding of why FES was interested in
10 entering into the proposed transaction. Do you
11 recall that discussion?

12 A. I -- I don't recall specifically, but --

13 Q. Okay.

14 A. -- go ahead.

15 Q. I think you had indicated or you had
16 stated that your belief was that FES thought that the
17 Sammis, Davis-Besse, and OVEC plants were at risk in
18 the near term; is that correct?

19 A. I stated that Mr. Moul's testimony makes
20 that indication, yes.

21 Q. Okay. Do you know whether any of those
22 plants would be permanently retired if the proposed
23 transaction did not go through?

24 A. I don't know.

1 Q. Okay. Has anyone ever told you
2 personally that these plants would be retired if the
3 proposed transaction is not executed?

4 A. No.

5 Q. Okay. Do you know who within the
6 FirstEnergy corporate family would decide whether or
7 not to permanently retire any of those units?

8 A. I don't know.

9 Q. Okay. And in your -- your testimony,
10 you had stated that over the 15-year period of the
11 proposed transaction that Sammis, Davis-Besse, and
12 the OVEC share would earn nearly \$2 billion in
13 nominal dollars or \$770 million net present value.

14 A. Correct.

15 Q. Okay. Well, with the \$35 million
16 amendment we discussed earlier, correct?

17 A. Correct.

18 Q. Okay. Does it seem -- given the amount
19 of revenue that these plants projected to earn over
20 the next 15 years, does it seem likely to you that
21 FirstEnergy would decide to permanently retire them
22 if the proposed transaction is not executed?

23 A. I don't know.

24 Q. You don't have any opinion on that one

1 way or the other?

2 A. I don't -- I don't operate the plants.
3 I don't operate their financials. I can't -- I can't
4 speak for FES.

5 Q. Okay. What about FirstEnergy, you know,
6 apart from what FES internally might think, but the
7 FirstEnergy Corporation generally?

8 A. I -- I can't speak for them as well.

9 Q. Okay. Do you have a sense of what kind
10 of timeframe utilities look at when deciding whether
11 or not to retire generating units?

12 A. I don't know.

13 Q. Okay. I think we're done.

14 MR. LANG: That's your public section?

15 MR. SOULES: Yes.

16 MR. LANG: Yeah.

17 THE WITNESS: No, he said done.

18 MR. SOULES: Got me.

19 MR. LANG: We'll hold you to that.

20 MR. SOULES: Thank you, Mr. Ruberto.

21 THE WITNESS: You're welcome.

22 MS. DUNN: Do you want to take a break,
23 start at 11:00?

24 MR. LANG: Maybe take a break, start at

1 11:00.

2 MR. OLIKER: We're going to continue
3 with the public portion.

4 MR. LANG: Then we'll continue with the
5 public portion.

6 MR. OLIKER: Okay. Great. Thank you.

7 MR. LANG: For the folks on the phone
8 call, I guess are there -- are there those of you who
9 have questions for the public part of the transcript?

10 MR. OLIKER: This is Joe, I have
11 questions.

12 MS. FLEISHER: This is Madeline, I may
13 have a few questions.

14 MR. LANG: Okay.

15 MS. HUSSEY: This is Becky Hussey, I may
16 have a few as well.

17 MR. LANG: Who was that that just spoke?

18 MR. SETTINERI: Mike Settineri, we'll
19 have questions, as well.

20 MR. LANG: Was it Becky? Oh.

21 MR. SOULES: Becky.

22 MS. HUSSEY: Becky Hussey.

23 MR. LANG: Rebecca, okay.

24 MS. FLEISHER: This is Madeline Fleisher

1 from the OCC. We can go off the record.

2 MR. LANG: Let's go off the record.

3 (Discussion held off the record.)

4 (Recess taken.)

5 MS. DUNN: Okay. We're back.

6 MR. LANG: Madeline, do you want to go
7 up next?

8 MS. FLEISHER: I'm glad to do it,
9 thanks.

10 - - -

11 CROSS-EXAMINATION

12 BY MS. FLEISHER:

13 Q. All right. Mr. Ruberto, my name's
14 Madeline Fleisher, I represent the Environmental Law
15 and Policy Center. Thanks for being here today.

16 A. You're welcome.

17 Q. And I'll repeat, as Mr. Soules said,
18 that I don't think I'm going to be asking about
19 anything confidential, but if I do get into that
20 area, please just let me know.

21 A. Okay.

22 Q. Mr. Ruberto, do you know what a
23 corporate separation plan is?

24 A. I'm not familiar with that term.

1 Q. Are you generally familiar with the fact
2 that under Ohio law there are rules governing
3 transactions between regulated electric utilities and
4 their unregulated affiliates?

5 A. Yes.

6 Q. Do you know anything about what those
7 rules are?

8 A. I do not.

9 Q. Do you receive any training regarding
10 those rules?

11 A. No.

12 Q. In your evaluation as part of the EDU
13 team, did you consider whether this transaction
14 proposed in the Economic Stability Program would be
15 consistent with those rules?

16 MR. LANG: Objection. Go ahead and
17 answer.

18 THE WITNESS: I would rely on Legal's
19 advice, and they gave me no indication that there was
20 an issue with that.

21 BY MS. FLEISHER:

22 Q. In your evaluation as part of the EDU
23 team, did you consider what the effect of their
24 proposed transaction would be on FirstEnergy

1 Solutions's financial viability?

2 A. No.

3 Q. Okay. And, Mr. Ruberto, moving on to a
4 different topic, you indicate in your direct
5 testimony that you evaluated the values or benefits
6 and risks of the proposed transaction.

7 I'm going to ask you: How did you
8 evaluate the risks of this transaction?

9 A. Well, we looked at what potential
10 downsides there could be of the transaction, which,
11 of course, costs or market prices would certainly be
12 things that could vary from the projection.

13 Q. And did you do anything to quantify how
14 much variation there might be from the -- from the
15 projections that you received from Mr. Lisowski or
16 Mr. Rose?

17 A. We did not.

18 Q. And what's your understanding of what
19 the risks or uncertainties are specifically that
20 might cause the -- the cost of the plants or their
21 market revenues to differ from those projected by
22 Mr. Lisowski and Mr. Rose?

23 A. Well, because the term is 15 years, and
24 we're basing it on projections, one has to at least

1 recognize that projections could vary from what
2 actually occurs. What would cause that would
3 potentially be things I wouldn't even know today. So
4 those were the risks we considered.

5 Q. Are there any risks that you do know
6 today?

7 A. No.

8 Q. And when you were considering the --
9 apologies, let me start over.

10 So you testified, I believe, that one of
11 the assets of the proposal that you considered was
12 the appropriate term, correct?

13 A. Correct.

14 Q. And when were you -- when you were
15 considering whether a 15-year term was appropriate,
16 did you consider the fact that the longer the term,
17 the more unknown risk there might be?

18 A. Yes.

19 Q. And why did you conclude that a 15-year
20 term was still appropriate?

21 A. We felt that it was an appropriate
22 balance with -- with future risk, while keeping the
23 term long enough to -- to harvest the gains that are
24 on the back half of the agreement.

1 Q. What is your basis for -- for concluding
2 that the risks there balance out the benefits?

3 A. That was just the EDU team's discussion
4 and our judgment.

5 Q. And to confirm, you don't have any
6 direct experience with economic dispatch modeling on
7 the length -- the 15 length -- year term for a period
8 of time under consideration here, correct?

9 MR. LANG: Objection; asked and
10 answered. But go ahead.

11 THE WITNESS: That's correct.

12 BY MS. FLEISHER:

13 Q. And does anyone on the EDU team have
14 experience with economic dispatch modeling over that
15 length of time?

16 A. I don't know.

17 Q. Just to clarify, you're not aware of
18 anyone who does, is that what you mean?

19 A. Yes. That's correct.

20 Q. Thank you.

21 MS. FLEISHER: And that's all I have for
22 the public portion. Thanks very much for letting me
23 go first.

24 MR. LANG: All right. Then, let's see,

1 is Larry Sauer on the phone?

2 MR. SAUER: I am.

3 MR. LANG: Do you have questions?

4 MR. SAUER: I do.

5 MR. LANG: Why don't you go ahead.

6 MR. SAUER: We'll do that.

7 - - -

8 CROSS-EXAMINATION

9 BY MR. SAUER:

10 Q. Good morning, Mr. Ruberto.

11 A. Good morning.

12 Q. My name's Larry Sauer, I'm an attorney
13 with the Office of Ohio Consumers' Counsel. I have
14 some questions for you this morning. As other
15 attorneys have suggested, if I get into an area
16 that's confidential, please let me know before you
17 respond. I'll try not to rehash areas that have
18 already been covered.

19 In some questions that you received
20 earlier, you were asked about some of your
21 background. Do you have any response -- have you had
22 any responsibilities with regard to Davis-Besse --

23 A. No.

24 Q. -- in your job responsibilities?

1 A. No.

2 Q. How about Sammis?

3 A. No.

4 Q. And with OVEC?

5 A. The regulated side of MonPower does own
6 a small share of OVEC that I'm --

7 Q. And what are your job responsibilities
8 in conjunction with the OVEC share that is owned?

9 A. We do the market function for that,
10 offering it in the PJM.

11 Q. In your testimony, Page 2, Line 15, you
12 describe a FERC jurisdictional proposed purchase
13 power agreement between the companies and FirstEnergy
14 Solutions. Do you see that, Page 2, Lines 15 to 16?

15 A. Yes.

16 Q. What do you mean by a FERC
17 jurisdictional PPA?

18 A. Wholesale power transactions, as I
19 understand it, are under the jurisdiction of FERC.

20 Q. Is it your understanding that
21 FirstEnergy will seek FERC approval of the PPA?

22 A. No.

23 Q. And if -- if not, why not?

24 A. Counsel has advised me they don't

1 believe that approval is necessary.

2 Q. And have they -- has counsel given you
3 any specific reasons why that is not required?

4 MR. LANG: Objection, to the extent it
5 requires privilege. I'm guessing you probably can't
6 answer that question without going into legal advice
7 provided to you.

8 THE WITNESS: That's correct.

9 MR. LANG: Next question then.

10 BY MR. SAUER:

11 Q. All right. Under -- let's see -- same
12 page, Lines 16, 17, you describe the companies'
13 intent to sell energy, capacity and ancillary
14 services from the proposed purchase power agreement
15 into the wholesale market and obtain market revenues.
16 Do you see that?

17 A. Yes, I do.

18 Q. What do you mean by intent to sell
19 energy and capacity?

20 A. I mean that is what we intend to do. We
21 have no plan to do anything other than that.

22 Q. And the -- and by "intent," the intent
23 is to maximize revenues that could be generated from
24 the sale of those energy, capacity and ancillary

1 services into the market?

2 A. Yes.

3 Q. The -- Page 3, Lines 6 through 8, you
4 discuss, "The Companies would purchase all of the
5 generation output of the plants on a cost basis plus
6 a return on investment." Do you see that?

7 A. Yes.

8 Q. And is that return a guaranteed return
9 on the investment?

10 A. No. It's a calculated return.

11 Q. And that calculated return is -- is used
12 to determine what FES would ultimately charge the
13 EDUs for the generation output?

14 A. Yes.

15 Q. There wouldn't be any deviation from the
16 use of that return?

17 A. I -- I don't understand -- I don't
18 understand the question.

19 Q. If we look at what was marked I think as
20 your Exhibit 1. I was looking for the ROE term that
21 you agreed upon with FES in the term sheet. I'm not
22 finding it right offhand here. I'll move on. I'll
23 come back to that.

24 Can you define for me, Mr. Ruberto, your

1 understanding of what an arm's-length negotiation is?

2 A. That is where each party is evaluating
3 the agreement from their own perspective.

4 Q. Okay. And I believe you indicated
5 Mr. Julian selected you for the EDU team, correct?

6 A. Correct.

7 Q. And when he selected you, were you
8 immediately identified as the head of the EDU team?

9 A. When I found out, I was -- I was asked
10 to be the head of the team.

11 Q. When you say you found out, do you mean
12 the initial --

13 A. Yes.

14 Q. -- the initial contact with Mr. Julian,
15 he requested you to be the EDU's team head, correct?

16 A. Actually, the --

17 Q. Is that true?

18 A. Well, the initial contact was from
19 Mr. Haney, who asked me to be the EDU team head.

20 Q. Okay. And how much experience do you
21 have in negotiations?

22 A. Outside of negotiating consulting
23 contracts that I've done, I have -- have little.

24 Q. You're not the guy your family and

1 friends call when they want to buy a car to get the
2 best deal they can get?

3 MR. LANG: Objection.

4 THE WITNESS: Actually, I am.

5 BY MR. SAUER:

6 Q. Well, maybe you're not -- you're selling
7 yourself short maybe.

8 A. Yeah.

9 Q. I believe you indicated that when you
10 were brought into the EDU team, you met with I
11 believe Ebony Yeboah; is that correct?

12 MR. LANG: Objection to form, but go
13 ahead.

14 THE WITNESS: She -- she called me.

15 BY MR. SAUER:

16 Q. She called you, okay.

17 And who is Ebony Yeboah?

18 A. She is an executive director, I believe,
19 Legal Affairs, or something of that -- that nature.

20 Q. And she wasn't on your EDU team, was
21 she?

22 A. Correct, she was not.

23 Q. And she wasn't on the FES team?

24 A. That's correct.

1 Q. And so why was she calling you?

2 A. I don't know.

3 Q. And she gave you some instructions; is
4 that correct?

5 A. Yes.

6 Q. And what were those instructions or
7 directions?

8 MR. LANG: Objection; asked and
9 answered. Go ahead.

10 THE WITNESS: She -- she asked us -- she
11 asked me to lead a team that would evaluate this
12 potential transaction, and if -- if it comes to that,
13 negotiate the transaction.

14 BY MR. SAUER:

15 Q. And I -- if I recalled your -- your
16 previous testimony, you -- you -- her instructions
17 were to evaluate if it made sense for the companies
18 and the customers?

19 A. That's correct.

20 Q. Is that correct?

21 A. Yes.

22 Q. And what authority did the EDU team have
23 with regard to this negotiation?

24 A. I'm -- I'm not sure I understand what

1 you're asking.

2 Q. You know, in a range from you had the
3 complete authority to recommend acceptance or
4 rejection of the proposal to you had virtually no
5 authority to reject or accept the proposal, how
6 did -- how did the team's autonomy fit within that --
7 within that range?

8 MR. LANG: Objection. Go ahead.

9 THE WITNESS: We -- we had our own
10 authority to recommend or not. We were not
11 instructed to recommend or not. We were asked to
12 evaluate and determine if we would recommend it.

13 BY MR. SAUER:

14 Q. I believe you -- you said the team was
15 formed May -- May 20th; is that correct?

16 A. Yes.

17 Q. And the -- the agreement in principle
18 was reached when?

19 A. Late July. I don't remember the date.

20 Q. Okay. And did you -- did I hear you
21 testify earlier that the -- there were actually
22 negotiations between the EDU team and the FES team
23 during that interim period?

24 MR. LANG: Objection. Go ahead.

1 THE WITNESS: Yes.

2 BY MR. SAUER:

3 Q. And those negotiations involved
4 face-to-face meetings with the two teams?

5 A. Correct.

6 Q. And then I thought I heard there was
7 bi-weekly meetings where the progress of the
8 negotiations were communicated to certain people; is
9 that correct?

10 MR. LANG: Objection to form again. Go
11 ahead.

12 THE WITNESS: Correct.

13 BY MR. SAUER:

14 Q. And can you, again, explain who was
15 attending those meetings where the reporting was
16 taking place?

17 A. I had mentioned earlier the names. The
18 meetings were -- were held in Akron.

19 Q. And were the meetings with both the EDU
20 team and the FES team --

21 A. No.

22 Q. -- to report the progress?

23 It was just the EDU team reporting
24 progress?

1 A. My meeting was just the EDU team
2 reporting progress.

3 Q. Okay. And you were reporting, I
4 believe, again, I think some of the names -- Eileen
5 Mikkelsen may have been somebody you mentioned you
6 were reporting to.

7 A. I was reporting to Mark Julian, but
8 there were at times other people present, and Eileen
9 was one of them.

10 Q. And were the other people present --
11 were there other people present that were with FES?

12 MR. LANG: Objection.

13 THE WITNESS: No.

14 BY MR. SAUER:

15 Q. I thought I heard that some of these
16 meetings where you were reporting the progress, Mark
17 Hayden may have been in attendance.

18 MR. LANG: Objection. Go ahead.

19 THE WITNESS: He was.

20 BY MR. SAUER:

21 Q. And what was his role in those meetings
22 where you were reporting progress?

23 A. He was there to hear the report of
24 progress.

1 Q. And what's Mr. Hayden's title?

2 A. I don't know.

3 Q. Is he an attorney that represents
4 FirstEnergy Solutions?

5 MR. LANG: Objection. Go ahead.

6 THE WITNESS: I -- I don't know his
7 responsibilities.

8 BY MR. SAUER:

9 Q. And did I hear earlier in your
10 deposition, did the team have any ability to choose
11 plants to be included in a PPA other than the plants
12 that were ultimately agreed upon?

13 MR. LANG: Objection to form.

14 THE WITNESS: The team made no attempt
15 to do that.

16 BY MR. SAUER:

17 Q. And why is that?

18 A. Because the team was formed to evaluate
19 the potential transaction.

20 Q. But if you're looking at the transaction
21 from the perspective of the companies and the
22 customers, would it be -- would it not be helpful to
23 have potentially other plants in the fleet included
24 instead of the ones that were proposed?

1 A. The other plants were not -- were not
2 part of the proposal we were evaluating.

3 Q. So does the negotiation, as you're
4 describing it, were there certain parameters to it
5 that were considered unchangeable and you were just
6 evaluating as to whether you would accept that --
7 those -- those terms of the proposal?

8 A. I'm not -- I don't understand your
9 question.

10 Q. As you're going through your
11 negotiation, you didn't make any recommended changes
12 to the plants that were proposed. Were there other
13 terms of the negotiation that -- that were different
14 from what was originally proposed?

15 A. There were no terms in the original
16 proposal other than the plants that were proposed.

17 Q. Okay. From what was originally
18 proposed, did you -- did the EDU team send back
19 counterproposals?

20 A. Can you rephrase that?

21 Q. Well, let me ask you another question.
22 If you look at what was marked as your Exhibit 1, are
23 there terms on here that were included within the
24 original proposal?

1 A. The original proposal did not have these
2 terms, it merely had the plants.

3 Q. The original proposal only had the
4 plant?

5 A. Correct. This -- this --

6 Q. Is that what you --

7 A. Yes. Correct.

8 Q. And so you're suggesting the original
9 proposal didn't have, for example, it would be a
10 15-year term?

11 A. Correct.

12 Q. Under the -- as things exist today, what
13 liability do customers have for FES's operation of
14 the generating units?

15 MR. LANG: Objection.

16 THE WITNESS: They -- they do not.

17 BY MR. SAUER:

18 Q. And under the PPA that you've proposed,
19 what risks do customers have for the operation of
20 Davis-Besse and Sammis and the piece of OVEC that
21 would be included?

22 A. Can you rephrase that?

23 Q. You -- I think you just -- previously
24 you had answered that today customers have -- aren't

1 at risk for the operation of Davis-Besse, Sammis, or
2 the OVEC piece of the PPA, correct?

3 A. I -- I'm not sure what you mean by
4 "operation."

5 Q. Well, for example, if -- if a -- a large
6 turbine is damaged at Sammis today, are customers
7 liable for any maintenance or capital repairs to that
8 unit today?

9 A. No.

10 Q. Under the PPA if that turbine is
11 damaged, would customers be at risk for either that
12 maintenance or capital expenditure?

13 A. The -- the maintenance cost would be
14 part of the PPA, and the return on the capital cost
15 would be as well. So to the extent those costs flow
16 through to Rider RRS, they wouldn't be responsible
17 for the operation of the plant, but it could affect
18 the amount of credit Rider RRS receives.

19 Q. So -- so customers are at risk for
20 those -- those costs under Rider RRS?

21 MR. LANG: Objection. Objection; asked
22 and answered.

23 BY MR. SAUER:

24 Q. Is that correct?

1 A. Well, as I described before, O&M costs
2 and return on capital do get passed through to RRS,
3 and it would affect the amount of the RRS credit.

4 Q. And if -- if you look at the term sheet,
5 what terms are in there from your perspective that
6 protect customers from these additional risks that
7 they could be facing under the RRS Rider charge?

8 MR. LANG: Objection. Go ahead.

9 THE WITNESS: I -- I don't know specific
10 terms, because the agreement in its entirety is
11 intended to provide an overall benefit to the
12 customers.

13 BY MR. SAUER:

14 Q. And the benefit you're talking about is
15 the estimated \$2 billion that could come back to
16 customers under the -- the forecast that --

17 A. That --

18 Q. -- the EDU team has relied on?

19 A. That is one of the benefits, yes.

20 Q. And as you previously testified, it's a
21 15-year term, there are a lot of uncertainties,
22 correct?

23 MR. LANG: Objection.

24 THE WITNESS: Agreed, it's a 15-year

1 term.

2 BY MR. SAUER:

3 Q. I'm looking at Page 9 of your testimony,
4 the Q and A begins on Page 8, and on Lines 1 and 2
5 you talk about, "The EDU team also worked to ensure
6 that the terms of the transaction would not impose
7 undue risk on customers." Do you see that?

8 A. I do.

9 Q. And, again, I'm trying to understand
10 what terms of the transaction you're referring to
11 that would provide customers protection from undue
12 risk.

13 A. Of course, the EDUs have the output of
14 the plants, the seller is responsible for operating
15 the plants using good utility practices. If not,
16 they're responsible for -- for, as the provisions in
17 the agreement define, plant outages exceeding 180
18 days also require FES to provide replacement power or
19 financial equivalent. The term of the agreement
20 protects the customers by extending the agreement to
21 the period where the benefits are the greatest.

22 The EDUs have the opportunity to review
23 capital expenditures, outage plans, audit the
24 invoices to make sure the billings are correct, the

1 rights to potential future environmental attributes
2 that may not even be known today would become the
3 EDUs'. The EDUs would be responsible for scheduling
4 and dispatch of the plants to give us the greatest
5 amount of control to maximize the revenue for our
6 customers. That's what comes to mind right now.

7 Q. Okay. One of the things that you
8 mentioned was the audit of invoices. Can you give me
9 a little bit of your understanding of what -- in the
10 terms that you've negotiated, what the audit rights
11 are for the EDUs?

12 A. We have the right to audit any expense
13 that they are charging us.

14 Q. And to reject that charge?

15 A. If that charge is deemed to be outside
16 of the agreement, then it would not be something we
17 should be paying for.

18 Q. And when you're -- when you say "audit,"
19 are you auditing just to make sure the debits equal
20 the credits, or are you auditing to see if the
21 charges were to the right FERC account, or is it a
22 more strenuous audit?

23 A. It can be both.

24 Q. And what -- what, in the terms that

1 you're familiar with, provide the parties with the
2 ability to -- strike that for a minute.

3 (Pause.)

4 MR. LANG: Do you have any more
5 questions, Mr. Sauer?

6 MR. SAUER: Yeah, I do. I'm trying to
7 see what I've already -- what may have already been
8 asked.

9 BY MR. SAUER:

10 Q. Do the -- Mr. Ruberto, do the three
11 utilities have any authority to require FES to retire
12 the power plants if evidence shows that they're
13 uneconomic?

14 A. Today?

15 Q. No. Under the PPA.

16 A. There is a provision, should a capital
17 expense be required, that upon mutual agreement would
18 allow it to be removed from the agreement, but there
19 is no other provision beyond that.

20 Q. Does the PUCO have any authority to
21 require the retirement or shutdown or, in the
22 alternative, termination of the PPA?

23 MR. LANG: Objection, to the extent
24 you're asking him to make a legal conclusion.

1 THE WITNESS: I don't know.

2 BY MR. SAUER:

3 Q. Will the PPA be submitted to the PUCO
4 for its approval?

5 MR. LANG: Objection.

6 THE WITNESS: I don't know. The PUCO
7 will not have authority to approve the PPA, if that's
8 what you're asking. I'm unclear.

9 BY MR. SAUER:

10 Q. Well, right now there's a term sheet.
11 Would there ever be an opportunity for the PUCO to
12 approve a PPA once it's drafted?

13 A. No.

14 Q. You had also discussed that you went on
15 some tours of the Sammis and Davis-Besse plants.

16 A. Correct.

17 Q. What was the purpose of those tours?

18 A. We had already received information
19 about the plants, and we thought it just would make
20 sense to go out and see them to see if -- the
21 condition of the plants, talk to plant management and
22 validate what we already believed.

23 Q. Who did you talk to in plant management
24 at Sammis?

1 A. The director, Don Ullom, he's the plant
2 director, as well as several of his management staff.

3 Q. And what did they tell you?

4 A. They gave us a -- a tour of the plant
5 after -- we had a discussion, then we had a tour of
6 the plant, showed us the operations, talked about a
7 lot of the things they've done over the years,
8 upgrades, just general operations.

9 Q. Did you get anything in writing?

10 A. No.

11 Q. And similar with Davis-Besse, who did
12 you talk to at Davis-Besse?

13 A. We met with the site vice-president, Ray
14 Lieb, and several of his management staff.

15 Q. Was the tour part of your due diligence?

16 A. It was certainly something we included
17 in our -- in our effort to determine whether we felt
18 that the PPA was something we'd recommend.

19 Q. You had mentioned that you were provided
20 Lisowski's projections and the EDU team verified
21 them.

22 A. Correct.

23 Q. Is that correct?

24 A. Yes.

1 Q. And did the EDU team agree with those
2 projections?

3 A. Yes.

4 Q. Did you do any independent projections
5 to verify the projections?

6 A. Yes.

7 Q. What independent projections did you do?

8 A. We, at my direction, asked business
9 development to run the dispatch model.

10 Q. And what were the results of the
11 dispatch model that you ran?

12 A. They matched Mr. Lisowski's.

13 Q. What do you mean, "they matched"?

14 A. They validated what he provided was the
15 same results we received from business development.

16 Q. Maybe I'm not -- did you put the same
17 inputs into a different model and came up with the
18 same results, is that what you're saying?

19 A. Same model.

20 Q. Well, the question had to do with any
21 independent projections. Did you have any other
22 projections that were different than the ones you
23 already had from Mr. Lisowski?

24 MR. LANG: Objection.

1 THE WITNESS: By "independent," I'm
2 confused what you're -- what you're asking.

3 BY MR. SAUER:

4 Q. Just a way to verify the result using
5 different inputs, a different model, a different
6 consultant, some way to look at the outputs, you have
7 to see if there were any -- any inconsistencies or
8 any potential problem?

9 MR. LANG: Objection.

10 THE WITNESS: We did not use a different
11 model.

12 BY MR. SAUER:

13 Q. So the only verification was to rerun
14 same numbers in the same model --

15 A. No.

16 Q. -- as Mr. Lisowski?

17 A. No.

18 Q. What was different?

19 A. We did review the results without
20 running them through a model. You can look at the
21 results and you -- we were aware of and compared
22 market prices, plant costs. Based upon that, when
23 you can see plant costs, variable costs are well
24 below market prices, you know the plant output is

1 going to be running near full-time.

2 You can look at those kind of inputs
3 and -- and see whether the plant dispatch -- whether
4 the dispatch model actually showed the plants would
5 be running most of the time. And we were able to
6 look at that and evaluate to determine the dispatch
7 model did appear to compare properly the costs versus
8 the market costs, and it did run, and you could look
9 at those gigawatt hours and determine the market
10 revenues were in line with what we would expect.

11 Q. Was there any consideration -- so you
12 essentially have one -- call it a base-case analysis
13 that you did?

14 A. I -- can you rephrase that?

15 Q. Did you essentially have just one
16 base-case analysis that you relied upon?

17 A. No.

18 Q. What else -- well, how many -- how many
19 different studies did you have?

20 A. Well, as I had mentioned, we had -- we
21 had the -- the results of the model, but we didn't
22 completely rely on that without analyzing it, as I
23 explained a few minutes ago. We didn't run another
24 model.

1 Q. Did you run a -- for example, a -- an
2 optimistic case, or pessimistic case, or any other
3 variation on the forecast that you had for the model
4 runs that you had?

5 A. No.

6 Q. You mentioned earlier another benefit
7 that customers would be receiving from the terms that
8 had been agreed upon is that the companies will
9 ensure that the revenues are maximized in the -- to
10 offset the costs, correct?

11 A. I believe I said that the companies will
12 be responsible for the marketing and dispatch of that
13 to maximize those revenues.

14 Q. Well, to the extent that at least
15 initially these plants are subsidized by Rider RRS,
16 what effect do you believe offering these facilities
17 on PJM markets for various generation services will
18 have on the markets of PJM?

19 MR. LANG: Objection.

20 THE WITNESS: Can you rephrase that
21 question?

22 BY MR. SAUER:

23 Q. Do you believe that there would be any
24 effect -- offering these facilities into the PJM

1 markets for the various generation services will have
2 any effect on the PJM markets?

3 A. I'm still not sure I follow. I mean, we
4 will offer these plants into PJM. The plants operate
5 today; so I'm not sure I'm following what you're
6 asking.

7 Q. Well, to the extent that you can offer
8 them in as, say, a price taker, for example, do you
9 think that has any effect on the PJM markets?

10 A. I don't know how to talk about this
11 without getting into confidential.

12 Q. Well, we can save it then if -- yeah.

13 MR. SAUER: Can we go off the record for
14 just a minute? I may be finished, and we'll save the
15 rest for the confidential piece.

16 MR. LANG: Sure.

17 (Discussion held off the record.)

18 MR. SAUER: Jim, I think I'm done.

19 MR. LANG: Okay. I was just going down
20 the list.

21 MR. SAUER: Thanks, Mr. Ruberto.

22 THE WITNESS: You're welcome.

23 MR. LANG: I was just going down the
24 list of how people introduced themselves this

1 morning; so Dane Stinson would be next. Do you have
2 any questions, Dane? Go once, going twice for Dane
3 Stinson.

4 All right. Moving on to Joe Olier.
5 Joe.

6 MR. OLIER: Sure. Just a few
7 questions. How long do you want to go before we
8 break for lunch?

9 MR. LANG: I hate to ask this, but how
10 long do you think you have, Joe?

11 MR. OLIER: I think I can do it in a
12 half an hour or less.

13 MR. LANG: That would be great. Yeah,
14 let's see if we can get you in and then we can break
15 for lunch.

16 MR. OLIER: Okay. Great.

17 - - -

18 CROSS-EXAMINATION

19 BY MR. OLIER:

20 Q. Good afternoon, Mr. Ruberto.

21 A. Hello.

22 Q. My name is Joe Olier, and I represent
23 IGS Energy. Just a few questions for you this
24 afternoon.

1 Initially there was some discussion
2 about FES making capital investments, correct?

3 A. Yes.

4 Q. And FES, if I understand, FES would
5 determine to make a capital investment, and then
6 would FirstEnergy have the opportunity to have input
7 on whether FirstEnergy Solutions should go forward
8 with that investment?

9 A. We would have the ability to review
10 that, yes.

11 Q. Would it be a retrospective review or a
12 prospective review?

13 A. Prospective.

14 Q. Okay. And if FirstEnergy disagreed on
15 whether that investment should proceed, what would
16 happen?

17 A. Ultimately FES has the responsibility of
18 operating the plant; so ultimately if a capital
19 expense is required to operate the plant, FES -- FES
20 would do that.

21 Q. Assuming FES determined a capital
22 expenditure should be made but FirstEnergy disagreed,
23 would FirstEnergy still be required to pay for the
24 additional capital investment in the cost-based

1 revenue requirement under the RRS?

2 A. Only for the depreciation that occurs
3 during the period of the PPA. Outside of that -- go
4 ahead.

5 Q. I'm sorry. So the answer to my question
6 is yes?

7 MR. LANG: I mean, yeah, objection.

8 THE WITNESS: No, it's --

9 MR. LANG: If you need to finish your
10 answer, go ahead.

11 THE WITNESS: The answer is no, with the
12 question implying the -- the companies are paying for
13 the whole thing. I was clarifying that the companies
14 would only pay for the portion of depreciation that
15 occurs during the term of the PPA.

16 BY MR. OLKER:

17 Q. Okay. And I'm sorry if I interrupted
18 you. I just want to make sure I understand that.

19 So assuming that this disagreement with
20 FirstEnergy and FirstEnergy Solutions over the
21 capital expenditure, then FirstEnergy would still pay
22 for that capital expenditure to the extent that it is
23 in service during the life of the RRS?

24 MR. LANG: Objection. Joe, when you're

1 referring to FirstEnergy, are you referring to the
2 companies, the utilities?

3 MR. OLIKER: Yes, I am.

4 THE WITNESS: Give me that question one
5 more time. I've got it lost again.

6 BY MR. OLIKER:

7 Q. Okay. So assuming there's a
8 disagreement, let's call it -- let's put some more
9 meat on this hypothetical.

10 Assume FirstEnergy Solutions decides it
11 needs to install a selective catalytic reduction, an
12 SCR, FirstEnergy, the utility, disagrees about that
13 expenditure, FirstEnergy Solutions goes ahead and
14 does it anyway. Will -- given this agreement, would
15 FirstEnergy still be required to pay for the SCR in
16 the revenue requirement it pays to FirstEnergy
17 Solutions over the life of the PPA?

18 A. Yes.

19 Q. Okay. And let's add another layer to
20 that.

21 If the Ohio Public Utilities Commission
22 also determines it would like to review expenditures
23 and it also agrees with FirstEnergy or it
24 independently determines that that SCR investment is

1 not prudent, would FirstEnergy still have to pay FES
2 the cost of the SCR in the revenue requirement for
3 the life of the PPA?

4 A. Yes.

5 Q. Okay. Thank you.

6 And another question on these capital
7 investments: How would FirstEnergy, the utility, go
8 about evaluating the economics of a capital
9 expenditure?

10 A. That presumably would have to be through
11 discussions with the plant operations to understand
12 what the capital expenditure is for, why it's
13 necessary. If it's an economic issue, we certainly
14 would evaluate that. For instance, if it's -- in
15 your example you install an SCR as opposed to buying
16 credits, you could make the economic analysis there.
17 So it would really depend on what the capital
18 investment is, how it would be evaluated.

19 Q. Okay. And earlier there was a
20 discussion, is it correct that you do not have a
21 similar probabilistic modeling system similar to what
22 Mr. Lisowski used? By "you," I mean FirstEnergy, the
23 utility?

24 A. We did not use one, correct.

1 Q. So am I correct that for purposes of
2 determining the economic impact of a long-term
3 capital expenditure, you would rely upon the modeling
4 of FirstEnergy Solutions?

5 A. I don't know.

6 Q. Okay. And you can tell me if this is
7 confidential or not, but earlier we were talking
8 about the -- the way that FirstEnergy utility would
9 sell this power into the PJM energy and capacity
10 markets. Do you consider all of that information to
11 be confidential?

12 A. It depends on the question.

13 Q. Okay. I'll just ask: Does FirstEnergy,
14 the utility, plan to bid the capacity of Sammis,
15 Davis-Besse -- I'll just repeat the question.

16 Assuming this PPA is approved, does
17 FirstEnergy, the utility, plan to bid the capacity of
18 Davis-Besse, Sammis, Clifty Creek, and Kyger Creek
19 into the PJM capacity market at a price of zero?

20 A. Well, these would be confidential.

21 Q. Okay. That's fine.

22 Do you consider the date that the
23 transaction with FirstEnergy Solutions was approved
24 confidential?

1 A. No.

2 Q. Would you agree that FirstEnergy agreed
3 to the final transaction on July 25th of 2014?

4 A. I don't -- I don't know. In that range.

5 Q. And you would agree that the application
6 in this proceeding was filed approximately 10 days
7 after the transaction was approved?

8 A. Generally speaking, yes.

9 Q. Would you agree that the transaction was
10 approved by FirstEnergy, the utility, prior to
11 FirstEnergy reviewing historical forced outage rates
12 for Sammis, Davis-Besse, Clifty Creek, and Kyger
13 Creek?

14 A. I don't know.

15 Q. When was the first time you reviewed the
16 historical outage rates of Sammis?

17 A. I don't remember.

18 Q. Do you remember if it was July 25th?

19 MR. LANG: Objection; asked and
20 answered.

21 THE WITNESS: I don't remember.

22 BY MR. OLIKER:

23 Q. Okay. Page 4 of your testimony, you
24 state that you're responsible for determining whether

1 the RRS would be beneficial for customers and make
2 sense for the companies. Are the factors you
3 considered the factors that are listed in your
4 testimony, that being the impact on customers,
5 reliability, and Ohio's economy, and the companies?

6 A. Those are factors, yes.

7 Q. Are those the only factors?

8 A. Yes.

9 Q. Okay. And were you the specific person
10 that evaluated -- so let's take a step back.

11 When evaluating the impact on the
12 customers, what did you consider?

13 A. Certainly we considered the value of the
14 transaction over the 15-year period, but part of that
15 also includes transmission, reliability, potential
16 transmission expenditures if the plant's retired.

17 Q. Okay. So would you agree that regarding
18 reliability and transmission constraints -- sorry,
19 let me take a step back.

20 Would you agree that it was assumed in
21 your evaluation of the impact and reliability,
22 transmission development, and Ohio's economy, that if
23 the transaction is not approved the plant will be
24 shut down?

1 A. I don't think we ever said that.

2 Q. Well, let's state it differently. Would
3 you agree that if the plants are not shut down, there
4 will be no impact on reliability?

5 A. On retail system reliability?

6 Q. What type of reliability are you talking
7 about in your testimony?

8 A. Retail system reliability.

9 Q. And what do you mean by "retail system
10 reliability"?

11 A. The -- the plants that are part of this
12 agreement are baseload plants, they're plants that
13 typically run year-round, they're plants that are not
14 dependent upon intermittent fuel supplies or
15 interruptible fuel supplies.

16 The companies have an interest in
17 maintaining power to its customers; so during severe
18 periods where -- and Mr. Strah speaks to this more in
19 detail, there are periods where because of failures
20 of generators for various reasons, that retail system
21 reliability could be impacted.

22 Q. And when you say "retail," are you
23 talking about the electric grid in general, are you
24 talking about blackouts?

1 A. I'm talking about the retail customers
2 of the three companies.

3 Q. So you're -- you're talking about
4 whether or not the grid will be able to deliver
5 electrons to those people, or are you talking about
6 something else?

7 A. Well, ultimately, yes, yes, whether
8 those people will get the electrons they need when
9 they need them.

10 Q. So you would agree that if Davis-Besse,
11 Sammis, Clifty Creek, and Kyger Creek are not shut
12 down, then there will be no impact on reliability?

13 A. That -- that would have no change to the
14 current state.

15 Q. And you would agree if they're not shut
16 down, there would be no impact on -- let me state
17 that differently.

18 If they're not shut down, then there
19 would be no need to build additional transmission
20 systems?

21 A. I --

22 MR. LANG: Objection.

23 THE WITNESS: That's outside of my
24 testimony as far as transmission analysis.

1 BY MR. OLIKER:

2 Q. When you say it's outside of your
3 testimony, do you mean it's outside of your
4 expertise?

5 A. Both.

6 Q. Okay. So what analysis did you do to
7 determine whether the plants would be shut down?

8 A. We did no -- no analysis other than the
9 representations from FES.

10 Q. Okay. Thank you.

11 So when we talked about your
12 considerations regarding impacts and reliability,
13 Ohio's economy and potential transmission building,
14 that's all based on FES's representation that the
15 plants may be shut down if the transaction is not
16 approved?

17 MR. LANG: Objection.

18 BY MR. OLIKER:

19 Q. You may answer.

20 A. That certainly is the main factor, yes.

21 Q. What other factors are there?

22 A. Well, when you talk about the economy, a
23 transaction that returns potentially \$2 billion to
24 our retail customers can have a positive impact on

1 the economy.

2 Q. Are there any other factors?

3 A. Not that I can think of right now.

4 Q. Okay. When you reviewed the modeling
5 that was performed by Mr. Lisowski, did you consider
6 or evaluate whether the marginal cost of operating a
7 plant, that is fuel and O&M, would be lower than
8 market clearing prices over the term of the proposal?

9 A. Yes.

10 Q. In other words, and this is taking aside
11 the cost-based revenue requirement, did you determine
12 whether the plants would create net margin and would
13 recover at least a portion of the fixed costs in each
14 year?

15 A. I'm sorry, that follow-up question
16 seemed to be different than the first question.
17 Could you rephrase that?

18 Q. Okay. Well, let's break it up into
19 pieces. Generally speaking, plants clear in PJM
20 based upon variable costs versus clearing prices,
21 right?

22 A. Generally.

23 Q. And you can add -- you can look at the
24 variable costs of operating and the O&M expense of a

1 plant and you can compare that to the clearing
2 prices, correct?

3 A. Yes.

4 Q. To determine whether the to-go cost of
5 continuing to operate a plant are lesser than
6 clearing prices?

7 MR. LANG: Objection.

8 THE WITNESS: Correct.

9 BY MR. OLIKER:

10 Q. Did you compare those costs to clearing
11 prices?

12 MR. LANG: Objection, again, as to
13 defining "those costs."

14 THE WITNESS: What we did look at was
15 the variable costs compared to the market price.

16 BY MR. OLIKER:

17 Q. What did you include in your analysis of
18 variable costs, was it just fuel or was it also O&M?

19 A. It would be whatever -- whatever would
20 vary by the output.

21 Q. Okay. Now, let me ask you a
22 hypothetical.

23 Assume that a plant has a cost-based
24 revenue requirement of \$500 million, and that revenue

1 requirement includes variable costs, fixed costs and
2 capital costs. The marginal cost of operating that
3 plant is \$350 million, and that includes the fuel and
4 O&M; so that assumes that the other \$150 million is
5 the fixed costs related to the plant and the capital.
6 Now, the plant will produce \$450 million of revenue
7 in the capacity, energy and ancillary services in
8 each year.

9 So do you understand here that this
10 plant is recovering \$50 million less than its total
11 revenue requirement, but it is recovering \$100
12 million in fixed costs and capital costs in addition
13 to its variable costs? Do you understand this part?

14 MR. LANG: Objection to the -- objection
15 to the hypothetical, but if --

16 THE WITNESS: I understand the
17 hypothetical.

18 MR. LANG: If you're able to answer, go
19 ahead.

20 THE WITNESS: Yeah.

21 BY MR. OLIKER:

22 Q. Okay. Now, would you agree in this
23 circumstance, if we can assume these statistics for
24 the life of the plant, would you agree that an

1 economically rational decision would be to let the
2 plant continue to operate rather than retiring it?

3 MR. LANG: I continue to object to the
4 hypothetical, and it's beyond the scope of his
5 testimony.

6 THE WITNESS: And I don't know the
7 answer.

8 BY MR. OLIKER:

9 Q. And why is that?

10 MR. LANG: Continuing objection. Go
11 ahead.

12 MR. OLIKER: That's fine, Jim.

13 THE WITNESS: You've given me a
14 hypothetical that I've not analyzed; so I'm not in a
15 position to make a judgment on that.

16 BY MR. OLIKER:

17 Q. Okay. Let's take it a little further.
18 Would you agree that if you decide to retire the
19 plant and there is outstanding plant service of, say,
20 \$2 billion, then that \$2 billion is completely
21 stranded?

22 MR. LANG: Objection.

23 THE WITNESS: I -- I don't know.

24 BY MR. OLIKER:

1 Q. Well, if you've got \$2 billion of rate
2 base and you retire a plant, would you agree that
3 that rate base is not recovered?

4 MR. LANG: Objection.

5 THE WITNESS: I don't know.

6 MR. OLIKER: You can have a standing
7 objection, Jim.

8 THE WITNESS: I -- you're asking me
9 questions outside -- outside my knowledge.

10 BY MR. OLIKER:

11 Q. Let me ask you another question: Given
12 the choice of recovering -- of losing \$2 billion and
13 losing \$1 billion, what would an economically
14 rational person do?

15 MR. LANG: Objection.

16 THE WITNESS: Certainly --

17 BY MR. OLIKER:

18 Q. You may answer.

19 A. Certainly you would choose to lose less.

20 Q. Okay. Thank you.

21 Earlier you talked about the companies
22 retained Judah Rose. Do you remember saying that?

23 A. Yes.

24 Q. Were you involved in retaining Judah

1 Rose?

2 A. No.

3 Q. Do you know who at the companies
4 retained Mr. Rose?

5 A. I do not.

6 Q. During the negotiation of this
7 transaction with FirstEnergy Solutions, did you or
8 anybody else at FirstEnergy ask FES if they had their
9 own projection of the profitability of these plants?

10 A. I did not.

11 Q. Do you know if anybody else did?

12 A. I'm not aware of anybody else.

13 Q. I'm sorry if you already answered this
14 question, but do you remember who Mark Hayden
15 represented in the negotiation of this transaction?

16 MR. LANG: Objection; asked and
17 answered.

18 THE WITNESS: I don't know.

19 BY MR. OLKER:

20 Q. Okay. Your testimony says that the
21 level of outages is in line with what you would
22 expect compared to similar generation plants. What
23 did you review for the basis of this statement?

24 A. From a nuclear standpoint, the outages

1 were extremely low; so comparing to other nuclear
2 plants, it's very similar. The Sammis plant, though,
3 we did review that against our own experience with
4 fossil operations, and it was very similar to the
5 outage rates we experienced.

6 Q. That statement is not based on the
7 historical outage rate of any of the plants in this
8 transaction, correct?

9 A. It certainly was based upon projected.
10 I don't recall what historical information we had at
11 the time.

12 Q. Okay. Did you personally determine
13 whether the projected outage rates were reasonable?

14 A. Yes.

15 Q. Okay. Earlier you talked about a
16 180-day provision in the term sheet. Would you
17 describe -- did you say that if there is an outage
18 that is longer than 180 days, then FirstEnergy
19 Solutions must provide replacement power?

20 A. Or the financial equivalent, correct.

21 Q. And is the 180-day outage rate for plant
22 outages or forced outages or both?

23 A. Forced outages.

24 Q. Are you familiar with PJM's capacity

1 performance proposal?

2 A. Yes.

3 Q. Are you familiar with the penalties for
4 nonperformance contained in that proposal?

5 MR. LANG: Objection; asked and
6 answered.

7 THE WITNESS: I am.

8 BY MR. OLIKER:

9 Q. Would you agree that a forced outage of
10 less than 180 days could cause a generating unit to
11 pay more penalties than the total amount of revenue
12 it receives?

13 MR. LANG: Objection; beyond the scope
14 of his testimony.

15 THE WITNESS: Yes.

16 BY MR. OLIKER:

17 Q. Okay. Sorry to jump around here, but
18 you talked about -- you talked earlier with attorneys
19 about the code of conduct between unregulated
20 competitive and regulated noncompetitive services.
21 Do you remember that discussion?

22 A. I do.

23 Q. Would you agree that the purpose of this
24 code of conduct is to prevent the unregulated

1 business from obtaining a competitive advantage?

2 A. I agree that's part of it.

3 Q. Okay. Now, shifting back to your
4 testimony, you mention -- and this is just more about
5 mechanics. You mention that the cost of debt in this
6 transaction is forecasted to be 4.5 percent to
7 determine the cost-based rate to be paid to FES,
8 correct?

9 A. I'm sorry, what percentage did you say?

10 Q. I think it was 4.54 percent.

11 A. Correct.

12 Q. And but just so I understand the
13 mechanics, this is what's used in the projection of
14 the cost-based rate, but in each year the cost of
15 debt will be trued up to an actual cost of debt?

16 A. Correct.

17 Q. Okay. And mechanically -- first of all,
18 do you know if this is a short-term cost of debt or
19 long-term cost of debt?

20 A. I don't know.

21 Q. Would Steven Strah know that, if you
22 know?

23 A. I don't know.

24 Q. Or Witness Staub? I think I had the

1 wrong name first.

2 A. Yeah, I don't know.

3 Q. Initially did you evaluate whether 4.54
4 percent is a reasonable cost of debt?

5 A. No.

6 Q. Would you agree that if the actual cost
7 of debt is higher than 4.54 percent, directionally
8 any charge to customers would be higher or any credit
9 would be smaller?

10 A. Yes.

11 Q. Now, moving to the cost of equity.
12 There is an 11.15 percent cost of equity used,
13 correct?

14 A. Correct.

15 Q. And will the cost of equity also be
16 updated each year?

17 A. No.

18 Q. Or will it -- it will not. It will stay
19 steady at 11.15 throughout the duration of the
20 transaction?

21 A. Correct.

22 Q. Okay. If I could have just a minute or
23 two, I might be done.

24 (Pause.)

1 MR. OLIKER: That's all I have. See,
2 I'm 30 minutes exactly.

3 MR. LANG: We were all complimenting you
4 in the room, 30 minutes pretty much spot on. Thanks,
5 Jim.

6 And at this time, folks, we're going to
7 take a lunch break. What have you guys been doing?

8 MS. DUNN: How long, one hour?

9 MR. FISK: An hour.

10 MS. DUNN: An hour.

11 MR. LANG: Come back at 1:30.

12 MS. DUNN: And we'll be on the public
13 line.

14 (Luncheon recess.)

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1 Thursday Afternoon Session,
2 January 8, 2015.

3 - - -

4 MR. LANG: All right. We're back on the
5 record continuing the public version of the
6 deposition of Jay Ruberto.

7 On my list, the next person that had
8 checked in in the morning was Colleen Mooney.
9 Colleen, are you on?

10 MS. MOONEY: Yes, I'm on, but I don't
11 have any questions. Thank you.

12 MR. LANG: Okay. And the next person
13 then would be Mike, Mike Settineri.

14 MR. SETTINERI: Yes. Good afternoon.
15 Just so everyone knows, I have a number of questions,
16 but the bulk of my questions today should be in the
17 public session.

18 - - -

19 CROSS-EXAMINATION

20 BY MR. SETTINERI:

21 Q. Good afternoon, Mr. Ruberto. My name is
22 Mike Settineri on behalf of the Retail Energy Supply
23 Association, the PJM Power Providers Group.

24 How are you today, sir?

1 A. I'm doing fine. Thank you.

2 Q. Can you hear me okay?

3 A. I can.

4 Q. All right. If I fade off or mumble,
5 just let me know, please.

6 A. Will do.

7 Q. All right. I'd like to backtrack a
8 little today to understand more of your role on the
9 EDU team. So if you can, sir, could you describe for
10 me what you believe your role was on the EDU team?

11 A. Sure. I led the team that was charged
12 with reviewing, evaluating, and if recommending to go
13 ahead and proceed with negotiating a potential
14 transaction.

15 Q. Okay. Anything else?

16 A. No.

17 Q. Okay. And when you say you led the
18 team, what does that mean?

19 A. Well, there -- I would be responsible
20 for scheduling things, responsible for deciding if we
21 needed to get some information, appointing team
22 members to do some research, logistics, providing --
23 providing updates to -- to Mr. Julian, I handled
24 communications with FES for the most part.

1 Q. Anything else?

2 A. No. That's -- that should cover it.

3 Q. Okay. Now, your background is an
4 engineer, correct?

5 A. Yes.

6 Q. Okay. Have you ever been in a project
7 manager position as an engineer?

8 A. Yes.

9 Q. Okay. Would you say your role in
10 regards to the EDU team is similar to what a project
11 manager would be on an engineering project?

12 A. Not totally dissimilar, but not
13 particularly similar.

14 Q. I'm sorry, I couldn't hear your last
15 phrase.

16 A. Related, but not completely similar.

17 Q. Okay. You also mentioned that earlier
18 about being the only, I believe, regulated
19 FirstEnergy Services Company employee on the EDU
20 team. Were you concerned about -- let me ask you
21 this question: How did you deal with the company
22 policy regarding separation between regulated and
23 nonregulated in your role as a lead of the EDU team
24 negotiating with FirstEnergy Solutions?

1 MR. LANG: I'm going to -- objection to
2 the form of the question, and at least the first part
3 was a mischaracterization, but --

4 THE WITNESS: Yes. And actually I was a
5 regulated marketing function employee, which is --
6 which is a little bit different than your
7 characterization. And the -- dealing with
8 FirstEnergy Solutions was -- was all right as long as
9 we weren't sharing information that would benefit one
10 side or another in their ongoing marketing functions.

11 BY MR. SETTINERI:

12 Q. Okay. Are you familiar with alternative
13 bid caps at PJM?

14 A. With alternative?

15 Q. Bid caps.

16 A. Alternative bid cap?

17 Q. That's correct.

18 A. The terminology sounds familiar, but I
19 don't recall.

20 Q. Are you familiar with a phrase
21 "avoidable cost rate" used at PJM?

22 A. Yes.

23 Q. In your experience throughout your
24 career, have you had an occasion to develop an

1 avoidable cost rate?

2 A. Not me personally.

3 Q. Okay. Would that have been done under
4 your direction?

5 A. My -- my regulated generation group does
6 such things.

7 MR. SETTINERI: Okay. And, Jim, if we
8 go into an area that you want me to ask these
9 questions later, I'd be glad to.

10 BY MR. SETTINERI:

11 Q. In regards to the negotiations that took
12 place with FirstEnergy Solutions on the term sheet,
13 were you provided with any avoidable cost rate
14 information for the units that are subject to the
15 PPA -- proposed PPA?

16 A. We were not provided with an avoidable
17 cost rate.

18 Q. Did you get any of the spreadsheets that
19 are used to produce that information?

20 A. I don't know.

21 Q. Going back to the initial proposal of
22 the PPA -- let me rephrase that.

23 There was some discussion earlier today
24 about an initial proposal from FES. And my

1 understanding from your testimony earlier today, that
2 FES is the entity that made -- is the first made --
3 that made the proposal. In what form was this
4 proposal made for the first time?

5 A. It was not made to me personally; so I
6 don't know that answer.

7 Q. You don't know whether it was in writing
8 or verbal, correct?

9 A. I -- I do know that it was not in
10 writing, I just don't know the form in which it
11 occurred.

12 Q. And approximately when did you -- when
13 was the first time the proposal was presented to you?

14 A. In May.

15 Q. And was the -- did you -- was that late
16 May or early May?

17 A. I don't recall.

18 Q. And I remember you mentioned earlier
19 about having -- setting up a conference call with the
20 EDU team on or around May 20th; is that correct?

21 A. After May 20th, yes.

22 Q. Okay. And I guess what I'm trying to
23 understand here is you had a conference call with the
24 EDU team. What -- was the proposal presented to the

1 entire EDU team then?

2 A. What do you mean by "proposal"?

3 Q. Well, at some point everyone was on --
4 everyone on the EDU team became aware of what was
5 being proposed by FES. And what I've heard so far
6 today is we have some units, but we really haven't
7 heard anything beyond that. So what I'm trying to
8 understand is what is -- what -- what was the initial
9 proposal, if anything?

10 MR. LANG: Objection.

11 THE WITNESS: The plants that FES was
12 offering were discussed at that first meeting with
13 the EDU team.

14 BY MR. SETTINERI:

15 Q. Okay. And that would be the Davis, the
16 Sammis, and the OVEC entitlement, correct?

17 A. Correct.

18 Q. And were there any other plants offered
19 at that time?

20 A. No.

21 Q. Now, you had mentioned previously,
22 though, if I'm correct, that FES at one point had
23 inquired regarding adding the rest of their Ohio
24 units to the proposal; is that correct?

1 A. No.

2 Q. Let me just -- I'm just trying to get
3 this record clear, that's all.

4 Did FES ever propose to include units
5 other than Davis, Sammis, and the OVEC entitlement in
6 its proposal?

7 A. They made an initial overture prior to
8 this proposal where they suggested including
9 additional plants.

10 Q. And when did that initial overture take
11 place?

12 A. That occurred prior to the EDU team
13 being formed, but I don't know the date that that
14 occurred.

15 Q. Okay. How do you know about that
16 initial overture?

17 A. The -- I've -- I -- I was aware of and
18 had seen a letter from Mr. Haney informing FES that
19 they -- that we were aware of that, but were not
20 interested in that volume of plants.

21 Q. Okay. And when did you see that letter
22 from Mr. Haney?

23 A. It would -- I would have seen it in May,
24 near the time it was written. I don't remember the

1 date.

2 Q. And how -- how many -- do you know what
3 other units FES has rights to in Ohio?

4 A. Not offhand, I don't.

5 Q. Do you have a feel for how much capacity
6 that would be?

7 A. All their Ohio capacity, are you asking
8 me?

9 Q. The -- yes, the capacity for the Ohio
10 units that FES made initial overture to include in
11 its proposal.

12 A. Generally it was three to four times the
13 size of what the proposal ended up with. I -- I
14 don't recall the -- the number, but it was -- it was
15 significantly higher.

16 Q. Okay. Do you know why FES sought to
17 include those units in the proposal?

18 A. No.

19 Q. Did the EDU team discuss the initial
20 overture about including these units in the proposal?

21 A. We may have discussed that that initial
22 overture occurred, but we never discussed trying to
23 add those into the proposal.

24 Q. Did it concern you or raise any issues

1 in your mind during this negotiation process that FES
2 not only wanted to include the Sammis, Davis, and
3 OVEC entitlement, but also all of its Ohio units in
4 the proposal?

5 A. No.

6 Q. Doesn't that run counter to FES's claim
7 that the proposal is meant to prevent unit shutdowns?

8 MR. LANG: Objection.

9 THE WITNESS: I -- I have -- I don't
10 know.

11 BY MR. SETTINERI:

12 Q. Did you investigate whether any of FES's
13 other Ohio units were at risk of shutdown or
14 retirements?

15 A. No.

16 Q. Did the EDU team conduct any
17 investigations regarding whether the other Ohio units
18 were at risk of shutdown or retirement?

19 A. No.

20 Q. Who made the decision to focus only on
21 the Sammis, Davis, and the OVEC entitlement for the
22 proposal?

23 A. That was the proposal FES presented.

24 Q. Okay. And now we're back to the

1 proposal that was submitted to the EDU team; is that
2 correct?

3 A. Correct.

4 Q. Was that proposal reduced in writing by
5 FES at some point?

6 A. I believe so, yes.

7 Q. And when was that proposal reduced to
8 writing?

9 A. That would have been in response to Jim
10 Haney's letter. I believe that would have been early
11 May, mid May.

12 Q. And you referenced Jim Haney's letter.
13 Can you describe what that letter or what was the
14 intent of that letter? I don't have that before me.

15 A. The letter essentially stated that he
16 was aware and that the companies were aware of the
17 overture by FES to offer a power purchase agreement
18 with all those plants we talked about, and
19 Mr. Haney's letter mentioned that the companies were
20 not interested in that volume, but may be willing to
21 consider a smaller capacity if FES so wished to make
22 such a proposal.

23 Q. And so would it be fair to say that
24 sometime in May FES reduced that offer to writing?

1 A. I -- I have to say I don't know for
2 certain.

3 Q. I know that there has been an exhibit
4 marked earlier, which is the term sheet, that would
5 be Ruberto Exhibit 1. Was that the only term sheet
6 that was developed during the negotiation process
7 between the EDU team and the FES team?

8 A. Yes. There is only one term sheet.

9 Q. Would it surprise you to know that
10 Mr. Lisowski stated in his deposition that there were
11 multiple drafts of the term sheets produced?

12 A. Drafts of the same term sheet?

13 Q. Multiple drafts of term sheets.

14 A. There were multiple drafts of this same
15 term sheet, yes.

16 Q. Okay. And -- and just to be clear, what
17 I'm trying to get at here is just to understand in
18 the back and forth how many term sheets went back and
19 forth. The fact that you start out with a document
20 and it gets revised, to me that's a different term
21 sheet.

22 So kind of starting over again, and
23 let's work our way backwards. Ruberto Exhibit 1, is
24 that the final term sheet --

1 A. Yes.

2 Q. -- that was --

3 A. Sorry. Correct.

4 Q. All right. And prior to that final term
5 sheet, were there other drafts and revisions to the
6 term sheet between the parties?

7 MR. LANG: Objection.

8 THE WITNESS: Yes.

9 BY MR. SETTINERI:

10 Q. Do you know how many of those drafts
11 exist -- or, not exist, but were created?

12 A. No.

13 Q. Would you say there was a significant
14 amount of back and forth between the parties on
15 drafting the term sheet?

16 A. No.

17 Q. When was the first version of Ruberto
18 Exhibit 1 created?

19 MR. LANG: Objection.

20 THE WITNESS: I don't know.

21 BY MR. SETTINERI:

22 Q. What was the first time that you saw a
23 term sheet for the proposal?

24 A. I don't know.

1 Q. Was it in May?

2 A. I don't recall seeing one in May.

3 Q. How about June of 2014?

4 A. I don't recall.

5 Q. How about July of 2014?

6 A. Well, I know I've seen them in July, but
7 your question was for the first one, and I don't
8 recall.

9 Q. So let me ask the question a different
10 way: Did you -- are you telling me, then, that the
11 first time that you recollect seeing a draft of this
12 term sheet was in July of 2014?

13 A. That's not what I'm saying.

14 Q. Well, let's start over again. You know,
15 when do you recollect seeing for the first time a
16 draft of the term sheet?

17 A. As I stated, I don't recall when I saw
18 the first draft.

19 Q. I'm not -- yeah, I'm talking about any
20 draft, we'll start with that.

21 A. I -- I don't recall.

22 Q. But you did see a draft of the term
23 sheet in July of 2014, correct?

24 A. Yes.

1 Q. And did you see a draft of the term
2 sheet in June of 2014?

3 A. I don't recall.

4 Q. Okay. Is it fair to say that the period
5 of negotiations for the proposal occurred from late
6 May through late July?

7 A. Yes.

8 Q. Did you take any vacations last July?

9 A. I did.

10 Q. How much vacation did you take?

11 A. Four or five days.

12 Q. Over the July 4th holiday week?

13 A. The end of July.

14 Q. End of July. Was that the last week of
15 July?

16 A. Thereabouts, yes, last full week of
17 July, I believe it was.

18 Q. Was there a -- did the EDU team meet
19 over the week of 4th of July, do you recall?

20 A. I don't remember.

21 Q. Do you know why the term sheet has not
22 been reduced to a PPA?

23 A. It just hasn't.

24 Q. Has there been any discussion of

1 doing -- of creating that PPA?

2 A. I don't know.

3 Q. During the negotiation process, what
4 issues would you view, in your opinion, as being
5 significant issues to negotiate? Let me rephrase
6 that.

7 During the negotiation process, in your
8 opinion, what issues were negotiated the heaviest?

9 A. The -- who would do the dispatching of
10 the units, the EDUs wanted that to be handled by
11 them; the good utility practices clause dealing with
12 how outages are handled. Those were the more
13 significant issues.

14 Q. All right. Any other more significant
15 issues that come to mind?

16 A. Well, many of the issues that ended up
17 on the term sheet, but the ones that I mentioned
18 certainly were included as some of the significant
19 issues. But I -- I don't recall all the issues that
20 were talked about, but all the issues that were
21 talked about and resolved ended up with what is now
22 the term sheet.

23 Q. Thanks. In regards to who would do the
24 dispatch of the units, why -- what -- what was

1 FirstEnergy Solutions's position on that issue?

2 A. They preferred to continue to do the
3 dispatch.

4 Q. Why is that?

5 A. I don't know.

6 Q. Did they give you a reason?

7 A. They just felt they have been doing it
8 and they can continue to do it, but I don't know
9 their internal reasons for that motivation.

10 Q. Did they express any reason that they
11 could do it better than the companies?

12 A. Not that I recall.

13 Q. Okay. What was Jason Lisowski's role in
14 the negotiation?

15 A. He was part of the FES team, and beyond
16 that he attended some of the negotiation meetings.

17 Q. How active was he in those meetings?

18 A. I don't recall. He was there, I do
19 recall that.

20 Q. Let me ask this question: Did the EDU
21 team have any discussions regarding seeking proposals
22 from other generation asset owners in Ohio?

23 A. No.

24 Q. Why not?

1 A. Because the EDU team was tasked with
2 reviewing this proposal.

3 Q. And you may not be able to answer this,
4 but I'll ask it anyway: Are you aware of any
5 prohibition to purchasing capacity and energy from
6 other generation asset owners?

7 In other words, let me rephrase that,
8 are you aware of any prohibition that would prevent
9 the companies from purchasing capacity and energy
10 from other generation asset owners besides FES?

11 MR. LANG: Objection.

12 THE WITNESS: I don't know.

13 BY MR. SETTINERI:

14 Q. Did the EDU -- let me rephrase that.
15 Were you aware of any discussions, whether with the
16 EDU team or the companies or FirstEnergy Service
17 Company, regarding buying capacity and energy from
18 FES and simply returning any gains to shareholders?

19 A. I'm not aware of that.

20 Q. Assume for me, though, that happened.
21 When I say "that happened," assume for me that the
22 companies are able to purchase capacity and energy
23 from FES and resell in the PJM market and transfer
24 any gains to shareholders. If that was to occur,

1 would that type of an arrangement accomplish the goal
2 of protecting the units from closure?

3 MR. LANG: Objection.

4 THE WITNESS: I -- I can't answer that
5 hypothetical. That -- that's only part of the -- the
6 entire plan; so I don't know the answer to that
7 question.

8 BY MR. SETTINERI:

9 Q. Okay. All right. The same arrangement
10 hypothetical, would that arrangement avoid putting
11 any risk on the ratepayers that the gains might
12 actually be losses?

13 MR. LANG: Objection.

14 THE WITNESS: If -- if there were no
15 Rider RRS and -- and the projected \$2 billion were
16 not passed through RRS, of course, eliminating that,
17 which is what you're suggesting in your hypothetical,
18 would eliminate any benefits or losses.

19 BY MR. SETTINERI:

20 Q. Okay. And then who ultimately would
21 bear the risk of the losses or the benefits of the
22 gains in that situation?

23 MR. LANG: The same hypothetical you've
24 been -- for the last couple questions?

1 MR. SETTINERI: Yes.

2 MR. LANG: Okay. Then objection again,
3 but go ahead.

4 THE WITNESS: In your hypothetical,
5 whomever is -- if it's FirstEnergy I believe is what
6 you suggested -- is that correct, was it FirstEnergy
7 that was buying the output from FES?

8 BY MR. SETTINERI:

9 Q. That is correct.

10 A. Then that's who would get the gains or
11 losses.

12 Q. Would that risk ultimately transfer to
13 the shareholders of FirstEnergy?

14 A. I don't know how that transfers.

15 Q. Do you know, have the companies entered
16 into PPAs with other companies?

17 A. I don't know.

18 Q. In your experience on the regulated
19 generation side, have -- are you aware of any of the
20 regulated entities that you're involved with entering
21 into PPAs with other companies?

22 A. We have numerous PURPA projects where we
23 don't own the plants, but we do own the output
24 similar to this.

1 Q. Are you able to disclose in the public
2 session generally what the length of those agreements
3 are?

4 A. They -- I probably can, because they
5 vary from few years to many, many, many years, 15,
6 20.

7 Q. What's many, many, many years?

8 A. Fifteen, 20.

9 Q. Okay.

10 A. Maybe even more than that. I don't -- I
11 don't know the exact length, but -- but they are --
12 they're well -- well in excess of what this PPA is.

13 Q. And to the extent you can, what
14 typically -- what causes or what -- what is the
15 driving factor between entering into -- or, into
16 having a long-term PPA like you just referenced for
17 the 15 years, in your experience?

18 A. I'm sorry, can you -- can you rephrase
19 that?

20 Q. Yeah. You mentioned that there are some
21 PPAs that go for many, many years. Is there a
22 distinguishing factor that would result in why that
23 PP- -- those PPAs go for many, many years?

24 A. Are you referring to the PURPA ones that

1 I referred to?

2 Q. Yes, sir.

3 A. Those -- those were signed many years
4 ago under the PURPA requirements; so I do not know
5 what went into creation of those agreements or term
6 lengths.

7 Q. All right. Earlier today you mentioned
8 in your work experience that you had -- I believe in
9 the middle of 2013, you moved into a group within
10 FirstEnergy Service Company as an advisor; is that
11 correct?

12 A. Correct.

13 Q. What is an advisor?

14 A. I was an advisor for Regulated
15 Generation Strategy and Asset Management; so my role
16 was to be responsible for the marketing side of
17 regulated generation.

18 Q. And -- and how did that advisor role
19 differ from your current position?

20 A. The -- the person who replaced me in
21 that advisor role reports to me, and then in my
22 current role I also have dispatch responsibilities.

23 Q. Okay. And -- and prior to coming into
24 the group as an advisor, did you have previous

1 experience with dispatch at PJM in capacity offers?

2 A. No.

3 Q. How did you become familiar with those
4 areas?

5 A. Through -- through working with the
6 group that I became a part of, as well as PJM has --
7 has volumes of material that are available, other
8 internal experts.

9 Q. Do you consider yourself an expert on
10 PJM at this time?

11 A. No.

12 Q. You mentioned earlier I believe from the
13 regulated generation side that you handle
14 approximately 4,000 megawatts in capacity; is that
15 correct?

16 A. Correct.

17 Q. What type of generation is in that
18 portfolio?

19 A. Some hydro pumped storage, coal, some
20 waste coal, that may be it.

21 Q. Any natural gas?

22 A. No.

23 Q. Any nuclear?

24 A. No.

1 Q. What experience do you have in regards
2 to nuclear plants?

3 A. I do not have experience with nuclear
4 plants.

5 Q. Going back to you mentioned earlier
6 there's some discussion about experience in
7 negotiating commercial transactions, but if I recall,
8 I just want to get this for the record, do you have
9 experience in negotiating commercial transactions?

10 MR. LANG: Objection as to the form, but
11 go ahead.

12 THE WITNESS: Can I ask what you mean, a
13 commercial transaction?

14 BY MR. SETTINERI:

15 Q. Fair question. Have you ever negotiated
16 a PPA --

17 A. No.

18 Q. -- prior to the -- to the term sheet for
19 this case?

20 A. No, I have not.

21 Q. Am I correct that the bulk of your
22 negotiating in a commercial context has been for
23 consulting contracts?

24 A. Correct.

1 Q. In fact, has all of your negotiating
2 been in relation to consulting contracts?

3 A. There -- there were some contracts that
4 were a little beyond consulting for significant
5 hardware purchases for a call center, but it's more
6 of equipment purchases combined with the consulting
7 efforts to develop those -- those pieces of
8 equipment.

9 Q. What kind of equipment purchases?

10 A. Telephony equipment, various -- various
11 forms of telephony equipment, dialers, software front
12 ends for -- for agents, typical contact center-type
13 technologies.

14 Q. Here's the big question for you: Why do
15 people come to you to help purchase cars?

16 MR. LANG: Objection. Objection; beyond
17 the scope of the testimony.

18 (Laughter.)

19 BY MR. SETTINERI:

20 Q. I'm serious, I want to know the answer.

21 A. Well, I tend to be somewhat analytical.
22 As an engineer, I tend to do those kind of things,
23 and I like cars.

24 Q. Thank you. Do you have -- and just to

1 clarify for the record, do you have any opinion
2 whether the Davis-Besse unit is at risk of retirement
3 within the next three years?

4 A. I do not.

5 Q. Same question with regards to W.H.
6 Sammis, do you have any opinion as to whether that
7 unit is at risk of retirement within the next three
8 years?

9 A. I do not.

10 Q. Same question with OVEC, do you have any
11 opinion as to whether any of the OVEC units will
12 retire within the next three years?

13 A. I do not.

14 Q. You do have familiarity with the OVEC
15 units, correct?

16 A. I do.

17 Q. Can you -- am I correct then that you
18 also dispatch or are you responsible for capacity
19 offers and energy offers for the OVEC entitlement for
20 one of the regulated entities?

21 A. Yes.

22 Q. Okay. Do you in that capacity have any
23 concerns that the OVEC plants will shut down and
24 retire within the next three years?

1 A. I do not have that concern.

2 Q. Was that discussed in the EDU team
3 negotiations at all?

4 A. Whether regulated generation has
5 concerns?

6 Q. Let me clarify. Was there any
7 discussion with the EDU team or amongst the EDU team
8 members that -- regarding the risk that the OVEC
9 units will shut -- retire in the next three years?

10 A. I don't recall.

11 Q. So if you assume for me that there's
12 little risk, if not zero, that the OVEC units will
13 retire, why should those units be included in the
14 PPA?

15 MR. LANG: Objection.

16 THE WITNESS: The proposal from FES was
17 the package of Sammis, Davis-Besse, and -- and the
18 OVEC share.

19 BY MR. SETTINERI:

20 Q. Okay. Doesn't including the OVEC share
21 run counter to FES's claim that the units are in
22 jeopardy?

23 A. I can only offer you what their proposal
24 was.

1 Q. You're analytic, though, correct?

2 A. So I hear.

3 Q. Wouldn't that jump out to you as being a
4 red flag?

5 A. I -- I stand by my previous, that --
6 that just happened to be what their offer was.

7 Q. Was there any pushback to say, "No,
8 those units should not be in because they're not
9 going to retire"?

10 A. No.

11 Q. And there was no discussion on that
12 point, correct?

13 A. Discussion with?

14 Q. Within the EDU team.

15 A. I don't recall.

16 Q. Okay. Was there any discussion amongst
17 the EDU team members or within the companies as to
18 whether FES would be -- as an entity would be able to
19 absorb any losses from the Davis-Besse, Sammis, and
20 OVEC entitlement over the next three years --

21 A. I am -- I'm sorry.

22 Q. -- and offset those losses or gains from
23 other units?

24 A. I am not aware of those discussions.

1 Q. Do you have any opinion as to whether
2 FES as an entity is at risk of bankruptcy?

3 A. I do not know.

4 Q. Do you have any opinion as to the
5 financial wherewithal of FES?

6 A. I do not know.

7 Q. Okay. And I may have asked this
8 already, am I correct that the companies did not
9 issue an RFP regarding energy, capacity?

10 A. That's correct.

11 Q. And do you know why that did not take
12 place?

13 A. I -- I had answered that before, that
14 that was not what we were evaluating.

15 Q. Do you know if FES sent out any requests
16 for proposals regarding energy, capacity to any other
17 entities besides the companies?

18 A. I don't know.

19 Q. Who was the lead scribe for the term
20 sheet that was -- the term sheet drafts that were
21 circulated throughout the negotiation process?

22 A. Legal handled creating these drafts.
23 I -- I don't remember or know who was -- who was
24 inputting what.

1 Q. You mentioned earlier also that you --
2 that you took notes in the meetings. Do you -- do
3 you take handwritten notes or do you use a computer?

4 A. In which meetings are we referring to?

5 Q. During the EDU meetings, I believe
6 earlier you said that you took notes. And my
7 question to you is: In those meetings, did you take
8 handwritten notes or did you use a computer to take
9 notes?

10 A. Electronic, computer.

11 Q. What does electronic mean, computer?

12 A. Computer.

13 Q. And is it fair to say, then, that you
14 were the scribe for the meeting minutes for those
15 meetings?

16 MR. LANG: Objection.

17 THE WITNESS: I -- I can only comment
18 that I -- I took -- I took notes and provided those
19 to Legal, that's --

20 BY MR. SETTINERI:

21 Q. Did you provide them to anybody else on
22 the EDU team?

23 A. The EDU team, I don't know.

24 Q. During this process, did FES and the

1 companies or FirstEnergy Service Company sign a
2 confidentiality or nondisclosure agreement --

3 A. Yes.

4 Q. -- with respect to the -- with respect
5 to the negotiations?

6 A. They signed -- they signed an agreement,
7 yes.

8 Q. And was that agreement a confidentiality
9 agreement or what I also would call a nondisclosure
10 agreement?

11 A. I believe a nondisclosure agreement.

12 Q. Now, at the end -- at what point did the
13 EDU team make a recommendation on the FES --

14 MR. LANG: Sorry, Mike, I think you cut
15 off. Can you ask that question again?

16 MR. SETTINERI: I sure will. At what
17 point did the EDU team make a recommendation on the
18 FES proposal?

19 THE WITNESS: In July.

20 BY MR. SETTINERI:

21 Q. And to whom was that recommendation
22 made?

23 A. Ultimately it was made for Chuck Jones
24 to approve.

1 Q. Okay. Was there a vote taken on the
2 proposal -- or, I should say was there a vote taken
3 on the recommendation?

4 A. I'm not aware of one.

5 Q. Was there -- was -- did any member of
6 the EDU team disagree with the recommendation?

7 A. No.

8 Q. How did each member of the EDU team
9 communicate their approval of the proposal?

10 A. The EDU team was part of the discussion
11 and negotiations.

12 Q. Correct. What I'm just getting at is
13 there was a recommendation -- there was an approval
14 made and a recommendation made to management. Was
15 there a -- was there a group meeting -- was there a
16 meeting of the EDU team so that -- so that can be
17 communicated within the team?

18 In other words, did the members of the
19 EDU team tell you they agreed with the recommendation
20 or did they e-mail -- communicate via e-mail?

21 A. We -- the EDU team reached agreement
22 when we were together.

23 Q. So the fact that the term sheet was
24 developed --

1 THE COURT REPORTER: I'm sorry, could
2 you repeat that?

3 BY MR. SETTINERI:

4 Q. The fact that the term sheet was
5 developed, did that act as the recommendation of the
6 EDU team?

7 A. The recommendation for -- can you
8 clarify what you mean by "the recommendation of the
9 EDU team"?

10 Q. Recommending the proposal to management.

11 A. What -- well, once the EDU team reached
12 the conclusion that we felt negotiations made sense,
13 then the term sheet did conclude -- was the
14 conclusion of the negotiations; so at the end of
15 that, once we were in agreement, then we were ready
16 to move forward recommending approval.

17 Q. I'm going to switch gears and try to
18 move along here.

19 Let's go to Ruberto Exhibit 1 again. I
20 just want to walk through this term sheet a little
21 bit with you.

22 In fact, before I do that, let's start
23 at your testimony at Page 3, Line 18. There's a
24 phrase there -- do you have that in front of you,

1 Mr. Ruberto?

2 A. I do.

3 Q. There's a phrase at Line 18 states,
4 "plus a reasonable return on invested capital." Do
5 you see that?

6 A. I do.

7 Q. What do you mean by the phrase
8 "reasonable return"?

9 A. That's a -- a return on -- as you look
10 through the term sheet, you'll see -- I believe it's
11 called capacity cost in there, to have a return on
12 the capital they have invested, assuming a 50/50
13 capital-to-debt structure.

14 Q. Going back to my question though, and
15 focusing solely on the word "reasonable," what does
16 reasonable mean in that sentence to you?

17 A. Reasonable was -- was the result that we
18 ended up with throughout the process. It was a
19 result that the EDUs felt was appropriate.

20 Q. Why did the EDUs feel that was
21 appropriate?

22 A. Based upon the advice of others more
23 knowledgeable on those returns; Mr. Staub, for
24 instance.

1 Q. Who does Mr. Staub work for?

2 A. I don't know who he reports to.

3 Q. Okay. Do you know what side of the
4 fence -- is he a regulated side or is he unregulated?

5 A. I -- I don't believe he's on either
6 side, I believe he's shared, but I -- I don't know.
7 I don't know his reporting structure.

8 Q. Do you think the rate of -- of return on
9 invested capital under the term sheet is reasonable
10 for a for-profit private entity that is not
11 regulated?

12 A. The EDU team was satisfied that that was
13 a reasonable return.

14 Q. Compared to what, though?

15 A. Based -- based upon the input from
16 others who helped develop, we -- we were in
17 agreement.

18 Q. Would what is reasonable for a regulated
19 utility be different for what is reasonable for a
20 for-profit unregulated private entity?

21 A. I don't know.

22 Q. You don't have an opinion?

23 A. No.

24 Q. Just so I understand, there's a phrase

1 on Line 7, Page 3, Line 7 towards the end of the
2 line, "cost basis." What do you mean by "cost
3 basis"?

4 A. The -- the payments would be based upon
5 the cost of operating the plant as opposed to some
6 other market or other type of a calculation.

7 Q. If any of the Sammis units are converted
8 to gas at some point, will those capital -- would
9 such a capital expenditure be subject to that rate of
10 return that's set forth in the term sheet?

11 A. We did not review for that possibility.

12 Q. Was that possibility discussed amongst
13 the EDU team members?

14 A. No.

15 Q. What is your opinion on that? Let me
16 clarify. Let me ask a better question.

17 In the event FES converts a unit at
18 Sammis to natural gas and seeks to include those --
19 the capital expenditures under the PPA for recovery,
20 what is your opinion as to whether those expenditures
21 should be recovered?

22 A. The -- the PPA term sheet does outline
23 capital expenditures. And if capital expenditures do
24 occur, then they are passed on as described in the

1 term sheet regardless of what the capital expenditure
2 was for.

3 Q. Okay. So if a unit is converted to
4 natural gas, it would be subject to the rate of
5 return under the PPA, correct?

6 A. Yes.

7 Q. What if another unit was added, whether
8 natural gas or coal, would that -- would the capital
9 expenditure for that unit be allowed to be recovered
10 under the PPA as a capital expenditure?

11 A. No.

12 Q. Why not?

13 A. Because the units and capacity are
14 already defined within the agreement, and it -- it
15 doesn't leave open for adding additional units.

16 Q. Thank you. Turning to the term sheet,
17 which is Ruberto Exhibit 1, starting with Section 1,
18 under the phrase "The Toledo Edison Company," there
19 is another phrase starts "provided that each Buyer's
20 obligation will be several." What does that mean to
21 you?

22 A. Each company has its own responsibility
23 for its own obligation, one is not responsible for
24 the other's obligation.

1 Q. When you say "obligation," does that
2 relate to payment?

3 A. Yes, and any other obligations under the
4 agreement.

5 Q. What about regarding capacity offers and
6 energy offers in dispatch, will each company be
7 responsible for its own allocation?

8 A. If it helps you, I guess I would
9 consider it analogous to the OVEC entitlement and how
10 the OVEC units operate. Each -- each company
11 certainly has its share of the combined amount. I
12 don't know the answer to -- to the way you phrased
13 that.

14 Q. Well, for instance, will each company
15 have a market-based rate tariff with FERC?

16 A. I don't know.

17 Q. Do you know if the companies will have
18 to have those tariffs in place prior to making sales
19 of power into the PJM wholesale market?

20 A. I don't know.

21 Q. Will each company make separate capacity
22 bids into the BRA?

23 A. I don't know that answer.

24 Q. All right. Was that discussed at all

1 amongst the EDU team?

2 A. No.

3 Q. Was the FERC MBR tariff raised at all
4 amongst the EDU team?

5 A. No.

6 Q. Are you aware of any discussions
7 regarding obtaining FERC MBR tariffs as well as
8 dispatch -- or, I should say, as well as offers and
9 bids in the capacity markets?

10 A. No.

11 Q. What about energy offers, will each
12 company make its own separate energy offers into the
13 day-ahead and real-time markets?

14 A. I don't know that answer.

15 Q. Now, you are familiar with OVEC, though,
16 correct?

17 A. Yes.

18 Q. And am I -- am I correct that each
19 entity that has OVEC entitlement makes separate bids
20 for capacity and energy, and that those -- and this
21 is a clunky question, but those bids are separate
22 from the other members?

23 A. Yes.

24 Q. And am I correct that, in fact, the

1 members do not share the bidding information with
2 each other for both capacity and energy; is that
3 correct?

4 A. I know the -- the small entitlement that
5 we have, we do not share. I assume the same is true
6 for others.

7 Q. Why don't you share that?

8 A. We don't share any market offers with
9 any party.

10 Q. So as of today, you don't know how
11 the -- how -- you don't know whether the companies
12 will treat the -- I'll call it entitlement from the
13 Sammis, Davis-Besse, and OVEC units similar to how
14 OVEC's members treat their entitlements, meaning it
15 is bid separately into the markets?

16 MR. LANG: Objection; asked and
17 answered.

18 THE WITNESS: Yeah, I don't know.

19 BY MR. SETTINERI:

20 Q. Thank you. Who at the companies will be
21 responsible for determining what constitutes good
22 utility practice? And I know that is a defined term
23 in Ruberto Exhibit 1 at Page 14 of 15.

24 A. I'm sure there's not going to be an

1 individual to make that determination, but should
2 those issues arise, I suspect it will become a legal
3 matter.

4 Q. And if there is a dispute that's not
5 resolved, do you know where that dispute would be
6 resolved? When I say "where," in what forum, for
7 example, the PUCO or a court?

8 A. Not the PUCO, but outside of that I
9 don't know where it would be resolved.

10 Q. In Section 8 of the term sheet, in the
11 second -- starting with the second paragraph, Section
12 8, and in that paragraph, "...Seller's failure to
13 deliver such Energy, Capacity or Ancillary Services
14 is excused to the extent that a given Facility or
15 portion of a Facility is unavailable; provided that
16 Seller's failure to deliver Capacity, Energy or
17 Ancillary Services will not be excused if the Seller
18 could have avoided such failure by exercise of Good
19 Utility Practice...", and there's other language
20 there, too.

21 What would be an example where FES would
22 be excused from delivering energy, capacity or
23 ancillary services, assuming that they have exercised
24 good utility practice? Do you have any examples that

1 come to mind?

2 A. Sure. Let's suppose one of the units at
3 Sammis experienced a tube leak, and it had a forced
4 outage and it was down for four days and came back
5 up.

6 Q. Okay. And am I correct in reading that
7 paragraph, that there's a 180-day grace period for
8 such an event?

9 A. Correct.

10 Q. So during that period, there would be no
11 energy revenues received as a result of that unit,
12 correct?

13 A. Correct.

14 Q. And then in turn, would there be PJM
15 penalties for failure to deliver?

16 A. I don't know.

17 Q. If those events occur, could that then
18 reduce the amount of revenue being received from
19 those units?

20 A. Yes.

21 Q. And was that accounted for in your --
22 your -- I call it a spreadsheet projection that was
23 attached to your testimony?

24 A. Yes.

1 Q. And just to do a global, in the event of
2 any dispute as to a term of this agreement, is it
3 your opinion that the PUCO would not have -- would
4 not be the proper forum to resolve that dispute
5 between FirstEnergy Solutions and the companies?

6 A. Yes.

7 Q. There's another -- in Section 8 just
8 before Section 9, there's a phrase "would render the
9 affected Facility to be uneconomic." Who makes the
10 determination of whether the affected facility is
11 uneconomic under this term sheet?

12 A. Both the buyer and the seller would have
13 to agree to that.

14 Q. What if they disagree?

15 A. Then it's not rendered uneconomic, then
16 it remains.

17 Q. Well, if there is a disagreement,
18 wouldn't that -- I mean, you're saying if there's a
19 disagreement, then that -- then it is considered to
20 be uneconomic?

21 A. Well --

22 Q. I'm trying -- go ahead.

23 A. The -- the buyer and seller would have
24 to agree such that it would be removed, but as far as

1 it being uneconomic, I guess that's one person's math
2 against another's. I -- I don't think that's -- I
3 don't think that's the characterization it's drawing,
4 but the buyer and seller would have to agree.

5 Q. I understand. Thank you.

6 Now, assuming that this term sheet gets
7 reduced to a PPA, could this PPA -- or, could the PPA
8 be modified or replaced in a subsequent PUCO
9 proceeding?

10 A. No.

11 Q. Would the Public Utilities Commission of
12 Ohio have authority to modify the PPA if losses to
13 ratepayers occur throughout the term of this PPA?

14 A. No.

15 Q. Was that discussed amongst the EDU
16 members?

17 A. Yes.

18 Q. And what were those discussions?

19 A. We -- we discussed and were aware that
20 the PPA is not an agreement between the companies in
21 a manner that the State has jurisdiction over. It's
22 an agreement between the companies and -- and FES.

23 Q. All right. Would FERC have any
24 jurisdiction to resolve any dispute over the PPA

1 between the company and FES?

2 MR. LANG: Objection.

3 THE WITNESS: I don't know.

4 BY MR. SETTINERI:

5 Q. Okay. Was there any discussion of
6 whether FERC would be a forum to resolve any disputes
7 between the companies and FES?

8 MR. LANG: Objection.

9 THE WITNESS: No.

10 BY MR. SETTINERI:

11 Q. What would happen under this agreement,
12 assuming a PPA is signed, if the PUCO terminates the
13 rider prior to the 15-year period?

14 A. That -- that termination has no bearing
15 on the PPA.

16 Q. So in your opinion, the PPA would
17 continue regardless of whether the PUCO terminates
18 the rider in a subsequent proceeding?

19 MR. LANG: Objection.

20 THE WITNESS: I mean, as I said before,
21 that -- that termination doesn't automatically
22 terminate the PPA.

23 BY MR. SETTINERI:

24 Q. Does it give rise to a right of

1 termination?

2 MR. LANG: Objection.

3 THE WITNESS: That is not in -- in the
4 term sheet.

5 BY MR. SETTINERI:

6 Q. All right. Was it discussed at all
7 amongst the EDU team?

8 A. There was an awareness of that; so
9 that -- that awareness was discussed.

10 Q. What was the results of those
11 discussions?

12 MR. LANG: Objection. Just to the
13 extent that that gets into legal advice, again, I
14 don't know if it does, but, you know, if it does keep
15 that in mind; otherwise, answer the question.

16 THE WITNESS: I'm sorry, could you
17 repeat the question?

18 BY MR. SETTINERI:

19 Q. Yeah. Now I have to remember my
20 question.

21 What was the result of the discussions
22 that were had regarding what may happen or whether
23 the PUCO had the right -- what would happen if the
24 PUCO terminated the rider prior to the end of the

1 term?

2 A. Well, as far as the result, we ended up
3 with the term sheet as you see it today.

4 Q. So in the event that the PUCO terminates
5 the rider sometime in the term and the company -- at
6 that point, would you agree with me the company would
7 not be able to recover any losses or transfer any
8 gains to ratepayers?

9 A. I -- I don't know that answer.

10 Q. The rider's the mechanism, correct?

11 A. Yes.

12 Q. Without the mechanism, I assume that
13 won't occur; is that correct?

14 MR. LANG: Objection.

15 THE WITNESS: You're getting into an
16 area about -- about the rates that -- that I'm not
17 very familiar.

18 BY MR. SETTINERI:

19 Q. All right. And just to clarify, in
20 Section 12, Page 4, there was some previous questions
21 regarding capital expenditure plan, what would be
22 reasonable. Am I correct that FES maintains final
23 discretion over -- as to what capital expenditures
24 will be recoverable under this plan?

1 A. They do maintain the final sole
2 discretion of what capital expenditures will be made,
3 yes.

4 Q. Going to Section 15, I had a question
5 there for you. On Page 6 of 15, it's Section 15,
6 Scheduling and Dispatch, there's a phrase -- on the
7 wrong page here. No, I'm on the wrong page. Page 7,
8 I'm sorry, first full paragraph, Page 7, there's a
9 phrase that says "that has been offered or otherwise
10 committed to PJM or another third party." Can you
11 explain that, "another third party," for me, what
12 does that mean?

13 A. I'm unaware of anything committed to a
14 third party; so I -- I don't know.

15 Q. Okay. I just wanted to clarify that.
16 Just want to confirm Section 16, Force
17 Majeure. Am I right that the term sheet does not
18 include a termination provision for an extended force
19 majeure?

20 A. I'm sorry, I missed the first part of
21 what you said.

22 Q. Sure. In the Force Majeure provision,
23 am I correct that there is no right of termination
24 for either party for an extended period of force

1 majeure?

2 A. I don't believe there's a termination
3 provision in there.

4 Q. Were termination provisions discussed
5 amongst the EDU members?

6 A. The -- the fact that there was no
7 termination provision was discussed.

8 Q. Okay. And what was discussed -- and
9 what were -- what were the nature of those
10 discussions?

11 A. Well, recognizing that most of the
12 benefits for the EDUs come in the later portion of
13 the agreement, the EDUs wanted to make sure the
14 agreement remained in effect when it's time for them
15 to enjoy the benefits.

16 Q. Is this term sheet binding between FES
17 and the companies?

18 A. No.

19 Q. Could there be additional terms added to
20 this term sheet?

21 A. Ultimately the power purchase agreement
22 will define the terms in greater detail.

23 Q. Fair to say that these terms could
24 change then, correct?

1 A. These terms do represent what was
2 negotiated and agreed to, and I would anticipate an
3 agreement would reflect that.

4 Q. I guess I asked you earlier, you know,
5 is this a -- is this term sheet binding between -- on
6 FirstEnergy Solutions and the companies?

7 A. Neither party would have to sign a PPA
8 as a result of this term sheet.

9 Q. Okay. Do all of these terms -- is there
10 any -- is there any written agreement that would bind
11 both parties to incorporate these terms into the PPA?

12 A. Not that I'm aware.

13 Q. Is there any oral agreement?

14 A. Not that I'm aware.

15 Q. Will the Public Utilities Commission of
16 Ohio have a right to audit FES under this program?

17 A. Not that I'm aware.

18 Q. And will the ratepayers have a right of
19 audit?

20 A. I don't know those answers.

21 Q. Okay. Did the EDU team discuss at any
22 time during the negotiations or after the
23 negotiations the possibility of imposing a cap on the
24 ratepayers' responsibility for costs under this

1 proposed PPA?

2 A. No.

3 Q. Why not?

4 A. We just didn't.

5 Q. Do you agree with me, though, that such
6 a cap could limit the risk to ratepayers?

7 MR. LANG: Objection.

8 THE WITNESS: Yeah, I don't know.

9 BY MR. SETTINERI:

10 Q. You don't know, okay. So if you're
11 buying a car and you go to Saturn, you have -- if you
12 bought a Saturn, you have a set price, correct?

13 A. Can't get one anymore, but, okay.

14 Q. I'm getting to the point here that --
15 just so we have an understanding, that when there is
16 a cap, that can be to the benefit of the ratepayers,
17 correct?

18 MR. LANG: Objection.

19 THE WITNESS: The characterization that
20 a cap on one side would not come without compromising
21 on another leads me to believe that a cap in and of
22 itself wouldn't necessarily have provided a better
23 result.

24 BY MR. SETTINERI:

1 Q. Okay. And when you say on one side or
2 the other, are you referring back to reliability and
3 unit retirements, things of that nature?

4 A. No. I'm referring to a negotiated
5 agreement that picking -- if other provisions were
6 added, that becomes subject to negotiation. So if
7 that was added, I can't say what the contract would
8 have looked like with that as a provision.

9 Q. Thank you. Go to Page 5 of your
10 testimony, Line 5. Bear with me. Actually I'm going
11 to switch that up to be -- let's look at Line 20,
12 Page 5. You used the phrase "improve the value to
13 the companies." What value are you referring to
14 there?

15 A. The -- the benefits are in the later
16 portion of the term; so this was referring to having
17 a term long enough that those credits to customers
18 would be maximized.

19 Q. Okay. This is the value to the
20 companies; so it said value to the companies. What
21 value are you referring to there?

22 A. Well, the companies derive value from --
23 from the economic conditions of the region, from
24 stabilizing rates.

1 Q. Okay. And if those projections are
2 incorrect and actually represent losses, it could go
3 the other way, correct?

4 A. What could go the other way?

5 Q. The economic conditions to the region.

6 A. It still may provide some stabilization
7 effect; so I can't answer that.

8 Q. What about the value to the customers,
9 what do you refer to there?

10 A. The customers benefit by stabilized
11 rates, the \$2 billion, economic benefits to the
12 region.

13 Q. And economic benefits to the region are
14 a result of the plants staying open, correct?

15 A. That certainly is part of it, yes.

16 Q. What about -- you have the phrase, "A
17 fifteen-year term was viewed as sufficiently long to
18 provide substantial benefits to the companies'
19 customers..." What do you mean by "substantial" in
20 that phrase at Line 22?

21 A. Well, the \$2 billion, of course, is --
22 is the significant portion of substantial.

23 Q. And that's over a 15-year period,
24 correct?

1 A. Correct.

2 Q. Anything else?

3 A. Well, all the benefits that -- that are
4 provided remain, but certainly that \$2 billion is a
5 substantial part of it.

6 Q. What other benefits, though? You
7 mentioned just other benefits.

8 A. Well, the economic benefits.

9 Q. And that's the economic benefits of the
10 plant staying open, correct?

11 A. Correct.

12 Q. Any others?

13 A. Well, reliability benefits of the plants
14 being there.

15 Q. Okay. You did a net present value
16 calculation for your spreadsheet, correct, that's
17 attached to your testimony?

18 A. Correct.

19 Q. What interest rate did you use to
20 present value?

21 A. I don't recall.

22 Q. Above 10 percent?

23 A. I don't know the number.

24 Q. Where would that number -- where would

1 that number be found?

2 A. I don't know if it's in the spreadsheet.
3 I just don't know the number.

4 Q. Would it have been in any workpapers
5 that you produced or worked on?

6 A. It may be.

7 Q. Did you use different -- how did you
8 come up with your present value interest rate?

9 A. I don't know how it was reached.

10 Q. Did you -- you created the spreadsheet,
11 correct?

12 A. No. It was created on my behalf,
13 though.

14 Q. All right. But you don't know how the
15 net present value was calculated on the spreadsheet
16 that's attached to your testimony as JAR-1?

17 A. I don't know what percentage was used
18 for it.

19 Q. Okay. Did you -- did you have -- did
20 you create this spreadsheet yourself?

21 A. No.

22 Q. Who created this spreadsheet?

23 A. Joanne Savage.

24 Q. Does she work for you?

1 A. She was part of the EDU team.

2 Q. Does she work for you?

3 A. No.

4 Q. Did you ask her to create this
5 spreadsheet?

6 A. Yes.

7 Q. Do you have any opinion as to the
8 reasonableness of the net present value numbers shown
9 in your spreadsheet?

10 A. I feel they're reasonable.

11 Q. How do you know if you don't know the
12 interest rate that was used?

13 A. I believe the interest rate that was
14 used was appropriate even though I don't know it.
15 Others -- others with expertise participated in this
16 as well.

17 Q. As of today, you have never reviewed the
18 interest rate that was used in this spreadsheet for
19 net present value calculation?

20 MR. LANG: Objection; I think it's asked
21 and answered. Let's move along, Mike.

22 MR. SETTINERI: I'm trying to, but I'd
23 like an answer to that question, please.

24 MR. LANG: Let's move along. The

1 afternoon's running by.

2 MR. SETTINERI: I'd like an answer to
3 that question, please.

4 MR. LANG: He's already said he's not
5 aware of what the interest rate is. Let's move
6 along.

7 MR. SETTINERI: That's not what I asked.
8 I'd like the question reread, please.

9 (Record read back as requested.)

10 THE WITNESS: I -- I have seen it, I
11 just don't recall what it is.

12 BY MR. SETTINERI:

13 Q. When did you see it?

14 A. When these numbers were being developed,
15 I was aware of it, I just don't recall the number.

16 Q. Thank you. That's what I wanted to
17 know.

18 What will be the impact on customers in
19 the first three years if you're assuming the
20 projections in your spreadsheet on over and under
21 recovery are correct?

22 A. They would be a net cost to customers.

23 Q. Okay. So assuming a customer is in a
24 service territory for the first two years and then

1 leaves the service territory, would that customer
2 receive the benefit under this program?

3 A. Potentially.

4 Q. What would that benefit be?

5 A. There are other economic benefits to the
6 state, to the region. I can't be certain where the
7 customer was, where they went.

8 Q. Okay. How does FES benefit under this
9 PPA?

10 A. I don't know.

11 Q. Was that discussed amongst the EDU team
12 members?

13 A. Only to the extent that we recognized
14 that the units were at risk early on, but we
15 didn't -- we didn't discuss anything beyond that.

16 Q. And you may have answered this
17 previously, but what -- who will be responsible for
18 capacity bids and energy offers day-ahead and
19 real-time for these units if the PPA is approved?

20 MR. LANG: Objection; asked and answered
21 several times. Do you have any new questions, Mike?

22 MR. SETTINERI: I'll take your
23 representation that's been asked.

24 No. Let me check here for a second.

1 Yeah, I do have a question.

2 BY MR. SETTINERI:

3 Q. Did you draft your testimony,
4 Mr. Ruberto?

5 A. I did.

6 Q. Did you write it yourself, all of it?

7 A. Generally, but others certainly have had
8 some input.

9 Q. Is it fair to say, did you write the
10 bulk of your testimony?

11 A. I did.

12 Q. When did you write your testimony?

13 A. Around July of last year.

14 Q. What part of July?

15 A. I don't recall.

16 Q. Was it before you went on vacation?

17 A. Yes.

18 Q. Is that yes?

19 A. Yes. Some of it may have been while I
20 was on vacation. I did do work while I was on
21 vacation.

22 Q. Let me check here to see if I have any
23 other questions. Just a concern. Do you know the
24 date on when you went on vacation?

1 A. It would have been Monday, late July,
2 through Friday, it would have been somewhere around
3 the 27th, 28th, whatever that Monday is, starting
4 that day. I don't remember what that Monday is.

5 Q. All right. And you rolled into the
6 first of the August -- into the first weekend in
7 August then, would that be right?

8 A. If -- I guess that probably is about
9 right, yes.

10 Q. Okay. All right.

11 MR. SETTINERI: I appreciate everyone's
12 patience. I have no further questions for the public
13 session.

14 MR. LANG: All right. We're going to
15 take a break now. I'm curious, are there -- are
16 there other folks -- I think Rebecca Hussey had -- I
17 think you had chimed in in the morning. Is there
18 anyone else that has public questions?

19 MS. HUSSEY: Jim, this is Rebecca, I
20 just have probably five minutes' worth.

21 MR. LANG: Okay. I think the goal here
22 is to -- we'd actually be able to get this done by
23 5:30 so that the witness could head home, which seems
24 like it could be an effort at this point, but, I

1 mean, I think we're going to try to stay on that
2 track and encourage everybody to do that. Five
3 minutes, 10 minutes, what do you think?

4 MS. DUNN: So 10 minutes.

5 MR. LANG: If we could take a 10-minute
6 break.

7 MR. SOULES: Does it make sense to
8 finish up the public session now since people are
9 going to have to call in to a separate conference
10 line?

11 MR. LANG: That's a good point.

12 MS. DUNN: Rebecca, if you promise you
13 have five minutes.

14 MS. HUSSEY: I'm actually really good
15 about that; so, yes, I only have five minutes.

16 MR. LANG: That does make sense. Let's
17 go ahead and do that.

18 - - -

19 CROSS-EXAMINATION

20 BY MS. HUSSEY:

21 Q. Okay. Thank you very much.

22 Mr. Ruberto, could you please turn to
23 Page 4, Line 7, of your testimony?

24 A. Sure.

1 Q. And there you testify that you evaluated
2 the proposed transaction based in part on retail
3 system reliability, which I believe you talk about in
4 depth more on Page 8; is that correct?

5 A. Yes.

6 Q. Okay. Is it your position that the
7 system will not be reliable if the PUCO does not
8 approve FirstEnergy's ESP application or if it
9 modifies the ESP such that it does not include Rider
10 RRS?

11 A. No.

12 Q. Okay. And I believe you discussed with
13 Mr. Olikier earlier what would happen under the
14 proposed transaction if a capital expenditure is
15 required for facility operations. Do you remember
16 that conversation?

17 A. I do.

18 Q. Okay. And you mentioned a section in
19 the term sheet which would allow for certain expenses
20 to occur outside of the agreement. Is the section
21 which you were referring Section 12 of the term
22 sheet?

23 A. Okay. I'm on Section 12.

24 Q. Okay. I'm asking if you're referring to

1 the procedure outlined on Page 4 of Section 12.

2 A. The procedure for reviewing the capital
3 expenditures? I'm not sure I understand what you're
4 asking me.

5 Q. So you -- you had a conversation about,
6 well, if certain expenditures would be occurring
7 outside of what the proposed transaction is, that
8 there was a process for essentially removing them or
9 not having them be a part of it. Is this the section
10 for the procedure to which you were alluding?

11 A. I don't recall what you're referring to.
12 This -- this section refers to the reviewing of the
13 capital plan.

14 Q. Okay. And as I understood it in the
15 hypothetical that he posed, that Mr. Olikier posed
16 earlier, FES might believe that an additional
17 environmental control would be needed on Sammis. Is
18 that your recollection of what the hypothetical said?

19 A. I don't remember, but go ahead.

20 Q. Okay. Sure. Okay. Say, for instance,
21 that that is the situation and FES thinks that an
22 additional environmental control is needed.

23 If FirstEnergy and the companies -- or
24 excuse me, FirstEnergy Solutions and the companies do

1 not agree and the parties go through the process as
2 outlined under Section 12, if at the end of that
3 process FirstEnergy still does not agree that the
4 capital expenditures should be made and FirstEnergy
5 Solutions goes forward with it, what payment would
6 FirstEnergy be responsible for under the terms of the
7 proposed transaction?

8 A. When you say "FirstEnergy," you mean the
9 companies? You're referring to the companies?

10 Q. Yeah, sorry.

11 A. The companies would be responsible for
12 the capacity payment that includes that capital
13 expenditure regardless of whether we -- we both
14 agreed. If the capital expenditure occurs, then it
15 will be factored into the cost calculation.

16 Q. Okay. And if you don't mind, I'd like
17 to change the scenario just a bit. So say the
18 initial situation is the same and FES believes that
19 an additional environmental control is needed on
20 Sammis. If the companies voice no concern about the
21 proposed capital expenditure, then under the proposed
22 transaction would the companies automatically be
23 responsible for the entirety of the expenditure?

24 A. When you say "responsible for the

1 entirety of the expenditure," can you explain what
2 you mean by that?

3 Q. Sure. Would they strictly be
4 responsible for the capacity payments that you talked
5 about earlier? Would they just -- would they be
6 responsible for the entire capital expenditures?
7 What would it be?

8 A. They -- the companies are only
9 responsible for the capacity payment calculation on
10 capital; so --

11 Q. Okay.

12 A. -- FES pays for the capital
13 expenditures. And during the term of the PPA, the
14 companies would pay their return on that component of
15 that expenditure's depreciation that falls within the
16 term of the agreement, but FES fronts all the money
17 and FES is responsible for that.

18 Q. Okay. Thanks for that clarification.

19 And you would agree that FirstEnergy
20 would not be taking title to Davis-Besse, Sammis, or
21 FES's OVEC entitlement under the proposed
22 transaction, correct?

23 A. Correct.

24 Q. Under Section 13 of the term sheet

1 covering Contract Price, FirstEnergy is also
2 responsible for a depreciation payment to FES each
3 month; is that correct?

4 A. Correct.

5 Q. And I believe that you mentioned to
6 Mr. Settineri that the reasonable return on
7 investment capital that you testified to on Page 3,
8 Line 18, is reflected in the Capacity Payment portion
9 of Section 13; is that correct?

10 A. Jumped me too fast. Page 3 of my
11 testimony, Line --

12 Q. Yes.

13 A. Line?

14 Q. 18.

15 A. Line 18.

16 Q. Plus a reasonable return on investment
17 capital.

18 A. Correct.

19 Q. And you said that that is reflected in
20 the Capacity Payment portion --

21 A. Correct.

22 Q. -- is that correct?

23 A. Yes.

24 Q. Okay. And immediately following the

1 Capacity Payment section, there's a tax reimbursement
2 payment proposal included.

3 If you could just clarify for me: Is it
4 your understanding that the tax reimbursement payment
5 would require FirstEnergy to reimburse FES for any
6 taxes resulting from the income FES received pursuant
7 to the capacity payment?

8 A. Yes.

9 Q. Okay. So then kind of bring this full
10 circle: If the ESP is approved, including Rider RSS,
11 then under the proposed transaction consumers would
12 have to pay for taxes resulting -- or reimburse FES
13 for taxes resulting from the income received pursuant
14 to the capacity payment that they had to make?

15 A. Correct.

16 Q. Okay. Thank you. That's all the
17 questions I have.

18 MR. LANG: All right. I think at this
19 time we'll take a 10-minute break, and then when we
20 come back we'll dial in on the confidential line that
21 was provided.

22 And, of course, if you have not signed
23 the confidentiality provisions of the nondisclosure
24 agreement, please do not dial in.

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MS. DUNN: We'll come back at 3:20.

(Recess taken.)

(Confidential Portion Excerpted.)

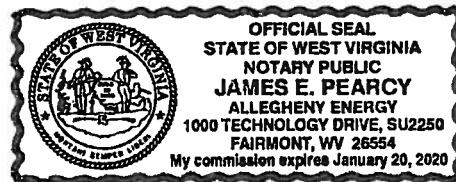
1 State of Ohio :
2 County of : SS:
3 :

4 I, Jay A. Ruberto, do hereby certify
5 that I have read the foregoing transcript of my
6 deposition given on Thursday, January 8, 2015; that
7 together with the correction page attached hereto
8 noting changes in form or substance, if any, it is
9 true and correct.

10 
Jay A. Ruberto

11 I do hereby certify that the foregoing
12 transcript of the deposition of Jay A. Ruberto was
13 submitted to the witness for reading and signing;
14 that after he had stated to the undersigned Notary
15 Public that he had read and examined his deposition,
16 he signed the same in my presence on the 19th day of
17 January, 2015.

18 
19 Notary Public



20
21 My commission expires January 20th, 2020.

22 - - -
23
24

ERRATA SHEET

Please do not write on the transcript. Any changes in form or substance you desire to make should be entered upon this sheet.

TO THE REPORTER:

I have read the entire transcript of my deposition taken on the 8th day of January, 2015, or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the signature page and authorize you to attach the same to the original transcript.

Page	Line	Change	Reason
25	23	"shorter" should be "shoulder"	Transcribed incorrectly
58	2	"projects" should be "projections"	Transcribed incorrectly
116	13	the period(".") should be dashes "--"	Spoken as an incomplete statement rather than a sentence as shown
141	24	Remove the comma after "Agreed"	Transcribed incorrectly
169	21	"plant" should be "planned"	Transcribed incorrectly
<div style="background-color: black; height: 30px; width: 100%;"></div>			

Date 1/19/2015 Signature: 


1 CERTIFICATE

2 State of Ohio :
3 County of Muskingum : SS:

4 I, Carolyn D. Ross, Registered
5 Professional Reporter and Notary Public in and for
6 the State of Ohio, duly commissioned and qualified,
7 certify that the within named Jay A. Ruberto was by
8 me duly sworn to testify to the whole truth in the
9 cause aforesaid; that the testimony was taken down by
10 me in stenotype in the presence of said witness,
11 afterwards transcribed upon a computer; that the
12 foregoing is a true and correct transcript of the
13 testimony given by said witness taken at the time and
14 place in the foregoing caption specified and
15 completed without adjournment.

16 I certify that I am not a relative,
17 employee, or attorney of any of the parties hereto,
18 or of any attorney or counsel employed by the
19 parties, or financially interested in the action.

20 IN WITNESS WHEREOF, I have hereunto set
21 my hand and affixed my seal of office at Columbus,
22 Ohio, on this 12th day of January, 2015.

23 
24 Carolyn D. Ross, Registered
Professional Reporter and
Notary Public in and for the
State of Ohio.

My commission expires April 3, 2019.
(CDR-77435)

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/20/2015 12:17:03 AM

in

Case No(s). 14-1297-EL-SSO

Summary: Deposition (Public) of Jay A. Ruberto electronically filed by Mr. Tony G. Mendoza
on behalf of Sierra Club