

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  
Tuesday, October 6, 2015.

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1 Tuesday Morning Session,  
2 October 6, 2015.

3 - - -

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

12 My name is Mandy Chiles, and with me is  
13 Gregory Price and Megan Addison, and we are the  
14 attorney examiners assigned by the Commission to hear  
15 this case. We will waive appearances from the  
16 attorneys, but would anyone like to enter an  
17 appearance this morning?

18 MR. MAYES: I would like to enter an  
19 appearance. I'm Jeffrey Mayes, general counsel for  
20 Monitoring Analytics, acting in the capacity of the  
21 Independent Market Monitor for PJM.

22 EXAMINER CHILES: Thank you.

23 MR. O'DONNELL: Terrence O'Donell with  
24 Dickinson Wright representing Mid-Atlantic Renewable  
25 Energy Coalition.

1 MR. BURCAT: Bruce Burcat with  
2 Mid-Atlantic Renewable Energy Companies.

3 EXAMINER CHILES: Thank you.

4 Are we ready to proceed this morning?

5 MR. STINSON: Yes, your Honor. OCC and  
6 NOPEC would call Dr. Kahal.

7 (Witness sworn.)

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 - - -

10 MATTHEW KAHAL

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

13 DIRECT EXAMINATION

14 By Mr. Stinson:

15 Q. Mr. Kahal, would you please state your  
16 full name and business address for the record.

17 A. Yes. My name is Matthew Kahal. That's  
18 spelled K-A-H-A-L. Business address is 1108 Pheasant  
19 Crossing, Charlottesville, Virginia 22901.

20 Q. I've placed before you your direct  
21 testimony, which is marked OCC/NOPEC Exhibit 7. Do  
22 you have that?

23 A. I have my own copy.

24 Q. You can use your own copy.

25 A. Okay. Thank you. Yes, I have the direct

1 testimony.

2 Q. And was your direct testimony prepared by  
3 you or under your direct supervision?

4 A. Yes, it was prepared by me.

5 Q. And do you have any additions, deletions,  
6 or corrections to that direct testimony?

7 A. I have one deletion to that direct  
8 testimony.

9 Q. Can you describe that, please?

10 A. Yes. That's at page 28. There's -- at  
11 page 28 there's a footnote No. 20, and that footnote  
12 is to be deleted. That's the only change to the  
13 direct testimony I have.

14 Q. Thank you. If I were to ask you the same  
15 questions in your direct testimony, would your  
16 answers, as amended, be the same?

17 A. Yes.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. You also have before you your  
20 supplemental direct testimony which has been marked  
21 as OCC and NOPEC Exhibit 8.

22 A. Yes, I have that.

23 Q. And was that testimony prepared or was  
24 that supplemental direct testimony prepared by you or  
25 under your supervision?

1           A.    Yes, it was prepared by me.

2           Q.    Do you have any additions, deletions, or  
3 corrections to that testimony.

4           A.    Yes, there are a couple of deletions.

5           Q.    Go ahead.

6           A.    At page 29 of that testimony, the  
7 sentence at line 4 that states "In addition" and goes  
8 through line 5. That sentence is to be deleted.

9                   In addition on that page, along with the  
10 deletion of that sentence, the referenced footnote at  
11 line -- excuse me -- that's numbered 33, that  
12 footnote is to be deleted as well.

13          Q.    Do you have any other corrections?

14          A.    Yes. At page 37, at line number 14, the  
15 sentence that begins "Witness Sioshansi" and that  
16 sentence concludes at line 17, that sentence is to be  
17 deleted.

18          Q.    Thank you. If I were to ask you the same  
19 questions in your supplemental direct testimony,  
20 would your answers, as amended, be the same?

21          A.    They would.

22               MR. STINSON: At this time, your Honor, I  
23 move the admission of OCC and NOPEC Exhibit 7 and 8  
24 subject to cross.

25               EXAMINER CHILES: Thank you. We will

1 defer ruling on those exhibits. At this time we will  
2 proceed with cross-examination.

3 Before we proceed with cross-examination,  
4 do we have any motions?

5 Mr. O'Donnell?

6 MR. O'DONNELL: No questions.

7 EXAMINER CHILES: Mr. Mendoza?

8 MR. MENDOZA: No questions, your Honor.

9 EXAMINER CHILES: Mr. Kurtz?

10 MR. KURTZ: If I could go after the  
11 company, please, your Honor.

12 EXAMINER CHILES: Sure.

13 Mr. Kutik.

14 MR. KUTIK: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Kutik:

18 Q. Good morning, sir.

19 A. Good morning.

20 Q. Would you agree with me that the energy  
21 industry has undergone some changes in last five to  
22 ten years?

23 A. Yes.

24 Q. I want to talk to you a little bit about  
25 your experience. Your last teaching position was



1 around 1980.

2 A. That's correct.

3 Q. And both of your teaching positions were  
4 nontenured track, correct?

5 A. Yes, instructor-type positions.

6 Q. Thank you. And your last publication was  
7 in 2008?

8 A. Yes.

9 Q. And your last conference presentation was  
10 in 2004?

11 A. I think that's right, yes.

12 Q. And the last case involving an electric  
13 utility before your recent SSO cases in Ohio was  
14 1988?

15 A. Oh, I'm sorry. Did you mean my last case  
16 in Ohio?

17 Q. Yes, other than the SSO cases.

18 A. I think that's right, yes, other than the  
19 three SSO cases that I've done within, I guess, the  
20 last two years.

21 Q. Now, you haven't done any studies of the  
22 Ohio retail electric market, correct?

23 A. That's right.

24 Q. And you haven't reviewed the PUCO website  
25 regarding shopping information, correct?

1           A.    No.  I mean, I've seen some shopping  
2           statistics, but no, I haven't gone on the website to  
3           do any kind of a systematic-type search, which I  
4           think that's what you're talking about.

5           Q.    Yes, it is.  So your answer would be no,  
6           you haven't done that?

7           A.    Oh, I have not, that's right.  In the  
8           sense that you're talking about, I think.

9           Q.    Yes.  And you haven't done any study of  
10          the Ohio economy, correct?

11          A.    Recently, no.

12          Q.    Now, you would not consider yourself an  
13          expert on the design of a distribution system,  
14          correct?

15          A.    That's right.  I'm not an engineer, and I  
16          would consider that to be an engineering task.

17          Q.    And, similarly, you would not consider  
18          yourself an expert on planning system improvements.

19          A.    Only the economic aspects, not the  
20          engineering aspects.

21          Q.    And, similarly, with respect to the  
22          engineering aspects of making judgments about  
23          repairing and replacing an engineering system, you  
24          wouldn't consider yourself an expert on that?

25          A.    That's right, not on the engineering

1 aspect, you're correct.

2 Q. But you do know something about the PJM  
3 market, correct?

4 A. Yes.

5 Q. And would you agree with me that PJM has  
6 on the order of 200,000 megawatts of capacity  
7 resources?

8 A. That's a rough ballpark number. I  
9 believe that's in the ballpark of the amount of  
10 capacity in PJM.

11 Q. And 80 to 90 percent of that is in-ground  
12 capacity?

13 A. Yeah. In-ground meaning physical  
14 capacity, yes, that sounds about right.

15 Q. There are areas within PJM that are  
16 nonretail choice areas, correct?

17 A. There are.

18 Q. And there are vertically integrated  
19 utilities that provide generation and distribution  
20 service to customers in those areas, correct?

21 A. That's right. It's not the majority, but  
22 those areas within PJM do exist.

23 Q. And these utilities offer their  
24 generation into the PJM capacity market, correct?

25 A. As far as I know, I believe that's

1 correct. I haven't verified that, but that's my  
2 understanding of the way they normally operate.

3 Q. And this amount of generation comprises  
4 about 15 to 20 thousand megawatts.

5 A. It may be more than that. I mean, that  
6 would be ballpark. It might be as much as 30,000,  
7 but that's, you know, a rough, rough estimate.

8 Q. And you know that a FirstEnergy affiliate  
9 owns regulated generation in PJM, correct?

10 A. FirstEnergy affiliate? Subsidiary?

11 Q. A subsidiary of FirstEnergy Corp.

12 A. Yes, a subsidiary of the FirstEnergy  
13 Corp., I think we're talking about Mon Power.

14 Q. Now, within PJM, you would agree with me  
15 that the overwhelming percentage of retirements in  
16 the last few years have been retirements of  
17 generation plants that have been coal-fired, correct?

18 A. Yes, certainly in terms of the number of  
19 megawatts, yes.

20 Q. And the overwhelming percent of  
21 generation additions have been gas-fired, correct?

22 A. Yes. Again, in terms of megawatts, yes.

23 Q. Now, I want to talk to you about two  
24 developments in the PJM market since you filed your  
25 testimony. One of those is the capacity performance

1 rules. You're aware of those, right?

2 A. Yes.

3 Q. And you would agree with me that those  
4 rules have had and will likely have the effect of  
5 increasing capacity prices?

6 A. Yes.

7 Q. Another development has been the Clean  
8 Power Plan, you're aware of that?

9 A. Yes, the final rule -- I can't remember  
10 the date when it was issued, but I think it was over  
11 the summer.

12 Q. Yes. And you would agree with me that  
13 all else equal, the Clean Power Plan will tend to  
14 increase natural gas prices by increasing demand for  
15 natural gas.

16 A. As compared to not having the Clean Power  
17 Plan, if it didn't exist, yes.

18 Q. Now, you are also aware, are you not,  
19 that FERC has rules or tariffs that deal with market  
20 manipulation, correct?

21 A. There are tariffs that govern behavior of  
22 generators in RTOs that are FERC jurisdictional  
23 tariffs. In terms of an actual rulemaking that the  
24 FERC has done that defines market manipulation, that  
25 I'm not so sure that there's an actual rule.

1       There's -- I think that there's an investigation of  
2       that now that's taking place in FERC where it's just  
3       beginning, but there are tariffs that govern the  
4       behavior of market participants.

5               Q.     And you're aware that there are tariffs  
6       that deal with the subject of market manipulation,  
7       correct?

8               A.     I don't know if it uses the term "market  
9       manipulation," but that certainly is related to  
10      market manipulation issues, if that's helpful.

11              Q.     And FERC has used its authority to impose  
12      fines to deter market manipulation, correct?

13              A.     Punish and deter, yes.

14              Q.     Now, I want to talk to you a little bit  
15      about rider RRS and the economic stability program  
16      that's been proposed by the companies.

17              A.     Certainly.

18              Q.     Would it be correct to say that you're  
19      not sure if the companies are seeking Commission  
20      approval of a PPA?

21              A.     I'm not 100 percent sure since I haven't  
22      actually seen the PPA.

23              Q.     And you would agree with me that rider  
24      RRS does not set the price that the companies would  
25      pay under a PPA, correct?

1           A.    As the concept has been discussed, rider  
2   RRS does not set the price.  If a PPA goes forward,  
3   is confected and is approved, presumably that's what  
4   would set the price.

5           Q.    The PPA?

6           A.    Yes.

7           Q.    So the answer to my question was yes?

8           A.    Yes.

9           Q.    And you don't know if rider RRS would not  
10   dictate who would offer the plant's output into the  
11   PJM market?

12               MR. STINSON:  Could I have that reread,  
13   please.

14               EXAMINER CHILES:  You may.

15               (Record read.)

16           A.    You phrased it as "would not," negative?

17           Q.    Yes, I did.

18           A.    My understanding is that rider RRS does  
19   not address that.

20           Q.    Now, you believe, do you not, that the  
21   proposed transaction would be purely financial and  
22   not physical, correct?

23           A.    That's my understanding as to the concept  
24   that's being proposed.

25           Q.    And one of the reasons for that is that

1 the plant's output will not be used to displace the  
2 power procured for SSO load by the companies?

3 A. That's correct, not only SSO load but  
4 also for shopping customers, it wouldn't displace  
5 their load either.

6 Q. You anticipated my next question.

7 A. Okay. Good.

8 Q. Now, the companies would have the right  
9 to audit FES's books. You understand that, correct?

10 A. Yes. There are audit rights -- let me  
11 put it this way. It's a little hard to say that for  
12 sure because I haven't seen the contract. I have to  
13 rely on the proposed term sheet. Based upon the  
14 proposed term sheet, I believe that that's  
15 anticipated.

16 Q. And the companies under the term sheet  
17 would also be consulted on capital projects, correct?

18 A. There is a consultative process that's  
19 described in the term sheet for capital additions.

20 Q. Now, you haven't done any modeling on the  
21 effect of rider RRS on wholesale energy or capacity  
22 markets in PJM, correct?

23 A. I have not modeled that, no.

24 Q. And you have done no analysis on the  
25 amount of generation that would have to change its



1 behavior to affect capacity prices, correct?

2 A. That's correct.

3 Q. And you would agree with me that if  
4 customers receive a credit under rider RRS, rider RRS  
5 does not create a subsidy, correct?

6 A. I have to clarify what you mean by  
7 customers receiving a subsidy -- a credit. If you  
8 mean this is anticipated to be 15 years, so if what  
9 you mean is they receive a net credit over the  
10 15-year term, in other words, ratepayers are coming  
11 out ahead on this for the full 15 years of the PPA,  
12 assuming there is a PPA, then I would agree with the  
13 statement that you made. I assume that you didn't  
14 mean that, you know, if it was just one year.

15 Q. Now, I want to talk to you about your  
16 evaluation of the ESP under the ESP versus MRO test.

17 A. Sure.

18 Q. Now, it's your view that there is no ESP  
19 that should be approved by the Commission, correct?

20 A. That's right.

21 Q. And you would advocate a policy where no  
22 ESP would ever be approved by the Commission,  
23 correct?

24 A. That's correct.

25 Q. And you base this opinion that you just

1 had on the Opinion and Order in PUCO case No.

2 12-3151-EL-COI which you cite in your testimony?

3 A. I cite to that. That's, obviously, not  
4 the total basis of my opinion, but sure I cite to  
5 that in my testimony.

6 Q. And that was Commissioner Schnitzer's  
7 concurring opinion?

8 A. Yes.

9 Q. And you recognize that a concurring  
10 opinion is not the controlling opinion?

11 A. It's the majority opinion is the  
12 controlling opinion, so you're correct.

13 Q. Now, you also recognize that the  
14 statement that you quote from the then chair of the  
15 Commission can be fairly read as advice to the  
16 legislature as to what the legislature should do?

17 A. I don't disagree with that statement.

18 Q. And there were other filings in that  
19 case. You're aware of that, correct?

20 A. Yes. I didn't -- I mean, I wasn't in the  
21 case. I didn't participate, but sure, there were  
22 lots of things filed in the case.

23 Q. And would it be fair to say that you  
24 didn't review those other filings?

25 A. That's correct.

1           Q.    So you don't know whether OCC made any  
2   filings in those cases, in that case?

3           A.    I believe they made a filing.  I'm not  
4   familiar with it.

5           Q.    Would it be fair to say that since you  
6   haven't read the filing that OCC, you believe, made,  
7   you don't know if OCC argued for the elimination of  
8   ESPs or not?

9           A.    I don't know what positions OCC took in  
10  that case.

11          Q.    And would your policies be the same for  
12  any filings that NOPEC might have made?

13          A.    Correct.

14          Q.    Now, under the terms of the ESP versus  
15  MRO test, you would agree with me that one must  
16  evaluate all the terms and conditions of the ESP?

17          A.    Yes.  It's an aggregate test.

18          Q.    So this includes or this would mean,  
19  though, in your view, not including any costs or  
20  benefits that resulted from prior ESPs, correct?

21          A.    That's right.  Another way of stating it  
22  is it's an incremental test.

23          Q.    Now, you're aware that the Commission has  
24  considered qualitative aspects of ESPs in its  
25  determination or review of the ESP versus MRO test in

1 other ESPs?

2 A. They have. I haven't reviewed every one,  
3 but the ones that I've reviewed, they did address  
4 qualitative issues.

5 Q. And the Commission has also approved ESPs  
6 where the ESP rates were higher than MRO?

7 A. Yes. I would clarify that just to say  
8 the ESP costs -- costs and rates, were higher than  
9 the MRO, but they had -- I can think of at least one  
10 case where they did that where for other reasons they  
11 decided that the ESP still should be approved with  
12 whatever modifications they made to it.

13 Q. Now, as an economist, you understand that  
14 it's appropriate for the Commission to consider  
15 nonprice factors for an ESP in the ESP versus MRO  
16 test?

17 A. It could be, yes.

18 Q. Now, you also understand that there is an  
19 Ohio statute that sets out energy policies for the  
20 state, correct?

21 A. Yes.

22 Q. And you did no analyses of whether the  
23 ESP complies with the policies set out in that  
24 statute, correct?

25 A. You mean for this case?

1 Q. Yes.

2 A. Yes. In this case, I didn't go through  
3 and do a systematic review of that issue, that's  
4 correct.

5 Q. You believe that there is, though, a  
6 state energy policy that addresses the state's  
7 effectiveness in the global economy?

8 A. That's correct, I agree, that's one of  
9 the policies, yes.

10 Q. But you don't know if the Commission has  
11 a charge to address economic development, correct?

12 A. A charge to address economic development?  
13 By "charge" I assume you mean like a mandate?

14 Q. A charge.

15 A. That's just something that's not clear to  
16 me. I don't think I can answer that.

17 Q. Okay. Do you know whether they have --  
18 isn't it true you don't know whether the Commission  
19 has a statutory charge to address economic  
20 development?

21 A. A statutory charge, if charge means the  
22 same thing as mandate, then I don't know. I know  
23 that they can address it. I don't know if they're  
24 required to address it.

25 Q. Now, the Commission can consider rate

1 stability in making its ESP versus MRO determination,  
2 correct?

3 A. Certainly.

4 Q. And companies can offer features in ESP  
5 that has the effect of stabilizing rates?

6 A. Yes.

7 Q. Including a hedge product?

8 A. Yes.

9 Q. I want to talk to you a little bit about  
10 your analysis, your quantitative analysis, of the ESP  
11 versus MRO test.

12 A. Yes.

13 Q. And your analysis includes a figure for  
14 the cost of rider DCR, correct?

15 A. It does.

16 Q. And you're --

17 A. Actually, excuse me. It includes a  
18 range.

19 Q. Fair enough. And you're aware that the  
20 Commission has, for purposes of the ESP versus MRO  
21 test, treated the rider DCR and riders like it such  
22 as AEP Ohio's rider DIR as a wash, having no effect  
23 on the test because expenses under rider DCR could be  
24 recovered under an MRO versus a base rate case?

25 A. Or plural, rate cases. What stands out

1 is the last ESP case for the FirstEnergy Companies.  
2 I believe they may have even used the term "wash,"  
3 but I can't remember.

4 Q. And you're also aware -- well, I'll back  
5 up.

6 You participated, did you not, in the AEP  
7 ESP Case No. 13-2385?

8 A. I did.

9 Q. And you read the opinion in that case?

10 A. Yes.

11 Q. And would it be fair to say in that case,  
12 the Commission also determined that AEP's similar  
13 rider to rider DCR for purposes of the MRO test  
14 should not be factored in for quantitative analysis?

15 A. That's right, with the caveat that they  
16 actually modified the companies' proposal. They  
17 modified it quite a bit. But then after their  
18 modification that they made to it, they then  
19 determined that it wasn't a positive or negative  
20 factor, I guess a wash, to use the term that we've  
21 been using.

22 Q. Thank you. Now, in terms of -- I'm going  
23 to back up.

24 For lack of a better term, your primary  
25 analysis in terms of quantification of the ESP versus

1 MRO test, you only take the rider RRS figures for the  
2 term of the ESP, correct?

3 A. Well, I do it both ways.

4 Q. Right. But initially that's one way you  
5 did it?

6 A. That's the preferred way. Basically my  
7 testimony says let's look at it both ways. The first  
8 way I looked at it was for the three-year time  
9 period.

10 Q. And with respect to looking at it the  
11 second way, the 15-year time period, you take  
12 Mr. Wilson's figures, correct?

13 A. That's correct. He has three scenarios.  
14 For purposes of presenting ESP figures, I used his  
15 medium scenario.

16 Q. And as you mentioned, he has three cases,  
17 and the first two are based upon the Energy  
18 Information Administration's forecast for natural gas  
19 prices, correct?

20 A. That's right, yes.

21 Q. And then he uses Company Witness Lisowski  
22 and Company Witness Rose's information?

23 A. Yes. To my knowledge, he did not change  
24 the companies' projections of their O&M cost and cap  
25 adds. My understanding is that he just accepted that



1 information.

2 Q. Now, using the reference case for the  
3 EIA, that was Mr. Wilson's first case, correct?

4 A. Correct.

5 Q. And it's, I want to say, many millions of  
6 dollars as a wash, but it's essentially a wash?

7 A. Oh, I think when you take into account,  
8 you know, the enormous potential for monitoring  
9 error, I think it's fair to call it a breakeven.

10 Q. And the second case he uses, as  
11 Mr. Wilson, a high oil and gas resource case,  
12 correct?

13 A. The EIA high oil and gas resource, yes.

14 Q. And you've seen that case before,  
15 correct?

16 A. I'm aware of it. It's not anything I've  
17 really studied.

18 Q. Have you seen the annual energy outlook  
19 that Mr. Wilson uses?

20 A. I have. I mean, it's a report that I  
21 routinely reference and use in other cases. I didn't  
22 study it specifically for this case, because that  
23 wasn't my assignment, but it's a document I'm  
24 generally familiar with.

25 Q. So the answer to my question is you've

1       seen it before?

2               A.     Oh, sure, yeah.

3               Q.     And you're aware that the natural gas  
4       prices that are projected in the Ohio oil and gas  
5       research case are well below the other cases that the  
6       other five -- the four main cases that the EIA looks  
7       at in its AEO?

8               A.     Yes. I think in your question you said  
9       "research" and you meant "resource."

10              Q.     Yes. Thank you.

11                     You would agree with me that oil prices  
12       are currently low?

13              A.     Compared to where they've been in about  
14       the last ten years, yeah. I'm loving it.

15              Q.     And do you know that as far as natural  
16       gas price forecasts, that EIA includes in its AEO,  
17       there's a low price forecast, low oil price forecast?

18              A.     Yes, it's a low case.

19              Q.     And would it be fair to say that if we  
20       used that low case, it would be much closer to the  
21       reference case?

22              A.     I would have to verify that. If you want  
23       to suggest that's the case, I'm not disputing that.

24              Q.     Now, Mr. Wilson's third case is based  
25       upon natural gas futures prices, correct?

1           A.    Yes.

2           Q.    And would you agree with me that most  
3           forecasters don't use futures prices beyond the first  
4           few, perhaps, three years because after that, the  
5           futures market is thin?

6           A.    Right. I think you're referring to  
7           long-term studies. If they were doing long-term  
8           studies, they may very well for the first few years  
9           use the futures market. But then they -- excuse me.  
10          When I say the "futures market," I'm talking about  
11          the CME futures markets for standard products like  
12          the Henry Hub, something like that. I think that's  
13          what we're talking about.

14                 And that's information that's readily  
15          available, and they might use it for the first couple  
16          of years, but if you're talking about a figure, let's  
17          say, that's published on the CME website going out  
18          five years, ten years, they would -- typically they  
19          wouldn't grab a figure like that. Rather what they  
20          would do is they might take it just for the first  
21          couple of years, and then attach an escalation figure  
22          to it.

23          Q.    Now, would you agree with me -- so is the  
24          answer to my question yes?

25          A.    Yes, with just adding a little bit more

1 explanation, yes.

2 Q. Would you agree with me that  
3 historically, gas prices have been volatile and  
4 probably more volatile than most other commodities?

5 A. They have been volatile. I'm not in a  
6 position to say they have been more volatile than  
7 most other commodities. Most other commodities being  
8 things like food products, metals and -- I haven't  
9 done those calculations. I would say that natural  
10 gas has been more volatile than certain other energy  
11 commodities. I think it's fair to say that.

12 Q. Would it be also fair to say that you  
13 would not expect gas prices to be flat and unchanged  
14 over eight years?

15 A. I would love it if it was true that they  
16 were unchanged over ten years. I wouldn't really  
17 expect that.

18 Q. Now, you did not do any forecasts for  
19 this case, correct?

20 A. That's correct.

21 Q. And you did not model the impact of rider  
22 RRS, correct?

23 A. Model it in the sense that Mr. Ruberto  
24 did or Mr. Wilson, I did not.

25 Q. And would it also be fair to say you did

1 not do a typical bill analysis?

2 A. I did not calculate typical bills. I did  
3 calculate total numbers, but not typical bills.

4 Q. So the answer to my question is yes?

5 A. That's correct.

6 Q. And the only typical bill analysis you've  
7 seen has been one that was done by the companies,  
8 correct?

9 A. The companies are the only party that, to  
10 my knowledge, have done a typical bill analysis.

11 Q. So the answer to my question is yes.

12 A. That's right. It was more than one  
13 witness that did it, but yes.

14 Q. And did you review the typical bill -- I  
15 take it then you reviewed the typical bill analysis  
16 that was attached to the companies' application?

17 A. Yes. I actually saw two of them, two  
18 typical bill analysis.

19 Q. I'm getting to the second one, perhaps.

20 A. Okay. Thank you.

21 Q. Is the second one that you saw, that was  
22 in discovery, a discovery response?

23 A. No. It was actually in the companies'  
24 workpapers. There was one attached to the  
25 application. I think it was Attachment 7. It may

1 have been discussed here in hearings. And then there  
2 was another one that was, I believe, in the  
3 companies' workpapers. I don't know if that's  
4 something that's in the record or not.

5 Q. Okay.

6 A. But that's where I saw the other one.

7 Q. And would it be fair to say, sir, that in  
8 looking at the typical bill analysis, either one that  
9 you looked at, for most rate classes and most usage,  
10 rates went up -- or, rates went up in the first year  
11 but then down in the second and third years of the  
12 ESP?

13 A. They went up, right. They went up in the  
14 first year as compared to ESP III. That's the  
15 comparison that was made, and then they -- from after  
16 year 1, they went down a little bit, and they went  
17 down a little bit further in the year 3 as compared  
18 to year by year, but not as compared to ESP III.

19 Q. Okay.

20 A. That would be the best description I  
21 could give you.

22 Q. Thank you. Now, I want to talk to you a  
23 little bit about the qualitative aspects of the ESP.  
24 Would you agree with me that Ohio has a role to play  
25 in the development of generation in Ohio?

1           A.    I would think so.

2           Q.    And PUCO has a role in ensuring  
3 reliability for electric customers?

4           A.    Yes.  It has a role to play with regard  
5 to reliability, yes.

6           Q.    Now, with regard to the retirement of the  
7 plants in question here, I want to ask you some  
8 questions about your own background.  You've never  
9 had a decision-making role in buying or selling a  
10 retirement power plant, correct?

11          A.    Not a decision-making role, per se, no, a  
12 recommendation role.

13          Q.    Haven't seen information on the finances  
14 of the FES plants at issue here, correct?

15          A.    Well, no, that's not true.  I've seen the  
16 information that's in the record in this case.

17          Q.    From Mr. Moul?

18          A.    Yeah.  I'm trying to remember whether  
19 there was anyone else.  Certainly it's from Mr. Moul.  
20 I mean, there's also from other witnesses, too.  It's  
21 not just him.  I'm thinking of Dr. Kalt, for example.

22          Q.    All right.  Is it true that you haven't  
23 reviewed any information on FES's debt?

24          A.    No, other than what was in Mr. Staub's  
25 testimony, no, which was not very much.

1           Q.    And you don't know how much additional  
2    debt FirstEnergy Corp. can take without affecting its  
3    credit rating, correct?

4           A.    No, I don't, because that would depend on  
5    many variables.

6           Q.    Now, you know that FES has deactivated a  
7    number of coal-fired plants located along Lake Erie  
8    in 2014 and this year, correct?

9           A.    I know that they deactivated a number of  
10   coal units yes.

11          Q.    And you know that FirstEnergy Solutions  
12   announced scheduling plans to repower two units with  
13   biomass at the R. E. Burger plant in Shadyside, Ohio.

14          A.    I'll take your word for it. That's not  
15   something that I follow.

16          Q.    And you also are aware that in 2013, FES  
17   deactivated Hatfields Ferry and Mitchell power  
18   stations?

19          A.    Yes.

20          Q.    Now, you've done no modeling on the  
21   consequences of retirement of plants in question,  
22   correct?

23          A.    No. I'm not sure which consequences  
24   you're referring to, but I guess for purposes of your  
25   question, it may not matter since I didn't do any.



1           Q.    Right.  And from a reliability  
2           standpoint, the location of a particular plant may be  
3           relevant, you would agree with that, correct?

4           A.    You're asking me whether location  
5           matters?  Sure, of course it does.

6           Q.    And you would also agree with me that  
7           voltage support is necessary to maintain the  
8           stability of the grid?

9           A.    Absolutely.

10          Q.    And for voltage support, the location of  
11          the plant is very relevant, correct?

12          A.    Location of the relationship between the  
13          location of the plant and load is relevant for the  
14          voltage support issue along with the characteristics  
15          of the generating units.

16          Q.    And you would agree with me, would you  
17          not, that the plants in question here provide  
18          economic benefits to their local areas?

19          A.    They do.

20          Q.    And they provide things like providing  
21          employment and paying property taxes?

22          A.    Yes.

23          Q.    And if the plants would close, that would  
24          have a property tax impact?

25          A.    It would.  I mean, presumably it would

1 unless it was replaced by something that was  
2 comparable.

3 Q. Okay. And the plants, you would agree,  
4 are major employers in their respective geographic  
5 areas?

6 A. They are.

7 Q. And you don't know who other major  
8 employers in that area might be?

9 A. I don't know the names of the other major  
10 employers.

11 Q. Or the unemployment rates in those areas?

12 A. I have a general understanding of the  
13 unemployment rates. Maybe not precise, but I know,  
14 in general, what the unemployment rate situation is.

15 Q. Would looking at figures from the Bureau  
16 of Labor Statistics be information that you would  
17 rely upon to form a view as to the unemployment rates  
18 in those areas?

19 A. Yes. The Bureau of Labor Statistics has  
20 unemployment rates by state and by counties.

21 MR. KUTIK: May I have a moment, your  
22 Honor?

23 EXAMINER CHILES: You may.

24 MR. KUTIK: Your Honor, we would ask to  
25 have marked as Company Exhibit 74 a multi-page

1 document that starts with a page that's entitled  
2 "Local Area Unemployment Statistics Map."

3 EXAMINER CHILES: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Mr. Kahal, I've handed you what we have  
6 asked to have marked for identification as Company  
7 Exhibit 74. Does this appear to be data from the  
8 Bureau of Labor Statistics?

9 A. It does. On their website, if you  
10 actually go to their website, it's in color, which  
11 would be a lot nicer.

12 Q. I agree, sir. And do you know -- and it  
13 lists here, does it not, the various counties in Ohio  
14 and their unemployment rates?

15 A. It does, for July of 2015, yes.

16 Q. And you are aware, are you not, the  
17 counties in which the plants are located?

18 A. The two plants that are at issue in this  
19 case, yes, I am aware of that. The Sammis, I think,  
20 is located in Jefferson County and Davis-Besse in  
21 Erie County.

22 Q. And if we look at this table, and  
23 particularly on the second page, we see the  
24 unemployment rate for Jefferson County is  
25 7.4 percent?

1           A.    Yes.

2           Q.    And do you know where the Davis-Besse  
3 plant is located?

4           A.    Erie County.

5           Q.    How about Ottawa County? Does that sound  
6 familiar?

7           A.    You could be right. I thought it was  
8 Erie County. But Ottawa County, yes, and the number  
9 is 5.2 percent.

10          Q.    Now, I want to talk to you a little bit  
11 about retail rates and prices in Ohio. Would it be  
12 fair to say that you have not studied the change in  
13 prices experienced by customers as they've switched  
14 contracts?

15          A.    We're talking about switching retail  
16 suppliers?

17          Q.    Or going from one contract to another in  
18 a retail -- with the same retail supplier.

19          A.    That's correct. I mean, for  
20 nonresidential customers, it's generally not public  
21 information.

22          Q.    And you've also not done a study of the  
23 change in retail generation rates from nonshopping  
24 customers as EDUs have switched from ESP to ESP?

25          A.    From one three-year period to the next;

1 is that what you're referring to?

2 Q. Yes.

3 A. That's correct.

4 Q. I want to talk to you a little bit more  
5 about rider DCR.

6 A. Sure.

7 Q. You understand that rider DCR is to  
8 recover costs related to investments or expenditures  
9 intended, in part, to provide reliability benefits,  
10 correct?

11 A. Yes.

12 Q. And you would agree with me that  
13 reliability adds value for customers?

14 A. Absolutely.

15 Q. And you're aware that there have been  
16 cost tracker rider proceedings in Ohio?

17 A. Yes.

18 Q. And if the Commission in those cases  
19 finds that costs are not prudent, the Commission has  
20 the authority to disallow certain costs being  
21 recovered under those riders?

22 A. That's my understanding, that the  
23 Commission has the authority to disallow imprudently  
24 incurred or unreasonable costs.

25 Q. And you have not participated in cost

1 tracker rider audit proceedings in Ohio?

2 A. In Ohio, I have not, that's correct.

3 Q. And you have not reviewed cost tracker  
4 rider audit proceedings in Ohio?

5 A. That's right, I have not been involved in  
6 any of those proceedings.

7 Q. And that includes proceedings to audit  
8 rider DCR, correct?

9 A. That's correct.

10 Q. Would it be also correct to say you  
11 haven't been involved in a base rate case in Ohio for  
12 many, many years?

13 A. It's been quite a while since I've been  
14 involved. I was trying to remember when, but it's  
15 been quite a while, you're correct.

16 Q. And you believe that there is less risk  
17 associated with recovery of costs through a cost  
18 tracker than a base rate case, correct?

19 A. There's less risk, yes.

20 Q. And one of the reasons is because you  
21 think that prudence review disallowances are rare,  
22 correct?

23 A. That's been my experience, that prudence  
24 disallowances in tracker proceedings are rare. I  
25 think the second reason that's very often cited is

1       there's less regulatory lag.

2               Q.     I was going to ask you that.

3               A.     There is less -- yes, there's less  
4       regulatory lag.

5               Q.     Thank you for anticipating my question.

6                     It's your view that customers -- I'll  
7       back up.

8                     You would agree with me, would you not,  
9       that customers are unwilling to pay more to avoid  
10      outages? That's a view you have adopting  
11      Mr. Williams' testimony, correct?

12              A.     I don't know whether -- I think that  
13      that's a reference to some surveys, customer surveys,  
14      that have been done. I don't have firsthand  
15      knowledge of that being true.

16              Q.     And any comments that you would have on  
17      customer perceptions would be based upon  
18      Mr. Williams' testimony?

19              A.     That's right, I didn't get involved with  
20      reviewing those customer surveys and that sort of  
21      thing.

22              Q.     And, again, you've anticipated my next  
23      question, so I appreciate that.

24                     Now, I want to talk to you a little bit  
25      about Mr. Effron's calculations regarding earnings.

1 You agree with me that what he did was not a base  
2 rate return calculation, correct; in other words, a  
3 return calculation one would make in a base rate  
4 case?

5 A. No, it is. I think that what I explained  
6 in my testimony, is that it's not at the same level  
7 of detail. It's not that its conceptually different.

8 Q. It's not the same level of detail?

9 A. It's not the same level of detail as what  
10 would take place in a rate case where witnesses will  
11 be introducing adjustments and normalizations and all  
12 kinds of myriad of things that go on in a rate case.

13 Q. So there might be a variety of  
14 adjustments and a variety of normalizations that  
15 might occur in a base rate case not reflected in  
16 Mr. Effron's calculations?

17 A. That's correct. I don't think he tried  
18 to represent it otherwise.

19 Q. And would it also be fair to say that  
20 Mr. Effron's calculations are not the formula that  
21 would be used for the SEET, S-E-E-T?

22 A. Oh, no, no. He wasn't trying to simulate  
23 a SEET type of presentation. He was simply trying to  
24 present, as I understand it, what the companies'  
25 experience, based upon the most recent data that he



1 had in terms of their earnings under distribution  
2 service.

3 Q. So the answer to my question is yes?

4 A. It's different than a SEET, yes.

5 Q. And it's your understanding that the SEET  
6 acts as a mechanism for limiting earnings in an ESP?

7 A. In a fashion, yes.

8 Q. And you understand that that's part of  
9 the ESP statute, correct?

10 A. Yes.

11 Q. And unlike as with a base rate case, to  
12 obtain approval of an ESP under the ESP statutory  
13 test, there's no rate base necessary to be shown,  
14 correct?

15 A. I think you're referring to the filing  
16 requirements?

17 Q. Yes.

18 A. To my knowledge, there isn't a specific  
19 rule that requires that being filed when one makes an  
20 ESP application.

21 Q. Or for a rate of return either, correct?

22 A. Or the presentation of a rate of return.  
23 Now, there is financial information projections that  
24 are part of the filing.

25 Q. My question is about a rate of return.

1           A.     That doesn't include a rate of return.  
2     That includes financial information.

3           Q.     Now, you haven't reviewed any orders in  
4     any of the companies' SEET proceedings, correct?

5           A.     I have not been involved in any SEET  
6     proceedings or reviewed SEET orders.

7           Q.     I want to ask you a few questions or  
8     maybe one or two about Rider GDR.

9           A.     Yes.

10          Q.     You understand, do you not, that under  
11     the companies' proposal to obtain any recovery, the  
12     companies would first have to apply for approval for  
13     recovery of some type of cost, correct?

14          A.     That's correct.

15          Q.     And then they would have to come in to  
16     show the amount of the costs sought to be recovered  
17     or, perhaps, a projection of that cost?

18          A.     I think that's the proposal as to how it  
19     would work.

20          Q.     Now, I have one, I think, final line of  
21     questions that I want to talk to you about, and  
22     that's relating to stipulations and your review about  
23     the stipulations in this case. You reviewed at least  
24     one Commission case on the standards for approval of  
25     a stipulation, correct?

1           A.    Yes, specifically the -- I think it's the  
2   ESP III case, which resulted in a stipulation, and  
3   there was pretty extended discussion about that in  
4   the Commission order.

5           Q.    And you haven't been involved in  
6   negotiations of any of the stipulations in this case,  
7   correct?

8           A.    Oh, I have not, no.

9           Q.    And you have no information on any  
10   involvement that OCC may have had in any negotiation  
11   with respect to a stipulation or any issue of  
12   settlement, correct?

13          A.    That's correct, I have no knowledge of  
14   what their participation in the settlement process,  
15   if any, has been.

16          Q.    And your answer would be the same for  
17   NOPEC, correct?

18          A.    My answer would be the same for NOPEC,  
19   that's correct.

20          Q.    And you don't know if there was any party  
21   precluded from having an opportunity to participate  
22   in the settlement process?

23          A.    That's correct.

24          Q.    And you would agree with me that no  
25   stakeholder's interest is more important than any

1 other stakeholder's interest, correct?

2 A. I would have -- the best answer I can  
3 give you, I have no basis for saying that one  
4 stakeholder's interest should be elevated over  
5 another stakeholder's interest. That's the best  
6 answer I can give you.

7 Q. And you don't believe that OCC or NOPEC  
8 should have a veto over stipulations, correct?

9 A. I don't believe that any individual  
10 single party should have a veto, that's correct.

11 Q. Now, you're aware that the signatory  
12 parties included representatives of commercial  
13 customers, industrial customers, and municipalities,  
14 correct?

15 A. Yes.

16 Q. But you don't know if any signatory party  
17 represents residential customers, correct?

18 A. The general body of residential customers  
19 of the three utilities, I don't know that any of them  
20 represent them.

21 Q. Okay. Well, isn't it true that you don't  
22 know if any signatory party represents residential  
23 customers at all?

24 A. That's correct, I don't. I don't know  
25 what their specific representation is.

1           Q.    And you don't know if there are any side  
2 agreements not reflected in the stipulation as  
3 amended?

4           A.    That's correct, I have no knowledge of  
5 any side agreements.

6           Q.    You don't know if the signatory parties  
7 were represented by experienced counsel?

8           A.    I'm agnostic on that in that I can't  
9 comment on the capabilities of the counsel that were  
10 involved.

11          Q.    In fact, you don't know those counsel?

12          A.    I don't know them, no.

13          Q.    That's a good reason to be agnostic.

14          A.    I agree.

15          Q.    Now, you have a view, do you not, that  
16 the signatory parties did not do an independent  
17 analysis, correct?

18          A.    I have a view that I don't know that they  
19 have. I've seen no evidence that they have.

20          Q.    Okay.

21          A.    What they may have done and not provided  
22 is something that's unknowable to me.

23          Q.    You wouldn't consider a party that merely  
24 read the filings and then came to a conclusion about  
25 the benefits of the stipulation as a party that had

1 done an independent analysis, correct?

2 A. I wouldn't consider that to be an  
3 independent analysis, just reading the filing.

4 Q. But you understand that a party could  
5 come to a conclusion regarding the benefits of a  
6 stipulation without doing what you would consider to  
7 be an independent analysis.

8 A. They can come to any conclusion they  
9 want, sure.

10 Q. Now, your belief that the parties didn't  
11 do an independent analysis is based upon three  
12 things; one, that you don't believe any signatory  
13 party provided any substantively supported testimony;  
14 two, signatory parties objected to discovery  
15 regarding what analysis they did; and three, to the  
16 extent the signatory parties answered this discovery,  
17 it showed that they had not done any bill impact  
18 analysis, correct?

19 A. Well, all those statements are true. But  
20 just to clarify, I'm not saying that because they  
21 didn't answer the discovery that by itself means that  
22 they didn't do an analysis. I'm simply saying it  
23 simply means that by not responding to the discovery  
24 or objecting to the discovery, that I can't document  
25 that they have.

1 Q. So is the answer to my question yes?

2 A. With that clarification, I think the  
3 answer is yes.

4 Q. Now, do you know who Nucor Steel is?

5 A. Yes.

6 Q. And you understand that Nucor Steel is a  
7 signatory party.

8 A. Yes.

9 Q. Do you know a party called the Ohio  
10 Energy Group or OEG?

11 A. I don't know who their members are.

12 Q. I didn't ask you that; whether you knew  
13 that OEG is a party.

14 A. Oh, that they're a party, yeah. I don't  
15 have a knowledge of who they are, but I know they're  
16 a party.

17 Q. Do you understand that OEG was a  
18 signatory to the stipulations in this case?

19 A. I believe so. I would have to check who  
20 signed the stipulation.

21 Q. Would you like to do that, sir, or will  
22 you accept that?

23 A. I'll accept it.

24 Q. And it's true, is it not, that both Nucor  
25 Steel and OEG sponsored witnesses in this case that

1 testified in support of the stipulation?

2 A. I didn't read their testimony that way.  
3 I read the testimony of Dennis Goins and I read the  
4 testimony of Steve Baron. I certainly did not read  
5 the testimony of either witness as being a  
6 full-throated support for the entire stipulation. I  
7 read their testimony as being support for aspects of  
8 it.

9 Q. All right. But you did read their  
10 testimony?

11 A. Oh, yes.

12 Q. And the testimony, at least in your view,  
13 made statements in favor of parts of the stipulation?

14 A. Yes, of components of the stipulation.  
15 As an example, Dr. Goins testified strongly in favor  
16 of the interruptibility credit, but really not much  
17 else about the rest of the stipulation.

18 Q. Now, with respect to the signatory  
19 parties' answers to discovery, you would agree with  
20 me that many of those parties objected to the  
21 discovery that's attached to your testimony on at  
22 least one of three grounds, maybe combinations of  
23 these three grounds: Attorney/client privilege, work  
24 product, and confidential settlement talks?

25 A. Yes.



1           Q.    And you're aware that each of those  
2 grounds may be a basis for not otherwise responding  
3 to discovery?

4           A.    Absolutely.

5           Q.    And since you're not an attorney, you're  
6 not in the position to judge the merits of those  
7 objections, correct?

8           A.    No, I'm not. I've had pretty extensive  
9 experience with settlement processes. I don't find  
10 any of this surprising.

11          Q.    All right. And you're not aware, are  
12 you, that OCC or NOPEC moved to compel any response  
13 to challenge the validity of any of the objections?

14          A.    Not to my knowledge.

15          Q.    Now, would it be fair also to say that  
16 your primary problem with the stipulation as amended  
17 is that it includes riders RRS, DCR, and ELR?

18          A.    Yes. Those are the biggest problems.

19          Q.    And with regard to rider ELR, you don't  
20 know of any CRES providers that provide interruptible  
21 rates, correct?

22          A.    I don't have firsthand knowledge of CRES  
23 providers that provide interruptible features to  
24 their service.

25          Q.    So the answer to my question is yes?

1           A.    Yes.

2           Q.    And you're not aware of any recent  
3 Commission decisions regarding the need to continue  
4 interruptible rates?

5           A.    No.

6           Q.    Now, regarding the policy issues  
7 discussed in the stipulation as amended, on the issue  
8 of the alleged selection or regarding stranded costs,  
9 regarding the policy issues in the stipulation  
10 regarding the issues of stranded costs, you were not  
11 involved in any electric transition plan case in  
12 Ohio, correct?

13          A.    That's correct. I'm a little bit  
14 confused by the question, though, because I didn't  
15 think stranded costs were addressed in the  
16 stipulation. Am I misunderstanding the question?

17          Q.    Did you include commentary about stranded  
18 costs in your supplemental testimony, sir?

19          A.    I did. I thought you were referring to  
20 the stipulation.

21          Q.    I'm sorry, in your supplemental  
22 testimony.

23          A.    In the supplemental testimony, yes.

24          Q.    And so let's get back to my question,  
25 which I think you've answer but just for clarity.

1 You were not involved in any electric transition case  
2 in Ohio?

3 A. That's correct.

4 Q. And you don't remember reading any  
5 opinions in those cases, correct?

6 A. I'm pretty sure I didn't.

7 Q. And you don't know when the transition  
8 period was, correct?

9 A. I know the general time frame. I don't  
10 know precise dates.

11 Q. Or when it ended?

12 A. Again, the same thing. I don't know  
13 precise dates. I don't know the general time frame.

14 Q. And you don't know what a rate certainty  
15 plan or what a rate stability plan is?

16 A. Those are terms that I don't recognize.

17 Q. And you don't remember reading any  
18 decisions about the companies' plans with respect to  
19 a rate certainty plan or rate stabilization plan?

20 A. That's correct.

21 Q. And you don't know the mechanism for the  
22 companies' collection of stranded costs?

23 A. The rate mechanism, I don't know what  
24 rate mechanism was used for the company to collect  
25 its stranded costs.

1           Q.    And you don't know if the companies'  
2 rates went up or down during the transition period,  
3 correct?

4           A.    That's right, I don't know the history of  
5 the companies' rates during that period.

6           Q.    And regarding the issue of stranded  
7 costs, would it be fair to say you're relying solely  
8 on Dr. Rose's testimony?

9           A.    Yes.

10          Q.    And no other source?

11          A.    In terms of the quantitative numbers, I'm  
12 relying on his representation of the \$7 billion  
13 collection of stranded costs. I'm relying on him for  
14 that.

15          Q.    On a slightly different subject, would  
16 you agree with me that you would not define  
17 reasonably priced service as service that's priced as  
18 low as possible?

19               MR. STINSON:  Could I have that question  
20 reread, please?

21               EXAMINER CHILES:  You may.

22               (Record read.)

23          A.    We are talking about electric service, is  
24 that what you mean?

25          Q.    Yes.

1           A.    In the context of electric service,  
2   that's not a definition I would use.

3           MR. KUTIK:  May I have a minute, your  
4   Honor?

5           EXAMINER CHILES:  You may.

6           MR. KUTIK:  I have no further questions.  
7   Thank you.

8           EXAMINER CHILES:  Thank you.

9           Mr. Kurtz?

10          MR. KURTZ:  No questions.

11          EXAMINER CHILES:  Mr. McNamee?

12          MR. MCNAMEE:  No questions.  Thank you.

13          EXAMINER CHILES:  Mr. Stinson?

14          MR. STINSON:  Could we take just one  
15   moment, your Honor?

16          EXAMINER CHILES:  Sure.

17          (Discussion off the record.)

18          EXAMINER CHILES:  Let's go back on the  
19   record.

20          Mr. Stinson?

21          MR. STINSON:  We have no redirect, your  
22   Honor.

23          EXAMINER CHILES:  Thank you very much.

24          EXAMINER PRICE:  I've got questions.  Not  
25   so fast.

1                   Mr. Kahal, could you turn to page 26 of  
2                   your testimony?

3                   THE WITNESS:   The direct, sir?

4                   EXAMINER PRICE:   The direct, yes.

5                   THE WITNESS:   Yes, I have that.

6                   EXAMINER PRICE:   In the answer to  
7                   question 26, you discuss giving equal weight to the  
8                   benefits from both Mr. Rose's projections and  
9                   Mr. Wilson's projections; is that right?

10                  THE WITNESS:   That's correct.

11                  EXAMINER PRICE:   So we have a number of  
12                  projections in front of us.   Do you think it's too  
13                  crude of a mechanism for the Commission to take the  
14                  average of all the projections that we have in front  
15                  of us?

16                  THE WITNESS:   Too crude?   I mean, that's  
17                  one thing that the Commission should do.   I think  
18                  that -- now, I don't want to speak for Mr. Wilson,  
19                  but I do think that it's important to recognize that  
20                  there's a lot of uncertainty in these numbers, and  
21                  the fact that we have comparing Mr. Rose, that is,  
22                  companies' Mr. Rose and Mr. Wilson, there's a spread  
23                  of \$6 billion.   Mr. Wilson's case that has the lowest  
24                  prices is almost a \$4 billion detriment.   Mr. Rose's  
25                  produces a benefit of 2 billion, so that's a spread

1 of 6 billion. That's really huge. And the  
2 Commission could do a lot of things. I mean, they  
3 could average Mr. Wilson's numbers with Mr. Rose's  
4 numbers if they thought they were of equal validity.

5 EXAMINER PRICE: So if we had other  
6 projections, three or four projections, that the  
7 Commission thought were equally valid, it would not  
8 be incorrect or not be invalid to aggregate them and  
9 take the average?

10 THE WITNESS: If they thought they were  
11 equally validly, that would be one way of looking at  
12 a possible expected outcome. They could do that. I  
13 wasn't trying to advocate that, but that's something  
14 that they could do.

15 EXAMINER PRICE: I understand. I'm  
16 struggling with all the projections we have and how  
17 we can make some sense of them of.

18 THE WITNESS: Yeah. I mean, planners  
19 struggle with that question all the time.

20 EXAMINER PRICE: If you could turn to  
21 your supplemental testimony.

22 THE WITNESS: Yes.

23 EXAMINER PRICE: Page 17. Is all of your  
24 knowledge of Ohio law derived from Dr. Rose?

25 THE WITNESS: Oh, no. I've read the

1 statute. It's been called the ESP statute.

2 EXAMINER PRICE: Perfect. You discussed  
3 in your testimony that Dr. Rose describes his  
4 firsthand experience with involvement in Senate Bill  
5 3, is that right?

6 THE WITNESS: Yes.

7 EXAMINER PRICE: And you quote him  
8 saying, "After the enactment of Senate Bill 3, market  
9 forces are to determine which power plants should be  
10 operated and which power plants should be retired if  
11 they're inefficient and uneconomic."

12 THE WITNESS: Yes.

13 EXAMINER PRICE: And we're moving through  
14 a deregulated environment, correct?

15 THE WITNESS: Exactly, yes.

16 EXAMINER PRICE: Are you familiar with  
17 Senate Bill 221 which was enacted in 2008?

18 THE WITNESS: I don't know the  
19 legislation by the numbers, by their Senate bill  
20 numbers, so I'm not entirely sure. What I have  
21 reviewed is the statute --

22 EXAMINER PRICE: I'll get to that, don't  
23 worry. You do not recall what Senate Bill 221 is?

24 THE WITNESS: No.

25 EXAMINER PRICE: You know if Dr. Rose has



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1 any firsthand experience with Senate Bill 221?

2 THE WITNESS: I don't know that.

3 EXAMINER PRICE: Do you know whether or  
4 not Senate Bill 221 changed 4928.14 to delete the  
5 words "market-based from" the standard service offer?

6 THE WITNESS: Don't know that.

7 EXAMINER PRICE: Do you know whether  
8 Senate Bill 221 amended 4928.17 to change the  
9 statutes on corporate separation?

10 THE WITNESS: That, I don't know.

11 EXAMINER PRICE: Do you know whether  
12 Senate Bill 221 enacted 4928.143?

13 THE WITNESS: I don't know.

14 EXAMINER PRICE: You are familiar --

15 THE WITNESS: I don't recognize that  
16 bill, so I can't answer those questions.

17 EXAMINER PRICE: You are familiar with  
18 4928.143, the ESP statute?

19 THE WITNESS: Yes, the ESP statute,  
20 right.

21 EXAMINER PRICE: And that has an  
22 automatic fuel adjustment clause provision -- an ESP  
23 can have an automatic fuel adjustment clause?

24 THE WITNESS: It provides for that. I  
25 guess it's an option, would be the best way I would

1 put it.

2 EXAMINER PRICE: But that wouldn't be a  
3 market force, right? If an ESP had an automatic fuel  
4 adjustment clause, that would not be something you  
5 would say is characteristic of market forces  
6 determining price?

7 THE WITNESS: Generally not. It's  
8 possible that someone could enter into -- let me put  
9 it this way. I have a lot of experience with PPAs in  
10 competitive wholesale markets, and it is not  
11 uncommon, based on my experience, for market PPAs to  
12 have pass-throughs of cost items. That happens.

13 And if that was the case, I wouldn't  
14 necessarily say that's nonmarket, but I think that  
15 what you're alluding to is something like an  
16 automatic fuel clause is kind of more characteristic  
17 of the traditional regulated model.

18 EXAMINER PRICE: Are you familiar with  
19 what CWIP provisions are, construction work in  
20 progress provisions?

21 THE WITNESS: Yes.

22 EXAMINER PRICE: And you're aware  
23 4928.143 allows construction work in progress  
24 provisions?

25 THE WITNESS: It provides for that as a

1 possibility that the Commission could approve.

2 EXAMINER PRICE: It allows for it.

3 THE WITNESS: It allows for it.

4 EXAMINER PRICE: Would you consider a  
5 CWIP provision to be something characteristic of a  
6 market-based system?

7 THE WITNESS: Generally, no.

8 EXAMINER PRICE: Are you aware that  
9 4928.143(B)(2)(c) allows a utility to submit an  
10 application to construct a power plant --

11 THE WITNESS: Yes.

12 EXAMINER PRICE: -- and receive rate of  
13 return regulation on that?

14 THE WITNESS: Yes.

15 EXAMINER PRICE: Is that a characteristic  
16 of a market-based system?

17 THE WITNESS: Generally not.

18 EXAMINER PRICE: Based on all that we've  
19 talked about, isn't it possible that 221 moved the  
20 policy of the state away from a strict deregulated  
21 environment to something else entirely different?

22 THE WITNESS: I can't argue with you one  
23 way or the other, because I don't think that I've  
24 actually seen that legislation.

25 EXAMINER PRICE: Under 143, 4928.143, is

1       there any requirement that rates be set for the  
2       standard service offer based upon a market system?

3               THE WITNESS: As being the only way of  
4       doing it I think is the context of your question.

5               EXAMINER PRICE: Yes.

6               THE WITNESS: No, it doesn't require that  
7       as being the only way of doing it. I think as you  
8       correctly indicated, it actually provides for the  
9       possibility of constructing new power plants to serve  
10      load.

11              EXAMINER PRICE: Thank you. Finally, you  
12      indicated in your testimony prudence -- you found  
13      that prudence disallowances are rare; is that  
14      correct?

15              THE WITNESS: Under trackers, yes.

16              EXAMINER PRICE: If a company filed an  
17      application for an amount, it doesn't matter what the  
18      amount is, and then later a stipulation was reached  
19      for a lower amount, would you consider that to be --  
20      and the Commission approved the stipulation for the  
21      lower amount, would you consider that to be a  
22      disallowance?

23              THE WITNESS: No, I wouldn't -- no, I  
24      wouldn't consider that to be a disallowance. I would  
25      consider that to be an agreement reached by the

1 parties based upon any number of considerations,  
2 including litigation risk.

3 EXAMINER PRICE: That's fair. Are you  
4 aware whether in the last ten years the Commission  
5 has disallowed significant portions of storm damage  
6 recovery costs by Duke Energy Ohio?

7 THE WITNESS: I have heard of -- yes, I  
8 had heard that there was a disallowance. I can't  
9 remember what the reasons for it were.

10 EXAMINER PRICE: Are you aware of whether  
11 in the last five years the Commission has disallowed  
12 significant recovery of fuel charges by Dayton  
13 Power & Light? Not significant, but disallowed some  
14 portion of fuel charges.

15 THE WITNESS: No, I'm not familiar with  
16 the Dayton case. I had heard of the Duke case.

17 EXAMINER PRICE: Are you aware of whether  
18 in the last five years the Commission has disallowed  
19 fuel costs submitted by American Electric Power,  
20 Ohio, AEP Ohio?

21 THE WITNESS: I don't know.

22 EXAMINER PRICE: Are you aware of whether  
23 in the last five years the Commission has disallowed  
24 the recovery of certain alternative energy portfolio  
25 standard costs incurred by FirstEnergy?

1 THE WITNESS: Yes, I had heard of that.

2 EXAMINER PRICE: What's your definition  
3 of rare? I'm sorry. That was argumentative. You  
4 don't have to answer that. Thank you. You're  
5 excused.

6 EXAMINER CHILES: Mr. Stinson.

7 MR. STINSON: Yes, your Honor. At this  
8 time, OCC and NOPEC would move OCC and NOPEC Exhibits  
9 7 and 8.

10 EXAMINER CHILES: Are there any  
11 objections to OCC and NOPEC Exhibits 7 and 8?

12 Hearing none, they will be admitted  
13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 MR. KUTIK: Your Honor, we move for the  
15 admission of Company Exhibit 74.

16 EXAMINER CHILES: Are there any  
17 objections to the admission of Company Exhibit 74?

18 MR. STINSON: I would object to the  
19 extent, your Honor, that we covered during  
20 cross-examination the Ohio unemployment rates in the  
21 involved counties. Attached is also unemployment  
22 information considering Indiana and the United  
23 States, which were not covered. We would object to  
24 the inclusion of the Indiana and U.S. rates, those  
25 pages.

1 MR. KUTIK: Your Honor, the witness  
2 identified this document as being statistics from the  
3 Bureau of Labor Statistics which were reliable and he  
4 relied upon in his work generally. The fact that we  
5 didn't talk about specific statistics is not a basis  
6 for objection. The foundation has been laid.

7 EXAMINER CHILES: The objection is  
8 overruled. We will admit the entirety of Company  
9 Exhibit 74.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER CHILES: At this time, we'll  
12 take a ten-minute break and we will return at 10:40.  
13 Thank you.

14 Off the record.

15 (Recess taken.)

16 EXAMINER ADDISON: Let's go back on the  
17 record at this time.

18 Mr. O'Donnell, please call your next  
19 witness.

20 MR. O'DONNELL: I'll call Bruce Burcat  
21 with Mid-Atlantic Renewable Energy Coalition, and  
22 he's the executive director.

23 (Witness sworn.)

24 EXAMINER ADDISON: You may proceed,  
25 Mr. O'Donnell.

1 MR. O'DONNELL: We've introduced  
2 Mr. Burcat's direct testimony, and we don't have any  
3 questions for him at this time.

4 EXAMINER ADDISON: Would you like to mark  
5 that as an exhibit?

6 MR. O'DONNELL: Yes, your Honor. We  
7 could mark that as Exhibit A.

8 How about MAREC Exhibit No. 1?

9 MR. O'DONNELL: Yes, your Honor. That  
10 would be perfect.

11 EXAMINER ADDISON: Thank you. It will be  
12 so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. DUNN: Your Honor, could we go off  
15 the record for a moment?

16 EXAMINER ADDISON: Let's go off the  
17 record.

18 (Discussion off the record.)

19 EXAMINER ADDISON: Let's go back on the  
20 record.

21 Did you have any other exhibits to mark,  
22 Mr. O'Donnell?

23 MR. O'DONNELL: No.

24 EXAMINER ADDISON: The amended  
25 supplemental testimony filed on --



1 MR. O'DONNELL: The amended supplemental  
2 testimony we'll mark as MAREC Exhibit 2.

3 EXAMINER ADDISON: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 EXAMINER ADDISON: Mr. Burcat, you didn't  
6 have any revisions or changes to your testimony as  
7 filed?

8 THE WITNESS: There were no changes, but  
9 I would say in my supplemental testimony we updated  
10 the exhibit that was in my direct testimony, just for  
11 clarification purposes.

12 EXAMINER ADDISON: Thank you for that  
13 clarification.

14 MS. DUNN: Your Honor, may we go off the  
15 record for one moment?

16 (Discussion off the record.)

17 EXAMINER ADDISON: Let's go back on the  
18 record.

19 Any questions, Mr. Randazzo?

20 MR. RANDAZZO: Well, your Honor, I do  
21 have a couple of questions, but there's a process by  
22 which prepared testimony can come into the record,  
23 and I do not believe that process has been followed  
24 here. So I think there's a major problem with  
25 anybody doing cross-examination at this point.

1           It's rather -- it's like an exhibit. It  
2       has to be sponsored, and I don't believe  
3       Mr. O'Donnell has properly sponsored the exhibits for  
4       this witness, so I'll object.

5           EXAMINER ADDISON: Let's go off the  
6       record for a moment.

7           (Discussion off the record.)

8           EXAMINER ADDISON: Let's go back on the  
9       record.

10          Mr. O'Donnell.

11          MR. O'DONNELL: Thank you, your Honor.  
12       We'll lay a foundation for Mr. Burcat's testimony to  
13       introduce it into the record.

14          EXAMINER ADDISON: Thank you.

15                       - - -

16                       BRUCE H. BURCAT  
17       being first duly sworn, as prescribed by law, was  
18       examined and testified as follows:

19                       DIRECT EXAMINATION

20       By Mr. O'Donnell:

21           Q.    Mr. Burcat, did you file testimony in  
22       this case?

23           A.    Yes, I did.

24           Q.    And can you identify the testimony for  
25       the record?

1           A.    Yes.  I filed direct testimony on  
2   December 22nd, labeled the Direct Testimony of Bruce  
3   Burcat, and it's consisting of -- we didn't,  
4   unfortunately, number those pages, 14 pages of  
5   testimony and one exhibit, one attachment.

6           Q.    And, Mr. Burcat, did you also file  
7   supplemental testimony in the case?

8           A.    Yes, we did.

9           Q.    Can you identify that?

10          A.    Yes.  It's the supplemental testimony of  
11   Bruce Burcat filed on May 11th, 2015.  It's five  
12   pages of testimony and one attachment.

13          Q.    Okay.  And that's your testimony in this  
14   case.  If we were to ask you the same questions in  
15   that testimony today, would you answer the same way,  
16   or do you have any amendments to that testimony that  
17   you'd like to make?

18          A.    No, other than just the clarification  
19   that I made earlier on the record.

20                MR. O'DONNELL:  Okay.  Thank you.

21                Your Honor, anything further that we need  
22   to do foundationally?

23                EXAMINER ADDISON:  I believe this witness  
24   is available for cross-examination, unless  
25   Mr. Randazzo has any other objections.

1 MR. RANDAZZO: We'll move on, your Honor.

2 EXAMINER ADDISON: Thank you. Please  
3 proceed, Mr. Randazzo.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Randazzo:

7 Q. Sir, my name Sam Randazzo. I'm general  
8 counsel for the Industrial Energy Users of Ohio and a  
9 member of the firm McNees, Wallace & Nurick.

10 Can you tell me how you define renewable?

11 A. How I define renewable?

12 Q. Yes.

13 A. Just renewable or renewable energy?

14 Q. We'll start with renewable resource.

15 A. A renewable resource is typically a  
16 zero-emitting resource that is indefinite in its  
17 ability to, you know, for the resource itself to be  
18 obtained and used for generation in electricity.

19 Q. Mandates that require subsidies for  
20 renewable resources?

21 A. Well, we support, certainly, policies  
22 that facilitate the development of those resources  
23 because of their positive effects on the environment  
24 as well as economical impacts to the jurisdictions  
25 that they're located, among a number of other

1 benefits.

2 Q. Okay. Can you answer my question? Does  
3 your organization support state mandates that require  
4 customers to have a portion of their energy uses  
5 coming from renewable resources?

6 A. Well, maybe if you could define mandates,  
7 but we support policies like renewable portfolio  
8 standards, sure, that encourage the use of renewable  
9 energy in a utility or suppliers portfolio of energy  
10 resources.

11 Q. And so we are not dealing with the word  
12 "mandates." When you say "standards," would it be  
13 fair to say that if we substituted "requirements" for  
14 your choice of the word "standards," that your  
15 statement would remain unchanged?

16 A. On the case of renewable portfolio  
17 standards, that is a requirement in some states and  
18 some states its voluntary.

19 Q. And do you know what the case is in Ohio?

20 A. Right now there's a freeze, so there  
21 aren't -- there isn't a requirement at the moment for  
22 additional resources.

23 Q. And do you know what happens if there's  
24 no further legislation in Ohio? Do you know what  
25 happens effective January 1, 2017?

1           A.    Yes.  The freeze is over and the  
2 requirements are started up again at that point in  
3 time consistent with the statute.

4           Q.    And you're supporting the resumption and  
5 the escalation in what you call standards, what I  
6 call mandates?

7           A.    Yes.

8           Q.    And do those standards result in  
9 nonbypassable charges being imposed on customers?

10          A.    In Ohio?

11          Q.    Yes.

12          A.    Not that I'm aware of, no.

13          Q.    Would you agree that -- well, strike  
14 that.

15                Do you believe that what you call  
16 standards, what I call mandates, effectively  
17 subsidize the market entry of renewable resources in  
18 Ohio?

19          A.    No.  I think it creates a fair playing  
20 field.

21          Q.    And how about the production tax credit  
22 that wind resources receive, would you agree that  
23 that's about 2.3 cents a kilowatt-hour?

24          A.    Yes, that's what it is currently.

25          Q.    And do you regard that as a subsidy for

1 renewable resources?

2 A. I look at it as the same type of thing.  
3 It's a policy to support the development of renewable  
4 energy throughout the country. It's a federal  
5 policy, not a state policy.

6 Q. And to the extent that there were  
7 property tax breaks in Ohio for wind resources, would  
8 you regard that as a subsidy?

9 A. No.

10 Q. Why not?

11 A. I don't see tax credit as something that  
12 reduces the level of tax, but it's the project -- the  
13 project gets developed, and there's still tax  
14 payments being made by the entity. I think it's a  
15 tool that's used commonly, not just in this state but  
16 in a number of states for a variety of different  
17 purposes, and so I don't see it in the same way as  
18 you see it.

19 Q. And would you regard requirements in the  
20 wholesale market that permit wind resources to come  
21 and go without obligation to be a subsidy?

22 MR. MENDOZA: Objection, vague. Come and  
23 go has no -- it's impossible to understand.

24 MR. RANDAZZO: I'll strike the question.  
25 That's all I have. Thank you.

1 EXAMINER ADDISON: Thank you,  
2 Mr. Randazzo.

3 Mr. Mendoza?

4 MR. MENDOZA: No questions, your Honor.

5 EXAMINER PRICE: Ms. Petrucci?

6 MS. PETRUCCI: No questions.

7 EXAMINER ADDISON: Mr. Sauer?

8 MR. SAUER: No questions, your Honor.

9 EXAMINER ADDISON: Ms. Dunn?

10 MS. DUNN: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Dunn:

14 Q. Good morning, Mr. Burcat.

15 A. Good morning.

16 Q. My name is Carrie Dunn. We've not met  
17 personally before, but I'm counsel for the Ohio  
18 Edison, the Cleveland Electric Illuminating Company,  
19 and the Toledo Edison Company. If I refer to the  
20 term "companies," can we agree I mean those three  
21 entities I just identified?

22 A. Yes.

23 Q. And you're here on behalf of the  
24 Mid-Atlantic Renewable Energy Coalition, correct?

25 A. Correct.



1           Q.    Can we refer to that throughout our  
2 discussion as MAREC?

3           A.    Yes.  I know it's a mouthful otherwise.

4           Q.    Thank you.  I'm going to go ahead and  
5 start with MAREC Exhibit 1, your direct testimony,  
6 and you previously indicated that there are no page  
7 numbers.  I'm going to represent that I'm going to  
8 start page 1 as the place where you say, "Please  
9 state your name and business address," okay?

10          A.    Okay.

11          Q.    And on page 1 of your direct testimony,  
12 it states that MAREC's membership, in part, consists  
13 of wind developers, correct?

14          A.    Correct.

15          Q.    And for the time being, MAREC's focus is  
16 primarily on wind energy, not solar or other types of  
17 renewables, correct?

18          A.    That's correct.

19          Q.    And some of your members have an interest  
20 in developing wind projects in Ohio, correct?

21          A.    That is correct.

22          Q.    And some of your members have permitted  
23 wind farms, but they're not operational or under  
24 construction at this point in time, correct?

25          A.    Yes.

1           Q.    And in Ohio, the Ohio Power Siting Board  
2           is responsible for issuing permits to wind farm  
3           developers, correct?

4           A.    Yes.

5           Q.    Now, simply because a wind developer  
6           receives a permit from the Ohio Power Siting Board,  
7           it does not necessarily mean the developer will  
8           actually construct the wind farm, correct?

9           A.    That's correct.

10          Q.    Or that the wind farm will become  
11          operational, correct?

12          A.    Yes.

13          Q.    And sitting here today, there are two  
14          operating wind developments in Ohio operated by MAREC  
15          members, correct?

16          A.    That's correct.

17          Q.    And there are 11 permitted wind projects  
18          in Ohio that are either not constructed or  
19          operational, correct?

20          A.    That's my understanding, but they're not  
21          all MAREC members.

22          Q.    Thank you for the clarification.

23                   I also want to focus now on what  
24          documents you reviewed from this case in preparing  
25          both of your testimonies. For example, you did read

1 parts of the application the companies filed,  
2 correct?

3 A. Yes.

4 Q. And you also reviewed Jay Ruberto's  
5 testimony, correct?

6 A. That's correct.

7 Q. Is it fair to say for your direct  
8 testimony that you limited your review to those two  
9 items?

10 A. The application and Jay Ruberto's  
11 testimony -- no, I looked at other -- in general, I  
12 looked at other things. I looked at statutory  
13 authority and some other issues that would arise. I  
14 did some searches. I did some general research. We  
15 also used a document -- I know I raised this at the  
16 deposition, but we looked at a document that showed  
17 the specifics on -- some of the specifics on -- let's  
18 see, I guess that was the Blue Creek Wind Farm.

19 Q. And I don't think my question may have  
20 been very clear. But as far as what the companies  
21 filed in this case, is it fair to say that you  
22 limited your review to the application and Jay  
23 Ruberto's testimony?

24 A. For the direct testimony?

25 Q. Yes.

1           A.    I would say that's primarily correct, but  
2   I did look at -- well, from the companies'  
3   information, yes.

4           Q.    Thank you.  And I'm going to go ahead and  
5   turn to page 4 of your direct testimony.  And the  
6   first answer paragraph, so the first paragraph at the  
7   top, in that paragraph, you're discussing the  
8   proposed transaction from the companies, correct?

9           A.    Correct.

10          Q.    And today you are not offering an opinion  
11   relating to whether or not the proposed transaction  
12   is legal under Ohio or federal law, correct?

13          A.    That's correct.

14          Q.    You are also not offering an opinion as  
15   it relates to the structure of the proposed  
16   transaction, correct?

17          A.    In terms of that project, yes.

18          Q.    And you're also not offering an opinion  
19   on rider RRS, correct?

20          A.    Correct.

21          Q.    In your testimony, you are proposing a  
22   similar recovery mechanism, but for a purchase power  
23   agreement for renewable energy, correct?

24          A.    Yes, I would say it's very similar.

25          Q.    And you're also not offering any other

1 opinions on any other aspect of the companies'  
2 proposed transaction, correct?

3 A. I would say that -- I mean, we do talk --  
4 you're talking about the direct testimony still or  
5 the supplemental direct testimony?

6 Q. Your direct testimony.

7 A. No, not in the direct testimony.

8 Q. And I'm going to go ahead and turn to  
9 page 6 of your testimony, your direct testimony.

10 A. Okay.

11 Q. And looking at the graph on page 6, you  
12 show a rise from 2013 up of the average annual LMP,  
13 correct?

14 A. Correct.

15 Q. And that rise is likely a result of the  
16 polar vortex, correct?

17 A. I can't say it's totally as a result of  
18 that. I could say that that's probably a piece of  
19 that, but I think there's probably other reasons  
20 involved in that. I mean, we know that natural gas  
21 prices have jumped around a little bit, maybe not as  
22 much in those earlier years, but that could be a big  
23 piece of it as well.

24 MS. DUNN: Your Honor, may I approach?

25 EXAMINER ADDISON: You may.

1           Q.    Mr. Burcat, I've handed you a copy of  
2           your deposition.  Could you please turn to page 24.  
3           And starting on line 22, you state:

4                        "And in our testimony -- and let me find  
5           the page, on page -- I apologize for not having put  
6           page numbers on this, but basically page 6, there's a  
7           graph listed as PJM West Average Annual LMP from 2001  
8           to 2014, which shows the extreme price volatility of  
9           energy prices from the time of 2001 to 2013.  And  
10          even in 2013 you can see the price going into 2014  
11          jump pretty significantly in that time frame

12                        "And that's very likely related due to  
13          the condition we had last winter with the polar  
14          vortex jumping prices on a temporary basis."

15                        Did I read that correctly?

16          A.    Yeah.  Maybe too much reliance on that  
17          particular condition.  I mean, part of the concern  
18          with the polar vortex is the lack of natural gas  
19          availability to run generation at that time.  So, I  
20          mean, I think certainly natural gas, whether it was  
21          through that particular event and possibly prices in  
22          general for natural gas, that those maybe combined  
23          could have created the volatility at that point.  
24          But, yeah, the polar vortex was clearly a factor in  
25          that.

1 MS. DUNN: Your Honor, at this time I'd  
2 like to move to strike everything after the word  
3 "yes." I do understand we've had the so-called  
4 Mulligan rule; however, I believe my question was  
5 pretty straightforward, "if I read that correctly."  
6 Anything after "yes" is clearly not explaining or  
7 putting in context and it can be dealt with on  
8 redirect, if necessary.

9 EXAMINER ADDISON: I'm going to deny the  
10 motion to strike.

11 But, Mr. Burcat, if you could simply  
12 answer counsel's question. Mr. O'Donnell can raise  
13 any additional information that you'd like to be put  
14 on the record during redirect.

15 Q. (By Ms. Dunn) Go ahead and turn to page  
16 7, please, of your direct testimony. And on page 7,  
17 you state that "The W. H. Sammis plant is exposed to  
18 coal-price fluctuations," correct?

19 A. That is correct.

20 Q. You do not know what Sammis pays for its  
21 coal, correct?

22 A. That is correct.

23 Q. You do not know what coal contracts  
24 Sammis has now, correct?

25 A. I do not.

1 Q. And you do not know what coal contracts  
2 Sammis will have in the future, correct?

3 A. That's correct.

4 Q. And earlier you discussed with  
5 Mr. Randazzo state incentives for renewable energy as  
6 well as production tax credits. Wind facilities also  
7 received accelerated depreciation, correct?

8 A. That's correct, like a number of other  
9 types of businesses.

10 MS. DUNN: Your Honor, I move to strike  
11 "like every other type of businesses."

12 EXAMINER ADDISON: Mr. O'Donnell, do you  
13 have a response?

14 MR. O'DONNELL: I think that the  
15 statement was perfectly appropriate given that  
16 depreciation is not an energy-specific incentive.

17 EXAMINER ADDISON: I'm going to grant the  
18 motion to strike after "that's correct."

19 Q. (By Ms. Dunn) Mr. Burcat, for PJM RPM  
20 auctions, the PJM average capacity factor for wind is  
21 13 percent, correct?

22 A. Yes. However, I think there's been some  
23 significant changes moving forward in the RPM  
24 auction.

25 MS. DUNN: Your Honor, I would move to



1 strike everything after the word "yes."

2 EXAMINER ADDISON: Mr. O'Donnell?

3 MR. O'DONNELL: Well, then we request she  
4 clarify the question in the first place. Could we  
5 have it reread?

6 EXAMINER ADDISON: You may.

7 (Record read.)

8 MS. DUNN: I'm sorry, your Honor. Could  
9 we go off the record?

10 (Discussion off record.)

11 MR. O'DONNELL: Thank you for repeating  
12 the question. I think given that the question just  
13 said "for auctions" and didn't specify which auctions  
14 or a time frame, that Mr. Burcat's answer was  
15 perfectly appropriate because he's trying to provide  
16 context so he's not misrepresenting something in this  
17 proceeding.

18 MS. DUNN: Your Honor, he did answer  
19 "that's correct" and then did go on to say the rest  
20 of his sentence.

21 EXAMINER ADDISON: I'll grant the motion  
22 to strike.

23 Mr. O'Donnell, you can raise that issue  
24 on redirect.

25 MR. O'DONNELL: Thank you, your Honor.

1           Q.     (By Ms. Dunn) Mr. Burcat, I believe you  
2     previously discussed the Blue Creek Wind Farm. MAREC  
3     has not done an analysis on the cost of operating the  
4     Blue Creek Wind Farm versus the cost of operating  
5     Sammis or Davis-Besse, correct?

6           A.     Yes.

7           Q.     And MAREC has not done an analysis on the  
8     cost of operating the Paulding Wind Farm versus the  
9     cost of operating Sammis or Davis-Besse, correct?

10          A.     Yes.

11          Q.     Turning to page 12 of your testimony,  
12     your direct testimony --

13          A.     Okay.

14          Q.     -- at the bottom in the bullet points you  
15     list the general economic development benefits of  
16     adding approximately 800 megawatts of Ohio wind  
17     energy to the companies' ESP, correct?

18          A.     Yes.

19          Q.     And as a basis for this information, you  
20     utilized the Blue Creek Wind Farm fact sheet,  
21     correct?

22          A.     That's correct.

23          Q.     And you scaled the information on that  
24     fact sheet up for the 800-megawatt facility?

25          A.     Well, clarification, it's 800 megawatts

1 of wind energy. It's not for one particular  
2 facility. It could be multiple facilities, but  
3 that's what we did for the 800-megawatt total.

4 Q. And, for example, the Blue Creek wind  
5 farm had \$2.7 million in annual local tax payments.  
6 You scaled that up to \$7.2 million for 800 megawatts  
7 of wind energy?

8 A. That's correct.

9 Q. And MAREC did not do a formal study  
10 relating to the economic benefits of its proposed  
11 800 megawatts of wind energy?

12 A. We did not.

13 Q. And for purposes of your direct  
14 testimony, you did not review the companies'  
15 testimony filed related to the economic development  
16 benefits of maintaining Sammis or Davis-Besse,  
17 correct?

18 A. Well, are you saying for the direct?

19 Q. Yes.

20 A. That's correct.

21 Q. MAREC did not do an analysis as to  
22 whether new transmission would be needed as a result  
23 of its proposal, correct?

24 A. We did not -- can you repeat the  
25 question?

1           Q.     Sure.  MAREC did not do an analysis as to  
2     whether new transmission would be needed as a result  
3     of its proposal?

4           A.     We did not do an analysis.

5           Q.     And in preparation of both your direct  
6     testimony and your amended supplemental testimony,  
7     you did not review any of the EPA's modeling for the  
8     Clean Power Plan, correct?

9           A.     Well, we did look at EPA's outputs in  
10    certain respects for developing our numbers on the  
11    schedule attached to the supplemental testimony.

12          Q.     For preparation of your direct testimony,  
13    you did not review any of the EPA's modeling for the  
14    Clean Power Plan?

15          A.     No.  We did the same thing for the  
16    particular -- in fact, it's even labeled in the  
17    exhibit itself, so we did look at that.

18          Q.     Could you please open your deposition  
19    that I handed you previously, page 70, starting at  
20    line 10.

21                 Question:  "Did you personally review any  
22    of the EPA's modeling for the Clean Power Plan?"

23                 Answer:  "Their modeling?  Not their  
24    modeling.  I have looked at some of their data, but  
25    not the modeling"

1 Did I read that correct?

2 A. Yes. And I believe that's my answer.

3 Q. You do not know if Sammis is compliant  
4 with MATS requirements, correct?

5 A. That's correct.

6 Q. MAREC has also not done a study on the  
7 cost of utilizing wind renewables to comply with the  
8 Clean Power Plan as compared to other options to  
9 comply, correct?

10 A. MAREC has not performed that study, but  
11 there have been definitely other studies that we have  
12 looked at that do discuss compliance from the aspect  
13 of utilizing wind for compliance purposes.

14 MS. DUNN: Your Honor, I would move to  
15 strike everything after the word "but."

16 EXAMINER ADDISON: Mr. O'Donnell?

17 MR. O'DONNELL: That's fine. No  
18 objection.

19 EXAMINER ADDISON: Motion to strike is  
20 granted.

21 Q. Turning to your direct testimony,  
22 Attachment 1, you did not create Attachment 1 to your  
23 direct testimony, correct?

24 A. I did not. It was under my supervision.

25 Q. And Attachment 1 to the amended

1 supplemental testimony, you did not create that  
2 either, correct?

3 A. Well, based on -- I did not -- I had a  
4 hand in some of the changes that were made to that  
5 particular attachment based on my review of the  
6 earlier attachment, the subsequent review of the  
7 earlier attachment.

8 Q. Just for clarification, should Attachment  
9 1 to your direct testimony be disregarded and  
10 replaced by the updated attachment to your amended  
11 supplemental testimony?

12 A. It should be, because Attachment 1, while  
13 basically correct, there's a couple of minor errors  
14 in it, but based on the minor errors and the fact  
15 that it actually provides too much detail, some of  
16 the information is relevant for what we are trying to  
17 present there, yes, I would say we're at this point  
18 relying solely on the updated schedule in the  
19 supplemental testimony.

20 Q. Turning to your amended supplemental  
21 testimony, looking at the updated exhibit, the  
22 capacity factor -- I'll let you get there. I  
23 apologize.

24 A. Yes.

25 Q. The capacity factor, the 59.45 for

1 Sammis --

2 A. Yes.

3 Q. -- that's using a straight average of all  
4 of the Sammis units, correct?

5 A. Yes. That's my understanding, yes.

6 Q. And the updated exhibit does not use a  
7 weighted average of the Sammis units even though the  
8 Sammis units are different sizes, correct?

9 A. Probably -- I would say that's correct,  
10 yes.

11 Q. And the 14.52, that's the interim EPA  
12 goal, correct?

13 A. That's correct?

14 Q. And there are final goals now for Ohio,  
15 correct?

16 A. That's correct. They've increased.

17 Q. And in developing the updated exhibit,  
18 the capacity factor you used for wind was 33 percent,  
19 correct?

20 A. That's correct.

21 Q. Now, this updated exhibit is not an  
22 actual illustration of how the wind offset would be  
23 treated under the Clean Power Plan, correct?

24 A. Well, I mean, the final plan has changed  
25 somewhat since the rules were finalized on August the

1 3rd of this year, so I think there's still a lot of  
2 discussion between the -- in the states, and states  
3 aren't going to have their final rules required until  
4 September of 2016. So I would say we can't tell at  
5 this time if this is the exact methodology that will  
6 be utilized in Ohio.

7 Q. And in developing the updated exhibit,  
8 did MAREC review the technical support document from  
9 the EPA for Carbon Pollution Emission Guidelines for  
10 Existing Stationery Sources, Electric Utility  
11 Generating Units regarding State Plan Considerations?

12 A. I missed some of that, could you repeat  
13 the question?

14 Q. In developing Attachment 1, did MAREC  
15 review the technical support Document from the EPA  
16 for Carbon Pollution Emission Guidelines for Existing  
17 Stationery Sources, Electric Utility Generating Units  
18 Regarding State Planning Considerations?

19 A. Again, this is -- we reviewed the data,  
20 but not the specific guidelines.

21 Q. So the answer to my question is no,  
22 correct?

23 A. Yes.

24 Q. So MAREC did not review the EPA's methods  
25 and tools for quantifying avoided CO-2 emissions from



1 end-use energy efficiency and renewable energy?

2 A. I missed that again.

3 Q. Sure. So MAREC did not review the EPA's  
4 methods and tools for quantifying avoided CO-2  
5 emissions from end-use energy efficiency and  
6 renewable energy?

7 A. I would say that I think that's correct,  
8 yes.

9 Q. And, for example, MAREC -- strike that.

10 So on the updated exhibit, MAREC took the  
11 total CO-2 emissions from Sammis, divided it by the  
12 total generation output from Sammis and wind  
13 combined, to come up with the 17.54 number, which is  
14 emissions -- CO-2 emissions from wind?

15 A. That is correct.

16 Q. Turning to page 3 of your amended  
17 supplemental testimony, and you state towards the  
18 bottom that "it does not appear that the applicant  
19 intends to provide a plan for compliance with pending  
20 environmental regulations," correct?

21 A. I'm sorry. What line is that?

22 Q. Sure. I can't tell what line, but if you  
23 look at the question, "Does the applicant's plan  
24 provide."

25 A. Yes.

1           Q.    And then the second line down, it does  
2   not appear that the applicant intends to provide such  
3   a plan for compliance with pending environmental  
4   regulations in this proceeding.  That's what I meant.

5           A.    That's correct, yes.

6           Q.    Okay.  And since your testimony, I think  
7   you just said that the final rules for the Clean  
8   Power Plan have been published, correct?

9           A.    That is correct.

10          Q.    Have you reviewed the errata filed by  
11   Mr. Evans on September 14th, 2015?

12          A.    I have not.

13          Q.    And then turning to page 4 of your  
14   testimony, in the middle of the page, there's a  
15   paragraph that starts with "Other relevant  
16   testimony."  You acknowledge on that page that you  
17   did not review the unredacted version of Mr. Evans'  
18   testimony where he discusses how Sammis can help Ohio  
19   meet the proposed Clean Power Plan, correct?

20          A.    That's correct.

21          Q.    And is it fair to say that you also did  
22   not review the unredacted version of any errata that  
23   Mr. Evans filed on September 14th, 2015?

24          A.    That's correct.

25          Q.    And I believe you acknowledged earlier

1       that under the final rules for the Clean Power Plan,  
2       Ohio will have a choice of what its state  
3       implementation plan will be, correct?

4             A.     There are various options.

5             MS. DUNN:   Your Honor, I have no further  
6       questions.

7             Thank you, Mr. Burcat

8             EXAMINER ADDISON:   Thank you.

9             Mr. Kurtz?

10            MR. KURTZ:   Thank you, your Honor.

11                   - - -

12                   CROSS-EXAMINATION

13       By Mr. Kurtz:

14            Q.     Just very briefly, Mr. Burcat.   Good  
15       morning.

16                   At the very beginning of your testimony,  
17       you described your organization as generally designed  
18       to promote renewables in the PJM footprint; is that  
19       correct?

20            A.     Yes.

21            Q.     Okay.   What I want to do is ask you when  
22       you list ten of the nine PJM states plus the District  
23       of Columbia, I just want to ask you, I'm going to go  
24       state by state, tell me if there is a mandatory  
25       renewable portfolio standard by state to the extent

1       you know.

2                       And, by the way, will you define  
3       "mandatory renewable portfolio standard" before we  
4       start?

5               A.     Well, mandatory is not the word I was  
6       using.

7               Q.     What word do you want to use?

8               A.     I would say there are requirements in  
9       various states.

10              Q.     As opposed to voluntary, what should we  
11       call it? As opposed to voluntary, what is --

12              A.     I would say required.

13              Q.     Required RPS?

14              A.     Yes.

15              Q.     And what is a required RPS?

16              A.     What is a required RPS?

17              Q.     Yes.

18              A.     It's a state statute or act. In some  
19       cases, it's actually implemented by a Commission or a  
20       public utility type commission in various states. So  
21       it doesn't necessarily have to come from statute if  
22       they have broad authority. But it's usually an  
23       escalating amount of renewable energy that must be  
24       purchased by the supplier of electricity to its  
25       customers.

1 Q. Okay.

2 MR. O'DONNELL: Your Honor, may I just  
3 object on the grounds of vagueness. I think we're  
4 struggling with this term "requirement" that  
5 Mr. Randazzo is using "mandated" and "required" RPS,  
6 because in Ohio -- or I shouldn't say in Ohio, just  
7 generally when it comes to the word "requirement."

8 Obviously, the Ohio RPS contains, in the  
9 first instance, what appears to be a requirement, "a  
10 utility shall," but then it contains a number of off  
11 ramps and caveats such as cost cap and force majeure  
12 provision, which, of course, the Commission has  
13 granted in the past.

14 So I think the word "requirement," since  
15 we are trying to define the term, might not  
16 necessarily describe the policy that we're trying to  
17 talk about here.

18 MR. KURTZ: That's why I asked the  
19 witness to describe what he meant by not mandatory  
20 but required. Anything as possessed to voluntary,  
21 that's what I want to get at. Is that good enough?

22 THE WITNESS: I think it is --

23 EXAMINER PRICE: Mr. Burcat, one moment.

24 Well, I agree that the witness has  
25 already provided a definition, and as long as we

1 have -- he understands the question as posed, I don't  
2 have an issue with this line of questioning as is.

3 Mr. O'Donnell, if you have an objection, please do so  
4 prior to the witness giving an answer. That way, we  
5 can all make sure we're on the same page while I rule  
6 on the objection.

7 MR. O'DONNELL: Yes, your Honor.

8 Q. (By Mr. Kurtz) So let's go by state.

9 A. Okay.

10 Q. And a nonvoluntary or required RPS  
11 standard, Delaware, yes, no, or you don't know?  
12 Delaware?

13 A. Delaware has an RPS that's not voluntary.

14 Q. So that's a yes? Is that a yes?

15 A. Yes.

16 Q. Okay.

17 MR. MENDOZA: Objection. The question  
18 was about nonvoluntary or required, and so it's  
19 compound, and it's compounding the same problem that  
20 we've had here, which is we have --

21 MR. KURTZ: I'm trying to bend over  
22 backwards to be as clear as possible.

23 EXAMINER ADDISON: Just rephrase your  
24 question to use the definition or the word that he  
25 provided.

1 Q. (By Mr. Kurtz) The required RPS, as you  
2 have defined it, yes, no, or I don't know. Delaware?

3 A. I would say it's yes.

4 Q. Illinois?

5 A. Illinois is not in my territory.

6 Q. So you don't know?

7 A. Well, I understand they have one, but I  
8 don't know the details of it.

9 Q. Is that a yes?

10 A. I can't answer that question. I don't  
11 have the details.

12 Q. Indiana?

13 A. It's not in my territory.

14 Q. Kentucky?

15 A. Not in my territory.

16 Q. Maryland?

17 A. That would be a yes.

18 Q. Michigan?

19 A. It's not in my territory.

20 Q. New Jersey?

21 A. Yes.

22 Q. North Carolina?

23 A. Yes.

24 Q. Ohio?

25 A. Ohio is not the case at the moment since

1       there's a freeze. And I would say the caveat that  
2       Mr. O'Donnell presented previously applies in all of  
3       these states. There are off ramps. There are ways  
4       to -- like, for instance, in Delaware there's a cost  
5       cap provision in that state and there are cost cap  
6       provisions in other states.

7               Q.     Pennsylvania?

8               A.     Yes.

9               Q.     Tennessee?

10              A.     It's not one of my jurisdictions.

11              Q.     Virginia?

12              A.     It's what they call a voluntary standard.

13              Q.     So that would be a no?

14              A.     No.

15              Q.     West Virginia?

16              A.     That's a no.

17              Q.     District of Columbia?

18              A.     That would be a yes. All with the same  
19       caveats.

20                   MR. KURTZ: Thank you, sir. No further  
21       questions.

22                   EXAMINER ADDISON: Thank you, Mr. Kurtz.  
23       Mr. McNamee?

24                   MR. MCNAMEE: I have no questions. Thank  
25       you.



1 EXAMINER ADDISON: Any redirect,  
2 Mr. O'Donnell?

3 MR. O'DONNELL: Yes, your Honor.

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. O'Donnell:

7 Q. Mr. Burcat, on the subject of mandates  
8 and requirements, Mr. Kurtz already elicited some of  
9 this information. Could you talk about why the word  
10 "mandate" might not be necessarily appropriate as  
11 commonly understood if -- well, if these portfolio  
12 standards as you described them have certain  
13 provisions that while they may appear mandatory, that  
14 word might be causing confusion.

15 MR. RANDAZZO; I'll object.

16 MS. DUNN: I'll object as well.

17 EXAMINER PRICE: Grounds?

18 MR. RANDAZZO: Improper form of the  
19 question. The question was, "Can you talk about  
20 this?" There's no way for us to anticipate and  
21 logically form an appropriate objection to the  
22 testimony when it's an invitation to the witness to  
23 just talk about stuff.

24 MR. O'DONNELL: I can rephrase it.

25 EXAMINER ADDISON: Thank you.

1           Q.     (By Mr. O'Donnell) Mr. Burcat, why do you  
2 believe the term -- you've said to Mr. Randazzo you  
3 didn't think the term "mandate" was appropriate. Why  
4 not?

5           A.     I think for a lot of the reasons you  
6 spoke about. But generally that there are these off  
7 ramps. There are cost caps in states like Ohio, even  
8 though the RPS is frozen at the moment. There are  
9 states like Delaware with an off ramp, and there are  
10 other states in that required, but these state  
11 statutes are very complicated.

12                     There are a number of provisions,  
13 especially respecting the costs of renewables that  
14 might be used, and so it's very hard to say that they  
15 are mandatory requirements on the utilities when they  
16 do have means to back out under certain  
17 circumstances.

18                     MS. DUNN: Your Honor, I would move to  
19 strike Mr. O'Donnell's previous question before  
20 Mr. Randazzo's objection and Mr. Burcat's reference  
21 to what his counsel just said.

22                     EXAMINER ADDISON: Mr. O'Donnell, do you  
23 have a response?

24                     MR. O'DONNELL: I mean, I rephrased the  
25 question in accordance with the ruling from the

1 Bench, so I don't see why it needs to be stricken.

2 MR. MENDOZA: What is the grounds of the  
3 motion to strike the counsel's statement?

4 MS. DUNN: The original question that he  
5 made was a narrative, and it was then objected to by  
6 Mr. Randazzo. Then he rephrased his question to ask  
7 an appropriate question, and then Mr. Burcat  
8 indicated "what my counsel just said," and he would  
9 have been referring to Mr. O'Donnell's previous  
10 narrative, which is why I'm asking to have the  
11 narrative stricken and his response, the first part  
12 of his response, which was "what he just said."

13 MR. O'DONNELL: Your Honor, I don't think  
14 the witness was referring to that at all.

15 EXAMINER ADDISON: At this time I'm going  
16 to deny the motion to strike. It seems a lot of the  
17 information that was covered during Mr. Burcat's  
18 response was also included in the line of questioning  
19 from Mr. Kurtz.

20 MS. DUNN: Thank you, your Honor.

21 EXAMINER ADDISON: Thank you.

22 Please proceed, Mr. O'Donnell.

23 Q. (By Mr. O'Donnell) Mr. Burcat, you  
24 testified on direct and were asked several questions  
25 about volatility. Do you have an opinion on price

1 volatility of renewables versus nonrenewables?

2 MS. DUNN: Your Honor, I object that  
3 that's outside the scope of my direct or  
4 cross-examination.

5 MR. O'DONNELL: He was asked specifically  
6 about the graph that shows price volatility and was  
7 asked about volatility and whether he knew about  
8 Sammis' coal contracts and whether they are fixed or  
9 volatile. This is exactly the same subject of that  
10 question, your Honor.

11 MS. DUNN: Your Honor, if I may respond.  
12 The question Mr. O'Donnell asked was price volatility  
13 of renewables, and I never broached the subject of  
14 price volatility of renewables.

15 EXAMINER ADDISON: I tend to agree with  
16 Ms. Dunn. The objection is sustained.

17 MR. O'DONNELL: Thank you, your Honor.

18 Q. (By Mr. O'Donnell) Mr. Burcat, in your  
19 questioning by Ms. Dunn, you were asked about the  
20 price volatility of coal and, in particular, the  
21 Sammis plant. I believe you testified that you  
22 weren't aware of specific contracts that existed for  
23 the Sammis plant, but do you have an opinion on the  
24 general volatility of coal?

25 A. Yes.

1 MS. DUNN: Your Honor, I would also  
2 object on the basis that I asked him just very  
3 specific questions about whether he knew about coal  
4 contracts with Sammis. I did not open the door for  
5 questions about coal price volatility.

6 EXAMINER ADDISON: Mr. O'Donnell?

7 MR. O'DONNELL: She asked if he has an  
8 opinion on -- he testified on direct about price  
9 volatility of coal. She asked about coal contracts.  
10 I think it's only fair that he's able to provide the  
11 basis for his opinions since she asked the question.

12 MS. DUNN: Your Honor, if I may respond.

13 EXAMINER ADDISON: Of course, Ms. Dunn.

14 MS. DUNN: My three specific questions  
15 were: Do you know what Sammis pays for coal? Do you  
16 know what contracts Sammis has? And do you know what  
17 contracts it will have in the future? None of those  
18 questions opened the door to discuss coal price  
19 volatility.

20 MR. O'DONNELL: Your Honor, the original  
21 foundation for the question had to do with the  
22 volatility shown in the graph.

23 EXAMINER ADDISON: Thank you, both. I'm  
24 going to allow the question. There was references to  
25 Mr. Burcat's testimony on page 7 of his direct

1 testimony as to the Sammis plants' exposure to coal  
2 price fluctuations.

3 Do you need to have that question reread,  
4 Mr. Burcat?

5 THE WITNESS: I think I do at this point.

6 EXAMINER ADDISON: Could we have the last  
7 question reread, please.

8 (Record read.)

9 A. Yes. Well, first of all, in regards to  
10 that question, coal prices as opposed to wind, energy  
11 and solar energy are not something that you could  
12 determine today. So even those contracts, most  
13 contracts for coal are usually passing through the  
14 pricing of coal, and that creates volatility.

15 And there's all sorts of factors related  
16 to that, but certainly a 15-year purchase power  
17 agreement is so far out into the future that there's  
18 bound to be some significant price volatility with  
19 coal.

20 On the other hand, when you're talking  
21 about wind energy, when a purchase power agreement is  
22 signed and executed, you know the price of the wind  
23 energy throughout the term of the contract, it's  
24 almost 100 percent stable because you know exactly  
25 what that price is, and it usually is fairly level

1 throughout the term, and there might be a small  
2 incremental inflation adjustment in some contracts.  
3 It depends on the negotiations. But it acts as a  
4 significant hedge to the pricing of a -- pricing from  
5 fossil fuels, like coal and natural gas, that have  
6 historic volatility as shown in that graph.

7 MS. DUNN: Your Honor, I would move to  
8 strike everything after the "on the other hand" when  
9 he discusses renewable energy. The question from  
10 Mr. O'Donnell asked for coal fluctuations or  
11 volatility, and he answered that and went on to  
12 discuss renewable.

13 Previously you did not allow a question  
14 about renewable energy and the volatility because I  
15 did not open the door, so that should be stricken as  
16 well.

17 EXAMINER ADDISON: Mr. O'Donnell.

18 MR. O'DONNELL: I think when asked about  
19 volatility, it's perfectly appropriate to draw  
20 contrast between a fuel source that has volatility  
21 and one that doesn't. It's part and parcel of the  
22 same question.

23 EXAMINER ADDISON: I agree with Ms. Dunn.  
24 Motion to strike will be granted for everything after  
25 "on the other hand," starting with "on the other

1 hand."

2 Please continue, Mr. O'Donnell.

3 MR. O'DONNELL: Thank you, your Honor.

4 Q. (By Mr. O'Donnell) Mr. Burcat, you were  
5 asked about the Clean Power Plan and the proposal's  
6 impact on the Clean Power Plan and the work MAREC did  
7 to analyze that. Can you outline why you believe  
8 wind energy would help this proposal and its  
9 compliance with the Clean Power Plan?

10 MR. RANDAZZO: I object.

11 EXAMINER ADDISON: Grounds?

12 MR. RANDAZZO: Leading question.

13 EXAMINER ADDISON: Would you care to  
14 rephrase, Mr. O'Donnell?

15 Q. (By Mr. O'Donnell) Mr. Burcat, do you  
16 think that the MAREC proposal helps this plant's  
17 compliance with the Clean Power Plan?

18 A. Absolutely. That's the whole basis of my  
19 testimony.

20 Q. And why do you believe that, sir?

21 A. Because of the zero-emitting resource  
22 that wind is and when combined with and basically  
23 used as an offset to the coal, the emissions, the  
24 requirement emissions from the coal plant, it acts as  
25 a significant offset as our schedule shows in the



1 supplemental testimony.

2 Q. Thank you, Mr. Burcat. Follow-up  
3 question. Do you believe that there are any prior  
4 decisions of this Commission that also support that  
5 interpretation?

6 MS. DUNN: Your Honor, I object. That's  
7 outside the scope of my direct -- or excuse me,  
8 cross-examination, and also as Mr. O'Donnell just  
9 indicated, it was a follow-up to his last question,  
10 so it's not appropriate on redirect.

11 EXAMINER ADDISON: Objection sustained.

12 MR. O'DONNELL: I don't have any further  
13 questions.

14 EXAMINER ADDISON: Thank you,  
15 Mr. O'Donnell.

16 Mr. Randazzo?

17 MR. RANDAZZO: I do.

18 - - -

19 RECROSS-EXAMINATION

20 By Mr. Randazzo

21 Q. Sir, your counsel asked you about your  
22 proposal and how it might help with regard to  
23 compliance with the Clean Power Plan, otherwise known  
24 as the EPA's regulations to reduce the amount of  
25 carbon dioxide emissions, correct?

1 MR. MENDOZA: Objection.

2 EXAMINER ADDISON: Grounds?

3 MR. MENDOZA: I think that name for the  
4 regulation was invented by counsel.

5 EXAMINER ADDISON: Care to rephrase,  
6 Mr. Randazzo.

7 Q. (By Mr. Randazzo) Sir, you agree the  
8 Clean Power Plan that your counsel referenced to you  
9 involves regulations to reduce the emissions of  
10 carbon dioxide?

11 A. It does. And one of its main building  
12 blocks is wind and solar energy to get there.

13 Q. And your proposal is focused on wind,  
14 right?

15 A. Our proposal is focused on wind.

16 Q. Do you know how many megawatts of  
17 renewable resources have been certified by the state  
18 of Ohio to obtain RECS? First of all, so Mr. Mendoza  
19 doesn't object, do you know what a REC is?

20 A. You're asking me what a REC is?

21 Q. Yes.

22 A. Renewable energy credit.

23 Q. Yes, sir. So do you know how many  
24 megawatts of renewable resources have been certified  
25 by the state of Ohio to receive renewable energy

1 credits?

2 A. Well, presumably some of it is coming  
3 from out of state, so I don't know. I know it's  
4 coming from in state, which is just over  
5 300 megawatts of --

6 Q. Of what?

7 A. Of wind energy, and then it's the 880,060  
8 hours times that to get to the megawatt-hours.

9 Q. I asked you about megawatts.

10 A. I told you what megawatts is, just over  
11 300 megawatts.

12 Q. And it's your understanding --

13 A. But that's not what's coming from out of  
14 state.

15 Q. It's your understanding --

16 MR. O'DONNELL: I'm going to object.  
17 Also, it's unclear if he's talking about megawatts  
18 that are permitted or sited or operational. I think  
19 he said certified at one point. There's just a lot  
20 of metrics here.

21 MR. RANDAZZO: This is the witness that  
22 said his proposal would help reduce the carbon  
23 dioxide emissions. So we're going to find out a  
24 little bit what his proposal actually does.

25 EXAMINER ADDISON: That's correct,

1 Mr. Randazzo. But make sure the record is clear  
2 enough so the record can be clear.

3 MR. RANDAZZO: Your Honors, I asked him  
4 if he was aware of how many megawatts of renewable  
5 energy resources have been certified by the state of  
6 Ohio.

7 EXAMINER ADDISON: And he answered that  
8 question.

9 MR. RANDAZZO: I don't know how I can  
10 make it any clearer.

11 Q. (By Mr. Randazzo) Do you know the  
12 answer?

13 A. I'm assuming that what they're certifying  
14 is the megawatt-hours, but not specifically the  
15 megawatts.

16 Q. Have you had occasion to review the  
17 Public Utilities Commission of Ohio's website to  
18 identify the total renewable energy credits measured  
19 in capacity that have been certified by the state of  
20 Ohio?

21 A. If that's -- no, I'm not sure it would be  
22 labeled that particular way.

23 Q. And would you accept, subject to check,  
24 that total renewable energy credits certified by the  
25 state of Ohio is in excess of 5000 megawatts?

1 MR. O'DONNELL: Objection. A REC is not  
2 a megawatt.

3 EXAMINER ADDISON: Please rephrase.

4 MR. O'DONNELL: A REC is a megawatt-hour.

5 EXAMINER ADDISON: Please rephrase,  
6 Mr. Randazzo.

7 Q. (By Mr. Randazzo) Are you aware that the  
8 total renewable energy capacity that has been  
9 certified by the state of Ohio to receive RECS is in  
10 excess of 5000 megawatts?

11 A. I am not aware of that number, whatever  
12 it means.

13 Q. Do you know what percentage of those  
14 renewable energy resources are solar?

15 A. No, I do not.

16 Q. Is solar a zero-emission resource?

17 A. Yes, it is.

18 Q. Is hydroelectric generation capability a  
19 zero-emitting resource?

20 MR. O'DONNELL: Your Honor, I want to  
21 object again. He represents MAREC. He's focused on  
22 the wind industry. This is not the subject of his  
23 testimony or any of the questions here today.

24 MR. MENDOZA: Your Honor, I'd further  
25 like to object. We've gone beyond the scope of

1 redirect. He started off asking about questions that  
2 were specifically about the Clean Power Plan, which I  
3 think was permissible. Now, we're talking about  
4 aspects of renewable energy that he could have asked  
5 on the first go-around.

6 EXAMINER ADDISON: I tend to agree.  
7 Let's move on, Mr. Randazzo.

8 Q. (By Mr. Randazzo) Sir, do you know  
9 whether -- have you done any analysis to determine  
10 whether or not the nonwind renewable resources might  
11 provide a basis of compliance for the Clean Power  
12 Plan that is less expensive than your proposal?

13 A. I have not.

14 Q. Why not?

15 A. I mean, we're early in this process, and  
16 wind energy under the Clean Power Plan, especially  
17 the final rule that's been laid out on August 3rd,  
18 indicates that wind is an extremely cost-effective  
19 way of complying with, in part, the Clean Power Plan.

20 I've seen studies out there that  
21 basically say it, and the problem with -- you know,  
22 although solar is an excellent resource, as far as  
23 I'm concerned, you cannot deploy it in anywhere close  
24 to the volumes that you can employ wind in a  
25 cost-effective way.

1           Q.    Now, your counsel asked you about  
2           volatility of renewable resources. Do you recall  
3           that question?

4           A.    Yes.

5           MR. O'DONNELL: Your Honor, I believe the  
6           question wasn't permitted.

7           EXAMINER ADDISON: That's correct,  
8           Mr. Randazzo.

9           MR. RANDAZZO: I thought the question was  
10          permitted up to the point where the witness answered  
11          beyond the scope of the permissible question. Where  
12          the witness was not permitted to go was to talk about  
13          volatility in coal.

14          MR. O'DONNELL: No.

15          EXAMINER ADDISON: I believe it may have  
16          been the opposite of that, correct?

17          MR. O'DONNELL: We'll object because we  
18          weren't allowed to ask that.

19          MR. RANDAZZO: I'll withdraw the  
20          question.

21          EXAMINER ADDISON: Thank you.

22          Q.    (By Mr. Randazzo) Do you agree that the  
23          Clean Power Plan imposes an obligation on states to  
24          submit a statewide compliant plan?

25          A.    Yes.

1           Q.    Have you done any analysis to determine  
2           how your proposal could be integrated into a  
3           statewide compliance plan?

4           A.    I think that is something that's going to  
5           be determined by the state.

6           Q.    I asked you if you've done any analysis  
7           to determine how your proposal would be integrated  
8           into a statewide plan.

9           A.    We have not done an analysis on that, but  
10          I feel certain that it could be integrated into a  
11          state compliance plan.

12               MR. RANDAZZO: Your Honor, I move to  
13          strike after when he began to say "I feel certain it  
14          could be."

15               EXAMINER ADDISON: Mr. O'Donnell.

16               MR. O'DONNELL: He was asked if he had  
17          done an analysis, and he provided the analysis that  
18          he believes could easily be integrated into a plan.  
19          That's answering the question. That's not going  
20          outside the scope of anything.

21               EXAMINER ADDISON: I don't think he's  
22          saying he provided an analysis, but I'm going to deny  
23          the motion to strike.

24           Q.    (By Mr. Randazzo) Are you aware that  
25          there are generating units in the state that are not



1 owned and operated by investor-owned utilities?

2 A. Yes.

3 Q. Would those also be subject to potential  
4 impact from the Clean Power Plan?

5 A. It's a statewide plan, yes.

6 Q. Would municipal electric utilities also  
7 be subject to the Clean Power Plan?

8 A. Yes. That's assuming they own  
9 generation.

10 Q. Have you done any analysis to determine  
11 how your proposal would affect the compliance options  
12 that are available to the state?

13 A. I've not done a specific analysis on  
14 that.

15 Q. Have you done any analysis?

16 A. No.

17 MR. RANDAZZO: Thank you. That's all I  
18 have.

19 EXAMINER ADDISON: Thank you.

20 Mr. Mendoza?

21 MR. MENDOZA: No questions, your Honor.

22 EXAMINER PRICE: Ms. Petrucci?

23 MS. PETRUCCI: No questions.

24 EXAMINER PRICE: Mr. Sauer?

25 MR. SAUER: No questions, your Honor.

1 EXAMINER ADDISON: Ms. Dunn?

2 MS. DUNN: Thank you, your Honor.

3 - - -

4 RECROSS-EXAMINATION

5 By Ms. Dunn:

6 Q. Mr. Burcat, you don't know whether Sammis  
7 has long-term fixed contracts for coal, correct?

8 MR. O'DONNELL: Objection. She already  
9 asked the question.

10 MS. DUNN: It's a different question,  
11 your Honor.

12 EXAMINER ADDISON: I'll allow the  
13 question.

14 A. I do not know that answer, yes.

15 Q. And you have a yellow pad up there with  
16 you today, correct?

17 A. Yes, I do.

18 Q. And does that yellow pad contain notes  
19 that you brought up there with you today?

20 A. Yeah. I jotted down a few notes before I  
21 walked up here, like any witness would.

22 Q. In responding to Mr. O'Donnell's  
23 questions on redirect, you were referring to those  
24 notes?

25 A. I was not.

1 MR. DUNN: Thank you, your Honor. I have  
2 no further questions.

3 EXAMINER ADDISON: Thank you.

4 Mr. Kurtz?

5 MR. KURTZ: No questions.

6 EXAMINER ADDISON: Mr. McNamee?

7 MR. MCNAMEE: No questions. Thank you.

8 EXAMINER ADDISON: Mr. Burcat, you're  
9 excused.

10 THE WITNESS: Thank you.

11 EXAMINER ADDISON: Thank you.

12 Mr. O'Donnell, would you like to move for  
13 the admission of MAREC Exhibits 1 and 2 into the  
14 record?

15 MR. O'DONNELL: So moved, your Honor.

16 EXAMINER ADDISON: Any objections?

17 Thank you. Hearing none, MAREC Exhibit 1  
18 and No. 2 will be admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

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

22 (Discussion off the record.)

23 EXAMINER PRICE: Mr. Mayes, you may call  
24 your witness.

25 MR. MAYES: I'm Jeffrey Mayes, general

1 counsel of Monitoring Analytics, acting in the  
2 capacity as the independent market monitor for PJM.

3 I have with me Dr. Bowring. Dr. Bowring  
4 is the president of Monitoring Analytics, and he is  
5 also the market monitor for PJM as defined in the PJM  
6 tariff.

7 (Witness sworn.)

8 EXAMINER PRICE: Dr. Bowring, please  
9 state your name and business address for the record.

10 THE WITNESS: Joseph Bowring. We are in  
11 Norristown, Pennsylvania, 19066.

12 EXAMINER PRICE: Thank you.

13 Please proceed, Mr. Mayes.

14 - - -

15 JOSEPH E. BOWRING  
16 being first duly sworn, as prescribed by law, was  
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Mayes:

20 Q. The market monitor filed testimony on  
21 December 22nd, 2014. Do you have a copy of that  
22 testimony, Dr. Bowring?

23 A. Yes.

24 MR. MAYES: I would move for -- I would  
25 like to mark that testimony as IMM-1.

1 EXAMINER PRICE: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. So, Dr. Bowring, is this testimony that  
4 you prepared?

5 A. Yes.

6 Q. Do you have any corrections?

7 A. No.

8 Q. Would your answers be the same today as  
9 they were then?

10 A. Yes.

11 MR. MAYES: I would move to enter into  
12 the record the direct testimony of Joseph E. Bowring  
13 on behalf of the Independent Market Monitor for PJM.

14 EXAMINER PRICE: We'll defer ruling of  
15 your motion for admission until complete with  
16 cross-examination.

17 Ms. Bojko.

18 MR. KUTIK: Your Honor, before we begin,  
19 I have a motion to strike.

20 EXAMINER PRICE: Mr. Kutik.

21 MR. KUTIK: Your Honor, the companies  
22 would move to strike starting on page 3, line 13, the  
23 sentence beginning with the word "both" and the  
24 footnote it relates to, footnote 1 to that page.

25 This seeks to characterize the decisions

1 in the two cases cited, and similar to the discussion  
2 that was had with respect to OCC Witness Ferrey, it  
3 is improper for parties to render opinions as to what  
4 happened or what was decided in particular cases.  
5 Witnesses are supposed to provide either facts or  
6 opinions on their expertise. Issues with respect to  
7 legal matters are for the Commission to decide, and  
8 particularly the interpretation of cases with respect  
9 to -- and particularly with respect to interpretation  
10 regarding the Federal Power Act, which is what these  
11 cases related to. So on those grounds, we move to  
12 strike.

13 EXAMINER PRICE: Mr. Mayes, response?

14 MR. MAYES: We object. We think that  
15 that sentence is fine. It states his opinion on  
16 these cases as they relate to consistency with  
17 competition, and so it's not just about the legal  
18 finding of those cases. It's about the relevance of  
19 those cases to competition.

20 And I would note that we have had a lot  
21 of discussion, even just today, about what has been  
22 going on in other states. So it seems that the  
23 companies have already conceded these sorts of things  
24 are relevant to their case.

25 MS. BOJKO: Your Honor, may I be heard?

1 EXAMINER PRICE: Ms. Bojko.

2 MS. BOJKO: Your Honor, Judah Rose  
3 footnote 1 and 11 of the companies' testimony cited  
4 to the recent District of Columbia Circuit Case, DC  
5 Circuit Case regarding capacity performance and  
6 regarding issues before the Federal Energy Regulatory  
7 Commission, OEG Witness Baron.

8 EXAMINER PRICE: Ms. Bojko, slow down.  
9 And who objected to that footnote?

10 MS. BOJKO: I don't know, your Honor,  
11 because it's typically in this situation that people  
12 can give regulatory opinions of what goes on in other  
13 regulatory jurisdictions and the company did it.

14 EXAMINER PRICE: So there was no ruling  
15 on that footnote; is that correct?

16 MS. BOJKO: Not to my knowledge, your  
17 Honor. It was allowed in the record and consistent  
18 with it being allowed into the record, other  
19 witnesses testifying on similar subject matters  
20 should also be able to have their opinion heard and  
21 in the record.

22 The Commission should want a complete  
23 docket, a complete evidentiary record in which to  
24 base its decision, and that includes counterarguments  
25 to the exact thing raised by the companies in their

1 testimony, and that's exactly what the intervenors  
2 did. They filed testimony in response to the  
3 companies' testimony.

4 EXAMINER PRICE: If you've got an  
5 instance of us denying a motion to strike, I'll hear  
6 it. But if it's an instance of nobody made a motion  
7 to strike, therefore, you should allow this, I don't  
8 think that's an analogous situation. You can put the  
9 question to the Bench, and so you didn't get a  
10 ruling.

11 MS. BOJKO: I believe in your companies'  
12 Witness Strah, if I recall correctly, footnotes 1, 2,  
13 and 3, discussions of the New York State Commission  
14 decisions in those cases, there was a motion to  
15 strike that was denied.

16 EXAMINER PRICE: Fair enough.

17 Mr. Kutik, care to respond to that?

18 MR. KUTIK: Yes, your Honor. The  
19 Commission -- or what was happening in those  
20 testimonies is that the witness was describing the  
21 facts and circumstances of those cases and what the  
22 proposal was with respect to those facilities at  
23 issue in those cases. Here the witness is giving his  
24 opinion on what these cases said in terms of the  
25 matters of the law.



1 MR. MAYES: Your Honor, the market  
2 monitor is willing to agree the purpose of that  
3 statement can be confined to the same purpose the  
4 companies used to support their reference to a case.

5 MR. KUTIK: This doesn't describe the  
6 facts or the proposals that were at issue in those  
7 cases.

8 MR. MENDOZA: Your Honor, if I may.

9 EXAMINER PRICE: Mr. Mendoza.

10 MR. MENDOZA: The entire statement the  
11 witness is offering that subsidies for generation in  
12 this case are similar to those that were overturned  
13 by the Third and Fourth Circuit in those other cases,  
14 and I think this is an important issue for the  
15 Commission to consider, and this is an important  
16 witness who can talk about those issues.

17 And I think the key part of that sentence  
18 is that he alleges that the subsidies are analogous,  
19 which is a factual claim, and he's just adding that  
20 last clause after both is just a summary of the  
21 holdings of those cases, and it's true that those are  
22 legal conclusions, but it gives context to the  
23 factual claim he's making.

24 And I would note, like Ms. Bojko, that  
25 many of their witnesses have -- many of the

1 companies' witnesses have included discussions of  
2 case law in their testimony.

3 MR. KUTIK: And none of those, your  
4 Honor, were objected to. And we are not objecting,  
5 your Honor, to his analogy to what was happening in  
6 New Jersey or Maryland, nor are we objecting, at  
7 least at this point, for parties to be able to argue  
8 whatever they want to argue about the two cases that  
9 they cite here in footnote 1. The point is that  
10 that's a subject of briefs. It's not a subject of  
11 testimony.

12 MR. MAYES: Your Honor, that statement  
13 represents the witness' opinion on the meaning of  
14 those cases, and it's very relevant to his testimony  
15 here.

16 EXAMINER PRICE: That's Mr. Kutik's  
17 point, that he's drawing a legal conclusion. I don't  
18 think --

19 MR. MAYES: No, the meaning in the  
20 sense -- with the meaning in the sense of competitive  
21 markets, not a legal conclusion. We're willing to  
22 conclude it does not represent a legal conclusion.

23 MR. KUTIK: Your Honor, what this will  
24 force me to do if you don't strike it, is I will then  
25 present to this witness the opinions in those cases

1 and discuss what those cases say and don't say,  
2 which, again, is more appropriate for briefs rather  
3 than cross-examination.

4 EXAMINER PRICE: Now, you've just said  
5 something that would really interest the Bench.

6 Okay. We're going to grant the motion to  
7 strike, although, I'm very intrigued by Mr. Kutik's  
8 possibilities. We're going to grant the motion to  
9 strike.

10 MR. KUTIK: You can look forward to the  
11 briefs.

12 EXAMINER PRICE: We'll have an  
13 opportunity to do some briefs, so the motion to  
14 strike will be granted.

15 Any other further motion to strike?

16 MR. KUTIK: No, your Honor.

17 EXAMINER PRICE: Ms. Bojko.

18 MS. BOJKO: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By MS. Bojko:

22 Q. Good afternoon, Mr. Bowring.

23 A. Good afternoon.

24 Q. My name is Kim Bojko, and I represent the  
25 Ohio Manufacturers' Association's Energy Group in

1 this proceeding.

2 On page 2 of your testimony on lines 3  
3 and 5, you use the term "FirstEnergy." What do you  
4 mean by the use of FirstEnergy in this context?

5 A. When I use the term "FirstEnergy," I'm  
6 referring to the entirety of the FirstEnergy  
7 companies all owned by the single parent company.

8 Q. And, sir, why do you use the term  
9 "FirstEnergy" interchangeably throughout the  
10 testimony to refer to both the companies' provisions  
11 as well as the FirstEnergy Corp.?

12 MR. KUTIK: Objection.

13 EXAMINER PRICE: Grounds?

14 MR. KUTIK: Well, your Honor, as the  
15 Bench is aware, OMA really has no adversity to the  
16 subject matter of this witness' testimony, and at  
17 this point, the question is designed to elicit  
18 friendly cross.

19 EXAMINER PRICE: I think Ms. Bojko is  
20 fully aware of the prohibition on friendly cross. It  
21 doesn't sound like a very friendly question to me.

22 MR. KUTIK: I'll guarantee the answer  
23 will be friendly, your Honor.

24 EXAMINER PRICE: Let's hear the answer  
25 and, then we'll go from there.

1 MR. KUTIK: Fair enough, your Honor.

2 A. So if I remember, you're asking why I  
3 interchangeably used these terms?

4 Q. Yes.

5 A. Because there's one company here, one  
6 company making decisions, and that's really the  
7 essence of the case, one company with different  
8 affiliates shifting costs between the two.

9 MR. KUTIK: Move to strike.

10 EXAMINER PRICE: Granted.

11 MS. BOJKO: The entirety of the answer,  
12 your Honor?

13 EXAMINER PRICE: Yes.

14 MS. BOJKO: I think he's entitled to  
15 explain what terms he uses and why he's using it and  
16 in what context.

17 EXAMINER PRICE: I think you demonstrated  
18 Mr. Kutik's point, this is friendly cross. If you  
19 have adverse questions to ask this witness because  
20 you are adverse, both parties are adverse to what  
21 each other's position is, if you have adverse  
22 questions to ask this witness, you should ask them  
23 now.

24 MS. BOJKO: Your Honor, it was a  
25 clarifying question of what is meant by terms in the

1 testimony.

2 EXAMINER PRICE: I've made my ruling,  
3 Ms. Bojko. It's time to move on.

4 Q. (By Mr. Bojko) Sir, would you oppose  
5 rider RRS, even if it turned out to be profitable for  
6 ratepayers for the entire term of the PPA?

7 A. Yes.

8 Q. Are you opposed to renewable purchase  
9 power agreements, sir?

10 MR. KUTIK: Objection.

11 EXAMINER PRICE: I want to hear the  
12 answer to this one. Overruled.

13 A. I'm not sure that's a well-defined term,  
14 but if it looked like this, then yes.

15 EXAMINER PRICE: Are you opposed to  
16 renewable mandates?

17 THE WITNESS: As a general matter, I'm  
18 opposed to subsidies that affect market outcomes.

19 EXAMINER PRICE: Do you believe a  
20 renewable portfolio standard or renewable mandate  
21 depending on your choice of term is a subsidy?

22 THE WITNESS: Yes.

23 EXAMINER PRICE: Thank you.

24 Q. (By Ms. Bojko) And, sir, do you believe  
25 that the renewable PPAs may serve a different purpose

1 to meet such things as mandates?

2 MR. RANDAZZO: I object.

3 EXAMINER PRICE: Grounds?

4 MR. RANDAZZO: It's redirect on your  
5 Honor's cross-examination.

6 MR. KUTIK: I'd join.

7 EXAMINER PRICE: Overruled. I think we  
8 may have found a position that this witness is  
9 adverse to OMAEG.

10 MS. BOJKO: I don't know about that  
11 characterization, your Honor.

12 MR. KUTIK: If that's not true, your  
13 Honor, I would object.

14 MR. RANDAZZO: Somebody is wrong here.

15 EXAMINER PRICE: Well, we'll allow this  
16 one.

17 THE WITNESS: All right. Sorry. Could  
18 you give me the question again?

19 EXAMINER PRICE: Let's read the question  
20 back, again.

21 (Record read.)

22 A. So if the question is if renewable  
23 portfolio standards are a response to mandates or a  
24 form of implementing mandates, then that's true,  
25 they're implementing mandates.

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1 MS. BOJKO: Your Honor, I have no further  
2 questions. Thank you.

3 EXAMINER PRICE: Mr. Mendoza?

4 MR. MENDOZA: No questions, your Honor.

5 EXAMINER PRICE: I'm coming back to the  
6 signatory parties after the nonsignatory parties.

7 Mr. Petricoff?

8 MR. PETRICOFF: No questions, your Honor.

9 EXAMINER PRICE: Mr. O'Brien?

10 MR. O'BRIEN: No questions, your Honor.

11 EXAMINER PRICE: Mr. Sauer?

12 MR. SAUER: No questions, your Honor.

13 EXAMINER PRICE: Mr. Randazzo?

14 MR. RANDAZZO: Just a couple.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Randazzo:

18 Q. Dr. Bowring, welcome to Ohio.

19 A. Thank you.

20 Q. Counsel, Ms. Bojko, to my right actually  
21 took most of my questions. Thank you.

22 But with regard to renewable mandates or  
23 standards or requirements, can those also have  
24 impacts on the available cash flow to other  
25 generation technologies?



1 MR. MENDOZA: Objection. Compound.

2 EXAMINER PRICE: Let's have the question  
3 back again.

4 MR. RANDAZZO: I'll try again.

5 EXAMINER PRICE: Okay.

6 MR. RANDAZZO: I don't know what's  
7 compound about it, but I'll try again.

8 Q. (By Mr. Randazzo) With regard to state  
9 portfolio mandates, can compliance with those  
10 mandates impact the available cash flow to  
11 nonmandated generating technologies?

12 A. Yes, to the extent that they're  
13 subsidies, which I believe they are, subsidies change  
14 the outcome of competitive markets, and when other  
15 sources of supply are mandated and subsidized, it  
16 tends to reduce prices and, therefore, reduces  
17 revenues to other forms of generation.

18 Q. And is it true that in the PJM wholesale  
19 structure that at times wind resources have been  
20 negative prices into the wholesale market?

21 A. Wind resources at times have offered in  
22 at negative prices, yes.

23 Q. And have they cleared at negative prices?

24 A. Yes.

25 Q. Which when wind, a resource clears in the

1 PJM market, that means it's been accepted for  
2 dispatch, correct?

3 A. Yes.

4 Q. And would you regard that, in other  
5 words, the ability of a particular type of generating  
6 technology to bid a negative price and be accepted by  
7 PJM, to be an anti-competitive condition?

8 A. It's a result of subsidies. Those  
9 subsidies are affecting market outcomes, and in this  
10 case resulting in lower prices and lower revenues to  
11 other forms of generation.

12 MR. RANDAZZO: That's all I have. Thank  
13 you very much.

14 EXAMINER PRICE: Thank you.

15 Mr. Kurtz?

16 MR. KURTZ: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Kurtz:

20 Q. Good afternoon, Dr. Bowring.

21 You filed essentially identical testimony  
22 in the AEP case as you did in this case, is that  
23 correct?

24 A. Very close, yes, same points.

25 Q. And you were deposed in both cases.

1           A.    Yes.

2           Q.    Am I correct that in your AEP deposition,  
3   you testified that you had not reviewed -- that you  
4   did not know that Ohio allowed for CWIP on new  
5   generation built by a distribution utility?

6           A.    I was not asked that question.

7           Q.    Before you filed testimony, did you  
8   review 4928.143, the ESP statute?

9           A.    No.

10          Q.    Will you turn to page 4 of your  
11   testimony. I want to read just a short two sentences  
12   beginning on line 4 to put things in a little bit of  
13   context.

14                You testify that "A sustainable market  
15   design means a market design that results in  
16   appropriate incentives to retire units and to invest  
17   in new units over time such that reliability is  
18   ensured as a result of the functioning of the market.  
19   There are at least two broad paradigms that could  
20   result in such an outcome."

21                Did I read that correctly?

22          A.    Yes.

23          Q.    Then you describe the market paradigm,  
24   the next couple sentences, which has most importantly  
25   an energy and capacity market; is that correct?

1 A. Yes.

2 Q. Then you describe a quasi-market paradigm  
3 where energy is procured in the market, in the LMP,  
4 but that capacity or need for investment is done  
5 through long-term-contract model or the  
6 cost-of-service model; is that correct?

7 A. Yes.

8 Q. Okay. What I'd like to do is -- are  
9 these generally the market paradigm or the  
10 quasi-market paradigm by state, or do you have both  
11 within a state?

12 A. It's possible they're both within a  
13 state.

14 Q. Okay. Let me go by state in PJM and tell  
15 me if that state is a market paradigm, a quasi-market  
16 paradigm, or something different, or both. Delaware?

17 A. Okay. So maybe -- I'm not sure I'm going  
18 to be able to give you a comprehensive answer. I'm  
19 not sure I've thought about whether every state is  
20 best characterized by market or quasi-market. I'll  
21 be happy to respond to that question, but I'm not  
22 sure I can do it accurately sitting here.

23 Q. Can you respond as to Delaware? Is that  
24 a market paradigm or quasi-market paradigm?

25 A. I don't evaluate state by state. I'm

1 interested in the broader PJM market which, as you  
2 know, incorporates multiple states. So if you're  
3 asking whether in Delaware there's some quasi-market  
4 elements, sure. There are other subsidies to forms  
5 of generation in probably almost every state in PJM.

6 Q. Okay. Well, I want to understand your  
7 testimony, and ultimately I want to understand where  
8 Ohio fits into these two paradigms. Delaware allows  
9 for customer choice, correct?

10 A. Yes.

11 Q. And do the investor-owned utilities still  
12 own generation, or are they divested?

13 A. I think generally they're divested.

14 Q. Why wouldn't that be a market paradigm?

15 A. Generally it is. There are -- to the  
16 extent that Delaware has RECS, then that's a  
17 nonmarket. We're talking about subsidies there, so  
18 there are lots of exceptions across the footprint of  
19 PJM; but, nonetheless, PJM is broadly characterized  
20 by the market paradigm, but there are clearly  
21 exceptions. It's not a perfect market paradigm.

22 Q. Does Delaware have municipal utilities or  
23 rural electric cooperatives that still own generation  
24 and they do not allow customer choice for those  
25 customers?

1           A.    Yes.

2           Q.    Illinois, is that generally market  
3 paradigm or quasi-market paradigm?

4           A.    As I said, I can give you a better  
5 answer -- if you're interested in a detailed answer  
6 from me, I can give it to you afterwards. If you  
7 want me to go through this state by state, we could  
8 do that. As I said, every state has elements of  
9 quasi-market, particularly to the extent that they  
10 allow for solar and nonsolar renewable RECS.

11          Q.    I do want to go state by state.

12          A.    That's fine.

13          Q.    Illinois, is that market paradigm or  
14 quasi-market paradigm?

15          A.    Generally market.

16          Q.    Does Illinois have municipal or  
17 cooperative utilities that still own generation and  
18 do not allow for customer choice?

19          A.    Yes.

20          Q.    Indiana, market paradigm or quasi-market  
21 paradigm?

22          A.    Generally quasi-market. It depends on  
23 what you mean -- I assume you mean the entire state?

24          Q.    They have no customer choice for  
25 investor-owned or any utility customers, correct?

1 A. Yes.

2 Q. Kentucky?

3 A. There are elements of market, but there's  
4 certainly elements of quasi-market.

5 Q. There's no overall customer choice in  
6 Kentucky, is there?

7 A. I'm not sure. I didn't define the  
8 quasi-market paradigm having to do with customer  
9 choice. I don't recall.

10 Q. Well --

11 A. I don't believe that was the premise of  
12 your question.

13 Q. Okay. Does Kentucky procure resources  
14 through long-term contracts or cost-of-service  
15 regulation?

16 A. Yes.

17 Q. So why --

18 A. I'm sorry. Kentucky itself, as a state  
19 obviously doesn't do that, just to be clear.

20 Q. Do the investor-owned cooperative and  
21 municipal-owned utilities in Kentucky procure  
22 generation through the cost-of-service model?

23 A. Yes.

24 Q. So that would be the quasi-market  
25 paradigm?

1           A.    Unless to the extent they're relying  
2           entirely on that. They also participate in markets,  
3           so it's not entirely quasi-market.

4           Q.    Well, even -- let's take Maryland, market  
5           paradigm or quasi-market paradigm?

6           A.    Maryland also has -- Maryland also has --  
7           Maryland also has cooperatives.

8           Q.    They have cooperatives that own  
9           generation and do not have customer choice, but the  
10          rate -- but the investor-owned utilities have  
11          divested, and there is choice.

12          A.    Yes.

13          Q.    So would that be for the investor-owned  
14          utilities the market paradigm?

15          A.    Generally, yes.

16          Q.    Here's a good one. Michigan where they  
17          have 10 percent shopping and 90 percent cost of  
18          service, how would you characterize that one?

19          A.    As you know, only a very tiny part of  
20          Michigan is in PJM, but as a general matter, the  
21          state I would say is not in the market paradigm.

22          Q.    The M portion of INM, Indiana-Michigan --

23          A.    Yes.

24          Q.    The M portion of INM, which is Indiana  
25          and Michigan Power, which is an AEP affiliate, so



1 that part of the state would be -- well, let's -- New  
2 Jersey, market paradigm, quasi-market?

3 A. There are munis in Maryland as well, but  
4 generally market.

5 Q. So the investor-owned utilities have  
6 divested. There is choice for the ratepayers of the  
7 investor-owned utilities in New Jersey?

8 A. Yes.

9 Q. But they have municipal utilities that  
10 still own generation and there is no customer choice.

11 A. For those customers.

12 Q. All the municipal utilities that own  
13 generation in PJM, they do participate in the energy  
14 and capacity markets, do they not?

15 A. Yes. I'm sorry. So as you know, there  
16 are some exceptions, and anyone who elects to be an  
17 FRR entity is not participating in the capacity  
18 market, although they are participating in the energy  
19 market and are subject to reliability rules.

20 Q. Well, the only FRR fixed resource  
21 requirement entities in PJM are only the AEP  
22 affiliates, Appalachian Power, Indiana-Michigan,  
23 Kentucky Power, and, I guess, Duke Energy Kentucky as  
24 well is an FRR, correct?

25 A. I'm not sure what your question is.

1           Q.    Well, you were making a distinction that  
2   FRR entities do not participate in the capacity  
3   markets, and I was just naming the FRR entities that  
4   I know.

5           A.    Okay. That was not an exhaustive list,  
6   if that's your question.

7           Q.    Okay. FRR entities can participate in  
8   the capacity market if they meet certain reserve  
9   requirements. Isn't there an extra 3 percent  
10  holdback they have to get over before they can  
11  participate?

12          A.    FRR entities do not generally participate  
13  in the capacity market. They are allowed to buy if  
14  they need to or to sell a small amount of excess  
15  capacity in the market, but it's recognized that any  
16  more than that would be an inappropriate subsidy  
17  intervention in the market and, therefore, they're  
18  not allowed to.

19          Q.    PJM-wide is 1,300 megawatts that the FRR  
20  entities are allowed to participate in the market.

21          A.    I'm not exactly sure what the number is,  
22  but it's fairly small.

23          Q.    North Carolina, is that a market paradigm  
24  or quasi-market paradigm?

25          A.    Only a small part of North Carolina is

1 PJM, but I would say that's generally nonmarket or  
2 quasi-market.

3 Q. Ohio?

4 A. Generally market paradigm.

5 Q. How would you know that if you had not  
6 reviewed the ESP statute before filing your  
7 testimony?

8 A. Since I haven't reviewed it, I'm not sure  
9 how to answer the question. I'm not sure what it has  
10 to do with your question to me about whether it's  
11 market or quasi-market. My definition has nothing to  
12 do with your statute.

13 Q. Well, do you recognize from your  
14 deposition or elsewhere that under Ohio law,  
15 investor-owned utilities are allowed to build power  
16 plants and charge customers on a nonbypassable  
17 cost-of-service basis?

18 A. I recognize that, but I also don't recall  
19 the last time that occurred.

20 Q. Well, it has not occurred -- well, it has  
21 for renewables. But let me go back to my question.  
22 Your position is that Ohio is a market paradigm  
23 state?

24 A. Generally.

25 Q. Okay. Yet when writing this testimony,

1       you had not reviewed the ESP statute to form a basis  
2       for that conclusion, correct?

3               MS. BOJKO:  Objection, your Honor.

4               EXAMINER PRICE:  Grounds?

5               MS. BOJKO:  It's argumentative.

6               EXAMINER PRICE:  It's asked and answered.

7               MS. BOJKO:  That too.

8               Q.     Pennsylvania, quasi-market paradigm or --

9               A.     Generally market paradigm.

10              Q.     But Pennsylvania does have municipal  
11       utilities that have cost-of-service generation?

12              A.     Yes.

13              Q.     And that cost-of-service generation does  
14       participate in the PJM capacity markets?

15              A.     Yes.

16              Q.     Tennessee, quasi-market or market?

17              A.     Quasi-market.

18              Q.     Is TVA allowed to participate in the PJM  
19       capacity markets, or is that selling outside of the  
20       fence, so to speak?

21              A.     Any entity that has generation can  
22       participate in the PJM market, including TVA.

23              Q.     That's a huge utility, that's a huge  
24       enterprise, correct?

25              MS. BOJKO:  Objection.

1 Q. How big is TVA's --

2 EXAMINER PRICE: Pending objection.

3 Grounds?

4 MS. BOJKO: He just rephrased. I mean,  
5 he's testifying instead of asking the witness  
6 questions. Assumes facts not in evidence.

7 Q. (By Mr. Kurtz) Do you know how many  
8 megawatts TVA has?

9 A. I do not.

10 Q. Virginia, market paradigm or quasi-market  
11 paradigm?

12 A. Quasi.

13 Q. And they have municipal utilities as well  
14 that participate in the market, as well as the  
15 investor-owned utilities; is that correct?

16 A. Yes.

17 Q. West Virginia?

18 A. Quasi.

19 Q. District of Columbia?

20 A. Market paradigm, generally.

21 Q. Okay. You've already testified as to  
22 your position on renewals, so that's fine.

23 MS. BOJKO: Objection, your Honor.

24 MR. KURTZ: Let me rephrase, because I  
25 may be done.

1 EXAMINER PRICE: We're going to ignore  
2 Mr. Kurtz's editorial comments.

3 MS. BOJKO: And strike them from the  
4 record?

5 EXAMINER PRICE: We're just going to  
6 satisfy ourselves with ignoring them.

7 MR. KURTZ: I am done. Thank you, your  
8 Honor.

9 EXAMINER PRICE: Thank you.

10 Mr. Kutik?

11 MR. KUTIK: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Kutik:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. It is correct, is it not, that you are  
18 testifying for the first time at the Public Utilities  
19 Commission of Ohio in this case?

20 A. Yes.

21 Q. And so let me ask you a couple questions  
22 about yourself. You joined PJM in March of 1988,  
23 correct?

24 A. No, March 8th, 1998.

25 Q. 1999?

1           A.    I'm sorry. 1999. Now, you've got me  
2 confused.

3           Q.    To be clear, you joined PJM in  
4 March 1999.

5           A.    March 8, 1999.

6           Q.    And your position then was market  
7 monitor.

8           A.    Yes.

9           Q.    And you had that position until the  
10 creation of Monitoring Analytics, correct?

11          A.    Yes.

12          Q.    And marketing analytics, we might regard  
13 that as a spinoff of the PJM market monitoring unit,  
14 correct?

15          A.    The name is Monitoring Analytics, not  
16 marketing analytics.

17          Q.    Okay. And it's an LLC?

18          A.    Yes.

19          Q.    And you are the only member of the LLC?

20          A.    Yes.

21          Q.    Now, would it be fair to say that among  
22 the functions of the market monitor within PJM is to  
23 monitor, report on, and recommend changes to the PJM  
24 rules?

25          A.    Yes.

1           Q.    And another one of those functions is  
2   to -- or in looking at recommendations for how the  
3   rules are working, one of the goals that you have is  
4   to assure that there are competitive outcomes in PJM,  
5   correct?

6           A.    Yes.

7           Q.    Now, you and your firm also publish  
8   reports from time to time, correct?

9           A.    Yes.

10          Q.    And some of those reports are entitled  
11   "State of the Market."

12          A.    Yes.

13          Q.    And those reports are intended to capture  
14   the most significant issues that confront the market?

15          A.    Yes.

16          MR. KUTIK:  Your Honor, at this time we  
17   would like to have marked as Company Exhibit 75 a  
18   document entitled "State of the Market Report for  
19   PJM" dated May 15, 2014.

20               EXAMINER PRICE:  It will be so marked.

21               (EXHIBIT MARKED FOR IDENTIFICATION.)

22          MR. KUTIK:  We'd also like to have marked  
23   at this time, your Honor, as Company Exhibit 76 a  
24   document entitled State of the Market Report for PJM  
25   dated April 13, 2015 -- excuse me -- August 13, 2015.



1 EXAMINER PRICE: That will also be so  
2 marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. KUTIK: May I approach, your Honor?

5 EXAMINER PRICE: You may.

6 Q. Doctor, I have handed you, and my  
7 colleague, Mr. Harvey, has handed you Company  
8 Exhibits 75 and 76. Do you have those?

9 A. Yes. 75 is Q1?

10 Q. Yes. Q1, '14 and Company Exhibit 76 is  
11 Q2, 2015?

12 A. Yes.

13 Q. You have those in front of you.

14 A. I do.

15 Q. And these are the State of the Market  
16 reports for May 15, 2014 and April 13, 2015, correct?

17 A. Yes.

18 Q. And you were the principal author of  
19 these documents?

20 A. Yes.

21 Q. You also prepared or you and your firm  
22 also publish reports entitled Analysis of Base  
23 Residual Auctions, correct?

24 A. Yes.

25 Q. And you have published reports for the

1 2016-'17 BRA and 2017-'18 BRA?

2 A. Yes.

3 MR. KUTIK: Your Honor, we'd like to have  
4 marked at this time as Company Exhibit 77, a document  
5 entitled Analysis of 2016/2017 RPM Base Residual  
6 Auction dated April 18, 2014.

7 EXAMINER PRICE: Be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. KUTIK: We'd like to have marked as  
10 Company Exhibit 78 a document entitled Analysis of  
11 the 2017/2018 RPM Base Residual Auction dated October  
12 6, 2014.

13 EXAMINER PRICE: Also be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. KUTIK: May I approach, your Honor?

16 EXAMINER PRICE: You may.

17 MR. MENDOZA: Your Honor, may I ask a  
18 point of clarification?

19 EXAMINER PRICE: We'll get these  
20 distributed. Then we'll move on to your  
21 clarification.

22 Q. Doctor, I've handed you what has been  
23 marked for identification as Company Exhibits 77 and  
24 78. And you recognize these as the reports from  
25 Monitoring Analytics regarding the base residual

1 auctions for 2016-'17 and 2017-'18, correct?

2 A. Yes.

3 EXAMINER PRICE: Mr. Mendoza, you have an  
4 issue?

5 MR. MENDOZA: I have a question about the  
6 Market Monitor Report. I was wondering if the  
7 document included all, the appendices --

8 MR. KUTIK: Honor, I'm cross-examining  
9 the witness at this point. If he has questions, he  
10 could have asked questions. If he wants to make some  
11 other point at some other time, that's fine, but I'd  
12 like to continue my cross-examination.

13 EXAMINER PRICE: I'd appreciate an  
14 answer. Is this the full document, with all  
15 appendices?

16 MR. KUTIK: Your Honor, what I'll say is  
17 this is a document that -- I'll start with Exhibit  
18 75. Exhibit 75 is a document that has page numbers  
19 that go from 1 to 409, and Exhibit 76 is a document,  
20 not including the cover and table of contents, that  
21 goes from page 1 to 471.

22 EXAMINER PRICE: Okay. That will work.

23 Q. (By Mr. Kutik) Were you the principal  
24 author of the documents that we've identified as  
25 Company Exhibit 77 and 78?

1           A.    Yes.

2           Q.    And do you intend in these documents,  
3           that is, Exhibit 77 and 78, to capture what you  
4           thought were the significant facts arising from those  
5           auctions?

6           A.    Yes.

7           Q.    Now, one of the things that you do in  
8           these base residual auction analyses is to total the  
9           total capacity offered in the auction, correct?

10          A.    Yes.

11          Q.    And we can see that, for example, in the  
12          report dated April 18, 2017, Company Exhibit 77, we  
13          can see that in Table 6 on page 44, I believe,  
14          correct?

15          A.    I didn't hear a question.

16          Q.    I'm sorry. My answer was correct. My  
17          question was you see that data with respect to the  
18          total amount offered into the auction on Table 6 on  
19          page 44, correct?

20          A.    Yes.

21          Q.    And UCAP that was 169,159.7, correct?

22          A.    So that is total cleared if you're  
23          looking at the row halfway down the table.

24          Q.    And total offer was 184,380?

25          A.    I'm not sure what you're looking at.

1           Q.    Okay. To determine the total offered,  
2           total amount of capacity offered into the BRA, we  
3           would look at the -- we could look at either column,  
4           but looking at the UCAP column, we would see number  
5           184,380, correct?

6           A.    Yes.

7           Q.    All right. And that represents, if you  
8           look over to the right-hand column, 91 percent was  
9           generation, 91.5 percent was generation, correct?

10          A.    Yes. And just so we're clear, the number  
11          you described is available capacity; it's not the  
12          total offered in, just for clarity.

13          Q.    Okay.

14          A.    Yes. And then the percentages are the  
15          percentage of generation offered DR and EE.

16          Q.    And the generation offered was  
17          91.5 percent. The DR offered was 7.9 percent and the  
18          EE offered was .6 percent, correct?

19          A.    Yes.

20          Q.    And then you also show the total amount  
21          that's cleared, correct?

22          A.    Yes.

23          Q.    And that number under the UCAP column is  
24          169,159.7, correct?

25          A.    Sorry. So, yes, that's right. Yes.

1           Q.    And looking at the 2017/2018 report, we  
2 would see a similar analysis on page 47 of the  
3 report, correct?

4           A.    Yes.

5           Q.    And what we'd see here, looking at  
6 similar numbers that we looked at, the table in the  
7 prior report, we would see under the UCAP column on  
8 the row that says "Total offered," 178,138.5,  
9 correct?

10          A.    Yes.

11          Q.    And of that amount, 92.9 percent was  
12 generation, 6.3 percent was DR and .7 percent was EE,  
13 correct?

14          A.    Yes.

15          Q.    Now, you also have information on --  
16 well, strike that.

17                Let me refer you back to Exhibit 77,  
18 April of 2014 report, the 2016-'17 auction, and  
19 specifically refer you to Table 3 on page 20.

20                Are you there?

21          A.    Yes.

22          Q.    And Table 3, one of the lines indicates  
23 "Existing generation sources as price takers." Do  
24 you see that?

25          A.    Yes.

1 Q. And what it shows there is that a 519 of  
2 100 -- excuse me, 1,199 of the generation resources  
3 offered constituted existing generation resources as  
4 price takers; is that correct?

5 A. Yes.

6 Q. And we would see a similar analysis with  
7 respect to your report dated October 6th, 2014 for  
8 the 2017/2018 auction that we marked as Exhibit 78,  
9 correct?

10 A. Yes.

11 Q. And that also would be on page 22, Table  
12 3?

13 A. That's correct.

14 Q. And what we would see there is out of  
15 1,202 generation resources offered, 637 were existing  
16 generation resources as price takers.

17 A. Yes.

18 Q. You were also aware, are you not, that  
19 PJM publishes some information on the prices offered  
20 by capacity or by generation owners or capacity  
21 resource owners, correct?

22 A. Sorry. I'm not sure quite what you're  
23 asking me.

24 Q. Well, have you seen any data that PJM  
25 publishes on capacity resource offer prices for a

1 particular delivery year?

2 A. I have. The reason I'm pausing is  
3 there's been some discussion over the years about  
4 what they're allowed to publish and what not they're  
5 allowed to published, so they've done things that  
6 FERC ultimately told them not to do, so I'm not sure  
7 exactly what you're referring to.

8 Q. But you have seen some data?

9 A. Certainly.

10 MR. KUTIK: Your Honor, at this time we  
11 would like to have marked as Company Exhibit 79 a  
12 document, a one-page document, entitled "Capacity  
13 Resource Offer Prices for 2016/17 Delivery Year."

14 EXAMINER PRICE: Be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. KUTIK: And we'd also like to have  
17 marked for identification Company Exhibit 80,  
18 "Capacity Resource Offer Prices for 2017/18 Delivery  
19 Year."

20 EXAMINER PRICE: Also so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. KUTIK: May I approach?

23 EXAMINER PRICE: You may.

24 Q. (By Mr. Kutik) Doctor, have you seen the  
25 information that's shown in Exhibit 79 and 80 before?



1 A. I'm sure I've seen these slides, yes.

2 Q. You recognize these as slides that are  
3 published by PJM.

4 A. Yes.

5 Q. And what this shows is a certain amount  
6 of capacity resources that offer, for example, at a  
7 price of zero, correct?

8 A. Yes.

9 Q. We also see a certain amount of  
10 generation resources that offered at between zero and  
11 \$100.

12 A. Yes.

13 Q. And then for over 200, correct?

14 A. Yes.

15 Q. And Exhibit 79 shows that information for  
16 the 2016-'17 BRA, correct?

17 A. Yes.

18 Q. And Exhibit 80 shows that same  
19 information for the 2017-2018 BRA, correct?

20 A. Yes.

21 Q. Now, one of the things that your office  
22 also does is monitor retirements, correct?

23 A. Yes.

24 Q. And would you agree with me that the  
25 large percentage of retirements in the last four or

1 five years have been coal-fired units?

2 A. Yes.

3 Q. You'd also agree with me, would you not,  
4 that the overwhelming percentage of additions in the  
5 last four or five years within PJM have been  
6 gas-fired, natural gas-fired units, correct?

7 A. Yes.

8 Q. Now, you would agree with me that the PJM  
9 capacity market rules are not perfect, correct?

10 A. Yes.

11 Q. In fact, that's something you've stated  
12 from time to time?

13 A. Yes.

14 Q. And would you also agree with me that  
15 capacity prices have been suppressed by a number of  
16 market design features?

17 A. Yes.

18 Q. And the rules relating to demand response  
19 have had a price suppression effect, correct?

20 A. Yes.

21 Q. And, for example, you've determined that  
22 the impact of continued inclusion of a limited DR  
23 product in the capacity market on the 2016-'17 BRA  
24 was about \$4.6 billion?

25 A. Are you referring to some particular

1 document I have in front of me? That sounds  
2 approximately correct. I'm not -- I don't want to  
3 argue with you, but I just want to check the number.

4 Q. Sure. Could you look at what we've  
5 marked as Exhibit 75, which is your State of the  
6 Market report dated May 15th, and particularly on  
7 page 1 of that document. Tell me when you're there.

8 A. I'm there.

9 Q. And in the --

10 A. I see the number. The answer is yes.

11 Q. Thank you. And would it be fair to say  
12 that in that auction the total value of capacity sold  
13 was 5.5 billion?

14 A. Yes.

15 Q. And a month earlier in your BRA report,  
16 you had observed that if no DR had been offered into  
17 the market in 2016-'17 BRA, revenues would have  
18 increased by \$5.5 billion, correct?

19 A. I'm assuming you're reading it correctly.

20 Q. All right. Well, let's look at the  
21 report, if you'd like.

22 A. Okay.

23 Q. Let's look at Exhibit 77, which is the  
24 2016-'17 BRA analysis. Let me have you look at page  
25 5 at the bottom. Are you there, sir?

1           A.     I am.

2           Q.     And the last sentence it says, "If only  
3           generation in Annual DR were offered in the 2016/2017  
4           RPM base residual auctions, total RPM market revenues  
5           for the 2016/2017 RPM Base Residual Auction would  
6           have been \$10,141,586,456. If there were no offers  
7           for the DR in 20162017 RPM Base Residual Auction,  
8           total RPM market revenues for the 2016/2017 RPM Base  
9           Residual Auction would have been 15,630,600,107, an  
10          increase of 5,489,013,652 or 54 percent compared to  
11          the results with only Annual DR."

12          A.     Yes.

13          Q.     I read that correctly?

14          A.     Very well.

15          Q.     Now, I want to follow up on some  
16          questions and answers that took place during your  
17          examination with Mr. Kurtz. It is correct to say, is  
18          it not, that there are generators in PJM that receive  
19          cost-based generation from ratepayers as part of  
20          bundled retail rates that also offer that generation  
21          into the PJM capacity markets, correct?

22          A.     I'm not sure -- if the question was are  
23          there generation owners who receive cost-of-service  
24          revenues and then offer those units into the RPM  
25          auction, the answer is yes.

1           Q.    And there is -- and some of this  
2 generation is owned by vertically integrated  
3 utilities in nonretail choice states?

4           A.    Yes.

5           Q.    And the amount of this generation is a  
6 significant number, correct?

7           A.    I don't know what you mean by that.

8           Q.    Okay.

9           A.    The number is what it is.

10          Q.    All right. Do you remember me taking  
11 your deposition, sir?

12          A.    I do.

13               MR. KUTIK: May I approach, your Honor?

14               EXAMINER PRICE: You may.

15          Q.    Dr. Bowring, you recall, as I just said,  
16 I took your deposition, and at the deposition you  
17 took an oath to tell the truth, correct?

18          A.    Yes.

19          Q.    And you did tell the truth?

20          A.    Yes.

21          Q.    And you also took the opportunity after  
22 the deposition was over and after the deposition was  
23 transcribed, you wanted the opportunity to review  
24 your deposition transcript, correct?

25          A.    Yes.

1           Q.    Now, I want to refer you to page 40 of  
2           your deposition.  Are you there, sir?

3           A.    Yes.

4           Q.    And starting at line 8, did you give the  
5           following answers to the following questions:

6                   Question:  "Is there some generation in  
7           PJM that is owned by fully integrated utilities or  
8           vertically integrated utilities operating in a  
9           non-retail choice state?"

10                  Answer:  "Yes."

11                  Question:  "And are you aware with  
12           respect to those generators whether they offer their  
13           generation into the PJM capacity market?"

14                  Answer:  "Yes."

15                  Question:  "Do you know how much  
16           generation that entails?"

17                  Answer:  "Again, I don't know off the top  
18           of my head."

19                  Question:  "All right.  Can you give me  
20           an approximation?"

21                  Answer:  "I am not sure that number is  
22           not confidential, but it's a significant number."

23                  That was your deposition testimony, was  
24           it not?

25           A.    Yes.

1           Q.    Now, one of those generation owners  
2           receiving cost-based generation from retail customers  
3           and offering generation into the PJM market is  
4           Dominion, correct?

5           A.    Yes.

6           Q.    And that's in Virginia, correct?

7           A.    Yes.

8           Q.    Now, before I get to Dominion, I want to  
9           just, perhaps, clarify some of your answers in  
10          response to questions from Mr. Kurtz.  Would it be  
11          fair to say that most of Pennsylvania is within PJM?

12          A.    I believe it all is.  Well, actually,  
13          there may be some tiny exceptions, so the answer is  
14          yes.

15          Q.    And part of West Virginia is in PJM?

16          A.    Yes.

17          Q.    And part of Kentucky is in PJM?

18          A.    Yes.

19          Q.    Part of Indiana is in PJM?

20          A.    Yes.

21          Q.    I think you said a tiny part of Michigan  
22          is in PJM?

23          A.    I think the tiny part applies to many of  
24          those states.

25          Q.    And with respect to the part of Virginia

1 that's in PJM, Virginia has cost-of-service  
2 regulation for generation, correct?

3 A. Yes.

4 Q. And the same is true with West Virginia?

5 A. Yes.

6 Q. And Kentucky?

7 A. Yes.

8 Q. And Indiana?

9 A. Yes.

10 Q. And Michigan?

11 A. Yes.

12 Q. Now, going back to Dominion, it's correct  
13 to say that Dominion owns approximately  
14 18,000 megawatts of generation capacity?

15 A. Yes.

16 Q. And that's roughly 10 percent of the  
17 total capacity in PJM?

18 A. Roughly.

19 Q. And Dominion bids both into the capacity  
20 and energy markets, correct?

21 A. Yes.

22 Q. Dominion has recently built and put into  
23 service a number of new generation facilities,  
24 correct?

25 A. Yes.



1           Q.    One of those new generation facilities is  
2   the Bear Garden unit or plant, correct.

3           A.    Yes.

4           Q.    And that's a 589-megawatt natural gas  
5   combined cycle plant, correct?

6           A.    I believe so.

7           Q.    And another Dominion plant is the  
8   Virginia City Hybrid Energy Center, correct?

9           A.    Yes.

10          Q.    And that's in service now, correct?

11          A.    I believe so.

12          Q.    Another plant that's in service recently  
13   is Dominion's Warren County Power Station, correct?

14          A.    Yes.

15          Q.    And that's a natural gas combined cycle  
16   plant.

17          A.    Yes.

18          Q.    Dominion also plans a facility for the  
19   Brunswick County Power Station, correct?

20          A.    You're asking me if they're planning one?

21          Q.    Yes, a planned facility.

22          A.    I believe so.

23          Q.    And that's a 1,300-megawatt combined  
24   cycle plant or will be, correct?

25          A.    I believe so.

1           Q.    Another planned facility is Dominion's  
2   Greensville Power Station, correct?

3           A.    Yes.

4           Q.    And that planned unit is for  
5   1,555 megawatts as a natural gas combined cycle  
6   plant, correct?

7           A.    I believe so?

8           Q.    And you would expect that all of these  
9   units, to the extent they exist, to the extent they  
10   will exist, have been or will be offered into PJM,  
11   correct?

12          A.    Yes.

13          Q.    Would it be also fair to say that there  
14   are -- I think as you mentioned to Mr. Kurtz, there  
15   are some cooperatives within PJM, correct?

16          A.    Yes.

17          Q.    And these are nonprofit entities that  
18   recover the cost of generation through retail rates,  
19   correct?

20          A.    Yes.

21          Q.    One of those cooperatives is Eastern  
22   Kentucky Power Cooperative?

23          A.    Yes.

24          Q.    And that owns four plants that  
25   approximate about 3,000 megawatts?

1           A.    That sounds right.

2           Q.    And they, that as EKPC, bids its capacity  
3 into PJM, into the PJM markets, correct?

4           A.    Yes.

5           Q.    You're also aware of an entity called  
6 American Municipal Power, correct?

7           A.    Yes.

8           Q.    That is a member of PJM, correct?

9           A.    Yes.

10          Q.    And owns generation on behalf of  
11 municipally owned electric systems, correct?

12          A.    Yes.

13          Q.    And the net cost of operating that  
14 generation is passed through to members and  
15 eventually to ratepayers of members, correct?

16          A.    Yes.

17          Q.    And with respect to American Municipal  
18 Power, it offers its generation into the PJM market,  
19 correct?

20          A.    Sorry. I thought you just -- did you ask  
21 the same question? Maybe I didn't understand.

22          Q.    Well, does AMP offer its generation into  
23 the PJM markets?

24          A.    It doesn't do it directly. I believe so.

25          Q.    Now, as market monitor, one of the

1 things, one of your special statuses is that you get  
2 to see the offers that entities make into the  
3 capacity and energy markets, correct?

4 A. We do see the offers.

5 Q. And would it be fair to say that you have  
6 never brought a complaint to the enforcement  
7 authorities at FERC against Dominion for how its bid  
8 its capacity or energy into the PJM market?

9 A. The status of our referrals is actually  
10 confidential.

11 Q. Well, isn't it true that you have never  
12 brought a complaint against EKPC?

13 A. The status of our referrals is  
14 confidential, if that's what you're asking about.

15 MR. MAYES: Objection. Can you clarify  
16 the meaning of complaint that you're using?

17 Q. Dr. Bowring, do you remember being  
18 deposed in the AEP ESP case?

19 A. Yes.

20 MR. KUTIK: May I approach, your Honor?

21 EXAMINER PRICE: You may.

22 Q. Dr. Bowring, I've handed you a copy of a  
23 document. Is that the transcript of your deposition  
24 in the AEP case?

25 A. Yes.

1 Q. And that was earlier this week, was it  
2 not, or last week, I guess?

3 A. Friday.

4 Q. And like with the deposition in this  
5 case, you took an oath to tell the truth in that  
6 case, did you not?

7 A. Yes.

8 Q. Let me refer you, sir, to page 55 of that  
9 transcript. Are you there?

10 A. Yes.

11 Q. And let me refer you specifically to line  
12 15. Did you not give the following answer to the  
13 following question:

14 Question: "Have you ever brought a  
15 complaint to PJM or FERC about the way that Eastern  
16 Kentucky Power Cooperative bids at its plants?"

17 Answer: "I don't believe -- I don't  
18 believe so."

19 A. That is what I said, and I think it's  
20 consistent with what I just told you.

21 Q. Well, isn't it true that you have never  
22 brought a complaint to PJM or FERC about the way that  
23 American Municipal Power bids its capacity?

24 A. Okay. So just to be clear, referrals,  
25 which is a form of a complaint, I assume, in the way

1 you're using the term are confidential, so I can't  
2 answer the question about referrals. Have we said  
3 anything public about it? No.

4 Q. Okay. Well, again, let me refer you to  
5 your deposition, sir, page 58. At the bottom of page  
6 58, starting at line 23, do you not answer the  
7 following questions the following way --

8 A. Sorry. What page are you on?

9 Q. Page 58, starting at line 23.

10 Question: "Have you ever brought a  
11 complaint to PJM or FERC about AMP's bidding behavior  
12 in the capacity auctions?"

13 Answer: "No."

14 That was your deposition testimony, was  
15 it not?

16 A. Yes.

17 MS. BOJKO: Objection. Your Honor.

18 EXAMINER PRICE: Grounds?

19 MS. BOJKO: This is improper impeachment.  
20 He did not say -- he said we did not make a formal  
21 public complaint, but we cannot discuss referrals,  
22 and that's a different entity. Mr. Kutik was not the  
23 deposer asking questions, so he has no idea of what  
24 the intent of the deposer was at the time, thus it's  
25 improper impeachment.

1 EXAMINER PRICE: Overruled. It's plain  
2 language. He asked the same question.

3 MS. BOJKO: And the witness clarified.

4 EXAMINER PRICE: Mr. Mayes can provide  
5 any context to the Bench on redirect if he thinks  
6 that that's appropriate.

7 MR. MAYES: The meaning of the term  
8 "complaint," as I think the witness has already  
9 testified, sometimes people use that to mean  
10 referral. Sometimes they mean it to mean a filing  
11 under Section 206 of the Federal Power Act.

12 EXAMINER PRICE: I think now you're  
13 testifying, Mr. Mayes. Again, I'm not saying this is  
14 no -- this is certainly legitimate topic for inquiry,  
15 but you should do it on redirect.

16 MR. MAYES: I think the witness has  
17 already testified on that point.

18 EXAMINER PRICE: If you're happy with the  
19 record, then so am I.

20 MR. MAYES: Yes, your Honor.

21 Q. (By Mr. Kutik) Now, Dr. Bowring, you've  
22 used the word "subsidy" in your testimony, correct?

23 A. Yes.

24 Q. And, in fact, you've used that word  
25 today, correct?

1           A.    Yes.

2           Q.    In your view, generation owners, like  
3   Dominion, are receiving a subsidy, correct?

4           A.    Yes.

5           Q.    But recovery of cost of service for  
6   generation that would otherwise be recovered in the  
7   wholesale market is -- I'll back up.

8                    Would it be fair to say that the receipt  
9   by Dominion of cost-based recovery from retail  
10  customers is not inconsistent with PJM rules?

11          A.    That is correct.

12          Q.    Now, I want to switch to a slightly  
13  different topic.  Would you agree with me that there  
14  are many generation owners that offer PJM into --  
15  well, that offer generation into the PJM market at  
16  zero, correct?

17          A.    Yes.

18          Q.    And we saw several exhibits or two  
19  exhibits before that show that, correct?

20          A.    Yes.

21          Q.    And you would agree with me that there is  
22  nothing in your reports about offering in at zero as  
23  being improper, correct?

24          A.    Yes, zero offers can be consistent with  
25  competitive offers, and there's certainly no rule of



1 offering in at zero.

2 Q. So the answer to my question is yes?

3 A. The answer is the answer I gave.

4 Q. My question was, there's nothing in your  
5 reports that says that's improper, correct?

6 A. Well, I think I probably have exhausted  
7 recall of everything I said in the report. I mean,  
8 if you'd allow me to explain the answer, I'd be happy  
9 to. If you don't want me to, I'm not sure I can  
10 answer the question.

11 Q. All right. You are familiar with  
12 something called the minimum offer pricing rule,  
13 correct?

14 A. Yes.

15 Q. Would it be correct to say that that does  
16 not apply to existing generation?

17 A. Yes.

18 Q. And it has never applied to existing  
19 generation, correct?

20 A. Yes.

21 Q. And Davis-Besse and Sammis would be  
22 considered existing generation for purposes of the  
23 MOPR, correct?

24 A. Yes.

25 Q. And the two OVEC plants involved in the

1 proposed transaction would be considered existing  
2 generation for MOPR purposes, correct?

3 A. Yes.

4 Q. And you argued at one point that existing  
5 generation, like Dominion, should be subject to the  
6 MOPR, correct?

7 A. We argued that Dominion should be subject  
8 to the MOPR.

9 Q. And PJM did not -- or, excuse me, but  
10 FERC did not accept your view, correct?

11 A. There was a settlement and FERC accepted  
12 the settlement, which included Dominion.

13 Q. Isn't it true that your view did not  
14 prevail?

15 A. That is correct.

16 Q. I want to talk to you a little bit about  
17 the companies' proposal in this case. Would it be  
18 fair to say you do not recall whether the companies  
19 are asking the Commission to approve a PPA?

20 A. The companies are asking for -- the  
21 companies are asking for the transfer of the  
22 responsibility for paying certain assets to the  
23 customers, and the form of it is through a PPA, I  
24 believe.

25 MR. KUTIK: Move to strike as

1 nonresponsive.

2 EXAMINER PRICE: I'm not going to strike  
3 your answer, but I'm going to warn you to please be  
4 more responsive to the counsel going forward, and if  
5 you could give a more straightforward response to the  
6 previous question, I'd appreciate it.

7 THE WITNESS: Okay. Sorry. Could you  
8 tell me the question again?

9 EXAMINER PRICE: The court reporter will  
10 read it back.

11 (Record read.)

12 A. Yes.

13 Q. And you don't recall reviewing the term  
14 sheet between the companies and FES, correct?

15 A. I've read the companies' filing and the  
16 companies' witnesses' testimony.

17 Q. So is the answer to my question, yes, you  
18 don't recall reviewing the term sheet?

19 A. I don't recall if it was included in  
20 those documents, that's correct.

21 Q. And you don't know if there is only one  
22 contract or more than one contract as proposed,  
23 correct?

24 A. Yes.

25 Q. And you understand that under the

1 companies' proposal, the Commission would not be  
2 asked to determine what the price of the generation  
3 received under the PPA to be offered into the market  
4 would be, correct?

5 A. Sorry. I didn't understand what you were  
6 asking.

7 Q. Sure. Let me try to repeat it.

8 You understand that under the companies'  
9 proposal, the Commission would not be asked to  
10 determine the price of generation under the PPA, what  
11 that would be offered into the market at, correct?

12 A. So can I try to rephrase the question to  
13 see if I have it?

14 Q. Sure.

15 A. So you're asking me whether the  
16 Commission is determining the price at which this  
17 capacity would be offered in the PJM market?

18 Q. Yes.

19 A. That is correct.

20 Q. And would it be fair to say that rider --  
21 let me ask you a different question.

22 The price that the companies would pay  
23 FES under the PPA would not be set by the Commission,  
24 correct

25 A. I don't know.

1           Q.    You understand that rider RRS would be  
2           either a retail charge or credit, correct?

3           A.    Yes.

4           Q.    And rider RRS would reflect the netting  
5           of the amounts that the companies paid FES and the  
6           market revenues received by the companies via  
7           whatever output of the plants was sold into the  
8           market, correct?

9           A.    Again, I'm not quite sure what you're  
10          asking.

11          Q.    All right.  So you don't understand that  
12          there is a netting in rider RRS of what the companies  
13          would pay FES and what the companies would receive  
14          from the market in offering the output of the plants  
15          into the PJM markets.

16          A.    I understand there's a netting.

17          Q.    Okay.  Now, would it also be correct to  
18          say that as far as the companies are concerned, rider  
19          RRS is to act as a pass-through?

20          A.    Yes.

21          Q.    And the recovery from the companies'  
22          customers of costs paid by the companies to FES would  
23          not be automatic, correct?

24          A.    There is a provision for a review, yes.

25          Q.    But the Commission would also have the

1 right to review the companies' bidding behavior into  
2 the PJM market, correct?

3 A. Yes.

4 Q. You didn't do an analysis of the  
5 companies' projection of costs and revenues under  
6 rider RRS, correct?

7 A. I didn't think it was necessary, that's  
8 correct.

9 Q. And you didn't do an analysis of  
10 Mr. Rose's energy or price capacity forecast,  
11 correct?

12 A. Yes.

13 Q. And you believe that even if rider RRS  
14 results in a credit for customers, the rider would be  
15 providing a subsidy, correct?

16 A. Yes.

17 Q. And that would be true even if rider RRS  
18 provided a credit for its entire term?

19 A. Yes.

20 Q. Now, I understand, sir, that you've  
21 reviewed the PUCO's order in the prior AEP ESP case,  
22 correct?

23 A. How do I understand that? I'm sorry.  
24 I'm not supposed to ask questions. I'm not sure what  
25 you're referring to, I'll put it that way.

1           Q.    You testified in or you plan to testify  
2   in a case involving AEP, correct?

3           A.    Yes.

4           Q.    And you understand that that's a case  
5   that involves AEP's PPA rider, correct?

6           A.    Yes.

7           Q.    And you understand that the PPA rider was  
8   established in AEP's most recent ESP case, correct?

9           A.    Yes.

10          Q.    And you read the order in that case from  
11   the Commission, correct?

12          A.    I just don't recall having -- I don't  
13   recall the details of it, but I probably read it.

14          Q.    Now, it would be correct to say, sir,  
15   that you do not have an opinion that that case, that  
16   is, the AEP ESP case, was wrongly decided, correct?

17          A.    Correct.

18          Q.    And would it be fair to say that supply  
19   diversity is an appropriate factor for the Commission  
20   to consider in evaluating proposals like the riders  
21   that were at issue -- or that are at issue in this  
22   case or in AEP's PPA rider case?

23          A.    Yes.

24          Q.    Would you also agree with me, sir, that  
25   compliance with environmental regulations and with

1 pending environmental regulations is similarly an  
2 appropriate factor for the Commission to consider?

3 A. Yes.

4 Q. Do you further agree that the impact of  
5 closure of generation plants and the impact that it  
6 would have on electric prices and the resulting  
7 effect on economic development within the state is a  
8 similarly and appropriate factor for the Commission  
9 to consider?

10 A. Sorry. "Similarly and appropriate" is  
11 what you said?

12 Q. Yes.

13 A. Yes.

14 MR. KUTIK: May I have one minute, your  
15 Honor?

16 EXAMINER PRICE: You may.

17 (Discussion off the record.)

18 MR. KUTIK: I have no further questions.

19 Thank you, Dr. Bowring.

20 EXAMINER PRICE: Thank you.

21 Mr. McNamee?

22 MR. MCNAMEE: I have no questions. Thank  
23 you.

24 EXAMINER PRICE: Mr. Mayes, redirect?

25 MR. MAYES: Yes, I have redirect.



1                               - - -

2                               REDIRECT EXAMINATION

3       By Mr. Mayes:

4               Q.     Dr. Bowring, is there anything in any of  
5       your answers that you would like to clarify?

6               MR. KUTIK:   I object.

7               MR. MAYES:   It's not a leading question.

8               MR. KUTIK:   But it calls for an  
9       incredibly detailed and unobstructed narrative and  
10      that's improper.

11              EXAMINER PRICE:   I think you have to  
12      narrow your redirect a little more than that.

13              Let's go off the record.

14              (Discussion off the record.)

15              Q.     (By Mr. Mayes) We discussed at some  
16      length your various reports and the State of Monitor  
17      Report and Base Residual Auction analysis or  
18      conclusions about the capacity market. Have there  
19      been any developments regarding the capacity markets  
20      that might cause that information to be less relevant  
21      today?

22              A.     Well, there's certainly been significant  
23      developments since our last BRA report was done. I  
24      think it's widely known, probably been discussed  
25      here, that the capacity performance changes to the

1 capacity -- you're causing it -- that the capacity  
2 performance modifications to the capacity market were  
3 put in place recently and affected the most recent  
4 base residual auction, which was for years '18-'19.  
5 The net effect of that was to remove some of the  
6 issues that we had with the capacity market design  
7 resulting in higher clearing prices throughout the  
8 PJM footprint.

9 MR. MAYES: That concludes my redirect.

10 EXAMINER PRICE: Thank you.

11 Mr. O'Brien, recross?

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

13 - - -

14 RECROSS-EXAMINATION

15 By Mr. O'Brien:

16 Q. Just one question, Dr. Bowring.

17 Mr. Kutik asked you a number of questions about  
18 Dominion in Virginia. To your knowledge, does  
19 Virginia regulation allow Dominion to recover  
20 generation costs from facilities that are  
21 specifically excluded from providing retail  
22 generation service to Dominion's Virginia customers?

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: Friendly cross.

1 EXAMINER PRICE: That's also outside the  
2 scope of redirect.

3 MR. KUTIK: That, too.

4 MR. O'BRIEN: I thought I'd try, your  
5 Honor.

6 EXAMINER PRICE: Good try.

7 MS. BOJKO: I do have one.

8 EXAMINER PRICE: Ms. Bojko.

9 MS. BOJKO: Thank you.

10 - - -

11 RECROSS-EXAMINATION

12 By Ms. Bojko:

13 Q. Your counsel just asked you about the  
14 recent developments in the capacity performance being  
15 included in the recent BRA auctions. Has your  
16 testimony here today changed based on the recent  
17 developments in the capacity auctions, which include  
18 the capacity performance modifications that you  
19 mentioned?

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MS. BOJKO: Friendly cross.

23 EXAMINER PRICE: I'll allow this one.

24 A. No.

25 MS. BOJKO: Thank you. No further

1 questions.

2 EXAMINER PRICE: Mr. Mendoza?

3 MR. MENDOZA: I have a question.

4 EXAMINER PRICE: Promise me it will be  
5 unfriendly.

6 MR. MENDOZA: I think I will pass then,  
7 actually. I thought I would take a shot given your  
8 previous ruling, but I can't make that --

9 EXAMINER PRICE: It seemed unfriendly  
10 when she asked it.

11 Mr. Petricoff?

12 MR. PETRICOFF: No questions.

13 EXAMINER PRICE: Mr. Sauer?

14 MR. SAUER: No questions.

15 EXAMINER PRICE: Mr. Randazzo?

16 MR. RANDAZZO: No questions.

17 EXAMINER PRICE: Mr. Kurtz?

18 MR. KURTZ: No questions.

19 EXAMINER PRICE: Mr. Kutik?

20 MR. KUTIK: Your Honor, may I proceed?

21 EXAMINER PRICE: Thank you.

22 - - -

23 RECROSS-EXAMINATION

24 By Mr. Kutik:

25 Q. It is correct that there were a number of

1 units that offered in in terms of the last BRA as  
2 price takers?

3 A. The nature of offer has changed in that  
4 auction, so certainly some did offer as price takers.

5 Q. Okay. And that included both the BRA and  
6 the transition auctions, correct?

7 A. I'm not sure that it did include the  
8 transition auctions. To answer the question  
9 accurately, I would need to check.

10 Q. Well, would you agree that one of the  
11 effects of the capacity performance rule is that it  
12 has increased capacity prices?

13 A. Yes.

14 Q. And there is also a proposal, is there  
15 not, or perhaps it's a rule now, regarding a change  
16 in the rules relating to offer caps, correct?

17 A. Yes.

18 Q. And that is to set the cap at a  
19 percentage of CONE, correct?

20 A. Not entirely.

21 Q. All right. Well, do you believe that  
22 that offer cap change will put upward pressure on  
23 capacity prices, and you believe that; do you not?

24 A. I believe it will result in higher  
25 prices.

1 MR. KUTIK: No further questions. Thank  
2 you, your Honor.

3 EXAMINER PRICE: Thank you.

4 Mr. McNamee?

5 MR. MCNAMEE: No questions. Thank you.

6 EXAMINER PRICE: Ms. Addison?

7 EXAMINER ADDISON: No questions.

8 EXAMINER PRICE: Ms. Chiles?

9 EXAMINER CHILES: No questions.

10 EXAMINER PRICE: I just have a couple  
11 questions.

12 THE WITNESS: Sure.

13 EXAMINER PRICE: Turning to your  
14 testimony at page 3, line 12.

15 MR. KUTIK: I'm sorry, your Honor.

16 EXAMINER PRICE: Page 3, line 12 of the  
17 testimony, you have a brief discussion or abbreviated  
18 discussion of the subsidy question in New Jersey and  
19 Maryland, is that correct?

20 THE WITNESS: Yes.

21 EXAMINER PRICE: And you believe the  
22 situations where analogous, even though New Jersey  
23 and Maryland involve construction of generation and  
24 in this case it's existing generation?

25 THE WITNESS: Yes.

1                   EXAMINER PRICE: You indicated that --  
2                   I'm trying to listen to your opposition to long-term  
3                   contracts. If hypothetically a company were to  
4                   propose a long-term contract for renewable energy,  
5                   10, 15 years, you would oppose that as a market  
6                   subsidy?

7                   THE WITNESS: So, first of all, I don't  
8                   have opposition to long-term contracts.

9                   EXAMINER PRICE: I misunderstood  
10                  something then.

11                  THE WITNESS: Long-term contracts are  
12                  fine as long as they're market based. So there are  
13                  lots of long-term contracts. But, nonetheless,  
14                  everyone in the PJM market is required to offer their  
15                  capacity into the market. So as long as the  
16                  long-term contract doesn't constitute a subsidy --  
17                  this, for example, lots of units, brand new units,  
18                  are being built enter into energy takeoff long-term  
19                  contracts with someone willing to guarantee them a  
20                  price for energy, that's fine.

21                  So I have no objection to long-term  
22                  contracts, only when they're a vehicle for providing  
23                  subsidies. And in the case of renewables, the same  
24                  issues apply. If someone was entering into a  
25                  long-term contract really for the purpose of making

1 an out-of-market payment that those resources would  
2 not receive in the market, that would be a subsidy as  
3 well. But it's not the long-term contract, it's the  
4 fact that these payments are not consistent with the  
5 competitive market.

6 EXAMINER PRICE: Okay. Does opposition  
7 to renewable energy mandates and their impact on the  
8 market extend to energy efficiency mandates?

9 THE WITNESS: Okay. Just so we're clear,  
10 my view on all of these things is that markets work  
11 better without subsidies, and those do constitute  
12 subsidies and subsidies for energy efficiency  
13 function the same way that subsidies for wind or  
14 solar function, or they can function that way.

15 EXAMINER PRICE: So you're opposed to  
16 them?

17 THE WITNESS: Yes. When they operate, a  
18 subsidy is, in effect, competitive prices, yes.

19 EXAMINER PRICE: Thank you. You're  
20 excused.

21 THE WITNESS: Thank you.

22 EXAMINER PRICE: At this time, we will  
23 rule on Mr. Mayes' motion for admission of IMM  
24 Exhibit 1. We will grant it subject to the motion to  
25 strike.



1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 MR. KUTIK: Your Honor, at this time  
3 we'll move for the admission of Company Exhibit 75,  
4 76, 77, 78, 79 and 80.

5 EXAMINER PRICE: Any objection to the  
6 admission?

7 MR. PETRICOFF: Yes, your Honor. I would  
8 like to object. We have no objection to the  
9 relatively few pages, there were two tables that were  
10 cited in what are 1,000 pages of documents which were  
11 not handed out, and I think it's wrong to have all of  
12 that come into the record. I think it ought to be  
13 limited to just the pages that were referenced in the  
14 cross-examination, and I think that those pages ought  
15 to be made available by filing them into the record  
16 so we can have them for briefs.

17 MR. KUTIK: Your Honor, this witness  
18 authenticated all the documents, and he also  
19 indicated that he -- or the documents are supposed to  
20 indicate significant and substantial issues within  
21 PJM. I think the entire document is fair game to be  
22 commented on and to be briefed.

23 EXAMINER PRICE: Mr. Petricoff, is your  
24 concern the fact that the documents have not been  
25 handed out, or is your concern the fact that the

1 documents are so voluminous?

2 MR. PETRICOFF: C, all of the above. And  
3 let me explain why. There's no question about the  
4 authenticity. We're not challenging the  
5 authenticity. But in 1,000 pages, there might be a  
6 lot of items that could end up in briefs that could  
7 be cited that weren't part of the discussion and  
8 aren't relevant. And I can't articulate to you why  
9 it isn't relevant because nobody has seen it. These  
10 are not documents that were produced in discovery.  
11 They just showed up today, and they were not passed  
12 out to everybody.

13 EXAMINER PRICE: In terms of passing them  
14 out, I assume, Mr. Mayes, these documents are  
15 available on your website?

16 MR. MAYES: That's correct.

17 EXAMINER PRICE: So there's easy access  
18 to these documents. In terms of relevance, that's a  
19 matter for your reply brief.

20 Frankly, generally it's been our practice  
21 to submit the complete document and not omit parts of  
22 documents. I think we've taken administrative notice  
23 of major sections of the tariff, for example. So if  
24 there's a relevance issue that comes up, you can take  
25 care of it on brief.

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1 MR. PETRICOFF: Thank you.

2 EXAMINER PRICE: At this time, we will  
3 admit Company Exhibit 75, 76, 77, 78, 79 and 80.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 EXAMINER PRICE: Let's at this point  
6 adjourn for lunch. We'll return at 2:30. Let's go  
7 off the record.

8 (At 1:18 p.m. a lunch recess was taken  
9 until 2:30 p.m.)

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1 Tuesday Afternoon Session,  
2 October 6, 2015.

3 - - -

4 EXAMINER PRICE: Mr. Petricoff, you may  
5 call your next witness.

6 MR. PETRICOFF: Thank you, your Honor.  
7 At this time we'd like to called David Scarpignato to  
8 the stand.

9 (Witness sworn.)

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

12 THE WITNESS: Hello. I'm David  
13 Scarpignato with Calpine Corporation. The address is  
14 875 15th Street, Suite 700, Washington DC 20005.

15 EXAMINER PRICE: Please proceed,  
16 Mr. Petricoff.

17 MR. PETRICOFF: Yes, your Honor. Has the  
18 witness been sworn in?

19 EXAMINER PRICE: Yes.

20 MR. PETRICOFF: At this point I'd like to  
21 have marked as RESA Exhibit 1 the direct prepared  
22 testimony of David Scarpignato, and I'd also like to  
23 have marked as RESA Exhibit 1A an errata sheet for  
24 changes to that testimony that we'll go over here  
25 momentarily.

1 EXAMINER PRICE: Be so marked.

2 (EXHIBITS MARKED FOR IDENTIFICATION.)

3 - - -

4 DAVID SCARPIGNATO

5 being first duly sworn, as prescribed by law, was  
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Petricoff:

9 Q. Mr. Scarpignato, do you recognize what --  
10 first of all, do you have a copy of what we've just  
11 marked as RESA Exhibit 1 and RESA Exhibit 1A?

12 A. I have this (indicating).

13 Q. That's 1A.

14 EXAMINER PRICE: Mr. Petricoff, we don't  
15 have copies of 1A.

16 MR. PETRICOFF: I'm sorry, your Honor.

17 Q. Mr. Scarpignato, let's start with RESA  
18 Exhibit 1. Do you have a copy with you of your  
19 direct prepared testimony?

20 A. Yes, I do.

21 Q. And was that prepared by you or under  
22 your direction?

23 A. Yes.

24 Q. And was it submitted to the Commission on  
25 December 22nd, 2014?

1 A. Yes.

2 Q. And have there been any changes in your  
3 position that have taken place since December 22nd of  
4 2014?

5 A. Yes.

6 Q. Could you tell us about that?

7 A. I am now with Calpine Corporation and the  
8 address has changed. The title has stayed the same,  
9 and I've been employed there since April 2016.

10 Q. And do you have --

11 A. '15. Thank you.

12 Q. And the changes in terms of your position  
13 and the date that you started with Calpine are  
14 reflected in Exhibit 1A?

15 A. Correct.

16 Q. And I notice that the job  
17 responsibilities and duties appear to be the same  
18 other than the change of the name; is that correct?

19 A. Yes. At a high level, that's correct.

20 Q. Does Calpine belong to RESA? Are they  
21 members of RESA?

22 A. Calpine does not belong to RESA, but  
23 Calpine purchased Champion Energy on October 1st, the  
24 other day, and Champion is a member of RESA.

25 Q. And you are here on behalf of RESA?

1           A.    I am here on behalf of RESA.

2           Q.    The first four questions that we have now  
3 redone by virtue of RESA Exhibit 1A, if I asked you  
4 the other questions in your direct prepared testimony  
5 that was filed on December 22nd, would your answers  
6 be the same?

7           A.    Yes.

8           Q.    Are there any other changes or amendments  
9 you would like to make?

10          A.    No.

11               MR. PETRICOFF: Your Honor, at this time  
12 the witness is available for cross-examination.

13               EXAMINER PRICE: Mr. Kutik.

14               MR. KUTIK: We have some motions to  
15 strike. Our first motion to strike, your Honor, is  
16 directed to page 16, and, particularly, your Honor,  
17 the sentence that begins on line 6. It says "For  
18 example," and goes to line 8 and ends with the  
19 footnote No. 2. So we would move to strike that  
20 sentence and the two footnotes on the grounds that  
21 the sentence relies on hearsay, particularly it  
22 appears that one is -- the first footnote on a report  
23 by the Brattle Group, another report by Sargent &  
24 Lundy; and the second footnote appears to be  
25 something from SNL, but it isn't apparent exactly

1     what it is, so there's no foundation to establish  
2     that it meets any of the exceptions to the hearsay  
3     rule.

4             EXAMINER PRICE:   Mr. Petricoff?

5             MR. PETRICOFF:   Yes, your Honor.   As to  
6     the question on hearsay, these are publicly available  
7     sources.   The Internet sites are presented.   The  
8     value of the source can obviously be addressed in  
9     cross-examination, and the Commission can give the  
10    proper weight to it.

11            EXAMINER PRICE:   Do you have personal  
12    knowledge of the statements made in your testimony?

13            THE WITNESS:   Yes.

14            MR. KUTIK:   Do you mean with respect to  
15    the facts of that particular sentence?

16            EXAMINER PRICE:   Yes, with respect to the  
17    facts of that particular sentence.

18            THE WITNESS:   Can the reporter repeat the  
19    question so I understand what you're asking?

20            EXAMINER PRICE:   I'll ask it again.   Do  
21    you have personal knowledge of the facts contained in  
22    that sentence?

23            THE WITNESS:   If you mean by personal  
24    knowledge, am I the one that obtained the knowledge,  
25    yes.



1 EXAMINER PRICE: Where did you obtain the  
2 knowledge?

3 THE WITNESS: I obtained the knowledge  
4 from publicly available sources that I have listed  
5 there. Nobody else handed them to me. It's not  
6 unusual to talk about heat rates in my industry.

7 EXAMINER PRICE: Okay. We will grant the  
8 motion to strike at this time. It is hearsay.

9 MR. KUTIK: Our next motion, your Honor,  
10 or might be two motions because they're both on the  
11 same grounds, is directed to some sentences on page  
12 31, and actually it starts on line 21 with the  
13 sentence that begins "As an example," and our motion  
14 continues on to page 32, line 5, and we would have a  
15 similar motion, your Honor, with respect to the  
16 sentence that begins on line 5 on page 32 to the end  
17 of that paragraph that ends on line 10.

18 These sentences report statements that  
19 are in Attachments 4 and 5 to the witness' testimony.  
20 Attachments 4 and 5, your Honor, appear to be letters  
21 from third parties to others, and so they are  
22 statements of the declarants that are outside the  
23 hearing room, and they are statements, your Honor,  
24 that are not of parties, and certainly nothing in  
25 these letters satisfies any of the exceptions of the

1 hearsay rule.

2 EXAMINER PRICE: Mr. Petricoff?

3 MR. PETRICOFF: Your Honor, may I have a  
4 minute to review the sentences?

5 EXAMINER PRICE: You may.

6 Just to clarify, you're not striking the  
7 example -- the sentence on line 20, "For example, PJM  
8 load forecasts in 2008-'12 were significantly off  
9 from the estimates"?

10 MR. KUTIK: I'm sorry. I didn't hear  
11 your reference.

12 EXAMINER PRICE: Line 20, you are not  
13 including that sentence?

14 MR. KUTIK: On page 32?

15 EXAMINER PRICE: 31.

16 MR. KUTIK: That's correct, your Honor.  
17 I'm not striking that sentence.

18 MR. PETRICOFF: Well, your Honor, in  
19 terms of the Attachment 4, this letter basically is a  
20 public letter that was filed by public officials with  
21 the PJM, and, I assume, is available on the records  
22 of PJM, and, therefore, I think it does fit the  
23 hearsay example for a public document.

24 MR. KUTIK: May I respond, your Honor?

25 EXAMINER PRICE: Are you making the same

1 argument about the second one, Attachment 5?

2 MR. PETRICOFF: I hadn't got to that one  
3 yet. I thought I'd take the first one first.

4 EXAMINER PRICE: You may respond.

5 MR. KUTIK: Your Honor, the public  
6 records exception are records of a public entity, a  
7 governmental entity, additionally with a duty to  
8 report the facts or circumstances that are in that  
9 document. These are simply statements of these  
10 various parties about certain facts that they allege  
11 to exist. It's classic hearsay.

12 EXAMINER PRICE: I'm going to grant the  
13 motion to strike as to the first sentence and  
14 attachment.

15 As to the second sentence, Mr. Petricoff?

16 MR. PETRICOFF: Well, your Honor, I'm  
17 going to make a very similar argument. Once again,  
18 PJM is a public quasi-governmental agency  
19 Correspondence as docketed is open for the public to  
20 see, and, therefore, I think it deserves treatment  
21 here as a public document and exception to the  
22 hearsay rule.

23 EXAMINER PRICE: Thank you. We'll grant  
24 the motion to strike. The difficulty is Mr. Kutik  
25 cannot cross-examine the underlying statements to

1 test the veracity. I understand what you're saying  
2 about it's available, but he has no ability to  
3 dispute these underlying facts.

4 MR. PETRICOFF: I understand that he  
5 doesn't have the, if you will, declarant here to do  
6 it, but I think when looking at the way it is used  
7 within the testimony, it is to support the issue as  
8 opposed to being in there only for the truth of its  
9 assertion in that case. I think it does -- it is  
10 covered by the hearsay rule.

11 EXAMINER PRICE: Thank you. I am  
12 granting the motion to strike.

13 MR. PETRICOFF: I understand, your Honor.  
14 That's fine.

15 MR. KUTIK: Your Honor, for our last  
16 motion to strike, we direct your attention to page  
17 34, and we would move to strike in their entirety  
18 question and answers 52 and 53. This is very similar  
19 to the discussion we had this morning with  
20 Dr. Bowring. This is a discussion of two cases, four  
21 opinions, and is more appropriate for a brief and not  
22 for an opinion by a witness and cross-examine on that  
23 opinion.

24 EXAMINER PRICE: Mr. Petricoff?

25 MR. PETRICOFF: Yes, your Honor. I think

1 I want to start by talking about the answer to 53  
2 first and then move back to 52. In 53,  
3 Mr. Scarpignato indicates that he's not a lawyer, but  
4 the purpose here is to -- but he is an expert in PJM  
5 affairs and is on the PJM committees, including the  
6 MOPR committee, and so he is saying that the  
7 compensation schemes that were proposed in Maryland  
8 and New Jersey are similar to the application in the  
9 matter at bar.

10 That, I think, is not a legal matter, and  
11 he should be able to do it. So I think it makes  
12 sense in the context to leave the fact that they were  
13 struck down in, but if, in fact, the concern is he's  
14 raising a legal opinion or making a legal decision, I  
15 think that should be limited to just taking out the  
16 words "struck down" on line 1 on page 35.

17 MR. MENDOZA: Your Honor, may I?

18 EXAMINER PRICE: You may.

19 MR. MENDOZA: I'd like to add similar to  
20 the discussion we had this morning, this is all  
21 factual comparison of the schemes that were  
22 overturned in New Jersey and Maryland and comparing  
23 those to the proposal here, so this is appropriate  
24 testimony for this witness. It's a factual  
25 comparison of the two programs.

1 EXAMINER PRICE: Mr. Kutik.

2 MR. KUTIK: Your Honor, this testimony,  
3 and particularly the footnotes, quote at length from  
4 the opinion, and so, again, we're talking about the  
5 necessity of sitting here and debating what the  
6 opinion said and didn't say.

7 EXAMINER PRICE: The issue I think that  
8 Mr. Petricoff has raised is that it's not unfair, is  
9 if we struck the footnotes, would you still have an  
10 issue with the remainder of the testimony?

11 MR. KUTIK: With Mr. Petricoff's  
12 additional strike, your Honor?

13 EXAMINER PRICE: Yes.

14 MR. KUTIK: So that sentence now would  
15 read how, your Honor?

16 EXAMINER PRICE: "I simply want to point  
17 out that the compensation scheme proposed by the  
18 Companies is nearly identical to the ones in Maryland  
19 and New Jersey," and strike the footnotes.

20 MR. KUTIK: That would be acceptable,  
21 your Honor.

22 EXAMINER PRICE: Okay. The motion to  
23 strike will be granted in part and denied in part.

24 MR. PETRICOFF: Your Honor, I think in  
25 keeping with the logic, then, we would not contest

1 taking out Q52 and A52 because I think that goes  
2 along with --

3 EXAMINER PRICE: Question 52 and answer  
4 52, those will be stricken also.

5 MR. KUTIK: That concludes my motion.

6 EXAMINER PRICE: Thank you.

7 Mr. Mendoza?

8 MR. MENDOZA: No questions, your Honor.

9 EXAMINER PRICE: Mr. Sauer?

10 MR. SAUER: No questions, your Honor.

11 EXAMINER PRICE: Mr. Randazzo?

12 MR. RANDAZZO: Yes, a few.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Randazzo:

16 Q. Good afternoon, sir.

17 A. Hello.

18 Q. As compared to Direct Energy, is Calpine  
19 in the generation business?

20 A. As compared to Direct Energy?

21 Q. Right.

22 A. Direct Energy is not in the generation  
23 business as far as what most people think of as a  
24 generator. If you're talking about resources in PJM,  
25 they're still not the same, but Direct Energy has

1 demand response resources.

2 Q. And Calpine is a merchant generator firm;  
3 is that correct?

4 A. Correct.

5 Q. Now, on page 2 of your testimony, at line  
6 16 -- starting on line 16 and ending on line 18, I  
7 just want to make sure I've got this correct. You're  
8 saying that the testimony that you are presenting may  
9 represent the position of RESA as an organization,  
10 but may not represent the views of any particular  
11 RESA member; is that correct?

12 A. That's correct.

13 Q. And yet you're testifying on behalf of  
14 RESA; is that correct?

15 A. Yes, I am testifying on behalf of RESA.

16 Q. Now, in your testimony, you talk about  
17 rider RRS. Would it be correct, sir, that regardless  
18 of what happens, how the Commission disposes of the  
19 issues related to rider RRS, that purchase power  
20 agreements are still going to exist to supply the  
21 generation requirements of retail customers, correct?

22 A. Is it a legal question?

23 Q. No, just commercial practice. There has  
24 to be both sale and purchase power agreements  
25 upstream of every retail purchase power agreement,



1 correct?

2 A. I don't know. I'm an expert in business  
3 rules and regulatory affairs and stakeholder  
4 processes at PJM, so I'm not sure what's required for  
5 a bilateral to be set up in the first place. I'm  
6 aware of people that enter into bilaterals, but I'm  
7 not as familiar with whether they're legal or not  
8 legal.

9 Q. That really wasn't my question.

10 A. Sorry about that.

11 Q. Let's try it again. Would it be correct,  
12 sir, that for every retail purchase agreement of  
13 electricity, there is a corresponding wholesale  
14 transaction?

15 A. A one-to-one ratio, no.

16 Q. And how is it that retail customers  
17 obtain purchased electricity?

18 A. Through typically -- although there's  
19 different setups, typically through a load-serving  
20 entity of some sort.

21 Q. And would the retail customer need to  
22 enter into some sort of agreement to purchase that  
23 electricity?

24 A. Well, for instance, PJM will charge the  
25 load-serving entity the price to purchase all the

1 capacity. I'm sorry. I'm trying to follow you.

2 Q. I'm sure it's my questions.

3 Are you aware of how retail electric  
4 customers in Ohio receive generation supply?

5 A. Not intimately, no.

6 Q. At all?

7 A. At all, yes.

8 Q. And what's your understanding?

9 A. My understanding is that at a wholesale  
10 level, there's typically load-serving entities of  
11 some sort that you can buy the power from those  
12 load-serving entities, buy the generation or the  
13 supply to supply those to the end-use customers. So  
14 there's a wholesale transaction where I'm heavily --  
15 where I know a lot of the rules and hope to help out  
16 here.

17 And then there's the retail side of  
18 things where I'm not as intimately involved, but I  
19 believe that then the LSE has to have some kind of  
20 rate on file. Whether the LSE makes money or uses  
21 money is kind of irrelevant from an LSE's  
22 perspective -- I mean, not from the LSE's perspective  
23 but customer's perspective because they sign up for a  
24 rate usually. And I think the other way to get  
25 retail service in Ohio is through more of a standard

1 offer service through the companies.

2 Q. And would it be your understanding that  
3 there are agreements in both cases? In other words,  
4 if customers, retail customers, are obtaining  
5 generation supply through what you call a  
6 load-serving entity, there would be agreements  
7 associated with that transaction?

8 A. Yeah. The load-serving entities have a  
9 reliability assurance agreement that they sign with  
10 PJM to purchase the wholesale power. They also are  
11 signatories to the PJM operating agreement, and they  
12 probably sign other things too.

13 Q. Now, at page 6 of your testimony, line  
14 14, beginning with the sentence that starts on that  
15 line, you indicate that "PJM would need to do  
16 something." Is it your understanding that PJM has a  
17 unilateral ability to act in the areas that you  
18 described in your testimony?

19 A. I believe in the operating agreement.  
20 You're testing my memory a little bit. I believe in  
21 the operating agreement, it has -- PJM itself has a  
22 responsibility to maintain efficient markets. That's  
23 my recollection. I don't have the document in front  
24 of me.

25 Q. More specifically, sir, if PJM was going

1 to make any changes of the type that you describe in  
2 your testimony, wouldn't it need to make an  
3 application to the Federal Energy Regulatory  
4 Commission?

5 A. Well, there's multiple ways that that can  
6 occur.

7 Q. Answer my --

8 MR. PETRICOFF: He was answering. He  
9 should be allowed to finish.

10 EXAMINER PRICE: First allow the witness  
11 to finish his answer. Then you can move to strike  
12 anything you think is nonresponsive.

13 MR. RANDAZZO: I'll withdraw the  
14 question.

15 Q. To the extent that PJM would change its  
16 rules related to such things as the minimum offer  
17 price rule, would it need to seek approval of the  
18 Federal Energy Regulatory Commission?

19 A. If PJM initiated, yes.

20 Q. Well, that's what you're talking about in  
21 your testimony, if the PJM initiated something,  
22 right?

23 A. This relates to the question I was trying  
24 to answer before.

25 MR. RANDAZZO: I'll withdraw my question,

1 your Honor.

2 MR. PETRICOFF: Your Honor, he should be  
3 allowed to finish regardless.

4 EXAMINER PRICE: The question is  
5 withdrawn. Let's just move on.

6 Q. Now, with regard to -- were you here  
7 earlier today to hear Dr. Bowring's testimony?

8 A. Yes, I was.

9 Q. Did you hear him discuss his views that  
10 the renewable mandates are subsidies?

11 A. I heard parts of it. I was reading a  
12 little bit during the testimony.

13 Q. Did you hear that?

14 A. I think I heard that, but, again, I was  
15 coming in and out of the conversation.

16 Q. Has Dr. Bowring or PJM done anything to  
17 address those subsidies?

18 A. The subsidies for --

19 Q. As renewable energy resources.

20 A. Yes. There was huge discussion in the  
21 PJM stakeholder process where I primarily do my  
22 business. Market monitor also operates in that  
23 environment, and I think it was the market's  
24 reliability committee. We discussed changing the  
25 MOPR a few years back related to something that

1 happened in Maryland and New Jersey. That was  
2 related to new resources, though, not existing  
3 resources. And in that regard, there were  
4 stakeholders pushing -- a strong push and market  
5 monitor, if I recall -- and I'm not the market  
6 monitor, so I'm recalling what he said. The market  
7 monitor pushed very strongly that the MOPR should be  
8 more expansive and not just be limited to more of the  
9 traditional types of resources; CT, CC, and coal.

10 So back then, yeah, I recall him  
11 potentially trying to get the renewables for  
12 basically the new-entry renewables I'm referring to,  
13 just to be clear, the new-entry renewables to prevent  
14 them from offering in at zero. Ultimately, though,  
15 he was not successful with that, and obviously the  
16 stakeholders take different positions. There's over  
17 900 stakeholders in PJM.

18 Q. And it's clear to you that PJM never  
19 modified the minimum offer price rule to deal with  
20 the subsidies for renewable resources; is that  
21 correct?

22 A. Oh, it's very clear, yes.

23 Q. Now, at page 13 of your testimony,  
24 actually line 19 and 20 in response to question 23,  
25 you mentioned deliverability limits. Do you see

1       that?

2               A.     Yes.

3               Q.     Now, would deliverability limits be the  
4       same as transmission constraints?

5               A.     Deliverability limits are a type of  
6       transmission constraint, but there are other types of  
7       transmission constraints, too.  So if you're asking  
8       if it's a subset of that, I can say yes.  Is that  
9       what you're asking?

10              Q.     Right.

11              A.     Yes.

12              Q.     And page 22 at the bottom of the page,  
13       the sentence that starts on line 23, when you say,  
14       "Where the market location is incapable of  
15       responding," would it be fair to say that what you're  
16       referring to there is where the capacity resource is  
17       located within a particular zone are incapable of  
18       responding?  Would that be a fair way to more  
19       specifically state what you're getting at there?

20              A.     No, not completely.

21              Q.     Well, can we start in part at what you're  
22       getting at?

23              A.     Yes.

24              Q.     So when generation resources or capacity  
25       resources located within a particular zone in PJM are

1 inadequate to satisfy the load within that zone,  
2 would one of the responses from PJM be to require the  
3 construction of transmission?

4 A. Feel free to strike this, but I think  
5 what you're trying to ask me -- I think what you're  
6 trying to ask me is more related to where would new  
7 capacity locate, because that's what the question is  
8 kind of relating to. And if new capacity -- you can  
9 strike it if you want. If new capacity is not there,  
10 then what happens is, yeah, PJM would do a  
11 transmission build. If existing capacity is already  
12 there, there's nothing to build.

13 And the third topic, which you might  
14 eventually ask me about, is if something retires, and  
15 if something retires and then is not replaced by  
16 something else, then you also see transmission build.  
17 If that helps -- sorry.

18 Q. Well, we got there eventually. Thank  
19 you.

20 Now, if you know, do you know what  
21 position RESA took or Calpine took or Direct Energy  
22 took with regard to the above-market capacity pricing  
23 authorized by this Commission for AEP Ohio?

24 MR. PETRICOFF: Object as to Direct  
25 Energy and Calpine. He is the RESA witness and



1 cannot answer for the rest of it.

2 EXAMINER PRICE: He can answer if he  
3 knows.

4 A. No.

5 Q. Did you evaluate the positions that have  
6 been taken or review the positions that have been  
7 taken by RESA in other Ohio Commission cases for  
8 purposes of preparing your testimony?

9 A. I think RESA took a position, especially  
10 in New Jersey, and I have a vague recollection of  
11 reviewing that.

12 Q. Okay. Other than that, anything else?  
13 I'm talking about Ohio Commission decisions.

14 A. Ohio Commission decisions, I'm sorry, I  
15 did not answer that question correctly.

16 Q. That's okay.

17 A. The answer would be no.

18 MR. RANDAZZO: That's all I have. Thank  
19 you.

20 EXAMINER PRICE: Thank you.

21 Mr. Kurtz?

22 MR. KURTZ: Could I go after the company;  
23 your Honor?

24 EXAMINER PRICE: You may.

25 Mr. Kutik?

1                                   - - -

2                                   CROSS-EXAMINATION

3           By Mr. Kutik:

4                   Q.    Good afternoon, sir.

5                   A.    Good afternoon.

6                   Q.    Let's see if I can get a couple things  
7                   straight first off.  Your former employer was an  
8                   entity called Direct Energy, LLC, correct?

9                   A.    Correct.

10                  Q.    And there were two affiliates that Direct  
11                  Energy, LLC, had.  One was Direct Energy Services,  
12                  LLC, and another was Direct Energy Business, LLC,  
13                  correct?

14                  A.    Those were two affiliates.  If you're  
15                  saying that's all of them --

16                  Q.    No, I'm saying there were those two among  
17                  others.

18                  A.    Among others.

19                  Q.    And as far as you know, both of those  
20                  companies are certified to be CRES providers in the  
21                  state, correct?

22                  A.    Correct.

23                  Q.    But your direct employer, Direct Energy,  
24                  LLC, was not certified, correct?

25                  A.    I believe that's correct.

1           Q.    Now, you then left the Direct Energy  
2 family and you went to Calpine in April of this year,  
3 correct?

4           A.    Correct.

5           Q.    And so you were not then working for a  
6 business affiliated with a CRES provider until a week  
7 ago?

8           A.    Yeah, October 1st.

9           Q.    Okay. Now, you don't hold any positions  
10 in RESA, correct?

11          A.    No, I do not.

12          Q.    And until a couple weeks ago, maybe this  
13 week, last week, you were not -- or Calpine was not a  
14 member of RESA, correct?

15          A.    Correct.

16          Q.    And you don't hold an office or you're  
17 not on any committees at RESA?

18          A.    No, I'm not.

19          Q.    Now, would it be fair to say you don't  
20 have experience doing a forecast or projection of  
21 market prices, correct?

22          A.    Correct.

23          Q.    And you have not on a regular basis  
24 provided regulatory monitoring or advocacy services  
25 to your employers letting to Ohio, correct?

1           A.    I hate to do this, but can you repeat the  
2 question.

3                   (Record read.)

4           A.    Correct.  Sorry, Mr. Kutik.

5           Q.    We'll mispronounce each others' names and  
6 I will not be offended if you won't.

7           A.    Maybe we should go with first names.

8           Q.    Or sir.

9           A.    Sir.

10          Q.    You can call me counsel.  I can call you  
11 sir.

12                   Now, the first time that you knew  
13 anything about the possibility of testifying is when  
14 your counsel at Direct approached you and told you  
15 that they wanted you to testify?

16          A.    Correct.

17          Q.    And before then, you had not reviewed the  
18 companies' filings in this case, correct?

19          A.    That's correct.

20          Q.    In fact, you've mainly gained your  
21 understanding about what the companies are proposing  
22 through counsel and reading some of the companies'  
23 filings, correct?

24          A.    That's correct.

25          Q.    And you reviewed the companies'

1 application and some, but not all, of the companies'  
2 testimony, correct?

3 A. That is correct.

4 Q. And certainly you reviewed the documents  
5 that were cited in your testimony?

6 A. That's correct.

7 Q. But you don't recall reviewing any  
8 documentation that outlines what the proposed  
9 transaction between the companies or FES would be,  
10 correct?

11 A. I know there's a PPA, but I don't know,  
12 again, whether it's going to be allowed or not  
13 allowed or how it's allowed and those types of  
14 things.

15 Q. Let's get back to my question. My  
16 question was, you don't recall reviewing any  
17 documentation that outlines what the proposed  
18 transaction between the companies or FES would be,  
19 correct?

20 A. I think that's correct.

21 Q. Now, in coming to your opinions in this  
22 case, you did not speak with anyone from PJM,  
23 correct?

24 A. Not on this issue, correct.

25 Q. Or with the PJM market monitor, correct?

1           A.    That's correct.

2           Q.    And you don't specifically recall reading  
3   the ESP statute for purposes of your testimony or  
4   preparing your testimony?

5           A.    Correct.

6           Q.    And you don't know if there is a statute  
7   relating to anti-competitive subsidies, correct?

8           A.    I'm trying to remember the last time I  
9   talked to you. I might have come to an understanding  
10   that there is one.

11          Q.    Well, at the time that you wrote your  
12   testimony, would it be fair to say that you didn't  
13   know whether there was a statute relating to  
14   anti-competitive subsidies?

15          A.    Correct.

16          Q.    And do you believe that the ESP statute  
17   requires an ESP every three years, correct?

18          A.    Correct.

19          Q.    Now, you didn't do any modeling of rider  
20   RRS, correct?

21          A.    Did you say modeling?

22          Q.    Yes, I did.

23          A.    No, I did not do any modeling of RRS.

24          Q.    And you didn't develop any forecast of  
25   the prices or costs for purposes of this case for

1 rider RRS?

2 A. That's correct.

3 Q. You didn't do any modeling or forecasting  
4 of PJM, correct, for purposes of this case?

5 A. That's correct.

6 Q. And you're certainly not an expert in the  
7 Ohio retail electric market?

8 A. That's correct.

9 Q. You don't have any opinions as to the  
10 competitiveness of the Ohio retail market, correct?

11 A. Based on data, no. I more look at rules  
12 and how they interact with the competitiveness in an  
13 area.

14 Q. So the answer to my question is yes?

15 A. I think so.

16 Q. You haven't reviewed and are not familiar  
17 with the amount of shopping that takes place in Ohio,  
18 correct?

19 A. No.

20 Q. What I said was correct?

21 A. Correct. Thank you.

22 Q. And you haven't reviewed any filings in  
23 prior ESPs, correct?

24 A. For Ohio?

25 Q. Yes.

1           A.    Correct.

2           Q.    Now, your job, at least at Direct Energy,  
3 did not include working with retail customers  
4 directly, correct?

5           A.    Typically not.

6           Q.    And you've done no research in retail  
7 customer preferences, correct?

8           A.    No research as I would use the word  
9 "research."

10          Q.    And you're not aware of any studies on  
11 retail customer preferences, correct?

12          A.    I may be aware of studies.  I may have  
13 read something, but I'm certainly not -- I can't cite  
14 what those examples would be, but I'm sure I probably  
15 read things over the years.

16          Q.    None come to mind that you could talk  
17 about intelligently today, correct?

18          A.    Correct.

19          Q.    And you have very limited knowledge of  
20 the products offered, for example, by Direct Energy  
21 affiliates in Ohio, correct?

22          A.    I have no direct knowledge of the  
23 products offered?

24          Q.    No.  I said you have very limited  
25 knowledge.



1           A.    Oh, yes, correct.

2           Q.    Now, I want to talk to you a little bit  
3    about what you understand about the companies'  
4    proposals in this case.  You believe that the  
5    companies are seeking approval of a PPA, correct?

6           A.    I probably read a little bit into that  
7    statement.  I believe they're seeking approval of the  
8    PPA costs to be passed on to the end distribution  
9    customers.

10          Q.    Is the answer to my question yes?

11               MR. PETRICOFF:  Objection, your Honor.  
12   He answered the question.

13               MR. KUTIK:  I'm not sure he did, your  
14   Honor.  That's why I'm asking the question again.

15               EXAMINER PRICE:  Objection is overruled.  
16   Please go ahead and answer the question.

17               THE WITNESS:  Can you repeat the question  
18   again?

19               EXAMINER PRICE:  The question is, is the  
20   answer to my question yes.

21               MR. PETRICOFF:  Your Honor, may I have  
22   the question before that question read back?

23               MR. KUTIK:  I can repeat it, your Honor.

24          Q.    (By Mr. Kutik) Isn't it true that you  
25   believe the companies are seeking approval of the

1 PPA?

2 A. No, not without the other context that I  
3 provided. I think if somebody asked me that  
4 question, I would read the rest of what I said  
5 before.

6 MR. KUTIK: Okay. May I approach, your  
7 Honor?

8 EXAMINER PRICE: You may.

9 Q. Sir, I've handed you what appears to be a  
10 transcript from a deposition that I took of you on  
11 February 4, 2015.

12 MR. PETRICOFF: Your Honor, may I have a  
13 moment to get my copy of the transcript?

14 EXAMINER PRICE: You may.

15 MR. PETRICOFF: I'm ready now.

16 Q. Is that correct, sir?

17 A. That's correct.

18 Q. And you recall having your deposition  
19 taken, correct?

20 A. Correct.

21 Q. And at that deposition, you swore an oath  
22 to tell the truth?

23 A. Yes.

24 Q. And at the deposition, I asked you  
25 whether you wanted to take the opportunity after the

1 deposition was transcribed to read the record and  
2 make any corrections?

3 A. Correct.

4 Q. And you took that opportunity; did you  
5 not?

6 A. I did.

7 Q. Now, I want to refer you, sir -- I want  
8 to refer you, sir, to page 78 of your deposition.  
9 Are you there?

10 A. Not yet. Yes, sir.

11 Q. Starting at line 1, did you not answer  
12 the following questions the following way:

13 Question: "All right. Now, I want to  
14 ask you a question. I want to ask you a little about  
15 what -- about your understanding about what the  
16 companies have proposed. In this case is it your  
17 understanding that the companies are seeking approval  
18 of a purchase power agreement?"

19 Answer: "Yeah, I would call it a  
20 purchase power agreement, yeah."

21 Question: "So the answer is yes?"

22 Answer: "Yes."

23 That was your deposition testimony,  
24 correct?

25 A. Correct.

1           Q.    Thank you.  Now, you believe that the  
2           companies proposed to have the PUCO set or approve  
3           the price to be paid under the proposed PPA, correct?

4           A.    The price under the PPA is not specified  
5           until after -- until after you estimate it for each  
6           year, and then there's a true-up with it.  So I'm  
7           not -- I don't think there's an actual dollar figure  
8           upfront that you see.

9           Q.    But RRS, as far as you're concerned, will  
10          set the price that the companies will pay FES in the  
11          future if approved, correct?

12          A.    Yeah.  It will determine the payments.

13          Q.    So the answer is yes?

14          A.    I'm worried about the last one where I  
15          read into your question and you missed a piece of it,  
16          so I'm trying to make sure I understand your question  
17          and add what my interpretation of your question is.

18          Q.    So, again, the answer to my question is  
19          yes?

20          A.    No.  The answer is what I provided  
21          earlier.

22          Q.    Let me refer you again to your  
23          deposition, sir.  And let me refer you specifically  
24          to page 78 again.

25          A.    Okay.

1           Q.    Did you not give the following answer to  
2   the following question starting at line 23 on page  
3   78.

4                   Question:  "All right.  So your  
5   understanding is the companies propose that the PUCO  
6   set the price that FES, FirstEnergy Solutions, would  
7   pay the companies, correct?"

8                   Answer:  "Not at this -- they will not do  
9   that at this point, but at some point in the future  
10  after they have already agreed to the concept, they  
11  will."

12                   Was that your answer, sir?

13           A.    Yes, that's consistent with my answer  
14  here.

15           Q.    Well, we can agree to disagree on that,  
16  sir.  You believe that the companies would have no  
17  risk of nonrecovery under this proposal, correct?

18           A.    I believe they would have no risk of  
19  nonrecovery for costs that are, I guess, within  
20  normal costs, prudent-type costs, obviously, the  
21  prudency-type review.  But assuming that they do  
22  everything reasonably, using terminology I know,  
23  according to good utility practice and all that,  
24  which may not be optimal, which is good utility  
25  practice, it may not be good as a competitive market

1 would produce, yes, I think they would recover  
2 100 percent.

3 Q. All right. So there is a risk, however,  
4 that the Commission could find that certain costs  
5 that the companies paid FES were not reasonable,  
6 correct?

7 A. There is a risk.

8 Q. And if that happened, the companies then  
9 would not recover that portion of the costs that they  
10 paid to FES, correct? That's how you understand it  
11 works, right?

12 A. Correct.

13 Q. Now, you understand that the companies  
14 propose, as we just talked about, the PUCO would have  
15 a right to audit the PPA's cost, correct?

16 A. Correct.

17 Q. But you think if the PUCO said that the  
18 costs were improper, the companies wouldn't have to  
19 pay FES for those costs, correct?

20 A. Yeah, in very general-speak.

21 Q. Now, you don't know whether under the  
22 companies' proposal, the Commission would have the  
23 ability to review the companies' bidding behavior,  
24 that is, how the plant's output was offered into the  
25 PJM markets, correct?

1           A.     Correct.

2           Q.     But you understand that the companies do  
3     not propose that the PUCO establish or order the  
4     manner in which the plants' capacity or energy would  
5     be bid into the markets?

6           A.     Yes.

7           Q.     You understand that the companies will be  
8     offering capacity, energy, and ancillary service into  
9     those respective markets, correct?

10          A.     Yes.

11          Q.     And you don't know who owns the plants;  
12     is that correct?

13          A.     Not 100 percent certain, especially about  
14     the OVEC plants.

15          Q.     All right. And you don't know if the  
16     companies propose one contract or more than one  
17     contract, correct?

18          A.     I do not know.

19          Q.     You understand that the energy purchased  
20     under the proposed transaction would not be used by  
21     the companies to displace SSO load procured during  
22     the auction, correct?

23          A.     I might have to rethink that one a little  
24     bit.

25                 Could the reporter read it back one more

1 time just to make sure I don't answer this  
2 incorrectly?

3 EXAMINER PRICE: Yes, please.

4 (Record read.)

5 A. When you say "energy," you're talking  
6 capacity energy or just energy?

7 Q. Energy.

8 A. Yes.

9 Q. And you also understand that the energy  
10 purchased by the companies would not be directly  
11 provided to shopping customers?

12 A. Not directly, correct.

13 Q. Would it be fair to say that you don't  
14 know if FES would be required under the proposed  
15 transaction to use good utility practices?

16 A. It would be fair to say I don't know  
17 that, but it would also be fair to say that most  
18 things that you see written in the industry usually  
19 refer to good utility practice.

20 Q. But you don't know?

21 A. I don't know.

22 Q. And you don't know whether if FES failed  
23 to do so, the companies would not be obligated to pay  
24 for any costs relating to those practices that were  
25 not consistent with good utility practice?



1           A.    Yeah, I don't know what the causes are  
2           for that.

3           Q.    And would it be fair to say that you  
4           don't know if FES would be required under the  
5           proposed transaction to pay upfront for any capital  
6           expenditures?

7           A.    No, I would not know that.

8           Q.    And you don't know whether FES would be  
9           prohibited under the proposed transaction from  
10          accelerating depreciation unless the companies  
11          agreed?

12          A.    No, I would not know that either.

13          Q.    Now, regarding rider RRS, you understand  
14          that it's a generation-related rider, correct?

15          A.    Yes.

16          Q.    And if capacity prices went up, the rider  
17          RRS charge would move in a positive direction for  
18          customers, correct?

19          A.    The RRS is related to energy and  
20          capacity. So if the capacity went in one direction  
21          so that the resources cleared more money there and  
22          you still have to look at the energy market, the  
23          capacity markets is less than 20 percent of the  
24          marketplace. The energy and ancillary services are  
25          the bulk.

1           Q.    Let me refer you to your deposition, sir,  
2           page 91.

3                   Did you not give the following answer to  
4           the following question starting at line 2:

5                   Question:  "That's correct.  So that if  
6           capacity prices went up, the way the companies have  
7           proposed how rider RRS would work, the rider RRS  
8           charge would move in a positive direction for  
9           customers?"

10                  Answer:  "Correct."

11                  That was your deposition testimony,  
12           correct?

13           A.    It has to be taken in context with line  
14           9 --

15           Q.    Is that your deposition testimony, sir?

16                   MR. PETRICOFF:  Your Honor, he's allowed  
17           to finish.

18                   EXAMINER PRICE:  Number one, go ahead and  
19           finish your answer.

20           A.    It has to be taken in context with line 9  
21           on page 90.  Just because the price of capacity  
22           market goes up doesn't mean that the costs of the  
23           units weren't out of market.  You would have to go  
24           above a certain level is another reason.

25           Q.    Are you done?

1 MR. PETRICOFF: Move to strike, your  
2 Honor.

3 EXAMINER PRICE: Grant the motion to  
4 strike.

5 You need to listen carefully to counsel's  
6 questions and answer the question and only that  
7 question. On redirect, Mr. Petricoff will have a  
8 chance to ask any questions that might give the  
9 Commission the context that you feel the Commission  
10 should know or any other information you think the  
11 Commission should know about the answer.

12 Q. So I read that correctly, correct?

13 A. You read my deposition correctly.

14 Q. Now, I'm going to ask you some questions  
15 about PJM. Would it be fair to say that easily  
16 160,000 megawatts of generation have been bid into  
17 the PJM auctions for planning years 2015-'16 and  
18 later?

19 A. I believe that's the approximate number,  
20 yes.

21 Q. And you are familiar with the term  
22 "regulated generation," are you not?

23 A. Yes.

24 Q. And would it be fair to say that  
25 regulated generation would include generation owned

1 by vertically integrated utilities within PJM's  
2 footprint but also located in nonretail choice  
3 states?

4 A. Yes.

5 Q. And those generators are receiving  
6 generation-related compensation through bundled  
7 retail rates, correct?

8 A. Correct.

9 Q. And part of the rates paid by  
10 distribution customers would, therefore, include a  
11 generation-related component, correct?

12 A. I don't know how the individual retail  
13 rates are structured, if they put that into an  
14 individual component or if they bundle it with  
15 something else.

16 Q. But in some part of the overall rates  
17 that are paid by those customers would be generation  
18 cost recovery?

19 A. Correct.

20 Q. And you also understand that some of the  
21 generation that's owned by that regulated generation  
22 that appears in PJM is bid into the PJM markets,  
23 correct?

24 A. Correct.

25 Q. And with respect to the regulated

1 generation in PJM, Virginia Power or Dominion is one  
2 example, correct?

3 A. Correct.

4 Q. Now, would it also be fair to say that  
5 there is also plenty of generation PJM that offers  
6 into the RPM auctions at zero?

7 A. Yes.

8 Q. And you would think that over -- or you  
9 believe that over 50 percent of the generators do  
10 that, correct?

11 A. That would be reasonable, yes.

12 Q. Now, I want to talk to you a little bit  
13 about your comments on the minimum offer pricing  
14 rule. You follow FERC's orders on that; do you not?

15 A. Yeah. I follow the outcome of them as  
16 far as the concepts are concerned and how they relate  
17 to business rules for us to follow, not the legality  
18 of it.

19 Q. Sure. And you understand that the MOPR  
20 currently does not apply to nuclear or coal  
21 facilities, correct?

22 A. I might be incorrect then, because I  
23 thought it applied to coal facilities, new coal  
24 facilities.

25 Q. All right. So you believe that it

1 currently does not apply to nuclear facilities; is  
2 that correct?

3 A. I think it would probably apply to a new  
4 nuclear facility, but I may be wrong.

5 MR. KUTIK: May I approach, your Honor?

6 EXAMINER PRICE: You may.

7 MR. KUTIK: Your Honor, I'd like to hand  
8 to the witness -- I don't intend to mark this,  
9 because I believe it's something the Commission could  
10 take administrative notice of -- an order of the  
11 Federal Energy Regulatory Commission In the Matter of  
12 the PJM Interconnection, LLC, and PJM Power Providers  
13 Group versus PJM Interconnection, LLC, FERC Docket  
14 Number ER11-2875-000, et al., an order issued on  
15 April 12, 2011.

16 Q. (By Mr. Kutik) Sir, I've handed you the  
17 order that I've just described. You recognize this  
18 as an order of the FERC?

19 A. Yes.

20 Q. And I want to refer you to page 7. Are  
21 you there, sir?

22 A. Yes, I am.

23 Q. And I want to refer you specifically to  
24 page -- to footnote 16. Do you see that?

25 A. Yes, I do.

1           Q.    Does that refresh your recollection as to  
2 whether the MOPR applies to nuclear coal facilities?

3           MR. PETRICOFF:  Your Honor, I want to  
4 object.  At this point it's the -- the foundation  
5 question was did you recognize this as an order of  
6 the Federal Energy Regulatory Commission?  But we  
7 don't know whether he has seen this, read this, or  
8 understood it, and it's unfair to give him something  
9 that he doesn't know and then ask him questions from  
10 specific pages.

11          MR. KUTIK:  I merely asked if it  
12 refreshed his recollection, your Honor.  Apparently  
13 he was having problems with recalling what the detail  
14 of the rule was.

15          MR. PETRICOFF:  The point was he hasn't  
16 said yet whether he recognized this.

17          MR. KUTIK:  He doesn't have to recognize  
18 it.

19          EXAMINER PRICE:  Let's allow the  
20 refreshed recollection question, and then we'll go on  
21 from there.

22          A.    I appreciate showing me this.  No, I did  
23 not realize this.

24          Q.    Okay.  So it does refresh your  
25 recollection, sir, that the MOPR does not apply to

1 nuclear, coal facilities?

2 A. Yes.

3 Q. Would it also be true to say the MOPR for  
4 such facilities is set at zero?

5 MR. PETRICOFF: Can I get a clarification  
6 as to what facilities?

7 MR. KUTIK: Coal and nuclear.

8 A. I think it's -- based on what you just  
9 showed me, I think the answer is yes, but MOPR  
10 currently only applies to new generation.

11 Q. And you've anticipated my next question.  
12 Would it be fair to say that the MOPR does not apply  
13 to existing generation facilities?

14 A. Correct.

15 Q. And would it be fair to say that in April  
16 of 2011, PJM proposed extending the MOPR for all new  
17 resources after the BRA in which the resource first  
18 cleared? Do you recall that?

19 A. Yes, I recall that.

20 Q. And the Commission rejected that,  
21 correct, the FERC?

22 A. I don't recall if I've ever seen it, but  
23 I believe you if you're implying that it did.

24 Q. Well, let me see if I can refresh your  
25 recollection again.



1           A.    I appreciate that.

2           Q.    Could you look at page 52 of the  
3 April 12, 2011 order that I just handed you.

4           A.    Page which one?  Which page?

5           Q.    52.

6           A.    52.

7           Q.    In paragraph 172 to 174.  And the  
8 Commission found that PJM's proposed revision was not  
9 just and reasonable?

10          A.    Correct.

11               EXAMINER PRICE:  Excuse me, Mr. Kutik.

12               Are you having your recollection  
13 refreshed, or are you learning new things?

14               THE WITNESS:  As far as in the  
15 stakeholder process where that issue is discussed, I  
16 know all about it, and I know the stakeholders wanted  
17 to change it.  I know the market monitor wanted to  
18 change it.

19               Once it was filed at FERC, I'm learning  
20 new things on what rulings necessarily came out.  
21 Usually if a ruling comes out requiring us to do  
22 something, then it comes back to the stakeholder body  
23 and I see it again, and then we have to figure out  
24 how to implement the order.  If it doesn't get  
25 approved, it doesn't necessarily come back to me to

1 figure out how to implement it with the other  
2 stakeholders in PJM.

3 Q. (By Mr. Kutik) Now, are you aware also  
4 that the FERC again considered proposals to revise  
5 the MOPR in 2013?

6 A. There was at least two times, so, yeah,  
7 2013 is probably correct.

8 Q. And one of those proposals was to include  
9 it extending the mitigation period, correct?

10 A. Correct.

11 Q. And that was also rejected, correct?

12 A. Correct.

13 Q. Now, I want to talk to you about your  
14 comments about what happened -- or your comments  
15 about what you believe PJM would do if the Commission  
16 here approves the companies' ESP; in particular, you  
17 said that with respect to PJM's response to what  
18 happened in New Jersey and Maryland.

19 Would it be fair to say that in both of  
20 those states, it was proposed or established that the  
21 generator would be in charge of bidding the capacity  
22 and energy into the wholesale market?

23 A. They would be in charge of it, but they  
24 would be directed to put it -- to offer it in in such  
25 a way that it cleared.

1           Q.    And in both states, the generator was  
2           required to bid the capacity in a certain way that  
3           you just mentioned, correct?

4           A.    Correct.

5           Q.    And in both states the rules establish a  
6           specific price or formula by which the generation  
7           would be paid, correct?

8           A.    You mean outside the capacity market,  
9           correct?

10          Q.    Yes.

11          A.    Yes.

12          Q.    And in both states, the generation was  
13          going to be new generation?

14          A.    Correct.

15          Q.    Now, it's also fair to say that in April  
16          of 2011, the FERC decided to eliminate the exception  
17          for state-mandated generation to some degree,  
18          correct?

19          A.    Correct.

20          Q.    And the FERC was still concerned about,  
21          quote, uneconomic entry, correct?

22          A.    Correct.

23          Q.    And that means new facilities, correct?

24          A.    It means uneconomic new facilities.

25          Q.    Now, the FERC has never suggested or made

1 any effort to apply MOPR to existing facilities,  
2 correct?

3 A. Not in PJM, but I don't know elsewhere.

4 Q. Fair enough. And FERC has not approved  
5 any effort to require -- well, strike that.

6 I want to talk to you a little bit about  
7 the polar vortex. You don't know what FirstEnergy  
8 plants were out during the polar vortex, correct?

9 A. I'm not sure of all the plants that were  
10 out during the polar vortex, and the polar vortex  
11 wasn't one day; but since then, I've heard of a  
12 couple that have been out.

13 Q. Well, certainly you didn't know what  
14 FirstEnergy plants were out during the polar vortex  
15 when you wrote your testimony, fair to say?

16 A. Yes.

17 Q. And PJM has put -- has, in fact, adopted  
18 proposals to change the rules as a result of the  
19 polar vortex, correct?

20 A. Yes.

21 Q. And, particularly, that's the capacity  
22 performance rules, correct?

23 A. And another filing that they did at FERC,  
24 I don't know the docket numbers, but they changed  
25 requirements about things like outside management

1 control excuses for not being there, but it wasn't  
2 actually the CP filing. So they've done a few  
3 things.

4 MR. KUTIK: Your Honor, may I have the  
5 question reread, please?

6 EXAMINER PRICE: You may.

7 (Record read.)

8 MR. KUTIK: And the answer, please?

9 (Record read.)

10 MR. KUTIK: Move to strike, your Honor.

11 MR. PETRICOFF: Your Honor, if I may, I  
12 think he's merely completing the answer to the  
13 concept that they were looking at, what is being  
14 covered by the CP rules, and he's indicating there's  
15 important information that's relevant to what is in  
16 and out, but it's not in the CP rule, per se.

17 EXAMINER PRICE: I'm going to avoid  
18 answering by invoking the one Mulligan for this  
19 particular witness.

20 But in the future, if you could please  
21 focus on counsel's question and answer only that  
22 question.

23 THE WITNESS: I will try my best.

24 Q. (By Mr. Kutik) So let's go back to my  
25 question, which is isn't it true that one of the

1 proposals that was created as a result of the polar  
2 vortex was the capacity performance proposal, which  
3 ultimately became the capacity performance rule,  
4 correct?

5 A. That question, correct.

6 Q. There's also a proposal to change the  
7 offer cap to a percentage of net CONE, correct? To,  
8 I guess I should say, a higher percentage of net  
9 CONE, correct?

10 A. Correct.

11 Q. And you believe that these proposals and  
12 this rule will put upward pressure on capacity  
13 prices, correct?

14 A. Correct.

15 Q. You would agree with me that the  
16 overwhelming majority of retirements in PJM in the  
17 last five years have been coal-fired, correct?

18 A. Correct.

19 Q. You would also agree with me that the  
20 overwhelming additions in PJM in the last five years  
21 have been gas-fired units, correct?

22 A. Correct.

23 Q. And would you also agree with me that gas  
24 plants represented proportionately a higher  
25 percentage of plants with problems during the polar

1 vortex than other fuel-type plants?

2 A. Correct.

3 Q. You are aware, are you not, of some  
4 hedging strategies for retail electric service  
5 providers, correct?

6 A. Correct.

7 Q. And you know what they were for at least  
8 three of your employers, Baltimore Gas & Electric,  
9 Old Dominion Electric Cooperative and Direct Energy,  
10 correct?

11 A. Yes.

12 Q. And I assume that you've become aware of  
13 hedging strategies at your new employer, Calpine?

14 A. No, I have not.

15 Q. You were at least aware of hedging  
16 strategies of the three other employers that you  
17 have. And would it be fair to say that you don't  
18 know for sure what other companies do with respect to  
19 their hedging strategies?

20 A. I believe that's correct.

21 Q. And one strategy that you're aware of is  
22 long-term bilateral contracts for fuel?

23 A. Correct.

24 Q. Another strategy is relying on your  
25 own -- or that entity's own generation?

1 A. Correct.

2 Q. Another strategy is buying futures?

3 A. Correct.

4 Q. But NYMEX and other exchanges don't go  
5 out very far, correct?

6 A. Correct.

7 Q. And your understanding is that the NYMEX  
8 futures market is generally illiquid beyond three  
9 years?

10 A. Correct.

11 Q. Now, you're not an economist, are you?

12 A. No, I'm not.

13 Q. And you've never done a market power  
14 analysis for purposes of this case?

15 A. No, I have not.

16 Q. And you don't know if FES has been able  
17 to exercise market power, correct?

18 A. No.

19 Q. Now, for the ATSI region, you don't  
20 consider that to be a separate market, correct?

21 A. No.

22 Q. What I said was correct?

23 A. No, what you said is incorrect.

24 Q. Let me refer you, sir, to your  
25 deposition, page 136.



1 MR. PETRICOFF: 136?

2 MR. KUTIK: Yes.

3 Q. Let me know when you're there, please.

4 A. I'm at page 136.

5 Q. And did you not provide the following  
6 answer to the following question starting at line 24  
7 at page 136:

8 Question: "Would you consider ATSI to be  
9 a separate market?"

10 Answer: "No."

11 That was your deposition testimony, was  
12 it not?

13 A. Correct.

14 MR. KUTIK: May I approach, your Honor?

15 EXAMINER PRICE: You may.

16 MR. KUTIK: Your Honor, we would like to  
17 have marked for identification as Company Exhibit 81  
18 an article from the Harvard Business Review called  
19 "The Five Competitive Forces that Shape Strategy," by  
20 Michael E. Porter.

21 EXAMINER PRICE: It will be so marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Now, sir, in your testimony, you refer to  
24 something called Porter's five forces, correct?

25 A. Correct.

1 Q. And that Porter is Michael E. Porter,  
2 correct?

3 A. Correct.

4 Q. You are familiar or you've seen this  
5 article before from Professor Porter?

6 A. I believe so.

7 Q. And between Professor Porter and you,  
8 would he be more authoritative as to what those  
9 forces are and how they should be used?

10 A. No.

11 Q. Okay. So you think that you're more of  
12 an authority on Porter's five forces than Professor  
13 Porter; is that your testimony?

14 A. No. You said in how they're used.

15 Q. Okay. So in terms of how they should be  
16 used, you would be more authoritative than Professor  
17 Porter; is that your testimony?

18 A. Not how they should be used, but how they  
19 are used, which I think is your original question.

20 Q. No. My question is how they should be  
21 used. Are you more authoritative than Professor  
22 Porter on how Porter's five forces should be used?

23 A. Should be used?

24 Q. Yes.

25 A. In a general context.

1 Q. In any context.

2 A. To say yes and no. In a general sense,  
3 he's more authoritative, and in a detailed sense as  
4 far as applying them to the industry where you have  
5 knowledge of the different forces at play, the person  
6 in that market, industry, would be more  
7 authoritative.

8 Q. Okay. But in terms of how the analysis,  
9 the general structure of the analysis, you would  
10 concede that Professor Porter be more authoritative  
11 than you?

12 A. Yes.

13 Q. Now, would it be fair to say that these  
14 forces that Professor Porter describes help companies  
15 understand the structure of an industry and stake out  
16 a position that is more profitable and less  
17 vulnerable to attack?

18 A. In a general sense, yes, but I'm not sure  
19 if it's granular enough to say that.

20 Q. So you're generally agreeing with my  
21 proposition?

22 A. Probably the market within the industry.

23 Q. Well, let me refer you, sir, to page 2 of  
24 this document, the page that's numbered 2. You  
25 state -- you see the top, sir, there's a statement

1       that says, "awareness of the five forces can help a  
2       company understand the structure of its industry and  
3       stake out a position that is more profitable and less  
4       vulnerable to attack."

5             A.     I see that.

6             Q.     Would you agree with that?

7             A.     Yes.   From a general high level, yes.

8             Q.     Would you also agree that good industry  
9       analysis does not just list pluses or minuses, but  
10      sees an industry in overall systemic terms?

11            A.     Yes.

12            Q.     And when using Porter's five forces,  
13      analysts look at industry structure quantitatively  
14      rather than be satisfied with lists of quantitative  
15      factors?

16            A.     Yeah, I believe that.

17            Q.     Now, defining the industry is important  
18      when using Porter's five forces, correct?

19            A.     Correct.

20            Q.     And the industry here is the PJM  
21      wholesale market for electricity, correct?

22            A.     That's the market in the industry.

23            Q.     So the answer to my question is yes?

24            A.     No.

25            Q.     Let me refer you to your deposition, sir,

1 page 167. Are you there, sir?

2 A. Not yet. One second. I am there.

3 Q. Did you not give the following answers to  
4 the following questions starting at line 16:

5 Question: "In your testimony when you  
6 are discussing Porter's five factors, what industry  
7 are you discussing?"

8 Answer: "We're discussing market models  
9 within the electric utility industry."

10 Question: "Okay. Are you talking about  
11 the wholesale market for electricity?"

12 Answer: "Yes."

13 Question: "Are you talking about the PJM  
14 wholesale market for electricity?"

15 Answer: "Yes."

16 That was your deposition testimony, was  
17 it not?

18 A. Correct.

19 Q. And you would agree with me, would you  
20 not, that wholesale power is not a substitute for  
21 wholesale power?

22 A. I don't think that that's -- you just  
23 want me to say yeses and nos. Can you repeat the  
24 question again?

25 Q. Wholesale power is not a substitute for

1 wholesale power?

2 A. Wholesale power can be a substitute for  
3 wholesale power.

4 Q. Let me refer you to your deposition, sir,  
5 page 168. Did you not give the following answer to  
6 the following question starting at line 16:

7 Question: "That wasn't my question. My  
8 question is, is he -- is a substitute for wholesale  
9 electric power wholesale electric power?"

10 Answer: "No."

11 That was your deposition testimony, was  
12 it not?

13 A. Yes.

14 Q. Now, would it also be fair to say that  
15 customers of wholesale power in PJM are the LSEs?

16 A. Largely, yes.

17 Q. And the bargaining power of load-serving  
18 entities is influenced by the PJM's rules, correct?

19 A. Yes.

20 Q. And suppliers to generators would be  
21 entities like fuel suppliers or suppliers of  
22 machinery for plants, correct?

23 A. I apologize. I zoned out for a second.  
24 I was thinking about the last question.

25 Q. Sure. Can it be read, please, your

1 Honor?

2 EXAMINER PRICE: Yes.

3 (Record read.)

4 A. Correct.

5 Q. Now, on a different topic, you're  
6 familiar with the RMR process, correct?

7 A. A level of familiarity.

8 Q. You have a general familiarity?

9 A. Yes.

10 Q. And you understand that part of that is a  
11 notice requirement that a generator must give PJM  
12 before the unit retires, correct?

13 A. Correct.

14 Q. And that's a three-month requirement,  
15 correct?

16 A. Correct.

17 Q. And you don't know if the PUCO could  
18 require a longer notice period, correct?

19 A. No, I don't know.

20 Q. And you would agree with me, would you  
21 not, that Ohio has a role to play in the development  
22 of generation within its borders?

23 A. Yes.

24 Q. And a state might have an interest in  
25 having a generation plant with the jobs that a

1 generation plant would support, correct?

2 A. I assume they would.

3 Q. And a state might also have an interest  
4 in reliability for its citizens, correct?

5 A. Yes.

6 MR. KUTIK: May I have a minute, your  
7 Honor?

8 EXAMINER PRICE: You may.

9 Q. Is it your understanding, sir, that the  
10 RMR is voluntary?

11 A. Yes.

12 MR. KUTIK: I have no further questions.  
13 Thank you, sir.

14 EXAMINER PRICE: Thank you.

15 Mr. Kurtz?

16 MR. KURTZ: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Kurtz:

20 Q. Good afternoon, sir.

21 A. Hi. How are you doing?

22 Q. To the best of your knowledge, in New  
23 Jersey and Maryland schemes, scenarios that you refer  
24 to in your testimony, would you agree that the  
25 purpose of those programs was to affect wholesale



1 capacity pricing?

2 A. That is my opinion, but I can't -- I  
3 think that's what you're asking me. If you're asking  
4 me do I have proof of that, no, I do not.

5 Q. Is that your understanding of why the  
6 stakes did that, to reduce capacity pricing in those  
7 zones?

8 A. It's more my theory than understanding.

9 Q. Okay. What is the purpose of the minimum  
10 offer price rule?

11 A. It's to prevent market power by buyers to  
12 artificially drive down the costs that the overall, I  
13 guess, market entity is paying by actually spending  
14 money on a resource and offering it in below its  
15 actual costs.

16 Q. I think you agreed with Mr. Kutik that  
17 the minimum offer price rule does not apply to any  
18 existing power plants?

19 A. Correct.

20 Q. And the minimum offer price rule does not  
21 apply to new wind generation?

22 A. Correct.

23 Q. Does not apply to new solar?

24 A. Correct.

25 Q. Does not apply to new coal?

1 A. Correct.

2 Q. And it basically only applies to new gas  
3 combustion turbines and combined cycles, correct?

4 A. Correct.

5 Q. Calpine Corporation, your current  
6 employer, is a major owner of merchant power plants;  
7 is that correct?

8 A. Yes.

9 Q. All else equal, would an increase in  
10 capacity pricing in the PJM markets increase  
11 Calpine's profits?

12 MR. PETRICOFF: Your Honor, I'm going to  
13 object. He's not here on behalf of Calpine.

14 Q. Who are you here on behalf of?

15 A. RESA.

16 MR. KUTIK: Well, your Honor, it goes to  
17 credibility.

18 MR. KURTZ: I'll just change the  
19 examples.

20 Q. Do any of the RESA members own  
21 generation, or was that just the P3 Group in this  
22 proceeding?

23 A. You know, I'm not sure if some of the  
24 RESA members -- oh, wait. Yeah, some of them do.

25 Q. Okay. As to those RESA members that own

1 generation, would an increase in wholesale capacity  
2 pricing improve their profits, all else equal?

3 A. All else equal, yes.

4 Q. And then by the same token, an increase  
5 in wholesale capacity prices would drive up rates  
6 that consumers ultimately pay, all else equal?

7 A. No, not necessarily, because you used the  
8 word "ultimately," because ultimately implies  
9 long-term.

10 Q. No. I meant if the cost of capacity goes  
11 up that the load-serving entities have to pay to  
12 provide service, wouldn't that result in higher  
13 prices to consumers?

14 A. No, not necessarily in the long term,  
15 because the capacity construct is constructed in  
16 behavior that actually -- when you get more  
17 generation in the capacity market, especially  
18 reliable generation -- I'm going off topic. Do you  
19 want me to keep going?

20 Q. Not in the long term, but in the short  
21 term certainly would raise prices on consumers,  
22 correct?

23 A. Correct.

24 Q. You mentioned there's 900 stakeholders in  
25 the PJM process.

1           A.    Over 900.

2           Q.    What committees are you on?

3           A.    I'm on quite a few. I probably can't  
4 recall them all. Now, although there's 900 members,  
5 I will point out they don't necessarily all go to all  
6 the meetings, but there's a lot there. The members  
7 committee is the highest level committee at PJM. I'm  
8 on that, and the committee below --

9           Q.    Stop there. How many members are on the  
10 member committee?

11          A.    The member committee is made up of voting  
12 members as opposed to members. Voting -- well,  
13 members attend too, but the voting members are what  
14 we kind of count. Voting members -- I'm not sure. I  
15 think it's 200 something.

16          Q.    So whenever there's an important  
17 proposal, those 200 members vote yes or no on the  
18 proposal?

19          A.    If they show up, yeah.

20          Q.    So are there -- when there's a member  
21 committee meeting, how many members typically show up  
22 for an important meeting?

23          A.    Well, there's two -- I'm sorry. I forgot  
24 the question.

25          Q.    How many members show up to an important

1 member meeting typically?

2 A. Let me see. I've never looked around to  
3 count it. There's two ways of showing up. One is  
4 via teleconference, and the other way is in person.  
5 I think for a typical MC, probably see, I'm guessing,  
6 maybe 80 or so voting members.

7 Q. So there's a very large conference room  
8 and some people participate by teleconference?

9 A. Correct.

10 Q. Okay. And so during an important vote,  
11 do you confer with other members to see how they're  
12 going to vote and how you're going to vote? Is there  
13 any prohibition against that?

14 A. There's no prohibition against that.

15 Q. So is there a certain amount of  
16 negotiation that goes on?

17 A. Yes.

18 Q. Why do people refer to the PJM capacity  
19 process as a market?

20 A. They don't. They do sometimes, but when  
21 you get down to the details of it, most people refer  
22 to it as a capacity construct.

23 Q. Okay. Because it isn't really a true  
24 market. It's maybe a construct intended to get to  
25 market-based results, but it's not a market like

1       there was a market for most products?

2               A.    No.  You have a supply stack in the  
3       capacity market which is like a typical market, but  
4       only in some respects.  Most of the time, the  
5       capacity market -- I call it market.  If I misuse the  
6       terms, I apologize, but that's how we all just talk  
7       nowadays.

8               So with the capacity, you get a supply  
9       stack, and even that is usually cost-mitigated  
10      offers.  If you had a true market, you would have  
11      competitive forces disciplining those offers which  
12      would lead to the need for less cost capping.

13              I think there's been two incremental  
14      auctions where they actually had the supply stack,  
15      not BRAs but incremental auctions where they actually  
16      had a supply stack where you weren't cost mitigated,  
17      which would be more market-like.  And then the other  
18      reason it's more of a construct, which is what most  
19      people refer to, is because the demand curve is  
20      administratively set.

21              Q.    Is the starting point for the demand  
22      curve, the administratively set demand curve, the net  
23      CONE?

24              A.    CONE.  It's cost of new entry.

25              Q.    Is that the starting point for the

1 development of the demand curve?

2 A. It is on the Y axis, but not on the X  
3 axis.

4 Q. Net CONE is the net cost of new entry, so  
5 it's the cost of a combined cycle plant, the capital  
6 cost, the property taxes, the carrying charges, the  
7 depreciation, less forecasted market revenues for  
8 energy and capacity?

9 A. Yeah. They do a hypothetical reference  
10 resource to determine that. It's not always a CC,  
11 though. Sometimes it's a CT.

12 Q. I said combustion turbine. If I said --

13 A. It's not always a CT then. Sometimes  
14 it's a CC.

15 Q. Which would change all the economics?

16 A. Actually, I don't personally -- I mean  
17 I'm not an analyst I think as someone was pointing  
18 out earlier. But it doesn't appear to me that it  
19 changes things a whole lot between which one you  
20 pick.

21 Q. So is it fair -- the administratively  
22 determined demand curve, is it fair to say that  
23 dozens or scores or hundreds of assumptions go into  
24 that?

25 A. I'm thinking through what they are. Just

1 give me a second.

2 Q. Just as to net CONE, wouldn't it be fair  
3 that there are dozens or scores of assumptions that  
4 go into that calculation?

5 A. Yes.

6 Q. And then once you start there, aren't  
7 there many more assumptions that have to be made  
8 about the slope of the demand curve?

9 A. Well, it's administratively set. But in  
10 administratively setting it, yeah, you have to -- I  
11 don't know if you make assumptions or you set it to  
12 produce a certain type of outcome. Like the less  
13 slope it has, the more stability it's supposed to  
14 give to the capacity prices from year to year.  
15 Things like that come into play.

16 Q. So this is why PJM sometimes decides  
17 whether to go with a vertical or sloping demand  
18 curve, and if there's a slope, what the slope should  
19 be and should there be ceilings, that type of thing.

20 A. They actually changed the demand curve  
21 not too long ago and pushed it out from net CONE and  
22 made it either convex or concave.

23 Q. Can you think of any other commodity in  
24 the United States that is administratively set with  
25 such interaction as the capacity in PJM? There's no



1 committee setting natural gas prices or oil prices or  
2 anything like that, is there?

3 A. No. I'm thinking back to  
4 telecommunication days, there might have been a  
5 parallel with the AT&T -- a long time ago, though.  
6 They might have.

7 Q. Anything recent or current?

8 A. For commodities? I mean, if you look  
9 globally, I suppose, you know, NOPEC is a cartel, but  
10 let's just keep it limited to the United States. In  
11 the U.S., I can't think of anything.

12 MR. KURTZ: Thank you, sir. No more  
13 questions.

14 EXAMINER PRICE: Mr. McNamee?

15 MR. MCNAMEE: No questions.

16 EXAMINER PRICE: Ms. Addison?

17 EXAMINER ADDISON: No questions.

18 EXAMINER PRICE: Ms. Chiles?

19 EXAMINER CHILES: No questions.

20 EXAMINER PRICE: Mr. Petricoff, redirect?

21 MR. PETRICOFF: Could we have five  
22 minutes?

23 EXAMINER PRICE: You may. Let's go off  
24 the record.

25 (Recess taken.)

1 EXAMINER PRICE: Let's go back on the  
2 record.

3 Mr. Petricoff, redirect?

4 MR. PETRICOFF: Thank you, your Honor.

5 - - -

6 REDIRECT EXAMINATION

7 By Mr. Petricoff:

8 Q. Mr. Scarpignato, do you remember earlier  
9 this afternoon when Mr. Kutik asked you if you were  
10 familiar with regulated generators like Virginia  
11 Power, and I think you gave a longer list?

12 A. Yes.

13 Q. What is the difference between in your --  
14 what is the difference that you see between a  
15 regulated generator like Virginia Power and the kind  
16 of subsidies that would flow under rider RRS in Ohio  
17 as proposed?

18 A. In Dominion, Virginia Power pay it  
19 through to ratepayers, and in Ohio it sounds like it  
20 would be paid more by ratepayers. But in Dominion,  
21 they get a return based on an individual filing. In  
22 other words, if they have a rate approved and during  
23 the year they don't make money with the units or as  
24 much they expected to make, whatever return they were  
25 looking for, they can't just go and collect that from

1 the ratepayers retroactively for that year. So  
2 they're wearing risk in the marketplace.

3 Eventually they can go in for a rate  
4 case, but when I was with, for instance, Baltimore  
5 Gas & electric, it was a long period of time before  
6 they would go in for retail rate cases. It wasn't  
7 every year. This is formulaic in Ohio. Every year  
8 they're going to update and true-up their costs so  
9 that their risk is drastically reduced for them?  
10 FirstEnergy Solutions Company in getting the revenues  
11 and returns it's looking for. It's guaranteed.

12 In most of the other regulated states,  
13 you can argue that it's being paid for by somebody  
14 else, but they're not necessarily wearing the risk.  
15 It would be individual rate cases, not necessarily  
16 every year, that would look at that, and you could --  
17 if one of the Dominion resources did not clear RPM  
18 and the Commission felt like maybe it wasn't a wise  
19 decision by Dominion, they may not allow that in its  
20 future retail rates.

21 Here, whether it clears RPM or not,  
22 whether it was a good resource to pick or not, you're  
23 guaranteeing that you're going to make those  
24 customers whole to their guaranteed rate of return if  
25 they made prudent decisions. Lots of people make

1 prudent decisions based on the information they had  
2 at the time, turn out not to be the right market  
3 solutions, and that's not necessarily not prudent.  
4 But in Ohio, those types of charges might actually be  
5 passed on -- looks like they would be passed on to  
6 the ratepayers, because I don't know that it fails a  
7 prudence review of any sort. So that's kind of the  
8 major difference.

9           Once again, in other states where they  
10 have regulated generation, they're not necessarily --  
11 the ratepayers are not necessarily wearing the risk  
12 that that generation is uneconomic in the wholesale  
13 markets. In Ohio, the ratepayers are wearing that  
14 risk.

15           Q. Earlier Mr. Kurtz asked you a question  
16 about the effects of an increase in capacity prices.  
17 Would an increase in capacity prices at PJM  
18 necessarily result in a higher credit or reduced  
19 subsidies to the retail customers under rider RRS?

20           A. I recall being asked -- I think this is  
21 the question, whether CP -- with CP there would be  
22 more pressure for capacity prices to be higher, and I  
23 answered that, yes, there would be more pressure for  
24 higher capacity prices. Higher capacity prices would  
25 result in an increased likelihood that the PPA units,

1 I'll call them that, would clear an RPM. It doesn't  
2 guarantee they'll clear, but it increases the  
3 likelihood that they will clear. And even if they  
4 have costs in excess and there's no MOPR and all  
5 that, there's still the chance that the credit is not  
6 higher, and there's still a very good chance that  
7 the -- if it's not a credit, there would be a charge,  
8 that the charge is more; in other words, it would be  
9 a negative impact.

10 And the reason for that is the capacity  
11 market makes up less than 20 percent of the PJM  
12 system. I believe last time I looked, I think for  
13 2014, it was about 12.5 percent. But you could look  
14 it up in the State of the Market report that was  
15 distributed earlier.

16 So just because you have increased  
17 capacity revenues which would reduce any rider  
18 charges that have to occur doesn't mean your actual  
19 overall costs are less. It doesn't necessarily -- it  
20 doesn't necessarily reduce the rider charge or  
21 increase the rider credit.

22 And the reason for that is the energy and  
23 ancillary service markets. If you have bad  
24 generation -- I'm using the term "bad" kind of  
25 loosely here. If you have bad generation that clears

1 in the capacity market and you force it to clear  
2 rather than something new that's highly efficient in  
3 the energy market and has redundant backup and things  
4 like that that are types of reliability requirements  
5 out of CP because it's relatively newer.

6 These energy costs under CP can actually  
7 be higher. The actual unit that you cleared in the  
8 capacity market might have less run hours than a  
9 newer source that could displace it in the capacity  
10 market and it might also not be available in a time  
11 of need, and there's lots of issues with that.

12 So when we calculate the credit, it's not  
13 just did you get more from the capacity market. It's  
14 the combination of the capacity market with the  
15 energy market. A resource that is not highly  
16 efficient is likely to increase the energy costs.

17 Q. And the answer you just gave, you  
18 indicated that capacity was 20 percent. What is the  
19 other 80 percent?

20 A. Well, the other approximately 80 percent  
21 is the energy and ancillary services market, is what  
22 I'm referring to. I'm not looking transmission and  
23 distribution and those types of things. I'm looking  
24 more at the wholesale marketplace. Maybe I'm  
25 looking -- I'm not looking at distribution charges

1 and those types of taxes.

2 Q. And when you're talking about 80 percent  
3 for energy and ancillary services and 20 percent,  
4 this is the wholesale energy -- total wholesale  
5 energy price?

6 MR. KUTIK: Objection. Leading.

7 EXAMINER PRICE: Sustained.

8 Q. Could you explain to us here what --  
9 because you've talked about a price. What price were  
10 you describing when you had these percentages?

11 A. It's not a price. It's the amount of  
12 revenue that goes towards it and the amount of  
13 revenue in the wholesale electric marketplace that  
14 goes towards capacity payments is less than  
15 20 percent, 20 percent or less. It changes from year  
16 to year. The energy and ancillary service  
17 statements, which are also part of the electric  
18 wholesale costs, make up approximately the other  
19 80 percent.

20 So you could have -- you could clear an  
21 expensive unit in the capacity market by offering it  
22 in below its cost and you have some subsidy to make  
23 it up. That subsidy, you could say there's a  
24 tendency for that subsidy to be reduced by the higher  
25 capacity price from CP, but the bulk of your costs

1 are in the energy and ancillary energy market, so a  
2 small move there with a more inefficient unit that  
3 you're keeping around actually increases your --  
4 potentially on the energy side, it's a very negative  
5 impact, especially if you don't have run hours.

6 Q. One last question. Earlier you were  
7 asked about whether the new capacity procedure would  
8 increase revenues for generators. Would the new  
9 rules -- could the new rules actually decrease  
10 revenues for generators?

11 A. Can I assume we're talking about the  
12 capacity performance rules?

13 Q. Yes.

14 A. Yes. With the question regarding  
15 capacity performance rules, when you look at it very  
16 narrowly, and you say what is the impact going to be  
17 on the capacity market? You will see the capacity  
18 market prices tend to be higher, as was indicated  
19 earlier, which would reduce the subsidy-type effect.

20 The problem is CP also introduces other  
21 rules, and we talk about the energy market. Well,  
22 the energy market and the CP penalties -- there's  
23 something called CP penalties, performance penalties,  
24 basically. If you're not there when you're needed  
25 during an emergency event in PJM, you get charged



1 over \$3,000 per megawatt-hour for every hour you're  
2 not there.

3 So if you're looking -- if you're looking  
4 at a unit that's, say, 1,000 megawatts, something  
5 similar to Besse, and it happens not to be there  
6 during a capacity performance event, that resource or  
7 whoever is entering into the market -- not the  
8 resource. Whoever is entering into the PJM market,  
9 whoever sold it as a capacity resource -- and I don't  
10 know if they have bilateral agreements to deal with  
11 this or not, but it's something that should be  
12 checked out -- those CP penalties in 20 hours of  
13 emergency, in just 20 hours would erase 100 percent  
14 of your capacity revenues.

15 In 30 hours of an emergency, which we've  
16 had in years like 1994 when there was rotating  
17 blackouts in PJM, you would eliminate 150 percent of  
18 your capacity revenues for that resource. So for  
19 1,000 megawatts of resources that don't show up, the  
20 capacity performance penalty could be as high as  
21 about -- I believe it's about \$300 million.

22 If you think of the polar vortex, the  
23 uplift that everybody complained about was  
24 approximately \$500 million. This is a huge sum for  
25 \$1,000 resource not being there -- I mean a

1 1,000-megawatt resource not being there.

2 So the penalties would have to be paid by  
3 that resource, and I don't know if the ratepayers  
4 ultimate pay that penalty, but that's an interesting  
5 question.

6 Now, let's look at the flip side of that.  
7 Now, let's pretend -- not the flip side, but another  
8 side, the other side to the same exact issue. Now,  
9 let's look at FirstEnergy, and let's pretend they  
10 have other units in Ohio besides the PPA units.  
11 Let's say that Besse trips, and those other units in  
12 that FirstEnergy Solutions have actually  
13 overgenerated. They produce more than their unforced  
14 capacity times the P factor, and when they do that,  
15 they'll actually get a bonus payment. So you have  
16 the ratepayers in a situation I'm describing, you  
17 have the ratepayers paying millions, maybe hundreds  
18 of millions of dollars to FirstEnergy Solutions for  
19 overperforming with other units.

20 So Besse underperformed, paid the  
21 penalties. Does that mean -- I don't know the answer  
22 to this. Does that mean the ratepayers are paying  
23 that CP penalty? Because it is huge. We talked  
24 about a capacity market being about \$2.5 billion.  
25 Now I'm talking about penalties of about 300 million

1 for one unit. So those penalty dollars might  
2 actually go to some of the other FirstEnergy  
3 resources. If they overperformed, it definitely  
4 will.

5 I don't know if there's a mechanism in  
6 order to get some of that money back or not, but with  
7 capacity performance in place, you really need to  
8 look at what's happening with the capacity  
9 performance penalties and what's happening with the  
10 capacity performance bonuses.

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

13 EXAMINER PRICE: You may.

14 (Record read.)

15 MR. PETRICOFF: I have no further  
16 questions, your Honor.

17 EXAMINER PRICE: Thank you.

18 Mr. Randazzo?

19 MR. RANDAZZO: No questions. Thank you.

20 EXAMINER PRICE: Mr. Mendoza?

21 MR. MENDOZA: No questions, your Honor.

22 EXAMINER PRICE: Mr. Kurtz?

23 MR. KURTZ: No.

24 EXAMINER PRICE: Mr. Sauer?

25 MR. SAUER: No questions.

1 Mr. Kurtz?

2 MR. KURTZ: I actually do have a few  
3 questions.

4 - - -

5 RECROSS-EXAMINATION

6 By Mr. Kurtz:

7 Q. Is it, of course, true that any unit that  
8 clears the capacity performance market could be  
9 subject to penalties?

10 A. Correct.

11 Q. But it's also true that they could be the  
12 recipient, they could be the recipient of bonus  
13 payments also, correct?

14 A. Yeah. If they asked me about the  
15 reception of revenues, I would have brought that up.  
16 The other side, like you said, is you could be the  
17 recipient of revenues, and if you get those extra  
18 revenues, again, I don't know what happens to them,  
19 but it's really something I think the Commission  
20 should look at.

21 Q. Well, the construct is whatever units are  
22 penalized during an emergency hour that funds a pool  
23 of money that goes to the units that did perform in  
24 the form of bonus payments.

25 A. Not that performed, that overperformed.

1           Q.    Excuse me. That overperformed in the  
2           form of bonus payments, so it's a closed loop.  
3           Penalties fund the bonuses, and so if these units  
4           receive bonus payments, they could get lots of extra  
5           money.

6           A.    Yeah, they could get extra -- they could  
7           get extra money, but it's not a closed loop. Some of  
8           the penalties that -- for instance, if Besse wasn't  
9           available, it doesn't even have to trip, it just has  
10          to not be available, would go to other FirstEnergy  
11          Resources and other PPAs.

12          Q.    It's a closed loop within PJM. PJM  
13          doesn't keep any of the penalty money. It flows it  
14          all back to the overperformers in the form of bonus  
15          payments?

16          A.    Correct. PJM, although it's an LLC and  
17          could operate at a profit, it operates at a zero  
18          profit. It's not a nonprofit, but operates at zero  
19          profit.

20          Q.    So the penalty bonus structure would be  
21          good for the PPA units if they overperform and could  
22          be bad if they underperform.

23          A.    Well, if they overperform, it could be  
24          good. If they underperform, it could be good for  
25          other units outside of them.

1           Q.    It would be bad for the PPA units if they  
2           underperformed during an emergency because they could  
3           be penalized?

4           A.    The PPA units are still owned by  
5           FirstEnergy Solutions, so I get a little confused. I  
6           understand your questions. I just don't have the --  
7           I don't know the answer to some of these.

8           Q.    Well, you do agree that the PPA units  
9           could receive bonus payments or be assessed penalty  
10          charges?

11          A.    Correct.

12          Q.    One last question. The regulated units  
13          in Virginia or elsewhere in PJM that operate on a  
14          cost-of-service basis, those units could actually  
15          achieve more than the authorized rate of return, in  
16          other words, they could overearn as well as  
17          underearn?

18          A.    That's correct. That's part of a market  
19          mechanism. That's competition at its best. That  
20          is --

21          Q.    I was talking about the cost-of-service  
22          units like Dominion.

23          A.    Right.

24          Q.    So that's not competition. I mean, they  
25          could overearn or underearn the regulated return?

1           A.    They're incentivized to operate more  
2           efficiently so they could overearn.  Eventually there  
3           will be regulatory lag where somebody -- and this is  
4           why I get into the ultimate question.  So over time  
5           you go back in for a rate case, and because you have  
6           a natural inclination to perform better, as you say  
7           make extra earnings, when you go in for your next  
8           rate case, that's kind of seen, even if it's five  
9           years down the road.  So sometimes in regulatory, I  
10          take a longer-term look at things, but I understand  
11          what you're saying.

12          Q.    Did your counsel tell you about the  
13          multiple commission factors that they will review in  
14          approving a PPA?

15               MR. PETRICOFF:  I was going to object.

16               MR. KURTZ:  I'll withdraw the question.

17          MR. PETRICOFF:  What his counsel told him  
18          is privileged.

19               MR. KURTZ:  That's fine.

20          Q.    (By Mr. Kurtz) Do you know that in  
21          evaluating a PPA the Commission will look at the  
22          shareholder/ratepayer balance of risk and reward?

23          A.    I don't know it, but I assume they would.

24               MR. KURTZ:  Okay.  Thank you.

25               EXAMINER PRICE:  Mr. Kutik.

1                               - - -

2                               RECROSS-EXAMINATION

3       By Mr. Kutik:

4               Q.     Now, it's correct, is it not, that having  
5       regulated generation in PJM offer its generation into  
6       the PJM markets is acceptable under the PJM rules,  
7       correct?

8               A.     Existing generation?

9               Q.     Yes.

10              A.     Yes.

11              Q.     There's no prohibition if those units  
12       offer at zero?

13              A.     There's no prohibition.

14              Q.     And that's allowed by the market rules,  
15       correct?

16              A.     Yes.

17              Q.     Now, you haven't been involved in a base  
18       rate case in Ohio, have you?

19              A.     No.

20              Q.     In your discussions about Virginia Power,  
21       would it be fair to say in following your answer to  
22       Mr. Kurtz, that if Virginia Power received additional  
23       or higher revenues year to year as a result of their  
24       participation in PJM markets, the customers would not  
25       receive any credit for those, correct?



1           A.    No, not correct.

2           Q.    All right.  There is no rider that you're  
3   aware of that would allow them to enjoy that credit,  
4   correct?

5           A.    Correct.

6           Q.    Now, would it be fair to say that you're  
7   not familiar with the details of the operations of  
8   the FES plants?

9           A.    That's correct.

10          Q.    So you don't know the relative efficiency  
11   of Davis-Besse or Sammis, do you?

12          A.    No, I do not.

13          Q.    And would it also be fair to say since  
14   you haven't read any documentation regarding the  
15   outline of the proposed transaction in this case, you  
16   don't know whether any capacity performance penalties  
17   or any capacity performance bonus payments would go  
18   to the companies or FirstEnergy Solutions, correct?

19          A.    I think I know, but I'm not 100 percent  
20   certain.

21          Q.    So you don't know?

22          A.    Not 100 percent certain.  I'm not  
23   100 percent certain of those things.

24          Q.    Now, you were aware, were you not, of the  
25   capacity performance proposal when you wrote your

1 testimony in this case?

2 A. Not the current construct. It's  
3 changed --

4 Q. That's not my question, sir. You were  
5 aware of the capacity performance proposal, correct?

6 A. Which proposal?

7 Q. Were you aware of a capacity performance  
8 proposal that PJM was considering?

9 A. Yes.

10 Q. And that was in existence at the time you  
11 wrote your testimony, was it not?

12 A. That one was.

13 MR. KUTIK: That's all the questions I  
14 have. Thank you, your Honor.

15 EXAMINER PRICE: Thank you.

16 Mr. McNamee?

17 MR. MCNAMEE: No, thank you. No  
18 questions.

19 EXAMINER PRICE: Thank you. You're  
20 excused.

21 Mr. Petricoff?

22 MR. PETRICOFF: At this point, your  
23 Honor, we move to introduce into evidence RESA  
24 Exhibit 1 and RESA Exhibit 1A.

25 EXAMINER PRICE: Any objection?

1 MR. KUTIK: Subject to motion to strike,  
2 your Honor.

3 EXAMINER PRICE: Subject to motion to  
4 strike.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 MR. KUTIK: Your Honor, we move for the  
7 admission of Company Exhibit 81.

8 EXAMINER PRICE: Any objection?

9 That will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER PRICE: With that, we will  
12 adjourn for the evening. We'll commence again at  
13 9:00 with Mr. Haugen and Mr. White.

14 Thank you.

15 (The hearing adjourned at 4:50 p.m.)

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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 Tuesday, October 6,  
5 2015, and carefully compared with my original  
6 stenographic notes.

7  
8  
9 Carol A. Kirk, RPR, RMR.

10 (CAK-79476)

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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 10/06/15 - Volume XXIV electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.