

4271

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
Friday, October 2, 2015.

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VOLUME XXII

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1 Friday Morning Session,

2 October 2, 2015.

3 - - -

4 EXAMINER CHILES: Let's go ahead and go
5 on the record. The Public Utilities Commission of
6 Ohio has called for hearing at this time and place
7 Case No. 14-1297-EL-SSO being in the matter of the
8 Application of Ohio Edison Company, the Cleveland
9 Electric Illuminating Company and the Toledo Edison
10 Company for Authority to Provide for a Standard
11 Service Offer pursuant to Revised Code Section
12 4928.143 in the form of an Electric Security Plan.

13 My name is Mandy Chiles. With me are
14 Gregory Price and Meghan Addison, and we are the
15 Attorney Examiners assigned by the Commission to hear
16 this case. We will waive appearances from the
17 attorneys present this morning.

18 Before we begin, are there any
19 preliminary matters to be discussed on the record?
20 Mr. Hays.

21 MR. HAYS: Yes, your Honor. NOAC and
22 individual communities will be withdrawing the
23 testimony of Mr. Vallen.

24 EXAMINER CHILES: Thank you for noting
25 that in the record.

1 MR. HAYS: Thank you.

2 EXAMINER CHILES: Mr. Kurtz, are you
3 ready to proceed?

4 MR. KURTZ: Thank you, your Honor. Is
5 the witness sworn?

6 EXAMINER PRICE: Not yet.

7 (Witness sworn.)

8 EXAMINER CHILES: Thank you. You may be
9 seated and please turn on your microphone.

10 - - -

11 STEPHEN J. BARON

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

14 DIRECT EXAMINATION

15 By Mr. Kurtz:

16 Q. Good morning, Mr. Baron.

17 A. Good morning.

18 Q. Do you have a document in front of you of
19 supplemental testimony of Steven J. Baron?

20 A. Yes, I do.

21 Q. Was this prepared by you or under your
22 direct supervision?

23 A. Yes.

24 Q. If I were to ask you the same questions
25 that were contained herein, would your answers be the

1 same?

2 A. Yes.

3 Q. Do you have any changes or corrections
4 you would like to make?

5 A. Not that I am aware of.

6 MR. KURTZ: Your Honor, could we have
7 this document marked as OEG Exhibit 1?

8 EXAMINER CHILES: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. KURTZ: I tender the witness for
11 cross.

12 EXAMINER CHILES: Let's begin with the
13 companies.

14 MR. KUTIK: No questions, your Honor.

15 EXAMINER CHILES: Ms. Willis.

16 MS. WILLIS: No questions, your Honor.

17 EXAMINER CHILES: Mr. Lavanga.

18 MR. LAVANGA: No questions, your Honor.

19 EXAMINER CHILES: Mr. Soules.

20 MR. SOULES: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Soules:

24 Q. Thank you, your Honor. Good morning,
25 Mr. Baron.

1 A. Good morning.

2 Q. My name is Michael Soules, and I
3 represent Sierra Club in this proceeding. How are
4 you doing?

5 A. I'm doing fine.

6 Q. Great. Before we talk about your
7 supplemental testimony, I would like to quickly cover
8 just a couple definitional points if we can. If I
9 refer to the Ohio Edison Company, the Cleveland
10 Electric Illuminating Company, and The Toledo Edison
11 Company collectively as the companies, will you
12 understand what I mean?

13 A. Yes.

14 Q. And if I refer to FirstEnergy Solutions
15 Corp. as FES, will you understand what I mean?

16 A. Yes.

17 Q. And are you aware that FES owns a 4.85
18 percent interest in two Ohio Valley Electric
19 Corporation power plants?

20 A. Yes.

21 Q. And if I refer to those power plants as
22 the OVEC plants, will you understand what I mean?

23 A. Yes.

24 Q. And if I refer to FES's ownership share
25 in those plans as the FES -- as the OVEC entitlement,

1 will you understand what I mean?

2 A. Yes.

3 Q. Great. Mr. Baron, are you generally
4 aware of the proposed agreement under which FES would
5 sell to the companies the capacity, energy and
6 ancillary services from the Davis-Besse and the
7 Sammis plants in the OVEC entitlement?

8 A. Generally.

9 Q. Okay. If I refer to that proposed
10 agreement as the proposed transaction, will you
11 understand what I mean?

12 A. I'll understand that it's a transaction
13 to facilitate the -- this -- the transfer of energy,
14 capacity, and costs.

15 Q. Okay. Are you aware that the companies
16 and FES executed a term sheet related to the proposed
17 transaction?

18 A. I have -- I am aware of the term sheet.
19 I have not read the term sheet.

20 Q. Okay. Thank you. Are you aware that the
21 term of the proposed transaction would run from
22 June 1, 2016, through May 31, 2031?

23 A. Yes.

24 Q. Okay. Before we go any further, just
25 pause for a moment, do you have any documents other

1 than your written testimony and attachments before
2 you on the stand today?

3 A. No.

4 Q. Okay. Thank you. And in this case --

5 A. Well, excuse me. I have various -- I
6 have excerpts of orders and some testimony of the
7 company and other parties. Is that -- I may have
8 misunderstood your question. I don't have any notes.

9 Q. Okay. What -- what orders do you have
10 copies of?

11 A. I have some excerpts of the AEP ESP
12 order. I may have an excerpt from Duke -- yes, a
13 Duke ESP order. They are all for the most part
14 public documents.

15 Q. Okay. Okay. And then you said you had
16 testimony -- company testimony up there?

17 A. I think I have some testimony of the
18 company and staff. I'm looking. A couple of
19 exhibits, not much.

20 Q. Okay, okay. Great. Well, thank you,
21 Mr. Baron. And in this proceeding, you are
22 testifying on behalf of the Ohio Energy Group,
23 correct?

24 A. Yes.

25 Q. And OEG is a signatory to the stipulation

1 the companies filed with the Commission on December
2 22, 2014?

3 A. Yes.

4 Q. And OEG supports the entire stipulation,
5 correct?

6 A. Yes. That's my understanding.

7 Q. Okay. Have you personally read the
8 stipulation?

9 A. I have.

10 Q. Okay. And it's your understanding that
11 the stipulation recommends the adoption of the
12 companies' proposed economic stability program,
13 correct?

14 A. Yes, among -- and obviously specific
15 provisions or identification of various elements,
16 but, yes, that's correct.

17 Q. What do you mean by verification of
18 various elements?

19 A. Well, the RRS, the various rate
20 provisions that are included and so forth.

21 Q. Okay. Great. Thank you. And so you are
22 familiar generally with the retail rate stability
23 rider; is that correct?

24 A. Generally, yes.

25 Q. Okay. And if the Commission approves it,

1 under rider RRS, the companies would pass through to
2 customers the net of the costs and revenues
3 associated with the Sammis plant, Davis-Besse plant,
4 and the OVEC entitlement; is that correct?

5 A. That's my understanding, yes.

6 Q. Okay. And a rider would continue for a
7 15-year term, correct?

8 A. Yes.

9 Q. Okay. If we could turn to page 5 of your
10 written testimony. Please let me know once you're
11 there.

12 A. Okay. I am on page 5.

13 Q. Great. Looking down at line 21, there is
14 a sentence that begins, "While I have not analyzed
15 the substantive economic analyses with the Economic
16 Stability Program (other than the rate recovery
17 issues for large customer classes)" and the sentence
18 continues on after that. Do you see that portion of
19 your testimony?

20 A. Yes, I do.

21 Q. Okay. Are you aware that companies'
22 witness Jay Ruberto provided an estimate of the costs
23 and revenues associated with rider RRS over the
24 15-year period of the Economic Stability Program?

25 A. Yes.

1 Q. Okay. Did you review Mr. Ruberto's
2 estimate prior to submitting your written testimony
3 in this case?

4 A. I believe I did. I think I read his
5 testimony.

6 Q. Okay. Prior to submitting your written
7 testimony in this case, did you take any steps to
8 verify the reasonableness of Mr. Ruberto's estimate?

9 A. No. As I indicated in the testimony at
10 page 5, line 21, I haven't analyzed the economic
11 and -- I haven't reviewed the economic analyses in
12 the case --

13 Q. Okay.

14 A. -- that underlie the projections of costs
15 and revenues and so forth.

16 Q. So you've -- you've not reviewed the cost
17 projections that were presented by Jason Lisowski in
18 this case; is that correct?

19 A. I have in the last -- since the time I
20 submitted my testimony, I have seen them. I haven't
21 evaluated them in a formal evaluation the way, say,
22 other parties in this case have done in terms of
23 examining the model inputs, the various assumptions,
24 and so forth. I haven't done that type of analysis.
25 I've seen the summary results of really Mr. Ruberto's

1 calculations --

2 Q. Okay.

3 A. -- presentation.

4 Q. Thank you. Sorry to interrupt before you
5 were finished.

6 A. No, no, I'm finished.

7 Q. So is it correct that you did not review
8 Mr. Lisowski's modeling inputs?

9 A. That's correct.

10 Q. Okay. Thank you.

11 A. That wasn't the purpose of my testimony.

12 Q. All right. So just to be clear, you are
13 not offering any opinion in this case about the
14 reasonableness of Mr. Lisowski's cost and revenue
15 projections, correct?

16 A. That -- I think that's fair.

17 Q. Okay. And are you aware that companies'
18 witness Judah Rose provided a forecast to market
19 energy prices, capacity prices and CO-2 prices that
20 were used for Mr. Lisowski's projections?

21 A. Yes, I am aware of that.

22 Q. Okay. Did you review those price
23 forecasts prior to submitting your written testimony?

24 A. I did not.

25 Q. And you are not offering any opinion in

1 this case about the reasonableness of Mr. Rose's
2 price forecasts, correct?

3 A. No. I'm not offering opinion about the
4 reasonableness or the unreasonableness. I am simply
5 not addressing that issue.

6 Q. Okay. Great. Thank you. Could you
7 please turn to page 4 of your written testimony.

8 A. All right.

9 Q. So looking at lines 1 and 2, there's a
10 reference to the company's proposal providing
11 additional rate stability to customers in
12 FirstEnergy's territory. Do you see that reference?

13 A. Yes.

14 Q. Okay. Have you attempted to estimate the
15 amount of rate instability that the companies'
16 customers may face between June 1, 2016 and May 31,
17 2031?

18 A. I haven't done a specific analysis of
19 projections for that period. However, based on my
20 experience and working in -- in Ohio and at -- in
21 evaluating PJM capacity and energy prices, I am aware
22 of the volatility in both of those, both the capacity
23 prices through the RPM, the reliability pricing model
24 results and the LMPs that -- that occur in PJM.

25 And so I have an understanding of that

1 volatility and that's really what I was referring to.
2 There's no -- I don't have any -- any reason to
3 believe and there's no evidence that I'm aware of
4 that would support somehow a change in that, that
5 pattern, over the next 15 years, so what I see --
6 observe, say, in the last couple of years on LMPs in
7 Ohio and PJM in general indicates that there is
8 volatility.

9 MR. SOULES: Your Honor, I'm sorry, could
10 I have that last answer read back.

11 EXAMINER CHILES: You may.

12 (Record read.)

13 MR. SOULES: Thank you.

14 Q. So just to be clear, Mr. Baron, you have
15 not attempted to quantify the amount of rate
16 instability that the companies' customers may face,
17 correct?

18 A. I haven't performed a specific
19 quantification. The analysis -- the basis for my
20 testimony that you cited was the statement in my
21 experience in the general volatility. I haven't
22 performed a statistical analysis of standard
23 deviation or some other measure of volatility, but
24 it's an observation based on my experience that I
25 believe to exist, that is, there is considerable

1 variation in those prices.

2 MR. SOULES: I'm sorry, could I have that
3 last answer also read back.

4 EXAMINER CHILES: You may.

5 (Record read.)

6 MR. SOULES: Thank you.

7 Q. Mr. Baron, have you attempted to quantify
8 the degree to which rider RRS might provide greater
9 rate stability for the companies' customers?

10 A. I have not done a specific analysis.
11 However, I think it's self-evident that when a
12 portion of the -- of customers' overall generation
13 rate is comprised of cost-based capacity and energy
14 in addition to market, all else being equal, it is my
15 opinion that that is going to reduce what otherwise
16 would be the level of volatility or variability in
17 the rates. I haven't done a quantification of that.
18 I don't know that it -- that it could be done. I
19 suppose possibly it could be done, but I didn't think
20 it was necessary.

21 MR. SOULES: Your Honor, I would like to
22 move to strike everything in that answer after the
23 first sentence as being nonresponsive to my question.

24 MS. BOJKO: I join that motion starting
25 with "however". I think consistent with prior

1 rulings, we have given him leeway on three questions
2 now that were yes or no answers about quantification,
3 and he's expanded on all three of those answers.

4 MR. KURTZ: I think the answer was
5 responsive to the relatively broad question about the
6 policy behind the blending of cost-based rates and
7 market-based rates, that that was the answer, but the
8 policy surrounding the RRS.

9 EXAMINER CHILES: Did you want to add
10 something else?

11 MR. SOULES: Oh, I was just going to say,
12 your Honor, I think it could have been answered with
13 a yes or no.

14 EXAMINER CHILES: I am going to deny the
15 motion to strike at this time, but I will direct the
16 witness to answer carefully the question and answer
17 the question and only the question.

18 THE WITNESS: Yes, your Honor.

19 MR. SOULES: Thank you, your Honor.

20 Q. (By Mr. Soules) Mr. Baron, could you
21 please turn to page 7 of your written testimony.

22 A. I'm there.

23 Q. Looking at -- starting on line 3, there
24 are two sentences that read, "There is a chance that
25 the cost of Sammis, OVEC and Davis-Besse will be

1 higher than forecast. But there is also a chance
2 that those costs will be lower." Do you see those
3 statements in your testimony?

4 A. Yes, I do.

5 Q. Okay. Have you quantified the
6 probability that the cost of Sammis, OVEC and
7 Davis-Besse will be higher than forecast?

8 A. No.

9 Q. Have you quantified the probability that
10 the cost of Sammis, OVEC and Davis-Besse will be
11 lower than forecast?

12 A. No.

13 Q. And looking down at line 5, there are two
14 sentences which read, "There is a chance that market
15 prices will be lower than forecast. But there is
16 also a chance that market prices will be higher." Do
17 you see those sentences in your testimony?

18 A. Yes, I do.

19 Q. Okay. Have you quantified the
20 probability that market prices will be lower than
21 forecast?

22 A. No.

23 Q. Have you quantified the probability that
24 market prices will be higher than forecast?

25 A. No.

1 Q. Okay. Looking down near the bottom of
2 page 7, starting on line 23 and then running over to
3 the eighth page, there's a couple of sentences that
4 state, "Given that FirstEnergy's proposal would not
5 harm customer shopping in Ohio, the proposal is not
6 anti-competitive. Nor would the proposal result in
7 customers paying an unlawful subsidy." Do you see
8 those statements in your testimony?

9 A. Yes.

10 Q. Mr. Baron, are you familiar with Ohio
11 Revised Code Section 4928.02 subpart (H)?

12 A. I can't -- I may or may not be familiar.
13 The numerical designation doesn't strike a cord of --
14 in my memory.

15 Q. If you had an opportunity to review that
16 statute, might that refresh your recollection?

17 A. It's possible.

18 MR. SOULES: Your Honor, may I approach?

19 EXAMINER CHILES: You may.

20 Q. (By Mr. Soules) Mr. Baron, if you could
21 please -- feel free to familiarize yourself with the
22 statute, but I would like to specifically draw your
23 attention to subpart (H). And please let me know
24 when you are ready to proceed.

25 A. All right. I have read subpart H.

1 Q. Okay. And are you familiar with this
2 statutory provision?

3 A. I have definitely seen this -- this --
4 this state policy section in the past. I don't
5 recall when I have seen it.

6 Q. On page -- or in the two sentences of
7 testimony that we just referred to, so page 7,
8 starting on line 2 through page 8, line 1, are you
9 offering an opinion about whether rider RRS is
10 consistent with Section 4928.02 subpart (H)?

11 A. I'm obviously not offering a legal
12 opinion. I'm offering an opinion that based on my
13 understanding, discussions with counsel but really
14 more significantly guided by the Commission's
15 decision in the AEP ESP case, 13-2385, where the
16 Commission, as I read it, indicated that a -- the
17 Commission -- I can even quote from it.

18 It says The Commission does not believe
19 that a PPA rider proposal if properly conceived
20 has -- it has -- well, the whole section of that
21 order discusses the fact that a PPA rider like AEP
22 proposed which is similar to what is being proposed
23 in the RRS, as I understand it, the Commission found
24 that it is consistent with Ohio law.

25 Now, as I said, I am not offering a legal

1 opinion. I don't think it would be of any value if I
2 did. I can tell you what my opinion is, and my
3 opinion is that the -- that the Commission in the AEP
4 case concluded that a similar provision proposed by
5 AEP would meet the statutory requirements, though in
6 that particular case, the Commission did not approve
7 it, and there is another proceeding going on right
8 now for -- with AEP proposing a plan.

9 Q. And you submitted testimony in that
10 related proceeding you just referenced, correct?

11 A. Yes, I have.

12 Q. Okay. So are you relying upon the
13 Commission order that you just cited to for these
14 portions of your testimony?

15 A. I am relying on the Commission order and
16 discussions with OEG counsel.

17 Q. And I think you said this, but just to be
18 clear, you are not an attorney, correct?

19 A. Yeah. I'm sorry, I couldn't hear. Say
20 it again.

21 Q. You are not an attorney yourself,
22 correct?

23 A. That's correct.

24 Q. Okay. And looking specifically at page
25 8, line 1, you are not offering a legal opinion about

1 whether rider RRS would require customers to pay an
2 unlawful subsidy, correct?

3 A. I am not offering a legal opinion.

4 Q. Okay. Thank you. And while we are on
5 page 8, if we could skip down a little further to
6 line 7 through 11, in this portion of your testimony,
7 you provided an opinion as to whether the companies'
8 proposal is consistent with Ohio's regulatory
9 structure, correct?

10 A. Yes.

11 Q. And it's your opinion that the proposal
12 is consistent with the regulatory structure, correct?

13 A. Yes, based again -- well, yes.

14 Q. And you are relying upon information
15 provided by counsel for that opinion; is that
16 correct?

17 A. Yes, and my review of the AEP ESP order
18 that I discussed previously.

19 Q. Okay. Could you please look at page 6 of
20 your testimony.

21 A. I'm on page 6.

22 Q. Okay. On line 5 there is a sentence
23 which reads, "In my opinion, it is reasonable for
24 Ohio to maintain some control over generation." Do
25 you see that sentence in your testimony?

1 A. Yes.

2 Q. Is it your understanding that the
3 companies' proposal would give the Commission some
4 control over the operation of Sammis and Davis-Besse?

5 A. I think by -- to some extent, obviously
6 the Commission is not going to operate the plants but
7 through the regulatory process if the -- if a PPA
8 rider RRS was approved, that in conjunction with the
9 transaction, then there would effectively be Ohio
10 Commission regulatory oversight of the entire process
11 similar to, not exactly, but and to some extent maybe
12 closer to traditional regulation. But it's not --
13 obviously it's not -- it's not per se traditional
14 regulation.

15 MR. SOULES: Your Honor, could I have
16 that last answer read back.

17 EXAMINER CHILES: You may.

18 EXAMINER PRICE: And the question too,
19 please.

20 (Record read.)

21 MR. SOULES: Thank you.

22 Q. So, Mr. Baron, when you suggested that
23 the Commission would have oversight over the entire
24 process, is it your understanding then that the
25 Commission would actually have oversight over the

1 operation of those plants?

2 A. I think I indicated that the Commission
3 would not operate the plants but through the
4 regulatory process, even in this -- by virtue of this
5 case, the Commission will have some control over --
6 in terms of the ratemaking process, the company, as I
7 understand it, have the ability, as I understand it,
8 to examine costs that are flowed through and so
9 forth. If -- and that exists under -- in traditional
10 rate regulated jurisdictions. But obviously the
11 Commission is not going to operate the plants.

12 Q. But you think the Commission would have
13 oversight over some operational aspects of the
14 plants?

15 A. I don't think that -- I don't envision
16 that the Commission is going to have oversight over,
17 for example, the bidding strategy that is used to bid
18 the energy, though I don't -- for baseload plants. I
19 don't know that there is much of a strategy, but the
20 Commission is not going to have per se oversight.

21 But on a -- an after the fact basis, I
22 would imagine if the company -- if there was some
23 challenge at some point, assuming RRS was approved,
24 in some future year if there was a challenge by some
25 party, that the Commission -- that the utilities were

1 not operating, say, bidding the plants into PJM over
2 selling energy and capacity in a cost effective
3 manner, the Commission certainly could -- I would
4 think would have an opportunity to review that in the
5 context of approving RRS rates.

6 That would be a general Commission -- I
7 would think the Commission would have that authority.
8 I -- to be honest, I haven't studied that and
9 evaluated whether that would occur. It's just based
10 on my experience in how Public Utilities Commissions
11 would operate.

12 MR. SOULES: Your Honor, could I have
13 just my question read back?

14 EXAMINER CHILES: Sure.

15 (Record read.)

16 MR. SOULES: Thank you. Your Honor, I
17 would move to strike the answer as nonresponsive to
18 my question. My question pertained to the operation
19 of the plants, not to after the fact cost recovery
20 issues.

21 EXAMINER CHILES: Could I have the answer
22 read back, please. I know it's long. Sorry.

23 (Record read.)

24 EXAMINER CHILES: The motion to strike is
25 denied. Mr. Soules, I think you need to maybe be

1 more specific about what you mean as far as
2 operational aspects.

3 MR. SOULES: Okay.

4 EXAMINER PRICE: Or oversight.

5 MR. SOULES: Okay. Thank you, your
6 Honors. Your Honors, I have nothing further.

7 EXAMINER CHILES: Thank you.

8 Ms. Petrucci.

9 MS. PETRUCCI: Thank you very much.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Petrucci:

13 Q. Let's stick with this topic of regulatory
14 oversight. Are you aware, Mr. Baron, that the
15 companies have proposed that the Commission conduct a
16 mathematical review of rider RRS?

17 A. As part of -- are you suggesting -- the
18 answer is I may have seen some reference to that. I
19 would assume that that would be part of Commission --
20 the Commission's ability to review the RRS.

21 Q. Are you aware that the extent to which
22 that review that the companies have proposed is
23 simply mathematical review?

24 A. That -- that the company -- is your
25 question that the company has proposed that the

1 Commission can only review the arithmetic that goes
2 into the formula; is that your question?

3 Q. Yes.

4 MR. KUTIK: Objection, your Honor. It
5 mischaracterizes the companies' proposal.

6 EXAMINER PRICE: But he is seeking
7 clarification.

8 MR. KUTIK: But she said yes.

9 MS. PETRUCCI: I did. I am asking if he
10 is aware of whether or not the companies have
11 proposed to allow -- to have the Commission conduct
12 an annual mathematical review of rider RRS.

13 A. Yes. And I -- but my clarification was,
14 was the question that is the only thing that the
15 companies is saying or seeking Commission ruling,
16 that the Commission would not have any other
17 authority other than that.

18 Q. Okay. Do you know if they've proposed
19 something other than that mathematical review?

20 A. I don't know that. But I -- my
21 recollection, I was trying to find it, is that the
22 Commission has identified a set of criteria that
23 would be considered -- I think it was in the AEP case
24 to -- that would give the Commission authority to
25 have -- to look at the process, the costs that go in

1 and so forth.

2 That's -- and certainly I think that's a
3 reasonable activity for the Commission to conduct.
4 So I don't know whether the company has proposed
5 something else, but I don't know that the
6 Commission -- that the company has said the
7 Commission can't do anything other than arithmetic
8 calculations.

9 Q. Are you aware of whether or not the
10 companies have proposed a review of the
11 reasonableness of actual costs but excluding all of
12 the cost components that they deem to be legacy cost
13 components?

14 A. I just don't recall. I don't recall.

15 Q. Will you agree with me there are multiple
16 ways in which to hedge electric costs?

17 A. As a theoretical matter, yes.

18 Q. And, for instance, large customers can
19 purchase financial hedges, perhaps through NYMEX --
20 the NYMEX exchange or through puts and calls?

21 A. I'm aware that there -- there are NYMEX
22 products. I don't -- I'm not aware that -- that
23 there are -- that extend 15 years.

24 Q. Would you agree there are such options
25 for financial hedges that extend out several years?

1 A. As -- I am not familiar with specifics
2 but as a general matter, I'm aware that through
3 the -- that through futures contracts, there can be
4 strategies confected to accomplish financial hedges
5 for some relatively short period of time. And I
6 think you indicated in your question a couple of
7 years.

8 Q. I used the word several. Would you agree
9 with me they can be multi-year financial hedges?

10 A. Well, I think several in my mind conveys
11 more than one.

12 Q. Okay. Thank you. And large customers
13 can purchase generation from CRES providers at -- on
14 indexed rates with an administrative fee, for
15 instance, as also a means for financially hedging
16 electric costs?

17 A. Again, the answer is yes but that may be
18 for a one-year period, perhaps longer, I don't know,
19 but certainly there's a -- I think that the contrast
20 to RRS -- the RRS proposal is a 15-year period.

21 Q. If I understood your answer, you said you
22 are not sure of the length that these other financial
23 hedges that we have been discussing are, but you are
24 of the opinion that they are not 15 years in length;
25 is that accurate?

1 A. Yes. It's my general understanding that
2 to the extent that a customer enters a contract with
3 a CRES provider, it would be for a much shorter
4 period of time.

5 Q. But you would agree with me that it could
6 be multi years nonetheless, correct?

7 A. I don't know, but I'll accept that that's
8 a possibility.

9 Q. And would you also agree that Ohio
10 customers should be allowed to hedge their power
11 purchases?

12 A. Yes. I think that independent of any
13 regulatory process in Ohio, I would think a customer
14 is free to engage in independent financial
15 transactions. That's -- yes.

16 Q. And do you also agree that customers
17 should have options to select the manner in which
18 they hedge their power purchases?

19 A. Well, yes. I think if I understand --
20 make sure -- I want to make sure I understand your
21 question. If the question is do I think there should
22 be a statute or some Commission rule that would
23 prevent customers from independently engaging in
24 financial transactions, the answer is no, I don't
25 think there should be. And -- but that -- I think --

1 and so if that was your question, then I've answered.
2 If your question was broader with respect to the
3 issues in this case, RRS, my answer would be
4 expanded.

5 Q. Okay. Well, I was speaking generally. I
6 wasn't speaking about a particular statute or a
7 particular rule. I was asking in general. Do you
8 believe that customers should have options to select
9 the manner in which they can hedge their power
10 purchases?

11 A. Yes. And I think I indicated to you that
12 customers should be allowed to engage in independent
13 financial transactions, whether it's buying common
14 equities on the stock exchange or financial futures
15 if that's what the customer wants to do.

16 Q. And do you also agree that it's
17 reasonable to give customers options to select the
18 manner in which they hedge their power purchases?

19 A. Well, I'm not sure I understand that
20 question. Reasonable to give by who?

21 Q. Is it reasonable for customers to have
22 options, to be allowed to have options, I'm sorry, to
23 select the manner in which they hedge their power
24 purchases?

25 A. Well, I think I answered that question

1 previously that to my knowledge, customers in Ohio
2 are free to engage in futures transactions and if
3 it's including buying a NYMEX product, they are
4 allowed to do that. I don't know that that has
5 anything to do with Commission regulation.

6 Q. Well, Mr. Baron, I am asking you if you
7 consider it to be reasonable that customers have the
8 ability to select the manner in which they hedge
9 their power purchases?

10 MR. KUTIK: Your Honor, I object. He has
11 answered this question.

12 EXAMINER CHILES: Ms. Petrucci, do you
13 have a response?

14 MS. PETRUCCI: Well, I think that
15 Mr. Baron is perhaps trying to answer. I'm not sure
16 that he has actually answered the question yet.
17 That's why I have tried it a couple of times, and I
18 think he's even expressed that he's having a little
19 difficulty trying to answer the question.

20 MR. KUTIK: Your Honor, his answer was
21 quite thorough.

22 EXAMINER CHILES: I am going to sustain
23 the objection.

24 Q. (By Ms. Petrucci) Mr. Baron, do you
25 believe it's unreasonable to not give Ohio customers

1 different options that would allow them to select the
2 manner in which they hedge their power purchases?

3 A. Consistent with my -- I think my prior
4 answer, customers should be free -- and this is
5 irrespective of whether the Commission approves the
6 RRS or not, free to engage in -- in financial
7 transactions outside the context of rates.

8 If -- in trying to answer your question,
9 I'm sensing that what you are asking is if something
10 really broader, and that's why I am sort of
11 struggling. It sounds like you're saying the
12 Commission, isn't a problem if the Commission
13 approves the RRS because that's a financial hedge and
14 that would be then setting that as the financial
15 hedge. But that wasn't exactly your question, but it
16 seems like that's where you're going, and so
17 that's -- that's why I am having trouble.

18 Q. Well, I appreciate your trying to figure
19 out where I am going. Let me turn to this -- your
20 testimony on page 5, lines 21 to 22. I know you have
21 already answered some questions from the Sierra Club
22 with respect to the statement there that you have not
23 analyzed the substantive economic analyses associated
24 with the economic stability program. Did you accept
25 the companies' claim that the plants are at risk of

1 closure for purposes of -- for your testimony in this
2 case?

3 A. I did not make any evaluation of that.

4 Q. Did you accept the companies' forecast of
5 the impact of ride -- of the Economic Stability
6 Program?

7 A. The economic results that I was --

8 Q. That you said you did look at, I was
9 wondering if you accepted them.

10 A. I didn't accept them or reject them. I
11 observed them. And since I didn't perform any
12 independent analysis of the modeling, the input
13 assumptions, I didn't form an opinion one way or the
14 other, but I -- I don't have any reason to -- I mean,
15 I have seen some of the testimony from other parties
16 in the case challenging aspects of the assumptions
17 and the modeling and so forth. I'm generally aware
18 of that, and based on my experience, I know that
19 exists any time you have a proceeding like this.

20 But I haven't done any independent
21 analysis, so I haven't -- I've accepted them for the
22 purposes of the analysis -- for my testimony in the
23 sense that I'm aware of it and that the -- it shows
24 the net present value benefit over the term but in
25 the early years, a negative impact.

1 Q. Okay. So then you also understand that
2 the company is forecasting that the rider RRS amount
3 or rate will vary each and every year if their
4 forecasts were to actually come to fruition?

5 A. Yes, absolutely, I am aware of that.

6 Q. And are you also aware that the -- that
7 the rider RRS will be reconciled which then would
8 also have an impact on what the actual rate under
9 rider RRS will be?

10 A. Yes, that it's based on actual revenues
11 and costs.

12 Q. And would you also then understand that
13 the impact of rider RRS will vary differently from
14 what's forecasted by the companies at this time?

15 A. Yes. I would expect so.

16 Q. And do you also agree as a result of such
17 reconciliations, the amount to be applied each and --
18 each of those years is going to change the amount
19 that customers will pay under rider RRS?

20 MR. KUTIK: May I have the question read,
21 please.

22 EXAMINER CHILES: You may.

23 (Record read.)

24 MR. KUTIK: Your Honor, I object. That
25 mischaracterizes the analysis and also

1 mischaracterizes the nature of the rider in that it
2 characterizes the rider as something that customers
3 will pay, end quote.

4 MS. PETRUCCI: I'm fine with that
5 clarification. I understand that perhaps there could
6 be a credit or a charge under the rider but my -- and
7 with that clarification, I'm fine.

8 A. Yeah. I actually was going to respond
9 similarly that based on the companies' forecast after
10 year three, it shows a credit to customer bills, not
11 a payment, but with that clarification, it will vary
12 from the actuals. I am 100 percent certain that the
13 actuals will vary one way or the other from the
14 forecast.

15 Q. And as we sit here today, we don't know
16 how much that variance is going to be one way or the
17 other, correct?

18 A. That's correct. As I think I said that
19 in my testimony, that the market prices could be
20 higher or lower than projected. Costs could be
21 higher or lower and since those too are combined to
22 form the RRS payment or credit, it's going to vary.

23 Q. Okay. Let's shift gears for a moment.
24 With regard to the -- with regard to FirstEnergy's --

25 EXAMINER PRICE: Ms. Petrucci, before you

1 go on, I just have a follow-up question.

2 MS. PETRUCCI: Certainly.

3 EXAMINER PRICE: If the Commission
4 modified the companies' proposal and ordered that the
5 rider be updated biannually instead of annually,
6 would that reduce the amount of variation in the
7 amount of reconciliation?

8 THE WITNESS: I would think all else
9 being equal that -- that it would. That to the
10 extent that the -- that a cost or a revenue changed
11 during -- over a period of a couple of months, that
12 biannual reconciliation, with all else being equal,
13 would have the effect of reducing the -- the rate
14 change every six months. I think arithmetically I
15 believe that would occur.

16 EXAMINER PRICE: Thank you.

17 Thank you, Ms. Petrucci.

18 Q. (By Ms. Petrucci) The extent to which
19 reconciliations result in changes in the rider RRS is
20 dependent on how close to actual the forecasted costs
21 and revenues are; isn't that accurate?

22 A. I'm not sure I agree with that. Maybe
23 I'm misunderstanding your question. I think that on
24 day one the -- there is going to be -- yes, there
25 would be a projection of presumably revenues and

1 costs for that period, and so the reconciliation --
2 it wouldn't be this forecast that's in the companies'
3 exhibit, but I assume it would be a forecast at the
4 time of the filing.

5 Q. If the companies' forecasts for costs and
6 revenues are close to what the actual amounts end up
7 being, whether it's reconciled on a six-month basis
8 or on an annual basis, that means that the
9 adjustment, the amount of reconciliation that has to
10 be applied would be smaller; isn't that accurate?

11 A. Yes.

12 Q. So the frequency with respect to how
13 often a reconciliation takes place only has an impact
14 if, in fact, the forecasts are close to what the
15 actual costs and revenues are; is that correct?

16 A. Yes. And I think the presumption would
17 be that if it was done more frequently, the forecast
18 would be more accurate.

19 Q. Thank you.

20 A. If that's not true, then it wouldn't make
21 any difference.

22 Q. Thank you. Okay. With respect to
23 FirstEnergy's ELR program, that program can -- can be
24 continued --

25 A. I'm sorry, I am not hearing you.

1 Q. Okay. I'm sorry. It just magically --
2 the microphone went out. The --

3 MR. KUTIK: Mr. Baron, you need to put
4 your microphone on.

5 Q. I am not alone apparently.

6 A. Okay.

7 Q. We both are supposed to stop talking.
8 FirstEnergy's ELR program can be continued or
9 expanded or phased out with or without the companies'
10 proposed rider RRS; isn't that true?

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

13 EXAMINER CHILES: You may.

14 (Record read.)

15 A. Yes. I would imagine that would be --
16 that could happen, yes.

17 Q. And the proposed stipulation does not
18 open up the availability of the ELR program to more
19 customers; isn't that correct?

20 A. I think it does. And it's my
21 understanding based on the subsequent stipulations,
22 that additional load has been made available. And as
23 I read the stipulation, to the extent that -- I think
24 the most recent, if customers have not fully met the
25 level of the cap, the megawatt cap, by I think it was

1 May of 2015, then it would be available on a first
2 come first serve basis, so that's my understanding of
3 how it works.

4 Q. Okay. Do you have a copy of either the
5 December -- actually, do you have a copy of both the
6 December stipulation and the May stipulation
7 documents?

8 A. Yes, I believe I do. I've got one of
9 them. Let me see if I can find it.

10 Q. If you find the May stipulation document,
11 maybe we can start with that.

12 MR. KUTIK: May we go off the record,
13 your Honor.

14 EXAMINER CHILES: You can.

15 (Discussion off the record.)

16 EXAMINER CHILES: Let's go back on the
17 record.

18 Q. (By Ms. Petrucci) Okay. So I think we
19 found the right document. Can you turn to page 2.
20 And to be very clear for the record, that's the May
21 2015 Supplemental Stipulation and Recommendation.

22 A. Yes.

23 Q. Okay. And on page 2, there is a
24 paragraph that's marked with a little i and then
25 underneath it there is a paragraph that starts with

1 the No. 1.

2 A. Yes, I see that.

3 Q. Okay. And in looking at that, do you --
4 do you agree with me that the participation in the
5 rider is limited to customers taking service under
6 the rider during ESP III? Do you see that there?

7 A. I see the language -- the reference in
8 little i of that paragraph 1 to customers taking
9 service during ESP III.

10 Q. Okay. So do you agree with me that
11 the -- in looking at that language, the ELR program
12 that's being proposed for ESP IV is limited to the
13 customers that are taking -- by this language limited
14 to the customers taking the rider ELR during ESP III?

15 A. Yes. I think that's what it says, yes.

16 Q. Okay. So now, can we try to find the
17 December stipulation, December 2014 stipulation.

18 A. Okay. I've got that.

19 Q. Okay. And if you could turn to page 7.

20 A. Yes, I have that.

21 Q. Okay. And there you will see a paragraph
22 with a little i and then a paragraph that starts with
23 a No. 1.

24 A. Yes.

25 Q. It also discusses the participation and

1 it being limited. Do you see that?

2 A. Yes. I think when I read -- Yes. When I
3 read it the first time, I had interpreted the "and"
4 as really "or" and not as a -- In reading it now, I
5 think I agree that it's -- the first clause -- as I
6 understand it, of course, I'm not a lawyer, but
7 that's how I interpret it.

8 Q. Okay. And to be fair, if you can look in
9 that same paragraph that starts with the No. 1 at the
10 sub paragraph with the little ii, that talks about
11 the additional kilowatt hours being available for
12 customers who historically have been eligible for
13 rider ELR.

14 A. Yes. I think that's when I -- when I
15 read that and I think the same language is in the May
16 supplement, my -- I interpret it as customers who
17 could have qualified for ELR but maybe were not on
18 ELR, so that's -- that was the confusion as to
19 whether it requires that a customer actually did
20 participate during the ESP III.

21 Q. Okay. So after having looked at this
22 language, do you agree with me the stipulation does
23 not open up the availability of rider ELR to more
24 customers?

25 A. It may. The only exception to

1 clarification in answering to that is as I understand
2 it, there may have been customers who were on ELR
3 during the ESP III but perhaps are not on ELR today,
4 so they're not currently -- perhaps currently not on
5 a ELR. And as I read this, those customers who are
6 not currently on ELR but may have been on it at some
7 point in ESP III may -- may qualify under this too.
8 I'm not 100 percent certain. I didn't negotiate this
9 obviously.

10 Q. But if a new factory came to
11 FirstEnergy's service territory, it would not be able
12 to sign up for the ELR program during -- for use
13 during the ESP IV period; isn't that correct?

14 A. Yes, and that's pretty standard in these
15 types of tariffs. I think AEP's IRP has the same
16 type of provision that the Commission as approved.

17 Q. With respect to the stipulations
18 provision for the automaker credit, the -- that
19 credit can be approved with or without rider RRS,
20 isn't that true?

21 A. Yes, I would agree in some hypothetical
22 independent proceeding, yes.

23 Q. If a new automaker wanted to start a new
24 facility in FirstEnergy's service territory, would it
25 be eligible for this automaker credit?

1 A. I know that the -- I have to look at the
2 tariff.

3 Q. So you're not sure as you sit here today?

4 MR. KUTIK: Your Honor, could he finish
5 his answer, please?

6 EXAMINER CHILES: Were you finished?

7 THE WITNESS: Well, I was just going to
8 say I know that one of the provisions of the tariff
9 is that it's tied to -- the credit is applied to a
10 customer's baseline in a prior year, and so obviously
11 a new customer wouldn't have a baseline, but if
12 you -- I may have the tariff here, and let me just
13 see and I could perhaps clarify my answer.

14 Again, I think it's consistent with what
15 I said, that it appears that it's -- it's based on
16 customers that had 45 million kilowatt hours for the
17 12 months ended December 31, 2009. So I think that's
18 the basis for the economic development provision, is
19 to provide the credit to customers who were on the
20 system in that period.

21 Q. And the automaker credit pays those
22 customers -- those automakers on the system already
23 to increase the use of their electricity; isn't that
24 correct?

25 A. Increase it relative to the very

1 depressed year of 2009 when the economy in the United
2 States and in Ohio was severely down in terms of
3 economic activity, but, yes, yes, that's on a
4 relative basis is designed to provide incentives to
5 large employers in the state to continue production,
6 increase production and presumably increase
7 employment.

8 Q. And you indicated in your testimony that
9 increased production is through the increase of the
10 use of electricity and I was looking at page 16, line
11 23.

12 A. Yes, I said -- that's exactly what I just
13 said, that for auto manufacturers there -- absent
14 some advance, some change in technology, increased
15 electric usage corresponds to increased production
16 which would correspond to increased employment and
17 economic activity in the state -- in Ohio.

18 Q. And you've also indicated in an earlier
19 response, that the credit was essentially an
20 incentive during the recent recession; isn't that
21 correct?

22 A. Well, to the extent that it's tied to a
23 baseline level of 2009, that's -- that's my
24 interpretation. It's a mechanism that all else being
25 equal and incents automakers to keep or expand

1 employment in Northern Ohio.

2 Q. Now, turning to the provision in the
3 stipulation to alter the allocation or the collection
4 under rider RRS, the -- the stipulation proposes to
5 change collection from a kilowatt-hour basis to a
6 billing demand basis; isn't that correct?

7 A. Within the large customer rates, those
8 are intraclass issues, in other words, within a large
9 power rate that the RRS would be recovered on a
10 demand basis. So it's not -- it's not per se -- it's
11 not a cost allocation issue across customer classes.
12 It's -- it's a change in rate design within the
13 class.

14 Q. So if two customers, let's -- fall within
15 the same rate class, they could receive very
16 different credit amounts if rider RRS were a credit
17 because of how their usage falls in comparison with
18 the average of their rate class; isn't that correct?

19 A. Well, I -- it goes without saying that
20 within a rate class, customers with different load
21 characteristics will receive or pay different RRS
22 credits depending on their usage, their load
23 characteristics and that's true whether it's a
24 kilowatt-hour basis or a demand basis. That's simply
25 a fact that by -- but by changing it to a demand

1 basis within the rate class, it's a recognition of
2 the fixed costs aspect of the carrying costs
3 associated with the plants.

4 Q. If rider RRS were collected on a
5 kilowatt-hour basis, each customer within that class
6 would be receiving a credit or a charge based on that
7 same formula, that same amount that's set forth would
8 ultimately be set forth in the tariff, correct?

9 A. Yes. And that would be true if it was a
10 demand basis, every customer in the class, in the GT
11 class or the GP class, would be receiving exactly the
12 same credit on a demand basis. It would be a uniform
13 credit on a demand basis, so that that's -- that's --
14 that hasn't -- that wouldn't change at all. And just
15 to clarify for residential customers or -- or
16 customers that are billed on a kilowatt-hour basis,
17 the charge would continue to be a kilowatt-hour
18 charge.

19 Q. So in the end, customers within the same
20 rate class are going to experience different levels
21 of charges or credits under rider RRS, isn't that
22 correct?

23 A. Yes. And that's always how rate design
24 would work and it -- as I said, if it was on a
25 kilowatt-hour basis, that would also be true, that

1 would be different and it should be different
2 depending on the load characteristics of the
3 customer.

4 Q. And by that, do you mean their load --
5 their usage level? Or when you say load
6 characteristics, are you talking about their usage
7 level or are you talking about something else?

8 A. Well, I -- load characteristics really is
9 a way -- it's sort of a shorthand way of saying
10 demand and energy usage. They are both usage, but
11 load characteristics would be recognized not only the
12 volume of energy used but the pattern of usage, the
13 load factor of the customer and so forth. And that's
14 generally how costs are recovered in large customer
15 classes in that manner, both on a demand and an
16 energy basis.

17 MS. PETRUCCI: If I can have just one
18 moment.

19 EXAMINER CHILES: Sure.

20 MS. PETRUCCI: I have no further
21 questions. Thank you very much, Mr. Baron.

22 THE WITNESS: Thank you.

23 EXAMINER CHILES: Thank you. Ms. Bojko?

24 MS. BOJKO: Thank you.

25 - - -

1 CROSS-EXAMINATION

2 By Ms. Bojko:

3 Q. Good morning, Mr. Baron.

4 A. Good morning.

5 Q. Good to see you again.

6 A. Likewise.

7 Q. It's your understanding, sir, that Ohio
8 is in a deregulated state; is that correct?9 A. Well, it's a retail access state. I --
10 it's not fully deregulated because we wouldn't be
11 here otherwise.12 Q. Well, it's your understanding that
13 distribution utilities have either divested or are in
14 the process of divesting their generation functions
15 and they will no longer own generation; is that
16 correct?

17 A. Yes.

18 Q. And currently the companies, meaning the
19 FirstEnergy companies, do not own any generation; is
20 that correct?21 A. That's correct, yes. That's my
22 understanding.23 Q. And is it your understanding that
24 FirstEnergy Solutions, an unregulated affiliate, owns
25 the plants that are the subject of the purchase power

1 agreement that we have been discussing this morning?

2 A. Yes, and just -- and I know this is what
3 you meant, but it's not regulated by the Ohio
4 Commission. I assume it's regulated by the FERC to
5 some extent.

6 Q. Right. And also just for clarification
7 purposes, the OVEC units are also owned by
8 FirstEnergy Solutions, the percentage of their
9 entitlement is owned by FirstEnergy Solutions; is
10 that correct?

11 A. Yes.

12 Q. Okay. And although you discuss in your
13 testimony what you believe the Ohio -- Ohio, the
14 State of Ohio, can or cannot do with regard to
15 generation pricing and the regulatory structure,
16 you've stated here today that you're not an attorney
17 and you are not making any kind of legal conclusions
18 with regard to that; is that correct?

19 A. Yes.

20 Q. And you stated this morning that did you
21 not review 4928.02(h) or any other statutory
22 provision prior to drafting your testimony; is that
23 correct?

24 A. I don't think I said that. I think the
25 question was did I -- am I familiar with 4928.02 and

1 the numerical designation didn't ring a bell. When I
2 was handed the document, I think I indicated that I
3 had seen it before and probably in a number of cases.

4 Q. Okay. You would agree with me, sir, that
5 rate stability is an important issue for all
6 customers, especially large commercial/industrial
7 customers; is that correct?

8 A. Yes.

9 Q. And as a representative of large
10 industrial users, you would agree with me that an
11 increase in electricity prices will likely affect
12 that customer and affect the cost of their product?

13 A. Yes, I would agree with that.

14 Q. And large customers are particularly
15 sensitive to electric price increases and that's why
16 you believe that the ELR and the automaker credit are
17 so important for economic development purposes; is
18 that right?

19 A. Yes. Because I discuss in my testimony
20 because these customers face competition even within
21 their own corporate structure in terms of which plant
22 has been allocated a certain amount of production
23 based on costs. That's how businesses work, in
24 addition to national and international competition
25 from other companies.

1 Q. And you would agree with me, sir, that
2 those economic development considerations are
3 particularly important for customers that are
4 competing in the same area or region; is that
5 correct?

6 A. Yes. I think for -- for large industrial
7 manufacturing customers, the competitive impacts
8 really go -- go beyond region depending on their
9 particular businesses. So if you are a steel maker
10 or an automaker, you're -- it's really national or
11 perhaps even an international market.

12 Q. Right. And it's important that all
13 customers have access to those economic development
14 tools in order to be competitive and stay competitive
15 with each other; is that correct?

16 A. Well, as a general matter, yes.
17 Obviously there are industries, there are types of
18 customers that are more sensitive in terms of their
19 business operations and, therefore, the impact on
20 economic activity in Ohio and employment than others.

21 So, for example, a smaller commercial
22 customer that is competing against like a restaurant
23 that's competing against another restaurant that is
24 paying the same electric bill, the -- you know,
25 electricity is obviously an important element but the

1 competitive aspect of it is not -- perhaps not really
2 an issue because they are both affected by the same
3 cost structures and that's who they are competing
4 against, a customer down the street, and that's not
5 true for large manufacturing customers.

6 Q. It is true for similarly situated large
7 manufacturing customers that have a steel company A
8 versus steel company B, it would be important that
9 they have a level playing field and that they are
10 provided with the same options or tools in order to
11 be competitive with each other, isn't it?

12 A. I think as a general matter, that's true,
13 and it's really -- it's state policy and it's
14 Commission policy that makes that assessment in terms
15 of how a particular rate that the Commission controls
16 is -- is established and what the economic impacts
17 and implications are. It's state policy.

18 Q. And turning back to rider RRS, sir, it's
19 your understanding that rider RRS will include the
20 difference between revenues collected from the sale
21 of the energy capacity and the ancillaries by the
22 companies into the markets as compared to the costs
23 associated with the proposed purchase power
24 transaction; is that correct?

25 A. Yes.

1 Q. And that difference as you explained
2 could either be a charge or a credit?

3 A. That -- yes, that's based on the
4 companies' forecast, that's -- yes, as a matter of
5 structure, that's true, and as a matter of forecast,
6 the companies' forecast shows three years of negative
7 and followed by 12 years of credits to customer
8 bills.

9 Q. And when you say three years of negative,
10 you are saying it will be a cost to customers during
11 the ESP III term; is that correct -- ESP IV, excuse
12 me?

13 A. Based on my interpretation of the
14 companies' forecast, yes.

15 Q. And you understand that the companies'
16 proposal as of right now is that the rider RRS will
17 be adjusted annually so that it would be in effect
18 from June 1 through May 31st of each year; is that
19 correct?

20 A. Yes. That would be my understanding.

21 Q. And so if there were to be some kind of
22 event that you discuss in your testimony, if that
23 event occurred in July under the companies' proposal,
24 the PPA rider would not be adjusted to reflect any
25 results of the event until the following June; is

1 that accurate?

2 A. That's what -- how I would understand it,
3 yes. And that's traditionally how these types of
4 riders would work.

5 Q. And page 6 of your testimony, going to
6 lines 13 and 15, you recognize here that
7 FirstEnergy's proposal, the companies' proposal will
8 result in the companies' retail generation pricing
9 being partially market based and partially cost
10 based; is that correct?

11 A. Yes.

12 Q. And on page 7, lines 17 and 18, you state
13 that the proposed rider is a financial limitation on
14 customer shopping. Do you see that?

15 A. Yes.

16 Q. And in making this statement, you are
17 relying solely on the Commission order that you were
18 referring to earlier today in AEP's ESP proceeding
19 and at the advice of counsel; is that correct?

20 A. Yes. The Commission discussed that in
21 its order.

22 Q. Okay.

23 A. And that's what I based it on.

24 Q. And you mentioned the AEP ESP, I think it
25 was AEP ESP III, AEP ESP III case you filed testimony

1 in that case, did you not, sir?

2 A. I did.

3 Q. And although you talked generally about
4 the rider RRS, you did not -- you were not the
5 witness in that proceeding regarding rider RRS, isn't
6 that correct?

7 A. That's correct.

8 Q. And you also, sir, filed testimony in the
9 last Duke SSO case, ESP case, and you specifically
10 did not address the proposed rider RRS in that case
11 either, did you?

12 A. That's correct.

13 Q. You discussed this morning that there are
14 certain market uncertainties and you agree at the top
15 of page 7 of your testimony that the 15-year PPA
16 does, of course, have risks.

17 A. Yes.

18 Q. And on page 7, line 24, you state that
19 rider RRS will not harm shopping and thus, it is not
20 anti-competitive. Do you see that?

21 A. Yes.

22 Q. And isn't it true that this proposal will
23 favor one generator over another favoring an
24 affiliated generating company?

25 A. In the very limited sense that it is the

1 transaction involves assets owned by FES, that's one
2 owner of assets. And so in -- in that sense, yes.
3 In a broader competitive sense I don't view this as
4 a -- as affecting the market, the market structure
5 per se but in the sense that this involves FES units,
6 it's one -- one entity.

7 Q. And understanding you believe that Ohio
8 is still a hybrid model, it's your understanding that
9 an unregulated affiliate generator owner could not
10 come before the Commission and ask for cost recovery
11 of its generating plants; is that correct?

12 A. In terms of -- just as a stand-alone, if
13 I understood your question, if -- if company X owned
14 generation in Ohio and participated in the PJM
15 market, that company wouldn't be regulated by the
16 Ohio Commission. But I'm not sure -- I don't think
17 there is anything that would preclude a utility, the
18 companies in this case or some other set of
19 companies, from entering a similar type of contract
20 with some non-affiliate generation owner.

21 Q. And, sir, are you aware of whether a
22 competitive solicitation was conducted in this case
23 to do just that?

24 A. I'm not aware that it was. I don't know,
25 but I don't recall seeing anything to that effect,

1 no.

2 Q. And isn't it true that the independent
3 market monitor for PJM also opposes the concept of
4 subsidizing one generator over another stating that
5 it is, in fact, inconsistent with the competitive
6 market construct?

7 MR. KUTIK: May I have the question read,
8 please?

9 EXAMINER CHILES: You may.

10 (Record read.)

11 MR. KUTIK: Your Honor, I object. You
12 know Dr. Bowring is going to be here -- she can ask
13 Dr. Bowring that question.

14 MS. BOJKO: Your Honor, he's stating his
15 belief and I am asking him if he's aware that the
16 independent market monitor for the PJM market that
17 he's discussing disagrees with his statement that
18 there's no effect on the market.

19 EXAMINER CHILES: Overruled. He can
20 answer if he holds an opinion.

21 A. Well, first, I don't agree that it's a
22 subsidy. You didn't ask me did I -- is this a
23 subsidy. You premised that in your question, so I
24 disagree with that premise. I think Dr. Bowring, the
25 Market Monitor did say -- talk about subsidies and he

1 opposed that.

2 First of all, I don't agree that this is
3 a subsidy. It's paying costs -- cost of service
4 pricing for generation. And that occurs in PJM in a
5 number of cases. Dominion Power, Mon Power, another
6 FirstEnergy affiliate, Old Dominion Electric Co-op
7 all owned cost of service based regulated facilities
8 and they participated in PJM. And that's really not
9 any different than what's going on here, so
10 there's -- to my knowledge, PJM doesn't disallow
11 that. It exists by these -- fair amount of capacity
12 actually.

13 MS. BOJKO: Your Honor, I move to strike
14 his entire answer as not responsive. I actually
15 asked if he was aware that the independent market
16 monitor for PJM opposes the concept of subsidizing
17 one generator over another stating that it is
18 inconsistent with the competitive market construct.

19 EXAMINER CHILES: Mr. Kurtz.

20 MR. KURTZ: Your Honor, counsel opened
21 the door very wide for this question and answer by
22 referring to Dr. Bowring's testimony, bringing in the
23 question of whether there is a subsidy. So I think
24 the answer was very responsive.

25 MS. BOJKO: No. I asked if the

1 independent market monitor opposes the concept, if he
2 knows.

3 MR. KUTIK: Your Honor, this is the
4 reason that I objected. If she is just going to ask
5 him what his recollection is of Dr. Bowring's
6 testimony, that's unfair. This witness at least
7 should be able to explain what -- why his views
8 either agree or disagree with Dr. Bowring which is
9 exactly what he did.

10 MS. BOJKO: And that is what redirect is
11 for.

12 EXAMINER CHILES: Thank you. The motion
13 to strike is denied.

14 Q. (By Ms. Bojko) Do you -- are you also
15 aware that staff filed testimony in this case
16 recommending that rider RRS be denied as currently
17 proposed?

18 A. Yes. The staff -- I am aware the staff
19 indicated that there are a set of conditions which
20 the staff believe need to be satisfied in order for
21 it to be acceptable.

22 Q. And you discussed this morning a little
23 bit about the Commission having some oversight or
24 control over the operation of the plants and, sir,
25 you would be -- excuse me. Strike that.

1 You would consider any proposal that
2 would prohibit a thorough review of the plants'
3 operating costs to be unacceptable for customers;
4 isn't that true?

5 A. I would think that -- I haven't balanced
6 all of the equities of this or that or the other, but
7 as a general matter, I believe that the Commission
8 should have review and, in fact, you asked me about
9 the staff's testimony. One of the points raised was
10 rigorous Commission oversight of the PPA rider, and I
11 would characterize that as being able to review costs
12 and revenues.

13 Q. And staff was making a point that the
14 current application does not allow for that and that
15 would be one of staff's recommendations or conditions
16 for any approval of a purchase power agreement in the
17 future; isn't that true?

18 A. The staff -- in answer -- I can
19 absolutely agree that the staff believes that that
20 should be a condition. I'm not certain whether the
21 staff took a position that that was not in there or
22 not. I would have to reread the staff's testimony.

23 EXAMINER PRICE: You need to turn your
24 microphone up.

25 Q. I'm sorry, your mic turned off. Sir, you

1 must be reading from staff testimony; is that a fair
2 assumption?

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

4 Q. You must be reading from staff's
5 testimony; is that a fair assumption?

6 A. I was reading from the testimony of
7 Mr. Choueiki.

8 Q. Choueiki.

9 A. Choueiki, sorry.

10 Q. Dr. Choueiki.

11 A. Dr. Choueiki.

12 Q. Right. And if you turn to 12, sorry. If
13 you could turn to page 12 of Dr. Choueiki's
14 testimony.

15 A. Yes. I see that, and I do see that --

16 Q. Line 12.

17 A. He states that the -- in his opinion the
18 companies at FES did not commit to rigorous
19 oversight. I see that.

20 Q. Okay. Thank you. Let's switch to talk a
21 little bit about demand response. You believe that
22 demand response is a useful tool to reduce strains on
23 the grid during peak times and lower market prices;
24 isn't that accurate?

25 A. Yes.

1 Q. And demand response can also be used to
2 reduce the need for new generation capacity; is that
3 correct?

4 A. Yes. In fact, it does reduce the need --
5 reduce the capacity obligations of LSEs in PJM.

6 Q. And if you are on -- if you look at the
7 last word on page 9 flowing over to page 10, lines 1
8 and 3 of your testimony, you explain that demand
9 response -- you tie it here to economic development
10 and say that demand response can be a useful tool for
11 economic development; is that correct?

12 A. Yes, that's true.

13 Q. And you are supporting today, sir, both
14 stipulations that were filed in this proceeding; is
15 that correct?

16 A. Yes.

17 Q. And the stipulations as you discussed
18 earlier continue the existing ELR program for
19 existing customers meeting certain eligibility
20 requirements and then as expanded to include up to
21 136,250 kW of additional curtailable load; is that
22 correct?

23 A. Yes, that's my understanding.

24 Q. Okay. And also your understanding now I
25 think today is that it's only available to existing

1 customers or those customers who have historically
2 been eligible for rider ELR; is that correct?

3 A. Yes.

4 Q. And that the expanded ELR may have added
5 customers who are historically eligible and who
6 signed the stipulation or were a member of an
7 association that signed the stipulation; is that
8 correct?

9 MR. KUTIK: May I have the question read,
10 please?

11 EXAMINER CHILES: You may.

12 (Record read.)

13 MR. KUTIK: I object to the question as
14 to characterizing the ELR as expanded, end quote.
15 would also object this provision of the stipulation
16 is not limited to individual group members unlike
17 that transmission part of the stipulation.

18 EXAMINER CHILES: Ms. Bojko.

19 MS. BOJKO: Well, I appreciate counsel
20 testifying, but I am trying to ask the witness his
21 extent of his knowledge. He didn't know before today
22 that the requirements were of the existing customers
23 of those who have been historically eligible. In
24 response to --

25 MR. KUTIK: That's not true.

1 MS. BOJKO: He said it was an "or"
2 instead of an "and", and then also we will get to
3 Mr. Kurtz's point, though. In response to Mr. Kutik,
4 he can answer if he knows. I am trying to explore
5 his knowledge of what he believes he agreed to or
6 didn't agree to. It doesn't misrepresent anything.

7 MR. KUTIK: Well, the question assumes
8 that the ELR is "expanded."

9 MS. BOJKO: I'm sorry, he used the word
10 "expanded" earlier today, I believe, so I was using
11 his word, but I can rephrase if that's more
12 appropriate.

13 EXAMINER CHILES: Could you rephrase.

14 MS. BOJKO: Sure.

15 EXAMINER CHILES: Thank you.

16 Q. (By Ms. Bojko) Sir, is it your
17 understanding that the increase of additional
18 curtailable load to rider ELR may have added
19 customers who are historically eligible and who
20 signed or was a member of an association that signed
21 the stipulation?

22 MR. KUTIK: That also mischaracterizes
23 the proposal, your Honor, so I object.

24 MR. KURTZ: I join. I explained why that
25 characterization mischaracterizes the stipulation.

1 MS. BOJKO: Your Honor, if the witness
2 believes he can testify to what he believes, he can
3 testify to a clarification if that's what he would
4 prefer.

5 EXAMINER CHILES: Objection is sustained.

6 Q. Sir, you do believe the ELR added
7 additional curtailable load; is that true?

8 A. The original stipulation added 75
9 megawatts and the subsequent stipulation increased
10 that up to 136,250 kW.

11 Q. Okay. And both of those amounts that you
12 just discussed are in addition to the ELR rider that
13 existed prior to the stipulations being filed; is
14 that correct?

15 A. I think the -- it was -- it was the cap
16 on load. If you will give me a moment, I will get my
17 copy of the original stipulation and try to answer
18 that. It -- the specific language states that it's
19 customers taking service under rider ELR during ESP
20 III and up to 75,000 kW of additional curtailable
21 load on a first come first serve basis for customers
22 who historically have been eligible for ELR.

23 The supplemental stipulation has the same
24 language but it's the 75,000 is now changed to
25 136,250 kW. There's nothing, just to clarify from

1 your prior question, there's nothing that talks about
2 group membership or anything of that nature.

3 Q. Well, let's discuss that. So this
4 stipulation -- Well, first of all, sir, do you know
5 that the additional curtailable load available has
6 already been fully subscribed?

7 A. I don't know.

8 Q. Okay. So the stipulation was filed on
9 May 28, 2015; is that correct?

10 MR. KUTIK: I'm sorry, may I have the
11 question read, please?

12 EXAMINER CHILES: You may.

13 Q. I'll rephrase, sorry. The supplemental
14 stipulation was filed on May 28, 2015; is that
15 correct?

16 A. The date of it is May 26, 2015. But when
17 it was filed, I can't tell you.

18 Q. And where do you -- what? Where do you
19 see a date?

20 A. I am looking at page 5 signed by the
21 authorized agent of the undersigned parties as of
22 this 26th day of May, 2015.

23 Q. Oh, thank you. But if you -- you don't
24 have a docketed copy that has a time stamp of
25 5-28-2015 1:07 a.m.?

1 A. No, I don't.

2 Q. Okay. So if the stipulation was filed on
3 May 28, 2015, which was a Thursday, parties were
4 required to notify them of their intent to
5 participate by written notification on or before
6 May 31st of 2015; isn't that correct?

7 A. There is a -- in paragraph 2 on page 2,
8 there is a statement that says "Provided notice to
9 participate on or before May 1, 2015."

10 Q. Are you reading the supplemental
11 stipulation, sir?

12 A. Yes. And then it goes on and says, Their
13 curtailable load cap of new customers that have
14 provided notices to participate after May 1, 2015,
15 but on or before May 31, 2015 will be approved to
16 participate in rider ELR on a pro rata basis so that
17 it meets the load cap.

18 Q. And the sentence I was reading with
19 regard to written notice is the first sentence in
20 section 2 which says that the aggregate curtailable
21 load cap of new rider ELR customers that have
22 provided companies written notice of intent to
23 participate in this program on or before May 31,
24 2015, shall not exceed 136,250 kW; is that correct?

25 A. That's what it says, yes.

1 Q. Okay. So if the stipulation was filed on
2 Thursday, then customers had to notify -- had to
3 receive the stipulation, review it, and notify the
4 customers the following business day in order to be
5 able to participate in the ELR program; is that true?

6 A. I don't know if it's true, but I
7 certainly follow your logic that if a customer was
8 first made aware of it on the 28th and notice had to
9 be provided by the 31st, that's three days.

10 Q. Or one business day, Thursday to Friday?

11 A. Well, I will take your word. I don't
12 have a calendar in front of me, but I'll accept that.

13 Q. So practically speaking, the customer
14 would have had to have known about the stipulation
15 either through participating in settlement
16 negotiations or by being a member of an association
17 that participated inside the negotiations; is that
18 correct?

19 A. I don't know, but it is what it is.
20 Those are facts.

21 Q. Okay. So let's talk a little bit about
22 what the ELR program does. There are two components.
23 The stipulation provides for two \$5 per kW per month
24 credits; is that correct?

25 A. Yes.

1 Q. So that's a total of \$10 per kW per
2 month; is that accurate?

3 A. Yes.

4 Q. And the first \$5 per kW per unit
5 curtailable load credit is the economic development
6 rider, rider EDR(b); is that correct?

7 A. Yes.

8 Q. And you are aware that the economic
9 development rider credit is only collected from two
10 classes of commercial customers, GS and GP customers;
11 is that correct?

12 A. That's my understanding.

13 Q. And Ohio Energy Group, do they have any
14 GS or GP customers?

15 A. I don't know for a fact. I would imagine
16 that some of the members have some loads on those
17 rates, but I don't know. I haven't looked at any of
18 the billing data.

19 Q. But GS & GP customers would not be
20 typically the type of customers that have high
21 Industrial Energy Users that take service from the
22 companies which those are listed on page 2 of your
23 testimony, lines 2 through 8, isn't that true?

24 A. Generally that's true, but I simply don't
25 know. And in answering your prior question, my

1 experience is that most large industrial customers
2 will have more than one account with the company on
3 different rate schedules. They may have a primary
4 load on one account and then other loads, but I don't
5 know. I indicated that I haven't read -- looked at
6 anybody's bills.

7 Q. And that primary account that you just
8 referenced, that primary account would not be a GS or
9 GP customer. They wouldn't be taking service from
10 them, isn't that correct? Their main facility would
11 not be taking service pursuant to a GS and GP
12 customer rate schedule?

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

14 EXAMINER CHILES: You may.

15 MR. KUTIK: I'll object.

16 (Record read.)

17 EXAMINER CHILES: Grounds?

18 MR. KUTIK: Compound.

19 EXAMINER CHILES: Ms. Bojko, would you
20 rephrase?

21 MS. BOJKO: Sure.

22 Q. The primary account of those large
23 industrial customers would not be taking service
24 pursuant to a GS or GP tariff schedule; is that
25 correct?

1 A. I'm telling you that I don't know because
2 I just haven't looked at the bills. As a general
3 matter, large industrial -- well, it's certainly true
4 that every large industrial customer doesn't take
5 service at a transmission voltage, but I haven't
6 looked at the composition of OEG membership. I just
7 don't know.

8 Q. And the second credit of the rider ELR
9 also equals \$5 per kW per month by unit of
10 curtailable load; is that correct?

11 A. Yes.

12 Q. And that is an ELR credit and is
13 collected from customers in DS E-1.

14 A. Yes.

15 Q. And is collected from all customers
16 except for the ELR customers; is that correct?

17 A. That's my understanding.

18 Q. And on page 12 of your testimony, you
19 cite to ESP II of AEP, but you are aware as we've
20 stated this morning that the Commission recently
21 approved an interruptible program in the ESP III
22 case, is that correct, which is 13-2385?

23 A. Yes, and the Commission in that order
24 approved to continue the IRP credit, the
25 interruptible credit, at \$8.21 a kilowatt and it

1 would apply to shopping and nonshopping customers on
2 the AEP Ohio system.

3 Q. And in that AEP case, we talked a little
4 bit earlier about you filing testimony that
5 summarized rider PPA, but the heart of your
6 testimony, the meat of your testimony in the AEP case
7 was regarding this ELR program; is that correct?

8 A. The IRP program, the interruptible load
9 program.

10 Q. Thank you for that. Interruptible
11 program, clarification. And you proposed in the AEP
12 case two options, you proposed two different types of
13 interruptible programs; is that accurate?

14 A. That's my recollection.

15 Q. And the first option was based on the
16 approach to approve by the Commission for Duke and
17 would be patterned after the PJM limited emergency
18 demand response program; is that correct?

19 A. I -- yes, I recall that. I haven't
20 reviewed that testimony in a while, but I do recall
21 there were two options. The Commission accepted the
22 8.21 and authorized that.

23 Q. And you also, your first option, was that
24 it would be available to all customers, both standard
25 service offer and shopping customers, and it would be

1 set equal to 50 percent of net CONE which -- is that
2 correct?

3 A. That's my recollection, but, again, the
4 Commission rejected that.

5 Q. And your proposal of the 50 percent net
6 CONE in your testimony was calculated to be about
7 \$5.36 kW a month, but I believe on the stand, you
8 calculated it to be about \$4.88 per kW a month; is
9 that correct?

10 A. I just don't remember, but that sounds
11 close.

12 EXAMINER CHILES: Let's go off the record
13 for a moment.

14 (Discussion off the record.)

15 EXAMINER CHILES: Let's go back on the
16 record.

17 Ms. Bojko, sorry for the interruption.

18 MS. BOJKO: Thank you, your Honor.

19 Q. (By Ms. Bojko) Mr. Baron, before the
20 break we were discussing your AEP testimony and I
21 believe you stated that you didn't quite recall but
22 it sounded correct. I have your testimony.

23 MS. BOJKO: Your Honors, may I approach?

24 EXAMINER CHILES: You may.

25 MR. KUTIK: Mike, do you want to go to

1 this?

2 MS. BOJKO: I'm sorry. I handed it to
3 the wrong one. My apologies, Mr. Kurtz.

4 MR. KURTZ: Oh, that's okay.

5 MS. BOJKO: Your Honor, at this time, I
6 would like to mark this as OMAEG Exhibit --

7 EXAMINER CHILES: I believe we are at 16.

8 EXAMINER PRICE: We know we didn't mark
9 something 13.

10 MS. BOJKO: Oh, we can mark this 13, how
11 about that? So we don't have a gap. OMAEG Exhibit
12 13.

13 EXAMINER CHILES: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. (By Ms. Bojko) Sir, do you have in front
16 of you what has been marked as OMAEG Exhibit 13?

17 A. Yes.

18 Q. And is this a copy of your testimony
19 filed on May 2014 in Case No. 13-2385-EL-SSO?

20 A. Yes.

21 Q. And it says just May on the front cover,
22 May 2014, but it appears that it was filed around May
23 2nd by the affidavit attached; is that your
24 recollection?

25 A. That's fine, yes.

1 Q. If you turn to pages -- turn to page 16
2 of this testimony.

3 A. 16?

4 Q. Yes.

5 A. Yes.

6 Q. Page 16 here is where you will find your
7 discussion of your recommendation on line 10
8 regarding the Duke interruptible rate being an
9 interruptible credit set at -- set equal to
10 50 percent of net CONE about \$5.36 kW a month; is
11 that correct?

12 A. Yes.

13 Q. And your second criteria of that first
14 option was that the rate would be available to all
15 customers both shopping and nonshopping; is that
16 correct?

17 A. Yes, that's my recollection, and as I
18 indicated, the Commission ultimately approved the
19 8.21 per kW credit and made it available to shopping
20 and nonshopping customers in this case, the AEP case.

21 Q. Okay. Thank you for that. And the next
22 sentence on line 13, you are explaining that your
23 first option for the Commission was reasonable
24 because while the \$5.36 kW a month credit is
25 significantly less than the current \$8.21 kW per

1 month credit in the AEP territory, it is greater than
2 the current PJM RPM rate; is that correct?

3 A. Yes.

4 Q. And then the second option you propose to
5 the Commission was an unlimited emergency
6 interruptible rate that was set at \$8.21 per kW per
7 month credit; is that correct?

8 A. Yes.

9 Q. And as you just explained, the Commission
10 chose a hybrid, they chose option 2 but also made it
11 available to nonshopping customers and shopping
12 customers; is that correct?

13 A. Yes.

14 Q. And, sir, you also filed testimony in the
15 Duke SSO case which was Case 14-841-EL-SSO where the
16 Commission also approved an interruptible program; is
17 that correct?

18 A. Yes.

19 Q. And in the Duke case, you discussed the
20 options that you provided in the AEP case and you
21 also discussed the Duke's power share demand response
22 program; is that correct?

23 A. I recall discussing that, yes.

24 Q. And, sir, the Duke's power share demand
25 response program provided an approximate \$3 or \$3.50

1 kW a month per credit; is that correct?

2 A. That's my general recollection.

3 MS. BOJKO: Your Honor, at this time, may
4 I have marked as OMAEG 16 the direct testimony of
5 Stephen J. Baron in Case No. 14-841-EL-SSO, et al.

6 EXAMINER CHILES: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MS. BOJKO: May I approach?

9 EXAMINER CHILES: You may.

10 MS. BOJKO: And, your Honor, I didn't
11 make copies since it a publicly filed document for
12 the parties.

13 Q. (By Ms. Bojko) Sir, do you have in front
14 of you what's been marked as OMAEG 16?

15 A. Yes.

16 Q. And is this your testimony that was filed
17 in the Duke -- the most recent Duke ESP case?

18 A. It appears to be, yes.

19 Q. And if you turn to page 18 of that
20 testimony.

21 A. All right. I'm on 18.

22 Q. On page 18 is -- does this refresh your
23 recollection that you recommended continuing the Duke
24 program and providing an IRP credit of 50 percent of
25 net CONE which is approximately \$5.36 at the time you

1 filed your testimony?

2 A. Yes, that was my recommendation.

3 MS. BOJKO: Your Honor, I am not going to
4 mark this, but may I approach the witness?

5 EXAMINER CHILES: You may.

6 Q. (By Ms. Bojko) Mr. Baron, do you have in
7 front of you what appears to be a transcript Volume
8 VIII from the Duke Case No. 14-841-EL-SSO case?

9 A. Yes.

10 Q. And if you turn to page 2364.

11 A. Yes.

12 Q. I'm sorry.

13 A. Yes, I have 2364.

14 Q. Do you see on line 22 that you state you
15 believe your calculation of one-half of net CONE is
16 roughly \$4.88 per kW a month?

17 A. I see that.

18 Q. And if you turn to the next page, 2365,
19 do you see a discussion with your counsel about the
20 Duke power share program and that that amount or that
21 credit equaled approximately \$3 or \$3.50?

22 A. Yes.

23 Q. And the Commission accepted your
24 recommendation in the Duke case and adopted an IRP
25 credit of 50 -- half of net CONE which was

1 approximately either \$4.88 or \$5.36?

2 A. Yes.

3 Q. Sir, do you know how many customers are
4 on the ELR program proposed by FirstEnergy companies
5 in this case?

6 A. I believe it's currently 27, but I don't
7 have that with me. That's my recollection.

8 Q. And you don't know, I take it from your
9 testimony earlier today, how many customers subscribe
10 to the additional 136,000 kW in the stip- -- in the
11 supplemental stipulation?

12 A. I do not.

13 Q. And, sir, do you know the amount
14 associated with the credits, with the \$10 credit that
15 are projected to be passed on to other customers in
16 this proceeding?

17 A. The net amount of that?

18 Q. Yes.

19 A. I don't have that calculation. It would
20 basically be the portion that's recovered through the
21 EDR, plus the portion that's recovered through the DS
22 E-1 charge which is net of proceeds from PJM,
23 80 percent of those proceeds from PJM that the
24 company receives from using -- bidding the
25 interruptible load into the BRA or an interim

1 auction.

2 Q. Okay. Just walk me -- walk through the
3 calculation with me. So the way to calculate the
4 total maximum revenues that could be passed on to
5 customers -- strike that.

6 In order to calculate the total amount of
7 costs of providing the credits that will be passed on
8 to other customers not receiving the credits, the
9 Commission would take the \$10 per kW per month and
10 they would multiply it by the interruptible load; is
11 that the first step?

12 A. Yes.

13 Q. And then you would take that number and
14 you would multiply it by 12 months, is that correct,
15 to get an annual figure?

16 A. Yes.

17 Q. And then you would take that number and
18 you would multiply it by three years for the term of
19 the ESP; is that correct?

20 A. Assuming that -- let's just say for each
21 kW of load, yes, you would do that and obviously it
22 depends on whether the same amount of load is on
23 every day or every month but, yes, conceptually
24 that's correct.

25 Q. And then the total is passed on to

1 customers, either GP and GS customers, only through
2 the EDR rider or it would be passed on to all
3 customers except for rider ELR customers through
4 rider ELR; is that correct?

5 A. Well --

6 Q. Or DSE?

7 A. \$5 of the credit is through EDR and the
8 other \$5 is through DS E-1, but we didn't -- you
9 didn't talk about the netting of revenues that --
10 which would be offset in the DS E-1 calculation.

11 Q. Thank you for that clarification.

12 Assuming that that provision is adopted again; is
13 that correct?

14 A. Yes.

15 Q. And that's not in the stipulation; is
16 that correct?

17 A. It's my understanding -- I don't think
18 the specific -- I think my understanding is the
19 stipulation is to continue the ELR program, and it's
20 my understanding that that provision in the ELR
21 program would continue because that's the ELR tariff.
22 I am not aware of any other changes that the
23 stipulation would make to that provision.

24 EXAMINER PRICE: Which provision are you
25 talking about?

1 MS. BOJKO: The 80 percent of the
2 revenues received from bidding into the demand
3 response into the PJM, your Honor.

4 EXAMINER PRICE: Okay.

5 Q. And if the netting provision was not
6 located in the companies' tariff provisions, you
7 believe that that practice would still continue? I
8 believe it was ordered by the Commission and not in
9 the companies' original proposal or their tariffs.

10 A. It's my understanding that that is the
11 Commission's requirement for ELR, and I am not aware
12 of any proposed change that anyone is proposing to
13 change that.

14 Q. And you are not aware of whether that
15 exact language is or is not included in rider ELR
16 tariff or in the DS E-1 tariff; is that correct?

17 A. I -- without studying it, I don't know,
18 but I understand that the Commission has issued
19 decisions requiring that practice.

20 Q. And you would hope or expect that value
21 to be passed back to customers; is that accurate?

22 A. That's my understanding that that's how
23 it would continue to work.

24 Q. And, sir, are you aware that staff has
25 filed testimony in this case opposing the \$10 per kW

1 per month ELR credit?

2 A. Yes. I've seen that.

3 Q. Let's turn to page 18 and 19 now of your
4 testimony.

5 A. My testimony in this case?

6 Q. Yes, thank you. On pages 18 and 19, you
7 discuss economic development and the benefits of
8 reasonable arrangements at the bottom of page 18
9 flowing over to page 19. Do you see that?

10 A. Yes.

11 Q. And on page 19, line 17, you explain that
12 both residential and commercial customers benefit
13 from promoting manufacturing and using economic
14 development tools; is that correct?

15 A. Could you give me the reference again to
16 the page and line?

17 Q. Sure, it's page 19. It's lines 6 and 7.

18 A. Okay. Yes, I see that.

19 Q. It states the primary beneficiaries are
20 residential and commercial customers; is that
21 correct?

22 A. Yes, obviously in addition to the
23 customer receiving the reasonable arrangement.

24 Q. Right, clearly in addition. And you were
25 explaining here that in essence if all customers

1 benefit from these tools, they should all pay for or
2 be responsible for those benefits; is that accurate?

3 A. Yes. I think that's a -- I think, first
4 of all, that's a general policy of the Commission and
5 for -- that offering reasonable arrangements is
6 deemed to be I presume in the public interest because
7 it promotes economic activity and other objectives of
8 the State of Ohio and the Commission.

9 Q. And you believe in this section that
10 reasonable arrangements are an economic development
11 tool that should be offered to customers in order to
12 promote economic development and job growth and/or
13 job retention; is that correct?

14 A. Yes, yes.

15 Q. And that those reasonable arrangements
16 are currently and should continue to be offered to
17 all customers, is that correct, that meet the
18 qualifications obviously?

19 A. Yes.

20 MS. BOJKO: Mr. Baron, that is all I
21 have. Thank you so much for your time, sir.

22 THE WITNESS: Thank you.

23 EXAMINER CHILES: Thank you, Ms. Bojko.

24 Mr. Hays.

25 MR. HAYS: I am going to move around.

1 EXAMINER CHILES: Okay.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Hays:

5 Q. Hello, Mr. Baron.

6 A. Hello.

7 Q. I am Tom Hays. I'm the counsel for the
8 Northwest Ohio Aggregation Coalition and the City of
9 Toledo, Lucas County, and smaller members of the
10 coalition like Lake Township. I'm hopeful we won't
11 be a half an hour. A number of the questions did get
12 asked. Would you agree with me that underlying all
13 of these regulatory things, there's also an economic
14 deal going on or a business deal?

15 A. Well, certainly between FirstEnergy
16 Solutions and the companies, this is a business
17 transaction going on.

18 Q. Would you also agree that there is an
19 agreement between OEG and the companies in this
20 proceeding as well?

21 A. The stipulation is an agreement
22 consistent with the normal practice in utility rate
23 proceedings. It's not -- doesn't occur every time,
24 but it's a normal practice to have stipulations.

25 Q. Okay. Could FirstEnergy Solutions have

1 approached the OEG and its member companies and made
2 a 15-year power purchase agreement offer to them?

3 A. I would guess that could be done. I am
4 not sure of what regulatory or statutory limitations
5 might be imposed on something like that, but as a
6 general matter, I would expect that something like
7 that could be done. I am not 100 percent certain but
8 as a general matter.

9 Q. Okay. If --

10 A. I should say that I don't think the --
11 from a feasibility standpoint, the transaction that's
12 at issue here which is Davis-Besse, Sammis, and OVEC,
13 all of that capacity could be -- there could be a
14 contract with OEG members for that. I just think
15 from an economic feasibility standpoint, that
16 wouldn't occur, but I assumed you weren't asking
17 specifics in terms of the nature of the deal.

18 Q. No. But I -- you probably have never
19 seen me in another hearing, so you can guess that I'm
20 not like some of the other counsel who have been to
21 many, and so, yes, I wasn't asking kind of generally,
22 but then I guess I would follow-up on what you told
23 me by saying but they could do, say, for a portion of
24 the power output.

25 A. Again, I -- without knowing any --

1 without commenting or offering a view about any legal
2 restrictions that might exist in Ohio regulation or
3 even federal regulation, as a general economic
4 construct, I would think you could enter something
5 like that.

6 Q. Okay. So generally speaking, as they
7 approach the OEG -- and instead of saying OEG and the
8 companies, member companies, I will just say OEG if
9 that's all right by you.

10 A. All right.

11 Q. So if they approached OEG and OEG -- I
12 ask you to assume OEG reviewed the proposal and felt
13 that it was too rich, that is, they needed a price
14 concession, could they make a counteroffer in this
15 scenario?

16 A. I would expect if all else being equal in
17 a hypothetical where there are two parties, two
18 business entities engaging in a financial transaction
19 or economic arrangement, it would be subject to
20 negotiation.

21 Q. Would you not agree with me that the
22 signing of the stipulation which was an agreement
23 actually was a culmination of negotiations on just
24 this kind of arrangement?

25 A. I would only be able to speculate. I

1 wasn't involved in it, but I assume that
2 representatives of OEG, you know, evaluated the terms
3 of the stipulation and made a decision. I wasn't
4 involved in that.

5 Q. Okay. Well, you know, though, originally
6 when the case was filed by first -- FirstEnergy in
7 September 2014, it did not include the stipulation.
8 You are aware of that?

9 A. Yes.

10 Q. And subsequently an arrangement was
11 reached, and I would ask you from an economic
12 standpoint if the OEG companies did not as part of
13 that agreement get a cost concession, that is, they
14 got the value of the riders ELR and EDR and the other
15 benefits.

16 A. I would -- I would agree that when -- and
17 I am just speculating because, as I said, I was not
18 involved in the negotiation, that OEG and its
19 representatives evaluated the entirety of the
20 proposal and that would include all of the elements,
21 both -- which would include the rate design or
22 provisions, all of them.

23 Q. Now --

24 A. OEG members will be paying the RRS as
25 other customers will, so it's the entirety of the --

1 I assume it would be the entirety of the package.

2 Q. Yes. And they would be getting the
3 benefits that flow under the riders to them, correct?

4 A. Well, any -- any customer -- yes, to the
5 extent that OEG members, and I don't believe all OEG
6 members are participating, for example, in the ELR
7 program or the automotive credit program, but to the
8 extent that OEG members participate in those, those
9 members would receive the provisions of those
10 tariffs. Other customers on the FirstEnergy
11 companies who would qualify who are not members of
12 OEG would also receive those same benefits to the
13 extent they are benefits.

14 Q. Okay. And you don't think they are
15 benefits? I want to be clear. To me they seem to be
16 clear benefits to get cash out of this.

17 MR. KUTIK: Excuse me, your Honor. Is
18 there -- is there a question to the witness?

19 MR. HAYS: Yes.

20 MR. KUTIK: It was a comment.

21 A. Well, first of all, I wouldn't agree with
22 the characterization. It sounds like what you are
23 saying is --

24 MR. KURTZ: Mr. Baron.

25 EXAMINER CHILES: There is an objection

1 pending. I don't believe that you asked a question.
2 Would you please rephrase.

3 MR. HAYS: Oh, sure. I'm sorry, your
4 Honor.

5 Q. (By Mr. Hays) Do you see from the
6 viewpoint of OEG that riders ELR and EDR are economic
7 benefits to them?

8 A. Yes, I would agree with that. What I was
9 about to say in response to your prior statement was
10 I interpreted your comment as the stipulation
11 includes some kind of cash payment and that's not the
12 case. It's -- the ELR tariff, the automotive credit,
13 the other provisions, those are existing Commission
14 approved rates and the stipulation calls for
15 continuing those.

16 Q. Okay. I apologize for calling it cash.
17 I guess I reduced a little bit too much.

18 In a deal that was outside of -- outside
19 of this regulatory proceeding, if it were just a
20 private deal, that cash concession would be paid
21 by -- excuse me. The value of ELR, of the riders ELR
22 and EDR would presumably be paid by FirstEnergy
23 itself, wouldn't it?

24 MR. KUTIK: Your Honor, I object. Are we
25 talking about a private transaction regarding

1 interruptible power?

2 EXAMINER CHILES: Mr. Hays.

3 MR. HAYS: I guess what I -- let me go
4 about this a different way.

5 Q. Would you agree that since a value can be
6 calculated for riders ELR and EDR, that it would be
7 possible in a private transaction to offer an equal
8 amount of money as an inducement for signing the
9 contract?

10 MR. KUTIK: Well, again, your Honor, I
11 object. What deal are we talking about? Are we
12 talking about a deal for interruptible power? Who is
13 on the deal? Is it FirstEnergy Solutions? What are
14 we talking about?

15 EXAMINER CHILES: Mr. Hays.

16 MR. HAYS: I will be glad to clarify
17 that.

18 Q. (By Mr. Hays) Assuming there was a
19 15-year power purchase agreement between FirstEnergy
20 Solutions and OEG, would it not be able -- would --
21 could that deal, private deal, not include an
22 economic benefit to the OEG members that's equal in
23 value to riders ELR and EDR?

24 A. I think the way to answer your question,
25 I don't know if you could structure it like you're

1 suggesting, but what I can agree to is this: If two
2 independent parties enter a financial arrangement, a
3 contract, then obviously they will -- the presumption
4 is they would negotiate a price.

5 And that price for some service would
6 reflect the parties' bargaining power and all other
7 aspects of whether the parties agree that it is a
8 reasonable economic transaction. And the price --
9 the contract terms would effectively have an economic
10 value to each party, and it would be -- and it may
11 not be the same to each party, but it would be
12 assessed. I mean, that's how all transactions work.

13 I don't -- I am having a little trouble
14 translating that into an interruptible credit or
15 continuing a current tariff provision. I mean,
16 FirstEnergy Solutions certainly couldn't have offered
17 that in an independent negotiation with an industrial
18 customer.

19 Q. It couldn't offer a concession, an
20 economic concession to form a deal; is that what you
21 are saying?

22 A. It could offer a price for whatever the
23 deal is that would reflect all of the net economic
24 value. It would reflect any negative economic value
25 to the other party that the other party perceives.

1 What I said was FirstEnergy Solutions can't offer to
2 continue the ELR; the Public -- the Public Utility
3 Commission of Ohio has to approve that.

4 Q. Again, back in -- back in September 2014,
5 riders ELR and EDR were not a part of that original
6 filing by the -- by the companies, were they?

7 A. That's correct.

8 Q. I was really intrigued by your -- by your
9 testimony on page 7, line 10. And if I could just
10 read it for you because it's so short. First, this
11 is regarding rider RRS; am I correct?

12 A. Yes.

13 Q. "Managing these risks and uncertainty is
14 the reason for a stability mechanism such as this to
15 protect customers." Is that correct?

16 A. Yes. Except it was the word mitigating
17 these risks.

18 Q. Okay, sorry. "Mitigating these risks and
19 uncertainty is the reason for a stability mechanism
20 such as this to protect customers," did I read it
21 correctly now?

22 A. Yes.

23 Q. Okay. OEG did not sign -- did not
24 support in a stipulation in September 2014 rider RRS,
25 did it?

1 A. To my knowledge, there was no stipulation
2 in September.

3 Q. Could --

4 A. '14.

5 Q. Could it have written in a letter of
6 support for this at that time?

7 A. I suppose so.

8 Q. To your knowledge, did they ever support
9 this proposal prior to the stipulations in December
10 and May?

11 A. In a --

12 MR. KUTIK: Excuse me, your Honor, I
13 believe that mischaracterizes the record. There were
14 several stipulations, the first one being filed in
15 December.

16 EXAMINER CHILES: Mr. Hays.

17 Q. (By Mr. Hays) Prior to December -- excuse
18 me. Prior to the stipulation being filed in December
19 2014, to the best of your knowledge, did OEG ever
20 take a position that it supported rider RRS?

21 A. I don't know.

22 Q. Would you agree with me that Ford Motor
23 Company is one of the companies that you list as a
24 member of OEG?

25 A. Yes.

1 Q. Do you know if Ford in its recent second
2 quarter earnings forecast projected that the company
3 would make in excess of \$9 billion this year?

4 A. I don't know.

5 Q. Would you agree with me that that's
6 something that could be readily found out by
7 consulting the Ford website?

8 A. Yes, or some other public document.

9 Q. Do you know the average Social Security
10 check that old age retirees receive in the United
11 States?

12 A. I actually recall reading that just
13 recently. It may be roughly a thousand a month or
14 maybe less than that.

15 Q. I think you are in the ballpark. Would
16 you agree with me that the evaluation of risk for
17 Ford might be very different than the evaluation of
18 risk by somebody who is receiving the average Social
19 Security payment?

20 A. I would agree that it's different. You
21 know, in the case of Ford, it's -- Ford would
22 evaluate this issue based on the plants and the
23 electric -- electric energy that it purchases on the
24 companies' system in Ohio.

25 And obviously our retiree is going to

1 evaluate, make an economic -- if it were -- if that
2 customer were in a position to make an economic
3 decision, the customer would evaluate it based on the
4 impact on that customer's usage or typical
5 residential bill or something of that nature.

6 Q. Would you agree with me that one of the
7 reasons that -- would you agree with me that
8 FirstEnergy Solutions has alleged that it has a cash
9 flow problem for the next three years?

10 A. I don't know. I didn't really focus on
11 that part of the system. I know the company did
12 present testimony talking about the economic
13 uncertainty associated with the plant. I don't
14 recall the specifics. I didn't focus on that.

15 Q. I think you did, though, testify that in
16 response to a question by Ms. Bojko that for the next
17 three years, that there would be losses in the cost
18 of production of electricity at the Sammis and
19 Davis-Besse plants?

20 MR. KUTIK: Objection. Mischaracterizes
21 his testimony.

22 EXAMINER CHILES: Mr. Hays.

23 MR. HAYS: I will reask it.

24 Q. Are you aware if the company has
25 forecasts that for the next three years the

1 Davis-Besse and Sammis plants would be losing money
2 in their sale of electricity?

3 MR. KUTIK: Objection on two grounds.

4 EXAMINER CHILES: Mr. Kutik, would you
5 please turn on your microphone.

6 MR. KUTIK: Yes, first, again, it
7 mischaracterizes the testimony. And, second, with
8 respect to the specific financial viability of any of
9 the plants and specific financial data with respect
10 to the plants, that's confidential information and
11 should be handled in the confidential session.

12 EXAMINER CHILES: Sustained.

13 Q. Are you aware for the next three years
14 the companies are forecasting that over \$400 million
15 would be added to customers' bills as a result of
16 rider RRS?

17 A. That is my understanding, that for the
18 first three years of the 15-year term of the RRS,
19 that there would be a charge under RRS, and it would
20 be approximately \$460 million nominal.

21 Q. Okay.

22 A. And then the next 12 years, it would
23 reverse, so that over the term, it was I think on an
24 MVP basis it was about 800 million.

25 Q. Let's just deal with the first three

1 years.

2 A. Yes.

3 Q. Would you not agree that that will
4 increase the cash flow to FirstEnergy --
5 FirstEnergy -- excuse me. Would you not agree that
6 that will increase the cash flow to the companies?

7 MR. KUTIK: Objection.

8 Q. Over the next three years?

9 MR. KUTIK: Objection.

10 EXAMINER CHILES: Grounds?

11 MR. KUTIK: Mischaracterizes the
12 testimony, mischaracterizes the proposal.

13 MR. HAYS: Your Honor, if I may be heard,
14 I was asking a question about whether or not he
15 believes that would increase the cash flow. He's an
16 economic expert. He can certainly testify as to
17 whether or not he believes that would increase the
18 cash flow.

19 MR. KUTIK: As the testimony in this
20 cases has amply demonstrated, the proposal rider RRS
21 is cash neutral, in fact, potentially cash negative
22 to the companies. Everything is a flow through.

23 EXAMINER CHILES: The objection is
24 sustained.

25 Q. (By Mr. Hays) Do you agree that over the

1 next three years, there will be a passthrough from
2 the customers through First -- through the companies
3 to FirstEnergy Solutions approximating \$460 million?

4 A. I don't -- It's not my understanding
5 that's how it would work. It's my understanding that
6 the transaction between the companies and the -- FES
7 would be paying for the cost of the plants and that
8 the companies would receive -- bid the units into PJM
9 and receive the revenues.

10 So my understanding is that -- and is
11 that the companies under the arrangement would pay
12 FirstEnergy Solutions -- FES for -- under the cost of
13 service type pricing for the cost of the plants. So
14 that would be reimbursement of the costs.

15 Q. Would that be done through cash? Would
16 that not be a payment from one to the other?

17 A. Well, it would be -- I guess it would be
18 a compensate -- it would be the operating company
19 affiliates paying the FES affiliate for the costs.
20 Whether actual cash changes hands from an accounting
21 standpoint, that's what would happen.

22 Q. Okay. And it's your understanding that
23 during the next -- the first three years of rider
24 RRS, that an additional \$460 million will go from the
25 companies to FirstEnergy Solutions when we net -- net

1 the costs versus what they are able to sell the power
2 on the market for?

3 A. Again, that's not my understanding of how
4 it would work. My understanding was that the
5 companies would bid the energy and capacity into PJM
6 and receive the revenues which would then be netted
7 in the RRS against the costs. In addition, the
8 companies would pay First -- FES for the cost of
9 service. That's how I -- in other words, what the
10 cost of Davis-Besse, Sammis and OVEC was. That's how
11 I understood it.

12 Q. Okay. Do you understand that for the
13 first three years of rider RRS, that retirees in
14 their own electric bills will be paying additional
15 sums of money?

16 A. Based on the companies' projections, the
17 RRS is a -- produces a charge for the first three
18 years. And it displaces a certain amount of
19 market -- would otherwise be market purchases from
20 the company, but the RRS for the first three years is
21 a charge to customers, all customers, including
22 retirees.

23 Q. Is one of the reasons First -- excuse me,
24 is one of the reasons the companies are proposing
25 rider RRS is that an affiliate company has been

1 harmed by bad economic times?

2 A. I don't know.

3 Q. Do you know if regular people have been
4 harmed in north -- in northwest Ohio or northeast
5 Ohio by the current economic circumstances?

6 MR. KUTIK: Your Honor, I object. It's
7 argumentative.

8 EXAMINER CHILES: Sustained.

9 MR. HAYS: Your Honor, I would ask you to
10 reconsider. He said specifically going back to the
11 sentence mitigating these risks and uncertainties is
12 the reasons for stability mechanism such as this to
13 protect customers. And I believe I have a right to
14 figure out how he is protecting them, who they are,
15 what amount of money they make, what economic
16 circumstances they are in.

17 EXAMINER CHILES: Mr. Kutik, do you have
18 a response?

19 MR. KUTIK: No, your Honor. Again, the
20 question is argumentative.

21 EXAMINER CHILES: The objection is still
22 sustained.

23 Q. (By Mr. Hays) Do you know the
24 unemployment rate in Lucas County?

25 A. I do not.

1 Q. Do you know the average income of the
2 residents of the City of Toledo?

3 A. No.

4 Q. Do you know the number of people in the
5 city of Toledo who live on less than \$25,000 a year
6 in household income?

7 A. No.

8 MR. HAYS: No other questions, your
9 Honor. Thank you and also thank you, Mr. Baron.

10 THE WITNESS: Thank you.

11 EXAMINER CHILES: Mr. McNamee?

12 MR. McNAMEE: I have no questions, your
13 Honor.

14 EXAMINER CHILES: Examiner Price.

15 EXAMINER PRICE: I have a couple of
16 areas. Would you say current energy prices now are
17 by historic standards relatively low?

18 THE WITNESS: I actually haven't done a
19 comparison. I know that -- obviously natural -- one
20 thing I certainly am aware of, that natural gas
21 prices at some point in time and market, you know, a
22 couple of years ago were much, much higher than they
23 are now. So market prices were commensurate with
24 that.

25 And today, some of the prices is

1 certainly driven by natural gas prices in particular,
2 and the residual effects of the economic turndown
3 have contributed to perhaps a slower load growth that
4 has affected market, you know, prices in general, the
5 need for capacity additions and so forth.

6 EXAMINER PRICE: And if the Commission
7 approves rider RRS and market prices -- energy prices
8 go up, customers will pay less than they otherwise
9 would have paid; isn't that correct?

10 THE WITNESS: Yes, correct.

11 EXAMINER PRICE: And if the Commission
12 approves rider RRS and energy prices stay low,
13 customers will not benefit as much as they -- they
14 will be economically worse off if we had not approved
15 rider RRS; is that right?

16 THE WITNESS: All else being equal, there
17 is some level of future market prices that would not
18 support the economics of the transaction. Based on
19 the companies' forecast, it shows over time is
20 substantially economic, but clearly whatever the
21 market turns out to be and whatever the input costs
22 of the units is will determine that.

23 EXAMINER PRICE: The customers would
24 benefit because market prices would have stayed at
25 the relatively low level; is that correct?

1 THE WITNESS: Under the arrangement,
2 under the RRS.

3 EXAMINER PRICE: If we approve RRS, the
4 market price and energy prices stay low, customers
5 will be worse off than they otherwise would have been
6 but they will benefit from the fact that energy
7 prices are relatively low?

8 THE WITNESS: Yes. The answer is yes,
9 and it's exactly sort of analogous to if you enter a
10 hedge, like a natural gas hedge and it doesn't pay
11 off --

12 EXAMINER PRICE: If I can interrupt you,
13 hedges are way too advanced for me. I am just a
14 lawyer. Isn't it analogous to insurance, car
15 insurance?

16 THE WITNESS: Yes.

17 EXAMINER PRICE: If you don't get in an
18 accident next year, you will be economically worse
19 off than if you hadn't bought car insurance; is that
20 correct?

21 THE WITNESS: Absolutely.

22 EXAMINER PRICE: But you'll be happy.

23 THE WITNESS: Yes.

24 EXAMINER PRICE: Because you didn't get
25 in an accident. Do you have life insurance?

1 THE WITNESS: You are betting against a
2 bad outcome, if you don't have that bad outcome, the
3 premium that you paid for that bet will be worth it.

4 EXAMINER PRICE: Thank you. I'm
5 struggling what to do with these forecasts which by
6 the end of today, we will have at least four
7 forecasts in front of us. You have a degree in
8 political science and so do I. If we were talking
9 about polls and you had six or seven polls, you could
10 aggregate the results of those polls and take an
11 average and say this is probably the most likely poll
12 to be the accurate results; isn't that right?

13 THE WITNESS: That is one of the ways
14 that -- I think there is one clear politics or
15 something poll that does that, aggregates.

16 EXAMINER PRICE: Now, you are an
17 economist, and I am not, so I am going to ask you a
18 question. Is it analogous with these projections, is
19 it too crude for the Commission to take an average of
20 these projections and say, all things considered,
21 this is probably the most likely result?

22 THE WITNESS: If all things were equal,
23 that might be a reasonable answer. And, again, I
24 haven't looked at the individual forecasts, but in
25 the case of economic for -- market price forecasts,

1 for example, there -- I think you have to go beyond
2 that and sort of look at the methodology, compare
3 them and the assumptions because if the averaging was
4 simply the answer, then anybody could say, well, I am
5 going to affect the average, I'll just say it's going
6 to be this, and if that -- and a much lower forecast
7 or a much higher forecast.

8 And it wouldn't be reasonable if that
9 forecast was included in the average if it didn't
10 meet certain standards of reasonableness in terms of
11 assumption, methodology, whatever. So as a general
12 matter, I agree with the averaging concept, but I do
13 think you have to go further and evaluate whether
14 there are imperfections, sort of systematic
15 imperfections in the methodology or the assumption or
16 something of that nature to make sure that it's --
17 it's qualified to be included in the average.

18 EXAMINER PRICE: But if you made that
19 decision, if you said, okay, we have looked at the
20 underlying assumptions, they are within a range of
21 reason for each individual projection, it would not
22 be too crude a mechanism simply to average them and
23 come up with a result?

24 THE WITNESS: That would certainly be a
25 way to do it, to look at it. Another way would be to

1 look at, sort of assign probabilities to the
2 forecasts, and those could be either relied on more
3 scientific methods or maybe just judgmental. I heard
4 the witness supporting his forecasts, and I'll grade
5 it X, and this other witness, I'll grade him Y, and
6 we will use those as a probability.

7 EXAMINER PRICE: Okay. Thank you.
8 That's all I have.

9 EXAMINER CHILES: Thank you. Mr. Kurtz,
10 redirect?

11 MR. KURTZ: Your Honor, I would like to
12 have just a few minutes with the witness.

13 EXAMINER CHILES: Yes. Absolutely.
14 Let's take a 5-minute break. Is 5 minutes enough?

15 MR. KURTZ: Yes.

16 EXAMINER CHILES: Let's take 5 minutes.
17 Off the record.

18 (Recess taken.)

19 EXAMINER CHILES: Let's go ahead and go
20 back on the record. Mr. Kurtz.

21 MR. KURTZ: I do have some redirect, your
22 Honor.

23 - - -
24
25

REDIRECT EXAMINATION

By Mr. Kurtz:

Q. Mr. Baron, you were asked questions by counsel about hedging and options and whether or not customers on their own could buy a hedge or do you recall those lines of questions?

A. Yes.

EXAMINER CHILES: Mr. Kurtz, would you turn on your microphone, please. Thank you.

Q. You recall those questions?

A. Yes.

Q. Okay. Is the type of hedge that's being offered here the same as the type of hedging product that would be available on the NYMEX market or any market?

A. My understanding -- The answer is no. I mean, this -- this hedge has the properties of a -- of a -- of a physical hedge in the sense that it's -- but it's based on cost of service as defined by the Commission ultimately when -- based on whatever the Commission approves for the RRS and that includes the Commission approved return on equity.

In contrast, buying a futures contract on NYMEX for on and off peak energy at a particular delivery hub is really -- first of all, it's

1 energy -- it's my understanding that that would be an
2 energy related product, and it's relatively
3 short-term versus 15 years of a cost of service base
4 construct which is what's at issue here, but moreover
5 the NYMEX prices reflect the expectations of the
6 sellers of the financial futures contract of what PJM
7 prices are going to be for energy out -- basically
8 LMP energy. So they are really -- they are
9 different, really completely different constructs.

10 Q. You were asked questions about
11 eligibility for rate ELR and the restrictions that
12 have been applied by the Commission historically and
13 as included in the proposed stipulations. Do you
14 recall that?

15 A. Yes.

16 Q. Is it unusual for any Commission or this
17 Commission to have restrictions on rates of that
18 type?

19 A. No. As I indicated, I think in response
20 to a question, the -- the AEP IRP D tariff, which is
21 an interruptible rate provision, has restrictions,
22 similar grandfathering restrictions. And FirstEnergy
23 itself has restrictions in a number of their tariffs,
24 but specifically, for example, the rider EDR, the
25 current rider EDR has a provision F called school

1 credit provision, and it specifically provides a
2 credit to Cleveland Public Schools.

3 These were schools served before -- under
4 a special program on December 2008 or a Cleveland
5 municipal school district building that was served on
6 January 2009, or a new school district building in
7 the Cleveland municipal district. It doesn't apply
8 to all schools, but it has restrictions. It's a
9 typical type of Commission policy that does enter in
10 based on the Commission's approval and judgment into
11 tariffs.

12 MS. BOJKO: Objection, your Honor. I
13 move to strike. It's beyond the scope of cross.
14 Nobody talked about the school provision, and he read
15 from the school provision tariffs which is
16 inappropriate on redirect, and I move to strike both
17 discussions starting with the discussion in the EDR,
18 there's a school provision, I think he said something
19 like that.

20 EXAMINER CHILES: Mr. Kurtz.

21 MR. KURTZ: Your Honor, he was giving an
22 example in the Commission approved tariffs that has
23 restrictions similar to the restrictions in ELR, so
24 it was a redirect response to a whole line of
25 questioning about the restrictions in ELR.

1 EXAMINER CHILES: The motion to strike is
2 granted. I have to find exactly where to strike.
3 We'll strike everything beginning with "but
4 specifically, for example, the rider ELR..."

5 MS. BOJKO: Thank you, your Honor.

6 Q. Mr. Baron, you were asked a number of
7 questions about the automaker credit?

8 A. Yes.

9 Q. Do you know what domestic manufacturing
10 automakers are included in that?

11 A. There's basically four, General Motors
12 and Chrysler and there are three Ford plants, three
13 GM plants and two Chrysler plants in the Northern
14 Ohio area served by FirstEnergy that are eligible for
15 that.

16 Q. In your experience, is that a high
17 concentration of auto manufacturing in one area?

18 A. Yes. It's very high.

19 Q. What is the annual amount of the
20 automaker credit?

21 A. I think I looked at the tariff. It's --
22 I think I looked at the discovery in this case, I
23 recall it was about [REDACTED].

24 MS. BOJKO: I object. I believe that's
25 on a confidential discovery document that I have

1 sitting in front of me.

2 MR. KURTZ: Okay. The number is out
3 there. I don't know what you want to do with it.

4 EXAMINER PRICE: Just delete. Go off the
5 record.

6 (Discussion off the record.)

7 Q. Do you know how much the automaker credit
8 costs the average residential customer based upon the
9 tariff amounts?

10 A. The current charge on the tariff is .006
11 cents a kilowatt-hour. If you multiply that times
12 the typical residential usage of about I think
13 785-kilowatt hours a month, it comes out to about 4.7
14 cents a month per customer.

15 Q. Okay. You were asked questions about
16 energy intensity and the cost of energy is a part of
17 doing business and similarly situated customers; do
18 you recall all that?

19 A. Yes.

20 Q. Is FirstEnergy Service territory highly
21 intensive with steel making?

22 A. Yes. There are -- there's a substantial
23 amount of customer load and customers who make steel
24 in the FirstEnergy area. It's huge. I don't -- I
25 haven't done a comparison, but I imagine it's among

1 the highest in the country.

2 Q. Is steel making a particularly energy
3 intensive business?

4 A. Yes.

5 Q. Do you know the percentage of industrial
6 load on the FirstEnergy system compared to other
7 utilities in Ohio?

8 A. Yes.

9 Q. What are those?

10 A. Based on the records that I guess are
11 really publicly available, I think AEP has about 20
12 percent of its sales devoted to large -- to
13 industrial customers, Duke about 25 percent, and
14 FirstEnergy 39 percent, so it's much larger.

15 Q. Do you know the number of steelmakers
16 served by the FirstEnergy utilities?

17 A. Yes. I've seen that before. I think
18 there are about I think eight.

19 Q. Finally, you were asked questions about
20 whether the RRS transaction would favor one set of
21 generation versus another. Do you recall those?

22 A. Yes.

23 Q. Do you view a transaction such as this as
24 providing a subsidy or favoring one generation versus
25 another?

1 A. No, because the transaction is based --
2 is a cost of service transaction and the cost of
3 service includes traditional rate of return regulated
4 type costs, O&M expense, depreciation, and it
5 includes a return on equity which is a component of
6 cost of service, and it essentially is the profit
7 that in this case FES would make, and that is -- it's
8 at issue in this case as to what the rate of return
9 would be and to the -- but I don't characterize that
10 as a subsidy. It's a cost of service based rate.

11 It's a construct, the same as Dominion
12 Power receives cost of service pricing on its
13 generators that participate in the PJM market, and
14 Monongahela Power receives cost of service pricing on
15 its generators in the same manner.

16 Q. And the return on equity approved by the
17 Commission here would be essentially a profit cap as
18 well as a profit floor as well as a profit cap.

19 MR. KUTIK: Objection.

20 EXAMINER CHILES: Grounds?

21 MR. KUTIK: Mischaracterizes the
22 companies' proposal. The companies are not asking
23 for approval on anything with respect to the proposed
24 transaction including any return.

25 MR. KURTZ: Let me just rephrase.

1 EXAMINER CHILES: Thank you.

2 Q. The return on equity component included
3 in the sales from FES to the operating companies will
4 serve as a profit floor as well as a profit cap for
5 FES on these -- on these assets?

6 MS. BOJKO: Objection.

7 A. Yes.

8 MR. SOULES: Objection. Leading
9 question.

10 MS. BOJKO: I think this goes way beyond
11 the scope of cross we talked about.

12 MR. KURTZ: There were a number of
13 questions about whether this was a subsidy, whether
14 this was favoring generation over another, and I
15 think it's directly responsive.

16 EXAMINER CHILES: I am just going to ask
17 you to rephrase your question so it's not a leading
18 question.

19 Q. (By Mr. Kurtz) Okay. The -- you
20 indicated the return on equity that FES proposes to
21 include in the transaction is a cost of service
22 element that the -- that the owners -- is that right?

23 A. Yes.

24 Q. Okay. And to a -- well, would that
25 serve -- would the return on equity included in that

1 sale serve as a floor and a cap on FES's profits?

2 A. All else being equal under the
3 transaction, FES will be selling the capacity and to
4 the companies at a cost of service including a stated
5 return on equity and that will be set pursuant to
6 the -- to the -- to the contract.

7 And so it will act as -- it has the
8 effect of acting as a floor and a cap on the profit
9 that FES would make from the units in the sense that
10 if market prices were to rise substantially at some
11 point during the 15-year period and FES would
12 otherwise be permitted, absent this transaction, to
13 sell that capacity and energy into the market and
14 reap much higher returns on equity, then that will
15 occur.

16 So in that sense, it reflects a cap on
17 the profit and likewise, it reflects a floor if
18 market prices are lower, and it -- the return on
19 equity implicit in what otherwise would be market
20 price -- per sales would be lower.

21 MR. KURTZ: Thank you, your Honor, no
22 further questions.

23 EXAMINER CHILES: Thank you. Recross
24 beginning with the companies.

25 MR. KUTIK: May I have a minute, your

1 Honor?

2 EXAMINER CHILES: Sure.

3 MR. KUTIK: No questions.

4 EXAMINER CHILES: Miss Willis?

5 MS. WILLIS: No questions, your Honor.

6 EXAMINER CHILES: Mr. Lavanga?

7 MR. LAVANGA: No questions, your Honor.

8 EXAMINER CHILES: Mr. Soules?

9 MR. SOULES: Thank you, your Honor.

10 - - -

11 RECROSS-EXAMINATION

12 By Mr. Soules:

13 Q. Just very briefly, Mr. Baron. You just
14 answered some questions regarding the return on
15 equity associated with the proposed transaction,
16 correct?

17 A. Yes.

18 Q. Do you know what the return on equity is
19 for purposes of this proposed transaction?

20 A. The company has I think it was
21 11.15 percent, has used that.

22 Q. And do you know what the weighted average
23 cost of capital that was assumed for Mr. Ruberto's
24 projections?

25 A. I don't recall the number. I think I

1 recall a 50/50 capital structure.

2 Q. Do you recall what the debt percentage
3 was that was assumed?

4 A. Well, I thought it was a 50/50 capital
5 structure, but I really haven't focused on that.

6 Q. 50/50 --

7 A. 50 percent equity, 50 percent debt.

8 Q. And for the 50 percent debt, do you know
9 what the debt rate percentage assumed was?

10 A. No.

11 MR. SOULES: Okay. Thank you. Nothing
12 further, your Honor.

13 EXAMINER CHILES: Thank you.

14 Ms. Petrucci.

15 MS. PETRUCCI: Yes, your Honor.

16 - - -

17 RECROSS-EXAMINATION

18 By Ms. Petrucci:

19 Q. If the Economic Stability Program is
20 approved as proposed, the alleged hedge would be
21 applied to all of the FirstEnergy companies'
22 customers, not just the stipulating parties such as
23 OEG; isn't that correct?

24 A. Yes.

25 Q. And as a result, all customers do not

1 have the option to select or not select that hedge,
2 that alleged hedge; isn't that accurate?

3 A. The -- to the extent that the hedge is
4 the RRS, customers would be required to pay the RRS,
5 all customers.

6 Q. And as a result, they would be subject to
7 the up and down estimates that we previously
8 discussed earlier as to what the actual rate would
9 end up being, correct?

10 A. Well, yes. I mean, the RRS would adjust
11 under the companies' filing annually as we talked,
12 and there would be subject to that change, yes.

13 Q. Okay. Customers then would not have the
14 option to select the kind of hedge that they
15 particularly are interested in if this particular
16 proposal is implemented.

17 MR. KUTIK: I object.

18 EXAMINER CHILES: Grounds?

19 MR. KUTIK: Two grounds. I think we are
20 now beyond the scope of redirect, and second, it's
21 been asked and answered.

22 MS. PETRUCCI: Well, I disagree it's
23 beyond the scope of redirect. I believe the witness
24 specifically stated, find my notes here, that this --
25 this proposal is different, and I am exploring

1 further how it has an impact and doesn't have an
2 impact that -- over the course of the period that's
3 involved, the 15 years.

4 MS. BOJKO: Your Honor, I join in that.
5 Counsel did mention hedge. He opened the door when
6 he started talking about hedges again and the
7 benefits of a hedge.

8 MS. PETRUCCI: If I could just add, he
9 specifically said the type of hedge here is not the
10 same as what could be obtained in the market outside.

11 MR. KUTIK: But this very point was
12 discussed before and this very question was asked
13 before.

14 EXAMINER CHILES: Thank you. The
15 objection is overruled. Do you need the question
16 reread?

17 A. Well, I think I remember it, but I think
18 your question was something to the effect of
19 precluding customers from participating or engaging
20 in other hedges, and I would disagree with that. It
21 doesn't preclude any customer from entering any other
22 type of hedge arrangement. It is -- becomes part of
23 the tariff. And so customers would be -- all
24 customers would pay the RRS, but it doesn't preclude
25 any customer from entering a hedge, another hedge

1 which I thought was your question.

2 Q. Is a customer going to have knowledge in
3 advance of what the -- let me strike that.

4 MS. PETRUCCI: I have nothing further.

5 EXAMINER CHILES: Thank you. Ms. Bojko?

6 MS. BOJKO: Thank you, your Honors.

7 - - -

8 RECROSS-EXAMINATION

9 By Ms. Bojko:

10 Q. The type of hedge that you were just
11 discussing, the PPA hedge, I am not talking about
12 other hedges you may or may not be able to get into
13 the market, just the PPA hedge that you referenced,
14 that PPA hedge, customers have no choice of provider
15 of that PPA hedge; isn't that correct?

16 A. That would be correct if it is approved.

17 Q. And customers have no choice of the term
18 of that PPA hedge; is that correct?

19 A. That's correct.

20 Q. And customers have no choice of the risk
21 level associated with that PPA hedge; is that
22 correct?

23 A. I would agree if the Commission approves
24 it, it is a -- becomes part of the tariff and it's in
25 effect for 15 years, yes.

1 Q. And customers have no choice of the
2 premium level associated with the type or the risk
3 level of that hedge; isn't that correct?

4 A. Well, I don't think I would agree with
5 that because based on my understanding, that it's a
6 cost of service based construct, it's based on cost
7 of service. And so in contrast to a market hedge,
8 there isn't a premium per se in it. The return on
9 equity is a profit, it's a return on equity, but
10 that, under a traditional ratemaking, that is part of
11 cost of service.

12 Q. But you would agree with me that a
13 customer that goes out to source a hedge in the
14 market gets to look at the risk that it has an
15 appetite for and it can weigh the price of that hedge
16 with their risk appetite; isn't that correct?

17 A. I would agree that if a customer goes to
18 the market, those are all factors that the customer
19 could consider.

20 Q. And you would also agree with me that
21 this alleged hedge is in addition to any fixed price
22 contract that a customer may or may not have with
23 their supplier; isn't that correct?

24 A. Yes. I would agree. And effectively,
25 the Commission is, as part of its responsibilities in

1 this proceeding under Ohio regulation, is acting
2 as -- in terms of it approves it, the proposal or
3 even if it disapproves it, it is making that decision
4 as is typical for regulated -- regulators to do when
5 it engages in ratemaking.

6 Q. And that decision by the Commission could
7 have the consequence of increasing a commercial
8 customer's rates above the rate that they have
9 entered into a fixed price contract with their
10 supplier if the cost to operate the plants is greater
11 than the revenues received from the out plant --
12 output of the plants; isn't that correct?

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

15 EXAMINER CHILES: You may.

16 (Record read.)

17 A. Yes. If the RRS produces a charge
18 instead of a credit, that would be an additional cost
19 to customers' charges. And if it was a credit, it
20 would be a reduction. And that's -- that's the
21 nature of a hedge, as -- as I was really talking,
22 explaining, answering the judge's question, that
23 that's -- that's what hedges do.

24 Q. And the -- you had a discussion with your
25 counsel about the automaker credit, and just so we're

1 clear, the automaker credit is merely one component
2 of the over -- of the two stipulations that you are
3 requesting that the Commission approve; is that
4 correct?

5 A. It is -- it is one element of the
6 stipulation, yes.

7 Q. And there are other elements that have
8 the effect of passing on costs to other customers
9 that are contained and embedded in the stipulation;
10 isn't that correct?

11 A. Yes. All else being equal, the ELR
12 provision relative to where it is today, it's the
13 same provision, but if you were depositing that it
14 would otherwise go away, then it has that effect.

15 MS. BOJKO: Your Honor, at this time, I
16 would request that we go into confidential session to
17 talk about numbers. Counsel put the issue in front
18 of us when he talked about the one component of the
19 price of what the stipulation will cost, and I think
20 in fairness, I think that putting forth one element
21 is very misleading to the Commission, and I think
22 that the Commission has the right to hear the cost of
23 the other elements that he chose not to explain or
24 ask the witness about.

25 So it's my understanding those numbers

1 are confidential. And as I explained previously, I
2 think that it would be appropriate to go into a
3 confidential session to discuss those.

4 MR. KURTZ: Well, your Honor, I
5 completely disagree. The whole purpose of redirect
6 is to ask specific questions about things he has been
7 cross-examined on, and I did as to the automaker
8 credit, so moving beyond that which it sounds like
9 counsel wants to do --

10 EXAMINER PRICE: You don't have to give
11 the answer. What questions do you want to ask in
12 confidential session?

13 MS. BOJKO: Well, your Honor, he also
14 equated this to the number of steel companies, the
15 number of industries and comparing FirstEnergy to
16 AEP. So my questions are the costs of the
17 stipulation and the cost of the ELR program with the
18 automaker credit. He recollected the automaker
19 credit discovery, so I think it's only fair to bring
20 in the ELR to get the total cost to the stipulation.

21 EXAMINER PRICE: The automaker credit is
22 gone. That's not in the record anymore. That number
23 is gone. We took it out.

24 MS. BOJKO: No. He gave a kilowatt-hour
25 number.

1 MR. KURTZ: That's directly from the
2 tariff, the public tariff, .006 cents per
3 kilowatt-hour.

4 MS. BOJKO: He is trying to lead the
5 Commission to believe that that --

6 EXAMINER PRICE: You want to ask -- I
7 just want to understand what you want to ask. You
8 want to ask the per kilowatt hour prices of ELR
9 that's passed along to customers?

10 MS. BOJKO: Yes, I was going to ask the
11 total, not the per kilowatt-hour.

12 MR. KUTIK: Your Honor, these things are
13 already in the record. The Commission has -- the
14 Bench has taken administrative notice of the
15 companies' tariffs.

16 MS. BOJKO: No, this is not -- This is
17 the cost of the ELR provision for the stip which what
18 was exactly relating to the cost of the automaker
19 credit for the stip. It's not the existing credits.

20 MR. KUTIK: Well, is this something the
21 witness even knows?

22 EXAMINER PRICE: I have no idea if he
23 knows that, if that's the --

24 MR. KUTIK: That question can be asked in
25 public session, your Honor.

1 MS. BOJKO: He was clearly refreshed of
2 his recollection of discovery regarding the automaker
3 credit.

4 MR. KUTIK: Well, why don't you ask him,
5 your Honor.

6 EXAMINER CHILES: We are going to deny
7 the request to go into confidential session.

8 Q. (By Ms. Bojko) Mr. Baron, do you know the
9 charge to customers that will be passed on by a \$10
10 kilowatt-hour per month credit for the projected
11 stipulation?

12 A. I don't know exactly. I recall looking
13 at some discovery, but I can't cite the number.

14 Q. Okay.

15 A. I believe the companies' witnesses may
16 have talked about that and I sort of perused the
17 deposition, and some of that was asked perhaps or in
18 discovery in the deposition.

19 Q. And you would agree with me that the
20 total dollar figure for the existing ELR customers
21 would be increased by the additional 1,306 --
22 136,250-kilowatt hours per month of additional
23 curtailable load in the stipulations; is that
24 correct?

25 A. I would expect so.

1 Q. And the annual number that you get would
2 then have to be multiplied by three years in order to
3 get the total annual kilowatt-hour -- or excuse me,
4 just to get the total annual cost of providing ELR
5 credits to specific ELR customers; is that correct?

6 A. What -- Assuming that there is some
7 number X and the same amount of load was
8 participating over three years, it would be three
9 times X.

10 Q. And then you would add that to the
11 automaker credit cost that you explained previously;
12 is that correct?

13 A. Well, I don't know what you mean -- if
14 you wanted to add up the impact of the automotive
15 credit and the ELR provision, you would add them
16 together, I agree with that.

17 Q. Thank you. And you are aware there are
18 other provisions in the stipulation that may have a
19 cost that are passed on to customers that would also
20 have to be added to get a total impact of both
21 stipulations; is that fair?

22 A. I, again, by simple arithmetic assuming
23 each of those -- if they have a cost, and I don't
24 know what they are, but let's assume they have a
25 cost, obviously you would add them up and if -- and

1 if the billing volume stayed the same, you would
2 multiply it by three.

3 Q. Thank you. And that is the total cost of
4 the provisions -- well, strike that.

5 That would be one component of the costs
6 associated with the stipulation that the Commission
7 would have to consider in its analysis of the
8 reasonableness of the stipulation; is that correct?

9 A. I would agree with that, that the
10 stipulation includes a number of provisions and the
11 Commission would -- would -- is in a position to
12 evaluate all of them.

13 MS. BOJKO: Thank you. I have no further
14 questions.

15 EXAMINER CHILES: Thank you. Mr. Hays.

16 MR. HAYS: No questions, your Honor.
17 Thank you.

18 EXAMINER CHILES: Thank you. Examiner
19 Price?

20 EXAMINER PRICE: Done.

21 EXAMINER CHILES: All right. Thank you,
22 you are excused.

23 THE WITNESS: Thank you, your Honor.

24 MR. KURTZ: Oh, your Honor, I move the
25 admission of OEG Exhibit 1.

1 EXAMINER CHILES: Are there any
2 objections to the admission of OEG Exhibit 1.

3 Hearing none, it will be admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 MS. BOJKO: Your Honor, at this time, I
6 would move the admission of OMAEG 13 and 16.

7 EXAMINER CHILES: Are there any
8 objections to the admission of OMAEG Exhibits 13 and
9 16?

10 MR. KUTIK: Well, again, we haven't seen
11 those, so I don't know if I have an objection.

12 MS. BOJKO: I don't know -- I mean, I
13 could show counsel copies. I wasn't provided any
14 copies of his exhibits yesterday, so they are
15 publicly filed documents. They are his testimony
16 that's filed with the Commission. I would think that
17 the --

18 EXAMINER CHILES: Do you want to see
19 copies?

20 MR. KUTIK: Yeah, your Honor. Yes, your
21 Honor. What I would suggest is that counsel provide
22 us with a copy while we have our lunch break and we
23 can come back and finish this.

24 MS. BOJKO: Your Honor, can we go off the
25 record?

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1 EXAMINER CHILES: Sure.

2 (Discussion off the record.)

3 EXAMINER CHILES: Let's go back on the
4 record. At this time we will reserve ruling on the
5 admission of OMAEG Exhibits 13 and 16 until after the
6 lunch hour. We will take an abbreviated lunch break
7 today. We will return at 1:30. Let's go off the
8 record.

9 (Discussion off the record.)

10 (Thereupon, at 12:52 p.m., a lunch recess
11 was taken until 1:30 p.m.)

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Friday Afternoon Session,
October 2, 2015.

- - -

EXAMINER CHILES: Let's go ahead and go
back on the Lord. Before we broke for lunch there
was a motion to admit OMAEG Exhibits 13 and 16. Are
there any objections to the admission of OMAEG
Exhibit 13 and 16.

MR. KUTIK: Your Honor, we do not object.

EXAMINER CHILES: Hearing none OMAEG
Exhibits 13 and 16 will be admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Is it Mr. Soules or
Mr. Stinson that is sponsoring this witness? Mr.
Stinson, please call your next witness.

MR. STINSON: Yes, your Honor.
Dr. Sioshansi. And if I could approach, your Honor.

EXAMINER PRICE: Let me swear him in
first.

(Witness sworn.)

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

THE WITNESS: My name is Ramteen
Sioshansi. My address is 60 East Spring Street,
Columbus, Ohio 43215.

1 EXAMINER PRICE: Please proceed,
2 Mr. Stinson.

3 (EXHIBITS MARKED FOR IDENTIFICATION.)

4 - - -

5 RAMTEEN SIOSHANSI, Ph.D
6 being first duly sworn, as prescribed by law, was
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Stinson:

10 Q. Mr. Sioshansi, I have placed before you
11 three documents. One is your Direct Testimony which
12 is marked as OCC/NOPEC Exhibit 1. The next document
13 is your Supplemental Testimony marked as OCC/NOPEC
14 Exhibit 2. And the third document is captioned
15 Errata Direct and Supplemental Testimonies Ramteen
16 Sioshansi, Ph.D. Do you have those in front of you?

17 A. Yes, I do.

18 Q. And beginning with Exhibit 1, was your
19 direct testimony prepared by you or under your
20 supervision?

21 A. Yes, it was.

22 Q. And Exhibit 2, your supplemental
23 testimony was prepared by you or under your
24 supervision?

25 A. Yes, it was.

1 Q. Do you have any additions, correction,
2 deletions to make to your direct or supplemental
3 testimonies?

4 A. Yes, I do.

5 Q. And are those additions and deletions
6 listed on OCC/NOPEC Exhibit 3?

7 A. Yes, I do. Those are the changes.

8 Q. Let's go to OCC/NOPEC Exhibit 1. If you
9 could read those changes for the record, please.

10 A. Yes. On line 16 of page 3 after the
11 semicolon, the word "and" should be inserted.

12 Next on line 17 of page 3, after the word
13 "proposal," the semicolon followed by the words "and
14 federal policy issues" should be deleted.

15 Next on line 2 of page 4, after the word
16 "following" the word "five" should be deleted and the
17 word "four" inserted in its place.

18 Next, on page 5, lines 10 through 14
19 should be deleted.

20 Next on line 16 through 20 of page 7,
21 first the sentence that begins with the word
22 "moreover" should be deleted followed by the sentence
23 beginning with the word "however" should also be
24 deleted.

25 Then line 17 of page 23 through line 9 of

1 page 27 should be deleted.

2 EXAMINER PRICE: Slow down. Slow down.
3 That was a big one. On to your next one. You may
4 proceed.

5 THE WITNESS: Thank you. Then line 14 on
6 page 29 through line 18 on page 33 should be deleted.

7 And then finally on lines 5 and 6 of
8 page 34, the sentence beginning with the word
9 "finally" should be deleted.

10 Q. Are there any other additions,
11 corrections or deletions to your direct testimony?

12 A. No, there are not.

13 Q. Turning to OCC/NOPEC Exhibit 2, do you
14 have any corrections or deletions to that testimony?

15 A. Yes, I do.

16 Q. And could you explain those for the
17 record, please.

18 A. First of all, on line 11 of page 10, the
19 word "small" should be deleted.

20 And then on line 9 of page 6, the comma
21 after the word "unjust" should be deleted and the
22 word "and" should be inserted between "unjust" and
23 "unreasonable." And the comma followed by the words
24 "and unlawful" after the word "unreasonable" should
25 be deleted.

1 Q. Are there any other additions,
2 corrections or deletions to your supplemental
3 testimony Exhibit 2?

4 A. No.

5 Q. With respect to OCC/NOPEC Exhibit No. 1,
6 if I were to ask you the same questions and -- let me
7 start over. If I were to ask you the same questions
8 as amended, would your answers as amended be the
9 same?

10 A. Yes, they would.

11 Q. And the same with OCC Exhibit No. 2, if I
12 were to ask the questions as amended, would your
13 answers as amended be the same?

14 A. Yes, they would.

15 MR. STINSON: Thank you. At this time,
16 your Honor, Dr. Sioshansi is available for
17 cross-examination.

18 EXAMINER PRICE: Mr. Mendoza?

19 MR. MENDOZA: No questions.

20 EXAMINER PRICE: Mr. Hays?

21 MR. HAYS: No questions, your Honor.

22 EXAMINER PRICE: Companies?

23 MR. ALEXANDER: Just a moment, your
24 Honor. I believe counsel may have saved us a
25 substantial amount of time.

1 EXAMINER PRICE: Okay. Let's go off the
2 record for 5 minutes and take a minute to catch up.

3 (Discussion off the record.)

4 EXAMINER PRICE: Let's go back on the
5 record. Mr. Alexander.

6 MR. ALEXANDER: Thank you, your Honor,
7 yes.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Alexander:

11 Q. Dr. Sioshansi, I'm Trevor Alexander, we
12 have met before. You have just made some relatively
13 significant changes to your testimony. If I ask you
14 questions about areas which have been deleted, please
15 just remind me of that in your response, okay?

16 A. Okay.

17 Q. Now, turning to your direct testimony
18 which has been marked as Exhibit 1 at page 1, line
19 10, let me know when you are there.

20 A. Yes, I'm there.

21 Q. You state you are -- you had 16 years
22 experience in the academic and consulting in the
23 electric power industry, correct?

24 A. I see where I have written that, yes.

25 Q. So your first experience was in 1998; is

1 that correct?

2 A. Working backwards, yes, 1998.

3 Q. And in 1998, you were a sophomore at UC
4 Berkeley, correct?

5 A. That would be correct.

6 Q. So when you say you have 16 years of
7 experience, you are including the time you spend in
8 undergrad and graduate school, correct?

9 A. The time period spans when I was an
10 undergraduate. However, I was working as an intern
11 at Pacific Gas and Electric Company which is an
12 electric utility in northern California.

13 Q. My question was when you say you have 16
14 years of experience, you are including the time you
15 spent in undergrad and graduate school, correct?

16 A. Yes. By the tautology that I was an
17 undergraduate 16 years ago, I am counting that period
18 of time.

19 Q. Okay. Please turn to page 1, line 20.
20 You discuss your consulting work. Tell me when you
21 are there.

22 A. I'm there.

23 Q. The consulting work you are referring to
24 in this section was research and analysis for Pacific
25 Gas and Electric, correct?

1 A. Which particular consulting or research
2 are you referring to?

3 Q. The consulting and research you refer to
4 at page 1, lines 20 and 21.

5 A. Line what?

6 Q. 20 and 21.

7 A. So are you referring specifically to
8 analyses of wholesale electricity market designs for
9 market participants including the development of
10 generation offer strategies?

11 Q. That's correct.

12 A. And the question was?

13 Q. The consulting work you are referring to
14 in this section was research and analysis for Pacific
15 Gas and Electric, correct?

16 A. That is correct.

17 Q. And your primary responsibility was to do
18 research and analysis into the California ISO market,
19 correct?

20 A. My primary responsibility had to do with
21 an analysis of the changes that were at that time
22 proposed to the California ISO market under the
23 market restructuring and technology update process.

24 Q. And your consulting work for Pacific Gas
25 and Electric was from 2006 to 2007, correct?

1 A. I believe so. It may have stretched into
2 2008. Moreover, I've also done research since then
3 that was motivated by work that I did while I was
4 working with Pacific Gas and Electric Company.

5 MR. ALEXANDER: Your Honor, I move to
6 strike everything after the word "moreover..."

7 EXAMINER PRICE: We are going to deny the
8 motion to strike this time, but Dr. Sioshansi, I
9 would urge you to listen carefully to counsel's
10 question, answer counsel's question and only
11 counsel's question. To the extent you need
12 additional context or to expand upon the answer, I am
13 sure Mr. Stinson will ask you questions on redirect.

14 THE WITNESS: Okay.

15 Q. You have not done any other consulting
16 work analyzing electric market design for any other
17 wholesale markets other than that 2006 and 2007 work
18 for Pacific Gas and Electric, correct?

19 A. What was the question?

20 EXAMINER PRICE: Let's have the question
21 back.

22 (Record read.)

23 A. That would depend on what you
24 characterize as consulting work.

25 Q. Dr. Sioshansi, do you recall being

1 deposed in this proceeding?

2 A. I do.

3 Q. And you were deposed twice, correct?

4 A. I do -- I was.

5 Q. And at both depositions, there was a
6 court reporter present?

7 A. I believe there was.

8 Q. And do you recall swearing an oath to
9 tell the truth?

10 A. Yes.

11 Q. I've placed copies of your deposition on
12 the witness stand. Please get the copy of your
13 deposition taken on January 23, 2015.

14 A. Okay.

15 Q. And please turn to page 27, line 10 and
16 let me know when you are there.

17 A. I'm there.

18 Q. Okay. And did I ask you, "Question: Did
19 you do any -- strike that. Have you done consulting
20 work of the wholesale electric -- electric market
21 design for any other markets?

22 "Answer: Consulting work on wholesale
23 markets? That's the only consulting work that I can
24 think of specifically analyzing electricity markets.
25 That's the only one I can recall right now." Did I

1 read that correctly?

2 A. You did read that correctly.

3 MR. STINSON: Is this going to be marked
4 as an exhibit, counsel?

5 MR. ALEXANDER: No.

6 MR. STINSON: Your Honor, I would ask
7 that it be marked as an exhibit so the entire
8 deposition could be a part of the record.

9 EXAMINER PRICE: That has not been our
10 practice thus far in the proceeding; however, if at
11 the end of this, you want to move this as an exhibit,
12 we will entertain that at that point.

13 MR. STINSON: Thank you, your Honor.

14 Q. (By Mr. Alexander) And so the only market
15 participant you have done consulting work for is
16 Pacific Gas and Electric, correct?

17 A. The only participant, yes.

18 Q. Now, please turn to your direct testimony
19 page 1, line 22 where you reference your work on
20 developing generation offer strategies, and let me
21 know when you are there.

22 A. I'm there.

23 Q. This reference is also to your work for
24 Pacific Gas and Electric in 2006 and 2007, correct?

25 A. When I originally wrote that, I was

1 primarily referring to when I was working with
2 Pacific Gas and Electric during that period of time.
3 Now that I think about it, however, when I worked for
4 Pacific Gas and Electric in 1998, I helped them with
5 their bidding strategies in the California power
6 exchanges forward market that had begun operation
7 then.

8 Q. And that consulting work related to the
9 California ISO market, correct?

10 A. That was the California power exchange,
11 not the California ISO.

12 Q. Well, let's be clear. The 1998 work,
13 this was for the California power exchange?

14 A. Yes.

15 Q. And the 2006 work was for the California
16 ISO?

17 A. Yes.

18 Q. And this consulting work related to the
19 energy and ancillary services markets?

20 A. The California power exchange work, if I
21 recall correctly, would have been solely for energy.
22 The California ISO market work, if I recall
23 correctly, would have been for energy and ancillary
24 services.

25 Q. Now, please turn to page 1, line 22 where

1 you reference advising renewable technology
2 developers. Let me know when you are there.

3 A. I'm there.

4 Q. So the only technology you have worked
5 with is solar thermal generation; is that correct?

6 A. What do you mean by the only technology I
7 have worked with?

8 Q. Okay. I will rephrase. The only
9 renewable technology you have worked with is solar
10 thermal generation, correct?

11 A. That is incorrect.

12 Q. Okay. Please turn to page 29 of your
13 testimony -- excuse me, of your deposition, line 12.

14 A. Page what?

15 Q. Page 29, line 12. Let me know when you
16 are there.

17 A. I'm there.

18 Q. Okay. And did I ask you "Question: What
19 technologies were you working with?

20 "Answer: The specific technology that I
21 was working with was on solar thermal generation.

22 "Question: Any others?

23 "Answer: That was the only one at that
24 time, yes.

25 "Question: Were there any other

1 technologies after that time?

2 "Answer: No." Did I read that
3 correctly?

4 A. You did.

5 Q. Okay. So with regard to the power
6 purchase agreements you reference at line 23 of your
7 testimony, that power purchase agreement -- first of
8 all, there was just one power purchase agreement
9 you're referencing there, right?

10 A. I don't know how many power purchase
11 agreements were negotiated by the company that I was
12 working with.

13 Q. And what you were working on was the sale
14 of energy from a potential solar plant to a utility,
15 correct?

16 A. It was not solely energy, that is
17 incorrect.

18 Q. Okay. Please turn to page 29, line 20 of
19 your deposition. Let me know when you are there.

20 A. I'm there.

21 Q. And did I ask you "Question: What was
22 the nature of the power purchase agreement you worked
23 on?

24 "Answer: The power purchase agreement
25 was essentially the sale of energy from a potential

1 solar plant to a utility." Did I read that
2 correctly?

3 A. You did.

4 Q. Okay. And your advice to the solar
5 developer was modeling the potential value of the
6 energy produced by the solar plant, correct?

7 A. That is not correct. As it says later in
8 my deposition, I provided them analysis of the value
9 of energy ancillary service and other products.

10 Q. You did not forecast future energy prices
11 as part of that project, correct?

12 A. As part of that particular project, no.

13 Q. No, that is not correct, or no, did you
14 not forecast?

15 A. No, I did not.

16 Q. And instead, you used projections of
17 future energy prices which had been provided to you
18 to determine the dollar value of energy produced by
19 the solar facility, correct?

20 A. I used some prices that were provided to
21 me by the company that I was working with, some
22 prices that I obtained from elsewhere.

23 Q. And that solar PPA that we have been
24 referring to was, again, in the California ISO
25 market, correct?

1 A. I don't know what market it operates in.

2 Q. Okay. Please turn to page 64 of your
3 deposition, line 12. Let me know when you are there.

4 A. Okay.

5 Q. "The solar thermal PPA you worked on as a
6 consultant?

7 "Answer: The solar thermal work that I
8 did, that was in the California ISO market." Did I
9 read that correctly?

10 A. You did.

11 Q. And you have never modeled a solar
12 purchase agreement in the PJM market, correct?

13 A. What do you mean by modeling a power
14 purchase agreement?

15 Q. Well, in your consulting experience, you
16 reference here at page 1, line 23, you reference your
17 "advice to renewable technology developers on
18 structuring power purchase agreements." Do you see
19 that?

20 A. I do see that.

21 Q. And we further discussed with the project
22 that you worked on, you modeled the potential value,
23 I believe you testified, with energy ancillary
24 services, correct?

25 A. That's correct.

1 Q. And so my question is you have never done
2 similar modeling for a solar power purchase agreement
3 in the PJM market, correct?

4 A. That was not exactly what you asked me.
5 You asked me if I modeled a power purchase agreement.

6 EXAMINER PRICE: Okay. Excuse me.
7 That's argumentative. You need to allow your counsel
8 to pose the objections, and you just need to focus on
9 answering the questions.

10 THE WITNESS: Okay. I'm answering that I
11 modeled as it says in my deposition what the value of
12 energy ancillary services and other products from a
13 solar plant are. That can be done in the context of
14 a power purchase agreement or it can be done in any
15 other context.

16 Q. My question was you have never modeled a
17 solar power purchase agreement in the PJM market,
18 correct?

19 A. That question doesn't completely make
20 sense. Have I modeled solar plants outside of
21 California in other parts of the country, the answer
22 is yes.

23 MR. ALEXANDER: Your Honor, I move to
24 strike. My question was limited to the PJM market.

25 EXAMINER PRICE: Mr. Stinson.

1 MR. STINSON: Your Honor, I think his
2 answer stands that he has performed that function in
3 other markets outside of California.

4 EXAMINER PRICE: Which would be a
5 perfectly fair question for you to ask on redirect.
6 The motion to strike is granted. Please answer the
7 question.

8 THE WITNESS: What was the question
9 again?

10 EXAMINER PRICE: Let's have it back.

11 (Record read.)

12 A. Again, depending upon what you mean by
13 modeling the power purchase agreement, I have modeled
14 solar PV generation in the PJM market including other
15 markets.

16 Q. Okay. Please turn to your deposition,
17 page 64, line 6. Let me know when you are there.

18 A. I'm there.

19 Q. Did I ask you "Question: And, in fact,
20 you've modeled the solar PPA in the PJM wholesale
21 market, correct?

22 "Answer: I have not modeled a solar PPA
23 into the PJM market, no." Did I read that correctly?

24 A. You did; however, this deposition was
25 taken in January. I have done work since then.

1 Q. Please turn to page 4, line 4 of your
2 direct testimony. Are you there?

3 A. I am.

4 Q. You believe that rider RRS would
5 constitute a subsidy, correct?

6 A. I do.

7 Q. I would like to explore your definition
8 of the word subsidy with a hypothetical. Assume that
9 in the year 2020 the companies' customers will
10 receive a credit of \$100 million. Do you understand
11 the hypothetical I have asked you to assume?

12 A. The hypothetical is a one time credit in
13 2020?

14 Q. That's correct, of \$100 million.

15 A. Just a windfall payment.

16 Q. No, the hypothetical is the companies'
17 customers will receive a credit of \$100 million in
18 the year 2020.

19 A. From this program?

20 Q. From rider RRS, yes.

21 A. Okay. There are no other credits or
22 charges any other years?

23 Q. We are just talking about the year 2020.

24 A. Okay.

25 Q. So do you understand the hypothetical?

1 A. I believe so.

2 Q. All right. So if customers receive a
3 credit in the year 2020, you would agree that rider
4 RRS would not constitute a subsidy in the year 2020,
5 correct?

6 A. I don't know that I could answer that
7 just on the basis of what you are telling me happens
8 in the year 2020.

9 Q. Okay. Let's go to your deposition, page
10 44, starting at line 6. Let me know when you are
11 there.

12 A. Okay.

13 Q. Actually start on line 11. This was a
14 stricken question there. Did I ask you "If the
15 companies' customers receive a credit in the year
16 2020, do you believe that in that year they will be
17 subsidizing FirstEnergy Solutions?

18 "Answer: So in the hypothetical
19 situation that the -- that ratepayers receive a
20 \$100 million credit, are they subsidizing the plant
21 in that specific year?

22 "Question: Correct.

23 "Answer: That's the question?

24 "Question: Yes.

25 "Answer: In this specific year, no, they

1 would not be. That doesn't say whether ratepayers
2 would be subsidizing the plants over the period, the
3 full 15-year period of the PPA." Did I read that
4 correctly?

5 A. You did.

6 Q. And so you would agree that in every year
7 in which rider RRS is actually a credit, customers
8 would not be subsidizing FES in that year, correct?

9 A. Well, I think what I said in the
10 deposition speaks for itself.

11 Q. You have to answer the question now,
12 Dr. Sioshansi.

13 MR. ALEXANDER: Your Honor, could the
14 reporter --

15 A. So, specific --

16 EXAMINER PRICE: Why don't you finish
17 your answer, Dr. Sioshansi, and we will go from
18 there.

19 THE WITNESS: In that specific year, no,
20 they would not be subsidizing. However, looking at
21 the single year in isolation doesn't provide the full
22 picture of what effect the rider would have.

23 MR. ALEXANDER: Your Honor, I move to
24 strike everything after the word "however."

25 EXAMINER PRICE: Sustained -- or granted.

1 Q. Now, Dr. Sioshansi, I would like to
2 discuss your understanding of subsidies generally.
3 You would agree with me that subsidies are not
4 necessarily bad things, correct?

5 A. Not necessarily, no.

6 Q. And if a market is not -- excuse me, if a
7 market is not operating at optimal efficiency, you
8 would agree a subsidy could be beneficial, correct?

9 MR. STINSON: I am going to object. Lack
10 of foundation, your Honor.

11 MR. ALEXANDER: Your Honor, the witness's
12 direct testimony argues that since rider RRS would be
13 a subsidy, it would have an adverse impact on the
14 wholesale markets, and so I'm exploring why he
15 believes that.

16 EXAMINER PRICE: Mr. Stinson.

17 MR. STINSON: I still believe he needs
18 more foundation, your Honor, as to what he is talking
19 about whether that would create a subsidy or not.

20 EXAMINER PRICE: Overruled. He can
21 answer if he understands the question. Can I have
22 the question back.

23 (Record read.)

24 A. Not necessarily, no.

25 Q. Okay. Please turn to page 46 of your

1 deposition starting at line 6. Let me know when you
2 are there.

3 A. I'm there.

4 Q. I asked you "Question: Because if
5 markets are not operating at optimal efficiency, a
6 subsidy could be helpful?

7 "Answer: That could be one situation
8 that a subsidy could be beneficial." Did I read that
9 correctly?

10 A. You did.

11 Q. And, Doctor, you also believe that
12 subsidies could be beneficial for new technologies
13 like solar, correct?

14 A. Could be.

15 Q. And you believe subsidies could be
16 beneficial for environmental reasons, correct?

17 MR. STINSON: Object. Again, I am going
18 to object to the -- to the form of the question, just
19 to the form of the question at this point and the
20 foundation for beneficial.

21 EXAMINER PRICE: I'll overrule the
22 foundation aspect, but if you would go ahead and
23 rephrase your question.

24 Q. (By Mr. Alexander) Okay. Dr. Sioshansi,
25 you believe that a subsidy could be economically

1 beneficial to the marketplace to address
2 environmental concerns such as concerns about carbon,
3 correct?

4 MR. STINSON: Same objection, your Honor.

5 EXAMINER PRICE: Grounds?

6 MR. STINSON: Economically beneficial.
7 There's no basis for that. I don't know what the
8 basis for that is in the record.

9 MR. ALEXANDER: Well, your Honor, I don't
10 know why you would ever need basis for words in the
11 record. The words are what they are. The witness
12 has already answered three questions using those
13 exact same words and in the deposition used the exact
14 same words without objection.

15 EXAMINER PRICE: Overruled.

16 THE WITNESS: Can you repeat the
17 question?

18 (Record read.)

19 A. There are instances that it could be.

20 Q. You believe that subsidies could also be
21 beneficial for economic development reasons, correct?

22 A. What do you mean by economic development?

23 Q. Encouraging a manufacturer to locate in a
24 certain location.

25 A. If that's someone's policy objective, it

1 could be.

2 Q. Now, I would like to focus your attention
3 on page 4, line 13 of your direct testimony and your
4 argument number two. Let me know when you are there.

5 A. I'm there.

6 Q. Now, you don't know whether solar
7 resources are subsidized by the State of Ohio,
8 correct?

9 A. I'm not aware of the detail.

10 Q. And you don't know whether wind resources
11 are subsidized by the State of Ohio, correct?

12 A. That is correct. I don't know that
13 detail.

14 Q. And you don't know whether wind resources
15 are subsidized at the federal level, correct?

16 A. I don't know that detail.

17 Q. And you have never modeled the impact of
18 renewable subsidies on the competitive market,
19 correct?

20 A. I don't know definitively one way or
21 another without going back through my full research
22 record.

23 Q. But you don't recall ever having modeled
24 the impact of renewable subsidies on a competitive
25 market, correct?

1 A. Again, that would be difficult to answer
2 without going through my research record. I have
3 modeled the effect of having renewables with
4 subsidies in electric power systems. I don't know
5 that I have specifically looked at the effect on the
6 competitive market.

7 MR. ALEXANDER: Can I have that question
8 and answer read back, your Honor.

9 EXAMINER PRICE: You may.

10 (Record read.)

11 Q. You don't know whether demand response
12 resources receives a subsidy, correct?

13 A. I don't.

14 Q. And you don't have any opinion as to the
15 effect of renewable subsidies on the PJM market,
16 correct?

17 A. Can you repeat the question or reread the
18 question?

19 (Record read.)

20 A. No, I don't.

21 Q. Please turn to pages 12 and 13 of your
22 testimony where you discuss your opinion on how rider
23 RRS could undermine PJM markets. Let me know when
24 you are there.

25 A. Where on page 12?

1 Q. There's no specific reference. I am
2 pointing you to this argument.

3 A. Okay.

4 Q. And first, I would like to focus your
5 attention on energy markets, okay?

6 A. Okay.

7 Q. Now, you believe that offers both above
8 and below true costs could cause the PJM energy
9 market to operate inefficiently, correct?

10 MR. STINSON: Could I have that reread,
11 your Honor, please?

12 EXAMINER PRICE: You may.

13 (Record read.)

14 MR. STINSON: Object on the basis of the
15 foundation of as to offers. I don't know what we are
16 talking about.

17 MR. ALEXANDER: Your Honor, these are the
18 witness's words page 12, line 17 and 18.

19 EXAMINER PRICE: Overruled. You can
20 answer the question.

21 THE WITNESS: Oh, the question was what?

22 Q. I can repeat it. Do you believe that
23 offers both above and below true costs could cause
24 the PJM energy market to operate inefficiently,
25 correct?

1 A. I believe such offers could have that
2 kind -- those kinds of effects.

3 Q. Now, you have never sold energy in the
4 day-ahead market, correct?

5 A. Meaning I myself have not sold energy
6 from a generating unit?

7 Q. That's correct.

8 A. Into a day-ahead market? That is
9 correct.

10 Q. And you have similarly never sold energy
11 in the realtime energy market, correct?

12 A. That is correct.

13 Q. But you are generally aware there are
14 written rules in the PJM manual which govern the
15 offering of energy in the day-ahead market, correct?

16 A. I understand that there are restrictions
17 on offer -- on how offers into the market can be
18 structured.

19 Q. My question was, you are aware that there
20 are written rules which govern -- in the PJM manual
21 which govern the offering of energy into the PJM
22 market, correct?

23 A. Yes, I believe so.

24 Q. However, you have never read the PJM
25 written rules which govern the offering of energy in

1 the day-ahead market, correct?

2 A. No, I haven't.

3 Q. And you don't know whether PJM energy
4 market offers are made by plant or by unit, correct?

5 A. I don't know that detail, no.

6 Q. And you don't know whether PJM offers are
7 based on marginal costs or average variable costs,
8 correct?

9 A. I don't know that detail.

10 Q. And you don't know the specific structure
11 of offers that gets submitted to the market on a
12 daily basis, correct?

13 A. I don't know that detail.

14 Q. Now, you are aware that all offers are
15 monitored by the PJM market monitor, correct?

16 A. My understanding is that there is an
17 independent market monitor that examines the offers.

18 Q. And however, you don't know the specific
19 criteria used by the market monitor to monitor those
20 offers, correct?

21 A. No, I am not aware of the specific
22 criteria he used.

23 Q. And you are also aware that FERC has
24 jurisdiction to examine market participation,
25 correct?

1 A. I'm generally aware of that, yes.

2 Q. And you are also generally aware that the
3 market monitor and FERC have rules to prevent
4 improper bidding behavior in PJM, correct?

5 A. My understanding is that they have rules
6 that are intended to do that.

7 MR. ALEXANDER: Should I continue, your
8 Honor?

9 EXAMINER PRICE: No, you're fine.

10 Q. And you are not aware of the written FERC
11 policies which govern bidding behavior, correct?

12 A. No, I am not aware of those specific
13 policies.

14 Q. And you would agree that it could make
15 sense for a generator to offer into the energy market
16 at a value below their average variable cost,
17 correct?

18 MR. STINSON: Could I have that reread,
19 please, your Honor.

20 EXAMINER PRICE: Please.

21 (Record read.)

22 MR. STINSON: I object on the basis of
23 the foundation to making sense.

24 MR. ALEXANDER: I'll rephrase.

25 Q. You agree there could be situations in

1 which it was logical for a generator to offer into
2 the energy market at below their average variable
3 cost, correct?

4 MR. STINSON: Same objection as to
5 logical. I don't know what we are talking about.

6 MR. ALEXANDER: Your Honor, the witness
7 testifies that offers above or below true costs could
8 have an impact on short run efficiency in the PJM
9 market. This question asks whether an offer below
10 average variable cost would be logical from the sense
11 of the person making the offer.

12 EXAMINER PRICE: The witness can answer
13 the question if he understands it.

14 THE WITNESS: I'm sorry?

15 EXAMINER PRICE: You can answer the
16 question if you understand it.

17 THE WITNESS: Can the question be reread?

18 (Record read.)

19 A. I don't know what you mean by logical.
20 Logical to whom?

21 Q. Okay. Could it be profit maximizing in
22 situations for a generator to offer into the energy
23 market at below its average variable cost?

24 A. There are situations that it could be
25 with the caveat that it depends on the market rules

1 and the structure of bids or the offers that are
2 submitted to the market.

3 Q. And one of the reasons where it could
4 make sense for a generator to offer below its average
5 variable cost is based on the operating
6 characteristics of the plant which is being bid at,
7 correct?

8 MR. STINSON: Objection, same objection
9 as to makes sense.

10 EXAMINER PRICE: Overruled. I think he's
11 laid the foundation now.

12 THE WITNESS: Can the question be reread?

13 EXAMINER PRICE: Let's go off the record
14 for one moment.

15 (Discussion off the record.)

16 EXAMINER PRICE: Let's go back on the
17 record.

18 (Record read.)

19 A. So if by making sense you again are using
20 the definition of profit maximizing, the answer would
21 be that is a possibility again depending upon the
22 market rules and the structure of the offers into the
23 market.

24 Q. And one of those operating
25 characteristics which must be taken into account is

1 the ramp-up time for the unit?

2 A. Ramp-up time is an example of a
3 characteristic that could factor in.

4 Q. And you would agree that the ramp-up time
5 for a coal unit is typically longer than one hour,
6 correct?

7 A. I don't know definitively without
8 studying the characteristics of the plant in
9 question.

10 Q. Okay. Another operating characteristic
11 to be taken into account is the minimum run time for
12 the plant, correct?

13 A. That is another characteristic that could
14 be taken into account, yes.

15 Q. And you would agree ramp-up times and
16 minimum times would both be reasons why a generator
17 would offer below its average variable cost in
18 certain hours, correct?

19 A. Again, I would agree with the caveat that
20 it does depend on the market rules and the structure
21 of the bids. So, for example, if the market allows
22 bids that take into account those operating
23 characteristics, that actually reduces the need for a
24 plant to bid below average cost.

25 Q. But you are aware that the plants can be

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1 offered at something other than their marginal costs,
2 correct?

3 A. That's my understanding.

4 Q. And you don't know whether current PJM
5 market participants have the ability to offer energy
6 above their marginal costs through price offers,
7 correct?

8 A. I don't know that detail.

9 Q. You don't know the rules which govern
10 above cost offers at PJM, correct?

11 A. I don't know the details.

12 Q. And you don't know whether companies are
13 required to make cost based offers at PJM in the
14 day-ahead market, correct?

15 A. My understanding has been but without
16 knowing the details, that some -- some generators are
17 required to make cost-based bids and some can make
18 price-based bids, but I don't know the details of
19 that, what distinguishes plants into those
20 categories.

21 MR. ALEXANDER: Could I just have the
22 first sentence of that answer read, please?

23 EXAMINER PRICE: You may.

24 (Record read.)

25 Q. Okay. Doctor, I think that first

1 sentence might have come out a little bit garbled, so
2 the question is, you don't know for sure what the
3 market offer rules are at PJM regarding cost-based
4 offers, correct?

5 A. No.

6 Q. And you would agree that at page 12, line
7 18 -- excuse me, line 17, there you are referencing a
8 price-based offer, correct?

9 A. Yes, a price-based offer would be an
10 example.

11 Q. So in your hypothetical starting at page
12 12, line 17, you are assuming the plants are offered
13 in below their true costs via a price-based offer?

14 A. That's one situation that I believe would
15 fit the hypothetical.

16 Q. And you agree that PJM makes dispatch
17 decisions based on the price-based offer submitted by
18 the plant rather than the plants' costs in most
19 circumstances?

20 A. My understanding is that they make
21 commitment and dispatch decisions based off of the
22 offers that are submitted subject to any mitigation
23 steps that the market monitor takes.

24 Q. When you say subject to the offers being
25 submitted, you are referring to the price-based

1 offers, correct?

2 A. That's my understanding.

3 Q. And you aren't aware of the PJM energy
4 market rules addressing when PJM can change a
5 price-based offer, correct?

6 A. No, I don't know those details.

7 Q. Now, I would like to discuss how
8 traditional vertically integrated generation
9 participates in the PJM market. You understand that
10 regular -- regulated generation currently
11 participates in the PJM energy market, correct?

12 A. I believe but don't know of specific
13 cases that regulated generation can participate in
14 the market.

15 Q. And, in fact, regulated generation does
16 participate in the PJM market, correct?

17 A. I'm not 100 percent how much does or
18 doesn't.

19 Q. Yeah. I am not asking you to quantify
20 it. I am just asking you whether some regulated
21 generation currently participates in the PJM market.

22 A. I believe, but I am not certain.

23 Q. Okay. And you don't know whether PJM has
24 different bidding rules for regulated generation
25 assets, correct?

1 A. I don't.

2 Q. And you can't identify any bidding rule
3 which is different for regulated and unregulated
4 generation in the PJM market, correct?

5 A. I don't know those details.

6 Q. Okay. And at page 12, line 10, when you
7 are talking about the PJM-operated wholesale markets,
8 you are also referencing the capacity market,
9 correct?

10 A. Sorry. Page 12, lines 9 and 10?

11 Q. That's correct.

12 A. Given that I am talking about short-run
13 efficiency benefits, I think this would primarily
14 apply to the day ahead and real-time markets.

15 Q. Okay. Let's turn to then page 14, line
16 6, where you talk about long run efficiency of the
17 PJM run wholesale markets, do you see that?

18 A. I do.

19 Q. And in that section, are you referring to
20 the capacity market as well as the energy market?

21 A. In line 6 and 7, this would be referring
22 to the day ahead realtime and capacity markets.

23 Q. And you believe that rider RRS could have
24 an impact on PJM markets but not necessarily that it
25 would have an impact on PJM markets, correct?

1 A. I would say that's a fair
2 characterization without knowing how the assets or
3 the units would be offered into the market and how
4 they would be operated, I couldn't make a definitive
5 statement one way or the other what the effect would
6 be.

7 Q. Now, none of your educational background
8 pertains specifically to the design of the PJM
9 capacity market, correct?

10 A. So do you mean to the specific rules of
11 the PJM market or the general design principles
12 underlying the PJM market?

13 Q. The rules of the PJM market.

14 A. So the specific rules, no. The general
15 design philosophy, yes.

16 MR. ALEXANDER: Your Honor, I move to
17 strike the "general design philosophy" addendum.

18 MR. STINSON: It explains his answer,
19 your Honor.

20 MR. ALEXANDER: Your Honor, I had
21 clarified the witness had a question about the
22 answer, and I narrowed it just to the PJM rules at
23 the witness's request.

24 EXAMINER PRICE: I mean, we will grant
25 the motion to strike.

1 Q. And none of your work experience directly
2 pertains to the PJM capacity market, correct?

3 A. I can't think of any work that directly
4 pertains to it.

5 Q. You have never participated in making
6 offers into the base residual auction, correct?

7 A. That would be correct.

8 Q. And you don't know where the PJM rules
9 which govern capacity offers into the base residual
10 auction are located, correct?

11 MR. STINSON: Objection, vague, your
12 Honor.

13 EXAMINER PRICE: Can I have the question
14 back, please. Can we have the question again?

15 MR. ALEXANDER: I'll rephrase the
16 question, your Honor.

17 EXAMINER PRICE: Okay.

18 Q. You have never read the PJM capacity
19 auction bidding rules, correct?

20 A. The specific bidding rules and tariffs,
21 no. However, I have read documents on PJM's website
22 describing the structure and design of the market.

23 MR. ALEXANDER: Your Honor, I move to
24 strike everything after the word "however."

25 MR. STINSON: Your Honor, it explains his

1 answer.

2 EXAMINER PRICE: We are going to allow
3 this one, but again, I am going to caution the
4 witness please try to answer Mr. Alexander's
5 questions and only Mr. Alexander's questions. If you
6 need to explain your answer, you will do that on
7 redirect with Mr. Stinson, okay?

8 Q. Doctor, you are not aware of any limits
9 on how a generator can price its bid into the PJM
10 capacity market, correct?

11 A. I'm not aware of any specific -- I am not
12 aware of the specifics of the bidding rules.

13 Q. And you are not aware of any rules
14 governing bid caps in the PJM capacity market,
15 correct?

16 A. I'm not aware of any -- I am not aware of
17 any specifics of rules on bid caps.

18 Q. And you are not aware of whether a plant
19 can bid above its ACR value in the PJM capacity
20 market, correct?

21 MR. STINSON: Object, your Honor. I
22 believe asked and answered. The witness said he
23 didn't know the PJM bidding rules specifically.

24 EXAMINER PRICE: He can answer if he
25 knows.

1 THE WITNESS: The question again was?

2 EXAMINER PRICE: Please.

3 (Record read.)

4 A. I'm not aware of any specific rules.

5 Q. And you don't know whether a plant can
6 bid into the PJM capacity market at zero as a price
7 taker, correct?

8 A. I don't know definitely one way or
9 another.

10 Q. And you don't know whether any resources
11 currently ever bid into the PJM capacity market at
12 zero, correct?

13 A. I don't know. I have never examined the
14 bids into the PJM market.

15 Q. And you don't know whether regulated
16 generation plants ever participate in the PJM
17 capacity market, correct?

18 A. I don't know for certain, no.

19 Q. And you don't know whether there's any
20 difference in the bidding rules between regulated and
21 unregulated generation in the PJM capacity market,
22 correct?

23 A. I don't know of any specific differences.

24 Q. And you believe that the market monitor
25 and FERC both examined the bids into the PJM capacity

1 market, correct?

2 A. My understanding is that the market
3 monitor examines them on a daily basis. I don't know
4 the frequency with which FERC examines the bids.

5 Q. But you do agree FERC does examine the
6 bids.

7 A. I believe that they do.

8 Q. And you don't know the details of how
9 each of those entities actually examine bids,
10 correct?

11 A. No, I don't.

12 Q. And you don't know the rules regarding
13 demand responses participation in PJM markets,
14 correct?

15 A. I don't know the specific rules, no.

16 Q. And you don't know whether demand
17 response resources have the same performance
18 obligations as traditional generation resources,
19 correct?

20 A. I don't know the full details of their
21 performance obligation.

22 Q. And you weren't aware of the PJM capacity
23 performance plan changes to the demand response
24 rules, correct?

25 A. I'm sorry, that question was in

1 response -- was in regard to the capacity performance
2 product?

3 Q. The plan, yes.

4 A. And if you -- if the question could just
5 be reread.

6 EXAMINER PRICE: Please.

7 (Record read.)

8 A. I believe but don't know the details that
9 are -- that there are some changes to the
10 requirements for demand response and generation
11 participating in the capacity performance product
12 under the proposal.

13 Q. So you have already testified as to your
14 knowledge about regulated generation in the PJM
15 system. So just bringing you back to that topic, I
16 don't want to ask and answer a question we have
17 already covered. But you are generally aware that
18 regulated generation is typically given the
19 opportunity to recover all of its prudently incurred
20 costs, correct?

21 A. Yes. I believe as a regulatory aim,
22 regulated generation is offered the opportunity to
23 recover prudently incurred costs.

24 Q. And you are not providing any opinion in
25 this proceeding as to whether regulated generation

1 would adversely affect the long-run efficiency of the
2 PJM market, correct?

3 A. No, I'm not.

4 Q. Okay. Now, please turn to page 16, line
5 15 where you discuss how the plans would be offered
6 and let me know when you are there.

7 A. Did you say line 15?

8 Q. Line 5.

9 A. Oh, line 5. Okay.

10 Q. Now, you are not aware of any generator
11 which has publicly disclosed its offer strategy,
12 correct?

13 A. No, I am not.

14 Q. And you are not aware of any generator
15 which has produced its offer strategies subject to a
16 confidentiality agreement, correct?

17 A. What do you mean by produced its offer
18 strategy under a confidentiality agreement?

19 Q. Providing its offer strategy to a third
20 party pursuant to a confidentiality agreement.

21 A. I don't know insomuch as I have never
22 entered into such a confidentiality agreement.

23 Q. And you are not recommending any specific
24 offer strategy for the companies to use if their
25 proposal is approved, correct?

1 A. No, I am not. I'm cautioning about the
2 issues surrounding the potential offer strategies
3 that the PPA and rider raise.

4 Q. Now, you have not reviewed the term sheet
5 describing the proposed PPA between the companies and
6 FES, correct?

7 A. I haven't reviewed it in detail, no.

8 Q. Now, please turn to page 19, line 6 where
9 you discuss the Commission's opportunity to disallow
10 the costs. Let me know when you are there.

11 A. The sentence beginning on line 5?

12 Q. Yes, the word "thus."

13 A. Yes.

14 Q. Now, you were not aware of any provision
15 in the term sheet which limits staff's ability to
16 review costs at the plant, correct?

17 A. My understanding has been that staff
18 would not have access to -- access to and the ability
19 to audit FES's costs.

20 Q. And when you say FES's costs, I am not
21 sure you are answering my question. My question was
22 you are not aware of any provision of the term sheet
23 which limits staff's ability to review costs at the
24 Sammis and Davis-Besse plants, correct?

25 A. Again, it would depend on what you mean

1 by review. So my understanding is that they would be
2 able to review essentially what the monthly or
3 quarterly charge from FES to the companies would be.
4 However, as far as I know, there would not be an
5 opportunity to understand what led to those costs,
6 what decisions were made by FES and what the entire
7 generation portfolio operated by FES in any cross
8 subsidy between plants if there were any issues of
9 that sort.

10 Q. So you base this portion of your
11 testimony on the assumption that staff would not have
12 the ability to review the specific going forward
13 costs at Sammis and Davis-Besse, correct?

14 A. I base it on that and also whether there
15 would be the ability to audit all the costs incurred
16 by FES.

17 EXAMINER PRICE: Doctor, when you say all
18 the costs incurred by FES, are you talking throughout
19 their entire fleet, incurred by FES throughout their
20 fleet or all costs incurred by FES with respect to
21 the plants at issue?

22 THE WITNESS: Potentially I am speaking
23 across the entire fleet. So a hypothetical I could
24 think of is if FES -- if FES has a high cost and a
25 low cost fuel contract, it's not clear whether the

1 high cost fuel contract would be allocated to these
2 three units and the low cost contracts allocated to
3 other units within the FES fleet.

4 EXAMINER PRICE: Thank you. Thank you,
5 Mr. Alexander.

6 Q. (By Mr. Alexander) Now, please turn to
7 page 20, line 13 where you discuss whether the
8 companies believe their own analysis. Let me know
9 when you are there.

10 A. I am.

11 Q. You have not analyzed FES's financial
12 statements, correct?

13 A. No, I have not.

14 Q. And you don't have any opinion as to
15 whether FES is capable of making the financial
16 investments needed to keep the plants operational
17 over the short-term, correct?

18 A. No, I have not.

19 Q. Please turn to page 29, line 6 where you
20 discuss fuel diversity. Let me know when you are
21 there.

22 A. I am.

23 Q. You believe that fuel diversity could
24 help provide more stable electric pricing to retail
25 customers, correct?

1 A. Not necessarily.

2 Q. You believe that fuel diversity could
3 help provide more stable electric pricing to retail
4 customers, correct?

5 A. No, not necessarily.

6 Q. Okay. Let's go to your deposition page
7 174, line 7. Let me know when you are there.

8 A. I am.

9 Q. I am going to ask you "Question: Do you
10 believe that fuel diversity helps provide more stable
11 electric pricing to retail customers?

12 "Answer: It could." Did I read that
13 correctly?

14 A. You did, and I believe that's consistent
15 with what I just said. It could, meaning not
16 necessarily.

17 Q. You believe that fuel diversity could
18 provide more stable electric prices because power
19 sources could be substituted in response to fuel
20 price changes, correct?

21 A. It could happen but not necessarily.

22 Q. And you've never studied the volatility
23 of fuel prices, correct?

24 *****

25 A. Not in detail. I have looked at

1 historical fuel prices but, again, not in detail to
2 study volatility.

3 Q. Let's turn to your supplemental
4 testimony, specifically start at page 6, line 15.

5 A. Okay.

6 Q. You would agree that in the AEP Ohio
7 order you cite in your testimony the Commission
8 expressly addressed whether customers would benefit
9 from AEP Ohio's proposed power purchase agreement,
10 correct?

11 A. I believe, if I recall, that they stated
12 that as a criteria.

13 Q. Now I would like to discuss your nine
14 proposed criteria. You believe that each of your
15 nine proposed criteria should be weighed against one
16 another when evaluating the PPA, correct?

17 A. What do you mean by weighed against one
18 another?

19 Q. The Commission should look at -- you
20 believe that the Commission should look at your nine
21 proposed factors and weigh them against one another,
22 compare them against one another, correct?

23 A. Again, I am totally unclear about what
24 you mean by compare them to one another.

25 Q. I am using your words. So let's see if

1 we can clarify it that way. Let's go to your
2 supplemental deposition taken on May 27, 2015, and if
3 you could start at page 24, line 21. Let me know
4 when you are there.

5 A. I'm there.

6 Q. Did I ask you "Question: I understand
7 your point as far as the accuracy of future
8 projections. I understand what you are trying to
9 prove. I just want to understand if you believe the
10 Commission has to find that each of these nine
11 factors benefit ratepayers or whether you believe the
12 Commission should weigh these factors. That's all I
13 want to know."

14 You said "Answer: Well, the factors
15 should be weighed against one another." Did I read
16 that correctly?

17 A. You did.

18 Q. Now, you created each of these nine
19 criteria yourself, correct?

20 A. I did.

21 Q. You are not aware of any articles or
22 scholarly works of any kind which support the
23 position of these nine factors when evaluating a
24 proposed power purchase agreement, correct?

25 A. That would depend on what you mean by

1 scholarly work. So I don't know of any -- I myself
2 don't know of any academic research that looks at the
3 question of whether customers should fund the
4 operation of an unregulated generator through an
5 affiliate transaction and passthrough of costs from
6 the affiliated generator to customers.

7 So if you are asking within that narrow
8 context, I don't know of any research on that topic
9 because to be honest, people who study competitive or
10 restructured electricity markets would not study this
11 question because it is an anathema to market
12 restructuring.

13 Now, there is a basis for these suggested
14 criteria which is that if you are going to consider a
15 proposal, in this case the PPA and rider RRS, you
16 should compare it to what other alternatives are
17 available and the alternative of the status quo, the
18 do nothing alternative. That, I would characterize
19 as coming from the principle of optimality

20 MR. ALEXANDER: Your Honor, I move to
21 strike the entire response. The question was whether
22 there were any scholarly works, not a complete
23 evaluation of the proposal.

24 EXAMINER PRICE: Is the answer to his
25 question no, you are not aware of any scholarly

1 works?

2 THE WITNESS: Pardon me?

3 EXAMINER PRICE: Is the answer to his
4 question no, you are not aware of any scholarly
5 works?

6 THE WITNESS: No, no one studies this
7 problem.

8 EXAMINER PRICE: You got your record.
9 Move on. Denying your motion to strike.

10 Q. Now, let's please turn to page 10, line 4
11 where you discuss your first recommendation. Are you
12 there?

13 A. I am.

14 Q. Now, you are aware of Mr. Rose, Company
15 Witness Rose, providing a pricing scenario in this
16 proceeding, correct?

17 A. I am aware that he has done so, yes.

18 Q. And you are not aware of any
19 independently produced pricing scenarios which are
20 available for the ATSI region, correct?

21 A. I don't know of availability of pricing
22 scenarios for the ATSI region.

23 Q. And you were not aware of any
24 independently produced future pricing scenarios which
25 are nodal in nature, correct?

1 A. I don't know specifically whether there
2 are or not.

3 Q. And you are not aware of any restriction
4 on the intervenors to this case from providing their
5 own pricing scenarios, correct?

6 A. I don't know about a restriction to
7 provide pricing scenarios. There could be
8 restrictions on them doing this type of assessment.

9 EXAMINER PRICE: Can you explain your
10 answer?

11 THE WITNESS: Sure. So to do this kind
12 of an assessment, I feel to do it properly there
13 would be a lot of data required that an intervenor
14 may not have access to. So, for example, the
15 operating characteristics, operating costs to the
16 plants, how the plants would be offered into the PJM
17 market if the rider were approved, factors like that.
18 So the best that an intervenor could do is make
19 assumptions around some of those.

20 EXAMINER PRICE: Have you reviewed all
21 the discovery responses in this case?

22 THE WITNESS: Pardon me?

23 EXAMINER PRICE: Have you reviewed all of
24 the discovery responses in this case?

25 THE WITNESS: Not every single one, no.

1 EXAMINER PRICE: Have you ever reviewed
2 the vast majority of discovery responses in this
3 case?

4 THE WITNESS: I honestly don't know as a
5 percentage how much of the discovery I've reviewed in
6 detail.

7 EXAMINER PRICE: Well, the company
8 responded something along the order of 998 discovery
9 responses to the Sierra Club at one point. Have you
10 reviewed anywhere near 998 discovery responses?

11 THE WITNESS: I really don't recall.

12 Q. (By Mr. Alexander) Have you reviewed --

13 MR. ALEXANDER: I'm sorry, your Honor.

14 EXAMINER PRICE: Thank you,
15 Mr. Alexander.

16 Q. Have you reviewed the plants' specific
17 cost information that was produced by the companies
18 in this proceeding?

19 A. I recall having seen it. I didn't look
20 at it in detail.

21 Q. And you would also agree that there are
22 commercially available models which model the --
23 strike that.

24 And you would agree that if the
25 independent energy prices used in the dispatch

1 analysis are found satisfactory by the Commission,
2 then your first prong would be met, correct?

3 EXAMINER PRICE: Can I have that question
4 back.

5 (Record read.)

6 MR. STINSON: I am going to object on a
7 couple of bases, your Honor, as to what Commission
8 and what dispatch analysis.

9 EXAMINER PRICE: Well, I think we all
10 assumed he was referring to the Public Utilities
11 Commission of Ohio; however, I do think Mr. Alexander
12 needs to rephrase. I think he jumped ahead a little
13 bit, to rephrase the question a little more
14 specifically.

15 MR. ALEXANDER: Yes, your Honor.

16 Q. (By Mr. Alexander) Dr. Sioshansi, you
17 would agree a projection of future energy prices does
18 not necessarily entail dispatch analysis for the
19 plants, correct?

20 A. So of future prices?

21 Q. Yes, future projection of energy prices
22 does not necessarily entail dispatching and
23 projecting the costs and revenues for these specific
24 plants, correct?

25 A. I'm not totally clear that I got your

1 question because it sounds like you are describing
2 two different processes. One is producing a price
3 forecast; the other is doing a dispatch analysis.

4 Q. That's correct.

5 A. Now, there are circumstances that you can
6 produce price forecasts from a dispatch analysis, but
7 there are other methods to produce price forecasts as
8 well.

9 Q. Correct. So we understand when we are
10 talking about price forecasts, that does not
11 necessarily correlate to a dispatch analysis as well,
12 correct?

13 A. That is correct.

14 Q. Okay. So you would agree that if the
15 independent energy prices which you discuss in your
16 first prong are found satisfactory by the Commission,
17 then your first prong would be met, correct?

18 A. Well, if the prices are used for an
19 analysis to evaluate the rider in the program, so
20 just producing prices on their own, I don't think
21 meets what I've proposed here.

22 Q. Okay. My question was if the Commission
23 finds that the projection of future energy is
24 satisfactory, you believe your first prong would be
25 met, correct?

1 MR. STINSON: Objection. Asked and
2 answered.

3 EXAMINER PRICE: He hasn't answered it
4 yet. Overruled.

5 A. So you just said if the prices -- you
6 described the characteristic of the prices and my
7 suggestion here is that there needs to be an
8 assessment using a variety of prices. So you have
9 only described half of what I have suggested here.
10 So if -- if there were a variety of price scenarios
11 and those were used to conduct assessments, then that
12 would go towards addressing what I have recommended
13 here.

14 Q. Okay. Let's go to your deposition page
15 39, line 11. Let me know when you are there. It's
16 the May deposition, Doctor.

17 A. Yes, I see that.

18 Q. And are you there?

19 A. I am.

20 Q. And did I ask "Question: Okay. So if
21 the independent energy prices are used in a dispatch
22 analysis that the Commission finds satisfactory, then
23 you would believe this first prong is met?

24 "Answer: I believe that's one way it
25 could move towards meeting it, yes.

1 "Question: What would be another way to
2 meet the first prong?

3 "Answer I don't know off the top of my
4 head of other sources of price forecasts that could
5 be used to satisfy this criteria." Did I read that
6 correctly?

7 A. You did, and the first question was
8 consistent with the answer I just gave you which is
9 the prices need to be used in an analysis to assess
10 the rider in the program. I heard your question as
11 just coming up with a set of prices, so maybe I
12 misunderstood what you asked me.

13 Q. Sure. We will let the record speak for
14 itself. Let's look at your second prong at page 8,
15 line 15. Let me know when you are there.

16 EXAMINER PRICE: Where are you at,
17 Trevor?

18 MR. ALEXANDER: Page 8, line 15. That's
19 just where he explained that....

20 EXAMINER PRICE: I understand.

21 MR. ALEXANDER: It's the bullet point.

22 A. Okay.

23 Q. And if the Commission were satisfied that
24 the proposed rider RRS would not have an
25 anti-competitive or market efficiency effect, then

1 your second prong would be met, correct?

2 A. So if it believed that there would be no
3 market efficiency or competitiveness effect, then,
4 yes, that would satisfy.

5 Q. And your prongs 3 and 4, so on page 8,
6 are both the cost control issues you address in your
7 direct testimony, correct?

8 A. Yes. Specifically lines 19 on page 8
9 through line 1 of page 9? These are related to --
10 these are primarily related to cost control issues
11 that was raised in the original testimony.

12 Q. And turning your attention to prong 5
13 discussed at -- well, page 9 and line 2 and again at
14 page 14, line 19, you say the Commission should
15 consider the economic impact of changes. Do you see
16 that?

17 A. So the economic impact of imposing higher
18 retail rates on the FE utilities cap to customers?

19 Q. Yes, that's the section. I am getting
20 you in the right area.

21 A. Do you want me to look on page 9 or page
22 14?

23 Q. It doesn't matter. Page 14.

24 A. Okay.

25 Q. So you believe that if the Commission

1 believes their rider RRS would be a net credit to
2 customers, then the -- excuse me, should be a net
3 charge to customers, then the Commission should
4 consider that impact, correct? I think I've
5 butchered that, so I'll rephrase it.

6 You believe that the Commission if it
7 believes rider RRS would be a net charge to
8 customers, then it should consider that impact on
9 retail rates, correct?

10 A. Yes. I think that the Commission should
11 consider the scale and the likelihood of a potential
12 charge.

13 Q. And you would similarly believe that if
14 the Commission believes rider RRS would be a net
15 credit to customers, that it should consider that
16 impact on retail rates as well, correct?

17 A. Yes, again, taking into account the scale
18 and the likelihood of whether a credit would actually
19 materialize.

20 Q. You have reviewed Company Witness
21 Murley's testimony, correct?

22 A. I have, yes.

23 Q. And you don't specifically recall whether
24 Company Witness Murley reviewed the retirement impact
25 of the plants, correct?

1 A. My recollection is that she conducted a
2 multiplier based analysis to determine -- or I should
3 say estimate the direct, indirect, and I believe
4 induced economic impacts of the plants. I would
5 not -- I -- I would not characterize that as
6 assessing the impacts of the plants retiring.

7 Q. Do you believe that Ms. Murley
8 addressed -- strike that.

9 You don't specifically recall whether
10 Witness Murley reviewed the retirement impact of the
11 plants, correct?

12 A. Again, my recollection was that she
13 estimated the direct, indirect, and induced impacts
14 of the plants operating, and that is not in my belief
15 a full assessment of the impacts of the plants
16 retiring.

17 Q. Did she address the plants retiring?

18 A. I do not believe so.

19 EXAMINER PRICE: What do you believe she
20 failed to do that you believe she should have done?

21 THE WITNESS: So I would characterize her
22 work as at most providing a what you would call a
23 partial equilibrium analysis. Basically she asked
24 the question what do the plants operating produce in
25 terms of direct, indirect, and induced impacts. And

1 my takeaway from having read that was the implication
2 being that if those plants were retired, those
3 direct, indirect, and induced impacts would go away.
4 However, there are a number of factors that it fails
5 to address.

6 So, for instance, if the plants were
7 retired, they may be replaced with new generation
8 capacity that produces the same or perhaps even
9 greater direct, indirect, and induced impacts.
10 Moreover, if the plants were retired, depending on
11 their going forward costs and the costs of other
12 generation in Ohio and in PJM, there could be a
13 reduction in customer retail rates that would also
14 have an economic impact. So in my mind, there are
15 lots of other impacts that were not captured from
16 what I recall of her analysis and testimony.

17 EXAMINER PRICE: Would those impacts also
18 include the effects on the wholesale price if you
19 took out 36 -- 3,200 megawatts generation out of the
20 PJM market and all other things were equal?

21 A. Of course. So my -- my argument is that
22 if one wants to do an assessment of what the impact
23 of the plants retiring would be, one should do a
24 complete assessment of what happens under the status
25 quo of keeping the plants versus what would happen

1 when all these long-run effects take place if the
2 plants were to retire.

3 So there could be effects on the
4 wholesale market. There could be effects on retail
5 prices. There could be effects on new generation or
6 transmission being built. And all of those could
7 have ancillary, indirect, induced, spillover effects.

8 EXAMINER PRICE: And have you performed
9 that analysis?

10 THE WITNESS: I have not, no.

11 EXAMINER PRICE: Thank you.

12 Q. And you are not aware of any witness in
13 this proceeding other than Ms. Murley who has
14 quantified the economic impact of the plants,
15 correct?

16 A. The economic impact of the plants
17 operating?

18 Q. Correct.

19 A. I am not aware of anyone else who has,
20 no.

21 Q. You are not aware of any witness in this
22 proceeding who has quantified the impact of the
23 plants retiring, correct?

24 A. I am not aware of anyone having fully
25 done that analysis, no.

1 Q. Let's turn to your prong 6, page 9, line
2 4. Are you there?

3 A. I am.

4 Q. You don't know whether PJM currently
5 provides reliability benefits in states with
6 regulated generation, correct?

7 A. I'm not clear on what you mean. Do you
8 mean -- I don't understand your question.

9 Q. Okay. Do you know whether PJM currently
10 operates in states which also have regulated
11 generation?

12 A. I believe it does, yes.

13 Q. Okay. And you don't know whether PJM
14 currently provides reliability benefits in those
15 states that do have regulated generation, correct?

16 A. So, again, the question is throwing me
17 off a little bit because I don't believe that PJM
18 provides reliability benefits. I believe it's
19 generation, transmission, demand response, assets
20 like that that provide reliability benefits.

21 Q. Sure. In your prong 6, you were talking
22 about reliability benefits of the plans that are not
23 already captured in the PJM-operated wholesale
24 markets, correct?

25 A. Yes.

1 Q. And so what I am trying to drill down on
2 is what additional benefits you're specifically
3 referring to that are not already captured. So, for
4 example, you can't identify how the performance and
5 supply obligations referenced in this prong differ
6 from the obligations of unregulated generations that
7 would be operating in PJM, correct?

8 A. Can the question be reread?

9 EXAMINER PRICE: Please.

10 (Record read.)

11 A. So is the question whether regulated and
12 unregulated generation both provide reliability
13 benefits?

14 Q. Yeah. Let's go at this another way. You
15 believe that reliability or regulated generation has
16 an obligation to serve load that unregulated
17 generation does not, correct?

18 A. I believe so. I don't know the details,
19 but I believe that they do have some sort of
20 obligation of that sort.

21 Q. Okay. You can't identify a difference if
22 the PJM market of the obligations of regulated and
23 unregulated generation, correct?

24 A. I don't know of any specific differences
25 in their obligations.

1 Q. Let's turn to your prong 7, page 9, line
2 7. You are not aware of any intervenor witness who
3 has proposed a lower cost alternative to rider RRS,
4 correct?

5 MR. STINSON: Could I have the question
6 reread, please?

7 EXAMINER PRICE: You may.

8 (Record read.)

9 A. I believe I would disagree with that. My
10 understanding is that OCC/NOPEC Joint Witness Wilson
11 has conducted an analysis of rider RRS under some
12 alternative price assumptions and has shown that they
13 could -- it could result in a net charge to
14 customers.

15 Q. Okay.

16 A. So, in essence, he would be saying that
17 the do nothing alternative would be a lower cost
18 alternative to rider RRS.

19 Q. Okay. Let's go to your deposition, page
20 85, starting at line 20.

21 A. Which deposition?

22 Q. The second. The question was: "Are you
23 aware of any intervenor witness who has proposed a
24 lower" --

25 A. Where on line 85?

1 Q. Page 85, line 20. Let me know when you
2 are there.

3 A. Okay.

4 Q. Did I ask you "Question: Are you aware
5 of any intervenor witness who has proposed a lower
6 cost alternative to the proposed PPA?

7 "Answer: I am not aware of a specific
8 one, no." Did I read that correctly?

9 A. You did. If you read my answer to your
10 previous question on lines 13 through 19, you will
11 see that I gave you the same answer regarding the
12 analysis conducted by Witness Wilson.

13 MR. ALEXANDER: Your Honor, move to
14 strike everything after "yes."

15 EXAMINER PRICE: We will grant the motion
16 to strike. That's a topic for redirect which you can
17 discuss with your counsel.

18 Q. Now, turning to your factor 8 on
19 competitive solicitations, you are not aware of any
20 intervenor witness who has quantified the savings
21 associated with a competitive solicitation, correct?

22 A. I am not, no.

23 Q. And at -- turn to page 21, line 4 where
24 you address auction ladderling, and let me know when
25 you are there.

1 A. Line 4, you said?

2 Q. That's correct.

3 A. Yes, I am at line 4.

4 Q. And you would agree that laddering only
5 stabilizes prices for the period in which the
6 laddering occurs, correct?

7 A. Yes, that would be when it has its
8 primary effect.

9 Q. And you would agree that any benefits of
10 laddering only apply to nonshopping customers,
11 correct?

12 A. Yes. Laddering of -- for SSO customers
13 would only apply to SSO customers.

14 Q. And you would also agree that the
15 benefits of laddering would in no way preclude the
16 additional benefits of rider RRS, correct?

17 A. If rider RRS does have benefits, then
18 I -- I can't immediately see how laddering would
19 interfere with that.

20 Q. Okay. Let's turn to your factor 9. That
21 factor is contingent --

22 A. Do you want me to go back to page --

23 Q. It doesn't matter. You can go to page 9
24 if you would like. Are you there?

25 A. So line 17?

1 Q. That's correct.

2 A. Okay.

3 Q. So your factor is contingent on obtaining
4 a list of alternatives pursuant to your factor 7,
5 correct?

6 A. 9 and 7 would be similar. The only
7 difference -- the only potential difference is that 7
8 is focused on a least cost combination, whereas 9
9 presumably would be a least cost combination but may
10 also have additional environmental regulations that
11 need to be met.

12 Q. And nothing in your supplemental
13 testimony expressly addresses where the companies'
14 proposal complies with the factors identified by the
15 Commission in the AEP Ohio order, correct?

16 A. No, I don't recall having anything in
17 here that specifically addresses that.

18 Q. Is that a yes, you don't recall having
19 anything?

20 A. Yes, I don't recall.

21 MR. ALEXANDER: Nothing further, your
22 Honor. Thank you, Doctor.

23 EXAMINER PRICE: Thank you.

24 Mr. McNamee?

25 MR. McNAMEE: No questions.

1 EXAMINER PRICE: Mr. Stinson, redirect?

2 MR. STINSON: If we could have a few
3 minutes, your Honor, it might be a good time for a
4 break.

5 EXAMINER PRICE: We will break until
6 3:25.

7 (Recess taken.)

8 EXAMINER PRICE: Let's go back on the
9 record. Mr. Stinson.

10 MR. STINSON: Yes, sir.

11 - - -

12 REDIRECT EXAMINATION

13 By Mr. Stinson:

14 Q. Mr. -- I'm sorry, Dr. Sioshansi, do you
15 recall during cross-examination that -- where
16 Mr. Alexander asked you questions to the effect
17 whether any witness provided a lower cost alternative
18 to RRS?

19 A. I do, yes.

20 Q. And I would like to turn your attention
21 to your supplemental deposition page 85 beginning at
22 line 11. Could you read that question and answer,
23 please.

24 A. Yes. "Question: Are you aware of any
25 lower cost alternatives to the proposed PPA?

1 "Answer: I am not aware of a specific
2 one, no. However, given the fact that, again, if you
3 were to look at OCC and NOPEC," that's a typo,
4 "Witness Wilson's analysis of the program and the
5 potentially very high charge to customers, that may
6 point to the fact that the PPA and the program could
7 be a very costly source, a very costly proposition
8 for the ratepayers."

9 Q. Thank you. One other question, and do
10 you also recall the questions from Mr. Alexander
11 regarding whether any year in which there would be a
12 credit under the RRS, whether that would be a
13 subsidy?

14 A. Yes, I do.

15 Q. And if I turn your attention to your
16 initial deposition from January, page 44, beginning
17 on line 24, carrying over to the next page, could you
18 read that question and answer, please.

19 A. "Question: So in every year in which
20 rider -- in which the rider RRS is a credit, you
21 would agree that in those years, customers are not
22 subsidizing FES?

23 "Answer: Again, if that hypothetical
24 situation were to occur and we are focusing
25 specifically on the year in which there is a credit,

1 there is not a direct subsidy. However, that's not
2 to say that over the 15-year term of the PPA
3 ratepayers would not be subsidizing FES. That's also
4 assuming that those particular price projections do
5 materialize."

6 Q. Thank you. At what point in time would
7 the Commission be able to determine if there were a
8 subsidy or not over that 15-year period?

9 A. So that's one of the difficulties in
10 evaluating the PPA and the rider which is that the
11 hypothetical questions all presume that one can look
12 at the program in an ex post fashion, essentially
13 look after the fact and see whether there was a
14 credit or a charge. Unfortunately the PUCO can't
15 make a decision on that basis and instead has to make
16 a decision in an ex ante fashion.

17 I would also add that regardless of
18 whether the PPA and the rider ends up being a net
19 credit or net charge to customers over its 15-year
20 term, there is an implicit subsidization of risk
21 because the full cost risk of these plants are being
22 transferred from FES to the companies' customers.

23 MR. STINSON: Thank you, Doctor. No
24 further -- no further questions.

25 EXAMINER PRICE: Recross, Mr. Kurtz?

1 MR. KURTZ: No, your Honor.

2 EXAMINER PRICE: Mr. Mendoza?

3 MR. MENDOZA: No, your Honor.

4 EXAMINER PRICE: Mr. Alexander?

5 MR. ALEXANDER: No, your Honor. Thank
6 you.

7 EXAMINER PRICE: Mr. McNamee?

8 MR. McNAMEE: No, thank you.

9 EXAMINER PRICE: Doctor, you are excused.

10 THE WITNESS: Thank you.

11 EXAMINER PRICE: Mr. Stinson?

12 MR. STINSON: Your Honor, at this point,
13 I would move the admission of OCC/NOPEC Exhibit No.
14 1, No. 2, and No. 3.

15 EXAMINER PRICE: Any objection?

16 MR. ALEXANDER: No, your Honor. As
17 amended, no, your Honor.

18 EXAMINER PRICE: Hearing no objection,
19 all three exhibits will be admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER PRICE: Mr. Wilson, you're next.
22 Ms. Willis, call your next witness.

23 MS. WILLIS: Thank you, your Honor. OCC
24 calls to the stand James Wilson. Mr. Wilson.

25 (Witness sworn.)

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

3 THE WITNESS: James F. Wilson, 4800
4 Hampden, H-A-M-P-D-E-N, Lane, Suite 200, Bethesda,
5 Maryland, 20814.

6 EXAMINER PRICE: Thank you. Please
7 proceed, Ms. Willis.

8 MS. WILLIS: Thank you, your Honor. At
9 this time, OCC would ask to mark as Joint Exhibit OCC
10 and NOPEC the direct testimony of James F. Wilson as
11 Exhibit No. 4.

12 EXAMINER PRICE: It will be so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 - - -

15 JAMES F. WILSON

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

18 DIRECT EXAMINATION

19 By Ms. Willis:

20 Q. Mr. Wilson, do you also have in front of
21 you in addition to your direct testimony your
22 supplemental testimony?

23 A. Yes, I do.

24 MS. WILLIS: Your Honor, at this time,
25 OCC would ask that the Supplemental Testimony of

1 James F. Wilson dated May 11, 2015 be marked as OCC
2 and NOPEC Joint Exhibit No. 5.

3 EXAMINER PRICE: It will be so marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MS. WILLIS: Now, your Honor, with
6 respect to the confidential version of the direct
7 testimony, we would ask that the confidential version
8 which relates to the confidential direct testimony of
9 Mr. James F. Wilson filed December 22, 2014, be
10 marked as Joint Exhibit OCC/NOPEC 4B. Off the
11 record.

12 EXAMINER PRICE: Let's go off the record.

13 (Discussion off the record.)

14 MS. WILLIS: We would ask that the -- the
15 confidential direct testimony be marked as -- I'm
16 sorry, Joint Exhibit OCC/NOPEC 6C.

17 EXAMINER PRICE: Confidential, yes.

18 MS. WILLIS: Yes.

19 EXAMINER PRICE: It will be so marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Now, Mr. Wilson, let's start with your
22 direct testimony that's been marked as Exhibit 4 and
23 Exhibit 6C. Was that testimony prepared by you or
24 under your direction and supervision?

25 A. Yes, it was.

1 Q. And if I were to -- or do you have any
2 additions, corrections, or deletions to that
3 testimony, either version?

4 A. Yes. I had three quite minor errata.

5 Q. Okay. If you could identify those for
6 us, please.

7 A. On page 22, line 3, MMBtu should be MBtu.

8 Q. And that correction applies to both your
9 direct public and your direct confidential?

10 A. Yes.

11 Q. Thank you.

12 A. On page 4, line 9, where it says "holding
13 Mr. Rose's," it should say "holding Mr. Lisowski's
14 and Mr. Rose's."

15 Q. And, again, that correction is made on
16 both your direct public and your direct confidential?

17 A. Yes.

18 Q. Thank you.

19 A. And, finally, on page 67, lines 11, 12,
20 the phrase "over the ESP period" should be deleted.

21 Q. And, again, this correction is made to
22 both your direct and your confidential version of
23 your direct testimony?

24 A. Yes.

25 Q. Okay. Did you have any further

1 corrections, additions, or deletions to your
2 supplemental testimony?

3 A. I did, one.

4 Q. Okay. Can you identify those for me.

5 A. On page 17, line 9, the word "efficiency"
6 should be followed by a period and end quote.

7 Q. No, I think I actually forgot the initial
8 question which was to ask you for purposes of this
9 proceeding, by whom are you employed and in what
10 capacity?

11 A. I am an independent consultant and doing
12 business as Wilson Energy Economics and I'm -- I am
13 presenting testimony on behalf of OCC and NOPEC in
14 this proceeding.

15 Q. Thank you. Now, with respect to both
16 your public direct testimony and your confidential
17 direct testimony, if I ask you the questions that are
18 posed there, would your answers be the same today?

19 A. Yes, with the caveat that if I were to
20 redo my analysis with updated assumptions, I might
21 get different results but, yes.

22 Q. Okay. And with respect, Mr. Wilson, to
23 your supplemental testimony, if I ask you the
24 questions that are posed to you in that supplemental
25 testimony, would your answers be the same?

1 A. Yes.

2 MS. WILLIS: Your Honor, at this time, I
3 would move for the admission of the Exhibits 4, 5,
4 and 6C and offer Mr. Wilson for cross-examination.

5 EXAMINER PRICE: Thank you. We will
6 defer ruling on the motions for admission until the
7 completion of cross-examination.

8 Mr. Mendoza, cross?

9 MR. KUTIK: Your Honor, at this time we
10 would entertain motions to strike before
11 cross-examination begins.

12 EXAMINER PRICE: Sure.

13 MR. KUTIK: Your Honor, I have a few
14 motions to strike certain parts of the direct
15 testimony starting with the direct testimony page
16 5 -- excuse me 34. And we would move to strike
17 starting at line 4, the sentence starting with the
18 word "Exhibit," goes all the way to line 6 and ends
19 in the footnote, and we would include the footnote in
20 our motion to strike, footnote 11.

21 We would also move to strike the exhibit
22 that's referred to JFW-10 all for the reason, your
23 Honor, it is hearsay. It is a publication of the
24 INGAA Foundation, not a party of this case, not a
25 witness to this case, and, therefore, it's hearsay.

1 EXAMINER PRICE: Ms. Willis.

2 MS. WILLIS: Yes, your Honor. We believe
3 it is not hearsay. It's an exception to hearsay
4 under 803.17. Additionally, it is information that
5 Mr. Wilson uses for purposes of his analysis. And as
6 an expert witness, he is entitled to set forth an
7 opinion and rely upon informations and publications,
8 and this is one of them, so it is perfectly proper
9 testimony and should be not stricken.

10 EXAMINER PRICE: Just pretend I can't
11 remember which one is 803.17 and tell me --

12 MR. KUTIK: Thank you, your Honor.

13 MS. WILLIS: Yes, your Honor, I believe
14 that's publications and the exception that relates to
15 publications and reports of commercially available
16 information, I believe.

17 EXAMINER PRICE: Okay. Which would
18 pertain to market quotations, tabulations, lists,
19 directories, or other published compilations
20 generally used and relied upon by the public or by
21 persons in a particular occupation.

22 MS. WILLIS: Yes, your Honor.

23 EXAMINER PRICE: Can you explain to me
24 how it meets that specific definition?

25 MS. WILLIS: Well, they are publicly

1 available projections. They are prepared by a --
2 Mr. Rose's firm for a foundation and submitted to the
3 foundation which I would understand to be a public
4 foundation or a foundation that receives public
5 dollars. And they are a compilation of facts or data
6 that are relied upon for the purposes of carrying out
7 business.

8 EXAMINER PRICE: What is the INGAA
9 Foundation?

10 MS. WILLIS: Your Honor, I apologize that
11 I do not have that information available.

12 EXAMINER PRICE: I'll ask the witness.
13 What is the INGAA foundation?

14 THE WITNESS: Interstate National Gas
15 Association of America, I believe.

16 MR. KUTIK: Your Honor.

17 EXAMINER PRICE: Yes, sir.

18 MR. KUTIK: As you know, the burden with
19 respect to the admissibility of the evidence is upon
20 the party that proffers the evidence. There is no
21 evidence in the record, certainly by Ms. Willis's
22 test -- statements or certainly by the witness in
23 terms of the nature of the foundation. It's not the
24 association, it's a foundation, and that that would
25 fall within the -- a readily available, readily

1 relied upon commercial entity that produces market
2 materials which is really the point of that exception
3 to the hearsay rule.

4 With respect to the reliance by this
5 witness on that, that would be true, your Honor,
6 counsel may have a point, your Honor, if we were in
7 federal court, but under the state rules, your Honor,
8 as you know, things that the witness relies on and
9 seeks to offer into evidence must be independently
10 admissible.

11 EXAMINER PRICE: I very much want to
12 agree with you on every issue you have raised,
13 Mr. Kutik, because I agree with you on every issue
14 you raised except the issue of ICF prepared these.
15 And the fundamental issue about hearsay is you've got
16 no opportunity to cross-examine the witness on the
17 statements being offered out of state and to test his
18 credibility, but this is -- bear with me a minute and
19 you can respond.

20 But this is an ICF forecast, and you
21 have an ICF witness, and you could call that ICF
22 witness, and he could say we were wrong in 2011 or
23 the assumptions were given to us by somebody else,
24 but you understand what I am getting at?

25 MR. KUTIK: Yes, your Honor. And what if

1 it was an ICF forecast but it was employed by ICF?
2 So we don't know if there has been any analysis done
3 or any revisions or manipulation or treatment of the
4 ICF data.

5 MS. WILLIS: I'm not sure I understood
6 your comment it is employed?

7 MR. KUTIK: Yeah. His own footnote says,
8 quote, "employing the ICF 2011 referenced case."

9 MS. WILLIS: Well, certainly, you would
10 have the ability to cross-examine Mr. Wilson with
11 respect to what he had done with the ICF analysis.

12 MR. KUTIK: The problem is it's not
13 Mr. Wilson who did something with this analysis. It
14 was this foundation.

15 EXAMINER PRICE: Mr. Wilson, I have a
16 question for you. Were you reviewing an ICF source
17 document, or were you reviewing a foundation source
18 document?

19 THE WITNESS: This is an INGAA Foundation
20 document, but it's reporting a forecast prepared by
21 ICF that I included in my exhibit.

22 EXAMINER PRICE: So we have hearsay
23 within hearsay, and that's good enough for me.
24 Motion to strike will be granted.

25 MR. KUTIK: Your Honor, our next motion

1 to strike is on page 42.

2 EXAMINER PRICE: What was the page of
3 that last one? I just want to make sure I write down
4 the last one.

5 MR. KUTIK: 34.

6 EXAMINER PRICE: Thank you.

7 MR. KUTIK: Lines 4 through 6. There's a
8 sentence that begins on that line and ended on 6,
9 footnote 11 and JF -- Exhibit JFW-10.

10 Our next motion, your Honor, is on page
11 42 at line 14, the sentence that begins there and
12 ends in the middle of line 15 and then the footnote.
13 It refers to something in reference to U.S. Electric
14 Utilities and IPPs. It's unclear what the source of
15 the document is, your Honor. So for that reason, we
16 object, move to strike on the grounds of hearsay.

17 EXAMINER PRICE: What was the reference
18 again? I'm sorry.

19 MR. KUTIK: Sure. It is page 42, line
20 14, sentence that begins there.

21 EXAMINER PRICE: And the footnote.

22 MR. KUTIK: Through line 15, the sentence
23 ends on line 15, and the footnote I believe is
24 footnote 16.

25 EXAMINER PRICE: Yes. Thank you.

1 Ms. Grady?

2 MS. WILLIS: Your Honor, I would believe
3 that, again, this would fall under 803.17.

4 Mr. Kutik's remarks about he was -- he was not aware
5 of some reference, it's unclear to the source of the
6 document, then that certainly would be something
7 Mr. Kutik could clear up on cross-examination.

8 And I do believe that a witness is
9 entitled to give an opinion and rely upon information
10 in giving that opinion, and this is all Mr. Wilson is
11 doing. He is relying upon information and data that
12 is widely known in the industry and he's presenting
13 that -- that opinion, and it is part of what he is
14 relying upon as part of his testimony in presenting
15 his testimony to the Commission.

16 MR. KUTIK: Your Honor, what he is
17 reporting is according to "some final analysts," so
18 we have a document that's reporting hearsay.

19 EXAMINER PRICE: I agree. Motion to
20 strike will be granted.

21 MR. KUTIK: Your Honor, our next motion
22 to strike is on page 52. And on page 52, your Honor,
23 starting at line 18, that paragraph that ends at --
24 the sentence that ends at line 20 where he was
25 informed by NOPEC counsel. That's hearsay. He lacks

1 personal knowledge. That's an interesting theory
2 that I can tell my witness a whole bunch of things
3 and they can testify to it. It's -- it's
4 inappropriate testimony.

5 EXAMINER PRICE: Ms. Grady?

6 MS. WILLIS: May I have a moment, your
7 Honor?

8 EXAMINER PRICE: You may. Let's go off
9 the record.

10 (Discussion off the record.)

11 EXAMINER PRICE: Now we are on the
12 record.

13 MS. WILLIS: We can withdraw that
14 testimony lines 18 through 20.

15 EXAMINER PRICE: Thank you.

16 MR. KUTIK: Your Honor, our next motion
17 to strike, and this is the last one on direct
18 testimony is on page 55. And we would move to strike
19 the sentence that begins on line 5 and the testimony
20 continuing through line 11, as well as the two
21 footnotes that are referred to, those being 19 and
22 20. This is a reference to the same NRRI report,
23 your Honor, that was stricken yesterday in
24 Mr. Effron's testimony.

25 EXAMINER PRICE: Ms. Grady, try again.

1 MS. WILLIS: Your Honor, I believe it is
2 something that this witness is relying upon, he is
3 familiar with. NRRI is certainly a known entity. It
4 is a -- an organization that regularly does research
5 and keeps track of trends as well as information
6 on -- specific to utilities, so I believe it really
7 is the type of evidence that is trustworthy and
8 really is not the type of evidence that the hearsay
9 rule is targeted to.

10 EXAMINER PRICE: Consistent with our
11 motion yesterday, we will go ahead and grant the
12 motion -- the ruling yesterday, we will go ahead and
13 grant the motion to strike.

14 MR. KUTIK: Your Honor, our next motion
15 to strike is on -- or in Mr. Wilson's supplemental
16 testimony on line 12 or -- on page 12. And, your
17 Honor, this is the -- starting on line 9, the
18 sentence that begins there and ends on line 12, as
19 well as the footnote, footnote No. 4 cites the
20 comments of someone else.

21 EXAMINER PRICE: You are asking for
22 beginning of line 9?

23 MR. KUTIK: No, I'm sorry, the sentence
24 that begins on line 9, the sentence that begins "the
25 term." I'm sorry, it's actually two sentences.

1 Begins on line 9 "the term" and the second sentence
2 ends on line 12.

3 EXAMINER PRICE: Let's take these
4 sentences one at a time. Why can't he testify as to
5 the first sentence?

6 MR. KUTIK: Well, I guess you're right,
7 your Honor, he could.

8 EXAMINER PRICE: Okay. With respect to
9 the second sentence, Ms. Grady?

10 MS. WILLIS: Yes, your Honor, in terms of
11 hearsay, there's a concern with hearsay that it's an
12 unreliable statement. Here we have actually comments
13 that are filed in a FERC docket that could be --
14 clearly could be checked, that is, it is -- it is --
15 the filing is what it is. The comments are what they
16 are. There is no question that they either state or
17 do not state that term. So I don't think this is the
18 type of evidence that the hearsay rule is geared
19 to -- to protect the court against.

20 EXAMINER PRICE: I disagree. The problem
21 still is and always is that Mr. Kutik cannot
22 cross-examine the declarant on the contents of the
23 statement, so we will go ahead and strike that. Just
24 to be clear, we are striking the sentence that begins
25 on line 10 with the words "he explained" and the

1 accompanying footnote 4.

2 MR. KUTIK: That concludes my motions to
3 strike, your Honor.

4 EXAMINER PRICE: Thank you.

5 Now, Mr. Mendoza, cross?

6 MR. MENDOZA: No questions, your Honor.

7 EXAMINER PRICE: Mr. Kurtz, cross?

8 MR. KURTZ: No questions.

9 EXAMINER PRICE: Ms. Bojko, cross?

10 MS. BOJKO: No, thank you, your Honor.

11 EXAMINER PRICE: Are you sure? We will
12 give you a minute.

13 MS. BOJKO: I'm sure.

14 MR. KURTZ: Your Honor, can I say this?
15 I thought the company was going to go first, and I
16 may have cross depending on that.

17 EXAMINER PRICE: As you are a party in
18 interest to the company, that's fine. I just want to
19 get the nonsignatory parties so that they are not
20 rehabilitating.

21 MR. KURTZ: You caught me offguard.

22 Thank you.

23 EXAMINER PRICE: Mr. Kutik.

24 MR. KUTIK: Thank you, your Honor.

25 - - -

CROSS-EXAMINATION

By Mr. Kutik:

Q. Good afternoon, Mr. Wilson.

A. Good afternoon.

Q. First, let me ask you to do me a favor if you could. I think we can get through your examination today with maybe very few questions, perhaps none, in confidential session. So it is my intent unless I specifically flag I want to go to confidential session to try to keep the information that I ask you about in as public and nonconfidential. So if I ask you something that you think is confidential, will you let me know that?

A. I'll try to remember that, but you might want to hint when you are getting close.

Q. Okay. Or you can give me the hint when I am getting close. All right. Thank you very much.

Mr. Wilson, we can agree, can we not, that OCC is an important client to you?

A. Yes.

Q. And they have been your client since 2008 and 2009?

A. Yes, not continuously, but yes.

Q. Well, you've had a contract, at least one

1 contract, with OCC every year since then, have you
2 not?

3 A. I am not sure if it's every year but most
4 years, yes.

5 Q. And they would be, that is OCC, would be
6 among your top five clients?

7 MS. WILLIS: Objection.

8 EXAMINER PRICE: Grounds?

9 MS. WILLIS: Relevance.

10 EXAMINER PRICE: Overruled.

11 A. I'm not sure but possibly.

12 Q. All right. And it would be as much as
13 perhaps 35 percent of your billings?

14 A. No. The 35 percent number that I gave on
15 deposition referred to broader work with PJM consumer
16 advocates inclusively.

17 Q. All right. So that 35 percent number
18 would include OCC or organizations that OCC is a
19 member of that you do work for?

20 A. No. It would include other load
21 interests in the PJM's space. So consumer advocates,
22 industrial customers, public power, the states
23 sometimes participate.

24 Q. Do you have your deposition, Mr. Wilson?

25 A. I do.

1 MR. KUTIK: May I approach the Bench?

2 EXAMINER PRICE: You may.

3 MS. WILLIS: Can I inquire what was
4 handed out?

5 MR. KUTIK: His deposition from February.

6 MS. WILLIS: February?

7 MR. KUTIK: Yes.

8 MS. WILLIS: And can you give me a moment
9 to find that, please?

10 Thank you.

11 Q. (By Mr. Kutik) Mr. Wilson, I took your
12 deposition two times in this case, correct?

13 A. Correct.

14 Q. And one time that I took your deposition
15 was on February 10, 2015, correct?

16 A. That's correct.

17 Q. And you took an oath to tell the truth in
18 that deposition?

19 A. I did.

20 Q. And you had an opportunity to review the
21 deposition and make corrections, did you not?

22 A. Yes.

23 Q. And you actually took advantage of that
24 opportunity, did you not?

25 A. Yes.

1 Q. Let me now refer you to page 106.
2 Specifically, Mr. Wilson, I want to refer you to line
3 19. And did I ask you the following questions and
4 did you give the following answers: "Question: How
5 much of your work in the last two years has been for
6 OCC or groups that have included OCC?

7 "Answer: How much?

8 "Question: Yeah.

9 "Answer: I don't know. I would have to
10 calculate it, but it might be 25, 30, 35 percent,
11 something like that." Did I read that correctly?

12 A. Yes.

13 MS. WILLIS: Objection.

14 EXAMINER PRICE: Grounds?

15 MS. WILLIS: It is not inconsistent, it's
16 improper impeachment.

17 MR. KUTIK: He said the 35 percent figure
18 did not include or included other things and other
19 groups.

20 EXAMINER PRICE: The -- we will match it
21 up with the transcript and it will reveal what it
22 says.

23 Q. Now, would it be correct to say that
24 since 2008, you have submitted testimony on behalf of
25 OCC or groups that have included OCC about 10 times?

1 A. I don't know.

2 Q. All right. Well, let's refer to your
3 testimony and let's refer to your attachment JW-1.

4 MS. WILLIS: Is that the direct
5 testimony, Mr. Kutik?

6 MR. KUTIK: Yes, yes.

7 Q. And specifically, could you please turn
8 to page 5 of that where there's a heading Testimony
9 and Affidavits. Okay? So going down the list, the
10 first one we come to where you worked on behalf of
11 OCC was in the matter of the Duke Energy Ohio -- In
12 the Matter of the Application of Duke Energy Ohio for
13 Authority to Establish a Standard Service Offer in
14 the Form of an Electric Security Plan, and that's a
15 PUCO Case No. 14-841-EL-SSO, correct?

16 A. Yes.

17 Q. The second one would be in Ohio Power's
18 ESP, the next one on the list, Case No.
19 13-2385-EL-SSO, correct?

20 A. Yes. You skipped the first one on the
21 list which was for a group of consumer advocates that
22 OCC has at times participated in.

23 Q. All right.

24 A. I just want to note.

25 Q. All right. The next one on the list in

1 PJM interconnection FERC docket ER 14-504, that was
2 for the Joint Consumer Advocates and public interest
3 organizations, that included OCC, did it not?

4 A. I don't recall.

5 MR. KUTIK: May I approach, your Honor?

6 EXAMINER PRICE: You may.

7 MR. KUTIK: Your Honor, I do not intend
8 to mark this exhibit. I am doing it purely to
9 refresh the witness's recollection.

10 EXAMINER PRICE: Thank you.

11 Q. Mr. Wilson, I have handed you a document
12 from that case that we just listed out, correct?

13 A. Yes.

14 Q. And do you recognize this as your
15 affidavit?

16 A. Yes.

17 Q. And on the second page, does it list who
18 you represent, or I should say on page 2, does it say
19 who you represent?

20 A. Not represent but prepared at the request
21 of.

22 Q. Fair enough. And does that list include
23 OCC?

24 A. It does.

25 Q. All right. The next one I would like to

1 talk to you about is the last one on page 5 of your
2 attachment and that is the Dayton Power and Light
3 Company approval for a market rate offer, and that
4 was Case 12-426-EL-SSO, correct?

5 A. Yes.

6 Q. And that was on behalf of OCC, correct?

7 A. Yes.

8 Q. The next one I want to talk to you about
9 is on page 6, and that -- and the second line or the
10 second item is with respect to Ohio Edison, et al.,
11 Authority for Standard Service Offer in the Form of
12 an Electric Security Plan, Case No. 12-1230-EL-SSO.
13 That was for OCC as well, correct?

14 A. Correct.

15 Q. Now I would like you to go down a few,
16 and there is a PJM interconnection LLC FERC docket
17 number ER 11-2288. Do you see that?

18 A. Yes.

19 Q. And you made comments on behalf of the
20 Joint Consumer Advocates, do you see that?

21 A. Yes.

22 Q. And did that include OCC?

23 A. I don't know.

24 MR. KUTIK: May I approach, your Honor?

25 EXAMINER PRICE: You may.

1 Q. Mr. Wilson, I would like to hand you a
2 document that appears to be from that case. Do you
3 recognize it?

4 A. Yes.

5 Q. And this is your affidavit, is it not?

6 A. Yes.

7 Q. I would like to have you turn to the
8 second page or the page that's numbered 2,
9 particularly paragraph 5.

10 A. Yes.

11 Q. Lists who you are making comments on
12 behalf of, correct?

13 A. Yes.

14 Q. And that includes OCC, does it not?

15 A. Yes.

16 Q. The next one I want to talk to you about
17 is three from the bottom on page 6 of your attachment
18 JFW-1, and again, that's in the Application of Ohio
19 Edison Company, et al. for Market Rate Offer and
20 that's Case No. 09-906-EL-SSO, and you appeared on
21 behalf of the OCC, correct?

22 A. Correct.

23 Q. I would like to have you turn to page 7.
24 And the second item that's listed there, Maryland
25 Public Service Commission, et al. versus PJM

1 Interconnection, LLC, FERC docket number EL 0867000,
2 that was an affidavit on behalf of RPM buyers. Did
3 that include -- that included OCC, did it not?

4 A. I don't recall, but it may have, yes.

5 MR. KUTIK: All right. May I approach,
6 your Honor?

7 EXAMINER PRICE: You may.

8 Q. Does that document appear to be from that
9 case?

10 A. Yes.

11 Q. And does this document indicate who the
12 RPM buyers are?

13 A. Yes.

14 Q. And does that -- does that include OCC?

15 A. Yes.

16 Q. And lastly, I want to refer you to the
17 next item on Page 7 of Attachment JFW-1, RPM
18 Connection LLC, FERC docket number ER 08516. Do you
19 see that?

20 A. Yes.

21 Q. And that was on behalf also of RPM
22 buyers?

23 A. Yes.

24 Q. And did that include -- and that included
25 OCC as well, did it not?

1 A. I don't know.

2 MR. KUTIK: May I approach?

3 EXAMINER PRICE: You may.

4 Q. Mr. Wilson, I have handed you a document
5 from that case.

6 A. Yes.

7 Q. And does that appear to be a document you
8 played a part in submitting?

9 A. This is the pro test. But my affidavit
10 appears to be attached, yes.

11 Q. And does this indicate who comprises the
12 RPM buyers, correct?

13 A. Footnote 1.

14 Q. And footnote 1 indicates that OCC is a
15 part of that, correct?

16 A. Yes.

17 Q. So you would agree with me, would you
18 not, that we've identified about 10 cases where
19 you've provided information on behalf of OCC or
20 groups that included OCC since 2008, you would agree
21 with that, correct?

22 A. Okay, yes. There may be more. I haven't
23 checked.

24 Q. Thank you. Now, would it be fair to say
25 that by the time you were retained in this case, you

1 had already provided OCC your testimony in the -- in
2 AEP and Duke's ESP cases?

3 A. I believe that's correct.

4 EXAMINER PRICE: Let's go off the record
5 real fast.

6 (Discussion off the record.)

7 EXAMINER PRICE: Let's go back on the
8 record.

9 MR. KUTIK: May I have the last question
10 and answer read, please?

11 EXAMINER PRICE: Yes.

12 (Record read.)

13 A. Yeah, I think you are referring to the
14 2014 cases.

15 Q. Yes.

16 A. Yes.

17 Q. And would it be fair to say that your
18 testimony in those cases dealt with, among other
19 things, what we might call PPA-related riders?

20 A. Yes.

21 Q. And would it be also true to say that
22 some part of your testimony in those cases has been
23 replicated in your testimony in this case?

24 A. Yes.

25 MR. KUTIK: May I approach, your Honor?

1 EXAMINER PRICE: You may.

2 MR. KUTIK: We would ask to have marked
3 for identification as a Company Exhibit 56 the public
4 version of the direct testimony of James F. Wilson
5 in -- in the Matter of the Application of Ohio Power
6 Company for Authority to Establish a Standard Service
7 Offer Pursuant to Section 4928.143, Revised Code, in
8 the form of an Electric Security Plan, Case No.
9 13-2385-EL-SSO.

10 EXAMINER PRICE: It will be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. KUTIK: And we would ask that we have
13 marked for identification as Company Exhibit 57 the
14 public version of the direct testimony of James F.
15 Wilson in -- in the Matter of the Application of Duke
16 Energy Ohio for Authority to Establish a Standard
17 Service Offer Pursuant to Section 4928.143, Revised
18 Code, in the Form of an Electric Security Plan
19 Accounting Modifications and Tariffs for Generation
20 Service, Case No. 14-841-EL-SSO.

21 EXAMINER PRICE: It will be so marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. (By Mr. Kutik) Mr. Wilson, are those that
24 I have just given you your testimonies, correct, in
25 those cases?

1 A. Yes.

2 Q. Now, OCC put no limitations for your work
3 on this case, correct?

4 A. Correct, budget limitations, but I mean,
5 there was -- there was a scope worked out.

6 Q. And that was a matter of negotiation
7 between you and your clients in this case?

8 A. I am not sure negotiation is the right
9 word, but they ask me about a case, they tell me what
10 their concern is, they ask me if I could testify
11 about this, could I evaluate and testify to this,
12 this, and this and we work out a scope.

13 Q. Okay.

14 MR. KUTIK: May I approach, your Honor?

15 EXAMINER PRICE: You may.

16 MR. KUTIK: Your Honor, at this time, we
17 would like to have marked for identification as
18 Company Exhibit 57 --

19 EXAMINER PRICE: 58.

20 MR. KUTIK: Excuse me, 58, a document
21 indicating -- indicated as Contract 1516 Wilson
22 Energy Economics, Contract For Professional Services.

23 EXAMINER PRICE: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Mr. Wilson, do you recognize that

1 document?

2 A. Yes.

3 Q. And that's your contract in this case?

4 A. Yeah -- yes, this seems to be specific to
5 this case.

6 Q. And this -- you agreed to do the work in
7 this case for an amount not to exceed \$30,000?

8 A. Yes. That's the limit. I am trying to
9 recall whether I had already worked a little bit on
10 this case under a different contract before that or
11 not. I don't think so, but....

12 Q. We will get to that in a minute.

13 A. Okay.

14 Q. And would you agree that the \$30,000
15 figure at least you thought at the time was a
16 sufficient amount for you to do the work that you
17 needed to do for this case?

18 A. I think that's right, yes.

19 Q. And this work -- this did not limit you
20 in any way in doing the work you thought was
21 necessary to do?

22 A. I thought I could do a good job for this
23 budget. Necessary, I didn't really have a notion of
24 necessary.

25 Q. Okay. So let me now --

1 MR. KUTIK: Your Honor, may I approach?

2 EXAMINER PRICE: You may.

3 MR. KUTIK: Your Honor, we would like to
4 have marked as Company Exhibit 59, a multi-page
5 document which starts with a letter from Wilson
6 Energy Economics dated October 30, 2014.

7 EXAMINER PRICE: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. (By Mr. Kutik) Now, would it be correct
10 to say, Mr. Wilson, that these represent some of the
11 invoices that you sent to OCC?

12 A. Yes.

13 Q. And these are several invoices, are they
14 not?

15 A. Yes.

16 Q. And this appears to be a recitation of
17 work that you did at least in terms of detail in the
18 months of October, November, and December, correct?

19 A. Yes.

20 Q. And would it be fair to say that you did
21 work after this primarily relating to your
22 supplemental testimony, sitting for a deposition and
23 I assume preparing for your testimony today?

24 A. Yes.

25 Q. If we -- if we look at the first invoice,

1 that was an invoice that was for another case,
2 correct, or under a contract that started for another
3 case?

4 A. Well, the contract was somewhat open
5 ended. I believe this contract was for work on PUCO
6 issues. I think at the time that contract was put in
7 place which was probably usually early summer on
8 OCC's contract cycle, I think they had anticipated
9 some of the cases I would be working on.

10 Q. So this covered several cases, not just
11 one?

12 A. Yes, multiple.

13 Q. Okay. Now, if we look at the invoices,
14 would it be fair to say that you spent three days or
15 more accurately three hours in October concluding
16 with the last day of the month?

17 A. I think you mean to ask about the FE
18 case?

19 Q. Yes.

20 A. Yes.

21 Q. Thank you. And would it be fair to say
22 then that you continued to work on this case on
23 November 3?

24 A. I'm missing the -- Oh, there it is, okay.
25 Yes, it appears I spent two hours on November 3.

1 Q. All right. So as of November 3, you had
2 worked five hours on this case, correct?

3 A. Three hours in October, two hours on that
4 day. That would appear to be correct.

5 Q. And at the end of that time, you had
6 organized your thoughts on this case, correct?

7 A. After five hours, that might be a little
8 overreaching to say I had organized my thoughts on
9 the case. I don't know.

10 Q. All right. Well, doesn't this line item
11 on November 3 say "Review FE's testimony, organize
12 thoughts on case"?

13 A. I was working on organizing my thoughts
14 on the case, yes. I didn't say I completed it on
15 that day.

16 Q. All right. And would it be fair to say
17 that you began drafting your testimony on December 3
18 which we see in the third and last invoice in this
19 group on the last page of the exhibit?

20 A. Apparently so, yes.

21 Q. Now, before you began drafting your
22 testimony, one of the things that you did was that
23 you evaluated price forecasts, correct, specifically
24 on November 24, November 25, and November 26?

25 A. Yes.

1 Q. And it also indicates that you reviewed
2 case materials on October 30 and FE testimony on
3 November 3, correct?

4 A. I did those things, yes.

5 Q. All right. And would it be fair to say
6 that none of the other descriptions indicates a
7 review of case materials or testimony; fair to say?

8 A. Well, the line items don't mention that
9 but, of course, I was reviewing the FE testimony
10 continuously through my effort.

11 MR. KUTIK: Well, your Honor, I would ask
12 that everything starting with the words "but, of
13 course," be stricken.

14 EXAMINER PRICE: We will grant the motion
15 to strike. Mr. Wilson, please listen carefully to
16 counsel's question. Answer that question and only
17 that question. If you feel there is additional
18 context or other information useful to the Bench,
19 Ms. Grady -- Ms. Willis can ask you that question on
20 redirect.

21 MS. WILLIS: Thank you, your Honor. Your
22 Honor, I might inquire. I think the other day there
23 was a -- a gimme or a do-over or whatever you might
24 want to call it, mulligan, where the witness would be
25 allowed to explain, so I would hold that in abeyance

1 and at a future point he may.

2 MR. KUTIK: It's a little late in the
3 week and the day for mulligans.

4 EXAMINER PRICE: The mulligan is highly
5 discretionary on the Bench's part and also relates to
6 the experience of the witness, and Mr. Wilson has
7 appeared before me several times now and he knows the
8 drill.

9 MS. WILLIS: Thank you, your Honor.

10 Q. (By Mr. Kutik) Mr. Wilson, you reviewed
11 the term sheet between the companies and FES?

12 A. I believe I did, yes.

13 Q. And you did not attempt to review the
14 profitability of any FES plants, correct?

15 A. No, I didn't.

16 Q. And that would include the plants
17 discussed in this case, correct?

18 A. Yes.

19 Q. Now, I wanted to talk to you a little bit
20 about your views on rider RRS and what you understand
21 about the application. Now, you understand that the
22 companies do not intend to offer the output or use
23 the output that they might receive through the
24 proposed transaction to serve SSO customers, correct?

25 A. Yes, that's my understanding.

1 Q. And the output will also not be used to
2 provide services directly to shopping customers,
3 correct?

4 A. Well, we don't know that the output won't
5 be used that way, but FES doesn't intend to sell it
6 that way, yes.

7 Q. And there's nothing in rider RRS that
8 prevents customers from shopping; isn't that correct?

9 A. Yes.

10 Q. Now, regarding how the rider works, if
11 capacity prices are higher, customers will receive a
12 more positive value in terms of what rider RRS will
13 actually be, correct?

14 A. If capacity prices are higher and you
15 hold everything else constant which, of course, is
16 not what happens, everything adjusts, but, yes.

17 Q. Now, you would agree with me, would you
18 not, that PJM capacity prices have been fairly
19 volatile?

20 A. They haven't been all that volatile in
21 western PJM that's relevant to this case. They've
22 been -- we've not got what -- another based residual
23 auction with another price within the range. It's
24 been volatile in some of the zones, but in western
25 PJM, not so volatile really.

1 MR. KUTIK: May I approach, your Honor?

2 EXAMINER PRICE: You may.

3 Q. Mr. Wilson, I would like to hand you a
4 deposition that was taken of you in the Duke ESP Case
5 14-81-EL-SSO on October 6, 2014. Mr. Wilson, do you
6 recall being deposed in the Duke ESP?

7 A. I wouldn't say I recall the day, but yes,
8 that did occur.

9 Q. I am not going to hold you to the date,
10 but you recall having your deposition taken, do you
11 not?

12 A. Yes, that did occur.

13 Q. And this appears to be a transcript of
14 that deposition?

15 A. Yes.

16 Q. I would like to refer you -- and by the
17 way, in that deposition you took an oath to tell the
18 truth; did you not?

19 A. I am sure I did.

20 Q. I am sure you did. Now, let's go to page
21 51, please. Were you not asked the following
22 question and did you not give the following answer.
23 "Question: Do you believe, Mr. Wilson, that
24 wholesale prices for capacity have been volatile over
25 the last five years?

1 "Answer: Well, typically we use volatile
2 to refer to very short-term prices and capacity
3 prices established on an annual basis, but because
4 for capacity we only have prices on an annual basis,
5 we compare price one year to the next year to the
6 next year. And on that basis, PJM capacity prices
7 have been fairly volatile, yes." That was your
8 testimony in the Duke ESP deposition; was it not?

9 A. Yes. And there I did not limit it to
10 western PJM and the time range was a specific
11 five-year period.

12 Q. Nor was my question limited. Now, the
13 PJM market is an uncertain time or has been in an
14 uncertain time within the last year or so, do you
15 agree?

16 A. Try that again, please.

17 Q. Sure. The PJM market has been in
18 uncertain times within the last year or so?

19 A. That's kind of a very broad -- I mean,
20 the times are always uncertain, yes.

21 Q. All right. And wholesale energy prices
22 have also had periods of volatility over the last
23 five years, correct?

24 A. Yes.

25 Q. And volatile energy prices can be driven

1 by unknown weather variations?

2 A. Unknown weather variations. By weather
3 variations, yes.

4 Q. Okay. And extreme weather can have more
5 of an impact on energy prices than moderate weather.

6 A. Yes.

7 Q. You would also agree, would you not, that
8 less fuel diversity would result in electric prices
9 tending to be reflective of that fuel?

10 A. Could you ask that again, please?

11 Q. Sure. Less fuel diversity would result
12 in electric prices tending to be reflective of that
13 fuel?

14 A. I don't think that question makes sense
15 actually.

16 Q. All right. May I approach, your Honor?

17 EXAMINER PRICE: You may.

18 MR. KUTIK: Actually, your Honor, I
19 believe I will just have the witness refer to his
20 deposition testimony he has before him in the Duke
21 ESP, particularly page -- excuse me, page 83.

22 Q. Mr. Wilson, are you there?

23 A. Yes.

24 Q. And let me ask you, did you give the
25 following testimony by answering the following

1 question with the following answer, starting on line
2 11: "Question: And is there a consequence in terms
3 of prices if the fuel resource is particularly
4 dependent on one type of fuel?

5 "Answer: If the fuel resource is
6 particularly dependent on one type of fuel, then
7 electric prices would tend to be reflective of that
8 fuel, especially if it's the marginal fuel, so less
9 diversity would result in a system pattern -- a
10 system price pattern be more reflective of one fuel
11 and potentially more volatile." Did I read that
12 correctly?

13 A. Not quite. You put fuel in line 14 where
14 it actually wasn't.

15 Q. All right. Other than that?

16 A. Perhaps.

17 Q. Okay. Should I read it again to you,
18 sir?

19 A. That's fine.

20 Q. Would you agree with me that coal is
21 generally a more stable priced fuel than natural gas?

22 A. Yes, generally so.

23 Q. And gas as a driver of electric prices
24 could potentially make energy praises more volatile.

25 A. Potentially so some day.

1 Q. Okay. And a financial -- and you would
2 also agree that a financial hedge can potentially
3 provide some rate stability for retail customers?

4 A. Yes.

5 Q. Now, I want to ask you a little bit about
6 Ohio. Ohio's regulatory scheme is somewhat unique,
7 is it not?

8 A. Every state's regulatory scheme is
9 unique, yes.

10 Q. And no other state provides for an ESP,
11 correct?

12 A. I don't know.

13 Q. Okay. Well, let me refer you to your
14 deposition, sir. Let me refer you to page 115.

15 MS. WILLIS: Which deposition would this
16 be?

17 MR. KUTIK: This is the deposition he has
18 before him in this case February 10, 2015.

19 MS. WILLIS: Thank you.

20 Q. And, sir, starting on page 115 starting
21 at line 19, did I ask you the following questions and
22 did you not give the following answers: "Question:
23 Would you agree with me that Ohio's regulatory scheme
24 is unique?

25 "Answer: I think they're all unique.

1 "Question: Well, for example, although
2 they're all -- although other retail choice states
3 may provide for a utility procuring service of last
4 resort for default service, would it be fair to say
5 that no other state has an option to provide that
6 service for something called Electric Security Plan?

7 "Answer: I'm not aware of any other
8 state that uses that particular terminology,
9 correct."

10 MS. WILLIS: Objection.

11 Q. Was that your testimony, sir?

12 MS. WILLIS: I'm sorry.

13 A. Yes.

14 EXAMINER PRICE: Miss Grady, grounds?

15 MS. WILLIS: Your Honor, he is asking a
16 different question all together. You know, if you
17 want to ask him the direct question, ask him a direct
18 question. Don't go to the deposition. That is
19 improper use of impeachment. He is asking him a
20 different question than he asked him today on the
21 stand.

22 MR. KUTIK: I asked him if any of the
23 state uses an Electric Security Plan, he said he
24 didn't know.

25 MS. WILLIS: That's not the question

1 that's posed in the deposition, Mr. Kutik.

2 THE WITNESS: Is there a question
3 outstanding?

4 EXAMINER PRICE: No. I'm mulling it
5 over. We are not going to bog ourselves down to
6 this. We will match it up, the transcript, with the
7 deposition and if it proves improper impeachment, we
8 will disregard it.

9 MS. WILLIS: Thank you, your Honor.

10 Q. (By Mr. Kutik) Now, you are aware, are
11 you not, that the electric security -- excuse me, the
12 ESP statute provides what can be included in an ESP,
13 correct?

14 A. Yes.

15 Q. An ESP can include cost tracker riders,
16 correct?

17 A. That's my understanding.

18 Q. It also provides for single issue
19 ratemaking?

20 A. I don't know, but I am willing to accept
21 this.

22 Q. You don't know if the companies already
23 have cost trackers; is that correct?

24 A. I expect that they do.

25 Q. But you don't know?

1 A. I think some of those elements -- some of
2 the other elements of the ESV are or could be
3 considered cost trackers. I don't think you used
4 that term here, but I do think you have some, yes.

5 Q. And you are aware with regard to riders
6 or cost recovery riders, there is an audit process?

7 A. Yes.

8 Q. And there is an audit process proposed
9 for rider RRS, correct?

10 A. Yes.

11 Q. Under rider RRS, there is a risk of
12 nonrecovery for the companies; is that correct?

13 A. Yes.

14 Q. And you believe that the risk of
15 nonrecovery is not much of an incentive for the
16 companies to manage the cost of their plants?

17 A. Yes.

18 Q. And you are aware from time to time that
19 with regard to cost recovery riders, there might be
20 some proceedings before the PUCO to review the
21 findings of audits.

22 A. Yes.

23 Q. And you have never been part of such a
24 proceeding, correct?

25 A. Before the PUCO, no.

1 Q. Okay. You don't know whether OCC has
2 ever been part of such proceedings, correct?

3 A. No.

4 Q. You also don't believe that for
5 vertically integrated utilities, traditional cost of
6 service regulation -- excuse me, you believe that for
7 vertically integrated utilities, traditional cost of
8 service regulation provides only weak incentives to
9 minimize costs?

10 A. Correct.

11 Q. Now, you are not an expert on the Ohio
12 retail market, correct?

13 A. Correct.

14 Q. And you've not generally reviewed the
15 products or terms offered by CRES providers in Ohio,
16 correct?

17 A. Correct.

18 Q. And you've done no study of retail
19 contracts in Ohio, correct?

20 A. Correct.

21 Q. And you are not aware of any contract
22 offered for customers that is a fixed priced contract
23 for a greater -- for a term greater than three years,
24 correct?

25 A. Correct.

1 Q. And you are not specifically aware of any
2 specific terms of any CRES contract, correct?

3 A. Well, I've seen some of the details of
4 the NOPEC contract if you consider that.

5 Q. Okay.

6 A. I've seen that.

7 Q. Other than that, have you seen it?

8 A. Not that I recall.

9 Q. Now, you are aware also that a
10 nonshopping customer may experience rather large
11 price changes from one ESP to another, correct?

12 A. Potentially, yes.

13 Q. And you are also aware that a shopping
14 customer may experience changes from one contract to
15 another?

16 A. Yes.

17 Q. Now, you also believe that there is an
18 Ohio statute that deals with the issue of corporate
19 separation between regulated affiliates and what we
20 will call those state unregulated affiliates?

21 A. Correct.

22 Q. Correct?

23 A. Yes, that was suggested on my deposition,
24 and I agreed to it.

25 Q. And you haven't reviewed that statute?

1 A. No, I haven't.

2 Q. But you do understand, have an
3 understanding of the term corporate separation plan?

4 A. Yes.

5 Q. You haven't read the company's plan
6 though, have you?

7 A. No.

8 Q. You are aware there is something called
9 FirstEnergy Service Company?

10 A. Yes.

11 Q. And you believe that that may have
12 something to do with -- may have subs -- or
13 subsidiaries that own generations, correct?

14 A. Yes.

15 Q. And you don't have any other
16 understanding of what FirstEnergy Service Company
17 does, correct?

18 A. Yes.

19 Q. You are not familiar with a department or
20 a unit within FirstEnergy Service Company called the
21 regulated generation department?

22 A. I think I may have read about it, yes,
23 actually.

24 Q. All right. And did -- can we take it
25 then you read about it after your deposition?

1 A. It may be discussed in some of the
2 testimony that I reviewed.

3 Q. All right. Let's go to your deposition,
4 sir, the February 10 deposition, page 70. Are you
5 there?

6 A. Yes.

7 Q. And did I ask you the following question
8 and did you not give the following answer starting at
9 line 1 on page 70, "Question: Have you ever heard of
10 a department or a unit within the FirstEnergy Service
11 Company called the regulated generation department or
12 unit?

13 "Answer: I am not familiar with that,
14 no." That was your deposition testimony, was it not?

15 A. Yes.

16 MS. WILLIS: Objection.

17 EXAMINER PRICE: Grounds?

18 MS. WILLIS: Your Honor, this is --
19 again, this is inappropriate impeachment. Mr. Wilson
20 indicated that he may have reviewed testimony with
21 that information in it. That is not inconsistent
22 with the statement in the deposition.

23 MR. KUTIK: I specifically asked him
24 whether he knew about it after his deposition.

25 MS. WILLIS: And he did not, and if you

1 look at his response, he did not say. He said he may
2 have reviewed testimony. He did not indicate that
3 was before his deposition was taken, Mr. Kutik.

4 MR. KUTIK: He said he wasn't familiar
5 with it at the time of his deposition, your Honor.

6 EXAMINER PRICE: I agree. Overruled.

7 Q. Now, you don't know whether there are any
8 affiliates of the companies that operate generation
9 in what we call nonretail choice states, correct?

10 A. I think there are actually.

11 Q. All right. Well, did you know that at
12 the time -- isn't it true you didn't know that at the
13 time of your deposition?

14 A. I was unsure at that time, yes.

15 Q. Okay. Now, you've read the testimony
16 of Mr. Ruberto?

17 A. Yes.

18 Q. And you understand then what Mr. Ruberto
19 does?

20 A. I don't recall.

21 Q. All right. And would it be fair to say
22 you have done no detailed review of how he does his
23 job?

24 A. Correct.

25 Q. You are generally familiar, are you not,

1 with the rules of the Federal Energy Regulatory
2 Commission?

3 A. That's probably overly broad, but many of
4 them, yes.

5 Q. I asked you generally, and your answer
6 was many of them, correct?

7 A. Okay, yes.

8 Q. And you are aware of a rule that
9 prohibits market manipulation, correct?

10 A. Yes.

11 Q. And energy market manipulation is
12 unlawful, I know you are not a lawyer, but in your
13 lay opinion?

14 A. Yes.

15 Q. And economic withholding for the purpose
16 of raising prices for the benefit of affiliated
17 plants is considered market manipulation, correct?

18 A. Could be, yes.

19 Q. Now, the Federal Energy Regulatory
20 Commission has an office of enforcement, correct?

21 A. Yes.

22 Q. That includes a division of
23 investigations, correct?

24 A. Yes.

25 Q. And it also includes a division of energy

1 market oversight?

2 A. Yes.

3 Q. And a division of analytics and
4 surveillance?

5 A. I'll believe it.

6 Q. And some or all of those monitor the PJM
7 and other wholesale markets looking for instances of
8 market manipulation including economic withholding,
9 correct?

10 A. Yes.

11 Q. And the PJM market monitor also reviews
12 trades looking for trading patterns, correct?

13 A. He does, yes.

14 Q. Now, I want to move to another topic.
15 You're familiar with ICF; are you not?

16 A. Yes.

17 Q. You used to work for ICF.

18 A. Yes.

19 Q. And ICF is a well known firm in the
20 energy field, correct?

21 A. Yes.

22 Q. And one of the things that ICF is known
23 for is its forecasting in the energy area, correct?

24 A. They do forecast, yes.

25 Q. For example, ICF is the main consultant

1 to the USEPA on analyzing the impact of environmental
2 regulations on the power industry, correct?

3 A. I'll take your word for it, yes.

4 Q. All right. And, well, that's something
5 you know, correct?

6 A. I'm not sure of exactly that wording you
7 put around it. I don't know that, no.

8 Q. Let's go to your deposition, sir. Let me
9 refer you to page 86, sir, and let me ask you if you
10 answered the following question the following way
11 starting at line 9: "Are you aware it's true, is it
12 not, that ICF is the main consultant to the U.S.
13 Environmental Protection Agency on analyzing impacts
14 of environmental regulations on the power industry?

15 "Answer: Yes, I recall they have been
16 doing that for a very long time." Did I read that
17 correctly?

18 A. Yes.

19 Q. Now, for its forecasting, ICF uses the
20 integrated planning model or IPM, correct?

21 A. Yes.

22 Q. And you know that EPA does a regulatory
23 impact analysis, correct?

24 A. Yes, they do.

25 Q. And would it be correct to say that the

1 regulatory impact analysis the EPA does uses the IPM?

2 A. I don't know.

3 Q. Have you ever read a regulatory impact
4 analysis?

5 A. I don't believe I have. I may have. I
6 don't know.

7 Q. All right. Well, let me see if I can
8 refresh your recollection. May I approach, your
9 Honor?

10 EXAMINER PRICE: You may.

11 Q. Mr. Wilson, I have handed you a document
12 that has a title page. It says regulatory impact
13 analysis for the Clean Power Plan Final Rule. Do you
14 see that?

15 A. Yes.

16 Q. And it's dated August 15?

17 A. Yeah. August 2015.

18 Q. Thank you. And I would like to refer you
19 to page 3-1. Are you there, sir?

20 A. Yes.

21 Q. And if we're doing this right, it's a
22 chapter that says chapter 3, Cost, Emissions,
23 Economic and Energy Impacts. Do you see that?

24 A. Yes.

25 Q. And in paragraph 3.3, it talks about

1 modeling, correct?

2 A. Yes.

3 Q. And does that refresh your recollection
4 as to whether the EPA uses IPM in regulatory impact
5 analysis?

6 A. Apparently they did, yes.

7 Q. And would you agree with me, sir, that
8 this is a -- that the IPM is a state-of-the-art peer
9 reviewed dynamic linear programming model that can be
10 used to project power sector behavior?

11 MS. WILLIS: Objection.

12 EXAMINER PRICE: Grounds?

13 MS. WILLIS: Your Honor, he is reading
14 this document into the record. Now, it's one thing
15 to use the document to refresh the witness's
16 recollection. It's another thing to bring statements
17 in from the document that are clearly hearsay, and I
18 would object.

19 MR. KUTIK: I haven't marked it, your
20 Honor. I am just asking this witness propositions.

21 THE WITNESS: I don't know.

22 EXAMINER PRICE: You don't know if you
23 agree with him?

24 THE WITNESS: No, I am answering the
25 question.

1 EXAMINER PRICE: No. His question is
2 would you agree with it?

3 THE WITNESS: No, the question was is it
4 a state-of-the-art blah, blah, blah and my answer is
5 that I don't know.

6 Q. I will put it to you again so we can be
7 clear on the record.

8 A. Okay.

9 Q. Isn't it true that the IPM is a
10 state-of-the-art peer reviewed dynamic linear
11 programming model that can be used to project power
12 sector behavior?

13 A. I don't know.

14 Q. Is it true that the IPM is a multi
15 regional dynamic deterministic linear programming
16 model of the U.S. power sector?

17 MS. WILLIS: Your Honor, I am going to
18 lodge a continuing objection. If we're going to sit
19 here and read statements from this multi-page
20 document for the rest of the night, we are going to
21 be here forever. It is hearsay. And if you are
22 using to -- he's reading the statements into the
23 record, clearly hearsay. It did not refresh -- or it
24 did not -- let me just stop there. It's hearsay.

25 MR. KUTIK: Well, as a matter of fact,

1 your Honor, I am reading from my notes.

2 MS. WILLIS: Well, those are hearsay as
3 well.

4 MR. KUTIK: But he can agree to them or
5 not. I am putting propositions to him, your Honor,
6 and he can agree or disagree as he has done all
7 afternoon.

8 EXAMINER PRICE: He can ask -- it doesn't
9 matter whether he references the document or not. He
10 can ask him all the questions he wants. You can
11 answer the question if you know.

12 Q. Do you need the question again, sir?

13 A. The answer is I don't know.

14 Q. Would it be correct to say that the IPM
15 provides forecasts of least cost capacity expansion,
16 electric dispatch and emission control strategies
17 while meeting energy demand and environmental
18 transmission dispatch and reliability constraints?

19 A. That sounds right.

20 Q. And the model is designed to reflect
21 electricity markets as accurately as possible.

22 A. I don't know.

23 Q. Okay. Now, you rely on a report, do you
24 not, from the U.S. Energy Information Administration,
25 correct?

1 A. Yes.

2 Q. And that's the annual energy outlook 2014
3 projected to 2040, correct?

4 A. Yes, I did use that.

5 MR. KUTIK: May I approach, your Honor?

6 EXAMINER PRICE: You may.

7 MR. KUTIK: Your Honor, we would like to
8 have marked at this time the document we just talked
9 about, and it's Company Exhibit 60, and that is the
10 Annual Energy Outlook 2014 with projections to 2040.

11 EXAMINER PRICE: It will be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MS. BOJKO: 2014 to what?

14 MR. KUTIK: 2040.

15 Q. (By Mr. Kutik) Mr. Wilson, I've handed
16 you what's been marked for identification as Company
17 Exhibit 60, and that's the Annual Energy Outlook,
18 correct?

19 A. Yes.

20 Q. And that's -- that has some of the
21 material that you relied upon, correct?

22 A. I believe so, yes. I pulled it down off
23 the internet but, yes.

24 Q. Okay. And would it be fair to say that
25 when the EIA in the very report that you rely on

1 wanted to compare its projections to other
2 projections, one of the forecasts that it used was
3 ICF's?

4 A. I believe so, yes, yes.

5 Q. All right. And we could find that
6 comparison -- well, back up. There's a section of
7 the 2014, we will call this the AEO, that compares
8 IEA's projections to other forecasts, correct?

9 A. Yes.

10 Q. And one of -- one area of projection
11 comparison is for natural gas prices, correct?

12 A. Yes.

13 Q. And we can find that comparison on page
14 CP12.

15 MS. BOJKO: Counsel, if you are going to
16 refer to the document, do you have extra copies for
17 the parties?

18 MR. KUTIK: Yes.

19 MS. WILLIS: Can I have the reference
20 again to the page?

21 MR. KUTIK: Sure. C as in Charles, P as
22 Paul, 12.

23 MS. WILLIS: Thank you.

24 MR. KUTIK: And it's about midway through
25 the document. The chapters are orderly marked and

1 marginated.

2 MS. WILLIS: Was that your doing?

3 MR. KUTIK: I wish I was that smart.

4 Q. Are you there, sir?

5 A. CP12, yes.

6 Q. All right. And on CP12, we can see some
7 commentary with respect to price forecasts, do we
8 not?

9 A. Where are you referring?

10 Q. Well, how about under the heading Prices.

11 A. Okay.

12 Q. Would you agree with me what they are
13 doing there is comparing price forecasts? For
14 natural gas?

15 A. Apparently, so.

16 Q. And it also includes a commentary on how
17 ICF's price forecast compared to the IEA's forecast,
18 correct?

19 A. They are mentioned here, yes.

20 Q. Now, would it be -- would it be fair to
21 say this in your career, you haven't done a lot of
22 forecasting?

23 A. Yes.

24 Q. And the modeling and forecasting that you
25 have done was mostly earlier in your career and later

1 you have been merely evaluating models and forecasts,
2 correct?

3 A. Except for the merely, yes.

4 Q. Fair enough. Now, your resume, for this
5 case, you didn't do any sort of computer modeling,
6 correct?

7 A. I made computer calculations, but I
8 didn't do modeling in the sense of, you know, like
9 running a dispatch model, correct.

10 Q. And you didn't do any modeling of the
11 costs of the proposed transaction or potential
12 revenues of the companies, correct?

13 A. I did calculations relevant to that. I
14 did not do -- if you are asking about running like a
15 dispatch model, no, I didn't.

16 Q. Okay. And you didn't do any independent
17 forecast of energy prices, correct?

18 A. That's correct.

19 Q. You didn't do any independent forecasts
20 of capacity prices, correct?

21 A. Correct.

22 Q. You didn't do any fore -- forecasts or
23 independent forecasts of natural gas prices, correct?

24 A. Correct.

25 Q. And you've done no analysis of the effect

1 of plant retirements or additions within PJM on
2 wholesale capacity prices in PJM, correct?

3 A. I've looked at the history over time and
4 at the time of many retirements. I didn't do any
5 independent analysis, and, of course, the history is
6 that there wasn't much impact.

7 MR. KUTIK: Move to strike, your Honor.
8 I'd ask him to answer the question "yes" or "no".

9 THE WITNESS: Can you read it back?

10 EXAMINER PRICE: Let's have the question
11 and answer back again.

12 (Record read.)

13 EXAMINER PRICE: Mr. Wilson, we will
14 count this as your do over, but I would instruct you
15 to please answer this question "yes" or "no" for
16 counsel.

17 A. I haven't done a study, correct.

18 Q. And would your answer be the same with
19 respect to the effect on wholesale energy prices?

20 A. Yes.

21 Q. And you've done no analysis or study of
22 the impact of any proposed environmental regulation
23 on generation supplies within PJM?

24 A. Correct.

25 Q. Or on wholesale capacity prices in PJM.

1 A. Correct.

2 Q. Or on wholesale energy prices within PJM.

3 A. Yes.

4 Q. And you didn't do any modeling of the
5 effect of the proposed transaction and the companies'
6 sale of the plant's output into the PJM markets,
7 correct?

8 A. I think I already answered that, yes.

9 Q. You didn't do any modeling of any
10 reliability within PJM, correct?

11 A. Modeling of reliability within PJM.

12 Q. Yes.

13 A. Could you be a little clearer what you
14 mean by "modeling reliability"?

15 Q. Well, did you do any models to determine
16 whether there would be any issues with reliability
17 within PJM?

18 A. No.

19 Q. Now, I want to talk to you a little bit
20 about the three cases that you developed. And,
21 again, if I am getting into an area that's
22 confidential, please let me know. Would it be
23 correct to say that what you did was that you -- you
24 took some natural gas price forecasts that you
25 thought were more likely and you used the natural gas

1 prices from those forecasts and then otherwise you
2 used -- the rest of the information you used was
3 either from Mr. Lisowski or Mr. Rose?

4 A. More or less, yes. I mean, they were not
5 forecasts. One was a projection, and one was forward
6 prices.

7 Q. Thank you --

8 A. But yes.

9 Q. -- for that correction. And so in your
10 cases as the natural gas prices changed, you changed
11 energy prices, correct, or had an effect on changing
12 energy prices, correct?

13 A. Yes.

14 Q. And you did no adjustment to capacity
15 prices, correct?

16 A. Correct.

17 Q. Now, to get your new energy price, you
18 took a natural gas price and you multiplied that by
19 implied heat rate?

20 A. Yes.

21 Q. And your implied heat rate was held
22 constant throughout, correct?

23 A. No.

24 Q. How did it change?

25 A. I used the heat rates that were implicit

1 in the ICF Lisowski analysis which change over time.

2 Q. So you didn't change the Lisowski/Rose
3 heat rates, correct?

4 A. Correct.

5 Q. All right. Now, in terms of deriving
6 your natural gas price, would it be fair to say you
7 started with the Henry Hub price?

8 A. That was the third scenario, yes.

9 Q. All right. And did you apply some
10 delivery factor to that?

11 A. Yes.

12 Q. And was the delivery factor the factor
13 that was used in the ICF model?

14 A. Yes.

15 Q. Now, one of the cases that you used was
16 based upon the EIA 2014 AEO that we just looked at,
17 correct, the base case?

18 A. Reference case, yes.

19 Q. The reference case. And for its natural
20 gas projections, would it be fair to say that the EIA
21 admitted for its base case that it had one of the
22 lowest forecasts through 2015 in comparison to the
23 other forecasts that the EIA looked at?

24 MS. WILLIS: Objection.

25 EXAMINER PRICE: Grounds?

1 MS. WILLIS: If he is -- if Mr. Kutik
2 wants to present the statement or the admission by
3 EIA that its base case had one of the lowest
4 forecasts through 2014, I think that that's something
5 he needs to present to the witness before asking the
6 witness if he -- if he recalls that EIA had an
7 admission of that along those lines.

8 EXAMINER PRICE: Overruled.

9 Q. And I may have misspoke because I didn't
10 mean to say 2015. So let me restate it.

11 EXAMINER PRICE: Please.

12 Q. For its natural gas projections and for
13 its reference case, EIA admitted that it had one of
14 the lowest forecasts through 2025 with respect to the
15 other forecasts that it compared to for natural gas
16 prices. Correct?

17 A. I don't recall.

18 Q. All right. Let me refer you, sir, to
19 page CP-12.

20 MS. WILLIS: Thank you.

21 Q. And on the paragraph that is under the
22 heading "Prices," the one that we looked at earlier
23 where it's discussing natural gas price projections,
24 does it not say through 2025 the AEO 2014 reference
25 case has the second lowest projected Henry Hub prices

1 after IHSGI. However, it has the highest projected
2 2035 spot price at \$6.92 per MMBtu in real 2012
3 dollars followed by EVA and ICF at 6.46 and -- excuse
4 me, \$6.46 and \$6.89 per MMBtu respectively, correct?
5 That's what it says.

6 A. That's what it says.

7 Q. All right. And you would agree with me,
8 would you not, that the EIA AEO reference case would
9 take into account facts that the EIA knew at the time
10 of its report?

11 A. That's prepared months ahead, but they
12 would try to take into account facts that they knew,
13 yes.

14 Q. Okay. Things like data on natural gas
15 production?

16 A. Yes.

17 Q. Natural gas reserves?

18 A. Yes.

19 Q. Natural gas consumption?

20 A. Yes.

21 Q. And the EIA provides a discussion of its
22 assumptions, correct?

23 A. Yes.

24 Q. And one of the discussions -- one of the
25 assumptions appears on -- at the very beginning on

1 page II after the title page. Are you there?

2 A. Yes.

3 Q. And it indicates -- and it indicates
4 what -- it indicates what projections -- well, it
5 indicates that the projections are based generally on
6 federal, state, and local laws and regulations in
7 effect as of the end of October 2013. The potential
8 effects of pending or proposed legislation,
9 regulations, and standards and sections of existing
10 legislation that required implementing regulations or
11 funds that have not been appropriated, are not
12 reflected in the projections. In certain situations,
13 however, where it is clear that a law or regulation
14 will take effect shortly after the -- after AEO 2014
15 is completed, it may be considered in the
16 projections. Do you see that?

17 A. Yes. It says -- It says the potential
18 impacts, not effects.

19 Q. Thank you. It would be correct to say
20 that the 2014 AEO reference case did not include the
21 effects of the Clean Power Plan, correct?

22 A. Correct.

23 Q. The AEO did, however, have a case where
24 it projected carbon prices and those cases were
25 called the GHG10 and the GHG25; is that correct?

1 A. I don't know.

2 Q. So you don't know whether that -- whether
3 those cases were in the AEO for 2014?

4 A. I don't know, yes.

5 Q. And so it would be fair to say you don't
6 know the relationship between the base case or the
7 reference case, excuse me, and those two GHG cases,
8 correct?

9 A. Correct.

10 Q. Now, would it be correct to say that you
11 believe that carbon regulation would have an upward
12 pressure on energy prices?

13 A. It likely would, yes.

14 Q. And would it also -- and it also would
15 have an upward pressure on natural gas prices?

16 A. It could. Yes.

17 Q. Would it also be fair to say that the
18 2014 AEO reference case does not consider or factor
19 in the proposals for changes, they would have been
20 proposals at this time, with respect to the rules in
21 PJM such as the capacity performance rule?

22 A. That's probably correct, yes.

23 Q. And it would be fair to say that you
24 believe that the capacity performance rule will
25 likely lead to higher capacity prices?

1 A. It has, yes.

2 Q. Now, I want to talk about your second
3 case. Your second case is based upon one of the
4 cases in the 2014 AEO other than the reference case,
5 correct?

6 A. Correct.

7 Q. And the 2014 AEO has over 20 different
8 cases that it analyzes, correct?

9 A. It has many cases, yes.

10 Q. And for natural gas prices in the 2014
11 AEO, it has five cases.

12 A. Yes.

13 Q. Now, I want to refer you now to page M,
14 as in mother, T as in Thomas, 22 of the AEO for 2014.

15 EXAMINER PRICE: That was MT-22?

16 MR. KUTIK: Yes.

17 EXAMINER PRICE: Thank you.

18 Q. And we see, do we not, on that page a
19 figure MT-41, correct?

20 A. Yes.

21 Q. And that shows projections for natural
22 gas prices in five cases.

23 A. Correct.

24 Q. And you picked the high oil and gas
25 resource case, correct?

1 A. I used the reference case and the high
2 oil and gas resource case, correct.

3 Q. Now we are talking about your second
4 case. For your second case, you picked the high oil
5 and gas resource case, correct?

6 A. Correct.

7 Q. And of the five cases, that's the lowest
8 case with respect to the prices it projects for
9 natural gas prices?

10 A. In most years, correct?

11 Q. And in most years, it's the lowest by a
12 lot.

13 A. Correct.

14 Q. Now, one of the differences between the
15 high oil and gas resource case and the other cases is
16 that in the high oil and gas resource case, there's
17 certain assumptions with respect to the amount of
18 resources that is oil and gas resources and the
19 amount of oil and gas resource production, correct?

20 A. Yes. There are different assumptions
21 about resource and production, yes.

22 Q. Right. And as the name implies, the high
23 oil and gas resource case anticipates higher levels
24 of production than other cases.

25 A. Yes.

1 Q. And you would agree with me, would you
2 not, that there is a great deal of uncertainty in
3 projecting oil and gas production?

4 A. Yes. I mean, it responds to prices but
5 there is some uncertainty, yes.

6 Q. Would you say there is a great deal of
7 uncertainty?

8 A. About production, no.

9 Q. All right. Well, how about with respect
10 to the amount of resources and production?

11 A. I wouldn't say a great deal of
12 uncertainty when we -- in the context we've been
13 talking about prices which are much more uncertain.

14 Q. Well, so you would not agree that there
15 is a great deal of uncertainty with respect to
16 projections of oil production.

17 A. Far out in time perhaps, yes.

18 Q. All right. Well, let me have you refer
19 to page IF-10. Are you there, sir?

20 A. Yes.

21 Q. And IF-10 is -- has a discussion of U.S.
22 type oil production, correct?

23 A. Yes.

24 Q. And about three paragraphs down -- well,
25 back up. The second paragraph talks about rejected

1 trends in oil production vary tremendously in the
2 alternative cases, and those trends hold important
3 implications for the United States, correct?

4 A. That's oil, yes.

5 Q. And then it goes on to talk about the
6 high oil and gas resource case, correct?

7 A. Yes.

8 Q. And the last paragraph of that sentence
9 says the range of production and imports in these
10 alternative cases as shown in Figures IF2-1 and IF2-2
11 illustrates the importance of uncertainty in the
12 resource and technology assumptions. Do you see
13 that?

14 A. I see that.

15 Q. And in the next paragraph, it talks about
16 some more of the assumptions, correct, and how they
17 were used?

18 A. The paragraph starting "Policy makers"?

19 Q. Yes.

20 A. You want me to read that?

21 Q. No. I am just asking you if it's
22 correct.

23 A. I have to read it.

24 Q. All right. Well, let me refer you, sir,
25 to I think the third sentence which begins four lines

1 from the bottom of that paragraph, the line that
2 begins, "For wells in each region." Do you see that
3 line?

4 A. No. Four lines from the bottom.

5 Q. Of the paragraph we were looking at.

6 A. Of the line starts that's the end of a
7 sentence?

8 Q. Yes. And the next sentence reads, "There
9 is still a great deal of uncertainty in the
10 projections of U.S. type oil production," correct?

11 A. Yes.

12 Q. Now, isn't it true that -- Well, so you
13 would disagree that projection of oil and gas
14 production is an undertaking of great uncertainty,
15 correct?

16 A. Can you try that again?

17 MR. KUTIK: Sure. Can it be read,
18 please.

19 EXAMINER PRICE: Let's have the question
20 back.

21 (Record read.)

22 A. There is uncertainty for sure, yes.

23 Q. But my question was great uncertainty.

24 A. Great compared to what?

25 Q. Well, can you agree with that or can't

1 you?

2 A. I would say it's -- it's uncertain. It
3 depends on how far out you go and great is compared
4 to what? So....

5 Q. Okay. So isn't it true, sir, that you
6 haven't been shy in using adjectives or adverbs
7 relating to the word uncertainty in your career
8 before the Commission?

9 A. You mean my great uncertainty?

10 Q. How about highly uncertain?

11 A. Okay. I probably have from time to time
12 in context.

13 Q. All right. And you've used the words
14 extraordinary uncertainty in testimony before the
15 Commission.

16 A. I may have, yes.

17 Q. Okay. Now, I think we said earlier --
18 let me back up.

19 MR. KUTIK: Your Honor, may I have a
20 minute?

21 EXAMINER PRICE: You may. Let's go off
22 the record for 5 minutes plus and reconvene at 5:25.

23 (Recess taken.)

24 EXAMINER PRICE: Let's go back on the
25 record. Please continue, Mr. Kutik.

1 Q. (By Mr. Kutik) The EIA publishes a great
2 deal of reports, does it not?

3 A. That's correct.

4 Q. And are you aware of a report entitled
5 "Short-term Energy Outlook"?

6 A. Yes.

7 MR. KUTIK: May I approach, your Honor?

8 EXAMINER PRICE: You may.

9 MR. KUTIK: Your Honor, I would like to
10 have marked at this time Company Exhibit 61, a
11 document entitled "U.S. Energy Information
12 Administration Short-Term Energy Outlook, September,
13 2015."

14 EXAMINER PRICE: It will be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. Mr. Wilson, I have handed you what has
17 been marked for identification as Exhibit 61
18 "Short-Term Energy Outlook EIA" from 2015; is it not?

19 A. Yes.

20 Q. And it provides, does it not, in the
21 fourth bullet an estimate for a commentary about
22 crude oil production, correct?

23 A. Yes.

24 Q. And it indicates that crude oil
25 production declined by 140,000 barrels per day in

1 August compared to July production.

2 A. Yes.

3 Q. And crude oil production's forecast
4 continues decreasing through mid 2016 before a growth
5 resumes late in 2016. Do you see that?

6 A. That's what it says, yes.

7 Q. And are you familiar with the
8 International Energy Agency?

9 A. Yes.

10 Q. And they are charted by the United
11 Nations?

12 A. I don't know.

13 Q. It is an agency that publishes market
14 reports from time to time?

15 A. Market reports. They do similar work to
16 EIA but with an international view, and I think they
17 are kind of an OECD organization, is my
18 understanding.

19 Q. And for those of us who are acronymally
20 challenged, what is that?

21 A. Kind of the European organization of
22 economic cooperation. I am not sure, but they are
23 similar to EIA with an international purview.

24 MR. KUTIK: Thank you. May I approach,
25 your Honor?

1 EXAMINER PRICE: You may.

2 MR. KUTIK: Your Honor, we would like to
3 have marked at this time as Company Exhibit 62 a
4 document entitled "Oil Market Report from the
5 International Energy Agency, August 12, 2015."

6 EXAMINER PRICE: It will be so marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Mr. Wilson, I have handed you what has
9 been marked for identification as Company Exhibit 62,
10 the Oil and Market Report from August 2015. Do you
11 see that?

12 A. Yes.

13 Q. Have you seen reports of this type?

14 A. No.

15 Q. Let me refer you, sir, to page 24. And
16 there is a reference, is there not, to something
17 called Baker and Hughes Oil Rig Count?

18 A. I see that, yes.

19 Q. And are you familiar with what the Baker
20 Hughes Oil Rig Count is?

21 A. Yes.

22 Q. And that is data that's published about
23 oil rigs?

24 A. Yes.

25 Q. And that's data that's widely available?

1 A. I presume so.

2 Q. And is the pattern that's shown on page
3 24 a pattern you are familiar with?

4 MS. WILLIS: Objection.

5 EXAMINER PRICE: Grounds?

6 MS. WILLIS: I believe, your Honor, this
7 is hearsay. There's been no foundation laid. He
8 said he's not seen the report before. This is not
9 the witness to bring this in on.

10 EXAMINER PRICE: Okay. Let's deal with
11 the foundation question first. Mr. Kutik.

12 MR. KUTIK: Your Honor, he said he was
13 familiar with the Baker Hughes Oil Rig Count, and
14 then I am asking if this is a pattern that looks
15 familiar to him. That's how I am laying my
16 foundation.

17 MS. WILLIS: And the pattern you are
18 talking about is on page 24 of this document, so you
19 are bringing this document -- you are trying to
20 assert -- or you are trying to use this document to
21 bring in evidence being used for the truth of the
22 matter asserted.

23 MR. KUTIK: Well, your Honor --

24 EXAMINER PRICE: Let's wait to see what
25 he does with the document, so at this time -- at this

1 time, we are not ruling on the admissibility of the
2 document just yet, but at this time, I am going to
3 overrule your objection. He can answer the question
4 if he knows.

5 MS. WILLIS: On foundation you are
6 overruling?

7 EXAMINER PRICE: Your objection on both
8 grounds.

9 THE WITNESS: Let's have the question
10 again.

11 EXAMINER PRICE: Yes.

12 Q. I think the question was is the pattern
13 that's shown in the graph on page 24 of this document
14 headed Baker Hughes Oil -- U.S. Oil Rig Count a
15 pattern that you are familiar with?

16 A. Well, the rig counts go up and down.
17 They are kind of a leading indicator of production,
18 so when prices are low, as they have been for quite a
19 while now, you are going -- you can expect to see rig
20 count decline. So rig count, you know, is going to
21 be more volatile in production obviously because it
22 reflects efforts to bring more production online. So
23 when there's a glut of production as there has been
24 recently and prices are low, you should expect to see
25 the rig count decline, yes.

1 MR. KUTIK: Your Honor, I move to strike
2 everything but the word "yes." The question was was
3 he familiar with this pattern.

4 EXAMINER PRICE: Actually, I think that's
5 an open-ended question. I am going to go ahead and
6 deny the motion to strike.

7 Q. You would agree with me what this Baker
8 Hughes U.S. Oil Rig Count shows is a steep decline in
9 rig count after January of 2014.

10 MS. WILLIS: Objection.

11 THE WITNESS: Wait. Let me get back to
12 your page again.

13 MS. WILLIS: Mr. Wilson, there is an
14 objection pending.

15 MR. KUTIK: It is page 24, sir.

16 EXAMINER PRICE: Grounds?

17 MS. WILLIS: Your Honor, this is hearsay.
18 Now he is trying to use the graph to assert that the
19 graph shows information in which -- about the --

20 EXAMINER PRICE: I like your foundation
21 argument better at this point.

22 MS. WILLIS: And there is no foundation,
23 yes, and in fact, there is no foundation.

24 EXAMINER PRICE: We have been fairly
25 consistent saying you cannot ask questions of the

1 witness regarding foundation. I have tried to give
2 you a little bit of leeway, and I think your last
3 question, I am not striking your last question
4 because you asked if he was familiar with the pattern
5 and you got the answer, but I think you need to lay a
6 better foundation for this document which he claims
7 he has never seen before before you can ask more
8 questions about it.

9 MR. KUTIK: Certainly, your Honor.

10 Q. (By Mr. Kutik) Mr. Wilson, isn't it true
11 that U.S. oil rig counts have declined since January
12 of 2014?

13 A. The graph actually shows a decline from
14 about January 15 of this year.

15 Q. Okay.

16 EXAMINER PRICE: I don't think he was
17 actually asking you the question regarding the graph.

18 MR. KUTIK: That's fine, your Honor. I'm
19 satisfied with that answer.

20 EXAMINER PRICE: Okay.

21 Q. And the EIA also publishes data I think
22 as we mentioned earlier on natural gas consumption,
23 correct?

24 A. Yes.

25 Q. And are you familiar with that data?

1 A. Yes.

2 Q. And would it be correct to say that that
3 data shows a general increase in natural gas
4 consumption since at least 2008?

5 A. I don't recall. Consumption had been
6 flat for a long time, but there's so much supply
7 pushing and low prices, that I think consumption is
8 finally starting to catch up, yes.

9 MR. KUTIK: Your Honor, at this time I
10 would like to have marked as Company Exhibit 63 a
11 document marked -- a document labeled U.S. Natural
12 Gas Total Consumption from the EIA.

13 EXAMINER PRICE: It will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. KUTIK: May I approach?

16 EXAMINER PRICE: You may.

17 Q. Mr. Wilson, I have handed you what has
18 been marked for identification as Company Exhibit 63.
19 Do you recognize this as information from the U.S.
20 Energy and Information Administration on natural gas
21 consumption?

22 A. Yes.

23 Q. And does this pattern that's shown on the
24 graph and the table that's under it, is that
25 consistent with your understanding of natural gas

1 consumption in the United States?

2 A. Yes.

3 Q. Are you familiar with the depletion
4 curves from natural gas wells?

5 A. Yes.

6 Q. Would it be fair to say that a depletion
7 curve from a shale well is steeper than a curve from
8 a conventional well?

9 A. That's my understanding, yes.

10 Q. And would it be fair to say for a shale
11 well, within five years, a well's maximum output
12 decreases by 70 percent?

13 A. I don't know.

14 Q. Does that sound about right to you?

15 A. It could be, yes.

16 Q. Now, I want to talk about your third
17 case, and I think as you mentioned earlier, your
18 third case is based upon natural gas forwards,
19 correct?

20 A. Yes.

21 Q. And the price for a forward reflects an
22 actual transaction, correct?

23 A. Yes.

24 Q. Or series of actual transactions,
25 correct?

1 A. The quotes that you can find reflect --
2 yes, they reflect a series of transactions generally,
3 yes.

4 Q. And there may be a different volume of
5 trades represented for a particular month.

6 A. Yes.

7 Q. And volume supporting a particular
8 forward price drops out the further one goes out.

9 A. Yes.

10 Q. And for 2015, that could be millions or
11 hundreds of thousands of transactions in any month.

12 A. That's probably right, yes.

13 Q. And by 2017, it might be in the
14 thousands.

15 A. I don't recall.

16 Q. 2018 might be more like a couple hundred.

17 A. For Henry Hub?

18 Q. For 2018.

19 A. I think it holds up a little better than
20 that.

21 Q. All right. Well, would it be fair to say
22 that after three years, the market is fairly liquid?

23 A. Well, that's just sort of a vague
24 statement, so I can't really agree to it.

25 Q. Well, would you agree that after three

1 years, the volume certainly gets lower in terms of
2 transactions?

3 A. Are you referring to daily volume?

4 Q. I am talking about the volumes for
5 forward, sir.

6 A. Are you talking about daily volume?

7 Q. I'll start there. How about monthly
8 volumes?

9 A. The daily volumes are much lower for
10 months out, for years out, yes.

11 Q. Well, now, in your -- this is where I'm
12 not sure I'm getting into confidential, so you tell
13 me, is your -- do you regard your line for your
14 forward case, I will call your third case in Exhibit
15 JFW-5 confidential?

16 A. The forward projection?

17 Q. Yes.

18 A. Of course not.

19 Q. I want to make sure. Now, with respect
20 to your case, would it be fair to say that in the
21 more distant years, your graph figures represents
22 fairly liquid markets?

23 A. In the distance years, that's probably a
24 fair statement.

25 Q. Okay. And would you agree with me future

1 prices are good only as a short-term forecast?

2 A. No. I don't consider a forecast at all.
3 I consider it indicative of what market participants
4 consider to be a fair price for trading. It's not
5 really a forecast, but it definitely reflects market
6 participant's forecast.

7 Q. Would you agree with me the historical
8 pattern of natural gas futures prices exhibits high
9 volatility even on a month-to-month basis?

10 A. Only the near and futures prices, you
11 know, for the coming month which are very close to
12 spot prices. If you go out three or four years, they
13 are actually very stable.

14 Q. All right. For one of your recent
15 engagements, you participated in a -- strike that.

16 And for one -- for one of your recent
17 engagements, you participated in a panel teleseminar
18 on natural gas forward pricing?

19 A. Yes.

20 Q. That was put on by the National
21 Regulatory Research Institute, correct?

22 A. Yes.

23 Q. And one of the persons that works for NRI
24 is Ken Costello?

25 A. Yes.

1 Q. And you believe he is an authority on
2 regulatory matters.

3 A. Yes.

4 Q. And you've been on seminars with him on
5 the subject of gas price forecasts.

6 A. I believe he was involved in that panel,
7 yes.

8 Q. All right.

9 MR. KUTIK: Your Honor, at this time, I
10 would like to have marked as Company Exhibit 64 a
11 document entitled "Natural Regulatory Research
12 Institute Looking Before Leaping: Are Your Utilities
13 Gas Price Forecasts Accurate?" Dated May 10 -- May,
14 2010.

15 EXAMINER PRICE: It will be so marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. KUTIK: May I approach?

18 EXAMINER PRICE: You may.

19 MR. McNAMEE: Could we get copies of
20 this? Oh, thank you.

21 Q. (By Mr. Kutik) Mr. Wilson, have you ever
22 seen this before?

23 A. Not that I recall, but I may have.

24 Q. You may have? Do you know Mr. Costello?

25 A. I do.

1 Q. Let me have you refer to page 6. And at
2 page 6, the third full paragraph it says, "Many
3 analysts consider NYMEX futures prices to be unbiased
4 forecasts of Henry Hub spot prices; they regard
5 prices discovered at futures exchanges as today's
6 best estimate of tomorrow's cash market prices for
7 standardized quantities of commodities such as
8 natural gas. Futures prices are good only as a
9 short-term forecast; the vast majority of NYMEX
10 contracts settle within the following 12 months. The
11 historical pattern of natural gas futures prices
12 exhibits high volatility even on a month-to-month
13 basis." Do you disagree with Mr. Costello?

14 MS. WILLIS: Objection.

15 EXAMINER PRICE: Grounds?

16 MS. WILLIS: Your Honor, first of all,
17 there is no foundation laid on this document. Second
18 of all, we are at -- we are being asked to accept a
19 hearsay on hearsay which was the same issue I believe
20 that caused testimony to be struck. It was of the
21 same organization, in fact, the same gentleman,
22 Mr. Costello.

23 EXAMINER PRICE: Mr. Kutik?

24 MR. KUTIK: Your Honor, I -- he has
25 recognized Mr. Costello as a authority. He said he

1 may have seen this. I am now using it as an
2 authoritative treatise. Rather than the whole
3 document coming in, I am asking for a statement from
4 the treatise.

5 EXAMINER PRICE: I am not going to allow
6 an NRRI document, with all due respect to
7 Mr. Costello, as a learned treatise.

8 MS. WILLIS: Thank you, your Honor.

9 Q. (By Mr. Kutik) Would it be fair to say,
10 sir, that after the forwards prices in your third
11 case, you applied an inflation rate beyond 2023?

12 A. That's right.

13 Q. And so would it be fair to say then that
14 your calculation assumes that natural gas prices will
15 be flat in real terms for the last eight years?

16 A. Yes.

17 Q. Of your case?

18 A. Yes. It extends out the forward prices
19 using an inflation rate.

20 Q. Right. Now, I want to switch topics and
21 ask you about a couple of questions about demand
22 response. Isn't it true, sir, that with respect to
23 demand response the PJM Market Monitor believes that
24 the demand response has -- had the effect of
25 suppressing capacity prices.

1 A. He has suggested that, yes.

2 Q. On page 40 of your testimony, you ask
3 about demand response contributions to meeting
4 capacity requirements being eliminated.

5 A. Yes.

6 Q. And would be it be fair to say that
7 Mr. Rose did not assume that the contribution of
8 demand response to capacity requirements would be
9 eliminated?

10 A. I believe that's correct, yes.

11 Q. And, in fact, would it be fair to say you
12 don't know what Mr. Rose assumes for the contribution
13 of demand response to capacity requirements?

14 A. Yeah, I don't think he does assume.

15 Q. Now, I want to ask you to shift to a
16 different topic, just a couple of questions. You
17 recognize, do you not, that states like Ohio have an
18 interest in generation in their borders for siting
19 purposes?

20 A. They review requests to site power
21 plants.

22 Q. And so the answer to my question is
23 "yes."

24 A. Well, your -- your wording was strange.
25 Yes, they -- they review applications to site power

1 plants.

2 Q. All right. So they have an interest in
3 siting where the generation is within their borders,
4 correct?

5 A. I'm not sure whether you are saying that
6 they want generation to be in their borders or
7 whether they have an interest in reviewing siting
8 applications and taking into account all the many
9 considerations that go into review of siting
10 applications. I am not sure which of those things
11 you are asking.

12 Q. You recognize that states have an
13 interest in their borders for economic development
14 purposes; do you not?

15 A. Yes.

16 Q. Now, you follow the -- you regularly
17 follow what goes on within -- at PJM, correct?

18 A. Yes.

19 Q. Would it be fair to say that PJM is a net
20 importer of capacity?

21 A. Yes.

22 Q. And would it be fair to say that you have
23 reviewed PJM information with respect to the queue
24 for plant additions within PJM?

25 A. Yes.

1 Q. And the process to enter the market as a
2 new unit has a number of steps; does it not?

3 A. Yes.

4 Q. And one of those steps is a feasibility
5 study?

6 A. Yes.

7 Q. Another step is an impact study.

8 A. Yes.

9 Q. And not all projects that are -- or even
10 complete visibility impacts -- feasibility or impact
11 studies actually come online.

12 A. That's correct.

13 Q. About 50 percent don't.

14 A. I am not sure of the fraction.

15 Q. Does that sound about right to you,
16 though?

17 A. Could be, yes.

18 Q. Within the last five years of the PJM
19 plants that have retired or that have announced
20 retirements the majority have been of coal fired,
21 would you agree?

22 A. That's correct.

23 Q. And with respect to plant additions in
24 the last five years and those additions that are
25 currently in the queue, a majority of those are gas

1 fired, correct?

2 A. There's quite a bit of wind also, but I
3 think that's correct the majority is gas fired.

4 Q. All right. And the natural gas fired
5 plants are either peaking units or combined cycle
6 units.

7 A. Well, most of them are either combustion
8 turbines or combined cycle units.

9 Q. All right. Within PJM, there have been
10 issues of -- well, issues of fuel assurance have
11 become a greater concern, correct?

12 A. Yes, a couple of years ago, yes.

13 Q. And that has become a concern given the
14 increased reliance on natural gas-fired generation.

15 A. Yes.

16 Q. Within the population of natural gas
17 plants, the fraction that was forced out -- that was
18 on forced outage during the polar vortex was greater
19 than the population among the plants of other
20 categories.

21 A. That may have been the case, yes.

22 Q. Within the last 10 years in PJM, is it
23 true that returns for regulated utilities have been
24 better than returns for competitive power companies?

25 A. I haven't done that analysis, but it's

1 likely correct.

2 Q. Thank you. In 2014, would it be fair to
3 say that a substantial portion of generating units in
4 PJM did not achieve cost recovery through revenue --
5 from energy markets alone?

6 A. They received capacity payments, so
7 probably correct, but I haven't done that analysis.

8 Q. The capacity market is in place to
9 address the gap between revenue market -- revenue
10 from markets and revenue needed to attract sufficient
11 capacity to meet adequacy targets?

12 A. I think what you wanted to say is the
13 capacity markets in place to augment revenues from
14 energy and ancillary services markets to provide
15 enough capacity to attract entry as needed.

16 Q. And that's correct, right?

17 A. Yes.

18 Q. All right. Now, PJM has adopted some
19 changes in capacity market design, correct?

20 A. Many changes, yes.

21 Q. And some of those changes are under the
22 banner of capacity performance?

23 A. Yes.

24 Q. And these rules call for generation
25 providers to provide a firm supply of fuel and be

1 subject to nonperformance charges if they fail.

2 A. Yes. Firm fuel or dual fuel, yes.

3 Q. It also calls for a change in the offer
4 cap --

5 A. Yes, it did.

6 Q. -- as a different higher percentage of
7 net CONE.

8 A. Yes.

9 Q. It also calls for making the costs of
10 fuel storage or pipeline capacity to be part of net
11 CONE.

12 A. That is a change that's probably coming,
13 yes.

14 Q. All right. Now, the reason for that
15 proposal is that the cost to arrange for fuel storage
16 or pipeline capacity are potential new costs that
17 have become part of a generator's permanent cost
18 structure.

19 A. Potentially so. I'm not sure there's a
20 specific proposal for how to do that yet and, of
21 course, capacity performance also results in reliable
22 generation actually earning some of the penalties
23 paid by other capacity, so we are not really sure
24 what's going to happen in net CONE under capacity
25 performance.

1 Q. That wasn't my question. My question is
2 the reason why it is included in that CONE is because
3 these type of costs are going to become part of
4 generators' costs structure on a permanent basis.

5 A. Yes.

6 Q. Now, you believe that capacity prices and
7 natural gas prices have some relationship, correct?

8 A. Indirect, but, yes, they can.

9 Q. And that there they are probably
10 negatively correlated.

11 A. Yes.

12 Q. But you could envision some circumstances
13 where they could move in the same direction, correct?

14 A. Sure. You can always construct
15 something, yes.

16 Q. Okay. It could be a situation where you
17 have a PJM rule like capacity performance which would
18 put upward pressure on capacity prices and at the
19 same time have an event in the natural gas market
20 that would cause natural gas prices to increase; that
21 scenario could happen, correct?

22 A. Two completely different things happening
23 at the same -- they could both go the same direction,
24 okay?

25 Q. That's correct.

1 A. Yes.

2 Q. Now, would it also be fair to say that
3 capacity costs for baseload units are generally
4 greater than the costs for cycling units?

5 A. Okay. Now I think you are talking about
6 fixed costs.

7 Q. Yes.

8 A. Because we're not -- we don't want to
9 confuse capacity and capacity prices with plant fixed
10 costs. Yes, baseload plants typically are plants
11 with higher fixed and lower variable costs and
12 peaking plants tend to be plants with lower fixed and
13 higher variable costs.

14 Q. Thank you. You anticipated my next
15 several questions. And so for peaking units, most of
16 the generation cost recovery comes from capacity
17 revenue.

18 A. A higher fraction, yes.

19 Q. And baseload units are more reliant on
20 energy prices than peaking units with respect to
21 total cost recovery.

22 A. A higher fraction, yes.

23 Q. In a market with an increasing number of
24 units with lower or zero marginal costs, there will
25 be downward pressure on energy prices.

1 A. Well, other things being equal and in
2 certain hours, that could be the case but, you know,
3 everything -- everything adapts.

4 Q. All right.

5 A. Everything adjusts around those
6 resources, so it's difficult to make those kind of
7 simple statements.

8 Q. Holding everything else equal, you would
9 agree.

10 A. Yeah. But I can't hold everything else
11 equal because when you bring those resources on,
12 other resources are going to adjust, so but, yes, if
13 you hold everything else equal, which is unrealistic,
14 yes.

15 Q. All right. And you would agree -- you
16 would agree that wind and solar units don't run
17 predominantly at peak.

18 A. Well, solar runs during the day which is
19 the peak hours. The hours of the day, wind, it's
20 going to vary by location whether it runs more day or
21 peak or off peak. That's going to vary by location.

22 MR. KUTIK: May I approach, your Honor?

23 EXAMINER PRICE: You may.

24 Q. Mr. Wilson, I took your deposition on May
25 26, 2015, correct?

1 A. Yes.

2 Q. Let me refer you to page 79 of your
3 deposition on that day. Did you not answer the
4 following question the following way starting on line
5 17, "Question: And is it your testimony that looking
6 at PJM data, we would see that wind or solar plants
7 run predominantly at peak periods?

8 "Answer: Predominantly at peak? No,
9 they don't run predominantly at peak." That was your
10 deposition testimony, was it not?

11 A. Yes. After quite a bit of conversation
12 of what we were talking about for peak and other
13 related issues.

14 Q. Okay. Would it be fair to say that low
15 marginal units that run mostly at nonpeak would
16 potentially have a price suppression effect that
17 would fall mostly on baseload units rather than other
18 types of units?

19 A. I think you wanted to ask low marginal
20 costs?

21 Q. Yes.

22 A. Yes, that could be the case.

23 Q. Now, with respect to renewable energy
24 mandates, would it be fair to say that they have had
25 the effect to cause more renewable energy resources

1 to come into the market than they otherwise would
2 have?

3 A. That's their intent, so unless they are
4 totally ineffective, yes.

5 Q. Thank you. Now, the same would be true
6 with respect to federal or state tax credits that
7 renewable energy facilities might be eligible for.

8 A. Yes.

9 Q. And you would agree with me that you
10 could call either these mandates or these tax credits
11 as a form of subsidy.

12 A. Yes.

13 EXAMINER PRICE: Next time we have a
14 hearing, I am going to put in the dictionary
15 portfolio standards instead of mandates.

16 MR. KUTIK: Your Honor, may I have a
17 minute, please?

18 EXAMINER PRICE: You may.

19 MR. KUTIK: I have no further questions
20 at this time.

21 EXAMINER PRICE: Thank you. Mr. McNamee?

22 MR. McNAMEE: No questions.

23 MR. KURTZ: I do have 5 minutes.

24 EXAMINER PRICE: Mr. Kurtz.

25 MR. KURTZ: Thank you. Sorry, everyone.

1 - - -

2 CROSS-EXAMINATION

3 By Mr. Kurtz:

4 Q. Can you turn to your supplemental
5 testimony page 23. And let me know when you are
6 there, Mr. Wilson.

7 A. Yes.

8 Q. Okay. Let me just read this brief
9 section, line 13, question 34, "Dr. Makovich asserts
10 that the Economic Stability Program is not a subsidy.
11 Is he correct on this answer?"

12 "No. It absolutely would be a subsidy to
13 these specific plants. It would be an out-of-market
14 payment and revenue guarantee to specific resources.
15 Dr. Makovich does not propose to offer the program to
16 the thousands of megawatts of other similarly
17 situated resources in the market." Did I read that
18 correctly?

19 A. Yes.

20 Q. Okay. The out-of-market payment and the
21 revenue guarantee is essentially the cost of service
22 structure of the purchase power agreement here; is
23 that correct?

24 A. Well, there -- it's net of market
25 revenues but....

1 Q. Well, that's the rider, but as to FES,
2 you are referring to the cost-of-service structure of
3 the agreement between the utility and FES.

4 A. Okay. Yes.

5 Q. Is that right?

6 A. Yes.

7 Q. Okay. In your opinion is it your opinion
8 that cost-of-service generation is prohibited from
9 participating in the PJM energy capacity markets?

10 A. No.

11 Q. Okay. Do you know if Virginia is in PJM?

12 A. They are.

13 Q. Do you know how many thousands of
14 megawatts of rate-based cost-of-service generation in
15 Virginia participates in the PJM energy and capacity
16 markets?

17 A. I don't but Dominion is a pretty large
18 zone. It might be 20,000 megawatts. I don't know.

19 Q. Do you know how many megawatts of cost of
20 service generation in West Virginia participates in
21 the PJM markets?

22 A. I don't know the quantity, no.

23 Q. Okay.

24 A. It's much smaller.

25 Q. I am sure it is. Same question as to the

1 Indiana, do you know how many megawatts participate?

2 A. I don't know but there is some, yes.

3 Q. What about the cost-of-service megawatts
4 in Kentucky that participate in the PJM markets?

5 A. Yes.

6 Q. Do you know?

7 A. I think it's around 1 or 2 thousand, yes.

8 Q. Would it be Kentucky Power, East Kentucky
9 Power Cooperative, and Duke Kentucky, correct?

10 A. Sounds right, yes.

11 Q. Same question with cost-of-service
12 megawatts in Michigan, do you know the amount?

13 A. I don't.

14 Q. Okay. Do you know how many megawatts of
15 cost-of-service rate-based generation located in MISO
16 participates in the PJM energy and capacity markets?

17 A. In MISO rate-based participate -- selling
18 in as an import or?

19 Q. Yes, import with firm transmission,
20 telemeter, all the requirements.

21 A. There are imports. I don't know the
22 status of the generation behind it.

23 Q. Do you know if this Commission has
24 approved cost-of-service renewable contracts for the
25 utilities here?

1 A. I don't know. I suppose they may have,
2 yes.

3 Q. Okay. Do you know if under the Revised
4 Code 4928.143(B) (2) (b) a utility -- distribution
5 utility can get a cost-based return for construction
6 work in progress on a power plant that they may be
7 building?

8 A. I would have -- I would have to take your
9 word for that.

10 Q. Do you know if under (B) (2) (c) a
11 distribution utility can get cost-of-service recovery
12 for the -- on a nonbypassable basis for the cost of
13 owning and operating a power plant that is dedicated
14 to Ohio consumers?

15 A. I don't know.

16 Q. Were you aware of that?

17 A. No.

18 MR. KURTZ: Okay. Thank you, your Honor.

19 EXAMINER PRICE: Thank you.

20 Ms. Willis, redirect?

21 MS. WILLIS: Yes, your Honor. We would
22 like a brief period of time.

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

24 (Recess taken.)

25 EXAMINER PRICE: Let's go back on record.

1 Ms. Willis.

2 MS. WILLIS: Thank you, your Honor.

3 - - -

4 REDIRECT EXAMINATION

5 By Ms. Willis:

6 Q. Mr. Wilson, good evening. And we are
7 going to try to finish this up very quickly. I want
8 to direct your attention to two of the exhibits that
9 were used during counsel's cross-examination of you
10 and those would be Exhibits 60 and 61. Do you have
11 those in front of you?

12 A. I do.

13 Q. Okay. Let's go to Exhibit 60. Exhibit
14 60 counsel directed your attention to page CP-12.
15 Can you get to that page, please.

16 A. Yes.

17 Q. Now, specifically counsel directed your
18 attention to a statement under the prices that says
19 through 2025 the AEO 2014 reference case has the
20 second lowest projected Henry Hub prices after IHSGI.
21 Do you see that sentence?

22 A. Yeah. It was through 2025, yes.

23 Q. Through 2025, thank you. Has -- has EIA
24 further updated their near-term update for natural
25 gas?

1 A. Yes, they have.

2 Q. And do you have any -- do you have that
3 information before you?

4 A. Yes.

5 MR. KUTIK: Objection, your Honor.

6 EXAMINER PRICE: Grounds?

7 MR. KUTIK: Your Honor, we asked about
8 2014 and what's in the 2014 report. We didn't ask
9 about any updates. So it's beyond the scope of
10 cross.

11 EXAMINER PRICE: Ms. Grady.

12 MS. WILLIS: Your Honor, it is well
13 within the scope of the cross-examination. That
14 was -- this was specifically what he asked. It's a
15 counter to that; and, in fact, the updated is
16 contained in Company Exhibit 61 which we were just
17 going to get to.

18 EXAMINER PRICE: I'll allow it.

19 MS. WILLIS: Thank you.

20 I'm sorry. Do you have -- there was a
21 question pending and an answer? I'm not sure.

22 EXAMINER PRICE: There must have been a
23 question pending. Can we have the last question
24 back, please.

25 (Record read.)

1 Q. And, Mr. Wilson, can you identify where
2 that information is found?

3 A. I think we're talking about Exhibit 61,
4 Table 2, which is about maybe 60 percent of the way
5 through the document.

6 Q. Would that be entitled "Table 2 Energy
7 Prices U.S. Energy Information Administration
8 Short-Term Energy Outlook, September, 2015"?

9 A. Yes.

10 Q. And within that Table 2 can you direct my
11 attention to where the natural gas updates would be?

12 A. Yes. About two-thirds of the way down
13 you have natural gas, and if you go over to the -- I
14 go to the far columns which are annual rather than
15 quarterly and you see -- and they are in both dollars
16 per thousand and dollars per million. They are
17 roughly the same, but 2014 was 4.52 per thousand
18 cubic feet dropping to this update had \$2.93 for 2015
19 and expecting \$3.20 for 2016. And those are, of
20 course, way down from earlier projections by EIA.

21 Q. Okay. Now, counsel for the company, also
22 going back to Company Exhibit 60, directed your
23 attention to MT-22. Can you pull to that, please.

24 A. Yes.

25 Q. And in particular counsel directed your

1 attention to Figure MT-41. Do you recall those
2 questions?

3 A. Yes.

4 Q. And, in fact, counsel asked you whether
5 or not you had utilized the high oil and gas resource
6 as part of your analysis. Do you recall that?

7 A. That's correct.

8 Q. Can you tell me how that high oil and gas
9 resource compares to the EIA projections shown on
10 Exhibit 61?

11 A. Yes. That high oil and gas resource case
12 is, of course, the lowest of the various projections.
13 But EIA's update now is even lower than the high oil
14 and gas resource case so if those prices are never
15 below maybe about \$3.50. Of course, EIA's projection
16 now is \$3 for 2015 and 3.20 for 2015, so their latest
17 projection is even below the high oil and gas
18 resource projection.

19 Q. Okay. Again, that high oil and gas
20 resource projection was used in your analysis that
21 you presented before the Commission.

22 A. Yes.

23 Q. Okay. Now, counsel at some point this
24 afternoon asked you about whether you're familiar
25 with CRES contracts. Do you recall those questions?

1 A. Yes.

2 Q. And what was your response at that time?

3 A. That I was familiar with the terms of one
4 such arrangement, the arrangement between NOPEC and
5 FES.

6 Q. And can you explain to me what your
7 familiarity is with that arrangement?

8 A. Yeah. My understanding it was a
9 nine-year contract initiated in the end of 2010,
10 early 2011 and that it's pegged to the price to
11 compare with residential customers getting 4 --
12 6 percent and commercial customers getting 4 percent
13 off of the price to compare for a full
14 requirements-type contract.

15 MS. WILLIS: Okay. Your Honors, that's
16 all the questions I have. Thank you, Mr. Wilson.

17 EXAMINER PRICE: I just want to clarify
18 one thing about the line of questions with your
19 counsel. The short-term energy outlook prices only
20 update through 2015; is that right?

21 THE WITNESS: It provides a number for
22 2016 also.

23 EXAMINER PRICE: Oh, it does? Okay.
24 Thank you.

25 Mr. Mendoza?

1 MR. MENDOZA: No questions, your Honor.

2 EXAMINER PRICE: Mr. Kutik?

3 MR. KUTIK: May I have a minute, your
4 Honor?

5 EXAMINER PRICE: You may.

6 - - -

7 RECROSS-EXAMINATION

8 By Mr. Kutik:

9 Q. Mr. Wilson, isn't it true that you never
10 reviewed the NOPEC contract?

11 A. The contract itself, no.

12 Q. Okay. And you don't know its price
13 terms.

14 A. Yes, I do.

15 Q. Well, you didn't know it at your
16 deposition, sir, did you?

17 A. I don't recall.

18 Q. All right.

19 A. I think probably did not, yes.

20 Q. Okay. And, in fact, you didn't know what
21 the term "price to compare" meant.

22 A. I don't recall.

23 Q. Okay. And since you haven't seen the
24 contract you don't know whether it has
25 confidentiality provisions in it, do you?

1 A. I believe I saw a press release about it.

2 Q. All right. My question to you is do you
3 know whether it had confidentiality provisions in it?

4 A. I don't know that but --

5 Q. All right. So do you know whether what
6 you've just said violates the confidentiality
7 provisions?

8 EXAMINER PRICE: Wait a second. In all
9 fairness he had not completed his prior answer.

10 MR. KUTIK: Fair enough, your Honor.

11 EXAMINER PRICE: If you have anything
12 else you would like to finish on your prior answer
13 and then move on to --

14 THE WITNESS: I understood I was looking
15 at a press release that described all of the
16 provisions that I mentioned about the contract.

17 Q. My question to you, sir, you haven't seen
18 the confidentiality provision, correct?

19 A. Correct.

20 Q. You don't know whether what you've just
21 said violates those confidentiality provisions then,
22 fair to say?

23 A. Well, no, because I believe I -- I mean,
24 what I described was from a press release, a public
25 document, I believe.

1 Q. You believe.

2 A. Yes. That was my understanding.

3 Q. All right. And your understanding came
4 from what you were told by counsel, correct?

5 A. No, by the document I was provided by
6 counsel.

7 Q. All right. And your counsel told you it
8 was a press release.

9 A. It looked like a press release, yes.

10 Q. So that was a deduction you made.

11 A. Yes.

12 Q. So you don't know whether you violated
13 the confidentiality provisions sitting here today,
14 fair to say?

15 A. I guess if that press release looking
16 thing was a confidential document, I don't think it
17 said anywhere on it that it was, but I don't know. I
18 guess.

19 Q. You don't know. You guess. Isn't it
20 true -- I think you mentioned in question to the
21 attorney examiner that the STEO, Short-Term Energy
22 Outlook, went through 2016, correct?

23 A. Yes.

24 Q. And isn't it true that the EIA has
25 natural gas price forecasts that are higher in -- for

1 certain years -- strike that.

2 Isn't it true that for the period of from
3 2015 to 2031 the updated AEO from 2015 has years
4 where the 2015 natural gas price projections are
5 higher than the 2014 AEO?

6 MS. WILLIS: Objection.

7 EXAMINER PRICE: Grounds?

8 MS. WILLIS: It's beyond the scope
9 redirect.

10 EXAMINER PRICE: Opened the door.
11 Overruled.

12 A. There were a few years when the AEO 2015
13 was higher.

14 Q. Okay. Well, sir, are you aware that
15 using the AEO data one can make graphs of various
16 projections?

17 A. I have done so.

18 MR. KUTIK: All right. May I approach?

19 EXAMINER PRICE: You may.

20 MR. KUTIK: Your Honor, I would like to
21 have marked as Company Exhibit 65 a document entitled
22 "EIA Forecast of U.S. Natural Gas Prices."

23 EXAMINER PRICE: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Mr. Wilson, you have seen graphs of this

1 type before at the EIA database.

2 A. I have made graphs like this, yes. You
3 don't find those graphs in the database, no.

4 Q. You've created graphs like this.

5 A. Yes.

6 Q. All right. And would this graph
7 accurately depict the relationship between the 2015
8 AEO reference case and the 2014 AEO reference case
9 for natural gas prices using nominal dollars?

10 MS. WILLIS: Objection.

11 EXAMINER PRICE: Grounds?

12 MS. WILLIS: Your Honor, this -- he has
13 not laid a foundation for this document and it is
14 hearsay.

15 EXAMINER PRICE: The witness relied upon
16 both the -- referenced -- relied upon 2014 AEO
17 reference case and referenced in his testimony that
18 he reviewed the 2015 reference case. I think there
19 is plenty of foundation.

20 MS. WILLIS: But he did not plot graphs,
21 and he cannot testify as to the accuracy of the
22 plotting of these points on the graph.

23 MR. KUTIK: He hasn't said one way or the
24 other, your Honor. All I asked him was does this
25 accurately depict it. He can say "yes," or he can

1 say "no."

2 A. I'm not sure but it may be.

3 Q. Do you think it generally shows the
4 relationship?

5 A. Well, I remember it had that different
6 shape and that there were periods -- I mean, the
7 critical period of 2015 to 2020, the new one is lower
8 but then it's slightly higher after that. I think
9 generally it may have had that relationship.

10 MR. KUTIK: Thank you. May we have a
11 minute, your Honor?

12 EXAMINER PRICE: Counsel had a pending
13 objection, but it's moot now.

14 MR. KUTIK: That's all I have, your
15 Honor. Thank you.

16 EXAMINER PRICE: Mr. McNamee?

17 Mr. Kurtz? I'm sorry.

18 MR. KURTZ: Nothing, your Honor.

19 EXAMINER PRICE: Mr. McNamee?

20 MR. McNAMEE: No.

21 EXAMINER PRICE: Ms. Addison?

22 Ms. Willey?

23 I hate to do this to you.

24 THE WITNESS: Please.

25 EXAMINER PRICE: But I keep asking

1 witnesses in this proceeding and nobody can help me.
2 Assuming that the company -- and if this is
3 confidential, tell me. Assuming that your projection
4 is correct for prices, what is the total expenditure
5 expected by consumers over the course of the proposed
6 transaction within the FirstEnergy service territory?

7 THE WITNESS: Okay. I mean, I had three
8 scenarios.

9 EXAMINER PRICE: Let's use your -- your
10 primary scenario.

11 THE WITNESS: Okay. And I updated those
12 scenarios with new data in May.

13 EXAMINER PRICE: I'll take any -- I'll
14 take any information.

15 MR. KUTIK: Well, your Honor, I will
16 object to that, the question about updates,
17 especially coming at this stage in the proceeding.

18 EXAMINER PRICE: Okay. We will roll it
19 back to your initial projections.

20 THE WITNESS: Okay. I think one of them
21 was 3 billion.

22 EXAMINER PRICE: That's not the question
23 I am asking.

24 THE WITNESS: Okay.

25 EXAMINER PRICE: My issue is your claim

1 is that the PPA is going to cost consumers X dollars.
2 I want to stay away from confidentiality. Right?

3 THE WITNESS: Okay.

4 EXAMINER PRICE: What's lost -- what the
5 record is not clear is X billion dollars of out of
6 what? So you say it's going to cost consumers \$3
7 billion you just said. What's their total spend?
8 Does it cost them \$3 billion dollars out of 13
9 billion? 20 billion? 30 billion?

10 THE WITNESS: Okay. I guess I don't have
11 that number handy. I could try to do it back of the
12 envelope. It would sound small. It would sound
13 small.

14 EXAMINER PRICE: It would sound small?

15 THE WITNESS: Well, yeah. You take a big
16 number, but you divide it by a much larger number,
17 and you could divide it by the Ohio economy and it
18 would sound small and I don't know what their total
19 spend over the period is, but it would be a lot
20 larger than that.

21 EXAMINER PRICE: 10 times? 20 times
22 larger?

23 THE WITNESS: I would have to at least
24 try to do a back of the envelope calculation.

25 EXAMINER PRICE: Okay. Fair enough.

1 Okay. You're excused.

2 Ms. Willis.

3 MS. WILLIS: Yes, your Honor. OCC moves
4 for the admissions of Exhibit 4, 5, and 6C.

5 EXAMINER PRICE: Any objection to the
6 admission of Exhibits 4, 5, and 6 Confidential?

7 MR. KUTIK: Subject to your rulings on
8 the motion to strike, your Honor, no.

9 EXAMINER PRICE: Subject to the rulings
10 on the motion to strike, they will be admitted.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 MS. WILLIS: Your Honor, those are joints
13 exhibits. I referred to them as OCC.

14 EXAMINER PRICE: I understand.

15 MS. WILLIS: Thank you.

16 EXAMINER PRICE: Mr. Kutik.

17 MR. KUTIK: Your Honor, at this time we
18 offer Company Exhibits 58, 59, 60, 61, 63, and 65.

19 EXAMINER PRICE: Just to make clear you
20 have offered 58, 59, 60, 61, 63, and 65; is that
21 correct?

22 MR. KUTIK: Yes, your Honor.

23 EXAMINER PRICE: Any objections to the
24 admission of those exhibits?

25 MS. WILLIS: Your Honor, with respect to

1 two of those exhibits we do have objections.

2 EXAMINER PRICE: Okay. Tell me the ones
3 you don't object to. Tell me the ones you do object
4 to.

5 MS. WILLIS: We do object to -- the first
6 one is 58. The second one is going to be 59. 58 --

7 EXAMINER PRICE: Wait. Stop. Stop.
8 Okay. At this time then we will admit Company
9 Exhibits 60, 61, 63, and 65.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 EXAMINER PRICE: Now, we will take your
12 arguments as to Company Exhibit 58.

13 MS. WILLIS: Yes, your Honor. This
14 exhibit was the contract for legal services between
15 OCC/NOPEC and Mr. Wilson. It is not relevant.
16 Relevant evidence is evidence that has the tendency
17 to make the existence of any fact that is of
18 consequence to the determination of the action more
19 probable. There is nothing that -- there is no fact
20 that this is related to that it is of consequence to
21 the issues being determined in this -- in this
22 proceeding. So I believe on grounds of relevance it
23 should not come in.

24 EXAMINER PRICE: Mr. Kutik.

25 MR. KUTIK: Your Honor, she made the same

1 argument with respect to Mr. Effron's contract. It's
2 relevant to the issue of the fact of what budget he
3 was under and what he did and that he also felt that
4 what he -- when he -- the budget he was under was not
5 a constraint in terms of what he needed to do.

6 MS. WILLIS: And, again, that issue, the
7 budget, whether the budget he was under constrained
8 his work is of no -- has no consequence to the
9 determination of issues in this proceeding. It is
10 not relevant.

11 MR. KUTIK: It goes to the diligence and
12 work of the witness and whether it should be relied
13 upon.

14 EXAMINER PRICE: Consistent with our
15 prior ruling that exhibit will be admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER PRICE: 59.

18 MS. WILLIS: 59, your Honor, is the
19 invoices of that -- that Mr. Wilson exchanged with
20 the Office of Consumers' Counsel. Again, it is not
21 relevant. It is not -- it does not go to anything
22 that is of consequence to the issues being determined
23 in this proceeding.

24 EXAMINER PRICE: Mr. Kutik.

25 MR. KUTIK: This shows exactly what he

1 did, your Honor, in terms of his work product and
2 obviously allows us to argue whether he was diligent
3 and whether he provided -- he provided a detailed
4 analysis or not. The fact that he was already
5 talking to his lawyers and organizing his thoughts
6 after five hours we should be able to argue that is
7 bias and he is a biased witness for an important
8 client of his that brings in a lot of revenue. Those
9 are all arguments relating to his bias and his
10 credibility.

11 EXAMINER PRICE: I agree. The exhibit
12 will be admitted.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 EXAMINER PRICE: Anything else before we
15 go off the record?

16 Okay. We will adjourn at this time. We
17 will reconvene on --

18 MR. McNAMEE: With which witness?

19 EXAMINER PRICE: We will reconvene Monday
20 at 10 o'clock. Let's go off the record.

21 (Discussion off the record.)

22 (Thereupon, at 6:38 p.m., the hearing was
23 adjourned.)

24 - - -
25

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1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on this Friday, October
5 2nd, 2015, and carefully compared with my original
6 stenographic notes.

7
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10
11 _____
12 Karen Sue Gibson, Registered
Merit Reporter.

13 (KSG-6)

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Summary: Transcript In the Matter of the application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company hearing held on 10/02/15 - Volume XXII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.