

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY’S RE QUEST FOR
CERTIFICATION AND APPLICATION FOR REVIEW OF AN INTERLOCUTORY
APPEAL OF THE ATTORNEY EXAMINERS’ ORAL RULINGS**

Pursuant to Ohio Administrative Code Rule 4901-1-15, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “the Companies”) request that an Interlocutory Appeal be certified arising from the Attorney Examiners’ oral rulings of October 7 and October 13, 2015 denying the Companies’ motion to strike certain prefiled testimony.¹ The Companies further request that the Commission reverse these rulings. Specifically, the Attorney Examiners denied the Companies’ motions to strike portions of the Supplemental Testimony of IGS Energy (“IGS”) witness Matthew White and the Second Supplemental Testimony of Ohio Manufacturers’ Association Energy Group (“OMAEG”) witness Edward Hill, i.e., unauthenticated copies of purported legislative committee testimony of an officer of the Companies’ parent corporation, FirstEnergy Corp.,

¹ Pursuant to Rule 4901-1-15(C), O.A.C., a copy of the hearing transcript containing the October 7, 2015 ruling at issue is attached as Exhibit A. The portion of the record containing the Attorney Examiners’ October 13, 2015 ruling is not yet available, but that ruling is described with particularity in this filing. The Companies will file the portion of the record containing the Attorney Examiners’ decision as a supplement to this filing when it becomes available.

before the Public Utilities Committee of the Ohio House of Representatives and the Public Utilities Committee of the Ohio Senate (the “Rulings”).

As demonstrated in the attached Memorandum in Support, the Rulings effectively allowed IGS and OMAEG to amend their witnesses’ supplemental testimony months after it was due in order to cure defects with the as-filed testimony and exhibits. The Rulings represent a departure from past precedent, a fact recognized by one of the Attorney Examiners at hearing. Immediate review by the Commission is needed to prevent the likelihood of undue prejudice to the Companies. The Attorney Examiners should certify the Companies’ interlocutory appeal, and the Commission should reverse the Rulings.

Date: October 13, 2015

Respectfully submitted,

/s/ David A. Kutik

James W. Burk (0043808)
Counsel of Record
Carrie M. Dunn (0076952)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
Telephone: (330) 384-5861
Fax: (330) 384-8375
Email: burkj@firstenergycorp.com
Email: cdunn@firstenergycorp.com

David A. Kutik (0006418)
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 586-3939
Fax: (216) 579-0212
Email: dakutik@jonesday.com

James F. Lang (0059668)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1405 East Sixth Street
Cleveland, OH 44114
Telephone: (216) 622-8200
Fax: (216) 241-0816
Email: jlang@calfee.com
Email: talexander@calfee.com

ATTORNEYS FOR OHIO EDISON
COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE
TOLEDO EDISON COMPANY

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**MEMORANDUM IN SUPPORT OF OHIO EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY’S
REQUEST FOR CERTIFICATION AND APPLICATION FOR REVIEW OF AN
INTERLOCUTORY APPEAL OF THE ATTORNEY EXAMINERS’ ORAL RULINGS**

The Rulings, if left undisturbed, will have the extraordinary consequence of permitting IGS and OMAEG to amend, at hearing, their witnesses’ supplemental testimony to cure evidentiary defects several months after the deadline for submitting testimony had passed.² As one of the Attorney Examiners recognized during arguments on the Companies’ motion to strike Mr. White’s testimony, this is an unquestionable departure from Commission precedent. (Hearing Tr. Vol. XXV at 5028:25-5029:2).³ Indeed, the Attorney Examiner specifically asked the intervenors: “Can you show me an examiner’s entry where it says you get to miss the filing

² Mr. White’s Supplemental Testimony was due and initially filed on March 2, 2015. *See* Attorney Examiner Entry granting Staff’s motion for continuance and directing the parties to observe the modified procedural schedule set forth in Finding (7) (Feb. 4, 2015) (establishing March 2, 2015 as the deadline for Supplemental Testimony on behalf of the intervenors). Dr. Hill’s Second Supplemental Testimony was due and initially filed on August 10, 2015. *See* Attorney Examiner Entry setting a modified procedural schedule as indicated in Finding (11) (July 2, 2015) (establishing August 10, 2015 as the deadline for additional supplemental testimony on behalf of the intervenors).

³ All citations to “Hearing Tr. Vol. ____” indicate a reference to the transcripts of the evidentiary hearing in this proceeding, Case No. 14-1297-EL-SSO.

deadlines to [cure] defects?” (*Id.*). No response was forthcoming. Yet, the Rulings permitted IGS and OMAEG to do just that.

The Rulings violate the Commission’s Rules, cannot be reconciled with Commission or Ohio precedent, and set a dangerous policy moving forward. Immediate review by the full Commission is necessary to prevent the likelihood of undue prejudice and expense to the Companies, should the Rulings ultimately be overturned. The Attorney Examiners should certify this interlocutory appeal, and the Commission should reverse the Rulings.

I. STATEMENT OF THE CASE

Mr. White filed Supplemental Testimony on behalf of IGS on March 2, 2015.⁴ Attached as MW Ex. 1 to that testimony was a document purporting to be the October 19, 2011 testimony of Leila Vespoli, Executive Vice President, Markets and Chief Legal Officer of FirstEnergy Corp., before the Public Utilities Committee of the Ohio House of Representatives. The exhibit was not authenticated pursuant to the Ohio Rules of Evidence, was not signed by Ms. Vespoli, and was devoid of any indication of its provenance. Mr. White admitted that the document was provided to him by counsel for IGS and that at the time he drafted his testimony and testified at deposition, he did not know where his counsel had obtained it. (Hearing Tr. Vol. XXV at 5099:6-10, 5099:18-21). After taking the stand at hearing on October 7, 2015, Mr. White claimed that he had brought a certified copy of Ms. Vespoli’s testimony with him. (Hearing Tr. Vol. XXV at 4984:22-4985:1). Notably, IGS did not seek to admit that copy of Ms. Vespoli’s purported testimony into the record as a separate exhibit.

⁴ Mr. White’s Supplemental Testimony, as filed on March 2, 2015, and MW Ex. 1 are attached as Exhibit B.

Dr. Hill filed his Second Supplemental Testimony on behalf of OMAEG on August 10, 2015.⁵ At page 84 of EWH Supplemental Attachment A to that testimony, Dr. Hill attached a document purporting to be the April 9, 2013 testimony of Leila Vespoli concerning proposed Senate Bill (“SB”) 58 before the Senate Utilities Committee of the Ohio House of Representatives. Just as with MW Ex. 1, the attachment was not authenticated pursuant to the Ohio Rules of Evidence, was not signed by Ms. Vespoli, and was devoid of any indication of its provenance. And, just as Mr. White had done, Dr. Hill claimed that he had brought with him authenticated copies of the April 9, 2013 testimony to the stand at hearing on October 8, 2015. (Hearing Tr. Vol. XXVI at 5411:9-17).⁶ Dr. Hill offered no information at hearing, other than the purportedly certified copy of the legislative committee testimony, to attempt to authenticate the document as it was attached to his Second Supplemental Testimony.⁷ (*Id.*). And, counsel for OMAEG did not seek to admit the purportedly certified copy of Ms. Vespoli’s testimony as a separate exhibit.

At hearing on October 7, 2015, the Companies moved to strike MW Ex. 1 and the testimony relying upon it from Mr. White’s Supplemental Testimony because, among other reasons, the exhibit lacked proper authentication. (Hearing Tr. Vol. XXV at 5017:10-5019:16).⁸

⁵ Dr. Hill’s Second Supplemental Testimony, as filed on August 10, 2015, and the relevant pages of EWH Supplemental Attachment A are attached as Exhibit C.

⁶ The relevant page of Hearing Tr. Vol. XXVI as attached as Exhibit D.

⁷ Dr. Hill first took the stand at hearing on October 8, 2015, but his cross examination was not completed until October 13. There were no hearing proceedings from October 9 through October 12. As noted, the transcript of the October 13, 2015 proceedings will be filed as a supplement when it becomes available.

⁸ As indicated in the hearing transcript, the Companies specifically moved to strike MW Ex. 1 and the portion of Mr. White’s Supplemental Testimony beginning with the word “However” at Page 7, Line 19 and continuing through Page 9, Line 2.

After lengthy arguments, the Attorney Examiners denied the Companies' motion to strike, finding that Ms. Vespoli's purported testimony was relevant to the case. (Hearing Tr. Vol. XXV at 5035:21-5036:7). The Attorney Examiners did not note the evidentiary support they had found for the authenticity of the document.

During cross examination, the Companies renewed their motion to strike MW Ex. 1 and the testimony relying upon it after establishing that Mr. White received the document from counsel and that he was not aware of from where the document was obtained at the time he prepared his testimony. (Hearing Tr. Vol. XXV at 5099:3-5105:10). In response to the Companies' motion, counsel for IGS relied exclusively upon the purportedly certified copy of Ms. Vespoli's testimony to argue the authenticity of MW Ex. 1. (Hearing Tr. Vol. XXV at 5105:12-5106:13). The Attorney Examiners denied the motion to strike, noting their reliance on their prior ruling. (Hearing Tr. Vol. XXV at 5107:7-11). Again, despite relying solely on the purportedly certified copy of Ms. Vespoli's testimony in an attempt to establish MW Ex. 1's authenticity, IGS did not seek to move that copy into evidence. (Hearing Tr. Vol. XXV at 5128:10-20).

At hearing on October 13, 2015, the Companies moved to strike the portion of EWH Supplemental Attachment A containing Ms. Vespoli's purported testimony, as well as the portion of Dr. Hill's Second Supplemental Testimony relying upon it, on authentication grounds, among others.⁹ The Attorney Examiners denied the motion to strike, finding that the testimony

⁹ The Companies specifically moved to strike (i) EWH Supplemental Attachment A pages 84 to 93 and (ii) Dr. Hill's Second Supplemental Testimony beginning at Page 28, Line 17 and continuing through Page 29, Line 3 and (iii) footnote 45 of the Second Supplemental Testimony. Pages 91 through 93 of EWH Supplemental Attachment A contained two newspaper articles, which were both cited in footnote 45. These articles and the

was relevant. As with their decision in relation to MW Ex. 1, the Attorney Examiners did not note the evidentiary support they had found for the authenticity of the document.

II. STANDARD OF REVIEW

Ohio Administrative Code Rule 4901-1-15 (B) permits an attorney examiner to certify an interlocutory appeal at the request of a party adversely affected by an oral ruling upon a finding that: (i) the appeal presents a new or novel question of law or policy or is taken from a ruling which represents a departure from past precedent; and (ii) an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the Commission ultimately reverse the ruling in question.¹⁰ Because the Rulings represent a departure from past precedent and threaten the Companies with undue prejudice and expense, an interlocutory appeal should be certified and the Commission should reverse the Rulings.

III. APPLICABLE LAW

Under Ohio Administrative Rule 4901-1-29(A), “all expert testimony to be offered in commission proceedings, except testimony to be offered by the commission staff, shall be reduced to writing, filed with the commission, and served upon all parties prior to the time such testimony is to be offered.” Notwithstanding this provision, an attorney examiner “may, in his or

(continued...)

portion of footnote 45 citing them were stricken by the Attorney Examiners as hearsay. That portion of the Attorney Examiners’ Ruling is not at issue here, and as such, pages 91 through 93 of Attachment A are not included in Exhibit C.

¹⁰ The Rulings do not fall within any grounds for an interlocutory appeal under Rule 4901-1-15(A).

her discretion, permit an expert witness to present additional oral testimony at the hearing, provided that: such testimony could not, with reasonable diligence, have been filed and served within the time limits established by the commission or the presiding hearing officer or the presentation of such testimony will not unduly delay the proceeding or unjustly prejudice any other party.” Rule 4901-1-29(C), O.A.C. (emphasis added).

The unambiguous requirement of Rule 4901-1-29 that all written expert testimony must be filed and served prior to being offered at hearing is buttressed by prior Commission decisions. For example, in *In Re Complaint of the Transp. Dep’t of the Pub. Utilities Comm’n of Ohio, Complainant*, Case No. 89-1422-TR-CSS, 1990 WL 10649732, at *1 (Feb. 21, 1990), Staff argued that the testimony of a certain witness should not be considered because his testimony was not prefiled in accordance with Rule 4901-1-29(A). The Attorney Examiner disagreed, finding that the witness was not sponsored as an expert and therefore that the rule was inapplicable. *Id.* The Commission agreed that the witness was not offered as an expert, but it also addressed Staff’s request “to issue a statement that we not allow expert testimony . . . to be introduced into evidence without compliance with [Rule 4901-1-29].” *Id.* Responding to Staff’s request, the Commission stated: “That rule speaks for itself and addresses staff’s concern. No such statement is necessary.” *Id.*; see also *In Re Water & Sewer LLC*, Case No. 03-318-WS-AIR, 2003 WL 23355699 (Nov. 14, 2003) (granting Staff’s motion to strike direct expert testimony that was filed after the filing deadline).

It is also elementary that a condition precedent to admissibility is the authentication or identification of evidence. Evid.R. 901(A)¹¹; *Seringetti Const. Co. v. City of Cincinnati*, 51 Ohio App. 3d 1, 9, 553 N.E.2d 1371 (Ohio Ct. App. 1988) (citing *Steinle v. Cincinnati* (1944), 142 Ohio St. 550, 53 N.E.2d 800) (“[P]roof of a writing's execution and authenticity is required as a condition precedent to its admission into evidence.”). To be sure, extrinsic evidence of authenticity is not required in all instances. *See* Evid.R. 902 (enumerating categories of self-authenticating documents).¹² But all evidence must be authenticated in some manner.

IV. REQUEST FOR CERTIFICATION

A. The Rulings depart from past precedent because they violate Rule 4901-1-29(A) and prior Commission decisions.

The Attorney Examiner posed this question to the intervenors opposing the Companies’ motion to strike on Mr. White’s testimony and MW Ex. 1: “Can you show me an examiner’s entry where it says you get to miss the filing deadline to [cure] defects?” (Hearing Tr. Vol. XXV at 5028:25-5029:2). While Rule 4901-1-29(C) permits an expert to offer additional testimony, such testimony must be oral, and the testimony must further satisfy the requirement that it “could not, with reasonable diligence, have been filed and served within the time limits established by the commission or the presiding hearing officer or the presentation of such testimony will not unduly delay the proceeding or unjustly prejudice any other party.”

¹¹ Evid.R. 901(A) provides: “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”

¹² For example, domestic public documents under seal (Evid.R. 902(1)) and books, pamphlets or other publications purporting to be issued by a public authority (Evid.R. 902(5)).

Thus, as the Attorney Examiner's question directly put it, evidentiary defects of prefiled testimony cannot be cured long after the filing deadline has passed. And certainly not at hearing. Yet, this is what IGS and OMAEG were allowed to do by the Rulings. While, as noted, the Attorney Examiners based their Rulings on relevancy grounds, the Rulings implicitly found that MW Ex. 1 and EWH Supplemental Attachment A were properly authenticated. This is so because the Commission follows the evidentiary rule that authentication is a condition precedent to admissibility. *See, e.g., Westside Cellular, Inc. v. New Par Companies*, Case No. 93-1758-RC-CSS, 2001 WL 1018827 (April 26, 2001) (denying application for rehearing of attorney examiner's decision to exclude evidence because such evidence was not properly authenticated, among other reasons); *In Re Petition of Ben Donahue & Numerous Other Subscribers of the N. Jackson Exch. of Ameritech Ohio, Complainants*, Case No. 97-718-TP-PEX, 1997 WL 34879135 (Nov. 4, 1997) (finding that certain evidence could be presented at hearing as long as the "evidence is authenticated properly."). Indeed, in this very proceeding, the Attorney Examiners have sustained numerous objections and excluded evidence on several occasions for failures to authenticate certain documents. (*See, e.g.,* Hearing Tr. Vol. I at 145:4-13; Hearing Tr. Vol. II at 358:20-22; Hearing Tr. Vol. XX at 3870:1-3871:12).

There is no foundation in the record to authenticate either MW Ex. 1 or Ms. Vespoli's purported testimony in EWH Supplemental Attachment A. Neither document is self-authenticating. *See* Evid.R. 902. And neither Mr. White nor Dr. Hill did anything to authenticate these documents when they prepared their prefiled testimony, thereby failing to satisfy the foundational requirements of Rule 901. The actions of IGS and OMAEG prove the authentication failures of these documents as filed. Bringing purportedly certified or self-authenticating copies of the legislative committee testimony to hearing was nothing if not a tacit

admission that the filed versions of MW Ex. 1 and the at-issue portion of EWH Supplemental Attachment A would be impossible to authenticate and move into evidence. Indeed, counsel for IGS based his authentication argument with respect to MW Ex. 1 entirely upon the copy of the document Mr. White brought to the stand, which was never admitted into evidence. (Hearing Tr. Vol. XXV at 5105:12-5106:13). And no testimony was offered at hearing to support the authentication of the as-filed version of the at-issue portion of EWH Supplemental Attachment A.

For these reasons, the Attorney Examiners' Rulings, as they relate to authentication, must be premised, at least theoretically, on the rationale that the purportedly certified or self-authenticating copies of the testimony somehow amended and cured the evidentiary defects of MW Ex. 1 and EWH Supplemental Attachment A as filed. But this rationale to support the Rulings would be highly improper, and in fact was never expressed in any way by the Attorney Examiners. As the Attorney Examiner's question points out, this represents an unquestionable departure from past precedent and a violation of Rule 4901-1-29. What is more, the Commission will not be able assess the authenticity of the copies of Ms. Vespoli's testimony that Mr. White and Dr. Hill brought with them to the stand. IGS and OMAEG never attempted to move these documents into evidence. The Attorney Examiners' Rulings therefore rely entirely on the evidentiary impact of documents that are not even a part of the record. (Hearing Tr. Vol. XXV at 5128:10-20).

This departure from Commission precedent is not only problematic in the context of this case. The Rulings also sets a dangerous precedent for the future. As discussed, an unintended consequence of the Rulings is that they effectively permitted IGS and OMAEG to cure blatant evidentiary defects at hearing. Mr. White admitted that he brought a "different version" of MW

Ex. 1 with him to the evidentiary hearing, where the Companies were provided with that version of the exhibit for the first time and only after the Companies' counsel requested an opportunity to review it. (Hearing Tr. Vol. XXV at 5100:20-5102:1). Dr. Hill also brought a different version of Attachment A to his Second Supplemental Testimony to the hearing, which, again, was the first opportunity the Companies had to review the document. Presenting at hearing different, unseen versions of exhibits appended to prefiled testimony is prejudicial to opposing parties and unsupported by law or logic. *See Gevelaar v. Millennium Inorganic Chems.*, 11th Dist. Ashtabula No. 2012-A-0013, 2013-Ohio-435, ¶¶ 33-36 (affirming trial court's decision to exclude an exhibit offered for the first time at trial because it amounted to an unfair surprise and noting "Ohio courts have routinely excluded evidence offered at the 'eleventh hour.'"); *see also Huffman v. Hair Surgeon, Inc.*, 19 Ohio St. 3d 83, 95 (1985) (expert testimony proffered on the eve of trial constituted unfair surprise); *U.S. Bank v. Amir*, 8th Dist. No. 97438, 2012 Ohio 2772, ¶ 22 (admission of a property valuation, which had not been disclosed before trial, would have amounted to unfair surprise and prejudiced the opposing party). It is also contrary to the rationale behind Rule 4901-1-29(A), i.e., that parties should not be surprised at hearing with new expert testimony. But parties to future cases before the Commission will look to this departure from precedent to support efforts to cure similar evidentiary defects that should have been addressed long before hearing.

B. An immediate determination by the Commission is needed to prevent the likelihood of undue prejudice and expense to the Companies, should the Commission ultimately reverse the Rulings.

The Companies require an immediate determination by the Commission to prevent the likelihood of undue prejudice and expense, should the Commission ultimately reverse the Rulings. The Rulings will inevitably lead to the dated testimony of an individual that is not even

a witness to this proceeding being used in the briefs of the parties opposing the Companies' Application and the related stipulations. This is especially problematic because the purported certified or self-authenticated documents were never admitted into evidence. The Companies will also be forced to spend a substantial amount of resources responding to the arguments based on MW Ex. 1 and the at-issue portion of EWH Supplemental Attachment A. And this is an issue that will not be cured if and when the Commission ultimately reverses the Rulings. Any Commission decision related to this proceeding, which, as of the time of this filing, is in its seventh week of hearings, will likely not be issued for months. By that time, the Companies—and any other parties taking issue with the Rulings—will have spent the resources necessary to respond to the arguments related to these documents.

The decisions of IGS and OMAEG to spring different versions of prefiled exhibits upon the Companies during the sixth week of the hearing also amount to “unfair surprise.” *See Gevelaar*, 2013-Ohio-435 at ¶¶ 33-36. The Companies have already suffered the prejudicial effects of this tactic, and an immediate decision by the Commission is required to address that prejudice.

V. APPLICATION FOR REVIEW

The Commission should reverse the Rulings. The Attorney Examiners' decisions relied on a determination that MW Ex. 1 and the at-issue portion of EWH Supplemental Attachment A were relevant to this proceeding.¹³ (Hearing Tr. Vol. XXV at 5035:21-5036:7) But implicit in the Rulings was a finding that these documents had been authenticated. If they were

¹³ The Companies dispute the Attorney Examiners' findings of relevance, but those determinations are not at issue in this filing and will be addressed on brief, if necessary.

authenticated, they could only have been authenticated in an improper fashion by the purportedly certified or self-authenticated copies of Ms. Vespoli's testimony that Mr. White and Dr. Hill brought with them to the hearing.¹⁴ As filed, MW Ex. 1 and the at-issue portion of EWH Supplemental Attachment A contained no authenticating characteristics required by the Ohio Rules of Evidence.¹⁵ They were neither signed nor certified. And they were similarly not authenticated by the statements of Mr. White or Dr. Hill in their supplemental testimony or at hearing. (Hearing Tr. Vol. XXV at 5099:6-10, 5099:18-21; Hearing Tr. Vol. XXVI at 5411:9-17).

Accordingly, the unintended consequence of the Rulings was a determination that the purportedly certified versions of Ms. Vespoli's testimony, which were not admitted into evidence, somehow—months after the filing deadlines—amended the testimony of Mr. White and Dr. Hill to cure the evidentiary defects of MW Ex. 1 and EWH Supplemental Attachment A. That determination violates Rule 4901-1-29, which requires expert testimony to be filed before the hearing. As noted by the Attorney Examiner, parties are not permitted to miss filing deadlines to later cure the evidentiary defects of written testimony. (Hearing Tr. Vol. XXV at 5028:25-5029:2). The Rulings, however, allowed IGS and OMAEG to do just that.

Moreover, it is unclear how the different versions of MW Ex. 1 and EWH Supplemental Attachment A brought to the hearing by Mr. White and Dr. Hill could authenticate their as-filed exhibits. These versions of the documents are simply not in evidence. What *is* in evidence as a

¹⁴ Similarly to the relevance issue, the Companies do not here address the purported authenticity of these documents.

¹⁵ See Exhibits B and C.

result of the Rulings are these: the as-filed versions of MW Ex. 1 and EWH Supplemental Attachment A, which are devoid of self-authenticating characteristics and which neither witness was able to authenticate at the time they prepared their testimony. (Hearing Tr. Vol. XXV at 5099:6-10, 5099:18-21). Mr. White's and Dr. Hill's supplemental testimony falls far short of authenticating either MW Ex. 1 or the at-issue portion EWH Supplemental Attachment A. And there is no evidence actually in the record to resolve these failures.

Permitting parties to amend prefiled testimony with different versions of exhibits at hearing, which are not themselves admitted into evidence, is improper. The Rulings set a dangerous precedent. Parties to future proceedings will look to the Rulings in order to justify their attempts to cure defects in prefiled testimony that should have been addressed prior to the filing deadline. The Rulings introduce great uncertainty into the hearing preparations of any party to a Commission proceeding and open the door to highly prejudicial conduct, as occurred in this case. Such a result is unacceptable under Ohio law. *See Gevelaar*, 2013-Ohio-435 at ¶¶ 33-36. Both established precedent and sound policy counsel in favor of overturning the Attorney Examiners' decisions. The Commission should reverse the Rulings.

VI. CONCLUSION

For the foregoing reasons, the Attorney Examiners should certify this appeal to the full Commission, and the Commission should reverse the Rulings.

Date: October 13, 2015

Respectfully submitted,

/s/ David A. Kutik

James W. Burk (0043808)
Counsel of Record
Carrie M. Dunn (0076952)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
Telephone: (330) 384-5861
Fax: (330) 384-8375
Email: burkj@firstenergycorp.com
Email: cdunn@firstenergycorp.com

David A. Kutik (0006418)
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 586-3939
Fax: (216) 579-0212
Email: dakutik@jonesday.com

James F. Lang (0059668)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1405 East Sixth Street
Cleveland, OH 44114
Telephone: (216) 622-8200
Fax: (216) 241-0816
Email: jlang@calfee.com
Email: talexander@calfee.com

ATTORNEYS FOR OHIO EDISON
COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE
TOLEDO EDISON COMPANY

CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 13th day of October, 2015. The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

Association of Independent Colleges and Universities of Ohio, Buckeye Association Of School Administrators, Buckeye Wind LLC, Citizens Coalition, City Of Akron, City Of Cleveland, Constellation NewEnergy Inc., Council Of Smaller Enterprises, Direct Energy Services LLC, Duke Energy Ohio Inc., Dynegy Inc., Energy Professionals of Ohio, EnerNOC Inc., Environmental Law & Policy Center, Exelon Generation Company, LLC, Hardin Wind LLC, IBEW Local 245, IGS Energy, Industrial Energy Users Of Ohio, Kroger Co., Mid-Atlantic Renewable Energy Coalition, Monitoring Analytics LLC, MSC, Nextera Energy Resources, Northeast Ohio Public Energy Council, Northwest Ohio Aggregation Coalition, Nucor Steel Marion, Inc., Ohio Advanced Energy Economy, Ohio Association Of School Business, Ohio Consumers Counsel, Ohio Energy Group, Inc., Ohio Environmental Counsel, Ohio Hospital Association, Ohio Manufacturers' Association, Ohio Power Company, Ohio Partners For Affordable Energy, Ohio School Boards Association, Ohio Schools Council, PJM Power Providers Group, Power4Schools, Retail Energy Supply Association, Sierra Club, The Cleveland Municipal School District, The Electric Power Supply Association, Wal-Mart Stores East, LP, and Sam's East, Inc.

/s/ David A. Kutik

David A. Kutik

Exhibit A

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
 Wednesday, October 7, 2015.

VOLUME XXV

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

APPEARANCES: (Continued)

1 Bricker & Eckler, LLP
 2 By Mr. Dane Stinson
 3 and Mr. Dylan Borchers
 4 100 South Third Street
 5 Columbus, Ohio 43215-4291
 6 Bricker & Eckler, LLP
 7 By Mr. Glenn S. Krassen
 8 1001 Lakeside Avenue East, Suite 1350
 9 Cleveland, Ohio 44114
 10
 11 On behalf of the Northeast Ohio Public
 12 Energy Council, Ohio Schools Council, and
 13 Power for the Schools.
 14
 15 Earthjustice
 16 By Mr. Shannon Fisk
 17 Northeast Office
 18 1617 John F. Kennedy Boulevard, Suite 1675
 19 Philadelphia, Pennsylvania 19103
 20
 21 Earthjustice
 22 By Mr. Michael Soules
 23 1625 Massachusetts Avenue NW, Suite 702
 24 Washington, D.C. 20036
 25 Sierra Club Environmental Law Program
 Mr. Tony Mendoza
 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.

APPEARANCES:

1 FirstEnergy Corp.
 2 By Mr. James W. Burk
 3 and Ms. Carrie M. Dunn
 4 76 South Main Street
 5 Akron, Ohio 44308
 6 Calfee, Halter & Griswold LLP
 7 By Mr. James Lang
 8 and Mr. N. Trevor Alexander
 9 The Calfee Building
 10 1405 East Sixth Street
 11 Cleveland, Ohio 44114
 12
 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 J. Weston, Consumers' Counsel
 19 By Mr. Larry Sauer
 20 Ms. Maureen R. Grady Willis
 21 Mr. William J. Michael
 22 Mr. Kevin F. Moore
 23 Mr. 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.

APPEARANCES: (Continued)

1 IGS Energy
 2 By Mr. Joseph Olier
 3 6100 Emerald Parkway
 4 Dublin, Ohio 43016
 5
 6 On behalf of IGS Energy.
 7
 8 Taft, Stettinius & Hollister LLP
 9 By Mr. Mark S. Yurick
 10 and Mr. Devin D. Parram
 11 65 East State Street, Suite 1000
 12 Columbus, Ohio 43215
 13
 14 On behalf of The Kroger Company.
 15
 16 Vorys, Sater, Seymour & Pease, LLP
 17 By Mr. M. Howard Petricoff
 18 Ms. Gretchen Petrucci
 19 Mr. Stephen M. Howard
 20 and Mr. Michael J. Settineri
 21 52 East Gay Street
 22 Columbus, Ohio 43215
 23
 24 On behalf of Retail Energy Supply
 25 Association, PJM Power Providers Group,
 Electric Power Supply Association,
 Constellation NewEnergy, and Exelon
 Generation, LLC.
 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.

Page 4860	Page 4862
<p>1 APPEARANCES: (Continued)</p> <p>2 Kravitz, Brown & Dortch, LLC</p> <p>3 By Mr. Michael D. Dortch</p> <p>4 and Mr. Richard R. Parsons</p> <p>5 65 East State Street, Suite 200</p> <p>6 Columbus, Ohio 43215</p> <p>7 On behalf of Dynegey, Inc.</p> <p>8 Carpenter Lipps & Leland LLP</p> <p>9 By Ms. Kimberly W. Bojko</p> <p>10 Ms. Rebecca L. Hussey</p> <p>11 Ms. Danielle Ghiloni</p> <p>12 280 North High Street, Suite 1300</p> <p>13 Columbus, Ohio 43215</p> <p>14 On behalf of the Ohio Manufacturers'</p> <p>15 Association Energy Group.</p> <p>16 Carpenter Lipps & Leland LLP</p> <p>17 By Mr. Joel E. Sechler</p> <p>18 280 North High Street, Suite 1300</p> <p>19 Columbus, Ohio 43215</p> <p>20 On behalf of EnerNOC, Inc.</p> <p>21 Boehm, Kurtz & Lowry</p> <p>22 By Mr. Michael L. Kurtz</p> <p>23 Mr. Kurt J. Boehm</p> <p>24 Ms. Jody Kyler Cohn</p> <p>25 36 East Seventh Street, Suite 1510</p> <p>Cincinnati, Ohio 45202</p> <p>On behalf of the Ohio Energy Group.</p> <p>Environmental Law & Policy Center</p> <p>By Ms. Madeline Fleisher</p> <p>21 West Broad Street, Suite 500</p> <p>Columbus, Ohio 43215</p> <p>On behalf of the Environmental Law &</p> <p>Policy Center.</p>	<p>1 APPEARANCES: (Continued)</p> <p>2 Ohio Environmental Council</p> <p>3 By Mr. Trent A. Dougherty</p> <p>4 and Mr. John Finnigan</p> <p>5 1145 Chesapeake Avenue, Suite 1</p> <p>6 Columbus, Ohio 43212</p> <p>7 On behalf of the Ohio Environmental</p> <p>8 Council and the Environmental Defense</p> <p>9 Fund.</p> <p>10 Mr. Thomas R. Hays</p> <p>11 8355 Island Lane</p> <p>12 Maineville, Ohio 45039</p> <p>13 On behalf of the Northwest Ohio</p> <p>14 Aggregation Coalition and the Individual</p> <p>15 Communities.</p> <p>16 Ice Miller, LLP</p> <p>17 By Mr. Christopher Miller,</p> <p>18 250 West Street, Suite 700</p> <p>19 Columbus, Ohio 43215-7509</p> <p>20 On behalf of the Association of</p> <p>21 Independent Colleges and Universities of</p> <p>22 Ohio.</p> <p>23 American Electric Power</p> <p>24 By Mr. Steven T. Nourse</p> <p>25 Mr. Matthew J. Satterwhite</p> <p>One Riverside Plaza</p> <p>Columbus, Ohio 43215</p> <p>On behalf of the Ohio Power Company.</p> <p>Mr. Craig I. Smith</p> <p>15700 Van Aken Boulevard #26</p> <p>Shaker Heights, Ohio 44120</p> <p>On behalf of Material Sciences</p> <p>Corporation.</p> <p>Meissner and Associates Law Firm</p> <p>By Mr. Joseph Patrick Meissner</p> <p>5400 Detroit Avenue</p> <p>Cleveland, Ohio 44102</p>
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<p>1 APPEARANCES: (Continued)</p> <p>2 Stone Mattheis Xenopoulos & Brew, PC</p> <p>3 By Mr. Michael Lavanga</p> <p>4 Mr. Garrett A. Stone</p> <p>5 Mr. Owen J. Kopon</p> <p>6 1025 Thomas Jefferson Street, N.W.</p> <p>7 Eighth Floor West Tower</p> <p>8 Washington, D.C. 20007-5201</p> <p>9 On behalf of the Nucor Steel Marion, Inc.</p> <p>10 Barth E. Royer, LLC</p> <p>11 By Mr. Barth E. Royer</p> <p>12 2740 East Main Street</p> <p>13 Bexley, Ohio 43209</p> <p>14 and</p> <p>15 Taft, Stettinius & Hollister LLP</p> <p>16 By Mr. Adrian D. Thompson</p> <p>17 200 Public Square, Suite 3500</p> <p>18 Cleveland, Ohio 44114-2300</p> <p>19 On behalf of the Cleveland Municipal</p> <p>20 School District.</p> <p>21 Spilman, Thomas & Battle, PLLC</p> <p>22 By Mr. Derrick Price Williamson</p> <p>23 Ms. Carrie Harris</p> <p>24 Ms. Lisa Hawrot</p> <p>25 1100 Bent Creek Boulevard, Suite 101</p> <p>Mechanicsburg, Pennsylvania 17050</p> <p>On behalf of Wal-Mart Stores East, LP,</p> <p>and Sam's East, Inc.</p> <p>Mr. Richard L. Sites</p> <p>155 East Broad Street</p> <p>Columbus, Ohio 43215</p> <p>Bricker & Eckler, LLP</p> <p>By Mr. Thomas J. O'Brien</p> <p>100 South Third Street</p> <p>Columbus, Ohio 43215-4291</p> <p>On behalf of the Ohio Hospital</p> <p>Association.</p>	<p>1 APPEARANCES: (Continued)</p> <p>2 Kegler, Brown, Hill & Ritter</p> <p>3 By Mr. Christopher J. Allwein</p> <p>4 and Ms. Margeaux Kimbrough</p> <p>5 Capitol Square, Suite 1800</p> <p>6 65 East State Street</p> <p>7 Columbus, Ohio 43215-4294</p> <p>8 On behalf of the EverPower Wind Holdings,</p> <p>9 Incorporated.</p> <p>10 City of Cleveland</p> <p>11 By Ms. Kate E. Ryan</p> <p>12 Assistant Director of Law</p> <p>13 601 Lakeside Avenue, Room 106</p> <p>14 Cleveland, Ohio 44114</p> <p>15 On behalf of the City of Cleveland.</p> <p>16 Monitoring Analytics</p> <p>17 By Jeffrey Mayes</p> <p>18 2621 Van Buren Avenue, Suite 160</p> <p>19 Eagleville, Pennsylvania 19403</p> <p>20 On behalf of the Independent Market</p> <p>21 Monitor for PJM.</p> <p>22 Dickinson Wright, PLLC</p> <p>23 By Mr. Terrence O'Donnell</p> <p>24 150 East Gay Street, Suite 2400</p> <p>25 Columbus, Ohio 43215</p> <p>On behalf of the Mid-Atlantic Renewable</p> <p>Energy Coalition.</p> <p>---</p>

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<p style="text-align: right;">Page 4868</p> <p>1 Wednesday Morning Session, 2 October 7, 2015. 3 --- 4 EXAMINER PRICE: Good morning. The 5 Public Utilities Commission of Ohio has set for 6 hearing at this time and place Case No. 7 14-1297-EL-SSO being In the Matter of the Application 8 of Ohio Edison Company, the Cleveland Electric 9 Illuminating Company, and the Toledo Edison Company 10 for Authority to Provide for a Standard Service Offer 11 pursuant to Revised Code 4928.143 in the Form of an 12 Electric Security Plan. 13 My name is Gregory Price. With me is 14 Mandy Wiley Chiles and Megan Addison. We are the 15 Attorney Examiners assigned to preside over this 16 hearing. 17 We'll dispense with appearances, and 18 begin with IGS's first witness. 19 MR. OLIKER: Good morning, your Honors. 20 IGS Energy would call Joseph Haugen to the stand. 21 (Witness sworn.) 22 EXAMINER PRICE: State your name and 23 business address for the record. 24 THE WITNESS: My name is Joseph Haugen. 25 My business address is 6100 Emerald Parkway, Dublin,</p>	<p style="text-align: right;">Page 4870</p> <p>1 as IGS Exhibit 9. 2 EXAMINER PRICE: Be so marked. 3 (EXHIBIT MARKED FOR IDENTIFICATION.) 4 Q. And this testimony was prepared by you or 5 under your direction? 6 A. Correct. 7 Q. Do you have any changes that you would 8 make to this testimony? 9 A. Yes. On page 4, I reference the direct 10 testimony of Don Wathen. I would like to change that 11 to Steven Strah in the footnote, pages 4 and 5. 12 Q. And the data that falls in the next 13 footnote, that doesn't need to be changed; is that 14 correct? 15 A. Correct. 16 Q. With that correction, if asked these same 17 questions today, would all of your responses be the 18 same? 19 A. Yes. 20 Q. Turning to the document that was filed on 21 March 2nd, 2015, which is titled the Supplemental 22 Testimony of Joseph Haugen, do you see that document, 23 Mr. Haugen? 24 A. I do. 25 MR. OLIKER: IGS would mark this document</p>
<p style="text-align: right;">Page 4869</p> <p>1 Ohio. 2 EXAMINER PRICE: Please proceed, 3 Mr. Olikar. 4 --- 5 JOSEPH HAUGEN 6 being first duly sworn, as prescribed by law, was 7 examined and testified as follows: 8 DIRECT EXAMINATION 9 By Mr. Olikar: 10 Q. Mr. Haugen, first, could you state your 11 name for the record, please? 12 A. Joseph Haugen. 13 Q. And who are you employed by? 14 A. IGS Energy. 15 Q. And what is your address? 16 A. 6100 Emerald Parkway, Dublin, Ohio. 17 Q. And did you file testimony in this case? 18 A. I did. 19 Q. First, could you turn to the document 20 that was filed on December the 22nd, which is the 21 Direct Testimony of Joseph Haugen? 22 A. Yes. 23 Q. Is this your testimony, Mr. Haugen? 24 A. It is. 25 MR. OLIKER: IGS would mark this document</p>	<p style="text-align: right;">Page 4871</p> <p>1 as IGS Exhibit 10. 2 EXAMINER PRICE: Be so marked. 3 (EXHIBIT MARKED FOR IDENTIFICATION.) 4 Q. Was IGS 10 prepared by you or under your 5 direction? 6 A. Yes. 7 Q. And do you have any changes that you 8 would make to this testimony? 9 A. I do not. 10 Q. If asked these same questions today, 11 would your answers be the same? 12 A. Yes. 13 MR. OLIKER: Your Honor, with that, I 14 would move for admission of the exhibits and tender 15 the witness for cross-examination. 16 EXAMINER PRICE: Thank you. 17 Mr. Kutik. 18 MR. KUTIK: Your Honor, I have some 19 motions to strike, and I think I have an even dozen, 20 your Honor. My first motion to strike, your Honor, 21 is directed to page 3, and the sentence that begins 22 at line 22. 23 MR. OLIKER: I'm sorry, which document 24 are you on, Mr. Kutik? 25 MR. KUTIK: The direct testimony, page 3,</p>

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<p>1 line 22, the sentence that begins there and goes to 2 page 4, line 2. At this sentence, your Honor, the 3 witness is opining what Ohio law, quote, requires, 4 and then asserts that something is, quote, contrary 5 to Ohio law, end quote. 6 It's clear from this witness' testimony 7 that he is not an attorney, and even if he was an 8 attorney, this would be an improper subject and is an 9 improper subject for testimony. As we've discussed 10 in this case many times with respect to other 11 witnesses' testimony, arguments about what the law is 12 are improper with respect to witnesses. They're not 13 facts. They're not proper opinions. Discussions 14 about what the law is belong in briefs, and for that 15 reason, your Honor, we'd move to strike. 16 EXAMINER PRICE: Mr. Olikier? 17 MR. OLIKER: Your Honor, will there be 18 additional motions to strike? I would almost rather 19 hear all of them and respond at once, but if you 20 would like me to take each at a time, I can do that. 21 EXAMINER PRICE: Let's take each at a 22 time. If he really has a dozen, we'll take each at a 23 time. 24 MR. KUTIK: And I really do. 25 MR. OLIKER: Your Honor, the Bench will</p>	<p>1 MR. OLIKER: Thank you, your Honor. 2 MR. KUTIK: My second motion, your Honor, 3 is directed to page 4, line 6 and 7, and the phrase 4 which begins with the word "which," talking about 5 what he believes is within "the exclusive 6 jurisdiction of the Federal Energy Regulatory 7 Commission" on the same grounds, your Honor. 8 MR. OLIKER: Your Honor, given the 9 grounds are the same, is a response necessary? 10 EXAMINER PRICE: It's certainly 11 different. 12 MR. OLIKER: The response would be, and 13 you can ask the witness yourself, he has substantial 14 experience regarding federal matters. He 15 participates in PJM matters, conference calls. He is 16 the IGS employee that handles its relationship 17 regarding capacity market. He has substantial 18 knowledge base regarding policy, federal law, and 19 from his own experience, besides his conversations 20 with counsel, that would be very helpful for this 21 Commission to understand to the extent it addresses 22 federal issues in this case, which it may or may not 23 do, depending on the precedent that we have seen 24 previously. But I think it does provide an 25 interesting insight that the Commission should be</p>
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<p>1 be familiar from his many years of practice at the 2 Public Utilities Commission, oftentimes a witness 3 will provide recommendations regarding their 4 understanding of the regulatory process regarding -- 5 in the context of statutes and providing policy 6 recommendations. Oftentimes it's impossible to do 7 that without referencing the law to which provides 8 that context, and actually a very good example is -- 9 EXAMINER PRICE: I just have a question 10 for your witness. 11 Do you have any basis for knowledge for 12 this statement other than your counsel has told you? 13 THE WITNESS: Just from that and my 14 understanding of reading Ohio law, 4928. 15 EXAMINER PRICE: So you have read 4928? 16 THE WITNESS: Large portions of it. 17 MR. OLIKER: May I continue, your Honor? 18 EXAMINER PRICE: No, you may not. We're 19 going to deny the motion to strike at this time. We 20 understand that this witness is, in fact, a 21 nonlawyer, and we're not going to accept this as a 22 legal recommendation, but Mr. Olikier is correct that 23 this is within the bounds of him testifying as to a 24 regulatory issue rather than a legal issue, and we'll 25 go from there.</p>	<p>1 aware of. 2 EXAMINER PRICE: Mr. Haugen, what are the 3 tests the Supreme Court uses for preemption? 4 THE WITNESS: I'm not sure. 5 EXAMINER PRICE: What is conflict 6 preemption? 7 THE WITNESS: I'm not sure. 8 EXAMINER PRICE: What is field 9 preemption? Are the preemption provisions for the 10 Federal Power Act the same as preemption provisions 11 for the Natural Gas Act? 12 THE WITNESS: No, they're not. 13 EXAMINER PRICE: What was the Supreme 14 Court's holding in Onoek, Inc. vs Leer Jet, Inc.? 15 THE WITNESS: I'm not sure. 16 EXAMINER PRICE: How are the preemption 17 provisions different from the Federal Power Act and 18 Natural Gas Act? 19 THE WITNESS: I'm not as familiar with 20 the Natural Gas Act, but I know that it is not 21 regulated by FERC. The natural gas prices on the 22 interstate pipelines are not regulated by the FERC. 23 EXAMINER PRICE: Thank you. 24 Mr. Olikier, he's not qualified to speak 25 at to the federal preemption exclusive jurisdiction</p>

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<p>1 of the FERC, I'm sorry.</p> <p>2 MR. KUTIK: Your Honor, our next motion</p> <p>3 deals with --</p> <p>4 MR. OLIKER: Before the motion, I'd like</p> <p>5 to proffer the testimony because --</p> <p>6 EXAMINER PRICE: You can do that at the</p> <p>7 end. When we move for admission, you can make your</p> <p>8 proffers.</p> <p>9 MR. KUTIK: May I proceed, your Honor?</p> <p>10 EXAMINER PRICE: You may.</p> <p>11 MR. KUTIK: My next motion deals with</p> <p>12 page 6 on lines 19 and 21, the sentence that begins</p> <p>13 "On advice of counsel" that he opines about</p> <p>14 provisions of Revised Code 492.03 -- well, actually,</p> <p>15 your Honor, let me start again with this motion.</p> <p>16 Actually, your Honor, it goes from page 6, line 12,</p> <p>17 the entire question and answer ending on page 7, line</p> <p>18 4.</p> <p>19 In this question and answer, your Honor,</p> <p>20 the witness opines regarding a "unlawful subsidy,"</p> <p>21 and he also asserts other legal propositions like</p> <p>22 what constitutes competitive service under 4928.03,</p> <p>23 specifically on advice of counsel and asserting other</p> <p>24 scenarios that run "afoul of the law," again,</p> <p>25 specifically on advice of counsel.</p>	<p>1 Question: "Can you tell me what Ohio law</p> <p>2 you are referring to?"</p> <p>3 Answer: "Shoot. I know it's Ohio law</p> <p>4 4928 there is a corporate separation policy, but I</p> <p>5 don't have it in front of me."</p> <p>6 Question: "Okay. So it would be part</p> <p>7 of the corporate separation statute?"</p> <p>8 Answer: "I believe so."</p> <p>9 Question: "Okay. And what was the</p> <p>10 source of your knowledge regarding the law?"</p> <p>11 Answer: "I originally reviewed it for</p> <p>12 the Duke ESP case."</p> <p>13 Question: "Okay. Were you provided that</p> <p>14 reference by counsel, or did you research it on your</p> <p>15 own?"</p> <p>16 Answer: "I believe it was provided by</p> <p>17 counsel but this was probably over a year ago."</p> <p>18 Question: "Okay. Did you review the</p> <p>19 statute after counsel provided it to you?"</p> <p>20 Answer: "I did."</p> <p>21 Question: "And the counsel you are</p> <p>22 talking about, was that Mr. Oliker?"</p> <p>23 Answer: "That's correct."</p> <p>24 Question: "Okay. And did Mr. Oliker</p> <p>25 give you his view as to what the law meant?"</p>
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<p>1 With regard to anything provided -- so</p> <p>2 first grounds, your Honor, is these state legal</p> <p>3 opinions and do not belong in testimony. Second,</p> <p>4 your Honor, with respect to any testimony that is</p> <p>5 given on advice of counsel, the testimony should be</p> <p>6 stricken because we were precluded from pursuing</p> <p>7 discovery by instruction of counsel. And if I may</p> <p>8 approach, let me provide you the deposition</p> <p>9 testimony.</p> <p>10 EXAMINER PRICE: You may.</p> <p>11 MR. KUTIK: Your Honor, I would point the</p> <p>12 Bench to the colloquy that began on page 81 of</p> <p>13 Mr. Haugen's deposition, and specifically beginning</p> <p>14 on line 10, and I don't know if you want to read that</p> <p>15 to yourself or whether I should read it into the</p> <p>16 record.</p> <p>17 EXAMINER PRICE: Read it into the record.</p> <p>18 MR. KUTIK: It says question:</p> <p>19 "All right. Now, I want to refer you to</p> <p>20 your testimony, your direct testimony. And at the</p> <p>21 bottom of page 3 and over on page 4, it says, 'Ohio</p> <p>22 law requires the utility (and its affiliates) shall</p> <p>23 be fully on its own in the competitive market.' Do</p> <p>24 you see that?"</p> <p>25 Answer: "That's correct."</p>	<p>1 "MR. OLIKER: Objection. He's not going</p> <p>2 to reveal attorney-client confidences."</p> <p>3 "MR. KUTIK: Well, he says he's relying</p> <p>4 on advice of counsel, so I'm entitled to inquire what</p> <p>5 that advice was."</p> <p>6 Question: "So can you tell me what</p> <p>7 Mr. Oliker told you about that?"</p> <p>8 "MR. OLIKER: And he is not going to tell</p> <p>9 you. He is not going to tell you what I told him."</p> <p>10 "MR. KUTIK: Okay. So would it be fair</p> <p>11 to say that anywhere where there's a reference to 'on</p> <p>12 advice of counsel,' you will not allow me to inquire</p> <p>13 as to what that advice was?"</p> <p>14 "MR. OLIKER: I will let you inquire what</p> <p>15 his belief and knowledge is, but I am not going to</p> <p>16 let you inquire as to what I may have told him."</p> <p>17 "MR. KUTIK: So, again, you are going to</p> <p>18 instruct him not to answer any questions about what</p> <p>19 your advice was where he says in his testimony 'on</p> <p>20 advice of counsel,' fair?"</p> <p>21 "MR. OLIKER: That's fair. He can talk</p> <p>22 about his laymen's language."</p> <p>23 Your Honor, Ohio law provides that</p> <p>24 wherein an individual reveals some of the content of</p> <p>25 a communication with counsel, that is not privileged.</p>

<p style="text-align: right;">Page 4880</p> <p>1 This witness was instructed not to answer questions 2 on what the advice of counsel was, and on that basis, 3 your Honor, we move to strike. 4 EXAMINER PRICE: Mr. Oliker? 5 MR. OLIKER: Your Honor, it's common 6 practice in Commission proceedings to include the 7 words "on advice of counsel" prior to providing the 8 context for a statement to indicate -- 9 EXAMINER PRICE: I've always wondered 10 about that practice, and now Mr. Kutik has put it 11 squarely before us. 12 MR. OLIKER: Because as to identify the 13 witness is not an attorney. As I stated in the 14 deposition, he can ask about his own knowledge, and 15 he did. He was allowed to have full access to any 16 question about what you mean in these statements. If 17 you look in the original question, it didn't even 18 pertain to these pages in his testimony. So it's 19 wholly irrelevant on that aspect. But Mr. Haugen has 20 been fully deposed and asked questions about all of 21 his testimony. 22 There's also a substantial amount of 23 precedent in this Commission that certain 24 conversations regarding confidences with attorneys 25 are not revealed in their entirety merely by the</p>	<p style="text-align: right;">Page 4882</p> <p>1 4928.02(H); is that correct? 2 THE WITNESS: Correct. 3 EXAMINER PRICE: And you've read all the 4 policy provisions in 4928.02? 5 THE WITNESS: Yes. 6 EXAMINER PRICE: Mr. Kutik can 7 cross-examine you on your understanding of the 8 regulatory matters. 9 MR. KUTIK: Your Honor, our next motion 10 to strike deals with page 4, line 7, starting after 11 the word "White" -- 12 MR. OLIKER: Mr. Kutik, what document are 13 you on? 14 MR. KUTIK: Same document. 15 MR. OLIKER: Page 4, line 7 -- 16 MR. KUTIK: I'm sorry, page 7, line 7. 17 After the word "White" and continuing to the end of 18 the sentence on line 10 with the word "utility." 19 Here, your Honor, he is opining about what the 20 corporate separation requirements are, and that's a 21 legal matter, and so we object. 22 EXAMINER PRICE: What is the corporate 23 separation statute you're referring to, Mr. Haugen? 24 THE WITNESS: I believe it's 4928.17. 25 EXAMINER PRICE: We'll deny the motion at</p>
<p style="text-align: right;">Page 4881</p> <p>1 identification of maybe a small aspect, "I talked to 2 my counsel" about something. 3 EXAMINER PRICE: So what is the purpose 4 of the phrase "on advice of counsel"? If you can't 5 testify as to what the counsel's advice was, what is 6 the purpose of the phrase "on advice of counsel"? 7 MR. OLIKER: The purpose of the phrase is 8 to show the witness himself is not providing legal 9 testimony, your Honor, similar to your first ruling 10 as to say he's providing a regulatory perspective, 11 and it's an indication that he understands there may 12 be a certain legal context to this, but he's 13 providing a recommendation from a regulatory's 14 perspective. 15 EXAMINER PRICE: If the company believed 16 that this was a discovery issue, you probably should 17 have contacted the examiners and we could have dealt 18 with it at that point. We're going to deny in part 19 the motion to strike. We're only going to grant it 20 to the extent it includes the words "on advice of 21 counsel," which will be stricken from the record 22 throughout the question and answer for question 12. 23 The witness may testify as a lay opinion as to Ohio 24 regulatory matters. 25 Let me ask a question first. You've read</p>	<p style="text-align: right;">Page 4883</p> <p>1 this time, again, with the understanding that he's 2 not rendering a legal opinion. It's only relating to 3 Ohio regulatory matters. 4 MR. KUTIK: Our next motion, your Honor, 5 deals with page 7, line 19, starting with the word 6 "which" and going to the end of the sentence on line 7 20. Here's a double dose, your Honor, where we're 8 talking about on advice of counsel and his opinions 9 on the exclusive jurisdiction of the Federal Energy 10 Regulatory Commission. 11 EXAMINER PRICE: Consistent with our 12 prior ruling, we'll grant the motion to strike both 13 "on the advice of counsel" grounds and that we're 14 satisfied he's not capable of testifying on exclusive 15 jurisdiction with FERC. 16 MR. KUTIK: Our sixth motion, your Honor, 17 it's directed to page 7 in the footnote No. 6. 18 MR. OLIKER: I'm sorry. Could I have a 19 clarification of which lines again on page 7 were 20 struck? 21 MR. KUTIK: Sure. My last motion related 22 to page 7, line 19, starting with the word "which" to 23 the end of the sentence on line 20. 24 MR. OLIKER: Okay. Thank you. 25 MR. KUTIK: Our sixth motion, your Honor,</p>

<p style="text-align: right;">Page 4884</p> <p>1 deals with footnote on the same page, note 6, and the 2 second sentence. Again this witness is opining about 3 what specific products are under Ohio law and what is 4 subject to Commission regulation. 5 MR. OLIKER: Your Honor, the witness has 6 already indicated he's read the statute. 7 EXAMINER PRICE: I think the ruling here 8 is pretty predictable. We're going to allow him to 9 testify as to a regulatory matter under Ohio law. 10 MR. OLIKER: Thank you. 11 MR. KUTIK: Our next motion, our seventh 12 motion, your Honor, deals with page 9 and starts with 13 line 14 after the word "Yes" and ending on page 10, 14 line 3. Consistent with our discussions with other 15 witnesses, this witness' recitation of what happened 16 in certain cases before the Third and Fourth Circuit 17 are matters that belong in briefs, not in testimony, 18 and it's not a proper subject of cross-examination to 19 discuss the specifics of what the courts rule, what 20 the courts said. 21 MR. OLIKER: I have a response to this, 22 your Honor. FirstEnergy witnesses, including Judah 23 Rose, have already talked about the EPSA case before 24 the Supreme Court, what has happened in that case, 25 how it will impact the capacity markets.</p>	<p style="text-align: right;">Page 4886</p> <p>1 MR. KUTIK: Your Honor, our next motion 2 deals with attachment JH-1. Your Honor, it's 3 hearsay. This purports to be the Annual Report of 4 OVEC. 5 MR. OLIKER: Where are you, Mr. Kutik? 6 MR. KUTIK: His direct testimony. 7 MR. OLIKER: Which page? 8 MR. KUTIK: Attachment JH-1. This 9 purports to be an annual report, no foundation for 10 it. Even if there was foundation for it, your Honor, 11 it's hearsay. It is not a statement of the 12 companies. 13 MR. OLIKER: Your Honor, it is a 14 statement of an entity to which this companies' 15 affiliate has an interest in and to which is being 16 attempted to include in the rider in this case. It's 17 a public document that has been filed on the OVEC 18 website. It has been admitted in the Duke Energy 19 Ohio case, I believe the AEP Ohio case, and there is 20 no question regarding its authenticity. And the 21 witness also is formerly an employee at Buckeye 22 Power, which had an ownership interest in OVEC, so he 23 does have much personal knowledge regarding OVEC. 24 MR. KUTIK: Well, his relationship with 25 OVEC with respect to this issue is irrelevant. The</p>
<p style="text-align: right;">Page 4885</p> <p>1 EXAMINER PRICE: Did you object to that? 2 MR. OLIKER: I did not because it has 3 been past practice to allow witnesses to testify 4 based upon their understanding of how cases may 5 impact energy markets. 6 EXAMINER PRICE: Very rarely by this 7 examiner. I won't say never, but very rarely. 8 Besides, I think we've already established that 9 federal issues are just not -- federal law and the 10 preemption under federal law is just not within this 11 witness' expertise so we're going to grant the motion 12 to strike. 13 MR. OLIKER: Regarding, your Honor, that 14 issue, he testified regarding his understanding of 15 the specific words field preemption, conflict 16 preemption, but he has read those cases here and 17 talked about his understanding of the facts in this 18 case as relative to this one. So I would at least 19 like to have a minute to look and see exactly -- 20 EXAMINER PRICE: The whole basis of the 21 preemption was one of those two tests, right? The 22 whole basis of preempting the New Jersey and 23 Maryland -- fundamentally, the whole legal basis was 24 one of those two tests. If he doesn't understand the 25 test, how can he apply them?</p>	<p style="text-align: right;">Page 4887</p> <p>1 fact that an affiliate of the companies has a minor 2 interest in OVEC doesn't make it a statement of the 3 companies. 4 EXAMINER PRICE: Mr. Kutik is correct, 5 that this is a hearsay document. Nonetheless, we 6 will take administrative notice of documents easily 7 verified. 8 MR. OLIKER: Thank you, your Honor. 9 MR. KUTIK: All right. Your Honor, for 10 our next motion, it's on similar grounds again with 11 respect to the reference to the attachment, on page 12 5, note 3 and 5 of his direct testimony. 13 MR. OLIKER: Could you say that one 14 again, Mr. Kutik? You said two different things. 15 MR. KUTIK: I didn't say two different 16 things. The motion is to exclude reference to JH-1, 17 footnote 3 and footnote 5 on page 5. 18 EXAMINER PRICE: Consistent with -- we've 19 already taken administrative notice of this 20 particular document so we'll deny the motion to 21 strike. 22 MR. KUTIK: Our next motions, your Honor, 23 are related to the supplemental testimony, and these 24 are similar to issues that we've already discussed. 25 First on page 3 of the supplemental testimony,</p>

<p style="text-align: right;">Page 4888</p> <p>1 starting on line 17, the sentence that begins "Ohio 2 law" and ends with "Ohio law." There's a discussion 3 of Ohio law. 4 EXAMINER PRICE: Consistent with our 5 previous rulings, we'll allow it with the 6 understanding that he is a lay witness and not giving 7 a legal opinion. 8 MR. KUTIK: And, lastly, your Honor, on 9 page 4, line 6, the sentence -- strike the sentence 10 after the word "prices" to the rest of the end of the 11 sentence on line 7. 12 EXAMINER PRICE: Can I have the reference 13 again, please? 14 MR. KUTIK: Page 4 of the supplemental 15 testimony, line 6, after the word "prices" to the end 16 of the sentence on line 7. 17 EXAMINER PRICE: That motion to strike 18 will be granted. 19 MR. KUTIK: That concludes our motions, 20 your Honor. 21 EXAMINER PRICE: Mr. Hays? 22 MR. HAYS: No questions, your Honor. 23 Thank you. 24 EXAMINER PRICE: Ms. Bojko? 25 MS. BOJKO: No questions.</p>	<p style="text-align: right;">Page 4890</p> <p>1 Q. And your understanding about Ohio 2 regulatory law has been gained since February of 3 2013, correct? 4 A. Correct. 5 Q. And your Bachelor of Science degree was 6 in English? 7 A. It's a Bachelor of Arts. 8 Q. Your Bachelor's degree was in English? 9 A. That's correct. 10 Q. And you don't hold yourself out as an 11 economist? 12 A. Well, my title is not an economist. I do 13 provide a lot of economic analysis. 14 Q. You don't hold yourself out as an 15 economist, though, do you? 16 MR. OLIKER: Objection. Asked and 17 answered. 18 EXAMINER PRICE: Overruled. He didn't 19 answer the question. 20 Q. Sir -- 21 A. I'm not titled as an economist. 22 EXAMINER PRICE: Mr. Haugen, it's fine. 23 From this point forward when I say "overruled," it 24 means you can answer the question. 25 THE WITNESS: Sorry. Just trying to</p>
<p style="text-align: right;">Page 4889</p> <p>1 EXAMINER PRICE: Mr. Fisk? 2 MR. FISK: No questions. 3 EXAMINER PRICE: Mr. Kurtz. 4 MR. KURTZ: For efficiency purposes, if I 5 can go after the company, that will be great. 6 EXAMINER PRICE: Mr. Kutik, will you 7 allow Mr. Kurtz to go after you? 8 MR. KUTIK: That's fine. Your Honor. If 9 you can give me one minute, though. I need to look 10 at my notes to make sure I don't cover anything 11 that's been -- 12 EXAMINER PRICE: Let's go off the record 13 for a minute. 14 (Discussion off the record.) 15 EXAMINER PRICE: Mr. Kutik. 16 MR. KUTIK: Thank you, your Honor. 17 --- 18 CROSS-EXAMINATION 19 By Mr. Kutik: 20 Q. Good morning, sir. 21 A. Good morning. 22 Q. Would it be fair to say that the total 23 sum of your experience in the industry is about eight 24 years? 25 A. Right around that.</p>	<p style="text-align: right;">Page 4891</p> <p>1 help. 2 Q. Do you need the question again, sir? 3 A. No, I do not. I do not hold myself as an 4 economist, as it is not my title. 5 Q. You're not an attorney, so I think we've 6 talked about that. 7 A. That's correct. 8 Q. And in your position, you're not called 9 upon or required to read or interpret Ohio statutes, 10 correct? 11 A. Not regularly. 12 Q. And you didn't take any courses while 13 getting your MBA on statutory interpretation? 14 A. Not that I can recall. 15 Q. Or in business law? 16 A. That's correct. 17 Q. And your views on the law, particularly 18 when you state "on advice of counsel," are based, in 19 part, on what your lawyer told you, correct? 20 A. In some part. 21 Q. And the process was that Mr. Oliker would 22 give you the statute, you would read the statute, and 23 then you would talk with him, right? 24 A. In the process of determining my 25 interpretation, that's correct.</p>

<p style="text-align: right;">Page 4892</p> <p>1 Q. At IGS you provide advice on rule changes 2 dealing with PJM capacity and the energy markets, 3 correct? 4 A. That's correct. 5 Q. And you're not currently a member of any 6 PJM committee? 7 A. That's correct. 8 Q. And you weren't on any committee when you 9 worked at your previous employer, Buckeye, correct? 10 A. That's correct. 11 Q. Now, prior to filing your testimony in 12 this case, you reviewed the companies' application? 13 A. I did. 14 Q. And you only read the testimonies of 15 Messrs. Strah, Moul, and Ms. Mikkelsen, correct? 16 A. I also read Judah Rose's, part of Judah 17 Rose's testimony. 18 Q. So those are the only testimonies you 19 read, correct? 20 A. That's all that I can recall. 21 Q. And you didn't review any term sheet 22 between the companies and FES, correct? 23 A. That's correct. 24 Q. And you did not do any analysis of the 25 projected cost of the plants, correct?</p>	<p style="text-align: right;">Page 4894</p> <p>1 A. Are you referring to how other generation 2 units may bid into the market? 3 Q. No. 4 A. Can you define marketability? 5 Q. Do you remember me asking you about it in 6 your deposition? 7 A. It was over six months ago. 8 MR. KUTIK: May I approach, your Honor? 9 EXAMINER PRICE: I'd like to have the 10 answer to your question. Do you remember him taking 11 your deposition? 12 THE WITNESS: I do. 13 MR. KUTIK: Fair enough, your Honor. May 14 I approach, your Honor? 15 EXAMINER PRICE: You may. 16 MR. KUTIK: Actually, I think the 17 question was, "Do you remember me asking you about 18 that in deposition?" 19 Q. (By Mr. Kutik) Mr. Haugen, I've shown 20 you what appears to be a copy of your deposition, 21 correct? 22 A. That's correct. 23 Q. Do you remember taking an oath before 24 your deposition, correct? 25 A. I do.</p>
<p style="text-align: right;">Page 4893</p> <p>1 A. I was not privy to any cost information, 2 so I did not. 3 Q. You didn't do any analysis of the 4 projected revenue to the companies from offering the 5 output of the plants into the PJM markets, correct? 6 A. Only with relation to our own 7 forward-market projections. 8 Q. So what I said was correct? 9 A. I did not specifically look at their 10 projections, no. 11 Q. And you did no analysis of the effect of 12 the approval of rider RRS on the wholesale capacity 13 prices, correct? 14 A. That's correct. 15 Q. And you didn't do any analysis of the 16 effect of the approval of rider RRS on wholesale 17 energy prices, correct? 18 A. That's correct. 19 Q. And you did not do any analysis of the 20 marketability of any generation unit within PJM, 21 correct? 22 MR. OLIKER: Could I have that question 23 read back? 24 EXAMINER PRICE: You may. 25 (Record read.)</p>	<p style="text-align: right;">Page 4895</p> <p>1 Q. I'd like to have you turn to page 60 of 2 the deposition transcript. Are you there? 3 A. Yes. 4 Q. And did you not give the following 5 answers to the following question, starting at line 6 23: 7 Question: "Okay. Have you done for 8 purposes of this case any analysis of the 9 marketability of any generation unit within PJM?" 10 Answer: "Can you define marketability?" 11 Question: "The ability to sell." 12 Answer: "Again, without being privy to 13 any of their cost information, it would be difficult 14 for me to determine if their costs would be below -- 15 above or below the forward markets and if that would 16 affect any of the generation unit." 17 Question: "So the answer is 'no,' 18 correct?" 19 Answer: "Correct." 20 MR. OLIKER: Objection. Improper 21 impeachment. The witness asked for clarification, 22 "define marketability," and Mr. Kutik never provided 23 it. He just decided to keep reading the deposition 24 to the questions he never asked. 25 EXAMINER PRICE: Overruled.</p>

<p style="text-align: right;">Page 4896</p> <p>1 Q. That was your deposition testimony, 2 correct? 3 A. That's correct. 4 Q. Now, would it be fair to say that you did 5 not discuss proposed rider RRS with anyone who works 6 for PJM? 7 A. That's correct. 8 Q. And you did not discuss proposed rider 9 RRS with the PJM market monitor, correct? 10 A. I did not. 11 Q. And you did not discuss proposed rider 12 RRS with any other CRES provider, correct? 13 A. That's correct. 14 Q. You did not discuss proposed rider RRS 15 with any other generator, correct? 16 A. That's correct. 17 Q. And, by the way, would it be fair to say 18 that other than for a very small landfill generator, 19 IGS doesn't own much other generation, correct? 20 A. That's correct. 21 Q. And you did not discuss proposed rider 22 RRS with any other participant in PJM, correct? 23 A. That's correct. 24 Q. And you did not review any cases at the 25 Commission that has involved any of the FirstEnergy</p>	<p style="text-align: right;">Page 4898</p> <p>1 that you were previously responsible for? 2 MR. OLIKER: Objection. 3 EXAMINER PRICE: Grounds? 4 MR. OLIKER: The word "adopted" is vague. 5 MR. KUTIK: I'll use another word. 6 EXAMINER PRICE: Okay. 7 Q. (By Mr. Kutik) Isn't it true that some 8 of the testimony that appears in this case appears to 9 be cut and pasted from testimony in other cases that 10 you were responsible for? 11 A. While I believe I use probably a lot of 12 the same terminology, they were prepared 13 independently but over the same course of times. 14 Q. But we would find many of the same words, 15 same sentences, in both testimonies, correct? 16 A. Oftentimes if I find a sentence that I 17 use that appears to clarify what I'm trying to say, I 18 will reuse those words. 19 Q. So the answer to my question is yes? 20 A. I will reuse a lot of the terminology and 21 sentence structure in a lot of the similar cases that 22 are asking for similar things. 23 EXAMINER PRICE: So the answer to his 24 question is yes? 25 A. Yes.</p>
<p style="text-align: right;">Page 4897</p> <p>1 companies, correct? 2 A. That's correct. 3 Q. And you have not reviewed any prior ESP 4 or SSO case for the companies, correct? 5 A. When you say the "companies," you're 6 referring to the FirstEnergy companies? 7 Q. Yes, I am? 8 A. That's correct. 9 Q. Are you aware, sir, that in this case 10 when we refer to "the companies," we are talking 11 about CEI, Toledo Edison, and Ohio Edison? 12 A. I had assumed, but I just wanted to 13 clarify. 14 Q. And the same will go if we use the word 15 "FirstEnergy," it means the same thing. 16 A. Correct. 17 Q. And if we want to refer to FirstEnergy 18 Solutions, we'll either use those words or FES, okay? 19 A. Correct. 20 Q. Now, you had not reviewed any other 21 companies' ESP other than the most recent DEO and AEP 22 cases, correct? 23 A. That's correct. 24 Q. Now, would it be fair to say that some of 25 your testimony in this case is adopted from testimony</p>	<p style="text-align: right;">Page 4899</p> <p>1 EXAMINER PRICE: Thank you. 2 Q. Now, in your prior testimony -- well, 3 I'll back up. You previously testified in the Duke 4 ESP case, correct? 5 A. Correct. 6 Q. And in that case, one of the things you 7 did is you adopted someone else's testimony, correct? 8 A. That's correct. 9 Q. And that was the testimony of 10 Mr. Hamilton, correct? 11 A. That's correct. 12 Q. And would it be fair to say that you did 13 not write Mr. Hamilton's testimony? 14 A. I did not. 15 Q. Now, would it be fair to say that in your 16 deposition you were not familiar with some of the 17 details in your prefiled -- in your direct prefiled 18 testimony? 19 MR. OLIKER: Objection. It's not 20 appropriate to ask him about his deposition. You can 21 ask him about questions today and maybe he can refer 22 to the deposition if it's necessary, but it's not 23 appropriate to go down that line of questioning. 24 EXAMINER PRICE: Sustained. 25 Q. Isn't it true, sir, that when I asked you</p>

<p style="text-align: right;">Page 4900</p> <p>1 about -- well, I'll back up.</p> <p>2 In your testimony, you reference the</p> <p>3 megawatt capacity of the plants in question in this</p> <p>4 case; do you not? And I'll refer you to page 4,</p> <p>5 lines 13 and 15.</p> <p>6 A. I do.</p> <p>7 Q. Isn't it true that you couldn't tell me</p> <p>8 previously what the megawatt capacity of Davis-Besse</p> <p>9 was?</p> <p>10 A. I could not recall off the top of my head</p> <p>11 at that time.</p> <p>12 MR. OLIKER: Object and move to strike</p> <p>13 the question and answer. It's merely rehashing the</p> <p>14 same exact ground.</p> <p>15 MR. KUTIK: Your Honor, I think it's</p> <p>16 relevant to the fact this witness adopts someone</p> <p>17 else's testimony that he didn't write and he doesn't</p> <p>18 know the details behind it -- or didn't know the</p> <p>19 details behind it and it's relevant to his</p> <p>20 credibility.</p> <p>21 EXAMINER PRICE: The alternative,</p> <p>22 Mr. Oliker, is he's going to ask him what the</p> <p>23 megawatts of Davis-Besse, and he's going to give the</p> <p>24 answer, and then he's going to go back to his</p> <p>25 deposition and impeach him. I think this would be</p>	<p style="text-align: right;">Page 4902</p> <p>1 MR. KUTIK: Your Honor, I would agree</p> <p>2 that the normal practice for impeachment is exactly</p> <p>3 as was discussed with Mr. Oliker, but we're talking</p> <p>4 about something different about the state of this</p> <p>5 witness' knowledge and what time the witness had such</p> <p>6 a knowledge, and the fact that he didn't know in his</p> <p>7 deposition is important, your Honor.</p> <p>8 MR. OLIKER: Then he should ask him about</p> <p>9 the date that he submitted testimony what his</p> <p>10 knowledge was at that time rather than what happened</p> <p>11 in his deposition, which is not appropriate.</p> <p>12 EXAMINER PRICE: I'm going to overrule</p> <p>13 the objection and give Mr. Kutik some leeway on this.</p> <p>14 I understand what you're saying and I sympathize with</p> <p>15 it, but we're going to see how this goes.</p> <p>16 MR. OLIKER: Thank you, your Honor.</p> <p>17 MR. KUTIK: Do you have the question in</p> <p>18 mind, sir?</p> <p>19 A. Can you show me in the deposition what</p> <p>20 you're referring to?</p> <p>21 Q. Sure. Let me refer you to page 156. Are</p> <p>22 you there, sir?</p> <p>23 A. I am.</p> <p>24 Q. And let me refer you specifically to line</p> <p>25 11 where you testified as follows:</p>
<p style="text-align: right;">Page 4901</p> <p>1 more expeditious to get to the same result.</p> <p>2 Overruled.</p> <p>3 Q. Let me refer you to page 10, line 7.</p> <p>4 A. Of what?</p> <p>5 Q. Of your direct testimony. And you say</p> <p>6 there, sir, that "FirstEnergy would be required to</p> <p>7 pay FES under the terms of the agreement regardless</p> <p>8 of any retail determination made by the Commission,"</p> <p>9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Isn't it true at your deposition you said</p> <p>12 that you believe that if the Commission disallowed</p> <p>13 certain costs under rider RRS, the price that FES</p> <p>14 would receive would be changed or affected by that</p> <p>15 disallowance?</p> <p>16 MR. OLIKER: Objection. Your Honor, he</p> <p>17 should be asking him questions about his testimony</p> <p>18 and not about his deposition, and regardless of</p> <p>19 whether or not something may or may not be</p> <p>20 expeditious to this proceeding, it is inappropriate,</p> <p>21 and it is maybe one more step to the extent Mr. Kutik</p> <p>22 can, in fact, show he's been inconsistent; but,</p> <p>23 otherwise, people are just going to show up and start</p> <p>24 reading depositions into the transcript without</p> <p>25 asking questions as an initial predicate.</p>	<p style="text-align: right;">Page 4903</p> <p>1 Question: "Now, is it your understanding</p> <p>2 that if the Commission would disallow certain costs</p> <p>3 under rider RRS, that the price that -- the price</p> <p>4 that FES would receive would be changed or affected</p> <p>5 by that disallowance?"</p> <p>6 Answer: "I believe that is a</p> <p>7 possibility."</p> <p>8 That was your deposition testimony,</p> <p>9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Now, you further agree that as far as</p> <p>12 costs that could be recovered from customers, it</p> <p>13 would be a total pass-through as far as the companies</p> <p>14 are concerned, correct?</p> <p>15 MR. OLIKER: Objection. Vague.</p> <p>16 EXAMINER PRICE: Overruled.</p> <p>17 A. Could you repeat the question?</p> <p>18 Q. Sure. Isn't it true you further agree</p> <p>19 that as far as the costs that could be recovered from</p> <p>20 customers, it would be a total pass-through as far as</p> <p>21 the companies are concerned?</p> <p>22 MR. OLIKER: Also, it mischaracterizes</p> <p>23 the testimony.</p> <p>24 EXAMINER PRICE: Overruled.</p> <p>25 A. Can you repeat the question?</p>

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1 Q. Sure. Isn't it true that you further
2 agree that as far as costs that could be recovered
3 from customers, it would be a total pass-through as
4 far as the companies are concerned with respect to
5 rider RRS? Do you recall that deposition testimony,
6 sir?

7 A. Yeah. I believe, in general, that's my
8 understanding of it.

9 Q. And you also said that you weren't sure
10 whether the companies have a risk of nonrecovery
11 under the proposal?

12 MR. OLIKER: Mr. Kutik are you reading
13 from the deposition transcript?

14 EXAMINER PRICE: No, but your witness is.

15 MR. KUTIK: I'm reading from my notes.

16 EXAMINER PRICE: Your witness is reading
17 the deposition transcript, but it's probably
18 improper. He probably needs to put it away.

19 Let's have the last question back,
20 please.

21 (Record read.)

22 MR. OLIKER: And I would object again.
23 He said "when," and if he's referring to the
24 deposition, it's improper.

25 EXAMINER PRICE: He just asked him a

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1 Q. Would it be fair to that say you're
2 familiarity with that statute is basically about a
3 year's experience?

4 A. That's correct.

5 Q. You hadn't read Section 4928.02(H) prior
6 to adopting Mr. Hamilton's testimony in the DEO ESP
7 case, correct?

8 A. I believe that's true.

9 Q. And you recall that you filed --
10 Mr. Hamilton's testimony was filed in September of
11 2014?

12 A. I don't have the dates in front of me,
13 but that timeline sounds right.

14 Q. And you filed your supplemental testimony
15 which adopted his testimony in November of 2014,
16 correct?

17 A. It's right around that timeline, yes.

18 Q. Now, would it be also true that you have
19 not read the statute that authorizes ESPs?

20 A. Can you refer to the specific statute?

21 Q. Well, do you know what the statute is
22 that authorizes ESPs?

23 A. I can't think of it right now.

24 Q. So would it be fair to say that you don't
25 know that you haven't read the statute that

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1 question. Why is it improper?

2 MR. OLIKER: I believe he said "you
3 said." He's referring to the deposition, what he
4 said there, and that's improper. This whole
5 cross-examination is just going to be about what he
6 said in the deposition without asking him a question.
7 The entire cross-examination is going to be improper.

8 EXAMINER PRICE: Okay. I'll sustain that
9 one.

10 Q. (By Mr. Kutik) Isn't it true, sir, that
11 you agree that as far as the costs being recovered
12 from customers, it would be a total pass-through as
13 far as the companies' customers are concerned -- I
14 already asked that one. Let me ask another one.

15 You also agree, do you not, that you
16 aren't sure why the companies have a risk of
17 nonrecovery under their proposal?

18 A. At the time I wasn't sure of the auditing
19 process, so that's why I wasn't sure.

20 Q. So you were not sure, correct?

21 A. Correct.

22 Q. Now, I want to talk to you about your
23 testimony about rider RRS and Revised Code Section
24 4928.02(H).

25 A. Okay.

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1 authorizes ESPs?

2 MR. OLIKER: Objection. Mischaracterizes
3 his testimony.

4 EXAMINER PRICE: I don't think he's
5 characterized the testimony. I think he's asking the
6 question. Overruled.

7 A. I can't recall it specifically at this
8 time.

9 Q. Okay. Would it be fair to say that you
10 don't know whether there might be any language in the
11 ESP statute that addresses any possible conflict
12 between the statute and anything else in Revised Code
13 titled 49?

14 A. Can you repeat the question?

15 Q. Sure.

16 MR. KUTIK: May it be read, please, your
17 Honor?

18 EXAMINER PRICE: Please.

19 (Record read.)

20 MR. OLIKER: I don't think it's
21 necessary, given the prior rulings, but I'd just like
22 to clarify that Mr. Haugen can provide his regulatory
23 opinion. He's not testifying as an attorney.

24 EXAMINER PRICE: And that is exactly what
25 Mr. Kutik is exploring.

13 (Pages 4904 to 4907)

<p style="text-align: right;">Page 4908</p> <p>1 MR. OLIKER: Thank you.</p> <p>2 MR. KUTIK: Given the rulings, I have no</p> <p>3 other choice.</p> <p>4 A. I can't recall at this time.</p> <p>5 Q. Now, you agree with me, do you not, that</p> <p>6 rider RRS is a generation-related rider?</p> <p>7 A. I do.</p> <p>8 Q. And the companies are not providing</p> <p>9 distribution services through rider RRS or that's not</p> <p>10 proposed to be the case, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And the companies don't propose providing</p> <p>13 transmission service through rider RRS, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And the companies don't propose to</p> <p>16 provide ancillary services under rider RRS, correct?</p> <p>17 A. I'm not sure how the generation units</p> <p>18 will be bid into PJM, but I believe that's correct.</p> <p>19 Q. Now, the output from the plants is going</p> <p>20 to be used by the companies, and it will not displace</p> <p>21 the amount of SSO load that will be purchased in the</p> <p>22 auctions under the ESP, correct?</p> <p>23 A. I believe the amount of energy will flow</p> <p>24 into the PJM markets.</p> <p>25 Q. So what I said was correct?</p>	<p style="text-align: right;">Page 4910</p> <p>1 A. That's correct.</p> <p>2 Q. And you're aware that that term is</p> <p>3 defined in another part of the statute, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And you've read that other statute, have</p> <p>6 you not?</p> <p>7 A. I have.</p> <p>8 Q. Can you tell me the number of the</p> <p>9 statute?</p> <p>10 A. I believe it's at the beginning.</p> <p>11 Q. So what would that number be?</p> <p>12 A. One.</p> <p>13 Q. And you've read that statute 1?</p> <p>14 A. I have since the deposition.</p> <p>15 Q. Would you agree with me, sir, that</p> <p>16 wholesale service is not a competitive electric</p> <p>17 service?</p> <p>18 A. I believe, in my opinion, it can be a</p> <p>19 competitive service, but not as defined in 4928.</p> <p>20 Q. So as defined in 4928, wholesale service</p> <p>21 is not a competitive retail electric service,</p> <p>22 correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And you agree with me that the proposed</p> <p>25 transaction between the companies and FES would be a</p>
<p style="text-align: right;">Page 4909</p> <p>1 A. Not specifically to the companies.</p> <p>2 Q. So what I said was correct?</p> <p>3 A. Can you repeat it?</p> <p>4 Q. Sure. The output from the companies is</p> <p>5 not going to be used by the companies to displace the</p> <p>6 amount of SSO load that will be purchased for the</p> <p>7 auctions under the ESP?</p> <p>8 A. That's correct.</p> <p>9 Q. And the companies do not intend to supply</p> <p>10 this output through direct transactions with any</p> <p>11 retail shopping customers, correct?</p> <p>12 A. It's a nonbypassable charge that will go</p> <p>13 to all customers.</p> <p>14 Q. That's not my question, sir. What I was</p> <p>15 asking you about is the output, okay, and the</p> <p>16 companies do not intend to supply this output through</p> <p>17 direct transactions with any retail shopping</p> <p>18 customers?</p> <p>19 A. That's correct.</p> <p>20 Q. And the companies couldn't do that anyway</p> <p>21 because they're not CRES providers, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Now, you know that there is a term under</p> <p>24 Section 4928.02(H) called competitive retail electric</p> <p>25 service, correct?</p>	<p style="text-align: right;">Page 4911</p> <p>1 wholesale transaction, correct?</p> <p>2 A. I do.</p> <p>3 Q. And the companies' activities in offering</p> <p>4 the plants' outputs into the PJM markets and</p> <p>5 receiving revenues therefrom, those would be</p> <p>6 wholesale activities; would they not?</p> <p>7 A. They would be.</p> <p>8 Q. Now, the term "noncompetitive retail</p> <p>9 electric service" is also used in Section 4928.02(H),</p> <p>10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And you don't believe that distribution</p> <p>13 service is a noncompetitive retail electric service,</p> <p>14 do you?</p> <p>15 A. Distribution service would be a</p> <p>16 noncompetitive service.</p> <p>17 Q. Let me refer you to your deposition, sir,</p> <p>18 page 89. Let me refer you specifically to line 20 on</p> <p>19 page 89, and do you not give the following answers to</p> <p>20 the following questions:</p> <p>21 Question: "Is distribution service a</p> <p>22 noncompetitive retail electric service?"</p> <p>23 Answer: "I don't believe so, but I would</p> <p>24 have to go back and look."</p> <p>25 Question: "All right. So sitting here</p>

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<p>1 today, you don't believe so, correct?"</p> <p>2 Answer: "Correct."</p> <p>3 That was your deposition testimony,</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. Now, you believe that distribution</p> <p>7 customers are a noncompetitive retail electric</p> <p>8 service, correct?</p> <p>9 A. I do believe that.</p> <p>10 Q. And you believe that the only type of</p> <p>11 service that can be subsidized is noncompetitive,</p> <p>12 correct?</p> <p>13 MR. OLIKER: Objection.</p> <p>14 EXAMINER PRICE: Grounds?</p> <p>15 MR. OLIKER: It's an extremely vague</p> <p>16 question.</p> <p>17 EXAMINER PRICE: He may answer if he</p> <p>18 knows.</p> <p>19 A. Can you repeat the question?</p> <p>20 Q. And you believe the only type of service</p> <p>21 that can be subsidized is noncompetitive?</p> <p>22 A. I believe there shouldn't be subsidies on</p> <p>23 the wholesale energy market, but as far as the retail</p> <p>24 market, there's a possibility.</p> <p>25 Q. So the answer to my question is yes?</p>	<p>1 testimony on page 3, line 22, and your testimony</p> <p>2 about requiring generation plants to be on their own.</p> <p>3 Do you see that testimony?</p> <p>4 A. I do.</p> <p>5 Q. Now, this is based upon your</p> <p>6 understanding of the corporate separation statute,</p> <p>7 correct?</p> <p>8 A. It is.</p> <p>9 Q. And, in fact, you think this language,</p> <p>10 this "on your own" language, is in Section 4928.17,</p> <p>11 correct?</p> <p>12 A. I believe the whole 4928 is very</p> <p>13 pro-competitive. .17 is one issue dealing with</p> <p>14 corporate separation. The language could be in other</p> <p>15 sections as well.</p> <p>16 MR. KUTIK: Your Honor, move to strike.</p> <p>17 MR. OLIKER: Your Honor, he answered</p> <p>18 Mr. Kutik's question and provided his answer and he</p> <p>19 was fully responsive.</p> <p>20 MR. KUTIK: The question simply was do</p> <p>21 you think the language "on your own" is in Section</p> <p>22 4928.17. I don't think I got an answer to that</p> <p>23 question.</p> <p>24 MR. OLIKER: He said yes and elsewhere.</p> <p>25 EXAMINER PRICE: I don't think he said</p>
Page 4913	Page 4915
<p>1 A. On the wholesale side, I believe there</p> <p>2 should be no subsidies, and on the retail side,</p> <p>3 there's a possibility.</p> <p>4 MR. KUTIK: Move to strike, your Honor.</p> <p>5 EXAMINER PRICE: Sustained.</p> <p>6 Please answer counsel's question. Would</p> <p>7 you like it back?</p> <p>8 THE WITNESS: Yes, please.</p> <p>9 EXAMINER PRICE: Can I have counsel's</p> <p>10 question again.</p> <p>11 (Record read.)</p> <p>12 A. I believe that's true.</p> <p>13 Q. Now, you would also agree with me, would</p> <p>14 you not, that if the companies' projections are</p> <p>15 correct, there would be, in your view, a subsidy</p> <p>16 flowing from FES to distribution customers, correct?</p> <p>17 A. I wouldn't necessarily agree with the</p> <p>18 companies' projections.</p> <p>19 Q. But assuming that the companies'</p> <p>20 projections are correct, would you agree that there</p> <p>21 would be a subsidy in your view from FES to</p> <p>22 distribution customers?</p> <p>23 A. From the projections I've seen from the</p> <p>24 company, I believe that is true.</p> <p>25 Q. Now, I want to talk to you about your</p>	<p>1 yes, but we'll deny the motion to strike.</p> <p>2 But we will instruct the witness to</p> <p>3 answer the question "yes" or "no."</p> <p>4 Q. And the question to you, sir, is in fact,</p> <p>5 you think that the language "on your own, is in</p> <p>6 Section 4928.17, correct?</p> <p>7 A. I believe so.</p> <p>8 MR. KUTIK: May I approach, your Honor?</p> <p>9 EXAMINER PRICE: You may.</p> <p>10 Q. Mr. Haugen, I want to show you Section</p> <p>11 4928.17. And would you agree with me, Mr. Haugen,</p> <p>12 that the language "on your own" does not appear in</p> <p>13 that statute?</p> <p>14 MR. OLIKER: Mr. Kutik, you're referring</p> <p>15 to the actual words "on your own"?</p> <p>16 MR. KUTIK: Yes, which is quoted.</p> <p>17 EXAMINER PRICE: In his testimony he uses</p> <p>18 "on its own."</p> <p>19 MR. KUTIK: "On its own."</p> <p>20 Q. Those words do not appear, do they? Will</p> <p>21 you accept that, subject to check, sir?</p> <p>22 A. I don't believe those exact words appear.</p> <p>23 MR. KUTIK: May I approach, your Honor?</p> <p>24 EXAMINER PRICE: You may.</p> <p>25 Q. Mr. Haugen, I want to show you another</p>

<p style="text-align: right;">Page 4916</p> <p>1 statute, Section 4928.38. Have you ever seen that 2 before, that statute? Have you ever read it? 3 A. I'm familiar with it, but I have not read 4 it. 5 Q. So, for example, looking at the 6 third-to-last line in the text of the statute, do you 7 see where it says, the phrase, "the utility shall be 8 fully on its own in the competitive market"? Do you 9 see that? 10 A. I do. 11 Q. You had never seen that phrase before in 12 this statute; is that correct? 13 A. I can't recall. 14 Q. Now, in this case, would it be fair to 15 say that the only utilities are the companies? 16 A. That's correct. 17 Q. Would it be fair to say that FES is not a 18 utility? 19 MR. OLIKER: Objection. 20 EXAMINER PRICE: Grounds? 21 MR. OLIKER: Under what law? 22 EXAMINER PRICE: Please specify which 23 provisions you're talking about. 24 MR. KUTIK: Under title 4928, your Honor. 25 A. I believe FES is not a regulated utility.</p>	<p style="text-align: right;">Page 4918</p> <p>1 Overruled. 2 A. I don't believe they can do that as part 3 of their distribution responsibilities. 4 Q. Do you believe they can do it -- isn't it 5 true you don't believe they can do it at all? 6 A. I believe that a company could be 7 structured separately to have a whole other component 8 that could do that. 9 Q. Let me refer you to your deposition, sir, 10 page 96. Specifically at line 22 do you not give the 11 following answer to the following question: 12 Question: "That's not my question. My 13 question is could the companies without violating any 14 law that you know of buy power through the PPA and 15 sell it into the PJM market?" 16 Answer: "I don't believe they can." 17 That was your testimony, correct? 18 MR. OLIKER: That's consistent with what 19 he testified. 20 MR. KUTIK: There were no qualifications 21 in his deposition, your Honor. 22 Q. Was that your testimony, sir? 23 A. Those were my thoughts at the time, and 24 then if you read on further, I said because buying 25 and selling power has to be separate from the</p>
<p style="text-align: right;">Page 4917</p> <p>1 Q. And would you agree with me that the 2 utilities do not own generation? 3 A. That's correct. 4 Q. Now, would it be also fair to say that if 5 an electric distribution company is structurally 6 separated from a generation business, it is in 7 compliance with the corporate separation statute? 8 A. That's correct. 9 Q. Now, I want to talk to you about some 10 other things, about how you understand the Ohio 11 regulatory rules work. Would it be fair to say that 12 you don't believe that an electric distribution 13 utility in Ohio can buy power through a PPA and sell 14 it into the PJM market? 15 A. Are you referring only to distribution 16 companies? 17 Q. Yes. 18 A. I don't believe that's the role of the 19 distribution companies, no. 20 Q. So it's true that you don't believe that 21 an EDU can buy power through a PPA and sell it into 22 the PJM market, correct? 23 MR. OLIKER: Objection. Asked and 24 answered. 25 EXAMINER PRICE: He hasn't answered yet.</p>	<p style="text-align: right;">Page 4919</p> <p>1 distribution companies. 2 Q. Now, you've also testified, have you not, 3 that electric distribution companies are not 4 prohibited from entering into the generation -- to a 5 generation-related contract as long as there is 6 structural separation, correct? 7 A. That's my understanding. 8 Q. And you would agree with me that in the 9 FirstEnergy family of companies, generation is 10 structurally separated from the companies? 11 A. That's my understanding. 12 Q. Now, is it also true that you don't 13 believe that the electric distribution companies can 14 participate in the wholesale market? 15 MR. OLIKER: Objection. 16 EXAMINER PRICE: Grounds? 17 MR. OLIKER: It's extremely broad, your 18 Honor. 19 EXAMINER PRICE: Overruled. 20 A. So with the caveat that I gave earlier 21 where they should be completely separated. 22 Q. Well, let me refer you back to your 23 deposition sir. Page 97, starting at line 12, do you 24 not give the following answers to the following 25 questions:</p>

<p style="text-align: right;">Page 4920</p> <p>1 "All right. So just to be clear, you do 2 not believe that the companies could participate in 3 the wholesale market, correct?" 4 Mr. Olikar objected. 5 Answer: "It's my understanding that 6 those are supposed to be separate." 7 MR. OLIVER: Which is consistent -- 8 MR. KUTIK: I haven't finished reading. 9 Q. Question: "All right. So they could not 10 do that, correct?" 11 Answer: "It's my understanding that they 12 could not do that." 13 That was your deposition testimony, 14 correct? 15 A. Correct. 16 MR. OLIVER: Which is consistent with 17 what he testified. 18 EXAMINER PRICE: Are you making an 19 objection or not? 20 MR. OLIVER: Yes, objecting to the 21 impeachment, which is improper. It is not 22 impeachment. 23 EXAMINER PRICE: Overruled. You're 24 overruled. 25 Q. Would it be also true, sir, that you</p>	<p style="text-align: right;">Page 4922</p> <p>1 seven witnesses today. We're trying to get through 2 them all so nobody has to stay overnight. Making 3 comments to counsel rather than the Bench is not 4 helpful. You'll direct your comments to me. Make a 5 proper objection or not. 6 MR. OLIVER: At this point I will object 7 because there was improper behavior in this 8 deposition where this question may have been asked, 9 15, 20 times. So I would like to bring that to the 10 Bench's attention before we proceed. 11 MR. KUTIK: Well, your Honor, if he has a 12 problem, he can redirect. He can read the whole 13 transcript in if he wants, but I'd like to proceed 14 with my cross-examination, please, without further 15 comment. 16 EXAMINER PRICE: Let's get through this 17 question and then you can raise your issue. 18 MR. OLIVER: Thank you. 19 Q. (By Mr. Kutik) Mr. Haugen, I'd like to 20 refer you to page 104. Are you there? 21 A. Yes. 22 Q. And did you not give the following 23 answers to the following questions starting at line 24 5: 25 Question: "That's not my question. My</p>
<p style="text-align: right;">Page 4921</p> <p>1 don't believe electric distribution companies could 2 offer some type of service in their ESP that would 3 have the effect of stabilizing retail electric rates? 4 A. Were you continuing to read there, or was 5 that a question? 6 Q. I'm reading from my notes, sir. I'm 7 sorry. Would you like me to give you the question 8 again? 9 A. Please. 10 Q. You don't believe that electric 11 distribution companies could offer some type of 12 service in their ESPs that would have the effect of 13 stabilizing retail rates, correct? 14 A. I don't believe that they could offer a 15 service that stabilized a competitive rate. 16 Q. So is the answer to my question correct, 17 or yes? 18 A. I mean, I believe they could offer a 19 service that stabilized the distribution rate. 20 Q. Let me refer you to your deposition, sir. 21 MR. OLIVER: Let's read all ten pages and 22 badger him. 23 MR. KUTIK: Move to strike that comment, 24 your Honor. 25 EXAMINER PRICE: Mr. Oliver. We have</p>	<p style="text-align: right;">Page 4923</p> <p>1 question is theoretically, as you understand what the 2 companies are allowed to do under -- in Ohio, the 3 companies could provide some type of service through 4 their ESP that would have the effect of stabilizing 5 retail electric rates." 6 There was an objection. 7 I said, Question: "Correct, sir?" 8 MR. OLIVER: I prefer the objection be 9 read. 10 Q. "Correct, sir?" 11 And you said: "I am not ready to draw 12 that conclusion right now without thinking about it 13 further." 14 Is that correct? 15 A. That's correct. 16 MR. OLIVER: It's improper impeachment 17 because the objection was not read. 18 EXAMINER PRICE: Well, Mr. Oliver, you 19 can read the objection into the record now. 20 MR. OLIVER: The objection was: "Asked 21 and answered maybe nine times now, and also calls for 22 a legal conclusion." 23 MR. KUTIK: Your Honor, may I be heard? 24 EXAMINER PRICE: You may. 25 MR. KUTIK: What happened at the</p>

<p style="text-align: right;">Page 4924</p> <p>1 deposition is exactly what's happening today where we 2 have a witness who doesn't want to answer questions 3 directly, and so I needed to be persistent in my 4 questions. So if I was over bearing or acting 5 improperly, Mr. Olikier certainly had a remedy which 6 he's not hesitant to invoke, in calling the Attorney 7 Examiner and getting things straight, which he didn't 8 do.</p> <p>9 The problem is, as the transcript will 10 show, is this witness continually refused to answer 11 questions put to him until I persisted in getting his 12 answer, and that's what the record reflects, as it 13 does today.</p> <p>14 MR. OLIKER: What happened in the 15 deposition is that Mr. Kutik didn't like the answer 16 he received, so then he continued to ask the question 17 over and over again until he found an answer he found 18 to be more suitable to his liking.</p> <p>19 EXAMINER PRICE: Why don't we put what 20 happened in the deposition behind us, and the witness 21 can simply answer Mr. Kutik's questions directly, and 22 then we will get through this line of questioning all 23 the quicker, bearing in mind that you presented him 24 as an expert on regulatory matters, and so he needs 25 to be answering these things as straightforwardly as</p>	<p style="text-align: right;">Page 4926</p> <p>1 process by the Public Utilities Commission. 2 Q. That wasn't my question. My question is, 3 you don't know whether the proposed transaction has 4 any kind of audit process for the companies of FES? 5 MR. OLIKER: Are you referring to a part 6 of his testimony, Mr. Kutik? 7 MR. KUTIK: I just asked the question, 8 your Honor. 9 EXAMINER PRICE: It might be helpful if 10 you define "proposed transaction." I'm not sure if 11 the witness was in the room when we previously 12 defined what we all mean by "proposed transaction." 13 Q. You understand that there is a 14 transaction that's proposed between FES and the 15 companies? 16 A. That's correct. 17 Q. Where the companies would buy certain 18 output of certain plants? 19 A. I believe they would be paying the 20 difference between what FES receives from the PJM 21 markets and their costs. 22 Q. Is it your understanding that -- well, is 23 your understanding, then, sir, that FES would be 24 offering the output into the wholesale markets? Is 25 that your testimony?</p>
<p style="text-align: right;">Page 4925</p> <p>1 possible. 2 MR. OLIKER: Thank you, your Honor. 3 EXAMINER PRICE: Next question. 4 MR. KUTIK: Your Honor, did I get an 5 answer to the question whether that was his 6 deposition testimony? 7 EXAMINER PRICE: I have no idea. 8 Can we have the last question and answer 9 back? 10 (Record read.) 11 Q. I want to talk to you about some other 12 aspects of the transaction, the proposed transaction, 13 and the application. Would it be fair to say that 14 you don't know whether there's any limitation in the 15 proposed transaction regarding what the companies 16 will be required to pay FES? 17 A. That's true. 18 Q. And you're not aware whether the 19 companies would have the right to review planned 20 capital expenditures at the plants, correct? 21 A. That's correct. 22 Q. And you don't know whether the proposed 23 transactions have any kind of audit process for the 24 companies, correct? 25 A. I believe there was a proposed auditing</p>	<p style="text-align: right;">Page 4927</p> <p>1 A. I believe that's true, yes. 2 Q. So let me go back to my question. With 3 respect to the proposed transaction, you don't know 4 whether there's any kind of audit process for the 5 companies of FES, correct, under the proposed 6 transaction? 7 MR. OLIKER: Objection. That's vague. 8 But if the witness understands. 9 MR. KUTIK: Well, that's coaching, your 10 Honor. 11 EXAMINER PRICE: Let me try. Do you 12 understand whether there's any process for the 13 company to review the expenses proposed by FES as 14 part of the proposed transaction? 15 THE WITNESS: I'm sure there would be an 16 auditing process to verify a cost-based charge versus 17 an offsetting revenue. 18 Q. (By Mr. Kutik) That wasn't my question, 19 nor was it the attorney examiner's question. So let 20 me try it again. Isn't it true that you don't know 21 whether the proposed transaction has any kind of 22 audit process for the companies of FES? 23 A. In my testimony, I talk about a prudence 24 review between -- the contract between FirstEnergy 25 and FES. Is that what you're referring to?</p>

<p style="text-align: right;">Page 4928</p> <p>1 Q. No. Let me refer you to your deposition, 2 sir. Perhaps we can get to the heart of this. Page 3 161, are you there, sir? 4 A. Yes. 5 Q. And at line 10, did you not answer the 6 following question the following way: 7 Question: "Okay. And do you know 8 whether the proposed transaction includes any kind of 9 audit process for the companies?" 10 Answer: "I am not specifically aware so 11 I don't know." 12 That was your testimony, correct? 13 A. That's correct. 14 Q. Now, would it be fair to say that one of 15 the problems you have with rider RRS and the proposed 16 transaction is that you think that it would provide 17 FES with revenues that would be different than 18 suppliers receiving LMP-based compensation? 19 A. That's correct. 20 Q. Now, would it be fair to say that a 21 generator, a generation supplier, or a seller 22 receiving compensation other than LMP is not 23 prohibited by PJM rules? 24 A. I don't believe that falls under PJM 25 rules, no.</p>	<p style="text-align: right;">Page 4930</p> <p>1 generators into the markets. The companies are, and 2 the companies are receiving the direct wholesale 3 prices. 4 Q. That's not my question, sir. 5 MR. KUTIK: So I move to strike. 6 MR. OLIKER: Your Honor. 7 EXAMINER PRICE: Mr. Oliker? 8 MR. OLIKER: He's providing an 9 explanation. I think he doesn't agree with 10 Mr. Kutik's premise of his question. 11 EXAMINER PRICE: If he doesn't agree with 12 Mr. Kutik's premise, that would be something you 13 should bring out on redirect. So we'll grant the 14 motion to strike and direct the witness to answer the 15 question again. 16 Can you repeat your question? 17 MR. KUTIK: Sure. 18 Q. Isn't it true that OVEC is receiving a 19 different level of compensation for its capacity than 20 the uniform locational clearing price? 21 A. That's true. 22 Q. Now, Buckeye offered the output of the 23 plants that it controlled into the PJM markets, too, 24 correct? 25 MR. OLIKER: Objection, to the extent</p>
<p style="text-align: right;">Page 4929</p> <p>1 Q. So it's not prohibited, correct? 2 A. I don't believe so. 3 Q. What I said was correct? 4 A. Correct. 5 Q. And you formerly worked for Buckeye 6 Power, correct? 7 A. That's correct. 8 Q. And that is a part owner or sponsor of 9 OVEC, correct? 10 A. That's correct. 11 Q. And OVEC provided its output to various 12 owners, correct? 13 A. That's correct. 14 Q. And, in return, OVEC received cost-based 15 compensation for capacity? 16 A. That's the way I understand it, yes. 17 Q. And OVEC's output has been offered by at 18 least some of the OVEC owners into the PJM market, 19 correct? 20 A. That's correct. 21 Q. So OVEC, would it be correct to say, is 22 receiving a different level of compensation for its 23 capacity than the uniform locational clearing price, 24 correct? 25 A. OVEC isn't directly offering the</p>	<p style="text-align: right;">Page 4931</p> <p>1 that this may call for proprietary information that 2 belongs to Buckeye. I'm not sure the Mr. Haugen is 3 allowed to answer this question. 4 MR. KUTIK: He can answer the question 5 "yes" or "no," your Honor, and he did in his 6 deposition. 7 EXAMINER PRICE: Mr. Haugen, can you 8 answer this question without disclosing any 9 confidential information that you're aware of? 10 THE WITNESS: I believe it's known that 11 they offered the units into PJM, but I would like to 12 refrain from any strategies they used. 13 Q. (By Mr. Kutik) So the answer to my 14 question is yes, correct? 15 A. Yes. 16 Q. Now, would it be fair to say that Buckeye 17 receives cost-based compensation from its member 18 co-ops? 19 A. That's correct. 20 Q. And Buckeye -- would it be fair to say 21 that in this way Buckeye has received out-of-market 22 compensation? 23 A. That's correct. 24 Q. Now, you're familiar at a very high level 25 with the alternate energy mandates, are you not?</p>

Page 4932	Page 4934
<p>1 A. At a high level, yes.</p> <p>2 Q. And you review these requirements as a</p> <p>3 subsidy, do you not?</p> <p>4 A. CK they can be.</p> <p>5 Q. And they provide additional compensation</p> <p>6 to renewable resources, correct?</p> <p>7 A. They do independently of the wholesale</p> <p>8 markets.</p> <p>9 Q. And renewable resources also get tax</p> <p>10 credits, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And you think those are subsidies, too,</p> <p>13 correct?</p> <p>14 A. They can be subsidies independent of the</p> <p>15 wholesale markets.</p> <p>16 Q. Now, you're aware that renewable</p> <p>17 resources can participate in the PJM market, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And you're not aware of any rule that</p> <p>20 would bar Ohio or any state from subsidizing</p> <p>21 renewable resources, correct?</p> <p>22 A. I believe that if resources were being</p> <p>23 subsidized based off of a cost of differences to the</p> <p>24 wholesale markets, they could possibly be barred.</p> <p>25 Q. Mr. Haugen, let me refer you to your</p>	<p>1 A. That's correct.</p> <p>2 Q. And we also talked about the fact that</p> <p>3 you did no analysis of the effect of rider RRS on the</p> <p>4 PJM markets, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you're not aware of any specific</p> <p>7 generators that have been discouraged from building</p> <p>8 any new projects by any existing subsidies as you</p> <p>9 believe they are in PJM, correct?</p> <p>10 A. I haven't spoken with any companies</p> <p>11 directly about this.</p> <p>12 Q. So the answer is correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And you're aware that between 160 and 180</p> <p>15 thousand megawatts of generation cleared in last</p> <p>16 year's BRAs, correct?</p> <p>17 A. That sounds correct.</p> <p>18 Q. And you're aware that over</p> <p>19 140,000 megawatts was offered at zero in the</p> <p>20 2017-2018 BRA, correct?</p> <p>21 A. I don't have the exact numbers, but</p> <p>22 that's a very common strategy.</p> <p>23 Q. Would it be about 140,000, somewhere in</p> <p>24 that neighborhood?</p> <p>25 A. I don't have that number on hand, but it</p>
Page 4933	Page 4935
<p>1 deposition, page 135, please. And did you not answer</p> <p>2 the following question with the following answer</p> <p>3 starting at line 24 on page 135:</p> <p>4 Question: "Do you know whether there is</p> <p>5 any PJM rule that bars Ohio or any other state from</p> <p>6 subsidizing renewable resources?"</p> <p>7 Answer: "Not that I'm aware of."</p> <p>8 That was your deposition answer, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Now, you understand that there are areas</p> <p>11 of PJM that are nonretail choice, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And you don't know if the utilities</p> <p>14 owning generation in those areas receive generation</p> <p>15 through bundled retail rates, correct?</p> <p>16 A. I'm not aware of how companies outside of</p> <p>17 Ohio operate.</p> <p>18 Q. So the answer to my question was correct?</p> <p>19 A. Correct.</p> <p>20 Q. Now, let's talk about your testimony</p> <p>21 regarding the effect of rider RRS and the proposed</p> <p>22 transaction on the PJM market. You've already talked</p> <p>23 about the fact that before you filed your testimony,</p> <p>24 you didn't talk to anyone basically outside of IGS</p> <p>25 about rider RRS, do you remember that?</p>	<p>1 sounds reasonable.</p> <p>2 Q. If rider RRS is approved, the energy and</p> <p>3 capacity from the plants would continue to be offered</p> <p>4 into the PJM markets, correct?</p> <p>5 A. I believe so.</p> <p>6 Q. And the revenue received from offering</p> <p>7 that output into the PJM market will be paid by PJM</p> <p>8 based upon the market, just as it is today, correct?</p> <p>9 A. Yes, they would be paid the same way, but</p> <p>10 they could use different strategies to bid in.</p> <p>11 Q. Now, you're not aware of any regulated</p> <p>12 generation owned by any FirstEnergy affiliate or</p> <p>13 subsidiary, correct?</p> <p>14 A. Can you repeat that?</p> <p>15 Q. Sure. You're not aware of any regulated</p> <p>16 generation owned by FirstEnergy affiliate or</p> <p>17 subsidiary, correct?</p> <p>18 A. Not that I can recall.</p> <p>19 Q. And prior to filing your testimony,</p> <p>20 you've done no investigation about how any</p> <p>21 FirstEnergy affiliate or subsidiary would dispatch</p> <p>22 any regulated generation, fair to say?</p> <p>23 A. That's fair.</p> <p>24 Q. Prior to filing your testimony, you did</p> <p>25 no investigation into the bidding strategy that might</p>

<p style="text-align: right;">Page 4936</p> <p>1 accompany such generation, fair to say?</p> <p>2 A. Bidding strategies are not public</p> <p>3 information, so that's fair to say.</p> <p>4 Q. And prior to filing your testimony, you</p> <p>5 never read the testimony of company Witness Ruberto?</p> <p>6 A. That's right.</p> <p>7 Q. Now, you're aware that at least one</p> <p>8 electric distribution utility has a retail rate</p> <p>9 stability rider, correct?</p> <p>10 A. I believe so.</p> <p>11 Q. And you believe that AEP had one?</p> <p>12 A. That's my understanding.</p> <p>13 Q. And you're not aware of any other company</p> <p>14 that has one?</p> <p>15 A. No, but I've not looked specifically.</p> <p>16 Q. And that retail rate stability rider took</p> <p>17 effect in 2012 or 2013?</p> <p>18 A. I don't have the details with me.</p> <p>19 MR. KUTIK: Your Honor, we would ask that</p> <p>20 the Bench take administrative notice of two things.</p> <p>21 First, an entry dated August 22, 2012 in case No.</p> <p>22 11-346-EL-SSO, finding that tariffs were filed in</p> <p>23 compliance with the Commission's August 8, 2012 order</p> <p>24 in that case.</p> <p>25 And, second, the Commission's August 8th,</p>	<p style="text-align: right;">Page 4938</p> <p>1 page 141.</p> <p>2 A. Which page?</p> <p>3 Q. 141. I'm sorry. 143, starting at line</p> <p>4 17, did you not give the following answers to the</p> <p>5 following questions:</p> <p>6 Question: "Okay. Do you know whether</p> <p>7 the rate of generation additions in PJM has slowed</p> <p>8 down in any noticeable way starting in 2012?"</p> <p>9 Answer: "I would have to go look at rate</p> <p>10 additions. I don't have that on hand."</p> <p>11 Question: "So you can't answer that</p> <p>12 today?"</p> <p>13 Answer: "No, I can't answer that."</p> <p>14 Starting at line 8 of the same page I</p> <p>15 asked you:</p> <p>16 "Okay. Are you aware of any particular</p> <p>17 trends in the rate of retirements or the rate of</p> <p>18 generation -- rate of additions starting in 2012 and</p> <p>19 2013?"</p> <p>20 Answer, after an objection: "There's</p> <p>21 nothing I can think of right now other than what I</p> <p>22 said."</p> <p>23 MR. OLIKER: Your Honor, if you look at</p> <p>24 what he's said, he referring to his previous answer</p> <p>25 which Mr. Kutik conveniently left out.</p>
<p style="text-align: right;">Page 4937</p> <p>1 2012 Opinion and Order approving the retail rate</p> <p>2 stability rider at pages 26 through 38.</p> <p>3 MR. OLIKER: Your Honor, I don't know if</p> <p>4 it's necessary to take administrative notice of the</p> <p>5 Commission's entries and orders. I believe they</p> <p>6 speak for themselves, can cited freely by anybody as</p> <p>7 they so choose.</p> <p>8 EXAMINER PRICE: I agree with Mr. Oliker.</p> <p>9 You're free to cite the order.</p> <p>10 MR. KUTIK: Thank you, your Honor.</p> <p>11 Q. Now, you've looked at trends related to</p> <p>12 generations -- you've looked at trends relating to</p> <p>13 generation additions or retirements within PJM,</p> <p>14 correct?</p> <p>15 A. I have looked at some trends, yes.</p> <p>16 Q. And you're not aware of any particular</p> <p>17 trend in the rates of retirements or additions</p> <p>18 starting in 2012 or 2013, correct?</p> <p>19 A. Can you repeat that.</p> <p>20 Q. You're not aware of any particular trend</p> <p>21 in rates of retirement or additions starting in 2012</p> <p>22 or 2013, correct?</p> <p>23 A. There are some high-level trends that</p> <p>24 could stand out.</p> <p>25 Q. Let me refer you to your deposition, sir,</p>	<p style="text-align: right;">Page 4939</p> <p>1 EXAMINER PRICE: Which you'll be able to</p> <p>2 conveniently point out on redirect.</p> <p>3 Q. Is that your testimony, sir?</p> <p>4 A. This is my testimony, yes.</p> <p>5 Q. Now, you understand that fuel diversity</p> <p>6 creates a portfolio of resources that use several</p> <p>7 different fuels, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And the benefit of fuel diversity is that</p> <p>10 it reduces the risk of having a specific type of fuel</p> <p>11 that would disproportionately affect the market,</p> <p>12 correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Would it also be fair to say that you</p> <p>15 really haven't followed closely the price of coal</p> <p>16 versus the price of natural gas?</p> <p>17 A. I don't follow the price of coal very</p> <p>18 closely, no.</p> <p>19 Q. So what I said is correct?</p> <p>20 A. That's correct.</p> <p>21 Q. And you don't know if coal is relatively</p> <p>22 stable as compared to natural gas, therefore,</p> <p>23 correct?</p> <p>24 A. Historically speaking, that's an</p> <p>25 assumption that a lot of people make, but I don't</p>

<p style="text-align: right;">Page 4940</p> <p>1 have specifically.</p> <p>2 Q. So the answer to my question is correct?</p> <p>3 A. Correct.</p> <p>4 Q. And historically you believe that natural</p> <p>5 gas prices have been more volatile than coal prices,</p> <p>6 correct?</p> <p>7 A. Can you give me an historical time range?</p> <p>8 Q. Do you remember answering that question</p> <p>9 in your deposition, sir?</p> <p>10 A. I do, and I believe I said on a long-term</p> <p>11 range, coal had been more stable, but more recently</p> <p>12 there are a lot of factors that have stabilized</p> <p>13 natural gas prices.</p> <p>14 Q. Well, let me refer you to your deposition</p> <p>15 so we can be clear. Page 149, at line 22, did you</p> <p>16 not answer the following question the following way:</p> <p>17 Question: "Okay. But historically</p> <p>18 though is it my understanding that you believe that</p> <p>19 natural gas prices have been more volatile than coal</p> <p>20 prices?"</p> <p>21 Mr. Olikier objected.</p> <p>22 Answer: "Historically but that's due to</p> <p>23 other factors."</p> <p>24 Is that what you said?</p> <p>25 A. I wasn't following that. Could you point</p>	<p style="text-align: right;">Page 4942</p> <p>1 stronger influence on energy prices as more gas-fired</p> <p>2 plants come on line in PJM, holding everything else</p> <p>3 steady, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Now, I want to talk to you a little bit</p> <p>6 about the proposed audits for rider RRS. We</p> <p>7 mentioned them a little bit earlier. Your</p> <p>8 understanding of the process is only at a high level,</p> <p>9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And your understanding -- you understand</p> <p>12 that one audit would be to determine if the costs are</p> <p>13 reasonable, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And you've heard the term "prudence</p> <p>16 review," correct?</p> <p>17 A. Yes.</p> <p>18 Q. And you never participated in a prudence</p> <p>19 review, correct?</p> <p>20 A. I have not.</p> <p>21 Q. Or a cost tracker audit proceeding,</p> <p>22 correct?</p> <p>23 A. I have not.</p> <p>24 Q. Or even read any orders or filings in any</p> <p>25 such proceedings, correct?</p>
<p style="text-align: right;">Page 4941</p> <p>1 to line items?</p> <p>2 Q. Sure. Page 149, line 22. Are you there?</p> <p>3 A. Yes.</p> <p>4 Q. Question. "Okay. But historically</p> <p>5 though is it my understanding that you believe that</p> <p>6 natural gas prices have been more volatile than coal</p> <p>7 prices?"</p> <p>8 Mr. Olikier objected.</p> <p>9 And you answered: "Historically but</p> <p>10 that's due to other factors."</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Thank you.</p> <p>14 MR. OLIER: And I would object because</p> <p>15 it also ignored several asked and answered objections</p> <p>16 and his prior answers which clarified that.</p> <p>17 EXAMINER PRICE: Overruled. It's a</p> <p>18 proper matter for redirect.</p> <p>19 Q. Now, you understand, also, do you not,</p> <p>20 that wholesale prides in PJM aren't -- wholesale</p> <p>21 energy prices are typically driven at the margin by</p> <p>22 natural gas prices, correct?</p> <p>23 A. Historically, that's been a general</p> <p>24 understanding.</p> <p>25 Q. And natural gas prices will have a</p>	<p style="text-align: right;">Page 4943</p> <p>1 A. At the time that was correct, but I have</p> <p>2 since read the one in Michigan.</p> <p>3 Q. Certainly at the time you filed your</p> <p>4 testimony, you had not read it, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Now, your understanding of a prudence</p> <p>7 review is that you would look through the companies'</p> <p>8 decisions to make sure that they are the best ones</p> <p>9 available, correct?</p> <p>10 A. Ideally, yes.</p> <p>11 Q. Now, I want to talk to you a little bit</p> <p>12 about your comments on the effect of the audit on</p> <p>13 page 10, lines 4 through 15, of your testimony. Now,</p> <p>14 sir, would it be fair to say that you've never</p> <p>15 participated in a distribution base rate case,</p> <p>16 correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And you're not familiar with the criteria</p> <p>19 that the Commission uses to grant increases in base</p> <p>20 distribution rates, correct, or I should say</p> <p>21 distribution base rates, correct?</p> <p>22 A. I believe they use the cost-based</p> <p>23 formula, but I'm not familiar with it.</p> <p>24 Q. Well, for example, you don't know how the</p> <p>25 formula method of ratemaking works, correct?</p>

<p style="text-align: right;">Page 4944</p> <p>1 A. That's what I just said, yes.</p> <p>2 Q. And you don't know whether</p> <p>3 nondistribution revenues are considered in</p> <p>4 determining whether to grant an increase in</p> <p>5 distribution base rates?</p> <p>6 A. That's correct.</p> <p>7 Q. Now, I want to talk to you a little bit</p> <p>8 about the possibility or likelihood of the sale of</p> <p>9 the plants. You've never had any decision-making</p> <p>10 responsibility for capital expenditures for</p> <p>11 generation plants, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. You've never had any decision-making</p> <p>14 responsibility with respect to environmental upgrades</p> <p>15 at generation plants, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And you've never had any decision-making</p> <p>18 responsibilities whether to sell or purchase a</p> <p>19 generation plant, correct?</p> <p>20 A. I've provided analysis and</p> <p>21 recommendations on purchasing, but not selling.</p> <p>22 Q. So the answer to my question is correct?</p> <p>23 A. I was never the final decision-maker,</p> <p>24 that's correct.</p> <p>25 Q. Now, you would agree with me that certain</p>	<p style="text-align: right;">Page 4946</p> <p>1 lowest value levels, correct?</p> <p>2 A. It wouldn't be an ideal situation.</p> <p>3 Q. And would it be fair to say that you</p> <p>4 don't know how much FES could sell Sammis or</p> <p>5 Davis-Besse for, correct?</p> <p>6 A. I do not know.</p> <p>7 Q. And I don't want you to reveal any</p> <p>8 particular numbers, and if you could answer this</p> <p>9 question "yes" or "no," I'd appreciate it. If you</p> <p>10 can't answer yes or no, tell us. You don't know</p> <p>11 whether Davis-Besse or Sammis are currently operating</p> <p>12 at a positive or negative margin, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And you haven't reviewed the historical</p> <p>15 capital expenditures or environmental upgrades at</p> <p>16 Sammis, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And you haven't analyzed what future</p> <p>19 environmental capital expenditures at Sammis might be</p> <p>20 necessary, if any?</p> <p>21 A. That's correct.</p> <p>22 Q. And you haven't reviewed the companies or</p> <p>23 FES's capital expenditure forecast for Sammis,</p> <p>24 correct?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">Page 4945</p> <p>1 plants are not sold because they're retired, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And one of the reasons why the plants are</p> <p>4 retired is that there's no practical way to keep the</p> <p>5 plants profitable and, therefore, they wouldn't be</p> <p>6 worth anything to sell?</p> <p>7 A. That's correct.</p> <p>8 Q. And right now you would agree that we are</p> <p>9 kind of in a low period as far as energy prices are</p> <p>10 concerned, correct?</p> <p>11 A. Due to several different factors, that's</p> <p>12 correct.</p> <p>13 Q. And at lower energy price levels, the</p> <p>14 value of any particular unit or generation unit is</p> <p>15 currently relatively low compared to other periods of</p> <p>16 time, correct?</p> <p>17 A. That's correct. But it was a decision of</p> <p>18 the companies to hold on to the units during other</p> <p>19 periods of time.</p> <p>20 MR. KUTIK: Move to strike, your Honor,</p> <p>21 everything including the word "but" and after that</p> <p>22 word.</p> <p>23 EXAMINER PRICE: Sustained.</p> <p>24 Q. Now, you would agree with me, would you</p> <p>25 not, that typically you don't sell things at their</p>	<p style="text-align: right;">Page 4947</p> <p>1 Q. And you have no idea what the cost</p> <p>2 profile for Davis-Besse, Sammis, or the OVEC plants</p> <p>3 has been or will be?</p> <p>4 A. I was not privy to any cost information.</p> <p>5 Q. So the answer to my question is correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Now, regarding your comments on FES</p> <p>8 selling or keeping the plants, you would not consider</p> <p>9 yourself an expert on shareholder tolerance for</p> <p>10 losses, would you?</p> <p>11 A. I believe those tolerances would be up to</p> <p>12 the individual shareholders, so I cannot speak for</p> <p>13 them.</p> <p>14 Q. You would not consider yourself an expert</p> <p>15 on shareholder tolerance for losses, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you would not consider yourself an</p> <p>18 expert on shareholder attitudes about the recovery of</p> <p>19 some costs, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And you've done no analysis of</p> <p>22 FirstEnergy's generation portfolio, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Now, you would agree with me, would you</p> <p>25 not, that it could be reasonable for FES to be</p>

<p style="text-align: right;">Page 4948</p> <p>1 concerned about short-term losses?</p> <p>2 A. I believe it's reasonable for any company</p> <p>3 to be concerned about losses.</p> <p>4 Q. And it could be reasonable for FES to be</p> <p>5 willing to give up future gains to reduce the risk of</p> <p>6 short-term losses in certain circumstances, correct?</p> <p>7 A. I believe there are multiple scenarios</p> <p>8 that would be looked at when reviewing whether to</p> <p>9 avoid short-term losses for long-term gains.</p> <p>10 Q. So the answer to my question is in some</p> <p>11 cases, yes, correct?</p> <p>12 A. In some cases, correct.</p> <p>13 Q. And it could be prudent for FES to hedge</p> <p>14 its risks in its portfolio by seeking cost-based</p> <p>15 recovery for a small portion of their portfolio while</p> <p>16 allowing the rest of the units prices to fluctuate</p> <p>17 with the market, correct?</p> <p>18 A. I don't agree that it would be prudent.</p> <p>19 Q. Let me refer you to your deposition, sir,</p> <p>20 page 169. This is on line 13:</p> <p>21 Question: "Okay. Do you think it would</p> <p>22 be prudent for FirstEnergy Solutions to hedge its</p> <p>23 risks by seeking cost base recovery for a short --</p> <p>24 small portion of their assets while allowing the rest</p> <p>25 of their assets to fluctuate with market prices?"</p>	<p style="text-align: right;">Page 4950</p> <p>1 A. I've not seen the details of any cost</p> <p>2 model.</p> <p>3 EXAMINER PRICE: Your counsel had a</p> <p>4 pending objection, which is now moot, but I was going</p> <p>5 to overrule it anyway, so I guess it doesn't matter.</p> <p>6 THE WITNESS: I apologize.</p> <p>7 Q. You're not aware of any analysis done by</p> <p>8 Mr. Ruberto, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Or Mr. Lisowski, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And you didn't read the testimony, I</p> <p>13 think we said earlier, about Mr. Ruberto, but you</p> <p>14 didn't read the testimony of Mr. Lisowski either,</p> <p>15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Now, you did look at Mr. Rose's</p> <p>18 information, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And what you did with Mr. Rose was you</p> <p>21 looked at forward curves, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And would you agree with me that</p> <p>24 generally the longer one goes out on the forward</p> <p>25 curve, the less liquid the market is?</p>
<p style="text-align: right;">Page 4949</p> <p>1 Answer: "Any sort of hedge is going to</p> <p>2 reduce risk. You know, how they spread that risk</p> <p>3 tolerance would be up to them."</p> <p>4 Question: Okay. So that wouldn't be --</p> <p>5 that wouldn't be one potential way to hedge risks,</p> <p>6 right -- let me strike that.</p> <p>7 "So that wouldn't be -- that would be one</p> <p>8 potential way to hedge risks, right?"</p> <p>9 Answer: "It would be -- yes, because</p> <p>10 that would be one way to hedge that portion of the</p> <p>11 risk."</p> <p>12 That was your testimony, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Now, I want to talk to you a little bit</p> <p>15 about your testimony, whether rider RRS will provide</p> <p>16 a hedge. You have a statement about Mr. Strah's</p> <p>17 assumptions on page -- I believe it's page 12 of your</p> <p>18 direct testimony.</p> <p>19 A. Is that a question?</p> <p>20 Q. Yes.</p> <p>21 A. Yes, I do.</p> <p>22 Q. Now, isn't it true that you haven't seen</p> <p>23 the details of Mr. Strah's cost model?</p> <p>24 MR. OLIKER: Objection, asked and</p> <p>25 answered. I think this is the third time.</p>	<p style="text-align: right;">Page 4951</p> <p>1 A. I would agree that it is less liquid, but</p> <p>2 not illiquid.</p> <p>3 Q. Well, forward prices that are more than</p> <p>4 three years out represent a relatively illiquid</p> <p>5 market; would you agree with that?</p> <p>6 A. I would agree that they would appear</p> <p>7 illiquid, but that doesn't mean I couldn't go</p> <p>8 purchase much longer than that today.</p> <p>9 MR. KUTIK: Your Honor, I move to strike</p> <p>10 everything including and after the word "but."</p> <p>11 MR. OLIKER: Your Honor, he's merely</p> <p>12 providing a complete answer to Mr. Kutik.</p> <p>13 EXAMINER PRICE: I'm going to deny the</p> <p>14 motion to strike.</p> <p>15 Q. Mr. Haugen, you've seen the Commission's</p> <p>16 website called Apples to Apples?</p> <p>17 A. I have.</p> <p>18 Q. And would you agree with me that</p> <p>19 customers believe that stable prices are a benefit?</p> <p>20 A. I believe a lot of customers feel that</p> <p>21 way, yes.</p> <p>22 Q. And you believe that there are benefits</p> <p>23 to IGS customers entering into long-term contracts?</p> <p>24 A. Stability is one of those, yes.</p> <p>25 Q. And, particularly, long-term contracts</p>

<p style="text-align: right;">Page 4952</p> <p>1 have a fixed price?</p> <p>2 A. Correct.</p> <p>3 Q. And most of the products that IGS offers</p> <p>4 to customers in Ohio are for one to three years -- or</p> <p>5 one or three years? Excuse me.</p> <p>6 MR. OLIKER: Your Honor --</p> <p>7 MR. KUTIK: Let me rephrase.</p> <p>8 MR. OLIKER: I want to be careful we</p> <p>9 don't cross over to proprietary information.</p> <p>10 MR. KUTIK: I want to be sensitive to</p> <p>11 Mr. Olier's concerns, so let me rephrase the</p> <p>12 question.</p> <p>13 Q. Isn't it true that if we look at the</p> <p>14 Apples to Apples website for IGS products, we would</p> <p>15 see products for one or three years?</p> <p>16 MR. OLIKER: You're referring to today,</p> <p>17 Mr. Kutik?</p> <p>18 MR. KUTIK: Any period of time that he's</p> <p>19 aware of.</p> <p>20 A. The Apples to Apples website shows a very</p> <p>21 limited number of products that we offer but are</p> <p>22 generally between one and three years.</p> <p>23 Q. Thank you. And isn't it true that most</p> <p>24 residential customers are either at one or three</p> <p>25 years in terms of having service provided by a CRES</p>	<p style="text-align: right;">Page 4954</p> <p>1 EXAMINER PRICE: Mr. Olier, knock it</p> <p>2 off.</p> <p>3 MR. OLIKER: I don't believe that what</p> <p>4 Mr. Kutik has purported is on these pages, your</p> <p>5 Honor, from my quick review.</p> <p>6 EXAMINER PRICE: I think it's a slightly</p> <p>7 different question asked in the deposition than what</p> <p>8 you asked today.</p> <p>9 MR. KUTIK: Sure.</p> <p>10 Q. (By Mr. Kutik) Would it be fair to say</p> <p>11 that the typical contracts that are offered by IGS</p> <p>12 are 12- or 36-month contracts?</p> <p>13 A. Our marketing department has determined</p> <p>14 that a lot of customers gravitate towards those</p> <p>15 terms, so those are what we typically offer.</p> <p>16 Q. So the answer to my question is yes?</p> <p>17 A. Yes.</p> <p>18 Q. Now, you'd agree with me, would you not,</p> <p>19 that once a customer's contract term is over, they</p> <p>20 have to sign a new contract, or they may sign a new</p> <p>21 contract?</p> <p>22 A. They may.</p> <p>23 Q. And that contract may have a new price?</p> <p>24 A. It could.</p> <p>25 Q. Now, you wouldn't be surprised to see</p>
<p style="text-align: right;">Page 4953</p> <p>1 provider, as far as you know?</p> <p>2 A. I can't state that most customers are on</p> <p>3 that.</p> <p>4 Q. Would it be fair to say that most of</p> <p>5 IGS's customers, retail customers, in Ohio enter</p> <p>6 into 12- or 36-month contracts?</p> <p>7 MR. OLIKER: Objection. That calls for a</p> <p>8 confidential response regarding IGS's book of</p> <p>9 business.</p> <p>10 MR. KUTIK: He answered that in the</p> <p>11 nonconfidential portion of his deposition, your</p> <p>12 Honor.</p> <p>13 MR. OLIKER: That may be so, but it's not</p> <p>14 the case today.</p> <p>15 EXAMINER PRICE: It became confidential</p> <p>16 since the deposition?</p> <p>17 MR. OLIKER: I'd have to look at the</p> <p>18 deposition to verify that, your Honor.</p> <p>19 EXAMINER PRICE: What page, Mr. Kutik?</p> <p>20 MR. KUTIK: 181, your Honor, starting at</p> <p>21 line 18 through 182, line 6.</p> <p>22 MR. OLIKER: If it is, I would say it's</p> <p>23 an inadvertent disclosure that pursuant to our</p> <p>24 confidentiality agreement we'd be allowed to retract,</p> <p>25 assuming you respect those terms, Mr. Kutik.</p>	<p style="text-align: right;">Page 4955</p> <p>1 that year to year or over a period that approximates</p> <p>2 a year, IGS customers that are in excess of one-year</p> <p>3 contracts might experience increases of 30 percent?</p> <p>4 MR. OLIKER: Could I have that question</p> <p>5 read back, please?</p> <p>6 EXAMINER PRICE: You may.</p> <p>7 (Record read.)</p> <p>8 MR. OLIKER: Your Honor, first, I would</p> <p>9 say if he knows the answer to that question, he can</p> <p>10 provide it, but I don't believe he can provide it in</p> <p>11 the nonpublic portion of the transcript because it</p> <p>12 deals with IGS pricing.</p> <p>13 EXAMINER PRICE: Mr. Kutik?</p> <p>14 MR. KUTIK: Your Honor, I believe this is</p> <p>15 information that's publicly available from the</p> <p>16 website, as I'll demonstrate in just a few minutes.</p> <p>17 EXAMINER PRICE: We'll go ahead and give</p> <p>18 him some leeway.</p> <p>19 MR. OLIKER: Then I would prefer that</p> <p>20 Mr. Kutik do that using public information.</p> <p>21 EXAMINER PRICE: I think he's saying he's</p> <p>22 intending to.</p> <p>23 Q. (By Mr. Kutik) Can you answer that</p> <p>24 question, sir?</p> <p>25 A. Once customers roll off their primary</p>

25 (Pages 4952 to 4955)

<p style="text-align: right;">Page 4956</p> <p>1 term, we typically offer them another fixed term. If</p> <p>2 they decide to stay on a variable term, their prices</p> <p>3 can fluctuate up or down.</p> <p>4 Q. As much as 30 percent?</p> <p>5 A. I don't have the exact percentages with</p> <p>6 me.</p> <p>7 Q. You wouldn't be surprised if that's</p> <p>8 30 percent?</p> <p>9 A. I believe it could probably fluctuate up</p> <p>10 or down within 30 percent.</p> <p>11 MR. KUTIK: Your Honor, I'd like to have</p> <p>12 marked at this time two documents. First, as Company</p> <p>13 Exhibit 82 for identification, a document that</p> <p>14 says -- that's from the PUCO website, FirstEnergy</p> <p>15 Apples to Apples chart, dated September 16, 2013, and</p> <p>16 that's Company Exhibit 82.</p> <p>17 EXAMINER PRICE: So marked.</p> <p>18 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>19 MR. KUTIK: And as Company Exhibit 83, we</p> <p>20 would ask to have marked a document EnergyChoice Ohio</p> <p>21 Apples to Apples chart, Ohio Edison, dated June 13,</p> <p>22 2014.</p> <p>23 EXAMINER PRICE: Be so marked.</p> <p>24 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>25 MR. KUTIK: May I approach?</p>	<p style="text-align: right;">Page 4958</p> <p>1 Q. (By Mr. Kutik) Looking at Exhibit 82,</p> <p>2 the September 2013 document, we see prices or offers</p> <p>3 for IGS?</p> <p>4 A. That's correct.</p> <p>5 Q. And looking at the next-to-last page, you</p> <p>6 see the third one down, an IGS offer for 12 months,</p> <p>7 correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And we see a fixed price for 6.19 cents</p> <p>10 per kilowatt-hour, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Now, let me have you refer to Exhibit 83,</p> <p>13 which is the document from the Apples to Apples chart</p> <p>14 for June 13, 2014. And let me have you refer to page</p> <p>15 4 of 7, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And we see two IGS offers there; do we</p> <p>18 not?</p> <p>19 A. We do.</p> <p>20 Q. For a length of 12 months; do we not?</p> <p>21 A. We do.</p> <p>22 Q. And the price there is a 7.99 cents per</p> <p>23 kilowatt-hour and 8.29 cents per kilowatt-hour,</p> <p>24 correct?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">Page 4957</p> <p>1 EXAMINER PRICE: You may.</p> <p>2 Q. Mr. Haugen, do you recognize Exhibits 82</p> <p>3 and 83 from the website sponsored by the PUCO?</p> <p>4 A. It is.</p> <p>5 Q. And do you see that there are product</p> <p>6 listings for IGS?</p> <p>7 MR. OLIKER: Objection.</p> <p>8 EXAMINER PRICE: Grounds?</p> <p>9 MR. OLIKER: He hasn't established that</p> <p>10 Mr. Haugen has ever actually seen these documents.</p> <p>11 He's only asked whether they're from the PUCO, so</p> <p>12 there's a lack of foundation.</p> <p>13 MR. KUTIK: Your Honor, he said he's been</p> <p>14 to the Apples to Apples website. He's identified</p> <p>15 these as being from the Apples to Apples website and</p> <p>16 that's what they appear to be.</p> <p>17 MR. OLIKER: It's a different issue.</p> <p>18 EXAMINER PRICE: The alternative is he</p> <p>19 discloses confidential information. You asked him to</p> <p>20 do this in public sources, so now you're objecting to</p> <p>21 the public sources, so we're going to give him a</p> <p>22 little leeway to avoid the confidential information</p> <p>23 you're seeking to protect.</p> <p>24 MR. OLIKER: Thank you.</p> <p>25 EXAMINER PRICE: Please proceed.</p>	<p style="text-align: right;">Page 4959</p> <p>1 Q. And would you accept, subject to check,</p> <p>2 the difference between what we see in Exhibit 82 and</p> <p>3 Exhibit 83 in terms of the IGS one-year offers is</p> <p>4 between 29 and 34 percent?</p> <p>5 A. I would have to do the math. It seems</p> <p>6 reasonable.</p> <p>7 Q. I want to talk to you about your</p> <p>8 testimony regarding coal availability. Now, as an</p> <p>9 initial matter, when you filed your testimony, you</p> <p>10 didn't know how Sammis gets its coal, correct?</p> <p>11 A. I believe I provided a projection in my</p> <p>12 deposition.</p> <p>13 Q. That wasn't my question. My question is,</p> <p>14 you didn't know how Sammis gets its coal, correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And you didn't know of any difficulties</p> <p>17 that Sammis or Clifty Creek or Kyger Creek have had</p> <p>18 getting any coal, correct?</p> <p>19 A. I don't believe that's been public</p> <p>20 information that I would even have available.</p> <p>21 Q. So you don't know, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And you don't know what the level of coal</p> <p>24 inventory is at any of these plants, correct?</p> <p>25 A. That's correct.</p>

<p style="text-align: right;">Page 4960</p> <p>1 Q. And isn't it true that the coal</p> <p>2 restraints or the rail restraints that you refer to</p> <p>3 applied only to coal from out West?</p> <p>4 A. As far as I understand it, yes.</p> <p>5 MR. KUTIK: May I approach, your Honor?</p> <p>6 EXAMINER PRICE: You may.</p> <p>7 MR. KUTIK: We'd like to have marked as</p> <p>8 Company Exhibit 84 a document entitled "Coal Delivery</p> <p>9 Issues for Electric Generation, Staff Overview."</p> <p>10 EXAMINER PRICE: It will be so marked.</p> <p>11 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>12 Q. Mr. Haugen, you've seen that document</p> <p>13 before; have you not?</p> <p>14 A. I have.</p> <p>15 Q. This is a document you cited in your</p> <p>16 testimony, correct?</p> <p>17 A. It was this document combined with</p> <p>18 another.</p> <p>19 Q. But this was one of them?</p> <p>20 A. Correct.</p> <p>21 Q. Would it be fair to say that this</p> <p>22 document says nothing about Ohio or PJM, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. For example, we can look at slide 3, and</p> <p>25 it doesn't mention Ohio in that, does it?</p>	<p style="text-align: right;">Page 4962</p> <p>1 before?</p> <p>2 A. I have not.</p> <p>3 MR. KUTIK: Your Honor, I ask the Bench</p> <p>4 to take administrative notice of this page from</p> <p>5 the PUCO's website.</p> <p>6 EXAMINER PRICE: We will.</p> <p>7 MR. KUTIK: Now, your Honor, at this time</p> <p>8 we'd like to have marked as Company Exhibit 86 a</p> <p>9 document entitled "December 18, 2014, FERC Rail</p> <p>10 Service Panel, Dave McMillan Statement."</p> <p>11 EXAMINER PRICE: It will be so marked.</p> <p>12 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>13 MR. KUTIK: May I approach?</p> <p>14 EXAMINER PRICE: You may.</p> <p>15 Q. Mr. Haugen, the document that I just</p> <p>16 handed you which we've marked as Company Exhibit 86,</p> <p>17 that's another document you cited, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And would it be fair to say that one of</p> <p>20 the things that Mr. McMillan is talking about is the</p> <p>21 problems with delivery for a railroad company called</p> <p>22 BNSF?</p> <p>23 A. That's correct.</p> <p>24 Q. And would it be fair to say, sir, that</p> <p>25 BNSF does not do business in Ohio?</p>
<p style="text-align: right;">Page 4961</p> <p>1 A. It does not.</p> <p>2 Q. And if we look at slide 5 -- excuse me.</p> <p>3 A page that says slide 5, but not the page with the</p> <p>4 text underneath, it talks about a handful of</p> <p>5 generating companies in MISO and SPP, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Do you know what SPP stands for?</p> <p>8 A. Southern Power Pool.</p> <p>9 Q. Do you know where that is?</p> <p>10 A. Yes.</p> <p>11 Q. And that's -- Ohio is not in SPP,</p> <p>12 correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Now, would you agree with me that Ohio is</p> <p>15 a relatively high railroad traffic state?</p> <p>16 A. I have no basis to make that assumption.</p> <p>17 MR. KUTIK: Your Honor, at this time we</p> <p>18 would like to have marked as Company Exhibit 85 a</p> <p>19 document that's from the PUCO website entitled</p> <p>20 "Railroad Industry Information."</p> <p>21 EXAMINER PRICE: It will be so marked.</p> <p>22 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>23 MR. KUTIK: May I approach?</p> <p>24 EXAMINER PRICE: You may.</p> <p>25 Q. Mr. Haugen, have you ever seen that</p>	<p style="text-align: right;">Page 4963</p> <p>1 A. I'm not aware of all the railways in</p> <p>2 Ohio.</p> <p>3 Q. Are you aware, sir, of whether railroads</p> <p>4 operating in Ohio have to be registered or certified?</p> <p>5 A. I can assume there's probably some</p> <p>6 industry standards, but I'm not aware of it.</p> <p>7 Q. Would you expect that the PUCO as an</p> <p>8 organization that regulates railroads would have a</p> <p>9 list of railroads that do business in Ohio?</p> <p>10 A. They could.</p> <p>11 EXAMINER PRICE: We were formerly the</p> <p>12 Ohio Rail Commission.</p> <p>13 MR. KUTIK: Your Honor, we would like to</p> <p>14 have marked as Company Exhibit 87 a page from the</p> <p>15 PUCO website, "Regulated Company List" for railroads.</p> <p>16 EXAMINER PRICE: Will be so marked.</p> <p>17 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>18 MR. KUTIK: May I approach?</p> <p>19 EXAMINER PRICE: You may.</p> <p>20 Q. Mr. Haugen, have you ever seen that</p> <p>21 document before?</p> <p>22 A. I have not.</p> <p>23 MR. KUTIK: Your Honor, I'd ask the Bench</p> <p>24 take administrative notice of the regulated company</p> <p>25 list for railroads on the PUCO website.</p>

<p style="text-align: right;">Page 4964</p> <p>1 EXAMINER PRICE: We will take 2 administrative notice. 3 Q. Now, I want to talk to you a little bit 4 about possible issues of delivery of power from the 5 OVEC plants. Both of those plants are in their own 6 balancing authority, correct? 7 A. That's correct, I believe. 8 Q. And both of those plants currently bid 9 into the PJM markets, correct? 10 A. I believe that most of the sponsoring 11 companies do. 12 Q. And you're familiar with the PJM import 13 rules that were approved by FERC in spring of 2014? 14 A. I am. 15 Q. And the rules were needed because 16 resources were clearing BRA without firm 17 transportation to deliver into PJM? 18 A. That's correct. 19 Q. And the rules contained exceptions for 20 pseudo-tied units, correct? 21 A. They did. 22 Q. And PJM defines pseudo-tied units as 23 electrically equivalent to internal resources, 24 correct? 25 A. I believe so.</p>	<p style="text-align: right;">Page 4966</p> <p>1 how the companies may have recovered any stranded 2 costs? 3 MR. OLIKER: Do you have a page cite, 4 Mr. Kutik? 5 EXAMINER PRICE: He's not asking about a 6 specific page. 7 There's a pending question. You can 8 answer it. 9 A. Yes. 10 Q. Okay. Let me go back to my question. 11 You have made no study of whether or how the 12 companies may have recovered any stranded costs, 13 correct? 14 A. I have not. 15 Q. And you're not aware -- you're not 16 familiar with the term "market development period" in 17 the Ohio market, correct? 18 A. I've heard of the term, but I can't think 19 of the time period right now. 20 Q. And you didn't review the companies' 21 transition plan case? 22 A. I have not. 23 Q. And you don't know what a rate stability 24 plan is, correct? 25 A. Correct.</p>
<p style="text-align: right;">Page 4965</p> <p>1 Q. And the OVEC units are pseudo-tied, 2 correct? 3 A. That's my understanding. 4 Q. And pseudo-tied units are subject to 5 day-ahead energy must-offer obligations just like an 6 internal unit? 7 A. Resources that clear in the base residual 8 auction are required to offer in resources the same. 9 Q. So the answer to my question is yes? 10 A. Yes. 11 Q. And they have also a capacity must-offer 12 obligation, just like any other internal resource, 13 correct? 14 A. I believe so. 15 Q. As resources being located where they 16 are, PJM requires the OVEC plants to have firm 17 transmission service into PJM, correct? 18 A. That's correct. 19 Q. And you're aware that FES has firm 20 transmission for its entitlement to the OVEC output, 21 correct? 22 A. That's correct. 23 Q. I want to talk to you a little bit about 24 your testimony on recovery of stranded costs. Would 25 it be fair to say you've made no study of whether or</p>	<p style="text-align: right;">Page 4967</p> <p>1 Q. And you don't know what a rate certainty 2 plan is, correct? 3 A. I can make assumptions, but that's 4 correct. 5 Q. So would it be fair to say you haven't 6 reviewed the companies' cases involving either a rate 7 stabilization plan or a rate certainty plan? 8 A. I have not. 9 MR. KUTIK: May I have one moment? 10 EXAMINER PRICE: You may. 11 (Discussion off the record.) 12 MR. KUTIK: May I proceed, your Honor? 13 EXAMINER PRICE: You may. 14 Q. Going back to the coal issue for a 15 moment. Would it be fair to say that no plant from 16 Ohio or even PJM has experienced any difficulty as 17 far as you know? 18 A. I would have no way of knowing that 19 either way. 20 Q. So the answer to my question is yes? 21 A. Yes. 22 MR. KUTIK: I have no further questions. 23 Thank you, sir. 24 EXAMINER PRICE: Thank you. 25 Mr. Kurtz.</p>

<p style="text-align: right;">Page 4968</p> <p>1 MR. KURTZ: Thank you, your Honor.</p> <p>2 ---</p> <p>3 CROSS-EXAMINATION</p> <p>4 By Mr. Kurtz:</p> <p>5 Q. Just very briefly. IGS Energy is a</p> <p>6 privately-held company?</p> <p>7 A. That's correct.</p> <p>8 Q. So the finances, the income statement is</p> <p>9 not publicly available?</p> <p>10 A. It's not.</p> <p>11 Q. Isn't it true that one of IGS's core</p> <p>12 businesses in Ohio is as a CRES electric supplier?</p> <p>13 A. That's correct.</p> <p>14 Q. And it's true also, isn't it, that one of</p> <p>15 IGS's main competitors is FES?</p> <p>16 A. They are a competitor.</p> <p>17 Q. You're aware that the companies' position</p> <p>18 in this case is that approval of the RRS will benefit</p> <p>19 both consumers and FES, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Assuming that's true, wouldn't approval</p> <p>22 of the RRS hurt IGS's competitive position by helping</p> <p>23 a competitor? Let me rephrase. Do you think it's a</p> <p>24 proper use of the regulatory process to use it as a</p> <p>25 mechanism to gain an advantage over a competitor in</p>	<p style="text-align: right;">Page 4970</p> <p>1 EXAMINER PRICE: Another provision is</p> <p>2 they're allowed to opt to, apply for a request, would</p> <p>3 be a provision to pay for the cost of service to</p> <p>4 construct a new generation facility through a</p> <p>5 nonbypassable charge; is that right?</p> <p>6 THE WITNESS: I'm not familiar with that.</p> <p>7 EXAMINER PRICE: You're not familiar with</p> <p>8 the provision in the ESP statute that allows an</p> <p>9 electric utility to request the Commission's</p> <p>10 authority for a nonbypassable charge to construct an</p> <p>11 electric generation facility?</p> <p>12 THE WITNESS: I'm not familiar with it.</p> <p>13 EXAMINER PRICE: Are you familiar with</p> <p>14 the provision in the ESP statute that allows an EDU</p> <p>15 to have an automatic adjustment clause for fuel</p> <p>16 charges?</p> <p>17 THE WITNESS: I am.</p> <p>18 EXAMINER PRICE: Any of those three</p> <p>19 charges that we've discussed, do you think those are</p> <p>20 reflective of a competitive service?</p> <p>21 THE WITNESS: I believe any generation</p> <p>22 service would be reflective of a competitive service</p> <p>23 in the wholesale energy markets if they're being</p> <p>24 offered.</p> <p>25 EXAMINER PRICE: Yes, but as you and I</p>
<p style="text-align: right;">Page 4969</p> <p>1 the CRES market?</p> <p>2 A. I do not.</p> <p>3 MR. KURTZ: Thank you, your Honor.</p> <p>4 EXAMINER PRICE: Thank you. Before we go</p> <p>5 on to redirect, I just have a couple questions. If</p> <p>6 you could turn to page 6 of your testimony, line 20,</p> <p>7 you indicate in your testimony that "generation</p> <p>8 service is a competitive service under Ohio law"; is</p> <p>9 that correct.</p> <p>10 THE WITNESS: That's the way I understand</p> <p>11 it, correct.</p> <p>12 EXAMINER PRICE: Irrespective of</p> <p>13 4928.143, the company is required to offer a standard</p> <p>14 service offer; are they not?</p> <p>15 THE WITNESS: That's correct.</p> <p>16 EXAMINER PRICE: And they can offer</p> <p>17 either a market rate offer or an electric security</p> <p>18 plan; is that correct?</p> <p>19 THE WITNESS: That's correct.</p> <p>20 EXAMINER PRICE: If they offer an</p> <p>21 electric security plan, one of the provisions they're</p> <p>22 allowed is to have a construction work-in-progress</p> <p>23 provision to allow the construction of generation</p> <p>24 plants; isn't that right?</p> <p>25 THE WITNESS: I believe so.</p>	<p style="text-align: right;">Page 4971</p> <p>1 both agree, 4928 only applies to retail electric</p> <p>2 service; isn't that correct?</p> <p>3 THE WITNESS: That's correct.</p> <p>4 EXAMINER PRICE: So could you answer my</p> <p>5 question again ignoring the wholesale aspect of this?</p> <p>6 THE WITNESS: Okay. I believe under the</p> <p>7 law that -- the way I understand it is that it's not</p> <p>8 prohibited to build a generator as a utility, so it</p> <p>9 is a possibility.</p> <p>10 EXAMINER PRICE: Thank you. And, last,</p> <p>11 are you familiar -- if I say Senate Bill 221, do you</p> <p>12 know what I'm talking about?</p> <p>13 THE WITNESS: Is that the renewable</p> <p>14 energy requirement?</p> <p>15 EXAMINER PRICE: That was part of Senate</p> <p>16 Bill 221. Senate Bill 221 amended 4928.14; did it</p> <p>17 not?</p> <p>18 THE WITNESS: Yes.</p> <p>19 EXAMINER PRICE: And when it amended</p> <p>20 4928.14, it dropped the term "market based" from the</p> <p>21 description of standard service offer; did it not?</p> <p>22 THE WITNESS: I believe so.</p> <p>23 EXAMINER PRICE: Thank you.</p> <p>24 Redirect?</p> <p>25 MR. OLIKER: Could we have a few minutes,</p>

<p style="text-align: right;">Page 4972</p> <p>1 your Honor?</p> <p>2 EXAMINER PRICE: I'm sorry. Mr. McNamee.</p> <p>3 MR. MCNAMEE: I have no questions.</p> <p>4 EXAMINER PRICE: Thank you.</p> <p>5 Redirect?</p> <p>6 MR. OLIKER: May we have a few minutes,</p> <p>7 your Honor?</p> <p>8 EXAMINER PRICE: You may.</p> <p>9 Let's go off the record.</p> <p>10 (Recess taken.)</p> <p>11 EXAMINER PRICE: Mr. Oliker, redirect?</p> <p>12 MR. OLIKER: Thank you, your Honor.</p> <p>13 ---</p> <p>14 REDIRECT EXAMINATION</p> <p>15 By Mr. Oliker:</p> <p>16 Q. Mr. Haugen, do you remember some</p> <p>17 questions you received from Mr. Kutik about the</p> <p>18 Apples to Apples chart which is contained in, I</p> <p>19 believe, Exhibits 82 and 83?</p> <p>20 A. I do.</p> <p>21 Q. And are there any differences that you</p> <p>22 can note between the products that are contained in</p> <p>23 those two exhibits?</p> <p>24 A. When he was questioning me, he was asking</p> <p>25 me about customers who were with us over 12 months</p>	<p style="text-align: right;">Page 4974</p> <p>1 to make?</p> <p>2 A. I believe he was referring to the rider</p> <p>3 RRS which would subsidize residential customers using</p> <p>4 generation services; is that correct?</p> <p>5 Q. Maybe I'll ask it this way, Mr. Haugen.</p> <p>6 When you indicated that a distribution rate could be</p> <p>7 subsidized, what was the context of your use of that</p> <p>8 word subsidy?</p> <p>9 MR. KUTIK: Your Honor, that</p> <p>10 mischaracterizes the question. The question is you</p> <p>11 believe the only type of service that can be</p> <p>12 subsidized is noncompetitive.</p> <p>13 EXAMINER PRICE: Sustained.</p> <p>14 MR. OLIKER: Happy to rephrase, your</p> <p>15 Honor.</p> <p>16 EXAMINER PRICE: Please.</p> <p>17 Q. In the context of Mr. Kutik's question,</p> <p>18 he was asking about noncompetitive service, whether</p> <p>19 it could be subsidized. Could you provide context</p> <p>20 for your use of the word subsidize?</p> <p>21 A. I don't believe that noncompetitive</p> <p>22 service could be subsidized using a competitive</p> <p>23 service.</p> <p>24 Q. Do you remember a series of questions</p> <p>25 that you received about coal delivery?</p>
<p style="text-align: right;">Page 4973</p> <p>1 rolling over to a new product. These products listed</p> <p>2 on the Apples to Apples website are both new products</p> <p>3 for new customers and are not typically what we would</p> <p>4 charge customers.</p> <p>5 EXAMINER PRICE: So you're like the cable</p> <p>6 company?</p> <p>7 THE WITNESS: I'll say these are probably</p> <p>8 not our best rates. There's a lot of risk involved</p> <p>9 with the rates that are out here on Apples to Apples,</p> <p>10 and we enroll very few customers on this compared to</p> <p>11 our other methods.</p> <p>12 EXAMINER PRICE: Okay.</p> <p>13 Q. (By Mr. Oliker) And did Mr. Kutik ask</p> <p>14 you -- regarding the products contained in Exhibit 83</p> <p>15 compared to Exhibit 82, is there any reason why the</p> <p>16 price may be different in Exhibit 83 from Exhibit 82</p> <p>17 regarding the type of product?</p> <p>18 A. In the second exhibit, there's also a</p> <p>19 green offer, but other than that, these are 12-month</p> <p>20 fixed terms.</p> <p>21 Q. And do you remember a question Mr. Kutik</p> <p>22 asked you about whether or not distribution rates can</p> <p>23 be subsidized?</p> <p>24 A. Yes.</p> <p>25 Q. Do you have any clarifications you'd like</p>	<p style="text-align: right;">Page 4975</p> <p>1 A. I do.</p> <p>2 Q. And do you remember looking at a</p> <p>3 document, admittedly you had never seen before, about</p> <p>4 the amount of railroad that exists in Ohio?</p> <p>5 A. I do.</p> <p>6 Q. Do you believe the amount of railroad</p> <p>7 that exists in Ohio is necessarily determinative of</p> <p>8 coal delivery issues?</p> <p>9 MR. KUTIK: Objection.</p> <p>10 EXAMINER PRICE: Grounds?</p> <p>11 MR. KUTIK: No foundation that he knows</p> <p>12 anything about coal delivery. That's been</p> <p>13 established in cross.</p> <p>14 EXAMINER PRICE: I'll give Mr. Oliker</p> <p>15 some leeway. Overruled.</p> <p>16 A. While I'm not 100 percent familiar with</p> <p>17 coal delivery, I am familiar with geographically</p> <p>18 where the coal has to move from one state to another.</p> <p>19 So by looking at an isolated state's railroad system,</p> <p>20 you are missing a lot of the possible interruptions</p> <p>21 that can happen between there.</p> <p>22 MR. KUTIK: I move to strike everything</p> <p>23 after "I'm not familiar with", the first sentence.</p> <p>24 EXAMINER PRICE: Denied.</p> <p>25 Q. And, Mr. Haugen, do you remember a</p>

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<p>1 question that Mr. Kutik asked about generators within 2 PJM being interrupted in the delivery of coal? Do 3 you remember that question? 4 A. Yes. 5 Q. Are you familiar with generators being 6 interrupted in states that are contiguous to Ohio to 7 the coal issues? 8 A. I believe there was recent testimony 9 filed on behalf of the Attorney General in Michigan 10 where consumers had to -- 11 MR. KUTIK: Move to strike. 12 EXAMINER PRICE: Let him finish. 13 A. -- where consumers had to curtail their 14 load due to coal concerns. 15 MR. KUTIK: Move to strike. 16 EXAMINER PRICE: Grounds? 17 MR. KUTIK: Hearsay. 18 EXAMINER PRICE: Mr. Olikier? 19 MR. OLIKER: He's testifying based upon 20 public documents that he's reviewed in other state 21 commissions, your Honor. 22 EXAMINER PRICE: Sustained -- or granted. 23 It's hearsay. The motion to strike is granted. 24 Q. Mr. Haugen, do you have personal 25 knowledge regarding coal-delivery issues that may</p>	<p>1 withdraw the question. 2 Your Honor, would you accept 3 administrative notice of the proceeding in Michigan? 4 EXAMINER PRICE: No. No. It's unfair to 5 bring it out on recross. 6 Let me rephrase that. Did you provide 7 that document to the companies on discovery as an 8 exhibit you might use? 9 MR. OLIKER: Not as an exhibit. We 10 indicated we would use any public information in our 11 testimony. It's a very recent case. 12 EXAMINER PRICE: Then no, it's unfair the 13 company bring it out on recross. 14 MR. OLIKER: I believe that's all the 15 questions I have, your Honor. 16 Thank you, Mr. Haugen. 17 EXAMINER PRICE: Thank you. 18 Recross, Mr. Hays? 19 MR. HAYS: No, your Honor. 20 EXAMINER PRICE: Mr. Randazzo? 21 MR. RANDAZZO: No questions. 22 EXAMINER PRICE: Mr. Fisk? 23 MR. FISK: No. 24 EXAMINER PRICE: Mr. Kurtz? 25 MR. KURTZ: No questions.</p>
Page 4977	Page 4979
<p>1 exist in other states? 2 A. I do. 3 Q. Could you explain what that knowledge is? 4 MR. KUTIK: Objection, your Honor. 5 EXAMINER PRICE: Grounds? 6 MR. KUTIK: Just to wave the personal 7 knowledge flag doesn't get you to the goal post. 8 They're mixing metaphors. It's a back-handed way to 9 get in exactly what he just -- 10 EXAMINER PRICE: I understand that, but 11 let's let him at least answer the question and then 12 we can deal with striking it or whether I'll just say 13 it's something you can deal with on recross. 14 A. Can you restate the question? 15 Q. Do you have personal knowledge regarding 16 potential coal-delivery issues that have occurred in 17 other states? 18 A. I do. 19 Q. Can you explain the basis for that 20 knowledge? 21 A. Through recent testimony filed by the 22 Attorney General in a Michigan hearing. 23 EXAMINER PRICE: Do you want to withdraw 24 that question and answer? 25 MR. OLIKER: I'll withdraw it. I'll</p>	<p>1 EXAMINER PRICE: Mr. Sauer? 2 MR. SAUER: No, thank you. 3 EXAMINER PRICE: Mr. Kutik? 4 --- 5 RECROSS-EXAMINATION 6 By Mr. Kutik: 7 Q. Mr. Haugen, did I hear you say that 8 prices that appear on the Apples to Apples chart 9 would not necessarily be the prices that IGS would 10 offer customers in their contracts? 11 A. The customers would have those prices 12 available, but we use very targeted marketing to 13 offer very specific customers over a large geographic 14 area. 15 Q. So a customer could call up and get a 16 different rate; is that correct? 17 A. That's possible. 18 MR. KUTIK: No further questions. 19 EXAMINER PRICE: Thank you. 20 Mr. McNamee? 21 MR. MCNAMEE: I have no questions. 22 EXAMINER PRICE: Thank you. You're 23 excused. 24 Mr. Olikier. 25 MR. OLIKER: IGS would move for the</p>

<p style="text-align: right;">Page 4980</p> <p>1 admission of Exhibits 9 and 10, and we would also 2 proffer the stricken provisions regarding 3 Mr. Haugen's testimony pertaining the federal 4 preemption, your Honor. 5 EXAMINER PRICE: Any objections to the 6 admission of 9 and 10, subject to the motion to 7 strike? 8 MR. KUTIK: Subject to the motion to 9 strike, no, your Honor. 10 EXAMINER PRICE: Those exhibits will be 11 admitted subject to the motion to strike, and we will 12 accept the proffer. 13 (EXHIBITS ADMITTED INTO EVIDENCE.) 14 MR. OLIKER: Just so the record is clear, 15 the reasons for the proffer were previously explained 16 in the motion to strike. I would renew that basis 17 now. 18 EXAMINER PRICE: Thank you. Mr. Kutik. 19 MR. KUTIK: Your Honor, at this time the 20 companies will move for the admission of Company 21 Exhibit 82, Company Exhibit 83, Company Exhibit 84 22 and Company Exhibit 86. 23 EXAMINER PRICE: Any objection to the 24 admission of those exhibits? 25 MR. OLIKER: No, your Honor.</p>	<p style="text-align: right;">Page 4982</p> <p>1 pieces of testimony in this proceeding, admittedly 2 two of those documents being a public and 3 confidential version? 4 A. Yes, I have. 5 Q. Let's start with your supplemental direct 6 testimony, which was submitted on August 18th, 2015. 7 A. Okay. 8 Q. Just could you clarify, is this an update 9 to an earlier piece of testimony, Mr. White? 10 A. Yes. 11 Q. And this updates your direct testimony? 12 A. Yes. 13 MR. OLIKER: Okay. And I'd like to mark 14 as IGS Exhibit 11 the public version of Mr. White's 15 supplemental direct testimony filed on August 18th, 16 2015. 17 EXAMINER CHILES: So marked. 18 (EXHIBIT MARKED FOR IDENTIFICATION.) 19 Q. And, Mr. White, do you recognize the 20 document filed as IGS Exhibit 11? 21 A. Yes. 22 Q. And was this prepared by you or under 23 your direction? 24 A. Yes. 25 Q. And do you have any changes to make to</p>
<p style="text-align: right;">Page 4981</p> <p>1 EXAMINER PRICE: Those exhibits will be 2 admitted. 3 (EXHIBITS ADMITTED INTO EVIDENCE.) 4 EXAMINER PRICE: Let's go off the record 5 for one minute. 6 (Recess taken.) 7 EXAMINER CHILES: Mr. Oliker. 8 MR. OLIKER: At this time IGS Energy 9 would call Matthew White. 10 (Witness sworn.) 11 --- 12 MATTHEW WHITE 13 being first duly sworn, as prescribed by law, was 14 examined and testified as follows: 15 DIRECT EXAMINATION 16 By Mr. Oliker: 17 Q. Please state your name for the record 18 again. 19 A. Matthew White. 20 Q. Who are you employed by? 21 A. IGS Energy. 22 Q. Have you submitted testimony in this 23 proceeding? 24 A. Yes, I have. 25 Q. Particularly, have you submitted three</p>	<p style="text-align: right;">Page 4983</p> <p>1 your testimony? 2 A. No. 3 Q. If asked these same questions again 4 today, would your answers be the same? 5 A. Yes. 6 Q. Could you please turn to the confidential 7 version of that testimony, Mr. White? 8 A. Sure. I have it. 9 MR. OLIKER: And I'd like to mark this 10 document as IGS Exhibit 12C. 11 EXAMINER CHILES: So marked. 12 (EXHIBIT MARKED FOR IDENTIFICATION.) 13 Q. Mr. White, does Exhibit 12C contain the 14 confidential version of your supplemental direct 15 testimony? 16 A. Yes. 17 Q. Like the public version, these answers 18 were prepared by you or under your direction? 19 A. Yes. 20 Q. And if I asked the same questions today, 21 would your answers be the same? 22 A. Yes. 23 Q. And also you have no clarifications to 24 make to this prepared testimony, correct? 25 A. Correct.</p>

<p style="text-align: right;">Page 4984</p> <p>1 Q. Finally, I would turn to the supplemental 2 testimony of Matthew White that was which was filed 3 on March 2, 2015. Do you see that document? 4 A. Yes. 5 MR. OLIKER: Your Honor, I would mark 6 that document as IGS Exhibit 13. 7 EXAMINER CHILES: So marked. 8 (EXHIBIT MARKED FOR IDENTIFICATION.) 9 Q. Mr. White, was IGS Exhibit 13 prepared by 10 you or under your direction? 11 A. Yes. 12 Q. And do you have any corrections to make 13 to that testimony? 14 A. No. 15 Q. And if asked the same questions today, 16 would your answers be the same? 17 A. Yes. 18 Q. Regarding this supplemental testimony 19 that we were just discussing as IGS Exhibit 13, do 20 you have any additional documents with you that may 21 be reflected in this testimony? 22 A. In my supplemental testimony, I cited 23 testimony from, I believe it was, Tony Alexander, and 24 I believe Leila Vespoli. I have certified copies of 25 that testimony provided to me by the Ohio House of</p>	<p style="text-align: right;">Page 4986</p> <p>1 line 22 on page 12. So that would be the entire 2 section regarding utility billing, and the 3 attachments referenced therein. 4 Your Honor, my grounds for the other two 5 are the same. Would you like me to identify the 6 motions to strike and then the grounds since they're 7 the same, or go one by one? 8 EXAMINER CHILES: Let's take these one by 9 one, please. Could you give me the last reference 10 where this motion to strike ends? 11 MS. DUNN: Sure. It's ending on line 22, 12 page 12, would be the entire section relating to 13 utility billing and attachments. 14 EXAMINER CHILES: Thank you. 15 MS. DUNN: Your Honor, moving to strike 16 this section on the basis of relevance. Relevance 17 means evidence having tendency to make the existence 18 of any fact that is of consequence to the 19 determination of the action more probable or less 20 probable than it would be without the evidence. 21 Moreover, even if relevant evidence, 22 which this is not, evidence may be excluded if its 23 probative value is substantively outweighed, 24 substantially outweighed by considerations of undue 25 delay or needless presentation of cumulative</p>
<p style="text-align: right;">Page 4985</p> <p>1 Representatives with me. So it's the same words, but 2 the copies that I have on the stand are certified 3 copies. 4 Q. Okay. Thank you. 5 MR. OLIKER: With that, I would move for 6 the admission of the exhibits and tender the witness 7 for cross-examination. 8 EXAMINER CHILES: Thank you. We will 9 defer ruling on the exhibits until cross-examination 10 is complete. 11 MS. DUNN: Your Honor, I have motions to 12 strike. Would you like to entertain those before we 13 do cross-examination? 14 EXAMINER CHILES: Yes, please. 15 MS. DUNN: I have several motions to 16 strike, your Honor. I'm going to go as slow as you 17 need me to, and I'll try to do this as methodically 18 as possible, so bear with me. 19 First, I'd like to move to strike -- I'm 20 going to work off of, just for the record, IGS 11, 21 which is the public version of his supplemental 22 direct testimony, not to be confused with IGS 13 23 which is his supplemental testimony. 24 So on IGS 11, turning to page 7, starting 25 at the section with line 13, moving to strike up to</p>	<p style="text-align: right;">Page 4987</p> <p>1 evidence. 2 As this Bench has already identified, the 3 issues in this case are whether the Commission has 4 statutory authority to approve rider RRS. This 5 section has no relevance to that issue. 6 The other issue this Bench has identified 7 is whether the other provisions of the ESP should be 8 approved. There is nothing in the companies' 9 application relating to the utility billing that 10 Mr. White identifies; therefore, it is not relevant 11 to the other provisions of the ESP. 12 Whether the ESP is in the aggregate more 13 favorable than an MRO would be, Mr. White makes no 14 argument in his testimony that adding utilities or 15 billing for noncommodity products would make the ESP 16 in the aggregate more favorable than the MRO. 17 And, also, the last issue is whether the 18 stipulations passed the Commission's three-prong 19 test. Again, the billing of noncommodity products 20 and services has nothing to do with that issue as 21 well. 22 In addition, even if the evidence were 23 relevant, it will cause unnecessary delay in this 24 proceeding in the form of extensive cross-examination 25 of Mr. White on this topic and potential rebuttal</p>

<p style="text-align: right;">Page 4988</p> <p>1 testimony on this issue since the companies have 2 nothing in their application or testimony related to 3 this issue. 4 For all of those reasons, your Honor, I 5 move to strike this section. 6 EXAMINER CHILES: Thank you. 7 Mr. Olikier. 8 MR. OLIKER: Your Honor, if you take a 9 look at the Q and A, there's actually a reference to 10 the application itself and a provision in the 11 application that Mr. White doesn't agree with, and he 12 goes on to talk about why he doesn't agree with it 13 and has his own recommendation. 14 And, additionally, before we even move 15 further, the standard for a relevance review is -- 16 it's a pretty low bar. This goes to state policy. 17 Mr. White provides examples of why the state policy 18 and customer choice would benefit from his 19 recommendations, and I think that we're entitled to 20 make that. 21 EXAMINER PRICE: Mr. Olikier, what 22 provision of the ESP statute are you urging the 23 Commission to adopt these provisions under? Because 24 we all know the Supreme Court has said the lists in 25 (B)(2)(b) is exhaustive, and a Commission has to</p>	<p style="text-align: right;">Page 4990</p> <p>1 MR. OLIKER: I think that that goes to 2 what can be included in an ESP and I understand -- 3 EXAMINER PRICE: Well, you're asking the 4 Commission to modify this ESP to include this. 5 MR. OLIKER: Yes, and there is 6 authorization under the statute to modify the ESP. 7 EXAMINER PRICE: Under which section? 8 Where do you want to hang your hat on? 9 MR. OLIKER: I want to give you a correct 10 reference, your Honor. I don't always think of the 11 statutes in terms of each particular aspect of it. I 12 just know what the words say. 13 Your Honor, I think it could definitely 14 be covered under (H), provisions related to 15 distribution service. 16 EXAMINER CHILES: Does that conclude your 17 response? 18 MR. OLIKER: I'm trying to take a moment 19 to make sure I've reviewed the statute appropriately, 20 your Honor. 21 EXAMINER CHILES: Take your time. 22 MR. OLIKER: Thank you. Potentially 23 under provisions related to transmission, ancillary 24 congestion, or any related service required for the 25 standard service offer, and I think billing would</p>
<p style="text-align: right;">Page 4989</p> <p>1 approve any provision of the ESP under one of those 2 provisions except for the standard service offer. 3 So my question for you is which provision 4 of (B)(2)(b) do his recommendations fall under -- or 5 B(2). I'm sorry. 6 MR. OLIKER: First, the utility billing 7 relates to distribution service. It is a 8 distribution service. It is a distribution asset. 9 That is allowed under the ESP. That's why we have 10 provisions in an ESP that relate to that service. I 11 mean, their own application proposes to change the 12 word "generation" in the billing agreement. 13 EXAMINER PRICE: So you're saying (H)? 14 MR. OLIKER: That would be one of them. 15 I would have to look at the statute, and I would take 16 a moment to do that, if you would like me to. But I 17 think there are several different ways where it's 18 relevant. If Mr. White can't testify on the issue, 19 then they can't amend the word "generation" in their 20 application. Then they both come out. It would be 21 one of them. I think the state policy is considered 22 in all SSO proceedings or all ESP proceedings. 23 EXAMINER PRICE: That's not what the 24 Court said. The Court said it has to be underneath 25 one of these provisions.</p>	<p style="text-align: right;">Page 4991</p> <p>1 fall under that. 2 MS. DUNN: Your Honor, when Mr. Olikier is 3 through, I'd like to respond, please. 4 EXAMINER CHILES: You'll have the 5 opportunity. 6 MR. OLIKER: I would leave it at that, 7 and also note that the companies have already put 8 this provision at issue in their own application. 9 EXAMINER CHILES: Thank you, Mr. Olikier. 10 Ms. Dunn. 11 MS. DUNN: Yes, your Honor. I'd like to 12 respond to the legal argument that it's permissible 13 4928.143(B)(2)(h). That references distribution 14 service. The Commission has in its retail market 15 investigation looked at billing, certain items on the 16 bills. This provision that he cites would ostensibly 17 let anything anyone ever wanted to bring in relating 18 to distribution service into an ESP case. It's not 19 what the statute intended. 20 The Commission has another form for 21 billing. That would be the retail market 22 investigation and the market development working 23 group. I would also note that this isn't simply 24 utility billing. This is billing of noncommodity or 25 nonelectric goods and service.</p>

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<p>1 If you look at part G, it relates to 2 services required for the standard service offer. 3 Billing of noncommodity goods and services is not 4 required for the standard service offer. 5 And, your Honor, may I approach to 6 address his other arguments? 7 EXAMINER CHILES: You may. 8 MS. DUNN: Your Honor, Mr. Olikier 9 referenced the redlined tariff that the companies 10 have submitted in this case. I've handed out a copy 11 of one of the redlined tariffs. It's a voluminous 12 document for all three. 13 So this is part of Company Exhibit 1, 14 Attachment 5, and it's the OhioEdison Supplier 15 Coordination Tariff redlined. Mr. Olikier is 16 referring to -- if you look at page 4 of 52, the 17 term -- or I'm sorry. Page 3 of 52, "Bill Ready," 18 and he's referring to the insertion of the word 19 "generation" there. 20 I would like to point out a couple of 21 other sections of this document. If you look at page 22 7 of 52 in the upper right-hand corner, Section C, it 23 says the "provisions apply to all Certified Suppliers 24 providing Competitive Retail Electric Services to 25 Customers located in the Company's service territory,</p>	<p>1 stricken. Thank you. 2 MR. OLIKER: May I respond briefly? I 3 think the key point here is the supplier tariff 4 itself is at issue, and that is the company can 5 change it to insert words like "generation." 6 Mr. White can recommend that they change other words 7 in the tariff regarding who it applies to, for people 8 providing competitive retail electric service or 9 other products and services which are also 10 contemplated by Ohio law. So the fact that this is 11 at issue at all and that they're making changes to it 12 opens the door for people to recommend additional 13 changes. 14 EXAMINER CHILES: Thank you, Mr. Olikier. 15 At this time we are going to deny the 16 motion to strike. 17 MR. OLIKER: Thank you, your Honor. 18 MS. DUNN: Thank you, your Honor. 19 Moving forward, also, to page -- I'm 20 working off of IGS 11, page 13, line 1 through page 21 16, line 18, essentially the entire section regarding 22 "Supplier Consolidated Billing." Again, the basis, 23 as I articulated before, is relevance, and also even 24 if relevant, substantially outweighed by 25 considerations of undue delay.</p>
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<p>1 including an affiliate or division of the Company 2 that provides Competitive Retail Electric Services." 3 And then I'd also like to point you to 4 the next page, page 8, where it states, "The Tariff 5 sets forth the basic requirements for interactions 6 and coordination between the Company and Certified 7 Suppliers necessary for ensuring the delivery of 8 Competitive Retail Electric Service from Certified 9 Suppliers to their Customers." 10 The reason I point out those sections, if 11 you'll also then indulge me to turn to page 94 of 12 Mr. White's deposition, lines 9 through 12 -- well, 13 actually, let's go to -- yeah, let's do 9 to 12. 14 "And we already talked about how 15 noncommodity products and services is not competitive 16 retail electric service, correct? 17 "Yes." 18 It's clear by the terms of the supplier 19 tariff in Mr. White's testimony that the insertion of 20 generation in the bill ready had nothing to do with 21 noncommodity goods and services. The supplier tariff 22 provision doesn't apply. That does not tie that to 23 this application. And for all those reasons, even if 24 relevant, the undue delay in handling this issue with 25 Mr. White and on rebuttal warrants this testimony be</p>	<p>1 I would also point out that regarding 2 supplier consolidated billing, IGS made this exact 3 same argument in AEP Ohio's ESP case. And in the 4 February 25, 2015 Opinion and Order at page 81, the 5 Commission itself said that the supplier consolidated 6 billing should be discussed in the market development 7 working group as part of this Commission's retail 8 market investigation. 9 This is not relevant to the ESP. The 10 Commission has recognized it is not relevant to AEP's 11 ESP, and for those reasons, this testimony should be 12 stricken. 13 EXAMINER CHILES: Thank you. 14 Mr. Olikier. 15 MR. OLIKER: Your Honor, billing issues 16 often come up in ESP cases. They talk about 17 purchase -- the receivables program. They talk about 18 consolidated billing. They talk about changes to the 19 billing agreements. It's perfectly acceptable and 20 logical for parties to make proposals regarding the 21 future of billing systems that they would like to see 22 at utilities. 23 While the market development working 24 group is currently ongoing, we don't know when that 25 will be resolved. It could be resolved tomorrow. It</p>

<p style="text-align: right;">Page 4996</p> <p>1 could be resolved in a year. There will ultimately 2 have to be a proceeding that approves any changes the 3 market development working group makes. And to the 4 extents that those changes happen soon, it would be 5 very helpful to have a proceeding available to make 6 those changes.</p> <p>7 The Commission is free to decide, as it 8 did in the AEP case, of where those changes should be 9 made, but I don't think that it's appropriate to say 10 that just because one result occurred someplace in 11 nine months ago or whatever date that was, that it's 12 going to be exactly the same here.</p> <p>13 EXAMINER CHILES: Ms. Dunn, do you have a 14 response?</p> <p>15 MS. DUNN: Your Honor, if it was good 16 enough for AEP, it was good enough for the company. 17 The retail market investigation is still going on. 18 The Commission did not address it at all in AEP's 19 case. The testimony is almost identical, and not to 20 mention that the companies have brought nothing in 21 their application or testimony regarding supplier 22 consolidated billing. For those reasons, it's not 23 relevant and should be stricken.</p> <p>24 EXAMINER CHILES: Thank you. 25 Mr. Olikier, final word.</p>	<p style="text-align: right;">Page 4998</p> <p>1 Order, that unbundled SSO service was "better suited 2 for another forum, such as a distribution rate case, 3 and, therefore, we decline to adopt the proposal from 4 IGS."</p> <p>5 Your Honor, there is absolutely nothing 6 in the companies' application relating to unbundled 7 SSO service. The Commission itself stated that that 8 issue was suited for another forum; therefore, the 9 Bench should strike that testimony in this case as 10 well.</p> <p>11 EXAMINER CHILES: Thank you. 12 Mr. Olikier.</p> <p>13 MR. OLIKER: Thank you. First, I would 14 note one of the things that is important about the 15 Duke order is there was an acknowledgment that this 16 is an issue that should be pursued. To the extent 17 the company is stipulating to not oppose any 18 discovery that may occur in a future case regarding 19 this issue for distribution rates, I think our 20 opinion may have softened. But what's at issue here 21 is the standard service offer rates, what is in them? 22 Does it contain all of the components of standard 23 service offer? For example, the call center that 24 FirstEnergy may operate, is that in there? And as 25 Mr. White says, it's not.</p>
<p style="text-align: right;">Page 4997</p> <p>1 MR. OLIKER: I would stand by my earlier 2 statements and just note that parties have 3 historically provided recommendations that are not 4 necessarily exactly in line with the companies' 5 application. While the company does typically make 6 several proposals in an ESP case, they are not the 7 only proposals, and this is one example of that, and 8 it's something the Commission could consider in 9 whether it approves, or modifies and approves, the 10 application that is in this case.</p> <p>11 EXAMINER CHILES: Thank you. Consistent 12 with our prior ruling, the motion to strike is 13 denied.</p> <p>14 MR. OLIKER: Thank you, your Honor.</p> <p>15 MS. DUNN: And, your Honor, I can proceed 16 if you'd like.</p> <p>17 EXAMINER CHILES: Yes, please.</p> <p>18 MS. DUNN: Along those same lines, I also 19 move to strike page 16, line 19, and through page 21, 20 line 16. This would be the entire section regarding 21 unbundled SSO costs and the subsequent attachments, 22 again on the basis of relevance and undue delay.</p> <p>23 And I would also note that the Commission 24 on this issue on identical testimony found in Duke's 25 ESP case, No. 14-841, April 2nd, 2015 Opinion and</p>	<p style="text-align: right;">Page 4999</p> <p>1 Because we're setting SSO rates, it's 2 perfectly appropriate. He's talking about the actual 3 rates and prices that are at issue in this case, and 4 he is free to opine that maybe they've left a few 5 cost components out.</p> <p>6 EXAMINER CHILES: Thank you. Consistent 7 with our prior ruling, the motion to strike will be 8 denied.</p> <p>9 MS. DUNN: Thank you, your Honor. 10 Turning to page 6, line 19 to 20, and 11 footnote 2, your Honor, I move to strike that 12 sentence along with the footnote. As an initial 13 matter, I'd like you to turn to page Exhibit MW-1 14 MR. OLIKER: We're at the footnote at 15 page 6 or MW-1?</p> <p>16 MS. DUNN: Lines 19 to 20 on page 6 and 17 all of footnote 2, including the attachments.</p> <p>18 Your Honor, I turn your attention to 19 Exhibit MW-1. I'm moving to strike MW-1 on the basis 20 of hearsay and an unauthenticated document. This is 21 being offered for the truth of the matter asserted, 22 that FES has announced it is returning customers to a 23 significant number of -- excuse me.</p> <p>24 It's returning a significant number of 25 its customers to SSO service. It is presumably</p>

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<p>1 someone from AEP, although, we don't know who, saying 2 that FES is no longer providing this unknown customer 3 generation service. We can't cross-examine the 4 customer or anyone from AEP. Also, it doesn't say 5 anything about SSO service. 6 I would also turn your attention to page 7 52 of Mr. White's deposition, starting at line 1: 8 "And also MW-2 to your testimony -- oh, 9 no, just MW-1, correct?" 10 "Yes." 11 "Okay. Is this a letter sent to you?" 12 "No." 13 "And I understand that you've redacted 14 the personal information so I will not ask you for a 15 name. Is this an employee of IGS?" 16 "I don't know." 17 "Do you know who this is?" 18 "No." 19 "How did you get this?" 20 "My attorney provided it to me." 21 "Do you know where Mr. Olikier got it?" 22 "I don't know." 23 For that reason, that document should be 24 stricken. 25 EXAMINER CHILES: Thank you.</p>	<p>1 Answer: "Yes." 2 "Is that a newspaper article or a news 3 article?" 4 Answer: "It's a news article from a 5 trade publication." 6 "Do you consider that article 7 authoritative?" 8 "I consider the article as accurately 9 representing the facts as stated in the article." 10 Also, if you turn to page 71 of his 11 deposition on line 7, I asked him: 12 "Do you personally know the author?" 13 "I don't know who the author is so I 14 don't know." 15 "Is it safe to assume you have never 16 actually spoken to the author?" 17 "Since I don't know who the author is, I 18 don't know." 19 For that reason, that cite should also be 20 stricken from footnote 2, leaving then the only item, 21 which is a quote from the 10-Q. The reason that 22 should be stricken as well is because what the note 23 in the 10-Q says does not say what Mr. White says on 24 line 19 to 20, that FES has announced that it's 25 returning and has returned a significant number of</p>
Page 5001	Page 5003
<p>1 Mr. Olikier. 2 MR. OLIKER: Your Honor, if you look at 3 the footnote -- I believe she moved to strike all the 4 footnote, including the SEC reference, is that true, 5 Ms. -- 6 MS. DUNN: I'm getting there. I can get 7 through the whole footnote and all the documents if 8 you'd like. 9 MR. OLIKER: I'd like to know if the SEC 10 reference is contained in the motion first before I 11 respond. 12 EXAMINER CHILES: Let's carry on. 13 MS. DUNN: Do you want me to keep going 14 through the whole thing? Okay. Also, then turning 15 in the footnote reference to "Dominant Retail 16 Supplier Drops Customers to POLR, Exiting Mass 17 Market." 18 If you turn to page 70 of his deposition 19 testimony, line 1, on page 70: 20 "I'm looking at the footnote that 21 continues over No. 2. The last sentence of that 22 footnote says, 'See also Dominant Retail Supplier 23 Drops Customers to POLR, Exiting Mass Market, 24 Mid-Merit Retail Sales, EnergyChoice Matters.' Then 25 you have a website, correct?"</p>	<p>1 its customers to SSO service. For that reason, the 2 quote from the 10-Q has no place in the document 3 anymore and should be stricken as well. 4 I would also note that because Mr. White 5 has no personal knowledge that FES has announced it's 6 returning a significant number of customers to SSO 7 service, that that is also hearsay, and that's why 8 lines 19 and 20 should be stricken. 9 EXAMINER CHILES: Thank you. 10 Mr. Olikier. 11 MR. OLIKER: I'll address all of these 12 starting with the last comment. It's public 13 knowledge that FES has returned customers to SSO 14 service. It's in their 10-Q as reflected there. The 15 fact that they have effectively exited the retail 16 residential market outside of aggregation, I mean, 17 the notion that you would strike that statement 18 because there may be some small differences between 19 what is reflected on line 19 doesn't change the fact 20 that this is a direct quote out of FES's 10-Q. I 21 mean, I don't think I have been to any proceeding 22 where they haven't allowed any of that information to 23 be included in the record. 24 And regarding the letter that is attached 25 as Exhibit MW-1, while Mr. White may not have known</p>

Page 5004	Page 5006
<p>1 exactly who that letter was mailed to, he can testify 2 now, and he's also seen the envelope which that 3 letter came in, and I believe that the use of the 4 federal mail allows for a validation of a document 5 that happens to be sent from a local utility that 6 practices before this Commission. 7 I don't think there's any question 8 regarding the authenticity of the document. She's 9 free to explore that issue with Mr. White, but I 10 don't think there's any question regarding the 11 authenticity of documents that arrived in the federal 12 mail. 13 Regarding the newspaper article that is 14 in Exhibit MW-2, he did not indicate it's from a 15 trade publication. It merely reiterates many of the 16 things that Mr. White says in his testimony and what 17 is contained in the FES filings. If the company 18 finds that objectionable, I don't know if it's 19 completely prejudicial to take out that reference, 20 but the Exhibit MW-1 and the SEC filing, I believe, 21 as well as the testimony on the issue should remain 22 on the record 23 EXAMINER CHILES: Thank you. 24 Ms. Dunn, do you want to respond? 25 MS. DUNN: Yes, thank you. What may or</p>	<p>1 MS. DUNN: Your Honor, are you also 2 striking Attachment MW-1? 3 EXAMINER CHILES: Yes. 4 THE WITNESS: Can you tell me what was 5 stricken. 6 EXAMINER CHILES: We're striking the 7 testimony beginning with "further" on page 6, line 8 19, ending with footnote 2 on page 6, the entirety of 9 footnote 2, and Exhibit MW-1. 10 THE WITNESS: That one sentence and two 11 footnotes? 12 EXAMINER CHILES: I believe it's just one 13 footnote, footnote number 2. 14 THE WITNESS: You didn't strike 1? 15 EXAMINER CHILES: No. 16 THE WITNESS: Okay. 17 MS. DUNN: Your Honor, moving forward, 18 I'd also like to strike on page 9, footnote 3, and 19 Attachment MW-2. It's hearsay being offered for the 20 truth of his statement at page 9, lines 12 to 14, 21 that many of these products appear to be provided by 22 third-party companies, but they are advertised as 23 FirstEnergy products and billed on the FirstEnergy 24 bill. 25 Rule 901 also requires that IGS prove</p>
Page 5005	Page 5007
<p>1 may not be public knowledge is not a basis for 2 evidence in this case. 3 Secondly, FES doesn't have a 10-Q; and 4 even if it did, it doesn't say what Mr. White says it 5 says. 6 Third, even if he cannot magically 7 authenticate now what he didn't know in his testimony 8 doesn't mean it's still not hearsay. We still can't 9 cross-examination AEP on a letter. We have no idea 10 why they said what they said. And it doesn't say 11 anything about FES switching customers to SSO. 12 And, last, the newspaper article is 13 clearly hearsay. The basis of anything Mr. White 14 knows is hearsay, and the fact that it's mail doesn't 15 also make it admissible evidence. 16 EXAMINER CHILES: Thank you. I believe 17 it's consistent with our prior rulings to strike this 18 as hearsay, not falling within any exception. So we 19 will strike the testimony beginning on page 6, line 20 19, beginning with "further" and ending on line 20, 21 including footnote number 2, as well as the entirety 22 of the footnote. 23 MR. OLIKER: Including the SEC quotation, 24 your Honor? 25 EXAMINER CHILES: That's correct.</p>	<p>1 that the document is authentic. For those reasons, 2 it should be stricken as hearsay, and an 3 unauthenticated document 4 EXAMINER CHILES: Thank you. 5 Mr. Olikier. 6 MR. OLIKER: Mr. White has personal 7 knowledge on this issue, regardless of what happens 8 with Exhibit MW-3, so I would definitely say the 9 sentence should stay in, because I believe -- 10 MS. DUNN: I'll be clear. I'm not moving 11 to strike the sentence, just the document. 12 MR. OLIKER: Exhibit MW-2? 13 MS. DUNN: Yes. 14 MR. OLIKER: Your Honor, regarding MW-2, 15 this is a FirstEnergy document. This is a party 16 admission and should be admitted in this case. This 17 can be offered against FirstEnergy at any time. This 18 is their own information. It should not be stricken. 19 EXAMINER CHILES: Thank you. 20 Ms. Dunn, would you like to respond? 21 MS. DUNN: Yes. There's been no 22 foundation laid by Mr. White in his testimony that 23 this is an admission of a party opponent. We don't 24 know who from the company said it. We don't know 25 what department. We don't know whether they were</p>

Page 5008	Page 5010
<p>1 authorized to speak. We don't know who it went to. 2 For all those reasons, there's no foundation. 3 I'd also note that there's no 4 authentication of this document in his testimony 5 either. 6 EXAMINER CHILES: Thank you, Ms. Dunn. 7 We will grant the motion to strike as to 8 footnote 3 on page 9. 9 MS. DUNN: And the document MW-2 as well, 10 correct, your Honor? 11 EXAMINER CHILES: Yes, that's correct. 12 MR. OLIKER: Your Honor, and the basis 13 is? I'm sorry. 14 EXAMINER CHILES: That it's hearsay and 15 not falling within any exception. 16 MS. DUNN: Your Honor, if I may move 17 forward? 18 EXAMINER CHILES: Yes, please. 19 MS. DUNN: Next I have a number of items 20 in his supplemental testimony marked as IGS 11, 21 that's the supplemental direct testimony, on the 22 basis of legal conclusions. On page 18, lines 14 to 23 16, Mr. White states, "Ohio law requires that the SSO 24 price be comparable and nondiscriminatory to other 25 products and services in the market. Further, Ohio</p>	<p>1 provide very good context for the Commission to 2 consider. This isn't a case where we have a jury. 3 We have a capable Commission that can review any 4 recommendations that are put before it and give it 5 its due weight. That has been historically the 6 Bench's interpretation of arguments or 7 recommendations that may involve legal conclusions. 8 Mr. White is an attorney licensed in 9 Ohio, and he also has substantial regulatory 10 experience. He speaks from both of those backgrounds 11 in this testimony, so I believe that it is 12 appropriate and something the Commission should 13 consider. 14 MS. DUNN: Your Honor, if I may respond 15 briefly. I think Mr. Olikier made my point that the 16 Commission is perfectly capable determining this 17 issue on its own. This testimony is not helpful. 18 It's an improper legal conclusion. 19 EXAMINER CHILES: We're going to take a 20 brief five-minute recess to consider this motion to 21 strike. Before we do that, though, let's continue 22 with your remaining motions, and then we'll consider 23 them all at one time. 24 MS. DUNN: Yes, your Honor. Turning to 25 page 20, lines 10 to 11, Mr. White states, "Although,</p>
Page 5009	Page 5011
<p>1 law prohibits subsidies flowing from distribution 2 rates to SSO service." 3 Your Honor, we're a little bit different 4 than the previous witness. Obviously, Matt White is 5 an attorney, so he is qualified to make a legal 6 opinion. 7 However, as we discussed during 8 Mr. Ferrey's motions to strike, which I believe was 9 Monday, who was an attorney making legal conclusions 10 as well, is that legal interpretations and legal 11 conclusions by an attorney in their direct testimony 12 is not helpful to the Commission. This is within the 13 sole province of the Commission to determine. 14 Under Wagenheim, which is a case that 15 Mr. Lang cited during Mr. Ferrey's motion to strike, 16 it is not appropriate to have legal conclusions in 17 direct testimony. Also, this goes beyond the 18 regulatory aspect that we've identified previously 19 today. He's giving a legal opinion and a legal 20 conclusion. For those reasons, it should be 21 stricken. 22 EXAMINER CHILES: Thank you. 23 Mr. Olikier. 24 MR. OLIKER: Your Honor, for the reasons 25 that we discussed earlier today, legal standards</p>	<p>1 as noted above, Ohio law requires that Ohio utilities 2 also do this kind of unbundling. The utilities in 3 Ohio have yet to begin this process." 4 For the same reason I just articulated, 5 your Honor, this is inappropriate legal conclusion. 6 I would also note I was remiss on page 18 as well as 7 on this section that he cites to statute. Perhaps if 8 he had quoted a statute, things would be different, 9 but this is clearly his interpretation of what Ohio 10 law is. 11 MR. OLIKER: Your Honor, he does cite to 12 that statute earlier in his testimony. It's not too 13 hard to put one and one together to see where he's 14 coming from, and I would renew my same response 15 earlier, that Mr. White is providing his perspective 16 as an attorney, but also as somebody in the 17 regulatory department of IGS speaking from his 18 experience regarding policy and the context of the 19 statutory framework that exists within Ohio. 20 EXAMINER CHILES: Thank you. 21 MS. DUNN: Well, your Honor, I'm a little 22 confused, but the only reference to a citation in 23 this testimony prior to that is on page 12. So I 24 don't think that's quite correct, but I'll move 25 forward to my next motion to strike for the same</p>

Page 5012	Page 5014
<p>1 grounds, which is on page 20, line 17 to 18. 2 "First, it is a requirement in Ohio law 3 that the SSO price be unbundled comparable price to a 4 retail electric product in the market." The same 5 reasons, your Honor. 6 EXAMINER CHILES: Thank you. 7 MR. OLIKER: Again, Mr. White is merely 8 referring to Ohio policy which is contained in 9 4920.02 and freely cited by nearly every witness that 10 testifies in this case, whether they cite the statute 11 or not. 12 MS. DUNN: And, your Honor, I would also 13 point out that 4920.02 does not require anything. So 14 if that is the section he's referring to, he's also 15 wrong. 16 Page 21, lines 20 to 21, and continuing 17 on to page 22, lines 2 through 6, those sections give 18 his legal opinion on what the corporate separation 19 requirements prohibit and whether or not FES is 20 violating those alleged corporate separation 21 requirements. 22 Again, whether or not FES or anyone else 23 in this proceeding has violated corporate separation 24 laws is strictly within the province of the 25 Commission. He's offering nothing more than</p>	<p>1 say the Commission shall ensure that the policies 2 specified in 4920.02 of the Revised Code is 3 effectuated. 4 EXAMINER CHILES: Thank you. 5 MS. DUNN: Your Honor, the Supreme Court 6 has disagreed with that in -- I'll move on to my next 7 one and get you that citation, for ease of time. 8 My next legal conclusion, motions to 9 strike, are in his supplemental testimony, which was 10 marked as IGS 13, page 2, lines 21 to 22, "Rider RRS 11 (and the entire Stipulation) would also violate 12 Federal preemption statutes and Ohio law." 13 For the same reasons that you struck it 14 from Mr. Haugen's testimony, it should also be struck 15 on this ground with the added bonus that Mr. White is 16 an attorney and that this is now an improper legal 17 interpretation or conclusion that is well within the 18 bounds of the Commission's authority to rule on. 19 It's not helpful to the Commission. 20 I would also note that this is also in 21 line very similar to the testimony that you struck 22 from Mr. Ferrey's testimony, and he's also an 23 attorney. 24 MR. OLIKER: Your Honor, if I could 25 respond?</p>
Page 5013	Page 5015
<p>1 inappropriate legal conclusion. 2 EXAMINER CHILES: Thank you. 3 Mr. Olikier. 4 MR. OLIKER: As I've stated earlier, 5 Mr. White is providing insight regarding the 6 interaction between FirstEnergy and its affiliate and 7 how he believes that is inappropriate, and he's 8 offering recommendations within the context of Ohio 9 law. 10 EXAMINER CHILES: Ms. Dunn, just a 11 clarification, are you relying on the language that 12 says, "No I do not" in line 20 in your motion to 13 strike? 14 MS. DUNN: One moment, your Honor. No. 15 I'm only striking starting with "I believe." 16 EXAMINER CHILES: Thank you. 17 MS. DUNN: And then ending that on line 1 18 where it says "affiliate." I am not moving to strike 19 "In this case, FirstEnergy has requested." And then 20 I'm starting my striking on "This would provide FES a 21 competitive advantage." 22 EXAMINER CHILES: Thank you for that 23 clarification. 24 MR. OLIKER: Your Honor, just so I follow 25 up also on the comment, if you read 4920.06, it does</p>	<p>1 EXAMINER CHILES: You may. 2 MR. OLIKER: The reasons for striking 3 testimony of this nature with Mr. Haugen were 4 specific to Mr. Haugen and his personal knowledge. 5 None of the background regarding Mr. Haugen has been 6 demonstrated to be true with Mr. White. And as you 7 noted, he is also an attorney. He is free to provide 8 his understanding of federal preemption and how it 9 may apply to this case within the context of 10 experience in regulatory and as an attorney 11 EXAMINER CHILES: Thank you. 12 Ms. Dunn. 13 MS. DUNN: Moving forward, your Honor, if 14 you're ready. 15 EXAMINER CHILES: Yes. 16 MS. DUNN: Page 6, lines 12 to 22, page 17 6, lines 12 to 22, I would point you to the testimony 18 given by Mr. Ferrey where it was struck where he 19 addressed almost identical issues, which is, namely, 20 the New Jersey and Maryland cases. That is the Third 21 and Fourth Circuit cases that Mr. White is discussing 22 here. I would also note that, again, this is 23 improper legal interpretation as I've already 24 articulated before. 25 EXAMINER CHILES: Just a clarification,</p>

Page 5016	Page 5018
<p>1 is that line 12 beginning with "It violates"?</p> <p>2 MS. DUNN: Yes. Thank you.</p> <p>3 EXAMINER CHILES: Mr. Olikier.</p> <p>4 MR. OLIKER: I think I already addressed</p> <p>5 this point because it's the same as the last one she</p> <p>6 made.</p> <p>7 EXAMINER CHILES: Thank you.</p> <p>8 MS. DUNN: Your Honor, moving forward,</p> <p>9 page 7, lines 5 to 13, this is nearly identical to</p> <p>10 what was stricken from Mr. Ferrey's testimony. He's</p> <p>11 identifying significant legal battles and risks that</p> <p>12 would occur under these cases if the Commission were</p> <p>13 to move forward. He's clearly identifying his</p> <p>14 interpretation of these cases and making improper</p> <p>15 legal interpretations.</p> <p>16 EXAMINER CHILES: Thank you.</p> <p>17 MR. OLIKER: Your Honor, I'd also note</p> <p>18 that Mr. White is providing some additional</p> <p>19 perspective that isn't necessarily legal opinion.</p> <p>20 He's just talking about practical consequences of a</p> <p>21 decision in this case. That's factual.</p> <p>22 EXAMINER CHILES: Thank you.</p> <p>23 MS. DUNN: Your Honor, that's all I have</p> <p>24 on the basis of legal conclusions. I have two more</p> <p>25 motions to strike on different grounds.</p>	<p>1 "My attorney provided it to me."</p> <p>2 "Would that be Mr. Olikier?"</p> <p>3 Answer: "Yes."</p> <p>4 "Do you understand where Mr. Olikier found</p> <p>5 the document?"</p> <p>6 "No."</p> <p>7 It's my understanding Mr. Olikier has come</p> <p>8 to the hearing today with a certified copy of that</p> <p>9 document. That does not cure the fact that at the</p> <p>10 time he filed his original testimony, he didn't know</p> <p>11 where the document came from. At the time I took his</p> <p>12 deposition, he didn't know where the document came</p> <p>13 from.</p> <p>14 I'd gamble on the fact that they got the</p> <p>15 idea that a certified copy was needed from</p> <p>16 Ms. Fleisher during the course of this proceeding and</p> <p>17 are attempting now to unfairly sandbag the companies</p> <p>18 by bringing in a certified copy that they originally</p> <p>19 did not have.</p> <p>20 In addition, this document is hearsay.</p> <p>21 While it purports to be Ms. Vespoli's testimony,</p> <p>22 there's been no foundation that's been laid that</p> <p>23 actually is what it says it's to be. And, also, and</p> <p>24 I think most importantly, as discussed previously in</p> <p>25 this case, Volume IV, pages 695 to 696, Volume XI,</p>
Page 5017	Page 5019
<p>1 EXAMINER CHILES: If there's only two</p> <p>2 remaining, we can just go ahead and talk about those</p> <p>3 now.</p> <p>4 MS. DUNN: Thank you, your Honor.</p> <p>5 I'm still on his supplemental testimony,</p> <p>6 Exhibit 13, IGS 13, turning to page 7, the question</p> <p>7 starting on line 14, moving the entire page -- okay.</p> <p>8 Wait. Let me back up. I apologize. I just confused</p> <p>9 myself. Let me start over.</p> <p>10 Page 7, starting on line 19 with the word</p> <p>11 "However," moving over to page 8, I'm moving to</p> <p>12 strike the entire page 8 going to page 9 up through</p> <p>13 line 2 and also attachment MW-1. At the time that</p> <p>14 Mr. White filed his testimony and at the time I took</p> <p>15 his deposition, he could not authenticate this</p> <p>16 document.</p> <p>17 If you would turn to page 46 of</p> <p>18 Mr. White's deposition, I asked him starting on line</p> <p>19 24:</p> <p>20 "Attached to your supplemental testimony,</p> <p>21 you have two attachments, and I'm specifically</p> <p>22 referring to attachment MW Exhibit 1."</p> <p>23 Answer: "Yes."</p> <p>24 Moving to page 47: "Where did you find</p> <p>25 this document?"</p>	<p>1 pages 2271 to 2279, this is testimony discussing</p> <p>2 Ms. Vespoli's views on Senate Bill 3, Senate Bill</p> <p>3 221, what the EDUs in PA and New Jersey have had to</p> <p>4 do, FES's plans to utilize compressed air energy</p> <p>5 store is.</p> <p>6 It's completely not relevant what that</p> <p>7 the companies' position took back in 2011, has no</p> <p>8 bearing on what the companies do in this case. It</p> <p>9 has no bearing on the four issues that I articulated</p> <p>10 that this Bench has already demonstrated. And to the</p> <p>11 extent that it's being offered to allegedly impeach</p> <p>12 Ms. Mikkelsen and it was not used with Ms. Mikkelsen,</p> <p>13 it wasn't brought upon her at any time, it's not a</p> <p>14 proper impeachment document either.</p> <p>15 For all of those reasons, it should be</p> <p>16 stricken along with the pages that cite to it.</p> <p>17 EXAMINER CHILES: Thank you.</p> <p>18 MR. OLIKER: Your Honor, if I may</p> <p>19 respond?</p> <p>20 EXAMINER CHILES: You may.</p> <p>21 MR. OLIKER: The issue regarding</p> <p>22 authenticity is completely off the table. The</p> <p>23 witness has certified copies right in front of him.</p> <p>24 The interesting story of why that was even necessary</p> <p>25 is because the company took the document off of their</p>

Page 5020	Page 5022
<p>1 public website after we filed the testimony. And 2 because of the fact that they did that, then we had 3 to go through a very long process to get a certified 4 copy, which took several weeks. So regarding that 5 issue, authenticity is not an issue.</p> <p>6 Regarding the hearsay issue, this is a 7 statement of an employee of FirstEnergy in a 8 representative capacity. It is an exception to 9 hearsay. It is their statement. The hearsay 10 doctrine is completely inapplicable.</p> <p>11 And how it's relevant to this case, if 12 you actually look at the documents, it's not -- first 13 of all, this isn't talking about Senate Bill 3 so 14 much. This is talking about the effect of 15 subsidizing generation on the competitive market. 16 It's about the position that FirstEnergy has taken in 17 every other case over the past ten years until this 18 one and why their credibility is completely at issue.</p> <p>19 Credibility is always at issue in 20 cross-examination or in any PUCO proceeding because 21 Ohio law provides for that. If you look at the 22 testimony that was admitted regarding Mr. Rubin in 23 his testimony in Oregon, that came in under 24 credibility. That was involving a tangential issue.</p> <p>25 This goes to the issue in this case</p>	<p>1 MS. DUNN: Not yet.</p> <p>2 MR. OLIKER: Take them one at a time.</p> <p>3 MS. DUNN: Your Honor, if I may respond?</p> <p>4 EXAMINER CHILES: You may.</p> <p>5 MS. DUNN: What Mr. Oliker thinks this 6 document does, what he thinks it's authenticated of, 7 is not what his witness does. What Mr. Oliker thinks 8 and wants on the record is not what his witness knows 9 about, has personal knowledge of the document, knew 10 where it came from at the time. None of what 11 Mr. Oliker says today matters.</p> <p>12 In addition to the relevance argument, I 13 think this Bench was clear of not opening the door to 14 other parties' previous statements so as to not 15 unduly prolong this proceeding.</p> <p>16 The third item, of course -- he made my 17 point for me. It wasn't used on Ms. Mikkelsen 18 because she couldn't testify to it. You can't 19 impeach a company as a whole. That's not proper 20 impeachment. This document doesn't come in under the 21 rules relating to impeachment. To impeach an entire 22 corporate organization, you must be able to use it on 23 someone with knowledge, and it has to be that 24 person's own statement.</p> <p>25 For all of those reasons and the previous</p>
Page 5021	Page 5023
<p>1 whether the RRS should be approved. We have company 2 statements that say subsidized generation is a bad 3 thing. 15-year contracts are a bad thing. This is 4 clearly at issue, and it's their own statements that 5 contradict their entire case. Whether it's 6 Ms. Mikkelsen or the application, it's impeaching 7 FirstEnergy as a company.</p> <p>8 It doesn't matter if it relates to 9 Ms. Mikkelsen's testimony, and it would have been 10 used on her, but during her deposition, and I can 11 refer you to that if necessary, she indicated she had 12 never seen any of the testimony that had been filed 13 at the General Assembly, so it couldn't have been 14 offered against her because there wouldn't have been 15 any foundation.</p> <p>16 Regarding the timing of these statements, 17 2011 is not that long ago. This is a period of four 18 years when we're talking about an ESP that would go 19 out for 15 years. She's still in a representative 20 capacity of the company. There are people in this 21 room that report to Ms. Vespoli, and her statements 22 provide very good insight into whether or not this 23 deal is in the public interest, as do 24 Mr. Alexander's, though I'm not sure there was a 25 motion on that.</p>	<p>1 rulings from the Bench, this document should be 2 stricken.</p> <p>3 EXAMINER CHILES: Thank you.</p> <p>4 MR. OLIKER: Any of those statements were 5 not true regarding Ohio law. For example, the 6 statement of a party in a representative capacity is 7 an admission of the party to which they are 8 representing. And Ms. Mikkelsen here is testifying 9 on behalf of FirstEnergy -- I'm sorry. Ms. Vespoli. 10 So, therefore, her statements are attributable to the 11 company, and it is an admission and should be offered 12 into evidence. There's no obligation to offer that 13 against the FirstEnergy witness. It can be sponsored 14 by an IGS witness.</p> <p>15 EXAMINER CHILES: Thank you.</p> <p>16 Ms. Dunn, your remaining motion to 17 strike?</p> <p>18 MS. DUNN: Yes. Moving forward, last 19 move to strike, page 9, line 30, starting with 20 "However," moving forward to page 10, line 18, also 21 moving to strike page 10, lines 25 through page 11, 22 line 7, and also Attachment MW-2, which purports to 23 be Mr. Alexander's testimony relating to Senate Bill 24 221.</p> <p>25 I believe I made myself clear regarding</p>

<p style="text-align: right;">Page 5024</p> <p>1 what occurred with getting certified copies after the 2 fact. I would like to point out, however, that in 3 his deposition on page 47, I asked Mr. White, and 4 then starting on line 11: 5 "And then turning to attachment MW 6 Exhibit 2, where did you find that document?" 7 Answer: "My attorney provided it to me." 8 Line 14: "And would that be Mr. Olikier?" 9 "Yes." 10 "And do you know where he found that 11 document?" 12 "I don't recall." 13 I also would like to point out that this 14 Bench has stricken and not permitted this testimony 15 to be used in this proceeding on several occasions. 16 It was requested to be admitted by Ms. Fleisher in a 17 certified form. I believe it was also brought in by 18 OMA either in this form or as part of a press 19 release, I can't recall, but it certainly has not 20 been used in this case. And for the same reasons on 21 the basis of relevance, I would move that it's 22 stricken as well. 23 EXAMINER CHILES: Thank you. 24 Mr. Olikier. 25 MR. OLIKER: Your Honor, there has been</p>	<p style="text-align: right;">Page 5026</p> <p>1 clarify, and the basis of your testimony is your 2 personal knowledge, and that is based upon the time 3 that you testify. If you say -- 4 EXAMINER PRICE: Mr. White personally 5 obtained the certified copy? 6 MR. OLIKER: He asked for them to be 7 obtained. 8 EXAMINER PRICE: That's all I asked. 9 MR. OLIKER: And I would say I don't 10 think that's a relevant question, your Honor. 11 EXAMINER PRICE: I will decide what's 12 relevant or what's not, Mr. Olikier. I said he did 13 not obtain it personally. I'm just asking. 14 MR. OLIKER: He did not. He directed 15 that it happen as the head of our regulatory 16 department. 17 MS. BOJKO: Your Honor, if Mr. Olikier is 18 done, when he's done, may I be heard? 19 EXAMINER PRICE: I think he's got some 20 things he'd like to add. 21 MR. OLIKER: Yes, absolutely. 22 Regarding Mr. Alexander's testimony from 23 2007 that may have been addressed by other witnesses 24 earlier in this case, this is not being offered to 25 indicate FirstEnergy may have had one position or</p>
<p style="text-align: right;">Page 5025</p> <p>1 continued reference to what the witness may or may 2 not have known at the time of his deposition. If his 3 deposition was the day that he was testifying in this 4 case, that might have relevance, but we're talking 5 about what Mr. White knows today as we create this 6 record, and that is how the Commission will evaluate 7 his opinions, based upon his personal knowledge when 8 he testifies in this case, and he's demonstrated his 9 knowledge. He has authentic documents to back up his 10 knowledge. 11 And regarding Exhibit MW-2 -- 12 EXAMINER PRICE: Mr. Olikier, may I 13 interrupt you? 14 MR. OLIKER: Sure, your Honor. 15 EXAMINER PRICE: This is a new principle, 16 that what you say in your deposition doesn't count? 17 MR. OLIKER: It counts. 18 EXAMINER PRICE: Based upon your 19 witnesses today, I'm not surprised, but can you cite 20 to an actual legal case or something where somebody 21 has said that authoritatively? 22 MR. OLIKER: I don't think that's the 23 point, your Honor. The point is if you say something 24 in your deposition, you can be shown that you made an 25 inconsistent statement, but you're also allowed to</p>	<p style="text-align: right;">Page 5027</p> <p>1 another about Senate Bill 221 or Senate Bill 3, and 2 we're happy to clarify that we will not offer it for 3 that purpose. 4 The purpose of Mr. Alexander's testimony 5 is regarding the impact of regulation versus 6 restructuring on wholesale energy markets. That's a 7 policy question, and it doesn't change regardless of 8 what kind of regulatory framework we're in. And I 9 think that it would be helpful to the record to see 10 where FirstEnergy was in 2007 about wholesale energy 11 markets and subsidies, where they were in 2011 on the 12 same issues. And you can even go back to 1999, which 13 admittedly is not in Mr. White's testimony, but one 14 thing you'll find is constant is FirstEnergy has been 15 pro-market up until the day that they asked for 16 cost-based recovery for their generating assets. So 17 it demonstrates a lack of credibility for the request 18 that is something that is in the public interest. 19 This is something that's in FirstEnergy's interest. 20 MS. DUNN: Your Honor, if I may respond 21 to your line of questioning. 22 I'm sorry, Ms. Bojko. I apologize. 23 MS. BOJKO: Thank you, your Honor. I 24 think there's been some misstatements of the rules, 25 the Ohio Rules of Evidence that I would like to be</p>

<p style="text-align: right;">Page 5028</p> <p>1 heard on.</p> <p>2 First of all, pursuant to Rule 902.4, the</p> <p>3 testimony is self-authenticating as a copy of an</p> <p>4 official record or report or entry therein or a</p> <p>5 document authorized by law to be recorded or filed</p> <p>6 and actually recorded or filed in a public office</p> <p>7 certified as correct by the custodian or other person</p> <p>8 authorized to make the certifications per rule 902.2.</p> <p>9 If we have a true and accurate copy of</p> <p>10 the testimony provided to the legislature with an</p> <p>11 attestation of that true and accurate copy in the</p> <p>12 many forms it can be provided in, then that is enough</p> <p>13 to meet the self-authenticating rule of a public</p> <p>14 record.</p> <p>15 As for whether there's foundation, Ohio</p> <p>16 courts have recognized that the concepts of lack of</p> <p>17 foundation and authentication are interrelated</p> <p>18 concepts, State versus Jackson, 2011 Oh 5593; and in</p> <p>19 Jackson, the Court considered appellant's arguments</p> <p>20 that a telephone recording was improperly admitted</p> <p>21 for the separate reasons of lack of foundation and</p> <p>22 authentication. The Court found that these are</p> <p>23 interrelated concepts rather than distinct concepts</p> <p>24 EXAMINER PRICE: If I could interrupt</p> <p>25 you. Can you show me an examiner's entry where it</p>	<p style="text-align: right;">Page 5030</p> <p>1 public record, and just because this Bench has now</p> <p>2 required it to be certified, that does not mean that</p> <p>3 he has missed the filing. You can compare the</p> <p>4 certified copy with the copy that he submitted with</p> <p>5 his testimony; and if those two are identical, then</p> <p>6 you have met your public record burden.</p> <p>7 MR. OLIKER: I agree this is the first</p> <p>8 time this issue has come up for me, your Honor, in my</p> <p>9 cases that I've been involved.</p> <p>10 EXAMINER PRICE: I'm not sure what that</p> <p>11 means, but that's fine.</p> <p>12 MS. BOJKO: And, your Honor, I don't know</p> <p>13 if I may continue.</p> <p>14 EXAMINER PRICE: I don't think it's</p> <p>15 necessary.</p> <p>16 MS. BOJKO: Okay. There are other</p> <p>17 requirements under Rule 801.2 that determines that</p> <p>18 this also not hearsay other than what counsel has</p> <p>19 referenced today, both from FirstEnergy's perspective</p> <p>20 and IGS></p> <p>21 MS. DUNN: Your Honor, if I may respond</p> <p>22 very briefly?</p> <p>23 One, this is not a public record. A</p> <p>24 public record is something that the public entity has</p> <p>25 a duty to report. So that isn't where the hearsay</p>
<p style="text-align: right;">Page 5029</p> <p>1 says you get to miss the filing deadlines to secure</p> <p>2 defects?</p> <p>3 MS. BOJKO: There is not. Your Honor, a</p> <p>4 public document filed with a public agent --</p> <p>5 EXAMINER PRICE: But the prefiled</p> <p>6 requirement was when it was. He didn't meet the</p> <p>7 prefiled requirement with the authenticated document,</p> <p>8 did he?</p> <p>9 MS. BOJKO: I disagree. We believe that</p> <p>10 the reports were with the Ohio Senate. We believe</p> <p>11 that a public record is authenticated if it's</p> <p>12 produced by a public entity. Because this Court has</p> <p>13 taken the extra step in this particular case to</p> <p>14 require that a document actually be authenticated,</p> <p>15 which to my knowledge has never been done in the</p> <p>16 past, but because this agency or the Bench has</p> <p>17 required that separate step, that still does not</p> <p>18 change the fact that it is a public record and it</p> <p>19 meets the exception of a public record exception</p> <p>20 under the hearsay rules. It is not hearsay if it's a</p> <p>21 public record.</p> <p>22 EXAMINER PRICE: I'm not disputing that.</p> <p>23 I'm just asking did he miss the prefiling deadline?</p> <p>24 MS. BOJKO: No, he did not, because the</p> <p>25 document is a public record. It's always been a</p>	<p style="text-align: right;">Page 5031</p> <p>1 exception is. This is not written by a public</p> <p>2 entity. It's not a public record.</p> <p>3 Number two, authentication, I think you</p> <p>4 were right on point with the filing deadline. He</p> <p>5 didn't know anything about the document when I</p> <p>6 deposed him. To come today and say "I don't know</p> <p>7 where it came from, I don't know where I got it," how</p> <p>8 can I cross-examine him on a document that he doesn't</p> <p>9 know where it came from.</p> <p>10 So we were definitely sandbagged, and I'm</p> <p>11 sure a lot of parties here wouldn't like it if the</p> <p>12 companies tried to cure their deposition, their</p> <p>13 testimony, by adding what they figured out was wrong</p> <p>14 in the middle of the hearing.</p> <p>15 For all of those reasons, your Honor,</p> <p>16 this should be stricken in addition to the relevance,</p> <p>17 which still hasn't changed from your previous</p> <p>18 rulings. Thank you.</p> <p>19 MR. OLIKER: Your Honor, she was not</p> <p>20 precluded from crossing him on the document. It was</p> <p>21 only a question of where he got the document, and it</p> <p>22 is a public record because there is a duty at the</p> <p>23 House and the Senate to record the proceedings that</p> <p>24 occurred before it. So I do think it counts as a</p> <p>25 public record. That's the reason why I was able to</p>

<p style="text-align: right;">Page 5032</p> <p>1 locate it there, because they had a duty to retain 2 that information under Ohio law. 3 EXAMINER CHILES: At this time we're 4 going to take a recess. We will consider the motions 5 to strike as well as take our lunch hour and a break 6 for the Commission meeting. We will return at 2:00. 7 (At 12:54 p.m. a lunch recess was taken 8 until 2:10 p.m.) 9 --- 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5034</p> <p>1 part and denied in part. Consistent with our prior 2 ruling, we will allow discussion of Ohio statutes in 3 general; however, we feel that any discussion of 4 federal preemption is a purely legal issue that is 5 not appropriate for testimony. So we'll be striking 6 the phrase within those lines 21 and 22, the phrase 7 beginning with "the federal preemption" -- I'll just 8 read the entire phrase. It's the beginning of line 9 22, "the federal preemption statutes." 10 And moving on to page 6, there was a 11 motion to strike beginning with line 12 and ending 12 with line 22. Consistent with our prior rulings, 13 this will also be granted in part and denied in part. 14 We will be striking the sentence beginning on line 15 15 that begins with "it violates the Federal Power Act" 16 and ending on line 19 with "federal law." 17 Moving on to page 7, there was a motion 18 to strike lines 5 beginning with "one can only" and 19 ending on line 13 with "customers." This motion to 20 strike is denied. We find this is distinguishable 21 from our other evidentiary rulings on the basis that 22 it's discussing the issues in these cases and not the 23 holdings with these specific cases or the findings of 24 those courts. 25 MR. OLIKER: I'm sorry, your Honor, I was</p>
<p style="text-align: right;">Page 5033</p> <p>1 Wednesday Afternoon Session, 2 October 7, 2015. 3 --- 4 EXAMINER CHILES: Before we stopped for 5 lunch, we have a pending or multiple pending motions 6 to strike by the companies. Let's begin with the 7 direct testimony of Mr. White. I'm just going to 8 take these line by line. 9 Let's begin on page 18. There is a 10 motion to strike lines 14 through 16. This motion to 11 strike is denied. We are going to allow this 12 testimony and several other pieces of testimony that 13 were moved to strike based on Mr. White's status as a 14 regulatory expert, and we believe that's consistent 15 with our practice during this hearing of allowing 16 experts to discuss their interpretation of Ohio law. 17 Moving on to page 20, lines 10 through 11 18 and also line 17 through 18, these motions to strike 19 are denied for the same reason; as well as on page 20 21, beginning at line 20, moving on to page 22 21 through line 1 as well as lines 2 through line 6 on 22 the same page. So motions to strike are all denied. 23 We'll move on to the supplemental 24 testimony of Mr. White beginning on page 2, lines 21 25 through 22. That motion to strike will be granted in</p>	<p style="text-align: right;">Page 5035</p> <p>1 having trouble keeping up with you. Were you on page 2 7? 3 EXAMINER CHILES: I'm on page 7, line 5, 4 beginning with "one can only" and ending with line 5 13, ending with "customers." 6 THE WITNESS: That's not stricken? 7 EXAMINER CHILES: It is not stricken. 8 Yes, the motion is denied as to that. 9 And moving down the page, beginning with 10 line 19, there's a motion to strike line 19 on page 11 7, ending on -- let's see. I believe it was line 26 12 on page 9; is that correct, Ms. Dunn? Or was it line 13 2? 14 MS. DUNN: It was line 26. I don't 15 think -- actually, your Honor -- well, I guess it 16 depends on what your ruling is, but I don't think 17 line 5 that say -- or the question on line 4 or line 18 5 saying, "No. In what Ms. Mikkelsen states." So 19 those three lines do not need -- I just made this 20 more confusing. Let me start over. 21 EXAMINER CHILES: I'll let you stop 22 because we're actually going to deny the motion to 23 strike as to that entire section, and ending with 24 whether it's line 26 or line 3, that motion to strike 25 is denied. We are finding that Ms. Vespoli's</p>

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<p>1 testimony is distinguishable from Mr. Alexander's 2 testimony, which we had previously stricken on the 3 basis of relevancy. We find that due to the age of 4 the testimony, which is more recent, the passage of 5 221, as well as the change in the economic 6 environment, that this testimony is relevant. So we 7 will not be striking Ms. Vespoli's testimony. 8 However, the bottom of page 9, line 30, 9 the sentence beginning with "However" and continuing 10 on through page 10, line 18, the testimony that 11 discusses Mr. Alexander's testimony, we will be 12 striking that entire section. So that motion to 13 strike is granted, as well as the exhibit referred to 14 that's MW Exhibit 2, the motion is to strike is 15 denied -- or I'm sorry. The motion to strike is 16 granted as to Exhibit 2. 17 Moving on to the bottom of page 10, line 18 25, the sentence beginning with "As is," going on to 19 page 11, line 7, that motion to strike is granted in 20 part and denied in part. Consistent with our prior 21 rulings, we will strike the "S" at the end of 22 statements in the first line and in the sixth line, 23 we will strike the phrase "Tony Alexander and." 24 MR. OLIKER: Could I have that read back, 25 your Honor, I had trouble keeping up.</p>	<p>1 MR. HAYS: None. Thank you, your Honor. 2 EXAMINER CHILES: Ms. Bojko? 3 MS. BOJKO: No thank you, your Honor. 4 EXAMINER CHILES: Mr. Randazzo? 5 MR. RANDAZZO: None. Thank you. 6 EXAMINER CHILES: Mr. Fisk. 7 MR. FISK: None, thank you. 8 EXAMINER CHILES: Mr. Kurtz. 9 MR. KURTZ: Probably none, if I could go 10 after the company. 11 EXAMINER CHILES: Ms. Dunn. 12 MS. DUNN: Thank you, your Honor. 13 --- 14 CROSS-EXAMINATION 15 By Ms. Dunn: 16 Q. Good afternoon, Mr. White. 17 A. Good afternoon. 18 Q. Turning to page 2 of your supplemental 19 direct testimony, IGS 11 -- or I'm sorry. Let's turn 20 to page 13 -- I can't talk today. IGS 13, the 21 supplemental testimony of Matt White. 22 A. Sure. 23 Q. You state you were general counsel for 24 Interstate Gas Supply, Inc., correct? 25 A. Correct.</p>
Page 5037	Page 5039
<p>1 EXAMINER CHILES: Page 10, line 25, the 2 sentence beginning with "as is," moving on to page 3 11, line 7, the sentence ending in "stipulation," 4 that motion to strike is granted in part and denied 5 in part. We will be striking the "S" at the end of 6 statements on line 1 and on line 6. We will be 7 striking the phrase "Tony Alexander and." And 8 consistent with those rulings, we are denying the 9 motion to strike MW Exhibit 1. 10 I know that was a lot of information. 11 Are there questions? Anyone missed anything? 12 MS. DUNN: Your Honor, which exhibit are 13 you -- you're denying motion to strike? 14 EXAMINER CHILES: As to MW Exhibit 1, we 15 are granting the motion to strike -- I'm sorry, we 16 are granting the motion to strike as to MW Exhibit 2. 17 I'll give everyone a few minutes here. 18 MR. OLIKER: In case I forget later, your 19 Honor, I'd like to proffer the exhibits that were 20 stricken. 21 EXAMINER CHILES: It's noted for the 22 record. 23 If everyone is ready to proceed, we will 24 move on to cross-examination. 25 Mr. Hays?</p>	<p>1 Q. And can we refer to that as IGS or IGS 2 Energy today? 3 A. Sure. 4 Q. And as general counsel, you are the 5 highest ranking legal individual at the company, 6 correct? 7 A. Our corporate structure is unique. In 8 some aspects, you could consider me to be the highest 9 ranking legal officer, but for purposes of 10 simplicity, yes, correct. 11 Q. And I'm going to now turn to your 12 supplemental direct testimony, IGS 11. 13 A. Yes. 14 Q. If I refer to this throughout as your 15 direct testimony, this is what I'm referring to, 16 okay? 17 A. Okay. Yeah, because there's a couple 18 supplemental, okay. 19 Q. If you feel I'm being unclear, just let 20 me know. 21 A. Is the testimony you're addressing the 22 stipulation or the -- 23 Q. No, IGS 11. 24 A. Okay. 25 Q. Your supplemental direct testimony of</p>

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<p>1 Matthew White.</p> <p>2 A. Okay. Okay.</p> <p>3 Q. And on page 3, line 14, you list several</p> <p>4 entities that are part of the IGS family of</p> <p>5 companies, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And as general counsel, at times you</p> <p>8 provide legal advice or legal services to the</p> <p>9 entities listed on page 3, correct?</p> <p>10 A. Yes.</p> <p>11 Q. You began drafting your testimony</p> <p>12 sometime in November 2014; is that correct?</p> <p>13 A. I don't recall specifically the time</p> <p>14 frame. This has been a long case.</p> <p>15 Q. Your direct testimony was filed on</p> <p>16 December 22nd, 2014 originally, correct?</p> <p>17 A. I will take your word for that.</p> <p>18 Q. So you prepared your testimony at least</p> <p>19 sometime before December 22nd, 2014, correct?</p> <p>20 A. Yes, I think that's safe to say.</p> <p>21 Q. And in this case, you originally appeared</p> <p>22 as counsel for IGS, correct?</p> <p>23 A. I believe -- again, I'm not 100 percent</p> <p>24 sure, but I will take your word for the fact that I</p> <p>25 did appear as counsel in this case.</p>	<p>1 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>2 Q. Mr. White, I've handed you what has been</p> <p>3 marked as Company Exhibit 89, is that the Notice of</p> <p>4 Withdrawal of you as counsel in this case?</p> <p>5 A. Yes, it is.</p> <p>6 Q. And the reason you withdrew as counsel</p> <p>7 was because you were going to be a witness, correct?</p> <p>8 A. Yes.</p> <p>9 Q. So did you draft your testimony between</p> <p>10 December 12th, 2014 when you withdrew and it was</p> <p>11 filed on December the 22nd, 2014?</p> <p>12 A. Can you please repeat the question?</p> <p>13 Q. So you drafted your testimony sometime</p> <p>14 between December 12th, 2014 when you withdrew as</p> <p>15 counsel and when you filed your testimony as a</p> <p>16 witness on December 22nd, 2014, correct?</p> <p>17 A. I don't remember.</p> <p>18 MS. DUNN: Your Honor, May I approach?</p> <p>19 EXAMINER CHILES: You may.</p> <p>20 MS. DUNN: Your Honor, may we mark the</p> <p>21 next exhibit Company Exhibit 90?</p> <p>22 EXAMINER CHILES: So marked.</p> <p>23 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>24 Q. Mr. White, I've handed you what has been</p> <p>25 marked as Company Exhibit 90. Could you take a look</p>
Page 5041	Page 5043
<p>1 Q. Well, let's go ahead and be sure.</p> <p>2 MS. DUNN: Your Honor, may I approach?</p> <p>3 EXAMINER CHILES: You may.</p> <p>4 MS. DUNN: Your Honor, may I mark this as</p> <p>5 Company Exhibit 88?</p> <p>6 EXAMINER CHILES: So marked.</p> <p>7 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>8 Q. Mr. White, I've handed you what has been</p> <p>9 marked as Company Exhibit 88. Is that the Motion to</p> <p>10 Intervene and Memorandum in Support of IGS Energy in</p> <p>11 this case?</p> <p>12 A. Yes.</p> <p>13 Q. Does it list you on the front page as</p> <p>14 counsel?</p> <p>15 A. Yes.</p> <p>16 Q. And then you withdrew as counsel on this</p> <p>17 case on December 12th, 2014, correct?</p> <p>18 A. Again, I will take your word that I</p> <p>19 withdrew on the 12th of December, 2014. I don't know</p> <p>20 the exact date, though.</p> <p>21 MS. DUNN: Your Honor, may I approach?</p> <p>22 EXAMINER CHILES: You may.</p> <p>23 MS. DUNN: Your Honor, I'd like to mark</p> <p>24 the next exhibit as Company Exhibit 89.</p> <p>25 EXAMINER CHILES: So marked.</p>	<p>1 at this document?</p> <p>2 A. Yes.</p> <p>3 Q. Have you seen this document before?</p> <p>4 A. I believe I have.</p> <p>5 Q. And the third page from the end has</p> <p>6 Exhibit B up in the upper right-hand corner. It says</p> <p>7 Nondisclosure Certificate.</p> <p>8 MR. OLIKER: Objection.</p> <p>9 EXAMINER CHILES: Grounds?</p> <p>10 MR. OLIKER: He was presented a document</p> <p>11 that relates to a protective agreement. I don't see</p> <p>12 how that's at all relevant to Mr. White's</p> <p>13 cross-examination, which only contains one small</p> <p>14 piece of confidential information that was filed in</p> <p>15 August of 2015. It seems like this is a waste of</p> <p>16 time.</p> <p>17 EXAMINER CHILES: Ms. Dunn?</p> <p>18 MS. DUNN: Your Honor, I'm laying a</p> <p>19 foundation for documents he received in discovery and</p> <p>20 whether they were confidential or competitively</p> <p>21 sensitive, and it goes to the weight and credibility</p> <p>22 of his testimony.</p> <p>23 EXAMINER CHILES: I'll allow the</p> <p>24 question.</p> <p>25 Q. (By Ms. Dunn) Mr. White, at the third</p>

<p style="text-align: right;">Page 5044</p> <p>1 page from the end do you seeing Exhibit B, a 2 nondisclosure certificate signed by you? 3 A. Yes. 4 Q. And you signed this on November 21st, 5 2014? 6 A. Yes. 7 Q. And at that time, you were counsel for 8 IGS Energy in this case, correct? 9 A. Let me cross-check the dates on the 10 documents that you gave me. It looks like I wasn't. 11 It looks like I withdrew on the 12th. 12 Q. Of December, correct? 13 A. Yes. 14 Q. So you were counsel on November 21st, 15 2014? 16 A. Yes. 17 Q. And then turning to page 3 of the 18 protective agreement -- 19 A. Sure. Yeah. 20 Q. -- paragraph 4, at the time you signed 21 the nondisclosure certificate, you were entitled to 22 be a fully authorized representative because you fit 23 within definition 4A as outside legal counsel or 24 in-house legal counsel, correct? 25 MR. OLIVER: Objection.</p>	<p style="text-align: right;">Page 5046</p> <p>1 "A. Receiving Party's outside legal 2 counsel." 3 Mr. White, at the time in November 21, 4 2014, were you receiving party's outside legal 5 counsel? 6 A. Yes. 7 Q. You were outside legal counsel from IGS 8 Energy? 9 A. I'm sorry. No, I was in-house legal 10 counsel. 11 Q. So you fit in the definition then of 12 receiving party's in-house legal counsel? 13 MR. OLIVER: Objection. 14 EXAMINER CHILES: Grounds? 15 MR. OLIVER: Calls for a legal 16 interpretation of what this document means, whether 17 he fits under A or B or both. 18 EXAMINER CHILES: Overruled. 19 A. At the time that I entered into the 20 agreement, I would be considered in-house legal 21 counsel. 22 Q. And then when you withdrew on 23 December 12th, 2014 from this case as counsel, where 24 did you fit within the definition of fully-authorized 25 representative?</p>
<p style="text-align: right;">Page 5045</p> <p>1 EXAMINER CHILES: Grounds? 2 MR. OLIVER: She's asking for a legal 3 interpretation of what this document means. We 4 haven't established or litigated any of the terms of 5 this document, how they may be applicable. It's 6 honestly a waste of time given what Mr. White has 7 relied upon in his testimony. 8 EXAMINER CHILES: Overruled. He can 9 answer if he knows. 10 A. Can you please repeat the question? 11 Q. Sure. At the time that you signed the 12 protective agreement, you fell under the definition 13 as a fully authorized representative because you were 14 receiving party's in-house legal counsel, correct? 15 A. Without having more time to fully review 16 the document in its totality and the applicable 17 statutes and case law, I don't know if I could make 18 that interpretation of what I fell in under the 19 definition of. 20 Q. Okay. We can go ahead then and look at 21 paragraph 4, "Fully Authorized Representative must 22 execute a Non-Disclosure Certificate in the form of 23 Exhibit B (applicable to COMPETITIVELY SENSITIVE 24 CONFIDENTIAL Protected Materials) and shall be 25 limited to the following persons:</p>	<p style="text-align: right;">Page 5047</p> <p>1 MR. OLIVER: Objection. 2 A. I don't know. 3 MR. OLIVER: Again, calls for a legal 4 interpretation of what this document means. 5 MS. DUNN: The witness answered. 6 A. I don't know. 7 Q. Were you a paralegal? 8 A. No. 9 Q. Were you other employee associated for 10 purposes of this case? 11 MR. OLIVER: Objection. 12 A. I don't know. I just don't know. I 13 don't know the answer to that question. 14 Q. Were you an outside expert? 15 A. No. 16 Q. Were you an employee of an outside 17 expert? 18 A. No. 19 Q. And under the protective agreement, you 20 received not only confidential but also competitively 21 sensitive confidential material, correct? 22 MR. OLIVER: Objection. 23 A. I don't know. I don't remember. 24 MS. DUNN: Your Honor, may I approach? 25 EXAMINER CHILES: You may.</p>

<p style="text-align: right;">Page 5048</p> <p>1 MS. DUNN: Your Honors, do you still have 2 copies of his deposition from earlier today? 3 EXAMINER CHILES: We do. 4 MS. DUNN: Thank you. 5 Q. Mr. White, could you please turn to page 6 125 of your deposition, line 13: 7 "Under the protective agreement you 8 received not only confidential, but competitively 9 sensitive confidential material, correct?" 10 Answer: "Correct." 11 Did I read that correctly? 12 A. You did not read the entire portion when 13 I explained that I got a lot of documents in the 14 case, and I was not clear on what the definition when 15 you asked me that question what was the difference 16 between confidential and competitively sensitive. I 17 was not clear on the distinction between the two at 18 the time that you asked me that question. 19 MS. DUNN: Your Honor, I move to strike 20 the entire answer as unresponsive. 21 EXAMINER CHILES: Mr. Olier. 22 MR. OLIER: He's providing clarification 23 to something that is quite misleading and to which 24 she established no foundation, and in trying to 25 establish the foundation that Mr. White received</p>	<p style="text-align: right;">Page 5050</p> <p>1 Q. On the 2 line of this document, does it 2 have mswhite@igsenergy.com? 3 A. Yes. 4 Q. Is that your e-mail address? 5 A. Yes. 6 Q. Does the document state, "Attached please 7 find confidential and/or competitively sensitive 8 documents related to the filing in Case No. 9 14-1296-EL-SSO"? 10 A. Of the thousands of discovery documents 11 that I've read, yes. 12 Q. And does the date also state on 13 November 21st, 2014 that you received this e-mail? 14 A. Yes. 15 Q. And does the document and the attachments 16 identify competitively sensitive confidential 17 material? 18 A. Can you please repeat the question? 19 Q. Sure. In the attachments line it lists 20 several attachments. Are those identified as 21 competitively sensitive confidential attachments? 22 A. Yes. 23 Q. And in this case, you reviewed 24 competitively sensitive confidential material that 25 has specific cost information relating to the plants</p>
<p style="text-align: right;">Page 5049</p> <p>1 these documents, failed to do so. I think it's 2 really a line of questioning we should really move on 3 from. 4 EXAMINER CHILES: Consistent with our 5 practice in hearing, I'm going to deny the motion to 6 strike at this point. 7 But I'm going to instruct the witness to 8 answer the question asked and only the question asked 9 Again, if you feel further context is needed, I'm 10 sure Mr. Olier will bring it out on redirect. 11 Thank you. 12 MS. DUNN: And, your Honor -- 13 Q. Well, Mr. White, I'd like you to answer 14 the question that I asked, which is did I read your 15 deposition correctly? 16 A. Yes, you read my deposition correctly. 17 MS. DUNN: Your Honor, may I approach? 18 EXAMINER CHILES: You may. 19 MS. DUNN: Your Honor, may I mark the 20 next document as Company Exhibit 91? 21 EXAMINER CHILES: So marked. 22 (EXHIBIT MARKED FOR IDENTIFICATION.) 23 Q. Mr. White, I've handed you what has been 24 marked as Company Exhibit 91. 25 A. Yes.</p>	<p style="text-align: right;">Page 5051</p> <p>1 being offered in the proposed transaction, correct? 2 A. No, or not that I'm aware of. 3 Q. If you could please turn to your 4 deposition. 5 A. Sure. 6 Q. Page 120. 7 A. Yes. 8 Q. Starting at line 17: 9 "I'm not asking for specifics, but have 10 you viewed competitively sensitive confidential 11 material in this case that has specific cost 12 information relating to the plants being offered in 13 the proposed transaction?" 14 Answer: "Yes." 15 Did I read that correctly? 16 MR. OLIER: Objection. He already 17 clarified this answer later in the deposition. 18 A. I was not clear at the time that what you 19 were referring to as competitively sensitive and 20 confidential. 21 MS. DUNN: Your Honor, I move to strike 22 that answer as not responsive. 23 EXAMINER CHILES: Motion to strike is 24 granted. 25 Mr. White, when there's an objection</p>

<p style="text-align: right;">Page 5052</p> <p>1 pending, you need to wait for a ruling before you 2 answer.</p> <p>3 THE WITNESS: Okay. My apologies.</p> <p>4 Q. And my question was, did I read that 5 correctly?</p> <p>6 A. Yes, you did.</p> <p>7 Q. We can go ahead and put that away.</p> <p>8 I'm going to direct you to page 3 of your 9 supplemental direct testimony, which is IGS 11.</p> <p>10 A. Sure.</p> <p>11 Q. And on lines 2 through 6, you list the 12 testimony that you have filed previously, correct?</p> <p>13 A. Can you please repeat the pages and 14 lines?</p> <p>15 Q. Sure. Page 3, lines 2 through 6.</p> <p>16 A. Yes.</p> <p>17 Q. That's the list of the testimony you 18 previously filed, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you've also recently filed testimony 21 in AEP's Case 14-1693?</p> <p>22 A. Yes.</p> <p>23 Q. And in September of 2015, you also 24 withdrew from that case as counsel for IGS Energy, 25 correct?</p>	<p style="text-align: right;">Page 5054</p> <p>1 Q. And turning to Company Exhibit 93, the 2 Notice of Withdrawal, did you withdraw on 3 September 11th, 2015 in that case as counsel?</p> <p>4 A. Yes.</p> <p>5 Q. And then turning to Company Exhibit 94, 6 your direct testimony in case 14-1693, looking at The 7 certificate of service and the electronic filing 8 docket, did you file testimony in Case No. 14-1693 on 9 September 11th, 2015?</p> <p>10 A. Yes.</p> <p>11 Q. And that was the same day you withdrew as 12 counsel for IGS, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Now, it says on page 3 of your 15 testimony --</p> <p>16 A. I've got a lot of documents up here.</p> <p>17 Q. I can slow down. I apologize.</p> <p>18 A. Give me a second to get organized.</p> <p>19 Q. I'm referring to IGS 11, the supplemental 20 direct testimony.</p> <p>21 A. Go ahead.</p> <p>22 Q. And you state on there you testified in 23 Case No. 14-841, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And did you also appear initially in that</p>
<p style="text-align: right;">Page 5053</p> <p>1 A. I will take your word for it.</p> <p>2 Q. Well, let's go ahead and be sure about 3 that as well.</p> <p>4 MR. OLICKER: Object to the relevance.</p> <p>5 MS. DUNN: Your Honor, if you'll indulge 6 me, this goes to the weight and credibility, as is 7 evident, specifically the practice of appearing as 8 counsel and withdrawing as counsel on the same day 9 testimony is filed.</p> <p>10 EXAMINER CHILES: Overruled.</p> <p>11 MS. DUNN: Your Honor, I'd like to mark 12 three exhibits. The first would be the Motion to 13 Intervene and Memorandum in Support of IGS Energy as 14 Company Exhibit 92; the Notice of Withdrawal of 15 Counsel as Company Exhibit 93; and the Direct 16 Testimony of Matthew White as Company Exhibit 94, and 17 these are all in Case No. 14-1693.</p> <p>18 EXAMINER CHILES: So marked.</p> <p>19 (EXHIBITS MARKED FOR IDENTIFICATION.)</p> <p>20 Q. Mr. White, I've handed you what has been 21 marked as Company Exhibit 92, 93, and 94. Company 22 Exhibit 92 was marked on the Motion to Intervene in 23 Case 14-1693. Did you appear as counsel for IGS 24 Energy on October 31st, 2014 in that case?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 5055</p> <p>1 case as counsel for IGS Energy?</p> <p>2 A. I will go ahead and save us the trouble 3 and stipulate yes.</p> <p>4 Q. And then on September 25th, 2014, did you 5 also withdraw as counsel in that case?</p> <p>6 A. Again, I will go ahead and save us all 7 the trouble and stipulate to yes.</p> <p>8 Q. Is September 26th, 2014 the day that you 9 filed direct testimony in Case 14-841?</p> <p>10 A. I will stipulate to yes.</p> <p>11 Q. And you also state in your direct 12 testimony in 12-426, that you testified in Case No. 13 12-426; is that correct?</p> <p>14 A. Yes, it is.</p> <p>15 Q. And in that case, did you also appear as 16 counsel for IGS?</p> <p>17 MR. OLICKER: Objection. Your Honor, are 18 we going to get to Mr. White's testimony in this 19 case? I don't think I've seen anything tying in the 20 relevance of all of these questions together to what 21 matters in this case, and we're just taking up a lot 22 of time on this.</p> <p>23 MS. DUNN: Your Honor, it continues to go 24 to weight and credibility. I'm almost done, and I 25 believe it's important for the Commission to know the</p>

Page 5056	Page 5058
<p>1 practice of IGS of having counsel enter and withdraw 2 and become a witness. 3 MR. OLIKER: There has been no 4 demonstration as to how that may go to credibility. 5 EXAMINER CHILES: Overruled. 6 MS. DUNN: May I have my last question 7 read please. 8 (Record read.) 9 A. I will stipulate to yes on that one, too. 10 Q. And did you also withdraw on March 1st, 11 2013 as counsel in that case? 12 A. I will stipulate to yes and to your time 13 frame. 14 Q. And in that case, did you also file 15 direct testimony on March 1st, 2013, the same day 16 that you withdrew as counsel? 17 A. I will stipulate that I did as such and 18 to your time frame. 19 Q. And last, you testified in Case No. 20 23-85, correct? 21 MR. OLIKER: I think you misspoke, 22 Ms. Dunn. 23 Q. You testified in case 13-2385, correct? 24 A. Yes, that's what it says in my testimony. 25 Q. And in that case, did you also appear as</p>	<p>1 gas plants. 2 Q. IGS Energy is a d/b/a for Interstate Gas 3 Supply, Inc., correct? 4 A. Yes. 5 Q. IGS purchased a retail supplier of 6 electricity in 2011, correct? 7 A. Yes. 8 Q. And that was the first time IGS Energy 9 became involved in the supply of electricity, 10 correct? 11 A. Depends on what you mean by the 12 definition of being involved in the supply of 13 electricity. 14 Q. Let me rephrase my question. Maybe I 15 misspoke. 2011 is the first time IGS Energy became 16 involved in the supply of electricity? 17 A. If you mean the first time IGS Energy 18 became a competitive retail electric supplier, then 19 that's correct. 20 Q. Page 4, line 4 to 5, still the same 21 testimony, IGS 11, you state, a large portion of the 22 aggregation is served by FES, an affiliate of 23 FirstEnergy. Is the basis of this statement just 24 information you know about the industry? 25 A. I've done research on specifics, but,</p>
Page 5057	Page 5059
<p>1 counsel for IGS? 2 A. I will stipulate that I trust you that I 3 did. 4 Q. And you also withdrew as counsel in that 5 case, correct? 6 A. I will stipulate that you did the 7 research that I did. 8 Q. Turning to page 3 of your supplemental 9 direct testimony, IGS 11 -- 10 A. Yes. 11 Q. -- line 14, you identify IGS Generation, 12 correct? 13 A. Yes. 14 Q. IGS Generation doesn't own any coal 15 plants, correct? 16 A. No. 17 Q. Meaning, I'm correct, they don't own -- 18 A. Yes, you are correct, IGS Generation does 19 not own coal plants. 20 Q. And IGS does not own any nuclear plants, 21 correct? 22 A. That is correct. 23 Q. And IGS Generation doesn't own any 24 wholesale natural gas plants, correct? 25 A. Correct, we do not own wholesale natural</p>	<p>1 yes, it's what I know about the industry and the 2 research that I've done. 3 Q. Can you please turn to your deposition? 4 A. Sure. 5 Q. Page 49. 6 A. A lot of documents up here, so it's kind 7 of hard to find my deposition. Okay. 8 Q. Line 21, question: 9 "And on page 4, lines 4 to 5, you state 10 'A large portion of that aggregation is served by 11 FirstEnergy Solutions (FES) an affiliate of 12 FirstEnergy,' correct?" 13 Line 1: "Yes." 14 Question: "How do you know that?" 15 Answer: "Upon my information about the 16 industry." 17 Did I read that correctly? 18 A. That is the answer I gave, and since you 19 asked me that, I did more research on the amount of 20 aggregation that was being served by FirstEnergy 21 Solutions, and I verified that the City of Toledo, 22 the City of Cleveland, all of NOPEC, all of Akron's 23 and all of I believe it's Canton's -- or I'm sorry -- 24 Youngstown's aggregation is served by FirstEnergy 25 Solutions. So since you asked me that question, I've</p>

Page 5060	Page 5062
<p>1 been able to verify more information on that topic. 2 MS. DUNN: Your Honor, I would move to 3 strike everything after the word "and" the first 4 time. 5 EXAMINER CHILES: Mr. Olikier, a response. 6 MR. OLIKER: Your Honor, he's providing 7 his understanding of the aggregation served by 8 FirstEnergy Solutions. It's very relevant to his 9 testimony. Ms. Dunn may not like the answer, but it 10 completes the record. 11 MS. DUNN: Your Honor, if I may. 12 MR. OLIKER: And also, before I finish 13 that, Ms. Dunn also left out the basis of the 14 information Mr. White did happen to know at the time, 15 which was not just based on his understanding of the 16 industry. 17 EXAMINER CHILES: Ms. Dunn, do you have 18 something to add? 19 MS. DUNN: Yes. My question was whether 20 I read it correctly. If Mr. Olikier has other things 21 he'd like to put on, he can do so on redirect. 22 EXAMINER CHILES: I agree. The motion is 23 granted. 24 Q. (By Ms. Dunn) Back to your testimony, 25 IGS 11, on page 4, lines 5 to 6, is the basis of your</p>	<p>1 deposition. 2 A. Sure. 3 Q. Page 50, line 12: 4 Question: "In lines 5 through 6, you 5 state, 'This is especially problematic given FES' 6 shift away from competitive markets and competitive 7 policies,' correct?" 8 "Can you restate where I said that?" 9 "Yes, lines 5 to 6." 10 "Page?" 11 "Page 4." 12 "Yes." 13 "And how do you know that?" 14 "It's my opinion based on public comments 15 made by FirstEnergy and FirstEnergy Solutions." 16 "Are you referring to comments on page 6, 17 footnote 2?" 18 "Yes, and other comments." 19 "What other comments?" 20 "Comments I've seen in news articles." 21 "Any others?" 22 "Those are the ones I can think of at 23 this time." 24 Did I read that correctly? 25 A. Yes, you did.</p>
Page 5061	Page 5063
<p>1 opinion there on public comments made by FirstEnergy 2 and FirstEnergy Solutions? 3 A. Excuse me. Can you recite that? 4 Q. Sure. Page 5, lines 5 to 6, is this your 5 opinion based on public comments made by FirstEnergy 6 and FirstEnergy Solutions? I think I misspoke. I 7 apologize. Page 4, line 5 to 6, this is your opinion 8 based on public comments made by FirstEnergy and 9 FirstEnergy Solutions, correct? 10 A. Page 4, 5 and 6? 11 Q. Yes. 12 A. You're talking about a large portion of 13 the aggregation is served by FirstEnergy and 14 FirstEnergy Solutions? Is that the line you're 15 referring to? 16 Q. No. On line 5 to 6, "This is especially 17 problematic given FES recent shift away from 18 competitive markets and competitive policies." 19 A. That statement is made based on public 20 comments and also just general information, industry 21 knowledge, what I've seen in the industry. 22 Q. And that's also based on comments you 23 read in news articles, correct? 24 A. Among other information, yes. 25 Q. Mr. White, could you please turn to your</p>	<p>1 MS. DUNN: Your Honor, I would move to 2 strike lines 5 through 6 on page 4 of his testimony 3 on the basis of hearsay. 4 MR. OLIKER: Your Honor, it specifically 5 says it's based upon public comments of FirstEnergy. 6 Any comments that FirstEnergy makes are admissions, 7 and he can provide any opinions that's based off of 8 the testimony. It's not hearsay. It's an exception 9 to hearsay. 10 EXAMINER CHILES: Ms. Dunn. 11 MS. DUNN: Your Honor, if I may respond, 12 I believe the exception to hearsay he's referring to 13 is the admission of a party opponent. In order for 14 that to apply they have to demonstrate that it fits 15 that definition that was within a representative 16 capacity. They have not the established that at all, 17 That it fits that definition that was within a 18 representative capacity. They have not the 19 established that at all, and news articles are also 20 hearsay within hearsay. 21 EXAMINER CHILES: Mr. Olikier, last word. 22 MR. OLIKER: The newspaper is only a 23 portion of what Mr. White indicated, and he also said 24 those are the ones that I can think of at this time. 25 Mr. White also testified on the stand that there is</p>

<p style="text-align: right;">Page 5064</p> <p>1 additional understanding he has, and going back to 2 the FirstEnergy comments, whether it's in 3 representative capacity -- I mean, it is FirstEnergy. 4 I mean, comments about FES, if it's in an SEC 5 document or some other document, I think he's allowed 6 to rely upon that document, as all witnesses have in 7 Commission practice. 8 EXAMINER CHILES: Consistent with our 9 prior rulings regarding hearsay regarding Mr. White's 10 testimony, we are going to grant the motion to strike 11 that sentence. 12 Q. (By Ms. Dunn) Mr. White, turning to page 13 5 of your testimony -- 14 A. Yes. 15 Q. -- lines 14 to 15, you state further 16 FirstEnergy has not proposed to eliminate many of the 17 anti-competitive elements of its current ESP. In 18 your opinion there are anti-competitive elements of 19 all of the EDUs in Ohio, correct? 20 A. Correct. 21 Q. And you're not aware of any EDUs in the 22 state of Ohio that has unbundled certain costs to 23 support SSO, correct? 24 A. Can you repeat the question? 25 Q. Sure. You're not aware of any EDUs in</p>	<p style="text-align: right;">Page 5066</p> <p>1 believe that there's a potential given the past 2 history that they pull back even further from serving 3 the competitive retail market. 4 MS. DUNN: Your Honor, I would move to 5 strike the entire response as nonresponsive and also 6 based on hearsay. My question was a "yes" or "no" 7 question. 8 MR. OLIKER: Your Honor, he answered the 9 question, and he answered it based upon FirstEnergy's 10 own comments. It's not hearsay. And to the extent a 11 document exists on FirstEnergy's website, Mr. White 12 is allowed to rely upon that. 13 MS. DUNN: Your Honor, I would move to 14 strike Mr. Olier comments as improper coaching of 15 the witness. 16 MR. OLIKER: It's responsive to 17 Ms. Dunn's objection. 18 EXAMINER CHILES: I'm going to actually 19 grant both motions to strike. 20 Mr. Olier, you can bring out any more 21 relevant information on redirect. 22 MS. DUNN: Thank you, your Honor. 23 May I have my question reread, please? 24 EXAMINER CHILES: You may. 25 EXAMINER PRICE: Can you please repeat</p>
<p style="text-align: right;">Page 5065</p> <p>1 the state of Ohio that has unbundled certain costs to 2 support SSO? 3 A. I think outside the auction costs that 4 the EDUs are recovering beyond the auction costs, no, 5 that the SSO is paying for. 6 Q. IGS Energy serves customers in 7 FirstEnergy service territories with CRES supply, 8 correct? 9 A. Yes. 10 Q. And IGS Energy also serves aggregation 11 communities in Ohio, correct? 12 A. Yes. 13 Q. Turning to page 6 of your testimony, 14 starting at line 20, "While it appears," and moving 15 to page 7 to the end of that sentence on line 3. 16 A. "While it appears that now FES intends to 17 still retain its aggregation customers," is that -- 18 Q. Yes. You're not aware of FES indicating 19 that they are going to stop serving aggregation 20 communities, are you? 21 A. Other than the fact that they have 22 stopped -- they've made public comments that they 23 have stopped serving a large portion of their 24 residential customers directly. They've also stopped 25 serving market segments, which would lead me to</p>	<p style="text-align: right;">Page 5067</p> <p>1 the question? 2 (Record read.) 3 A. If I can't explain anything, then I'll 4 have to answer that question no. 5 MS. DUNN: Your Honor, I would move to 6 strike "if I can't explain anything" and then leave 7 in "no." 8 EXAMINER CHILES: Granted. 9 A. Can I actually -- I want to rephrase 10 that. I would say, yes, I am aware. I am aware. 11 Q. That's fine. Please turn to your 12 deposition on page 73, line 7: 13 "Has FES indicated they're going to stop 14 serving aggregation communities? " 15 Answer: "Not that I'm aware of at this 16 time." 17 Did I read that correctly? 18 A. Yes. 19 Q. The Commission has launched a retail 20 market investigation, correct? 21 A. Yes. 22 Q. That's Case No. 12-3151, correct? 23 A. I'm not sure of the exact case number. 24 Q. You consider that a venue where 25 competitive issues can be discussed, correct?</p>

<p style="text-align: right;">Page 5068</p> <p>1 A. Yes.</p> <p>2 Q. And out of that Commission investigation,</p> <p>3 there is a market development working group, correct?</p> <p>4 A. Yes.</p> <p>5 Q. You believe that customer engagement when</p> <p>6 it comes to competitive retail electric supply is</p> <p>7 limited -- let me strike that.</p> <p>8 When it comes to competitive retail</p> <p>9 electric supply, you believe that customer engagement</p> <p>10 is limited in the entire state, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Turning to page 4 of your testimony, IGS</p> <p>13 11, lines 1 to 2.</p> <p>14 A. Yes.</p> <p>15 Q. You do not believe that any of the EDUs</p> <p>16 in Ohio have a robust retail market, correct?</p> <p>17 A. I believe that there is significant</p> <p>18 elements lacking in all the EDUs retail electric</p> <p>19 markets.</p> <p>20 MS. DUNN: Your Honor, I move to strike.</p> <p>21 That's unresponsive to my question. It's a "yes" or</p> <p>22 "no" question.</p> <p>23 EXAMINER CHILES: Mr. Olikier, any</p> <p>24 response?</p> <p>25 MR. OLIKER: Your Honor, it was</p>	<p style="text-align: right;">Page 5070</p> <p>1 Q. Turning to your deposition on page 86,</p> <p>2 line 7:</p> <p>3 Question: "Are noncommodity products and</p> <p>4 services also competitive retail electric supply?"</p> <p>5 Mr. Olikier objected.</p> <p>6 "No, I would consider competitive retail</p> <p>7 electric supply a commodity service."</p> <p>8 Did I read that correctly?</p> <p>9 A. Can you please repeat the lines you're</p> <p>10 reading?</p> <p>11 Q. Sure. Page 86 starting at line 7:</p> <p>12 Question: "Are noncommodity products and</p> <p>13 services also competitive retail electric supply?"</p> <p>14 Objection by Mr. Olikier.</p> <p>15 "No, I would consider competitive retail</p> <p>16 electric supply a commodity service."</p> <p>17 Did I read that correctly?</p> <p>18 A. Mr. Olikier objected because it was vague.</p> <p>19 So yes, you forgot to read the objection, that's a</p> <p>20 vague question.</p> <p>21 MS. DUNN: Your Honor, I would move to</p> <p>22 strike "you forgot to read," keep, yes," and then the</p> <p>23 remainder of his sentence.</p> <p>24 MR. OLIKER: Mr. White was indicating</p> <p>25 that she didn't read the deposition as it was</p>
<p style="text-align: right;">Page 5069</p> <p>1 responsive. It was just providing his answer,</p> <p>2 explanation.</p> <p>3 EXAMINER CHILES: I'm going to deny the</p> <p>4 motion to strike, but instruct the witness to answer</p> <p>5 the question, "yes," "no" or explain why you cannot</p> <p>6 answer it "yes" or "no."</p> <p>7 Could we have the question repeated,</p> <p>8 please?</p> <p>9 (Record read.)</p> <p>10 A. Yes.</p> <p>11 Q. You understand that the Commission can</p> <p>12 generally disallow cost recovery for utilities,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. Turning to page -- in your testimony, you</p> <p>16 use the term "noncommodity product and services,"</p> <p>17 correct?</p> <p>18 A. Can you please point to a point where I</p> <p>19 use that phrase?</p> <p>20 Q. On page 7, lines 14 to 15.</p> <p>21 A. Yes.</p> <p>22 Q. Noncommodity products and services are</p> <p>23 not competitive retail electric supply, correct?</p> <p>24 A. It depends on your definition of</p> <p>25 competitive retail electric supply.</p>	<p style="text-align: right;">Page 5071</p> <p>1 written, and he provided the clarification that was</p> <p>2 necessary to complete the question and answer.</p> <p>3 EXAMINER CHILES: I'm going to grant the</p> <p>4 motion to strike. I think the fact that the</p> <p>5 objection was noted is sufficient.</p> <p>6 Q. So for the record, you would consider</p> <p>7 competitive retail electric supply a commodity</p> <p>8 service, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And the term "noncommodity products and</p> <p>11 services" refers to any product and service that's</p> <p>12 not electric distribution generation or PJM-type</p> <p>13 charges, correct?</p> <p>14 MR. OLIKER: Objection.</p> <p>15 EXAMINER CHILES: Grounds?</p> <p>16 MR. OLIKER: The question is very broad</p> <p>17 and vague.</p> <p>18 EXAMINER CHILES: Ms. Dunn?</p> <p>19 MS. DUNN: I'm using Mr. White's terms.</p> <p>20 THE WITNESS: That's why it sounded so</p> <p>21 good.</p> <p>22 EXAMINER CHILES: Overruled.</p> <p>23 A. Yeah, I will agree with that.</p> <p>24 Q. Page 9 of your testimony.</p> <p>25 A. Yes.</p>

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<p>1 Q. I'll go ahead and strike that.</p> <p>2 You don't know if the companies' tariffs</p> <p>3 provide for them to offer noncommodity goods and</p> <p>4 services, correct?</p> <p>5 A. I think the tariffs could be subject to</p> <p>6 interpretation.</p> <p>7 MS. DUNN: Your Honor, I move to strike.</p> <p>8 It was a "yes" or "no" question.</p> <p>9 MR. OLIKER: It was also vague. It</p> <p>10 didn't say who may offer noncommodity services,</p> <p>11 whether referring to CRES providers or the company.</p> <p>12 MS. DUNN: If it's vague, I can restate</p> <p>13 my question.</p> <p>14 EXAMINER CHILES: If you would restate,</p> <p>15 please. Thank you.</p> <p>16 Q. You don't know if the companies' tariffs</p> <p>17 provide for the companies to offer noncommodity goods</p> <p>18 and services, do you?</p> <p>19 A. There may be a tariff -- I don't know</p> <p>20 specifically what the companies' tariffs provide,</p> <p>21 what the company can offer. I seem to recall -- and</p> <p>22 I may be confusing my utilities, but there may be a</p> <p>23 tariff in the FirstEnergy tariff that allows an offer</p> <p>24 of certain products. I'm not sure.</p> <p>25 Q. And on page 9, lines 12 to 14, you</p>	<p>1 for the companies, correct?</p> <p>2 A. I'm not sure there's a contract between</p> <p>3 FirstEnergy and Home Serve, but I don't know -- I</p> <p>4 mean, I don't know if they're a contractor just under</p> <p>5 contract.</p> <p>6 Q. And the information contained in the</p> <p>7 bullet points on line 9 through 11 is largely based</p> <p>8 on your review of the companies' website, correct?</p> <p>9 A. I reviewed the companies' website and I</p> <p>10 also spoke with representatives from FirstEnergy on</p> <p>11 the phone about these specific products.</p> <p>12 Q. You called FirstEnergy's customer</p> <p>13 service, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And you asked if they provide a service</p> <p>16 and whether or not it's billed on the utility bill,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. You don't remember the number you called,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. You don't remember the day you called,</p> <p>23 correct?</p> <p>24 A. No.</p> <p>25 Q. You don't remember how long your</p>
Page 5073	Page 5075
<p>1 indicate that "Many of these products appear to be</p> <p>2 provided by third party companies, but they are</p> <p>3 advertised as FirstEnergy products and billed on the</p> <p>4 FirstEnergy bill."</p> <p>5 You don't know which third-party company,</p> <p>6 if any, that provides electric technician service, do</p> <p>7 you?</p> <p>8 A. No, I don't know the exact company off</p> <p>9 the top of my head.</p> <p>10 Q. Turning to page 10 of your testimony, the</p> <p>11 second bullet referring to tree maintenance service,</p> <p>12 you don't know which third party company, if any,</p> <p>13 that provides tree maintenance service, correct?</p> <p>14 A. I know that there is a company that</p> <p>15 provides tree pruning service, but I don't know which</p> <p>16 company that is.</p> <p>17 Q. And on the third bullet, outdoor</p> <p>18 lighting, you don't know which third-party company,</p> <p>19 if any, that provides outdoor lighting services,</p> <p>20 correct?</p> <p>21 A. I know there is a company through which</p> <p>22 FirstEnergy offers outdoor lighting services, but I</p> <p>23 don't know the exact company.</p> <p>24 Q. And the fourth bullet, you mention Home</p> <p>25 Serve. You don't know if Home Serve is a contractor</p>	<p>1 conversation was, correct?</p> <p>2 A. I remember looking on the website and</p> <p>3 verifying that they offered these products and</p> <p>4 services on their website, and then I do remember</p> <p>5 calling to verify that what was offered on the</p> <p>6 website was true. But at the time and the date I</p> <p>7 don't know or the length of the call.</p> <p>8 MS. DUNN: Your Honor, I move to strike</p> <p>9 everything but you don't -- the length of the call he</p> <p>10 doesn't remember, which is the last portion of his</p> <p>11 sentence.</p> <p>12 EXAMINER CHILES: Motion to strike is</p> <p>13 denied.</p> <p>14 Q. You would describe your conversation with</p> <p>15 the customer service line as brief, correct?</p> <p>16 A. I think that's a reasonable description.</p> <p>17 Q. And when you called the customer service</p> <p>18 number, you recall going through a voice-activated</p> <p>19 system, correct?</p> <p>20 A. I probably did, given that most every</p> <p>21 time you call a utility, you go through a</p> <p>22 voice-activation system.</p> <p>23 Q. And you don't know who you were talking</p> <p>24 to when you called the companies' phone number,</p> <p>25 correct?</p>

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<p>1 A. No, not currently, no.</p> <p>2 Q. And you don't know what department they</p> <p>3 were in, correct?</p> <p>4 A. No.</p> <p>5 MS. DUNN: Your Honor, may I approach?</p> <p>6 EXAMINER CHILES: You may.</p> <p>7 MS. DUNN: Your Honor, I would ask to</p> <p>8 mark my next exhibit, which is a website page</p> <p>9 Electrical Services as Company Exhibit 95.</p> <p>10 EXAMINER CHILES: So marked.</p> <p>11 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>12 Q. Mr. White, I've handed you what has been</p> <p>13 marked as Company Exhibit 95. Is this the website</p> <p>14 you reviewed that's cited in your footnote 4 as</p> <p>15 electrical services?</p> <p>16 A. It appears to have the same URL address</p> <p>17 although this was dated July 27th, 2015 and, I don't</p> <p>18 know if the website has been modified since then,</p> <p>19 since when I cited it.</p> <p>20 Q. Does the website that you're looking at</p> <p>21 state anything about the FirstEnergy contact center</p> <p>22 arranging an electric technician to be sent to the</p> <p>23 customer's home to perform in-house services?</p> <p>24 A. Again, this is the -- this is a website</p> <p>25 from July 27th, 2015, and as we've heard earlier,</p>	<p>1 modifying its websites," just that portion of the</p> <p>2 answer.</p> <p>3 Q. (By Ms. Dunn) Turning to your testimony</p> <p>4 on page 10, the last bullet point.</p> <p>5 A. Yes.</p> <p>6 Q. "FirstEnergy has recently filed an</p> <p>7 application at the Commission in Case 14-1980," has</p> <p>8 that case been withdrawn, that application?</p> <p>9 A. Yes.</p> <p>10 MS. DUNN: Your Honor, I would move to</p> <p>11 strike page 10, line 16 through page 11, line 2 on</p> <p>12 the basis of relevance. The application is no longer</p> <p>13 pending.</p> <p>14 EXAMINER CHILES: Mr. Olikier, do you have</p> <p>15 any objection to that?</p> <p>16 MR. OLIER: Your Honor, this portion of</p> <p>17 the testimony shouldn't be stricken because it</p> <p>18 provides good context for some of the intentions of</p> <p>19 FirstEnergy. While the application may have been</p> <p>20 withdrawn, there was no description of why it was</p> <p>21 withdrawn, whether it would be refiled, or whether</p> <p>22 FirstEnergy may decide to pursue those opportunities</p> <p>23 under its existing authorization from this</p> <p>24 Commission, which the companies have been unwilling</p> <p>25 to answer that question.</p>
Page 5077	Page 5079
<p>1 FirstEnergy has a history of modifying its websites</p> <p>2 after what it sees in testimony, so I cannot attest</p> <p>3 to this being the exact same website that I cited in</p> <p>4 my testimony.</p> <p>5 MS. DUNN: Your Honor, I move to strike</p> <p>6 his commentary about changing the FirstEnergy's</p> <p>7 websites. That wasn't part of any testimony in this</p> <p>8 case and it's not in evidence.</p> <p>9 EXAMINER CHILES: Mr. Olikier.</p> <p>10 MS. DUNN: And it's also not true.</p> <p>11 MR. OLIER: That was nice testimony from</p> <p>12 Ms. Dunn, but Mr. White is just answering the</p> <p>13 questions, and, as he said, there's been a long time</p> <p>14 between when this application was filed and when he</p> <p>15 filed his testimony, and he can't necessarily say</p> <p>16 this is exactly the same website. I think he just</p> <p>17 provided that indication to Ms. Dunn.</p> <p>18 MS. DUNN: And the only issue with his</p> <p>19 answer was his commentary relating to changing the</p> <p>20 website, as was discussed today.</p> <p>21 MR. OLIER: And, your Honor, he wanted</p> <p>22 to provide a caveat.</p> <p>23 EXAMINER CHILES: I'm going to strike the</p> <p>24 portion of the sentence, the phrase that says "and as</p> <p>25 we heard earlier, FirstEnergy has had a history of</p>	<p>1 EXAMINER CHILES: Ms. Dunn, do you want</p> <p>2 to respond to that?</p> <p>3 MS. DUNN: I believe the fact it was</p> <p>4 withdrawn belies any assertion that it shows intent</p> <p>5 and also for that reason, it's not relevant.</p> <p>6 MR. OLIER: Ms. Dunn, are you</p> <p>7 stipulating that the companies are not offering any</p> <p>8 of these services under their existing authorization</p> <p>9 from this Commission?</p> <p>10 MS. DUNN: Your Honor, do I have to</p> <p>11 respond to that question?</p> <p>12 MR. OLIER: It's an important question.</p> <p>13 EXAMINER CHILES: I don't think so. We</p> <p>14 are going to grant the motion to strike at this time</p> <p>15 on the basis of relevancy, line 16 on page 10 through</p> <p>16 line 2 on page 11.</p> <p>17 MS. DUNN: Your Honor, may I request a</p> <p>18 five- to ten-minute break at this time if it's a good</p> <p>19 break time.</p> <p>20 EXAMINER CHILES: Sure. We can take a</p> <p>21 ten-minute break. We'll return at 2:35.</p> <p>22 THE WITNESS: Can we go off the record?</p> <p>23 EXAMINER CHILES: We can go off the</p> <p>24 record.</p> <p>25 (Recess taken.)</p>

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<p>1 EXAMINER CHILES: Let's go ahead and go 2 back on the record. 3 Ms. Dunn. 4 MS. DUNN: Thank you, your Honor. 5 Q. (By Ms. Dunn) Mr. White, I'm still 6 working off your IGS 11 supplemental direct 7 testimony, page 11 -- 8 A. Yes. 9 Q. -- question beginning on line 9 and 10 ending on line 16. 11 A. Yes. 12 Q. The basis for this question and answer is 13 a letter IGS sent to FirstEnergy and a letter 14 FirstEnergy sent back in response, correct? 15 A. Yes. 16 MS. DUNN: And, your Honor, I apologize. 17 May we go off the record one moment? 18 EXAMINER CHILES: Yes. 19 (Pause in proceedings.) 20 EXAMINER CHILES: Let's go back on the 21 record. 22 MS. DUNN: Thank you, your Honor. 23 Your Honor, may I approach? 24 EXAMINER CHILES: You may. 25 MS. DUNN: Your Honor, I would like to</p>	<p>1 Q. And is this a letter from Carrie Dunn to 2 Scott White, president of IGS Energy? 3 A. Yes. 4 Q. And are these the two letters that are 5 the basis for your statement on page 11, lines 9 6 through 16? 7 A. Yes, largely. 8 Q. And turning back to your testimony -- 9 A. Yeah. 10 Q. -- IGS 11, page 12, line 3, you state "or 11 affiliates." You've not identified any specific 12 affiliates, correct? 13 MR. OLIKER: Could I have that reference 14 again? 15 MS. DUNN: Page 12, line 3, "or 16 affiliates," and my question was, you have not 17 identified any specific affiliates, correct? 18 A. When you say I haven't identified any 19 affiliates, you mean I don't list any affiliates in 20 this specific question or answer; is that what you 21 mean? 22 Q. Correct. 23 A. No, I don't list any affiliates, 24 reference any specific affiliates. 25 Q. And you don't know how FirstEnergy chose</p>
Page 5081	Page 5083
<p>1 mark as Company Exhibit 96 a letter from Scott White 2 of IGS Energy to Chuck Jones of FirstEnergy. 3 EXAMINER CHILES: So marked. 4 (EXHIBIT FOR MARKED IDENTIFICATION.) 5 MS. DUNN: And as Company Exhibit 97, a 6 letter from myself to Scott White. 7 EXAMINER CHILES: So marked. 8 (EXHIBIT MARKED FOR IDENTIFICATION.) 9 Q. (By Ms. Dunn) Mr. White, off the record 10 we indicated that that IGS is okay treating what has 11 been marked as Company Exhibit 96, the IGS letter, as 12 nonconfidential, correct? 13 A. Yes. 14 Q. And the letter that you've been handed 15 for Company Exhibit 96, have you seen this letter 16 before? 17 A. Yes. 18 Q. And is this a letter from Scott White, 19 president of IGS Energy to Charles Jones, executive 20 vice president and president of FirstEnergy 21 Utilities? 22 A. Yes. 23 Q. And then the letter marked as Company 24 Exhibit 97, have you seen this letter before? 25 A. Yes.</p>	<p>1 Home Serve as the provider of noncommodity goods and 2 services in its service territories? 3 A. Generally I'm not aware of how that 4 process occurred. 5 Q. And you don't know if Home Serve was 6 chosen by the companies through a request for 7 proposal process that other suppliers were invited to 8 participate in, correct? 9 MR. OLIKER: Objection. 10 EXAMINER CHILES: Grounds? 11 MR. OLIKER: Calls for speculation. 12 MS. DUNN: My question was whether he 13 does or does not know. 14 EXAMINER CHILES: He can answer if he 15 knows. 16 A. Not specifically. 17 Q. You don't know if the companies conducted 18 an RFP to choose the vendor to provide noncommodity 19 goods and services in its service territories, 20 correct? 21 A. I'm not specifically aware of an RFP 22 conducted by FirstEnergy. 23 Q. Manchester Group was a subsidiary of IGS 24 and was a legacy entity for IGS Home Services, 25 correct?</p>

<p style="text-align: right;">Page 5084</p> <p>1 A. Was Manchester -- yes.</p> <p>2 Q. And you don't know whether Manchester</p> <p>3 Group has ever participated in a request for proposal</p> <p>4 to be a vendor of noncommodity products or services</p> <p>5 in the FirstEnergy service territories, correct?</p> <p>6 A. I'm not aware of a specific time when</p> <p>7 Manchester requested to be part of an RFP.</p> <p>8 Q. Do you know whether they were or were not</p> <p>9 part or -- or do you know if they participated ever</p> <p>10 in a request for proposal to be a vendor of</p> <p>11 noncommodity products or services in the FirstEnergy</p> <p>12 service territory?</p> <p>13 A. I don't know.</p> <p>14 Q. Would your answer be the same for IGS</p> <p>15 Home Services?</p> <p>16 A. I don't know.</p> <p>17 Q. You have not done any customer surveys to</p> <p>18 get customer opinions about whether they want other</p> <p>19 products and services beyond the electric commodity,</p> <p>20 correct?</p> <p>21 A. Can you repeat the question?</p> <p>22 Q. Sure. You have not done any customer</p> <p>23 surveys to get customer opinions about whether they</p> <p>24 want other products and services beyond the electric</p> <p>25 commodity, correct?</p>	<p style="text-align: right;">Page 5086</p> <p>1 noncommodity goods and services?</p> <p>2 A. I've seen sales results. I haven't done</p> <p>3 any studies, but I've seen results of sales for</p> <p>4 noncommodity products and services, and to the extent</p> <p>5 that's an analysis, I mean, I don't know if you'd</p> <p>6 consider that an analysis or not.</p> <p>7 Q. Mr. White, could you please turn back to</p> <p>8 your deposition.</p> <p>9 A. Sure.</p> <p>10 Q. Page 105, line 8:</p> <p>11 Question: "Has IGS done any surveys,</p> <p>12 studies, or analysis that customers perceive value in</p> <p>13 these noncommodity goods and services?"</p> <p>14 Answer: "I don't know."</p> <p>15 Question: "Have you personally done any</p> <p>16 studies, surveys, or analysis customers perceive</p> <p>17 value in these noncommodity goods and services?"</p> <p>18 Answer: "No."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. Turning back to your testimony, you do</p> <p>22 not know what the cost is to the utility to bill for</p> <p>23 noncommodity goods and services, correct?</p> <p>24 A. What portion of the testimony are you</p> <p>25 referring to?</p>
<p style="text-align: right;">Page 5085</p> <p>1 A. I have personally not conducted customer</p> <p>2 surveys.</p> <p>3 Q. And you have not done any studies,</p> <p>4 surveys, or analyses that perceive value in common</p> <p>5 commodity goods and services, correct? Excuse me. I</p> <p>6 misspoke. You have not done any studies, surveys, or</p> <p>7 analyses that customers perceive value in</p> <p>8 noncommodity goods and services?</p> <p>9 A. My company has done analysis to the</p> <p>10 extent that, you know, they test products that are</p> <p>11 noncommodity products and services and determine</p> <p>12 whether or not customers see value in those products</p> <p>13 and services.</p> <p>14 MS. DUNN: Your Honor, move to strike.</p> <p>15 That was not responsive to my question. It was</p> <p>16 whether he has personally done any studies, surveys,</p> <p>17 or analysis that customers perceive value in</p> <p>18 noncommodity goods and services.</p> <p>19 EXAMINER CHILES: I'm going to deny the</p> <p>20 motion to strike, but instruct the witness to answer</p> <p>21 your clarified question.</p> <p>22 A. Can you repeat the clarified question,</p> <p>23 please?</p> <p>24 Q. My question was, you have not done any</p> <p>25 studies, surveys, or analysis that perceive value in</p>	<p style="text-align: right;">Page 5087</p> <p>1 Q. I'm just asking you in general. I</p> <p>2 apologize. You do not know what the cost is to the</p> <p>3 utility to bill for noncommodity goods and services,</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. And because you don't know what the cost</p> <p>7 is, you don't know how they are allocated either,</p> <p>8 correct?</p> <p>9 A. I'm not sure I understand the question.</p> <p>10 Q. Turning to your deposition --</p> <p>11 A. Yes.</p> <p>12 Q. -- page 108, line 17:</p> <p>13 "Maybe you don't know what the costs are,</p> <p>14 but you wouldn't know how they're allocated either,</p> <p>15 correct?"</p> <p>16 Answer: "No."</p> <p>17 Question: "That's a correct statement?"</p> <p>18 "Yes."</p> <p>19 Do you understand my question now?</p> <p>20 MR. OLIKER: Object. That's improper</p> <p>21 impeachment. I don't know exactly what that was.</p> <p>22 A. What cost are you referring to?</p> <p>23 EXAMINER CHILES: Mr. White, there's a</p> <p>24 pending objection.</p> <p>25 Ms. Dunn, do you want to respond to the</p>

<p style="text-align: right;">Page 5088</p> <p>1 objection?</p> <p>2 MS. DUNN: I'm asking him about the costs</p> <p>3 we were referencing in his deposition. He understood</p> <p>4 my question then. He should understand it today.</p> <p>5 MR. OLIKER: He merely asked for a</p> <p>6 clarification, your Honor. The easier way is to just</p> <p>7 provide an explanation.</p> <p>8 A. What costs are you -- are you talking</p> <p>9 about the companies' costs, or are you talking about</p> <p>10 suppliers' costs?</p> <p>11 Q. Based on that clarification from the</p> <p>12 witness, I'll go ahead and rephrase.</p> <p>13 EXAMINER CHILES: Thank you.</p> <p>14 Q. And maybe you don't know what the costs</p> <p>15 to the utility are, but you wouldn't know how they're</p> <p>16 allocated either, correct?</p> <p>17 A. Are you talking about for billing the</p> <p>18 current noncommodity services that they bill for</p> <p>19 their products and services they offer new customers?</p> <p>20 Is that what you're talking about?</p> <p>21 Q. Yes.</p> <p>22 A. And you're asking me I don't know how</p> <p>23 they allocate the costs for the products and services</p> <p>24 that FirstEnergy -- the products and services</p> <p>25 FirstEnergy currently bills at?</p>	<p style="text-align: right;">Page 5090</p> <p>1 A. Yes.</p> <p>2 Q. And those specific references you didn't</p> <p>3 have a specific tariff in mind, correct?</p> <p>4 A. I would imagine that would be the</p> <p>5 supplier tariff or whatever tariffs that dictate the</p> <p>6 terms of supplier billing.</p> <p>7 Q. And on line 20, you mention "payment</p> <p>8 priority."</p> <p>9 A. Yes.</p> <p>10 Q. And you envision that the companies would</p> <p>11 actually collect the payment for those noncommodity</p> <p>12 goods and services if they billed for them, correct?</p> <p>13 A. Yes, under my proposal.</p> <p>14 Q. And you don't know how functionally that</p> <p>15 would work, correct?</p> <p>16 A. I have a general idea how that would</p> <p>17 work.</p> <p>18 Q. But you don't know how specific</p> <p>19 functionally it would work, correct?</p> <p>20 A. I mean, it would work -- I mean, I know</p> <p>21 it would work the same way that billing for -- that</p> <p>22 the company bills for CRES charges already in the</p> <p>23 same way. For instance, Vectren is a utility that</p> <p>24 bills for noncommodity charges, bills for</p> <p>25 noncommodity charges for suppliers.</p>
<p style="text-align: right;">Page 5089</p> <p>1 Q. That's correct.</p> <p>2 A. I do not know specifically how they</p> <p>3 allocate those costs.</p> <p>4 Q. Turning to page 12 of your testimony, IGS</p> <p>5 11, lines 13 to 18 -- well, probably lines 13 to 22,</p> <p>6 you discuss your request that the Commission require</p> <p>7 FirstEnergy to amend their tariffs to allow to bill</p> <p>8 for noncommodity goods and services, correct?</p> <p>9 A. Excuse me. I think -- can you repeat the</p> <p>10 reference again?</p> <p>11 Q. Sure. Page 12, lines 13 to 22, you</p> <p>12 reference your request that the Commission require</p> <p>13 FirstEnergy to amend its tariffs, correct?</p> <p>14 A. I do two things. I recommend</p> <p>15 FirstEnergy's proposal be rejected, and then I</p> <p>16 recommend that the Commission direct FirstEnergy to</p> <p>17 update its tariffs to specifically allow for CRES --</p> <p>18 treat noncommodity charges with respect to payment --</p> <p>19 I make a lot of recommendations. I can't say that</p> <p>20 that necessarily is the correct characterization of</p> <p>21 the recommendations that I made in that entire</p> <p>22 paragraph.</p> <p>23 Q. Let me be a little more specific. On</p> <p>24 line 17 you state "update its tariff," and on line 19</p> <p>25 you also state "update its tariff," correct?</p>	<p style="text-align: right;">Page 5091</p> <p>1 MS. DUNN: Your Honor, I'd move to strike</p> <p>2 everything relating to Vectren.</p> <p>3 MR. OLIKER: Your Honor, she asked him</p> <p>4 how it would work, and he provided an example of how</p> <p>5 another utility in Ohio does exactly what she's</p> <p>6 asking the question.</p> <p>7 MS. DUNN: My question was you don't know</p> <p>8 how it would specifically functionally work, and it</p> <p>9 was a "yes" or "no" question.</p> <p>10 MR. OLIKER: Your Honor, he provided a</p> <p>11 good example of specifically of how it could work.</p> <p>12 EXAMINER CHILES: The motion to strike</p> <p>13 will be granted.</p> <p>14 Q. (By Ms. Dunn) Mr. White, please turn to</p> <p>15 your deposition.</p> <p>16 A. Sure.</p> <p>17 Q. Page 115, starting at line 1: "Question:</p> <p>18 Do you know how that would functionally work? Would</p> <p>19 it be EDI or something along those lines?"</p> <p>20 Answer: "I don't know."</p> <p>21 Did I read that correctly?</p> <p>22 MR. OLIKER: Objection. This is related</p> <p>23 to a completely different subject. EDI is regarding</p> <p>24 the transmission of information, not necessarily the</p> <p>25 payment priority.</p>

<p style="text-align: right;">Page 5092</p> <p>1 MS. DUNN: Your Honor, it's the same 2 question that I asked. 3 A. It's a different question than you asked 4 me on the -- it's a different question than you asked 5 me on previously -- the question you asked me in 6 deposition is a different question than you asked me. 7 EXAMINER CHILES: Mr. White, there's a 8 pending objection. 9 MS. DUNN: Your Honor, I'd move to strike 10 his commentary. 11 EXAMINER CHILES: That motion to strike 12 is granted. However, I'm going to sustain the 13 objection. 14 Q. And you also -- you do not know how the 15 companies would collect if a customer failed to pay 16 for noncommodity goods and services, correct? 17 A. I generally do know how they would 18 collect. 19 Q. Would those be details that would need to 20 be worked out? 21 A. Some details would need to be worked out, 22 but there's also some details I think that I could 23 speak to today if you'd like me to. 24 Q. On page 13, lines 9 to 10, you state the 25 customer does not want separate bills for each</p>	<p style="text-align: right;">Page 5094</p> <p>1 motion to strike for everything beginning with 2 "although." 3 Q. (By Ms. Dunn) On page 13, lines 10 to 4 12, "Further customers may not even want a separate 5 price for each service, but rather may want a bundled 6 all-in price." You've not conducted any customer 7 surveys regarding this issue, correct? 8 A. I personally have not conducted a survey. 9 Q. You don't know the precise changes the 10 companies would need to make in order to accommodate 11 supplier consolidated billing, correct? 12 A. I know generally what they would need to 13 do. 14 Q. But you don't know precisely what they 15 would need to do, correct? 16 A. I don't know every detail, but I do know 17 largely what it would take. 18 Q. Mr. White, if you could please turn to 19 your deposition testimony, page 133, line 7: 20 "And what changes would the companies 21 need to make in order to accommodate supplier 22 consolidated billing?" 23 Answer: "I don't know the precise 24 changes that would be required." 25 Did I read that correctly?</p>
<p style="text-align: right;">Page 5093</p> <p>1 individual component of that product. You have not 2 conducted any customer surveys, correct? 3 A. I have not specifically surveyed 4 customers. 5 Q. No customer has spoken to you personally 6 about this topic, correct? 7 A. No customer has spoken to me personally, 8 although the customers have made our company aware of 9 these -- their preferences, so to the extent that's 10 been the case. 11 MS. DUNN: Your Honor, I move to strike 12 everything after "although," and including the word 13 "although." 14 MR. OLIVER: Your Honor, Mr. White works 15 for a company that has over 600 employees, and there 16 is a lot of data that's gathered by that company that 17 Mr. White has access to and that he may see in his 18 day-to-day responsibilities. I think it's much 19 better for the record to speak to what is important, 20 which is what Mr. White may know, not necessarily 21 whether he was standing on a corner someplace taking 22 a survey. 23 MS. DUNN: And, your Honor, I asked a 24 specific "yes" or "no" question. 25 EXAMINER CHILES: I'm going to grant the</p>	<p style="text-align: right;">Page 5095</p> <p>1 A. Can you please give me the reference 2 again? 3 Q. Sure. Page 133, line 7: 4 Question: "And what changes would the 5 companies need to make in order to accommodate 6 supplier consolidated billing?" 7 Answer: "I don't know the precise 8 changes that would be required." 9 Did I read that correctly? 10 MR. OLIVER: Objection. 11 EXAMINER CHILES: Grounds. 12 MR. OLIVER: It's consistent with his 13 testimony. 14 A. And I go on to describe changes later on 15 the deposition, if you read the deposition. 16 MS. DUNN: Your Honor, I move to strike 17 the portion where Mr. White spoke after Mr. Oliver's 18 objection, and also to respond to his objection if I 19 may. 20 EXAMINER CHILES: Go ahead. 21 MS. DUNN: My question was very narrow. 22 You don't know the precise changes the companies 23 would need to make in order to accommodate supplier 24 consolidated billing? That's exactly what I asked 25 him in his deposition and how he answered.</p>

<p style="text-align: right;">Page 5096</p> <p>1 EXAMINER CHILES: The motion to strike is</p> <p>2 granted and the objection is overruled.</p> <p>3 Q. Page 18 of your testimony, line 14 to 15,</p> <p>4 the Ohio law that you're referring to is ORC 4928.02,</p> <p>5 correct?</p> <p>6 A. That is a law that I'm referring to;</p> <p>7 although, there may be other specific statutes that</p> <p>8 are applicable to that statement.</p> <p>9 Q. Please turn to your deposition.</p> <p>10 A. Okay.</p> <p>11 Q. Page 144, starting at line 23.</p> <p>12 A. Yes.</p> <p>13 Q. Question: "On page 18 of your testimony,</p> <p>14 lines 14 and 15, you state, "Ohio law requires that</p> <p>15 the SSO price be comparable and nondiscriminatory to</p> <p>16 other products."</p> <p>17 Answer: "Yes."</p> <p>18 "What Ohio law are you referring to</p> <p>19 there?"</p> <p>20 Answer: "I'm referring to Statute 4928</p> <p>21 .02."</p> <p>22 Did I read that correctly?</p> <p>23 A. Yes, you did.</p> <p>24 Q. And on the same page, line 15 to 16 --</p> <p>25 oh, back to the testimony on page 18, line 15 to 16,</p>	<p style="text-align: right;">Page 5098</p> <p>1 but I'm not sure. I read a lot of documents.</p> <p>2 Q. Turning to page -- I'm going to now turn</p> <p>3 to supplemental testimony IGS 13.</p> <p>4 A. Okay.</p> <p>5 Q. Page 5, line 10, you state, "The</p> <p>6 stipulation amounts to an agreement entered into by a</p> <p>7 minority of parties intervening in this proceeding,"</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. You cannot point to a specific number</p> <p>11 that you think would meet the prong of this test,</p> <p>12 correct?</p> <p>13 A. Which test are you referring to?</p> <p>14 Q. Product of serious bargaining among</p> <p>15 capable and knowledgeable parties.</p> <p>16 A. Do I reference that on my testimony?</p> <p>17 Q. Yes, right above it, lines 8 to 9.</p> <p>18 A. I'm sorry. Can you please give me the</p> <p>19 cite of the page.</p> <p>20 Q. Sure. Page 5.</p> <p>21 A. Okay. Yes. Okay. I see it. Can you</p> <p>22 repeat the question?</p> <p>23 Q. Sure. You cannot point to a specific</p> <p>24 number that you think would meet the prong of this</p> <p>25 test, correct?</p>
<p style="text-align: right;">Page 5097</p> <p>1 the Ohio law that you're referring to in that</p> <p>2 sentence is also 4928.02?</p> <p>3 A. On the same page, page 18, 15-16?</p> <p>4 Q. Yes.</p> <p>5 A. Further, Ohio law -- that line, "Further,</p> <p>6 Ohio law prohibits subsidies flowing from</p> <p>7 distribution rates to SSO service," I believe that</p> <p>8 I'm referring to the provisions in 4928.02, although</p> <p>9 that provision does apply to that statement and gives</p> <p>10 basis for that statement, and there also may be other</p> <p>11 statutes that are applicable and give basis for that</p> <p>12 statement.</p> <p>13 Q. Turning to page 20 of your testimony,</p> <p>14 lines 17 to 18, you're referring to Ohio law on line</p> <p>15 17. You're referencing 4928.02 and 4928.141,</p> <p>16 correct?</p> <p>17 A. Seventeen to 18?</p> <p>18 Q. Yes.</p> <p>19 A. Yes, I believe those are the statutes I'm</p> <p>20 referring to.</p> <p>21 Q. Page 21, starting on line 17 through 22,</p> <p>22 line 9, you discuss corporate separation issues. You</p> <p>23 do not recall reading the companies' current</p> <p>24 corporate separation plan, correct?</p> <p>25 A. I have vague recollections of reading it,</p>	<p style="text-align: right;">Page 5099</p> <p>1 A. There's not a specific number that I know</p> <p>2 of that's been identified.</p> <p>3 Q. Mr. White, I'm going to turn to</p> <p>4 Attachment MW-1 --</p> <p>5 A. Sure.</p> <p>6 Q. -- of your supplemental testimony. At</p> <p>7 the time that you filed your supplemental testimony,</p> <p>8 your attorney provided you with a copy of MW-1,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. And that was Mr. Olikier, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And you do not know where Mr. Olikier</p> <p>14 found that document, do you?</p> <p>15 A. After speaking with Mr. Olikier, he</p> <p>16 informed me that he found it on the FirstEnergy</p> <p>17 website.</p> <p>18 Q. And at the time of your testimony, you</p> <p>19 did not know where Mr. Olikier found that document,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. And at the time of your deposition, you</p> <p>23 also did not know where he found the document,</p> <p>24 correct?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 5100</p> <p>1 Q. You were not present when Ms. Vespoli 2 allegedly gave this testimony, were you? 3 A. No, I was not. 4 Q. And you don't know what context she was 5 giving that testimony, correct? 6 A. I do know she was giving it in the 7 context that she's saying competitive markets work 8 and that it's not a good idea to subsidize 9 competitive generation in competitive markets. 10 Q. And you don't know whether she was asked 11 to appear before the House Public Utilities 12 Commission, correct? 13 A. I don't know why Ms. Vespoli appeared in 14 front of the House Public Utilities Commission. 15 Q. My question was, though, you don't know 16 whether the House Public Utilities Commission asked 17 her to appear before her, do you? 18 A. No, I don't know the reason why she 19 appeared. 20 Q. And do you have a different version of MW 21 Exhibit 1 with you today? 22 A. I believe I do. It's somewhere in these 23 documents. Yes, I do. 24 MS. DUNN: And, your Honor, because we 25 were not given a copy of the different version, may I</p>	<p style="text-align: right;">Page 5102</p> <p>1 MS. DUNN: Thank you. 2 Q. Mr. White, has the original of the 3 document in front of you dated October 6th, 2015 been 4 filed with the Commission? 5 A. Excuse me? I don't understand the 6 question. 7 Q. Sure. You have a document in front of 8 you dated October 6th, 2015, correct? 9 A. Yes. 10 Q. Has the original of this document been 11 provided -- been filed with the Commission? 12 A. I don't know what you're definition of 13 original is. 14 Q. Well, you're an attorney, correct? 15 A. Correct. 16 Q. And you're familiar with the rules of 17 evidence, correct? 18 A. As much as I could say I can remember 19 every single thing from my law school rules of 20 evidence class, I don't know every single rule of 21 evidence. 22 Q. So you don't know what the word 23 "original" means in its most common form? 24 A. We're getting very philosophical here. 25 MR. OLKER: Objection. If she's going</p>
<p style="text-align: right;">Page 5101</p> <p>1 approach and take a look at the document he has? 2 MR. OLKER: Carrie, I can give you one. 3 Do you want to go off the record? 4 MS. DUNN: 5 EXAMINER CHILES: Off the record. 6 (Discussion off the record.) 7 EXAMINER CHILES: Let's go back on the 8 record. 9 MS. DUNN: I would still like to approach 10 the witness to see what he has in front of him, your 11 Honor, to see if he has the original. 12 EXAMINER CHILES: You may. 13 Q. Mr. White, today you do not have an 14 original certified copy of Ms. Vespoli's testimony, 15 do you? 16 MR. OLKER: Objection. 17 Mischaracterizes. 18 A. I don't know. It depends on the 19 definition of original. 20 MS. DUNN: Your Honor, may I approach the 21 Bench? 22 EXAMINER CHILES: You may. 23 MS. DUNN: Mr. Olikier, do you have an 24 additional copy? 25 MR. OLKER: I do.</p>	<p style="text-align: right;">Page 5103</p> <p>1 to ask about the rules of evidence, maybe put it in 2 front of him and not have a legal argument with the 3 witness. 4 EXAMINER CHILES: Ms. Dunn, do you have a 5 specific citation? 6 Q. I'd also like to point your attention to 7 this letter. Does it state in the last sentence, 8 "The clerk of the Ohio House of Representatives did 9 not prepare the original committee records, thus no 10 assurance is given by this letter that the content of 11 the original record is an accurate account of House 12 Committee proceedings as they occurred"? Does the 13 letter state that? 14 A. I think what that means is that when you 15 file testimony in the legislature, you don't go up 16 and just read what you said in the legislature. You 17 submit your written testimony to the legislature, 18 which is what was submitted to the legislature, and 19 then Ms. Vespoli, like anybody that testifies in the 20 legislature, generally paraphrases or adds or 21 subtracts or answers questions, so that's really what 22 that reference is to. 23 MS. DUNN: Your Honor, I move to strike. 24 I just asked if that's what the letter said. 25 MR. OLKER: Your Honor, his answer was</p>

<p style="text-align: right;">Page 5104</p> <p>1 responsive to the question.</p> <p>2 MS. DUNN: It was a "yes" or "no"</p> <p>3 question.</p> <p>4 A. I think the letter speaks for itself.</p> <p>5 EXAMINER CHILES: Mr. White.</p> <p>6 A. Yes, that's what it says.</p> <p>7 MS. DUNN: Your Honor, I'd move to strike</p> <p>8 his commentary as well.</p> <p>9 A. I think that's the letter --</p> <p>10 EXAMINER CHILES: Mr. White, there's a</p> <p>11 pending objection.</p> <p>12 I'm going to deny the motion to strike.</p> <p>13 Q. Mr. White, do you know Bradley Young</p> <p>14 personally?</p> <p>15 A. I don't think I do.</p> <p>16 Q. And do you know -- can you verify the</p> <p>17 authenticity of his signature appearing on this</p> <p>18 letter?</p> <p>19 A. I would imagine not.</p> <p>20 Q. Did you request that Mr. Olier obtain a</p> <p>21 certified copy of Ms. Vespoli's testimony?</p> <p>22 A. Yes.</p> <p>23 Q. When did you do that?</p> <p>24 A. I don't remember the exact date.</p> <p>25 MS. DUNN: Your Honor, at this time I</p>	<p style="text-align: right;">Page 5106</p> <p>1 902, there are domestic public documents that are</p> <p>2 filed under seal, and this is one of those documents</p> <p>3 or certified copies of public records under 902.4,</p> <p>4 the copy of an official record or report therein.</p> <p>5 This is a copy, and, therefore, it comes</p> <p>6 in under that. It does not have to be the official</p> <p>7 document. And I also have the e-mail transportation</p> <p>8 on my computer, if Ms. Dunn would like to see it,</p> <p>9 from Mr. Bradley, from Mr. Lenzo, the chief legal</p> <p>10 counsel of the Ohio House of Representatives. If</p> <p>11 they would like to see that and if they believe that</p> <p>12 is from a false source, I think they're going to have</p> <p>13 a hard time.</p> <p>14 EXAMINER CHILES: Thank you.</p> <p>15 Ms. Dunn, do you want to briefly reply?</p> <p>16 MS. DUNN: May I have just one moment,</p> <p>17 please?</p> <p>18 EXAMINER CHILES: Sure.</p> <p>19 MS. DUNN: Thank you, your Honor, if I</p> <p>20 may.</p> <p>21 EXAMINER CHILES: You may.</p> <p>22 MS. DUNN: Your Honor, all we have today</p> <p>23 is representations by Mr. Olier as to where he got</p> <p>24 it. We have no original. We have no seal. We have</p> <p>25 a document that the only person signing it says he</p>
<p style="text-align: right;">Page 5105</p> <p>1 would again move to strike the document attached to</p> <p>2 his testimony as well as this purported certified</p> <p>3 copy. I understand the rulings -- the Bench's ruling</p> <p>4 on relevance; however, this document has not been</p> <p>5 verified as authentic. It's not been</p> <p>6 self-authenticated by a certified copy of a public</p> <p>7 record. In fact, the clerk actually said that he</p> <p>8 can't assure that this content is accurate or</p> <p>9 original, and for those reasons, I would renew our</p> <p>10 motion to strike on that basis.</p> <p>11 EXAMINER CHILES: Mr. Olier?</p> <p>12 MR. OLIER: Your Honor, we have a</p> <p>13 document that has been signed by the clerk of the</p> <p>14 House of Representatives that also contains a</p> <p>15 notation from the LSC indicating they have housed</p> <p>16 this document since it was filed.</p> <p>17 There is a statement that Mr. White</p> <p>18 already clarified, I believe, which states there is</p> <p>19 not necessarily any guarantee that what has been</p> <p>20 filed in a written document is what was stated by</p> <p>21 that witness in their testimony, but that doesn't</p> <p>22 change the fact that this is the document that</p> <p>23 FirstEnergy submitted to the House of Public</p> <p>24 Utilities Committee, and it is an authenticating</p> <p>25 document, because if you look at the Rule of Evidence</p>	<p style="text-align: right;">Page 5107</p> <p>1 can't authenticate the document. Mr. White cannot</p> <p>2 authenticate that document. We have no foundation</p> <p>3 that this document is, in fact, what it purports to</p> <p>4 be, and its use on that basis is improper, and it</p> <p>5 should be stricken along with the other testimony</p> <p>6 referencing the document.</p> <p>7 EXAMINER CHILES: Thank you. Your</p> <p>8 renewed objection is noted for the record; however,</p> <p>9 we are upholding our prior ruling, exercising our</p> <p>10 administrative discretion, and the Commission will</p> <p>11 afford this document the weight that it deserves.</p> <p>12 MS. DUNN: And, your Honor, if I may just</p> <p>13 have three minutes to look over my notes, I think I'm</p> <p>14 finished.</p> <p>15 EXAMINER CHILES: Absolutely.</p> <p>16 (Discussion off the record.)</p> <p>17 MS. DUNN: Thank you, your Honor. I have</p> <p>18 no further questions.</p> <p>19 EXAMINER CHILES: Thank you, Ms. Dunn.</p> <p>20 Thank you, Mr. White.</p> <p>21 EXAMINER CHILES: Mr. Sauer, I believe I</p> <p>22 skipped over you.</p> <p>23 MR. SAUER: No questions. Thank you.</p> <p>24 EXAMINER CHILES: Mr. Kurtz?</p> <p>25 MR. KURTZ: Thank you. Very briefly.</p>

<p style="text-align: right;">Page 5108</p> <p>1 ---</p> <p>2 CROSS-EXAMINATION</p> <p>3 By Mr. Kurtz:</p> <p>4 Q. Good afternoon, Mr. White.</p> <p>5 A. Good afternoon.</p> <p>6 Q. I want to talk to you a little bit about</p> <p>7 the very first part of your testimony, the utility</p> <p>8 billing, page 7 through 12.</p> <p>9 EXAMINER CHILES: Mr. Kurtz, would you</p> <p>10 use your microphone, please. Thank you.</p> <p>11 Q. So Mr. White, as I understand it, you</p> <p>12 want the Commission to order FirstEnergy to allow a</p> <p>13 CRES provider who has an electricity customer on</p> <p>14 their system to have the utility bill for other</p> <p>15 energy-related services that IGS or other CRES</p> <p>16 providers may provide; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And you list those services on</p> <p>19 page 8, electricity bundled with energy efficiency,</p> <p>20 demand response?</p> <p>21 A. I'm sorry. Give me a second.</p> <p>22 Q. Page 8, line 6.</p> <p>23 A. Okay.</p> <p>24 Q. Electricity bundled with energy</p> <p>25 efficiency, demand response, direct load control,</p>	<p style="text-align: right;">Page 5110</p> <p>1 A. I don't know if I understand your</p> <p>2 question.</p> <p>3 Q. Would they all have to be IGS customers</p> <p>4 for FirstEnergy to bill for this microgrid?</p> <p>5 A. Just to be clear, I'm not advocating</p> <p>6 necessarily that FirstEnergy bills for microgrids. I</p> <p>7 think my statement here is saying there's a bunch of</p> <p>8 products and services that are being developed by</p> <p>9 CRES providers.</p> <p>10 Q. And you go on, battery storage</p> <p>11 technology, products bundled with loyalty rewards,</p> <p>12 and products bundled with home protection, to name a</p> <p>13 few. Are the loyalty rewards the five cents off per</p> <p>14 gallon of gas that you offer, that type of thing?</p> <p>15 A. Yes, that would be an example of loyalty</p> <p>16 rewards.</p> <p>17 Q. Okay. Let's assume the Commission adopts</p> <p>18 your proposal, and you call up FirstEnergy, IGS calls</p> <p>19 up and says, "Hey, we have 25 customers who we sold</p> <p>20 microgrids" -- we'll skip that one. We have 25</p> <p>21 customers who we sold microgrids to. We want you to</p> <p>22 bill them on the utility bill." Are you with me, so</p> <p>23 far?</p> <p>24 A. Sure.</p> <p>25 Q. How many customers does FirstEnergy have</p>
<p style="text-align: right;">Page 5109</p> <p>1 smart thermostats, distributed solar generation, and</p> <p>2 other forms of on-site generation, microgrids --</p> <p>3 what's a microgrid?</p> <p>4 A. Sorry. I'm still trying to find --</p> <p>5 Q. Page 8, line 8.</p> <p>6 A. Okay. Just to clarify, those are not</p> <p>7 items I'm necessarily saying should be billed on the</p> <p>8 bill. I'm listing them as products and services.</p> <p>9 Q. I thought you said you listed all these</p> <p>10 things to name a few at the very end?</p> <p>11 A. I'm saying in my testimony that they're</p> <p>12 starting to develop new products and services that</p> <p>13 include additional value to customers.</p> <p>14 Q. At the end when you say "to name a few,"</p> <p>15 I thought there were more to come and this was</p> <p>16 nonexhaustive?</p> <p>17 A. Yes, that's true.</p> <p>18 Q. Okay. Well, what's a microgrid?</p> <p>19 A. A microgrid is a -- it's a generation</p> <p>20 resource that is located in a community or in the</p> <p>21 midst of businesses where it supplies that specific</p> <p>22 generation resource, provides energy to a set group</p> <p>23 of customers in a small geographic area.</p> <p>24 Q. Would they all have to be customers of</p> <p>25 the CRES to qualify?</p>	<p style="text-align: right;">Page 5111</p> <p>1 total?</p> <p>2 A. They have distribution customers. They</p> <p>3 have over a million.</p> <p>4 Q. About two million, right?</p> <p>5 A. Yes, that sounds about right.</p> <p>6 Q. So would they have to reprogram their</p> <p>7 entire billing system to accommodate your 25</p> <p>8 microgrid customers?</p> <p>9 A. So right now FirstEnergy currently offers</p> <p>10 Bill Ready billing, which essentially allows</p> <p>11 competitive suppliers to put different line items on</p> <p>12 the utility bill. So there is billing</p> <p>13 functionality in place that would be able to</p> <p>14 facilitate this particular request. I also expect</p> <p>15 there would have to be some additional IT upgrades as</p> <p>16 well.</p> <p>17 Q. Have you talked to them, or do you know</p> <p>18 anything about the IT upgrades for the billing to</p> <p>19 accommodate your proposal?</p> <p>20 A. So we -- there are other utilities in</p> <p>21 Ohio and other states that do allow IGS and other</p> <p>22 suppliers to bill for service on the utility bill.</p> <p>23 So to the extent that we know that other utilities</p> <p>24 can accommodate that request and have been able to</p> <p>25 accommodate that request, they charge us a fee for, I</p>

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<p>1 have a general understanding of what additional costs 2 would be.</p> <p>3 MS. DUNN: Your Honor, I would move to 4 strike. The question was, have you talked to anyone 5 at FirstEnergy.</p> <p>6 EXAMINER CHILES: Could I have the 7 question and answer read back, please?</p> <p>8 (Record read.)</p> <p>9 MR. OLIKER: Your Honor, if you look in 10 that question, there was "do you talk to them" or "do 11 you know anything about the IT upgrades that would be 12 necessary," and I think he provided an answer to the 13 latter question.</p> <p>14 EXAMINER CHILES: Thank you. The motion 15 to strike is denied.</p> <p>16 Q. (By Mr. Kurtz) So your proposal is that 17 they would bill you for the IT upgrades to 18 accommodate your request?</p> <p>19 A. Generally speaking, how it happens in 20 other utilities, they do recover some of the costs 21 through billing charges that we have to pay for 22 billing for those noncommodity charges.</p> <p>23 Q. I meant all the costs. Is your proposal 24 they would charge you all the of upgrading the IT 25 system to accommodate your proposal?</p>	<p>1 costs are reasonable and reasonable based on what the 2 actual costs are and not inflated costs, yes.</p> <p>3 Generally we do pay the costs to upgrade the system.</p> <p>4 Q. Now, would all the 2 million customers 5 get a line item that said "microgrid" and there would 6 be a zero for everybody except the 25?</p> <p>7 A. So the way the Bill Ready billing works, 8 it's my understanding that we have the ability to put 9 our own line items and our own charges on the bill. 10 So we would just -- when we send our invoices to 11 FirstEnergy, we would include microgrid at \$10. If a 12 customer does not have any value-added products and 13 services, they would just get their competitive 14 retail electric charge on their bill.</p> <p>15 Q. And if the following month you wanted to 16 add a line item for loyalty rewards, they would 17 change the billing system the following month to 18 accommodate that?</p> <p>19 A. Well, again, the way the Bill Ready 20 system works is that you would just basically give 21 them the bill with the charges on the bill and also 22 the name of the product you're purchasing. So I 23 wouldn't imagine there would be any additional costs.</p> <p>24 Q. If you wanted a whole new line item, why 25 wouldn't be there a whole new cost?</p>
Page 5113	Page 5115
<p>1 A. Generally the costs would be recovered 2 over time. I wouldn't say they would charge IGS 3 specifically all the costs upfront, given that there 4 would be multiple suppliers that would be able to 5 also participate in billing for noncommodity 6 services.</p> <p>7 Q. Well, why would CRES providers who don't 8 need this have to pay? Why wouldn't you pay it all 9 if you're the only one who wants the service?</p> <p>10 A. I guess just -- generally what happens is 11 you're going to get an upfront fee for the charges to 12 do initially IT upgrades, and there's an ongoing and 13 additional charge for the billing of the noncommodity 14 charges. That's generally how the costs are required 15 is any entity that wishes to bill for these 16 noncommodity charges.</p> <p>17 On the bill there's an upfront fee that 18 you have to pay, and I'm assuming that it's based on 19 the costs that the companies need to upgrade the 20 system, and also they charge us an ongoing billing 21 charge each time they bill for us.</p> <p>22 Q. Okay. So just so I'm clear, you are okay 23 with paying for all the costs associated with the 24 upgrade?</p> <p>25 A. Assuming the costs are -- assuming the</p>	<p>1 A. Because basically Bill Ready allows you X 2 amount of line items that you can utilize for 3 bill-specific charges. It already gives you that 4 functionality.</p> <p>5 Q. Do you know how the FirstEnergy billing 6 system works?</p> <p>7 A. I have a general understanding of how the 8 FirstEnergy billing system works.</p> <p>9 Q. You're a lawyer, not an IT person, right?</p> <p>10 A. I have had conversations with our IT 11 folks. I also know of how Bill Ready works.</p> <p>12 Q. Now, there are over 100 CRES providers in 13 Ohio, right?</p> <p>14 A. I don't know the exact number of CRES 15 providers in Ohio.</p> <p>16 Q. How many do you know about there are?</p> <p>17 A. I don't know. I mean, there's dozens, 18 but I'm not sure of the exact number.</p> <p>19 Q. The last I counted, over 100. Let's use 20 dozens. Would all the dozens of CRES providers be 21 able to have FirstEnergy customize the utility bill 22 the way you described if they wanted to have home 23 protection, home alarm service? Would that bill work 24 that way, too?</p> <p>25 A. Generally if they're willing to pay the</p>

<p style="text-align: right;">Page 5116</p> <p>1 fixed upfront costs, which in our experience we've</p> <p>2 had to pay fixed upfront costs to participate in the</p> <p>3 utility billing, if they're willing to pay the fixed</p> <p>4 upfront costs, they would have the ability to</p> <p>5 participate in the program offered to the utility.</p> <p>6 Q. So there could be dozens of customized</p> <p>7 utility bills under your proposal for each of the</p> <p>8 CRES providers, dozens of CRES providers, each</p> <p>9 providing ten or more different services? Is that</p> <p>10 the way you envision it?</p> <p>11 A. I envision there would be a limit. Like</p> <p>12 right now how Bill Ready is limited to the number of</p> <p>13 line items on the bill. There would be a limit to</p> <p>14 the amount of services that CRES providers can offer</p> <p>15 on their bill.</p> <p>16 Q. Now, you list ten to name a few. Does</p> <p>17 that exhaust the line items that are available?</p> <p>18 A. I'm not sure of the exact limitation on</p> <p>19 the line items in the FirstEnergy bill currently.</p> <p>20 What I know is it's in the range of ten-ish. I don't</p> <p>21 know.</p> <p>22 Q. If a customer has a dispute with a bill,</p> <p>23 would they call FirstEnergy's customer service?</p> <p>24 A. No. They would call IGS's customer</p> <p>25 service.</p>	<p style="text-align: right;">Page 5118</p> <p>1 Q. Now, if you have these ten line items on</p> <p>2 the bill and then you lost the customer for</p> <p>3 electricity supply, you're going to have to bill them</p> <p>4 for these ten demand response, microgrid, battery</p> <p>5 storage. You're going to have to bill them yourself,</p> <p>6 aren't you?</p> <p>7 A. Yes. The collections would be the</p> <p>8 responsibility of IGS at that time, just like often</p> <p>9 basically the way the FirstEnergy system currently</p> <p>10 works is that they collect the commodity charges for</p> <p>11 us. Since they don't have a POR, after a certain</p> <p>12 period of time if the customer is not current on</p> <p>13 their charges, the supplier assumes the</p> <p>14 responsibility of collecting on the customer. So it</p> <p>15 would be the same principle.</p> <p>16 Q. So if you've got a customer with</p> <p>17 microgrids and home protection and loyalty rewards</p> <p>18 and battery storage and then you lose them as an</p> <p>19 electricity customer, if you're going to have to bill</p> <p>20 them anyway for all those things, why don't you bill</p> <p>21 them to start with instead of having the utility</p> <p>22 change its billing software for its 2 million</p> <p>23 customers to accommodate you?</p> <p>24 A. So as I explained in my testimony,</p> <p>25 customers prefer simplicity, and they overwhelmingly</p>
<p style="text-align: right;">Page 5117</p> <p>1 Q. Well, the bill came from FirstEnergy.</p> <p>2 Wouldn't it be natural for the customer to call</p> <p>3 FirstEnergy?</p> <p>4 A. So this is what happens currently, and</p> <p>5 when a customer has a dispute with a supplier's</p> <p>6 commodity charges, currently they'll say, I don't</p> <p>7 agree with these charges. They may call FirstEnergy.</p> <p>8 FirstEnergy will say that those are charges between</p> <p>9 you and your supplier. You need to contact your</p> <p>10 supplier if you have a dispute with those charges.</p> <p>11 Or I'm sure FirstEnergy will refer them to the PUCO,</p> <p>12 too, if they want to make a complaint.</p> <p>13 Q. If you add more line items up to, ten or</p> <p>14 to name a few, wouldn't the possibility of disputes</p> <p>15 increase?</p> <p>16 A. There would, but -- there would likely be</p> <p>17 some additional calls to the call center, yes.</p> <p>18 Q. Do you reimburse FirstEnergy for that</p> <p>19 also?</p> <p>20 A. Again, traditionally how these</p> <p>21 relationships work in other utilities is that you pay</p> <p>22 the upfront costs and a fee and ongoing fees as they</p> <p>23 continue to bill. So to the extent that you continue</p> <p>24 to pay the utility, I imagine that their costs are</p> <p>25 covered.</p>	<p style="text-align: right;">Page 5119</p> <p>1 prefer a single bill for distribution and generation</p> <p>2 charges. So the customers do not want a total bill.</p> <p>3 If you look at your iPhone, oftentimes the products</p> <p>4 that you bundle on your wireless bill are multiple</p> <p>5 products bundled by one provider.</p> <p>6 In my testimony, I explain that our</p> <p>7 actual preference is that we're able to do supplier</p> <p>8 consolidated billing like they do in Texas where --</p> <p>9 Q. I'm going to stop you there. I didn't</p> <p>10 ask you about that part of your testimony.</p> <p>11 A. Okay.</p> <p>12 Q. If you're going to have to -- if you lose</p> <p>13 the customer, an electricity customer, you're going</p> <p>14 have to send dual bills anyway. How much of a burden</p> <p>15 is it to do that from the start? That's what you do</p> <p>16 now, isn't it?</p> <p>17 A. It is, but that's only for a small</p> <p>18 percentage of customers that don't pay off their</p> <p>19 bill. So the way it would work is the customer is</p> <p>20 required to pay the bill that's invoiced to them. If</p> <p>21 they don't pay the bill that's invoiced to them, then</p> <p>22 they turn that collection over to the CRES provider.</p> <p>23 That's not a very big percentage. That's a very</p> <p>24 small percentage of customers.</p> <p>25 Q. You have distributed solar and a lot of</p>

<p style="text-align: right;">Page 5120</p> <p>1 these products you sell now and you bill for them 2 now, right? 3 A. Not in Ohio. 4 Q. Your website indicates that you have all 5 kinds of things. 6 A. Well, we do have products in Ohio. I 7 thought you meant distributed solar. Are you talking 8 about distributed solar or other products? 9 Q. Well, I was talking about distributed 10 solar, but you have other products that you're 11 billing for now, right? 12 A. We do. We have some utilities that allow 13 us to bill some of our products on the utility bill. 14 Some of them don't. And the same principle would 15 apply to FirstEnergy is currently offering a number 16 of different products and services on their bill to 17 customers that are not commodity. It facilitates the 18 transaction for those products and services to 19 customers. So it's a value to customers, and it 20 certainly is a value to the companies that are 21 utilizing FirstEnergy's bill to do that. 22 Q. Now, your proposal is pretty sweepingly 23 important, isn't it, for how billing will work in the 24 largest utility in the state, isn't it? 25 A. It's -- I think it's a modest proposal</p>	<p style="text-align: right;">Page 5122</p> <p>1 details necessary for this type of proposal? Do you 2 agree with that, or do you think you spell it out in 3 specific -- enough specifics for the Commission? 4 A. I agree that there will be -- I think 5 that there will be additional details needed to be 6 worked out, but my testimony gives the Commission 7 enough to direct FirstEnergy to implement a program 8 within a certain period of time to allow for CRES 9 providers to bill on noncommodity services on the 10 utility bill. 11 MR. KURTZ: Thank you, Mr. White. No 12 further questions. 13 EXAMINER CHILES: Thank you. 14 Mr. McNamee? 15 MR. McNAMEE: No, thank you. I have no 16 questions. 17 EXAMINER CHILES: Mr. Olikier, redirect? 18 MR. OLIKER: Your Honor, if we could take 19 just a brief recess, and I think it will be pretty 20 brief, and it will be a short redirect. 21 EXAMINER CHILES: Sure. Let's go off the 22 record. 23 (Recess taken.) 24 EXAMINER CHILES: Let's go ahead and go 25 back on the record.</p>
<p style="text-align: right;">Page 5121</p> <p>1 that's been done by other utilities. 2 Q. You think this is modest, to revamp the 3 entire utility billing protocol? 4 A. I don't think it would be required to 5 revamp the entire utility billing protocol to offer 6 this service, especially considering the fact that 7 FirstEnergy is already doing it for a select group of 8 companies. 9 Q. Why isn't this a more appropriate issue 10 given its complexity, and the fact that you haven't 11 thought through all the details for the competitive 12 workshop or some other form rather than this ESP 13 case? 14 A. Because currently the company is 15 proposing to change its tariff to limit commodity 16 charges to only generation. It's our belief that as 17 the competitive markets evolve and technologies 18 advance, it's going to be increasingly more important 19 for customers to receive noncommodity charges as part 20 of their electric generation supply, and this is an 21 ESP case where the companies have brought up 22 restricting the ability to bill for noncommodity 23 charges. So I'm saying they should expand it. 24 Q. You do agree that your four or five pages 25 of your testimony cannot possibly address all the</p>	<p style="text-align: right;">Page 5123</p> <p>1 Mr. Olikier. 2 MR. OLIKER: Thank you, your Honor. Just 3 briefly on one category. 4 --- 5 REDIRECT EXAMINATION 6 By Mr. Olikier: 7 Q. Mr. White, do you remember questions that 8 you received from Ms. Dunn regarding confidential 9 information you may have reviewed in this case? 10 A. Yes. 11 Q. At the time of your deposition, did you 12 remember that there was a difference between 13 confidential and competitively sensitive confidential 14 information? 15 A. At the time of my deposition, I did not 16 remember that there was, FirstEnergy had made a 17 distinction between the competitively sensitive and 18 confidential information. 19 Q. And just to be clear, in the testimony 20 that you have submitted to this Commission in both 21 IGS Exhibit 11 and confidential -- sorry. Strike 22 that. In IGS Exhibit 11, 12 and 13, in any of those 23 documents do you rely on what is competitively 24 sensitive confidential information? 25 A. No. There's nothing I rely on or cite to</p>

<p style="text-align: right;">Page 5124</p> <p>1 in my testimony that FirstEnergy considers 2 competitively sensitive information. 3 Q. And, to your knowledge, have you reviewed 4 any of FirstEnergy Solutions' competitively sensitive 5 confidential information? 6 A. Although I believe that at the time I -- 7 before I met with counsel I would have had the right 8 to review it, to my knowledge, I did not review any 9 competitively sensitive information of FirstEnergy. 10 Largely any discovery that gets sent to me gets 11 deleted. I did not handle any discovery in this 12 case. That largely went through my counsel. You 13 know, you get hundreds and hundreds of discovery 14 documents, so I certainly didn't review every single 15 discovery document that got e-mailed to me. Even if 16 it was e-mailed to me, I would have had the right to 17 review it, I don't believe that I did. 18 MR. OLIKER: I believe those are all the 19 questions I have, your Honor. Thank you. 20 EXAMINER CHILES: Thank you, Mr. Oliker. 21 Recross. Mr. Randazzo? 22 MR. RANDAZZO: None. 23 EXAMINER CHILES: Mr. Fisk? 24 MR. FISK: None. 25 EXAMINER CHILES: Mr. Sauer.</p>	<p style="text-align: right;">Page 5126</p> <p>1 instead of going to the deposition? It's already 2 improper. 3 EXAMINER CHILES: Ms. Dunn, do you have a 4 response? 5 MS. DUNN: I'll rephrase. 6 EXAMINER CHILES: Thank you. 7 Q. Isn't it true that the facts you have -- 8 that you reviewed competitively sensitive 9 confidential material in this case that has specific 10 cost information relating to the plants being offered 11 in the proposed transaction? 12 A. I do not recall reviewing that 13 information if I did. 14 Q. Could you please turn to your deposition? 15 A. Sure. 16 Q. Page 120, line 10: 17 Question: "What facts do you have to 18 support the term 'inefficient competitive 19 generation'?" 20 Answer: "My general understanding of the 21 generation that's being proposed by FirstEnergy." 22 "MR. OLIKER: Mr. White, be careful not 23 to divulge confidential information in the public 24 record." 25 Question: "I'm not asking for specifics,</p>
<p style="text-align: right;">Page 5125</p> <p>1 MR. SAUER: None. 2 EXAMINER PRICE: Ms. Dunn. 3 MS. DUNN: Yes, your Honor. 4 --- 5 RECROSS-EXAMINATION 6 By Ms. Dunn: 7 Q. Mr. White, could you turn to your 8 supplemental direct testimony, IGS 11. 9 A. Supplemental direct, yes. 10 Q. I apologize. I was at the wrong 11 supplemental. IGS 13. 12 A. The supplemental -- 13 Q. Let's back up. IGS 13, which is your 14 supplemental testimony filed on March 2nd. 15 A. Okay. Sure. 16 Q. And you state on line 17 to 18 -- 17 MR. OLIKER: Can I have the page, Carrie? 18 MS. DUNN: I'm sorry. Page 2. 19 Q. And you state, "to subsidize FES's 20 inefficient competitive generation." Do you see 21 that? 22 A. Yes. 23 Q. And if you could please turn to page 120 24 of your deposition. 25 MR. OLIKER: How about we have a question</p>	<p style="text-align: right;">Page 5127</p> <p>1 but have you reviewed competitively sensitive 2 confidential material in this case that has specific 3 cost information relating to the plants being offered 4 in the proposed transaction?" 5 Answer: "Yes." 6 Did I read that correctly? 7 MR. OLIKER: Objection. He already 8 offered his explanation of his understanding in the 9 deposition. 10 A. I didn't understand what you meant. I 11 didn't remember the distinction between the 12 competitively sensitive and the confidential. 13 MS. DUNN: Your Honor, move to strike. 14 EXAMINER CHILES: Motion granted. 15 A. That's what was read in my deposition. 16 MS. DUNN: Your Honor, move to strike 17 again. 18 EXAMINER CHILES: I think that was 19 actually responsive to your question. 20 THE WITNESS: But you can strike that, 21 too. I think you should strike that. 22 MS. DUNN: I'll retrack my motion to 23 strike. 24 EXAMINER CHILES: Thank you. 25 MS. DUNN: No further question, your</p>

<p style="text-align: right;">Page 5128</p> <p>1 Honor.</p> <p>2 EXAMINER CHILES: Mr. Kurtz?</p> <p>3 MR. KURTZ: No, thank you, your Honor.</p> <p>4 EXAMINER PRICE: Mr. McNamee?</p> <p>5 MR. MCNAMEE: No questions.</p> <p>6 EXAMINER CHILES: Thank you, Mr. White.</p> <p>7 You are excused.</p> <p>8 THE WITNESS: Thank you.</p> <p>9 EXAMINER CHILES: Mr. Olier.</p> <p>10 MR. OLICKER: Your Honor, IGS would move</p> <p>11 for the admission of Exhibit 11, 12 and 13, and we</p> <p>12 would proffer the portions of the testimony that were</p> <p>13 stricken on the basis that was provided earlier in</p> <p>14 the discussion on the motions.</p> <p>15 EXAMINER CHILES: Your proffer is noted</p> <p>16 for the record.</p> <p>17 Are there any objections to the admission</p> <p>18 of IGS Exhibits 11, 12 Confidential, and 13?</p> <p>19 MS. DUNN: Your Honor, subject to the</p> <p>20 motions to strike, there are no objections.</p> <p>21 EXAMINER CHILES: Thank you. Subject to</p> <p>22 the rulings on the motions to strike, they will be</p> <p>23 admitted.</p> <p>24 (EXHIBITS ADMITTED INTO EVIDENCE.)</p> <p>25 EXAMINER CHILES: Ms. Dunn?</p>	<p style="text-align: right;">Page 5130</p> <p>1 the testimony.</p> <p>2 MS. DUNN: What are you looking for?</p> <p>3 MR. OLICKER: I think the Bench asked for</p> <p>4 94, what that is.</p> <p>5 MS. DUNN: Your Honor, Company Exhibit 94</p> <p>6 is 14-1693, the Direct Testimony of Matthew White.</p> <p>7 And may I respond?</p> <p>8 EXAMINER CHILES: Yes.</p> <p>9 MS. DUNN: As it relates to 90 and 91, I</p> <p>10 believe I established the foundation and relevancy of</p> <p>11 those documents with Mr. White's cross, and they're</p> <p>12 appropriate for the record. And also I didn't hear</p> <p>13 an objection to 96 and 97, but the companies will</p> <p>14 not -- did not use Mr. White's testimony, anything</p> <p>15 other than to show the date he filed it. So there</p> <p>16 was no foundation laid for any use other than that,</p> <p>17 so we would object to the admission of that document.</p> <p>18 MR. OLICKER: And, your Honor, because she</p> <p>19 marked the exhibit, we have a right to include all of</p> <p>20 it for the sake of completeness under Ohio law and</p> <p>21 the Rules Of Evidence.</p> <p>22 MS. DUNN: There's nothing to be</p> <p>23 complete, your Honor, other than date which he agreed</p> <p>24 to. I believe he stipulated to that, too.</p> <p>25 EXAMINER CHILES: We will go ahead and we</p>
<p style="text-align: right;">Page 5129</p> <p>1 MS. DUNN: Your Honor, the companies</p> <p>2 would like to move Company Exhibit 90, 91, 96 and 97.</p> <p>3 EXAMINER CHILES: Are there any</p> <p>4 objections to the admission of companies' Exhibits</p> <p>5 90, 91, 96 or 97?</p> <p>6 MR. OLICKER: Can we go off the record for</p> <p>7 a second?</p> <p>8 EXAMINER CHILES: Yes.</p> <p>9 (Discussion off the record.)</p> <p>10 EXAMINER CHILES: Let's go back on the</p> <p>11 record.</p> <p>12 MR. OLICKER: Your Honor, the protective</p> <p>13 agreement and the e-mail from Tamara Singleton are</p> <p>14 really not relevant to this case or any point that</p> <p>15 would bear on this testimony, so I would oppose their</p> <p>16 admission.</p> <p>17 And regarding the letter to Mr. White and</p> <p>18 from Mr. White to Mr. Jones, we wouldn't oppose the</p> <p>19 admission, but we would also request that Mr. White's</p> <p>20 testimony from Case 14-1694 be admitted because it</p> <p>21 was marked as an exhibit in this case, and he was</p> <p>22 asked questions about it..</p> <p>23 EXAMINER CHILES: Do you have a reference</p> <p>24 for that Company Exhibit 94?</p> <p>25 MR. OLICKER: The Notice for Withdrawal of</p>	<p style="text-align: right;">Page 5131</p> <p>1 will admit Companies' Exhibits 90 and 91, objection</p> <p>2 noted, and Companies' Exhibits 96 and 97.</p> <p>3 (EXHIBITS ADMITTED INTO EVIDENCE.)</p> <p>4 MS. DUNN: Your Honor, if I may offer one</p> <p>5 more response.</p> <p>6 EXAMINER CHILES: Go ahead.</p> <p>7 MS. DUNN: For the limited use that I</p> <p>8 used it does not allow it to be brought in on issues</p> <p>9 that pertain to AEP and do not pertain to this case,</p> <p>10 of which Mr. White did not file in this case in a</p> <p>11 timely manner.</p> <p>12 MR. OLICKER: Your Honors, she could have</p> <p>13 used it to refresh his recollection, but she did not.</p> <p>14 She marked it as an exhibit, and she authenticated it</p> <p>15 as a document, and it is all right to have the entire</p> <p>16 document admitted under the Rules of Evidence.</p> <p>17 EXAMINER CHILES: We are not going to</p> <p>18 admit Company Exhibit 94; however, we will take</p> <p>19 administrative notice of it.</p> <p>20 MR. OLICKER: Thank you, your Honor.</p> <p>21 EXAMINER CHILES: Let's go off the</p> <p>22 record.</p> <p>23 (Discussion off the record.)</p> <p>24 EXAMINER ADDISON: Let's go back on the</p> <p>25 recovered.</p>

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<p>1 Mr. Fisk, please call your first witness. 2 MR. FISK: Thank you, your Honors. The 3 Sierra Club would call Peter Lanzalotta to the stand. 4 --- 5 PETER LANZALOTTA 6 being first duly sworn, as prescribed by law, was 7 examined and testified as follows: 8 DIRECT EXAMINATION 9 By Mr. Fisk: 10 Q. Good afternoon, Mr. Lanzalotta. 11 A. Mr. Fisk. 12 Q. Could you please state your name for the 13 record? 14 A. Peter Lanzalotta. 15 Q. And could you please state your business 16 address. 17 A. 67 Royal Point Drive, Hilton Head Island, 18 South Carolina. 19 MR. FISK: And, your Honors, Sierra Club 20 would ask that Mr. Lanzalotta's supplemental 21 testimony, the public version, be marked as Exhibit 22 67 and the confidential version be marked as Sierra 23 Club 68C. 24 EXAMINER ADDISON: So marked. 25 (EXHIBITS MARKED FOR IDENTIFICATION.)</p>	<p>1 and tenders Mr. Lanzalotta for cross-examination. 2 EXAMINER ADDISON: Thank you, Mr. Fisk. 3 We'll defer on ruling on those motions until after 4 cross-examination has been completed. 5 Mr. Hays, do you have any questions? 6 MR. HAYS: No. Thank you, your Honor. 7 EXAMINER ADDISON: Mr. Randazzo? 8 MR. RANDAZZO: None, thank you. 9 EXAMINER ADDISON: Mr. Olikier? 10 MR. OLIKER: None, thank you 11 EXAMINER ADDISON: Mr. Kurtz? 12 MR. KURTZ: No questions. 13 EXAMINER ADDISON: Mr. Sauer. 14 MR. SAUER: No questions. 15 EXAMINER ADDISON: Mr. Lang? 16 MR. LANG: Thank you, your Honor. 17 --- 18 CROSS-EXAMINATION 19 By Mr. Lang: 20 Q. Good evening, Mr. Lanzalotta. 21 A. Mr. Lang. 22 Q. A few questions about history. Your work 23 experience dates back to the 1970s, correct? 24 A. Yes. 25 Q. And in the 1970s, you first worked for</p>
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<p>1 Q. Thank you. Mr. Lanzalotta, do you have 2 in front of you a copy of Sierra Club Exhibit 67? 3 A. Yes. 4 Q. And is that document your supplemental 5 testimony, the public version, filed in this 6 proceeding? 7 A. Yes. 8 Q. And do you have in front of you a copy of 9 Sierra Club Exhibit 68C? 10 A. Yes. 11 Q. And is that the confidential version of 12 the supplemental testimony that you filed in this 13 proceeding? 14 A. Yes. 15 Q. And with regards to either the public 16 version or the confidential version of your 17 supplemental testimony, do you have any corrections 18 or changes? 19 A. No. 20 Q. And so if I were to ask you today the 21 questions in Sierra Club Exhibit 67 and 68C, would 22 your answers be the same? 23 A. Yes. 24 MR. FISK: Your Honors, Sierra Club moves 25 for the admission of Sierra Club Exhibit 67 and 68C</p>	<p>1 about five years with Baltimore Gas & Electric, 2 correct? 3 A. Yes. 4 Q. During your time at BG&E, you did not do 5 transmission planning, correct? 6 A. Correct. 7 Q. And after you left Baltimore Gas & 8 Electric, you worked for -- during this time period 9 from 1977 to 1982, you worked for a few consulting 10 firms and also for a few municipal utilities; is that 11 correct? 12 A. That's correct. 13 Q. And in those jobs, you did not do any 14 transmission impact studies involving the retirement 15 of generating units, correct? 16 A. That's correct. 17 Q. And then in 1982, you became an employee 18 of Whitfield Russell Associates, correct? 19 A. Yes. 20 Q. And you have worked for that consulting 21 firm since 1982, correct? 22 A. From 1982 through the end of 2000. 23 Q. Now, you filed your testimony in this 24 case on May 11th, 2015, correct? 25 A. Yes.</p>

<p style="text-align: right;">Page 5136</p> <p>1 Q. And you were retained by Sierra Club to 2 provide testimony sometime during the first half of 3 the previous week, either on May 4th, 5th or 6th, 4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you then began preparing your 7 testimony relatively soon after you were retained, 8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Now, your testimony addresses the 11 supplemental testimony of Rodney Phillips. You 12 understand, do you not, that Mr. Phillips' testimony 13 is, in part, based on load flow studies that were 14 performed using PJM base case models?</p> <p>15 A. Yes.</p> <p>16 Q. And you have performed load flow studies 17 in the past using PJM's base case models, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And some of those studies were to 20 determine the impact on the transmission grid of 21 generating plant retirements, is that true?</p> <p>22 A. Yes.</p> <p>23 Q. You've done load flow studies for that 24 specific purpose to determine the impact on the 25 transmission grid of retirements, you've done that</p>	<p style="text-align: right;">Page 5138</p> <p>1 contracts, that there can be parties that provide a 2 different perspective to PJM and have the opportunity 3 to oppose cost recovery through RMR contracts, 4 correct?</p> <p>5 A. Yes. They can participate in the process 6 at FERC and file testimony, oppose, offer changes, 7 things like that, yes.</p> <p>8 Q. Now, with regard to PJM's base case 9 models, those models make assumptions regarding what 10 existing transmission facilities and planned 11 transmission facilities will be in place during the 12 year that's being studied, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And PJM's base case models also make 15 assumptions regarding planned generation that will be 16 in service during the year studied, correct?</p> <p>17 A. Yes.</p> <p>18 Q. PJM includes generation in its base case 19 models that have met certain milestones in the PJM 20 queue, and that's with regard to proposed generation, 21 not existing generation, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Now, PJM's base case models also include 24 all transmission projects that are in PJM's database 25 of baseline transmission projects as long as those</p>
<p style="text-align: right;">Page 5137</p> <p>1 about eight to ten times as you remember?</p> <p>2 A. I believe that's correct.</p> <p>3 Q. And that would have been done in the 4 2010-2013 time period, correct?</p> <p>5 A. Some might have been before 2010.</p> <p>6 Q. Okay. And in some of those cases when 7 you were doing those load flow studies, you were 8 retained by an environmental organization, correct?</p> <p>9 A. Some for an environmental organization 10 and some on behalf of state agencies, such as Office 11 of Consumer Advocate, Peoples' Counsel, organizations 12 such as that.</p> <p>13 Q. And when you were retained in that 2011 14 and 2013 time period by an environmental 15 organization, the objective of the retention was to 16 oppose RMR compensation for retiring generating units 17 in PJM, correct?</p> <p>18 A. Not specifically. My assignment there 19 was to study the retirements and see what effect on 20 reliability they had and if, perhaps, there was a 21 basis for an RMR contract. I was never told, you 22 know, we want to oppose these contracts. That's why 23 we are doing this work. Not at all.</p> <p>24 Q. So you're at least aware that in the 25 process that PJM employs with regard to RMR</p>	<p style="text-align: right;">Page 5139</p> <p>1 projects have a completion date before the year being 2 studied, correct?</p> <p>3 A. Are you saying everything in the queue?</p> <p>4 Q. Let me try again. The base case model, 5 and let's take an example and maybe it will be a 6 little clear. If we're looking at PJM's 2019 RTEP 7 base case model, PJM would include all transmission 8 projects in that model that are in PJM's database of 9 baseline transmission projects as long as the 10 completion date of those baseline transmission 11 projects is prior to 2019?</p> <p>12 A. Yes, I agree.</p> <p>13 Q. Now, one type of load flow study is a 14 generation deliverability study, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And with regard to a generation 17 deliverability study, the standard practice is to 18 look at single contingencies or what's referred to as 19 N minus 1, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Which raises the question, what does the 22 N stand for?</p> <p>23 A. I think it stands for number, N minus 1, 24 N minus 2 or N minus 1 minus 1; one contingency 25 followed by another one a certain number of times</p>

<p style="text-align: right;">Page 5140</p> <p>1 later.</p> <p>2 Q. Which raises my next question. In</p> <p>3 addition to an N minus 1 study as part of a</p> <p>4 generation deliverability study, you can also look at</p> <p>5 selected double contingencies in what is called an N</p> <p>6 minus 1 minus 1, correct?</p> <p>7 A. Yes.</p> <p>8 Q. If you wanted to run a load flow study</p> <p>9 for the summer of 2017, that would be the period you</p> <p>10 were modeling, you would use PJM's base case model</p> <p>11 for that time period, correct?</p> <p>12 A. That would be the ideal situation, yes.</p> <p>13 Q. You would not add to or subtract</p> <p>14 generating units from PJM's base case for that</p> <p>15 period, correct?</p> <p>16 A. I would not.</p> <p>17 Q. Now, on page 3 of your testimony at line</p> <p>18 5, you identify PUCO Case No. 10-503-EL-FOR as a case</p> <p>19 in which you provided testimony, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And in that case, you performed a load</p> <p>22 flow study to determine the impact of the retirement</p> <p>23 of Duke Energy's Beckjord Units 1 through 6, correct?</p> <p>24 A. Yes. I think it's 1 through 6. I know</p> <p>25 there's a large number of units there.</p>	<p style="text-align: right;">Page 5142</p> <p>1 A. Yes.</p> <p>2 Q. Now, on your Exhibit PJL-3, which I</p> <p>3 understand is confidential, but I have a question for</p> <p>4 you that doesn't get to the confidential information,</p> <p>5 you agree there are overloaded facilities that were</p> <p>6 identified by Mr. Cunningham and Mr. Phillips that</p> <p>7 are listed on that exhibit, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And you do not have any basis for showing</p> <p>10 that that list is incorrect, true?</p> <p>11 A. As performed, no, that's correct.</p> <p>12 Q. Now, if I could take you to your Exhibit</p> <p>13 2 and your list of proceedings in which you</p> <p>14 testified, and ask you to turn particularly to page 5</p> <p>15 of 18.</p> <p>16 A. Yes, I'm there.</p> <p>17 Q. On that page, it shows several cases</p> <p>18 before the Illinois Commerce Commission involving</p> <p>19 Commonwealth Edison, correct?</p> <p>20 A. Yes, it does.</p> <p>21 Q. And in those cases, you provided</p> <p>22 testimony regarding transmission upgrade</p> <p>23 alternatives; is that fair?</p> <p>24 A. Yes.</p> <p>25 Q. And you would agree that the Illinois</p>
<p style="text-align: right;">Page 5141</p> <p>1 Q. And with respect to the study that you</p> <p>2 did for those Beckjord units, you did not identify</p> <p>3 any transmission lines that would be overloaded,</p> <p>4 correct?</p> <p>5 A. Given the studies that we ran, that is</p> <p>6 correct, yes.</p> <p>7 Q. Now, for purposes of this case involving</p> <p>8 the Sammis plant and the Davis-Besse plant, you did</p> <p>9 not perform a load flow study to analyze the</p> <p>10 retirement of any combination of units at Sammis or</p> <p>11 Davis-Besse, correct?</p> <p>12 A. Yes.</p> <p>13 Q. The only studies you reviewed that show</p> <p>14 the impact of the retirement of Sammis and</p> <p>15 Davis-Besse are the studies performed by</p> <p>16 Mr. Cunningham and Mr. Phillips in this case,</p> <p>17 correct?</p> <p>18 A. Yes. Also took notice of the studies</p> <p>19 that were performed in relation to FirstEnergy plant</p> <p>20 closures that I think were announced in 2012.</p> <p>21 Q. And so that would be what has been</p> <p>22 referred to as the Lake plants; is that right?</p> <p>23 A. Sounds familiar to me.</p> <p>24 Q. That would involve like the Ashtabula,</p> <p>25 Eastlake plants; is that what you're referring to?</p>	<p style="text-align: right;">Page 5143</p> <p>1 Commerce Commission in those cases had a lot of</p> <p>2 problems with your particular methods?</p> <p>3 A. Yes.</p> <p>4 Q. And in particular, in the case that's No.</p> <p>5 35 on your list, the Illinois Commerce Commission</p> <p>6 found that you had made numerous engineering and</p> <p>7 planning errors and omissions, correct?</p> <p>8 A. That's what they say in their order.</p> <p>9 Q. And they also criticized you for not</p> <p>10 performing necessary load flow studies, correct?</p> <p>11 A. Yes, they did.</p> <p>12 Q. Now, if I could ask you to turn to page 5</p> <p>13 of your testimony. Now, on page 5, you present a</p> <p>14 scenario in which not all of the Sammis units would</p> <p>15 be retired at the same time. Is it fair to say you</p> <p>16 have not calculated the odds that FirstEnergy</p> <p>17 Solutions would retire only some of the Sammis units?</p> <p>18 A. That's correct.</p> <p>19 Q. You have not studied what the possibility</p> <p>20 is that only some of the Sammis units would retire,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And as part of your engagement for this</p> <p>24 case, you have not studied the economics of the</p> <p>25 Sammis units, correct?</p>

<p style="text-align: right;">Page 5144</p> <p>1 A. I did not study the economics, correct.</p> <p>2 Q. And you did not conduct a load flow</p> <p>3 analysis to determine what the impact would be on the</p> <p>4 transmission system if only some of the Sammis units</p> <p>5 were retired, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And you have not studied the impact of</p> <p>8 any specific generation being added to the PJM</p> <p>9 transmission grid as part of this case or as part of</p> <p>10 this scenario, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Now, with regard to a hypothetical</p> <p>13 scenario you describe on page 5 of your testimony,</p> <p>14 you cannot say that reducing the amount of generating</p> <p>15 capacity being retired would reduce all of the</p> <p>16 overloads, correct?</p> <p>17 A. I can't say that they would necessarily</p> <p>18 eliminate overloading. Sammis is 2,200 megawatt-plus</p> <p>19 plant. If you kept a substantial portion of that in</p> <p>20 service rather than retiring it, I think I would be</p> <p>21 surprised if there were any of those overloads that</p> <p>22 it had absolutely zero effect on. It's an AC system.</p> <p>23 Almost everything affects everything else, to some</p> <p>24 degree. So even for the lines that are, you know,</p> <p>25 more affected by Davis-Besse, I would expect maybe</p>	<p style="text-align: right;">Page 5146</p> <p>1 Q. And you were sworn in and agreed to tell</p> <p>2 the truth, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And do you recognize the deposition</p> <p>5 transcript in front of you as the transcript of your</p> <p>6 deposition from May 28th?</p> <p>7 A. Yes.</p> <p>8 Q. Could I have you turn to page 39, please.</p> <p>9 A. Okay.</p> <p>10 Q. And on line 10, is it your testimony -- I</p> <p>11 asked you the question:</p> <p>12 "At the bottom of page 5 of your</p> <p>13 testimony, the part that goes on -- at the top of</p> <p>14 page 6 that starts with reducing the amount of</p> <p>15 generating capacity, is it your belief that reducing</p> <p>16 the amount of generating capacity being retired would</p> <p>17 reduce the magnitude of all of the overloads that</p> <p>18 are shown on PJL-3?"</p> <p>19 Your answer was: "No, I can't say they</p> <p>20 would reduce all of the overloads, no."</p> <p>21 That was your testimony in the</p> <p>22 deposition, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Now, you agree that as long as a load</p> <p>25 flow study shows a transmission facility is at</p>
<p style="text-align: right;">Page 5145</p> <p>1 some reduction in the overload, although, maybe not</p> <p>2 significant.</p> <p>3 Q. Well, to my question, you can't say</p> <p>4 whether in that scenario you'd see a reduction in all</p> <p>5 of the overloads, correct?</p> <p>6 A. I think I just answered that, but I'll be</p> <p>7 happy to answer it again. I said it wouldn't</p> <p>8 eliminate necessary overloads, but if you're going</p> <p>9 to -- you do a study and you're retiring 2,200</p> <p>10 megawatts of generating capacity, it's going to</p> <p>11 affect -- have some affect on almost every AC line in</p> <p>12 the electrical vicinity.</p> <p>13 If you change that and all of a sudden</p> <p>14 you're cutting that in half or you're making a</p> <p>15 substantial change in the amount of megawatts, I</p> <p>16 think that would reflect itself in the size of the</p> <p>17 overloads.</p> <p>18 MR. LANG: Your Honor, may I approach?</p> <p>19 EXAMINER ADDISON: You may.</p> <p>20 Q. Mr. Lanzalotta, do you remember being</p> <p>21 deposed in this case on May 28th?</p> <p>22 A. Yes.</p> <p>23 Q. That was a telephone deposition, and you</p> <p>24 were in Fort Myers, Florida, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 5147</p> <p>1 100 percent of overload or higher, PJM and NERC</p> <p>2 require mitigation of the overload, correct?</p> <p>3 A. Requires some solution. The violation</p> <p>4 has to be addressed.</p> <p>5 Q. Fair enough. Now, on page 6 of your</p> <p>6 testimony, lines 9 and 11, you discuss the</p> <p>7 possibility of new generating plants coming online</p> <p>8 that are connected to the grid at an appropriate</p> <p>9 location. I wanted to ask you about that statement.</p> <p>10 Is it fair to say to understand what an appropriate</p> <p>11 location is, it's what would be referred to as the</p> <p>12 electrical distance that matters, not the distance as</p> <p>13 the crow flies?</p> <p>14 A. That's involved in the subject of picking</p> <p>15 an appropriate location. The impact of replacement</p> <p>16 generation varies depending on where you would put</p> <p>17 it. If you retired 1,000 megawatts at Sammis and</p> <p>18 then you put 1,000 megawatts in at Sammis, there</p> <p>19 would be very little effect on the transmission</p> <p>20 system or zero effect, actually, is what I would</p> <p>21 expect.</p> <p>22 If replacement generation is not at</p> <p>23 Sammis but, say, it's located on a high voltage line,</p> <p>24 345 kV line that runs into Sammis, that's not quite</p> <p>25 the same as being at Sammis, but electrically it's</p>

<p style="text-align: right;">Page 5148</p> <p>1 almost as good.</p> <p>2 Q. And so the concept of electrical distance</p> <p>3 relates to the location of generation as it's</p> <p>4 connected to the grid; is that fair?</p> <p>5 A. Generally speaking, I think so, yes.</p> <p>6 Q. And you understand that the further away</p> <p>7 electrically a new generating unit is from Sammis,</p> <p>8 the less chance that new unit could address the</p> <p>9 overloads resulting from the retirement of Sammis,</p> <p>10 correct?</p> <p>11 A. You could say that, or you could --</p> <p>12 actually, what I would say is the further away it is,</p> <p>13 the less impact it would be likely to have on both</p> <p>14 overloads. Again, on an AC alternating current</p> <p>15 system like we have in Ohio, everything is</p> <p>16 interconnected. Almost everything affects everything</p> <p>17 else, especially if you're talking about taking off</p> <p>18 thousands of megawatts of generation.</p> <p>19 Q. Okay. Now, you have not studied what an</p> <p>20 appropriate location would be with respect to the</p> <p>21 retirement of the Sammis and Davis-Besse units,</p> <p>22 correct?</p> <p>23 A. I haven't run any load flow studies with</p> <p>24 replacement units, correct.</p> <p>25 Q. And when PJM studies the impact on</p>	<p style="text-align: right;">Page 5150</p> <p>1 Q. Now, on page 6 of your testimony, you</p> <p>2 start to discuss Mr. Phillips' cost estimates, and</p> <p>3 you are aware that Mr. Phillips' low-end cost</p> <p>4 estimate assumes all the overloaded facilities that</p> <p>5 were identified would be reconnected, correct?</p> <p>6 A. Yes, with the exception of those</p> <p>7 violations that were not transmission line overload,</p> <p>8 and I don't want to get into any detail because</p> <p>9 that's confidential.</p> <p>10 Q. Thank you. And you agree that the</p> <p>11 approach taken was conservative in terms of</p> <p>12 estimating the cost of eliminating the overloads on</p> <p>13 those specific lines, correct?</p> <p>14 A. If we agree that those overloads on those</p> <p>15 specific lines have to be addressed, then</p> <p>16 reconnected the lines is a relatively conservative</p> <p>17 approach at estimating the cost, yes.</p> <p>18 Q. And you also agree it is unlikely that</p> <p>19 the overloads could be eliminated simply by</p> <p>20 reconnected all of those lines, correct?</p> <p>21 A. I think it's fairly unlikely, although I</p> <p>22 haven't run those studies either.</p> <p>23 Q. Now, with regard to the overloaded</p> <p>24 facilities identified by Mr. Phillips, you have not</p> <p>25 studied whether any of those facilities are of such</p>
<p style="text-align: right;">Page 5149</p> <p>1 reliability of generating unit retirements, PJM does</p> <p>2 not identify potential generating units that could be</p> <p>3 constructed at appropriate locations to remedy the</p> <p>4 reliability issues, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you have not identified a specific</p> <p>7 new generating unit being constructed at an</p> <p>8 appropriate location that would reduce the need for</p> <p>9 the transmission upgrades listed in Mr. Phillips'</p> <p>10 testimony, correct?</p> <p>11 A. Like I said, I didn't run any studies on</p> <p>12 that.</p> <p>13 Q. So the answer is correct?</p> <p>14 A. I didn't determine that there were any.</p> <p>15 I didn't determine that there were not any either.</p> <p>16 Q. Right.</p> <p>17 A. I didn't run any studies.</p> <p>18 Q. Since you didn't run any studies, you</p> <p>19 have not identified any specific generating units at</p> <p>20 an appropriate location, correct?</p> <p>21 MR. FISK: Asked and answered.</p> <p>22 EXAMINER ADDISON: I don't think he</p> <p>23 really answered the question.</p> <p>24 So you may answer the question.</p> <p>25 A. I agree.</p>	<p style="text-align: right;">Page 5151</p> <p>1 advanced age that they will need to be reinforced</p> <p>2 regardless of these plant retirements at some time in</p> <p>3 the near future, correct?</p> <p>4 A. I have not made that determination, yes.</p> <p>5 Q. Now, when PJM identifies an overloaded</p> <p>6 facility, one possible outcome is that PJM directs</p> <p>7 that a new line be built to eliminate the overload,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. And until PJM conducts a load flow study</p> <p>11 and then studies potential solutions, you cannot say</p> <p>12 what combination of reconnected, rebuilds, or new</p> <p>13 builds would be necessary?</p> <p>14 A. It would be speculation to some extent.</p> <p>15 Q. So you would agree?</p> <p>16 A. Yes.</p> <p>17 Q. Now, with regard to PJM's allocation of</p> <p>18 the costs of transmission upgrades required if Sammis</p> <p>19 and Davis-Besse retires, those costs are allocated to</p> <p>20 retail customers within PJM, correct?</p> <p>21 A. Yes.</p> <p>22 Q. The rule simply is retail customers pay</p> <p>23 transmission costs, correct?</p> <p>24 A. Baseline rulings are a little different,</p> <p>25 but for baseline upgrades. Most of those costs are</p>

<p style="text-align: right;">Page 5152</p> <p>1 allocated to the transmission zones and retail 2 customers pay for those lines. 3 Q. And you expect that if Sammis and 4 Davis-Besse were to retire and there were 5 transmission costs related to that, that some portion 6 of those costs would be allocated to the customers of 7 the companies in this case, Ohio Edison, Toledo 8 Edison, and CEI, correct? 9 A. Some portion, yes. 10 Q. And you do not know what percentage of 11 those transmission upgrade costs would be allocated 12 to the companies' customers, correct? 13 A. Since we don't know the package of 14 upgrades, that's correct. 15 Q. Now, you agree that the longer a 16 transmission line is, the higher its exposure to the 17 elements that might cause a forced outage, true? 18 A. Yes. 19 Q. And the longer the transmission line, the 20 higher the chance of a forced outage on that line, 21 correct? 22 A. I think that's almost the same question 23 that I just answered, but yes. 24 Q. And the longer the line, the more 25 difficult it is to provide reactive support over that</p>	<p style="text-align: right;">Page 5154</p> <p>1 while also paying extra for the generation under the 2 RMR contract, correct? 3 A. They would be paying for both, yes. 4 Q. Now, on page 8 of your testimony, you 5 reference PJM's baseline database and network 6 upgrades database, and I have a few questions for you 7 in the confidential session at the bottom of page 8. 8 But right now since we're in the public 9 session, we'll stay at the top of page 8. Those two 10 databases, the baseline database and the network 11 upgrades database, you understand those are two 12 separate databases, correct? 13 A. I believe that's true, yes. 14 Q. And an individual project would not be in 15 both databases, correct? 16 A. I wouldn't expect it to be. 17 Q. The baseline database includes approved 18 projects that are part of the regional transmission 19 expansion plan or the RTEP, correct? 20 A. Yes. 21 Q. The network database lists facilities 22 that are tied to proposed generation or transmission 23 projects, is that right? 24 A. Merchant transmission, yes. 25 Q. Projects in the network database are</p>
<p style="text-align: right;">Page 5153</p> <p>1 line, correct? 2 A. Yes. Reactive power doesn't travel well 3 over transmission lines. 4 Q. Now, on page 10 of your testimony, you 5 discuss the RMR process. 6 A. Okay. 7 Q. Now, the way the RMR process works is 8 that the RMR contract is in place until new 9 transmission identified by PJM can be built, correct? 10 A. Until the violations that that plant was 11 given an RMR contract to help avoid have been 12 eliminated. If that's a new transmission line or if 13 that's a new generating plant that was in the queue 14 finally coming into service, I think both of those 15 would be reason to end an RMR contract. 16 Q. Although what PJM is looking at, since 17 PJM can build transmission, it doesn't build 18 generation, PJM puts the RMR contract in place until 19 it can remedy the violation through transmission, 20 correct? 21 A. PJM doesn't strictly build transmission 22 either, but they might order a transmission owner to 23 build transmission, yes. 24 Q. And under the RMR process, customers pay 25 for the new transmission upgrades that are required</p>	<p style="text-align: right;">Page 5155</p> <p>1 under study for purposes of the related project that 2 they're tied to, correct? 3 A. If they're related to a generation unit 4 deactivation, if that is, in fact, what is being 5 proposed. They're also related -- they're done every 6 year looking forward five years to look for what we 7 call NERC violations, lines that are overloaded, 8 under normal conditions or under N minus 1, 9 single-contingency conditions. 10 So for baseline, it may not be affiliated 11 with a generation unit retirement or affected by a 12 generation unit retirement hardly at all. But the 13 upgrades that are needed to compensate for generation 14 unit retirements are baseline facilities. 15 Q. So I was asking you about the network 16 upgrades database, not baseline database. 17 A. I'm sorry. Network upgrades I don't 18 believe address generation unit retirements. 19 Q. So projects in the network database may 20 or may not be built based on whether the related 21 project that they're connected to goes forward, 22 correct? 23 A. I agree. 24 MR. LANG: Your Honor, that's all I have 25 for the public session. I have maybe five minutes of</p>

75 (Pages 5152 to 5155)

<p style="text-align: right;">Page 5156</p> <p>1 confidential.</p> <p>2 EXAMINER ADDISON: Thank you, Mr. Lang.</p> <p>3 Let's go ahead and finish up the public</p> <p>4 cross-examination and then we'll get back to you</p> <p>5 during the confidential session.</p> <p>6 Mr. McNamee?</p> <p>7 MR. MCNAMEE: I have no questions.</p> <p>8 EXAMINER ADDISON: Thank you.</p> <p>9 All right. At this time we will move</p> <p>10 into the confidential portion of our transcript. I</p> <p>11 would normally ask for any parties if they haven't</p> <p>12 executed a confidentiality agreement to leave the</p> <p>13 room, but I think at this point of the day we're</p> <p>14 okay.</p> <p>15 Thank you, Mr. Mendoza.</p> <p>16 (CONFIDENTIAL PORTION EXCERPTED.)</p>	<p style="text-align: right;">Page 5162</p> <p>1 redirect.</p> <p>2 MR. FISK: Just a couple questions.</p> <p>3 EXAMINER ADDISON: Please proceed.</p> <p>4 - - -</p> <p>5 REDIRECT EXAMINATION</p> <p>6 By Mr. Fisk:</p> <p>7 Q. Mr. Lanzalotta, do you remember Mr. Lang</p> <p>8 asked you a little while ago about an order from the</p> <p>9 Illinois Commerce Commission with a case involving</p> <p>10 ComEd, Commonwealth Edison?</p> <p>11 A. Yes, I remember.</p> <p>12 Q. Okay. And approximately how long ago was</p> <p>13 that order?</p> <p>14 A. About 20 years.</p> <p>15 Q. And do you recall Mr. Lang asking you</p> <p>16 whether if you were doing a load flow study, you</p> <p>17 would add any units into the PJM base case?</p> <p>18 A. I remember.</p> <p>19 Q. Okay. And are there any circumstances in</p> <p>20 which you would add any units to the PJM base case?</p> <p>21 A. I think the companies -- yes, there are.</p> <p>22 A company study was done about a year ago. I might</p> <p>23 check to see if since then any additional generating</p> <p>24 units have achieved that milestone status under which</p> <p>25 PJM would normally consider them to be in service for</p>
<p style="text-align: right;">Page 5161</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 (OPEN RECORD.)</p> <p>25 EXAMINER ADDISON: Mr. Fisk, any</p>	<p style="text-align: right;">Page 5163</p> <p>1 the load flow studies. So there might -- the status</p> <p>2 of these units is changing all the time. It may be</p> <p>3 that there are additional units that would qualify.</p> <p>4 Q. And what is that milestone you were just</p> <p>5 referring to?</p> <p>6 A. I believe it's having a facility services</p> <p>7 agreement and an in-service state -- to be in service</p> <p>8 by 2019 for purposes of our studies here.</p> <p>9 MR. FISK: Nothing further, your Honor.</p> <p>10 EXAMINER ADDISON: Thank you, Mr. Fisk.</p> <p>11 Mr. Hays, any recross?</p> <p>12 MR. HAYS: No, your Honor. Thank you.</p> <p>13 EXAMINER ADDISON: Mr. Sauer?</p> <p>14 MR. SAUER: No. Thank you, your Honor.</p> <p>15 EXAMINER ADDISON: Mr. Lang?</p> <p>16 MR. LANG: Yes, your Honor.</p> <p>17 - - -</p> <p>18 RECROSS-EXAMINATION</p> <p>19 By Mr. Lang:</p> <p>20 Q. Mr. Lanzalotta, to the last question</p> <p>21 Mr. Fisk asked you, talking about looking for</p> <p>22 additional generating units, you would also look for</p> <p>23 projected transmission system changes and projected</p> <p>24 generating unit retirements plus any changes in</p> <p>25 imports on the PJM system during that time period,</p>

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<p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And you would also look at withdrawals</p> <p>4 from the PJM queue, correct?</p> <p>5 A. Yes. There might be changes in</p> <p>6 generating units' status in the queue that would take</p> <p>7 generators out as well as put them in as fast</p> <p>8 eligibility goes.</p> <p>9 Q. And that is because there are commonly</p> <p>10 withdrawals from the queue of generation that even</p> <p>11 though they've hit certain milestones, something</p> <p>12 happens and the project is withdrawn, correct?</p> <p>13 A. It's not unusual or unknown for that to</p> <p>14 happen.</p> <p>15 Q. So in terms of the things that we just</p> <p>16 talked about that you would have to look at, you</p> <p>17 would agree that the transmission system is dynamic</p> <p>18 with all those definite factors both on the</p> <p>19 generation and transmission side?</p> <p>20 A. Yes, sir.</p> <p>21 MR. LANG: No further questions.</p> <p>22 EXAMINER ADDISON: Thank you, Mr. Lang.</p> <p>23 Mr. McNamee?</p> <p>24 MR. MCNAMEE: No questions. Thank you.</p> <p>25 EXAMINER ADDISON: Mr. LanzaLotta, you</p>	<p>1 (EXHIBIT ADMITTED INTO EVIDENCE.)</p> <p>2 EXAMINER ADDISON: Thank you all. We</p> <p>3 will adjourn for today and reconvene tomorrow at</p> <p>4 9:00 in the morning.</p> <p>5 Let's go off the record.</p> <p>6 (The hearing adjourned at 6:05 p.m.)</p> <p>7 ---</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 are excused. Thank you for your testimony.</p> <p>2 THE WITNESS: Thank you, your Honor.</p> <p>3 EXAMINER ADDISON: Have a very safe trip</p> <p>4 home.</p> <p>5 THE WITNESS: I appreciate it. Thank</p> <p>6 you.</p> <p>7 EXAMINER ADDISON: I believe Sierra Club</p> <p>8 previously moved for admission of Sierra Club</p> <p>9 Exhibits 67 and 68 Confidential. Do I hear any</p> <p>10 objections as to the admission of those exhibits?</p> <p>11 MR. LANG: No, your Honor.</p> <p>12 EXAMINER ADDISON: Thank you. Those will</p> <p>13 be admitted.</p> <p>14 (EXHIBITS ADMITTED INTO EVIDENCE.)</p> <p>15 EXAMINER ADDISON: Mr. Lang?</p> <p>16 MR. LANG: Your Honor, the companies</p> <p>17 would move Companies' Exhibit 8.</p> <p>18 EXAMINER ADDISON: Ninety-eight</p> <p>19 confidential.</p> <p>20 MR. LANG: Sorry. Yes, 98 confidential.</p> <p>21 EXAMINER ADDISON: Thank you.</p> <p>22 Any objections?</p> <p>23 MR. FISK: No, your Honor.</p> <p>24 EXAMINER ADDISON: Hearing none, it will</p> <p>25 be admitted.</p>	<p>1 CERTIFICATE</p> <p>2 I do hereby certify that the foregoing is</p> <p>3 a true and correct transcript of the proceedings</p> <p>4 taken by me in this matter on Wednesday, October 7,</p> <p>5 2015, and carefully compared with my original</p> <p>6 stenographic notes.</p> <p>7</p> <p>8</p> <p>9</p> <p>10 <u>Carol A. Kirk, RPR, RMR.</u></p> <p>11 (CAK-79477)</p> <p>12 --</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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Exhibit B

**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)	Case No. 14-1297-EL-SSO
Edison Company for Authority to Provide)	
for a Standard Service Offer Pursuant to)	
R.C. 4928.143 in the Form of an Electric)	
Security Plan)	

SUPPLEMENTAL TESTIMONY OF MATTHEW WHITE

On behalf of Interstate Gas Supply, Inc.

March 2, 2015

1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY**

2 **Q. Please introduce yourself.**

3 A. My name is Matthew White. I am employed by Interstate Gas Supply, Inc. ("IGS"
4 or "IGS Energy") as General Counsel, Legislative and Regulatory Affairs. My
5 business address is 6100 Emerald Parkway, Dublin, Ohio 43016.

6 **Q. Are you the same Matthew White that filed testimony on behalf of IGS**
7 **earlier in this proceeding?**

8 A. Yes I am.

9 **Q. What is the purpose of your testimony?**

10 A. I testify that the Commission should reject the Stipulation and Recommendation
11 filed on December 22, 2014 in this proceeding ("Stipulation") which recommends
12 approval of FirstEnergy's deceptively named and unlawful retail rate stability rider
13 ("Rider RRS") proposal. Rider RRS would require FirstEnergy customers to pay a
14 cost based rate to support nearly 3000 MW of FirstEnergy Solution's ("FES")
15 generation. As explained by the previously filed testimony of IGS witness
16 Haugen (as well as numerous other witnesses) the Rider RRS proposal would
17 require FirstEnergy customers to subsidize FES inefficient competitive
18 generation and otherwise would be harmful to FirstEnergy customers. Further,
19 the remaining provisions in the Stipulation directly financially benefit only a small-
20 subset of intervening parties while leaving the vast majority of FirstEnergy
21 customers worse-off. Rider RRS (and the entire Stipulation) would also violate
22 the Federal preemption statutes and Ohio law. Finally, adoption of the Stipulation

1 would move Ohio towards the return of the antiquated vertically integrated utility
2 monopoly model which the Ohio General Assembly and the Commission wisely
3 left behind years ago.

4 **Q. Does this testimony substantively change the previous direct testimony**
5 **you filed in this proceeding?**

6 A. No. I still support my previously filed direct testimony and the recommendations
7 made therein. This testimony is meant to supplement my previously filed direct
8 testimony. Thus, as noted in my previous testimony, I continue to recommend
9 that the Commission should:

- 10 • Modify FirstEnergy's proposed standard service offer ("SSO") to ensure that
11 it truly is a "comparable and unbundled" retail electric product in the market
12 as required by Ohio law;
- 13 • Deny FirstEnergy's anti-competitive proposal to require competitive retail
14 electric service ("CRES") providers to use the bill-ready function to bill for only
15 generation charges; rather, the Commission should affirm that CRES
16 providers are able to use the bill-ready function to bill for a more diverse
17 range of products as explained in my testimony. These measures are
18 particularly important because FirstEnergy is currently allowing select third-
19 party companies to bill for non-commodity charges on the EDU bill while
20 excluding all others.
- 21 • Direct FirstEnergy to begin taking steps necessary to implement supplier
22 consolidated billing as described in my testimony.

- Reject the RRS and investigate FirstEnergy's past dealings with FES because it appears that FirstEnergy's corporate separation plan is not working.

II. TESTIMONY

Q. Are you familiar with the standard of review for a Stipulation filed in a Commission proceeding?

A. Yes. The standard of review for considering the reasonableness of a Stipulation has been discussed in a number of prior Commission proceedings.¹ The ultimate issue for the Commission's consideration is whether the Stipulation is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission must consider:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

¹ See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, *et al.*, Opinion and Order (Dec. 30, 1993); *Cleveland Electric Illumin. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985).

1 The Ohio Supreme Court has endorsed the Commission's analysis using these
2 criteria to resolve issues in a manner economical to customers and public
3 utilities.²

4 **Q. Does the Stipulation satisfy any of the prongs that are considered when**
5 **determining the reasonableness of a stipulation?**

6 A. No. The Stipulation does not satisfy any of the prongs that are considered under
7 the Commission's reasonableness test.

8 **Q. Is the settlement a product of serious bargaining among capable,**
9 **knowledgeable parties?**

10 A. No. The Stipulation amounts to an agreement entered into by a minority of
11 parties intervening in this proceeding. A majority of parties to this proceeding do
12 not support the Stipulation or Rider RRS. Further, many of the additional
13 provisions in the Stipulation are direct financial payments to the parties signing
14 the Stipulation. Even the provisions that effect rate design merely shift costs
15 from parties that signed the Stipulation onto all other FirstEnergy customers.
16 Thus, there is nothing in the Stipulation that would make FirstEnergy's otherwise
17 unreasonable Rider RRS more reasonable. Rather, the Stipulation appears to
18 be largely financial transfers to the few parties signing the Stipulation in
19 exchange for agreement to support Rider RRS.

20 **Q. Does the settlement as a package benefit ratepayers?**

² *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm'n*, 68 Ohio St.3d 559, 563 (1994). The Court stated, "stipulations are considered merely as recommendations to the commission and, while entitled to substantial weight, they must be supported by the evidence of record to withstand scrutiny under the standard of review provided in R.C. 4903.13. *Id.*

1 A. No. The proposed Stipulation would largely approve FirstEnergy's filed ESP
2 Application. As noted in my previous testimony, and in testimony filed by Mr.
3 Haugen, FirstEnergy's ESP Application is unreasonable and would be harmful
4 FirstEnergy customers. The proposed provisions in the Stipulation do not
5 provide any additional benefit to the vast majority of FirstEnergy customers.

6 **Q. Does the settlement package violate any important regulatory principle or**
7 **practice?**

8 A. First Energy's Witness Mikkelson testifies that approval of Rider RRS does not
9 violate and regulatory principals. However, her conclusions are incorrect. The
10 Stipulation violates many important regulatory principals. The Stipulation violates
11 R.C. 4928.02(H) in that it provides anti-competitive subsidies to FirstEnergy
12 Solutions ("FES") which is a provider of competitive generation. It violates R.C.
13 4928.17(B)(2) and (3) Ohio's corporate separation rules in that it would endorse
14 FirstEnergy's unlawful use of customer funds to subsidize its competitive affiliate
15 FES. It violates the Federal Power Act which delegates to the Federal Energy
16 Regulatory Commission ("FERC") the authority to regulate wholesale energy
17 transactions. The Third and Fourth Circuit Courts have affirmed that "contract for
18 differences" (which is what the Stipulation would approve) is an encroachment of
19 FERC's regulatory authority and pre-empted by Federal law. The Stipulation
20 would also violate 4928.143(B)(2)(d) in that it approves a non-bypassable
21 generation related charge. Thus, even if approved the Stipulation is unlikely to
22 hold-up in the courts.

1 **Q. Given the controversial nature of Rider RRS, will approval of the Stipulation**
2 **create great uncertainty and legal expense for Ohio customers for years to**
3 **come?**

4 **A. Yes. As I note above, the Stipulation violates many important legal and**
5 **regulatory principals. One can only look at the *PPL Energy Plus V. Nazarian* and**
6 **the *PPL Energy Plus v. Solomon* cases to see significant legal battles faced in**
7 **the Federal Courts when the states of Maryland and New Jersey tried to approve**
8 **similar schemes- not to mention the uphill battles Rider RRS will certainly face at**
9 **the Ohio Supreme Court. This litigation will come at a great cost to Ohio**
10 **customers and cause uncertainty in Ohio's wholesale and retail electric markets**
11 **for many years in the future. Thus the Commission should not subject customers**
12 **to this future uncertainty for a Stipulation that does not even provide a net benefit**
13 **to customers.**

14 **Q. Will the Stipulation help stabilize retail rates and protect against increasing**
15 **market prices and volatility over the longer term?**

16 **A. No. In testimony supporting the Stipulation FirstEnergy's witness Eileen**
17 **Mikkelson claims that the approval of the so called Economic Stability Program**
18 **(aka Rider RRS) will "help stabilize retail rates and protect against increasing**
19 **market prices and volatility over the longer term."**³ **However, this statement**
20 **directly contradicts what FirstEnergy's Executive Vice President, Markets and**
21 **Chief Legal Officer, Leila Vespoli testified in front of the Ohio House of**

³ Supplemental Testimony of Eileen Mikkelson at 2 (Dec. 22, 2014).

1 Representatives. Specifically, Ms. Vespoli testified that “measures that restrict
2 customer shopping or subsidize one electric generator over another are throw-
3 backs to monopoly regulation. Such efforts that pick ‘winners’ and ‘losers’ in the
4 energy market would create obstacles to private investment in generation and
5 increase prices for customers.”⁴ Ms. Vespoli also stated:

6 We’re also concerned about any effort to subsidize certain
7 generating facilities. Much of the rhetoric around these efforts
8 involves a misguided notion of Ohio’s energy security –that our
9 state could experience outages if it doesn’t generate as much
10 energy as it consumes. This notion simply ignores how the electric
11 grid operates, and how competitive markets always secure
12 generation from the lowest-cost sources – no matter where they are
13 located.⁵

14 **Q. Has FirstEnergy also criticized other states for attempting to enter into the**
15 **very type of contracts that the Stipulation now seeks to approve?**

16 **A.** Yes. In testimony the Ohio House of Representatives Ms. Vespoli explained how
17 entering into regulated power purchase contracts with competitive generation has
18 significantly harmed customers in Pennsylvania and New Jersey. Specifically
19 Ms. Vespoli testified that:

20 The real problem with subsidized generation is that regulators
21 would be picking the “winners” and “losers” in the energy market.
22 We’ve been down that road before, and the results weren’t pretty.
23 For example, in the past our utilities in Pennsylvania and New
24 Jersey were required to purchase power from Non Utility
25 Generators, with contracts extending up to two or three decades. In
26 our Pennsylvania service area alone, customers have paid \$1.5
27 billion over market prices for this subsidized generation. At a time
28 when Ohio is exploring every opportunity to create jobs and grow

⁴ MW Ex. 1 at 2 (Testimony of Lela Vespoli, *Competitive Markets Work*, House Public Utilities Committee (Oct. 19, 2011)) (emphasis added).

⁵ *Id.* at 4-5 (Emphasis added).

1 our economy, we simply cannot afford similar missteps that would
2 saddle our customers with higher-than-market prices for electricity.⁶
3

4 **Q. Does approval of the Stipulation promote reliability in Ohio?**

5 A. No. In her testimony Ms. Mikkelson claims that approval of the Rider RRS
6 addresses “reliability challenges” faced by Ohio. However, this testimony directly
7 contradicts recent testimony of Ms. Vespoli explaining how subsidizing
8 generation through long term power purchase contracts would discourage the
9 development of new generation. Specifically Ms. Vespoli stated:

10 FirstEnergy Solutions is currently reviewing a plan to
11 transform an old limestone mine in Norton, Ohio, into a
12 Compressed Air Energy Storage, or CAES, facility. With the
13 volume of nine Empire State Buildings, the site was
14 identified by a leading developer of natural gas storage
15 facilities as the best among more than 70 potential sites in
16 the nation for supporting CAES technology. It would be
17 scalable – from approximately 270 megawatts all the way up
18 to 2,700 megawatts – and, more important, would support
19 the operation of intermittent renewable sources such as wind
20 by compressing air at night and standing ready to serve load
21 on peak. However, it is highly unlikely that we would
22 consider moving forward with this project if the plant would
23 have to compete against subsidized generation in Ohio.⁷
24

25 The entire transcript of Ms. Vespoli’s testimony is attached to my testimony as
26 MW Ex. 1.

27
28 **Q. Are fear of plant closures valid reasons to approve the Stipulation?**

29 A. No. The Stipulation cites the claim that that “3,600 MWs of generation will retire
30 by 2016” as justification to approve Rider RRS.⁸ However, in previous testimony

⁶ MW Ex. 1 at 5 (emphasis added).

⁷ *Id.* at 6 (emphasis added).

⁸ Stipulation at 2.

1 of Tony Alexander (the former CEO of FirstEnergy) submitted to the Ohio
2 Senate, Mr. Alexander explained that fear of plant closures should not dictate
3 Ohio's Energy policy. Specifically, Mr. Alexander stated:

4 Rather than relying on regulation and government mandates to
5 meet state energy objectives, FirstEnergy believes that the
6 competitive market will deliver better products and prices and drive
7 innovation and efficiency improvements

8 This push to change Ohio law should be driven by facts not fear . . .

- 9 • Fear about price increases
- 10 • Fear about lack of new generation construction
- 11 • Fear that competitive markets don't exist for electricity,
12 which is simply not true.⁹

13 However, FirstEnergy is now relying on fear to try to convince the Commission
14 that without Rider RRS, generation plants will close, and Ohio will not have
15 enough electricity to meet the needs of customers. The entire transcript of Mr.
16 Alexander's testimony is attached to my testimony as MW Ex. 2.

17 **Q. Should the statements made in the Stipulation regarding promoting**
18 **reliability and price stability be given any credibility given the previous**
19 **statements made by FirstEnergy?**

20 **A.** By approving Rider RRS, the Commission would have FirstEnergy enter into long
21 term contracts that would require FirstEnergy customers to pay above market
22 prices for competitive generation owned by FES. This is the very type of subsidy
23 of competitive generation that FirstEnergy has previously strongly opposed. As is
24 abundantly clear when comparing the Stipulation with FirstEnergy's previous

⁹ MW Ex. 2 at 4 (Testimony for Anthony J. Alexander for Senate Bill 221, Ohio Senate (Oct. 4, 2007)).

1 statements, FirstEnergy does not support subsidies to competitive generation
2 unless those subsidies are provided to generation owned by its affiliate
3 FirstEnergy Solution. In testimony to the Ohio General Assembly FirstEnergy has
4 articulately explained why subsidizing competitive generation is harmful the
5 customers. For these reasons the Commission should listen to the advice of
6 Tony Alexander and Lela Vespoli and reject subsidies to competitive generation
7 by rejecting the Stipulation.

8 **Q. Does this conclude your supplemental testimony?**

9 A. Yes, it does. But I reserve the right to supplement my testimony.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Supplemental Testimony of Matthew White* was served this the 2nd day of March 2015 via electronic mail upon the following:

Thomas.mcnamee@puc.state.oh.us Thomas.lindgren@puc.state.oh.us Ryan.orourke@puc.state.oh.us mkurtz@BKLawfirm.com kboehm@BKLawfirm.com jkylercohn@BKLawfirm.com stnourse@aep.com mjsatterwhite@aep.com yalami@aep.com joseph.clark@directenergy.com ghull@eckertseamans.com myurick@taftlaw.com zkravitz@taftlaw.com Schmidt@sppgrp.com ricks@ohonet.org tobrien@bricker.com mkl@bbrslaw.com gas@bbrslaw.com ojk@bbrslaw.com wttpmlc@aol.com lhawrot@spilmanlaw.com dwilliamson@spilmanlaw.com blanghenry@city.cleveland.oh.us hmadorsky@city.cleveland.oh.us kryan@city.cleveland.oh.us jscheaf@mcdonaldhopkins.com gkrassen@bricker.com dstinson@bricker.com dborchers@bricker.com drinebolt@ohiopartners.org meissnerjoseph@yahoo.com LeslieKovacik@toledo.oh.gov trhayslaw@gmail.com Jeffrey.mayes@monitoringanalytics.com mhpetricoff@vorys.com mjsettineri@vorys.com glpetrucci@vorys.com msoules@earthjustice.org sfisk@earthjustice.org Larry.sauer@occ.ohio.gov	burkj@firstenergycorp.com cdunn@firstenergycorp.com jlang@calfee.com talexander@calfee.com dakutik@jonesday.com sam@mwncmh.com fdarr@mwncmh.com mpritchard@mwncmh.com cmooney@ohiopartners.org callwein@wamenergylaw.com mswhite@igsenergy.com Bojko@carpenterlipps.com Allison@carpenterlipps.com hussey@carpenterlipps.com barthroyer@aol.com athompson@taftlaw.com Christopher.miller@icemiller.com Gregory.dunn@icemiller.com Jeremy.grayem@icemiller.com blanghenry@city.cleveland.oh.us hmadorsky@city.cleveland.oh.us kryan@city.cleveland.oh.us tdougherty@theOEC.org finnigan@edf.org Marilyn@wflawfirm.com todonnell@dickinsonwright.com matt@matthewcoxlaw.com mfleisher@elpc.org mitch.dutton@fpl.com selisar@mwncmh.com ccunningham@akronohio.gov asonderman@keglerbrown.com sechler@carpenterlipps.com gpoulos@enernoc.com toddm@wamenergylaw.com amy.spiller@duke-energy.com Jeanne.kingery@duke-energy.com dwilliamson@spilmanlaw.com lhawrot@spilmanlaw.com
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Michael.schuler@occ.ohio.gov Kevin.moore@occ.ohio.gov	
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/s/ Joseph Olier
Counsel for IGS Energy

House Public Utilities Committee

Competitive Markets Work

Submitted by:

**Leila L. Vespoli
Executive Vice President and
General Counsel
FirstEnergy**

October 19, 2011

Chairman Stautberg, Ranking Minority Member DeGeeter, members of the Committee – good morning. I’m Leila Vespoli, Executive Vice President and General Counsel of FirstEnergy, which is the parent company of three electric distribution utilities in Ohio – Ohio Edison, The Illuminating Company and Toledo Edison – and of our competitive subsidiary, FirstEnergy Solutions.

I’m pleased to be here today to talk about what Ohio has done right in creating an effective structure for providing customers with lower prices for electric generation, and where we can do more to maintain and expand competitive markets for electricity in the years ahead.

Specifically, my testimony will focus on three key points:

- First, with respect to electric generation, competitive markets work. They deliver the lowest price over the long-term to customers, and the proof is undeniable. Moreover, they will continue to ensure adequate and affordable supplies of generation for Ohio’s future – which, in my mind, is the only meaningful definition of Ohio’s energy security.
- Second, measures that restrict customer shopping or subsidize one electric generator over another are throw-backs to monopoly regulation. Such efforts that pick “winners” and “losers” in the energy market would create obstacles to private investment in generation and increase prices for customers.
- Third, governmental aggregation is the jewel of Senate Bill 3 – a proven way to deliver significant savings on electric generation to large numbers of residential and small business customers. Toward that end, we should pursue every effort to extend this channel to more Ohioans.

Keep Competitive Markets Working

Regarding competitive markets for electric generation, we already know that they work because these markets have resulted in lower electric generation prices and less risk for Ohio customers. That's good news for businesses and homeowners looking for every opportunity to stretch their limited resources.

Today, every customer of FirstEnergy's Ohio utilities is getting the benefits of competition for electric generation. Our utilities conduct wholesale auctions in which many suppliers compete to provide generation at the lowest price for customers who choose not to shop. In addition, customers are free to shop with competitive suppliers and get an even better price – and many customers are choosing to do that. These customers saved an estimated \$100 million in 2010 through competitive markets for electric generation. Right now, 2.3 million Ohioans – including more than 200,000 businesses – are saving money through electric competition. In addition, competitive suppliers are lining up to do more, with more than 40 registered suppliers in Ohio standing ready to bring additional savings to customers.

These and other benefits validate the good judgment of Ohio's legislators when they established competitive markets for electricity in our state – first in 1999 through Senate Bill 3, and then again in 2008 through changes made with Senate Bill 221.

This first display illustrates how our industry was restructured by Senate Bill 3, making generation a competitive business. The idea was that competitive markets for electric generation, instead of utility monopolies, would drive innovation, efficiency and investment – and, most important, deliver the lowest price to customers over time.

At FirstEnergy, we made every effort to meet the letter and spirit of the new law – devoting significant resources to prepare our company, employees and customers for competitive markets.

Among other changes, we structurally separated our regulated and unregulated operations so our power plants are no longer owned by our electric distribution companies. But

more important, all of our generation-related investments – including the risks that accompany them – are now borne by our shareholders, not by customers. This includes the significant investments we’ve made in environmental controls at our generating plants. This change has made us better – leaner, more efficient, and more customer-focused.

Since 1999, our competitive subsidiary, FirstEnergy Solutions, has invested nearly \$6.4 billion in its generating fleet while adding more than 900 megawatts of power. That’s the equivalent of a large, baseload power plant – and, once again, we’ve brought that additional capacity online *at no risk to customers*.

These are just a few of the many benefits that competitive markets for electricity are bringing to Ohio. Unfortunately, several ill-conceived proposals such as restrictions that effectively cap shopping have the potential to undermine these markets and drive up prices for certain effectively captive customers.

Eliminate Shopping Caps and Other Obstacles

For example, there is one proposal wherein a utility is seeking to be allowed to effectively cap shopping by limiting the amount of market-priced capacity available to suppliers over the next three years. Once these caps are reached, third-party suppliers would be forced to buy capacity from the company at prices that would be more than four times the market value. This is simply an attempt to restrict shopping and to force customers to pay the utility’s above-market rate. The stated rationale for imposing this servitude on customers is that the utility needs time to “transition” to market – a transition the company has had more than 10 years to make.

The price tag for this protectionist approach would be significant – especially when you consider how the arbitrary shopping cap would negatively impact governmental aggregation.

We’re also concerned about any effort to subsidize certain generating facilities. Much of the rhetoric around these efforts involves a misguided notion of Ohio’s energy security –

that our state could experience outages if it doesn't generate as much energy as it consumes. This notion simply ignores how the electric grid operates, and how competitive markets always secure generation from the lowest-cost sources – no matter where they are located.

The second display highlights PJM and MISO – regional transmission organizations that are charged with maintaining adequate supplies of wholesale power to serve the energy needs of nearly 100 million customers within their footprints. As you can see, these footprints extend far outside Ohio – so a power plant in one state can serve customers in any number of other states if it is economical to do so.

Even when utilities were vertically integrated – with centralized control of distribution, transmission and generation – new siting decisions involving power plants were always based on key factors such as available water, space and fuel sources. That's why even under the previous regulated model, power plants formerly regulated by the PUCO weren't necessarily built in Ohio. Some were built in Pennsylvania or West Virginia to serve customers in Ohio.

Even if Ohio's energy security were an issue – which it is not – our state imports less electricity today than it did under the previous regulated model, largely due to the significant amount of generation that has been added since competitive markets were established in Ohio. From 2005 to 2009, Ohio imported an average of 10 percent of its total electricity needs, compared with 17 percent in 1990.

The real problem with subsidized generation is that regulators would be picking the “winners” and “losers” in the energy market. We've been down that road before, and the results weren't pretty. For example, in the past our utilities in Pennsylvania and New Jersey were required to purchase power from Non Utility Generators, with contracts extending up to two or three decades. In our Pennsylvania service area alone, customers have paid \$1.5 billion over market prices for this subsidized generation. At a time when Ohio is exploring every opportunity to create jobs and grow our economy, we simply

cannot afford similar missteps that would saddle our customers with higher-than-market prices for electricity.

Let me offer a final example of the unintended consequences of subsidized generation. FirstEnergy Solutions is currently reviewing a plan to transform an old limestone mine in Norton, Ohio, into a Compressed Air Energy Storage, or CAES, facility. With the volume of nine Empire State Buildings, the site was identified by a leading developer of natural gas storage facilities as the best among more than 70 potential sites in the nation for supporting CAES technology. It would be scalable – from approximately 270 megawatts all the way up to 2,700 megawatts – and, more important, would support the operation of intermittent renewable sources such as wind by compressing air at night and standing ready to serve load on peak. However, it is highly unlikely that we would consider moving forward with this project if the plant would have to compete against subsidized generation in Ohio.

Extend Governmental Aggregation to More Ohioans

Rather than creating new obstacles to competitive markets, I believe lawmakers and regulators should build on efforts such as governmental aggregation that already are delivering lower prices for electric generation to Ohioans.

As you may know, governmental aggregation is an effective way for local communities to combine their residents and small businesses into a single, large buying group. With this significant buying power, municipalities can then shop for the best deal on electric generation on behalf of all its citizens. This process is currently providing savings on electricity to nearly 1.2 million Ohioans. In addition, ballots scheduled for the upcoming election in November would authorize governmental aggregation for more than 100 additional communities representing 450,000 residential and 15,000 small commercial customers.

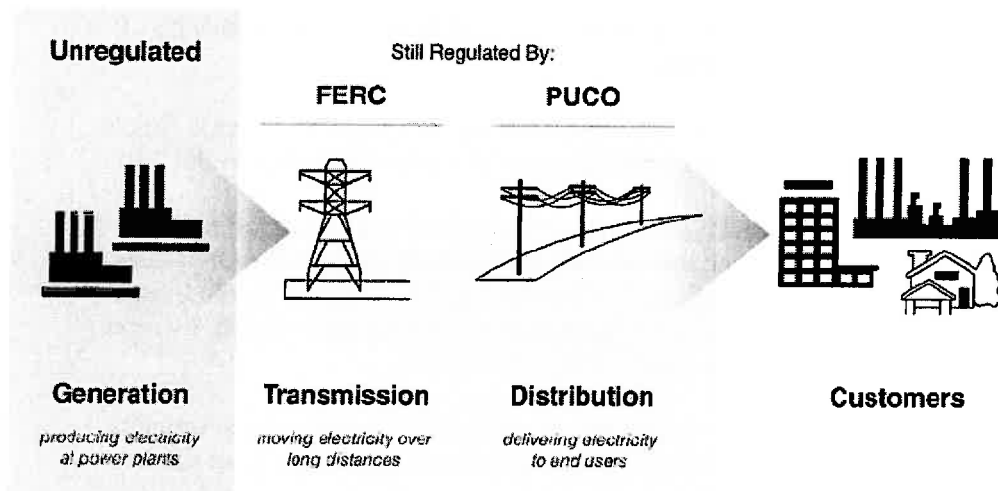
However, because of the way one utility plan is contrived, there will be limited – if any – opportunities for residential customers and no opportunities for small business customers to benefit from governmental aggregation.

The fact is, these and other restrictions can only undermine competitive markets that already are bringing significant savings to customers throughout Ohio. Simply put, we have the right structure in place. We just need to keep those markets working to continue delivering real savings to homes and businesses throughout our state. That's one of the best strategies I can think of to create jobs and promote economic development in Ohio.

As always, FirstEnergy remains committed to working with the Committee and the Ohio General Assembly. Thank you again for allowing me to address you today. I would be pleased to answer your questions.

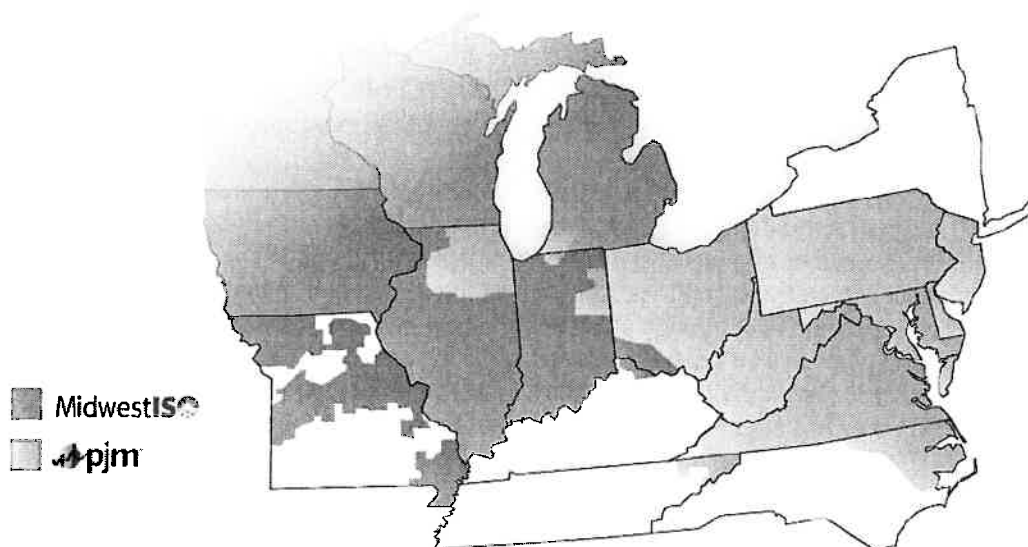
Attachment A:

Generation is a competitive business; transmission and distribution remain regulated



MISO and PJM – FERC Regulated

Large, regional transmission organizations coordinate movement of wholesale electricity



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in

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

Summary: Testimony of Matthew White in Opposition to Stipulation electronically filed by Mr. Joseph E. Olikar on behalf of IGS Energy

Exhibit C

**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 Authority to) Case No. 14-1297-EL-SSO
Provide for a Standard Service Offer)
Pursuant to R.C. 4928.143 in the Form of)
an Electric Security Plan.)

**SECOND SUPPLEMENTAL TESTIMONY OF EDWARD W. HILL
ON BEHALF OF THE
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

August 10, 2015

1 **Introduction, Purpose and Summary of Conclusions**

2 **Q. Please state your name, title and business address.**

3 A. My name is Edward W. Hill, Ph.D. I recently retired as the Dean of the Maxine
4 Goodman Levin College of Urban Affairs at Cleveland State University and Professor of
5 Economic Development. My current address is 1121 Forest Rd., Lakewood, Ohio 44107.

6 **Q. Have you provided written testimony before in this proceeding?**

7 A. Yes, I provided written direct testimony on December 22, 2014, and supplemental
8 written testimony on May 11, 2015. My testimony addressed the policy implications that
9 I believe the Public Utilities Commission of Ohio (Commission) should consider
10 regarding the request of Ohio Edison Company (Ohio Edison), The Cleveland Electric
11 Illuminating Company (CEI), and The Toledo Edison Company (Toledo Edison)
12 (collectively, the Companies) for approval of an Economic Stability Program (Program),
13 which includes shifting the financial risk of operating generation plants onto their
14 customers through a rider and the utilization of a power purchase agreement (PPA) to
15 subsidize portions of the generation capacity owned by the Companies' affiliate,
16 FirstEnergy Solutions. I explained that the proposal shifts the risk of owning and
17 operating generating capacity to customers, including those customers who choose to
18 shop and purchase their generation from alternative suppliers or generators other than the
19 Companies' affiliate, FirstEnergy Solutions. I also addressed, in response to the Attorney
20 Examiner's Entries dated March 23, 2015 and May 1, 2015, whether and how the
21 Commission's factors set forth in the recent AEP Ohio Order regarding AEP's electric

1 security plan and request for cost recovery associated with a PPA¹ should be considered
2 in evaluating the Companies' request for future cost recovery associated with a PPA.²

3 **Q. What is the purpose of your second supplemental testimony in this proceeding?**

4 A. Pursuant to the established procedural schedule,³ I am testifying in response to the
5 Supplemental Stipulation and Recommendation that was filed on May 28, 2015 by the
6 Companies and signatory parties in this proceeding (Supplemental Stipulation)⁴ and the
7 Second Supplemental Stipulation and Recommendation that was filed on June 4, 2015 by
8 the Companies and signatory parties in this proceeding (Second Supplemental
9 Stipulation)⁵ (collectively, Supplemental Stipulations). Both Supplemental Stipulations
10 modify and adopt the initial Stipulation and Recommendation filed by the Companies and
11 signatory parties in this proceeding on December 22, 2014 (Stipulation).⁶ In the
12 Supplemental Stipulations, the Companies continue to raise new issues, offer new
13 arguments, expand the carefully crafted coalition of supporters, and, when considered
14 together with the initial Stipulation, further its attempt to influence the public policy

¹*In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Opinion and Order at 25 (February 25, 2015) (AEP Ohio Order).

²*In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO (ESP IV Proceeding), Entry at 2 (March 23, 2015) and Entry at 10 (May 1, 2015) (citing AEP Ohio Order).

³ ESP IV Proceeding, Entry at 4 (July 2, 2015), modifying the schedule established at the June 2, 2015 Prehearing Conference, Transcript at 93, 95-96.

⁴ ESP IV Proceeding, Supplemental Stipulation and Recommendation (May 28, 2015) (Supplemental Stipulation).

⁵ ESP IV Proceeding, Second Supplemental Stipulation and Recommendation (June 4, 2015) (Second Supplemental Stipulation).

⁶ ESP IV Proceeding, Stipulation and Recommendation (December 22, 2014), as modified by the Errata filed on January 21, 2015 (Stipulation).

1 process in ways that are harmful for the state of Ohio. Accordingly, I offer an analysis of
2 the multiple stipulations, the supporters of those stipulations, and the cumulative effect of
3 the multiple stipulations on the business community in Ohio.

4 **Q. Have you had an opportunity to review the Supplemental Stipulation and Second**
5 **Stipulation, both of which modify the Stipulation?**

6 A. Yes. I have reviewed all of the stipulations that have been filed to date, as well as
7 relevant portions of the Companies' Plan termed at different times *Powering Ohio's*
8 *Progress*, Electric Security Plan IV, and ESP IV. I have also reviewed the supplemental
9 testimony of Eileen Mikkelsen (multiple filings), filed on behalf of the Companies, which
10 claim to support the various stipulations.⁷

11 **Q. Which provisions contained in the Supplemental Stipulations are new to the**
12 **Companies' initial ESP IV Plan and Stipulation?**

13 A. The Supplemental Stipulations modify various provisions of Rider ELR (the
14 interruptible program), create a new pilot program for certain customers regarding
15 transmission costs, and create a new time-of-use proposal for certain customers. In
16 exchange for these new or modified provisions, the Supplemental Stipulations add two
17 additional entities to the group of 12 entities that were signatory parties to the Stipulation,
18 all of which have agreed to either support or not oppose the Companies in their request
19 for approval of the Companies' ESP IV Application (Signatory or Non-opposing Parties).
20 These Signatory or Non-opposing Parties state that they joined the Companies in

⁷ ESP IV Proceeding, Supplemental Testimony of Eileen M. Mikkelsen (December 22, 2014) (Mikkelsen Supplemental Testimony), Third Supplemental Testimony of Eileen M. Mikkelsen (June 1, 2015) (Mikkelsen Third Supplemental Testimony), and Fourth Supplemental Testimony of Eileen M. Mikkelsen (June 4, 2015) (Mikkelsen Fourth Supplemental Testimony).

1 supporting the proposed ESP IV Application after “a serious compromise of complex
2 issues.”⁸ However, the Signatory or Non-opposing Parties extracted payments, rate
3 discounts, and/or customer-specific special programs from the Companies through
4 several new provisions added to the ESP IV Application through the stipulations, many
5 of which are on topics that did not appear in the Companies’ original ESP IV Application
6 and were not discussed in pre-filed testimony. After successfully extracting benefits
7 from the Companies, the Signatory or Non-opposing Parties agreed to recommend
8 approval of the Companies’ proposed ESP IV Application (as modified by the
9 stipulations), including the Economic Stability Program and establishment of the Retail
10 Rate Stability Rider (Rider RRS) associated with the PPA.⁹

11 While the Supplemental Stipulations, as well as the corresponding third and fourth
12 supplemental testimony of Ms. Mikkelsen, tout the additional issues addressed in the
13 Supplemental Stipulations (that adopt the entirety of the initial Stipulation¹⁰) as small and
14 narrow, the fact of the matter is that both Supplemental Stipulations raise additional
15 matters that have not been presented previously.

⁸ Supplemental Stipulation at 1, 5, and Second Supplemental Stipulation at 1, 2, adopting Stipulation in its entirety; see Stipulation at 5.

⁹ Supplemental Stipulation at 1, 5, and Second Supplemental Stipulation at 1, 2, adopting Stipulation in its entirety; see Stipulation at 6.

¹⁰ Supplemental Stipulation at 1 and Second Supplemental Stipulation at 1.

1 **Q. Are the benefits extracted from the stipulations available to all customers or all**
2 **parties to the proceeding?**

3 A. No. Several benefits only pertain to the interests of a specific Signatory or Non-
4 opposing Party or are only available to specific Signatory and Non-opposing Parties, or
5 their members.

6 For example, under the Supplemental Stipulation, the Stipulating and Non-opposing
7 Parties propose a new, small-scale pilot program for some of the Signatory and Non-
8 opposing Parties and their members, which allows those pilot participants to opt-out of
9 the Companies' Rider NMB and obtain all transmission and ancillary services directly
10 through PJM's Open Access Transmission Tariff (OATT), or indirectly through a
11 certified retail electric supplier. It is not clear whether the costs associated with the
12 implementation of this pilot program will be passed on to other customers, nor is it clear
13 whether any costs included in Rider NMB that are not paid for by opt-out pilot
14 participants will be borne by other customers.

15 As another example, under the latest stipulation filed (i.e., Second Supplemental
16 Stipulation), the Stipulating and Non-opposing Parties propose to deploy a Commercial
17 High Load Factor ("HLF") Experimental Time-of-Use Rate Proposal that will be
18 available for only commercial customers that have headquarters located in Ohio and have
19 at least 30 facilities in the Companies' service territories (with each facility consuming at
20 least 1.5GWh annually). Refrigeration must also be a major portion of the customer's
21 load. Furthermore, each of the customer's participating facilities must have interval

1 metering, must have an average monthly load factor during the preceding 12 months of
2 70% or higher, and must be served under the Companies' GS or GP rate schedules.¹¹

3 The Experimental Time-of-Use Rate was not included in the Company's ESP IV
4 Application, the Stipulation, or the Supplemental Stipulation. It appears for the first time
5 in the Second Supplemental Stipulation and adds one Signatory Party to the overall
6 settlement. Ms. Mikkelsen states that the provision will give a customer that meets the
7 specified narrowly-tailored criteria an opportunity to reduce its overall energy bills with
8 the "[r]ecovery of differences, if any, between revenues collected to provide this
9 generation service and the cost associated with providing this generation service" from
10 other customers through Rider GCR.¹² The amount or impact on Rider GCR is not
11 disclosed.¹³

12 **Q. What are some of the other benefits that only pertain to the interests of specific**
13 **Signatory or Non-opposing Parties?**

14 A. In addition to the new programs created and the special rate programs continued that
15 are, essentially, limited to only Signatory or Non-opposing Parties, various payments are
16 promised to a few Signatory Parties associated with energy efficiency and assistance

¹¹ See Second Supplemental Stipulation at 1-2.

¹² Mikkelsen Fourth Supplemental Testimony at 2; see also Response of the Companies to OCC-16-INT-601, attached hereto at EWH Supplemental Attachment A at 1.

¹³ See Response of the Companies to OCC-15-INT-590 and RESA/EPSC-2-INT-16, attached hereto at EWH Supplemental Attachment A at 2-3.

1 programs.¹⁴ The stipulations and supporting testimony show that these Signatory Parties
2 will receive approximately \$15.31 million in payments.¹⁵

3 **Q. Do ratepayers pay for the cumulative benefits available to the Signatory and**
4 **Non-signatory Parties?**

5 A. Yes, for the most part. The costs associated with providing the special rate
6 discounts will be recoverable from ratepayers through Rider DSE1, Rider EDR(e), Rider
7 EDR(i), and Rider DRR,¹⁶ the costs associated with implementing and running the energy
8 efficiency programs or audits will be recoverable from ratepayers through Rider DSE,¹⁷
9 the costs associated with funding the Community Connections program will be
10 recoverable from ratepayers,¹⁸ and any net costs associated with providing the new
11 experimental time-of-use rate will be recovered from ratepayers through Rider GCR.¹⁹

12 **Q. Have you been able to quantify the costs of the cumulative benefits of the**
13 **stipulations that will be paid for by ratepayers, most of which will not be receiving**
14 **the direct benefits delineated in the stipulations?**

15 A. The stipulations only provide partial information about the cost shifting and payments
16 that are proposed during the ESP IV. I received some supplemental information from

¹⁴ See, e.g., Stipulation Sections B and C.

¹⁵ List of benefits compiled based upon Stipulation at 10-15 and Mikkelsen Supplemental Testimony at 4-5.

¹⁶ Supplemental Stipulation at 2-3; Mikkelsen Third Supplemental Testimony, Attachment EMM-3 at 2; Stipulation at 9-10; Mikkelsen Supplemental Testimony at 3-4.

¹⁷ Stipulation at 10-12; Mikkelsen Supplemental Testimony at 4-5.

¹⁸ Mikkelsen Supplemental Testimony at 10 (Although not stated in the Stipulation, Ms. Mikkelsen's Supplemental Testimony asserts that the Companies will not seek to recover from other ratepayers the \$7.1 million in funds designated to assist at-risk populations. There is no similar commitment made regarding the recovery of the \$5.1 million in payments to the CHN from the Community Connections program funding).

¹⁹ Mikkelsen Fourth Supplemental Testimony at 2; see also *supra* n.13.

1 discovery responses given by the Companies. Unfortunately, however, the overall
2 financial impact upon the customers that cannot receive the settlement benefits that are
3 only attainable by a few Signatory or Non-opposing Parties are not made clear in the
4 material submitted.²⁰

5 From the information that we have been able to obtain to date through the testimony and
6 discovery responses, I have been able to quantify some of the costs that will be borne by
7 the ratepayers due to the cumulative impact of the stipulations. From the special
8 programs, payments, and rate discounts, ratepayers may be responsible for \$228.2
9 million.²¹ Any projected costs assessed to ratepayers through Rider RRS would be in
10 addition to the direct benefits received by the Stipulating or Non-opposing Parties.

²⁰ For example, it is not clear who will bear the cost of administrative oversight of some of the new programs. Although the Companies claim in response to PUCO-DR-33, Part 10, attached hereto at EWH Supplemental Attachment A at 4-6, that they will not seek recovery of administrative costs for the new transmission Pilot Program that would permit certain customers to opt out of Rider NMB, the Companies did not include such a guarantee in the Supplemental Stipulation or filed testimony. Nonetheless, the Companies admitted that there are administrative activities associated with the Pilot Program's implementation. See response to PUCO-DR-33, Part 9, attached hereto at EWH Supplemental Attachment A at 4-6. If those activities are completed by employees of the Companies (regulated distribution companies) or costs are allocated to the distribution business, the labor and costs of such activities may be borne by ratepayers. See also *supra* n.13, and the Response of the Companies to RESA/EPSC-1-INT-34, attached hereto at EWH Supplemental Attachment A at 7, regarding the Experimental Time-of-Use Rate Proposal (the participants of the Experimental Time-of-Use Rate Proposal will not pay the same cost for capacity as standard service customers).

²¹ See Stipulation at 7-8, 9-10, 10-15 and Mikkelsen Supplemental Testimony at 3-5; Supplemental Stipulation at 2-3; Mikkelsen Fourth Supplemental Testimony at 2; Response of the Companies to: OMAEG-3-INT-46(b); OMAEG-4-INT-88; OCC-12-INT-296; OCC-12-INT-300; OCC-15-INT-578; OCC-15-INT-579; OMAEG-5-INT-118; and OMAEG-5-INT-119, respectively attached hereto at EWH Supplemental Attachment A at 8-15. See also Response of the Companies to OMAEG-3-RPD-021, Attachment 1 (Confidential); OMAEG-4-RPD-32, Attachment 1 (Confidential); and PUCO-DR-30(a) (Confidential), respectively attached hereto at EWH Supplemental Attachment B at 1-7 (Confidential).

1 **Q. Do economic development discounts and incentives provide benefits to all**
2 **ratepayers?**

3 A. If structured properly, yes. Economic development incentives can help companies
4 lower production costs, control or provide increased certainty over their operating costs,
5 speed the opening of a plant, and influence the design of plant and equipment. Economic
6 development incentives can be used to bring fallow land into use and they can be used to
7 provide a trained workforce. In other words, a public benefit should be identifiable and
8 the incentive should pass the “but for” test—but for the incentive the operation would not
9 have opened.

10 Incentives may be appropriate for economic development reasons, but the incentives need
11 to be uniformly applied and available to all similarly situated customers. The criteria for
12 qualifying for the incentives and discounts should not be so narrowly tailored that they
13 are discriminatory or only apply to one or a few companies. Economic development
14 incentives also should be restricted to companies that primarily sell goods and services to
15 out-of-state customers or have their goods and services bundled into these exported goods
16 and services. These firms are considered to be part of the economic base of the state.

17 The selection of the recipients of narrowly defined economic development incentives
18 should not be made by a private company that is in a position to provide one of its
19 customers with a competitive advantage over another company in its service territory.
20 This is especially true if there is a quid-pro-quo as is the case in the proceeding currently
21 pending before the Commission. Most importantly, the state of Ohio should not be

1 delegating its economic development strategy and authority to a privately owned electric
2 utility.

3 What is presented in the stipulations is not a set of economic development incentives.
4 Instead, the incentives are targeted price reductions and discounts that are being offered
5 by the Companies through the regulatory process to only those customers or groups that
6 have been invited to join the exclusive club or coalition formed by the Companies, and
7 the costs of such discounts and incentives are being largely passed on to the broad pool of
8 ratepayers in the Companies' service territories who were not invited to join the club
9 formed by the Companies. Typically, in operating competitive markets, the decision to
10 offer a discount is up to the provider and that provider and its stockholders absorb the
11 discount in expectation of other gains, such as increased sales volumes tied to efficiencies
12 of scale or using slack production capacity, or to prevent the loss of the customer. The
13 cost of these discounts is not typically passed onto other customers unless the provider
14 has some form of market power. Also, in competitive markets, cost shifting does not
15 occur to customers in a defined geographic area using the regulatory powers of the state.

16 While incentives may reduce the expenses and provide associated benefits to the
17 Signatory or Non-opposing Parties that are receiving the incentive, such discounting
18 becomes problematic when the cost of the incentive is then passed on to other customers
19 or other classes of customers.

20 The value of incentives should not be shifted to other customers or established in a
21 manner that is tailored to discriminate among competitive customers, unjustly choosing
22 winners and losers. Economists consider such cost shifting to be a form of cross-

1 subsidization where parties that lack market power are paying for incentives offered to
2 parties that have market power. Such cross-subsidies are inherently market distorting.

3 There is no longer an integrated generation, transmission, and distribution power market
4 in Ohio. Electric generation in Ohio is now a competitive service. The only remaining
5 natural monopoly is in the distribution system. Regulatory policy should be very careful
6 not to allow the existence of a natural monopoly in the distribution system to be used as
7 leverage to protect non-competitive firms in the other two components of electric service.

8 **Q. Will the costs of the stipulations be borne equally and fairly by all ratepayers?**

9 A. No. From reviewing the stipulations, testimony, and applicable tariff schedules, it
10 appears that some of the costs or charges to ratepayers for the settlement programs and
11 rate discounts will be paid for by only certain commercial rate schedules, mainly the
12 General Service (GS) and General Primary (GP) customers in the Companies' service
13 territories, some costs will be paid for by all ratepayers in the Companies' service
14 territories, and some costs will be borne by all ratepayers in the Companies' service
15 territories except for the customers receiving the direct benefits.²² If this occurs, then
16 certain customers or classes will pay a disproportionate share of the benefits outlined in
17 the stipulations.

²² See generally, Ohio Edison Company, P.U.C.O. No. 11, Sheets 101 (Rider ELR, Effective June 1, 2015), 115 (Rider DSE, Effective July 1, 2015), and 116 (Rider EDR, Effective June 1, 2011 and July 1, 2015, depending on section); The Cleveland Electric Illuminating Company, P.U.C.O. No. 13, Sheets 101 (Rider ELR, Effective June 1, 2015), 115 (Rider DSE, Effective July 1, 2015), and 116 (Rider EDR, Effective June 1, 2011 and July 1, 2015, depending on section); and The Toledo Edison Company, P.U.C.O. No. 8, Sheets 101 (Rider ELR, Effective June 1, 2015), 115 (Rider DSE, Effective July 1, 2015), and 116 (Rider EDR, Effective June 1, 2011 and July 1, 2015, depending on section), respectively attached hereto as EWH Supplemental Attachment A at 16-57; see also, Response of the Companies to OCC-13-INT-345; OCC-15-INT-580; OCC-15-INT-581, respectively attached hereto as EWH Supplemental Attachment A at 58-60.

1 **Q. Are there other Signatory or Non-opposing Parties that indirectly benefit from**
2 **the stipulations?**

3 A. Yes, given that the Supplemental Stipulations adopt the Stipulation and the ESP IV
4 Application, as modified by the stipulations,²³ beneficiaries to the stipulations include
5 those who benefit from the establishment of a rider to recover from ratepayers all costs
6 associated with the generating plants subject to a purchase power agreement between the
7 regulated utility and unregulated affiliate. Rider RRS provides the regulated entities' (the
8 Companies') parent company, FirstEnergy Corp., with a guaranteed return on the
9 generation assets owned by FirstEnergy Solutions that are included in the PPA
10 transaction that forms the basis of Rider RRS.²⁴ Beneficiaries of the stipulations would
11 include the Companies, Ohio Power, and their affiliates.²⁵

12 **Q. Are the Supplemental Stipulations in the public interest?**

13 A. No. In addition to the discussion above regarding costs of incentives and the unfair
14 cross-subsidization of costs to a select group of customers, the Supplemental Stipulations
15 are also not in the public interest because they adopt the Companies' Application with
16 regard to the Economic Stability Program and Rider RRS, as well as the associated PPA.
17 As explained in my Supplemental Testimony, the proposed PPA requires the Companies
18 to purchase all of the power from uncompetitive generating plants owned by its affiliate,
19 FirstEnergy Solutions, and pass on the costs of fuel and any plant upgrades, plus a return,
20 to ratepayers. The output from the generating units will be sold into the regional

²³ See supra n.9.

²⁴ See generally, Testimony of Stephen E. Strah at 4-5 (August 4, 2015).

²⁵ Stipulation at 25 (Ohio Power Signature Page).

1 wholesale market, and any losses or profit resulting from the sale will be passed on to all
2 customers in the Companies' service territories through Rider RRS. The Companies
3 have projected that there will be no profit in the first three years covered by all three
4 stipulations.

5 Although the Companies assert that the Stipulation, which is adopted by the
6 Supplemental Stipulations in its entirety,²⁶ preserves the competitive retail market, an
7 overall settlement that includes the PPA proposal prevents a completely free market from
8 evolving and, therefore, is not in the public interest.

9 More specifically, the Supplemental Stipulations are not in the public interest for two
10 reasons. First, they adopt a scheme that will provide one certified retail electric supplier
11 in Ohio with a competitive advantage in the Ohio market as its uneconomic generating
12 plants will be subsidized by the Companies' ratepayers through approval of the Economic
13 Stability Program and associated PPA. Second, the Supplemental Stipulations and the
14 PPA will deter entry into the power generation portion of the market by new competitors.
15 Typically, if a market participant cannot compete in a competitive market, it will fail.
16 Subsidizing an existing market participant in the hope that it may be able to compete at
17 some point in the future is not in the public interest, nor is it good public policy. It will
18 only deter entry and keep prices higher than they would be in a competitive market. The
19 PPA can best be described as a coin-flip bet that FirstEnergy Corp. is making, one where
20 it's "heads I win and tails you lose."

²⁶ See *supra* n.9.

1 By examining the algebra behind the logic of the proposal, the inequities of the proposal
2 become apparent:

3 Let p_C represent the price paid for by consumers, p_{FE} the price charged by FirstEnergy
4 Solutions, and p_A is the price charged by alternative suppliers.

5 Also let the production cost of energy be represented by c_{FE} for FirstEnergy Solutions
6 and c_A for the alternative producers.

7 If $p_C = p_A = p_{FE}$ then the market is at a short-term equilibrium and there is no incentive to
8 change suppliers. This can only be a stable solution over time only as long as $c_A = c_{FE}$.

9 However, the Companies have informed the Commission that its affiliate could not sell
10 the output from the generating plants covered by the PPA for a profit, implying that for
11 some fraction of its capacity its production cost is higher than the cost of competitors.
12 Therefore, $c_{FE} > c_A$.

13 Now let t_{FE} represent the tax or surcharge imposed by the Companies through the
14 proposed regulation (Rider RRS) on all customers if the net costs outweigh the revenues
15 that the plants obtain in the market; then $t_{FE} = f(c_{FE} - c_A)$. This equation notes that as the
16 cost differential increases between the plants in question and alternative sources of
17 generating capacity the tax increases automatically.

18 There is a secondary effect to this dynamic that offers greater pause, which is the power
19 of precedent. If the PPA is approved and other generating assets become uncompetitive
20 then the Commission has established a precedent that will be used to bring those assets

1 under regulatory protection with an assured rate of return on capital. This will affect not
2 just the Companies' affiliated generating assets but all generating plants located in the
3 state of Ohio; after all, what is fair for one must be fair for all. In this case, allow **b** to
4 represent the decimal fraction of non-competitive generating assets expressed in terms of
5 kilowatt-hours and **(1-b)** is the fraction that is competitive; then **b + (1-b) = 1.00**.

6 Then: $t_{FE} = f(b)$ meaning that the tax (or costs) imposed by the Companies, and others in
7 similar situations, will be a function of the portion of generating capacity that falls under
8 a PPA and its successors and as **b** increases, so does t_{FE} .²⁷ In other words, as **b** increases,
9 or as the portion of the state's generating fleet that is not price competitive in the
10 wholesale markets increases, the tax will increase. This will effectively deter entry and
11 investments by competitors in generating capacity.

12 Then: $p_C = p_A + t_{FE} = p_{FE}$.

13 The algebra states that as the production cost differential increases compared to that of
14 alternative producers, the imposed tax increases proportionately, thereby redistributing
15 income from customers located in the Companies' service territories to FirstEnergy
16 Solutions and FirstEnergy Corp.'s shareholders. Heads, FirstEnergy Solutions wins; tails
17 FirstEnergy Solutions' competitors lose. No matter what, FirstEnergy Solutions'
18 customers will have, at best, market electric rates; but, more likely, they will have higher
19 electric rates than if a competitive generating market existed. The second conclusion I
20 reach is that entry into the state by alternative energy producers will be deterred because

²⁷ The actual function is nested: $t_{FE} = f(b)$ with $b = g(c_i - c_A)$, where c_i is the operating cost at power plant *i*.

1 the precedent provided by the PPA will eliminate their pricing advantage held by new
2 entrants. The PPA is a way of using the regulatory power of the state to create political
3 market power in the electric market for the legacy generators. Deterring entry and
4 investment in the state of Ohio is not in the public's interest.

5 **Q. Have you been able to quantify the costs of the indirect benefits attributed to the**
6 **Signatory or Non-opposing Parties that benefit from the establishment of Rider**
7 **RRS, which was adopted by the Supplemental Stipulations?**

8 A. No. As explained in my previous testimony,²⁸ Ms. Mikkelsen appears to value the
9 PPA provision of the ESP IV Application at \$2.0 billion in favor of customers, but
10 recognizes that that benefit may not come to fruition, and if it does, it will not occur
11 during the term of ESP IV.²⁹ The stipulations appear to adopt the Companies' proposed
12 Rider RRS in its entirety with one modification. The Supplemental Stipulations' blanket
13 adoption of the Companies' Application with regard to the Economic Stability Program
14 and Rider RRS, as well as the associated PPA (with one modification), adds costs to the
15 proposed overall settlement that will be borne by ratepayers, and, as explained above, is
16 not in the public interest.³⁰

²⁸ Hill Supplemental Testimony at 16.

²⁹ See Mikkelsen Supplemental Testimony at 2.

³⁰ See, e.g., Supplemental Testimony of Ramteen Sioshansi at 2; Supplemental Testimony of James F. Wilson at 3-4; Direct Testimony of Steven Ferrey at 12 (all filed May 11, 2015).

1 Q. Why do you believe the Companies, through the Supplemental Stipulations,
2 increased the size of what you have termed a “redistributive coalition”?

3 A. In my previous testimony, I explained how the Stipulation formed a redistributive
4 coalition, which is a relatively small group that promotes policies for their mutual
5 financial benefit.³¹

6 The redistributive coalition was assembled to present to the Commission and to the
7 public the façade not only of broad support for the ESP IV, but of a broad range of
8 benefits flowing to the classes of customers represented by the Signatory or Non-
9 opposing Parties. The stipulations and testimony are careful to state that the participation
10 of the members of the redistributive coalition indicates broad support and benefits
11 flowing to the classes that they represent. Unfortunately, the benefits only flow to the
12 Signatory or Non-opposing Parties.

13 While the Companies imply that the outcome was universal, the stipulations are clear
14 that the provisions only apply to the entities that were involved in the negotiations and
15 the benefits derived only apply to the Signatory or Non-opposing Parties. In her
16 testimony, Ms. Mikkelsen asserts: “As can be seen from this list, the Signatory Parties
17 represent varied and diverse interests including large industrial customers, small and
18 medium businesses, mercantile customers, colleges and universities, low income
19 residential customers, organized labor and a large municipality.”³² The façade of
20 universality, however, is apparent later in her testimony: “The Signatory Parties represent

³¹ Hill Supplemental Testimony at 14.

³² Mikkelsen Supplemental Testimony at 6.

1 a broad range of interests including the Companies, another Ohio electric distribution
2 utility, organized labor, various consumer groups (themselves representing a broad range
3 of customer classes and varied interests), and a large municipality.”³³

4 Ms. Mikkelsen then concludes that given the group of Signatory Parties that make up the
5 coalition, the stipulation as a package benefits customers and the public interest.³⁴ As I
6 have stated before, this is a carefully crafted coalition designed to look as if it represents
7 broad groups, rather than the specific entities that they actually represent.

8 The Supplemental Stipulations merely add two more entities to that redistributive
9 coalition by adding additional provisions that are for the benefit of the Signatory or Non-
10 opposing Parties.

11 **Q. How does the concept of a redistributive coalition apply?**

12 A. Here, the Companies have assembled a coalition to promote a policy that benefits
13 their affiliate, FirstEnergy Solutions, and the other coalition members. The benefit to the
14 Companies consists of a subsidy to pay for its affiliated company’s underperforming
15 generation. This benefit to the Companies has been valued at \$3 billion by one expert
16 witness for a non-signatory party, the Office of the Ohio Consumers’ Counsel.³⁵

17 The large heterogeneous group that has to pay for the majority of this proposed policy, as
18 well as the other costs embedded in the stipulations, consists of the remaining

³³ Id. at 7.

³⁴ Id. at 8.

³⁵ See Direct Testimony of James F. Wilson at 12 (December 22, 2014).

1 commercial, industrial, and residential ratepayers of northern Ohio who are not members
2 of the redistributive coalition. This large ratepayer group would be very difficult and
3 expensive to organize for purposes of advocating the group's interests.

4 Further, the costs of learning about and understanding the impact of the proposals set
5 forth in the various stipulations and the ESP IV Application are substantial because these
6 costs are opaque, buried in a series of riders that are beyond the ability of a typical
7 ratepayer to understand, and provided through an evolving regulatory process that needs
8 to be constantly monitored. Non-members of the redistributive coalition are further
9 disadvantaged by the large, complicated, last minute submittals to the Commission.
10 Additionally, many of the provisions embedded in the stipulations are written in ways
11 that are extremely difficult to disentangle, including the wholesale adoption of the
12 Companies' large ESP IV Application with limited exceptions.

13 Economists and political theorists who have developed public choice theory anticipated
14 the dense and opaque nature of these sorts of submittals with another concept: *rational*
15 *ignorance*.³⁶ A redistributive coalition can raise the costs of obtaining and understanding
16 information that relates to their proposed actions by making submittals as opaque and
17 technical as possible. The term "rational ignorance" was coined to describe the
18 reasonable disengagement of the public from trying to understand technical information
19 and expert testimony where the cost of obtaining the knowledge is high and the return to
20 individuals from their effort is low, even if the collective impact is large. Rational
21 ignorance also explains how members of a redistributive coalition will focus on the direct

³⁶ Downs, Anthony. *An Economic Theory of Democracy*. New York: Harper Row, 1957.

1 impact of payments and benefits to them or their members without acknowledging the
2 full impact of the proposed redistribution on the public at large. This is a point to keep in
3 mind when the Commission's three part test of the reasonableness of the multiple
4 stipulations is discussed below: the calculation used by the members of a redistributive
5 coalition is their net benefit, not society's net benefit.

6 **Q. Does the expansion of the redistributive coalition through the Supplemental**
7 **Stipulations improve the overall settlement or address your previously stated**
8 **concerns?**

9 A. No. The cost of organizing the group and adding two more parties to the group is
10 small relative to the benefits received by the Signatory or Non-opposing Parties. The
11 costs associated with providing incentives to a group of parties, much of which are
12 funded by ratepayers that have been excluded from the settlement, are far outweighed by
13 the returns.

14 The actual cost of organizing the redistributive coalition will not be borne significantly
15 by the organizer, the Companies. These costs will instead be passed on to ratepayers in
16 the form of various costs or expenses of the regulated utility. Therefore, the direct or
17 lasting expense incurred by the organizer, the Companies, is minimal. Some of the
18 coalition members receive cost reductions, a predictable financial benefit, some obtain
19 benefits that will be passed on to the members of their organizations, and others find
20 funds to support their organizations' missions. Many coalition members may be able to
21 use the windfalls to pay for their administrative expenses. Nonetheless, while many of
22 these pass-through benefits may be socially beneficial or meritorious to a relatively small
23 group of beneficiaries, it is at the expense of a much larger group. Accordingly, the

1 overall settlement, as a package, does not benefit most ratepayers and is not in the public
2 interest.

3 **Q. How do you think the coalition members were selected?**

4 A. The list of signatories was carefully constructed. The Companies stated that the
5 members of the redistributive coalition “represent varied and diverse interests including
6 large customers, small and medium businesses, mercantile customers, colleges and
7 universities, low income residential customers, organized labor, and a large
8 municipality.”³⁷ However, the list also raises a series of questions: how are they
9 representative? Did they represent their peers and similar organizations in the negotiation
10 process? Were they able to obtain similar benefits for their peers or at the exclusion of
11 their peers? Generally speaking, the answers to the last two questions are no: they
12 represented themselves and the incentives they obtained are for their organizations or
13 companies alone.

14 For example, why is the City of Akron a direct beneficiary while other communities with
15 low-income populations, such as Toledo, are excluded? Why are private colleges and
16 universities beneficiaries, while public colleges and universities are excluded? Why are
17 COSE's members eligible for audits, while small business members of other chambers of
18 commerce or organizations are left out? Why would a grocer that is able to meet certain
19 requirements receive an operating cost advantage over its competitors?

³⁷ See Mikkelsen Supplemental Testimony at 2.

1 The simple answer is that not all customers were invited to become members of the
2 coalition. This is a political coalition assembled to provide a veneer of inclusion and the
3 image of universal support in exchange for a limited set of pre-defined financial benefits.
4 In exchange, the members of the coalition (i.e., Signatory or Non-opposing Parties) have
5 committed to endorse the totality of the ESP IV Application, including Rider RRS. The
6 Supplemental Stipulations adopted the Stipulation in its entirety, which includes the
7 statement: “each Signatory Party agrees to and will support the reasonableness of the ESP
8 IV and this Stipulation before the Commission, and to cause its counsel to do the
9 same.”³⁸

10 The redistributive coalition is being used by the Companies, and their parent company,
11 FirstEnergy Corp., as a broad representation of the economy in a political process. The
12 Commission, however, is being asked to adopt a settlement that chooses winners and
13 losers among competitors. Why is this good public policy?

14 **Q. From your perspective is there anything illegal about creating and using a**
15 **“redistributive coalition” to your benefit?**

16 A. There is nothing illegal about forming a redistributive coalition; it is a political
17 coalition designed to extract a favorable outcome from a regulatory or legislative
18 proceeding for its members. It just has to be recognized for what it is, and for what it is
19 not. It is not a bargaining body that represents all of the Companies’ ratepayers or the
20 public interest.

³⁸ Stipulation at 18.

1 The Companies imply that the negotiations that took place between the members of its
2 redistributive coalition were “fair.” However, there is nothing supporting this conclusion
3 in the record. Ms. Mikkelsen’s Testimony supporting the Supplemental Stipulations does
4 not address the negotiations of the Signatory or Non-opposing Parities or fairness. The
5 testimony supporting the Supplemental Stipulations merely asserts that each stipulation
6 continues to meet the Commission’s criteria and refers to the Supplemental Testimony
7 supporting the initial Stipulation. In the referenced Supplemental Testimony, Ms.
8 Mikkelsen references the Commission’s criteria when considering the reasonableness of a
9 stipulation: “a stipulation must satisfy three criteria: (1) the stipulation must be the
10 product of serious bargaining among capable, knowledgeable parties; (2) the stipulation
11 must not violate any important regulatory principle or practice; and (3) the stipulation
12 must, as a package, benefit ratepayers and the public interest.”³⁹ Ms. Mikkelsen then
13 explains how she believes that the initial Stipulation meets those criteria. Ms. Mikkelsen,
14 however, fails to address the Commission’s criteria in her Third and Fourth Supplemental
15 Testimony as they relate to the Supplemental Stipulations.

16 **Q. Do you agree with Ms. Mikkelsen’s conclusion?**

17 A. No. There is no evidence in the record that the Supplemental Stipulations satisfy the
18 Commission’s three-prong test. First, in my reading of the Supplemental Stipulations,
19 which adopt the Stipulation and supporting testimony, there is no evidence that the first
20 criterion has been met, as there is no evidence that all or most of the Signatory or Non-

³⁹ See Supplemental Testimony of Eileen M. Mikkelsen at 2; see also Third Supplemental Testimony of Eileen M. Mikkelsen at 3 and Fourth Supplemental Testimony of Eileen M. Mikkelsen (referencing the above-mentioned factors).

1 opposing Parties were knowledgeable of all provisions of the Companies' ESP IV
2 Application that they have agreed to through the Stipulations.

3 Furthermore, there is no evidence in the record that the claimed additional supporters of
4 the Companies' ESP IV Application are actual supporters of the Application and/or the
5 stipulations or that they are even knowledgeable of the contents of the Application and/or
6 multiple stipulations.⁴⁰ For instance, the President and CEO of FirstEnergy Corp., Chuck
7 Jones, published an article in the Cleveland Plain Dealer, stating that "the supporters ...
8 include many residential, commercial, industrial and low-income customers, as well as
9 organized labor, communities and schools." Many of the cited "supporters" in the article
10 are not Signatory or Non-opposing Parties to the multiple stipulations, and it is unknown
11 what, if any, incentives or benefits that any such "supporters" may have received to voice
12 their support for the Companies' proposal. It is also unknown what the "support" is truly
13 based upon. For instance, did those "supporters" understand that the Companies' motive
14 came at an expense to the Companies' ratepayers?

15 Mr. Jones explained the purpose of the Companies' proposal and settlement pending
16 before the Commission in his July 27, 2015 interview with *Plain Dealer* reporter John
17 Funk: "Jones said FirstEnergy's future is at risk if it cannot persuade the state's Public
18 Utilities Commission to *force ratepayers* to cover the full costs of electricity from two of

⁴⁰ "Powering Ohio's Progress' rate plan is about preserving vital power plants for Ohio customers: Chuck Jones (Opinion)," *Cleveland Plain Dealer* (August 2, 2015), attached hereto at EWH Supplemental Attachment A at 61-63; see also list of claimed supporters in the Companies' cover letter filed with Stipulation (December 22, 2014) and Response of the Companies to OMAEG-3-INT-27; OMAEG-3-INT-28; OMAEG-3-INT-29; OMAEG-3-INT-30; OMAEG-3-INT-31; OMAEG-3-INT-32; OMAEG-3-INT-33; OMAEG-3-INT-34; OMAEG-3-INT-35; OMAEG-3-INT-36; OMAEG-4-INT-68; OMAEG-4-INT-69; OMAEG-4-INT-72; OMAEG-3-INT-25; OMAEG-4-INT-73; OMAEG-4-INT-74; and OMAEG-4-INT-75, attached hereto as EWH Supplemental Attachment A at 64-80.

1 its huge coal and nuclear plants, *even if other sources of electricity, such as natural gas,*
2 *would be cheaper for consumers.*” Funk reported that in an interview with the
3 newspaper’s editorial board Jones stated: “I am trying to save a company.”⁴¹

4 Second, the parties did not represent a diverse group of customers or certain classes of
5 customers as they only represented themselves. It is my understanding that the second
6 criteria fails as the Commission has recently stated that it disfavors direct payments of
7 funds to intervenors, even if those funds are to be refunded to ratepayers.⁴² This appears
8 to be the case with many of the funds provided to organizations in the stipulations. This
9 policy position would also apply to the provisions contained in the Supplemental
10 Stipulations, as well as the Stipulation, that are only available to one or more of the
11 Signatory or Non-signatory parties at the exclusion of other customers.

12 Finally, it is clear that the Supplemental Stipulations do not meet the third criterion of
13 benefiting ratepayers and the public interest. The Supplemental Stipulations do not
14 benefit ratepayers as a whole and are not in the public interest. Providing benefits to
15 carefully selected members of a redistributive coalition cannot be deemed to benefit all
16 ratepayers, similarly-situated ratepayers who were not included in the bargaining process,

⁴¹ Funk, John, “FirstEnergy wants Ohio to end deregulation, return to state-controlled rates,” *Cleveland Plain Dealer* (July 28, 2015, updated July 29, 2015) (emphasis added), attached hereto at EWH Supplemental Attachment A at 81-83.

⁴² See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Ultimate Construction and Operation of an Integrated Gasification Combined Cycle Electric Generation Facility*, Case No. 05-376-EL-UNC, Order on Remand at 11-12 (February 11, 2015) (“The Commission notes that provision 1.b. of the Stipulation includes direct payments to intervenors of funds to be refunded to ratepayers. * * * However, the Signatory Parties to this Stipulation and parties to future stipulations should be forewarned that such provisions are strongly disfavored by this Commission and are highly likely to be stricken from any future stipulation submitted to the Commission for approval.”)

1 or the public interest as a whole. The bargains struck will result in most of the
2 redistributive coalition's benefits being paid for by the vast majority of ratepayers: those
3 who were not part of the bargaining and those who will not receive the direct payments
4 and other benefits extracted by the members of the redistributive coalition. If enacted,
5 the broad pool of electricity users will pay a *de facto* tax enabled and enforced by the
6 Commission to benefit the redistributive coalition assembled by the Companies,
7 including the organizer, the Companies, which are the largest beneficiaries, as well as
8 their affiliate.

9 **Q. Why is such a redistributive coalition a problem for policy makers?**

10 A. The problem is that those who stand to lose from policies promoted by a
11 redistributive coalition are part of a large, heterogeneous group, one that is difficult and
12 expensive to organize in opposition to the proposed redistribution.

13 Information that is missing from the cumulative settlement, including testimony
14 supporting the Supplemental Stipulations that adopt the Stipulation, include models and
15 estimates on the losses that will be incurred by companies that are not part of the
16 redistributive coalition when faced with higher prices triggered by the redistributive
17 features of the stipulations and Economic Stability Program; deterred investment by new
18 power generators; the impact of embargoing the importation of power from out-of-state
19 generators; cost-shifting that will take place from the members of the redistributive
20 coalition to those not invited to join the coalition; and the expected net benefits to be
21 enjoyed by the Companies or their parent company from the increase in revenues versus
22 the costs it will incur during the three-year period covered by the stipulations and the 15-
23 year period covered by the PPA.

1 One loss will be indirect, but it will directly affect the economy of the state of Ohio. This
2 is the loss in Gross State Product and employment associated with operating and sales
3 cost increases that are part of the elasticities associated with the cost of electricity.⁴³ The
4 price elasticity of demand for electricity that will be experienced by all other
5 manufacturers in the region with the increases in electric prices that will be necessary to
6 fund the provisions of the stipulations, including Rider RRS, has not been considered.
7 My concerns about the price elasticity of demand for electricity among manufacturers
8 generally were addressed in my previous testimony and will not be repeated here.
9 However, it is important to note that the additional provisions of the Supplemental
10 Stipulations exacerbate my original concerns.

11 **Q. Do the Supplemental Stipulations include programs for demand reduction and**
12 **energy efficiency programs that could reduce electricity demand in Northern Ohio?**

13 A. Yes, the Supplemental Stipulations include demand reduction programs, including an
14 interruptible program and a time-of-use rate proposal.⁴⁴ These are in addition to the
15 amounts of money promised to support the administration of energy efficiency programs,
16 which will benefit a small number of ratepayers, in the Stipulation.

17 The Companies were proponents of legislation in the Ohio General Assembly to revise
18 and/or freeze energy efficiency and peak demand reduction programs that were part of

⁴³ The elasticity associated with Gross Product is the percent change in value added in a manufacturing sector divided by the percent change in the cost of electricity. The elasticity in the number of jobs in the manufacturing sector is the percent change in the number of jobs divided by the percent change in the cost of electricity. These can also be expressed in their instantaneous forms, the ration of the natural logarithms of each variable.

⁴⁴ Supplemental Stipulation at 1-2; Second Supplemental Stipulation at 1-2; Mikkelsen Fourth Supplemental Testimony at 2.

1 the energy efficiency portfolio in Ohio.⁴⁵ Proponents of the legislation argued that
2 energy efficiency should compete without subsidy with other forms of generation in an
3 open, unsubsidized market. Through the various stipulations and ESP IV Application,
4 the Companies propose additional energy efficiency and peak demand reduction
5 programs and argue for a generation subsidy because certain generation facilities cannot
6 compete in the open market.

7 The Companies also argue that its affiliated subsidized generation can be complemented
8 with a modest and highly selective subsidy to promote energy efficiency and peak
9 demand reduction programs. The Companies want to replace independent public
10 administration and a broader efficiency mandate with certain administrators running a far
11 smaller funding vehicle for the efficiency plans.

12 The energy efficiency programs included in the stipulations have been carved out to
13 entice specific signatories to join the redistributive coalition and provide political support
14 for the package of rates and riders that are the true substance of *Powering Ohio's*
15 *Progress Plan*. The efficiencies gained through the series of *ad hoc* small initiatives will
16 not make a serious difference in the regional demand for electricity. But they will result
17 in shifting costs to the ratepayers who were not allowed to become signatory parties, if
18 the redistributive coalition persuades the Commission to adopt the stipulations and ESP
19 IV.

⁴⁵ See testimony submitted to the Senate Public Utilities Committee regarding SB 58 (the predecessor to SB 310) by Leila L. Vespoli on behalf of FirstEnergy Corp. in support of Revisiting Ohio's Energy Efficiency Mandates (April 9, 2013), attached hereto at EWH Supplemental Attachment A at 84-90; see also "No retreat: the governor enters the energy debate and sends the right message to lawmakers," *Akron Beacon Journal* (May 3, 2014) and "Kasich should work against deeply flawed Ohio Senate Bill 310: editorial," *Cleveland Plain Dealer* (May 2, 2014), attached hereto at EWH Supplemental Attachment A at 91-93.

1 **Q. What is the cumulative effect of the stipulations on energy policy?**

2 A. The submission of the stipulations has effectively confused the order of public policy
3 making in regard to the future of electric energy production and cost, and serves only to
4 distract the Commission (and the State) from answering the most important questions
5 about Ohio's energy future:

6 • What is the proper energy-producing footprint? Is it energy produced within the
7 borders of the state or is it the PJM footprint?

8 • What is the best and least cost way of resolving uneconomic power generating
9 assets to ensure the integrity of the power transmission and distribution systems
10 and truly guarantee reliable power? This has to go beyond the Companies'
11 service territories.

12 • How can Ohio and the PJM footprint accommodate industry-scale proof of
13 concept energy experiments to comply with mandates to lower CO₂ and
14 particulate emissions in power generation?

15 • Should low-income utility voucher programs or special interest programs
16 provide for statewide access and equity? Should they be tax-based programs
17 voted on by the Ohio General Assembly, as opposed to programs and costs
18 embedded in utility specific rates for select geographic areas of the state and only
19 for a select group of beneficiaries?

20 The *de facto* taxation and redistribution measures that are proposed in the stipulations
21 properly belong to the Ohio General Assembly, not the Commission.

22

1 **Conclusion**

2 **Q. Have your prior recommendations to the Commission with regard to the**
3 **Companies' "Powering Ohio's Progress" strategy, set forth in its Fourth Electric**
4 **Security Plan, changed in any way as a result of the Supplemental Stipulations?**

5 A. No. I continue to recommend that the Commission reject the Companies' request for
6 the establishment of a rider and the utilization of a power purchase agreement to
7 subsidize portions of the aging, inefficient power plants owned by their affiliate,
8 FirstEnergy Solutions. I also continue to recommend that the Commission reject any
9 proposals that are detrimental to Ohio businesses and economic growth, and that are not
10 in the public interest, including incentives that are neither uniformly applied nor available
11 to all similarly situated customers. The redistributive features of the stipulations that shift
12 costs to companies that are not part of the redistributive coalition will cause those
13 companies to face higher operating costs and be less competitive.

14 **Q. Does this conclude your second supplemental testimony?**

15 A. Yes.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served on August 10, 2015 by electronic mail upon the persons listed below.

/s/ Rebecca L. Hussey

Rebecca L. Hussey

Thomas.mcnamee@puc.state.oh.us
Thomas.lindgren@puc.state.oh.us
Ryan.orourke@puc.state.oh.us
mkurtz@BKLLawfirm.com
kboehm@BKLLawfirm.com
jkylercohn@BKLLawfirm.com
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com
joseph.clark@directenergy.com
ghull@eckertseamans.com
myurick@taftlaw.com
dparram@taftlaw.com
Schmidt@sppgrp.com
ricks@ohanet.org
tobrien@bricker.com
mkl@bbrslaw.com
gas@bbrslaw.com
ojk@bbrslaw.com
wttpmlc@aol.com
jscheaf@mcdonaldhopkins.com
gkrassen@bricker.com
dstinson@bricker.com
dborchers@bricker.com
drinebolt@ohiopartners.org
meissnerjoseph@yahoo.com
LeslieKovacik@toledo.oh.gov
trhayslaw@gmail.com
Jeffrey.mayes@monitoringanalytics.com
mhpeticoff@vorys.com
mjsettineri@vorys.com
glpetrucci@vorys.com
msoules@earthjustice.org
sfisk@earthjustice.org
lhawrot@spilmanlaw.com
dwilliamson@spilmanlaw.com
mdortch@kravitzllc.com
rparsons@kravitzllc.com
Cynthia.brady@exeloncorp.com
David.fein@exeloncorp.com

burkj@firstenergycorp.com
cdunn@firstenergycorp.com
jlang@calfee.com
talexander@calfee.com
dakutik@jonesday.com
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
cmooney@ohiopartners.org
callwein@wamenergylaw.com
joliker@igsenergy.com
barthroyer@aol.com
athompson@taftlaw.com
Christopher.miller@icemiller.com
Gregory.dunn@icemiller.com
Jeremy.grayem@icemiller.com
tdougherty@theOEC.org
jfinnigan@edf.org
Marilyn@wflawfirm.com
todonnell@dickinsonwright.com
matt@matthewcoxlaw.com
mfleisher@elpc.org
mitch.dutton@fpl.com
selisar@mwncmh.com
ccunningham@akronohio.gov
asonderman@keglerbrown.com
sechler@carpenterlipps.com
gpoulos@enernoc.com
toddm@wamenergylaw.com
amy.spiller@duke-energy.com
Jeanne.kingery@duke-energy.com
Larry.sauer@occ.ohio.gov
Michael.schuler@occ.ohio.gov
Kevin.moore@occ.ohio.gov
Tony.mendoza@sierraclub.org
hmadorsky@city.cleveland.oh.us
blanghenry@city.cleveland.oh.us
kryan@city.cleveland.oh.us
gthomas@gtpowergroup.com
Schmidt@sppgrp.com

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

**Summary: Testimony Second Supplemental Testimony of Edward W. Hill electronically filed by
Ms. Rebecca L Hussey on behalf of OMAEG**

Senate Public Utilities Committee

Revisiting Ohio's Energy Efficiency Mandates

Submitted by:

**Leila L. Vespoli
Executive Vice President and
General Counsel
FirstEnergy**

April 9, 2013

Chairman Seitz, Vice Chair LaRose, Ranking Member Gentile, and honorable members of the Senate Public Utilities Committee, thank you for the opportunity to appear before you today.

My name is Leila L. Vespoli. I serve as Executive Vice President and General Counsel at FirstEnergy.

As the largest electric distribution service provider in the state, FirstEnergy's Ohio utilities serve more than two million customers across the northern tier of the state, as well as in portions of central Ohio. We also have a competitive business, FirstEnergy Solutions, which owns and operates power plants, and supplies retail generation service to more than two and a half million electric customers in Ohio and five other states.

Like Ohio's other investor-owned utilities, FirstEnergy currently remains on track to continue meeting the energy efficiency and peak demand reduction benchmarks established in 2008 under Senate Bill 221. However, we believe these mandates were established under a different set of circumstances – at a time when the economy was booming, electric demand was soaring and our energy supply options were thought to be limited. Since then, the landscape has changed dramatically, and the law is now having unintended consequences not foreseen when the law was passed. These consequences are harming electric customers, delaying our state's economic recovery, and limiting Ohio's prospects for future growth. My testimony will highlight three key areas that illustrate why we're urging the legislature to revisit and modify the energy efficiency provisions as soon as possible:

1. **Changing economic realities** – Today's low power prices and plentiful energy sources call for a change in policy.
2. **Unintended consequences** – The cost of meeting future benchmarks jeopardizes economic growth and may restrict the development of shale gas in Ohio.
3. **Low participation** – Nearly all electric customers in Ohio pay for energy efficiency programs, but only a fraction participate. That means that the effect of the mandate is a huge cost shift among customers.

Before I expand on these issues, let me draw a clear distinction between voluntary and mandated energy efficiency and why we believe voluntary energy efficiency is a good thing while mandating energy efficiency is simply not in our customers' – or Ohio's – best interest. Long before state mandates were in place, our company worked closely with our customers to help them use energy wisely. For many of our customers – particularly our larger customers who could improve their bottom line by reducing their electric use – energy efficiency often just made good business sense. They didn't need a state mandate or incentive to make wise decisions when it came to their energy use. Their decisions were based on criteria that made sense from a business perspective. If the payback period for an energy efficiency project was 20 years, for example, I doubt that an investment would have been made.

But energy efficiency took on new meaning in Ohio five years ago when the General Assembly passed Senate Bill 221. For the first time, Ohio's electric companies were required by law to aggressively convince customers to use less of the product we produce and deliver to them – with customers footing the bill for that "privilege."

Let me explain why these mandates are having unintended consequences not foreseen when the law was passed – and why there is merit in revising the existing law.

Number One – Changing Economic Realities: There is no doubt that Ohio's economic landscape has changed dramatically since Senate Bill 221 was passed five years ago.

At that time, our economy was still booming and many Ohio factories were running third shifts. Electric demand was steadily rising, and electric prices were already at record highs. And there was a concern that prices would go even higher because there appeared to be limited options available for producing affordable electricity in the future. Stated in economic terms: demand was rising and there weren't sufficient moderately priced supply options available to meet that demand, so there was a concern that the "unchecked" demand would lead to even higher electric prices.

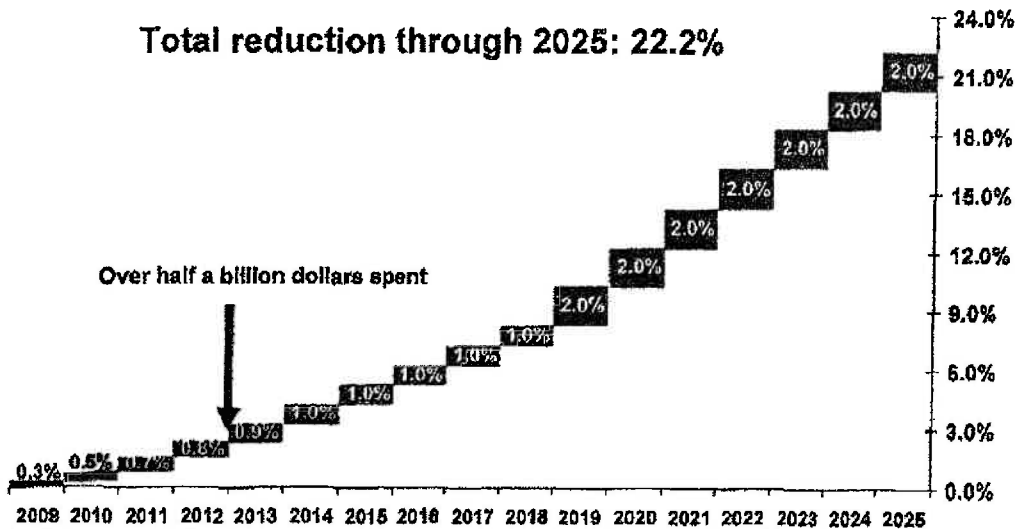
But since then, the world has changed. Every factor I just mentioned no longer applies today. Electric demand remains flat, and wholesale power prices are at their lowest levels in 10 years.

But the game changer is the new generation supply option. A gas plant fired by shale gas – an abundant resource that we didn't really know existed five years ago.

So what may have been good public policy at the time the law was passed may no longer be good public policy today.

Number Two – Unintended Consequences: Describing Ohio's current mandates as "aggressive" is putting it mildly. By 2025, each utility must achieve annual cuts that will ultimately reduce the amount of electricity our customers use by more than 22 percent – that's nearly a quarter of the electricity powering Ohio's economy.

Ohio law calls for these aggressive reductions to be paid for by utility customers as part of multiyear energy efficiency plans approved by the PUCO. However, most Ohio consumers are completely unaware they pay for these programs every month even though the overall price tag amounts to a staggering tax. I'm sure your constituents would be surprised to learn that since 2009, Ohio's electric customers have paid more than a half-billion dollars in monthly charges for energy efficiency programs. And so far, this mountain of customer charges has only achieved a 2.3 percent reduction in usage – just over 10 percent of the 22.2 percent overall mandated reduction.



And that reduction was achieved using the cheapest programs -- the lowest hanging fruit if you would. Those programs will need to be supplemented with more expensive programs to achieve future reductions. When you factor in those mandated reductions into an already sluggish economy, you're left with a costly measure at a time when growth is sorely needed.

Adding to the cost are current guidelines that do not allow our utilities to count every form of energy efficiency savings gained by the customer. For example, if an industrial customer replaces a 30 year-old motor with a new high-efficiency model, utilities should be able to count all of the energy savings actually occurring when the old motor is replaced. Yet, in Ohio, utilities are often limited to counting only the efficiency gains that occur above and beyond the current minimum federal standards for new motors. This is just one of the many real-life examples of how the implementation of the current law essentially raises the mandate even higher than the 22 percent on the books, making the goals even more difficult to achieve and more expensive for our customers.

This increasing financial burden on our customers is a concern to FirstEnergy because our success is directly tied to the success of our customers and the communities we serve. Ultimately, the cost of these mandates will lead to fewer jobs and less growth. That's a bad outcome for everyone.

The numbers contained in Ohio's latest Long-Term Forecast Reports are particularly telling. The reports, filed with the PUCO every year by Ohio's investor-owned utilities, forecast electric usage expected in each of their respective territories over the next decade. What the latest report says is that when you factor in the mandates, not a single one of Ohio's investor-owned utilities is projected to reach pre-recession power sales through the year 2020. Let me repeat that. There is no load growth projected in any Ohio utility service territory between 2007 and 2020. Electric use has traditionally been a bellwether of the American economy and a key indicator of economic success, particularly in an energy-intensive manufacturing state like Ohio. Yet, under the current law we will continue to march on with costly programs that discourage electric load growth despite low power prices and adequate generation supply.

Ohio GWh Delivery Sales by Company				
Year	FE	AEP	DUKE	DP&L
2007	56,460	49,737	21,900	15,260
<div> <div>-6%</div> <div>-4%</div> <div>-7%</div> <div>-13%</div> </div>				
2020	53,220	47,546	20,471	13,264

Source: 2012 Ohio Long-Term Forecast Reports

But there's more: by artificially suppressing electric demand, we may be unintentionally restricting the development of shale gas – a potential economic game-changer in Ohio. Under the current law, energy producers are less likely to build new gas-fired generating plants based on flat or declining electric load growth. Investors won't have the certainty they need to finance new power plants, and developers will be less willing to risk capital in a market with aggressive mandates in place. We have to consider whether this law undermines the development of this low-cost, domestic energy source in our state. Are we seizing this opportunity, or are we suppressing it?

Number Three – Low Participation Rates: It's important to note that when utilities began charging customers for energy efficiency a few years ago, public information campaigns urged customers to participate in the energy efficiency programs under the premise that the resulting savings would outweigh the monthly charges. But the reality is that while all customers pay for the programs, only a fraction of them are using the programs – which amounts to a “tax” on all those who don't or can't participate.

And the vast majority of them don't participate. Almost 98 percent of our business customers don't take advantage of the programs. And if you exclude discounts for compact fluorescent bulbs, only 7 percent of our residential customers participate – despite a significant public

education campaign that's been going on for years. These are staggering statistics when you consider that practically every customer is paying for these programs every month.

Our customers often have good reasons for not participating. They may determine that the long-term payback may not justify the up-front costs. In our challenging economic climate, many customers simply don't have the money to make these investments. But their electric bills will increase regardless, to pay for energy efficiency programs used by other customers.

Many businesses have already invested in energy efficiency initiatives that made sense for them prior to Ohio's mandates. Yet, they have to pay for similar programs that benefit others – including their direct competitors in some cases. This amounts to an entitlement program that shifts costs from one group of businesses to another.

We believe that, absent the mandates, our customers will continue to pursue energy efficiency projects when it makes sense for them. And because what is good for the customer is also good for Ohio's utilities, we will continue to work with our customers who want to conserve energy. That is voluntary energy efficiency – not mandated energy efficiency – and it is a good thing.

For these and other reasons, we believe the time is right for the legislature to review and adjust the current law with a sense of urgency. Energy efficiency existed long before these mandates were enacted – and it will continue to be pursued even if Ohio's energy efficiency law is changed. Ultimately, businesses and consumers should be allowed to make their own decisions on how to meet their specific energy needs. We cannot afford arbitrary and overly prescriptive requirements that raise electricity prices.

Thanks again for the opportunity to testify today.

Exhibit D

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, October 8, 2015.

VOLUME XXVI

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

APPEARANCES: (Continued)

Bricker & Eckler, LLP
 By Mr. Dane Stinson
 and Mr. Dylan Borchers
 100 South Third Street
 Columbus, Ohio 43215-4291
 Bricker & Eckler, LLP
 By Mr. Glenn S. Krassen
 1001 Lakeside Avenue East, Suite 1350
 Cleveland, Ohio 44114
 On behalf of the Northeast Ohio Public
 Energy Council, Ohio Schools Council, and
 Power for the Schools.

Earthjustice
 By Mr. Shannon Fisk
 Northeast Office
 1617 John F. Kennedy Boulevard, Suite 1675
 Philadelphia, Pennsylvania 19103

Earthjustice
 By Mr. Michael Soules
 1625 Massachusetts Avenue NW, Suite 702
 Washington, D.C. 20036
 Sierra Club Environmental Law Program
 Mr. Tony Mendoza
 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.

APPEARANCES:

FirstEnergy Corp.
 By Mr. James W. Burk
 and Ms. Carrie M. Dunn
 76 South Main Street
 Akron, Ohio 44308
 Calfee, Halter & Griswold LLP
 By Mr. James Lang
 and Mr. N. Trevor Alexander
 The Calfee Building
 1405 East Sixth Street
 Cleveland, Ohio 44114

Jones Day
 By Mr. David A. Kutik
 901 Lakeside Avenue
 Cleveland, Ohio 44114

On behalf of the Applicants.
 Bruce J. Weston, Consumers' Counsel

By Mr. Larry Sauer
 Ms. Maureen R. Grady Willis
 Mr. William J. Michael
 Mr. Kevin F. Moore
 Mr. Ajay K. Kumar
 Assistant Consumers' Counsel
 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.

APPEARANCES: (Continued)

IGS Energy
 By Mr. Joseph Olier
 6100 Emerald Parkway
 Dublin, Ohio 43016

On behalf of IGS Energy.

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

On behalf of The Kroger Company.

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

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

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.

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<p>1 APPEARANCES: (Continued)</p> <p>2 Kravitz, Brown & Dortch, LLC</p> <p>3 By Mr. Michael D. Dortch</p> <p>4 and Mr. Richard R. Parsons</p> <p>5 65 East State Street, Suite 200</p> <p>6 Columbus, Ohio 43215</p> <p>7 On behalf of Dynegey, Inc.</p> <p>8 Carpenter Lipps & Leland LLP</p> <p>9 By Ms. Kimberly W. Bojko</p> <p>10 Ms. Rebecca L. Hussey</p> <p>11 Ms. Danielle Ghiloni</p> <p>12 280 North High Street, Suite 1300</p> <p>13 Columbus, Ohio 43215</p> <p>14 On behalf of the Ohio Manufacturers'</p> <p>15 Association Energy Group.</p> <p>16 Carpenter Lipps & Leland LLP</p> <p>17 By Mr. Joel E. Sechler</p> <p>18 280 North High Street, Suite 1300</p> <p>19 Columbus, Ohio 43215</p> <p>20 On behalf of EnerNOC, Inc.</p> <p>21 Boehm, Kurtz & Lowry</p> <p>22 By Mr. Michael L. Kurtz</p> <p>23 Mr. Kurt J. Boehm</p> <p>24 Ms. Jody Kyler Cohn</p> <p>25 36 East Seventh Street, Suite 1510</p> <p>Cincinnati, Ohio 45202</p> <p>On behalf of the Ohio Energy Group.</p> <p>Environmental Law & Policy Center</p> <p>By Ms. Madeline Fleisher</p> <p>21 West Broad Street, Suite 500</p> <p>Columbus, Ohio 43215</p> <p>On behalf of the Environmental Law &</p> <p>Policy Center.</p>	<p>1 APPEARANCES: (Continued)</p> <p>2 Ohio Environmental Council</p> <p>3 By Mr. Trent A. Dougherty</p> <p>4 and Mr. John Finnigan</p> <p>5 1145 Chesapeake Avenue, Suite 1</p> <p>6 Columbus, Ohio 43212</p> <p>7 On behalf of the Ohio Environmental</p> <p>8 Council and the Environmental Defense</p> <p>9 Fund.</p> <p>10 Mr. Thomas R. Hays</p> <p>11 8355 Island Lane</p> <p>12 Maineville, Ohio 45039</p> <p>13 On behalf of the Northwest Ohio</p> <p>14 Aggregation Coalition and the Individual</p> <p>15 Communities.</p> <p>16 Ice Miller, LLP</p> <p>17 By Mr. Christopher Miller,</p> <p>18 250 West Street, Suite 700</p> <p>19 Columbus, Ohio 43215-7509</p> <p>20 On behalf of the Association of</p> <p>21 Independent Colleges and Universities of</p> <p>22 Ohio.</p> <p>23 American Electric Power</p> <p>24 By Mr. Steven T. Nourse</p> <p>25 Mr. Matthew J. Satterwhite</p> <p>One Riverside Plaza</p> <p>Columbus, Ohio 43215</p> <p>On behalf of the Ohio Power Company.</p> <p>Mr. Craig I. Smith</p> <p>15700 Van Aken Boulevard #26</p> <p>Shaker Heights, Ohio 44120</p> <p>On behalf of Material Sciences</p> <p>Corporation.</p> <p>Meissner and Associates Law Firm</p> <p>By Mr. Joseph Patrick Meissner</p> <p>5400 Detroit Avenue</p> <p>Cleveland, Ohio 44102</p>
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<p>1 APPEARANCES: (Continued)</p> <p>2 Stone Mattheis Xenopoulos & Brew, PC</p> <p>3 By Mr. Michael Lavanga</p> <p>4 Mr. Garrett A. Stone</p> <p>5 Mr. Owen J. Kopon</p> <p>6 1025 Thomas Jefferson Street, N.W.</p> <p>7 Eighth Floor West Tower</p> <p>8 Washington, D.C. 20007-5201</p> <p>9 On behalf of the Nucor Steel Marion, Inc.</p> <p>10 Barth E. Royer, LLC</p> <p>11 By Mr. Barth E. Royer</p> <p>12 2740 East Main Street</p> <p>13 Bexley, Ohio 43209</p> <p>14 and</p> <p>15 Taft, Stettinius & Hollister LLP</p> <p>16 By Mr. Adrian D. Thompson</p> <p>17 200 Public Square, Suite 3500</p> <p>18 Cleveland, Ohio 44114-2300</p> <p>19 On behalf of the Cleveland Municipal</p> <p>20 School District.</p> <p>21 Spilman, Thomas & Battle, PLLC</p> <p>22 By Mr. Derrick Price Williamson</p> <p>23 Ms. Carrie Harris</p> <p>24 Ms. Lisa Hawrot</p> <p>25 1100 Bent Creek Boulevard, Suite 101</p> <p>Mechanicsburg, Pennsylvania 17050</p> <p>On behalf of Wal-Mart Stores East, LP,</p> <p>and Sam's East, Inc.</p> <p>Mr. Richard L. Sites</p> <p>155 East Broad Street</p> <p>Columbus, Ohio 43215</p> <p>Bricker & Eckler, LLP</p> <p>By Mr. Thomas J. O'Brien</p> <p>100 South Third Street</p> <p>Columbus, Ohio 43215-4291</p> <p>On behalf of the Ohio Hospital</p> <p>Association.</p>	<p>1 APPEARANCES: (Continued)</p> <p>2 Kegler, Brown, Hill & Ritter</p> <p>3 By Mr. Christopher J. Allwein</p> <p>4 and Ms. Margeaux Kimbrough</p> <p>5 Capitol Square, Suite 1800</p> <p>6 65 East State Street</p> <p>7 Columbus, Ohio 43215-4294</p> <p>8 On behalf of the EverPower Wind Holdings,</p> <p>9 Incorporated.</p> <p>10 City of Cleveland</p> <p>11 By Ms. Kate E. Ryan</p> <p>12 Assistant Director of Law</p> <p>13 601 Lakeside Avenue, Room 106</p> <p>14 Cleveland, Ohio 44114</p> <p>15 On behalf of the City of Cleveland.</p> <p>16 Monitoring Analytics</p> <p>17 By Jeffrey Mayes</p> <p>18 2621 Van Buren Avenue, Suite 160</p> <p>19 Eagleville, Pennsylvania 19403</p> <p>20 On behalf of the Independent Market</p> <p>21 Monitor for PJM.</p> <p>22 Dickinson Wright, PLLC</p> <p>23 By Mr. Terrence O'Donnell</p> <p>24 150 East Gay Street, Suite 2400</p> <p>25 Columbus, Ohio 43215</p> <p>On behalf of the Mid-Atlantic Renewable</p> <p>Energy Coalition.</p> <p>---</p>

Armstrong & Okey, Inc., Columbus, Ohio (614) 224-9481

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<p>1 INDEX (Continued)</p> <p>2 ---</p> <p>3 OCC EXHIBITS IDENTIFIED ADMITTED</p> <p>4 26 - Supplemental Testimony of Kenneth Rose, Ph.D. 5372 5406</p> <p>5 ---</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 THE WITNESS: Lael Campbell, 101</p> <p>2 Constitution Avenue, NW, Washington, DC.</p> <p>3 EXAMINER PRICE: Thank you. Please</p> <p>4 proceed, Mr. Petricoff.</p> <p>5 MR. PETRICOFF: Your Honor, at this time</p> <p>6 I'd like to have three exhibits marked. The first,</p> <p>7 we'll call them, Exelon Exhibit No. 1, which is the</p> <p>8 direct prepared testimony of Lael Campbell filed on</p> <p>9 December 22nd.</p> <p>10 EXAMINER PRICE: Be so marked.</p> <p>11 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>12 MR. PETRICOFF: Second I'd like to have</p> <p>13 marked as Exelon Exhibit No. 2, the supplemental</p> <p>14 direct testimony of Lael Campbell, public version.</p> <p>15 EXAMINER PRICE: Be so marked.</p> <p>16 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>17 MR. PETRICOFF: And then I guess in</p> <p>18 keeping with the numbering convention we've used</p> <p>19 before, I'd like to have marked as Exelon Exhibit No.</p> <p>20 2A, the confidential version of the supplemental</p> <p>21 testimony of Lael Campbell.</p> <p>22 EXAMINER PRICE: We'll mark that 3</p> <p>23 Confidential.</p> <p>24 MR. PETRICOFF: That's fine, your Honor.</p> <p>25 (EXHIBIT MARKED FOR IDENTIFICATION.)</p>
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<p>1 Thursday Morning Session,</p> <p>2 October 8, 2015.</p> <p>3 ---</p> <p>4 EXAMINER PRICE: Good morning. The</p> <p>5 Public Utilities Commission has set for hearing at</p> <p>6 this time and place Case No. 14-1297-EL-SSO being In</p> <p>7 the Matter of the Application of Ohio Edison Company,</p> <p>8 the Cleveland Electric Illuminating Company, and, the</p> <p>9 Toledo Edison Company for Authority to Provide for a</p> <p>10 Standard Service Offer pursuant to Revised Code</p> <p>11 4928.143 in the Form of an Electric Security Plan.</p> <p>12 My name is Gregory Price. With me are</p> <p>13 Mandy Willey Chiles and Megan Addison. We're the</p> <p>14 Attorney Examiners assigned to preside over today's</p> <p>15 hearing.</p> <p>16 We'll dispense with appearances again.</p> <p>17 Mr. Petricoff, you may call your next</p> <p>18 witness.</p> <p>19 MR. PETRICOFF: Thank you, your Honor.</p> <p>20 At this time we would like to call to the stand Lael</p> <p>21 Campbell on behalf of Constellation NewEnergy and</p> <p>22 Exelon Generation, LLC.</p> <p>23 (Witness sworn.)</p> <p>24 EXAMINER PRICE: Please be seated and</p> <p>25 state your name and business address for the record.</p>	<p>1 MR. PETRICOFF: That's fine. Thank you,</p> <p>2 your Honor. May I have a moment. I want to give</p> <p>3 these to the court reporter.</p> <p>4 ---</p> <p>5 LAEL CAMPBELL</p> <p>6 being first duly sworn, as prescribed by law, was</p> <p>7 examined and testified as follows:</p> <p>8 DIRECT EXAMINATION</p> <p>9 By Mr. Petricoff:</p> <p>10 Q. Mr. Campbell, do you have with you what</p> <p>11 has just been marked as Exelon Exhibits 1, 2 and 3?</p> <p>12 A. I do.</p> <p>13 Q. And just out of interest, did you bring</p> <p>14 anything else to the stand besides that direct</p> <p>15 prepared testimony?</p> <p>16 A. I also have a copy of my deposition</p> <p>17 transcript.</p> <p>18 Q. Anything else?</p> <p>19 A. That is it.</p> <p>20 Q. Were these exhibits, Exelon Exhibits 1,</p> <p>21 2, and 3, prepared by you or under your direction?</p> <p>22 A. Yes.</p> <p>23 Q. Are there any amendments, changes, or</p> <p>24 updates that are required?</p> <p>25 A. Not that I'm aware of.</p>

4 (Pages 5180 to 5183)

<p style="text-align: right;">Page 5408</p> <p>1 proceeding?</p> <p>2 A. I am.</p> <p>3 MS. BOJKO: Your Honors, at this time I</p> <p>4 would like to mark the direct testimony of Dr. Hill</p> <p>5 as OMAEG Exhibit 17.</p> <p>6 I would like to mark the supplemental</p> <p>7 testimony of Dr. Hill as OMAEG Exhibit 18.</p> <p>8 And I would like to mark the second</p> <p>9 supplemental testimony of the Dr. Hill as OMAEG</p> <p>10 Exhibit 19.</p> <p>11 EXAMINER PRICE: The exhibits will be</p> <p>12 marked accordingly.</p> <p>13 (EXHIBITS MARKED FOR IDENTIFICATION.)</p> <p>14 Q. Dr. Hill, do you have in front of you</p> <p>15 what has been marked as OMAEG Exhibits 17, 18 and 19?</p> <p>16 A. I do.</p> <p>17 Q. And are these all testimony prepared by</p> <p>18 you or under your direction?</p> <p>19 A. They are.</p> <p>20 Q. Since filing your multiple pieces of</p> <p>21 testimony, it's my understanding -- do you have any</p> <p>22 changes in your business status?</p> <p>23 A. I do. When I filed the testimony first,</p> <p>24 I was the dean of the Maxine Goodman Levin College of</p> <p>25 Urban Affairs of Cleveland State University. I</p>	<p style="text-align: right;">Page 5410</p> <p>1 your errata sheet, if I were to ask you the questions</p> <p>2 today that are contained in all three pieces of your</p> <p>3 testimony, would your answers be to those questions</p> <p>4 the same?</p> <p>5 A. Can you repeat, please?</p> <p>6 Q. With the changes provided in the errata</p> <p>7 sheet, if I were to ask you the same questions</p> <p>8 contained in all three pieces of your testimony</p> <p>9 today, would your answers be the same?</p> <p>10 A. They would.</p> <p>11 Q. Dr. Hill, do you recognize that there are</p> <p>12 certain documents that have either been final rules</p> <p>13 provided or final reports issued that would cause the</p> <p>14 need for your testimony as provided to the Commission</p> <p>15 to be updated in some fashion?</p> <p>16 A. Yes.</p> <p>17 Q. You have not made those updates today,</p> <p>18 have you?</p> <p>19 A. I have not.</p> <p>20 Q. And could you explain to us the two</p> <p>21 documents that you're referring to that you would</p> <p>22 need to incorporate into testimony if it were to be</p> <p>23 given today?</p> <p>24 A. Well, on October 1st of this year, the</p> <p>25 USEPA released a new set of standards around carbon,</p>
<p style="text-align: right;">Page 5409</p> <p>1 retired from that position the last day of June 2015,</p> <p>2 and then I was retired for two months. On</p> <p>3 September 1 I became an employee of The Ohio State</p> <p>4 University.</p> <p>5 Q. And, sir, since filing your testimony in</p> <p>6 this case, do you have changes to your testimony?</p> <p>7 A. I made a series of corrections, so the</p> <p>8 answer is yes.</p> <p>9 MS. BOJKO: Your Honor, at this time, we</p> <p>10 prepared a written -- for ease of the Bench, we</p> <p>11 prepared a written errata sheet for all three pieces</p> <p>12 of Dr. Hill's testimony that's been handed out to the</p> <p>13 parties. At this time I'd like to mark that as OMAEG</p> <p>14 Exhibit 20.</p> <p>15 EXAMINER PRICE: Be so marked.</p> <p>16 (EXHIBIT MARKED FOR IDENTIFICATION.)</p> <p>17 Q. Dr. Hill, do you have what's in front of</p> <p>18 you as OMAEG Exhibit 20, the errata sheet?</p> <p>19 A. No, I do not.</p> <p>20 EXAMINER PRICE: Here.</p> <p>21 Q. Are these the changes that you just</p> <p>22 referenced that you made and put together on an</p> <p>23 errata sheet?</p> <p>24 A. Yes, they are.</p> <p>25 Q. With the changes that you've provided in</p>	<p style="text-align: right;">Page 5411</p> <p>1 and that would change some of my testimony that I</p> <p>2 provided back in December. Particularly, there's a</p> <p>3 map in there, and I think that would be the one that</p> <p>4 would cause the -- that could cause changes.</p> <p>5 Q. And do you believe that that changes any</p> <p>6 of the underlying analysis or conclusions that you've</p> <p>7 drawn in your testimony?</p> <p>8 A. No.</p> <p>9 Q. And have you brought with you today</p> <p>10 copies of what has been provided by the deputy legal</p> <p>11 counsel at the Ohio Senate as self-authenticating</p> <p>12 with regard to one of your attachments?</p> <p>13 A. I have.</p> <p>14 Q. And that is the testimony of Layla</p> <p>15 Vespoli by the FirstEnergy Company in Attachment A to</p> <p>16 your testimony?</p> <p>17 A. It is.</p> <p>18 MS. BOJKO: At this time, your Honor, I</p> <p>19 would like to move OMAEG Exhibit 17, 18, 19 and 20</p> <p>20 subject to cross-examination, and I tender the</p> <p>21 witness for cross.</p> <p>22 EXAMINER PRICE: We will defer ruling on</p> <p>23 the motion for admission until the conclusion of</p> <p>24 cross-examination.</p> <p>25 And let's go off the record.</p>

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Summary: Motion Companies Request for Certification and Application for Review of an Interlocutory Appeal of the Attorney Examiners' Oral Rulings electronically filed by MR. DAVID A KUTIK on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company