

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and
Ms. Megan Addison, Attorney Examiners, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-A, Columbus, Ohio, called at 9:00 a.m. on
Wednesday, October 7, 2015.

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1 Wednesday Morning Session,
2 October 7, 2015.

3 - - -

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

13 My name is Gregory Price. With me is
14 Mandy Wiley Chiles and Megan Addison. We are the
15 Attorney Examiners assigned to preside over this
16 hearing.

17 We'll dispense with appearances, and
18 begin with IGS's first witness.

19 MR. OLIKER: Good morning, your Honors.
20 IGS Energy would call Joseph Haugen to the stand.

21 (Witness sworn.)

22 EXAMINER PRICE: State your name and
23 business address for the record.

24 THE WITNESS: My name is Joseph Haugen.
25 My business address is 6100 Emerald Parkway, Dublin,

1 Ohio.

2 EXAMINER PRICE: Please proceed,

3 Mr. Oliker.

4 - - -

5 JOSEPH HAUGEN

6 being first duly sworn, as prescribed by law, was

7 examined and testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Oliker:

10 Q. Mr. Haugen, first, could you state your
11 name for the record, please?

12 A. Joseph Haugen.

13 Q. And who are you employed by?

14 A. IGS Energy.

15 Q. And what is your address?

16 A. 6100 Emerald Parkway, Dublin, Ohio.

17 Q. And did you file testimony in this case?

18 A. I did.

19 Q. First, could you turn to the document
20 that was filed on December the 22nd, which is the
21 Direct Testimony of Joseph Haugen?

22 A. Yes.

23 Q. Is this your testimony, Mr. Haugen?

24 A. It is.

25 MR. OLIKER: IGS would mark this document

1 as IGS Exhibit 9.

2 EXAMINER PRICE: Be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. And this testimony was prepared by you or
5 under your direction?

6 A. Correct.

7 Q. Do you have any changes that you would
8 make to this testimony?

9 A. Yes. On page 4, I reference the direct
10 testimony of Don Wathen. I would like to change that
11 to Steven Strah in the footnote, pages 4 and 5.

12 Q. And the data that falls in the next
13 footnote, that doesn't need to be changed; is that
14 correct?

15 A. Correct.

16 Q. With that correction, if asked these same
17 questions today, would all of your responses be the
18 same?

19 A. Yes.

20 Q. Turning to the document that was filed on
21 March 2nd, 2015, which is titled the Supplemental
22 Testimony of Joseph Haugen, do you see that document,
23 Mr. Haugen?

24 A. I do.

25 MR. OLIKER: IGS would mark this document

1 as IGS Exhibit 10.

2 EXAMINER PRICE: Be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Was IGS 10 prepared by you or under your
5 direction?

6 A. Yes.

7 Q. And do you have any changes that you
8 would make to this testimony?

9 A. I do not.

10 Q. If asked these same questions today,
11 would your answers be the same?

12 A. Yes.

13 MR. OLIKER: Your Honor, with that, I
14 would move for admission of the exhibits and tender
15 the witness for cross-examination.

16 EXAMINER PRICE: Thank you.

17 Mr. Kutik.

18 MR. KUTIK: Your Honor, I have some
19 motions to strike, and I think I have an even dozen,
20 your Honor. My first motion to strike, your Honor,
21 is directed to page 3, and the sentence that begins
22 at line 22.

23 MR. OLIKER: I'm sorry, which document
24 are you on, Mr. Kutik?

25 MR. KUTIK: The direct testimony, page 3,

1 line 22, the sentence that begins there and goes to
2 page 4, line 2. At this sentence, your Honor, the
3 witness is opining what Ohio law, quote, requires,
4 and then asserts that something is, quote, contrary
5 to Ohio law, end quote.

6 It's clear from this witness' testimony
7 that he is not an attorney, and even if he was an
8 attorney, this would be an improper subject and is an
9 improper subject for testimony. As we've discussed
10 in this case many times with respect to other
11 witnesses' testimony, arguments about what the law is
12 are improper with respect to witnesses. They're not
13 facts. They're not proper opinions. Discussions
14 about what the law is belong in briefs, and for that
15 reason, your Honor, we'd move to strike.

16 EXAMINER PRICE: Mr. Olikier?

17 MR. OLIKER: Your Honor, will there be
18 additional motions to strike? I would almost rather
19 hear all of them and respond at once, but if you
20 would like me to take each at a time, I can do that.

21 EXAMINER PRICE: Let's take each at a
22 time. If he really has a dozen, we'll take each at a
23 time.

24 MR. KUTIK: And I really do.

25 MR. OLIKER: Your Honor, the Bench will

1 be familiar from his many years of practice at the
2 Public Utilities Commission, oftentimes a witness
3 will provide recommendations regarding their
4 understanding of the regulatory process regarding --
5 in the context of statutes and providing policy
6 recommendations. Oftentimes it's impossible to do
7 that without referencing the law to which provides
8 that context, and actually a very good example is --

9 EXAMINER PRICE: I just have a question
10 for your witness.

11 Do you have any basis for knowledge for
12 this statement other than your counsel has told you?

13 THE WITNESS: Just from that and my
14 understanding of reading Ohio law, 4928.

15 EXAMINER PRICE: So you have read 4928?

16 THE WITNESS: Large portions of it.

17 MR. OLIKER: May I continue, your Honor?

18 EXAMINER PRICE: No, you may not. We're
19 going to deny the motion to strike at this time. We
20 understand that this witness is, in fact, a
21 nonlawyer, and we're not going to accept this as a
22 legal recommendation, but Mr. Oliker is correct that
23 this is within the bounds of him testifying as to a
24 regulatory issue rather than a legal issue, and we'll
25 go from there.

1 MR. OLIKER: Thank you, your Honor.

2 MR. KUTIK: My second motion, your Honor,
3 is directed to page 4, line 6 and 7, and the phrase
4 which begins with the word "which," talking about
5 what he believes is within "the exclusive
6 jurisdiction of the Federal Energy Regulatory
7 Commission" on the same grounds, your Honor.

8 MR. OLIKER: Your Honor, given the
9 grounds are the same, is a response necessary?

10 EXAMINER PRICE: It's certainly
11 different.

12 MR. OLIKER: The response would be, and
13 you can ask the witness yourself, he has substantial
14 experience regarding federal matters. He
15 participates in PJM matters, conference calls. He is
16 the IGS employee that handles its relationship
17 regarding capacity market. He has substantial
18 knowledge base regarding policy, federal law, and
19 from his own experience, besides his conversations
20 with counsel, that would be very helpful for this
21 Commission to understand to the extent it addresses
22 federal issues in this case, which it may or may not
23 do, depending on the precedent that we have seen
24 previously. But I think it does provide an
25 interesting insight that the Commission should be

1 aware of.

2 EXAMINER PRICE: Mr. Haugen, what are the
3 tests the Supreme Court uses for preemption?

4 THE WITNESS: I'm not sure.

5 EXAMINER PRICE: What is conflict
6 preemption?

7 THE WITNESS: I'm not sure.

8 EXAMINER PRICE: What is field
9 preemption? Are the preemption provisions for the
10 Federal Power Act the same as preemption provisions
11 for the Natural Gas Act?

12 THE WITNESS: No, they're not.

13 EXAMINER PRICE: What was the Supreme
14 Court's holding in Onoek, Inc. vs Leer Jet, Inc.?

15 THE WITNESS: I'm not sure.

16 EXAMINER PRICE: How are the preemption
17 provisions different from the Federal Power Act and
18 Natural Gas Act?

19 THE WITNESS: I'm not as familiar with
20 the Natural Gas Act, but I know that it is not
21 regulated by FERC. The natural gas prices on the
22 interstate pipelines are not regulated by the FERC.

23 EXAMINER PRICE: Thank you.

24 Mr. Oliker, he's not qualified to speak
25 at to the federal preemption exclusive jurisdiction

1 of the FERC, I'm sorry.

2 MR. KUTIK: Your Honor, our next motion
3 deals with --

4 MR. OLIKER: Before the motion, I'd like
5 to proffer the testimony because --

6 EXAMINER PRICE: You can do that at the
7 end. When we move for admission, you can make your
8 proffers.

9 MR. KUTIK: May I proceed, your Honor?

10 EXAMINER PRICE: You may.

11 MR. KUTIK: My next motion deals with
12 page 6 on lines 19 and 21, the sentence that begins
13 "On advice of counsel" that he opines about
14 provisions of Revised Code 492.03 -- well, actually,
15 your Honor, let me start again with this motion.
16 Actually, your Honor, it goes from page 6, line 12,
17 the entire question and answer ending on page 7, line
18 4.

19 In this question and answer, your Honor,
20 the witness opines regarding a "unlawful subsidy,"
21 and he also asserts other legal propositions like
22 what constitutes competitive service under 4928.03,
23 specifically on advice of counsel and asserting other
24 scenarios that run "afoul of the law," again,
25 specifically on advice of counsel.

1 With regard to anything provided -- so
2 first grounds, your Honor, is these state legal
3 opinions and do not belong in testimony. Second,
4 your Honor, with respect to any testimony that is
5 given on advice of counsel, the testimony should be
6 stricken because we were precluded from pursuing
7 discovery by instruction of counsel. And if I may
8 approach, let me provide you the deposition
9 testimony.

10 EXAMINER PRICE: You may.

11 MR. KUTIK: Your Honor, I would point the
12 Bench to the colloquy that began on page 81 of
13 Mr. Haugen's deposition, and specifically beginning
14 on line 10, and I don't know if you want to read that
15 to yourself or whether I should read it into the
16 record.

17 EXAMINER PRICE: Read it into the record.

18 MR. KUTIK: It says question:

19 "All right. Now, I want to refer you to
20 your testimony, your direct testimony. And at the
21 bottom of page 3 and over on page 4, it says, 'Ohio
22 law requires the utility (and its affiliates) shall
23 be fully on its own in the competitive market.' Do
24 you see that?"

25 Answer: "That's correct."

1 Question: "Can you tell me what Ohio law
2 you are referring to?"

3 Answer: "Shoot. I know it's Ohio law
4 4928 there is a corporate separation policy, but I
5 don't have it in front of me."

6 Question: "Okay. So it would be part
7 of the corporate separation statute?"

8 Answer: "I believe so."

9 Question: "Okay. And what was the
10 source of your knowledge regarding the law?"

11 Answer: "I originally reviewed it for
12 the Duke ESP case."

13 Question: "Okay. Were you provided that
14 reference by counsel, or did you research it on your
15 own?"

16 Answer: "I believe it was provided by
17 counsel but this was probably over a year ago."

18 Question: "Okay. Did you review the
19 statute after counsel provided it to you?"

20 Answer. "I did."

21 Question: "And the counsel you are
22 talking about, was that Mr. Oliker?"

23 Answer: "That's correct."

24 Question: "Okay. And did Mr. Oliker
25 give you his view as to what the law meant?"

1 "MR. OLIKER: Objection. He's not going
2 to reveal attorney-client confidences."

3 "MR. KUTIK: Well, he says he's relying
4 on advice of counsel, so I'm entitled to inquire what
5 that advice was."

6 Question: "So can you tell me what
7 Mr. Oliker told you about that?"

8 "MR. OLIKER: And he is not going to tell
9 you. He is not going to tell you what I told him."

10 "MR. KUTIK: Okay. So would it be fair
11 to say that anywhere where there's a reference to 'on
12 advice of counsel,' you will not allow me to inquire
13 as to what that advice was?"

14 "MR. OLIKER: I will let you inquire what
15 his belief and knowledge is, but I am not going to
16 let you inquire as to what I may have told him."

17 "MR. KUTIK: So, again, you are going to
18 instruct him not to answer any questions about what
19 your advice was where he says in his testimony 'on
20 advice of counsel,' fair?"

21 "MR. OLIKER: That's fair. He can talk
22 about his laymen's language."

23 Your Honor, Ohio law provides that
24 wherein an individual reveals some of the content of
25 a communication with counsel, that is not privileged.

1 This witness was instructed not to answer questions
2 on what the advice of counsel was, and on that basis,
3 your Honor, we move to strike.

4 EXAMINER PRICE: Mr. Oliker?

5 MR. OLIKER: Your Honor, it's common
6 practice in Commission proceedings to include the
7 words "on advice of counsel" prior to providing the
8 context for a statement to indicate --

9 EXAMINER PRICE: I've always wondered
10 about that practice, and now Mr. Kutik has put it
11 squarely before us.

12 MR. OLIKER: Because as to identify the
13 witness is not an attorney. As I stated in the
14 deposition, he can ask about his own knowledge, and
15 he did. He was allowed to have full access to any
16 question about what you mean in these statements. If
17 you look in the original question, it didn't even
18 pertain to these pages in his testimony. So it's
19 wholly irrelevant on that aspect. But Mr. Haugen has
20 been fully deposed and asked questions about all of
21 his testimony.

22 There's also a substantial amount of
23 precedent in this Commission that certain
24 conversations regarding confidences with attorneys
25 are not revealed in their entirety merely by the

1 identification of maybe a small aspect, "I talked to
2 my counsel" about something.

3 EXAMINER PRICE: So what is the purpose
4 of the phrase "on advice of counsel"? If you can't
5 testify as to what the counsel's advice was, what is
6 the purpose of the phrase "on advice of counsel"?

7 MR. OLIKER: The purpose of the phrase is
8 to show the witness himself is not providing legal
9 testimony, your Honor, similar to your first ruling
10 as to say he's providing a regulatory perspective,
11 and it's an indication that he understands there may
12 be a certain legal context to this, but he's
13 providing a recommendation from a regulatory's
14 perspective.

15 EXAMINER PRICE: If the company believed
16 that this was a discovery issue, you probably should
17 have contacted the examiners and we could have dealt
18 with it at that point. We're going to deny in part
19 the motion to strike. We're only going to grant it
20 to the extent it includes the words "on advice of
21 counsel," which will be stricken from the record
22 throughout the question and answer for question 12.
23 The witness may testify as a lay opinion as to Ohio
24 regulatory matters.

25 Let me ask a question first. You've read

1 4928.02(H); is that correct?

2 THE WITNESS: Correct.

3 EXAMINER PRICE: And you've read all the
4 policy provisions in 4928.02?

5 THE WITNESS: Yes.

6 EXAMINER PRICE: Mr. Kutik can
7 cross-examine you on your understanding of the
8 regulatory matters.

9 MR. KUTIK: Your Honor, our next motion
10 to strike deals with page 4, line 7, starting after
11 the word "White" --

12 MR. OLIKER: Mr. Kutik, what document are
13 you on?

14 MR. KUTIK: Same document.

15 MR. OLIKER: Page 4, line 7 --

16 MR. KUTIK: I'm sorry, page 7, line 7.
17 After the word "White" and continuing to the end of
18 the sentence on line 10 with the word "utility."
19 Here, your Honor, he is opining about what the
20 corporate separation requirements are, and that's a
21 legal matter, and so we object.

22 EXAMINER PRICE: What is the corporate
23 separation statute you're referring to, Mr. Haugen?

24 THE WITNESS: I believe it's 4928.17.

25 EXAMINER PRICE: We'll deny the motion at

1 this time, again, with the understanding that he's
2 not rendering a legal opinion. It's only relating to
3 Ohio regulatory matters.

4 MR. KUTIK: Our next motion, your Honor,
5 deals with page 7, line 19, starting with the word
6 "which" and going to the end of the sentence on line
7 20. Here's a double dose, your Honor, where we're
8 talking about on advice of counsel and his opinions
9 on the exclusive jurisdiction of the Federal Energy
10 Regulatory Commission.

11 EXAMINER PRICE: Consistent with our
12 prior ruling, we'll grant the motion to strike both
13 "on the advice of counsel" grounds and that we're
14 satisfied he's not capable of testifying on exclusive
15 jurisdiction with FERC.

16 MR. KUTIK: Our sixth motion, your Honor,
17 it's directed to page 7 in the footnote No. 6.

18 MR. OLIKER: I'm sorry. Could I have a
19 clarification of which lines again on page 7 were
20 struck?

21 MR. KUTIK: Sure. My last motion related
22 to page 7, line 19, starting with the word "which" to
23 the end of the sentence on line 20.

24 MR. OLIKER: Okay. Thank you.

25 MR. KUTIK: Our sixth motion, your Honor,

1 deals with footnote on the same page, note 6, and the
2 second sentence. Again this witness is opining about
3 what specific products are under Ohio law and what is
4 subject to Commission regulation.

5 MR. OLIKER: Your Honor, the witness has
6 already indicated he's read the statute.

7 EXAMINER PRICE: I think the ruling here
8 is pretty predictable. We're going to allow him to
9 testify as to a regulatory matter under Ohio law.

10 MR. OLIKER: Thank you.

11 MR. KUTIK: Our next motion, our seventh
12 motion, your Honor, deals with page 9 and starts with
13 line 14 after the word "Yes" and ending on page 10,
14 line 3. Consistent with our discussions with other
15 witnesses, this witness' recitation of what happened
16 in certain cases before the Third and Fourth Circuit
17 are matters that belong in briefs, not in testimony,
18 and it's not a proper subject of cross-examination to
19 discuss the specifics of what the courts rule, what
20 the courts said.

21 MR. OLIKER: I have a response to this,
22 your Honor. FirstEnergy witnesses, including Judah
23 Rose, have already talked about the EPSA case before
24 the Supreme Court, what has happened in that case,
25 how it will impact the capacity markets.

1 EXAMINER PRICE: Did you object to that?

2 MR. OLIKER: I did not because it has
3 been past practice to allow witnesses to testify
4 based upon their understanding of how cases may
5 impact energy markets.

6 EXAMINER PRICE: Very rarely by this
7 examiner. I won't say never, but very rarely.
8 Besides, I think we've already established that
9 federal issues are just not -- federal law and the
10 preemption under federal law is just not within this
11 witness' expertise so we're going to grant the motion
12 to strike.

13 MR. OLIKER: Regarding, your Honor, that
14 issue, he testified regarding his understanding of
15 the specific words field preemption, conflict
16 preemption, but he has read those cases here and
17 talked about his understanding of the facts in this
18 case as relative to this one. So I would at least
19 like to have a minute to look and see exactly --

20 EXAMINER PRICE: The whole basis of the
21 preemption was one of those two tests, right? The
22 whole basis of preempting the New Jersey and
23 Maryland -- fundamentally, the whole legal basis was
24 one of those two tests. If he doesn't understand the
25 test, how can he apply them?

1 MR. KUTIK: Your Honor, our next motion
2 deals with attachment JH-1. Your Honor, it's
3 hearsay. This purports to be the Annual Report of
4 OVEC.

5 MR. OLIKER: Where are you, Mr. Kutik?

6 MR. KUTIK: His direct testimony.

7 MR. OLIKER: Which page?

8 MR. KUTIK: Attachment JH-1. This
9 purports to be an annual report, no foundation for
10 it. Even if there was foundation for it, your Honor,
11 it's hearsay. It is not a statement of the
12 companies.

13 MR. OLIKER: Your Honor, it is a
14 statement of an entity to which this companies'
15 affiliate has an interest in and to which is being
16 attempted to include in the rider in this case. It's
17 a public document that has been filed on the OVEC
18 website. It has been admitted in the Duke Energy
19 Ohio case, I believe the AEP Ohio case, and there is
20 no question regarding its authenticity. And the
21 witness also is formerly an employee at Buckeye
22 Power, which had an ownership interest in OVEC, so he
23 does have much personal knowledge regarding OVEC.

24 MR. KUTIK: Well, his relationship with
25 OVEC with respect to this issue is irrelevant. The

1 fact that an affiliate of the companies has a minor
2 interest in OVEC doesn't make it a statement of the
3 companies.

4 EXAMINER PRICE: Mr. Kutik is correct,
5 that this is a hearsay document. Nonetheless, we
6 will take administrative notice of documents easily
7 verified.

8 MR. OLIKER: Thank you, your Honor.

9 MR. KUTIK: All right. Your Honor, for
10 our next motion, it's on similar grounds again with
11 respect to the reference to the attachment, on page
12 5, note 3 and 5 of his direct testimony.

13 MR. OLIKER: Could you say that one
14 again, Mr. Kutik? You said two different things.

15 MR. KUTIK: I didn't say two different
16 things. The motion is to exclude reference to JH-1,
17 footnote 3 and footnote 5 on page 5.

18 EXAMINER PRICE: Consistent with -- we've
19 already taken administrative notice of this
20 particular document so we'll deny the motion to
21 strike.

22 MR. KUTIK: Our next motions, your Honor,
23 are related to the supplemental testimony, and these
24 are similar to issues that we've already discussed.
25 First on page 3 of the supplemental testimony,

1 starting on line 17, the sentence that begins "Ohio
2 law" and ends with "Ohio law." There's a discussion
3 of Ohio law.

4 EXAMINER PRICE: Consistent with our
5 previous rulings, we'll allow it with the
6 understanding that he is a lay witness and not giving
7 a legal opinion.

8 MR. KUTIK: And, lastly, your Honor, on
9 page 4, line 6, the sentence -- strike the sentence
10 after the word "prices" to the rest of the end of the
11 sentence on line 7.

12 EXAMINER PRICE: Can I have the reference
13 again, please?

14 MR. KUTIK: Page 4 of the supplemental
15 testimony, line 6, after the word "prices" to the end
16 of the sentence on line 7.

17 EXAMINER PRICE: That motion to strike
18 will be granted.

19 MR. KUTIK: That concludes our motions,
20 your Honor.

21 EXAMINER PRICE: Mr. Hays?

22 MR. HAYS: No questions, your Honor.
23 Thank you.

24 EXAMINER PRICE: Ms. Bojko?

25 MS. BOJKO: No questions.

1 EXAMINER PRICE: Mr. Fisk?

2 MR. FISK: No questions.

3 EXAMINER PRICE: Mr. Kurtz.

4 MR. KURTZ: For efficiency purposes, if I
5 can go after the company, that will be great.

6 EXAMINER PRICE: Mr. Kutik, will you
7 allow Mr. Kurtz to go after you?

8 MR. KUTIK: That's fine. Your Honor. If
9 you can give me one minute, though. I need to look
10 at my notes to make sure I don't cover anything
11 that's been --

12 EXAMINER PRICE: Let's go off the record
13 for a minute.

14 (Discussion off the record.)

15 EXAMINER PRICE: Mr. Kutik.

16 MR. KUTIK: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Kutik:

20 Q. Good morning, sir.

21 A. Good morning.

22 Q. Would it be fair to say that the total
23 sum of your experience in the industry is about eight
24 years?

25 A. Right around that.

1 Q. And your understanding about Ohio
2 regulatory law has been gained since February of
3 2013, correct?

4 A. Correct.

5 Q. And your Bachelor of Science degree was
6 in English?

7 A. It's a Bachelor of Arts.

8 Q. Your Bachelor's degree was in English?

9 A. That's correct.

10 Q. And you don't hold yourself out as an
11 economist?

12 A. Well, my title is not an economist. I do
13 provide a lot of economic analysis.

14 Q. You don't hold yourself out as an
15 economist, though, do you?

16 MR. OLIKER: Objection. Asked and
17 answered.

18 EXAMINER PRICE: Overruled. He didn't
19 answer the question.

20 Q. Sir --

21 A. I'm not titled as an economist.

22 EXAMINER PRICE: Mr. Haugen, it's fine.
23 From this point forward when I say "overruled," it
24 means you can answer the question.

25 THE WITNESS: Sorry. Just trying to

1 help.

2 Q. Do you need the question again, sir?

3 A. No, I do not. I do not hold myself as an
4 economist, as it is not my title.

5 Q. You're not an attorney, so I think we've
6 talked about that.

7 A. That's correct.

8 Q. And in your position, you're not called
9 upon or required to read or interpret Ohio statutes,
10 correct?

11 A. Not regularly.

12 Q. And you didn't take any courses while
13 getting your MBA on statutory interpretation?

14 A. Not that I can recall.

15 Q. Or in business law?

16 A. That's correct.

17 Q. And your views on the law, particularly
18 when you state "on advice of counsel," are based, in
19 part, on what your lawyer told you, correct?

20 A. In some part.

21 Q. And the process was that Mr. Oliker would
22 give you the statute, you would read the statute, and
23 then you would talk with him, right?

24 A. In the process of determining my
25 interpretation, that's correct.

1 Q. At IGS you provide advice on rule changes
2 dealing with PJM capacity and the energy markets,
3 correct?

4 A. That's correct.

5 Q. And you're not currently a member of any
6 PJM committee?

7 A. That's correct.

8 Q. And you weren't on any committee when you
9 worked at your previous employer, Buckeye, correct?

10 A. That's correct.

11 Q. Now, prior to filing your testimony in
12 this case, you reviewed the companies' application?

13 A. I did.

14 Q. And you only read the testimonies of
15 Messrs. Strah, Moul, and Ms. Mikkelsen, correct?

16 A. I also read Judah Rose's, part of Judah
17 Rose's testimony.

18 Q. So those are the only testimonies you
19 read, correct?

20 A. That's all that I can recall.

21 Q. And you didn't review any term sheet
22 between the companies and FES, correct?

23 A. That's correct.

24 Q. And you did not do any analysis of the
25 projected cost of the plants, correct?

1 A. I was not privy to any cost information,
2 so I did not.

3 Q. You didn't do any analysis of the
4 projected revenue to the companies from offering the
5 output of the plants into the PJM markets, correct?

6 A. Only with relation to our own
7 forward-market projections.

8 Q. So what I said was correct?

9 A. I did not specifically look at their
10 projections, no.

11 Q. And you did no analysis of the effect of
12 the approval of rider RRS on the wholesale capacity
13 prices, correct?

14 A. That's correct.

15 Q. And you didn't do any analysis of the
16 effect of the approval of rider RRS on wholesale
17 energy prices, correct?

18 A. That's correct.

19 Q. And you did not do any analysis of the
20 marketability of any generation unit within PJM,
21 correct?

22 MR. OLIKER: Could I have that question
23 read back?

24 EXAMINER PRICE: You may.

25 (Record read.)

1 A. Are you referring to how other generation
2 units may bid into the market?

3 Q. No.

4 A. Can you define marketability?

5 Q. Do you remember me asking you about it in
6 your deposition?

7 A. It was over six months ago.

8 MR. KUTIK: May I approach, your Honor?

9 EXAMINER PRICE: I'd like to have the
10 answer to your question. Do you remember him taking
11 your deposition?

12 THE WITNESS: I do.

13 MR. KUTIK: Fair enough, your Honor. May
14 I approach, your Honor?

15 EXAMINER PRICE: You may.

16 MR. KUTIK: Actually, I think the
17 question was, "Do you remember me asking you about
18 that in deposition?"

19 Q. (By Mr. Kutik) Mr. Haugen, I've shown
20 you what appears to be a copy of your deposition,
21 correct?

22 A. That's correct.

23 Q. Do you remember taking an oath before
24 your deposition, correct?

25 A. I do.

1 Q. I'd like to have you turn to page 60 of
2 the deposition transcript. Are you there?

3 A. Yes.

4 Q. And did you not give the following
5 answers to the following question, starting at line
6 23:

7 Question: "Okay. Have you done for
8 purposes of this case any analysis of the
9 marketability of any generation unit within PJM?"

10 Answer: "Can you define marketability?"

11 Question: "The ability to sell."

12 Answer: "Again, without being privy to
13 any of their cost information, it would be difficult
14 for me to determine if their costs would be below --
15 above or below the forward markets and if that would
16 affect any of the generation unit."

17 Question: "So the answer is 'no,'
18 correct?"

19 Answer: "Correct."

20 MR. OLIKER: Objection. Improper
21 impeachment. The witness asked for clarification,
22 "define marketability," and Mr. Kutik never provided
23 it. He just decided to keep reading the deposition
24 to the questions he never asked.

25 EXAMINER PRICE: Overruled.

1 Q. That was your deposition testimony,
2 correct?

3 A. That's correct.

4 Q. Now, would it be fair to say that you did
5 not discuss proposed rider RRS with anyone who works
6 for PJM?

7 A. That's correct.

8 Q. And you did not discuss proposed rider
9 RRS with the PJM market monitor, correct?

10 A. I did not.

11 Q. And you did not discuss proposed rider
12 RRS with any other CRES provider, correct?

13 A. That's correct.

14 Q. You did not discuss proposed rider RRS
15 with any other generator, correct?

16 A. That's correct.

17 Q. And, by the way, would it be fair to say
18 that other than for a very small landfill generator,
19 IGS doesn't own much other generation, correct?

20 A. That's correct.

21 Q. And you did not discuss proposed rider
22 RRS with any other participant in PJM, correct?

23 A. That's correct.

24 Q. And you did not review any cases at the
25 Commission that has involved any of the FirstEnergy

1 companies, correct?

2 A. That's correct.

3 Q. And you have not reviewed any prior ESP
4 or SSO case for the companies, correct?

5 A. When you say the "companies," you're
6 referring to the FirstEnergy companies?

7 Q. Yes, I am?

8 A. That's correct.

9 Q. Are you aware, sir, that in this case
10 when we refer to "the companies," we are talking
11 about CEI, Toledo Edison, and Ohio Edison?

12 A. I had assumed, but I just wanted to
13 clarify.

14 Q. And the same will go if we use the word
15 "FirstEnergy," it means the same thing.

16 A. Correct.

17 Q. And if we want to refer to FirstEnergy
18 Solutions, we'll either use those words or FES, okay?

19 A. Correct.

20 Q. Now, you had not reviewed any other
21 companies' ESP other than the most recent DEO and AEP
22 cases, correct?

23 A. That's correct.

24 Q. Now, would it be fair to say that some of
25 your testimony in this case is adopted from testimony

1 that you were previously responsible for?

2 MR. OLIKER: Objection.

3 EXAMINER PRICE: Grounds?

4 MR. OLIKER: The word "adopted" is vague.

5 MR. KUTIK: I'll use another word.

6 EXAMINER PRICE: Okay.

7 Q. (By Mr. Kutik) Isn't it true that some
8 of the testimony that appears in this case appears to
9 be cut and pasted from testimony in other cases that
10 you were responsible for?

11 A. While I believe I use probably a lot of
12 the same terminology, they were prepared
13 independently but over the same course of times.

14 Q. But we would find many of the same words,
15 same sentences, in both testimonies, correct?

16 A. Oftentimes if I find a sentence that I
17 use that appears to clarify what I'm trying to say, I
18 will reuse those words.

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

20 A. I will reuse a lot of the terminology and
21 sentence structure in a lot of the similar cases that
22 are asking for similar things.

23 EXAMINER PRICE: So the answer to his
24 question is yes?

25 A. Yes.

1 EXAMINER PRICE: Thank you.

2 Q. Now, in your prior testimony -- well,
3 I'll back up. You previously testified in the Duke
4 ESP case, correct?

5 A. Correct.

6 Q. And in that case, one of the things you
7 did is you adopted someone else's testimony, correct?

8 A. That's correct.

9 Q. And that was the testimony of
10 Mr. Hamilton, correct?

11 A. That's correct.

12 Q. And would it be fair to say that you did
13 not write Mr. Hamilton's testimony?

14 A. I did not.

15 Q. Now, would it be fair to say that in your
16 deposition you were not familiar with some of the
17 details in your prefiled -- in your direct prefiled
18 testimony?

19 MR. OLIKER: Objection. It's not
20 appropriate to ask him about his deposition. You can
21 ask him about questions today and maybe he can refer
22 to the deposition if it's necessary, but it's not
23 appropriate to go down that line of questioning.

24 EXAMINER PRICE: Sustained.

25 Q. Isn't it true, sir, that when I asked you

1 about -- well, I'll back up.

2 In your testimony, you reference the
3 megawatt capacity of the plants in question in this
4 case; do you not? And I'll refer you to page 4,
5 lines 13 and 15.

6 A. I do.

7 Q. Isn't it true that you couldn't tell me
8 previously what the megawatt capacity of Davis-Besse
9 was?

10 A. I could not recall off the top of my head
11 at that time.

12 MR. OLIKER: Object and move to strike
13 the question and answer. It's merely rehashing the
14 same exact ground.

15 MR. KUTIK: Your Honor, I think it's
16 relevant to the fact this witness adopts someone
17 else's testimony that he didn't write and he doesn't
18 know the details behind it -- or didn't know the
19 details behind it and it's relevant to his
20 credibility.

21 EXAMINER PRICE: The alternative,
22 Mr. Oliker, is he's going to ask him what the
23 megawatts of Davis-Besse, and he's going to give the
24 answer, and then he's going to go back to his
25 deposition and impeach him. I think this would be

1 more expeditious to get to the same result.

2 Overruled.

3 Q. Let me refer you to page 10, line 7.

4 A. Of what?

5 Q. Of your direct testimony. And you say
6 there, sir, that "FirstEnergy would be required to
7 pay FES under the terms of the agreement regardless
8 of any retail determination made by the Commission,"
9 correct?

10 A. That's correct.

11 Q. Isn't it true at your deposition you said
12 that you believe that if the Commission disallowed
13 certain costs under rider RRS, the price that FES
14 would receive would be changed or affected by that
15 disallowance?

16 MR. OLIKER: Objection. Your Honor, he
17 should be asking him questions about his testimony
18 and not about his deposition, and regardless of
19 whether or not something may or may not be
20 expeditious to this proceeding, it is inappropriate,
21 and it is maybe one more step to the extent Mr. Kutik
22 can, in fact, show he's been inconsistent; but,
23 otherwise, people are just going to show up and start
24 reading depositions into the transcript without
25 asking questions as an initial predicate.

1 MR. KUTIK: Your Honor, I would agree
2 that the normal practice for impeachment is exactly
3 as was discussed with Mr. Oliker, but we're talking
4 about something different about the state of this
5 witness' knowledge and what time the witness had such
6 a knowledge, and the fact that he didn't know in his
7 deposition is important, your Honor.

8 MR. OLIKER: Then he should ask him about
9 the date that he submitted testimony what his
10 knowledge was at that time rather than what happened
11 in his deposition, which is not appropriate.

12 EXAMINER PRICE: I'm going to overrule
13 the objection and give Mr. Kutik some leeway on this.
14 I understand what you're saying and I sympathize with
15 it, but we're going to see how this goes.

16 MR. OLIKER: Thank you, your Honor.

17 MR. KUTIK: Do you have the question in
18 mind, sir?

19 A. Can you show me in the deposition what
20 you're referring to?

21 Q. Sure. Let me refer you to page 156. Are
22 you there, sir?

23 A. I am.

24 Q. And let me refer you specifically to line
25 11 where you testified as follows:

1 Question: "Now, is it your understanding
2 that if the Commission would disallow certain costs
3 under rider RRS, that the price that -- the price
4 that FES would receive would be changed or affected
5 by that disallowance?"

6 Answer: "I believe that is a
7 possibility."

8 That was your deposition testimony,
9 correct?

10 A. That's correct.

11 Q. Now, you further agree that as far as
12 costs that could be recovered from customers, it
13 would be a total pass-through as far as the companies
14 are concerned, correct?

15 MR. OLIKER: Objection. Vague.

16 EXAMINER PRICE: Overruled.

17 A. Could you repeat the question?

18 Q. Sure. Isn't it true you further agree
19 that as far as the costs that could be recovered from
20 customers, it would be a total pass-through as far as
21 the companies are concerned?

22 MR. OLIKER: Also, it mischaracterizes
23 the testimony.

24 EXAMINER PRICE: Overruled.

25 A. Can you repeat the question?

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

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

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

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

14 EXAMINER PRICE: No, but your witness is.

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

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

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

21 (Record read.)

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

25 EXAMINER PRICE: He just asked him a

1 question. Why is it improper?

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

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

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

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

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

20 Q. So you were not sure, correct?

21 A. Correct.

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

25 A. Okay.

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

4 A. That's correct.

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

8 A. I believe that's true.

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

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

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

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

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

20 A. Can you refer to the specific statute?

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

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

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

1 authorizes ESPs?

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

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

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

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

14 A. Can you repeat the question?

15 Q. Sure.

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

18 EXAMINER PRICE: Please.

19 (Record read.)

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

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

1 MR. OLIKER: Thank you.

2 MR. KUTIK: Given the rulings, I have no
3 other choice.

4 A. I can't recall at this time.

5 Q. Now, you agree with me, do you not, that
6 rider RRS is a generation-related rider?

7 A. I do.

8 Q. And the companies are not providing
9 distribution services through rider RRS or that's not
10 proposed to be the case, correct?

11 A. Correct.

12 Q. And the companies don't propose providing
13 transmission service through rider RRS, correct?

14 A. That's correct.

15 Q. And the companies don't propose to
16 provide ancillary services under rider RRS, correct?

17 A. I'm not sure how the generation units
18 will be bid into PJM, but I believe that's correct.

19 Q. Now, the output from the plants is going
20 to be used by the companies, and it will not displace
21 the amount of SSO load that will be purchased in the
22 auctions under the ESP, correct?

23 A. I believe the amount of energy will flow
24 into the PJM markets.

25 Q. So what I said was correct?

1 A. Not specifically to the companies.

2 Q. So what I said was correct?

3 A. Can you repeat it?

4 Q. Sure. The output from the companies is
5 not going to be used by the companies to displace the
6 amount of SSO load that will be purchased for the
7 auctions under the ESP?

8 A. That's correct.

9 Q. And the companies do not intend to supply
10 this output through direct transactions with any
11 retail shopping customers, correct?

12 A. It's a nonbypassable charge that will go
13 to all customers.

14 Q. That's not my question, sir. What I was
15 asking you about is the output, okay, and the
16 companies do not intend to supply this output through
17 direct transactions with any retail shopping
18 customers?

19 A. That's correct.

20 Q. And the companies couldn't do that anyway
21 because they're not CRES providers, correct?

22 A. Correct.

23 Q. Now, you know that there is a term under
24 Section 4928.02(H) called competitive retail electric
25 service, correct?

1 A. That's correct.

2 Q. And you're aware that that term is
3 defined in another part of the statute, correct?

4 A. Correct.

5 Q. And you've read that other statute, have
6 you not?

7 A. I have.

8 Q. Can you tell me the number of the
9 statute?

10 A. I believe it's at the beginning.

11 Q. So what would that number be?

12 A. One.

13 Q. And you've read that statute 1?

14 A. I have since the deposition.

15 Q. Would you agree with me, sir, that
16 wholesale service is not a competitive electric
17 service?

18 A. I believe, in my opinion, it can be a
19 competitive service, but not as defined in 4928.

20 Q. So as defined in 4928, wholesale service
21 is not a competitive retail electric service,
22 correct?

23 A. That's correct.

24 Q. And you agree with me that the proposed
25 transaction between the companies and FES would be a

1 wholesale transaction, correct?

2 A. I do.

3 Q. And the companies' activities in offering
4 the plants' outputs into the PJM markets and
5 receiving revenues therefrom, those would be
6 wholesale activities; would they not?

7 A. They would be.

8 Q. Now, the term "noncompetitive retail
9 electric service" is also used in Section 4928.02(H),
10 correct?

11 A. That's correct.

12 Q. And you don't believe that distribution
13 service is a noncompetitive retail electric service,
14 do you?

15 A. Distribution service would be a
16 noncompetitive service.

17 Q. Let me refer you to your deposition, sir,
18 page 89. Let me refer you specifically to line 20 on
19 page 89, and do you not give the following answers to
20 the following questions:

21 Question: "Is distribution service a
22 noncompetitive retail electric service?"

23 Answer: "I don't believe so, but I would
24 have to go back and look."

25 Question: "All right. So sitting here

1 today, you don't believe so, correct?"

2 Answer: "Correct."

3 That was your deposition testimony,
4 correct?

5 A. Correct.

6 Q. Now, you believe that distribution
7 customers are a noncompetitive retail electric
8 service, correct?

9 A. I do believe that.

10 Q. And you believe that the only type of
11 service that can be subsidized is noncompetitive,
12 correct?

13 MR. OLIKER: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. OLIKER: It's an extremely vague
16 question.

17 EXAMINER PRICE: He may answer if he
18 knows.

19 A. Can you repeat the question?

20 Q. And you believe the only type of service
21 that can be subsidized is noncompetitive?

22 A. I believe there shouldn't be subsidies on
23 the wholesale energy market, but as far as the retail
24 market, there's a possibility.

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

1 A. On the wholesale side, I believe there
2 should be no subsidies, and on the retail side,
3 there's a possibility.

4 MR. KUTIK: Move to strike, your Honor.

5 EXAMINER PRICE: Sustained.

6 Please answer counsel's question. Would
7 you like it back?

8 THE WITNESS: Yes, please.

9 EXAMINER PRICE: Can I have counsel's
10 question again.

11 (Record read.)

12 A. I believe that's true.

13 Q. Now, you would also agree with me, would
14 you not, that if the companies' projections are
15 correct, there would be, in your view, a subsidy
16 flowing from FES to distribution customers, correct?

17 A. I wouldn't necessarily agree with the
18 companies' projections.

19 Q. But assuming that the companies'
20 projections are correct, would you agree that there
21 would be a subsidy in your view from FES to
22 distribution customers?

23 A. From the projections I've seen from the
24 company, I believe that is true.

25 Q. Now, I want to talk to you about your

1 testimony on page 3, line 22, and your testimony
2 about requiring generation plants to be on their own.

3 Do you see that testimony?

4 A. I do.

5 Q. Now, this is based upon your
6 understanding of the corporate separation statute,
7 correct?

8 A. It is.

9 Q. And, in fact, you think this language,
10 this "on your own" language, is in Section 4928.17,
11 correct?

12 A. I believe the whole 4928 is very
13 pro-competitive. .17 is one issue dealing with
14 corporate separation. The language could be in other
15 sections as well.

16 MR. KUTIK: Your Honor, move to strike.

17 MR. OLIKER: Your Honor, he answered
18 Mr. Kutik's question and provided his answer and he
19 was fully responsive.

20 MR. KUTIK: The question simply was do
21 you think the language "on your own" is in Section
22 4928.17. I don't think I got an answer to that
23 question.

24 MR. OLIKER: He said yes and elsewhere.

25 EXAMINER PRICE: I don't think he said

1 yes, but we'll deny the motion to strike.

2 But we will instruct the witness to
3 answer the question "yes" or "no."

4 Q. And the question to you, sir, is in fact,
5 you think that the language "on your own, is in
6 Section 4928.17, correct?

7 A. I believe so.

8 MR. KUTIK: May I approach, your Honor?

9 EXAMINER PRICE: You may.

10 Q. Mr. Haugen, I want to show you Section
11 4928.17. And would you agree with me, Mr. Haugen,
12 that the language "on your own" does not appear in
13 that statute?

14 MR. OLIKER: Mr. Kutik, you're referring
15 to the actual words "on your own"?

16 MR. KUTIK: Yes, which is quoted.

17 EXAMINER PRICE: In his testimony he uses
18 "on its own."

19 MR. KUTIK: "On its own."

20 Q. Those words do not appear, do they? Will
21 you accept that, subject to check, sir?

22 A. I don't believe those exact words appear.

23 MR. KUTIK: May I approach, your Honor?

24 EXAMINER PRICE: You may.

25 Q. Mr. Haugen, I want to show you another

1 statute, Section 4928.38. Have you ever seen that
2 before, that statute? Have you ever read it?

3 A. I'm familiar with it, but I have not read
4 it.

5 Q. So, for example, looking at the
6 third-to-last line in the text of the statute, do you
7 see where it says, the phrase, "the utility shall be
8 fully on its own in the competitive market"? Do you
9 see that?

10 A. I do.

11 Q. You had never seen that phrase before in
12 this statute; is that correct?

13 A. I can't recall.

14 Q. Now, in this case, would it be fair to
15 say that the only utilities are the companies?

16 A. That's correct.

17 Q. Would it be fair to say that FES is not a
18 utility?

19 MR. OLIKER: Objection.

20 EXAMINER PRICE: Grounds?

21 MR. OLIKER: Under what law?

22 EXAMINER PRICE: Please specify which
23 provisions you're talking about.

24 MR. KUTIK: Under title 4928, your Honor.

25 A. I believe FES is not a regulated utility.

1 Q. And would you agree with me that the
2 utilities do not own generation?

3 A. That's correct.

4 Q. Now, would it be also fair to say that if
5 an electric distribution company is structurally
6 separated from a generation business, it is in
7 compliance with the corporate separation statute?

8 A. That's correct.

9 Q. Now, I want to talk to you about some
10 other things, about how you understand the Ohio
11 regulatory rules work. Would it be fair to say that
12 you don't believe that an electric distribution
13 utility in Ohio can buy power through a PPA and sell
14 it into the PJM market?

15 A. Are you referring only to distribution
16 companies?

17 Q. Yes.

18 A. I don't believe that's the role of the
19 distribution companies, no.

20 Q. So it's true that you don't believe that
21 an EDU can buy power through a PPA and sell it into
22 the PJM market, correct?

23 MR. OLIKER: Objection. Asked and
24 answered.

25 EXAMINER PRICE: He hasn't answered yet.

1 Overruled.

2 A. I don't believe they can do that as part
3 of their distribution responsibilities.

4 Q. Do you believe they can do it -- isn't it
5 true you don't believe they can do it at all?

6 A. I believe that a company could be
7 structured separately to have a whole other component
8 that could do that.

9 Q. Let me refer you to your deposition, sir,
10 page 96. Specifically at line 22 do you not give the
11 following answer to the following question:

12 Question: "That's not my question. My
13 question is could the companies without violating any
14 law that you know of buy power through the PPA and
15 sell it into the PJM market?"

16 Answer: "I don't believe they can."

17 That was your testimony, correct?

18 MR. OLIKER: That's consistent with what
19 he testified.

20 MR. KUTIK: There were no qualifications
21 in his deposition, your Honor.

22 Q. Was that your testimony, sir?

23 A. Those were my thoughts at the time, and
24 then if you read on further, I said because buying
25 and selling power has to be separate from the

1 distribution companies.

2 Q. Now, you've also testified, have you not,
3 that electric distribution companies are not
4 prohibited from entering into the generation -- to a
5 generation-related contract as long as there is
6 structural separation, correct?

7 A. That's my understanding.

8 Q. And you would agree with me that in the
9 FirstEnergy family of companies, generation is
10 structurally separated from the companies?

11 A. That's my understanding.

12 Q. Now, is it also true that you don't
13 believe that the electric distribution companies can
14 participate in the wholesale market?

15 MR. OLIKER: Objection.

16 EXAMINER PRICE: Grounds?

17 MR. OLIKER: It's extremely broad, your
18 Honor.

19 EXAMINER PRICE: Overruled.

20 A. So with the caveat that I gave earlier
21 where they should be completely separated.

22 Q. Well, let me refer you back to your
23 deposition sir. Page 97, starting at line 12, do you
24 not give the following answers to the following
25 questions:

1 "All right. So just to be clear, you do
2 not believe that the companies could participate in
3 the wholesale market, correct?"

4 Mr. Oliker objected.

5 Answer: "It's my understanding that
6 those are supposed to be separate."

7 MR. OLIKER: Which is consistent --

8 MR. KUTIK: I haven't finished reading.

9 Q. Question: "All right. So they could not
10 do that, correct?"

11 Answer: "It's my understanding that they
12 could not do that."

13 That was your deposition testimony,
14 correct?

15 A. Correct.

16 MR. OLIKER: Which is consistent with
17 what he testified.

18 EXAMINER PRICE: Are you making an
19 objection or not?

20 MR. OLIKER: Yes, objecting to the
21 impeachment, which is improper. It is not
22 impeachment.

23 EXAMINER PRICE: Overruled. You're
24 overruled.

25 Q. Would it be also true, sir, that you

1 don't believe electric distribution companies could
2 offer some type of service in their ESP that would
3 have the effect of stabilizing retail electric rates?

4 A. Were you continuing to read there, or was
5 that a question?

6 Q. I'm reading from my notes, sir. I'm
7 sorry. Would you like me to give you the question
8 again?

9 A. Please.

10 Q. You don't believe that electric
11 distribution companies could offer some type of
12 service in their ESPs that would have the effect of
13 stabilizing retail rates, correct?

14 A. I don't believe that they could offer a
15 service that stabilized a competitive rate.

16 Q. So is the answer to my question correct,
17 or yes?

18 A. I mean, I believe they could offer a
19 service that stabilized the distribution rate.

20 Q. Let me refer you to your deposition, sir.

21 MR. OLIKER: Let's read all ten pages and
22 badger him.

23 MR. KUTIK: Move to strike that comment,
24 your Honor.

25 EXAMINER PRICE: Mr. Oliker. We have

1 seven witnesses today. We're trying to get through
2 them all so nobody has to stay overnight. Making
3 comments to counsel rather than the Bench is not
4 helpful. You'll direct your comments to me. Make a
5 proper objection or not.

6 MR. OLIKER: At this point I will object
7 because there was improper behavior in this
8 deposition where this question may have been asked,
9 15, 20 times. So I would like to bring that to the
10 Bench's attention before we proceed.

11 MR. KUTIK: Well, your Honor, if he has a
12 problem, he can redirect. He can read the whole
13 transcript in if he wants, but I'd like to proceed
14 with my cross-examination, please, without further
15 comment.

16 EXAMINER PRICE: Let's get through this
17 question and then you can raise your issue.

18 MR. OLIKER: Thank you.

19 Q. (By Mr. Kutik) Mr. Haugen, I'd like to
20 refer you to page 104. Are you there?

21 A. Yes.

22 Q. And did you not give the following
23 answers to the following questions starting at line
24 5:

25 Question: "That's not my question. My

1 question is theoretically, as you understand what the
2 companies are allowed to do under -- in Ohio, the
3 companies could provide some type of service through
4 their ESP that would have the effect of stabilizing
5 retail electric rates."

6 There was an objection.

7 I said, Question: "Correct, sir?"

8 MR. OLIKER: I prefer the objection be
9 read.

10 Q. "Correct, sir?"

11 And you said: "I am not ready to draw
12 that conclusion right now without thinking about it
13 further."

14 Is that correct?

15 A. That's correct.

16 MR. OLIKER: It's improper impeachment
17 because the objection was not read.

18 EXAMINER PRICE: Well, Mr. Oliker, you
19 can read the objection into the record now.

20 MR. OLIKER: The objection was: "Asked
21 and answered maybe nine times now, and also calls for
22 a legal conclusion."

23 MR. KUTIK: Your Honor, may I be heard?

24 EXAMINER PRICE: You may.

25 MR. KUTIK: What happened at the

1 deposition is exactly what's happening today where we
2 have a witness who doesn't want to answer questions
3 directly, and so I needed to be persistent in my
4 questions. So if I was over bearing or acting
5 improperly, Mr. Oliker certainly had a remedy which
6 he's not hesitant to invoke, in calling the Attorney
7 Examiner and getting things straight, which he didn't
8 do.

9 The problem is, as the transcript will
10 show, is this witness continually refused to answer
11 questions put to him until I persisted in getting his
12 answer, and that's what the record reflects, as it
13 does today.

14 MR. OLIKER: What happened in the
15 deposition is that Mr. Kutik didn't like the answer
16 he received, so then he continued to ask the question
17 over and over again until he found an answer he found
18 to be more suitable to his liking.

19 EXAMINER PRICE: Why don't we put what
20 happened in the deposition behind us, and the witness
21 can simply answer Mr. Kutik's questions directly, and
22 then we will get through this line of questioning all
23 the quicker, bearing in mind that you presented him
24 as an expert on regulatory matters, and so he needs
25 to be answering these things as straightforwardly as

1 possible.

2 MR. OLIKER: Thank you, your Honor.

3 EXAMINER PRICE: Next question.

4 MR. KUTIK: Your Honor, did I get an
5 answer to the question whether that was his
6 deposition testimony?

7 EXAMINER PRICE: I have no idea.

8 Can we have the last question and answer
9 back?

10 (Record read.)

11 Q. I want to talk to you about some other
12 aspects of the transaction, the proposed transaction,
13 and the application. Would it be fair to say that
14 you don't know whether there's any limitation in the
15 proposed transaction regarding what the companies
16 will be required to pay FES?

17 A. That's true.

18 Q. And you're not aware whether the
19 companies would have the right to review planned
20 capital expenditures at the plants, correct?

21 A. That's correct.

22 Q. And you don't know whether the proposed
23 transactions have any kind of audit process for the
24 companies, correct?

25 A. I believe there was a proposed auditing

1 process by the Public Utilities Commission.

2 Q. That wasn't my question. My question is,
3 you don't know whether the proposed transaction has
4 any kind of audit process for the companies of FES?

5 MR. OLIKER: Are you referring to a part
6 of his testimony, Mr. Kutik?

7 MR. KUTIK: I just asked the question,
8 your Honor.

9 EXAMINER PRICE: It might be helpful if
10 you define "proposed transaction." I'm not sure if
11 the witness was in the room when we previously
12 defined what we all mean by "proposed transaction."

13 Q. You understand that there is a
14 transaction that's proposed between FES and the
15 companies?

16 A. That's correct.

17 Q. Where the companies would buy certain
18 output of certain plants?

19 A. I believe they would be paying the
20 difference between what FES receives from the PJM
21 markets and their costs.

22 Q. Is it your understanding that -- well, is
23 your understanding, then, sir, that FES would be
24 offering the output into the wholesale markets? Is
25 that your testimony?

1 A. I believe that's true, yes.

2 Q. So let me go back to my question. With
3 respect to the proposed transaction, you don't know
4 whether there's any kind of audit process for the
5 companies of FES, correct, under the proposed
6 transaction?

7 MR. OLIKER: Objection. That's vague.
8 But if the witness understands.

9 MR. KUTIK: Well, that's coaching, your
10 Honor.

11 EXAMINER PRICE: Let me try. Do you
12 understand whether there's any process for the
13 company to review the expenses proposed by FES as
14 part of the proposed transaction?

15 THE WITNESS: I'm sure there would be an
16 auditing process to verify a cost-based charge versus
17 an offsetting revenue.

18 Q. (By Mr. Kutik) That wasn't my question,
19 nor was it the attorney examiner's question. So let
20 me try it again. Isn't it true that you don't know
21 whether the proposed transaction has any kind of
22 audit process for the companies of FES?

23 A. In my testimony, I talk about a prudence
24 review between -- the contract between FirstEnergy
25 and FES. Is that what you're referring to?

1 Q. No. Let me refer you to your deposition,
2 sir. Perhaps we can get to the heart of this. Page
3 161, are you there, sir?

4 A. Yes.

5 Q. And at line 10, did you not answer the
6 following question the following way:

7 Question: "Okay. And do you know
8 whether the proposed transaction includes any kind of
9 audit process for the companies?"

10 Answer: "I am not specifically aware so
11 I don't know."

12 That was your testimony, correct?

13 A. That's correct.

14 Q. Now, would it be fair to say that one of
15 the problems you have with rider RRS and the proposed
16 transaction is that you think that it would provide
17 FES with revenues that would be different than
18 suppliers receiving LMP-based compensation?

19 A. That's correct.

20 Q. Now, would it be fair to say that a
21 generator, a generation supplier, or a seller
22 receiving compensation other than LMP is not
23 prohibited by PJM rules?

24 A. I don't believe that falls under PJM
25 rules, no.

1 Q. So it's not prohibited, correct?

2 A. I don't believe so.

3 Q. What I said was correct?

4 A. Correct.

5 Q. And you formerly worked for Buckeye
6 Power, correct?

7 A. That's correct.

8 Q. And that is a part owner or sponsor of
9 OVEC, correct?

10 A. That's correct.

11 Q. And OVEC provided its output to various
12 owners, correct?

13 A. That's correct.

14 Q. And, in return, OVEC received cost-based
15 compensation for capacity?

16 A. That's the way I understand it, yes.

17 Q. And OVEC's output has been offered by at
18 least some of the OVEC owners into the PJM market,
19 correct?

20 A. That's correct.

21 Q. So OVEC, would it be correct to say, is
22 receiving a different level of compensation for its
23 capacity than the uniform locational clearing price,
24 correct?

25 A. OVEC isn't directly offering the

1 generators into the markets. The companies are, and
2 the companies are receiving the direct wholesale
3 prices.

4 Q. That's not my question, sir.

5 MR. KUTIK: So I move to strike.

6 MR. OLIKER: Your Honor.

7 EXAMINER PRICE: Mr. Oliker?

8 MR. OLIKER: He's providing an
9 explanation. I think he doesn't agree with
10 Mr. Kutik's premise of his question.

11 EXAMINER PRICE: If he doesn't agree with
12 Mr. Kutik's premise, that would be something you
13 should bring out on redirect. So we'll grant the
14 motion to strike and direct the witness to answer the
15 question again.

16 Can you repeat your question?

17 MR. KUTIK: Sure.

18 Q. Isn't it true that OVEC is receiving a
19 different level of compensation for its capacity than
20 the uniform locational clearing price?

21 A. That's true.

22 Q. Now, Buckeye offered the output of the
23 plants that it controlled into the PJM markets, too,
24 correct?

25 MR. OLIKER: Objection, to the extent

1 that this may call for proprietary information that
2 belongs to Buckeye. I'm not sure the Mr. Haugen is
3 allowed to answer this question.

4 MR. KUTIK: He can answer the question
5 "yes" or "no," your Honor, and he did in his
6 deposition.

7 EXAMINER PRICE: Mr. Haugen, can you
8 answer this question without disclosing any
9 confidential information that you're aware of?

10 THE WITNESS: I believe it's known that
11 they offered the units into PJM, but I would like to
12 refrain from any strategies they used.

13 Q. (By Mr. Kutik) So the answer to my
14 question is yes, correct?

15 A. Yes.

16 Q. Now, would it be fair to say that Buckeye
17 receives cost-based compensation from its member
18 co-ops?

19 A. That's correct.

20 Q. And Buckeye -- would it be fair to say
21 that in this way Buckeye has received out-of-market
22 compensation?

23 A. That's correct.

24 Q. Now, you're familiar at a very high level
25 with the alternate energy mandates, are you not?

1 A. At a high level, yes.

2 Q. And you review these requirements as a
3 subsidy, do you not?

4 A. CK they can be.

5 Q. And they provide additional compensation
6 to renewable resources, correct?

7 A. They do independently of the wholesale
8 markets.

9 Q. And renewable resources also get tax
10 credits, correct?

11 A. That's correct.

12 Q. And you think those are subsidies, too,
13 correct?

14 A. They can be subsidies independent of the
15 wholesale markets.

16 Q. Now, you're aware that renewable
17 resources can participate in the PJM market, correct?

18 A. That's correct.

19 Q. And you're not aware of any rule that
20 would bar Ohio or any state from subsidizing
21 renewable resources, correct?

22 A. I believe that if resources were being
23 subsidized based off of a cost of differences to the
24 wholesale markets, they could possibly be barred.

25 Q. Mr. Haugen, let me refer you to your

1 deposition, page 135, please. And did you not answer
2 the following question with the following answer
3 starting at line 24 on page 135:

4 Question: "Do you know whether there is
5 any PJM rule that bars Ohio or any other state from
6 subsidizing renewable resources?"

7 Answer: "Not that I'm aware of."

8 That was your deposition answer, correct?

9 A. Correct.

10 Q. Now, you understand that there are areas
11 of PJM that are nonretail choice, correct?

12 A. That's correct.

13 Q. And you don't know if the utilities
14 owning generation in those areas receive generation
15 through bundled retail rates, correct?

16 A. I'm not aware of how companies outside of
17 Ohio operate.

18 Q. So the answer to my question was correct?

19 A. Correct.

20 Q. Now, let's talk about your testimony
21 regarding the effect of rider RRS and the proposed
22 transaction on the PJM market. You've already talked
23 about the fact that before you filed your testimony,
24 you didn't talk to anyone basically outside of IGS
25 about rider RRS, do you remember that?

1 A. That's correct.

2 Q. And we also talked about the fact that
3 you did no analysis of the effect of rider RRS on the
4 PJM markets, correct?

5 A. Correct.

6 Q. And you're not aware of any specific
7 generators that have been discouraged from building
8 any new projects by any existing subsidies as you
9 believe they are in PJM, correct?

10 A. I haven't spoken with any companies
11 directly about this.

12 Q. So the answer is correct?

13 A. That's correct.

14 Q. And you're aware that between 160 and 180
15 thousand megawatts of generation cleared in last
16 year's BRAs, correct?

17 A. That sounds correct.

18 Q. And you're aware that over
19 140,000 megawatts was offered at zero in the
20 2017-2018 BRA, correct?

21 A. I don't have the exact numbers, but
22 that's a very common strategy.

23 Q. Would it be about 140,000, somewhere in
24 that neighborhood?

25 A. I don't have that number on hand, but it

1 sounds reasonable.

2 Q. If rider RRS is approved, the energy and
3 capacity from the plants would continue to be offered
4 into the PJM markets, correct?

5 A. I believe so.

6 Q. And the revenue received from offering
7 that output into the PJM market will be paid by PJM
8 based upon the market, just as it is today, correct?

9 A. Yes, they would be paid the same way, but
10 they could use different strategies to bid in.

11 Q. Now, you're not aware of any regulated
12 generation owned by any FirstEnergy affiliate or
13 subsidiary, correct?

14 A. Can you repeat that?

15 Q. Sure. You're not aware of any regulated
16 generation owned by FirstEnergy affiliate or
17 subsidiary, correct?

18 A. Not that I can recall.

19 Q. And prior to filing your testimony,
20 you've done no investigation about how any
21 FirstEnergy affiliate or subsidiary would dispatch
22 any regulated generation, fair to say?

23 A. That's fair.

24 Q. Prior to filing your testimony, you did
25 no investigation into the bidding strategy that might

1 accompany such generation, fair to say?

2 A. Bidding strategies are not public
3 information, so that's fair to say.

4 Q. And prior to filing your testimony, you
5 never read the testimony of company Witness Ruberto?

6 A. That's right.

7 Q. Now, you're aware that at least one
8 electric distribution utility has a retail rate
9 stability rider, correct?

10 A. I believe so.

11 Q. And you believe that AEP had one?

12 A. That's my understanding.

13 Q. And you're not aware of any other company
14 that has one?

15 A. No, but I've not looked specifically.

16 Q. And that retail rate stability rider took
17 effect in 2012 or 2013?

18 A. I don't have the details with me.

19 MR. KUTIK: Your Honor, we would ask that
20 the Bench take administrative notice of two things.
21 First, an entry dated August 22, 2012 in case No.
22 11-346-EL-SSO, finding that tariffs were filed in
23 compliance with the Commission's August 8, 2012 order
24 in that case.

25 And, second, the Commission's August 8th,

1 2012 Opinion and Order approving the retail rate
2 stability rider at pages 26 through 38.

3 MR. OLIKER: Your Honor, I don't know if
4 it's necessary to take administrative notice of the
5 Commission's entries and orders. I believe they
6 speak for themselves, can cited freely by anybody as
7 they so choose.

8 EXAMINER PRICE: I agree with Mr. Oliker.
9 You're free to cite the order.

10 MR. KUTIK: Thank you, your Honor.

11 Q. Now, you've looked at trends related to
12 generations -- you've looked at trends relating to
13 generation additions or retirements within PJM,
14 correct?

15 A. I have looked at some trends, yes.

16 Q. And you're not aware of any particular
17 trend in the rates of retirements or additions
18 starting in 2012 or 2013, correct?

19 A. Can you repeat that.

20 Q. You're not aware of any particular trend
21 in rates of retirement or additions starting in 2012
22 or 2013, correct?

23 A. There are some high-level trends that
24 could stand out.

25 Q. Let me refer you to your deposition, sir,

1 page 141.

2 A. Which page?

3 Q. 141. I'm sorry. 143, starting at line
4 17, did you not give the following answers to the
5 following questions:

6 Question: "Okay. Do you know whether
7 the rate of generation additions in PJM has slowed
8 down in any noticeable way starting in 2012?"

9 Answer: "I would have to go look at rate
10 additions. I don't have that on hand."

11 Question: "So you can't answer that
12 today?"

13 Answer: "No, I can't answer that."

14 Starting at line 8 of the same page I
15 asked you:

16 "Okay. Are you aware of any particular
17 trends in the rate of retirements or the rate of
18 generation -- rate of additions starting in 2012 and
19 2013?"

20 Answer, after an objection: "There's
21 nothing I can think of right now other than what I
22 said."

23 MR. OLIKER: Your Honor, if you look at
24 what he's said, he referring to his previous answer
25 which Mr. Kutik conveniently left out.

1 EXAMINER PRICE: Which you'll be able to
2 conveniently point out on redirect.

3 Q. Is that your testimony, sir?

4 A. This is my testimony, yes.

5 Q. Now, you understand that fuel diversity
6 creates a portfolio of resources that use several
7 different fuels, correct?

8 A. That's correct.

9 Q. And the benefit of fuel diversity is that
10 it reduces the risk of having a specific type of fuel
11 that would disproportionately affect the market,
12 correct?

13 A. That's correct.

14 Q. Would it also be fair to say that you
15 really haven't followed closely the price of coal
16 versus the price of natural gas?

17 A. I don't follow the price of coal very
18 closely, no.

19 Q. So what I said is correct?

20 A. That's correct.

21 Q. And you don't know if coal is relatively
22 stable as compared to natural gas, therefore,
23 correct?

24 A. Historically speaking, that's an
25 assumption that a lot of people make, but I don't

1 have specifically.

2 Q. So the answer to my question is correct?

3 A. Correct.

4 Q. And historically you believe that natural
5 gas prices have been more volatile than coal prices,
6 correct?

7 A. Can you give me an historical time range?

8 Q. Do you remember answering that question
9 in your deposition, sir?

10 A. I do, and I believe I said on a long-term
11 range, coal had been more stable, but more recently
12 there are a lot of factors that have stabilized
13 natural gas prices.

14 Q. Well, let me refer you to your deposition
15 so we can be clear. Page 149, at line 22, did you
16 not answer the following question the following way:

17 Question: "Okay. But historically
18 though is it my understanding that you believe that
19 natural gas prices have been more volatile than coal
20 prices? "

21 Mr. Oliker objected.

22 Answer: "Historically but that's due to
23 other factors."

24 Is that what you said?

25 A. I wasn't following that. Could you point

1 to line items?

2 Q. Sure. Page 149, line 22. Are you there?

3 A. Yes.

4 Q. Question. "Okay. But historically
5 though is it my understanding that you believe that
6 natural gas prices have been more volatile than coal
7 prices?"

8 Mr. Oliker objected.

9 And you answered: "Historically but
10 that's due to other factors."

11 Do you see that?

12 A. I do.

13 Q. Thank you.

14 MR. OLIKER: And I would object because
15 it also ignored several asked and answered objections
16 and his prior answers which clarified that.

17 EXAMINER PRICE: Overruled. It's a
18 proper matter for redirect.

19 Q. Now, you understand, also, do you not,
20 that wholesale prices in PJM aren't -- wholesale
21 energy prices are typically driven at the margin by
22 natural gas prices, correct?

23 A. Historically, that's been a general
24 understanding.

25 Q. And natural gas prices will have a

1 stronger influence on energy prices as more gas-fired
2 plants come on line in PJM, holding everything else
3 steady, correct?

4 A. That's correct.

5 Q. Now, I want to talk to you a little bit
6 about the proposed audits for rider RRS. We
7 mentioned them a little bit earlier. Your
8 understanding of the process is only at a high level,
9 correct?

10 A. That's correct.

11 Q. And your understanding -- you understand
12 that one audit would be to determine if the costs are
13 reasonable, correct?

14 A. That's correct.

15 Q. And you've heard the term "prudence
16 review," correct?

17 A. Yes.

18 Q. And you never participated in a prudence
19 review, correct?

20 A. I have not.

21 Q. Or a cost tracker audit proceeding,
22 correct?

23 A. I have not.

24 Q. Or even read any orders or filings in any
25 such proceedings, correct?

1 A. At the time that was correct, but I have
2 since read the one in Michigan.

3 Q. Certainly at the time you filed your
4 testimony, you had not read it, correct?

5 A. That's correct.

6 Q. Now, your understanding of a prudence
7 review is that you would look through the companies'
8 decisions to make sure that they are the best ones
9 available, correct?

10 A. Ideally, yes.

11 Q. Now, I want to talk to you a little bit
12 about your comments on the effect of the audit on
13 page 10, lines 4 through 15, of your testimony. Now,
14 sir, would it be fair to say that you've never
15 participated in a distribution base rate case,
16 correct?

17 A. That's correct.

18 Q. And you're not familiar with the criteria
19 that the Commission uses to grant increases in base
20 distribution rates, correct, or I should say
21 distribution base rates, correct?

22 A. I believe they use the cost-based
23 formula, but I'm not familiar with it.

24 Q. Well, for example, you don't know how the
25 formula method of ratemaking works, correct?

1 A. That's what I just said, yes.

2 Q. And you don't know whether
3 nondistribution revenues are considered in
4 determining whether to grant an increase in
5 distribution base rates?

6 A. That's correct.

7 Q. Now, I want to talk to you a little bit
8 about the possibility or likelihood of the sale of
9 the plants. You've never had any decision-making
10 responsibility for capital expenditures for
11 generation plants, correct?

12 A. That's correct.

13 Q. You've never had any decision-making
14 responsibility with respect to environmental upgrades
15 at generation plants, correct?

16 A. That's correct.

17 Q. And you've never had any decision-making
18 responsibilities whether to sell or purchase a
19 generation plant, correct?

20 A. I've provided analysis and
21 recommendations on purchasing, but not selling.

22 Q. So the answer to my question is correct?

23 A. I was never the final decision-maker,
24 that's correct.

25 Q. Now, you would agree with me that certain

1 plants are not sold because they're retired, correct?

2 A. That's correct.

3 Q. And one of the reasons why the plants are
4 retired is that there's no practical way to keep the
5 plants profitable and, therefore, they wouldn't be
6 worth anything to sell?

7 A. That's correct.

8 Q. And right now you would agree that we are
9 kind of in a low period as far as energy prices are
10 concerned, correct?

11 A. Due to several different factors, that's
12 correct.

13 Q. And at lower energy price levels, the
14 value of any particular unit or generation unit is
15 currently relatively low compared to other periods of
16 time, correct?

17 A. That's correct. But it was a decision of
18 the companies to hold on to the units during other
19 periods of time.

20 MR. KUTIK: Move to strike, your Honor,
21 everything including the word "but" and after that
22 word.

23 EXAMINER PRICE: Sustained.

24 Q. Now, you would agree with me, would you
25 not, that typically you don't sell things at their

1 lowest value levels, correct?

2 A. It wouldn't be an ideal situation.

3 Q. And would it be fair to say that you
4 don't know how much FES could sell Sammis or
5 Davis-Besse for, correct?

6 A. I do not know.

7 Q. And I don't want you to reveal any
8 particular numbers, and if you could answer this
9 question "yes" or "no," I'd appreciate it. If you
10 can't answer yes or no, tell us. You don't know
11 whether Davis-Besse or Sammis are currently operating
12 at a positive or negative margin, correct?

13 A. Correct.

14 Q. And you haven't reviewed the historical
15 capital expenditures or environmental upgrades at
16 Sammis, correct?

17 A. That's correct.

18 Q. And you haven't analyzed what future
19 environmental capital expenditures at Sammis might be
20 necessary, if any?

21 A. That's correct.

22 Q. And you haven't reviewed the companies or
23 FES's capital expenditure forecast for Sammis,
24 correct?

25 A. That's correct.

1 Q. And you have no idea what the cost
2 profile for Davis-Besse, Samsis, or the OVEC plants
3 has been or will be?

4 A. I was not privy to any cost information.

5 Q. So the answer to my question is correct?

6 A. That's correct.

7 Q. Now, regarding your comments on FES
8 selling or keeping the plants, you would not consider
9 yourself an expert on shareholder tolerance for
10 losses, would you?

11 A. I believe those tolerances would be up to
12 the individual shareholders, so I cannot speak for
13 them.

14 Q. You would not consider yourself an expert
15 on shareholder tolerance for losses, correct?

16 A. Correct.

17 Q. And you would not consider yourself an
18 expert on shareholder attitudes about the recovery of
19 some costs, correct?

20 A. Correct.

21 Q. And you've done no analysis of
22 FirstEnergy's generation portfolio, correct?

23 A. Correct.

24 Q. Now, you would agree with me, would you
25 not, that it could be reasonable for FES to be

1 concerned about short-term losses?

2 A. I believe it's reasonable for any company
3 to be concerned about losses.

4 Q. And it could be reasonable for FES to be
5 willing to give up future gains to reduce the risk of
6 short-term losses in certain circumstances, correct?

7 A. I believe there are multiple scenarios
8 that would be looked at when reviewing whether to
9 avoid short-term losses for long-term gains.

10 Q. So the answer to my question is in some
11 cases, yes, correct?

12 A. In some cases, correct.

13 Q. And it could be prudent for FES to hedge
14 its risks in its portfolio by seeking cost-based
15 recovery for a small portion of their portfolio while
16 allowing the rest of the units prices to fluctuate
17 with the market, correct?

18 A. I don't agree that it would be prudent.

19 Q. Let me refer you to your deposition, sir,
20 page 169. This is on line 13:

21 Question: "Okay. Do you think it would
22 be prudent for FirstEnergy Solutions to hedge its
23 risks by seeking cost base recovery for a short --
24 small portion of their assets while allowing the rest
25 of their assets to fluctuate with market prices?"

1 Answer: "Any sort of hedge is going to
2 reduce risk. You know, how they spread that risk
3 tolerance would be up to them."

4 Question: Okay. So that wouldn't be --
5 that wouldn't be one potential way to hedge risks,
6 right -- let me strike that.

7 "So that wouldn't be -- that would be one
8 potential way to hedge risks, right?"

9 Answer: "It would be -- yes, because
10 that would be one way to hedge that portion of the
11 risk."

12 That was your testimony, correct?

13 A. That's correct.

14 Q. Now, I want to talk to you a little bit
15 about your testimony, whether rider RRS will provide
16 a hedge. You have a statement about Mr. Strah's
17 assumptions on page -- I believe it's page 12 of your
18 direct testimony.

19 A. Is that a question?

20 Q. Yes.

21 A. Yes, I do.

22 Q. Now, isn't it true that you haven't seen
23 the details of Mr. Strah's cost model?

24 MR. OLIKER: Objection, asked and
25 answered. I think this is the third time.

1 A. I've not seen the details of any cost
2 model.

3 EXAMINER PRICE: Your counsel had a
4 pending objection, which is now moot, but I was going
5 to overrule it anyway, so I guess it doesn't matter.

6 THE WITNESS: I apologize.

7 Q. You're not aware of any analysis done by
8 Mr. Ruberto, correct?

9 A. That's correct.

10 Q. Or Mr. Lisowski, correct?

11 A. That's correct.

12 Q. And you didn't read the testimony, I
13 think we said earlier, about Mr. Ruberto, but you
14 didn't read the testimony of Mr. Lisowski either,
15 correct?

16 A. That's correct.

17 Q. Now, you did look at Mr. Rose's
18 information, correct?

19 A. Correct.

20 Q. And what you did with Mr. Rose was you
21 looked at forward curves, correct?

22 A. Correct.

23 Q. And would you agree with me that
24 generally the longer one goes out on the forward
25 curve, the less liquid the market is?

1 A. I would agree that it is less liquid, but
2 not illiquid.

3 Q. Well, forward prices that are more than
4 three years out represent a relatively illiquid
5 market; would you agree with that?

6 A. I would agree that they would appear
7 illiquid, but that doesn't mean I couldn't go
8 purchase much longer than that today.

9 MR. KUTIK: Your Honor, I move to strike
10 everything including and after the word "but."

11 MR. OLIKER: Your Honor, he's merely
12 providing a complete answer to Mr. Kutik.

13 EXAMINER PRICE: I'm going to deny the
14 motion to strike.

15 Q. Mr. Haugen, you've seen the Commission's
16 website called Apples to Apples?

17 A. I have.

18 Q. And would you agree with me that
19 customers believe that stable prices are a benefit?

20 A. I believe a lot of customers feel that
21 way, yes.

22 Q. And you believe that there are benefits
23 to IGS customers entering into long-term contracts?

24 A. Stability is one of those, yes.

25 Q. And, particularly, long-term contracts

1 have a fixed price?

2 A. Correct.

3 Q. And most of the products that IGS offers
4 to customers in Ohio are for one to three years -- or
5 one or three years? Excuse me.

6 MR. OLIKER: Your Honor --

7 MR. KUTIK: Let me rephrase.

8 MR. OLIKER: I want to be careful we
9 don't cross over to proprietary information.

10 MR. KUTIK: I want to be sensitive to
11 Mr. Oliker's concerns, so let me rephrase the
12 question.

13 Q. Isn't it true that if we look at the
14 Apples to Apples website for IGS products, we would
15 see products for one or three years?

16 MR. OLIKER: You're referring to today,
17 Mr. Kutik?

18 MR. KUTIK: Any period of time that he's
19 aware of.

20 A. The Apples to Apples website shows a very
21 limited number of products that we offer but are
22 generally between one and three years.

23 Q. Thank you. And isn't it true that most
24 residential customers are either at one or three
25 years in terms of having service provided by a CRES

1 provider, as far as you know?

2 A. I can't state that most customers are on
3 that.

4 Q. Would it be fair to say that most of
5 IGS's customers, retail customers, in Ohio enter
6 into 12- or 36-month contracts?

7 MR. OLIKER: Objection. That calls for a
8 confidential response regarding IGS's book of
9 business.

10 MR. KUTIK: He answered that in the
11 nonconfidential portion of his deposition, your
12 Honor.

13 MR. OLIKER: That may be so, but it's not
14 the case today.

15 EXAMINER PRICE: It became confidential
16 since the deposition?

17 MR. OLIKER: I'd have to look at the
18 deposition to verify that, your Honor.

19 EXAMINER PRICE: What page, Mr. Kutik?

20 MR. KUTIK: 181, your Honor, starting at
21 line 18 through 182, line 6.

22 MR. OLIKER: If it is, I would say it's
23 an inadvertent disclosure that pursuant to our
24 confidentiality agreement we'd be allowed to retract,
25 assuming you respect those terms, Mr. Kutik.

1 EXAMINER PRICE: Mr. Oliker, knock it
2 off.

3 MR. OLIKER: I don't believe that what
4 Mr. Kutik has purported is on these pages, your
5 Honor, from my quick review.

6 EXAMINER PRICE: I think it's a slightly
7 different question asked in the deposition than what
8 you asked today.

9 MR. KUTIK: Sure.

10 Q. (By Mr. Kutik) Would it be fair to say
11 that the typical contracts that are offered by IGS
12 are 12- or 36-month contracts?

13 A. Our marketing department has determined
14 that a lot of customers gravitate towards those
15 terms, so those are what we typically offer.

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

17 A. Yes.

18 Q. Now, you'd agree with me, would you not,
19 that once a customer's contract term is over, they
20 have to sign a new contract, or they may sign a new
21 contract?

22 A. They may.

23 Q. And that contract may have a new price?

24 A. It could.

25 Q. Now, you wouldn't be surprised to see

1 that year to year or over a period that approximates
2 a year, IGS customers that are in excess of one-year
3 contracts might experience increases of 30 percent?

4 MR. OLIKER: Could I have that question
5 read back, please?

6 EXAMINER PRICE: You may.

7 (Record read.)

8 MR. OLIKER: Your Honor, first, I would
9 say if he knows the answer to that question, he can
10 provide it, but I don't believe he can provide it in
11 the nonpublic portion of the transcript because it
12 deals with IGS pricing.

13 EXAMINER PRICE: Mr. Kutik?

14 MR. KUTIK: Your Honor, I believe this is
15 information that's publicly available from the
16 website, as I'll demonstrate in just a few minutes.

17 EXAMINER PRICE: We'll go ahead and give
18 him some leeway.

19 MR. OLIKER: Then I would prefer that
20 Mr. Kutik do that using public information.

21 EXAMINER PRICE: I think he's saying he's
22 intending to.

23 Q. (By Mr. Kutik) Can you answer that
24 question, sir?

25 A. Once customers roll off their primary

1 term, we typically offer them another fixed term. If
2 they decide to stay on a variable term, their prices
3 can fluctuate up or down.

4 Q. As much as 30 percent?

5 A. I don't have the exact percentages with
6 me.

7 Q. You wouldn't be surprised if that's
8 30 percent?

9 A. I believe it could probably fluctuate up
10 or down within 30 percent.

11 MR. KUTIK: Your Honor, I'd like to have
12 marked at this time two documents. First, as Company
13 Exhibit 82 for identification, a document that
14 says -- that's from the PUCO website, FirstEnergy
15 Apples to Apples chart, dated September 16, 2013, and
16 that's Company Exhibit 82.

17 EXAMINER PRICE: So marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. KUTIK: And as Company Exhibit 83, we
20 would ask to have marked a document EnergyChoice Ohio
21 Apples to Apples chart, Ohio Edison, dated June 13,
22 2014.

23 EXAMINER PRICE: Be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. KUTIK: May I approach?

1 EXAMINER PRICE: You may.

2 Q. Mr. Haugen, do you recognize Exhibits 82
3 and 83 from the website sponsored by the PUCO?

4 A. It is.

5 Q. And do you see that there are product
6 listings for IGS?

7 MR. OLIKER: Objection.

8 EXAMINER PRICE: Grounds?

9 MR. OLIKER: He hasn't established that
10 Mr. Haugen has ever actually seen these documents.
11 He's only asked whether they're from the PUCO, so
12 there's a lack of foundation.

13 MR. KUTIK: Your Honor, he said he's been
14 to the Apples to Apples website. He's identified
15 these as being from the Apples to Apples website and
16 that's what they appear to be.

17 MR. OLIKER: It's a different issue.

18 EXAMINER PRICE: The alternative is he
19 discloses confidential information. You asked him to
20 do this in public sources, so now you're objecting to
21 the public sources, so we're going to give him a
22 little leeway to avoid the confidential information
23 you're seeking to protect.

24 MR. OLIKER: Thank you.

25 EXAMINER PRICE: Please proceed.

1 Q. (By Mr. Kutik) Looking at Exhibit 82,
2 the September 2013 document, we see prices or offers
3 for IGS?

4 A. That's correct.

5 Q. And looking at the next-to-last page, you
6 see the third one down, an IGS offer for 12 months,
7 correct?

8 A. That's correct.

9 Q. And we see a fixed price for 6.19 cents
10 per kilowatt-hour, correct?

11 A. That's correct.

12 Q. Now, let me have you refer to Exhibit 83,
13 which is the document from the Apples to Apples chart
14 for June 13, 2014. And let me have you refer to page
15 4 of 7, correct?

16 A. That's correct.

17 Q. And we see two IGS offers there; do we
18 not?

19 A. We do.

20 Q. For a length of 12 months; do we not?

21 A. We do.

22 Q. And the price there is a 7.99 cents per
23 kilowatt-hour and 8.29 cents per kilowatt-hour,
24 correct?

25 A. That's correct.

1 Q. And would you accept, subject to check,
2 the difference between what we see in Exhibit 82 and
3 Exhibit 83 in terms of the IGS one-year offers is
4 between 29 and 34 percent?

5 A. I would have to do the math. It seems
6 reasonable.

7 Q. I want to talk to you about your
8 testimony regarding coal availability. Now, as an
9 initial matter, when you filed your testimony, you
10 didn't know how Sammis gets its coal, correct?

11 A. I believe I provided a projection in my
12 deposition.

13 Q. That wasn't my question. My question is,
14 you didn't know how Sammis gets its coal, correct?

15 A. That's correct.

16 Q. And you didn't know of any difficulties
17 that Sammis or Clifty Creek or Kyger Creek have had
18 getting any coal, correct?

19 A. I don't believe that's been public
20 information that I would even have available.

21 Q. So you don't know, correct?

22 A. That's correct.

23 Q. And you don't know what the level of coal
24 inventory is at any of these plants, correct?

25 A. That's correct.

1 Q. And isn't it true that the coal
2 restraints or the rail restraints that you refer to
3 applied only to coal from out West?

4 A. As far as I understand it, yes.

5 MR. KUTIK: May I approach, your Honor?

6 EXAMINER PRICE: You may.

7 MR. KUTIK: We'd like to have marked as
8 Company Exhibit 84 a document entitled "Coal Delivery
9 Issues for Electric Generation, Staff Overview."

10 EXAMINER PRICE: It will be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Mr. Haugen, you've seen that document
13 before; have you not?

14 A. I have.

15 Q. This is a document you cited in your
16 testimony, correct?

17 A. It was this document combined with
18 another.

19 Q. But this was one of them?

20 A. Correct.

21 Q. Would it be fair to say that this
22 document says nothing about Ohio or PJM, correct?

23 A. That's correct.

24 Q. For example, we can look at slide 3, and
25 it doesn't mention Ohio in that, does it?

1 A. It does not.

2 Q. And if we look at slide 5 -- excuse me.
3 A page that says slide 5, but not the page with the
4 text underneath, it talks about a handful of
5 generating companies in MISO and SPP, correct?

6 A. That's correct.

7 Q. Do you know what SPP stands for?

8 A. Southern Power Pool.

9 Q. Do you know where that is?

10 A. Yes.

11 Q. And that's -- Ohio is not in SPP,
12 correct?

13 A. That's correct.

14 Q. Now, would you agree with me that Ohio is
15 a relatively high railroad traffic state?

16 A. I have no basis to make that assumption.

17 MR. KUTIK: Your Honor, at this time we
18 would like to have marked as Company Exhibit 85 a
19 document that's from the PUCO website entitled
20 "Railroad Industry Information."

21 EXAMINER PRICE: It will be so marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. KUTIK: May I approach?

24 EXAMINER PRICE: You may.

25 Q. Mr. Haugen, have you ever seen that

1 before?

2 A. I have not.

3 MR. KUTIK: Your Honor, I ask the Bench
4 to take administrative of notice of this page from
5 the PUCO's website.

6 EXAMINER PRICE: We will.

7 MR. KUTIK: Now, your Honor, at this time
8 we'd like to have marked as Company Exhibit 86 a
9 document entitled "December 18, 2014, FERC Rail
10 Service Panel, Dave McMillan Statement."

11 EXAMINER PRICE: It will be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MR. KUTIK: May I approach?

14 EXAMINER PRICE: You may.

15 Q. Mr. Haugen, the document that I just
16 handed you which we've marked as Company Exhibit 86,
17 that's another document you cited, correct?

18 A. Correct.

19 Q. And would it be fair to say that one of
20 the things that Mr. McMillan is talking about is the
21 problems with delivery for a railroad company called
22 BNSF?

23 A. That's correct.

24 Q. And would it be fair to say, sir, that
25 BNSF does not do business in Ohio?

1 A. I'm not aware of all the railways in
2 Ohio.

3 Q. Are you aware, sir, of whether railroads
4 operating in Ohio have to be registered or certified?

5 A. I can assume there's probably some
6 industry standards, but I'm not aware of it.

7 Q. Would you expect that the PUCO as an
8 organization that regulates railroads would have a
9 list of railroads that do business in Ohio?

10 A. They could.

11 EXAMINER PRICE: We were formerly the
12 Ohio Rail Commission.

13 MR. KUTIK: Your Honor, we would like to
14 have marked as Company Exhibit 87 a page from the
15 PUCO website, "Regulated Company List" for railroads.

16 EXAMINER PRICE: Will be so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. KUTIK: May I approach?

19 EXAMINER PRICE: You may.

20 Q. Mr. Haugen, have you ever seen that
21 document before?

22 A. I have not.

23 MR. KUTIK: Your Honor, I'd ask the Bench
24 take administrative notice of the regulated company
25 list for railroads on the PUCO website.

1 EXAMINER PRICE: We will take
2 administrative notice.

3 Q. Now, I want to talk to you a little bit
4 about possible issues of delivery of power from the
5 OVEC plants. Both of those plants are in their own
6 balancing authority, correct?

7 A. That's correct, I believe.

8 Q. And both of those plants currently bid
9 into the PJM markets, correct?

10 A. I believe that most of the sponsoring
11 companies do.

12 Q. And you're familiar with the PJM import
13 rules that were approved by FERC in spring of 2014?

14 A. I am.

15 Q. And the rules were needed because
16 resources were clearing BRA without firm
17 transportation to deliver into PJM?

18 A. That's correct.

19 Q. And the rules contained exceptions for
20 pseudo-tied units, correct?

21 A. They did.

22 Q. And PJM defines pseudo-tied units as
23 electrically equivalent to internal resources,
24 correct?

25 A. I believe so.

1 Q. And the OVEC units are pseudo-tied,
2 correct?

3 A. That's my understanding.

4 Q. And pseudo-tied units are subject to
5 day-ahead energy must-offer obligations just like an
6 internal unit?

7 A. Resources that clear in the base residual
8 auction are required to offer in resources the same.

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

10 A. Yes.

11 Q. And they have also a capacity must-offer
12 obligation, just like any other internal resource,
13 correct?

14 A. I believe so.

15 Q. As resources being located where they
16 are, PJM requires the OVEC plants to have firm
17 transmission service into PJM, correct?

18 A. That's correct.

19 Q. And you're aware that FES has firm
20 transmission for its entitlement to the OVEC output,
21 correct?

22 A. That's correct.

23 Q. I want to talk to you a little bit about
24 your testimony on recovery of stranded costs. Would
25 it be fair to say you've made no study of whether or

1 how the companies may have recovered any stranded
2 costs?

3 MR. OLIKER: Do you have a page cite,
4 Mr. Kutik?

5 EXAMINER PRICE: He's not asking about a
6 specific page.

7 There's a pending question. You can
8 answer it.

9 A. Yes.

10 Q. Okay. Let me go back to my question.
11 You have made no study of whether or how the
12 companies may have recovered any stranded costs,
13 correct?

14 A. I have not.

15 Q. And you're not aware -- you're not
16 familiar with the term "market development period" in
17 the Ohio market, correct?

18 A. I've heard of the term, but I can't think
19 of the time period right now.

20 Q. And you didn't review the companies'
21 transition plan case?

22 A. I have not.

23 Q. And you don't know what a rate stability
24 plan is, correct?

25 A. Correct.

1 Q. And you don't know what a rate certainty
2 plan is, correct?

3 A. I can make assumptions, but that's
4 correct.

5 Q. So would it be fair to say you haven't
6 reviewed the companies' cases involving either a rate
7 stabilization plan or a rate certainty plan?

8 A. I have not.

9 MR. KUTIK: May I have one moment?

10 EXAMINER PRICE: You may.

11 (Discussion off the record.)

12 MR. KUTIK: May I proceed, your Honor?

13 EXAMINER PRICE: You may.

14 Q. Going back to the coal issue for a
15 moment. Would it be fair to say that no plant from
16 Ohio or even PJM has experienced any difficulty as
17 far as you know?

18 A. I would have no way of knowing that
19 either way.

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

21 A. Yes.

22 MR. KUTIK: I have no further questions.

23 Thank you, sir.

24 EXAMINER PRICE: Thank you.

25 Mr. Kurtz.

1 MR. KURTZ: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Kurtz:

5 Q. Just very briefly. IGS Energy is a
6 privately-held company?

7 A. That's correct.

8 Q. So the finances, the income statement is
9 not publicly available?

10 A. It's not.

11 Q. Isn't it true that one of IGS's core
12 businesses in Ohio is as a CRES electric supplier?

13 A. That's correct.

14 Q. And it's true also, isn't it, that one of
15 IGS's main competitors is FES?

16 A. They are a competitor.

17 Q. You're aware that the companies' position
18 in this case is that approval of the RRS will benefit
19 both consumers and FES, correct?

20 A. Correct.

21 Q. Assuming that's true, wouldn't approval
22 of the RRS hurt IGS's competitive position by helping
23 a competitor? Let me rephrase. Do you think it's a
24 proper use of the regulatory process to use it as a
25 mechanism to gain an advantage over a competitor in

1 the CRES market?

2 A. I do not.

3 MR. KURTZ: Thank you, your Honor.

4 EXAMINER PRICE: Thank you. Before we go
5 on to redirect, I just have a couple questions. If
6 you could turn to page 6 of your testimony, line 20,
7 you indicate in your testimony that "generation
8 service is a competitive service under Ohio law"; is
9 that correct.

10 THE WITNESS: That's the way I understand
11 it, correct.

12 EXAMINER PRICE: Irrespective of
13 4928.143, the company is required to offer a standard
14 service offer; are they not?

15 THE WITNESS: That's correct.

16 EXAMINER PRICE: And they can offer
17 either a market rate offer or an electric security
18 plan; is that correct?

19 THE WITNESS: That's correct.

20 EXAMINER PRICE: If they offer an
21 electric security plan, one of the provisions they're
22 allowed is to have a construction work-in-progress
23 provision to allow the construction of generation
24 plants; isn't that right?

25 THE WITNESS: I believe so.

1 EXAMINER PRICE: Another provision is
2 they're allowed to opt to, apply for a request, would
3 be a provision to pay for the cost of service to
4 construct a new generation facility through a
5 nonbypassable charge; is that right?

6 THE WITNESS: I'm not familiar with that.

7 EXAMINER PRICE: You're not familiar with
8 the provision in the ESP statute that allows an
9 electric utility to request the Commission's
10 authority for a nonbypassable charge to construct an
11 electric generation facility?

12 THE WITNESS: I'm not familiar with it.

13 EXAMINER PRICE: Are you familiar with
14 the provision in the ESP statute that allows an EDU
15 to have an automatic adjustment clause for fuel
16 charges?

17 THE WITNESS: I am.

18 EXAMINER PRICE: Any of those three
19 charges that we've discussed, do you think those are
20 reflective of a competitive service?

21 THE WITNESS: I believe any generation
22 service would be reflective of a competitive service
23 in the wholesale energy markets if they're being
24 offered.

25 EXAMINER PRICE: Yes, but as you and I

1 both agree, 4928 only applies to retail electric
2 service; isn't that correct?

3 THE WITNESS: That's correct.

4 EXAMINER PRICE: So could you answer my
5 question again ignoring the wholesale aspect of this?

6 THE WITNESS: Okay. I believe under the
7 law that -- the way I understand it is that it's not
8 prohibited to build a generator as a utility, so it
9 is a possibility.

10 EXAMINER PRICE: Thank you. And, last,
11 are you familiar -- if I say Senate Bill 221, do you
12 know what I'm talking about?

13 THE WITNESS: Is that the renewable
14 energy requirement?

15 EXAMINER PRICE: That was part of Senate
16 Bill 221. Senate Bill 221 amended 4928.14; did it
17 not?

18 THE WITNESS: Yes.

19 EXAMINER PRICE: And when it amended
20 4928.14, it dropped the term "market based" from the
21 description of standard service offer; did it not?

22 THE WITNESS: I believe so.

23 EXAMINER PRICE: Thank you.

24 Redirect?

25 MR. OLIKER: Could we have a few minutes,

1 your Honor?

2 EXAMINER PRICE: I'm sorry. Mr. McNamee.

3 MR. MCNAMEE: I have no questions.

4 EXAMINER PRICE: Thank you.

5 Redirect?

6 MR. OLIKER: May we have a few minutes,

7 your Honor?

8 EXAMINER PRICE: You may.

9 Let's go off the record.

10 (Recess taken.)

11 EXAMINER PRICE: Mr. Oliker, redirect?

12 MR. OLIKER: Thank you, your Honor.

13 - - -

14 REDIRECT EXAMINATION

15 By Mr. Oliker:

16 Q. Mr. Haugen, do you remember some
17 questions you received from Mr. Kutik about the
18 Apples to Apples chart which is contained in, I
19 believe, Exhibits 82 and 83?

20 A. I do.

21 Q. And are there any differences that you
22 can note between the products that are contained in
23 those two exhibits?

24 A. When he was questioning me, he was asking
25 me about customers who were with us over 12 months

1 rolling over to a new product. These products listed
2 on the Apples to Apples website are both new products
3 for new customers and are not typically what we would
4 charge customers.

5 EXAMINER PRICE: So you're like the cable
6 company?

7 THE WITNESS: I'll say these are probably
8 not our best rates. There's a lot of risk involved
9 with the rates that are out here on Apples to Apples,
10 and we enroll very few customers on this compared to
11 our other methods.

12 EXAMINER PRICE: Okay.

13 Q. (By Mr. Oliker) And did Mr. Kutik ask
14 you -- regarding the products contained in Exhibit 83
15 compared to Exhibit 82, is there any reason why the
16 price may be different in Exhibit 83 from Exhibit 82
17 regarding the type of product?

18 A. In the second exhibit, there's also a
19 green offer, but other than that, these are 12-month
20 fixed terms.

21 Q. And do you remember a question Mr. Kutik
22 asked you about whether or not distribution rates can
23 be subsidized?

24 A. Yes.

25 Q. Do you have any clarifications you'd like

1 to make?

2 A. I believe he was referring to the rider
3 RRS which would subsidize residential customers using
4 generation services; is that correct?

5 Q. Maybe I'll ask it this way, Mr. Haugen.
6 When you indicated that a distribution rate could be
7 subsidized, what was the context of your use of that
8 word subsidy?

9 MR. KUTIK: Your Honor, that
10 mischaracterizes the question. The question is you
11 believe the only type of service that can be
12 subsidized is noncompetitive.

13 EXAMINER PRICE: Sustained.

14 MR. OLIKER: Happy to rephrase, your
15 Honor.

16 EXAMINER PRICE: Please.

17 Q. In the context of Mr. Kutik's question,
18 he was asking about noncompetitive service, whether
19 it could be subsidized. Could you provide context
20 for your use of the word subsidize?

21 A. I don't believe that noncompetitive
22 service could be subsidized using a competitive
23 service.

24 Q. Do you remember a series of questions
25 that you received about coal delivery?

1 A. I do.

2 Q. And do you remember looking at a
3 document, admittedly you had never seen before, about
4 the amount of railroad that exists in Ohio?

5 A. I do.

6 Q. Do you believe the amount of railroad
7 that exists in Ohio is necessarily determinative of
8 coal delivery issues?

9 MR. KUTIK: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. KUTIK: No foundation that he knows
12 anything about coal delivery. That's been
13 established in cross.

14 EXAMINER PRICE: I'll give Mr. Oliker
15 some leeway. Overruled.

16 A. While I'm not 100 percent familiar with
17 coal delivery, I am familiar with geographically
18 where the coal has to move from one state to another.
19 So by looking at an isolated state's railroad system,
20 you are missing a lot of the possible interruptions
21 that can happen between there.

22 MR. KUTIK: I move to strike everything
23 after "I'm not familiar with", the first sentence.

24 EXAMINER PRICE: Denied.

25 Q. And, Mr. Haugen, do you remember a

1 question that Mr. Kutik asked about generators within
2 PJM being interrupted in the delivery of coal? Do
3 you remember that question?

4 A. Yes.

5 Q. Are you familiar with generators being
6 interrupted in states that are contiguous to Ohio to
7 the coal issues?

8 A. I believe there was recent testimony
9 filed on behalf of the Attorney General in Michigan
10 where consumers had to --

11 MR. KUTIK: Move to strike.

12 EXAMINER PRICE: Let him finish.

13 A. -- where consumers had to curtail their
14 load due to coal concerns.

15 MR. KUTIK: Move to strike.

16 EXAMINER PRICE: Grounds?

17 MR. KUTIK: Hearsay.

18 EXAMINER PRICE: Mr. Oliker?

19 MR. OLIKER: He's testifying based upon
20 public documents that he's reviewed in other state
21 commissions, your Honor.

22 EXAMINER PRICE: Sustained -- or granted.
23 It's hearsay. The motion to strike is granted.

24 Q. Mr. Haugen, do you have personal
25 knowledge regarding coal-delivery issues that may

1 exist in other states?

2 A. I do.

3 Q. Could you explain what that knowledge is?

4 MR. KUTIK: Objection, your Honor.

5 EXAMINER PRICE: Grounds?

6 MR. KUTIK: Just to wave the personal
7 knowledge flag doesn't get you to the goal post.
8 They're mixing metaphors. It's a back-handed way to
9 get in exactly what he just --

10 EXAMINER PRICE: I understand that, but
11 let's let him at least answer the question and then
12 we can deal with striking it or whether I'll just say
13 it's something you can deal with on recross.

14 A. Can you restate the question?

15 Q. Do you have personal knowledge regarding
16 potential coal-delivery issues that have occurred in
17 other states?

18 A. I do.

19 Q. Can you explain the basis for that
20 knowledge?

21 A. Through recent testimony filed by the
22 Attorney General in a Michigan hearing.

23 EXAMINER PRICE: Do you want to withdraw
24 that question and answer?

25 MR. OLIKER: I'll withdraw it. I'll

1 withdraw the question.

2 Your Honor, would you accept
3 administrative notice of the proceeding in Michigan?

4 EXAMINER PRICE: No. No. It's unfair to
5 bring it out on recross.

6 Let me rephrase that. Did you provide
7 that document to the companies on discovery as an
8 exhibit you might use?

9 MR. OLIKER: Not as an exhibit. We
10 indicated we would use any public information in our
11 testimony. It's a very recent case.

12 EXAMINER PRICE: Then no, it's unfair the
13 company bring it out on recross.

14 MR. OLIKER: I believe that's all the
15 questions I have, your Honor.

16 Thank you, Mr. Haugen.

17 EXAMINER PRICE: Thank you.

18 Recross, Mr. Hays?

19 MR. HAYS: No, your Honor.

20 EXAMINER PRICE: Mr. Randazzo?

21 MR. RANDAZZO: No questions.

22 EXAMINER PRICE: Mr. Fisk?

23 MR. FISK: No.

24 EXAMINER PRICE: Mr. Kurtz?

25 MR. KURTZ: No questions.

1 EXAMINER PRICE: Mr. Sauer?

2 MR. SAUER: No, thank you.

3 EXAMINER PRICE: Mr. Kutik?

4 - - -

5 RE-CROSS-EXAMINATION

6 By Mr. Kutik:

7 Q. Mr. Haugen, did I hear you say that
8 prices that appear on the Apples to Apples chart
9 would not necessarily be the prices that IGS would
10 offer customers in their contracts?

11 A. The customers would have those prices
12 available, but we use very targeted marketing to
13 offer very specific customers over a large geographic
14 area.

15 Q. So a customer could call up and get a
16 different rate; is that correct?

17 A. That's possible.

18 MR. KUTIK: No further questions.

19 EXAMINER PRICE: Thank you.

20 Mr. McNamee?

21 MR. MCNAMEE: I have no questions.

22 EXAMINER PRICE: Thank you. You're
23 excused.

24 Mr. Oliker.

25 MR. OLIKER: IGS would move for the

1 admission of Exhibits 9 and 10, and we would also
2 proffer the stricken provisions regarding
3 Mr. Haugen's testimony pertaining the federal
4 preemption, your Honor.

5 EXAMINER PRICE: Any objections to the
6 admission of 9 and 10, subject to the motion to
7 strike?

8 MR. KUTIK: Subject to the motion to
9 strike, no, your Honor.

10 EXAMINER PRICE: Those exhibits will be
11 admitted subject to the motion to strike, and we will
12 accept the proffer.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 MR. OLIKER: Just so the record is clear,
15 the reasons for the proffer were previously explained
16 in the motion to strike. I would renew that basis
17 now.

18 EXAMINER PRICE: Thank you. Mr. Kutik.

19 MR. KUTIK: Your Honor, at this time the
20 companies will move for the admission of Company
21 Exhibit 82, Company Exhibit 83, Company Exhibit 84
22 and Company Exhibit 86.

23 EXAMINER PRICE: Any objection to the
24 admission of those exhibits?

25 MR. OLIKER: No, your Honor.

1 EXAMINER PRICE: Those exhibits will be
2 admitted.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 EXAMINER PRICE: Let's go off the record
5 for one minute.

6 (Recess taken.)

7 EXAMINER CHILES: Mr. Oliker.

8 MR. OLIKER: At this time IGS Energy
9 would call Matthew White.

10 (Witness sworn.)

11 - - -

12 MATTHEW WHITE

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

15 DIRECT EXAMINATION

16 By Mr. Oliker:

17 Q. Please state your name for the record
18 again.

19 A. Matthew White.

20 Q. Who are you employed by?

21 A. IGS Energy.

22 Q. Have you submitted testimony in this
23 proceeding?

24 A. Yes, I have.

25 Q. Particularly, have you submitted three

1 pieces of testimony in this proceeding, admittedly
2 two of those documents being a public and
3 confidential version?

4 A. Yes, I have.

5 Q. Let's start with your supplemental direct
6 testimony, which was submitted on August 18th, 2015.

7 A. Okay.

8 Q. Just could you clarify, is this an update
9 to an earlier piece of testimony, Mr. White?

10 A. Yes.

11 Q. And this updates your direct testimony?

12 A. Yes.

13 MR. OLIKER: Okay. And I'd like to mark
14 as IGS Exhibit 11 the public version of Mr. White's
15 supplemental direct testimony filed on August 18th,
16 2015.

17 EXAMINER CHILES: So marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. And, Mr. White, do you recognize the
20 document filed as IGS Exhibit 11?

21 A. Yes.

22 Q. And was this prepared by you or under
23 your direction?

24 A. Yes.

25 Q. And do you have any changes to make to

1 your testimony?

2 A. No.

3 Q. If asked these same questions again
4 today, would your answers be the same?

5 A. Yes.

6 Q. Could you please turn to the confidential
7 version of that testimony, Mr. White?

8 A. Sure. I have it.

9 MR. OLIKER: And I'd like to mark this
10 document as IGS Exhibit 12C.

11 EXAMINER CHILES: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Mr. White, does Exhibit 12C contain the
14 confidential version of your supplemental direct
15 testimony?

16 A. Yes.

17 Q. Like the public version, these answers
18 were prepared by you or under your direction?

19 A. Yes.

20 Q. And if I asked the same questions today,
21 would your answers be the same?

22 A. Yes.

23 Q. And also you have no clarifications to
24 make to this prepared testimony, correct?

25 A. Correct.

1 Q. Finally, I would turn to the supplemental
2 testimony of Matthew White that was which was filed
3 on March 2, 2015. Do you see that document?

4 A. Yes.

5 MR. OLIKER: Your Honor, I would mark
6 that document as IGS Exhibit 13.

7 EXAMINER CHILES: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Mr. White, was IGS Exhibit 13 prepared by
10 you or under your direction?

11 A. Yes.

12 Q. And do you have any corrections to make
13 to that testimony?

14 A. No.

15 Q. And if asked the same questions today,
16 would your answers be the same?

17 A. Yes.

18 Q. Regarding this supplemental testimony
19 that we were just discussing as IGS Exhibit 13, do
20 you have any additional documents with you that may
21 be reflected in this testimony?

22 A. In my supplemental testimony, I cited
23 testimony from, I believe it was, Tony Alexander, and
24 I believe Leila Vespoli. I have certified copies of
25 that testimony provided to me by the Ohio House of

1 Representatives with me. So it's the same words, but
2 the copies that I have on the stand are certified
3 copies.

4 Q. Okay. Thank you.

5 MR. OLIKER: With that, I would move for
6 the admission of the exhibits and tender the witness
7 for cross-examination.

8 EXAMINER CHILES: Thank you. We will
9 defer ruling on the exhibits until cross-examination
10 is complete.

11 MS. DUNN: Your Honor, I have motions to
12 strike. Would you like to entertain those before we
13 do cross-examination?

14 EXAMINER CHILES: Yes, please.

15 MS. DUNN: I have several motions to
16 strike, your Honor. I'm going to go as slow as you
17 need me to, and I'll try to do this as methodically
18 as possible, so bear with me.

19 First, I'd like to move to strike -- I'm
20 going to work off of, just for the record, IGS 11,
21 which is the public version of his supplemental
22 direct testimony, not to be confused with IGS 13
23 which is his supplemental testimony.

24 So on IGS 11, turning to page 7, starting
25 at the section with line 13, moving to strike up to

1 line 22 on page 12. So that would be the entire
2 section regarding utility billing, and the
3 attachments referenced therein.

4 Your Honor, my grounds for the other two
5 are the same. Would you like me to identify the
6 motions to strike and then the grounds since they're
7 the same, or go one by one?

8 EXAMINER CHILES: Let's take these one by
9 one, please. Could you give me the last reference
10 where this motion to strike ends?

11 MS. DUNN: Sure. It's ending on line 22,
12 page 12, would be the entire section relating to
13 utility billing and attachments.

14 EXAMINER CHILES: Thank you.

15 MS. DUNN: Your Honor, moving to strike
16 this section on the basis of relevance. Relevance
17 means evidence having tendency to make the existence
18 of any fact that is of consequence to the
19 determination of the action more probable or less
20 probable than it would be without the evidence.

21 Moreover, even if relevant evidence,
22 which this is not, evidence may be excluded if its
23 probative value is substantively outweighed,
24 substantially outweighed by considerations of undue
25 delay or needless presentation of cumulative

1 evidence.

2 As this Bench has already identified, the
3 issues in this case are whether the Commission has
4 statutory authority to approve rider RRS. This
5 section has no relevance to that issue.

6 The other issue this Bench has identified
7 is whether the other provisions of the ESP should be
8 approved. There is nothing in the companies'
9 application relating to the utility billing that
10 Mr. White identifies; therefore, it is not relevant
11 to the other provisions of the ESP.

12 Whether the ESP is in the aggregate more
13 favorable than an MRO would be, Mr. White makes no
14 argument in his testimony that adding utilities or
15 billing for noncommodity products would make the ESP
16 in the aggregate more favorable than the MRO.

17 And, also, the last issue is whether the
18 stipulations passed the Commission's three-prong
19 test. Again, the billing of noncommodity products
20 and services has nothing to do with that issue as
21 well.

22 In addition, even if the evidence were
23 relevant, it will cause unnecessary delay in this
24 proceeding in the form of extensive cross-examination
25 of Mr. White on this topic and potential rebuttal

1 testimony on this issue since the companies have
2 nothing in their application or testimony related to
3 this issue.

4 For all of those reasons, your Honor, I
5 move to strike this section.

6 EXAMINER CHILES: Thank you.

7 Mr. Oliker.

8 MR. OLIKER: Your Honor, if you take a
9 look at the Q and A, there's actually a reference to
10 the application itself and a provision in the
11 application that Mr. White doesn't agree with, and he
12 goes on to talk about why he doesn't agree with it
13 and has his own recommendation.

14 And, additionally, before we even move
15 further, the standard for a relevance review is --
16 it's a pretty low bar. This goes to state policy.
17 Mr. White provides examples of why the state policy
18 and customer choice would benefit from his
19 recommendations, and I think that we're entitled to
20 make that.

21 EXAMINER PRICE: Mr. Oliker, what
22 provision of the ESP statute are you urging the
23 Commission to adopt these provisions under? Because
24 we all know the Supreme Court has said the lists in
25 (B) (2) (b) is exhaustive, and a Commission has to

1 approve any provision of the ESP under one of those
2 provisions except for the standard service offer.

3 So my question for you is which provision
4 of (B) (2) (b) do his recommendations fall under -- or
5 B(2). I'm sorry.

6 MR. OLIKER: First, the utility billing
7 relates to distribution service. It is a
8 distribution service. It is a distribution asset.
9 That is allowed under the ESP. That's why we have
10 provisions in an ESP that relate to that service. I
11 mean, their own application proposes to change the
12 word "generation" in the billing agreement.

13 EXAMINER PRICE: So you're saying (H)?

14 MR. OLIKER: That would be one of them.
15 I would have to look at the statute, and I would take
16 a moment to do that, if you would like me to. But I
17 think there are several different ways where it's
18 relevant. If Mr. White can't testify on the issue,
19 then they can't amend the word "generation" in their
20 application. Then they both come out. It would be
21 one of them. I think the state policy is considered
22 in all SSO proceedings or all ESP proceedings.

23 EXAMINER PRICE: That's not what the
24 Court said. The Court said it has to be underneath
25 one of these provisions.

1 MR. OLIKER: I think that that goes to
2 what can be included in an ESP and I understand --

3 EXAMINER PRICE: Well, you're asking the
4 Commission to modify this ESP to include this.

5 MR. OLIKER: Yes, and there is
6 authorization under the statute to modify the ESP.

7 EXAMINER PRICE: Under which section?
8 Where do you want to hang your hat on?

9 MR. OLIKER: I want to give you a correct
10 reference, your Honor. I don't always think of the
11 statutes in terms of each particular aspect of it. I
12 just know what the words say.

13 Your Honor, I think it could definitely
14 be covered under (H), provisions related to
15 distribution service.

16 EXAMINER CHILES: Does that conclude your
17 response?

18 MR. OLIKER: I'm trying to take a moment
19 to make sure I've reviewed the statute appropriately,
20 your Honor.

21 EXAMINER CHILES: Take your time.

22 MR. OLIKER: Thank you. Potentially
23 under provisions related to transmission, ancillary
24 congestion, or any related service required for the
25 standard service offer, and I think billing would

1 fall under that.

2 MS. DUNN: Your Honor, when Mr. Oliker is
3 through, I'd like to respond, please.

4 EXAMINER CHILES: You'll have the
5 opportunity.

6 MR. OLIKER: I would leave it at that,
7 and also note that the companies have already put
8 this provision at issue in their own application.

9 EXAMINER CHILES: Thank you, Mr. Oliker.
10 Ms. Dunn.

11 MS. DUNN: Yes, your Honor. I'd like to
12 respond to the legal argument that it's permissible
13 4928.143(B)(2)(h). That references distribution
14 service. The Commission has in its retail market
15 investigation looked at billing, certain items on the
16 bills. This provision that he cites would ostensibly
17 let anything anyone ever wanted to bring in relating
18 to distribution service into an ESP case. It's not
19 what the statute intended.

20 The Commission has another form for
21 billing. That would be the retail market
22 investigation and the market development working
23 group. I would also note that this isn't simply
24 utility billing. This is billing of noncommodity or
25 nonelectric goods and service.

1 If you look at part G, it relates to
2 services required for the standard service offer.
3 Billing of noncommodity goods and services is not
4 required for the standard service offer.

5 And, your Honor, may I approach to
6 address his other arguments?

7 EXAMINER CHILES: You may.

8 MS. DUNN: Your Honor, Mr. Oliker
9 referenced the redlined tariff that the companies
10 have submitted in this case. I've handed out a copy
11 of one of the redlined tariffs. It's a voluminous
12 document for all three.

13 So this is part of Company Exhibit 1,
14 Attachment 5, and it's the OhioEdison Supplier
15 Coordination Tariff redlined. Mr. Oliker is
16 referring to -- if you look at page 4 of 52, the
17 term -- or I'm sorry. Page 3 of 52, "Bill Ready,"
18 and he's referring to the insertion of the word
19 "generation" there.

20 I would like to point out a couple of
21 other sections of this document. If you look at page
22 7 of 52 in the upper right-hand corner, Section C, it
23 says the "provisions apply to all Certified Suppliers
24 providing Competitive Retail Electric Services to
25 Customers located in the Company's service territory,

1 including an affiliate or division of the Company
2 that provides Competitive Retail Electric Services."

3 And then I'd also like to point you to
4 the next page, page 8, where it states, "The Tariff
5 sets forth the basic requirements for interactions
6 and coordination between the Company and Certified
7 Suppliers necessary for ensuring the delivery of
8 Competitive Retail Electric Service from Certified
9 Suppliers to their Customers."

10 The reason I point out those sections, if
11 you'll also then indulge me to turn to page 94 of
12 Mr. White's deposition, lines 9 through 12 -- well,
13 actually, let's go to -- yeah, let's do 9 to 12.

14 "And we already talked about how
15 noncommodity products and services is not competitive
16 retail electric service, correct?

17 "Yes."

18 It's clear by the terms of the supplier
19 tariff in Mr. White's testimony that the insertion of
20 generation in the bill ready had nothing to do with
21 noncommodity goods and services. The supplier tariff
22 provision doesn't apply. That does not tie that to
23 this application. And for all those reasons, even if
24 relevant, the undue delay in handling this issue with
25 Mr. White and on rebuttal warrants this testimony be

1 stricken. Thank you.

2 MR. OLIKER: May I respond briefly? I
3 think the key point here is the supplier tariff
4 itself is at issue, and that is the company can
5 change it to insert words like "generation."
6 Mr. White can recommend that they change other words
7 in the tariff regarding who it applies to, for people
8 providing competitive retail electric service or
9 other products and services which are also
10 contemplated by Ohio law. So the fact that this is
11 at issue at all and that they're making changes to it
12 opens the door for people to recommend additional
13 changes.

14 EXAMINER CHILES: Thank you, Mr. Oliker.

15 At this time we are going to deny the
16 motion to strike.

17 MR. OLIKER: Thank you, your Honor.

18 MS. DUNN: Thank you, your Honor.

19 Moving forward, also, to page -- I'm
20 working off of IGS 11, page 13, line 1 through page
21 16, line 18, essentially the entire section regarding
22 "Supplier Consolidated Billing." Again, the basis,
23 as I articulated before, is relevance, and also even
24 if relevant, substantially outweighed by
25 considerations of undue delay.

1 I would also point out that regarding
2 supplier consolidated billing, IGS made this exact
3 same argument in AEP Ohio's ESP case. And in the
4 February 25, 2015 Opinion and Order at page 81, the
5 Commission itself said that the supplier consolidated
6 billing should be discussed in the market development
7 working group as part of this Commission's retail
8 market investigation.

9 This is not relevant to the ESP. The
10 Commission has recognized it is not relevant to AEP's
11 ESP, and for those reasons, this testimony should be
12 stricken.

13 EXAMINER CHILES: Thank you.

14 Mr. Oliker.

15 MR. OLIKER: Your Honor, billing issues
16 often come up in ESP cases. They talk about
17 purchase -- the receivables program. They talk about
18 consolidated billing. They talk about changes to the
19 billing agreements. It's perfectly acceptable and
20 logical for parties to make proposals regarding the
21 future of billing systems that they would like to see
22 at utilities.

23 While the market development working
24 group is currently ongoing, we don't know when that
25 will be resolved. It could be resolved tomorrow. It

1 could be resolved in a year. There will ultimately
2 have to be a proceeding that approves any changes the
3 market development working group makes. And to the
4 extents that those changes happen soon, it would be
5 very helpful to have a proceeding available to make
6 those changes.

7 The Commission is free to decide, as it
8 did in the AEP case, of where those changes should be
9 made, but I don't think that it's appropriate to say
10 that just because one result occurred someplace in
11 nine months ago or whatever date that was, that it's
12 going to be exactly the same here.

13 EXAMINER CHILES: Ms. Dunn, do you have a
14 response?

15 MS. DUNN: Your Honor, if it was good
16 enough for AEP, it was good enough for the company.
17 The retail market investigation is still going on.
18 The Commission did not address it at all in AEP's
19 case. The testimony is almost identical, and not to
20 mention that the companies have brought nothing in
21 their application or testimony regarding supplier
22 consolidated billing. For those reasons, it's not
23 relevant and should be stricken.

24 EXAMINER CHILES: Thank you.

25 Mr. Oliker, final word.

1 MR. OLIKER: I would stand by my earlier
2 statements and just note that parties have
3 historically provided recommendations that are not
4 necessarily exactly in line with the companies'
5 application. While the company does typically make
6 several proposals in an ESP case, they are not the
7 only proposals, and this is one example of that, and
8 it's something the Commission could consider in
9 whether it approves, or modifies and approves, the
10 application that is in this case.

11 EXAMINER CHILES: Thank you. Consistent
12 with our prior ruling, the motion to strike is
13 denied.

14 MR. OLIKER: Thank you, your Honor.

15 MS. DUNN: And, your Honor, I can proceed
16 if you'd like.

17 EXAMINER CHILES: Yes, please.

18 MS. DUNN: Along those same lines, I also
19 move to strike page 16, line 19, and through page 21,
20 line 16. This would be the entire section regarding
21 unbundled SSO costs and the subsequent attachments,
22 again on the basis of relevance and undue delay.

23 And I would also note that the Commission
24 on this issue on identical testimony found in Duke's
25 ESP case, No. 14-841, April 2nd, 2015 Opinion and

1 Order, that unbundled SSO service was "better suited
2 for another forum, such as a distribution rate case,
3 and, therefore, we decline to adopt the proposal from
4 IGS."

5 Your Honor, there is absolutely nothing
6 in the companies' application relating to unbundled
7 SSO service. The Commission itself stated that that
8 issue was suited for another forum; therefore, the
9 Bench should strike that testimony in this case as
10 well.

11 EXAMINER CHILES: Thank you.

12 Mr. Oliker.

13 MR. OLIKER: Thank you. First, I would
14 note one of the things that is important about the
15 Duke order is there was an acknowledgment that this
16 is an issue that should be pursued. To the extent
17 the company is stipulating to not oppose any
18 discovery that may occur in a future case regarding
19 this issue for distribution rates, I think our
20 opinion may have softened. But what's at issue here
21 is the standard service offer rates, what is in them?
22 Does it contain all of the components of standard
23 service offer? For example, the call center that
24 FirstEnergy may operate, is that in there? And as
25 Mr. White says, it's not.

1 Because we're setting SSO rates, it's
2 perfectly appropriate. He's talking about the actual
3 rates and prices that are at issue in this case, and
4 he is free to opine that maybe they've left a few
5 cost components out.

6 EXAMINER CHILES: Thank you. Consistent
7 with our prior ruling, the motion to strike will be
8 denied.

9 MS. DUNN: Thank you, your Honor.

10 Turning to page 6, line 19 to 20, and
11 footnote 2, your Honor, I move to strike that
12 sentence along with the footnote. As an initial
13 matter, I'd like you to turn to page Exhibit MW-1

14 MR. OLIKER: We're at the footnote at
15 page 6 or MW-1?

16 MS. DUNN: Lines 19 to 20 on page 6 and
17 all of footnote 2, including the attachments.

18 Your Honor, I turn your attention to
19 Exhibit MW-1. I'm moving to strike MW-1 on the basis
20 of hearsay and an unauthenticated document. This is
21 being offered for the truth of the matter asserted,
22 that FES has announced it is returning customers to a
23 significant number of -- excuse me.

24 It's returning a significant number of
25 its customers to SSO service. It is presumably

1 someone from AEP, although, we don't know who, saying
2 that FES is no longer providing this unknown customer
3 generation service. We can't cross-examine the
4 customer or anyone from AEP. Also, it doesn't say
5 anything about SSO service.

6 I would also turn your attention to page
7 52 of Mr. White's deposition, starting at line 1:

8 "And also MW-2 to your testimony -- oh,
9 no, just MW-1, correct?"

10 "Yes."

11 "Okay. Is this a letter sent to you?"

12 "No."

13 "And I understand that you've redacted
14 the personal information so I will not ask you for a
15 name. Is this an employee of IGS?"

16 "I don't know."

17 "Do you know who this is?"

18 "No."

19 "How did you get this?"

20 "My attorney provided it to me."

21 "Do you know where Mr. Olikier got it?"

22 "I don't know."

23 For that reason, that document should be
24 stricken.

25 EXAMINER CHILES: Thank you.

1 Mr. Oliker.

2 MR. OLIKER: Your Honor, if you look at
3 the footnote -- I believe she moved to strike all the
4 footnote, including the SEC reference, is that true,
5 Ms. --

6 MS. DUNN: I'm getting there. I can get
7 through the whole footnote and all the documents if
8 you'd like.

9 MR. OLIKER: I'd like to know if the SEC
10 reference is contained in the motion first before I
11 respond.

12 EXAMINER CHILES: Let's carry on.

13 MS. DUNN: Do you want me to keep going
14 through the whole thing? Okay. Also, then turning
15 in the footnote reference to "Dominant Retail
16 Supplier Drops Customers to POLR, Exiting Mass
17 Market."

18 If you turn to page 70 of his deposition
19 testimony, line 1, on page 70:

20 "I'm looking at the footnote that
21 continues over No. 2. The last sentence of that
22 footnote says, 'See also Dominant Retail Supplier
23 Drops Customers to POLR, Exiting Mass Market,
24 Mid-Merit Retail Sales, EnergyChoice Matters.' Then
25 you have a website, correct?"

1 Answer: "Yes."

2 "Is that a newspaper article or a news
3 article?"

4 Answer: "It's a news article from a
5 trade publication."

6 "Do you consider that article
7 authoritative?"

8 "I consider the article as accurately
9 representing the facts as stated in the article."

10 Also, if you turn to page 71 of his
11 deposition on line 7, I asked him:

12 "Do you personally know the author?"

13 "I don't know who the author is so I
14 don't know."

15 "Is it safe to assume you have never
16 actually spoken to the author?"

17 "Since I don't know who the author is, I
18 don't know."

19 For that reason, that cite should also be
20 stricken from footnote 2, leaving then the only item,
21 which is a quote from the 10-Q. The reason that
22 should be stricken as well is because what the note
23 in the 10-Q says does not say what Mr. White says on
24 line 19 to 20, that FES has announced that it's
25 returning and has returned a significant number of

1 its customers to SSO service. For that reason, the
2 quote from the 10-Q has no place in the document
3 anymore and should be stricken as well.

4 I would also note that because Mr. White
5 has no personal knowledge that FES has announced it's
6 returning a significant number of customers to SSO
7 service, that that is also hearsay, and that's why
8 lines 19 and 20 should be stricken.

9 EXAMINER CHILES: Thank you.

10 Mr. Oliker.

11 MR. OLIKER: I'll address all of these
12 starting with the last comment. It's public
13 knowledge that FES has returned customers to SSO
14 service. It's in their 10-Q as reflected there. The
15 fact that they have effectively exited the retail
16 residential market outside of aggregation, I mean,
17 the notion that you would strike that statement
18 because there may be some small differences between
19 what is reflected on line 19 doesn't change the fact
20 that this is a direct quote out of FES's 10-Q. I
21 mean, I don't think I have been to any proceeding
22 where they haven't allowed any of that information to
23 be included in the record.

24 And regarding the letter that is attached
25 as Exhibit MW-1, while Mr. White may not have known

1 exactly who that letter was mailed to, he can testify
2 now, and he's also seen the envelope which that
3 letter came in, and I believe that the use of the
4 federal mail allows for a validation of a document
5 that happens to be sent from a local utility that
6 practices before this Commission.

7 I don't think there's any question
8 regarding the authenticity of the document. She's
9 free to explore that issue with Mr. White, but I
10 don't think there's any question regarding the
11 authenticity of documents that arrived in the federal
12 mail.

13 Regarding the newspaper article that is
14 in Exhibit MW-2, he did not indicate it's from a
15 trade publication. It merely reiterates many of the
16 things that Mr. White says in his testimony and what
17 is contained in the FES filings. If the company
18 finds that objectionable, I don't know if it's
19 completely prejudicial to take out that reference,
20 but the Exhibit MW-1 and the SEC filing, I believe,
21 as well as the testimony on the issue should remain
22 on the record

23 EXAMINER CHILES: Thank you.

24 Ms. Dunn, do you want to respond?

25 MS. DUNN: Yes, thank you. What may or

1 may not be public knowledge is not a basis for
2 evidence in this case.

3 Secondly, FES doesn't have a 10-Q; and
4 even if it did, it doesn't say what Mr. White says it
5 says.

6 Third, even if he cannot magically
7 authenticate now what he didn't know in his testimony
8 doesn't mean it's still not hearsay. We still can't
9 cross-examination AEP on a letter. We have no idea
10 why they said what they said. And it doesn't say
11 anything about FES switching customers to SSO.

12 And, last, the newspaper article is
13 clearly hearsay. The basis of anything Mr. White
14 knows is hearsay, and the fact that it's mail doesn't
15 also make it admissible evidence.

16 EXAMINER CHILES: Thank you. I believe
17 it's consistent with our prior rulings to strike this
18 as hearsay, not falling within any exception. So we
19 will strike the testimony beginning on page 6, line
20 19, beginning with "further" and ending on line 20,
21 including footnote number 2, as well as the entirety
22 of the footnote.

23 MR. OLIKER: Including the SEC quotation,
24 your Honor?

25 EXAMINER CHILES: That's correct.

1 MS. DUNN: Your Honor, are you also
2 striking Attachment MW-1?

3 EXAMINER CHILES: Yes.

4 THE WITNESS: Can you tell me what was
5 stricken.

6 EXAMINER CHILES: We're striking the
7 testimony beginning with "further" on page 6, line
8 19, ending with footnote 2 on page 6, the entirety of
9 footnote 2, and Exhibit MW-1.

10 THE WITNESS: That one sentence and two
11 footnotes?

12 EXAMINER CHILES: I believe it's just one
13 footnote, footnote number 2.

14 THE WITNESS: You didn't strike 1?

15 EXAMINER CHILES: No.

16 THE WITNESS: Okay.

17 MS. DUNN: Your Honor, moving forward,
18 I'd also like to strike on page 9, footnote 3, and
19 Attachment MW-2. It's hearsay being offered for the
20 truth of his statement at page 9, lines 12 to 14,
21 that many of these products appear to be provided by
22 third-party companies, but they are advertised as
23 FirstEnergy products and billed on the FirstEnergy
24 bill.

25 Rule 901 also requires that IGS prove

1 that the document is authentic. For those reasons,
2 it should be stricken as hearsay, and an
3 unauthenticated document

4 EXAMINER CHILES: Thank you.

5 Mr. Oliker.

6 MR. OLIKER: Mr. White has personal
7 knowledge on this issue, regardless of what happens
8 with Exhibit MW-3, so I would definitely say the
9 sentence should stay in, because I believe --

10 MS. DUNN: I'll be clear. I'm not moving
11 to strike the sentence, just the document.

12 MR. OLIKER: Exhibit MW-2?

13 MS. DUNN: Yes.

14 MR. OLIKER: Your Honor, regarding MW-2,
15 this is a FirstEnergy document. This is a party
16 admission and should be admitted in this case. This
17 can be offered against FirstEnergy at any time. This
18 is their own information. It should not be stricken.

19 EXAMINER CHILES: Thank you.

20 Ms. Dunn, would you like to respond?

21 MS. DUNN: Yes. There's been no
22 foundation laid by Mr. White in his testimony that
23 this is an admission of a party opponent. We don't
24 know who from the company said it. We don't know
25 what department. We don't know whether they were

1 authorized to speak. We don't know who it went to.
2 For all those reasons, there's no foundation.

3 I'd also note that there's no
4 authentication of this document in his testimony
5 either.

6 EXAMINER CHILES: Thank you, Ms. Dunn.

7 We will grant the motion to strike as to
8 footnote 3 on page 9.

9 MS. DUNN: And the document MW-2 as well,
10 correct, your Honor?

11 EXAMINER CHILES: Yes, that's correct.

12 MR. OLIKER: Your Honor, and the basis
13 is? I'm sorry.

14 EXAMINER CHILES: That it's hearsay and
15 not falling within any exception.

16 MS. DUNN: Your Honor, if I may move
17 forward?

18 EXAMINER CHILES: Yes, please.

19 MS. DUNN: Next I have a number of items
20 in his supplemental testimony marked as IGS 11,
21 that's the supplemental direct testimony, on the
22 basis of legal conclusions. On page 18, lines 14 to
23 16, Mr. White states, "Ohio law requires that the SSO
24 price be comparable and nondiscriminatory to other
25 products and services in the market. Further, Ohio

1 law prohibits subsidies flowing from distribution
2 rates to SSO service."

3 Your Honor, we're a little bit different
4 than the previous witness. Obviously, Matt White is
5 an attorney, so he is qualified to make a legal
6 opinion.

7 However, as we discussed during
8 Mr. Ferrey's motions to strike, which I believe was
9 Monday, who was an attorney making legal conclusions
10 as well, is that legal interpretations and legal
11 conclusions by an attorney in their direct testimony
12 is not helpful to the Commission. This is within the
13 sole province of the Commission to determine.

14 Under Wagenheim, which is a case that
15 Mr. Lang cited during Mr. Ferrey's motion to strike,
16 it is not appropriate to have legal conclusions in
17 direct testimony. Also, this goes beyond the
18 regulatory aspect that we've identified previously
19 today. He's giving a legal opinion and a legal
20 conclusion. For those reasons, it should be
21 stricken.

22 EXAMINER CHILES: Thank you.

23 Mr. Oliker.

24 MR. OLIKER: Your Honor, for the reasons
25 that we discussed earlier today, legal standards

1 provide very good context for the Commission to
2 consider. This isn't a case where we have a jury.
3 We have a capable Commission that can review any
4 recommendations that are put before it and give it
5 its due weight. That has been historically the
6 Bench's interpretation of arguments or
7 recommendations that may involve legal conclusions.

8 Mr. White is an attorney licensed in
9 Ohio, and he also has substantial regulatory
10 experience. He speaks from both of those backgrounds
11 in this testimony, so I believe that it is
12 appropriate and something the Commission should
13 consider.

14 MS. DUNN: Your Honor, if I may respond
15 briefly. I think Mr. Oliker made my point that the
16 Commission is perfectly capable determining this
17 issue on its own. This testimony is not helpful.
18 It's an improper legal conclusion.

19 EXAMINER CHILES: We're going to take a
20 brief five-minute recess to consider this motion to
21 strike. Before we do that, though, let's continue
22 with your remaining motions, and then we'll consider
23 them all at one time.

24 MS. DUNN: Yes, your Honor. Turning to
25 page 20, lines 10 to 11, Mr. White states, "Although,

1 as noted above, Ohio law requires that Ohio utilities
2 also do this kind of unbundling. The utilities in
3 Ohio have yet to begin this process."

4 For the same reason I just articulated,
5 your Honor, this is inappropriate legal conclusion.
6 I would also note I was remiss on page 18 as well as
7 on this section that he cites to statute. Perhaps if
8 he had quoted a statute, things would be different,
9 but this is clearly his interpretation of what Ohio
10 law is.

11 MR. OLIKER: Your Honor, he does cite to
12 that statute earlier in his testimony. It's not too
13 hard to put one and one together to see where he's
14 coming from, and I would renew my same response
15 earlier, that Mr. White is providing his perspective
16 as an attorney, but also as somebody in the
17 regulatory department of IGS speaking from his
18 experience regarding policy and the context of the
19 statutory framework that exists within Ohio.

20 EXAMINER CHILES: Thank you.

21 MS. DUNN: Well, your Honor, I'm a little
22 confused, but the only reference to a citation in
23 this testimony prior to that is on page 12. So I
24 don't think that's quite correct, but I'll move
25 forward to my next motion to strike for the same

1 grounds, which is on page 20, line 17 to 18.

2 "First, it is a requirement in Ohio law
3 that the SSO price be unbundled comparable price to a
4 retail electric product in the market." The same
5 reasons, your Honor.

6 EXAMINER CHILES: Thank you.

7 MR. OLIKER: Again, Mr. White is merely
8 referring to Ohio policy which is contained in
9 4920.02 and freely cited by nearly every witness that
10 testifies in this case, whether they cite the statute
11 or not.

12 MS. DUNN: And, your Honor, I would also
13 point out that 4920.02 does not require anything. So
14 if that is the section he's referring to, he's also
15 wrong.

16 Page 21, lines 20 to 21, and continuing
17 on to page 22, lines 2 through 6, those sections give
18 his legal opinion on what the corporate separation
19 requirements prohibit and whether or not FES is
20 violating those alleged corporate separation
21 requirements.

22 Again, whether or not FES or anyone else
23 in this proceeding has violated corporate separation
24 laws is strictly within the province of the
25 Commission. He's offering nothing more than

1 inappropriate legal conclusion.

2 EXAMINER CHILES: Thank you.

3 Mr. Oliker.

4 MR. OLIKER: As I've stated earlier,
5 Mr. White is providing insight regarding the
6 interaction between FirstEnergy and its affiliate and
7 how he believes that is inappropriate, and he's
8 offering recommendations within the context of Ohio
9 law.

10 EXAMINER CHILES: Ms. Dunn, just a
11 clarification, are you relying on the language that
12 says, "No I do not" in line 20 in your motion to
13 strike?

14 MS. DUNN: One moment, your Honor. No.
15 I'm only striking starting with "I believe."

16 EXAMINER CHILES: Thank you.

17 MS. DUNN: And then ending that on line 1
18 where it says "affiliate." I am not moving to strike
19 "In this case, FirstEnergy has requested." And then
20 I'm starting my striking on "This would provide FES a
21 competitive advantage."

22 EXAMINER CHILES: Thank you for that
23 clarification.

24 MR. OLIKER: Your Honor, just so I follow
25 up also on the comment, if you read 4920.06, it does

1 say the Commission shall ensure that the policies
2 specified in 4920.02 of the Revised Code is
3 effectuated.

4 EXAMINER CHILES: Thank you.

5 MS. DUNN: Your Honor, the Supreme Court
6 has disagreed with that in -- I'll move on to my next
7 one and get you that citation, for ease of time.

8 My next legal conclusion, motions to
9 strike, are in his supplemental testimony, which was
10 marked as IGS 13, page 2, lines 21 to 22, "Rider RRS
11 (and the entire Stipulation) would also violate
12 Federal preemption statutes and Ohio law."

13 For the same reasons that you struck it
14 from Mr. Haugen's testimony, it should also be struck
15 on this ground with the added bonus that Mr. White is
16 an attorney and that this is now an improper legal
17 interpretation or conclusion that is well within the
18 bounds of the Commission's authority to rule on.
19 It's not helpful to the Commission.

20 I would also note that this is also in
21 line very similar to the testimony that you struck
22 from Mr. Ferrey's testimony, and he's also an
23 attorney.

24 MR. OLIKER: Your Honor, if I could
25 respond?

1 EXAMINER CHILES: You may.

2 MR. OLIKER: The reasons for striking
3 testimony of this nature with Mr. Haugen were
4 specific to Mr. Haugen and his personal knowledge.
5 None of the background regarding Mr. Haugen has been
6 demonstrated to be true with Mr. White. And as you
7 noted, he is also an attorney. He is free to provide
8 his understanding of federal preemption and how it
9 may apply to this case within the context of
10 experience in regulatory and as an attorney

11 EXAMINER CHILES: Thank you.

12 Ms. Dunn.

13 MS. DUNN: Moving forward, your Honor, if
14 you're ready.

15 EXAMINER CHILES: Yes.

16 MS. DUNN: Page 6, lines 12 to 22, page
17 6, lines 12 to 22, I would point you to the testimony
18 given by Mr. Ferrey where it was struck where he
19 addressed almost identical issues, which is, namely,
20 the New Jersey and Maryland cases. That is the Third
21 and Fourth Circuit cases that Mr. White is discussing
22 here. I would also note that, again, this is
23 improper legal interpretation as I've already
24 articulated before.

25 EXAMINER CHILES: Just a clarification,

1 is that line 12 beginning with "It violates"?

2 MS. DUNN: Yes. Thank you.

3 EXAMINER CHILES: Mr. Oliker.

4 MR. OLIKER: I think I already addressed
5 this point because it's the same as the last one she
6 made.

7 EXAMINER CHILES: Thank you.

8 MS. DUNN: Your Honor, moving forward,
9 page 7, lines 5 to 13, this is nearly identical to
10 what was stricken from Mr. Ferrey's testimony. He's
11 identifying significant legal battles and risks that
12 would occur under these cases if the Commission were
13 to move forward. He's clearly identifying his
14 interpretation of these cases and making improper
15 legal interpretations.

16 EXAMINER CHILES: Thank you.

17 MR. OLIKER: Your Honor, I'd also note
18 that Mr. White is providing some additional
19 perspective that isn't necessarily legal opinion.
20 He's just talking about practical consequences of a
21 decision in this case. That's factual.

22 EXAMINER CHILES: Thank you.

23 MS. DUNN: Your Honor, that's all I have
24 on the basis of legal conclusions. I have two more
25 motions to strike on different grounds.

1 EXAMINER CHILES: If there's only two
2 remaining, we can just go ahead and talk about those
3 now.

4 MS. DUNN: Thank you, your Honor.

5 I'm still on his supplemental testimony,
6 Exhibit 13, IGS 13, turning to page 7, the question
7 starting on line 14, moving the entire page -- okay.
8 Wait. Let me back up. I apologize. I just confused
9 myself. Let me start over.

10 Page 7, starting on line 19 with the word
11 "However," moving over to page 8, I'm moving to
12 strike the entire page 8 going to page 9 up through
13 line 2 and also attachment MW-1. At the time that
14 Mr. White filed his testimony and at the time I took
15 his deposition, he could not authenticate this
16 document.

17 If you would turn to page 46 of
18 Mr. White's deposition, I asked him starting on line
19 24:

20 "Attached to your supplemental testimony,
21 you have two attachments, and I'm specifically
22 referring to attachment MW Exhibit 1."

23 Answer: "Yes."

24 Moving to page 47: "Where did you find
25 this document?"

1 "My attorney provided it to me."

2 "Would that be Mr. Oliker?"

3 Answer: "Yes."

4 "Do you understand where Mr. Oliker found
5 the document?"

6 "No."

7 It's my understanding Mr. Oliker has come
8 to the hearing today with a certified copy of that
9 document. That does not cure the fact that at the
10 time he filed his original testimony, he didn't know
11 where the document came from. At the time I took his
12 deposition, he didn't know where the document came
13 from.

14 I'd gamble on the fact that they got the
15 idea that a certified copy was needed from
16 Ms. Fleisher during the course of this proceeding and
17 are attempting now to unfairly sandbag the companies
18 by bringing in a certified copy that they originally
19 did not have.

20 In addition, this document is hearsay.
21 While it purports to be Ms. Vespoli's testimony,
22 there's been no foundation that's been laid that
23 actually is what it says it's to be. And, also, and
24 I think most importantly, as discussed previously in
25 this case, Volume IV, pages 695 to 696, Volume XI,

1 pages 2271 to 2279, this is testimony discussing
2 Ms. Vespoli's views on Senate Bill 3, Senate Bill
3 221, what the EDUs in PA and New Jersey have had to
4 do, FES's plans to utilize compressed air energy
5 store is.

6 It's completely not relevant what that
7 the companies' position took back in 2011, has no
8 bearing on what the companies do in this case. It
9 has no bearing on the four issues that I articulated
10 that this Bench has already demonstrated. And to the
11 extent that it's being offered to allegedly impeach
12 Ms. Mikkelsen and it was not used with Ms. Mikkelsen,
13 it wasn't brought upon her at any time, it's not a
14 proper impeachment document either.

15 For all of those reasons, it should be
16 stricken along with the pages that cite to it.

17 EXAMINER CHILES: Thank you.

18 MR. OLIKER: Your Honor, if I may
19 respond?

20 EXAMINER CHILES: You may.

21 MR. OLIKER: The issue regarding
22 authenticity is completely off the table. The
23 witness has certified copies right in front of him.
24 The interesting story of why that was even necessary
25 is because the company took the document off of their

1 public website after we filed the testimony. And
2 because of the fact that they did that, then we had
3 to go through a very long process to get a certified
4 copy, which took several weeks. So regarding that
5 issue, authenticity is not an issue.

6 Regarding the hearsay issue, this is a
7 statement of an employee of FirstEnergy in a
8 representative capacity. It is an exception to
9 hearsay. It is their statement. The hearsay
10 doctrine is completely inapplicable.

11 And how it's relevant to this case, if
12 you actually look at the documents, it's not -- first
13 of all, this isn't talking about Senate Bill 3 so
14 much. This is talking about the effect of
15 subsidizing generation on the competitive market.
16 It's about the position that FirstEnergy has taken in
17 every other case over the past ten years until this
18 one and why their credibility is completely at issue.

19 Credibility is always at issue in
20 cross-examination or in any PUCO proceeding because
21 Ohio law provides for that. If you look at the
22 testimony that was admitted regarding Mr. Rubin in
23 his testimony in Oregon, that came in under
24 credibility. That was involving a tangential issue.

25 This goes to the issue in this case

1 whether the RRS should be approved. We have company
2 statements that say subsidized generation is a bad
3 thing. 15-year contracts are a bad thing. This is
4 clearly at issue, and it's their own statements that
5 contradict their entire case. Whether it's
6 Ms. Mikkelsen or the application, it's impeaching
7 FirstEnergy as a company.

8 It doesn't matter if it relates to
9 Ms. Mikkelsen's testimony, and it would have been
10 used on her, but during her deposition, and I can
11 refer you to that if necessary, she indicated she had
12 never seen any of the testimony that had been filed
13 at the General Assembly, so it couldn't have been
14 offered against her because there wouldn't have been
15 any foundation.

16 Regarding the timing of these statements,
17 2011 is not that long ago. This is a period of four
18 years when we're talking about an ESP that would go
19 out for 15 years. She's still in a representative
20 capacity of the company. There are people in this
21 room that report to Ms. Vespoli, and her statements
22 provide very good insight into whether or not this
23 deal is in the public interest, as do
24 Mr. Alexander's, though I'm not sure there was a
25 motion on that.

1 MS. DUNN: Not yet.

2 MR. OLIKER: Take them one at a time.

3 MS. DUNN: Your Honor, if I may respond?

4 EXAMINER CHILES: You may.

5 MS. DUNN: What Mr. Oliker thinks this
6 document does, what he thinks it's authenticated of,
7 is not what his witness does. What Mr. Oliker thinks
8 and wants on the record is not what his witness knows
9 about, has personal knowledge of the document, knew
10 where it came from at the time. None of what
11 Mr. Oliker says today matters.

12 In addition to the relevance argument, I
13 think this Bench was clear of not opening the door to
14 other parties' previous statements so as to not
15 unduly prolong this proceeding.

16 The third item, of course -- he made my
17 point for me. It wasn't used on Ms. Mikkelsen
18 because she couldn't testify to it. You can't
19 impeach a company as a whole. That's not proper
20 impeachment. This document doesn't come in under the
21 rules relating to impeachment. To impeach an entire
22 corporate organization, you must be able to use it on
23 someone with knowledge, and it has to be that
24 person's own statement.

25 For all of those reasons and the previous

1 rulings from the Bench, this document should be
2 stricken.

3 EXAMINER CHILES: Thank you.

4 MR. OLIKER: Any of those statements were
5 not true regarding Ohio law. For example, the
6 statement of a party in a representative capacity is
7 an admission of the party to which they are
8 representing. And Ms. Mikkelsen here is testifying
9 on behalf of FirstEnergy -- I'm sorry. Ms. Vespoli.
10 So, therefore, her statements are attributable to the
11 company, and it is an admission and should be offered
12 into evidence. There's no obligation to offer that
13 against the FirstEnergy witness. It can be sponsored
14 by an IGS witness.

15 EXAMINER CHILES: Thank you.

16 Ms. Dunn, your remaining motion to
17 strike?

18 MS. DUNN: Yes. Moving forward, last
19 move to strike, page 9, line 30, starting with
20 "However," moving forward to page 10, line 18, also
21 moving to strike page 10, lines 25 through page 11,
22 line 7, and also Attachment MW-2, which purports to
23 be Mr. Alexander's testimony relating to Senate Bill
24 221.

25 I believe I made myself clear regarding

1 what occurred with getting certified copies after the
2 fact. I would like to point out, however, that in
3 his deposition on page 47, I asked Mr. White, and
4 then starting on line 11:

5 "And then turning to attachment MW
6 Exhibit 2, where did you find that document?"

7 Answer: "My attorney provided it to me."

8 Line 14: "And would that be Mr. Oliker?"

9 "Yes."

10 "And do you know where he found that
11 document?"

12 "I don't recall."

13 I also would like to point out that this
14 Bench has stricken and not permitted this testimony
15 to be used in this proceeding on several occasions.
16 It was requested to be admitted by Ms. Fleisher in a
17 certified form. I believe it was also brought in by
18 OMA either in this form or as part of a press
19 release, I can't recall, but it certainly has not
20 been used in this case. And for the same reasons on
21 the basis of relevance, I would move that it's
22 stricken as well.

23 EXAMINER CHILES: Thank you.

24 Mr. Oliker.

25 MR. OLIKER: Your Honor, there has been

1 continued reference to what the witness may or may
2 not have known at the time of his deposition. If his
3 deposition was the day that he was testifying in this
4 case, that might have relevance, but we're talking
5 about what Mr. White knows today as we create this
6 record, and that is how the Commission will evaluate
7 his opinions, based upon his personal knowledge when
8 he testifies in this case, and he's demonstrated his
9 knowledge. He has authentic documents to back up his
10 knowledge.

11 And regarding Exhibit MW-2 --

12 EXAMINER PRICE: Mr. Oliker, may I
13 interrupt you?

14 MR. OLIKER: Sure, your Honor.

15 EXAMINER PRICE: This is a new principle,
16 that what you say in your deposition doesn't count?

17 MR. OLIKER: It counts.

18 EXAMINER PRICE: Based upon your
19 witnesses today, I'm not surprised, but can you cite
20 to an actual legal case or something where somebody
21 has said that authoritatively?

22 MR. OLIKER: I don't think that's the
23 point, your Honor. The point is if you say something
24 in your deposition, you can be shown that you made an
25 inconsistent statement, but you're also allowed to

1 clarify, and the basis of your testimony is your
2 personal knowledge, and that is based upon the time
3 that you testify. If you say --

4 EXAMINER PRICE: Mr. White personally
5 obtained the certified copy?

6 MR. OLIKER: He asked for them to be
7 obtained.

8 EXAMINER PRICE: That's all I asked.

9 MR. OLIKER: And I would say I don't
10 think that's a relevant question, your Honor.

11 EXAMINER PRICE: I will decide what's
12 relevant or what's not, Mr. Olikier. I said he did
13 not obtain it personally. I'm just asking.

14 MR. OLIKER: He did not. He directed
15 that it happen as the head of our regulatory
16 department.

17 MS. BOJKO: Your Honor, if Mr. Olikier is
18 done, when he's done, may I be heard?

19 EXAMINER PRICE: I think he's got some
20 things he'd like to add.

21 MR. OLIKER: Yes, absolutely.

22 Regarding Mr. Alexander's testimony from
23 2007 that may have been addressed by other witnesses
24 earlier in this case, this is not being offered to
25 indicate FirstEnergy may have had one position or

1 another about Senate Bill 221 or Senate Bill 3, and
2 we're happy to clarify that we will not offer it for
3 that purpose.

4 The purpose of Mr. Alexander's testimony
5 is regarding the impact of regulation versus
6 restructuring on wholesale energy markets. That's a
7 policy question, and it doesn't change regardless of
8 what kind of regulatory framework we're in. And I
9 think that it would be helpful to the record to see
10 where FirstEnergy was in 2007 about wholesale energy
11 markets and subsidies, where they were in 2011 on the
12 same issues. And you can even go back to 1999, which
13 admittedly is not in Mr. White's testimony, but one
14 thing you'll find is constant is FirstEnergy has been
15 pro-market up until the day that they asked for
16 cost-based recovery for their generating assets. So
17 it demonstrates a lack of credibility for the request
18 that is something that is in the public interest.
19 This is something that's in FirstEnergy's interest.

20 MS. DUNN: Your Honor, if I may respond
21 to your line of questioning.

22 I'm sorry, Ms. Bojko. I apologize.

23 MS. BOJKO: Thank you, your Honor. I
24 think there's been some misstatements of the rules,
25 the Ohio Rules of Evidence that I would like to be

1 heard on.

2 First of all, pursuant to Rule 902.4, the
3 testimony is self-authenticating as a copy of an
4 official record or report or entry therein or a
5 document authorized by law to be recorded or filed
6 and actually recorded or filed in a public office
7 certified as correct by the custodian or other person
8 authorized to make the certifications per rule 902.2.

9 If we have a true and accurate copy of
10 the testimony provided to the legislature with an
11 attestation of that true and accurate copy in the
12 many forms it can be provided in, then that is enough
13 to meet the self-authenticating rule of a public
14 record.

15 As for whether there's foundation, Ohio
16 courts have recognized that the concepts of lack of
17 foundation and authentication are interrelated
18 concepts, State versus Jackson, 2011 Oh 5593; and in
19 Jackson, the Court considered appellant's arguments
20 that a telephone recording was improperly admitted
21 for the separate reasons of lack of foundation and
22 authentication. The Court found that these are
23 interrelated concepts rather than distinct concepts

24 EXAMINER PRICE: If I could interrupt
25 you. Can you show me an examiner's entry where it

1 says you get to miss the filing deadlines to secure
2 defects?

3 MS. BOJKO: There is not. Your Honor, a
4 public document filed with a public agent --

5 EXAMINER PRICE: But the prefiled
6 requirement was when it was. He didn't meet the
7 prefiled requirement with the authenticated document,
8 did he?

9 MS. BOJKO: I disagree. We believe that
10 the reports were with the Ohio Senate. We believe
11 that a public record is authenticated if it's
12 produced by a public entity. Because this Court has
13 taken the extra step in this particular case to
14 require that a document actually be authenticated,
15 which to my knowledge has never been done in the
16 past, but because this agency or the Bench has
17 required that separate step, that still does not
18 change the fact that it is a public record and it
19 meets the exception of a public record exception
20 under the hearsay rules. It is not hearsay if it's a
21 public record.

22 EXAMINER PRICE: I'm not disputing that.
23 I'm just asking did he miss the prefiling deadline?

24 MS. BOJKO: No, he did not, because the
25 document is a public record. It's always been a

1 public record, and just because this Bench has now
2 required it to be certified, that does not mean that
3 he has missed the filing. You can compare the
4 certified copy with the copy that he submitted with
5 his testimony; and if those two are identical, then
6 you have met your public record burden.

7 MR. OLIKER: I agree this is the first
8 time this issue has come up for me, your Honor, in my
9 cases that I've been involved.

10 EXAMINER PRICE: I'm not sure what that
11 means, but that's fine.

12 MS. BOJKO: And, your Honor, I don't know
13 if I may continue.

14 EXAMINER PRICE: I don't think it's
15 necessary.

16 MS. BOJKO: Okay. There are other
17 requirements under Rule 801.2 that determines that
18 this also not hearsay other than what counsel has
19 referenced today, both from FirstEnergy's perspective
20 and IGS>

21 MS. DUNN: Your Honor, if I may respond
22 very briefly?

23 One, this is not a public record. A
24 public record is something that the public entity has
25 a duty to report. So that isn't where the hearsay

1 exception is. This is not written by a public
2 entity. It's not a public record.

3 Number two, authentication, I think you
4 were right on point with the filing deadline. He
5 didn't know anything about the document when I
6 deposed him. To come today and say "I don't know
7 where it came from, I don't know where I got it," how
8 can I cross-examine him on a document that he doesn't
9 know where it came from.

10 So we were definitely sandbagged, and I'm
11 sure a lot of parties here wouldn't like it if the
12 companies tried to cure their deposition, their
13 testimony, by adding what they figured out was wrong
14 in the middle of the hearing.

15 For all of those reasons, your Honor,
16 this should be stricken in addition to the relevance,
17 which still hasn't changed from your previous
18 rulings. Thank you.

19 MR. OLIKER: Your Honor, she was not
20 precluded from crossing him on the document. It was
21 only a question of where he got the document, and it
22 is a public record because there is a duty at the
23 House and the Senate to record the proceedings that
24 occurred before it. So I do think it counts as a
25 public record. That's the reason why I was able to

1 locate it there, because they had a duty to retain
2 that information under Ohio law.

3 EXAMINER CHILES: At this time we're
4 going to take a recess. We will consider the motions
5 to strike as well as take our lunch hour and a break
6 for the Commission meeting. We will return at 2:00.

7 (At 12:54 p.m. a lunch recess was taken
8 until 2:10 p.m.)

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1 Wednesday Afternoon Session,
2 October 7, 2015.

3 - - -

4 EXAMINER CHILES: Before we stopped for
5 lunch, we have a pending or multiple pending motions
6 to strike by the companies. Let's begin with the
7 direct testimony of Mr. White. I'm just going to
8 take these line by line.

9 Let's begin on page 18. There is a
10 motion to strike lines 14 through 16. This motion to
11 strike is denied. We are going to allow this
12 testimony and several other pieces of testimony that
13 were moved to strike based on Mr. White's status as a
14 regulatory expert, and we believe that's consistent
15 with our practice during this hearing of allowing
16 experts to discuss their interpretation of Ohio law.

17 Moving on to page 20, lines 10 through 11
18 and also line 17 through 18, these motions to strike
19 are denied for the same reason; as well as on page
20 21, beginning at line 20, moving on to page 22
21 through line 1 as well as lines 2 through line 6 on
22 the same page. So motions to strike are all denied.

23 We'll move on to the supplemental
24 testimony of Mr. White beginning on page 2, lines 21
25 through 22. That motion to strike will be granted in

1 part and denied in part. Consistent with our prior
2 ruling, we will allow discussion of Ohio statutes in
3 general; however, we feel that any discussion of
4 federal preemption is a purely legal issue that is
5 not appropriate for testimony. So we'll be striking
6 the phrase within those lines 21 and 22, the phrase
7 beginning with "the federal preemption" -- I'll just
8 read the entire phrase. It's the beginning of line
9 22, "the federal preemption statutes."

10 And moving on to page 6, there was a
11 motion to strike beginning with line 12 and ending
12 with line 22. Consistent with our prior rulings,
13 this will also be granted in part and denied in part.
14 We will be striking the sentence beginning on line 15
15 that begins with "it violates the Federal Power Act"
16 and ending on line 19 with "federal law."

17 Moving on to page 7, there was a motion
18 to strike lines 5 beginning with "one can only" and
19 ending on line 13 with "customers." This motion to
20 strike is denied. We find this is distinguishable
21 from our other evidentiary rulings on the basis that
22 it's discussing the issues in these cases and not the
23 holdings with these specific cases or the findings of
24 those courts.

25 MR. OLIKER: I'm sorry, your Honor, I was

1 having trouble keeping up with you. Were you on page
2 7?

3 EXAMINER CHILES: I'm on page 7, line 5,
4 beginning with "one can only" and ending with line
5 13, ending with "customers."

6 THE WITNESS: That's not stricken?

7 EXAMINER CHILES: It is not stricken.
8 Yes, the motion is denied as to that.

9 And moving down the page, beginning with
10 line 19, there's a motion to strike line 19 on page
11 7, ending on -- let's see. I believe it was line 26
12 on page 9; is that correct, Ms. Dunn? Or was it line
13 2?

14 MS. DUNN: It was line 26. I don't
15 think -- actually, your Honor -- well, I guess it
16 depends on what your ruling is, but I don't think
17 line 5 that say -- or the question on line 4 or line
18 5 saying, "No. In what Ms. Mikkelsen states." So
19 those three lines do not need -- I just made this
20 more confusing. Let me start over.

21 EXAMINER CHILES: I'll let you stop
22 because we're actually going to deny the motion to
23 strike as to that entire section, and ending with
24 whether it's line 26 or line 3, that motion to strike
25 is denied. We are finding that Ms. Vespoli's

1 testimony is distinguishable from Mr. Alexander's
2 testimony, which we had previously stricken on the
3 basis of relevancy. We find that due to the age of
4 the testimony, which is more recent, the passage of
5 221, as well as the change in the economic
6 environment, that this testimony is relevant. So we
7 will not be striking Ms. Vespoli's testimony.

8 However, the bottom of page 9, line 30,
9 the sentence beginning with "However" and continuing
10 on through page 10, line 18, the testimony that
11 discusses Mr. Alexander's testimony, we will be
12 striking that entire section. So that motion to
13 strike is granted, as well as the exhibit referred to
14 that's MW Exhibit 2, the motion is to strike is
15 denied -- or I'm sorry. The motion to strike is
16 granted as to Exhibit 2.

17 Moving on to the bottom of page 10, line
18 25, the sentence beginning with "As is," going on to
19 page 11, line 7, that motion to strike is granted in
20 part and denied in part. Consistent with our prior
21 rulings, we will strike the "S" at the end of
22 statements in the first line and in the sixth line,
23 we will strike the phrase "Tony Alexander and."

24 MR. OLIKER: Could I have that read back,
25 your Honor, I had trouble keeping up.

1 EXAMINER CHILES: Page 10, line 25, the
2 sentence beginning with "as is," moving on to page
3 11, line 7, the sentence ending in "stipulation,"
4 that motion to strike is granted in part and denied
5 in part. We will be striking the "S" at the end of
6 statements on line 1 and on line 6. We will be
7 striking the phrase "Tony Alexander and." And
8 consistent with those rulings, we are denying the
9 motion to strike MW Exhibit 1.

10 I know that was a lot of information.
11 Are there questions? Anyone missed anything?

12 MS. DUNN: Your Honor, which exhibit are
13 you -- you're denying motion to strike?

14 EXAMINER CHILES: As to MW Exhibit 1, we
15 are granting the motion to strike -- I'm sorry, we
16 are granting the motion to strike as to MW Exhibit 2.
17 I'll give everyone a few minutes here.

18 MR. OLIKER: In case I forget later, your
19 Honor, I'd like to proffer the exhibits that were
20 stricken.

21 EXAMINER CHILES: It's noted for the
22 record.

23 If everyone is ready to proceed, we will
24 move on to cross-examination.

25 Mr. Hays?

1 MR. HAYS: None. Thank you, your Honor.

2 EXAMINER CHILES: Ms. Bojko?

3 MS. BOJKO: No thank you, your Honor.

4 EXAMINER CHILES: Mr. Randazzo?

5 MR. RANDAZZO: None. Thank you.

6 EXAMINER CHILES: Mr. Fisk.

7 MR. FISK: None, thank you.

8 EXAMINER CHILES: Mr. Kurtz.

9 MR. KURTZ: Probably none, if I could go
10 after the company.

11 EXAMINER CHILES: Ms. Dunn.

12 MS. DUNN: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Dunn:

16 Q. Good afternoon, Mr. White.

17 A. Good afternoon.

18 Q. Turning to page 2 of your supplemental
19 direct testimony, IGS 11 -- or I'm sorry. Let's turn
20 to page 13 -- I can't talk today. IGS 13, the
21 supplemental testimony of Matt White.

22 A. Sure.

23 Q. You state you were general counsel for
24 Interstate Gas Supply, Inc., correct?

25 A. Correct.

1 Q. And can we refer to that as IGS or IGS
2 Energy today?

3 A. Sure.

4 Q. And as general counsel, you are the
5 highest ranking legal individual at the company,
6 correct?

7 A. Our corporate structure is unique. In
8 some aspects, you could consider me to be the highest
9 ranking legal officer, but for purposes of
10 simplicity, yes, correct.

11 Q. And I'm going to now turn to your
12 supplemental direct testimony, IGS 11.

13 A. Yes.

14 Q. If I refer to this throughout as your
15 direct testimony, this is what I'm referring to,
16 okay?

17 A. Okay. Yeah, because there's a couple
18 supplemental, okay.

19 Q. If you feel I'm being unclear, just let
20 me know.

21 A. Is the testimony you're addressing the
22 stipulation or the --

23 Q. No, IGS 11.

24 A. Okay.

25 Q. Your supplemental direct testimony of

1 Matthew White.

2 A. Okay. Okay.

3 Q. And on page 3, line 14, you list several
4 entities that are part of the IGS family of
5 companies, correct?

6 A. Yes.

7 Q. And as general counsel, at times you
8 provide legal advice or legal services to the
9 entities listed on page 3, correct?

10 A. Yes.

11 Q. You began drafting your testimony
12 sometime in November 2014; is that correct?

13 A. I don't recall specifically the time
14 frame. This has been a long case.

15 Q. Your direct testimony was filed on
16 December 22nd, 2014 originally, correct?

17 A. I will take your word for that.

18 Q. So you prepared your testimony at least
19 sometime before December 22nd, 2014, correct?

20 A. Yes, I think that's safe to say.

21 Q. And in this case, you originally appeared
22 as counsel for IGS, correct?

23 A. I believe -- again, I'm not 100 percent
24 sure, but I will take your word for the fact that I
25 did appear as counsel in this case.

1 Q. Well, let's go ahead and be sure.

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

3 EXAMINER CHILES: You may.

4 MS. DUNN: Your Honor, may I mark this as
5 Company Exhibit 88?

6 EXAMINER CHILES: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Mr. White, I've handed you what has been
9 marked as Company Exhibit 88. Is that the Motion to
10 Intervene and Memorandum in Support of IGS Energy in
11 this case?

12 A. Yes.

13 Q. Does it list you on the front page as
14 counsel?

15 A. Yes.

16 Q. And then you withdrew as counsel on this
17 case on December 12th, 2014, correct?

18 A. Again, I will take your word that I
19 withdrew on the 12th of December, 2014. I don't know
20 the exact date, though.

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

22 EXAMINER CHILES: You may.

23 MS. DUNN: Your Honor, I'd like to mark
24 the next exhibit as Company Exhibit 89.

25 EXAMINER CHILES: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Mr. White, I've handed you what has been
3 marked as Company Exhibit 89, is that the Notice of
4 Withdrawal of you as counsel in this case?

5 A. Yes, it is.

6 Q. And the reason you withdrew as counsel
7 was because you were going to be a witness, correct?

8 A. Yes.

9 Q. So did you draft your testimony between
10 December 12th, 2014 when you withdrew and it was
11 filed on December the 22nd, 2014?

12 A. Can you please repeat the question?

13 Q. So you drafted your testimony sometime
14 between December 12th, 2014 when you withdrew as
15 counsel and when you filed your testimony as a
16 witness on December 22nd, 2014, correct?

17 A. I don't remember.

18 MS. DUNN: Your Honor, May I approach?

19 EXAMINER CHILES: You may.

20 MS. DUNN: Your Honor, may we mark the
21 next exhibit Company Exhibit 90?

22 EXAMINER CHILES: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Mr. White, I've handed you what has been
25 marked as Company Exhibit 90. Could you take a look

1 at this document?

2 A. Yes.

3 Q. Have you seen this document before?

4 A. I believe I have.

5 Q. And the third page from the end has
6 Exhibit B up in the upper right-hand corner. It says
7 Nondisclosure Certificate.

8 MR. OLIKER: Objection.

9 EXAMINER CHILES: Grounds?

10 MR. OLIKER: He was presented a document
11 that relates to a protective agreement. I don't see
12 how that's at all relevant to Mr. White's
13 cross-examination, which only contains one small
14 piece of confidential information that was filed in
15 August of 2015. It seems like this is a waste of
16 time.

17 EXAMINER CHILES: Ms. Dunn?

18 MS. DUNN: Your Honor, I'm laying a
19 foundation for documents he received in discovery and
20 whether they were confidential or competitively
21 sensitive, and it goes to the weight and credibility
22 of his testimony.

23 EXAMINER CHILES: I'll allow the
24 question.

25 Q. (By Ms. Dunn) Mr. White, at the third

1 page from the end do you seeing Exhibit B, a
2 nondisclosure certificate signed by you?

3 A. Yes.

4 Q. And you signed this on November 21st,
5 2014?

6 A. Yes.

7 Q. And at that time, you were counsel for
8 IGS Energy in this case, correct?

9 A. Let me cross-check the dates on the
10 documents that you gave me. It looks like I wasn't.
11 It looks like I withdrew on the 12th.

12 Q. Of December, correct?

13 A. Yes.

14 Q. So you were counsel on November 21st,
15 2014?

16 A. Yes.

17 Q. And then turning to page 3 of the
18 protective agreement --

19 A. Sure. Yeah.

20 Q. -- paragraph 4, at the time you signed
21 the nondisclosure certificate, you were entitled to
22 be a fully authorized representative because you fit
23 within definition 4A as outside legal counsel or
24 in-house legal counsel, correct?

25 MR. OLIKER: Objection.

1 EXAMINER CHILES: Grounds?

2 MR. OLIKER: She's asking for a legal
3 interpretation of what this document means. We
4 haven't established or litigated any of the terms of
5 this document, how they may be applicable. It's
6 honestly a waste of time given what Mr. White has
7 relied upon in his testimony.

8 EXAMINER CHILES: Overruled. He can
9 answer if he knows.

10 A. Can you please repeat the question?

11 Q. Sure. At the time that you signed the
12 protective agreement, you fell under the definition
13 as a fully authorized representative because you were
14 receiving party's in-house legal counsel, correct?

15 A. Without having more time to fully review
16 the document in its totality and the applicable
17 statutes and case law, I don't know if I could make
18 that interpretation of what I fell in under the
19 definition of.

20 Q. Okay. We can go ahead then and look at
21 paragraph 4, "Fully Authorized Representative must
22 execute a Non-Disclosure Certificate in the form of
23 Exhibit B (applicable to COMPETITIVELY SENSITIVE
24 CONFIDENTIAL Protected Materials) and shall be
25 limited to the following persons:

1 "A. Receiving Party's outside legal
2 counsel."

3 Mr. White, at the time in November 21,
4 2014, were you receiving party's outside legal
5 counsel?

6 A. Yes.

7 Q. You were outside legal counsel from IGS
8 Energy?

9 A. I'm sorry. No, I was in-house legal
10 counsel.

11 Q. So you fit in the definition then of
12 receiving party's in-house legal counsel?

13 MR. OLIKER: Objection.

14 EXAMINER CHILES: Grounds?

15 MR. OLIKER: Calls for a legal
16 interpretation of what this document means, whether
17 he fits under A or B or both.

18 EXAMINER CHILES: Overruled.

19 A. At the time that I entered into the
20 agreement, I would be considered in-house legal
21 counsel.

22 Q. And then when you withdrew on
23 December 12th, 2014 from this case as counsel, where
24 did you fit within the definition of fully-authorized
25 representative?

1 MR. OLIKER: Objection.

2 A. I don't know.

3 MR. OLIKER: Again, calls for a legal
4 interpretation of what this document means.

5 MS. DUNN: The witness answered.

6 A. I don't know.

7 Q. Were you a paralegal?

8 A. No.

9 Q. Were you other employee associated for
10 purposes of this case?

11 MR. OLIKER: Objection.

12 A. I don't know. I just don't know. I
13 don't know the answer to that question.

14 Q. Were you an outside expert?

15 A. No.

16 Q. Were you an employee of an outside
17 expert?

18 A. No.

19 Q. And under the protective agreement, you
20 received not only confidential but also competitively
21 sensitive confidential material, correct?

22 MR. OLIKER: Objection.

23 A. I don't know. I don't remember.

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

25 EXAMINER CHILES: You may.

1 MS. DUNN: Your Honors, do you still have
2 copies of his deposition from earlier today?

3 EXAMINER CHILES: We do.

4 MS. DUNN: Thank you.

5 Q. Mr. White, could you please turn to page
6 125 of your deposition, line 13:

7 "Under the protective agreement you
8 received not only confidential, but competitively
9 sensitive confidential material, correct?"

10 Answer: "Correct."

11 Did I read that correctly?

12 A. You did not read the entire portion when
13 I explained that I got a lot of documents in the
14 case, and I was not clear on what the definition when
15 you asked me that question what was the difference
16 between confidential and competitively sensitive. I
17 was not clear on the distinction between the two at
18 the time that you asked me that question.

19 MS. DUNN: Your Honor, I move to strike
20 the entire answer as unresponsive.

21 EXAMINER CHILES: Mr. Olikier.

22 MR. OLIKER: He's providing clarification
23 to something that is quite misleading and to which
24 she established no foundation, and in trying to
25 establish the foundation that Mr. White received

1 these documents, failed to do so. I think it's
2 really a line of questioning we should really move on
3 from.

4 EXAMINER CHILES: Consistent with our
5 practice in hearing, I'm going to deny the motion to
6 strike at this point.

7 But I'm going to instruct the witness to
8 answer the question asked and only the question asked
9 Again, if you feel further context is needed, I'm
10 sure Mr. Oliker will bring it out on redirect.

11 Thank you.

12 MS. DUNN: And, your Honor --

13 Q. Well, Mr. White, I'd like you to answer
14 the question that I asked, which is did I read your
15 deposition correctly?

16 A. Yes, you read my deposition correctly.

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

18 EXAMINER CHILES: You may.

19 MS. DUNN: Your Honor, may I mark the
20 next document as Company Exhibit 91?

21 EXAMINER CHILES: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Mr. White, I've handed you what has been
24 marked as Company Exhibit 91.

25 A. Yes.

1 Q. On the 2 line of this document, does it
2 have mswhite@igsenergy.com?

3 A. Yes.

4 Q. Is that your e-mail address?

5 A. Yes.

6 Q. Does the document state, "Attached please
7 find confidential and/or competitively sensitive
8 documents related to the filing in Case No.
9 14-1296-EL-SSO"?

10 A. Of the thousands of discovery documents
11 that I've read, yes.

12 Q. And does the date also state on
13 November 21st, 2014 that you received this e-mail?

14 A. Yes.

15 Q. And does the document and the attachments
16 identify competitively sensitive confidential
17 material?

18 A. Can you please repeat the question?

19 Q. Sure. In the attachments line it lists
20 several attachments. Are those identified as
21 competitively sensitive confidential attachments?

22 A. Yes.

23 Q. And in this case, you reviewed
24 competitively sensitive confidential material that
25 has specific cost information relating to the plants

1 being offered in the proposed transaction, correct?

2 A. No, or not that I'm aware of.

3 Q. If you could please turn to your
4 deposition.

5 A. Sure.

6 Q. Page 120.

7 A. Yes.

8 Q. Starting at line 17:

9 "I'm not asking for specifics, but have
10 you viewed competitively sensitive confidential
11 material in this case that has specific cost
12 information relating to the plants being offered in
13 the proposed transaction?"

14 Answer: "Yes."

15 Did I read that correctly?

16 MR. OLIKER: Objection. He already
17 clarified this answer later in the deposition.

18 A. I was not clear at the time that what you
19 were referring to as competitively sensitive and
20 confidential.

21 MS. DUNN: Your Honor, I move to strike
22 that answer as not responsive.

23 EXAMINER CHILES: Motion to strike is
24 granted.

25 Mr. White, when there's an objection

1 pending, you need to wait for a ruling before you
2 answer.

3 THE WITNESS: Okay. My apologies.

4 Q. And my question was, did I read that
5 correctly?

6 A. Yes, you did.

7 Q. We can go ahead and put that away.

8 I'm going to direct you to page 3 of your
9 supplemental direct testimony, which is IGS 11.

10 A. Sure.

11 Q. And on lines 2 through 6, you list the
12 testimony that you have filed previously, correct?

13 A. Can you please repeat the pages and
14 lines?

15 Q. Sure. Page 3, lines 2 through 6.

16 A. Yes.

17 Q. That's the list of the testimony you
18 previously filed, correct?

19 A. Yes.

20 Q. And you've also recently filed testimony
21 in AEP's Case 14-1693?

22 A. Yes.

23 Q. And in September of 2015, you also
24 withdrew from that case as counsel for IGS Energy,
25 correct?

1 A. I will take your word for it.

2 Q. Well, let's go ahead and be sure about
3 that as well.

4 MR. OLIKER: Object to the relevance.

5 MS. DUNN: Your Honor, if you'll indulge
6 me, this goes to the weight and credibility, as is
7 evident, specifically the practice of appearing as
8 counsel and withdrawing as counsel on the same day
9 testimony is filed.

10 EXAMINER CHILES: Overruled.

11 MS. DUNN: Your Honor, I'd like to mark
12 three exhibits. The first would be the Motion to
13 Intervene and Memorandum in Support of IGS Energy as
14 Company Exhibit 92; the Notice of Withdrawal of
15 Counsel as Company Exhibit 93; and the Direct
16 Testimony of Matthew White as Company Exhibit 94, and
17 these are all in Case No. 14-1693.

18 EXAMINER CHILES: So marked.

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 Q. Mr. White, I've handed you what has been
21 marked as Company Exhibit 92, 93, and 94. Company
22 Exhibit 92 was marked on the Motion to Intervene in
23 Case 14-1693. Did you appear as counsel for IGS
24 Energy on October 31st, 2014 in that case?

25 A. Yes.

1 Q. And turning to Company Exhibit 93, the
2 Notice of Withdrawal, did you withdraw on
3 September 11th, 2015 in that case as counsel?

4 A. Yes.

5 Q. And then turning to Company Exhibit 94,
6 your direct testimony in case 14-1693, looking at The
7 certificate of service and the electronic filing
8 docket, did you file testimony in Case No. 14-1693 on
9 September 11th, 2015?

10 A. Yes.

11 Q. And that was the same day you withdrew as
12 counsel for IGS, correct?

13 A. Yes.

14 Q. Now, it says on page 3 of your
15 testimony --

16 A. I've got a lot of documents up here.

17 Q. I can slow down. I apologize.

18 A. Give me a second to get organized.

19 Q. I'm referring to IGS 11, the supplemental
20 direct testimony.

21 A. Go ahead.

22 Q. And you state on there you testified in
23 Case No. 14-841, correct?

24 A. Yes.

25 Q. And did you also appear initially in that

1 case as counsel for IGS Energy?

2 A. I will go ahead and save us the trouble
3 and stipulate yes.

4 Q. And then on September 25th, 2014, did you
5 also withdraw as counsel in that case?

6 A. Again, I will go ahead and save us all
7 the trouble and stipulate to yes.

8 Q. Is September 26th, 2014 the day that you
9 filed direct testimony in Case 14-841?

10 A. I will stipulate to yes.

11 Q. And you also state in your direct
12 testimony in 12-426, that you testified in Case No.
13 12-426; is that correct?

14 A. Yes, it is.

15 Q. And in that case, did you also appear as
16 counsel for IGS?

17 MR. OLIKER: Objection. Your Honor, are
18 we going to get to Mr. White's testimony in this
19 case? I don't think I've seen anything tieing in the
20 relevance of all of these questions together to what
21 matters in this case, and we're just taking up a lot
22 of time on this.

23 MS. DUNN: Your Honor, it continues to go
24 to weight and credibility. I'm almost done, and I
25 believe it's important for the Commission to know the

1 practice of IGS of having counsel enter and withdraw
2 and become a witness.

3 MR. OLIKER: There has been no
4 demonstration as to how that may go to credibility.

5 EXAMINER CHILES: Overruled.

6 MS. DUNN: May I have my last question
7 read please.

8 (Record read.)

9 A. I will stipulate to yes on that one, too.

10 Q. And did you also withdraw on March 1st,
11 2013 as counsel in that case?

12 A. I will stipulate to yes and to your time
13 frame.

14 Q. And in that case, did you also file
15 direct testimony on March 1st, 2013, the same day
16 that you withdrew as counsel?

17 A. I will stipulate that I did as such and
18 to your time frame.

19 Q. And last, you testified in Case No.
20 23-85, correct?

21 MR. OLIKER: I think you misspoke,
22 Ms. Dunn.

23 Q. You testified in case 13-2385, correct?

24 A. Yes, that's what it says in my testimony.

25 Q. And in that case, did you also appear as

1 counsel for IGS?

2 A. I will stipulate that I trust you that I
3 did.

4 Q. And you also withdrew as counsel in that
5 case, correct?

6 A. I will stipulate that you did the
7 research that I did.

8 Q. Turning to page 3 of your supplemental
9 direct testimony, IGS 11 --

10 A. Yes.

11 Q. -- line 14, you identify IGS Generation,
12 correct?

13 A. Yes.

14 Q. IGS Generation doesn't own any coal
15 plants, correct?

16 A. No.

17 Q. Meaning, I'm correct, they don't own --

18 A. Yes, you are correct, IGS Generation does
19 not own coal plants.

20 Q. And IGS does not own any nuclear plants,
21 correct?

22 A. That is correct.

23 Q. And IGS Generation doesn't own any
24 wholesale natural gas plants, correct?

25 A. Correct, we do not own wholesale natural

1 gas plants.

2 Q. IGS Energy is a d/b/a for Interstate Gas
3 Supply, Inc., correct?

4 A. Yes.

5 Q. IGS purchased a retail supplier of
6 electricity in 2011, correct?

7 A. Yes.

8 Q. And that was the first time IGS Energy
9 became involved in the supply of electricity,
10 correct?

11 A. Depends on what you mean by the
12 definition of being involved in the supply of
13 electricity.

14 Q. Let me rephrase my question. Maybe I
15 misspoke. 2011 is the first time IGS Energy became
16 involved in the supply of electricity?

17 A. If you mean the first time IGS Energy
18 became a competitive retail electric supplier, then
19 that's correct.

20 Q. Page 4, line 4 to 5, still the same
21 testimony, IGS 11, you state, a large portion of the
22 aggregation is served by FES, an affiliate of
23 FirstEnergy. Is the basis of this statement just
24 information you know about the industry?

25 A. I've done research on specifics, but,

1 yes, it's what I know about the industry and the
2 research that I've done.

3 Q. Can you please turn to your deposition?

4 A. Sure.

5 Q. Page 49.

6 A. A lot of documents up here, so it's kind
7 of hard to find my deposition. Okay.

8 Q. Line 21, question:

9 "And on page 4, lines 4 to 5, you state
10 'A large portion of that aggregation is served by
11 FirstEnergy Solutions (FES) an affiliate of
12 FirstEnergy,' correct?"

13 Line 1: "Yes."

14 Question: "How do you know that?"

15 Answer: "Upon my information about the
16 industry."

17 Did I read that correctly?

18 A. That is the answer I gave, and since you
19 asked me that, I did more research on the amount of
20 aggregation that was being served by FirstEnergy
21 Solutions, and I verified that the City of Toledo,
22 the City of Cleveland, all of NOPEC, all of Akron's
23 and all of I believe it's Canton's -- or I'm sorry --
24 Youngstown's aggregation is served by FirstEnergy
25 Solutions. So since you asked me that question, I've

1 been able to verify more information on that topic.

2 MS. DUNN: Your Honor, I would move to
3 strike everything after the word "and" the first
4 time.

5 EXAMINER CHILES: Mr. Oliker, a response.

6 MR. OLIKER: Your Honor, he's providing
7 his understanding of the aggregation served by
8 FirstEnergy Solutions. It's very relevant to his
9 testimony. Ms. Dunn may not like the answer, but it
10 completes the record.

11 MS. DUNN: Your Honor, if I may.

12 MR. OLIKER: And also, before I finish
13 that, Ms. Dunn also left out the basis of the
14 information Mr. White did happen to know at the time,
15 which was not just based on his understanding of the
16 industry.

17 EXAMINER CHILES: Ms. Dunn, do you have
18 something to add?

19 MS. DUNN: Yes. My question was whether
20 I read it correctly. If Mr. Oliker has other things
21 he'd like to put on, he can do so on redirect.

22 EXAMINER CHILES: I agree. The motion is
23 granted.

24 Q. (By Ms. Dunn) Back to your testimony,
25 IGS 11, on page 4, lines 5 to 6, is the basis of your

1 opinion there on public comments made by FirstEnergy
2 and FirstEnergy Solutions?

3 A. Excuse me. Can you recite that?

4 Q. Sure. Page 5, lines 5 to 6, is this your
5 opinion based on public comments made by FirstEnergy
6 and FirstEnergy Solutions? I think I misspoke. I
7 apologize. Page 4, line 5 to 6, this is your opinion
8 based on public comments made by FirstEnergy and
9 FirstEnergy Solutions, correct?

10 A. Page 4, 5 and 6?

11 Q. Yes.

12 A. You're talking about a large portion of
13 the aggregation is served by FirstEnergy and
14 FirstEnergy Solutions? Is that the line you're
15 referring to?

16 Q. No. On line 5 to 6, "This is especially
17 problematic given FES recent shift away from
18 competitive markets and competitive policies."

19 A. That statement is made based on public
20 comments and also just general information, industry
21 knowledge, what I've seen in the industry.

22 Q. And that's also based on comments you
23 read in news articles, correct?

24 A. Among other information, yes.

25 Q. Mr. White, could you please turn to your

1 deposition.

2 A. Sure.

3 Q. Page 50, line 12:

4 Question: "In lines 5 through 6, you
5 state, 'This is especially problematic given FES'
6 shift away from competitive markets and competitive
7 policies,' correct?"

8 "Can you restate where I said that?"

9 "Yes, lines 5 to 6."

10 "Page?"

11 "Page 4."

12 "Yes."

13 "And how do you know that?"

14 "It's my opinion based on public comments
15 made by FirstEnergy and FirstEnergy Solutions."

16 "Are you referring to comments on page 6,
17 footnote 2?"

18 "Yes, and other comments."

19 "What other comments?"

20 "Comments I've seen in news articles."

21 "Any others?"

22 "Those are the ones I can think of at
23 this time."

24 Did I read that correctly?

25 A. Yes, you did.

1 MS. DUNN: Your Honor, I would move to
2 strike lines 5 through 6 on page 4 of his testimony
3 on the basis of hearsay.

4 MR. OLIKER: Your Honor, it specifically
5 says it's based upon public comments of FirstEnergy.
6 Any comments that FirstEnergy makes are admissions,
7 and he can provide any opinions that's based off of
8 the testimony. It's not hearsay. It's an exception
9 to hearsay.

10 EXAMINER CHILES: Ms. Dunn.

11 MS. DUNN: Your Honor, if I may respond,
12 I believe the exception to hearsay he's referring to
13 is the admission of a party opponent. In order for
14 that to apply they have to demonstrate. that it fits
15 that definition that was within a representative
16 capacity. They have not the established that at all,
17 That it fits that definition that was within a
18 representative capacity. They have not the
19 established that at all, and news articles are also
20 hearsay within hearsay.

21 EXAMINER CHILES: Mr. Oliker, last word.

22 MR. OLIKER: The newspaper is only a
23 portion of what Mr. White indicated, and he also said
24 those are the ones that I can think of at this time.
25 Mr. White also testified on the stand that there is

1 additional understanding he has, and going back to
2 the FirstEnergy comments, whether it's in
3 representative capacity -- I mean, it is FirstEnergy.
4 I mean, comments about FES, if it's in an SEC
5 document or some other document, I think he's allowed
6 to rely upon that document, as all witnesses have in
7 Commission practice.

8 EXAMINER CHILES: Consistent with our
9 prior rulings regarding hearsay regarding Mr. White's
10 testimony, we are going to grant the motion to strike
11 that sentence.

12 Q. (By Ms. Dunn) Mr. White, turning to page
13 5 of your testimony --

14 A. Yes.

15 Q. -- lines 14 to 15, you state further
16 FirstEnergy has not proposed to eliminate many of the
17 anti-competitive elements of its current ESP. In
18 your opinion there are anti-competitive elements of
19 all of the EDUs in Ohio, correct?

20 A. Correct.

21 Q. And you're not aware of any EDUs in the
22 state of Ohio that has unbundled certain costs to
23 support SSO, correct?

24 A. Can you repeat the question?

25 Q. Sure. You're not aware of any EDUs in

1 the state of Ohio that has unbundled certain costs to
2 support SSO?

3 A. I think outside the auction costs that
4 the EDUs are recovering beyond the auction costs, no,
5 that the SSO is paying for.

6 Q. IGS Energy serves customers in
7 FirstEnergy service territories with CRES supply,
8 correct?

9 A. Yes.

10 Q. And IGS Energy also serves aggregation
11 communities in Ohio, correct?

12 A. Yes.

13 Q. Turning to page 6 of your testimony,
14 starting at line 20, "While it appears," and moving
15 to page 7 to the end of that sentence on line 3.

16 A. "While it appears that now FES intends to
17 still retain its aggregation customers," is that --

18 Q. Yes. You're not aware of FES indicating
19 that they are going to stop serving aggregation
20 communities, are you?

21 A. Other than the fact that they have
22 stopped -- they've made public comments that they
23 have stopped serving a large portion of their
24 residential customers directly. They've also stopped
25 serving market segments, which would lead me to

1 believe that there's a potential given the past
2 history that they pull back even further from serving
3 the competitive retail market.

4 MS. DUNN: Your Honor, I would move to
5 strike the entire response as nonresponsive and also
6 based on hearsay. My question was a "yes" or "no"
7 question.

8 MR. OLIKER: Your Honor, he answered the
9 question, and he answered it based upon FirstEnergy's
10 own comments. It's not hearsay. And to the extent a
11 document exists on FirstEnergy's website, Mr. White
12 is allowed to rely upon that.

13 MS. DUNN: Your Honor, I would move to
14 strike Mr. Oliker comments as improper coaching of
15 the witness.

16 MR. OLIKER: It's responsive to
17 Ms. Dunn's objection.

18 EXAMINER CHILES: I'm going to actually
19 grant both motions to strike.

20 Mr. Oliker, you can bring out any more
21 relevant information on redirect.

22 MS. DUNN: Thank you, your Honor.

23 May I have my question reread, please?

24 EXAMINER CHILES: You may.

25 EXAMINER PRICE: Can you please repeat

1 the question?

2 (Record read.)

3 A. If I can't explain anything, then I'll
4 have to answer that question no.

5 MS. DUNN: Your Honor, I would move to
6 strike "if I can't explain anything" and then leave
7 in "no."

8 EXAMINER CHILES: Granted.

9 A. Can I actually -- I want to rephrase
10 that. I would say, yes, I am aware. I am aware.

11 Q. That's fine. Please turn to your
12 deposition on page 73, line 7:

13 "Has FES indicated they're going to stop
14 serving aggregation communities? "

15 Answer: "Not that I'm aware of at this
16 time."

17 Did I read that correctly?

18 A. Yes.

19 Q. The Commission has launched a retail
20 market investigation, correct?

21 A. Yes.

22 Q. That's Case No. 12-3151, correct?

23 A. I'm not sure of the exact case number.

24 Q. You consider that a venue where
25 competitive issues can be discussed, correct?

1 A. Yes.

2 Q. And out of that Commission investigation,
3 there is a market development working group, correct?

4 A. Yes.

5 Q. You believe that customer engagement when
6 it comes to competitive retail electric supply is
7 limited -- let me strike that.

8 When it comes to competitive retail
9 electric supply, you believe that customer engagement
10 is limited in the entire state, correct?

11 A. Yes.

12 Q. Turning to page 4 of your testimony, IGS
13 11, lines 1 to 2.

14 A. Yes.

15 Q. You do not believe that any of the EDUs
16 in Ohio have a robust retail market, correct?

17 A. I believe that there is significant
18 elements lacking in all the EDUs retail electric
19 markets.

20 MS. DUNN: Your Honor, I move to strike.
21 That's unresponsive to my question. It's a "yes" or
22 "no" question.

23 EXAMINER CHILES: Mr. Oliker, any
24 response?

25 MR. OLIKER: Your Honor, it was

1 responsive. It was just providing his answer,
2 explanation.

3 EXAMINER CHILES: I'm going to deny the
4 motion to strike, but instruct the witness to answer
5 the question, "yes," "no" or explain why you cannot
6 answer it "yes" or "no."

7 Could we have the question repeated,
8 please?

9 (Record read.)

10 A. Yes.

11 Q. You understand that the Commission can
12 generally disallow cost recovery for utilities,
13 correct?

14 A. Yes.

15 Q. Turning to page -- in your testimony, you
16 use the term "noncommodity product and services,"
17 correct?

18 A. Can you please point to a point where I
19 use that phrase?

20 Q. On page 7, lines 14 to 15.

21 A. Yes.

22 Q. Noncommodity products and services are
23 not competitive retail electric supply, correct?

24 A. It depends on your definition of
25 competitive retail electric supply.

1 Q. Turning to your deposition on page 86,
2 line 7:

3 Question: "Are noncommodity products and
4 services also competitive retail electric supply?"

5 Mr. Oliker objected.

6 "No, I would consider competitive retail
7 electric supply a commodity service."

8 Did I read that correctly?

9 A. Can you please repeat the lines you're
10 reading?

11 Q. Sure. Page 86 starting at line 7:

12 Question: "Are noncommodity products and
13 services also competitive retail electric supply?"

14 Objection by Mr. Oliker.

15 "No, I would consider competitive retail
16 electric supply a commodity service."

17 Did I read that correctly?

18 A. Mr. Oliker objected because it was vague.
19 So yes, you forgot to read the objection, that's a
20 vague question.

21 MS. DUNN: Your Honor, I would move to
22 strike "you forgot to read," keep, yes," and then the
23 remainder of his sentence.

24 MR. OLIKER: Mr. White was indicating
25 that she didn't read the deposition as it was

1 written, and he provided the clarification that was
2 necessary to complete the question and answer.

3 EXAMINER CHILES: I'm going to grant the
4 motion to strike. I think the fact that the
5 objection was noted is sufficient.

6 Q. So for the record, you would consider
7 competitive retail electric supply a commodity
8 service, correct?

9 A. Yes.

10 Q. And the term "noncommodity products and
11 services" refers to any product and service that's
12 not electric distribution generation or PJM-type
13 charges, correct?

14 MR. OLIKER: Objection.

15 EXAMINER CHILES: Grounds?

16 MR. OLIKER: The question is very broad
17 and vague.

18 EXAMINER CHILES: Ms. Dunn?

19 MS. DUNN: I'm using Mr. White's terms.

20 THE WITNESS: That's why it sounded so
21 good.

22 EXAMINER CHILES: Overruled.

23 A. Yeah, I will agree with that.

24 Q. Page 9 of your testimony.

25 A. Yes.

1 Q. I'll go ahead and strike that.

2 You don't know if the companies' tariffs
3 provide for them to offer noncommodity goods and
4 services, correct?

5 A. I think the tariffs could be subject to
6 interpretation.

7 MS. DUNN: Your Honor, I move to strike.
8 It was a "yes" or "no" question.

9 MR. OLIKER: It was also vague. It
10 didn't say who may offer noncommodity services,
11 whether referring to CRES providers or the company.

12 MS. DUNN: If it's vague, I can restate
13 my question.

14 EXAMINER CHILES: If you would restate,
15 please. Thank you.

16 Q. You don't know if the companies' tariffs
17 provide for the companies to offer noncommodity goods
18 and services, do you?

19 A. There may be a tariff -- I don't know
20 specifically what the companies' tariffs provide,
21 what the company can offer. I seem to recall -- and
22 I may be confusing my utilities, but there may be a
23 tariff in the FirstEnergy tariff that allows an offer
24 of certain products. I'm not sure.

25 Q. And on page 9, lines 12 to 14, you

1 indicate that "Many of these products appear to be
2 provided by third party companies, but they are
3 advertised as FirstEnergy products and billed on the
4 FirstEnergy bill."

5 You don't know which third-party company,
6 if any, that provides electric technician service, do
7 you?

8 A. No, I don't know the exact company off
9 the top of my head.

10 Q. Turning to page 10 of your testimony, the
11 second bullet referring to tree maintenance service,
12 you don't know which third party company, if any,
13 that provides tree maintenance service, correct?

14 A. I know that there is a company that
15 provides tree pruning service, but I don't know which
16 company that is.

17 Q. And on the third bullet, outdoor
18 lighting, you don't know which third-party company,
19 if any, that provides outdoor lighting services,
20 correct?

21 A. I know there is a company through which
22 FirstEnergy offers outdoor lighting services, but I
23 don't know the exact company.

24 Q. And the fourth bullet, you mention Home
25 Serve. You don't know if Home Serve is a contractor

1 for the companies, correct?

2 A. I'm not sure there's a contract between
3 FirstEnergy and Home Serve, but I don't know -- I
4 mean, I don't know if they're a contractor just under
5 contract.

6 Q. And the information contained in the
7 bullet points on line 9 through 11 is largely based
8 on your review of the companies' website, correct?

9 A. I reviewed the companies' website and I
10 also spoke with representatives from FirstEnergy on
11 the phone about these specific products.

12 Q. You called FirstEnergy's customer
13 service, correct?

14 A. Yes.

15 Q. And you asked if they provide a service
16 and whether or not it's billed on the utility bill,
17 correct?

18 A. Yes.

19 Q. You don't remember the number you called,
20 correct?

21 A. Correct.

22 Q. You don't remember the day you called,
23 correct?

24 A. No.

25 Q. You don't remember how long your

1 conversation was, correct?

2 A. I remember looking on the website and
3 verifying that they offered these products and
4 services on their website, and then I do remember
5 calling to verify that what was offered on the
6 website was true. But at the time and the date I
7 don't know or the length of the call.

8 MS. DUNN: Your Honor, I move to strike
9 everything but you don't -- the length of the call he
10 doesn't remember, which is the last portion of his
11 sentence.

12 EXAMINER CHILES: Motion to strike is
13 denied.

14 Q. You would describe your conversation with
15 the customer service line as brief, correct?

16 A. I think that's a reasonable description.

17 Q. And when you called the customer service
18 number, you recall going through a voice-activated
19 system, correct?

20 A. I probably did, given that most every
21 time you call a utility, you go through a
22 voice-activation system.

23 Q. And you don't know who you were talking
24 to when you called the companies' phone number,
25 correct?

1 A. No, not currently, no.

2 Q. And you don't know what department they
3 were in, correct?

4 A. No.

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

6 EXAMINER CHILES: You may.

7 MS. DUNN: Your Honor, I would ask to
8 mark my next exhibit, which is a website page
9 Electrical Services as Company Exhibit 95.

10 EXAMINER CHILES: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Mr. White, I've handed you what has been
13 marked as Company Exhibit 95. Is this the website
14 you reviewed that's cited in your footnote 4 as
15 electrical services?

16 A. It appears to have the same URL address
17 although this was dated July 27th, 2015 and, I don't
18 know if the website has been modified since then,
19 since when I cited it.

20 Q. Does the website that you're looking at
21 state anything about the FirstEnergy contact center
22 arranging an electric technician to be sent to the
23 customer's home to perform in-house services?

24 A. Again, this is the -- this is a website
25 from July 27th, 2015, and as we've heard earlier,

1 FirstEnergy has a history of modifying its websites
2 after what it sees in testimony, so I cannot attest
3 to this being the exact same website that I cited in
4 my testimony.

5 MS. DUNN: Your Honor, I move to strike
6 his commentary about changing the FirstEnergy's
7 websites. That wasn't part of any testimony in this
8 case and it's not in evidence.

9 EXAMINER CHILES: Mr. Oliker.

10 MS. DUNN: And it's also not true.

11 MR. OLIKER: That was nice testimony from
12 Ms. Dunn, but Mr. White is just answering the
13 questions, and, as he said, there's been a long time
14 between when this application was filed and when he
15 filed his testimony, and he can't necessarily say
16 this is exactly the same website. I think he just
17 provided that indication to Ms. Dunn.

18 MS. DUNN: And the only issue with his
19 answer was his commentary relating to changing the
20 website, as was discussed today.

21 MR. OLIKER: And, your Honor, he wanted
22 to provide a caveat.

23 EXAMINER CHILES: I'm going to strike the
24 portion of the sentence, the phrase that says "and as
25 we heard earlier, FirstEnergy has had a history of

1 modifying its websites," just that portion of the
2 answer.

3 Q. (By Ms. Dunn) Turning to your testimony
4 on page 10, the last bullet point.

5 A. Yes.

6 Q. "FirstEnergy has recently filed an
7 application at the Commission in Case 14-1980," has
8 that case been withdrawn, that application?

9 A. Yes.

10 MS. DUNN: Your Honor, I would move to
11 strike page 10, line 16 through page 11, line 2 on
12 the basis of relevance. The application is no longer
13 pending.

14 EXAMINER CHILES: Mr. Oliker, do you have
15 any objection to that?

16 MR. OLIKER: Your Honor, this portion of
17 the testimony shouldn't be stricken because it
18 provides good context for some of the intentions of
19 FirstEnergy. While the application may have been
20 withdrawn, there was no description of why it was
21 withdrawn, whether it would be refiled, or whether
22 FirstEnergy may decide to pursue those opportunities
23 under its existing authorization from this
24 Commission, which the companies have been unwilling
25 to answer that question.

1 EXAMINER CHILES: Ms. Dunn, do you want
2 to respond to that?

3 MS. DUNN: I believe the fact it was
4 withdrawn belies any assertion that it shows intent
5 and also for that reason, it's not relevant.

6 MR. OLIKER: Ms. Dunn, are you
7 stipulating that the companies are not offering any
8 of these services under their existing authorization
9 from this Commission?

10 MS. DUNN: Your Honor, do I have to
11 respond to that question?

12 MR. OLIKER: It's an important question.

13 EXAMINER CHILES: I don't think so. We
14 are going to grant the motion to strike at this time
15 on the basis of relevancy, line 16 on page 10 through
16 line 2 on page 11.

17 MS. DUNN: Your Honor, may I request a
18 five- to ten-minute break at this time if it's a good
19 break time.

20 EXAMINER CHILES: Sure. We can take a
21 ten-minute break. We'll return at 2:35.

22 THE WITNESS: Can we go off the record?

23 EXAMINER CHILES: We can go off the
24 record.

25 (Recess taken.)

1 EXAMINER CHILES: Let's go ahead and go
2 back on the record.

3 Ms. Dunn.

4 MS. DUNN: Thank you, your Honor.

5 Q. (By Ms. Dunn) Mr. White, I'm still
6 working off your IGS 11 supplemental direct
7 testimony, page 11 --

8 A. Yes.

9 Q. -- question beginning on line 9 and
10 ending on line 16.

11 A. Yes.

12 Q. The basis for this question and answer is
13 a letter IGS sent to FirstEnergy and a letter
14 FirstEnergy sent back in response, correct?

15 A. Yes.

16 MS. DUNN: And, your Honor, I apologize.
17 May we go off the record one moment?

18 EXAMINER CHILES: Yes.

19 (Pause in proceedings.)

20 EXAMINER CHILES: Let's go back on the
21 record.

22 MS. DUNN: Thank you, your Honor.

23 Your Honor, may I approach?

24 EXAMINER CHILES: You may.

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

1 mark as Company Exhibit 96 a letter from Scott White
2 of IGS Energy to Chuck Jones of FirstEnergy.

3 EXAMINER CHILES: So marked.

4 (EXHIBIT FOR MARKED IDENTIFICATION.)

5 MS. DUNN: And as Company Exhibit 97, a
6 letter from myself to Scott White.

7 EXAMINER CHILES: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. (By Ms. Dunn) Mr. White, off the record
10 we indicated that that IGS is okay treating what has
11 been marked as Company Exhibit 96, the IGS letter, as
12 nonconfidential, correct?

13 A. Yes.

14 Q. And the letter that you've been handed
15 for Company Exhibit 96, have you seen this letter
16 before?

17 A. Yes.

18 Q. And is this a letter from Scott White,
19 president of IGS Energy to Charles Jones, executive
20 vice president and president of FirstEnergy
21 Utilities?

22 A. Yes.

23 Q. And then the letter marked as Company
24 Exhibit 97, have you seen this letter before?

25 A. Yes.

1 Q. And is this a letter from Carrie Dunn to
2 Scott White, president of IGS Energy?

3 A. Yes.

4 Q. And are these the two letters that are
5 the basis for your statement on page 11, lines 9
6 through 16?

7 A. Yes, largely.

8 Q. And turning back to your testimony --

9 A. Yeah.

10 Q. -- IGS 11, page 12, line 3, you state "or
11 affiliates." You've not identified any specific
12 affiliates, correct?

13 MR. OLIKER: Could I have that reference
14 again?

15 MS. DUNN: Page 12, line 3, "or
16 affiliates," and my question was, you have not
17 identified any specific affiliates, correct?

18 A. When you say I haven't identified any
19 affiliates, you mean I don't list any affiliates in
20 this specific question or answer; is that what you
21 mean?

22 Q. Correct.

23 A. No, I don't list any affiliates,
24 reference any specific affiliates.

25 Q. And you don't know how FirstEnergy chose

1 Home Serve as the provider of noncommodity goods and
2 services in its service territories?

3 A. Generally I'm not aware of how that
4 process occurred.

5 Q. And you don't know if Home Serve was
6 chosen by the companies through a request for
7 proposal process that other suppliers were invited to
8 participate in, correct?

9 MR. OLIKER: Objection.

10 EXAMINER CHILES: Grounds?

11 MR. OLIKER: Calls for speculation.

12 MS. DUNN: My question was whether he
13 does or does not know.

14 EXAMINER CHILES: He can answer if he
15 knows.

16 A. Not specifically.

17 Q. You don't know if the companies conducted
18 an RFP to choose the vendor to provide noncommodity
19 goods and services in its service territories,
20 correct?

21 A. I'm not specifically aware of an RFP
22 conducted by FirstEnergy.

23 Q. Manchester Group was a subsidiary of IGS
24 and was a legacy entity for IGS Home Services,
25 correct?

1 A. Was Manchester -- yes.

2 Q. And you don't know whether Manchester
3 Group has ever participated in a request for proposal
4 to be a vendor of noncommodity products or services
5 in the FirstEnergy service territories, correct?

6 A. I'm not aware of a specific time when
7 Manchester requested to be part of an RFP.

8 Q. Do you know whether they were or were not
9 part or -- or do you know if they participated ever
10 in a request for proposal to be a vendor of
11 noncommodity products or services in the FirstEnergy
12 service territory?

13 A. I don't know.

14 Q. Would your answer be the same for IGS
15 Home Services?

16 A. I don't know.

17 Q. You have not done any customer surveys to
18 get customer opinions about whether they want other
19 products and services beyond the electric commodity,
20 correct?

21 A. Can you repeat the question?

22 Q. Sure. You have not done any customer
23 surveys to get customer opinions about whether they
24 want other products and services beyond the electric
25 commodity, correct?

1 A. I have personally not conducted customer
2 surveys.

3 Q. And you have not done any studies,
4 surveys, or analyses that perceive value in common
5 commodity goods and services, correct? Excuse me. I
6 misspoke. You have not done any studies, surveys, or
7 analyses that customers perceive value in
8 noncommodity goods and services?

9 A. My company has done analysis to the
10 extent that, you know, they test products that are
11 noncommodity products and services and determine
12 whether or not customers see value in those products
13 and services.

14 MS. DUNN: Your Honor, move to strike.
15 That was not responsive to my question. It was
16 whether he has personally done any studies, surveys,
17 or analysis that customers perceive value in
18 noncommodity goods and services.

19 EXAMINER CHILES: I'm going to deny the
20 motion to strike, but instruct the witness to answer
21 your clarified question.

22 A. Can you repeat the clarified question,
23 please?

24 Q. My question was, you have not done any
25 studies, surveys, or analysis that perceive value in

1 noncommodity goods and services?

2 A. I've seen sales results. I haven't done
3 any studies, but I've seen results of sales for
4 noncommodity products and services, and to the extent
5 that's an analysis, I mean, I don't know if you'd
6 consider that an analysis or not.

7 Q. Mr. White, could you please turn back to
8 your deposition.

9 A. Sure.

10 Q. Page 105, line 8:

11 Question: "Has IGS done any surveys,
12 studies, or analysis that customers perceive value in
13 these noncommodity goods and services?"

14 Answer: "I don't know."

15 Question: "Have you personally done any
16 studies, surveys, or analysis customers perceive
17 value in these noncommodity goods and services?"

18 Answer: "No."

19 Did I read that correctly?

20 A. Yes.

21 Q. Turning back to your testimony, you do
22 not know what the cost is to the utility to bill for
23 noncommodity goods and services, correct?

24 A. What portion of the testimony are you
25 referring to?

1 Q. I'm just asking you in general. I
2 apologize. You do not know what the cost is to the
3 utility to bill for noncommodity goods and services,
4 correct?

5 A. Correct.

6 Q. And because you don't know what the cost
7 is, you don't know how they are allocated either,
8 correct?

9 A. I'm not sure I understand the question.

10 Q. Turning to your deposition --

11 A. Yes.

12 Q. -- page 108, line 17:

13 "Maybe you don't know what the costs are,
14 but you wouldn't know how they're allocated either,
15 correct?"

16 Answer: "No."

17 Question: "That's a correct statement?"

18 "Yes."

19 Do you understand my question now?

20 MR. OLIKER: Object. That's improper
21 impeachment. I don't know exactly what that was.

22 A. What cost are you referring to?

23 EXAMINER CHILES: Mr. White, there's a
24 pending objection.

25 Ms. Dunn, do you want to respond to the

1 objection?

2 MS. DUNN: I'm asking him about the costs
3 we were referencing in his deposition. He understood
4 my question then. He should understand it today.

5 MR. OLIKER: He merely asked for a
6 clarification, your Honor. The easier way is to just
7 provide an explanation.

8 A. What costs are you -- are you talking
9 about the companies' costs, or are you talking about
10 suppliers' costs?

11 Q. Based on that clarification from the
12 witness, I'll go ahead and rephrase.

13 EXAMINER CHILES: Thank you.

14 Q. And maybe you don't know what the costs
15 to the utility are, but you wouldn't know how they're
16 allocated either, correct?

17 A. Are you talking about for billing the
18 current noncommodity services that they bill for
19 their products and services they offer new customers?
20 Is that what you're talking about?

21 Q. Yes.

22 A. And you're asking me I don't know how
23 they allocate the costs for the products and services
24 that FirstEnergy -- the products and services
25 FirstEnergy currently bills at?

1 Q. That's correct.

2 A. I do not know specifically how they
3 allocate those costs.

4 Q. Turning to page 12 of your testimony, IGS
5 11, lines 13 to 18 -- well, probably lines 13 to 22,
6 you discuss your request that the Commission require
7 FirstEnergy to amend their tariffs to allow to bill
8 for noncommodity goods and services, correct?

9 A. Excuse me. I think -- can you repeat the
10 reference again?

11 Q. Sure. Page 12, lines 13 to 22, you
12 reference your request that the Commission require
13 FirstEnergy to amend its tariffs, correct?

14 A. I do two things. I recommend
15 FirstEnergy's proposal be rejected, and then I
16 recommend that the Commission direct FirstEnergy to
17 update its tariffs to specifically allow for CRES --
18 treat noncommodity charges with respect to payment --
19 I make a lot of recommendations. I can't say that
20 that necessarily is the correct characterization of
21 the recommendations that I made in that entire
22 paragraph.

23 Q. Let me be a little more specific. On
24 line 17 you state "update its tariff," and on line 19
25 you also state "update its tariff," correct?

1 A. Yes.

2 Q. And those specific references you didn't
3 have a specific tariff in mind, correct?

4 A. I would imagine that would be the
5 supplier tariff or whatever tariffs that dictate the
6 terms of supplier billing.

7 Q. And on line 20, you mention "payment
8 priority."

9 A. Yes.

10 Q. And you envision that the companies would
11 actually collect the payment for those noncommodity
12 goods and services if they billed for them, correct?

13 A. Yes, under my proposal.

14 Q. And you don't know how functionally that
15 would work, correct?

16 A. I have a general idea how that would
17 work.

18 Q. But you don't know how specific
19 functionally it would work, correct?

20 A. I mean, it would work -- I mean, I know
21 it would work the same way that billing for -- that
22 the company bills for CRES charges already in the
23 same way. For instance, Vectren is a utility that
24 bills for noncommodity charges, bills for
25 noncommodity charges for suppliers.

1 MS. DUNN: Your Honor, I'd move to strike
2 everything relating to Vectren.

3 MR. OLIKER: Your Honor, she asked him
4 how it would work, and he provided an example of how
5 another utility in Ohio does exactly what she's
6 asking the question.

7 MS. DUNN: My question was you don't know
8 how it would specifically functionally work, and it
9 was a "yes" or "no" question.

10 MR. OLIKER: Your Honor, he provided a
11 good example of specifically of how it could work.

12 EXAMINER CHILES: The motion to strike
13 will be granted.

14 Q. (By Ms. Dunn) Mr. White, please turn to
15 your deposition.

16 A. Sure.

17 Q. Page 115, starting at line 1: "Question:
18 Do you know how that would functionally work? Would
19 it be EDI or something along those lines?"

20 Answer: "I don't know."

21 Did I read that correctly?

22 MR. OLIKER: Objection. This is related
23 to a completely different subject. EDI is regarding
24 the transmission of information, not necessarily the
25 payment priority.

1 MS. DUNN: Your Honor, it's the same
2 question that I asked.

3 A. It's a different question than you asked
4 me on the -- it's a different question than you asked
5 me on previously -- the question you asked me in
6 deposition is a different question than you asked me.

7 EXAMINER CHILES: Mr. White, there's a
8 pending objection.

9 MS. DUNN: Your Honor, I'd move to strike
10 his commentary.

11 EXAMINER CHILES: That motion to strike
12 is granted. However, I'm going to sustain the
13 objection.

14 Q. And you also -- you do not know how the
15 companies would collect if a customer failed to pay
16 for noncommodity goods and services, correct?

17 A. I generally do know how they would
18 collect.

19 Q. Would those be details that would need to
20 be worked out?

21 A. Some details would need to be worked out,
22 but there's also some details I think that I could
23 speak to today if you'd like me to.

24 Q. On page 13, lines 9 to 10, you state the
25 customer does not want separate bills for each

1 individual component of that product. You have not
2 conducted any customer surveys, correct?

3 A. I have not specifically surveyed
4 customers.

5 Q. No customer has spoken to you personally
6 about this topic, correct?

7 A. No customer has spoken to me personally,
8 although the customers have made our company aware of
9 these -- their preferences, so to the extent that's
10 been the case.

11 MS. DUNN: Your Honor, I move to strike
12 everything after "although," and including the word
13 "although."

14 MR. OLIKER: Your Honor, Mr. White works
15 for a company that has over 600 employees, and there
16 is a lot of data that's gathered by that company that
17 Mr. White has access to and that he may see in his
18 day-to-day responsibilities. I think it's much
19 better for the record to speak to what is important,
20 which is what Mr. White may know, not necessarily
21 whether he was standing on a corner someplace taking
22 a survey.

23 MS. DUNN: And, your Honor, I asked a
24 specific "yes" or "no" question.

25 EXAMINER CHILES: I'm going to grant the

1 motion to strike for everything beginning with
2 "although."

3 Q. (By Ms. Dunn) On page 13, lines 10 to
4 12, "Further customers may not even want a separate
5 price for each service, but rather may want a bundled
6 all-in price." You've not conducted any customer
7 surveys regarding this issue, correct?

8 A. I personally have not conducted a survey.

9 Q. You don't know the precise changes the
10 companies would need to make in order to accommodate
11 supplier consolidated billing, correct?

12 A. I know generally what they would need to
13 do.

14 Q. But you don't know precisely what they
15 would need to do, correct?

16 A. I don't know every detail, but I do know
17 largely what it would take.

18 Q. Mr. White, if you could please turn to
19 your deposition testimony, page 133, line 7:

20 "And what changes would the companies
21 need to make in order to accommodate supplier
22 consolidated billing?"

23 Answer: "I don't know the precise
24 changes that would be required."

25 Did I read that correctly?

1 A. Can you please give me the reference
2 again?

3 Q. Sure. Page 133, line 7:

4 Question: "And what changes would the
5 companies need to make in order to accommodate
6 supplier consolidated billing?"

7 Answer: "I don't know the precise
8 changes that would be required."

9 Did I read that correctly?

10 MR. OLIKER: Objection.

11 EXAMINER CHILES: Grounds.

12 MR. OLIKER: It's consistent with his
13 testimony.

14 A. And I go on to describe changes later on
15 the deposition, if you read the deposition.

16 MS. DUNN: Your Honor, I move to strike
17 the portion where Mr. White spoke after Mr. Oliker's
18 objection, and also to respond to his objection if I
19 may.

20 EXAMINER CHILES: Go ahead.

21 MS. DUNN: My question was very narrow.
22 You don't know the precise changes the companies
23 would need to make in order to accommodate supplier
24 consolidated billing? That's exactly what I asked
25 him in his deposition and how he answered.

1 EXAMINER CHILES: The motion to strike is
2 granted and the objection is overruled.

3 Q. Page 18 of your testimony, line 14 to 15,
4 the Ohio law that you're referring to is ORC 4928.02,
5 correct?

6 A. That is a law that I'm referring to;
7 although, there may be other specific statutes that
8 are applicable to that statement.

9 Q. Please turn to your deposition.

10 A. Okay.

11 Q. Page 144, starting at line 23.

12 A. Yes.

13 Q. Question: "On page 18 of your testimony,
14 lines 14 and 15, you state, "Ohio law requires that
15 the SSO price be comparable and nondiscriminatory to
16 other products."

17 Answer: "Yes."

18 "What Ohio law are you referring to
19 there?"

20 Answer: "I'm referring to Statute 4928
21 .02."

22 Did I read that correctly?

23 A. Yes, you did.

24 Q. And on the same page, line 15 to 16 --
25 oh, back to the testimony on page 18, line 15 to 16,

1 the Ohio law that you're referring to in that
2 sentence is also 4928.02?

3 A. On the same page, page 18, 15-16?

4 Q. Yes.

5 A. Further, Ohio law -- that line, "Further,
6 Ohio law prohibits subsidies flowing from
7 distribution rates to SSO service," I believe that
8 I'm referring to the provisions in 4928.02, although
9 that provision does apply to that statement and gives
10 basis for that statement, and there also may be other
11 statutes that are applicable and give basis for that
12 statement.

13 Q. Turning to page 20 of your testimony,
14 lines 17 to 18, you're referring to Ohio law on line
15 17. You're referencing 4928.02 and 4928.141,
16 correct?

17 A. Seventeen to 18?

18 Q. Yes.

19 A. Yes, I believe those are the statutes I'm
20 referring to.

21 Q. Page 21, starting on line 17 through 22,
22 line 9, you discuss corporate separation issues. You
23 do not recall reading the companies' current
24 corporate separation plan, correct?

25 A. I have vague recollections of reading it,

1 but I'm not sure. I read a lot of documents.

2 Q. Turning to page -- I'm going to now turn
3 to supplemental testimony IGS 13.

4 A. Okay.

5 Q. Page 5, line 10, you state, "The
6 stipulation amounts to an agreement entered into by a
7 minority of parties intervening in this proceeding,"
8 correct?

9 A. Correct.

10 Q. You cannot point to a specific number
11 that you think would meet the prong of this test,
12 correct?

13 A. Which test are you referring to?

14 Q. Product of serious bargaining among
15 capable and knowledgeable parties.

16 A. Do I reference that on my testimony?

17 Q. Yes, right above it, lines 8 to 9.

18 A. I'm sorry. Can you please give me the
19 cite of the page.

20 Q. Sure. Page 5.

21 A. Okay. Yes. Okay. I see it. Can you
22 repeat the question?

23 Q. Sure. You cannot point to a specific
24 number that you think would meet the prong of this
25 test, correct?

1 A. There's not a specific number that I know
2 of that's been identified.

3 Q. Mr. White, I'm going to turn to
4 Attachment MW-1 --

5 A. Sure.

6 Q. -- of your supplemental testimony. At
7 the time that you filed your supplemental testimony,
8 your attorney provided you with a copy of MW-1,
9 correct?

10 A. Correct.

11 Q. And that was Mr. Oliker, correct?

12 A. Correct.

13 Q. And you do not know where Mr. Oliker
14 found that document, do you?

15 A. After speaking with Mr. Oliker, he
16 informed me that he found it on the FirstEnergy
17 website.

18 Q. And at the time of your testimony, you
19 did not know where Mr. Oliker found that document,
20 correct?

21 A. Correct.

22 Q. And at the time of your deposition, you
23 also did not know where he found the document,
24 correct?

25 A. Correct.

1 Q. You were not present when Ms. Vespoli
2 allegedly gave this testimony, were you?

3 A. No, I was not.

4 Q. And you don't know what context she was
5 giving that testimony, correct?

6 A. I do know she was giving it in the
7 context that she's saying competitive markets work
8 and that it's not a good idea to subsidize
9 competitive generation in competitive markets.

10 Q. And you don't know whether she was asked
11 to appear before the House Public Utilities
12 Commission, correct?

13 A. I don't know why Ms. Vespoli appeared in
14 front of the House Public Utilities Commission.

15 Q. My question was, though, you don't know
16 whether the House Public Utilities Commission asked
17 her to appear before her, do you?

18 A. No, I don't know the reason why she
19 appeared.

20 Q. And do you have a different version of MW
21 Exhibit 1 with you today?

22 A. I believe I do. It's somewhere in these
23 documents. Yes, I do.

24 MS. DUNN: And, your Honor, because we
25 were not given a copy of the different version, may I

1 approach and take a look at the document he has?

2 MR. OLIKER: Carrie, I can give you one.

3 Do you want to go off the record?

4 MS. DUNN:

5 EXAMINER CHILES: Off the record.

6 (Discussion off the record.)

7 EXAMINER CHILES: Let's go back on the
8 record.

9 MS. DUNN: I would still like to approach
10 the witness to see what he has in front of him, your
11 Honor, to see if he has the original.

12 EXAMINER CHILES: You may.

13 Q. Mr. White, today you do not have an
14 original certified copy of Ms. Vespoli's testimony,
15 do you?

16 MR. OLIKER: Objection.
17 Mischaracterizes.

18 A. I don't know. It depends on the
19 definition of original.

20 MS. DUNN: Your Honor, may I approach the
21 Bench?

22 EXAMINER CHILES: You may.

23 MS. DUNN: Mr. Oliker, do you have an
24 additional copy?

25 MR. OLIKER: I do.

1 MS. DUNN: Thank you.

2 Q. Mr. White, has the original of the
3 document in front of you dated October 6th, 2015 been
4 filed with the Commission?

5 A. Excuse me? I don't understand the
6 question.

7 Q. Sure. You have a document in front of
8 you dated October 6th, 2015, correct?

9 A. Yes.

10 Q. Has the original of this document been
11 provided -- been filed with the Commission?

12 A. I don't know what you're definition of
13 original is.

14 Q. Well, you're an attorney, correct?

15 A. Correct.

16 Q. And you're familiar with the rules of
17 evidence, correct?

18 A. As much as I could say I can remember
19 every single thing from my law school rules of
20 evidence class, I don't know every single rule of
21 evidence.

22 Q. So you don't know what the word
23 "original" means in its most common form?

24 A. We're getting very philosophical here.

25 MR. OLIKER: Objection. If she's going

1 to ask about the rules of evidence, maybe put it in
2 front of him and not have a legal argument with the
3 witness.

4 EXAMINER CHILES: Ms. Dunn, do you have a
5 specific citation?

6 Q. I'd also like to point your attention to
7 this letter. Does it state in the last sentence,
8 "The clerk of the Ohio House of Representatives did
9 not prepare the original committee records, thus no
10 assurance is given by this letter that the content of
11 the original record is an accurate account of House
12 Committee proceedings as they occurred"? Does the
13 letter state that?

14 A. I think what that means is that when you
15 file testimony in the legislature, you don't go up
16 and just read what you said in the legislature. You
17 submit your written testimony to the legislature,
18 which is what was submitted to the legislature, and
19 then Ms. Vespoli, like anybody that testifies in the
20 legislature, generally paraphrases or adds or
21 subtracts or answers questions, so that's really what
22 that reference is to.

23 MS. DUNN: Your Honor, I move to strike.
24 I just asked if that's what the letter said.

25 MR. OLIKER: Your Honor, his answer was

1 responsive to the question.

2 MS. DUNN: It was a "yes" or "no"
3 question.

4 A. I think the letter speaks for itself.

5 EXAMINER CHILES: Mr. White.

6 A. Yes, that's what it says.

7 MS. DUNN: Your Honor, I'd move to strike
8 his commentary as well.

9 A. I think that's the letter --

10 EXAMINER CHILES: Mr. White, there's a
11 pending objection.

12 I'm going to deny the motion to strike.

13 Q. Mr. White, do you know Bradley Young
14 personally?

15 A. I don't think I do.

16 Q. And do you know -- can you verify the
17 authenticity of his signature appearing on this
18 letter?

19 A. I would imagine not.

20 Q. Did you request that Mr. Oliker obtain a
21 certified copy of Ms. Vespoli's testimony?

22 A. Yes.

23 Q. When did you do that?

24 A. I don't remember the exact date.

25 MS. DUNN: Your Honor, at this time I

1 would again move to strike the document attached to
2 his testimony as well as this purported certified
3 copy. I understand the rulings -- the Bench's ruling
4 on relevance; however, this document has not been
5 verified as authentic. It's not been
6 self-authenticated by a certified copy of a public
7 record. In fact, the clerk actually said that he
8 can't assure that this content is accurate or
9 original, and for those reasons, I would renew our
10 motion to strike on that basis.

11 EXAMINER CHILES: Mr. Oliker?

12 MR. OLIKER: Your Honor, we have a
13 document that has been signed by the clerk of the
14 House of Representatives that also contains a
15 notation from the LSC indicating they have housed
16 this document since it was filed.

17 There is a statement that Mr. White
18 already clarified, I believe, which states there is
19 not necessarily any guarantee that what has been
20 filed in a written document is what was stated by
21 that witness in their testimony, but that doesn't
22 change the fact that this is the document that
23 FirstEnergy submitted to the House of Public
24 Utilities Committee, and it is an authenticating
25 document, because if you look at the Rule of Evidence

1 902, there are domestic public documents that are
2 filed under seal, and this is one of those documents
3 or certified copies of public records under 902.4,
4 the copy of an official record or report therein.

5 This is a copy, and, therefore, it comes
6 in under that. It does not have to be the official
7 document. And I also have the e-mail transportation
8 on my computer, if Ms. Dunn would like to see it,
9 from Mr. Bradley, from Mr. Lenzo, the chief legal
10 counsel of the Ohio House of Representatives. If
11 they would like to see that and if they believe that
12 is from a false source, I think they're going to have
13 a hard time.

14 EXAMINER CHILES: Thank you.

15 Ms. Dunn, do you want to briefly reply?

16 MS. DUNN: May I have just one moment,
17 please?

18 EXAMINER CHILES: Sure.

19 MS. DUNN: Thank you, your Honor, if I
20 may.

21 EXAMINER CHILES: You may.

22 MS. DUNN: Your Honor, all we have today
23 is representations by Mr. Oliker as to where he got
24 it. We have no original. We have no seal. We have
25 a document that the only person signing it says he

1 can't authenticate the document. Mr. White cannot
2 authenticate that document. We have no foundation
3 that this document is, in fact, what it purports to
4 be, and its use on that basis is improper, and it
5 should be stricken along with the other testimony
6 referencing the document.

7 EXAMINER CHILES: Thank you. Your
8 renewed objection is noted for the record; however,
9 we are upholding our prior ruling, exercising our
10 administrative discretion, and the Commission will
11 afford this document the weight that it deserves.

12 MS. DUNN: And, your Honor, if I may just
13 have three minutes to look over my notes, I think I'm
14 finished.

15 EXAMINER CHILES: Absolutely.

16 (Discussion off the record.)

17 MS. DUNN: Thank you, your Honor. I have
18 no further questions.

19 EXAMINER CHILES: Thank you, Ms. Dunn.
20 Thank you, Mr. White.

21 EXAMINER CHILES: Mr. Sauer, I believe I
22 skipped over you.

23 MR. SAUER: No questions. Thank you.

24 EXAMINER CHILES: Mr. Kurtz?

25 MR. KURTZ: Thank you. Very briefly.

1 smart thermostats, distributed solar generation, and
2 other forms of on-site generation, microgrids --
3 what's a microgrid?

4 A. Sorry. I'm still trying to find --

5 Q. Page 8, line 8.

6 A. Okay. Just to clarify, those are not
7 items I'm necessarily saying should be billed on the
8 bill. I'm listing them as products and services.

9 Q. I thought you said you listed all these
10 things to name a few at the very end?

11 A. I'm saying in my testimony that they're
12 starting to develop new products and services that
13 include additional value to customers.

14 Q. At the end when you say "to name a few,"
15 I thought there were more to come and this was
16 nonexhaustive?

17 A. Yes, that's true.

18 Q. Okay. Well, what's a microgrid?

19 A. A microgrid is a -- it's a generation
20 resource that is located in a community or in the
21 midst of businesses where it supplies that specific
22 generation resource, provides energy to a set group
23 of customers in a small geographic area.

24 Q. Would they all have to be customers of
25 the CRES to qualify?

1 A. I don't know if I understand your
2 question.

3 Q. Would they all have to be IGS customers
4 for FirstEnergy to bill for this microgrid?

5 A. Just to be clear, I'm not advocating
6 necessarily that FirstEnergy bills for microgrids. I
7 think my statement here is saying there's a bunch of
8 products and services that are being developed by
9 CRES providers.

10 Q. And you go on, battery storage
11 technology, products bundled with loyalty rewards,
12 and products bundled with home protection, to name a
13 few. Are the loyalty rewards the five cents off per
14 gallon of gas that you offer, that type of thing?

15 A. Yes, that would be an example of loyalty
16 rewards.

17 Q. Okay. Let's assume the Commission adopts
18 your proposal, and you call up FirstEnergy, IGS calls
19 up and says, "Hey, we have 25 customers who we sold
20 microgrids" -- we'll skip that one. We have 25
21 customers who we sold microgrids to. We want you to
22 bill them on the utility bill." Are you with me, so
23 far?

24 A. Sure.

25 Q. How many customers does FirstEnergy have

1 total?

2 A. They have distribution customers. They
3 have over a million.

4 Q. About two million, right?

5 A. Yes, that sounds about right.

6 Q. So would they have to reprogram their
7 entire billing system to accommodate your 25
8 microgrid customers?

9 A. So right now FirstEnergy currently offers
10 Bill Ready billing, which essentially allows
11 competitive suppliers to put different line items on
12 the utility bill. So there is billing
13 functionality in place that would be able to
14 facilitate this particular request. I also expect
15 there would have to be some additional IT upgrades as
16 well.

17 Q. Have you talked to them, or do you know
18 anything about the IT upgrades for the billing to
19 accommodate your proposal?

20 A. So we -- there are other utilities in
21 Ohio and other states that do allow IGS and other
22 suppliers to bill for service on the utility bill.
23 So to the extent that we know that other utilities
24 can accommodate that request and have been able to
25 accommodate that request, they charge us a fee for, I

1 have a general understanding of what additional costs
2 would be.

3 MS. DUNN: Your Honor, I would move to
4 strike. The question was, have you talked to anyone
5 at FirstEnergy.

6 EXAMINER CHILES: Could I have the
7 question and answer read back, please?

8 (Record read.)

9 MR. OLIKER: Your Honor, if you look in
10 that question, there was "do you talk to them" or "do
11 you know anything about the IT upgrades that would be
12 necessary," and I think he provided an answer to the
13 latter question.

14 EXAMINER CHILES: Thank you. The motion
15 to strike is denied.

16 Q. (By Mr. Kurtz) So your proposal is that
17 they would bill you for the IT upgrades to
18 accommodate your request?

19 A. Generally speaking, how it happens in
20 other utilities, they do recover some of the costs
21 through billing charges that we have to pay for
22 billing for those noncommodity charges.

23 Q. I meant all the costs. Is your proposal
24 they would charge you all the of upgrading the IT
25 system to accommodate your proposal?

1 A. Generally the costs would be recovered
2 over time. I wouldn't say they would charge IGS
3 specifically all the costs upfront, given that there
4 would be multiple suppliers that would be able to
5 also participate in billing for noncommodity
6 services.

7 Q. Well, why would CRES providers who don't
8 need this have to pay? Why wouldn't you pay it all
9 if you're the only one who wants the service?

10 A. I guess just -- generally what happens is
11 you're going to get an upfront fee for the charges to
12 do initially IT upgrades, and there's an ongoing and
13 additional charge for the billing of the noncommodity
14 charges. That's generally how the costs are required
15 is any entity that wishes to bill for these
16 noncommodity charges.

17 On the bill there's an upfront fee that
18 you have to pay, and I'm assuming that it's based on
19 the costs that the companies need to upgrade the
20 system, and also they charge us an ongoing billing
21 charge each time they bill for us.

22 Q. Okay. So just so I'm clear, you are okay
23 with paying for all the costs associated with the
24 upgrade?

25 A. Assuming the costs are -- assuming the

1 costs are reasonable and reasonable based on what the
2 actual costs are and not inflated costs, yes.

3 Generally we do pay the costs to upgrade the system.

4 Q. Now, would all the 2 million customers
5 get a line item that said "microgrid" and there would
6 be a zero for everybody except the 25?

7 A. So the way the Bill Ready billing works,
8 it's my understanding that we have the ability to put
9 our own line items and our own charges on the bill.

10 So we would just -- when we send our invoices to
11 FirstEnergy, we would include microgrid at \$10. If a
12 customer does not have any value-added products and
13 services, they would just get their competitive
14 retail electric charge on their bill.

15 Q. And if the following month you wanted to
16 add a line item for loyalty rewards, they would
17 change the billing system the following month to
18 accommodate that?

19 A. Well, again, the way the Bill Ready
20 system works is that you would just basically give
21 them the bill with the charges on the bill and also
22 the name of the product you're purchasing. So I
23 wouldn't imagine there would be any additional costs.

24 Q. If you wanted a whole new line item, why
25 wouldn't be there a whole new cost?

1 A. Because basically Bill Ready allows you X
2 amount of line items that you can utilize for
3 bill-specific charges. It already gives you that
4 functionality.

5 Q. Do you know how the FirstEnergy billing
6 system works?

7 A. I have a general understanding of how the
8 FirstEnergy billing system works.

9 Q. You're a lawyer, not an IT person, right?

10 A. I have had conversations with our IT
11 folks. I also know of how Bill Ready works.

12 Q. Now, there are over 100 CRES providers in
13 Ohio, right?

14 A. I don't know the exact number of CRES
15 providers in Ohio.

16 Q. How many do you know about there are?

17 A. I don't know. I mean, there's dozens,
18 but I'm not sure of the exact number.

19 Q. The last I counted, over 100. Let's use
20 dozens. Would all the dozens of CRES providers be
21 able to have FirstEnergy customize the utility bill
22 the way you described if they wanted to have home
23 protection, home alarm service? Would that bill work
24 that way, too?

25 A. Generally if they're willing to pay the

1 fixed upfront costs, which in our experience we've
2 had to pay fixed upfront costs to participate in the
3 utility billing, if they're willing to pay the fixed
4 upfront costs, they would have the ability to
5 participate in the program offered to the utility.

6 Q. So there could be dozens of customized
7 utility bills under your proposal for each of the
8 CRES providers, dozens of CRES providers, each
9 providing ten or more different services? Is that
10 the way you envision it?

11 A. I envision there would be a limit. Like
12 right now how Bill Ready is limited to the number of
13 line items on the bill. There would be a limit to
14 the amount of services that CRES providers can offer
15 on their bill.

16 Q. Now, you list ten to name a few. Does
17 that exhaust the line items that are available?

18 A. I'm not sure of the exact limitation on
19 the line items in the FirstEnergy bill currently.
20 What I know is it's in the range of ten-ish. I don't
21 know.

22 Q. If a customer has a dispute with a bill,
23 would they call FirstEnergy's customer service?

24 A. No. They would call IGS's customer
25 service.

1 Q. Well, the bill came from FirstEnergy.

2 Wouldn't it be natural for the customer to call

3 FirstEnergy?

4 A. So this is what happens currently, and

5 when a customer has a dispute with a supplier's

6 commodity charges, currently they'll say, I don't

7 agree with these charges. They may call FirstEnergy.

8 FirstEnergy will say that those are charges between

9 you and your supplier. You need to contact your

10 supplier if you have a dispute with those charges.

11 Or I'm sure FirstEnergy will refer them to the PUCO,

12 too, if they want to make a complaint.

13 Q. If you add more line items up to, ten or

14 to name a few, wouldn't the possibility of disputes

15 increase?

16 A. There would, but -- there would likely be

17 some additional calls to the call center, yes.

18 Q. Do you reimburse FirstEnergy for that

19 also?

20 A. Again, traditionally how these

21 relationships work in other utilities is that you pay

22 the upfront costs and a fee and ongoing fees as they

23 continue to bill. So to the extent that you continue

24 to pay the utility, I imagine that their costs are

25 covered.

1 Q. Now, if you have these ten line items on
2 the bill and then you lost the customer for
3 electricity supply, you're going to have to bill them
4 for these ten demand response, microgrid, battery
5 storage. You're going to have to bill them yourself,
6 aren't you?

7 A. Yes. The collections would be the
8 responsibility of IGS at that time, just like often
9 basically the way the FirstEnergy system currently
10 works is that they collect the commodity charges for
11 us. Since they don't have a POR, after a certain
12 period of time if the customer is not current on
13 their charges, the supplier assumes the
14 responsibility of collecting on the customer. So it
15 would be the same principle.

16 Q. So if you've got a customer with
17 microgrids and home protection and loyalty rewards
18 and battery storage and then you lose them as an
19 electricity customer, if you're going to have to bill
20 them anyway for all those things, why don't you bill
21 them to start with instead of having the utility
22 change its billing software for its 2 million
23 customers to accommodate you?

24 A. So as I explained in my testimony,
25 customers prefer simplicity, and they overwhelmingly

1 prefer a single bill for distribution and generation
2 charges. So the customers do not want a total bill.
3 If you look at your iPhone, oftentimes the products
4 that you bundle on your wireless bill are multiple
5 products bundled by one provider.

6 In my testimony, I explain that our
7 actual preference is that we're able to do supplier
8 consolidated billing like they do in Texas where --

9 Q. I'm going to stop you there. I didn't
10 ask you about that part of your testimony.

11 A. Okay.

12 Q. If you're going to have to -- if you lose
13 the customer, an electricity customer, you're going
14 have to send dual bills anyway. How much of a burden
15 is it to do that from the start? That's what you do
16 now, isn't it?

17 A. It is, but that's only for a small
18 percentage of customers that don't pay off their
19 bill. So the way it would work is the customer is
20 required to pay the bill that's invoiced to them. If
21 they don't pay the bill that's invoiced to them, then
22 they turn that collection over to the CRES provider.
23 That's not a very big percentage. That's a very
24 small percentage of customers.

25 Q. You have distributed solar and a lot of

1 these products you sell now and you bill for them
2 now, right?

3 A. Not in Ohio.

4 Q. Your website indicates that you have all
5 kinds of things.

6 A. Well, we do have products in Ohio. I
7 thought you meant distributed solar. Are you talking
8 about distributed solar or other products?

9 Q. Well, I was talking about distributed
10 solar, but you have other products that you're
11 billing for now, right?

12 A. We do. We have some utilities that allow
13 us to bill some of our products on the utility bill.
14 Some of them don't. And the same principle would
15 apply to FirstEnergy is currently offering a number
16 of different products and services on their bill to
17 customers that are not commodity. It facilitates the
18 transaction for those products and services to
19 customers. So it's a value to customers, and it
20 certainly is a value to the companies that are
21 utilizing FirstEnergy's bill to do that.

22 Q. Now, your proposal is pretty sweepingly
23 important, isn't it, for how billing will work in the
24 largest utility in the state, isn't it?

25 A. It's -- I think it's a modest proposal

1 that's been done by other utilities.

2 Q. You think this is modest, to revamp the
3 entire utility billing protocol?

4 A. I don't think it would be required to
5 revamp the entire utility billing protocol to offer
6 this service, especially considering the fact that
7 FirstEnergy is already doing it for a select group of
8 companies.

9 Q. Why isn't this a more appropriate issue
10 given its complexity, and the fact that you haven't
11 thought through all the details for the competitive
12 workshop or some other form rather than this ESP
13 case?

14 A. Because currently the company is
15 proposing to change its tariff to limit commodity
16 charges to only generation. It's our belief that as
17 the competitive markets evolve and technologies
18 advance, it's going to be increasingly more important
19 for customers to receive noncommodity charges as part
20 of their electric generation supply, and this is an
21 ESP case where the companies have brought up
22 restricting the ability to bill for noncommodity
23 charges. So I'm saying they should expand it.

24 Q. You do agree that your four or five pages
25 of your testimony cannot possibly address all the

1 details necessary for this type of proposal? Do you
2 agree with that, or do you think you spell it out in
3 specific -- enough specifics for the Commission?

4 A. I agree that there will be -- I think
5 that there will be additional details needed to be
6 worked out, but my testimony gives the Commission
7 enough to direct FirstEnergy to implement a program
8 within a certain period of time to allow for CRES
9 providers to bill on noncommodity services on the
10 utility bill.

11 MR. KURTZ: Thank you, Mr. White. No
12 further questions.

13 EXAMINER CHILES: Thank you.

14 Mr. McNamee?

15 MR. McNAMEE: No, thank you. I have no
16 questions.

17 EXAMINER CHILES: Mr. Oliker, redirect?

18 MR. OLIKER: Your Honor, if we could take
19 just a brief recess, and I think it will be pretty
20 brief, and it will be a short redirect.

21 EXAMINER CHILES: Sure. Let's go off the
22 record.

23 (Recess taken.)

24 EXAMINER CHILES: Let's go ahead and go
25 back on the record.

1 Mr. Oliker.

2 MR. OLIKER: Thank you, your Honor. Just
3 briefly on one category.

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. Oliker:

7 Q. Mr. White, do you remember questions that
8 you received from Ms. Dunn regarding confidential
9 information you may have reviewed in this case?

10 A. Yes.

11 Q. At the time of your deposition, did you
12 remember that there was a difference between
13 confidential and competitively sensitive confidential
14 information?

15 A. At the time of my deposition, I did not
16 remember that there was, FirstEnergy had made a
17 distinction between the competitively sensitive and
18 confidential information.

19 Q. And just to be clear, in the testimony
20 that you have submitted to this Commission in both
21 IGS Exhibit 11 and confidential -- sorry. Strike
22 that. In IGS Exhibit 11, 12 and 13, in any of those
23 documents do you rely on what is competitively
24 sensitive confidential information?

25 A. No. There's nothing I rely on or cite to

1 in my testimony that FirstEnergy considers
2 competitively sensitive information.

3 Q. And, to your knowledge, have you reviewed
4 any of FirstEnergy Solutions' competitively sensitive
5 confidential information?

6 A. Although I believe that at the time I --
7 before I met with counsel I would have had the right
8 to review it, to my knowledge, I did not review any
9 competitively sensitive information of FirstEnergy.
10 Largely any discovery that gets sent to me gets
11 deleted. I did not handle any discovery in this
12 case. That largely went through my counsel. You
13 know, you get hundreds and hundreds of discovery
14 documents, so I certainly didn't review every single
15 discovery document that got e-mailed to me. Even if
16 it was e-mailed to me, I would have had the right to
17 review it, I don't believe that I did.

18 MR. OLIKER: I believe those are all the
19 questions I have, your Honor. Thank you.

20 EXAMINER CHILES: Thank you, Mr. Oliker.

21 Recross. Mr. Randazzo?

22 MR. RANDAZZO: None.

23 EXAMINER CHILES: Mr. Fisk?

24 MR. FISK: None.

25 EXAMINER CHILES: Mr. Sauer.

1 MR. SAUER: None.

2 EXAMINER PRICE: Ms. Dunn.

3 MS. DUNN: Yes, your Honor.

4 - - -

5 RE-CROSS-EXAMINATION

6 By Ms. Dunn:

7 Q. Mr. White, could you turn to your
8 supplemental direct testimony, IGS 11.

9 A. Supplemental direct, yes.

10 Q. I apologize. I was at the wrong
11 supplemental. IGS 13.

12 A. The supplemental --

13 Q. Let's back up. IGS 13, which is your
14 supplemental testimony filed on March 2nd.

15 A. Okay. Sure.

16 Q. And you state on line 17 to 18 --

17 MR. OLIKER: Can I have the page, Carrie?

18 MS. DUNN: I'm sorry. Page 2.

19 Q. And you state, "to subsidize FES's
20 inefficient competitive generation." Do you see
21 that?

22 A. Yes.

23 Q. And if you could please turn to page 120
24 of your deposition.

25 MR. OLIKER: How about we have a question

1 instead of going to the deposition? It's already
2 improper.

3 EXAMINER CHILES: Ms. Dunn, do you have a
4 response?

5 MS. DUNN: I'll rephrase.

6 EXAMINER CHILES: Thank you.

7 Q. Isn't it true that the facts you have --
8 that you reviewed competitively sensitive
9 confidential material in this case that has specific
10 cost information relating to the plants being offered
11 in the proposed transaction?

12 A. I do not recall reviewing that
13 information if I did.

14 Q. Could you please turn to your deposition?

15 A. Sure.

16 Q. Page 120, line 10:

17 Question: "What facts do you have to
18 support the term 'inefficient competitive
19 generation'?"

20 Answer: "My general understanding of the
21 generation that's being proposed by FirstEnergy."

22 "MR. OLIKER: Mr. White, be careful not
23 to divulge confidential information in the public
24 record."

25 Question: "I'm not asking for specifics,

1 but have you reviewed competitively sensitive
2 confidential material in this case that has specific
3 cost information relating to the plants being offered
4 in the proposed transaction?"

5 Answer: "Yes."

6 Did I read that correctly?

7 MR. OLIKER: Objection. He already
8 offered his explanation of his understanding in the
9 deposition.

10 A. I didn't understand what you meant. I
11 didn't remember the distinction between the
12 competitively sensitive and the confidential.

13 MS. DUNN: Your Honor, move to strike.

14 EXAMINER CHILES: Motion granted.

15 A. That's what was read in my deposition.

16 MS. DUNN: Your Honor, move to strike
17 again.

18 EXAMINER CHILES: I think that was
19 actually responsive to your question.

20 THE WITNESS: But you can strike that,
21 too. I think you should strike that.

22 MS. DUNN: I'll retrack my motion to
23 strike.

24 EXAMINER CHILES: Thank you.

25 MS. DUNN: No further question, your

1 Honor.

2 EXAMINER CHILES: Mr. Kurtz?

3 MR. KURTZ: No, thank you, your Honor.

4 EXAMINER PRICE: Mr. McNamee?

5 MR. MCNAMEE: No questions.

6 EXAMINER CHILES: Thank you, Mr. White.

7 You are excused.

8 THE WITNESS: Thank you.

9 EXAMINER CHILES: Mr. Oliker.

10 MR. OLIKER: Your Honor, IGS would move
11 for the admission of Exhibit 11, 12 and 13, and we
12 would proffer the portions of the testimony that were
13 stricken on the basis that was provided earlier in
14 the discussion on the motions.

15 EXAMINER CHILES: Your proffer is noted
16 for the record.

17 Are there any objections to the admission
18 of IGS Exhibits 11, 12 Confidential, and 13?

19 MS. DUNN: Your Honor, subject to the
20 motions to strike, there are no objections.

21 EXAMINER CHILES: Thank you. Subject to
22 the rulings on the motions to strike, they will be
23 admitted.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 EXAMINER CHILES: Ms. Dunn?

1 MS. DUNN: Your Honor, the companies
2 would like to move Company Exhibit 90, 91, 96 and 97.

3 EXAMINER CHILES: Are there any
4 objections to the admission of companies' Exhibits
5 90, 91, 96 or 97?

6 MR. OLIKER: Can we go off the record for
7 a second?

8 EXAMINER CHILES: Yes.

9 (Discussion off the record.)

10 EXAMINER CHILES: Let's go back on the
11 record.

12 MR. OLIKER: Your Honor, the protective
13 agreement and the e-mail from Tamara Singleton are
14 really not relevant to this case or any point that
15 would bear on this testimony, so I would oppose their
16 admission.

17 And regarding the letter to Mr. White and
18 from Mr. White to Mr. Jones, we wouldn't oppose the
19 admission, but we would also request that Mr. White's
20 testimony from Case 14-1694 be admitted because it
21 was marked as an exhibit in this case, and he was
22 asked questions about it..

23 EXAMINER CHILES: Do you have a reference
24 for that Company Exhibit 94?

25 MR. OLIKER: The Notice for Withdrawal of

1 the testimony.

2 MS. DUNN: What are you looking for?

3 MR. OLIKER: I think the Bench asked for
4 94, what that is.

5 MS. DUNN: Your Honor, Company Exhibit 94
6 is 14-1693, the Direct Testimony of Matthew White.

7 And may I respond?

8 EXAMINER CHILES: Yes.

9 MS. DUNN: As it relates to 90 and 91, I
10 believe I established the foundation and relevancy of
11 those documents with Mr. White's cross, and they're
12 appropriate for the record. And also I didn't hear
13 an objection to 96 and 97, but the companies will
14 not -- did not use Mr. White's testimony, anything
15 other than to show the date he filed it. So there
16 was no foundation laid for any use other than that,
17 so we would object to the admission of that document.

18 MR. OLIKER: And, your Honor, because she
19 marked the exhibit, we have a right to include all of
20 it for the sake of completeness under Ohio law and
21 the Rules Of Evidence.

22 MS. DUNN: There's nothing to be
23 complete, your Honor, other than date which he agreed
24 to. I believe he stipulated to that, too.

25 EXAMINER CHILES: We will go ahead and we

1 will admit Companies' Exhibits 90 and 91, objection
2 noted, and Companies' Exhibits 96 and 97.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 MS. DUNN: Your Honor, if I may offer one
5 more response.

6 EXAMINER CHILES: Go ahead.

7 MS. DUNN: For the limited use that I
8 used it does not allow it to be brought in on issues
9 that pertain to AEP and do not pertain to this case,
10 of which Mr. White did not file in this case in a
11 timely manner.

12 MR. OLIKER: Your Honors, she could have
13 used it to refresh his recollection, but she did not.
14 She marked it as an exhibit, and she authenticated it
15 as a document, and it is all right to have the entire
16 document admitted under the Rules of Evidence.

17 EXAMINER CHILES: We are not going to
18 admit Company Exhibit 94; however, we will take
19 administrative notice of it.

20 MR. OLIKER: Thank you, your Honor.

21 EXAMINER CHILES: Let's go off the
22 record.

23 (Discussion off the record.)

24 EXAMINER ADDISON: Let's go back on the
25 recovered.

1 Mr. Fisk, please call your first witness.

2 MR. FISK: Thank you, your Honors. The
3 Sierra Club would call Peter Lanzalotta to the stand.

4 - - -

5 PETER LANZALOTTA

6 being first duly sworn, as prescribed by law, was
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Fisk:

10 Q. Good afternoon, Mr. Lanzalotta.

11 A. Mr. Fisk.

12 Q. Could you please state your name for the
13 record?

14 A. Peter Lanzalotta.

15 Q. And could you please state your business
16 address.

17 A. 67 Royal Point Drive, Hilton Head Island,
18 South Carolina.

19 MR. FISK: And, your Honors, Sierra Club
20 would ask that Mr. Lanzalotta's supplemental
21 testimony, the public version, be marked as Exhibit
22 67 and the confidential version be marked as Sierra
23 Club 68C.

24 EXAMINER ADDISON: So marked.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)

1 Q. Thank you. Mr. Lanzalotta, do you have
2 in front of you a copy of Sierra Club Exhibit 67?

3 A. Yes.

4 Q. And is that document your supplemental
5 testimony, the public version, filed in this
6 proceeding?

7 A. Yes.

8 Q. And do you have in front of you a copy of
9 Sierra Club Exhibit 68C?

10 A. Yes.

11 Q. And is that the confidential version of
12 the supplemental testimony that you filed in this
13 proceeding?

14 A. Yes.

15 Q. And with regards to either the public
16 version or the confidential version of your
17 supplemental testimony, do you have any corrections
18 or changes?

19 A. No.

20 Q. And so if I were to ask you today the
21 questions in Sierra Club Exhibit 67 and 68C, would
22 your answers be the same?

23 A. Yes.

24 MR. FISK: Your Honors, Sierra Club moves
25 for the admission of Sierra Club Exhibit 67 and 68C

1 and tenders Mr. Lanzalotta for cross-examination.

2 EXAMINER ADDISON: Thank you, Mr. Fisk.
3 We'll defer on ruling on those motions until after
4 cross-examination has been completed.

5 Mr. Hays, do you have any questions?

6 MR. HAYS: No. Thank you, your Honor.

7 EXAMINER ADDISON: Mr. Randazzo?

8 MR. RANDAZZO: None, thank you.

9 EXAMINER ADDISON: Mr. Oliker?

10 MR. OLIKER: None, thank you

11 EXAMINER ADDISON: Mr. Kurtz?

12 MR. KURTZ: No questions.

13 EXAMINER ADDISON: Mr. Sauer.

14 MR. SAUER: No questions.

15 EXAMINER ADDISON: Mr. Lang?

16 MR. LANG: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Lang:

20 Q. Good evening, Mr. Lanzalotta.

21 A. Mr. Lang.

22 Q. A few questions about history. Your work
23 experience dates back to the 1970s, correct?

24 A. Yes.

25 Q. And in the 1970s, you first worked for

1 about five years with Baltimore Gas & Electric,
2 correct?

3 A. Yes.

4 Q. During your time at BG&E, you did not do
5 transmission planning, correct?

6 A. Correct.

7 Q. And after you left Baltimore Gas &
8 Electric, you worked for -- during this time period
9 from 1977 to 1982, you worked for a few consulting
10 firms and also for a few municipal utilities; is that
11 correct?

12 A. That's correct.

13 Q. And in those jobs, you did not do any
14 transmission impact studies involving the retirement
15 of generating units, correct?

16 A. That's correct.

17 Q. And then in 1982, you became an employee
18 of Whitfield Russell Associates, correct?

19 A. Yes.

20 Q. And you have worked for that consulting
21 firm since 1982, correct?

22 A. From 1982 through the end of 2000.

23 Q. Now, you filed your testimony in this
24 case on May 11th, 2015, correct?

25 A. Yes.

1 Q. And you were retained by Sierra Club to
2 provide testimony sometime during the first half of
3 the previous week, either on May 4th, 5th or 6th,
4 correct?

5 A. Yes.

6 Q. And you then began preparing your
7 testimony relatively soon after you were retained,
8 correct?

9 A. Yes.

10 Q. Now, your testimony addresses the
11 supplemental testimony of Rodney Phillips. You
12 understand, do you not, that Mr. Phillips' testimony
13 is, in part, based on load flow studies that were
14 performed using PJM base case models?

15 A. Yes.

16 Q. And you have performed load flow studies
17 in the past using PJM's base case models, correct?

18 A. Yes.

19 Q. And some of those studies were to
20 determine the impact on the transmission grid of
21 generating plant retirements, is that true?

22 A. Yes.

23 Q. You've done load flow studies for that
24 specific purpose to determine the impact on the
25 transmission grid of retirements, you've done that

1 about eight to ten times as you remember?

2 A. I believe that's correct.

3 Q. And that would have been done in the
4 2010-2013 time period, correct?

5 A. Some might have been before 2010.

6 Q. Okay. And in some of those cases when
7 you were doing those load flow studies, you were
8 retained by an environmental organization, correct?

9 A. Some for an environmental organization
10 and some on behalf of state agencies, such as Office
11 of Consumer Advocate, Peoples' Counsel, organizations
12 such as that.

13 Q. And when you were retained in that 2011
14 and 2013 time period by an environmental
15 organization, the objective of the retention was to
16 oppose RMR compensation for retiring generating units
17 in PJM, correct?

18 A. Not specifically. My assignment there
19 was to study the retirements and see what effect on
20 reliability they had and if, perhaps, there was a
21 basis for an RMR contract. I was never told, you
22 know, we want to oppose these contracts. That's why
23 we are doing this work. Not at all.

24 Q. So you're at least aware that in the
25 process that PJM employs with regard to RMR

1 contracts, that there can be parties that provide a
2 different perspective to PJM and have the opportunity
3 to oppose cost recovery through RMR contracts,
4 correct?

5 A. Yes. They can participate in the process
6 at FERC and file testimony, oppose, offer changes,
7 things like that, yes.

8 Q. Now, with regard to PJM's base case
9 models, those models make assumptions regarding what
10 existing transmission facilities and planned
11 transmission facilities will be in place during the
12 year that's being studied, correct?

13 A. Yes.

14 Q. And PJM's base case models also make
15 assumptions regarding planned generation that will be
16 in service during the year studied, correct?

17 A. Yes.

18 Q. PJM includes generation in its base case
19 models that have met certain milestones in the PJM
20 queue, and that's with regard to proposed generation,
21 not existing generation, correct?

22 A. Correct.

23 Q. Now, PJM's base case models also include
24 all transmission projects that are in PJM's database
25 of baseline transmission projects as long as those

1 projects have a completion date before the year being
2 studied, correct?

3 A. Are you saying everything in the queue?

4 Q. Let me try again. The base case model,
5 and let's take an example and maybe it will be a
6 little clear. If we're looking at PJM's 2019 RTEP
7 base case model, PJM would include all transmission
8 projects in that model that are in PJM's database of
9 baseline transmission projects as long as the
10 completion date of those baseline transmission
11 projects is prior to 2019?

12 A. Yes, I agree.

13 Q. Now, one type of load flow study is a
14 generation deliverability study, correct?

15 A. Yes.

16 Q. And with regard to a generation
17 deliverability study, the standard practice is to
18 look at single contingencies or what's referred to as
19 N minus 1, correct?

20 A. Yes.

21 Q. Which raises the question, what does the
22 N stand for?

23 A. I think it stands for number, N minus 1,
24 N minus 2 or N minus 1 minus 1; one contingency
25 followed by another one a certain number of times

1 later.

2 Q. Which raises my next question. In
3 addition to an N minus 1 study as part of a
4 generation deliverability study, you can also look at
5 selected double contingencies in what is called an N
6 minus 1 minus 1, correct?

7 A. Yes.

8 Q. If you wanted to run a load flow study
9 for the summer of 2017, that would be the period you
10 were modeling, you would use PJM's base case model
11 for that time period, correct?

12 A. That would be the ideal situation, yes.

13 Q. You would not add to or subtract
14 generating units from PJM's base case for that
15 period, correct?

16 A. I would not.

17 Q. Now, on page 3 of your testimony at line
18 5, you identify PUCO Case No. 10-503-EL-FOR as a case
19 in which you provided testimony, correct?

20 A. Yes.

21 Q. And in that case, you performed a load
22 flow study to determine the impact of the retirement
23 of Duke Energy's Beckjord Units 1 through 6, correct?

24 A. Yes. I think it's 1 through 6. I know
25 there's a large number of units there.

1 Q. And with respect to the study that you
2 did for those Beckjord units, you did not identify
3 any transmission lines that would be overloaded,
4 correct?

5 A. Given the studies that we ran, that is
6 correct, yes.

7 Q. Now, for purposes of this case involving
8 the Sammis plant and the Davis-Besse plant, you did
9 not perform a load flow study to analyze the
10 retirement of any combination of units at Sammis or
11 Davis-Besse, correct?

12 A. Yes.

13 Q. The only studies you reviewed that show
14 the impact of the retirement of Sammis and
15 Davis-Besse are the studies performed by
16 Mr. Cunningham and Mr. Phillips in this case,
17 correct?

18 A. Yes. Also took notice of the studies
19 that were performed in relation to FirstEnergy plant
20 closures that I think were announced in 2012.

21 Q. And so that would be what has been
22 referred to as the Lake plants; is that right?

23 A. Sounds familiar to me.

24 Q. That would involve like the Ashtabula,
25 Eastlake plants; is that what you're referring to?

1 A. Yes.

2 Q. Now, on your Exhibit PJL-3, which I
3 understand is confidential, but I have a question for
4 you that doesn't get to the confidential information,
5 you agree there are overloaded facilities that were
6 identified by Mr. Cunningham and Mr. Phillips that
7 are listed on that exhibit, correct?

8 A. Yes.

9 Q. And you do not have any basis for showing
10 that that list is incorrect, true?

11 A. As performed, no, that's correct.

12 Q. Now, if I could take you to your Exhibit
13 2 and your list of proceedings in which you
14 testified, and ask you to turn particularly to page 5
15 of 18.

16 A. Yes, I'm there.

17 Q. On that page, it shows several cases
18 before the Illinois Commerce Commission involving
19 Commonwealth Edison, correct?

20 A. Yes, it does.

21 Q. And in those cases, you provided
22 testimony regarding transmission upgrade
23 alternatives; is that fair?

24 A. Yes.

25 Q. And you would agree that the Illinois

1 Commerce Commission in those cases had a lot of
2 problems with your particular methods?

3 A. Yes.

4 Q. And in particular, in the case that's No.
5 35 on your list, the Illinois Commerce Commission
6 found that you had made numerous engineering and
7 planning errors and omissions, correct?

8 A. That's what they say in their order.

9 Q. And they also criticized you for not
10 performing necessary load flow studies, correct?

11 A. Yes, they did.

12 Q. Now, if I could ask you to turn to page 5
13 of your testimony. Now, on page 5, you present a
14 scenario in which not all of the Sammis units would
15 be retired at the same time. Is it fair to say you
16 have not calculated the odds that FirstEnergy
17 Solutions would retire only some of the Sammis units?

18 A. That's correct.

19 Q. You have not studied what the possibility
20 is that only some of the Sammis units would retire,
21 correct?

22 A. Yes.

23 Q. And as part of your engagement for this
24 case, you have not studied the economics of the
25 Sammis units, correct?

1 A. I did not study the economics, correct.

2 Q. And you did not conduct a load flow
3 analysis to determine what the impact would be on the
4 transmission system if only some of the Sammis units
5 were retired, correct?

6 A. That's correct.

7 Q. And you have not studied the impact of
8 any specific generation being added to the PJM
9 transmission grid as part of this case or as part of
10 this scenario, correct?

11 A. Yes.

12 Q. Now, with regard to a hypothetical
13 scenario you describe on page 5 of your testimony,
14 you cannot say that reducing the amount of generating
15 capacity being retired would reduce all of the
16 overloadings, correct?

17 A. I can't say that they would necessarily
18 eliminate overloading. Sammis is 2,200 megawatt-plus
19 plant. If you kept a substantial portion of that in
20 service rather than retiring it, I think I would be
21 surprised if there were any of those overloads that
22 it had absolutely zero effect on. It's an AC system.
23 Almost everything affects everything else, to some
24 degree. So even for the lines that are, you know,
25 more affected by Davis-Besse, I would expect maybe

1 some reduction in the overload, although, maybe not
2 significant.

3 Q. Well, to my question, you can't say
4 whether in that scenario you'd see a reduction in all
5 of the overloadings, correct?

6 A. I think I just answered that, but I'll be
7 happy to answer it again. I said it wouldn't
8 eliminate necessary overloads, but if you're going
9 to -- you do a study and you're retiring 2,200
10 megawatts of generating capacity, it's going to
11 affect -- have some affect on almost every AC line in
12 the electrical vicinity.

13 If you change that and all of a sudden
14 you're cutting that in half or you're making a
15 substantial change in the amount of megawatts, I
16 think that would reflect itself in the size of the
17 overloads.

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

19 EXAMINER ADDISON: You may.

20 Q. Mr. Lanzalotta, do you remember being
21 deposed in this case on May 28th?

22 A. Yes.

23 Q. That was a telephone deposition, and you
24 were in Fort Myers, Florida, correct?

25 A. Yes.

1 Q. And you were sworn in and agreed to tell
2 the truth, correct?

3 A. Yes.

4 Q. And do you recognize the deposition
5 transcript in front of you as the transcript of your
6 deposition from May 28th?

7 A. Yes.

8 Q. Could I have you turn to page 39, please.

9 A. Okay.

10 Q. And on line 10, is it your testimony -- I
11 asked you the question:

12 "At the bottom of page 5 of your
13 testimony, the part that goes on -- at the top of
14 page 6 that starts with reducing the amount of
15 generating capacity, is it your belief that reducing
16 the amount of generating capacity being retired would
17 reduce the magnitude of all of the overloadings that
18 are shown on PJL-3?"

19 Your answer was: "No, I can't say they
20 would reduce all of the overloadings, no."

21 That was your testimony in the
22 deposition, correct?

23 A. Yes.

24 Q. Now, you agree that as long as a load
25 flow study shows a transmission facility is at

1 100 percent of overload or higher, PJM and NERC
2 require mitigation of the overload, correct?

3 A. Requires some solution. The violation
4 has to be addressed.

5 Q. Fair enough. Now, on page 6 of your
6 testimony, lines 9 and 11, you discuss the
7 possibility of new generating plants coming online
8 that are connected to the grid at an appropriate
9 location. I wanted to ask you about that statement.
10 Is it fair to say to understand what an appropriate
11 location is, it's what would be referred to as the
12 electrical distance that matters, not the distance as
13 the crow flies?

14 A. That's involved in the subject of picking
15 an appropriate location. The impact of replacement
16 generation varies depending on where you would put
17 it. If you retired 1,000 megawatts at Sammis and
18 then you put 1,000 megawatts in at Sammis, there
19 would be very little effect on the transmission
20 system or zero effect, actually, is what I would
21 expect.

22 If replacement generation is not at
23 Sammis but, say, it's located on a high voltage line,
24 345 kV line that runs into Sammis, that's not quite
25 the same as being at Sammis, but electrically it's

1 almost as good.

2 Q. And so the concept of electrical distance
3 relates to the location of generation as it's
4 connected to the grid; is that fair?

5 A. Generally speaking, I think so, yes.

6 Q. And you understand that the further away
7 electrically a new generating unit is from Sammis,
8 the less chance that new unit could address the
9 overloads resulting from the retirement of Sammis,
10 correct?

11 A. You could say that, or you could --
12 actually, what I would say is the further away it is,
13 the less impact it would be likely to have on both
14 overloads. Again, on an AC alternating current
15 system like we have in Ohio, everything is
16 interconnected. Almost everything affects everything
17 else, especially if you're talking about taking off
18 thousands of megawatts of generation.

19 Q. Okay. Now, you have not studied what an
20 appropriate location would be with respect to the
21 retirement of the Sammis and Davis-Besse units,
22 correct?

23 A. I haven't run any load flow studies with
24 replacement units, correct.

25 Q. And when PJM studies the impact on

1 reliability of generating unit retirements, PJM does
2 not identify potential generating units that could be
3 constructed at appropriate locations to remedy the
4 reliability issues, correct?

5 A. Yes.

6 Q. And you have not identified a specific
7 new generating unit being constructed at an
8 appropriate location that would reduce the need for
9 the transmission upgrades listed in Mr. Phillips'
10 testimony, correct?

11 A. Like I said, I didn't run any studies on
12 that.

13 Q. So the answer is correct?

14 A. I didn't determine that there were any.
15 I didn't determine that there were not any either.

16 Q. Right.

17 A. I didn't run any studies.

18 Q. Since you didn't run any studies, you
19 have not identified any specific generating units at
20 an appropriate location, correct?

21 MR. FISK: Asked and answered.

22 EXAMINER ADDISON: I don't think he
23 really answered the question.

24 So you may answer the question.

25 A. I agree.

1 Q. Now, on page 6 of your testimony, you
2 start to discuss Mr. Phillips' cost estimates, and
3 you are aware that Mr. Phillips' low-end cost
4 estimate assumes all the overloaded facilities that
5 were identified would be reconductored, correct?

6 A. Yes, with the exception of those
7 violations that were not transmission line overload,
8 and I don't want to get into any detail because
9 that's confidential.

10 Q. Thank you. And you agree that the
11 approach taken was conservative in terms of
12 estimating the cost of eliminating the overloads on
13 those specific lines, correct?

14 A. If we agree that those overloads on those
15 specific lines have to be addressed, then
16 reconductoring the lines is a relatively conservative
17 approach at estimating the cost, yes.

18 Q. And you also agree it is unlikely that
19 the overloads could be eliminated simply by
20 reconductoring all of those lines, correct?

21 A. I think it's fairly unlikely, although I
22 haven't run those studies either.

23 Q. Now, with regard to the overloaded
24 facilities identified by Mr. Phillips, you have not
25 studied whether any of those facilities are of such

1 advanced age that they will need to be reinforced
2 regardless of these plant retirements at some time in
3 the near future, correct?

4 A. I have not made that determination, yes.

5 Q. Now, when PJM identifies an overloaded
6 facility, one possible outcome is that PJM directs
7 that a new line be built to eliminate the overload,
8 correct?

9 A. Yes.

10 Q. And until PJM conducts a load flow study
11 and then studies potential solutions, you cannot say
12 what combination of reconductoring, rebuilds, or new
13 builds would be necessary?

14 A. It would be speculation to some extent.

15 Q. So you would agree?

16 A. Yes.

17 Q. Now, with regard to PJM's allocation of
18 the costs of transmission upgrades required if Sammis
19 and Davis-Besse retires, those costs are allocated to
20 retail customers within PJM, correct?

21 A. Yes.

22 Q. The rule simply is retail customers pay
23 transmission costs, correct?

24 A. Baseline rulings are a little different,
25 but for baseline upgrades. Most of those costs are

1 allocated to the transmission zones and retail
2 customers pay for those lines.

3 Q. And you expect that if Sammis and
4 Davis-Besse were to retire and there were
5 transmission costs related to that, that some portion
6 of those costs would be allocated to the customers of
7 the companies in this case, Ohio Edison, Toledo
8 Edison, and CEI, correct?

9 A. Some portion, yes.

10 Q. And you do not know what percentage of
11 those transmission upgrade costs would be allocated
12 to the companies' customers, correct?

13 A. Since we don't know the package of
14 upgrades, that's correct.

15 Q. Now, you agree that the longer a
16 transmission line is, the higher its exposure to the
17 elements that might cause a forced outage, true?

18 A. Yes.

19 Q. And the longer the transmission line, the
20 higher the chance of a forced outage on that line,
21 correct?

22 A. I think that's almost the same question
23 that I just answered, but yes.

24 Q. And the longer the line, the more
25 difficult it is to provide reactive support over that

1 line, correct?

2 A. Yes. Reactive power doesn't travel well
3 over transmission lines.

4 Q. Now, on page 10 of your testimony, you
5 discuss the RMR process.

6 A. Okay.

7 Q. Now, the way the RMR process works is
8 that the RMR contract is in place until new
9 transmission identified by PJM can be built, correct?

10 A. Until the violations that that plant was
11 given an RMR contract to help avoid have been
12 eliminated. If that's a new transmission line or if
13 that's a new generating plant that was in the queue
14 finally coming into service, I think both of those
15 would be reason to end an RMR contract.

16 Q. Although what PJM is looking at, since
17 PJM can build transmission, it doesn't build
18 generation, PJM puts the RMR contract in place until
19 it can remedy the violation through transmission,
20 correct?

21 A. PJM doesn't strictly build transmission
22 either, but they might order a transmission owner to
23 build transmission, yes.

24 Q. And under the RMR process, customers pay
25 for the new transmission upgrades that are required

1 while also paying extra for the generation under the
2 RMR contract, correct?

3 A. They would be paying for both, yes.

4 Q. Now, on page 8 of your testimony, you
5 reference PJM's baseline database and network
6 upgrades database, and I have a few questions for you
7 in the confidential session at the bottom of page 8.

8 But right now since we're in the public
9 session, we'll stay at the top of page 8. Those two
10 databases, the baseline database and the network
11 upgrades database, you understand those are two
12 separate databases, correct?

13 A. I believe that's true, yes.

14 Q. And an individual project would not be in
15 both databases, correct?

16 A. I wouldn't expect it to be.

17 Q. The baseline database includes approved
18 projects that are part of the regional transmission
19 expansion plan or the RTEP, correct?

20 A. Yes.

21 Q. The network database lists facilities
22 that are tied to proposed generation or transmission
23 projects, is that right?

24 A. Merchant transmission, yes.

25 Q. Projects in the network database are

1 under study for purposes of the related project that
2 they're tied to, correct?

3 A. If they're related to a generation unit
4 deactivation, if that is, in fact, what is being
5 proposed. They're also related -- they're done every
6 year looking forward five years to look for what we
7 call NERC violations, lines that are overloaded,
8 under normal conditions or under N minus 1,
9 single-contingency conditions.

10 So for baseline, it may not be affiliated
11 with a generation unit retirement or affected by a
12 generation unit retirement hardly at all. But the
13 upgrades that are needed to compensate for generation
14 unit retirements are baseline facilities.

15 Q. So I was asking you about the network
16 upgrades database, not baseline database.

17 A. I'm sorry. Network upgrades I don't
18 believe address generation unit retirements.

19 Q. So projects in the network database may
20 or may not be built based on whether the related
21 project that they're connected to goes forward,
22 correct?

23 A. I agree.

24 MR. LANG: Your Honor, that's all I have
25 for the public session. I have maybe five minutes of

1 confidential.

2 EXAMINER ADDISON: Thank you, Mr. Lang.
3 Let's go ahead and finish up the public
4 cross-examination and then we'll get back to you
5 during the confidential session.

6 Mr. McNamee?

7 MR. MCNAMEE: I have no questions.

8 EXAMINER ADDISON: Thank you.

9 All right. At this time we will move
10 into the confidential portion of our transcript. I
11 would normally ask for any parties if they haven't
12 executed a confidentiality agreement to leave the
13 room, but I think at this point of the day we're
14 okay.

15 Thank you, Mr. Mendoza.

16 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

EXAMINER ADDISON: Mr. Fisk, any

1 redirect.

2 MR. FISK: Just a couple questions.

3 EXAMINER ADDISON: Please proceed.

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. Fisk:

7 Q. Mr. Lanzalotta, do you remember Mr. Lang
8 asked you a little while ago about an order from the
9 Illinois Commerce Commission with a case involving
10 ComEd, Commonwealth Edison?

11 A. Yes, I remember.

12 Q. Okay. And approximately how long ago was
13 that order?

14 A. About 20 years.

15 Q. And do you recall Mr. Lang asking you
16 whether if you were doing a load flow study, you
17 would add any units into the PJM base case?

18 A. I remember.

19 Q. Okay. And are there any circumstances in
20 which you would add any units to the PJM base case?

21 A. I think the companies -- yes, there are.
22 A company study was done about a year ago. I might
23 check to see if since then any additional generating
24 units have achieved that milestone status under which
25 PJM would normally consider them to be in service for

1 the load flow studies. So there might -- the status
2 of these units is changing all the time. It may be
3 that there are additional units that would qualify.

4 Q. And what is that milestone you were just
5 referring to?

6 A. I believe it's having a facility services
7 agreement and an in-service state -- to be in service
8 by 2019 for purposes of our studies here.

9 MR. FISK: Nothing further, your Honor.

10 EXAMINER ADDISON: Thank you, Mr. Fisk.

11 Mr. Hays, any recross?

12 MR. HAYS: No, your Honor. Thank you.

13 EXAMINER ADDISON: Mr. Sauer?

14 MR. SAUER: No. Thank you, your Honor.

15 EXAMINER ADDISON: Mr. Lang?

16 MR. LANG: Yes, your Honor.

17 - - -

18 RE-CROSS-EXAMINATION

19 By Mr. Lang:

20 Q. Mr. Lanzalotta, to the last question
21 Mr. Fisk asked you, talking about looking for
22 additional generating units, you would also look for
23 projected transmission system changes and projected
24 generating unit retirements plus any changes in
25 imports on the PJM system during that time period,

1 correct?

2 A. Yes.

3 Q. And you would also look at withdrawals
4 from the PJM queue, correct?

5 A. Yes. There might be changes in
6 generating units' status in the queue that would take
7 generators out as well as put them in as fast
8 eligibility goes.

9 Q. And that is because there are commonly
10 withdrawals from the queue of generation that even
11 though they've hit certain milestones, something
12 happens and the project is withdrawn, correct?

13 A. It's not unusual or unknown for that to
14 happen.

15 Q. So in terms of the things that we just
16 talked about that you would have to look at, you
17 would agree that the transmission system is dynamic
18 with all those definite factors both on the
19 generation and transmission side?

20 A. Yes, sir.

21 MR. LANG: No further questions.

22 EXAMINER ADDISON: Thank you, Mr. Lang.

23 Mr. McNamee?

24 MR. MCNAMEE: No questions. Thank you.

25 EXAMINER ADDISON: Mr. Lanzalotta, you

1 are excused. Thank you for your testimony.

2 THE WITNESS: Thank you, your Honor.

3 EXAMINER ADDISON: Have a very safe trip
4 home.

5 THE WITNESS: I appreciate it. Thank
6 you.

7 EXAMINER ADDISON: I believe Sierra Club
8 previously moved for admission of Sierra Club
9 Exhibits 67 and 68 Confidential. Do I hear any
10 objections as to the admission of those exhibits?

11 MR. LANG: No, your Honor.

12 EXAMINER ADDISON: Thank you. Those will
13 be admitted.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 EXAMINER ADDISON: Mr. Lang?

16 MR. LANG: Your Honor, the companies
17 would move Companies' Exhibit 8.

18 EXAMINER ADDISON: Ninety-eight
19 confidential.

20 MR. LANG: Sorry. Yes, 98 confidential.

21 EXAMINER ADDISON: Thank you.

22 Any objections?

23 MR. FISK: No, your Honor.

24 EXAMINER ADDISON: Hearing none, it will
25 be admitted.

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(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER ADDISON: Thank you all. We will adjourn for today and reconvene tomorrow at 9:00 in the morning.

Let's go off the record.

(The hearing adjourned at 6:05 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, October 7, 2015, and carefully compared with my original stenographic notes.

Carol A. Kirk, RPR, RMR.

(CAK-79477)

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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 10/07/15 - Volume XXV electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.