BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and Ms. Megan Addison, Attorney Examiners, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-A, Columbus, Ohio, called at 9 a.m. on Tuesday, September 15, 2015.

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VOLUME XI

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1 Tuesday Morning Session,
2 September 15, 2015.
3 - - -
4 EXAMINER PRICE: Let's go back on the
5 record.
6 Good morning. The Public Utilities
7 Commission has set for hearing at this time and place
8 Case No. 14-1297-EL-SSO, being in the Matter of the
9 Application of the Ohio Edison Company, The Cleveland
10 Electric Illuminating Company, and The Toledo Edison
11 Company for Authority to Provide for a Standard
12 Service Offer Pursuant to Revised Code 4928.143 in
13 the form of an Electric Security Plan.
14 My name a Greg Price. With me is Megan
15 Addison and Mandy Chiles. We are the attorney
16 examiners assigned to preside over today's hearing.
17 Let's just dispense with the appearances
18 this morning. We will continue with the testimony of
19 Mr. Moul.
20 Mr. Moul, I will remind you that you are
21 still under oath, and we are still in the public
22 session.
23 Where did we leave off? Ms. Fleisher.
24 - - -
25

1 DONALD MOUL
2 being previously duly sworn, as prescribed by law,
3 was examined and testified further as follows:
4 CROSS-EXAMINATION (Continued)
5 By Ms. Fleisher:
6 Q. Good morning, Mr. Moul.
7 A. Good morning.
8 Q. And thank you for coming back. Just to
9 refresh everyone's memory from yesterday, so between
10 2012 and 2015, you served as the vice president of
11 commodity operations at FirstEnergy Solutions,
12 correct?
13 A. Yes.
14 Q. And FES makes money by selling
15 electricity; is that correct?
16 A. At the highest level, yes.
17 Q. And can you turn to your direct testimony
18 at page 6.
19 A. All right. I'm on page 6.
20 Q. And can you look to lines 9 and 10.
21 A. Yes.
22 Q. Your discussion of resource diversity in
23 your testimony focuses only on fuel and asset
24 diversity, correct?
25 A. Yes.

1 Q. So it doesn't include demand side
2 resources, only supply side resources, correct?
3 A. Yes.
4 Q. Electricity demand is a factor in
5 determining energy and capacity prices, correct?
6 A. In the current market today, yes, demand
7 side can affect load. So as such, it has an impact
8 on prices.
9 Q. Is it correct that FirstEnergy submitted
10 an energy efficiency plan to the PUCO in 2012?
11 A. I don't know.
12 MS. FLEISHER: May I approach, your
13 Honor?
14 EXAMINER PRICE: You may.
15 MS. FLEISHER: If I can get this marked
16 as ELPC Exhibit 7.
17 EXAMINER PRICE: So marked.
18 (EXHIBIT MARKED FOR IDENTIFICATION.)
19 MS. FLEISHER: Could we go off the
20 record?
21 EXAMINER PRICE: We may.
22 (Discussion off the record.)
23 EXAMINER PRICE: Let's go back on the
24 record.
25

1 Q. (By Ms. Fleisher) Mr. Moul, is this
2 document labeled as Cleveland Electric Illuminating
3 portfolio plan filed with the Commission in document
4 12-2190?
5 MR. LANG: Objection, your Honor.
6 EXAMINER PRICE: Grounds?
7 MR. LANG: He already answered the
8 question he's not familiar with any portfolio plan
9 that was filed by the companies. There is no
10 foundation laid that this witness has any familiarity
11 with a portfolio plan. Simply asking him whether
12 that document says that on the title doesn't
13 establish either foundation for him to ask him
14 questions about it or establish authenticity of the
15 document itself.
16 EXAMINER PRICE: She also misstated the
17 case number.
18 MS. FLEISHER: My apologies.
19 EXAMINER PRICE: That's okay.
20 Ms. Fleisher, response?
21 MS. FLEISHER: If you'll give me a little
22 leeway, your Honor, I'll work on foundation.
23 EXAMINER PRICE: On everything except the
24 case number.
25 MS. FLEISHER: Yes, certainly, your

1 Honor. Sorry, it's 12-2191.
2 Q. (By Ms. Fleisher) Mr. Moul, are you aware
3 that Ohio has state requirements for energy
4 efficiency and peak demand reduction?
5 MR. LANG: Objection, your Honor.
6 EXAMINER PRICE: Grounds?
7 MR. LANG: Before she can ask him whether
8 he's aware of something she has to establish it's a
9 fact in the record, which it is not. It's assuming
10 facts not in evidence.
11 EXAMINER PRICE: I don't think it's a
12 fact, per se. I mean, it's a legal requirement. She
13 can ask if he's aware of a legal requirement.
14 MR. LANG: To that extent, objection. It
15 is calling for a legal conclusion.
16 EXAMINER PRICE: Overruled.
17 You can answer if you know.
18 A. Just in general terms as any other Ohio
19 consumer, I know that there are energy efficiency
20 requirements for the state.
21 Q. Okay. And are you aware that those
22 require utilities in the state to achieve certain
23 percentage reductions in energy usage and in peak
24 demand within their service territory?
25 A. As I said, only at the highest level as a

1 consumer. It's not something that I've dealt with.
2 I've not seen this document before.
3 Q. Okay. And if you can turn to the
4 numbered page 1.
5 MR. LANG: Objection, your Honor.
6 EXAMINER PRICE: Grounds?
7 MR. LANG: Still no foundation
8 established with this witness and, in fact, quite the
9 opposite that this witness has no knowledge of this
10 document and, therefore, cannot testify.
11 EXAMINER PRICE: Sustained.
12 MS. FLEISHER: Your Honor, I'd like to
13 establish he doesn't know these things, if that's
14 okay.
15 EXAMINER PRICE: I think you can ask him
16 that generally without asking the numbers. Again,
17 it's unfair to ask him a question about a document
18 that he's never seen before, and he has no foundation
19 for being able to testify about it.
20 MS. FLEISHER: Okay. Certainly, your
21 Honor.
22 Q. (By Ms. Fleisher) Are you aware of the
23 amount of energy efficiency and peak demand reduction
24 that FirstEnergy is required to achieve in its
25 service territory under the Ohio State standard?

1 A. I don't recall the specific amounts.
2 Q. Were you ever aware of the specific
3 amounts and you've forgotten them or you don't know?
4 A. As I said, the only thing that I know
5 about the program and the requirements is what I've
6 read potentially in the newspaper. It's not specific
7 numbers that I deal with on a regular basis.
8 Q. And did you play any role in the
9 negotiation of the proposed PPA?
10 A. From its inception, I was part of the
11 discussion of what we could potentially offer to the
12 companies. I was not part of the FES negotiating
13 team, although, I had some conversations with
14 Ms. Noewer. That's about the extent of it.
15 Q. And to the extent you did participate,
16 did you ever discuss with anyone on the FES team or
17 representing FES about the possibility of considering
18 demand side resources to provide resource diversity?
19 A. No, and the reason we didn't discuss that
20 is because demand side is a retail product, and it's
21 not supply. While it is an important tool to help
22 control and shave load for transmission operators at
23 times of peak demand, it doesn't generate megawatts.
24 So we were really focusing on baseload generation
25 assets that provide fuel diversity that provide

1 reactive support to the system when needed, voltage
2 support in the local areas, particularly in this case
3 in the ATSI zone which, you know, right now is one of
4 the largest importers in the whole PJM territory
5 based on the second quarter market monitor's report
6 for PJM, over 10.6 million megawatt hours imported
7 into the zone. So generation is more important for
8 reliability to the ATSI zone than peak demand
9 reduction. So we didn't include that as part of what
10 we offer.
11 MS. FLEISHER: Your Honor, I'd move to
12 strike everything after "No."
13 EXAMINER PRICE: Sustained -- or granted.
14 MS. BOJKO: It's difficult to hear the
15 witness. I don't know if the microphone is not
16 working.
17 EXAMINER PRICE: It is.
18 THE WITNESS: I can move closer.
19 EXAMINER PRICE: Just project. Don't
20 move closer. It won't work.
21 THE WITNESS: Fair enough.
22 EXAMINER PRICE: But you do consider
23 energy efficiency and peak demand reduction programs
24 a part of asset diversity?
25 THE WITNESS: Not of asset diversity

1 but --
2 EXAMINER PRICE: Resource diversity.
3 THE WITNESS: I'm specifically speaking
4 of supply resources. I think they're a valuable tool
5 on the demand side. I think they have their place,
6 but I don't consider them to be supply.
7 EXAMINER PRICE: But you're here
8 testifying today on behalf of the electric utilities;
9 isn't that correct?
10 THE WITNESS: I'm testifying on behalf of
11 the companies, yes.
12 EXAMINER PRICE: Okay.
13 Q. (By Ms. Fleisher) And in the course of
14 your participation in the negotiation of the proposed
15 transaction, did you ever discuss with anyone
16 representing the companies, including on the EDU
17 team, the potential for using demand side resources
18 to provide resource diversity?
19 A. No.
20 Q. And are you aware that on September 24th,
21 2014, FirstEnergy filed a document with the PUCO
22 amending its energy efficiency plan?
23 A. No.
24 Q. And are you aware that this amendment
25 eliminated a number of the energy efficiency programs

1 offered by the company?
2 MR. LANG: Objection, your Honor. I was
3 involved in that proceeding. It did not eliminate
4 the programs. It suspended them. So it
5 mischaracterizes what's filed by the companies.
6 EXAMINER PRICE: I'm going to sustain
7 your objection on different grounds. If he's not
8 aware it was filed, he's certainly not aware what the
9 contents might be.
10 Q. And does your testimony or the companies'
11 current ESP proposal contain any analysis of how
12 command side resources might be able to provide
13 resource diversity?
14 A. My testimony does not. I'm not sure of
15 every aspect of the ESP filing by the companies.
16 Q. PJM allows utilities to bid -- or allows
17 market participants to bid energy efficiency
18 resources into the capacity auctions, correct?
19 A. Yes, that's correct.
20 Q. And, likewise, for demand response
21 resources?
22 A. Yes, that's correct.
23 Q. Likewise, for renewable resources?
24 A. Yes.
25 Q. And I think you've testified that you're

1 aware of PJM's new capacity performance rules?
2 A. Yes.
3 Q. And are you aware that these rules allow
4 renewables and demand side resources to bid into
5 capacity markets as aggregate resources?
6 A. Yes.
7 Q. And those aggregate resources qualify as
8 capacity performance products?
9 A. Yes.
10 Q. And are you aware that any capacity
11 performance resource that fails to perform during
12 emergency hours will be subject to significant
13 penalties?
14 A. Yes, I am.
15 Q. Have you quantified what percentage of
16 coal Ohio would have to have in order to have
17 sufficient resource diversity?
18 A. No, I've not done a specific
19 quantification because it really varies by region.
20 There is no one right answer on the right percentage
21 of different asset. For example, solar is much more
22 prevalent in areas with a lot of sunshine, right,
23 because there is an advantage in those type of areas.
24 Similarly, the state of Ohio has a fair amount of
25 coal generation, and right now in the marketplace,

1 you've got close proximity of the Northern App. coal,
2 which is relatively inexpensive and you've got the
3 transportation advantage of the Ohio River, which is
4 a much more economic way to deliver. So regionally
5 you would have more of a bias towards coal based on
6 what was built previously and how it fairs in the
7 marketplace today.
8 Q. Could Ohio still have sufficient resource
9 diversity if it had lower percentage of coal
10 generation than it has now?
11 A. I think a reduction in the amount of coal
12 generation right now would put more reliance on
13 natural gas. And as I've stated earlier, there are
14 some strengths with natural gas based on its low
15 commodity price right now, but there are also
16 vulnerabilities associated with the just-in-time
17 deliverability of its fuel source. So reducing our
18 percentage of coal I think makes us more susceptible
19 to too much reliance on natural gas. Similarly with
20 nuclear, it would be -- a reduction in nuclear would
21 put more reliance on natural gas and I think would
22 expose Ohio to greater volatility based on the
23 commodity price of gas.
24 EXAMINER PRICE: When you say our
25 percentage of coal, do you include out-of-state

1 resources that may serve Ohio, like Bruce Mansfield?
2 THE WITNESS: Not specifically in that
3 discussion, but actually that's a very good point
4 because there was transmission built to serve the
5 Cleveland load distribution -- or the LDA from the
6 Bruce Mansfield plant pending the closure of the Lake
7 plants around Cleveland.
8 EXAMINER PRICE: But there is no
9 commitment in this proceeding that you won't close
10 Bruce Mansfield?
11 THE WITNESS: As part of your portfolio,
12 each plant stands on its own. So whether this
13 proposal is passed or isn't passed really doesn't
14 speak to any of the other assets in our portfolio.
15 EXAMINER PRICE: Yesterday you testified
16 that Davis-Besse and Sammis were in the middle of the
17 pack in terms of financial uncertainty. Is Bruce
18 Mansfield in the middle of the pack as well?
19 THE WITNESS: I don't recall where the
20 different order was. It wasn't our worst and it
21 wasn't our best. That's the best I can tell you.
22 EXAMINER PRICE: How about Perry nuclear
23 power plant?
24 THE WITNESS: I don't recall where it was
25 in the stack.

1 EXAMINER PRICE: Do you have any
2 guarantees you won't close Perry nuclear power plant
3 even if the Commission approves this PPA?
4 THE WITNESS: As I said, each of the
5 plants stands on its own. Each of the plants has
6 different costs and different revenues based on where
7 they are in the marketplace. There is no guarantees
8 for any of the plants in our competitive fleet in the
9 marketplace right now. Based on what I know right
10 now, I don't necessarily see any large capital
11 expenditures that would challenge Perry right now.
12 EXAMINER PRICE: If Perry nuclear power
13 plant were to be retired, Ohio would lose some number
14 of megawatts of carbon free generation; isn't that
15 true?
16 THE WITNESS: Yes.
17 EXAMINER PRICE: And nothing in this PPA
18 guarantees that Perry nuclear power plant will stay
19 in place, will not be retired?
20 THE WITNESS: That's correct.
21 EXAMINER PRICE: Sorry for the tangent,
22 Ms. Fleisher.
23 MS. FLEISHER: No problem, your Honor.
24 Q. (By Ms. Fleisher) Speaking of retirement
25 of the plants, if FirstEnergy is not granted the

1 ability to enter into the proposed transaction or
2 rider RRS, however you want to put it, and decides to
3 retire any of the plants, would FirstEnergy if
4 offered by PJM enter into a reliability must-run
5 contract for the plants?
6 A. We would have to evaluate that. An offer
7 for reliability must-run is a voluntary offer, and it
8 would depend upon the conditions that were laid out.
9 Q. If FirstEnergy -- or if FES were able to
10 recover the fully-loaded costs of the plants, would
11 FES be willing to enter into an RMR contract?
12 A. As I said, it would depend on the
13 structure, but an RMR contract is really a stopgap
14 measure until transmission can be built. So it's a
15 year, three years, depends on how long it takes to
16 build transmission to compensate for the plant that's
17 shutting down. And my experience with RMR has been
18 with the Lake plants which was based on the PJM
19 tariff under which there was an allowance for only
20 $2 million in capital investment. So you end up
21 having those plants limp along and really don't
22 provide the same level of reliability that a plant
23 that's earning a good return and getting reinvestment
24 in it gets.
25 So stopgap measure is kind of the way I

1 think of an RMR agreement. We might consider it in
2 the time that it allows transmission to be built, but
3 it's nowhere near the benefit that the proposed
4 transaction provides to customers. There's a cost
5 for that transmission bill that gets passed along to
6 customers.
7 MS. FLEISHER: Move to strike the answer.
8 I had asked if they were able to recover their
9 fully-loaded cost when they enter into an RMR. I
10 don't think he identified any -- he said it depends
11 on the circumstances but without identifying any
12 circumstances that would develop.
13 EXAMINER PRICE: Could I have the
14 question back again.
15 (Record read.)
16 MR. LANG: Your Honor, he was explaining
17 how the hypothetical is incorrect for the recovery of
18 the fully-loaded costs. It was specifying his
19 experience is they only get to recover 2 million a
20 year in costs.
21 EXAMINER PRICE: I was going to comment
22 that I thought she asked a very broad and open-ended
23 question.
24 MR. LANG: I would agree.
25 EXAMINER PRICE: I don't think she does,

1 but we'll deny the motion to strike.
2 MS. FLEISHER: That's your prerogative,
3 your Honor.
4 Q. (By Ms. Fleisher) Mr. Moul, I think you
5 said it was the Lake Shore plant that you had
6 experienced --
7 A. It was actually Eastlake --
8 Q. Eastlake.
9 A. -- Lake Shore, and Ashtabula.
10 Q. And would you describe that as giving FES
11 the ability to recover its fully-loaded costs for
12 those plants?
13 A. No, I wouldn't. As I said, with only
14 $2 million in capital investment allowance and while
15 there is a structure for some return, it's only on
16 the costs that are allowed by the market monitor. So
17 it's not something that's financially advantageous
18 for FirstEnergy Solutions.
19 MS. FLEISHER: May I approach, your
20 Honor?
21 EXAMINER PRICE: You may.
22 MS. FLEISHER: Can I have this marked as
23 ELPC 8?
24 EXAMINER PRICE: So marked.
25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. (By Ms. Fleisher) Mr. Moul, is this a
2 copy of the excerpt from the PJM tariff?
3 A. While I've not seen this specific
4 document before, it looks familiar to what I've seen
5 in some of the PJM tariffs.
6 Q. And if you'll turn to the second page.
7 A. Okay.
8 Q. And obviously feel free to take a minute
9 to look at the actual text, but I'm looking at the
10 bullet point starting APIR (Avoidable Project
11 Investment Recovery Rate).
12 A. Okay.
13 Q. Below that, there's a sentence saying
14 "The amount recovered through the APIR shall not
15 exceed the actual amount of the PI, and in no event
16 shall recovery through the APIR exceed $2 million."
17 Is that correct?
18 A. Yes. That's what it says.
19 Q. And to the best of your knowledge, is
20 that what you're referring to when you said you were
21 unable to recover more than $2 million?
22 A. Yes.
23 Q. Can you turn to the fourth page. Section
24 117, "Excess Project Investment Required."
25 A. Okay.

1 Q. Is it correct that that reads "In the
2 event that a Generation Owner is informed
3 Transmission Provider pursuant to Section 113.2 that
4 a generating unit will continue operating beyond its
5 desired Deactivation Date, but such generating unit
6 cannot continue to operate without PA, as defined in
7 the APIR set forth in section 115 of this Tariff,
8 that exceeds the limit for recovery of PI specified
9 in the APIR, the Generation Owner, or its Designated
10 Agent, may file a rate with the Commission to recover
11 the PI in excess of the permissible limit for
12 recovery of the PI through the APIR"?
13 A. Are you going to go on and read the rest?
14 Q. I don't believe I need to, but if you see
15 some reason why that's relevant. Did I read that
16 correctly?
17 A. You read those sentences correctly, yes.
18 Q. And were you aware of the option of
19 recovering project investment under an RMR over and
20 above the $2 million amount in this section we
21 previously looked at?
22 A. Yes, we were aware of that capability;
23 however, it requires going to the Commission. So
24 there are more hurdles to jump through and you would
25 have to be stating you want to operate past the

1 deactivation date.
2 Q. And can you turn to the last page,
3 Section 119, "Cost of Service Recovery Rate."
4 A. Okay.
5 Q. Are you aware that there is another type
6 of RMR contract permitting recovery of a cost of
7 service recovery rate?
8 MR. LANG: Your Honor, could I inquire
9 with regard to this document? There is -- the page
10 numbers do not seem to be consecutive. If I can
11 inquire of counsel whether it's missing sections
12 between what she's cited.
13 MS. FLEISHER: Sure. Yeah, there are.
14 The full tariff is about two or three thousand pages.
15 This is the PJM Open Access Transmission Tariff. If
16 need be, I think you can take administrative notice
17 of the whole thing. If you're concerned that there
18 are relevant provisions that are omitted, you don't
19 have -- I mean, I will say I attempted to excerpt all
20 the relevant provisions for the cost recovery under
21 an RMR contract, but if you want to redirect and want
22 to bring in other ones, then you certainly may do
23 that.
24 MR. LANG: And, your Honor, I think it
25 would be fair if the Bench could take administrative

1 notice at least of the OATT -- figure out if there is
2 even a subpart of this, but take administrative
3 notice of the Open Access Transmission Tariff related
4 to the RMR agreements because I know there is. There
5 is many more pages than what's being put in front of
6 the witness.
7 EXAMINER PRICE: We will take
8 administrative notice of all of the OATT provisions
9 related to RMRs.
10 MR. LANG: Thank you, your Honor.
11 EXAMINER PRICE: At a minimal will be 115
12 through 119 inclusive.
13 MS. FLEISHER: I think I had a question
14 pending.
15 EXAMINER PRICE: Let's have the last
16 question back, please.
17 (Record read.)
18 A. Yes.
19 Q. And when you referred to the $2 million
20 cap on project investment, do you know whether that
21 pertains to the cost of service recovery rate type of
22 contract?
23 A. My understanding is that pertains to the
24 other portion of the tariff. The cost of service
25 recovery rate involves essentially filing for all of

1 your costs of service, but it also opens you up to
2 intervention and potential disallowance of those
3 costs after you have spent the dollars. So there is
4 some risk associated with that version of the RMR
5 tariff. That's why we chose the first section of the
6 tariff when we did our RMR.
7 MS. FLEISHER: Your Honor, I'd move to
8 strike everything after I think the answer was "no."
9 EXAMINER PRICE: Denied. How would that
10 work under the cost of service rate? If you've got a
11 capital investment that normally you would amortize
12 over ten years and you make the capital investment
13 and they grant recovery, what happens at the end of
14 two years when the RMR contract is up to the balance
15 of that capital investment?
16 THE WITNESS: You're kind of over my
17 skiis of knowledge of the amortization and how the
18 collection goes. We probably work with
19 Mr. Lisowski's team on laying out that foundation.
20 That's who handled the financials for us.
21 EXAMINER PRICE: Okay. That's fair.
22 Q. (By Ms. Fleisher) Returning to your role
23 in the negotiation of the proposed transaction, did
24 you ever discuss the at that time pending capacity
25 performance proposal with representatives of the

1 companies or members of the EDU team?
2 A. No. You'd have to think about the
3 timeline, right? We originally filed this in August
4 of 2014 before capacity performance was really even a
5 possibility. And actually, our original formulation
6 and discussion of this was in the first quarter of
7 2014, essentially started talking about it before the
8 polar vortex which triggered a lot of the capacity
9 performance. So it wasn't a topic of consideration
10 because it wasn't a topic at the time.
11 Q. Have you or anyone else at FES done any
12 analysis of the potential penalties for Sammis,
13 Davis-Besse, or OVEC if they were to fail to perform
14 during an emergency hour?
15 A. No. We have not done a unit-specific
16 analysis.
17 Q. Are you aware that there is an annual cap
18 on penalties?
19 A. Yes.
20 Q. And are you aware of the amount of that
21 cap or the formula for calculating it?
22 A. My recollection is one and a half times
23 the capacity revenue.
24 Q. Can you turn to your direct testimony,
25 page 3, line 4.

1 A. Okay.
2 Q. And here you're asked how market prices
3 have affected plant operations, correct?
4 A. Yes.
5 Q. And your answer is "Markets have not, and
6 are not, providing sufficient revenues to ensure
7 continued operation of the Plants"; is that correct?
8 A. Yes.
9 Q. And does this mean you think that markets
10 are not properly incentivizing investment in the
11 plants?
12 A. I think it stands on its own. It says
13 that the revenues don't ensure continued operation of
14 the plants. There is still investment in the plants,
15 but it's investment to keep the plants operating at
16 or just holding a line on their current level of
17 forced outage rates.
18 Q. And you believe that's not sufficient
19 investment.
20 A. You're mixing the two topics together.
21 Markets -- well, this kind of starts bridging into my
22 confidential. I'll try to keep it out of the
23 confidential numbers, but the plants have been
24 challenged for the last five years economically and
25 that's shown in my supplemental testimony. If

there's a point based on energy market revenue and capacity market revenue where these plants are not covering the costs that are required to keep them in the marketplace, that's what the statement about not ensuring their continued operation means.

MS. FLEISHER: Can I get that answer read back?

EXAMINER PRICE: You may.

(Record read.)

Q. So you think market prices are not assuring the plant's continued operation; is that correct?

A. Back to my testimony, it really is what's driving my statement that their future is in doubt or uncertain is because of historic low energy prices and capacity prices.

Q. Were you employed at FirstEnergy in 2007?

A. Yes.

Q. And are you familiar with FirstEnergy's position at that time on market regulation?

A. No.

MR. LANG: Sorry, your Honor. Could I back up to two questions ago and have the question read and the answer?

EXAMINER PRICE: Yes, you may.

1 (Record read.)
2 MR. LANG: I just want to make sure by
3 FirstEnergy I think that's been defined for purposes
4 of this hearing as Ohio Edison, CEI, and Toledo
5 Edison. I think the witness may have misheard the
6 question.
7 Q. (By Ms. Fleisher) Apologies. If we could
8 reask the question.
9 Were you employed within the FirstEnergy
10 Corp. family of companies in 2007?
11 A. Thanks for the clarification. Yes, I
12 was, and specifically I was a FENOC employee in 2007.
13 Q. And are you familiar with the position
14 that FirstEnergy Corp. took regarding market
15 regulation of generation at that time?
16 A. No.
17 MS. FLEISHER: May I approach, your
18 Honor?
19 EXAMINER PRICE: You may.
20 MS. FLEISHER: If I can get this marked
21 as ELPC 9.
22 EXAMINER PRICE: It will be so marked.
23 (EXHIBIT MARKED FOR IDENTIFICATION.)
24 Q. This document at the top says "Ohio State
25 Senate Energy and Public Utilities Committee Witness

1 Form"?
2 MR. LANG: Objection, your Honor.
3 EXAMINER PRICE: Grounds?
4 MR. LANG: Having him read the document
5 doesn't identify his knowledge of the document. He's
6 testified at this time period he was a FENOC
7 employee. He wasn't familiar with this material,
8 and, your Honor, on day 4 of the testimony in the
9 morning, and I was suspecting this may come back,
10 pages 695 through 96 of the transcript where you
11 stated and ruled that this document and documents of
12 this sort were not relevant to this proceeding, which
13 they are not. So objection for lack of foundation
14 and relevance, and on the relevance ground alone, I
15 think we can short circuit any further examination
16 and move on to the next topic.
17 EXAMINER PRICE: Ms. Fleisher.
18 MS. FLEISHER: Certainly, your Honor. I
19 believe that discussion and ruling was with respect
20 to another witness. Mr. Moul is in his testimony
21 taking a position about market regulation of
22 generation. We can get to this is a
23 self-authenticating document. It's certified as a
24 public record. It's a statement of Tony Alexander,
25 representative of FirstEnergy Corp., so I'm certainly

1 entitled to impeach with the statements of
2 FirstEnergy.
3 MR. OLIKER: Your Honor, I would add that
4 I believe the objection that was sustained was
5 regarding how legislation should proceed, not on the
6 policy statements made by Mr. Alexander regarding
7 market forces.
8 EXAMINER PRICE: I believe what our
9 ruling was was that circumstances have changed since
10 2007, and in light of the changed circumstances,
11 whatever the company did or didn't say in 2007 has no
12 probative value in this proceeding. Sustained.
13 MR. LANG: Thank you, your Honor.
14 MS. FLEISHER: Your Honor, I just want
15 to --
16 EXAMINER PRICE: Make a proffer?
17 MS. FLEISHER: Yes.
18 EXAMINER PRICE: You may.
19 MS. FLEISHER: Okay. I'd like to say
20 that this is -- I think -- I'm happy to debate the
21 authenticity of the document, but I don't think there
22 can be any doubt about it. It's certified under the
23 Ohio rules. I'd like to note that it is a party
24 admission by Tony Alexander, the president and chief
25 executive officer of FirstEnergy in 2007. I'd also

1 like to note that Mr. Moul's testimony regarding the
2 treatment of markets relates to a transaction that
3 would govern several FirstEnergy's plants for 15
4 years during which time market conditions may change.
5 And so I think what we're dealing with here is not
6 just -- it's not just about the Commission deciding
7 what to do with market regulation at this point in
8 time. It's about over the long term. And so to that
9 extent, I think FirstEnergy's position as to how to
10 handle the long-term regulation of markets is
11 certainly relevant --
12 EXAMINER PRICE: Now you're arguing
13 relevancy. You should make a proffer. A proffer
14 would be the statements he's making today conflict
15 with the statements made by Tony Alexander in 2007.
16 MS. FLEISHER: Yes.
17 EXAMINER PRICE: We will accept your
18 proffer, and you may appeal the Bench's decision in
19 your brief.
20 MS. FLEISHER: Your Honor, I do -- I have
21 two other documents which I think actually have
22 separate relevance grounds; likewise, legislative
23 testimony by Mr. Alexander. But before I go ahead
24 with those, I wanted to make clear that I think
25 they're not necessarily encompassed by this ruling

1 from the Bench.
2 EXAMINER PRICE: I don't have them so
3 you'll have to show them to me, and then we can go
4 from there.
5 MS. FLEISHER: Okay. May I approach,
6 your Honor?
7 EXAMINER PRICE: You may.
8 MS. FLEISHER: If these can be ELPC 10
9 for the 2007 document and ELPC 11 for the 1999
10 document.
11 EXAMINER PRICE: 1999?
12 MS. FLEISHER: Yes.
13 (EXHIBITS MARKED FOR IDENTIFICATION.)
14 MS. FLEISHER: For the record, ELPC 10 is
15 a document that says "Ohio House Public Utilities
16 Committee Witness Information Form" dated November
17 14, 2007, listing Tony Alexander of FirstEnergy as
18 the witness; and ELPC 11 is a document with a caption
19 saying "Senate Ways and Means Committee, Anthony J.
20 Alexander, Executive Vice President & General Counsel
21 of FirstEnergy Corp., April 20, 1999." Both
22 documents are stamped and signed by a representative
23 of the Ohio State Archives.
24 THE WITNESS: Are there two documents?
25 EXAMINER PRICE: There are two documents.

1 Would you like to explain why these two documents are
2 more relevant than the previous documents?
3 MS. FLEISHER: Certainly. I think it
4 would help to go to the specific portions of the
5 documents that I believe are relevant.
6 Q. Sorry. Just before -- do you have them?
7 Did I not get you?
8 A. I only have one.
9 Q. Apologies. Which one do you have?
10 A. The November 14th of '07 dated one.
11 Q. Okay. Sorry about that. So on the 2007
12 document I'm turning to page 5.
13 EXAMINER PRICE: You mean the fifth page?
14 It's not numbered.
15 MS. FLEISHER: It should have a number.
16 The print --
17 EXAMINER PRICE: Thank you.
18 MS. FLEISHER: Just for purposes of
19 discussion to read into the record, the statement I
20 believe is relevant, it says -- maybe I'm on the
21 wrong page. Sorry. Page 4, right at the bottom, it
22 says "And, if the basic rules of our industry are
23 rewritten every eight years or so -- irrespective of
24 the long-term impact of doing so -- major providers
25 of capital won't risk investing the billions of

1 dollars it will take to meet Ohio's energy needs in
2 the years ahead."
3 And I believe this is relevant because
4 Mr. Moul is testifying as to the market conditions
5 and regulations necessary to promote investment in
6 adequate generation in Ohio. Mr. Alexander took a
7 position about the appropriate way to do that. It
8 may have been a while ago, but I don't think that
9 relevant conditions have changed since then. And
10 certainly I think it's -- it passes the threshold
11 test of relevance, and if the companies want to argue
12 that for some reason it shouldn't apply now, they can
13 do so. I think it's worth the Commission's
14 consideration.
15 EXAMINER PRICE: Do you want to talk
16 about your other document, the '99 document, before
17 you yield the floor?
18 MS. FLEISHER: Yes. So on page 6, so
19 this actually relates to corporate separation issues
20 which I think are relevant in this case as well, here
21 Mr. Alexander is testifying as to FirstEnergy's views
22 on an appropriate code of conduct governing corporate
23 separation. I intend to lay a foundation that as to
24 the relevance of corporate separation to the proposed
25 transaction and I believe the companies' views as to

1 the appropriate rules to corporate separation are
2 relevant to that issue.
3 MR. LANG: Your Honor.
4 EXAMINER PRICE: Mr. Lang.
5 MR. LANG: I believe for both of these
6 documents your earlier rulings would apply. They
7 were statements at an earlier time, different place,
8 long before SB 221 which is in Revised Code 4928.143
9 which is at issue in this proceeding. Discussion of
10 code of conduct from 1999, certainly I don't think
11 there is any objection and any position that this
12 company has taken that they're opposed to the code of
13 conduct; however, you don't need to go back to 1999
14 to discuss code of conduct. There's a corporate
15 separation provision included in every Electric
16 Security Plan.
17 To the extent -- so to the extent that
18 counsel is seeking to dredge up old statements from
19 another time, we'd certainly object that it's not
20 relevant. And in addition to that, certainly not
21 something to be addressed with this witness.
22 EXAMINER PRICE: Objection as to
23 relevance will be sustained.
24 Do you care to make a proffer?
25 MS. FLEISHER: Yes, I'd like to proffer

1 both ELPC 10 and 11 on the grounds as stated and
2 reserve my right to appeal on a brief.
3 EXAMINER PRICE: I guess the question I
4 would ask is in your proffer is what statements you
5 believe in 10 and 11 respectively conflict with the
6 testimony of the witness?
7 MS. FLEISHER: Certainly -- okay. Let me
8 go through everything and make sure I'm covering all
9 the bases.
10 So on ELPC 10, on page 4, the statement I
11 have read about "if the basic rules of our industry
12 are rewritten every eight years or so -- irrespective
13 of the long-term impact of doing so -- major
14 providers of capital won't risk investing the
15 billions of dollars it will take to meet Ohio's
16 energy needs in the years ahead," I believe that
17 conflicts with Mr. Moul's testimony to the extent he
18 is asserting that the proposed transaction in rider
19 RRS will provide stable conditions for investment in
20 generation in Ohio while omitting any -- while
21 asserting that there will not be any other effect on
22 investment in Ohio generation.
23 EXAMINER PRICE: As to 11?
24 MS. FLEISHER: As to 11, as I indicated
25 on page 6, Mr. Alexander offers statements regarding

1 a code of conduct to guarantee that the "local
2 distribution company will not have an undue advantage
3 over other suppliers. This code would prohibit,"
4 among other items, "tying the provision of any
5 non-competitive product or service" to the product --
6 or "service of any generation supplier." We haven't
7 gotten to this with Mr. Moul. I will do so. But
8 certainly Ms. Mikkelsen testified that from the
9 companies' end she believed that --
10 EXAMINER PRICE: No, no. You've got to
11 tie it to this witness.
12 MS. FLEISHER: Can I ask a few
13 foundational questions then?
14 EXAMINER PRICE: What do you think this
15 conflicts with his testimony?
16 MS. FLEISHER: I believe he's -- as part
17 of his testimony asserting that this is consistent
18 with Ohio law, one aspect of Ohio law is corporate
19 separation requirements, and I believe that to the
20 extent I anticipate the companies will argue what
21 those corporate separation requirements mean, that
22 this statement provides a -- commemorates the
23 companies' view of what corporate separation requires
24 of them and that that's inconsistent with the
25 position they're taking in this case.

1 EXAMINER PRICE: Your proffer is
2 accepted. Thank you.
3 Q. (By Ms. Fleisher) Mr. Moul, are you aware
4 that FirstEnergy has a corporate -- FirstEnergy Corp.
5 has a corporate separation policy?
6 A. Yes.
7 Q. And have you received training regarding
8 that policy?
9 A. Yes.
10 Q. And are you aware that policy is designed
11 in part to comply with Ohio's corporate separation
12 requirements?
13 A. Yes.
14 Q. And what's your understanding of how that
15 policy applies to this proposed transaction?
16 A. It's kind of a broad question. So I'll
17 see if I can answer from my position. We approached
18 the companies with a proposal based on the structure
19 that we saw in the AEP file in December of '13.
20 Worked on that proposal. Offered something for
21 consideration to the companies. They countered for a
22 subset of our generation, and we set up a separate
23 FES team as well as an EDU team. I wasn't a part of
24 either of the teams, but they did a negotiation as
25 development of that term sheet and that lead into the

1 file.
2 So from my standpoint, I was on the
3 competitive side, the FES side, and that's where my
4 interests were.
5 Q. And you believe that that course of
6 events was compliant with FirstEnergy Corp.'s
7 corporate separation policy?
8 A. Yes.
9 Q. And during the course of negotiating the
10 proposed transaction, are you aware of anyone
11 conducting any specific analysis regarding compliance
12 with FirstEnergy Corp.'s corporate separation policy?
13 A. I'm not aware of any specific analysis.
14 MS. FLEISHER: One minute, your Honor. I
15 want to make sure I.
16 Q. A few more questions. So am I correct
17 that FES spent significant amounts on bringing Sammis
18 in compliance with the Mercury and Air Toxic Standard
19 as of about 2010?
20 A. Yes, that's included in my testimony.
21 Q. And the specific number is $1.8 billion,
22 correct?
23 A. Yes.
24 Q. And at the time, do you know whether the
25 company intended to recover that investment through

1 market revenues?
2 A. I don't know.
3 Q. Are you aware whether the company has
4 fully recovered that investment through market
5 revenues?
6 MR. LANG: Just so the transcript is
7 clear, she's using the company.
8 MS. FLEISHER: I stand corrected.
9 MR. LANG: She should say FES.
10 Q. To be clear, when I said the company
11 earlier, I, in fact, meant to refer to FES. Are you
12 aware whether FES has fully recovered its investment
13 in that $1.8 billion investment in Sammis through
14 market revenues?
15 A. When you make a large capital investment
16 like that, it depreciates over the life of the plant,
17 so some portion of it has been recovered, but the
18 remainder of it factors into depreciation over the
19 life of the plant.
20 Q. And are the costs attributable to that
21 investment one of the reasons that the net revenues
22 for Sammis are not sufficient to guarantee it will --
23 that FES will keep it open?
24 A. Certainly when you look at the revenues
25 versus the costs, they're a component. I think a

1 bigger component is what has happened to energy
2 prices.
3 Q. And is it your understanding that if the
4 proposed transaction is approved, at the end of the
5 term of the PPA, FES will regain its full entitlement
6 to the output of the Sammis plant?
7 MR. LANG: Objection, your Honor.
8 EXAMINER PRICE: Grounds?
9 MR. LANG: The form of the question
10 discussing the approval of the proposed transaction
11 which is not before the Commission.
12 EXAMINER PRICE: Please rephrase.
13 MS. FLEISHER: Certainly.
14 Q. (By Ms. Fleisher) Is it your
15 understanding that if the proposed transaction goes
16 into effect, that in 2031 at the conclusion of the
17 PPA, FES will regain its full entitlement to the
18 output of the Sammis plant?
19 A. Yes.
20 Q. And do you believe at that point the
21 Sammis plant will be in compliance with NAAQS and
22 other environmental regulations?
23 A. It's my belief that investments will be
24 made as needed to keep it in compliance. If there
25 was some significant change, there would to be a

1 discussion between the companies and FES as to
2 whether per the term sheet that made the plant
3 uneconomic enough and not worth investment, and then
4 the companies and FES could walk away from that
5 asset.
6 MS. FLEISHER: That's all I have for the
7 public session, your Honor.
8 EXAMINER PRICE: You indicate on page 3
9 in response to a question, "Do you see the situation
10 improving in the near term," you say "No." Do you
11 see the market situation improving in the longer
12 term?
13 THE WITNESS: I think as -- if you take a
14 look at the fundamental analysis of Witness Rose, it
15 shows a recovery in the long term. I think the basic
16 economic realities of supply and demand and the
17 engineering behind generation and reliability on the
18 grid is going to drive prices up in the long term.
19 The question in my mind and part of my testimony is
20 how long will it be and how deep will the reduction
21 in energy prices be and will these plants be able to
22 survive through that.
23 EXAMINER PRICE: Fair enough. And you're
24 familiar with Company Witness Rose's forecasted
25 prices?

1 THE WITNESS: Yeah. I haven't studied
2 them in detail since I first saw them and they went
3 into the projections, but I am familiar with them.
4 EXAMINER PRICE: He forecasted a long
5 upward slope; is that correct?
6 THE WITNESS: Yeah, that ties with my
7 recollection.
8 EXAMINER PRICE: And the proposed
9 transaction is not before the Commission for review,
10 is that correct?
11 THE WITNESS: That's correct.
12 EXAMINER PRICE: What is to stop
13 FirstEnergy Solutions from seeking to renegotiate the
14 proposed transaction when market prices increase and
15 it will be economically beneficial for FirstEnergy
16 Solutions to terminate the proposed transaction and
17 return to market prices?
18 THE WITNESS: There's a section in the
19 term sheet that specifically calls out the duration
20 of this contract, that's a 15-year contract between
21 FES and the companies. We're not going to breach the
22 contract.
23 EXAMINER PRICE: I didn't ask if you were
24 going to breach the contract. I said what is to stop
25 FirstEnergy Solutions from seeking to renegotiate the

1 contract when its in their economic interest to do
2 so?
3 THE WITNESS: I don't think that's
4 specifically addressed in the term sheet. I would
5 expect though when a final purchase power agreement
6 were this approved would be developed, there would be
7 some controls along those lines.
8 EXAMINER PRICE: And the counterpart to
9 this transaction is the companies; is that correct?
10 THE WITNESS: Yes.
11 EXAMINER PRICE: And the companies are
12 totally economically indifferent to this transaction;
13 they're totally made whole by the ratepayers; is that
14 right?
15 THE WITNESS: As I understand it, yes.
16 EXAMINER PRICE: So in the event of a
17 renegotiation, you'd have one party with an economic
18 interest to renegotiate and another party that's
19 indifferent; is that right?
20 THE WITNESS: I would wonder if the party
21 that's made whole by ratepayers, though, would be
22 facing prudency reviews associated with whatever they
23 did.
24 EXAMINER PRICE: But we're not reviewing
25 the proposed transaction.

THE WITNESS: I understand your point.

EXAMINER PRICE: Thank you.

Ms. Bojko?

MS. BOJKO: Actually, Mr. Fisk is next.

EXAMINER PRICE: I skipped you. I was working my way around the room. Mr. Fisk.

MR. FISK: Thank you, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Fisk:

Q. Good morning, Mr. Moul.

A. Good morning.

Q. So I apologize. I think I missed yesterday you said that you have a new job title; is that right?

A. Yes, that's correct. It was corrected on my direct and my supplemental testimony.

Q. Could you just remind me what that was?

A. Yeah. My title is senior vice president, fossil operations and environmental.

Q. And when did you start in that new position?

A. September 6th.

Q. Of this year?

A. Of this year.

1 Q. Okay.
2 A. As in last week.
3 Q. I see. Okay. Congratulations.
4 A. Thank you.
5 Q. So for purposes of your testimony in
6 discovery responses, et cetera, those were all when
7 you were vice president of commodity operations?
8 A. Yes.
9 Q. Okay. And you are still employed by
10 FirstEnergy Solutions; is that right?
11 A. Yes, although I am part of the
12 FirstEnergy Generation, LLC, which is a subsidiary of
13 FirstEnergy Solutions.
14 Q. Okay. But during the time of your
15 testimony in discovery responses, you were employed
16 by FirstEnergy Solutions.
17 A. Yes.
18 Q. And as the vice president of commodity
19 operations, you did not do any work for any of the
20 companies; is that right?
21 A. That's correct.
22 Q. Okay. And you did not provide any
23 services to any of the companies; is that right?
24 A. That's correct.
25 Q. And I believe you referred when you were

1 speaking with Ms. Fleisher this morning to a
2 competitive side of the business; is that right?
3 A. Yes.
4 Q. Okay. And that's what FirstEnergy
5 Solutions is.
6 A. Yes.
7 Q. And then there is also a regulated side
8 of the business; is that right?
9 A. Yes.
10 Q. Okay. And that's the companies.
11 A. It's -- yes, the companies. It's the
12 ATSI transmission part of the companies, so yes.
13 Q. Okay. And there are some employees that
14 could provide services to both the competitive and
15 the regulated sides; is that correct?
16 A. Yes.
17 Q. And those are known as shared services
18 employees?
19 A. Yes.
20 Q. Okay. And is it your understanding that
21 a shared service employee can at different times
22 represent either FirstEnergy Solutions or the
23 regulated side of the business, but not on the same
24 issue?
25 A. My understanding is they can represent

1 both sides as long as they're not a conduit of
2 inappropriate information between the two sides. As
3 my understanding, it can be on the same issue as long
4 as there is no, you know, inappropriate transmission
5 of information through them as a conduit.
6 Q. Okay. You're aware, of course, of the
7 proposed transaction under which FES would sell the
8 energy, capacity, and ancillary services from the
9 Sammis, Davis-Besse plants, and the OVEC entitlement
10 to the companies?
11 A. Yes.
12 Q. And can we refer to that as the proposed
13 transaction?
14 A. Yes, we can.
15 Q. Okay. Great. And you are and you were
16 the person who originally came up with the idea of
17 doing this sort of agreement, correct?
18 A. What I would say is, we saw what AEP had
19 proposed and then we started formulating how to
20 enhance that proposal and offer something similar to
21 the companies, so yes.
22 Q. Okay. And as you originally envisioned
23 the proposed transaction, it would have involved all
24 of FirstEnergy's generating units in Ohio.
25 MR. LANG: Objection, your Honor. Again,

1 terminology, he said all of FirstEnergy's.
2 Q. All of FES's generating units in Ohio.
3 A. Yes, so once we saw the AEP proposal, as
4 I mentioned, we looked at that structure, and we
5 looked to see how we could -- we knew that the
6 companies were getting ready to file for an ESP and
7 looked to see if there was something we could add
8 value to that ESP -- and provide some certainty in
9 return for our plants. We looked at P&Ls for all of
10 the plants, looked at -- saw the various range of
11 challenges at the competitive fleets, and the first
12 conversation I had with Mr. Haney was to offer all of
13 the plants as a potential hedge.
14 Q. And just so the record is clear, P&Ls is
15 profit and loss statements?
16 A. Yes.
17 Q. And you first came up with this idea in
18 early January, 2014; is that right?
19 A. No, really just after the AEP filing, so
20 it was either late '13, I think it was December, '13,
21 it was filed, it was early '14 when we really started
22 formulating what it could look like.
23 Q. And the profit and loss statements that
24 you refer to, were those forward-looking or
25 historical?

1 A. We looked at historical, and we also
2 looked -- we had some forward-looking -- I mean,
3 colloquially I call them profit and loss statements.
4 They're not really forecasts. They were just some
5 assumptions put together against what we knew in our
6 budgets, and it gave us a feel for out to 2018 what
7 various plants' financial performance would look
8 like.
9 Q. So you looked at both historical and
10 forward-looking before proposing the transaction to
11 the companies?
12 A. Yes.
13 Q. And internally at FES, you discussed this
14 proposed transaction with Donald Schneider; is that
15 right?
16 A. Yes.
17 Q. Okay. Was he the one that ultimately
18 signed off on the FES side?
19 A. Mr. Schneider is president in FirstEnergy
20 Solutions, so yes, he was the ultimate approval
21 authority at FirstEnergy Solutions.
22 Q. And that in May, 2014, you proposed the
23 transaction to Mr. Haney; is that right?
24 A. Verbally.
25 Q. Okay. And over the summer of 2014, FES

1 and the companies negotiated a term sheet; is that
2 right?
3 A. Yes.
4 Q. And you've seen the term sheet, correct?
5 A. Yes.
6 Q. And you had input on some elements of the
7 term sheet?
8 A. While I wasn't part of the negotiating
9 team, I was consulted by the lead of the FES team on
10 some of the more contentious issues. As part of the
11 negotiation, there were about four issues that rose
12 to my level of awareness, one of which was who would
13 dispatch the units. Another was who would offer them
14 into the capacity markets. The unit contingent
15 status of the arrangement was another aspect that was
16 contentious and raised to my level, as well as use of
17 good utility practice and the terminology around
18 that.
19 Q. Do you have up there Sierra Club Exhibit
20 1 which was the term sheet that we marked?
21 A. I don't know. I've got quite a stack of
22 papers up here. I think I do. SC 1 up in the
23 corner?
24 Q. Yes. And it's entitled on the very top
25 "Term Sheet"; is that right?

1 A. Yes.
2 Q. Okay. And is this the term sheet we were
3 just referring to?
4 MR. LANG: Can we have one minute,
5 counsel?
6 MR. FISK: Sorry. I have one extra copy.
7 MR. LANG: We've got it. Thank you.
8 Q. (By Mr. Fisk) So, Mr. Moul, the document
9 in front of you, it has a watermark on it that says
10 "Draft." Do you know, is this document a draft or a
11 final term sheet?
12 A. This is the final term sheet.
13 Q. So, to your knowledge, there has been no
14 changes to the term sheet since this was produced in
15 discovery?
16 A. No changes, to my knowledge.
17 Q. Okay. And do you know when the term
18 sheet was finalized?
19 A. It was, as I recall, late July, right
20 before filing of the ESP. I'm not positive about the
21 date, but that's the time frame in which I remember
22 having discussions about resolving the issues around
23 the term sheet.
24 Q. So up until that time, there were still
25 issues being negotiated between FES and the

1 companies?
2 A. Yes.
3 Q. Okay. And I believe you referred to the
4 unit contingencies. Is that discussed on page 2,
5 Section 8 of the term sheet?
6 A. Yes, it is.
7 Q. Okay. And am I correct that unit
8 contingency provision addresses whether FES would be
9 excused from delivering the energy, capacity, and
10 ancillary services to the companies in the event that
11 one or more generating units is unavailable?
12 A. Yes.
13 Q. And under the term sheet, FES would be
14 excused for up to 180 consecutive days unless the
15 unavailability of the unit could have been avoided
16 through the use of good utility practice; is that
17 right?
18 A. Yes.
19 Q. So, essentially, if FES is operating the
20 generating units consistent with good utility
21 practice and yet one of the generating units becomes
22 unavailable, FES does not have to provide energy,
23 capacity, or ancillary services to the companies from
24 that unit for up to 180 consecutive days, right?
25 A. Yes.

1 Q. And during that time, during that up to
2 180-day period, the companies would continue to bear
3 the fixed costs of depreciation costs of the
4 unavailable unit, correct?
5 A. That's correct. They would also continue
6 to collect the capacity revenues because that's not
7 based on output. It's an annual payment. Once
8 you're a capacity resource that's cleared, you're
9 paid for that capacity.
10 Q. Even if the unit is unavailable?
11 A. Yes.
12 Q. And the term sheet does not clearly
13 delineate who determines whether a unit was operating
14 consistent with good utility practice, correct?
15 A. Similar to our previous discussion about
16 the term sheet, I would expect that that process
17 would be outlined in any final purchase power
18 agreement documentation where this proposed
19 transaction comes.
20 Q. But the document we have in front of us
21 today in this proceeding does not delineate that,
22 correct?
23 A. It's not -- the process isn't
24 specifically outlined in this purchase power
25 agreement -- or in this term sheet. Sorry.

1 Q. And the term sheet doesn't identify
2 whether the companies are able to make the final
3 determination whether something -- whether a unit was
4 operated in compliance with good utility practices;
5 is that right?
6 A. Your question is about the term sheet
7 specifically. As I said, the process isn't outlined.
8 It doesn't say if there is a final say. My
9 expectation is there would be a process outlined that
10 would have a negotiation, a communication between
11 both parties.
12 Q. And the 180-day period set forth in the
13 unit contingency provision, that applies to each unit
14 individually; is that correct?
15 MR. LANG: Your Honor, at this time I
16 would object. Mr. Moul is not being proposed as and
17 is not here based on his testimony as the witness for
18 the companies on the term sheet. He's obviously
19 established he has some familiarity with it from
20 discussions with the FES team, but it seems like
21 counsel for Sierra Club is intent on a long series of
22 questions with regard to the term sheet. I'd object
23 as beyond the scope of his testimony. Mr. Ruberto is
24 the company witness on the term sheet.
25 EXAMINER PRICE: Mr. Fisk.

1 MR. FISK: Mr. Moul has testified he's
2 familiar with the term sheet, and he had input into
3 the term sheet. He's a witness who works for FES so
4 I think has views of what FES's take was on what the
5 term sheet does or does not mean, that Mr. Ruberto
6 probably would not have, and so I think it's directly
7 relevant to the proceeding.
8 MR. SETTINERI: Your Honor, if I may
9 also, I don't believe the objection is outside the
10 scope of direct testimony is proper. On
11 cross-examination here, all matters regarding
12 relevancy and credibility are allowed for
13 cross-examination.
14 EXAMINER PRICE: I keep hearing people
15 say that in this proceeding, and honestly that is so
16 departing from Commission practice. It just amazes
17 me people are making that objection. You don't ask a
18 rate of return witness an accounting question. You
19 don't ask a reliability witness a rate of return
20 question. And that's well established in these
21 Commission proceedings.
22 Having said that, I think that Mr. Fisk
23 makes a much better argument about the witness's
24 competency to answer these questions. So we're going
25 to allow this line of questioning for the time being.

1 MR. FISK: Thank you, your Honor. I
2 believe there was a question.
3 THE WITNESS: Could you read back the
4 question, please?
5 (Record read.)
6 A. Yes, that's my understanding.
7 Q. Okay. And the 180-day clock starts over
8 with regards to each unavailability period; is that
9 also correct?
10 A. That's my understanding as well.
11 Q. And the companies, to your knowledge,
12 additionally wanted the unit contingency period to be
13 only 30 days; is that correct?
14 A. Yeah, that's the part of the discussion
15 that raised to my level, was how long of a unit
16 contingent status window it would be.
17 Q. And what the companies had proposed was
18 30 days?
19 A. Yes, the companies proposed 30 days.
20 Q. The unit contingent provision also
21 provides if a necessary capital expenditure would
22 render a facility uneconomic, FES and the companies
23 could agree to drop the facility from the
24 transaction; is that right?
25 A. That's correct.

1 Q. But that provision requires that both
2 sides of the contract agree, correct?
3 A. Yeah, that's how it's structured, yes.
4 Q. So if FES wants to make a capital
5 expenditure under the transaction, it can go ahead
6 and do so even if the companies think such
7 expenditure would render the facility uneconomic?
8 A. No. Capital expenditures are outlined in
9 section 12, so it's a different category. There's a
10 review process that's outlined in section 12 with the
11 details in that part of the term sheet.
12 Q. But ultimately under section 12, FES has
13 final decision-making authority as to whether to make
14 a capital expenditure, correct?
15 A. Pending resolution of the companies'
16 comments in that capital review process, yes, FES has
17 the final decision, provided they're operating in
18 accordance with good utility practice. That's kind
19 of the overarching umbrella for the operation of the
20 plants under the term sheet.
21 Q. Okay. And that reference to good utility
22 practice, that's the same discussion we were having
23 with regards to the reference to good utility
24 practice in section 8 of the term sheet.
25 A. It's referenced in section 8, that is

1 correct.
2 Q. And with regards to in section 8 the
3 ability to withdraw a facility from the transaction
4 if a necessary capital expenditure made it
5 uneconomic, does that apply at the facility level
6 rather than the unit level of a plant?
7 A. I think that would depend upon what was
8 driving the capital expenditure. So I think it's
9 open to both unit level and/or facility level. For
10 example, Davis-Besse, there is one unit at the
11 facility, so that's a pretty simple conversation.
12 Q. But at Sammis, there is seven, correct?
13 A. Yes, that's correct.
14 Q. So would a showing that a single unit of
15 Sammis would be uneconomic because of a capital
16 expenditure be enough to withdraw that unit, or would
17 it have to be all seven Sammis units?
18 A. It's my understanding it would be on a
19 unit-by-unit basis at Sammis.
20 Q. And just at a high level, am I correct
21 that in this proceeding, the companies are projecting
22 in the short term the costs of these plants would be
23 higher than the revenues?
24 A. Yes. What I've seen from the long-term
25 projections is in about the first four years, there's

1 a charge associated with it followed by a significant
2 credit over the remainder of the 15-year period.
3 Q. Okay. And I believe a few minutes ago,
4 the Attorney Examiner Price asked you about, you
5 know, whether FES could seek to renegotiate the
6 contract when those revenues being higher than costs
7 come along; is that correct? Do you recall that?
8 A. Yeah, I recall that.
9 Q. Okay. And I believe in answering those
10 questions, you made a statement that FES isn't going
11 to breach the contract?
12 A. That's correct.
13 Q. Okay. Do you know of any provision in
14 the term sheet that deals with if there were a breach
15 by FES?
16 A. I would image that the legal team would
17 outline all of that information when it gets laid out
18 into a final purchase power agreement contract. So I
19 don't recall a section that has a breach specifically
20 outlined in the term sheet right now.
21 Q. If you could turn to page 10 of the term
22 sheet.
23 A. Okay.
24 Q. Section 19.
25 A. There it is. I see it. Like I said,

1 this is a section that I would rely on the legal team
2 to flush out even more. So I really had no input or
3 consideration of this portion.
4 Q. Okay. So with regards to section 19,
5 limitations of liability, you don't have any
6 testimony as to what damages are or are not allowed
7 in the event FES were to breach the contract?
8 MR. LANG: Objection, your Honor, asked
9 and answered.
10 EXAMINER PRICE: Overruled.
11 THE WITNESS: I'm trying to remember what
12 the question was. Could you read the question back?
13 EXAMINER PRICE: Let's have the question
14 read back.
15 (Record read.)
16 A. None other than what's written in the
17 words.
18 Q. You referred to the words in section 19.
19 Do you have an understanding of what lost profits
20 means?
21 A. I've dealt with clauses in contracts for
22 lost profits. I don't know what they mean in the
23 context here.
24 Q. Okay. And do you know what direct
25 damages mean?

1 A. In general, I know what direct damages
2 mean. I have not thought of them in the context of
3 this term sheet or a potential contract.
4 Q. Okay. And, to your knowledge, does the
5 term sheet define what qualifies as direct damages?
6 A. There's a definition section in the back.
7 I don't see direct damages as a defined term.
8 Q. And same with lost profits, correct?
9 MR. LANG: You're asking whether it's a
10 defined term?
11 MR. FISK: Yes.
12 A. I don't see it as a defined term in the
13 back.
14 Q. And do you recall any discussions on the
15 FES side regarding what damages may or may not be
16 available in the event FES were to breach?
17 A. So as I said earlier, I wasn't part of
18 the negotiating team. There were only four issues
19 that bubbled to my level of attention and discussion,
20 and I've outlined those previously. Anything else
21 was handled with the FES team and the EDU team.
22 Q. Okay.
23 EXAMINER PRICE: When you say bubbled to
24 your attention, does that mean that the FES team
25 communicated with you and you gave them advice and

they then communicated with the companies' team, or does that mean that this term was escalated from negotiations between the FES team and the company team to you and a counterpart with the companies?

THE WITNESS: The former. The FES team lead would brief me. One of the other FES leaders, Kelly Mendenhall, they would tell us what the contentious issue was, ask for our opinion as to what a path forward might be, and then take that back to the negotiating team with the FES team and the companies' team.

EXAMINER PRICE: Let's use an example the 180 days, you said the company wanted 30 days, and FES wanted -- did the FES start at 180 days?

THE WITNESS: FES wanted purely unit contingent. We didn't want any timeline associated with it.

EXAMINER PRICE: The compromise between 30 days and infinite was 180.

THE WITNESS: That's correct, and it tied to the caveat as long as we're operating with good utility practice. Those two topics resolved that issue of contention.

EXAMINER PRICE: Okay. Thank you.

1 Q. (By Mr. Fisk) And your job
2 responsibilities prior to your recent promotion
3 included advising senior FES management on whether
4 the plants would retire; is that correct?
5 A. Yes, amongst other things, yes.
6 Q. And no one within FES has asked you your
7 opinion as to whether the Sammis plant would retire,
8 correct?
9 A. Not specifically.
10 Q. And you haven't been part of any
11 discussion at FES regarding whether the Sammis plant
12 would be retired if the proposed transaction were not
13 finalized; is that correct?
14 A. It's correct that I have not been part of
15 a conversation along those lines.
16 Q. And is that the same for Davis-Besse?
17 A. Yes.
18 Q. And you don't know if the Commission's
19 decision in this procedure will have any impact on a
20 decision to retire any of the OVEC units, correct?
21 A. No, I don't know.
22 MR. FISK: Your Honor, may we approach?
23 EXAMINER PRICE: You may.
24 MR. FISK: Ask this to be marked as
25 Sierra Club Exhibit 46.

1 EXAMINER PRICE: So marked.
2 (EXHIBIT MARKED FOR IDENTIFICATION.)
3 Q. (By Mr. Fisk) Mr. Moul, you've been
4 handed a document that's been marked as Sierra Club
5 Exhibit 46, and it is the companies' response to
6 discovery request from P3-EPSA Set 2 Interrogatory
7 59; is that correct?
8 A. Yes.
9 Q. And you are identified as the witness on
10 this response; is that correct?
11 A. Yes.
12 Q. Okay. And if you look at subpart A of
13 the request, it states, "Please explain the economic
14 analysis that the company would undertake to evaluate
15 whether retirement of a generating unit, or units,
16 would be economical." Do you see that?
17 A. Yes.
18 Q. Then if you go down to the response,
19 there's a number of objections, but then about the
20 middle to "Subject to and without waiving the
21 foregoing objections," and then there's a response;
22 is that right?
23 A. Yes.
24 Q. Okay. And the response says that "a
25 possible economic analysis of generating unit(s) that

1 could be undertaken would be to assess for economic
2 profitability or loss," and then "The economic
3 analysis would need to demonstrate that continued
4 operation of the generating unit(s) would protect the
5 shareholder's interests by being profitable,
6 providing a sufficient return on investment and to
7 recapitalize the business to maintain a 'going
8 concern' status"; is that right?
9 A. Yes.
10 Q. And is that your testimony?
11 A. Yes.
12 Q. So would you agree that ensuring
13 shareholder's return is an appropriate factor in
14 whether the Sammis plant would continue to operate?
15 A. Yes.
16 Q. And the economic analysis identified
17 here, that has not been carried out by the companies,
18 correct?
19 A. Yes, that's correct.
20 Q. And it has not been carried out by FES;
21 is that correct?
22 A. Yes, that's correct. Actually, let me go
23 back. I missed when you slipped in the companies
24 there. I don't know what the companies have done.
25 Sorry about that. But FES has not done this

1 analysis.
2 Q. Okay. And if you look at subpart B, it
3 says, "Has the company undertaken any retirement
4 studies for any of its units?" Do you see that?
5 That's the request.
6 A. I see where you're at, the request on
7 part bravo up above, yes.
8 Q. And then in the answer, or the response,
9 after the objections, the last sentence says, "The
10 Companies state as follows: No such analysis has
11 been undertaken for Sammis or Davis-Besse." Do you
12 see that?
13 A. Yes.
14 Q. So you were answering there for the
15 companies or for FES?
16 A. Well, as I'm the witness, but I am a
17 witness for FES -- well, I'm a witness for the
18 companies, but I'm representing FES. That's what the
19 answer is trying to get at. We've not done an
20 analysis at FES on the retirement of those plants.
21 Q. Okay. But you do not know if the
22 companies has done such an analysis?
23 A. That's correct.
24 Q. And do you know who Lawrence Makovich is?
25 A. Yes, I do.

1 Q. And who is he?
2 A. Dr. Makovich is one of the principals at
3 IHS Cera, which is an energy consulting firm, think
4 tank. I don't know what you want to call it.
5 Industry expert.
6 Q. And have you ever discussed FES's
7 generating plants with Dr. Makovich?
8 A. No.
9 Q. So you've never had any discussions
10 regarding the financial viability of FES's plants
11 with Dr. Makovich?
12 A. I've been to conferences with
13 Dr. Makovich. Dr. Makovich has been in providing
14 some industry views in our company. I've talked to
15 him about general market trends, but not specifically
16 about our power plants.
17 Q. What sort of general market trends have
18 you discussed with Dr. Makovich?
19 A. Talked about implications of the
20 production tax credit on energy markets, talked about
21 what's going on in the shale gas arena and how it's
22 got an impact on the marketplace, especially how it
23 has potential to grow the economy in the state of
24 Ohio. It varies. Any number of industry-related
25 insights that help us to understand what's moving in

1 the marketplace.
2 Q. And you just referred to shale gas
3 helping to grow the economy in Ohio; is that right?
4 A. Yeah.
5 Q. And is that based on projections that
6 shale gas production in Ohio will increase?
7 A. It's really based upon -- our discussion
8 was more about the use of natural gas, liquids, and
9 manufacturing that would flow from that where they're
10 a fracker built in the state of Ohio.
11 Q. And have you discussed with Dr. Makovich
12 any of IHS Cera's forecasts for natural gas prices?
13 A. A couple of years ago, we looked at one
14 of their forecasts for natural gas prices, yes.
15 Q. A couple years ago being when?
16 A. It was, I believe, early 2013.
17 Q. But nothing since then?
18 A. Not specifically, no.
19 Q. Any general discussion with Dr. Makovich
20 on natural gas prices?
21 A. No.
22 Q. And, to your knowledge, have you or
23 anyone else at FES provided any information to
24 Dr. Makovich regarding the plants' financial
25 condition?

1 A. I don't know.
2 Q. You personally have not?
3 A. I have not.
4 Q. Okay. And I believe you had a discussion
5 earlier with Ms. Fleisher regarding resource
6 diversity; is that correct?
7 A. Yes.
8 Q. Okay. And that's also discussed at page
9 6 of your direct testimony; is that right?
10 A. Yes.
11 Q. And you are not offering any opinion as
12 to what the ideal mix of generation assets is for
13 Ohio; is that right?
14 A. That's correct.
15 Q. And you do not have an opinion as to
16 whether the current mix of generating assets in Ohio
17 is optimal; is that right?
18 A. I don't have an opinion on whether the
19 current mix is optimal, because I don't know that
20 there is one optimal mix. Like I said, there are
21 regional advantages for different fuel supplies, and
22 that's why you'll have a higher percentage of coal,
23 gas, nuclear, wind, solar, depending on where the
24 regional advantage is.
25 Q. And you never discussed with the

1 companies what the appropriate generation mix would
2 be, correct?
3 A. That's correct.
4 Q. And for purposes of preserving generation
5 diversity, you do not know what percentage of gas
6 generation would be too high in Ohio; is that right?
7 A. While I don't know the specific
8 percentage that would be too high in Ohio, I do know
9 that more reliance on natural gas prior to
10 transitioning to an infrastructure that can
11 adequately support it would make Ohio susceptible to
12 more volatility, especially in the wintertime.
13 Q. And have you personally evaluated the gas
14 infrastructure in Ohio for purposes of this
15 proceeding?
16 A. No.
17 Q. And you don't know what the percentage --
18 at what the generation mix serving Ohio would -- I'm
19 sorry. Strike that.
20 You don't know what percent of the
21 generation mix serving Ohio would be coal-based if
22 the plants at issue in this proposed transaction were
23 to retire, correct
24 A. I'm not sure what the current percentage
25 is based on the most recent retirements. So I'm not

1 sure what it would change to were these plants to
2 retire.
3 EXAMINER PRICE: What about vis-a-vis the
4 2013 number you cite. What percentage did
5 Davis-Besse -- of the 44.4 percent coal you cite on
6 page 9, line 3, what portion of that was Sammis?
7 THE WITNESS: That's a PJM number, that
8 44 percent, because the entire region supports the
9 PJM region, the RTO. So that's where those numbers
10 came from. It wasn't a specific Ohio percentage.
11 EXAMINER PRICE: So that is not an Ohio
12 number? That is a regional number?
13 THE WITNESS: That's a regional number.
14 MR. HAYS: Your Honor, I missed the page
15 you were on.
16 EXAMINER PRICE: Page 9, line 3. Thank
17 you.
18 MR. LANG: Your Honor, can I inquire as
19 to how much longer this examination -- because I
20 think we're in need of a break for the witness.
21 MR. FISK: That's fine. We can take a
22 break.
23 EXAMINER PRICE: It would be encouraging
24 if he said only five more minutes.
25 MR. FISK: I mean, I may only have ten

1 minutes. But if the witness would like a break, I'm
2 fine with that.
3 EXAMINER PRICE: Let's go ahead and take
4 ten minutes. Let's go off the record until 11:05.
5 (Recess taken.)
6 EXAMINER PRICE: Let's go back on the
7 record.
8 Please proceed, Mr. Fisk.
9 MR. FISK: Thank you, your Honor.
10 Q. (By Mr. Fisk) Mr. Moul, you're familiar
11 with the proposed Carol County Energy natural gas
12 plant; is that correct?
13 A. Yes. I've seen it listed in the PJM
14 queue. I've seen some of his reports about it.
15 Q. And that plant is proposed to be built in
16 Ohio; is that right?
17 A. Yes.
18 Q. And that plant is currently under
19 construction?
20 A. That's my understanding, yes.
21 Q. And are you also aware of the Oregon
22 clean energy center?
23 A. Yes, I am.
24 Q. And that is a proposed natural gas plant
25 that would be built in Ohio; is that right?

1 A. Yes.
2 Q. And that plant is also currently under
3 construction; is that right?
4 A. I believe that's the case.
5 Q. I'd like to talk briefly about market
6 price projections and I'm going to try to keep this
7 in the public session but please let me know if you
8 need to go to the confidential and we can do that.
9 A. Okay.
10 Q. The business development group at
11 FirstEnergy Service Company does economic modeling
12 for FES; is that right?
13 A. Yes. They'll do a long-term economic
14 modeling for not just FES but for really the
15 corporation because they're a shared service.
16 Q. And when you say long term, what do you
17 mean?
18 A. I'm not sure of the exact time frame.
19 It's greater than 15 or 20 -- I think it's 20 years,
20 but I'm not positive.
21 Q. And in contrast, would short term be
22 under five years?
23 A. Yes. Typically short term would be five
24 years or less. Usually driven just by using market
25 forwards that are publicly available.

1 Q. And FES also does some modeling of its
2 own internally; is that right?
3 A. Some limited work internally, yes.
4 Q. Does that internal modeling include gas
5 market modeling?
6 A. No. For anything associated with a gas
7 market, it would just be market forwards that we
8 would be looking at.
9 Q. So FES doesn't do any gas market modeling
10 itself?
11 A. Not within my responsibilities or part of
12 FES Solutions.
13 Q. Does the business development group do
14 any gas market modeling for FES?
15 A. The business development group as part of
16 their overall long-term economic modeling will
17 typically, at least until recently, my understanding
18 is they purchased long-term gas price forecasts.
19 Q. Do you know who they purchased that from?
20 A. No, I don't.
21 Q. Have you seen that forecast?
22 A. I have not.
23 Q. Do you know when that was purchased?
24 A. I don't recall.
25 MR. FISK: One minute.

1 Q. Do you know who would know who the
2 business development group purchased the gas market
3 price forecasts from?
4 A. I would expect that Dave Pinter who is
5 the head of -- well, he used to be. There is an
6 organizational adjustment, but when he was in
7 position whenever I believe that long-term gas price
8 forecast was purchased.
9 Q. And does FES do any energy market
10 modeling internally?
11 A. Typically we'll just use energy forwards
12 for any of the work that we do. So it's not
13 fundamental modeling or any modeling of an energy
14 price forecast.
15 Q. And do you have still in front of you
16 your January 15th, 2015, deposition transcript from
17 yesterday?
18 A. Yes, I do.
19 Q. And if you could turn to page 38. And if
20 you start at line 7, there's a question, "Okay. Who
21 else does modeling for FES?"
22 The answer "We do some of it internally.
23 "Question: Okay. And are you referring
24 to dispatch modeling when you refer to modeling or
25 broader?

1 "Answer: Broader than that.
2 "Question: Okay. And what else would
3 that include?
4 "Answer: It could include gas market
5 modeling." Do you see that?
6 A. Yes.
7 Q. Okay. And did I read that correctly?
8 A. I said it could include that. We haven't
9 done that though.
10 Q. Has FES itself ever done that, gas market
11 modeling?
12 A. Not since I've been there. I don't know
13 before I was at FES in commodity operations.
14 Q. And when did you start there?
15 A. It was October of 2012.
16 Q. Okay. Do you know if it was done before
17 then?
18 A. I don't know.
19 EXAMINER PRICE: Can we have the
20 reference to the transcript again?
21 MR. FISK: Page 38 of the January 15th
22 transcript.
23 THE WITNESS: Actually let me go back to
24 the "I don't know." I do know the long-term price
25 forecast group used to be part of FES Solutions

1 before I got there. So that's what I'm referring to.
2 Q. And that's now the business development
3 group?
4 A. That's correct.
5 Q. So it moved from FES to FirstEnergy
6 Service Company?
7 A. That's correct.
8 Q. Okay. And do you know if that business
9 development group does gas market modeling?
10 A. As I said, they used to have the
11 capability. They purchased it this past -- the
12 latest version they have is a purchased version. We
13 had lost some of the capabilities. An individual
14 left the company who had some of those capabilities.
15 They purchased the long-term price forecast.
16 Q. So the business development group no
17 longer has the capability to do its own gas market
18 modeling?
19 A. We hired that person back. I don't know
20 whether they're doing the modeling now internally or
21 not. Now, they've got a gas model that they've
22 purchased right now.
23 EXAMINER PRICE: So you are a redundant
24 capability now.
25 THE WITNESS: That's exactly right.

1 EXAMINER PRICE: We're not paying for
2 that.
3 THE WITNESS: Fair enough.
4 Q. (By Mr. Fisk) When I was speaking of
5 modeling, is it the same if I were saying gas market
6 forecasting?
7 A. Yes, it would be the same.
8 Q. And back to page 38 of your deposition
9 transcript, we are then on line 14, "Question: Okay.
10 Anything else?
11 "Answer: Energy market modeling."
12 So is it your testimony that FES does
13 energy market modeling or no?
14 A. We would -- when I'm talking about energy
15 market modeling there, I'm talking about taking a
16 look at the energy forwards and evaluating our assets
17 using the energy forwards. So that's what I'm
18 talking about.
19 Q. So not any sort of projection of energy
20 prices beyond forwards?
21 A. That's exactly right. Not a fundamental
22 analysis that goes beyond the energy forwards.
23 Q. Okay. And that sort of fundamental
24 analysis, would that be done by the business
25 development group?

1 A. Yes.
2 Q. Okay. And do you know when the last time
3 the business development group did a fundamental
4 analysis?
5 A. I don't remember the exact date.
6 Q. Do you know approximately?
7 A. Within the last year, I believe.
8 Q. Have you seen that fundamental analysis?
9 A. I have not.
10 Q. And so any FES long-term energy price
11 forecast, that would have come from the business
12 development group?
13 A. Yes.
14 Q. So FES itself never contracts with
15 outside consultants to do that sort of forecast?
16 A. Yes, that's correct.
17 Q. And does FES have a long-term capacity
18 price forecast?
19 A. No. That's something that would be in
20 business development as well.
21 Q. Have you seen -- I'm sorry. Strike that.
22 Do you know when the most recent capacity
23 price forecast was made by business development?
24 A. I think it was at the same time the
25 energy price forecast, so I would say within the last

1 year, but I don't know the exact date.
2 Q. And have you seen that forecast?
3 A. I have not.
4 Q. Would you agree with me that if you use
5 different assumptions regarding, say, the way the
6 economy is going to go, you could end up with
7 different energy prices in your forecast?
8 A. You're talking about a long-term price
9 forecast?
10 Q. Yes.
11 A. Yeah, I would say that like any
12 fundamental analysis the assumptions associated with
13 it would vary the output.
14 Q. And am I correct that the business
15 development group when they provide a fundamentals
16 forecast of energy prices there, it will provide a
17 range of prices?
18 A. The structure that business development
19 has, there are a couple of different scenarios.
20 There's a worst case, there's a best case, and
21 there's a couple of intermediate cases, as I recall.
22 But they do make a determination based on their
23 evaluation of current economic conditions what is the
24 most appropriate case to use for their long-term
25 price projections.

1 Now, if I was to look for an asset
2 valuation with a range, I would have to specifically
3 ask for something and say, give me a worst case, give
4 me a best case. That would be the range you would be
5 looking for.
6 Q. So when you refer to the most
7 appropriate, that would be the base case?
8 A. That would be the base case or the point
9 value essentially that was associated with that
10 economic projection or that scenario they felt was
11 the most appropriate for current conditions.
12 Q. Okay. But business development could
13 also give you other cases, correct?
14 A. If asked for, if you wanted to get kind
15 of a bookends analysis of best and worst case, you
16 could do that.
17 Q. Has FES ever asked for a best or worst
18 case energy price forecast in evaluating the
19 economics of any of its plants?
20 A. Not since I've been there.
21 Q. And do you know, is business development
22 also able to provide a best and worst case capacity
23 price forecast?
24 A. I'm not sure if it's rolled into their
25 overall energy forecast or if it's a separate

1 projection of capacity prices. I don't know.
2 Q. And how about natural gas prices, are
3 they able to provide a best and worst case?
4 A. I'm not sure of the format that they got
5 the natural gas price projections and whether it has
6 a best or worst case or whether that gets rolled up
7 into the overall energy price.
8 MR. FISK: I have nothing else for the
9 public.
10 EXAMINER PRICE: Thank you.
11 Ms. Bojko.
12 MS. BOJKO: Yes, thank you.
13 - - -
14 CROSS-EXAMINATION
15 By Ms. Bojko:
16 Q. Good afternoon, Mr. Moul.
17 A. Good afternoon. Well, good morning. We
18 still have a half hour.
19 Q. At the time that you drafted your
20 testimony, you stated that you were directly employed
21 by FirstEnergy Solutions; is that correct?
22 A. I don't know if I used the word directly,
23 but stated in my title I was working for FirstEnergy
24 Solutions.
25 Q. I'm sorry. Let me clarify. You receive

1 your pay, your compensation directly from FirstEnergy
2 Solutions, not from FirstEnergy service Corp.; is
3 that correct?
4 A. That's correct.
5 Q. And your direct report is Don Schneider;
6 is that accurate?
7 A. No.
8 Q. Previously under your last -- when you
9 drafted your testimony, you did not report to Don
10 Schneider?
11 A. Oh, I thought you asked if Don Schneider
12 reported to me. I was going to say, wow, I got a
13 promotion.
14 EXAMINER PRICE: Second one in a month.
15 A. Wow, that's pretty good. No. Don
16 Schneider is president of FirstEnergy Solutions. I
17 was his direct report.
18 Q. And Don Schneider reports to Leila
19 Vespoli; is that correct?
20 A. Yes.
21 Q. Who asked you to prepare the testimony on
22 behalf of the companies?
23 A. I was requested by legal counsel to
24 prepare testimony on behalf of the companies.
25 Q. And which legal counsel asked you to

1 prepare testimony?
2 MR. LANG: Objection.
3 EXAMINER PRICE: Grounds?
4 MR. LANG: Relevance.
5 EXAMINER PRICE: Sustained.
6 A. Mark Hayden.
7 EXAMINER PRICE: I sustained it.
8 MR. LANG: You don't have to answer.
9 THE WITNESS: Sorry.
10 EXAMINER PRICE: It's all moot now.
11 Q. (By Ms. Bojko) Your testimony presented
12 to the Commission only addresses the proposed
13 transaction piece of the economic stability program;
14 is that correct?
15 A. Yes.
16 Q. And the proposed transaction is just one
17 aspect of the economic stability program; is that
18 accurate?
19 MR. LANG: Could I have that read back,
20 please.
21 EXAMINER PRICE: You may.
22 (Record read.)
23 A. Rider RRS is part of the economic
24 stability program. The proposed transaction is not
25 for review with the Commission.

1 Q. And rider RRS is just one aspect of the
2 economic stability program?
3 A. Yes.
4 Q. And you don't sponsor any other provision
5 of the economic stability program or the ESP IV; is
6 that correct?
7 A. Yes.
8 Q. And earlier today, I think in response to
9 Mr. Fisk, you explained that you involved -- you were
10 involved in creating the actual concept of the
11 proposed PPA; is that correct?
12 A. Yes.
13 Q. Because you modeled it after AEP, you
14 started with the OVEC units; is that correct?
15 A. Yes.
16 Q. Did you or anyone else at FirstEnergy
17 Solutions contact any other regulated utility to
18 offer them a similar purchase power arrangement?
19 A. No.
20 Q. Did you or anyone else at FirstEnergy
21 contact any other entities to offer them a similar
22 purchase power arrangement?
23 MR. LANG: Objection. It could be
24 rephrased again for -- she's using FirstEnergy
25 instead of FirstEnergy Solutions.

1 MS. BOJKO: I'm pretty sure I said
2 FirstEnergy Solutions.
3 EXAMINER PRICE: Rephrase it anyway.
4 Q. Did you or anyone else at FirstEnergy
5 Solutions contact any other entities to offer them a
6 similar purchase power arrangement?
7 A. No.
8 Q. Prior to taking your concept or your
9 proposal to the companies, isn't it true that the
10 only kind of written analysis or report that you had
11 would have been the P&L statements regarding the
12 FirstEnergy Solutions' units?
13 A. Yes.
14 Q. I believe earlier you said that when you
15 were discussing why you chose the plants in the
16 proposed transaction, you compared it to the rest of
17 FirstEnergy Solutions' portfolio; is that correct?
18 A. Yes, when we originally got feedback from
19 the companies that they were not interested in all of
20 our generating plants as a hedge, that that was too
21 much generation, they were interested in a subset,
22 then we started to narrow down which plants to
23 include.
24 So we first looked at the state of Ohio,
25 so plants that were located within, had jobs within,

1 and were built to serve Ohio customers primarily.
2 And then after that, we looked for the resource
3 diversity aspects of it. We have coal plants with
4 Sammis plant. We have a nuclear plant with
5 Davis-Besse. Now, because there are other baseload
6 assets in Ohio, between those and the remainder,
7 really came down to the point you're asking about,
8 which is how did we make that choice. And it was
9 really about taking a look at the percentages that we
10 were offering to the companies of different fuel
11 types, between nuclear and coal. We compared that to
12 our remaining competitive fleet because we thought
13 that was a pretty fair percentage mix from a risk
14 balancing standpoint. And so that's how we landed on
15 Sammis, Davis-Besse on top of the OVEC foundation.
16 Q. But looking at the FirstEnergy Solutions'
17 portfolio, you looked at plants outside the state of
18 Ohio, too; is that correct?
19 A. No. What I said originally was we
20 offered all the plants which were outside the state
21 of Ohio, and then as we started narrowing it down
22 based on the companies wanting a subset, we focused
23 primarily on Ohio Power plants.
24 Q. And when considering the FES portfolio
25 and fuel diversity, you were looking at the entire

1 FES portfolio; is that correct?
2 MR. LANG: Point of clarification, your
3 Honor. He has talked and has distinguished between
4 the first offer that was made and the second offer
5 that was made. This line of questioning, it's not
6 clear at all, I believe, whether she's asking
7 questions about the first offer or second offer. If
8 that could be clarified.
9 A. Please rephrase.
10 Q. You talk about in your testimony the FES
11 portfolio, and my question is, when you talk about
12 the FES portfolio, you're talking about the entire
13 FES portfolio; isn't that correct?
14 A. Could you show me where in the testimony
15 that is so I can see what the context is around it?
16 Q. We'll come back to that one. It's in
17 there somewhere. I don't know which piece of
18 testimony it's in.
19 Okay. Under the proposed transaction,
20 it's your understanding that the plants will continue
21 to be offered into the PJM market; is that correct?
22 A. Yes.
23 Q. And the plants will continue to be
24 dispatched by PJM; is that correct?
25 A. The plants will be offered in by the

1 companies each day into the PJM marketplace and then
2 PJM will make the dispatch decisions based on supply
3 and what their price offer and/or cost offer is for
4 those units.
5 Q. And isn't it true with respect to units
6 that are offered economically into the PJM markets,
7 PJM dispatches those based on the one that has the
8 lowest variable operating cost?
9 A. Yes, with the caveat that there are times
10 when they are needed for reliability. They may be
11 dispatched out of merit. But in general, yes.
12 Q. And you've talked a little bit today
13 about the term sheet. Just so we're all clear,
14 you're familiar with the term sheet; is that correct?
15 A. I've seen the term sheet. I'm not the
16 expert on the term sheet, but I can tell you the
17 first issues that bubbled up to me were the major
18 discussion points that I was involved in and, like I
19 said, I have a knowledge of it.
20 Q. And under the proposed transaction, could
21 additional generating plants be added to the PPA?
22 A. Not by the current words in the term
23 sheet that have been agreed to by the companies and
24 by FES.
25 Q. And could other terms and conditions

1 change?
2 A. This is the final term sheet, so this is
3 what has been agreed upon by the companies, what you
4 see in front of you, and FES.
5 Q. As you stated earlier today, there is --
6 you envision a contract being drafted; is that
7 correct?
8 A. Yes. There will a contract that houses
9 this term sheet and all of these terms and conditions
10 outlined in here, but I would expect that it would
11 have fidelity to what's in the term sheet.
12 Q. And you're not aware that a draft
13 contract for the proposed transaction exists today?
14 A. No.
15 Q. So is it fair to say that you're not
16 sure, you won't know exactly what provisions will or
17 will not be included in that final purchase power
18 agreement?
19 A. I know that the term sheet terms and
20 conditions will be included in that final contract.
21 Q. But other provisions could be included as
22 well, such as the breach provision that you discussed
23 earlier with Mr. Fisk?
24 A. Potentially.
25 Q. And it's my understanding that you were

1 not the lead of the FirstEnergy Solutions' team; it
2 was Sharon Noewer; is that correct?
3 A. Yes.
4 Q. And you stated earlier, I believe, that
5 Don Schneider approved the actual term sheet; is that
6 correct?
7 A. Final approval for the FirstEnergy
8 Solutions' portion, yes.
9 Q. And would rider RRS exist independent of
10 the purchase power agreement between FES and the
11 companies?
12 A. As I understand it, the proposed
13 transaction is separate from PUC review, but rider
14 RRS is part of the ESP. Certainly the structure of
15 rider RRS relies on generating assets as part of the
16 proposed transaction. So I don't see that they would
17 exist separately.
18 Q. And what is the term of the PPA, sir?
19 A. The term is 15 years.
20 Q. You discussed earlier today the unit
21 contingent provision, section 8 of the term sheet.
22 Do you recall that?
23 A. Yes.
24 Q. You talked about that FES's performance
25 is excused if the plants do not operate for up to 180

1 days; is that correct?
2 A. Yes, provided they were operating in
3 accordance with good utility practice.
4 Q. And under that same section 8 provision,
5 there are no consequences if FirstEnergy Solutions
6 fails to deliver the capacity, energy, and ancillary
7 services; is that correct?
8 A. Could you clarify what circumstances
9 you're talking about? Is it in accordance with good
10 utility practice? Not? I mean, there's a couple of
11 different ways it could go.
12 Q. During the first 180 days, the
13 FirstEnergy Solutions is excused, and they do not
14 have to deliver the capacity, energy, and ancillary
15 services; is that correct?
16 A. Provided they were operating in
17 accordance with good utility practice, yes.
18 Q. With that caveat, there are no
19 consequences or they don't have to provide any
20 penalties or anything for not operating within that
21 180 days; is that correct?
22 A. That's correct.
23 Q. But under that same circumstance, the
24 companies are still responsible for paying the
25 monthly payment associated with the PPA; is that

1 correct?
2 A. Yes.
3 Q. And that monthly payment consists of a
4 fuel payment for the plants' fuel expenses incurred
5 to operate the facilities; is that correct?
6 A. Yes.
7 Q. And it also includes an operation and
8 maintenance payment for the plant's O&M expenses for
9 the facilities incurred?
10 A. Yes, that's all outlined in section 3.
11 Q. And monthly payment also includes a
12 depreciation of payment, which includes a return on
13 and of the capital investment for the facilities?
14 A. Yes.
15 Q. And it also includes a capacity payment?
16 A. Yes.
17 Q. And then, finally, it includes tax
18 reimbursement payment for tax expenses; is that
19 correct?
20 A. Yes.
21 Q. Do you believe that the state of Ohio has
22 authority to shut down or close generating
23 facilities?
24 A. No.
25 Q. And does the proposal in front of the

1 Commission include the right for the state of Ohio or
2 the Commission to prohibit or preclude the generating
3 plants from shutting down?
4 A. When you say the proposed, what are you
5 talking about?
6 Q. FirstEnergy's proposal in front of the
7 Commission to approve rider RRS.
8 A. So could -- could I have the question
9 read back again? I want to make sure I understood.
10 Q. Let me start over. I'll take it apart.
11 A. Okay.
12 Q. Does the proposal in front of the
13 Commission by the companies, the proposed rider RRS
14 and the ESP IV, include the right for the state of
15 Ohio to prohibit or preclude generating plants from
16 shutting down?
17 MR. LANG: Objection, your Honor. To the
18 extent that she's asking about legal rights, asking
19 about legal conclusions, I would object to the extent
20 that she's requesting a legal determination be made
21 by this witness.
22 EXAMINER PRICE: I think she's just
23 asking about the economic stability program that he's
24 testified about.
25 MS. BOJKO: Yes, I am, your Honor. I

1 understand the witness is not an attorney.
2 THE WITNESS: Could you read the question
3 back again.
4 EXAMINER PRICE: Please.
5 (Record read.)
6 A. Not that I know of.
7 Q. And does the proposed purchase power
8 agreement include the right for the state of Ohio or
9 the Commission to prohibit or preclude the generating
10 plants from shutting down?
11 A. No.
12 Q. Prior to closing a generating facility,
13 do you have to submit a generation deactivation
14 request to PJM?
15 A. Yes.
16 Q. And has a generation deactivation request
17 for the Davis-Besse plant been submitted to PJM?
18 A. No.
19 Q. Has the generation deactivation request
20 for the Sammis plant been submitted to PJM?
21 A. No.
22 Q. Assuming there are no interruptions in
23 fuel delivery, would you agree with me that gas
24 plants can operate at any time of the day in any
25 season?

1 A. Given your hypothetical that eliminates
2 the vulnerabilities inherent with a natural gas
3 supply, yes.
4 Q. And a generating facility is able to
5 obtain a firm contract for the firm supply of natural
6 gas; is that correct?
7 A. It depends on the location of the plant
8 and the pipeline capacity and capability where
9 they're actually at. It also depends if they're
10 behind the local delivery company or not because
11 under a local delivery company, there is -- human
12 needs has a higher priority than generation, so that
13 would not be uninterruptible.
14 Q. But there are such contracts that exist
15 today; is that correct?
16 A. There are such contracts and some of
17 which were susceptible to interruptions even during
18 the winter of 2015.
19 Q. And some of them were not; isn't that
20 true?
21 A. Absolutely true.
22 Q. And isn't it true that it's possible for
23 a coal pile to freeze?
24 A. While coal pile freezing is a potential,
25 it's a manageable potential and through the last two

1 winters, which are some of the coldest in Ohio, we've
2 not had frozen coal pile issues at the Sammis plant.
3 Q. If a coal pile does freeze, it could
4 limit the output of a generating station, couldn't
5 it?
6 A. If you've not managed your coal pile
7 appropriately and allowed it to freeze, then, yes, it
8 could limit the output.
9 Q. You yourself, sir, have experienced a
10 coal pile freeze; have you not?
11 A. Portions of a coal pile freeze, but not
12 at the Sammis plant and very minor. It didn't
13 curtail the units.
14 Q. And I think either -- probably yesterday,
15 you discussed demand response as a tool for lowering
16 demand; is that correct?
17 A. Yes, I did.
18 Q. And isn't it true that demand response
19 was a useful tool during the polar vortex?
20 A. Absolutely, demand response is a useful
21 retail tool to shape and shave load for transmission
22 system operators.
23 Q. And, sir, if the customer has a fixed
24 rate contract for three years, isn't it true that
25 they would not see any fluctuation in natural gas

1 prices?
2 A. I guess I'm confused as how a long-term,
3 three-year contract, fixed-rate contract, has
4 anything to do with gas price fluctuations.
5 Q. Well, sir, I know I'm jumping around. I
6 don't want to repeat anything people have asked. But
7 isn't it true -- let's start with the -- I believe
8 you stated yesterday, and maybe to Mr. Fisk earlier
9 today, that you were talking about increases in
10 natural gas prices and how that may affect electric
11 prices; is that true?
12 A. Not only increases but volatility.
13 Q. Okay. With that background, isn't it
14 true that if a customer has a fixed price contract
15 for electric rates, that they are not necessarily
16 going to see any volatility in the natural gas
17 prices?
18 A. While they won't see them for the term of
19 their fixed price contract, the volatility in the
20 marketplace goes into cost buildup for any new
21 contracts that they would negotiate after the term of
22 their contract. So it eventually gets priced in
23 based on what energy market volatility is and that's
24 impacted and tied as well with the gas price
25 volatility in a gas dominated supply.

1 Q. It could get potentially built in.
2 A. I guarantee if there is volatility in the
3 energy markets, it gets factored into your new
4 contract as part of the cost buildup for a retail
5 contract.
6 Q. If an event happened in the first year of
7 the contract and the market settled down within the
8 next two years of that same contract, it's not
9 necessarily true that they would see an increase
10 that's directly correlated in something that happened
11 three years ago, is it?
12 A. I guess the point I'd make is there is
13 also some level of volatility in the energy price
14 market. So in your hypothetical, if there was an
15 event in the first year of a contract and then no
16 volatility from electric prices in the next two
17 years, it might be lower depending upon the terms of
18 the contract, but there is always a volatility
19 component in a cost buildup.
20 Q. And isn't it true, sir, that FirstEnergy
21 Solutions has offered three-year contracts to
22 customers in the past?
23 A. Yes.
24 Q. Isn't it true that they've also offered
25 five-year contracts to customers in the past?

A. I don't specifically recall if it's a five-year -- we've offered up to seven-year contracts to retail customers in the past, but based on the volatility that we saw in the marketplace after January of '14, we're out of that residential marketplace.

Q. And you've also offered seven-year fixed price contracts to customers previously; have you not?

A. In the residential space we have, yes. We don't any longer.

MS. BOJKO: Your Honor, if I could have just one minute. I think the remainder of mine are confidential.

EXAMINER PRICE: You may.

MS. BOJKO: That's all I have. Thank you.

Thank you, Mr. Moul.

EXAMINER PRICE: Thank you.

Mr. Settineri.

MR. SETTINERI: Thank you, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Settineri:

Q. Good morning, Mr. Moul.

A. Good morning. You got it. Five minutes.

Q. You're an engineer.

A. Yes, I am.

Q. That's a good profession.

Very quickly, in your new roll, what are your responsibilities?

A. In my new role, I have -- essentially if you take the nuclear fleet and separate that, the remaining generation units' operation reports up to me, as well as our corporate environmental group, and then we have a centralized maintenance group that we're developing for the generation fleet that reports to me as well.

Q. Thank you. Going to the draft term sheet that's been marked as Sierra Club Exhibit 1, am I correct that that term sheet is not binding on FES or the companies?

A. This is the final term sheet that's been agreed to by both parties. So it's as binding as I would expect it to be in its current state.

Q. You've had experience negotiating contracts?

A. Yes, I have.

Q. Have you signed contracts?

A. I have not signed contracts.

1 Q. Okay. You have you bought a car.
2 A. Yes, I have.
3 Q. Did you sign a contract to buy that car?
4 A. Yes, I have.
5 Q. Did you expect that deal to be binding
6 before you signed that contract?
7 A. Absolutely.
8 Q. Why did you believe it was binding?
9 A. I put my name on the paper.
10 Q. No. I asked you a different question.
11 Did you believe that contract for the car to be
12 binding before you signed the contract for the car?
13 A. Not until I signed it, no.
14 Q. And the term sheet is not signed by FES,
15 correct?
16 A. There is no signature on this document
17 right now.
18 Q. And it's not signed by the companies
19 either, correct?
20 A. Correct.
21 Q. Thank you. If a natural gas power plant
22 procures firm pipeline transportation and secures a
23 long-term contract for natural gas, it can operate as
24 reliable baseload generation, correct?
25 A. Emphasis on the word can, provided that

1 none of the vulnerabilities associated with the
2 just-in-time aspects or characteristics of its fuel
3 supply come into play.
4 Q. And if you could turn to -- you have a
5 copy of your June public deposition in front of you,
6 sir.
7 A. Yes, I do.
8 Q. If you could turn to page 130, please.
9 A. Yes.
10 Q. Starting at line 4, "Question: Okay.
11 And if a natural gas power plant does, in fact,
12 procure firm pipeline transportation and secures a
13 long-term contract for natural gas, it can operate as
14 reliable baseload generation?
15 "Answer: Is that a question?
16 "Question: Yes.
17 "Answer: Are you asking do I believe
18 that?
19 "Question: Yes.
20 Answer: I believe it can, yes." Did I
21 read that correctly, Mr. Moul?
22 MR. LANG: Your Honor, I would object to
23 improper impeachment because Mr. Moul's question
24 earlier was it can, which is exactly what he said in
25 his deposition. Only here he provided explanation as

1 to why he was saying it can.
2 EXAMINER PRICE: Sustained.
3 I sustained the objection.
4 MR. SETTINERI: Oh, I didn't hear you.
5 I'm sorry.
6 EXAMINER PRICE: Usually people have no
7 trouble hearing me.
8 MR. SETTINERI: I was not ignoring you.
9 Q. (By Mr. Settineri) Mr. Moul, today if a
10 generation unit in the FES fleet could not clear all
11 of its capacity in a base residual auction, could
12 that capacity be sold to third parties in the
13 wholesale markets?
14 A. Yes. You could enter a bilateral
15 contract with a third party.
16 Q. And is that -- has FES in the past
17 entered into bilateral contracts in the wholesale
18 markets for capacity with third parties?
19 A. Yes, we have.
20 Q. And if rider RRS is approved, could the
21 companies sell any capacity from any unit that did
22 not clear the BRA during the term of the proposed
23 transaction? Let me clarify. When I say sell, I
24 mean sell to a third party in the wholesale markets
25 through a bilateral transaction.

1 A. Similar to what we talked about in the
2 previous question, yes, they could. They would
3 control that capacity.
4 Q. In the event that there is
5 non-performance under that bilateral transaction,
6 could the companies bear penalties or damages for
7 non-performance?
8 A. I would expect yes based on the
9 experience I've had with other bilateral contracts
10 similarly set up for capacity obligations. If this
11 proposed transaction is consummated and goes through,
12 the companies will control the capacity of these
13 units and that obligation.
14 Q. And so in the event that penalties or
15 damages are imposed through that bilateral
16 transaction for non-performance, would those
17 penalties or damages be then recovered through rider
18 RRS?
19 MR. LANG: Objection, your Honor.
20 EXAMINER PRICE: Grounds?
21 MR. LANG: Mr. Moul is not testifying on
22 what may or may not be recovered through rider RRS.
23 Ms. Mikkelsen was the witness on that.
24 MR. OLIKER: Your Honor, I think the
25 witness said she didn't know, if I remember

1 Ms. Mikkelsen's testimony.
2 EXAMINER PRICE: Rider RRS is part of the
3 economic development program. You can answer, if you
4 know.
5 A. I don't know.
6 Q. Assume for me that two of the Sammis
7 units are converted to natural gas at some point in
8 the next 15 years or during the term of the proposed
9 rider RRS, am I correct to the extent you know that
10 the capital expenditure would not be recovered
11 through rider RRS with such a conversion?
12 MR. LANG: Your Honor, I object. The
13 witness has already testified on the term sheet.
14 Sammis is a coal plant. Davis-Besse is a nuclear
15 plant. It cannot be converted to natural gas before.
16 The hypothetical mischaracterizes the testimony and
17 is improper to ask the witness.
18 EXAMINER PRICE: Sustained.
19 MR. SETTINERI: Your Honor, if I may.
20 EXAMINER PRICE: You may.
21 MR. SETTINERI: His testimony related to
22 what the term sheet said. I'm assuming that -- my
23 assumption is that physically the units can be
24 converted to natural gas, for instance, if there is
25 an interstate transmission pipeline located up the

1 hill from the plant and they can connect to that
2 interstate pipeline and convert the units to gas, so
3 it's an assumption based on what can happen
4 physically, then my question is going to go towards
5 the recovery of the return on investment of that
6 conversion. So it relates to the return on
7 investment under the term sheet, not that the term
8 sheet precludes coal and gas conversions. And as he
9 said earlier, he's not an attorney.
10 EXAMINER PRICE: Do you understand his
11 hypothetical?
12 THE WITNESS: I mean, what I'm going to
13 fall back on is what's in the term sheet in front of
14 me, which is this is a coal plant.
15 EXAMINER PRICE: Can you rephrase your
16 hypothetical with something other than a conversion
17 to natural gas? Let me take a shot at it.
18 If -- and let me know if this is not the
19 correct hypothetical. If there were to be an
20 investment late in the 15-year program, 15-year PPA,
21 to put on carbon sequestration equipment, would that
22 be recoverable under the PPA?
23 THE WITNESS: So under the structure of
24 the PPA, that's a significant capital expenditure as
25 you see from the Kemper plant, for example.

1 EXAMINER PRICE: Right.
2 THE WITNESS: That would probably fall
3 into the area of making the unit uneconomic. It
4 would be a discussion between the companies and
5 FirstEnergy Solutions to decide whether a capital
6 investment of that size would be warranted.
7 Additionally, there's a section on capital
8 expenditure reviews that goes through that process of
9 determining what you need to do as far as getting
10 joint concurrence on capital expenditures going
11 forward. So I would think it would fall out of the
12 mix.
13 EXAMINER PRICE: I gave it my best shot,
14 Mr. Settineri.
15 MR. SETTINERI: Your Honor, thank you
16 very much.
17 Q. (By Mr. Settineri) And to be clear for
18 the record, Mr. Moul, then, it's your opinion that
19 during the term of the 15-year, what has been
20 proposed in the term sheet for 15 years, that the
21 Sammis plant units cannot be converted to natural
22 gas; is that correct?
23 A. That's my understanding as it's
24 structured right now.
25 Q. What do you base your understanding on?

A. Under the facilities section of the term sheet, it specifically defines the W.H. Sammis plant as a 2,220 megawatt coal-fired and a 13 megawatt diesel-fired power plant located in Stratton, Jefferson County, Ohio.

Q. Thank you.

A. You're welcome.

MR. SETTINERI: One moment, your Honor. No further questions in the public section, your Honor. Thank you.

EXAMINER PRICE: Thank you.

Mr. Dougherty.

MR. DOUGHERTY: Thank you. My colleagues have mercifully asked most of my questions, but I do have a couple.

- - -

CROSS-EXAMINATION

By Mr. Dougherty:

Q. Going back to the discussions that we've had today about your role in developing the proposed transaction, the idea of the proposed transaction, you stated you got this idea after learning about the AEP proposal in late 2013, correct?

A. Yes.

Q. So you would give AEP the credit for this

1 idea?
2 A. Yes.
3 Q. Okay. But you still had concerns about
4 the short-term viability of these plants before AEP
5 filed theirs or you learned of AEP's proposal?
6 A. Yes, like any other competitive generator
7 in the marketplace today, there is concerns, right?
8 I mean, all you've got to do is read the headlines.
9 You've got Exelon talking about challenges they have
10 with nuclear units. Entergy just the other day
11 talking about a challenge at Fitzpatrick, its unit up
12 in New York, and a fair amount of the competitive
13 generation in Ohio has sold its fleets.
14 Q. So the answer is yes, prior to that you
15 had concerns?
16 A. Absolutely.
17 Q. And had FES conducted any analysis to
18 find ways to help these plants survive?
19 A. Most of the work we had done was internal
20 focusing on optimizing our capital expenditures,
21 trimming our costs, do everything we could to be as
22 cost effective in the marketplace as possible,
23 renegotiated coal contracts, tried to make them as
24 advantaged economically as we possibly could during
25 these tough market times.

1 Q. And during those times that you had FES
2 inquired on finding -- strike that. Let's go back
3 one step.
4 Do you support the outlook -- excuse me,
5 the forecast by companies' Witness Rose about the
6 increased -- the forecasts of electricity prices
7 increasing over the next 15 years?
8 A. I think I actually answered the attorney
9 examiner's similar question, do you think over the
10 long-term energy prices will rise. I think over the
11 long term they will.
12 Q. Did you believe that before Mr. Rose
13 conducted his analysis or you had seen Mr. Rose's
14 analysis?
15 A. I had a general belief that energy prices
16 would rise in the long term. The question is what
17 would be the catalyst for that price rise and what
18 would be the loss in supply in the marketplace during
19 the down years in the near term. So would it be
20 retirement of additional units, for example? That
21 was the major concern that I had, was near term and
22 the viability of some of the units that are in our
23 portfolio, as well as the remainder of the market.
24 Q. That being said, you also believe and
25 believed at that point in time, if we can go to your

1 testimony -- I'm sure it's not your supplemental
2 testimony. No. Your testimony starting on page 7
3 where you go into rather great detail on the role the
4 plant served in promoting resource diversity which
5 starts there on line 3 of 7 and goes on through line
6 8. In those sections, you go into detail about how
7 important these plants are to resource diversity and
8 earlier you say how important resource diversity is,
9 correct?
10 A. Yes.
11 Q. Yeah. Thank you. Thank you for agreeing
12 with that --
13 A. You're welcome.
14 Q. -- that jumbled question there. So with
15 both of those things being said, that you felt that
16 over the long term there would be an increase in
17 prices as well as the importance that these plants
18 provide had FES intended or inquired on finding
19 financing for the plants outside of a PPA proposal?
20 A. What kind of a mechanism are you talking
21 about?
22 Q. Did you go to a bank and present to them
23 a plan like -- or a pitch like this where prices you
24 feel would increase and the importance of the plants
25 over the long term would support that?

1 MR. LANG: Objection to the
2 characterization, your Honor, of a pitch. I'm not
3 really sure what that means. I don't know if that's
4 ambiguous or argumentative because I don't know what
5 it means.
6 MR. DOUGHERTY: Can I call it a proposal?
7 I'm sorry. That was --
8 EXAMINER PRICE: Substitute proposal for
9 pitch. Can you answer the question, please?
10 A. Are you talking about in a similar
11 purchase power agreement structure?
12 Q. I'm talking about before AEP gave you the
13 idea for the power purchase agreement, you said that
14 you felt that you had plants that were important to
15 the viability of the grid as well as I'm assuming the
16 viability to Ohio, that although you had concerns
17 about their short-term viability, you felt that there
18 was going to be increases in prices over the long
19 term. Was that proposal, before you had the AEP
20 idea, presented for financing to, let's say, a bank?
21 MR. LANG: Objection. Ambiguous, your
22 Honor. I'm still not sure what he's talking about
23 with regard to a proposal.
24 EXAMINER PRICE: Can you try to rephrase?
25 MR. DOUGHERTY: Yes, I will.

1 Q. Did FES go to a bank to ask for a loan to
2 fund these plants over any amount of time?
3 A. So you're really looking at did we ask
4 for more debt to invest in these plants?
5 Q. I asked if you had a loan from the bank.
6 A. Well, right now, that, first of all, any
7 of that type of financing would be done through our
8 business services group, Jason Lisowski, working up
9 through FirstEnergy corporate, but to take on more
10 debt at FirstEnergy Solutions is not something that
11 would be palatable. It wasn't then, and it's not
12 palatable right now based on our balance sheet
13 currently.
14 Q. Before you got the idea of the PPA from
15 AEP and the AEP plan, did FES look to sell the plants
16 or analyze selling the plants outright?
17 A. No. What we'd seen in the marketplace
18 was showing that there wasn't a lot of value.
19 Certainly not what we believe an appropriate value
20 that the reliability benefits these plants provide
21 would entail, and we thought we had a viable
22 alternative that provided benefits to customers to
23 propose here today. So that was the first path we
24 went down.
25 Q. Thank you. And did FES -- I think I know

1 the answer. Did FES ask for funding from FE Corp. to
2 fund these plants in the short term?
3 A. Nothing over and above what we've already
4 got in our business plan.
5 Q. Thank you. Only one more line here. I
6 believe that in response to a question from
7 Ms. Fleisher, you had mentioned that there were some
8 voltage support needs in the ATSI zone. Did I get
9 that right?
10 A. Actually, I was talking about the value
11 that assets like the plants provide, which is they
12 can provide reactive support. They can provide
13 voltage support in the zones that they serve, unlike
14 some of the renewable sources that don't have that
15 capability.
16 Q. Are you aware whether the companies have
17 invested in Volt VAR optimization?
18 A. When you say the companies.
19 Q. The companies that we have been --
20 A. The operating companies. I don't know
21 the specifics. I do know, for example, though, that
22 our Eastlake units that were shut down have been
23 converted to -- some of them have been converted to
24 synchronous condensers as part of the compensation
25 for those plants shutting down and trying to maintain

1 voltage around Cleveland, as well as they're
2 installing a static bar compensator around the Lake
3 Shore plant as well to provide some of that support.
4 Q. Was the financing from that from the
5 companies or FES or another?
6 A. It wasn't from FES. That's regulated
7 transmission-type work. So it was -- I don't know if
8 it was from the companies or from corporate. I don't
9 know. But all of that financing -- well, the
10 financing aside, all of that expenditure once its put
11 in service as a transmission upgrade gets a
12 formulated rate of cost return and that cost gets
13 passed on to all of those customers that get the
14 benefit of the transmission support.
15 Q. One more quick thing just to close the
16 loop on something in the discussion I think you were
17 having with Ms. Fleisher earlier. If we go to page I
18 believe it's 6 where you talk about resource
19 diversity and the importance of resource diversity,
20 and you talk about the two kinds of resource
21 diversity, fuel diversity and asset diversity,
22 correct?
23 A. Yes.
24 Q. And you mentioned that both types of
25 resource diversity are essential, correct?

A. Yes.

Q. Is there any asset diversity -- can you explain the asset diversity that's being proposed in this proposed transaction?

A. If you actually go down to lines 12 and 13, it describes it where asset diversity is having a mix of assets in different classes so either baseload, intermittent, or peaking.

Q. And is there any intermittent or peaking proposed in this proposed transaction?

A. Davis-Besse is baseload. Sammis typically runs baseload; although it does load follow, especially the north units. So it can bridge the gap between baseload and an intermediate unit.

MR. DOUGHERTY: Thank you. No further questions from me on this.

EXAMINER PRICE: Mr. Hays.

MR. HAYS: Your Honor, I probably have an hour's worth of questions. So do you want me to start now? I mean, it's getting near lunchtime.

EXAMINER PRICE: Please proceed. Let's start.

MR. HAYS: Okay.

- - -

1 CROSS-EXAMINATION

2 By Mr. Hays:

3 Q. Hello, Mr. Moul. I'm Tom Hays with NOAC,
4 Northwest Ohio Aggregation Coalition, and a number of
5 individual communities like Toledo, Lucas County,
6 smaller ones, Perrysburg, and even smaller Lake
7 Township.

8 A. I used to live out there. I know what
9 you mean.

10 Q. Are you familiar with NOAC?

11 A. I'm familiar with the acronym. I'm
12 familiar with kind of the aggregation NOAC, yes.

13 Q. In your duties, are you aware that there
14 were contracts signed between FirstEnergy Solutions
15 and the Northwest Aggregation Coalition members to
16 provide electricity to our aggregation members?

17 A. I knew that NOAC was one of our
18 customers, but I never got involved in any of the
19 contracts with customers. That was really the retail
20 sales and marketing group function.

21 Q. Were you aware that FirstEnergy Solutions
22 also had contracts with NOPEC?

23 A. Yes, similarly.

24 Q. Were you aware that these were long-term
25 arrangements? In the case of NOAC, six years?

1 A. I remember that they were longer-term
2 contracts. I also remember that they were percent
3 off price to compare. So they're not fixed-term
4 contracts. And the price to compare moves with POLR
5 options and, therefore, market volatilities are all
6 eventually priced into that price to compare. So
7 while it's a long-term contract, we wouldn't count it
8 as a committed contract until its price had been set
9 by the price to compare.
10 Q. Okay. If I were to suggest to you that
11 the price for the NOAC communities was 6 percent,
12 does that ring a bell with you?
13 A. Not really. I knew it was a percent off.
14 I don't know the specific percentages. Like I said,
15 I didn't get involved in the terms.
16 Q. But the contract itself, while it had --
17 you would agree with me it had a variable price?
18 A. Yes.
19 Q. And that price was a percentage off of
20 the standard service auction price? In other words,
21 a standard service that would be offered if you took
22 no deal?
23 A. Yes.
24 Q. And would you agree with me that there
25 has been very little migration of customers moving

1 from the NOAC -- being a member of the NOAC
2 aggregation or a customer of the NOAC aggregation to
3 fixed price contracts offered by other suppliers?
4 MR. LANG: Objection, your Honor.
5 EXAMINER PRICE: Grounds?
6 MR. LANG: Both on relevance grounds and
7 foundation grounds. Relevance in terms of beyond the
8 scope of his testimony. He's testifying about the
9 future of the plants were uncertain and about
10 resource diversity benefits. Some issue with regard
11 to retail customer migration that may or may not have
12 occurred and related to NOAC is not relevant to or
13 within the scope of his testimony here. And Mr. Moul
14 has testified that even though he's generally aware
15 that there were some arrangements between FES and
16 NOAC, he's not familiar in detail with those
17 arrangements. He's never reviewed the contracts. So
18 I would object.
19 EXAMINER PRICE: We will sustain the
20 objection --
21 MR. HAYS: Your Honor, if I --
22 EXAMINER PRICE: Wait for the ruling.
23 MR. HAYS: I'm sorry.
24 EXAMINER PRICE: We will sustain the
25 objection with respect to the foundation. We will

1 give Mr. Hays a little bit of leeway with respect to
2 the relevance. So if you could rephrase your
3 question, see if he's got any knowledge of what
4 you're talking about.
5 Q. (By Mr. Hays) In your time with
6 FirstEnergy, did you look at customer classes in
7 terms of the delivery of demand response?
8 MR. LANG: Your Honor, can I have the
9 question rephrased using the right term? Nothing
10 with regard to whether he's talking about the
11 companies, FirstEnergy.
12 EXAMINER PRICE: He works for FES.
13 MR. HAYS: I'm sorry, your Honor.
14 Q. In your time with FES Solutions, did you
15 look at the demand response by customer classes?
16 A. No.
17 Q. In your position, were you ever aware of
18 the amount of demand that the aggregations, meaning
19 all of the aggregated customers that FirstEnergy
20 Solutions was serving, what their load may be?
21 A. Are you asking did I know what our total
22 government aggregation load was?
23 Q. Yes.
24 A. In any time frame?
25 Q. Let's just take over the last five years

while you've been there.

A. It hasn't been five. It's only been three. But in the last three years, it's been in the range of 10 to 15 terawatt hours.

MR. LANG: Is this a confidential issue? I don't think it is.

THE WITNESS: I don't think so. It's just total load we serve. I think it's outlined in the FirstEnergy fact book. I think it's publicly available. It's been in the 10 to 20 terawatt-hour range.

Q. Okay. Do you have any knowledge of what those load factors would be out of NOAC, NOAC's portion of that?

A. No.

Q. Do you know if the company considers the aggregation programs to be successful in terms of keeping customers of the aggregation from shopping, that is, leaving the aggregation so you would lose the sale or lose the load?

MR. LANG: Could I have that read back, please.

EXAMINER PRICE: You may.

(Record read.)

MR. LANG: Your Honor, I would object

1 because aggregation customers are shopping. The
2 question is about whether the aggregation is keeping
3 customers from shopping? Maybe it could be
4 rephrased.
5 EXAMINER PRICE: If you could rephrase,
6 please.
7 Q. You would agree under the current
8 contracts with NOAC that you are providing
9 electricity to our aggregation members, correct?
10 MR. LANG: Again, I'd object, your Honor.
11 No foundation has been established with regard to the
12 current contracts. And this witness has testified
13 he's never seen any of the contracts.
14 EXAMINER PRICE: We're going to allow
15 Mr. Hays a little bit of leeway, and we'll just
16 assume for purposes of this question that there are
17 contracts between NOAC and FirstEnergy Solutions for
18 aggregation service. You may proceed.
19 THE WITNESS: So could you read the last
20 question back?
21 EXAMINER PRICE: Yes.
22 (Record read.)
23 A. Yes.
24 Q. There are opt-out periods in the
25 contracts, you're aware of that.

1 A. Not really.
2 Q. Okay. Now, I think we both agreed that
3 the contracts are a variable price based on the
4 standard service auction.
5 A. Yes.
6 Q. Would you agree with me that you can
7 go -- that any of the individual homeowners or small
8 businesses served by the aggregation could go to the
9 PUCO website and look at the Apples to Apples
10 comparison chart to see if there were fixed offers?
11 A. I think anyone could go to the PUCO
12 website and look at the Apples to Apples offer. So
13 as your customers in NOAC are part of everyone, yeah,
14 I think they could.
15 Q. If a large number of customers in the
16 NOAC aggregations wanted stability, would you not
17 notice that in the loads that you're providing to the
18 aggregation?
19 EXAMINER PRICE: Could I have that
20 question back, please.
21 (Record read.)
22 MR. LANG: And, your Honor, I would
23 object. He's already testified he's not familiar
24 with the loads of NOAC.
25 EXAMINER PRICE: Just consider this to be

1 an extended hypothetical, but we are going to --
2 you're running out of your leeway, so let's consider
3 this to be an extended hypothetical. Answer the
4 question.
5 A. So when you say they want stability,
6 you're saying they would go to a fixed price contract
7 and opt out of their NOAC agreement?
8 Q. Correct.
9 A. We would notice that mostly with our load
10 forecasts. So my load forecasting group might notice
11 a change in our NOAC load if there were a large
12 number. It would take a large number before we would
13 notice it.
14 Q. Well, if the primary goal of consumers is
15 stability, wouldn't you expect large numbers of them
16 to go to a fixed price contract?
17 A. I guess that would really depend on the
18 price of the fixed price contract. I mean, I took a
19 look at the Apples to Apples website today, and you
20 can get up to a three-year contract, but it's over
21 seven and a half to eight and a half cents per
22 kilowatt-hour. That's pretty high.
23 Q. So they prefer the lower price they're
24 getting from our variable contracts, correct?
25 MR. LANG: Objection to this question,

1 your Honor. To the extent I think now he's asking
2 him to speculate not just in that hypothetical but to
3 speculate as to what each customer is interested in.
4 EXAMINER PRICE: Sustained. Customers
5 pick their retail choice contracts for a variety of
6 reasons. You can't isolate just one variable.
7 Don't answer it.
8 THE WITNESS: I'm not going to. Thank
9 you. I need the coaching.
10 Q. You mentioned you lived in the Toledo
11 area for a while?
12 A. Yes, I did.
13 Q. Have you recently -- excuse me. Since
14 you've been with FirstEnergy, have you been out to
15 the Bay Shore plant?
16 A. Yes, I have.
17 Q. When was the last time?
18 A. Less than two months ago.
19 Q. Did you see the new gas plant in Oregon
20 being constructed?
21 A. No. I didn't go past the facility.
22 Q. But you're aware that it's actually up
23 and it's a real building now?
24 A. I've not seen it, like I said. I've
25 heard it's under construction, but I don't know how

1 far along it is.
2 Q. If rider RRS is approved, would there be
3 a positive cash flow to FirstEnergy Solutions?
4 A. Well, I think if you --
5 Q. Let me rephrase it.
6 THE WITNESS: Would this border on
7 confidential?
8 MR. LANG: If in your answer you need to
9 get into confidential information, hold it for the
10 confidential section.
11 A. Could we hold it for that? I'm not sure.
12 Q. I would prefer not to. I'm asking just
13 in general terms, yes, no. So if rider RRS is
14 approved, will there be a positive cash flow to FES
15 from the Sammis plant and the Davis-Besse plant?
16 MR. LANG: Again, your Honor, to the
17 extent that for the witness to answer even "yes" or
18 "no" requires him accessing confidential information
19 to provide that, we would object to providing an
20 answer in this public portion of the transcript.
21 EXAMINER PRICE: Sustained.
22 Q. Let me ask you to assume that there will
23 be a positive cash flow if rider RRS is approved, a
24 positive cash flow to FES from the Davis-Besse plant
25 and the Sammis plant. Can you make that assumption

1 with me for a moment?
2 A. Yes.
3 Q. Once that money is back with FES, can it
4 invest that money in Pennsylvania plants?
5 A. When the revenues associated with any of
6 our generating fleet comes in, it's used
7 appropriately based on the needs across the entire
8 portfolio. It could be anywhere in our generating
9 fleet.
10 Q. But under RRS, all of the costs of
11 Davis-Besse are paid and all of the costs for Sammis
12 are paid; is that correct?
13 A. Yes. Additionally, the benefits of those
14 plants in the state of Ohio stay in Ohio, too, jobs,
15 economic development, and those kinds of things.
16 Q. Well, I think you just told me that any
17 positive funds could be used anywhere within FES to
18 include plants in Pennsylvania; am I correct?
19 A. And also could be at Davis-Besse and
20 Sammis. We look at it as a portfolio that we
21 operate.
22 Q. Is there anything in the term sheet that
23 limits the flow of these funds outside of the state
24 of Ohio?
25 A. Not that I recall.

1 Q. Now, the actual rider RRS would pass
2 these -- and let me just deal with Toledo Edison
3 because that's where NOAC is at; would you agree?
4 A. Yes.
5 Q. So we have ratepayers in NOAC in Toledo,
6 in Lucas County, in Perrysburg, and they are going to
7 pay during the first four years of this an additional
8 amount of money for their electric service; am I
9 correct?
10 MR. LANG: Objection, your Honor.
11 Mischaracterizes at least the forecast. There has
12 been multiple testimony in this proceeding with
13 regard to at least the forecast not being four years
14 of charges under rider RRS. To the extent that he's
15 asking the witness to speculate, I'm not sure what
16 he's asking.
17 EXAMINER PRICE: Could I have the
18 question back again?
19 (Record read.)
20 EXAMINER PRICE: You can answer, if you
21 know.
22 A. From the projections I've seen, there is
23 expected to be a charge for the first four years
24 followed by the remainder of the benefits flowing
25 back to the customers. Additionally, in that near

1 term, it provides certainty for the plants. So
2 you're from Toledo, from Lucas County, and from that
3 area out there, there is more than a few customers in
4 the NOAC area that work at the Davis-Besse plant.
5 It's 700 jobs in the area. There's a multiplier
6 effect for the economy for all those jobs that are
7 there. There is the tax base. If these plants don't
8 survive, they'll go out of the tax base and that
9 revenue will stop flowing to the local communities as
10 well. So there are a lot of benefits associated with
11 these plants over and above just the charge that
12 would go back to customers for the first four years.
13 MR. HAYS: Your Honor, I won't ask you to
14 strike, but I think you will notice it's
15 unresponsive. I would ask, your Honor, if I could
16 have the question reread and direct the witness to
17 answer it. It had to do with people paying their
18 billions, if there was an increase in the amount of
19 money for the first four years in their bills, that
20 they would be paying it.
21 MR. LANG: Your Honor, he answered the
22 question that they would pay rider RRS in the early
23 years. I don't think we need to have it read back.
24 EXAMINER PRICE: We don't need to have it
25 read back. I gave you a lot of leeway in your

1 questioning, so we're going to give the witness a lot
2 of leeway in his answering.
3 Q. Do you agree with your counsel that the
4 homeowners and small businesses in Lucas County will
5 be paying additional charges under rider RRS for the
6 first four years under the projections you see?
7 A. I think I've already answered that
8 question.
9 Q. Is the answer "yes"?
10 A. The answer is, while they would pay based
11 on the projections for the first four years, they
12 would also receive the benefits over the 15-year life
13 of the agreement. They would additionally receive
14 the benefits to the local economy, jobs retention,
15 the economic development value of all those jobs, 700
16 or so jobs at the Davis-Besse plant.
17 Q. Is that plant located in Oregon, Ohio?
18 A. Oak Harbor, actually.
19 Q. Did FirstEnergy already close four units
20 of the Bay Shore plant in Oregon, Ohio?
21 A. Yes.
22 Q. Did the loss of jobs come out of Oregon
23 and Toledo that went with those closures?
24 A. I don't know.
25 Q. That plant is a lot closer, would you not

1 agree, being in NOAC territory than the Davis-Besse
2 plant which is in Ottawa County?
3 A. Geographically, yes, it's closer. I
4 lived in Maumee, and I worked at Davis-Besse for six
5 years. So folks don't always live right on top of
6 the plant.
7 Q. Is FirstEnergy Solutions the subsidiary
8 that handles electric sales in Ohio?
9 A. Yes.
10 Q. So the companies, The Toledo Edison,
11 Cleveland Electric Illuminating, and the Ohio Edison,
12 they did not do sales, electric sales, in Ohio?
13 MR. LANG: Just for point of
14 clarification, you're talking about sales of retail
15 electric generation service? If I could help you.
16 MR. HAYS: Yeah, that's fine.
17 A. With respect to retail electric
18 generation service, I would say yes, the companies
19 don't do that in the state of Ohio.
20 Q. So the knowledge about the retail sales
21 would be on the FirstEnergy side of the company,
22 would it not, as compared to the FirstEnergy side?
23 MR. LANG: And, again, point of
24 clarification, you're talking about retail sales,
25 retail electric generation service, obviously the

1 companies have retail sales.
2 MR. HAYS: Let me take a moment and I'll
3 rephrase this.
4 Q. Would you agree with me that FirstEnergy
5 Solutions has greater knowledge of retail sales than
6 The Toledo Edison, Cleveland Electric Illuminating
7 Company, or the Ohio Edison?
8 MR. LANG: Your Honor, objection at this
9 point. I guess I'm done trying to clarify. Just
10 objection. It's ambiguous.
11 EXAMINER PRICE: Sustained.
12 MR. LANG: Your Honor, could we have an
13 estimate of how much time we have with Mr. Hays?
14 EXAMINER PRICE: I think he said an hour
15 a half hour ago.
16 MR. LANG: Would it be appropriate to
17 take a lunch break at this time, your Honor?
18 EXAMINER PRICE: I would very --
19 Mr. Lindgren, how much cross do you have?
20 MR. LINDGREN: I have about five
21 questions.
22 EXAMINER PRICE: I would very much like
23 to get this portion done before we go to lunch just
24 so we all feel good knowing we only have the
25 confidential portion next.

1 MR. LANG: Perhaps if Mr. Hays can limit
2 his questioning to Mr. Moul's testimony and the
3 relevance of that, we could get to the lunch break
4 quickly.
5 MR. HAYS: Thank you for your advice,
6 counsel. I'll certainly try to follow it.
7 Q. (By Mr. Hays) Early on I believe Mr. --
8 sorry, do you need a break for the water?
9 A. No. I'm fine. I can listen.
10 Q. Early on in your testimony, I believe you
11 were asked some questions by the Ohio Consumers'
12 Counsel regarding questions on demand, forecasts for
13 demand. Do you recall those?
14 A. Yes, associated with my structuring and
15 pricing my load forecasting group?
16 Q. Yes.
17 A. Yes.
18 Q. And I believe you indicated, and I wanted
19 to be sure, that you didn't take demand as just one
20 number, but you broke it down into categories or
21 classifications, groupings?
22 A. They will take a look at the load we're
23 serving, and each of the energy delivery companies,
24 and make a forecast for a given day based on weather
25 conditions and other factors that go into what that

1 actual demand will be because we have to bid our
2 demand into the PJM market every day, so that's what
3 they do.
4 Q. Okay. Do you separate out in your trying
5 to look forward to make these projections at
6 industrial demand versus, say, residential demand?
7 A. Yes. I want to clarify it's not a
8 long-term forecast. It's a projection for the next
9 day because we bid it in every day. But it will be
10 broken down by class, large commercial and industrial
11 customers have a different profile, a different load
12 factor, than, say, a residential customer.
13 Q. Over the last -- do you break it down
14 further? Like do you look at, say, the auto industry
15 and segments of the industrial load?
16 MR. LANG: Objection, your Honor.
17 Relevance.
18 EXAMINER PRICE: I'm giving him a little
19 bit of leeway.
20 A. We just keep it at the classes. We have
21 large commercial and industrial. So, for example,
22 the automotive industry, if you've got something like
23 a stamping plant, that would probably have a pretty
24 good load factor, pretty high. It would be a large
25 commercial industrial. It would be just in the

1 bundle of that. The only breakdown is by energy
2 delivery company.
3 Q. Do you ever look forward to try to make a
4 forecast in terms of right sizing your fleet and your
5 generating capacity or adding additions? Do you ever
6 look out and say what do we think the trends are
7 going to be? How much will we need five years from
8 now?
9 A. What we typically do is we run a dispatch
10 model and we make estimations on what we expect each
11 of the demands will be in the channels that we serve,
12 and we work to balance that portfolio to maintain our
13 risk level within acceptable levels and our return
14 for our shareholders to acceptable levels.
15 Q. Would that input for industrials over the
16 last four years have risen? I guess what I'm asking,
17 is industrial demand stronger today than it was four
18 years ago?
19 A. It's not exactly that way. The way I'm
20 talking about it is on a portfolio basis. So I'm
21 talking about how many customers in the large
22 commercial industrial sector we serve. We don't look
23 at it at a macro level for the state or anything like
24 that. We look at what are we serving. So that level
25 has gone down.

1 EXAMINER PRICE: When you say "we," you
2 mean FirstEnergy Solutions?
3 THE WITNESS: I mean FirstEnergy
4 Solutions, yes, I do. Sorry.
5 Q. So you would actually look at -- and I
6 don't know if you do or don't, so let's just call it
7 car company. If you look at a car company in Toledo
8 and there is several who have major operations there,
9 you would actually be looking at that level down to
10 the particular plant if it were a big user.
11 A. So that would be one of our large
12 commercial industrial loads. Before we would offer a
13 price to them, we would take a look at their load
14 profile. We would look at the risk factors. We
15 would build up all of the costs associated with that
16 offer, and if they entered into that agreement, then
17 we would serve that load. And based on that load
18 factor and their load shape and their historical
19 performance, that would go into our projections for
20 the load forecasting group.
21 Q. Okay. So it's really done at a very
22 granular level. I picked that term up from
23 Mr. Lisowski. I hope I used it right.
24 A. On a customer-by-customers basis for
25 large industrial commercial, because they have a lot

of load with fewer customers. On a residential basis, it's not that granular.

Q. Do residential -- does the residential portion stay relatively flat?

A. Actually, the residential load is one of the most volatile loads you have. It's very, very weather sensitive because folks run their air conditioners when it's hot and they run their furnaces when it's cold and that drives up demand significantly during extreme weather events.

Q. Okay. I guess I should have asked, I'm glad you answered that. Let me go back to what I was trying to get at.

Understanding that it varies by weather, what I'm really trying to get at is, hey, is that normal load of understanding the variabilities in it staying about the same over the last several years?

A. Are you talking about the amount of megawatts we serve in that --

Q. Yes.

A. -- portfolio?

Q. Yes.

A. Relatively. It's gone down some, but relatively flat.

Q. Okay. You brought up a subject of

1 natural advantage, I believe, when you were talking
2 about coal. Do you recall that, how there was -- you
3 know, that the Sammis plant was near coal?
4 A. I was talking about regional advantages
5 for different fuel types, but yes, with respect to
6 Sammis, it's on the Ohio River, and it's close to
7 northern App. coal which it can burn.
8 Q. Is the Sammis plant near the Utica
9 shales?
10 A. Yeah, Marcellus and Utica are really
11 under the footprint of FirstEnergy in general.
12 Q. Are you expecting load increase for sales
13 into the natural gas industry?
14 A. When you're asking me that question,
15 you're talking about FirstEnergy Solutions?
16 Q. Yes.
17 A. Potentially, and the reason I say that is
18 because the customers, for example, that are
19 midstream operators, it's a very desirable load,
20 there's a lot of competition for that type of load,
21 so we may see some of those customers come to us.
22 That's the type of customer we would like to get.
23 Q. So that would be, if you will, an
24 opportunity for FirstEnergy and a fuel that you're
25 competing with on the electric business, you know, in

1 terms of generating?
2 MR. LANG: Just point of clarification
3 again. You said FirstEnergy again. You meant
4 FirstEnergy Solutions?
5 MR. HAYS: I meant FirstEnergy Solutions
6 and I am sorry.
7 A. It's a retail opportunity for us, as we
8 understand it today.
9 Q. Have you read the annual report for 2014?
10 A. I've read portions of it, but not front
11 to back.
12 Q. Were you involved in developing the
13 annual report?
14 A. Not personally. My folks provided some
15 data to those who were writing it.
16 MR. HAYS: The reason for the -- I
17 believe this was Sierra Club -- no. Was it Sierra
18 Club or OCC, the annual report? I think it may be
19 OCC No. 3. Okay. If I could approach, your Honor,
20 or I could simply ask to direct the Bench's attention
21 to it. I mean, it says what it says, but I would
22 like to have it read into the record.
23 MR. LANG: Your Honor, we would object.
24 It's already been admitted into the record.
25 EXAMINER PRICE: Why don't you pose the

1 question related to what you want to read.
2 MR. HAYS: Okay.
3 Q. (By Mr. Hays) In the annual report, it
4 indicates that there is going to be 1,100 megawatts
5 of new load over the next four years, the equivalent
6 of about 1 million homes. Were you aware of a number
7 like that?
8 A. I wasn't aware of the specific number. I
9 know that there are some projections of load growth
10 in the area because of Marcellus and Utica shale, but
11 I wasn't aware of the specific number nor that
12 section of the annual report.
13 EXAMINER PRICE: One second. Do you know
14 if that statement relates to FirstEnergy's entire
15 corporate footprint or the companies' footprint?
16 THE WITNESS: I don't know for sure. I
17 suspect it's our entire footprint because of it being
18 the annual report not limited to a state or anything
19 like that, unless there is some qualifier in the
20 document, but I've not seen that page.
21 EXAMINER PRICE: Thank you.
22 Q. (By Mr. Hays) The next statement says,
23 "This represents approximately 50 percent of our
24 projected increase in industrial demand through
25 2019." Were you aware of anything like that or any

1 projections that FirstEnergy Solutions has made in
2 regard to demand growth?
3 A. No. As I said, FirstEnergy Solutions
4 focuses on the customers that we serve, not the macro
5 economic load growth in the area. That's really more
6 of an overall corporate view.
7 Q. Do you know if Ohio Jobs and Family has
8 issued a report about the number of jobs that are
9 going to be generated in Ohio by shale gas
10 development?
11 A. I don't know.
12 Q. Would you agree that -- you had said that
13 coal being nearby was a natural advantage. Would you
14 also agree that the Marcellus and Utica shales
15 located in Ohio are a natural advantage?
16 A. Absolutely.
17 EXAMINER PRICE: But not the sun?
18 MR. HAYS: I'm sorry, your Honor.
19 THE WITNESS: It's doggone Lake Erie. It
20 keeps it cloudy. I can't help that.
21 Q. In about 2008, was there an incident at
22 the Davis-Besse plant involving the reactor head?
23 A. No. Well, wait. 2008 is when I believe
24 we did find an indication on the replacement head.
25 You're not talking about the original problem, right?

1 Q. Well, let's go back and talk about the
2 original problem. When did the original problem with
3 the reactor head take place?
4 A. It was somewhere in the 2001, 2002 time
5 frame. I came to the company in 2004, and the plant
6 was restarting from that shutdown.
7 Q. But it was big news in the nuclear
8 industry; am I correct?
9 A. Absolutely.
10 Q. And that occurred within the last 15
11 years; am I correct?
12 A. Yes.
13 Q. Looking forward for the next 15 years, is
14 there a guarantee that something else couldn't happen
15 at the Davis-Besse plant?
16 A. Well, here's what I know about the
17 Davis-Besse plant. The steam generators have been
18 replaced. So that's a large capital investment that
19 will keep those plants viable and operating through
20 the remainder of their design life. The reactor
21 vessel head has been replaced and eliminated the
22 alloy 600 vulnerability that caused the problems in
23 the first place. So that was a materials issue. And
24 there's a rigorous inspection program to prevent that
25 from happening.

1 I know that they instituted a nuclear
2 power operations as a biannual review of all
3 operating reactors and evaluates them not toward
4 minimum compliance but towards industry excellence.
5 Davis-Besse has been rated at the industry excellence
6 the highest rating for the last three evaluations.
7 That's a well-run plant with capital investments
8 needed to keep it operating through its life, plus
9 potentially an additional 20-year extension if the
10 companies decide to go down that path.
11 Q. And all that said, there is no guarantee
12 that something unexpected couldn't come up?
13 A. I guess I would have to agree that
14 unexpected things could happen with any plant.
15 Q. I think you would agree with me that
16 almost all the major American industrial companies
17 have really put in a lot of effort into safety
18 programs.
19 EXAMINER PRICE: I'm going to object to
20 the relevance of that one.
21 MR. LANG: Thank you, your Honor.
22 EXAMINER PRICE: You don't need to answer
23 that.
24 Q. From your knowledge of what happened with
25 the incident with the reactor head, was FirstEnergy

1 employing good utility practices at the time?
2 A. I didn't have firsthand knowledge because
3 I didn't work at the company at the time so I can't
4 speculate but I was, for example, the operations
5 manager at Davis-Besse in 2006 to 2008 and as a
6 result of the lessons learned from that event. I
7 would walk through the containment building at power,
8 which is not usually done, just to make sure I had my
9 eyes on things and it had the right safety culture
10 and right performance and there were no unexpected
11 events. That's kind of the culture that is at that
12 plant based on the lessons they've learned.
13 Q. So your answer is you don't know if good
14 utility practices were in effect at the time that
15 happened?
16 MR. LANG: Objection. Asked and
17 answered.
18 EXAMINER PRICE: Sustained.
19 Q. Are there other similar plants to the
20 Davis-Besse plant in terms of the nuclear reactors?
21 MR. LANG: Objection. Relevance.
22 MR. HAYS: Your Honor, this will only be
23 a couple questions. You'll quickly see the
24 relevance.
25 EXAMINER PRICE: Okay. You can answer.

1 A. Davis-Besse is a pressurized water
2 reactor, and about 50 or so percent, give or take, of
3 the near 100 reactors are pressurized water reactors.
4 Is that what you're talking about, or are you talking
5 about --
6 Q. Yes. I'm asking if there are similar
7 kinds of plants. There are about 50 similar?
8 A. And more specifically it's a Babcock &
9 Wilcox designed reactor with once through steam
10 generators.
11 Q. In the nuclear industry, if a problem --
12 in your experience if a problem showed up at one of
13 the other similar plants, could it cause shutdowns of
14 Davis-Besse while inspections or changes are made?
15 A. I've not typically seen it cause
16 shutdowns, but I've seen the lessons learned from
17 those events be applied across the industry so that
18 performance improves and that the other plants aren't
19 susceptible to a similar issue.
20 Q. And some of those have been expensive,
21 I'm going to call them fixes, expensive fixes or
22 changes.
23 A. I guess it would carry. It depends on
24 the plant and what susceptibility it might have to a
25 specific issue that's identified.

Q. Some of these have been expensive, have they not?

MR. LANG: Objection, your Honor. I don't know what we're talking about.

EXAMINER PRICE: I've lost track, too.

Why don't you rephrase your question more specifically as to what it is you're talking about.

Q. If there were a problem at a similar reactor over the next 15 years, isn't it possible that that could cause large expenses at Davis-Besse even though it was following good utility practices itself?

MR. LANG: Objection, your Honor, to the incomplete hypothetical. I think the way the witness has answered that already, there's just too many variables.

EXAMINER PRICE: Sustained.

MR. HAYS: Thank you. Mr. Moul, I'm sorry your lunch got delayed a little bit.

THE WITNESS: Not just mine.

MR. HAYS: Mine too, but I mean everybody.

EXAMINER PRICE: Mr. Lindgren.

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1 CROSS-EXAMINATION
2 By Mr. Lindgren:
3 Q. Good afternoon, Mr. Moul.
4 A. Good afternoon.
5 Q. On pages 3 and 4 of your direct
6 testimony, you talk about the economic challenges
7 facing your baseload plant because of the current low
8 level revenues they're earning. Now, the state of
9 affairs would apply to other baseload plants in your
10 portfolio besides the ones included in this proposed
11 PPA; isn't that right?
12 A. Yes. Actually, it would apply to any
13 competitive plant. There are some differences,
14 depending upon where they are in, for example, PJM's
15 footprint and what kind of energy prices there are.
16 Out east they're a little higher than they are out
17 west, but in general, that's correct.
18 Q. And I believe in response to questions
19 from the Bench, you testified there would be nothing
20 to prevent the company from closing down another
21 plant such as Perry or Bruce Mansfield even if the
22 rider RRS is approved; is that right?
23 A. Yes. As I mentioned, each of the plants
24 stands on its own as we evaluate their financial
25 viability. The proposal -- the proposed transaction

1 would provide certainty for Davis-Besse and Sammis.
2 Q. Thank you. And, in fact, wouldn't
3 approving rider RRS actually increase the likelihood
4 that another plant not included in this PPA would be
5 closed down?
6 A. Actually, no. As I said, they all stand
7 alone. So the fact that you have two plants that
8 have certainty doesn't increase the likelihood at all
9 that another plant will not be able to compete in the
10 marketplace.
11 Q. Thank you. I believe you testified that
12 you were involved in structuring the PPA that's
13 summarized in the term sheet, correct?
14 A. Yes.
15 Q. Can you explain why Davis-Besse ended up
16 being included and not the Perry plant?
17 A. Yes, absolutely. It goes back to -- if
18 you remember, as I was describing it, I took a look
19 at the Ohio's plants as we were formulating how to
20 offer this, and so really, I mean, the only key
21 decision point is how much nuclear you put into the
22 mix, and we were trying to match it as closely as we
23 could to our overall competitive portfolio which
24 is -- it's not going to be exact, but it's about
25 30 percent nuclear, about 50 percent coal, 10 percent

1 or so gas and oil, 10 percent hydro, and another
2 percent or so is just solar and renewables. So with
3 that kind of 50/30 split kind of a view of the world,
4 we started with OVEC which was the base, Sammis was
5 really the only significant baseload coal plant
6 within the state of Ohio, and then plugged in
7 Davis-Besse, looked at the percentage, plugged in
8 Perry, looked at the percentage. With Davis-Besse in
9 there, the percentage was closer to what our
10 remaining competitive fleet fuel mix would be. It
11 was close to what we started with. So that was the
12 natural fit.
13 You know, part of it is offering
14 something that we think is a good balanced mix of the
15 fuel types to the companies, but the other part of it
16 is as FES is a competitive entity, we have to feel
17 comfortable with the fuel mix that we hold as well,
18 and so we wanted to keep them as close as possible.
19 Q. Well, how does Davis-Besse compare to
20 Perry in terms of operating costs?
21 A. I don't recall those numbers off the top
22 of my head. I'm thinking maybe Mr. Harden might be
23 able to give you a better view of that when he
24 testifies after me.
25 Q. Thank you.

A. They're not too far off. I mean --

MR. LANG: Just to instruct the witness to the extent that you are requiring numbers, we can do that in the afternoon in the confidential section.

THE WITNESS: That's a good point.

Q. (By Mr. Lindgren) Thank you. Mr. Moul, the OVEC plants were not built to serve the ratepayers of the FirstEnergy EDUs, were they?

A. Actually, I don't remember the whole genesis of the OVEC plants. I think they were built to serve the uranium enrichment facilities. I'm not sure.

Q. Is your answer "no"?

A. No. And as I said earlier, we included OVEC. It was kind of the foundation based on what we saw AEP file.

MR. LINDGREN: Thank you. I have no further questions.

EXAMINER PRICE: Thank you. Any questions?

I just have a couple. I believe earlier you testified as to who the head of the FES negotiating team was. Can you tell me who that was?

THE WITNESS: Sharon Noewer.

EXAMINER PRICE: Did she work for you in

1 your previous job?
2 THE WITNESS: No. She worked for Kelly
3 Mendenhall in FES at that time.
4 EXAMINER PRICE: But she worked at FES
5 while you were there?
6 THE WITNESS: Yes.
7 EXAMINER PRICE: So you know her?
8 THE WITNESS: I do.
9 EXAMINER PRICE: Do you think she is a
10 reliable source of information?
11 THE WITNESS: Absolutely.
12 EXAMINER PRICE: Would you consider her
13 testimony to be reliable?
14 THE WITNESS: Absolutely.
15 EXAMINER PRICE: Perfect. Have things
16 changed in the American economy significantly since
17 2013?
18 THE WITNESS: What do you mean by
19 significantly?
20 EXAMINER PRICE: Has the economy gotten
21 significantly better? Has the economy gotten a
22 little bit better? Has the economy gotten
23 significantly worse? Has it gotten a little worse?
24 THE WITNESS: I guess from 2008 until
25 2012 or so was a pretty steep drop. I think it's

1 been kind of hovering at a relatively low level since
2 then. So I think from 2013 to 2015, I don't have any
3 numbers to back this up, it's more of a gut feel.
4 EXAMINER PRICE: I'm just asking your
5 opinion.
6 THE WITNESS: I don't think it's gotten
7 much better or gotten much worse.
8 EXAMINER PRICE: Okay. And have
9 conditions in the electrical marketplace deteriorated
10 significantly since 2013?
11 THE WITNESS: I think what you've seen is
12 a continued decline in wholesale energy prices, and
13 so, yes, I would consider that a decline in the
14 energy markets themselves.
15 EXAMINER PRICE: Fair enough.
16 At this time we're going to take
17 administrative notice of Sharon Noewer's testimony in
18 12-426-EL-SSO being something along the lines the
19 application of Dayton Power and Light for standard
20 service offer. I'm going to read you some testimony,
21 question and answer by Sharon Noewer filed in that
22 proceeding.
23 "Question: Do customers benefit from
24 competition for electric service?
25 "Answer: Yes. Competition at both the

1 retail level for customers that choose to shop and
2 the wholesale levels for SSO procurements results in
3 numerous benefits for customers and the economy.
4 First and foremost, as opposed to regulated rates,
5 competition promotes lower prices to customers in
6 both the near and the long term. A competitive
7 market encourages electric suppliers to reduce their
8 costs in order to secure more customers. These cost
9 reductions may come from reduced supplier profits or
10 increased operating efficiency. In a competitive
11 market, such cost reductions are reflected in lower
12 electric prices that are enjoyed at the wholesale and
13 retail levels by all customers including the
14 industrial and commercial customers who play vital
15 roles in Ohio's economy. As a result, competition
16 promotes a favorable environment for the overall
17 development of Ohio's economy."
18 Do you disagree with that statement?
19 THE WITNESS: Not really, as long as it's
20 a truly competitive marketplace.
21 EXAMINER PRICE: She also states,
22 "Competition also shifts the inherent risks of
23 capital investments in generation away from
24 customers. In a competitive market, owners of
25 generation and their shareholders bare the risk that

1 generation investments will not be economic. Under a
2 market system with effective competition, generation
3 owners have a strong incentive to minimize their
4 costs and make their generation resources more
5 efficient because they bare the risk of their
6 business decisions. Thus, competition provides
7 incentives for generation owners to reduce their
8 costs while maintaining or increasing production
9 leading to improved operating performance from
10 existing generating plants. As a result, competition
11 promotes more innovative least cost solutions to
12 provide electric service in the most efficient and
13 cost effective manner." Was she incorrect in that
14 statement?
15 THE WITNESS: Back to the caveat I
16 provided earlier, as long as it's a truly competitive
17 marketplace in the generation field, I would agree.
18 But we don't have a truly competitive marketplace in
19 generation. We have policy decisions, such as
20 production tax credits that depress the energy
21 markets. We have decisions to include retail demand
22 shaping products in the wholesale capacity markets
23 that depress capacity prices, and so if it was truly
24 competitive, I might agree with that. I would
25 suggest that right now what we have in the generation

1 business is not a truly competitive marketplace.
2 EXAMINER PRICE: Is it less truly
3 competitive than it was in 2013?
4 THE WITNESS: I think it's similarly
5 noncompetitive, not truly competitive.
6 EXAMINER PRICE: Thank you. If you could
7 turn to page 8 of your testimony, lines 10 through
8 14. In those lines, you're not suggesting, are you,
9 that in the event the proposed transaction is
10 consummated and there was another incident like the
11 polar vortex, that PJM would dispatch the power from
12 Davis-Besse and to Sammis to Ohio as a priority to
13 the detriment of other parts of PJM, they would
14 dispatch power the way they dispatch power; is that
15 correct?
16 THE WITNESS: That's correct, but it
17 also -- inherent in that is the plants located within
18 the ATSI zone provides some of those other
19 reliability benefits that I talked about, power
20 support, voltage support in the local area that had
21 these plants not been around would have had to be
22 compensated for in other ways.
23 EXAMINER PRICE: Okay. Fair enough. And
24 last, on page -- you touched briefly upon
25 transmission upgrades. If Perry closed, customers

1 might be responsible for paying for transmission
2 upgrades to make up for Perry being closed,
3 retirement; is that correct?
4 THE WITNESS: I've not evaluated the
5 Perry plant's transmission situation specifically,
6 but in general Perry, like any other plant, when it
7 is deactivated, there's a reliability study done by
8 PJM and there are typically transmission upgrades
9 required to compensate for.
10 EXAMINER PRICE: And if Bruce Mansfield
11 closed, it might be necessary that there be
12 transmission upgrades; is that correct?
13 THE WITNESS: Similarly, yes.
14 EXAMINER PRICE: And under PJM's cost
15 allocation system, the cost of those transmission
16 upgrades could be passed along to Ohio ratepayers; is
17 that correct?
18 THE WITNESS: Yes. Specifically if they
19 get the benefit associated with the transmission bill
20 to support their load zones, then, yes, yes, it
21 would.
22 EXAMINER PRICE: And, lastly, and
23 maybe -- you may not be the right witness. It might
24 be one of the other witnesses, but if you could
25 answer this, I'd appreciate it. You discussed the

1 closure of Lake Shore, Eastlake, Bay Shore power
2 plants.
3 THE WITNESS: Ashtabula.
4 EXAMINER PRICE: Ashtabula and because of
5 those closures, as I understand it, there is
6 something like a billion in transmission upgrades
7 when necessary?
8 THE WITNESS: Yeah, I'm not sure of the
9 exact number, but that's close.
10 EXAMINER PRICE: Do you think that
11 investing a billion dollars in transmission upgrades
12 created any jobs?
13 THE WITNESS: A billion dollars in
14 transmission upgrades created short-term jobs to do
15 the construction of the system, but beyond that, no,
16 as opposed to jobs that are located at generating
17 facilities that can preclude that transmission build,
18 those jobs stay there. Those people support the
19 local community, the charities, the tax base of the
20 plant, all of that.
21 EXAMINER PRICE: Have you studied how
22 many short-term jobs were created in the transmission
23 upgrades?
24 THE WITNESS: I have not.
25 EXAMINER PRICE: Are you aware of how

1 many secondary and tertiary jobs were created as a
2 result of the transmission upgrades?
3 THE WITNESS: I have not.
4 EXAMINER PRICE: You don't go out of your
5 way to avoid Ohio suppliers for materials for
6 transmission upgrades, do you?
7 THE WITNESS: I'm not involved in the
8 procurement of those services.
9 EXAMINER PRICE: Fair enough. Finally,
10 you discuss on page 6 resource diversity, and you
11 point out a mix of resource, meaning coal, nuclear,
12 gas, wind, and solar; is that right?
13 THE WITNESS: Yeah, all of the above.
14 EXAMINER PRICE: But you have no wind in
15 this package; is that right?
16 THE WITNESS: That's correct, because
17 when we're looking at 24/7 capability, fuel
18 controlled on site, up to two years at Davis-Besse
19 and 30 days at Sammis, those are the kind of
20 reliability benefits and certainty of the ability to
21 generate that we put forth as a value for the
22 companies' customers. Wind by its very intermittent
23 nature can't provide those same certain generation
24 outputs and consistent potential revenues.
25 EXAMINER PRICE: But you would agree

1 during the polar vortex and the associated later
2 winter storm in January of 2014, that wind
3 outperformed what it was expected to perform in the
4 moment of crisis?
5 THE WITNESS: While I'll agree it
6 outperformed what it was expected to perform, it's
7 still 2 percent of the generation stack. So the
8 lion's share of generation was provided by coal and
9 nuclear units.
10 EXAMINER PRICE: Well, sure, it's
11 2 percent because you're not building more wind,
12 right? If you built more wind, it could provide more
13 generation; isn't that correct?
14 THE WITNESS: I can't remember the
15 statistics on how big a wind farm you would need to
16 replace Davis-Besse, but let's just suffice it to say
17 it's pretty big.
18 EXAMINER PRICE: I would agree with that.
19 But there are wind farms sited in Ohio that run
20 300 megawatts, don't they?
21 THE WITNESS: For a capacity factor,
22 maybe 30 percent on a good day and typically in the
23 off-peak hours. Not in the summertime typically when
24 you have the high peak times. Wintertime was
25 different, I'll admit, during the polar vortex and

the -- I guess they call it the Siberian Express.

EXAMINER PRICE: Right, right. But utilities for solar would help in the summer peak times?

THE WITNESS: During the day.

EXAMINER PRICE: During the day.

THE WITNESS: Although Lake Erie may have something to do with the cloudiness that we have here.

EXAMINER PRICE: You might have to consider the geographic location even within Ohio.

THE WITNESS: And that's why I talk about that there's no one right mix because regionally there are areas where solar is much more advantageous than Ohio.

EXAMINER PRICE: But the regional mix that you've picked accounted for 2013 for 79.5 percent of the generation mix?

THE WITNESS: Where are you at?

EXAMINER PRICE: Line 9, page 3, unless my math is wrong.

THE WITNESS: Yeah, 44.4 plus 35.1. I think your math is correct.

EXAMINER PRICE: Thank you. It's time for lunch. Let's go off the record.

1 (Thereupon, at 1:20 p.m., a lunch recess
2 was taken until 2:30 p.m. of the same day.)
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Tuesday Afternoon Session,

September 15, 2015.

- - -

EXAMINER PRICE: Let's go back on the record. At this time, we will go into confidential session.

(CONFIDENTIAL PORTION EXCERPTED.)

(OPEN RECORD.)

EXAMINER PRICE: Let's go back on the record and we will now go on the public portion of

1 your transcript.
2 Redirect.
3 MR. LANG: Thank you, your Honor.
4 - - -
5 REDIRECT EXAMINATION
6 By Mr. Lang:
7 Q. Mr. Moul, this morning Ms. Bojko asked
8 you questions specific to the term sheet with regard
9 to categories of payments under the monthly payment,
10 the contract price that's in the term sheet. Do you
11 remember that exchange?
12 A. Yes, I do.
13 Q. And she asked you specifically with
14 regard to during the first 180 days if a unit is
15 unavailable and FES was using good utility practice,
16 what categories of those contract terms would apply.
17 Do you remember that?
18 A. Yes, I do.
19 Q. If a unit is unavailable, how would that
20 affect those categories of costs that are in the term
21 sheet?
22 A. Functionally it's very important to
23 realize that if a unit is unavailable, it's not
24 running, it's not burning fuel, so the fuel payment,
25 there would be no expense associated with fuel or

1 reagents. Additionally, any variable O&M associated
2 with coal handling, what have you, isn't going to be
3 racking up costs as well. And then the capacity
4 payment, as I said earlier, still continues to flow
5 to the companies under this agreement. It's
6 important, too, to understand, that fuel cost, it's
7 almost 80 percent of the costs associated with these
8 plants. It's a very, very large portion of it. So a
9 large portion of those costs would not be incurred.
10 Q. And, also, I would say I believe this
11 afternoon, you were asked questions by -- Attorney
12 Examiner Price read you from Ms. Noewer's testimony
13 in an earlier proceeding. Based on what he read to
14 you, is there anything that's being proposed here
15 that you believe is inconsistent with Ms. Noewer's
16 testimony that was read to you?
17 A. No. Actually, I don't think anything
18 that we're proposing here is in any way inconsistent
19 with Ms. Noewer's comments on competitive markets.
20 Under the proposed construct, retail customers still
21 have the ability to shop for a -- from a retail
22 supplier. The wholesale marketplace still functions
23 to support provider of last resort or SSO options.
24 It doesn't change any of that. And the proposal
25 provides a hedge value to customers along with all

1 the other economic benefit and the reliability
2 benefits that these plants provide. So I don't see
3 any conflict with the competitive market construct
4 and what we're proposing as part of this PPA.
5 Q. And, Mr. Moul, lastly, Mr. Oliker
6 possessed a hypothetical to you involving asking you
7 to assume that for the next five years your revenues
8 would exceed your costs as the categories of revenues
9 and costs were as he described to you. Do you
10 remember that exchange?
11 A. Yes, I do.
12 Q. Under what circumstances -- under what
13 circumstances in actuality would you consider
14 retiring the plants?
15 A. Well, let me start by saying Mr. Oliker's
16 hypothetical provided me with certainty that I would
17 be making a profit on these plants. My testimony is
18 there is not a lot of the certainty in the
19 marketplace today. If you don't continue to get a
20 return on your investment, you don't have additional
21 investment to improve or maintain the performance of
22 these plants. As these plants would decline in
23 performance, then you're challenging your energy
24 revenue. Additional market prices going down could
25 put us to the point where we're not recovering our

1 avoidable costs, at which point we would be able to
2 make a decision to deactivate the plants.
3 MR. LANG: Thank you, Mr. Moul. Your
4 Honor, that's the redirect that we have.
5 EXAMINER PRICE: Thank you.
6 Ms. Grady, recross?
7 MR. GRADY: No questions, your Honor.
8 EXAMINER PRICE: Mr. Borchers?
9 Mr. Oliker.
10 MR. OLIKER: Your Honor, first, before I
11 resume cross-examination, could we clarify that the
12 initial questions that I asked him in the
13 confidential record be moved to the public record
14 regarding my hypothetical?
15 EXAMINER PRICE: Do the companies object
16 to that?
17 MR. LANG: Your Honors, if we could look
18 at the transcript this evening, I think thinking back
19 on his hypothetical, I think it might be possible
20 because it was a hypothetical. I would just like to
21 look at it in the transcript overnight, and we'll let
22 you know in the morning.
23 EXAMINER PRICE: I'd like both of you to
24 get together and agree on the line numbers so we're
25 not leaving this up to the reporters to guess.

1 MR. LANG: Yes, your Honor.
2 EXAMINER PRICE: And then we'll go from
3 there.
4 MR. OLIKER: And I think my follow-up to
5 that question will have to wait for the confidential
6 redirect if that's okay, your Honor, if I refer to
7 actually JJL-1.
8 EXAMINER PRICE: Okay. We'll do second
9 rounds and confidential redirect.
10 - - -
11 RECROSS-EXAMINATION
12 By Mr. Oliker:
13 Q. Following up on your statement about fuel
14 expense being a large -- do you remember that
15 question from Mr. Lang?
16 A. Yes, I do.
17 Q. Would you agree that the only way the
18 companies would incur fuel expenses in normal
19 business operations is if the fuel costs were lower
20 than the marginal price, locational marginal price of
21 electricity?
22 MR. LANG: And, I'm sorry, your Honor,
23 just if we could substitute, I believe, FES for the
24 companies in the question and then go right into it.
25 EXAMINER PRICE: With that clarification.

THE WITNESS: Could you read that back to me?

EXAMINER PRICE: Please. Let's have the the question again.

(Record read.)

A. If I understand your question, what you're asking me is when the locational marginal price is less than the variable fuel cost -- no, you're asking me when the variable fuel price --

EXAMINER PRICE: Why don't you start over.

A. Okay. If I understand your question, what you're asking me is, when the variable fuel cost is less than the locational marginal price for power, that is the only time that the companies would be incurring a fuel expense?

Q. Yes.

A. That's correct.

Q. And under the proposed terms, would fuel only be assessed to the companies to the extent it's burned?

A. The way we account for fuel expenses when it is actually burned, when it's on the pile, it's part of an inventory cost.

Q. Okay.

1 EXAMINER PRICE: And if you had a take or
2 pay contract, just add it to the pile?
3 THE WITNESS: Well, there are a number of
4 things you would do, depending upon contract terms,
5 that you could choose to discount based on liquidated
6 damages of a take or pay contract because it was less
7 expensive to burn the coal than it was to pay the
8 liquidated damages. So you can adjust your dispatch
9 cost or your variable costs based on any penalties
10 you might pay.
11 MR. OLIKER: Could I have one moment,
12 your Honor?
13 I think those are all the questions I
14 have, your Honor. Thank you.
15 Thank you, Mr. Moul.
16 EXAMINER PRICE: Mr. Fisk?
17 MR. FISK: No redirect.
18 EXAMINER PRICE: Ms. Fleisher?
19 MS. FLEISHER: Just a couple questions.
20 - - -
21 RECROSS-EXAMINATION
22 By Ms. Fleisher:
23 Q. When you said that fuel represents
24 80 percent of the costs of the plant, is that
25 80 percent of variable costs?

1 A. Yes.
2 Q. Okay. And in your testimony regarding
3 the effect of the economic stability program on
4 competitive markets, are you intending to testify to
5 the effect on retail markets as well?
6 A. Yeah, I believe I mentioned that at the
7 very first point after I agreed with Ms. Noewer's
8 comments.
9 Q. And if rider RRS is in place, can
10 customers shop for a hedge?
11 A. What are you suggesting as a hedge? You
12 mean options, calls, puts? What are you talking
13 about?
14 Q. Any potential hedge you can imagine.
15 A. I think the closest thing to a hedge
16 would be a fixed price contract, but the difference
17 there is the value doesn't flow back in high price
18 times. So I'm not sure if there's a hedge product
19 out there that would match the value that this
20 proposed transaction could provide.
21 Q. That was not particularly my question.
22 I'm asking you whether a customer will have the
23 option to shop for a hedge based on their own
24 assessment of what provides value to them.
25 A. I think that would depend on what's

1 offered in the marketplace. I couldn't speculate as
2 to what a customer wants and what a customer values
3 is necessarily available in the retail marketplace.
4 Q. Okay. And I'm again -- maybe I should
5 rephrase my question to make sure I'm clear.
6 Part of the application in this case is
7 proposing rider RRS as a hedge, correct?
8 A. Correct.
9 Q. So customers must -- are you aware that
10 rider RRS is proposed as a nonbypassable rider?
11 A. Yes.
12 Q. And am I correct that that means that
13 customers cannot decide not to accept that hedge?
14 A. Yes, I would assume nonbypassable would
15 mean that, yes.
16 MS. FLEISHER: Okay. That's it.
17 EXAMINER PRICE: Ms. Bojko?
18 MS. BOJKO: Thank you.
19 - - -
20 RECROSS-EXAMINATION
21 By Ms. Bojko:
22 Q. In response to your counsel's question,
23 you were talking about O&M expenses during the
24 180-day outage or when the plant is unavailable. Do
25 you recall that?

A. Yes.

Q. Okay. For the 180 days when the plants are out, the companies are still responsible for maintenance of the plant; is that correct?

A. Yeah, absolutely.

Q. And if the plant is unavailable or out due to a maintenance-type issue, the companies would be responsible to get that plant back up and running; is that correct?

MR. LANG: Objection. Could we please clarify when you say the companies will be responsible, you mean --

MS. BOJKO: The companies, the three utility companies that are paying for the maintenance costs, they would be required to pay for the maintenance costs to get the plant back up and running.

MR. LANG: That's what you intended, okay.

A. Well, the generation team would be the ones doing the work so it would flow through the charges in the rider eventually. What I mentioned in my answer was the variable O&M associated with fuel handling would not be included during the time it was shut down.

1 Q. Right. And I'm trying to clarify the
2 maintenance expenses incurred during that period
3 would be under the PPA the responsibility of the
4 companies?
5 A. Yes.
6 MS. BOJKO: Thank you. I have no further
7 questions.
8 EXAMINER PRICE: Mr. Settineri?
9 MR. SETTINERI: Thank you, your Honor.
10 - - -
11 RECROSS-EXAMINATION
12 By Mr. Settineri:
13 Q. Mr. Moul, you were asked some questions
14 about Ms. Noewer's testimony, and just for the record
15 how do you spell her last name?
16 A. You've got me. I won't even try. I'm
17 sorry.
18 EXAMINER PRICE: Don't look at me.
19 Q. Okay. Well, just to follow up on those
20 questions, FES competes with other competitive retail
21 suppliers, correct?
22 A. Yes.
23 Q. And FES competes with other companies
24 that are wholesale generators, correct?
25 A. Yes.

MR. SETTINERI: Thank you. No further questions.

EXAMINER PRICE: Mr. Dougherty?

MR. DOUGHERTY: No recross, sir.

EXAMINER PRICE: Mr. O'Brien?

MR. O'BRIEN: No questions. Thank you.

EXAMINER PRICE: At this time we'll go to the confidential session and people can ask any questions they had on redirect saved for the confidential section.

(CONFIDENTIAL PORTION EXCERPTED.)

(OPEN RECORD.)

EXAMINER PRICE: Back on the public session.

Mr. Moul, you're excused. Thank you very much.

1 EXAMINER PRICE: Mr. Lang.
2 MR. LANG: Your Honor, the companies
3 would move Companies' Exhibits 28, 29, and 30 which
4 are the direct, supplemental public, and supplemental
5 confidential testimony of Mr. Moul, and then also
6 Company Exhibit 31 Confidential, which is Mr. Moul's
7 workpapers.
8 EXAMINER PRICE: Any objections to the
9 admission of Company Exhibits 28, 29, 30 Confidential
10 and 31 Confidential?
11 Seeing none, they'll be admitted.
12 (EXHIBITS ADMITTED INTO EVIDENCE.)
13 EXAMINER PRICE: Ms. Fleisher?
14 MS. FLEISHER: Your Honor, at this time,
15 unless you would be inclined to take administrative
16 notice of it, I'm just going to defer moving ELPC
17 Exhibit 7 into evidence, if that's fine.
18 EXAMINER PRICE: Do you want
19 administrative notice taken of ELPC Exhibit 7?
20 MS. FLEISHER: I believe it would be
21 appropriate, but I'm happy to defer to your
22 preference if you'd rather I have another witness to
23 lay a foundation. I don't think it needs much of
24 one.
25 MR. LANG: And, your Honor, to me the

1 issue is whether there's a reason to take
2 administrative notice of it. She has -- ELPC has not
3 established at this point a reason to take
4 administrative notice of that exhibit. So I would
5 object to that.
6 MS. FLEISHER: I can address that, your
7 Honor. I do believe Ms. Mikkelsen did offer some
8 testimony about the companies' energy efficiency
9 program. So with respect to her testimony, it
10 provides context, but I also think that if he
11 believes it's not relevant to any future witness that
12 I might choose to question about it, he can raise a
13 relevance objection at that time.
14 EXAMINER PRICE: Are you asking for
15 administrative notice to be taken just of the CEI
16 plan, or are you asking administrative notice be
17 taken of all three approved plans?
18 MS. FLEISHER: I guess I would say all
19 three, and I'm happy to provide copies.
20 EXAMINER PRICE: Oh, no.
21 MS. FLEISHER: Okay.
22 EXAMINER PRICE: I have copies in my
23 office.
24 MS. FLEISHER: Okay.
25 EXAMINER PRICE: At this time we'll take

1 administrative notice of the approved company energy
2 efficiency and peak demand reduction program
3 portfolio plans filed in 12-2190, 2191, and
4 2192-EL-POR.
5 MS. FLEISHER: Thank you. And I would
6 like to at this point move for the admission of ELPC
7 8.
8 EXAMINER PRICE: I think we already took
9 administrative notice of all the PJM OATT tariffs
10 related to RMRs.
11 MS. FLEISHER: Okay. And we've dealt
12 with 9, 10, and 11, and so I believe I'm done.
13 EXAMINER PRICE: Thank you.
14 Mr. Fisk.
15 MR. FISK: Your Honor, I would move for
16 the admission of Sierra Club 46.
17 EXAMINER PRICE: Any objections? Seeing
18 none, it will be admitted.
19 (EXHIBIT ADMITTED INTO EVIDENCE.)
20 EXAMINER PRICE: Thank you all. We will
21 resume tomorrow at 9:00, at which point we'll take
22 Mr. Harden. We are adjourned. Thank you.
23 (Thereupon, at 4:40 p.m., the hearing was
24 adjourned.)
25 - - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, September 15, 2015, and carefully compared with my original stenographic notes.

_____
Carol A. Kirk, RPR, RMR.

(CAK-79302)

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Case No(s). 14-1297-EL-SSO

Summary: Transcript In the Matter of the application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company hearing held on 09/15/15 - Volume XI electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.