

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

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 9:00 a.m. on  
Thursday, September 17, 2015.

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VOLUME XIII

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

- - -

## 1 APPEARANCES:

2 FirstEnergy Corp.  
3 By Mr. James W. Burk  
4 and Ms. Carrie M. Dunn  
5 76 South Main Street  
6 Akron, Ohio 44308

7 Calfee, Halter & Griswold LLP  
8 By Mr. James Lang  
9 and Mr. N. Trevor Alexander  
10 The Calfee Building  
11 1405 East Sixth Street  
12 Cleveland, Ohio 44114

13 Jones Day  
14 By Mr. David A. Kutik  
15 901 Lakeside Avenue  
16 Cleveland, Ohio 44114

17 On behalf of the Applicants.

18 Bruce E. Weston, Ohio Consumers' Counsel  
19 By Mr. Larry Sauer  
20 Ms. Maureen R. Grady  
21 Mr. William J. Michael  
22 Mr. Kevin F. Moore  
23 Ms. Ajay K. Kumar  
24 Assistant Consumers' Counsel  
25 10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485

On behalf of the Residential Consumers of  
Ohio Edison Company, The Cleveland  
Electric Illuminating Company, and The  
Toledo Edison Company.

Ohio Partners for Affordable Energy  
By Ms. Colleen L. Mooney  
231 West Lima Street  
Findlay, Ohio 45840

On behalf of the Ohio Partners for  
Affordable Energy.

## 1 APPEARANCES: (Continued)

2 Bricker & Eckler, LLP  
3 By Mr. Dane Stinson  
4 and Mr. Dylan Borchers  
5 100 South Third Street  
6 Columbus, Ohio 43215-4291

7 Bricker & Eckler, LLP  
8 By Mr. Glenn S. Krassen  
9 1001 Lakeside Avenue East, Suite 1350  
10 Cleveland, Ohio 44114

11 On behalf of the Northeast Ohio Public  
12 Energy Council, Ohio Schools Council, and  
13 Power for the Schools.

14 Earthjustice  
15 By Mr. Shannon Fisk  
16 Northeast Office  
17 1617 John F. Kennedy Boulevard, Suite 1675  
18 Philadelphia, Pennsylvania 19103

19 Earthjustice  
20 By Mr. Michael Soules  
21 1625 Massachusetts Avenue NW, Suite 702  
22 Washington, D.C. 20036

23 Sierra Club Environmental Law Program  
24 Mr. Tony Mendoza  
25 85 Second Street, 2nd Floor  
San Francisco, California 94105

Richard Sahli Law Office, LLC  
By Mr. Richard C. Sahli  
981 Pinewood Lane  
Columbus, Ohio 43230-3662

On behalf of the Sierra Club.

McNees, Wallace & Nurick LLC  
By Mr. Frank P. Darr  
and Mr. Samuel C. Randazzo  
21 East State Street, 17th Floor  
Columbus, Ohio 43215

On behalf of the Industrial Energy Users  
of Ohio.

## 1 APPEARANCES: (Continued)

2 IGS Energy  
3 By Mr. Joseph Olikier  
4 6100 Emerald Parkway  
5 Dublin, Ohio 43016

6 On behalf of IGS Energy.

7 Taft, Stettinius & Hollister LLP  
8 By Mr. Mark S. Yurick  
9 and Mr. Devin D. Parram  
10 65 East State Street, Suite 1000  
11 Columbus, Ohio 43215

12 On behalf of The Kroger Company.

13 Vorys, Sater, Seymour & Pease, LLP  
14 By Mr. M. Howard Petricoff  
15 Ms. Gretchen Petrucci  
16 Mr. Stephen M. Howard  
17 and Mr. Michael J. Settineri  
18 52 East Gay Street  
19 Columbus, Ohio 43215

20 On behalf of Retail Energy Supply  
21 Association, PJM Power Providers Group,  
22 Electric Power Supply Association,  
23 Constellation NewEnergy, and Exelon  
24 Generation, LLC.

25 Mike DeWine, Ohio Attorney General  
By Mr. William L. Wright,  
Section Chief  
Mr. Thomas G. Lindgren  
Mr. Thomas W. McNamee  
Mr. Steven L. Beeler  
Assistant Attorneys General  
Public Utilities Section  
180 East Broad Street, 6th Floor  
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

## 1 APPEARANCES: (Continued)

2 Kravitz, Brown & Dortch, LLC  
3 By Mr. Michael D. Dortch  
4 and Mr. Richard R. Parsons  
5 65 East State Street, Suite 200  
6 Columbus, Ohio 43215

7 On behalf of Dynegy, Inc.

8 Carpenter Lipps & Leland LLP  
9 By Ms. Kimberly W. Bojko  
10 Ms. Rebecca L. Hussey  
11 280 North High Street, Suite 1300  
12 Columbus, Ohio 43215

13 On behalf of the Ohio Manufacturers'  
14 Association Energy Group.

15 Carpenter Lipps & Leland LLP  
16 By Mr. Joel E. Sechler  
17 280 North High Street, Suite 1300  
18 Columbus, Ohio 43215

19 On behalf of EnerNOC, Inc.

20 Boehm, Kurtz & Lowry  
21 By Mr. Michael L. Kurtz  
22 Mr. Kurt J. Boehm  
23 Ms. Jody Kyler Cohn  
24 36 East Seventh Street, Suite 1510  
25 Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

Environmental Law & Policy Center  
By Ms. Madeline Fleisher  
21 West Broad Street, Suite 500  
Columbus, Ohio 43215

On behalf of the Environmental Law &  
Policy Center.

## 1 APPEARANCES: (Continued)

2 Stone Mattheis Xenopoulos & Brew, PC  
3 By Mr. Michael Lavanga  
4 Mr. Garrett A. Stone  
5 Mr. Owen J. Kopon  
6 1025 Thomas Jefferson Street, N.W.  
7 Eighth Floor West Tower  
8 Washington, D.C. 20007-5201

9 On behalf of the Nucor Steel Marion, Inc.

10 Barth E. Royer, LLC  
11 By Mr. Barth E. Royer  
12 2740 East Main Street  
13 Bexley, Ohio 43209

14 and

15 Taft, Stettinius & Hollister LLP  
16 By Mr. Adrian D. Thompson  
17 200 Public Square, Suite 3500  
18 Cleveland, Ohio 44114-2300

19 On behalf of the Cleveland Municipal  
20 School District.

21 Spilman, Thomas & Battle, PLLC  
22 By Mr. Derrick Price Williamson  
23 Ms. Carrie Harris  
24 Ms. Lisa Hawrot  
25 1100 Bent Creek Boulevard, Suite 101  
Mechanicsburg, Pennsylvania 17050

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

Mr. Richard L. Sites  
155 East Broad Street  
Columbus, Ohio 43215

Bricker & Eckler, LLP  
By Mr. Thomas J. O'Brien  
100 South Third Street  
Columbus, Ohio 43215-4291

On behalf of the Ohio Hospital  
Association.

## 1 APPEARANCES: (Continued)

2 Ohio Environmental Council  
3 By Mr. Trent A. Dougherty  
4 and Mr. John Finnigan  
5 1145 Chesapeake Avenue, Suite I  
6 Columbus, Ohio 43212

7 On behalf of the Ohio Environmental  
8 Council and the Environmental Defense  
9 Fund.

10 Mr. Thomas R. Hays  
11 8355 Island Lane  
12 Maineville, Ohio 45039

13 On behalf of the Northwest Ohio  
14 Aggregation Coalition and the Individual  
15 Communities.

16 Ice Miller, LLP  
17 By Mr. Christopher Miller,  
18 250 West Street, Suite 700  
19 Columbus, Ohio 43215-7509

20 On behalf of the Association of  
21 Independent Colleges and Universities of  
22 Ohio.

23 American Electric Power  
24 By Mr. Steven T. Nourse  
25 Mr. Matthew J. Satterwhite  
One Riverside Plaza  
Columbus, Ohio 43215

On behalf of the Ohio Power Company.

Mr. Craig I. Smith  
15700 Van Aken Boulevard #26  
Shaker Heights, Ohio 44120

On behalf of Material Sciences  
Corporation.

Meissner and Associates Law Firm  
By Mr. Joseph Patrick Meissner  
5400 Detroit Avenue  
Cleveland, Ohio 44102

1 APPEARANCES: (Continued)

2 Kegler, Brown, Hill & Ritter  
3 By Mr. Christopher J. Allwein  
4 and Ms. Margeaux Kimbrough  
5 Capitol Square, Suite 1800  
6 65 East State Street  
7 Columbus, Ohio 43215-4294

8 On behalf of the EverPower Wind Holdings,  
9 Incorporated.

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1 Thursday Morning Session,

2 September 17, 2015.

3 - - -

4 EXAMINER ADDISON: Let's go on the  
5 record.

6 The Public Utilities Commission of Ohio  
7 has set for hearing at this time and place Case No.  
8 14-1297-EL-SSO, being In the Matter of the  
9 Application of Ohio Edison Company, the Cleveland  
10 Electric Illuminating Company and The Toledo Edison  
11 Company for Authority to Provide a Standard Service  
12 Offer pursuant to RC 4928.143 in the Form of an  
13 Electric Security Plan.

14 My name is Megan Addison, and with me are  
15 Gregory Price and Mandy Chiles, and we are the  
16 attorney examiners assigned by the Commission to hear  
17 this case.

18 We'll dispense with taking appearances  
19 this morning.

20 I believe we still need to move exhibits.

21 Mr. Lang.

22 MR. LANG: Yes, and good morning, your  
23 Honor. The companies move Exhibit 32, the direct  
24 testimony of Paul Harden.

25 EXAMINER ADDISON: Thank you. Any

1 objections?

2 Exhibit 32 will be moved into evidence.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 Mr. Fisk.

5 MR. FISK: Thank you, your Honor. The  
6 Sierra Club would move Exhibit Sierra Club 42  
7 Confidential, Sierra Club Exhibit 47, Sierra Club 48  
8 Confidential, Sierra Club Exhibit 49 Confidential,  
9 and Sierra Club Exhibit 51 Confidential.

10 EXAMINER ADDISON: Are there any  
11 objections?

12 MR. LANG: No, your Honor.

13 EXAMINER ADDISON: Seeing no objections,  
14 Exhibit 42 Confidential, Sierra Club 47, Sierra Club  
15 49, and Sierra Club 51 will be admitted into  
16 evidence.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 MR. FISK: 48 also.

19 EXAMINER ADDISON: In addition to that  
20 Sierra Club 48 Confidential will be admitted into  
21 evidence.

22 MR. FISK: Thank you.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 MR. FISK: I can't recall if we moved  
25 37A. We stipulated to it yesterday.

1 EXAMINER ADDISON: That was stipulated.

2 MR. FISK: Okay. Thank you.

3 EXAMINER ADDISON: Ms. Fleisher.

4 MS. FLEISHER: Your Honors, I would like  
5 to move in ELPC Exhibit 12, ELPC 13 Confidential, and  
6 ELPC Exhibit 15 Confidential.

7 EXAMINER ADDISON: Any objections?

8 MR. LANG: No, your Honor.

9 EXAMINER ADDISON: Thank you. Those  
10 exhibits will be moved into evidence.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 Mr. Sauer.

13 MR. SAUER: Thank you, your Honor. At  
14 this time OCC would like to move the admission of OCC  
15 Exhibits 7, 8, 9, 11C, and 12C.

16 EXAMINER ADDISON: Any objections?

17 MR. LANG: Your Honor, we have objections  
18 to Exhibit 7 and 8, not to the others.

19 EXAMINER ADDISON: OCC Exhibits No. 9,  
20 11, and 12 Confidential -- I'm sorry, 11 Confidential  
21 and 12 Confidential will be admitted into evidence.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 EXAMINER ADDISON: What are the  
24 objections to 7 and 8?

25 MR. LANG: Your Honor, with regard to

1 both documents, the witness said he had never seen  
2 the document. He said he did not have responsibility  
3 relating to Davis-Besse during the time period. On  
4 Exhibit 8, in particular, after the witness stating  
5 he had never seen the document, the examiner granted  
6 the motion to strike the reading of a question from  
7 the document, and other than that -- and given that  
8 motion to strike, there was no discussion of the  
9 document, so the only thing I believe that's in the  
10 record with regard to that document is that the  
11 witness has not seen it. Nothing else was done. So  
12 that would be No. 8, so we would object on lack of  
13 foundation, authenticity, relevance.

14 On Exhibit No. 7, again, the witness said  
15 he had not seen it, did not have any responsibility  
16 for Davis-Besse during the time period that is  
17 referenced in the document. The issue here is you  
18 have statements in the document which are hearsay.  
19 They could not be addressed in this proceeding  
20 because the witness is not familiar with the  
21 document, so any statements contained within the  
22 document cannot be addressed in this proceeding.

23 It's a document that if, for example,  
24 they had brought in with the witness, with one of  
25 their witnesses, it would have then been explored

1 through their testimony, would have been subject to  
2 cross-examination. It's not fair to this proceeding  
3 to bring documents in that are given to a witness  
4 that the witness can't explain.

5 So we would object both on foundation,  
6 relevance, hearsay, and then also Rule 401, 403 with  
7 regard to relevance of the document. The relevance  
8 in this proceeding of, obviously, rider RRS, there is  
9 testimony as to what's supporting the rider and the  
10 involvement of Davis-Besse as support of the output  
11 of Davis-Besse. All of that is occurring in 2016  
12 through 2031.

13 This document has no impact on and no  
14 relationship, and there was no relationship  
15 established in the record, connecting this document  
16 to Davis-Besse operations in 2016 through 2031. So  
17 to that extent any value that there might be is  
18 outweighed by the prejudice and confusion the  
19 document may cause, and we object to both 7 and 8.

20 Thank you, your Honor.

21 EXAMINER ADDISON: Mr. Sauer, do you have  
22 a response?

23 MR. SAUER: Yes, thank you, your Honor.  
24 At page 2, line 11, Mr. Harden testifying that the  
25 plants are good and efficient generating facilities.



1 Davis-Besse's NRC enforcement action history is  
2 relevant to the determination of how good the plant  
3 is. He has been in the nuclear energy industry for  
4 over 25 years. He stated he is familiar with the  
5 NRC. He is familiar with how NRC keeps records of  
6 escalated enforcement actions.

7 Exhibit 7 specifically is an -- is a  
8 document that lists escalated enforcement actions  
9 from the NRC, and the witness also stated he is aware  
10 the NRC records are publicly available. These were  
11 publicly available. I think they are relevant and  
12 should be admitted into the record. The Bench can  
13 give them the weight the Bench determines it should  
14 be given, but they should be admitted.

15 EXAMINER ADDISON: Mr. Lang, last word.

16 MR. LANG: Thank you, your Honor. And  
17 certainly there is already in the record exchanges  
18 between Mr. Sauer and Mr. Harden with regard to NRC  
19 regulation, with regard to current operations of the  
20 plants, with regard to future operation of the  
21 plants. Not opposing any -- anything related to,  
22 say, that's in this decade, that has been in the  
23 record.

24 But what counsel is trying to do with  
25 these documents is, again, slip in information from,

1 up to some cases, more than 15, 20 years ago that is  
2 not relevant to what's going on in this case.

3 EXAMINER ADDISON: Thank you. We will  
4 sustain the objections to OCC Exhibit No. 7 and No.  
5 8. I believe all the information that Mr. Harden had  
6 in his personal knowledge was presented in the  
7 record, and to the extent that that's there, the  
8 Commission will find that helpful, but to the actual  
9 documents themselves, there was no foundation laid  
10 and, therefore, they will not be admitted into  
11 evidence. Thank you.

12 MR. SAUER: Thank you, your Honor.

13 MR. LANG: Thank you, your Honor.

14 EXAMINER PRICE: FirstEnergy, you may  
15 call your next witness.

16 MR. KUTIK: Yes, your Honor. The  
17 companies call as their next witness Mr. Jay A.  
18 Ruberto.

19 (Witness sworn.)

20 EXAMINER PRICE: Please be seated and  
21 state your name and business address for the record.

22 THE WITNESS: My name is Jay Ruberto. My  
23 address is 5001 NASA Boulevard, West Virginia,  
24 Fairmont, West Virginia.

25 MR. KUTIK: Your Honor, we would like to

1 have marked at this time for identification Company  
2 Exhibit 33, the Direct Testimony of Jay A. Ruberto,  
3 and Company Exhibit 34, the Jay Ruberto errata sheet  
4 that was previously filed.

5 EXAMINER PRICE: They will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. KUTIK: Does the Bench need copies of  
8 the errata sheet?

9 EXAMINER PRICE: I do not. No, thank  
10 you.

11 MR. KUTIK: May I proceed?

12 EXAMINER PRICE: You may.

13 - - -

14 JAY A. RUBERTO

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

17 DIRECT EXAMINATION

18 By Mr. Kutik:

19 Q. Could you introduce yourself, please.

20 A. Sure. My name is Jay Ruberto. I am  
21 director of regulated generation and dispatch for the  
22 FirstEnergy Service Company.

23 Q. Do you have before you what's been marked  
24 for identification as Company Exhibit 33?

25 A. I do.

1 Q. What is that?

2 A. That is my direct testimony.

3 Q. And do you have also in front of you  
4 what's been marked for identification as Company  
5 Exhibit 34?

6 A. I do.

7 Q. And what is that?

8 A. That is an errata sheet to my direct  
9 testimony.

10 Q. Do you have any other additions or  
11 corrections to make to your testimony today?

12 A. I do. On page 3 of my direct testimony,  
13 line 3, I would like to replace the words "consists  
14 of" with "reflects."

15 Q. If I asked you the questions that appear  
16 in Company Exhibit 33 for identification as modified  
17 by your comments today and the errata sheet which is  
18 shown as Company Exhibit 34 for identification, would  
19 your answers be as shown in Exhibit 33?

20 A. They would.

21 MR. KUTIK: Thank you, your Honor.

22 EXAMINER PRICE: Thank you. Any  
23 intervenor care to go first? Mr. Soules.

24 MR. SOULES: Thank you, your Honor.

25 - - -

## CROSS-EXAMINATION

By Mr. Soules:

Q. Good morning, Mr. Ruberto. My name is Michael Soules, and I represent Sierra Club in this proceeding. How are you this morning?

A. I'm fine, thank you.

Q. Great. So, Mr. Ruberto, am I correct that you are still the director for regulated generation and dispatch at FirstEnergy Service Company?

A. That's correct.

Q. Okay. And you began your current position in late 2013, correct?

A. That's correct.

Q. And in your current position you are responsible for the marketing and dispatch of generating units, correct?

A. Among other things, that's correct.

Q. Okay. And with respect to the marketing services you provide, you provide those specifically for MonPower and New Jersey Power & Light, correct?

A. It's in addition to Mon Power, Potomac Edison, Jersey Central, there are some in Pennsylvania. I think that would be it.

Q. Okay. Thank you. And in your current

1 position you're only responsible for the marketing of  
2 generating units that are located in fully regulated  
3 states; is that correct?

4 A. No, that's not correct.

5 Q. Okay. Why is that not correct?

6 A. The generation units in Potomac Edison  
7 are -- and in Pennsylvania are in deregulated states,  
8 as well as New Jersey. In fact, the only regulated  
9 state is West Virginia.

10 Q. Okay. Thank you. And you began working  
11 in the regulated generation and dispatch group in the  
12 middle of 2013, correct?

13 A. That's correct.

14 Q. And prior to joining that group in  
15 mid-2013, you had no experience with the marketing  
16 dispatch of generating units, correct?

17 A. That's correct.

18 Q. Mr. Ruberto, before we talk a little bit  
19 more about your direct testimony, there were just a  
20 few preliminary points I wanted to cover. If I refer  
21 to the Ohio Edison Company, The Cleveland Electric  
22 Illuminating Company, and The Toledo Edison Company  
23 as "the companies," will you understand what I mean?

24 A. Yes.

25 Q. Okay. And if I refer to FirstEnergy

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

3 A. Yes.

4 Q. Okay. And you are aware that FES owns a  
5 4.85 percent interest in two Ohio Valley Electric  
6 Corporation plants, correct?

7 A. That's correct.

8 Q. And if I refer to that 4.85 percent  
9 ownership interest as the OVEC entitlement, will you  
10 understand what I mean?

11 A. Yes.

12 Q. Okay. Great. Mr. Ruberto, you are  
13 familiar with the proposed agreement under which FES  
14 would sell to the companies the capacity, energy, and  
15 ancillary from Davis-Besse, the Sammis plants, and  
16 the OVEC entitlement, correct?

17 A. I am. And additionally that includes the  
18 environmental attributes of those plants.

19 Q. Okay. Thank you. If I refer to that  
20 proposed agreement as the "proposed transaction,"  
21 will you understand what I mean?

22 A. Yes.

23 Q. Thank you. Mr. Ruberto, you first  
24 learned about a proposed transaction with FES in May  
25 of 2014, correct?

1           A.    I learned of the potential of a proposed  
2 transaction in May, that's correct.

3           Q.    And when you first heard about it, it was  
4 in the context of a request for you to lead a team  
5 that would review the proposed transaction, correct?

6           A.    Correct.

7           Q.    Okay. And it's your understanding that  
8 when FES first suggested entering into a power  
9 purchase agreement with the companies, it had  
10 expressed interest in including all of its Ohio units  
11 as part of that agreement, correct?

12          A.    I believe it actually included plants  
13 outside of Ohio as well, but it was a larger group of  
14 plants.

15          Q.    Okay. Thank you, and thank you for that  
16 clarification. And FES subsequently offered to enter  
17 into a PPA that would include the Sammis units,  
18 Davis-Besse, and the OVEC entitlement, correct?

19          A.    That's correct.

20          Q.    And just going back to that initial  
21 overture from FES, do you know which plants outside  
22 of Ohio were proposed to be included in the  
23 agreement?

24          A.    I'm not familiar with all of FES's  
25 plants. It may actually have included all of their



1 plants, but I couldn't name them individually.

2 Q. Okay. Thank you. Once FES's proposal  
3 had been limited to the Sammis units, Davis-Besse,  
4 and the OVEC entitlement, the companies did not  
5 evaluate any other mix of generation to be included  
6 in the proposed transaction, correct?

7 A. Looking back to the original overture, we  
8 did recognize that mix of assets as being a group  
9 that was too large based upon the load of the three  
10 companies combined. When we did get the subset, we  
11 did look at that subset to see whether we considered  
12 that to be an adequate mix of generation that  
13 provided the benefits that we looked for, which  
14 includes diversity of fuel, baseload fuel, fuel on  
15 the ground, so we did consider that mix and evaluate  
16 that mix at that time.

17 Q. And so once -- I believe --

18 MR. SOULES: I'm sorry. Could I have the  
19 last answer read back.

20 EXAMINER PRICE: You may.

21 (Record read.)

22 MR. SOULES: Thank you.

23 Q. And so my question is actually with  
24 respect to once the offer had been limited to that  
25 subset of assets, at that point in time the companies

1 did not evaluate any other mix of generation assets  
2 besides the ones that FES had offered, correct?

3 A. If you mean by evaluate do the entire  
4 financial evaluation, economic evaluation,  
5 reliability evaluation, that would be true. We did,  
6 however, look at the plants we would consider  
7 something we're interested in that would include, for  
8 example, Ohio plants built to serve Ohio load.  
9 That's a very small subset of what FES would have  
10 available. It would include -- Sammis really is the  
11 only supercritical, large coal facility.

12 You certainly have Perry and Davis-Besse,  
13 and we considered the benefits of Davis-Besse over  
14 Perry, and when we looked at that, we felt that the  
15 mix made sense to continue the more in-depth  
16 evaluation on those assets that were proposed.

17 Q. And when you are referring to "we," are  
18 you referring to the EDU team that you led?

19 A. That's correct.

20 Q. Okay. And so am I understanding  
21 correctly that the EDU team did evaluate including  
22 the Perry plant in the proposed transaction?

23 A. No. And I think -- that's why I said it  
24 depends what you mean by evaluation. We considered  
25 that as the asset mix and whether we had the right

1 mix of assets. From that point we proceeded with our  
2 evaluation, which was Davis-Besse and Sammis and the  
3 OVEC entitlement.

4 Q. Okay. Thank you. And the companies did  
5 not issue a request for proposal for any other  
6 resource options when evaluating the proposed  
7 transaction, correct?

8 A. We did not because when we looked at the  
9 assets that were part of the proposal from FES, they  
10 provided many unique benefits, such as diversity of  
11 fuel, such as the economic benefits to the region and  
12 to the state. We looked at the improvements -- or  
13 the effect on reliability should these plants be  
14 taken out of service. And when you combine all that,  
15 there isn't a reasonable substitute that an RFP would  
16 have been able to provide so we didn't consider it  
17 necessary to do an RFP to complete this evaluation.

18 MR. SOULES: Your Honor, may I have that  
19 last answer read back?

20 EXAMINER PRICE: You may.

21 (Record read.)

22 MR. SOULES: Thank you. I would move to  
23 strike everything after the word "not," so just  
24 everything after "we did not" as being nonresponsive  
25 to the question.

1 EXAMINER PRICE: I am going to deny your  
2 motion to strike. In this case -- although normally  
3 you ask very tight questions, in this case you did  
4 ask a pretty open-ended question, and he took  
5 advantage of that to give a very open-ended answer.

6 MR. SOULES: Thank you. Okay. Thank  
7 you, your Honor.

8 EXAMINER PRICE: Mr. Ruberto, you don't  
9 believe there are any other plants in the state of  
10 Ohio that have the resource diversity that you are  
11 interested in and were originally electrically  
12 connected to Ohio to provide the reliability benefits  
13 as opposed to Sammis and -- as opposed to Sammis.  
14 Let's leave Davis-Besse out of this.

15 THE WITNESS: Because the proposal was a  
16 package deal, we didn't evaluate Sammis  
17 independently. We did evaluate them combined.  
18 Having said that --

19 EXAMINER PRICE: So --

20 MR. KUTIK: Your Honor, may he finish his  
21 answer?

22 EXAMINER PRICE: He may. Fair enough.

23 MR. KUTIK: Go ahead.

24 THE WITNESS: Having said that, the  
25 combination of the two was the diversity of assets

1       that I am referring to because having nuclear fuel in  
2       addition to coal fuel gives you multiple plants whose  
3       economics could be affected independently, whose  
4       reliability could be affected independently because  
5       they have different -- different fuel, different  
6       operation characterizations. So it was the  
7       combination of those plants that we considered as the  
8       diverse group.

9               EXAMINER PRICE: Okay. Fair enough.  
10       Please proceed.

11              MR. SOULES: Thank you, your Honor.

12              Q.     (By Mr. Soules) Mr. Ruberto, the  
13       companies and FES have not yet entered into a final  
14       purchase power agreement for the transaction,  
15       correct?

16              A.     The actual purchase power agreement  
17       document has not been prepared, but the term sheet  
18       that we have provided in this case does represent all  
19       the material terms and conditions that we've already  
20       agreed to.

21              Q.     Thank you. In answering my last question  
22       you referenced the drafting of the agreement. So  
23       just to confirm, the companies and FES have not  
24       actually entered into a power purchase agreement,  
25       correct?

1 MR. KUTIK: Your Honor, we will stipulate  
2 to that.

3 MR. SOULES: Okay. Fair enough. Thank  
4 you.

5 Q. Mr. Ruberto, could you please take a look  
6 at Sierra Club Exhibit 1, which is a document  
7 entitled IEU Set 1-INT-25 Attachment 1?

8 MR. KUTIK: Your Honor, may we go off the  
9 record for a minute.

10 EXAMINER PRICE: Yes.

11 (Discussion off the record.)

12 EXAMINER PRICE: Let's go back on the  
13 record.

14 Q. (By Mr. Soules) Mr. Ruberto, are you  
15 familiar with this document?

16 A. I am.

17 Q. And this is the final version of the term  
18 sheet for the proposed transaction, correct?

19 MR. KUTIK: We'll stipulate to that as  
20 well, your Honor.

21 A. It is.

22 Q. Thank you, Mr. Ruberto. And this term  
23 sheet was finalized in late July of 2014, correct?

24 A. That's correct.

25 Q. Okay. And I believe earlier you stated

1 that the companies and FES have not yet written up  
2 the actual contract for the proposed transaction,  
3 correct?

4 MR. KUTIK: We've stipulated that, your  
5 Honor.

6 MR. SETTINERI: May I have that question  
7 read back, your Honor.

8 EXAMINER PRICE: You may. It's been  
9 stipulated, the answer, anyway, but you can have the  
10 question back.

11 MR. SETTINERI: Thank you, your Honor for  
12 indulging me.

13 (Record read.)

14 MR. SETTINERI: Thank you, your Honor.

15 MR. SOULES: Thank you.

16 Q. (By Mr. Soules) Now, Mr. Ruberto, you  
17 lead a team that represented the companies in  
18 evaluating the proposed transaction, correct?

19 A. That is correct.

20 Q. And if I refer to that team as the EDU  
21 team, you understand what I mean, correct?

22 A. Correct.

23 Q. And FES had a separate group that  
24 represented its interests in negotiating the proposed  
25 transaction, correct?

1           A.    Yes.

2           Q.    And if I refer to that as the FES team,  
3 will you understand what I mean?

4           A.    I will.

5           MR. SOULES: Your Honor, may we approach?

6           EXAMINER PRICE: You may.

7           MR. SOULES: Your Honor, could we have  
8 this document marked as Sierra Club Exhibit 52?

9           EXAMINER PRICE: You may.

10          (EXHIBIT MARKED FOR IDENTIFICATION.)

11          MR. SOULES: For the record, this is a  
12 response to a discovery request entitled OCC Set  
13 1-INT-19.

14          Q.    (By Mr. Soules) Mr. Ruberto, please take  
15 a moment to review the document and let me know when  
16 you are ready to proceed.

17          A.    I'm ready.

18          Q.    Great. And you're familiar with this  
19 document, correct?

20          A.    I am.

21          Q.    And you were the sponsoring witness for  
22 this discovery response, correct?

23          A.    That's correct.

24          Q.    Okay. And if you could, please look at  
25 subpart (a) of the request. This subpart asks for



1 the name, job title, and the entity that employs the  
2 members of the EDU team; is that correct?

3 A. It does.

4 Q. And if you could please turn to the  
5 response to subpart A, which is on page 2, does that  
6 list accurately identify the members of the EDU team?

7 A. It does.

8 Q. Okay. Thank you. And all the members of  
9 the EDU team were employed by FirstEnergy Service  
10 Company, correct?

11 A. That's correct.

12 Q. Okay. And no one on the EDU team was  
13 directly employed by the companies, correct?

14 A. While none were directly employed by the  
15 companies, many of these people, including myself, do  
16 work for multiple companies, and when that happens,  
17 you typically will see them being at FirstEnergy  
18 Service Company.

19 Q. Thank you.

20 MR. KUTIK: May we go off the record for  
21 a second, your Honor?

22 EXAMINER PRICE: Yes. Let's go off the  
23 record.

24 (Discussion off the record.)

25 EXAMINER PRICE: Let's go back on the

1 record.

2 MR. SOULES: Thank you.

3 Q. (By Mr. Soules) Mr. Ruberto, within  
4 FirstEnergy Corporation, there's a divide between the  
5 competitive marketing side of the business and the  
6 regulated marketing side of the business, correct?

7 A. If you mean by a divide there are  
8 restrictions in communications and physical location  
9 and those things, I would agree.

10 Q. Okay. And among other things, that  
11 divide restricts the exchange of information related  
12 to the marketing of generating units, correct?

13 MR. KUTIK: May I have the question read,  
14 please?

15 EXAMINER PRICE: You May.

16 (Record read.)

17 A. The competitive marketing and the  
18 regulated marketing do keep that information  
19 separate.

20 Q. Thank you. And FES is on the competitive  
21 marketing side of the business, correct?

22 A. Correct.

23 Q. And your group is responsible for the  
24 regulated marketing side of the business, correct?

25 A. That's correct.

1           Q.    Okay.  And some employees do work with  
2 both the competitive marketing side of the business  
3 and the regulated side of the business, correct?

4           MR. KUTIK:  Objection, some employees of  
5 what?  Or among whom?

6           EXAMINER PRICE:  Please rephrase to  
7 clarify.

8           MR. SOULES:  Be happy to.

9           Q.    Mr. Ruberto, some employees of  
10 FirstEnergy Service Company do work for both the  
11 competitive marketing side of the business and the  
12 regulated side of the business, correct?

13          A.    Not employees that would be involved in  
14 competitive or regulated marketing.  For example, my  
15 organizational group consists of 16 people.  All 16  
16 do not ever do competitive marketing work.  You  
17 certainly would have other groups, such as payroll,  
18 for example, that may support competitive and  
19 regulated marketing sides.  Those individuals have a  
20 responsibility that while they may be able to do work  
21 for both sides, they are prohibited from being a  
22 conduit of sharing that information so that the  
23 information cannot be exchanged directly or  
24 indirectly between the competitive side and the  
25 regulated side.

1           Q.    Thank you.  And those employees are  
2           generally referred to as shared services employees;  
3           is that correct?

4           A.    I'm not sure if that's an all-inclusive  
5           term.

6           Q.    Okay.  Looking back at the response to  
7           subpart (a) of Sierra Club Exhibit 52, other than  
8           yourself, all the members of the EDU team provide  
9           services to both the regulated side of the business  
10          and the competitive marketing side of the business,  
11          correct?

12          A.    I don't know that.

13          Q.    So you just don't know one way or the  
14          other whether or not the other members of the EDU  
15          team are shared services employees or something to  
16          that effect?

17          A.    I'm not aware of the entirety of the work  
18          assignments of all those employees.  I am aware they  
19          would have the same limitations of sharing  
20          information between one side or the other, but  
21          whether any part of their job ever interfaces with  
22          FES, I am unaware.

23          Q.    Okay.  Thank you.  If you could please  
24          look at subpart (e) of this request and the response  
25          to that request, does that accurately identify the

1 members of the FES team?

2 A. I believe it does.

3 Q. Okay. Thank you. And I believe earlier  
4 you stated that the term sheet was finalized in late  
5 July of 2014; is that correct?

6 A. Correct.

7 Q. And the EDU team was formed on May 20th  
8 of 2014, correct?

9 A. Correct.

10 Q. So that means that all of the EDU team's  
11 activities would have occurred between May 20, 2014,  
12 and late July of 2014, correct?

13 A. That's correct for the EDU team  
14 specifically, but me, as part of the EDU team, I was  
15 involved a week or two before the 20th, so some  
16 additional work was being initiated during that time.

17 Q. Okay. Thank you. And the EDU team was  
18 provided some instructions regarding its  
19 responsibilities, correct?

20 A. Correct.

21 Q. And those instructions were provided by  
22 counsel; is that correct?

23 A. The initial conversation was with my --  
24 my supervisor. And he would have indicated to me not  
25 detailed instructions but a high level of what I was

1 being asked to do. Beyond that, there were  
2 additional instructions by counsel.

3 Q. Okay. And those instructions were  
4 provided verbally, correct?

5 A. Correct.

6 Q. And you don't recall the EDU team being  
7 provided any instructions in writing; is that  
8 correct?

9 A. That's correct.

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

13 A. Certainly throughout the performance of  
14 our responsibilities, there were documents and things  
15 that were in writing, so I can't say nothing was in  
16 writing. But in direct -- to directly relate to your  
17 question about the initial information, that was  
18 merely a telephone call.

19 Q. Thank you.

20 EXAMINER PRICE: Excuse me. Do you mind  
21 if I interrupt?

22 MR. SOULES: Please, your Honor.

23 EXAMINER PRICE: You indicated your  
24 initial instructions were from your supervisor?

25 THE WITNESS: He gave me more of what I

1 would call a high-level assignment with generally  
2 "five-minute conversation type" information. And he  
3 indicated that I would get a call from someone else  
4 that would provide me some more details of the  
5 particular assignment.

6 EXAMINER PRICE: I was curious who your  
7 supervisor was.

8 THE WITNESS: Oh, Jim Haney.

9 EXAMINER PRICE: Thank you.

10 MR. SOULES: Thank you, your Honor.

11 Q. (By Mr. Soules) Now, once the EDU team  
12 was initially formed, you made arrangements for a  
13 first team meeting, correct?

14 A. I did.

15 Q. And that first team meeting occurred at  
16 some point after May 20, correct?

17 A. That's correct.

18 Q. And by the time of the first EDU team  
19 meeting, FES's proposal had been narrowed down to the  
20 Sammis units, Davis-Besse, and the OVEC entitlement,  
21 correct?

22 A. I don't believe it had at that first  
23 meeting.

24 Q. So at the first meeting the EDU team was  
25 considering a broader portfolio?

1           A.    No, that's not what I said. The EDU team  
2   was aware of the -- the outstanding request that FES  
3   had, which indicated we weren't interested in the  
4   broader group of assets but we were potentially  
5   interested in a smaller subset. The EDU team at that  
6   time knew that the likelihood of getting that subset  
7   was forthcoming, but we didn't have that information  
8   of the specific units at that first EDU team meeting.

9           MR. KUTIK: Your Honor, the witness may  
10   have misspoke or I may have misheard. May I have the  
11   answer read, please.

12           EXAMINER PRICE: You may.

13           (Record read.)

14           Q.    (By Mr. Soules) Mr. Ruberto, the EDU team  
15   was responsible for evaluating the proposed  
16   transaction with FES, correct?

17           A.    No. We were responsible for evaluating  
18   the transaction, and if we felt it provided value to  
19   our customers, then we would negotiate with FES.

20           Q.    Okay. So did the negotiation -- the EDU  
21   team was involved in the negotiations with FES,  
22   correct?

23           A.    Correct.

24           Q.    And did the negotiation process begin  
25   after the EDU team had completed its evaluation of



1 the potential for a proposed transaction?

2 A. No. Part of the evaluation would be the  
3 terms and conditions of a potential agreement, so you  
4 necessarily would need to begin discussions with FES  
5 to find out whether there were terms and conditions  
6 that may make the resultant agreement no longer  
7 palatable.

8 Q. Thank you.

9 MR. SOULES: Your Honor, could I have the  
10 second-to-last question and answer read back?

11 EXAMINER PRICE: You may.

12 (Record read.)

13 MR. SOULES: Thank you.

14 Q. (By Mr. Soules) So the EDU team's work  
15 did include an evaluation process; is that fair to  
16 say?

17 A. Yes.

18 Q. Okay. And that evaluation process began  
19 sometime in June of 2014, correct?

20 A. The entire charge of the EDU team which  
21 began on May 20 was part of that evaluation.

22 Q. And the EDU team completed its evaluation  
23 sometime mid to late July of 2014; is that correct?

24 A. Late July, correct.

25 Q. Okay. Thank you. Now, the EDU team

1 received some price forecast information from Judah  
2 Rose; is that correct?

3 A. That's correct.

4 Q. But Mr. Rose himself did not evaluate the  
5 proposed transaction, correct?

6 A. That's correct. His role was  
7 specifically narrowed to providing those projections.

8 EXAMINER PRICE: Can I ask you a  
9 question?

10 THE WITNESS: Yes, sir.

11 EXAMINER PRICE: Did you receive the  
12 projections directly from Mr. Rose, or did you  
13 receive the projections from the FES team?

14 THE WITNESS: I can't recall whether I  
15 received them separate from the spreadsheet that  
16 contained those results. I can't recall if I have  
17 specifically seen them. I have seen them. I'm just  
18 not sure at what point in this evaluation I saw those  
19 results.

20 EXAMINER PRICE: And you don't know who  
21 you received them from.

22 THE WITNESS: When I would receive that  
23 type of information, it would have generally been  
24 through the legal counsel that were part of the EDU  
25 team.

1 EXAMINER PRICE: Fair enough. Thank you.

2 Q. (By Mr. Soules) The EDU team was not  
3 involved in retaining Mr. Rose, correct?

4 A. The EDU team didn't do the retention  
5 itself, but the EDU team had the opportunity to  
6 review the qualifications and background and  
7 experience of Mr. Rose, and the EDU team was in  
8 agreement that he was -- he was an appropriate person  
9 to be able to provide those projections.

10 Q. So before Mr. Rose was retained, the EDU  
11 team had some involvement in making the decision to  
12 retain him; is that correct?

13 A. That's not what I said. We had the  
14 opportunity -- he was retained days before the EDU  
15 team began. Then the EDU team was presented with the  
16 information regarding Mr. Rose. At that point  
17 Mr. Rose wouldn't have been very deep into performing  
18 a great deal. It was just several days later. If  
19 the EDU team would have had concerns with his  
20 abilities, we would have expressed that. However, at  
21 the time we were -- we were very satisfied at his --  
22 his extensive level of qualifications.

23 Q. Thank you. And you don't know who  
24 specifically retained Mr. Rose, correct?

25 A. Legal handled that.

1           Q.    Okay.  Are you aware that FES maintains  
2           internal forecasts of energy prices, capacity prices,  
3           and CO-2 prices?

4           A.    Today I'm aware they have that  
5           information.  At the time of our evaluation not only  
6           was I not aware, I later learned they did not have  
7           that information until after we had filed.  So even  
8           if I had known they would ultimately get that  
9           information, none existed during the time of our  
10          evaluation.

11          Q.    And that -- that understanding is  
12          something you learned subsequent to filing your  
13          testimony, correct?

14          A.    That's correct.

15          Q.    Okay.  Thank you.  Apart from the price  
16          forecast information provided by Mr. Rose, the EDU  
17          team did not receive any assistance from outside  
18          consultants in evaluating the proposed transaction,  
19          correct?

20          A.    To be clear, Mr. Rose played no role in  
21          evaluating, and the EDU team, in and of itself,  
22          completed the evaluation without outside consultants.

23          Q.    Okay.  Thank you.  Thank you for the  
24          clarification.  And there was no independent third  
25          party that was involved in the negotiation of the

1 proposed transaction, correct?

2 A. No. The EDU team was comprised of a  
3 broad cross-section of people who had broad  
4 experience. And, likewise, the negotiation on the  
5 FES side shared the same, and we believe both sides  
6 had the appropriate resources to make that  
7 evaluation.

8 Q. Okay. So the individuals that were  
9 involved in the actual negotiations are the  
10 individuals that are listed in the responses in  
11 Sierra Club Exhibit 52; is that a fair statement?

12 A. Yes.

13 Q. Thank you. And is that a complete list  
14 of the individuals, to your knowledge, that were  
15 involved in the negotiation?

16 A. I believe so.

17 Q. Thank you. And during the EDU team's  
18 evaluation process, the team received a cost and  
19 revenue projection from Mr. Lisowski, correct?

20 A. Correct.

21 Q. And that's Jason Lisowski. I failed to  
22 mention his first name. Mr. Lisowski's projection  
23 was involved using the market price forecast  
24 information provided by Mr. Rose, correct?

25 A. Correct.

1           Q.    And the initial cost and revenue  
2           projection that Mr. Lisowski provided extended  
3           through May of 2030, correct?

4           A.    Correct.

5           Q.    Okay.  And the cost and revenue  
6           projection for Mr. Lisowski was provided at the  
7           request of the EDU team, correct?

8           A.    Some of the data that was provided was in  
9           response to a request for data made several days  
10          prior to the EDU team being assembled.  I was  
11          involved in that request, and, of course, I was a  
12          member of the EDU team so some of that was a result  
13          of that request.  There were additional requests for  
14          information later made specifically by the EDU team  
15          at large.

16          Q.    Okay.  Thank you.  Could you please turn  
17          to page 5 of your direct testimony.  Looking at line  
18          17 it states, "The EDU team evaluated the value and  
19          risks associated with the various terms."  Do you see  
20          that reference?

21          A.    I do.

22          Q.    Okay.  And is it fair to say that the EDU  
23          team considered the risks of the proposed  
24          transaction?

25          A.    Yes.  Since all of the risks, benefits,

1 everything was evaluated by the EDU team, so risk  
2 would certainly be a component of that.

3 Q. Thank you. And among the risks of the  
4 proposed transaction is a possibility that future  
5 costs or market prices could vary from the projection  
6 provided by Mr. Lisowski, correct?

7 A. To be clear, Mr. Lisowski didn't provide  
8 the revenue. Those were based on Mr. Rose.  
9 Mr. Lisowski did provide from the cost perspective.  
10 Now, Mr. Lisowski did assemble all that and create  
11 those revenues, but they were not projections of  
12 Mr. Lisowski. Those were projections based upon the  
13 input of Mr. Rose.

14 Q. Okay. Mr. Lisowski -- strike that. The  
15 revenue information that Mr. Lisowski provided was  
16 based on Mr. Rose's market price forecast, correct?

17 A. That was a piece of it. Obviously, the  
18 plant operation characterizations which would be  
19 known to FES would incorporate those projections from  
20 Mr. Rose, and that's what creates the forecast.

21 Q. Okay. Is it your understanding that  
22 Mr. Lisowski supervised the development of the  
23 revenue projection using pricing information from  
24 Mr. Rose?

25 A. I don't know.

1           Q.    The EDU team did not do anything to  
2           quantify how much variation there might be from the  
3           projection you received from Mr. Lisowski, correct?

4                   MR. KUTIK:  May I have the question read,  
5           please.

6                   EXAMINER PRICE:  You may.

7                   (Record read.)

8           A.    If you mean by quantify determine a  
9           specific likely variance in cost or market revenues,  
10          that wouldn't have been something that could readily  
11          be done.  The costs were based upon FES's costs,  
12          which includes their history and projection of costs.  
13          The market -- or the market revenues were based  
14          largely on Mr. Rose's forecast.  I don't see how we  
15          could quantify how they will vary.

16                   The EDU team did look at the  
17          approximately \$2 billion benefit over the 15 years  
18          and considered what if market prices were different,  
19          what if costs were different.  Our feeling on costs  
20          were costs are much more predictable.  Costs are  
21          fairly consistent.  A lot of features in a cost  
22          projection will follow inflation, salaries, wages.  
23          There are a lot of things in costs that are much more  
24          predictable.

25                   We recognized a market forecast is a



1 forecast. Inherent in any forecast can be changes.  
2 We did recognize there is going to be variances in  
3 those forecasts, but given the magnitude of the  
4 benefits and the confidence we have in Mr. Rose's  
5 forecast, we felt that the benefits would remain.

6 EXAMINER PRICE: You said you were  
7 unaware that Mr. Lisowski had a separate forecast of  
8 market prices; is that correct?

9 THE WITNESS: I -- I did not have  
10 knowledge of whether they did or didn't. We had  
11 requested that of FES at one point, and they  
12 indicated they don't have their -- they're to give  
13 us.

14 Now, I had later found out that during  
15 the review period, they indeed did not have market  
16 forecasts. Sometime after this case had been filed,  
17 they did produce forecasts, and I only found that  
18 out -- I believe it was the result of data requests  
19 that Mr. Lisowski or others responded to.

20 EXAMINER PRICE: So my question is, in  
21 your role as director of regulated generation and  
22 dispatch, do you maintain any market forecasts?

23 THE WITNESS: We only look at market  
24 forecasts that go out three or four years. Our --  
25 our intention is really to evaluate outage planning,

1 is probably one of the big ones; coal contract  
2 forecasting.

3 MR. KUTIK: Your Honor, I hate to  
4 interrupt the witness, but I just want to caution  
5 that I think he is general enough, but I don't want  
6 him to reveal anything that might be a competitive  
7 bidding issue because it does involve competitive  
8 bidding and the PJM procurements.

9 EXAMINER PRICE: Yes. Keep your answer  
10 at a very general level.

11 THE WITNESS: I'll try. So our market  
12 forecast is because major plant maintenance generally  
13 has a fairly large window. You might need 20, 30, 40  
14 days, depending on what's going on. We want to put  
15 that in the right place in the calendar in the right  
16 years when it's something that can be scheduled in  
17 the future.

18 So our forecasting really is designed to  
19 help more with fuel forecasting in that shorter  
20 window. We've not done anything to look out 10 or 15  
21 years.

22 EXAMINER PRICE: But you do have  
23 forecasts out three or four years.

24 THE WITNESS: Yes.

25 EXAMINER PRICE: Did you compare your

1 three- or four-year forecast with Mr. Rose's three-  
2 to four-year forecast to see if it matched up in the  
3 years you had comparable data?

4 THE WITNESS: I can't say we did a  
5 literal line-to-line comparison. But I was generally  
6 familiar with the forecasts that we have for that  
7 short window. And when I saw the results, they  
8 generally seemed similar.

9 Now, would they have been precise? I  
10 didn't look if -- if one was 42 and one was 38. I  
11 didn't look that close, but as far as the general  
12 trend, I was aware that it was similar.

13 EXAMINER PRICE: Okay. Fair enough.  
14 Thank you.

15 MR. SOULES: Thank you, your Honor.

16 Q. (By Mr. Soules) Mr. Ruberto, the revenue  
17 information that -- strike that.

18 The energy revenue information  
19 Mr. Lisowski provided was generated using a dispatch  
20 model, correct?

21 A. Correct.

22 Q. And that dispatch model is owned by  
23 FirstEnergy Service Company, correct?

24 A. I don't know who owns the model.

25 Q. Okay. Do you know whether or not the

1 business development group is responsible for running  
2 the model?

3 A. I know that the business development  
4 group does run the model. I don't know whether there  
5 are others who also run the model.

6 Q. Okay. Thank you. So the revenue -- the  
7 energy revenue information that Mr. Lisowski provided  
8 was not purely taken from Mr. Rose, correct? It also  
9 had to be run through the model to generate that  
10 estimate?

11 A. Correct.

12 Q. Okay. During the EDU team's evaluation  
13 process, the team verified Mr. Lisowski's projection,  
14 correct?

15 A. If I could ask for a clarification of  
16 what projection you are asking did we verify?

17 Q. The 15-year cost of revenue projection  
18 that was provided to the team.

19 A. The EDU team did -- and I will take this  
20 in two components. From a revenue perspective, using  
21 Mr. Rose's forecasts we were able to look at the  
22 variable costs and the projected market prices.  
23 Given what we saw was the market prices were pretty  
24 comfortably above variable cost for most of the term  
25 of the agreement and the model produced results that

1       showed the units would run pretty much full time, so  
2       given we know the market prices and variable costs,  
3       we would believe that the model should show the unit  
4       would run most of the time, and, indeed, the model  
5       did produce those results. So from that perspective  
6       we were comfortable that the revenue was properly  
7       identifying the operation of the unit.

8               From a cost perspective, we compared  
9       costs with publicly available FERC Form 1 data of  
10      similar-type generation to the extent it was  
11      available publicly to get an understanding of whether  
12      the costs that Mr. Lisowski had generated seemed to  
13      be in line with what other similar-type plants were.  
14      And when we saw those were very similar, we felt  
15      confident that the numbers were reasonable.

16             MR. SOULES: Your Honor, could I just  
17      have my last question read back, not the answer?

18             EXAMINER PRICE: Sure.

19             (Record read.)

20             Q. As part of the EDU team's verification of  
21      Mr. Lisowski's projection, the team asked the  
22      business development group to rerun the dispatch  
23      model; is that correct?

24             A. We did.

25             Q. And you provided the business development

1 group with the same inputs that were used for  
2 Mr. Lisowski's modeling run, correct?

3 A. I didn't personally provide it to  
4 business development, but they were provided to  
5 business development, and specifically someone in  
6 business development who is not involved with any  
7 running of the model for FES.

8 Q. Okay. And those identical inputs were  
9 run through the same model that Mr. Lisowski used to  
10 develop his projection, correct?

11 A. That's correct. That's what we  
12 specified.

13 Q. Okay. And after the model was rerun with  
14 identical inputs, you got results that were identical  
15 to Mr. Lisowski's, correct?

16 A. We did. Since the purpose of this  
17 verification of the model run was to verify that the  
18 inputs were proper, the output as it was developed  
19 was reported properly, we expected to get the same  
20 result because our goal was to verify that the model  
21 was run correctly.

22 Q. And the EDU team did not conduct any  
23 other economic dispatch modeling, correct?

24 A. Beyond what I've explained, that was the  
25 limit of our performance of dispatch modeling.

1           Q.    Okay.  In going back to the market price  
2   forecast information Mr. Rose provided, is it your  
3   understanding that that information was only a single  
4   set of forecasts without, say, a high-case and a  
5   low-case set of forecasts?

6           A.    There was not a high and low case but, of  
7   course, there were volumes of data that were  
8   included.

9           Q.    Okay.  But it was just a single case that  
10  Mr. Rose provided, correct?

11          A.    That's correct.

12          Q.    Okay.  And the EDU team did not request  
13  that any sensitivity analysis be performed on  
14  Mr. Rose's price forecasts, correct?

15          A.    We did not.  And from what I understand  
16  from Mr. Rose, given many of the components within  
17  his analysis contained probable -- probabilistic  
18  models and the complexity of the model, that it's not  
19  particularly easy to get a good alternate model that  
20  you are asking for, pessimistic/optimistic, and  
21  because of that, only one model result was created.

22          Q.    And when you refer to "alternate model,"  
23  do you mean alternate set of price forecasts?

24          A.    Alternate calculation based upon the  
25  modeling that Mr. Rose would do.

1           Q.    Thank you.  Mr. Ruberto, you personally  
2           don't have any training in economic dispatch modeling  
3           for power plants, correct?

4           A.    I do not have training in that, no.

5           Q.    And you've never personally performed  
6           economic dispatch modeling, correct?

7           A.    Not the specific use of a model,  
8           inputting the data, I have not performed that  
9           particular activity.

10          Q.    Okay.  So at the time you filed your  
11          testimony last August, you had concluded that the  
12          proposed transaction would provide the companies with  
13          benefits whose net present value is \$805 million,  
14          correct?

15          A.    That's correct.  And later amended to  
16          770.

17          Q.    Thank you.  And the \$805 million figure  
18          was based upon the projection provided by  
19          Mr. Lisowski, correct?

20          A.    To be clear, again, the projection by  
21          Mr. Lisowski was using projections from Mr. Rose.  So  
22          in that sense, Mr. Lisowski's projection was a  
23          representation of projections made by Mr. Rose.  And,  
24          yes, that calculation was what resulted in the 805,  
25          subsequently 770.



1 Q. Okay. And the subsequent amendment to  
2 the net present value estimate of \$770 million was  
3 the result of an omission of a carbon cost assumption  
4 for the OVEC plants, correct?

5 A. That's correct.

6 Q. And the EDU team did not catch that  
7 omission when it was verifying the projection  
8 provided by Mr. Lisowski and Mr. Rose?

9 A. We did not.

10 Q. Okay. The -- the projection provided by  
11 Mr. Lisowski was created assuming a cost of debt rate  
12 of 4.54 percent, correct?

13 A. That's correct.

14 Q. And you then, in turn, use that 5  
15 point -- strike that. You, in turn, use the  
16 4.54 percent assumption for the calculations that are  
17 reflected in Attachment JAR-1 Revised; is that  
18 correct?

19 A. Yes.

20 Q. And if FES and the companies do enter  
21 into the proposed transaction, each year of the  
22 agreement the cost of debt will be adjusted based on  
23 the actual cost of debt, correct?

24 A. That's correct. It's the long-term cost  
25 of debt.

1           Q.    Okay.  So there would likely be some  
2           variance over the 15-year transaction, correct?

3           A.    I can't say with certainty.  There may be  
4           some; there may not, but it's certainly possible.

5           Q.    Okay.  And during your evaluation of the  
6           proposed transaction, you did not evaluate whether  
7           4.54 percent was a reasonable cost of debt  
8           assumption, correct?

9           A.    We didn't do view evaluation of what is  
10          their actual cost of debt as something that needed  
11          evaluated.  That is their actual cost of debt, so we  
12          used an actual number.

13          Q.    And if the actual cost of debt was higher  
14          than 4.54 percent, then directionally any charges to  
15          customers would be higher and any credit to customers  
16          would be smaller; is that correct?

17          A.    While that's true, the effect on that may  
18          be very minimal because the cost of debt doesn't  
19          apply to all the costs.

20          Q.    Right.  It applies to 50 percent of the  
21          cap, correct?

22          A.    Of the capacity payment.  It doesn't  
23          apply to the O&M costs.  It doesn't apply to the fuel  
24          costs.

25          Q.    Okay.  And, actually, your reference to

1 the capacity payment is a good segue. If we could  
2 look back at the term sheet, and if we could  
3 specifically look at Section 12, which is on pages 3  
4 and 4. You're there?

5 A. I am.

6 Q. Okay. Great. This provision lays out a  
7 process for capital expenditures would be made under  
8 the proposed transaction, correct?

9 A. Correct.

10 Q. And this provision applies to Sammis and  
11 Davis-Besse; is that correct?

12 A. That's correct.

13 Q. And according to this portion of the term  
14 sheet, FES would notify the companies of its  
15 intention to make a capital investment, correct?

16 A. They would notify us of the capital  
17 spending plan for the following 12-month period, so  
18 it would be not a notification of a capital expense.  
19 It would be a notification of all the capital  
20 expenses that are going to occur during that period.

21 Q. Okay. So it's not project by project,  
22 it's an annual notification.

23 A. Correct. Which would include the  
24 necessary detail to evaluate our -- our thoughts on  
25 projects as well.

1           Q.    Okay. Under the term sheet the companies  
2 would have an opportunity to review and provide  
3 comment on FES's proposed capital investments,  
4 correct?

5           A.    That's correct.

6           Q.    And FES would be required to take into  
7 account and respond to the companies' comments,  
8 correct?

9           A.    Correct.

10          Q.    Okay. But if FES and the companies  
11 disagreed about the wisdom of giving a capital  
12 investment, FES would make the final decision about  
13 whether to proceed with that investment, correct?

14          A.    That's correct, because FES ultimately  
15 has the responsibility to operate the plant. They  
16 would need to have the necessary capital to operate  
17 the plant. I do envision a cooperative arrangement  
18 between the EDUs and FES, but FES needs to retain  
19 that ability to make sure the plant continues to  
20 operate under the conditions of the agreement.

21                Now, FES, likewise, is motivated to  
22 minimize capital expense as well because FES is  
23 responsible for paying the entire capital cost. The  
24 EDUs' responsibility for capital costs lies within  
25 the capacity payment, depreciation during the term of

1 the agreement. So, for example, if FES made a \$20  
2 million capital expenditure, FES pays the \$20  
3 million. We pay that return on that 20 million for  
4 the balance of the agreement. Once the 15 years is  
5 up for the balance of the depreciation of that  
6 facility, FES continues to be responsible for the  
7 balance of that cost. So since they have a lot of  
8 interest in reducing expenses, there is a cooperative  
9 arrangement where we are both equally motivated to  
10 minimize expenses while continuing with the reliable  
11 operation of the unit.

12 MR. SOULES: Your Honor, may I have that  
13 last question and answer read back?

14 EXAMINER PRICE: You may.

15 (Record read.)

16 MR. SOULES: Thank you. Your Honor, I  
17 would move to strike everything after the phrase  
18 "under the conditions of the agreement" as being  
19 nonresponsive to the request.

20 MR. KUTIK: May I be heard, your Honor?

21 EXAMINER PRICE: One second. Could you  
22 read the answer as proposed -- with the requested  
23 motion to strike and end there.

24 (Record read.)

25 EXAMINER PRICE: Mr. Kutik.

1 MR. KUTIK: Your Honor, this witness was  
2 explaining why FES needed to have the final say. He  
3 was also discussing the likelihood of a hypothetical,  
4 that is, whether there would be a disagreement, and  
5 it's fair comment for him to note that the  
6 disagreement would be unlikely and there would be a  
7 cooperative process for all the reasons he explained.

8 EXAMINER PRICE: Okay. We have been  
9 giving every witness one warning, so you should  
10 consider this to be your one warning.

11 We will deny the motion to strike, but  
12 you need to listen carefully to counsel's question  
13 and answer that question and only that question.  
14 Mr. Kutik will have an opportunity to ask you on  
15 redirect if you want to give context or additional  
16 information with respect to any particular area, and  
17 that way we can get you up and down off the stand and  
18 back to West Virginia, I think, right?

19 THE WITNESS: Yes.

20 EXAMINER PRICE: West Virginia as quickly  
21 as possible.

22 THE WITNESS: Thank you.

23 MR. SOULES: Thank you, your Honor.

24 Q. (By Mr. Soules) Mr. Ruberto, if FES made  
25 a capital investment over the companies' objection,

1 the companies would be responsible for paying the  
2 depreciation on that investment for the remaining  
3 period of the proposed transaction, correct?

4 A. Correct.

5 Q. Thank you. And if we could look at  
6 Section 8 of the term sheet, which is entitled "Unit  
7 Contingent," looking near the end of this section on  
8 page 3, there's a provision that discusses capital  
9 expenditures that "would render the affected Facility  
10 to be uneconomic. Do you see that language in  
11 Section 8?

12 A. I do.

13 Q. And under that provision, if the capital  
14 expenditure would render a facility uneconomic, FES  
15 would either replace the output or the facility would  
16 be dropped from the PPA, correct?

17 A. That would only be true under the buyer  
18 and seller's mutual agreement.

19 Q. Okay. So if there were a capital  
20 expenditure that potentially rendered a facility  
21 uneconomic and the companies and FES disagreed on  
22 that point, the facility would remain as part of the  
23 PPA, correct?

24 A. That's correct, and the capital  
25 expenditures necessary to resume operations of that

1 facility would then be undertaken.

2 Q. Okay. Thank you. Neither FES nor the  
3 companies are obligated to sign a power purchase  
4 agreement as a result of this term sheet, correct?

5 A. I can't speak to the legal requirement of  
6 an obligation. I can say this is something that the  
7 companies and FES intend to sign should rider RRS go  
8 through.

9 Q. Okay. And you're not aware of any  
10 written agreement that would bind the companies and  
11 FES to incorporate these terms into the final PPA,  
12 correct?

13 MR. KUTIK: Your Honor, it's been asked  
14 and answered. We stipulate there is no written  
15 agreement.

16 MR. SOULES: Your Honor, this is a  
17 different question.

18 EXAMINER PRICE: Yes, I think it is a  
19 different question. Overruled.

20 A. There's no written agreement specifically  
21 that says that, other than the agreement that this is  
22 the final terms and conditions that FES and the EDUs  
23 have entered into. So there is a written agreement  
24 that we've written by e-mail, we'll say, that we have  
25 agreed that this is the terms and conditions we



1       agreed to and fully intend to sign based upon these  
2       terms and conditions.

3               Q.     So there's an e-mail in which both  
4       parties represent that these terms and conditions  
5       will not change in the final power purchase  
6       agreement; is that correct?

7               MR. KUTIK:  Objection.  Mischaracterizes  
8       his testimony.

9               EXAMINER PRICE:  Sustained.

10              MR. SOULES:  Your Honor, could I have the  
11     last answer read back.

12              EXAMINER PRICE:  You may.

13              (Record read.)

14              MR. SOULES:  Okay.  Thank you.

15              Q.     (By Mr. Soules) Are you aware of the  
16     existence of an e-mail in which FES committed to  
17     signing a PPA that incorporates all of the terms in  
18     the term sheet?

19              A.     No.  The e-mail I was speaking of was  
20     that we agreed that these are the final terms and  
21     conditions, period.

22              Q.     Okay.

23              A.     Then as a follow-up, we fully intend, FES  
24     and the EDUs, to sign because we have reached an  
25     agreement in principle and intend to sign an

1 agreement that will be based upon this in its  
2 entirety.

3 Q. Okay. But you -- you can't speak to  
4 FES's intentions, correct?

5 A. FES has indicated to me they agree with  
6 these terms and conditions.

7 Q. Okay. But you're not representing FES in  
8 your testimony in this case, correct?

9 A. That's correct.

10 Q. Okay. So your understanding of FES's  
11 commitment is based upon what was communicated from  
12 them to you; is that fair to say?

13 A. Yes.

14 Q. Okay. I believe earlier you had  
15 discussed the EDU team negotiated with the FES team  
16 over the terms of the term sheet; is that a fair  
17 statement?

18 A. Yes.

19 Q. Okay. And there was not a significant  
20 amount of back and forth between the parties in  
21 drafting the term sheet, correct?

22 MR. KUTIK: May I have the question read,  
23 please?

24 EXAMINER PRICE: You may.

25 (Record read.)

1           A.     That's incorrect. There was a  
2           significant amount of back and forth. Much of that  
3           was done in person. So while there may not have been  
4           drafts mailed back and forth, many of the terms and  
5           conditions within the term sheet were reviewed,  
6           modified, discussed, and created at in-person  
7           meetings between the EDU team and the FES team.

8           Q.     Thank you. Looking at your direct  
9           testimony page --

10           EXAMINER PRICE: Before we go on, I just  
11           had a couple of questions about the negotiations.  
12           You indicated that the people listed in Sierra Club  
13           52 were the negotiating team for the EDU?

14           THE WITNESS: That's correct.

15           EXAMINER PRICE: And the negotiations are  
16           entirely by that group and only that group; is that  
17           right?

18           THE WITNESS: That's correct.

19           EXAMINER PRICE: Were there any issues  
20           that you needed to seek additional guidance on that  
21           you couldn't answer within the EDU team yourself and  
22           needed to move up the organization?

23           THE WITNESS: With regard to information  
24           necessary to help us with a decision, we certainly  
25           reached out to experts. For specific negotiation

1 strategy, we didn't reach out to other people to get  
2 specific negotiation strategy.

3 EXAMINER PRICE: How about information,  
4 guidance with respect to specific terms?

5 THE WITNESS: During that time we did  
6 provide updates to Mark Julian, who was the vice  
7 president of utilities at the time. To the extent he  
8 may have offered comments, I mean, we did present --  
9 I should say I did present to Mark Julian. He may  
10 have offered comments, and I would have discussed  
11 some of the issues we were working through. He may  
12 have offered comments and advice in that discussion,  
13 and the team would have taken that under  
14 consideration.

15 EXAMINER PRICE: But you cannot recall  
16 any specific issues where you sought guidance from  
17 more senior members of the regulated side of the  
18 operation for, "They're asking for this. We're  
19 asking for that. How far should we go?"

20 THE WITNESS: Those were the kind of  
21 issues with Mark Julian, and in those -- those  
22 meetings other people were present that there would  
23 be discussion around, what's the impact of our  
24 position right here and what's the value of us moving  
25 here. So there was -- there was some discussion in

1       that regard.

2                   I just don't want to characterize it as  
3       they were giving us guidance or direction. They  
4       were -- they were certainly discussing the issues to  
5       maybe give us additional points of view to consider  
6       as we evaluated it. They didn't specify, "No, this  
7       is what you do. No, you should go here."

8                   EXAMINER PRICE: Was Mr. Moul in the room  
9       when you had these discussions?

10                  THE WITNESS: No.

11                  EXAMINER PRICE: Did you have any  
12       discussions with Mr. Moul regarding the unit  
13       contingent provisions?

14                  THE WITNESS: I did not.

15                  EXAMINER PRICE: Thank you. You may  
16       proceed.

17                  MR. SOULES: Thank you, your Honor.

18                  Q.     (By Mr. Soules) Just going back to an  
19       answer you provided to Attorney Examiner Price a few  
20       moments ago, I believe you said you had reached out  
21       to experts at some point during the EDU team process;  
22       is that correct?

23                  A.     That's correct.

24                  Q.     And which experts were you referring to?

25                  A.     Certainly there were a few areas the EDU

1 team needed additional expertise. One was getting  
2 market projections, so we reached out to Judah Rose.  
3 A second one was doing an economic impact study  
4 which, of course, Ms. Murley was the expert to  
5 perform that analysis. We also reached out to the  
6 transmission planning group to evaluate the  
7 transmission impacts if the plants would retire, and  
8 that was -- that was Mr. Cunningham, subsequently  
9 Mr. Phillips, who provided that information.

10 And there may have been other experts  
11 that were reached out to independent of my knowledge.  
12 For instance, accounting might have reached out to  
13 some people they know in accounting. I'm not sure of  
14 everybody's touch to everybody in the corporation,  
15 but those are the main categories of experts we  
16 reached out to.

17 Q. Okay. Thank you. And on the  
18 transmission issue, if you could please look at page  
19 8 of your direct testimony. In looking at lines 10  
20 through 16, this portion of your testimony discusses  
21 how the EDU team reviewed the proposed transaction's  
22 impact on reliability; is that a fair statement?

23 A. Yes.

24 Q. And for that review did the EDU team rely  
25 upon Mr. Cunningham's counsel?

1 MR. KUTIK: You mean his advice as  
2 opposed to his lawyer?

3 MR. SOULES: Yes, yes, thank you. Yeah.

4 Q. Mr. Cunningham's advice.

5 A. Yes.

6 Q. The EDU team did not separately  
7 commission any load-flow studies focused on the  
8 plant -- the potential transmission impacts of the  
9 plants's retirement, correct?

10 A. The companies did ask for the studies to  
11 be performed by the transmission group. The level of  
12 detail of load-flow studies they did is unclear to me  
13 beyond the representations that they provided  
14 indicating transmission expenditures that would be  
15 required if these units were retired.

16 Q. Okay. So the EDU team reviewed the  
17 results of an analysis but did not separately conduct  
18 one; is that fair to say?

19 A. That's correct. The EDU team reached out  
20 to the transmission group particularly because we did  
21 not have the ability to do such an analysis.

22 Q. Okay. And for your testimony regarding  
23 the potential transmission impacts of plant  
24 retirements, are you relying entirely on the  
25 testimony of Mr. Cunningham and Mr. Phillips?

1 THE WITNESS: Could you read the question  
2 again, please.

3 (Record read.)

4 MR. KUTIK: Was that an "and" or an "or"?

5 MR. SOULES: It was an "and."

6 A. With regard to the transmission  
7 expenditures that would result, yes, Mr. Cunningham  
8 and Mr. Phillips provided that information.

9 Q. Okay. Thank you.

10 EXAMINER PRICE: Excuse me. I have a  
11 follow-up on that. You discussed with Mr. Cunningham  
12 the cost of the transmission enhancements at the time  
13 you were evaluating the proposal; is that right?

14 THE WITNESS: We actually asked  
15 Mr. Cunningham to evaluate whether there would be  
16 necessary transmission enhancements.

17 EXAMINER PRICE: At the time of the --

18 THE WITNESS: During -- during the  
19 evaluation process, correct.

20 EXAMINER PRICE: And the only number he  
21 gave you would have been the \$400 million that is  
22 present in the Cunningham prefiled testimony; is that  
23 correct?

24 THE WITNESS: During the time of that  
25 analysis, two members of the EDU team, Rich Ziegler



1 and Mike Thorne in particular, were working with  
2 Mr. Cunningham. We kept it separately intentionally  
3 because my role in regulated generation has -- has a  
4 wall between that and transmission, so we wanted to  
5 make sure I didn't get myself into knowing things  
6 about other transmission enhancements that maybe I  
7 didn't need to know.

8 So to the extent I got the higher-level  
9 numbers, but -- but Rich and Mike, Mr. Ziegler and  
10 Mr. Thorne, worked with -- with Mr. Cunningham during  
11 this time. They didn't work with Mr. Phillips, who  
12 didn't come on until Mr. Cunningham retired. But  
13 during the time they worked with Mr. Cunningham, they  
14 may have had additional detail. They may have had,  
15 "This is a transmission enhancement that might be  
16 needed. You might need to rebuild this line." They  
17 might have had that detail. So I don't want -- I  
18 don't want to say members of the EDU team didn't see  
19 it, but I can say I didn't see it.

20 EXAMINER PRICE: Okay. What number --  
21 what was your understanding at the time of the  
22 negotiations for the total transmission investment  
23 that would be required if the facilities closed?

24 THE WITNESS: I would have to refresh my  
25 memory on the number. I don't recall the number. I

1 know it was in the hundreds of millions. I just  
2 don't recall the specific number.

3 EXAMINER PRICE: Do you think it was  
4 closer to \$1.2 billion or closer to \$400 million?

5 THE WITNESS: I would think 400.

6 EXAMINER PRICE: Thank you.

7 MR. KUTIK: Your Honor, may we go off the  
8 record?

9 EXAMINER PRICE: Yes.

10 (Discussion off the record.)

11 (Recess taken.)

12 EXAMINER PRICE: Let's go back on the  
13 record.

14 Thank you, Mr. Soules.

15 MR. SOULES: Actually, your Honor, I have  
16 nothing further for the public session.

17 EXAMINER PRICE: Great. Anybody like to  
18 go next? Don't everybody stand at once.

19 Ms. Fleisher.

20 MS. FLEISHER: Sorry, I'm eating.

21 EXAMINER PRICE: No. You can wait. We  
22 can go to Miss Bojko.

23 MS. FLEISHER: Whatever, okay. Thank  
24 you.

25 - - -

## 1 CROSS-EXAMINATION

2 By Ms. Bojko:

3 Q. Good morning, sir.

4 A. Good morning.

5 Q. My name is Kim Bojko, and I am  
6 representing the Ohio Manufacturers' Association.7 Sir, sitting here today, do you believe  
8 that FirstEnergy's distribution system is reliable?

9 A. I do.

10 Q. And will FirstEnergy's system --  
11 distribution system be reliable if the Commission  
12 does not approve FirstEnergy's ESP application?13 A. It's difficult for me to say with  
14 certainty. It may depend upon what additional  
15 transmission may or may not be needed depending on  
16 what facilities may or may not remain in place.17 Q. And I'm referring specifically to the  
18 distribution system. Do you understand that, sir, in  
19 your response?20 A. My belief would be that reliable service  
21 needs to have the generation coming across the  
22 transmission to the distribution system to be able to  
23 be delivered, so from my perspective reliability  
24 includes the entire process of getting that energy to  
25 consumers.

1           Q.    Okay.  Sir, would your answer be the same  
2           if the Commission chooses to modify an aspect of the  
3           ESP -- of the ESP IV plan such as not approve the  
4           rider RRS?

5           A.    I'm sorry.  I am not following the  
6           question.

7           Q.    Well, do you believe the FirstEnergy's  
8           distribution system will be reliable if the  
9           Commission chooses to modify FirstEnergy's  
10          application and not approve rider RRS?

11          MR. KUTIK:  Well, your Honor, I think  
12          that question has been asked and answered.

13          MS. BOJKO:  Actually, it's a different  
14          question.

15          EXAMINER PRICE:  We will give Ms. Bojko  
16          some leeway on this one.

17          A.    Again, I believe that if rider RRS is not  
18          approved, the baseload coal and nuclear plants that  
19          are part of this agreement, their future is more  
20          uncertain to the extent those would no longer be  
21          available in Ohio.  Considering the amount of energy  
22          that the state imports, I believe that there could be  
23          some impact, but I can't say for certain whether it  
24          would be exactly the same or not.

25          Q.    Okay.  So I was talking specifically

1 about rider RRS. Let's talk about the plants. So do  
2 you believe that if the plants continue to operate as  
3 they are today, that FirstEnergy's distribution  
4 system would be reliable?

5 A. To the extent those plants affect the  
6 reliability of the plants continuing to operate as  
7 they do today, I agree there would be no change in  
8 the reliability.

9 Q. And if those plants do not affect the  
10 reliability of the system, FirstEnergy's distribution  
11 system would still continue to be reliable; is that  
12 correct, whether they operate or not?

13 MR. KUTIK: Well, I'll object, your  
14 Honor. There is no evidence in the record that the  
15 distribution system or the system serving the load of  
16 the companies is not affected by the plants in  
17 question.

18 EXAMINER PRICE: Are you asking a  
19 hypothetical?

20 MS. BOJKO: Your Honor, I was following  
21 up on his response. He said "if they affect the  
22 reliability of the system," so I'm asking him if they  
23 don't -- you can make it a hypothetical. Assuming  
24 they don't affect the reliability of the system,  
25 would FirstEnergy's distribution system continue to

1 be reliable?

2 MR. KUTIK: Your Honor, have you ruled on  
3 my objection?

4 EXAMINER PRICE: She has rephrased the  
5 question I think adequately.

6 A. In your hypothetical if you are strictly  
7 defining that they have no effect, then clearly  
8 whether they are there or not, as the basis of your  
9 hypothetical would demonstrate, there would be no  
10 effect by definition of your hypothetical.

11 Q. Sir, after FirstEnergy Solutions  
12 approached the companies, and understanding that it  
13 wasn't you first directly, is that correct? It was  
14 your supervisor, Mr. Haney; is that my understanding?

15 A. It was not me. I can't say for certain  
16 who was approached initially.

17 Q. Okay. So after FirstEnergy Solutions  
18 approached the companies, did the companies issue an  
19 RFP to other generator owners for a purchase power  
20 arrangement?

21 A. No.

22 Q. And did FirstEnergy -- did the companies,  
23 excuse me, did they reach out directly to any  
24 generator owners asking if they would be interested  
25 in entering into a purchase power arrangement?

1           A.    Not that I am aware of.

2           Q.    And you are aware, sir, there are several  
3 other generating facilities located in the state of  
4 Ohio; is that correct?

5           A.    Correct.

6           Q.    Other -- excuse me, other than the ones  
7 under the proposed transaction?

8           A.    Correct.

9           Q.    Okay. And those are owned many of the --  
10 or the other plants not subject to the proposed  
11 transaction, those are owned by FirstEnergy Solutions  
12 as well as a variety of other owners; is that  
13 correct?

14          A.    I'm not aware of any plants in the state  
15 beyond the mix that's available with FirstEnergy  
16 Solutions that would be in the state. The mix that  
17 FirstEnergy Solutions has includes, a mix of nuclear  
18 and coal, and I am not aware of other facilities in  
19 the state that could provide a similar diverse fuel  
20 supply.

21          Q.    No. I was asking you if there are other  
22 generator owners that own generating facilities in  
23 the state Ohio? Start with that.

24          A.    Yes.

25          Q.    And those generator owners include

1 FirstEnergy Solutions as well as other generator  
2 owners that own generating facilities in the state of  
3 Ohio; is that correct?

4 A. That's correct.

5 Q. Okay. I would like to talk a little bit  
6 more, follow-up on some questions asked to you  
7 previously this morning about the capacity payment.  
8 Do you recall that discussion you had?

9 A. I do.

10 Q. Okay. And the capacity payment is found  
11 in the term sheet; is that correct?

12 A. Yes.

13 Q. Specifically under section 13; is that  
14 correct?

15 A. That's correct.

16 Q. So under the proposed transaction, the  
17 companies are financially responsible for a return on  
18 FirstEnergy Solution's invested capital under the  
19 capacity payment; is that correct?

20 A. That's correct.

21 Q. Okay. And the return on equity under the  
22 arrangement would be 11.15 percent; is that correct?

23 A. That's not correct to the extent you are  
24 referring to the actual return, or I should say the  
25 return on their actual equity. The actual equity



1 position of FES is 65 percent. Part of the agreement  
2 we reached was that we would essentially devalue that  
3 equity position to 50 percent, so the return on  
4 equity is only applied to an assumed lower equity  
5 amount that is actually less than what their equity  
6 position is.

7 Q. Okay. Thank you for that clarification.  
8 And with that clarification, the return on equity  
9 that's defined in the term sheet is the 11.15  
10 percent?

11 A. The 11.15 is defined as return on equity,  
12 and because it's applied to their equity component it  
13 actually is an effective rate of about 9.6 percent  
14 when you consider what their actual equity position  
15 is.

16 Q. Okay. And that calculation is found in  
17 the term sheet under the definitional section of  
18 capacity payment; is that correct?

19 A. That's correct.

20 Q. Okay.

21 EXAMINER PRICE: Why did you go through  
22 that exercise in the negotiations?

23 THE WITNESS: As we were investigating  
24 what the right return on equity would be, we looked  
25 at -- in fact, there was an 11.15 that was an AEP

1 case that we looked at, so we used that as a  
2 reference point, but that's a good place to start.

3 But applying that to the full 65 percent,  
4 we felt we could negotiate that down to a lower  
5 amount. So using that as a reference point because  
6 it's -- it's something that existed, and artificially  
7 reducing their 65 to 55 percent gave us an effective  
8 rate of 9.6.

9 I agree we could have started at 9.6 and  
10 applied it to 65/35 and achieved the same result. I  
11 think it had more to do with us starting at a -- a  
12 reference point that existed and then going through  
13 the numbers that way.

14 EXAMINER PRICE: Thank you.

15 Q. (By Ms. Bojko) And the calculation of the  
16 capacity payment included accumulated deferred income  
17 tax associated with invested capital; is that  
18 correct?

19 A. That's correct.

20 Q. And the calculation of the capacity  
21 payment also includes capital expenditures work; is  
22 that correct?

23 A. That's correct.

24 Q. And capital expenditures work, as defined  
25 in the term sheet, to include studying, modeling,

1 engineering, design, construction, inspections, and  
2 testing of capital expenditures; is that correct?

3 A. That's correct.

4 Q. And also under section 13 of the proposed  
5 transaction, the depreciation payment, the companies  
6 would be financially responsible for depreciation  
7 expenses incurred on any new capital expenditures put  
8 in service at Sammis and Davis-Besse; is that  
9 correct?

10 A. That's correct.

11 Q. And would you agree, sir, that  
12 FirstEnergy, the companies, would not be taking title  
13 to Davis-Besse, Sammis, or the OVEC units under the  
14 proposed transaction?

15 MR. KUTIK: We'll stipulate to that.

16 MS. BOJKO: Well, your Honor, I  
17 appreciate that, but I'm trying to get an  
18 understanding of the witness' knowledge given his  
19 testimony in this case.

20 EXAMINER PRICE: Can I have the question  
21 back again.

22 (Record read.)

23 EXAMINER PRICE: Okay. Go ahead and  
24 answer if you like.

25 A. We will not be taking title.

1           Q.    And, sir, immediately following the  
2           capacity payment section in section 13, there is a  
3           tax reimbursement payment proposal; is that correct?

4                   MR. KUTIK:   May I have the question read,  
5           please?

6                   EXAMINER PRICE:   You may.

7                   (Record read.)

8           A.    There's not actually a proposal there.  
9           There is a tax reimbursement payment.

10          Q.    Provision then, excuse me.  Instead of a  
11          proposal, it is a provision.  Thank you.

12          A.    Correct.

13          Q.    And is it your understanding that the tax  
14          reimbursement payment would require the companies to  
15          reimburse FirstEnergy Solutions for taxes resulting  
16          from the income FirstEnergy Solutions receives  
17          pursuant to the capacity payment?

18                   THE WITNESS:   Could I hear that question  
19          again?

20                   EXAMINER PRICE:   You may.

21                   (Record read.)

22          A.    Correct.

23          Q.    Under the term -- term sheet the  
24          companies are given 100 percent of the rights to  
25          FirstEnergy Solutions capacity, energy, and the

1 ancillaries for the two generating units; is that  
2 correct -- or three, I'm sorry. Two plus OVEC.

3 A. In addition to the environmental  
4 attributes, that's correct.

5 Q. And the term sheet does not dictate what  
6 the companies should do with the energy, capacity,  
7 and ancillaries once they obtain ownership, does it?

8 A. The term sheet represents an agreement  
9 between FES and the companies. It's not a condition  
10 that FES would need to agree to how we would use the  
11 energy, capacity, ancillary services, and  
12 environmental benefits, so it would not be included  
13 in the term sheet.

14 Q. Right. So once the companies obtain  
15 ownership of the capacity, energy, ancillaries, and  
16 environmental attributes, the term sheet does not  
17 dictate what the companies may or may not do with  
18 that -- with those outputs; is that correct?

19 A. It does not, and it cannot because FES  
20 can't be in a position to dictate what the companies  
21 did with that output.

22 Q. Okay. And in your testimony you state  
23 that the companies will offer the energy and the  
24 ancillaries from the plants into the PJM markets; is  
25 that correct?

1           A.     That's correct.

2           Q.     And could the companies enter into a  
3     bilateral third-party arrangement to sell the energy  
4     to a third party?

5           A.     I don't believe there is a prohibition on  
6     that.   That is not our intent.

7           MS. BOJKO:   If I may have just one  
8     moment, your Honor, I may be done.   I think there was  
9     a question punted to Mr. Ruberto.

10          EXAMINER PRICE:   Don't use the word  
11     "punt."

12          MS. BOJKO:   It was already asked and  
13     answered.   Thank you, sir.   Thank you for your time.

14          EXAMINER PRICE:   Thank you.

15          Mr. Settineri.

16          MR. SETTINERI:   Thank you, your Honor.

17                               - - -

18                       CROSS-EXAMINATION

19     By Mr. Settineri:

20           Q.     Good morning, Mr. Ruberto.

21           A.     Good morning.

22           Q.     Just to be clear on the record, you may  
23     have already said this but I want to be clear on the  
24     record, you're not an attorney; is that correct, sir?

25           A.     That's correct.

1           Q.    And if you could turn to page 3 of your  
2 testimony, please, line 9 through 11.

3           A.    I have that.

4           Q.    Okay.  And lines 9 through 11 read, "The  
5 Companies would then offer this output into the PJM  
6 markets, and net 100% of the revenues against costs,  
7 with the difference being passed along to customers  
8 through Rider RRS."  Do you see that?

9           A.    I do.

10          Q.    Okay.  Did I read that correctly?

11          A.    You did.

12          Q.    Thank you.  In regards to the revenues  
13 that are referenced in the first word in line 10, am  
14 I correct that those revenues would be revenues  
15 received from the PJM markets regarding capacity  
16 revenues as well as energy revenues?

17          A.    In addition to -- yes, and in addition,  
18 ancillaries and, should there be environmental  
19 attributes that gain revenue, it would include those  
20 as well.

21          Q.    Okay.  And then you are going to net  
22 those revenues against costs, correct?

23          A.    Correct, and that term it is the payment  
24 made to FES.

25          Q.    Okay.  And going back to revenues then,

1       isn't it true, then, that the revenues you receive  
2       from PJM would also have to be netted against any  
3       penalties that are assessed by PJM against the  
4       companies related to the capacity and energy from the  
5       proposed units in this proposed transaction?

6           A.     The revenues referred to would be net of  
7       any charges that are included within PJM.  
8       Nonperformance charges under capacity performance  
9       would be some, but there are other charges, so it  
10      would be the net, if you will, of the PJM bill,  
11      everything that was on that bill. What's left is  
12      what this would be.

13          Q.     Okay. And just to be clear for the  
14      record, then, those charges that would be on that  
15      bill could include any penalties for nonperformance  
16      assessed by PJM, correct?

17          A.     I'm unaware of the term "penalties" being  
18      used at PJM. I am aware of nonperformance charges,  
19      and those nonperformance charges under PJM under the  
20      new capacity performance rules only apply if a unit  
21      does not perform during emergency conditions, which  
22      they estimate to be about 30 hours a year, of which  
23      so far this year there hasn't been a single one.

24          Q.     Okay.

25          A.     It is feasible that those would exist,



1 but it would certainly be our intent and expectations  
2 to operate the plants in a manner that reduces or  
3 eliminates nonperformance charges.

4 MR. SETTINERI: Can I have the answer  
5 reread, your Honor.

6 EXAMINER PRICE: You may.

7 MR. SETTINERI: If I may have the  
8 question and answer reread, please.

9 EXAMINER PRICE: Sure. Let's have the  
10 question and answer again.

11 (Record read.)

12 MR. SETTINERI: And, your Honor, if you  
13 could indulge me if I could have that answer reread  
14 one more time, please.

15 EXAMINER PRICE: Sure.

16 MR. SETTINERI: Thank you.

17 (Record read.)

18 MR. SETTINERI: Your Honor, based on the  
19 question and answer, I would move to strike, and  
20 hopefully I am catching the right spot here, but  
21 everything after the phrase "I'm aware of," and I  
22 believe there is a term there but then charges, the  
23 word charges. And I would strike everything after  
24 that as very unresponsive to the question which was  
25 very targeted around did mention that penalties

1 relate to nonperformance.

2 MR. KUTIK: Your Honor?

3 EXAMINER PRICE: Mr. Kutik.

4 MR. KUTIK: The -- counsel used the  
5 phrase penalties which this witness disagreed with  
6 and this witness was explaining why it wouldn't be  
7 penalties and what charges he was understanding the  
8 question to relate to.

9 MR. SETTINERI: If I may, your Honor?

10 EXAMINER PRICE: You may.

11 MR. SETTINERI: The question actually  
12 included the phrase "tied charges to nonperformance."

13 EXAMINER PRICE: Actually your question  
14 said penalties for nonperformance and I will agree  
15 with you that throughout this proceeding we have said  
16 penalties for nonperformance. However, that was not  
17 the witness's understanding and so I think it is -- I  
18 believe going to deny the motion to strike because I  
19 think he was attempting to give you an answer to your  
20 question but didn't do -- but didn't expand upon it  
21 considerably but I think he was trying to be  
22 responsive so the motion to strike will be denied.

23 And we are going to go off the record  
24 because my glasses are about to break.

25 (Discussion off the record.)

1 (Recess taken.)

2 EXAMINER PRICE: Go back on the record.

3 Q. (By Mr. Settineri) Mr. Ruberto, you don't  
4 have any opinion whether the Davis-Besse unit is at  
5 risk of retirement within the next three years,  
6 correct?

7 A. My opinion is their future is uncertain.  
8 If rider RRS was approved, my opinion would be the  
9 future would be more certain.

10 Q. Mr. Ruberto, do you recall being deposed  
11 in this case on January 8, 2015?

12 A. Yes.

13 MR. SETTINERI: Your Honor, may I  
14 approach?

15 EXAMINER PRICE: You may.

16 MR. KUTIK: The witness has a copy of his  
17 deposition.

18 EXAMINER PRICE: Thank you.

19 MR. SETTINERI: Does the Bench have  
20 copies?

21 EXAMINER PRICE: We do not.

22 Q. (By Mr. Settineri) Mr. Ruberto, you have  
23 in front of you a copy of your deposition transcript,  
24 correct?

25 A. Correct.

1           Q.    Okay.  Could you turn to page 199 of that  
2 transcript, please.

3           A.    I'm there.

4           Q.    Is there any handwriting on that page,  
5 sir?

6           A.    I'm sorry.  Would you repeat the  
7 question?

8           Q.    Is there any handwriting on the  
9 transcript that's in front of you, sir?

10          A.    No.

11          Q.    Thank you.  Do you see the -- I want to  
12 read a question here for you.  It actually starts at  
13 the bottom of page 198.

14                "Question:  Thank you.  Do you have --  
15 and just to clarify for the record, do you have any  
16 opinion whether the Davis-Besse unit is at risk of  
17 retirement within the next three years?

18                "Answer:  I do not."

19                Did I read that correctly, sir?

20          A.    You did.

21          Q.    Thank you.  Let me ask you another  
22 question, and again, I am not referring to your  
23 transcript, just so you know.  Same question with  
24 regard to W.H. Sammis, do you have any opinion as to  
25 whether that unit is at risk of retirement within the

1 next three years? Let me strike that. Let me  
2 rephrase that.

3 Do you have any opinion as to whether  
4 that unit, the Sammis unit, any of the Sammis units,  
5 are at risk of retirement -- strike that.

6 Am I correct, Mr. Ruberto, that you don't  
7 have any opinion as to whether any of the Sammis  
8 units are at risk of retirement within the next three  
9 years?

10 A. My opinion to the risk is similar to my  
11 previous response to Davis-Besse, that it's more  
12 certain the longevity of the plants if rider RRS was  
13 approved than without.

14 Q. And you have a copy of your deposition  
15 transcript in front of you, correct?

16 A. I do.

17 Q. Okay. And referring you to page 199,  
18 there was a question posed to you, "Same question  
19 with regard to W.H. Sammis, do you have any opinion  
20 as to whether that unit is at risk of retirement  
21 within the next three years?"

22 Answer: "I do not."

23 Did I read that correctly?

24 A. That's correct.

25 Q. Okay. And you also don't have any

1 opinion as to whether any of the OVEC units will  
2 retire within the next three years, correct?

3 A. I think the impact of whether rider RRS  
4 was approved or not has much less effect on OVEC  
5 simply because of the small share.

6 Q. Okay. And, again, referring you to your  
7 transcript, page 199 of your deposition, Question:  
8 Same question with OVEC, do you have any opinion as  
9 to whether any of the OVEC units will retire within  
10 the next three years?"

11 Answer: "I do not."

12 Did I read that correctly?

13 A. Mine says I do not have that concern.

14 EXAMINER PRICE: On page 199 on line 13?

15 THE WITNESS: Did I get to the next page?  
16 I'm sorry.

17 Q. (By Mr. Settineri) Would you like me to  
18 read that again for you, sir?

19 A. I have it. I'm sorry. I was -- I was at  
20 the same -- a similar paragraph was at the bottom of  
21 the page, that's what I was reading.

22 Q. Okay. Let me just ask the question again  
23 or cite to your -- let me reread your transcript. On  
24 line 10 on page 199 -- do you have that in front of  
25 you?

1           A.    I do have it.

2           Q.    Okay.  Question:  "Same question with  
3   OVEC, do you have any opinion as to whether any of  
4   the OVEC units will retire within the next three  
5   years?"

6                    Answer:  "I do not."

7                    Did I read those lines correctly, sir?

8           A.    You did.

9           Q.    Thank you.  Under the draft -- strike  
10   that.  Under the term sheet that has been marked as  
11   Sierra Club Exhibit 1, if a unit is converted to  
12   natural gas, it would be subject to a rate of return  
13   as proposed under the term sheet, correct?

14                   MR. KUTIK:  Objection, your Honor.

15                   EXAMINER PRICE:  Grounds?

16                   MR. KUTIK:  Although I realize that it is  
17   a hypothetical, the hypothetical should be based in  
18   something that's feasible under the contract, and  
19   there is no evidence that's something that is  
20   contemplated under the contract so I object.

21                   MR. SETTINERI:  Your Honor, if I may?  If  
22   I may?

23                   EXAMINER PRICE:  Let's have the question  
24   back first.

25                   (Record read.)

1 EXAMINER PRICE: I'm sorry, I agree with  
2 Mr. Kutik. I mean, you make specific reference under  
3 the term sheet and it's been pretty well established  
4 that the term sheet intends that Sammis be operated  
5 as a coal power plant, so.

6 MR. SETTINERI: Your Honor, may I be  
7 heard?

8 EXAMINER PRICE: You can.

9 MR. SETTINERI: Briefly, he is not an  
10 attorney, and it's been established throughout this  
11 proceeding multiple witnesses have been unable to  
12 interpret certain provisions of the term sheet.

13 And also I am laying this question with  
14 the expectation of having an answer because an answer  
15 was given to this question in a deposition with no  
16 objection.

17 MR. KUTIK: Well, just because it wasn't  
18 objected to in the deposition doesn't mean it's  
19 appropriate here. That's number one. And number  
20 two, he must lay a foundation with respect to his  
21 hypothetical, if he could do that.

22 EXAMINER PRICE: Why don't you try to lay  
23 a foundation.

24 MR. SETTINERI: I would be glad to.

25 Q. (By Mr. Settineri) Mr. Ruberto, is it



1 possible -- it is possible to convert a coal unit to  
2 natural gas in some circumstances, correct?

3 A. While theoretically possible, it's not  
4 practical in most cases.

5 Q. Okay. And technology changes over time,  
6 correct?

7 A. I'm not sure what technology you are  
8 referring to.

9 Q. Fifteen years ago did you anticipate that  
10 you might have a smartphone?

11 A. I may have. It may have been a  
12 Blackberry and not an iPhone, but I may have had one  
13 then.

14 Q. Would you agree with me, though, that  
15 technological improvements can be made in generation  
16 plants over time?

17 A. Yes.

18 Q. Okay. And the Sammis units are all  
19 coal-fired generation units, correct?

20 A. The main -- the main units, but there is  
21 12 megawatts of diesel-powered generation there.

22 Q. Thank you for that clarification. So if  
23 you assume for me that technically the Sammis units  
24 can be converted to natural gas fired, am I correct  
25 that if those units are converted to natural gas or

1 just -- let me simplify that and make it one unit is  
2 converted to natural gas, that it's your  
3 understanding under the term sheet that the capital  
4 expenditure for that conversion would be subject to  
5 the rate of return that's under the draft term sheet?

6 MR. KUTIK: Same objection, your Honor.

7 EXAMINER PRICE: Overruled. He made the  
8 case -- he has laid the foundation that it's  
9 technically feasible, and this witness is in no  
10 position to make the legal judgment as to whether the  
11 term sheet does or does not preclude the conversion  
12 because he is not an attorney.

13 MR. KUTIK: Well, certainly, your Honor.  
14 If I may be heard?

15 EXAMINER PRICE: Uh-huh.

16 MR. KUTIK: This is -- this witness is  
17 someone who negotiated the term sheet and should be  
18 able to provide an opinion as to whether that  
19 hypothetical has any foundation or whether that was  
20 in the contemplation of at least the EDU team, if not  
21 both of the parties to the transaction.

22 EXAMINER PRICE: And that would be a fair  
23 point for you to make on redirect, but I don't think  
24 it means he can't answer this question, ask this  
25 question and get an answer. Overruled.

1 THE WITNESS: May I have the question  
2 again?

3 EXAMINER PRICE: You may.  
4 (Record read.)

5 A. The term sheet does specify that any  
6 capital expenditures would be subject to that rate of  
7 return. The possibility of converting any of the  
8 units to gas was never discussed by the EDU team and  
9 wasn't contemplated.

10 My reading of the term sheet, essentially  
11 after the negotiations because it was never  
12 contemplated by either party, is that I believe --  
13 subject to legal's interpretation, but I believe the  
14 term sheet specifically limits it to coal-fired  
15 plants, units at Sammis.

16 Q. Let me refer you to your deposition  
17 transcript, page 209 to 210, please. Let me know  
18 when you have that in front of you, Mr. Ruberto.

19 A. I have it.

20 Q. Page 209, line 15, Question: "What is  
21 your opinion on that? Let me clarify. Let me ask a  
22 better question.

23 "In the event FES converts a unit at  
24 Sammis to natural gas and seeks to include those --  
25 the capital expenditures under the PPA for recovery,

1     what is your opinion as to whether those expenditures  
2     should be recovered?"

3             Answer:  "The -- the PPA term sheet does  
4     outline capital expenditures.  And if capital  
5     expenditures do occur, then they are passed on as  
6     described in the term sheet regardless of what the  
7     capital expenditure was for."

8             Question:  "Okay.  So if a unit is  
9     converted to natural gas, it would be subject to the  
10    rate of return under the PPA, correct?"

11            Answer:  "Yes."

12            Did I read that correctly?

13            MR. KUTIK:  Your Honor, I move to strike  
14    the answer and I object -- or the question.

15            EXAMINER PRICE:  Grounds, please?

16            MR. KUTIK:  It's improper impeachment.  
17    Nothing that is in the deposition is inconsistent  
18    with this witness' testimony.

19            EXAMINER PRICE:  Can I have the witness'  
20    question back or the answer back.  Not did I read  
21    this properly, but his original question to the --  
22    answer to the question.

23            (Record read.)

24            EXAMINER PRICE:  We are going to sustain  
25    the objection as to the improper impeachment, and we

1 are going to strike your answer beginning with the  
2 words "my reading" and going on forward because that  
3 was well beyond the scope of what was asked of you.

4 MR. SETTINERI: And, your Honor, if I may  
5 be briefly heard on the sustaining of the objection,  
6 with your permission?

7 EXAMINER PRICE: Fire away.

8 MR. SETTINERI: The impeachment is  
9 certainly proper because he gave an unqualified yes  
10 to the question. In fact, there are two questions  
11 and answers that led up to that unqualified yes, so I  
12 do believe it is very important for the record to  
13 note an unqualified yes was given that this witness  
14 considers that these capital expenditures would be  
15 subject to the rate of return, and in answer to my  
16 question, he did not give a yes at all in the answer.

17 MR. KUTIK: That's not a fair  
18 characterization at all, and the record will reflect  
19 that.

20 MR. SETTINERI: So with that, your Honor  
21 I would just ask that you reconsider.

22 EXAMINER PRICE: No. The problem is your  
23 question at hearing was posed in terms of a  
24 hypothetical, and the question at the deposition  
25 wasn't posed in terms of a hypothetical, and he gave

1 an answer as to why he thought the hypothetical  
2 wouldn't work, and I think that's -- I mean, that's  
3 fair.

4 MR. SETTINERI: If I may, your Honor,  
5 have -- if I could have that answer reread as  
6 revised, please.

7 EXAMINER PRICE: Yes.

8 (Record read.)

9 EXAMINER PRICE: Everything beginning  
10 with "my reading" was stricken.

11 MR. SETTINERI: Okay. Thank you. Thank  
12 you, your Honor.

13 If I may have a moment?

14 EXAMINER PRICE: You may.

15 Q. (By Mr. Settineri) Regarding Judah Rose,  
16 am I correct that he was retained prior to the EDU  
17 team being formed?

18 A. I believe his retention was four or five  
19 days before the balance of the EDU team was formed.  
20 However, I was already involved at that time.

21 Q. Okay. And who requested that Mr. Rose be  
22 retained?

23 A. Legal.

24 Q. Okay. Did you have any input on that  
25 decision?

1           A.    Not on the decision of who to retain. We  
2           were given the opportunity to review his credentials  
3           early on.

4                   MR. SETTINERI: Thank you, Mr. Ruberto.

5                   No further questions in the public  
6           session, your Honor.

7                   EXAMINER PRICE: Mr. Dougherty.

8                   MR. DOUGHERTY: Yes.

9                               - - -

10                           CROSS-EXAMINATION

11           By Mr. Dougherty:

12                   Q.    Thank you. Thank you, Mr. Ruberto. My  
13           name is Trent Dougherty, and I will ask you just a  
14           few questions on behalf of Ohio Environmental Council  
15           and the Environmental Defense Fund.

16                   So to clarify again, you were notified of  
17           the proposed transaction in May of 2014?

18                   A.    I was notified of a potential transaction  
19           in May.

20                   Q.    Thank you for that clarification. Thank  
21           you. And before that time, before May of 2014, were  
22           the companies in the market for power purchase  
23           agreements?

24                   A.    I don't have any knowledge of that.

25                   Q.    And FES brought the deal to the

1 companies, correct?

2 A. FES approached the companies with a  
3 suggestion. I am not sure if deal is -- is  
4 appropriate in that context.

5 Q. I will use your terminology there. Thank  
6 you. And what is your understanding about why they  
7 approached the companies?

8 MR. KUTIK: Your Honor, I'll object.

9 EXAMINER PRICE: Grounds?

10 MR. KUTIK: Speculation.

11 EXAMINER PRICE: Response?

12 MR. DOUGHERTY: He is the head of the EDU  
13 team that negotiated this. I would presume he would  
14 have an understanding or at least have some sort of  
15 idea of why they were presenting this opportunity to  
16 the companies. And I am just asking what his  
17 understanding was.

18 EXAMINER PRICE: We certainly have had  
19 witnesses explain why they approached the companies  
20 so far in this hearing, but if you want to ask him,  
21 not to speculate as to what his understanding is, but  
22 if they ever told him what their understanding was,  
23 what their motivation was, you can ask him.

24 MR. DOUGHERTY: May I ask that question?

25 EXAMINER PRICE: Sure.



1           Q.     (By Mr. Dougherty) I will strike the  
2 previous question and ask, were you ever told by any  
3 member of the FES side of the negotiations as to why  
4 they approached the companies with this proposal?

5           A.     I was not told by anyone at FES regarding  
6 the initial proposal, which is the one that involved  
7 many more units. During negotiations regarding the  
8 narrowed proposal, I'm sure we discussed, if nothing  
9 else, in casual terms that -- that the future of  
10 those plants are concerned, but I don't think -- it  
11 wouldn't have been anything extensive.

12           Q.     Thank you. On page 4 of your testimony,  
13 the question and answer that begins on line 13, you  
14 were asked about the due diligence that the EDU team  
15 conducted in reviewing this proposal. Do you see  
16 that? Are you at that spot?

17           A.     I do.

18           Q.     And you list that this included a broad  
19 range of -- strike that.

20                     You list you analyzed a product range of  
21 information, and it's listed here including projected  
22 energy and capacity capabilities, outage rates, O&M  
23 and capital expenditures, taxes, and planned outages;  
24 is that right?

25           A.     That's correct.

1           Q.    And that this information was compared to  
2           similar data in the industry to validate the  
3           reasonableness, correct?

4           A.    That's correct.

5           Q.    What other information did you compare?  
6           Can you explain that a little bit more about the --  
7           I'm sorry. Strike that. I meant -- sorry.

8                   Did you compare this with any other  
9           plants?

10          A.    Yes. We -- we looked at information  
11          that's available in the FERC Form 1, which provides  
12          information on -- on various plants. We looked at  
13          that information and compared it against this plant  
14          information.

15          Q.    And do you recall any specific plants  
16          that were part of that analysis?

17          A.    With regard to the FERC Form 1 data  
18          specifically, we looked at Harrison, Mount Storm,  
19          Mountaineer. There were a couple more other names  
20          escaping me. There was four or five coal plants. We  
21          also looked at a number of nuclear plants that were  
22          in Arizona, Florida, Virginia, and the Carolinas.

23          Q.    Did you compare any Ohio coal plants?

24          A.    The only data available in FERC Form 1 is  
25          regulated plants so other Ohio plant information

1 would not be available.

2 Q. In the term sheet that we have been  
3 discussing, is there any -- is there any provision  
4 that speaks to whether the companies can terminate  
5 this contract -- excuse me -- terminate this  
6 agreement before the term date of May of 2031?

7 A. No.

8 Q. Who are you responsible to as the head of  
9 the EDU negotiating team if the deal -- excuse me --  
10 that the proposed transaction doesn't benefit  
11 customers as you expect?

12 MR. KUTIK: May I have the question read?

13 EXAMINER PRICE: You may.

14 (Record read.)

15 MR. KUTIK: I am not sure it's an  
16 intelligible question, but it sounds argumentative to  
17 me. To the extent I understand it, I will object on  
18 those grounds.

19 EXAMINER PRICE: Overruled.

20 A. I'm not sure I understand what you mean  
21 by who am I responsible to.

22 Q. You negotiated the terms of this  
23 agreement. Strike that.

24 I'll strike that question. I believe  
25 earlier you were asked whether you had analyzed -- or

1       excuse me -- that you had done any RFPs. Do you  
2       remember those questions about request for proposals  
3       as it pertains to this proposed transaction?

4             A.    I don't remember specific questions but  
5       in general I do remember.

6             Q.    And just to be clear, the companies did  
7       not competitively bid or do any RFPs -- excuse me --  
8       for the -- for the power purchase agreement from  
9       another source?

10            MR. KUTIK: Objection.

11            MR. DOUGHERTY: For a power purchase  
12       agreement from another source.

13            MR. KUTIK: Objection, asked and  
14       answered.

15            EXAMINER PRICE: Sustained.

16            Q.    (By Mr. Dougherty) You mentioned that  
17       during your negotiations that you -- you were  
18       provided the forecasts from Judah Rose about the  
19       forecasts of prices in the market over the term of  
20       the proposed transaction, correct?

21            A.    Yes.

22            Q.    And that forecast does show an upward  
23       trend over the next 15 years in terms of electric  
24       energy prices, correct?

25            A.    Correct.

1           Q.    Are you aware of any factors that might  
2           lead actually to future market decreases?

3           A.    The EDU team relied on Mr. Rose's  
4           interpretation of all of those potential factors and  
5           relied on his expertise in evaluating all those  
6           factors.

7                   EXAMINER PRICE:   And you found Mr. Rose's  
8           projections to be reliable?

9                   THE WITNESS:   Yes.

10                  EXAMINER PRICE:   Did you find them  
11           sufficiently reliable that you would make a business  
12           decision based upon them?

13                  THE WITNESS:   Yes.   I believe he created  
14           those projections using sound modeling based on his  
15           expertise, and I believe they are as good as a  
16           projection as you can get.

17                  EXAMINER PRICE:   And you believe that the  
18           net -- you believed at the time that the net present  
19           value of the benefits of the PPA was \$800 million  
20           over 15 years; is that right?

21                  THE WITNESS:   That's correct.

22                  EXAMINER PRICE:   Did you consider the  
23           companies' retaining a portion of those benefits,  
24           let's say 10 or 20 percent, and the consequent risks?

25                  THE WITNESS:   I did not.

1 EXAMINER PRICE: You did not. That was  
2 not a subject between your team -- let me rephrase  
3 that. When you did the negotiation, was it your  
4 assumption that all risks and benefits would be  
5 passed along to customers?

6 THE WITNESS: Certainly there are risks  
7 and benefits passed on to customers but we also felt  
8 there were benefits and risks to the companies as  
9 well.

10 For instance, the economic impact of  
11 these plants, that alone has a significant impact on  
12 the companies who benefit from a strong local  
13 economy, so we do view the company can benefit from a  
14 strong economy.

15 EXAMINER PRICE: I don't think you  
16 understood my question.

17 Could we have the question back, please.

18 (Record read.)

19 EXAMINER PRICE: Okay. Let me rephrase  
20 to be more precise. When you did the negotiations,  
21 was it your assumption that all financial risks and  
22 financial benefits would be passed along to  
23 customers?

24 THE WITNESS: Yes.

25 EXAMINER PRICE: Was that part of your

1 instructions given to you by Mr. Haney?

2 THE WITNESS: No. Mr. Haney wouldn't  
3 have given me that level of detail.

4 EXAMINER PRICE: So where did that  
5 assumption come from?

6 THE WITNESS: I really don't recall.

7 EXAMINER PRICE: And throughout the  
8 negotiations, it never occurred to you that this was  
9 a great business opportunity -- financial opportunity  
10 for the companies because you thought that Mr. Rose's  
11 projections were reliable and were a sound basis to  
12 make your business risk?

13 THE WITNESS: I did not evaluate it from  
14 this perspective.

15 EXAMINER PRICE: Thank you. Sorry about  
16 the tangent.

17 MR. DOUGHERTY: No, thank you. I may  
18 want to go on the same tangent.

19 Q. (By Mr. Dougherty) So I guess, perhaps,  
20 to follow-up on what your Honor had said, had asked,  
21 the companies did not hire any independent financial  
22 adviser to review the aspects of the transaction to  
23 determine it was in the best interest of the  
24 companies, correct?

25 A. That's correct.

1 Q. And why not?

2 A. The companies felt the EDU team had  
3 sufficient resources to be able to make that  
4 evaluation.

5 MR. DOUGHERTY: I'm sorry, can you  
6 repeat -- can you reread the answer to that?

7 EXAMINER PRICE: Please.

8 MR. DOUGHERTY: Please. Thank you.

9 EXAMINER PRICE: I was telling her,  
10 please, not you. I wasn't correcting you.

11 MR. DOUGHERTY: I'm sorry. I'm just so  
12 used to that.

13 (Record read.)

14 Q. (By Mr. Dougherty) And looking to -- or  
15 looking at Sierra Club Exhibit 52, I believe, with  
16 the list of the EDU members, can you identify who on  
17 that list would be a replacement for an independent  
18 financial adviser?

19 A. I am not sure I understand.

20 Q. I asked a question of whether the EDU --  
21 excuse me -- the companies had hired an independent  
22 financial adviser to review the aspects of the  
23 transaction, and I believe you answered that you felt  
24 that the EDU team was -- these aren't your terms --  
25 fully equipped to do that work. And I am asking can



1 you identify any one particular person on this EDU  
2 team, or perhaps there is more than one?

3 MR. KUTIK: More than one to do what?  
4 That's the problem with the question. So I object.

5 EXAMINER PRICE: Can you rephrase?

6 Q. Is there any member or any members of the  
7 EDU team that you feel could -- could have provided  
8 the work that, an independent financial adviser could  
9 have provided to review the aspects of the  
10 transaction, as though they are -- to make sure they  
11 were best for the company -- companies, pardon me.

12 A. Taking the team collectively with the  
13 belief that an independent financial adviser would be  
14 getting the same information regarding the  
15 transaction, the same projections for Mr. Rose, the  
16 same economic benefits that Ms. Murley defines, the  
17 same potential transmission benefits, the same cost  
18 structure, I believe the team collectively would  
19 reach a similar conclusion because the information  
20 would be the same in both cases.

21 Q. With this being said, is there any reason  
22 that employing an independent financial adviser to  
23 review the deal would have harmed the interests of  
24 the companies?

25 A. Since we did not employ a financial

1       adviser, I can't really speak to what gain or harm  
2       you are referring to other than I suppose paying for  
3       them, which I guess would be one negative, if the  
4       team had sufficient resources to make that decision.

5               Q.     That's fair. One minute here.

6               MR. SAUER: Your Honor, could that last  
7       answer be read back in.

8               EXAMINER PRICE: Yes. Can we have that  
9       one back.

10              (Record read.)

11              MR. DOUGHERTY: I will leave it at that,  
12     your Honor. No further questions at this time.

13              EXAMINER PRICE: Mr. O'Brien?

14              MR. O'BRIEN: A few questions, your  
15     Honor.

16              MR. KUTIK: Your Honor, if we.  
17     Could --

18              MR. O'BRIEN: Good afternoon,  
19     Mr. Ruberto. My name is Tom O'Brien.

20              EXAMINER PRICE: Let's go off the record  
21     for a moment.

22              (Discussion off the record.)

23              EXAMINER PRICE: We'll break for lunch at  
24     this time, and we will resume at 2 o'clock sharp.

25              Thank you.

2836

(Thereupon, at 12:28 p.m., a lunch recess  
was taken until 2:00 p.m.)

- - -

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1 Thursday Afternoon Session,  
2 September 17, 2015.

3 - - -

4 EXAMINER CHILES: All right. Let's go  
5 and go back on the record.

6 Mr. O'Brien.

7 MR. O'BRIEN: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. O'Brien:

11 Q. Good afternoon once again, Mr. Ruberto.  
12 I just have a couple of fairly minor questions.

13 Could you please turn your attention to  
14 Section 18 of the term sheet, the document that has  
15 been marked as Sierra Club Exhibit 1, and I direct  
16 your attention to the first paragraph, the second  
17 sentence that says, "Seller shall make all  
18 computations relating to the Facility and all  
19 allocations of the costs and expenses for each  
20 Facility." Do you see that sentence?

21 A. I do.

22 Q. Is that the language of the term sheet  
23 that where the costs that will be collected through  
24 section 13 are going to come from?

25 A. I don't think that's meant to be in its

1 entirety. I think that's relating to a variety of  
2 expenses, books, records, cost allocations.

3 Q. Okay. So there isn't necessarily a  
4 one-to-one relationship between those computations  
5 and the charges that are going to be presented to the  
6 companies for passthrough through the rider?

7 A. Correct, realizing, of course, the rider  
8 will be the difference between revenues and costs.

9 Q. Understood, understood. Well, then going  
10 back to the language in section 13, are there  
11 specific FERC accounts that will form the basis for  
12 the payments that are called for in section 13?

13 A. I'm not familiar with the FERC  
14 accounting.

15 Q. Okay. Finally, you've been asked and  
16 you've answered, I think a couple of different times  
17 so far today, that you believe that the plants are  
18 more at risk if rider RRS is not approved than if it  
19 is approved; is that correct?

20 A. Yes.

21 Q. Are the plants any more at risk if rider  
22 RRS is not approved than they were, say, in 2010  
23 before rider RRS was anywhere on the horizon?

24 A. I don't know. I don't have a perspective  
25 that far back regarding the plants.

1 MR. O'BRIEN: Okay. That's all the  
2 questions I have, your Honors. Thank you.

3 EXAMINER CHILES: Thank you.

4 I believe we are back to Ms. Fleisher.

5 MS. FLEISHER: Sure, thanks.

6 - - -

7 CROSS-EXAMINATION

8 By Ms. Fleisher:

9 Q. Mr. Ruberto, can you go to page 8, lines  
10 18 to 19 of your direct testimony.

11 A. Did you say lines 18 and 19?

12 Q. Yes, on page 8.

13 A. Thank you.

14 Q. And so here you say, "The benefits of  
15 maintaining fuel diversity in an appropriate  
16 generation asset mix in Ohio as discussed by Company  
17 witness Moul." Is the issue of fuel diversity and  
18 appropriate generation asset mix something that you  
19 considered in your evaluation of the proposed  
20 transaction?

21 A. We did.

22 Q. And what's your understanding of what's  
23 an appropriate generation mix in Ohio?

24 A. We considered that having baseload fuel  
25 plants which include various types of generation,

1 including nuclear and coal, we considered that as --  
2 as diverse considering natural gas seems to be the  
3 fuel that is going to be continuing to grow into the  
4 future. So having this diversity of fuel where you  
5 have plants that have fuel on the ground, have the  
6 diversity because we have several different types  
7 with nuclear and coal, and the EDU team did consider  
8 the value of that diversity in our analysis.

9 Q. Okay. And at the time you were  
10 negotiating the proposed transaction, did you look at  
11 the proportions of generation of natural gas, coal,  
12 nuclear, et cetera, in Ohio at the time?

13 A. We didn't do a calculation of that but  
14 recognize that for the most part new generation  
15 appears to be relating to natural gas, and we were  
16 aware of that trend.

17 Q. And at the time did you calculate what  
18 the proportion of natural gas in Ohio would be if  
19 these plants retired?

20 A. We did not do that calculation.

21 Q. Okay. And did you have any understanding  
22 at the time of a particular proportion of natural gas  
23 that would be too much to preserve fuel diversity?

24 THE WITNESS: I'm sorry. Could I hear  
25 that question again?

1 (Record read.)

2 A. Not a specific number as in a percent,  
3 but we did recognize the value of baseload  
4 generation. Preserving that baseload would have a  
5 benefit because of, as I said, in the future gas  
6 seems to be the addition, so as the years go on, I  
7 would expect the proportion of gas generation is  
8 likely to increase.

9 Q. And did you consider supply-side  
10 resources such as energy efficiency and demand  
11 response to be a part of resource diversity?

12 A. Those type of resources wouldn't have the  
13 other benefits this proposal has, including the  
14 economic benefits of maintaining those plants, the  
15 reliability benefits, the reduction in potential  
16 transmission expenses, the hedging aspect of the  
17 rider that causes the charges and credits to flow  
18 through kind of cyclically to the way the market may  
19 change. So those kinds of resources wouldn't provide  
20 those benefits so they weren't considered in the  
21 analysis.

22 Q. Okay. I am not sure you answered my  
23 question, which is whether you consider those part of  
24 resource diversity.

25 THE WITNESS: Could I have the question



1 before that question?

2 EXAMINER CHILES: You may.

3 (Record read.)

4 A. We didn't view those as fuel diversity.

5 Q. Okay. And is there a reason you focused  
6 only on resource -- only on fuel diversity as opposed  
7 to including supply-side resources as part of  
8 resource diversity?

9 MR. KUTIK: Objection, asked and  
10 answered.

11 EXAMINER CHILES: Overruled.

12 A. Because those resources would not offer  
13 the balance of the benefits I mentioned, we didn't  
14 view that in the larger package of benefits of the  
15 package to be able to achieve the full benefits of --  
16 of the proposal.

17 Q. As head of the EDU team, it was part of  
18 your job to consider alternatives to the proposed  
19 transaction that we have in this case now?

20 A. Our charge was to review this  
21 transaction, which we could have if we felt it wasn't  
22 in the best interest of the customers, we could have  
23 recommended against it, which could have had a  
24 follow-up of other things to review. But since we  
25 never got to that point, those other things were not

1 part of the EDUs' review.

2 Q. So would it have been part of your  
3 evaluation to consider proposing, say, a PPA for only  
4 certain units of Sammis?

5 A. We never considered only taking a portion  
6 of Sammis.

7 Q. And are you aware that AEP has pending  
8 before the Commission its own PPA proposal?

9 MR. KUTIK: Objection.

10 EXAMINER CHILES: Grounds?

11 MR. KUTIK: Relevance.

12 MS. FLEISHER: Certainly, your Honor. I  
13 believe he testified before there were not other  
14 generation resources in Ohio that would be suitable  
15 for this sort of PPA. AEP's PPA involves certain  
16 other generation and resources in Ohio so I am  
17 interested in seeing what his knowledge of that is.

18 EXAMINER CHILES: I will allow a little  
19 bit of leeway if you want to ask a few questions on  
20 this. He may answer to the extent he holds an  
21 opinion on the subject.

22 MS. FLEISHER: Can you reread the  
23 question?

24 (Record read.)

25 A. I'm aware AEP has a proposal before the

1 Commission, only generally.

2 Q. So you don't know -- you wouldn't know  
3 what plants it involves?

4 A. I do not.

5 Q. Okay. Do you know that in Ohio there is  
6 a plant called the Conesville plant?

7 A. I'm not familiar with that plant.

8 Q. What about the Gavin plant?

9 A. I'm not familiar with that plant.

10 Q. Do you know if anyone ever discussed with  
11 FES whether it would accept a PPA for only the  
12 Davis-Besse plant?

13 A. I don't know.

14 Q. Would such discussions have occurred  
15 before you came in as head of the EDU team?

16 MR. KUTIK: Objection.

17 EXAMINER CHILES: Grounds?

18 MR. KUTIK: Speculation.

19 EXAMINER CHILES: Could you rephrase,  
20 Ms. Fleisher?

21 MS. FLEISHER: Certainly. Let me think  
22 about it one second.

23 Q. (By Ms. Fleisher) Do you know who  
24 discussed with FES what the subset of plants that you  
25 would have as part of the PPA would be?

1 MR. KUTIK: May I have the question back,  
2 please.

3 EXAMINER CHILES: You may.

4 (Record read.)

5 A. The companies made a written request to  
6 FES asking if there is a subset of plants they wished  
7 to offer to be considered, and they provided that  
8 answer in an e-mail or in writing.

9 Q. Okay. So the author of that letter would  
10 have been the person who would have discussed with  
11 FES what subset of plants was going to be included in  
12 the PPA?

13 MR. KUTIK: Objection, mischaracterizes  
14 his testimony.

15 MS. FLEISHER: I'm asking the question.

16 EXAMINER CHILES: Could we have the  
17 question read back, please.

18 (Record read.)

19 EXAMINER CHILES: Ms. Fleisher, could you  
20 rephrase your question?

21 MS. FLEISHER: Certainly.

22 Q. (By Ms. Fleisher) So I believe you said  
23 there was a letter from the companies to FES raising  
24 the prospect of just including a subset of the plants  
25 in the PPA, correct?

1           A.     That's correct.

2           Q.     Okay.  Do you know who authored that  
3 letter?

4           A.     Jim Haney.

5           Q.     And would Jim Haney have been the person  
6 to discuss with FES what the appropriate subset of  
7 plants would be?

8                   MR. KUTIK:  Objection.  Assumes that  
9 there were "discussions."

10           MS. FLEISHER:  I am happy to ask that  
11 question.  Strike the previous question.

12           EXAMINER CHILES:  Thank you.

13           Q.     (By Ms. Fleisher) Do you know whether  
14 there were discussions as to what the appropriate  
15 subset of plants to include in the PPA would be?

16           A.     I don't know what discussions they may  
17 have had that I was not involved with.

18           Q.     Okay.  So you were presented with the  
19 particular subset of Sammis, Davis-Besse, and the  
20 OVEC entitlement, and that's all you evaluated.

21           A.     That's correct.

22           Q.     Do you know whether FES had -- was  
23 engaging with anyone else regarding the possibility  
24 of a PPA or other arrangement to support these  
25 plants?

1           A.    I don't know.

2           Q.    Were you aware that Ohio has state energy  
3 efficiency and peak demand reduction requirements?

4           A.    Very generally, but not -- not very  
5 specifically.

6           Q.    Are you aware that those standards  
7 require the companies to achieve certain levels of  
8 energy savings and peak demand reduction?

9           A.    I don't know the requirements.

10          Q.    And I believe you had testified earlier  
11 that you had discussed with Mr. Rose whether his  
12 model could produce alternate predictions; is that  
13 correct?

14          A.    I don't recall saying that.

15          Q.    Okay. Did you ever have such a  
16 discussion with Mr. Rose as to whether his model  
17 could produce alternate forecast?

18          A.    I did not personally have that discussion  
19 with Mr. Rose.

20          Q.    Did anyone on the EDU team ever have such  
21 a discussion with Mr. Rose?

22          A.    Not to my knowledge.

23          Q.    Did anyone representing the companies  
24 ever have such a discussion with Mr. Rose?

25          A.    I don't know.

1           Q.    Did you ever discuss with Mr. Rose any of  
2   the assumptions underlying the forecasts produced by  
3   his model?

4           A.    I did not.

5           Q.    Did anyone on the EDU team, to the best  
6   of your knowledge, ever have such discussions with  
7   Mr. Rose?

8           A.    I don't know.

9           Q.    Do you know whether anyone on the EDU  
10   team ever discussed anything with Mr. Rose?

11          A.    I don't know.

12          Q.    If you could look at the term sheet.   One  
13   second.   Can you look at the definition of "Good  
14   Utility Practice," which is on page 14.   And I cannot  
15   remember if you testified to this previously, but I  
16   believe you said that the definition of good utility  
17   practice was one of the topics of negotiation?

18          A.    It was.

19          Q.    And did you ever consider whether good  
20   utility practice would include actions that led to a  
21   legal violation?

22          A.    Not specifically, but we would view good  
23   utility practice certainly as something that would  
24   reduce that likelihood if they are following the  
25   practices that a significant portion of the industry

1 is following. I would hope that a significant  
2 portion of the industry is not running afoul of  
3 various legal concerns.

4 Q. So let's say someone at the Sammis plant  
5 is running an emissions test and the plant fails the  
6 emissions test. Would you consider that to be good  
7 utility practice, assuming the emissions test was run  
8 consistent with industry practice?

9 MR. KUTIK: Objection.

10 EXAMINER CHILES: Grounds?

11 MR. KUTIK: It is unclear what we are  
12 talking about. Are we talking about the test being  
13 run as good utility practice, the violation being a  
14 violation of good utility practice, the things that  
15 may have caused the alleged violation of the  
16 emission?

17 EXAMINER CHILES: Would you rephrase your  
18 question, Ms. Fleisher?

19 MS. FLEISHER: Certainly.

20 Q. (By Ms. Fleisher) So am I correct in  
21 reading the definition of good utility practice to  
22 apply to particular practices, methods, and acts  
23 engaged in by FES?

24 A. That substantially paraphrased the  
25 definition.



1           Q.    Is it inconsistent with your  
2 understanding?

3           MR. KUTIK:  I'm sorry, had you finished  
4 your answer, sir?

5           THE WITNESS:  Not quite.

6           Q.    Certainly go ahead.

7           A.    To the extent the definition is broader  
8 than that, I didn't want to limit without the  
9 understanding that the full balance of the definition  
10 may be applicable.

11          Q.    Okay.  All right.  And would you agree  
12 that the good utility practice standard would --  
13 would be applied by the companies in evaluating FES's  
14 practices, methods, or acts to comply with  
15 environmental laws?

16          A.    Yes.

17          Q.    And if, as I said, a unit -- or a stack  
18 at the Sammis plant showed an emissions test  
19 violation, but assuming all acts, practices, methods,  
20 acts, any relevant conduct by FES was consistent with  
21 standard practices in the utility industry, would the  
22 companies consider that to be good utility practice?

23          A.    In that hypothetical, with the assumption  
24 that they have completely followed good utility  
25 practices, which is how I understand it's being

1 defined, then they would not have violated good  
2 utility practices.

3 Now, certainly, if there were  
4 environmental violations, we would want to know, did  
5 you truly follow all the good utility practices.  
6 There may be occasions where you did and other things  
7 occurred that caused a violation that, for whatever  
8 reason, was not a violation of good utility practice  
9 itself, and there may be ones where they failed to  
10 keep a piece of equipment in service, for example,  
11 that should have been, and they inadvertently turned  
12 it off, as a rudimentary example. We would  
13 certainly, you know, measure that against the good  
14 utility practices standard.

15 Q. Okay. So in the hypothetical where such  
16 an event occurred, and you did -- the companies did  
17 evaluate whether good utility practices had been  
18 observed and concluded that they had, then would any  
19 legal penalty associated with that violation be paid  
20 by the companies under the proposed transaction?

21 MR. KUTIK: Well, your Honor, I'll object  
22 to the extent it calls for a legal conclusion with  
23 respect to who would be assessed the penalty.

24 EXAMINER CHILES: We'll note for the  
25 record that the witness is not an attorney, but he

1 may answer.

2 MS. FLEISHER: I actually think Mr. Kutik  
3 has identified an ambiguity in my question so I want  
4 to be clear.

5 Q. (By Ms. Fleisher) In the scenario I  
6 described where FES was then, let's say, by EPA FES  
7 was charged a legal penalty, would that be paid by  
8 the companies as part of the costs of the plant under  
9 a final PPA?

10 A. To the extent that, first, it did follow  
11 good utility practices and, second, it fits into the  
12 cost categories in section 13, that would make it a  
13 valid cost. A legal conclusion of whether that's a  
14 valid cost within that section, I would -- I would  
15 defer to advice of counsel, to whether that is a  
16 valid cost as described in that section.

17 Q. And what if the -- as part of resolution  
18 of an alleged legal violation FES agreed to invest  
19 in, let's say, additional environmental controls at  
20 Sammis and, again, remaining in the scenario where  
21 the companies determined that all good utility --  
22 good utility practices were observed, would the  
23 capital costs of that environmental investment be  
24 paid by the companies under the term sheet or the  
25 final PPA?

1           A.    If there is remediation capital, O&M,  
2           whatever expense would be necessary to keep the plant  
3           in compliance, those would be valid costs. Now, to  
4           the extent you are referring to capital, that  
5           certainly is under the provisions of capacity  
6           payment. It's not -- it's actually paid for by FES,  
7           and then under the terms of the agreement how the  
8           capital payments -- or payments related to capital  
9           expenses are further defined in the term sheet.

10          Q.    Okay. And what about the converse of the  
11          hypothetical where there's an environmental  
12          violation. FES is charged and required to install  
13          additional environmental controls and the companies  
14          determine that good utility practices were not  
15          followed. In that scenario would the companies pay  
16          the capital costs of those environmental investments  
17          under the final PPA?

18               MR. KUTIK: May I have the question read,  
19               please?

20               EXAMINER CHILES: You may.

21               (Record read.)

22          A.    In your hypothetical if those controls  
23          are needed for the plant to be in compliance, I would  
24          expect those costs would fall under the terms of the  
25          PPA.

1           Q.    What about to the extent the costs go  
2 beyond current environmental compliance or the  
3 investment is in controls that would extend beyond  
4 current environmental compliance?

5           MR. KUTIK:  Well, I object.  Now, I am  
6 confused.  Are we talking about a prophylactic  
7 measure by the company?  Are we talking about a  
8 violation and now they want to expend beyond the  
9 standard?  It's unclear as to what we are talking  
10 about so I'll object.

11           EXAMINER CHILES:  Ms. Fleisher.

12           MS. FLEISHER:  I mean, I think if the  
13 witness doesn't understand the question, he can say  
14 so.

15           EXAMINER CHILES:  Do you understand the  
16 question?

17           THE WITNESS:  Not exactly, no.

18           EXAMINER CHILES:  Would you mind taking a  
19 stab at rephrasing it.

20           MS. FLEISHER:  Certainly.

21           EXAMINER CHILES:  Thank you.

22           Q.    Assuming resolution of a legal complaint  
23 against FES it could be required to install  
24 environmental controls that go beyond compliance with  
25 current environmental laws, let's say -- to give an

1 example, let's say FES agreed to resolve a legal  
2 complaint that they would improve their heat rate to  
3 reduce carbon emissions in a world with no carbon  
4 regulation. Would the capital costs of that  
5 investment be paid by the companies under a final  
6 PPA?

7 MR. KUTIK: Well, again, your Honor, I  
8 must object. Under the hypothetical as posed, are we  
9 talking about a legal requirement? Are we talking  
10 about something that's voluntary? It appears that  
11 it's unclear whether we are talking about agreeing to  
12 do something as a settlement or something else, so  
13 I'll object.

14 MS. FLEISHER: I'm not sure that's  
15 relevant. But let's say it's a requirement in a  
16 consent decree, legally enforceable, that they will  
17 undertake these heat rate improvements.

18 MR. KUTIK: Well, I'll object that it's  
19 been asked and answered. He has already testified  
20 what would happen in terms of capital expenditures  
21 and how they would be treated under the term sheet to  
22 comply with environmental regulations and laws.

23 EXAMINER CHILES: Overruled.

24 A. I would expect in that type of scenario  
25 that I would need some legal advice. Generally

1 speaking, if a good utility practice was violated and  
2 it resulted in costs that would not have been  
3 incurred, I think it's reasonable to tie costs that  
4 should not have been incurred if good utility  
5 practices were followed.

6 Q. To make sure I'm understanding your  
7 response, so you're saying -- knowing that you are  
8 not a lawyer and this is just your opinion as to what  
9 the internal sheet means -- you're saying where good  
10 utility practices -- where good utility practices  
11 were not followed and it resulted in capital costs  
12 that would not otherwise have been incurred, then you  
13 do not think those would be costs that would be paid  
14 by the companies under the final PPA.

15 A. I didn't specifically say capital costs  
16 because capital costs are not bound by good utility  
17 practices. But I was speaking generally about costs  
18 that would be bound by good utility practices.

19 Q. So to the extent costs incurred as a  
20 result of practices that were not good utility  
21 practices are not governed by the good utility  
22 practices provisions of the term sheet, then the  
23 companies would pay those costs under that -- under  
24 the final PPA?

25 A. Capital costs specifically are paid for

1 by FES, and the company is responsible for, as the  
2 term sheet outlines, the appropriate depreciation  
3 capacity payments based upon capital expenditures.  
4 Those aren't governed by the good utility practices.  
5 So strictly from that definition, the companies  
6 would.

7 Now, it does leave open legal remedies as  
8 a possibility. I am not sure. Again, I would need  
9 legal advice to know whether there is some other  
10 challenge in those situations.

11 Q. Mr. Ruberto, so you are aware, although I  
12 know you are not testifying as to rider RRS, that the  
13 companies would recover costs from the PPA through  
14 rider RRS, correct?

15 MR. KUTIK: Objection, mischaracterizes  
16 the rider.

17 EXAMINER CHILES: Sorry. Can we go off  
18 the record for a minute?

19 (Discussion off the record.)

20 EXAMINER CHILES: Let's go back on the  
21 record. I'm sorry, Mr. Kutik.

22 MR. KUTIK: Yes, your Honor.

23 EXAMINER CHILES: Could you restate your  
24 objections?

25 MR. KUTIK: Yes. I think the question



1 was rider RRS seeks to recover costs, and that's not  
2 what rider RRS is designed to do or does, as amply  
3 testified by Ms. Mikkelsen several times, many times  
4 during her discussion, and as this witness has also  
5 testified.

6 EXAMINER CHILES: Ms. Fleisher, would you  
7 restate?

8 MS. FLEISHER: Sure. I could rephrase.

9 Q. (By Ms. Fleisher) Are you aware costs  
10 from a final PPA will flow through rider RRS?

11 A. Rider RRS will have the net of revenues  
12 and costs.

13 Q. And are you aware that the companies have  
14 proposed that there be a PUCO review process where  
15 particular costs flowing through the rider RRS could  
16 be disallowed?

17 A. I'm aware of that.

18 Q. And during the process of evaluating the  
19 proposed transaction, did you consider whether such a  
20 disallowance could affect the credit rating of the  
21 companies?

22 A. I don't believe we specifically  
23 considered the credit rating. But we certainly  
24 considered how it could affect the companies. When  
25 we looked at the costs and revenues and tried to

1 identify something that could be of a magnitude that  
2 could have a significant impact on the company, we  
3 didn't feel there was, for instance, a \$500 million  
4 reduction that could happen in a year. It didn't --  
5 it didn't appear there was something of a magnitude  
6 that could have a significant detrimental effect on  
7 the companies.

8 Q. And I believe you testified that the  
9 original proposal by FES with a larger set of plants  
10 was considered too large proportional to the load of  
11 the companies; is that correct?

12 A. The original overture was not necessarily  
13 a proposal, but in that overture, the amount of  
14 megawatts they were suggesting was in excess of the  
15 combined load of the three companies, and we didn't  
16 feel that was too large.

17 Q. And is there any particular megawatt  
18 amount that you were targeting as an appropriate  
19 proportion of the companies' load?

20 A. There wasn't a specific target. The  
21 counterproposal or the original proposal of what they  
22 were proposing ended up being 25 percent of the  
23 companies' load. We did look at that to see whether  
24 that seemed like a reasonable amount for a hedge. We  
25 were pretty certain that 105 or 110 percent of the

1 load is not a hedge and something extremely small may  
2 not have been enough to move the needle. Given the  
3 proposal we had, which was about 25 percent, it  
4 seemed like a pretty reasonable amount to consider.

5 Q. Now, is that -- was there any  
6 quantitative aspect to that or it was just 25 percent  
7 is in the right rate?

8 A. I'm not sure how you could quantify it  
9 specifically. We felt given that was the proposal at  
10 hand, that it did seem to be a reasonable range in  
11 our judgment.

12 Q. But you never said, say, 25 percent is  
13 better than 20 percent, I guess is what I am asking?

14 A. That's correct.

15 Q. Mr. Ruberto, are you aware that Ohio has  
16 corporate separation laws?

17 A. Generally, yes.

18 Q. And are you aware that the companies have  
19 a corporate separation policy?

20 A. Generally.

21 Q. And did you ever while negotiating the  
22 proposed transaction evaluate whether it would be  
23 consistent with the companies' corporate separation  
24 policy?

25 A. Yes. The EDU team had two lawyers on the

1 team who were very familiar with that and -- and part  
2 of their role was to draw attention to any concerns  
3 related to that.

4 Q. Just to clarify, did they -- are you  
5 affirmatively aware that they did do that, or you  
6 just believe that would have been part of their job?

7 A. I'm aware they did that.

8 Q. Okay. And I believe you testified in  
9 response to Mr. Dougherty that to evaluate the costs  
10 for the plants you compared them to some other  
11 plants, correct?

12 A. Correct.

13 Q. And I believe you said those were all  
14 regulated plants because you used FERC Form 1 data  
15 that's only available for regulated plants?

16 A. That's correct.

17 Q. Did you ever ask FES to provide  
18 comparison data for the Mansfield plant?

19 A. We did not, given the purpose of that  
20 comparison was to validate that the cost data we were  
21 getting from FES was similar to other plants. I  
22 wouldn't have found FES giving me data for two plants  
23 useful to determine whether the data FES is providing  
24 is in the range of reasonableness. So our attempt  
25 was to look at other plants that provided cost data

1 to see if other plants of similar fuel type had  
2 similar costs.

3 Q. Okay. And how is Mansfield relevantly  
4 different from the plants you did look at?

5 A. I don't think I said anything about it  
6 being different. My point was Mansfield -- if FES  
7 gives us Mansfield costs and Sammis costs and I  
8 compare those two, that doesn't give me any  
9 additional knowledge of whether the numbers I am  
10 getting from FES are comparable to other plants. We  
11 wanted other plants' financial -- or information to  
12 compare against the FES costs.

13 Q. And are you aware whether Mansfield is a  
14 regulated or deregulated plant?

15 A. It's a competitive plant.

16 Q. And just to establish for the record,  
17 Perry is a competitive plant, too, correct?

18 A. That's correct.

19 Q. Now, I believe -- or I guess I will just  
20 ask you. At some point did you receive the inputs  
21 that Mr. Lisowski was using for his dispatch  
22 modeling?

23 A. If you mean inputs, the voluminous  
24 spreadsheet of data that they input into the model, I  
25 did not receive those.

1 Q. Did someone on the EDU team receive  
2 those?

3 A. Not that I know of.

4 Q. Further, for the members of the EDU team,  
5 are you aware of anyone who had ever been involved in  
6 negotiating an asset acquisition on behalf of any of  
7 the FirstEnergy companies, speaking of the larger  
8 family of companies here?

9 A. I don't know if any have.

10 Q. Now, I believe you testified earlier  
11 that -- that the companies will pay capital costs  
12 during the term of the program in the form of a  
13 depreciation amount plus the return on equity,  
14 correct?

15 A. The depreciation and the capacity  
16 payment.

17 Q. And the capacity payment includes a  
18 return on equity, correct?

19 A. It's a calculation that includes the  
20 return on equity.

21 Q. And is it true that capital investment is  
22 depreciated over the life of the plant?

23 A. I believe so.

24 Q. So if FES were to make a capital  
25 investment in 2016, that investment would be

1 depreciating over the remaining 15 years of the PPA,  
2 correct?

3 A. There would be depreciation during that  
4 15 years, but it would not be fully depreciated.  
5 There would be additional depreciation outside of  
6 that 15 years.

7 Q. And if FES were to make a capital  
8 investment in 2020, the depreciation that occurred  
9 would occur over the remaining 11 years of the PPA,  
10 correct?

11 A. Again, in a similar fashion there would  
12 be depreciation during that 11 years, but there would  
13 be additional depreciation for the balance of the  
14 life of that plant.

15 EXAMINER CHILES: Sorry to interrupt.  
16 Just to go off the record for just a minute.

17 (Discussion off the record.)

18 EXAMINER CHILES: Let's go back on the  
19 record.

20 Q. (By Ms. Fleisher) And to the best of your  
21 knowledge, knowing you are not an accountant in this  
22 case, is the depreciation linear the same amount  
23 every year?

24 A. The qualification that I am not an  
25 accountant, I understand that to be the case.

1           Q.    Okay.  You are not an accountant or a  
2   lawyer, got it.

3           MR. KUTIK:  Good for him.

4           MS. FLEISHER:  Yeah.

5           THE WITNESS:  Sounds like a win-win.

6           Q.    You are ahead of most of us.

7                    So in those years covered by the PPA, is  
8   it correct that FES will have a guaranteed rate of  
9   return on those capital investments?

10          A.    There wouldn't be a fair and guaranteed  
11   return.  The amount is calculated, but there are many  
12   things in the agreement that could cause other  
13   expenses to be not covered but may affect their  
14   return.

15          Q.    But assuming that the capital investment  
16   was compliant with all the terms in the term sheet,  
17   then FES would get a guaranteed rate of return,  
18   correct?

19          A.    No.  I can't agree to guaranteed return.  
20   As I mentioned, it's calculated.  The term sheet  
21   specifies how it is calculated, and the term sheet  
22   does not provide any guarantees because the balance  
23   of the agreement includes provisions that may cause  
24   them to not receive certain monies.

25          Q.    Okay.  It would be -- let me put it this



1 way. They would be entitled to a rate of return as  
2 laid out in the term sheet; is that correct?

3 A. Yes.

4 Q. Okay. And in years not covered by the  
5 PPA, let's say 2032, is that correct? Those years  
6 FES would be dependent on market prices to earn a  
7 rate of return on its capital investments?

8 A. Potentially. But I wouldn't be in a  
9 position to determine how FES chooses to market their  
10 plant in those years.

11 MS. FLEISHER: I'm sorry, one second,  
12 your Honor. Sorry.

13 Q. Going back one second to then plants that  
14 you compared, that you used for comparison of costs,  
15 do you know what -- let's start with the coal plants  
16 you compared for Sammis. Do you know what  
17 environmental controls those plants have?

18 A. Not an exhaustive list of their controls.  
19 For the most part, and possibly all of them, have NOx  
20 controls, scrubbers. So the significant  
21 environmental controls, particularly from a cost  
22 perspective, I believe those plants generally do  
23 have.

24 Q. What about -- I'm sorry. You said NOx  
25 controls. Do you know if they had equivalent sulfur

1       dioxide controls?

2               A.     The extent of the high-level controls I  
3       recall seeing indicated, for the most part, they had  
4       SCRs and, for the most part, possibly even  
5       completely, they had scrubbers. I don't recall  
6       seeing additional information beyond that.

7               MS. FLEISHER: That's all I have for the  
8       public. Thank you.

9               EXAMINER CHILES: Thank you. Who would  
10      like to go next?

11              MR. STINSON: I can go, your Honor.

12                               - - -

13                               CROSS-EXAMINATION

14      By Mr. Stinson:

15              Q.     Good afternoon, Mr. Ruberto. Just a few  
16      questions of you. Did you ever negotiate a purchase  
17      power agreement before you negotiated the term sheet  
18      in this proceeding?

19              A.     I did not.

20              Q.     Let's look at your testimony, page 2,  
21      line 15, where you use the term "FERC jurisdictional  
22      proposed purchase power agreement." What do you mean  
23      by FERC jurisdictional?

24              A.     Because this is a wholesale power  
25      transaction, I understand that's under the

1 jurisdiction of FERC.

2 Q. Does the PUCO have any authority to  
3 approve the agreement?

4 MR. KUTIK: Objection.

5 EXAMINER CHILES: Grounds?

6 MR. KUTIK: Calls for a legal conclusion,  
7 your Honor.

8 EXAMINER CHILES: Mr. Stinson?

9 MR. STINSON: If it's within his  
10 knowledge, he can answer.

11 EXAMINER CHILES: With the notation the  
12 witness is not an attorney he may answer if he holds  
13 knowledge on the subject.

14 THE WITNESS: May I hear the question  
15 again?

16 EXAMINER CHILES: You may.

17 (Record read.)

18 A. They do not.

19 Q. Will the companies seek approval of the  
20 agreement from FERC?

21 A. I don't believe that's necessary, but  
22 we'll defer to legal counsel to advise whether that  
23 approval is necessary.

24 Q. Do you know of the companies' plans then?  
25 I am not asking -- I am not asking a legal question.

1 I am asking whether you know of the companies' plans  
2 to seek FERC approval.

3 A. I do not know of any plans to seek FERC  
4 approval.

5 Q. On page 3, line 9, I think you've  
6 discussed this a little bit, but for some foundation  
7 where it says, "The companies would then offer this  
8 output into the PJM markets" -- and I believe you  
9 said earlier in discussing that with Ms. Bojko that  
10 that was the companies' intent, to sell the output  
11 into the PJM market; is that correct?

12 A. That's correct.

13 Q. And do you also recall discussing with  
14 Ms. Bojko that the output could be sold to a third  
15 party?

16 MR. KUTIK: I'll object to the extent it  
17 mischaracterizes his testimony.

18 Q. Well, let me ask you directly. Could the  
19 energy capacity, ancillary services, and  
20 environmental attributes subject to the PPA be sold  
21 to a third party?

22 A. I'm not aware of a prohibition against  
23 that. That isn't our intent. Our intent, as stated  
24 here and as I stated before, is to sell the output  
25 into PJM.

1           Q.    If the output were sold to a third party  
2           would the revenues, net of cost, be flowed through  
3           the RRS?

4                   MR. KUTIK:  Well, I'll object at this  
5           point, your Honor.  The witness testified that he  
6           knows of no plans to sell to a third party.  That's  
7           not the companies' intent to do so, so the  
8           hypothetical lacks any basis in the record.

9                   EXAMINER CHILES:  Mr. Stinson.

10                  MR. STINSON:  Your Honor, he negotiated  
11           the term sheet in these proceedings, and I am asking  
12           under the provisions of the term sheet, if they were  
13           to sell to a third party, revenues, net of cost, will  
14           flow through the RRS.

15                  MR. KUTIK:  The term sheet has no  
16           condition of the sale from the companies.

17                  EXAMINER CHILES:  I'll overrule.  I will  
18           give Mr. Stinson a little bit of leeway.

19                  THE WITNESS:  Could I hear the question  
20           again, please.

21                  EXAMINER CHILES:  You may.

22                   (Record read.)

23           A.    The understanding that that is not our  
24           intent, the companies own the output, and the  
25           revenues regardless of how they are achieved, would

1 be part of -- of the revenues that we receive,  
2 whether they're from PJM or some other source.

3 Q. So is your answer --

4 MR. KUTIK: Objection, asked and  
5 answered.

6 EXAMINER CHILES: Sustained.

7 Q. Look at page 4, line 6, and where you  
8 state, "We evaluated the proposal based on its  
9 potential impact on the Companies' customers, retail  
10 system reliability, Ohio's economy, and the  
11 Companies." Did the EDU team perform an analysis of  
12 the risk that Sammis, Davis-Besse, and OVEC would  
13 deactivate by 2019 absent the approval of the PPA?

14 A. We didn't do a specific analysis, other  
15 than our general awareness of the market conditions,  
16 the risks that the plants face in the near term,  
17 understanding that leaves the plants in a position  
18 where they may -- they may be at risk of return.

19 Q. And are you aware that rider RRS is a  
20 nonbypassable rider?

21 A. I am.

22 Q. Did the EDU team consider the effect of  
23 the RRS on large-scale governmental aggregation?

24 A. The EDU team recognized that by having a  
25 nonbypassable rider that all of the customers,

1 regardless of your example or other customers as  
2 well, would receive the same rate stabilization  
3 benefits as well as the other -- the other numerous  
4 benefits, including the reliability, the economic  
5 benefits of the reduction in potential transmission  
6 benefits. We recognize all of the customers would  
7 share in those.

8 Q. Was there any specific study performed  
9 with respect to large scale governmental aggregation?

10 A. No.

11 Q. Are you aware of the presence of any  
12 large scale governmental aggregations in the -- the  
13 Cleveland Electric Illuminating Company and the  
14 Edison companies' service territories?

15 A. I am not familiar with those.

16 Q. Are you aware of the Northeast Ohio  
17 Public Energy Council?

18 A. I'm not familiar with that.

19 Q. Are you aware that FirstEnergy Solutions  
20 provides generation supply to the Northeast Ohio  
21 Public Energy Council?

22 A. I'm not aware of FES's customers.

23 Q. After the last question, you are not  
24 aware of any contract between FirstEnergy Solutions  
25 and the Northeast Ohio Public Energy Council?

1           A.     That's correct.

2           MR. STINSON:  Nothing further, your

3     Honor.

4           Thank you, Mr. Ruberto.

5           EXAMINER CHILES:  Thank you, Mr. Stinson.

6     Ms.

7           MS. COHN:  No questions.

8           EXAMINER CHILES:  Mr. Sauer.

9                                 - - -

10                               CROSS-EXAMINATION

11     By Mr. Sauer:

12           Q.     Good after, Mr. Ruberto.  My name is  
13     Larry Sauer.  I am an attorney with the Office of  
14     Consumers' Counsel.  If you could, turn to page 1  
15     line 20 to 21 of your testimony.  There you state you  
16     are the director of regulation and dispatch; is that  
17     correct?

18           A.     That's correct.

19           Q.     Am I correct for the FE utility?

20           A.     That's correct.

21           Q.     The generation portfolio in Ohio is all  
22     owned.  It's deregulated within the FE Corp. family?

23           MR. KUTIK:  May I have the question read,  
24     please?

25           EXAMINER CHILES:  You may.



1 MR. KUTIK: I think counsel may have  
2 misspoke.

3 (Record read.)

4 MR. SAUER: Can restate, your Honor.

5 EXAMINER CHILES: Thank you.

6 Q. The generation portfolio in Ohio is all  
7 deregulated and owned by deregulated entities of FE?

8 MR. KUTIK: And by FE? It's not one of  
9 our glossary terms.

10 Q. FirstEnergy affiliate. FirstEnergy  
11 affiliate.

12 A. I believe that would be incorrect. There  
13 are other companies that own generation in Ohio. I  
14 would also add I am unaware if there is or is not  
15 other generation that may be regulated. For example,  
16 part of the regulated generation portfolio I manage  
17 includes kknnonutility generation from PURPA projects  
18 that are in deregulated states that are owned -- the  
19 output is owned by deregulated utilities of those  
20 states through power purchase agreements, and I am  
21 unaware -- the companies don't have any of those in  
22 Ohio, but I am unaware if other utilities in Ohio  
23 have such provisions.

24 Q. Okay. And I would focus your attention  
25 on just the FirstEnergy portfolio. And are those

1 generation assets that FirstEnergy owns within the  
2 deregulated affiliate of FirstEnergy Corp?

3 MR. KUTIK: Again, the reference to  
4 FirstEnergy in that question was FirstEnergy Corp?

5 MR. SAUER: Corp.

6 EXAMINER CHILES: Thank you.

7 MR. KUTIK: Do you need the question  
8 read?

9 THE WITNESS: Yes, I do.

10 EXAMINER CHILES: Please repeat the  
11 question. Thank you.

12 (Record read.)

13 A. I'm unclear of the legal distinction that  
14 you're drawing between FirstEnergy Corp and First  
15 Energy Solutions. My understanding is the generation  
16 is owned by FirstEnergy Solutions, but to the extent  
17 there is some complex corporate ownership structure,  
18 I'm unaware.

19 Q. I think you've answered the question.  
20 Thank you. You state on page 1, lines 21 to 22 of  
21 your testimony, you are responsible for asset  
22 management, strategic optimization, and dispatch of  
23 regulated assets, right?

24 A. That's correct.

25 Q. So you are not undertaking those duties

1 in Ohio for the companies, are you?

2 A. Because those particular assets aren't in  
3 place, there would be no asset management dispatch.

4 Q. And are you responsible for asset  
5 management's strategic optimization dispatch of the  
6 OVEC entitlements?

7 MS. BOJKO: Excuse me. I am having  
8 difficulty hearing Mr. Sauer because there is a lot  
9 of noise coming from across the room.

10 EXAMINER CHILES: Thank you.

11 Mr. Sauer.

12 MR. SAUER: See if this helps.

13 MR. KUTIK: May we have the question  
14 read, please.

15 EXAMINER CHILES: Please. Let's just  
16 have you restate it.

17 MR. SAUER: Okay.

18 Q. (By Mr. Sauer) Mr. Ruberto, are you  
19 responsible for asset management, strategic  
20 optimization, and dispatch of the OVEC unit  
21 entitlements?

22 A. The specific 4.85 percent entitlement, I  
23 do not. The Mon Power entitlement of OVEC I do have  
24 responsibility for.

25 Q. If you could turn to the term sheet,

1 under the term sheet does the PUCO have a right to  
2 audit FirstEnergy Solutions under the proposal?

3 A. They do not.

4 Q. There have been some questions of prior  
5 witnesses, and I am interested in your take on this.  
6 The FirstEnergy Solutions has a very extensive coal  
7 contract base, correct?

8 A. They certainly have coal contracts. To  
9 the extent the word "extensive" is applicable, I  
10 don't know.

11 Q. And are those coal contracts, to your  
12 understanding, plant-specific?

13 A. I don't know.

14 Q. To the extent that prior to approval of  
15 the proposed transaction Sammis was receiving coal  
16 under one contract and then subsequent to approval of  
17 the proposed transaction Sammis began receiving coal  
18 from a higher-priced coal contract, would that be a  
19 circumstance the companies would look closely at?

20 MR. KUTIK: May I have the question read,  
21 please.

22 EXAMINER CHILES: You may.

23 (Record read.)

24 MR. KUTIK: I object.

25 EXAMINER CHILES: Grounds?

1 MR. KUTIK: Well, it mischaracterizes the  
2 testimony of companies' witnesses and the companies'  
3 proposal. There is no proposal, as this witness has  
4 testified and other witnesses have testified,  
5 approval of the transaction.

6 EXAMINER CHILES: Mr. Sauer, do you care  
7 to rephrase?

8 MR. SAUER: Yes, I would.

9 EXAMINER CHILES: Thank you.

10 Q. (By Mr. Sauer) Under the -- under the  
11 terms of the proposed transaction, the companies have  
12 the right to audit the books and records of FES,  
13 correct?

14 A. That's correct.

15 Q. And assume that the proposed transaction  
16 is approved and that the companies in viewing and  
17 auditing the books and records of FES discovers that  
18 prior to the approval of the proposed transaction  
19 Sammis was receiving coal under contract that was  
20 priced at \$100 a ton, and afterwards they -- I'm  
21 sorry. They were receiving coal at \$30 a ton. But  
22 after the proposed transaction was approved, they  
23 started receiving coal under contract that was \$100 a  
24 ton. Would that be something -- a circumstance that  
25 the companies would look into as part of their audit

1 process?

2 MR. KUTIK: Same objection, your Honor.

3 EXAMINER CHILES: Mr. Sauer?

4 MR. SAUER: Could I have the objection  
5 restated?

6 MR. KUTIK: Yes. The question twice used  
7 the phrase "approval of the transaction." That's not  
8 part of the company's proposal. Witnesses have so  
9 testified.

10 EXAMINER CHILES: Would you please  
11 rephrase, Mr. Sauer.

12 Q. (By Mr. Sauer) Mr. Ruberto, what is your  
13 expectation, that assuming the proposed transaction  
14 is approved --

15 MR. KUTIK: Same objection, your Honor.

16 Q. Under the terms of the proposed  
17 transaction, would the companies have the ability to  
18 look closely at a circumstance where the coal -- the  
19 fuel costs being received from FES was dramatically  
20 different in a period prior to the transaction being  
21 undertaken and subsequent to that circumstance?

22 A. The companies have the right to all of  
23 the records of costs, and certainly have the right to  
24 look at those costs, and certainly have a right to  
25 ask questions about those costs.

1           Q.    And is that something that -- and is that  
2 something you believe the PUCO will not have the  
3 right to do as well?

4           A.    I believe --

5           MR. KUTIK:  I'll object, your Honor.

6           EXAMINER CHILES:  Grounds?

7           MR. KUTIK:  Well, it assumes that the  
8 costs that the company would look at would be the  
9 same as the costs that might be reflected in the  
10 netting under the rider RRS.

11          EXAMINER CHILES:  Mr. Sauer?

12          MR. SAUER:  Certainly the costs that come  
13 through rider RRS are costs the company should be  
14 reviewing and that the PUCO should have an  
15 opportunity to review as well.  And to put that into  
16 context, you are going to have to have some  
17 historical understanding of what happened prior to or  
18 subsequent to the entrance of the proposed  
19 transaction.

20          MR. KUTIK:  My question, your Honor -- or  
21 my objection, the question assumes there is a direct  
22 overlay between the costs that the companies may  
23 review for FES and the costs that are -- that might  
24 be reflected in the netting under rider RRS.

25          EXAMINER CHILES:  Would you rephrase your

1 question, Mr. Sauer?

2 Q. (By Mr. Sauer) If there is a significant  
3 difference in the fuel costs that Sammis is  
4 experiencing prior to -- or subsequent to the  
5 proposed transaction that gets run through rider RRS,  
6 would the companies be focused on that change in  
7 expenses?

8 A. I'm not clear on how the change in  
9 expenses would be identified in your scenario. Coal  
10 costs certainly can be validated against market  
11 prices of coal to know whether the fuel Sammis is  
12 using is reasonably market priced.

13 Q. On page 5 of the term sheet under fuel  
14 payment, it is defined as the "amount of Fuel  
15 Expenses incurred by Seller to operate some or all of  
16 the Facilities for each calendar month during each  
17 Contract Year." Do you see that?

18 A. I do.

19 Q. And the fuel payment, to your  
20 understanding, would be derived, in part, by  
21 contracts that FES has entered into for coal  
22 supplies, correct?

23 A. To the extent those contracts extend into  
24 terms of the PPA, I would agree.

25 Q. There could be long-term coal contracts



1 that were entered ten years prior to the entrance of  
2 the PPA, correct?

3 A. I don't know the terms of the contracts.

4 Q. Well, the point being that the fuel  
5 contracts aren't going to, all of them, begin the day  
6 that FES passes costs through to the companies,  
7 correct?

8 A. It certainly is unlikely that all of the  
9 contracts would expire on the first day of the power  
10 purchase agreement.

11 Q. So there will be coal contracts that  
12 preexist the proposed transaction, new contracts  
13 entered after the proposed transaction?

14 A. I think that's likely.

15 Q. To the extent there were coal contracts  
16 prior to the proposed transaction that Sammis wasn't  
17 being provided coal under but subsequently would be  
18 provided coal under, would that be a detail the  
19 companies might review?

20 A. The companies certainly could review any  
21 detail of a coal contract.

22 Q. Would the companies have recourse against  
23 FES if they find there is a change in allocation of  
24 the coal supply to Sammis that appears that there is  
25 a shift to higher-cost coal being burned at Sammis

1 after the proposed transaction was entered?

2 A. The companies -- because the companies  
3 have the ability to review costs, I believe the  
4 companies would have some -- some ability to  
5 challenge costs that seem to be inappropriate, and if  
6 under your hypothetical they are intentionally  
7 manipulating a coal contract, I think the companies  
8 would have grounds to challenge something like that.

9 Q. Thank you. Looking at the term sheet  
10 again, page 6 of 15, paragraph 13, there is a  
11 provision for "Tax Reimbursement Payment." Do you  
12 see that?

13 A. I do.

14 Q. And are you aware of the magnitude of the  
15 costs of the tax that could be passed through to the  
16 companies under this proposal?

17 A. I have seen numbers, but I don't recall.

18 Q. On page 3, line 6, of your testimony, you  
19 are talking about the OVEC entitlement. Do you see  
20 that?

21 A. I do.

22 Q. Are the companies shareholders of OVEC?

23 A. I don't know.

24 Q. Do you know if the companies received  
25 dividends from OVEC?

1 MR. KUTIK: Objection.

2 EXAMINER CHILES: Grounds?

3 MR. KUTIK: Relevance.

4 EXAMINER CHILES: Mr. Sauer.

5 MR. SAUER: The relevance would be if  
6 there are benefits coming from OVEC, would those be  
7 passed through to customers through this proposal?

8 EXAMINER CHILES: Overruled.

9 A. Since I am unaware if they are  
10 shareholders, I additionally have no awareness of  
11 whether there have dividends.

12 Q. I think you were asked a question from  
13 Mr. Dougherty earlier today about whether the EDU  
14 team had given thought to or looked into having an  
15 independent adviser be made available, and I thought  
16 you had a response something along the lines of  
17 whether there was sufficient resources available for  
18 that. Do you recall that?

19 A. I don't recall specifically, but I  
20 certainly did not characterize or intend to  
21 characterize it as resources to hire a consultant.

22 Q. Okay. I guess the follow-up is did the  
23 EDU team have a budget for performing the evaluation  
24 of the proposal?

25 A. We did not have a specific budget, nor

1 did we have an applied limit to access resources if  
2 we needed them.

3 Q. If you turn to page 4, lines 5 and 6, you  
4 say, the EDU team was "responsible to determine  
5 whether it would be beneficial to customers and make  
6 sense for the Companies over the term of the  
7 agreement." Do you see that?

8 A. I do.

9 Q. How did you determine that the proposed  
10 transaction made sense for the companies?

11 A. The companies have some risk in this  
12 proposition as well. The companies will be  
13 responsible to make payments to FES under the PPA.  
14 There are risks the company faces that the PUCO may  
15 deny recovery of some of those costs. So we  
16 certainly considered if some costs are denied, how  
17 would that affect the companies. Additionally we  
18 looked at how did the companies benefit by the  
19 economic benefits of the plants remaining in the  
20 region, reliability benefits.

21 Q. So the proposal doesn't provide the  
22 companies any financial benefit, correct?

23 MR. KUTIK: Objection. Mischaracterizes  
24 his testimony.

25 MR. SAUER: I'll rephrase.

1 EXAMINER CHILES: Thank you.

2 Q. Does the proposed transaction provide any  
3 financial benefit for the companies?

4 A. To the extent the economic impact  
5 improves the region, that is of value to the company.  
6 To the extent reliability is maintained, that's also  
7 of value to the company.

8 Q. When you say reliability, are you talking  
9 distribution reliability?

10 A. I'm characterizing it broadly as the  
11 ability of the distribution customers to receive  
12 power when they need it.

13 Q. I think you received some questions from  
14 Miss Bojko earlier today about distribution  
15 reliability. Do you recall that?

16 A. I do.

17 Q. Do you know if the PUCO has rules  
18 regarding distribution reliability standards?

19 A. I'm not aware of standards.

20 Q. Would you expect that to the extent the  
21 PUCO has distribution reliability standards, the  
22 company would comply with such standards whether the  
23 plants remained open or not?

24 A. I would expect the companies would make  
25 every effort to comply with those standards. The

1 reliability concerns, though, may go beyond that.  
2 Ohio is a net importer of electricity. 3,000  
3 megawatts of Ohio plants being preserved would  
4 improve the likelihood that power is available when  
5 needed.

6 Q. Do you know how much power Ohio imports  
7 today?

8 A. I have heard the number, but I don't  
9 recall it.

10 Q. Do you know how long Ohio has been a net  
11 importer of energy?

12 A. I don't know.

13 Q. Is it possible Ohio has been a net  
14 importer of energy for the past 10 years?

15 A. I don't know.

16 Q. On page 5, line 6 to 15 of your  
17 testimony, please.

18 MR. KUTIK: What was the line again?

19 MR. SAUER: 6 to 15.

20 A. I have that.

21 Q. Okay. And in there you are discussing  
22 the EDU team determined that the Sammis coal units  
23 are reasonably similar in generation costs to  
24 existing regulated coal-fired generation units,  
25 correct?

1 A. That's correct.

2 Q. And you also state that Davis-Besse's  
3 cost to generate megawatts is reasonably comparable  
4 to other facilities, correct?

5 A. That's correct.

6 Q. And the facilities you were looking at  
7 for Davis-Besse, those were regulated nuclear plants  
8 in Arizona, California, Virginia, and the Carolinas,  
9 I think you said?

10 A. Florida rather than California.

11 Q. Oh, sorry.

12 A. Otherwise that's correct.

13 Q. Okay. Thank you.

14 MR. SAUER: May I approach, your Honor?

15 EXAMINER CHILES: You may.

16 MR. SAUER: I am not marking this as an  
17 exhibit. I believe the Bench took administrative  
18 notice of the testimony of Sharon Noewer on behalf of  
19 the FirstEnergy Solutions Company in the DP&L SSO  
20 Case 12-426-EL-SSO.

21 EXAMINER CHILES: Thank you.

22 Q. Mr. Ruberto, have you seen this testimony  
23 before?

24 A. I have not.

25 Q. Would you turn to page 8.

1 MR. KUTIK: I object.

2 EXAMINER CHILES: Grounds?

3 MR. KUTIK: The witness hasn't seen the  
4 document. Are you going to read to him the document?  
5 Are you going to talk to him about the document when  
6 he hasn't seen it before? Objection, no foundation.

7 EXAMINER CHILES: Mr. Sauer.

8 MR. SAUER: I am just going to ask him  
9 generally about some opinions that Ms. Noewer holds  
10 towards the competitive generation market and see if  
11 those opinions hold true to his own.

12 MR. KUTIK: Well, your Honor, it doesn't  
13 matter whatever Ms. Noewer might have thought. If  
14 Mr. Sauer wants to ask him questions apart from this  
15 document about what interesting thoughts Mr. Ruberto  
16 might have about the PJM market, he is free to do so.  
17 You can't read him the document and ask him does he  
18 agree or disagree, especially when he hasn't seen it.

19 EXAMINER CHILES: This is a good time for  
20 a break. Let's go off the record.

21 (Recess taken.)

22 EXAMINER CHILES: Let's go ahead and go  
23 back on the record. When we left off, there was a  
24 pending objection by Mr. Kutik to Mr. Sauer's use of  
25 Sharon Noewer's testimony in Case No. 12-426-EL-SSO.



1 The objection is overruled.

2           However, Mr. Sauer, you may only ask  
3 questions -- you may ask the witness if he agrees  
4 with statements in the testimony without reading  
5 from -- reading things into the record from the  
6 document or referring to the document.

7           MR. SAUER: Okay.

8           EXAMINER CHILES: Thank you.

9           MR. SAUER: Thank you, your Honors.

10           Q. (By Mr. Sauer) Mr. Ruberto, would it be  
11 your understanding that a plant operating in the  
12 competitive environment would be looking for  
13 operating efficiencies in order to lower costs and  
14 obtain more customers?

15           EXAMINER CHILES: I'm sorry to interrupt,  
16 Mr. Ruberto. I think your microphone is turned off,  
17 if you wouldn't mind. Thank you.

18           A. I would expect a competitive generator  
19 would want to manage costs, but I can't speak to any  
20 detail of how they would do that.

21           Q. When you were reviewing the Sammis costs  
22 compared to other utilities, did you find their costs  
23 could be lower?

24           MR. KUTIK: Objection, your Honor.

25           EXAMINER CHILES: Grounds?

1 MR. KUTIK: I believe that information  
2 should be discussed in confidential session.

3 EXAMINER CHILES: Mr. Sauer, would you  
4 mind reserving that question?

5 MR. SAUER: No, no. That's fine.

6 EXAMINER CHILES: Thank you.

7 Q. (By Mr. Sauer) Would you agree,  
8 Mr. Ruberto, that a plant operating in a competitive  
9 environment -- a generating plant operating in a  
10 competitive environment has accepted risks with that  
11 operation that a plant operating in a noncompetitive  
12 environment wouldn't assume?

13 A. I believe plants operating in either  
14 environment has a number of risks.

15 Q. But a plant operating in a regulated  
16 environment has an opportunity to pass those risks on  
17 to the customers, correct, the costs associated with  
18 those risks on to the customers?

19 A. In a regulated environment, those costs  
20 are under regulatory scrutiny, so while there may be  
21 a difference between a competitive generator's  
22 motivation to reduce costs, there is a motivation for  
23 a regulated generator who has regulatory scrutiny who  
24 could end up spending money and not getting it  
25 recovered, that causes even a regulated -- regulated

1 entity to manage those costs wisely.

2 Q. I think you made a statement that --  
3 earlier today that capital costs are not bound by  
4 good utility practice. Do you recall that?

5 A. Item 11 of the term sheet indicates  
6 operating work is bound by good utility practice, and  
7 in the definition of operating work, it does indicate  
8 that it excludes capital expenditures work, and  
9 that's what I was referring to.

10 MR. SAUER: Could I have that answer  
11 reread, please.

12 EXAMINER CHILES: You may.

13 (Record read.)

14 Q. Today if a large turbine is damaged at  
15 Sammis, customers are not liable for any maintenance  
16 or capital repairs for them, correct?

17 A. Correct.

18 Q. But under the proposed transaction if a  
19 turbine at Sammis was damaged, the maintenance costs  
20 and return on capital costs would be flowed through  
21 to customers under rider RRS, correct?

22 A. To the extent those costs are -- are in  
23 line with the costs that are described in the term  
24 sheet and to the extent those costs are incurred  
25 while using good utility practices, then the answer

1 is yes.

2 Q. And today if there are planned outages at  
3 Sammis or Davis-Besse or the OVEC units, customers  
4 are not responsible for any fixed costs to bring  
5 those units back into operation, correct?

6 A. That's correct.

7 Q. But under the proposed transaction if  
8 there are planned outages at Sammis, Davis-Besse, or  
9 the OVEC units the fixed costs of the unit and  
10 replacement power up to 180 days would be costs  
11 flowed through to customers under rider RRS, correct?

12 MR. KUTIK: May I have the question read,  
13 please?

14 EXAMINER CHILES: You may.

15 (Record read.)

16 THE WITNESS: I'm sorry, could I ask for  
17 that again?

18 (Record read.)

19 A. I disagree. The portion where you  
20 mentioned replacement power, there may not be any  
21 costs or requirement or need to purchase replacement  
22 power so I don't want to make the assumption that  
23 replacement power would be a cost, and also during  
24 that period the companies will still get the capacity  
25 revenues that they are entitled to for that unit.

1           Q.    But if there was a need for replacement  
2 power, that cost of the replacement power would be  
3 passed through to customers under rider RRS in that  
4 situation, correct?

5           A.    I can't accept the hypothetical because I  
6 don't see a situation where the companies would go  
7 out and buy replacement power to, in turn, resell it  
8 in the PJM market.

9           Q.    In the past five years do you know how  
10 many outages at Sammis have extended 180 days or  
11 longer?

12          A.    I'm not aware of any that extended 180  
13 days.

14          Q.    And at Davis-Besse over the past five  
15 years, are you aware of any outages that extended for  
16 180 consecutive days?

17          A.    I am not aware of any.

18          Q.    Is that something you looked at as part  
19 of the EDU team's review of those plants?

20          A.    We were made aware of that, yes.

21          Q.    On page 3 of the term sheet, under  
22 Section 8, you had discussed earlier today the  
23 provision that states, about a little over halfway  
24 down the page on Section 8, "that in the event that a  
25 Capital Expenditure is required for Facility

1 operations but such Capital Expenditure would render  
2 the affected Facility to be uneconomic then upon  
3 Buyers and Seller's written agreement Seller will  
4 either replace the Facility's output of Energy,  
5 Capacity, Ancillary Services and Environmental  
6 Attributes." Do you see that provision there?

7 A. I see that.

8 Q. Okay. Is there a definition that the EDU  
9 team was working with in terms of what represented  
10 uneconomic?

11 A. There was no specific definition other  
12 than a high-level understanding that if a cost was so  
13 great that it couldn't possibly make sense to spend  
14 the costs to continue the operation, we didn't want  
15 the companies to be paying depreciation on a huge  
16 capital expense. FES certainly didn't want to make a  
17 huge capital expense, when in both cases the unit  
18 would never be economic because of that expense. The  
19 provision requires buyer and seller's agreement, so  
20 it doesn't have to be a particular number. It  
21 certainly would depend on the unit. A smaller unit,  
22 a smaller capital expense may be an issue. A bigger  
23 unit may be a larger capital expense.

24 Q. Okay. If you look at JAR-1, the first  
25 three years under your schedule --

1 MR. KUTIK: Are you looking at the  
2 revised?

3 MR. SAUER: JAR-1 Revised, yes.

4 Q. The first three years of your schedule  
5 shows an underrecovery, is that correct, for the  
6 years 2016, 2017, 2018?

7 A. That is correct.

8 Q. Would you consider in a situation where  
9 there is an underrecovery each of those years to be  
10 uneconomic?

11 A. I don't know what you mean by uneconomic.

12 Q. Is the transaction uneconomic in years  
13 that it reflects an underrecovery?

14 A. Because you've defined the transaction,  
15 which is a 15-year transaction, I can't look at only  
16 three years and make an economic decision on the  
17 transaction. Because it is a 15-year transaction, I  
18 think clearly the projected benefits are -- are  
19 significant for our customers.

20 Q. And the significant benefit you are  
21 talking about is that 15-year total of 2 billion 18  
22 million in your JAR-1 Revised total?

23 A. That is one of the significant benefits,  
24 and certainly the one that is listed on JAR-1.

25 Q. Is that benefit guaranteed to customers?

1           A.    No.

2                   MR. SAUER:  That's the only questions I  
3 have, your Honor, in the public session.

4                   EXAMINER CHILES:  Thank you, Mr. Sauer.

5                   MR. SAUER:  Thank you, Mr. Ruberto.

6                   EXAMINER CHILES:  Mr. Beeler.

7                   MR. BEELEER:  No questions, your Honor.

8                   EXAMINER CHILES:  Trying to think if I  
9 forgot anyone.  Okay.  At this time we will take a  
10 minute and go on to the confidential record.

11                   (CONFIDENTIAL PORTION EXCERPTED.)

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## 1 CERTIFICATE

2 I do hereby certify that the foregoing is  
3 a true and correct transcript of the proceedings  
4 taken by me in this matter on Thursday, September 17,  
5 2015, and carefully compared with my original  
6 stenographic notes.

7  
8  
9 Karen Sue Gibson, Registered  
10 Merit Reporter.

11 (KSG-6091)

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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 09/17/15 - Volume XIII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.